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88	Memorandum from A. P. C. to Mr. Hoguet, dated February 12, 1919	II	1170	I	276
89	Memorandum of A. M. Holcombe, Major, Ordnance Dept., U. S. A., of conference with A. Mitchell Palmer, A. P. C., February 12, 1919	II	1170	I	277
90	Letter of A. Mitchell Palmer to Frank L. Polk, Acting Secretary of State, dated February 26, 1919	II	1188	I	279
91	Order of Frank L. Polk, dated February 26, 1919 (Same as Exhibit No. 3 to Answer)	II	1191	Rec. I	551
92	Letter of Francis P. Garvan to Frank L. Polk, Acting Secretary of State, dated March 31, 1919	II	1193	I	280
93	Letter of Ramsay Hoguet to Mansfield Ferry, office A. P. C., dated April 1, 1919	II	1193	I	281
94	Order of Frank L. Polk, dated April 5, 1919 (Same as Exhibit No. 4 to Answer)	II	1194	Rec. I	554

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95	Page of Individual Trust Ledger, A. P. C., account of owners of various patents sold to defendant, Trust No. 46542	II	1268	I	283
96	Page of Individual Trust Ledger, A. P. C., account of Abraham Kranstein, Trust No. 36501	II	1276	I	284
97	Memorandum from Asst. Secretary of War to Chief of Ordnance, dated February 12, 1919	II	1288	I	285
98	Letter of Ramsay Hoguet to A. Mitchell Palmer, A. P. C., dated February 16, 1919	II	1288	I	286
99	Letter of Capt. W. H. Swenarton to Major A. M. Holcombe, dated February 19, 1919	II	1288	I	288
100	Letter of S. Whitaker, Asst. General Counsel, to Ramsay Hoguet, dated March 7, 1919	II	1289	I	292
101	Memorandum of Mr. Whitaker to Mr. Garvan, dated March 7, 1919	II	1289	I	292
102	Letter of B. Crowell, Acting Secretary of War, to the President, dated March 13, 1919	II	1289	I	293
103	Memorandum for the Acting Chief of Ordnance, from B. Crowell, Asst. Secretary of War, dated March 11, 1919	II	1289	I	294
104	Memorandum for Secretary of War, dated March 13, 1919, approved by the President	II	1289	I	295
105	Letter of Ramsay Hoguet to G. H. Dorr, Asst. Director of Munitions, dated April 4, 1919	II	1291	I	296
106	Letter of Rudolph Forster to the Attorney General, dated June 2, 1923	II	1292	I	297

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107	Memorandum for Patent Section, Purchase Branch, P. S. & F. Division, War Dept., by H. W. Dix, Captain, Ordnance Dept., U. S. A.	II	1293	I	298
108	Memorandum from Major A. M. Holcombe, for Mr. Dorr, dated April 14, 1919	II	1293	I	300
109	Letter from Captain W. H. Swenarton to Lt. S. H. Graves, Administration Division, Patent Sec., dated April 16, 1919	II	1313	I	302
110	Letter of A. G. Glasgow to G. H. Dorr, Asst. Director of Munitions, dated April 21, 1919	II	1316	I	305
111	Memorandum from Major A. M. Holcombe, to G. R. Dorr, dated April 25, 1919	II	1316	I	306
112	Letter from Douglas I. McKay, Vice-President of defendant, to Chief of Ordnance, dated August 19, 1919	II	1317	I	307
113	Letter of W. H. Swenarton, Major, U. S. A., to Major D. P. Gaillard, Nitrate Division, dated September 4, 1919	II	1319	I	309
114	Letter of Geo. J. Roberts, Special Assistant to Chief of Ordnance, to Capt. S. H. Graves, Chief Patent Branch, Advisory Section, dated September 9, 1919	II	1327	I	314
115	Minutes of meeting of Advisory Committee on Sales of A. P. C., February 14, 1919	II	1327	I	316
116	Assignment from Francis P. Garvan as A. P. C. to defendant, dated April 10, 1919 (Same as Exhibit "H-1" to Bill of Complaint)	II	1330	Rec. I	404
116-A	Schedule 1 annexed to Bill of Complaint	II	1331	Rec. I	124

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117	Assignment from Francis P. Garvan as A. P. C., to defendant, dated May 2, 1919 (Same as Exhibit "H-2" to Bill of Complaint)	II	1330	Rec. I	410
117-A	Schedule 2 annexed to Bill of Complaint	II	1331	Rec. I	292
118	Assignment from Francis P. Garvan as A. P. C., to defendant, dated May 6, 1919 (Same as Exhibit "H-3" to Bill of Complaint)	II	1330	Rec. I	415
118-A	Schedule 3 annexed to Bill of Complaint	II	1331	Rec. I	294
119	Assignment from Francis P. Garvan as A. P. C., to defendant, dated May 15, 1919 (Same as Exhibit "H-4" to Bill of Complaint)	II	1330	Rec. I	418
119-A	Schedule 4 annexed to Bill of Complaint	II	1331	Rec. I	294
120	Assignment from Francis P. Garvan as A. P. C., to defendant, dated June 17, 1919 (Same as Exhibit "H-5" to Bill of Complaint)	II	1330	Rec. I	421
120-A	Schedule 5 annexed to Bill of Complaint	II	1331	Rec. I	295
121	Assignment from Francis P. Garvan as A. P. C., to defendant, dated June 21, 1919 (Same as Exhibit "H-6" to Bill of Complaint)	II	1330	Rec. I	424
121-A	Schedule 6 annexed to Bill of Complaint	II	1331	Rec. I	297
122	Assignment from Francis P. Garvan as A. P. C., to defendant, dated October 17, 1919 (Same as Exhibit "H-7" to Bill of Complaint)	II	1330	Rec. I	429
122-A	Schedule 7 annexed to Bill of Complaint	II	1331	Rec. I	301

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123	Assignment from Francis P. Garvan as A. P. C., to defendant, dated December 9, 1919 (Same as Exhibit "H-8" to Bill of Complaint)	II	1330	Rec. I	43
123-A	Schedule 8 annexed to Bill of Complaint	II	1331	Rec. I	30
124	Assignment from Francis P. Garvan as A. P. C., to defendant, dated February 26, 1920 (Same as Exhibit "H-9" to Bill of Complaint)	II	1330	Rec. I	435
124-A	Schedule 9 annexed to Bill of Complaint	II	1331	Rec. I	30
125	Assignment from Francis P. Garvan as A. P. C., to defendant, dated February 26, 1920 (Same as Exhibit "H-10" to Bill of Complaint)	II	1330	Rec. I	438
125-A	Schedule 10 annexed to Bill of Complaint	II	1331	Rec. I	325
126	Assignment from Francis P. Garvan as A. P. C., to defendant, dated March 9, 1920 (Same as Exhibit "H-11" to Bill of Complaint)	II	1330	Rec. I	441
126-A	Schedule 11 annexed to Bill of Complaint	II	1331	Rec. I	328
127	Assignment from Francis P. Garvan as A. P. C., to defendant, dated May 4, 1920 (Same as Exhibit "H-12" to Bill of Complaint)	II	1330	Rec. I	444
127-A	Schedule 12 annexed to Bill of Complaint	II	1331	Rec. I	331
128	Assignment from Francis P. Garvan as A. P. C., to defendant, dated May 15, 1920 (Same as Exhibit "H-13" to Bill of Complaint)	II	1330	Rec. I	447
128-A	Schedule 13 annexed to Bill of Complaint	II	1331	Rec. I	333

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129	Assignment from Francis P. Garvan as A. P. C., to defendant, dated July 20, 1920 (Same as Exhibit "H-14" to Bill of Complaint)	II	1330	Rec. I	451
129-A	Schedule 14 annexed to Bill of Complaint	II	1331	Rec. I	344
130	Assignment from Francis P. Garvan as A. P. C., to defendant, dated December 21, 1920 (Same as Exhibit "H-15" to Bill of Complaint)	II	1330	Rec. I	453
130-A	Schedule 15 annexed to Bill of Complaint	II	1331	Rec. I	345
131	Assignment from Francis P. Garvan as A. P. C., to defendant, dated December 21, 1920 (Same as Exhibit "H-16" to Bill of Complaint	II	1330	Rec. I	457
131-A	Schedule 16 annexed to Bill of Complaint	II	1331	Rec. I	356
132	Assignment from Francis P. Garvan as A. P. C., to defendant, dated December 21, 1920 (Same as Exhibit "H-17" to Bill of Complaint)	II	1330	Rec. I	460
132-A	Schedule 17 annexed to Bill of Complaint	II	1331	Rec. I	357
133	Assignment from Francis P. Garvan as A. P. C., to defendant, dated December 21, 1920 (Same as Exhibit "H-18" to Bill of Complaint)	II	1330	Rec. I	464
133-A	Schedule 18 annexed to Bill of Complaint	II	1331	Rec. I	379
134	Assignment from Francis P. Garvan as A. P. C., to defendant, dated February 19, 1921 (Same as Exhibit "H-19" to Bill of Complaint)	II	1330	Rec. I	467
134-A	Schedule 19 annexed to Bill of Complaint	II	1331	Rec. I	382
135	Stipulation as to corrections in Exhibit "G" to Bill of Complaint	II	1332	I	330

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136	Corrections to Exhibit "G" to Bill of Complaint (These corrections embodied in Exhibit "G" as printed)	II	1333	Not printed	
137	Letter of J. H. Choate, Jr., to Lucien H. Boggs, office A. P. C., dated November 14, 1919	II	1333	I	331
138	Letter of J. H. Choate, Jr., to Lucien H. Boggs, office A. P. C., dated November 18, 1919	II	1334	I	332
139	Office memorandum, A. P. C., from Mr. Goldstein to Mr. Boggs, dated November 21, 1919	II	1334	I	333
140	Letter from Mr. Boggs to Mr. Dunbar, office of A. P. C., dated December 20, 1919	II	1335	I	334
141	Letter of C. E. Dunbar, Asst. General Counsel, A. P. C., to J. H. Choate, Jr., dated December 22, 1919	II	1336	I	335
142	Letter of J. H. Choate, Jr., to C. E. Dunbar, dated December 30, 1919 ..	II	1336	I	337
143	Letter of Lucien H. Boggs to Joseph H. Choate, Jr., dated January 7, 1920	II	1336	I	338
144	Letter of J. H. Choate, Jr., to Lucien T. Boggs, dated January 21, 1920 ..	II	1337	I	340
145	Office memorandum, A. P. C., from Mr. Dunbar to Mr. Garvan, dated February 10, 1920	II	1337	I	341
146	Note of Francis P. Garvan to Joseph P. Tumulty, dated February 11, 1920	II	1337	I	341
146-A	Memorandum attached to Plaintiff's Exhibit No. 146	II	1338	I	342
147	Letter of Francis P. Garvan, A. P. C., to the President, dated February 10, 1920	II	1339	I	342
148	Executive Order of February 13, 1920 (Same as Exhibit No. 5 to Answer)	II	1339	Rec. I	557

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149	Letter of Joseph P. Tumulty to Francis P. Garvan, dated February 13, 1920	II	1339	I	343
150	Minutes of meeting of Advisory Committee on Sales of A. P. C., March 28, 1919	II	1340	I	344
151	Minutes of a conference with Ramsay Hoguet before Federal Trade Commission, June 10, 1919	II	1348	I	351
152	Letter of Ramsay Hoguet to A. Mitchell Palmer, Attorney General, dated June 28, 1919	II	1349	I	372
153	Memorandum from R. T. Scott to Mr. Brown, dated July 3, 1919	II	1349	I	374
154	Letter of LaRue Brown to Ramsay Hoguet, dated July 8, 1919	II	1349	I	374
155	Assignment from Francis P. Garvan as A. P. C., to defendant, dated March 1, 1921 (Same as Exhibit "I" to Bill of Complaint)	II	1355	Rec. I	472
156	Assignment from Thomas W. Miller, A. P. C., to defendant, dated April 27, 1921 (Same as Exhibit "J" to Bill of Complaint)	II	1355	Rec. I	480
156-A	Schedule attached to assignment of April 27, 1921 (Plaintiff's Ex. No. 156) (Same as Schedule 20 of Exhibit "G" to Bill of Complaint)	II	1357	Rec. I	390
157	Assignment from Thomas W. Miller, A. P. C., to defendant, dated November 5, 1921 (Same as Exhibit "K" to Bill of Complaint)	II	1356	Rec. I	485
157-A	Schedule 3 attached to assignment of April 5, 1921 (Plaintiff's Ex. No. 157) (Same as Schedule 21 of Exhibit "G" to Bill of Complaint)	II	1357	Rec. I	391

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158	Letter from Bureau of Trusts, A. P. C., to Pacific Flush Tank Co., dated February 5, 1918	III	1362	I	376
159	Letter of Federal Trade Commission to F. J. Horne, dated February 12, 1918	III	1362	I	377
160	Letter of League of Minnesota Municipalities to A. Mitchell Palmer, A. P. C., dated March 13, 1918	III	1364	I	378
161	Letter of Pacific Flush Tank Co., to A. Mitchell Palmer, A. P. C., dated March 20, 1918	III	1365	I	381
162	Memorandum from R. C. Goldstein, Division of Patents, A. P. C., to Mr. Horne, dated March 22, 1919	III	1366	I	382
163	Letter of Pacific Flush Tank Co. to A. Mitchell Palmer, A. P. C., dated January 9, 1919	III	1371	I	386
164	Memorandum from Mr. Goldstein to Judge Brodhead, dated February 18, 1919	III	1372	I	388
165	Letter of J. Davis Brodhead to Francis P. Garvan, A. P. C., dated March 28, 1919	III	1403	I	392
166	Report of J. R. Zimmerman, Patent Section, A. P. C., re Imhoff Patents	III	1404	I	401
167	Letter of Robert C. Goldstein to F. C. Youmana, dated August 6, 1919	III	1404	I	402
168	Minutes of meeting of Board of Directors of defendant, August 2, 1921	III	1406	I	403
168-A	Blank form of license of defendant	III	1406	I	406
169	Minutes of meeting of Board of Directors of defendant, October 5, 1921	III	1407	I	421
169-A	Blank form of license of defendant	III	1407	I	423
170	Agreement dated August 12, 1921, between defendant and Pacific Flush Tank Co.	III	1407	I	427

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170½	Letter of Fred K. Seymour to Washington Sales Committee, A. P. C., dated December 27, 1918	III	1492	I	435
171	Letter of Spier Whitaker to Fred K. Seymour, dated December 31, 1918	III	1408	I	438
172	Letter of Joseph J. Hart to A. Mitchell Palmer, dated February 20, 1919	III	1409	I	439
173	Memorandum from R. C. Goldstein to A. Mitchell Palmer, dated February 20, 1919	III	1409	I	440
174	Memorandum from A. Mitchell Palmer, A. P. C., to Washington Committee on Sales, dated February 22, 1919	III	1409	I	440
175	Memorandum from A. Mitchell Palmer, A. P. C., to Mr. Whitaker, dated March 3, 1919	III	1409	I	441
176	Letter of Ramsay Hoguet to Spier Whitaker, dated March 10, 1919	III	1410	I	442
177	Letter of E. Leitz, Inc., to A. P. C., dated May 20, 1919	III	1410	I	443
178	Letter of E. Leitz, Inc., to A. P. C., dated May 29, 1919	III	1411	I	444
179	Letter of Robert C. Goldstein to E. Leitz, Inc., dated May 31, 1919	III	1411	I	445
180	Letter of Robert C. Goldstein to Ramsay Hoguet, dated May 31, 1919	III	1411	I	446
181	Letter of Ramsay Hoguet to Arabol Manufacturing Co., dated April 22, 1919	III	1412	I	446
182	Letter of the Arabol Mfg. Co. to A. P. C., dated April 24, 1919	III	1412	I	448
183	Letter of Robert C. Goldstein to Arabol Mfg. Co., dated May 6, 1919	III	1412	I	449
184	Letter of Chas. Roome Parmele to A. P. C., dated March 21, 1919	III	1413	I	450
185	Letter of Robert C. Goldstein to Chinosol Co., dated March 26, 1919	III	1413	I	451

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186	Letter of Charles Roome Parmele to A. P. C.	III	1414	I	452
187	Letter of Robert C. Goldstein to Chinosol Co., dated October 14, 1919	III	1415	I	454
188	Letter of Charles Roome Parmele to A. P. C., dated October 17, 1919	III	1416	I	455
189	Letter of Robert C. Goldstein to Chinosol Co., dated October 21, 1919	III	1416	I	457
190	Letter of Robert C. Goldstein to Ramsay Hoguet, dated October 21, 1919	III	1416	I	458
191	Extracts from minutes of certain meetings of American Dyes Institute (Withdrawn and separate minutes of different meetings admitted in evidence)	III	1417	(Withdrawn)	
192	Statement of Lee C. Bradley, General Counsel, A. P. C., before sub-committee of Committee on Appropriations, U. S. Senate, on October 21, 1918 (Same as Exhibit "A" to Bill of Complaint)	III	1418	Rec. I	75
193	Executive Order of April 24, 1918	III	1447	I	460
194	Statement of moneys received by A. P. C. on account of contract rights assigned to defendant	III	1452	I	463
195	Contract, In Re American Kitchens Products Company (Afterwards offered as Plaintiff's Exhibit No. 402)	III	1455	I	720
196	No exhibit; embodied in Plaintiff's Exhibit No. 400	III	1455	I	699
197	Memorandum dated August 17, 1922, for Department of Justice, from A. P. C., re, Royalties Received, with Schedule annexed	III	1456	I	465
198	Statement of earnings from royalties under licenses issued by the Federal Trade Commission	III	1473	I	473

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198-A	Summary of royalties under licenses issued by Federal Trade Commission	III	1473	I	477
199	Adjustment of earnings as shown by plaintiff's statement from properties assigned to defendant	III	1481	I	479
200	Consolidated statement showing royalties earned or paid to Federal Trade Commission, A. P. C. and defendant	III	1483	I	481
201	Summary of royalties and license fees	III	1488	I	483
202	General Ledger, Bureau of Sales, A. P. C. Property held by defendant	III	1496	I	484
203	Letter of R. C. Goldstein to F. J. Horne, dated March 19, 1919	III	1541	I	490
203-A	Demand of A. P. C. upon Chinosol Co., enclosed with Plaintiff's Exhibit No. 203	III	1541	I	491
204	Letter of Chas. Roome Parmele, dated June 20, 1919, to Mr. Hoguet	III	1553	I	493
205	Letter of defendant to Parmele Pharmacal Company, dated June 21, 1919	III	1553	I	494
206	Letter of Ramsay Hoguet to Charles Roome Parmele, dated June 23, 1919	III	1554	I	495
207	Letter of Ramsay Hoguet to Charles Roome Parmele, dated August 21, 1919	III	1555	I	496
208	Letter of Chas. Roome Parmele to Ramsay Hoguet, dated August 22, 1919	III	1555	I	497
209	Letter of defendant to Charles Roome Parmele, dated August 25, 1919	III	1555	I	498
210	Letter of Chas. Roome Parmele to defendant, dated August 27, 1919	III	1556	I	499
211	U. S. Patent No. 906,918	III	1571	See Patent Ex. Book	
212	Certificate of Registration of trade-mark "Chinosol"	III	1571	I	501
213	Assignment to Chinosol Company of trade-mark "Chinosol"	III	1572	I	504

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214	Assignment by defendant to Chinosol Company of trade-mark "Chinosol" ..	III	1615	I	508
215	Release and discharge by Chinosol Company to defendant	III	1615	I	510
216	Federal Trade Commission License No. 1, 1(a), 1(b) and 1(c), to The Dermatological Research Laboratories ..	III	1619	I	515
217	Federal Trade Commission License No. 1(d), to the Dermatological Research Laboratories	III	1630	I	531
218	Federal Trade Commission License No. 2, 2(a), 2(b) and 2(c), to the Takamine Laboratory, Inc.	III	1630	I	532
219	Federal Trade Commission License No. 2(d) to the Takamine Laboratory, Inc.	III	1630	I	533
220	Federal Trade Commission License No. 3 to Farbwerke-Hoechst Company ..	III	1631	I	533
221	Federal Trade Commission License No. 3(a) to Farbwerke-Hoechst Company.	III	1631	I	534
222	Federal Trade Commission License No. 4 to Farbwerke-Hoechst Company ..	III	1631	I	535
223	Federal Trade Commission License No. 5, to Rector Chemical Company, Inc..	III	1631	I	535
224	Federal Trade Commission License No. 7, to Pacific Flush Tank Company ..	III	1631	I	536
225	Federal Trade Commission License No. 8, 8(a), 8(b) and 8(c) to Diarsenol Company, Inc.	III	1631	I	543
226	Federal Trade Commission License No. 8(d) to Diarsenol Company, Inc. ...	III	1631	I	544
227	Federal Trade Commission License No. 9, to The Abbott Laboratories	III	1632	I	545
228	Federal Trade Commission License No. 10, to Lembcke, Von Bermuth Company, Incorporated	III	1632	I	545
229	Federal Trade Commission License No. 12, to The Calco Chemical Company.	III	1632	I	548

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232	Federal Trade Commission License No. 18 to E. I. duPont de Nemours & Company	III	1632	I	549
233	Federal Trade Commission License No. 19 to E. I. duPont de Nemours & Company	III	1632	I	558
234	Federal Trade Commission License No. 19 to E. I. duPont de Nemours & Co.	III	1633	I	558
235	Federal Trade Commission License No. 20, to E. I. duPont de Nemours & Co.	III	1633	I	560
236	Federal Trade Commission License No. 21, to E. I. duPont de Nemours & Co.	III	1633	I	561
237	Federal Trade Commission License No. 22, to Albert B. Moses	III	1633	I	562
238	Federal Trade Commission License No. 23, to F. L. Smidth & Company	III	1633	I	563
239	Federal Trade Commission License No. 24, to E. C. Klipstein & Sons Company	III	1633	I	563
240	Federal Trade Commission License No. 27, to National Aniline & Chemical Company, Inc.	III	1633	I	564
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246	Federal Trade Commission License No. 34 to H. A. Metz Laboratories, Inc.	III	1634	I	570
247	Federal Trade Commission License No. 34(a) to H. A. Metz Laboratories, Inc.	III	1634	I	571
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249	Federal Trade Commission License No. 36, to General Ceramics Co.	III	1635	I	572
250	Federal Trade Commission License No. 38, to E. C. Klipstein & Sons Company	III	1635	I	573
251	Federal Trade Commission License No. 39, to Merck & Co.	III	1635	I	579
252	Federal Trade Commission License No. 42, to Draeger Oxygen Apparatus Company	III	1635	I	579
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256	Federal Trade Commission License No. 47, to Reinschild Chemical Company	III	1636	I	582
257	Federal Trade Commission License No. 48, to Arma Engineering Company	III	1636	I	583
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263	Federal Trade Commission License No. 55, to Consolidated Color & Chemical Co.	III	1637	I	587
264	Federal Trade Commission License No. 56, to Consolidated Color & Chemical Co.	III	1637	I	588
265	Federal Trade Commission License No. 57, to Consolidated Color & Chemical Co.	III	1637	I	588
266	Federal Trade Commission License No. 58, to Consolidated Color & Chemical Co.	III	1637	I	589
267	Federal Trade Commission License No. 59, to Consolidated Color & Chemical Company	III	1637	I	590
268	Federal Trade Commission License Nos. 60, 60(a), 60(b) and 60(c), to Division of Laboratories and Research of the New York State Department of Health	III	1637	I	590
269	Federal Trade Commission License No. 61, to Semet-Solvay Company	III	1637	I	591
270	Federal Trade Commission License No. 62, 62(a), 62(b) and 62(c), to Massachusetts State Department of Health.	III	1638	I	592
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724	Executive Order dated August 30, 1919.	VII	4875	III	1864
725	Executive Order dated September 21, 1919	VII	4875	III	1868
726	Executive Order dated November 25, 1919	VII	4875	III	1871
727	Executive Order dated November 25, 1919	VII	4875	III	1873
728	Order by Frank L. Polk dated December 4, 1918	VII	4876	III	1874
728-A	Order by Frank L. Polk dated January 11, 1919	VII	4876	III	1876
728-B	Order by Frank L. Polk dated February 26, 1919	VII	4876	III	1879
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728-D	Order by Frank L. Polk dated March 24, 1919	VII	4879	III	1886
728-E	Order by Frank L. Polk dated April 5, 1919	VII	4879	III	1892
728-F	Order by Frank L. Polk dated April 5, 1919	VII	4879	III	1895
728-G	Order by Frank L. Polk dated April 8, 1919	VII	4879	III	1896
728-H	Order by Frank L. Polk dated April 18, 1919	VII	4879	III	1899
728-I	Order by Frank L. Polk dated May 7, 1919	VII	4879	III	1903
728-J	Order by Frank L. Polk dated May 28, 1919	VII	4879	III	1906
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728-O	Order by Frank L. Polk dated June 24, 1919	VII	4879	III	1920
728-P	Order by Frank L. Polk dated July 8, 1919	VII	4879	III	1922
728-Q	Order by Frank L. Polk dated July 8, 1919	VII	4879	III	1924
729	Proclamation by the President dated February 5, 1918	VII	4879	III	1926
729-A	Proclamation by the President dated May 31, 1918	VII	4879	III	1928
729-B	Proclamation by the President dated June 28, 1918	VII	4879	III	1932
729-C	Proclamation by the President dated July 13, 1917	VII	4879	III	1934
729-D	Proclamation by the President dated August 10, 1918	VII	4879	III	1936
729-E	Proclamation by the President dated August 14, 1918	VII	4879	III	1938
729-F	Proclamation by the President dated November 29, 1918	VII	4879	III	1940
729-G	Proclamation by the President dated December 3, 1918	VII	4879	III	1969
729-H	Schedule of Compensation for Docks, Piers, Warehouses, etc., pursuant to Act of Congress approved March 28, 1918	VII	4880	III	1972
730	Message of the President to Congress April 2, 1917	VII	4880	III	1979
730½	Address of President to the Two Houses of Congress, December 4, 1917	VII	4880	III	1991
731	Certified Copy of letter signed "R. L." to His Holiness Pope Benedictus XV	VII	4880	III	2003
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732-C	Letter from The Chemical Foundation, Inc., to The Textile Alliance, Inc., dated December 9, 1919	VII	4882	III	2011
732-D	List of Non-Vat Dyes for which Chemical Foundation holds Patents	VII	4882	III	2012
733	License between The Chemical Foundation, Inc. and Atmospheric Nitrogen Corporation dated July 24, 1920	VII	4885	III	2014
734	Statement from Cheney Brothers of German Colors used during 1922	VII	4888	III	2024
734-A	Statement from Cheney Brothers of Chief Colors of American Manufacture purchased in 1922	VII	4888	III	2025
734-B	Statement from Cheney Brothers of Dyestuffs purchased from Germany in 1921	VII	4888	III	2025
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2	Letter of Will T. Gordon to H. E. Danner, Treas. American Dyes Institute, dated February 28, 1919	II	1029	IV	2029
3	Letter of Will T. Gordon to Ramsay Hoguet dated February 3, 1919	II	1131	IV	2035
3a	Letter of Will T. Gordon to M. R. Poucher, American Dyes Institute, dated February 3, 1919	II	1131	IV	2036
4	Order by Frank L. Polk dated December 4, 1918 (Same as Plaintiff's Exhibit No. 728)	II	1250	III	1874
4-A	Order by Frank L. Polk dated January 11, 1919 (Same as Plaintiff's Exhibit No. 728-A)	II	1250	III	1876
4-B	Order by Frank L. Polk dated February 26, 1919 (Same as Plaintiff's Exhibit No. 91, 728-B and Defendant's Exhibit No. 3 to Answer)	II	1250	Rec. I	551
4-C	Order by Frank L. Polk dated March 24, 1919 (Same as Plaintiff's Exhibit No. 728-C)	II	1250	III	1882
4-D	Order by Frank L. Polk dated March 24, 1919 (Same as Plaintiff's Exhibit No. 728-D)	II	1250	III	1886
4-E	Order by Frank L. Polk dated April 5, 1919 (Same as Plaintiff's Exhibit No. 94, 788-E, and Exhibit 4 to Defendant's answer)	II	1250	Rec. I	554
4-F	Order by Frank L. Polk dated April 5, 1919 (Same as Plaintiff's Exhibit No. 728-F)	II	1250	III	1895

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4-I	Order by Frank L. Polk dated May 7, 1919 (Same as Plaintiff's Exhibit No. 728-I)	II	1250	III	1903
4-J	Order by Frank L. Polk dated May 28, 1919 (Same as Plaintiff's Exhibit No. 728-J)	II	1250	III	1906
4-K	Order by Frank L. Polk dated May 28, 1919 (Same as Plaintiff's Exhibit No. 728-K)	II	1250	III	1908
4-L	Order by Frank L. Polk dated May 28, 1919 (Same as Plaintiff's Exhibit No. 728-L)	II	1250	III	1914
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4-N	Order by Frank L. Polk dated June 18, 1919 (Same as Plaintiff's Exhibit No. 728-N)	II	1250	III	1919
4-O	Order by Frank L. Polk dated June 24, 1919 (Same as Plaintiff's Exhibit No. 728-O)	II	1250	III	1920
4-P	Order by Frank L. Polk dated July 8, 1919 (Same as Plaintiff's Exhibit No. 728-P)	II	1250	III	1922
4-Q	Order by Frank L. Polk dated July 8, 1919 (Same as Plaintiff's Exhibit No. 728-Q)	II	1250	III	1924
5	Copy of Agreement of Settlement—Farbwerke-Hoechst Co. and Herman A. Metz with Dermatological Research Laboratories, et al.	III	2017	IV	2042

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6	Agreement between Dermatological Research Laboratories, Dr. Schamberg, Dr. Raiziss and Herman A. Metz, dated June 8, 1918	III	2018	IV	2049
7	Article in "Journal of American Medical Association" of March 30, 1918, entitled "Toxicity of the American-Made Arsphenamin,"	III	2018	IV	2052
8	Letter from Dr. Haeuser to Mr. Metz dated June 20, 1913	III	2018	IV	2055
9	Letter from Dr. Haeuser to Mr. Metz dated May 14, 1913	III	2019	IV	2057
10	Letter from H. A. Metz to Dr. Albert dated May 9, 1916	III	2019	IV	2059
10-A	Clipping from "Brooklyn Eagle" of May 6, 1916	III	2019	IV	2059
11	Letter from Herman A. Metz to Joseph P. Tumulty dated April 8, 1915	III	2019	IV	2065
12	Letter from Herman A. Metz to President Wilson dated November 7, 1914	III	2019	IV	2072
13	Letter from Mr. Blank to Mr. Metz dated August 5, 1915	III	2020	IV	2323
14	Letter from C. Blank to H. A. Metz dated September 28, 1915	III	2020	IV	2351
15	Letter from C. Blank to H. A. Metz dated November 12, 1915	III	2020	IV	2352
16	Letter from Dr. Haeuser to Mr. Metz dated March 30, 1914	III	2020	IV	2077
17	Letter from Dr. Haeuser to H. A. Metz dated July 31, 1913	III	2021	IV	2344
18	Letter from H. A. Metz to Robert F. Rose, Foreign Trade Adviser, dated October 23, 1914	III	2021	IV	2080
19	Letter from H. A. Metz to President Wilson dated June 16, 1915	III	2021	IV	2081
20	Letter from H. A. Metz to William Jennings Bryan, Secretary of State, dated March 6, 1915	III	2021	IV	2083

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22	Letter from Farbwerke-Hoechst Company to Drs. Brown and Jack dated April 26, 1917	III	2022	IV	2084
23	Letter from H. A. Metz to Dr. G. W. McCoy dated March 14, 1919	III	2022	IV	2085
24	Letter from Edward W. Deeters to H. A. Metz dated October 24, 1922	III	2022	IV	2086
24-A	Statement of Edward W. Deeters to H. A. Metz dated October 23, 1922 (Enclosed with Defendant's Exhibit No. 24)	III	2022	IV	2087
25	Letter from E. L. Pickerell to C. Cyril Bennett dated September 6, 1921 ...	III	2022	IV	2088
26	Letter from E. W. Deeters to H. A. Metz dated March 22, 1923	III	2106	IV	2089
27	Memorandum enclosed with Defendant's Exhibit No. 26	III	2107	IV	2089
28	Extract from Congressional Record of of July 14, 1923 (Enclosed with Defendant's Exhibit No. 26)	III	2107	IV	2090
29	Letter from H. A. Metz to E. W. Deeters dated March 23, 1923	III	2108	IV	2097
30	Report of A. Mitchell Palmer, Alien Property Custodian	IV	2338	IV	2098
31	Statement of A. Mitchell Palmer, A. P. C., before Committee on Appropriations, U. S. Senate, Hearing on H. R. 9867	IV	2545	IV	2228
32	Résumé of Extracts from Proceedings before Congress, showing history of Amendment of March, 1918	IV	2548	IV	2263
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32-B	Executive Order dated April 2, 1918, (Same as Plaintiff's Exhibit No. 691).	IV	2564	III	1788

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59	Telegram from Badische, Germany, to Adolph Kuttroff	IV	2730	IV	2426
60	Telegram from Badische, Germany, to Adolf Kuttroff	IV	2730	IV	2426
61	Letter from Dr. Albert to "My dear Benefactors and Friends" dated November 16, 1914	IV	2732	IV	2426
62	Telegram from Bernstorff to Foreign Office in Berlin	IV	2732	IV	2427
63	Telegram from Charles Suchard to Millington Behren, Berlin	IV	2733	IV	2428
64	Letter to Dr. Hossenfelder dated April 19, 1915	IV	2733	IV	2428
65	Letter from K. Boy-Ed to Dr. Albert dated April 28, 1915	IV	2742	IV	2429
65-A	Editorial from "New York World," Issue of April 28, 1915	IV	2742	IV	2430
65-B	Letter from Dr. Albert to K. Boy-Ed dated April 28, 1915	IV	2742	IV	2431
66	Letter from H. A. Metz to Robert F. Rose, Foreign Trade Adviser, dated April 8, 1915	IV	2743	IV	2431
67	Letter from H. A. Metz to William C. Redfield dated April 9, 1915	IV	2743	IV	2434
68	The Chemists' War	IV	2745	IV	2438
69	Article published in "The Yale Review" of April, 1918	IV	2745	IV	2457
70	German Militarism and Its Influence upon the Industries	IV	2745	IV	2477
71	The President's Protest to Great Britain and Its justification by the perils to our trade and industries	IV	2746	IV	2491
72	Report of Consul General Hossenfelder to the Imperial Chancellor Dr. Von Bethmann-Hollweg dated March 3, 1916	IV	2746	IV	2514

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73	Dr. Albert's Report to the German Government on the Dyestuffs Situation dated April 26, 1916	IV	2746	IV	2525
74	Letter from Zimmerman to Dr. Albert dated May 21, 1916	IV	2747	IV	2529
75	Letter from Bernstorff to Dr. Albert dated June 21, 1916	IV	2747	IV	2530
76	Letter from Mr. Kuttroff to Dr. Albert dated September 20, 1916	IV	2747	IV	2534
77	Report by Dr. Schweitzer to Count Von Bernstorff	IV	2747	IV	2534
78	Excerpt from speech of Lord Moulton on "The German Dye Factories"	IV	2748	IV	2543
79	Article entitled "German Business Methods in the United States," by C. H. Burr, printed in the "Quarterly Review" of July, 1919	IV	2748	IV	2544
80	Extract from Letter of Dr. Albert to Dr. Schweitzer	IV	2780	IV	2573
81	Sample Letter, used in soliciting subscriptions to stock of The Chemical Foundation, Inc., dated July 16, 1919	IV	2804	IV	2575
82	List of stockholders of The Chemical Foundation and what they manufacture	IV	2805	IV	2576
83	Statement of The Chemical Foundation, Inc., of income on licenses from April 10, 1919, to December 31, 1922, on patents and trade-marks assigned to it by Alien Property Custodian	IV	2824	IV	2583
84	Form of Agency Agreement of The Chemical Foundation, Inc,	IV	2825	IV	2619
85	Letter from Francis P. Garvan to A. Mitchell Palmer dated April 15, 1919	IV	2830	IV	2623
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88	Letter from Franklin D. Roosevelt to Alien Property Custodian dated March 16, 1920	IV	2838	IV	26
89	List of Licensees of The Chemical Foundation and what they manufacture, dated December 31, 1922	IV	2844	IV	26
90	Statement of The Chemical Foundation, Inc., showing number of licenses issued each year and number of patents involved	IV	2845	IV	26
91	Statement of Chemical Foundation's Income and expenses from beginning of operations to December 31, 1922	IV	2848	IV	26
91-A	Statement of Chemical Foundation's Educational expense from April 10, 1919, to December 31, 1922	IV	2849	IV	266
92	Statement of Chemical Foundation, Inc., of costs of properties acquired from Alien Property Custodian	IV	2861	IV	266
93	Summary Statement by Chemical Foundation, Inc., of Income and other receipts and disposition thereof from April 10, 1919, to December 31, 1922, and balance net assets remaining at December 31, 1922	IV	2861	IV	2667
94	Summary by Chemical Foundation, Inc., showing yearly expiration of income-producing patents and amounts earned thereon	IV	2862	IV	2668
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96	Book entitled "Creative Chemistry," by Edward E. Slosson	V	2869	Not print	
97	Pamphlet entitled "The Future Independence and Progress of American Medicine in the Age of Chemistry"	V	2869	Not print	

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99	Pamphlet entitled "An Exhibit prepared under the Auspices of the National Research Council with the co-operation of the Chemical War Service of the United States Army," now permanently installed at the Smithsonian Institute, Washington, D. C.	V	2870	Not printed	
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101	Pamphlet entitled "The Dyes Question"	V	2872	Not printed	
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103	Statement by Chemical Foundation of Income received on Arsphenamine Patents from April 10, 1919, to December 31, 1922, divided as between patents formerly licensed by Federal Trade Commission and patents licensed by Chemical Foundation, Inc.	V	2876	IV	2674
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110	Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 26, Census of Dyes and other Synthetic Organic Chemicals 1921"	V	2885	Not printed	
111	Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 1922, Census of Dyes and Coal Tar Chemicals 1919"	V	2885	Not printed	
112	Report of U. S. Tariff Commission entitled "Report on Dyes and Related Coal-Tar Chemicals 1918 printed for use of the Committee on Ways and Means of the House of Representatives"	V	2887	Not printed	
113	Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 15, Costs of production in the Dyes Industry, 1918 and 1919 details of costs for a selected list of dyes and intermediates"	V	2887	Not printed	
114	Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 11, Census of Dyes and Coal-Tar Chemicals, 1918"	V	2887	Not printed	
115	Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 6, Census of Dyes and Coal-Tar Chemicals, 1917"	V	2887	Not printed	

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117	Statement showing comparison of value of dyes, domestic and imported, controlled by patents owned by Chemical Foundation, Inc., for years 1919, 1920, 1921 and 1922	V	2890	V	2703
118	Statement showing comparison of pounds of dyes—domestic and imported—controlled by patents owned by Chemical Foundation, Inc., for years 1919, 1920, 1921 and 1922	V	2899	V	2704
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122	Booklet entitled "Vat Dye Patents, owned by The Chemical Foundation, Inc."	V	2903	Not printed	
123	Booklet entitled "Drug and Medicinal Patents owned by The Chemical Foundation, Inc."	V	2903	Not printed	
124	Book entitled "Electro-Chemical and Electro-Metallurgical Patents owned by The Chemical Foundation, Inc."	V	2903	Not printed	
125	Book entitled "Paper Patents owned by The Chemical Foundation, Inc."	V	2904	Not printed	

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129	Report by Mr. Longworth to accompany H. R. 8078, "A bill to regulate the importation of Coal-Tar Products," dated August 1, 1919	V	2913	V	2717
130	Report by Mr. Watson to accompany H. R. 8078, "A bill to regulate the importation of Coal-Tar Products," dated February 13, 1920	V	2920	V	2726
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134	Letter from Josephus Daniels to Chemical Foundation dated December 4, 1919	V	2936	V	2736
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144	Assignment from A. Mitchell Palmer, Alien Property Custodian, to United States of America dated February 6, 1919	V	3235	V	2797
145	Assignment from United States of America to Francis P. Garvan, Alien Property Custodian, dated November 11, 1919	V	3235	V	2801
146	Assignment from Francis P. Garvan, Alien Property Custodian, to United States of America dated April 3, 1920	V	3236	V	2803
147	License from The Chemical Foundation, Inc., to United States dated February 26, 1921	V	3236	V	2811
148	List of Licensees of The Chemical Foundation who are not stockholders thereof, dated December 31, 1922	V	3237	V	2837
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169-A	Letter from G. P. Metz to Herman A. Metz dated June 20, 1918	V	3613	V	3000
170	Letter from H. A. Metz to Julius Steiglitz dated June 24, 1918	V	3613	V	3002
171	Letter from H. A. Metz to Julius Steiglitz dated August 20, 1918	V	3613	V	3003
172	Letter from Julius Stieglitz to H. A. Metz dated August 22, 1918	V	3613	V	3004
173	Letter from Julius Stieglitz to Herman Metz dated January 3, 1919	V	3613	V	3005
174	Letter from H. A. Metz to Julius Stieglitz dated January 7, 1919	V	3614	V	3006
175	Report of United States Tariff Commission on the Dye and Synthetic Organic Chemical Industry	VI	3701	V	3007
176	Report of U. S. Tariff Commission for year 1922	VI	3703	Not printed	
177	Pamphlet entitled "A statement of the Action taken and contemplated looking to the Fixation of Nitrogen," dated August 21, 1917	VI	3728	V	3017
178	Letter from General Chemical Company to The President dated June 5, 1917	VI	3736	V	3067
179	U. S. Patent No. 1,196,101 dated Aug. 29, 1916	VI	3745	See Pat. Ex. Book	
180	U. S. Patent No. 1,102,716 dated July 7, 1914	VI	3745	"	

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol. Page
181	U. S. Patent No. 1,113,096 dated Oct. 6, 1914	VI	3745	See Pat. Ex. Book
182	U. S. Patent No. 1,113,097 dated Oct. 6, 1914	VI	3745	"
183	U. S. Patent No. 1,115,776 dated Nov. 3, 1914	VI	3746	"
184	U. S. Patent No. 1,126,371 dated Jan. 26, 1915	VI	3746	"
185	U. S. Patent No. 1,128,904 dated Feb. 16, 1915	VI	3746	"
186	U. S. Patent No. 1,133,087 dated Mar. 23, 1915	VI	3746	"
187	U. S. Patent No. 1,157,660 dated Oct. 26, 1915	VI	3746	"
188	U. S. Patent No. 1,200,805 dated Oct. 10, 1916	VI	3746	"
189	U. S. Patent No. 1,207,968 dated Dec. 12, 1916	VI	3746	"
190	U. S. Patent No. 1,286,650 dated Dec. 3, 1918	VI	3746	"
191	U. S. Patent No. 1,301,151 dated Apr. 22, 1919	VI	3746	"
192	U. S. Patent No. 1,330,772 dated Feb. 10, 1920	VI	3747	"
193	U. S. Patent No. 971,501 dated Sep. 27, 1910	VI	3747	"
194	U. S. Patent No. 999,025 dated July 25, 1911	VI	3747	"
195	U. S. Patent No. 1,053,951 dated Feb. 18, 1913	VI	3747	"
196	U. S. Patent No. 1,053,952 dated Feb. 18, 1913	VI	3747	"
197	U. S. Patent No. 1,068,966 dated July 29, 1913	VI	3747	"
198	U. S. Patent No. 1,068,967 dated July 29, 1913	VI	3747	"
199	U. S. Patent No. 1,068,968 dated July 29, 1913	VI	3747	"

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200	U. S. Patent No. 1,088,989 dated July 29, 1913	VI	3747	See Pat. Ex. Book	
201	U. S. Patent No. 1,083,585 dated Jan. 6, 1914	VI	3748	"	
202	U. S. Patent No. 1,094,194 dated Apr. 21, 1914	VI	3748	"	
203	U. S. Patent No. 1,118,628 dated Nov. 24, 1914	VI	3748	"	
204	U. S. Patent No. 1,128,843 dated Feb. 16, 1915	VI	3748	"	
205	U. S. Patent No. 1,148,570 dated Aug. 3, 1915	VI	3748	"	
206	U. S. Patent No. 1,149,510 dated Aug. 10, 1915	VI	3748	"	
207	U. S. Patent No. 1,152,930 dated Sept. 7, 1915	VI	3748	"	
208	U. S. Patent No. 1,158,167 dated Oct. 26, 1915	VI	3748	"	
209	U. S. Patent No. 1,225,755 dated May 15, 1917	VI	3748	"	
210	U. S. Patent No. 1,006,206 dated Oct. 17, 1911	VI	3749	"	
211	U. S. Patent No. 1,202,995 dated Oct. 31, 1916	VI	3749	"	
212	U. S. Patent No. 1,216,059 dated Feb. 13, 1917	VI	3749	"	
213	U. S. Patent No. 1,243,382 dated Oct. 16, 1917	VI	3749	"	
214	U. S. Patent No. 1,244,580 dated Oct. 30, 1917	VI	3749	"	
215	U. S. Patent No. 1,386,760 dated Aug. 9, 1921	VI	3749	"	
216	U. S. Patent No. 1,075,085 dated Oct. 7, 1913	VI	3749	"	
217	U. S. Patent No. 1,077,034 dated Oct. 28, 1913	VI	3750	"	
218	U. S. Patent No. 1,086,130 dated Feb. 3, 1914	VI	3750	"	

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219	U. S. Patent No. 1,188,530 dated June 27, 1916	VI	3750	See Pat. Ex. Book
220	U. S. Patent No. 1,094,182 dated Apr. 21, 1914	VI	3750	"
221	U. S. Patent No. 1,207,706 dated Dec. 12, 1916	VI	3750	"
222	U. S. Patent No. 1,207,707 dated Dec. 12, 1916	VI	3750	"
223	U. S. Patent No. 1,207,708 dated Dec. 12, 1916	VI	3750	"
224	U. S. Patent No. 1,211,394 dated Jan. 9, 1917	VI	3750	"
225	U. S. Patent No. 1,379,387 dated May 24, 1921	VI	3750	"
226	U. S. Patent No. 1,063,007 dated May 27, 1913	VI	3751	"
227	U. S. Patent No. 1,091,234 dated March 24, 1914	VI	3751	"
228	U. S. Patent No. 1,091,234 dated Mar. 24, 1914	VI	3751	"
229	U. S. Patent No. 1,133,086 dated Mar. 23, 1915	VI	3751	"
230	U. S. Patent No. 1,173,550 dated Feb. 29, 1916	VI	3751	"
231	U. S. Patent No. 1,200,806 dated Oct. 10, 1916	VI	3751	"
232	U. S. Patent No. 1,211,393 dated Jan. 9, 1917	VI	3751	"
233	U. S. Patent No. 1,261,900 dated Apr. 9, 1918	VI	3751	"
234	U. S. Patent No. 1,274,503 dated Aug. 6, 1918	VI	3752	"
235	U. S. Patent No. 1,292,019 dated Jan. 21, 1919	VI	3752	"
236	U. S. Patent No. 1,369,383 dated Feb. 22, 1921	VI	3752	"
237	U. S. Patent No. 1,344,673 dated June 29, 1920	VI	3752	"

Ex. No.		Admitted Record Vol.	Page	Printed Exhibits Vol.	Pa
238	French Text of Report to Chamber of Deputies, Twelfth Legislature Extraordinary Session, 1922, Re, Bill relating to the approval and powers for granting an agreement for the purpose of manufacturing Synthetic Ammonia ..	VI	3772	Not print	
238-A	Translation of French Text of Report to Chamber of Deputies (Defendant's Exhibit No. 238)	VI	3772	V	3072
239	Statement of J. W. Joyes, Ordnance Department U. S. Army at hearing on H. R. 10329-S 3390	VI	3784	V	3225
240	U. S. Patent No. 1,141,947 dated June 8, 1915	VI	3935	See Pat. Ex. Boo	
241	U. S. Patent No. 1,141,948 dated June 8, 1915	VI	3935	"	
242	U. S. Patent No. 1,151,537 dated Aug. 24, 1915	VI	3935	"	
243	U. S. Patent No. 1,159,364 dated Nov. 9, 1915	VI	3935	"	
244	U. S. Patent No. 1,159,365 dated Nov. 9, 1915	VI	3935	"	
245	U. S. Patent No. 1,143,363 dated June 15, 1915	VI	3935	"	
246	Statement from Books and Records of Abbott Laboratories	VI	4019	V	3238
247	Statement from Books and Records of Abbott Laboratories	VI	4019	V	3239
248	Statement from Books and Records of Abbott Laboratories	VI	4020	V	3240
249	Statement from Books and Records of Abbott Laboratories	VI	4020	V	3241
250	U. S. Patent No. 724,789 dated Apr. 7, 1903	VI	4040	See Pat. Ex. Book	
251	U. S. Patent No. 1,063,173 dated May 27, 1913	VI	4043	"	
252	U. S. Patent No. 1,104,943 dated July 28, 1914	VI	4044	"	

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253	U. S. Patent No. 739,145 dated Sept. 15, 1903	VI	4047	See Pat. Ex. Book	
254	U. S. Patent No. 876,810 dated Jan. 14, 1908	VI	4047	"	
255	U. S. Patent No. 856,811 dated June 11, 1907	VI	4047	"	
256	U. S. Patent No. 919,572 dated Apr. 27, 1909	VI	4055	"	
257	U. S. Patent No. 956,348 dated Apr. 26, 1910	VI	4055	"	
258	U. S. Patent No. 966,092 dated Aug. 2, 1910	VI	4055	"	
259	U. S. Patent No. 1,004,433 dated Sept. 26, 1911	VI	4073	"	
260	U. S. Patent No. 828,778 dated Aug. 14, 1906	VI	4073	"	
261	U. S. Patent No. 845,129 dated Feb. 26, 1907	VI	4073	"	
262	Licenses issued to E. I. duPont de Nemours & Company by Chemical Foundation, Inc.	VI	4077	V	3242
263	U. S. Patent No. 1,336,759 dated April 13, 1920	VI	4147	See Pat. Ex. Book	
264	U. S. Patent No. 1,237,405 dated Aug. 21, 1917	VI	4147	"	
265	U. S. Patent No. 1,191,480 dated July 18, 1916	VI	4147	"	
266	U. S. Patent No. 1,216,612 dated Feb. 20, 1917	VI	4147	"	
267	U. S. Patent No. 1,278,229 dated Sept. 10, 1918	VI	4147	"	
268	U. S. Patent No. 1,232,620 dated July 10, 1917	VI	4147	"	
269	U. S. Patent No. 1,254,364 dated Jan. 22, 1918	VI	4147	"	
270	U. S. Patent No. 1,133,108 dated Mar. 23, 1915	VI	4147	"	
271	U. S. Patent No. 1,289,280 dated Dec. 31, 1918	VI	4147	"	

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272	U. S. Patent No. 1,281,494 dated Oct. 15, 1918	VI	4147	See Pat. Ex	
273	U. S. Patent No. 1,107,107 dated Aug. 11, 1914	VI	4147	"	
274	U. S. Patent No. 1,203,069 dated Oct. 31, 1916	VI	4161	"	
275	U. S. Patent No. 1,089,797 dated Mar. 10, 1914	VI	4161	"	
276	U. S. Patent No. 1,421,722 dated July 4, 1922	VI	4161	"	
277	U. S. Patent No. 1,414,045 dated April 25, 1922	VI	4161	"	
278	U. S. Patent No. 915,572 dated April 27, 1909	VI	4197	"	
279	U. S. Patent No. 956,348 dated April 26, 1910	VI	4197	"	
280	U. S. Patent No. 966,092 dated August 2, 1910	VI	4197	"	
281	U. S. Patent No. 733,280 dated July 7, 1903	VI	4236	"	
382	U. S. Patent No. 1,063,173 dated May 27, 1913	VI	4236	"	
283	U. S. Patent No. 682,523 dated Sept. 10, 1901	VI	4236	"	
284	U. S. Patent No. 724,789 dated April 7, 1903	VI	4236	"	
285	U. S. Patent No. 739,145 dated Sept. 15, 1903	VI	4238	"	
286	Statement of E. I. duPont de Nemours & Company of expense incurred for Chemical Research upon Dyes and Dye Intermediates to June 30, 1921	VI	4289	V	3246
287	Stipulation dated July 19, 1923	VI	4349	V	3247
288	Minutes of Meeting of American Dyes Institute January 8, 1919	VI	4350	V	3296
289	Minutes of Meeting of American Dyes Institute April 4, 1919	VI	4350	V	3300

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290	Minutes of Joint Meeting of Board of Governors and Executive Committee American Dyes Institute, April 9, 1920	VI	4350	V	3308
291	Minutes of Meeting of American Dyes Institute April 9, 1920	VI	4350	V	3313
292	Statement of Harry E. Danner, before Sub-Committee of Committee on Judiciary, U. S. Senate on Resolution No. 77	VI	4352	V	3327
293	Assignment from Francis P. Garvan to American Radio Company dated November 20, 1919	VI	4353	V	3347
294	Assignment from United States Government by F. D. Roosevelt, Acting Secretary of Navy, dated November 11, 1919, re-conveying to Alien Property Custodian three patents theretofore conveyed to him by Defendant's Exhibit No. 144 (Same as Defendant's Exhibit No. 145)	VI	4353	V	2801
295	Extract from "Congressional Record," page 12,450, dated August 17, 1922 ..	VI	4370	V	3350
296	Letter from Edwin Denby to Boies Penrose dated July 27, 1921	VI	4372	V	3352
297	Report of Mr. Fordney to accompany H. R. 7456, dated July 6, 1921	VI	4373	V	3353
298	Offer of defendant and Graselli Chemical Company to Department of State	VI	4375	V	3367
299	Executive Order dated December 11, 1922, authorizing Alien Property Custodian to sell certain property at private sale	VI	4377	V	3368
300	Pamphlet entitled "The Future Independence and Progress of American Medicine in the Age of Chemistry" (Same as Defendant's Exhibit No. 97)	VI	4386	Not printed	

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
301	Pamphlet entitled "Aims and Purposes of The Chemical Foundation, Incorporated, and the reasons for its Organization"	VI	4386	Not printed	
302	List of original subscribers to the Underwriting of the stock of defendant	VII	4397	V	3370
303	Constitution and By-Laws of American Dyes Institute as Amended	VII	4397	V	3373
304	Letter from Ramsay Hoguet to W. H. Swenarton, dated February 25, 1919	VII	4399	V	3387
305	Letter from Marston T. Bogert to A. C. Holcombe dated April 21, 1919	VII	4399	V	3389
306	Letter from A. M. Holcombe to Munitions Patents Board dated April 21, 1919	VII	4400	V	3392
307	Memorandum from A. M. Holcombe to Col. Hilton, dated May 1, 1919	VII	4400	V	3393
308	Letter from J. M. Wainwright to The Chairman of Committee on Patents, U. S. Senate	VII	4401	V	3395
309	Letter from Charles E. Vekman to Robert C. Goldstein, dated January 30, 1920	VII	4451	V	3399
310	Letter from P. C. March to Secretary of Navy dated March 19, 1921	VII	4402	V	3400
311	Letter from Charles B. McVay, Jr., to defendant dated March 24, 1921	VII	4402	V	3401
312	Letter from Charles B. McVay, Jr., to defendant dated March 30, 1921	VII	4402	V	3402
313	Minutes of Meeting of Munitions Patent Board, December 17, 1918	VII	4402	V	3403
314	Minutes of meeting of Munitions Patent Board dated April 23, 1919	VII	4403	V	3405
315	Minutes of Meeting of Munitions Patent Board, February 18, 1919	VII	4403	V	3408
316	Report of E. I. duPont de Nemours & Company of expenditures for research work on products licensed from Federal Trade Commission, 1916 to Jan-				

	Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
1923	VI	4295	V	3412
E. I. duPont de Nemours & of Research Expenditures ects licensed from defendant. anuary 1, 1923	VI	4296	V	3414
iterature distributed by de-	VII	4404	V	3421
um from Mr. Caton to Thom- Miller, Alien Property Custo- seizure of Blass Patent Plaintiff's Exhibit No. 481)	VII	4405	II	893
Prospectus of Defendant Exhibit 8 to Defendant's	VII	4405	Rec. I	583
British Mission dated Febru- 1919	VII	4406	V	3437
m "Journal of Industrial and ing Chemistry," June, 1919	VII	4410	V	3448
m Annual Report of Federal cal year ended June 30, 1918	VII	4411	V	3456
distributed by defendant (For al items see Defendant's Ex-)	VII	4497	V	3421
m Notebook of Louis Freed- Experiments at Calco Chemi- pany	VII	4793	V	3466
to Deposition of Dr. George ey, taken in Chambers)	VII	4801	Not printed	
to deposition of Dr. George ey, taken in Chambers)	VII	4801	"	
to deposition of Dr. George ey, taken in Chambers)	VII	4802	"	
to deposition of Dr. George ey, taken in Chambers)	VII	4803	"	
of Research Expenditures for licensed from Defendant from anuary 1, 1923	VII	4845	V	3469

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
374	Letter from H. A. Metz to Julius Stieglitz dated August 13, 1918	VII	4869	V	3489
375	Letter from Ramsay Hoguet to Isidore J. Kresel, dated July 17, 1923	VII	4899	V	3490
376	Telegram from J. A. McCreery to Isadore J. Kresel dated July 18, 1923 ..	VII	4899	V	3491

NITED STATES OF AMERICA, }
ISTRICT OF DELAWARE, } *ss.:*

BE IT REMEMBERED, that at a District Court of the nited States for the District of Delaware begun and eld at the United States Court House and Post Office uilding, in the city of Wilmington, in the said Disrict of Delaware, at the time and place required by aw, among other, the following proceedings were had, o wit:

UNITED STATES OF AMERICA,
Complainant,
v.
THE CHEMICAL FOUNDATION,
INCORPORATED,
Defendant.

No. 502
In Equity.

DOCKET ENTRIES.

Sept. 8, 1922.	Bill of Complaint with Exhibits "A" to "M" inclusive annexed filed; same day subpœna issued, returnable September 28, 1922.
Sept. 16, 1922.	Marshal returns on Subpœna "Served" &c.; same day writ filed.
Sept. 23, 1922.	Defendant appears by William G. Mahaffy, Esq., its solicitor; same day præcipe filed.
Sept. 27, 1922.	Stipulation and motion filed; same day order enlarging time for defendant to file answer, &c., until October 27, 1922; same day said order filed. (Exit copy to solicitors.)
Oct. 27, 1922.	Answer of defendant, with exhibits Nos. 1 to 8 incl. filed.

Jan. 22, 1923.	Order setting case down for trial April 23, 1923, at 10 o'clock A. M.; same day said order filed. (Exit copy to solicitors.)
April 6, 1923.	Order postponing trial until June 4, 1923, at 10 o'clock A. M.; same day said order filed. (Exit copy to solicitors.
May 4, 1923.	Order granting leave to plaintiff to file motion to amend bill of complaint; same day said motion filed.
May 4, 1923.	Order granting leave to file motion of plaintiff to strike out parts of defendant's answer; same day said motion filed.
May 4, 1923.	Motion of plaintiff for order for taking deposition of Karl Holderman, filed.
May 4, 1923.	Affiadvit of Edwin F. Haaren filed on behalf of defendant.
May 4, 1923.	Order advancing trial to May 8, 1923, at 9 o'clock A. M. for taking deposition of Karl Holderman, &c; same day said order filed.
May 7, 1923.	Order appointing William F. Smart stenographer, &c; same day said order filed. (Exit copy to solicitors.)
May 8, 1923.	Trial; same day order adjourning trial to June 4, 1923, at 9 o'clock A. M.
May 18, 1923.	Petition of plaintiff filed; same day order for issuance of subpœnas for non-resident witnesses &c; same day said order filed. (Exit 12 subpœnas.)

ay 26, 1923. Petition of plaintiff, filed; same day order for issuance of subpœnas for non-resident witnesses, &c; same day said order filed. (Exit 4 subpœnas.)

June 4, 1923. Order amending bill of complaint; same day said order filed.

June 7, 1923. Order amending bill of complaint by striking out Textile Alliance, Inc., &c; same day said order filed.

July 18, 1923. Petition of plaintiff filed; same day order for issuance of subpœna for non-resident witness, &c; same day said order filed. (Exit subpœna.)

July 20, 1923. Order approving stipulation concerning Patent Exhibit Book; same day stipulation filed.

June 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 22, 23, 25, 26, 27, 28, 29, July 2, 3, 5, 6, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21 and 23, 1923. Trial before the Court.

July 23, 1923. Order setting case down for argument October 8, 1923.

July 23, 1923. Order that record be printed, &c; same day said order filed.

July 23, 1923. Depositions taken at trial filed.

July 30, 1923. Order that expenses of experiment be paid equally by parties, &c; same day said order filed. (Exit copies to solicitors.)

Oct. 8, 1923. Order that complainant pay stenographer's bill, &c; same day said order filed.

Oct. 8, 1923. Order granting leave to file complainant's objections to and motions to strike out evidence, &c; same day same filed.

Jan. 3, 1924.	Opinion of Court, filed.
Feb. 18, 1924.	Final decree dismissing bill of complaint, &c; same day said decree filed.
Feb. 26, 1924.	Petition of complainant for appeal with assignments of error filed; same day order allowing appeal; same day said order filed.
Feb. 26, 1924.	Citation issued.
Feb. 26, 1924.	Citation with acceptance of service by solicitor for defendant-appellee endorsed thereon filed.
Feb. 26, 1924.	Præcipe for transcript of record filed.

BILL OF COMPLAINT.

(Filed September 8, 1922)

IN THE

District Court of the United States,

FOR THE DISTRICT OF DELAWARE.

UNITED STATES OF AMERICA *v.* THE CHEMICAL FOUNDATION, Incorporated.	In Equity, No. 502

To the Honorable Judge of the District Court of the United States for the District of Delaware.

UNITED STATES OF AMERICA, complainant, by Harry M. Daugherty, Attorney General of the United States, brings this its bill of complaint against THE CHEMICAL FOUNDATION, INCORPORATED, a corporation chartered, organized, and existing under the laws of the State of Delaware, and shows unto the court the following case:

FIRST. UNITED STATES OF AMERICA is the real party in interest in and with respect to certain property and property rights hereinafter fully set forth and described, and avers that if the acts and transactions with respect to said property and property rights hereinafter alleged be allowed to stand, the rights and interests of the United States will be prejudiced thereby and the fulfillment of the public duties and performance and discharge of the public obligations of the United States will be prevented or impaired.

The defendant, The Chemical Foundation, Incorporated, is a corporation chartered, organized, and existing under the laws of the State of Delaware, is a citizen of said state and an inhabitant of the judicial district of Delaware, claiming under and by virtue of the acts and transactions hereinafter described certain interest in or rights with respect to said property or property rights adverse to the United States.

Second. By joint resolution of Congress, approved by the President on the 6th day of April, 1917 (40 Stat. at Large, 1), a state of war was declared to exist between the United States of America and the Imperial German Government. By joint resolution of Congress, approved by the President on the 7th day of December, 1917 (40 Stat. at Large, 429), a state of war was declared to exist between the United States of America and the Imperial and Royal Austro-Hungarian Government. The military operations and the prosecution of said war proceeded, in association with certain other powers then in alliance with one another, known as the Allied Powers, and then at war with the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, until the 3d day of November, 1918, when an agreement of armistice was signed by the representatives of the Allied Powers and the United States of America on the one part and the representatives of the Imperial and Royal Austro-Hungarian Government on the other part, and until the 11th day of November, 1918 when an agreement of armistice was signed by the representatives of said Allied Powers and the United States of America on the one part, and representatives of said Imperial German Government on the other part, whereby the military operations were suspended, and thereupon negotiations for peace were entered upon by representatives of the respective powers at war. Said negotiations for peace between said Allied Powers and the United States of America on the one part, and Germany on the other part, continued until they resulted in a treaty of peace signed by said respective powers at Versailles, in the Republic of France, on the 28th day of June, 1919; and negotiations continued between the representatives of said Allied Powers and the United States of America on the one part and Austria and Hungary on the other part, until they resulted in a treaty of peace between the Allied and Associated Powers, including the United States of America, on the one part, and the Government of Austria on the other part, which was signed at St. Germain en Laye in the Republic of France on the 10th day of September, 1919, and a treaty of peace between the Allied and Associated Powers, including the United States of America on the one part, and the Government of Hungary on the other part, which was signed at Trianon, in the Republic of France, on the 4th day of June, 1920.

THIRD. The ratification of said treaties of peace so signed was never advised or consented to by the Senate of the United States as required by the Constitution, and said treaties never became binding or obligatory upon the United States. Through the failure of the Senate to ratify said treaties, the state of war declared by the joint resolutions of Congress aforesaid, as between the United States of America and Germany, Austria, and Hungary, continued, but without further military operations, until the 2d day of July, 1921; except that by joint resolution of Congress, approved by the President on the 3d day of March, 1921 (41 Stat. at Large, 1359), it was provided that in the interpretation of any provisions of law relating to the duration or the date of the termination of the war between the United States of America and Germany and Austria-Hungary, the date that such joint resolution approved March 3d, 1921, became effective should be considered as the date of the termination of said war, excepting, however, from the provisions of such joint resolution the "trading with the enemy act," hereinafter referred to, amendments thereto, and the proclamations issued in pursuance thereof.

FOURTH. By joint resolution of Congress approved by the President on the 2d day of July, 1921 (Public Resolution No. 8, 67th Congress), the state of war theretofore declared to exist between the Imperial German Government and the United States of America and the Imperial and Royal Austro-Hungarian Government and the United States of America, as aforesaid, was declared at an end. Said joint resolution expressly reserved to the United States and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they had become entitled under the terms of the armistice agreements aforesaid, or any extensions or modifications thereof, or which were acquired by or were, on the date of said joint resolution, in the possession of the United States of America by reason of its participation in the war; or to which its nationals had thereby become rightfully entitled; or which, under the respective treaties of Versailles, St. Germain en Laye, and Trianon, had been stipulated for its or their benefit; or to which it was entitled as one of the principal allied or associated powers in said war; or to which it was entitled by virtue of any act or acts of Congress, or otherwise. And said joint resolution further expressly provided that all property of the Imperial German Government, or its successor or successors, and of all German nationals, or of the Imperial and Royal Austro-Hungarian Government, its successor or successors, and of all Austro-Hungarian nationals which was on the respective dates of declarations of war, as aforesaid, in, or had since said respective dates come into the possession or under the control of, or been the subject of a demand by the United States of America or any of its officers, agents, or employees, from any source or by any agency whatever, should be retained by the United States of America and no disposition thereof made except as had been theretofore or might be thereafter specifically provided by law until such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, their successor or successors, should have respectively complied with certain conditions in said resolution set forth; and complainant avers that neither the Imperial German Government nor the Imperial and Royal Austro-Hungarian Government, nor any successor or successors of said Governments, or either of them, have complied with the conditions and provisions in said joint resolution prescribed; and that all the rights and interest of the United States of America and of its nationals in, to, or with respect to, said properties of the Imperial German Government, its successor or successors, and of all German nationals, and of the Imperial and Royal Austro-Hungarian Government, its successor or successors, and of all Austro-Hungarian nationals mentioned, described and reserved in and by said joint resolution, to the extent that the same were then or have since become valid, have since continued, and are now in full force and effect. Reference is hereby made to said joint resolution for more complete statements of the terms, provisions, and conditions thereof.

Fifth. Thereafter negotiations were begun between the Government of the United States and the Governments of Germany, Austria and Hungary, respectively, which negotiations resulted in the following treaties, which were duly ratified and became effective as follows, to-wit:

A treaty between the United States and Germany, signed at Berlin on the 25th day of August, 1921, ratified by the United States on the 21st day of October, 1921, and which became effective by the exchange of ratifications on the 11th day of November, 1921.

A treaty between the United States and Austria, signed at Vienna on the 24th day of August, 1921, which was ratified by the United States on the 21st day of October, 1921, and which became effective by the exchange of ratifications on the 8th day of November, 1921.

A treaty between the United States and Hungary, signed at Budapest on the 29th day of August, 1921, which was ratified by the United States on the 21st day of October, 1921, and which became effective by the exchange of ratifications on the 17th day of December, 1921.

Each of said treaties contained substantially the same reservations as those contained in the aforesaid joint resolution approved July 2, 1921, hereinbefore set forth, which reservations will more fully and at length appear by reference to said respective treaties, to which reference is hereby made; and complainant avers that neither the Imperial German Government nor the Imperial and Royal Austro-Hungarian Government, nor any successor or successors of said Governments or either of them, has complied with the conditions and provisions mentioned in said reservations contained in said treaties of Berlin, Vienna, and Budapest, respectively; and that all the rights and interests of the United States of America and its nationals, in, to, and with respect to the properties of the Imperial German Government, its successor or successors, and of all German nationals, and of the

Imperial and Royal Austro-Hungarian Government, its successor or successors, and of all Austro-Hungarian nationals mentioned, described and reserved in said joint resolution, and in each of said treaties of Berlin, Vienna, and Budapest, respectively, to the extent that the same were then or have since become valid, have since continued, and now are in full force and effect.

Sixth. By act of Congress entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917 (40 Stat. at Large, 411), commonly known and herein referred to as the "Trading with the Enemy Act," provision was made for the seizure, sequestration, custody, and management of the property of persons, firms, or corporations which might be determined to be enemies or allies of enemies as defined in said act. Said act also provided for the sale or disposition of such property so seized or sequestrated when necessary to prevent waste or to protect such property, and to the end that interests of the United States in such property and the rights of such persons as might ultimately become entitled thereto, or to the proceeds thereof, might be preserved and safeguarded. Reference is hereby made to said act of Congress for full statement of the terms, provisions, and conditions thereof.

Seventh. Among other things, the said act provided that the President might appoint and prescribe the duties of an official to be known as the Alien Property Custodian, who should under the direction of the President, as and to the extent in said act provided, be empowered to receive all money and property in the United States due or belonging to an enemy or ally of an enemy as defined in and by said act, which might be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of the said act, and to hold, administer, and account for the same under the general direction of the President and as provided therein. Said act further provided that all moneys paid to or received by the Alien Property Custodian pursuant to the terms thereof should be forthwith deposited in the Treasury of the United States, and might be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness under such rules and regulations as the President might prescribe for such investment, deposit, and sale of securities, and that all other property of an enemy or ally of an enemy conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian under said act should be safely kept and administered by him except as in said act provided. Said act further provided that said Alien Property Custodian "shall be vested with all the powers of a common law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this act"; and the power was expressly reserved to Congress to make final disposition of any money or other property received and held by the Alien Property Custodian, or deposited in the Treasury of the United

States as provided in and by said act; all of which will more fully and at length appear by reference to said act of Congress, to which reference is hereby made.

Eighth. By Executive order, dated October 12, 1917, the President, in the exercise of the powers conferred upon him by said "Trading with the Enemy Act," vested in an Alien Property Custodian, to be thereafter appointed, the executive administration of certain of the provisions of said act, and certain powers and authority in the execution thereof, all of which will more fully and at length appear by reference to Paragraphs XXIX to XXXIV, inclusive, of said Executive order, to which reference is hereby made.

Ninth. Prior to the declarations of war aforesaid various persons, including citizens and subjects of Germany and Austria-Hungary, who thereupon became and were enemies or allies of enemies within the meaning of said "Trading with the Enemy Act," had procured from or registered with the United States pursuant to the laws relating thereto, and then owned, numerous patents, copyrights, trade-marks, and labels, and similar rights; and at the time of said declarations of war had numerous applications pending before the proper officers of the United States for the granting or registration of other patents, copyrights, trade-marks, labels, and other similar rights as provided by law; and held, owned, and possessed certain contracts and contract rights with respect to other patents, copyrights, trade-marks, labels, and similar rights. Prior to said declarations of war, licenses or contract rights for the use and employment of certain of said patents, copyrights, trade-marks, labels, and other similar rights, or certain rights thereunder, had been granted by the divers owners thereof to certain persons, firms, and corporations in the United States, and said licenses and other contract rights under said patents, copyrights, trade-marks, labels, and other similar rights, were at the time of the declaration of war being used, exercised, and employed by such licensee persons, firms, or corporations in the United States or the territories or insular possessions thereof.

TENTH. By section 10 of said "Trading with the Enemy Act" it was expressly provided that an enemy or ally of an enemy might file and prosecute in the United States an application for letters patent or for registration of trade-mark, print, label, or copyright, but subject to the terms and conditions in said section 10 contained; and the President was authorized to grant to any citizen of the United States or any corporation organized within the United States licenses to use any of said enemy-owned patents, copyrights, trade-marks, labels, and other rights for the period and upon and subject to the terms, conditions, and limitations set forth in said act, reference being hereby made to said section 10 of said act for more full and complete statement of the powers thereby conferred and of the terms, conditions, provisions, and limitations thereof.

Eleventh. In the exercise of the authority so granted, the President did, by Executive order dated October 12, 1917, delegate to and vest in the Federal Trade Commission the power and authority to issue licenses, as authorized by section 10 of said act, under such terms and conditions as were not inconsistent with law or to withhold or refuse the same as in said Executive order provided, reference being hereby made to Paragraphs XVII to XXI, inclusive, of said Executive order for more complete statement of the terms and provisions thereof with reference to the issue of said licenses by said Federal Trade Commission. The said Federal Trade Commission thereafter from time to time did, in the exercise of the authority so granted by the President, issue to certain citizens of the United States or corporations organized within the United States certain licenses for the use, exercise, and employment of many of said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights.

Twelfth. On the 22d day of October, 1917, A. Mitchell Palmer was duly appointed by the President to the office of Alien Property Custodian, under the terms and provisions of the said "Trading with the Enemy Act," and on the 13th day of November, 1917, said A. Mitchell Palmer duly qualified as such Alien Property Custodian by taking the oath of office required by law, and entered upon the discharge of his duties. Said A. Mitchell Palmer continued to serve as Alien Property Custodian under said act and in pursuance of said appointment until the 3d day of March, 1919, when he resigned said office and his resignation was accepted. Thereupon, on the 3d day of March, 1919, Francis P. Garvan, was appointed by the President Alien Property Custodian and duly qualified and entered upon the discharge of his duties as said Alien Property Custodian on the 4th day of March, 1919, and continued to serve as such Alien Property Custodian under said act and in pursuance of said appointment until the 12th day of March, 1921, when he resigned said office and his resignation was duly accepted. Thereupon, on the 12th day of March, 1921, Thomas W. Miller was appointed by the President Alien Property Custodian, and on the 16th day of March, 1921, duly qualified as such and entered upon the discharge of his duties; and said Thomas W. Miller has since served, and is now serving as Alien Property Custodian under the terms and provisions of said "Trading with the Enemy Act" and the appointment of the President, aforesaid.

THIRTEENTH. By an act of Congress entitled "An act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and prior fiscal years, on account of war expenses, and other purposes," approved March 28, 1918 (40 Stat. at Large, 459); the fourth paragraph of section 12 of the "Trading with the Enemy Act" was amended in certain particulars, among others, to enlarge the powers of sale and disposition of enemy property conferred upon the Alien Property Custodian by said section 12 of the original act as approved October 6, 1917. Said amendment among other things authorized said Alien Property Custodian, acting under the supervision and direction of the President, and under such rules and regulations as the President might prescribe, to manage such property or do anything or things in respect thereto, or make any disposition thereof, or any part thereof, by sale or otherwise, and to exercise any rights or powers which might be or become appurtenant thereto, or to the ownership thereof in like manner as though he were the actual owner thereof; but it was expressly provided by said amendment that any property sold under said act as amended, except when sold to the United States, should be sold only to American citizens at public sale to the highest bidder after public advertisement of the time and place of sale, unless the President, stating the reasons therefor in the public interest, should otherwise determine.

FOURTEENTH. By two Executive orders dated, respectively, the 15th and 16th days of July, 1918, the President did prescribe the rules and regulations which should govern the custody, management, sale, and disposition of property by the Alien Property Custodian, subject to the terms, conditions, and limitations of said "Trading with the Enemy Act" and of said amendment approved March 28, 1918, as will more fully appear from an examination of the terms and provisions of said Executive orders, to which reference is hereby made.

FIFTEENTH. In the administration of said "Trading with the Enemy Act," as amended by the act approved March 28, 1918, aforesaid, it was determined by the Alien Property Custodian and others charged with the administration thereof under his direction and by the Attorney General of the United States, that said "Trading with the Enemy Act," as amended, did not authorize the seizure and sequestration or sale or other disposition of enemy-owned patents, copyrights, trade-marks, labels, and similar rights or applications therefor, or contracts with respect thereto, mentioned in the NINTH paragraph hereof; and it was subsequently claimed that in many cases where it was deemed desirable to make sale of manufacturing plants and other properties or business of enemies or allies of enemies, as defined in said "Trading with the Enemy Act," which had been seized or taken possession of by the Alien Property Custodian pursuant to the terms thereof, that much of the value of said properties arose out of licenses or other rights granted to the persons or corporations owning or operating said properties or undertakings to use patents, copyrights, trade-marks, labels, or other similar rights necessary in the operation or conduct of said properties or undertakings, which licenses or other rights had been granted by the enemy owners of said patents, copyrights, trade-marks, labels, or other rights, prior to the declarations of war as aforesaid, but many of which by their terms were terminable at the will of the owner of said patents or the rights so granted; that an advantageous or judicious sale of said properties or enterprises could not be made without a transfer to the purchaser thereof of the patents, copyrights, trade-marks, labels, or other rights, as the case might be, so used and employed in the operation of said properties or in the conduct of said business. Thereupon, the Alien Property Custodian, or assistants acting on his behalf, represented to Congress the alleged facts aforesaid with relation to said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights used or employed in the operation of properties, or conduct of business proposed to be sold, and requested that subsection (c) of section 7 of the "Trading with the Enemy Act" should be amended so as to authorize the seizure of enemy-owned patents, copyrights, trade-marks, labels, and other similar rights, applications therefor and rights to apply for the same, choses in action and rights and claims of similar character and description by the Alien Property Custodian and the custody, management, and disposition thereof under the terms and provisions of the original "Trading with the Enemy Act" as amended by the aforesaid act approved March 28, 1918. It was expressly represented that the sole purpose of said proposed amendment was to give to the Alien Property Custodian the power to seize such of the patents, copyrights, trade-marks, labels, and other similar rights, as were used in the operation or conduct of property or business proposed to be sold by the Alien Property Custodian and to enable said Alien Property Custodian to carry out the terms and provisions of the original "Trading with the Enemy Act" and the amendment thereto aforesaid, with respect to said enemy properties and business; all of which will more fully appear from a copy of the statement of Lee C. Bradley, Esq., general counsel of the Alien Property Custodian, before the Subcommittee of the Committee on Appropriations of the United States Senate, on October 21, 1918, hereto annexed as Exhibit A and prayed to be read as a part of this bill of complaint.

SIXTEENTH. Acting upon the faith of the representations aforesaid and solely for the purposes aforesaid, Congress did, by an act entitled "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and prior fiscal years on account of war expenses and for other purposes," approved November fourth, nineteen hundred and eighteen (40 Stat. at Large, 1020), amend subsection (c) of section 7 of the "Trading with the Enemy Act" so as to provide that if the President should so require, any money or other property, including patents, copyrights, applications therefor and rights to apply for the same, trade-marks, choses in action, and rights and claims of similar character and description owing, or belonging to, or held for, by, or on account of, or on behalf of, or for the benefit of an enemy or ally of an enemy not holding a license granted by the President thereunder, which the President after investigation, should determine to be so owing, or belong or be so held, should be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same might be seized by the Alien Property Custodian; and all property thus acquired should be held, administered, and disposed of as elsewhere in said act provided. Said amendment further provided the procedure by which the seizure or taking possession of said patents and other rights mentioned should be accomplished, reference being hereby made to said act of Congress for full statement of the terms, provisions, and conditions thereof.

SEVENTEENTH. By Executive order No. 3016, dated the 3d day of December, 1918, the President vested or undertook to vest in the Alien Property Custodian the executive administration of all the provisions of said subsection (c) of section 7 of said "Trading with the Enemy Act," as amended by the act approved November 4, 1918, aforesaid, and vested or undertook to vest in Frank L. Polk all power and authority conferred upon the President by the provisions of section 12 of said "Trading with the Enemy Act" as amended, except as in said Executive order provided, reference being hereby made to said Executive order for full statement of the terms and provisions thereof. Complainant does not admit the validity of said Executive order or any part or provisions thereof, but submits to the court all questions as to the validity of said Executive order and of each clause or provision thereof, including the question as to whether the President had power or authority to vest or could validly vest in said Frank L. Polk the exercise of the Executive functions required to be exercised by the President under the provisions of said section 12 of said "Trading with the Enemy Act," as amended.

Eighteenth. Complainant is informed and believes and therefore avers that for several years prior to the declarations of war aforesaid various persons, firms, and corporations engaged in the production, manufacture, and sale of dyes, and the ingredients thereof, and of kindred or similar chemical materials and products, had been engaged in the formation and development of plans for the complete monopolization and control of the dyestuffs and organic chemical industry in the United States through or by means of the purchase or other acquisition of the plants, business, or rights of persons, firms, and corporations engaged in such business; through or by means of consolidating or merging of corporations owning, operating, or conducting plants engaged in the production, manufacture, sale, and distribution of dyestuffs or the ingredients thereof, and of chemical products; through or by means of contracts and agreements between those controlling the production, manufacture, sale, and distribution of said products; through or by means of the formation of trade and cooperative associations, and by other like methods.

Nineteenth. The declarations of war aforesaid had automatically stopped the importation into the United States of dyestuffs and the necessary ingredients thereof, and of chemical materials and products from Germany which was and for a long time had been the chief producer thereof, and this greatly aided and facilitated the aforesaid persons, firms, and corporations engaged in the manufacture, sale, and distribution of said products, in the United States, in perfecting and carrying into effect the aforesaid plans and purposes for or relating to the control and monopolization of said industries.

TWENTIETH. Complainant is further informed, believes and therefore avers that by or before June, 1918, the aforesaid plans and purposes for the complete control and monopolization of said dyestuffs and chemical industry had developed to a point where the essential basic and intermediate ingredients in the manufacture of dyes and many of the essential chemicals used and necessary in connection therewith were controlled by a limited number of corporations, working in close alliance with each other, chief among these being the National Aniline & Chemical Company, which had been formed in 1917 through the consolidation of numerous corporations then engaged in the manufacture, sale, and distribution of dyestuffs and chemicals and the ingredients thereof, the General Chemical Company, the Solvay Process Company, the Semet-Solvay Company, the Barrett Company, and E. I. du Pont de Nemours & Co. Further control of said industry had then been or was then being affected and accomplished through or by means of agreements between said corporations and other persons, firms, and corporations engaged in like business in America and foreign countries, and through or by means of the trade organizations, among others the American Dyes Institute, the Chemical Manufacturers Association of the United

States, [the Textile Alliance, Inc.]* and their affiliated organizations, of which the persons, firms, and corporations engaged in the manufacture, sale, and distribution of dyes and chemicals and the essential ingredients thereof or a large proportion thereof, were members. Complainant is informed, believes, and therefore charges that through and by means of the methods, agreements, and organizations aforesaid, there was in June, 1918, and has since continued, an organized and united control and monopoly of the manufacture, sale, and distribution of dyes and the ingredients thereof, and of chemicals related thereto or used in connection therewith in the United States; and that said combination, monopoly, and control has since been further developed and perfected by and through the consolidation in 1920 of the General Chemical Company, the Solvay Process Company, the Semet-Solvay Company, the Barrett Company, and the National Aniline and Chemical Company into a single corporation known as the Allied Chemical and Dye Corporation.

TWENTY-FIRST. A large proportion of the enemy-owned patents, copyrights, trade-marks, labels and other similar rights and the applications therefor mentioned in Paragraph NINTH hereof, covered or related to dyestuffs, or the necessary ingredients thereof, or methods or processes used and employed in the manufacture or production thereof; and complainant is informed and believes and therefore avers that the persons, firms, and corporations which had acquired practical control of the dyestuffs and chemical industry in the United States, as aforesaid, conceived that upon the termination of the aforesaid war their monopoly and control of said industry in the United States, established as aforesaid, would be threatened by competition and importation from foreign sources and especially from Germany, in which country large amounts of such chemicals and dyestuffs were produced, unless they, the persons, firms, and corporations aforesaid, could obtain control of said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor, covering, affecting, or relating to said dyestuffs and chemical industry, and could through such control of said enemy-owned patents and other rights prevent the importation of such dyestuffs, chemicals, and ingredients thereof into the United States save and except upon such terms and conditions and subject to such charges and royalties, as they, the aforesaid persons, firms, and corporations, might through the ownership of or control of said patents, copyrights, trade-marks, labels, and other similar rights, impose, and could thus prevent competition in said business and industry and perfect, protect, and perpetuate their monopoly and control thereof in the United States.

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*Note: Matter enclosed in brackets stricken out by amendment June 7, 1923.

Twenty-second. That with the object and purpose of securing such control of said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor, and for the purposes hereinbefore stated, said persons, firms, corporations, and trade associations and others associated with them in said industry and in the control and monopoly thereof conceived and entered into a scheme, combination, and conspiracy prior to or about November, 1918, to induce and procure the seizure of said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor by the Alien Property Custodian, and the sale, transfer, and assignment thereof by said Alien Property Custodian to themselves or to some corporation, agency, or institution controlled by them.

Twenty-third. Complainant is informed and believes and therefore avers that in pursuance of said plan, scheme, and conspiracy the persons, firms, corporations, and associations aforesaid, parties thereto, about or soon after June, 1918, through their duly authorized representatives, and especially through one Morris R. Poucher, representing and acting for said conspirators, approached said Alien Property Custodian and certain of his assistants, and especially Francis P. Garvan, who was then and for a long time prior thereto had been Chief of the Bureau of Investigation and also Director of the New York office of the Alien Property Custodian, and who continued to occupy said positions in the organization of the Alien Property Custodian until March 3, 1919, when he was appointed and became Alien Property Custodian, as hereinbefore stated; Joseph H. Choate, Jr., who was then and for a long time prior thereto had been an attorney for the Alien Property Custodian in charge of the chemical matters in the Bureau of Investigation existed, to seize and sell such patents pretended to be given by said amendment of November 4, 1918, should be modified or terminated, said attorneys in charge of said work obtained the right through the Alien Property Custodian to work day and night shifts and also on Sundays in said patent office. As the patents so selected by said attorneys and their assistants in the employ of the parties to said scheme and conspiracy were listed by them, such lists were turned over to a representative of the Alien Property Custodian, also stationed in said patent office. Thereupon there were instituted and taken by or on behalf of the Alien Property Custodian, such proceedings as were necessary to demand, seize, and obtain custody and control of the same by the Alien Property Custodian, and from time to time said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor so selected were seized or demanded by, and taken into the custody and control of the Alien Property Custodian. Complainant avers and charges that substantially all the enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor which are the subject of this complaint and which were so seized at the instigation, request, and procurement of said parties to said scheme or conspiracy, were not then being used in connection with or as a part of and had no relation to any enemy-owned plant, property, or business then in the custody of the Alien Property Custodian, or which were to be sold or disposed of by him.

Twenty-fifth. Further carrying out and in pursuance of said scheme or conspiracy, the persons, firms, corporations, and associations aforesaid, acting through their common representative or representatives as aforesaid, procured and induced the said Francis P. Garvan, Joseph H. Choate, Jr., and Ramsey Hoguet and other assistants, agents, and employees of the Alien Property Custodian to incorporate on or about the 19th day of February, 1919, and organize under the laws of the State of Delaware, defendant, The Chemical Foundation, Incorporated, for the purpose of and as a device for acquiring by purchase from the Alien Property Custodian and taking title to said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor, and to issue licenses for the use and enjoyment of said patents, copyrights, trade-marks, labels, and other similar rights and applications therefor, or the rights granted thereby. A copy of the certificate of incorporation or charter and a copy of the by-laws of said defendant are hereto annexed as Exhibit B and prayed to be read as a part hereof.

Twenty-sixth. Said certificate of incorporation or charter of defendant, The Chemical Foundation, Incorporated, provided that the total authorized capital stock of said corporation should be $500,000, divided into 5,000 shares of $100 each, of which 4,000 shares of an aggregate par value of $400,000 should be preferred stock and 1,000 shares of an aggregate par value of $100,000 should be common stock. Said preferred stock was without voting power except on the matter of amendment of said charter, which it was provided by said charter, might be amended from time to time by a vote of three-fourths in number and amount of the preferred and common stockholders, thus vesting in the holders of the preferred stock full power to amend the same as will more fully appear from a copy of the said charter, annexed hereto as part of Exhibit B aforesaid, to which reference is hereby made.

Twenty-seventh. In order to induce and procure the organization of said corporation for the purposes aforesaid, for the benefit of the said persons, firms, and corporations in control of the dyestuffs and chemical industry, as hereinbefore set forth, who were parties to said scheme and conspiracy to obtain the ownership or control of said enemy-owned patents and other rights, in furtherance of said scheme and conspiracy, the initial expense of seizing said patents and other rights and the organization of said corporation was provided for by advances made by said parties to said conspiracy direct or through said American Dyes Institute and said parties also agreed to underwrite and did in fact underwrite the financial requirements for the organization of said defendant corporation to the amount of $460,600; a list of said underwriters or subscribers with the amount of their respective subscriptions is hereto annexed as Exhibit C and prayed to be read as a part hereof.

Twenty-eighth. In the further carrying out of said scheme or conspiracy, the parties aforesaid engaged in the organization of said defendant corporation for the purposes aforesaid and in order to prevent and avoid any competitive bidding for said patents and other rights when sold, undertook to induce, and did in fact induce substantially all of the persons, firms, and corporations engaged in said dyestuffs and chemical industry who might become bidders for said patents, copyrights, trade-marks, labels, and other rights or applications therefor or any part thereof at a sale thereof, if made by the Alien Property Custodian, to become interested as stockholders in said The Chemical Foundation, Incorporated, as will more fully appear from a list of said preferred and common stockholders with the amount of their respective holdings, hereto annexed as Exhibit D and prayed to be read as a part hereof. And complainant is informed, believes, and therefore avers that all of the capital of said defendant, The Chemical Foundation, Incorporated, was subscribed by, and all the capital requirements of said defendant were provided by the persons, firms, and corporations interested in or engaged in said dye or chemical business, and that all or a large proportion thereof was in fact subscribed and provided by the persons, firms, and corporations who had formed the scheme, combination, or conspiracy to obtain control or ownership of said enemy-owned patents, through the Alien Property Custodian, as and in the manner hereinbefore set forth.

Twenty-ninth. As a part of the plan for the organization of said defendant, The Chemical Foundation, Incorporated, and for carrying out the scheme and conspiracy aforesaid, provision was made for the deposit of the common stock of said corporation with voting trustees under a voting trust agreement to continue in force until the first of December, 1936, and it was arranged that the voting trustees under said agreement should be the members of the Advisory Sales Committee of the Alien Property Custodian who were required to pass upon any sale of said patents and other rights when sold to said defendant. By action of the board of directors of said corporation it was expressly provided that no subscriptions should be received to the common stock of said defendant corporation and no certificates for common stock should be used unless and until the subscribers therefor should execute and become parties to said trust agreement for the deposit of said stock with said voting trustees for the purposes aforesaid, and under the terms and conditions of said agreement. A copy of said voting trust agreement is hereto annexed as Exhibit E and prayed to be read as a part hereof. Complainant is informed, believes, and therefore avers that all of the certificates for common stock issued by said defendant corporation were in fact deposited with the voting trustees under said agreement and are now held by said trustees under the terms and provisions thereof.

Thirtieth. Under the charter and by-laws of said defendant corporation, Exhibit B aforesaid, the general power was vested in the board of directors thereof, consisting of three members, to manage the affairs of said corporation, including the power to issue and refuse licenses authorized to be issued by said corporation for and under any patents and other rights aforesaid owned or acquired by it; and by resolution of said board of directors subsequently adopted, two members of said board acting together constituted a licensing committee to fix uniform fees and royalties for licenses granted by said corporation. Thereafter, by action of the stockholders of said corporation a committee to be known as "Chemical Foundation Advisory Committee" was created with full power under the supervision and control of said directors to promote the interests, objects, and purposes of the corporation and to cooperate in an advisory capacity with The Chemical Foundation, Incorporated, in the determination of its general policies and of its policies regarding forms, limitation, and distribution of licenses under its patents and other rights aforesaid. It was provided by the constitution under which said committee was formed that said committee should consist of the president and the vice-president of The Chemical Foundation, Incorporated, and members of the dyestuffs and chemical industry, being a representative of the American Dyes Institute and a representative of the Manufacturing Chemists' Association of the United States, to be chosen by such associations, the chairman of the Section Committee of The Chemical Foundation, Incorporated, and not to exceed five committee members at large to be chosen by the president of The Chemical Foundation, Incorporated, all of which will more fully appear from a copy of said constitution annexed hereto as Exhibit F and prayed to be read as a part hereof.

THIRTY-FIRST. By virtue of the proceedings aforesaid, in the carrying out of said scheme and conspiracy by the parties aforesaid said The Chemical Foundation, Incorporated, was incorporated on or about the 19th day of February, 1919, and said corporation was duly organized, upon the plan aforesaid, with the following officers, that is to say:

PRESIDENT: FRANCIS P. GARVAN, who had been for a long time theretofore Chief of the Bureau of Investigation and also Director of the New York office of Alien Property Custodian, and was at the date of his election as President of said The Chemical Foundation, Incorporated, on March 8, 1919, the Alien Property Custodian.

VICE-PRESIDENT: DOUGLAS I. MCKAY, of New York, who had theretofore been appointed and was then serving as Director for the Alien Property Custodian of certain corporations in the custody of said Alien Property Custodian.

SECRETARY AND TREASURER: GEORGE J. CORBETT, who had been up to that time vice-president of the Central Union Trust Company of New York, which was one of the chief depositories of the Alien Property Custodian; and said George J. Corbett was also at said time an officer and agent in certain corporations in the custody of said Alien Property Custodian.

GENERAL COUNSEL: JOSEPH H. CHOATE, JR., who was then and had been for a long time theretofore and thereafter continued to be an attorney for the Alien Property Custodian in charge of the chemical matters in its Bureau of Investigation.

PATENT ATTORNEY: RAMSEY HOGUET, who was then and had been for a long time theretofore and thereafter continued to be patent attorney for the Alien Property Custodian.

BOARD OF DIRECTORS: The president, vice-president, and secretary of the corporation aforesaid.

VOTING TRUSTEES for the common stock:

OTTO T. BANNARD, who was then and continued to be a member of the Advisory Sales Committee of the Alien Property Custodian, who in November, 1917, had been appointed assistant to the Alien Property Custodian and served for a short time as such; and who was then president of the New York Trust Company, one of the chief depositories of, and a liquidator for the Alien Property Custodian.

CLEVELAND H. DODGE, who was then and continued to be a member of the Advisory Sales Committee of the Alien Property Custodian.

GEORGE H. INGRAHAM, of New York, who was then and continued to be a member of the Advisory Sales Committee of the Alien Property Custodian and who also had been appointed by the Alien Property Custodian as counsel representing the interest of the Alien Property Custodian in certain litigation.

B. HOWELL GRISWOLD, JR., of Baltimore, who was then and continued to be a member of the Advisory Sales Committee of the Alien Property Custodian.

RALPH STONE, of Detroit, who was then and continued to be a member of the Advisory Sales Committee of the Alien Property Custodian, and who in November, 1917, had been appointed Director of the Bureau of Trusts of the Alien Property Custodian and had served for a short time in such capacity.

And thereafter there was added to said organization the Advisory Committee of The Chemical Foundation, Incorporated, aforesaid, consisting of the president and vice-president of The Chemical Foundation, Incorporated, a representative of the American Dyes Institute, a representative of the Manufacturers Chemical Association of America, chairman of the Section Committee of The Chemical Foundation, Incorporated, and five additional members to be appointed by the president of The Chemical Foundation, Incorporated.

And complainant avers and charges that the said defendant, The Chemical Foundation, Incorporated, was devised, incorporated, and organized by or at the procurement of the aforesaid parties to said scheme and conspiracy to procure through the Alien Property Custodian the ownership or control of said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor, and that the said corporation was a mere device and expedient employed by said parties to said scheme and conspiracy to acquire, secure, and obtain from the Alien Property Custodian said properties and rights for their private benefit and for the purposes herein set forth.

Thirty-second. Subsequent to the 4th day of November, 1918, and prior to the 2d day of July, 1921, the Alien Property Custodian, acting at the instance and inducement of the parties to the aforesaid scheme and conspiracy, and upon or with respect to lists of enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor or contracts with respect thereto, furnished by the attorneys and agents of said persons, firms, and corporations as aforesaid, and claiming to act under provisions of said "Trading with the Enemy Act" and the amendments thereto, and the executive orders and proclamations issued in pursuance thereof, did determine that the respective holders and owners of certain patents, copyrights, trade-marks, labels, and other similar rights or applications therefor and contracts with respect thereto, hereinafter mentioned, were enemies or allies of enemies not holding a license granted by the President within the purview of said act as amended and said orders and proclamations, and did further determine that each of said patents, copyrights, trade-marks, labels, and other similar rights or applications therefor or contracts with respect thereto and all right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement thereof, belonged to, or was held for, or on account of, or on behalf of, or for the benefit of said enemy, and did as such Alien Property Custodian seize or demand said letters patent and other rights hereinafter mentioned and all right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement thereof, and did, as such Alien Property Custodian, require the same to be conveyed, transferred, assigned, and delivered to him as Alien Property Custodian and did, as such Alien Property Custodian on the dates hereinafter mentioned, file a copy of his said respective determinations, requirements, and seizures in the proper office for filing, registering, or recording of conveyances, transfers, or assigns of patents, copyrights, trade-marks, or other rights therein or any other rights to be recorded, and did cause the same to be recorded among the transfers of patents, copyrights, trade-marks, and other similar rights or applications therefor or contracts with respect thereto in the books and on the pages hereinafter mentioned: and said filing or recording of said instruments did operate to convey to and vest in complainant and the Alien Property Custodian as an officer of complainant any rights and interests in and powers with respect to said patents, copyrights, trade-marks, labels, and other similar rights or applications therefor or contracts with respect thereto as and to the extent provided in and by said "Trading with the Enemy Act" and amendments thereto and orders and proclamations issued with respect thereto and in and by any and all other laws of the United States applicable thereto. A complete schedule of the said patents, copyrights, trade-marks, labels, and other similar rights or applications therefor, or contracts with respect thereto, showing the serial or identification number of such patent or other right, the title thereto, the date of demand or seizure thereof by the Alien Property Custodian, the date of filing the same for record, and the date and place of record thereof is hereto annexed as Exhibit G, Schedules 1 to 21, inclusive, and prayed to be read as a part of this bill of complaint with the same force and effect as if the statements in said Exhibit G contained as to each of said patents, copyrights, trade-marks, labels, and other similar rights or applications therefor or contracts with respect thereto were specifically and at length averred herein.

THIRTY-THIRD. On the 26th day of February, 1919, Frank L. Polk, claiming to act under and by virtue of authority vested in the President by the "Trading with the Enemy Act" and amendments thereto and alleged to have been vested in him by Executive order No. 3016, dated the 3d day of December, 1918, hereinbefore mentioned, undertook to authorize the said Alien Property Custodian to sell at private sales without public advertisement to the defendant, The Chemical Foundation, Incorporated, at such place and upon such terms and conditions as to the said Alien Property Custodian or his authorized agents might seem proper, all of the letters patent and trade-marks, including all profits and damages recoverable at law or in equity for the past infringement thereof, which said Alien Property Custodian might seize or had seized under the provisions of said "Trading with the Enemy Act" and amendments thereto, then or thereafter enacted, and which said Alien Property Custodian from time to time might determine to relate to the objects and purposes of said defendant, The Chemical Foundation, Incorporated, as expressed and defined by its charter; all of which will more fully appear from an examination of the terms and provisions of said order, to which reference is hereby made. By further order dated April 5, 1919, the said Frank L. Polk, claiming to act under and by virtue of the pretended powers and authorities aforesaid, undertook to authorize said Alien Property Custodian to sell all the copyrights, certificates of registration therefor and the publications upon which said registrations were granted, applications for letters patent and for registration of trade-marks and copyrights, and all rights thereunder which the Alien Property Custodian might seize or had seized under the provisions of the "Trading with the Enemy Act" and the amendments thereof then or thereafter enacted, and which he, the Alien Property Custodian, might from time to time determine related to the objects and purposes of the defendant, The Chemical Foundation, Incorporated, as expressed in its charter; all of which will more fully appear from an examination of the provisions of said order to which reference is hereby made.

THIRTY-FOURTH. Complainant is informed, believes, and therefore avers that said orders of said Frank L. Polk were in fact prepared by or at the instance of the said defendant, The Chemical Foundation, Incorporated, and at the instance and procurement of the persons, firms, and corporations in control of said dyestuffs and chemical industry, in pursuance of the scheme and conspiracy as hereinbefore set forth; that necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of said patents and other rights mentioned in said orders at private sale were not stated or disclosed to said Frank L. Polk, but were withheld from him and suppressed; that other facts in connection therewith, and especially the attitude of the Federal Trade Commission, charged with issuing licenses under the enemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk; that his signature to said order and the issuance thereof by him were procured as aforesaid through such suppression and misrepresentation of the facts, which, if the same had been known by said Frank L. Polk, would have prevented his signing and issuing said orders; and that said orders were signed and issued by him without knowledge of the facts and upon mistake as to the facts, and that the same were and are for this and other reasons in all respect null, void, and of no effect; and complainant submits to the court the question as to whether said Frank L. Polk was authorized or empowered under the Constitution and laws of the

United States to issue such orders or to exercise the powers therein and thereby sought to be exercised by him.

THIRTY-FIFTH. By Executive order dated February 13, 1920, the President undertook [to confirm and validate the aforesaid orders or pretended orders of Frank L. Polk and any actions taken by the Alien Property Custodian thereunder, and]* to enlarge the powers of the Alien Property Custodian with respect to the private sale of said patents and other rights, and rights incident or pertinent thereto or arising out of the same, as will more fully and at length appear from an examination of the terms and provisions of said Executive order, to which reference is hereby made. Complainant is informed, believes, and therefore avers and charges, that said Executive order was prepared by or at the instance or procurement of said defendant, The Chemical Foundation, Incorporated, at the instance or procurement of said persons, firms, and corporations in control of said dyestuffs and chemical industry and parties to said scheme or conspiracy hereinbefore set forth; that the facts hereinbefore set forth and other facts necessary and essential in relation to said seizure and proposed and pretended sale of said patents, copyrights, and other rights, and rights arising out of or incident thereto, [sought to be confirmed and validated or authorized by said Executive order,]* were not disclosed to the President at the time of or before the signing of said

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*Note: Matter enclosed in brackets stricken out by amendment June 4, 1923. (See motion for leave to amend and order thereon, Vol. I, Page 498.)

Executive order and that the same was signed and issued upon an entire misunderstanding or mistake of facts which, if the same had been truly stated and known to the President, would have prevented his signing or issuing the said order; that said Executive order was not authorized by law, and that the same was and is for the reasons aforesaid and for other reasons, without force and effect to authorize, confirm, or validate the pretended sale or disposition of said patents, copyrights and other rights and rights arising out of or relating thereto, [sought to be confirmed, validated and authorized by said Executive order.]*

Thirty-sixth. In pursuance of the scheme and conspiracy aforesaid, the parties aforesaid to said scheme and conspiracy, acting through the said defendant, The Chemical Foundation, Incorporated, its agents or attorneys, induced and procured Francis P. Garvan, as Alien Property Custodian (who was also at the time president of defendant, The Chemical Foundation, Incorporated, as aforesaid), acting under the pretended authority of said "Trading with the Enemy Act" and amendments thereto, and said orders of Frank L. Polk, and in some cases of said Executive order of the President to make, and said Francis P. Garvan as Alien Property Custodian did make, or undertake to make, to said defendant, The Chemical Foundation, Incorporated, certain pretended instruments of sale, assignment, and transfer of the patents, copyrights, trade-marks, labels, and other similar rights and applications therefor and contracts with respect thereto, mentioned and described in Exhibit G, Schedules 1 to 19, inclusive, without any reservation or qualification whatever, except as in said respective pretended instruments of sale, assignment, and transfer expressly set forth; said pretended instruments of sale, assignment, and transfer of said patents and other rights being briefly described and stated as follows:

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*Note: Matter enclosed in brackets stricken out by amendment June 4, 1923. (See motion for leave to amend and order thereon, Vol. 1, Page 499.)

(1) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated April 10, 1919, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain patents and other rights therein mentioned and described, being approximately 3,880 patents, 246 applications for patents, 851 trade-marks, 492 copyrights and rights growing out of 46 contracts and other rights therein mentioned, for a lump sum or consideration of $250,000; which said instrument was recorded in liber Y. 107, p. 1, of transfers of patents in the United States Patent Office on April 21, 1919, and in book 81, pages 181-186, of the Copyright Office of the United States of America, on April 15, 1919.

(2) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated May 2, 1919, undertaking to assign, sell, and transfer unto said The Chemical

Foundation, Incorporated, certain trade-marks and other rights therein mentioned and described, being 2 trade-marks and rights growing out of one contract and other rights therein mentioned, for a lump sum or consideration of $50.00, which said instrument was recorded in liber J-107, p. 152, of transfers of patents in the United States Patent Office on May 21, 1919.

(3) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated May 6, 1919, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain patents and other rights therein mentioned and described, being 14 patents and other rights therein mentioned, for a lump sum or consideration of $500.00, which said instrument was recorded in liber A-107, p. 229, of transfers of patents in the United States Patent Office on May 21, 1919.

(4) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated May 15, 1919, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain patents and other rights therein mentioned and described, being one patent and other rights therein mentioned for the sum or consideration of $50.00, which said instrument was recorded in liber X-107, p. 188, of transfers of patents in the United States Patent Office, on May 21, 1919.

(5) An instrument of pretended sale, assignment,

and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated June 17, 1919, undertaking to assign, sell, and transfer unto the said The Chemical Foundation, Incorporated, certain patents and applications therefor and other rights therein mentioned and described, being approximately 53 patents and 20 applications for patents and other rights therein mentioned, for a lump sum or consideration of $3,650.00, which said instrument was recorded in liber L-107, p. 242, of transfers of patents in the United States Patent Office, on June 27, 1919.

(6) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated June 21, 1919, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain patents, applications therefor, trade-marks, contract rights, and other rights therein mentioned and described, being approximately 2 patents, 1 application for patent, 3 trademarks and rights growing out of 3 contracts and other rights therein mentioned, for a lump sum or consideration of $450.00, which said instrument was recorded in liber H-107, p. 259, of transfers of patents in the United States Patent Office on July 10, 1919.

(7) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated October 17, 1919, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain patents and

other rights therein mentioned and described, being approximately 21 patents and other rights therein mentioned, for a lump sum or consideration of $1,050.00, recorded in liber P-108, p. 441, of transfers of patents in the United States Patent Office on November 14, 1919.

(8) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated December 9, 1919, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain applications for patents and other rights therein mentioned and described, being approximately 22 applications for patents and other rights therein mentioned, for a lump sum or consideration of $1,100.00, which said instrument was recorded in liber Z-109, p. 69, of transfers of patents in the United States Patent Office on December 19, 1919.

(9) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated February 26, 1920, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, and to ratify and confirm the previous attempted sale, assignment, and transfer unto said The Chemical Foundation, Incorporated, of certain rights under contracts relating to patents and other rights, and other rights therein mentioned and described, being rights growing out of approximately 49 contracts and other rights therein mentioned without consideration other than the sum of

$250,000 theretofore paid by said The Chemical Foundation, Incorporated, for the instrument of pretended sale, assignment, and transfer dated April 10, 1919, hereinabove mentioned, and the sum of $450.00 theretofore paid by said The Chemical Foundation, Incorporated, as consideration for the pretended instrument of sale, assignment, and transfer dated June 21, 1919, hereinabove mentioned, which said instrument was recorded in Liber W-112, p. 1, of transfers of patents in the United States Patent Office on December 21, 1920.

(10) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated February 26, 1920, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain rights growing out of contracts relating to patents and other rights therein mentioned and described, being rights growing out of 7 contracts and other rights therein mentioned for a lump sum or consideration of $300.00, which said instrument was recorded in liber S-111, p. 428, of transfers of patents in the United States Patent Office on December 21, 1920.

(11) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated March 9, 1920, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain patents, trademarks, and other rights therein mentioned and

lescribed, being approximately 26 patents and 20 rade-marks and other rights therein mentioned, for a lump sum or consideration of $2,300, which said instrument was recorded in liber X-108, p. 435, of transfers of patents in the United States Patent Office on March 11, 1920.

(12) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated May 4, 1920, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain patents and applications therefor and other rights therein mentioned and described, being approximately 34 patents and 1 application for patent and other rights therein mentioned, for a lump sum or consideration of $1,750.00, which said instrument was recorded in liber X-109, p. 199, of transfers of patents in the United States Patent Office on May 20, 1920.

(13) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated May 15, 1920, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain patents and other rights therein mentioned and described, being approximately 406 patents and other rights therein mentioned, for a lump sum or consideration of $5,000.00, together with the several sums theretofore paid by said The Chemical Foundation, Incorporated, upon the execution and delivery of previous patented assignments,

which said instrument was recorded in liber E-111, p 319, of transfers of patents in the United States Patent Office on November 1, 1920.

(14) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated July 20, 1920, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, a certain patent and other rights therein mentioned, the application for which patent said Alien Property Custodian had previously attempted to sell, transfer, and assign to said The Chemical Foundation, Incorporated, which patent had been subsequently issued to said Alien Property Custodian, the consideration stated in said instrument being the valuable consideration already paid to said Alien Property Custodian by said The Chemical Foundation, Incorporated, which said instrument was recorded in liber B-111, p. 66, of transfers of patents in the United States Patent Office on July 27, 1920.

(15) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated December 21, 1920, undertaking to assign, sell, and transfer certain patents and other rights therein mentioned and described, being approximately 406 patents, and other rights therein mentioned and undertaking to confirm and ratify a previous attempted assignment, sale, and

transfer of said patents and other rights unto said The Chemical Foundation, Incorporated, for a lump sum or consideration of $5,000.00 and the several sums theretofore paid by said The Chemical Foundation, Incorporated, upon the execution and delivery of said previous pretended assignments, which said instrument was recorded in liber V-112, p. 1, of transfers of patents in the United States Patent Office on December 21, 1920.

(16) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated December 21, 1920, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain patents and other rights therein mentioned and described, being 2 patents and other rights therein mentioned for a lump sum or consideration of $100.00, which said instrument was recorded in liber Q-112, p. 91, of transfers of patents in the United States Patent Office on December 21, 1920.

(17) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated December 21, 1920, undertaking to assign, sell, and transfer to said The Chemical Foundation, Incorporated, and to ratify and confirm a previous attempted sale, transfer, and assignment to said The Chemical Foundation, Incorporated, of certain rights growing out of contracts relating to

patents and other rights therein mentioned and described, being rights growing out of approximately 49 contracts relating to patents and other rights therein mentioned for a consideration stated in said instrument of the sum of $250,000.00 theretofore paid by said The Chemical Foundation, Incorporated, upon the execution and delivery of the pretended assignment dated April 10, 1919, hereinabove mentioned, and the further sum of $450.00 theretofore paid by said The Chemical Foundation, Incorporated, upon the execution and delivery of the pretended assignment, dated June 21, 1919, hereinbefore mentioned, which said instrument was recorded in liber W-112, p. 21, of transfers of patents in the United States Patent Office on December 21, 1920.

(18) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated December 21, 1920, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, and to confirm and ratify prior pretended sales and transfers to said The Chemical Foundation, Incorporated, of certain rights growing out of certain contracts relating to patents and other rights therein mentioned, being rights growing out of 7 contracts relating to patents, and other rights therein mentioned for a lump sum or consideration of $300.00, which said instrument was recorded in liber S-111, p. 432, of transfers of patents in the United States Patent Office on December 21, 1920.

(19) An instrument of pretended sale, assignment, and transfer from Francis P. Garvan, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated February 19, 1921, undertaking to assign, sell, and transfer unto said The Chemical Foundation, Incorporated, certain patents and other rights therein mentioned and described, being approximately 355 patents and other rights therein mentioned for a lump sum or consideration of $5,000.00, which said instrument was recorded in liber Y-112, p. 163, of transfers of patents in the United States Patent Office on February 23, 1921.

A true copy of each of said pretended instruments of sale, transfer, and assignment from said Francis P. Garvan, Alien Property Custodian, to The Chemical Foundation, Incorporated, exclusive of the schedules or lists thereto annexed, is hereto annexed as Exhibits H-1 to H-19, inclusive, and prayed to be read as a part hereof, to the same extent and with the same effect as if copied at length herein. The patents and other rights mentioned and described in said respective instruments and in the lists or schedules annexed to said respective instruments are included and identified in Exhibit G, Schedules 1 to 19, inclusive, herewith to which reference is made.

THIRTY-SEVENTH. In further pursuance of said scheme and conspiracy and at the instance, inducement, and procurement of the parties aforesaid, the said Francis P. Garvan, Alien Property Custodian (who was then president of defendant, The Chemical Foundation, Incorporated), did, on the 1st day of

March, 1921, execute and deliver to said The Chemical Foundation, Incorporated, an instrument in writing whereby the said Alien Property Custodian undertook to ratify, confirm, and validate the alleged sales, transfers, and assignments of said patents and other rights theretofore attempted to be made unto said defendant, The Chemical Foundation, Incorporated, and undertook to enlarge and extend the same, without further consideration therefor, as will more fully appear from the copy of said instrument dated March 1, 1921, hereto annexed as Exhibit I and prayed to be read as a part of this complaint.

Thirty-eighth. Complainant is informed, believes, and therefore avers that each and every of said instruments of pretended sale, transfer, and assignment was prepared by or at the instance of said defendant, its attorneys, or agents, at the instance, inducement, and procurement of the parties to the aforesaid scheme and conspiracy to procure said patents and other rights mentioned for their private gain and benefit, and to protect and preserve their monopoly and control of the dye and chemical industry in the United States as aforesaid; that in their haste and urgent desire to secure colorable title to said patents and other rights, and in complete neglect of the rights and obligations of complainant, said pretended sales were made in many instances without following the law or the usual procedure in such cases established in the office of the Alien Property Custodian; that in many instances a part of the nominal consideration named for said patents and other rights was in fact paid by the defendant before said pretended sale had been made or consummated; and that some of said patents and other rights mentioned and sought to be assigned by the Alien Property Custodian by the respective instruments mentioned had not, in fact, at the time of such pretended or attempted assignments thereof been seized by and were not in the custody, possession, or control of the Alien Property Custodian; and that said alleged sales, assignments, and transfers, and ratifications and confirmations thereof, were in other respects irregular and in violation of law, and that the same were and are in all respects null, void, and of no effect in law and equity.

THIRTY-NINTH. The said Francis P. Garvan resigned as Alien Property Custodian on the 12th day of March, 1921, and was succeeded in said office on said date by Thomas W. Miller, who thereafter, as Alien Property Custodian, executed and delivered to the defendant, The Chemical Foundation, Incorporated, two additional instruments of alleged sale, transfer, and assignment, as follows;

1. An instrument of alleged sale, assignment, and transfer from Thomas W. Miller, Alien Property Custodian, to defendant, The Chemical Foundation, Incorporated, dated the 27th day of April, 1921, purporting to sell, transfer, and assign to said defendant the patents and other rights mentioned and listed in Schedules A and B therewith, a true copy of said instrument, together with the accompanying schedule, is hereto annexed as Exhibit J and prayed to be read as a part hereof.

2. An instrument of alleged sale, assignment, and transfer by Thomas W. Miller, Alien Property Custodian, to defendant, The Chemical Foundation, Incorporated, dated the 5th day of November, 1921, wherein and whereby the said Thomas W. Miller as Alien Property Custodian undertakes to confirm and ratify the sale and assignment theretofore made to the said defendant of certain trade-marks and registrations thereof and of all property rights thereto appertaining, which said trade-marks are mentioned and described in Exhibit G, Schedule 21, hereof, to which reference is hereby made. A copy of said instrument, exclusive of the schedule thereto annexed, is filed herewith as Exhibit K and prayed to be read as a part hereof.

Complainant is informed, believes, and therefore avers that said instruments of alleged sale, assignment, and transfer were prepared by or at the instance and procurement of said defendant, The Chemical Foundation, Incorporated; that said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration, and especially said instrument of November 5, 1921, was made, executed, and delivered without any consideration whatever; that said alleged sales, transfers, and assignments were otherwise irregular and contrary to law, and were and are in all respects null, void, and of no effect in law or equity.

FORTIETH. The parties aforesaid to the scheme and conspiracy aforesaid having as complainant is informed, believes and charges, through their representatives in the manner aforesaid induced and procured the organization of the defendant corporation, and having induced and procured the complete cooperation of the Alien Property Custodian and the essential agents and attorneys of said Alien Property Custodian in the manner aforesaid, and by making said Francis P. Garvan who was then Alien Property Custodian and the various officers, assistants, attorneys and agents of the Alien Property Custodian, aforesaid also the officers, agents, and attorneys of said defendant, The Chemical Foundation, Incorporated, proceeded through said defendant corporation to procure the seizure by the Alien Property Custodian and the pretended sale and transfer to said corporation in the manner aforesaid, of substantially all of the enemy-owned patents and other rights which had not theretofore been disposed of, and which were of any substantial value, whether the same related to the objects and purposes of the defendant corporation or not; and complainant avers that a large number of the patents, copyrights, trade-marks, labels, and other similar rights and applications therefor or contracts relating thereto, mentioned and described in and sought to be sold, assigned, and transferred to said defendant by the instruments aforesaid, such as for example machines for making fringes, gas engines, airplane parts, telescopes, field and spectacle glasses, turbine engines, and many other like valuable rights, did not in any way relate to the objects or purposes of said The Chemical Foundation, Incorporated, as expressed and defined by its charter, but were entirely foreign to the objects and purposes thereof, and that the pretended transfer, sale, and assignment thereof to defendant corporation was solely for the private gain of said corporation and the parties to said scheme and conspiracy aforesaid who were interested in said defendant, The Chemical Foundation, Incorporated; all of which will more fully appear from an examination of the lists of said patents and other rights in the various schedules of Exhibit G aforesaid to which reference is hereby made.

Forty-first. Prior to the seizure or acquisition of custody or control of said patents and other rights by Alien Property Custodian, as hereinbefore set forth, the Federal Trade Commission, acting under and in pursuance of the provisions of said "Trading with the Enemy Act" and amendments thereto and orders and proclamations relating thereto, and especially by virtue of the Executive order October 12, 1917, hereinbefore set forth, had licensed to certain citizens of the United States and corporations organized within the United States the right to use certain of said patents, copyrights, trade-marks, and other similar rights for considerations to be paid by said licensees to the Alien Property Custodian and deposited with the Treasurer of the United States, as provided by said act and the amendments thereto and the orders and proclamations aforesaid. A list of the licenses so issued, together with the royalties accrued or collected therefrom to the date of the pretended assignments thereof to the defendant is hereto annexed as Exhibit L and prayed to be read as a part hereof. Since the seizure and pretended sale, assignment, and transfer of said patents, copyrights, and other rights hereinbefore mentioned, by the Alien Property Custodian to defendant, The Chemical Foundation, Incorporated, said defendant corporation has issued other licenses for the use and enjoyment of said patents, copyrights, and other rights so alleged to have been sold, assigned, and transferred to it by said Alien Property Custodian, and said defendant has also collected royalties on certain amounts of products alleged to have been covered by said patents, copyrights, and other rights, imported into the United States since the alleged sale, assignment, and transfer thereof to said defendant. Complainant is not informed as to the exact number of licenses so issued by The Chemical Foundation, Incorporated, or as to the exact patents, copyrights, or other rights under which the same were issued or to which the same relate, but avers that such licenses have been as yet issued by defendant, The Chemical Foundation, Incorporated, under a comparatively small number of patents, copyrights and other rights among the large number thereof alleged to have been sold, assigned, and transferred to it, as hereinbefore set forth.

FORTY-SECOND. Complainant is informed and believes and therefore avers that defendant, The Chemical Foundation, Incorporated, is now claiming under and by virtue of the pretended instruments of assignments aforesaid that the said defendant is entitled to receive, collect, and have paid over to it as alleged owner of said patents, copyrights, and other rights pretended to have been so assigned as aforesaid all of the accrued royalties thereon under licenses issued by the Federal Trade Commission, aforesaid, and all royalties which may accrue under said licenses, as well as all royalties or other income or increment which may accrue or have accrued, or may be or have been derived from licenses which may have been or may hereafter be issued under said patents, copyrights, trade-marks, or other similar rights by said The Chemical Foundation, Incorporated. Complainant is informed and believes and therefore avers that the amount of such royalties accrued under licenses issued by the Federal Trade Commission aforesaid, and by defendant, The Chemical Foundation, Incorporated, aforesaid, under certain of said patents, aggregate as of the 30th day of June, 1922, the sum of $1,152,048.36; that the present average income from and under patents, copyrights, and other rights so claimed, and under a small number of which patents and other rights licenses have already been issued, is approximately $300,000 per annum, which income can be greatly increased by the issue of additional licenses and the increasing royalties chargeable under said patents and other rights upon imports of products covered thereby; and that the average life of patents and other rights alleged to have been sold to said The Chemical Foundation, Incorporated, is in excess of 8 years.

Forty-third. Complainant is informed and therefore avers that the actual original cost to the grantee or registered owner of said patents, copyrights, trade-marks, and other rights so granted or registered by enemy owners as aforesaid, and of securing the issue of such patents and other rights and the registration of said copyrights, trade-marks, and other similar rights was in excess of $50.00 for each of said patents or other rights so granted or registered; that the consideration paid or alleged to have been paid to said Alien Property Custodian by defendant, The Chemical Foundation, Incorporated, for and on account of said patents, copyrights, and other rights hereinbefore described was less than $50.00 for each of the patents and other rights so pretended to have been sold, transferred, and assigned to said defendant, and alleged to have been purchased by it; and that said consideration was paid to said Alien Property Custodian and by him into the Treasury of the United States in lump sums for the aggregate amount of the consideration for the patents, copyrights, and other similar rights covered by each of said pretended instruments of sale, transfer, and assignment; that the sums so paid or alleged to have been paid were not segregated to or apportioned among the several patents, copyrights, and other similar rights so alleged to have been sold, transferred, or assigned to the defendant although some of said patents, copyrights, and other rights were of great value, while others were of small value, if anything. Complainant avers that said method of alleged sale, transfer, and assignment and payment of the consideration therefor was contrary to and in every respect opposed to the terms, provisions, and true intent of said "Trading with the Enemy Act," and amendments thereto and orders and proclamations issued thereunder, and of said orders purporting to authorize said pretended sales, transfers, and assignments even if said orders were valid; and complainant further avers and charges that said alleged sales, transfers, and assignments so made were in all respects null, void, and of no effect in law or in equity.

FORTY-FOURTH. Complainant avers that the total aggregate consideration paid or agreed to be paid by defendant, The Chemical Foundation, Incorporated, for all said patents, copyrights, trade-marks, and other rights alleged to have been sold, assigned, and transferred to it by said Alien Property Custodian by the instruments aforesaid, and hereinbefore more fully described, was approximately $271,000; that the present average annual income from the small proportion of said patents, copyrights, trade-marks, and other similar rights under which licenses have already been issued is in excess of $300,000; and complainant is informed and believes and therefore avers that the actual value of said patents, copyrights, trade-marks, and other rights mentioned and described in said instruments of alleged sale, transfer, and assignment set forth in detail as Exhibit G herewith was at the time that said alleged sales were made and is now many millions of dollars; that the consideration paid or agreed to be paid by said defendant, The Chemical Foundation, Incorporated, for said patents, copyrights, trade-marks, and other similar rights was less than the original cost of procuring or registering the same, and was at the time of said alleged sale and is nominal and wholly and grossly inadequate; and that the alleged and pretended sale of said patents, copyrights, trade-marks, or other similar rights and each of them for the consideration received or agreed to be paid therefor, if sustained, constituted and would constitute a confiscation of said property and property rights for the private benefit of the defendant and of the parties to the scheme and conspiracy aforesaid acting through said defendant, which was unauthorized by and in violation of the Constitution of the United States and amendments thereto and of the treaties made and laws passed in pursuance thereof, and of the rights, interests, duties, and obligations of complainant; and complainant avers and charges that the alleged transactions of sale, transfer, and assignment of said patents, trade-marks, copyrights, and other rights mentioned in said instruments, respectively, and hereinbefore fully described, were and are each and all of them in all respects null, void, and of no effect either in law or in equity, and that the same should be rescinded and vacated and the parties thereto restored to their original positions in the premises.

Forty-sixth. Complainant avers that the records and facts relating to transactions herein set forth were in the possession and under the control of the Alien Property Custodian, and certain of his assistants, attorneys, and agents, who were also officers of or connected with The Chemical Foundation, Incorporated, until the change in the administration of said office in March, 1921, aforesaid; that many of the records of said office relating to the transactions herein set forth were removed from said possession and control to the office of said The Chemical Foundation, Incorporated, by the officers and said corporation, and many of the facts herein related have only recently come to the knowledge of the complainant; that a short time prior to the 2d day of July, 1922, the said defendant, The Chemical Foundation, Incorporated, instituted numerous suits against licensees, of the patents and other rights hereinbefore mentioned and described, under licenses issued by the Federal Trade Commission as aforesaid, and against the Treasurer of the United States, claiming and asserting its alleged right to certain royalties accruing under said licenses. An investigation of the matters and things hereinbefore set forth by complainant was then in progress and had reached the stage at which complainant deemed it to be its duty to demand the restoration of said patents, copyrights, and other rights hereinbefore mentioned by said The Chemical Foundation, Incorporated, to the Alien Property Custodian, and an accounting for the income and revenue derived therefrom by said The Chemical Foundation, Incorporated. Thereupon complainant caused formal and written demand to be made upon defendant, The Chemical Foundation, Incorporated, for the restoration of said patents and other rights hereinbefore described and an accounting for the income and revenue derived therefrom. Said demand was made by the Alien Property Custodian by direction and under instructions of the President of the United States, and said demand was refused by the said defendant, The Chemical Foundation, Incorporated; all of which will more fully appear from a copy of a letter from the President to the Alien Property Custodian, dated the 1st day of July, 1922, and a copy of said demand by the Alien Property Custodian, dated the 8th day of July, 1922, and a copy of the reply of the defendant to said demand, all of which are hereto annexed as Exhibit M and prayed to be read as a part hereof.

FORTY-SEVENTH. Complainant charges that each, every, and all of said pretended sales, transfers, and assignments of the patents and other rights aforesaid, were made, and that each, every, and all of said instruments, undertaking, or purporting to evidence, effectuate, confirm, or ratify the same, or any of them, were executed and delivered by the Alien Property Custodian in pursuance of or as a result of the scheme and conspiracy aforesaid; that the same were unauthorized and were in all respects unlawful; that the said alleged and pretended sales were made, and said instruments executed, for no consideration or for a nominal consideration, or for a consideration which was so wholly and grossly inadequate as to be shocking to the conscience of a court of equity, and a violation of the rights and duties of the complainant and of the Alien Property Custodian under the law; and that said alleged or pretended sales, transfers, and assignments of said patents and other rights and the transactions connected therewith, constituted an effort to, and if sustained would operate to effect a forfeiture or confiscation of said enemy-owned patents and other rights and interests therein or arising therefrom for the private gain of defendant and the parties to said scheme, and without authority of Congress and contrary to the Constitution of the United States and amendments thereto, and contrary to the treaties made and laws passed in pursuance thereof, and contrary to and in violation of the rights and public duties and obligations of complainant. And complainant further avers and charges that the acts, transactions, alleged sales, transfers, assignments, and instruments aforesaid were and are null, void, and of no effect in law or in equity, and that the same should be so adjudged by this court; that said patents and other rights and all interests therein or rights arising therefrom should be by the defendant, and by proper order of this court in the premises, restored and reassigned to complainant or to said Alien Property Custodian for complainant, to be by said Alien Property Custodian held and administered and disposed of as now provided in law, or as may be provided or required by any future legislation by Congress relating thereto: and that said defendant should also be required to account to complainant for, and pay over to said Alien Property Custodian, all income or revenues of every kind or character which may have been received by or accrued to defendant, or which may hereafter be received by or accrue to it from said patents and other rights, or any of them, or any interest therein or rights thereunder, the same to be by said Alien Property Custodian held, administered, and disposed of as required by the "Trading with the Enemy Act," and amendments thereto, and valid orders or proclamations relating thereto, or by any future legislation of Congress applicable thereto.

FORTY-EIGHTH. Complainant further avers that defendant has recently instituted in various District Courts of the United States, and in the Supreme Court of the District of Columbia, numerous suits in equity claimed to have been brought under and in pursuance of the provisions of subsection of section 10 of the "Trading with the Enemy Act," as amended, against the licensees of certain patents, trade-marks, copyrights, and other rights aforesaid holding licenses from the Federal Trade Commission as aforesaid, and also against the Treasurer of the United States, in which said suits defendant claims and seeks to assert as to certain patents and other rights as against the licensees thereof and the Treasurer of the United States the rights of the owner thereof within the terms of said subsection *f* of said section 10 of the "Trading with the Enemy Act," as amended, and seeks to prosecute the rights as against said licensees and the Treasurer of the United States reserved to the owner of said patents under subsection *f* of section 10 of the "Trading with the Enemy Act," as amended, and to recover the amount of license fees or other revenues accrued thereon under said licenses of the Federal Trade Commission, part of which revenues accrued prior to the seizure of such patents and other rights by said Alien Property Custodian; which said suits are now pending in the several courts aforesaid and proceedings therein have been stayed by stipulation of the defendant pending the filing of this bill of complaint and until the 15th day of September, 1922. Complainant avers that all of the patents and other rights under or with respect to which defendant has instituted said suits and seeks to prosecute the same as owner thereof are among the patents and other rights alleged or pretended to have been sold, transferred, and assigned to the defendant by the Alien Property Custodian by virtue of the acts and transactions hereinbefore in this bill of complaint set forth; that the further prosecution of said suits or any other actions at law or suits in equity against the licensees of said patents under said Federal Trade Commission, or against the Treasurer of the United States, by the defendant will involve the issues raised by this bill of complaint, will necessitate the prosecution and defense of numerous suits involving the questions herein raised, and will be seriously prejudicial to the rights and interests of complainant, and complainant therefore avers that the further prosecution of said suits by defendant, and the institution or prosecution of any action at law or suits in equity or other proceedings by defendant by virtue of its alleged ownership of said patents and other rights, so licensed by the Federal Trade Commission, whether against the licensees of the said Federal Trade Commission or against the Treasurer of the United States, should be enjoined and restrained until the final adjudication of the questions herein and hereby raised, and the final decree of the court in this cause.

FORTY-NINTH. Complainant further shows that since the pretended acquisition of said patents and other rights by defendant, The Chemical Foundation, Incorporated, as hereinbefore set forth, said defendant has been expending and complainant is informed, and believes and therefore avers, is now spending large sums of money, being a large proportion of the revenues derived as royalties from licenses and other rights issued under said patents and other rights mentioned, for salaries, legal fees, and in publicity and propaganda on behalf of and in creating public sentiment favorable to said The Chemical Foundation, Incorporated, and the transactions aforesaid; that said defendant is at present in a position to undertake to, and is clothed with apparent authority to convey and dispose of the patents, copyrights, trade-marks, and other rights aforesaid, or parts thereof, or to encumber the same; that it appears from the books and records and from the published statements of said defendant that it is expending and has expended and complainant is informed and believes and therefore avers that said defendant will continue to expend amounts in excess of its income largely for the purposes aforesaid unless enjoined and restrained by this court, and has created and is creating a large deficit; that said defendant has no substantial assets except the patents, copyrights, trade-marks, and other rights aforesaid, pretended to have been sold, transferred, and assigned to it by the Alien Property Custodian, as hereinbefore set forth, and that with the exception of said assets so claimed said defendant is insolvent; and unless said defendant be enjoined and restrained from disposing of or encumbering said patents, copyrights, trade-marks, and other rights aforesaid, or attempting to do so, and from wasting the income derived therefrom on account of royalties or other rights issued by said defendant thereunder or with respect thereto, as hereinbefore set forth, it will have no visible or available assets, or will not have adequate or sufficient assets, with which to comply with the final decree in this cause should the court grant to the complainant the relief herein prayed, to the irreparable injury and damage of the complainant.

Whereupon, complainant, being without remedy save in a court of equity where such matters are properly cognizable, respectfully prays:

1. That the process of this honorable court may issue, directed to the defendant, The Chemical Foundation, Incorporated, requiring and commanding it to appear and answer this bill of complaint and each and every allegation hereof but answer under oath is hereby expressly waived.

2. That each, every, and all of the alleged or pretended sales, transfers, and assignments hereinbefore recited from the Alien Property Custodian to defendant, The Chemical Foundation, Incorporated, of patents, copyrights, trade-marks, labels, and other similar rights or applications therefor or contracts with respect thereto, or choses or rights of action growing out of the same, and each, every, and all of the instruments in writing made, executed and delivered by the Alien Property Custodian to said defendant undertaking or purporting to evidence, effectuate, confirm, or ratify any such alleged or pretended sale, transfer, or assignment to said defendant as in this bill of complaint set forth, be adjudged and declared invalid in law and in equity, and be rescinded, set aside and annulled by decree of this court.

3. That defendant, The Chemical Foundation, Incorporated, be commanded and required to execute and deliver in form to be approved by this court, and cause to be recorded in the proper offices of record or registry of the United States, any and all instruments, and to perform any and all acts, deemed

to be necessary or proper by this court to fully restore the complainant and vest in complainant and the Alien Property Custodian as such all rights and titles to, interest in, and custody of said patents, copyrights, trade-marks, labels, and other rights or applications therefor, or contracts with respect thereto, or choses in action or other rights arising thereunder or therefrom, claimed or pretended to have been sold, transferred or assigned to said defendant, The Chemical Foundation, Incorporated, as in this bill of complaint set forth, to the same extent as if said alleged or pretended sales, transfers, and assignments from the Alien Property Custodian to said defendant had not been made (but with such lawful protection to any rights of any licensee or licensees of defendant as the court may give pursuant to the further prayers hereof, and agreeable to the principles of equity); the same to be by said Alien Property Custodian as an officer of complainant held, administered, and disposed of only as directed and required by said "Trading with the Enemy Act" and amendments thereto and valid orders or proclamations relating thereto or as Congress may hereafter by law direct.

4. That defendant, The Chemical Foundation, Incorporated, be required to make and render a true, full, and complete accounting of income, licensee fees, and revenues of every kind and description, whether collected by or accrued and still due to the defendant from or on account of said patents, copyrights, trade-marks, or other rights hereinbefore fully described in any manner and from whatever source

derived, up to and including the date of the restoration thereof to the Alien Property Custodian under decree of this court as hereinbefore prayed; and subject only to such credits on account of any amounts which may have been paid by the defendant to the Alien Property Custodian as consideration for the alleged and pretended sales, transfers, and assignments of said patents and other property, or other rights, as may be permitted by law and agreeable to the principles of equity; and to pay over any balances so ascertained of said income and revenue, with lawful interest thereon, and to assign any claims to any uncollected portions thereof unto the Alien Property Custodian, to be by him held, administered, and disposed of under and subject to the terms and provisions of said "Trading with the Enemy Act" and amendments thereto, and valid orders and proclamations relating thereto, or as Congress may hereafter by law direct.

5. That this court will in granting the relief herein and hereby prayed, so shape its decrees and impose such equitable conditions therein and thereby that the licenses and interests of all licensees of said patents and other rights hereinbefore described under licenses or other rights issued or granted by defendant, The Chemical Foundation, Incorporated, or by the Federal Trade Commission may be protected and safeguarded to the full extent authorized by law and agreeable to the principles of equity.

6. That defendant, The Chemical Foundation, Incorporated, be enjoined and restrained from further

prosecuting any action at law or suit in equity heretofore brought, and from instituting or prosecuting any action at law or suit in equity or other proceeding as alleged or pretended owner of the patents or other rights hereinbefore described, against any licensee under license granted by the Federal Trade Commission, or against the Treasurer of the United States, under subsection *f* of section 10 of said "Trading with the Enemy Act," as amended, or otherwise, to recover any amounts paid or accrued under any license or licenses heretofore issued by said Federal Trade Commission under or on account of any patent, copyright, trade-mark, or other right claimed by said defendant, under or by virtue of any alleged sale, transfer, or assignment from the Alien Property Custodian to said defendant, until the final decree of this court in this cause.

7. That defendant, The Chemical Foundation, Incorporated, be enjoined and restrained from selling or in any manner disposing of and from encumbering in any manner whatsoever any of the patents, copyrights, trade-marks, labels, and other similar rights or applications therefor or contracts with respect thereto, claimed to have been acquired from the Alien Property Custodian by defendant as hereinbefore set forth, save and except only by licenses for the use and employment thereof by citizens of the United States or corporations organized within the United States, the same to be in such form and upon and subject to such terms and conditions as this court may direct, and subject in each instance to its

approval; and that said defendant be enjoined and restrained from expending, using, or in any manner disposing of any income or revenue of any kind or character whatsoever which may be received by, collected, or paid to said defendant on any license or other right heretofore or hereafter issued under or with respect to said patents, copyrights, trade-marks, labels, and other similar rights or applications therefor or contracts with respect thereto, or on account of said patents or other rights from any source whatever; and that it the said defendant be required to pay over into the registry of this court from time to time as received any amounts so hereafter collected or received by it on any of the accounts aforesaid, or paid to it under or on account of any such license or right to use such patents or other rights or on account of said patents or other rights; the same to be there held to await the final decree of the court in this cause, and to be disposed of as the court may then direct.

8. That complainant may have and be granted such other, further, and general relief as the nature of its case may require and to equity may seem meet.

And complainant will ever pray, etc.

UNITED STATES OF AMERICA,
By
(Sgd.) H. M. DAUGHERTY,
Attorney General of the United States.

(Sgd.) JAMES H. HUGHES, JR.,
United States Attorney for the District of Delaware.

Solicitors for complainant:
HENRY W. ANDERSON,
Special Assistant to the Attorney General,
Richmond, Va.

HERMAN J. GALLOWAY,
Special Assistant to the Attorney General,
Washington, D. C.

Of Counsel:
WILLIAM W. WILSON,
General Counsel, Alien Property Custodian,
Washington, D. C.

STATE OF DELAWARE,
New Castle County, ss:

Thomas W. Miller, being duly sworn, upon oath says that he is now the duly appointed, qualified, and acting Alien Property Custodian under the terms and provisions of the aforesaid "Trading with the Enemy Act" and amendments thereto; that he has read the foregoing bill of complaint, and that the matters and things therein stated of which the defendant has knowledge are true and that the matters and things therein stated upon information and belief he believes to be true.

(Sgd.) THOMAS W. MILLER.

Subscribed and sworn to before me, a notary public, in the city of Wilmington, in the State of Delaware, this 8th day of September, 1922.

(Sgd.) H. C. MAHAFFY, JR.,
Notary Public for the State of Delaware.

(Notarial Seal)

My commission expires August 11, 1923.

EXHIBIT A.

(Offered and admitted in evidence as Plaintiff's Exhibit No. 192.)

[First deficiency appropriation bill, 1919. Hearing before the subcommittee of the Committee on Appropriations, United States Senate, Sixty-fifth Congress, second session, on H. R. 13086, a bill making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes.]

STATEMENT OF LEE C. BRADLEY, ESQ., GENERAL COUNSEL, ALIEN PROPERTY CUSTODIAN.

SALE OF ENEMY PROPERTY.

The CHAIRMAN. We shall be glad to hear from you, Mr. Bradley.

Mr. BRADLEY. Are the members of the committee provided with drafts of the amendments?

The CHAIRMAN. No.

Senator UNDERWOOD. I introduced the amendment this morning. It has not been printed yet.

Mr. BRADLEY. Perhaps it would be better for it to be before you. I have only two extra copies, I am sorry to say.

Senator UNDERWOOD. I have one in my pocket. I will say that I introduced the amendment this morning and it was referred to the committee, but it will not come down until tomorrow. It will have to go to the Printing Office.

Mr. BRADLEY. I think for your convenience, then, I had better provide you gentlemen with copies to be inserted in the act, so that the references I make in explanation will be better understood.

This amendment is designed to make effective the power of sale of enemy property. The original act conferred upon the Alien Property Custodian the power of sale to prevent waste, and of course was therefore very limited. It will be found in section 12 of the act, on page 15, of the printed copy I have handed you.

In the urgent deficiency bill approved March 28—the last page of the printed copy contain it—Congress conferred the unrestricted power of sale on the Alien Property Custodian, striking out all limitations about cases only of waste and the like. Following that amendment, the Alien Property Custodian, with the approval of the President, formulated the policy of selling the enemy interest in all enemy-going businesses in this country. That was done because they were found invariably to be nests of espionage and outposts of their propaganda and sabotage and general deviltry, and of course they constitute a very powerful strangle hold on the industry and commerce of the country. But experience has demonstrated that the power of sale thus conferred, although unlimited in its terms, is ineffective, for two reasons in particular:

First, the prevailing legal opinion is that patents are not included within the enemy property which is subject to seizure and sale by the Alien Property Custodian. That opinion prevails because of the specific treatment given to patents, copyrights, trade-marks, and other similar species of property by section 10 of the act. The only power in reference to these species of property is the power conferred upon the President to license their use within certain limits that are defined, and those licenses may either be for a fixed term or for the life of the patent, as the Federal Trade Commission—to which the President has delegated the powers of section 10—may decide. But any license so granted is subject to judicial review after the end of the war as to the license fees paid thereunder; and it goes even to the extent of authorizing the court, if it thinks proper so to do, to cancel the license in its entirety.

We find in these concerns that the patented process is important, and indeed indispensable in the great majority of cases. We find, furthermore, even in the case of an American corporation where the enemy owns the stock, that the patent itself is rarely owned by the corporation, but that the corporation exercises a mere license, the title to the patent itself standing in the name of the enemy, some individual stockholder and probably a predominating stockholder, and the corporation exercising the patented process under a license which in many instances is revocable at will. That seems to be a favorite German method.

I should like to read here a statement prepared by our patent counsel, Mr. Ramsay Hoguet, of New York, in which he instances a few cases that are typical of the general situation. He says:

"The following are only a few of the many instances in which the proposed legislation appears to be necessary to enable the Alien Property Custodian to make a conveyance of property which will be of practical value to the purchaser. We estimate that in fully 80 per cent of the cases in which it is proposed to sell a business, patents or trade-marks, or both, are involved; in every case we have examined so far the titles to the patents and trade-marks are, in most cases, in the enemy and were not held by the persons or concerns who had title to the physical assets of the business. I believe that in fully 90 per cent of the cases the patents or trade-marks are encumbered in some way in favor of an alien enemy, which will prevent their transference free and clear to a purchaser."

The Atlantic Communication Co. is an American corporation, the stock of which is owned by Germans, and the corporation is the owner of the wireless plant at Sayville, Long Island. He says:

"ATLANTIC COMMUNICATION CO.

"In the case of the Atlantic Communication Co. it is proposed to transfer to the Navy Department the wireless plant located at Sayville, Long Island, and all of the patent rights under which this station is operated. The American corporation which operates the station holds merely a license to operate under letters patent owned by a German company, and a sale of the license to the Navy Department would, of course, place the department under the obligation of paying royalties, accounting, etc., to the German company. While these royalties, in the case of mere operation of the plant, are not excessive, a sale of any apparatus under the patents carries a 20 per cent royalty under the license. Inasmuch as the Navy Department is now equipping all of the ships being built by the Emergency Fleet Corporation with wireless apparatus, it will be impossible to sell the wireless apparatus located on these ships to the ultimate purchasers of the ships without paying a license fee to the German patent owners and without accounting for each installation placed in use upon a United States ship. There are also a considerable number of patents the titles to which are in the names of individual German owners, which the Navy Department desires to acquire in order to be free to operate its large number of stations (both ship and shore) without interference by way of patent litigation. As the act stands at present the Navy Department can not operate under these patents except by securing a license from the German owners and subjecting itself to patent suits after the war and to the payment of a royalty in accordance with the provisions of section 10 and accounting for every installation made and subjecting itself to terms which the Navy Department could not comply with, such as inspection, etc.

"C. P. GOERZ AMERICAN OPTICAL CO.

"This company is one of the German-owned American concerns the stock of which the custodian has taken over and is about to offer for sale to an American purchaser. The business of the concern is manufacturing and selling lenses and photographic apparatus. It is one of the three or four largest concerns in the United States. More than 50 per cent of the devices and apparatus manufactured and sold by this concern are covered by United States letters patent, which are not owned by the concern itself, but under which the concern has a right to manufacture under license. The right which this American concern has under these German-owned patents is simply the right to continue to manufacture and sell the devices as long as the German concern allows it to do so."

It is revocable at will.

"The instrument which creates this right is the instrument upon which the American Optical Co. was organized and provides specifically that every patent right held by it is revocable at the will and pleasure of the German owners.

"The question arises, therefore, as to possibility of getting an American purchaser who really understands the situation who would be willing to take over a concern whose entire business substantially can not be lawfully conducted unless it has the patents to which the business is wholly subject.

"The alternative, of course, is to have a license from the Federal Trade Commission. There are about 80 some patents under which this concern is working, and therefore a corresponding number of licenses would be required. Each such license would subject the licensee to a suit after the war by the German owners, a patent suit for the purpose of determining the value of each such license—that is, the value of the use of the corresponding patent. In our opinion such a situation is intolerable and no purchaser would knowingly submit to it. Besides this it is obviously impossible for any American purchaser to have his patent attorney examine some 80 patents and determine what the outcome of such a litigation might be with sufficient definiteness for him to do any figuring beforehand.

"G. SIEGLE CO.

"In the case of this corporation the agreement between the American and German companies was such that it raised a distinct doubt as to whether the good will and trade-marks of the German company were conveyed to the American so that it was impossible to assure the purchaser that he would be permitted to carry on the business under the name it theretofore had been carried on under and to use the trademarks in the business which they had adopted and had acquired great value.

"It should be borne in mind in all cases that the time allowed for investigation is so short that a purchaser must to some extent rely upon the representations made to him by the governmental officers having the sales in charge, and that the average purchaser believes that he can secure no better title than that conveyed to him by the Government of the United States. It is at present impossible to guarantee to the prospective purchaser that he will be permitted to conduct the business he purchases because of patent infringement, and thus the purchaser may be very seriously misled and may believe that he is buying a going business when in fact he is purchasing merely the buildings and machinery (very often of no use whatever except for the practice of certain patented processes and for the manufacture of certain patented articles) without any opportunity of using the physical assets of the concern for the purpose for which they were intended without laying himself open to a charge of infringement."

There are other features of this statement that I will read presently.

This general subject has been considered at some length by the Department of Justice—the legal features of it, of course—and also quite extensively with the general counsel of the Federal Trade Commission, Mr. Walsh; and Mr. Walsh has stated very broadly that he feels—and I assume he voices the views of the commission—that this act should be amended so as to confer the power upon the Alien Property Custodian, or upon the President, to seize patents, copyrights, trade-marks, and other similar pieces of property, and deal with them as provided by the terms of the act in respect of all other enemy property.

I suppose there may be in the mind of the committee the general question of international policy, as that was prominent when the trading with the enemy act was originally considered and enacted. Mr. Hoguet adds, in his comments:

"It has been suggested than an amendment of the act along the lines planned would provoke retaliatory measures in Germany. I am of the opinion that such retaliatory measures, if taken, are unimportant, for the following reasons:

"It is very difficult to secure patents in Germany, and probably 10 to 20 patents are issued in the United States to 1 issued in Germany, consequently the valuation of patents probably is much greater in the United States than in Germany.

"German patents require the payment of certain nominal taxes, which increase on a sliding scale. At the beginning of the war such taxes were paid under license by the President."

Let me add there that by subsections (a) and (b) of section 10 it is provided that a citizen of the United States may, with the license of the President, pay any tax, annuity, or fee which may be required by the law of any enemy or ally of enemy nation; and, as Mr. Hoguet says, in the beginning the President issued such a general blanket license, which was exercised.

"The presidential license having been revoked, no taxes upon German patents have been paid since, I think, in July. The German law provides for an extension of six weeks' time in which to pay the taxes and an additional six weeks' grace upon the payment of a fine. After that the patent is invalidated. American patent owners in Germany are, therefore, prevented by the revocation of the presidential license from keeping their payments in force, and a large number have already been invalidated from failure to pay taxes.

"My experience in practice leads me to the opinion that the average life of an American-owned patent in Germany is from three to five years. By that time the payment of taxes has become so burdensome to the patentee and the commercial conditions have usually so changed as to discourage payment of taxes upon patents.

"I understand that the German Government has already taken steps for the sale of licenses at a nominal fee of American patents. We have been informed that 59 of the Underwood Typewriter Co.'s licenses to manufacture at a nominal royalty, and that the trademarks of the Vacuum Oil Co. have either been sold or will be sold in the near future to a German oil company."

To the last statement I may add that we have advices from our legation in Switzerland that these Underwood Typewriter patents were disposed of under a license at a nominal figure some time ago. I believe this was dated in June. As to the exact details, we are not advised.

The net result of the patent situation is that we can really sell only the plant, and therefore only the instrument for infringing the patent monopoly that must still reside in the German owner during the life of the patent. This situation, as I said, affects a very large majority of these concerns, and that is peculiarly true in the chemical industry, which, I believe, in the mind of the general public, is perhaps the most important of all to be cleaned up if it can be done.

The other changes in the first paragraph of 7-C, as amended, are, comparatively speaking, of minor importance. In addition to patents, we do add the express inclusion of choses in action, and rights and claims of every character and description. That expression is put there by way of excess caution, perhaps, to avoid the possible construction of any limitation on the meaning of the word "property," and also with the further specific thought in mind that it will enable us to reach this situation:

Just prior to the war, and particularly after the break in diplomatic relations, there were very many transactions by which property then owned by Germans was pretended to be sold to American citizens. The larger part of it was perhaps first incorporated, and then the stock was pretended to be sold; but in very many of those cases we have also been able to locate strings in the way of options reserved, and the right to repurchase, say in 1920; and where they did sell outright without our being able to secure any evidence of retaking the property, they were cautious to make the purchase price payable about 1920, and in some cases boldly after the end of the war. We also add, in the latter part of this first paragraph, a provision authorizing the Alien Property Custodian to seize—of course, that is mere mechanical machinery—property where he is not able, for any reason, to serve a demand.

The next paragraph of the amendment authorizes, in general terms, the recording of any requirement made pursuant to the act, or a duly certified copy thereof, and gives it the same effect when spread upon the record in any recording office as a conveyance, assignment, or transfer. This has particular reference to patents, and they are especially mentioned because under the patent statute a transfer of title is not complete until the transfer has been recorded.

The next amendment presents the second difficulty that we meet in exercising this power of sale. It relates to the cancellation of shares of stock in corporations which have been determined by the President—the Alien Property Custodian exercising his power—to be enemy-owned, and the issuance of new certificates in favor of the Alien Property Custodian. The present provision of the act in that regard is limited merely to those cases where the Alien Property Custodian has possession of, and is therefore in position to surrender, the original certificates; but naturally in the great majority of cases where corporate stock is owned by a German, the certificate is in his hands, and we can not comply with that provision.

Senator UNDERWOOD. That is, in the German's hands.

Mr. BRADLEY. Exactly; in the German's hands. Now, you will readily see that when we come to sell corporate stock where we have no evidence whatsoever of our title, notwithstanding that the certificate is mere evidence of the thing and not the thing itself, yet it is affected with certain elements of quasi negotiability; and no prudent purchaser will buy unless we have something that we can really offer to sell to him and make a delivery. This provision is express that whenever any enemy property consists of shares of stock or other beneficial interest in any corporation, association, company, or trust, it shall be the duty of the corporation, association, company, trustee or trustees issuing the shares, or any certificates or other instruments representing the same, to cancel upon its, his, or their books all shares, beneficial interest, and the like, standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy, and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custodian or otherwise, as the Alien Property Custodian shall require, in volume and in value.

Of course, this amendment reaches even a larger amount of property than the patent itself. The two run together in very many instances, because we find, as I explained in the outset, that the American corporation—and then, of course, the American corporation in instances where its stock certificates are held by the Germans abroad—does not own the patent but is merely exercising a license to employ the patented process.

If there is any apprehension of doing an injustice by mistake, let me add that section 9 of the act provides a very complete remedy to any person who is not an enemy or ally of enemy to reclaim his property. It contains a provision for an Executive order granting him relief, and, failing in that provision, for the institution of suit in the district where he resides for the recovery of the property, and then the express provision that the property shall be retained in the custody of the Alien Property Custodian or Treasurer of the United States, as the case may be, pending such suit; so that there is no power to dispose of property where a mistake is claimed to have been made until the person who claims to have been wronged has his day in court.

The CHAIRMAN. Then he could not sell it.

Mr. BRADLEY. I say, he could not sell it in the case of a claim.

Senator UNDERWOOD. Where there is a claim set up.

The CHAIRMAN. But supposing no claim is set up; can he go on and sell it?

Mr. BRADLEY. Oh, yes; the Alien Property Custodian then goes ahead and sells.

The CHAIRMAN. Unless there is an actual claim his power of sale is not interfered with?

Mr. BRADLEY. No; unless the claim is actually made.

Finally, we have this provision:

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States."

In section 9, to which I have just referred, there is this provision:

"Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court."

But that provision is scarcely broad enough to cover our purposes and our necessities. We therefore ask for an express provision making the provisions of this act the sole relief and remedy that any person may have. They are ample, and we submit that they ought to be exclusive. I may add to that that in limiting these claims in cases of sale to the proceeds of sale we follow the precedents of the Civil War acts, which were found effective at that time, and the validity of which was uniformly upheld.

Senator UNDERWOOD. Mr. Bradley, let me ask you this question: The purpose of this amendment covers two general subject matters, and only two. One is handling the patent situation so that you can convey the title to the purchaser?

Mr. BRADLEY. Exactly.

Senator UNDERWOOD. The other is largely a question of transfer of stock certificates?

Mr. BRADLEY. That is correct.

Senator UNDERWOOD. And although Congress gave you, or attempted to give you, full power to dispose of enemy-owned property, when you come to investigate and handle the situation you find that the power does not reach far enough to control the patent situation or the transfer of stock certificates that are not in the actual possession of the Alien Property Custodian?

Mr. BRADLEY. That is correct.

Senator UNDERWOOD. And all you want to do by this amendment is simply to carry out the terms of the original act, and give you the power that is necessary to handle these two particular features that are not covered by the general proposition?

Mr. BRADLEY. That is a very comprehensive statement of the whole purpose and scope of the amendments.

The CHAIRMAN. The only question in my mind is this: No doubt you have covered it as far as possible, but I may not have taken it in correctly. I did not fully appreciate the efficacy of the remedy so far as patents in some instances might be concerned. So far as this country is concerned, it might be covered; but in the case of a patent like wireless business, that has connection with some other country, the question in my mind was whether the purchaser could enforce his rights under purchase by the United States Government in a patent that reaches beyond this country?

Mr. Bradley. Of course the patent is confined to this country in its operation, and its situs for all purposes of execution, for illustration, attachment, and the like, is uniformly held to be in this country; so I think there is no legal difficulty there. We have investigated that question, and our patent counsel is very definitely of the opinion of those who have investigated it that this will make effective every purpose that we have.

Senator Underwood. The other proposition is, you find that where you are selling a plant which is manufacturing a patented article, you can not get the real value of that plant unless you can convey a good title for the use of the patent to the purchaser of the plant?

Mr. Bradley. Exactly so.

Senator Underwood. And therefore it delays and narrows your field of operation in disposing of this property?

Mr. Bradley. It is scarcely too broad a statement, Senator, that we have sold already most of the property we can sell until we get further legislation. Our hands are pretty well tied.

Senator Underwood. And you feel that this is absolutely necessary to wind up your business?

Mr. Bradley. It is, indeed.

Senator Underwood. Is there any other testimony that you want to give?

Mr. Bradley. No, I think not. I am very much obliged to you for your courtesy.

EXHIBIT B.

(Offered and admitted in evidence as Plaintiff's Exhibit No. 54.)

CERTIFICATE OF INCORPORATION OF THE CHEMICAL FOUNDATION, INCORPORATED.

1. The name of the corporation is "The Chemical Foundation, Incorporated."

2. The principal office of the corporation is to be located at the offices of the Corporation Trust Company of America, No. 1007 Market Street, in the city of Wilmington, in the county of New Castle, in the State of Delaware. The name of its resident agent is Corporation Trust Company of America, whose address is No. 1007 Market Street, Wilmington, Delaware.

3. The nature of the business of the corporation and the objects and purposes proposed to be transacted, promoted, or carried on by it are as follows, to wit:

(a) To acquire by purchase from the Alien Property Custodian, under the provisions of an act of the Congress of the United States known as the "Trading with the Enemy Act" (act October 6, 1917, as amended by act of March 28, 1918, and further amended by act of November 4, 1918) patents, and applications therefor, trade-marks, choses in action, and rights and claims of every character and description, owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy, as defined by said act, which the Alien Property Custodian is authorized by said act, and amendments thereto, to require and seize, and to sell and convey, and also to acquire from any person, firm, or corporation any and all letters patent, and applications therefor, trade-marks, and similar rights granted

by the United States, or any other country or government licenses and the like, or any other interest therein, or any inventions which may seem capable of being used for or in connection with any of the objects or purposes of said corporation, and to hold any such property and rights so acquired in a fiduciary capacity for the Americanization of such industries as may be affected thereby, for the exclusion or elimination of alien interests hostile or detrimental to the said industries, and for the advancement of chemical and allied science and industry in the United States.

(b) In furtherance of the above objects and purposes the corporation may grant non-exclusive licenses only, to make, use, and sell the inventions covered by any patents owned or controlled by it to the United States of America, upon such terms as the board of directors may determine, and also upon reasonable and equal terms and without advantage, as between licensees, to the following: (1) Natural persons, citizens of the United States; (2) copartnerships, all the members of which are citizens of the United States; and (3) corporations organized under the laws of the United States or of any State, Territory, or dependency of the United States, of which not less than three-fourths of the capital stock and the beneficial interest therein is owned by stockholders who are citizens of the United States and who were not, prior to the "end of the war," as used in the "Trading with the Enemy Act," enemies or allies of enemies, as defined by said act, and the amendments thereto.

The board of directors may refuse to issue any license or may revoke any license granted by the corporation and may prescribe the terms and conditions of said licenses. It shall be the duty of the corporation to defend and enforce the rights acquired by it and to protect the rights of its licensees under any licenses granted by it.

(c) To purchase, or otherwise acquire, such personal property of every kind and description within and without the State of Delaware, and in any part of the world, suitable, necessary, useful, or advisable in connection with any or all of the objects hereinbefore set forth.

(d) To do each and every thing necessary, suitable, useful, or advisable for the accomplishment of any one or more of said objects, or which shall at any time appear to be conducive to or expedient for the benefit of such corporation in connection therewith.

(e) In general, but in connection with the foregoing, said corporation shall have and exercise all the powers conferred by the laws of the State of Delaware upon business corporations, it being hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner such general powers.

(f) To do each and all things above set forth to the same extent and as fully as a natural person might do or could do in the State of Delaware or in any other State, country, or place.

4. The total authorized capital stock of the corporation is five hundred thousand dollars ($500,000), divided into five thousand (5,000) shares of the par value of one hundred dollars ($100) each.

Of said authorized capital stock four thousand (4,000) shares, amounting to four hundred thousand dollars ($400,000), shall be nonvoting preferred stock (except for amendment of the charter, as hereinafter provided), and one thousand (1,000) shares, amounting to one hundred thousand dollars ($100,000), shall be common stock.

The preferred stock shall entitle the holders thereof to receive, when and as declared, out of the surplus or net earnings of the corporation, a fixed cumulative dividend at the rate of, but never exceeding, six per cent (6%) per annum, payable quarterly on such dates as the directors may determine, which dividend shall run from the date of the issue of said preferred stock, and shall be paid or set apart before any dividend shall be set apart or paid on the common stock.

The common stock shall entitle the holders thereof to receive, when and as declared, out of the surplus or net earnings of the corporation, a dividend at the rate of, but never exceeding, six per cent (6%) per annum, but no such dividends shall be payable on the common stock until all cumulative dividends on the preferred stock at the above rate, up to the date of the declaration of such common stock dividends, shall have been paid or set apart.

In the event of any liquidation or dissolution or winding up of the corporation, whether voluntary or involuntary, the preferred stock shall entitle the holders thereof to be paid in full the par amount of their shares, with all unpaid accumulated dividends thereon to the date of such payment, before any amount shall be paid to the holders of the common stock.

The preferred stock shall be subject to redemption as a whole at one hundred dollars ($100) per share, and accumulated dividends thereon, on the first day of January, 1921, or on the first day of January in any year thereafter, in such manner as the board of directors shall determine; provided that whenever the accumulated surplus of the corporation amounts to one hundred per cent (100%) of the total issued and outstanding preferred and common stock of th corporation, the board of directors shall redeem al the issued and outstanding preferred stock. Afte the full redemption of the preferred stock, the ne earnings of the corporation, over and above such amounts as may be necessary for the purpose of working capital, shall be used and devoted to the development and advancement of chemistry and allied sciences, in the useful arts and manufactures in the United States, in such manner as the board of directors may determine.

The holders of the common stock shall have the sole right to vote at all meetings of the stockholders, and the holders of the preferred stock shall have no voting power, except for the purpose of the amendment of the charter. None of the owners or holders of the preferred or common stock of this corporation shall sell, assign, or transfer any such stock except with the approval of the board of directors.

From time to time the common and preferred stock may be increased according to law.

The amount of the capital stock with which the corporation will commence business is fifteen hundred dollars ($1,500).

5. The names and places of residence of each of the original subscribers to the capital stock and the number of shares subscribed for by each are as follows:

Name	Residence	Number of shares of common stock.
M. M. Clancy	Wilmington, Delaware . . .	13
P. B. Drew	Wilmington, Delaware . . .	1
H. E. Knox	Wilmington, Delaware . . .	1

6. The corporation is to have perpetual existence.

7. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

8. The number of directors of the corporation shall be fixed from time to time by the by-laws, and the number may be increased or decreased as therein provided.

In case of any increase in the number of directors, the additional directors shall be elected as provided by the by-laws, or by the stockholders, at an annual or special meeting.

In case of any vacancy in the board of directors for any cause, the stockholders may elect a successor to hold office for the unexpired term of the director whose place is vacant and until the election of his successor.

The board of directors shall, from time to time, fix and determine the uniform license fee or royalty that shall be paid by the persons, firms, or corporations mentioned in paragraph *(b)* of article 3 of this certificate, and the license fee or royalty so fixed shall be binding and conclusive on the corporation and upon all of its licensees.

In furtherance, but not in limitation of the powers conferred by law, the board of directors are expressly authorized—

(a) To hold their meetings outside of the State of Delaware at such places as from time to time may be designated by the by-laws or by resolution of the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole board of directors.

of the Corporation Trust Company of America, No. 1007 Market Street, in the city of Wilmington, county of New Castle. The name of the agent in charge thereof, upon whom process against this corporation may be served, is "Corporation Trust Company of America."

Sec. 2. In addition to its principal office in the State of Delaware, the corporation may maintain offices at any other place, or places, designated by the board of directors.

Corporate seal.

Sec. 3. This corporation shall have a seal, upon which shall be inscribed its name, the year of its creation, and the word "Delaware."

ARTICLE II.

Stockholders—Annual meeting.

Section 1. The annual meeting of stockholders shall be held on the first day of February in each year, beginning with the year, 1920, if not a legal holiday, and if a legal holiday then on the day following, at the principal office of the corporation, No. 1007 Market Street, Wilmington, Delaware, or at such place outside of the State of Delaware as the directors may from time to time designate, when there shall be elected by ballot, by the majority vote of the stock outstanding having full voting power, a board of three directors, and such other business may be transacted thereat as may come before the meeting.

Sec. 2. A majority in amount of the stock outstanding having full voting power shall be requisite to constitute a quorum for an election of directors, or the transaction of any other business, except to adjourn, and each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of stock having full voting power registered in his name on the books of the corporation, provided that no share of stock shall be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election.

Special meetings.

Sec. 3. Except as otherwise provided by law, special meetings may be called for any purpose at any time by the president, or by the secretary upon the written request of at least two directors, or by the holder or holders of seventy-five per cent of the capital stock then issued and outstanding and having full voting power, or upon resolution of the board of directors, which request or resolution shall state the purpose or purposes thereof.

Notice of meetings.

Sec. 4. The secretary shall cause notice of each meeting of the stockholders to be published once in the calendar week next preceding the meeting in at least one newspaper published in Wilmington, Delaware; or written notice setting forth the time and place of the meeting, and the general nature of the business to be considered thereat, shall be given by the president or secretary to the owner or holder of record of each share of stock having full voting power at least ten days before the meeting in the case of an annual meeting, and five days before the meeting in the case of a special meeting. When notice of an annual meeting is given by publication, no irregularity in such notice or in the publication thereof shall affect the validity of such meeting or of any proceedings thereat.

No notice of a special meeting shall be required if the owners or holders of record of all the stock having full voting power shall waive such notice or shall meet thereat either in person or by proxy, and at such a meeting any corporate action may be taken.

ARTICLE III.

Directors.

SECTION 1. The board of directors shall consist of three members.

SEC. 2. The number of directors may be increased at any time by the affirmative vote of the majority of the stockholders at any annual or special meeting.

Regular meetings.

SEC. 3. The annual meeting of the board of directors shall be held on the first day of February in each year at No. 1007 Market Street, Wilmington, Delaware, or at such place as shall be determined by resolution of the board. Stated meetings of the board may be held at such times and places as shall be determined from time to time by resolution of the board. Both annual and stated meetings may be held without notice thereof.

Special meetings.

SEC. 4. Special meetings of the board may be called by the president on five days' written notice to each director, and shall be called upon like notice by the secretary on the written request of at least two directors. Such notice may be waived by any director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

At any meeting at which every director shall be present, even though without any notice, any business may be transacted.

Powers.

SEC. 5. The board of directors shall have the management of the business and affairs of the corporation, and, subject to the restrictions imposed by law, the certificate of incorporation, and the by-laws, may exercise all the powers of the corporation.

ARTICLE IV.

Officers.

SECTION 1. The executive officers of the corporation shall consist of a president, a vice president or more than one vice president, a secretary, and a treasurer, and the president and vice president shall be chosen from among the directors.

The board of directors may appoint such other officers as it shall deem necessary, who shall have such authority and shall perform such duties as from time to time may be prescribed by the board of directors.

The powers and duties of the treasurer and secretary may be exercised and performed by the same person.

The board of directors may leave unfilled for any such period as it may fix by resolution any office except those of president, treasurer and secretary.

President.

SEC. 2. The president shall preside at all meetings of the board of directors, and shall be ex officio chairman of all meetings of the stockholders. Subject to the approval, direction or authorization of the board of directors, he shall have general charge and care of the business and property of the corporation; appoint and discharge employees and agents of the corporation, and determine their compensation; execute all authorized bonds, contracts, and agreements; sign all certificates of stock; and do and perform all acts incident to the office of president or which are authorized or required by law. In the absence or disability of the president, the board of directors may designate a vice president to perform the duties of president. The president shall receive no salary.

Vice president.

SEC. 3. Vice presidents shall have such powers and shall perform such duties as may be assigned to them respectively by the board of directors. The vice president shall receive no salary.

Secretary.

SEC. 4. The secretary shall be ex officio secretary of the board of directors and of all standing committees; shall give, or cause to be given, all required notices of meetings of stockholders and directors; shall record all proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose, and shall perform like duties for the standing committees; and shall perform such other duties as may be assigned to him by the board or the president; he shall have custody of the seal of the corporation, and shall affix the same to any instrument when duly authorized so to do, and attest the same. By virtue of his office, the secretary shall be an assistant treasurer, and shall have such powers and shall perform such duties as may be assigned to him by the board of directors.

He shall be sworn to the faithful discharge of his duties.

Treasurer.

SEC. 5. The treasurer shall have the custody of all moneys and valuable papers and documents of the corporation; shall place the same for safe-keeping in such depositories as may be designated by the board of directors; shall expend the funds of the corporation as directed by the board of directors, taking proper vouchers for such expenditures, shall keep or cause to be kept a book or books, setting forth a true record of the receipts, expenditures, assets, liabilities, losses, and gains of the corporation; and shall, when and as required by the president or the board of directors, render a statement of the financial condition of the corporation. He shall register and transfer stock of the corporation or cause same to be done under such regulations as may be prescribed by the board of directors. He shall countersign certificates of stock, bonds, and debentures of the corporation.

The treasurer shall give the corporation a bond for the faithful discharge of his duties in such amount and with such surety as and when prescribed by the board.

By virtue of his office the treasurer shall be an assistant secretary, and shall have such powers and shall perform such duties as may be assigned to him by the board of directors.

ARTICLE V.

Capital stock.

SECTION 1. The president shall issue, or cause to be issued, to each stockholder a certificate or certificates, signed by himself or the vice president, and countersigned by the treasurer, with the seal of the corporation affixed thereto, certifying the number of shares of stock of the corporation owned by such stockholder.

SEC. 2. Shares of stock of the corporation shall be transferable only upon its books by the holder, or holders thereof, in person or by proxy, or by his or their duly authorized attorney or legal representative, who shall at such time surrender to the corporation the old certificate or certificates and receive new certificates in exchange therefor, but no stock shall be transferred within twenty days next preceding the date fixed for the payment of a dividend. Surrendered certificates shall be canceled at the time of such transfer. Each transfer shall be recorded, and the original record, or duplicate thereof, shall be kept at the principal office of the corporation in the State of Delaware. No transfer shall be made for collateral security unless so expressed in the entry of the transfer.

Regulations.

SEC. 3. The board of directors may make rules and regulations concerning the issue, transfer, and registration of certificates for shares of the capital stock of the corporation.

The board of directors may appoint a transfer agent and a registrar of transfers, and may require all stock certificates to bear the signature of such transfer agent and of such registrar of transfers.

Dividends.

SEC. 4. Dividends may be declared by the board of directors in its discretion from surplus or net profits of the corporation, and the transfer books of the corporation shall be closed for the period of twenty days next preceding the day appointed for the payment of any dividend.

Stock ledger.

Sec. 5. The original or duplicate stock ledger, containing the names and addresses of the stockholders in alphabetical order and the number of shares held by them, respectively, shall at all times during usual hours of business be open to the examination of every stockholder at the principal office of the corporation in this State, which original or duplicate stock ledger shall be the only evidence as to the stockholders entitled to vote in person or by proxy at any election.

ARTICLE VI.

General provisions—Notice.

Section 1. Unless otherwise expressly provided, any notice required by these by-laws to be given to any person or persons shall be in writing, and may be given by duly depositing the same in a post office or letter box in a post-paid sealed wrapper, addressed to such person or persons at his or their address as the same appears on the books of the corporation, and such notice shall be held to have been given on the day of such deposit.

Vacancies.

Sec. 2. In case of any vacancy in the board of directors for any cause, the remaining directors, by affirmative vote of a majority thereof, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, or until the election of his successor.

Adjournments.

Sec. 3. Whenever at any meeting provided for in these by-laws less than a quorum shall be present or represented, such meeting may thereupon be adjourned from time to time by a majority vote of those present or represented, without notice, until a quorum shall be present or represented, provided, however, that no adjournment shall be for a period exceeding one month at any one time. Any meeting at which a quorum is present or represented may be adjourned in the same manner for such time as may be fixed by a majority vote at such meeting. At any adjourned meeting, whenever a quorum is present, any business may be transacted which could have been transacted at the meeting originally called, had a quorum been present.

Sec. 4. The term "full voting power" as applied to stock or stockholders in these by-laws shall be construed to mean the power to vote at all stockholders' meetings on any matter coming before the meeting.

ARTICLE VII.

Amendments.

Section 1. These by-laws may be amended or repealed from time to time by a vote of three-fourths in number and amount of the common stockholders at any annual or special meeting of the stockholders.

The following amendments to these by-laws were adopted:

Section I of Article II:

"Section I amended. The annual meeting of stockholders shall be held on the first Monday of February in each year at the office of the corporation in the city of New York, unless in any year the directors shall have designated a different place for the holding of such meeting, and notice of such change in place shall have been given to the stockholders as required by the laws of Delaware.

"At every annual meeting three directors shall be elected by ballot, by the majority of the outstanding stock having full voting power and present at such meeting in person or by proxy, to hold office until the next annual meeting, or until their successors shall have been duly elected and qualified, and such other business may be transacted as shall be presented."

Section III of Article III:

"Section III amended. The annual meeting of the board of directors shall be held on the first Monday of February in each year at the office of the corporation in the city of New York, unless in any year the directors shall by resolution designate a different place for the holding of such meeting.

"Stated meetings of the board may be held at such times and places as shall be determined from time to time by resolution of the board. Both annual and stated meetings may be held without notice thereof."

EXHIBIT C.

(Offered and admitted in evidence as Plaintiff's Exhibit No 55.)

Althouse Chemical Co.	$500.00
American Aniline Products	1,000.00
Atlantic Dyestuffs & Chemical Co.	500.00
Ault & Wiborg Co.	5,000.00
Barrett & Co.	10,000.00
Butterworth Judson Corporation	10,000.00
Campbell, John, Co. (Inc.)	5,000.00
Central Dyestuff & Chemical Co.	10,000.00
Commonwealth Chemical Corporation	500.00
Consolidated Color & Chemical Co.	10,000.00
Dicks, David, Co. (Inc.)	500.00
Dow Chemical Co.	500.00
du Pont, E. I., de Nemours & Co.	125,000.00
Dye Products & Chemical Co.	500.00
Essex Aniline Works	600.00
General Chemical Co.	50,000.00
General Electric Co.	1,000.00
Grasselli Chemical Co.	30,000.00
Heller & Nerz Co.	20,000.00
Hooker Electrochemical Co.	10,000.00

Marden, Orth & Hastings (Calco Chemical Co.)	$50,000.00
Merck & Company	10,000.00
Merrimac Chemical Co.	20,000.00
Metals Disintegrating Co. (Inc.)	500.00
Metz, H. A., Laboratory (Inc.)	10,000.00
Monroe Drug Co.	500.00
Monsanto Chemical Works	500.00
Morrill, Geo. H., Co.	500.00
National Aniline & Chemical Co.	37,500.00
Naugatuck Chemical Co.	500.00
The Newport Co.	20,000.00
Rector, Chemical Co., The	500.00
Roessler & Hasslacher Chemical Co.	1,000.00
Semet Solvay Co.	10,000.00
Sherwin-Williams Co.	5,000.00
Tartar Chemical Works	500.00
U. S. Color & Chemical Co.	3,000.00

EXHIBIT D.

(Offered and admitted in evidence as Plaintiff's Exhibit No. 60.)

	Number of shares preferred stock.	Number of shares common stock.	Par value both common and preferred issued.
Abbott Laboratories	8	2	$1,000.00
Althouse Chemical Co.	4	1	500.00
Aluminum Co. of America	8	2	1,000.00
American Aniline Products	8	2	1,000.00
American Cellulose & Chemical Co.	8	2	1,000.00
American Chemical Society	8	2	1,000.00
American Cotton Oil Co.	8	2	1,000.00
American Platinum Works	8	2	1,000.00
American Printing Co.	8	2	1,000.00
Aniline Dye & Chemical Co.	8	2	1,000.00
Arnold Print Works	8	2	1,000.00
Armour Fertilizer Works	8	2	1,000.00
Aspinook Co.	8	2	1,000.00
Atlantic Dyestuffs & Chemical Co.	4	1	500.00
Atteaux, F. E.	8	2	1,000.00
Ault & Wiborg Co.	31	2	3,300.00
Baker, H. J., & Bro.	8	2	1,000.00
Baker & Co. (Inc.)	8	2	1,000.00
Ball, George A.	8	2	1,000.00
Bancroft, Jos., & Sons	8	2	1,000.00
Barrett & Co.	65	2	6,700.00
Bayer & Co. (Inc.)	8	2	1,000.00
Bethlehem Steel Co.	8	2	1,000.00
Bischoff, C., & Co.	8	2	1,000.00
Berne Seyrauer Co.	8	2	1,000.00
Bower Chemical Manufacturing Co.	8	2	1,000.00
Bronx Co.	8	2	1,000.00
Brown Company	8	2	1,000.00
Butterworth Judson Corporation	65	2	6,700.00
Campbell, John, Co., (Inc.)	31	2	3,300.00
Capudini Chemical Co.	4	1	500.00
Central Dyestuff & Chemical Co.	72	2	7,400.00
Chapel, Antoni (Gaskill Chemical Co.)	8	2	1,000.00
Cheney Bros.	8	2	1,000.00
Clapp, B. F., Ammonia Co.	4	1	500.00
Citro Chemical Co.	4	1	500.00
Comey, R. H., Co.	8	2	1,000.00
Commercial Research Co.	8	2	1,000.00
Commonwealth Chemical Corporation	4	1	500.00

Exhibit D—Continued.

	Number of shares preferred stock.	Number of shares common stock.	Par value both common and preferred issued.
Consolidated Color & Chemical Co.	65	2	$6,700.00
Contact Process Co	8	2	1,000.00
Crocker Burbank Co.	8	2	1,000.00
Croser, S. A., & Son	8	2	1,000.00
Davison Chemical Co.	8	2	1,000.00
Dehls, John, Co.	8	2	1,000.00
Dermatological Research Laboratories	8	2	1,000.00
Detroit Chemical Works	8	2	1,000.00
Diamond Alkali Co.	8	2	1,000.00
Dicks, David, Co. (Inc.)	4	1	500.00
Digestive Fermints Co.	4	1	500.00
Dorr, J. V. M.	8	2	1,000.00
Dow Chemical Co.	13	2	1,500.00
Du Pont, E. I. de Nemours & Co.	841	2	84,300.00
Durez Chemical Corporation (Inc.)	4	1	500.00
Durfee Winthrop Co.	8	2	1,000.00
Dye Products & Chemical Co.	4	1	500.00
Eastern Drug Co.	8	2	1,000.00
Electric Boat Co.	8	2	1,000.00
Electric Bleaching Gas Co.	8	2	1,000.00
Engelhard, Chas.	8	2	1,000.00
Essankay Products Co.	8	2	1,000.00
Essex Aniline Works	5	1	600.00
General Bakelite Co.	8	2	1,000.00
General Ceramics	8	2	1,000.00
General Chemical Co.	335	2	33,700.00
General Electric Co.	8	2	1,000.00
Genessee Pure Food	8	2	1,000.00
Gilmour, Geo. L.	8	2	1,000.00
Grasselli Chemical Co.	200	2	20,200.00
Hanovia Chemical & Manufacturing Co.	8	2	1,000.00
Hardwick & Magee Co.	8	2	1,000.00
Heller & Merz Co.	152	2	13,400.00
Hercules Powder Co.	8	2	1,000.00
Herf & Frerichs Chemical Co.	8	2	1,000.00
Hess Goldschmidt & Co. (Inc.)	8	2	1,000.00
Hayden Chemical Works	8	2	1,000.00
Hocker Electrochemical Co.	65	2	6,700.00
Irvington Smelting & Refining Works	8	2	1,000.00
Isco Chemical Co.	8	2	1,000.00
Johnson & Johnson	8	2	1,000.00
Kelly Springfield Tire Co.	8	2	1,000.00
Klipstein, E. C., & Sons Co.	8	2	1,000.90
Kneip, W. E., & Sons	8	2	1,000.00
La Belle Iron Works	8	2	1,000.00
Lackawanna Steel Co.	8	2	1,000.00
Lehn & Fink (Inc.)	8	2	1,000.00
Lewiston Bleachery & Dye Works	8	2	1,000.00
Lilly, Eli Co.	8	2	1,000.00
Lindsay Light Co.	8	2	1,000.00
Lonsdale Co.	8	2	1,000.00
Lowell Bleachery	8	2	1,000.00
Lucas, John, & Co. (Inc.)	8	2	1,000.00
McKesson & Robbins	4	1	500.00
Mallinckrodt Chemical Works	8	2	1,000.00
Marden Orth & Hastings (Calco Chemical Co.)	335	2	33,700.00
Maxwell, F. T.	8	2	1,000.00
Merck & Co.	65	2	6,700.00
Merrill, Wm. S., Co.	4	1	500.00
Merrimac Chemical Co.	119	2	12,100.00
Metals Disintegrating Co. (Inc.)	4	1	500.00
Metz, H. A., Laboratory (Inc.)	65	2	6,700.00
Melville Manufacturing Co.	8	2	1,000.00
Monroe Drug Co.	4	1	500.00
Monsanto Chemical Works	8	2	1,000.00
Morrill, Geo. H., Co.	4	1	500.00
Mount Hope Finishing Co.	8	2	1,000.00
Mutual Chemical Co. of America	8	2	1,000.00
National Ammonia Co.	8	2	1,000.00
National Aniline & Chemical Co.	251	2	25,300.00
National Electrolytic Co.	8	2	1,000.00
National Silk Dyeing Co.	8	2	1,000.00

Exhibit D—Continued.

	Number of shares preferred stock.	Number of shares common stock.	Par value both common and preferred issued.
Naugatuck Chemical Co.	8	2	$1,000.00
New Bedford & Agawan Finishing Co.	4	1	500.00
The Newport Co.	132	2	13,400.00
Niagara Alkali Co.	8	2	1,000.00
Niagara Electrochemical Co.	4	1	500.00
Ohio Chemical & Manufacturing Co.	8	2	1,000.00
Pacific Mills	8	2	1,000.00
Parke, Davis & Co.	8	2	1,000.00
Patchett, Jos. E.	8	2	1,000.00
Peerless Colors Co. (Inc.)	8	2	1,000.00
Pennsylvania Salt Manufacturing Co.	8	2	1,000.00
Permutit Co.	8	2	1,000.00
Perth Amboy Chemical Works	4	1	500.00
Pfizer, Chas., & Co. (Inc.)	8	2	1,000.00
Philadelphia Textile Machine Co.	8	2	1,000.00
Philadelphia Tapestry Mills	8	2	1,000.00
Powers, Weightman & Rosengarten Co.	8	2	1,000.00
Rector Chemical Co., The	4	1	500.00
Republic Iron & Steel Co.	8	2	1,000.00
Rhodia Chemical Co.	8	2	1,000.00
Roessler & Hasslacher Chemical Co.	8	2	1,000.00
Sayles Finishing Plants	8	2	1,000.00
Schieffelin & Co.	4	1	500.00
Solvay Process Co.	8	2	1,000.00
Semet Solvay Co.	65	2	6,700.00
Sherwin-Williams Co.	31	2	3,300.00
Fred. Stearns & Co.	4	1	500.00
Stifel, J. L., & Sons	8	2	1,000.00
Squibb, E. R., & Sons	8	2	1,000.00
Tarter Chemical Works	4	1	500.00
Toch Bros.	4	1	500.00
Union Carbide & Carbon Co.	8	2	1,000.00
Union Bleaching & Finishing Co.	8	2	1,000.00
United Drug Co.	8	2	1,000.00
United Piece Dye Works	8	2	1,000.00
U. S. Color & Chemical Co.	18	2	2,000.00
U. S. Finishing Co.	8	2	1,000.00
U. S. Industrial Alcohol Co.	8	2	1,000.00
Upjohn Co., The	8	2	1,000.00
Visceloid Co., The	8	2	1,000.00
Wallau, G. J.	8	2	1,000.00
Wanskuck Co., The	8	2	1,000.00
West Virginia Pulp & Paper Co.	8	2	1,000.00
Western Electric Co. (Inc.)	8	2	1,000.00
Wolfe, Jacques, Co.	8	2	1,000.00
Youngstown Sheet & Tube Co.	8	2	1,000.00
Zinsser & Co.	8	2	1,000.00
Total	3,997	202	428,900.00

EXHIBIT E.

(Offered and admitted in evidence as Plaintiff's Exhibit No. 61.)

[The Chemical Foundation (Inc.), Otto T. Bannard, Cleveland H. Dodge, George L. Ingraham, B. Howell Griswold, Jr., Ralph Stone, Trustees.]

TRUST AGREEMENT.

Agreement, made at the city of Wilmington, in the State of Delaware, this first day of May, 1919, between all the holders of the common capital stock, now or hereafter authorized or issued, of the Chemical

Foundation (Inc.), a corporation organized under the laws of the State of Delaware (hereinafter called the "company") who shall become parties to this agreement by signing the same or depositing stock hereunder (hereinafter called the "stockholders"), parties of the first part, and George L. Ingraham, Otto T. Bannard, Cleveland H. Dodge, B. Howell Griswold, jr., and Ralph Stone (hereinafter called the "trustees"), parties of the second part.

This agreement witnesseth:

In consideration of the mutual agreements hereinafter set forth, the parties agree as follows:

First. The stockholders promise and agree immediately upon the execution by them of this agreement, to assign, transfer, and deliver to the trustees, certificates for shares of the common stock of the company to the number of shares set opposite their respective signatures, together with sufficient transfer tax stamps, to be held by the trustees, together with such other certificates as may hereafter from time to time be delivered hereunder by any of the stockholders of the company, and to be disposed of by the trustees under and pursuant to the terms and conditions hereof.

Second. The trustees in exchange for the shares of common stock of the company transferred and delivered to them hereunder, will cause to be issued and delivered to the stockholders transferring the same, trust certificates in substantially the following form:

COMMON STOCK TRUST CERTIFICATE.

This is to certify that as hereinafter provided ——— ——— will be entitled to receive, on the 1st day of January, 1936, a certificate or certificates for ——— shares of the par value of one hundred dollars ($100) each of the common stock of the Chemical Foundation (Inc.), a corporation organized under the laws of the State of Delaware, and in the meantime is entitled to receive payments equal to the amount of dividends, if any, collected by the undersigned trustees or their successors in the trust, upon a like number of shares of the common stock of said corporation; and until after actual delivery of such stock certificates, the said trustees, or their successors in the trust, shall possess and shall be entitled in their discretion to exercise all the rights and powers of every nature of absolute owners of such shares, including the right to vote thereon for every purpose, and to consent to any corporate act of said corporation; it being expressly stipulated that no voting right passes to the above-named owner hereof, or his assigns, by or under this certificate or by or under any agreement, express or implied.

This certificate is issued under and pursuant to, and the rights of the holders hereof are subject to and are limited by, the terms and conditions of a certain trust agreement, dated the first day of May, 1919, and filed with the said corporation, and is transferable on the books of the undersigned trustees by the registered owner hereof in person or by attorney duly authorized, upon surrender of this certificate properly endorsed.

This certificate shall not be sold, assigned, or transferred, nor shall the same be transferable upon the books of the trustees, until the consent and approval of the board of directors of the Chemical Foundation (Inc.), to and of such transfer, duly evidenced by suitable endorsement hereon, shall have been obtained.

This certificate shall not be valid unless registered by the registrar.

In witness whereof the undersigned trustees personally or by their duly appointed agent have executed this certificate this —— day of ———, 19—

——— ———,
——— ———,
——— ———,
Trustees.

By——— ———.

Registered——— ——, 19—.

——— ———, *Registrar.*

By——— ———.

The trustees may cause to be issued hereunder temporary printed trust certificates in substantially the form hereinbefore set forth, and may cause the same to be exchanged for definite engraved trust certificates in substantially the said form.

Third. The trustees may execute any or all of said trust certificates by their agent or agents whom they may from time to time appoint for the purpose; and they shall from time to time appoint a registrar to register the same, and no certificate shall be valid unless registered with the said registrar.

Fourth. The trust certificate issued by the trustees hereunder may be transferred on the books of the trustees upon the surrender of such certificates properly endorsed by the registered owner thereof in person or by attorney duly authorized according to the rules established for that purpose by the trustees. No such transfer shall, however, be permitted unless and until the consent and approval of the board of directors of the Chemical Foundation (Inc.), evidenced by a suitable endorsement on the trust certificate to be transferred shall have been obtained. The trustees shall not be obliged to recognize, nor shall they be held liable for not recognizing, any person as the owner of any trust certificate issued hereunder other than the person in whose name the same shall be registered on their books as such owner.

Fifth. The trustees shall forthwith cause all shares of stock deposited with them hereunder to be transferred on the books of said the Chemical Foundation (Inc.), into the names of the trustees as trustees under this agreement. Such further transfer of said shares may be made as may become necessary through the occurrence of any change of the persons holding the office of trustee, as herein provided.

Sixth. Until the actual delivery of stock certificates in exchange for trust certificates, the trustees shall possess the legal title to the shares deposited hereunder, and be entitled to exercise all rights and powers of absolute owners of said stock of every name and nature, including the right to consent to any corporate act of the company, and the full and unqualified right and power to vote in person or by proxy such stock so transferred to them at all meetings of the stockholders of the company for any and every purpose and on any and all matters and business of the company, ordinary and extraordinary. In particular the trustees shall have the full and unqualified right and power to vote in person or by proxy on said stock upon all questions affecting the disposition, after the redemption or retirement of the preferred stock, of the net earnings of the corporation, and affecting the use or application of such earnings for the development and advancement of chemistry and allied science in the useful arts and manufactures in the United States.

The foregoing enumeration of particular powers shall not be construed to limit the generality of the grants of power herein contained.

In voting upon the shares of stock of the company held by them hereunder, the trustees shall exercise their best judgment, but they assume no responsibility in respect to the management of the company or in respect to any act taken pursuant to their votes so cast, or pursuant to any consent given by them.

Seventh. On the 1st day of January, 1936, or upon the prior termination of this agreement, as herein provided, the trustees in exchange for and upon surrender of the aforesaid trust certificates then outstanding, and upon payment by the respective holders of trust certificates of the stock transfer tax, if any, will in accordance with the terms hereof deliver or cause to be delivered proper certificates representing such number of shares of the common stock of the company as is represented by the trust certificates so surrendered.

Eighth. This agreement shall continue in force until the 1st day of January, 1936, it being understood, however, that the trustees shall have the power, by unanimous vote, at any time prior to said date, to terminate this trust agreement and to deliver the shares of stock so deposited with them to the holders of the trust certificates, and in that case the trustees may call upon the holders of trust certificates to surrender them and receive in exchange therefor certificates for common stock, as hereinbefore provided.

Ninth. Either of the said trustees may at any time resign, by delivering his resignation in writing to the other trustees, to take effect ten days thereafter, or on its earlier acceptance by the other trustees. In the event of the death, resignation, or disability of any of the trustees now or hereafter acting under this agreement, his successor shall be appointed in writing by a majority vote of the remaining trustees.

The term "trustees" as used herein, and in said trust certificates, shall apply to those herein named, and their successors at any time hereunder.

Tenth. Except as provided in the eighth clause of this agreement, all questions arising between the trustees shall from time to time be determined by a decision of a majority of those then acting as trustees either at a meeting or by writing with or without a meeting, and in like manner they may establish their rules or action. Except as aforesaid, the decision or act of a majority of the trustees shall for the exercise of the voting power and for all purposes of this agreement be deemed a decision or act of all the trustees.

Any trustee may be a director or officer of the company and may vote for himself and any or all of the trustees, as such officer or director. Any trustee, or any firm of which he is a member, or any corporation of which he may be a stockholder, a director or officer, may contract with the company or any subsidiary or controlled company, or be or become pecuniarily interested in any matter or transaction in which the company or any subsidiary or controlled company may be a party, or in which it may in any way be concerned, as fully as though he were not a trustee.

Eleventh. Each holder of a trust certificate issued by the trustees hereunder shall be entitled to receive payments equal to the amount of dividends, if any, collected by the trustees upon the number of shares of the common stock of the said company represented by the trust certificates held by him.

Twelfth. Any stockholder being the owner of fully paid common stock of the company, whether now or hereafter authorized or issued, may at any time become a party to this agreement, and acquire all the rights and benefits hereof by depositing his stock with the trustees, to be held for the purposes and subject to the term of this agreement. Such deposit, or the acceptance of a trust certificate, issued under this agreement, shall have the same force and effect as though such stockholder had, in fact, subscribed this agreement under seal.

Thirteenth. The trustees hereby accept the above trust subject to all the terms, conditions, and reservations herein contained, and agree that they will exercise the powers and perform the duties of trustees as herein set forth, provided, however, that nothing herein contained shall be construed to prevent any or all of the trustees from resigning and discharging themselves from the trust aforesaid, and provided, further, that it is expressly understood and agreed that no trustee shall incur any responsibility by reason of any error of judgment or liability in any matter or thing done or omitted to be done under this agreement or otherwise, except for his own individual, willful misconduct.

Fourteenth. A duplicate of this agreement shall be filed in the office of the company where its principal business is transacted, and shall be open daily during business hours to the inspection of any stockholder of the company or holder of a trust certificate issued hereunder.

Fifteenth. This agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

Sixteenth. All notices to be given to the holders of trust certificates hereunder shall be given by mail to the holders of the trust certificates at their addresses registered with the trustees.

Seventeenth. The validity and interpretation of this agreement and of every provision thereof shall be determined in accordance with the laws of the State of Delaware.

In witness whereof the several parties hereto have hereunto set their hands and seals as of the day and year first above written.

——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]
Trustees.

EXHIBIT F.

(Offered and admitted in evidence as Plaintiff's Exhibit No. 64.)

CONSTITUTION AND BY-LAWS, CHEMICAL FOUNDATION ADVISORY COMMITTEE.

ARTICLE I.

Name.

The name of this committee shall be the Chemical Foundation Advisory Committee.

ARTICLE II.

The Chemical Foundation Advisory Committee is established subject to the supervision and control of the board of directors and president of the Chemical Foundation (Inc.) to promote in all lawful ways the interests, objects, and purposes of the Chemical Foundation (Inc.), to cooperate in an advisory capacity with the foundation in the determination of its general policies and of its policies regarding the forms, limitations, and distribution of licenses under its patents, and to render such other services to the Chemical Foundation (Inc.) as may be deemed beneficial to the Chemical Foundation (Inc.) and to the public safety and welfare.

ARTICLE III.

Organization of the committee.

SECTION 1. The advisory committee shall consist of the president and vice president of the Chemical Foundation (Inc.), a representative of the American Dyes Institute, and a representative of the Manufacturing Chemists' Association of the United States, to be respectively chosen by each association, the chairman of the section committee, and not to exceed five committeemen at large, to be chosen by the President of the Chemical Foundation (Inc.).

The advisory committee shall supervise and direct investigation of any and all matters which the board of directors or president of the Chemical Foundation (Inc.) may refer to it and shall report thereon to said board of directors or president, shall appoint such special subcommittees as it may deem necessary, and may abolish the same, and shall have such other powers and duties as may be given to it from time to time by the president and board of directors of the Chemical Foundation (Inc.).

SEC. 2. *Meetings of the advisory committee.*—A meeting of the advisory committee shall be held immediately after the annual meetings of the section committees, as hereinafter provided for. Regular monthly meetings shall be held at 2.30 o'clock p. m. on the third Wednesday of each month, and special meetings may be held at the call of the president or vice president of the Chemical Foundation (Inc.) or by request in writing to the secretary signed by three members of the advisory committee. At least five days' notice of such meetings shall be given to each member of the advisory committee. Five members of the advisory committee shall constitute a quorum.

ARTICLE IV.

Officers.

SECTION 1. The officers of the advisory committee shall be a chairman, a vice chairman, who shall be respectively the president and vice president of the Chemical Foundation (Inc.), and a secretary, who shall be elected annually by the advisory committee at its annual meeting. The secretary shall hold office for the year and until his successor shall have been elected and shall have accepted office. Any vacancies in office shall be filled by the advisory committee. The secretary need not be a member of the committee.

SEC. 2. The chairman shall preside at all meetings of the advisory committee. He shall be a member ex officio of all sections and all committees and shall perform such duties as are necessarily incident to his office.

In the absence or disability of the chairman his duties shall member ex officio of all sections and all committees.

SEC. 3. The Secretary shall keep a record of the proceedings of the advisory committee and of all other meetings of which a record shall be deemed advisable by the advisory committee. It shall be the duty of the secretary to issue notices for all meetings of the advisory committee. He shall perform such other duties as may be delegated to him by the advisory committee.

ARTICLE V.

Organization of sections.

SECTION 1. The stockholders of the Chemical Foundation (Inc.) shall be divided into the following sections for the purpose of assembling in groups of like or kindred interest:

1. Dyes and intermediates.
2. Pharmaceuticals and medicinal chemicals.
3. General chemicals and fertilizers.
4. Textiles, including dyers and finishers.
5. Metallurgical.
6. Unclassified.

Additional sections shall be formed from time to time when in the opinion of the president or board of directors of the Chemical Foundation (Inc.) there is a sufficient number of stockholders of like or kindred interest to justify their formation.

Each stockholder shall designate the section into which assignment is desired, and shall be so assigned. No stockholder shall be assigned to more than one section except upon approval of the president or vice president of the Chemical Foundation (Inc.).

SEC. 2. Sections shall be represented by a section committee of not less than three elected by and from the membership of each section. The chairman and vice chairman of the advisory committee shall be ex officio members of all sections and all committees.

SEC. 3. Each section may adopt its own rules and regulations provided such are not inconsistent with the constitution and by-laws of the advisory committee.

Sec. 4. Each section shall elect its section committee at the time of the annual meeting, or at the time of any special meeting of the stockholders called for the purpose. Section committees shall have power to elect their own chairman and to fill vacancies. No person shall be chairman of more than one section committee. Each chairman of a section committee shall be ipso facto a member of the advisory committee.

ARTICLE VI.

Section meetings.

Section 1. *Annual meeting.*—The annual meeting of all sections shall be held immediately following the annual stockholders' meeting of the Chemical Foundation (Inc.) and at the same place.

Sec. 2. *Special meetings.*—The secretary shall call a special meeting of any section or section committee whenever directed to do so by the advisory committee or whenever requested in writing to do so by five or more members of the particular section. Each such request in writing shall state the object or objects for which the meeting is desired, and no object not so stated shall be acted upon at the meeting.

Sec. 3. *Notice of meeting.*—At least 14 days' written notice or 7 days' telegraphic notice of the annual meeting or of any special meeting shall be sent by the secretary to each member. Notice of each special meeting shall set forth the object or objects for which it is called.

Sec. 4. *Quorum.*—A quorum at any annual or special meeting of any section shall be not less than three members in person or by proxy, unless and until such section shall by resolution otherwise provide.

Less than a quorum may adjourn any meeting for a period not longer than twenty days.

Sec. 5. Each member shall be entitled to one vote, irrespective of the amount of stock of the Chemical Foundation (Inc.) held, and may vote in person or by proxy, provided the proxy be duly executed in writing within two months prior to the meeting at which it is presented for use. A proxy given for any meeting shall, unless notice of revocation is delivered to the presiding officer, hold good for adjournments of that meeting.

ARTICLE VII.

Resignation and withdrawal.

Any member may withdraw from any section by giving written notice of resignation to the secretary, and any member who ceases to be a stockholder of the Chemical Foundation (Inc.) shall ipso facto cease to be a section member.

ARTICLE VIII.

Amendments.

The constitution and by-laws may be amended at any meeting of the stockholders of the Chemical Foundation (Inc.) by a vote of two-thirds of the members present in person or by proxy, provided a copy of the amendment or the substance thereof shall have been given in the notice calling the meeting.

The advisory committee may amend the constitution and by-laws at any meeting by a vote of two-thirds of the members present, subject to ratification at the next succeeding meeting of the stockholders of the Chemical Foundation (Inc.).

DECEMBER 2, 1919.

AMENDMENTS TO ARTICLE 5, SECTION 1.

1. There shall be one additional section known as metallurgical section, or section 5.

2. There shall be one additional section known as unclassified section, or section 6.

EXHIBIT G.

SCHEDULE 1.

The instrument dated April 10, 1919, and recorded in the United States Patent Office on April 21, 1919, in Liber Y-107, page 143, a copy of which instrument is set out in Exhibit H-1 attached to this bill of complaint, enumerated the following patents or applications therefor:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
4747	Jan. 27, 1915	Process for depositing hydrate of alumina and similar gelatinous precipitates from their salts.	1919. Mar. 1	1919. Mar. 26	I-106	381
5808	Feb. 2, 1915	Process for making press yeast.	Mar. 1	Mar. 26	X-106	459
6052	Feb. 4, 1915	Mercury derivatives of aromatic compounds and in the process of manufacturing same.	Mar. 1	Mar. 26	R-106	403
6615	Feb. 6, 1915	Method of producing with bacterae poisons intended for immunizing purposes.	Mar. 1	Mar. 26	J-106	354
7212	Feb. 9, 1915	Tanning means, their preparation and use.	Mar. 1	Mar. 26	Y-106	340
9217	Feb. 18, 1915	Processes and apparatus for sterilizing milk and other liquids.	Mar. 1	Mar. 26	Q-106	563
13085	Mar. 8, 1915	Cigar mouthpieces	Mar. 1	Mar. 26	V-106	380
15397	Mar. 18, 1915	Manufacture of acetic ester	Feb. 28	Mar. 26	Y-106	345
16511	Mar. 23, 1915	Boarding machines	Mar. 1	Mar. 22	W-106	369
20105	Apr. 8, 1915	Process for the extraction and recovery of loading materials from silk waste, etc.	Feb. 28	Mar. 26	S-106	351

[1] Date of service on Commissioner of Patents of the United States and of filing for record in the U. S. Patent Office.

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
21588	Apr. 15, 1915	Process of separating thorium from the other metals of the rare earths.	Mar. 1	Mar. 26	L-106	384
21912	Apr. 16, 1915	Decomposition of alkaline chlorid solutions by means of electrolysis.	Mar. 1	Mar. 26	V-106	383
29696	May 21, 1915	Process for the reduction of iron ores and the like.	Mar. 1	Apr. 9	K-106	498
30573	May 26, 1915	Method and apparatus for uniting together pieces of brass, aluminum, and similar metals or alloys by electric resistance heating.	Feb. 28	Mar. 26	K-106	427
45023	Aug. 11, 1915	Process of converting limestone into a compressible artificial stone.	Mar. 1	Mar. 26	Y-106	361
46587	Aug. 20, 1915		Feb. 28	Mar. 26	I-106	402
47014	Aug. 17, 1915	Plant for manufacturing lampblack.	Mar. 1	Mar. 26	J-106	370
47421	Aug. 26, 1915	Methods of making mouth-pieced oval cigarettes.	Mar. 1	Mar. 26	X-106	457
47487	Aug. 26, 1915	Manufacture of metal hydroxides.	Mar. 1	Mar. 26	I-106	381
52210	Sept. 23, 1915	Anthracene dyestuffs and process for the "production thereof."	Mar. 1	Mar. 26	X-106	465
61656	Nov. 15, 1915	Process for the treatment of silk with reserves for the purpose of increasing its strength and elasticity.	Feb. 28	Mar. 26	I-106	398
62255	Nov. 18, 1915	Method and contrivance in producing building and isolation material and articles of all kinds from wood-pulp compositions, wool, cotton, peat, and other watery substances.	Mar. 1	Mar. 26	U-106	311
63231	Nov. 24, 1915	Device for charging retorts and the like.	Mar. 1	Mar. 26	S-108	358
63232	Nov. 24, 1915	Gas producers	Mar. 1	Mar. 26	S-106	358
68847	Dec. 27, 1915	Washing preparation	Feb. 28	Mar. 26	S-106	352
69562	Dec. 31, 1915	Suction boxes of paper and pasteboard machines.	Mar. 1	Mar. 26	R-106	403
69590	Dec. 31, 1915	Method of and apparatus for producing hydrocarbon.	Mar. 1	Mar. 26	Y-106	347
71515	Jan. 11, 1916	Generators for producing water gas	Mar. 1	Mar. 26	L-106	337
74007	Jan. 24, 1916	Method of oxidizing ammonia	Mar. 1	Mar. 26	I-106	387
77521	Feb. 10, 1916	Electrically driven shaker molding machines.	Mar. 1	Mar. 26	L-106	329
77706	Feb. 11, 1916	Plants for the continuous lixiviation of ores, rocks, or the like materials.	Mar. 1	Mar. 26	L-106	331
78296	Feb. 14, 1916	Method of removing the waste water produced by the recovery of ammonia from gases of a dry distillation or of fuel vaporizers.	Mar. 1	Mar. 26	T-106	367
78311	Feb. 14, 1916	Process of manufacturing lubricating oils.	Mar. 1	Mar. 26	R-106	405
83613	Mar. 11, 1916	Process of producing a surrogate for tannine.	Mar. 1	Mar. 26	Z-106	287
84246	Mar. 14, 1916	Process of tanning	Mar. 1	Mar. 26	Y-106	340
86498	Mar. 24, 1916	Process of manufacturing wrought iron and steel.	Feb. 28	Mar. 26	K-106	423
87085	Mar. 27, 1916	Process of making means for reducing blood pressure.	Mar. 1	Apr. 9	V-106	489
87496	Mar. 29, 1916	Process for producing a durable food from straw, hay, and other vegetable substances.	Feb. 28	Mar. 25	S-106	330
92064	Apr. 18, 1916	Process of hydrogenerating carbon compounds.	Mar. 1	Mar. 26	S-106	354
92065	Apr. 18, 1916	Process of hydrogenerating carbon compounds under high pressure and elevated temperature.	Mar. 1	Mar. 26	S-106	353

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
92523	Apr. 20, 1916	Process for cleaning sulfonic acids.	Feb. 28	Mar. 26	Y-106	353
99254	May 20, 1916	Producing resinous bases from tar.	Mar. 1	Mar. 26	Y-106	352
100349	May 27, 1916	Manufacture of organic acids and acid anhydrides.	Mar. 1	Mar. 26	Y-106	343
106524	June 28, 1916	Method of dressing hides	Mar. 1	Mar. 26	R-106	399
110619	July 21, 1916	Method of and apparatus for utilising mine waste by means of heat of waste fields.	Feb. 28	Mar. 25	S-106	333
112130	July 29, 1916	New dye of the acridine series and their manufacture.	Mar. 1	Mar. 26	Z-106	289
112131	July 29, 1916	New dye of the acridine series and their manufacture.	Mar. 1	Mar. 26	Z-106	289
112139	July 29, 1916	Process of systematically sulphurating the juices obtained during the manufacture of sugar.	Mar. 1	Mar. 26	J-106	374
112146	July 29, 1916	Washing, cleaning, and lubricating medium.	Mar. 1	Mar. 26	I-106	380
112197	July 29, 1916	New dyes of the benzenenaphthalene series and their manufacture.	Mar. 1	Mar. 26	Z-106	288
113750	Aug. 8, 1916	Process of and oven for the continuous distillation or gasification of organic matter or minerals containing organic matter.	Mar. 1	Mar. 26	U-106	324
113963	Aug. 9, 1916	Device for producing sugar lumps in confectionery.	Mar. 1	Mar. 26	Y-106	338
114082	Aug. 9, 1916	Letter copying machine	Mar. 1	Mar. 26	Q-106	358
115733	Aug. 18, 1916	Employment of carbon and hydrogen extracted out of methan or of carburretted hydrogen of the methan series (earthy gas) by means of the formation of nitrogen (azotic gas).	Mar. 1	Mar. 26	Q-106	364
118421	Sept. 5, 1916	Treatment of lumber	Feb. 28	Mar. 26	K-106	421
118836	Sept. 7, 1916	Method of producing bound nitrogen during evaporation of nitrogen containing fuels.	Mar. 1	Mar. 25	S-106	332
118837	Sept. 7, 1916	Method of operating generators	Mar. 1	Mar. 25	S-106	332
119550	Sept. 11, 1916	Method of manufacture of polyvalent alcohols.	Mar. 1	Mar. 26	H-106	423
124855	Oct. 10, 1916	Method for the production of byproducts; for example, nitrogen compounds, etc.	Feb. 28	Mar. 25	S-106	333
124864	Oct. 10, 1916	Method for rendering cement and the like water-tight.	Feb. 28	Mar. 26	X-106	463
125116	Oct. 11, 1916	Process of manufacturing dense ware from bauxite.	Mar. 1	Mar. 26	Y-106	337
126322	Oct. 18, 1916	Method and arrangement for wetting the paper cut to strip for spinning purposes.	Mar. 1	Mar. 26	U-106	310
126533	Oct. 19, 1916	Treatment of textile fibers and fabrics.	Feb. 28	Mar. 26	S-106	352
127448	Oct. 24, 1916	Method of refining raw wood-pulp liquor.	Mar. 1	Mar. 26	V-106	382
129115	Nov. 2, 1916	Multicolour printing	Mar. 1	Mar. 26	I-106	404
129829	Nov. 6, 1916	Blue tetrakisazo dyes	Mar. 1	Mar. 26	Z-106	289
129830	Nov. 6, 1916	Manufacture of enamels	Mar. 1	Mar. 26	T-106	269
130437	Nov. 9, 1916	Process for producing a highly active decolorising charcoal.	Mar. 1	Mar. 26	R-106	406
130676	Nov. 10, 1916	Process and machine for making horny bodies particularly of clear translucent or transparent quality from mealy albuminous masses as casein.	Mar. 1	Mar. 26	I-106	396
130760	Nov. 11, 1916	Process of recovering metals from natural waters.	Mar. 1	Mar. 26	L-106	340
130928	Nov. 11, 1916	Process for the manufacture of products of condensation and oxidation from acetylene.	Mar. 1	Mar. 26	X-106	470
131222	Nov. 14, 1916	Manufacture of a table salt	Mar. 1	Mar. 26	L-106	335

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
136701	Dec. 13, 1916	Process of and apparatus for producing decolorizing charcoal.	Feb. 28	Mar. 26	J-106	373
137241	Dec. 15, 1916	Dyeing machine	Feb. 28 Feb. 28	Mar. 21 Mar. 26	D-106 I-106	393 400
137242	Dec. 15, 1916	Means for dyeing yarns or the like.	Feb. 28 Feb. 28	Mar. 21 Mar. 26	D-106 I-106	393 400
137243	Dec. 15, 1916	Process of dyeing yarn on cross spools or the like.	Feb. 28 Feb. 28	Mar. 21 Mar. 26	D-106 I-106	393 400
137244	Dec. 15, 1916	Carriers for cross spools or the like.	Feb. 28 Feb. 28	Mar. 21 Mar. 26	D-106 I-106	393 400
137245	Dec. 15, 1916	Device for use in dyeing yarn and the like.	Feb. 28 Feb. 28	Mar. 21 Mar. 26	D-106 I-106	393 400
138665	Dec. 23, 1916	Tanning	Feb. 3 Mar. 1	Feb. 21 Mar. 26	Y-106 U-106	133 325
139431	Dec. 28, 1916	Process of treating molten metal on metallic alloys with a view to freeing them from the slag.	Mar. 1	Apr. 10	K-106	497
139436	Dec. 28, 1916	Suction box for paper machines and the like.	Mar. 1	Mar. 26	Y-106	350
142233	Jan. 13, 1917	Flexible metal hose	Mar. 21	Apr. 9	Q-106	444
142234	Jan. 13, 1917	Method of welding electrically sheet zinc lap seams.	Mar. 21	Apr. 9	Q-106	444
142235	Jan. 13, 1917	Method of working electric resistance welding machines operating with continuous current.	Mar. 21	Apr. 9	Q-106	444
142238	Jan. 13, 1917	Method of welding flexible metal hose.	Mar. 21	Apr. 9	Q-106	444
143144	Jan. 18, 1917	Process for producing tannic acid compounds of the digitalisglycosides.	Mar. 21	Apr. 9	K-106	496
143943	Jan. 23, 1917	Method of and apparatus for hardening manganese steel articles.	Mar. 1	Mar. 26	X-106	458
144516	Jan. 25, 1917	Process for rendering durable extracts of drugs.	Mar. 21	Apr. 9	K-106	494
148869	Feb. 15, 1917	Method of making steel tools by casting for machining of iron and other hard material.	Mar. 1	Mar. 26	J-106	355
149971	Feb. 20, 1917	Device for the manufacture of aluminum vessels by means of the tilt-over-casting method.	Mar. 1	Mar. 26	Z-106	288
150597	Feb. 23, 1917	Method of producing nitrogen from fuels at the combustion.	Feb. 28	Mar. 25	S-106	333
150598	Feb. 23, 1917	Method for the production of nitrogen compounds.	Feb. 28	Mar. 25	S-106	333
150854	Feb. 24, 1917	Method of tinning sheet metal	Mar. 1	Mar. 26	K-106	418
150855	Feb. 24, 1917	Adhesive material for gluing	Mar. 1	Mar. 26	W-106	468
1089960	Mar. 10, 1914	Reis. app. orig. pat.	Mar. 24	Apr. 9	Y-106	437
152350	Mar. 3, 1917	Primary batteries	Mar. 22	Apr. 9	Q-106	446
152353	Mar. 3, 1917	Galvanic batteries	Mar. 22	Apr. 9	Q-106	446
152354	Mar. 3, 1917	Galvanic batteries	Mar. 22	Apr. 9	Q-106	446
152355	Mar. 3, 1917	Galvanic batteries	Mar. 22	Apr. 9	Q-106	446
152393	Mar. 3, 1917	Process for the manufacture of a casein especially adapted for the production of artificial hornlike masses.	Mar. 1	Mar 26	H-106	409
152724	Mar. 6, 1917	Zinc alloys	Mar. 1	Mar. 26	T-106	365
152725	Mar. 6, 1917	Manufacture of high-speed steel free from tungsten, for highest capacities.	Mar. 1	Mar. 26	T-106	365
152726	Mar. 6, 1917	Manufacture of chrome cobalt steel for high-speed tools.	Mar. 1	Mar. 26	T-106	365
153425	Mar. 8, 1917	Process and device for casting metals and other materials under an explosivelike pressure into molds.	Apr. 7	Apr. 9	K-106	493
153984	Mar. 10, 1917	Process for producing tannate lime compound difficultly soluble in dilute acids.	Mar. 21	Apr. 9	K-106	496
159036	Mar. 31, 1917	Process for the preparation of gallic and pyrogallic acid.	Feb. 26	Mar. 26	P-106	384

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
161632	Apr. 12, 1917	Spinning viscous liquids while flowing liquids are used for feeding the thread.	Mar. 1	Mar. 26	T-106	368
162113	Apr. 14, 1917	Proceedings for the acceleration of fermentation.	Feb. 28	Mar. 26	J-106	353
163261	Apr. 19, 1917	Zinc alloys	Mar. 21	Apr. 9	U-106	385
163262	Apr. 19, 1917	Zinc alloys	Mar. 21	Apr. 9	U-106	385
163263	Apr. 19, 1917	Zinc alloys	Mar. 21	Apr. 9	U-106	385
167564	May 9, 1917	Composition of matter and method of preserving organic porous material.	Mar. 1	Mar. 26	Q-106	355
170663	May 24, 1917	Method of preserving vegetables, fruit, and the like.	Mar. 1	Mar. 26	J-106	350
172791	June 4, 1917	Process for making enamels	Feb. 28	Mar. 26	U-106	331
173153	June 6, 1917	Process of coating blank material, as, for instance, paper with leaf metal.	Feb. 28	Mar. 26	J-106	361
174642	June 13, 1917	Means for greasing leather of all kinds and for oil tanning.	Mar. 21	Apr. 9	Y-106	440
174643	June 13, 1917	Process for tanning with iron salts.	Mar. 21	Apr. 9	Y-106	440
176622	June 23, 1917	Method of manufacturing solid toilet and household soaps in cake or powder form.	Mar. 1	Mar. 26	J-106	371
177845	June 29, 1917	Process for the preparation of glyoxal.	Mar. 1	Mar. 26	I-106	384
180196	July 12, 1917	Production of molybdenum compounds.	Feb. 28	Mar. 26	U-106	322
181130	July 17, 1917	Solution of albumin containing medicinal and immunizing substances.	Mar. 1	Mar. 26	Y-106	360
186043	Aug. 13, 1917	Process of making moulded reproductions from matrices.	Mar. 1	Mar. 26	I-106	401
187398	Aug. 21, 1917	Furnace for reducing and roasting ores.	Mar. 1	Mar. 26	J-106	352
187726	Aug. 22, 1917	Method of working refractory metals.	Mar. 1	Mar. 26	Q-106	356
190654	Sept. 10, 1917	Hot-gas processes for the reduction and smelting of metals.	Mar. 1	Mar. 26	J-106	352
192021	Sept. 18, 1917	Manufacture of products capable of precipitating glue or like substances.	Feb. 3	Feb. 21	Y-106	138
193137	Sept. 25, 1917	Process for the extraction of borax from mixtures containing boracic acid or borax and sodium sulphate.	Mar. 1	Mar. 26	Q-106	359
196288	Oct. 12, 1917	Carbonic-acid bath and process of making same.	Mar. 1	Mar. 26	U-106	320
196774	Oct. 15, 1917	Rotating or revolving presses	Mar. 1	Mar. 26	R-106	401
196921	Oct. 16, 1917	Method of annealing rods, tubes, and the like and apparatus therefor.	Mar. 1	Mar. 26	V-106	388
198337	Oct. 24, 1917	Method of treating animal and vegetable fibers and the like, such as wool, hairs, feathers, and cotton, with a view of rendering them active either in a colored or uncolored condition.	Feb. 28	Mar. 26	I-106	393
199401	Oct. 31, 1917	Tents	Mar. 1	Mar. 26	Y-106	383
199794	Nov. 1, 1917	Pharmaceutical product and process of making same.	Mar. 1	Mar. 26	I-106	385
199798	Nov. 1, 1917	Clamp or holder for writing pads or blocks.	Mar. 1	Mar. 26	H-106	422
203037	Nov. 20, 1917	Method of manufacturing raw plate glass of different quality, size, thickness, surface, initial temperature, and the like.	Mar. 1	Mar. 26	V-106	390
204439	Nov. 28, 1917	Rotary malting drums	Mar. 1	Mar. 26	Z-106	280
204440	Nov. 28, 1917	Acetylene producers	Mar. 1	Mar. 22	P-106	308
205460	Dec. 4, 1917	Process for washing materials of all kinds.	Mar. 21	Apr. 9	Y-106	440

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
205880	Dec. 6, 1917	Process for tanning with aluminium salts.	Mar. 21	Apr. 9	Y-106	440
208671	Dec. 24, 1917	Process for producing and revivifying decolorizing charcoal of high decolorizing power.	Mar. 1	Mar. 26	K-106	419
208705	Dec. 24, 1917	Method of producing hydroxydes of metals by precipitating metallic salts with ammonia.	Mar. 1	Mar. 26	I-106	381
208862	Dec. 26, 1917	Process of treating albumenous animal waste.	Mar 1	Mar. 26	V-106	389
208863	Dec. 26, 1917	Process for the production of meat-extract like preparations.	Mar. 1	Mar. 26	V-106	389
208864	Dec. 26, 1917	Process for the treatment of albumenous animal waste for the preparation of human food.	Mar. 1	Mar. 26	V-106	389
208865	Dec. 26, 1917	Process for the preparation of human food from horns, hair, skins, etc.	Mar. 1	Mar. 26	V-106	389
208866	Dec. 26, 1917	Process for the production of a preserved meat-extract like preparations from fish flesh.	Mar. 1	Mar. 26	V-106	389
212820	Jan. 19, 1918	Manufacture of ceramic and like ware.	Mar. 1	Mar. 26	Y-106	342
213440	Jan. 23, 1918	Plastic compositions	Mar. 1	Mar. 26	Q-106	361
213789	Jan. 25, 1918	Bromodiethylacetylcarboxyalkylurea compounds.	Mar. 1	Mar. 26	I-106	385
13621	Jan. 25, 1918	Black-brown disazo dye	Mar. 1	Mar. 26	R-106	398
213624	Jan. 25, 1918	Dyeing mediums and process of dyeing.	Mar. 1	Mar. 26	S-106	348
214484	Jan. 30, 1918	Diaphragms for electrolytical cells.	Mar. 1	Apr. 9	V-106	484
215940	Feb. 7, 1918	Process for converting limestone into a compressible artificial stone.	Mar. 1	Mar. 26	Y-106	361
217392	Feb. 15, 1918	Process of extracting water or aqueous solutions from earth or other oil emulsions.	Mar. 1	Mar. 26	Y-106	344
219935	Mar. 1, 1918	Process for the manufacture of meat-extract preparations.	Mar. 1	Mar. 26	V-106	389
219942	Mar. 1, 1918	Method of manufacturing vessels, such as preserve boxes and the like.	Mar. 21	Apr. 9	Q-106	444
222002	Mar. 12, 1918	Boarding machines	Mar. 1	Mar. 22	W-106	369
224691	Mar. 25, 1918	Process for the utilization of waste leather.	Feb. 28	Mar. 26	S-106	352
227817	Apr. 10, 1918	Electric resistance	Mar. 1	Mar. 26	Y-106	355
227818	Apr. 10, 1918	Process of extracting inuline and laevulose from plants.	Mar. 1	Mar. 26	L-106	330
228755	Apr. 15, 1918	Nutriment containing albumen, and more especially to the method of producing it.	Mar. 1	Mar. 26	V-106	386
233389	May 8, 1918	Means for stiffening linen and the like.	Mar. 1	Mar. 26	Q-106	362
237597	May 31, 1918	Arc furnace for producing endothermic gas reactions.	Mar. 1	Mar. 26	X-106	464
237665	May 31, 1918	Fruit squeezer	Mar. 1	Mar. 26	V-106	410
240885	June 19, 1918	Device for use in dyeing yarn and the like.	Feb. 28 Feb. 28	Mar. 21 Mar. 26	D-106 I-106	393 400
242676	June 29, 1918	Tablets for preparing solutions for preserving wood.	Mar. 1	Mar. 26	Q-106	355
244201	July 10, 1918	Tinning of sheet metal	Mar. 1	Mar. 26	Z-106	285
246419	July 23, 1918	Process of preparing a permanent and spinnable solution in the cupric ammonia process.	Mar. 1	Mar. 26	Y-106	339
246791	July 25, 1918	Manufacture or production of chlorinated products of toluene and dyestuffs therefrom.	Mar. 1	Mar. 26	X-106	460
248015	Aug. 2, 1918	Manufacture of new substances containing sulfur and of new sulfur dyestuffs.	Feb. 28	Mar. 26	V-106	385

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
248066	Aug. 2, 1918	Tanning substances for tanning animal hides and process of preparing the same.	1919. Mar. 1	1919. Mar. 26	Q-106	365
251576	Aug. 26, 1918	Method and means for the production of metallic coatings after the spirting process within a receptacle containing and moving the parts to be coated.	Mar. 1	Mar. 26	Y-106	348
252796	Sept. 5, 1918	Manufacturing electric coils of aluminium.	Mar. 1	Mar. 26	I-106	405
254359	Sept. 16, 1918	Manure, and method and apparatus for making same.	Mar. 22 Apr. 22	Apr. 9 Apr. 22	N-106 Q-107	497 34
256928	Oct. 4, 1918	Process of making wood alcohol from methane gas by the way of methylic-chlorine.	Mar. 1	Mar. 26	U-106	323
256929	Oct. 4, 1918	Process of making the chlorinating products of methane.	Mar. 1	Mar. 26	U-106	323
260214	Oct. 29, 1918	Machines for making layer fabrics.	Feb. 28	Mar. 26	Y-106	351
260609	Oct. 31, 1918	Process of producing metal bodies.	Feb. 28	Mar. 26	V-106	397
262628	Nov. 14, 1918	Method of refining mixtures of chlorides of naphthalenes serving as substitutes for rosin.	Mar. 1	Mar. 26	U-106	328
270243	Jan. 8, 1919	Process of manufacturing caoutchouc-like substances.	Mar. 1	Mar. 26	L-106	333
274582	Feb. 1, 1919	Articles which require a high resistance against corrosion.	Mar. 1	Apr. 9	Q-106	443
672119	Jan. 19, 1912	Process for the manufacture of viscose.	Mar. 1	Mar. 26	Q-106	361
712993	Aug. 2, 1912	Method of distilling benzol hydrocarbons from saturated wash oil or benzolated creosote.	Mar. 1	Mar. 26	X-106	467
719658	Sept. 10, 1912	Process of subdividing metal for use in plastic metallic packings.	Mar. 1	Mar. 26	Q-106	357
730032	Nov. 7, 1912	Coke ovens	Mar. 1	Mar. 26	X-106	467
742695	Jan. 17, 1913	Manufacture of salts of acetylsalicylic acid.	Mar. 1	Mar. 26	Z-106	282
797572	Oct. 27, 1913	Ceramic composition	Mar. 1	Mar. 26	Z-106	281
799030	Nov. 3, 1913	Process of manufacturing urea	Mar. 1	Mar. 26	V-106	396
802499	Nov. 22, 1913	Process for obtaining light hydrocarbons.	Mar. 1	Mar. 26	Z-106	283
803377	Nov. 28, 1913	Cleansing compounds and process of making the same.	Mar. 1	Mar. 26	S-106	349
803437	Nov. 28, 1913	Process of making opaquering and enameling compounds, and products.	Feb. 28	Mar. 26	K-106	426
808261	Dec. 22, 1913	Use for photographic purposes of more or less insoluble salts of fatty acids.	Mar. 1	Mar. 26	U-106	327
808370	Dec. 23, 1913	Method of manufacturing flexible record blanks or discs for talking machines.	Mar. 1	Mar. 26	I-106	399
810198	Jan. 3, 1914	Hydraulic ingredient and process of making same.	Mar. 1	Mar. 26	Y-106	338
811060	Jan. 8, 1914	Process for the manufacture of lustrous threads from crude viscose by means of warm mineral acids.	Feb. 28	Mar. 26	S-106	350
813066	Jan. 19, 1914	Process for producing salts of the N - menthyl hexa - menthenetetramine.	Mar. 1	Mar. 26	J-106	362
815295	Jan. 29, 1914	Process of manufacturing hydrocarbons adapted for gasification.	Feb. 28	Mar. 26	V-106	384
816391	Feb. 3, 1914	Process for removing fat from raw wool or analogous materials by the aid of fat solvents.	Mar. 1	Mar. 26	I-106	394
818224	Feb. 12, 1914	Process for obtaining light hydrocarbons from heavy hydrocarbons.	Mar. 1	Mar. 22	X-106	327
818914	Feb. 16, 1914	Process for the manufacture of ethers of the carbohydrates CHO and their derivatives 6-10-5.	Mar. 1	Mar. 26	Q-106	361

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
819757	Feb. 19, 1914	Manufacture of varnish.	Feb. 28	Mar. 26	V-106	409
825916	Mar. 19, 1914	Process of converting mineral oils of high boiling points into products having lower boiling points.	Mar. 1	Mar. 26	I-106	395
835567	Apr. 30, 1914	Manufacture of molded cork pieces.	Mar. 21	Apr. 9	U-106	386
837878	May 11, 1914	Method of extracting juices from root fruits.	Mar. 1	Mar. 26	H-106	425
839079	May 16, 1914	Process of making cellulose kanthrogenate solutions and product produced.	Mar. 1	Mar. 26	Q-106	361
839085	May 16, 1914	Apparatus for electrochemical and electroosmotic purposes.	Mar. 1	Mar. 26	X-106	461
844819	June 12, 1914	Process for making light colored air and light proof condensation products from phenol and formaldehyde.	Feb. 28	Mar. 26	K-106	425
845325	June 15, 1914	Process of making means for reducing blood pressure.	Mar. 1	Apr. 9	V-106	489
846100	June 19, 1914	Process for preparing combinations of phenolphtaleine with carbonates of alcali.	Mar. 1	Mar. 26	X-106	471
846168	June 19, 1914	Articles which require a high resistance against corrosion.	Mar. 1	Apr. 9	Q-106	443
846707	June 22, 1914	Process of destroying obnoxious insects.	Mar. 1	Mar. 26	P-106	383
852477	July 22, 1914	Process for the enriching or activating liquids or gases with radium emanation.	Feb. 28	Mar. 26	I-106	383
855051	Aug. 4, 1914	Process of treating tar or tar oils or tar derivatives.	Mar. 1	Mar. 26	H-106	424
862622	Sept. 19, 1914	Manufacture of hollow bodies made of brass, aluminium, and other metals or alloys of high conductivity for heat.	Feb. 28	Mar. 26	K-106	427
867868	Oct. 21, 1914	Process of making solid bodies from nitrids.	Mar. 1	Mar. 26	K-106	422
869131	Oct. 28, 1914	Method of producing chlorine and sulphates from chlorides.	Mar. 1	Mar. 26	S-106	356
869140	Oct. 28, 1914	Ceramic articles and method of making same.	Mar. 1	Mar. 26	V-106	391
870089	Nov. 3, 1914	Pre-heaters for use in the chemical industry, especially for use in the petroleum, tar, and the like industry.	Mar. 1	Mar. 26	X-106	466
876001	Dec. 7, 1914	Apparatus for evaporating liquids.	Mar. 1	Mar. 26	Y-106	346
876723	Dec. 11, 1914	Process for treating minerals containing potash.	Mar. 1	Mar. 26	Y-106	335
877595	Dec. 16, 1914	Method for refining hydrocarbons, their products of distillation and residues.	Mar. 1	Mar. 26	T-106	364
879492	Dec. 29, 1914	Method for separating constituents of air or other gases.	Apr. 8	Apr. 9	V-106	485
879603	Dec. 29, 1914	Method of producing bronzed sections, subsequently to form the tips on cigarette paper strips.	Mar. 1	Mar. 26	U-106	320
879726	Dec. 30, 1914	Process of preparation of oxalic acid.	Mar. 1	Mar. 26	Z-106	286

The following patents and applications demanded under Report No. 33051, Trust No. 734:

Note: The name "Badische Anilin & Soda Fabrik Co." appears in assignment. The name "Badische Anilin & Soda Fabrik" is the name appearing in the demands.

Badische Anilin & Soda Fabrik Co.

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
Patent			1919.	1919.		
11973	Mar. 4, 1902		Feb. 3	Feb. 21	Y-106	133
12654	May 21, 1907		Feb. 3	Feb. 21	Y-106	133
687072	Nov. 19, 1901		Feb. 3	Feb. 21	Y-106	133
688576	Dec. 10, 1901		Feb. 3	Feb. 21	Y-106	133
688645	Dec. 10, 1901		Feb. 3	Feb. 21	Y-106	133
688646	Dec. 10, 1901		Feb. 3	Feb. 21	Y-106	133
688647	Dec. 10, 1901		Feb. 3	Feb. 21	Y-106	133
690271	Dec. 31, 1901		Feb. 3	Feb. 21	Y-106	133
690292	Dec. 31, 1901		Feb. 3	Feb. 21	Y-106	133
690294	Dec. 31, 1901		Feb. 3	Feb. 21	Y-106	133
690325	Dec. 31, 1901		Feb. 3	Feb. 21	Y-106	133
690332	Dec. 31, 1901		Feb. 3	Feb. 21	Y-106	133
690347	Dec. 31, 1901		Feb. 3	Feb. 21	Y-106	133
692174	Jan. 28, 1902		Feb. 3	Feb. 21	Y-106	133
692675	Feb. 4, 1902		Feb. 3	Feb. 21	Y-106	133
692676	Feb. 4, 1902		Feb. 3	Feb. 21	Y-106	133
692720	Feb. 4, 1902		Feb. 3	Feb. 21	Y-106	133
692762	Feb. 4, 1902		Feb. 3	Feb. 21	Y-106	133
692760	Feb. 4, 1902		Feb. 3	Feb. 21	Y-106	133
695811	Mar. 18, 1902		Feb. 3	Feb. 21	Y-106	133
695812	Mar. 18, 1902		Feb. 3	Feb. 21	Y-106	133
695835	Mar. 18, 1902		Feb. 3	Feb. 21	Y-106	133
698328	Apr. 22, 1902		Feb. 3	Feb. 21	Y-106	133
698355	Apr. 22, 1902		Feb. 3	Feb. 21	Y-106	133
699033	Apr. 29, 1902		Feb. 3	Feb. 21	Y-106	133
699581	May 6, 1902		Feb. 3	Feb. 21	Y-106	133
700565	May 20, 1902		Feb. 3	Feb. 21	Y-106	133
707373	Aug. 19, 1902		Feb. 3	Feb. 21	Y-106	133
707374	Aug. 19, 1902		Feb. 3	Feb. 21	Y-106	133
710059	Sept. 30, 1902		Feb. 3	Feb. 21	Y-106	133
711377	Oct. 14, 1902		Feb. 3	Feb. 21	Y-106	133
711835	Oct. 21, 1902		Feb. 3	Feb. 21	Y-106	133
713437	Nov. 11, 1902		Feb. 3	Feb. 21	Y-106	133
713447	Nov. 11, 1902		Feb. 3	Feb. 21	Y-106	133
713507	Nov. 11, 1902		Feb. 3	Feb. 21	Y-106	133
715074	Dec. 2, 1902		Feb. 3	Feb. 21	Y-106	133
715662	Dec. 9, 1902		Feb. 3	Feb. 21	Y-106	133
715680	Dec. 9, 1902		Feb. 3	Feb. 21	Y-106	133
716242	Dec. 16, 1902		Feb. 3	Feb. 21	Y-106	133
716248	Dec. 16, 1902		Feb. 3	Feb. 21	Y-106	133
716264	Dec. 16, 1902		Feb. 3	Feb. 21	Y-106	133
716289	Dec. 16, 1902		Feb. 3	Feb. 21	Y-106	133
718028	Jan. 6, 1903		Feb. 3	Feb. 21	Y-106	133
718340	Jan. 13, 1903		Feb. 3	Feb. 21	Y-106	133
718342	Jan. 13, 1903		Feb. 3	Feb. 21	Y-106	133
718356	Jan. 13, 1903		Feb. 3	Feb. 21	Y-106	133
718389	Jan. 13, 1903		Feb. 3	Feb. 21	Y-106	133
719720	Feb. 3, 1903		Feb. 3	Feb. 21	Y-106	133
720501	Feb. 10, 1903		Feb. 3	Feb. 21	Y-106	133
723125	Mar. 17, 1903		Feb. 3	Feb. 21	Y-106	133
724789	Apr. 7, 1903		Feb. 3	Feb. 21	Y-106	133

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in the U. S. Patent Office.

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Patent			1919.	1919.		
730148	June 2, 1903		Feb. 3	Feb. 21	Y-106	133
731385	June 16, 1903		Feb. 3	Feb. 21	Y-106	133
735775	Aug. 11, 1903		Feb. 3	Feb. 21	Y-106	133
737445	Aug. 25, 1903		Feb. 3	Feb. 21	Y-106	133
738614	Sept. 8, 1903		Feb. 3	Feb. 21	Y-106	133
739145	Sept. 15, 1903		Feb. 3	Feb. 21	Y-106	133
739579	Sept. 22, 1903		Feb. 3	Feb. 21	Y-106	133
741936	Oct. 20, 1903		Feb. 3	Feb. 21	Y-106	133
744417	Nov. 17, 1903		Feb. 3	Feb. 21	Y-106	133
744501	Nov. 17, 1903		Feb. 3	Feb. 21	Y-106	133
746784	Dec. 15, 1903		Feb. 3	Feb. 21	Y-106	133
746965	Dec. 15, 1903		Feb. 3	Feb. 21	Y-106	133
746981	Dec. 15, 1903		Feb. 3	Feb. 21	Y-106	133
749913	Jan. 19, 1904		Feb. 3	Feb. 21	Y-106	133
750113	Jan. 19, 1904		Feb. 3	Feb. 21	Y-106	133
752562	Feb. 16, 1904		Feb. 3	Feb. 21	Y-106	133
752947	Feb. 23, 1904		Feb. 3	Feb. 21	Y-106	133
753657	Mar. 1, 1904		Feb. 3	Feb. 21	Y-106	133
753659	Mar. 1, 1904		Feb. 3	Feb. 21	Y-106	133
754264	Mar. 8, 1904		Feb. 3	Feb. 21	Y-106	133
754315	Mar. 8, 1904		Feb. 3	Feb. 21	Y-106	133
754856	Mar. 15, 1904		Feb. 3	Feb. 21	Y-106	133
755428	Mar. 22, 1904		Feb. 3	Feb. 21	Y-106	133
756171	Mar. 29, 1904		Feb. 3	Feb. 21	Y-106	133
756571	Apr. 5, 1904		Feb. 3	Feb. 21	Y-106	133
756759	Apr. 5, 1904		Feb. 3	Feb. 21	Y-106	133
759716	May 10, 1904		Feb. 3	Feb. 21	Y-106	133
760817	May 24, 1904		Feb. 3	Feb. 21	Y-106	133
761007	May 24, 1904		Feb. 3	Feb. 21	Y-106	133
763233	June 21, 1904		Feb. 3	Feb. 21	Y-106	133
765079	July 12, 1904		Feb. 3	Feb. 21	Y-106	133
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765590	July 19, 1904		Feb. 3	Feb. 21	Y-106	133
765597	July 19, 1904		Feb. 3	Feb. 21	Y-106	133
767259	Aug. 9, 1904		Feb. 3	Feb. 21	Y-106	133
770177	Sept. 13, 1904		Feb. 3	Feb. 21	Y-106	133
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772775	Oct. 18, 1904		Feb. 3	Feb. 21	Y-106	133
777323	Dec. 13, 1904		Feb. 3	Feb. 21	Y-106	133
778175	Dec. 20, 1904		Feb. 3	Feb. 21	Y-106	133
778656	Dec. 27, 1904		Feb. 3	Feb. 21	Y-106	133
778725	Dec. 27, 1904		Feb. 3	Feb. 21	Y-106	133
778752	Dec. 27, 1904		Feb. 3	Feb. 21	Y-106	133
778772	Dec. 27, 1904		Feb. 3	Feb. 21	Y-106	133
779825	Jan. 10, 1905		Feb. 3	Feb. 21	Y-106	133
779860	Jan. 10, 1905		Feb. 3	Feb. 21	Y-106	133
780404	Jan. 17, 1905		Feb. 3	Feb. 21	Y-106	133
780886	Jan. 24, 1905		Feb. 3	Feb. 21	Y-106	133
785003	Mar. 14, 1905		Feb. 3	Feb. 21	Y-106	133
786085	Mar. 28, 1905		Feb. 3	Feb. 21	Y-106	133
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787767	Apr. 18, 1905		Feb. 3	Feb. 21	Y-106	133
787768	Apr. 18, 1905		Feb. 3	Feb. 21	Y-106	133
787824	Apr. 18, 1905		Feb. 3	Feb. 21	Y-106	133
787859	Apr. 18, 1905		Feb. 3	Feb. 21	Y-106	133
789096	May 2, 1905		Feb. 3	Feb. 21	Y-106	133
790167	May 16, 1905		Feb. 3	Feb. 21	Y-106	133
791869	June 6, 1905		Feb. 3	Feb. 21	Y-106	133
792421	June 13, 1905		Feb. 3	Feb. 21	Y-106	133
793558	June 27, 1905		Feb. 3	Feb. 21	Y-106	133
793559	June 27, 1905		Feb. 3	Feb. 21	Y-106	133
793610	June 27, 1905		Feb. 3	Feb. 21	Y-106	133
794049	July 4, 1905		Feb. 3	Feb. 21	Y-106	133
794050	July 4, 1905		Feb. 3	Feb. 21	Y-106	133

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795751	July 25, 1905		Feb. 3	Feb. 21	Y-106	133
795755	July 25, 1905		Feb. 3	Feb. 21	Y-106	133
796393	Aug. 1, 1905		Feb. 3	Feb. 21	Y-106	133
798077	Aug. 29, 1905		Feb. 3	Feb. 21	Y-106	133
798098	Aug. 29, 1905		Feb. 3	Feb. 21	Y-106	133
798103	Aug. 29, 1905		Feb. 3	Feb. 21	Y-106	133
798104	Aug. 29, 1905		Feb. 3	Feb. 21	Y-106	133
799058	Sept. 12, 1905		Feb. 3	Feb. 21	Y-106	133
806053	Nov. 28, 1905		Feb. 3	Feb. 21	Y-106	133
806077	Nov. 28, 1905		Feb. 3	Feb. 21	Y-106	133
809892	Jan. 9, 1906		Feb. 3	Feb. 21	Y-106	133
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811471	Jan. 30, 1906		Feb. 3	Feb. 21	Y-106	133
812098	Feb. 6, 1906		Feb. 3	Feb. 21	Y-106	133
814137	Mar. 6, 1906		Feb. 3	Feb. 21	Y-106	133
815193	Mar. 13, 1906		Feb. 3	Feb. 21	Y-106	133
818336	Apr. 17, 1906		Feb. 3	Feb. 21	Y-106	133
818341	Apr. 17, 1906		Feb. 3	Feb. 21	Y-106	133
818992	Apr. 24, 1906		Feb. 3	Feb. 21	Y-106	133
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820900	May 15, 1906		Feb. 3	Feb. 21	Y-106	133
821452	May 22, 1906		Feb. 3	Feb. 21	Y-106	133
821457	May 27, 1906		Feb. 3	Feb. 21	Y-106	133
826428	July 17, 1906		Feb. 3	Feb. 21	Y-106	133
828741	Aug. 14, 1906		Feb. 3	Feb. 21	Y-106	133
828759	Aug. 14, 1906		Feb. 3	Feb. 21	Y-106	133
828778	Aug. 14, 1906		Feb. 3	Feb. 21	Y-106	133
831002	Sept. 11, 1906		Feb. 3	Feb. 21	Y-106	133
833602	Oct. 16, 1906		Feb. 3	Feb. 21	Y-106	133
833605	Oct. 16, 1906		Feb. 3	Feb. 21	Y-106	133
833654	Oct. 16, 1906		Feb. 3	Feb. 21	Y-106	133
833666	Oct. 16, 1906		Feb. 3	Feb. 21	Y-106	133
835462	Nov. 6, 1906		Feb. 3	Feb. 21	Y-106	133
837730	Dec. 4, 1906		Feb. 3	Feb. 21	Y-106	133
837775	Dec. 4, 1906		Feb. 3	Feb. 21	Y-106	133
837777	Dec. 4, 1906		Feb. 3	Feb. 21	Y-106	133
837840	Dec. 4, 1906		Feb. 3	Feb. 21	Y-106	133
840419	Jan. 1, 1907		Feb. 3	Feb. 21	Y-106	133
843566	Feb. 5, 1907		Feb. 3	Feb. 21	Y-106	133
844914	Feb. 19, 1907		Feb. 3	Feb. 21	Y-106	133
845129	Feb. 26, 1907		Feb. 3	Feb. 21	Y-106	133
855248	May 28, 1907		Feb. 3	Feb. 21	Y-106	133
856811	June 11, 1907		Feb. 3	Feb. 21	Y-106	133
860480	July 16, 1907		Feb. 3	Feb. 21	Y-106	133
860575	July 16, 1907		Feb. 3	Feb. 21	Y-106	133
861014	July 23, 1907		Feb. 3	Feb. 21	Y-106	133
863396	Aug. 13, 1907		Feb. 3	Feb. 21	Y-106	133
863401	Aug. 13, 1907		Feb. 3	Feb. 21	Y-106	133
863761	Aug. 20, 1907		Feb. 3	Feb. 21	Y-106	133
867167	Sept. 24, 1907		Feb. 3	Feb. 21	Y-106	133
868399	Oct. 15, 1907		Feb. 3	Feb. 21	Y-106	133
869655	Oct. 29, 1907		Feb. 3	Feb. 21	Y-106	133
871600	Nov. 19, 1907		Feb. 3	Feb. 21	Y-106	133
871629	Nov. 19, 1907		Feb. 3	Feb. 21	Y-106	133
872181	Nov. 26, 1907		Feb. 3	Feb. 21	Y-106	133
876190	Jan. 7, 1908		Feb. 3	Feb. 21	Y-106	133
876679	Jan. 14, 1908		Feb. 3	Feb. 21	Y-106	133
876810	Jan. 14, 1908		Feb. 3	Feb. 21	Y-106	133
876839	Jan. 14, 1908		Feb. 3	Feb. 21	Y-106	133
879030	Feb. 11, 1908		Feb. 3	Feb. 21	Y-106	133
879053	Feb. 11, 1908		Feb. 3	Feb. 21	Y-106	133
883651	Mar. 31, 1908		Feb. 3	Feb. 21	Y-106	133

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885566	Apr. 21, 1908		Feb. 3	Feb. 21	Y-106	133
885567	Apr. 21, 1908		Feb. 3	Feb. 21	Y-106	133
885577	Apr. 21, 1908		Feb. 3	Feb. 21	Y-106	133
886815	May 5, 1908		Feb. 3	Feb. 21	Y-106	133
889059	May 26, 1908		Feb. 3	Feb. 21	Y-106	133
891708	June 23, 1908		Feb. 3	Feb. 21	Y-106	133
892899	July 7, 1908		Feb. 3	Feb. 21	Y-106	133
892900	July 7, 1908		Feb. 3	Feb. 21	Y-106	133
893384	July 14, 1908		Feb. 3	Feb. 21	Y-106	133
893412	July 14, 1908		Feb. 3	Feb. 21	Y-106	133
893507	July 14, 1908		Feb. 3	Feb. 21	Y-106	133
893508	July 14, 1908		Feb. 3	Feb. 21	Y-106	133
896610	Aug. 18, 1908		Feb. 3	Feb. 21	Y-106	133
898307	Sept. 8, 1908		Feb. 3	Feb. 21	Y-106	133
903047	Nov. 3, 1908		Feb. 3	Feb. 21	Y-106	133
906367	Dec. 8, 1908		Feb. 3	Feb. 21	Y-106	133
909800	Jan. 12, 1909		Feb. 3	Feb. 21	Y-106	133
910839	Jan. 26, 1909		Feb. 3	Feb. 21	Y-106	133
910858	Jan. 26, 1909		Feb. 3	Feb. 21	Y-106	133
910889	Jan. 26, 1909		Feb. 3	Feb. 21	Y-106	133
911468	Feb. 2, 1909		Feb. 3	Feb. 21	Y-106	133
913633	Feb. 23, 1909		Feb. 3	Feb. 21	Y-106	133
913634	Feb. 23, 1909		Feb. 3	Feb. 21	Y-106	133
914144	Mar. 2, 1909		Feb. 3	Feb. 21	Y-106	133
914146	Mar. 2, 1909		Feb. 3	Feb. 21	Y-106	133
921546	May 11, 1909		Feb. 3	Feb. 21	Y-106	133
922282	May 18, 1909		Feb. 3	Feb. 21	Y-106	133
923012	May 25, 1909		Feb. 3	Feb. 21	Y-106	133
925917	June 22, 1909		Feb. 3	Feb. 21	Y-106	133
926023	June 22, 1909		Feb. 3	Feb. 21	Y-106	133
929442	July 27, 1909		Feb. 3	Feb. 21	Y-106	133
929443	July 27, 1909		Feb. 3	Feb. 21	Y-106	133
931598	Aug. 17, 1909		Feb. 3	Feb. 21	Y-106	133
931618	Aug. 17, 1909		Feb. 3	Feb. 21	Y-106	133
932266	Aug. 24, 1909		Feb. 3	Feb. 21	Y-106	133
932289	Aug. 24, 1909		Feb. 3	Feb. 21	Y-106	133
932290	Aug. 24, 1909		Feb. 3	Feb. 21	Y-106	133
935370	Sept. 28, 1909		Feb. 3	Feb. 21	Y-106	133
935371	Sept. 28, 1909		Feb. 3	Feb. 21	Y-106	133
936951	Oct. 12, 1909		Feb. 3	Feb. 21	Y-106	133
941320	Nov. 23, 1909		Feb. 3	Feb. 21	Y-106	133
943560	Dec. 14, 1909		Feb. 3	Feb. 21	Y-106	133
943561	Dec. 14, 1909		Feb. 3	Feb. 21	Y-106	133
948241	Feb. 1, 1910		Feb. 3	Feb. 21	Y-106	133
949592	Feb. 15, 1910		Feb. 3	Feb. 21	Y-106	133
955080	Apr. 12, 1910		Feb. 3	Feb. 21	Y-106	133
955105	Apr. 12, 1910		Feb. 3	Feb. 21	Y-106	133
955410	Apr. 19, 1910		Feb. 3	Feb. 21	Y-106	133
957683	May 10, 1910		Feb. 3	Feb. 21	Y-106	133
957842	May 10, 1910		Feb. 3	Feb. 21	Y-106	133
957843	May 10, 1910		Feb. 3	Feb. 21	Y-106	133
961612	June 14, 1910		Feb. 3	Feb. 21	Y-106	133
963656	July 5, 1910		Feb. 3	Feb. 21	Y-106	133
968376	Aug. 23, 1910		Feb. 3	Feb. 21	Y-106	133
970340	Sept. 13, 1910		Feb. 3	Feb. 21	Y-106	133
970878	Sept. 20, 1910		Feb. 3	Feb. 21	Y-106	133
971501	Sept. 27, 1910		Feb. 3	Feb. 21	Y-106	133
983834	Feb. 7, 1911		Feb. 3	Feb. 21	Y-106	133
984312	Feb. 14, 1911		Feb. 3	Feb. 21	Y-106	133
990173	Apr. 18, 1911		Feb. 3	Feb. 21	Y-106	133
990191	Apr. 18, 1911		Feb. 3	Feb. 21	Y-106	133
990192	Apr. 18, 1911		Feb. 3	Feb. 21	Y-106	133
992567	May 16, 1911		Feb. 3	Feb. 21	Y-106	133
993144	May 23, 1911		Feb. 3	Feb. 21	Y-106	133
995936	June 20, 1911		Feb. 3	Feb. 21	Y-106	133

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999025	July 25, 1911		Feb. 3	Feb. 21	Y-106	133
999055	July 25, 1911		Feb. 3	Feb. 21	Y-106	133
1001408	Aug. 22, 1911		Feb. 3	Feb. 21	Y-106	133
1002066	Aug. 29, 1911		Feb. 3	Feb. 21	Y-106	133
1003288	Sept. 12, 1911		Feb. 3	Feb. 21	Y-106	133
1003289	Sept. 12, 1911		Feb. 3	Feb. 21	Y-106	133
1004433	Sept. 26, 1911		Feb. 3	Feb. 21	Y-106	133
1006206	Oct. 17, 1911		Feb. 3	Feb. 21	Y-106	133
1010919	Dec. 5, 1911		Feb. 3	Feb. 21	Y-106	133
1010930	Dec. 5, 1911		Feb. 3	Feb. 21	Y-106	133
1011068	Dec. 5, 1911		Feb. 3	Feb. 21	Y-106	133
1011084	Dec. 5, 1911		Feb. 3	Feb. 21	Y-106	133
1011085	Dec. 5, 1911		Feb. 3	Feb. 21	Y-106	133
1012363	Dec. 19, 1911		Feb. 3	Feb. 21	Y-106	133
1016004	Feb. 6, 1912		Feb. 3	Feb. 21	Y-106	133
1018836	Feb. 27, 1912		Feb. 3	Feb. 21	Y-106	133
1018837	Feb. 27, 1912		Feb. 3	Feb. 21	Y-106	133
1022351	Apr. 2, 1912		Feb. 3	Feb. 21	Y-106	133
1025652	May 7, 1912		Feb. 3	Feb. 21	Y-106	133
1026418	May 14, 1912		Feb. 3	Feb. 21	Y-106	133
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1026420	May 14, 1912		Feb. 3	Feb. 21	Y-106	133
1026557	May 14, 1912		Feb. 3	Feb. 21	Y-106	133
1026588	May 14, 1912		Feb. 3	Feb. 21	Y-106	133
1026621	May 14, 1912		Feb. 3	Feb. 21	Y-106	133
1027312	May 21, 1912		Feb. 3	Feb. 21	Y-106	133
1027836	May 28, 1912		Feb. 3	Feb. 21	Y-106	133
1027908	May 28, 1912		Feb. 3	Feb. 21	Y-106	133
1027953	May 28, 1912		Feb. 3	Feb. 21	Y-106	133
1028045	May 28, 1912		Feb. 3	Feb. 21	Y-106	133
1029528	June 11, 1912		Feb. 3	Feb. 21	Y-106	133
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1032216	July 9, 1912		Feb. 3	Feb. 21	Y-106	133
1032822	July 16, 1912		Feb. 3	Feb. 21	Y-106	133
1034898	Aug. 6, 1912		Feb. 3	Feb. 21	Y-106	133
1035023	Aug. 6, 1912		Feb. 3	Feb. 21	Y-106	133
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1042679	Oct. 29, 1912		Feb. 3	Feb. 21	Y-106	133
1043798	Nov. 12, 1912		Feb. 3	Feb. 21	Y-106	133
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1044675	Nov. 19, 1912		Feb. 3	Feb. 21	Y-106	133
1045139	Nov. 26, 1912		Feb. 3	Feb. 21	Y-106	133
1045895	Dec. 3, 1912		Feb. 3	Feb. 21	Y-106	133
1047812	Dec. 17, 1912		Feb. 3	Feb. 21	Y-106	133
1047813	Dec. 17, 1912		Feb. 3	Feb. 21	Y-106	133
1052507	Feb. 11, 1913		Feb. 3	Feb. 21	Y-106	133
1053951	Feb. 18, 1913		Feb. 3	Feb. 21	Y-106	133
1053952	Feb. 18, 1913		Feb. 3	Feb. 21	Y-106	133
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1057243	Mar. 25, 1913		Feb. 3	Feb. 21	Y-106	133
1058604	Apr. 8, 1913		Feb. 3	Feb. 21	Y-106	133
1061714	May 13, 1913		Feb. 3	Feb. 21	Y-106	133
1061725	May 13, 1913		Feb. 3	Feb. 21	Y-106	133
1062973	May 27, 1913		Feb. 3	Feb. 21	Y-106	133
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1062998	May 27, 1913		Feb. 3	Feb. 21	Y-106	133
1062999	May 27, 1913		Feb. 3	Feb. 21	Y-106	133
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1063004	May 27, 1913		Feb. 3	Feb. 21	Y-106	133
1063007	May 27, 1913		Feb. 3	Feb. 21	Y-106	133
1063172	May 27, 1913		Feb. 3	Feb. 21	Y-106	133

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1063173	May 27, 1913		Feb. 3	Feb. 21	Y-106	133
1065102	June 17, 1913		Feb. 3	Feb. 21	Y-106	133
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1067046	July 8, 1913		Feb. 3	Feb. 21	Y-106	133
1068966	July 29, 1913		Feb. 3	Feb. 21	Y-106	133
1068967	July 29, 1913		Feb. 3	Feb. 21	Y-106	133
1068968	July 29, 1913		Feb. 3	Feb. 21	Y-106	133
1068969	July 29, 1913		Feb. 3	Feb. 21	Y-106	133
1070294	Aug. 12, 1913		Feb. 3	Feb. 21	Y-106	133
1071274	Aug. 26, 1913		Feb. 3	Feb. 21	Y-106	133
1073902	Sept. 23, 1913		Feb. 3	Feb. 21	Y-106	133
1073903	Sept. 23, 1913		Feb. 3	Feb. 21	Y-106	133
1073904	Sept. 23, 1913		Feb. 3	Feb. 21	Y-106	133
1073905	Sept. 23, 1913		Feb. 3	Feb. 21	Y-106	133
1073951	Sept. 23, 1913		Feb. 3	Feb. 21	Y-106	133
1075085	Oct. 7, 1913		Feb. 3	Feb. 21	Y-106	133
075305	Oct. 7, 1913		Feb. 3	Feb. 21	Y-106	133
076756	Oct. 28, 1913		Feb. 3	Feb. 21	Y-106	133
077034	Oct. 28, 1913		Feb. 3	Feb. 21	Y-106	133
1077115	Oct. 28, 1913		Feb. 3	Feb. 21	Y-106	133
1077655	Nov. 4, 1913		Feb. 3	Feb. 21	Y-106	133
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1083051	Dec. 30, 1913		Feb. 3	Feb. 21	Y-106	133
1083110	Dec. 30, 1913		Feb. 3	Feb. 21	Y-106	133
1083164	Dec. 30, 1913		Feb. 3	Feb. 21	Y-106	133
1083165	Dec. 30, 1913		Feb. 3	Feb. 21	Y-106	133
1083585	Jan. 6, 1914		Feb. 3	Feb. 21	Y-106	133
1086123	Feb. 3, 1914		Feb. 3	Feb. 21	Y-106	133
1086130	Feb. 3, 1914		Feb. 3	Feb. 21	Y-106	133
1089185	Mar. 3, 1914		Feb. 3	Feb. 21	Y-106	133
1089221	Mar. 3, 1914		Feb. 3	Feb. 21	Y-106	133
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1090123	Mar. 10, 1914		Feb. 3	Feb. 21	Y-106	133
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1091276	Mar. 24, 1914		Feb. 3	Feb. 21	Y-106	133
1092542	Apr. 7, 1914		Feb. 3	Feb. 21	Y-106	133
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1094182	Apr. 21, 1914		Feb. 3	Feb. 21	Y-106	133
1094194	Apr. 21, 1914		Feb. 3	Feb. 21	Y-106	133
1095425	May 5, 1914		Feb. 3	Feb. 21	Y-106	133
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1095793	May 5, 1914		Feb. 3	Feb. 21	Y-106	133
1098145	May 26, 1914		Feb. 3	Feb. 21	Y-106	133
1098858	June 2, 1914		Feb. 3	Feb. 21	Y-106	133
1098859	June 2, 1914		Feb. 3	Feb. 21	Y-106	133
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1102655	July 7, 1914		Feb. 3	Feb. 21	Y-106	133
1102715	July 7, 1914		Feb. 3	Feb. 21	Y-106	133
1102716	July 7, 1914		Feb. 3	Feb. 21	Y-106	133
1104611	July 21, 1914		Feb. 3	Feb. 21	Y-106	133
1106919	Aug. 11, 1914		Feb. 3	Feb. 21	Y-106	133
1106970	Aug. 11, 1914		Feb. 3	Feb. 21	Y-106	133
1107107	Aug. 11, 1914		Feb. 3	Feb. 21	Y-106	133
1113096	Oct. 6, 1914		Feb. 3	Feb. 21	Y-106	133
1113097	Oct. 6, 1914		Feb. 3	Feb. 21	Y-106	133
1115776	Nov. 3, 1914		Feb. 3	Feb. 21	Y-106	133
1118628	Nov. 24, 1914		Feb. 3	Feb. 21	Y-106	133
1121208	Dec. 15, 1914		Feb. 3	Feb. 21	Y-106	133

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1122790	Dec. 29, 1914		Feb. 3	Feb. 21	Y-106	133
1126371	Jan. 26, 1915		Feb. 3	Feb. 21	Y-106	133
1126475	Jan. 26, 1915		Feb. 3	Feb. 21	Y-106	133
1126627	Jan. 26, 1915		Feb. 3	Feb. 21	Y-106	133
1126656	Jan. 26, 1915		Feb. 3	Feb. 21	Y-106	133
1128504	Feb. 16, 1915		Feb. 3	Feb. 21	Y-106	133
1128836	Feb. 16, 1915		Feb. 3	Feb. 21	Y-106	133
1128843	Feb. 16, 1915		Feb. 3	Feb. 21	Y-106	133
1133031	Mar. 23, 1915		Feb. 3	Feb. 21	Y-106	133
1133081	Mar. 23, 1915		Feb. 3	Feb. 21	Y-106	133
1133086	Mar. 23, 1915		Feb. 3	Feb. 21	Y-106	133
1133087	Mar. 23, 1915		Feb. 3	Feb. 21	Y-106	133
1133108	Mar. 23, 1915		Feb. 3	Feb. 21	Y-106	133
1148570	Aug. 3, 1915		Feb. 3	Feb. 21	Y-106	133
1149510	Aug. 10, 1915		Feb. 3	Feb. 21	Y-106	133
1150863	Aug. 24, 1915		Feb. 3	Feb. 21	Y-106	133
1152930	Sept. 7, 1915		Feb. 3	Feb. 21	Y-106	133
1156048	Oct. 12, 1915		Feb. 3	Feb. 21	Y-106	133
1157668	Oct. 26, 1915		Feb. 3	Feb. 21	Y-106	133
1157669	Oct. 26, 1915		Feb. 3	Feb. 21	Y-106	133
1163531	Dec. 28, 1915		Feb. 3	Feb. 21	Y-106	133
1166160	Dec. 28, 1915		Feb. 3	Feb. 21	Y-106	133
1166790	Jan. 4, 1916		Feb. 3	Feb. 21	Y-106	133
1166808	Jan. 4, 1916		Feb. 3	Feb. 21	Y-106	133
1168070	Jan. 11, 1916		Feb. 3	Feb. 21	Y-106	133
1169404	Jan. 25, 1916		Feb. 3	Feb. 21	Y-106	133
1173532	Feb. 29, 1916		Feb. 3	Feb. 21	Y-106	133
1173550	Feb. 29, 1916		Feb. 3	Feb. 21	Y-106	133
1175693	Mar. 14, 1916		Feb. 3	Feb. 21	Y-106	133
1176363	Mar. 21, 1916		Feb. 3	Feb. 21	Y-106	133
1185943	June 6, 1916		Feb. 3	Feb. 21	Y-106	133
1188530	June 27, 1916		Feb. 3	Feb. 21	Y-106	133
1188543	June 27, 1916		Feb. 3	Feb. 21	Y-106	133
1188544	June 27, 1916		Feb. 3	Feb. 21	Y-106	133
1188545	June 27, 1916		Feb. 3	Feb. 21	Y-106	133
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1189110	June 27, 1916		Dec. 23 Feb. 3	Jan. 6 Feb. 21	E-106 Y-106	94 133
			1919.			
1191480	July 18, 1916		Feb. 3	Feb. 21	Y-106	133
1191799	July 18, 1916		Feb. 3	Feb. 21	Y-106	133
1192310	July 25, 1916		Feb. 3	Feb. 21	Y-106	133
1196101	Aug. 29, 1916		Feb. 3	Feb. 21	Y-106	133
1196127	Aug. 29, 1916		Feb. 3	Feb. 21	Y-106	133
1200805	Oct. 10, 1916		Feb. 3	Feb. 21	Y-106	133
1200806	Oct. 10, 1916		Feb. 3	Feb. 21	Y-106	133
1200848	Oct. 10, 1916		Feb. 3	Feb. 21	Y-106	133
1200886	Oct. 10, 1916		Feb. 3	Feb. 21	Y-106	133
1201850	Oct. 17, 1916		Feb. 3	Feb. 21	Y-106	133
1201968	Oct. 17, 1916		Feb. 3	Feb. 21	Y-106	133
1202260	Oct. 24, 1916		Feb. 3	Feb. 21	Y-106	133
1202282	Oct. 24, 1916		Feb. 3	Feb. 21	Y-106	133
1202995	Oct. 31, 1916		Feb. 3	Feb. 21	Y-106	133
1203069	Oct. 31, 1916		Feb. 3	Feb. 21	Y-106	133
1204639	Nov. 14, 1916		Feb. 3	Feb. 21	Y-106	133
1207706	Dec. 12, 1916		Feb. 3	Feb. 21	Y-106	133
1207707	Dec. 12, 1916		Feb. 3	Feb. 21	Y-106	133
1207762	Dec. 12, 1916		Feb. 3	Feb. 21	Y-106	133
1207802	Dec. 12, 1916		Feb. 3	Feb. 21	Y-106	133
1207968	Dec. 12, 1916		Feb. 3	Feb. 21	Y-106	133
1207981	Dec. 12, 1916		Feb. 3	Feb. 21	Y-106	133
1207982	Dec. 12, 1916		Feb. 3	Feb. 21	Y-106	133
1211393	Jan. 9, 1917		Feb. 3	Feb. 21	Y-106	133
1211394	Jan. 9, 1917		Feb. 3	Feb. 21	Y-106	133
1215334	Feb. 13, 1917		Feb. 3	Feb. 21	Y-106	133

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1215335	Feb. 13, 1917		Feb. 3	Feb. 21	Y-106	133
1215396	Feb. 13, 1917		Feb. 3	Feb. 21	Y-106	133
1216059	Feb. 13, 1917		Feb. 3	Feb. 21	Y-106	133
1216134	Feb. 13, 1917		Feb. 3	Feb. 21	Y-106	133
			1918.			
1216612	Feb. 20, 1917		Dec. 23	Jan. 6	E-106	94
			1919.			
			Feb. 23	Feb. 21	Y-106	133
1216921	Feb. 20, 1917		Feb. 3	Feb. 21	Y-106	133
1216933	Feb. 20, 1917		Feb. 3	Feb. 21	Y-106	133
1220248	Mar. 27, 1917		Feb. 3	Feb. 21	Y-106	133
1221382	Apr. 3, 1917		Feb. 3	Feb. 21	Y-106	133
1225755	May 15, 1917		Feb. 3	Feb. 21	Y-106	133
1232551	July 10, 1917		Feb. 3	Feb. 21	Y-106	133
1232552	July 10, 1917		Feb. 3	Feb. 21	Y-106	133
1232620	July 10, 1917		Feb. 3	Feb. 21	Y-106	133
1237405	Aug. 21, 1917		Feb. 3	Feb. 21	Y-106	133
1237828	Aug. 21, 1917		Feb. 3	Feb. 21	Y-106	133
1238930	Sept. 4, 1917		Feb. 3	Feb. 21	Y-106	133
1238932	Sept. 4, 1917		Feb. 3	Feb. 21	Y-106	133
1243382	Oct. 16, 1917		Feb. 3	Feb. 21	Y-106	133
1244580	Oct. 30, 1917		Feb. 3	Feb. 21	Y-106	133
1248888	Dec. 4, 1917		Feb. 3	Feb. 21	Y-106	133
1253252	Jan. 15, 1918		Feb. 3	Feb. 21	Y-106	133
1254364	Jan. 22, 1918		Feb. 3	Feb. 21	Y-106	133
1256032	Feb. 12, 1918		Feb. 3	Feb. 21	Y-106	133
1258529	Mar. 5, 1918		Feb. 3	Feb. 21	Y-106	133
1261900	Apr. 9, 1918		Feb. 3	Feb. 21	Y-106	133
1264604	Apr. 30, 1918		Feb. 3	Feb. 21	Y-106	133
1266896	May 21, 1918		Feb. 3	Feb. 21	Y-106	133
1271013	July 2, 1918		Feb. 3	Feb. 21	Y-106	133
1274503	Aug. 6, 1918		Feb. 3	Feb. 21	Y-106	133
1278229	Sept. 10, 1918		Feb. 3	Feb. 21	Y-106	133
1278580	Sept. 10, 1918		Feb. 3	Feb. 21	Y-106	133
1280648	Oct. 8, 1918		Feb. 3	Feb. 21	Y-106	133
1280650	Oct. 8, 1918		Feb. 3	Feb. 21	Y-106	133
1281494	Oct. 15, 1918		Feb. 3	Feb. 21	Y-106	133
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3559	Jan. 21, 1915		Feb. 3	Feb. 21	Y-106	133
10566	May 8, 1919		Feb. 3	Feb. 21	Y-106	133
10627	Feb. 25, 1915		Feb. 3	Feb. 21	Y-106	133
93882	Apr. 27, 1916		Feb. 3	Feb. 21	Y-106	133
118286	Sept. 2, 1916		Feb. 3	Feb. 21	Y-106	133
138122	Dec. 24, 1918		Feb. 3	Feb. 21	Y-106	133
165001	Nov. 30, 1918		Feb. 3	Feb. 21	Y-106	133
165000	Apr. 27, 1917		Feb. 3	Feb. 21	Y-106	133
192923	Sept. 24, 1917		Feb. 3	Feb. 21	Y-106	133
192924	Sept. 24, 1917		Feb. 3	Feb. 21	Y-106	133
192925	Sept. 24, 1917		Feb. 3	Feb. 21	Y-106	133
716442	Jan. 22, 1919		Feb. 3	Feb. 21	Y-106	133
720412	Sept. 14, 1912		Feb. 3	Feb. 21	Y-106	133
762246	Nov. 6, 1918		Feb. 3	Feb. 21	Y-106	133
791947	Feb. 2, 1919		Feb. 3	Feb. 21	Y-106	133
804744	Dec. 4, 1913		Feb. 3	Feb. 21	Y-106	133
818087	Feb. 14, 1914		Feb. 3	Feb. 21	Y-106	133
842953	June 4, 1914		Feb. 3	Feb. 21	Y-106	133
842954	June 4, 1914		Feb. 3	Feb. 21	Y-106	133
842956	June 4, 1914		Feb. 3	Feb. 21	Y-106	133
847324	Mar. 23, 1919		Feb. 3	Feb. 21	Y-106	133

Said instrument dated April 10, 1919, also enumerated the following patents:

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				Date of filing or recording.[1]	Book.	Page.
			1919.	1919.		
690804	Jan. 7, 1902	Salt of hexamethylentetramin and quinic acid and process of making same.	Feb. 25	Apr. 9	Z-106	358
691157	Jan. 14, 1902	Trimethyl hexahydrooxybenzylanilin and process of making same.	Feb. 26	Apr. 9	L-106	419
692497	Feb. 4, 1902	Process of making acetl-cellulose.	Feb. 28	Mar. 24	Y-106	249
692656	Feb. 4, 1902	Acidyl derivative of unsymmetrical acetonalkamins and process of making same.	Feb. 25	Apr. 9	Z-106	358
693653	Feb. 18, 1902	Process of dyeing sulfur colors	Mar. 21	Mar. 26	W-106	456
693670	Feb. 18, 1902	Disazo wool dye and process of making same.	Feb. 26	Apr. 9	L-106	419
693941	Feb. 25, 1902	Manufacture of wool paper	Feb. 28	Mar. 24	K-106	367
694149	Feb. 25, 1902	Acidyl dialkylrhodamin and process of making same.	Feb. 26	Apr. 9	L-106	419
695238	Mar. 11, 1902	Orange-red dye and process of making same.	Feb. 26	Apr. 9	L-106	419
697730	Apr. 15, 1902	Isovaleramid derivative and process of making same.	Feb. 26	Apr. 9	L-106	419
697765	Apr. 15, 1902	Red cotton-dye and process of making same.	Mar. 9 Apr. 9	Mar. 26 Apr. 9	K-106 M-106	409 485
698390	Apr. 22, 1902	Method of making magnesium-peroxid compound.	Feb. 28	Mar. 21	K-106	284
698698	Apr. 29, 1902	Ignition material for matches	Feb. 26	Mar. 22	H-106	296
699422	May 6, 1902	Methylene citric acid and process of making same.	Feb. 25	Apr. 9	Z-106	358
699423	May 6, 1902	Dimethylene tartrate and method of making same.	Feb. 25	Apr. 9	Z-106	358
700631	May 20, 1902	Modified milk and process of obtaining same.	Feb. 26	Apr. 9	L-106	419
700670	May 20, 1902	Electrolytic reduction of nitro or other compounds.	Feb. 25	Mar. 22	Y-106	190
700671	May 20, 1902	Reduction of azo compounds	Feb. 24	Mar. 21	Q-106	250
701044	May 27, 1902	Process of making phenylamidsacetonitrile.	Feb. 26	Apr. 9	L-106	419
701051	May 27, 1902	Black sulfur dye and process of making same.	Feb. 26	Apr. 9	L-106	419
701604	June 3, 1902	Process of making cyanids	Feb. 27	Mar. 25	S-106	324
701605	June 3, 1902	Manufacture of colloidal gold	Feb. 23	Mar. 24	T-106	271
701606	June 3, 1902	Manufacture of colloidal silver	Feb. 23	Mar. 24	T-106	271
702357	June 10, 1902	Detonating composition	Feb. 28	Mar. 21	H-106	283
702730	June 17, 1902	Purifying raw indigo	Feb. 26	Apr. 9	L-106	419
703096	June 24, 1902	Process of preparing lithographic printing-plates.	Mar. 1	Mar. 21	G-106	283
703104	June 24, 1902	Chlorinated methyl-ether of menthol.	Mar. 1	Mar. 25	K-106	307
703341	June 24, 1902	Method of impregnating paper or pasteboard.	Feb. 28	Mar. 21	U-106	149
703606	July 1, 1902	Process of utilizing carboniferous colliery waste.	Mar. 1	Mar. 21	H-106	275
704798	July 15, 1902	Blue anthraquinone dye and process of making same.	Feb. 26	Apr. 9	L-106	419
704804	July 15, 1902	Process of making indoxyl, etc.	Feb. 26	Apr. 9	L-106	419
704825	July 15, 1902	Red azo dye	Feb. 25	Mar. 22	H-106	301
704826	July 15, 1902	Red azo dye	Feb. 26	Mar. 22	H-106	301
705545	July 22, 1902	Cineol arsenate and process of making same.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
705667	July 29, 1902	Process of solidifying formaldehyde.	Feb. 25	Mar. 22	K-106	300
705748	July 29, 1902	Manufacture of cellulose products.	Feb. 28	Mar. 22	X-106	317
706411	Aug. 5, 1902	Process of extracting ellagic acid	Feb. 26	Mar. 24	Y-106	278

[1] Date of service on Commissioner of Patents of the United States and of filing for record in the U. S. Patent Office.

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				Date of filing or recording.	Book.	Page.
			1919.	1919.		
706921	Aug. 12, 1902	Process of making bromindigo	Feb. 26	Apr. 9	L-106	419
707270	Aug. 19, 1902	Process of making camphene	Feb. 25	Apr. 9	Z-106	358
707271	Aug. 19, 1902	Process of making camphene	Feb. 25	Apr. 9	Z-106	358
707812	Aug. 26, 1902	Alkoxy-caffein and process of making same.	Feb. 25	Mar. 22	Y-106	199
707813	Aug. 26, 1902	Triphenyl-methane dye and process of making same.	Feb. 25	Mar. 22	Y-106	199
708069	Sept. 2, 1902	Process of staining woods	Feb. 28	Mar. 22	T-106	260
708330	Sept. 2, 1902	Process of obtaining food extracts.	Feb. 28	Mar. 22	R-106	290
708429	Sept. 2, 1902	Process of printing with sulfur dyes.	Feb. 26	Mar. 22	H-106	329
708511	Sept. 9, 1902	Paramethyl-amidophenylglyoxylic acid and process of making same.	Feb. 25	Mar. 22	Y-106	199
708512	Sept. 9, 1902	Diacetyl-diamin and process of making same.	Feb. 25	Mar. 22	Y-106	199
708513	Sept. 9, 1902	Thioxanthin and process of making same.	Feb. 25	Mar. 22	Y-106	199
708823	Sept. 9, 1902	Process of preparing and treating rubber-coated materials.	Feb. 27	Mar. 25	P-106	372
709321	Sept. 16, 1902	Process of separating sulfonic acids.	Feb. 28	Mar. 22	X-106	339
710060	Sept. 30, 1902	Capsule for medicines	Feb. 26	Mar. 22	R-106	296
710233	Sept. 30, 1902	Printing color for lithographic or metallographic printing.	Feb. 28	Mar. 25	T-106	314
710493	Oct. 7, 1902	Production of the metals of the alkalies.	Feb. 26	Mar. 22	J-106	269
710648	Oct. 7, 1902	Process of making acetyl chlorid.	Feb. 28	Mar. 25	U-106	304
710766	Oct. 7, 1902	Blue-sulfur dye and process of making same.	Feb. 26	Apr. 9	L-106	419
710800	Oct. 7, 1902	Process of dyeing indigo	Feb. 26	Apr. 9	L-106	419
710819	Oct. 7, 1902	Manufacture of filaments from cellulose solutions.	Feb. 28	Mar. 25	V-106	376
711310	Oct. 14, 1902	Polyamidoanthraquinone sulfoacid and process of making same.	Feb. 26	Apr. 9	L-106	419
711572	Oct. 21, 1902	Oxalic-acid ester of paracresol and process of making same.	Feb. 28	Mar. 21	G-106	250
712246	Oct. 28, 1902	Process of making formylmethylanthranilic acid.	Feb. 26	Apr. 9	L-106	419
712274	Oct. 28, 1902	Process of making milk extract	Feb. 26	Mar. 22	J-106	249
712421	Oct. 28, 1902	Yellow to red acridin dye and process of making same.	Feb. 26	Apr. 9	L-106	419
712798	Nov. 4, 1902	Process of making indoxyl	Feb. 26	Apr. 9	L-106	419
712891	Nov. 4, 1902	Apparatus for freeing ammonia from gas liquor.	Feb. 25	Mar. 22	Y-106	198
713190	Nov. 11, 1902	Manufacture of insulating or protective compounds.	Feb. 25	Mar. 22	P-106	305
713432	Nov. 11, 1902	Process of making polyamidoanthraquinone-sulfoacids.	Feb. 26	Apr. 9	L-106	419
713474	Nov. 11, 1902	Sensitized material and process of making same.	Feb. 28	Mar. 24	Q-106	340
713999	Nov. 18, 1902	Process of manufacturing artificial horsehair.	Feb. 28	Mar. 25	Q-106	347
714000	Nov. 18, 1902	Process of making indoxyl	Feb. 26	Apr. 9	L-106	419
714347	Nov. 25, 1902	Process of making oxalates	Feb. 28	Mar. 22	S-106	287
714428	Nov. 25, 1902	Process of reducing aromatic nitro compounds.	Feb. 28	Mar 25	U-106	300
714454	Nov. 25, 1902	Process of making acids of the fatty-acid series.	Feb. 28	Mar. 25	I-106	372
714578	Nov. 25, 1902	Process of producing peat briquets.	Feb. 28	Mar. 24	Y-106	268
714882	Dec. 2, 1902	Monoazo dye and process of making same.	Mar. 22	Mar. 26	T-106	362
714883	Dec. 2, 1902	Orange-yellow azo dye and process of making same.	Feb. 26	Apr. 9	L-106	419
714931	Dec. 2, 1902	Hydrobenzaldehyde and process of making same.	Feb. 26	Apr. 9	L-106	419
715462	Dec. 9, 1902	Method of manufacturing molded elastic goods.	Feb. 28	Mar. 26	L-106	327
715748	Dec. 16, 1902	Process of making acetic acid	Feb. 25	Mar. 21	Z-106	134
715896	Dec. 16, 1902	Process of making ionone	Mar. 1	Mar. 24	X-106	404

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				Date of filing or recording.	Book.	Page.
			1919.	1919.		
716008	Dec. 16, 1902	Working zinc and substances containing silicic acid in electric furnaces.	Feb. 25	Mar. 22	U-106	195
716306	Dec. 16, 1902	Process of electrolytically preparing metals and alloys for lithographic purposes.	Feb. 28	Mar. 21	G-106	282
716776	Dec. 23, 1902	Salt of yohimbine	Feb. 25	Mar. 22	Y-106	245
717550	Jan. 6, 1903	Process of making black polyazo dyes.	Feb. 26	Mar. 22	H-106	301
717654	Jan. 6, 1903	Gas-analysis apparatus	Feb. 25	Mar. 21	I-106	237
718249	Jan. 13, 1903	Electrolytic apparatus	Feb. 26	Mar. 22	I-106	290
718312	Jan. 13, 1903	Silver bromid gelatin and process of making same.	Mar. 1	Mar. 21	H-106	266
718335	Jan. 13, 1903	Process of cementation	Feb. 28	Mar. 22	Y-106	225
718397	Jan. 13, 1903	Filter press	Feb. 28	Mar. 22	Y-106	241
719014	Jan. 27, 1903	Process of purifying fats	Feb. 26	Mar. 24	U-106	237
719074	Jan. 27, 1903	Metal preserving and cleansing compound.	Feb. 25	Mar. 21	Y-106	172
720157	Feb. 10, 1903	Process of making decolorized tannin extracts.	Feb. 26	Mar. 22	Z-106	169
720186	Feb. 10, 1903	Apparatus for electro-endosmetically freeing materials from fluids.	Feb. 28	Mar. 21	S-106	237
720402	Feb. 10, 1903	Method of producing cyanogen compounds.	Feb. 24	Mar. 22	G-106	298
720627	Feb. 17, 1903	Process of producing linoleum having patterns resembling wood or fabric.	Feb. 28	Mar. 25	X-106	435
720848	Feb. 17, 1903	Process of producing artificial stone.	Feb. 28	Mar. 25	X-106	430
720920	Feb. 17, 1903	Alkylated auramins and process of making same.	Feb. 26	Apr. 9	L-106	419
721171	Feb. 24, 1903	Wrapping material for preventing tarnishing of metal articles.	Feb. 28	Mar. 24	V-106	313
721282	Feb. 24, 1903	Process of treating molten iron	Feb. 28	Mar. 21	Q-106	257
721638	Feb. 24, 1903	Art of producing and refining metals, metalloids, and alloys.	Feb. 28	Mar. 22	X-106	351
721814	Mar. 3, 1903	Method of producing alloys of aluminum.	Feb. 27	Mar. 21	I-106	203
721852	Mar. 3, 1903	Process of making glue	Feb. 25	Mar. 22	Y-106	210
721961	Mar. 3, 1903	Process of halogenizing organic fluids.	Feb. 28	Mar. 24	W-106	405
722506	Mar. 10, 1903	Sulfonic-acid salt and process of making same.	Feb. 28	Mar. 22	X-106	339
722507	Mar. 10, 1903	Sulfonic-acid salts of alkaline earthy metals and metals proper and process of making same.	Feb. 28	Mar. 22	X-106	339
722626	Mar. 10, 1903	Process of manufacturing plastic objects from peat.	Feb. 28	Mar. 21	T-106	218
722632	Mar. 10, 1903	Filter, Fritz Rothe	Mar. 1	Mar. 22	W-106	365
722869	Mar. 17, 1903	Process of bleaching cane	Feb. 28	Mar. 24	T-106	309
723007	Mar. 17, 1903	Reducing indigo	Feb. 26	Apr. 9	L-106	419
723319	Mar. 24, 1903	Manufacture of substance for filling hollow brake beams.	Feb. 28	Mar. 21	S-106	228
723448	Mar. 24, 1903	Brown sulfur dye and process of making same.	Feb. 23	Mar. 24	T-106	271
723594	Mar. 24, 1903	Process of producing steel	Feb. 28	Mar. 24	Q-106	309
723928	Mar. 31, 1903	Electro-endosmotic process of extracting sugar.	Feb. 28	Mar. 21	S-106	237
724631	Apr. 7, 1903	Process of dyeing with sulfur dyes.	Feb. 28	Mar. 22	H-106	318
724743	Apr. 7, 1903	Red azo dye and process of making same.	Feb. 26	Apr. 9	L-106	419
724893	Apr. 7, 1903	Violet azo dye and method of making same.	Feb. 28 Mar. 1	Mar. 25 Mar. 21	P-106 P-106	381 281
724894	Apr. 7, 1903	Red to violet dyestuff and method of making same.	Feb. 28	Mar. 25	P-106	381
725361	Apr. 14, 1903	Method of making nitrogen compounds.	Feb. 26	Mar. 21	M-106	381
725533	Apr. 14, 1903	Apparatus for analyzing gases	Feb. 25	Mar. 21	I-106	237

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			1919.	1919.		
725890	Apr. 21, 1903	Process of making camphene	Feb. 25	Apr. 9	Z-106	358
725895	Apr. 21, 1903	Process of extracting gold	Feb. 25	Mar. 24	T-106	290
726126	Apr. 21, 1903	Mercury salts of ethylenediamin bases and process of making same.	Feb. 25	Apr. 9	Z-106	358
726688	Apr. 28, 1903	Indigo mixture and process of making same.	Feb. 26	Apr. 9	L-106	419
727024	May 5, 1903	Manufacture of camphidon	Feb. 25	Mar. 22	Y-106	199
727025	May 5, 1903	Art of producing hydroxylamin	Feb. 25	Mar. 22	Y-106	199
727026	May 5, 1903	Camphidin and method of preparing same.	Feb. 25	Mar. 22	Y-106	199
727292	May 5, 1903	Process of dyeing and printing in anilin black.	Feb. 26	Mar. 22	I-106	283
727389	May 5, 1903	Blue dye and process of making same.	Feb. 26	Apr. 9	L-106	419
727758	May 12, 1903	Igniting composition and method of making same.	Feb. 26	Mar. 22	J-106	269
727792	May 12, 1903	Production of permanganates	Feb. 26	Mar. 22	R-106	306
727798	May 12, 1903	Process of making tanning extracts.	Feb. 26	Mar. 24	L-106	260
728021	May 12, 1903	Black azo dye and process of making same.	Feb. 26	Apr. 9	M-106	485
728477	May 19, 1903	Blue disazo dye	Feb. 28	Mar. 25	P-106	361
728623	May 19, 1903	Blue sulfur dye and process of making same.	Feb. 26	Apr. 9	L-106	419
728778	May 19, 1903	Production of chromium compounds and alkalies.	Feb. 26	Mar. 22	J-106	269
728895	May 26, 1903	Automatic feeder for vinegar generators.	Feb. 26	Mar. 22	S-106	267
728997	May 26, 1903	Process of making linoleum products.	Feb. 28	Mar. 25	X-106	435
729217	May 26, 1903	Process of making brom indigo	Feb. 28	Mar. 22	U-106	199
729502	May 26, 1903	Oxidizing organic compounds	Feb. 26	Apr. 9	L-106	419
729574	June 2, 1903	Apparatus for bleaching textile fabrics, etc.	Feb. 26	Mar. 22	X-106	329
729643	June 2, 1903	Method of making sulfuric acid	Feb. 28	Mar. 24	K-106	362
729749	June 2, 1903	Artificial hair	Feb. 28	Mar. 22	X-106	317
729874	June 2, 1903	Olive-green sulfur dye and process of making same.	Feb. 28	Mar. 25	P-106	361
729876	June 2, 1903	Process of making substitution products of aromatic amins.	Feb. 26	Mar. 24	J-106	297
729990	June 2, 1903	Celluloid compound and process of making same.	Mar. 1	Mar. 24	K-106	374
730630	June 9, 1903	Manufacture of white cement	Feb. 28	Mar. 22	S-106	268
730979	June 16, 1903	Manufacture of alkali metals	Feb. 26	Mar. 22	J-106	269
731082	June 16, 1903	Process of preparing metals of alloys for lithographic printing.	Mar. 1	Mar. 21	G-106	283
731670	June 23, 1903	Yellow monoazo dyestuff and process of making same.	Feb. 26	Apr. 9	L-106	419
731906	June 23, 1903	Process of producing metalline films.	Feb. 28	Mar. 24	T-106	286
732189	June 30, 1903	Solution for use in the production of photographic papers, plates, etc.	Feb. 28	Mar. 24	Z-106	213
732226	June 30, 1903	Composition of painting cement	Feb. 28	Mar. 21	S-106	241
733000	July 7, 1903	Process of obtaining silfid of zinc from copper slag.	Feb. 28	Mar. 21	Q-106	242
733110	July 7, 1903	Celluloid of pyroxylin compound and process of making same.	Mar. 1	Mar. 24	K-106	374
733200	July 7, 1903	Extracting apparatus	Feb. 26	Mar. 24	Y-106	275
733280	July 7, 1903	Red azo dye and process of making same.	Feb. 26	Apr. 9	L-106	419
733578	July 14, 1903	Process of smelting metals and metal compounds.	Feb. 28	Mar. 22	R-106	287
733590	July 14, 1903	Process of obtaining metal sulfates from mattes.	Feb. 27	Mar. 24	T-106	305
733663	July 14, 1903	Filtering press	Feb. 28	Mar. 24	L-106	267
734325	July 21, 1903	Green anthraquinone dye and process of making same.	Mar. 22	Mar. 26	T-106	382

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			1919.	1919.		
734333	July 21, 1903	Mercerizing apparatus	Feb. 18	Mar. 21	Z-106	203
734352	July 21, 1903	Method of producing mussel extracts.	Mar. 1	Mar. 24	K-106	358
734393	July 21, 1903	Pyrometer	Mar. 1	Mar. 21	I-106	238
734454	July 21, 1903	Process of making photographic color filters.	Mar. 1	Mar. 21	U-106	136
734457	July 21, 1903	Process of making bricks or bodies for refractory linings or other uses.	Feb. 26	Mar. 24	T-106	277
734458	July 21, 1903	Process of making bricks or bodies for refractory linings or other uses and the product thereof.	Feb. 26	Mar. 24	T-106	277
734866	July 28, 1903	Blue anthraquinone dye and process of making same	Mar. 22	Mar. 26	T-106	362
734889	July 28, 1903	Tanning extract and process of making same.	Feb. 26	Mar. 22	Z-106	169
734950	July 28, 1903	Manufacture of peroxid of lead	Feb. 26	Mar. 22	J-106	260
735098	Aug. 4, 1903	Process of obtaining lead or other metals from ores or mattes.	Feb. 28	Mar. 26	X-106	451
735538	Aug. 4, 1903	Artificial wax	Feb. 26	Mar. 21	W-106	330
735599	Aug. 4, 1903	Process of mordanting wool, etc	Feb. 28	Mar. 25	U-106	280
736007	Aug. 11, 1903	Method of decomposing tallow, etc.	Feb. 28	Mar. 24	R-106	341
736204	Aug. 11, 1903	Reduction of nitro and azo compounds.	Feb. 25	Mar. 22	Y-106	199
736205	Aug. 11, 1903	Reduction of nitro compounds	Feb. 25	Mar. 22	Y-106	199
736206	Aug. 11, 1903	Reduction of aromatic nitro compounds.	Feb. 25	Mar. 22	Y-106	199
736250	Aug. 11, 1903	Process of making hemoglobin preparations.	Feb. 26	Mar. 22	X-106	331
736380	Aug. 18, 1903	Blue sulfur dye and process of making same.	Feb. 26	Mar. 22	H-106	301
736381	Aug. 18, 1903	Process of purifying graphite	Feb. 26	Mar. 24	S-106	298
736403	Aug. 18, 1903	Indigo-blue sulfur dye and process of making same.	Feb. 26	Mar. 22	H-106	301
736565	Aug. 18, 1903	Process of sizing objects by electrolysis.	Feb. 28	Mar. 24	J-106	313
736676	Aug. 18, 1903	Machinery for manufacturing patterned linoleum.	Feb. 28	Mar. 21	U-106	140
736730	Aug. 18, 1903	Process of rendering the phosphoric acid in natural phosphates soluble in citric acid.	Feb. 26	Mar. 24	L-106	264
736812	Aug. 18, 1903	Solder	Feb. 28	Mar. 24	Y-106	262
736959	Aug. 25, 1903	Process of obtaining pure pyroligneous acid.	Feb. 25	Mar. 22	H-106	308
737249	Aug. 25, 1903	Process of converting solidified oils into a soluble oil.	Feb. 28	Mar. 21	M-106	365
737882	Sept. 1, 1903	Process of electrolytically preparing lithographic plates.	Feb. 28	Mar. 25	H-106	390
737967	Sept. 1, 1903	Violet-red azo dye and process for making same.	Feb. 26	Apr. 9	L-106	419
738027	Sept. 1, 1903	Yellow sulfur dye and process of making same.	Feb. 26	Mar. 22	H-106	301
738404	Sept. 8, 1903	Process of reducing nitro compounds.	Feb. 25	Mar. 22	Y-106	199
738461	Sept. 8, 1903	Method of preparing oils for medicinal use.	Feb. 26	Mar. 21	W-106	341
738709	Sept. 8, 1903	Process of making glue and gelatin.	Mar. 1	Mar. 22	S-106	280
738905	Sept. 15, 1903	Process of extracting tannin	Feb. 26	Mar. 24	L-106	280
739069	Sept. 15, 1903	Red mordant azo dye	Feb. 26	Apr. 9	L-106	419
739117	Sept. 15, 1903	Yellow acridinium dye and process of making same.	Feb. 26	Apr. 9	L-106	416
739118	Sept. 15, 1903	Monoazo dye and process of making same.	Feb. 26	Apr. 9	L-106	419
739835	Sept. 29, 1903	Art of making artificial stone	Feb. 25	Mar. 21	H-106	273
738820	Sept. 29, 1903	Apparatus for treating gases				
740283	Sept. 29, 1903	Process of making tannin extracts.	Feb. 26	Mar. 22	Z-106	169
740355	Sept. 29, 1903	Detonating composition	Feb. 28 Apr. 19	Mar. 21 June 6	H-106 A-108	284 165

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			1919.	1919.		
740424	Oct. 6, 1903	Process of producing compounds for disinfecting purposes.	Feb. 26	Mar. 24	S-106	305
740767	Oct. 6, 1903	Mordant disazo dye and process of making same.	Feb. 28	Mar. 25	P-106	361
740768	Oct. 6, 1903	Black mordant dye and process of making same.	Feb. 28	Mar. 25	P-106	361
741030	Oct. 13, 1903	Green sulfur dye and process of making same.	Feb. 26	Mar. 22	H-106	301
741188	Oct. 13, 1903	Apparatus for bleaching, etc	Feb. 28	Mar. 22	V-106	294
741430	Oct. 13, 1903	Roasting furnace with a swimming hearth.	Feb. 28	Mar. 22	H-106	327
741552	Oct. 13, 1903	Process of making azo dye	Feb. 26	Apr. 9	L-106	419
741585	Oct. 13, 1903	Process of producing glycerin and acidylated derivatives of aromatic bases and the product thereof.	Feb. 27	Mar. 22	J-106	262
741615	Oct. 20, 1903	Process of making acetic acid	Feb. 28	Mar. 24	H-106	334
741726	Oct. 20, 1903	Process of making lampblack	Feb. 28	Mar. 21	S-106	240
741840	Oct. 20, 1903	Process of extracting the heavy metals by the use of chlorin.	Feb. 28	Mar. 22	Q-106	290
742245	Oct. 27, 1903	Method of producing from amber, ambroid, or the like, in mass, cigarette holders, pipe stems, etc.	Feb. 28	Mar. 21	G-106	272
742469	Oct. 27, 1903	Process of making soluble starch	Mar. 1	Mar. 21	Y-106	184
742530	Oct. 27, 1903	Process of printing black	Feb. 26	Apr. 9	L-106	419
742532	Oct. 27, 1903	Cotarnin phthalate and method of making same.	Feb. 26	Mar. 22	V-106	292
742797	Oct. 27, 1903	Electrolytic reduction of organic compounds by means of titanium compounds.	Feb. 26	Apr. 9	L-106	419
742997	Nov. 3, 1903	Manufacture of electrical insulating material.	Feb. 28	Mar. 24	Z-106	214
743071	Nov. 3, 1903	Monoazo dye and process of making same.	Feb. 26	Mar. 22	H-106	301
743305	Nov. 3, 1903	Trimethyl - cyclohexenonicarbo - xylic-acid ester and process of making same.	Feb. 26	Apr. 9	L-106	419
743566	Nov. 10, 1903	Alloy	Feb. 28	Mar. 25	T-106	331
743668	Nov. 10, 1903	Extracting chromium from chrome-iron ore.	Feb. 26	Mar. 22	J-106	269
743986	Nov. 10, 1903	Methylene-hippuric acid and process of making same.	Feb. 25	Apr. 9	Z-106	358
744208	Nov. 17, 1903	Composition for hardening steel	Feb. 28	Mar. 24	R-106	333
745097	Nov. 24, 1903	Process of preparing fat-free casein.	Feb. 26	Mar. 22	J-106	249
745333	Dec. 1, 1903	Serum and process of preparing same.	Feb. 28	Mar. 22	U-106	198
745675	Dec. 1, 1903	Process of making glucose	Feb. 28	Mar. 22	U-106	215
746366	Dec. 8, 1903	Process of manufacturing fuel blocks or briquets.	Mar. 1	Mar. 24	V-106	335
746638	Dec. 8, 1903	Fatty substances and process of making same.	Feb. 27	Mar. 22	J-106	262
746909	Dec. 15, 1903	Process of producing iridescent scales.	Feb. 28	Mar. 21	L-106	206
747629	Dec. 22, 1903	Process of purifying pinene hydrochlorid.	Feb. 28	Mar. 24	V-106	333
748101	Dec. 29, 1903	Aromatic esters and process of making same.	Feb. 28	Mar. 25	W-106	442
748375	Dec. 29, 1903	Blue anthraquinone dye and process of making same.	Feb. 26	Apr. 9	L-106	419
748511	Dec. 29, 1903	Fat-like substance and process of making same.	Feb. 27	Mar. 22	J-106	262
748711	Jan. 5, 1904	Process of preparing alimentary yeast extracts.	Mar. 1	Mar. 22	J-106	246
748739	Jan. 5, 1904	Process of making briquets	Feb. 28	Mar. 21	L-106	203
748791	Jan. 5, 1904	Process of making oxalates	Feb. 27	Mar. 24	Z-106	238
749297	Jan. 12, 1904	Process of preparing horn-like material from raw skins.	Feb. 28	Mar. 21	J-106	229
749343	Jan. 12, 1904	Process of testing butter	Feb 28	Mar. 25	L-106	320

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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			1919.	1919.		
750371	Jan. 26, 1904	Production of substances resembling leather.	Feb. 28	Mar. 24	Y-106	281
750502	Jan. 26, 1904	Art of making artificial silk	Feb. 28	Mar. 25	V-106	378
750575	Jan. 26, 1904	Process of manufacturing varnish substitutes.	Feb. 25	Mar. 21	T-106	205
750601	Jan. 26, 1904	Apparatus for dyeing, etc	Feb. 26	Mar. 22	I-106	283
751080	Feb. 2, 1904	Manufacture of fireproof bricks or material.	Feb. 28	Mar. 21	M-106	367
751179	Feb. 2, 1904	Process of electrolytically purifying juices.	Feb. 28	Mar. 24	Y-106	290
751216	Feb. 2, 1904	Acidyl derivatives of rufigallic-acid ethers and process of making same.	Feb. 25	Apr. 9	Z-106	358
751605	Feb. 9, 1904	Priming composition	Feb. 25	Mar. 21	Z-106	123
752054	Feb. 16, 1904	Process of treating iron and steel.	Mar. 1	Mar. 24	T-106	279
754474	Mar. 15, 1904	Process of making nitrogen compounds from atmospheric nitrogen.	Feb. 28	Mar. 22	L-106	232
754584	Mar. 15, 1904	Delivering apparatus for yarn-skeins.	Feb. 28	Mar. 24	I-106	333
754643	Mar. 15, 1904	Process of separating iron pyrites from zinc blende.	Feb. 25	Mar. 22	Z-106	152
754768	Mar. 15, 1904	Process of making anthraquinone dyes.	Mar. 22	Mar. 26	T-106	362
755050	Mar. 22, 1904	Apparatus for dyeing, etc	Feb. 28	Mar. 21	U-106	170
755144	Mar. 22, 1904	Method of steeping grain	Feb. 28	Mar. 24	L-106	267
755225	Mar. 22, 1904	Process of making printing plates.	Mar. 1	Mar. 21	U-106	148
755372	Mar. 22, 1904	Manufacturing ore bricks	Feb. 28	Mar. 24	R-106	332
755479	Mar. 22, 1904	Manufacture of starch	Feb. 28	Mar. 24	I-106	328
755765	Mar. 29, 1904	Machine for mercerizing yarn	Feb. 26	Mar. 24	Y-106	265
755993	Mar. 29, 1904	Process of dyeing wood	Feb. 25	Mar. 21	Z-106	121
757059	Apr. 12, 1904	Furnace for producing zinc	Feb. 28	Mar. 21	U-106	177
757109	Apr. 12, 1904	Blue-red lake and process of making same.	Feb. 26	Apr. 9	L-106	418
757136	Apr. 12, 1904	Oxidizing organic compounds	Feb. 26	Apr. 9	L-106	419
757328	Apr. 12, 1904	Art of preparing xanthin derivatives.	Feb. 25	Mar. 22	Y-106	199
757329	Apr. 12, 1904	Process of making xanthin derivatives.	Feb. 25	Mar. 22	Y-106	199
757330	Apr. 12, 1904	Alkoxy-caffein and process of making same.	Feb. 25	Mar. 22	Y-106	198
757337	Apr. 12, 1904	Process of making adhesives	Mar. 18	Mar. 24	K-106	380
757361	Apr. 12, 1904	Process of rendering leather durable and waterproof.	Feb. 28	Mar. 21	G-106	280
757370	Apr. 12, 1904	Process of making monobenzoyl arbutin.	Feb. 28	Mar. 22	H-106	318
757658	Apr. 19, 1904	Process of making glue and gelatin from bones.	Feb. 26	Mar. 24	J-106	282
757757	Apr. 19, 1904	Apparatus for operating on finely divided fluids or solid materials.	Feb. 27	Mar. 22	J-106	265
758086	Apr. 26, 1904	Method of producing platina copy paper.	Feb. 28	Mar. 24	L-106	281
758312	Apr. 26, 1904	Photographic developing paper	Feb. 25	Apr. 9	Z-106	358
758335	Apr. 26, 1904	Celluloid compound	Feb. 26	Apr. 9	L-106	419
758450	Apr. 26, 1904	Process of preparing highly diluted solutions.	Feb. 28	Mar. 21	J-106	230
758775	May 3, 1904	Apparatus for the treatment of gases.	Feb. 28	Mar. 22	T-106	258
759208	May 3, 1904	Process of making an insecticide	Feb. 28	Mar. 21	I-106	251
759413	May 10, 1904	Process for the manufacture of combs from celluloid.	Feb. 25	Mar. 22	S-106	250
760018	May 17, 1904	Process of making medicated soaps.	Feb. 28	Mar. 24	G-106	338
760263	May 17, 1904	Regenerative gas furnace	Mar. 1	Mar. 21	G-106	269
760319	May 17, 1904	Process of making compounds of titanic and lactic acids.	Feb. 25	Mar. 22	L-106	223
760541	May 24, 1904	Substitute for shellac	Feb. 27	Mar. 24	U-106	253
760561	May 24, 1904	Process of manufacturing hard porous electrodes for batteries.	Feb. 28	Mar. 21	Q-106	274

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			1919.	1919.		
761237	May 31, 1904	Method of causing the germination of grain.	Feb. 28	Mar. 24	L-106	267
761260	May 31, 1904	Compound of formaldehyde	Feb. 25	Apr. 9	Z-106	358
761284	May 31, 1904	Reduction of nitro compounds	Feb. 25	Mar. 22	Y-106	199
761412	May 31, 1904	Organic acid from beet-root molasses and process of making same.	Feb. 28	Mar. 25	U-106	289
761939	June 7, 1904	Process of making watery solutions of mineral and rosin oils.	Feb. 26	Mar. 21	T-106	193
761998	June 7, 1904	Alkyl ester of 3-4 diamidobenzoic acid and process of making same.	Feb. 26	Apr. 9	L-106	419
762032	June 7, 1904	Process of extracting juice from dried licorice root.	Feb. 26	Mar. 24	Q-106	305
762765	June 14, 1904	Homologues of isoionone and process of making same.	Mar. 1	Mar. 24	X-106	404
763003	June 21, 1904	Saponin and process of making same.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
763193	June 21, 1904	Blue sulfur dye and process of making same.	Feb. 26	Apr. 9	L-106	419
763756	June 28, 1904	Process of reacting on nitramine with formaldehyde and a product thereof.	Feb. 26	Apr. 9	L-106	419
764044	July 5, 1904	Process of smelting and reducing metals.	Feb. 25	Mar. 22	U-106	189
764251	July 5, 1904	Process of producing nitrate of ammonium.	Feb. 18	Mar. 24	K-106	355
764453	July 5, 1904	Process of manufacturing cement.	Feb. 28	Mar. 24	I-106	321
764733	July 12, 1904	Black sulfur dye and process of making same.	Feb. 26	Mar. 24	P-106	336
764734	July 12, 1904	Direct cotton sulfur dye and process of making same.	Feb. 26	Mar. 24	P-106	336
764735	July 12, 1904	Process of making sulfur dyes stable.	Feb. 26	Mar. 24	P-106	336
764776	July 12, 1904	Process of nitrating fibrous matter.	Feb. 28	Mar. 21	S-106	238
764966	July 12, 1904	Apparatus for dyeing	Feb. 28	Mar. 22	H-106	315
765291	July 19, 1904	Process of preparing compositions for sulfur baths.	Feb. 26	Mar. 22	L-106	230
765996	July 26, 1904	Manufacture of brominated indigo.	Feb 26	Apr. 9	L-106	419
766154	July 26, 1904	Process of preparing a composition for sulfur baths.	Feb. 26	Mar. 22	L-106	230
766540	Aug. 2, 1904	Orange dye and process of making same.	Feb. 26	Apr. 9	L-106	419
766893	Aug. 9, 1904	Process of manufacturing artificial marble.	Feb. 18	Mar. 25	R-106	361
766898	Aug. 9, 1904	Horizontal coke oven	Feb. 28	Mar. 25	J-106	327
766955	Aug. 9, 1904	Filter plant	Feb. 28	Mar. 24	S-106	317
767069	Aug. 9, 1904	Dark brown wool dye	Feb. 28	Mar. 25	P-106	361
767070	Aug. 9, 1904	Brown mordant dye	Feb. 28	Mar. 25	P-106	361
767291	Aug. 9, 1904	Process of making odoriferous compounds.	Feb. 26	Mar. 24	R-106	321
767335	Aug. 9, 1904	Denitrating plant	Feb. 26	Mar. 24	Q-106	306
767352	Aug. 9, 1904	Xanthin derivative and process of making same.	Feb. 25	Mar. 22	Y-106	199
767353	Aug. 9, 1904	Art of making xanthin	Feb. 25	Mar. 22	Y-106	199
767354	Aug. 9, 1904	Art of making xanthin	Feb. 25	Mar. 22	Y-106	199
767355	Aug. 9, 1904	Art of making xanthin	Feb. 25	Mar. 22	Y-106	199
767563	Aug. 16, 1904	Bleaching and dyeing apparatus	Feb. 26	Mar. 22	G-106	313
767815	Aug. 16, 1904	Photographic developer	Feb. 26	Apr. 9	L-106	419
767840	Aug. 16, 1904	Regenerative gas reheating furnace.	Mar. 1	Mar. 21	G-106	269
768389	Aug. 23, 1904	Cyclogeraniolidenacetone and process of making same.	Feb. 26	Apr. 9	L-106	419
768398	Aug. 23, 1904	Pyrazolone compound and process of making same.	Feb. 26	Apr. 9	L-106	419
768455	Aug. 23, 1904	Glycollic acid anilid-orthocarboxylic acid and process of making same.	Feb. 26	Apr. 9	L-106	419
768512	Aug. 23, 1904	Explosive compound	Feb. 26	Mar. 22	I-106	287
768533	Aug. 23, 1904	Process of making theophylline	Feb. 25	Mar. 22	Y-106	199

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			1919.	1919.		
768744	Aug. 30, 1904	Polychoral and process of making same.	Feb. 26	Mar. 24	R-106	312
768807	Aug. 30, 1904	Gas-mixing device for gas engines.	Mar. 1	Mar. 24	H-106	351
768886	Aug. 30, 1904	Soluble compound of iron and arsenic and process of making same	Feb. 28	Mar. 21	G-106	278
769003	Aug. 30, 1904	Manufacture of electrodes of arc lamps.	Mar. 1	Mar. 24	X-106	392
769061	Aug. 30, 1904	Process of making soluble starch	Feb. 28	Mar. 21	H-106	277
769143	Sept. 6, 1904	Filter	Feb. 28	Mar. 21	Z-106	132
769164	Sept. 6, 1904	Apparatus for producing pyroacetic spirit.	Feb. 28	Mar. 24	V-106	329
770046	Sept. 13, 1904	Explosive	Feb. 28 Apr. 19	Mar. 21 June 6	H-106 A-108	283 168
770047	Sept. 13, 1904	Explosive	Feb. 28 Apr. 19	Mar. 21 June 6	H-106 A-108	283 165
770389	Sept. 20, 1904	Manufacture of aluminum	Feb. 28	Mar. 24	H-106	367
770430	Sept. 20, 1904	Red lake	Feb. 26	Mar. 22	H-106	301
770533	Sept. 20, 1904	Reproducing pictures or the like	Feb. 28	Mar. 24	V-106	340
770534	Sept. 20, 1904	Developing catalytic pictures	Feb. 28	Mar. 24	V-106	340
770643	Sept. 20, 1904	Process of coloring natural crystalline stones.	Feb. 26	Mar. 22	Z-106	170
770940	Sept. 27, 1904	Process of making camphor	Feb. 25	Apr. 9	Z-106	358
771031	Sept. 27, 1904	Ammonia-water apparatus	Feb. 25	Mar. 22	Y-106	198
771062	Sept. 27, 1904	Process of manufacturing artificial stone from magnesite.	Feb. 28	Mar. 21	U-106	158
771183	Sept. 27, 1904	Process of manufacturing material designed for the production of cement.	Feb. 27	Mar. 25	Y-106	309
771184	Sept. 27, 1904	Process of manufacturing vitreous cement.	Feb. 27	Mar. 25	Y-106	309
772390	Oct. 18, 1904	Saturating apparatus for recovering ammonium sulfate.	Mar. 1	Mar. 24	K-106	371
772717	Oct. 18, 1904	Apparatus for removing water from peat.	Feb. 26	Mar. 24	Q-106	330
772891	Oct. 18, 1904	Process of removing water from peat.	Feb. 26	Mar. 24	Q-106	330
772931	Oct. 25, 1904	Process of making lakes from sulfur dyes.	Feb. 26	Mar. 22	H-106	[illegible]
773251	Oct. 25, 1904	Ureide of dialkyl-acetic acid and process of making same.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
773343	Oct. 25, 1904	Process of making pure salt	Feb. 28	Mar. 25	F-106	368
773346	Oct. 25, 1904	Yellow sulfur dye and process of making same.	Feb. 26	Apr. 9	L-106	419
773784	Nov. 1, 1904	Process of extracting ammonia from distillation gases.	Feb. 24	Mar. 21	T-106	209
773941	Nov. 1, 1904	Manufacture of cellulose	Feb. 26	Mar. 22	Z-106	164
773992	Nov. 1, 1904	Process of manufacturing peat fuel.	Feb. 28	Mar. 21	U-106	172
773995	Nov. 1, 1904	Manufacture of linoleum	Feb. 28	Mar. 25	X-106	435
774049	Nov. 1, 1904	Process of electrolytically producing lead-peroxid layers upon positive accumulator plates.	Feb. 28	Mar. 22	L-106	218
774121	Nov. 1, 1904	Process of polishing and finishing limestone, marble, etc.	Feb. 28	Mar. 22	S-106	279
774224	Nov. 8, 1904	Solidified halogenized fat and process of making same.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
774407	Nov. 8, 1904	Apparatus for dyeing, etc	Feb. 28	Mar. 22	H-106	315
774677	Nov. 8, 1904	Elastic horn-like substance and process of producing same.	Feb. 26	Mar. 24	P-106	343
774840	Nov. 15, 1904	Method of making white cement	Feb. 28	Mar. 21	U-106	152
775251	Nov. 15, 1904	Process of making homologues of ionone.	Mar. 1	Mar. 24	X-106	404
775475	Nov. 22, 1904	Filter	Feb. 28	Mar. 24	I-106	340
775548	Nov. 22, 1904	Process of separating copper or like metals from their ores.	Feb. 28	Mar. 24	W-106	421
775570	Nov.22, 1904	Dark-blue sulfur dye	Feb. 27	Mar. 22	J-106	286
775892	Nov. 22, 1904	Galvanic element or battery	Feb. 28	Mar. 21	Y-106	164
775978	Nov. 29, 1904	Process of making sesquiterpene alcohol.	Mar. 1	Mar. 26	U-106	319

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			1919.	1919.		
776264	Nov. 29, 1904	Blue sulfur dye and process of mak- same.	Feb. 26	Apr. 9	L-106	419
777145	Dec. 13, 1904	Manufacture of artificial stone	Feb. 28	Mar. 25	T-106	332
777316	Dec. 13, 1904	Paper-stock filter	Feb. 28	Mar. 25	Z-106	265
777285	Dec. 13, 1904	Process of heating air	Feb. 28	Mar. 22	T-106	258
777486	Dec. 13, 1904	Process of manufacturing nitric acid	Feb. 28	Mar. 22	T-106	258
777669	Dec. 20, 1904	Process of producing salts of hydrosulfurous acid.	Feb. 25	Mar. 22	Y-106	227
777734	Dec. 20, 1904	Process of making translucent opal glass.	Feb. 28	Mar. 24	Q-106	324
777746	Dec. 20, 1904	Reversible converter	Feb. 28	Mar. 21	T-106	211
777962	Dec. 20, 1904	Iodoxy compound and process of making same.	Feb. 26	Apr. 9	L-106	419
778036	Dec. 20, 1904	Anthraquinone dye and process of making same.	Feb. 26	Apr. 9	M-106	419
778476	Dec. 27, 1904	Beta-naphthol azo dye and process of making same.	Feb. 23	Mar. 24	T-106	271
778477	Dec. 27, 1904	Monochloro alphanaphthol and process of making same.	Feb. 23	Mar. 24	T-106	271
778478	Dec. 27, 1904	Blue sulfur dye and process of making same.	Feb. 23	Mar. 24	T-106	271
778610	Dec. 27, 1904	Black disazo dye and process of making same.	Feb. 26	Apr. 9	L-106	419
778658	Dec. 27, 1904	Manufacture of linoleums	Feb. 25	Mar. 22	H-106	310
778713	Dec. 27, 1904	Violet sulfur dye and process of making same.	Feb. 26	Apr. 9	L-106	419
778715	Dec. 27, 1904	Process of making linoleum	Feb. 28	Mar. 21	P-106	296
778783	Dec. 27, 1904	Process of producing nutri[illegible] substance from blood.	Feb. 25	Mar. 22	I-106	300
778846	Jan. 3, 1905	Process of coking	Feb. 25	Mar. 21	H-106	274
778899	Jan. 3, 1905	Method of forming blocks of ores for metallurgical purposes.	Feb. 25 Mar. 1	Mar. 22 Mar. 24	Y-106 H-106	240 370
[1]12843	Apr. 30, 1907		Mar. 1	Mar. 24	H-106	370
778912	Jan. 3, 1905	Dry cell	Feb. 28	Mar. 22	X-106	349
778980	Jan. 3, 1905	Process of producing fatty acids	Feb. 27	Mar. 22	J-106	262
779076	Jan. 3, 1905	Apparatus for treating fabrics with fluids.	Feb. 26	Mar. 24	R-106	316
779175	Jan. 3, 1905	Manufacture of silklike thread	Feb. 28	Mar. 22	X-106	317
779187	Jan. 3, 1905	Alpha-beta methylionone and process of making same.	Feb. 28	Mar. 22	Q-106	301
779210	Jan. 3, 1905	Process of producing barium oxid from barium carbonate.	Feb. 26	Mar. 25	Q-106	352
779228	Jan. 3, 1905	Process of dyeing	Feb. 28	Mar. 24	W-106	404
779261	Jan. 3, 1905	Process of purifying sugar juice	Feb. 28	Mar. 24	X-106	360
779760	Jan. 10, 1905	Explosive	Feb. 28	Mar. 25	T-106	317
779777	Jan. 10, 1905	Process of producing silver emulsions.	Feb. 26	Mar. 24	R-106	308
779797	Jan. 10, 1905	Reproducing pictures by means of catalysis.	Feb. 28	Mar. 24	V-106	340
779816	Jan. 10, 1905	Treatment of sugar-bearing mater ials.	Feb. 28	Mar. 25	Y-106	311
780241	Jan. 17, 1905	Process of making dialkyl barbituric acid.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
781363	Jan. 31, 1905	Process of making medicaments containing plant juice.	Feb. 28	Mar. 22	U-106	211
781472	Jan. 31, 1905	Process of making cyanids	Feb. 28	Mar. 25	V-106	368
781536	Jan. 31, 1905	Filter	Feb. 28	Mar. 24	L-106	278
782154	Feb. 7, 1905	Preparation of theophylline	Feb. 25	Mar. 22	Y-106	199
782637	Feb. 14, 1905	Ammonium-sulfate saturator	Mar. 1	Mar. 24	K-106	371
782679	Feb. 14, 1905	Pauedo cyclocitralidene acetone and process of making same.	Feb. 26	Apr. 9	L-106	419
782905	Feb. 21, 1905	Orange sulfur dyes and process of making same.	Feb. 26	Mar. 22	H-106	301
783569	Feb. 28, 1905	Mercerizing apparatus	Feb. 26	Mar. 22	R-106	286
783916	Feb. 28, 1905	Process of manufacturing pitch	Feb. 28	Mar. 22	H-106	326
784349	Mar. 7, 1905	Process of manufacturing limpid solutions of agaragar and product of same.	Feb. 28	Mar. 25	W-106	436

[1] Reissue

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			1919.	1919.		
784411	Mar. 7, 1905	Materials for perfumes and process of making same.	Feb. 26	Apr. 9	L-106	419
784412	Mar. 7, 1905	Materials for perfumes and process of making same.	Feb. 26	Apr. 9	L-106	419
784503	Mar. 7, 1905	Preservative of foods, etc.	Mar. 1	Mar. 24	H-106	371
784640	Mar. 14, 1905	Process of making chromates	Feb. 26	Mar. 22	J-106	289
785675	Mar. 21, 1905	Orange sulfur dye and process of making same.	Feb. 28	Mar. 25	P-106	361
785734	Mar. 28, 1905	Process of obtaining the contents of yeast cells.	Feb. 26	Mar. 24	J-106	279
786004	Mar. 28, 1905	Method of preparing dressings for bandages.	Feb. 24	Mar. 21	H-106	388
786028	Mar. 28, 1905	Process of manufacturing bricks from refuse from coal or coke.	Feb. 28	Mar. 24	T-106	288
786052	Mar. 28, 1905	Process of coloring natural compact crystalline stones.	Feb. 26	Mar. 22	Z-106	179
786498	Apr. 4, 1905	Process of making neutral soap	Feb. 26	Mar. 24	L-106	283
786527	Apr. 4, 1905	Manufacture of a substitute for caoutchouc.	Feb. 27	Mar. 25	S-106	343
786640	Apr. 4, 1905	Process of producing catalysing pictures.	Mar. 1	Mar. 26	Z-106	279
786770	Apr. 4, 1905	Siemens regenerative furnace	Feb. 28	Mar. 22	Z-106	179
787046	Apr. 11, 1905	Claret-red mordant dye and process of making same.	Feb. 28	Mar. 25	P-106	363
788129	Apr. 25, 1905	Process of making waterproof transparent celluloid pictures.	Feb. 25	Mar. 21	Y-106	171
788940	May 2, 1905	Method of manufacturing thin bronze or other metal plates.	Feb. 26	Mar. 21	X-106	316
789252	May 9, 1905	Blasting composition	Feb. 25	Mar. 21	Z-106	123
789610	May 9, 1905	Objects of artificial marble and process of producing same.	Feb. 28	Mar. 21	L-106	304
789647	May 9, 1905	Process of making dibasic calcium phosphate.	Feb. 25	Mar. 22	Y-106	310
789671	May 9, 1905	Process of making alkaline fluosilicates.	Feb. 27	Mar. 22	U-106	303
790116	May 16, 1905	Process of making diethyl-barbituric acids.	Feb. 26	Apr. 9	L-106	419
790138	May 16, 1905	Process of obtaining nicotin	Feb. 28	Mar. 24	R-106	331
790306	May 23, 1905	Method of improving gypsum mortar and utilising dead-burnt gypsum.	Feb. 28	Mar. 24	X-106	378
790901	May 23, 1905	Process of making camphor	Feb. 25	Apr. 9	Z-106	338
791306	May 30, 1905	Process of making hydrohalogenic acid.	Feb. 28	Mar. 25	T-106	330
791971	June 6, 1905	Process of making first sugar and waste molasses in one operation.	Feb. 28	Mar. 25	T-106	333
792379	June 13, 1905	Ammonia still	Feb. 25	Mar. 22	Y-106	198
792451	June 13, 1905	Method of erecting walls	Feb. 28	Mar. 25	K-106	304
792518	June 13, 1905	Remedy for tree cancer	Feb. 28	Mar. 22	G-106	315
793200	June 27, 1905	Kiln for coking peat or similar material.	Feb. 28	Mar. 21	L-106	308
793394	June 27, 1905	Dyeing apparatus	Feb. 28	Mar. 24	S-106	315
793399	June 27, 1905	Paint-spraying device	Feb. 28 July 28	Mar. 22 Oct. 7	S-106 I-108	237 315
793600	June 27, 1905	Process of manufacturing size	Feb. 28	Mar. 21	Y-106	191
793707	July 4, 1905	Process of absorbing gases	Feb. 28	Mar. 22	S-106	294
794052	July 4, 1905	Orange-red acridin dye	Feb. 26	Apr. 9	L-106	419
794173	July 11, 1905	Drum filter	Mar. 1	Mar. 22	S-106	273
794373	July 11, 1905	Process of chemically modifying oils.	Feb. 28	Mar. 24	T-106	308
794823	July 11, 1905	Process of treating blood and the product thereof.	Feb. 28	Mar. 22	X-106	343
794947	July 18, 1905	Process of extracting tanning substances.	Feb. 25	Mar. 21	T-106	183
795058	July 18, 1905	Bisulfite compound of a tetrazo dye and process of making same.	Feb. 26	Apr. 9	L-106	419
795465	July 25, 1905	Process of making alkyl barbituric acids.	Feb. 26	Apr. 9	L-106	419

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			1919.	1919.		
795526	July 25, 1905	Manufacture of artificial threads from solutions of cellulose.	Feb. 26	Mar. 24	X-106	397
795587	July 25, 1905	Igniting composition for matches.	Feb. 26	Mar. 22	J-106	269
795613	July 25, 1905	Machine for manufacturing linoleum.	Feb. 28	Mar. 25	Z-106	256
796443	Aug. 8, 1905	Red-violet sulfur dye and process of making same.	Feb. 23	Mar. 24	T-106	271
796514	Aug. 8, 1905	Process of making yellow sulfur dye	Feb. 26	Mar 22	H-106	329
796715	Aug. 8, 1905	Process of dyeing violet to black	Feb. 26	Apr. 9	L-106	419
796801	Aug. 8, 1905	Filter	Feb. 28	Mar. 24	X-106	358
797323	Aug. 15, 1905	Process of making chromates	Feb. 28	Mar. 25	W-106	443
797493	Aug. 15, 1905	Explosive compound	Feb. 26	Mar. 22	I-106	287
797624	Aug. 22, 1905	Process of manufacturing artificial stone.	Feb. 28	Mar. 24	X-106	414
797961	Aug. 22, 1905	Process of making ammonia	Feb. 28	Mar. 21	G-106	252
797962	Aug. 22, 1905	Process of making ammonia	Feb. 26	Mar. 21	G-106	253
798066	Aug. 29, 1905	Coking furnace	Feb. 28	Mar. 25	R-106	383
798205	Aug. 29, 1905	Process of making nitric acid	Feb. 28	Mar. 21	X-106	307
798509	Aug. 29, 1905	Process of obtaining soluble starch.	Feb. 25	Mar. 24	T-106	290
798807	Sept. 5, 1905	Indophenol sulfonic acids and process of making same.	Feb. 27	Mar. 25	P-106	380
798808	Sept. 5, 1905	Blue azo wool dye and process of making same.	Feb. 28	Mar. 25	P-106	381
798863	Sept. 5, 1905	Process of making dial-kylbarbituric acid.	Feb. 26	Mar. 22	H-106	301
798920	Sept. 5, 1905	Method of reducing oxalic acid and its derivatives by electrolysis.	Feb. 28	Mar. 22	H-106	325
799061	Sept. 12, 1905	Electrolytic apparatus and electrodes therefor.	Feb. 26	Mar. 22	Z-106	165
799153	Sept. 12, 1905	Drum for drum filters	Mar. 1	Mar. 22	S-106	275
799441	Sept. 12, 1905	Process for purifying tantalum metal.	Feb. 25	Mar. 24	T-106	200
799705	Sept. 19, 1905	Nitroglycerin explosive	Feb. 25	Mar. 21	Z-106	123
799770	Sept. 19, 1905	Process of making lead carbonates.	Mar. 1	Mar. 25	R-106	386
799955	Sept. 19, 1905	Process of making guanin	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
800181	Sept. 26, 1905	Method of producing electrodes	Feb. 26	Mar. 22	J-106	269
800197	Sept. 26, 1905	Process for the preservation of feathers.	Feb. 28	Mar. 21	J-106	238
800735	Oct. 3, 1905	Diamidodiphenylamin sulfonic acid and process of making same.	Feb. 26	Mar. 22	H-106	301
800785	Oct. 3, 1905	Soap and process of making same.	Feb. 25	Mar 21	Y-106	174
800913	Oct. 3, 1905	Process of nitrating aromatic amins.	Feb. 26	Mar. 22	H-106	301
800914	Oct. 3, 1905	Yellow-red azo dye	Feb. 26	Mar. 22	H-106	301
801028	Oct. 3, 1905	Process of making plasters, etc	Feb. 27	Mar. 24	X-106	401
801143	Oct. 3, 1905	Process of preparing dust ores for blast furnaces.	Mar. 1	Mar. 22	R-106	295
801144	Oct. 3, 1905	Preparing dust ores for blast furnaces.	Mar. 1	Mar. 22	R-106	295
801158	Oct. 3, 1905	Process of making insoluble aluminum acetate.	Feb. 28	Mar. 24	G-106	336
801312	Oct. 10, 1905	Sugar crystallizing apparatus	Feb. 28	Mar. 22	Y-106	222
801339	Oct. 10, 1905	Compound for hardening or case-hardening iron or steel.	Mar. 1	Mar. 22	W-106	304
801430	Oct. 10, 1905	Process for manufacturing white-lead color.	Mar. 1	Mar. 25	R-106	386
801483	Oct. 10, 1905	Process of making camphor	Feb. 25	Apr. 9	Z-106	358
801484	Oct. 10, 1905	Methylenglycerinsalicy-licacid-ester and process of making same.	Feb. 25	Apr. 9	Z-106	358
801485	Oct. 10, 1905	Process of making camphor	Feb. 25	Apr. 9	Z-106	358
801489	Oct. 10, 1905	Protecting metal surfaces	Feb. 28	Mar. 25	J-106	341
801598	Oct. 10, 1905	Brown sulfur dye and process of making same.	Feb. 28	Mar. 25	P-106	381
801656	Oct. 10, 1905	Process for the deoxidation of ingot iron, ingot steel, etc.	Mar. 1	Mar. 22	J-106	245
801871	Oct. 17, 1905	Dyer's jigger	Feb. 28	Mar. 24	X-106	370
802169	Oct. 17, 1905	Artificial wax	Feb. 26	Mar. 21	W-106	339
802256	Oct. 17, 1905	Heating composition	Feb. 28	Mar. 24	H-106	332
802487	Oct. 24, 1905	Treatment of tobacco for the removal of nicotin.	Mar. 1	Mar. 22	S-106	290

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				Date of filing or recording.	Book.	Page.
			1919.	1919.		
802516	Oct. 24, 1905	Process for manufacturing artificial fuel.	Feb. 28	Mar. 22	Z-106	173
802517	Oct. 24, 1905	Furnace for the continuous heating of metal objects without oxidation	Feb. 28	Mar. 21	M-106	368
802792	Oct. 24, 1905	Process of making camphor	Feb. 25	Mar. 22	Y-106	199
802793	Oct. 24, 1905	Process of making camphor	Feb. 25	Mar. 22	Y-106	199
802835	Oct. 24, 1905	Double salt of ferric chlorid and cotarnin hydrochlorate and process of making same.	Feb. 28	Mar. 22	H-106	228
803421	Oct. 31, 1905	Process of dyeing	Feb. 28	Mar. 24	S-106	313
803479	Oct. 31, 1905	Making artificial stone from magnesite.	Mar. 1	Mar. 24	I-106	325
803541	Nov. 7, 1905	Bromo-lecithin and process of making same.	Feb. 26	Mar. 22	H-106	301
803592	Nov. 7, 1905	Monoazo dye and process of making same.	Feb. 26	Mar. 22	H-106	301
803774	Nov. 7, 1905	Process of making dialkylmalonylurea.	Feb. 28	Mar. 21	I-106	267
803835	Nov. 7, 1905	Process of dyeing indigo resists	Mar. 1	Mar. 25	V-106	366
803887	Nov. 7, 1905	Process of removing nicotin from articles made of tobacco.	Mar. 1	Mar. 22	T-106	243
804006	Nov. 7, 1905	Process of making zinc alloys	Feb. 28	Mar. 24	P-106	326
804021	Nov. 7, 1905	Means for producing oxids of nitrogen.	Feb. 28	Mar. 24	Q-106	333
804157	Nov. 7, 1905	Process of making hydrosulfite preparations.	Feb. 26	Apr. 9	L-106	419
804191	Nov. 7, 1905	Process for manufacturing films or threads of cellulose.	Feb. 28	Mar. 24	V-106	319
804193	Nov. 7, 1905	Process for manufacturing briquets.	Feb. 28	Mar. 25	Z-106	258
804239	Nov. 14, 1905	Apparatus for carbonizing peat	Feb. 26	Mar. 24	P-106	344
804515	Nov. 14, 1905	Process of making and separating hydrochloric and sulfuric acids.	Feb. 28	Mar. 24	Y-106	256
804516	Nov. 14, 1905	Process of making acetylene tetrachlorid.	Feb. 28	Mar. 24	Y-106	256
804524	Nov. 14, 1905	Process of freeing yeast extract from bitter principles.	Mar. 1	Mar. 22	J-106	246
804682	Nov. 14, 1905	Process of making protocatechuic aldehyde.	Feb. 26	Mar. 22	Y-106	244
804718	Nov. 14, 1905	Process for chamoising fur skins	Feb. 26	Mar. 22	K-106	295
804960	Nov. 21, 1905	Compound suitable as lacquer or varnish.	Feb. 26	Mar. 24	P-106	343
805143	Nov. 21, 1905	Cyanin dye and process of making same.	Feb. 26	Apr. 9	L-106	419
805302	Nov. 21, 1905	Producing quartz-glass free from air bubbles.	Feb. 26	Mar. 24	S-106	313
805303	Nov. 21, 1905	Producing hollow quartz - glass articles.	Feb. 26	Mar. 24	S-106	313
805304	Nov. 21, 1905	Method of protecting quartz-glass vessels.	Feb. 26	Mar. 24	S-106	313
805407	Nov. 21, 1905	Process for cleansing, scouring, or removing oil and fat from wool, hair bristles, and other material.	Feb. 25	Mar. 21	T-106	196
805443	Nov. 28, 1905	Process for the preparation of water-soluble vaseline.	Feb. 26	Mar. 21	T-106	193
805477	Nov. 28, 1905	Process of manufacturing boot and shoe lasts.	Feb. 28	Mar. 24	U-106	250
805503	Nov. 28, 1905	Vulcanizing hard-rubber articles having interior cavities.	Feb. 28	Mar. 25	Z-106	270
805553	Nov. 28, 1905	Process for improving paper yarn.	Feb. 25	Mar. 22	G-106	312
805890	Nov. 28, 1905	Diamidoformyl diphenylamin and process of making same.	Feb. 26	Apr. 9	L-106	419
805924	Nov. 28, 1905	4-Cyclogeranic acid and process of making same.	Feb. 26	Apr. 9	L-106	419
806006	Nov. 28, 1905	Process of manufacturing calcium.	Feb. 28	Mar. 24	H-106	368
806161	Dec. 5, 1905	Manufacture of hydraulic cement.	Mar. 1	Mar. 24	T-106	311
806533	Dec. 5, 1905	Process for the manufacture of threads or films of cellulose.	Feb. 28	Mar. 24	V-106	319
806615	Dec. 5, 1905	Pepsin preparation	Feb. 26	Mar. 22	H-106	301
806660	Dec. 5, 1905	Process of making concentrated formic acid.	Feb. 26	Mar. 22	X-106	330

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806590	Dec. 5, 1905	Electrical ring furnace	Feb. 26	Mar. 24	I-106	342
806932	Dec. 12, 1905	Process of making organic-acid anhydrids.	Feb. 28	Mar. 21	G-106	273
807491	Dec. 19, 1905	Process of manufacturing nitric acid.	Feb. 28	Mar. 22	T-106	258
807513	Dec. 19, 1905	Device for filtering liquids	Feb. 28	Mar. 21	G-106	276
807646	Dec. 19, 1905	Apparatus for making lampblack.	Feb. 28	Mar. 21	P-106	293
807688	Dec. 19, 1905	Process of treating raw peat	Feb. 28	Mar. 25	R-106	370
8[illegible]7782	Dec. 19, 1905	Process of brominating indigo	Feb. 26	Apr. 9	L-106	419
808[illegible]46	Dec. 26, 1905	Process for the production of metallic calcium.	Feb. 28	Mar. 24	H-106	344
808443	Dec. 26, 1905	Process of printing with indigo	Feb. 26	Apr. 9	L-106	419
809067	Jan. 2, 1906	Siemens regenerative furnace	Feb. 26	Mar. 22	Z-106	179
809101	Jan. 2, 1906	Process of making stable non-alcoholic iron compounds.	Feb. 25	Mar. 22	U-106	190
809116	Jan. 2, 1906	Method of producing circulation in electrolytic processes.	Feb. 28	Mar. 24	Y-106	289
809121	Jan. 2, 1906	Illuminant	Feb. 26	Mar. 21	W-106	339
809138	Jan. 2, 1906	Milk preserve and process of making same.	Feb. 25	Mar. 22	Y-106	199
809218	Jan. 2, 1906	Apparatus for the separation of gases from their mixture.	Feb. 28	Mar. 21	Q-106	267
809225	Jan. 2, 1906	Process of manufacturing artificial paving stone.	Mar. 1	Mar. 22	K-106	318
809279	Jan. 9, 1906	Process for the production of stove polish.	Feb. 25	Mar. 21	Y-106	167
809291	Jan. 9, 1906	Art of manufacturing iron or steel.	Feb. 28	Mar. 21	K-106	278
809347	Jan. 9, 1906	Antitoxin for fatigue and process of making same.	Feb. 28	Mar. 24	Z-106	239
809492	Jan. 9, 1906	Process for electrolytic production of lustrous metallic coatings upon metals.	Feb. 25	Mar. 21	H-106	262
810063	Jan. 16, 1906	Duplex smelting furnace	Feb. 27	Mar. 22	J-106	294
810342	Jan. 16, 1906	Heat-nonconducting material	Feb. 28	Mar. 24	Q-106	341
810363	Jan. 16, 1906	Match	Mar. 1	Mar. 24	J-106	310
810572	Jan. 23, 1906	Process of treating ores	Feb. 28	Mar. 22	Q-106	290
810637	Jan. 23, 1906	Apparatus for continuously distilling benzin and the like.	Feb. 26	Mar. 21	U-106	147
810889	Jan. 23, 1906	Process of electrolytically preparing metals or alloys for lithographic purposes.	Feb. 28	Mar. 25	H-106	390
811826	Feb. 6, 1906	Process of making 4-imino-2-6-dioxypyrimidin.	Feb. 28	Mar. 24	Z-106	185
811827	Feb. 6, 1906	Process of making pyrimidin derivatives.	Feb. 28	Mar. 24	Z-106	185
811828	Feb. 6, 1906	Process of making pyrimidin derivatives.	Feb. 28	Mar. 24	Z-106	185
811829	Feb. 6, 1906	Process of making pyrimidin derivatives.	Feb. 28	Mar. 24	Z-106	185
812195	Feb. 13, 1906	Explosive compound	Mar. 1	Mar. 24	Q-106	303
812554	Feb. 13, 1906	Alkamin esters of para-aminobenzoic acid.	Mar. 21	Mar. 26	T-106	361
812598	Feb. 13, 1906	Process of chlorinating indigo	Feb. 26	Apr. 9	L-106	419
813272	Feb. 20, 1906	Process of making silk fibroin peptone.	Feb. 26	Mar. 22	H-106	301
813532	Feb. 27, 1906	Process for the electrolytic production of metals of the earthy alkalies.	Feb. 26	Mar. 22	P-106	298
813643	Feb. 27, 1906	Orange-yellow sulfur dye and process of making same.	Feb. 26	Mar. 22	H-106	301
813647	Feb. 27, 1906	Process of preparing soluble starch.	Feb. 28	Mar. 24	T-106	293
813671	Feb. 27, 1906	Apparatus for analysis of gases	Feb. 28	Mar. 24	Y-106	297
813965	Feb. 27, 1906	Production of cement	Feb. 28	Mar. 21	U-106	153
813977	Feb. 27, 1906	Titration apparatus	Feb. 28	Mar. 24	H-106	348
814490	Mar. 6, 1906	Binding agent and process of forming same.	Feb. 28	Mar. 26	V-106	400
814496	Mar. 6, 1906	Process of making barbituric acid.	Feb. 26	Mar. 24	W-106	414
814503	Mar. 6, 1906	Receptacle	Feb. 26	Mar. 22	H-106	301
814565	Mar. 6, 1906	Pivotable microscope stand	Mar. 1	Mar. 26	W-106	455
814917	Mar. 13, 1906	Process making nitric acid from air	Feb. 28	Mar. 22	T-106	257

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815306	Mar. 13, 1906	Apparatus for treating textile fabrics	Feb. 28	Mar. 25	R-106	352
815600	Mar. 20, 1906	Process of producing metallic or lustrous colors for printing on fabrics	Feb. 27	Mar. 24	X-106	389
815653	Mar. 20, 1906	Alkylaminoacetopyrocatechol and process of making same.	Feb. 26	Apr. 9	L-106	419
815671	Mar. 20, 1906	Process of producing multi-colored dye effects in woolen fabrics, etc.	Feb. 25	Mar. 21	Y-106	173
815846	Mar. 20, 1906	Filtering material	Feb. 28	Mar. 24	L-106	278
815875	Mar. 20, 1906	Process of deep etching of zinc by electrolysis.	Feb. 28	Mar. 25	H-106	396
816378	Mar. 27, 1907	Dyeing leather	Feb. 28	Mar. 25	W-106	438
816457	Mar. 27, 1906	Blue fibrous material and process of dyeing same.	Feb. 26	Apr. 9	L-106	419
816547	Mar. 27, 1906	Process of making medicines	Feb. 28	Mar. 21	U-106	157
816707	Apr. 3, 1906	Process for the manufacture of quartz glass from quartz sand, etc.	Feb. 25	Mar. 21	Z-106	119
816708	Apr. 3, 1906	Manufacture of articles from quartz glass.	Feb. 25	Mar. 21	Z-106	119
817159	Apr. 10, 1906	Process of making dialkylbarbituric acid.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
817164	Apr. 10, 1906	Benzoylalkylaminoethanols and process of making same.	Feb. 25	Apr. 9	Z-106	358
817419	Apr. 10, 1906	Process for the electrolytic manufacture of metal tubes.	Feb. 25	Mar. 22	L-106	214
817733	Apr. 10, 1906	Homogeneous body of highly refractory metals.	Feb. 25	Mar. 24	T-106	290
818192	Apr. 17, 1906	Process of manufacturing caustic alkalies and zinc sulfid.	Feb. 28	Mar. 22	W-106	363
818980	Apr. 24, 1906	Sulfur dye and process of making same.	Feb. 26	Apr. 9	L-106	419
818981	Apr. 24, 1906	Yellow dye and process of making same.	Feb. 26	Apr. 9	L-106	419
819262	May 1, 1906	Process of concentrating diluted nitric acid.	Feb. 26	Mar. 22	J-106	269
819348	May 1, 1906	Red sulfur dye and process of making same.	Feb. 23	Mar. 24	T-106	271
819410	May 1, 1906	Manufacture of chlorin	Feb. 25	Mar. 22	I-106	281
820052	May 8, 1906	Violet color lake and process of making same.	Feb. 26	Mar. 22	H-106	301
820159	May 8, 1906	Process of making formates	Feb. 27	Mar. 24	Z-106	238
820373	May 8, 1906	Process of making formates	Feb. 27	Mar. 24	Z-106	238
820374	May 8, 1906	Process of making formates	Feb. 28	Mar. 21	K-106	274
820587	May 15, 1906	Phosphorous compound and method of making same.	Feb. 28	Mar. 24	W-106	409
820830	May 15, 1906	Alkaminester	Feb. 26	Apr. 9	L-106	419
821260	May 22, 1906	Oil dressing for leather	Feb. 28	Mar. 25	U-106	288
821394	May 22, 1906	Dissolving and regenerating rubber.	Feb. 25	Mar. 22	Y-106	208
822087	May 29, 1906	Process for dissolving solid fluxes in fluid slag.	Feb. 28	Mar. 25	Z-106	204
822165	May 29, 1906	Process of making dialkylbarbituric acids.	Feb. 28	Mar. 22	V-106	299
822444	June 5, 1906	Process of making beryllium hydroxid.	Feb. 28	Mar. 26	H-106	408
822486	June 5, 1906	Regenerative Gas Furnace	Mar. 1	Mar. 21	G-106	269
822672	June 5, 1906	Process of making dialkylmalonyl ureas.	Feb. 26	Apr. 9	L-106	419
823294	June 12, 1906	Vat dye and process of making same.	Feb. 26	Apr. 9	L-106	419
823435	June 12, 1906	Process of treating organic substances in presence of vanadium compounds.	Feb. 26	Apr. 9	L-106	419
824475	June 26, 1906	Composition of matter	Feb. 26	Mar. 22	S-106	265
824539	June 26, 1906	Process of making an internal remedy.	Feb. 26	Mar. 22	K-106	298
824644	June 26, 1906	Process of manufacturing zinc alloys.	Feb. 28	Mar. 24	P-106	326
824791	July 3, 1906	Insectic[illegible] fertiliser	Feb. 28	Mar. 24	Z-106	211

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825060	July 3, 1906	Process for reclaiming vulcanised rubber waste.	Feb. 26	Mar. 22	Z-106	168
825221	July 3, 1906	Coke oven	Feb. 28	Mar. 24	U-106	240
825297	July 10, 1906	Process of extracting ammonia from gases.	Feb. 24	Mar. 21	T-106	210
825435	July 10, 1906	Process for the manufacture of impregnated gloves.	Feb. 28	Mar. 21	P-106	294
825883	July 10, 1906	Stable solution of peroxid of hydrogen.	Feb. 26	Mar. 24	Y-106	278
825983	July 17, 1906	Process of treating matte	Feb. 28	Mar. 22	Q-106	290
826165	July 17, 1906	Process of making borneol	Feb. 26	Mar. 22	G-106	304
826166	July 17, 1906	Magnesium compound of pinene haloids and process of making same.	Feb. 26	Mar. 22	G-106	304
826279	July 17, 1906	Ortho-oxyazo dye	Feb. 26	Apr. 9	L-106	419
826280	July 17, 1906	Ortho-oxymonoazo dye	Feb. 26	Apr. 9	L-106	419
826281	July 17, 1906	Ortho-oxymonoazo dye	Feb. 26	Apr. 9	L-106	419
826282	July 17, 1906	Ortho-oxyazo dye	Feb. 26	Apr. 9	L-106	419
826435	July 17, 1906	Extracting metals by electrolytic means from ores.	Feb. 26	Mar. 21	P-106	285
826509	July 17, 1906	Alizarin sulfoacid and process of making same.	Feb. 28	Mar. 24	V-106	325
826310	July 17, 1906	Authraflavin disulfonic acid and process of making same.	Feb. 28	Mar. 24	V-106	325
826880	July 24, 1906	Process of hardening and solidifying oils and unsaturated organic compounds.	Feb. 28	Mar. 21	M-106	365
826925	July 24, 1906	Process of sulfatizing ores, etc.	Feb. 28	Mar. 24	T-106	280
827418	July 31, 1906	Process of refining zinc and other metals.	Feb. 28	Mar. 24	Z-106	183
827468	July 31, 1906	Ortho-oxymonoazo dye and process of making same.	Feb. 26	Apr. 9	L-106	419
827591	July 31, 1906	Method of testing milk	Feb. 28	Mar. 22	P-106	297
827768	Aug. 7, 1906	Priming composition	Feb. 28	Mar. 25	V-106	378
828070	Aug. 7, 1906	Alkamin ester	Feb. 26	Apr. 9	L-106	419
828071	Aug. 7, 1906	Alkamin ester	Feb. 26	Apr. 9	L-106	419
828583	Aug. 14, 1906	Manufacture of iron	Mar. 17	Mar. 25	V-106	374
828908	Aug. 21, 1906	Bromin-substituted tanninurea derivative and process of making same.	Feb. 28	Mar. 24	L-106	297
829168	Aug. 21, 1906	Apparatus for treating textile materials.	Feb. 28	Mar. 25	T-106	344
829448	Aug. 28, 1906	Apparatus for coking briquets	Feb. 28	Mar. 21	P-106	287
829740	Aug. 28, 1906	Bordeaux-red sulfur and dye and process of making same.	Feb. 26	Apr. 9	L-106	419
829807	Aug. 28, 1906	Filter	Feb. 28	Mar. 22	Y-106	241
830043	Sept. 4, 1906	Process of producing salicylic acid-menthol ether.	Feb. 28	Mar. 24	H-106	337
830082	Sept. 4, 1906	Process of dyeing wool black	Feb. 28	Mar. 21	M-106	356
830312	Sept. 4, 1906	Red lake	Feb. 26	Apr. 9	L-106	419
830493	Sept. 11, 1906	Manufacture of plastic masses from casein, etc.	Feb. 25	Mar. 21	H-106	269
830639	Sept. 11, 1906	Process for the electrolytic production of copper.	Feb. 28	Mar. 24	H-106	343
830831	Sept. 11, 1906	Process of preserving cork	Feb. 26	Mar. 22	K-106	299
831185	Sept. 18, 1906	Vitreous cement for plugging teeth and process of manufacturing same.	Feb. 27	Mar. 22	U-106	201
831357	Sept. 18, 1906	Alloy for bearings	Feb. 25	Mar. 24	T-106	290
831488	Sept. 18, 1906	Method for producing celluloidlike substances.	Feb. 28	Mar. 25	V-106	378
831843	Sept. 25, 1906	Process for the electrolytic production of zinc.	Feb. 25	Mar. 24	T-106	290
832024	Sept. 25, 1906	Process for the electrodeposition of metals.	Feb. 25	Mar. 24	T-106	290
832393	Oct. 2, 1906	Black polyazo dye and process of making same.	Feb. 26	Mar. 22	J-106	269
832678	Oct. 9, 1906	Parallel filter	Mar. 22	Mar. 24	H-106	352
833005	Oct. 9, 1906	Process of manufacturing briquets of ore, etc.	Feb. 28	Mar. 25	U-106	292

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833053	Oct. 9, 1906	Method of manufacturing glue and gelatin from bones.	Feb. 26	Mar. 24	J-106	283
833063	Oct. 9, 1906	Process for treating wood oil with oxidizing agents.	Feb. 28	Mar. 21	M-106	365
833472	Oct. 16, 1906	Process of obtaining metals and compounds thereof.	Feb. 27	Mar. 24	I-106	338
833513	Oct. 16, 1906	Manufacture of hydroazo derivatives.	Feb. 25	Mar. 22	L-106	214
833630	Oct. 16, 1906	Process of briquetting friable ores.	Feb. 28	Mar. 21	T-106	219
833930	Oct. 23, 1906	Magnesium cement and process of manufacturing same.	Feb. 28	Mar. 21	J-106	227
834040	Oct. 23, 1906	Apparatus for gas analysis	Feb. 25	Mar. 21	U-106	138
834257	Oct. 30, 1906	Apparatus for making nitric acid.	Feb. 24	Mar. 21	Q-106	244
834633	Oct. 30, 1906	Cement	Feb. 28	Mar. 21	X-106	306
834739	Oct. 30, 1906	Coloring matter for producing silk-like or pearl-luster effects.	Mar. 1	Mar. 26	P-106	396
834806	Oct. 30, 1906	Manufacture of gelatin and glue from bones.	Feb. 26	Mar. 24	J-106	283
834864	Oct. 30, 1906	Packing of filter plates	Feb. 24	Mar. 21	I-106	236
835559	Nov. 13, 1906	Apparatus for gas analysis	Feb. 26	Mar. 22	Y-106	233
835682	Nov. 13, 1906	Triphenymethane dye and process of making same.	Feb. 26	Mar. 22	H-106	301
835771	Nov. 13, 1906	Process of manufacturing alkaline bicarbonates.	Feb. 25	Mar. 21	Y-106	178
835907	Nov. 13, 1906	Process for purifying pitch oil and other ethereal oils obtained by destructive distillation of resinous substances.	Feb. 26	Mar. 22	G-106	304
836265	Nov. 20, 1906	Fire-extinguishing compound	Feb. 25	Mar. 21	I-106	268
836452	Nov. 20, 1906	Process of producing lustrous threads, etc., from viscose.	Feb. 28	Mar. 22	X-106	317
836788	Nov. 27, 1906	Production of artificial silk and artificial hair from casein.	Feb. 28	Mar. 22	V-106	295
837128	Nov. 27, 1906	Azo dye and process of making same.	Feb. 26	Apr. 9	L-106	419
837446	Dec. 4, 1906	Means for carrying off gases from retorts while being charged.	Feb. 27	Mar. 25	R-106	389
837592	Dec. 4, 1906	Apparatus for concentrating sulfuric acid.	Feb. 28	Mar. 25	S-106	347
837899	Dec. 4, 1906	Alkylaminomethylpentyl benzoate.	Feb. 25	Apr. 9	Z-106	358
838108	Dec. 11, 1906	Process of preparing manure	Feb. 26	Mar. 24	Y-106	267
838406	Dec. 11, 1906	Process and apparatus for the construction of slabs of artificial stone.	Mar. 1	Mar. 24	X-106	377
838757	Dec. 18, 1906	Converting chromates into bichromates.	Feb. 26	Mar. 22	J-106	269
839150	Dec. 25, 1906	Manufacture of lavatory-basins, etc., made of earthenware.	Feb. 28	Mar. 24	Z-106	207
839336	Dec. 25, 1906	Process of utilising waste amber	Feb. 28	Mar. 25	V-106	377
839489	Dec. 25, 1906	Black mordant dye and process of making same.	Feb. 26	Mar. 22	J-106	269
839500	Dec. 25, 1906	Hydrosulfite preparations	Feb. 26	Apr. 9	L-106	419
839590	Dec. 25, 1906	Compound of organic colors with fatty acids and process of making same.	Feb. 26	Apr. 9	L-106	419
839605	Dec. 25, 1906	Yellow azo dye	Feb. 26	Apr. 9	L-106	419
839645	Dec. 25, 1906	Dyeing leather	Feb. 28	Mar. 25	W-106	438
839825	Jan. 1, 1907	Manufacturing cellulose products.	Feb. 26	Mar. 24	Y-106	259
841278	Jan. 15, 1907	Manufacture of chromic acid	Feb. 26	Mar. 22	J-106	269
841456	Jan. 15, 1907	Process of making phenylglycin	Feb. 26	Apr. 9	L-106	419
841738	Jan. 22, 1907	Boracic-acid esters	Mar. 1	Mar. 25	Z-106	259
841877	Jan. 22, 1907	Blue sulfur dye and process of making same.	Feb. 26	Mar. 22	J-106	269
841883	Jan. 22, 1907	Process of photomechanic color-printing.	Feb. 28	Mar. 24	Z-106	228
841999	Jan. 22, 1907	Process of making formaldehyde sulfoxylates.	Feb. 26	Apr. 9	L-106	419
842452	Jan. 29, 1907	Process of making ferrous carbonate.	Feb. 26	Mar. 22	Y-106	219
842548	Jan. 29, 1907	Azo dye and process of making same.	Feb. 25 Feb. 26	Mar. 21 Mar. 22	S-106 H-106	213 301

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			1919.	1919.		
842560	Jan. 29, 1907	Orange lake and process of making same.	Feb. 26	Mar. 22	H-106	301
842568	Jan. 29, 1907	Process for manufacturing glossy cellulose threads.	Feb. 26	Mar. 24	X-106	397
842612	Jan. 29, 1907	Process for obtaining solution of bacterial poisons.	Feb. 28	Mar. 24	H-106	336
842636	Jan. 29, 1907	Dust-binding composition and process of making same.	Feb. 28	Mar. 25	Q-106	348
843156	Feb. 5, 1907	Green sulfur dye	Feb. 26	Mar. 22	J-106	269
843318	Feb. 5, 1907	Distilling apparatus	Feb. 25	Mar. 22	Y-106	198
843401	Feb. 5, 1907	Manufacture of varnishes, balsam, and resins.	Feb. 28	Mar. 21	M-106	365
843872	Feb. 12, 1907	Furnace for obtaining zinc from zinc ores.	Mar. 1	Mar. 25	Q-106	350
844077	Feb. 12, 1907	Process for the production of aqueous caoutchouc solutions and the regeneration of rubber waste.	Feb. 25	Mar. 22	Y-106	208
844530	Feb. 19, 1907	Manufacture of cement	Feb. 28	Mar. 22	H-106	323
844804	Feb. 19, 1907	Blue quinolin dye and process of making same.	Feb. 26	Apr. 9	L-106	419
844845	Feb. 19, 1907	Yellow and orange pigment colors.	Feb. 26	Apr. 9	L-106	419
845138	Feb. 26, 1907	Process for producing printing plates.	Feb. 28	Mar. 24	P-106	351
845322	Feb. 26, 1907	Carbon - tetrachlorid preparation and process for its production.	Feb. 28	Mar. 21	G-106	279
845413	Feb. 26, 1907	Electric - resistance thermometer.	Feb. 28	Mar. 26	X-106	440
845681	Feb. 26, 1907	Process of making blue substitute.	Feb. 25	Mar. 21	Y-106	114
845854	Mar. 5, 1907	Manufacture of alumina and alkali compounds of sulfur.	Feb. 25	Mar. 22	I-106	281
846511	Mar. 12, 1907	Ortho-oxy-monoazo dye	Feb. 26	Apr. 9	L-106	419
846582	Mar. 12, 1907	Filter	Feb. 26	Mar. 26	P-106	387
846895	Mar. 12, 1907	Medicinal extracts	Feb. 25	Mar. 21	U-106	135
846934	Mar. 12, 1907	Process of treating photographic prints.	Feb. 28	Mar. 21	S-106	232
847078	Mar. 12, 1907	Production of organic sulfonic acids.	Feb. 28	Mar. 24	V-106	325
847126	Mar. 12, 1907	Process for the treatment of beet root, etc.	Feb. 28	Mar. 25	Y-106	311
847202	Mar. 12, 1907	Process of forming building material.	Feb. 28	Mar. 25	R-106	362
847530	Mar. 19, 1907	Lime color	Feb. 28	Mar. 24	U-106	270
847668	Mar. 19, 1907	Heating cartridge	Feb. 28	Mar. 21	P-106	278
848133	Mar. 26, 1907	Wood substitute	Feb. 28	Mar. 25	I-106	365
848179	Mar. 26, 1907	Method of molding soap	Feb. 26	Mar. 24	U-106	239
848439	Mar. 26, 1907	Treatment of corundum	Feb. 28	Mar. 21	Q-106	252
848600	Mar. 26, 1907	Production of homogeneous bodies from tantalum or other metals.	Feb. 25	Mar. 24	T-106	290
848612	Mar. 26, 1907	Manufacture of alumina and alkali sulfur salts.	Feb. 25	Mar. 22	I-106	281
848903	Apr. 2, 1907	Art of distilling	Feb. 28	Mar. 21	L-106	196
848960	Apr. 2, 1907	Desiccating material	Feb. 25	Mar. 21	Y-106	168
849547	Apr. 9, 1907	Counter die and method of making same.	Mar. 1	Mar. 22	J-106	273
849635	Apr. 9, 1907	Apparatus for treating textile fibers with liquids and gases.	Mar. 1	Mar. 25	R-106	330
849690	Apr. 9, 1907	Yellow wool dye	Feb. 26	Mar. 22	J-106	269
849739	Apr. 9, 1907	Yellow monoazo dye and process of making same.	Feb. 26	Mar. 22	J-106	269
849947	Apr. 9, 1907	Apparatus for coking briquets	Feb. 28	Mar 21	P-106	287
850392	Apr. 16, 1907	Process of oxidising atmospheric nitrogen.	Feb. 28	Mar. 21	X-106	304
850444	Apr. 16, 1907	Process of making indigo	Feb. 27	Mar. 25	V-106	356
850689	Apr. 16, 1907	Process for manufacturing artificial stone	Feb. 28	Mar. 25	Y-106	307
850827	Apr. 16, 1907	Thio-indoxyl derivative and process of making same.	Feb. 23	Mar. 24	T-106	271
850860	Apr. 16, 1907	Self-luminous body	Feb. 28	Mar. 22	H-106	314
850898	Apr. 23, 1907	Process for the preparation of water-soluble hydrocarbon derivatives.	Feb. 26	Mar. 21	T-106	193

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			1919.	1919.		
850965	Apr. 23, 1907	Apparatus for producing alkali hydrates and zinc sulfid.	Feb. 28	Mar. 22	W-106	363
851153	Apr. 23, 1907	Apparatus for mechanically mixing or combining liquids, etc.	Feb. 25	Mar. 21	I-106	343
851444	Apr. 23, 1907	Amido-oxy-sulfonic acid of paenylnaphthimidazol and process of making same.	Feb. 26	Mar. 22	H-106	301
851918	Apr. 30, 1907	Process of manufacturing printing blocks and plates.	Feb. 25	Mar. 21	H-106	269
852126	Apr. 30, 1907	Manufacture of artificial thread from solutions of cellulose.	Feb. 26	Mar. 24	X-106	397
852371	Apr. 30, 1907	Method of producing dicalcium phosphate.	Feb. 25	Mar. 21	I-106	258
852372	Apr. 30, 1907	Method of producing dicalcium phosphate.	Feb. 25	Mar. 21	I-106	256
853341	May 14, 1907	Manufacture of ceramic products.	Feb. 28	Mar. 21	Q-106	252
853934	May 14, 1907	Solidified diastatic malt extracts.	Mar. 1	Mar. 24	R-106	336
854011	May 21, 1907	Process for the preparation of lithophones.	Feb. 24	Mar. 26	P-106	378
854032	May 21, 1907	Process for dyeing granulated leather in different colors or shades.	Feb. 26	Mar. 22	T-106	247
854560	May 21, 1907	Process of separating beryllia from alumina and iron.	Feb. 28	Mar. 26	H-106	408
854565	May 21, 1907	Process for manufacturing briquets from coal peat and bog earth.	Feb. 28	Mar. 24	X-106	367
855449	June 4, 1907	Process of ameliorating wines and spirits and of sterilizing liquids.	Feb. 25	Mar. 22	L-106	220
855488	June 4, 1907	Fire lighter	Feb. 28	Mar. 25	L-106	316
855860	June 4, 1907	Manufacturing means from wood tar for preventing dust on streets, roads, and the like.	Feb. 28	Mar. 24	Q-106	336
855869	June 4, 1907	Process of nitrating cellulose	Feb. 28	Mar. 21	H-106	281
856622	June 11, 1907	Process of manufacturing dialkybarbituric acid.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
856857	June 11, 1907	Process for the manufacture of threads, films, or other forms of cellulose.	Feb. 28	Mar. 24	V-106	319
857046	June 18, 1907	Process of producing concentrated formic acid from formates.	Feb. 25	Mar. 21	K-106	279
857146	June 18, 1907	Method of producing calcium hydrid.	Feb. 26	Mar. 22	P-106	298
858065	June 25, 1907	Monoazo dye for lakes and process of making same.	Mar. 22	Mar. 26	T-106	362
858607	July 2, 1907	Dust collector	Feb. 28	Mar. 24	H-106	357
859106	July 2, 1907	Bronze leaf	Mar. 1	Mar. 24	R-106	337
859184	July 2, 1907	Process of extracting tin from tin ores.	Mar. 1	Mar. 24	H-106	347
859594	July 9, 1907	Process of extracting tin from iron containing tin products.	Mar. 1	Mar. 24	H-106	347
860220	July 16, 1907	Blue cotton dye and process of making same.	Feb. 26	Mar. 22	J-106	269
860221	July 16, 1907	Blue disazo dye and process of making same.	Feb. 26	Mar. 22	J-106	269
860414	July 16, 1907	Process of making a proteose preparation.	Mar. 1	Mar. 25	X-106	433
860776	July 23, 1907	Process of manufacturing nitrated cellulose.	Feb. 28	Mar. 21	H-106	281
860893	July 23, 1907	Color feeding attachment for machines for dyeing or printing in shaded colors or tints.	Feb. 26	Apr. 9	L-106	419
861129	July 23, 1907	Process of reducing refractory oxids.	Feb. 28	Mar. 21	M-106	370
861218	July 23, 1907	Stable hydrosulfite mixture and method of making same.	Feb. 28	Mar. 24	W-106	401
861345	July 30, 1907	Process of manufacturing lead acetate.	Feb. 28	Mar. 22	S-106	294
861397	July 30, 1907	Process of manufacturing fatty compounds for use as turkey-red oils.	Feb. 28	Mar. 22	Q-106	302

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			1919.	1919.		
861435	July 30, 1907	Waterproof-coated linen and process for producing the same.	Feb. 25	Mar. 21	H-106	264
861826	July 30, 1907	Process for producing metal peroxids.	Mar. 1	Mar. 24	U-106	228
861847	July 30, 1907	Varnish for producing mat surfaces.	Feb. 26	Mar. 24	W-106	391
862305	Aug. 6, 1907	Manufacture of a cleaning and protecting material for metals.	Feb. 28	Mar. 25	T-106	320
862409	Aug. 6, 1907	Treating sheet metal by electrolysis.	Feb. 26	Mar. 24	Z-106	222
862674	Aug. 6, 1907	Process of making ortho-dioxyphenylethanolethylamin.	Feb. 26	Apr. 9	L-106	419
862675	Aug. 6, 1907	Orthodioxyphenylethanolamin	Feb. 26	Apr. 9	L-106	419
862763	Aug. 6, 1907	Medicated bougie	Feb. 28	Mar. 21	S-106	242
862857	Aug. 6, 1907	Santalol carbonate	Feb. 26	Mar. 22	V-106	292
862858	Aug. 6, 1907	Insipid sandalwood - oil preparations.	Feb. 26	Mar. 22	V-106	292
862870	Aug. 6, 1907	Apparatus for testing the water of a boiler under pressure.	Feb. 28	Mar. 21	U-106	180
863290	Aug. 13, 1907	Black mordant azo dye	Feb. 26	Mar. 22	J-106	289
864217	Aug. 27, 1907	Process of concentrating nitric acid.	Feb. 28	Mar. 24	W-106	426
864388	Aug. 27, 1907	Process for producing a horn-like mass.	Feb. 28	Mar. 24	P-106	347
864475	Aug. 27, 1907	Process for making a siccative	Feb. 27	Mar. 22	J-106	258
864513	Aug. 27, 1907	Production of ammonium nitrate.	Feb. 28	Mar. 24	V-106	325
864644	Aug. 27, 1907	Sulfur dye and process of making same.	Feb. 26	Mar. 22	H-106	301
864723	Aug. 27, 1907	Process for the production of electric resistance bodies.	Feb. 26	Mar. 24	H-106	340
865587	Sept. 10, 1907	Red-orange monoazo dye and process of making same.	Feb. 26	Mar. 22	H-106	301
865807	Sept. 10, 1907	Production of elastic and plastic substances.	Feb. 28	Mar. 25	S-106	347
866058	Sept. 17, 1907	Dye jigger	Feb. 28	Mar. 25	H-106	383
866359	Sept. 17, 1907	Triphenylmethan dye and process of making same.	Feb. 26	Mar. 22	H-106	301
866385	Sept. 17 1907	Process for producing technically pure ductile tantalum.	Feb. 25	Mar. 24	T-106	290
866444	Sept. 17, 1907	Process for the manufacture of solid forms.	Feb. 26	Mar. 25	Q-106	352
866768	Sept. 24, 1907	Process for the manufacture of artificial silk filaments from nitrocellulose.	Feb. 26	Mar. 24	Y-106	263
867305	Oct. 1, 1907	Vat dyestuff	Feb. 26	Apr. 9	L-106	419
867306	Oct. 1, 1907	Vat dyestuff	Feb. 26	Apr. 9	L-106	419
867679	Oct. 8, 1907	Red-violet vat dye and process of making same.	Feb. 26	Apr. 9	L-106	419
867757	Oct. 8, 1907	Pitch substitute and process for making the same.	Feb. 25	Mar. 22	W-106	368
868008	Oct. 15, 1907	Pulverulent coloring matter for leather.	Feb. 28	Mar. 21	T-106	218
868204	Oct. 15, 1907	Thiosinamin compound	Feb. 26	Mar. 24	T-106	301
868294	Oct. 15, 1907	Process of producing phenylglycin and its homologues.	Mar. 22	Mar. 26	Z-106	301
868295	Oct. 15, 1907	Vat-dye and process of making same.	Feb. 26	Apr. 9	L-106	419
868347	Oct. 15, 1907	Method of eliminating tar from gaseous products of dry distillation for the purpose of producing acetate solutions.	Feb. 26	Mar. 24	U-106	232
868383	Oct. 15, 1907	Process for improving aluminium alloys by heating and chilling.	Feb. 28	Mar. 21	W-106	357
868385	Oct. 15, 1907	Oxid of iron	Mar. 1	Mar. 25	R-106	385
868729	Oct. 22, 1907	Bath for obtaining electrolytic metallic deposits.	Feb. 28	Mar. 25	J-106	333
869073	Oct. 22, 1907	Para-aminodiphenylamin sulfonic acid and process of making same.	Feb. 26	Mar. 22	H-106	301
869610	Oct. 29, 1907	Carbonic acid bath	Feb. 18	Mar. 24	K-106	372

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869636	Oct. 29, 1907	Borate of hexamethyleneamin and process of making same.	Feb. 26	Mar. 22	H-106	301
870148	Nov. 5, 1907	Process of producing hydrogen peroxid.	Feb. 28	Mar. 21	J-106	236
870691	Nov. 12, 1907	Process of producing porous barium oxid.	Feb. 26	Mar. 22	K-106	314
870962	Nov. 12, 1907	Manufacture of a new material suitable for use in dentistry.	Feb. 28	Mar. 21	L-106	200
871495	Nov. 19, 1907	Process of making mercury salves and ointments.	Mar. 1	Mar. 24	U-106	228
871507	Nov. 19, 1907	Anthrachrysone derivatives	Feb. 26	Apr. 9	L-106	419
872085	Nov. 26, 1907	Brown vat dye	Feb. 26	Apr. 9	L-106	419
872086	Nov. 26, 1907	Green-black vat dye	Feb. 26	Apr. 9	L-106	419
872585	Dec. 3, 1907	Orange vat dye and process of making same.	Feb. 26	Apr. 9	L-106	419
872757	Dec. 3, 1907	Process of making nitrated superphosphates.	Feb. 28	Mar. 22	Q-106	298
872815	Dec. 3, 1907	Safranin dye and process of making same.	Feb. 26	Mar. 22	H-106	301
872949	Dec. 3, 1907	Process for the production of amorphous carbon.	Feb. 28	Mar. 21	I-106	262
872950	Dec. 3, 1907	Apparatus for producing carbon	Feb. 28	Mar. 21	I-106	260
873853	Dec. 17, 1907	Method of producing hydrogen from water gas.	Feb. 25	Mar. 22	Y-106	224
873958	Dec. 17, 1907	Method of producing homogeneous bodies from tantalum or other highly refractory metals.	Feb. 25	Mar. 24	T-106	290
873960	Dec. 17, 1907	Method of producing plastic composition.	Mar. 1	Mar. 21	S-106	230
874005	Dec. 17, 1907	Process of producing photographs on metal, glass, porcelain, etc.	Feb. 28	Mar. 21	S-106	212
874649	Dec. 24, 1907	Thio-indoxyl derivatives and process of making same.	Feb. 23	Mar. 24	T-106	271
875259	Dec. 31, 1907	Method of extracting metallic ores and mattes.	Feb. 28	Mar. 24	P-106	328
875665	Dec. 31, 1907	Emulsion of oil and the like	Feb. 26	Mar. 22	Z-106	174
875764	Jan. 7, 1908	Composition for production of aromatic baths.	Feb. 18	Mar. 24	K-106	372
876179	Jan. 7, 1908	Stable solution of hydrogen peroxid and method of making same.	Feb. 26	Mar. 24	Y-106	278
876275	Jan. 7, 1908	Smelting furnace with oil fire	Feb. 28	Mar. 21	M-106	354
876311	Jan. 7, 1908	Process of manufacturing condensation products from formaldehyde, tannin, and aromatic monohydroxyl compounds.	Feb. 26 July 22	Mar. 24 July 31	J-106 B-108	284 60
876421	Jan. 14, 1908	Kiln for coking peat or similar material.	Feb. 27	Mar. 25	R-106	389
876782	Jan. 14, 1908	Process for the manufacture of artificial stone.	Feb. 25	Mar. 22	U-106	197
876783	Jan. 14, 1908	Method of making molded articles.	Mar. 1	Mar. 22	L-106	225
877289	Jan. 21, 1908	Process for solidifying fats, oils, tar, resin, etc.	Feb. 25	Mar. 21	U-106	139
877702	Jan. 28, 1908	Process of making arylthioglycollic-orthocarboxylic acids.	Feb. 26	Apr. 9	L-106	419
877743	Jan. 28, 1908	Violet dye and process of making same.	Feb. 26	Apr. 9	L-106	419
878103	Feb. 4, 1908	Machine for dyeing bobbins and the like.	Feb. 28	Mar. 25	K-106	392
878210	Feb. 4, 1908	Process for the reduction of refractory oxids.	Feb. 28	Mar. 25	U-106	281
878370	Feb. 4, 1908	Apparatus for the chemical purification of oils and the like.	Mar. 1	Mar. 22	T-106	238
878480	Feb. 4, 1908	Apparatus for manufacturing fuel.	Feb. 28	Mar. 21	L-106	198
878964	Feb. 11, 1908	Red color-lake	Feb. 26	Apr. 9	L-106	419
879499	Feb. 18, 1908	Process of manufacturing dialkylbarbituric acids.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
879553	Feb. 18, 1908	Process of mordanting wool	Feb. 28	Mar. 24	K-106	344

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879633	Feb. 18, 1908	Process of treating metallic ores or mattes.	Feb. 28	Mar. 24	P-106	328
879963	Feb. 25, 1908	Filter	Feb. 27	Mar. 24	J-106	290
880074	Feb. 25, 1908	Electrical systems of measuring temperatures.	Feb. 28 July 28	Mar. 26 Aug. 25	X-106 C-108	440 488
880292	Feb. 25, 1908	Red azo dye and process of making same.	Feb. 26	Mar. 22	H-106	301
880293	Feb. 25, 1908	Yellow tetrazo dye and process of making same.	Feb. 26	Mar. 22	H-106	301
880373	Feb. 25, 1908	Process of accelerating the separation of nitroglycerin from acids.	Feb. 28	Mar. 24	Q-106	314
880405	Feb. 25, 1908	Process of producing poreless and well-adhering electrodeposits.	Feb. 28	Mar. 25	I-106	354
880599	Mar. 3, 1908	Process of electrolytically producing persulfates.	Feb. 28	Mar. 24	U-106	259
881157	Mar. 10, 1908	Dark-green black dye	Feb. 26	Apr. 9	L-106	419
881158	Mar. 10, 1908	Dark-blue-violet dye	Feb. 26	Apr. 9	L-106	419
881159	Mar. 10, 1908	Red vat dye	Feb. 26	Apr. 9	L-106	419
881624	Mar. 10, 1908	Making vat dyestuffs	Feb. 26	Apr. 9	L-106	419
881724	Mar. 10, 1908	Method of working gas furnaces	Mar. 1	Mar. 24	J-106	315
882590	Mar. 24, 1908	Manufacture of salicylic acid glycerin esters.	Mar. 22	Mar. 26	Z-106	295
882910	Mar. 24, 1908	Safety explosive	Feb. 28	Mar. 22	U-106	206
882916	Mar. 24, 1908	Liquid composition to be used in the manufacture of fancy stained papers.	Feb. 28	Mar. 25	I-106	358
882958	Mar. 24, 1908	Process for manufacturing nitric acid by means of superheating, etc.	Feb. 28	Mar. 22	T-106	258
883165	Mar. 31, 1908	Baking powder	Feb. 26	Mar. 22	H-106	313
883286	Mar. 31, 1908	Method of manufacturing and treating composite aluminium oxids.	Feb. 28	Mar. 21	Q-106	252
883360	Mar. 31, 1908	Process for the manufacture of floating soap.	Feb. 28	Mar. 24	J-106	307
884025	Apr. 7, 1908	Process of manufacturing blood-albumin preparations.	Feb. 27	Mar. 24	P-106	333
884346	Apr. 7, 1908	Remedying defects such as blow-holes in metal castings.	Feb. 26	Mar. 22	J-106	269
884874	Apr. 14, 1908	Zinc-sulfid pigment and process of producing the same.	Feb. 25	Mar. 22	Z-106	157
885453	Apr. 21, 1908	Manufacture of colored photographic images.	Feb. 26	Apr. 9	L-106	419
885591	Apr. 21, 1908	Process for the manufacture of fused oil and its components.	Feb. 28	Mar. 24	Q-106	310
886085	Apr. 28, 1908	Process of manufacturing protocatechuic aldehyde.	Feb. 28	Mar. 25	S-106	346
886111	Apr. 28, 1908	Process of manufacturing crucible compounds.	Feb. 24	Mar. 22	I-106	288
886258	Apr. 28, 1908	Process for hardening artificial stone.	Feb. 28	Mar. 24	P-106	346
886420	May 5, 1908	Lining for filter elements	Feb. 28	Mar. 25	S-106	337
886597	May 5, 1908	Aluminum alloy	Feb. 26	Mar. 22	Y-106	236
887348	May 12, 1908	Mordant azo dye and process of making same.	Feb. 26	Mar. 22	J-106	269
887349	May 12, 1908	Filter element	Feb. 28	Mar. 25	S-106	337
887540	May 12, 1908	Latten (yellow brass)	Feb. 28	Mar. 25	H-106	391
888036	May 19, 1908	Blue disazo dye	Feb. 28	Mar. 24	G-106	327
888122	May 19, 1908	Manufacture of chlorinated compounds of lime.	Feb. 26	Mar. 22	J-106	269
888321	May 19, 1908	Arsenoarylglycin	Feb. 26	Apr. 9	L-106	419
888712	May 26, 1908	Combined water filter and regulating tap.	Feb. 28	Mar. 24	Q-106	327
888837	May 26, 1908	Red azo dye	Feb. 26	Apr. 9	L-106	419
888852	May 26, 1908	Brown vat dye	Feb. 26	Apr. 9	L-106	419
888857	May 26, 1908	Brom-valeric-acid-menthol ester	Mar. 1	Mar. 25	Z-106	259
888981	May 26, 1908	Making red azo dye lakes	Feb. 26	Apr. 9	L-106	419
889010	May 26, 1908	Making methylthiophenol orthocarboxylix acid.	Feb. 26	Apr. 9	L-106	419

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			1919.	1919.		
889799	June 2, 1908	Process for the approximate separation of reaction products resulting from the sulfonation of aromatic bodies.	Feb. 27	Mar. 21	Y-106	186
889936	June 9, 1908	Brown sulfur dye and process of making same.	Feb. 26	Mar. 22	J-106	269
890078	June 9, 1908	Process for the production of soap powder.	Feb. 26	Mar. 22	J-106	266
890175	June 9, 1908	Door for furnaces and the like	Feb. 28	Mar. 22	U-106	208
890249	June 9, 1908	Process of obtaining pure tin from crude tin or tin alloys electrolytically.	Feb. 28	Mar. 25	Y-106	315
890254	June 9, 1908	Process of making lakes	Feb. 28	Mar. 22	V-106	309
890596	June 16, 1908	Device for filling apparatus for making patterns in linoleum.	Feb. 28	Mar. 21	U-106	140
891218	June 16, 1908	Cellulose derivative	Feb. 26	Mar. 22	V-106	292
891567	June 23, 1908	Compound for combatting fungoid diseases of plants.	Mar. 1	Mar. 25	T-106	337
891677	June 23, 1908	Manufacture of aluminates	Feb. 26	Mar. 22	J-106	269
891703	June 23, 1908	Removal of arsenic from liquids and gases.	Feb. 26	Mar. 22	J-106	269
891753	June 23, 1908	Oxidation of methane	Feb. 27	Mar. 25	I-106	377
891775	June 23, 1908	Removal of arsenic from liquids and gases.	Feb. 26	Mar. 22	J-106	269
891866	June 30, 1908	Process of preparing india rubber for vulcanization.	Feb. 26	Mar. 24	X-106	408
891982	June 30, 1908	Electrolytic process for the production of metallic dark coatings upon metals.	Feb. 25	Mar. 21	H-106	263
892178	June 30, 1908	Process of producing ammonium chlorid.	Feb. 18	Mar. 24	K-106	355
892186	June 30, 1908	Process of dehydrating sodium thydrosulfite.	Feb. 26	Apr. 9	L-106	419
892188	June 30, 1908	Process for separating and simultaneously extracting water from mineral, vegetable and animal substances.	Feb. 26	Apr. 9	L-106	419
892414	July 7, 1908	Process for preparation of phthalic acid salts of cotarnin and product resulting therefrom.	Feb. 26	Mar. 22	S-106	264
892593	July 7, 1908	Device for emptying superphosphate chambers.	Mar. 1	Mar. 21	G-106	257
892897	July 7, 1908	[illegible] vat dye	Mar. 22	Mar. 26	T-106	362
892955	July 7, 1908	Apparatus for gas analysis	Feb. 26	Mar. 22	X-106	332
893129	July 14, 1908	Process of producing a horn-like substance from casein.	Mar. 1	Mar. 22	S-106	254
893308	July 14, 1908	Process of making dialkylbarbituric acid.	Feb. 26	Mar. 24	W-106	414
			Apr. 8	Apr. 9	V-106	488
893499	July 14, 1908	Process of making sulfur dyes and their leuco bodies.	Feb. 26	Apr. 9	L-106	419
894004	July 21, 1908	Process of making alpha-oxythionaphthenes.	Feb. 26	Apr. 9	L-106	419
894005	July 21, 1908	Process of making sulfurized dyes.	Feb. 26	Apr. 9	L-106	419
894006	July 21, 1908	Sulfurous leuco body and process of making same.	Feb. 26	Apr. 9	L-106	419
894070	July 21, 1908	Extraction of water or other liquid from mineral vegetable and animal substances.	Feb. 26	Apr. 9	L-106	419
894148	July 21, 1908	Process of producing dichlorethoxyethylene.	Feb. 28	Mar. 24	V-106	327
894149	July 21, 1908	Process of producing glycin derivatives.	Feb. 28	Mar. 24	V-106	327
894159	July 21, 1908	Process of producing paints and other coatings.	Feb. 27	Mar. 22	J-106	276
894490	July 28, 1908	Process for the production of pure caoutchouc.	Feb. 26	Mar. 22	Y-106	220
894647	July 28, 1908	Method for coking hydrous bituminous combustibles.	Feb. 28	Mar. 25	Z-106	254

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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			1919.	1919.		
894707	July 28, 1908	Explosive compound	Feb. 28	Mar. 24	Y-106	305
894741	July 28, 1908	Galvanizing sheet metal	Feb. 28	Mar. 24	L-106	269
894994	Aug. 4, 1908	Process of manufacturing barbituric acid.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
895689	Aug. 11, 1908	Process of making indophenol-like condensation products.	Feb. 26	Mar. 22	H-106	329
895798	Aug. 11, 1908	Automatic apparatus for gas analysis.	Feb. 26	Mar. 22	Y-106	233
895800	Aug. 11, 1908	Process for the manufacture of brewers' pitch.	Feb. 28	Mar. 21	U-106	175
895930	Aug. 11, 1908	Process of electrolytically producing chromic acid from chromic sulfate.	Mar. 1	Mar. 21	I-106	230
896184	Aug. 18, 1908	Apparatus for the electrolysis of fluids.	Mar. 1	Mar. 22	S-106	277
896551	Aug. 18, 1908	Method of cooling soap	Feb. 28	Mar. 24	Z-106	210
896752	Aug. 25, 1908	Malting process	Feb. 28	Mar. 22	T-106	256
896887	Aug. 25, 1908	Explosive	Feb. 28	Mar. 25	T-106	317
897160	Aug. 25, 1908	Process for the production of tooth cement.	Feb. 27	Mar. 25	I-106	366
897334	Sept. 1, 1908	Method of manufacturing elastic material.	Feb. 28	Mar. 21	I-106	227
897439	Sept. 1, 1908	Apparatus for making lampblack	Feb. 28	Mar. 21	P-106	293
897546	Sept. 1, 1908	Process of preparing carbonic-acid baths.	Mar. 1	Mar. 24	P-106	341
897735	Sept. 1, 1908	Process of freeing waste waters containing cyanids and sulfocyanids from poison.	Feb. 25	Mar. 21	X-106	310
897764	Sept. 1, 1908	Tea product and process of making same.	Feb. 28	Mar. 26	H-106	419
898033	Sept. 8, 1908	Process of making nitric acid	Feb. 28	Mar. 21	Q-106	245
898144	Sept. 8, 1908	Process of nitrating solvent naphtha.	Feb. 26	Mar. 25	U-106	293
898246	Sept. 8, 1908	Method of impregnating timber and the like.	Feb. 24	Mar. 21	I-106	264
898311	Sept. 8, 1908	Process of manufacturing new compounds of proteids with bismuth iodid.	Feb. 25	Mar. 22	X-106	321
898378	Sept. 8, 1908	Manufacture of sulfur, etc	Feb. 28	Mar. 25	U-106	280
898382	Sept. 8, 1908	Process of preparing substitutes for shellac.	Feb. 28	Mar. 22	L-106	236
898439	Sept. 15, 1908	Horizontal regenerative coke oven, etc.	Feb. 25	Mar. 21	H-106	270
898476	Sept. 15, 1908	Ship's paint	Feb. 26	Mar. 24	L-106	262
898638	Sept. 15, 1908	Process of casting copper and copper alloys.	Feb. 26	Mar. 24	R-106	315
898738	Sept. 15, 1908	Oxid of thiendigo dyes	Feb. 26	Apr. 9	L-106	419
899503	Sept. 29, 1908	Iron structure for oven buildings	Feb. 28	Mar. 21	I-106	259
899581	Sept. 29, 1908	Method of producing solid hard pieces from pulverulent material of any origin.	Feb. 28	Mar. 26	V-106	400
899908	Sept. 29, 1908	Exposure plate for copying apparatus.	Mar. 1	Mar. 24	H-106	366
900038	Sept. 29, 1908	Process of treating extracts of quebracho.	Feb. 28	Mar. 24	R-106	344
900204	Oct. 6, 1908	Chemical product resembling celluloid and process for producing the same.	Feb. 27	Mar. 25	V-106	358
900274	Oct. 6, 1908	Process for the production of a soluble gum.	Feb. 28	Mar. 22	T-106	242
900276	Oct. 6, 1908	Means for pressing hollow bodies having depressions of cavities at their outer sides.	Feb. 28	Mar. 22	H-106	298
900471	Oct. 6, 1908	Process of making nitric acid	Feb. 25	Mar. 21	Y-106	181
900502	Oct. 6, 1908	Electrode for electrolytic purposes.	Feb. 28	Mar. 24	V-106	311
900686	Oct. 6, 1908	Wood substitute	Feb. 28	Mar. 25	I-106	365
900688	Oct. 6, 1908	Process of making sulfuric acid	Feb. 25	Mar. 21	Y-106	181
901009	Oct. 13, 1908	Process of making chloracetic ether	Feb. 28	Mar. 24	V-106	327

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901218	Oct. 13, 1908	Process of producing pictures and photographic-printing plates.	Feb. 28	Mar. 22	V-106	300
901293	Oct. 13, 1908	Process for the preparation of borneol esters from turpentine.	Feb. 26	Mar. 24	W-106	395
901298	Oct. 13, 1908	Process of producing diformin	Feb. 26	Mar. 26	J-106	367
901599	Oct. 20, 1908	Method of producing a new ceramic mass and of manufacturing pottery.	Feb. 28	Mar. 22	R-106	293
901708	Oct. 20, 1908	Process of making camphor	Feb. 26	Mar. 24	W-106	395
901709	Oct. 20, 1908	Process of making iodin products.	Feb. 26	Mar. 24	W-106	395
901718	Oct. 20, 1908	Process for bleaching fats, oils, resins, waxes, and the like.	Feb. 28	Mar. 25	P-106	368
901746	Oct. 20, 1908	Process of making concentrated liquid dyestuffs.	Feb. 26	Apr. 9	L-106	419
901905	Oct. 20, 1908	Process of producing hydroxy-fatty acids.	Feb. 28	Mar. 24	V-106	327
902177	Oct. 27, 1908	Apparatus for treating oleic acid	Feb. 28	Mar. 21	S-106	335
902234	Oct. 27, 1908	Process for the production of an organic soluble iron preparation.	Feb. 28	Mar. 21	U-106	167
902260	Oct. 27, 1908	Process of obtaining metallic oxids.	Feb. 28	Mar. 22	K-106	322
903062	Nov. 3, 1908	Manufacture of bricks, shaped stones, or blocks, tubes, tiles, and the like.	Feb. 25	Mar. 22	U-106	197
903135	Nov. 3, 1908	Process of making sodium thiosulfate.	Feb. 26	Mar. 24	Y-106	270
903136	Nov. 3, 1908	Process of producing sodium hydrosulfid.	Feb. 26	Mar. 21	Y-106	270
903287	Nov. 10, 1908	Process of the manufacture of insulating materials.	Feb. 28	Mar. 22	X-106	335
903588	Nov. 10, 1908	Manufacture of sodium arylamins.	Feb. 26	Mar. 22	J-106	275
903833	Nov. 17, 1908	Process of mordanting fibrous material.	Feb. 25	Mar. 21	T-106	306
903853	Nov. 17, 1908	Process of disinfection	Feb. 28	Mar. 25	Z-106	248
903951	Nov. 17, 1908	Process for the electrolysis of liquids	Feb. 25	Mar. 21	Z-106	125
903967	Nov. 17, 1908	Sodium perborate containing borax and method of producing same.	Feb. 23	Mar. 22	T-106	242
904114	Nov. 17, 1908	Method of softening water	Mar. 1	Mar. 24	X-106	354
¹13338	Dec. 12, 1911	Treatment of liquids	Mar. 1	Mar. 24	X-106	354
904263	Nov. 17, 1908	Process of obtaining metals from their ores.	Feb. 26	Mar. 21	G-106	253
904315	Nov. 17, 1908	Dyeing apparatus	Feb. 25	Mar. 22	Z-106	160
904483	Nov. 17, 1908	Process of decolorising tannin extracts.	Feb. 26	Mar. 22	I-106	302
904831	Nov. 24, 1908	Process of making homogeneous bodies from tantalum metal or other refractory metals.	Feb. 25	Mar. 24	T-106	290
905264	Dec. 1, 1908	Process of making lake colors	Feb. 28	Mar. 21	J-106	233
905613	Dec. 1, 1908	Treatment of blast-furnace slag for production of hydraulic cement.	Feb. 28	Mar. 21	U-106	133
906307	Dec. 8, 1908	Process of obtaining curative animal serum.	Feb. 25	Mar. 22	Z-106	150
906306	Dec. 8, 1908	Process for vulcanising a rubber solution.	Feb. 28	Mar. 21	U-106	167
906307	Dec. 8, 1908	Manufacture of indigo-white preparations suitable for fermentation vats.	Feb. 26	Apr. 9	L-106	419
906421	Dec. 8, 1908	Ortho-oxy-monoazo dye and process of making same.	Feb. 26	Mar. 22	H-106	302
906422	Dec. 8, 1908	Yellow monoazo dyestuff	Feb. 26	Mar. 22	H-106	301
906669	Dec. 15, 1908	Electrolytic apparatus for use in the manufacture of bleaching liquors.	Feb. 28	Mar. 22	H-106	319
906820	Dec. 15, 1908	Preparing magnesium and alloys thereof for casting.	Feb. 26	Mar. 22	J-106	260
906937	Dec. 15, 1908	Alloy	Feb. 28	Mar. 25	T-106	331
907007	Dec. 15, 1908	Safety-explosive	Feb. 26	Mar. 22	I-106	286
907016	Dec. 15, 1908	Acyl derivative of para-amino-phenylarsinic acid.	Feb. 26	Apr. 9	L-106	419

¹Reissue.

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907017	Dec. 15, 1908	Diaminobenzoic-acid alkamin ester.	Feb. 26	Apr. 9	L-106	419
907066	Dec. 15, 1908	Radio-active mass	Feb. 27	Mar. 25	P-106	369
907664	Dec. 22, 1908	Process of manufacturing dialkyl-barbituric acid.	Feb. 26	Mar. 24	W-106	414
907665	Dec. 22, 1908	Process of manufacturing barbituric acid.	Feb. 26	Mar. 24	W-106	414
907937	Dec. 29, 1908	Process of dyeing sulfur dyes	Feb. 26	Apr. 9	L-106	419
907941	Dec. 29, 1908	Process for the manufacture of acid esters of cyclical terpene alcohols.	Feb. 28	Mar. 24	K-106	365
907943	Dec. 29, 1908	Carbonated-ferruginous-bath composition.	Feb. 26	Mar. 22	P-106	306
907978	Dec. 29, 1908	Hydroxyarylarsenoxid	Feb. 26	Apr. 9	L-106	419
908051	Dec. 29, 1908	Manufacture of acetylene tetrachlorid.	Feb. 26	Mar. 22	J-106	269
908560	Jan. 5, 1909	Monoazo dye and process of making same.	Feb. 28	Mar. 24	H-106	349
908606	Jan. 5, 1909	Method of making sulfuric acid	Feb. 28	Mar. 25	L-106	299
908837	Jan. 5, 1909	Combustible mixture for producing actinic light.	Feb. 25	Mar. 21	Z-106	117
908912	Jan. 5, 1909	Apparatus for treating briquets	Feb. 28	Mar. 21	P-106	287
909380	Jan. 12, 1909	Arsenophenol	Feb. 26	Apr. 9	L-106	419
909703	Jan. 12, 1909	Ketone sulfoxylate and process of making same.	Feb. 26	Apr. 9	L-106	419
909831	Jan. 12, 1909	Process for preparing printing plates by means of electrolytic etching.	Feb. 28	Mar. 21	G-106	281
910030	Jan. 19, 1909	Azo lake and process of making same.	Feb. 28	Mar. 25	J-106	337
910394	Jan. 19, 1909	Process for the reduction of refractory oxids.	Feb. 28	Mar. 25	U-106	281
910490	Jan. 26, 1909	Manufacture of large crystals	Feb. 28	Mar. 21	Z-106	120
910520	Jan. 26, 1909	Method of manufacturing solutions of caoutchouc.	Feb. 25	Mar. 24	T-106	290
910524	Jan. 26, 1909	Process for the production of soluble starch.	Feb. 28	Mar. 21	K-106	282
910827	Jan. 26, 1909	Vegetable butter capable of being spread.	Feb. 28	Mar. 24	R-106	335
911186	Feb. 2, 1909	Red monoazo dye	Feb. 28	Mar. 25	J-106	337
911547	Feb. 2, 1909	Process for hardening calcareous artificial-stone substances by means of carbonic acid.	Feb. 28	Mar. 24	P-106	346
911801	Feb. 9, 1909	Gas generator	Feb. 25	Mar. 26	P-106	381
912138	Feb. 9, 1909	Orange lake dye and process of making same.	Feb. 26	Mar. 22	H-106	301
912581	Feb. 16, 1909	Quicksilver closure for fermentation vessels.	Feb. 26	Mar. 24	P-106	330
912733	Feb. 16, 1909	Process of densifying a nitrohydrocarbon composition.	Mar. 1	Mar. 22	Y-106	242
913280	Feb. 23, 1909	Process of producing printing plates.	Mar. 1	Mar. 22	U-106	148
913311	Feb. 23, 1909	Manufacture of new stable iodin compounds of fats.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
913428	Feb. 23, 1909	Process of converting catechin into a catechu-tannic acid.	Feb. 28	Mar. 26	L-106	341
913500	Feb. 23, 1909	Process of recovering purifying materials.	Feb. 26	Mar. 22	G-106	310
913653	Feb. 23, 1909	Process of manufacturing nitroglycerin.	Feb. 25	Mar. 22	Y-106	204
913940	Mar. 2, 1909	Manufacture of homologues of para-aminophenylarsinic acids.	Feb. 26	Apr. 9	L-106	419
914113	Mar. 2, 1909	Gunpowder	Feb. 28	Mar. 25	Q-106	343
914183	Mar. 2, 1909	Apparatus for separating solid bodies from liquids by cooling.	Mar. 1	Mar. 24	R-106	348
914271	Mar. 2, 1909	Process of making infusible sodium sulfid.	Feb. 26	Mar. 24	Y-106	270
914518	Mar. 9, 1909	Alpha-halogen-isovaleryl-urea and process of making the same.	Feb. 26	Mar. 22	V-106	292
914624	Mar. 9, 1909	Explosive mixture for combustion engines.	Feb. 28	Mar. 25	U-106	299

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914644	Mar. 9, 1909	Obtaining animal serum	Feb. 25	Mar. 22	Z-106	150
914813	Mar. 9, 1909	Process of producing nitric oxids and nitric acid.	Feb. 28	Mar. 24	Z-106	193
915165	Mar. 16, 1909	Manufacture of explosives	Feb. 28	Mar. 24	Q-106	314
915169	Mar. 16, 1909	Process for extracting fatty substances from fresh (unbroken) oil fruits, moist raw wool, and the like.	Feb. 25	Mar. 22	Y-106	228
915192	Mar. 16, 1909	Smelting furnace.	Feb. 28	Mar. 21	M-106	354
915488	Mar. 16, 1909	Furnace for the treatment of metals.	Mar. 1	Mar. 25	H-106	307
915660	Mar. 16, 1909	Horizontal coke oven	Feb. 25	Mar. 21	H-106	270
916004	Mar. 23, 1909	Process of rendering lithopone more stable against light.	Feb. 27	Mar. 25	S-106	323
916029	Mar. 23, 1909	Red-violet dye and process of making same.	Mar. 22	Mar. 26	T-106	362
916030	Mar. 23, 1909	Vat dye and process of making same.	Feb. 26	Apr. 9	L-106	419
916031	Mar. 23, 1909	Highly brominated indigoes and process of making same.	Feb. 26	Apr. 9	L-106	419
916033	Mar. 23, 1909	Process of producing electro-deposits which can be removed from their base.	Feb. 28	Mar. 25	I-106	354
917096	Apr. 6, 1909	Theobromin double salts	Mar. 1	Mar. 25	Z-106	259
917828	Apr. 13, 1909	Process for the manufacture of soaps containing peroxids.	Mar. 1	Mar. 21	J-106	239
918397	Apr. 13, 1909	Process of obtaining goffering effects on yarns, tissues, or the like.	Feb. 28	Mar. 25	Z-106	271
918525	Apr. 20, 1909	Manufacture on the paper machine of paper having relief-like effect.	Feb. 26	Apr. 9	L-106	419
918558	Apr. 20, 1909	Flash-light powder	Feb. 28	Mar. 24	H-106	358
918589	Apr. 20, 1909	Apparatus for separating nitrogen and oxygen from mixtures containing them.	Feb. 28	Mar. 21	Q-106	267
918818	Apr. 20, 1909	Flash-light composition	Feb. 25	Mar. 21	Z-106	117
918920	Apr. 20, 1909	Highly brominated halogen indigoes and process of making same. (Patent No. 1043468 is a division of above.)	Feb. 26	Apr. 9	L-106	419
919031	Apr. 20, 1909	Process for rendering material of any kind proof against the action of moisture and of chemical agents.	Feb. 28	Mar. 21	M-106	365
919161	Apr. 20, 1909	Theophyllin compound	Feb. 26	Mar. 22	H-106	313
919457	Apr. 27, 1909	Galvanic cell	Feb. 28	Mar. 25	K-106	378
919493	Apr. 27, 1909	Refining steel	Mar. 1	Mar. 22	V-106	301
919884	Apr. 27, 1909	Manufacture of lubricating and anticorrosive oils.	Feb. 26	Mar. 24	U-106	238
920078	Apr. 27, 1909	Electrical furnace	Feb. 28	Mar. 24	K-106	352
920601	May 4, 1909	Process of making metal sulfates.	Feb. 27	Mar. 24	T-106	305
920604	May 4, 1909	Indicator for testing liquids with respect to viscosity.	Mar. 1	Mar. 21	Y-106	187
920881	May 4, 1909	Radium compound and process of making same.	Mar. 1	Mar. 21	T-106	221
921148	May 11, 1909	Process for regenerating rubber waste of all kinds.	Feb. 27	Mar. 21	X-106	302
921329	May 11, 1909	Process of making sodium sulfate and sulfuric acid.	Mar. 1	Mar. 24	K-106	363
921382	May 11, 1909	Furniture polish and process for producing same.	Feb. 28	Mar. 24	Q-106	311
922003	May 18, 1909	Process of making ammonia	Feb. 26	Mar. 21	M-106	361
922040	May 18, 1909	Aralkyl-para-aminophenol	Feb. 25	Apr. 9	Z-106	358
922340	May 18, 1909	Manufacture of objects from cellulose acetate.	Feb. 25	Mar. 22	Y-106	234
922538	May 25, 1909	Santalol esters	Mar. 1	Mar. 25	Z-106	259
923310	June 1, 1909	Apparatus for treating fibrous material with liquids.	Feb. 28	Mar. 24	U-106	263

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923342	June 1, 1909	Dyeing apparatus	Feb. 25	Mar. 22	Z-106	160
923635	June 1, 1909	Hair dye	Feb. 26	Mar. 22	H-106	301
923761	June 1, 1909	Process of producing nitro compounds.	Feb. 28	Mar. 24	H-106	338
924304	June 8, 1909	Process of making dichlorethylene.	Feb. 28	Mar. 24	Y-106	358
924494	June 8, 1909	Process of preparing pure lactic acid.	Feb. 25 Mar. 1	Mar. 21 Mar. 22	X-106 L-106	310 248
924584	June 8, 1909	Process of obtaining pure caoutchouc, gutta-percha, and the like.	Feb. 26	Mar. 24	X-106	410
924979	June 15, 1909	Process of treating fabrics with fluids.	Feb. 26	Mar. 26	Z-106	274
925419	June 15, 1909	Process of increasing the density of fusible explosive nitro-substances.	Mar. 1	Mar. 21	Z-106	122
925468	June 22, 1909	Apparatus for producing and multiplying relieves after pictures.	Mar. 1	Mar. 25	Q-106	354
925651	June 22, 1909	Means for operating the doors of retort furnaces, coke ovens, and the like from a distance.	Feb. 28	Mar. 21	T-106	234
926658	June 22, 1909	Preparation of chloroform in a solid condition.	Feb. 26	Mar. 25	R-106	388
925798	June 22, 1909	Apparatus for producing homogeneous ductile bodies from metals of a highly refractory nature.	Feb. 25	Mar. 24	T-106	290
926216	June 29, 1909	Apparatus for the fractional distillation, condensation, and rectification of liquids.	Feb. 28	Mar. 22	X-106	342
926099	July 6, 1909	Process of producing digestible substances from keratin.	Feb. 28	Mar. 24	K-106	361
927198	July 6, 1909	Process for the production of a leather substitute.	Feb. 28	Mar. 24	W-106	419
927342	July 6, 1909	Process of recovering sulfur	Feb. 26	Mar. 22	T-106	246
927370	July 6, 1909	Manufacture of tiled linoleum	Feb. 28	Mar. 24	T-106	313
927457	July 6, 1909	Process of bleaching	Feb. 27	Mar. 24	U-106	229
927678	July 13, 1909	Preparation of iron or steel for casting.	Feb. 26	Mar. 22	J-106	269
927916	July 13, 1909	Process of recovering volatile metals and metalloids from lead and copper slags.	Feb. 18	Mar. 25	U-106	303
928053	July 13, 1909	Elastic composition	Feb. 28	Mar. 25	Z-106	255
928545	July 20, 1909	Process of making nitric acid	Feb. 28	Mar. 25	R-106	376
928734	July 20, 1909	Process for the electrolysis of alkali chlorids.	Feb. 28	Mar. 22	X-106	323
929452	July 27, 1909	Soluble - iron - albuminate preparation.	Feb. 26	Mar. 24	P-106	338
929861	Aug. 3, 1909	Process for obtaining starch and gluten from wheat flour.	Feb. 28	Mar. 21	G-106	267
930054	Aug. 3, 1909	Bromisovaleric ester of the borneols	Feb. 25	Apr. 9	Z-106	358
930087	Aug. 3, 1909	Atomizer for paint or the like	Feb. 28	Mar. 21	T-106	214
930167	Aug. 3, 1909	Filter	Feb. 28	Mar. 21	K-106	371
930344	Aug. 10, 1909	Process of treating titaniferous iron ores.	Feb. 25	Mar. 21	T-106	194
930575	Aug. 10, 1909	Process relating to refractory substances.	Feb. 28	Mar. 25	J-106	332
930801	Aug. 10, 1909	Method of manufacturing a porous material.	Mar. 1	Mar. 26	Z-106	304
930836	Aug. 10, 1909	Process of manufacturing soluble compounds of mercuric salts with hexamethylene tetramin.	Feb. 25	Mar. 22	X-106	321
930874	Aug. 10, 1909	Cellulose substitute	Feb. 28	Mar. 21	Y-106	196
930909	Aug. 10, 1909	Process of making extracts	Feb. 28	Mar. 24	W-106	422
931513	Aug. 17, 1909	Electrode	Feb. 26	Mar. 22	J-106	269
931634	Aug. 17, 1909	Colored cellulose article	Feb. 27	Mar. 24	Z-106	223
931945	Aug. 24, 1909	Process for melting and working quartz glass.	Feb. 27	Mar. 24	I-106	336
932067	Aug. 24, 1909	Process of making iron-free alum.	Feb. 27	Mar. 25	H-106	302
932077	Aug. 24, 1909	Igniting appliance for safety fuses.	Mar. 1	Mar. 25	T-106	352
932219	Aug. 24, 1909	Water filter	Feb. 28	Mar. 21	J-106	331

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932334	Aug. 24, 1909	Brominated beta-naphthylindigo	Feb. 26	Apr. 9	L-106	419
932408	Aug. 24, 1909	Filtering device	Feb. 28	Mar. 22	L-106	238
932643	Aug. 31, 1909	Process of leaching copper ores	Feb. 24	Mar. 21	S-106	224
932706	Aug. 31, 1909	Artificial-stone composition	Feb. 28	Mar. 22	L-106	263
932739	Aug. 31, 1909	Device for severing metals	Feb. 26	Mar. 22	J-106	269
932740	Aug. 31, 1909	Device for severing metal bodies	Feb. 26	Mar. 22	J-106	269
932758	Aug. 31, 1909	Method of recovering ammonia from coal gases.	Feb. 25	Mar. 21	Z-106	137
932986	Aug. 31, 1909	Transforming smelting furnace	Feb. 26	Mar. 24	Y-106	280
933269	Sept. 7, 1909	Manufacture of agglomerated bodies from blast-furnace dust.	Feb. 25	Mar. 22	Y-106	249
933270	Sept. 7, 1909	Manufacture of coherent bodies from blast-furnace dust.	Feb. 25	Mar. 22	Y-106	249
934020	Sept. 14, 1909	Explosive	Feb. 28	Mar. 21	H-106	292
934110	Sept. 14, 1909	Apparatus for removing lye from fabrics.	Feb. 28	Mar. 24	L-106	291
934235	Sept. 14, 1909	Process for cutting metal objects	Mar. 1	Mar. 21	K-106	288
934302	Sept. 14, 1909	Brown sulfur dye	Feb. 26	Mar. 22	H-106	301
934303	Sept. 14, 1909	Olive sulfur dye	Feb. 26	Mar. 22	H-106	301
934349	Sept. 14, 1909	Continuous juice extraction by diffusion.	Feb. 28	Mar. 22	T-106	261
934385	Sept. 14, 1909	Apparatus for the electrolysis of alkali chlorids.	Feb. 28	Mar. 22	X-106	323
934467	Sept. 21, 1909	Manufacture of chlorin compound of lime.	Feb. 26	Mar. 22	J-106	269
934844	Sept. 21, 1909	Disinfectant	Feb. 28	Mar. 22	K-106	309
934892	Sept. 21, 1909	Smelting furnace	Mar. 1	Mar. 24	Z-106	191
934966	Sept. 21, 1909	Separator	Feb. 28	Mar. 25	I-106	371
934988	Sept. 28, 1909	Process of making durable carbon electrodes for electrolytical purposes.	Feb. 25	Mar. 21	I-106	229
935109	Sept. 28, 1909	Apparatus for the electrolysis of aqueous solutions.	Feb. 25	Mar. 24	T-106	290
935234	Sept. 28, 1909	Process for reducing the amount of carbon in cast iron or articles cast from iron.	Mar. 1	Mar. 25	T-106	329
935250	Sept. 28, 1909	Electrolytic winning of zinc from solution of zinc sulfate.	Feb. 25	Mar. 24	T-106	290
935414	Sept. 28, 1909	Rubber	Feb. 28	Mar. 25	F-106	373
935606	Sept. 28, 1909	Process of obtaining chlor-acetic acid.	Feb. 28	Mar. 24	V-106	327
935815	Oct. 5, 1909	Process of preparing zinc formaldehyde sulfoxylate.	Feb. 28	Mar. 25	V-106	354
935849	Oct. 5, 1909	Apparatus for washing caoutchouc, gutta-percha, and similar substances.	Apr. 22 Apr. 22 Feb. 28	Apr. 23 Apr. 23 Mar. 24	S-107 V-107 Q-106	3 43 325
936010	Oct. 5, 1909	Process and machine for marbleizing paper and the like.	Feb. 25	Mar. 21	Y-106	183
936260	Oct. 5, 1909	Process of making a red azo dye	Feb. 28	Mar. 25	J-106	337
936380	Oct. 12, 1909	1 - para-dialkylaminoaryl - 2-4-dialkyl - 3 - oxymethyl - 5 - pyrazolone.	Feb. 26	Apr. 9	L-106	491
936382	Oct. 12, 1909	Process of deoxidizing slags	Mar. 1	Mar. 22	V-106	301
936635	Oct. 12, 1909	Apparatus for washing caoutchouc and similar substances.	Apr. 22 Apr. 22 Mar. 22	Apr. 23 Apr. 23 Mar. 26	V-107 S-107 U-106	43 3 316
937194	Oct. 19, 1909	Process of making sulfurous-acid compound of alphaisatin anilid.	Feb. 28	Mar. 24	P-106	357
937486	Oct. 19, 1909	Process of producing steel free from protoxids.	Mar. 1	Mar. 22	V-106	301
937720	Oct. 19, 1909	Process of tanning skins and hides.	Feb. 25	Mar. 22	Y-106	199
937741	Oct. 19, 1909	Azo dye	Feb. 28	Mar. 25	J-106	337
937929	Oct. 26, 1909	Derivative of aminoarylarsinic acid.	Feb. 26	Apr. 9	L-106	491
937965	Oct. 26, 1909	Extraction of copper from raw unroasted ores and other products.	Feb. 25	Mar. 21	S-106	223
938128	Oct. 26, 1909	Neutralizing solutions of salts	Feb. 26	Mar. 22	L-106	216
938132	Oct. 26, 1909	Guaiacol carbonate sulfo-acid derivative.	Feb. 25	Mar. 22	Y-106	199

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938939	Nov. 2, 1909	New mercury salt of para-aminophenylarsinic acid.	Feb. 26	Mar. 22	H-106	301
939097	Nov. 2, 1909	Process of preparing a preventative of tuberculosis.	Feb. 28	Mar. 25	T-106	324
939742	Nov. 9, 1909	Treatment of quebracho extract	Feb. 28	Mar. 24	G-106	334
940394	Nov. 16, 1909	Tannin - containing extract and process of producing same.	Feb. 28	Mar. 21	M-106	371
940398	Nov. 16, 1909	Process for the production of soap powders.	Feb. 26	Mar. 22	J-106	266
940868	Nov. 23, 1909	Apparatus for dyeing yarn	Mar. 1	Mar. 24	I-106	320
941071	Nov. 23, 1909	Process of making thorium sulfid	Mar. 1	Mar. 24	T-106	285
941088	Nov. 23, 1909	Azo dye and process of making same.	Feb. 26	Apr. 9	L-106	419
941423	Nov. 30, 1909	Process of making preventive and curative lymph.	Feb. 28	Mar. 24	H-106	354
941768	Nov. 30, 1909	Electric furnace for gas reactions	Feb. 28	Mar. 24	Z-106	193
941785	Nov. 30, 1909	Process of producing a mineral-oil emulsion.	Mar. 1	Mar. 24	R-106	323
942379	Dec. 7, 1909	Method of manufacturing dynamo brushes, etc.	Feb. 28	Mar. 25	Q-106	351
942395	Dec. 7, 1909	Method of improving textile fibres, threads, and fabrics.	Feb. 28	Mar. 21	M-106	359
942674	Dec. 7, 1909	Method of making diphenylorthooxalic esters.	Feb. 28	Mar. 22	K-106	309
942916	Dec. 14, 1909	Red azo dye for lakes and process of making same.	Feb. 28	Mar. 21	M-106	355
943403	Dec. 14, 1909	Melting hearth for electric induction furnaces.	Mar. 1	Mar. 21	U-106	161
943536	Dec. 14, 1909	Mordant-dyeing azo dyes	Feb. 26	Mar. 22	H-106	301
943632	Dec. 14, 1909	Apparatus for treating fabrics with fluids.	Feb. 26 Feb. 28	Mar. 26 Mar. 21	Z-106 U-106	274 151
943678	Dec. 21, 1909	Leuco body containing sulfur and process of making same.	Feb. 26	Apr. 9	L-106	419
943717	Dec. 21, 1909	Brown anthraquinone dye and process of making same.	Feb. 26	Apr. 9	L-106	419
943724	Dec. 21, 1909	Process of briqueting metallic iron.	Feb. 28	Mar. 22	S-106	284
944372	Dec. 28, 1909	Process of preparing organic compounds containing the acetyl group.	Feb. 24	Mar. 21	Y-106	193
944738	Dec. 28, 1909	Medicament for diseases of the mucous membrane.	Feb. 26	Mar. 24	U-106	249
944957	Dec. 28, 1909	Water-glass compound and process of making the same.	Feb. 26	Mar. 22	J-106	250
945025	Jan. 4, 1910	Method of producing jointless material for covering walls and the like.	Mar. 1	Mar. 22	T-106	238
945338	Jan. 4, 1910	Sprayer for glue-pain, liquid glue, and the like.	Feb. 28	Mar. 21	Y-106	188
94617	Jan. 11, 1910	Device for spinning glass	Mar. 1	Mar. 24	Z-106	241
94647	Jan. 11, 1910	Process of making screens for color photography.	Feb. 26	Mar. 22	H-106	301
946529	Jan. 18, 1910	Method of making durable solutions of peroxid of hydrogen.	Feb. 25	Mar. 22	Y-106	211
946551	Jan. 18, 1910	Process of producing powdered metallic tungsten or other hexavalent high-fusing-point metals.	Feb. 28	Mar. 24	W-106	400
946633	Jan. 18, 1910	Hair tonic	Feb. 25	Mar. 21	Z-106	118
946676	Jan. 18, 1910	Apparatus for manufacturing leaf metal and the like.	Mar. 1	Mar. 24	S-106	320
947030	Jan. 18, 1910	Vat dyeing and process of making same.	Feb. 26	Apr. 9	L-106	419
947078	Jan. 18, 1910	Process of manufacturing lactic acid	Feb. 26	Mar. 24	U-106	231
947856	Feb. 1, 1910	Filter	Feb. 28	Mar. 25	S-106	337
948084	Feb. 1, 1910	Esters of diglycollic acid and preparation of same.	Feb. 25	Mar. 22	Y-106	199
948572	Feb. 8, 1910	Process of manufacturing linoleum.	Feb. 28	Mar. 21	U-106	140
948930	Feb 8, 1910	Process of preparing medicaments.	Feb. 28	Mar. 22	L-106	235
949357	Feb 15, 1910	Filter	Feb. 28	Mar. 21	S-106	216

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949633	Feb. 15, 1910	Azo dye for chromed wool and process of making same.	Feb. 26	Mar. 22	H-106	301
949863	Feb. 22, 1910	Manufacture of linoleum and the like.	Feb. 28	Mar. 24	U-106	264
949920	Feb. 22, 1910	Striking surface on safety match boxes, etc.	Feb. 28	Mar. 24	J-106	312
950392	Feb. 22, 1910	Substitute for celluloid	Feb. 28	Mar. 22	G-106	306
950669	Mar. 1, 1910	Process of producing an amorphous tungsten powder.	Feb. 28	Mar. 22	Q-106	297
950936	Mar. 1, 1910	Process of making the N-propyl-ester of P-aminobenzoic acid.	Feb. 26	Mar. 22	J-106	278
951113	Mar. 8, 1910	Refractory substance	Feb. 28	Mar. 22	K-106	302
951243	Mar. 8, 1910	Process of making sodium carbonate.	Feb. 26	Mar. 24	Y-106	270
951811	Mar. 15, 1910	Utilization of waste rubber	Feb. 26	Mar. 24	R-106	320
952484	Mar. 22, 1910	Method of lixiviating ores	Feb. 25	Mar. 21	S-106	223
952560	Mar. 22, 1910	Process of obtaining ammonium sulfate from gases.	Mar. 1	Mar. 24	Z-106	180
952704	Mar. 22, 1910	Process of making antimony compounds.	Feb. 28	Mar. 22	X-106	315
952901	Mar. 22, 1910	Method of producing conductive layers on ceramic wares.	Feb. 26	Mar. 24	W-106	383
952914	Mar. 22, 1910	Ore briqueting	Feb. 28	Mar. 21	W-106	337
953008	Mar. 22, 1910	Compound of sulfur dyes soluble in water.	Feb. 26	Mar. 22	H-106	301
953094	Mar. 29, 1910	Process for devulcanizing india rubber.	Feb. 28	Mar. 21	M-106	358
953187	Mar. 29, 1910	Process of producing a sulfur compound of quinin.	Mar. 1	Mar. 25	L-106	312
953495	Mar. 29, 1910	Filter basin for brewing purposes.	Mar. 1	Mar. 25	H-106	387
953621	Mar. 29, 1910	Liquid coating composition	Feb. 28	Mar. 24	Z-106	197
953677	Mar. 29, 1910	Cellulose formate	Feb. 26	Mar. 26	J-106	367
953947	Apr. 5, 1910	Remedy for swine plague	Feb. 28	Mar. 22	S-106	259
954050	Apr. 5, 1910	Process of treating fish flesh	Mar. 1	Mar. 25	X-106	433
954080	Apr. 5, 1910	Process of producing hydro-cyanic acid.	Feb. 28	Mar. 24	Z-106	193
954310	Apr. 5, 1910	Process of producing acetyl-cellulose-coated material.	Feb. 26	Mar. 24	P-106	343
954486	Apr. 12, 1910	Saponaceous compound	Mar. 1	Mar. 25	K-106	402
954658	Apr. 12, 1910	Process of manufacturing cement.	Feb. 28	Mar. 22	V-106	296
954960	Apr. 12, 1910	Red azo dye and process of making same.	Feb. 26	Mar. 22	H-106	301
955068	Apr. 12, 1910	Azo dye and process of making same	Feb. 26	Mar. 22	H-106	301
955082	Apr. 12, 1910	Cellulose formate	Feb. 26	Mar. 26	J-106	367
955360	Apr. 19, 1910	Method of manufacturing substances of high resistance.	Feb. 28	Mar. 25	R-106	372
955699	Apr. 19, 1910	Thioindigo vat dye	Feb. 26	Apr. 9	L-106	419
955918	Apr. 26, 1910	Lithopone-white and process for treating same.	Feb. 28	Mar. 25	Y-106	314
956764	May 3, 1910	Process of producing lithographic printing plates.	Feb. 26	Mar. 21	U-106	146
956832	May 3, 1910	Filter	Feb. 28	Mar. 25	S-106	336
957460	May 10, 1910	Machine for spinning viscous liquids.	Mar. 1	Mar. 24	T-106	274
957761	May 10, 1910	Process of making sodium sulfite and ammonium chlorid.	Feb. 28	Mar. 24	V-106	321
958154	May 17, 1910	Coke oven	Feb. 28	Mar. 24	Z-106	227
958180	May 17, 1910	Method of producing tantalum	Feb. 25	Mar. 24	T-106	290
958325	May 17, 1910	Urea of the anthraquinone series and process of making same.	Mar. 22	Mar. 26	T-106	362
958623	May 17, 1910	Process of briqueting fines of ore, furnace dust, waste metal, waste iron, etc.	Feb. 25	Mar. 22	H-106	306
958640	May 17, 1910	Sulfur dye and process of making same.	Feb. 26	Mar. 22	H-106	301
958700	May 17, 1910	Process of briqueting fines of ore, furnace dust, waste metal, waste iron, etc.	Feb. 25	Mar. 22	H-106	306

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			1919.	1919.		
958701	May 17, 1910	Process for briqueting fines of ore, furnace dust, waste metal, waste iron, etc.	Feb. 25	Mar. 22	H-106	306
958757	May 24, 1910	Electric melting and refining furnace.	Feb. 28	Mar. 24	K-106	352
958774	May 24, 1910	Black-mono-azo dye and process of making.	Feb. 26	Apr. 9	L-106	419
958912	May 24, 1910	Nitro-ortho-oxy-azo colors and process of making same.	Feb. 23	Mar. 24	T-106	271
958936	May 24, 1910	Process of regenerating stannic-chlorid solutions.	Feb. 28	Mar. 21	P-106	291
959078	May 24, 1910	Orange azo dye	Feb. 26	Mar. 22	J-106	269
959617	May 31, 1910	Vat dye and process of making	Feb. 26	Apr. 9	L-106	419
959883	May 31, 1910	Apparatus for chemical cleaning	Feb. 28	Mar. 26	W-106	466
960100	May 31, 1910	Compound for producing silk-like effects.	Mar. 1	Mar. 26	P-106	306
960116	May 31, 1910	Method of producing a caoutchouc-like elastic substance.	Feb. 28	Mar. 21	U-106	174
960652	June 7, 1910	Brown sulfur dye and process of making same.	Feb. 26	Mar. 22	J-106	269
961047	June 7, 1910	Anthraquinone acridones	Feb. 26	Mar. 22	H-106	301
961350	June 14, 1910	Process of making nitric acid	Feb. 26	Mar. 24	Y-106	273
961564	June 14, 1910	Process for the determination of fat in milk and other dairy products.	Feb. 28	Mar. 22	P-106	297
961924	June 21, 1910	Process of refining gold	Mar. 1	Mar. 24	W-106	413
962069	June 28, 1910	Device for pressing the doors of ovens against their seats.	Feb. 28	Mar. 21	T-106	225
962770	June 28, 1910	Process of producing durable solutions for spinning and other purposes.	Feb. 26	Mar. 24	X-106	397
963126	July 5, 1910	Arsenoarylglycollic acids	Feb. 26	Apr. 9	L-106	419
963377	July 5, 1910	Manufacture of indigo leuco bodies.	Feb. 26	Mar. 22	J-106	275
963813	July 12, 1910	Red halogenised dye and process of making same.	Feb. 26	Apr. 9	L-106	419
964055	July 12, 1910	Device for locking and releasing oven doors.	Feb. 28	Mar. 21	T-106	225
964122	July 12, 1910	Alloy and a compound for the production thereof.	Feb. 28	Mar. 25	T-106	331
964164	July 12, 1910	Composition of matter to be used for making acid-proof cement.	Feb. 28	Mar. 24	Q-106	320
964244	July 12, 1910	Separator	Feb. 28	Mar. 22	K-106	303
964415	July 12, 1910	Method of producing hydrogen from water gas.	Feb. 25	Mar. 22	Y-106	224
964565	July 19, 1910	Process of making fatty compounds for use as Turkey-red oils.	Feb. 28	Mar. 22	Q-106	302
964918	July 19, 1910	Bluish-red disazo dye	Feb. 26	Mar. 22	J-106	269
964919	July 19, 1910	Brown mordant azo dye	Feb. 26	Mar. 22	J-106	269
964920	July 19, 1910	Disazo dye	Feb. 26	Mar. 22	J-106	269
965267	July 26, 1910	Composition for use in burning artificial teeth.	Mar. 1	Mar. 21	W-106	352
965482	July 26, 1910	Process of manufacturing gas for inflating aerostats.	Feb. 27	Mar. 24	K-106	357
965485	July 26, 1910	Article of manufacture	Feb. 26	Mar. 22	J-106	269
965804	July 26, 1910	Alizarin preparation and process of making.	Feb. 25	Mar. 21	K-106	279
965823	July 26, 1919	Process for hardening condensation products from phenols and aldehydes.	Feb. 28	Mar. 21	P-106	282
966136	Aug. 2, 1910	Compound of emulsion and production of same.	Feb. 28	Mar. 21	G-106	279
966372	Aug. 2, 1910	Manufacture of moldings	Mar. 1	Mar. 25	T-106	342
966820	Aug. 9, 1910	Process of rendering hydroxyl derivatives of aromatic hydrocarbons soluble in water.	Feb. 26	Mar. 22	T-106	240
967584	Aug. 16, 1910	Casein derivatives or compounds and process of making same.	Feb. 26	Mar. 22	V-106	293
967775	Aug. 16, 1910	Pyrophoric metallic substance	Feb. 28	Mar. 24	T-106	284

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968423	Aug. 23, 1910	Process for the manufacture of albumose soap.	Mar. 1	Mar. 22	U-106	218
968438	Aug. 23, 1910	Process for the manufacture of bleached soap.	Feb. 28	Mar. 25	P-106	363
968478	Aug. 23, 1910	Apparatus for the uninterrupted separation of constituents.	Feb. 28	Mar. 22	I-106	304
968697	Aug. 30, 1910	Vat dye and process of making same	Mar. 22	Mar. 26	T-106	362
969118	Aug. 30, 1910	Apparatus for washing and rinsing clothes and the like by means of benzene.	Feb. 28	Mar. 26	W-106	465
969381	Sept. 6, 1910	Process of making artificial cryolite.	Feb. 27	Mar. 24	U-106	244
969504	Sept. 6, 1910	Manufacture of briquets	Feb. 28	Mar. 24	U-106	265
969907	Sept. 13, 1910	Method of recovering ammonia from coal gases and the like.	Feb. 25	Mar. 21	Z-106	137
970883	Sept. 20, 1910	Process of obtaining ammonia	Feb. 25	Mar. 22	I-106	276
971124	Sept. 27, 1910	Protective screen for apparatus which are exposed to high temperatures.	Feb. 28	Mar. 25	Q-106	351
971137	Sept. 27, 1910	Coke Furnace	Feb. 28	Mar. 24	Z-106	227
971144	Sept. 27, 1910	Preparing caustic soda	Feb. 26	Mar. 22	J-106	269
971145	Sept. 27, 1910	Preparing caustic potash	Feb. 26	Mar. 22	J-106	269
971149	Sept. 27, 1910	Catalytic body and method of making same.	Feb. 26	Mar. 22	J-106	259
971194	Sept. 27, 1910	Wood-preserving solution	Feb. 26	Mar. 22	X-106	334
971206	Sept. 27, 1910	Process of producing hydrogen	Feb. 25	Mar. 21	P-106	276
971280	Sept. 27, 1910	Ink for ceramic transfer pictures	Feb. 28	Mar. 25	U-106	275
971681	Oct. 4, 1910	Process of making artificial ointment bases.	Mar. 1	Mar. 24	R-106	323
971745	Oct. 4, 1910	Washing and cleaning machine for textile fabrics and the like.	Feb. 18	Mar. 24	K-106	330
971761	Oct. 4, 1910	Yellow disazo dyestuff for wool	Feb. 26	Mar. 22	J-106	269
971762	Oct. 4, 1910	Yellow azo dyestuff for wool	Feb. 26	Mar. 22	J-106	269
972029	Oct. 4, 1910	Method of and apparatus for generating electricity.	Feb. 28	Mar. 21	S-106	237
972079	Oct. 4, 1910	Method of autogeneous welding, cutting or soldering metals.	Feb. 26	Mar. 22	R-106	308
972316	Oct. 11, 1910	Process of preparing a tooth-healing preparation.	Feb. 28	Mar. 21	L-106	206
972345	Oct. 11, 1910	Preparation of a fat like substance from the bodies of bacteria.	Feb. 23	Mar. 24	T-106	271
972723	Oct. 11, 1910	Manufacture of filters	Mar. 1	Mar. 25	X-106	436
973164	Oct. 18, 1910	Process of obtaining ammonium salts from gas.	Feb. 24	Mar. 21	U-106	126
973171	Oct. 18, 1910	Process of treating barium chlorid and strontium chlorid for producing chlorin and hydroxid of the said metals.	Feb. 25	Mar. 22	I-106	281
973732	Oct. 25, 1910	Process of reduction of ores containing sulfur and iron.	Feb. 26	Mar. 22	P-106	293
973832	Oct. 25, 1910	Process of making oxalates from formates.	Feb. 26	Mar. 22	P-106	293
974001	Oct. 25, 1910	Process of manufacture of fuel blocks.	Feb. 28	Mar. 25	Z-106	269
974131	Nov. 1, 1910	Gelatin composition	Feb. 26	Mar. 22	T-106	249
974463	Nov. 1, 1910	Process for removing tin from tin plate waste	Feb. 24	Mar. 21	Y-106	163
974835	Nov. 8, 1910	Process of case-hardening tantalum	Mar. 21	Mar. 26	Z-106	293
974962	Nov. 8, 1910	Method of preserving wood	Feb. 28	Mar. 24	X-106	372
975129	Nov. 8, 1910	Stable mixture for producing hydrogen peroxid.	Feb. 26	Mar. 22	H-106	313
975353	Nov. 8, 1910	Stable mixture for producing hydrogen peroxid.	Feb. 26	Mar. 22	H-106	313
975354	Nov. 8, 1910	Stable mixture for producing hydrogen peroxid.	Feb. 26	Mar. 22	H-106	313
975613	Nov. 15, 1910	Process of purifying chlorates	Feb. 26	Mar. 24	R-106	311
975691	Nov. 15, 1910	Process of producing a molded mass	Feb. 28	Mar. 24	X-106	385
975835	Nov. 15, 1910	Process of electrolytically treating tannic infusions of plants.	Feb. 26	Mar. 21	H-106	276

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975863	Nov. 15, 1910	Anthraquinone derivatives and process of making same.	Feb. 26	Apr. 9	L-106	419
976319	Nov. 22, 1910	Protective coating for carbon bodies	Feb. 26	Mar. 25	Q-106	352
976401	Nov. 22, 1910	Monoazo dye for lakes	Feb. 26	Mar. 22	J-106	269
977348	Nov. 29, 1910	Regenerative coke oven	Feb. 28	Mar. 21	P-106	286
977681	Dec. 6, 1910	Manufacture of artificial stone from slag.	Mar. 1	Mar. 22	K-106	315
977730	Dec. 6, 1910	Plaster	Feb. 26	Mar. 24	K-106	335
977819	Dec. 6, 1910	Process of making phosphatic slag and iron.	Feb. 27	Mar. 24	I-106	339
977909	Dec. 6, 1910	Process of removing tar in recovering ammonia.	Feb. 28	Mar. 25	K-106	390
978282	Dec. 13, 1910	Process of fermentation for use in manufacture of yeast and spirit.	Feb. 28	Mar. 24	V-106	314
978307	Dec. 13, 1910	Process of transforming substance soluble in alcohol into emulsions in water.	Mar. 1	Mar. 24	R-106	323
978792	Dec. 13, 1910	Quinin ester	Mar. 1	Mar. 25	Z-106	259
978865	Dec. 20, 1910	Monoazo and process of making	Feb. 26	Apr. 9	L-106	419
979013	Dec. 20, 1910	Process of manufacturing masses for use in making artificial threads and the like.	Feb. 27	Mar. 24	X-106	398
979054	Dec. 20, 1910	Remedy for swine fever, plague, etc.	Feb. 28	Mar. 21	I-106	250
979080	Dec. 20, 1910	Process of preparing tanniferous material for extraction.	Feb. 28	Mar. 24	K-106	344
979362	Dec. 20, 1910	Apparatus for making extracts	Feb. 28	Mar. 21	W-106	349
979431	Dec. 27, 1910	Nitrocellulose gunpowder	Mar. 1	Mar. 22	I-106	279
979656	Dec. 27, 1910	Clarifying extracts containing tannin.	Feb. 28	Mar. 24	Z-106	190
979704	Dec. 27, 1910	Moth-destroying composition	Feb. 28	Mar. 21	Q-106	277
979887	Dec. 27, 1910	Vanadium acid oxalate and process of making same.	Feb. 25	Apr. 9	Z-106	358
980848	Jan. 3, 1911	Method of producing stable soluble cellulose derivatives from viscose.	Feb. 27	Mar. 24	X-106	389
980807	Jan. 3, 1911	Process for the manufacture of plastic substances.	Feb. 27	Mar. 24	X-106	399
980813	Jan. 3, 1911	Process of liquefying air and separating out oxygen.	Feb. 27	Mar. 24	T-106	307
980936	Jan. 10, 1911	Manufacture and production of baking powder.	Feb. 26	Mar. 22	T-106	245
980940	Jan. 10, 1911	Electric induction furnace	Feb. 26	Mar. 22	K-106	305
981727	Jan. 17, 1911	Means for electric-arc reactions on gases.	Feb. 26	Mar. 22	J-106	269
981775	Jan. 17, 1911	Process of detinning tin scraps	Feb. 18	Mar. 25	I-106	370
981953	Jan. 17, 1911	Apparatus for distilling oils of the petroleum tar, and like industries using a high vacuum.	Feb. 28	Mar. 24	P-106	356
982022	Jan. 17, 1911	Magnesium-zinc alloy	Feb. 25	Mar. 21	Z-106	149
982050	Jan. 17, 1911	Yellow pyrazolone dye for wool	Feb. 26	Mar. 22	H-106	301
982370	Jan. 24, 1911	Composition for making gold leaf	Feb. 28	Mar. 24	S-106	319
982507	Jan. 24, 1911	Disazo dyestuff	Feb. 26	Mar. 22	J-106	269
982508	Jan. 24, 1911	Disazo dyestuff	Feb. 26	Mar. 22	J-106	269
982509	Jan. 24, 1911	Disazo dyestuff	Feb. 26	Mar. 22	J-106	269
982902	Jan. 31, 1911	Process of cleaning and refining coffee beans.	Feb. 28	Mar. 21	K-106	291
982910	Jan. 31, 1911	Tannin-silver-albumen compound	Feb. 28	Mar. 25	K-106	400
982964	Jan. 31, 1911	Apparatus for atomizing liquid slag.	Feb. 28	Mar. 21	J-106	226
983132	Jan. 31, 1911	Monoazo dyestuff for chromemordanted wool.	Feb. 26	Mar. 22	H-106	301
983139	Jan. 31, 1911	Manufacture of filaments, films, and other cellulose products from cellulose solutions.	Feb. 26	Mar. 24	Y-106	259
983377	Feb. 7, 1911	Method of protecting iron from rust.	Feb. 28	Mar. 21	P-106	280
983486	Feb. 7, 1911	Monoazo dyestuff and process of making same.	Feb. 26	Apr. 9	L-106	419
983521	Feb. 7, 1911	Process of manufacturing cement.	Feb. 28	Mar. 22	V-106	296

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			1919.	1919.		
983530	Feb. 7, 1911	Apparatus for dyeing loose material	Feb. 26	Apr. 9	L-106	419
983805	Feb. 7, 1911	Monoazo dye	Feb. 26	Mar. 22	H-106	301
983907	Feb. 14, 1911	Apparatus for generating ozone	Feb. 25	Mar. 24	T-106	290
983916	Feb. 14, 1911	Aneroid barometer	Feb. 27	Mar. 24	U-106	254
983951	Feb. 14, 1911	Process of bucking or bleaching vegetable fibers dyed with vat dyestuffs.	Feb. 26	Apr. 9	L-106	419
984020	Feb. 14, 1911	Candle emitting a colored light	Feb. 28	Mar. 22	Q-106	296
984030	Feb. 14, 1911	Gas-liquefying apparatus for demonstration purposes.	Feb. 28	Mar. 22	K-106	310
984442	Feb. 14, 1911	Process for preparing indoxyls and indigo coloring matters.	Feb. 27	Mar. 25	V-106	353
984483	Feb. 14, 1911	Process of manufacturing starch soluble in cold water.	Feb. 28	Mar. 21	G-106	254
984605	Feb. 21, 1911	Method of producing nitrogen and carbon dioxid from gaseous products of combustion.	Feb. 28	Mar. 21	T-106	215
984900	Feb. 21, 1911	Monoazo dyestuff and process of making same.	Feb. 26	Mar. 22	H-106	301
984925	Feb. 21, 1911	Process of oxidizing nitrogen of air by means of electric discharges.	Feb. 26	Mar. 21	G-106	253
985528	Feb. 28, 1911	Producing acetylene tetrachlorid	Feb. 28	Mar. 24	X-106	382
986148	Mar. 7, 1911	Derivative of oxylarylarsinic acids and process of making same	Feb. 26 Mar. 22	Apr. 9 Mar. 26	L-106 T-106	419 359
986204	Mar. 7, 1911	Process of making pure ammonium nitrate.	Feb. 28	Mar. 24	V-106	325
986287	Mar. 7, 1911	Monoazo dyes for wool	Feb. 26	Mar. 22	H-106	301
986332	Mar. 7, 1911	Process of treating textile materials.	Feb. 28	Mar. 25	T-106	344
986508	Mar. 14, 1911	Process for the recovery of copper from porphyry ores and the like.	Feb. 28	Mar. 24	X-106	406
986527	Mar. 14, 1911	Soap	Feb. 28	Mar. 25	T-106	346
986562	Mar. 14, 1911	Process of manufacturing linoxyn and like products especially intended for utilization in the linoleum manufacture.	Feb. 26	Mar. 21	U-106	145
987133	Mar. 21, 1911	Process of obtaining lecithin, lecith albumin, and their by-products out of raw material containing lecithin.	Feb. 28	Mar. 24	T-106	294
987362	Mar. 21, 1911	Monoazo dyes for wool	Feb. 26	Mar. 22	H-106	301
987375	Mar. 21, 1911	Process of making nitrogen-oxygen.	Feb. 26	Mar. 21	G-106	253
987721	Mar. 28, 1911	Scouring machine	Mar. 22	Mar. 24	W-106	386
987771	Mar. 28, 1911	Esters of salicylic-acid derivatives and process of making the same.	Mar. 1	Mar. 24	J-106	317
987999	Mar. 28, 1911	Process of making ortho-oxymonoazo dye.	Feb. 26	Mar. 22	J-106	269
988000	Mar. 28, 1911	Substantine disazo dyestuff	Feb. 26	Mar. 22	J-106	269
988032	Mar. 28, 1911	Process of manufacturing new organic fatty-acid compounds.	Feb. 26	Apr. 9	L-106	419
988244	Mar. 28, 1911	Explosive	Feb. 26	Mar. 22	I-106	287
988261	Mar. 28, 1911	Process for directly converting sugar syrups into crystallized sugar of agreeable taste.	Feb. 28	Mar. 21	U-106	154
988430	Apr. 4, 1911	Process of manufacturing artificial threads.	Feb. 26	Mar. 24	Y-106	259
988733	Apr. 4, 1911	Formaldehyde compound and process of making same.	Feb. 25	Mar. 22	T-106	252
988842	Apr. 4, 1911	Retort furnace	Feb. 28	Mar. 24	Z-106	243
988870	Apr. 4, 1911	Yellow monazo dye and process of making same.	Feb. 26	Mar. 22	H-106	301
988874	Apr. 4, 1911	Process for removing printer's ink from printed paper by means of bleaching substances having an alkaline action.	Feb. 28	Mar. 24	X-106	376
989322	Apr. 11, 1911	Disinfecting composition	Feb. 28	Mar. 22	S-106	253
989602	Apr. 18, 1911	Manufacture of animoraylacidylanimoanthraquinones and their acidyl derivatives.	Feb. 26	Apr. 9	L-106	419

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989651	Apr. 18, 1911	Process for manufacture of camphor.	Feb. 28	Mar. 25	I-106	363
989664	Apr. 18, 1911	Manufacture of hydrocinchona alkaloids.	Mar. 1	Mar. 25	Z-106	259
989671	Apr. 18, 1911	Electric furnace	Feb. 28	Mar. 24	L-106	286
989868	Apr. 18, 1911	Ore-roasting furnace	Feb. 28	Mar. 25	L-106	306
989955	Apr. 18, 1911	Treatment of gases for removing carbon monoxid therefrom and replacing it by hydrogen.	Feb. 26	Mar. 22	J-106	269
990040	Apr. 18, 1911	Improving the conductivity and tensile strength of copper and its alloys.	Feb. 28	Mar. 21	K-106	281
990064	Apr. 18, 1911	Apparatus for use in dyeing wound yarn.	Feb. 28	Mar. 22	U-106	204
990224	Apr. 25, 1911	Fluorescein dyestuff and process of making same.	Feb. 26	Apr. 9	L-106	419
990310	Apr. 25, 1911	1. Para-dimethylaminophenyl 1 -2.3.4- trimethyl- 5 -pyrasolone and process of making same.	Feb. 26	Apr. 9	L-106	419
990929	May 2, 1911	Process of preparing starch	Feb. 28	Mar. 21	K-106	290
991096	May 2, 1911	Process of making phosphates	Feb. 28	Mar. 25	U-106	290
991200	May 2, 1911	Process of preserving wood	Feb. 25	Mar. 22	U-106	183
991205	May 2, 1911	Distilling apparatus	Feb. 28	Mar. 21	L-106	196
991261	May 2, 1911	Pharmaceutical preparation	Feb. 26	Mar. 22	H-106	301
991861	May 8, 1911	Apparatus for deodorising the exhaust gases of internal-combustion engines.	Mar. 1	Mar. 24	J-106	295
991874	May 9, 1911	Process for obtaining alcohols or alcoholic matters from wool fat.	Feb. 26	Mar. 24	Z-106	219
992600	May 16, 1911	Process of treating aluminum articles for the formation of galvanic metallic coatings.	Feb. 25	Mar. 21	Z-106	150
992947	May 23, 1911	Process of dyeing hair, furs, and the like.	Feb. 26	Mar. 22	H-106	301
992951	May 23, 1911	Process for the manufacture of ductile electrolytic iron.	Feb. 26	Mar. 22	Y-106	213
992952	May 23, 1911	Process for the manufacture of ductile electrolytic iron.	Feb. 26	Mar. 22	Y-106	213
993011	May 23, 1911	Process of manufacturing dextrin	Feb. 28	Mar. 21	J-106	243
993270	May 23, 1911	Production of metals and alloys	Feb. 28	Mar. 24	V-106	336
993331	May 23, 1911	Process for the manufacture of formates.	Feb. 28	Mar. 22	S-106	287
993373	May 30, 1911	Purification of magnesium and magnesium alloys.	Feb. 26	Mar. 22	R-106	306
993463	May 30, 1911	Method of making manure	Feb. 28	Mar. 22	Q-106	292
993888	May 30, 1911	Method of separating substances in suspension.	Feb. 28	Mar. 21	S-106	237
993915	May 30, 1911	Halogenized carboylic acid of phenylamincanthrasuinone series.	Feb. 26	Mar. 22	H-106	301
993992	May 30, 1911	Vat dye of the anthraquinone series.	Feb. 26	Mar. 22	H-106	301
993998	May 30, 1911	Metallic alloy	Feb. 28	Mar. 24	T-106	284
994076	May 30, 1911	Method of mercerizing cotton, preferably in form of skeins.	Feb. 26	Mar. 24	Y-106	265
994095	May 30, 1911	Process of making nitrogenous compounds.	Feb. 25	Mar. 24	T-106	290
994315	June 6, 1911	Treatment of gases given off in the destructive distillation of coal, &c	Feb. 27	Mar. 22	G-106	307
994437	June 6, 1911	Process of preparing camphor	Feb. 25	Apr. 9	Z-106	358
994445	June 6, 1911	Methoxymethylmenthol	Feb. 25	Apr. 9	Z-106	358
994660	June 6, 1911	Process of breeding microbes	Feb. 27	Mar. 25	I-106	355
995038	June 13, 1911	Acid ferric phosphor tartrate	Feb. 28	Mar. 25	S-106	342
995113	June 13, 1911	Aluminum alloy	Feb. 25	Mar. 21	H-106	262
995160	June 13, 1911	Orange cotton dyes	Feb. 26	Mar. 22	J-106	269
995161	June 13, 1911	Disazo dyes for wool	Feb. 26	Mar. 22	J-106	269
995431	June 20, 1911	Process of dyeing half-woolen goods.	Feb. 26	Apr. 9	L-106	419
995494	June 20, 1911	Blue triphenylmethane dye-stuff	Feb. 26	Apr. 9	L-106	419
995510	June 20, 1911	Method of producing transparent camphor in shaped pieces.	Feb. 28	Mar. 25	U-106	301
995724	June 20, 1911	White enamel	Feb. 28	Mar. 21	Z-106	145

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996191	June 27, 1911	Pyroxylin plastic and method of making same.	Feb. 25	Mar. 22	Y-106	199
996274	June 27, 1911	Yohimbin preparations and process of manufacturing same.	Feb. 28	Mar. 22	L-106	239
996380	June 27, 1911	Process of purifying tin scraps preparatory to detinning the same.	Feb. 18	Mar. 25	I-106	369
996485	June 27, 1911	Sulfurized vat dye of the anthraquinone series.	Feb. 26	Mar. 22	H-106	301
996763	July 4, 1911	Production of anhydrous ethyl alcohol.	Feb. 26	Mar. 22	R-106	306
996773	July 4, 1911	Stable perborate mixture yielding hydrogen peroxid.	Feb. 28	Mar. 24	Y-106	284
997056	July 4, 1911	Heating and moulding subdivided cork.	Feb. 28	Mar. 22	K-106	306
997061	July 4, 1911	Tetrakisazo dye	Feb. 26	Mar. 22	H-106	301
997477	July 11, 1911	Process and apparatus for purifying solutions.	Feb. 28	Mar. 25	Z-106	261
998288	July 18, 1911	Yarn, mercerizing machine	Feb. 26	Mar. 24	Y-106	265
998358	July 18, 1911	Manufacture of cement from furnace slag.	Feb. 28	Mar. 21	W-106	338
998726	July 25, 1911	Phenolphthalein diisovalerate	Feb. 26	Mar. 22	V-106	292
998772	July 25, 1911	Blue dyestuff and process of making same.	Feb. 26	Apr. 9	L-106	419
998787	July 25, 1911	Tilting forehearth for furnaces	Feb. 27	Mar. 24	U-106	248
998982	July 25, 1911	Method of producing haloginoxygen compounds by electrolysis.	Mar. 1	Mar. 22	Y-106	242
998995	July 25, 1911	Detergent and production of same	Feb. 28	Mar. 21	G-106	279
999013	July 25, 1911	Process of preparing wood-impregnating liquids.	Mar. 1	Mar. 22	U-106	182
999045	July 25, 1911	Manufacture of brown sulfurised vat dyestuffs.	Feb. 26	Mar. 22	J-106	269
999062	July 25, 1911	Manufacture of anthranol	Mar. 22	Mar. 26	T-106	362
999099	July 25, 1911	Process of perforating metals	Mar. 1	Mar. 22	Z-106	155
999236	Aug. 1, 1911	Process for preparing cellulose esters in definite forms.	Feb. 26	Mar. 24	P-106	343
999320	Aug. 1, 1911	Rectifying column	Feb. 28	Mar. 21	M-106	373
999330	Aug. 1, 1911	Paint or color disperser with more than one air-nozzle.	Feb. 28	Mar. 21	Y-106	188
999420	Aug. 1, 1911	Process of separating zinc or zinc oxid.	Feb. 28	Mar. 24	W-106	416
999497	Aug. 1, 1911	Process of making stable calcium perborate.	Feb. 26	Mar. 22	H-106	313
999499	Aug. 1, 1911	Apparatus for washing and dyeing cops or similar articles.	Feb. 26	Mar. 26	X-106	446
999558	Aug. 1, 1911	Polyazo dye and process of making same.	Feb. 25	Mar. 21	S-106	215
999680	Aug. 1, 1911	Vat dyestuff of the anthracene series.	Feb. 26	Mar. 22	J-106	269
999785	Aug. 8, 1911	Vat dyestuff	Feb. 26	Apr. 9	L-106	419
1000425	Aug. 15, 1911	Method of making solid colored bodies.	Feb. 27	Mar. 21	I-106	271
1000479	Aug. 15, 1911	Briquet and method of making the same.	Feb. 28	Mar. 21	L-106	212
1000487	Aug. 15, 1911	Art of preparing fatty-acid compounds.	Feb. 25 Feb. 25	Mar. 22 Mar. 22	Y-106 S-106	199 255
1000663	Aug. 15, 1911	Method of treating nitro-bodies strips.	Mar. 1	Mar. 21	Z-106	122
1000732	Aug. 15, 1911	Process of making nitric oxid	Feb. 26	Mar. 24	Y-106	273
1000827	Aug. 15, 1911	Process of making salts of hydrated cupric oxid.	Feb. 28	Mar. 21	W-106	344
1000838	Aug. 15, 1911	Electric furnace	Feb. 28	Mar. 24	K-106	352
1000852	Aug. 15, 1911	Solid perfume mixture containing artificial musk.	Feb. 28	Mar. 21	G-106	277
1001247	Aug. 22, 1911	Process for the extraction of licithin from the seeds of lupines and other pulses.	Feb. 24	Mar. 21	Q-106	259
1001286	Aug. 22, 1911	Disazo dyes and process of making same.	Feb. 26	Mar. 22	J-106	269

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1001325	Aug. 22, 1911	Product of the anthraquinone series and process of making same.	Feb. 26	Mar. 22	H-106	301
1001350	Aug. 22, 1911	Ammonium-phosphate fertilizer	Feb. 28	Mar. 24	Z-106	184
1001413	Aug. 22, 1911	Process of treating clay, kaolin, and ceramic masses.	Feb. 28	Mar. 21	G-106	258
1001446	Aug. 22, 1911	Process for the manufacture of a resistive paper mass for industrial purposes.	Mar. 1	Mar. 25	W-106	439
1001457	Aug. 22, 1911	Green to black vat dyestuff	Feb. 26	Apr. 9	L-106	419
1001458	Aug. 22, 1911	Bluish-red azo dyestuffs	Feb. 26	Apr. 9	L-106	419
1001480	Aug. 22, 1911	Process of extracting radium compounds.	Feb. 28	Mar. 24	U-106	271
1001770	Aug. 29, 1911	Process for manufacture of metal bands, wire, etc., from electrolytic iron.	Mar. 1	Mar. 25	L-106	303
1001789	Aug. 29, 1911	Process of rendering vitreous compounds turbid.	Feb. 28	Mar. 22	S-106	281
1001836	Aug. 29, 1911	Method of making plates of linoleum composition for producing blocks for the manufacture of continuously grained linoleum.	Feb. 28	Mar. 25	Z-106	247
1001933	Aug. 29, 1911	Methoxymethylsantalol	Feb. 25	Apr. 9	Z-106	358
1001964	Aug. 29, 1911	Process of making a disinfectant	Feb. 26	Mar. 24	J-106	296
1002023	Aug. 29, 1911	Treatment of mercerized cotton goods.	Feb. 26	Mar. 22	J-106	269
1002115	Aug. 29, 1911	Process of producing multicolored effects in spun and woven goods.	Feb. 26	Apr. 9	L-106	419
1002243	Sept. 5, 1911	Aminooxyarylarsenoxids and process of making same.	Feb. 26	Apr. 9	L-106	419
1002270	Sept. 5, 1911	Vat dyestuff of the anthraquinone series and process of making same.	Feb. 26	Apr. 9	L-106	419
1002547	Sept. 5, 1911	Alkaline albumose-silver compound.	Feb. 25	Apr. 9	Z-106	358
1002548	Sept. 5, 1911	Albumose-silver-ammonic product.	Feb. 25	Apr. 9	Z-106	358
1002635	Sept. 5, 1911	Apparatus for measuring and regulating the concentration of dye liquors.	Feb. 24	Mar. 21	Y-106	166
1003244	Sept. 12, 1911	Purifying rubber or guttapercha	Feb. 28	Mar. 24	Q-106	313
1003266	Sept. 12, 1911	Monoazo dye	Feb. 26	Mar. 22	H-106	301
1003293	Sept. 12, 1911	Monoazo dye for wool	Feb. 26	Mar. 22	H-106	301
1003406	Sept. 12, 1911	Process and apparatus for puffing blast-furnace slag.	Feb. 28	Mar. 25	S-106	326
1003627	Sept. 19, 1911	Process for the reduction of metallic oxids.	Feb. 27	Mar. 24	I-106	334
1003741	Sept. 19, 1911	Solution of resins and the process of manufacturing same.	Feb. 26	Mar. 22	G-106	304
1004027	Sept. 26, 1911	Process and apparatus for manufacturing lincrusta.	Feb. 28	Mar. 24	L-106	259
1004361	Sept. 26, 1911	Method of making ammonium carbonate.	Feb. 24	Mar. 22	G-106	298
1004499	Sept. 26, 1911	Extract of ergot	Feb. 26	Mar. 22	V-106	292
1004661	Oct. 3, 1911	Purifying apparatus for acetylene gas.	Mar. 1	Mar. 24	U-106	243
1004916	Oct. 3, 1911	Rotary metallurgical furnace for roasting zinc ores and the like.	Feb. 28	Mar. 21	U-106	178
1005076	Oct. 3, 1911	Bacterial product	Feb. 28	Mar. 21	S-106	231
1005077	Oct. 3, 1911	Bacterial product	Feb. 28	Mar. 21	S-106	231
1005115	Oct. 3, 1911	Gun barrel and analogous object	Feb. 28	Mar. 24	Y-106	271
1005339	Oct. 10, 1911	Instrument for high temperatures	Feb. 28	Apr. 9	Q-106	450
1005456	Oct. 10, 1911	Method of producing acid albuminate.	Feb. 28	Mar. 21	X-106	313
1005481	Oct. 10, 1911	Preparation suitable for the indigo vat.	Feb. 26	Apr. 9	L-106	419
1005931	Oct. 17, 1911	Process of producing juice from beet roots.	Feb. 28	Mar. 21	T-106	202
1006274	Oct. 17, 1911	Process for the manufacture of rubber substitute.	Feb. 28	Mar. 22	U-106	203
1006281	Oct. 17, 1911	Car for quenching coke	Feb. 28	Mar. 22	U-106	208

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1006311	Oct. 17, 1911	Apparatus for continuously lixiviating plants.	Feb. 28	Mar. 25	Y-106	310
1006312	Oct. 17, 1911	Process of treating potatoes	Feb. 28	Mar. 25	Y-106	310
1006471	Oct. 24, 1911	Liquid dyeing apparatus	Feb. 26	Mar. 22	R-106	291
1006725	Oct. 24, 1911	Manufacture of dry mortar or plaster.	Feb. 28	Mar. 25	Q-106	340
1006738	Oct. 24, 1911	Red acid dyestuff on the triphenylmethanes series and process of making same.	Feb. 26	Apr. 9	L-106	419
1006793	Oct. 24, 1911	Process of producing aldehyde sulfoxylates.	Feb. 28	Mar. 21	Z-106	135
1006849	Oct. 24, 1911	Pyrophoric metal alloy	Feb. 28	Mar. 21	L-106	199
1006929	Oct. 24, 1911	Azo dye	Feb. 28	Mar. 24	G-106	327
1006977	Oct. 24, 1911	Process for decolorizing tannin extracts.	Feb. 28	Mar. 24	R-106	336
1007104	Oct. 31, 1911	Vat dyestuffs of the anthraquinone series and the process of making same.	Feb. 26	Apr. 9	L-106	419
1007199	Oct. 31, 1911	Composition of matter for forming plastic wall coverings.	Feb. 18	Mar. 24	W-106	393
1007967	Nov. 7, 1911	Distillation process	Mar. 21	Mar. 26	L-106	348
1008249	Nov. 7, 1911	Process of treatment of wool	Feb. 26	Mar. 22	J-106	248
1008284	Nov. 7, 1911	Process of briqueting metals containing copper.	Feb. 25	Mar. 22	H-106	306
1008906	Nov. 14, 1911	Vat dyes of the anthraquinone series.	Feb. 26	Mar. 22	H-106	301
1008907	Nov. 14, 1911	Monoazo dye	Feb. 26	Mar. 22	H-106	301
1008908	Nov. 14, 1911	Vat dye of the anthraquinone series.	Feb. 26	Mar. 22	H-106	301
1008927	Nov. 14, 1911	Process of making calcium cyanamid.	Feb. 27	Mar. 25	F-106	381
1009061	Nov. 21, 1911	Apparatus for mercurial decomposition of alkaline chloride.	Feb. 25	Mar. 24	U-106	223
1009100	Nov. 21, 1911	Process of toning blue photographic silver pictures.	Feb. 25	Apr. 9	Z-106	358
1009577	Nov. 21, 1911	Process of manufacture of smokeless gunpowder.	Mar. 1	Mar. 25	W-106	440
1009610	Nov. 21, 1911	Process of decaffeinizing coffee beans.	Feb. 28	Mar. 22	S-106	290
1009964	Nov. 28, 1911	Process for producing verdigris	Feb. 25	Mar. 21	S-106	223
1009981	Nov. 28, 1911	Process of dyeing with benzoquinone derivatives.	Feb. 26	Apr. 9	L-106	419
1010141	Nov. 28, 1911	Photographic plate	Feb. 28	Mar. 22	G-106	303
1010177	Nov. 28, 1911	Process for the manufacture of alkali earthsal of hydroxylamin disulfonic acid.	Feb. 27	Mar. 25	V-106	338
1010210	Nov. 28, 1911	Disinfectant	Feb. 26	Mar. 24	K-106	300
1010447	Dec. 5, 1911	Manufacture of harmless combinations of sulfocyanic acid.	Feb. 25 Feb. 28	Mar. 22 Mar. 22	L-106 L-106	244 246
1011014	Dec. 5, 1911	Process of manufacturing oxide of nitrogen.	Feb. 25	Mar. 21	Y-106	181
1011075	Dec. 5, 1911	Manufacture of harmless combinations of sulfocyanic acid.	Feb. 25	Mar. 22	L-106	244
1011076	Dec. 5, 1911	Manufacture of harmless combinations of sulfocyanic acid.	Feb. 25 Mar. 1	Mar. 22 Mar. 22	L-106 L-106	244 247
1011079	Dec. 5, 1911	Still for use with a high vacuum	Feb. 28	Mar. 24	R-106	345
1011203	Dec. 12, 1911	Process for pickling aluminum and its alloys prior to galvanizing or coating the same with other metals.	Feb. 26	Mar. 22	I-106	308
1011485	Dec. 12, 1911	Electric battery	Feb. 28	Mar. 25	L-106	310
1011500	Dec. 12, 1911	Process of making phenylglycin salts.	Feb. 26	Mar. 22	J-106	269
1011511	Dec. 12, 1911	Funnel for charging containers for bursting charges with fused explosives.	Mar. 1	Mar. 22	Y-106	342
1011770	Dec. 12, 1911	Azo dye for wool	Feb. 26	Mar. 22	H-106	301
1012149	Dec. 19, 1911	Process for the production of halogen derivatives of hydrocarbons.	Feb. 28	Mar. 24	R-106	343
1012283	Dec. 19, 1911	Process of coloring wood	Feb. 28	Mar. 24	Y-106	302

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1012421	Dec. 19, 1911	Manufacture of sulphuric acid	Feb. 26	Mar. 24	Y-106	339
1012511	Dec. 19, 1911	Method of detinning	Feb. 24	Mar. 21	Y-106	163
1012531	Dec. 19, 1911	Process for the manufacture of solid-fashioned bodies containing silicon carbid.	Feb. 26	Mar. 25	Q-106	352
1012619	Dec. 26, 1911	Process of producing dischargeable dyeings on cotton.	Feb. 26	Apr. 9	L-106	419
1012630	Dec. 26, 1911	Raw-tallow substitutes for lubricating purposes and process for manufacturing the same.	Feb. 26	Mar. 24	T-106	276
1012867	Dec. 26, 1911	Process for manufacturing material for casting and painting.	Feb. 28	Mar. 22	L-106	231
1013137	Jan. 2, 1912	Process of tightening casks, barrels, or the like.	Feb. 26	Mar. 22	L-106	216
1013181	Jan. 2, 1912	Process of making chlorosulfonic acid.	Feb. 28	Mar. 24	Y-106	285
1013407	Jan. 2, 1912	Production of starch and gluten from wheat flour.	Feb. 28	Mar. 21	G-106	267
1013620	Jan. 2, 1912	Method of welding copper or nickel and copper or nickel alloy.	Mar. 1	Mar. 22	Y-106	235
1013881	Jan. 9, 1912	Method of and apparatus for vaporizing the volatile constituents of liquids.	Feb. 28	Mar. 24	Y-106	288
1014103	Jan. 9, 1912	Hydrocarbon emulsion	Feb. 28	Mar. 21	P-106	228
1014198	Jan. 9, 1912	Nontoxic suprarenal preparation	Feb. 28	Mar. 21	L-106	213
1014539	Jan. 9, 1912	Manufacture of lakes	Feb. 28	Mar. 25	J-106	337
1014560	Jan. 9, 1912	Process of electroplating aluminum and its alloys.	Feb. 27	Mar. 24	H-106	333
1015214	Jan. 16, 1912	Loading charge for bursting shells for guns, torpedo heads, maritime mines, and the like.	Mar. 1	Mar. 22	Y-106	242
1015215	Jan. 16, 1912	Projectile loading for scattering charges.	Mar. 1	Mar. 22	Y-106	242
1015220	Jan. 16, 1912	Process of making sodium aluminum fluorid.	Feb. 28	Mar. 24	U-106	261
1015286	Jan. 23, 1912	Process of making alkali-earth peroxid.	Feb. 25	Mar. 21	I-106	254
1015320	Jan. 23, 1912	Vat dyestuffs and process of making same.	Feb. 26	Apr. 9	L-106	419
1015354	Jan. 23, 1912	Trisulfonic acid and the safranin series and process of making same.	Feb. 26	Apr. 9	L-106	419
1015519	Jan. 23, 1912	Process of distilling wood	Feb. 27	Mar. 22	X-106	352
1015566	Jan. 23, 1912	Process of obtaining and separating oxygen and nitrogen from the atmosphere.	Feb. 28	Mar. 25	U-106	276
1015650	Jan. 23, 1912	Method of extracting sugar juices.	Feb. 28	Mar. 25	Y-106	310
1015900	Jan. 30, 1912	Process of liquefying air and separating it into its elements.	Feb. 18	Mar. 24	Z-106	201
1015994	Jan. 30, 1912	Process for the manufacture of the fatty acids from their esters.	Feb. 28	Mar. 25	P-106	368
1016024	Jan. 30, 1912	Process of preserving wood	Feb. 26	Mar. 24	W-106	406
1016092	Jan. 30, 1912	Process of producing para-alkyloxyphenylethylamine and their N-alkyl derivatives.	Feb. 26	Mar. 22	H-106	301
1016115	Jan. 30, 1912	Process for rendering vegetable proteins soluble.	Feb. 28	Mar. 24	Z-106	231
1016307	Feb. 6, 1912	Monoazo dyestuff and process of making same.	Feb. 26	Apr. 9	L-106	419
1016636	Feb. 6, 1912	Vat dye and process of making same	Feb. 26	Mar. 22	J-106	269
1016758	Feb. 6, 1912	Process of producing alkali metal from oxygen compounds of alkali.	Feb. 27	Mar. 24	I-106	338
1016784	Feb. 6, 1912	Organic mercury compound	Feb. 26	Mar. 22	H-106	301
1016939	Feb. 13, 1912	Process for manufacture of briquets.	Mar. 1	Mar. 24	S-106	304
1016977	Feb. 13, 1912	Manufacture of carbamates of tertiary alcohols.	Mar. 1	Mar. 25	Z-106	259
1017181	Feb. 13, 1912	Furnace	Feb. 28	Mar. 22	X-106	341
1017259	Feb. 13, 1912	Ozonizing apparatus	Feb. 26	Mar. 22	S-106	276

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
1017261	Feb. 13, 1912	Process of producing formates	Feb. 26	Mar. 24	W-106	387
1017560	Feb. 13, 1912	Process of producing derivatives of cantharidic acid containing iodin and mercury.	Feb. 26	Mar. 24	U-106	233
1017657	Feb. 20, 1912	Arsenobenzene derivatives and process of making same.	Feb. 26	Apr. 9	L-106	495
1017669	Feb. 20, 1912	Solution of perfumes and method of making the same.	Feb. 26	Mar. 22	G-106	304
1017699	Feb. 20, 1912	1 - P - Dimethylaminophenol - 3.4.4 - trimethyl - 5 - pyrazolone and process of making same.	Feb. 26	Apr. 9	L-106	419
1017748	Feb. 20, 1912	Process of case-hardening metals and alloys.	Feb. 28	Mar. 24	I-106	330
1018003	Feb. 20, 1912	Carbon electrode for electrical purposes.	Mar. 1	Mar. 25	V-106	362
1018329	Feb. 20, 1912	Process of producing sulfur derivatives derived from glycerin.	Feb. 27	Mar. 24	X-106	389
1018402	Feb. 27, 1912	Process of making sulfur trioxid	Feb. 25	Mar. 21	I-106	232
1018406	Feb. 27, 1912	Manufacture of ammonium carbonate.	Feb. 24	Mar. 22	G-106	298
1018458	Feb. 27, 1912	Process for the preparation of stone slabs.	Feb. 28	Mar. 25	L-106	318
1018479	Feb. 27, 1912	Process of recovering sulfur from gas.	Feb. 24	Mar. 21	U-106	128
1018433	Feb. 27, 1912	Brown vat dyestuff and process of making same.	Feb. 26 Mar. —	Apr. 9 Mar. 26	L-106 K-106	419 409
1018733	Feb. 27, 1912	Process of manufacturing anhydrids of fatty acids.	Feb. 28	Mar. 21	P-106	291
1018746	Feb. 27, 1912	Manufacture of phosphoric acid	Feb. 25	Mar. 22	U-106	191
1018990	Feb. 27, 1912	Method of an apparatus for producing and utilizing disklike electric arcs for effecting gas reactions.	Feb. 26	Mar. 22	P-106	298
1019002	Mar. 5, 1912	Method of dyeing	Feb. 27	Mar. 25	X-106	431
1019102	Mar. 5, 1912	Process of manufacturing paraffin.	Feb. 28	Mar. 21	K-106	285
1019285	Mar. 5, 1912	Quinin esters of aromatic amino acids and process of producing same.	Mar. 1	Mar. 25	Z-106	259
1019945	Mar. 12, 1912	Process of producing lecithin	Feb. 24	Mar. 21	Q-106	258
1020102	Mar. 12, 1912	Process for the production of hydrogen from gas mixtures containing hydrogen.	Feb. 28	Mar. 22	H-106	322
1020293	Mar. 12, 1912	Process of making phosphates of potash and ammonia.	Feb. 26	Mar. 22	R-106	301
1020306	Mar. 12, 1912	Process of manufacturing dried yeast.	Mar. 1	Mar. 25	R-106	358
1020452	Mar. 19, 1912	Machine for dyeing, bleaching, and the like.	Feb. 27	Mar. 25	R-106	364
1020624	Mar. 19, 1912	Process for the manufacture of disinfectant substances and products produced thereby.	Mar. 1	Mar. 25	T-106	336
1020673	Mar. 19, 1912	Method of separating the solid constituents from the liquid constituents of fats or fatty substances.	Feb. 28	Mar. 24	W-106	425
1021095	Mar. 26, 1912	Parasiticide for plants	Feb. 26	Mar. 22	K-106	296
1021234	Mar. 26, 1912	Process of manufacturing pure nitric acid.	Feb. 26	Apr. 9	L-106	419
1021380	Mar. 26, 1912	Glove leather and process of preparing it.	Feb. 26	Mar. 24	X-106	413
1021744	Mar. 26, 1912	Process for preparing paste used as weavers' glue or for other similar dressing purposes.	Feb. 28	Mar. 24	G-106	335
1021811	Apr. 2, 1912	Dyeing apparatus	Feb. 28	Mar. 24	W-106	423
1021674	Mar. 26, 1912	Medicinal tablet	Feb. 26	Mar. 22	T-106	240
1021700	Mar. 26, 1912	Process of increasing the raising power of yeast.	Mar. 1	Mar. 25	R-106	358
1022019	Apr. 2, 1912	Amino - oxy - naphtnalene sulfonic acid and process of making same.	Feb. 23	Mar. 24	T-106	271

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				Date of filing or recording.	Book.	Page.
			1919.	1919.		
1022097	Apr. 2, 1912	Process of manufacturing fine artificial threads.	Feb. 26	Mar. 24	X-106	395
1022274	Apr. 2, 1912	Etching fluid for flat printing plates of metal.	Mar. 1	Mar. 21	G-106	283
1022496	Apr. 9, 1912	Process for the filtration of furnace gases.	Feb. 28	Mar. 22	L-106	243
1022612	Apr. 9, 1912	Manufacture of lakes	Feb. 28	Mar. 25	J-106	337
1022627	Apr. 9, 1912	Medicinal bath	Feb. 26	Mar. 24	W-106	387
1023107	Apr. 9, 1912	Method of extinguishing fires in telephone installations.	Feb. 26	Mar. 24	R-106	313
1023199	Apr. 16, 1912	Manufacture of a new beta-naphthol-ortho-oxy-azo dye.	Feb. 23	Mar. 24	T-106	271
1023208	Apr. 16, 1912	Process for the production of pyrophorous substances for ignition and illumination.	Feb. 28	Mar. 25	P-106	365
1023287	Apr. 16, 1912	Manufacture of bleaching liquids.	Feb. 28	Mar. 21	W-106	358
1023451	Apr. 16, 1912	Process for the preparation of chrome leather.	Feb. 23	Mar. 25	R-106	379
1023548	Apr. 16, 1912	Method of recovering ammonia in the cuprammonium cellulose precipitation.	Feb. 28	Mar. 22	X-106	317
1023612	Apr. 16, 1912	Process for the manufacture of galvanic metal reproductions of articles of the plastic arts.	Feb. 25	Mar. 22	S-106	250
1023661	Apr. 16, 1912	Pyrophorous metal	Feb. 27	Mar. 22	Z-106	178
1023758	Apr. 16, 1912	Process for the manufacture of chlorinated phenol esters and of oxybenzyl alcohols, oxybenzaldehydes, and oxybenzoic acids.	Feb. 27	Mar. 25	V-106	358
1023847	Apr. 23, 1912	Alizarin-red vat dyestuffs and process of making same.	Feb. 26	Apr. 9	L-106	419
1023890	Apr. 23, 1912	Process of treating brittle vegetable fibers of kapok and other plants.	Feb. 26	Mar. 26	Z-106	206
1024308	Apr. 23, 1912	Manufacture of azo coloring matters containing a carbazole derivative.	Feb. 23	Mar. 24	T-106	271
1024330	Apr. 23, 1912	Mixture suitable for baking powder.	Feb. 26	Mar. 24	K-106	328
1024405	Apr. 23, 1912	Process of producing a filler for white enamels.	Feb. 25	Mar. 22	Z-106	176
1024668	Apr. 30, 1912	Production of peculiar color effects on textile fabrics.	Feb. 26	Apr. 9	L-106	419
1024993	Apr. 30, 1912	Derivative of diaminodioxyarsenobenzene.	Feb. 26	Apr. 9	L-106	419
1025138	May 7, 1912	Violet-blue vat dyestuffs	Feb. 26	Apr. 9	L-106	419
1025147	May 7, 1912	Vat dyestuff and process of making same.	Feb. 26	Apr. 9	L-106	419
1025174	May 7, 1912	Blue vat dyestuff and process of making same.	Feb. 26	Apr. 9	L-106	419
1025195	May 7, 1912	Salmon-colored vat dyestuff and process of making same.	Feb. 26	Apr. 9	L-106	419
1025466	May 7, 1912	Method of producing iron albuminates of organomineral acids.	Feb. 28	Mar. 24	X-106	384
1025509	May 7, 1912	Means for causing mercury to circulate while electrolyzing aqueous solutions of metallic salts.	Feb. 25	Mar. 24	T-106	290
1025819	May 7, 1912	Process of manufacturing phosphoric-acid compounds.	Feb. 28	Mar. 25	Z-106	250
1025956	May 14, 1912	Process for obtaining refined lead	Feb. 25	Mar. 21	I-106	239
1026094	May 14, 1912	Arseno compounds and process of making same.	Feb. 26	Apr. 9	L-106	419
1026257	May 14, 1912	Manufacture of a new pyrazolone-azo dye.	Feb. 23	Mar. 24	T-106	271
1026267	May 14, 1912	Process for renovating cotton-waste	Feb. 26	Mar. 22	Z-106	162
1026461	May 14, 1912	Safe or steel-vault wall	Feb. 26	Mar. 22	Y-106	236
1026563	May 14, 1912	Bleaching apparatus	Feb. 26	Mar. 26	X-106	446
1026881	May 21, 1912	Process of manufacturing black sulfurized coloring matters.	Feb. 26	Mar. 22	H-106	329
1026902	May 21, 1912	Manufacture of azo coloring matter.	Feb. 23	Mar. 24	T-106	271

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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			1919.	1919.		
1027004	May 21, 1912	Process of manufacturing porous bodies.	Feb. 28	Mar. 21	S-106	237
1027153	May 21, 1912	Process of manufacturing strongly absorbent coal.	Feb. 28	Mar. 24	H-106	362
1027333	May 21, 1912	Oxygen-generating composition	Feb. 28	Mar. 24	W-106	364
1027441	May 28, 1912	Isolated alkali salts of indoxyl and process of making same.	Feb. 26	Apr. 9	L-106	419
1027790	May 28, 1912	Pancreas preparation suitable for the treatment of diabetes.	Feb. 25	Apr. 9	Z-106	258
1027844	May 28, 1912	Process of making a soluble compound of iron-glycero-phosphate combined with milk or milk albumin.	Feb. 26	Mar. 22	G-106	311
1027862	May 28, 1912	Apparatus for the separation of hydrogen from a gaseous mixture.	Feb. 28	Mar. 22	H-106	322
1027863	May 28, 1912	Apparatus for the separation of hydrogen.	Feb. 28	Mar. 22	H-106	323
1027967	May 28, 1912	Art of preparing iron-albuminous compounds containing phosphorus.	Feb. 28	Mar. 25	R-106	331
1028006	May 28, 1912	Manufacture and production of fast ortho-oxy-azo dyestuffs.	Feb. 23	Mar. 24	T-106	271
1028074	May 28, 1912	Ortho-oxalic-acid ester of meta-cresol and process for the manufacture of same.	Feb. 28	Mar. 25	U-106	290
1028101	June 4, 1912	Arseno compound	Feb. 26	Apr. 9	L-106	419
1028139	June 4, 1912	Manufacture of azo dyestuffs of the anthraquinone series and process of making same.	Feb. 26	Apr. 9	L-106	419
1028140	June 4, 1912	Black disazo dyestuffs and process of making same.	Feb. 26	Apr. 9	L-106	419
1028216	June 4, 1912	Melting and casting magnesium and alloys thereof.	Feb. 26	Mar. 22	R-106	308
1028239	June 4, 1912	Color-lake and process of manufacturing same.	Feb. 28	Mar. 25	J-106	237
1028282	June 4, 1912	Apparatus for producing vegetable extracts.	Feb. 26	Mar. 22	T-106	340
1028366	June 4, 1912	Apparatus for producing hydrogen gas.	Feb. 25	Mar. 21	P-106	276
1028521	June 4, 1912	Anthracene derivatives and process of making same.	Feb. 26	Mar. 22	J-106	299
1028595	June 4, 1912	Tin-oxidising furnace	Feb. 28	Mar. 25	I-106	374
1028650	June 4, 1912	Process of diffusion	Feb. 28	Mar. 21	J-106	233
1028748	June 4, 1912	Filaments and other products obtained from cellulose compounds.	Feb. 26	Mar. 24	P-106	343
1028903	June 11, 1912	Art of making insulating building material.	Feb. 28	Mar. 25	S-106	328
1028911	June 11, 1912	Reddish blue vat dyestuffs and process of making same.	Feb. 26	Apr. 9	L-106	419
1029327	June 11, 1912	Preparation for regenerating metals.	Mar. 1	Mar. 25	J-106	335
1029341	June 11, 1912	Transforming formyl esters of cellulose or solutions of the same into plastic solutions.	Feb. 28	Mar. 22	X-106	317
1029579	June 11, 1912	Method of separating substances in suspension by washing.	Feb. 28	Mar. 21	S-106	237
[1] 14583	Jan. 7, 1919	Same	Feb. 28	Mar. 21	S-106	237
1029639	June 18, 1912	Black disazo dyestuffs and process of making same.	Feb. 26	Apr. 9	L-106	419
1030177	June 18, 1912	Process of producing ketones of high boiling points from acetone and homologues thereof.	Feb. 26	Mar. 24	W-106	365
1030251	June 18, 1912	Process of producing cellulose products.	Feb. 28	Mar. 24	X-106	364
1030334	June 25, 1912	Process of manufacturing camphene.	Feb. 28	Mar. 25	I-106	363
1030916	July 2, 1912	Process of producing acetylene tetrachlorid.	Feb. 28	Mar. 25	S-106	331

[1] Reissue.

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			1919.	1919.		
1031227	July 2, 1912	Manufacture of asphalt blocks, slabs, and the like.	Feb. 26	Mar. 22	Y-106	197
1031638	July 2, 1912	Process for preparing fuel from peat.	Mar. 1	Mar. 22	Y-106	230
1031823	July 9, 1912	Color lake and process of making same.	Feb. 26	Apr. 9	L-106	419
1031837	July 9, 1912	Process of manufacturing caoutchouclike products.	Feb. 25	Mar. 21	X-106	310
1031900	July 9, 1912	Manufacture of hollow bodies from quartz.	Feb. 26	Mar. 25	U-106	306
1032123	July 9, 1912	Manufacture of phenylates 6.6 Diquinolyl-4.4-dicarboxylic acids and homologues.	Feb. 25	Apr. 9	Z-106	358
1032400	July 16, 1912	Process of treating ores	Feb. 26	Mar. 24	K-106	331
1032433	July 16, 1912	Black monoazo dyestuffs and process of making same.	Feb. 26	Apr. 9	L-106	419
1032642	July 16, 1912	Tasteless quinine compound and process of making same.	Feb. 25	Mar. 22	Y-106	199
1032779	July 16, 1912	Radio-active material	Feb. 27	Mar. 25	R-106	374
1032951	July 16, 1912	Radio-active material	Feb. 27	Mar. 25	R-106	374
1032988	July 16, 1912	Process of obtaining cyanogen and its compounds.	Feb. 24	Mar. 22	G-106	298
1033126	July 23, 1912	Method of producing endothermic compounds from their components.	Feb. 26	Mar. 22	P-106	298
1033285	July 23, 1912	Explosive charge	Mar. 1	Mar. 22	Y-106	242
1033352	July 23, 1912	Metallurgical product	Feb. 28	Mar. 25	T-106	331
1033398	July 23, 1912	Metallic vessel for liquefied gases	Feb. 28	Mar. 24	J-106	281
1033537	July 23, 1912	Safety explosive	Feb. 26	Mar. 22	I-106	287
1033626	July 23, 1912	Apparatus for testing gas	Mar. 1	Mar. 22	Y-106	239
1033757	July 23, 1912	Process for manufacture of new kind of parchment paper.	Mar. 1	Mar. 22	S-106	272
1033779	July 30, 1912	Process of drying peat	Feb. 28	Mar. 22	G-106	292
1033807	July 30, 1912	Method of producing dry yeast	Mar. 1	Mar. 22	R-106	304
1033904	July 30, 1912	Arseno compounds and process of making same.	Feb. 26	Apr. 9	L-106	419
1034036	July 30, 1912	Process of producing food fats	Feb. 28	Mar. 25	I-106	360
1034235	July 30, 1912	Process of manufacturing artificial threads.	Feb. 28	Mar. 22	I-106	296
1034320	July 30, 1912	Manufacture of alkali metals	Feb. 26	Mar. 22	J-106	269
1034652	Aug. 6, 1912	Process of preserving timber by means of phenolate solutions.	Feb. 28	Mar. 25	X-106	438
1034745	Aug. 6, 1912	Preparation of printing plates	Feb. 28	Mar. 22	V-106	308
1034856	Aug. 6, 1912	Biological preparation for the production of intestinal peristalsis.	Feb. 25	Apr. 9	Z-106	358
1034887	Aug. 6, 1912	Process for regenerating storage battery plates.	Feb. 28	Mar. 22	U-106	184
1034974	Aug. 6, 1912	Method of converting ammonium sulfite into ammonium sulfate.	Feb. 24	Mar. 21	U-106	128
1035202	Aug. 13, 1912	Process for the production of reactionary substances for the generation of heat.	Feb. 27	Mar. 21	P-106	279
1035486	Aug. 13, 1912	Grenade	Mar. 1	Mar. 22	Y-106	242
1035615	Aug. 13, 1912	Process of forming an insoluble substance from the roots of plants of the amorphophallus family.	Mar. 1	Mar. 24	L-106	284
1035756	Aug. 13, 1912	Process of making stable compounds containing hydrogen peroxid.	Feb. 25	Mar. 22	Y-106	248
1035815	Aug. 13, 1912	Process of removing fat and impurities from vegetables and animal materials.	Feb. 28	Mar. 21	G-106	279
1035873	Aug. 20, 1912	Process of producing endothermic gas reactions and apparatus therefor.	Feb. 28	Mar. 22	T-106	257
1035972	Aug. 20, 1912	Process for the removal of carbon disulfid from gases.	Feb. 25	Mar. 22	R-106	303

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1036087	Aug. 20, 1912	Halogenphenolalkali salts and process for the manufacture of same.	1919. Feb. 26	1919. Mar. 22	Y-106	210
1036170	Aug. 20, 1912	Mass for filling tires of vehicles	Feb. 28	Mar. 21	L-106	211
1036176	Aug. 20, 1912	Explosive charge and explosive body of projectile, mines, and torpedoes.	Mar. 1	Mar. 21	Z-106	122
1036224	Aug. 20, 1912	Process of making penta-and hex-a-chlorethanes.	Feb. 28	Mar. 25	S-106	321
1036405	Aug. 20, 1912	Art of making iron-albuminous compounds.	Feb. 28	Mar. 25	R-106	300
1036622	Aug. 27, 1912	Process for producing thyroid-gland extracts.	Feb. 26	Mar. 24	L-106	253
1036705	Aug. 27, 1912	Method for the production of anhydrous hydrosulfites.	Feb. 28	Mar. 22	H-106	325
1036728	Aug. 27, 1912	Compound for polishing leather and the like.	Feb. 28	Mar. 25	F-106	377
1036784	Aug. 27, 1912	5 - Nitro - 2 - aminobenzene - 1-arsinic acid.	Feb. 26	Apr. 9	L-106	419
1036831	Aug. 27, 1912	Process of purifying clay, etc.	Feb. 28	Mar. 24	P-106	323
1036906	Aug. 27, 1912	Granular explosive, especially suitable for the preparation of pressed pieces, and method of making the same.	Mar. 1	Mar. 22	Y-106	262
1036941	Aug. 27, 1912	Bleaching apparatus	Feb. 28	Mar. 25	T-106	344
1037061	Aug. 27, 1912	Process of manufacturing nitrogen compounds.	Feb. 28	Mar. 24	P-106	349
1037158	Aug. 27, 1912	Process of manufacturing substitutes for oils, caoutchouc, resins and the like.	Feb. 27	Mar. 24	X-106	390
1037280	Sept. 3, 1912	Apparatus for removing lye from fabrics.	Feb. 28	Mar. 22	L-106	227
1037464	Sept. 3, 1912	Superphosphate chamber	Mar. 1	Mar. 22	S-106	263
1037479	Sept. 3, 1912	Apparatus for coking briquets	Feb. 28	Mar. 21	S-106	218
1037585	Sept. 3, 1912	Electrolysis of liquids	Feb. 25	Mar. 21	Z-106	125
1037685	Sept. 3, 1912	Casein derivatives and process for the manufacture of the same.	Feb. 26	Mar. 22	V-106	292
1037997	Sept. 10, 1912	Producing a remedy for tuberculosis	July 23 Feb. 26	Aug. 25 Apr. 9	D-106 L-106	344 419
1038003	Sept. 10, 1912	Banthraquinonyl urea-chlorid and process of making same.	Feb. 26	Apr. 9	L-106	419
1038027	Sept. 10, 1912	Manufacture of hydroquinin	Mar. 1	Mar. 25	Z-106	230
1038152	Sept. 10, 1912	Revolver cotton-mercerizing machine.	Feb. 28	Mar. 24	U-106	234
1038194	Sept. 10, 1912	Method of preparing halogen-oxygen compounds by electrolysis.	Mar. 1	Mar. 22	Y-106	262
1038205	Sept. 10, 1912	Heater for zinc-reducing furnaces	Feb. 28	Mar. 21	Z-106	142
1038292	Sept. 10, 1912	Safety explosive	Feb. 26	Mar. 22	I-106	287
1038884	Sept. 17, 1912	Azo dye	Feb. 26	Mar. 22	H-106	301
1039204	Sept. 24, 1912	Method of placing container in projectile.	Mar. 1	Mar. 22	Y-106	242
1039266	Sept. 24, 1912	Diaphragm for electrolysis	Feb. 25	Mar. 22	L-106	214
1039356	Sept. 24, 1912	Process of making anhydrous tetrachlorid of tin from dioxid.	Feb. 24	Mar. 21	Y-106	169
1039459	Sept. 24, 1912	Placing containers in projectiles	Mar. 1	Mar. 22	Y-106	242
1039533	Sept. 24, 1912	Means for heating briquets and the like.	Feb. 28	Mar. 21	S-106	216
1039851	Oct. 1, 1912	Method and apparatus for the carrying out of gas reactions by means of an electric arc.	Mar. 1	Mar. 22	Y-106	262
1039852	Oct. 1, 1912	Method of an apparatus for carrying out gas reactions by the use of an electric arc.	Mar. 1	Mar. 22	Y-106	263
1039875	Oct. 1, 1912	Preparation of formic esters	Feb. 27	Mar. 25	R-106	378
1039961	Oct. 1, 1912	Process of decaffeinating coffee beans.	Feb. 28	Mar. 21	G-106	204
1039999	Oct. 1, 1912	Process of maintaining the vitality of dried yeast.	Mar. 1	Mar. 25	R-106	338
1040218	Oct. 1, 1912	Process of purifying crude gas	Feb. 28	Mar. 2[illegible]	U-106	166

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			1919.	1919.		
1040260	Oct. 8, 1912	2.5-diaminobenzene-arsenic acid	Feb. 26	Apr. 9	L-106	419
1040323	Oct. 8, 1912	Process of purifying monochlorhydrin.	Mar. 1	Mar. 22	Y-106	242
1040379	Oct. 8, 1912	Process of treating nitric acid by electrolysis.	Feb. 26	Apr. 9	L-106	419
1040665	Oct. 8, 1912	Manufacture of a stable preparation from hydrogen peroxid and urea.	Feb. 28	Mar. 24	P-106	325
1040708	Oct. 8, 1912	Hydrocarbon soap and process of making same.	Feb. 28	Mar. 25	P-106	367
1040818	Oct. 8, 1912	Electric furnace	Feb 18	Mar. 25	L-106	317
1040850	Oct. 8, 1912	Process of preparing condensates from casein, phenols, and formic aldehyde and the product obtained thereby.	Feb. 25	Mar. 21	I-106	245
1041146	Oct. 15, 1912	Dyestuff	Feb. 26	Apr. 9	L-106	419
1041357	Oct. 15, 1912	Process of producing effervescent baths.	Feb. 18	Mar. 25	F-106	374
1041528	Oct. 15, 1912	Manufacture of esters of the hydrocinchona alkaloids.	Mar. 1	Mar. 25	Z-106	259
1041583	Oct. 15, 1912	Process of obtaining porous and fairly pure barium oxid from barium carbonate.	Feb. 25	Mar. 21	T-106	197
1041587	Oct. 15, 1912	Process of producing dyed cellulose ester.	Feb. 25	Mar. 21	T-106	200
1041604	Oct. 15, 1912	Process for preparing an oil suitable for impregnating porous bodies.	Feb. 25	Mar. 22	U-106	183
1041681	Oct. 15, 1912	Composition of matter and method of preserving and fireproofing wood.	Feb. 28	Mar. 24	P-106	350
1041682	Oct. 15, 1912	Compositions of matter and methods of preserving and fireproofing wood.	Feb. 28	Mar. 24	P-106	350
1041790	Oct. 22, 1912	Process for electrolytic cleansing	Feb. 26	Mar. 22	G-106	302
1041894	Oct. 22, 1912	Detonator for hand grenades	Mar. 1	Mar. 22	Y-106	242
1041919	Oct. 22, 1912	Dyestuffs and process of making same.	Feb. 26	Apr. 9	L-106	419
1042113	Oct. 22, 1912	Process of making artificial stone	Feb. 26	Mar. 22	X-106	333
1042179	Oct. 22, 1912	Process and furnace for producing gas reactions.	Feb. 28	Mar. 24	W-106	418
1042198	Oct. 22, 1912	Red disazo dye	Feb. 26	Mar. 22	H-106	301
1042315	Oct. 22, 1912	Process of recovering zinc from galvanized-iron articles.	Mar. 1	Mar. 25	T-106	323
1042356	Oct. 22, 1912	Disazo dyes and process of making same.	Feb. 26 Mar. 22	Mar. 22 Mar. 26	J-106 R-106	269 398
1042408	Oct. 29, 1912	Dyestuff of the triphenylmethane series and process of making same.	Feb. 26	Apr. 9	L-106	419
1042605	Oct. 29, 1912	Manufacture of hypophosphoric acid and of its salts.	Feb. 28	Mar. 22	U-106	214
1042643	Oct. 29, 1912	Method for the detonation of explosives.	Mar. 1	Mar. 22	X-106	322
1042739	Oct. 29, 1912	Apparatus for steeping grain	Feb. 28	Mar. 21	W-106	361
1042803	Oct. 29, 1912	Press for filtering fluids	Feb. 25	Mar. 22	Z-106	175
1042827	Oct. 29, 1912	Process for obtaining metal printing plates with silver-salt gelatin emulsion.	Feb. 28	Mar. 21	S-106	232
1042830	Oct. 29, 1912	Pressure fuse for projectiles, mines, torpedoes, etc.	Mar. 1	Mar. 22	Y-106	242
1042915	Oct. 29, 1912	Process for manufacturing oils soluble in water.	Feb. 26	Mar. 22	G-106	305
1042931	Oct. 29, 1912	Vat dyestuffs of the anthracene series and process of making same.	Feb. 26	Mar. 22	J-106	269
1042999	Oct. 29, 1912	Process of hardening steel poor in carbon.	Feb. 28	Mar. 21	Q-106	261
1043007	Oct. 29, 1912	Process for obtaining the inner secretions of the thyroid glands and other organs in a pure state.	Feb. 26	Mar. 24	L-106	252

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
1043209	Nov. 5, 1912	Process of preparing a refined extract from cascara sagrada.	Feb. 25	Mar. 22	Z-106	161
1043271	Nov. 5, 1912	Yellowish-green pigment dyes and process of making same.	Feb. 26	Apr. 9	L-106	419
1043452	Nov. 5, 1912	Method of direct recovery of tar and ammonia from distillation gases.	Feb. 28	Mar. 21	Y-106	192
1043468	Nov. 5, 1912	Manufacture of brominated blue indigo dyestuff.	Feb. 26	Apr. 9	L-106	419
1043873	Nov. 12, 1912	Brown azo dyestuff and process of making same.	Feb. 26	Apr. 9	L-106	419
1043937	Nov. 12, 1912	Anode and process of manufacturing same.	Feb. 25	Mar. 24	T-106	290
1043985	Nov. 12, 1912	Process for the preparation of formic acid from the reaction mixture of formates and mineral acid.	Feb. 27	Mar. 24	Z-106	238
1044169	Nov. 12, 1912	Manufacture from acetylene of acetaldehyde and condensation and polymerization products thereof.	Feb. 26	Mar. 22	J-106	269
1044261	Nov. 12, 1912	Artificial grindstone	Feb. 28	Mar. 22	Q-106	300
1044317	Nov. 12, 1912	Oil-testing machine	Mar. 1	Mar. 25	T-106	348
1044933	Nov. 19, 1912	Process of making vat dyes of the anthracene series.	Feb. 26	Mar. 22	J-106	269
1044969	Nov. 19, 1912	Apparatus for testing air or other gases.	Feb. 25	Mar. 26	P-106	382
1045196	Nov. 26, 1912	Azo dyestuffs	Feb. 26	Apr. 9	L-106	419
1045377	Nov. 26, 1912	Methyl-ester of 8-methoxy-2-phenyl-quinolin-4-carboxylic acid.	Feb. 25	Apr. 9	Z-106	358
1045378	Nov. 26, 1912	Ethyl-ester of 8-methoxy-2-phenylo-quinolin-4-carboxylic acid.	Feb. 25	Apr. 9	Z-106	358
1045379	Nov. 26, 1912	Methyl ester of 6-methyl 2-phenyl-quinolin 4 carboxylic acid.	Feb. 25	Apr. 9	Z-106	358
1045451	Nov. 26, 1912	Process of making solid stable compounds containing hydrogen peroxid.	Feb. 25	Mar. 22	Y-106	246
1045590	Nov. 26, 1912	Recovery of ammonia from distillation gases.	Apr. 8	Apr. 9	N-106	494
1045650	Nov. 26, 1912	Regenerative furnace	Mar. 1	Mar. 25	T-106	341
1045759	Nov. 26, 1912	Ethyl ester of 6-methyl 2-phenyl-quinolin 4 carboxylic acid.	Feb. 25	Apr. 9	Z-106	358
1045982	Dec. 3, 1912	Process obtaining emulsions in combination with solid substances.	Feb. 28	Mar. 21	J-106	227
1046402	Dec. 3, 1912	Apparatus for the treatment of carcasses, slaughterhouse wastes, and the like.	Feb. 26	Mar. 22	X-106	343
1046498	Dec. 10, 1912	Halogenized condensation product of the anthracene series and process of making same.	Feb. 26	Apr. 9	L-106	419
1046729	Dec. 10, 1912	Process of producing formyl cellulose.	Feb. 28	Mar. 22	X-106	317
1047360	Dec. 17, 1912	Process of separating zinc and lead from mixed sulfids.	Feb. 28	Mar. 21	J-106	234
1047077	Dec. 10, 1912	Process for the manufacture of barium oxid.	Feb. 25	Mar. 21	K-106	279
1047923	Dec. 24, 1912	Process of dyeing vegetable fiber.	Feb. 25	Mar. 22	L-106	221
1047940	Dec. 24, 1912	Vat dyestuff of the anthraquinone series and the process of making same.	Feb. 26	Apr. 9	L-106	419
1048002	Dec. 24, 1912	Derivatives of dioxydiaminoarsenobenzene and process of making same.	Feb. 26	Apr. 9	L-106	419
1048185	Dec. 24, 1912	Making clear and durable hemoglobin preparations.	Feb. 26	Mar. 21	W-106	341
1048294	Dec. 24, 1912	Ferric tanning process	Feb. 28	Mar. 24	X-106	368

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			1919.	1919.		
1048342	Dec. 24, 1912	Process of manufacturing artificial belt or sole leather and like products.	Feb. 28	Mar. 25	V-106	363
1048425	Dec. 24, 1912	Distilling column	Mar. 21	Mar. 26	L-106	348
1048528	Dec. 31, 1912	Method of producing wall and floor linings.	Feb. 28	Mar. 24	T-106	297
1048699	Dec. 31, 1912	Process of manufacturing urea	Feb. 28	Mar. 24	V-106	331
1048709	Dec. 31, 1912	Treatment of skins and hides for the removal of fat, etc.	Feb. 26	Mar. 24	J-106	293
1048763	Dec. 31, 1912	Mixing machine	Feb. 26	Apr. 9	L-106	419
1048892	Dec. 31, 1912	Apparatus for extracting rubber	Mar. 1	Mar. 25	F-106	371
1048953	Dec. 31, 1912	Manufacture of sulfuric acid	Feb. 26	Mar. 22	J-106	269
1049109	Dec. 31, 1912	Violet cotton dyes	Feb. 26	Mar. 22	J-106	269
1049172	Dec. 31, 1912	Manufacture of esters of the hydrocinchona alkaloids.	Mar. 1	Mar. 25	Z-106	259
1049201	Dec. 31, 1912	Process for recovering copper from the wash liquors employed in the cuprammonia cellulose process.	Feb. 28	Mar. 22	X-106	317
1049624	Jan. 7, 1913	Means for joining electrodes	Feb. 26	Mar. 25	Q-106	352
1049665	Jan. 7, 1913	Detonating fuse	Mar. 1	Mar. 22	X-106	322
1049666	Jan. 7, 1913	Detonating fuse	Mar. 1	Mar. 22	X-106	322
1049740	Jan. 7, 1913	Process of purifying sodiumphosphate waste liquors.	Feb. 27	Mar. 24	J-106	298
1049916	Jan. 7, 1913	Tar paint and process of manufacture.	Feb. 27	Mar. 25	V-106	358
1050179	Jan. 14, 1913	Violet tetrachlorindigo and process of making same.	Feb. 26	Apr. 9	L-106	419
1050299	Jan. 14, 1913	Process of producing a remedy for tuberculosis.	Feb. 26	Apr. 9	L-106	419
1050303	Jan. 14, 1913	Article for electrolytic purposes	Feb. 26	Mar. 24	X-106	411
1050453	Jan. 14, 1913	Process of making high-percentage crystallized potassium hydrate.	Feb. 28	Mar. 25	S-106	321
1050696	Jan. 14, 1913	Process for rapidly separating emulsions formed by aqueous liquids with fatty substances of any kind.	Feb. 28	Mar. 21	Z-106	147
1050829	Jan. 21, 1913	Anthraquinone vat dye	Feb. 26	Mar. 22	H-106	301
1051035	Jan. 21, 1913	Method of making transparent quartz glass.	Feb. 28	Mar. 24	L-106	286
1051036	Jan. 21, 1913	Electric resistance melting furnace.	Feb. 28	Mar. 24	L-106	287
1051060	Jan. 21, 1913	Apparatus for electrolyzing liquids.	Feb. 25	Mar. 24	T-106	290
1051520	Jan. 28, 1913	High-per-cent salvarsan emulsion	Feb. 28	Mar. 21	U-106	169
1051582	Jan. 28, 1913	Process of husking kernels of seeds and obtaining products therefrom.	Feb. 26	Mar. 24	Y-106	276
1052216	Feb. 4, 1913	Apparatus for absorbing carbonic acid from air.	Mar. 1	Mar. 22	I-106	285
1052430	Feb. 4, 1913	Vulcanizing distinct parts or surfaces of rubber.	Feb. 28	Mar. 21	P-106	289
1052480	Feb. 11, 1913	Dyestuffs of the anthraquinone series and process of making same.	Feb. 26	Apr. 9	L-106	419
1052520	Feb. 11, 1913	Condensation products of the anthracene series and process of making same.	Feb. 26	Apr. 9	L-106	419
1052716	Feb. 11, 1913	Manufacture on the paper machine of paper having relief-like effect.	Feb. 26	Apr. 9	L-106	419
1052924	Feb. 11, 1913	Process for the manufacture of a product from which red lead can be burnt.	Feb. 28	Mar. 24	Z-106	202
1052958	Feb. 11, 1913	Filter	Feb. 28	Mar. 21	T-106	213
1053240	Feb. 18, 1913	Purazolene derivative	Feb. 26	Apr. 9	L-106	419
1053300	Feb. 18, 1913	Derivatives of diaminodioxy arseno benzene and process of making same	Feb. 26	Apr. 9	L-106	419
[1]13848	Dec. 15, 1914		Mar. 22	Mar. 26	R-106	393
1053690	Feb. 18, 1913	Manufacture of acetyl derivatives of the alkylated iminopyrimidins.	Feb. 25	Apr. 9	Z-106	358
1053381	Feb. 18, 1913	Process of treating ores, etc	Feb. 26	Mar. 24	K-106	334
1053454	Feb. 18, 1913	Process of improving the quality of malleable iron and steel.	Feb. 26	Mar. 22	V-106	303

[1] Reissue.

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
1053456	Feb. 18, 1913	Production of ammonium nitrate from ammoniacal gases.	1919. Feb. 28	1919. Mar. 22	V-106	305
1053911	Feb. 18, 1913	Machine for mercerizing yarn in skeins.	Feb. 26	Mar. 24	Y-106	265
1054039	Feb. 25, 1913	Stable indigo-white preparations and process of making same.	Feb. 26	Apr. 9	L-106	419
1054049	Feb. 25, 1913	Method of casting explosive charges	Mar. 1	Mar. 22	Y-106	242
1054147	Feb. 25, 1913	Cast explosive charge	Mar. 1	Mar. 22	Y-106	242
1054250	Feb. 25, 1913	Process of obtaining pure phosphorus sesquisulfid.	Feb. 26	Mar. 22	J-106	269
1054414	Feb. 25, 1913	Treating sugar liquors	Feb. 28	Mar. 24	L-106	251
1054460	Feb. 25, 1913	Method of revivifying or restoring permutit.	Feb. 27	Mar. 22	K-106	316
1054497	Feb. 25, 1913	Apparatus for the electrolysis of salt solutions.	Feb. 25	Mar. 21	Z-106	125
1054589	Feb. 25, 1913	Device for the production of pure air.	Feb. 28	Mar. 21	Y-106	182
1054735	Mar. 4, 1913	Process for the preparation of formates of chromium, aluminium, and iron.	Feb. 28	Mar. 25	R-106	379
1055155	Mar. 4, 1913	Process of making photographs in natural colors.	Mar. 1	Mar. 22	T-106	239
1055189	Mar. 4, 1913	Process of producing three-color screens.	Mar. 1	Mar. 21	M-106	363
1055295	Mar. 4, 1913	Electrode for producing arcs	Mar. 1	Mar. 22	Y-106	242
1055331	Mar. 11, 1913	Apparatus for carrying out gas reactions, particularly for the production of oxid of nitrogen in the electric arc.	Feb. 26	Mar. 24	R-106	329
1055454	Mar. 11, 1913	Gum pencil	Feb. 26	Mar. [illegible]	J-106	254
1055475	Mar. 11, 1913	Hop-extracting apparatus	Feb. 28	Mar. 24	G-106	316
1055495	Mar. 11, 1913	Process for treating ores	Mar. 21	Mar. [illegible]	S-106	367
1055504	Mar. 11, 1913	Salting apparatus	Feb. 25	Mar. 21	I-106	233
1055513	Mar. 11, 1913	Production of viscous cellulose solutions.	Feb. 28	Mar. 22	X-106	317
1055514	Mar. 11, 1913	Process of obtaining tasteless and inodorous lecithin.	Feb. 25	Mar. 21	Q-106	290
1056340	Mar. 18, 1913	Method of production of arsenate of lead.	Feb. 28	Mar. 24	G-106	324
1056365	Mar. 18, 1913	Explosive and process of producing same.	Mar. 1	Mar. 25	V-106	359
1056366	Mar. 18, 1913	Sulfite-waste explosive	Mar. 1	Mar. 25	V-106	359
1056367	Mar. 18, 1913	Continuous process for producing explosives.	Mar. 1	Mar. 25	V-106	359
1056456	Mar. 18, 1913	Electric furnace for melting and liquefying ferro-alloys.	Feb. 28	Mar. 22	Q-106	293
1056881	Mar. 25, 1913	Alkylsulfites of amino-substituted pyrazolones and process of making same.	Feb. 26	Apr. 9	L-106	419
1056913	Mar. 25, 1913	Albuminimeter	Mar. 1	Mar. 21	M-106	372
1057199	Mar. 25, 1913	Composition of matter to be used as an oil paint.	Feb. 25	Mar. 21	J-106	244
1057281	Mar. 25, 1913	Oxygen bath	Feb. 28	Mar. 25	F-106	374
1057284	Mar. 25, 1913	Process for artificially staining woods.	Feb. 28	Mar. 24	Y-106	301
1057437	Apr. 1, 1913	Manufacture of glyceheptonic acid.	Feb. 28	Mar. 24	L-106	276
1057584	Apr. 1, 1913	Multiple-floor furnace for roasting ores.	Feb. 28	Mar. 22	Q-106	295
1057673	Apr. 1, 1913	Process for the removal of inert substances from blood serums, etc.	Feb. 28	Mar. 21	U-106	163
1057680	Apr. 1, 1913	Production of isoprene	Feb. 25	Apr. 9	Z-106	358
1057886	Apr. 1, 1913	Mode of manufacturing a new form of synthetic indigo.	Feb. 26	Apr. 9	L-106	419
1057887	Apr. 1, 1913	Process of manufacturing finely divided colloidlike indigo.	Feb. 26	Apr. 9	L-106	419
1057905	Apr. 1, 1913	Apparatus for drying and heating ladles, etc.	Feb. 28	Mar. 22	S-106	288

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			1919.	1919.		
1057931	Apr. 1, 1913	Process of making soap in the form of tablets or the like.	Feb. 26	Mar. 22	I-106	277
1058019	Apr. 1, 1913	Synthetic indigo in a new form and process of making same.	Feb. 26	Apr. 9	L-106	419
1058020	Apr. 1, 1913	Synthetic indigo in a new form and process of making same.	Feb. 26	Apr. 9	L-106	419
1058021	Apr. 1, 1913	Dry colloidlike indigo and process of making same.	Feb. 26	Apr. 9	L-106	419
1058633	Apr. 8, 1913	Process for dissociating fats, oils, and waxes.	Feb. 28	Mar. 25	P-106	368
1058653	Apr. 8, 1913	Process for carrying through chemical gas reactions by means of an enlarged electrical discharge.	Feb. 25	Mar. 22	Y-106	206
1058686	Apr. 8, 1913	Process of obtaining potash and cement clinker.	Feb. 28	Mar. 24	I-106	322
1058898	Apr. 15, 1913	Process for the manufacture of cellulose from wood, wood chips, straw, reed, and like material.	Mar. 1	Mar. 25	L-106	308
1058904	Apr. 15, 1913	Process for the formation of calcium salt of acetylsalicylic acid.	Feb. 28	Mar. 25	W-106	433
1058980	Apr. 15, 1913	Baking powder	Feb. 28	Mar. 21	J-106	220
1059150	Apr. 15, 1913	Process of manufacturing briquets from ore or blast-furnace dust.	Mar. 1	Mar. 21	S-106	210
1059195	Apr. 15, 1913	Process of producing minium	Feb. 27	Mar. 21	Y-106	194
1059431	Apr. 22, 1913	Process for preventing the formation of boiler scale.	Feb. 28	Mar. 24	X-106	356
1059531	Apr. 22, 1913	Process for the preparation, isolation, and enrichment of radium and other radioactive substances.	Feb. 26	Mar. 22	J-106	255
1059571	Apr. 22, 1913	Yellow to brown wool dyestuffs and process of making same.	Feb. 26	Apr. 9	L-106	419
1059584	Apr. 22, 1913	Apparatus for decomposing oxids of nitrogen and the like.	Feb. 28	Mar. 21	W-106	350
1059740	Apr. 22, 1913	Making auxiliary mordants containing titanium and glycolic acids.	Feb. 28	Mar. 24	L-106	274
1059741	Apr. 22, 1913	Process of making auxiliary mordants containing antimony and glycolic acid.	Feb. 28	Mar. 24	L-106	274
1059809	Apr. 22, 1913	Manufacture of persulfates	Feb. 28	Mar. 24	Y-106	253
1059817	Apr. 22, 1913	Apparatus for the manufacture of hydrogen.	Feb. 28	Mar. 21	I-106	255
1059818	Apr. 22, 1913	Process for the manufacture of hydrogen from metals and water.	Feb. 28	Mar. 21	I-106	255
1059983	Apr. 29, 1913	Alkali compound of dioxydiaminoarsenobenzene.	Feb. 26	Apr. 9	L-106	419
1060785	May 6, 1913	Organic antimony compounds and process of making same.	Feb. 26	Mar. 24	Q-106	310
1061016	May 6, 1913	Process of melting ferro-alloys and keeping them in liquid state.	Feb. 28	Mar. 21	T-106	204
1061139	May 6, 1913	Art of preparing alkaloid salts	Feb. 25	Mar. 22	Y-106	199
1061392	May 13, 1913	Bleaching process	Feb. 28	Mar. 24	Q-106	235
1061587	May 13, 1913	Process of production of organic derivatives of arsenic acid.	Feb. 25	Mar. 26	Y-106	329
1061597	May 13, 1913	Process for treating iron-tanned leather.	Feb. 28	Mar. 24	X-106	368
1061713	May 13, 1913	Grain-steeping tank	Feb. 28	Mar. 21	W-106	351
1061781	May 13, 1913	Greenish-blue hexabromindigo	Feb. 26	Apr. 9	L-106	419
1061861	May 13, 1913	Process for the production of a plastic or blastic substance.	Feb. 27	Mar. 25	H-106	365
1061889	May 13, 1913	Process for the preparation of colored seleniferous and telluriferous substances.	Feb. 28	Mar. 24	L-106	298
1061949	May 13, 1913	Process for the recovery of by-products from gases of fuels.	Feb. 28	Mar. 26	K-106	408
1061977	May 20, 1913	Process for the production of viscous cellulose solutions.	Feb. 28	Mar. 22	X-106	317
1062106	May 20, 1913	Process for producing cellulose formations.	Feb. 26	Mar. 24	X-106	397

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			1919.	1919.		
1062122	May 20, 1913	Regenerator or hot-blast stove	Mar. 1	Mar. 24	Y-106	303
1062203	May 20, 1913	Manufacture and production of alkyl derivatives and substitutes, alkyl derivatives of hydrocupreine.	Mar. 1	Mar. 25	Z-106	259
1062245	May 20, 1913	Apparatus for treating fabric with liquids.	Feb. 28	Mar. 24	Q-106	325
1062351	May 20, 1913	Process for the manufacture of monovalent phenols from monochlorosubstitution products of aromatic hydrocarbons.	Feb. 28	Mar. 24	Q-106	338
1062431	May 20, 1913	Method of purifying carbon for carbon filaments.	Feb. 25	Mar. 21	Z-106	125
1062771	May 27, 1913	Paving block composition	Feb. 28	Mar. 22	Z-106	156
1063012	May 27, 1913	Process of treatment of fusible ceramic bodies for indicating temperature in furnaces.	Mar. 1	Mar. 22	I-106	280
1063025	May 27, 1913	Apparatus for the recovery of acid used in refining oils.	Feb. 26	Mar. 24	R-106	319
1063099	May 27, 1913	Acidylsalicylic acid ester and process of making same.	Feb. 28	Mar. 21	J-106	236
1063252	June 3, 1913	Machine for printing carpet yarns	Feb. 26	Apr. 9	L-106	419
1063383	June 3, 1913	Art of making hydrogen peroxid	Feb. 28	Mar. 24	R-106	343
1063469	June 3, 1913	Smokeless nitrocellulose nitro-glycerin powder and method of making same.	Mar. 1	Mar. 25	W-106	440
1063679	June 3, 1913	Process of producing stable hydrogen-peroxid compounds.	Mar. 1 Feb. 28	Mar. 24 Mar. 24	X-106 X-106	386 374
1063746	June 3, 1913	Process of preparing hydrogenized products from unsaturated compounds.	Feb. 25	Mar. 22	Y-106	199
1063870	June 3, 1913	Process for making a viscous, stringy, adhesive substance.	Feb. 28	Mar. 24	I-106	329
1063893	June 3, 1913	Process for magnetic separation of ores out of slimes.	Feb. 26	Mar. 24	X-106	411
1064227	June 10, 1913	Salt of hexamethylenetetramin and process of making same.	Feb. 26	Apr. 9	L-106	419
1064260	June 10, 1913	Process for the manufacture of cellulose solutions.	Feb. 28	Mar. 22	V-106	298
1064379	June 10, 1913	Toning bath for photographic silver prints.	Feb. 25	Apr. 9	Z-106	358
1064481	June 10, 1913	Annealing apparatus	Feb. 28	Mar. 21	L-106	195
1064550	June 10, 1913	Process of utilizing the waste gases of combustion from Portland-cement, lime, and other kilns.	Feb. 28	Mar. 22	K-106	312
1065063 [1]751646	June 17, 1913 Mar. 1, 1913	Benzoquinone derivatives and process of making same.	Feb. 26	Apr. 9	L-106	419
1065405 [1]13969	June 24, 1913 Aug. 24, 1915	Dyestuffs of the triphenylmethane series and process of making same.	Feb. 26 Mar. — Apr. 2	Apr. 9 Mar. 26 Apr. 9	L-106 K-106 N-106	419 409 453
1065651	June 24, 1913	Air pyrometer	Feb. 25	Mar. 21	L-106	237
1065684	June 24, 1913	Application of adhesive substances to textile fabrics and the like.	Feb. 25	Mar. 22	I-106	298
1065855	June 24, 1913	Process of manufacturing alloys	Feb. 28	Mar. 22	S-106	419
1065950	July 1, 1913	Red azo dyestuffs and process of making same.	Feb. 26	Apr. 9	L-106	455
1066231	July 1, 1913	Manufacture of leather and leather-like products.	Feb. 26	Mar. 22	X-106	345
1066322	July 1, 1913	Active carbon and process of making same.	Feb. 28	Mar. 25	W-106	430
1066364	July 1, 1913	Process of producing soluble albumen powder.	Feb. 25	Mar. 21	U-106	134
1066391	July 1, 1913	Producer of inert gases	Feb. 28	Mar. 24	L-106	288
1066397	July 1, 1913	Process and contrivance for production particularly of sugar crystals in vacuum.	Feb. 28	Mar. 24	V-106	323
1066405	July 1, 1913	Cerium iron automatic lighter	Mar. 1	Mar. 22	H-106	309

[1] Serial

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			1919.	1919.		
1066758	July 8, 1913	Process for the manufacture of camphor from borneol or isoborneol.	Feb. 28	Mar. 25	T-106	335
1066777	July 8, 1913	Process of making nitroamino derivatives of the anthraquinone series.	Feb. 26	Mar. 22	J-106	269
1066785	July 8, 1913	Manufacture of artificial silk threads from cellulose.	Feb. 28	Mar. 24	Y-106	258
1067843	July 22, 1913	Method of recovering ammonia from coal gases and the like.	Feb. 28	Mar. 22	W-106	366
1068396	July 22, 1913	Process of making light bricks of blast-furnace slag.	Mar. 1	Mar. 21	S-106	226
1068522	July 29, 1913	Manufacture of zinc-sodium hydrosulfite.	Feb. 26	Mar. 22	J-106	269
1068611	July 29, 1913	Process of treating ores and metallurgical products.	Feb. 28	Mar. 21	K-106	294
1068716	July 29, 1913	Apparatus for producing hollow quartz bodies.	Feb. 28	Mar. 24	L-106	292
1069085	July 29, 1913	Process of recovering zinc and other volatile metals.	Mar. 1	Mar. 26	X-106	455
1069151	Aug. 5, 1913	Process for the production of an insulating coating on electrical conductors.	Feb. 27	Mar. 24	U-106	245
1069191	Aug. 5, 1913	Process and apparatus for roasting ores and recovering the gases thereform.	Feb. 18	Mar. 25	I-106	375
1069445	Aug. 5, 1913	Process for acetylating cellulose and its products of transformation.	Feb. 25	Apr. 9	Z-106	358
1069959	Aug. 12, 1913	Process of obtaining thorium	Feb. 26	Mar. 22	R-105	305
1069982	Aug. 12, 1913	Process of treating coffee beans for the elimination of deleterious constitutents thereof.	Feb. 28	Mar. 25	R-106	375
1070070	Aug. 12, 1913	Production of nitrates	Feb. 26	Mar. 22	P-106	298
1070138	Aug. 12, 1913	Process for the preparation of catalytic substances in a minutely divided state.	Feb. 26	Mar. 24	K-106	347
1070196	Aug. 12, 1913	Vat dyes and process of making same.	Feb. 26	Mar. 22	J-106	269
1070541	Aug. 19, 1913	Pentabromindigo	Feb. 26	Apr. 9	L-106	419
1070806	Aug. 19, 1913	Process of making oxalates	Feb. 26	Mar. 24	W-106	387
1070808	Aug. 19, 1913	Process for the destruction of animal and vegetable parasites in the soil.	Feb. 26	Mar. 24	J-106	287
1070828	Aug. 19, 1913	Extraction apparatus	Feb. 28	Mar. 21	I-106	272
1071022	Aug. 26, 1913	Apparatus for dyeing loose textile goods.	Feb. 26	Apr. 9	L-106	419
1071832	Sept. 2, 1913	Color lakes	Feb. 26	Apr. 9	L-106	419
1071833	Sept. 2, 1913	Red wood dyestuff and process of making same.	Feb. 26	Apr. 9	L-106	419
1071873	Sept. 2, 1913	Refining process for iron and steel by means of ferro-chromium alloy	Feb. 28	Mar. 21	Q-106	246
1072010	Sept. 2, 1913	Process of producing alkali-metal hydroxids directly from alkali-metal chlorids.	Feb. 26	Mar. 22	Z-106	167
1072032	Sept. 2, 1913	Explosive	Mar. 1	Mar. 25	V-106	359
1072034	Sept. 2, 1913	Process for bleaching solid and semi-solid fats of all kinds.	Feb. 28	Mar. 24	H-106	362
1072035	Sept. 2, 1913	Process for purifying and bleaching wax of all kinds.	Feb. 28	Mar. 24	H-106	362
1072209	Sept. 2, 1913	Process of extracting zinc from residues containing zinc, especially slags in reverberatory furnaces.	Feb. 25	Mar. 22	U-106	186
1072299	Sept. 2, 1913	Esters of polyhalogen compounds of alcohols with therepeutically active acids.	Feb. 28	Mar. 21	J-106	236
1072857	Sept. 8, 1913	Coke-oven door	Feb. 28	Mar. 21	G-106	261
1073233	Sept. 16, 1913	Process for obtaining a charge liquid particularly adapted for explosion motors from liquid hydrocarbons.	Feb. 28	Mar. 24	W-106	390

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			1919.	1919.		
1073302	Sept. 16, 1913	Cooler for condensing mixtures of hydrocarbon and steam.	Feb. 28	Mar. 25	Y-106	319
1073380	Sept. 16, 1913	N-halogenalkyl-C, C-dialkylbarbituric acids and preparation of the same.	Mar. 1	Mar. 22	S-106	293
1073653	Sept. 23, 1913	Siemens-Martin furnace	Mar. 1	Mar. 21	I-106	231
1073684	Sept. 23, 1913	Electric furnaces	Feb. 25	Mar. 21	G-106	255
1073823	Sept. 23, 1913	Device for synthesizing gases	Feb. 28	Mar. 21	G-106	271
1073870	Sept. 23, 1913	Device for synthesizing gases	Feb. 26	Mar. 22	P-106	298
1073891	Sept. 23, 1913	Process of manufacturing artificial lustrous threads, bands, and filaments.	Feb. 28	Mar. 25	Q-106	347
1073932	Sept. 23, 1913	Process for the manufacture of fluorescent substance.	Feb. 28	Mar. 25	T-106	338
1074008	Sept. 23, 1913	Folded filter	Feb. 28	Mar. 24	K-106	356
1074030	Sept. 23, 1913	N-halgenalkyl-C, D-dialkylbarbituric acids and preparation of the same.	Mar. 1	Mar. 22	S-106	293
1074263	Sept. 30, 1913	Method of densifying fusible-explosive nitro bodies.	Mar. 1	Mar. 22	I-106	305
1074390	Sept. 30, 1913	Apparatus for dyeing thread and like material.	Feb. 28	Mar. 25	V-106	372
1074400	Sept. 30, 1913	Process for treating peat, slime, and like substances.	Feb. 28	Mar. 21	J-106	240
1074549	Sept. 30, 1913	Electrolytic apparatus	Feb. 26	Mar. 21	Z-106	233
1074633	Oct. 7, 1913	Process for the manufacture of diethyl sulfate.	Feb. 27	Mar. 24	X-106	389
1074881	Oct. 7, 1913	Dry viscose in a granular, soluble, and stable condition and process of preparing the same.	Feb. 28	Mar. 24	L-106	283
1074915	Oct. 7, 1913	Process of producing lincrusta linoleum, or like diaperedlike cloth.	Feb. 28	Mar. 21	P-106	296
1074983	Oct. 7, 1913	Process of making artificial stone and product obtained thereby.	Feb. 25	Mar. 22	Q-106	291
1074893	Oct. 7, 1913	Method of rendering insufficiently ductile metals ductile.				
1075171	Oct. 7, 1913	Process for the manufacture of 2-phenylquinolin-4-carboxylic acid.	Mar. 1	Mar. 24	U-106	268
1075279	Oct. 7, 1913	Arsinic acids and process of making the same.	Feb. 25	Mar. 22	Y-106	199
1075537	Oct. 14, 1913	Nitroaminophenylarsinic acid	Feb. 26	Apr. 9	L-106	419
1075538	Oct. 14, 1913	Dimitrophenylarsinic acid	Feb. 26	Apr. 9	L-106	419
1075581	Oct. 14, 1913	Anhydrid of salicylic acid and process of preparing the same.	Feb. 28	Mar. 24	G-106	317
1075634	Oct. 14 1913	Process for the production of refractory electrically conducting molded bodies.	Feb. 26	Mar. 25	Q-106	332
1076141	Oct. 21, 1913	Preparation of radiothorium	Feb. 26	Mar. 24	I-106	344
1076160	Oct. 21, 1913	Hexamethylenetetramin salts of the a-phenylquinolin-carboxylic acids	Feb. 26	Apr. 9	L-106	419
1076232	Oct. 21, 1913	Method of restoring coagulated albumins to the original state.	Mar. 1	Mar. 25	V-106	357
1076321	Oct. 21, 1913	Brown azo dyestuffs	Feb. 26	Apr. 9	L-106	419
1076424	Oct. 21, 1913	Process of treating large fermentation vessels.	Feb. 26	Mar. 22	X-106	337
1076495	Oct. 21, 1913	Electric safety lamp	Feb. 26	Mar. 22	J-106	289
1076508	Oct. 21, 1913	Method of extracting alkali metals in form of nitrates from minerals.	Feb. 28	Mar. 21	I-106	273
1076703	Oct. 28, 1913	Process of preparing an oil	Mar. 1	Mar. 25	V-106	367
1076840	Oct. 28, 1913	Manufacture of diacidyl and higher acidylated compounds from aminoazo bases.	Feb. 23	Mar. 24	T-106	271
1077255	Nov. 4, 1913	Coke quenching and conveying apparatus.	Mar. 22	Mar. 22	G-106	295
1077442	Nov. 4, 1913	Process of hydrogenising organic compounds.	Mar. 1	Mar. 25	Z-106	259
1077462	Nov. 4, 1913	Derivatives of acidylaminooxyarsenobenzene and process of making same.	Feb. 26	Apr. 9	L-106	419

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			1919.	1919.		
1077480	Nov. 4, 1913	Process for the treatment of the surfaces of articles of aluminum.	Feb. 28	Mar. 21	P-106	278
1077483	Nov. 4, 1913	Method of producing printing plates	Feb. 27	Mar. 24	U-106	256
1077492	Nov. 4, 1913	Brown azo dyestuffs	Feb. 26	Apr. 9	L-106	419
1077854	Nov. 4, 1913	Ointment containing colloidal compounds.	Feb. 23	Mar. 24	T-106	271
10778[illegible]	Nov. 4, 1913	Preparation containing colloidal compounds.	Feb. 23	Mar. 24	T-106	271
1078135	Nov. 11, 1913	Preparation from alkali salts of the 3.31 diamino-4.4 dioxy arseno-benzene and process of making same.	Feb. 26	Apr. 9	L-106	419
1078199	Nov. 11, 1913	Method of extracting manganese from its ores.	Feb. 28	Mar. 21	L-106	194
1078288	Nov. 11, 1913	Process of treating yeast	Mar. 1	Mar. 22	I-106	306
1078423	Nov. 11, 1913	Apparatus for obtaining nitrogen from the atmosphere.	Feb. 28	Mar. 24	V-106	317
1078495	Nov. 11, 1913	Process of receiving alkalis from silicate rocks.	Feb. 28	Mar. 24	I-106	322
1078496	Nov. 11, 1913	Method of recovering alkalis from silicates.	Feb. 28	Mar. 24	I-106	322
1078503	Nov. 11, 1913	Diazotizable disazo dyes for cotton	Feb. 26	Mar. 22	H-106	301
1078504	Nov. 11, 1913	Diazotizable disazo dyes for cotton	Feb. 26	Mar. 22	H-106	301
1078505	Nov. 11, 1913	Blue dyes of the anthraquinone series.	Feb. 26	Mar. 22	H-106	301
1078544	Nov. 11, 1913	Process of making briquets	Feb. 26	Mar. 26	W-106	445
1078686	Nov. 18, 1913	Process for the production of hydrogen.	Feb. 28	Mar. 22	J-106	257
1078845	Nov. 18, 1913	Artificial stone and process of making same.	Feb. 28	Mar. 21	K-106	277
1079004	Nov. 18, 1913	Process for separating mixtures of liquids.	Feb. 28 Mar. 1	Mar. 24 Mar. 24	I-106 P-106	328 329
1079269	Nov. 18, 1913	Manufacture of magnetic electrodes	Feb. 28	Mar. 25	X-106	434
1079053	Nov. 25, 1913	Apparatus for sterilizing liquids by means of ultra-violet rays.	Feb. 25	Mar. 24	X-106	394
1079568	Nov. 25, 1913	Vat dyestuff	Feb. 26	Mar. 22	J-106	269
1079705	Nov. 25, 1913	Process for synthetically preparing ammonia and other compounds containing nitrogen and hydrogen.	Feb. 26	Mar. 24	L-106	249
1079727	Nov. 25, 1913	Process for bleaching and thickening oils and fats.	Feb. 28	Mar. 25	F-106	379
1079728	Nov. 25, 1913	Linoleum, lincrusta, or like material.	Feb. 28	Mar. 21	S-106	234
1080085	Dec. 2, 1913	Method of recovering graphite from worn-out crucibles.	Feb. 28	Mar. 21	K-106	286
1080100	Dec. 2, 1913	Process for the manufacture of lacquers and varnishes.	Feb. 25	Mar. 21	H-106	287
1080433	Dec. 2, 1913	Process of producing patterns on fabrics.	Feb. 26	Mar. 22	S-106	260
1080606	Dec. 9, 1913	Converter process	Mar. 17	Mar. 25	V-106	374
1080886	Dec. 9, 1913	Apparatus for washing ore	Feb. 28	Mar. 21	U-106	143
1080938	Dec. 9, 1913	Recovery of tar and ammonia from coal gas.	Feb. 28	Mar. 25	Y-106	319
1080970	Dec. 9, 1913	Tanning material and method of making same.	Feb. 26	Mar. 24	L-106	260
1081079	Dec. 9, 1913	Art of making derivatives of dinitro-methylintraminophenylarsinic acids.	Feb. 25	Mar. 22	Y-106	190
1081178	Dec. 9, 1913	Strontium salt of cholic acid	Feb. 28	Mar. 22	S-106	285
1081191	Dec. 9, 1913	Process for the electrolytic manufacture of perborates.	Feb. 25	Mar. 21	K-106	279
1081287	Dec. 9, 1913	Apparatus for reducing compounds.	Feb. 28	Mar. 21	X-106	309
1081592	Dec. 16, 1913	Medicinal preparation	Feb. 26 Apr. 8	Apr. 9 Apr. 9	L-106 M-106	419 485
1081775	Dec. 16, 1913	Method of obtaining sulfonated oils and fats.	Feb. 28	Mar. 25	T-106	340
1081897	Dec. 16, 1913	Medicinal preparation.	Feb. 26 Apr. 8	Apr. 9 Apr. 9	L-106 M-106	419 487

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			1919.	1919.		
1081959	Dec. 23, 1913	Manufacture of acetic acid	Feb. 28	Mar. 22	J-106	269
1082058	Dec. 23, 1913	Process for casting artificial teeth	Feb. 28	Mar. 21	W-106	353
1082161	Dec. 23, 1913	Protecting iron from rust	Feb. 28	Mar. 21	P-106	280
1082200	Dec. 23, 1913	Manufacture of hollow bodies	Feb. 28	Mar. 25	U-106	279
1082719	Dec. 30, 1913	Monoazo dyestuffs and process of making same.	Feb. 26	Apr. 9	L-106	419
1082780	Dec. 30, 1913	Pharmaceutical compounds	Feb. 25	Apr. 9	Z-106	358
1082781	Dec. 30, 1913	Process for the dehalogenication of halogeniferous nitrates.	Feb. 28	Mar. 25	J-106	336
1083132	Dec. 30, 1913	Electrode for preventing cathodic reduction.	Feb. 28	Mar. 24	R-106	343
1083142	Dec. 30, 1913	Artificial-stone composition or for building and like purposes.	Feb. 28	Mar. 21	Z-106	144
1083275	Jan. 6, 1914	Process for the continuous mechanical manufacture of objects from plastic substances.	Feb. 26	Mar. 22	J-106	219
1083553	Jan. 6, 1914	Method for production of fertilizers.	Feb. 27	Mar. 24	T-106	303
1083703	Jan. 6, 1914	Method of producing ammonia and compounds of ammonia.	Feb. 28	Mar. 22	U-106	216
1083888	Jan. 6, 1914	Process of producing hydrogen peroxid.	Feb. 28	Mar. 24	R-106	343
1083903	Jan. 6, 1914	Process of improving alloys	Feb. 28	Mar. 25	U-106	298
1084199	Jan. 13, 1914	Fireproof electrically conducting bodies and process of manufacturing the same.	Feb. 28	Mar. 25	Q-106	351
1084363	Jan. 13, 1914	Yellow monoazo dyes and process making them.	Feb. 26	Mar. 22	J-106	269
1084581	Jan. 13, 1914	Manufacture of esters and ethers of ethylidene glycol and of vinyl alcohol.	Feb. 26	Mar. 22	J-106	269
1084559	Jan. 20, 1914	Filter press				
1085178	Jan. 27, 1914	Color lake and process of making same.	Feb. 26	Apr. 9	L-106	419
1085361	Jan. 27, 1914	Mode of preparing finely divided or colloid indigo dyestuffs.	Feb. 26	Apr. 9	L-106	419
1085437	Jan. 27, 1914	Manufacture of milled soap	Feb. 26	Mar. 24	U-106	242
1085708	Feb. 3, 1914	Process of producing sulfur derivatives of hydrocarbons.	Feb. 27	Mar. 25	Y-106	317
1085845	Feb. 3, 1914	Apparatus for quenching and conveying glowing materials.	Feb. 28	Mar. 22	G-106	295
1085898	Feb. 3, 1914	Insecticide for plants and process of making same.	Feb. 26	Mar. 22	Y-106	214
1086113	Feb. 3, 1914	Vitreous substance	Feb. 27	Mar. 22	S-106	291
1086139	Feb. 3, 1914	Process of manufacturing caoutchouclike products.	Feb. 25	Mar. 21	X-106	310
1086149	Feb. 3, 1914	Process for the manufacture of glue, gelatin, and the like.	Mar. 1	Mar. 24	L-106	280
1086155	Feb. 3, 1914	Yellow azo dyes	Feb. 26	Mar. 22	H-106	301
1086306	Feb. 3, 1914	Process of bleaching tobacco leaves	Mar. 1	Mar. 25	R-106	355
1086452	Feb. 10, 1914	Rectifying apparatus	Mar. 1 Feb. 28	Mar. 24 Mar. 21	P-106 I-106	329 328
1086881	Feb. 10, 1914	Glycolic acid esters of 2-phenylquinolin-4-carboxylic acid.	Feb. 25	Apr. 9	Z-106	358
1086939	Feb. 10, 1914	Muffle for reduction furnaces	Feb. 28	Mar. 21	Z-106	141
1087064	Feb. 10, 1914	Process for the manufacture of oil-varnish substitutes from animal oils.	Feb. 26	Mar. 21	G-106	249
1087132	Feb. 17, 1914	Process of obtaining alkali-metal compounds from silicates containing the same.	Feb. 28	Mar. 21	I-106	273
1087293	Feb. 17, 1914	Yellow vat dyestuffs	Feb. 28	Mar. 24	V-106	325
1087442	Feb. 17, 1914	Yarn-mercerizing machine	Feb. 26	Mar. 24	Y-106	265
1087815	Feb. 17, 1914	Elastic padding and filling composition.	Feb. 27	Mar. 25	R-106	357
1088063	Feb. 21, 1914	Process for purifying water	Feb. 25	Mar. 22	L-106	222
1088734	Mar. 3, 1914	Carbon electrode having protective covering and process for producing same.	Feb. 28	Mar. 21	S-106	227

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			1919.	1919.		
1088907	Mar. 3, 1914	Process of manufacturing a substitute for vulcanite.	Feb. 27	Mar. 21	G-106	208
1089064	Mar. 3, 1914	Process of manufacturing vegetable glue.	Feb. 28	Mar. 24	L-106	271
1089464	Mar. 10, 1914	Saccharometer	Feb. 26	Mar. 24	T-106	281
1089482	Mar. 10, 1914	Process of manufacturing an elastic foam from volatile solutions.	Feb. 27	Mar. 21	P-106	274
1089663	Mar. 10, 1914	Regenerative oven	Feb. 28	Mar. 24	Z-106	227
1089716	Nov. 10, 1914	Metnod of extracting alkalis from natural rocks.	Feb. 28	Mar. 21	I-106	273
1089831	Mar. 10, 1914	Column apparatus for distilling, cooling, heating, and similar purposes.	Feb. 28	Mar. 22	H-106	297
1089951	Mar. 10, 1914	Process and high-pressure furnace for the direct production of iron and steel.	Feb. 27	Mar. 22	T-106	255
1090074	Mar. 10, 1914	Compounds or derivatives of cellulose and process of obtaining the same.	Feb. 26	Mar. 24	R-106	321
1090111	Mar. 10, 1914	Manufacture of electric filaments	Mar. 1	Mar. 25	I-106	379
1090372	Mar. 17, 1914	Dry battery	Feb. 26	Mar. 21	I-106	226
1090431	Mar. 17, 1914	Germinating apparatus	Feb. 28	Mar. 25	Z-106	267
1090469	Mar. 17, 1914	Process for sharpening the ends of fine wires.	Mar. 1	Mar. 25	Z-106	246
1090503	Mar. 17, 1914	Open-hearth furnace	Mar. 1	Mar. 25	S-106	339
1090730	Mar. 17, 1914	Process of manufacturing compositions of matter.	Feb. 27	Mar. 24	X-106	390
1090874	Mar. 24, 1914	Process of bringing hydrogen or hydrogen-containing gas mixtures to reaction and apparatus therefor.	Feb. 25	Mar. 22	Y-106	204
1091148	Mar. 24, 1914	Disazo dyestuff	Feb. 26	Mar. 22	J-106	269
1091230	Mar. 24, 1914	Method for extracting potassium and sodium compounds from silicates which contain alkalis.	Feb. 28	Mar. 21	I-106	273
1091286	Mar. 24, 1914	Process for case-hardening iron and steel articles.	Feb. 28	Apr. 9	R-106	477
1091312	Mar. 24, 1914	Welding powder for welding iron and steel.	Mar. 1	Mar. 22	R-106	292
1091325	Mar. 24, 1914	Process of manufacture of solid sulfites or bisulfites of homogenous chemical constitution.	Feb. 28	Mar. 24	V-106	321
1091429	Mar. 24, 1914	Process of manufacture of sulfites or bisulfites.	Feb. 28	Mar. 24	V-106	321
1091870	Mar. 31, 1914	Sulfo compounds of quinolin-4-carboxylic acids arylated in the 2 position.	Feb. 25	Apr. 9	Z-106	358
1092074	Mar. 31, 1914	Process of making manure from tanned-leather shavings or cuttings.	Feb. 27	Mar. 24	Z-106	215
1092386	Apr. 7, 1914	Process for working up the acid sludge and liquor produced as by-products during the washing of mineral oils.	Feb. 28	Mar. 25	U-106	280
1092448	Apr. 7, 1914	Method of treating mineral oils	Feb. 27	Mar. 21	I-106	270
1092620	Apr. 7, 1914	Process and apparatus for wood distillation.	Mar. 18	Mar. 25	U-106	305
1092629	Apr. 17, 1914	Process tor refining and decolorizing mineral wax.	Feb. 28	Mar. 25	L-106	322
1093012	Apr. 14, 1914	Process for the preparation of nitrocellulose.	Feb. 28	Mar. 25	I-106	361
1093503	Apr. 14, 1914	Process of converting photographic silver prints into colored prints.	Feb. 26	Mar. 22	H-106	301
1093522	Apr. 14, 1914	Coke-oven door	Feb. 28	Mar. 21	U-106	130
1093567	Apr. 14, 1914	Stable nitrobenzene-diazonium derivatives.	Feb. 26	Mar. 22	H-106	301
1094448	Apr. 28, 1914	Yellow disazo dyes for cotton and process for making same.	Feb. 26	Mar. 22	J-106	269

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			1919	1919		
1094475	Apr. 28, 1914	Process of purifying water from germs by means of bromin.	Feb. 28	Mar. 22	U-106	207
1094727	Apr. 28, 1914	Process for the production of artificial stone from natural rock waste.	Feb. 26	Mar. 24	P-106	337
1094740	Apr. 28, 1914	Wafer for encapsulating medicines	Feb. 28	Mar. 21	X-106	303
1095058	Apr. 28, 1914	Adhesive resinous preparations and process of producing the same.	Mar. 1	Mar. 25	R-106	380
1095165	Apr. 28, 1914	Cooler for extraction apparatus and the like.	Feb. 27	Mar. 25	R-106	354
1095189	May 5, 1914	Process of purifying raw sugar containing juice.	Feb. 25	Mar. 21	H-106	261
1095205	May 5, 1914	Manufacture of lactid	Mar. 21	Mar. 26	Z-106	276
1095302	May 5, 1914	Explosive	Feb. 26	Mar. 22	H-106	313
1095414	May 5, 1914	Apparatus for spraying liquid metal.	Feb. 28	Mar. 21	H-106	281
1095684	May 5, 1914	Weighed silk and process of making it.	Feb. 28 Feb. 25	Mar. 22 Mar. 22	T-106 R-106	253 297
1095852	May 5, 1914	Process of obtaining sugar from molasses.	Feb. 28	Mar. 24	P-106	321
1095979	May 5, 1914	Apparatus for manufacture of objects from plastic substances.	Mar. 1	Mar. 21	K-106	288
1095988	May 5, 1914	Manufacture of coating and impregnating materials.	Mar. 1	Mar. 25	T-106	326
1096060	May 12, 1914	Preparation suitable for the indigo vat.	Feb. 26	Apr. 9	L-106	419
1096198	May 12, 1914	Printing colors	Feb. 28	Mar. 24	Y-106	308
1096361	May 12, 1914	Process for the production of disinfectant.	Feb. 26	Mar. 22	Y-106	218
1096392	May 12, 1914	Process of producing nitrogen simultaneously with oxids of nitrogen.	Feb. 26	Apr. 9	L-106	419
1096393	May 12, 1914	Process of producing nitrogen simultaneously with oxids of nitrogen.	Feb. 26	Apr. 9	L-106	419
1096464	May 12, 1914	Process for the manufacture of bodies of refractory metals and alloys.	Feb. 28	Mar. 22	K-106	319
1096620	May 12, 1914	Apparatus for extracting herbs and medicating steam.	Mar. 21	Mar. 26	X-106	444
1096667	May 12, 1914	Process of preparing acetaldehyde	Feb. 24	Mar. 21	Y-106	193
1096715	May 12, 1914	Sulfurized dyes and process of making same.	Feb. 26	Mar. 22	H-106	301
1096751	May 12, 1914	Negative electrode for alkaline secondary batteries.	Feb. 28	Mar. 24	R-106	347
1096786	May 12, 1914	Method of and apparatus for producing filled precious metal wire, etc.	Feb. 28	Mar. 24	K-106	340
1096832	May 19, 1914	Apparatus for the continuous examination of liquids.	Feb. 26	Mar. 24	U-106	227
1097099	May 19, 1914	Manufacture of lead salts of acetic acid.	Feb. 26	Mar. 24	K-106	339
1097345	May 19, 1914	Device for closing the tapping openings of smelting furnaces.	Feb. 28	Mar. 24	T-106	310
1097377	May 19, 1914	Process for the treatment of cotton	Feb. 28	Mar. 25	V-106	372
1097406	May 19, 1914	Process of destroying insects	Feb. 26	Mar. 22	H-106	301
1097551	May 19, 1914	Method of producing means for preventing scales on boilers, etc.	Feb. 28	Mar. 24	Y-106	282
1097900	May 26, 1914	Furnace with regenerative firing	Mar. 1	Mar. 24	Z-106	242
1098139	May 26, 1914	Production of mixtures of nitrogen and hydrogen suitable for the manufacture of ammonia.	Feb. 27	Mar. 24	Z-106	238
1098176	May 26, 1914	Method for producing metal adsorptions.	Feb. 26	Mar. 24	X-106	411
1098188	May 26, 1914	Horizontal coke oven	Feb. 28	Mar. 25	Y-106	318
1098237	May 26, 1914	Process of preparing progressive gunpowder.	Feb. 26	Mar. 26	K-106	403

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1098259	May 26, 1914	Sulfurized dyes and process of making same.	1919. Feb. 26	1919. Mar. 22	H-106	301
1098260	May 26, 1914	Sulfurized dyes and process of making same.	Feb. 26	Mar. 22	H-106	301
1098305	May 26, 1914	Process for the manufacture of nitrous oxid.	Mar. 1	Mar. 24	U-106	269
1098348	May 26, 1914	Process of making tanning extracts	Feb. 26	Mar. 22	X-106	330
1098606	June 2, 1914	Electric battery	Feb. 26	Mar. 22	Y-106	202
1098763	June 2, 1914	Process for purifying hydrocarbons.	Feb. 28	Mar. 25	W-106	431
1098764	June 2, 1914	Process for the purification of liquid hydrocarbons.	Feb. 28	Mar. 25	W-106	431
1098811	June 2, 1914	Process of an apparatus for mixing powdered substances or highly concentrated solutions with a liquid or dissolving them in the latter.	Feb. 28	Mar. 24	L-106	277
1098900	June 2, 1914	Process of obtaining ammonia from gas.	Mar. 1 Feb. 27	Mar. 24 Mar. 22	J-106 G-106	285 307
1098985	June 2, 1914	Furnace	Mar. 1	Mar. 21	G-106	269
1099039	June 2, 1914	Sulfur dyes and process of making same	Feb. 26	Mar. 22	H-106	301
1099089	June 2, 1914	Process of obtaining by-products from gases resulting from the dry distillation of coal, etc.	Feb. 27	Mar. 22	G-106	307
1099107	June 2, 1914	Process for the manufacture of a substance resembling natural rubber.	Feb. 26	Mar. 21	P-106	295
1099108	June 2, 1914	Producing ice colors	Mar. 22 Feb. 26	Mar. 26 Mar. 22	V-106 R-106	404 308
1099113	June 2, 1914	Method of producing fireproof materials from quartz and the like.	Feb. 25	Mar. 21	Z-106	129
1099211	June 9, 1914	Process of and apparatus for producing zinc and other similar metals.	Feb. 28	Mar. 22	X-106	346
1099368	June 9, 1914	Means for distilling acids	Feb. 26	Mar. 24	L-106	255
1099452	June 9, 1914	Process for the continuous production of nitric acid.	Mar. 1	Mar. 24	Q-106	331
1099598	June 9, 1914	Method for manufacturing steel bands, wires, or the like enveloped in celluloid or similar material.	Feb. 26	Mar. 24	K-106	332
1099710	June 9, 1914	Light filter	Feb. 28	Mar. 24	Q-106	332
1099934	June 16, 1914	Coating flexible objects of organic origin with metal.	Feb. 28	Mar. 24	G-106	332
1099976	June 16, 1914	Manufacture of nitro products from petroleum and tar.	Feb. 28	Mar. 22	Y-106	218
1100076	June 16, 1914	Process of making formaldehyde	Feb. 28	Mar. 25	I-106	372
1100490	June 10, 1914	Process for the recovery of zinc from its ores.	Feb. 28	Mar. 21	Z-106	140
1100518	June 16, 1914	Process of producing cuprammonium.	Feb. 25	Mar. 21	T-106	200
1100675	June 16, 1914	Process of eliminating iron from liquids.	Feb. 28	Mar. 24	T-106	295
1100710	June 23, 1914	Drying coal slimes	Feb. 28	Mar. 22	G-106	292
1100720	June 23, 1914	Polyarseno compounds and process of making same.	Feb. 26	Apr. 9	L-106	419
1100730	June 23, 1914	Process for the preparation of gallic acid.	Feb. 28	Mar. 24	K-106	344
1100743	June 23, 1914	Process of obtaining salts of mesothorium and of radium from thorium-bearing minerals.	Feb. 25	Mar. 22	R-106	297
1101061	June 23, 1914	Conversion of wood or other cellulose material into glucose and other soluble and insoluble carbohydrates.	Feb. 25	Mar. 21	H-106	263

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
1101156	June 23, 1914	Process for purifying and decolorizing sugar solutions.	Feb. 28	Mar. 25	Z-106	261
1101373	June 23, 1914	Process for the manufacture of aliphatic alkyl sulfates.	Feb. 26	Mar. 22	P-106	300
1101424	June 23, 1914	Process of making nitrogen compounds.	Feb. 28	Mar. 24	V-106	317
1101449	June 23, 1914	Stabilized oxidizing agents	Feb. 26	Mar. 24	Q-106	322
1101455	June 23, 1914	Cloudening agent for producing cloudening effects in white enamels and process of producing the same.	Feb. 18	Mar. 24	H-106	359
1102028	June 30, 1914	Process of making colored photographs.	Feb. 26	Mar. 22	Y-106	215
1102062	June 30, 1914	Thermometer carrier	Feb. 26	Mar. 24	J-106	303
1102129	June 30, 1914	Fatty saponaceous product and method of manufacturing same.	Feb. 25	Mar. 21	I-106	241
1102171	June 30, 1914	Sulfurized dyes and process of making same.	Feb. 26	Mar. 22	H-106	301
1102237	July 7, 1914	Process for the production of threads, films, or plates.	Feb. 28	Mar. 22	X-106	317
1102359	July 7, 1914	Regenerative furnace	Mar. 1	Mar. 21	G-106	269
1102575	July 7, 1914	Pyrophoric alloy	Feb. 26	Mar. 22	P-106	298
1102591	July 7, 1914	Making waste wood obtaining in forestry into briquets.	Feb. 28	Mar. 22	H-106	321
1103258	July 14, 1914	Process of manufacturing pure iron or manganese metal from pure or impure iron or manganese-metal oxids.	Feb. 28	Mar. 21	U-106	142
1103318	July 14, 1914	Process for sintering smelting products and the like.	Feb. 28	Mar. 22	Q-106	290
1103383	July 14, 1914	Process of making anthraquinone	Feb. 26	Mar. 22	J-106	269
1103473	July 14, 1914	Process of preserving wood oil from congealing on being subjected to heat.	Feb. 28	Mar. 21	I-106	258
1103499	July 14, 1914	Process of regenerating oil used for electrical purposes.	Mar. 22	Mar. 26	J-106	345
1104124	July 21, 1914	Briqueting iron ores	Feb. 27	Mar. 24	I-106	334
1104149	July 21, 1914	Auric compounds from cantharidylethylenediamin and process of making same.	Feb. 26	Apr. 9	L-106	419
1104266	July 21, 1914	Enamels and process of making them.	Feb. 25	Mar. 22	Z-106	176
1104326	July 21, 1914	Nonhygroscopic manure stuff and process of making same.	Feb. 28	Mar. 24	Y-106	293
1104679	July 21, 1914	Enameling composition	Feb. 25	Mar. 22	Z-106	176
1104722	July 21, 1914	Vulcanizer	Mar. 1	Mar. 25	K-106	391
1104913	July 28, 1914	Process for the manufacture of sodium bisulfate in a directly calcinable form.	Feb. 27	Mar. 24	U-106	258
1104943	July 28, 1914	Process of producing aminoanthraquinones.	Mar. 22	Mar. 26	T-106	362
1105378	July 28, 1914	Process of producing a mixture of camphene and isobornyl acetate from pinene hydrochlorid.	Feb. 28	Mar. 25	T-106	333
1105447	July 28, 1914	Process for dyeing furs, hairs, and the like.	Feb. 26	Mar. 22	H-106	301
1105501	July 28, 1914	Dyes for dyeing furs, hairs, and the like.	Feb. 26	Mar. 22	H-106	301
1105515	July 28, 1914	Sulfurized dyes and process of making same.	Mar. 21	Mar. 26	X-106	434
1105554	July 28, 1914	Preparation for dyeing hairs, fur, and the like.	Feb. 26	Mar. 22	H-106	301
1105567	July 28, 1914	Process of manufacturing adhesives giving with cold water strong cementing masses.	Feb. 26	Mar. 24	K-106	342
1106047	Aug. 4, 1914	Method of producing amyl acet[illegible] and its homologues.	[illegible]b. 26	Mar. 24	K-106	348

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				Date of filing or recording.	Book.	Page.
			1919.	1919.		
1106077	Aug. 4, 1914	Process for the production of shaped articles from copper-ammonium cellulose solution.	Feb. 28	Mar. 22	X-106	317
1106509	Aug. 11, 1914	Process for deodorizing oleic and fatty acids derived from train or fish oils.	Feb. 26	Mar. 24	L-106	258
1107003	Aug. 11, 1914	Manufactureofelasticplasticmasses.	Feb. 28	Mar. 22	X-106	353
1107006	Aug. 11, 1914	Roasting furnace	Feb. 28	Mar. 21	L-106	207
1107019	Aug. 11, 1914	Process of preparing acetaldehyde.	Feb. 24	Mar. 21	Y-106	193
1107020	Aug. 11, 1914	Emulsion products and process for producing them.	Feb. 28	Mar. 21	I-106	247
1107175	Aug. 11, 1914	Method of treating distillery wash	Feb. 28	Mar. 26	P-106	393
1107386	Aug. 18, 1914	Method of producing hollow quartz bodies.	Feb. 28	Mar. 24	L-106	287
1107387	Aug. 18, 1914	Method of producing transparent quartz.	Feb. 28	Mar. 24	L-106	287
1107892	Aug. 18, 1914	Preserving compound	Feb. 28	Mar. 25	T-106	319
1107926	Aug. 18, 1914	Process of producing hydrogen	Feb. 25	Mar. 24	U-106	225
1108056	Aug. 18, 1914	Manufacture of vat dyestuffs	Feb. 23	Mar. 24	T-106	271
1108057	Aug. 18, 1914	Manufacture of vat dyestuffs	Feb. 23	Mar. 24	T-106	271
1108189	Aug. 25, 1914	Fertilizer and process of manufacturing the same.	Feb. 26	Mar. 24	R-106	324
1108638	Aug. 25, 1914	Electro-optical cell	Feb. 28	Mar. 22	X-106	348
1108676	Aug. 25, 1914	Process of manufacturing the carbamic-acid ester of dichlorhydrin.	Feb. 25	Mar. 21	Y-106	176
1108752	Aug. 25, 1914	Manufacture of hydrogen peroxid	Feb. 26	Mar. 24	Z-106	233
1109447	Sept. 1, 1914	Generation of hydrogen by means of iron.	Feb. 28	Mar. 21	I-106	273
1109448	Sept. 1, 1914	Manufacture of hydrogen	Feb. 28	Mar. 21	I-106	273
1109512	Sept. 1, 1914	Process of making a cellulose acetate soluble in ethyl acetate.	Feb. 28	Mar. 25	Q-106	345
1109529	Sept. 1, 1914	Process for effecting the separation of materials.	Feb. 28	Mar. 24	Z-106	199
1109887	Sept. 8, 1914	Manufacture of electric filaments	Mar. 1	Mar. 25	I-106	379
1109888	Sept. 8, 1914	Manufacture of electric filaments	Mar. 1	Mar. 25	I-106	379
1112432	Oct. 6, 1914	Apparatus for use in elementary organic analysis.	Feb. 24	Mar. 21	U-106	141
1112602	Oct. 6, 1914	Process of treating mineral oils	Feb. 25	Mar. 22	U-106	183
1112725	Oct. 6, 1914	Method of making pipes for chimneys.	Feb. 28	Mar. 25	U-106	282
1112846	Oct. 6, 1914	Cupola furnace	Feb. 28	Mar. 25	X-106	426
1113468	Oct. 13, 1914	Manufacture of an azo dyestuff which may be developed on the fiber.	Feb. 23	Mar. 24	T-106	271
1114006	Oct. 20, 1914	Method of embedding thin printed labels made of gelatin in transparent soap.	Feb. 28	Mar. 22	Z-106	166
1114502	Oct. 20, 1914	Method of heating ores in two chambers or retorts arranged behind each other.	Feb. 28	Mar. 24	T-106	302
1114598	Oct. 20, 1914	Process for the extraction of fat from bones, materials suitable for glue manufacture, and like substances.	Feb. 26	Mar. 22	T-106	251
1115192	Oct. 27, 1914	Process of concentrating nitric acid.	Feb. 28	Mar. 25	Z-106	251
1115262	Oct. 27, 1914	Process of detinning	Feb. 28	Mar. 21	P-106	291
1115321	Oct. 27, 1914	Method of producing cement from molten blast-furnace slag.	Feb. 28	Mar. 21	W-106	337
1115671	Nov. 3, 1914	Electrolytic apparatus	Feb. 26	Mar. 22	G-106	302
1116024	Nov. 3, 1914	Method of briqueting iron ores and the like.	Feb. 24	Mar. 21	H-106	273
1116176	Nov. 3, 1914	Process of obtaining the tin from waste tinned metal.	Feb. 18	Mar. 25	I-106	370
1116322	Nov. 3, 1914	Apparatus for the elimination of fusel oils during the distillation and rectification of alcohol.	Feb. 28 Mar. 21	Mar. 24 Mar. 26	R-106 L-106	339 348
1116979	Nov. 10, 1914	Process for the production of fresco paintings and colored weatherproof architectural ornaments.	Feb. 25	Mar. 21	T-106	198

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			1919.	1919.		
1117059	Nov. 10, 1914	Machine for sealing supporting wires into the beads of glass rods of metal-filament electric incandescent lamps.	Mar. 1	Mar. 24	H-106	380
1117060	Nov. 10, 1914	Machine for producing beads on glass rods.	Mar. 1	Mar. 24	H-106	360
1117194	Nov. 17, 1914	Method for the purification of raw wool.	Feb. 26	Mar. 24	R-106	327
1117197	Nov. 17, 1914	White enamel	Feb. 25	Mar. 22	Z-106	176
1117242	Nov. 17, 1914	Microscope	Mar. 1	Mar. 25	K-106	387
1117631	Nov. 17, 1914	Process of removing oxygen from water.	Feb. 26	Mar. 22	H-106	295
1118238	Nov. 24, 1914	Process of manufacturing fusel oil	Feb. 28	Mar. 26	S-106	366
1118332	Nov. 24, 1914	Ammonia-soda process	Feb. 25	Mar. 22	I-106	281
1118593	Nov. 24, 1914	Process of producing hydrogen	Feb. 28	Mar. 21	U-106	166
1118869	Nov. 24, 1914	Annealing furnace	Feb. 28	Mar. 21	M-106	368
1118898	Nov. 24, 1914	Enamel composition	Feb. 28	Mar. 24	Q-106	307
1118952	Dec. 1, 1914	Method of extinguishing fires	Feb. 26	Mar. 24	X-106	402
1119313	Dec. 1, 1914	Secondary galvanic battery	Mar. 1	Mar. 26	K-106	415
1119746	Dec. 1, 1914	Process of making anthraquinone	Feb. 26	Mar. 22	J-106	269
1119647	Dec. 1, 1914	Manufacture of stable collodial solutions of metals.	Feb. 26	Mar. 22	K-106	318
1120233	Dec. 8, 1914	Cocain isovalerianate	Feb. 28	Mar. 21	V-106	341
1120436	Dec. 8, 1914	Separation of oxygen from the air.	Feb. 25	Mar. 21	I-106	253
1120551	Dec. 8, 1914	Process for the exchange of ions absorbed by colloids.	Feb. 26	Mar. 22	K-106	318
1120632	Dec. 8, 1914	Manufacture of artificial marble	Feb. 28	Mar. 24	Y-106	298
1120683	Dec. 15, 1914	Treatment of zinc lyes	Feb. 25	Mar. 22	X-106	318
1121026	Dec. 15, 1914	Azo dyes from the arylamids of 2.3-oxynaphthoic acid and process of making them.	Feb. 26	Mar. 22	J-106	269
1121218	Dec. 15, 1914	Antogenous burner	Feb. 26	Mar. 22	J-106	269
1121223	Dec. 15, 1914	Dry treatment of ores	Feb. 25	Mar. 22	X-106	318
1121408	Dec. 15, 1914	Process to lower the vitrifying point of ceramic substances.	Feb. 26	Mar. 24	X-106	411
1121409	Dec. 15, 1914	Process for removing liquid from organic and inorganic substances.	Feb. 26	Mar. 22	K-106	318
1121428	Dec. 15, 1914	Process of manufacturing perborate of zinc.	Feb. 26	Mar. 24	Z-106	233
1121605	Dec. 22, 1914	Method of manufacturing a viscose solution from wood-cellulose.	Feb. 25	Mar. 21	Z-106	116
1121889	Dec. 22, 1914	Method of manufacturing utensils and the like from the oxides of the rare earths thorium oxid, zirconium oxid, and the like.	Feb. 28	Mar. 24	Y-106	250
1121890	Dec. 22, 1914	Method for manufacturing utensils and the like from the oxids of the rare earths, thorium oxid, zirconium oxid, and the like.	Feb. 26	Mar. 24	I-106	344
1121903	Dec. 22, 1914	Process of manufacturing artificial lustrous threads, etc.	Feb. 28	Mar. 25	Q-106	347
1121925	Dec. 22, 1914	Process for the manufacture of polymerized products from animal oils.	Feb. 26	Mar. 21	G-106	249
1121926	Dec. 22, 1914	Process for the manufacture of polymerized products from animal oils.	Feb. 26	Mar. 21	G-106	249
1122400	Dec. 29, 1914	Process for the manufacture of polymerized products from animal oils.	Feb. 26	Mar. 21	G-106	249
1122465	Dec. 29, 1914	Vulcanizer press	Mar. 1	Mar. 21	Y-106	177
1122564	Dec. 29, 1914	Condensation products from the arylamids of 2.3. oxynaphthoic acid and formaldehyde and azo dyestuffs therefrom and process of making same.	Feb. 26	Mar. 22	J-106	269
1122610	Dec. 29, 1914	Quick-roasting apparatus	Feb. 28	Mar. 24	Q-106	329
1123522	Jan. 5, 1915	Process of preparing nicotin	Feb. 28	Mar. 24	Y-106	266

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1123542	Jan. 5, 1915	Process of agitating and aerating substances.	1919. Feb. 28	1919. Mar. 21	J-106	224
1123572	Jan. 5, 1915	Process for the production of the esters of the tertiary alcohols.	Mar. 1	Mar. 24	V-106	337
1123760	Jan. 5, 1915	Process of manufacturing opaquing agents for white enamel.	Feb. 18	Mar. 24	H-106	359
1123981	Jan. 5, 1915	Gas mixer	Feb. 28	Mar. 21	U-106	166
1123985	Jan. 5, 1915	Insulating material	Feb. 28	Mar. 24	H-106	341
1124081	Jan. 5, 1915	Process of manufacturing magnesium perborate.	Feb. 26	Mar. 24	Z-106	233
1124560	Jan. 12, 1915	Process for saturating unsaturated fatty acids and their glycerids by combining them with hydrogen.	Feb. 28	Mar. 22	V-106	310
1124691	Jan. 12, 1915	Process for the manufacture of hollow combs.	Feb. 25	Mar. 21	I-106	242
1124776	Jan. 12, 1915	Process for the continuous reduction of aromatic nitro bodies.	Feb. 28	Mar. 24	W-106	411
1125318	Jan. 19, 1915	Process of manufacturing artificial fertilizer.	Feb. 28	Mar. 24	X-106	380
1126655	Jan. 26, 1915	Method of uniting sheets of brass, aluminum, and other metals of high conductivity for heat.	Mar. 1	Mar. 24	R-106	349
1127027	Feb. 2, 1915	Process of producing dyestuffs on the fiber by means of the one-bath method.	Mar. 22 Feb. 26	Mar. 26 Mar. 22	R-106 R-106	396 366
1128389	Feb. 16, 1915	Process for obtaining photographic prints in natural colors from lumiere autochrome and other color-sensitive lines plates.	Feb. 28	Mar. 25	J-106	338
1128494	Feb. 16, 1915	Process for the fractional separation of paraffin and like substances and of mixtures of such substances with oil.	Feb. 28	Mar. 25	S-106	328
1128691	Feb. 16, 1915	Manufacture of white enamel, glass, and the like.	Feb. 25	Mar. 22	Z-106	176
1128726	Feb. 16, 1915	Iron alloy	Feb. 28	Mar. 25	T-106	331
1128747	Feb. 16, 1915	Method of manufacturing porcelain insulators.	Feb. 25	Mar. 21	Z-106	131
1128829	Feb. 16, 1915	Apparatus for granulating liquid blast-furnace slag.	Feb. 28	Mar. 25	T-106	349
1129165	Feb. 23, 1915	Process of chlorinating	Feb. 25	Mar. 22	Y-106	199
1129271	Feb. 23, 1915	Device for sterilizing medical instruments.	Feb. 28	Mar. 21	Z-106	130
1129300	Feb. 23, 1915	White enamel and the like	Feb. 25	Mar. 22	Z-106	176
1129377	Feb. 23, 1915	Method and apparatus for protecting the electrodes in arc furnaces.	Feb. 28	Mar. 21	T-106	204
1129387	Feb. 23, 1915	Manufacture of diastase	Feb. 25	Mar. 22	S-106	258
1129558	Feb. 23, 1915	Gas-purifying apparatus	Feb. 25	Mar. 21	H-106	280
1129559	Feb. 23, 1915	Reducing and oxidizing apparatus for generating hydrogen from iron ore and steam.	Feb. 25	Mar. 21	H-106	280
1130678	Mar. 2, 1915	Process of manufacturing an iron alloy for dynamo electric purposes.	Feb. 28	Mar. 25	T-106	331
1130767	Mar. 9, 1915	Composition for making glass	Mar. 1	Mar. 25	U-106	287
1130785	Mar. 9, 1915	Aluminum alloy	Feb. 28	Mar. 25	U-106	297
1131488	Mar. 9, 1915	Vacuum process for production of steel.	Feb. 25	Mar. 22	U-106	194
1131516	Mar. 9, 1915	Greenish-blue dyes of the anthraquinone series.	Feb. 26	Mar. 22	H-106	301
1131939	Mar. 16, 1915	Process of manufacturing pure resin oil.	Feb. 27	Mar. 21	I-106	268
1132001	Mar. 16, 1915	Process of satinizing cotton fabrics.	Feb. 25	Mar. 22	L-106	228
1132394	Mar. 16, 1915	Manufacture of chemically pure soluble silicic acid.	Feb. 26	Mar. 22	K-106	318
1132709	Mar. 23, 1915	Manufacture of aluminum-acetate compounds.	Feb. 23	Mar. 24	T-106	271

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			1919.	1919.		
1133548	Mar. 30, 1915	Method of making imitation textile products from solutions of cellulose or plastic substances.	Feb. 25	Mar. 21	T-106	200
1133556	Mar. 30, 1915	Method of quantitatively analyzing gas mixtures of known constituents and apparatus therefor.	Feb. 25	Mar. 24	T-106	290
1133961	Mar. 30, 1915	Orthovanadic-acid esters and their solutions.	Feb. 26	Mar. 26	X-106	448
1133967	Mar. 30, 1915	Apparatus for electroosmotic processes.	Feb. 26	Mar. 24	X-106	411
1133994	Mar. 30, 1915	Process of producing pure resin oils.	Feb. 27	Mar. 21	I-106	268
1134323	Apr. 6, 1915	Process for preventing decomposition of hydrogen-peroxid solutions.	Feb. 26	Mar. 22	T-106	244
1135303	Apr. 13, 1915	Bleaching solution	Feb. 26	Mar. 24	J-106	292
1135387	Apr. 13, 1915	Nitrate fertilizer and process of making the same.	Feb. 28	Mar. 21	I-106	273
1136304	Apr. 20, 1915	Zinc-producing furnace	Feb. 28	Mar. 21	L-106	207
1136527	Apr. 20, 1915	Thermometer	Feb. 28	Mar. 21	L-106	193
1136559	Apr. 20, 1915	Continuous process for the distillation and rectification of alcoholic liquids.	Feb. 28	Mar. 22	X-106	342
1137293	Apr. 27, 1915	Hardening apparatus	Feb. 26	Mar. 25	U-106	285
1138230	May 4, 1915	Process for the manufacture of hard soaps.	Feb. 27	Mar. 22	J-106	259
1138251	May 4, 1915	Mash-filter plate	Feb. 28	Mar. 25	F-106	376
1138400	May 4, 1915	Apparatus for electrolysis of alkaline chlorids.	Feb. 25	Mar. 24	T-106	290
1138519	May 4, 1915	Process of manufacturing peroxid of hydrogen.	Feb. 28	Mar. 24	Z-106	235
1138520	May 4, 1915	Process of manufacturing peroxid of hydrogen.	Feb. 28	Mar. 24	Z-106	235
1138917	May 11, 1915	Method for facilitating the separation of nitroglycerin.	Feb. 28	Mar. 21	W-106	348
1139085	May 11, 1915	Mixing machine	Feb. 26	Apr. 9	L-106	419
1139620	May 18, 1915	Production of glucose from starch	Feb. 28	Mar. 22	P-106	301
1139621	May 18, 1915	Process for moistening and cooling dextrin.	Feb. 28	Mar. 22	P-106	301
1140174	May 18, 1915	Artificial leather and process of making the same.	Feb. 27	Mar. 24	X-106	389
1140262	May 18, 1915	Method of manufacturing base-exchanging substances.	Feb. 26	Mar. 22	H-106	295
1141224	June 1, 1915	Process of coating woven fabrics, paper, and the like.	Feb. 18	Mar. 25	K-106	393
1141265	June 1, 1915	Process and apparatus for continuous distillation.	Mar. 1	Mar. 25	V-106	359
1141491	June 1, 1915	Method of extracting wort from mashes.	Feb. 28	Mar. 25	F-106	376
1141545	June 1, 1915	Leather substitute and method of making it.	Feb. 28	Mar. 22	I-106	297
1141994	June 8, 1915	Manufacture of nitric acid	Feb. 28	Mar. 25	J-106	336
1143411	June 15, 1915	Clusure for distillation furnaces and particularly coke ovens.	Feb. 26	Mar. 24	X-106	393
1143497	June 15, 1915	Process of drying raw peat and the like.	Feb. 28	Mar. 21	Q-106	241
1143499	June 15, 1915	Manufacture of emulsions and substances for use therein.	Feb. 25	Mar. 21	Q-106	256
1143569	June 15, 1915	Production of articles or materials from viscose.	Feb. 25	Mar. 21	T-106	200
1143670	June 22, 1915	Process of manufacturing artificial stone.	Feb. 27	Mar. 25	K-106	401
1143732	June 22, 1915	Glass	Feb. 26	Mar. 25	U-106	286
1144065	June 22, 1915	Mechanism for removing residues from vertical retorts.	Feb. 28	Mar. 24	H-106	364
1144066	June 22, 1915	Process and apparatus for removing drossy residues from vertical muffles in the extraction of zinc.	Feb. 28	Mar. 21	Z-106	141
1144181	June 22, 1915	Dyes for furs, hairs, and the like	Feb. 26	Mar. 22	H-106	301

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			1919.	1919.		
1144270	June 22, 1915	Process for the production of antiseptically acting bodies.	Feb. 28	Mar. 22	H-106	331
1144325	June 22, 1915	Preparation for dyeing hairs, furs, and the like.	Feb. 26	Mar. 22	T-106	283
1144457	June 29, 1915	Method of producing cyanogen compounds.	Feb. 25	Mar. 21	Y-106	179
1144577	June 29, 1915	Manufacture of vat dyestuffs	Feb. 23	Mar. 24	T-106	271
1144730	June 29, 1915	Process of producing hydrogen	Feb. 28	Mar. 21	U-106	166
1144829	June 29, 1915	Method of removing acetone from lecithin-containing substances.	Feb. 26	Mar. 22	T-106	237
1144905	June 29, 1915	Fertilizer and process of manufacturing same.	Feb. 26	Mar. 24	Q-106	326
1145072	July 6, 1915	Azo dyestuffs insoluble in water and process of making them.	Feb. 26	Mar. 22	J-106	269
1145186	July 6, 1915	Process of making anticorrosive paints and the like.	Feb. 26	Mar. 22	J-106	250
1145370	July 6, 1915	Method for producing manure	Feb. 26	Mar. 24	Q-106	326
1145634	July 6, 1915	Process for the preparation of soluble heavy metal compounds of thio-protein bodies.	Feb. 28	Mar. 22	V-106	306
1146455	July 13, 1915	Binding means for briquets	Mar. 1	Mar. 22	K-106	315
1147515	July 20, 1915	Process of obtaining base-exchanging substances.	Feb. 28	Mar. 24	R-106	325
1147991	July 27, 1915	Process for the production of a filter stuff by the employment of coal or similar filter materials.	Feb. 28	Mar. 25	I-106	378
1148401	July 27, 1915	A process for treating osier bark	Mar. 1	Mar. 22	T-106	267
1148637	Aug. 3, 1915	Byrrolidin derivative	Feb. 25	Apr. 9	Z-106	358
1148936	Aug. 3, 1915	Electro-optical cell	Feb. 28	Mar. 22	X-106	348
1149585	Aug. 10, 1915	Denitration of waste acid	Feb. 28	Mar. 25	U-106	273
1150152	Aug. 17, 1915	Process of making alizarin	Feb. 26	Mar. 22	J-106	269
1150467	Aug. 17, 1915	Opaquing composition for enamels and the like.	Feb. 28	Mar. 21	P-106	290
1150642	Aug. 17, 1915	Process of manufacturing condensation products from formaldehyde and phenol.	Feb. 28	Mar. 24	P-106	358
1150685	Aug. 17, 1915	Machine for dyeing, bleaching, washing, scouring, and subjecting to like processes hanks of yarn.	Mar. 1	Mar. 24	S-106	310
1150691	Aug. 17, 1915	Foodstuff containing free lecithin and process of making same.	Feb. 27	Mar. 24	W-106	410
1150772	Aug. 17, 1915	Opaquing agents for the production of white enamels.	Feb. 25	Mar. 22	Z-106	176
1151187	Aug. 24, 1915	Process of obtaining radiothorium and solutions therefrom containing thorium-X.	Feb. 25	Mar. 22	R-106	297
1151294	Aug. 24, 1915	Method and apparatus for producing sulphuric acid.	Feb. 27	Mar. 25	R-106	371
1151582	Aug. 31, 1915	Mode of charging mash filters	Feb. 28	Mar. 21	S-106	211
1152050	Aug. 31, 1915	Arrangement for preventing the formation of smoke in the production of zinc.	Feb. 28	Mar. 21	Z-106	141
1152066	Aug. 31, 1915	Process of preparing a solution of peroxid of hydrogen with a high content of ozone and oxygen.	Feb. 28	Mar. 25	R-106	379
1152098	Aug. 31, 1915	Process for the preparation of acetic-acid anhydrid.	Feb. 25	Mar. 21	G-106	255
1152196	Aug. 31, 1915	Process of making hydrogen	Feb. 28	Mar. 21	I-106	273
1152197	Aug. 31, 1915	Process of and apparatus for making hydrogen.	Feb. 28	Mar. 21	I-106	273
1152699	Sept. 7, 1915	Process for separating iron and nickel from copper in certain ores and masses.	Feb. 28	Mar. 24	H-106	345
1153402	Sept. 14, 1915	Manufacture of organic acid anhydrids or of mixtures of such anhydrids with their acids.	Feb. 27	Mar. 24	Z-106	224
1153596	Sept. 14, 1915	Noninflammable celluloid like mass and process of production thereof.	Feb. 28	Mar. 22	G-106	290
1153748	Sept. 14, 1915	Opaque enamel or glaze composition	Feb. 28	Mar. 22	I-106	296

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			1919.	1919.		
1153834	Sept. 14, 1915	Method of producing cellulose and other products.	Feb. 28	Mar. 24	L-106	295
1154298	Sept. 21, 1915	Coke oven	Feb. 28	Mar. 26	K-106	408
1154440	Sept. 21, 1915	Machine for treating materials with a liquid.	Feb. 27	Mar. 25	U-106	291
1154701	Sept. 28, 1915	Process of producing tungsten filaments.	Mar. 1	Mar. 24	S-106	308
1155765	Oct. 5, 1915	Mordant azo dyestuffs	Feb. 26	Apr. 9	L-106	419
1156044	Oct. 12, 1915	Art of preparing amino-arsenobenzenes.	Feb. 26	Apr. 9	L-106	418
1156045	Oct. 12, 1915	Art of preparing 2-chloro-4-aminobenzene-1-arsinic acid.	Feb. 26	Apr. 9	L-106	418
1156051	Oct. 12, 1915	Manufacture of steel	Feb. 28	Mar. 24	X-106	381
1156107	Oct. 12, 1915	Production of anhydrous hydrosulphites solutions.	Feb. 26	Mar. 22	J-106	206
1156715	Oct. 12, 1915	Electro osmotical filter press	Feb. 28	Mar. 24	X-106	411
1157348	Oct. 19, 1915	Process for producing oxalic acid	Feb. 28	Mar. 22	H-106	323
1157368	Oct. 19, 1915	Coke oven	Feb. 25	Mar. 21	H-106	270
1157402	Oct. 19, 1915	Manufacture of pure lactic acid	Feb. 27	Mar. 24	P-106	331
1157485	Oct. 19, 1915	Manufacture of black vat dyestuffs	Feb. 23	Mar. 24	T-106	271
1157662	Oct. 26, 1915	Process for the manufacture of fireproof utensils from refractory oxids.	Feb. 28	Mar. 24	Y-106	230
1157691	Oct. 26, 1915	Electric furnace	Mar. 1	Mar. 24	K-106	327
1158769	Nov. 2, 1915	Method of producing white zirconium oxid free of iron.	Feb. 25	Mar. 22	Z-106	178
1159878	Nov. 9, 1915	Process for forming casein masses	Feb. 28	Mar. 25	V-106	379
1159879	Nov. 9, 1915	Process for forming casein masses	Feb. 28	Mar. 25	V-106	379
1160375	Nov. 16, 1915	Process of removing sulfurated hydrogen from gases.	Feb. 28	Mar. 21	Q-106	363
1160481	Nov. 16, 1915	Apparatus for scouring greasy materials and recovering the solvent.	Mar. 1	Mar. 25	T-106	334
1160595	Nov. 16, 1915	Process for the manufacture of esters of oxy fatty acids.	Feb. 26	Mar. 22	H-106	313
1160636	Nov. 16, 1915	Purifying gases of dry distillation and recovering the by-products thereof.	Feb. 24	Mar. 21	U-106	127
1160847	Nov. 16, 1915	Electrolysis of alkali chlorids or alkali earth chlorids.	Feb. 25	Mar. 22	I-106	292
1160992	Nov. 16, 1915	Manufacture of a light-colored tar colloid having curative properties.	Feb. 28	Mar. 24	X-106	365
1161200	Nov. 23, 1915	Manufacture of zeolites	Feb. 25	Mar. 21	H-106	279
1162024	Nov. 30, 1915	Means for softening water	Feb. 25	Mar. 21	Q-106	248
1162044	Nov. 30, 1915	Process for extracting valuable copper constituents from cupriferous ores and their gangues.	Feb. 24	Mar. 21	K-106	273
1162130	Nov. 30, 1915	Method for producing pure alumina from clay and other alumina-bearing materials.	Feb. 24	Mar. 21	Q-106	209
1162152	Nov. 30, 1915	Disinfectant	Feb. 26	Mar. 22	Y-106	216
1162259	Nov. 30, 1915	Dyeing machine	Feb. 28	Mar. 22	K-106	321
1162496	Nov. 30, 1915	Vat dyes of the anthraquinone series and process of making same.	Feb. 26	Mar. 22	J-106	209
1162600	Nov. 30, 1915	Process of agglomerating flue dust or other finely divided material.	Feb. 26	Mar. 24	S-106	296
1162617	Nov. 30, 1915	Process for the manufacture of potassium and sodium salts from kelps ashes.	Feb. 26	Mar. 24	U-106	238
1162729	Nov. 30, 1915	Process of treating crude petroleum.	Feb. 28	Mar. 25	U-106	289
1162907	Dec. 7, 1915	Act of preparing nitrogenous products from cod-liver oil.	Feb. 25	Mar. 22	Y-106	199
1162908	Dec. 7, 1915	Act of obtaining vitamins	Feb. 25	Mar. 22	Y-106	199
1163423	Dec. 7, 1915	Method of separating gas mixtures	Feb. 26	Mar. 24	X-106	388
1163438	Dec. 7, 1915	Bleaching process	Feb. 26	Mar. 24	Z-106	226
1163496	Dec. 7, 1915	Art of preparing nitrated aminobenzol arsinic acid.	Feb. 26	Apr. 9	L-106	410
1163693	Dec. 14, 1915	Method of and apparatus for testing liquids and other materials.	Feb. 28	Mar. 24	Y-106	294

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			1919.	1919.		
1164234	Dec. 14, 1915	Process for extinguishing flames in tanks.	Feb. 28	Mar. 24	P-106	354
1165222	Dec. 21, 1915	Material for coating and impregnating purposes.	Feb. 25	Mar. 22	Y-106	199
1165358	Dec. 21, 1915	Process for manufacturing nitrogen compounds.	Feb. 28	Mar. 24	R-106	329
1165815	Dec. 28, 1915	Mechanical sulfate furnace	Feb. 28	Mar. 24	U-106	262
1166139	Dec. 28, 1915	Mixing apparatus	Feb. 26 Mar. 21	Mar. 22 Mar. 26	H-106 H-106	329 413
1166160	Dec. 28, 1915	Manufacture of anhydrous hydrosulfites.	Feb. 28	Mar. 22	H-106	325
1166170	Dec. 28, 1915	Process for production of zinc	Feb. 25	Mar. 21	U-106	129
1166171	Dec. 28, 1915	Process for smelting metallic ores	Feb. 25	Mar. 21	U-106	128
1166346	Dec. 28, 1915	Yellow disazo dyes	Feb. 26	Mar. 22	H-106	301
1167195	Jan. 4, 1916	Roof covering	July 28 Feb. 27	Sept. 22 Mar. 22	G-108 L-106	324 228
1167230	Jan. 4, 1916	Medicinal extract of aperient drugs.	Feb. 26	Mar. 22	V-106	292
1167373	Jan. 11, 1916	Process for solidifying emulsion products.	Feb. 28	Mar. 21	I-106	246
1167532	Jan. 11, 1916	Process of manufacturing tungsten anticathodes for Roentgen tubes.	Feb. 28	Apr. 9	Q-106	448
1167622	Jan. 11, 1916	Mercury preparation for therapeutic purposes.	Feb. 25	Mar. 21	Q-106	256
1167827	Jan. 11, 1916	Process for the production of alloys of high melting point having ductile properties.	Feb. 28	Mar. 25	U-106	274
1168137	Jan. 11, 1916	Process of making an adhesive	Feb. 28	Mar. 21	W-106	354
1168194	Jan. 11, 1916	Derivatives of cellulose containing the residue of an organic acid and nitrogen and process of making same.	Feb. 26	Mar. 22	H-106	301
1169267	Jan. 25, 1916	Dyeing artificial silk	Feb. 28	Mar. 22	J-106	269
1169365	Jan. 25, 1916	Manufacture of reduction products of sulfurous acids and salts therefrom.	Feb. 25	Mar. 22	J-106	269
1169371	Jan. 25, 1916	Method of drying air for metallurgical uses.	Feb. 26	Mar. 22	R-106	306
1169479	Jan. 25, 1916	Apparatus for separating substances of different specific gravities.	Feb. 26	Mar. 21	U-106	160
1169634	Jan. 25, 1916	Process for the manufacture of aluminous products from the residues obtained in the oil manufacture.	Mar. 1	Mar. 24	P-106	319
1169817	Feb. 1, 1916	Method of carrying out gas reactions in an electric furnace.	Feb. 26	Mar. 21	S-106	219
1170102	Feb. 1, 1916	Elastic artificial cork and process of producing same.	Mar. 1	Mar. 25	V-106	359
1170110	Feb. 1, 1916	Process for the manufacture of yeast from molasses.	Feb. 28	Mar. 25	T-106	327
1170247	Feb. 1, 1916	Anticathode for Roentgen-ray tubes	Mar. 1	Mar. 24	K-106	328
1170313	Feb. 1, 1916	Process of burning carbon electrodes.	Mar. 1	Mar. 25	P-106	374
1172113	Feb. 15, 1916	Coloring medium for concentrated viscous sugar.	Feb. 28	Mar. 24	Z-106	189
1172521	Feb. 22, 1916	Process for recovering zinc from zinkiferous materials.	Feb. 28	Mar. 25	Z-106	262
1172863	Feb. 22, 1916	Process for producing nitrogen compounds.	Feb. 25	Mar. 21	Y-106	181
1172908	Feb. 22, 1916	Manufacture of hydrogen	Feb. 28	Mar. 21	U-106	166
1172925	Feb. 22, 1916	Process of producing hydrogen or illuminating and heating gas.	Feb. 25	Mar. 21	H-106	280
1173012	Feb. 22, 1916	Reduction of chloride	Feb. 28	Mar. 24	Q-106	337
1173077	Feb. 22, 1916	Disazo dye	Feb. 26	Mar. 22	H-106	301
1173195	Feb. 29, 1916	Loaded silk and process of loading the silk.	Feb. 28	Mar. 21	M-106	364
1173196	Feb. 29, 1916	Loaded silk and process of loading the silk.	Feb. 28	Mar. 21	M-106	364

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			1919.	1919.		
1173931	Feb. 29, 1916	Process of producing coating compositions of acetyl cellulose.	Feb. 26	Mar. 22	H-106	301
1173951	Feb. 29, 1916	Manufacture of sheet silicon alloy	Mar. 22	Mar. 26	Z-106	275
1173965	Feb. 29, 1916	Galvanic battery	Feb. 26	Mar. 22	R-106	306
1174250	Mar. 7, 1916	Process for producing acetic acid	Feb. 26	Mar. 22	J-106	269
1174663	Mar. 7, 1916	Process for distilling formic acid	Feb. 25	Mar. 21	K-106	279
1174946	Mar. 7, 1916	Apparatus for electroosmosis	Feb. 26	Mar. 24	X-106	411
1175146	Mar. 14, 1916	Process for separating thallium and radioactive metals from lead ores and producing a white lead pigment.	Feb. 28	Mar. 22	I-106	262
1175429	Mar. 14, 1916	Pickling apparatus for drawn wires	Feb. 28	Mar. 22	S-106	262
1175539	Mar. 14, 1916	Process for dyeing pelts, hairs, feathers, and the like.	Feb. 26	Mar. 22	J-106	266
1175587	Mar. 14, 1916	Process for the recovery of metal oxids and hydroxids.	Feb. 28	Mar. 24	Y-106	261
1175634	Mar. 14, 1916	Vat-dyestuff compounds suited for dyeing and printing.	Feb. 28	Mar. 24	V-106	325
1175751	Mar. 14, 1916	Process of making paint	Feb. 28	Mar. 24	T-106	295
1175958	Mar. 21, 1916	Process of producing graphite in colloidal form.	Feb. 26	Mar. 24	K-106	346
1176362	Mar. 21, 1916	Thero-electric thermometer	Feb. 25	Mar. 24	T-106	290
1176551	Mar. 21, 1916	Apparatus for decomposing alkali-chlorid solutions.	Feb. 26	Mar. 24	Y-106	277
1177156	Mar. 28, 1916	Waterproofing and weatherproofing composition.	Feb. 28	Mar. 25	I-106	367
1178223	Apr. 4, 1916	Process for production salts of fatty acids.	Feb. 26	Mar. 24	T-106	270
1178440	Apr. 4, 1916	Process for the manufacture of nitric acid or nitrates from nitrogen oxids.	Feb. 25	Mar. 21	H-106	263
1178551	Apr. 11, 1916	Cementation and hardening of iron and steel articles.	Feb. 28	Mar. 24	J-106	308
1179176	Apr. 11, 1916	Paint for protecting metals from rusting.	Feb. 26	Mar. 24	K-106	324
1179357	Apr. 11, 1916	Manufacture of fibrous material to be used as a substitute for leather and other purposes.	Feb. 25	Mar. 22	I-106	293
1179420	Apr. 18, 1916	Process for the manufacture of organic acids, especially acetic acid.	Feb. 24 Mar. 1	Mar. 21 Mar. 22	Y-106 H-106	193 293
1179625	Apr. 18, 1916	Production of fermentative preparation.	Feb. 28	Mar. 21	U-106	158
1180264	Apr. 18, 1916	Incandescent body for electric lamps.	Mar. 1	Mar. 24	P-106	342
1180614	Apr. 25, 1916	Highly refractory article of tantalum and its alloys.	Feb. 28	Apr. 9	Q-106	448
1180627	Apr. 25, 1916	Art of preparing organic compounds containing arsenic.	Feb. 26	Apr. 9	L-106	418
1180657	Apr. 25, 1916	Glycosid and process of making same.	Feb. 25	Mar. 22	Y-106	199
1180694	Apr. 25, 1916	Mercury preparation for therapeutic purposes and process of producing same.	Feb. 28	Mar. 21	Q-106	253
1180775	Apr. 25, 1916	Method of improving the permeability to air of dry plastering mortar.	Feb. 28	Mar. 24	K-106	343
1180985	Apr. 25, 1916	Blue tetrakisazo dyes	Feb. 26	Mar. 22	H-106	301
1181264	May 2, 1916	Process of replacing carbon monoxid in a gaseous mixture by hydrogen.	Feb. 26	Mar. 22	J-106	269
1181275	May 2, 1916	Imitation-ice surface and process of making it.	Feb. 28	Mar. 24	Z-106	232
1181697	May 2, 1916	Process for saponification of the chlorin derivatives of aliphatic hydrocarbons.	Feb. 27	Mar. 25	H-106	392
1183268	May 16, 1916	Process of obtaining gasolene substitute.	Feb. 28	Mar. 24	K-106	366
1183711	May 16, 1916	Compounds of the safranin dyes especially adapted for internal use.	Feb. 26	Mar. 22	H-106	301

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1183748	May 16, 1916	Process for dyeing skins, hairs, and the like.	Feb. 26	Mar. 22	H-106	301
1183749	May 16, 1916	Method of producing pure tar distillates.	Feb. 27	Mar. 21	I-106	270
1183831	May 16, 1916	Green substantive trisazo dyes	Feb. 26	Mar. 22	H-106	301
1184177	May 23, 1916	Manufacture of acetaldehyde	Feb. 26	Mar. 22	J-106	269
1185265	May 30, 1916	Pharmaceutical compounds	Feb. 25	Apr. 9	Z-106	358
1185499	May 30, 1916	Method of regenerating mercury catalysts.	Feb. 26	Mar. 22	J-106	269
1185514	May 30, 1916	Process for manufacturing lace from derivatives of cellulose.	July 28 Feb. 28	Sept. 30 Mar. 24	H-108 L-106	22 273
1185637	June 6, 1916	Compounds of quinin and dialkylbarituric acids.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
1185731	June 6, 1916	Process of improving the fertilizing action of lime nitrogen.	Feb. 25	Mar. 21	G-106	285
1185961	June 6, 1916	Regenerative coke oven	Feb. 28	Mar. 23	U-106	294
1186052	June 6, 1916	Process for the dyeing of artificial leather.	Mar. 1	Mar. 25	K-106	398
1186162	June 6, 1916	Method of cutting or machining metal articles.	Feb. 28	Mar. 22	S-106	244
1186500	June 6, 1916	Tanning substances and method of preparing the same.	Feb. 25	Mar. 22	U-106	212
1187865	June 20, 1916	Yarn washing and dyeing machine	Feb. 28	Mar. 21	U-106	173
1188021	June 20, 1916	Rabble	Feb. 28	Mar. 24	J-106	318
1188068	June 20, 1916	Apparatus for producing and preparing foils.	Feb. 28	Mar. 22	K-106	307
1188191	June 20, 1916	Process of liquefying gas mixtures and for separating the constituents.	Feb. 27	Mar. 24	T-106	307
1189313	July 4, 1916	Process of treating metalliferous materials for roasting, reducing, sintering, and like purposes.	Feb. 28	Mar. 25	Z-106	262
1189696	July 4, 1916	Process of producing colloidal solutions in organic substances not miscible with water.	Feb. 26	Mar. 24	K-106	348
1191390	July 18, 1916	Process for making condensation products from phenols and formaldehyde.	Feb. 25	Mar. 21	I-106	345
1191801	July 18, 1916	Process for manufacturing plastic substances from the derivatives of cellulose.	Mar. 1	Mar. 24	L-106	270
1192061	July 25, 1916	Process of regenerating the waste products of galvanic batteries.	Feb. 26	Mar. 22	R-106	308
1192400	July 25, 1916	Method of manufacturing leather substances.	Feb. 28	Mar. 21	Z-106	139
1192581	July 25, 1916	Apparatus for distilling petroleum tar, or other substances under vacuum.	Feb. 28	Mar. 24	P-106	354
1194866	Aug. 15, 1916	Paper size and the process of making same.	Feb. 28	Mar. 24	Z-106	230
1195099	Aug. 15, 1916	Method for the production of gelatinous substances.	Mar. 1	Mar. 24	Y-106	252
1195432	Aug. 22, 1916	Sensitive plate for Roentgen photography and process of making the same.	Feb. 28	Mar. 24	Y-106	255
1196185	Aug. 29, 1916	Process of producing an iron alloy rich in phosphorus from inferior finery slag.	Feb. 28	Mar. 21	H-106	285
1197462 Re- (14216)	Sept. 5, 1916 Nov. 21, 1916	2-Naphthyquinolin -4- carboxylic acid.	Feb. 25	Apr. 9	Z-106	358
1199220	Sept. 26, 1916	Method for producing pure retort carbon.	Feb. 28	Mar. 25	H-106	395
1199273	Sept. 26, 1916	Process for dyeing with dyestuffs insoluble in water or water insoluble senco compounds of dyestuffs.	Feb. 28	Mar. 24	V-106	325
1199697	Sept. 26, 1916	Dyes and process of making same	Feb. 26	Mar. 22	H-106	301

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1200055	Oct. 3, 1916	Process of making sulfur dyes	Feb. 28	Mar. 22	H-106	318
1200138	Oct. 3, 1916	Compound or mixture from which to make forms for producing castings of objects from materials of any kind.	Feb. 28	Mar. 22	U-106	210
1200146	Oct. 3, 1916	Manufacture of leather and products resembling leather.	Feb. 24	Mar. 21	G-106	274
1200617	Oct. 10, 1916	Manufacture of lubricating grease	Feb. 28	Mar. 24	T-106	299
1200726	Oct. 10, 1916	Process for the manufacture of alkali salts of nitrosamins of primary aromatic amins.	Feb. 26	Mar. 22	R-106	308
1200774	Oct. 10, 1916	Treatment of cellulose derivatives	Feb. 28	Mar. 25	Y-106	313
1201101	Oct. 10, 1916	Process for the decortication and scoring of urticaceous plants.	Feb. 28	Mar. 24	H-106	363
1201132	Oct. 10, 1916	Method for the production of gelatinous substances.	Mar. 1	Mar. 24	Y-106	252
1201133	Oct. 10, 1916	Solid gelatinous product	Mar. 1	Mar. 24	Y-106	252
1201260	Oct. 17, 1916	Process for the manufacture of cellulose esters.	Feb. 28	Mar. 25	Q-106	345
1201601	Oct. 17, 1916	Method of producing pure tar distillates.	Feb. 27	Mar. 21	I-106	270
1201607	Oct. 17, 1916	Electric furnace	Feb. 27	Mar. 24	Z-106	221
1202061	Oct. 24, 1916	Apparatus for shifting hanks of yarn in dyeing.	Feb. 26	Mar. 24	Y-106	265
1202109	Oct. 24, 1916	Filter press	Feb. 28	Mar. 22	Y-106	241
1202512	Oct. 24, 1916	Method of concentrating ore by flotation.	Feb. 26	Mar. 22	H-106	311
1203409	Oct. 31, 1916	Enamel composition	Mar. 1	Mar. 25	W-106	434
1204398	Nov. 14, 1916	Electrodeposition of metal on rotation bodies.	Feb. 25	Mar. 21	T-106	203
1204479	Nov. 14, 1916	Therapeutically active substances	Feb. 28	Mar. 21	X-106	311
1204537	Nov. 14, 1916	Method of and apparatus for producing lead oxid.	Feb. 28	Mar. 21	U-106	133
1204933	Nov. 14, 1916	Process of making formates	Feb. 27	Mar. 24	Z-106	238
1205081	Nov. 14, 1916	Method of manufacturing phenol-aldehyde resins soluble in oil and varnishes therefrom.	Feb. 25	Mar. 21	I-106	245
1205493	Nov. 21, 1916	Process of producing oxalic acid	Feb. 28	Mar. 22	H-106	325
1205578	Nov. 21, 1916	Process for converting heavy hydrocarbons into light hydrocarbons.	Feb. 28	Mar. 24	J-106	309
1205735	Nov. 21, 1916	Water-tight cement and process of producing the same.	Feb. 28	Mar. 24	X-106	371
1205829	Nov. 21, 1916	Process of producing a stable fertilizer.	Feb. 28	Mar. 21	W-106	356
1205924	Nov. 21, 1916	Process for improving the antiseptic fungicidal and insecticidal action of tar oils.	Feb. 25	Mar. 21	X-106	310
1205944	Nov. 21, 1916	Process for sintering fine ores, flue dust, purple ore, and the like.	Feb. 26	Mar. 24	S-106	298
1205957	Nov. 28, 1916	Preparation for treating teeth	Feb. 25	Mar. 21	I-106	235
1206345	Nov. 28, 1916	Artificial building material and method for producing the same.	Feb. 28	Mar. 21	G-106	259
1206346	Nov. 28, 1916	Process for producing articles from diatomaceous earth.	Feb. 28	Mar. 21	G-106	259
1207177	Dec. 5, 1916	Process of making soluble starch	Feb. 28	Mar. 25	U-106	312
1207416	Dec. 5, 1916	Process for manufacturing nitrogen compounds.	Feb. 28	Mar. 24	R-106	328
1207782	Dec. 12, 1916	Production of anhydrous hydrosulfites from aqueous hydrosulfite solutions.	Feb. 26	Mar. 22	J-106	289
1207819	Dec. 12, 1916	Furnace	Feb. 28	Mar. 21	K-106	293
1208877	Dec. 19, 1916	Manufacture of acid ammonium phosphate.	Feb. 18	Mar. 25	R-106	381
1209154	Dec. 19, 1916	Trisazo dyes	Feb. 26	Mar. 22	H-106	301
1209212	Dec. 19, 1916	Manufacture of vat dyestuffs or initial products of same.	Feb. 23	Mar. 24	T-106	271
1209327	Dec. 19, 1916	Process for treating the green juice of tobacco plants.	Mar. 1	Mar. 23	R-106	355

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1209539	Dec. 19, 1916	Process for treating casein	Feb. 25	Mar. 21	U-106	131
1209580	Dec. 19, 1916	Sulfur dyes	Feb. 26	Mar. 22	H-106	301
1209628	Dec. 19, 1916	Process of manufacturing iron from the scrap of zinced sheet iron.	Feb. 28	Mar. 21	I-106	247
1209710	Dec. 26, 1916	Wire electrode for electrolytic purposes.	Feb. 25 June 24	Mar. 24 June 28	T-106 T-106	290 215
1210279	Dec. 26, 1916	Method of producing special effects in batik work	Feb. 25	Mar. 22	U-106	187
1210491	Jan. 2, 1917	Process of artificially seasoning wood.	Feb. 28	Mar. 21	G-106	266
1210651	Jan. 2, 1917	Process of making pure highly concentrated hydrogen peroxid from the peroxid of an alkaline earth.	Feb. 28	Mar. 21	J-106	222
1210792	Jan. 2, 1917	Method of purifying acetic acid	Feb. 26	Mar. 24	S-106	301
1210820	Jan. 2, 1917	Process for the manufacture of artificial-stone plates.	Feb. 28	Apr. 9	N-106	485
1211181	Jan. 2, 1917	Apparatus for the production of nitrogen compounds.	Feb. 28	Mar. 24	G-106	320
1211395	Jan. 9, 1917	Treatment of coke-oven gases	Feb. 28	Mar. 24	X-106	363
1211450	Jan. 9, 1917	Washing device for guncotton and similar products.	Feb. 26	Mar. 21	J-106	223
1211526	Jan. 9, 1917	Process for the manufacture of horny substances from casein.	Feb. 28	Mar. 21	U-106	132
1211564	Jan. 9, 1917	Production of antimonates	Feb. 27	Mar. 24	Z-106	238
1211687	Jan. 9, 1917	Apparatus for the electrolytic decomposition of water.	Feb. 25	Mar. 22	U-106	193
1211721	Jan. 9, 1917	Process for the manufacture of asphaltlike masses and derivatives therefrom.	Feb. 27	Mar. 21	P-106	275
1212007	Jan. 9, 1917	Water softening	Feb. 25	Mar. 21	T-106	208
1212426	Jan. 16, 1917	Process for producing homogeneous bodies of chemically pure tungsten metal of any desired shape.	Feb. 28	Mar. 24	I-106	293
1212504	Jan. 16, 1917	Process of preparing nitrogen compounds.	Feb. 28	Mar. 24	G-106	320
1212586	Jan. 16, 1917	Separating finely divided ore mixtures in vacuum separating vessels or chambers.	Feb. 28	Mar. 25	R-106	363
1212702	Jan. 16, 1917	Manufacture of alkali and alkaline-earth metal sulfids.	Feb. 26	Mar. 22	J-106	269
1213075	Jan. 16, 1917	Disazo dyes	Feb. 26	Mar. 22	H-105	301
1214346	Jan. 30, 1917	Manufacture of an artificial manure or fertilizer.	Feb. 28	Mar. 21	I-106	273
1214414	Jan. 30, 1917	Condensation product from phenols and formaldehyde.	Feb. 25	Mar. 21	I-106	245
1215957	Feb. 13, 1917	Apparatus for liquefying and separating gases.	Feb. 27	Mar. 24	T-106	307
1216371	Feb. 20, 1917	Process for the manufacture of hydroxid of aluminum.	Feb. 26	Mar. 22	K-106	318
1217862	Feb. 27, 1917	Salts of acetylsalicylic acid and process of manufacture of same.	Feb. 28	Mar. 24	I-106	324
1219166	Mar. 13, 1917	Manufacture of chlorinated products of sylene, aldehydro-benzoic acids, and dyestuffs therefrom.	Feb. 28	Mar. 24	Y-106	299
1219226	Mar. 13, 1917	Process for the manufacture of betain from vinasses.	Feb. 26	Mar. 22	H-106	301
1219852	Mar. 20, 1917	Process of preheating blast-furnace gases.	Feb. 28	Mar. 25	R-106	356
1219954	Mar. 20, 1917	Ortho-oxy-monoazo dyes	Feb. 26	Mar. 22	H-106	301
1220067	Mar. 20, 1917	Process and apparatus for continuously distilling mineral oils and the like.	Mar. 1	Mar. 21	T-106	199
1220253	Mar. 27, 1917	Enamel and process of making the same.	Feb. 25	Mar. 22	Z-106	176
1220735	Mar. 27, 1917	Method for the production of hydraulic lime and cement from combustion residues of sewage, canal sludge, or the like.	Feb. 28	Mar. 24	T-106	275

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
1220746	Mar. 27, 1917	Process for the manufacture of aldol.	Feb. 24	Mar. 21	Y-106	193
1221104	Apr. 3, 1917	Process for making coatings of fusible substances.	Feb. 28	Mar. 25	H-106	388
1222033	Apr. 10, 1917	Manufacture of products adapted to precipitate glue or like substances.	Feb. 25	Mar. 22	U-106	212
1222239	Apr. 10, 1917	Electrolysis of alkaline haloids	Feb. 25	Mar. 24	T-106	290
1224242	May 1, 1917	Process for producing homogeneous articles of any desired form out of pure tungsten.	Feb. 28	Mar. 22	H-106	320
1224418	May 1, 1917	Flux for welding nickel and nickel alloy.	Feb. 28	Mar. 24	Y-106	295
1225262	May 8, 1917	Apparatus for producing hydrogen	Feb. 28	Mar. 21	I-106	273
1225263	May 8, 1917	Apparatus for producing hydrogen	Feb. 28	Mar. 21	I-106	273
1225264	May 8, 1917	Process of producing hydrogen	Feb. 28	Mar. 21	I-106	273
1228622	June 5, 1917	Preparing compounds of chromium oxid.	Feb. 28	Mar. 22	H-106	318
1228916	June 5, 1917	Process for producing yoghurt beer	Feb. 28	Mar. 21	S-106	222
1230524	June 19, 1917	Method for separation of finely divided substances from coarse and foreign matters.	Feb. 26	Mar. 22	K-106	318
1231083	June 26, 1917	Process of producing pure zinc	Feb. 28	Mar. 22	X-106	347
1231084	June 26, 1917	Apparatus for producing zinc and other similar metals.	Feb. 28	Mar. 22	X-106	346
1232334	July 3, 1917	Process of separating thorium from soda solutions containing thorium oxalate.	Feb. 18	Mar. 24	H-106	359
1233384	July 17, 1917	Binding materialand the method of preparing.	Feb. 27	Mar. 24	I-106	334
1233611	July 17, 1917	Method of improving coke as fuel for stoves, hearths, and the like by filling up the pores thereof.	Feb. 26	Mar. 22	K-106	311
1233713	July 17, 1917	Process for the treatment of clay and kaolin by elutriation.	Feb. 26	Mar. 22	K-106	318
1234156	July 24, 1917	Process of making aldol	Feb. 26	Mar. 24	K-106	323
1234714	July 31, 1917	Method of thickening (condensing) or drying solutions, emulsions, and the like.	Mar. 1	Mar. 22	Y-106	209
1234946	July 31, 1917	Electrode packing for melting furnaces.	Feb. 26	Mar. 22	Y-106	236
1234947	July 31, 1917	Cooled bottom electrode for electric smelting furnaces.	Feb. 26	Mar. 22	Y-106	236
1235063	July 31, 1917	Electro-osmotic process of treating liquid mixtures.	Feb. 26	Mar. 22	K-106	318
1235064	July 31, 1917	Electro-osmotic purification of gelatinous substances.	Feb. 26	Mar. 22	K-106	318
1235426	July 31, 1917	Production of formic acid	Feb. 27	Mar. 24	Z-106	238
1236213	Aug. 7, 1917	Process for rendering liquids radioactive.	Feb. 28	Mar. 21	U-106	165
1236468	Aug. 14, 1917	Tanning material	Feb. 26	Mar. 21	Y-106	189
1236978	Aug. 14, 1917	Manufacture of calcium hypochlorite	Feb. 26	Mar. 22	J-106	279
1237076	Aug. 14, 1917	Method of manufacturing polyvalent alcohols.	Feb. 27	Mar. 22	L-106	228
1237840	Aug. 21, 1917	Process for the direct production of pure oxid of tin.	Feb. 28	Mar. 25	V-106	370
1237852	Aug. 21, 1917	Process of producing synthetic asphalt limestone.	Feb. 28	Mar. 24	K-106	368
1238022	Aug. 21, 1917	Art of compressing fine ores and the like substances into blocks or briquets.	Feb. 26	Mar. 26	W-106	445
1238202	Aug. 28, 1917	Process of impregnating artificial and natural materials.	Feb. 26	Mar. 22	K-106	318
1238528	Aug. 28, 1917	Process of making plastic masses	Feb. 28	Mar. 24	G-106	319
1239112	Sept. 4, 1917	Process of producing well-clouded enamels or gases by means of substitutes for stannic oxid.	Feb. 28	Mar. 24	S-106	307
1239227	Sept. 4, 1917	Apparatus for impregnating water with radium emanations.	Feb. 28	Mar. 21	U-106	165

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
1239867	Sept. 11, 1917	Art of hydrogenating organic substances.	Feb. 25	Mar. 22	Y-106	199
1240523	Sept. 18, 1917	Production of sulfonic-acid salts from mineral-oil waste liquor.	Feb. 28	Mar. 25	R-106	379
1240886	Sept. 25, 1917	Galvanic battery	Mar. 1	Mar. 25	X-106	427
1241738	Oct. 2, 1917	Plastic composition and process of producing it.	Feb. 26	Mar. 22	J-106	269
1241789	Oct. 2, 1917	Process for the dry distillation of materials containing cellulose.	Feb. 26	Mar. 24	T-106	270
1241950	Oct. 2, 1917	Process for treating tanning substances soluble with difficulty contained in crude quebracho liquors.	Feb. 28	Mar. 24	V-106	318
1241995	Oct. 2, 1917	Modifying acetyl cellulose	Feb. 26	Mar. 22	V-106	292
1243170	Oct. 16, 1917	Vat dyes and process of making same.	Feb. 26	Mar. 24	W-106	396
1243171	Oct. 16, 1917	Vat dyes and process of making same.	Feb. 26	Mar. 24	W-106	396
1244901	Oct. 30, 1917	Method of producing acetaldehyde	Feb. 28 July 17	Mar. 25 July 22	F-106 H-106	378 315
1244902	Oct. 30, 1917	Method of producing acetaldehyde	Feb. 28 July 17	Mar. 25 July 22	F-106 H-107	378 315
1247334	Nov. 20, 1917	Stable carbonic-acid solution and method of producing same.	Feb. 26	Mar. 24	G-106	328
1247833	Nov. 27, 1917	Process of softening water	Feb. 28	Mar. 21	S-106	220
1248022	Nov. 27, 1917	Solution for preserving wood	Feb. 27	Mar. 26	Z-106	292
1248233	Dec. 4, 1917	Process for utilizing the washwater of the manufacture of nitrocellulose.	Feb. 28	Mar. 25	S-106	338
1249937	Dec. 11, 1917	Production of ground enamels	Feb. 28	Mar. 21	K-106	274
1251368	Dec. 25, 1917	Sulfur dyes and their manufacture	Feb. 26	Mar. 22	H-106	301
1251369	Dec. 25, 1917	Dyes and manufacture thereof	Feb. 26	Mar. 22	H-106	301
1252212	Jan. 1, 1918	Process of producing novel addition compounds of the desoxycholic acid.	Feb. 28	Mar. 21	W-106	351
1252591	Jan. 8, 1918	Process of obtaining wax-like substances from lanolin.	Feb. 26	Mar. 24	J-106	304
1253691	Jan. 15, 1918	Explosive substance	Feb. 28	Mar. 25	U-106	273
1253840	Jan. 15, 1918	Process for the elimination of manganese and iron from water.	Feb. 28	Mar. 24	R-106	325
1254033	Jan. 22, 1918	Preparation of amino compounds fermentation.	Feb. 26	Mar. 22	J-106	253
1255340	Feb. 5, 1918	Impregnation of wood, etc	Feb. 26	Mar. 24	G-106	331
1255739	Feb. 5, 1918	Halogenated dyes of the acridin series.	Feb. 26	Mar. 22	H-106	301
1255740	Feb. 5, 1918	Dyes of the benzene-naphthalene series and process for their manufacture.	Feb. 26	Mar. 22	H-106	301
1256171	Feb. 12, 1918	Filter body	Feb. 28	Mar. 25	S-106	334
1256455	Feb. 12, 1918	Composition and process for making enamel.	Feb. 28	Mar. 21	K-106	274
1256456	Feb. 12, 1918	Enamel composition and process of manufacturing it.	Feb. 28	Mar. 21	K-106	274
1256952	Feb. 19, 1918	Recovery of sugar from molasses	Feb. 28	Mar. 25	Z-106	261
1257896	Feb. 26, 1918	Process of dyeing elongated bodies of yarn or the like.	Feb. 28	Mar. 21	M-106	360
1260684	Mar. 26, 1918	Rubber-mixing machine	Mar. 1	Mar. 22	R-106	299
1261342	Apr. 2, 1918	Process for the production of zinc	Feb. 25	Mar. 21	U-106	128
1261858	Apr. 9, 1918	Manufacture of vat dyestuffs of the carbazole naphthoquinone series.	Feb. 23	Mar. 24	T-106	271
1261987	Apr. 9, 1918	Method of making aluminum alloy articles.	Feb. 28	Mar. 25	U-106	297
1262302	Apr. 9, 1918	Oil varnish and process for manufacturing same.	Feb. 25	Mar. 21	Z-106	127
1262589	Apr. 9, 1918	Process of producing hydrogen peroxide.	Feb. 27	Mar. 24	J-106	302
1263119	Apr. 16, 1918	Cellulose acetate and a process of making same.	Feb. 28	Mar. 25	Q-106	345

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			1919.	1919.		
1264479	Apr. 30, 1918	Process of recovering the vapors of volatile liquids.	Feb. 25	Mar. 21	H-106	280
1264674	Apr. 30, 1918	Insulation of electricity	Feb. 28	Mar. 24	Z-106	217
1265864	May 14, 1918	Process of preparing stable solutions of di-methylaminotetraminiarsenobenzene.	Feb. 26	Apr. 9	L-106	419
1265865	May 14, 1918	Process of preparing derivatives of bismethylamino arsenobenzene which are soluble in water.	Feb. 26	Apr. 9	L-106	419
1266329	May 14, 1918	Electro osmotic extraction of water from animal, vegetable, and material substances.	Feb. 26	Mar. 24	X-106	411
1267209	May 21, 1918	Apparatus for dyeing wool and other fibrous substances.	Feb. 26	Mar. 24	R-106	317
1268240	June 4, 1918	Manufacture of metal nitrogen compound.	Feb. 26	Mar. 24	S-106	302
1268483	June 4, 1918	Electrode for use in electric furnaces and for other purposes.	Feb. 28	Mar. 24	K-106	353
1269006	June 11, 1918	Process for purifying fluids	Feb. 26	Mar. 22	K-106	318
1271846	July 9, 1918	Process of producing mercury preparations for therapeutic purposes.	Feb. 28	Mar. 21	Q-106	253
1274171	July 30, 1918	Process of preserving wood	Feb. 26	Mar. 24	P-106	332
1274560	Aug. 6, 1918	Process of purifying water	Feb. 28	Mar. 24	R-106	325
1275045	Aug. 6, 1918	Process for utilizing the residues obtained in the distillation of zinc.	Feb. 28	Mar. 24	Y-106	286
1275289	Aug. 13, 1918	Method of refining fats and oils	Feb. 26	Mar. 24	Z-106	219
1276206	Aug. 20, 1918	Absorbent material sizing composition.	Feb. 26	Mar. 22	S-106	274
1278429	Sept. 10, 1918	Apparatus for the autogenous working of metals under water.	Feb. 28	Mar. 22	G-106	296
1281775	Oct. 15, 1918	Method of heating coke ovens	Mar. 1	Mar. 22	H-106	300
1284723	Nov. 12, 1918	Process of producing high melting point fatty acid and hydrophilous neutral products, etc.	Feb. 26	Mar. 24	J-106	305
1284724	Nov. 12, 1918	Process of obtaining oxycholesterin	Feb. 28	Mar. 21	W-106	343
1285144	Nov. 19, 1918	Process for tanning or impregnating hides.	Mar. 1	Mar. 21	S-106	214
1285704	Nov. 26, 1918	Radioactive preparation	Feb. 28	Mar. 24	X-106	381
1285726	Nov. 26, 1918	Anthraquinone derivative and process of making same.	Feb. 28	Mar. 24	K-106	338
1285727	Nov. 26, 1918	Vat color and process of making same.	Feb. 28	Mar. 24	K-106	336
1287387	Dec. 10, 1918	Process of manufacturing a substitute for leather.	Mar. 1	Mar. 24	I-106	341
		Series 2.				
698268	Apr. 22, 1902	Process of making cement	Mar. 21	Mar. 26	J-106	346
704036	July 8, 1902	Process of separating alkali-metal sulfates from mixed solutions.	Mar. 22	Mar. 26	X-106	453
708396	Sept. 2, 1902	Process of tanning	Feb. 26	Mar. 22	T-106	262
709358	Sept. 16, 1902	Process of desulfurizing furnace gases.	Mar. 1	Mar. 25	J-106	329
709563	Sept. 23, 1902	Process of producing iron	Mar. 1	Mar. 25	V-106	373
709570	Sept. 23, 1902	Process of producing cyanate of potassium.	Mar. 1	Mar. 24	K-106	373
709712	Sept. 23, 1902	Filter	Mar. 1	Mar. 22	Z-106	173
713646	Nov. 18, 1902	Process of clearing fluids containing free acids or acid salts.	Mar. 1	Mar. 24	G-106	323
713755	Nov. 18, 1902	Apparatus for bleaching, dyeing, etc.	Mar. 1	Mar. 25	Z-106	244
714201	Nov. 25, 1902	Storage battery	Mar. 1	Mar. 25	P-106	363
716926	Dec. 30, 1902	Dyeing apparatus	Ma 1	Mar. 25	R-106	351
721489	Feb. 24, 1903	Process of making citrate soluble-phosphates.	Mar. 1	Mar. 21	J-106	241
722050	Mar. 3, 1903	Process of printing cotton	Mar. 22	Mar. 26	S-106	363
722238	Mar. 10, 1903	Photographic emulsion and process of making same.	Mar. 1	Mar. 24	U-107	257

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722455	Mar. 10, 1903	Process of precipitating gold from cyanid solutions.	1919. Feb. 26	1919. Mar. 25	K-106	382
724079	Mar. 31, 1903	Method of producing electric insulating bodies.	Feb. 26	Mar. 25	T-106	318
724619	Apr. 7, 1903	Electric accumulator	Mar. 1	Mar. 26	S-106	369
725208	Apr. 14, 1903	Electrolytic coating apparatus	Mar. 21	Mar. 26	Y-106	330
725879	Apr. 21, 1903	Process of producing printing cliches and high reliefs.	Mar. 1	Mar. 25	I-106	357
728385	May 19, 1903	Process of making albumose	Mar. 1	Mar. 22	T-106	250
729218	May 26, 1903	Process of improving tobacco	Mar. 1	Mar. 25	V-106	365
729321	May 26, 1903	Process of preparing fuel composition.	Mar. 1	Mar. 24	U-106	224
731831	June 23, 1903	Bronze-coated plate	Mar. 1	Mar. 21	L-106	292
733957	July 21, 1903	Process of manufacturing homogeneous metal castings.	Mar. 1	Mar. 24	S-106	300
734240	July 21, 1903	Pulverizing and cleaning minerals	Feb. 26	Mar. 25	K-106	383
734826	July 28, 1903	Electric battery	Mar. 1	Mar. 22	I-106	289
735293	Aug. 4, 1903	Process of making articles of wolfram and lead.	Feb. 26	Mar. 25	K-106	377
737579	Sept. 1, 1903	Process of purifying gas	Feb. 28	Mar. 22	G-106	301
737850	Sept. 1, 1903	Filter	Mar. 1	Mar. 22	Z-106	173
741029	Oct. 13, 1903	Red azo lake	Mar. 21	Mar. 26	Z-106	277
741584	Oct. 13, 1903	Process of making fatty substances	Mar. 1	Mar. 21	W-106	342
743340	Nov. 3, 1903	Disinfecting apparatus	Feb. 28	Mar. 25	S-106	341
744758	Nov. 24, 1903	Pocket battery	Mar. 1	Mar. 26	X-106	449
744978	Nov. 24, 1903	Disinfectant vessel	Mar. 1	Mar. 25	J-106	320
745274	Nov. 24, 1903	Accumulator-plate	Mar. 1	Mar. 22	X-106	319
745378	Dec. 1, 1903	Electrolytic refining of zinc	Feb. 26	Mar. 25	H-106	378
751807	Feb. 9, 1904	Explosive	Feb. 28	Mar. 21	Q-106	270
752693	Feb. 23, 1904	Filter	Mar. 1	Mar. 24	U-106	247
755222	Mar. 22, 1904	Process of treating plumbiferous ores.	Mar. 1	Mar. 26	K-106	411
756124	Mar. 29, 1904	Method of producing pit coal or coke briquets.	Mar. 1	Mar. 24	J-106	301
757806	Apr. 19, 1904	Disinfecting apparatus	Mar. 1	Mar. 24	S-106	295
758338	Apr. 26, 1904	Art of photomechanical printing	Feb. 28	Mar. 25	S-106	344
758774	May 3, 1904	Process of manufacturing nitric dioxid acid.	Feb. 26	Mar. 21	Q-106	265
761310	May 31, 1904	Preparation of azo dyes	Mar. 1	Mar. 21	W-106	346
765943	July 26, 1904	Process of making a substitute for cold-liver oil.	Mar. 1	Mar. 25	Z-106	268
768180	Aug. 23, 1904	Galvanic battery	Mar. 1	Mar. 24	Z-106	195
769355	Sept. 6, 1904	Process of manufacturing fireproof flooring.	Feb. 28	Mar. 21	Q-106	269
772646	Oct. 18, 1904	Manufacture of an artificial leather substitute.	Mar. 1	Mar. 21	K-106	270
773427	Oct. 25, 1904	Manufacture of floor coverings and plastic wall and ceiling facings.	Feb. 28	Mar. 21	U-106	179
773492	Oct. 25, 1904	Ignition material	Mar. 1	Mar. 24	R-106	309
778670	Dec. 27, 1904	Ortho-dioxyanthraquinone sulfo acid and process of making same.	Mar. 1	Mar. 24	Z-106	206
778703	Dec. 27, 1904	Process of utilizing waste ends of carbons.	Feb. 27	Mar. 25	H-106	382
782656	Feb. 14, 1905	Process of manufacturing storage battery or accumulator electrodes.	Mar. 1	Mar. 24	L-106	252
782739	Feb. 14, 1905	C-C-dialkyl-barbituric acid and process of making same.	1918 Dec. 4 Dec. 11 1919 Mar. 22	1918 Dec. 5 Dec. 11 1919 Mar. 26	I-105 Q-105 J-106	436 473 349
785308	Mar. 21, 1905	Process of recovering sugar from masscuite.	Mar. 1	Mar. 22	I-106	301
785733	Mar. 28, 1905	Process of obtaining the contents of yeast cells.	Mar. 1	Mar. 24	J-106	280
786573	Apr. 4, 1905	Apparatus for spraying blast-furnace cinder.	Mar. 1	Mar. 22	J-106	261
791904	June 6, 1905	Pigmented paper	Mar. 1	Mar. 24	W-106	398

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			1919.	1919.		
792449	June 13, 1905	Method of converting granular or pulverulent materials into lumps.	Feb. 28	Mar. 21	Q-106	271
792826	June 20, 1905	Method of coating materials with silver.	Mar. 1	Mar. 24	J-106	286
793446	June 27, 1905	Igniter	Mar. 1	Mar. 26	W-106	455
797458	Aug. 15, 1905	Process of reducing photographic emulsions.	Feb. 26	Mar. 25	W-106	444
797577	Aug. 22, 1905	Storage vessel for liquefied gases	Feb. 28	Mar. 25	Z-106	252
798208	Aug. 29, 1905	Process of making sodium ferrocyanid.	Feb. 26	Mar. 25	L-106	300
799011	Sept. 5, 1905	Process for the extirpation of vermin on board ship.	Mar. 1	Mar. 24	J-106	299
800925	Oct. 3, 1905	Process of purifying viscin	Mar. 1	Mar. 26	P-106	391
802598	Oct. 24, 1905	Process for preparing autotype negatives.	Mar. 1	Mar. 21	T-106	223
802996	Oct. 31, 1905	Apparatus for making fertilizers	Mar. 1	Mar. 21	H-106	287
804429	Nov. 14, 1905	Process for making contacts	Feb. 18	Mar. 25	L-106	301
804664	Nov. 14, 1905	Soldering paste	Mar. 1	Mar. 21	P-106	284
805031	Nov. 21, 1905	Process for preparing zinc and aluminium plates for printing purposes.	Mar. 1	Mar. 25	I-106	359
808095	Dec. 26, 1905	Manufacture of organic compounds of oxidation.	Mar. 1	Mar. 26	U-106	314
809770	Jan. 9, 1906	Asymmetric cell	Mar. 1	Mar. 25	T-106	322
812608	Feb. 13, 1906	Process of making a formicaldehyde compound.	Mar. 22	Mar. 26	Z-106	299
815414	Mar. 20, 1906	Weighing scale	Mar. 1	Mar. 22	S-106	270
815548	Mar. 20, 1906	Process of producing aromatic alcohols and their derivatives.	Mar. 1	Mar. 22	L-106	233
817188	Apr. 10, 1906	Process of making acetylene chlorid.	Feb. 28	Mar. 21	Q-106	275
817732	Apr. 10, 1906	Electric incandescent lamp	Mar. 21	Mar. 26	J-106	366
817734	Apr. 10, 1906	Incandescing body for lighting purposes.	Mar. 21	Mar. 26	J-106	366
821434	May 22, 1906	Process for manufacturing artificial parchment.	Mar. 1	Mar. 25	F-106	369
824092	June 26, 1906	Process of extracting ammonia from gases.	Mar. 1	Mar. 22	G-106	291
827896	Aug. 7, 1906	Micrographic microscope	Mar. 1	Mar. 25	L-106	321
830248	Sept. 4, 1906	Appliance for storage vessels for liquid gases.	Mar. 1	Mar. 21	H-106	288
832621	Oct. 9, 1906	Sticking plaster	Mar. 1	Mar. 25	J-106	324
833922	Oct. 23, 1906	Balance or weighing apparatus of the pendulum type	Mar. 1	Mar. 22	S-106	270
836520	Nov. 20, 1906	Manufacture of steel from ordinary iron.	Mar. 1	Mar. 22	L-106	241
837016	Nov. 27, 1906	Process for detanning mineral or chrome tanned or leather waste.	Mar. 1	Mar. 25	R-106	388
837045	Nov. 27, 1906	Extraction of ammonia from gas	Mar. 1	Mar. 24	U-106	220
838216	Dec. 11, 1906	Explosive coherer powder	Mar. 1 Apr. 19	Mar. 25 June 6	I-106 A-108	364 142
843549	Feb. 5, 1907	Receptacle for elements	Feb. 28	Mar. 24	Z-106	236
845256	Feb. 26, 1907	Process of utilizing waste ends of carbons for arc lamps.	Feb. 27	Mar. 25	H-106	382
848791	Apr. 2, 1907	Pyrimidin derivative	Feb. 26	Mar. 24	W-106	414
[1]12745	Jan. 28, 1907		Feb. 26	Mar. 24	W-106	414
855595	June 4, 1907	Process of manufacturing nitroglycerin explosives of reduced freezing point.	Mar. 1	Mar. 22	Y-106	248
858536	July 2, 1907	Waterproof paint	Feb. 28	Mar. 25	J-106	326
859753	July 9, 1907	Process for the building up of spongy lead plates for electric storage batteries.	Mar. 1	Mar. 22	L-106	217
860483	July 16, 1907	Apparatus for carbonizing wood, peat, and the like.	Mar. 1	Mar. 26	U-106	309
861440	July 30, 1907	Process for manufacturing steel	Mar. 1	Mar. 26	L-106	325
861999	July 30, 1907	Process for preparing steel of high grade from ordinary iron.	Mar. 1	Mar. 22	L-106	241

[1] Reissue

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			1919.	1919.		
864219	Aug. 27, 1907	Process for the manufacture of easily emulsifiable fatty matter.	Mar. 1	Mar. 25	R-106	384
865276	Sept. 3, 1907	Art of etching	Feb. 28	Mar. 25	S-106	344
867048	Sept. 24, 1907	Sterlizing apparatus	Mar. 1	Mar. 24	Z-106	209
870985	Nov. 12, 1907	Carbon electrode for galvanic elements.	Feb. 27	Mar. 25	P-106	373
871524	Nov. 19, 1907	Process of and apparatus for manufacturing artificial stone.	Mar. 1	Mar. 25	K-106	386
876466	Jan. 14, 1908	Method of preparing and storing concrete.	Mar. 1	Mar. 24	W-106	399
877114	Jan. 21, 1908	Method of obtaining oxid fumes from ores and furnace products.	Feb. 27	Mar. 25	H-106	373
880055	Feb. 25, 1908	Arc-light electrode containing metal within the same.	Feb. 1	Mar. 25	L-106	315
884026	Apr. 7, 1908	Blood compound of glycero-phosphate of lime and calcium.	Mar. 1	Mar. 24	P-106	334
891223	June 16, 1908	Process for manufacturing the filaments of electric incandescent lamps.	Mar. 21	Mar. 26	J-106	366
892898	July 7, 1908	Dyeing and bleaching apparatus	Mar. 1	Mar. 26	Z-106	303
894238	July 28, 1908	Accumulator electrode	Feb. 28	Mar. 25	H-106	389
895197	Aug. 4, 1908	Manufacture of plastic compositions.	Mar. 1	Mar. 25	V-106	364
896705	Aug. 25, 1908	Process for hardening tantalum	Apr. 8	Apr. 9	V-106	482
900597	Oct. 6, 1908	Process for producing an electrolytic deposit of metallic chromium.	Mar. 1	Mar. 25	F-106	372
901177	Oct. 13, 1908	Radioactive composition	Mar. 1	Mar. 24	Q-106	321
902093	Oct. 27, 1908	Process of separating cellulose esters from solutions.	Mar. 1	Mar. 25	P-106	364
904147	Nov. 17, 1908	Manufacture of sulfuric acid	Feb. 26	Mar. 25	H-106	384
906918	Dec. 15, 1908	Process of making neutral oxychinolin salts.	Mar. 1	Mar. 25	S-106	329
908149	Dec. 29, 1908	Explosive	Apr. 19 Mar. 1	June 6 Mar. 21	A-108 H-106	178 291
909309	Jan. 12, 1909	Apparatus for generating ozone	Mar. 1	Mar. 24	G-106	326
910146	Jan. 19, 1909	Process of purifying pine oil, pine-tar oil, and wood-tar oil.	Feb. 27	Mar. 25	H-106	379
910468	Jan. 19, 1909	Process for producing textile fibers from reeds and the like.	Mar. 1	Mar. 22	S-106	271
912351	Feb. 16, 1909	Process of charging lead peroxid zinc storage batteries.	Mar. 1	Mar. 22	P-106	304
913762	Mar. 2, 1909	Process of manufacturing baking powder.	Feb. 26	Mar. 25	H-106	377
915657	Mar. 16, 1909	Incandescent body for electric glow lamps.	Mar. 21	Mar. 26	J-106	366
915980	Mar. 23, 1909	Process for regenerating electric accumulators.	Mar. 1	Mar. 21	W-106	347
917159	Apr. 6, 1909	Filaments for electric incandescent lamps.	Mar. 1	Mar. 25	R-106	366
918503	Apr. 20, 1909	Making double-walled vacuum vessels.	Feb. 28	Mar. 22	G-106	299
923136	June 1, 1909	Making double-walled vacuum vessels.	Feb. 28	Mar. 22	G-106	299
925988	June 22, 1909	Process of hardening tantalum	Apr. 8	Apr. 9	V-106	482
929383	July 27, 1909	Process of the manufacture of a disinfectant.	Mar. 1	Mar. 22	G-106	288
929913	Aug. 3, 1909	Printing medium	Mar. 1	Mar. 24	Z-106	181
931916	Aug. 24, 1909	Hearth furnace	Mar. 1	Mar. 22	Z-106	151
934400	Sept. 14, 1909	Separatingandconcentratingchlorin.	Mar. 1	Mar. 24	S-106	300
934965	Sept. 21, 1909	Art of making sugar	Feb. 28	Mar. 24	L-106	290
935900	Oct. 5, 1909	Process of treating zinc	Mar. 1	Mar. 21	K-106	278
936472	Oct. 12, 1909	Mechanical arrangement for electroplating objects.	Feb. 18	Mar. 25	L-106	305
937730	Oct. 19, 1909	Battery electrode	Feb. 28	Mar. 24	Z-106	236
940111	Nov. 16, 1909	Flux for use in soldering	Mar. 1	Mar. 22	Y-106	203
940181	Nov. 16, 1909	Process for treating tobacco, etc	Mar. 1	Mar. 24	Z-106	218
942704	Dec. 7, 1909	Method of securing metal contacts to carbon electrodes.	Feb. 28	Mar. 22	S-106	249
943578	Dec. 14, 1909	Digitalis extract	Mar. 1	Mar. 24	U-106	267

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				Date of filing or recording.	Book.	Page.
			1919.	1919.		
944444	Dec. 28, 1909	Regenerative furnace	Mar. 1	Mar. 21	G-106	262
947399	Jan. 25, 1910	Process for the preparation of zinc oxid for reduction.	Feb. 27	Mar. 25	H-106	373
948740	Feb. 8, 1910	Process for obtaining zinc from zinciferous materials.	Feb. 27	Mar. 25	H-106	373
949153	Feb. 15, 1910	Metallic-filament incandescent lamp.	Mar. 1	Mar. 24	W-106	403
951778	Mar. 8, 1910	Treatment of coal gas and analogous for obtaining tar and ammonia.	Mar. 1	Mar. 24	U-106	220
952278	Mar. 15, 1910	Process of preparing mineral fertilizers.	Feb. 28	Mar. 21	Q-106	272
952723	Mar. 22, 1910	Regenerator	Mar. 1	Mar. 22	S-106	246
959605	May 31, 1910	Stable composition containing hydrogen peroxid.	Feb. 27	Mar. 22	T-106	269
961048	June 7, 1910	Anthraquinone-di-acridones	Mar. 21	Mar. 26	Z-106	277
961696	June 14, 1910	Process for the manufacture of soles.	Mar. 1	Mar. 24	T-106	288
962173	June 21, 1910	Process of treating brittle vegetable fibers.	Mar. 21	Mar. 26	Z-106	298
963852	July 12, 1910	Galvanic battery	Feb. 28	Mar. 22	S-106	249
965016	July 19, 1910	Process for producing sodium peroxid compositions for washing and bleaching purposes.	Mar. 1	Mar. 21	Z-106	146
965147	July 19, 1910	Extraction of tar and tar constituents from gases.	Mar. 1	Mar. 24	U-106	220
965170	July 26, 1910	Process of condensing reduction products of acenaphthenequinone.	Mar. 21	Mar. 26	T-106	358
967272	Aug. 16, 1910	Process of purifying waste mercerization dyes.	Feb. 26	Mar. 25	L-106	313
968175	Aug. 23, 1910	Roller cover casting machine	Mar. 1	Mar. 24	I-106	335
969906	Sept. 13, 1910	Ammonia saturator	Mar. 1	Mar. 21	Z-106	136
970215	Sept. 13, 1910	Preparation impermeable for Roentgen rays.	Mar. 1	Mar. 24	S-106	306
973883	Oct. 25, 1910	Production of incandescent electric lamp filaments.	Feb. 28	Mar. 24	G-106	330
974016	Oct. 25, 1910	Hollow carbon electrode for galvanic elements.	Feb. 28	Mar. 22	S-106	249
974138	Nov. 1, 1910	Method of facilitating and accelerating the hardening of hydraulic cements.	Mar. 1	Mar. 24	Y-106	272
977312	Nov. 29, 1910	Fumigator	Mar. 1	Mar. 24	V-106	328
978644	Dec. 13, 1910	Automatic liquid testing apparatus.	Mar. 1	Mar. 22	W-106	362
982162	Jan. 17, 1911	Fungicide	Mar. 1	Mar. 25	Y-106	321
983303	Feb. 7, 1911	Electric furnace	Mar. 1	Mar. 24	K-106	351
987318	Mar. 21, 1911	Manufacture of thin electrolytic iron plates of large area.	Feb. 18	Mar. 25	L-106	305
989189	Apr. 11, 1911	Process of making diabetic bread	Feb. 26	Mar. 25	L-106	307
990661	Apr. 25, 1911	Method of regenerating storage bread.	Mar. 1	Mar. 21	W-106	347
992265	May 16, 1911	Process of preserving hydrogen peroxid solution.	Mar. 1	Mar. 25	R-106	367
994435	June 6, 1911	Process for making ammonium sulfate and sulfite.	Mar. 22	Mar. 26	V-106	405
994646	June 6, 1911	Process of purifying raw juices in the sugar manufacture.	Mar. 1	Mar. 24	H-106	353
994824	June 13, 1911	Disinfecting apparatus	Mar. 1 Mar. 1	Mar. 22 Mar. 26	Z-106 L-106	154 323
996205	June 27, 1911	Method of deodorizing exhaust-gases from internal-combustion engines.	Feb. 28	Mar. 24	X-106	357
999439	Aug. 1, 1911	Vat-dyeing coloring matter	Mar. 1	Mar. 24	Q-106	316
1001222	Aug. 22, 1911	Process for manufacturing coal of high activity.	Mar. 1	Mar. 25	W-106	429
1003161	Sept. 12, 1911	Plaster bandage	Mar. 1	Mar. 25	V-106	371
1006142	Oct. 17, 1911	Process of treating brittle vegetable fibers of kapok and other plants.	Mar. 21	Mar. 26	Z-106	298
1006389	Oct. 17, 1911	Electrolytic manufacture of difficulty soluble salts of heavy metals.	Mar. 1	Mar. 21	W-106	347

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			1919.	1919.		
1006539	Oct. 24, 1911	Process and product for use in unliming hides and the like.	Mar. 1	Mar. 22	J-106	252
1007531	Oct. 31, 1911	Process for manufacturing crude-oil soap.	Mar. 1	Mar. 24	Z-106	186
1011559	Dec. 12, 1911	Carbon electrode for galvanic elements.	Feb. 28	Mar. 22	S-106	248
1013334	Jan. 2, 1912	Superphospahte chamber and means fos emptying same.	Mar. 1	Mar. 22	V-106	304
1014333	Jan. 9, 1912	Machines for cleaning muffles or zinc furnaces.	Mar. 1	Mar. 21	U-106	162
1016804	Feb. 6, 1912	Manufacture of metallic filaments for incandescent lighting.	Mar. 1	Mar. 25	K-106	395
1018624	Feb. 27, 1912	Process of preserving poles, etc	Mar. 1	Mar. 24	Y-106	291
1019576	Mar. 5, 1912	Hair dye	Mar. 21	Mar. 26	V-106	406
1020117	Mar. 12, 1912	Process for imparting luster to yarns, fabric, and the like.	Mar. 1	Mar. 22	Y-106	237
1021229	Mar. 26, 1912	Apparatus for measuring the viscosity of liquids.	Mar. 1	Mar. 21	I-106	249
1022276	Apr. 2, 1912	Primary battery	Mar. 1	Mar. 21	G-106	286
1022602	Apr. 9, 1912	Apparatus for regenerating air	Mar. 1	Mar. 21	H-106	289
1024203	Apr. 23, 1912	Process of inlaying metal in masses such as celluloid, ebonite, and the like.	Mar. 1	Mar. 24	K-106	350
1027754	May 28, 1912	Method of making filters	Feb. 26	Mar. 25	H-106	374
1030171	June 18, 1912	Process of testing the freshness of milk.	Mar. 1	Mar 24	U-106	219
1034853	Aug. 6, 1912	Azo dyes for lakes	Mar. 21	Mar. 26	Y-106	358
1038950	Sept. 17, 1912	Process of manufacturing vulcanized froth.	Feb. 26	Mar. 25	J-106	319
[1]13667	Dec. 30, 1913		Mar. 1	Mar. 25	K-106	388
1039413	Sept. 24, 1912	Manufacture of plates from fibrous substances like asbestos and hydraulic binding substances.	Mar. 22 Feb. 1	Mar. 26 Mar. 21	W-106 G-106	446 263
1039706	Oct. 1, 1912	Method of and apparatus for agglomerating fine ores, metalliferous residues.	Mar. 1	Mar. 24	Z-106	188
1041510	Oct. 15, 1912	Process of producing fast brown resists on vegetable fibers.	Feb. 26	Mar. 25	J-106	323
1042057	Oct. 22, 1912	Process of making bodies of sulfuring casks and the like.	Mar. 1	Mar. 25	J-106	340
1043291	Nov. 5, 1912	Process for the extraction of copper and nickel, particularly from low-grade ores and products.	Mar. 1	Mar. 22	X-106	325
1044840	Nov. 19, 1912	Antiseptic	Mar. 1	Mar. 24	W-106	428
1048581	Dec. 31, 1912	Carbon electrode for electric furnaces.	Feb. 26	Mar. 25	V-106	361
1051124	Jan. 21, 1913	Treatment of waste flax for obtaining a product adapted to be spun like carded wool yarn.	Mar. 1	Mar. 24	S-106	311
1051261	Jan. 21, 1913	Electric storage battery plate	Mar. 1	Mar. 25	W-106	435
1052065	Feb. 4, 1913	Method of regenerating electric glow lamps.	Mar. 1	Mar. 24	G-106	321
1054141	Feb. 25, 1913	Purifying sulfite cellulose lye	Feb. 28	Mar. 25	J-106	325
1058459	Apr. 8, 1913	Process of treating textile fabrics	Feb. 26	Mar. 25	L-106	313
1061183	May 6, 1913	Baking powder	Mar. 1	Mar. 22	R-106	300
1061494	May 13, 1913	Method of increasing the fermentation property of yeast.	Feb. 28	Mar. 21	Q-106	273
1069980	Aug. 12, 1913	Apparatus for vaporizing medicaments.	Feb. 1	Mar. 21	T-106	220
1074708	Oct. 7, 1913	Process of making lactic acid	Mar. 1	Mar. 24	V-106	323
1076657	Oct. 21, 1913	Manufacturing slag products	Mar. 1	Mar. 25	U-106	283
1079756	Nov. 25, 1913	Process of toning photographic silver pictures.	Mar. 1	Mar. 26	J-106	344
1082035	Dec. 23, 1913	Process of manufacturing a waterproof mortar.	Feb. 26	Mar. 25	P-106	371
1082530	Dec. 30, 1913	Apparatus for manufacturing mercury bichlorid.	Mar. 1	Mar. 26	U-106	314
1082707	Dec. 30, 1913	Manufacture of solid fatty substances from oil.	Mar. 1	Mar. 24	J-106	314

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No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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			1919.	1919.		
1083489	Jan. 6, 1914	Sulfur dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482
1083934	Jan. 13, 1914	Homoglobinometer	Mar. 1	Mar. 21	W-106	348
1084346	Jan. 13, 1914	Mercuric chlorid and process of producing same.	Feb. 28	Mar. 25	U-106	278
1085675	Feb. 3, 1914	Metallurgical treatment of silver ores.	Mar. 22	Apr. 9	Z-106	361
1087157	Feb. 17, 1914	Colored compounds of the selenoazin series and process of making the same.	Apr. 2	Apr. 9	N-106	482
1089346	Mar. 3, 1914	Process of manufacturing filtering material.	Feb. 26	Mar. 25	K-106	379
1091080	Mar. 24, 1914	Filter plate	Feb. 26	Mar. 22	T-106	263
1091881	Mar. 31, 1914	Arseno-metal preparations and process of making same.	Apr. 2	Apr. 9	N-106	482
1092332	Apr. 7, 1914	Regenerator	Feb. 28	Mar. 22	G-106	294
1094477	Apr. 28, 1914	Process of making sound damping intermediate layers.	Mar. 1	Mar. 25	T-106	328
1094683	Apr. 28, 1914	Mode of preparing finely divided or colloid indigo dyestuffs.	Apr. 2	Apr. 9	N-106	482
1095237	May 5, 1914	Leuco-alkali preparations of sulfur dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482
1099611	June 9, 1914	Testing and controlling device for producers of inert gases.	Mar. 1	Mar. 24	W-106	408
1099761	June 9, 1914	Process for the formation of diaryl ethers.	Mar. 1	Mar. 25	S-106	329
1100944	June 23, 1914	Adhesive plaster	Mar. 1	Mar. 22	S-106	243
1101111	June 23, 1914	Process of making arylamids of 2.3 oxynaphthoic acid.	Mar. 21	Mar. 26	Y-106	358
1101115	June 23, 1914	Extraction of copper and nickel, particularly from low-grade ores and products.	Mar. 1	Mar. 22	X-106	335
1101823	June 30, 1914	Process for producing smooth, glossy or glazed coating on cement goods	Mar. 1	Mar. 25	T-106	343
1104906	July 28, 1914	Treatment of oils	Mar. 22	Mar. 26	P-106	394
1105739	Aug. 4, 1914	Stable mixture containing perborates.	Feb. 27	Mar. 22	T-106	269
1105902	Aug. 4, 1914	Process of manufacturing stannic chlorid from materials containing oxid of tin.	Mar. 1	Mar. 24	S-106	290
1106435	Aug. 11, 1914	Process for the production of acid chlorids of the oxyacids.	Mar. 1	Mar. 26	W-106	452
1108154	Aug. 25, 1914	Arsenostibino compounds and process of making same.	Apr. 2	Apr. 9	N-106	482
1111821	Sept. 29, 1914	Arsenic-antimony compound and process of making same.	Apr. 2	Apr. 9	N-106	482
1115608	Nov. 3, 1914	Double salts of gold hydrocyanic acids and process of making same.	Apr. 2	Apr. 9	N-106	482
1115609	Nov. 3, 1914	Dicantharidylethylene - diaminmonaurocyanic and process of making same.	Apr. 2	Apr. 9	N-106	482
1115610	Nov. 3, 1914	Salts of the aurothiosulfuric acid and process of making same.	Apr. 2	Apr. 9	N-106	482
1115887	Nov. 3, 1914	Process of extinguishing fires	Feb. 26	Mar. 25	T-106	313
1116398	Nov. 10, 1914	Dihydrochlorid of diaminodioxyarsenobenzene.	Mar. 21	Mar. 26	T-106	357
1117125	Nov. 10, 1914	Briquet	Mar. 1	Mar. 22	Y-106	207
1117240	Nov. 17, 1914	Method of insulating wire of aluminum and the like.	Mar. 1	Mar. 25	K-106	381
1117332	Nov. 17, 1914	Alkali metal salts of 3.3' diamino-4.4' dioxyarsenobenzene combined with copper and process of making same.	Apr. 2	Apr. 9	N-106	482
1119534	Dec. 1, 1914	Method for the preparation of ammonia from the elements.	Mar. 1	Mar. 22	Y-106	248
1120700	Dec. 15, 1914	Arseno-azo compounds and process of making same.	Apr. 2	Apr. 9	N-106	482

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			1919.	1919.		
1121004	Dec. 15, 1914	Scratcher or scraper for stirring apparatus in sulfate furnaces.	Apr. 2	Apr. 9	N-106	482
1121099	Dec. 15, 1914	Process for rendering peat, wood waste, and other vegetable substances suitable for the manufacture of paper pulp.	Mar. 1	Mar. 24	W-106	385
1121490	Dec. 15, 1914	Process of producing alumino-silicates.	Apr. 9	Apr. 8	U-106	381
1122379	Dec. 29, 1914	Process for the preparation of a vaccine.	Mar. 1	Mar. 22	Y-106	223
1123263	Jan. 5, 1915	Process of producing dyeings on cotton.	Apr. 2	Apr. 9	N-106	482
1123390	Jan. 5, 1915	Vat dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482
1123430	Jan. 5, 1915	Red wood dyestuffs	Apr. 2	Apr. 9	N-106	482
1123842	Jan. 5, 1915	Depolarizer for galvanic cells				
1125311	Jan. 19, 1915	Arylated naphthlamin sulfonic acids and process of making same.	Apr. 2	Apr. 9	N-106	482
1126211	Jan. 26, 1915	Process and means for securing metallic coats on ceramic surfaces.	Mar. 1	Mar. 22	X-106	338
1127025	Feb. 2, 1915	Process for producing perforated tubular electrodes for accumulators.	Mar. 1	Mar. 24	H-106	355
1127603	Feb. 9, 1915	Alkali salts of the 3.3′ diamino-4.4′ dioxyarsenobenzene combined with silver and process of making same.	Apr. 2	Apr. 9	N-106	482
1128368	Feb. 16, 1915	Vat dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482
1128369	Feb. 16, 1915	Carbazol-sulfonic acids and process of making same.	Apr. 2	Apr. 9	N-106	482
1128370	Feb. 16, 1915	Indophenolsulfonic acids and process of making same.	Apr. 2	Apr. 9	N-106	482
1128371	Feb. 16, 1915	Sulfur dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482
1132482	Mar. 16, 1915	Apparatus for conveying liquid fuel.	Mar. 1	Mar. 24	W-106	408
1132880	Mar. 23, 1915	Balance	Feb. 28	Mar. 26	S-106	362
1135792	Apr. 13, 1915	Process for manufacturing explosives.	Feb. 28	Mar. 25	U-106	273
1136723	Apr. 20, 1915	Unexplosive preparation	Apr. 2	Apr. 9	N-106	482
1136724	Apr. 20, 1915	Nonexplosive preparations and process of making same.	Apr. 2	Apr. 9	N-106	482
1138670	May 11, 1915	Arylaminoanthraquinone dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482
1139540	May 18, 1915	Arylaminoanthraquinone dyestuffs.	Apr. 2	Apr. 9	N-106	482
1139699	May 18, 1915	Mold for forming blocks of cork	Apr. 8	Apr. 9	N-106	493
1141148	June 1, 1915	Leuco compounds and process of making same.	Apr. 2	Apr. 9	N-106	482
1141510	June 1, 1915	Process of preparing solutions of cellulose.	Mar. 1	Mar. 25	U-106	296
1142619	June 8, 1915	Process of manufacturing artificial sponge.	Feb. 26	Mar. 26	L-106	348
1144053	June 22, 1915	Furnace for working up ores	Feb. 27	Mar. 25	H-106	373
1144054	June 22, 1915	Reduction furnace	Feb. 27	Mar. 25	H-106	373
1144193	June 22, 1915	Process of deodorizing waste gases	Mar. 1	Mar. 26	X-106	441
1145846	July 6, 1915	Process of producing melange-like dyed yarns, hosiery and weavings.	Feb. 27	Mar. 25	H-106	390
1145934	July 13, 1915	Finely divided vat dyestuffs and process of making same.	Apr. 8 Apr. 2	Apr. 9 Apr. 9	Q-106 N-106	451 482
1149231	Aug. 10, 1915	Yellow chrome mordant dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482
1150414	Aug. 17, 1915	Process of producing combination printing plates for printing combined half-tone and printed type or line work.	Mar. 1	Mar. 26	Y-106	322
1151628	Aug. 31, 1915	Vat dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482

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			1919.	1919.		
1151928	Aug. 31, 1915	Process of preparing acetaldehyde from acetylene.	Feb. 26	Apr. 9	L-106	419
[1]14063	Feb. 15, 1916		Feb. 26	Apr. 9	L-106	419
			Mar. —	Mar. 26	K-106	409
1151929	Aug. 31, 1915	Process of preparing acetaldehyde from acetylene.	Feb. 26	Apr. 9	L-106	419
[1]14064	Feb. 15, 1916		Feb. 26	Apr. 9	L-106	419
			Mar. —	Mar. 26	K-106	409
1153640	Sept. 14, 1915	Diastase preparations and method of making same.	Feb. 26	Mar. 25	K-106	376
1153641	Sept. 14, 1915	Malt extract and method of making same.	Feb. 26	Mar. 25	K-106	376
1154826	Sept. 28, 1915	Red wool dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482
1155486	Oct. 5, 1915	Apparatus for coking coal briquets.	Feb. 28	Mar. 22	I-106	294
1157253	Oct. 19, 1915	Process for manufacture of ammonia from its elements.	Feb. 26	Mar. 25	J-106	322
1159264	Nov. 2, 1915	Highly refractory material and process for making it.	Feb. 26	Mar. 25	L-106	302
1159865	Nov. 9, 1915	Apparatus for effecting reactions of hydrogen under pressure.	Feb. 26	Mar. 25	J-106	322
1160471	Nov. 16, 1915	Yellow dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482
1161866	Nov. 30, 1915	Compounds of silver glycocholate readily soluble in water.	Apr. 2	Apr. 9	N-106	482
1161867	Nov. 30, 1915	Compound of silver glycocholate readily soluble in water and process of making same.	Apr. 2	Apr. 9	N-106	482
1162109	Nov. 30, 1915	Brownish yellow wool dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482
1163605	Dec. 7, 1915	Art of converting molten slag into a highly-porous mass.	Mar. 1	Mar. 25	U-106	283
1166546	Jan. 4, 1916	Process of producing a liquid explosive	Mar. 1	Mar. 22	Y-106	248
1168752	Jan. 18, 1916	Process of manufacturing bi-metallic composite objects or bodies.	Feb. 28	Mar. 25	X-106	439
1175490	Mar. 14, 1916	Process for making coffee extract	Mar. 1	Mar. 25	I-106	378
1175997	Mar. 21, 1916	Preparations from quinone vat dyestuffs.	Apr. 2	Apr. 9	N-106	482
1178941	Apr. 11, 1916	Preparation for infecting vermin with disease.	Mar. 1	Mar. 22	T-106	266
1180850	Apr. 25, 1916	Apparatus for mixing and pressing smokeless powder.	Mar. 1	Mar. 24	J-106	291
1181485	May 2, 1916	Oxyphenylquinolin-dicarboxylic acid and process of making same.	Apr. 2	Apr. 9	N-106	482
1187864	June 20, 1916	Apparatus for changing the positions of hanks of yarn on dyeing sticks.	Mar. 1	Mar. 24	X-106	403
1188421	June 27, 1916	Blue monoazo dyes and process of making same.	Apr. 2	Apr. 9	N-106	482
1189356	July 4, 1916	Electric furnace	Mar. 1	Mar. 24	Q-106	317
1191997	July 25, 1916	Mixtures of alkali salts of 4.4′dioxy-3.3′-diamino-arseno-benzene and process of making same.	Apr. 2	Apr. 9	N-106	482
1193566	Aug. 8, 1916	Compounds for use in the production of dyestuffs.	Mar. 21	Mar. 26	Y-106	358
1195040	Aug. 15, 1916	Product resembling celluloid and process for producing the same.	Mar. 1	Mar. 26	P-106	386
1196422	Aug. 29, 1916	Brown dyestuffs for dyeing wool	Apr. 2	Apr. 9	N-106	482
1197632	Sept. 12, 1916	Quinophthalonesulfonic acids containing halogen and process of making same.	Apr. 2	Apr. 9	N-106	482
1197633	Sept. 12, 1916	Process of producing yellow insoluble azo dyes on the fiber.	Apr. 2	Apr. 9	N-106	482
1201187	Oct. 10, 1916	Method of and machine for making colored patterned linoleum, oilcloth, lincrusta, and the like.	Mar. 1	Mar. 24	Z-106	198
1205007	Nov. 14, 1916	Process of treating lignite	Mar. 1	Mar. 24	T-106	299
1205080	Nov. 14, 1916	Process of manufacturing filaments for incandescent electric lamps.	Mar. 1	Mar. 26	Y-106	334

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No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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1206232	Nov. 28, 1916	Azo dyestuffs and process of producing the same.	1919. Mar. 21	1919. Mar. 26	Y-106	358
1207284	Dec. 5, 1916	Auromercaptobenzenes and process of making same.	Apr. 2	Apr. 9	N-106	482
1209163	Dec. 19, 1916	Vat dyestuffs and process of making same.	Apr. 2	Apr. 9	N-106	482
1209465	Dec. 19, 1916	Apparatus for bleaching and rinsing mercerized fabrics and recovering the lye.	Mar. 1	Mar. 22	L-106	242
1210681	Jan. 2, 1917	Hydrogenizing olefinic terpene derivatives.	Feb. 28	Mar. 21	Q-106	264
1210982	Jan. 2, 1917	Process for the production of resin-like condensation products.	Feb. 27	Mar. 25	J-106	330
1211227	Jan. 2, 1917	Process for the manufacture of insoluble condensation products.	Feb. 27	Mar. 25	J-106	330
1214924	Feb. 6, 1917	Complex arseno compounds and process of making same.	Apr. 2	Apr. 9	N-106	482
1217238	Feb. 27, 1917	Dyes of the triphenylmethane series and process of making same.	Apr. 2	Apr. 9	N-106	482
1230185	June 19, 1917	1-iodo-2.3. - dihydroxypropane and process of making same.	Apr. 2	Apr. 9	N-106	482
1230600	June 19, 1917	Process for the manufacture of crystalline polymerization products of formaldehyde.	Feb. 27	Mar. 25	J-106	330
1238147	Aug. 28, 1917	Process of making magnesia	Mar. 1	Mar. 24	Z-106	205
1239526	Sept. 11, 1917	Stable concentrated preparation for the indigo fermentation vats.	Apr. 2	Apr. 9	N-106	482
1240885	Sept. 25, 1917	Galvanic battery	Mar. 1	Mar. 25	X-106	429
1249514	Dec. 11, 1917	Apparatus for sterilizing surgical instruments and any other objects.	Mar. 1	Mar. 22	Y-106	252
1253534	Jan. 15, 1918	Process of producing nitrogen simultaneously with oxides of nitrogen.	Apr. 2	Apr. 9	N-106	482
1260656	Mar. 26, 1918	Manufacture of woodstuffs	Mar. 1	Mar. 22	S-106	257
1265370	May 7, 1918	Composition for preserving wood	Feb. 28	Mar. 21	Q-106	266
1269110	Jan. 11, 1918	Continuous process for recovering lead or zinc, or both metals from their ores or from slag in the form of metal fumes, whereby the charge is mixed with fuel.	Mar. 1	Mar. 25	R-106	359
1285603	Nov. 26, 1918	Process of manufacturing a water-softening reagent.	Feb. 28	Mar. 21	T-106	205
		Series 3.				
[1]13848	Dec. 15, 1914	Derivatives of diaminodioxaryzenobenzene.	Mar. 22	May 26	R-106	398
1053300	Feb. 18, 1913	Dyestuffs of the triphenylmethane series and process of making same.	Feb. 26	Apr. 9	L-106	419
[1]13969	Aug. 24, 1915		Feb. 26	Apr. 9	L-106	419
1065405	June 24, 1913		Apr. 2	Apr. 9	N-106	482
			Mar. —	Mar. 26	K-106	409
680395	Aug. 13, 1901	Process of making indoxyl derivatives.	Mar. 22	Mar. 26	K-106	417
682523	Sept. 10 1901	Blue dye and process of making same.	Mar. 22	Mar. 26	V-106	394
692775	Feb. 4, 1902	Cellulose lakes and process of making same.	Mar. 21	Mar. 26	P-106	379
693632	Feb. 18, 1902	Blue sulphur dye and process of making same.	Mar. 21	Mar. 26	W-106	456
693633	Feb. 18, 1902	Making blue sulphur dye	Mar. 21	Mar. 26	W-106	456
694109	Feb. 25, 1902	Apparatus for mercerizing	Mar. 21	Mar. 26	W-106	462
695533	Mar. 18, 1902	Sulfur dye and process of making same.	Mar. 21	Mar. 26	Y-106	327
695534	Mar. 18, 1902	Sulfur dye and process of making same.	Mar. 21	Mar. 26	Y-106	327
701435	June 3, 1902	Brown violet sulphur dye and making same.	Mar. 21	Mar. 26	W-106	456
701523	June 3, 1902	Process of making alkyl ethers of cinchona-alkaloid carbonic acids	Mar. 21	Mar. 26	J-106	358
			1918 Dec. 4	1918 Dec. 5	J-105	473
			Dec. 11	Dec. 11	H-106	1

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No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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703105	June 24, 1902	Blue wool dye and making same	1919. Mar. 21	1919. Mar. 26	W-106	456
705838	July 29, 1902	Glycosuria antidote and process of producing same.	Feb. 26 Apr. 8	Mar. 24 Apr. 9	W-106 V-106	414 488
709151	Sept. 16, 1902	Blue sulphur dye and making same.	Mar. 21	Mar. 26	W-106	456
709166	Sept. 16, 1902	Blue dye and process of making same.	Mar. 21	Mar. 26	W-106	456
709187	Sept. 16, 1902	Yellow acridin dye and making same.	Mar. 21	Mar. 26	W-106	456
709799 [1]12707	Sept. 23, 1902 Oct. 22, 1907	Method of impregnating wood, etc.	Apr. 2	Apr. 9	Y-106	434
711953	Oct. 28, 1902	Process of dyeing acid colors	Mar. 21	Mar. 26	W-106	456
712747	Nov. 4, 1902	Yellow sulphur dye and making same.	Mar. 21	Mar. 26	W-106	456
714542	Nov. 25, 1902	Orange-brown sulphur dye and process of making same.	Mar. 21	Mar. 26	W-106	456
718181	Jan. 13, 1903	Blue wool dye and making same	Mar. 21	Mar. 26	W-106	456
723154	Mar. 17, 1902	Sulphogene indigo-blue—valuable as covering product—process superceded by Swiss method.	Mar. 21	Mar. 26	W-106	456
742189	Oct. 27, 1903	Blue sulphur due and making same	Mar. 21	Mar. 26	W-106	456
749195	Jan. 12, 1904	Dark blue wool dye and making same.	Mar. 21	Mar. 26	W-106	456
759887	May 17, 1904	Process of manufacturing peroxids	Mar. 21 Feb. 26	Mar. 26 Mar. 24	X-106 J-106	450 289
760110	May 17, 1904	Orange sulphur dye	Feb. 26 Mar. ...	Apr. 9 Mar. 26	L-106 K-106	419 409
765006	July 12, 1904	Lens	Mar. 21	Mar. 26	X-106	443
768211	Aug. 23, 1904	Machine for manufacturing patterned linoleum.	Mar. 21	Mar. 26	H-106	403
770743	Sept. 27, 1904	Process of making dialkylbarbituric acids.	1918 Dec. 4 Dec. 11 1919 Mar. 21	1918 Dec. 5 Dec. 11 1919 Mar. 26	I-105 Q-105 J-106	438 473 342
782740	Feb. 14, 1905	Dipropyl-barbituric acid. Analogous derivatives and process of making same.	1918 Dec. 4 Dec. 11 1919 Mar. 21	1918 Dec. 5 Dec. 11 1919 Mar. 26	I-105 Q-105 J-106	438 473 342
782741	Feb. 14, 1905	Disubstituted barbituric acid and process of making same.	1918 Dec. 4 Dec. 11 1919 Mar. 21	1918 Dec. 5 Dec. 11 1919 Mar. 26	I-105 Q-105 J-106	438 473 342
782742	Feb. 14, 1905	Trisubstituted barbituric acids and process of making them.	1918 Dec. 4 Dec. 11 1919 Mar. 21	1918 Dec. 5 Dec. 11 1919 Mar. 26	I-105 Q-105 J-106	438 473 342
799065	Sept. 12, 1905	Process of making varnish-gum	Feb. 28 Mar. 21	Mar. 21 Mar. 26	M-106 W-106	365 451
802297	Oct. 17, 1905	Method of producing flames of high temperature.	Mar. 1	Mar. 24	S-106	316
807117	Dec. 12, 1905	Sulpho-acid and making same	Mar. 21	Mar. 26	W-105	456
807119	Dec. 12, 1905	Red azo dye and process of making same.	Mar. 21	Mar. 26	W-106	456
807300	Dec. 12, 1905	Method of manufacturing liquid lenses.	Mar. 22	Mar. 26	H-106	418
807422 811884	Dec. 12, 1905 Feb. 6, 1906	Zinc azonaphthol dye and process of making same. Salicylic-acid methylene acetate and process of making same.	Apr. 8 Mar. 1 Mar. 21 Mar. 21 Mar. 1	Apr. 9 Mar. 24 Mar. 26 Mar. 26 Mar. 23	M-106 Q-106 Y-106 J-106 L-106	484 316 327 363 311
813078	Feb. 20, 1906	Potash leaching apparatus	Mar. 1 Mar. 21	Mar. 22 Mar. 26	S-106 H-106	252 402
813155	Feb. 20, 1906	Red azo dye and process of making same.	Mar. 21	Mar. 26	W-106	456
829042	Aug. 21, 1906	Process of preparing a mask for making briquets.	Mar. 21	Mar. 26	V-106	[illegible]

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No	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page
			1919.	1919.		
830909	Sept. 11, 1906	Manufacture of glycerin nitrates	Mar. 21	Mar. 26	H-106	420
840611	Jan. 8, 1907	Solution of cellulose	Feb. 26 Mar. 21	Mar. 24 Mar. 26	Y-106 K-106	259 406
841954	Jan. 22, 1907	Apparatus for manufacturing tubes and the like.	Mar. 1	Mar. 22	Y-106	229
846585	Mar. 12, 1907	Method of producing bronze printing.	Mar. 22	Mar. 26	P-106	392
849900	Apr. 9, 1907	Single cemented objective lens, also applicable as double objectives.	Mar. 22 Apr. 19	Mar. 26 June 6	X-106 A-108	445 60
851423	Apr. 23, 1907	Anthrachinone disulfonic acid	Feb. 28 Feb. 28	Mar. 24 Apr. 9	V-106 L-106	325 416
863397	Aug. 13, 1907	Anthraquinone compound and process of making same.	Feb. 3 Mar. 22	Feb. 21 Mar. 26	Y-106 V-106	133 394
867141	Sept. 24, 1907	Emulsion of oil and the like	Mar. 21	Mar. 26	R-106	395
873798	Dec. 17, 1907	Red azo dye and process of making same.	Mar. 21	Mar. 26	W-106	456
879552	Feb. 18, 1908	Brown azo dye and process of making same.	Mar. 21	Mar. 26	W-106	456
880641	Mar. 3, 1908	Process of manufacture of artificial aromatic balsams.	Mar. 21 Feb. 25	Mar. 26 Mar. 22	K-106 L-106	414 244
882481	Mar. 17, 1908	Process for the extraction of glue from mineral-dressed or chrome-tanned leather.	Mar. 21	Mar. 26	V-106	407
884919	Apr. 14, 1908	Process for making nitrogen oxids from air.	Mar. 1	Mar. 24	P-106	322
884920	Apr. 14, 1908	Process for making nitrogen oxids from the air.	Mar. 1	Mar. 24	P-106	322
886985	May 5, 1908	Red trisazo dye and process of making same.	Mar. 21	Mar. 26	W-106	456
888399	May 19, 1908	Artificial lumber	Mar. 1	Mar. 24	W-106	389
892166	June 30, 1908	Process of preparing printers' overlays and underlays.	Mar. 1	Mar. 24	L-106	266
892455	July 7, 1908	Yellow sulphur dye and making same.	Mar. 21	Mar. 26	W-106	456
893385	July 14, 1908	Clay press or mixer	Mar. 21	Mar. 26	S-106	368
896807	Aug. 25, 1908	Agar-agar-cascara product and process of making same.	Mar. 1	Mar. 24	Z-106	194
898980	Sept. 15, 1908	Process for the fractional condensation of vapors.	Mar. 1	Mar. 24	U-106	252
903284	Nov. 10, 1908	Orange or brown dye and process of making same.	Mar. 21	Mar. 26	W-106	456
904269	Nov. 17, 1908	Producing glossy or silky effects on fabrics and other material.	Mar. 21	Mar. 26	P-106	397
904752	Nov. 24, 1908	Manufacture of multi-colored fabrics.	Mar. 21	Mar. 26	W-106	456
904809	Nov. 24, 1908	Yellow olive dye and making same.	Mar. 21	Mar. 26	W-106	456
912182	Feb. 9, 1909	Red cotton dye and making same	Mar. 21	Mar. 26	W-106	456
915680	Mar. 16, 1909	Process for the manufacture of amids of higher fatty acids.	Mar. 21	Mar. 26	R-106	395
919572	Apr. 27, 1909	Blue sulphur dye and making same	Mar. 21	Mar. 26	W-106	456
920156	May 4, 1909	Brominated indigo sulphid and process of making same.	Mar. 21	Mar. 26	W-106	456
922695	May 25, 1909	Salicylic-acid derivative and process of making same.	Mar. 22 Feb. 25	Mar. 26 Mar. 22	P-106 Y-106	377 199
924684	June 15, 1909	Sewage-treatment apparatus	Mar. 1 Mar. 22	Mar. 24 Mar. 26	V-106 V-106	332 393
925612	June 22, 1909	Refining of steel in electric	Feb. 28 Mar. 21	Mar. 21 Mar. 26	K-106 J-106	289 357
926069	June 22, 1909	Process of treating metallic filaments for electric incandescent lamps.	Mar. 21 Mar. 1	Mar. 26 Mar. 24	H-106 W-106	411 403
934632	Sept. 21, 1909	Temperature regulator	Mar. 22	Mar. 26	S-106	361
941399	Nov. 30, 1909	Dyeing wool	Mar. 21	Mar. 26	W-106	456
943105	Dec. 14, 1909	Teleobjective	Mar. 21	Mar. 26	J-106	369
943163	Dec. 14, 1909	Agar-agar-cascara product	Mar. 1	Mar. 24	Z-106	194
945559	Jan. 4, 1910	Process of producing solutions for spinning artificial threads and the like.	Mar. 21	Mar. 26	P-106	389

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
948204	Feb. 1, 1910	Indanthrene monosulfonic acid and process of making same.	Feb. 3 Mar. 22	Feb. 21 Mar. 26	Y-106 V-106	133 394
956348	Apr. 26, 1910	Blue vat dye and process of making same.	Mar. 21	Mar. 26	W-106	456
957196	May 10, 1910	Method of making paper and similar material pliable.	Feb. 26 Mar. 21	Mar. 24 Mar. 26	Q-106 K-106	305 413
960671	June 7, 1910	Process of making indoxyl, etc.	Mar. 21 Feb. 24	Mar. 26 Mar. 21	Z-106 Y-106	272 193
960788	June 7, 1910	Process for manufacturing carbonic acid.	Mar. 21	Mar. 26	H-106	404
960919	June 7, 1910	Blue sulfid colors and process of making same.	Mar. 21	Mar. 26	W-106	456
960975	June 7, 1910	Process of fixing sulfid colors	Mar. 21	Mar. 26	W-106	458
961241	June 14, 1910	Dyeing acetyl cellulose	Mar. 21 Feb. 26	Mar. 26 Mar. 24	W-106 R-106	449 321
966092	Aug. 2, 1910	Indo-phenolic compound and process of making same.	Mar. 21	Mar. 26	W-106	456
976580	Nov. 22, 1910	Apparatus for quenching incandescent materials.	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
978889	Dec. 10, 1910	Treating sewage	Mar. 1 Mar. 22	Mar. 24 Mar. 26	V-106 V-106	332 393
979966	Dec. 27, 1910	Process of dyeing acetyl-cellulose	Mar. 21 Feb. 26	Mar. 26 Mar. 24	W-106 R-106	449 321
980261	Jan. 3, 1911	Door for gas-producing furnaces and the like.	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
981574	Jan. 10, 1911	Treatment of acetyl cellulose to enhance its elasticity and its power of absorption for dyestuffs.	Mar. 21 Feb. 26	Mar. 26 Mar. 24	W-106 R-106	449 321
983569	Feb. 7, 1911	Supplementary optical instrument	Mar. 21	Mar. 26	J-106	309
984972	Feb. 21, 1911	Barometer	Mar. 21 Feb. 28	Mar. 26 Mar. 24	S-106 X-106	371 407
986642	Mar. 14, 1911	Optical reversing system	Mar. 21 Apr. 19	Mar. 26 June 6	H-106 A-108	417 113
992492	May 16, 1911	Coke-oven door	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
995383	June 13, 1911	Acid ferric arsen-tartrate	Mar. 21	Mar. 26	Z-106	294
996487	June 27, 1911	Process of making acid dyes of the anthracene series.	Feb. 28 Feb. 28	Mar. 24 Apr. 9	V-106 L-108	325 418
999230	Aug. 1, 1911	Azo dye	Mar. 21	Mar. 26	W-106	456
999798	Aug. 8, 1911	Vat dye and process of making same	Mar. 21	Mar. 26	W-106	458
1002408	Sept. 5, 1911	Art of dyeing acetyl cellulose	Mar. 21 Feb. 26	Mar. 26 Mar. 24	W-106 R-106	449 321
1003875	Sept. 19, 1911	Process of making granular sodium bichromate.	Feb. 28 Feb. 28	Mar. 24 Apr. 9	V-106 L-108	325 418
1005011	Oct. 3, 1911	Cleaning device for gas-collecting mains.	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1005176	Oct. 10, 1911	3.6-Diaminoacridinium and its salts	Mar. 21	Mar. 26	W-106	456
1007439	Oct. 31, 1911	Device for quenching coke	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1008336	Nov. 14, 1911	Composition of matter	Mar. 1	Mar. 24	L-106	278
1008847	Nov. 14, 1911	Process of making sulfuric dioxid	Feb. 28 Feb. 28	Mar. 24 Apr. 9	V-106 L-108	325 418
1008864	Nov. 14, 1911	Impregnation of wood, etc	Apr. 2	Apr. 9	Y-106	434
1012207	Dec. 19, 1911	Process of impregnating timber	Mar. 21	Mar. 26	W-106	453
1013603	Jan. 2, 1912	Process of treating clay, kaolin, and ceramic masses.	Feb. 28 Mar. 21	Mar. 21 Mar. 26	G-106 U-106	258 318
1016369	Feb. 6, 1912	Collective system	Mar. 21	Mar. 26	J-106	309
1017142	Feb. 13, 1912	Hoisting device for oven doors	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1020756	Mar. 19, 1912	New cotton dyestuffs and making same.	Mar. 21	Mar. 26	W-106	456
1024128	Apr. 23, 1912	Gas producing oven	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1024864	Apr. 30, 1912	Impregnation of wood	Feb. 28	Mar. 22	T-106	264
1027845	May 28, 1912	Coke oven	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	223 34
1027968	May 28, 1912	Art of preparing iron-albuminois compounds containing phosphorus.	Feb. 21	Mar. 26	Y-106	387

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			1919.	1919.		
1028569	June 4, 1912	Vertical coke oven	Apr. 8 Apr. 22	Apr. 9 Apr. 22	L-106 Q-107	417 34
1029066	June 11, 1912	Dyeing vegetable fibers with halogenated indigo and indigoid dyestuffs.	Mar. 21	Mar. 26	W-106	456
1031832	July 9, 1912	Machine for cleaning and sorting clay or the like.	Mar. 22	Mar. 26	Y-106	326
1032129	July 9, 1912	Reversing mechanism in ovens of the regenerative type.	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1034709	Aug. 6, 1912	Horizontal coke oven of the regenerative type.	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1035882	Aug. 20, 1912	Process of purifying waste mercerization lyes.	Mar. 21 Feb. 26	Mar. 26 Mar. 25	W-106 L-106	450 313
1038887	Sept. 17, 1912	Air-blast heater	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1039270	Sept. 24, 1912	Regenerative gas-producing oven	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1041457	Oct. 15, 1912	Regenerative coke oven	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1043016	Oct. 29, 1912	Dyeing of cotton or linen cloths with vat colors.	Mar. 21	Mar. 25	W-106	456
1047635	Dec. 17, 1912	Horizontal coke oven	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1053396	Feb. 18, 1913	Sewage purification	Mar. 1 Mar. 22	Mar. 24 Mar. 26	V-106 V-106	332 393
1055287	Mar. 4, 1913	Yellow vat dye	Mar. 21	Mar. 26	W-106	456
1056080	Mar. 18, 1913	Process of producing dyeings on cotton.	Feb. 26 Mar. --	Apr. 9 Mar. 26	L-106 K-106	419 409
1056548	Mar. 18, 1913	Process of drying sludge	Mar. 1 Mar. 22	Mar. 24 Mar. 26	V-106 V-106	332 393
1057154	Mar. 25, 1913	Settling tank	Mar. 1 Mar. 22	Mar. 24 Mar. 26	V-106 V-106	332 393
1058744	Apr. 15, 1913	Upright-chamber oven	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1060837	May 6, 1913	Gas-producing oven	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1062983	May 27, 1913	Gasometer	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1069296	Aug. 5, 1913	Derivatives of phenylcinchgoninic acid.	Mar. 22	Mar. 26	S-106	373
1072223	Sept. 2, 1913	Chamber oven	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1073789	Sept. 23, 1913	Photographic objective	Mar. 21	Mar. 26	J-106	369
1078125	Nov. 11, 1913	Cellular drying apparatus	Mar. 1	Mar. 24	X-106	370
1079003	Nov. 18, 1913	Chamber oven	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1079415	Nov. 25, 1913	Diasozo dyes	Mar. 21	Mar. 26	W-106	456
1079764	Nov. 25, 1913	Air-blast heater	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1087261	Feb. 17, 1914	Process of making isoprene	Mar. 21	Mar. 26	W-106	463
1089775	Mar. 10, 1914	Decolorizing glycerin	Feb. 3 Mar. 1	Feb. 21 Mar. 22	Y-106 G-106	133 287
1094182	Apr. 21, 1914	Process of producing oxids of nitrogen.	Feb. 3 Mar. 1	Feb. 21 Mar. 22	Y-106 G-106	133 287
1095725	May 5, 1914	Device for emptying upright coking chambers.	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1099378	June 9, 1914	Method of subjecting lacquered leather and the like to the light treatment.	Mar. 21	Mar. 26	U-106	307
1100877	June 23, 1914	Fast yellow sulfid dyestuffs	Mar. 21	Mar. 26	W-106	456
1102131	June 30, 1914	Apparatus for producing distilled water.	Mar. 22	Mar. 26	Y-106	323
1103004	July 7, 1914	Red vat dyestuffs and making same	Mar. 21	Mar. 26	W-106	456
1103482	July 14, 1914	Alloy for welding copper and nickel	Feb. 25 Mar. 21	Mar. 22 Mar. 26	I-106 I-106	275 389
1106956	Aug. 11, 1914	Device for the fine adjustment of microscope.	Mar. 21	Mar. 26	J-106	369
1107164	Aug. 11, 1914	Producing fast dyeings on the fiber.	Mar. 21	Mar. 26	W-106	456

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1107199	Aug. 11, 1914	Process for clarifying and sterilizing water.	1919. Feb. 28	1919. Mar. 24	I-106	332
1109362	Sept. 1, 1914	Method and apparatus for annealing or cementing various articles.	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1115776	Nov. 3, 1914	Producing hydrogen	Feb. 3 Mar. 1	Feb. 21 Mar. 22	Y-106 G-106	133 287
1118878	Nov. 24, 1914	Coating flexible objects of organic origin with metal.	Mar. 28	Mar. 26	W-106	459
1128472	Feb. 16, 1915	Process for the suppression of dust during the working of Panama bark.	Mar. 26	Mar. 26	H-106	412
1128966	Feb. 16, 1915	Process of making peroxid of hydrogen.	Mar. 21 Feb. 26	Mar. 26 Mar. 24	V-106 Z-106	399 233
1129574	Feb. 23, 1915	Vat dyes	Mar. 21	Mar. 26	W-106	456
1129575	Feb. 23, 1915	Vat dyes and process of making same.	Mar. 21	Mar. 26	W-106	456
1133446	Mar. 30, 1915	Process for manufacturing a substance for purifying waste water and for draining sludge.	Mar. 21	Mar. 26	W-106	461
1134416	Apr. 6, 1915	Process of making hydrogen	Mar. 22	Mar. 26	L-106	344
1135043	Apr. 13, 1915	Process of obtaining prints on fabrics.	Mar. 21	Mar. 26	L-106	339
1136519	Apr. 20, 1915	Muffle for the distillation of zinc	Mar. 22	Mar. 26	K-106	412
1137467	Apr. 27, 1915	Manufacture of cinnabar	Feb. 26 Mar. 21	Mar. 22 Mar. 26	R-106 K-106	288 407
1137671	Apr. 27, 1915	Drying of patent-leather	Mar. 21	Mar. 26	S-106	372
1137681	Apr. 27, 1915	Process of refining steel and producing high-phosphorous slag.	Feb. 22	Mar. 26	J-106	365
1138916	May 11, 1915	Method for facilitating the separation of nitroglycerin.	Mar. 21	Mar. 26	V-106	402
1139031	May 11, 1915	Manufacture of artificial milk	Mar. 1	Mar. 24	Q-106	342
1141266	June 1, 1915	Improvement in absorption and reaction tower for acids, etc.	Feb. 28	Apr. 9	Y-106	435
1142153	June 8, 1915	Manufacture, isolation, and enrichment of radio-active substances by absorption from solutions.	Mar. 22	Mar. 26	K-106	404
1142154	June 8, 1915	Method of treating radio-active ores and intermediate products.	Mar. 22	Mar. 26	K-106	404
1144271	June 22, 1915	Apparatus for the continuous production by synthesis of hydrogen peroxid.	Feb. 26 Mar. 21	Mar. 24 Mar. 26	Z-106 V-106	233 399
1145332	July 6, 1915	Process for separating the first and last runnings in distillation and rectification.	Mar. 21	Mar. 26	L-106	347
1145895	July 13, 1915	Coke oven	Apr. 8	Apr. 9	U-106	389
1150825	Aug. 17, 1915	Claret red trisazo dyestuff	Mar. 21	Mar. 26	W-106	456
1151536	Aug. 24, 1915	Potentiated sera and process of making them.	1918 Dec. 4 Dec. 11 1919 Mar. 21	1918 Dec. 5 Dec. 11 1919 Mar. 26	O-105 B-106 P-106	493 14 376
1152467	Sept. 7, 1915	Manufacture of marbled paper	Mar. 21	Mar. 26	Y-106	356
1154792	Sept. 28, 1915	Apparatus for analyzing gases	Mar. 21	Mar. 26	H-106	415
1157257	Oct. 19, 1915	Microscope condenser	Mar. 21	Mar. 26	J-106	369
1158167	Oct. 26, 1915	Production of ammonia	Feb. 3 Mar. 1	Feb. 21 Mar. 22	Y-106 G-106	133 287
1165498	Dec. 28, 1915	Process of rendering tetrachlorid of carbon and other halogen hydrocarbons, or hydrocarbons soluble in dilute solutions of soap.	Mar. 21 Feb. 28	Mar. 26 Mar. 24	J-106 V-106	347 315
1169703	Jan. 25, 1916	Process for the cathodic production of solid peroxid compounds.	Feb. 26 Mar. 21	Mar. 24 Mar. 26	Z-106 V-106	233 396
1172061	Feb. 15, 1916	Fast yellow dyes and making same	Mar. 21	Mar. 26	W-106	456
1174146	Mar. 7, 1916	Electric miner's lamp	Mar. 22	Mar. 26	V-106	404
1174903	Mar. 7, 1916	Process of the treatment of materials for impregnating them electro-cosmotically.	Mar. 22	Mar. 26	Z-106	290

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
1175091	Mar. 14, 1916	Method of making highly-aromatic, clearly-soluble, solid coffee extract.	1919. Apr. 8	1919. Apr. 9	V-106	483
1176744	Mar. 28, 1916	Open hearth furnace	Apr. 8	Apr. 9	M-106	483
1179421	Apr. 18, 1916	Manufacture of peracids from aldehydes.	Mar. 21 Feb. 24	Mar. 26 Mar. 21	Z-106 Y-106	272 193
1180027	Apr. 18, 1916	Chamber oven of the reversing flame type.	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1185500	May 30, 1916	Method of regenerating mercury catalysis.	Mar. 22	Mar. 26	V-106	404
1191551	July 18, 1916	Serum mixture	1918 Dec. 4 Dec. 11 1919 Mar. 21	1918 Dec. 5 Dec. 11 1919 Mar. 26	O-105 B-106 P-106	493 414 376
1193829	Aug. 8, 1916	Diasazo dyestuffs and making same.	Mar. 21	Mar. 26	W-106	456
1195673	Aug. 22, 1916	Varnish, lacquer, or the like and process of making same.	Apr. 8	Apr. 9	U-106	383
1196065	Aug. 29, 1916	Serum therapy	1918 Dec. 4 Dec. 11 1919 Mar. 21	1918 Dec. 5 Dec. 11 1919 Mar. 26	O-105 B-106 P-106	493 414 376
1196329	Aug. 29, 1916	Process for distilling acetic acid and the like.	Mar. 21 Feb. 25	Mar. 26 Mar. 21	Y-106 K-106	331 279
1201625	Oct. 17, 1916	Drying oil and process of making same.	Mar. 28	Mar. 26	W-106	460
1205138	Nov. 14, 1916	Phosphorus and oxygen containing organic compounds.	1918 Dec. 4 Dec. 11 1919 Mar. 22	1918 Dec. 5 Dec. 11 1919 Mar. 26	D-105 H-106 V-106	480 4 403
1207708	Dec. 12, 1916	Manufacture of oxids of nitrogen	Feb. 3 Mar. 1	Feb. 21 Mar. 22	Y-106 G-106	133 287
1208781	Dec. 19, 1916	Coke oven	Apr. 8	Apr. 9	U-106	389
1211875	Jan. 9, 1917	Furnace for burning refuse	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1214259	Jan. 30, 1917	Continuous distillation of tar	Apr. 8	Apr. 9	R-106	476
1228609	June 5, 1917	Process for making insulating material from basic magnesium carbonate and fibrous substances.	Apr. 8	Apr. 9	Q-106	447
1216728	Feb. 20, 1917	Method of producing insoluble condensation products and product thereof.	Mar. 21	Mar. 26	L-106	345
1217028	Feb. 20, 1917	Manufacture of artificial textile material and process of producing same.	Mar. 21	Mar. 26	P-106	388
1218332	Mar. 6, 1917	Manufacture of diolefine (isoprene) caoutchouc and caoutchouc-like substances.	Mar. 22	Mar. 26	Z-106	300
1218713	Mar. 13, 1917	Production of caoutchouc-like bodies.	Mar. 22	Mar. 26	Z-106	300
1227569	May 29, 1917	German-silver-alloy products and manufacture of same.	Mar. 21	Mar. 25	H-106	399
1229150	June 5, 1917	Process for tanning and impregnating materials by means of electricity.	Mar. 22	Mar. 26	Z-106	290
1229203	June 5, 1917	Method of purifying and separating finely divided substances.	Mar. 22	Mar. 26	S-106	374
1229637	June 12, 1917	Process of distilling and exsiccating watery combustibles.	1919 Dec. 22 1919 Apr. 8	1920 Feb. 27 1919 Apr. 9	O-109 N-106	352 492
1232187	July 3, 1917	Disinfectant	Mar. 21	Mar. 25	H-106	398
1233970	July 17, 1917	Process of manufacturing iron and steel.	Mar. 21	Mar. 26	H-106	407
1234380	July 24, 1917	Method of manufacturing hydrogen peroxid.	Mar. 21	Mar. 26	L-106	342

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
1237128	Aug. 14, 1917	Manufacturing of sodium percarbonate.	Feb. 26 Mar. 21	Mar. 24 Mar. 26	Z-106 V-106	233 399
1238409	Aug. 28, 1917	Process for manufacturing iron and steel from oxygen containing baths.	Mar. 22	Mar. 26	W-106	448
1251954	Jan. 1, 1918	Process for producing liquid or soluble organic combinations from hard coal and the like.	Mar. 21 May 12	Mar. 26 May 14	H-106 I-107	406 60
1252185	Jan. 1, 1918	Diaphragm for electrolytical and electro-osmotic purposes.	Mar. 22	Mar. 26	S-106	374
1256875	Feb. 19, 1918	Process for producing ammonia	Mar. 21 Feb. 25	Mar. 26 Mar. 21	I-106 H-106	388 263
1256929	Feb. 19, 1918	Process of producing metallic wires, filaments, and the like.	Mar. 22	Mar. 26	S-106	364
1256930	Feb. 19, 1918	Filament or wire formed by a single crystal.	Mar. 22	Mar. 26	S-106	364
1259347	Mar. 12, 1918	Method of manufacturing permanently fusible and soluble synthetic resins from nonfusible phenolaldehyde-resins.	Mar. 21	Mar. 26	H-106	401
1261394	Apr. 2, 1918	Vat dyestuffs and process for their formation.	Feb. 28 Feb. 28	Apr. 9 Mar. 24	L-106 V-106	416 325
1262250	Apr. 9, 1918	Cooling mantle for furnaces	Feb. 28 Apr. 22	Mar. 24 Apr. 22	U-106 Q-107	222 34
1265485	May 7, 1918	Electrical furnaces	Mar. 21	Mar. 26	L-106	338
1265945	May 14, 1918	Electric furnace	Mar. 21	Mar. 26	L-106	338
1266330	May 14, 1918	Process for removing liquid from stealite.	Mar. 22	Mar. 26	Z-106	290
1283112	Oct. 29, 1918	Process for the production of nitric acids in internal combustion engines.	Mar. 21	Mar. 26	L-106	326
1285703	Nov. 26, 1918	Process for the production of new derivatives for the hydantoin.	Mar. —	Mar. 26	K-106	409
1286650	Dec. 3, 1918	Producing hydrogen	Mar. 22	Mar. 26	U-106	315
1288582	Dec. 24, 1918	Permanently stable, dry, bacteria preparations and process of making same.	Mar. —	Mar. 26	K-106	409
1289280	Dec. 31, 1918	Tanning	Mar. 22	Mar. 26	U-106	315
1292019	Jan. 21, 1919	Manufacture of urea	Mar. 22	Mar. 26	U-106	315
		Series 3—Supplementary.				
1089960	Mar. 10, 1914	Adhesive material for gluing	Mar. 24	Apr. 9	Y-106	437
1165408	Dec. 28, 1915	Briquet-cooling apparatus	Mar. 22	Apr. 9	U-106	387
1296063	Mar. 4, 1919	Extractive products from the hypophysis gland.	Mar. 22	Apr. 9	M-106	491
1296064	Mar. 4, 1919	Salts of the extractive products from the hypophysis gland.	Mar. 22	Apr. 9	M-106	491
775353	Nov. 22, 1904	Lens combination for producing virtual images.	Feb. 27	Apr. 9	Y-106	438
873870	Dec. 17, 1907	Ramsden ocular	Feb. 27	Apr. 9	Y-106	438
873871	Dec. 17, 1907	Ramsden ocular	Feb. 27	Apr. 9	Y-106	438
873896	Dec. 17, 1907	Double objective	Feb. 27	Apr. 9	Y-106	438
873898	Dec. 17, 1907	Telephotographic objective	Feb. 27	Apr. 9	Y-106	438
886416	May 5, 1908	Photographic objectives	Feb. 27	Apr. 9	Y-106	438
895045	Aug. 4, 1908	Photographic objectives	Feb. 27	Apr. 9	Y-106	438
929795	Aug. 3, 1909	Illuminating system	Feb. 27	Apr. 9	Y-106	438
934579	Sept. 21, 1909	Deformed collective lens	Feb. 27	Apr. 9	Y-106	438
940895	Nov. 23, 1909	Lens system	Feb. 27	Apr. 9	Y-106	438
962920	June 28, 1910	Galilean telescope lens system	Feb. 27	Apr. 9	Y-106	438
968693	Aug. 30, 1910	Achromatic spectacle glass	Feb. 27	Apr. 9	Y-106	438
988720	Apr. 4, 1911	Lens system for projecting stripes	Feb. 27	Apr. 9	Y-106	438
920224	May 4, 1909	Process of manufacture of nitric acid.	Feb. 11	Feb. 20	J-106	187
936844	Oct. 12, 1909	Plant for heating gas and air for combustion in gas furnaces.	Feb. 11	Feb. 20	I-106	157

No.	Date o issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
1099451	June 9, 1914	Process for continuous production of dry hydrochloric acid and potassium bisulfate from potassium chlorid and sulphuric acid.	1919. Feb. 11	1919. Feb. 20	Q-106	172
1124380	Jan. 12, 1915	Muffle furnace for enameling	Feb. 11	Feb. 20	I-106	157
1130104	Mar. 2, 1915	Process for the production of nitric acid.	Feb. 11	Feb. 20	F-106	229
1163174	Dec. 7, 1915	Process and apparatus for concentrating dilute nitric acid.	Feb. 11	Feb. 20	F-106	229
912352	Feb. 16, 1909	Objective	Feb. 12 Feb. 28	Feb. 20 Apr. 9	C-106 V-106	239 490
1108307	Aug. 25, 1914	Spherically, chromatically, astigmatically, and comatically corrected double objective.	Feb. 28 Feb. 12	Apr. 9 Feb. 20	V-106 C-106	490 239
1217027	Feb. 20, 1917	Film and process of producing same.	Mar. 22	Apr. 9	N-106	487
1188376	June 20, 1916	Alkyl ethers of cellulose and process of making same.	Mar. 22	Apr. 9	N-106	487
1021337	Mar. 26, 1912	Quadruple lens objective	Feb. 27	Apr. 9	Y-106	438
1025766	May 7, 1912	Photographic objective	Feb. 27	Apr. 9	Y-106	438
1028224	June 4, 1912	Liquid lens system	Feb. 27	Apr. 9	Y-106	438
1085868	Feb. 3, 1914	Objective system	Feb. 27	Apr. 9	Y-106	438
1092861	Apr. 14, 1914	Magnifying glass	Feb. 27	Apr. 9	Y-106	438
1159233	Nov. 2, 1915	Ocular	Feb. 27	Apr. 9	Y-106	438
1169731	Jan. 25, 1916	Lens for placing before a photographic objective	Feb. 27	Apr. 9	Y-106	438
1228609	June 5, 1917	Process for making insulating material from basic magnesium and fibrous substances.	Apr. 8	Apr. 9	Q-106	447
982326	Jan. 24, 1911	Process of producing sound metal castings.	Apr. 7 Apr. 8	May 15 Apr. 9	V-107 V-106	81 486

Said instrument dated April 10, 1919, and recorded in the United States Patent Office on April 21, 1919, in Liber Y-107, page 1-143, a copy of which instrument is set out in Exhibit H-1 attached to this bill of complaint, also enumerated the following trade-marks:

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording. [1]	Book.	Page.
9100	1882 Feb. 7	A medical salt	Apr. 4, 1919	Apr. 8, 1919	Y-106	426
11464	1884 Sept. 9	Extracts of leaves, barks, and woods for tanning and dyeing.	Apr. 4, 1919	Apr. 8, 1919	E-106	488
12607	1885 Sept. 29	Bone black, ivory black, etc	Apr. 4, 1919	Apr. 8, 1919	K-106	472
13527	1886 July 27	Toilet soap, cream, milk, paste, and pomatum.	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	M-107 P-113	14 276
13528	July 27	Salves and plasters	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	M-107 P-113	14 276
13622	Aug. 31	Unguent or salve	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	M-107 P-113	14 276
13871	Dec. 14	Pigment colors	Apr. 4, 1919	Apr. 8, 1919	N-106	457
13872	Dec. 14	Medical drugs	Apr. 4, 1919	Apr. 8, 1919	N-106	457
14074	1887 Feb. 15	Pine-wool fabrics and preparations.	Apr. 4, 1919	Apr. 8, 1919	Q-106	423
14473	May 31	Preparation for use in the manufacture of colors for paper and paper hangings and for other purposes.	Apr. 4, 1919	Apr. 8, 1919	G-107	22
14868	Nov. 1	Salves	Apr. 4, 1919	Apr. 8, 1919	L-106	395
		T. M. 1.				
15260	1888 Mar. 6	Potato flour and potato starch and all potato-starch products, including dextrine.	Apr. 4, 1919	Apr. 8, 1919	G-107	22
15350	Apr. 10	Pharmaceutical and medical preparations generally.	Apr. 4, 1919	Apr. 8, 1919	G-106	390
15478	May 22	Medical compounds for curing skin diseases.	Apr. 4, 1919	Apr. 8, 1919	M-107	14
15767	Aug. 14	Linoleum	Apr. 4, 1919	Apr. 8, 1919	T-106	419
16027	Nov. 27	Tincture of iron	Apr. 4, 1919	Apr. 8, 1919	E-106	496
16578	1889 May 14	Alkaloids made from the calabar bean.	Apr. 4, 1919	Apr. 8, 1919	R-106	452
16767	July 2	Pocket, pen, erasing, and table knives and surgical and other cutting instruments classed as cutlery.	June 29, 1921 Apr. 4, 1919	July 1, 1921 Apr. 8, 1919	S-113 P-106	296 472
16788	July 9	Preserving paint	Apr 4, 1919 July 2, 1921	Apr. 8, 1919 July 5, 1921	E-106 Z-113	498 370
17078	Oct. 1	A medical preparation for purifying the blood.	Apr. 4, 1919	Apr. 8, 1919	M-107	29

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[1] Date of service on Commissioner of Patents of the United States and *for* filing of record in U. S. Patent Office.

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 1—Continued.				
	1890					
17375	Jan. 7	Medical preparations for veterinary purposes.	Apr. 4, 1919	Apr. 8, 1919	M-106	464
17586	Feb. 25	Soluble metal albuminates	Apr. 4, 1919	Apr. 8, 1919	F-106	459
17904	May 13	Medicine for kidney and heart diseases.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
18083	June 24	Tar and its chemical products	Apr. 4, 1919	Apr. 8, 1919	M-106	471
		T. M. 2.				
	1891					
18827	Jan. 13	Printing and lithographing inks.	June 11, 1919 Apr. 4, 1919	June 16, 1919 Apr. 8, 1919	C-107 M-107	254 22
19375	Apr. 21	Aniline and other tar dyestuffs.	Apr. 4, 1919	Apr. 8, 1919	K-106	470
19839	July 7	Certain named remedies	Apr. 4, 1919	Apr. 8, 1919	P-106	459
19840	July 7	Remedies for insomnia	Apr. 4, 1919	Apr. 8, 1919	P-106	459
20460	Dec. 15	Anesthetics or hypnotics	Apr. 4, 1919	Apr. 8, 1919	M-107	19
20505	Dec. 29	Remedies for skin diseases	Apr. 4, 1919	Apr. 8, 1919	M-107	14
	1892					
20799	Mar. 1	Anticorrosive oils, paints, varnishes, and lacquers.	Apr. 4, 1919	Apr. 8, 1919	I-106	453
20876	Mar. 22	Paint for application to metallic surfaces.	Apr. 4, 1919	Apr. 8, 1919	U-106	378
21842	Oct. 4	Dyes or colors	Apr. 4, 1919	Apr. 8, 1919	S-106	422
22095	Nov. 29	Wool fat	Apr. 4, 1919	Apr. 8, 1919	G-107	23
	1893					
22274	Jan. 3	Photographic preparations	Apr. 4, 1919	Apr. 8, 1919	Y-106	412
23457	Aug. 8	Artists' colors, varnishes and driers.	Apr. 4, 1919	Apr. 8, 1919	I-106	454
23493	Aug. 15	A remedy for diabetes	Apr. 4, 1919	Apr. 8, 1919	Y-106	427
		T. M. 3.				
23707	Oct. 10	Mordants	Apr. 4, 1919	Apr. 8, 1919	T-106	423
23724	Oct. 17	Cleaning and polishing preparations.	June 28, 1921 Apr. 4, 1919	July 1, 1921 Apr. 8, 1919	V-113 Y-106	325 417
23820	Nov. 14	Scouring and polishing preparations.	June 28, 1921 Apr. 4, 1919	July 1, 1921 Apr. 8, 1919	V-113 Y-106	325 417
23927	Dec. 19	Remedies for diarrhea and gouty rheumatism.	Apr. 4, 1919	Apr. 8, 1919	Z-106	323
	1894					
24013	Jan. 9	Remedies for throat diseases	Apr. 4, 1919	Apr. 8, 1919	E-106	493
24228	Feb. 13	Iron derivatives of albumen	Apr. 4, 1919	Apr. 8, 1919	R-106	452
24357	Mar. 13	A medical compound for the cure of neuralgic and rheumatic complaints.	Apr. 4, 1919	Apr. 8, 1919	H-106	490
24643	May 1	Lactyl derivatives of paraphenetidin.	Apr. 4, 1919	Apr. 8, 1919	R-106	452
24866	June 12	Pharmaceutical preparations	Apr. 4, 1919	Apr. 8, 1919	K-106	480
24910	June 26	Paper for photographic use	Apr. 4, 1919	Apr. 8, 1919	F-107	19
25139	Aug. 14	Household dyes	Apr. 4, 1919	Apr. 8, 1919	M-106	470
25430	Oct. 30	Polishing preparations	Apr. 4, 1919	Apr. 8, 1919	V-106	460
25433	Oct. 30	Painters' size	Apr. 4, 1919	Apr. 8, 1919	Y-106	410
		T. M. 4.				
	1895					
26784	July 9	Chemical and medical products	Apr. 4, 1919	Apr. 8, 1919	F-107	17
26906	Aug. 6	Antiseptics	Apr. 4, 1919	Apr. 8, 1919	Y-106	425
27089	Sept. 24	A paste for removing spots and stains.	Apr. 4, 1919	Apr. 8, 1919	S-106	421
27318	Nov. 26	Certain named medicines and toilet preparations.	Apr. 4, 1919	Apr. 8, 1919	R-106	453
27391	Dec. 3	Chemical products and colors for use as disinfectants.	Apr. 4, 1919	Apr. 8, 1919	Y-106	407
27454	Dec. 10	Tetrajodphenolphthalein, an antiseptic substance.	Apr. 4, 1919	Apr. 8, 1916	V-106	462

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 4.—Continued.				
27456	1895 Dec. 10	Disinfectants and antiseptics	Apr. 4, 1919	Apr. 8, 1919	B-106	409
27568	Dec. 31	Perfumery, toilet preparations, powder, toilet water, and ingredients for the bath.	Apr. 4, 1919	Apr. 8, 1919	I-106	441
27785	1896 Feb. 11	Remedies for skin diseases	Apr. 4, 1919	Apr. 8, 1919	M-106	461
27896	Mar. 3	Certain named remedies	Apr. 4, 1919	Apr. 8, 1919	I-106	444
27944	Mar. 10	Dyestuffs	Apr. 4, 1919	Apr. 8, 1919	N-106	457
27945	Mar. 10	Dyestuffs	Apr. 4, 1919	Apr. 8, 1919	N-106	457
28021	Mar. 24	Cleaning and polishing preparations and wash blue.	June 28, 1921 Apr. 4, 1919	July 1, 1921 Apr. 8, 1919	V-113 Y-106	325 417
		T. M. 5.				
28192	Apr. 28	Starch and starch preparations	Apr. 4, 1919	Apr. 8, 1919	J-107	7
28193	Aug. 28	Starch, starch and borax preparations, soap and soap powders and blue.	Apr. 4, 1919	Apr. 8, 1919	J-107	7
28223	May 5	Starch and its preparations, soap, soap powders, soda, blue, borax, and the like.	Apr. 4, 1919	Apr 8, 1919	C-106	495
28274	May 19	Homeopathic medicines, dietetic preparations and books.	Apr 4, 1919	Apr. 8, 1919	C-106	498
28348	June 2	A medical compound to be used as an astringent.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
28501	June 30	Pharmaceutical preparations in tablet form.	Apr. 4, 1919	Apr. 8, 1919	T-106	418
28679	July 28	Pharmaceutical and cosmetical products.	Apr. 4, 1919	Apr. 8, 1919	G-107	23
28750	Aug. 11	Antiseptic, perfumery and other similar compounds.	Apr. 4, 1919	Apr. 8, 1919	G-106	391
28868	Sept. 8	Deliming and preserving compound for tanners use.	June 29, 1921 Apr. 4, 1919	July 1, 1921 Apr. 8, 1919	X-113 Y-106	319 412
28994	Oct. 13	Remedies for blood diseases.	Apr. 4, 1919	Apr. 8, 1919	V-106	453
29171	Nov. 17	Pharmaceutical preparations containing myrrh.	Apr. 4, 1919	Apr. 8, 1919	G-106	398
29262	Dec. 8	A remedy for wounds and sores.	Apr. 4, 1919	Apr. 8, 1919	V-106	462
		T. M. 6.				
29263	Dec. 8	A remedy for wounds and sores.	Apr. 4, 1919	Apr. 8, 1919	V-106	462
29264	Dec. 8	A remedy for wounds and sores.	Apr. 4, 1919	Apr. 8, 1919	V-106	462
29265	Dec. 8	A remedy for wounds and sores.	Apr. 4, 1919	Apr. 8, 1919	V-106	462
29282	Dec. 8	Salts that serve as a covering layer for molten zinc and tin.	Apr. 4, 1919	Apr. 8, 1919	T-106	423
29457	1897 Jan. 12	A medicament comprising menthol dissolved in menthol ether of valeric acid.	June 28, 1921 Apr. 4, 1919	July 1, 1921 Apr. 8, 1919	C-113 F-107	327 17
29552	Feb. 2	A composition for manufacturing glass batch.	Apr. 4, 1919	Apr. 8, 1919	M-107	28
29687	Mar. 9	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
29688	Mar. 9	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
29689	Mar. 9	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
29723	Mar. 23	Stethoscopes or instruments for rendering audible sounds in the human body.	Apr. 4, 1919	Apr. 8, 1919	G-107	12
29728	Mar. 23	Chemical preparations	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	V-106 Z-113	398 382
29831	Apr. 13	Diarrhea and catarrh of the stomach and bowels.	Apr. 4, 1919	Apr. 8, 1919	V-106	462
29836	Apr. 13	A remedy for wounds	Apr. 4, 1919	Apr. 8, 1919	V-106	462

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page
		T. M. 7.				
	1897					
29857	Apr. 20	Optical instruments and parts thereof.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
29895	Apr. 20	Derivatives of cinchona alkaloids.	Apr. 4, 1919	Apr. 8, 1919	F-107	17
29998	May 11	Ointments or salves	Apr. 4, 1919	Apr. 8, 1919	S-106	416
30338	July 6	Pharmaceutical preparations for the cure of chlorosis and all forms of anemia.	Apr. 4, 1919	Apr. 8, 1919	Y-106	427
30494	Aug. 10	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
30524	Aug. 24	Impure and pure or refined benezoic sulfinid or benezoic sulfinid combined with sodium oxid.	July 2, 1921 Apr. 4, 1919	July 5, 1921 Apr. 8, 1919	K-113 S-106	271 419
30563	Sept. 28	Powders, pastes, salves, and pills.	Apr. 4, 1919	Apr. 8, 1919	E-106	492
30696	Oct. 19	Derivatives of cinchona alkaloids.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
30750	Oct. 26	A medical preparation for strengthening the blood.	Apr. 4, 1919	Apr. 8, 1919	F-106	457
30751	Oct. 26	A medical preparation for strengthening the blood.	Apr. 4, 1919	Apr. 8, 1919	F-106	457
30881	Nov. 23	Salves	Apr. 4, 1919	Apr. 8, 1919	F-107	13
30942	Dec. 7	Certain named articles and preparations for the teeth, hair, and skin.	June 28, 1921 Apr. 4, 1919	July 1, 1921 Apr. 8, 1919	L-113 F-106	303 462
		T. M. 8.				
	1898					
31062	Jan. 4	Remedies for diseases of the stomach and bowels.	Apr. 4, 1919	Apr. 8, 1919	Q-106	428
31114	Jan. 11	Antiseptic and remedy for skin diseases, tuberculosis, chlorosis, diseases of women, intestinal catarrh and bronchial asthma.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
31198	Feb. 1	A chemical compound used as an antiseptic.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
31235	Feb. 8	Photographic developers	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	Y-106 X-113	412 319
31236	Feb. 8	Photographic developers	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	Y-106 X-113	412 319
31290	Feb. 22	Dental cement	Apr. 4, 1919	Apr. 8, 1919	E-106	489
31667	June 7	Hemorrhoidal suppositories	June 24, 1921 Apr. 4, 1919	June 25, 1921 Apr. 8, 1919	C-113 S-106	301 417
31799	July 12	Certain named pharmaceutical preparations.	Apr. 4, 1919	Apr. 8, 1919	V-106	458
31831	Aug. 9	Milk measuring and registering apparatus and charts therefor.[2]				
31815	Aug. 9	Milk measuring and registering apparatus and charts therefor.	Apr. 4, 1919	Apr. 8, 1919	P-106	465
31950	Sept. 6	Disinfecting, antiseptic and asepticizing preparations.	Apr. 4, 1919	Apr. 8, 1919	U-106	306
31963	Sept. 13	Powders, pills, tablets, perls, ointments, and tinctures.	Apr. 4, 1919	Apr. 8, 1919	K-106	473
32021	Oct. 4	Diseases of the blood and infectious diseases.	Apr. 4, 1919	Apr. 8, 1919	V-106	467
		T. M. 9				
32022	Oct. 4	A certain remedy for arthritis, rheumatism, and like diseases.	Apr. 4, 1919	Apr. 8, 1919	V-106	467
32088	Oct. 25	Unguent for skin diseases	Apr. 4, 1919	Apr. 8, 1919	I-106	445
32145	Nov. 8	Dietetic preparations of albumen.	Apr. 4, 1919	Apr. 8, 1919	K-106	473
32146	Nov. 8	Oils for artists' paints, colors, and varnishes.	Apr. 4, 1919	Apr. 8, 1919	G-106	387

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[2] This trade-mark seized as No. 31,815. See below.

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 9—Continued.				
32148	1898 Nov. 8	Certain artificial fertilizers	Apr. 4, 1919	Apr. 8, 1919	I-106	446
32149	Nov. 8	Certain artificial fertilizers	Apr. 4, 1919	Apr. 8, 1919	I-106	446
32174	Nov. 22	Albuminates and compounds thereof for certain named purposes.	Apr. 4, 1919	Apr. 8, 1919	F-107	24
32242	Dec. 13	Certain named medical compounds.	Apr. 4, 1919	Apr. 8, 1919	T-106	412
32550	1899 Feb. 28	Certain named toilet preparations.	Apr. 4, 1919	Apr. 8, 1919	I-106	441
32576	Mar. 7	Medicinal and remedial sulfo compounds for internal and external use.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1 ,1921	H-106 L-113	491 365
32577	Mar. 7	Veterinary remedial agents	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	H-106 L-113	491 365
32700	Apr. 11	Rice powder, rice starch powder, starch and starch powder.	Apr. 4, 1919	Apr. 8, 1919	C-106	495
32748	Apr. 18	Materials for sharpening, grinding, boring and polishing.	Apr. 4, 1919	Apr. 8, 1919	Z-106	330
32887	May 16	Medicines for certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	V-106	467
33016	June 6	Photographic developers	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	Y-106 X-113	412 320
		T. M. 10.				
33017	June 6	Photographic developers	Apr. 4, 1919 June 29, 1921	Apr. 8, 9191 July 1, 1921	Y-106 X-113	412 320
33281	July 25	Certain named diseases	Apr. 4, 1919	Apr. 8, 1919	U-106	366
33481	Sept. 19	Certain named painters' supplies.	Apr. 4, 1919	Apr. 8, 1919	E-106	486
33539	Oct. 10	Certain named toilet preparations.	Apr. 4, 1919	Apr. 8, 1919	Q-106	430
33622	Oct. 24	Remedy for certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	Z-106	327
33818	Nov. 28	Chemical preparations for the preservation of leather.	Apr. 4, 1919	Apr. 8, 1919	Y-106	419
33821	Nov. 28	Remedies for catarrh	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	J-107 C-113	2 323
33865	Dec. 12	Knitted fabrics and garments made therefrom.	Apr. 4, 1919 Dec. 31, 1918	Apr. 8, 1919 June 20, 1919	N-106 O-107	465 293
33866	Dec. 12	Knitted fabrics and garments made therefrom.	Apr. 4, 1919 Dec. 31, 1918	Apr. 8, 1919 June 20, 1919	N-106 O-107	465 293
34132	1900 Feb. 6	Certain named photographic materials.	June 24, 1921 Apr. 4, 1919	June 25, 1921 Apr. 8, 1919	Q-113 P-106	274 463
34259	Feb. 27	Certain named drugs and chemicals.	Apr. 4, 1919	Apr. 8, 1919	V-106	458
34346	Mar. 20	Certain named chemical and pharmaceutical preparations.	Apr. 4, 1919	Apr. 8, 1919	M-106	467
34360	Mar. 27	Chemical and pharmaceutical preparations.	Apr. 4, 1919	Apr. 8, 1919	Y-106	414
		T. M. 11.				
34482	Apr. 17	Certain named fabrics or body garments.	Apr. 4, 1919	Apr. 8, 1919	N-106	463
34706	May 29	Certain named medical compounds.	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	M-107 P-113	14 276
34742	June 5	Haemoglobin preparations	Apr. 4, 1919	Apr. 8, 1919	J-106	425
34880	July 10	Certain named chemical products and fertilizers.	Apr. 4, 1919	Apr. 8, 1919	N-106	474
34881	July 10	Certain named chemical products and fertilizers.	Apr. 4, 1919	Apr. 8, 1919	N-106	474
34951	July 24	A certain named polishing compound.	Apr. 4, 1919	Apr. 8, 1919	U-106	375

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 11—Continued				
	1900					
35049	Sept. 18	Certain named optical instruments.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
35050	Sept. 18	Certain named optical instruments.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
35181	Oct. 2	Alkaloids	Apr. 4, 1919	Apr. 8, 1919	V-106	454
35183	Oct. 2	Nutritive ferruginous preparations.	Apr. 4, 1919	Apr. 8, 1919	M-107	16
35389	Nov. 13	Certain named cutlery and surgical instruments.	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	P-106 S-113	472 296
35639	Dec. 25	Certain named chemical, pharmaceutical and surgical products and preparations.	Apr. 4, 1919	Apr. 8, 1919	J-106	422
	1901					
35772	Jan. 15	Certain named pharmaceutical products.	Apr. 4, 1919	Apr. 8, 1919	P-106	463
		T. M. 12.				
35864	Feb. 5	Medicinal liquors	Apr. 4, 1919	Apr. 8, 1919	N-106	481
35928	Feb. 19	Wool fat and wool-fat preparations.	Apr. 4, 1919	Apr. 8, 1919	G-107	23
35930	Feb. 19	Manures, fertilizers and liquids for spraying plants.	Apr. 4, 1919	Apr. 8, 1919	V-106	462
35979	Feb. 26	Medical and pharmaceutical preparations.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	T-106 G-113	427 294
35997	Mar. 5	Coverings for floors, ceiling, and boilers and plaster.	Apr. 4, 1919	Apr. 8, 1919	I-106	443
36046	Mar. 12	Oleates of sodium	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
36050	Mar. 12	Medicinal, toilet, and antiseptic preparations.	Apr. 4, 1919	Apr. 8, 1919	G-107	23
36268	Apr. 16	Therapeutic preparations for digestive purposes.	Apr. 4, 1919	Apr. 8, 1919	V-106	462
36522	June 4	Certain named soluble starch	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	J-106 Q-113	426 273
36523	June 4	Certain named soluble starch	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	J-106 Q-113	426 273
36588	June 11	Certain named iron, steel, and manufacture.	May 12, 1919 Apr. 4, 1919	May 4, 1919 Apr. 8, 1919	Q-107 C-106	117 489
36603	June 18	Raw materials or substances of celluloid, hard rubber, and tortoise or of like nature and articles made thereof.	Apr. 4, 1919	Apr. 8, 1919	F-107	20
		T. M. 13.				
	1901					
36604	June 18	Lanolin or wool-fat and certain named lanolin preparations, mixtures and compounds.	Apr. 4, 1919	Apr. 8, 1919	G-107	23
36747	July 16	A tonic	Apr. 4, 1919	Apr. 8, 1919	M-106	461
37152	Oct. 1	Caffein compounds	Apr. 4, 1919	Apr. 8, 1919	Y-106	421
37373	Nov. 26	Certain named pharmaceutical products.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
37374	Nov. 26	Certain named pharmaceutical products.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
37420	Dec. 3	Filling material for teeth	Apr. 4, 1919	Apr. 8, 1919	L-106	396
37424	Dec. 3	Certain named foods and relishes.	Apr. 4, 1919	Apr. 8, 1919	F-106	451
37568	Dec. 31	Paints and insulating materials	Apr. 4, 1919	Apr. 8, 1919	E-106	456
37573	Dec. 31	Chemicals for pharmaceutical purposes.	Apr. 4, 1919	Apr. 8, 1919	L-106	400
37579	Dec. 31	Remedy for rheumatism	Apr. 4, 1919	Apr. 8, 1919	F-107	13
	1902					
37612	Jan. 7	Remedy for wounds, burns and other injuries to the skin.	Apr. 4, 1919	Apr. 8, 1919	F-107	13

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 13—Continued.				
	1901					
37684	Jan. 21	Quinate of lithium	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
37733	Feb. 4	Certain named chemical substances and preparations.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
37734	Feb. 4	Certain named chemical substances and preparations.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
37744	Feb. 4	Medical preparations for wounds and certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	V-106	462
		T. M. 14.				
38016	Apr. 1	Perfumery and certain named toilet preparations.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	I-106 H-113	441 302
38017	Apr. 1	Perfumery and certain named toilet preparations.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	I-106 H-113	441 302
38167	Apr. 22	Salicylates of some rare earths	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
38552	July 1	Certain named chemical compound.	Apr. 4, 1919	Apr. 8, 1919	U-106	378
38682	July 29	A conserving compound	Apr. 4, 1919	Apr. 8, 1919	J-107	10
38879	Sept. 9	Arsenic compounds	Apr. 4, 1919	Apr. 8, 1919	F-107	15
39022	Oct. 14	Remedy for pulmonary consumption and inflammation of the lungs.	Apr. 4, 1919	Apr. 8, 1919	F-107	13
39153	Oct. 28	Substitute for gum copal and amber.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	J-106 Q-113	426 271
39473	Dec. 16	Preparation for treatment of photographic plates.	Apr. 4, 1919	Apr. 8, 1919	C-106	494
39523	Dec. 23	Cotoin compound	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
39577	Dec. 30	Derivatives of vanillin and phenetidin.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
39598	Dec. 30	Dietetic preparations and admixtures thereof with food products and beverages.	Apr 4, 1919	Apr. 8, 1919	F-106	451
		T. M. 15.				
	1903					
39841	Feb. 24	Starch and starch compounds	Apr. 4, 1919	Apr. 8, 1919	Q-106	421
39849	Feb. 24	Tanning extracts and tanning liquors.	Apr. 4, 1919	Apr. 8, 1919	K-106	478
40016	Mar. 31	Medical compound for external use.	Apr. 4, 1919	Apr. 8, 1919	G-106	383
40027	Mar. 31	Chemicals for photographic baths.	Apr. 4, 1919	Apr. 8, 1919	V-106	456
40116	Apr. 14	Combinations of quinin and phenetidin.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
40117	Apr. 14	Salts of diorthooxydibenzalaceton.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
40139	Apr. 21	Photographic cameras	Apr. 4, 1919	Apr. 8, 1919	N-106	479
40140	Apr. 21	Lens instruments	Apr. 4, 1919	Apr. 8, 1919	N-106	479
40141	Apr. 21	Optical systems consisting of one or several lenses.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
40534	June 9	Titanium preparations for leather dyeing.	Apr. 4, 1919	Apr. 8, 1919	F-106	461
40558	June 9	Remedy for tapeworm and similar parasitic ailments.	Apr. 4, 1919	Apr. 8, 1919	R-106	452
40614	June 16	Dyestuff	Apr 4, 1919	Apr. 8, 1919	N-106	457
40632	June 23	An internal antiseptic and uric-acid solvent.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
		T. M. 16.				
40633	June 23	A medical compound to be used as a haemostatic.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
40634	June 23	Remedies for skin diseases	Apr. 4, 1919	Apr 8, 1919	M-106	461

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 16—Continued.				
	1903					
40695	Aug. 11	Remedies for tuberculosis and catarrhal complaints	Apr. 4, 1919 July 2, 1921	Apr. 8, 1919 July 5, 1921	Y-106 L-113	415 369
41046	Sept. 1	Certain named soluble receptacles.	Apr. 4, 1919	Apr. 8, 1919	J-106	433
41079	Sept. 8	Soluble receptacles	Apr. 4, 1919	Apr. 8, 1919	J-106	433
41199	Sept. 29	Oxygen preparations for internal use.	Apr. 4, 1919	Apr. 8, 1919	G-107	14
41285	Oct. 13	Certain named photographic films and wrappers therefor.	Apr. 4, 1919	Apr. 8, 1919	Q-106	429
41356	Oct. 27	Anesthetics	Apr. 4, 1919	Apr. 8, 1919	U-106	374
41441	Nov. 10	Remedy against gall stones	Apr. 4, 1919	Apr. 8, 1919	U-106	376
41782	Dec. 29	Oxygen preparations for external use.	Apr. 4, 1919	Apr. 8, 1919	G-107	14
	1904					
41814	Jan. 5	Disinfectants and deodorizers	Apr. 4, 1919	Apr. 8, 1919	B-106	499
42306	Mar. 29	Paints and colors	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	M-106 O-113	463 269
42421	Apr. 19	Medical pastes and salves	Apr. 4, 1919	Apr. 8, 1919	N-106	475
		T. M. 17.				
42422	Apr. 19	Chemical preparations for sulfur baths.	Apr. 4, 1919	Apr. 8, 1919	V-106	465
42423	Apr. 19	Synthetic or anilin colors for printing purposes.	Apr. 4, 1919	Apr. 8, 1919	M-107	15
42452	Apr. 19	Certain named medicinal and food compounds.	Apr. 4, 1919	Apr. 8, 1919	R-106	452
42486	Apr. 26	A certain named chemical	Apr. 4, 1919	Apr. 8, 1919	Z-106	329
42487	Apr. 26	Certain named chemical substances.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
42551	May 3	Coloring matters, dyes and mordants.	Apr. 4, 1919	Apr. 8, 1919	N-106	460
42593	May 10	Certain named oil	Apr. 4, 1919	Apr. 8, 1919	L-106	405
42618	May 17	A coating and preserving paint.	Apr. 4, 1919	Apr. 8, 1919	P-106	461
42632	May 17	Prophylactic medicines	Apr. 4, 1919	Apr. 8, 1919	N-106	470
42658	May 24	Pharmaceutical preparations for certain named purposes.	Apr. 4, 1919	Apr. 8, 1919	G-107	13
42957	July 5	A preservation liquid for the protection of wood.	Apr. 4, 1919 July 2, 1921	Apr. 8, 1919 July 5, 1921	E-106 Z-113	498 370
42991	July 12	Chemical finishing compound	Apr. 4, 1919	Apr. 8, 1919	R-106	446
42992	July 12	Chemical finishing compound	Apr. 4, 1919	Apr. 8, 1919	R-106	446
		T. M. 18.				
43188	Aug. 16	An ointment and cutaneous preparation and remedies.	Apr. 4, 1919	Apr. 8, 1919	U-106	370
43208	Aug. 16	Aromatic iron liquor for pharmaceutical use.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
43227	Aug. 23	Cutaneous preparations and remedies.	Apr. 4, 1919	Apr. 8, 1919	U-106	370
43230	Aug. 23	Preparations for tooth filling and manufacturing of artificial teeth.	Apr. 4, 1919	Apr. 8, 1919	M-106	457
43574	Oct. 18	Chemical fire extinguishers	Apr. 4, 1919	Apr. 8, 1919	T-106	424
43703	Nov. 15	Curative serum	Apr. 4, 1919	Apr. 8, 1919	Y-106	422
	1905					
43979	Jan. 3	Wool fat and products obtained therefrom.	Apr. 4, 1919	Apr. 8, 1919	G-107	23
44142	Feb. 7	Salicylic preparations for intravenous applications.	Apr. 4, 1919	Apr. 8, 1919	F-107	15
47110	Oct. 24	Printing and lithographic inks	June 11, 1919 Apr. 4, 1919	June 16, 1919 Apr. 8, 1919	C-107 M-107	254 22
47764	Nov. 21	Potato flour, potato starch, and dextrin.	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	G-107 T-113	22 300

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 18—Continued				
	1906					
48934	Jan. 16	Vacuum tubes, X-ray tubes and parts thereof.	Apr. 4, 1919	Apr. 8, 1919	I-106	450
49512	Feb. 6	Chemical finishing compound	Apr. 4, 1919	Apr. 8, 1919	R-106	446
49667	Feb. 13	Starch and dextrin	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	G-107 T-113	22 300
		T. M. 19.				
49911	Feb. 20	Potato flour, potato starch, and dextrin.	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	G-107 T-113	22 300
51505	Apr. 17	Uniting agents for colors	Apr. 4, 1919	Apr. 8, 1919	Y-106	423
51645	Apr. 17	Chemical fire extinguishers	Apr. 4, 1919	Apr. 8, 1919	T-106	424
51898	Apr. 24	A medical compound to be used as an astringent.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
51899	Apr. 24	A medical compound to be used as a hemostatic.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
52333	May 1	Dyestuff	(3)			
52224	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52225	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52226	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52227	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52228	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52229	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52230	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
		T. M. 20.				
52231	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52232	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52233	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52234	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52235	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52236	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52237	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52238	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52239	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
52240	May 1	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
53527	June 5	A medicine for Graves' disease	Apr. 4, 1919	Apr. 8, 1919	F-107	15
53937	June 12	Disinfectants and antiseptics	Apr. 4, 1919	Apr. 8, 1919	B-106	499
54087	June 19	A medicament	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
		T. M. 21.				
54088	June 19	Derivatives of cinchona alkaloids.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
54110	June 19	Preparations for the cleansing and preservation of the teeth and of the mouth.	Apr. 4, 1919	Apr. 8, 1919	M-107	18
54266	June 26	Nonalcoholic solutions of iron-manganese-peptone.	Apr. 4, 1919	Apr. 8, 1919	V-106	458
55490	Aug. 14	Bronze colors, brocades, and leaf metals.	Apr. 4, 1919	Apr. 8, 1919	E-106	497
55544	Aug. 14	Composition of matter	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	Q-106 S-113	419 297
55635	Aug. 21	Creosote and guaiacol	Apr. 4, 1919	Apr. 8, 1919	Y-106	407
55658	Aug. 21	Plasters and salves	Apr. 4, 1919	Apr. 8, 1919	N-106	463
55723	Aug. 21	Derivatives of cinchona alkaloids.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
55759	Aug. 21	Preparations of sodium theobromate and sodium salicylate.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
56371	Sept. 18	A medicine for kidney and heart diseases.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
56434	Sept. 25	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
56885	Oct. 23	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457

[3] Not demanded.

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 22.				
	1906					
57052	Oct. 30	Chemicals for reducing, discharging and bleaching purposes.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
57145	Nov. 6	Photographic developers	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	Y-106 X-113	412 319
57153	Nov. 6	Preparation made from leeches.	Apr. 4, 1919	Apr. 8, 1919	J-106	421
57159	Nov. 6	Medical plasters	Apr. 4, 1919	Apr. 8, 1919	N-106	463
57218	Nov. 6	Photographic developers	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	Y-106 X-113	412 319
57220	Nov. 6	Certain named medicinal compounds.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
57493	Nov. 13	Chemical finishing compound	Apr. 4, 1919	Apr. 8, 1919	R-106	446
57505	Nov. 13	Bactericides	Apr. 4, 1919	Apr. 8, 1919	T-106	426
58089	Dec. 4	A germicide	Apr. 4, 1919	Apr. 8, 1919	U-106	379
58412	Dec. 11	Ferruginous preparations	Apr. 4, 1919	Apr. 8, 1919	G-107	18
58700	Dec. 25	Insulating and protective paints and varnishes.	Apr. 4, 1919	Apr. 8, 1919	E-106	486
	1907					
59181	Jan. 1	Briquets of iron and silica	Apr. 4, 1919	Apr. 8, 1919	R-106	457
59289	Jan. 1	Cathartics	Apr. 4, 1919	Apr. 8, 1919	J-107	3
		T. M. 23.				
	1907					
59443	Jan. 8	Cement for filling teeth	June 28, 1919 Apr. 4, 1919	July 1, 1921 Apr. 8, 1919	C-113 Y-106	324 409
60440	Feb. 5	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	N-106	457
60607	Feb. 12	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	M-106	461
60763	Feb. 19	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
61165	Mar. 5	Certain medicinal compounds	Apr. 4, 1919	Apr. 8, 1919	M-106	461
61255	Mar. 12	A medical preparation to be used as an antigonorrheic.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
61628	Apr. 2	A detergent cleaning preparation.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	L-106 F-113	406 275
62058	Apr. 16	Antitoxic serums	Apr. 4, 1919	Apr. 8, 1919	J-106	431
62340	Apr. 30	Measuring and scientific optical apparatus, appliances and instruments.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
62605	May 14	Inks	Apr. 4, 1919	Apr. 8, 1919	G-107	23
63161	June 11	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
63162	June 11	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
63256	June 11	Chemicals used in reducing, discharging and bleaching.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
63257	June 11	Dyestuff	Apr. 4, 1919	Apr. 8, 1919	N-106	457
		T. M. 24.				
63258	June 11	Dyestuff and chemicals used in reducing, discharging and bleaching.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
63303	June 11	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	N-106	457
63539	June 25	Raw catgut and sewing silk for surgical purposes.	Apr. 4, 1919	Apr. 8, 1919	J-106	429
63554	June 25	A local anesthetic	Apr. 4, 1919	Apr. 8, 1919	U-106	376
63562	June 25	Subcutaneous injections	Apr. 4, 1919	Apr. 8, 1919	U-106	376
63563	June 25	Remedy for certain diseases	Apr. 4, 1919	Apr. 8, 1919	U-106	373
63650	July 2	A curative serum for the prevention of hay fever.	Apr. 4, 1919	Apr. 8, 1919	Y-106	422
63910	July 16	Liquid preparation for soldering and coating metals.	Apr. 4, 1919	Apr. 8, 1919	M-106	473
64654	Aug. 20	Anesthetics	Apr. 4, 1919	Apr. 8, 1919	E-106	90
64669	Aug. 20	A color-setting compound used in dyeing.	Apr. 4, 1919	Apr. 8, 1919	S-106	25
65161	Sept. 10	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	R-106	52
65296	Sept. 17	Certain weighing apparatus	Apr. 4, 1919	Apr. 8, 1919	C-106	492
65473	Oct. 8	A color-setting compound used in dyeing.	Apr. 4, 1919	Apr. 8, 1919	S-106	415

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 25				
	1907					
65549	Oct. 8	Certain medicines	Apr. 4, 1919	Apr. 8, 1919	R-106	456
65761	Oct. 22	Soap manufactured from wool grease.	Apr. 4, 1919	Apr. 8, 1919	F-107	15
66004	Nov. 5	Glass tubes for water gages	Apr. 4, 1919	Apr. 8, 1919	M-106	459
66353	Nov. 26	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	Z-106	331
			June 29, 1921	July 1, 1921	P-113	286
66400	Nov. 26	Soap made of wool fat	Apr. 4, 1919	Apr. 8, 1919	F-107	15
66585	Dec. 17	Impregnating agents for preserving and coating wood.	Apr. 4, 1919	Apr. 8, 1919	L-106	405
	1908					
67605	Feb. 11	Remedy for gall stones	Apr. 4, 1919	Apr. 8, 1919	U-106	376
67643	Feb. 11	Optical instruments	Apr. 4, 1919	Apr. 8, 1919	N-106	479
			June 24, 1921	June 25, 1921	O-113	240
67964	Mar. 3	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	N-106	457
67965	Mar. 3	Dyestuffs, including indigo and indigo preparations, coal-tar dyes.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
67986	Mar. 3	Chemical nickel salt	Apr. 4, 1919	Apr. 8, 1919	N-106	472
68043	Mar. 3	Soap	Apr. 4, 1919	Apr. 8, 1919	Z-106	331
			June 29, 1921	July 1, 1921	P-113	286
68080	Mar. 3	Ultramarine blue	Apr. 4, 1919	Apr. 8, 1919	F-107	21
		T. M. 26.				
68169	Mar. 10	Syringes and surgical irrigators	Apr. 4, 1919	Apr. 8, 1919	M-107	25
68546	Apr. 14	Disinfectants	Apr. 4, 1919	Apr. 8, 1919	Z-106	326
68570	Apr. 14	Optical instruments and parts thereof.	Apr 4, 1919	Apr. 8, 1919	N-106	479
			June 24, 1921	June 25, 1921	O-113	240
68571	Apr. 14	Optical instruments and parts therof.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
			June 24, 1921	June 25, 1921	O-113	240
68572	Apr. 14	Optical instruments and parts thereof.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
			June 24, 1921	June 25, 1921	O-113	240
68573	Apr. 14	Optical instruments and parts thereof.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
			June 24, 1921	June 25, 1921	O-113	240
68604	Apr. 21	Certain medicines and toilet preparations.	Apr. 4, 1919	Apr. 8, 1919	N-106	463
68797	Apr. 28	Leather dressing and leather blacking.	Apr. 4, 1919	Apr. 8, 1919	H-106	492
69001	May 12	Prismatic telescopes	Apr. 4, 1919	Apr. 8, 1919	U-106	369
69128	May 19	Certain remedies	Apr. 4, 1919	Apr. 8, 1919	Z-106	331
			July 2, 1921	July 5, 1921	K-113	263
			July 2, 1921	July 5, 1921	K-113	261
			July 2, 1921	July 5, 1921	K-113	260
69147	May 19	Remedies for certain diseases	Apr. 4, 1919	Apr. 8, 1919	Z-106	331
			June 29, 1921	July 1, 1921	P-113	286
69213	May 26	Veterinary medicine in the form of pills or powders.	Apr. 4, 1919	Apr. 8, 1919	Q-106	420
69247	June 2	Disinfectants and antiseptics	Apr. 4, 1919	Apr. 8, 1919	Z-106	335
		T. M. 27.				
69366	June 9	Ultramarine blue	Apr. 4, 1919	Apr. 8, 1919	F-107	21
69420	June 9	Ultramarine blue	Apr. 4, 1919	Apr. 8, 1919	F-107	21
69958	July 21	Certain chemical preparations.	Apr. 4, 1919	Apr. 8, 1919	Y-106	407
70427	Sept. 1	Certain surgical apparatus	Apr. 4, 1919	Apr. 8, 1919	F-106	458
71156	Nov. 3	Certain optical goods	Apr. 4, 1919	Apr. 8, 1919	U-106	369
71199	Nov. 10	Certain rubber goods	Apr. 4, 1919	Apr. 8, 1919	Y-106	405
71288	Nov. 17	Certain measures and optical goods.	Apr. 4, 1919	Apr. 8, 1919	H-106	492
71330	Nov. 17	Certain surgical goods and medicine chests.	Apr. 4, 1919	Apr. 8, 1919	H-106	492
71337	Nov. 17	Certain rubber goods	Apr. 4, 1919	Apr. 8, 1919	Y-106	405
71349	Nov. 17	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	N-106	457
71638	Dec. 8	Medicine for internal use	Apr. 4, 1919	Apr. 8, 1919	T-106	417

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 27—Continued.				
	1909					
72251	Jan. 12	An aromatic iron tonic as a remedy for anemia.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
72321	Jan. 19	Medicinal electrolytic preparations.	Apr. 4, 1919	Apr. 8, 1919	E-106	494
		T. M. 28.				
72322	Jan. 19	Remedies for certain diseases	Apr. 4, 1919 July 2, 1921 July 2, 1921 July 2, 1921	Apr. 8, 1919 July 5, 1921 July 5, 1921 July 5, 1921	Z-106 K-113 K-113 K-113	331 263 261 260
72331	Jan. 19	Antiparasitic preparation for plants.	Apr. 4, 1919	Apr. 8, 1919	I-106	445
72455	Jan 26	Medicinal preparations containing iodin, or its salts and albumen.	Apr. 4, 1919 Jan 13, 1919	Apr. 8, 1919 Jan. 16, 1919	N-106 K-106	476 76
72602	Feb. 9	Medicinal dietetical iron preparations.	Apr. 4, 1919	Apr. 8, 1919	H-106	495
72603	Feb. 9	Rubber preparations for covering the skin for hygienian purposes.	Apr. 4, 1919	Apr. 8, 1919	H-106	495
72706	Feb. 16	A tonic remedy for diseases of the heart.	Apr. 4, 1919	Apr. 8, 1919	H-106	495
72707	Feb. 16	A remedy for rhachitis	Apr. 4, 1919	Apr. 8, 1919	H-106	495
73012	Mar. 9	Medicine for heart diseases	Apr. 4, 1919	Apr. 8, 1919	M-106	461
73162	Mar. 23	Measuring machines or instruments.	Apr. 4, 1919	Apr. 8, 1919	G-106	388
73187	Mar. 30	Laxative tablets	Apr. 4, 1919	Apr. 8, 1919	V-106	458
73301	Apr. 6	Disinfectants	Apr. 4, 1919	Apr. 8, 1919	B-106	499
		T. M. 29.				
73628	May 4	Synthetic oil of violet	Apr. 4, 1919	Apr. 8, 1919	J-106	431
73648	May 4	Physical devices and instruments for treating fluids with radioactive preparations.	Apr. 4, 1919	Apr. 8, 1919	K-106	479
73751	May 18	Inhalation masks	Apr. 4, 1919	Apr. 8, 1919	N-106	463
73755	May 18	Medicine	Apr. 4, 1919	Apr. 8, 1919	M-106	461
73761	May 18	Boiler compound	Apr. 4, 1919	Apr. 8, 1919	N-106	459
74332	July 6	A remedy for arteriosclerosis and attendant diseases and a diuretic.	Apr. 4, 1919	Apr. 8, 1919	F-107	17
74333	July 6	A remedy against gonorrhea and cystitis.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
74558	July 20	A venereal remedy	Apr. 4, 1919	Apr. 8, 1919	M-106	460
74581	July 20	A chemical preparation for rendering cement, mortar, and the like waterproof.	Apr. 4, 1919	Apr. 8, 1919	N-106	478
74856	Aug. 17	Salves, ointments, powders, and tablets for coughs and colds.	Apr. 4, 1919	Apr. 8, 1919	G-106	391
74913	Aug. 17	Certain named scientific appliances and parts thereof.	Apr. 4, 1919	Apr. 8, 1919	K-106	471
76056	Dec. 7	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	N-106	457
		T. M. 30.				
75091	Aug. 31	Pharmaceutical preparations for treating disorders of the skin.	Apr. 4.1919 June 28,1921	Apr. 8, 1919 July 1, 1921	P-106 S-113	467 294
75300	Sept. 21	A remedy for rheumatism and gout.	Apr. 4, 1919 June 28,1921	Apr. 8, 1919 July 1, 1921	R-106 P-113	453 275
76243	Dec. 28	Dyestuffs	Apr. 4, 1919	Apr. 8, 1919	N-106	457
76244	Dec. 28	Coal tar coloring matters	Apr. 4, 1919	Apr. 8, 1919	N-106	457
76245	Dec. 28	Chemicals used in reducing, discharging and bleaching.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
	1910					
76268	Jan. 4	Coloring matters	Apr. 4, 1919	Apr. 8, 1919	N-106	457

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 30—Continued.				
76318	1910 Jan. 4	A preparation of chloroform for medicinal use.	Apr. 4, 1919	Apr. 8, 1919	F-107	22
76404	Jan. 11	Paint	Apr. 4, 1919	Apr. 8, 1919	K-106	477
76472	Jan. 18	Soldering-fluxes	Apr. 4, 1919	Apr. 8, 1919	T-106	420
76580	Feb. 1	Chemicals to be used when bucking or scouring dyed textile materials.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
76808	Feb. 15	Certain chemicals and chemical preparations.	Apr. 4, 1919	Apr. 8, 1919	Z-106	333
76958	Mar. 1	Chemicals used in reducing, discharging and bleaching.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
		T. M. 31.				
76968	Mar. 1	Lecithin preparations	Apr. 4, 1919	Apr. 8, 1919	G-106	385
77192	Mar. 22	Coloring matters	Apr. 4, 1919	Apr. 8, 1919	N-106	457
77617	Apr. 26	Certain cutlery	Apr. 4, 1919	Apr. 8, 1919	R-106	459
77618	Apr. 26	Diuretic preparations	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	Z-106 F-113	336 274
77323	Mar. 29	Means for preventing certain infections.	Apr. 4, 1919	Apr. 8, 1919	P-106	467
77657	Apr. 26	Lactic-acid bacteria and dietetical preparations.	Apr. 4, 1919	Apr. 8, 1919	P-106	469
77790	May 10	Linoleum	Apr. 4, 1919	Apr. 8, 1919	R-106	458
78065	May 31	Antiseptic mouth wash	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	Z-106 F-113	338 274
78617	June 28	Medicinal preparation	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	P-106 S-113	467 294
78933	July 26	Plastic compositions for making gums for artificial teeth.	Apr. 4, 1919	Apr. 8, 1919	R-106	450
79036	Aug. 2	A substitute for camphor in celluloid manufactures.	Apr. 4, 1919	Apr. 8, 1919	Z-106	325
79186	Aug. 16	A mineral powder for decolorizing oil.	Apr. 4, 1919	Apr. 8, 1919	N-106	467
		T. M. 32.				
79656	Sept. 27	A remedy for diseases of swine	Apr. 4, 1919	Apr. 8, 1919	F-106	455
79700	Sept. 27	Animal serum	Apr. 4, 1919	Apr. 8, 1919	Y-106	422
80000	Oct. 25	Preparation for cleansing and preserving the teeth and mouth.	Apr. 4, 1919	Apr. 8, 1919	M-107	18
80001	Oct. 25	Tooth paste, tooth cream, tooth powder and lotion.	Apr. 4, 1919	Apr. 8, 1919	M-107	18 18
80238	Nov. 22	Carbolic acid, cresol, and disinfectants.	Apr. 4, 1919	Apr. 8, 1919	K-106	482
80257	Nov. 22	Telescopes	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
80258	Nov. 22	Telescopes	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
80313	Dec. 6	Calculating machines	Apr. 4, 1919	Apr. 8, 1919	T-106	425
80338	Dec. 13	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	N-106	457
80780	1911 Jan. 31	Molding material for dental purposes.	Apr. 4, 1919	Apr. 8, 1919	C-106	493
80781	Jan. 31	Molding material for dental purposes.	Apr. 4, 1919	Apr. 8, 1919	C-106	498
81426	Apr. 11	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	N-106	457
81431	Apr. 11	Certain scientific apparatus and appliances.	Apr. 4, 1919	Apr. 8, 1919	R-106	461
		T. M. 33.				
81784	May 9	Medicinal plasters	Apr. 4, 1919	Apr. 8, 1919	V-106	458
81807	May 9	Preparation containing the active components of digitalis and strophanthus.	Apr. 4, 1919	Apr. 8, 1919	C-106	498

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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		T. M. 33—Continued.				
	1911					
82621	July 11	Fertilisers	Apr. 4, 1919	Apr. 8, 1919	I-106	449
83417	Sept. 12	Soaps and soap powders	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	P-106 S-113	467 294
83541	Sept. 26	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	N-106	457
83542	Sept. 26	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	N-106	457
83658	Oct. 3	A remedy for the treatment of gonorrhea and other venereal diseases.	Apr. 4, 1919	Apr. 8, 1919	P-106	470
83687	Oct. 3	Capsules made of gelatin and adapted to receive medicinal substances.	Apr. 4, 1919	Apr. 8, 1919	K-106	476
83906	Oct. 24	Neurotics and remedial preparations for nervous diseases.	Apr. 4, 1919	Apr. 8, 1919	Y-106	408
84258	Nov. 21	Optical instruments and certain specified scientific appliances	Apr. 4, 1919	Apr. 8, 1919	Y-106	429
84309	Nov. 28	Laxative medicinal gelatin preparations.	Apr. 4, 1919	Apr. 8, 1919	V-106	458
84559	Dec. 19	Dental drilling machines and parts thereof, rubber-dam clamps, and surgical instruments of steel.	Apr. 4, 1919	Apr. 8, 1919	I-106	455
		T. M. 34.				
84591	Dec. 26	Single and double prism telescopes.	Apr. 4, 1919	Apr. 8, 1919	R-106	461
84643	Dec. 26	Certain goods and chemical mixtures of fusible materials for the determination of temperature.	Apr. 4, 1919	Apr. 8, 1919	M-106	468
	1912					
84780	Jan. 2	A tonic in pulverized form	Apr. 4, 1919	Apr. 8, 1919	M-106	460
84922	Jan. 9	A disinfectant and an astringent remedy.	Apr. 4, 1919 Jan. 13, 1919	Apr. 8, 1919 Jan. 16, 1919	N-106 K-106	476 76
85108	Jan. 30	Silk-treating substances	Apr. 4, 1919	Apr. 8, 1919	T-106	423
85161	Jan. 30	Toilet soap	Apr. 4, 1919	Apr. 8, 1919	G-107	23
85162	Jan. 30	Toilet soap	Apr. 4, 1919	Apr. 8, 1919	G-107	23
85306	Feb. 6	Objective-lens system	Apr. 4, 1919 June 21, 1921	Apr. 8, 1919 June 24, 1921	N-106 Q-113	479 240
85307	Feb. 6	Objective-lens system	Apr. 4, 1919 June 21, 1921	Apr. 8, 1919 June 24, 1921	N-106 O-113	409 240
85308	Feb. 6	Objective-lens system	Apr. 4, 1919 June 21, 1921	Apr. 8, 1919 June 24, 1921	N-106 O-113	479 240
85309	Feb. 6	Field glasses	Apr. 4, 1919 June 21, 1921	Apr. 8, 1919 June 24, 1921	N-106 O-113	479 240
85310	Feb. 6	Field glasses	Apr. 4, 1919 June 21, 1921	Apr. 8, 1919 June 24, 1921	N-106 O-113	479 240
85539	Feb. 20	Certain optical goods	Apr. 4, 1919 June 21, 1921	Apr. 8, 1919 June 24, 1921	N-106 O-113	479 240
		T. M. 35.				
85549	Feb. 27	Derivatives of salicylic acid	Apr. 4, 1919	Apr. 8, 1919	R-106	452
86035	Apr. 9	Tapeworm remedy	Apr. 4, 1919	Apr. 8, 1919	V-106	458
86333	Apr. 30	Cement for filling teeth	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	U-106 Z-113	372 360
86601	May 21	Laxatives	Apr. 4, 1919	Apr. 8, 1919	M-106	465
86617	May 21	Glass tubes for water gages	Apr. 4, 1919	Apr. 8, 1919	U-106	371
86831	June 4	A remedy for diabetes	Apr. 4, 1919	Apr. 8, 1919	U-106	367
86848	June 4	Dyes	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	N-106 B-113	473 327
87050	June 25	Linomenes	Apr. 4, 1919	Apr. 8, 1919	H-106	496
87075	June 25	Certain measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	C-106	499
87097	June 25	Toilet soap	Apr. 4, 1919	Apr. 8, 1919	G-107	23
87164	July 2	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	L-106	398

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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		T. M. 35—Continued.				
	1912					
87337	July 9	Bleaching preparations	Apr. 4, 1919	Apr. 8, 1919	C-106	490
87996	Aug. 20	Calculating and adding machines.	Apr. 4, 1919	Apr. 8, 1919	T-106	425
		T. M. 36.				
87991	Aug. 20	Calculating machines	Apr. 4, 1919	Apr. 8, 1919	T-106	425
88387	Sept. 10	Thomasphosphat	Apr. 4, 1919	Apr. 8, 1919	J-107	6
88454	Sept. 24	Salve for dermatological purposes.	Apr. 4, 1919	Apr. 8, 1919	J-107	3
88489	Sept 24	Preparations for use in removing printer's ink.	Apr. 4, 1919	Apr. 8, 1919	C-106	490
88517	Sept. 24	Toilet soap	Apr. 4, 1919	Apr. 8, 1919	G-107	23
88894	Oct. 29	A remedy for diseases of the skin.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
88896	Oct. 29	Remedy for diabetes	Apr. 4, 1919	Apr. 8, 1919	Q-106	426
89087	Nov. 12	White lead, red lead, orange mineral, and oxid of zinc.	Apr. 4, 1919	Apr. 8, 1919	N-106	469
89121	Nov. 12	A remedy for sleeplessness	Apr. 4, 1919	Apr. 8, 1919	M-106	461
89335	Dec. 10	Baking powder	Apr. 4, 1919	Apr. 8, 1919	R-106	451
89611	Dec 31	Leather preservatives, finishing and tanning agents.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
	1913					
89957	Jan. 21	An antiseptic solution of rosin for dressing and bandaging wounds.	Apr. 4, 1919	Apr. 8, 1919	T-106	415
		T. M. 37.				
90154	Feb. 11	Drop glasses	Apr. 4, 1919	Apr. 8, 1919	T-106	413
90256	Feb. 11	A product of the condensation of tannic acid with thymol.	Apr. 4, 1919	Apr. 8, 1919	J-106	431
90299	Feb. 18	Certain named photographic apparatus and supplies therefor.	Apr. 4, 1919	Apr. 8, 1919	H-106	494
90353	Feb. 18	Water-repelling preservative paints for certain named surfaces.	Apr. 4, 1919	Apr. 8, 1919	Q-106	425
90505	Mar. 4	Preparation of opium, both in liquid and solid form.	Apr. 4, 1919	Apr. 8, 1919	R-106	451
90712	Mar. 18	Salves for medical and hygienic purposes.	Apr. 4, 1919	Apr. 8, 1919	Q-106	424
90802	Mar. 25	Leucite phonolite (mineral manure).	Apr. 4, 1919	Apr. 8, 1919	T-106	421
90854	Mar. 25	A remedy for certain skin affections and other skin diseases.	Apr. 4, 1919	Apr. 8, 1919	V-106	457
90954	Apr. 8	Salves for dermatological purposes.	Apr. 4, 1919	Apr. 8, 1919	J-107	3
90967	Apr. 8	A remedy for nervous diseases	Apr. 4, 1919	Apr. 8, 1919	V-106	457
		T. M. 38.				
91540	May 6	Turpentine and turpentine compositions.	Apr. 4, 1919	Apr. 8, 1919	N-106	468
91584	May 13	Sensitized photographic paper and cardboard.	Apr. 4, 1919	Apr. 8, 1919	M-106	469
91647	May 20	A remedy for furunculosis and acne.	Apr. 4, 1919	Apr. 8, 1919	V-106	457
91659	May 20	Calculating and adding machines.	Apr. 4, 1919	Apr. 8, 1919	T-106	425
91685	May 20	Serum preparations in form for application to boils and similar afflictions.	Apr. 4, 1919	Apr. 8, 1919	G-107	19
92309	July 1	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	C-106	499
92537	July 15	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	H-106	492

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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		T. M. 38—Continued.				
92538	1913 July 15	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	H-106	492
92621	July 22	Salves	Apr. 4, 1919	Apr. 8, 1919	J-107	3
92622	July 22	Mercurial preparation of all kinds for treatment of venereal maladies.	Apr. 4, 1919	Apr. 8, 1919	J-107	3
		T. M. 39.				
92623	July 22	Salves	Apr. 4, 1919	Apr. 8, 1919	J-107	3
92716	July 22	Certain dental, medical and surgical appliances.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	U-106 Z-113	372 360
93037	Aug. 12	Disinfectants and antiseptics	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	B-106 V-113	499 327
93038	Aug. 12	Disinfectants and antiseptics	Apr. 4, 1919 June 29, 1921	Apr. 8, 1919 July 1, 1921	B-106 V-113	499 327
93220	Aug. 26	Certain chemicals, medicines, and pharmaceutical preparations.	Apr. 4, 1919	Apr. 8, 1919	J-107	5
93230	Aug. 26	Ointment and vulnerary powder.	Apr. 4, 1919	Apr. 8, 1919	L-106	397
93383	Sept. 9	An antisyphiliticum	Apr. 4, 1919	Apr. 8, 1919	J-106	430
93467	Sept. 16	Inorganic acids, sodium-bisulfate, potash and nitrate of soda and saccharin.	Apr. 4, 1919	Apr. 8, 1919	J-106	419
93577	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919 June 24, 1921	Apr. 8, 191[illegible] June 25, 1921	N-106 O-113	479 240
93578	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
		T. M. 40.				
93579	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
93580	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
93581	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
93582	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
93623	Sept. 30	Certain named optical goods	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
93646	Oct. 7	An antiseptic	Apr. 4, 1919	Apr. 8, 1919	Y-106	418
93670	Oct. 14	Certain remedies for treatment of certain diseases.	Apr. 4, 1919	Apr. 8, 1919	J-107	3
93730	Oct. 14	Tar colloids employed as a specific for diseases of the skin.	Apr. 4, 1919	Apr. 8, 1919	M-107	27
93784	Oct. 14	Coloring materials for painters' use.	Apr. 4, 1919	Apr. 8, 1919	F-107	14
93955	Oct. 28	Anilin dyes and other named chemicals.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
		T. M. 41.				
94062	Nov. 4	Laxative preparations	Apr. 4, 1919	Apr. 8, 1919	V-106	458
94372	Dec. 2	Artificial wood	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	Y-106 P-113	405 258
94409	Dec. 2	Objective lens systems	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
94591	Dec. 23	Chemical substances prepared for use in certain named purposes.	Apr. 4, 1919	Apr. 8, 1919	N-106	461
94620	Dec. 23	Mechanical respiratory apparatus and devices for administering oxygen.	Apr. 4, 1919	Apr. 8, 1919	F-106	458

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 41—Continued.				
	1913					
94602	Dec. 23	A remedy for gonorrhea	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	J-107 C-113	1 322
94740	Dec. 30	Oil paints and water colors, paint and pigments therefor.	Apr. 4, 1919	Apr. 8, 1919	I-106	449
94783	Dec. 30	Agar preparations for bacteriological purposes.	Apr. 4, 1919	Apr. 8, 1919	V-106	458
	1914					
95007	Jan. 20	Medicinal nerve-sedative preparations.	Apr. 4, 1919	Apr. 8, 1919	G-107	17
95324	Feb. 10	A remedy employed as a sedative in cough and asthmatic ailments.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
		T. M. 42.				
95356	Feb. 10	Certain surgical sewing and ligation means, in a raw sterilized or prepared state.	Apr. 4, 1919	Apr. 8, 1919	J-106	429
95495	Feb. 17	Cholin preparations	Apr. 4, 1919	Apr. 8, 1919	F-107	15
95532	Feb. 24	Syringes	Apr. 4, 1919	Apr. 8, 1919	S-106	420
95782	Mar. 10	Paint for certain named materials and paste, preventing rust and tarnish.	Apr. 4, 1919	Apr. 8, 1919	K-106	477
95817	Mar. 17	Additions to discharges for printing textile material.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
95977	Mar. 31	Soap	Apr. 4, 1919	Apr. 8, 1919	N-106	463
96316	Apr. 14	Dry paste, and ready-mixed paint and varnish.	Apr. 4, 1919	Apr. 8, 1919	I-106	448
96758	Apr. 28	A soporific preparation	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	F-107 C-113	17 327
96853	May 5	Coloring-matters and chemicals used in dyeing and printing.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
96854	May 5	Dyestuff and colors	Apr. 4, 1919	Apr. 8, 1919	N-106	457
96900	May 5	Double salt of narcotin and morphin.	Apr. 4, 1919	Apr. 8, 1919	R-106	452
		T. M. 43.				
97116	May 19	Yeast fat, the active principle of yeast as a remedy for boils, furunculosis, acne, and constipation.	Apr. 4, 1919	Apr. 8, 1919	R-106	452
97367	June 16	Solvents for cellulose esters, resins, and the like.	Apr. 4, 1919	Apr. 8, 1919	N-106	457
97930	June 23	Surveying, photographic, and optical apparatus.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
97950	June 30	Dye colors, dyes, and insecticides.	Apr. 4, 1919	Apr. 8, 1919	V-106	404
97979	June 30	Pharmaceutical preparations for skin diseases and women's diseases.	Apr. 4, 1919	Apr. 8, 1919	M-107	23
97997	June 30	Magnesium preparation	May 12, 1919	May 14, 1919	H-107	82
98099	June 30	Coloring matters for use as ingredients in food.	Apr. 4, 1919	Apr. 9, 1919	J-107	8
98211	July 7	Medicinal, dietetic, and pharmaceutical preparations of cod-liver oil and oil emulsions.	Apr. 4, 1919	Apr. 8, 1919	Y-106	427
98220	July 7	Coloring matters for use as ingredients in food.	Apr. 4, 1919	Apr. 8, 1919	J-107	8
98468	July 21	Hygienic and cosmetic preparations for the hair.	Apr. 4, 1919	Apr. 8, 1919	N-106	463

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 44.				
98488	1914 July 21	Certain named medical and surgical instruments and appliances.	Apr. 4, 1919	Apr. 8, 1919	F-106	453
98489	July 21	Certain named medical and surgical instruments and appliances.	Apr. 4, 1919	Apr. 8, 1919	F-106	453
98561	July 21	Tanners' bark, quebracho bark, tanning extracts, corrosives, and catechu-tannic acid.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	K-106 T-113	478 301
98562	July 21	Tanners' bark, quebracho bark, tanning extracts, corrosives, and catechu-tannic acid preventive for leather.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	K-106 T-113	478 301
99024	Aug. 11	A medicinal preparation for the treatment of diabetes.	Apr. 4, 1919	Apr. 8, 1919	J-106	423
99025	Aug. 11	A medicinal preparation used in the treatment of certain-named diseases.	Apr. 4, 1919	Apr. 8, 1919	J-106	423
99273	Aug. 25	Positive black print paper	Apr. 4, 1919	Apr. 8, 1919	R-106	448
99331	Aug. 25	Linseed oil	Apr. 4, 1919	Apr. 8, 1919	I-106	449
99822	Sept. 15	Preparation for treating malaria and similar diseases and pneumococcus infection.	Apr. 4, 1919	Apr. 8, 1919	F-107	17
		T. M. 45.				
100163	Oct. 6	Wafer capsules, tablets, or shells for administering medicines.	Apr. 4, 1919	Apr. 8, 1919	J-106	433
100408	Oct. 26	Tanning greases and oils	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	K-106 T-113	478 301
100487	Oct. 20	Perfumery, cosmetics, preparations for the hair, mouth, and teeth.	Apr. 4, 1919	Apr. 8, 1919	N-106	403
100491	Oct. 20	Surgical rubber goods, rubber teats and nipples, and rubber sponges.	Apr. 4, 1919	Apr. 8, 1919	R-106	447
100615	Oct. 20	Tanning greases and oils	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	K-106 T-113	478 301
100688	Oct. 20	Lenses for scientific use, prisms, etc.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
100689	Oct. 20	Lenses for scientific use, prisms, etc.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
100947	Nov. 3	Bandages	Apr. 4, 1919	Apr. 8, 1919	N-106	464
100962	Nov 3	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	F-106	454
100963	Nov. 3	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	F-106	454
		T. M. 46.				
100987	Nov. 3	Cameras	Apr. 4, 1919	Apr. 8, 1919	P-106	462
101014	Nov. 3	Oil colors in tubes and water colors.	Apr. 4, 1919	Apr. 8, 1919	J-106	434
101034	Nov. 10	Certain medicinal preparations for internal and external use.	Apr. 4, 1919	Apr. 8, 1919	L-106	394
101161	Nov. 17	Remedy for diabetes, furunculosis, gout, skin affections, leucorrhea, and constipation.	Apr. 4, 1919	Apr. 8, 1919	Y-106	413
102054	1915 Jan. 26	Solids, liquids, or pastes for washing and cleaning purposes.	Apr. 4, 1919	Apr. 8, 1919	Z-106	334
103249	Mar. 23	Artists' colors of all kinds	Apr. 4, 1919	Apr. 8, 1919	J-106	434
103250	Mar. 23	Oil and water colors, painters' oils and varnishes.	Apr. 4, 1919	Apr. 8, 1919	J-106	424

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		T. M. 46—Continued.				
103380	1915 Mar. 30	A preservative coating material.	Apr. 4, 1919	Apr. 8, 1919	H-106	497
103776	Apr. 13	Surgical and medical plasters	Apr. 4, 1919	Apr. 8, 1919	N-106	463
103900	Apr. 20	A remedy employed as a laxative and for the treatment of constipation.	Apr. 4, 1919	Apr. 8, 1919	M-106	461
		T. M. 47.				
104674	June 8	Alcohol-measuring apparatus and condenser water meters.	Apr. 4, 1919	Apr. 8, 1919	T-106	416
104930	June 29	Cleaning and polishing preparations for certain-named materials.	Apr. 4, 1919	Apr. 8, 1919	L-106	403
104992	June 29	Preparation containing radium and having radioactive properties.	Apr. 4, 1919	Apr. 8, 1916	J-106	427
105119	July 6	Certain named photographic supplies.	Apr. 4, 1919	Apr. 8, 1919	G-107	16
105313	July 20	Eyeglasses	Apr. 4, 1919	Apr. 8, 1919	R-106	461
106086	Oct. 12	Paints and varnishes for protection against atmospheric influences.	Apr. 4, 1919	Apr. 8, 1919	E-106	486
106131	Oct. 12	Certain named measuring and scientific appliances and parts thereof.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
106132	Oct. 12	Certain named measuring and scientific appliances and parts thereof.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	N-106 O-113	479 240
106213	Oct. 19	Remedies for certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	V-106	461
106248	Oct. 19	Artificial corundum	Apr. 4, 1919	Apr. 8, 1919	I-106	452
		T. M. 48.				
106407	Oct. 19	Certain named manicure implements.	Apr. 4, 1919	Apr. 8, 1919	R-106	455
106473	Oct. 19	Certain named photographic apparatus and supplies.	Apr. 4, 1919	Apr. 8, 1919	G-107	16
107076	Nov. 9	Photographic cameras	Apr. 4, 1919	Apr. 8, 1919	P-106	462
107098	Nov. 9	Antiseptics for internal and external use.	Apr. 4, 1919	Apr. 8, 1919	U-106	374
107547	Dec. 7	A remedy for nervous diseases	Apr. 4, 1919	Apr. 8, 1919	V-106	457
108440	1916 Feb. 8	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	G-107	20
108525	Feb. 15	Bandaging material	Apr. 4, 1919	Apr. 8, 1919	P-106	466
111674	July 25	Cement filling for teeth	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	U-106 Z-113	372 360
111849	Aug. 8	Certain named surgical and dental appliances.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	U-106 Z-113	372 360
111929	Aug. 15	Compositions for finishing textile fabrics.	Apr. 4, 1919	Apr. 8, 1919	S-106	414
114340	Dec. 12	Tanning substances	Apr. 4, 1919	Apr. 8, 1919	S-106	413
119283	1917 Nov. 13	Bates for leather industries	Apr. 4, 1919	Apr. 8, 1919	S-106	413
		49. Supplemental.				
12511	1885 Aug. 18	A remedy for certain indicated diseases.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
13802	1886 Nov. 16	Medical preparation	(a)	—	—	—

(a) Not demanded

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		49. Supplemental—Con.				
		T. M. 30—Continued.				
	1887					
14100	Feb. 22	Liquid gold and material for decorating and coloring earthenware, porcelain, and glass.	Apr. 4, 1919	Apr. 8, 1919	H-106	498
	1888					
15989	Nov. 6	A preparation of hyoscyamin known as duboisin.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
15990	Nov. 6	An alkaloid, to wit, oxytolnyltropein.	Apr. 8, 1919	....	....	....
	1889					
17273	Dec. 17	Chemical substances and preparations used in photography.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
17325	Dec. 31	Chemical compounds derived from chloral.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
	1891					
18825	Jan. 13	Certain named chemicals	Apr. 4, 1919	Apr. 8, 1919	L-106	401
19064	Feb. 24	Ammonia preparations for medical purposes.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
		T. M. 1.				
19855	July 7	Ammonia derivatives	Apr. 4, 1919	Apr. 8, 1919	L-106	401
19856	July 7	Glococoll derivatives	Apr. 4, 1919	Apr. 8, 1919	L-106	401
20156	Sept 22	Basic gallate of bismuth	Apr. 4, 1919	Apr. 8, 1919	I-106	390
20452	Dec. 8	A remedy for fevers, tuberculosis, abscesses, and rheumatism.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
20518	Dec 29	Chemical preparations for use in photography.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
	1892					
20617	Jan. 19	A remedy for phthisic	Apr. 4, 1919	Apr. 8, 1919	I-106	390
20618	Jan. 19	A remedy for phthisic	Apr. 4, 1919	Apr. 8, 1919	I-106	390
22153	Dec. 13	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
22154	Dec. 13	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
	1893					
22375	Jan. 24	Remedies for cancerous diseases.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
		T. M. 2.				
23530	Aug. 22	Preparations of iron derived from animal matter, known as physiological iron preparations.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
23531	Aug. 22	Preparations of iron derived from animal matter, known as physiological iron preparations.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
23533	Aug. 22	Therapeutic remedies	Apr. 4, 1919	Apr. 8, 1919	L-106	401
23534	Aug. 22	Medicinal agents for nervous diseases and a febrifuge.	June 28, 1921 Apr. 8, 1919	July 1, 1921 Apr. 9, 1919	S-113 N-106	298 490
23536	Aug. 22	Whooping cough and asthmatic diseases.	June 28, 1921 Apr. 8, 1919	July 1, 1921 Apr. 9, 1919	S-113 N-106	298 490
23537	Aug. 22	Remedies for cancerous diseases.	June 28, 1921 Apr. 8, 1919	July 1, 1921 Apr. 9, 1919	S-113 N-106	298 490
23629	Sept 19	Germicides, disinfectants, and other deodorizing preparations.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
	1894					
24093	Jan. 23	Medicinal agents for use in nervous diseases as a febrifuge and soporific.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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		49. Supplemental—Con.				
		T. M. 2—Continued.				
24094	1894 Jan. 23	Medicinal agents for use in urinary diseases.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July [illegible], 1921	N-106 S-113	490 298
24188	Feb. 6	Antiseptics	Apr. 4, 1919	Apr. 8, 1919	L-106	401
		T. M. 3.				
24418	Mar. 27	Chemical and pharmaceutical preparations.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
26020	1895 Feb. 12	A remedy for wounds	Apr. 4, 1919	Apr. 8, 1919	I-106	390
26022	Feb. 12	A remedy for fever and whooping cough.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
26155	Mar. 5	Photographic and chemical products.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
27257	Nov. 19	Ammonia preparations	Apr. 4, 1919	Apr. 8, 1919	L-106	401
27388	Dec. 3	Soporifics	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
27389	Dec. 3	Soporifics	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
28431	1896 June 23	A chemical preparation	Apr. 4, 1919	Apr. 8, 1919	L-106	401
28438	June 23	Anesthetics	Apr. 4, 1919	Apr. 8, 1919	L-106	401
29658	1897 Mar. 9	Chemicals having a narcotic influence.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
29914	Apr. 27	Antiseptics and antipyretics	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
		T. M. 4.				
29995	May 11	Medicinal chemicals	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
30078	May 25	Medicinal chemicals acting as internal and external astringent disinfectants.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
30140	June 8	Chemicals acting as intestinal astringents and antiseptics.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
31337	1898 Mar. 1	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
32002	Sept. 27	A chemical and medicinal preparation.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
32003	Sept. 27	A chemical and medicinal preparation.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
32177	Nov. 22	Cure for consumption	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	M-107 I-113	20 305
32178	Nov. 22	Cure for consumption	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	M-107 I-113	20 305
32209	Dec. 6	Dyestuffs applicable in coloring and printing processes.	Apr. 4, 1919	Apr 8, 1919	I-106	390
32210	Dec. 6	A local anesthetic for ophthalmological purposes.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
		T. M. 5.				
32211	Dec. 6	An albumin compound containing phosphorus.	Apr. 4, 1919 June 28, 1921	Apr. 8, 1919 July 1, 1921	I-106 G-113	390 284
32212	Dec. 6	Artificial dung	Apr. 4, 1919	Apr. 8, 1919	I-106	390
32213	Dec. 6	Medicine for wounds	Apr. 4, 1919	Apr. 8, 1919	I-106	390
32214	Dec. 6	A remedy for certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
32215	Dec. 6	A remedy for certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
32216	Dec. 6	A remedy for certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	I-106	390

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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		49. Supplemental—Con.				
	1898	T. M. 5—Continued.				
32287	Dec. 27	Cure for consumption	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	M-107 I-113	20 305
	1899					
32529	Feb. 21	Certain named chemical substances.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
32530	Feb. 21	Certain named chemical substances.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
32531	Feb. 21	Certain named chemical substances.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
32532	Feb. 21	Certain named chemical substances.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
		T. M. 6.				
32737	Apr. 18	Certain named medicinal chemicals.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
33153	June 27	Perfumes	Apr. 4, 1919	Apr. 8, 1919	E-106	483
33154	June 27	Perfumes	Apr. 4, 1919	Apr. 8, 1919	E-106	483
33417	Aug. 29	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
33418	Aug. 29	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
33504	Oct. 3	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	L-106	401
	1900					
34318	Mar. 13	A medicine for certain named purposes.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
34420	Apr. 3	Certain named medical compounds.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
34741	June 5	Metabolic product of tubercle bacilli.	Apr. 8, 1919 June 28, 1921	Apr. 9, 1919 July 1, 1921	N-106 S-113	490 298
35541	Dec. 4	Alkamine derivatives	Apr. 4, 1919	Apr. 8, 1919	L-106	401
35667	Dec. 25	A chemical compound for purifying acetylene.	Apr. 4, 1919	Apr. 8, 1919	H-106	498
		T. M. 7.				
	1902					
37736	Feb. 4	Mercury preparations	Apr. 4, 1919	Apr. 8, 1919	L-106	401
37916	Mar. 11	Photographic plates and films.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
38800	Aug. 19	Certain named medical compounds.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
38950	Sept. 30	Films, plates, and photographic papers.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
38951	Sept. 30	Coal-tar dyestuffs	Apr. 4, 1919	Apr. 8, 1919	E-106	483
39367	Nov. 25	Pharmaceutical products for certain named purposes.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
	1903					
40137	Apr. 21	Certain named photographic goods.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
40259	May 5	Photographic developing preparation	Apr. 4, 1919	Apr. 8, 1919	I-106	390
40680	June 30	Remedy for stomachic disturbances.	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	M-107 I-113	20 305
41254	Oct. 6	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
	1904					
41857	Jan. 12	Dyes	Apr. 4, 1919	Apr. 8, 1919	I-106	390
		T. M. 8.				
42988	July 12	Disinfecting and deodorizing agents.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
43029	July 19	Purgatives	Apr. 4, 1919	Apr. 8, 1919	L-106	401
43189	Aug. 16	Certain named medical substances.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
43418	Sept. 27	Certain named pharmaceutical products.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
43419	Sept. 27	Certain named therapeutic agents.	Apr. 4, 1919	Apr. 8, 1919	L-106	401

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		49. Supplemental—Con.				
		T. M. 8.—Continued.				
	1904					
43539	Oct. 18	Treatment of certain named diseases, etc.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
43628	Nov. 1	Certain named medical compounds.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
43656	Nov. 8	Soporifics	Apr. 4, 1919 June 24, 1921	Apr. 8, 1919 June 25, 1921	M-107 I-113	20 305
43705	Nov. 15	Dyes and chemical preparations for dyeing purposes.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
	1905					
44147	Feb. 7	A solution of hydrogen peroxid in water.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
	1906					
48756	Jan. 9	Dipropyl barbituric acid	Apr 8, 1919	Apr. 9, 1919	N-106	490
		T. M. 9.				
49160	Jan. 23	A soluble thiosinamine compound for medicinal use.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
52135	May 1	Antiseptics and deodorants	Apr. 4, 1919	Apr. 8, 1919	I-106	390
53072	May 22	Anesthetics	Apr. 4, 1919	Apr. 8, 1919	I-106	390
54566	June 26	An internal remedy being a diuretic medicine.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
54995	Aug. 7	A serum	Apr. 8, 1919	Apr. 9, 1919	N-106	490
55744	Aug. 21	Anesthetics	Apr. 4, 1919	Apr. 8, 1919	I-106	390
58733	Dec. 25	Perfumes	Apr. 4, 1919	Apr. 8, 1919	E-106	483
58734	Dec. 25	Perfumes	Apr. 4, 1919	Apr. 8, 1919	E-106	483
58735	Dec. 25	Remedies for nerve weakness and sexual neurasthenia.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
	1907					
59094	Jan. 1	Certain named chemicals	Apr. 4, 1919	Apr. 8, 1919	L-106	401
59160	Jan. 1	Remedy for certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
		T. M. 10.				
59161	Jan. 1	Certain named medicines	Apr. 4, 1919	Apr. 8, 1919	I-106	390
59185	Jan. 1	An antiseptic	Apr. 4, 1919	Apr. 8, 1919	I-106	390
59186	Jan. 1	Remedy for fever and whooping-cough.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
59290	Jan. 1	Albumin compound containing phosphorus.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
60467	Feb. 12	Photographic plates and films	Apr. 4, 1919	Apr. 8, 1919	E-106	483
60585	Feb. 12	Wool dyes	Apr. 4, 1919	Apr. 8, 1919	E-106	483
60586	Feb. 12	Coal-tar dyestuffs	Apr. 4, 1919	Apr. 8, 1919	E-106	483
60587	Feb. 12	Dyes and chemical preparations for dyeing purposes.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
60588	Feb. 12	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
60589	Feb. 12	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
60590	Feb. 12	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
60591	Feb. 12	Certain chemical substances	Apr. 4, 1919	Apr. 8, 1919	E-106	483
60592	Feb. 12	Certain chemical substances	Apr. 4, 1919	Apr. 8, 1919	E-106	483
		T. M. 11.				
60714	Feb. 19	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
60783	Feb. 19	An internal remedy for dieting purposes.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
60784	Feb. 19	Intestinal astringents	Apr. 4, 1919	Apr. 8, 1919	E-106	483
60785	Feb. 19	Sedatives	Apr. 4, 1919	Apr. 8, 1919	E-106	483
61677	Apr. 2	Films, plates, and photographic papers.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
61920	Apr. 9	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
62033	Apr. 16	External medicinal preparations for the skin.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
62034	Apr. 16	Certain medicinal preparations	Apr. 4, 1919	Apr. 8, 1919	E-106	483
62086	Apr. 16	Coal-tar dyestuffs	Apr. 4. 9119	Apr, 8, 1919	E-106	483

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording	Book.	Page.
		49. Supplemental—Con.				
		T. M. 11.—Continued.				
	1907					
62087	Apr. 16	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	E-106	483
62108	Apr. 16	Dyes	Apr. 4, 1919	Apr. 8, 1919	I-106	390
62109	Apr. 16	Dyestuffs applicable in coloring and printing processes.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
62674	May 21	Hair-dyeing preparations	Apr. 4, 1919	Apr. 8, 1919	E-103	483
		T. M. 12.				
62707	May 21	Coal-tar dyestuffs	Apr. 4, 1919	Apr. 8, 1919	E-106	483
62708	May 21	Coal-tar dyestuffs	Apr. 4, 1919	Apr. 8, 1919	E-106	483
62741	May 21	Films, plates, and photographic papers.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
62996	June 4	An astringent and hemostatic	Apr. 4, 1919	Apr. 8, 1919	I-106	390
63778	July 9	Coal-tar colors, including artificial indigo.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
64994	Sept. 3	Synthetic medicines and preparations made therefrom.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
64995	Sept. 3	Perfumeries	Apr. 4, 1919	Apr. 8, 1919	E-106	483
65165	Sept. 10	Benzoylguaiacol	Apr. 4, 1919	Apr. 8, 1919	I-106	390
65177	Sept. 10	Certain medicines	Apr. 4, 1919	Apr. 8, 1919	I-106	390
65287	Sept. 17	Anesthetics	Apr. 4, 1919	Apr. 8, 1919	E-106	483
65291	Sept. 17	Certain medicines	Apr. 4, 1919	Apr. 8, 1919	L-106	401
65624	Oct. 15	An antiseptic and disinfectant substance.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
65625	Oct 15	A product of formaldehyde	Apr. 4, 1919	Apr. 8, 1919	L-106	401
		T. M. 13.				
65626	Oct. 15	Antiseptics, deodorants, and disinfectants.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
65721	Oct. 22	Medicine for fever	Apr. 4, 1919	Apr. 8, 1919	I-106	390
66068	Nov. 5	Disinfecting and deodorizing apparatus.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
	1908					
67287	Jan. 28	Photographic developing substance.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
67288	Jan. 28	Photographic developing substances.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
67391	Feb. 4	Antiseptic remedies for the treatment of urinary passages	Apr. 4, 1919	Apr. 8, 1919	L-106	401
67619	Feb. 11	A solution of hydrogen peroxid in water.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
67963	Mar. 3	An internal remedy for urinary diseases.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
68111	Mar. 10	A derivative or a substitute for ergot.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
69205	May 26	Remedies for certain diseases	Apr. 4, 1919	Apr. 8, 1919	E-106	483
69208	May 26	A certain pharmaceutical preparation.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
69560	June 23	A medicinal powder	Apr. 4, 1919	Apr. 8, 1919	I-106	390
69267	June 2	A solution of hydrogen peroxid in water.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
		T. M. 14.				
71910	Dec. 22	A remedy for hog plague	Apr. 8, 1919	Apr. 9, 1919	N-106	490
	1909					
72716	Feb. 16	Remedy for leprosy	Apr. 4, 1919	Apr. 8, 1919	M-107	20
74280	June 29	Medical compound	Apr. 4, 1919	Apr. 8, 1919	I-106	390
75046	Aug. 31	A remedy for certain diseases	Apr. 4, 1919	Apr. 8, 1919	I-106	390
75616	Oct. 26	Hypnotics	Apr. 4, 1919	Apr. 8, 1919	L-106	401
	1910					
76468	Jan. 18	Sedative substances	Apr. 4, 1919	Apr. 8, 1919	L-106	401

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		49. Supplemental—Con.				
		T. M. 14—Continued.				
	1910					
76542	Jan. 25	Photographic developing substances.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
78598	June 28	Capsules and tablets of medicaments.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
78758	July 12	Medicines and pharmaceutical preparations.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
79969	Oct. 25	Remedy for certain diseases	Apr. 4, 1919	Apr. 8, 1919	I-106	390
80115	Nov. 8	Remedy for certain diseases	Apr. 4, 1919	Apr. 8, 1919	I-106	390
	1911					
80761	Jan. 31	Silver preparations for medicinal purposes.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
80861	Feb. 7	Certain chemicals	Apr. 8, 1919	Apr. 9, 1919	N-106	490
		T. M. 15.				
81062	Feb. 28	Remedy for the nerves of the brain.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
81388	Apr. 4	A medicinal powder	Apr. 4, 1919	Apr. 8, 1919	I-106	390
81507	Apr. 18	Chemical products for the production of galvanic bath solutions.	Apr. 4, 1919 July 17, 1919	Apr. 8, 1919 July 22, 1919	L-106 X-107	401 423
82283	June 20	A remedy for ophthalmic disorders and diseases of the urogenital system.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
84595	Dec. 26	Photographic toning preparations.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
	1912					
86317	July 9	Remedies for the treatment of gout and rheumatism.	(a)			
87768	June 4	Wound-healing remedies	(a)			
87041	June 25	Remedies for the treatment of gout and rheumatism.	Apr. 4, 1919	Apr. 8, 1919	L-106	401
87135	July 2	Pharmaceutical preparations containing fuller's earth.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
87187	July 2	A nutritious and entirely digestible carbon hydrate for diabetes.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
87188	July 2	An internal antiseptic for the uropoietic system.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
88242	Sept. 10	Purgatives	Apr. 4, 1919	Apr. 8, 1919	L-106	401
		T. M. 16.				
88478	Sept. 24	An antipyretic, antineuralgic, and sedative.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
88562	Oct. 1	An antipyretic, antineuralgic, and sedative.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
88563	Oct. 1	An antipyretic, antineuralgic, and sedative.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
88564	Oct. 1	An antipyretic, antineuralgic, and sedative.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
88862	Oct. 29	A remedy for certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
89100	Nov. 12	Antiarthriticum for treating and preventing arthritis and predisposition of lithuria.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
89101	Nov. 12	An officious tonic for heart and uterus.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
89119	Nov. 12	Preparation for treatment of wounds.	Apr. 4, 1919	Apr. 8, 1919	M-107	20
89595	Dec. 31	Solvents for resins, oils, natural or artificial perfumes.	Apr. 4, 1919	Apr. 8, 1919	E-106	483
	1913					
89917	Jan. 21	An internal antiseptic for the uropoietical system.	Apr. 4, 1919	Apr. 8, 1919	I-106	390

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		49. Supplemental—Con.				
		T. M. 17.				
90161	1913 Feb. 11	Remedies for the treatment of gout and rheumatism.	Apr. 4, 1919	Apr. 8, 1919	L–106	401
90976	Apr. 8	Bacterial preparation used as a remedy for certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	I–106	390
91183	Apr. 22	Dyestuffs for dyeing and printing purposes.	Apr 4, 1919	Apr. 8, 1919	I–106	390
91218	Apr. 22	Preparation in certain forms for treatment of certain diseases.	Apr. 4, 1919	Apr. 8, 1919	M–107	20
91499	May 6	A compound of quinin and diethylbarbituric acid prepared for pharmaceutical use.	Apr. 8, 1919	Apr. 9, 1919	N–106	490
91680	May 20	N-monodibromopropyl-C. C-diethylbarbituric acid, prepared for pharmaceutical use.	Apr. 8, 1919	Apr. 9, 1919	N–106	490
91764	May 27	A chemical or biological reagent for certain named purposes.	Apr. 4, 1919	Apr. 8, 1919	I–106	390
91878	June 3	Preparation to be used in the textile industry.	Apr. 4, 1919	Apr. 8, 1919	M–107	20
92992	Aug. 12	Preparation for the treatment of wounds.	Apr. 4, 1919	Apr. 8, 1919	M–107	20
		T. M. 18.				
93794	Oct. 21	Insect-destroying preparations.	Apr. 4, 1919	Apr. 8, 1919	E–106	483
93861	Oct. 21	Ointment preparation containing colloidal palladium and platinum salts.	Apr. 4, 1919	Apr. 8, 1919	M–107	20
94061	Nov. 4	Remedies for the treatment of gout and rheumatism.	Apr. 4, 1919	Apr. 8, 1919	L–106	401
94244	Nov. 18	Preparation for the treatment of wounds.	Apr. 4, 1919	Apr. 8, 1919	M–107	20
94819	1914 Jan. 6	A preparation for reducing inflammation of the skin and promoting granulations.	Apr. 4, 1919	Apr. 8, 1919	I–106	390
94820	Jan. 6	Antiseptic chemical preservative, sanitary paints or dressings for certain materials.	Apr. 4, 1919	Apr. 8, 1919	I–106	390
94997	Jan. 20	Certain compounds in certain forms used as disinfectants.	Apr. 4, 1919	Apr. 8, 1919	M–107	20
95250	Feb. 3	Powder for use as a remedy for certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	I–106	390
95311	Feb. 10	Certain named preparations for dyeing and printing purposes.	Apr. 4, 1919	Apr. 8, 1919	I–106	390
		T. M. 19.				
95989	Mar. 31	Paints for retouching and coloring photographic pictures.	Apr. 4, 1919	Apr. 8, 1919	L–106	401
98479	July 21	Remedies for the treatment of gout and rheumatism.	Apr. 4, 1919	Apr. 8, 1919	L–106	401
99470	Sept. 1	Bacilli preparations for the treatment of tuberculosis and other infectious diseases.	Apr. 4, 1919	Apr. 8, 1919	M–107	20
100071	Oct. 6	Remedy for certain named diseases.	Apr. 4, 1919	Apr. 8, 1919	E–106	483
100983	Nov. 3	Preparation for the treatment of syphilis, lupus, scrofula, and cutaneous diseases.	Apr. 4, 1919	Apr. 8, 1919	M–107	20
102332	1915 Feb. 9	A carcinoma extract to be used in the treatment of malignant tumors.	Apr. 4, 1919	Apr. 8, 1919	I–106	390

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		49. Supplemental—Con.				
		T. M. 19—Continued.				
102333	1915 Feb. 9	A sarcoma extract to be used in the treatment of malignant tumors.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
102602	Feb. 16	A patent product for the preparation of medicines intended for the treatment of tuberculosis.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
102603	Feb. 16	A sterilised solution of 2.5 per cent strength of a preparation for the treatment of tuberculosis.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
		T. M. 20.				
103758	Apr. 13	Hydrogen peroxid in solid form and rendered stable, prepared for pharmaceutical use.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
105811	Aug. 17	Remedy for gouty and rheumatic diseases and neuralgic affections.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
106308	Oct. 19	Remedy against syphilis, sleeping sickness, trypanosomiasis and other tropical infectious diseases.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
107489	Dec. 7	Hypnotic and sedative preparations.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
109160	1916 Mar. 21	Remedy for gouty and rheumatic diseases and neuralgic affections.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
112878	Oct. 3	Basic gallate of bismuth, a substitute for iodoform, used in certain named forms.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
115747	1917 Mar. 6	Chemical compound having bactericide action and being particularly useful for the treatment of gonorrhea.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
115884	Mar. 20	Chemical compound used for the treatment of tuberculosis diseases.	Apr. 4, 1919	Apr. 8, 1919	I-106	390
		T. M. 21.				
		Supplemental No. 2.				
15986	1888 Nov. 6	A soporific preparation containing carbon, hydrogen and oxygen.	Apr. 8, 1919	Apr. 9, 1919	M-106	488
16309	1889 Feb. 26	A new hypnotic	Apr. 8, 1919	Apr. 9, 1919	M-106	488
16310	Feb. 26	A new hypnotic	Apr. 8, 1919	Apr. 9, 1919	M-106	488
16311	Feb. 26	A new hypnotic	Apr. 8, 1919	Apr. 9, 1919	M-106	488
16392	Mar. 19	Febrifuges or fever curatives	Apr. 8, 1919	Apr. 9, 1919	M-106	488
16468	Apr. 9	A soporific preparation	Apr. 8, 1919	Apr. 9, 1919	M-106	488
20487	1891 Dec. 22	Dyestuffs	Apr. 8, 1919	Apr. 9, 1919	M-106	488
20488	Dec. 22	Dyestuffs	Apr. 8, 1919	Apr. 9, 1919	M-106	488
20489	Dec. 22	Dyestuffs	Apr. 8, 1919	Apr. 9, 1919	M-106	488
20490	Dec. 22	Dyestuffs	Apr. 8, 1919	Apr. 9. 1919	M-106	488
20491	Dec. 22	Dyestuffs	Apr. 8, 1919	Apr. 9, 1919	M-106	488
		T. M. 1.				
20492	Dec. 22	Dyestuffs	Apr. 8, 1919	Apr. 9, 1919	M-106	488

No.	Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
		Supplemental No. 2.—Con.				
		T. M. 1—Continued.				
20493	1891 Dec. 22	Dyestuffs	Apr. 8, 1919	Apr. 9, 1919	M-106	488
23606	1893 Sept. 12	An antiseptic for destroying insects, fungi and the like.	Apr. 8, 1919	Apr. 9, 1919	M-106	488
23823	Nov. 14	Pharmaceutical or dietetical compounds.	Apr. 8, 1919	Apr. 9, 1919	M-106	488
28432	1896 June 23	Dyestuffs	Apr. 8, 1919	Apr. 9, 1919	M-106	488
28502	June 30	A pharmaceutical product used as a substitute for sugar.	Apr. 8, 1919	Apr. 9, 1919	M-106	488
29314	Dec. 15	A substitute for sugar	Apr. 8, 1919	Apr. 9, 1919	M-106	488
29323	Dec. 15	Dyestuffs	Apr. 8, 1919	Apr. 9, 1919	M-106	488
29406	1897 Jan. 5	An extract of thyroid glands for use in obesity and cutaneous affections.	Apr. 8, 1919	Apr. 9, 1919	M-106	488
31386	1898 Mar. 8	A scientific food and iron preparation.	Apr. 8, 1919	Apr. 9, 1919	M-106	488
		T. M. 2.				
31387	Mar. 8	A scientific food and weak astringent.	Apr. 8, 1919	Apr. 9, 1919	M-106	488
31388	Mar. 8	A scientific food and weak astringent.	Apr. 8, 1919	Apr. 9, 1919	M-106	488
31389	Mar. 8	A scientific food and iron preparation.	Apr. 8, 1919	Apr. 9, 1919	M-106	488
31409	Mar. 8	An artificial fertilizer	Apr. 8, 1919	Apr. 9, 1919	M-106	488
31422	Mar. 15	Coloring matter or dyestuffs and medical compounds.	Apr. 8, 1919	Apr. 9, 1919	M-106	488
61715	1907 Apr. 2	Fire extinguishing compounds	Apr. 8, 1919	Apr. 8, 1919	K-106	474
67669	1908 Feb. 11	Substitute for shellac for the preparation of furniture polish and spirit lakes.	Apr. 8, 1919	Apr. 9, 1919	M-106	488
		T. M. 3.—Schedule D.				

Said instrument dated April 10, 1919, was also recorded in the United States Copyright Office, Library of Congress, on April 15, 1919, in book 81, page 181, a copy of which instrument is set out in Exhibit H-1 attached to this bill of complaint, and also enumerated the following copyrights:

No. (A–Foreign).	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919	1919		
1425	June 15, 1910	"Hutte Taschenbuch für Eisenhütten-Leute."	Apr. 7	Apr. 8	81	106–107
1967	Nov. 3, 1910	"Themen der physikalischen Chemie, etc."	Apr. 7	Apr. 8	81	75–76
2862	Mar. 15, 1911	"Die neue Welt der flüssigen Kristalle und deren bedeutung für Physik, etc."	Apr. 7	Apr. 8	81	75–76
4121	Oct. 5, 1911	"Theorie und Praxis der massanalyse, etc."	Apr. 7	Apr. 8	81	75–76
4632	Nov. 25, 1911	"Das Eisenhuttenwesen, etc."	Apr. 7	Apr. 8	81	75–76
9217	July 5, 1913	"Geschichte der Chemie, etc."	Apr. 7	Apr. 8	81	75–76
9916	Sept. 25, 1913	"Der Stärkezucker, etc."	Apr. 7	Apr. 8	81	75–76
13920	Sept. 30, 1915	"Chemie der Hefe und der alkchelischen Gärung, etc."	Apr. 7	Apr. 8	81	75–76
3698	Sept. 6, 1911	"Chemie der Gase"	Apr. 7	Apr. 8	81	77–78
626[1]	Nov. 30, 1909	"Die Entwecklung der Elektrochemie in gemeinverständicher Darstellung, etc."	Apr. 7	June 30	81	79–81
1052[1]	Mar. 9, 1910	"Elemente der theoretischen Physik, etc."	Apr. 7	June 30	81	79–81
1059[1]	Mar. 9, 1910	"Lexikon der anorganischen Verbindungen, etc."	Apr. 7	June 30	81	79–81
1521[1]	July 1, 1910	"Theorie der Kinematographischen Projektionen, etc."	Apr. 7	June 30	81	79–81
2114[1]	Nov. 11, 1910	"Hamolysine, Zytotoxine und Prazipitine, etc."	Apr. 7	June 30	81	79–81
2313[1]	Jan. 3, 1911	"Einzelschriften zur chemischen Technologie, etc."	Apr. 7	June 30	81	79–81
2315[1]	Dec. 23, 1910	"Lehrbuch der Experimentalphysik, etc."	Apr. 7	June 30	81	79–81
3584[1]	Aug. 11, 1911	"Chemische Technologie der organischen Farbstoffe, etc."	Apr. 7	June 30	81	79–81
4743[1]	Aug. 30, 1911	"Thermodynamik der Atmosphäre, etc."	Apr. 7	June 30	81	79–81
4747[1]	Aug. 30, 1911	"Fernoptik, etc."	Apr. 7	June 30	81	79–81
7649[1]	Apr. 4, 1913	"Lehrbuch der Röntgenkunde, etc."	Apr. 7	June 30	81	79–81
9100[1]	Sept. 4, 1913	"Einführung in die Elektrotechnik, etc."	Apr. 7	June 30	81	79–81
9105[1]	July 29, 1913	"Die Physik der bewegten Materie und die Relativitätstheorie, etc.	Apr. 7	June 30	81	79–81
12257[1]	Sept. 1, 1914	"Korrelative beziehungen zwischen elementaren Vergleichsleistungen, etc."	Apr. 7	June 30	81	79–81
13307[1]	Jan. 2, 1915	"Gundriss der allgemeinen Warenkunde, etc."	Apr. 7	June 30	81	79–81
192	July 5, 1909	"Anleitung zu den analytisch-chemischen Übungen für Anfänger, etc."	Apr. 7	Apr. 8	81	122–125
259	Sept. 15, 1909	"Metallographie, etc."	Apr. 7	Apr. 8	81	122–125
313	Oct. 27, 1909	"Botanisch-mikroskopisches Praktikum für Anfänger, etc."	Apr. 7	Apr. 8	81	122–125

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[1] These copyrights were demanded April 7, 1919, and the demands were received for record in the Copyright Office on April 8, 1919, and the seal of the office was not affixed to the demands until June 30, 1919.

No. (A–Foreign.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording	Book.	Page.
572	Oct. 18, 1909	"Lehre von den Erzlagerstätten, etc."	1919 Apr. 7	1919 Apr. 8	81	122-125
1468	July 1, 1910	"Die Chemie der Cellulose unter besonderer berücksichtigung der Textil-und Zellstoffindustrien, etc.," volume 1.	Apr. 7	Apr. 8	81	122-125
1535	July 12, 1910	"Die Entstehung der Steinkohle und der Kaustobiolithe, etc."	Apr. 7	Apr. 8	81	122-125
1906	Oct. 29, 1910	"Die Kristallinen Schiefer, etc."	Apr. 7	Apr. 8	81	122-125
2575	Feb. 27, 1911	"Die wichtigsten Lagerstätten der 'Nicht-erze.' "	Apr. 7	Apr. 8	81	122-125
3073	May 11, 1911	"Einführung in die Mykologie der Nahrungsmittelgewerbe, etc."	Apr. 7	Apr. 8	81	122-125
3802	Oct. 1, 1911	"Kalorimetrische Methodik, etc."	Apr. 7	Apr. 8	81	122-125
3803	Oct. 1, 1911	"Einfuhrung in die Mykologie der Genussmittel und in Gärungsphysiologie."	Apr. 7	Apr. 8	81	122-125
3975	Nov. 1, 1911	"Chemisch-technisches Praktikum, etc."	Apr. 7	Apr. 8	81	122-125
4528	Dec. 14, 1911	"Magnetochemie, etc."	Apr. 7	Apr. 8	81	122-125
4531	Dec. 14, 1911	"Die Chemie der Cellulose unter besonderer berucksichtigung der Textil-und Zellstoffindustrien, etc.," volume 2.	Apr. 7	Apr. 8	81	122-125
5154	Apr. 1, 1912	"Mikroskopisches Praktikum für systematische Botanik," volume 1.	Apr. 7	Apr. 8	81	122–125
6444	Oct. 22, 1912	"Lehrbuchder Grund wasser-und Quellenkunde für Geologen, etc."	Apr. 7	Apr. 8	81	122–125
6458	Oct. 22, 1912	"Pflanzenwachstum und Kalkmangel im Boden, etc."	Apr. 7	Apr. 8	81	122–125
7076	Jan. 25, 1913	"Statische und Kinetische Kristalltheorien."	Apr. 7	Apr. 8	81	122–125
8778	Nov. 1, 1913	"Chemische Technologie der Gespinstfasern."	Apr. 7	Apr. 8	81	122–125
11137	July 8, 1914	"Die chemischen Arzneimittel der letzten 113 Jahre, etc."	Apr. 7	Apr. 8	81	122–125
12127	Jan. 4, 1915	"Einführung in die Metallographie und Wärmebehandlung nebst einer Sammlung von Gefügebildern."	Apr. 7	Apr. 8	81	122–125
12128	Nov. 7, 1914	"Lehrbuch der Chemie, etc."	Apr. 7	Apr. 8	81	122–125
3434	July 1, 1911	"Die Erzlagerstätten der Vereinigten Staaten von Nordamerika, etc."	Apr. 7	Apr. 8	81	84–87
3989	Nov. 4, 1911	"Lehrbuch der Leuchtgasindustrie, etc."	Apr. 7	Apr. 8	81	84–87
5151	Mar. 12, 1912	"Die Ketene"	Apr. 7	Apr. 8	81	84–87
5152	Mar. 12, 1912	"Leitfaden der anorganischen und organischen Chemie, etc."	Apr. 7	Apr. 8	81	84–87
5202	Apr. 13, 1912	"Die Spezialstähle"	Apr. 7	Apr. 8	81	84–87
5646	Apr. 20, 1912	"Lehrbuch der Mineralogie"	Apr. 7	Apr. 8	81	84–87
5737	June 22, 1912	"Paul Drudes Physik des Aethers auf elektromagnetischer Grundlage."	Apr. 7	Apr. 8	81	84–87
5738	June 22, 1912	"Leitfaden der theoretischen Chemie, etc."	Apr. 7	Apr. 8	81	84–87
5754	July 13, 1912	"Ueber Katalytische Reduktionen organischer verbindungen."	Apr. 7	Apr. 8	81	84–87
5755	July 6, 1912	"Die Analyse der seltenen Erden und der Erdsäuren."	Apr. 7	Apr. 8	81	84–87

No. (A-Foreign).	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
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6608	Sept. 14, 1912	"Industrielle Chemie unter mitarbeit."	1919. Apr. 7	1919. Apr. 8	81	84-87
6612	Sept. 21, 1912	"Spektrochemie Organischer verbindungen."	Apr. 7	Apr. 8	81	84-87
6613	Oct. 19, 1912	"Theorie, Berechnung und Untersuchung von Transformatoren."	Apr. 7	Apr. 8	81	84-87
8252	July 8, 1913	"Handbuch der organischen Arsenverbindungen."	Apr. 7	Apr. 8	81	84-87
8253	July 8, 1913	"Die Nutzbaren Mineralien, etc."	Apr. 7	Apr 8	81	84-87
8291	July 19, 1913	"Die Hydrazine"	Apr. 7	Apr. 8	81	84-87
8762	Oct. 11, 1913	"Handbuch der präparativen Chemie, etc.," volume 1.	Apr. 7	Apr. 8	81	84-87
9120	Nov. 15, 1913	"Lehrbuch der Erz-und Steinkohlenaufbereitung."	Apr. 7	Apr. 8	81	84-87
12276	Nov. 7, 1914	"Die 32 kristallographischen Symmetrieklassen und ihre einfachen Formen."	Apr. 7	Apr. 8	81	122-123
13296	July 1, 1915	"Die mikroskopische Untersuchung der Erzlagerstätten."	Apr. 7	Apr. 8	81	122-123
13297	July 1, 1915	"Grundlagen der physikalischchemischen Petrographie"	Apr. 7	Apr. 8	81	122-123
2602	Feb. 13, 1911	"Metallkunde, etc."	Apr. 7	Apr. 8	81	82-83
12470	July 23, 1914	"Die Illustrationsverfahren etc."	Apr. 7	Apr. 8	81	88-89
1850	Oct. 13, 1910	"Theorie und Praxis der Grossgasindustrie."	Apr. 7	Apr. 8	81	108-109
9184	July 10, 1913	"Lehrbuch der chemischen Technologie der Gespinstfasern."	Apr. 7	Apr. 8	81	90-91
12170	Dec. 18, 1914	"Die Künstlichen Edelsteine, etc."	Apr. 7	Apr. 8	81	92-93
5390	Mar. 27, 1912	"Lehrbuch der Eisen-und Stahlgiesserei, etc."	Apr. 7	Apr. 8	81	68-70
7261	Nov 29, 1912	"Über die Verwendung des Holzes zu Pflasterzwecken in den grossstädten Europas und Australiens, etc."	Apr. 7	Apr. 8	81	68-70
8218	Feb. 14, 1913	"Grundzüge der Elektrotechnik"	Apr. 7	Apr. 8	81	68-70
9180	June 6, 1913	"Lehrbuch der Eisen-und Stahlgiesserei, etc."	Apr. 7	Apr. 8	81	68-70
10177	Feb. 6, 1914	"Die Technik der Vorzeit, etc."	Apr. 7	Apr. 8	81	68-70
10186	Mar. 4, 1914	"Kristallberechnung und Kristallzeichnung, etc."	Apr. 7	Apr. 8	81	68-70
11180	June 19, 1914	"Über Schleppkraft und Geschiebebewegung."	Apr. 7	Apr. 8	81	68-70
13286	Oct. 23, 1914	"Handbuch des Wasserbaues, etc."	Apr. 7	Apr. 8	81	68-70
13316	July 17, 1914	"Vorlesungen über Wasserkraftmaschinen."	Apr. 7	Apr. 8	81	68-70
9522	Nov. 22, 1913	"Die Bestimmungsmethoden des Nickels und Kobalts, etc."	Apr. 7	Apr. 8	81	84-87
9979	Feb. 7, 1914	"Das Triphenylmethyl"	Apr. 7	Apr. 8	81	84-87
10365	Apr. 4, 1914	"Theoretische and praktische Einführung in die allgemeine Elektrotechnik, etc."	Apr. 7	Apr. 8	81	84-87
10375	Mar. 21, 1914	"Die Bestimmungsmethoden des Arsens, etc."	Apr. 7	Apr. 8	81	84-87
11081	May 30, 1914	"Der Nachweis organischer verbindungen."	Apr. 7	Apr. 8	81	84-87
11084	May 30, 1914	"Lehrbuch der Physikalischen Chemie."	Apr. 7	Apr. 8	81	84-87
11104	May 30, 1914	"Handbuch der industriellen Finanzierungen."	Apr. 7	Apr. 8	81	84-87
12134	July 18, 1914	"Handbuch der präparativen Chemie, etc." volume 2.	Apr. 7	Apr. 8	81	84-87
12139	July 18, 1914	"Die organischen Verbindungen mit mehrwertigem Jod."	Apr. 7	Apr. 8	81	84-87
12174	July 11, 1914	"Farbenphotographie in der Medizin, etc."	Apr. 7	Apr. 8	81	84-87
12613	June 5, 1915	"Handbuch der physikalischchemischen Technik für Forscher und Techniker."	Apr. 7	Apr. 8	81	84-87

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			1919.	1919.		
12803	July 24, 1915	"Die röntgenologische Lagebestimmung von Fremdkörpern, etc."	Apr. 7	Apr. 8	81	84–87
10520	Nov. 13, 1913	"Konstruieren und Rechnen, etc."	Apr. 7	Apr 8	81	71–72
9707	Aug. 28, 1913	"Olmoteren in viertakt-und zweitaktbauart, etc."	Apr. 7	Apr. 8	81	71–72
10862	Mar. 10, 1914	"Pumpen und Kompressoren, etc."	Apr. 7	Apr. 8	81	71–72
5048	May 17, 1912	"Keramisches Rechnen auf chemischer Grundlage an Beispielen erlaütert, etc."	Apr. 7	Apr. 8	81	73–74
3844[1]	Oct. 7, 1911	"Heinze-Waeber Lehrbuch der Chemie, etc."	Apr. 7	June 30	81	166–168
5410[1]	Apr. 26, 1912	"Heinze-Waeber Lehrbuch der Chemie."	Apr. 7	June 30	81	166–168
10217[1]	Mar. 25, 1913	"Heinze-Waeber Lehrbuch der Chemie."	Apr. 7	June 30	81	166–168
10333[1]	Mar. 25, 1913	"R. Waebers Lehrbuch der Chemie etc."	Apr. 7	June 30	81	166–168
990[1]	Jan. 27, 1910	"Acht Vorlesungen über theoretische Physik, etc."	Apr. 7	June 30	81	177–180
1428[1]	June 18, 1910	"Anorganisch-chemisches Praktikum."	Apr. 7	June 30	81	177–180
1799[1]	Sept. 29, 1910	"Prinzipien der Atomdynamik"	Apr. 7	June 30	81	177–180
1809[1]	Sept. 29, 1910	"Der Kautschuk und seine Prüfung"	Apr. 7	June 30	81	177–180
2168[1]	Dec. 1, 1910	"Mikroskopische warenprüfung, etc."	Apr. 7	June 30	81	177–180
2615[1]	Feb. 28, 1911	"Die beziehungen zwischen Farbe und Konstitution bei organischen verbindungen, etc."	Apr. 7	June 30	81	177–180
3130[1]	May 23, 1911	"Der elektrische lichtbogen, etc."	Apr. 7	June 30	81	177–180
4287[1]	Nov. 14, 1911	"Handbuch der Chemie und Technologie der Oele und Fette, etc."	Apr. 7	June 30	81	177–180
4507[1]	Nov. 28, 1911	"Mineralogie für Ingenieure und Chemiker."	Apr. 7	June 30	81	177–180
4508[1]	Nov. 28, 1911	"Qualitative Analyse"	Apr. 7	June 30	81	177–180
4509[1]	Nov. 28, 1911	"Technische Mechanik"	Apr. 7	June 30	81	177–180
4510[1]	Nov. 28, 1911	"Kompendium der Experimental physik."	Apr. 7	June 30	81	177–180
4515[1]	Nov. 28, 1911	"Wasserkraftmaschinen, etc."	Apr. 7	June 30	81	177–180
5206[1]	Apr. 9, 1912	"Physiologisch-chemisches Praktikum."	Apr. 7	June 30	81	177–180
5647[1]	May 29, 1912	"Lehrbuch der chemischen-Technologie und Metallurgie, etc."	Apr. 7	June 30	81	177–180
6407[1]	Oct. 10, 1912	"Die Leichtmotoren"	Apr. 7	June 30	81	177–180
6408[1]	Oct. 10 1912	"Grundzüge der Elektrotechnik"	Apr. 7	June 30	81	177–180
6417[1]	Oct. 30, 1912	"Kurzer Leitfaden der Eletrotechnik für Schiffsingenieure und betriebsingenieure industrieller Werke."	Apr. 7	June 30	81	177–180
6624[1]	Nov. 8, 1912	"Mechanische Technologie"	Apr. 7	June 30	81	177–180
7652[1]	Apr. 25, 1913	"Physikalische Chemie"	Apr. 7	June 30	81	177–180
8921[1]	Nov. 10, 1913	"Maschinen-elemente"	Apr. 7	June 30	81	177–180
9082[1]	Jan. 15, 1914	"Kurzes Lehrbuch der anorganischen Chemie."	Apr. 7	June 30	81	177–180
12131[1]	Jan. 19, 1915	"Die Chemie der hydraulischen Bindemittel, etc."	Apr. 7	June 30	81	177–180
12234[1]	July 1, 1914	"Elektrische spektralanalyse chemischer Atome."	Apr. 7	June 30	81	177–180
5596	June 17, 1912	"Ein neues Verfahren zur Herstellung alkoholfreier Obst und Traubenweine, etc."	Apr. 7	Apr. 8	81	154–156
13408	Dec. 20, 1915	"Die chemische Untersuchung von Wasser und Abwasser."	Apr. 7	Apr. 8	81	160–162
585	Oct. 14, 1909	"Die Holzstoff- oder Holzschliff-Fabrikation, etc."	Apr. 7	Apr. 8	81	169–172
1031	Feb. 23, 1910	"Der Konstruktionsstahl und seine Kikrostruktur unter besonderer berücksichtigung des modernen Automobilstahls, etc."	Apr. 7	Apr. 8	81	169–172

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			1919.	1919.		
1466	June 20, 1910	"Die Metallfärbung und deren Ausführung, etc."	Apr. 7	Apr. 8	81	169–172
2413	Jan. 5, 1911	"Das ätzen und färben der Metalle, etc."	Apr. 7	Apr. 8	81	169–172
3773	Aug. 31, 1911	"Die Papier-prägetechnik, etc."	Apr. 7	Apr. 8	81	169–172
3788	Aug. 31, 1911	"Die Metallurgie des Wolframs, etc."	Apr. 7	Apr. 8	81	169–172
4300	Feb. 15, 1912	"Theorie und Berechnung von Motor-Luftschiffen."	Apr. 7	Apr. 8	81	169–172
5096	June 15, 1912	"Die deutschen Patente über Flugapparate, etc."	Apr. 7	Apr. 8	81	169–172
6767	Sept. 20, 1912	"Elektrolytische Metallabscheidungen, etc."	Apr. 7	Apr. 8	81	169–172
6768	Sept. 20, 1912	"Der Torsionsindikator"	Apr. 7	Apr. 8	81	169–172
7658	Jan. 1, 1913	"Die Schokoladen-Fabrikation, etc."	Apr. 7	Apr. 8	81	169–172
8201	Feb. 15, 1913	"Die Chemie in Industrie, Handwerk und Gewerbe, etc."	Apr. 7	Apr. 8	81	169–172
8214	Jan. 2, 1913	"Prüfung der Papier-Rohstoffe"	Apr. 7	Apr. 8	81	169–172
9712	Sept. 30, 1913	"Die quantitativen Untersuchungs-Methoden des Molybdäns, Vanadiums and Wolframs, etc."	Apr. 7	Apr. 8	81	169–172
10495	Dec. 30, 1913	"Die Strohstoff-Fabrikation, etc."	Apr. 7	Apr. 8	81	169–172
10498	Jan. 17, 1914	"Die Metallfärbung und deren Ausführung, etc."	Apr. 7	Apr. 8	81	169–172
14109	June 10, 1915	"Die moderne Vorkalulkation in Maschinenfabriken, etc."	Apr. 7	Apr. 8	81	169–172
5257	Apr. 13, 1912	"Einführung in die Chemie der Kohlenstoffverbindungen, etc."	Apr. 7	Apr. 8	81	163–165
6148[1]	Sept. 21, 1912	"Einführung in die praktische Chemie."	Apr. 7	June 30	81	157–159
970	Feb. 10, 1910	"Hebemaschinen und Transport-Vorrichtungen, etc."	Apr. 7	Apr. 8	81	173–176
1155	Apr. 1, 1910	"Der Eisenbeton im Hoch-und Tiefbau, etc.	Apr. 7	Apr. 8	81	173–176
1175	Apr. 8, 1910	"Das Trocknen und die Trockner, etc."	Apr. 7	Apr. 8	81	173–176
2497	Jan. 14, 1911	"Die Strömung in Röhren und die berechnung Weitverzweigter leitungen und Kanäle."	Apr. 7	Apr. 8	81	173–176
2980	Apr. 27, 1911	"Eisenhüttenwesen, etc."	Apr. 7	Apr. 8	81	173–176
3402	Dec. 15, 1910	"Werkzeugmaschinen, etc."	Apr. 7	Apr. 8	81	173–176
4041	Nov. 21, 1911	"Die Gasturbine, etc."	Apr. 7	Apr. 8	81	173–176
9525	Nov. 18, 1913	"Leitfaden der drahtlosen Telegraphie für die Luftfahrt."	Apr. 7	Apr. 8	81	173–176
9528	Nov. 18, 1913	"Die Wasserdrachen, etc."	Apr. 7	Apr. 8	81	173–176
12268	July 4, 1914	"Das Trocknen und die Trockner, etc."	Apr. 7	Apr. 8	81	173–176
12269	July 18, 1914	"Die angewante-Chemie in der Luftfahrt."	Apr. 7	Apr. 8	81	173–176
12270	July 18, 1914	"Anlage und Betrieb von Luftschiffhäfen."	Apr. 7	Apr. 8	81	173–176
12137	July 28, 1914	"Brotgetreide und Brot, etc."	Apr. 7	Apr. 8	81	146–147
8289	July 22, 1913	"Die chemische Verwandtschaft und ihre Beziehungen zu den übrigen energieformen."	Apr. 7	Apr. 8	81	151–153
10178	Mar. 17, 1914	"Die Welt der Kolloide"	Apr. 7	Apr. 8	81	151–153
3207	May 8, 1911	"Die Offizinellen Atherischen Ole und Balsame, etc."	Apr. 7	Apr. 8	81	148–150
14268	Aug. 26, 1916	"Hilfsbuch fur Metalltechniker, etc."	Apr. 7	Apr. 8	81	102–103
2774	Jan. 15, 1911	"Auskunftsbuch für die chemische Industrie."	Apr. 7	Apr. 8	81	104–105
2108[1]	Nov. 17, 1910	"Kraftgas, etc."	Apr. 7	June 30	81	133–135
2620[1]	Jan. 21, 1911	"Das Acetylen, etc."	Apr. 7	June 30	81	133–135
2699[1]	Feb. 13, 1911	"Zerkleinerungsvorrichtungen und Mahlanlagen."	Apr. 7	June 30	81	133–135

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3399[1]	June 21, 1911	"Sulfurieren alkalischmelze der sulfosäuren, etc."	Apr. 7	June 30	81	133-135
3400[1]	June 21, 1911	"Mischen, rühren, Kneten und die dazu verwendeten Maschinen."	Apr. 7	June 30	81	133-135
3401[1]	June 21, 1911	"Sicherheitseinrichtungen chemischen Betrieben."	Apr. 7	June 30	81	133-135
4899[1]	Jan. 8, 1912	"Chemisch-technologisches Rechnen."	Apr. 7	June 30	81	133-135
4914[1]	Dec. 28, 1911	"Die Schwefelfarbstoffe, etc."	Apr. 7	June 30	81	133-135
5616[1]	May 9, 1912	"Kolloidchemie, etc."	Apr. 7	June 30	81	133-135
7034[1]	Oct. 30, 1912	"Filtern und Pressen zum Trennen von Flüssigkeiten und festen Stöffen."	Apr. 7	June 30	81	133-135
7035[1]	Oct. 30, 1912	"Verdampfen und Verkochen unter besonderer Berucksichtigung der Zuckerfabrikation."	Apr. 7	June 30	81	133-135
8368[1]	Apr. 17, 1913	'Zink und Cadmium, etc."	Apr. 7	June 30	81	133-135
8667[1]	June 11, 1913	"Die Prüfungsmethoden des deutschen Arzneibuches, etc."	Apr. 7	June 30	81	133-135
9827[1]	Nov. 18, 1913	"Das Wasser"	Apr' 7	June 30	81	133-135
11343[1]	May 13, 1914	"Lehrbuch der Farben-chemie, etc."	Apr. 7	June 30	81	133-135
382	Oct. 5, 1909	"Praktikum der quantitativen anorganischen Analyse."	Apr. 7	Apr. 8	81	136-142
860	Jan. 4, 1910	"Der basische Herd-ofenprozess, etc."	Apr. 7	Apr. 8	81	136-142
891	Jan. 1, 1910	"Technologie der Holzverkohlung, etc."	Apr. 7	Apr. 8	81	136-142
1411	June 7, 1910	"Die Röntgentherapie in der Dermatologie."	Apr. 7	Apr. 8	81	136-142
1923	Oct. 23, 1910	"Die experimentelle Chemotherapie der Spirillosen, etc."	Apr. 7	Apr. 8	81	136-142
2118	Nov. 22, 1910	"Der Edisonakkumulator, etc."	Apr. 7	Apr. 8	81	136-142
2324	Jan. 2, 1911	"Grundzuge des Eisenhüttenwesens."	Apr. 7	Apr. 8	81	136-142
2373	Jan. 24, 1911	"Der Indikator und seine Hilfseinrichtungen."	Apr. 7	Apr. 8	81	136-142
3028	May 8, 1911	"Die citronensäure und ihre derivate."	Apr. 7	Apr. 8	81	136-142
3632	Sept. 9, 1911	"Handbuch der Eisen-und Stahlgiesserei, etc."	Apr. 7	Apr. 8	81	136-142
3839	Oct. 12, 1911	"Die chemie der trocknenden Ole."	Apr. 7	Apr. 8	81	136-142
4857	Feb. 18, 1912	"Probenahme und analyse von Eisen und Stahl, etc."	Apr. 7	Apr. 8	81	136-142
5028	Nov. 20, 1911	"Kolben, etc."	Apr. 7	Apr. 8	81	136-142
5033	Nov. 29, 1911	"Die Zylinder ortsfester Dampfmaschinen."	Apr. 7	Apr. 8	81	136-142
5162	Apr. 11, 1912	"Die Abwarmeverwertung im Kraft-Maschinenbetrieb, etc."	Apr. 7	Apr. 8	81	136-142
5164	Mar. 21, 1912	"Die Mercerisation der Baumwolle und die Appretur der mercerisierten Gewebe."	Apr. 7	Apr. 8	81	136-142
5492	June 10, 1912	"Elektrische Starkstromanlagen, etc."	Apr. 7	Apr. 8	81	136-142
5488	June 10, 1912	"Die electrische Kraftübertragung." Vol. 1.	Apr. 7	Apr. 8	81	136-142
5601	June 7, 1912	"Mechanisch-und Physikalischtechnische Textile-untersuchungen, etc."	Apr. 7	Apr. 8	81	136-142
5651	June 15, 1912	"Die aromatischen Arsenverbindungen, etc."	Apr. 7	Apr. 8	81	136-142
5742	June 28, 1912	"Technische thermodynamik."	Apr. 7	Apr. 8	81	136-142
6088	Aug. 12, 1912	"Die Entropie-Diagramme der Verbrennungsmotoren einschliesslich der Gasturbine."	Apr. 7	Apr. 8	81	136-142
6418	Nov. 2, 1912	"Hilfsbuch für die Elektrotechnik, etc."	Apr. 7	Apr. 8	81	136-142
6429	Oct. 21, 1912	"Praktikum der Elektrochemie."	Apr. 7	Apr. 8	81	136-142
6448	Nov. 2, 1912	"Der Kautschuk, etc."	Apr. 7	Apr. 8	81	136-142

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6881	Nov. 21, 1912	"Chemische Untersuchungsmethoden für Eisenhütten und deren nebenbetriebe, etc."	Apr. 7	Apr. 8	81	136–142
7097	Dec. 28, 1912	"Berechnung, etc."	Apr. 7	Apr. 8	81	136–142
9965	Feb. 17, 1914	"Die medikamentösen Seifen, etc."	Apr. 7	Apr. 8	81	136–142
7325	Feb. 4, 1913	"Qualitative Analyse auf Präparative Grundlage."	Apr. 7	Apr. 8	81	136–142
7465	Mar. 29, 1913	"Technische Hydrodynamik"	Apr. 7	Apr. 8	81	136–142
7851	May 21, 1913	"Untersuchung der Kohlenwasserstofföle und Fette, etc."	Apr. 7	Apr. 8	81	136–142
8237	July 1, 1913	"Grundriss der Fermentmethoden, etc."	Apr. 7	Apr. 8	81	136–142
8513	Sept. 12, 1913	"Ermittlung der billigsten Betriebekraft für fabriken, etc."	Apr. 7	Apr. 8	81	136–142
8547	Oct. 7, 1913	"Untersuchungen über Chlorophyll, etc."	Apr. 7	Apr. 8	81	136–142
8577	Sept. 20, 1913	"Der Wirkungsgrad von Dampfturbinen-Beschauflungen."	Apr. 7	Apr. 8	81	136–142
8929	Nov. 13, 1913	"Die Kugellager und ihre Verwendung im Maschinenbau."	Apr. 7	Apr. 8	81	136–142
9452	Jan. 5, 1914	"Wahl, etc."	Apr. 7	Apr. 8	81	136–142
9456	Jan. 15, 1914	"Die Lehre vom Trocknen in Graphischer Darstellung."	Apr. 7	Apr. 8	81	136–142
9460	Jan. 2, 1914	"Strömungsenergie und mechanische Arbeit, etc."	Apr. 7	Apr. 8	81	136–142
9462	Dec. 31, 1913	"Schubstangen und Kreuzköpfe."	Apr. 7	Apr. 8	81	136–142
9639	Jan. 17, 1914	"Chemie der Zuckerindustrie, etc."	Apr. 7	Apr. 8	81	136–142
9993	Feb. 17, 1914	"Die Drahtseilbahnen, etc."	Apr. 7	Apr. 8	81	136–142
10157	Mar. 21, 1914	"Technische Mechanik, etc."	Apr. 7	Apr. 8	81	136–142
10259	Mar. 21, 1914	"Die Wissenschaftlichen Grundlagen der Elektrotechnik."	Apr. 7	Apr. 8	81	136–142
10376	Apr. 17, 1914	"Kombinationsgebungen der Lohe, etc."	Apr. 7	Apr. 8	81	136–142
10395	Apr. 18, 1914	"Elektrische Starkstromanlagen, etc."	Apr. 7	Apr. 8	81	136–142
10396	Apr. 11, 1914	"Grundlagen der Kokschemie, etc."	Apr. 7	Apr. 8	81	136–142
11012	June 6, 1914	"Einführung in die Mikroskopie."	Apr. 7	Apr. 8	81	136–142
11691	Nov. 5, 1914	"Lotrohrprobierkunde, etc."	Apr. 7	Apr. 8	81	136–142
12122	Oct. 30, 1914	"Die Kolbenpumpen, etc."	Apr. 7	Apr. 8	81	136–142
12123	Oct. 23, 1914	"Technische Messungen bei Maschinen-Untersuchungen und im Betriebe zum Gebrauch in Maschinenlaboratorien und in der Praxis."	Apr. 7	Apr. 8	81	136–142
12173	Oct. 23, 1914	"Die Elektrische Kraftübertragung." Vol. II.	Apr. 7	Apr. 8	81	136–142
12188	Apr. 20, 1915	"Leitfaden für Giessereilaboratorien."	Apr. 7	Apr. 8	81	136–142
14126	May 12, 1916	"Untersuchengen über das Ozon und seine Einwirkung auf organische Verbindungen, etc."	Apr. 7	Apr. 8	81	136–142
14253	July 6, 1916	"Hebe-und förderanlagen, etc."	Apr. 7	Apr. 8	81	136–142
14278	Apr. 19, 1916	"Analyse und Konstitutionsermittlung organischer Verbindungen."	Apr. 7	Apr. 8	81	136–142
367	Sept. 2, 1909	"Dynamik der Oberflächen, etc."	Apr. 7	Apr. 8	81	143–145
861	Jan. 1, 1910	"Das Radium und die Farben, etc."	Apr. 7	Apr. 8	81	143–145
996	Feb. 15, 1910	"Einführung in die Kolloidchemie, etc."	Apr. 7	Apr. 8	81	143–145
1199	Apr. 2, 1910	"Die Theorie des Färbeprozesses."	Apr. 7	Apr. 8	81	143–145
4190	Sept. 26, 1911	"Einführung in die Kolloidchemie, etc."	Apr. 7	Apr. 8	81	143–145
4992	Jan. 2, 1912	"Die Kolloide in Biologie und Medizin."	Apr. 7	Apr. 8	81	143–145
4924	Jan. 2, 1912	"Vorlesungen über chemische Technologie."	Apr. 7	Apr. 8	81	143–145
8641	Apr. 2, 1912	"Grundlinien der anorganischen Chemie."	Apr. 7	Apr. 8	81	143–145

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6755	Aug. 1, 1912	"Handbuch der Mineralchemie, etc." Volume 1.	Apr. 7	Apr. 8	81	143-145
8378	Mar. 1, 1913	"Elektrochemisches Praktikum."	Apr. 7	Apr. 8	81	143-145
9251	May 1, 1913	"Geologische Diffusionen."	Apr. 7	Apr. 8	81	143-145
11277	Mar. 21, 1914	"Handbuch der Mineralchemie, etc." Volume 2.	Apr. 7	Apr. 8	81	143-145
13820	Apr. 15, 1915	"Mineralsynthetisches Praktikum, etc."	Apr. 7	Apr. 8	81	143-145
13884	June 1, 1915	"Die Bodenkolloide, etc."	Apr. 7	Apr. 8	81	143-145
13923	Aug. 26, 1915	"Die Welt der vernachlassigten."	Apr. 7	Apr. 8	81	143-145
13926	Dec. 30, 1914	"Einführung in die Kolloidchemie, etc."	Apr. 7	Apr. 8	81	143-145
227[1]	Aug. 20, 1909	"Einführung in die chemische Wissenschaft, etc."	Apr. 7	June 30	81	94-101
614[1]	Nov. 20, 1909	"Spektroskopie, etc."	Apr. 7	June 30	81	94-101
973[1]	Jan. 29, 1910	"Die Sprengstoffe, etc."	Apr. 7	June 30	81	94-101
992[1]	Feb. 14, 1910	"Drähte und Kabel, etc."	Apr. 7	June 30	81	94-101
1190[1]	Apr. 13, 1910	"Leitfaden zum elektrotechnischen Praktikum, etc."	Apr. 7	June 30	81	94-101
1493[1]	June 21, 1910	"Die Maschinenelemente, etc."	Apr. 7	June 30	81	94-101
1507[1]	July 9, 1910	"Die Kälte, etc."	Apr. 7	June 30	81	94-101
1509[1]	July 9, 1910	"Einführung in die Kinetische Theorie der Gase, etc."	Apr. 7	June 30	81	94-101
1666[1]	Aug. 11, 1910	"Abhandlungen und berichte über technisches Schulwesen, etc."	Apr. 7	June 30	81	94-101
1750[1]	Sept. 7, 1910	"Der Luftstickstoff und seine Verwertung, etc."	Apr. 7	June 30	81	94-101
1753[1]	Sept. 17, 1910	"Weinbau und Weinbereitung, etc."	Apr. 7	June 30	81	94-101
1760[1]	Sept. 7, 1910	"Das chemische Gleichgewicht auf grund mechanischer Vorstellungen, etc."	Apr. 7	June 30	81	94-101
1840[1]	Oct. 7, 1910	"Beispiele und Ubungen aus Elektrizität und Magnetismus, etc."	Apr. 7	June 30	81	94-101
1855[1]	Oct. 7, 1910	"Physikalisch-chemische Praktikumsaufgaben, etc."	Apr. 7	June 30	81	94-101
1873[1]	Sept. 28, 1910	"Lehrbuch der Kristallphysik, etc."	Apr. 7	June 30	81	94-101
1875[1]	Sept. 24, 1910	"Experimentelle Elektrizitätslehre etc."	Apr. 7	June 30	81	94-101
1970[1]	Oct. 20, 1910	"Das Licht und die Farben, etc."	Apr. 7	June 30	81	94-101
2290[1]	Jan. 3, 1911	"Bierbrauerei, etc."	Apr. 7	June 30	81	94-101
2365[1]	Jan. 5, 1911	"Vorlesungen über technische Mechanik, etc."	Apr. 7	June 30	81	94-101
2629[1]	Jan. 23, 1911	"Theoretische Mechanik, etc."	Apr. 7	June 30	81	94-101
2645[1]	Dec. 28, 1910	"Die grossen Physiker und ihre Leistungen, etc."	Apr. 7	June 30	81	94-101
2654[1]	Jan. 20, 1911	"Experimentelle Biologie, etc."	Apr. 7	June 30	81	94-101
2657[1]	Jan. 14, 1911	"Agrikulturchemie, etc."	Apr. 7	June 30	81	94-101
2659[1]	Feb. 8, 1911	"Werdegang der modernen Physik, etc."	Apr. 7	June 30	81	94-101
2852[1]	Mar. 6, 1911	"Lehrbuch der Physik für Realschulen, etc."	Apr. 7	June 30	81	94-101
2860[1]	Feb. 25, 1911	"Lehrbuch der Kosmischen Physik, etc."	Apr. 7	June 30	81	94-101
2922[1]	Feb. 28, 1911	"Physikalisches Experimentierbuch, etc."	Apr. 7	June 30	81	94-101
3685[1]	July 27, 1911	"Einfürhrung in die Biochemie in elementarer Darstellung, etc."	Apr. 7	June 30	81	94-101
3782[1]	Aug. 17, 1911	"Anleitung zur photographischen Naturaufnahmen, etc."	Apr. 7	Juhe 30	81	94-101
4124[1]	Oct. 21, 1911	"Vorbereitungsbuch für den Experimental unterricht in Chemie, etc."	Apr. 7	June 30	81	94-101
4135[1]	Oct. 14, 1911	"Geschichte des Welthandels, etc."	Apr. 7	June 30	81	94-101
4140[1]	Sept. 27, 1911	"Die Kinematographie, etc."	Apr. 7	June 30	81	94-101
4573[1]	Dec. 1, 1911	"Die Theorie der Wechselströme, etc."	Apr. 7	June 30	81	94-101
4636[1]	Oct. 25, 1911	"Lehrbuch der Physik, etc."	Apr. 7	June 30	81	94-101
4893[1]	Jan. 26, 1912	"Elementare Mechanik, etc."	Apr. 7	June 30	81	94-101
4903[1]	Dec. 29, 1911	"Theorie der Elektrizität, etc."	Apr. 7	June 30	81	94-101

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[1] These copyrights were demanded April 7, 1919, and the demands were received for record in the Copyright Office on April 8, 1919, and the seal of the office was not affixed to the demands until June 30, 1919.

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4912[1]	Jan. 26, 1912	"Maschinen und apparate der Starkstromtechnik, etc."	1919. Apr. 7	1919. June 30	81	94-101
4915[1]	Dec. 4, 1911	"Lehrbuch der Physik, etc."	Apr. 7	June 30	81	94-101
4941[1]	Dec. 8, 1911	"Chemisches Experimentierbuch, etc."	Apr. 7	June 30	81	94-101
5219[1]	Feb. 5, 1912	"Feuerungsanlagen und Dampfkessel, etc."	Apr. 7	June 30	81	94-101
5233[1]	Feb. 7, 1912	"Populäre Astrophysik, etc."	Apr. 7	June 30	81	94-101
6012[1]	June 6, 1912	"Einleitung in die Experimentalphysik, etc."	Apr. 7	June 30	81	94-101
6495[1]	Mar. 23, 1912	"Physik in graphischen Darstellungen, etc."	Apr. 7	June 30	81	94-101
6500[1]	Feb. 15, 1912	"Lehr-und Aufgabenbuch der Physik für Maschinenbau-und Gewerbeschulen, etc." Vol. 1.	Apr. 7	June 30	81	94-101
6501[1]	Mar. 21, 1912	"Lehr-und Aufgabenbuch der Physik für Maschinenbauund Gewerbeschulen, etc." Vol. 2.	Apr. 7	June 30	81	94-101
7147[1]	July 27, 1912	"Das Eisenhüttenwesen, etc."	Apr. 7	June 30	81	94-101
7286[1]	Oct. 28, 1912	"Grundlagen der Elektrotechnik, etc."	Apr. 7	June 30	81	94-101
8039[1]	June 27, 1912	"Allgemeine Elektrotechnik, etc."	Apr. 7	June 30	81	94-101
9190[1]	May 13, 1913	"Chemie, etc."	Apr. 7	June 30	81	94-101
9198[1]	Apr. 24, 1913	"Der Stoffwechsel der Pflanzen, etc."	Apr. 7	June 30	81	94-101
9200[1]	June 25, 1913	"Die Künstlerische Photographie, etc."	Apr. 7	June 30	81	94-101
9207[1]	May 28, 1913	"Einfuhrung in das Studium der theoretischen Physik, etc."	Apr. 7	June 30	81	94-101
9226[1]	Feb. 22, 1913	"Anleitung zur Kultur der Mikroorganisnier, etc."	Apr. 7	June 30	81	94-101
9236[1]	July 27, 1913	"Die Funkentelegraphie, etc."	Apr. 7	June 30	81	94-101
9826[1]	Oct. 9, 1913	"Hervorragende leistungen der Technik, etc."	Apr. 7	June 30	81	94-101
9845[1]	Nov. 3, 1913	"Die Luftfahrt, etc."	Apr. 7	June 30	81	94-101
9924[1]	Oct. 13, 1913	"Die Metalle, etc."	Apr. 7	June 30	81	94-101
10486[1]	Jan. 5, 1914	"Chemie in Küche und Haus, etc."	Apr. 7	June 30	81	94-101
10491[1]	Jan. 5, 1914	"Die Photographie, etc."	Apr. 7	June 30	81	94-101
10536[1]	Jan. 5, 1914	"Hydraulik, etc."	Apr. 7	June 30	81	94-101
10548[1]	Nov. 24, 1913	"Elemente der technischen Hydromechanik, etc."	Apr. 7	June 30	81	94-101
10590[1]	Dec. 16, 1913	"Das Mikroskop, etc."	Apr. 7	June 30	81	94-101
10802[1]	Feb. 20, 1914	"Schöpfungen der Ingenieurtechnik der Neuzeit, etc."	Apr. 7	June 30	81	94-101
10836[1]	Feb. 27, 1914	"Grundlehren der Chemie und Wege zur Künstlichen Herstellung von Naturstoffen, etc."	Apr. 7	June 30	81	94-101
11294[1]	Mar. 12, 1914	"Handbuch der naturgeschichtlichen Technik für Lehrer und Studierende der Naturwissenschaften, etc."	Apr. 7	June 30	81	94-101
11357[1]	July 1, 1914	"Lehrbuch der Physik, etc."	Apr. 7	June 30	81	94-101
12481[1]	July 13, 1914	"Lehrbuch der praktischen Physik, etc."	Apr. 7	June 30	81	94-101
13587[1]	Feb. 20, 1915	"Farben und Farbstoffe, etc."	Apr. 7	June 30	81	94-101
13590[1]	Oct 20, 1914	"Desinfektion, Sterilisation, Konservierung, etc."	Apr. 7	June 30	81	94-101
13901[1]	Dec. 31, 1914	"Luft, Wasser, Licht und Wärme, etc."	Apr. 7	June 30	81	94-101
13916[1]	Sept. 23, 1915	"Dynamik der Kristallgitter, etc."	Apr. 7	June 30	81	94-101
14032[1]	Jan. 14, 1914	"Die Wasserkraftmaschinen und die Ausnutzung der Wasserkräfte, etc."	Apr. 7	June 30	81	94-101
6013	May 21, 1912	"Chemische Methodik für Arzte"	Apr. 7	Apr. 8	81	15-16
14113	Jan. 26, 1916	"Grundriss der organischen Chemie."	Apr. 7	Apr. 8	81	15-16
10981	July 22, 1914	"Praktischer Ratgeber für Siegeleien, etc."	Apr. 7	Apr. 8	81	17-18

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1183	Mar. 30, 1910	"Handbuch der biochemischen Arbeits-Methoden."	1919. Apr. 7	1919. Apr. 8	81	23-24
10986	May 5, 1914	"Enzyklopädie der technischen Chemie, etc."	Apr. 7	Apr. 8	81	23-24
619	Nov. 15, 1909	"Lichtbiologie, etc."	Apr. 7	Apr. 8	81	126-132
920	Jan. 17, 1910	"Das gleichzeitige Telegraphieren und Fernsprechen, etc."	Apr. 7	Apr. 8	81	126-132
966	Feb. 5, 1910	"Die elektrische Fernübertragung von Bildern."	Apr. 7	Apr. 8	81	126-132
997	Feb. 15, 1910	"Das elektrische Bogenlicht, etc."	Apr. 7	Apr. 8	81	126-132
1092	Mar. 21, 1910	"Einfürung in die technische Elektro-Chemie, etc."	Apr 7	Apr. 8	81	126-132
1117	Apr. 6, 1910	"Die Schule der Chemie, etc."	Apr. 7	Apr. 8	81	126-132
1179	Apr. 6, 1910	"Die Schule der Physik, etc."	Apr. 7	Apr. 8	81	126-132
1191	Apr. 8, 1910	"Die Methoden der Massanalyse, etc."	Apr. 7	Apr. 8	81	126-132
1456	June 20, 1910	"Die Stromversorgung der Telegraphen-und Fernsprechanstalten."	Apr. 7	Apr. 8	81	126-132
1457	June 20, 1910	"Theoretische Telegraphie"	Apr. 7	Apr. 8	81	126-132
1598	July 16, 1910	"Die Lehre von der Bildentstehung im Mikroskop."	Apr. 7	Apr. 8	81	126-132
1842	Oct. 7, 1910	"Lehrbuch der anorganischen Chemie."	Apr. 7	Apr. 8	81	126-132
2121	Nov. 15, 1910	"Die elektrischen erscheinungen in metallischen Leitern, etc."	Apr. 7	Apr. 8	81	126-132
2456	Jan. 25, 1911	"Telegraphen-und fernsprechkabelanlagen."	Apr. 7	Apr. 8	81	126-132
2557	Feb. 11, 1911	"Anleitung zur Untersuchung der für die Zuckerindustrie, etc."	Apr. 7	Apr. 8	81	126-132
2571	Feb. 8, 1911	"Der drehrohrofen als modernster Brennapparat."	Apr. 7	Apr. 8	81	126-132
2603	Feb. 20, 1911	"Leitfaden für den praktischchemischen Unterricht der Mediziner, etc."	Apr. 7	Apr. 8	81	126-132
2977	May 5, 1911	"Die Schutzvorrichtungen der Starkstromtechnik, etc."	Apr. 7	Apr. 8	81	126-132
3063	June 1, 1911	"Das Relativitätsprinzip"	Apr. 7	Apr. 8	81	126-132
3234	June 16, 1911	"Joh. Karl König's Warenlexikon für den Verkehr mit Drogen und Chemikalien, etc."	Apr. 7	Apr. 8	81	126-132
3245	June 15, 1911	"Chemie der Eiweisskörper"	Apr. 7	Apr. 8	81	126-132
3496	Aug. 28, 1911	"E. F. Schell's Führer des Maschinisten, etc."	Apr. 7	Apr. 8	81	126-132
4044	Nov. 14, 1911	"Die Leuchtgaserzeugung und die moderne Gasbeleuchtung, etc."	Apr. 7	Apr. 8	81	126-132
4045	Nov. 14, 1911	"Wechselstromversuche"	Apr. 7	Apr. 8	81	126-132
4046	Oct. 20, 1911	"Die Selbstanschluss-und wählereinrichtungen im fernsprechbetriebe."	Apr. 7	Apr. 8	81	126-132
4056	Nov. 13, 1911	"Kurzes Lehrbuch der organischen Chemie."	Apr. 7	Apr. 8	81	126-132
4131	Dec. 7, 1911	"Leitfaden für eisenhütten Laboratorien."	Apr. 7	Apr. 8	81	126-132
4323	Dec. 15, 1911	"Aufgaben aus der Physik nebst einem Anhange, etc."	Apr. 7	Apr. 8	81	126-132
4422	Jan. 25, 1912	"Auflösungen zu den Aufgaben aus der Physik, etc."	Apr. 7	Apr. 8	81	126-132
4705	Feb. 7, 1912	"Die chemischen grundlehren nach Menge, etc."	Apr. 7	Apr. 8	81	126-132
4723	Feb. 19, 1912	"Berechnung von Wechselstromfernleitungen."	Apr. 7	Apr. 8	81	126-132
5523	May 8, 1912	"Leitfaden der Physik und Chemie, etc."	Apr. 7	Apr. 8	81	126-132
5622	June 19, 1912	"Handbuch der Presshefenfabrikation."	Apr. 7	Apr. 8	81	126-132
5797	Aug. 7, 1912	"Leitfaden für den Unterricht in der Physik, etc."	Apr. 7	Apr. 8	81	126-132

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5980	Aug. 29, 1912	"Die Grundgesteze der Wechselstrom-Technik."	1919. Apr. 7	1919. Apr. 8	81	126-132
5983	Aug. 29, 1912	"Die Telephonie ohne Draht"	Apr. 7	Apr. 8	81	126-132
6238	Oct. 11, 1912	"Die Physik der Röntgenstrahlen"	Apr. 7	Apr. 8	81	126-132
6239	Oct. 11, 1912	"Elektrobiologie"	Apr. 7	Apr. 8	81	126-132
6240	Oct. 19, 1912	"Theorien der organischen Chemie, etc."	Apr. 7	Apr. 8	81	126-132
6241	Sept. 17, 1912	"Das Erdöl und seine Verwandten, etc."	Apr. 7	Apr. 8	81	126-132
6242	Sept. 17, 1912	"Die Fabrikation des Russes und der Schwärze aus Abfällen und nebenprodukten, etc."	Apr. 7	Apr. 8	81	126-132
6244	Sept. 21, 1912	"Die Industrie des Steinkohlenteers und des Ammoniaks."	Apr. 7	Apr. 8	81	126-132
6763	Jan. 3, 1913	"Physikalische Grundlagen der Elektro-Technik."	Apr. 7	Apr. 8	81	126-132
8199	July 16, 1913	"Das Leuchten der Gase und Dämpfe, etc."	Apr. 7	Apr. 8	81	126-132
8636	Oct. 7, 1913	"Tabelle der wichtigsten organischen Verbindungen geordnet nach schmelzpunkten, etc."	Apr. 7	Apr. 8	81	126-132
8959	Oct. 22, 1913	"Der Heutige Stand der Synthese von Pflanzenalkaloiden."	Apr. 7	Apr. 8	81	126-132
9495	Jan. 2, 1914	"Die Industrie der cyanverbindungen, etc."	Apr. 7	Apr. 8	81	126-132
8633	Oct. 7, 1913	"Gasbeleuchtung, etc."	Apr. 7	Apr. 8	81	126-132
9496	Jan. 10, 1914	"Moderne Probleme der Physik"	Apr. 7	Apr. 8	81	126-132
9517	Nov. 27, 1913	"Die Chemie und Technologie der natürlichen und künstlichen Asphatle."	Apr. 7	Apr. 8	81	126-132
9937	Feb. 11, 1914	"Kinetische Stereschemie der Kohlenstoff-verbindungen."	Apr. 7	Apr. 8	81	126-132
10421	Apr. 28, 1914	"Die Lichtelelektrischen Erscheinungen."	Apr. 7	Apr. 8	81	126-132
10422	Apr. 28, 1914	"Anorganische Peroxyde und Persalze."	Apr 7	Apr. 8	81	126-132
10424	Apr. 28, 1914	"Die Lichtbrechung in Gase als physikalisches und chemisches Problem."	Apr. 7	Apr. 8	81	126-132
10428	Apr. 28, 1914	"Brennereifragen, etc."	Apr. 7	Apr. 8	81	126-132
10600	May 19, 1914	"Die Nitrocellulosen, etc."	Apr. 7	Apr. 8	81	125-132
11618	Dec. 4, 1914	"Die Flüssigen Brennstoffe, etc."	Apr. 7	Apr. 8	81	126-132
11621	Dec. 4, 1914	"Ueber die Natur der Mischfarben auf Grund der Uydulationshypothese."	Apr. 7	Apr. 8	81	126-132
11628	Dec. 4, 1914	"Die Interferenz der Röntgenstrahlen."	Apr. 7	Apr. 8	81	126-132
11629	Dec. 4, 1914	"Die Elektrolytische Darstellung von Legierungen aus wasserigen Lösungen."	Apr. 7	Apr. 8	81	126-132
11622	Dec. 4, 1914	"Verflüssigung der Kohle und Herstellung der Sonnentemperatur."	Apr. 7	Apr. 8	81	126-132
11630	Dec. 4, 1914	"Rost und Rostschutz"	Apr. 7	Apr. 8	81	126-132
11634	Dec. 4, 1914	"Aufbereitung, Brikettierung und Verkokung der Steinkohle."	Apr. 7	Apr. 8	81	126-132
6229	Oct. 9, 1912	"Medizinisch chemisches Laboratoriums-Hilfsbuch."	Apr. 7	Apr. 8	81	120-121
7390	Mar. 18, 1913	"Die Fermente und ihre Wirkungen," volume 1.	Apr. 7	Apr. 8	81	120-121
7948	June 13, 1913	"Grundriss der Pharmakologie in bezug auf Arneimittellehre und Toxikologie."	Apr. 7	Apr. 8	81	120-121
8627	Oct. 1, 1913	"Die Fermente und ihre Wirkungen," volume 2.	Apr. 7	Apr. 8	81	120-121
11043	Apr. 21, 1914	"Lehrbuch der Metallographie, etc."	Apr. 7	Apr. 8	81	114-115
5328	May 8, 1912	"Die Schule des modernen Parfumeürs, etc"	Apr. 7	Apr. 8	81	118-119

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6413	Oct. 30, 1912	"Die moderne Parfümerie, etc."	Apr. 7	Apr. 8	81	119–119
7131	Feb. 12, 1913	"Die Moderne Toiletteseifen-Fabrikation, etc."	Apr. 7	Apr. 8	81	118–119
7850	Apr. 16, 1913	"Schuhcremes und Bohnermassen, etc."	Apr. 7	Apr. 8	81	118–119
14130	Jan. 1, 1916	"Handbuch der Radiologie"	Apr. 7	Apr. 8	81	116–117
1089	Mar. 12, 1910	"Grundzuge der Physik"	Apr. 7	Apr. 8	81	110–111
6075	June 11, 1912	"Lexikon der Anorganischen Verbindungen."	Apr. 7	Apr. 8	81	66–67
7609	Dec. 31, 1912	"Lehrbuch der Thermodynamik."	Apr. 7	Apr. 8	81	66–67
11127	May 29, 1914	"Lexikon der anorganischen Verbindungen."	Apr. 7	Apr. 8	81	66–67
3420	July 12, 1911	"Lehrbuch der Mikrochemie"	Apr. 7	Apr. 8	81	64–65
11109	May 29, 1914	"Der chemische Giftnachweis"	Apr. 7	Apr. 8	81	64–65
191	July 5, 1909	"Biochemisches Taschenbuch, etc."	Apr. 7	Apr. 8	81	112–113
194	Apr. 1, 1909	"Grundriss der Pharmakochemie, etc."	Apr. 7	Apr. 8	81	112–113
1442	June 25, 1910	"Die Alkaloide, eine Monographie der natürlichen Basen, etc."	Apr. 7	Apr. 8	81	112–113
2601	Feb. 13, 1911	"Metallkunde Ein Lehr-und Handbuch für Fabrikanten, etc."	Apr. 7	Apr. 8	81	62–63
7953	Dec. 24, 1912	"V. V. Richter's Chemie der Kohlenstoff-Verbindungen, etc."	Apr. 7	Apr. 8	81	60–61
9915	Oct. 1, 1913	"Radium als Kosmetikum"	Apr. 7	Apr. 8	81	60–61
11303	May 30, 1914	"V. V. Richter's Lehrbuch der anorganischen Chemie."	Apr. 7	Apr. 8	81	60–61
4624	Aug. 1, 1911	"Physikalische Chemie der zelle und der gewebe, etc."	Apr. 7	Apr. 8	81	58–59
12136	July 24, 1914	"Physikalische Chemie der zelle und der gewebe, etc."	Apr. 7	Apr. 8	81	58–59
5207	Apr. 13, 1912	"Die Röntgen Literatur, etc."	Apr. 7	Apr. 8	81	55–57
6709	Nov. 9, 1912	"Das Materialprüfungswesen, unter besonderer berücksichtigung der am Königl, etc."	Apr. 7	Apr. 8	81	55–57
12148	July 18, 1914	"Die Röntgen Literatur, etc."	Apr. 7	Apr. 8	81	55–57
12214	Feb. 13, 1915	"Materialprüfungsmethoden im Elektro-Maschinen und Apparatebau, etc."	Apr. 7	Apr. 8	81	55–57
12683	June 19, 1915	"Die Katalyse"	Apr. 7	Apr. 8	81	55–57
12684	June 19, 1915	"Lehrbuch der Physikalischen Chemie, etc."	Apr. 7	Apr. 8	81	55–57
10	Dec. 20, 1908	"Starkstromtechnik, etc."	Apr. 7	Apr. 8	81	53–54
5629	June 29, 1912	"Starkstromtechnik, etc."	Apr. 7	Apr. 8	81	53–54
794	Dec. 8, 1909	"Einführung in die Chemie, etc."	Apr. 7	Apr. 8	81	51–52
4910	Dec. 20, 1911	"Der elektrische Strom"	Apr. 7	Apr. 8	81	51–52
5226	Feb. 12, 1912	"Der elektrische Strom"	Apr. 7	Apr. 8	81	51–52
11287	Jan. 15, 1915	"Das synthetische System der Atome."	Apr. 7	Apr. 8	81	49–50
418	Oct. 18, 1909	"Etymologisches Fachworterbuch zur Mathematik, Physik, Chemie und Mineralogie."	Apr. 7	Apr. 8	81	47–48
8521	Sept. 10, 1913	"Handbuch der Anorganischen Chemie."	Apr. 7	Apr. 8	81	45–46
12628	May 11, 1915	"Prinzipien der Atomdynamik, etc."	Apr. 7	Apr. 8	81	45–46
3775	Aug. 31, 1911	"Die Gallvanischen Metallniederschläge, etc."	Apr. 7	Apr. 8	81	43–44
14134	Jan. 5, 1916	"Die Praxis der Färberei unter Berucksichtigung der Appretur, etc."	Apr. 7	Apr. 8	81	43–44
340	Oct. 18, 1909	"Illustrierte Technische Worterbücher, etc."	Apr. 7	Apr. 8	81	33–34
624	Nov. 25, 1909	"Illustrierte Technische Worterbücher, etc."	Apr. 7	Apr. 8	81	33–34
1910	Oct. 17, 1910	"Illustrierte Technische Worterbücher, etc."	Apr. 7	Apr. 8	81	33–34
13159	Nov. 18, 1915	"Illustrierte Technische Worterbücher, etc."	Apr. 7	Apr. 8	81	33–34

No. (A—Foreign.)	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
1596	July 16, 1910	"Die Thermischen Eigenschaften der Gase, etc."	1919. Apr. 7	1919. Apr. 8	81	41-42
10110	Mar. 9, 1914	"Technische Thermodynamik"	Apr. 7	Apr. 8	81	38-40
11105	June 16, 1914	"Chemie der menschlichen nahrungs-und genussmittel."	Apr. 7	Apr. 8	81	38-40
14359	Jan. 15, 1916	"Handbuch der Eisen-und Stahlgiesserei."	Apr. 7	Apr. 8	81	38-40
465	Oct. 23, 1909	"Die Vektoranalysis und ihre Anwendung in der Theoretischen Physik, etc."	Apr. 7	Apr. 8	81	35-37
513	Oct. 27, 1909	"Vorlesungen zur Einführung in die Mechanik raumerfüllender massen, etc."	Apr. 7	Apr. 8	81	35-37
545	Nov. 3, 1909	"Lehrbook der Praktischen Physik, etc."	Apr. 7	Apr. 8	81	35-37
702	Dec. 9, 1909	"Vorlesungen über Technische Mechanik, etc."	Apr. 7	Apr. 8	81	35-37
995	Feb. 14, 1910	"Die Vektoranalysis und ihre Anwendung in der Theoretischen Physik, etc."	Apr. 7	Apr. 8	81	35-37
6104	June 19, 1912	"Grundriss der Anorganischen Chemie, etc."	Apr. 7	Apr. 8	81	31-32
11123	June 22, 1914	"Die Experimentelle Pharmakologie als Grundlage der Arzneibehandlung, etc."	Apr. 7	Apr. 8	81	29-30
13322	Jan. 15, 1915	"Enzyklopädie der Technischen Chemie, etc."	Apr. 7	Apr. 8	81	29-30
596	Nov. 9, 1909	"Elektrotechnisches Experimentierbuch, etc."	Apr. 7	Apr. 8	81	27-28
8842	Nov. 1, 1913	"Chemisches Experimentierbuch, etc."	Apr. 7	Apr. 8	81	27-28
14043	Mar. 24, 1915	"Auskunftsbuch für die chemische Industrie."	Apr. 7	Apr. 8	81	25-26
155	Jan. 11, 1909	"Müller-Pouillets Lehrbuch der Physik und Meteorologie."	Apr. 7	Apr. 8	81	19-22
156	Mar. 6, 1909	"Müller-Pouillets Lehrbuch der Physik und Meteorologie."	Apr. 7	Apr. 8	81	19-22
1115	Mar. 24, 1910	"Die Mechanik der Festen, flüssigen und Gasformigen Körper, etc."	Apr. 7	Apr. 8	81	35-37
1671	Aug. 14, 1910	"Schülerubungen zur einführung in die Physik, etc."	Apr. 7	Apr. 8	81	35-37
4938	Dec. 8, 1911	"Die Mechanik der festen, flüssigen und Gasformigen Körper, etc."	Apr. 7	Apr. 8	81	35-37
4942	Dec. 12, 1911	"Physikalisches Experimentierbuch."	Apr. 7	Apr. 8	81	35-37
9218	May 7, 1913	"Chemische Plaudereien für 10-bis 14 jährige schüler aller schulgattungen, etc."	Apr. 7	Apr. 8	81	35-37
10543	Dec. 2, 1913	"Chemisches Experementierbuch."	Apr. 7	Apr. 8	81	35-37
10819	Jan. 16, 1914	"Vorlesungen über technische mechanik, etc."	Apr. 7	Apr. 8	81	35-37
13569	Jan. 29, 1915	"Reportorium der Physik, etc."	Apr. 7	Apr. 8	81	35-37
13645	Feb. 16, 1915	"Theorie der Elektrizität, etc."	Apr. 7	Apr. 8	81	35-37
13649	Dec. 22, 1914	"Die Elektrische Kraftübertragung, etc."	Apr. 7	Apr. 8	81	35-37
14035	Nov. 9, 1915	"Kasmetik, etc."	Apr. 7	Apr. 8	81	35-37
158	Jan. 18, 1909	"Post's Chemisch-technische analyse, etc."	Apr. 7	Apr. 8	81	19-22
159	Jan. 15, 1909	"Die Kraftfelder, etc."	Apr. 7	Apr. 8	81	19-22
160	July 11, 1908	"Die Bindung des Atmosphärischen stickstoffs in natur und technik, etc."	Apr. 7	Apr. 8	81	19-22
161	Feb. 5, 1909	"Die Atmosphärische Elektrizität Methoden und Ergebnisse der Modernen Luftelektrischen forschung, etc."	Apr. 7	Apr. 8	81	19-22
162	Oct. 24, 1908	"Die Hebezeuge, etc."	Apr. 7	Apr. 8	81	19-22
163	May 29, 1909	"Kapazität und Induktivität, etc."	Apr. 7	Apr. 8	81	19-22

No. (A-Foreign).	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
167	Dec. 19, 1908	"Neuere Anschauungen auf dem gebiete der anorganischen Chemie, etc."	1919. Apr. 7	1919. Apr. 8	81	19-22
168	Mar. 3, 1909	"Das Klimaproblem der Geologischen Vergangenheit und Historischen Gegenwart, etc."	Apr. 7	Apr. 8	81	19-22
170	Oct. 31, 1908	"Neuere Theoretische Anschauungen auf den. gebiete der Organischen Chemie, etc."	Apr. 7	Apr. 8	81	19-22
172	June 9, 1909	"Anleitung zum Experimentieren in den vorlesung über Organische Chemie, etc."	Apr. 7	Apr. 8	81	19-22
173	Nov. 25, 1908	"Kurzes Lehrbuch der Organischen Chemie, etc."	Apr. 7	Apr. 8	81	19-22
175	Nov. 25, 1908	"Elektrotechnische Messungen und Messinstrumente, etc."	Apr. 7	Apr. 8	81	19-22
176	July 15, 1908	"Die Lagerundg der Atome in Raume, etc."	Apr. 7	Apr. 8	81	19-22
177	Mar. 13, 1909	"Die Chemie der Chlorophylle und ihre Beziehung zur Chemie des Blutfarbstoffs, etc."	Apr. 7	Apr. 8	81	19-22
178	May 15, 1909	"Handbuch der Soda-Industrie und ihrer Nebenzweige, etc."	Apr. 7	Apr. 8	81	19-22
179	May 14, 1909	"Die Fabrikation des Superphosphats mit Berücksichtigung der anderen Gebräuchlichen Dungemittel, etc."	Apr. 7	Apr. 8	81	19-22
229	Mar. 27, 1909	"H. W. Vogel's Photographie, etc."	Apr. 7	Apr. 8	81	19-22
235	July 29, 1909	"Die Transformatoren, ihre Wirkungsweise, etc."	Apr. 7	Apr. 8	81	19-22
291	Sept. 10, 1909	"J. G. Gentele's Lehrbuch der Farbenfabrikation, etc."	Apr. 7	Apr. 8	81	19-22
1235	Apr. 25, 1910	"Unterstufe der Naturlehre (Physik nebst Astronomie), etc."	Apr. 7	Apr. 8	81	19-22
3231	June 17, 1911	"Oberstufe der Naturlehre (Physik nebst Astronomie und Mathematischer Geographie), etc."	Apr. 7	Apr. 8	81	19-22
4043	Oct. 27, 1911	"Ausführliches Lehrbuch der pharmazeutischen Chemie, etc."	Apr. 7	Apr. 8	81	19-22
5087	Mar. 27, 1912	"Müller Poullets Lehrbuch der Physik, und Meteorologie, etc."	Apr. 7	Apr. 8	81	19-22
5098	Apr. 18, 1912	"Unterstufe der Naturlehre (Physik nebst Astronomie und Chemie), etc."	Apr. 7	Apr. 8	81	19-22
6114	Oct. 16, 1912	"Die Chemie in Natur und Technik, etc."	Apr. 7	Apr. 8	81	19-22
6243	Sept. 17, 1912	"Die Industrie des Steinkohlenteers und des Ammoniaks, etc."	Apr. 7	Apr. 8	81	19-22
10425	Apr. 28, 1914	"Die Radioaktivität von boden und quellen, etc."	Apr. 7	Apr. 8	81	19-22

Said instrument dated April 10, 1919, and recorded in the United States Patent Office on April 21, 1919, in liber Y-107, page 1-143 of Transfers of Patents, a copy of which instrument is set out in Exhibit H-1 attached to this bill of complaint, also enumerated certain contract rights growing out of the following contracts:

Between Badische Aniline and Sode Fabrik and Theodore Goldschmidt, assignor to the Goldschmidt Chemical Co., assignor to the Goldschmidt Detinning Co., now the Metal Thermit Corp.

Contract dated March 12, 1907.

Patent (not given).

Title: Manufacture of chlorine.

Date of demand served on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber R-106, page 475 of Transfers of Patents.

Demand served on Metal and Thermit Corporation, 120 Broadway, New York, N. Y., such service made March 26, 1919.

Between Dr. Frederick Supf and Arabol Manufacturing Company.

Contract not dated but acknowledged October 12, 1908.

Covering Patent No. 974448.

Dated November 1, 1910.

Title: Process of liquefying organic colloids.

Demand served on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber Q-106, page 441 of Transfer of Patents.

Demand dated March 22, 1919, served on Arabol Manufacturing Company, 100 William Street, New York, N. Y.; such service made March 26, 1919.

Between Kathreiners Malzkaffee Fabriken m. b. H., and William Rahr, Max Rahr, and Reinhardt Rahr, assignors to Kneipp Malt Food Company.

Contract dated June 26, 1895.

Covering Patent (S. N.) 513252.

Title: Kneipp Malt, a coffee substitute.

Date of demand served on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber K-106, page 499 of Transfers of Patents.

Between Rheinische Dampfkessel and Maschinenfabrik Buttner, G. M. B. H., and Stearns-Roger Manufacturing Company.

Contract dated December 20, 1912.

Covering Patent No. 1078125.

Dated November 11, 1913.

Title: Cellular drying apparatus.

Date of demand served on Commissioner of Patents: March 22, 1919.

Service of demand accepted April 9, 1919.

Recorded April 9, 1919, liber R-106, page 479 of Transfers of Patents.

Demand dated March 22, 1919, served on Stearns-Roger Manufacturing Company, 1720 California St., Denver, Colo., such service made May 13, 1919.

Between Friederick Grosche and Becton Dickinson & Company.

Contract dated June 1, 1912.

Covering Patent No. 823859.

Dated June 19, 1906.

Title: Apparatus for shaking thermometers.

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber U-106, page 384 of Transfers of Patents.

Demand dated March 22, 1919, served on Becton Dickinson and Company, Rutherford, N. J.; such service made April 16, 1919.

Between F. H. Kindel, agent for Coln-Musener-Berwegs Aktienverein and Burdette Manufacturing Company, assignor to the Oxygen Protective Association.

Contract dated January 18, 1916.

Covering Patent No. 703940.

Dated July 1, 1902.

Title: Process of fusion of metals.

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber N-106, page 496 of Transfers of Patents.

Demand dated ———, served on Oxygen Protective Association, c/o F. L. Horton, Packers and Exchange Ave., Chicago, Ill.; such service made ———.

Between Chemische Fabrik Rhenia and Schoellkopf Hartford and Hanna Company, assignor to the Contact Process Company.

Contract dated May 26, 1902.

Patent (not given).

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber R-106, page 473 of Transfers of Patents.

Demand dated March 22, 1919, served on Contact Process Company, Buffalo, New York; such service made April 12, 1919.

Between Leon Lilienfeld and Eastman Kodak Company.

Contract dated August 5, 1912.

Covering the following patents:

Patent No.	Date of issue	Title
1188376	June 20, 1916	Alkyl ethers of cellulose and process of making same.
1217027	Feb. 20, 1917	Film and process of producing same.

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber N-106, page 488 of Transfers of Patents.

Demand dated March 22, 1919, served on Eastman Kodak Company, Rochester, New York; such service made April 19, 1919.

Between Schulke & Mayr Aktiengesellschaft and Lehn & Fink, Inc.

Contract dated February 5, 1914.

Covering trade-marks 53937 and 53938.

Dated June 12, 1906.

Title: Lysol.

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber Q-106, page 440 of Transfers of Patents.

Demand dated March 24, 1919, served on Lehn & Fink, Inc., 120 Williams St., New York, New York; such service made March 24, 1919.

Between Oskar Zahn, doing business as Oskar Zahn Buro, and the Deutsche Ton-und Steinzeug Werke, A. G., and the General Ceramics Company.

Contract dated July 26, 1913.

Covering patent No. 1099451.

Dated June 9, 1914.

Title: Process for the continuous production of dry hydrochloric acid and potassium bisulfate from potassium chlorid and sulfuric acid.

Date of demand on Commissioner of Patents: February 11, 1919.

Service accepted February 20, 1919.

Recorded February 20, 1919, liber Q-106, page 172 of Transfers of Patents.

Demand dated February 11, 1919, served on General Ceramics Co., Inc., 50 Church Street, New York City; such service made February 25, 1919.

Between Oskar Zahn and the Deutsche Ton-und Steinzeug Werke A. G., and the General Ceramics Company, Inc.

Contract dated May 10, 1913.

Covering patents 936844 and 1124380.

Dated October 12, 1909, and January 12, 1915.

Title: Plant for heating the gas and air for combustion in gas furnaces; muffle furnaces for enameling.

Date of demand on Commissioner of Patents: February 11, 1919.

Service accepted February 20, 1919.

Recorded February 20, 1919, liber I-106, page 157 of Transfers of Patents.

Demand dated February 11, 1919, served on General Ceramics Company, Inc., 50 Church St., New York City; such service made February 25, 1919.

Demand dated February 11, 1919, served on E. Croyden Marks, Esq., 220 Broadway, New York City; such service made February 24, 1919.

Between Chemische Fabrik Helfenberg and Reinschild Chemical Company.

Contract dated December 28, 1905.

Covering patents 896807 and 943163.

Title: Agar-agar cascara.

Date of demand on Commissioner of Patents: March 24, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber Z-106, page 356 of Transfers of Patents.

Demand dated March 22, 1919, served on Reinschild Chemical Company, 47 Barclay St., New York, N. Y.; such service made April 4, 1919.

Between Huelsberg & Company, m. b. H., and Atchison, Topeka & Santa Fe Railway Company.

Contract dated January 16, 1905.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber J-106, page 447 of Transfers of Patents.

Demand dated ———, served on Atchison, Topeka & Santa Fe Railway Co., Topeka, Kansas; such service made April 23, 1919.

Between Huelsberg & Cie, m. b. H., and St. Helens Creosoting Company.

Contract dated October 24, 1913.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919; F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 438 of Transfers of Patents.

Demand dated ———, 1919, served on St. Helens Creosoting Co., 912 Yeon Building, Portland, Oregon; such service made April 18, 1919.

Between Huelsberg & Cie., m. b. H., and the Continental Tie and Lumber Company.

Contract dated February 19, 1913.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 20 of Transfers of Patents.

Between Huelsberg & Cie., m. b. H., and Kettle River Company.

Contract dated January 17, 1912.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Demand served on commissioner under date of April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 434 of Transfers of Patents.

Demand dated May 19, 1919, served on Kettle River Company, Minneapolis, Minnesota, such service made May 21, 1919.

Between Huelsberg & Cie., m. b. H., and Atlantic Coast Line Railroad Company.

Contract dated November 28, 1913.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 9 of Transfers of Patents.

Demand dated ———, 1919, served on Atlantic Coast Line Railroad Co., Wilmington, North Carolina, such service made April 19, 1919.

Between Huelsberg & Cie., m. b. H., and Southern Wood Preserving Company.

Contract dated January 14, 1915.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 443 of Transfers of Patents.

Demand dated ———, 1919, served on Southern Wood Preserving Co., of Atlanta, Georgia, such service made April 14, 1919.

Between Huelsberg & Cie., m. b. H., and the Gulf Creosoting Company.

Contract dated May 19, 1908.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Y-106, page 431 of Transfers of Patents.

Demand dated ———, 1919, served on Gulf Creosoting Co., Gulfport, Mississippi, such service made April 14, 1919.

Between Huelsberg & Cie., m. b. H., and Central Creosoting Co.

Contract dated April 23, 1917.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 15 of Transfers of Patents.

Demand dated ———, 1919, served on Central Creosoting Co., Chicago, Illinois; such service made April 12, 1919.

Between Huelsberg & Cie, m. b. H., and American Creosote Works, Inc., and American Creosote Works, Ltd.

Contract dated July 16, 1909.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 446 of Transfers of Patents.

Demand dated ———, 1919, served on American Creosote Works, Inc., and American Creosote Works, Ltd., Station B, New Orleans, La., such service made April 16, 1919.

Between Huelsberg & Cie, m. b. H., and Joseph B. Card.

Contract dated May 3, 1917.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 13 of Transfers of Patents.

Demand dated ———, 1919, served on Joseph B. Card, 111 West Washington St., Chicago, Ill.; such service made April 23, 1919.

Between Huelsberg & Cie, m. b. H., and Lemboke von Bernuth Company, Inc.

Contract dated October 6, 1911.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 436 of Transfers of Patents.

Between Huelsberg & Cie, m. b. H., and the American Creosoting Company of New Jersey.

Contract dated (no contract). (See letter R. 16713.)

Patents: Re. 12707, 709799 and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 444 of Transfers of Patents.

Demand dated ———, 1919, served on the American Creosoting Co. of N. J., 17 Battery Place, New York, New York; such service made April 11, 1919.

Between Huelsberg & Cie, m. b. H., and El Paso & Southwestern Company.

Contract dated August 15, 1910.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Y-106, page 430 of Transfers of Patents.

Demand dated ———, 1919, served on El Paso & Southwestern Co., 99 John St., New York, N. Y., such service made ———, 1919.

Between Huelsberg & Cie, m. b. H., and Santa Fe Tie & Lumber Preserving Company.

Contract dated January 16, 1905.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Demand served on Commissioner of Patents, April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 441 of Transfers of Patents.

Demand dated ———, 1919, served on Santa Fe Tie & Lumber Preserving Co., Galveston, Texas; such service made April 25, 1919.

Between Huelsberg & Cie, m. b. H., and Ohio Wood Preserving Company.

Contract (not dated).

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by R. F. Whitehead, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 442 of Transfers of Patents.

Between Huelsberg & Cie, m. b. H., and Southern Creosoting Company, Ltd.

Contract dated June 25, 1914.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 9, 1919.

Service accepted April 9, 1919, by R. F. Whitehead, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 440 of Transfers of Patents.

Demand dated, ———, 1919, served on Southern Creosoting Company, Ltd., Slidell, Louisiana; such service made May 12, 1919.

Between Huelsberg & Cie, m. b. H., and Pacific Creosoting Co.

Contract dated January 28, 1914.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 445 of Transfers of Patents.

Demand dated ———, 1919, served on Pacific Creosoting Co., 204 Northern Life Bldg., Seattle, Washington, such service made April 15, 1919.

Between Huelsberg & Cie, m. b. H., and Philadelphia & Reading Railway Company.

Contract dated December 18, 1912.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 435 of Transfers of Patents.

Demand dated ———, 1919, served on Philadelphia & Reading Ry. Co., Philadelphia, Pennsylvania; such service made ——— 17, 1919.

Between Huelsberg & Cie., m. b. H., and Charlotte Harbor & Northern Railway.

Contract dated July 1, 1913.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 17 of Transfers of Patents.

Demand dated ———, 1919, served on Charlotte Harbor & Northern Ry., Boca Grande, Florida; such service made May 14, 1919.

Between Huelsberg & Cie., m. b. H., and Pennsylvania Railroad Company.

Contract dated March 30, 1911.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 446 of Transfers of Patents.

Demand dated ———, 1919, served on the Pennsylvania Railroad Company, Philadelphia, Pennsylvania; such service made April 16, 1919.

Between Huelsberg & Cie., m. b. H., and Boston Elevated Railway Company.

Contract dated December 27, 1915.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 12 of Transfers of Patents.

Demand dated ———, 1919, served on Boston Elevated Railway Company, Boston, Massachusetts; such service made April 15, 1919.

Between Huelsberg & Cie, m. b. H., and Jennison-Wright Company.

Contract dated June 21, 1913.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Y-106, page 433 of Transfers of Patents.

Demand dated ———, 1919, served on Jennison-Wright Company, Toledo, Ohio; such service made April 15, 1919.

Between Huelsberg & Cie., m. b. H., and Pittsburgh Wood Preserving Company.

Contract dated September 22, 1910.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 437 of Transfers of Patents.

Between Huelsberg & Cie, m. b. H., and Central of Georgia Railway Company.

Contract dated April 15, 1912.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 16 of Transfers of Patents.

Demand dated April 19, 1919, served on Central of Georgia Railway Company, Savannah, Georgia; such service made April 21, 1919.

Between Huelsberg & Cie, m. b. H., and National Lumber & Creosoting Company.

Contract dated ——— day of ———, 1910.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 443 of Transfers of Patents.

Demand dated April 17, 1919, served on National Lumber and Creosoting Co., Texarkana, Arkansas; such service made April 17, 1919.

Between Huelsberg & Cie, m. b. H., and Missouri, Kansas & Texas Ry. Company.

Contract dated June 16, 1906.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 439 of Transfers of Patents.

Between Huelsberg & Cie, m. b. H., and Michigan Wood Preserving Company.

Contract (not dated). (See letter in R-150.)

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 437 of Transfers of Patents.

Between Huelsberg & Cie, m. b. H., and St. Paul & Tacoma Lumber Company.

Contract (none of record).

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Demand dated ———, 1919, served on St. Paul & Tacoma Lumber Company.

Between Huelsberg & Cie, m. b. H., and Ayer & Lord Tie Company.

Contract dated April 19, 1907.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 10 of Transfers of Patents.

Demand dated ———, 1919, served on Ayer & Lord Tie Company, Chicago, Illinois; such service made April 14, 1919.

Between Huelsberg & Cie, m. b. H., and Compressed Wood Preserving Company.

Contract dated March 10, 1916.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02, and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 19 of Transfers of Patents.

Demand dated ———, 1919, served on Compressed Wood Preserving Company, Cincinnati, Ohio; such service made April 16, 1919.

Between Erzroest Gesellschaft and Granby Mining & Smelting Company.

Contract dated January 19, 1916.

Covering Patent 979349.

Dated 12-20-10.

Title: Improvements in furnaces for roasting ores.

Date of demand served on Commissioner of Patents: April 7, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Z-106, page 354 of Transfers of Patents.

Between Erzroest Gesellschaft, m. b. H., and the National Zinc Company.

Contract dated October 21, 1915.

Patent 979349.

Dated 12-20-10.

Title: Improvements in furnaces for roasting ores.

Date of demand served on Commissioner of Patents: April 7, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Z-106, page 362 of Transfers of Patents.

Between Erzroest Gesellschaft, m. b. H., and the Grasselli Chemical Company.

Contract dated February 27, 1914.

Covering Patent 979349.

Dated 12-20-10.

Title: Improvements in furnaces for roasting ores.

Date of demand served on Commissioner of Patents: April 7, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Z-106, page 350 of Transfers of Patents.

Between C. H. Bormann and General Ceramics Company, Inc.

Contract dated May 24, 1913.

Covering Patents 881806 and 1151801.

Dated 3-10-08 and 8-31-15.

Titles: Process of removing chlorin from raw bromin; apparatus for separating liquid mixtures into two components.

Date of demand served on Commissioner of Patents: February 11, 1919.

Service of demand accepted February 20, 1919, by J. T. Newton, Commissioner of Patents.

Recorded February 20, 1919, liber O-106, page 253 of Transfers of Patents.

Demand dated February 11, 1919, served on B. Singer, 233 Broadway, New York, New York; such service made March 26, 1919.

Demand dated February 11, 1919, served on General Ceramics Company, 50 Church Street, New York City; such service made February 25, 1919.

SCHEDULE 2.

The instrument dated May 2, 1919, and recorded in the United States Patent Office on May 21, 1919, in Liber J-107, page 152, a copy of which instrument is set out in Exhibit H-2 attached to this bill of complaint, enumerated the following trade-marks:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
			1919.	1919.		
68059	Mar. 3, 1908	"Duron"	Apr. 30	May 9	R-107	102
			Apr. 30	May 9	R-107	109
68059	Mar. 3, 1908	"Duron"	Apr. 30	May 9	R-107	105
			Apr. 30	May 9	R-107	109
70391	Aug. 25, 1908	"C. W. H. H."	Apr. 30	May 9	R-107	102
			Apr. 30	May 9	R-107	109
70391	Aug. 25, 1908	"C. W. H. H."	Apr. 30	May 9	R-107	105
			Apr. 30	May 9	R-107	109

[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

The Alien Property Custodian duly seized all of the rights, interests, and benefits created in favor of or conferred upon Chemische Werke Hansa, G. m. b. H., Maritz Bernhard Max Knoblauch, liquidator of Chemische Werke Hansa, G. m. b. H., and Hansa Werke, A. G., pursuant to the terms of a certain agreement dated January 27, 1910, between Chemische Werke Hansa, G. m. b. H., and Arabol Manufacturing Company, granting to said Chemische Werke Hansa, G. m. b. H., its successors or assigns, certain rights with respect to stock ownership in a corporation thereafter to be formed; and by certain agreement believed to be dated between January 27, 1910, and February 11, 1910, between said Chemische Werke Hansa, G. m. b. H., and Amid Duron Company, the corporation formed pursuant to the terms of the agreement of January 27, 1910, above referred to, and granting to said Chemische Werke Hansa, G. m. b. H., a certain royalty in return for certain exclusive rights with respects to patents and trade-marks belonging to said Chemische Werke Hansa, G. m. b. H.; and also all rights and interests to and in any sum or sums of money hereafter accruing in favor of or becoming due or payable to said Chemische Werke Hansa, G. m. b. H., its successors or assigns, under the terms of said agreements; and also all claims and demands whatsoever created or existing in favor of or conferred upon said enemy against Amid Duron Company and Arabol Manufacturing Company.

Said demands were served also upon the following:

Amid Duron Company, 100 William Street, New York City.

Arabol Manufacturing Company, 100 William Street, New York City, in addition to service on the Commissioner of Patents.

SCHEDULE 3.

The instrument dated May 6, 1919, and recorded in the United States Patent Office on May 21, 1919, in Liber A-107, page 229, a copy of which instrument is set out in Exhibit H-3 attached to this bill of complaint, enumerated the following patents:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
			1919.	1919.		
1231933	July 3, 1917	Compass for ships and the like	Mar. 28	Apr. 4	Z-106	317
1231933	July 3, 1917	Compasses for ships and the like	July 28	Aug. 25	D-108	310
1186339	June 6, 1916	Gyroscopic compass	Mar. 28	Apr. 4	Z-106	317
1186686	June 13, 1916	Gyroscopic compass	Mar. 28	Apr. 4	Z-106	317
1228061	May 29, 1917	Device for damping oscillations of a gyroscope pendulum.	Mar. 28	Apr. 4	Z-106	317
794654	July 11, 1905	Gyroscope	Mar. 28	Apr. 4	Z-106	317
841612	Jan. 15, 1907	Suspension of rotating apparatus and magnetic compasses.	Mar. 28	Apr. 4	Z-106	317
877034	Jan. 21, 1908	Gyroscope	Mar. 28	Apr. 4	Z-106	317
973611	Oct. 25, 1910	Gyroscope	Mar. 28	Apr. 4	Z-106	317
1019582	Mar. 5, 1912	Gyroscope	Mar. 28	Apr. 4	Z-106	317
1092816	Apr. 14, 1914	Gyroscope compass	Mar. 28	Apr. 4	Z-106	317
1092816	Apr. 14, 1914	Gyroscope compasses	Apr. 19	June 6	A-108	6
1141099	June 1, 1915	Artificial horizon	May 6	May 8	U-107	60
1173241	Feb. 29, 1916	Gyroscopic apparatus	Mar. 28	Apr. 4	Z-106	317
1180365	Apr. 25, 1916	Method of gyroscopic control	Mar. 28	Apr. 4	Z-106	317
1180365	Apr. 25, 1916	Method gyroscopic control	Apr. 19	June 6	A-108	5
1180815	Apr. 25, 1916	Gyroscopic compass	Mar. 28	Apr. 4	Z-106	317

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

SCHEDULE 4.

The instrument dated May 15, 1919, and recorded in the United States Patent Office on May 21, 1919, in Liber X-107, page 188 of Transfers of Patents, a copy of which instrument is set out in Exhibit H-4 attached to this bill of complaint, enumerated the following patent:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording[1].	Book.	Page.
			1919.	1919.		
868397	Oct. 15, 1907	Transforming-nozzle for obtaining kinetic energy from flowing gases and vapors.	Apr. 27 May 8	May 11 May 13	Z-106 R-107	485 130

[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

SCHEDULE 5.

The instrument dated June 17, 1919, and recorded in the United States Patent Office on June 27, 1919, in Liber L-107, page 242, a copy of which instrument is set out in Exhibit H-5 attached to this bill of complaint, enumerated the following patents:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
			1919.	1919.		
973253	Mar. 12, 1912	Manufacture of incandescence bodies for gas lighting.	May 12	May 14	I-107	56
1061539	May 13, 1913	Apparatus for administering narcotics.	May 26	May 27	L-107	135
1167518	Jan. 11, 1916	Manufacturing froth fillings	May 26	May 27	T-107	132
851960	Apr. 30, 1907	Process of manufacturing of elastic fittings for tires.	May 26	May 27	T-107	132
862266	Aug. 6, 1907	Filter for dust suction apparatus	May 26	May 27	E-107	219
986712	Mar. 14, 1911	Vat washing machine ring	May 26	May 27	L-107	132
1083721	Jan. 6, 1914	Flexible occlusive pessary	May 26	May 27	P-107	191
1180391	Apr. 25, 1916	Device for lathering preparatory to shaving.	May 26	May 27	L-107	124
1001892	Aug. 29, 1911	Balloon envelope material	May 26	May 27	T-107	133
1180704	Apr. 25, 1916	Method of producing waterproof coatings on objects which are influenced by humidity.	May 26 July 28	May 27 Sept. 18	K-107 F-108	83 262
962769	June 28, 1910	Method of manufacturing cellulose structures.	May 26	May 27	E-107	214
868397	Oct. 15, 1907	Transforming nozzle for obtaining kinetic energy from flowing gases and vapors.	Apr. 27	May 1	Z-106	485
1241926	Oct. 2, 1917	Insulation of condensers for telephone circuits.	May 26	May 27	K-107	78
1020255	Oct. 18, 1910	Method of producing incandescent mantles.	May 12	May 14	I-107	57
1181431	May 2, 1916	Manufacture of gas	May 12	May 14	I-107	58
1228879	June 5, 1917	Manufacture of gas	May 12 July 11	May 14 Aug. 18	I-107 C-108	58 288

[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S Patent Office.

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
			1919.	1919.		
1251954	Jan. 1, 1918	Process for producing liquid or soluble organic combinations from hard coal and the like.	May 12	May 14	I-107	60
			Mar. 21	Mar. 26	H-106	406
1060938	May 6, 1913	Method of tinning and leading metals.	June 3	June 9	G-107	217
1302895	Apr. 1, 1912	Negative electrode for searchlights and other like.	June 3	June 9	A-107	303
1088518	Feb. 24, 1914	Method of refrigerating liquids	June 3	June 9	A-107	301
1037515	Sept. 3, 1912	Bronze foil	June 3	June 9	G-107	212
976594	Nov. 22, 1910	Process of providing bronze powder and dust colors with a coat of varnish.	June 3	June 9	G-107	212
1166866	Jan. 4, 1916	Vessel for boiling lye	June 3	June 9	W-107	183
1062522	May 20, 1913	Separation of substances by the wet magnetic process.	June 3	June 9	W-107	183
1114071	Oct. 20, 1914	Magnetic separator	June 3	June 9	W-107	183
1089993	Mar. 10, 1914	Magnetic separator	June 3	June 9	W-107	183
1130648	Mar. 2, 1915	Magnetic separator	June 3	June 9	W-107	183
1129822	Feb. 23, 1915	Magnetic separator	June 3	June 9	W-107	183
1055952	Mar. 11, 1913	Apparatus for the automatic manufacture and direct supply of aerated beverages.	June 3	June 9	L-107	192
1152060	Aug. 31, 1915	Manufacture of colored foil, bronze foil, and metal foil.	Feb. 3	June 9	L-107	195
879424	Feb. 18, 1908	Process of making azo dyes containing radicals of higher fatty acids.	June 3	June 9	L-107	193
1294662	Feb. 18, 1919	Producing substances resembling caoutchouc.	May 26	May 27	L-107	133
1072276	Sept. 2, 1913	Magnetic separator	June 3	June 9	W-107	185
1072277	Sept. 2, 1913	Apparatus for the magnetic separation of ores and other material.	June 3	June 9	W-107	185
1037563	Sept. 3, 1912	Magnetic separator	June 3	June 9	W-107	185
1141572	June 1, 1915	Extraction of juice from sugar and similar saccharine material.	June 3	June 9	D-107	280
1155237	Sept. 28, 1915	Apparatus for cooling and purifying furnace gases.	June 3	June 9	S-107	190
1071276	Aug. 26, 1913	Apparatus for the production of air gas.	June 3	June 9	W-107	181
1063081	May 27, 1913	Apparatus for the production of air gas.	June 3	June 9	W-107	181
			July 18	July 31	B-108	358
1296188	Nov. 3, 1914	Process for making anodes of solid manganese peroxid.	June 3	June 9	S-107	189
1138202	May 4, 1915	Apparatus for purifying water by means of ozonized air.	June 3	June 9	S-107	189
1164987	Dec. 21, 1915	Method of and apparatus for projecting Roentgen images.	June 3	June 9	S-107	189
1156317	Oct. 12, 1915	Electromedical apparatus	July 28	Oct. 15	J-108	70
			June 3	June 9	S-107	189
1204489	Nov. 14, 1916	Measuring magnetic properties of materials and apparatus therefor.	June 3	June 9	S-107	189
			July 22	July 31	B-108	150
			July 28	Sept. 22	G-108	236
1180687	Apr. 25, 1916	Absorption machine	June 3	June 9	N-107	229
886590	May 5, 1908	Blast or exhaust apparatus	June 3	June 9	H-107	144
1296847	Mar. 11, 1919	Process for making cellulose esters with over 20% of bound fatty acid.	June 3	June 9	G-107	215
1292544	Jan. 28, 1919	Process for the precipitation of viscose for the production of artificial threads and other structures	June 3	June 9	X-107	271
1262134	Apr. 9, 1918	Apparatus for making metallic coatings.	May 26	May 27	R-107	204
1009863	Nov. 28, 1911	Furnace for extracting zinc	May 26	May 27	R-107	203
1169895	Feb. 1, 1916	Manufacture of reinforced pasteboard and the like.	May 26	May 27	F-107	202
1197315	Sept. 5, 1916	Reinforced paper	May 26	May 27	F-107	202
1298880	Apr. 1, 1919	Subaqueous torch and method of igniting.	June 5	June 9	A-107	302

Said instrument dated June 17, 1919, and recorded in the United States Patent Office on June 27, 1919, in Liber L-107, page 242, a copy of which instrument is set out in Exhibit H-5, attached to this bill of complaint, also enumerated the following applications and serial numbers:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording[1].	Book.	Page.
			1919.	1919.		
865707	Oct. 8, 1914	Magnetic separator	June 3	June 9	W-107	186
92032	Apr. 18, 1916	Apparatus for treating liquids by ultra-violet rays.	June 3	June 9	G-107	214
87230	Mar. 28, 1916	Apparatus for treating liquids by ultra-violet rays.	June 3	June 9	G-107	214
77305	Feb. 9, 1916	Magnetic drum separator	June 3	June 9	W-107	188
73374	Jan. 21, 1916	Magnetic separator	June 3	June 9	W-107	188
802513	Nov. 22, 1913	Chemical fire extinguisher	June 3	June 9	L-107	191
48674	Sept. 2, 1915	Process and device for continuous treatment of hydrocarbons with liquefied sulphurous acid.	June 3	June 9	H-107	145
30669	May 26, 1915	Cartridge for chemical fire extinguisher.	June 3	June 9	S-107	183
44727	Aug. 10, 1915	Device for dry granulation of slag.	June 3	June 9	R-107	248
48667	Sept. 2, 1915	Method of extracting juice from sugar cane.	June 3	June 9	D-107	281
8023	Feb. 13, 1915	Chemical fire extinguisher	June 3	June 9	S-107	182
77306	Feb. 9, 1916	Method of and apparatus for separating magnetic material.	June 3	June 9	W-107	187
775764	June 25, 1913	Objects having great strength against the action of acids.	June 5	June 9	L-107	190
814194	Jan. 24, 1914	Process for producing steel	June 5	June 9	X-107	259
188040	Aug. 24, 1917	Process of decomposing air	May 12	May 14	W-107	98
719658	Sept. 10, 1912	Process of subdividing metal for use in plastic metallic packing.	Mar. 1	Mar. 26	Q-106	357
188039	Aug. 24, 1917	Process of separating constituents of air, etc.	June 17	June 18	P-107	284
998091	July 18, 1911	Color measuring device	June 21	June 23	Y-107	206
643568	Aug. 11, 1911	Art of separating suspended particles from gaseous bodies.	June 17	June 18	K-107	188
682331	Mar. 7, 1912	Electric means for the separation of suspended matter from gaseous fluids.	June 17	June 18	K-107	188

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

SCHEDULE 6.

The instrument dated June 21, 1919, and recorded in the United States Patent Office on July 10, 1919, in Liber H-107, page 259 of Transfers of Patents, a copy of which instrument is set out in Exhibit H-6 attached to this bill of complaint, enumerated the following patents:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
998091	July 18, 1911	Color measuring device	1919. June 21	1919. June 23	Y-107	206
805241	Nov. 21, 1905	Metal stamping machine	June 21	June 23	O-107	311

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

Said instrument dated June 21, 1919, and recorded in the United States Patent Office on July 10, 1919, in Liber H-107, page 259 of Transfers of Patents, a copy of which instrument is set out in Exhibit H-6 attached to his bill of complaint, also enumerated the following application for patent:

No.	Date of filing.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
879612	Dec. 29, 1914	Method of producing porous radio-active bodies.	1919. June 21	1919. June 23	O-107	313

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

Said instrument, dated June 21, 1919, and recorded in the United States Patent Office on July 10, 1919, in liber H-107, page 259, of Transfers of Patents, a copy of which instrument is set out in Exhibit "H-6" attached to this bill of complaint, also enumerated the following trade-marks:

No.	Date	For—	Date of demand	Demand recorded in records of the U. S. Patent Office		
				Date of filing or recording.[1]	Book	Page
82837	July 25, 1911	Perfumery	1919. May 26	1919. May 27	R-107	206
			1921. June 29	1921. July 1	V-113	328
18323	Aug. 19, 1890	Antibacterials, aseptics, antiseptics, and antizymotics.	1919. June 5	1919. June 25	B-107	349
86982	June 18, 1912	Wound powder	May 12	May 14	X-107	133

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

Said instrument, dated June 21, 1919, and recorded in the United States Patent Office on July 10, 1919, in liber H-107, page 259, of Transfers of Patents, a copy of which instrument is set out in Exhibit "H-6" attached to this bill of complaint, also enumerated certain contract rights growing out of the following contracts:

Between Cerofirm-Gesellschaft, G. M. B. H., and Harry Polasky & O. B. Eisendrath, copartners trading as the New Process Gas Mantle Company.

Contract dated April 3, 1914.

Covering Patent No. 1020255.

Dated March 12, 1912.

Title: Method of producing incandescent mantles.

Date of demand served on Commissioner of Patents: June 21, 1919.

Service accepted June 21, 1919.

Recorded June 23, 1919, liber T-107, page 209, of Transfers of Patents.

Between firm of E. Merck and Merck & Company.

Contract (verbal).

Covering trade-mark Nos. 32737 and 27388.

Dated 4-18-99 and 12-3-95.

Title: Certain named medicinal chemicals and soporifics.

Date of demand served on Commissioner of Patents: June 5, 1919.

Service accepted June 25, 1919.

Recorded June 25, 1919, liber B-107, page 350, of Transfers of Patents.

Between Alfred Wilm & Heinrich Krautschneider and Electric Boat Company.

Contract dated October 6, 1910, covered the following patents:

Patent No.	Date of issue	Title
868383	Oct. 8, 1907	Process for improving aluminum by heating and chilling.
995113	June 13, 1911	Aluminum alloy.
1083903	Jan. 6, 1914	Process of improving alloys.
1130785	Mar. 9, 1915	Aluminum alloy.
1261987	Apr. 9, 1918	Method of making aluminum-alloy articles.

Date of demand served on Commissioner of Patents: April 26, 1919.

Service accepted May 7, 1919.

Recorded May 7, 1919, liber R-107, page 95, of Transfers of Patents.

Demand dated April 26, 1919, served on Electric Boat Company, 11 Pine Street, New York City, such service made May 27, 1919.

SCHEDULE 7.

The instrument dated October 17, 1919, and recorded in the United States Patent Office on November 14, 1919, in liber P-108, page 441, a copy of which instrument is set out in Exhibit H-7, attached to this bill of complaint, enumerated the following patents:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page
			1919.	1919		
782129	Feb. 7, 1905	Gas retort	July 22	July 31	B-108	41
782129	Feb. 7, 1905	Gas retort	Aug. 25	Aug. 28	K-107	449
801268	Oct. 10, 1905	Closing devices for gas retorts	July 11 Aug. 25	Aug. 8 Aug. 28	C-108 V-107	341 447
815438	Mar. 20, 1906	Retort-charging apparatus	Aug. 25	Aug. 28	V-107	447
819596	May 1, 1906	Hydraulic condenser	July 28	Aug. 25	D-108	400
819596	May 1, 1906	Hydraulic condenser	Aug. 25	Aug. 28	V-107	445
822246	June 5, 1906	Gas-producing apparatus	Aug. 25	Aug. 28	U-108	9
822246	June 5, 1906	Gas-producing apparatus	July 11	Aug. 8	C-108	288
853830	July 25, 1905	Nitro glycerine explosive	Oct. 15	Nov. 4	R-108	349
904043	Nov. 17, 1908	Manufacture of gas	July 11	Aug. 8	C-108	288
904043	Nov. 17, 1908	Manufacture of gas	Aug. 25	Aug. 28	U-108	9
926702	June 29, 1909	Apparatus for charging gas retorts.	Aug. 25	Aug. 28	Y-107	471
928494	July 20, 1909	Gas furnace	Aug. 25	Aug. 28	U-108	9
955070	Apr. 26, 1910	Process of charging upright gas retorts.	July 15 Aug. 25	July 31 Aug. 28	B-108 Y-107	177 471
1000298	Aug. 8, 1911	Preparation for slowly liberating oxygen.	Sept. 11	Sept. 26	K-108	167
1005816	Oct. 17, 1911	Portable breathing apparatus	July 28 Aug. 25	Oct. 11 Aug. 28	I-108 W-108	409 5
1033681	July 23, 1912	Universal coupling	July 28 Aug. 25	Oct. 6 Aug. 28	I-108 W-108	33 5
1044031	Nov. 12, 1912	Method of causing artificial respirations.	July 28 Aug. 25	Oct. 11 Aug. 28	I-108 W-108	409 5
1049346	Jan. 7, 1913	Artificial breathing apparatus	July 28 Aug. 25	Oct. 11 Aug. 28	I-108 W-108	409 5
1083674	Feb. 3, 1914	Battery for absorbing carbonic acid such as used in breathing apparatus.	July 28 Aug. 25	Oct. 11 Aug. 28	I-108 W-108	409 5
1208134	Dec. 12, 1916	Method of heating coke and the like.	Aug. 25	Aug. 28	V-107	447
1208134	Dec. 12, 1916	Method of heating coke ovens and the like.	July 28	Sept. 18	F-108	281
1214941	Feb. 6, 1917	Resuscitating devices	July 28 Aug. 25	Oct. 11 Aug. 28	I-108 W-108	409 5
1218423	Mar. 6, 1917	Roentgen-ray tube	Sept. 23	Sept. 26	W-108	127
1122011	Dec. 22, 1914	Process and apparatus for producing Roentgen rays.	Aug. 25	Aug. 28	Y-107	473
1218423	Mar. 6, 1917	Roentgen-ray tube	Aug. 25	Aug. 28	Y-107	473
1136517	Apr. 20, 1915	Artificial breathing apparatus	July 28 Aug. 25	Oct. 11 Aug. 28	I-108 W-108	409 5

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

SCHEDULE 8.

The instrument dated December 9, 1919, and recorded in the United States Patent Office on December 19, 1919, in liber Z-109, page 69 of Transfers of Patents, a copy of which instrument is set out in Exhibit H-8 attached to this bill of complaint, enumerated the following serial numbers or applications for patents:

No.	Date of filing.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
			1919.	1919.		
290362	Apr. 15, 1919	Machine for producing narrow paper strips.	Nov. 29	Dec. 2	I-109	68
309149	July 7, 1919	Method and apparatus for narrowing or rounding fibre strips in manufacturing rovings from paper pulp and similar fibrous material.	Nov. 29	Dec. 2	I-109	68
305942	June 21, 1919	Process of obtaining furfurol in addition to glucose from substance containing cellulose.	Nov. 29	Dec. 2	H-109	80
309148	July 7, 1919	Device for leading away and distributing fibre strips in manufacturing rovings from paper pulp, etc.	Nov. 29	Dec. 2	I-109	67
294994	May 5, 1919	Machine for producing small, fibrous materials.	Nov. 29	Dec. 2	I-109	67
294993	May 15, 1919	Machine for manufacturing fibre strips from paper and the like.	Nov. 29	Dec. 2	I-109	67
301757	June 4, 1919	Device for coloring, painting, impregnating or smearing paper or the like breadths of material.	Nov. 29	Dec. 2	N-109	19
297711	May 16, 1919	Process of manufacturing a wool substitute from cellulose and similar solutions.	Nov. 29	Dec. 2	R-108	457
298309	May 15, 1919	Method of and apparatus for forming glass tubes.	Nov. 29	Dec. 2	B-109	123
295811	May 21, 1919	Proceedings for the increase of the produce of fusel oils in fermenting processes.	Nov. 29	Dec. 2	D-109	87
278440	Feb. 21, 1919	Method of producing fermentation preparations.	Nov. 29	Dec. 2	D-109	89
297174	May 14, 1919	Process of making a decolorising medium for watery liquids, oils, fats, and other liquids and the decolorising medium produced thereby.	Nov. 29	Dec. 2	D-109	88
302368	June 6, 1919	Process for the manufacture of meat extracts and like preparations.	Nov. 29	Dec. 2	I-109	69
290333	Apr. 15, 1919	Process for preparing a fodder from straw or other materials characterised by their contents of raw fibres.	Nov. 29	Dec. 2	L-109	29

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

No.	Date of filing.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording	Book.	Page.
290334	Apr. 15, 1919	Process for preparing a fodder from straw or other materials characterized by their contents of raw fibre.	Nov. 29	Dec. 2	L-109	29
290335	Apr. 15, 1919	Process for preparing a fodder from straw or other materials characterized by their contents of raw fibres.	Nov. 29	Dec. 2	L-109	29
303525	June 11, 1919	Process of preparing a fodder from straw.	Nov. 29	Dec. 2	L-108	29
316833	Aug. 11, 1919	Process for preparing a fodder from straw (e. g. of corn or legumes) or other similar stuffs characterized by their contents of raw fibres, such as rush forest grass, chaff Indian corn and the like, by treating the same by means of alkali-lye.	Nov. 29	Dec. 2	L-109	29
296206	May 10, 1919	Relating to a process of preparing a fodder from straw of corn or legumes.	Nov. 29	Dec. 2	L-109	29
297712	May 16, 1919	Process for producing spun material resembling wool, cotton, or chappe from viscose solutions.	Nov. 29	Dec. 2	R-108	458
307234	June 27, 1919	Process for the preparation of dinitroglycol and its homologues.	Nov. 29	Dec. 2	R-108	462
298810	May 21, 1919	Process of extending the catalytic of mercury compounds.	Nov. 29	Dec. 2	D-109	88

SCHEDULE 9.

The instrument dated February 26, 1920, and recorded in the United States Patent Office on December 21, 1920, in liber W-112, page 1 of Transfers of Patents, a copy of which instrument is set out in Exhibit H-9 attached to this bill of complaint, enumerated certain contract rights growing out of the following contracts:

Between Badische Aniline and Sode Fabrik and Theodore Goldschmidt, assignor to the Goldschmidt Chemical Co., assignor to the Goldschmidt Detinning Co., now the Metal Thermit Corp.

Contract dated March 12, 1907.

Patent (not given).

Title: Manufacture of chlorine.

Date of demand served on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber R-106, page 475 of Transfers of Patents.

Demand served on Metal and Thermit Corporation, 120 Broadway, New York, N. Y.; such service made March 26, 1919.

Between Dr. Frederick Supf and Arabol Manufacturing Company.

Contract not dated, but acknowledged October 12, 1908.

Covering Patent No. 974448.

Dated November 1, 1910.

Titles: Process of liquefying organic colloids.

Demand served on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber Q-106, page 441 of Transfers of Patents.

Demand dated March 22, 1919, served on Arabol Manufacturing Company, 100 William Street, New York, N. Y.; such service made March 26, 1919.

Between Kathreiners Malzkaffee Fabriken m. b. H., and William Rahr, Max Rahr, and Reinhardt Rahr, assignors to Kneipp Malt Food Company.

Contract dated June 26, 1895.

Covering Patent (S. N.) 513252.

Title: Kneipp malt, a coffee substitute.

Date of demand served on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber K-106, page 499 of Transfers of Patents.

Between Rheinische Dampfkessel and Maschinenfabrik Buttner, G. M. B. H., and Stearns-Roger Manufacturing Company.

Contract dated December 20, 1912.

Covering Patent No. 1078125.

Dated November 11, 1913.

Title: Cellular drying apparatus.

Date of demand served on Commissioner of Patents: March 22, 1919.

Service of demand accepted April 9, 1919.

Recorded April 9, 1919, liber R-106, page 479 of Transfers of Patents.

Demand dated March 22, 1919, served on Stearns-Roger Manufacturing Company, 1720 California St., Denver, Colo., such service made May 13, 1919.

Between Friedrich Dresche and Becton Dickinson and Company.

Contract dated June 1, 1912.

Covering Patent No. 823859.

Dated June 19, 1906.

Title: Apparatus for shaking thermometers.

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber U-106, page 384 of Transfers of Patents.

Demand dated March 22, 1919, served on Becton Dickinson and Company, Rutherford, N. J., such service made April 16, 1919.

Between F. H. Kindel, agent for Coln-Musener-Berwegs Aktienverein and Burdette Manufacturing Company, assignor to the Oxygen Protective Association.

Contract dated January 18, 1916.

Covering Patent No. 703940.

Dated July 1, 1902.

Title: Process of fusion of metals.

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber N-106, page 496 of Transfers of Patents.

Demand dated ———, served on Oxygen Protective Association, c-o F. L. Horton, Packers and Exchange Ave., Chicago, Ill., such service made ———.

Between Chemische Fabrik Rhenia and Schoellkopf Hartford and Hanna Company, assignor to the Contact Process Company.

Contract dated May 26, 1902.

Patent (not given).

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber R-106, page 473 of Transfers of Patents.

Demand dated March 22, 1919, served on Contract Process Company, Buffalo, New York; such service made April 12, 1919.

Between Leon Lilienfeld and Eastman Kodak Company.

Patent	Date of issue	Title
1188376	June 20 1916	Alkyl ethers of cellulose and process of making same.
1217027	Feb. 20, 1917	Film and process of producing same.

Contract dated August 5, 1912, covering the following patents:

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber N-106, page 488 of Transfers of Patents.

Demand dated March 22, 1919, served on Eastman Kodak Company, Rochester, N. Y.; such service made April 19, 1919.

Between Schulke & Mayr Aktiengesellschaft and Lehn & Fink, Inc.

Contract dated February 5, 1914.

Covering trade-marks 53937 and 53938.

Dated June 12, 1906.

Title: Lysol.

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber Q-106, page 440 of Transfers of Patents.

Demand dated March 24, 1919, served on Lehn & Fink, Inc., 120 Williams Street, New York, New York; such service made March 24, 1919.

Between Oskar Zahn, doing business as Oskar Zahn Buro, and the Deutsche Ton-und Steinzeug-Werke A. G. and the General Ceramics Company.

Contract dated July 26, 1913.

Covering Patent No. 1099451.

Dated June 9, 1914.

Title: Process for the continuous production of dry hydrochloric acid and potassium bisulfate from potassium chlorid and sulfuric acid.

Date of demand on Commissioner of Patents: February 11, 1919.

Service accepted February 20, 1919.

Recorded February 11, 1919, liber Q-106, page 172 of Transfers of Patents.

Demand dated February 11, 1919, served on General Ceramics Co., Inc., 50 Church Street, New York City; such service made February 25, 1919.

Between Oskar Zahn and the Deutsche Ton-und Steinzeug Werke A. G., and the General Ceramics Company, Inc.

Contract dated May 10, 1913.

Covering Patents 936844 and 1124380.

Dated October 12, 1909, and January 12, 1915.

Title: Plant for heating the gas and air for combustion in gas furnaces; muffle furnaces for enameling.

Date of demand on Commissioner of Patents: February 11, 1919.

Service accepted February 20, 1919.

Recorded February 20, 1919, liber I-106, page 157 of Transfers of Patents.

Demand dated February 11, 1919, served on General Ceramics Company, Inc., 50 Church Street, New York City; such service made February 25, 1919.

Demand dated February 11, 1919, served on E. Croyden Marks, Esq., 220 Broadway, New York City; such service made February 24, 1919.

Between Chemische Fabrik Helfenberg and Keinschild Chemical Company.

Contract dated December 28, 1905.

Covering Patents 896807 and 943163.

Title: Agar-agar cascara.

Date of demand on Commissioner of Patents: March 24, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber Z-106, page 356 of Transfers of Patents.

Demand dated March 22, 1919, served on Reinschild Chemical Company, 47 Barclay Street, New York, N. Y.; such service made April 4, 1919.

Between Huelsberg & Company, m. b. H., and Atchison, Topeka and Santa Fe Railway Company.

Contract dated January 16, 1905.

Patents: Re. 12707, 709799 and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber J-106, page 447 of Transfers of Patents.

Demand dated ——— served on Atchison, Topeka & Santa Fe Railway Co., Topeka, Kansas; such service made April 23, 1919.

Between Huelsberg & Cie, m. b. H., and St. Helens Creosoting Company.

Contract dated October 24, 1913.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 438 of Transfers of Patents.

Demand dated ———, 1919, served on St. Helens Creosoting Co., 912 Yeon Building, Portland, Oregon; such service made April 18, 1919.

Between Huelsberg & Cie, m. b. H., and the Continental Tie and Lumber Company.

Contract dated February 19, 1913.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 20, of Transfers of Patents.

Between Huelsberg & Cie, m. b. H., and Kettle River Company.

Contract dated January 17, 1912.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Demand served on Commissioner under date of April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 434, of Transfers of Patents.

Demand dated May 19, 1919, served on Kettle River Company, Minneapolis, Minnesota; such service made May 21, 1919.

Between Huelsberg & Cie, m. b. H., and Atlantic Coast Line Railroad Company.

Contract dated November 28, 1913.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 9, of Transfers of Patents.

Demand dated ———, 1919, served on Atlantic Coast Line Railroad Co., Wilmington, North Carolina; such service made April 19, 1919.

Between Huelsberg & Cie, m. b. H., and Southern Wood Preserving Company.

Contract dated January 14, 1915.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 443, of Transfers of Patents.

Demand dated ———, 1919, served on Southern Wood Preserving Co. of Atlanta, Georgia; such service made April 14, 1919.

Between Huelsberg & Cie, m. b. H., and the Gulf Creosoting Company.

Contract dated May 19, 1908.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents, April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Y-106, page 431, of Transfers of Patents.

Demand dated ———, 1919, served on Gulf Creosoting Co., Gulfport, Mississippi; such service made April 14, 1919.

Between Huelsberg & Cie, m. b. H., and Central Creosoting Co.

Contract dated April 23, 1917.

Patents Nos. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 15, of Transfers of Patents.

Demand dated ———, 1919, served on Central Creosoting Co., Chicago, Illinois; such service made April 12, 1919.

Between Huelsberg & Cie, m. b. H., and American Creosote Works, Inc., and American Creosote Works, Ltd.

Contract dated July 16, 1909.

Patents: Re. 12707, 709799 and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 446 of Transfers of Patents.

Demand dated ———, 1919, served on American Creosote Works, Inc., and American Creosote Works, Ltd., Station B, New Orleans, La.; such service made April 16, 1919.

Between Huelsberg & Cie., m. b. H., and Joseph B. Card.

Contract dated May 3, 1917.

Patents: Re. 12707, 709799 and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 13 of Transfers of Patents.

Demand dated ———, 1919, served on Joseph B. Card, 111 West Washington Street, Chicago, Ill.; such service made April 23, 1919.

Between Huelsberg & Cie, m. b. H., and Lemboke von Bernuth Company, Inc.

Contract dated October 6, 1911.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of Impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 436 of Transfers of Patents.

Between Huelsberg & Cie., m. b. H., and the American Creosoting Company of New Jersey.

Contract dated (no contract). (See letter R. 16713.)

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 444 of Transfers of Patents.

Demand dated ——, 1919, served on the American Creosoting Co. of N. J., 17 Battery Place, New York, New York; such service made April 11, 1919.

Between Huelsberg & Cie., m. b. H., and El Paso & Southwestern Company.

Contract dated August 15, 1910.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Y-106, page 430 of Transfers of Patents.

Demand dated ——, 1919, served on El Paso & Southwestern Co., 99 John St., New York, N. Y.; such service made ——, 1919.

Between Huelsberg & Cie., m. b. H., and Santa Fe Tie & Lumber Preserving Company.

Contract dated January 16, 1905.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 441 of Transfers of Patents.

Demand dated ———, 1919, served on Santa Fe Tie & Lumber Preserving Co., Galveston, Texas; such service made April 25, 1919.

Between Huelsberg & Cie, m. b. H., and Ohio Wood Preserving Company.

Contract (not dated).

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by R. F. Whitehead, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 442 of Transfers of Patents.

Between Huelsberg & Cie., m. b. H., and Southern Creosoting Company, Limited.

Contract dated June 25, 1914.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 9, 1919.

Service accepted April 9, 1919, by R. F. Whitehead, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 440 of Transfers of Patents.

Demand dated ———, 1919, served on Southern Creosoting Company, Ltd., Slidell, Louisiana; such service made May 12, 1919.

Between Huelsberg & Cie., m. b. H., and Pacific Creosoting Co.

Contract dated January 28, 1914.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 445 of Transfers of Patents.

Demand dated ———, 1919, served on Pacific Creosoting Co., 204 Northern Life Building, Seattle, Washington; such service made April 15, 1919.

Between Huelsberg & Cie., m. b. H., and Philadelphia & Reading Railway Company.

Contract dated December 18, 1912.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 435, of Transfers of Patents.

Demand dated ———, 1919, served on Philadelphia & Reading Ry. Co., Philadelphia, Pennsylvania; such service made ——— 17, 1919.

Between Huelsberg & Cie., m. b. H., and Charlotte Harbor & Northern Railway.

Contract dated July 1, 1913.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 17, of Transfers of Patents.

Demand dated ———, 1919, served on Charlotte Harbor & Northern Ry., Boca Grande, Florida; such service made May 14, 1919.

Between Huelsberg & Cie., m. b. H., and Pennsylvania Railroad Company.

Contract dated March 30, 1911.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 446 of Transfers of Patents.

Demand dated ———, 1919, served on the Pennsylvania Railroad Company, Philadelphia, Pennsylvania; such service made April 16, 1919.

Between Huelsberg & Cie., m. b. H., and Boston Elevated Railway Company.

Contract dated December 27, 1915.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 12 of Transfers of Patents.

Demand dated ———, 1919, served on Boston Elevated Railway Company, Boston, Massachusetts; such service made April 15, 1919.

Between Huelsberg & Cie., m. b. H., and Jennison-Wright Company.

Contract dated June 21, 1913.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Y-106, page 433 of Transfers of Patents.

Demand dated ———, 1919, served on Jennison-Wright Company, Toledo, Ohio, such service made April 15, 1919.

Between Huelsberg & Cie., m. b. H., and Pittsburgh Wood Preserving Company.

Contract dated September 22, 1910.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 437, of Transfers of Patents.

Beween Huelsberg & Cie, m. b. H., and Central of Georgia Railway Company.

Contract dated April 15, 1912.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 16, of Transfers of Patents.

Demand dated April 19, 1919, served on Central of Georgia Railway Company, Savannah, Georgia; such service made April 21, 1919.

Between Huelsberg & Cie, m. b. H., and National Lumber & Creosoting Company.

Contract dated ——— day of ———, 1910.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 443, of Transfers of Patents.

Demand dated April 17, 1919, served on National Lumber & Creosoting Co., Texarkana, Arkansas; such service made April 17, 1919.

Between Huelsberg & Cie, m. b. H., and Missouri, Kansas & Texas Ry. Company.

Contract dated June 16, 1906.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 439, of Transfers of Patents.

Between Huelsberg & Cie, m. b. H., and Michigan Wood Preserving Company.

Contract (not dated). (See letter in R-150.)

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 437, of Transfers of Patents.

Between Huelsberg & Cie, m. b. H., and St. Paul & Tacoma Lumber Co.

Contract (none of record).

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Demand dated ———, 1919, served on St. Paul & Tacoma Lumber Company, Tacoma, Washington; such service made April 19, 1919.

Between Huelsberg & Cie., m. b. H., and Ayer & Lord Tie Company.

Contract dated April 19, 1907.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 10 of Transfers of Patents.

Demand dated ———, 1919, served on Ayer & Lord Tie Company, Chicago, Illinois; such service made April 14, 1919.

Between Huelsberg & Cie., m. b. H., and Compressed Wood Preserving Company.

Contract dated March 10, 1916.

Patents: Re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 19 of Transfers of Patents.

Demand dated ———, 1919, served on Compressed Wood Preserving Company, Cincinnati, Ohio; such service made April 16, 1919.

Between Erzroest Gesellschaft and Granby Mining & Smelting Company.

Contract dated January 19, 1916.

Covering patent 979349.

Dated 12-20-10.

Title: Improvements in furnaces for roasting ores.

Date of demand served on Commissioner of Patents: April 7, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Z-106, page 354, of Transfers of Patents.

Between Erzroest Gesellschaft, m. b. H., and the National Zinc Company.

Contract dated October 21, 1915.

Patent 979349.

Dated 12-20-10.

Title: Improvements in furnaces for roasting ores.

Date of demand served on Commissioner of Patents: April 7, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Z-106, page 362 of Transfers of Patents.

Between Erzroest Gesellschaft, m. b. H., and the Grasselli Chemical Company.

Contract dated February 27, 1914.

Covering Patent 979349.

Dated 12-20-10.

Title: Improvements in furnaces for roasting ores.

Date of demand served on Commissioner of Patents: April 7, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Z-106, page 350 of Transfers of Patents.

Between C. H. Bormann and General Ceramics Company, Inc.

Contract dated May 24, 1913.

Covering patents 881806 and 1151801.

Dated 3-10-08 and 8-31-15.

Titles: Process of removing chlorin from raw bromin. Apparatus for separating liquid mixtures into two components.

Date of demand served on Commissioner of Patents: February 11, 1919.

Service of demand accepted February 20, 1919, by J. T. Newton, Commissioner of Patents.

Recorded February 20, 1919, liber O-106, page 253 of Transfers of Patents.

Demand dated February 11, 1919, served on B. Singer, 233 Broadway, New York City, such service made March 26, 1919.

Demand dated February 11, 1919, served on General Ceramics Company, 50 Church Street, New York City, such service made February 25, 1919.

Between Cerofirm-Gesellschaft, G. m. b. H., and Harry Polasky & O. B. Eisendrath, copartners trading as New Process Gas Mantle Company.

Contract dated April 3, 1914.

Covering patent 1020255.

Dated March 12, 1912.

Title: Manufacture of incandescent bodies for gas lighting.

Date of demand served on Commissioner of Patents: June 21, 1919.

Service accepted June 21, 1919, by J. T. Newton, Commissioner of Patents.

Recorded June 23, 1919, liber T-107, page 209 of Transfers of Patents.

Between firm of E. Merck and Merck and Company.

Contract (verbal).

Trade-marks 32737 and 27388.

Dated 4-18-99 and 12-3-95.

Title: Dionin and sypticin.

Date of demand served on Commissioner of Patents: June 5, 1919.

Service accepted June 25, 1919, by R. F. Whitehead, Acting Commissioner of Patents.

Recorded June 25, 1919, liber B-107, page 350 of Transfers of Patents.

Between Alfred Wilm & Heinrich Krautschneider and Electric Boat Company.

Contract dated October 6, 1910.

Covering the following patents:

Patent No.	Date of issue	Title
868383	Oct. 8, 1907	Process for improving aluminum by heating and chilling.
995113	June 13, 1911	Aluminum alloy.
1083903	Jan. 6, 1914	Process of improving alloys.
1130785	Mar. 9, 1915	Aluminum alloy.
1261987	Apr. 9, 1918	Method of making aluminum-alloy articles.

Date of demand on Commissioner of Patents: April 26, 1919.

Service accepted May 7, 1919, by R. F. Whitehead, Acting Commissioner of Patents.

Recorded May 7, 1919, liber R-107, page 95 of Transfers of Patents.

Demand dated April 26, 1919, served on Electric Boat Company, 11 Pine Street, New York City, such service made May 27, 1919.

SCHEDULE 10.

The instrument dated February 26, 1920, and recorded in the United States Patent Office on December 21, 1920, in liber S-111, page 428 of Transfers of Patents, a copy of which instrument is set out in Exhibit H-10 attached to this bill of complaint, enumerated certain contract rights growing out of the following contracts:

Between Gesellschaft fur Abwasserklarung, m. b. H., and Frieda Loeb.

Contracts dated December —, 1913, and February 17, 1914, covering the following patents:

Patent No.	Date of issue	Title
700056	May 13, 1902	Apparatus for the recovery of fats or the like.
751303	Feb. 2, 1904	Apparatus for the recovery of fats or the like.
823688	June 19, 1906	Apparatus for the recovery of fats and the like from waste.
839396	Dec. 25, 1906	Apparatus for the separation of solid matters from sewage, etc.
975081	Nov. 8, 1910	Apparatus for removing fat from effluents.
1057174	Mar. 25, 1913	Apparatus for separating floating matter from effluents.
1192569	July 25, 1916	Apparatus for clarifying waste waters.

Date of demand served on Commissioner of Patents: February 12, 1920.

Service accepted March 2, 1920.

Recorded March 2, 1920, liber K-109, page 323 of Transfer of Patents.

Demand dated February 12, 1920, served on the United States Sanitary Effluents Apparatus (Inc.), 35 Nassau Street, New York City, and the Ussesa Sales Company, 220 West Forty-second Street, New York City; such service made March 3, 1920.

Between Montana Company and Montanin Company.

Contract dated August 26, 1915.

Covering trade-mark No. 66726.

Dated December 24, 1907.

Title: "Montanin."

Demand dated February 12, 1920, served on the Montanin Company, 81 Fulton Street, New York City; such service made March 1, 1920.

The contract covering trade-mark No. 66726 was demanded under Report No. 47184, but the trade-mark was demanded of the Commissioner of Patents under Report 3822.

Date of demand served on Commissioner of Patents: March 3, 1920.

Service accepted April 14, 1920.

Recorded April 14, 1920, liber O-110, page 52, of Transfers of Patents.

Between Franz Meiser and National Carbon Company.

Contract dated July 31, 1914.

Patent (not given).

Demand dated February 12, 1920, served on the National Carbon Company, Cleveland, Ohio; such service made March 3, 1920.

The records also show that a demand dated January 31, 1918, was served on the National Carbon Company (Inc.), P. O. box 400, Cleveland, Ohio; such service made February 28, 1918.

No demand appears to have been served on the Commissioner of Patents.

Between Chemische Fabrik Rhenania and Stallman Company.

Contract dated ——— ——, 1908.

Trade-marks covered by this contract are as follows:

No.	Date registered	For—
27454	Dec. 10, 1895	Tetrajodphenolphtalein, an antiseptic substance.
29831	Apr. 13, 1897	Diarrhea and catarrh of the stomach and bowels.
29836	Apr. 13, 1897	A remedy for wounds.

Patents covered by this contract are as follows: Patents 618167, 618168, and 627981.

Dated 1-24-99, 1-24-99, and 7-4-99.

Titles: Improvement in sodium salt of iodine compound; improvement in ioding derivatives of phenols and bismuth salts; improvement of ioding compounds.

Demand dated February 12, 1920, served on the Stallman Company, 229 Pearl Street, New York City, N. Y.; such service made March 16, 1920.

The above patents have not been demanded.

Between Carl W. Rademacher and American Kitchen Products Company.

Contract dated May 10, 1909.

Patent (not given).

Title: "Steero."

Demand dated February 26, 1920, served on the American Kitchen Products Company, 40 Beekman Street, New York City; such service made March 27, 1920.

Between Karl Imhoff and Pacific Flush Tank Company.

Contract dated May 26, 1911.

Patents: 924664, 978889, 1053396, 1056548, 1057154.

Dated 6-15-09, 12-10-10, 2-18-13, 3-18-13, and 3-25-13.

Title: Imhoff Process and tanks used in disposal of sewage.

Demand dated February 26, 1920, served on the Pacific Flush-Tank Company, 4241 Ravenswood Avenue, Chicago, Ill.; such service made March 1, 1920.

SCHEDULE 11.

The instrument dated March 9, 1920, and recorded in the United States Patent Office on March 11, 1920, in Liber X-108, page 435, a copy of which instrument is set out in Exhibit H-11 attached to this bill of complaint, enumerated the following patents:

No.	Date of Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording [1]	Book.	Page.
700056	1902 May 13	Apparatus for the recovery of fats or the like.	May 14, 1919	May 20, 1919	T-107	86
700056	May 13	Apparatus for the recovery of fats or the like.	Feb. 12, 1920	Mar. 2, 1920	K-109	323
751303	1904 Feb. 2	Apparatus for the recovery of fats or the like.	May 14, 1919	May 20, 1919	T-107	86
303 823	Feb. 2	Apparatus for the recovery of fats or the like.	Feb. 12, 1920	Mar. 2, 1920	K-109	323
751688	1906 June 19	Apparatus for the recovery of fats and the like from waste waters.	May 14, 1919	May 20, 1919	T-107	86
823688	June 19	Apparatus for the recovery of fats and the like from waste waters.	Feb. 26, 1920	Mar. 6, 1920	J-109	316
839396	Dec. 25	Apparatus for separation of solid matters from sewage, etc.	May 14, 1919	May 20, 1919	T-107	86
839396	Dec. 25	Apparatus for separation of solid matters from sewage, etc.	Feb. 12, 1920	Mar. 2, 1920	K-109	323

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

No.	Date of Issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
1326104	1919 Dec. 23	Method for modifying electrical charge of diaphragms.	Aug. 17, 1920	Sept. 17, 1920	J-108	323
1326105	Dec. 23	Process for separation of absorbed substances.	Aug. 17, 1920	Sept. 17, 1920	J-108	328
1326106	Dec. 23	Process for treating colloidal and finely subdivided substances.	Aug. 17, 1920	Sept. 17, 1920	J-108	328
1069842	1913 Aug. 12	Device for recording the paths of ships.	July 28, 1919	Sept. 8, 1919	E-108	273
1069842	Aug. 12	Device for recording the paths of ships.	Feb. 26, 1920	Mar. 6, 1920	U-109	388
1170388	1916 Feb. 1	Electrical contact	Feb. 26, 1920	Mar. 6, 1920	U-109	389
1170388	Feb. 1	Electrical contact	July 28, 1919	Aug. 25, 1919	C-108	384
1204315	Nov. 7	Process of making practically alcohol-free beers.	Dec. 31, 1919	Feb. 27, 1920	U-109	368
1184359	May 23	Apparatus for recovering heat from hot solutions.	Dec. 18, 1919	Feb. 27, 1920	O-109	354
1184360	May 23	Method of recovering the heat from hot solutions.	Dec. 18, 1919	Feb. 27, 1920	O-109	354
1191440	July 18	Nonalcoholic concentrated beverage and process for its manufacture.	Dec. 18, 1919	Feb. 27, 1920	O-109	355
187940	June 20	Disintegratorlike device for purifying, cooling and mixing gases.	Mar. 24, 1920	Mar. 30, 1920	A-109	397
1187940	June 20	Disintegratorlike device for purifying, cooling and mixing gases.	Dec. 22, 1919	Feb. 27, 1920	O-109	352
1206031	Nov. 28	Brush	Dec. 22, 1919	Feb. 27, 1920	O-109	352
1207180	Dec. 5	Manufacture of briquets of coal, coke, turf, iron, or other ores, or the like.	Dec. 22, 1919	Feb. 27, 1920	O-109	352
1213659	1917 Jan. 23	Method of and apparatus for vaporizing, concentrating, or drying solutions.	Dec. 22, 1919	Feb. 27, 1920	O-109	352
1213887	Jan. 30	Method of vaporizing or concentrating liquids, solutions, emulsions, suspensions, and like substances.	Dec. 22, 1919	Feb. 27, 1920	O-109	352
1228942	June 5	Retort discharger	Dec. 22, 1919	Feb. 27, 1920	O-109	352
1247662	Nov. 27	Grasping tongs	Dec. 22, 1919	Feb. 27, 1920	O-109	352
1302450	1919 Apr. 29	Apparatus for casting metals.	Jan. 13, 1920	Feb. 27, 1920	J-109	277
1269931	1918 June 18	Method of drying varnished patent leather.	Dec. 19, 1919	Feb. 27, 1920	Q-109	256
807666	1905 Dec. 19	Apparatus for respiring within spaces full of smoke or noxious gases.	July 28, 1919	Aug. 25, 1919	E-108	29
834203	1906 Oct. 23	Therapeutic apparatus	July 28, 1919	Oct. 2, 1919	H-108	170
1233122	1917 July 10	X-ray apparatus	Jan. 10, 1920	Feb. 27, 1920	U-109	354
975081	1910 Nov. 8	Apparatus for removing fat from effluents.	May 14, 1919	May 20, 1919	T-107	88
975081	Nov. 8	Apparatus for removing fat from effluents.[a]	Feb. 12, 1920	Mar. 2, 1920	K-109	323

Said instrument, dated March 9, 1920, and recorded in the United States Patent Office on March 11, 1920, in liber X-108, page 435, a copy of which instrument is set out in Exhibit H-11, attached to this bill of complaint, also enumerated the following trade-marks:

No.	Date of registration.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
30242	June 22, 1897	Perfumery, confectionery, and distilled liquors.	1919 Dec. 31	1920 Mar. 4	O-109	383
30243	June 22, 1897	Perfumery, confectionery, and distilled liquors.	Dec. 31	Mar. 4	O-109	353
41901	Jan. 19, 1904	Medicine for certain named diseases.	Dec. 31	Mar. 4	I-109	374
15842	Sept. 4, 1888	Antiseptics and medicines for all skin diseases.	Dec. 31	Mar. 4	O-109	385
38544	July 1, 1902	Certain named medicinal compound.	Dec. 31	Mar. 2	K-109	318
72328	Jan. 19, 1909	Insect repellants	Dec. 31	Mar. 4	X-109	330
92854	July 29, 1913	Remedies for certain named diseases	Dec. 31	Mar. 4	O-109	391
98195	July 7, 1914	Medicinal and toilet soap disinfectants.	Dec. 31	Mar. 4	N-109	334
68587	Apr. 21, 1908	Silvana	Dec. 31	Mar. 4	N-109	328
14801	Oct. 4, 1887	Tooth soap	Dec. 31	Mar. 4	M-109	402
91240	Apr. 2, 1913	Dental filling compositions, dental impression compositions, and artificial teeth.	Dec. 31	Feb. 27	U-109	358
44248	Feb. 28, 1905	Pharmaceutical preparations for use in cases of seasickness. "Anti-vom."	Dec. 31	Mar. 4	O-109	390
17913	May 13, 1890	Medicinal tonic	Dec. 31	Mar. 4	U-109	384
17914	May 13, 1890	Medicinal tonic	Dec. 31	Mar. 4	U-109	384
55794	Aug. 21, 1906	Probilin	1920. Feb. 10	Feb. 27	W-109	262
58756	Dec. 25, 1906	Remedies for diseases of the urinary and genital organs.	1919. July 18	1919. July 19	C-107	394
32573	Mar. 7, 1899	Cordials, herb bitters, and liquors.	Dec. 31	1920. Feb. 27	H-109	394
40295	May 12, 1903	Water colors and oil colors	Dec. 20	Feb. 27	U-109	367
81706	May 2, 1911	"Vega" for vegetable fats and oils.	1920. Jan. 9	Feb 27	Q-109	253
106877	Nov. 2, 1915	"Magnalium"	1919. Dec. 22	Mar. 4	N-109	327

[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

SCHEDULE 12.

The instrument dated May 4, 1920, and recorded in the United States Patent Office on May 20, 1920, in liber X-109, page 199, a copy of which instrument is set out in Exhibit H-12 attached to this bill of complaint, enumerated the following patents:

No.	Date of issue.	Title	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
689246	Dec. 17, 1901	Process of purifying gases	1920. Mar. 24	1920. Mar. 30	A-109	396
704593	July 15, 1902	Apparatus for washing gases	Mar. 24	Mar. 30	A-109	398
794201	July 11, 1905	Centrifugalgas-purifyingapparatus	Mar. 24	Mar. 30	A-109	396
807695	Dec. 19, 1905	Centrifugal apparatus for treating gases.	Mar. 24	Mar. 30	A-109	396
895313	Aug. 4, 1908	Gas purifier	Mar. 24	Mar. 30	A-109	396
709527	Sept. 23, 1902	Treating gases	1919 July 28	1919 Sept. 8	F-108	146
1039677	Sept. 24, 1912	Apparatus for cleaning, cooling, and mixtures gases.	1920 Mar. 24	1920 Mar. 30	A-109	397
1042840	Oct. 29, 1912	Apparatus for cleaning, cooling, and washing gases.	Mar. 24	Mar. 30	A-109	397
1049317	Dec. 31, 1912	Gas-washing apparatus	Mar. 24	Mar. 30	A-109	397
1052188	Feb. 4, 1913	Gas-washing apparatus	Mar. 24	Mar. 30	A-109	397
1088186	Feb. 24, 1914	Apparatus for cleansing, cooling, and mixing gases.	Mar. 24	Mar. 30	A-109	397
1088187	Feb. 24, 1914	Liquid separator	Mar. 24	Mar. 30	A-109	397
1088188	Feb 24, 1914	Gas-washing apparatus	Mar. 24	Mar. 30	A-109	397
1131966	Mar. 16, 1915	Apparatus for cooling, washing, and mixing gases.	Mar. 24	Mar 30	A-109	397
1139385	May 11, 1915	Apparatus for washing, cleaning, and cooling gases.	Mar. 24	Mar. 30	A-109	397
1187940	June 20, 1916	Disintegrator-like device for purify-cooling, and mixing gases.	Mar. 24	Mar. 30	A-109	397
			1919 Dec. 22	Feb. 27	O-109	352
1326973	Jan. 6, 1920	Process for the preparation of pyrocatechin aldehyde.	1920 Mar. 24	Mar. 30	Q-109	458
1024553	Apr. 30, 1912	Delivery pipe for casting apparatus	Apr. 2	Apr. 13	A-109	485
1026733	May 21, 1912	Process for casting metals	Apr. 2	Apr. 13	A-109	485
1046146	Dec. 3, 1912	Steps in the modes of making die stamps or the like.	1919 July 28	1919 Aug. 25	E-108	30
649202	May 8, 1900	Apparatus for making BaO	1920 May 1	1920 May 1	J-108	106
764443	July 5, 1904	Process of making HCN	May 1	May 1	J-108	106
792889	June 20, 1905	Process of making HCN from iron cyanogen compounds.	May 1	May 1	J-108	106
806467	Dec. 5, 1905	Process of recovering NH_3 and HCN.	May 1	May 1	J-108	106
832466	Oct. 2, 1906	Production of ferrocyanides from gas.	May 1	May 1	J-108	106
839741	Dec. 25, 1906	Production of NH_4 No. 3	May 1	May 1	J-108	106
851349	Apr. 23, 1907	Extraction of NH_3 from gases	May 1	May 1	J-108	106
922409	May 18, 1909	Process of recovering HCN	May 1	May 1	J-108	106

[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording	Book.	Page.
1079291	Nov. 18, 1913	Process of obtaining sulphur	1920. May 1	1920. May 1	J-108	106
1127219	Feb. 2, 1915	Production of sulphur, etc.	May 1	May 1	J-108	106
1076641	Oct. 21, 1913	Machine for welding tubes	Apr. 2	Apr. 13	W-110	26
1286998	Dec. 10, 1918	Fire extinguishing arrangement for aerial craft.	Apr. 2	Apr. 13	Y-110	42
1301151	Apr. 22, 1919	Producing hydrogen[2]				
823859	June 19, 1906	Apparatus for shaking thermometers.	Feb. 25	Mar. 10	T-109	412

[2] This patent was demanded as Serial No. 847324 under date of Feb. 3, 1919, and recorded Feb. 21, 1919 in liber Y-106, page 133 of Transfers of Patents.

No.	Date of filing.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording[1]	Book.	Page.
224374	Mar. 23, 1918	Treatment of carbureted hydrogen with sulphur dioxide.	1920. Apr. 13	1920 Apr. 14	A-110	50

[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

Said instrument dated May 4, 1920, and recorded in the United States Patent Office on May 20, 1920, in liber X-109, page 199, a copy of which instrument is set out in Exhibit "H-12" attached to this bill of complaint, also enumerated the following serial number:

SCHEDULE 13.

The instrument dated May 15, 1920, and recorded in the United States Patent Office on November 1, 1920, in liber E 111, page 319 of Transfers of Patents, a copy of which instrument is set out in Exhibit H-13 attached to this bill of complaint, enumerated the following patents:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording[1]	Book.	Page.
877460	Jan. 21, 1908	Apparatus for separating liquids from gases or vapors.	1920 May 4	1920 Aug. 26	J-108	128
[2]12693	Sept. 3, 1907	Preservative	May 4	Aug. 26	J-108	255
929422	July 27, 1909	Heat-insulating vessel	May 4	June 11	J-108	122
801204	Oct. 10, 1905	Method of and apparatus for treating coal, ores, and other minerals for draining them of water.	May 4	Aug. 26	J-108	137
821819	May 29, 1906	Concentrator for pulverulent materials.	May 4	Aug. 26	J-108	241
813320	Feb. 20, 1906	Lateral packing for the end faces of pairs of rollers.	May 4	Aug. 26	J-108	241
831060	Sept. 18, 1906	Gas igniting and extinguishing device.	May 4	Aug. 26	J-108	171
1105610	Aug. 4, 1914	Apparatus for cutting plate glass	May 4	Aug. 26	J-108	127
1101392	June 23, 1914	Apparatus for the manufacture of raw plate glass.	May 4	Aug. 26	J-108	127
1114098	Oct. 20, 1914	Method of and apparatus for cutting plate glass.	May 4	Aug. 26	J-108	127
1175116	Mar. 14, 1916	Manufacture of raw plate glass	May 4	Aug. 26	J-108	712
1175117	Mar. 14, 1916	Making plate glass	May 4	Aug. 26	J-108	127
1158863	Nov. 2, 1915	Producing translucent ornaments	May 4	Aug. 26	J-108	264
866499	Sept. 17, 1907	Manufacturing a ferruginous addition to cattle food.	May 4	Aug. 26	J-108	221
1043349	Nov. 5, 1912	Ball mill	May 4	Aug. 26	J-108	242
1204779	Nov. 14, 1916	Water heating apparatus	1919 July 28	1919 Sept. 8	E-108	443
1021043	Mar. 26, 1912	Process and apparatus for the manufacture of glass drums and other hollow bodies.	1920 May 4	1920 Aug. 26	J-108	183
1151722	Aug. 31, 1915	Apparatus for separating minerals and like materials.	May 4	Aug. 26	J-108	284
1026577	May 14, 1912	Producing paper pulp from old paper.	May 4	Aug. 26	J-108	186
1036239	Aug. 20, 1912	Apparatus for preparing old and new molding sand.	May 4	Aug. 26	J-108	179
839941	Jan. 1, 1907	Machine for molding plastic materials.	May 4	Aug. 26	J-108	216
972674	Oct. 11, 1910	Apparatus for opening or closing the discharge openings of vertical retorts.	May 4	Aug. 26	J-108	139

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

[2] Reissue.

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
1205893	Nov 21, 1916	Apparatus for developing photographic plates by daylight.	1920 May 4	1920 Aug. 26	J-108	182
761051	May 24, 1904	Compound fabric	May 4	Aug. 26	J-108	299
1033377	July 23, 1912	Apparatus for separating granular admixtures from clay and like plastic substances.	May 4	Aug. 26	J-108	141
1158310	Oct. 26, 1915	Apparatus for measuring the area of hides.	1919 July 28	1919 Oct. 2	H-108	253
58683	May 17, 1910	Ice-making machine	1920 May 4	1920 Aug. 26	J-108	310
1126659	Jan. 26, 1915	Producing acid and fireproof bodies.	May 4	Aug. 26	J-108	281
1126027	Jan. 26, 1915	Apparatus for detecting pipe leads or other metallic masses embedded in masonry.	1919 July 28	1919 Sept. 30	H-108	7
1140289	May 18, 1915	Apparatus for homogenizing milk and other liquids.	July 28	Oct. 11	J-108	38
1156407	Oct. 12, 1915	Apparatus for dividing more or less thick liquid or pasty materials.	1920 May 4	1920 Aug. 26	J-108	205
1204564	Nov. 14, 1916	Fluid pressure relay governor	May 4	Aug. 26	J-108	170
988968	Apr. 11, 1911	Machine for cleaning and sorting clay or the like.	May 4	Aug. 26	J-108	140
991679	May 9, 1911	Drying apparatus	May 4	Aug. 26	J-108	312
835049	Nov. 6, 1906	Grinding or crushing mill	May 4	Aug. 26	J-108	314
882304	Mar. 17, 1908	Extracting apparatus for horizontal retorts.	May 4	Aug. 26	J-108	154
906785	Dec. 15, 1908	Centrifugal machine for feeding gas retorts.	May 4	Aug. 26	J-108	154
794187	July 11, 1905	Mechanical preparation of wood pulp from sawdust.	May 4	June 11	J-108	119
1127951	Feb. 9, 1915	Oil retort	May 4	Aug. 26	J-108	313
1071962	Sept. 2, 1913	Automatic charging device for roasting furnace and the like.	May 4	Aug. 26	J-108	263
1069009	July 29, 1913	Apparatus for pneumatically separating sheets.	June 9	Aug. 26	J-108	174
1092359	Apr. 7, 1914	Control device for sheet separators.	June 9	Aug. 26	J-108	174
1143708	June 22, 1915	Apparatus for separating sheets from a pile or stack.	June 9	Aug. 26	J-108	174
1069830	Aug. 12, 1913	Process of producing polychrome photogravures and apparatus therefor.	May 4	Aug. 26	J-108	298
839587	Dec. 11, 1906	Process and apparatus for construction of slabs of artificial stone, etc.	May 4	Aug. 26	J-108	188
1014221	Jan. 9, 1912	Device for making plates of artificial stone.	May 4	Aug. 26	J-108	187
1083279	Jan. 6, 1914	Device for removing water from layers of artificial stone pulp.	May 4	Aug. 26	J-108	187
899911	Sept. 29, 1908	Safety device for the mouths of vessels containing combustible liquids.	May 4	Aug. 26	J-108	382
874668	Dec. 24, 1907	Treating waste oakum and similar materials.	May 4	Aug. 26	J-108	172
847232	Mar. 12, 1907	Apparatus for cooling, moistening, and purifying the air in rooms.	May 4	Aug. 26	J-108	133
860810	July 23, 1907	Diffusion apparatus	May 4	Aug. 26	J-108	308
1065690	June 24, 1913	Regulating and reversing apparatus for regenerative gas furnaces.	May 4	Aug. 26	J-108	198

No.	Date of issue.	Title	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1920.	1920.		
1104002	July 21, 1914	Lubricating device for axle bearings.	May 4	Aug. 26	J-108	244
1141652	June 1, 1915	Blowing system for furnaces	May 4	Aug. 26	J-108	244
725894	Apr. 21, 1903	Arrangement for heating, cooling, and mixing the mash in mash tubs.	May 4	Aug. 26	J-108	300
1067287	July 15, 1913	Magnetic separator	May 4	Aug. 26	J-108	301
1016118	Jan. 30, 1912	Glass roof	May 4	Aug. 26	J-108	309
1064490	June 10, 1913	Malt drum	May 4	Aug. 26	J-108	201
934817	Sept. 21, 1909	Apparatus for spreading materials on edibles, such as cake, biscuit, and the like.	May 4	Aug. 26	J-109	211
822501	June 5, 1906	Magazine film holder	May 4	Aug. 26	J-108	130
906676	Dec. 15, 1908	Press for sweetmeats, tablets, and the like.	May 4	Aug. 26	J-108	129
1156829	Oct. 12, 1915	Cooling devices for electrical machines mounted on vessels.	May 4	Aug. 26	J-108	315
			1919	1919		
1078387	Nov. 11, 1913	Apparatus for lining tubes with lead, tin, or the like.	July 28	Sept. 22	G-108	412
842730	Jan. 29, 1907	Making electrically conducting bodies for use as contacts.	July 28	Sept. 22	G-108	416
1169942	Feb. 1, 1916	Arc-light electrode	July 28	Oct. 7	I-108	347
			1920	1920		
1267641	May 28, 1918	Resistance body	May 4	Aug. 26	J-108	152
1267642	May 28, 1918	Regulating resistance	May 4	Aug. 26	J-108	152
814967	Mar. 13, 1906	Apparatus for obtaining pure cotton or fibrous materials for textile and like purposes.	May 4	Aug. 26	J-108	206
807586	Dec. 19, 1905	Water-circulating device	May 4	Aug. 26	J-108	307
1074448	Sept. 30, 1913	Nonexplosive stopper for bottles containing liquid fuels.	May 4	Aug. 26	J-108	230
1077471	Nov. 4, 1913	Intermittently acting double siphon.	May 4	Aug. 26	J-107	189
1029817	June 18, 1912	Press for making briquets and the like.	May 4	Aug. 26	J-108	227
1065356	June 24, 1913	Fire-extinguishing apparatus	May 4	Aug. 26	J-108	169
			1919	1919		
858381	July 2, 1907	Fire extinguisher	July 28	Sept. 19	G-108	40
			1920	1920		
842979	Feb. 5, 1907	Device for cleaning frozen window glasses and for preventing them from freezing.	May 4	Aug. 26	J-108	277
1078752	Nov. 18, 1913	Temperature controller	May 4	Aug. 26	J-108	276
1070632	Aug. 19, 1913	Apparatus for producing cotton waste.	May 4	Aug. 26	J-108	252
1003813	Sept. 19, 1911	Increasing the binding power of basic silicates of lime.	May 4	Aug. 26	J-108	274
807507	Dec 19, 1905	Bottling and like apparatus	May 4	Aug. 26	J-108	256
814169	Mar. 6, 1906	Apparatus for decanting liquids	May 4	Aug. 26	J-108	256
888538	May 26, 1908	Corking machine	May 4	Aug. 26	J-108	256
1107986	Aug. 18, 1914	Apparatus for purifying gases	May 4	Aug. 26	J-108	239
1061488	May 13, 1913	Manufacture of alimentary products.	May 4	Aug. 26	J-108	240
			1919	1919		
1075720	Oct. 14, 1913	Manufacture of alimentary products.	July 28	Aug. 25	D-108	294
			1920	1920		
1046482	Dec. 10, 1912	Refrigerating and carbonating apparatus.	May 4	Aug. 26	J-108	223
771202	Sept. 27, 1904	Apparatus for the treatment of peat fiber for manufacturing half stuff.	May 4	Aug. 26	J-108	158

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
1255915	Feb. 12, 1918	Drying apparatus	1920. May 4	1920. Aug. 26	J-108	218
1164854	Dec. 21, 1915	Gas burner	May 4	Aug. 26	J-108	243
839450	Dec. 25, 1906	Explosive	May 4	Aug. 26	J-108	131
887027	May 5, 1908	Explosive	May 4	Aug. 26	J-108	131
1003628	Sept. 19, 1911	Apparatus for the treatment of solid bodies with gases.	May 4	Aug. 26	J-108	234
1027875	May 28, 1912	Economizer, regenerator, and the like.	May 4	Aug. 26	J-108	234
1018331	Feb. 20, 1912	Hot-blast stove	1919 July 28	1919 Sept. 8	F-108	348
1242873	Oct. 9, 1917	Process and apparatus for filling vessels with milk.	1920 May 4	1920 Aug. 26	J-108	291
839459	Dec. 25, 1906	Process of making gold	May 4	Aug. 26	J-108	150
1110278	Sept. 8, 1914	Machine for measuring the surface of leather or the like.	May 4	Aug. 26	J-108	144
822929	June 12, 1906	Nodulizing ore	May 4	Aug. 26	J-108	149
940075	Nov. 16, 1909	Device for preventing dust detonations.	May 4	Aug. 26	J-108	282
871308	Nov. 19, 1907	Surface cooler	May 4	Aug. 26	J-108	302
1285806	Nov. 26, 1918	Metal-vapor rectifier and similar apparatus.	May 4	Aug. 26	J-108	257
778193	May 17, 1904	Grain decorticating and grinding machine.	May 4	Aug. 26	J-108	178
863885	Aug. 20, 1907	Oil press	May 4	Aug. 26	J-108	259
929180	July 27, 1909	Machine for manufacturing paper tubes.	May 4	Aug. 26	J-108	147
911776	Feb. 9, 1909	Binocular telescope with double hinge.	1919 July 22	1919 Oct 2	Z-108	260
989645	Apr. 18, 1911	Toric spectacle glass	1920 May 4	1920 Aug. 26	J-108	304
949501	Feb. 15, 1910	Spectacle glass	1919 July 28	1919 Oct. 3	H-108	470
1242377	Oct. 9, 1917	Apparatus for examining radioactive substances.	1920 May 4	1920 Aug. 26	J-108	275
1120246	Dec. 8, 1914	Heat-transmitting fluids for baking ovens and the like.	May 4	Aug. 26	J-108	265
1026885	May 21, 1912	Gas furnace for heating, scaling, and hardening purposes.	May 4	Aug. 26	J-108	271
841499	Jan. 15, 1907	Manufacturing power gas	May 4	Aug. 26	J-108	161
986271	Mar. 7, 1911	Refining and agglomerating ores and the like.	1919 July 28	1919 Oct. 3	H-108	320
1005022	Oct. 3, 1911	Detinning tin scrap	1920 May 4	1920 Aug. 26	J-108	173
981695	Jan. 17, 1911	Means for forming parallel faces on the ends of rails, etc.	May 4	Aug. 26	J-108	260
1018734	Feb. 27, 1912	Treating tin-bearing material	May 4	Aug. 26	J-108	323
1187504	June 20, 1916	Stirring device for mechanical roasting furnaces.	May 4	Aug. 26	J-108	148
874063	Dec. 17, 1907	Gas burner	May 4	Aug. 26	J-108	166
892885	July 7, 1908	Shin substitute for heads of drums and the like.	May 4	May 26	J-108	246
887016	May 5, 1908	Construction of drums	May 4	Aug. 26	J-108	247
805366	Nov. 21, 1905	Textile-fiber materials	May 4	Aug. 26	J-108	208
827102	July 31, 1906	Process of manufacturing fiber material from animal tendons or sinews.	May 4	Aug. 26	J-108	208
974660	Nov. 1, 1910	Making fish sausage	May 4	Aug. 26	J-108	177
908001	Dec. 29, 1908	Fireproof-floor construction	May 4	Aug. 26	J-108	175
876359	Jan. 14, 1908	Pressure regulator for compressed gas plants.	May 4	Aug. 26	J-108	204

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording	Book.	Page.
			1920.	1920.		
1047809	Dec. 17, 1912	Oil press	May 4	Aug. 26	J-108	184
858663	July 2, 1907	Apparatus for cleaning the tubes and joint pipes of water gages.	May 4	Aug. 26	J-108	215
			1919	1919		
847065	Mar. 12, 1907	Body to be heated electrically	July 28	Oct. 6	I-108	61
1021249	Mar. 26, 1912	Prop for mines	July 28	Aug. 25	C-108	483
			1920	1920		
838464	Dec. 11, 1906	Means for uniformly distributing powdered substances.	May 4	Aug. 26	J-108	295
1014681	Jan. 16, 1912	Supporting incandescent electric lamps and reflectors.	May 4	Aug. 26	J-108	316
1055384	Mar. 11, 1913	Band press for drying vegetable and mineral substances.	May 4	Aug. 26	J-108	145
1280359	Oct. 1, 1918	Device for removing injurious seeds.	May 4	Aug. 26	J-108	145
1269599	June 18, 1918	Method and apparatus for testing gases.	May 4	Aug. 26	J-108	190
			1919	1919		
830225	Sept. 4, 1906	Testing gaseous mixtures	July 28	Oct. 11	R-108	305
			1920	1920		
1071354	Aug. 26, 1913	Electrical separator	May 4	Aug. 26	J-108	262
851778	Apr. 30, 1907	Purifying apparatus for liquids	May 4	Aug. 26	J-108	286
922524	May 25, 1909	Testing the tensile strength of elastic materials.	May 4	Aug. 26	J-108	268
940947	Nov. 23, 1909	Apparatus for separating particles of liquid from gases and vapors.	May 4	Aug. 26	J-108	294
880579	Mar. 3, 1908	Carbon electrode for electrical bleaching apparatus.	May 4	Aug. 26	J-108	280
852867	May 7, 1907	Crucible furnace	May 4	Aug. 26	J-108	138
1084520	Jan. 13, 1914	Increasing the heat-resisting properties of bituminous or tarry materials.	May 4	Aug. 26	J-108	324
869321	Oct. 29, 1907	Insulating material and manufacturing same.	May 4	Aug. 26	J-108	225
874374	Dec. 17, 1907	Apparatus for electro-depositing metals.	May 4	Aug. 26	J-108	217
945241	Jan. 4, 1910	Steam or hot-air apparatus	May 4	Aug. 26	J-108	228
858738	July 2, 1907	Furnace for burning glass, porcelain and like articles.	May 4	June 11	J-108	117
1090904	Mar. 24, 1914	Manufacturing raw plate glass	May 4	Aug. 26	J-108	126
866497	Sept. 17, 1907	Doing away with blow holes and like flaws in castings.	May 4	Aug. 26	J-108	237
			1919	1919		
866498	Sept. 17, 1907	Melting through masses of material.	July 28	Nov. 10	J-108	88
1235505	July 31, 1917	Fire extinguisher	July 28	Aug. 25	D-108	492
			1920	1920		
1094724	Apr. 28, 1914	Variable power telescope	May 4	Aug. 26	J-108	202
785786	Mar. 28, 1905	Machine for making corrugated wood sliver.	May 4	Aug. 26	J-108	317
1074306	Sept. 30, 1913	Differential manometer	May 4	Aug. 26	J-108	321
			1919	1919		
1199731	Sept. 26, 1916	Medical appliance	July 28	Oct. 6	J-108	54
			1920	1920		
1164151	Dec. 14, 1915	Furnace for heating water and generating steam.	May 4	Aug. 26	J-108	319
800044	Sept. 19, 1905	Machine for the manufacture of matches.	May 4	Aug. 26	J-108	320
			1919	1919		
1048135	Dec. 24, 1912	Respiration apparatus	July 28	Aug. 25	E-108	21
1253548	Jan. 15, 1918	Method and apparatus for transporting incompressible fluid.	July 28	Oct. 2	H-108	271

No	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording	Book.	Page.
945241	Jan. 4, 1910	Steam or hot-air apparatus	1920. May 4	1920. Aug. 26	J-108	228
770078	Sept. 13, 1904	Magnetic curtain for covering leaks in ships.	May 4	Aug. 26	J-108	203
804478	Nov. 14, 1905	Portable freezing apparatus	May 4	Aug. 26	J-108	210
771327	Oct. 4, 1904	Valve	1919 July 28	1919 Oct. 11	J-108	32
813328	Feb. 20, 1906	Apparatus for moistening and warming rooms or apartments.	1920 May 4	1920 Aug. 26	J-108	279
828515	Aug. 14, 1906	Clearing vat for sewage	May 4	Aug. 26	J-108	292
903510	Nov. 10, 1908	Soaking pit	May 4	Aug. 26	J-108	296
903511	Nov. 10, 1908	Ingot-heating furnace	May 4	Aug. 26	J-108	296
955915	Apr. 26, 1910	Gas-purifying apparatus	May 4	Aug. 26	J-108	293
995575	June 20, 1911	Leather-working machine	May 4	Aug. 26	J-108	261
917160	Apr. 6, 1909	Baking oven	May 4	Aug. 26	J-108	272
922050	May 18, 1909	Baking oven	May 4	Aug. 26	J-108	272
910729	Jan. 26, 1909	Gas syringe with branched-out discharge pipe.	May 4	Aug. 26	J-108	258
725065	Apr. 14, 1903	Machine for making prolines	May 4	Aug. 26	J-108	164
725237	Apr. 14, 1903	Machine for molding blocks or tablets of chocolate.	May 4	Aug. 26	J-108	164
829581	Aug. 28, 1906	Metal bar links and bands, etc., formed of them.	May 4	Aug. 26	J-108	188
1001834	Aug. 29, 1911	Liquid applying and polishing device.	May 4	Aug. 26	J-108	163
1024886	Apr. 30, 1912	Meter	May 4	Aug. 26	J-108	159
1032285	July 9, 1912	Centrifugal machine	May 4	Aug. 26	J-108	196
930966	Aug. 10, 1909	Centrifugal apparatus for separating purposes.	May 4	Aug. 26	J-108	196
781145	Jan. 31, 1905	Apparatus for drying woven goods.	May 4	Aug. 26	J-108	193
1031543	July 2, 1912	Machine for pressing liquids from materials containing the same.	May 4	Aug. 26	J-108	160
1227836	May 29, 1917	Single acting, condensing, continuous current steam engine.	1919 July 28	1919 Sept. 22	G-108	398
1124907	Jan. 12, 1915	Centrifugal machine for separating solid substances from liquid.	1920 May 4	1920 Aug. 26	J-108	194
1232098	July 3, 1917	Leaching out hops	May 4	Aug. 26	J-108	287
992811	May 23, 1911	Apparatus for clearing and filtering waste water.	May 4	Aug. 26	J-108	285
848210	Mar. 26, 1907	Treating citron peel	May 4	Aug. 26	J-108	288
924503	June 8, 1909	Cylindrical positive electrode	May 4	Aug. 26	J-108	121
1009794	Nov. 28, 1911	Film pack	May 4	Aug. 26	J-108	273
723736	Mar. 24, 1903	Color-printing machine	May 4	Aug. 26	J-107	278
1125916	Jan. 19, 1915	Briqueting press	May 4	Aug. 26	J-108	266
1132527	Mar. 16, 1915	Briquet	May 4	Aug. 26	J-108	266
933853	June 8, 1909	Stropping device	May 4	Aug. 26	J-108	269
976893	Nov. 29, 1910	Concentrating apparatus	May 4	Aug. 26	J-108	220
774788	Nov. 15, 1904	Charging apparatus for blast furnaces.	May 4	Aug. 26	J-108	290
921547	May 11, 1909	Blade-attaching means	May 4	Aug. 26	J-108	200
920584	May 4, 1909	Apparatus for purifying air	May 4	Aug. 26	J-108	209
1018734	Feb. 27, 1912	Treating tin-bearing material	May 4	Aug. 26	J-108	323
1102841	July 7, 1914	Apparatus for making hollow bricks which are closed on all sides.	May 4	Aug. 26	J-108	322
1095764	May 5, 1914	Molding apparatus	May 4	Aug. 26	J-108	318
874270	Dec. 17, 1907	Chopping and extracting apparatus.	May 4	Aug. 26	J-108	311
918201	Apr. 13, 1909	Apparatus for the production of flame-extinguishing gases.	May 4	Aug. 26	J-108	28

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
1149895	Aug. 10, 1915	Apparatus for manufacturing striped linoleum on a calender.	1920. May 4	1920. Aug. 26	J-108	132
818695	Apr. 24, 1906	Vessel for packing and storing washing powders containing alkaline peroxide.	May 4	Aug. 26	J-108	305
910002	Jan. 19, 1909	Apparatus for testing paper pulp....	May 4	Aug. 26	J-108	207
873785	Dec. 17, 1907	Apparatus for deodorizing the exhaust gases of motors.	May 4	Aug. 26	J-108	249
1076786	Oct. 28, 1913	Preserving plant leaves, flowers, butterflies, and the like.	May 4	Aug. 26	J-108	254
1155712	Oct. 5, 1915	Mixing and kneading machine for earthy and mineral materials.	May 4	Aug. 26	J-108	157
797511	Aug. 15, 1905	Process of preventing and extinguishing fires in petroleum, etc.	May 4	Aug. 26	J-108	167
798908	Sept. 5, 1905	Apparatus for carrying out bacterial purification of sewage of drain water.	May 4	Aug. 26	J-108	199
831031	Sept. 18, 1906	Producing solid-drawn tubes..........	May 4	Aug. 26	J-108	124
929421	July 27, 1909	Method and device for preparing metal leaves for raised-printing impressions or for other purposes.	May 4	Aug. 26	J-108	165
1144780	June 29, 1915	Crude-oil preheater..........................	May 4	Aug. 26	J-108	245
973768	Oct. 25, 1910	Method of making tobacco supple..	May 4	Aug. 26	J-108	156
825115	July 3, 1906	Closure and process of making same.	May 4	Aug. 26	J-108	155
825116	July 3, 1906	Process of closing or sealing apertures.	May 4	Aug. 26	J-108	155
752389	Feb. 16, 1904	System of feeding slow-burning stoves.	May 4	Aug 26	J-108	151
1313367	Aug. 19, 1919	Boring tool..	May 4	Aug. 26	J-108	142
1209102	Dec. 19, 1916	Apparatus for determining deviation of bore holes from the vertical.	1919 July 28	1919 Sept. 22	G-108	193
1171382	Feb. 8, 1916	Nozzle of presses for molding plastic materials.	1920 May 4	1920 Aug. 26	J-108	134
1178325	Apr. 4, 1916	Heating and cooking liquids, solid substances, and mixtures of liquids and solid substances.	May 4	Aug. 26	J-108	213
922553	May 25, 1909	Indicator for continuously registering the mean working pressure.	May 4	Aug. 26	J-108	145
927207	July 6, 1909	Indicator..	May 4	Aug. 26	J-108	145
981152	Jan. 10, 1911	Device for indicating the useful pressure in engines.	1919 July 28	1919 Sept. 22	G-108	194
984732	Feb. 21, 1911	Engine indicator..................................	1920 May 4	1920 Aug. 26	J-108	145
1063946	June 10, 1913	Apparatus for testing air or other gases.	May 4	Aug. 26	J-108	145
1065652	June 24, 1913	Testing apparatus for air and other gases.	May 4	Aug. 26	J-108	145
720361	Feb. 10, 1903	Method of regenerating platinum contact substances.	1919 July 28	1919 Oct. 23	H-108	369
726076	Apr. 21, 1903	Process of making sulphuric anhydrid.	July 11	Aug. 8	C-108	334
1051366	Jan. 21, 1913	Muffle kiln..	1920 May 4	1920 Aug. 26	J-108	153
1162353	Nov. 30, 1915	Pot press especially adapted for the extraction of cacao butter or cacao oil.	May 4	Aug. 26	J-108	181
945389	Jan. 4, 1910	Sphygmomanometer............................	May 4	Aug. 26	J-108	180
880955	Mar. 3, 1908	Apparatus for cleansing corks..........	May 4	Aug. 26	J-106	143
812204	Feb. 13, 1906	Manufacturing photographic papers	May 4	Aug. 26	J-108	176
828652	Aug. 14, 1906	Making photographic papers...........	May 4	Aug. 26	J-108	176
832790	Oct. 9, 1906	Machine for beating leaf metal.......	May 4	Aug. 26	J-108	192

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
896912	Aug. 25, 1908	Gasification of raw combustible materials.	1920. May 4	1920. Aug. 26	J-108	191
974393	Nov. 1, 1910	Treating cacao seeds to separate unripe from ripe seeds.	May 4	Aug. 26	J-108	197
897039	Aug. 25, 1908	Purifying and filtering water	May 4	Aug. 26	J-108	303
878528	Feb. 11, 1908	Rotary pump for gases	May 4	Aug. 26	J-108	185
733083	July 7, 1903	Apparatus for pouring out liquids	May 4	Aug. 26	J-108	267
895654	Aug. 11, 1908	Apparatus for the production of a gaseous or vaporeous fluid mixture.	May 4	Aug. 26	J-108	229
781348	Jan. 31, 1905	Revolving strainer	May 4	Aug. 26	J-108	232
831407	Sept. 18, 1906	Machine for cleaning textile fibers	May 4	Aug. 26	J-108	136
778510	Dec. 27, 1904	Apparatus for reducing bronze to powder.	May 4	Aug. 26	J-108	270
808766	Jan. 2, 1906	Joint for sheet metal and the like	May 4	Aug. 26	J-108	214
995575	June 20, 1911	Leather-working machine	May 4	Aug. 26	J-108	261
771086	Sept. 27, 1904	X-ray tube	May 4	Aug. 26	J-108	233
772666	Oct. 18, 1904	Roentgen tube	May 4	Aug. 26	J-108	233
772667	Oct. 18, 1904	X-ray tube	May 4	Aug. 26	J-108	233
806413	Dec. 5, 1905	Electrode for electrolyses used in the manufacture of bleaching liquors.	May 4	Aug. 26	J-108	212
832983	Oct. 9, 1906	Electrode for use in the manufacture of bleaching liquor.	May 4	Aug. 26	J-108	212
1172568	Feb. 22, 1916	Method of and apparatus for securing constancy in the light of vacuum tubes.	1919 July 28	1919 Oct. 11	J-108	39
881842	Mar. 10, 1908	Nozzle for the supply of liquid or gaseous fuel to furnaces.	1920 May 4	1920 Aug. 26	J-108	135
1006776	Oct. 24, 1911	Machine for making fringes	May 4	Aug. 26	J-108	236
973455	Oct. 18, 1910	Safety lock	May 4	Aug. 26	J-108	222
905402	Dec. 1, 1908	Removing carbon from metallic filaments.	May 4	Aug. 26	J-108	306
936403	Oct. 12, 1909	Making filaments for electric incandescent lamps.	May 4	Aug. 26	J-108	306
930723	Aug. 10, 1909	Forming electric-incandescent lamp filaments.	May 4	Aug. 26	J-108	306
746975	Dec. 15, 1903	Film and plate camera	May 4	Aug. 26	J-108	118
1064773	June 17, 1913	Draining and utilizing slime	May 4	June 11	J-108	120
1088297	Feb. 24, 1914	Machine for grinding slabs	May 4	Aug. 26	J-108	253
977132	Nov. 29, 1910	Machine for preparing hides and skins of every description.	May 4	Aug. 26	J-108	248
949661	Feb. 15, 1910	Sterilizing apparatus	May 4	Aug. 26	J-108	251
1172528	Feb. 22, 1916	Improving water for brewing and malting purposes.	May 4	Aug. 26	J-108	196
1059430	Apr. 22, 1913	Apparatus for preventing the formation of boiler scale.	May 4	Aug. 26	J-108	125
823287	June 12, 1906	Apparatus for delivering acid and alkaline liquids in measured quantities.	May 4	Aug. 26	J-108	226
1100694	June 16, 1914	Producing and maintaining a high vacuum.	1919 July 28	1919 Aug. 25	D-108	258
945567	Jan. 4, 1910	Roasted sulfurized grain	1920 May 4	1920 Aug. 26	J-108	224
1059553	Apr. 22, 1913	Weighing apparatus for liquids	May 4	Aug. 26	J-108	231
917882	Apr. 13, 1909	Automatic weighing apparatus	May 4	Aug. 26	J-108	233
921428	May 11, 1909	Regulating valve for liquid-weighing machines.	May 4	Aug. 26	J-108	233
1125027	Jan. 12, 1915	Heater	May 4	Aug. 26	J-108	238
1221469	Apr. 3, 1917	Rock machine drill for operating with flushing water.	May 4	Aug. 26	J-108	219
1221469	Apr. 3, 1917	Rock machine drill for operating with flushing water.	1919 July 28	1919 Sept. 22	G-108	318
1016093	Jan. 30, 1912	Process for corrugating cardboard.	1920 May 4	1920 Aug. 26	J-108	250

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording	Book.	Page.
			1920.	1920.		
1314642	Sept. 2, 1919	Process for the manufacture of catalyzing agents of particular efficiency.	May 4	Aug. 26	J-108	168
			1919	1919		
1152848	Sept. 7, 1915	Plant for cooling, removing scale from chalking and drying wire delivered by finishing rolls.	July 22	July 31	C-108	58
905598	Dec. 1, 1908	Gas engine	July 21	July 31	C-108	84
793237	June 27, 1905	Copying plastic objects	July 22	July 31	C-108	51
1126877	Feb. 2, 1915	Vapor alternating-current rectifier and similar apparatus.	July 28	Aug. 25	D-108	430
771669	Oct. 4, 1904	Cold process of simultaneously cutting out and stamping polished wooden articles.	July 28	Oct. 11	J-108	20
892241	June 30, 1908	Electrically detecting dangerous gases and apparatus therefor.	July 28	Sept. 19	G-108	24
959521	May 31, 1910	Electrolytic apparatus with liquid anode.	July 28	Sept. 10	F-108	302
817640	Apr. 10, 1906	Automatic gas igniter	July 28	Sept. 8	E-108	414
781338	Jan. 31, 1905	Uniting the two components of a thermo-electric couple.	July 28	Oct. 3	E-108	363
808086	Dec. 26, 1905	Thermo-electric battery	July 28	Sept. 18	F-108	303
888480	May 26, 1908	Bronzing machine	July 28	Sept. 22	G-108	238
903184	Nov. 10, 1908	Gas-retort feeding machine	July 28	Aug. 25	D-108	69
906812	Dec. 15, 1908	Gas producer	July 18	July 31	B-108	264
822270	June 5, 1906	Electrically heated hollow body	July 28	Aug. 23	C-108	487
875813	Jan. 7, 1908	Gas generator	July 21	July 31	B-108	50
807553	Dec. 19, 1905	Process for the treatment of wicks for increasing their inflammability.	July 28	Oct. 2	H-108	160
1237222	Aug. 14, 1917	Arrangement for homogenizing liquids.	July 28	Sept. 22	G-108	386
780670	Jan. 24, 1905	Method of and apparatus for applying solutions or fluids to traveling webs.	July 28	Aug. 25	D-108	152
846657	Mar. 12, 1907	Extracting copper	July 28	Aug. 25	D-108	109
832322	Oct. 2, 1906	Impregnating roasted coffee	July 28	Aug. 25	D-108	135
1130588	Mar. 2, 1915	Fruit and vegetable dust and making same.	July 28	Sept. 19	G-102	27
1187282	June 13, 1916	Arc-lamp electrode	July 28	Oct. 3	H-108	323
874667	Dec. 24, 1907	Apparatus for measuring the supply of steam from a boiler.	July 28	Aug. 25	C-108	418
909172	Jan. 12, 1909	Process of preserving meat	July 28	Sept. 8	E-108	339
1099595	June 9, 1914	Process of and apparatus for heating.	July 28	Aug. 25	D-108	104
1117618	Nov. 17, 1914	Surgical appliance	July 28	Aug. 25	C-108	372
1014690	Jan. 16, 1912	Butter flavoring	July 28	Aug. 25	D-108	27
1178858	Apr. 11, 1916	Obtaining gases for heating purposes.	July 11	Aug. 8	C-108	332
795943	Aug. 1, 1905	Moistening cloth for copying writings.	July 28	Sept. 19	G-108	126
980802	Jan. 3, 1911	Manufacture of incandescent gas mantle.	July 15	July 31	B-108	184
848622	Apr. 2, 1907	Gas generator	July 11	Aug. 8	C-108	252
977607	Dec. 6, 1910	Arc-lamp electrode	July 28	Aug. 25	D-108	58
994447	June 6, 1911	Electric radiatory stove	July 28	Oct. 7	I-108	222
1012617	Dec. 26, 1911	Electric radiator	July 28	Sept. 8	E-108	333
1103353	July 14, 1914	Electric heater	July 28	Oct. 7	I-108	222
1132313	Mar. 16, 1915	Flame arc lamp and electrode therefor.	July 28	Sept. 19	G-108	11
1221039	Apr. 3, 1917	Flame arc lamp and electrode therefor.	Apr. 28	Sept. 8	E-108	332
902871	Nov. 3, 1908	Thermic mixture	July 28	Aug. 25	C-108	445
895628	Aug. 11, 1908	Manufacturing metals	July 28	Aug. 25	C-108	445
938758	Nov. 2, 1909	Method of manufacturing calcium-silicon alloys, etc.	July 28	Aug. 25	C-108	445
995601	June 20, 1911	Gasometer	July 18	July 31	B-108	435
774801	Nov. 15, 1904	Lens stereoscope	July 28	Oct. 3	H-108	470

No.	Date of issue.	Title	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
1000346	Aug. 8, 1911	Magnifying spectacle glass	July 28	Aug. 25	E-108	172
1028281	June 4, 1912	Telescope spectacle glass	July 28	Oct. 3	H-108	470
1030128	June 18, 1912	Spectacle glass	July 28	Aug. 25	E-108	172
1143667	June 22, 1915	Optical system	July 28	Aug. 25	E-108	172
818453	Apr. 24, 1906	Machine for cutting up or mitering flanged metal beams or girders.	July 15	July 31	B-108	147
970932	Sept. 20, 1910	Stamping and printing paper webs.	July 28	Aug. 25	D-108	147
1050280	Jan. 14, 1913	Therapeutic belt	July 28	Sept. 22	G-108	290
850397	Apr. 16, 1907	Elastic fluid turbine	July 28	Oct. 7	I-108	328
874432	Dec. 24, 1907	Turbine	July 28	Oct. 7	I-108	328
1032158	July 9, 1912	Electrode for secondary galvanic cells.	July 28	Sept. 8	F-108	68
1066851	July 8, 1913	Electrode for secondary galvanic cells.	July 28	Sept. 30	H-108	28
919805	Apr. 27, 1909	Linotype machine	July 28	Aug. 25	C-108	370
864139	Aug. 20, 1907	Manufacture of alloys	July 28	Sept. 8	F-108	98
862336	Aug. 6, 1907	Color comparator	July 28	Feb. 22	G-108	272
886683	May 5, 1908	Balling together pulverulent or dusty ores.	July 28	Sept. 8	E-108	319
905632	Dec. 1, 1908	Device for admitting gas into vacuum tubes.	July 28	Oct. 6	H-108	495
914233	Mar. 2, 1909	Frost-proof fire-extinguishing liquid	July 28	Aug. 25	D-108	46
1160908	Nov. 16, 1915	Process for the production of gas from bituminous fuels in intermittent operation.	July 11	Aug. 8	C-108	333
887038	May 12, 1908	Producing gas	July 11	Aug. 8	C-108	252
912509	Feb. 16, 1909	Manufacturing gas from coal	July 21	July 31	C-108	134
935081	Sept. 28, 1909	Method of consolidating loose soils, quicksand, etc.	July 28	Oct. 2	H-108	284
811971	Feb. 6, 1906	Manufacturing milk preparation	July 28	Aug. 25	D-108	495
888120	May 19, 1908	Structure made of bricks for reaction towers, heat-compensation apparatus, and the like.	July 28	Aug. 25	D-108	453
1060868	May 6, 1913	Electric-resistance furnace	July 28	Sept. 19	C-108	170
1049947	Jan. 7, 1913	Apparatus for destroying refuse	July 28	Oct. 6	I-108	159
1054598	Feb. 25, 1913	Photographic recording apparatus for galvanometers, oscillographs, and the like.	July 28	Aug. 25	D-108	285
829664	Aug. 28, 1906	Solidifying earthy ground	July 22	July 31	B-108	313
885480	Apr. 21, 1908	Making producer gas	July 15	July 31	B-108	93
819144	May 1, 1906	Wafer capsule machine	July 28	Oct. 6	I-108	90
947971	Feb. 1, 1910	Binocular telescope	July 28	Sept. 8	E-108	468
918752	Apr. 20, 1909	Double telescope	July 22	Oct. 2	Z-108	260
920756	May 4, 1909	Binocular telescope	July 22	Oct. 2	Z-108	260
1000609	Aug. 15, 1911	Telemeter	July 22	Oct. 2	Z-108	260
940166	Nov. 16, 1909	Separating-prism telemeter	July 22	Oct. 2	Z-108	260
942393	Dec. 7, 1909	Angle-measuring appliance	July 28	Sept. 22	G-108	284
1062166	May 20, 1913	Stereoscopic telemeter	July 22	Oct. 2	Z-108	260
1101081	June 23, 1914	Optical square prism	July 28	Sept. 18	F-108	323
1128154	Feb. 9, 1915	Making foodstuffs from sulfite cellulose waste liquors.	July 28	Oct. 7	I-108	288
1126300	Jan. 26, 1915	Centrifugal pump blower, compressor, and the like.	July 28	Sept. 22	G-108	391
762847	June 14, 1904	Storage battery	July 28	Sept. 22	G-108	403
762256	June 7, 1904	Mixture for treating tuberculosis	July 28	Oct. 3	H-108	445
858675	July 2, 1907	Fireproof slab	July 28	Sept. 8	F-108	125
897840	Sept. 1, 1908	Preparation of coffee	July 28	Sept. 19	G-108	95
956775	May 3, 1910	Receptacle for liquid-weighing machines.	July 28	Nov. 10	J-108	90
1000618	Aug. 15, 1911	Tripod with hinged legs	July 28	Aug. 25	D-108	257
1083543	Jan. 6, 1914	Adjusting device for pattern-cylinders of printing machine.	July 28	Sept. 8	E-108	476
1086721	Feb. 10, 1914	Color-printing machine	July 28	Sept. 8	E-108	478
849429	Apr. 9, 1907	Apparatus for separating and discharging coke.	July 28	Oct. 7	I-108	345
996804	July 4. 1911	Alarm indicator for boiling purposes.	July 28	Sept. 30	H-108	55

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording	Book.	Page
			1919.	1919.		
729022	May 12, 1903	Device for automatically recording the amount of carbonic acid in products of combustion.	July 28	Aug. 2	D-108	482
905394	Dec. 1, 1908	Device for locating a molten distributing fuse.	July 28	Oct. 2	H-108	251
1104723	July 21, 1914	Oil transformer	July 28	Sept. 30	H-108	88
1189096	June 27, 1916	Pumping apparatus	July 22	July 31	B-108	6
1189096	June 27, 1916	Pumping apparatus	June 24	June 28	A-108	220
1066200	July 1, 1913	Process of treating groundnuts and products derived therefrom.	July 28	Aug. 25	D-108	99
857247	June 18, 1907	Apparatus for fusing metals	July 28	Nov. 10	J-108	87
1089805	Mar. 10, 1914	Medical appliance	July 28	Oct. 6	I-108	108
1155024	Sept. 28, 1915	Water-supply system	July 28	Nov. 10	J-108	101
751704	Feb. 9, 1904	Producing paved tracks on macadamised roads or the like.	July 28	Oct. 7	I-108	378
1257561	Feb. 26, 1918	Chambering device for rock drills	July 28	Aug. 25	E-108	242
878322	Feb. 4, 1908	Cemented lithographic stone	July 18	July 31	C-108	202
983586	Feb. 7, 1911	Conveyer for incandescent materials	July 28	Aug. 25	E-108	250
1029835	June 18, 1912	Lithographic stone	July 28	Sept. 8	F-108	180
1069047	July 29, 1913	Gas lighter	July 23	Sept. 8	F-108	179
874267	Dec. 17, 1907	Means for mounting stone lithographic rollers.	July 28	Oct. 6	I-108	179
883144	Mar. 24, 1908	Color-spraying apparatus	July 28	Sept. 18	F-108	359
863081	Aug. 13, 1907	Manufacture of alimentary products	July 28	Sept. 19	G-108	86
904886	Nov. 24, 1908	Self-igniting device	July 28	Aug. 25	D-108	281
927374	July 6, 1909	Manufacturing incandescent mantles.	July 28	Sept. 18	F-108	337
931460	Aug. 17, 1909	Gas producer	July 16	July 31	B-108	290
937887	Oct. 19, 1909	Gas producer	July 16	July 31	B-108	290
911745	Feb. 9, 1909	Making albuminous bread	July 28	Sept. 19	G-108	89
1102536	July 7, 1914	Container for storing photographic plates.	July 28	Sept. 19	G-108	91
1080920	Dec. 9, 1913	Manufacture of alimentary products.	July 28	Aug. 25	D-108	282
760361	May 17, 1904	Steadying resistance for arc-lamps.	July 28	Oct. 3	H-108	479
770489	Sept. 20, 1904	Electric arc lamp	July 28	Oct. 3	H-108	479
783662	Feb. 28, 1905	Incandescent gaslight lamp	July 28	Aug. 25	E-108	191
921897	May 18, 1909	Automatic cut-off for gas	July 21	July 31	C-108	111
836054	Nov. 13, 1906	Manufacturing gas	July 21	July 31	C-108	44
805235	Nov. 21, 1905	Producer-gas furnace	July 22	July 31	C-108	113
903112	Nov. 3, 1908	Gas producer	July 22	July 31	C-108	114
1108402	Aug. 25, 1914	Use of rawhide	June 17	June 28	A-108	264
970122	Sept. 13, 1910	Automatic gas cut-off	July 21	July 31	C-108	111
748424	Dec. 29, 1903	Hypodermic syringe	July 28	Aug. 25	D-108	456
763513	June 28, 1904	Fireproof ceiling	July 28	Oct. 11	J-108	33
768774	Aug. 30, 1904	Construction of frozen walls for shafts of mines.	July 28	Sept. 8	F-108	128
774607	Nov. 8, 1904	Manufacture of objects of papier-mache.	July 28	Oct. 3	H-108	448
898807	Sept. 15, 1908	Illuminating apparatus	July 28	Oct. 3	H-108	452
888006	May 19, 1908	Wall and ceiling covering	July 28	Sept. 22	G-108	230
842012	Jan. 22, 1907	Apparatus for forcing fluids	July 28	Oct. 11	J-108	3
1027154	May 21, 1912	Gas-generating furnace	July 18	July 31	B-108	435
1100845	June 23, 1914	Manufacture of grinding apparatus.	July 28	Sept. 30	H-108	35
891560	June 23, 1908	Refrigerating apparatus employing carbonic acid.	July 28	Aug. 25	D-108	279

SCHEDULE 14.

The instrument dated July 20, 1920, and recorded in the United States Patent Office on July 27, 1920, in liber B-111, page 66 of Transfers of Patents, a copy of which instrument is set out in Exhibit H-14, attached to this bill of complaint, enumerated the following patent:

No.	Date of filing.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
	Feb. 12, 1919	Improvements in Trimethyl acetyl salicylic acid compound.	1919. June 17	1919. June 18	C-107	269

[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

Note.—The demand was served withou tthe serial number being given. The above application later developed into a patent. The records of this office show no further demand than above.

SCHEDULE 15.

The instrument dated December 21, 1920, and recorded in United States Patent Office on December 21, 1920, in liber V-112, page 1, of the Transfers of Patents, a copy of which instrument is set out in Exhibit H-15 attached to this bill of complaint, enumerated the following patents:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
877460	Jan. 21, 1908	Apparatus for separating liquids from gases or vapors.	1920. May 4	1920. Aug. 26	J-108	128
[2]12693	Sept. 3, 1907	Preservative	May 4	Aug. 26	J-108	255
929422	July 27, 1909	Heat-insulating vessel	May 4	June 11	J-108	129
801204	Oct. 10, 1905	Method of and apparatus for treating coal, ores, and other minerals for draining them of water.	May 4	Aug. 26	J-108	137
821819	May 29, 1906	Concentrator for pulverulent materials.	May 4	Aug. 26	J-108	241
813320	Feb. 20, 1906	Lateral packing for the end faces of pairs of rollers.	May 4	Aug. 26	J-108	241
831060	Sept. 18, 1906	Gas igniting and extinguishing device.	May 4	Aug. 26	J-108	171
1105610	Aug. 4, 1914	Apparatus for cutting plate glass.	May 4	Aug. 26	J-108	127
1101392	June 23, 1914	Apparatus for the manufacture of raw plate glass.	May 4	Aug. 26	J-108	127
1114098	Oct. 20, 1914	Method of and apparatus for cutting plate glass.	May 4	Aug. 26	J-108	127
1175116	Mar. 14, 1916	Manufacture of raw plate glass	May 4	Aug. 26	J-108	127
1175117	Mar. 14, 1916	Making plate glass	May 4	Aug. 26	J-108	127
1158863	Nov. 2, 1915	Producing translucent ornaments or designs in pottery.	May 4	Aug. 26	J-108	204
866499	Sept. 17, 1907	Manufacturing a ferruginous addition to cattle food.	May 4	Aug. 26	J-108	221
1043349	Nov. 5, 1912	Ball mill	May 4	Aug. 26	J-108	242
1204779	Nov. 4, 1916	Water-heating apparatus	1919 July 28	1919 Sept. 8	E-108	443
1021043	Mar. 26, 1912	Process and apparatus for manufacture of glass drums and other hollow bodies.	1920 May 4	1920 Aug. 26	J-108	183
1151722	Aug. 31, 1915	Apparatus for separating minerals and like materials.	May 4	Aug. 26	J-108	284
1026577	May 14, 1912	Producing paper pulp from old paper.	May 4	Aug. 26	J-108	186
1036239	Aug. 20, 1912	Apparatus for preparing old and new molding sand.	May 4	Aug. 26	J-108	179
839941	Jan. 1, 1907	Machine for molding plastic materials.	May 4	Aug. 26	J-108	216

[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

[2] Reissue.

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
972674	Oct. 11, 1910	Apparatus for opening or closing the discharge openings of vertical retorts.	1920. May 4 1919 July 11	1920. Aug. 26 1919 Aug. 8	J-108 C-108	139 274
1205893	Nov. 21, 1916	Apparatus for developing photographic plates by daylight.	1920 May 4	1920 Aug. 26	J-108	182
761051	May 24, 1904	Compound fabric	May 4	Aug. 26	J-108	299
1033377	July 23, 1912	Apparatus for separating granular admixtures from clay and like plastic substances.	May 4	Aug. 26	J-108	141
1158310	Oct. 26, 1915	Apparatus for measuring area of hides.	1919 July 28	1919 Oct. 2	H-108	253
958683	May 17, 1910	Ice-making machine	1920 May 4	1920 Aug. 26	J-108	310
1126659	Jan. 26, 1915	Producing acid and fireproof bodies.	May 4	Aug. 26	J-108	281
1126027	Jan. 26, 1915	Apparatus for detecting pipe leads or other metallic masses embedded in masonry.	1919 July 28	1919 Sept. 30	H-108	7
1140289	May 18, 1915	Apparatus for homogenizing milk and other liquids.	July 28	Oct. 11	J-108	38
1156407	Oct. 12, 1915	Apparatus for dividing more or less thick liquid or pasty materials.	1920 May 4	1920 Aug. 26	J-108	205
1204564	Nov. 14, 1916	Fluid-pressure relay governor	May 4	Aug. 26	J-108	170
988968	Apr. 11, 1911	Machine for cleaning and sorting clay or the like.	May 4	Aug. 26	J-108	140
991679	May 9, 1911	Drying apparatus	May 4	Aug. 26	J-108	312
835049	Nov. 6, 1906	Grinding or crushing mill	May 4	Aug. 26	J-108	314
882304	Mar. 17, 1908	Extracting apparatus for horizontal retorts.	May 4	Aug. 26	J-108	154
906785	Dec. 15, 1908	Centrifugal machine for feeding gas retorts.	May 4	Aug. 26	J-108	154
794187	July 11, 1905	Mechanical preparation of wood pulp from sawdust.	May 4	June 11	J-108	119
1127951	Feb. 9, 1915	Oil retort	May 4	Aug. 26	J-108	313
1071962	Sept. 2, 1913	Automatic charging device for roasting furnace and the like.	May 4	Aug. 26	J-108	263
1069009	July 29, 1913	Apparatus for pneumatically separating sheets.	May 4	Aug. 26	J-108	174
1092359	Apr. 7, 1914	Control device for sheet separators.	May 4	Aug. 26	J-108	174
1143708	June 22, 1915	Apparatus for separating sheets from a pile or stack.	May 4	Aug. 26	J-108	174
1069830	Aug. 12, 1913	Process of producing polychrome photogravures and apparatus therefor.	May 4	Aug. 26	J-108	298
839587	Dec. 11, 1906	Process and apparatus for construction of slabs of artificial stone, etc.	May 4	Aug. 26	J-108	188
1014221	Jan. 9, 1912	Device for making plates of artificial stone.	May 4	Aug. 26	J-108	187
1083279	Jan. 6, 1914	Device for removing water from layers of artificial stone pulp.	May 4	Aug. 26	J-108	187
899911	Sept. 29, 1908	Safety device for the mouths of vessels containing combustible liquids.	May 4	Aug. 26	J-108	283
874668	Dec. 24, 1907	Treating waste oakum and similar materials.	May 4	Aug. 26	J-108	172
847232	Mar. 12, 1907	Apparatus for cooling, moistening, and purifying the air in rooms.	May 4	Aug. 26	J-108	133
860810	July 23, 1907	Diffusion apparatus	May 4	Aug. 26	J-108	308
1065690	June 24, 1913	Regulating and reversing apparatus for regenerative gas furnaces.	May 4	Aug. 26	J-108	198
1104002	July 21, 1914	Lubricating device for axle bearings	May 4	Aug. 26	J-108	244
1141652	June 1, 1915	Blowing system for furnaces	May 4	Aug. 26	J-108	244
725894	Apr. 21, 1903	Arrangement for heating, cooking, and mixing the mash in mashtubs	May 4	Aug. 26	J-108	300
1067287	July 15, 1913	Magnetic separator	May 4	Aug. 26	J-108	301

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1920.	1920.		
1016118	Jan. 30, 1912	Glass roof	May 4	Aug. 26	J-108	309
1064490	June 10, 1913	Malt drum	May 4	Aug. 26	J-108	201
934817	Sept. 21, 1909	Apparatus for spreading materials on edibles such as cake, biscuit, and the like.	May 4	Aug. 26	J-108	211
822501	June 5, 1906	Magazine film holder	May 4	Aug. 26	J-108	130
906676	Dec. 15, 1908	Press for sweetmeats, tablets, and the like.	May 4	Aug. 26	J-108	129
1156829	Oct. 12, 1915	Cooling devices for electrical machines mounted on vessels.	May 4	Aug. 26	J-108	315
			1919	1919		
1078387	Nov. 11, 1913	Apparatus for lining tubes with lead, tin, or the like.	July 28	Sept. 22	G-108	412
842730	Jan. 29, 1907	Making electrically conducting bodies for use as contacts.	July 28	Sept. 22	G-108	416
1169942	Feb. 1, 1916	Arc-light electrode	July 28	Oct. 7	I-108	374
			1920	1920		
1267641	May 28, 1918	Resistance body	May 4	Aug. 26	J-108	152
1267642	May 28, 1918	Regulating resistance	May 4	Aug. 26	J-108	152
814967	Mar 13, 1906	Apparatus for obtaining pure cotton or fibrous materials for textile and like purposes.	May 4	Aug. 26	J-108	206
807586	Dec. 19, 1905	Water-circulating device	May 4	Aug. 26	J-108	307
1074448	Sept. 30, 1913	Nonexplosive stopper for bottle containing liquid fuels.	May 4	Aug. 26	J-108	230
1077471	Nov. 4, 1913	Intermittently acting double siphon	May 4	Aug. 26	J-107	189
1029817	June 18, 1912	Press for making briquets and the like.	May 4	Aug. 26	J-108	227
1065356	June 24, 1913	Fire-extinguishing apparatus	May 4	Aug. 26	J-108	169
			1919	1919		
858381	July 2, 1907	Fire extinguisher	July 28	Sept. 19	G-108	40
			1920	1920		
842979	Feb. 5, 1907	Device for cleaning frozen window glasses and for preventing them from freezing.	May 4	Aug. 26	J-108	277
1078752	Nov. 18, 1913	Temperature controller	May 4	Aug. 26	J-108	276
1070632	Aug. 19, 1913	Apparatus for producing cotton waste.	May 4	Aug. 26	J-108	252
1003813	Sept. 19, 1911	Increasing the binding power of basic silicates of lime.	May 4	Aug. 26	J-108	274
807507	Dec. 19, 1905	Bottling and like apparatus	May 4	Aug. 26	J-108	256
814169	Mar. 6, 1906	Apparatus for decanting liquids	May 4	Aug. 26	J-108	256
888538	May 26, 1908	Corking machine	May 4	Aug. 26	J-108	256
1107986	Aug. 18, 1914	Apparatus for purifying gases	May 4	Aug. 26	J-108	239
1061488	May 13, 1913	Manufacture of alimentary products.	May 4	Aug. 26	J-108	240
			1919	1919		
1075720	Oct. 14, 1913	Manufacture of alimentary products.	July 28	Aug. 25	D-108	294
			1920	1920		
1046482	Dec. 10, 1912	Refrigerating and carbonating apparatus.	May 4	Aug. 26	J-108	223
771202	Sept. 27, 1904	Apparatus for the treatment of peat fiber for manufacturing half stuff.	May 4	Aug. 26	J-108	158
1255915	Feb. 12, 1918	Drying apparatus	May 4	Aug. 26	J-108	218
1164854	Dec. 21, 1915	Gas burner	May 4	Aug. 26	J-108	243
839450	Dec. 25, 1906	Explosive	May 4	Aug. 26	J-108	131
887027	May 5, 1908	Explosive	May 4	Aug. 26	J-108	131
1003628	Sept. 19, 1911	Apparatus for the treatment of solid bodies with gases.	May 4	Aug. 26	J-108	234
1027875	May 28, 1912	Economiser, regenerator, and the like.	May 4	Aug. 26	J-108	234
			1919	1919		
1018331	Feb. 20, 1912	Hot blast stove	July 28	Sept. 8	F-108	346

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				Date of filing or recording.	Book.	Page.
1242873	Oct. 9, 1917	Process and apparatus for filling vessels with milk.	1920 May 4	1920 Aug. 26	J-108	291
839459	Dec. 25, 1906	Process of making gold	May 4	Aug. 26	J-108	150
1110278	Sept. 8, 1914	Machine for measuring the surfaces of leather or the like.	May 4	Aug. 26	J-108	144
822929	June 12, 1906	Nodulizing ore	May 4	Aug. 26	J-108	149
940075	Nov. 16, 1909	Device for preventing dust detonations.	May 4	Aug. 26	J-108	282
871308	Nov. 19, 1907	Surface cooler	May 4	Aug. 26	J-108	302
1285806	Nov. 26, 1918	Metal-vapor rectifier and similar apparatus.	May 4	Aug. 26	J-108	257
778193	May 17, 1904	Grain decorticating and grinding machine.	May 4	Aug. 26	J-108	178
863885	Aug. 20, 1907	Oil press	May 4	Aug. 26	J-108	259
929180	July 27, 1909	Machine for manufacturing paper tubes.	May 4	Aug. 26	J-108	147
911776	Feb. 9, 1909	Binocular telescope with double hinge.	1919 July 22	1919 Oct. 2	Z-108	260
989645	Apr. 18, 1911	Toric spectacle glass	1920 May 4	1920 Aug. 26	J-108	304
949501	Feb. 15, 1910	Spectacle glass	1919 July 28	1919 Oct. 3	H-108	470
1242377	Oct. 9, 1917	Apparatus for examining radioactive substances.	1920 May 4	1920 Aug. 26	J-108	275
1120246	Dec. 8, 1914	Heat transmitting fluid for baking ovens and the like.	May 4	Aug. 26	J-108	265
1026885	May 21, 1912	Gas furnace for heating, scaling, and hardening purposes.	May 4	Aug. 26	J-108	271
841499	Jan. 15, 1907	Manufacturing power gas	May 4	Aug. 26	J-108	161
986271	Mar. 7, 1911	Refining and agglomerating ores and the like.	1919 July 28	1919 Oct. 3	H-108	320
005022	Oct. 3, 1911	Detinning tin scrap	1920 May 4	1920 Aug. 26	J-108	173
981695	Jan. 17, 1911	Means for forming parallel faces on the ends of rails, etc.	May 4	Aug. 26	J-108	200
1018734	Feb. 27, 1912	Treating tin-bearing material	May 4	Aug. 26	J-108	323
1187504	June 20, 1916	Stirring device for mechanical roasting furnaces.	May 4	Aug. 26	J-108	148
874063	Dec. 17, 1907	Gas burner	May 4	Aug. 26	J-108	166
892885	July 7, 1908	Skin substitute for heads of drum and the like.	May 4	Aug. 26	J-108	246
887016	May 5, 1908	Construction of drums	May 4	Aug. 26	J-108	247
805366	Nov. 21, 1905	Textile fiber materials	May 4	Aug. 26	J-108	208
827102	July 31, 1906	Process of manufacturing fiber material from animal tendons or sinews.	May 4	Aug. 26	J-108	208
974660	Nov. 1, 1910	Making fish sausage	May 4	Aug. 26	J-108	177
908001	Dec. 29, 1908	Fireproof floor construction	May 4	Aug. 26	J-108	175
876359	Jan. 14, 1908	Pressure regulator for compressed-gas plants.	May 4	Aug. 26	J-108	204
1047809	Dec. 17, 1912	Oil press	May 4	Aug. 26	J-108	184
858663	July 2, 1907	Apparatus for cleaning the tubes and joint pipes of water gages.	May 4	Aug. 26	J-108	215
847065	Mar. 12, 1907	Body to be heated electrically	1919 July 28	1919 Oct. 6	I-108	61
1021249	Mar. 26, 1912	Prop for mines	July 28	Aug. 25	C-108	482
838464	Dec. 11, 1906	Means for uniformly distributing powdered substances.	1920 May 4	1920 Aug. 26	J-108	295
1014681	Jan. 16, 1912	Supporting incandescent electric lamps and reflectors.	May 4	Aug. 26	J-108	316

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				Date of filing or cording.	Book.	Page
			1920.	1920.		
1055384	Mar. 11, 1913	Band press for drying vegetables and mineral substances.	May 4	Aug. 26	J-108	145
1280359	Oct. 1, 1918	Device for removing injurious seeds.	May 4	Aug. 26	J-108	145
1260599	June 18, 1918	Method and apparatus for testing gases.	May 4	Aug. 26	J-108	190
			1919	1919		
830225	Sept. 4, 1906	Testing gaseous mixtures	July 28	Oct. 11	R-108	305
			1920	1920		
1071354	Aug. 26, 1913	Electrical separator	May 4	Aug. 26	J-108	282
851778	Apr. 30, 1907	Purifying apparatus for liquids	May 4	Aug. 26	J-108	288
922524	May 25, 1909	Testing the tensile strength of elastic materials.	May 4	Aug. 26	J-108	268
940947	Nov. 23, 1909	Apparatus for separating particles of liquid from gases and vapors.	May 4	Aug. 26	J-108	294
880579	Mar. 3, 1908	Carbon electrode for electrical bleaching apparatus.	May 4	Aug. 26	J-108	280
852867	May 7, 1907	Crucible furnace	May 4	Aug. 26	J-108	138
1084520	Jan. 13, 1914	Increasing the heating resisting properties of bituminous or tarry materials.	May 4	Aug. 26	J-108	324
869321	Oct. 29, 1907	Insulating material and manufacturing same.	May 4	Aug. 26	J-108	225
874374	Dec. 17, 1907	Apparatus for electrodepositing metals.	May 4	Aug. 26	J-108	217
945241	Jan. 4, 1910	Steam or hot-air apparatus	May 4	Aug. 26	J-108	228
858738	July 2, 1907	Furnace for burning glass, porcelain and like articles.	May 4	June 11	J-108	117
1090904	Mar. 24, 1914	Manufacturing raw plate glass	May 4	Aug. 26	J-108	126
886497	Sept. 17, 1907	Doing away with blowholes and like flaws in castings.	May 4	Aug. 26	J-108	237
			1919	1919		
886498	Sept. 17, 1907	Melting through masses of material.	July 28	Nov. 10	J-108	88
1235505	July 31, 1917	Fire extinguisher	July 28	Aug. 25	D-108	492
			1920	1920		
1094724	Apr. 28, 1914	Variable power telescope	May 4	Aug. 26	J-108	202
785786	Mar. 28, 1905	Machine for making corrugated wood sliver.	May 4	Aug. 26	J-108	317
1074306	Sept. 30, 1913	Differential manometer	May 4	Aug. 26	J-108	321
			1919	1919		
1199731	Sept. 26, 1916	Medical appliance	July 28	Oct. 6	I-108	54
			1920	1920		
1164151	Dec. 14, 1915	Furnace for heating water and generating steam.	May 4	Aug. 26	J-108	319
800044	Sept. 19, 1905	Machine for the manufacture of matches.	May 4	Aug. 26	J-108	320
			1919	1919		
1048135	Dec. 24, 1912	Respiration apparatus	July 28	Aug. 25	E-108	21
1253548	Jan. 15, 1918	Method and apparatus for transporting incompressible fluid.	July 28	Oct. 2	H-108	271
			1920	1920		
945241	Jan. 4, 1910	Steam or hot-air apparatus	May 4	Aug. 26	J-108	228
770078	Sept. 13, 1904	Magnetic curtain for covering leaks in ships.	May 4	Aug. 26	J-106	203
804478	Nov. 14, 1905	Portable freezing apparatus	May 4	Aug. 26	J-108	210
			1919	1919		
771327	Oct. 4, 1904	Valve	July 28	Oct. 11	J-108	32
			1920	1920		
813328	Feb. 20, 1906	Apparatus for moistening and warming rooms or apartments.	May 4	Aug. 26	J-108	279
828515	Aug. 14, 1906	Clearing vat for sewage	May 4	Aug. 26	J-108	292
903510	Nov. 10, 1908	Soaking pit	May 4	Aug. 26	J-108	296
903511	Nov. 10, 1908	Ingot-heating furnace	May 4	Aug. 26	J-108	296

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			1920.	1920.		
955915	Apr. 26, 1910	Gas-purifying apparatus	May 4	Aug. 26	J-108	293
995575	June 20, 1911	Leather-working machine	May 4	Aug. 26	J-108	261
917260	Apr. 6, 1909	Baking oven	May 4	Aug. 26	J-108	272
922050	May 18, 1909	Baking oven	May 4	Aug. 26	J-108	272
910729	Jan. 26, 1909	Gas syringe with branched-out discharge pipe.	May 4	Aug. 26	J-108	258
725065	Apr. 14, 1903	Machine for making prolines	May 4	Aug. 26	J-108	164
725237	Apr. 14, 1903	Machine for molding blocks or tablets of chocolate.	May 4	Aug. 26	J-108	164
829581	Aug. 28, 1906	Metal bar-links and bands, etc., formed of them.	May 4	Aug. 26	J-108	162
1001834	Aug. 29, 1911	Liquid applying and polishing device.	May 4	Aug. 26	J-108	168
1024886	Apr. 30, 1912	Meter	May 4	Aug. 26	J-108	159
1032285	July 9, 1912	Centrifugal machine	May 4	Aug. 26	J-108	195
930966	Aug. 10, 1909	Centrifugal apparatus for separating purposes.	May 4	Aug. 26	J-108	195
781145	Jan. 31, 1905	Apparatus for drying woven goods	May 4	Aug. 26	J-108	193
1031543	July 2, 1912	Machine for pressing liquids from materials containing the same.	May 4	Aug. 26	J-108	160
			1919	1919		
1227836	May 29, 1917	Single acting, condensing, continuous current steam engine.	July 28	Sept. 22	G-108	398
			1920	1920		
1124907	Jan. 12, 1915	Centrifugal machine for separating solid substances from liquid.	May 4	Aug. 26	J-108	194
1232098	July 3, 1917	Leaching out hops	May 4	Aug. 26	J-108	287
992811	May 23, 1911	Apparatus for clearing and filtering waste water.	May 4	Aug. 26	J-108	285
848210	Mar. 26, 1907	Treating citron peel	May 4	Aug. 26	J-108	288
924503	June 8, 1909	Cylindrical positive electrode	May 4	June 11	J-108	121
1009794	Nov. 28, 1911	Film pack	May 4	Aug. 26	J-108	273
723736	Mar. 24, 1903	Color-printing machine	May 4	Aug. 26	J-108	278
1125916	Jan. 19, 1915	Briqueting press	May 4	Aug. 26	J-108	266
1132527	Mar. 16, 1915	Briquet	May 4	Aug. 26	J-108	266
933853	June 8, 1909	Stropping device	May 4	Aug. 26	J-108	269
976893	Nov. 29, 1910	Concentrating apparatus	May 4	Aug. 26	J-108	220
774788	Nov. 15, 1904	Charging apparatus for blast furnaces.	May 4	Aug. 26	J-108	290
921547	May 11, 1909	Blade-attaching means	May 4	Aug. 26	J-108	200
920584	May 4, 1909	Apparatus for purifying air	May 4	Aug. 26	J-108	209
1018734	Feb. 27, 1912	Treating tin-bearing material	May 4	Aug. 26	J-108	323
1102841	July 7, 1914	Apparatus for making hollow bricks which are closed on all sides.	May 4	Aug. 26	J-108	322
1095764	May 5, 1914	Molding apparatus	May 4	Aug. 26	J-108	318
874270	Dec. 17, 1907	Chopping and extracting apparatus.	May 4	Aug. 26	J-108	311
918201	Apr. 13, 1909	Apparatus for the production of flame-extinguishing gases.	May 4	Aug. 26	J-108	289
1149895	Aug. 10, 1915	Apparatus for manufacturing striped linoleum on a calender.	May 4	Aug. 26	J-108	132
818695	Apr. 24, 1906	Vessels for packing and storing washing powders containing alkaline peroxide.	May 4	Aug. 26	J-108	305
910002	Jan. 19, 1909	Apparatus for testing paper pulp	May 4	Aug. 26	J-108	207
873785	Dec. 17, 1907	Apparatus for deodorizing the exhaust gases of motors.	May 4	Aug. 26	J-108	249
1076786	Oct. 28, 1913	Preserving plant leaves, flowers, butterflies, and the like.	May 4	Aug. 26	J-108	254
1155712	Oct. 5, 1915	Mixing and kneading machine for earthy and mineral materials.	May 4	Aug. 26	J-108	157
797511	Aug. 15, 1905	Process of preventing and extinguishing fires in petroleum, etc.	May 4	Aug. 26	J-108	167
798908	Sept. 5, 1905	Apparatus for carrying out bacterial purification of sewage or drain water.	May 4	Aug. 26	J-108	199
831031	Sept. 18, 1906	Producing solid drawn tubes	May 4	Aug. 26	J-108	124

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929421	July 27, 1909	Method and device for preparing metal leaves for raised-printing impressions or for other purposes.	1920. May 4	1920. Aug. 26	J-108	165
1144780	June 29, 1915	Crude-oil preheater	May 4	Aug. 26	J-108	245
973768	Oct 25, 1910	Method of making tobacco supple.	May 4	Aug. 26	J-108	156
825115	July 3, 1906	Closure and process of making same	May 4	Aug. 26	J-108	155
825116	July 3, 1906	Process of closing or sealing apertures.	May 4	Aug. 26	J-108	155
752389	Feb. 16, 1904	System of feeding slow-burning stoves.	May 4	Aug. 26	J-108	151
1313367	Aug. 19, 1919	Boring tool	May 4	Aug. 26	J-108	142
1209102	Dec. 19, 1916	Apparatus for determining deviation of bore holes from the vertical.	1919 July 28	1919 Sept. 22	G-108	193
1171382	Feb. 8, 1916	Nozzle of presses for molding plastic materials.	1920 May 4	1920 Aug. 26	J-108	134
1178325	Apr. 4, 1916	Heating and cooking liquids, solid substances, and mixtures of liquids and solid substances.	May 4	Aug. 26	J-108	213
922553	May 25, 1909	Indicator for continuously registering the mean working pressure.	May 4	Aug. 26	J-108	145
927207	July 6, 1909	Indicator	May 4	Aug. 26	J-108	145
981152	Jan. 10, 1911	Device for indicating the useful pressure in engines.	1919 July 28	1919 Sept. 22	G-108	194
984732	Feb. 21, 1911	Engine indicator	1920 May 4	1920 Aug. 26	J-108	145
1063946	June 10, 1913	Apparatus for testing air or other gases.	May 4	Aug. 26	J-108	145
1065652	June 24, 1913	Testing apparatus for air and other gases.	May 4	Aug. 26	J-108	145
720361	Feb. 10, 1903	Method of regenerating platinum contact substances.	1919 July 28	1919 Oct. 3	H-108	369
726076	Apr. 21, 1903	Process of making sulphuric anhydrid.	July 11	Aug. 8	C-108	334
1051366	Jan. 21, 1913	Muffle kiln	1920 May 4	1920 Aug. 26	J-108	153
1162353	Nov. 30, 1915	Pot press especially adapted for the extraction of cacao butter or cacao oil.	May 4	Aug. 26	J-108	181
945389	Jan. 4, 1910	Sphygmomanometer	May 4	Aug. 26	J-108	180
889955	Mar. 3, 1908	Apparatus for cleansing corks	May 4	Aug. 26	J-108	143
812204	Feb. 13, 1906	Manufacturing photographic papers	May 4	Aug. 26	J-108	176
828652	Aug. 14, 1906	Making photographic papers	May 4	Aug. 26	J-108	176
832790	Oct. 9, 1906	Machine for beating leaf metal	May 4	Aug. 26	J-108	192
896912	Aug. 25, 1908	Gasification of raw combustible materials.	May 4	Aug. 26	J-108	191
974393	Nov. 1, 1910	Treating cacao seeds to separate unripe from ripe seeds.	May 4	Aug. 26	J-108	197
897039	Aug. 25, 1908	Purifying and filtering water	May 4	Aug. 26	J-108	303
878528	Feb. 11, 1908	Rotary pump for gases	May 4	Aug. 26	J-108	185
733083	July 7, 1903	Apparatus for pouring out liquids.	May 4	Aug. 26	J-108	267
895654	Aug. 11, 1908	Apparatus for the production of a gaseous or vaporous fluid mixture	May 4	Aug. 26	J-108	229
781348	Jan. 31, 1905	Revolving strainer	May 4	Aug. 26	J-108	232
831407	Sept. 18, 1906	Machine for cleaning textile fibers.	May 4	Aug. 26	J-108	136
778510	Dec. 27, 1904	Apparatus for reducing bronze to powder.	May 4	Aug. 26	J-108	270
808766	Jan. 2, 1906	Joint for sheet metal and the like	May 4	Aug. 26	J-108	214
995575	June 20, 1911	Leather-working machine	May 4	Aug. 26	J-108	261
771086	Sept. 27, 1904	X-ray tube	May 4	Aug. 26	J-108	233
772666	Oct. 18, 1904	Roentgen tube	May 4	Aug. 26	J-108	233
772667	Oct. 18, 1904	X-ray tube	May 4	Aug. 26	J-108	233

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806413	Dec. 5, 1905	Electrode for electrolyses used in the manufacture of bleaching liquors.	1920. May 4	1920. Aug. 26	J-108	212
832983	Oct. 9, 1906	Electrode for use in the manufacture of bleaching liquor.	May 4	Aug. 26	J-108	212
1172568	Feb. 22, 1916	Method of an apparatus for securing constancy in the light of vacuum tubes.	1919 July 28	1919 Oct. 11	J-108	39
881842	Mar. 10, 1908	Nozzle for the supply of liquid or gaseous fuel to furnaces.	1920 May 4	1920 Aug. 26	J-108	135
1006776	Oct. 24, 1911	Machine for making fringes	May 4	Aug. 26	J-108	236
973455	Oct. 18, 1910	Safety lock	May 4	Aug. 26	J-108	222
905402	Dec. 1, 1908	Removing carbon from metallic filaments.	May 4	Aug. 26	J-108	306
936403	Oct. 12, 1909	Making filaments for electric incandescent lamps.	May 4	Aug. 26	J-108	306
930723	Aug. 10, 1909	Forming electric - incandescent lamp filaments.	May 4	Aug. 26	J-108	306
746975	Dec. 15, 1903	Film and plate camera	May 4	June 11	J-108	118
1064773	June 17, 1913	Draining and utilising slime	May 4	June 11	J-108	120
1088297	Feb. 24, 1914	Machine for grinding slabs	May 4	Aug. 26	J-108	253
977132	Nov. 29, 1910	Machine for preparing hides and skins of every description.	May 4	Aug. 26	J-108	248
949661	Feb. 15, 1910	Sterilising apparatus	May 4	Aug. 26	J-108	251
1172528	Feb. 22, 1916	Improving water for brewing and malting purposes.	May 4	Aug. 26	J-108	196
1059430	Apr. 22, 1913	Apparatus for preventing the formation of boiler scale.	May 4	Aug. 26	J-108	125
823287	June 12, 1906	Apparatus for delivering acid and alkaline liquids in measured quantities.	May 4	Aug. 26	J-108	226
1100694	June 16, 1914	Producing and maintaining a high vacuum.	1919 July 28	1919 Aug. 25	D-108	258
945567	Jan. 4, 1910	Roasted sulfurised grain	1920 May 4	1920 Aug. 26	J-108	224
1059553	Apr. 22, 1913	Weighing apparatus for liquids	May 4	Aug. 26	J-108	231
917882	Apr. 13, 1909	Automatic weighing apparatus	May 4	Aug. 26	J-108	235
921428	May 11, 1909	Regulating valve for liquid-weighing machines.	May 4	Aug. 26	J-108	235
1125027	Jan. 12, 1915	Heater	May 4	Aug. 26	J-108	238
1221469	Apr. 3, 1917	Rock machine drill for operating with flushing water.	May 4	Aug. 26	J-108	219
1221469	Apr. 3, 1917	Rock machine drill for operating with flushing water.	1919 July 28	1919 Sept. 22	G-108	318
1016093	Jan. 30, 1912	Process for corrugating cardboard.	1920 May 4	1920 Aug. 26	J-108	250
1314642	Sept. 2, 1919	Process for the manufacture of catalysing agents of particular efficiency.	May 4	Aug. 26	J-108	168
1152848	Sept. 7, 1915	Plant for cooling, removing scale from chalking and drying wire delivered by finishing rolls.	1919 July 22	1919 July 31	C-108	58
905598	Dec. 1, 1908	Gas engine	July 21	July 31	C-108	84
793237	June 27, 1905	Copying plastic objects	July 22	July 31	C-108	51
1126877	Feb. 2, 1915	Vapor alternating-current rectifier and similar apparatus.	July 28	Aug. 25	D-108	430
771669	Oct. 4 1904	Cold process of simultaneously cutting out and stamping polished wooden articles.	July 28	Oct. 11	J-108	20
892241	June 30, 1908	Electrically detecting dangerous gases and apparatus therefor.	July 28	Sept. 19	G-108	24

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			1919.	1919.		
959521	May 31, 1910	Electrolytic apparatus with liquid anode.	July 28	Sept. 18	F-108	302
817640	Apr. 10, 1906	Automatic gas igniter	July 28	Sept. 8	E-108	414
781338	Jan. 31, 1905	Uniting the two components of thermo-electric couple.	July 28	Oct. 3	H-108	363
808086	Dec. 26, 1905	Thermo-electric battery	July 28	Sept. 18	F-108	303
888480	May 26, 1908	Bronzing machine	July 28	Sept. 22	G-108	238
903184	Nov. 10, 1908	Gas-retort feeding machine	July 28	Aug. 25	D-108	69
906812	Dec. 15, 1908	Gas producer	July 18	July 31	B-108	264
822270	June 5, 1906	Electrically heated hollow body	July 28	Aug. 25	C-108	487
875813	Jan. 7, 1908	Gas generator	July 21	July 31	B-108	50
807553	Dec. 19, 1905	Process for the treatment of wicks for increasing their inflammability.	July 28	Oct. 2	H-108	160
1237222	Aug. 14, 1917	Arrangement for homogenizing liquids.	July 28	Sept. 22	G-108	386
780670	Jan. 24, 1905	Method of and apparatus for applying solutions or fluids to traveling webs.	July 28	Aug. 25	D-108	152
846657	Mar. 12, 1907	Extracting copper	July 28	Aug. 25	D-108	109
832322	Oct. 2. 1906	Impregnating roasted coffee	July 28	Aug. 25	D-108	135
1130588	Mar. 2, 1915	Fruit and vegetable dust and making same.	July 28	Sept. 19	G-108	27
1187282	June 13, 1916	Arc-lamp electrode	July 28	Oct. 3	H-108	323
874667	Dec. 24, 1907	Apparatus for measuring the supply of steam from a boiler.	July 28	Aug. 25	C-108	418
909172	Jan. 12. 1909	Process of preserving meat	July 28	Sept. 8	E-108	339
1099595	June 9, 1914	Process of and apparatus for heating.	July 28	Aug. 25	D-108	104
1117618	Nov. 17, 1914	Surgical appliance	July 28	Aug. 25	C-108	372
1014690	Jan. 16 1912	Butter flavoring	July 28	Aug. 25	D-108	27
1178858	Apr. 11, 1916	Obtaining gases for heating purposes.	July 11	Aug. 8	C-108	332
795943	Aug. 1, 1905	Moistening cloth for copying writings.	July 28	Sept. 19	G-108	126
980802	Jan. 3, 1911	Manufacture of incandescent gas mantle.	July 15	July 31	B-108	184
848622	Apr. 2, 1907	Gas generator	July 11	Aug 8	C-108	252
977607	Dec. 6, 1910	Arc-lamp electrode	July 28	Aug. 25	D-108	58
994447	June 6, 1911	Electric radiatory stove	July 28	Oct. 7	I-108	222
1012617	Dec. 26, 1911	Electric radiator	July 28	Sept. 8	E-108	333
1103353	July 14, 1914	Electric heater	July 28	Oct. 7	I-108	222
1132313	Mar. 16, 1915	Flame arc lamp and electrode therefor.	July 28	Sept 19	G-108	11
1221039	Apr. 3, 1917	Flame arc lamp and electrode therefor.	July 28	Sept. 8	E-108	332
902871	Nov. 3, 1908	Thermic mixture	July 28	Aug. 25	C-108	445
895628	Aug. 11, 1908	Manufacturing metals	July 28	Aug. 25	C-108	445
938758	Nov. 2, 1909	Method of manufacturing calcium-silicon alloys, etc.	July 28	Aug. 25	C-108	445
995601	June 20, 1911	Gasometer	July 18	July 31	B-108	435
774801	Nov. 15, 1904	Lens stereoscope	July 28	Oct. 3	H-108	470
1000346	Aug. 8, 1911	Magnifying spectacle glass	July 28	Aug. 25	E-108	172
1028281	June 4, 1912	Telescope spectacle glass	July 28	Oct. 3	H-108	470
1030128	June 18, 1912	Spectacle glass	July 28	Aug. 25	E-108	172
1143667	June 22, 1915	Optical system	July 28	Aug. 25	E-108	172
818453	Apr. 24, 1906	Machine for cutting up or mitering flanged metal beams or girders.	July 15	July 31	B-108	147
970932	Sept. 20, 1910	Stamping and printing paper webs.	July 28	Aug. 25	D-108	147
1050280	Jan. 14, 1913	Therapeutic belt	July 28	Sept. 22	G-108	290
850397	Apr. 16, 1907	Elastic-fluid turbine	July 28	Oct. 7	I-108	328
874432	Dec. 24, 1907	Turbine	July 28	Oct. 7	I-108	328
1032158	July 9, 1912	Electrode for secondary galvanic cells.	July 28	Sept. 8	F-108	66
1066651	July 8, 1913	Electrode for secondary galvanic cells.	July 28	Sept. 30	H-108	28

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
919805	Apr. 27, 1909	Linotype machine	July 28	Aug. 25	C-108	370
864139	Aug. 20, 1917	Manufacture of alloys	July 28	Sept. 8	F-108	96
862336	Aug. 6, 1907	Color comparator	July 28	Sept. 22	G-108	272
886683	May 5, 1908	Balling together pulverulent or dusty ores.	July 28	Sept. 8	E-108	319
905632	Dec. 1, 1908	Device for admitting gas into vacuum tubes.	July 28	Oct. 6	H-108	495
914233	Mar. 2, 1909	Frost-proof fire-extinguishing liquid	July 28	Aug. 25	D-108	46
1160908	Nov 16, 1915	Process for the production of gas from bituminous fuels in intermittent operation.	July 11	Aug. 8	C-108	333
887058	May 12, 1908	Producing gas.	July 11	Aug. 8	C-108	252
912509	Feb. 16, 1909	Manufacturing gas from coal	July 21	July 31	C-108	134
935081	Sept. 28, 1909	Method of dconsolidating loose soils, quicksand, etc.	July 28	Oct. 2	H-108	284
811971	Feb. 6, 1906	Manufacturing milk preparations.	July 28	Aug. 25	D-108	405
1060868	May 6, 1913	Electric resistance furnace	July 28	Sept. 19	G-108	170
1049947	Jan. 7, 1913	Apparatus for destroying refuse	July 28	Oct. 6	I-108	159
1054598	Feb. 25, 1913	Photographic recording apparatus for galvanometers, oscillagraphs, and the like	July 28	Aug. 25	D-108	285
829664	Aug. 28, 1906	Solidfying earthy ground	July 22	July 31	B-108	313
885480	Apr. 21, 1908	Making producer gas	July 15	July 31	B-108	93
819144	May 1, 1906	Wafer-capsul machine	July 28	Oct 6	I-108	90
947971	Feb. 1, 1910	Binocular telescope	July 28	Sept. 8	E-108	468
918752	Apr. 20, 1909	Double telescope	July 22	Oct. 2	Z-108	260
920756	May 4, 1909	Binocular telescope	July 22	Oct. 2	Z-108	260
1000609	Aug. 15, 1911	Telemeter	July 22	Oct. 2	Z-108	260
940166	Nov. 16, 1909	Separating-prism telemeter	July 22	Oct. 2	Z-108	260
942393	Dec. 7, 1909	Angle-measurinlg appliance	July 28	Sept. 22	G-108	284
1062166	May 20, 1913	Stereoscopic tepemeter	July 22	Oct. 2	Z-108	260
1101081	June 23, 1914	Optical square prism	July 28	Sept. 18	F-108	323
1128154	Feb. 9, 1915	Making foodstuffs, from sulfite cellulose waste liquors.	July 28	Oct. 7	I-108	288
1126300	Jan. 26, 1915	Centrifugal pump, blower, compressor, and the like.	July 28	Sept. 22	G-108	391
762847	June 14, 1904	Storage battery	July 28	Sept. 22	G-108	405
762256	June 7, 1904	Mixture for treating tuberculosis	July 28	Oct. 3	H-108	445
858675	July 2, 1907	Fireproof slab	July 28	Sept. 8	F-108	125
897840	Sept. 1, 1908	Preparation of coffe	July 28	Sept. 19	G-108	95
956775	May 3, 1910	Receptacle for liquide-weighing machines	July 28	Nov. 10	J-108	90
1000618	Aug. 15, 1911	Tripod with hinged legs	July 28	Aug. 25	D-108	257
1083543	Jan. 6, 1914	Adjusting device for pattern-cylinders of printing machines.	July 28	Sept. 8	E-108	478
1086721	Feb. 10, 1914	Color-printing machine	July 28	Sept. 8	E-108	478
849429	Apr. 9, 1907	Apparatus for separating and discharging coke.	July 28	Oct. 7	I-108	345
996804	July 4, 1911	Alarm indicator for boiling purposes	July 28	Sept. 30	H-108	55
728022	May 12, 1903	Device for automatically recording the amount of carbonic acid in products of combustion	July 28	Aug. 25	D-108	482
905594	Dec. 1, 1908	Device for locating a molten distributing fuse.	July 28	Oct. 2	H-108	251
1104723	July 21, 1914	Oil transformer	July 28	Sept. 30	H-108	88
1189096	June 27, 1916	Pumping apparatus	July 22	July 31	B-108	6
1189096	June 27, 1916	Pumping apparatus	June 24	June 28	A-108	220
1066200	July 1, 1913	Process of treating groundnuts and products derived therefrom.	July 28	Aug. 25	D-108	99
857247	June 18, 1907	Apparatus for fusing metals	July 28	Nov. 10	J-108	87
1089805	Mar. 10, 1914	Medical appliance	July 28	Oct. 6	I-108	168
1155024	Sept. 28, 1915	Water-supply system	July 28	Nov. 10	J-108	101
751704	Feb. 9, 1904	Producing paved tracks on macadamized roads or the like.	July 28	Oct. 7	I-108	378
1257561	Feb. 26, 1918	Chambering device for rock drills.	July 28	Aug. 25	E-108	242
878322	Feb. 4, 1908	Cemented lithographic stone	July 18	July 31	C-108	202
983586	Feb. 7, 1911	Conveyor for incandescent materials	July 28	Aug. 25	E-108	250
1029835	June 18, 1912	Lithographic stone	July 28	Sept. 8	F-108	180

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording	Book.	Page.
			1919.	1919.		
1069047	July 29, 1913	Gas lighter	July 28	Sept. 8	F-108	179
874267	Dec. 17, 1907	Means for mounting stone lithographic rollers.	July 28	Oct. 6	I-108	179
883144	Mar. 24, 1908	Color-spraying apparatus	July 28	Sept. 18	F-108	359
863081	Aug. 13, 1907	Manufacture of alimentary products.	July 28	Sept. 19	G-108	88
904886	Nov. 24, 1908	Self-igniting device	July 28	Aug. 25	D-108	281
927374	July 6, 1909	Manufacturing incandescent mantles.	July 28	Sept. 18	F-108	337
931460	Aug. 17, 1909	Gas producer	July 16	July 31	B-108	290
937687	Oct. 19, 1909	Gas producer	July 16	July 31	B-108	290
911745	Feb. 9, 1909	Making albuminous bread	July 28	Sept. 19	C-108	89
1102536	July 7, 1914	Container for storing photographic plates.	July 28	Sept. 19	G-108	91
1080920	Dec. 9, 1913	Manufacture of alimentary products.	July 28	Aug. 25	D-108	282
760361	May 17, 1904	Steadying resistance for arc lamps.	July 28	Oct. 3	H-108	479
770489	Sept. 20, 1904	Electric arc lamp	July 28	Oct. 3	H-108	479
783662	Feb. 28, 1905	Incandescent gaslight lamp	July 28	Aug. 25	E-108	191
921897	May 18, 1909	Automatic cut-off for gas	July 21	July 31	C-108	111
836054	Nov. 13, 1906	Manufacturing gas	July 21	July 31	C-108	44
805235	Nov. 21, 1905	Producer-gas furnace	July 22	July 31	C-108	113
903112	Nov. 3, 1908	Gas producer	July 22	July 31	C-108	114
1108402	Aug. 25, 1914	Use of rawhide	June 17	June 28	A-108	264
970122	Sept. 13, 1910	Automatic gas cut-off	July 21	July 31	C-108	111
748424	Dec. 29, 1903	Hypodermic syringe	July 28	Aug. 25	D-108	456
763513	June 28, 1904	Fireproof ceiling	July 28	Oct. 11	J-108	33
768774	Aug. 30, 1904	Construction of frozen walls for shafts of mines.	July 28	Sept 8	F-108	128
774607	Nov. 8, 1904	Manufacture of objects of papier-mache.	July 28	Oct. 3	H-108	448
898607	Sept. 15, 1908	Illuminating apparatus	July 28	Oct. 3	H-108	452
888006	May 19, 1908	Wall and ceiling covering	July 28	Sept. 22	G-108	230
842012	Jan. 22, 1907	Apparatus for forcing fluids	July 28	Oct. 11	J-108	3
1027154	May 21, 1912	Gas-generating furance	July 18	July 31	B-108	435
1100845	June 23, 1914	Manufacture of grinding apparatus.	July 28	Sept. 30	H-108	35
891560	June 23, 1908	Refrigerating apparatus employing carbonic acid.	July 28	Aug. 25	D-108	279
888120	May 19, 1908	Structure made of bricks for reaction-towers, heat-compensation apparatus, and the like.	July 28	Aug. 25	D-108	453

SCHEDULE 16.

The instrument dated December 21, 1920, and recorded in the United States Patent Office on December 21, 1920, in liber Q-112, page 91, of Transfers of Patents, a copy of which instrument is set out in Exhibit H-16 attached to this bill of complaint, enumerated the following patents:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
			1919.	1919.		
1057174	Mar. 25, 1913	Apparatus for separation of floating matter from effluents.	May 14	May 20	T-107	88
1192560	July 25, 1916	Apparatus for clarifying waste waters.	May 14	May 20	T-107	88

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

Note.—Also seized under date of February 26, 1920. Said seizure recorded under date of March 6, 1920. Liber J-108, page 316

SCHEDULE 17.

The instrument dated December 21, 1920, and recorded in the United States Patent Office on December 21, 1920, in liber W-112, page 21, of Transfers of Patents, a copy of which instrument is set out in Exhibit H-17 attached to this bill of complaint, enumerated certain contract rights growing out of the following contracts:

Between Badische Aniline and Soda Fabrik and Theodore Goldschmidt, assignor to the Goldschmidt Chemical Co., assignor to the Goldschmidt Detinning Co., now the Metal Thermit Corp.

Contract dated March 12, 1907.

Patent (not given).

Title: Manufacture of chlorine.

Date of demand served on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber R-106, page 475, of Transfers of Patents.

Demand served on Metal & Thermit Corporation, 120 Broadway, New York, N. Y.; such service made March 26, 1919.

Between Dr. Frederick Supf and Arabol Manufacturing Company.

Contract not dated but acknowledged October 12, 1908.

Covering patent No. 974448.

Dated November 1, 1910.

Title: Process of liquifying organic colloids.

Demand served on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber Q-106, page 441, of Transfers of Patents.

Demand dated March 22, 1919, served on Arabol Manufacturing Company, 100 William Street, New York, N. Y.; such service made March 26, 1919.

Between Kathreiners Malzkaffee Fabriken m. b. H., and William Rahr, Max Rahr, and Reinhardt Rahr, assignors to Kneipp Malt Food Company.

Contract dated June 26, 1895.

Covering patent (S. N.) 513252.

Title: Kneipp Malt, a coffee substitute.

Date of demand served on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber K-106, page 499, of Transfers of Patents.

Between Rheinische Dampfkessel and Maschinenfabrik Buttner, G. m. b. H., and Stearns-Roger Manufacturing Company.

Contract dated December 20, 1912.

Covering patent No. 1078125.

Dated November 11, 1913.

Title: Cellular Drying Apparatus.

Date of demand served on Commissioner of Patents: March 22, 1919.

Service of demand accepted April 9, 1919.

Recorded April 9, 1919, liber R-106, page 479, of Transfers of Patents.

Demand dated March 22, 1919, served on Stearns-Roger Manufacturing Company, 1720 California St., Denver, Colo.; such service made May 13, 1919.

Between Friederick Grosche and Becton Dickinson & Company.

Contract dated June 1, 1912.

Covering patent No. 823859.

Dated June 19, 1906.

Title: Apparatus for shaking thermometers.

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber U-106, page 384, of Transfers of Patents.

Demand dated March 22, 1919, served on Becton Dickinson & Company, Rutherford, N. J.; such service made April 16, 1919.

Between F. H. Kindel, agent for Coln-Musener-Berwegs Aktienverein and Burdette Manufacturing Company, assignor to the Oxygen Protective Association.

Contract dated January 18, 1916.

Covering patent No. 703940.

Dated July 1, 1902.

Title: Process of fusion of metals.

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber N-106, page 496, of Transfers of Patents.

Demand dated ———, served on Oxygen Protective Association, c/o F. L. Horton, Packers & Exchange Ave., Chicago, Ill.; such service made———.

Between Chemische Fabrik Rhenia and Schoellkopf Hartford & Hanna Company, assignor to the Contact Process Company.

Contract dated May 26, 1902.

Patent (not given).

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber R-106, page 473, of Transfers of Patents.

Demand dated March 22, 1919, served on Contact Process Company, Buffalo, New York; such service made April 12, 1919.

Between Leon Lilienfeld and Eastman Kodak Company.

Contract dated August 5, 1912.

Covering the following patents:

Patent No.	Date of issue.	Title.
1188376	June 20, 1916	Alkyl ethers of cellulose, process of making same.
1217027	Feb. 20, 1917	Film and process of producing same.

Date of demand on Commissioner of Patents: March 22, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber N-106, page 488, of Transfers of Patents.

Demand dated March 22, 1919, served on Eastman Kodak Company, Rochester, N. Y.; such service made April 19, 1919.

Between Schulke & Mayr Aktiengesellschaft and Lehn & Fink, Inc.

Contract dated February 5, 1914.

Covering trade-marks 53937 and 53938.

Dated June 12, 1906.

Title: Lysol.

Date of demand on Commissioner of Patents: March 24, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber Q-106, page 440, of Transfers of Patents.

Demand dated March 24, 1919, served on Lehn & Fink, Inc., 120 William Street, New York, N. Y.; such service made March 24, 1919.

Between Oskar Zahn, doing business as Oskar Zahn Buro and the Deutsche Ton- und Steinzeug-Werke A. G., and General Ceramics Company.

Contract dated July 26, 1913.

Covering patent No. 1099451.

Dated June 9, 1914.

Title: Process for the continuous production of dry hydrochloric acid and potassium bisulfate from potassium chlorid and sulfuric acid.

Date of demand on Commissioner of Patents: February 11, 1919.

Service accepted February 20, 1919.

Recorded February 20, 1919, liber Q-106, page 172, of Transfers of Patents.

Demand dated February 11, 1919, served on General Ceramics Co., Inc., 50 Church Street, New York City; such service made February 25, 1919.

Between Oskar Zahn and the Deutsche Ton- und Steinzeug-Werke A. G., and General Ceramics Company, Inc.

Contract dated May 10, 1913.

Covering patents 936844 and 1124380.

Dated October 12, 1909, and January 12, 1915.

Title: Plant for heating the gas and air for combustion in gas furnaces. Muffle furnaces for enameling.

Date of demand on Commissioner of Patents: February 11, 1919.

Service accepted February 20, 1919.

Recorded February 20, 1919, liber I-106, page 157, of Transfers of Patents.

Demand dated February 11, 1919, served on General Ceramics Company, Inc., 50 Church St., New York City; such service made February 25, 1919.

Demand dated February 11, 1919, served on E. Croyden Marks, Esq., 220 Broadway, New York City; such service made February 24, 1919.

Between Chemische Fabrik Helfenberg and Reinschild Chemical Company.

Contract dated December 28, 1905.

Covering patents 896807 and 943163.

Title: Agar-agar cascara.

Date of demand on Commissioner of Patents; March 24, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber Z-106, page 356, of Transfers of Patents.

Demand dated March 22, 1919, served on Reinschild Chemical Company, 47 Barclay St., New York, N. Y.; such service made April 4, 1919.

Between Huelsberg & Company, m. b. H., and Atchison, Topeka and Santa Fe Railway Company.

Contract dated January 16, 1905.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919.

Recorded April 9, 1919, liber J-106, page 447, of Transfers of Patents.

Demand dated ——— served on Atchison, Topeka & Santa Fe Railway Co., Topeka, Kansas; such service made April 23, 1919.

Between Huelsberg & Cie., m. b. H., and St. Helens Creosoting Company.

Contract dated October 24, 1913.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 438, of Transfers of Patents.

Demand dated ———, 1919, served on St. Helens Creosoting Co., 912 Yeon Building, Portland, Oregon; such service made April 18, 1919.

Between Huelsberg & Cie., m. b. H., and the Continental Tie and Lumber Company.

Contract Dated February 19, 1913.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 20, of Transfers of Patents.

Between Huelsberg & Cie., m. b. H., and Kettle River Company.

Contract dated January 17, 1912.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Demand served on commissioner under date of April 8, 1919.

Service accepted April 9, 1919, F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 434, of Transfers of Patents.

Demand dated May 19, 1919, served on Kettle River Company, Minneapolis, Minnesota; such service made May 21, 1919.

Between Huelsberg & Cie., m. b. H., and Atlantic Coast Line Railroad Company.

Contract dated November 28, 1913.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 9, of Transfers of Patents.

Demand dated ———, 1919, served on Atlantic Coast Line Railroad Co., Wilmington, North Carolina; such service made April 19, 1919.

Between Huelsberg & Cie., m. b. H., and Southern Wood Preserving Company.

Contract dated January 14, 1915.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 443, of Transfers of Patents.

Demand dated ———, 1919, served on Southern Wood Preserving Co., of Atlanta, Georgia; such service made April 14, 1919.

Between Huelsberg & Cie., m. b. H., and The Gulf Creosoting Company.

Contract dated May 19, 1908.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Y-106, page 431, of Transfers of Patents.

Demand dated ———, 1919, served on Gulf Creosoting Co., Gulfport, Mississippi; such service made April 14, 1919.

Between Huelsberg & Cie., m. b. H., and Central Creosoting Co.

Contract dated April 23, 1917.

Patents re. 12707, 709799, and 1008864

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 15, of Transfers of Patents.

Demand dated ———, 1919, served on Central Creosoting Co., Chicago, Illinois; such service made April 12, 1919.

Between Huelsberg & Cie., m. b. H., and American Creosote Works, Inc., and American Creosote Works, Ltd.

Contract dated July 16, 1909.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 446, of Transfers of Patents.

Demand dated ———, 1919, served on American Creosote Works, Inc., and American Creosote Works, Ltd., Station B, New Orleans, La.; such service made April 16, 1919.

Between Huelsberg & Cie., m. b. H., and Joseph B. Card.

Contract dated May 3, 1917.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 13, of Transfers of Patents.

Demand dated ———, 1919, served on Joseph B. Card, 111 West Washington St., Chicago, Ill.; such service made April 23, 1919.

Between Huelsberg & Cie., m. b. H., and Lembcke von Bernuth Company, Inc.

Contract dated October 6, 1911,

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 436, of Transfers of Patents.

Between Huelsberg & Cie., m. b. H., and The American Creosoting Company of New Jersey.

Contract dated (no contract). (See letter R. 16713.)

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 444, of Transfers of Patents.

Demand dated ———, 1919, served on the American Creosoting Company, of N. J., 17 Battery Place, New York, New York; such service made April 11, 1919.

Between Huelsberg & Cie., m. b. H., and El Paso & Southwestern Company.

Contract dated August 15, 1910.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Y-106, page 430, of Transfers of Patents.

Demand dated ———, 1919, served on El Paso & Southwestern Co., 99 John St., New York, N. Y.; such service made ———, 1919.

Between Huelsberg & Cie., m. b. H., and Santa Fe Tie & Lumber Preserving Company.

Contract dated January 16, 1905.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 441, of Transfers of Patents.

Demand dated ———, 1919, served on Santa Fe Tie & Lumber Preserving Co., Galveston, Texas; such service made April 25, 1919.

Between Huelsberg & Cie., m. b. H., and Ohio Wood Preserving Company.

Contract (not dated).

Patents re. 12707, 709799 and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by R. F. Whitehead, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 442, of Transfers of Patents.

Between Huelsberg & Cie., m. b. H., and Southern Creosoting Company, Ltd.

Contract dated June 25, 1914.

Patents re. 12707, 709799 and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 9, 1919

Service accepted April 9, 1919, by R. F. Whitehead, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 440, of Transfers of Patents.

Demand dated ———, 1919, served on Southern Creosoting Company, Limited, Slidell, Louisiana; such service made May 12, 1919.

Between Huelsberg & Cie., m. b. H., and Pacific Creosoting Co.

Contract dated January 28, 1914.

Patents re. 12707, 709799 and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 445, of Transfers of Patents.

Demand dated ———, 1919, served on Pacific Creosoting Co., 204 Northern Life Bldg., Seattle, Washington; such service made April 15, 1919.

Between Huelsberg & Cie., m. b. H., and Philadelphia & Reading Railway Company.

Contract dated December 18, 1912.

Patents re. 12707, 709799 and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents; April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 435, of Transfers of Patents.

Demand dated ———, 1919, served on Philadelphia & Reading Ry. Co., Philadelphia, Pennsylvania; such service made ———, 17, 1919.

Between Huelsberg & Cie., m. b. H., and Charlotte Harbor and Northern Railway.

Contract dated July 1, 1913.

Patents re. 12707, 709799 and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 17, of Transfers of Patents.

Demand dated ———, 1919, served on Charlotte Harbor & Northern Ry., Boca Grande, Florida; such service made May 14, 1919.

Between Huelsberg & Cie., m. b. H., and Pennsylvania Railroad Company.

Contract dated March 30, 1911.

Patents re. 12707, 709799 and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 446, of Transfers of Patents.

Demand dated ———, 1919, served on The Pennsylvania Railroad Company, Philadelphia, Pa.; such service made April 16, 1919.

Between Huelsberg & Cie., m. b. H., and Boston Elevated Railway Company.

Contract dated December 27, 1915.

Patents re. 12707, 709799 and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 12, of Transfers of Patents.

Demand dated ———, 1919, served on Boston Elevated Railway Company, Boston, Massachusetts; such service made April 15, 1919.

Between Huelsberg & Cie., m. b. H., and Jennison-Wright Company.

Contract dated June 21, 1913.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Y-106, page 433, of Transfers of Patents.

Demand dated ———, 1919, served on Jennison-Wright Company, Toledo, Ohio; such service made April 15, 1919.

Between Huelsberg & Cie., m. b. H., and Pittsburgh Wood Preserving Company.

Contract dated September 22, 1910.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 437, of Transfers of Patents.

Between Huelsberg & Cie., m. b. H., and Central of Georgia Railway Company.

Contract dated April 15, 1912.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 16, of Transfers of Patents.

Demand dated April 19, 1919, served on Central of Georgia Railway Company, Savannah, Georgia; such service made April 21, 1919.

Between Huelsberg & Cie., m. b. H., and National Lumber & Creosoting Company.

Contract dated —— day of ———, 1910.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106 page 443, of Transfers of Patents.

Demand dated April 17, 1919, served on National Lumber & Creosoting Co., Texarkana, Arkansas; such service made April 17, 1919.

Between Huelsberg & Cie., m. b. H., and Missouri, Kansas & Texas Ry. Company.

Contract dated June 16, 1906.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 439, of Transfers of Patents.

Between Huelsberg & Cie., m. b. H., and Michigan Wood Preserving Company.

Contract (not dated). (See letter in R-150.)

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber S-106, page 437, of Transfers of Patents.

Between Huelsberg & Cie., m. b. H., and St. Paul & Tacoma Lumber Company.

Contract (none of record).

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber J-106, page 440, of Transfers of Patents.

Demand dated ———, 1919, served on St. Paul & Tacoma Lumber Company, Tacoma, Washington; such service made April 19, 1919.

Between Huelsberg & Cie., m. b. H., and Ayer & Lord Tie Company.

Contract dated April 19, 1907.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 10, of Transfers of Patents.

Demand dated ———, 1919, served on Ayer & Lord Tie Company, Chicago, Illinois; such service made April 14, 1919.

Between Huelsberg & Cie., m. b. H., and Compressed Wood Preserving Company.

Contract dated March 10, 1916.

Patents re. 12707, 709799, and 1008864.

Dated 10-22-07, 9-23-02 and 11-14-11.

Title: Method of impregnating wood.

Date of demand served on Commissioner of Patents: April 8, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber E-107, page 19, of Transfers of Patents.

Demand dated ———, 1919, served on Compressed Wood Preserving Company, Cincinnati, Ohio; such service made April 16, 1919.

Between Erzroest Gesellschaft, m. b. H., and Granby Mining & Smelting Company.

Contract dated January 19, 1916.

Covering patent 979349.

Dated 12-20-10.

Title: Improvements in furnaces for roasting ores.

Date of demand served on Commissioner of Patents: April 7, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Z-106, page 354, of Transfers of Patents.

Between Erzroest Gesellschaft, m. b. H., and The National Zinc Company.

Contract dated October 21, 1915.

Patent 979349.

Dated 12-20-10.

Title: Improvements in furnaces for roasting ores.

Date of demand served on Commissioner of Patents: April 7, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Z-106, page 352, of Transfers of Patents.

Between Erzroest Gesellschaft, m. b. H., and The Grasselli Chemical Company.

Contract dated February 27, 1914.

Covering patent 979349.

Dated 12-20-10.

Title: Improvements in furnaces for roasting ores.

Date of demand served on Commissioner of Patents: April 7, 1919.

Service accepted April 9, 1919, by F. W. H. Clay, Acting Commissioner of Patents.

Recorded April 9, 1919, liber Z-106, page 350, of Transfers of Patents.

Between C. H. Borrmann and General Ceramics Company, Inc.

Contract dated May 24, 1913.

Covering patents 881806 and 1151801.

Dated 3-10-08 and 8-31-15.

Titles: Process of removing chlorin from raw bromin. Apparatus for separating liquid mixtures into two components.

Date of demand served on Commissioner of Patents: February 11, 1919.

Service of demand accepted February 20, 1919, by J. T. Newton, Commissioner of Patents.

Recorded February 20, 1919, liber O-106, page 253 of Transfers of Patents.

Demand dated February 11, 1919, served on B. Singer, 233 Broadway, New York City, such service made March 26, 1919.

Demand dated February 11, 1919, served on General Ceramics Company, 50 Church Street, New York City; such service made February 25, 1919.

Between Cerofirm-Gesellschaft, G. m. b. H., and Harry Polasky & O. B. Eisendrath, copartners trading as New Process Gas Mantle Company.

Contract dated April 3, 1914.

Covering patent 1020255.

Dated March 12, 1912.

Title: Manufacture of incandescent bodies for gas lighting.

Date of demand served on Commissioner of Patents: June 21, 1919.

Service accepted June 21, 1919, by J. T. Newton, Commissioner of Patents.

Recorded June 23, 1919, liber T-107, page 209, of Transfers of Patents.

Between firm of E. Merck and Merck and Company.

Contract (verbal).

Trade-marks 32737 and 27388.

Dated 4-18-99 and 12-3-95.

Title: Dionin and sypticin.

Date of demand served on Commissioner of Patents: June 5, 1919.

Service accepted June 25, 1919, by R. F. Whitehead, Acting Commissioner of Patents. Recorded June 25, 1919, liber B-107, page 350, of Transfers of Patents.

Between Alfred Wilm & Heinrich Krautschneider and Electric Boat Company.

Contract dated October 6, 1910.

Covering the following patents:

Patent No.	Date of issue.	Title.
868383	Oct. 8, 1907	Process for improving aluminum by heating and chilling.
995113	June 13, 1911	Aluminum alloy.
1083903	Jan. 6, 1914	Process of improving alloys.
1130785	Mar. 9, 1915	Aluminum alloy.
1261987	Apr. 9, 1918	Method of making aluminum alloy articles.

Date of demand on Commissioner of Patents: April 26, 1919.

Service accepted May 7, 1919, by R. F. Whitehead, Acting Commissioner of Patents.

Recorded May 7, 1919, liber R-107, page 95, of Transfers of Patents.

Demand dated April 26, 1919, served on Electric Boat Company, 11 Pine Street, New York City; such service made May 27, 1919.

SCHEDULE 18.

The instrument dated December 21, 1920, and recorded in the United States Patent Office on December 21, 1920, in liber S-111, page 432 of Transfers of Patents, a copy of which instrument is set out in Exhibit H-18 attached to this bill of complaint, enumerated certain contract rights growing out of the following contracts:

Between Gesellschaft fur Abwasserklarung, m. b. H. and Frieda Loeb.

Contracts dated December —, 1913, and February 17, 1914, covering the following patents:

Patent No.	Date of issue.	Title.
700056	May 13, 1902	Apparatus for the recovery of fats or the like.
751303	Feb. 2, 1904	Apparatus for the recovery of fats or the like.
823688	June 19, 1906	Apparatus for the recovery of fats and the like from waste.
839396	Dec. 25, 1906	Apparatus for the separation of solid matters from sewage, etc.
975081	Nov. 8, 1910	Apparatus for removing fat from effluents.
1057174	Mar. 25, 1913	Apparatus for separating floating matter from effluents.
1192569	July 25, 1916	Apparatus for clarifying waste waters.

Date of demand served on Commissioner of Patents: February 12, 1920.

Service accepted March 2, 1920.

Recorded March 2, 1920, liber K-109, page 323, of Transfers of Patents.

Demand dated February 12, 1920, served on The United States Sanitary Effluents Apparatus, Inc., 35 Nassau Street, New York City, and The Ussesa Sales Company, 220 West 42nd Street, New York City; such service made March 3, 1920.

Between Montana Company and Montanin Company.

Contract dated August 26, 1915.

Covering trade-mark No. 66726.

Dated December 24, 1907.

Title: "Montanin."

Demand dated February 12, 1920, served on The Montanin Company, 81 Fulton Street, New York City; such service made March 1, 1920.

The contract covering trade-mark No. 66726 was demanded under report No. 47184, but the trade-mark was demanded of the Commissioner of Patents under report 3822.

Date of demand served on Commissioner of Patents: March 6, 1920.

Service accepted April 14, 1920.

Recorded April 14, 1920, liber O-110, page 52, of Transfers of Patents.

Between Franz Meiser and National Carbon Company.

Contract dated July 31, 1914.

Patent (not given).

Demand dated February 12, 1920, served on The National Carbon Company, Cleveland, Ohio; such service made March 3, 1920.

The records also show that a demand dated January 31, 1918, was served on the National Carbon Company, Inc., P. O. box 400, Cleveland, Ohio; such service made February 28, 1918.

No demand appears to have been served on the Commissioner of Patents.

Between Chemische Fabrik Rhenania and Stallman Company.

Contract dated ——, 1908.

Trade-marks covered by this contract are as follows:

No.	Date registered.	For—
27454	Dec. 10, 1895	Tetrajodphenolphtalein, an antiseptic substance.
29831	Apr. 13, 1897	Diarrhea and catarrh of the stomach and bowels.
29836	Apr. 13, 1897	A remedy for wounds.

Patents covered by this contract are as follows:

Patents 618167, 618168, and 627981.

Dated 1-24-99, 1-24-99, and 7-4-99.

Titles: Imp. in sodium salt of iodine compound. Imp. in ioding derivatives of phenols and bismuth salts. Imp. in ioding compounds.

Demand dated February 12, 1920, served on the Stallman Company, 229 Pearl Street, New York City, N. Y.; such service made March 16, 1920.

The above patents have not been demanded.

Between Carl W. Rademacher and American Kitchen Products Company.

Contract dated May 10, 1909.

Patent (not given).

Title: "Steero."

Demand dated February 26, 1920, served on the American Kitchen Products Company, 40 Beekman Street, New York City; such service made March 27, 1920.

Between Karl Imhoff and Pacific Flush Tank Company.

Contract dated May 26, 1911.

Patents 924664, 978889, 1053396, 1056548, 1057154.

Dated 6-15-09, 12-10-10, 2-18-13, 3-18-13, and 3-25-13.

Title: Imhoff process and tanks used in disposal of sewage.

Demand dated February 26, 1920, served on the Pacific Flush-Tank Company, 4241 Ravenswood Avenue, Chicago, Ill.; such service made March 1, 1920.

SCHEDULE 19.

The instrument dated February 19, 1921, and recorded in the United States Patent Office on February 23, 1921, in liber Y-112, page 163, a copy of which instrument is set out in Exhibit H-19 attached to this bill of complaint, enumerated the following patents:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
			1919.	1919.		
783435	Feb. 28, 1905	Retorts for manufacture of gas	July 21	July 31	B-108	66
793305	June 27, 1905	Gas producers	July 15	July 31	B-108	177
793970	July 4, 1905	Optical pyrometers	July 28	Sept. 8	F-108	183
794037	July 4, 1905	Gas generators	July 17	July 31	B-108	327
801148	Oct. 3, 1905	Double-walled furnace	July 28	Sept. 18	F-108	329
801773	Oct. 10, 1905	Refining milk	July 11	Aug. 8	C-108	303
807149	Dec. 12, 1905	Photographic shutter	June 21	Aug. 8	C-108	262
807728	Dec. 19, 1905	Optical instruments	July 28	Aug. 25	D-108	485
808244	Dec. 26, 1905	Gas producers	July 15	July 31	B-108	177
809322	Jan. 9, 1906	Apparatus for the complete combustion of solid fuel.	July 28	Sept. 19	G-108	110
811219	Jan. 30, 1906	Crucible furnace	July 28	Aug. 25	E-108	71
812845	Feb. 20, 1906	Kinematographic cameras	July 28	Aug. 25	E-108	62
814968	Mar. 13 1906	Nutritive preparations	July 28	Oct. 11	I-108	458
818014	Apr. 17, 1906	Prism telescope casings	July 28	Oct. 11	R-108	305
818939	Apr. 24, 1906	Explosives	Apr. 19	June 6	A-108	165
820954	May 22, 1906	Copper alloys	July 28	Sept. 18	F-108	255
821609	May 29, 1906	Apparatus for pulverizing blast furnace slag.	July 28	Oct. 6	I-108	29
821928	May 29, 1906	Process for making gas	July 28	Aug. 25	E-108	35
823445	June 12, 1906	Manufacturing of imitation silk	July 28	Oct. 2	H-108	217
824268	June 26, 1906	Bunsen burners for liquid hydrocarbons.	July 16	July 31	C-108	148
826791	July 24, 1906	Obtaining high polish on furniture, etc.	July 28	Sept. 18	F-108	338
828107	Aug. 7, 1906	Manufacturing clean edges in enamel ware.	July 28	Aug. 25	C-108	450

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[1] Date of service on Commissioner of Patents of the United States and of filing for record in U S. Patent Office.

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S Patent Office.		
				Date of filing or recording.	Book.	Page.
			1919.	1919.		
830225	Sept. 4, 1906	Testing gaseous mixtures	July 28	Oct. 11	R-108	305
833673	Oct. 16, 1906	Means of maintaining heat in gas producers.	July 11	Aug. 8	C-108	299
835213	Nov. 6, 1906	Producing limitation marble on finishing objects.	July 28	Aug. 25	D-108	23
835541	Nov. 13, 1906	Ornamenting oilcloth	July 28	Sept. 8	E-108	484
835888	Nov. 13, 1906	Color-spraying apparatus	July 28	Oct. 7	I-108	315
837394	Dec. 4, 1906	Metallic matrix plates	July 11	Aug. 8	C-108	325
837755	Dec. 4, 1906	Gas producers	July 22	July 31	C-108	137
840378	Jan. 1, 1907	Stereoscopic attachments for photographic cameras.	July 28	Sept. 18	F-108	439
841262	Jan. 15, 1907	Prism telescopes	Apr. 19	June 6	A-108	102
841262	Jan. 15, 1907	Prism telescopes	July 28	Sept. 22	G-108	309
843811	Feb. 12, 1907	Gas retorts	July 22	July 31	B-108	42
844186	Feb. 12, 1907	Telescope with prisms	Apr. 19	June 6	A-108	128
849143	Apr. 2 1907	Devices for moistening color ribbons	July 28	Oct. 7	I-108	306
849409	Apr. 9, 1907	Telescope field glasses and like	Apr. 19 July 28	June 6 Sept. 22	A-108 G-108	102 309
852616	May 7, 1907	Gypsum-burning kilns	July 28	Aug. 25	D-108	346
855845	June 4, 1907	Gas producer	July 28	Oct. 2	H-108	121
855870	June 4, 1907	Method of waterproof uniting pieces of wood.	July 28	Sept. 22	G-108	427
856137	June 4, 1907	Gas producer	July 28	Aug. 25	E-108	86
858904	July 2, 1907	Manufacturing nitric acid	July 28	Sept. 8	F-108	31
860601	July 16, 1907	Arrangements for the filament for high voltage incandescent electric lamps of high efficiency.	July 28	Aug. 25	C-108	440
860799	July 23, 1907	Methods of manufacturing metals and compositions used therein.	July 28	Aug. 25	C-108	445
862362	Aug. 6, 1907	Camera magazines	July 16	July 31	C-108	206
864140	Aug. 20, 1907	Metallic alloys or compounds	July 28	Sept. 18	F-108	400
873105	Dec. 10, 1907	Double telescope with support	July 22	Oct. 2	Z-108	260
			1920	1920		
873228	Dec. 10, 1907	Telescopes	Apr. 16	June 21	J-108	123
			1919	1919		
874309	Dec. 17, 1907	Generators for water gas	July 28	Aug. 25	E-108	25
880028	Feb. 25, 1908	Telescopes	July 28	Sept. 22	G-108	284
884501	Apr. 14, 1908	Means for measuring degree of explosive of selenium cell.	July 28	Oct. 6	I-108	89
886435	May 5, 1908	Binocular telescope	July 22	Oct. 2	Z-108	260
886436	May 5, 1908	Double telescopes	July 22	Oct. 2	Z-108	260
886628	May 5, 1908	Sighting telescopes	July 28	Oct. 7	I-108	220
889366	June 2, 1908	Furnace	July 28	Sept. 8	E-108	400
890489	June 9, 1908	Gas generators	July 11	Aug. 8	C-108	278
898803	Sept. 15, 1908	Process of generating water gases.	July 28	Sept. 19	G-108	124
899898	Sept. 29, 1908	Filling for reaction chambers, etc.	July 28	Oct. 7	I-108	326
899899	Sept. 29, 1908	Filling material for reaction	July 28	Oct. 7	I-108	326
900955	Oct. 13, 1908	Gas regenerators	July 22	Oct. 2	H-108	204
908279	Dec. 29, 1908	Double telescope	July 22	Oct. 2	Z-108	260
909464	Jan. 12, 1909	Rotary kilns	July 28	Oct. 6	I-108	131
909488	Jan. 12, 1909	Furnace	July 28	Aug. 25	E-108	245
911722	Feb. 9, 1909	Making albuminous bread	July 28	Aug. 25	E-108	84
913274	Feb. 23, 1909	Dyeing machines	July 28	Aug. 25	D-108	83
913274	Feb. 23, 1909	Dyeing machines	July 28	Oct. 2	H-108	126
917132	Apr. 6, 1909	Glass measuring scales	July 28	Aug. 25	D-108	485
917200	Apr. 6, 1909	Electrodes for searchlights	July 28	Sept. 8	F-108	163
921607	May 11, 1909	Alloy of silicon	July 28	Aug. 25	C-108	444
921773	May 18, 1909	Telescope level	July 22	Oct. 2	Z-108	260
922042	May 18, 1909	Furnaces for gasifying coal	July 11	Aug. 8	C-108	343
922679	May 25, 1909	Hinged double telescope	July 22	Oct. 2	Z-108	260
923587	June 1, 1909	Apparatus for raising liquids	July 28	Sept. 30	H-108	59
926061	June 22, 1909	Optical instrument	July 16	July 31	B-108	29
926135	June 29, 1909	Gas-retort furnaces	July 11	Aug. 8	C-108	343
928922	July 27, 1909	Etching	July 28	Oct. 7	I-108	186
928923	July 27, 1909	Etching machines	July 28	Oct. 7	I-108	186
929167	July 27, 1909	Rotary kilns for burning elements	July 28	Aug. 25	D-108	324

No.	Date of issue.	Title	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page
			1919.	1919.		
933804	Sept. 14, 1909	Gas producers	July 28	Oct. 2	H-108	275
937834	Oct. 26, 1909	Binoculars	Apr. 19	June 6	A-108	103
939442	Nov. 9, 1909	Production of voltaix high-current arcs.	July 28	Sept. 18	F-108	382
940329	Nov. 16, 1909	Optical instruments for determining the direction of travel of airships and the like.	July 28	Aug. 25	D-108	156
940329	Nov. 16, 1909	Optical instruments for determining the direction of travel of airships and the like.	Apr. 19	June 6	A-108	78
940894	Nov. 23, 1909	Optical cystoscope systems	July 28	Oct. 11	R-108	305
943284	Dec. 14, 1909	Biscuit coating machines	July 28	Sept. 8	F-108	151
947490	Jan. 25, 1910	Means for regulating illumination of films in kinematographs.	July 28	Sept. 18	F-108	293
949895	Feb. 22, 1910	Electric furnaces	July 28	Aug. 25	E-108	80
953319	Mar. 29, 1910	Mfg. of plastic masses	July 28	Sept. 18	F-108	257
953946	Apr. 5, 1910	Process of rendering bran digestible.	July 28	Sept. 18	F-108	270
954099	Apr. 5, 1910	Gas generator	July 28	Aug. 25	E-108	73
955361	Apr. 19, 1910	Means for packing incandescent mantles.	July 28	Sept. 18	F-108	443
956182	Apr. 26, 1910	Double telescopes	July 28	Oct 11	R-108	305
958752	May 24, 1910	Telescopic tubes	July 28	Oct. 2	H-108	188
959739	May 31, 1910	Prism binoculars	July 28	Oct. 11	R-108	305
961651	June 14, 1910	Method of producing acid and fire-proof bodies.	July 28	Sept. 19	G-108	157
962108	June 21, 1910	Process and apparatus for utilising the energy of waste gases.	July 28	Aug. 25	E-108	252
962929	June 28, 1910	Hinged double telescope	July 28	Oct 11	R-108	305
964341	July 12, 1910	Methods of utilizing spent fire gases from a furnace for firing other furnaces.	July 21	July 31	C-108	147
964656	July 19, 1910	Furnace	July 28	Aug. 25	D-108	140
968841	Aug. 30, 1910	Making malted food	July 28	Sept. 8	E-108	349
974639	Nov. 1, 1910	Gas generators	July 18	July 31	A-108	396
978354	Dec. 13, 1910	Gas producing ovens	July 18	July 31	B-108	435
981432	Jan. 10, 1911	Electric igniter	Apr. 19	June 6	A-108	80
981708	Jan. 17, 1911	Water gas producers	July 11	Aug. 8	C-108	349
986881	Mar. 14, 1911	Furnace	July 28	Sept. 8	F-108	186
987618	Mar. 21, 1911	Gas generators	July 11	Aug. 8	C-108	306
988279	Mar. 28, 1911	Telescopes	Apr. 19	June 6	A-108	113
989324	Apr. 11, 1911	Art of producing gases in upright retorts.	July 11	Aug. 8	C-108	274
989791	Apr. 18, 1911	Apparatus for insulating	July 28	Sept. 18	F-108	367
991273	May 2, 1911	Processes for producing substitutes for lithographic stones or metal plates.	July 28	Sept 30	G-108	459
993667	May 30, 1911	Optical combination	July 22	Oct. 2	Z-108	260
994962	June 13, 1911	Optical testing appliance	July 22	Oct. 2	Z-108	260
995956	June 20, 1911	Apparatus for preparing coffee substitute.	July 28	Sept. 8	E-108	371
998113	July 18, 1911	Method of producing cocoa powder.	July 28	Sept. 8	F-108	29
1000200	Aug. 8, 1911	Boxes for packing mantles for incandescent gas lighting.	July 28	Sept. 18	F-108	443
1002453	Sept. 5, 1911	Process of briqueting and pressing material.	July 28	Aug. 25	D-108	368
1005539	Oct. 10, 1911	Meat powder	July 28	Oct. 7	I-108	232
1006699	Oct. 24, 1911	Sighting telescopes	July 28	Sept. 18	F-108	408
1007908	Nov. 7, 1911	Processes of preserving meat	July 28	Sept. 22	F-108	500
1010103	Nov 28 1911	Processes of providing bread and other valued articles with a protective covering.	July 28	Oct. 6	I-108	170
1013717	Jan. 2, 1912	Etching machs	July 28	Oct. 7	I-108	196
1013791	Jan. 2, 1912	Making hydrogen peroxid from impure persulfuric acid solutions.	July 22	July 31	B-108	241
1028572	June 4, 1912	Furnace	July 28	Aug 25	E-108	153
1028669	June 4, 1912	Process preserving or cooking fruits and vegetables.	July 28	Aug. 25	D-108	48
1032011	July 9, 1912	Telescope carriers	July 28	Sept. 8	F-108	8

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1032615	July 16, 1912	**Flash light apparatus**	July 21	July 31	B-108	213
1034804	Aug. 6, 1912	Lookout telescopes	July 28	Oct. 11	R-108	305
1036254	Aug. 20, 1912	Process of preserving hams	July 22	July 31	B-108	102
1036255	Aug. 20, 1912	Process of preserving hams	July 22	July 31	B-108	102
1037480	Sept. 3, 1912	Charging devices for furnaces or gas generators.	July 28	Oct. 7	I-108	262
1037481	Sept. 3, 1912	Gas generators	July 28	Sept. 8	E-108	430
1037505	Sept. 3, 1912	Binocular telescopes	Apr. 19	June 6	A-108	111
1037505	Sept. 3, 1912	Binocular telescopes	July 28	Sept. 8	F-108	16
1041058	Oct. 15, 1912	Methods of making hot producer gas.	July 21	July 31	A-108	472
1042411	Oct. 29, 1912	Welding apparatus	July 21	July 31	A-108	429
1044758	Nov. 19, 1912	Mfg. porous chocolate	July 28	Sept. 18	F-108	261
1045178	Nov. 26, 1912	Preserving perishable goods	July 28	Sept. 30	H-108	29
1045490	Nov. 26, 1912	Proc. of separating germs of germs and hulls from corn pro.	July 28	Aug. 25	E-108	185
1047881	Dec. 17, 1912	Regenerative devices for Roentgen tubes.	July 28	Oct. 6	H-108	495
1049013	Dec. 31, 1912	Proc. of treating the anodemud resulting from electrolytic refining.	July 28	Aug. 25	E-108	243
1059488	Apr. 22, 1913	App. for prod. X-ray, kinematographic pictures.	July 28	Aug. 25	D-108	363
1059787	Apr. 22, 1913	Process for destroying refuse	July 28	Oct. 6	I-108	159
1062368	May 20, 1913	Device for closing tablet capsules (milk-testing apparatus).	July 28	Aug. 25	D-108	465
1065081	June 17, 1913	App. for quenching coke	July 28	Sept. 8	F-108	77
1066067	July 1, 1913	Apparatus for the treatment of ammonium sulfate.	July 28	Aug. 25	E-108	170
1067532	July 15, 1913	Double telescopes	July 28	Oct. 2	H-108	188
1071875	Sept. 2, 1913	Gas purifying app	July 28	Aug. 25	D-108	4
1073235	Sept. 16, 1913	Annealing app	July 28	Sept. 30	G-108	487
1073843	Sept. 23, 1913	Illuminating liquefied gas and methods.	July 11	Aug. 8	C-108	255
1074094	Sept. 23, 1913	App. for liquefying gaseous mixtures.	July 28	Sept. 22	G-108	198
1075101	Oct. 7, 1913	Shutter operating mechanism for photographic cameras.	July 28	Aug. 25	E-108	74
1076253	Oct. 21, 1913	Driving and breaking devices for photographic shutters.	July 28	Sept. 30	H-108	91
1078807	Nov. 18, 1913	Mfg. of meat-like conserves	July 28	Sept. 19	G-108	141
1080471	Dec. 2, 1913	Air gas apparatus	July 18	July 31	B-108	358
1081290	Dec. 16, 1913	Etching processes	July 28	Oct. 7	I-108	185
1085866	Feb. 3, 1914	App. for photographic reproduction of books, writing, and the like.	July 28	Aug. 25	D-108	123
1086382	Feb. 10, 1914	Mfg. easily digestible food from whole grain.	July 28	Sept. 8	F-108	341
1088875	Mar. 3, 1914	Food and proc. producing same	July 28	Aug. 25	C-108	399
1089546	Mar. 10, 1914	Petroleum incandescent lamps	July 28	Sept. 22	G-108	241
1095160	Apr. 28, 1914	Machines for measuring and marking webs of fabrics, papers, etc.	July 28	Aug. 25	E-108	148
1095217	May 5, 1914	Gas generators	July 22	July 31	B-108	183
1095932	May 5, 1914	Prisms	Apr. 19	June 6	A-108	146
1096642	May 12, 1914	Stereoscopic oculars	July 28	Sept. 8	F-108	41
1097141	May 19, 1914	Gas producers	July 15	July 31	B-108	412
1081289	Dec. 16, 1913	Etching machines	July 28	Oct. 7	I-108	185
1097211	May 19, 1914	Illumination apparatus for photographic cameras.	July 28	Sept. 8	E-108	283
1097646	May 26, 1914	Lookout telescopes	July 28	Oct. 11	R-108	305
1102551	July 7, 1914	Mfg. food fats for prop. of pastries, etc.	July 28	Sept. 8	F-108	131
1105895	Aug. 4, 1914	Optical squares	July 28	Sept. 8	E-108	341
1112418	Sept. 29, 1914	Process for the manufacture of optical squares.	July 28	Sept. 8	E-108	341
1112970	Oct. 6, 1914	Apparatus for purifying gases	July 28	Aug. 25	D-108	19
1113021	Oct. 6, 1914	Mfg. food preparations or extracts.	July 28	Aug. 25	D-108	160

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			1919.	1919.		
1117594	Nov. 17, 1914	Roasting cocoa and chocolate substances.	July 22	July 31	B-108	336
1119263	Feb. 1, 1914	Tomato preserves and making same.	July 22	July 31	A-108	488
1124777	Jan. 12, 1915	Methods of mfg. stratified fibrous materials.	July 28	Oct. 3	H-108	393
1142755	June 8, 1915	Separating prism system	July 28	Aug. 25	D-108	78
1143663	June 22, 1915	Lighting systems for cinematographs.	July 28	Oct. 11	R-108	305
1154455	Sept. 21, 1915	Methods of producing combustible gases.	July 22	July 31	B-108	484
1162058	Nov. 30, 1915	Optical testing instruments	July 28	Sept. 22	G-108	260
1167998	Nov. 11, 1916	Obtaining metals, such as lead and zinc, in an electric furnace.	July 28	Oct. 7	I-108	247
1170912	Feb. 8, 1916	Lookout telescopes	July 28	Aug. 25	E-108	116
1173570	Feb. 29, 1916	Electrolytic measuring instruments.	July 28	Sept. 8	E-108	420
1174248	Mar. 7, 1916	Making tomato extract	July 28	Sept. 8	E-108	306
1175844	Mar. 14, 1916	Gas producers	July 17	July 31	C-108	159
1175845	Mar. 14, 1916	Automatic working gas producers	July 17	July 31	C-108	159
1180365	Apr. 25, 1916	Method of gyroscopic control	Apr. 19 Mar. 28	June 6 Apr. 4	A-108 Z-106	5 317
1197857	Sept. 12, 1916	App. for etching	July 28	Oct. 7	I-108	329
1204845	Nov. 14, 1916	Drying vegetable materials	July 28	Sept. 19	F-108	496
1205292	Nov. 21, 1916	Manufacture of cold-drawn seamless tubes.	July 28	Sept. 18	F-108	468
1213174	Jan. 23, 1917	Electric welding machines	July 28	Sept. 19	G-108	12
1213422	Jan. 23, 1917	Electrically welding tubes	July 28	Oct. 11	J-108	8
1213627	Jan. 23, 1917	Mfg. of whole grain bread	July 28	Aug. 25	C-108	464
1216404	Feb. 20, 1917	Self-igniting electric arc candles	July 28	Sept. 30	G-108	449
1219221	Mar. 13, 1917	Cinematographic apparatus	July 28	Sept. 18	F-108	241
1220010	Mar. 20, 1917	Emulsifying fats and fatty substances.	July 28	Sept. 8	F-108	132
1223428	Apr. 24, 1917	Vapor alternating current rectifiers and similar app.	July 28	Oct. 11	J-108	28
1223790	Apr. 24, 1917	Making meat of sea mammals fit for food.	July 28	Aug. 25	E-108	101
1225877	May 15, 1917	Preparing tubers for mfg. dough or flour.	July 28	Sept. 22	G-108	373
1225878	May 15, 1917	Preparing legumes for mfg. dough or flour.	July 28	Sept. 22	G-108	373
1228818	June 5, 1917	Manufacturing of carbon monoxid and hydrogen.	July 17	July 31	B-108	378
1228930	June 5, 1917	App. for cooling air, liquids, vapors, gases, and the like.	July 28	Sept. 30	H-108	14
1235170	July 31, 1917	Optometers of the Scheiner system	July 28	Aug. 25	E-108	165
1236721	Aug. 14, 1917	Hearths of blast furnaces	July 28	Sept. 30	H-108	19
1273474	July 23, 1918	Manufacture-producer gas	July 21	July 31	A-108	472
1025500	May 7, 1912	Projectile for firing at airships	Apr. 19	June 6	V-107	216
1159556	Nov. 9, 1915	Sighting devices for projectile ejectors of airships.	Apr. 19	June 6	V-107	216
1095711	May 5, 1914	Armored aerial machine	June 27	July 14	A-108	287
1024429	Apr. 23, 1912	Starting device for flying machines.	Apr. 19	June 6	Z-107	78
728118	May 12, 1903	Methods of rigidly securing wire to other objects.	July 21	July 31	B-108	213
751082	Feb. 2, 1904	Propelling and steering apparatus for balloons.	July 28	Oct. 7	I-108	305
735905	Aug. 11, 1903	Screw propellers	July 28	Oct. 2	H-108	198
799465	Sept. 12, 1905	Propelling devices for vehicles intended for air, water, and land locomotion.	July 28	Oct. 7	I-108	263
827017	July 24, 1906	Wings of flying machine	July 16	July 31	B-108	68
851908	Apr. 30, 1907	Rotary engine	July 28	Oct. 2	H-108	287
855906	June 4, 1907	Rotary engine	July 28	Aug. 25	D-108	460
858749	July 2, 1907	Screw propeller	July 28	Oct. 7	I-108	368
867126	Sept. 24, 1907	Rotary engine	July 28	Aug. 25	C-108	490
794067	July 11, 1905	Plane	July 28	Aug. 25	E-108	31
872539	Dec. 3, 1907	Car suspension for motor balloons.	June 26	July 14	A-108	313
890591	June 16, 1908	Rotary engines	July 11	Aug. 8	C-108	245

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1074830	Oct. 7, 1913	Suspension of the cars of air ships.	June 26	July 14	A-108	313
1087134	Feb. 17, 1914	Suspension of the cars of air ships.	June 26	July 14	A-108	313
1100762	June 23, 1914	Reinforcement of the supporting bodies or envelopes of airships.	June 26	July 14	A-108	313
894391	July 28, 1908	Rotary engine	July 28	Sept. 18	F-108	472
895043	Aug. 4, 1908	Rotary engine	July 28	Sept. 19	G-108	119
904930	Nov. 24, 1908	Aerial ship	June 27	July 14	A-108	285
906559	Dec. 15, 1908	Self-propelled airship	June 27	July 14	A-108	315
914281	Mar. 2, 1909	Rotary internal combustion engine	July 16	July 31	B-108	73
949420	Feb. 15, 1910	Toy airship	June 24	June 28	A-108	205
951942	Mar. 15, 1910	Safety anchors for airships and the like.	July 28	Aug. 25	E-108	175
968700	Aug. 30, 1910	Flying apparatus	July 28	Oct. 3	H-108	449
974103	Oct. 25, 1910	Signaling apparatus for airships and the like.	July 28	Sept. 8	E-108	486
974434	Nov. 1, 1910	Stiffening skeleton for balloon coverings.	June 27	July 14	A-108	317
975196	Nov. 8, 1910	Apparatus for testing flying machines and learning the art of aviation.	June 26	July 14	A-108	282
979979	Dec. 27, 1910	Airship of the rigid type	June 27	July 14	A-108	308
980267	Jan. 3, 1911	Framework structure for balloons	June 27	July 14	A-108	294
983697	Feb. 7, 1911	Supporting surface for flying machines.	June 24	June 28	A-108	208
985126	Feb. 28, 1911	Aeroplane	July 18	July 31	A-108	418
986002	Mar. 7, 1911	Flying machine	June 24	June 28	A-108	230
943436	Dec. 14, 1909	Flying scaffolds	July 22	July 31	B-108	321
948121	Feb. 1, 1910	Flying machine, airship, and the like.	June 26	July 14	A-108	354
948177	Feb. 1, 1910	Aerial projectiles	Apr. 19	June 6	A-108	90
954992	Apr. 12, 1910	Propeller	July 28	Oct. 7	I-108	367
990140	Apr. 18, 1911	Compound engines	July 15	July 31	B-108	104
925764	June 22, 1909	Aerial flight chute	July 18	July 31	A-108	466
954215	Apr. 5, 1910	Balloon	June 24	June 28	A-108	261
954539	Apr. 12, 1910	Reversible propellers	July 28	Oct. 3	H-108	409
954574	Apr. 12, 1910	Means for steering flying machine.	July 28	Oct. 2	Z-108	264
957908	May 17, 1910	App. for measuring and registering oscillations of vibrating bodies such as marine vessels, airships, railway vehicles.	July 28	Aug. 25	D-108	361
959392	May 24, 1910	Rotary fans or propellers	July 28	Aug. 25	D-108	340
922756	May 25, 1909	Flying apparatus	June 24	June 28	A-108	201
932999	Aug. 31, 1909	"Airship"	June 27	July 14	A-108	318
934394	Sept. 14, 1909	Screw propellers for flying machines.	July 28	Sept. 8	E-108	315
935130	Sept. 28, 1909	"Lifting and driving propeller"	June 27	July 14	A-108	326
935262	Sept. 28, 1909	Device for turning the swinging axles of flapping wings.	June 27	July 14	A-108	299
966395	Aug. 2, 1910	Means for sheltering the landing places of airships from the force of the wind	June 27	Aug. 8	C-108	326
1083265	Dec. 30, 1913	Combustion engine	July 21 June 26	July 31 July 14	A-108 A-108	408 286
988597	Apr. 4, 1911	Balloon structure	June 26	July 14	A-108	332
1008345	Nov. 14, 1911	Automatic grabs	July 28	Aug. 25	D-108	174
1008437	Nov. 14, 1911	Dirigible airship	June 24	June 28	A-108	266
1015674	Jan. 23, 1912	Airship	June 21	June 28	A-108	213
1019418	Mar. 5, 1912	Aeroplanes or flying machine	June 27	July 14	A-108	284
1020088	Mar. 12, 1912	"Toy airship"	June 24	June 28	A-108	275
1020484	Mar. 19, 1912	"Aerial vessel"	June 21	June 28	A-108	200
1025589	May 7, 1912	"Coupling of screw propellers, screw ventilators, fly wheels, and other rotating machinery."	June 24	June 28	A-108	253
1027590	May 28, 1912	Dirigible airship	June 27	July 14	A-108	283

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1028782	June 4, 1912	Automatic stabilizer for flying machines.	June 24	June 28	A-108	249
1030060	June 18, 1912	Aerial electrical lines	July 28	Aug. 25	D-108	71
1031452	July 2, 1912	Wing for flying machines	June 27	July 14	A-108	301
996547	June 27, 1911	Propellers for aerial vehicles	July 28	Sept. 8	F-108	198
998213	July 18, 1911	Recording speed indicators	July 28	Sept. 8	F-108	154
998538	July 18, 1911	"Airship"	June 27	July 14	A-108	305
999469	Aug. 1, 1911	Balloon form	June 26	July 14	A-108	332
1000865	Aug. 15, 1911	"Airship"	June 24	June 28	A-108	277
1001223	Aug. 22, 1911	Aeroplane	June 27	July 14	A-108	333
1001342	Aug. 22, 1911	Speed indicators	July 28	Oct. 2	H-108	116
1001995	Aug. 29, 1911	Balloon system for airships	June 26	July 14	A-108	332
1003401	Sept. 12, 1911	Screw propellers	July 28	Nov. 10	J-108	78
1003782	Sept. 19, 1911	Aerial machine	June 27	July 14	A-108	314
1005097	Oct. 3, 1911	Airship	June 26	July 14	A-108	356
1007405	Oct. 31, 1911	Airships, balloon, aeroplane, and the like.	June 27	July 14	A-108	361
1008965	Nov. 14, 1911	Propellers for dirigible balloons	July 28	Oct. 2	H-108	138
1072514	Sept. 9, 1913	Dirigible balloon	June 26	July 14	A-108	332
1012507	Dec. 19, 1911	Wooden propellers	July 28	Aug. 25	D-108	22
1013491	Jan. 2, 1912	Reversing mechanism for internal combustion engines.	June 24	June 28	A-108	228
1036532	Aug. 27, 1912	Shutters for dirigibles, balloons, airships, and the like.	July 28	Aug. 25	C-108	369
1038089	Sept. 10, 1912	Aerial tracks	July 28	Sept. 8	E-108	308
1038400	Sept. 10, 1912	Aerial torpedo	Apr. 19	June 6	A-108	94
1038739	Sept. 17, 1912	Dirigible headlight	July 18	July 31	A-108	474
1044600	Nov. 19, 1912	Flying machine	June 27	July 14	A-108	338
1055005	Mar. 4, 1913	Rotary motor	June 24 July 21	June 28 July 31	A-108 C-108	278 213
1058432	Apr. 8, 1913	Construction of halls, airship hangars, etc.	July 28	Oct. 11	I-108	434
1081137	Dec. 8, 1913	Parachute	June 27	July 14	A-108	348
1011083	Dec. 5, 1911	Aeroplane	June 24	June 28	A-108	256
1011619	Dec. 12, 1911	Rotary engine	June 24	June 28	A-108	224
1011619	Dec. 12, 1911	Rotary engine	July 18	July 31	B-108	32
1041646	Oct. 15, 1912	Rotary engine	July 28	Oct. 11	I-108	486
1046028	Dec. 3, 1912	Aeroplane	July 28	Oct. 7	I-108	349
1046682	Dec. 10, 1912	Flying machine	June 24	June 28	A-108	273
1052199	Feb. 4, 1913	Flying machine	June 24	June 28	A-108	281
1054374	Feb. 25, 1913	Flying apparatus	June 27	July 14	A-108	347
1058256	Apr. 8, 1913	Chassis for aeroplanes	June 21	June 28	A-108	245
1058983	Apr. 15, 1913	Flying machine having supprting planes located one behind another.	June 21	June 28	A-108	236
1062258	May 20, 1913	Propellers	July 28	Oct. 6	I-108	150
1063805	June 3, 1913	Aeroplane	June 27	July 14	A-108	300
1065263	June 17, 1913	Aeroplane steering and stabilizing mechanism.	June 27	July 14	A-108	307
1065739	June 24, 1913	Flying machine	June 27	July 14	A-108	328
1066203	July 1, 1913	"Aeroplane track"	June 21	June 28	A-108	216
1066860	July 8, 1913	Automatic stabilizer for aerial vehicles or other moving bodies.	June 27	July 14	A-108	329
1073648	Sept. 23, 1913	Autoplane	June 24	June 28	A-108	280
1073655	Sept. 23, 1913	Flying machine	June 24	June 28	A-108	191
1076879	Oct. 28, 1913	"Flying device"	June 21	June 28	A-108	210
1088883	Mar. 3, 1914	Screw blades for impellers	July 28	Oct. 3	H-108	321
1189872	Mar. 10, 1914	Propellers for air crafts	July 28	Sept. 30	H-108	54
1109648	Sept. 1, 1914	Halls for airships	July 28	Oct. 2	H-108	177
1114364	Oct. 20, 1914	Flying machine	July 16	July 31	B-108	105
1114705	Oct. 20, 1914	App. determining angle for projectiles from aerial vessels.	Apr. 19	June 6	A-108	22
1117922	Nov. 17, 1914	Air cooling devices	July 28	Oct. 2	H-108	228
1119324	Dec. 1, 1914	Stabilizing device for flying machines.	June 27	July 14	A-108	337
1119646	Dec. 1, 1914	" Device for landing or berthing airships."	June 24	June 28	A-108	276
1121762	Dec. 22, 1914	"Airship"	June 24	June 28	A-108	255

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1130431	Mar. 2, 1915	App. for controlling rotary machines.	July 28	Oct. 11	I-108	492
1131888	Mar. 16, 1915	Steering wheel for motor cars and flying machines.	July 21	July 31	C-108	222
1132503	Mar. 16, 1915	Automatic stabilizing apparatus for flying machines.	June 21	June 28	A-108	279
1133342	Mar. 30, 1915	Float for hydroaeroplanes	June 27	July 14	A-108	343
1259398	Mar. 12, 1918	Device for starting and scavenging two-cycle engines.	July 21	July 31	B-108	52
			June 26	July 14	A-108	292
1239224	Sept. 4, 1917	Two-stroke combustion engine	July 22	July 31	B-108	472
			June 24	June 28	A-108	259
1047266	Dec. 17, 1912	Turbine-driven helicopter	June 24	June 28	A-108	240
1096045	May 12, 1914	Flying machine	June 24	June 28	A-108	240
1117972	Nov. 24, 1914	Combination brake and shock absorber	July 21	July 31	A-108	410
1118344	Nov. 24, 1914	Rotary inclosed engine	July 28	Oct. 11	I-108	443
1131375	Mar. 9, 1915	Rotary engine	July 28	Oct. 11	I-108	443
1134357	Apr. 6, 1915	Rotary engine	July 28	Sept. 30	H-108	66
1142827	June 15, 1915	Projectile for air vessels	Apr. 19	June 6	A-108	100
1143973	June 22, 1915	Two-cylinder engine	July 28	Sept. 30	H-108	16
1227968	May 29, 1917	Rotary engine	July 28	Sept. 30	H-108	66
997733	July 11, 1911	Steering apparatus for flying machine.	June 24	June 28	A-108	193
1015540	Jan. 23, 1912	Screw propellers	July 28	Aug. 25	D-108	5
1136420	Apr. 20, 1915	Hydroplane and aeroplane	June 21	June 28	A-108	219
1153487	Sept. 14, 1915	Carburetor	July 28	Oct. 11	I-108	422
1154466	Sept. 21, 1915	Flying machine	June 26	July 14	A-108	355
1160662	Nov. 16, 1915	Carburetors	July 28	Aug. 25	D-108	443
1163010	Dec. 7, 1915	Propellers	July 28	Aug. 25	E-108	89
1094898	Apr. 28, 1914	Flying machine	June 24	June 28	A-108	231
1095732	May 5, 1914	Screw propellers	July 28	Sept. 19	G-108	71
1175959	Mar. 21, 1916	Flying machine with gyroscopic steadying device.	June 21	June 28	A-108	237
1205515	Nov. 21, 1916	Aerial ropeways	July 28	Aug. 25	E-108	4
1256674	Feb. 19, 1918	Rotary gas engine	June 21	June 28	A-108	211
1256674	Feb. 19, 1918	Rotary gas engine	July 22	July 31	A-108	485
1180732	Apr. 25, 1916	Covering for balloons and the like	July 16	July 31	B-108	320
1196028	Aug. 29, 1916	Rotary engine	July 28	Oct. 11	J-108	1
1073370	Sept. 16, 1913	Driving apparatus	July 11	Aug. 8	C-108	350
1092930	Apr. 14, 1914	"Internal combustion engine"	July 18	July 31	B-108	273
1093633	Apr. 21, 1914	Air screw propellers	July 28	Aug. 25	D-108	167
1101372	June 23, 1914	Sheds for airships, etc.	July 28	Aug. 25	E-108	201
1101688	June 30, 1914	Rotary internal combustion engines.	July 22	Sept. 30	G-108	462
1227967	May 29, 1917	App. for driving rotary engines	July 28	Oct. 2	H-108	240
			1920	1920		
987178	Mar. 21, 1911	Driving mechanism for airships	Sept. 14	Sept. 18	J-108	330
992909	May 23, 1911	Balloon structure	Sept. 14	Sept. 18	J-108	330
			1919	1919		
997419	July 11, 1911	Steering mechanism for airships	June 26	July 14	A-108	332

SCHEDULE 20

The instrument dated April 27, 1921, and recorded in the United States Patent Office on May 2, 1921, in liber K-113, page 56, of Transfers of Patents, a copy of which instrument is set out in Exhibit J attached to this bill of complaint, enumerated the following patents:

No.	Date of issue.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office		
				Date of filing or recording.[1]	Book.	Page.
			1919.	1919.		
909300	Jan. 12, 1909	Feeding devices for tools, etc	July 28	Oct. 2	H-108	152
909300	Jan. 12, 1909	Feeding device for machine tools and the like.	Sept. 23	Oct. 10	T-108	227
1048073	Dec. 24, 1912	Gage	Sept. 23	Oct. 10	T-108	226
1048073	Dec. 24, 1912	Gages	July 28	Oct. 11	I-108	437
1049860	Jan. 7, 1913	Micrometer gage	Sept. 23	Oct. 10	T-108	227
1049860	Jan. 7, 1913	Micrometer gages	July 28	Sept. 22	G-108	263
1059545	Apr. 22, 1913	Pivoted jaw vises	July 28	Sept. 8	E-108	470
1150441	Aug. 17, 1915	Flexible coupling	July 18	July 31	B-108	232
1162720	Nov. 30, 1915	Measuring tools	July 28	Oct. 11	I-108	437
1162720	Nov. 30, 1915	Measuring tool	Sept. 23	Oct. 10	T-108	229
1201318	Oct. 17, 1916	Grinding machs	July 28	Aug. 25	D-108	199
1244090	Oct. 23, 1917	Machine bearing	Sept. 23	Oct. 10	T-108	225
1298929	Apr. 1, 1919	Producing isoprene[2]				

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[1] Date of service on Commissioner of Patents of the United States and of filing forrecord in U. S. Patent Office.

[2] This patent was seized as serial No. 675656, seizure of said serial number being filed Feb. 3, 1919, and recorded in liber Y-106, p. 133.

Said instrument dated April 27, 1921, and recorded in the United States Patent Office on May 2, 1921, in liber K-113, page 56, of Transfers of Patents a copy of which instrument is set out in Exhibit J attached to this bill of complaint, also enumerated the following serial numbers or applications for patents:

No.	Date of filing.	Title.	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page.
			1919.	1919.		
636030	June 29, 1911	Ball bearings	Sept. 23	Oct. 10	T-108	230
748875	Feb. 17, 1913	Measuring instrument	Sept. 23	Oct. 10	T-108	231

[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

SCHEDULE 21.

The instrument dated November 5, 1921, and recorded in the United States Patent Office on November 12, 1921, in liber W-114, page 349, of Transfers of Patents, a copy of which instrument is set out in Exhibit K, attached to this bill of complaint, enumerated the following trade-marks:

No.	Date of registration.	For—	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.[1]	Book.	Page
	1886					
13527	July 27	Toilet soap, cream, milk, paste, and pomatum.	June 29, 1921	July 1, 1921	P-113	276
13527	July 27	Toilet soap, cream, milk, paste, and pomatum.	Apr. 4, 1919	Apr. 8, 1919	M-107	14
13528	July 27	Salves and plasters	June 29, 1921	July 1, 1921	P-113	276
13528	July 27	Salves and plasters	Apr. 4, 1919	Apr. 8, 1919	M-107	14
13622	Aug. 31	Unguent or salve	June 29, 1921	July 1, 1921	P-113	276
13622	Aug. 31	Unguent or salve	Apr. 4, 1919	Apr. 8, 1919	M-107	14
13803	Nov. 16	Medicinal preparation	June 24, 1921	June 25, 1921	I-113	305
13803	Nov. 16	Medicinal preparation	Apr. 4, 1919	Apr. 8, 1919	M-107	20

[1] Date of service on Commissioner of Patents of the United States and of filing for record in U. S. Patent Office.

No.	Date of registration.	For—	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
16767	1889 July 2	Pocket, pen, erasing, and table knives and surgical and other cutting instruments classed as cutlery.	June 29, 1921	July 1, 1921	S-113	296
16767	July 2	Pocket, pen, erasing, and table knives and surgical and other cutting instruments classed as cutlery.	Apr. 4, 1919	Apr. 8, 1919	P-106	[illegible]
16788	July 9	Preserving paint	July 2, 1921	July 5, 1921	Z-113	570
16788	July 9	Preserving paint	Apr. 4, 1919	Apr. 8, 1919	E-106	498
22375	1893 Jan. 24	Remedies for cancerous diseases.	June 28, 1921	July 1, 1921	S-113	298
22375	Jan. 24	Remedies for cancerous diseases.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
23530	Aug. 22	Preparations of iron derived from animal matter known as physiological iron preparations.	June 28, 1921	July 1, 1921	S-113	298
23530	Aug. 22	Preparations of iron derived from animal matter known as physiological iron preparations.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
23531	Aug. 22	Preparations of iron derived from animal matter known as physiological iron preparations.	June 28, 1921	July 1, 1921	S-113	298
23531	Aug. 22	Preparations of iron derived from animal matter known as physiological iron preparations.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
23534	Aug. 22	Medicinal agents for nervous diseases and a febrifuge.	June 28, 1921	July 1, 1921	S-113	298
23534	Aug. 22	Medicinal agents for nervous diseases and a febrifuge.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
23536	Aug. 22	Whooping cough and asthmatic diseases.	June 28, 1921	July 1, 1921	S-113	298
23536	Aug. 22	Whooping cough and asthmatic diseases.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
23537	Aug. 22	Remedies for cancerous diseases.	June 28, 1921	July 1, 1921	S-113	298
23537	Aug. 22	Remedies for cancerous diseases.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
23724	Oct. 17	Cleaning and polishing preparations.	June 28, 1921	July 1, 1921	V-113	325
23724	Oct. 17	Cleaning and polishing preparations.	Apr. 4, 1919	Apr. 8, 1919	Y-106	417
23820	Nov. 14	Scouring and polishing preparations.	June 28, 1921	July 1, 1921	V-113	325
23820	Nov. 14	Scouring and polishing preparations.	Apr. 4, 1919	Apr. 8, 1919	Y-106	417
24093	1894 Jan. 23	Medicinal agents for use in nervous diseases as a febrifuge and soporific.	June 28, 1921	July 1, 1921	S-113	298
24093	Jan. 23	Medicinal agents for use in nervous diseases as a febrifuge and soporific.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
24094	Jan. 23	Medicinal agents for use in urinary diseases.	June 28, 1921	July 1, 1921	S-113	298
24094	Jan. 23	Medicinal agents for use in urinary diseases.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
27388	1895 Dec. 3	Soporifics	June 28, 1921	July 1, 1921	S-113	298
27388	Dec. 3	Soporifics	Apr. 8, 1919	Apr. 9, 1919	N-106	490
27389	Dec. 3	Soporifics	June 28, 1921	July 1, 1921	S-113	298
27389	Dec. 3	Soporifics	Apr. 8, 1919	Apr. 9, 1919	N-106	490

No.	Date of registration.	For—	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
28021	1896 Mar. 24	Cleaning and polishing preparations and wash blue.	June 28, 1921	July 1, 1921	V-113	325
28021	Mar. 24	Cleaning and polishing preparations and wash blue.	Apr. 4, 1919	Apr. 8, 1919	Y-106	417
28868	Sept. 8	Deliming and preserving compounds for tanners use.	June 29, 1921	July 1, 1921	X-113	319
28868	Sept. 8	Deliming and preserving compounds for tanners use.	Apr. 4, 1919	Apr. 8, 1919	Y-106	412
29457	1897 Jan. 12	A medicament comprising menthol dissolved in menthol ether of valeric acid.	June 28, 1921	July 1, 1921	C-113	327
29457	Jan. 12	A medicament comprising menthol dissolved in menthol ether of valeric acid.	Apr. 4, 1919	Apr. 8, 1919	F-107	17
29658	Mar. 9	Chemicals having a narcotic influence.	June 28, 1921	July 1, 1921	S-113	298
29658	Mar. 9	Chemicals having a narcotic influence.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
29728	Mar. 23	Chemical preparations	June 28, 1921	July 1, 1921	Z-113	362
29728	Mar. 23	Chemical preparations	Apr. 4, 1919	Apr. 8, 1919	U-106	366
29914	Apr. 27	Antiseptics and antipyretics	June 28, 1921	July 1, 1921	S-113	298
29914	Apr. 27	Antiseptics and antipyretics	Apr. 8, 1919	Apr. 9, 1919	N-106	499
29995	May 11	Medicinal chemicals	June 28, 1921	July 1, 1921	S-113	298
29995	May 11	Medicinal chemicals	Apr. 8, 1919	Apr. 9, 1919	N-106	490
30078	May 25	Medicinal chemicals acting as internal and external astringent disinfectants.	June 28, 1921	July 1, 1921	S-113	298
30078	May 25	Medicinal chemicals acting as internal and external astringent disinfectants.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
30140	June 8	Chemicals acting as intestinal astringents and antiseptics.	June 28, 1921	July 1, 1921	S-113	298
30140	June 8	Chemicals acting as intestinal astringents and antiseptics.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
30524	Aug. 24	Impure and pure or refined benzoic sulfinid or benzoic sulfinid combined with sodium oxid.	July 2, 1921	July 5, 1921	K-113	271
30524	Aug. 24	Impure and pure or refined benzoic sulfinid or benzoic sulfinid combined with sodium oxid.	Apr. 4, 1919	Apr. 8, 1919	S-106	419
30696	Oct. 19	Derivatives of cinchona alkaloids.	June 28, 1921	July 1, 1921	C-113	327
30696	Oct. 19	Derivatives of cinchona alkaloids.	Apr. 4, 1919	Apr. 8, 1919	F-107	17
30942	Dec. 7	Certain named articles and preparations for the teeth, hair, and skin.	June 28, 1921	July 1, 1921	L-113	363
30942	Dec. 7	Certain named articles and preparations for the teeth, hair, and skin.	Apr. 4, 1919	Apr. 8, 1919	F-106	463
31235	1898 Feb. 8	Photographic developers	June 29, 1921	July 1, 1921	X-113	319
31235	Feb. 8	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	Y-106	412
31236	Feb. 8	Photographic developers	June 29, 1921	July 1, 1921	X-113	319
31236	Feb. 8	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	Y-106	412
31667	June 7	Hemorrhoidal suppositories	June 24, 1921	June 25, 1921	C-113	301
31667	June 7	Hemorrhoidal suppositories	Apr. 4, 1919	Apr. 8, 1919	S-106	417
32002	Sept. 27	A chemical and medicinal preparation.	June 28, 1921	July 1, 1921	S-113	298
32002	Sept. 27	A chemical and medicinal preparation.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
32003	Sept. 27	A chemical and medicinal preparation.	June 28, 1921	July 1, 1921	S-113	298
32003	Sept. 27	A chemical and medicinal preparation.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
32177	Nov. 22	Cure for consumption	June 24, 1921	June 25, 1921	I-113	305

No.	Date of registration	For—	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
	1898					
32177	Nov. 22	Cure for consumption	Apr. 4, 1919	Apr. 8, 1919	M-107	20
32178	Nov. 22	Cure for consumption	June 24, 1921	June 25, 1921	I-113	305
32178	Nov. 22	Cure for consumption	Apr. 4, 1919	Apr. 8, 1919	M-107	20
32212	Dec. 6	Artificial dung	June 28, 1921	July 1, 1921	G-113	284
32212	Dec. 6	Artificial dung	Apr. 4, 1919	Apr. 8, 1919	I-106	390
32287	Dec. 27	Cure for consumption	June 24, 1921	June 25, 1921	I-113	305
32287	Dec. 27	Cure for consumption	Apr. 4, 1919	Apr. 8, 1919	M-107	20
	1899					
32576	Mar. 7	Medicinal and remedial sulfo-compounds for internal and external use.	June 28, 1921	July 1, 1921	L-113	365
32576	Mar. 7	Medicinal and remedial sulfo-compounds for internal and external use.	Apr. 4, 1919	Apr. 8, 1919	H-106	491
32577	Mar. 7	Veterinary remedial agents	June 28, 1921	July 1, 1921	L-113	365
32577	Mar. 7	Veterinary remedial agents	Apr. 4, 1919	Apr. 8, 1919	H-106	491
32737	Apr. 18	Certain named medicinal chemicals.	June 28, 1921	July 1, 1921	S-113	298
32737	Apr. 18	Certain named medicinal chemicals.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
33016	June 6	Photographic developers	June 29, 1921	July 1, 1921	X-113	320
33016	June 6	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	Y-106	412
33017	June 6	Photographic developers	June 29, 1921	July 1, 1921	X-113	320
33017	June 6	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	Y-106	412
33821	Nov. 28	Remedies for catarrh	June 28, 1921	July 1, 1921	C-113	323
33821	Nov. 28	Remedies for catarrh	Apr. 4, 1919	Apr. 8, 1919	J-107	2
	1900					
34132	Feb. 6	Certain-named photograpnic materials.	June 24, 1921	June 25, 1921	Q-113	274
34132	Feb. 6	Certain-named photographic materials.	Apr. 4, 1919	Apr. 8, 1919	P-106	463
34318	Mar. 13	A medicine for certain-named purposes.	June 28, 1921	July 1, 1921	S-113	298
34318	Mar. 13	A medicine for certain-named purposes.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
34420	Apr. 3	Certain-named medical compounds.	June 28, 1921	July 1, 1921	S-113	298
34420	Apr. 3	Certain-named medical compounds.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
34706	May 29	Certain-named medical compounds.	June 29, 1921	July 1, 1921	P-113	276
34706	May 29	Certain-named medical compound.	Apr. 4, 1919	Apr. 8, 1919	M-107	14
34741	June 5	Metabolic product of tubercle bacilli.	June 28, 1921	July 1, 1921	S-113	298
34741	June 5	Metabolic product of tubercle bacilli.	Apr. 8, 1919	Apr. 9, 1919	N-106	490
35389	Nov. 13	Certain-named cutlery and surgical instruments.	June 29, 1921	July 1, 1921	S-113	298
35389	Nov. 13	Certain-named cutlery and surgical instruments.	Apr. 4, 1919	Apr. 8, 1919	P-106	472
	1901					
35771	Jan. 15	Photographic paper and plates.	June 24, 1921	June 25, 1921	Q-113	274
35979	Feb. 26	Medical and pharmaceutical preparations.	June 28, 1921	July 1, 1921	G-113	294
35979	Feb. 26	Medical and pharmaceutical preparations.	Apr. 4, 1919	Apr. 8, 1919	T-106	427
36046	Mar. 12	Oleates of sodium	June 28, 1921	July 1, 1921	C-113	327
36046	Mar. 12	Oleates of sodium	Apr. 4, 1919	Apr. 8, 1919	F-107	17
36522	June 4	Certain-named soluble starch	June 24, 1921	June 25, 1921	Q-113	273
36522	June 4	Certain-named soluble starch	Apr. 4, 1919	Apr. 8, 1919	J-106	426
36523	June 4	Certain-named soluble starch	June 24, 1921	June 25, 1921	Q-113	273
36523	June 4	Certain-named soluble starch	Apr. 4, 1919	Apr. 8, 1919	J-106	426
37373	Nov. 26	Certain-named pharmaceutical products.	June 28, 1921	July 1, 1921	C-113	327
37373	Nov. 26	Certain-named pharmaceutical products.	Apr. 4, 1919	Apr. 8, 1919	F-107	17

No.	Date of registration.	For—	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording	Book.	Page
	1901					
37374	Nov. 26	Certain-named pharmaceutical products.	June 28, 1921	July 1, 1921	C-113	327
37374	Nov. 26	Certain-named pharmaceutical products.	Apr. 4, 1919	Apr. 8, 1919	F-107	17
	1902					
37664	Jan. 21	Quinate of lithium	June 28, 1921	July 1, 1921	C-113	327
37664	Jan. 21	Quinate of lithium	Apr. 4, 1919	Apr. 8, 1919	F-107	17
38016	Apr. 1	Perfumery and certain-named toilet preparations.	June 24, 1921	June 25, 1921	H-113	302
38016	Apr. 1	Perfumery and certain-named toilet preparations.	Apr. 4, 1919	Apr. 8, 1919	I-106	441
38017	Apr. 1	Perfumery and certain-named toilet preparations.	June 24, 1919	June 25, 1921	H-113	302
38017	Apr. 1	Perfumery and certain-named toilet preparations.	Apr. 4, 1919	Apr. 8, 1919	I-106	441
38167	Apr. 22	Salicylates of some rare earths	June 28, 1921	July 1, 1921	C-113	327
38167	Apr. 22	Salicylates of some rare earths	Apr. 4, 1919	Apr. 8, 1919	F-107	17
39153	Oct. 28	Substitute for gum copal and amber.	June 24, 1921	June 25, 1921	Q-113	271
39153	Oct. 28	Substitute for gum copal and amber.	Apr. 4, 1919	Apr. 8, 1919	J-106	426
39523	Dec. 23	Cotoin compound	June 28, 1921	July 1, 1921	C-113	327
39523	Dec. 23	Cotoin compound	Apr. 4, 1919	Apr. 8, 1919	F-107	17
39577	Dec. 30	Derivatives of vanillin and phenetidin.	June 28, 1921	July 1, 1921	C-113	327
39577	Dec. 30	Derivatives of vanillin and phenetidin.	Apr. 4, 1919	Apr. 8, 1919	F-107	17
	1903					
40116	Apr. 14	Combinations of quinin and phenetidin.	June 28, 1921	July 1, 1921	C-113	327
40116	Apr. 14	Combinations of quinin and phenetidin.	Apr. 4, 1919	Apr. 8, 1919	F-107	17
40117	Apr. 14	Salts of diorthooxydibenzalaceton.	June 28, 1921	July 1, 1921	C-113	327
40117	Apr. 14	Salts of diorthooxydibenzalaceton.	Apr. 4, 1919	Apr. 8, 1919	F-107	17
40680	June 30	Remedy for stomachic disturbances.	June 24, 1921	June 25, 1921	I-113	305
40680	June 30	Remedy for stomachic disturbances.	Apr. 4, 1919	Apr. 8, 1919	M-107	20
40895	Aug. 11	Remedies for tuberculous and catarrhal complaints.	July 2, 1921	July 5, 1921	L-113	369
40895	Aug. 11	Remedies for tuberculous and catarrhal complaints.	Apr. 4, 1919	Apr. 8, 1919	Y-106	415
	1904					
42306	Mar. 29	Paints and colors	June 28, 1921	July 1. 1921	O-113	269
42306	Mar. 29	Paints and colors	Apr. 4, 1919	Apr. 8, 1919	M-106	463
42957	July 5	Preservative liquid for the protection of wood.	July 2, 1921	July 5, 1921	Z-113	370
42957	July 5	A preservation liquid for the protection of wood.	Apr. 4, 1919	Apr. 8, 1919	E-106	498
43656	Nov. 8	Soporifics	June 24, 1921	June 25, 1921	I-113	305
43656	Nov. 8	Soporifics	Apr. 4, 1919	Apr. 8, 1919	M-107	20
	1905					
47764	Nov. 21	Potato flour, potato starch and dextrin.	June 29, 1921	July 1, 1921	T-113	300
47764	Nov. 21	Potato flour, potato starch and dextrin.	Apr. 4, 1919	Apr. 8, 1919	G-107	22
	1906					
49667	Feb. 13	Starch and dextrin	June 29, 1921	July 1, 1921	T-113	300
49667	Feb. 13	Starch and dextrin	Apr. 4, 1919	Apr. 8, 1919	G-107	22
49911	Feb. 20	Potato flour, potato starch and dextrin.	June 29, 1921	July 1, 1921	T-113	300
49911	Feb. 20	Potato flour, potato starch and dextrin.	Apr. 4, 1919	Apr. 8, 1919	G-107	22
54087	June 19	A medicament	June 28, 1921	July 1, 1921	C-113	327
54087	June 19	A medicament	Apr. 4, 1919	Apr. 8, 1919	F-107	17

No.	Date of registration.	For—	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
	1906					
54088	June 19	Derivatives of cinchona alkaloids.	June 28, 1921	July 1, 1921	C-113	327
54088	June 19	Derivatives of cinchona	Apr. 4, 1919	Apr. 8, 1919	F-107	17
55544	Aug. 14	Composition of matter	June 28, 1921	July 1, 1921	S-113	297
55544	Aug. 14	Composition of matter	Apr. 4, 1919	Apr. 8, 1919	Q-106	419
55723	Aug. 21	Derivatives of cinchona alkaloids.	June 28, 1921	July 1, 1921	C-113	327
55723	Aug. 21	Derivatives of cinchona alkaloids.	Apr. 4, 1919	Apr. 8, 1919	F-107	17
57145	Nov. 6	Photographic developers	June 29, 1921	July 1, 1921	X-113	319
57145	Nov. 6	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	Y-106	412
57218	Nov. 6	Photographic developers	June 29, 1921	July 1 1921	X-113	320
57218	Nov. 6	Photographic developers	Apr. 4, 1919	Apr. 8, 1919	Y-106	412
	1907					
59443	Jan. 8	Cement for filling teeth	June 28, 1921	July 1, 1921	C-113	324
59443	Jan. 8	Cement for filling teeth	Apr. 4, 1919	Apr. 8, 1919	Y-106	409
61628	Apr. 2	A detergent cleaning preparation.	June 24, 1921	June 25, 1921	F-113	275
61628	Apr. 2	A detergent cleaning preparation.	Apr. 4, 1919	Apr. 8, 1919	L-106	406
66353	Nov. 26	Certain chemicals	June 29, 1921	July 1, 1921	P-113	286
66353	Nov. 26	Certain chemicals	Apr. 4, 1919	Apr. 8, 1919	Z-106	331
	1908					
67643	Feb. 11	Optical instruments	June 24, 1921	June 25, 1921	O-113	240
67643	Feb. 11	Optical instruments	Apr. 4, 1919	Apr. 8, 1919	N-106	479
68043	Mar. 3	Soap	June 29, 1921	July 1, 1921	P-113	286
68043	Mar. 3	Soap	Apr. 4, 1919	Apr. 8, 1919	Z-106	331
68570	Apr. 14	Optical instruments and parts thereof.	June 24, 1921	June 25, 1921	O-113	240
68570	Apr. 14	Optical instruments and parts thereof.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
68571	Apr. 14	Optical instruments and parts thereof.	June 24, 1921	June 25, 1921	O-113	240
68571	Apr. 14	Optical instruments and parts thereof.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
68572	Apr. 14	Optical instruments and parts thereof.	June 24, 1921	June 25, 1921	O-113	240
68572	Apr. 14	Optical instruments and parts thereof.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
68573	Apr. 14	Optical instruments and parts thereof.	June 24, 1921	June 25, 1921	O-113	240
68573	Apr. 14	Optical instruments and parts thereof.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
69128	May 19	"Cupressymol"	July 2, 1921	July 5, 1921	K-113	260
69128	May 19	"Cupressymol"	July 2, 1921	July 5, 1921	K-113	263
69128	May 19	"Cupressymol"	July 2, 1921	July 5, 1921	K-113	261
69128	May 19	Certain remedies	Apr. 4, 1919	Apr. 8, 1919	Z-106	331
69147	May 19	Remedies for certain diseases	June 29, 1921	July 1, 1921	P-113	296
69147	May 19	Remedies for certain diseases	Apr. 4, 1919	Apr. 8, 1919	Z-106	331
	1909					
72322	Jan. 19	Remedies for certain diseases	Apr. 4, 1919	Apr. 8, 1919	Z-106	331
72322	Jan. 19	"Aldthyform"	July 2, 1921	July 5, 1921	K-113	260
72322	Jan. 19	"Aldthyform"	July 2, 1921	July 5, 1921	K-113	263
72322	Jan. 19	"Aldthyform"	July 2, 1921	July 5, 1921	K-113	261
74333	July 6	A remedy against gonorrhea and cystitis.	June 28, 1921	July 1, 1921	C-113	327
74333	July 6	A remedy against gonorrhea and cystitis.	Apr. 4, 1919	Apr. 8, 1919	F-107	17
75091	Aug. 31	Pharmaceutical preparations for treating disorders of the skin.	June 28, 1921	July 1, 1921	S-113	294
75091	Aug 31	Pharmaceutical preparations for treating disorders of the skin.	Apr. 4, 1919	Apr. 8, 1919	P-106	467
75300	Sept. 21	A remedy for rheumatism and gout.	June 28, 1921	July 1, 1921	P-113	275

No.	Date of registration.	For—	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
	1909					
75300	Sept. 21	A remedy for rheumatism and gout.	Apr. 4, 1919	Apr. 8, 1919	R-106	453
	1910					
77618	Apr. 26	Diuretic preparations	June 24, 1921	June 25, 1921	F-113	274
77618	Apr. 26	Diuretic preparations	Apr. 4, 1919	Apr. 8, 1919	Z-106	336
78065	May 31	Antiseptic mouth wash	June 24, 1921	June 25, 1921	F-113	274
78065	May 31	Antiseptic mouth wash	Apr. 4, 1919	Apr. 8, 1919	Z-106	336
78617	June 28	A medicinal preparation	June 28, 1921	July 1, 1921	S-113	294
78617	June 28	A medicinal preparation	Apr. 4, 1919	Apr. 8, 1919	P-106	467
80257	Nov. 22	Telescopes	June 24, 1921	June 25, 1921	O-113	240
80257	Nov. 22	Telescopes	Apr. 4, 1919	Apr. 8, 1919	N-106	479
80258	Nov. 22	Telescopes	June 24, 1921	June 25, 1921	O-113	240
80258	Nov. 22	Telescopes	Apr. 4, 1919	Apr. 8, 1919	N-106	479
	1911					
82837	July 25	Perfumery	June 29, 1921	July 1, 1921	V-113	328
82837	July 25	Perfumery	May 26, 1919	May 27, 1919	R-107	206
83417	Sept. 12	Soaps and soap powders	June 28, 1921	July 1, 1921	S-113	294
83417	Sept. 12	Soaps and soap powders	Apr. 4, 1919	Apr. 8, 1919	P-106	467
	1912					
85306	Feb. 6	Objective-lens system	June 24, 1921	June 25, 1921	O-113	240
85306	Feb. 6	Objective-lens systems	Apr. 4, 1919	Apr. 8, 1919	N-106	479
85307	Feb. 6	Objective-lens system	June 24, 1921	June 25, 1921	O-113	240
85307	Feb. 6	Objective-lens systems	Apr. 4, 1919	Apr. 8, 1919	N-106	479
85308	Feb. 6	Objective-lens system	June 24, 1921	June 25, 1921	O-113	240
85308	Feb. 6	Objective-lens systems	Apr. 4, 1919	Apr. 8, 1919	N-106	479
85309	Feb. 6	Field glasses	June 24, 1921	June 25, 1921	O-113	240
85309	Feb. 6	Field glasses	Apr. 4, 1919	Apr. 8, 1919	N-106	479
85310	Feb. 6	Field glasses	June 24, 1921	June 25, 1921	O-113	240
85310	Feb. 6	Field glasses	Apr. 4, 1919	Apr. 8, 1919	N-106	479
85539	Feb. 20	Certain optical goods	June 24, 1921	June 25, 1921	O-113	240
85539	Feb. 20	Certain optical goods	Apr. 4, 1919	Apr. 8, 1919	N-106	479
86333	Apr. 30	Cement for filling teeth	June 28, 1921	July 1, 1921	Z-113	360
86333	Apr. 30	Cement for filling teeth	Apr. 4, 1919	Apr. 8, 1919	U-106	372
86848	June 4	Dyes	June 28, 1921	July 1, 1921	B-113	327
86848	June 4	Dyes	Apr. 4, 1919	Apr. 8, 1919	N-106	473
	1913					
92716	July 22	Certain dental, medical, and surgical appliances.	June 28, 1921	July 1, 1921	Z-113	360
92716	July 22	Certain dental, medical, and surgical appliances.	Apr. 4, 1919	Apr. 8, 1919	U-106	372
93037	Aug. 12	Disinfectants and antiseptics	June 29, 1921	July 1, 1921	V-113	327
93037	Aug. 12	Disinfectants and antiseptics	Apr. 4, 1919	Apr. 8, 1919	B-106	499
93038	Aug. 12	Disinfectants and antiseptics	June 29, 1921	July 1, 1921	V-113	327
93038	Aug. 12	Disinfectants and antiseptics	Apr. 4, 1919	Apr. 8, 1919	B-106	499
93577	Sept. 23	Certain named measuring and scientific appliances.	June 24, 1921	June 25, 1921	O-113	240
93577	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
93578	Sept. 23	Certain named measuring and scientific appliances.	June 24, 1921	June 25, 1921	O-113	240
93578	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
93579	Sept. 23	Certain named measuring and scientific appliances.	June 24, 1921	June 25, 1921	O-113	240
93579	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
93580	Sept. 23	Certain named measuring and scientific appliances.	June 24, 1921	June 25, 1921	O-113	240
93580	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
93581	Sept. 23	Certain named measuring and scientific appliances.	June 24, 1921	June 25, 1921	O-113	240
93581	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
93582	Sept. 23	Certain named measuring and scientific appliances.	June 24, 1921	June 25, 1921	O-113	240

No.	Date of registration.	For—	Date of demand.	Demand recorded in records of the U. S. Patent Office.		
				Date of filing or recording.	Book.	Page.
	1913					
93582	Sept. 23	Certain named measuring and scientific appliances.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
93623	Sept. 30	Certain named optical goods	June 24, 1921	June 25, 1921	O-113	240
93623	Sept. 30	Certain named optical goods	Apr. 4, 1919	Apr. 8, 1919	N-106	479
94372	Dec. 2	Artificial wood	June 24, 1921	June 25, 1921	P-113	258
94372	Dec. 2	Artificial wood	Apr. 4, 1919	Apr. 8, 1919	Y-106	405
94409	Dec. 2	Objective-lens systems	June 24, 1921	June 25, 1921	O-113	240
94409	Dec. 2	Objective-lens systems	Apr. 4, 1919	Apr. 8, 1919	N-106	479
94692	Dec. 23	A remedy for gonorrhea	June 28, 1921	July 1, 1921	C-113	322
94692	Dec. 23	A remedy for gonorrhea	Apr. 4, 1919	Apr. 8, 1919	J-107	1
	1914					
96758	Apr. 28	A soporific preparation	June 28, 1921	July 1, 1921	C-113	327
96758	Apr. 28	A soporific preparation	Apr. 4, 1919	Apr. 8, 1919	F-107	17
97930	June 23	Surveying, photographic, and optical apparatus.	June 24, 1921	June 25, 1921	O-113	240
97930	June 23	Surveying, photographic, and optical apparatus.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
98561	July 21	Tanners' bark, quebracho bark, tanning extracts, corrosives, and catechutannic acid.	June 28, 1921	July 1, 1921	T-113	301
98561	July 21	Tanners' bark, quebracho bark, tanning extracts, corrosives, and catechutannic acid.	Apr. 4, 1919	Apr. 8, 1919	K-106	478
98562	July 21	Tanners' bark, quebracho bark, tanning extracts, corrosives, and catechutannic acid preserver for leather.	June 28, 1921	July 1, 1921	T-113	301
98562	July 21	Tanners' bark, quebracho bark, tanning extracts, corrosives, and catechutannic acid preserver for leather.	Apr. 4 1919	Apr. 8, 1919	K-106	478
100408	Oct. 20	Tanning greases and oils	June 28, 1921	July 1, 1921	T-113	301
100408	Oct. 20	Tanning greases and oils	Apr. 4, 1919	Apr. 8, 1919	K-106	478
100615	Oct. 20	Tanning greases and oils	June 28, 1921	July 1, 1921	T-113	301
100615	Oct. 20	Tanning greases and oils	Apr. 4, 1919	Apr. 8, 1919	K-106	478
100688	Oct. 20	Lenses for scientific use, prisms &c.	June 24, 1921	June 25, 1921	O-113	240
100688	Oct. 20	Lenses for scientific use, prisms &c.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
100689	Oct. 20	Lenses for scientific use, prisms &c.	June 24, 1921	June 25, 1921	O-113	240
100689	Oct. 20	Lenses for scientific use, prisms &c.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
	1915					
106131	Oct. 12	Certain named measuring and scientific appliances and parts thereof.	June 24, 1921	June 25, 1921	O-113	240
106131	Oct. 12	Certain named measuring and scientific appliances and parts thereof.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
106132	Oct. 12	Certain named measuring and scientific appliances and parts thereof.	June 24, 1921	June 25, 1921	O-113	240
106132	Oct. 12	Certain named measuring and scientific appliances and parts thereof.	Apr. 4, 1919	Apr. 8, 1919	N-106	479
	1916					
111674	July 25	Cement filling for teeth	June 28, 1921	July 1, 1921	Z-113	360
111674	July 25	Cement filling for teeth	Apr. 4, 1919	Apr. 8, 1919	U-106	372
111849	Aug. 8	Certain named surgical and dental appliances.	June 28, 1921	July 1, 1921	Z-113	360
111849	Aug. 8	Certain named surgical and dental appliances.	Apr. 4, 1919	Apr. 8, 1919	U-106	372

Memorandum attached to Plaintiff's Exhibit No. 136, corrections to Exhibit "G" to bill of complaint. (For explanation see stipulation, Plaintiff's Exhibit No. 135, Exhibit Book Vol. I, page 330.)

The Chemical Foundation, Incorporated, desires to state it was the intention of Francis P. Garvan, Alien Property Custodian, to assign, sell and deliver to the Chemical Foundation, Incorporated, and it was the intention of the Chemical Foundation, Incorporated, to receive the following patents, applications, serial numbers or trade-marks enumerated as follows, a typographical error appearing in same. Said errors being also listed in the following enumerations.

Page 128:

Application No. 102,021, the demand enumerating this application number was dated March 1, 1919, recorded March 26, 1919, Liber S-106, Page 357. This number is in error, the attention of both the Alien Property Custodian and the Chemical Foundation, Incorporated, being to seize application 192021.

Page 130:

Application 818,914. A typographical error appears to have been made in the assignment of this application. It was the intention of Francis P. Garvan, Alien Property Custodian, and the Chemical Foundation, Incorporated, to list application No. 818,974. The list of said applications being in numerical order 818,914 appears in the list in the place of 818,974.

Page 144:

Patent 738,820. It was the intention of Francis P. Garvan, Alien Property Custodian, and the Chemical Foundation, Incorporated, to convey

Patent No. 739,920. Demand dated Feb. 28, 1919, recorded March 22, 1919, Liber T-106, Page 258. Patent 738,820 appearing out of position in the numerical list attached as Exhibit "A."

Page 192:

Patent 1074893. It was the intention of Francis P. Garvan, Alien Property Custodian, and the Chemical Foundation, Incorporated, to assign Patent No. 1074993. Demand dated March 1, 1919, recorded March 25, 1919, Liber J-106, Page 331. Patent No. 1074893 as appearing in assignment is out of order in the numerical list attached as Exhibit "A."

Page 194:

Patent 1084559. It was the intention of Francis P. Garvan, Alien Property Custodian, and the Chemical Foundation, Incorporated, to sell and receive Patent 1084659. The demand dated Feb. 26, 1919, recorded March 22, 1919, J-106, Page 269. Said Patent No. 1084559 appearing out of the numerical order in Exhibit "A" attached to assignment.

Page 219:

Patent 1123842. It was the intention of Francis P. Garvan, Alien Property Custodian, and the Chemical Foundation, Incorporated, to sell and receive Patent 1123843 covered by demand dated March 1, 1919, recorded March 22, 1919, Liber X-106, Page 326. Patent 1123842 appearing out of numerical order in Exhibit "A" attached to assignment.

Page 238:

Trade-mark 52333. It was the intention of Francis P. Garvan, Alien Property Custodian, and the Chemical Foundation, Incorporated, to sell and receive Trade-mark 52223 covered by demand dated April 4, 1919, recorded April 8, 1919, Liber N-106, Page 457. Said Trade-mark 52333 appearing out of the regular order in the numerical list attached to assignment.

Page 248:

Trade-mark 13802. It was the intention of Francis P. Garvan, Alien Property Custodian, and the Chemical Foundation, Incorporated, to sell and receive Trade-mark 13803. Said Trade-mark 13803 covered by two demands dated April 4, 1919, recorded April 8, 1919, Liber M-107, Page 20, and June 24, 1921, recorded June 25, 1921, Liber I-113, Page 305. Trade-mark 13802 never having been demanded or seized. Said Trade-mark 13802 appears, however, in the numerical list in Exhibit "A" and is claimed to be in error.

Page 254:

Trade-mark 86317. It was the intention of Francis P. Garvan, Alien Property Custodian, and the Chemical Foundation, Incorporated, to sell and receive Trade-mark 87317 covered by demand dated April 4, 1919, recorded April 8, 1919, Liber L-106, Page 401.

Trade-mark 87768. It was the intention of Francis P. Garvan, Alien Property Custodian, and the Chemical Foundation, Incorporated, to sell and receive Trade-mark 86768 covered by demand dated April 4, 1919, recorded April 8, 1919, Liber E-106, Page 483. In the original assignment the figure 6 has been crossed out and 7 written above.

Page 346:

Patent 839587. It was the intention of Francis P. Garvan, Alien Property Custodian, and the Chemical Foundation, Incorporated, to sell and receive Patent 838406 covered by demand dated March 1, 1919, recorded March 24, 1919, Liber X-106, Page 377.

Page 350:

Patent 933853. The Bill of Complaint shows date of issue June 8, 1919, Title, "Stropping Device," covered by demand dated May 4, 1920, recorded August 26, 1920, Liber J-108, Page 269. It was the intention of Francis P. Garvan, Alien Property Custodian, and the Chemical Foundation, Incorporated, to sell and receive the Patent containing said number 933853. The error in this case being in the date of issue. The Patent Office records show September 14, 1919, as date of issue, the title shown by original patent "Hydrocarbon Burner."

The foregoing list covering fifty-two pages of corrections to be made in the Bill of Complaint after a complete check of the records of the Patent Office and the Alien Property Custodian's office with the original demands and assignments are correct and the same have been carefully checked. Also attached is a statement of two pages of the patents, trade-marks, etc., which the Alien Property Custodian, Francis P. Garvan, intended to sell, transfer and assign to the Chemical Foundation, Incorporated, and which said Chemical Foundation, Incorporated, intended to receive.

Checked by Chemical Foundation, Incorporated
Represented by
(Sgd.) J. R. ZIMMERMAN.

Checked by Alien Property Custodian
Represented by
(Sgd.) CARL J. SKINNER,
Chief of Patent Section.

Approved:
(Sgd.) W. W. WILSON,
General Counsel, Alien Property Custodian's Office.

EXHIBIT H-1.

ASSIGNMENT.

Whereas A. Mitchell Palmer, formerly Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did, during his incumbency of said office of Alien Property Custodian by virtue of requirements or demands issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him certain letters patent of the United States and applications for letters patent of the United States which together with other letters patent and applications for letters patent are enumerated in Schedule A hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent and applications for letters patent; and

Whereas I, Francis P. Garvan, was on the 4th day of March, 1919, duly appointed and thereafter duly qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer; and

Whereas I, Francis P. Garvan, as Alien Property Custodian as aforesaid by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office and in the Office of the Register of Copyrights of the United States, have seized and required to be conveyed to me certain letters patent of the United States and applications for letters patent of the United States, certain trade-marks and registrations thereof and the business and good will appurtenant thereto, and certain copyrights and the certificates of registration thereof and the works upon which said copyrights were issued and certain rights, interests, and benefits under agreements, all of which are included in Schedules A, B, C, and D, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for the past infringement of said letters patent, trade-marks, and copyrights, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent, applications for letters patent, trade-marks, and registrations thereof, copyrights, and rights, interests, and benefits; and

Whereas by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks, and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto and by another certain order bearing date the 5th day of April, 1919, concerning the sale, transfer, and release of certain copyrights, applications for letters patent, and applications for the registration of trade-marks and copyrights determined to belong to or to be held for, by, on account of or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, both made by Frank L. Polk under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent, applications for letters patent, trade-marks and registrations thereof, copyrights and rights, interests and benefits under agreements to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I have determined that the letters patent of the United States, applications for letters patent of the United States, trade-marks and registrations thereof, copyrights and rights, interests and benefits under agreements enumerated in Schedules A, B, C, and D hereto annexed relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter.

Now, therefore, in consideration of the sum of two hundred and fifty thousand dollars ($250,000.00), paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents, do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the whole right, title, and interest acquired by me and by said A. Mitchell Palmer, each as said Alien Property Custodian as aforesaid, in and to:

1. Each of the letters patent of the United States and applications for letters patent of the United States enumerated in Schedule A hereto annexed, together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said letters patent of the United States against every person, firm, corporation, or government except the Government of the United States of America;

2. Each of the United States copyrights and the certificates of registration thereof and the works upon which said copyrights were granted, enumerated in Schedule B hereto annexed, together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said copyrights against every person, firm, corporation, or government except the Government of the United States of America;

3. Each of the trade-marks, and the registrations thereof enumerated in Schedule C, hereto annexed and the business and good will appurtenant thereto, together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said trade-marks against every person, firm, corporation, or government except the Government of the United States of America;

4. All of the rights, interests, and benefits under the agreements enumerated in Schedule C hereto annexed;

All as more specifically described and set forth in the requirements or demands relating to said letters patent of the United States, applications for letters patent of the United States, trade-marks and registrations thereof, copyrights and rights, interests and benefits under agreements issued by said A. Mitchell Palmer, as Alien Property Custodian, or by me as Alien Property Custodian without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or bylaws of the said the Chemical Foundation (Inc.), or otherwise, and subject only to the provisions of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or of friendly nations as set forth in the requirements or demands for certain of said letters patent of the United States, applications for letters patent, trademarks and registration thereof, copyrights and rights, interests and benefits under agreements.

I, as Alien Property Custodian as aforesaid, do hereby request the Commissioner of Patents to issue any letters patent granted upon any of the applications for letters patent enumerated in Schedule A hereto attached to the Chemical Foundation (Inc.), as the assignee of my entire right, title, and interest therein.

In witness whereof I have hereunto set my hand and seal of office this 10th day of April, 1919.

FRANCIS P. GARVAN,
Alien Property Custodian.

WASHINGTON,
District of Columbia, ss:

On this 10th day of April, 1919, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

ODEN B. GRAY,
Notary Public.

EXHIBIT H-2.

ASSIGNMENT.

Whereas I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did by virtue of the requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me the following trade-marks and registrations thereof in the United States Patent Office:

Registration No.	Date.	Trade-mark.
68059	Mar. 3, 1908	Duron.
70391	Aug. 25, 1908	C. W. H. H.

together with the good will and business pertaining to said trade-marks and the certificates of registration of said trade-marks and every right, title, and interest with respect to said trade-marks, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement thereof, subject to the rights, if any, of Amid Duron Company and Arabol Manufacturing Company, as stated in said requirements or demands relating to said trade-marks; and

Whereas, by virtue of the authority quoted above I did also seize and require to be conveyed to me all of the rights, interests, and benefits created in favor of or conferred upon Chemische Werke Hansa, G. m. b. H., Maritz Bernhard Max Knoblauch, liquidator of Chemische Werke Hansa, G. m. b. H., and Hansa Werke, A. G., pursuant to the terms of a certain agreement dated January 27, 1910, between Chemische Werke Hansa, G. m. b. H., and Arabol Manufacturing Company, granting to said Chemische Werke Hansa, G. m. b. H., its successors or assigns, certain rights with respect to stock ownership in a corporation thereafter to be formed; and by certain agreement believed to be dated between January 27, 1910, and February 11, 1910, between said Chemische Werke Hansa, G. m. b. H., and Amid Duron Company, the corporation formed pursuant to the terms of the agreement of January 27, 1910, above referred to, and granting to said Chemische Werke Hansa, G. m. b. H., a certain royalty in return for certain exclusive rights with respect to patents and trade-marks belonging to said Chemische Werke Hansa, G. m. b. H.; and also all rights and interests to and in any sum or sums of money hereafter accruing in favor of or becoming due or payable to said Chemische Werke Hansa, G. m. b. H., its successors or assigns, under the terms of said agreements; and also all claims and demands whatsoever created or existing in favor of or conferred upon said enemy against Amid Duron Company, and Arabol Manufacturing Company; and

Whereas, by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks, and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, made by Frank L. Polk under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent, trade-marks, and similar rights, to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas, I have determined that the trade-marks and the rights, interests, and benefits created pursuant to the provisions of the agreements above set forth, relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter:

Now, therefore, in consideration of the sum of fifty dollars ($50.00) paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents, do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the following trade-marks and registrations thereof in the United States Patent Office:

Registration No.	Date.	Trade-mark.
68059	Mar. 3, 1908	Duron.
70391	Aug. 25, 1908	C. W. H. H.

together with the good will and business pertaining to said trade-marks and the certificates of registration of said trade-marks and every right, title, and interest with respect to said trade-marks, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government for past infringement thereof, subject to the rights, if any, of Amid Duron Company and Arabol Manufacturing Company; and also all of the rights, interests, and benefits created in favor of or conferred upon Chemische Werke Hansa, G. m. b. H., and Hansa Werke, A. G., pursuant to the terms of a certain agreement dated January 27, 1910, between Chemische Werke Hansa, G. m. b. H., and Arabol Manufacturing Company, granting to said Chemische Werke Hansa, G. m. b. H., its successors or assigns, certain rights with respect to stock ownership in a corporation thereafter to be formed; and by certain agreement believed to be dated between January 27, 1910, and February 11, 1910, between said Chemische Werke Hansa, G. m. b. H., and Amid Duron Company, the corporation formed pursuant to the terms of the agreement of January 27, 1910, above referred to, and granting to said Chemische Werke Hansa, G. m. b. H., a certain royalty in return for certain exclusive rights with respect to patents and trade-marks belonging to said Chemische Werke Hansa, G. m. b. H.; and also all rights and interests to and in any sum or sums of money hereafter accruing in favor of or becoming due or payable to said Chemische Werke Hansa, G. m. b. H., its successors or assigns, under the terms of said agreements; and also all claims and demands whatsoever created or existing in favor of or conferred upon said enemy against Amid Duron Company and Arabol Manufacturing Company;

To be held and enjoyed by the said assignee above named, as fully and entirely as the same would have been enjoyed by Chemische Werke Hansa, G. m. b. H., Maritz Bernhard Max Knoblauch, liquidator of Chemische Werke Hansa, G. m. b. H., and Hansa Werke, A. G., had no sale and assignment of said rights and interests been made.

In witness whereof, I have hereunto set my hand and seal of office this 2nd day of May, 1919.

FRANCIS P. GARVAN,
Alien Property Custodian.

STATE OF NEW YORK,
County of New York, ss:

On this 2nd day of May, 1919, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the act of Congress known as the "trading with the enemy act" approved October 6, 1917, and the amendments thereto and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

A. C. PARHAM,
Notary Public, Richmond County 354,
Certificate filed in New York Co., No. 58.

EXHIBIT H-3.

ASSIGNMENT.

Whereas I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did, by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me the following letters patent of the United States:

Patent No.	Date of issue	Title.
1231933	July 3, 1917	Compass for ships or the like.
1186339	June 6, 1916	Gyroscopic compass.
1186686	June 13, 1916	Gyroscopic compass.
1228061	May 29, 1917	Device for damping oscillations of a gyroscope pendulum.
794654	July 11, 1905	Gyroscope.
841612	Jan. 15, 1907	Suspension of rotating apparatus and magnetic compass.
877034	Jan. 21, 1908	Gyroscope.
973611	Oct. 25, 1910	Gyroscope.
1019582	Mar. 5, 1912	Gyroscope.
1092816	Apr. 14, 1914	Gyroscope compass.
1141099	June 1, 1915	Artificial horizon.
1173241	Feb. 29, 1916	Gyroscope apparatus.
1180365	Apr. 25, 1916	Method of gyroscope control.
1180815	Apr. 25, 1916	Gyroscope compass.

together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent, subject to the rights, if any, of the Sperry Gyroscope Company as stated in the said requirements or demands relating to said letters patent; and

Whereas, by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, made by Frank L. Polk under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I have determined that the letters patent herein enumerated relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter.

Now, therefore, in consideration of the sum of five hundred dollars ($500.00) paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents, do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the following letters patent of the United States:

Patent No.	Date of issue.	Title
1231933	July 3, 1917	Compass for ships or the like.
1186339	June 6, 1916	Gyroscopic compass.
1186686	June 13, 1916	Gyroscopic compass.
1228061	May 29, 1917	Device for damping oscillations of a gyroscope pendulum.
794654	July 11, 1905	Gyroscope.
841612	Jan. 15, 1907	Suspension of rotating apparatus and magnetic compass.
877034	Jan. 21, 1908	Gyroscope.
973611	Oct. 25, 1910	Gyroscope.
1019582	Mar. 5, 1912	Gyroscope.
1092816	Apr. 14, 1914	Gyroscope compass.
1141099	June 1, 1915	Artificial horizon.
1173241	Feb. 29, 1916	Gyroscope apparatus.
1180365	Apr. 25, 1916	Method of gyroscope control.
1180815	Apr. 25, 1916	Gyroscope compass.

together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent, subject to the rights, if any, of the Sperry Gyroscope Company.

In witness whereof, I have hereunto set my hand and seal of office this 6th day of May, 1919.

Witness:
J. A. LODER.
[SEAL.] FRANCIS P. GARVAN,
Alien Property Custodian.

DISTRICT OF COLUMBIA, *ss*:

On this 6th day of May, 1919, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

[SEAL.] ALVIN G. BELT,
Notary Public, District of Columbia.
Term expires January 4, 1921.

EXHIBIT H-4.

ASSIGNMENT.

Whereas I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did, by virtue of a requirement or demand issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me the following letters patent of the United States:

Patent No.	Date of issue	Title.
868397	Oct. 15, 1907	Transforming nozzle for obtaining kinetic energy from flowing gases and vapors.

together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent; and

Whereas, by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks, and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, made by

Frank L. Polk under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I have determined that letters patent number 868397, issued October 15, 1907, for transforming nozzle for obtaining kinetic energy from flowing gases and vapors relates to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter:

Now, therefore, in consideration of the sum of fifty dollars ($50.00) paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the following letters patent of the United States:

Patent No.	Date of issue.	Title.
868397	Oct. 15, 1907	Transforming nozzle for obtaining kinetic energy from flowing gases and vapors.

together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent.

In witness whereof I have hereunto set my hand and seal of office this 15th day of May, 1919.

[SEAL.] FRANCIS P. GARVAN,
Alien Property Custodian.

STATE OF NEW YORK,
County of New York, ss:

On this 15th day of May, 1919, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

A. C. PARHAM,
Notary Public, Richmond County.

Certificate filed in New York County, No. 58.

EXHIBIT H-5.

ASSIGNMENT.

Whereas I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders and proclamations issued in pursuance thereof, did, by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me the letters patent of the United States and applications for letters patent of the United States, enumerated in Schedule A hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent; and

Whereas by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks, and similar rights, determined to belong to or to be held for or on account of or on behalf of or for the benefit of persons determined to be enemies, not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto and by another certain order bearing date the 5th day of April, 1919, concerning the sale, transfer, and release of certain copyrights, applications for letters patent, and applications for the registration of trade-marks and copyrights determined to belong to or to be held for, by, on account of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President, within the purview of the "trading with the enemy act" and the amendments thereto, both made by Frank L. Polk, under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent, applications for letters patent, trade-marks and registrations thereof and copyrights to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I have determined that the letters patent and applications for letters patent enumerated in Schedule A, hereto attached, relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter:

Now, therefore, in consideration of the sum of thirty-six hundred and fifty dollars ($3,650.00) paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents, do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the letters patent of the United States and the applications for letters patent of the United States enumerated in Schedule A, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government for past infringement of said letters patent; and I do hereby request the Commissioner of Patents to issue any letters patent granted upon said applications for letters patent, enumerated in Schedule A, hereto attached, to the said the Chemical Foundation (Inc.), as the assignee of my entire right, title, and interest therein.

In witness whereof I have hereunto set my hand and seal of office this 17th day of June, 1919.

[SEAL.] FRANCIS P. GARVAN,
Alien Property Custodian.

Witness:
J. A. LODER.

DISTRICT OF COLUMBIA, *ss:*

On this 17th day of June, 1919, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

[SEAL.] ALVIN G. BELT,
Notary Public, District of Columbia.

Commission expires January, 1921.

EXHIBIT H-6.

ASSIGNMENT.

Whereas A. Mitchell Palmer, formerly Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders and proclamations issued in pursuance thereof, did during his incumbency of said office of Alien Property Custodian, by virtue of requirements or demands issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him certain letters patent of the United States and applications for letters patent of the United States which, together with other letters patent and applications for letters patent, are enumerated in Schedule A, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or Government for past infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent and applications for letters patent; and

Whereas I, Francis P. Garvan, was on the 4th day of March, 1919, duly appointed and thereafter duly qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer; and

Whereas I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, have seized and required to be conveyed to me certain letters patent of the United States and applications for letters patent of the United States, certain trade-marks and registrations thereof and the business and good will appurtenant thereto, and certain rights, interests, and benefits under agreements all of which are included in Schedules A, B, and C, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or Government for the past infringement of said letters patent, trade-marks, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent, applications for letters patent, trade-marks and registrations thereof, and rights, interests, and benefits; and

Whereas by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks, and similar rights, determined to belong to or to be held for or on account of or on behalf of or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto and by another certain order bearing date the 5th day of April, 1919, concerning the sale, transfer, and release of certain applications for letters patent and applications for the registration of trade-marks determined to belong to or to be held for, by, on account of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, both made by Frank L. Polk, under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent, applications for letters patent, trademarks and registrations thereof, and rights, interests, and benefits under agreements to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I have determined that the letters patent of the United States, applications for letters patent of the United States, trade-marks, and registrations thereof, and rights, interests, and benefits under agreements enumerated in Schedules A, B, and C, hereto annexed, relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter.

Now, therefore, in consideration of the sum of four hundred and fifty dollars ($450.00), paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the whole right, title, and interest acquired by me and by said A. Mitchell Palmer, each as said Alien Property Custodian as aforesaid in and to:

1. Each of the letters patent of the United States and applications for letters patent of the United States enumerated in Schedule A, hereto annexed, together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said letters patent of the United States against every person, firm, corporation, or government except the Government of the United States of America.

2. Each of the trade-marks and the registrations thereof enumerated in Schedule B, hereto annexed and the business and good will appurtenant thereto, together with all claims and demands for profits and damages recoverable at law or in equity for the past infringements of said trade-marks against every person, firm, corporation, or government except the Government of the United States of America.

3. All of the rights, interests, and benefits under the agreements enumerated in Schedule C, hereto annexed.

All as more specifically described and set forth in the requirements or demands relating to said letters patent of the United States, applications for letters patent of the United States, trade-marks and registrations thereof, and rights, interests, and benefits under agreements issued by said A. Mitchell Palmer, Alien Property Custodian, or by me as Alien Property Custodian, without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws of the said the Chemical Foundation (Inc.), or otherwise and subject only to the provisions of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or of friendly nations as set forth in the requirements or demands for certain letters patent of the United States, applications for letters patent, trade-marks and registrations thereof, and rights, interests, and benefits under agreements.

I, as Alien Property Custodian as aforesaid, do hereby request the Commissioner of Patents to issue any letters patent granted upon any of the applications for letters patent enumerated in Schedule A, hereto attached, to the Chemical Foundation (Inc.), as the assignee of my entire right, title, and interest therein.

In witness whereof, I have hereunto set my hand and seal of office this 21st day of June, 1919.

[SEAL.] FRANCIS P. GARVAN.

Witness:
J. A. LODER.

CITY OF WASHINGTON,
District of Columbia, ss:

On this 21st day of June, 1919, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

[SEAL.] ODEN B. GRAY,
Notary Public.

My commission expires Oct. 13, 1920.

EXHIBIT H-7.

ASSIGNMENT.

Whereas I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders and proclamations issued in pursuance thereof, did, by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me the letters patent of the United States enumerated in Schedule A, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, or corporation, or government for past infringement thereof; and

Whereas by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks, and similar rights, determined to belong to or to be held for or on account of or on behalf of or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, and by another certain order bearing date the 5th day of April, 1919, concerning the sale, transfer, and release of certain copyrights, applications for letters patent, and applications for the registration of trade-marks and copyrights determined to belong to or to be held for, by, on account of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, both made by Frank L. Polk, under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent, applications for letters patent, trade-marks, and registrations thereof and copyrights to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I have determined that the letters patent enumerated in Schedule A, hereto attached, relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter:

Now, therefore, in consideration of the sum of ten hundred and fifty dollars ($1,050.00) paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents, do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the letters patent of the United States enumerated in Schedule A, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement thereof.

In witness whereof, I have hereunto set my hand and seal of office this 17th day of October, 1919.

[SEAL.] FRANCIS P. GARVAN,
Alien Property Custodian

Attest:
M. SCOTT HILL.

DISTRICT OF COLUMBIA, *ss:*

On this 27th day of October, 1919, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

ALVIN G. BELT,
Notary Public, District of Columbia.

Commission expires January, 1921.

EXHIBIT H-8.

ASSIGNMENT.

Whereas I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders and proclamations issued in pursuance thereof, did, by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me the applications for letters patent of the United States enumerated in Schedule A, hereto attached, together with every right, title, and interest with respect thereto; and

Whereas by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act," and the amendments thereto and by another certain order bearing date the 5th day of April, 1919, concerning the sale, transfer, and release of certain copyrights, applications for letters patent, and applications for the registration of trade-marks and copyrights determined to belong to or to be held for, by, on account of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, both made by Frank L. Polk, under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent, applications for letters patent, trade-marks and registrations thereof and copyrights to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I have determined that the applications for letters patent of the United States enumerated in Schedule A, hereto attached, relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter:

Now therefore, in consideration of the sum of eleven hundred dollars ($1,100) paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents, do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the applications for letters patent of the United States enumerated in Schedule A, hereto attached, together with every right, title, and interest with respect thereto; and I hereby request the Commissioner of Patents to issue any letters patent granted upon any of the applications for letters patent enumerated in Schedule A, hereto attached, to the Chemical Foundation (Inc.)

as the assignee of my entire right, title, and interest therein.

In witness whereof, I have hereunto set my hand and seal of office this 9th day of December, 1919.

[SEAL.] FRANCIS P. GARVAN,
Alien Property Custodian.

Attest:
M. SCOTT-HILL.

CITY OF WASHINGTON,
District of Columbia, ss:

On this 12th day of December, 1919, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

[SEAL.] ODEN B. GRAY,
Notary Public.

My commission expires Oct. 12, 1920.

EXHIBIT H-9.

ASSIGNMENT.

Whereas A. Mitchell Palmer, formerly Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did during his incumbency of said office of Alien Property Custodian by virtue of requirements or demands issued under his hand and seal of office, seize and required to be conveyed to him certain choses in action and rights, interests, and benefits under agreements, enumerated in Schedule A hereto attached, together with every right, title, and interest with respect thereto, subject to the rights of citizens of the United States or of friendly nations as stated in certain requirements and demands relating to said choses in action and rights, interests, and benefits under agreement; and

Whereas I, Francis P. Garvan, was on the 4th day of March, 1919, duly appointed and thereafter duly qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer; and

Whereas by a certain order bearing date the 26th day of February, 1919, and of another order bearing date the 5th day of April, 1919, both made by Frank L. Polk under authority of Executive order of December 3, 1918, and by a certain Executive order bearing date the 13th day of February, 1920, I am empowered to sell such choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description to the Chemical Foundation (Inc.), a corporation organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I have determined that the choses in action and rights, interests, and benefits under agreements enumerated in Schedule A hereto annexed relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I desire to ratify and confirm certain assignments of said choses in action and rights, interests, and benefits under agreements heretofore made by me on the 10th day of April, 1919, and on the 21st day of June, 1919;

Now, therefore, in consideration of the sum of two hundred and fifty thousand dollars ($250,000) heretofore paid by the said the Chemical Foundation (Inc.), upon the execution and delivery of the said prior assignment of April 10th, 1919, and the further sum of four hundred and fifty dollars ($450) heretofore paid by the said the Chemical Foundation (Inc.), upon execution and delivery of the said prior assignment of June 21st, 1919, receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian, as aforesaid, by these presents do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the whole right, title, and interest acquired by the said A. Mitchell Palmer as said Alien Property Custodian as aforesaid, in and to the choses in action and rights, interests, and benefits under agreements enumerated in Schedule A hereto annexed, all as more fully set forth in the requirements or demands relating to said choses in action and rights, interests, and benefits under agreements issued by said A. Mitchell Palmer as Alien Property Custodian, subject to the provisions of a certain release to the United States of America bearing date the 10th day of April, 1919, and to the rights of citizens of the United States or of friendly nations as set forth in the requirements or demands relating to certain of said choses in action and rights, interests, and benefits under agreements; and I do hereby ratify and confirm said prior assignments of said choses in action and rights, interests, and benefits under agreements made by me as Alien Property Custodian as aforesaid, the 10th day of April, 1919, and the 21st day of June, 1919.

In witness whereof I have hereunto set my hand and seal of office this 26th day of February, 1920.

FRANCIS P. GARVAN,
Alien Property Custodian.

STATE OF NEW YORK,
County of New York, ss:

On this 26th day of February, 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

A. C. PARHAM,
Notary Public, Richmond County.

Certificate filed in New York County.

EXHIBIT H-10.

ASSIGNMENT.

Whereas I, Francis P. Garvan, as Alien Property Custodian, by virtue of requirements or demands issued under my hand and seal, have seized and required to be conveyed to me certain choses in action and rights, interests, and benefits under agreements enumerated in Schedule A, hereto attached, together with every right, title, and interest with respect thereto, subject to the rights of citizens of the United States or of friendly nations as stated in certain requirements and demands relating to said choses in action and rights, interests, and benefits under agreements; and

Whereas, by a certain order bearing date the 26th day of February, 1919, and of another order bearing date the 5th day of April, 1919, both made by Frank L. Polk under authority of Executive order of December 3, 1918, and by a certain Executive order bearing date the 13th day of February, 1920, I am empowered to sell such choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description to the Chemical Foundation (Inc.), a corporation organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.) as expressed and defined in its charter; and

Whereas, I have determined that the choses in action and rights, interests, and benefits under agreements enumerated in Schedule A, hereto annexed, relate to the objects and purposes of the said the Chemical Foundation (Inc.) as expressed and defined in its charter;

Now, therefore, in consideration of the sum of three hundred dollars ($300.00) paid by the said the Chemical Foundation (Inc.), upon the execution and delivery of these presents, receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents do sell, assign and transfer and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the whole right, title, and interest acquired by me as Alien Property Custodian as aforesaid, in and to the choses in action and rights, interests, and benefits under agreements enumerated in Schedule A, hereto annexed, all as more fully set forth in requirements and demands relating to said choses in action and rights, interests, and benefits under agreements issued by me as Alien Property Custodian, subject, however, to the rights of citizens of the United States or friendly nations, as set forth in the requirements or demands relating to certain of said choses in action and rights, interests, and benefits under agreements.

In witness whereof I hereunto set my hand and seal of office this 26th day of February, 1920.

FRANCIS P. GARVAN,
Alien Property Custodian.

DISTRICT OF COLUMBIA:

On this 26th day of February, 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act,'' approved October 6, 1917, and the amendments thereto and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

Alvin G. Belt,
Notary Public, District of Columbia.
Commission expires January, 1921.

EXHIBIT H-11.

ASSIGNMENT.

Whereas I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did, by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me certain letters patent of the United States and certain trade-marks and registrations thereof and the business and good will appurtenant thereto, enumerated in Schedules A and B, respectively, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent and trade-marks; and

Whereas, by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks, and similar rights determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, made by Frank L. Polk under authority of Executive order of

December 3, 1918, I am empowered to sell such letters patent and trade-marks and registrations thereof to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I have determined that the letters patent and trade-marks enumerated in Schedules A and B, respectively, hereto attached, relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter—

Now, therefore, in consideration of the sum of twenty-three hundred dollars ($2,300.00) paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the letters patent of the United States and trade-marks enumerated in Schedules A and B, respectively, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent and trade-marks, subject, however, to the rights of citizens of the United States or friendly nations, as set forth in the requirements or demands relating to certain of said letters patent and trade-marks.

In witness whereof I have hereunto set my hand and seal of office this 9th day of March, 1920.

[SEAL.] FRANCIS P. GARVAN,
Alien Property Custodian.

DISTRICT OF COLUMBIA, *ss:*

On this 9th day of March, 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

ALVIN G. BELT,
Notary Public, District of Columbia.
Commission expires Jan., 1921.

EXHIBIT H-12.

ASSIGNMENT.

Whereas, I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did, by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me certain letters patent of the United States and a certain application for letters patent of the United States, enumerated in Schedules A and B, respectively, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent and application for letters patent; and

Whereas, by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, and by another certain order bearing date the 5th day of April, 1919, concerning the sale, transfer, and release of certain copyrights, applications for letters patent, and applications for the registration of trade-marks and copyrights determined to belong to or to be held for, by, on account of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, both made by Frank L. Polk, under authority of Executive order of December 3, 1918.

I am empowered to sell such letters patent and applications for letters patent, trade-marks, and registrations thereof and copyrights to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas, I have determined that the letters patent and application for letters patent enumerated in Schedules A and B, respectively, hereto attached relate to the objects and purposes of the said the Chemical Foundation (Inc.) as expressed and defined in its charter.

Now, therefore, in consideration of the sum of seventeen hundred and fifty dollars ($1,750.00) paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents, do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the letters patent of the United States and the application for letters patent of the

United States, enumerated in Schedules A and B, respectively, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent and application for letters patent; and I do hereby request the Commissioner of Patents to issue any letters patent granted upon said application for letters patent, enumerated in Schedule B hereto attached, to the said the Chemical Foundation (Inc.), as the assignee of my entire right, title, and interest therein.

In witness whereof, I have hereunto set my hand and seal of office this 4th day of May, 1920.

[SEAL.] FRANCIS P. GARVAN,
Alien Property Custodian.

Witness:
M. SCOTT HILL.

DISTRICT OF COLUMBIA, *ss:*

On this 7th day of May, 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

[SEAL.] ALVIN G. BELT,
Notary Public, District of Columbia.

Commission expires January, 1921.

EXHIBIT H-13.

ASSIGNMENT.

Whereas I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did, by certain assignments made, executed, and delivered by me as Alien Property Custodian, as aforesaid, convey to the Chemical Foundation (Inc.), a corporation organized and existing under and by virtue of the laws of the State of Delaware, certain letters patent of the United States theretofore by me as Alien Property Custodian seized and acquired to be conveyed to me; and

Whereas it was intended to seize and to convey to the said the Chemical Foundation (Inc.), by said assignments, all letters patent of the United States belonging to, or held for, by, on account of, or on behalf of, or for the benefit of persons determined to be enemies or allies of enemies as defined by the said "trading with the enemy act," which relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter and not otherwise disposed of by me as Alien Property Custodian, saving only the rights of citizens of the United States or friendly nations, as stated in certain of the requirements or demands relating to said letters patent; and

Whereas I, as Alien Property Custodian, as aforesaid, did, by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me certain letters patent of the United States enumerated in Schedule A, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recovable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations, as stated in certain of the requirements or demands relating to said letters patent; and

Whereas by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks, and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, made by Frank L. Polk under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent to the said the Chemical Foundation (Inc.) as I determine relate to the objects and purposes of the said the Chemical Foundations (Inc.), as expressed and defined in its charter; and

Whereas I have determined that the letters patent enumerated in Schedule A, hereto attached, relate to the objects and purposes of the said the Chemical Foundation (Inc.) as expressed and defined in its charter:

Now, therefore, in consideration of the sum of five thousand ($5,000.00) dollars and of the several sums paid upon the execution and delivery of the said previous assignments by the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, the said Francis P. Garvan, as Alien Property Custodian, as aforesaid, by these presents, do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the letters patent of the United States enumerated in Schedule A attached hereto, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent except such infringements as arose from the use or manufacture by or for the United States of any invention described in and covered by any of said patents, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent.

In witness whereof, I have hereunto set my hand and seal of office this 15th day of May, 1920.

FRANCIS P. GARVAN,
Alien Property Custodian.

Witness:
SOPHIE HILLMAN.

DISTRICT OF COLUMBIA, *ss:*

On this 15th day of May, 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

ALVIN G. BELT,
Notary Public, District of Columbia.

Term expires January 4, 1921.

EXHIBIT H-14.

ASSIGNMENT.

Whereas I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did, by virtue of an instrument in writing bearing my hand and seal of office and dated June 17th, 1919, for a valuable consideration, sell, assign, transfer, and set over to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, every right, title, and interest in and to an application for letters patent of the United States identified as follows: Date of filing, February 12, 1919; title, improvements in trimethyl acetyl salicylic acid compound. (Filed by C. P. Goepel without $15.00 fee.)

And whereas I did in said instrument in writing request the Commissioner of Patents to issue any letters patent granted upon said application to the said the Chemical Foundation (Inc.), as the assignee of my entire right, title, and interest therein, and,

Whereas said application matured into letters patent of the United States identified as follows:

No.	Date of issue.	Title.
1338297	Apr. 27, 1920	Trimethyl-acetyl-salicylic-acid compound.

And whereas said letters patent of the United States were erroneously issued to me as Alien Property Custodian of the United States; and

Whereas I desire to correct said erroneous issuance of said letters patent of the United States:

Now, therefore, in consideration of the premises and of the valuable consideration already paid to me as Alien Property Custodian of the United States by the said the Chemical Foundation (Inc.), I, the said Francis P. Garvan, as Alien Property Custodian, as aforesaid, by these presents do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, my entire right, title, and interest in and to said letters patent of the United States.

In witness whereof I have hereunto set my hand and seal of office this 20th day of July, 1920.

[SEAL.] FRANCIS P. GARVAN,
Alien Property Custodian.

Attest:
M. SCOTT-HILL.

DISTRICT OF COLUMBIA, *ss:*

On this 20th day of July, 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the trading with the enemy act, approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

[SEAL.] ALVIN G. BELT,
Notary Public, D. C.

EXHIBIT H-15.

ASSIGNMENT.

Whereas I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did, by certain assignments made, executed, and delivered by me as Alien Property Custodian, as aforesaid, convey to the Chemical Foundation (Incorporated), a corporation organized and existing under and by virtue of the laws of the State of Delaware, certain letters patent of the United States theretofore by me as Alien Property Custodian seized and required to be conveyed to me; and

Whereas it was intended to seize and to convey to the said the Chemical Foundation (Incorporated) by said assignments all letters patent of the United States belonging to, or held for, by, on account of, or on behalf of, or for the benefit of persons determined to be enemies or allies of enemies, as defined by the said "trading with the enemy act," which relate to the objects and purposes of the said the Chemical Foundation (Incorporated), as expressed and defined in its charter and not otherwise disposed of by me as Alien Property Custodian, saving only the rights of citizens of the United States or of friendly nations, as stated in certain of the requirements or demands relating to said letters patent; and

Whereas I, as Alien Property Custodian, as aforesaid, did by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office seize and require to be conveyed to me certain letters patent of the United States enumerated in Schedule A, hereto attached, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations, as stated in certain of the requirements or demands relating to said letters patent; and

Whereas by certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trademarks, and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, made by Frank L. Polk under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent to the said the Chemical Foundation (Incorporated) as I determine relate to the objects and purposes of the said the Chemical Foundation (Incorporated) as expressed and defined in its charter; and

Whereas I have determined that the letters patent enumerated in Schedule A, hereto attached, relate to the objects and purposes of the said the Chemical Foundation (Incorporated) as expressed and defined in its charter; and

Whereas I desire to confirm an assignment of said letters patent enumerated in Schedule A, hereto attached, to the Chemical Foundation (Incorporated), made May 15, 1920, which assignment was not recorded within the statutory period;

Now, therefore, in consideration of the sum of five thousand ($5,000.00) dollars and of the several sums paid upon the execution and delivery of the said previous assignments by the Chemical Foundation (Incorporated), receipt whereof is hereby acknowledged, I, the said Francis P. Garvan, as Alien Property Custodian, as aforesaid, by these presents, do sell, assign, transfer, and set over unto the said the Chemical Foundation (Incorporated), its successors and assigns, the letters patent of the United States enumerated in Schedule A, attached hereto, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent, except such infringements as arose from the use or manufacture by or for the United States of any invention described in and covered by any of said patents, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent.

In witness whereof, I have hereunto set my hand and seal of office this 21st day of Dec., 1920.

Francis P. Garvan.

(Signed) J. R. Zimmerman.

District of Columbia, *ss:*

On this 21st day of Dec., 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the act of Congress, known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

[seal.] (Signed) Alvin G. Belt,
Notary Public, D. C.

EXHIBIT H-16.

ASSIGNMENT.

Whereas I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did, by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me certain letters patent of the United States as follows:

Patent No.	Inventor.	Date of issue.	Title.
1057174	Rudolph Schilling	Mar. 25, 1913	Apparatus for separating floating matter from effluents.
1192569	Rudolph Schilling	July 25, 1916	Apparatus for clarifying waste waters.

together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent; and

Whereas by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, trade-marks, and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act" and the amendments thereto, made by Frank L. Polk under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent, and trade-marks and registrations thereof, to the Chemical Foundation (Incorporated), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Incorporated), as expressed and defined in its charter; and

Whereas I have determined that the said letters patent above mentioned relate to the objects and purposes of the said the Chemical Foundation (Incorporated), as expressed and defined in its charter; and

Whereas, I desire to confirm an assignment of said letters patent above mentioned to the Chemical Foundation (Incorporated) made March 9, 1920, which assignment was not recorded within the statutory period:

Now, therefore, in consideration of the sum of one hundred dollars ($100.00) paid by the said the Chemical Foundation (Incorporated), receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents do sell, assign, transfer, and set over unto the said the Chemical Foundation (Incorporated), its successors and assigns, the said letters patent of the United States as follows:

Patent No.	Inventor.	Date of issue.	Title.
1057174	Rudolph Schilling..	Mar. 25, 1913	Apparatus for separating floating matter from effluents.
1192560	Rudolph Schilling..	July 25, 1916	Apparatus for clarifying waste waters.

together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent.

In witness whereof, I have hereunto set my hand and seal of office this 21st day of Dec., 1920.

(Signed.) FRANCIS P. GARVAN,
Alien Property Custodian.
(Signed.) J. R. ZIMMERMAN.

DISTRICT OF COLUMBIA, *ss:*

On this 21st day of Dec., 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

[SEAL.] (Signed) ALVIN G. BELT,
Notary Public, D. C.

EXHIBIT H-17.

ASSIGNMENT.

Whereas A. Mitchell Palmer, formerly Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did during his incumbency of said office of Alien Property Custodian by virtue of requirements or demands issued under his hand and seal of office, seize and require to be conveyed to him certain choses in action and rights, interests, and benefits under agreements, enumerated in Schedule A hereto attached, together with every right, title, and interest with respect thereto, subject to the rights of citizens of the United States or of friendly nations as stated in certain requirements and demands relating to said choses in action and rights, interests, and benefits under agreements; and

Whereas I, Francis P. Garvan, was on the 4th day of March, 1919, duly appointed and thereafter duly qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer; and

Whereas by certain order bearing date the 26th day of February, 1919, and of another order bearing date the 5th day of April, 1919, both made by Frank L. Polk under authority of Executive order of December 3, 1918, and by a certain Executive order bearing date the 13th day of February, 1920, I am empowered to sell such choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description to the Chemical Foundation (Incorporated), a corporation organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Incorporated), as expressed and defined in its charter; and

Whereas I have determined that the choses in action and rights, interests, and benefits under agreements enumerated in Schedule A, hereto annexed, relate to the objects and purposes of the said the Chemical Foundation (Incorporated), as expressed and defined in its charter; and

Whereas I desire to ratify and confirm certain assignments of said choses in action and rights, interests, and benefits under agreements heretofore made by me on the 10th day of April, 1919, and on the 21st day of June, 1919; and

Whereas I desire to confirm a ratifying and confirming assignment of the said choses in action and rights, interests, and benefits under agreements enumerated in Schedule A, hereto annexed, to the Chemical Foundation (Incorporated), made on the 26th day of February, 1920, which ratifying and confirming assignment was not recorded within the statutory period:

Now, therefore, in consideration of the sum of two hundred and fifty thousand dollars ($250,000) heretofore paid by the said The Chemical Foundation (Incorporated), upon the execution and delivery of the said prior assignment of April 10th, 1919, and the further sum of four hundred and fifty dollars ($450) heretofore paid by the said the Chemical Foundation (Incorporated) upon execution and delivery of the said prior assignment of June 21st, 1919, receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian, as aforesaid, by these presents do sell, assign, transfer, and set over unto the said The Chemical Foundation (Incorporated), its successors and assigns, the whole right, title, and interest acquired by the said A. Mitchell Palmer as said Alien Property Custodian, as aforesaid, in and to the choses in action and rights, interests, and benefits under agreements enumerated in Schedule A hereto annexed, all as more fully set forth in the requirements or demands relating to said choses in action and rights, interests, and benefits under agreements issued by said A. Mitchell Palmer as Alien Property Custodian, subject to the provisions of a certain release to the United States of America bearing date the 10th day of April, 1919, and to the rights of citizens of the United States or of friendly nations as set forth in the requirements or demands relating to certain of said choses in action and rights, interests, and benefits under agreements; and I do hereby ratify and confirm said prior assignments of said choses in action and rights, interests, and benefits under agreements made by me as Alien Property Custodian, as aforesaid, the 10th day of April, 1919, and the 21st day of June, 1919.

In witness whereof, I have hereunto set my hand and seal of office this 21st day of Dec., 1920.

(Signed) Francis P. Garvan,
Alien Property Custodian.

(Signed) J. R. Zimmerman.

District of Columbia, *ss:*

On this 21st day of Dec., 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian, as aforesaid.

[seal.] (Signed) Alvin G. Belt,
Notary Public, D. C.

EXHIBIT H-18.

ASSIGNMENT.

Whereas I, Francis P. Garvan, as Alien Property Custodian, by virtue of requirements or demands issued under my hand and seal, have seized and required to be conveyed to me certain choses in action and rights, interests, and benefits under agreements enumerated in Schedule A, hereto attached, together with every right, title, and interest with respect thereto, subject to the rights of citizens of the United States or of friendly nations as stated in certain requirements and demands relating to said choses in action and rights, interests, and benefits under agreements; and

Whereas by a certain order bearing date the 26th day of February, 1919, and of another order bearing date the 5th day of April, 1919, both made by Frank L. Polk, under authority of Executive order of December 3, 1918, and by a certain Executive order bearing date the 13th day of February, 1920, I am empowered to sell such choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description to the Chemical Foundation (Incorporated), a corporation organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Incorporated) as expressed and defined in its charter; and

Whereas I have determined that the choses in action and rights, interests, and benefits under agreements enumerated in Schedule A, hereto annexed, relate to the objects and purposes of the said the Chemical Foundation (Incorporated) as expressed and defined in its charter; and

Whereas I desire to confirm an assignment of the choses in action and rights, interests, and benefits under agreements enumerated in Schedule A, hereto annexed, to the Chemical Foundation (Incorporated), made February 26, 1920, which assignment was not recorded within the statutory period:

Now, thereof, in consideration of the sum of three hundred dollars ($300.00) paid by the said the Chemical Foundation (Incorporated), upon the execution and delivery of these presents, receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents do sell, assign, and transfer and set over unto the said the Chemical Foundation (Incorporated), its successors and assigns, the whole right, title, and interest acquired by me as Alien Property Custodian as aforesaid in and to the choses in action and rights, interests, and benefits under agreements enumerated in Schedule A, hereto annexed, all as more fully set forth in requirements and demands relating to said choses in action and rights, interests, and benefits under agreements issued by me as Alien Property Custodian, subject, however, to the rights of citizens of the United States or friendly nations, as set forth in the requirements or demands relating to certain of said choses in action and rights, interests, and benefits under agreements.

In witness whereof I hereunto set my hand and seal of office this 21st day of Dec., 1920.

(Signed.) FRANCIS P. GARVAN,
Alien Property Custodian.

(Signed.) J. R. ZIMMERMAN.

DISTRICT OF COLUMBIA, *ss:*

On this 21st day of Dec., 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

[SEAL.] (Signed) ALVIN G. BELT,
Notary Public, D. C.

EXHIBIT H-19.

ASSIGNMENT.

Whereas A. Mitchell Palmer, formerly Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders and proclamations issued in pursuance thereof, did during his incumbency of said office of Alien Property Custodian, by virtue of certain requirements or demands issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him certain letters patent of the United States, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations as stated in the requirements or demands relating to said letters patent; and

Whereas I, Francis P. Garvan, was, on the 4th day of March, 1919, duly appointed and thereafter duly qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer; and

Whereas I, Francis P. Garvan, as Alien Property Custodian as aforesaid, likewise acting under the provisions of the act of Congress known as the "trading with the enemy act," and the amendments thereto, and the Executive orders and proclamations issued in pursuance thereof, did by virtue of certain requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me certain letters patent of the United States, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for the past infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations as stated in the requirements or demands relating to said letters patent; and

Whereas by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of letters patent, trade-marks, and rights under letters patent and trade-marks and similar rights, determined to belong to or to be held for, by, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act," and the amendments thereto, and by another certain order bearing date the 5th day of April, 1919, concerning the sale, transfer, and release of copyrights, the certificates of registration thereof, and the publications upon which said registrations were granted; applications for letters patent and for the registration of trade-marks and copyrights and all rights thereunder and similar rights determined to belong to or to be held for, by, or on account of, or on behalf of, or for the benefit of, persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act," and the amendments thereto, both made by Frank L. Polk under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent, trade-marks, and rights under letters patent and trade-marks; copyrights and the certificates of registration thereof and the publications upon which said registrations were granted; applications for letters patent and for the registration of trade-marks and copyrights and of rights thereunder, and similar rights, to the Chemical Foundation (Incorporated), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I from time to time shall determine relate to the objects and purposes of the said the Chemical Foundation (Incorporated), as expressed and defined in its charter; and

Whereas I have determined that the letters patent of the United States, enumerated in Schedule A, hereto attached and made part hereof, relate to the objects and purposes of the said the Chemical Foundation (Incorporated), as expressed and defined in its charter.

Now, therefore, in consideration of the sum of five thousand dollars ($5,000.00) paid by the said the Chemical Foundation (Incorporated), upon the execution and delivery of this assignment, the receipt whereof is hereby acknowledged, I, Francis P. Garvan, as Alien Property Custodian as aforesaid, by these presents do sell, assign, transfer, and set over unto the said the Chemical Foundation (Incorporated), its successors and assigns, the whole right, title, and interest acquired by me and by said A. Mitchell Palmer, each as said Alien Property Custodian as aforesaid, in and to each of the letters patent of the

United States enumerated in Schedule A, hereto attached and made part hereof, and as are more specifically described and set forth in the requirements and demands relating to said letters patent of the United States issued by said A. Mitchell Palmer, Alien Property Custodian, or by me as Alien Property Custodian.

Together with every right, title, and interest with respect thereto or in any way arising from or based or dependent upon the same, without any reservation or qualification whatsoever except as herein provided, and to the full extent to which I am or may become entitled to the same, including all claims and demands for profits and damages recoverable at law, or in equity from any person, firm, corporation, or government either for use or past infringement of said letters patent excepting, however, such use or infringements arising from the use or manufacture by or for the United States Government as represented by the Secretary of the Navy or any department of the United States Government, of any invention described in and covered by any of said letters patent, and subject to the terms and provisions of a certain license to the United States Government as represented by the Secretary of the Navy and his successor in office, bearing date the 20th day of December, 1920, and to the rights of citizens of the United States or of friendly nations as stated and set forth in the requirements and demands relating to said letters patent, so that the said the Chemical Foundation (Incorporated) shall stand in my place and stead in all respects as the owner of said letters patent and rights ancillary thereto or thereupon dependent.

In witness whereof, I have as Alien Property Custodian only hereunto set my hand and seal of office this 19th day of February, 1921.

FRANCIS P. GARVAN.

Witness:
F. A. LEVERING, JR.

CITY OF WASHINGTON,
District of Columbia, ss:

On this 19th day of February, 1921, before me personally came and appeared Francis P. Garvan, as Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders and proclamations issued in pursuance thereof, and he thereupon duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid and for the uses and purposes therein stated.

ALVIN G. BELT,
Notary Public, District of Columbia.
Commission expires Dec. 16, 1925.

EXHIBIT I.

Whereas I, Francis P. Garvan, as Alien Property Custodian, and my predecessor in the said office, acting under the authority conferred upon the Alien Property Custodian by the act of Congress known as "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders and proclamations issued in pursuance thereof, did seize, by certain seizure orders, certain letters patent, application therefor, copyrights, certificates of registration thereof, publications upon which such registrations were granted, trade-marks, the good will and business pertaining thereto, rights, interests, and benefits under agreements, and, together with the foregoing certain rights, claims, demands, interests, and choses in action, some of which were connected with or appurtenant to the same; and

Whereas by the said act of Congress and the amendments thereto, and by certain of said orders dated respectively February 26, 1919, and April 5, 1919, the Alien Property Custodian was authorized to sell to the Chemical Foundation (Inc.), a corporation organized and existing under and by virtue of the laws of the State of Delaware, certain of the said letters patent and other property above referred to; and

Whereas I, Francis P. Garvan, as Alien Property Custodian, pursuant to said authority vested in me, for valuable consideration and at such places and upon such terms and conditions as to myself, as Alien

Property Custodian, seemed proper, did sell to said the Chemical Foundation (Inc.), at private sale without public or other advertisement, certain of the said letters patent and other property, which letters patent and other property I, as Alien Property Custodian, from time to time determine to relate to the objects and purposes of said the Chemical Foundation (Inc.), as expressed and defined in its charter, and in effectuation of the said sales did execute and deliver to said the Chemical Foundation (Inc.) certain assignments in writing, in which assignments the patents, applications therefor, copyrights, and trade-marks assigned are enumerated, and which assignments are dated and recorded as follows:

(1) Assignment dated April 10, 1919, recorded as to patents, applications therefor, and trade-marks in the United States Patent Office on April 21, 1919, in liber Y 107, page 1 of Transfers of Patents, and recorded as to copyrights in the Library of Congress, Copyright Office, on April 15, 1919, in Copyright Office book 81, pages 181 to 186.

(2) Assignment dated May 2, 1919, recorded in the United States Patent Office on May 21, 1919, in liber J 107, page 152 of Transfers of Patents.

(3) Assignment dated May 6, 1919, recorded in the United States Patent Office on May 21, 1919, in liber A 107, page 229 of Transfers of Patents.

(4) Assignment dated May 15, 1919, recorded in the United States Patent Office on May 21, 1919, in liber X 107, page 188 of Transfers of Patents.

(5) Assignment dated June 17, 1919, recorded in the United States Patent Office on June 27, 1919, in liber L 107, page 242 of Transfers of Patents.

(6) Assignment dated June 21, 1919, recorded in the United States Patent Office on July 10, 1919, in liber H 107, page 259 of Transfers of Patents.

(7) Assignment dated October 17, 1919, recorded in the United States Patent Office on November 14, 1919, in liber P 108, page 441 of Transfers of Patents.

(8) Assignment dated December 9, 1919, recorded in the United States Patent Office on December 19, 1919, in liber Z 109, page 69 of Transfers of Patents.

(9) Assignment dated February 26, 1920, recorded in the United States Patent Office on December 21, 1920.

(10) Assignment dated February 26, 1920, recorded in the United States Patent Office on December 21, 1920.

(11) Assignment dated March 9, 1920, recorded in the United States Patent Office on March 11, 1920, in liber X 108, page 435 of Transfers of Patents.

(12) Assignment dated May 4, 1920, recorded in the United States Patent Office on May 20, 1920, in liber X 109, page 199 of Transfers of Patents.

(13) Assignment dated May 15, 1920, recorded in the United States Patent Office on November 1, 1920, in liber E 111, page 319 of Transfers of Patents.

(14) Assignment dated July 20, 1920, recorded in the United States Patent Office on July 27, 1920, in liber B 111, page 66 of Transfers of Patents.

(15) Assignment dated December 21, 1920, recorded in the United States Patent Office on December 21, 1920.

(16) Assignment dated December 21, 1920, recorded in the United States Patent Office on December 21, 1920.

(17) Assignment dated December 21, 1920, recorded in the United States Patent Office on December 21, 1920.

(18) Assignment dated December 21, 1920, recorded in the United States Patent Office on December 21, 1920.

(19) Assignment dated February 19, 1921, recorded in the United States Patent Office on February 23, 1921; and

Whereas it was the intention of myself as Alien Property Custodian and of said the Chemical Foundation (Inc.), in agreeing upon the said sales and in executing, delivering, and receiving the said assignments that the said assignments should assign and convey to said the Chemical Foundation (Inc.), not only the letters patent and other property specifically referred to in and assigned by the said assignments, but also with such exceptions as are specifically stated in said assignments, all rights, claims, demands, interests, and choses in action of every character and description acquired by the Alien Property Custodian by virtue of the seizures whereby the said letters patent and other property were seized; and

Whereas doubt has arisen as to whether the language of the said assignments is in fact and in law sufficient and effectual to carry out the true intent and purpose aforesaid of the said sales and to assign and convey to said the Chemical Foundation (Inc.), all of the said rights, claims, demands, interests, and choses in action acquired by the Alien Property Custodian as aforesaid; and

Whereas doubt has arisen as to the authority of the Alien Property Custodian to sell and convey to the said the Chemical Foundation (Inc.), certain of the said choses in action, rights, interests, benefits under agreements, and rights and claims, including rights to receive moneys by way of royalties or otherwise, as compensation for the use of patents, trade-marks, or trade-names; and

Whereas in one of the above-mentioned Executive orders, the same being dated February 13, 1920, among other things it is recited that it was the intention of the above-mentioned orders dated February 26, 1919, and April 5, 1919, respectively, to authorize the Alien Property Custodian to sell and convey thereunder, all choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description including rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, trade-marks, or trade-names, which the Alien Property Custodian may have seized under the provisions of the "trading with the enemy act" as amended, and which he had from time to time determined to relate to the object and purposes of said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas the Alien Property Custodian is authorized by said Executive order dated February 13, 1920, to sell at private sale, without public or other advertisement, to said the Chemical Foundation (Inc.), at such place and upon such terms and conditions as to the Alien Property Custodian may seem proper, all choses in action, rights, interests, and benefits under agreements and rights and claims of every charter and description which the Alien Property Custodian may seize or may have seized under the provisions of the "trading with the enemy act" and the amendments thereto, then or thereafter enacted and which he from time to time shall determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas the Alien Property Custodian is also authorized by said Executive order dated February

13, 1920, in the case of sales theretofore made by him of any property which he is authorized to sell by virtue of said Executive order dated February 13, 1920, but as to which his authority to sell the same under the said orders of February 26, 1919, and April 5, 1919, may be deemed doubtful to confirm and ratify the said sales by the execution and delivery of a suitable instrument of confirmation:

Now therefore, I, Francis P. Garvan, as Alien Property Custodian, by virtue of the authority conferred upon me by said "trading with the enemy act," as amended, and by the Executive orders, orders and proclamations issued in pursuance thereof, do hereby for the purpose of effectuating the true intent of the parties to said assignments, confirm and ratify the sale and assignment to said the Chemical Foundation (Inc.), of, and do hereby for valuable consideration heretofore received by me, sell, assign, transfer, and set over to said the Chemical Foundation (Inc.), all property, including (but not thereby limiting the generality of the foregoing) letters patent, rights under letters patent, applications for letters patent and rights thereunder, copyrights, rights under copyrights, certificates of registrations thereof, the publications upon which such registrations were granted, trade-marks, rights under trade-marks, together with the good will and business pertaining thereto, including all profits and damages recoverable at law or in equity for past infringement with respect to any and all of the foregoing, choses in action, rights, interests, and benefits under agreements, and rights and claims of every character and description with respect to all of the foregoing, seized by me as Alien Property Custodian, or by my predecessor in such office specifically referred to in and assigned by said assignments, and I do hereby confirm and ratify the sale and assignment of and do hereby sell, assign, transfer, and set over to said the Chemical Foundation (Inc.), all choses in action, rights, interests, and benefits under agreements, and rights and claims of every character and description growing out of and appurtenant to the ownership of said property, including (but not thereby limiting the generality of the foregoing) rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, copyrights, and trade-marks, and all right, title, and interest in and to the choses in action and the funds referred to in section 10, subsection (f) of the "trading with the enemy act," as amended, acquired by the Alien Property Custodian by virtue of the seizures by which there were seized patents, copyrights, or trade-marks, under which a license had theretofore been granted in accordance with the provisions of section 10, subsection (c) of said act, as amended, all of which property I, as Alien Property Custodian, from time to time have determined and do hereby determine to relate to the objects and purposes of said the Chemical Foundation (Inc.), as expressed and defined in its charter; the intent and purpose of this instrument being to vest in said the Chemical Foundation (Inc.), every right, title, interest, claim, and demand, save such as are specifically excepted in and by the said assignments, acquired by the Alien Property Custodian by virtue of the seizures whereby the said property was seized.

In witness whereof, I have hereunto set my hand and seal of office this 1st day of March, 1921.

[SEAL.] FRANCIS P. GARVAN,
Alien Property Custodian.

DISTRICT OF COLUMBIA, *ss:*

On this 1st day of March, 1921, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

[SEAL.] ODEN B. GRAY,
Notary Public.

My commission expires October 4, 1925.

EXHIBIT J.

ASSIGNMENT.

Whereas A. Mitchell Palmer was on the twenty-second day of October, 1917, duly appointed and thereafter duly qualified as Alien Property Custodian, and Francis P. Garvan was on the fourth day of March, 1919, duly appointed and thereafter duly qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer, and either the said A. Mitchell Palmer or the said Francis P. Garvan, acting under the provisions of the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, did during his incumbency of said office of Alien Property Custodian by virtue of requirements or demands issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him certain letters patent of the United States and applications for letters patent of the United States, which letters patent and applications for letters patent are enumerated in Schedules A and B, hereto attached and made part hereof, together with every right, title, and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent and applications for letters patent; and

Whereas I, Thomas W. Miller, was on the twelfth day of March, 1921, duly appointed and thereafter, to wit, on the 16th day of March, 1921, duly qualified as Alien Property Custodian in succession of the said Francis P. Garvan; and

Whereas by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer, and release of certain rights under letters patent, determined to belong to or to be held for or on account of or on behalf of or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act," and the amendments thereto, and by another certain order bearing date the 5th day of April, 1919, concerning the sale, transfer, and release of certain applications for letters patent determined to belong to or to be held for, by, on account of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "trading with the enemy act," and the amendments thereto, both made by Frank L. Polk, under authority of Executive order of December 3, 1918, I am empowered to sell such letters patent, applications for letters patent, and rights, interests, and benefits under agreements to the Chemical Foundation (Inc.), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter; and

Whereas I have determined that the letters patent of the United States and the applications for letters patent of the United States enumerated in Schedules A and B, hereto attached and made a part hereof, relate to the objects and purposes of the said the Chemical Foundation (Inc.), as expressed and defined in its charter.

Now, therefore, in consideration of the sum of five hundred and fifty dollars ($550.00) paid by the said the Chemical Foundation (Inc.), receipt whereof is hereby acknowledged, I, Thomas W. Miller, as Alien Property Custodian, as aforesaid, by these presents do sell, assign, transfer, and set over unto the said the Chemical Foundation (Inc.), its successors and assigns, the whole right, title, and interest acquired by me, or by said A. Mitchell Palmer, or by said Francis P. Garvan, each as said Alien Property Custodian as aforesaid, in and to

Each of the letters patent of the United States and each of the applications for letters patent of the United States enumerated in Schedules A and B, hereto attached, and as are more specifically described and set forth in the requirements and demands relating to said letters patent of the United States and said applications for letters patent of the United States issued by said A. Mitchell Palmer, or by said Francis P. Garvan, as said Alien Property Custodian as aforesaid.

Together with every right, title, and interest with respect thereto or in any way arising from or based or dependent upon the same, without any reservation or qualification whatsoever, except as herein provided, and to the full extent to which I am or may become entitled to the same, including all claims and demands for profits and damages recoverable at law, or in equity from any person, firm, corporation, or Government either for use or past infringement of said letters patent and said applications for letters patent, excepting, however, such use or infringements arising from the use or manufacture by or for the United States Government as represented by the Secretary of the Navy or any Department of the United States Government, of any invention described in and covered by any of said letters patent and said applications for letters patent and subject to the terms and provisions of a certain license to the United States Government as represented by the Secretary of the Navy and his successor in office, bearing date the 20th day of December, 1920, and to the rights of citizens of the United States or of friendly nations, as stated and set forth in the requirements and demands relating to said letters patent and to said applications for letters patent, so that the said the Chemical Foundation (Incorporated) shall stand in my place and stead in all respects as the owner of said letters patent and said applications for letters patent and rights ancillary thereto or thereupon dependent; and I do hereby request the Commissioner of Patents to issue any letters patent granted upon said application for letters patent, enumerated in Schedule B, thereto attached, to the said the Chemical Foundation (Inc.), as the assignee of my entire right, title, and interest therein.

In witness whereof I have hereunto set my hand and seal of office this 27th day of April, 1921.

[SEAL.] THOMAS W. MILLER,
Alien Property Custodian.

Witness:
GEO. H. WILSON.

District of Columbia, *ss:*

On this 27th day of April, 1921, before me came Thomas W. Miller, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress, known as the "trading with the enemy act," approved October 6, 1917, and the amendments thereto, and the Executive orders and proclamations issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

[seal.] Alvin G. Belt,
Notary Public, District of Columbia.

My commission expires Dec. 18, 1925.

SCHEDULE A

Inventor.	Patent No.	Date of issue.	Title.
Carl A. Hirth	909300	Jan. 12, 1909	Feeding device for machine tools and the like.
Carl A. Hirth	1048073	Dec. 24, 1912	Gage.
Carl A. Hirth	1049860	Jan. 7, 1913	Micrometer gage.
Paulin Karl Kunze	1059545	Apr. 22, 1913	Device for obtaining intimate contact with, engaging, or clamping bodies of any shape.
Johannes Loose	1150441	Aug. 17, 1915	Flexible coupling.
Carl A. Hirth	1162720	Nov. 30, 1915	Measuring tool.
Johannes Loose	1201318	Oct. 17, 1916	Grinding machine.
Carl A. Hirth	1244090	Oct. 23, 1917	Machine bearing.
Otto Graul Gottfried Hanschke Franz Webel	1298929	Apr. 1, 1919	Producing isoprene.

SCHEDULE B

Inventor.	Serial No.	Filing date.	Title.
Carl A. Hirth	636030	July 29, 1911	Ball bearings.
Carl A. Hirth	748875	Feb. 17, 1913	Gage.

EXHIBIT K.

ASSIGNMENT.

Whereas heretofore Francis P. Garvan as Alien Property Custodian, acting under and by virtue of the authority conferred upon the Alien Property Custodian, by the act of Congress known as the "trading with the enemy act," approved October 6, 1917, and amendments thereto, and the Executive orders, orders, and proclamations issued in pursuance thereof, did, by various instruments of assignment duly executed, delivered, and recorded in the office of the Commissioner of Patents, for valuable consideration actually paid by the Chemical Foundation (Incorporated), to said Francis P. Garvan as Alien Property Custodian, sell, assign, transfer, and set over unto the said the Chemical Foundation (Incorporated), certain trade-marks and registrations thereof in the United States Patent Office, enumerated in Schedule A hereto annexed, together with the good will and business pertaining to said trade-marks and the certificates of registrations thereof in the United States Patent Office and all property and property rights appurtenant thereto, and every right, title, and interest in respect to said trade-marks and registrations thereof, acquired by said Francis P. Garvan as Alien Property Custodian, and by his predecesor in said office; and

Whereas it was the intention of said instruments of assignment to convey unto said the Chemical Foundation (Incorporated) said trade-marks and registrations thereof in the United States Patent

Office, together with the good will and business pertaining thereto and all property and property rights appurtenant thereto and every right, title, and interest in respect thereto which said Francis P. Garvan as Alien Property Custodian and his predecessor and successor in the said office then had or might have duly acquired, or should in the future duly acquire; and

Whereas the Alien Property Custodian is authorized by Executive order dated February 13, 1920, to sell at private sale, without public or other advertisement, to said the Chemical Foundation (Incorporated), at such place and upon such terms and conditions as to the Alien Property Custodian may seem proper, all choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description which the Alien Property Custodian may seize or may have seized under the provisions of the "trading with the enemy act" and the amendments thereto, then or thereafter enacted and which he from time to time shall determine relate to the objects and purposes of the said the Chemical Foundation (Incorporated), as expressed and defined in its charter; and

Whereas I, Thomas W. Miller, as Alien Property Custodian, have determined that it is proper, to fully carry out the objects, intention, and purposes of said assignments and to perfect the title of the said the Chemical Foundation (Incorporated) to said trademarks and the registrations thereof in the United States Patent Office, together with the good will and business pertaining thereto and all property and property rights appurtenant thereto and every right, title, and interest in respect thereto, to execute and deliver to said the Chemical Foundation (Incorporated) a supplemental assignment thereof; and

Whereas I, Thomas W. Miller, as Alien Property Custodian, have determined that the trade-marks and registrations thereof in the United States Patent Office, enumerated in Schedule A, hereto annexed and made a part hereof, together with the good will and business pertaining thereto and all property and property rights appurtenant thereto, and every right, title, and interest in respect thereto, relate to the objects and purposes of said the Chemical Foundation (Incorporated), as expressed and defined in its charter.

Now, therefore, I, Thomas W. Miller, as Alien Property Custodian as aforesaid by virtue of the authority conferred upon me by said "trading with the enemy act" as amended, and the Executive orders, orders, and proclamations issued in pursuance thereof, do hereby, to effectuate the true intent of the parties to said assignments and for the reasons and to effectuate the purposes hereinbefore expressed, confirm and ratify the sale and assignment heretofore made to the Chemical Foundation (Incorporated), and do hereby, for valuable consideration heretofore paid to my predecessor in office, sell, convey, transfer, and set over to the said the Chemical Foundation (Incorporated), its successors and assigns, the whole right, title, and interest acquired by me and by my predecessors in said office, in and to each of the trade-marks and registrations thereof in the United States Patent Office enumerated in Schedule A, hereto attached and made a part hereof, and as more specifically described and set forth in the requirements and demands relating to said trade-marks and registrations thereof issued by me and/or by my predecessors in said office, together with the good will and business pertaining to said trade-marks, and the certificates of registration of said trade-marks, and all property and property rights appurtenant thereto, and every right, title, and interest with respect to said trademarks, without any reservation or qualification whatsoever, except as herein provided, and to the full extent to which I, as Alien Property Custodian, and my predecessors in said office, ever were, and to which I, as Alien Property Custodian, now am, or may hereafter become, entitled to the same, including all claims and demands for profits and damages recoverable at law or in equity from any person, firm, corporation, or government, either for the use or past infringement of said trade-marks, subject to the rights of citizens of the United States or of friendly nations as stated and set forth in the requirements and demands relating to said trade-marks and registrations thereof in the United States Patent Office, so that the said the Chemical Foundation (Incorporated) shall stand in the place and stead of the Alien Property Custodian in all respects as the owner of said trade-marks and registrations thereof and rights ancillary thereto, or thereupon dependent.

In witness whereof I have hereunto set my hand and seal of office this 5th day of Nov., 1921.

(Signed) THOMAS W. MILLER,
Alien Property Custodian.

DISTRICT OF COLUMBIA, *ss:*

On this 5th day of November, 1921, before me came Thomas W. Miller, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the act of Congress, known as the "trading with the enemy act,'' approved October 6, 1917, and the amendments thereto and the Executive orders issued in pursuance thereof, and he only acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

ODEN B. GRAY,
Notary Public.

My commission expires October 4, 1925.

EXHIBIT L.

Royalties accrued upon licenses granted by Federal Trade Commissio under patents which were attempted to be assigned and transferre to said the Chemical Foundation (Incorporated).

Licensee.	Product.	Royaltie accrued prior to pretended transfer t said the Chemical Foundatio (Incorporated).
The Dermatological Research Labs., Philadelphia, Pa.	Arsphenamine & Neo (introduced as "salvarsan" & "neo-salvarsan," resp.).	$35,447.7
Takamine Laboratory, Inc., New York City	Arsphenamine & neo (introduced as "salvarsan" & "neo-salvarsan," resp.).	1,574.9
Farbwerke-Hoechst Company, New York City.	Arsphenamine (introduced as "salvarsan")	6,203.2
Do	Neo-arsphenamine (introduced as "neo-salvarsan").	Non
Do	Procaine (introduced as "novocain")	3,812.8
Rector Chemical Company, New York City	Procaine (introduced as "novocain")	5,756.7
Pacific Flush Tank Company, Chicago, Ill.	Sewage treatment (Imhoff)	7,812.8
Diarsenol Company, Inc., Buffalo, N. Y.	Arsphenamine & neo (introduced as "salvarsan" & "neo-salvarsan," resp.).	17,003.6
The Abbott Laboratories, Chicago, Ill.	Procaine (introduced as "novocain")	1,638.2
Lembeke, von Bernuth Company, Inc., (now Bernuth Lembeke Co., Inc.), New York City.	Impregnation of wood (Rüping)	21,603.7
Calco Chemical Company, Bound Brook, N. J.	Procaine (introduced as "novocain")	Non
French Battery & Carbon Company, Madison, Wis.	Galvanic cells	Non
The Abbott Laboratories, Chicago, Ill.	Phenyl cinchoninic acid	138.8
E. I. DuPont de Nemours & Company, Wilmington, Del.	Anthracene dyes	Non
Do	Solid hydrosulfites	Non
Do	Indigo	Non
Do	Sulphur dyes	Non
Do	Azo dyes	Non
Albert B. Moses, Seattle, Wash.	Artificial milk	Non
F. L. Smidth & Company, New York City	Ball mill	Non
E. C. Klipstein & Sons Company	Solid hydrosulfites	21 8
National Aniline & Chemical Co., New York City.	Anthracene dyes	Non
Do	Indigo	Non
Do	Sulphur dyes	Non
Do	Azo dyes	146.2
The Stearns-Roger Mfg. Company, Denver, Colo.	Drying cylinder	Non
Merrimac Chemical Company, Boston, Mass.	Solid hydrosulfites	Non
H. A. Metz Laboratories, Inc., New York City.	Arsphenamine (introduced as "salvarsan")	13,408.5
Do	Neo-arsphenamine (introduced as "neo-salvarsan").	3,659.6
Do	Procaine (introduced as "novocain")	7,901.3
General Ceramics Company, New York City	Absorption tower	202.
E. C. Klirstein & Sons Co., New York City	Tanning agents	3,221.2
Merck & Company, New York City	Digitalis extract	77.8

Exhibit L—Continued

Royalties accrued upon licenses granted by Federal Trade Commission under patents which were attempted to be assigned and transferred to said the Chemical Foundation (Incorporated)—Continued.

Licensee.	Product.	Royalties accrued prior to pretended transfer to said the Chemical Foundation (Incorporated).
The Draeger Oxygen Apparatus **Co. (now** American Atmos Corporation), Wilkinsburg, Pa.	Artificial breathing apparatus method causing artificial respiration.	$246.50
Do	Artificial breathing apparatus; resuscitating device.	504.50
Do	Battery for absorbing carbonic acid such as used in breathing apparatus.	2,661.83
Do	Portable breathing apparatus; universal coupling.	7.28
Do	"Pulmotor" (trade-mark)	35.00
Reinschild Chemical Company, Manhattan N. Y.	Agar-agar cascara product: agar-agar cascara product & process of making same.	1,728.34
Arma Engineering Company, New York City	Gyroscopic compasses	None
The Ault & Wiborg Company (tsfd. to Cincinnati Chemical Works, Inc.), Cincinnati, Ohio.	Red azo lake	712.06
Central Dyestuff & Chemical Co., Newark, N. J.	Red azo lake & process of making same	None.
Ultro Chemical Corporation, New York City	Blue red lake & process of making same	192.47
Consolidated Color & Chemical Co., New York City.	Vat dyestuff	None.
Do	Blue vat dyestuff & process of making same	None.
Do	Red Violet dye & process of making same	None.
Do	Red vat dye	None.
Do	Vat dye & process of making same	None.
Do	Violet blue vat dyestuffs	None.
Do	Vat dyeing coloring matter	None.
Division of Laboratories & Research of New York State Dept. of Health, Albany, N. Y	Arsphenamine (introduced as "salvarsan")	None.
Semet-Solvay Company, Solvay, N. Y	Manufacture of ammonia	None.
Massachusetts State Dept. of Health, Boston, Mass.	Arsphenamine (introduced as "salvarsan")	11.14
Horatio Nelson Fraser (tsfd. to Chemical Refining Syndicate), Brooklyn, N. Y.	Process of preparing camphor	None.
Green & Bauer, Hartford, Conn.	Process and apparatus for producing Roentgen rays; Roentgen ray tube.	None.
The Sperry Gyroscope Company, Brooklyn, N. Y.	Gyroscopic compasses	None
Total		$135,765.91

EXHIBIT M.

The White House,
Washington, July 1, 1922.

My Dear Colonel Miller: My attention has been called by the Department of Justice to the fact that a corporation known as the Chemical Foundation has brought suit against the Treasurer of the United States and certain licensees of the Federal Trade Commission for an accounting alleged to be due the said Chemical Foundation on royalties due it for the use of certain patents originally seized under the authority of the Alien Property Custodian and sold to the Chemical Foundation by the custodian during the previous administration. On the face of such an action it became so apparent to me than an inquiry should be made that I asked for a report by the Department of Justice on the sale of this enemy property to the Chemical Foundation. It appears that the sale was made at so nearly a nominal sum that there is reason to believe that this Government has not faithfully observed the trust which was implied in the seizure of this property. The circumstances relating to the entire transaction are of such a character that full investigation becomes a public duty. Moreover, I feel that your office is obliged to maintain the sacred character of the trust to which the Alien Property Custodian is committed by the law.

You are, therefore, directed to forthwith proceed as follows:

1. Make written demand upon the Chemical Foundation (Inc.), in form to be approved by the Attorney General, to immediately return, transfer, and assign

to the Alien Property Custodian all patents, trademarks, copyrights, contracts, applications, or other properties or rights transferred to it by the Alien Property Custodian as aforesaid, and to account to you for any and all rents, profits, license fees, or other proceeds thereof realized by said Chemical Foundation (Inc.) from said properties or rights, or any of them, from the date of transfer thereof to the Chemical Foundation (Inc.), to the date of restitution.

2. Take any other action which may be advised or approved by the Attorney General, by suit or otherwise, to fully and in every respect protect the rights or interests of the United States and any other person or corporation interested therein, in and to the properties and rights aforesaid, and any proceeds, income, or profits therefrom in the hands of the Chemical Foundation (Inc.), or its officers, agents, or employees.

In carrying out these instructions you will act under the advice of the Attorney General.

Very truly yours,
(Signed) WARREN G. HARDING.

Col. THOMAS W. MILLER,
Alien Property Custodian,
Washington, D. C.

(Alien Property Custodian, Arlington Building, Vermont Avenue and H Street, Washington.)

To the CHEMICAL FOUNDATION (INC.),
A corporation organized and existing under the laws of the State of Delaware,
81 Fulton Street,
New York City, N. Y.

I, Thomas W. Miller, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress approved October 6, 1917, known as the trading with the enemy act, and the amendments thereto and the proclamations and Executive orders issued pursuant thereto, and acting upon the express direction and instruction of the President of the United States of America, do hereby demand and require that you forthwith and immediately return, transfer, assign, and account for to me, as Alien Property Custodian, all patents, trade-marks, copyrights, contracts, applications, or other properties or rights which have heretofore at any time been assigned, transferred, or in any manner delivered, or pretended to have been assigned, or in any manner transferred or delivered, or which have been enumerated, designated, or in any manner described in any transfer or assignment, or in any pretended transfers or assignments to you by the Alien Property Custodian, a list of which patents, trade-marks, copyrights, contracts, applications, and other properties and rights so far as now available is hereto attached and marked "Exhibit A" and is made a part hereof as fully and completely as if copied in the body of this demand, but this demand is intended to cover any and all patents, trade-marks, copyrights, contracts, applications, and other properties and rights above described whether included in said "Exhibit A" or not; and

I, acting as such Alien Property Custodian, as aforesaid, and under the instructions and directions as aforesaid, do further require and demand that you immediately account for and return to me, as such Alien Property Custodian, all income, proceeds, profits, or other benefits or rights which have accrued to or been received by you growing out of said patents, trade-marks, copyrights, contracts, applications, or other properties or rights above mentioned and described.

In any such accounting by you for said property and property rights described herein and in "Exhibit A" hereto annexed and the proceeds or income therefrom, as hereinabove demanded and mentioned, due credit and allowance will be given to you for the consideration, if any, paid by you or for your account to the Alien Property Custodian therefor and any balance which may be found to be due to you on account thereof, if any such balance be found, will be restored to you to the extent which may be permitted by law and agreeable to the principles of equity; and

I, as such Alien Property Custodian aforesaid, and acting under the instructions and directions aforesaid, do further demand and require that after the receipt by you of this notice you make no further transfers, licenses, assignments, or other dispositions of any of the property, rights, income, or other interests above mentioned and referred to, and that in the event that any such transfers, licenses, assignments, or other dispositions are made by you that the same will be made at your peril and you will be held strictly accountable therefor.

Witness my hand and official seal this 8th day of July, 1922.

[SEAL.] (Signed) THOS. W. MILLER,
Alien Property Custodian.

THE CHEMICAL FOUNDATION (INCORPORATED),
81 Fulton Street, New York City, July 15, 1922.

Hon. THOMAS W. MILLER,
Alien Property Custodian,
Washington, D. C.

DEAR SIR: This will acknowledge the receipt of your communication dated the 8th day of July, 1922, demanding that this company return and deliver to you all patents, trade-marks, and copyrights heretofore assigned to this company by the Alien Property Custodian, that the company account to you for all income received by it from such patents, trade-marks, and copyrights, and that the company forthwith cease to exercise any dominion over such trade-marks, copyrights, and patents.

In reply thereto you are advised that this company is the owner, in its own right, of all the aforesaid patents, trade-marks, and copyrights and of the income derived therefrom. The company denies that the United States Government, or you, as Alien Property Custodian, or anyone other than this company, has any right, title, or interest in said patents, trade-marks and copyrights. The company, therefore, declines to comply with your demand in any particular whatsoever.

Respectfully,

THE CHEMICAL FOUNDATION (INC.),
By FRANCIS P. GARVAN, *President.*
WILLIAM D. GUTHRIE, *Counsel.*

MOTION TO AMEND BILL OF COMPLAINT.

(Filed May 4, 1923)

Comes now the plaintiff, the United States of America, and asks leave of the court to amend the bill of complaint filed herein by striking out that part of said bill of complaint beginning with the word "to" on line 5 of page 40 and ending with the word "and" on line 8 of page 40, which reads as follows, to wit:

> "to confirm and validate the orders aforesaid, or pretended orders of Frank L. Polk and any actions taken by the Alien Property Custodian thereunder, and"

all of which appears in paragraph Thirty-fifth on page 40 of said bill of complaint;

Also to strike out that part of the bill of complaint beginning with the word "sought" in line 27 on page 40 of said bill of complaint and ending with the word "order" on line 28 of page 40, which reads as follows, to wit:

> "sought to be confirmed and validated or authorized by said executive order"

all of which appears in paragraph Thirty-fifth on page 40 of said bill of complaint;

Also to strike out that part of said bill of complaint beginning with the word "sought" in line 9 on page 41 of said bill of complaint and ending with the word "order" on line 11 of said page 41 of said bill of complaint, which reads as follows, to wit:

> "sought to be confirmed, validated and authorized by said executive order"

all of which appears in paragraph Thirty-fifth on page 41 of said bill of complaint.

(Sgd.) JAMES H. HUGHES, JR.,
United States Attorney.
(Sgd.) HENRY W. ANDERSON,
(Sgd.) HERMAN J. GALLOWAY,
Special Assistants to the Attorney General.

ORDER GRANTING LEAVE TO AMEND BILL OF COMPLAINT.

(Filed June 4, 1923)

AND NOW, TO WIT, this fourth day of June, A. D., 1923, upon motion of counsel for the plaintiff, it is ORDERED by the court that leave be and hereby is granted the plaintiff to amend the bill of complaint filed herein by striking out that part of said bill of complaint beginning with the word "to" on line 5 of page 40 and ending with the word "and" on line 8 of page 40, which reads as follows, to wit:

> "to confirm and validate the orders aforesaid or pretended orders of Frank L. Polk and any actions taken by the Alien Property Custodian thereunder, and"

all of which appears in paragraph Thirty-fifth on page 40 of said bill of complaint;

And further by striking out that part of bill of complaint beginning with the word "sought" in line 27 on page 40 of said bill of complaint and ending with the word "order" on line 28 of page 40, which reads as follows, to wit:

> "sought to be confirmed and validated or authorized by said executive order."

all of which appears in paragraph Thirty-fifth on page 40 of said bill of complaint;

And further by striking out that part of said bill of complaint beginning with the word "sought" in line 9 on page 41 of said bill of complaint and ending with the word "order" on line 11 of said page 41 of said bill of complaint, which reads as follows, to wit:

> "sought to be confirmed, validated and authorized by said executive order"

all of which appears in paragraph Thirty-fifth on page 41 of said bill of complaint;

And it is further ordered by the Court that the said bill of complaint be and hereby is amended accordingly and without prejudice.

(Sgd.) HUGH M. MORRIS, *J.*

ORDER GRANTING LEAVE TO AMEND BILL OF COMPLAINT.

(Filed June 7, 1923.)

The complainant herein, the United States of America, having moved the Court to amend the bill of complaint herein by striking out the words "the Textile Alliance, Inc.," in line one on page twenty-one of said bill of complaint and the Court having considered said motion, it is this seventh day of June, 1923.

ORDERED by the Court that said motion be and the same is hereby granted and the said bill of complaint is hereby amended by striking therefrom the words "the Textile Alliance, Inc.," in line one on page twenty-one of said bill of complaint.

(Sgd.) HUGH M. MORRIS,
Judge.

MOTION TO STRIKE OUT PARTS OF ANSWER.

(Filed May 4, 1923)

Comes now the United States of America, the plaintiff in the above-entitled cause, and moves the court that an order be entered striking out the following part of paragraph XI of defendant's answer beginning with the word "that" on line 33 of page 6 of said answer [Rec. page line] and ending with the word "alleged" on lines 12 and 13 of page 8 of said answer [Rec. page line], for the reason that said allegation does not constitute or state facts sufficient to constitute a defense either at law or in equity to the cause of action set forth in plaintiff's bill of complaint herein; that said matters so alleged are based upon conclusions of the law by the pleader, which are unfounded, incorrect and inaccurate, and that for any one or all of the reasons above set forth said allegations in said answer should be stricken out.

And the plaintiff also moves that an order be entered striking out the third separate and affirmative defense to the bill of complaint, as the same appears in paragraphs XLII to LVIII, both inclusive, being from and including line 26 on page 29 of defendant's answer herein [Rec. page line] to and including line 27 on page 44 of said defendant's answer herein [Rec. page line], for the reason that said paragraphs and the allegations therein contained do not constitute or state facts sufficient to constitute a defense, either at law or in equity, to the cause of action set forth in plaintiff's bill of complaint herein; that the matters alleged in said paragraphs of said defendant's answer are immaterial, irrelevant and impertinent; that said matters alleged in said paragraphs of said defendant's answer are based upon conclusions of law of the pleader which are unfounded, incorrect and inaccurate; that for any one or all of the reasons above set forth said third separate and affirmative defense to said bill of complaint as contained in said paragraphs of defendant's answer should be stricken out.

(Sgd.) JAMES H. HUGHES, JR.,
United States Attorney.
(Sgd.) HENRY W. ANDERSON,
(Sgd.) HERMAN J. GALLOWAY,
Special Assistants to the Attorney General.

ANSWER.*

(Filed October 27, 1922.)

To the Honorable the Judge of the United States District Court for the District of Delaware:

The defendant, The Chemical Foundation, Incorporated, answers the bill of complaint herein (hereinafter called the bill) as follows:

I. It admits that it is a corporation chartered, organized and existing under the laws of the State of Delaware, that it is a citizen of said State and an inhabitant of the judicial district of Delaware, and that it is and claims to be the owner of the property, property rights and interests referred to in the bill, so far as the same are accurately and completely described therein; and it denies each and every other allegation contained in paragraph First of the bill.

II. It admits the passage and enactment of the several joint resolutions and laws, the negotiation and ratification of the several treaties, and the issuance and promulgation [2*] of the several executive orders mentioned in paragraphs Second to Eighth inclusive, and in paragraphs Tenth, Eleventh, Thirteenth and Fourteenth of the bill, but it is advised and believes and therefore alleges that each and all of these, and their respective terms, provisions, meaning and effect, are matters of law to be judicially noticed and passed upon by the court and as to which the defendant is not required to make answer herein. It denies that it has any knowledge or information sufficient to form a belief as to whether the Imperial German Government or the Imperial and Royal Austro-Hungarian Government or any successor of either of said government has complied with the conditions or provisions mentioned in the reservations contained in the treaties referred to in paragraph Fifth of the bill. It admits th allegation contained in paragraph Eleventh of the bil that the Federal Trade Commission granted citizen and corporations of the United States licenses to us enemy-owned patents, copyrights and trademarks.

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*Note: Numbers in brackets refer to pages of original printed answer.

III. It admits the allegations contained in paragrap Ninth of the bill, except that it has no knowledge or information sufficient to form a belief concerning the allegations that the patents therein referred to were procured from or registered with the United States pursuant to the laws relating thereto and that the applications in said paragraph referred to were pending before the proper officers of the United States or wer made as provided by law and therefore denies suc latter allegations.

IV. It admits the allegations contained in paragrap Twelfth of the bill.

V. It admits that the Attorney-General of the Unite States determined that the Trading with the Enem Act, [3] as amended by the Act of Congress approve March 28, 1918, did not authorize the seizure and sequestration or sale or other disposition of enemy-owned patents, but, on information and belief, denie that he made such determination with respect to th other classes of property or rights enumerated in paragraph Fifteenth of the bill. It denies, on informatio and belief, that any similar determination was mad by the Alien Property Custodian, or by any other charged with the administration of said act under hi direction, and alleges, on information and belief, that on the contrary, from and after the passage of said amendment the Alien Property Custodian maintained and claimed that, by virtue of the said act as so amended and the executive orders made pursuant thereto, he was vested with power and authority to sequester and, under such rules and regulations as the President might prescribe, to sell or otherwise dispose of any and all enemy-owned patents, copyrights, trademarks, labels and other similar rights or applications therefor or contracts with respect thereto, and, on information and belief, alleges that said Custodian would have exercised the right, in respect of enemy-owned patents, to sequester and sell the same but for the said determination of the Attorney-General of the United States, and that said Custodian did sequester and require the payment to him of numerous patent royalties payable to enemies under pre-war contracts between enemy nationals and persons, firms and corporations resident in the United States, long before the further amendment to the Trading with the Enemy Act approved November 4, 1918. On information and belief, it denies that the representations made to Congress by the Alien Property Custodian, or assistants acting on his behalf, are accurately or completely set forth [4] in the bill, or were in any respect untrue or false, or had relation to any property or rights other than patents and patent rights, and denies that it was represented that the sole purpose of the proposed amendment to the Trading with the Enemy Act referred to in said paragraph of the bill was as in said paragraph alleged, and denies that such representation appears, or is made to appear, either by the statement of Lee C. Bradley, annexed to the bill as Exhibit A, or otherwise, and avers that the true intent, purpose and construction of said amendment are matters of law for the court to determine. Except as in this paragraph admitted or denied, the defendant admits the other allegations contained in said paragraph so far as the same concern patents and patent rights, and, on information and belief, denies them insofar as they concern other classes of property.

VI. It admits the passage of the Act of Congress referred to in paragraph Sixteenth of the bill; refers to the terms and provisions of said statute for the contents, meaning and effect thereof, and, on information and belief, denies that said statute was enacted by Congress upon the faith of the alleged representations or solely for the purposes and as alleged in said paragraph.

VII. It admits the issuance and promulgation of the executive order referred to in paragraph Seventeenth of the bill and that the same vested in Frank L. Polk the President's power and authority in the manner and to the extent in said order specified, and refers to the terms and provisions of said executive order for the contents, meaning and effect thereof.

VIII. It alleges that it is without knowledge or information sufficient to form a belief concerning each and [5] every allegation contained in paragraph Eighteenth of the bill and therefore denies the same.

IX. It admits the allegation contained in paragraph Nineteenth of the bill that the declaration of war between the United States and Germany automatically stopped the importation into the United States of dyestuffs and the necessary ingredients thereof and of chemical materials and products from Germany, and that Germany was then and for a long time before the outbreak of the European War had been the chief producer thereof, but, on information and belief, it denies that any of the declarations of war between Germany and other European powers automatically stopped such importation, and, on information and belief, alleges that during the period between the outbreak of the European War and the entrance of the United States therein, such importation ceased, not principally by reason of the declaration of war between Germany and such European powers, but because of Germany's purpose to embarrass and oppress the people of the United States by withholding from them and their industries necessary dyestuffs, medicines, drugs and chemicals to the end that the suffering and hardship thus inflicted might so raise and inflame public sentiment in the United States as to cause the Government of the United States to take action towards inducing or compelling Great Britain to terminate or alleviate the then existing blockade of German ports. It further avers that it is without knowledge or information sufficient to form a belief concerning each and every other allegation contained in said paragraph and therefore denies the same.

X. On information and belief, it admits the allegations contained in paragraph Twentieth of the bill that [6] there was a consolidation of certain corporations into the National Aniline & Chemical Company and also a consolidation of certain corporations into the Allied Chemical & Dye Corporation; it denies that it has any knowledge or information sufficient to form a belief as to the names of all the corporations that were so consolidated, the nature of the business of such corporations, or the dates when such consolidations were made, and, on information and belief, it denies each and every other allegation contained in said paragraph.

XI. It admits the allegations contained in paragraph Twenty-first of the bill that a large proportion of the enemy-owned patents, copyrights, trademarks, labels and other similar rights, and the applications therefor, covered or related to dyestuffs or ingredients thereof or methods or processes used in the manufacture or production thereof and that large amounts of chemicals and dyestuffs were and are produced in Germany, and alleges that it is without knowledge or information sufficient to form a belief concerning each and every other allegation in said paragraph and therefore denies the same.

It further alleges, on information and belief, that, prior to the recent war, the dyestuffs, drug and organic chemical manufacturing industry in the United States was not in any sense a monopoly, but was, on the contrary, a highly competitive, though small, weak and inconsequential industry without development, strength, efficiency, skilled personnel, or necessary capital and equipment; that it was in a condition of almost total dependence upon Germany, where the dyestuffs, drug and organic chemical manufacturing industry was in the hands of a powerful, well-developed and governmentally supported monopoly; that such dependence constituted a [7] menace to the safety and welfare of the people of the United States; that during said period Germany had an abundant supply of dyes, dyestuffs, essential drugs and medicines, necessary ingredients for high explosives and poison gas, and a large body of trained scientific chemical experts able to manufacture all of these and to train others so to do, and that the United States did not have any adequate supply of such dyes, dyestuffs, essential drugs, medicines, ingredients for high explosives and poison gas, or any sufficient number of trained scientific experts, but was dependent on Germany therefor. It further alleges that Germany was in large part able to create and maintain the said dependence of and superiority over the United States by reason of the ownership and control by her nationals of the patents referred to in the bill herein and the power which these gave to prevent the manufacture or profitable production in the United States of the aforesaid chemical substances and the growth and development therein of a suitably experienced and trained corps of organic chemists, munition makers, dyemakers, pharmacists and other experts, and that the sale, assignment and transfer to the defendant of said patents, and the defendant's system of granting non-exclusive licenses at low rates to all qualified American citizens, as well as its license of all its patents, free of charge, to the Government of the United States, and its use of said patents to protect American industry, have tended to build up and have resulted in building up in the United States a large, strong and competitive dyestuffs, drug and organic chemical manufacturing industry, capable of meeting approximately ninety per cent of the needs in said respects of the American people, and in making substantial progress toward assuring [8] to the country a supply of scientific and skilled experts adequate for the safety, welfare and independence of the United States in times both of war and peace. It further alleges that all and singular said results and accomplishments will be undone and the American dyestuffs, drug and organic chemical manufacturing industry will relapse into its former state of dependence upon Germany, if the said patents be now taken away from the defendant, or come again into the control of Germany, or be not employed in the impartial and non-discriminatory, non-profit-making and protective manner pursued by the defendant as hereinafter more fully alleged.

XII. On information and belief, it denies each and every allegation contained in paragraph Twenty-second of the bill. It alleges, however, that if the persons, firms, corporations, trade associations and others therein referred to conceived or entered upon the plan, scheme, combination, or conspiracy therein, or in any other part of the bill referred to, said plan, scheme, combination, or conspiracy never had and now has no relation to, connection with, or influence or effect upon, the formation, existence, purposes, policies, business, methods, acts, omissions, rights, property, affairs, stock ownership in or control of this defendant, and alleges, on information and belief, on the contrary, that subsequent to the enactment of the Act of Congress approved March 28, 1918, amending the Trading with the Enemy Act, and long prior to November, 1918, the Alien Property Custodian had, and believed he had, the authority to sequester and sell said enemy-owned patents, copyrights, trademarks, labels and other similar rights and applications therefor, and intended to seize and sell the same, [9] irrespective of, and uninfluenced by any alleged inducement or procurement so to do on the part of any of the persons, firms, or corporations mentioned in said paragraph.

XIII. It admits the allegations contained in paragraph Twenty-third of the bill that Francis P. Garvan, Joseph H. Choate, Jr., and Ramsay Hoguet held the positions and offices in said paragraph referred to and that at divers times Morris R. Poucher and others interested in the American dye and chemical industry discussed with the Alien Property Custodian or his assistants named in said paragraph the subject of the protection of said American industry and its promotion and upbuilding to a basis where it would be and remain independent of German domination during and after the end of the war, or on renewal of war, and, on information and belief, denies each and every other allegation contained in said paragraph.

XIV. It admits that after the passage of the amendment of November 4, 1918, to the Trading with the Enemy Act, specifically granting to the Alien Property Custodian the right to seize enemy-owned patents, copyrights, trademarks, labels and other similar rights and applications therefor, and in order to determine what chemical patents were in fact so owned, he caused various patent attorneys and other patent experts, being both employees of his office and outsiders and including, among others, a patent attorney associated with a firm of patent attorneys who did work for E. I. du Pont de Nemours & Co., and a patent attorney associated with a firm of patent attorneys who did work for the National Aniline & Chemical Company, to search and run down the titles of patents, copyrights, trademarks, labels and other [10] rights and applications therefor, and check up a list of alleged enemy-owned patents and other rights which had previously been made up by the Federal Trade Commission; that said work and much of the other work then being done in the office of the Alien Property Custodian were done both by day and night and on Sundays; that after the Alien Property Custodian and his counsel and assistants had received, examined and investigated the reports concerning alleged enemy-owned patents, copyrights, trademarks, labels and other similar rights and applications therefor, thus and otherwise procured, the Alien Property Custodian duly determined that a number of said patents, copyrights, trademarks, labels and other similar rights and applications therefor were in fact enemy-owned and seized and sequestered the same from time to time, and that a number of said enemy-owned patents, copyrights, trademarks, labels and other similar rights and applications therefor were not when seized or sold by the Alien Property Custodian used in connection with or as part of any enemy-owned plant or business seized or sold by him. It denies, or information and belief, that in performing the aforesaid work of investigating and making up the lists of enemy-owned patents, copyrights, trademarks, labels and other rights and applications therefor, or in making seizures thereof, the employees of the Alien Property Custodian or said outsiders acted under instructions of any person, firm, or corporation other than the Alien Property Custodian and his assistants; it denies that said seizures were made for the benefit of any private individual, firm, or corporation; and it alleges that the same were made solely on behalf of the Alien Property Custodian and in the public interest. Except as thus admitted or denied, it denies, [11] on information and belief, each and every other allegation contained in paragraph Twenty-fourth of the bill.

XV. It admits the allegations contained in paragraph Twenty-fifth of the bill that this defendant was incorporated on or about February 19, 1919, under the laws of the State of Delaware, and that a copy of its certificate of incorporation or charter and a copy of its by-laws are annexed to the bill as Exhibit B thereto, and denies each and every other allegation contained in said paragraph.

XVI. It admits the allegations contained in paragraph Twenty-sixth of the bill concerning the amounts of common and preferred capital stock provided for in its certificate of incorporation (Exhibit B to the bill), refers to said certificate for the terms and provisions thereof, and denies each and every other allegation contained in said paragraph.

XVII. It denies each and every allegation contained in paragraph Twenty-seventh of the bill, except that it admits that the persons, firms and corporations named in Exhibit C to the bill subscribed to the capital stock of this defendant in the amounts set forth in said exhibit, and that the sum of said underwritings, plus a subscription of $10,000 by Merck & Company of New York, which does not appear in said exhibit, amounts to $460,600. It alleges that so much of the expense of searching for enemy-owned patents and other rights and of determining the title thereto, as was not borne by the Alien Property Custodian, was advanced by or through the American Dyes Institute, and that such advances were thereafter repaid or agreed to be repaid by this defendant.

[12] XVIII. It admits that many of its stockholders are interested or engaged in the dyestuffs, chemical or drug industry, and that all of its capital requirements were provided by its stockholders, and that Exhibit D annexed to the bill is substantially a correct list of its stockholders, but it denies each and every other allegation contained in paragraph Twenty-eighth of the bill. It alleges that over three thousand persons, firms and corporations were solicited to subscribe to its stock and that said stock was distributed as widely as possible among those in any manner interested in the dyestuffs, chemical and drug industry of the United States so as to avoid the possibility of monopoly by any person, corporation, or group, and in order to enable the defendant more effectually to accomplish the purposes of its incorporation and charter.

XIX. It admits that the voting trust agreement referred to in paragraph Twenty-ninth of the bill was executed; that Exhibit E annexed to the bill is a copy thereof, and that the voting trustees thereunder were the members of the Advisory Sales Committee of the Alien Property Custodian, which committee, it alleges, had theretofore been appointed by the President of the United States. It further admits that all of the certificates for issued common capital stock of this defendant were deposited with, and are now held by the voting trustees under said agreement, and that it was expressly provided by the defendant's board of directors that no subscriptions should be received to the common stock of this defendant and no certificates therefor issued by its board of directors except upon agreement by the subscriber that he would enter into said voting trust agreement. Except [13] as above admitted, it denies each and every allegation contained in said paragraph.

XX. It admits the allegations contained in paragraph Thirtieth of the bill that under the charter and by-laws of the defendant the general power was vested in the board of directors thereof, consisting of three members, to manage the affairs of this defendant, including the power to issue and refuse licenses under any patents and other rights owned by it; that by resolution adopted by the board of directors of this defendant it was resolved that two members of said board acting together should constitute a licensing committee to fix uniform fees and royalties for licenses granted by this defendant, and that thereafter, by action of its stockholders, a committee was created called the Chemical Foundation Advisory Committee, whose membership, powers and duties were as regulated and defined in an instrument known as the constitution and by-laws of said advisory committee, a substantially correct copy of which is Exhibit F to the bill. It refers to the original of said exhibit, to be produced on the hearing, for its terms and provisions, and, except as in this paragraph admitted, it denies each and every allegation contained in said paragraph of the bill.

XXI. It admits the allegations of paragraph Thirty-first of the bill which refer to and describe the president, vice-president, secretary and treasurer, general counsel, patent attorney, board of directors, voting trustees and advisory committee of this defendant; it admits that it was incorporated on or about February 19, 1919, and it denies each and every other allegation contained in said paragraph.

[14] XXII. It admits all of the allegations contained in paragraph Thirty-second of the bill, except that it denies that any of the acts of the Alien Property Custodian set forth in said paragraph were done at the instance or inducement of parties to any scheme or conspiracy as charged in the bill, and alleges, on information and belief, that such acts were done by said Alien Property Custodian solely in the performance of his official duties as an officer of the United States and by reason of his determination to carry out the declared policy of the President and Congress in respect of the sequestration and disposition of enemy-owned property; and denies that such actions were based upon, or were with respect to lists furnished by the attorneys or agents of the alleged parties to any scheme or conspiracy, and that Exhibit G referred to in said paragraph is a complete schedule; but alleges to the contrary that such schedule is neither accurate nor complete.

XXIII. It admits all the allegations contained in paragraph Thirty-third of the bill, except that it denies that any of the powers and authorities exercised by Frank L. Polk in and by his said orders of February 26, 1919, and April 5, 1919, were in any sense pretended powers or authorities, or in any manner unlawful or ineffectual to accomplish their respective purposes and intent; and for the terms, conditions and effect of said orders reference is made thereto and to the executive order of the President No. 3016 of December 3, 1918, of which latter a copy is hereto annexed, made part hereof and marked Defendant's Exhibit 1.

XXIV. It denies the allegations contained in paragraph Thirty-fourth of the bill that either of the orders of Frank L. Polk therein referred to was prepared by [15] it or at its instance. On information and belief, it denies that either of said orders was prepared at the instance or procurement of the persons, firms and corporations in said paragraph alleged to be in control of the dyestuffs and chemical industry, or in pursuance of the alleged scheme and conspiracy mentioned in the bill, or in pursuance of any scheme or conspiracy whatsoever. It denies that any necessary or essential facts with regard to the seizure or sale or disposition of said patents and other rights mentioned in said orders were not stated or disclosed to said Polk, or were withheld or suppressed from him, or that any facts in connection therewith were misstated or misrepresented to him, or that his signature to either of said orders or the issuance thereof by him were procured through or by means of any suppression or misrepresentation of any facts, or that either of said orders was signed or issued by him without knowledge of the facts, or upon mistake as to the facts; and, on information and belief, it denies each and every other allegation contained in said paragraph. It alleges, to the contrary, that all the necessary and essential facts in respect of the matters and transactions referred to in the bill were fully disclosed to said Polk before any of said orders were made by him, and that prior to the time when said Polk made said orders all of said facts had been embodied and disclosed in a report made pursuant to law by A. Mitchell Palmer as Alien Property Custodian to the President and by the latter transmitted to Congress on

March 1, 1919, and, on information and belief, that said Polk had theretofore been personally informed by the Alien Property Custodian and was familiar with and approved of the plan outlined in that portion of said report which dealt with said matters and transactions, [16] and of the then proposed transfer and assignment of enemy-owned patents and other rights to this defendant. An excerpt of so much of said report of said Alien Property Custodian dated February 22, 1919, and transmitted by the President to Congress as aforesaid, as relates to this subject is hereto annexed, made part hereof and marked Defendant's Exhibit 2.

XXV. It admits the allegation contained in paragraph Thirty-fifth of the bill that by executive order dated February 13, 1920, the President undertook to confirm and validate said orders of Frank L. Polk and any action taken by the Alien Property Custodian thereunder, and it is advised and believes and therefore alleges that the President did thereby duly ratify, confirm and validate said orders and action. It refers to said executive order of February 13, 1920, made by the President for its terms, provisions, purpose and effect; it denies that said executive order was prepared by it or at its instance or procurement, and, on information and belief, it denies that said order was prepared at the instance or procurement of the persons, firms and corporations in said paragraph alleged to be in control of the dyestuffs and chemical industry or parties to the alleged scheme or conspiracy mentioned in the bill. It denies that any necessary or essential facts in relation to the seizure or sale of said patents, copyrights and other rights mentioned in said order were not disclosed to the President at the time of or before the signing of said executive order, or that said order was signed or issued by him upon any misunderstanding or mistake of facts whatsoever; and, on information and belief, it denies each and every other allegation contained in said paragraph. It alleges, to the contrary, that all the necessary and essential [17] facts in respect of the matters and transactions referred to in the bill had been fully disclosed to the President long before said executive order of February 13, 1920, was made by him, and that prior to the time when the President made said executive order all of said facts had been embodied and disclosed in the report made pursuant to law by A. Mitchell Palmer as Alien Property Custodian to the President and by the latter transmitted to Congress, hereinabove referred to, and, on information and belief, that the President was familiar with and approved of that portion of said report which dealt with said matters and transactions, and of the then proposed transfer and assignment of enemy-owned patents and other rights to this defendant.

XXVI. It admits the allegations contained in paragraph Thirty-sixth of the bill that Francis P. Garvan as Alien Property Custodian, and who was then also president of this defendant, executed and delivered to it the several assignments therein enumerated. It alleges, however, that the general plan for said assignments had in fact been determined and agreed upon by the predecessor in office of said Garvan before the latter became Alien Property Custodian and had the consent and approval of his said predecessor in said office, and that the latter intended to execute and would have executed said assignments himself if their formal preparation and completion had not been unavoidably delayed until after he had resigned said office. It further alleges that the plan which said assignments were intended to effectuate had been fully reported to the President and by him approved during the incumbency of said Palmer as Alien Property

Custodian, and had been embodied in said report by him so transmitted by the President to Congress, [18] on March 1, 1919, as hereinabove alleged. It denies the allegation that said assignments or any of them were made with no reservations or qualifications other than those in said instruments expressly set forth; it prays reference to the terms and provisions of said assignments, being Exhibits H-1 to H-19, inclusive, annexed to the bill, for their meaning and effect; and it denies that Exhibit G annexed to the bill is either accurate or complete. It further denies, on information and belief, that any of said assignments were induced or procured in pursuance of any scheme or conspiracy, and it denies each and every other allegation contained in said paragraph.

It further alleges that included among the patents and other rights sought to be recovered by the plaintiff in and by this suit are some heretofore released or restored to the Alien Property Custodian, and others heretofore released or restored to divers third parties, either at the instance or request of said Custodian or with his consent and approval; that heretofore and prior to the commencement of this suit divers persons, firms and corporations filed claims with the defendant for certain of the patents or other rights sold, transferred and assigned to it by the Alien Property Custodian, asserting that they were the true owners thereof at the time when the same were seized by him, and that they were neither enemies nor allies of enemies, as defined by the Trading with the Enemy Act, or asserting that they would otherwise be entitled to the return of said property under the provisions of said Act of Congress as amended, if such property were still held by the Alien Property Custodian; that thereupon the defendant in [19] good faith determined, after due investigation, that a number of such claims were meritorious in whole or in part, and without receiving any consideration therefor, released or restored either directly to such claimants or to the Alien Property Custodian, a number of the patents or rights claimed, and that in most, if not all, of such last mentioned cases it took such action at the request and with the full knowledge and approval of Thomas W. Miller as Alien Property Custodian.

XXVII. It admits the allegations contained in paragraph Thirty-seventh of the bill that on or about March 1, 1921, Francis P. Garvan as Alien Property Custodian, and who was then also president of this defendant, executed and delivered to it, without further consideration therefor, the instrument in writing dated on said day and a copy whereof is Exhibit I annexed to the bill, and that said Alien Property Custodian thereby undertook to ratify, confirm and validate the sales, transfers and assignments of patents and other rights theretofore made to this defendant, and it is advised and believes and therefore alleges that said instrument did thus ratify, confirm and validate said sales, transfers and assignments; and it alleges that the Alien Property Custodian executed said confirmatory instrument pursuant to the executive order of the President dated February 13, 1920. It refers to said instrument for its terms, meaning and effect; denies, on information and belief, that the execution and delivery thereof were induced or procured in pursuance of any scheme or conspiracy, and denies each and every other allegation contained in said paragraph.

XXVIII. On information and belief, it denies the allegations contained in paragraph Thirty-eighth of the bill that the sales, transfers and assignments therein referred [20] to, or any of them, or the instruments evidencing the same, were induced or procured in pursuance of any scheme or conspiracy, or for the private gain or benefit of any person, or to protect or preserve the alleged monopoly or control of any persons over the dye and chemical industry in the United States, and it denies each and every other allegation contained in said paragraph except that it admits that in one instance it paid a deposit on account of a transfer, as required by the office of the Alien Property Custodian, prior to receiving the instrument of transfer.

XXIX. It admits the allegations contained in paragraph Thirty-ninth of the bill that Francis P. Garvan resigned as Alien Property Custodian and was succeeded by Thomas W. Miller in said office, as alleged in said paragraph; that said Miller thereafter as Alien Property Custodian executed and delivered to the defendant the two instruments of sale, transfer and assignment, copies whereof are Exhibits J and K annexed to the bill, and it admits that the second of said instruments, being Exhibit K to the bill, was delivered to it without payment of any additional consideration than theretofore paid. It denies each and every other allegation contained in said paragraph, and, to the contrary thereof, it alleges that prior to the execution of said instruments, Exhibits J and K annexed to the bill, said Miller, as Alien Property Custodian, was fully informed of and knew the history of the organization of this defendant, the impelling and inducing motives for its creation, its charter and purposes, its muniments of title and their purposes and intent, and the considerations given for each and all of said patents and other properties and rights sold, assigned and transferred to it.

[21] XXX. It admits that some, but relatively few, of the patents and properties assigned and transferred to it by the Alien Property Custodian did not relate to the corporate objects and purposes of this defendant. It alleges that the defendant has not yet been able to make or complete an exhaustive and critical investigation of all the enemy-owned patents sold, transferred and assigned to it and that it is possible that some of the patents and other rights now held by it may be found not to relate to the objects and purposes of its charter; but it alleges that some of the transfers and assignments of such patents and properties were made by the Alien Property Custodian and received by it in good faith through misapprehension, inadvertence, or mistake, that other transfers and assignments were made to it at the special instance and request of the Navy Department or other branches of the Government, and that it neither claims nor desires any patents or other rights not relating to its corporate objects and purposes, and has always been and now stands ready to make restoration (without repayment to it of any part of the purchase price) in respect of any such patent or rights so transferred to or received by it. On information and belief, it denies each and every other allegation contained in paragraph Fortieth of the bill.

XXXI. It admits the allegations contained in paragraph Forty-first of the bill that the Federal Trade Commission, prior to said sales to this defendant by the Alien Property Custodian, had licensed certain citizens and corporations organized within the United States to use certain patents and other rights for considerations to be paid by them to the Alien Property Custodian and deposited with the Treasurer of the United States as provided [22] by law; that, since the seizure and sale, assignment and transfer of said patents and other rights to this defendant by the Alien Property Custodian, this defendant has issued other licenses to various persons and corporations for the use and enjoyment of certain of said patents and other rights and has collected royalties therefor, and that the licenses thus issued by this defendant are under a comparatively small number of the patents and other rights among those sold and assigned to it by the Alien Property Custodian. On information and belief, it denies that Exhibit L annexed to the bill is an accurate or complete list of the licenses so issued by the Federal Trade Commission; and, except as in this paragraph admitted or denied, it denies each and every allegation contained in said paragraph of the bill.

XXXII. It admits that, by virtue of said assignments thereof to it, it is now claiming that it is entitled to receive, collect and have paid over to it, as owner of said patents, copyrights and other rights thus assigned and transferred to it, all the royalties and other income accrued and accruing thereon since the respective dates of transfer to it of the patents and other rights thus licensed by it or the Federal Trade Commission, but it denies that it claims any royalties or other income which accrued prior to said dates of transfer to it of said patents and other rights. It alleges that all the royalties and income accrued to it from all its patents and other rights amounted in the aggregate to the sum of $552,991.83 as of June 30, 1922, and that all of its operating expenses necessarily incurred in the production of said gross income amounted to $442,719.75 as of said date. It has been informed and believes, but is otherwise without knowledge in this respect, that all the royalties and income accrued under licenses issued by the Federal Trade Commission in respect [23] to said patents and other rights do not amount in the aggregate to more than the sum of $400,000 as of said date. Except as in this paragraph admitted or denied, it denies, on information and belief, each and every allegation contained in paragraph Forty-second of the bill.

XXXIII. It is without knowledge or information sufficient to form a belief concerning the allegation contained in paragraph Forty-third of the bill as to the actual original cost to the grantees or registered owners of the patents, copyrights, trade-marks and other rights referred to in said paragraph and therefore denies the same. It admits that a part of the consideration given by this defendant to the Alien Property Custodian for the several patents and other rights assigned and transferred by him to it was paid to said Custodian in lump sums; that said sums were not segregated to or apportioned among the several patents and other rights sold, and that some of said patents and other rights were of greater value than others. Except as herein in this paragraph admitted or denied, it denies each and every allegation contained in said paragraph of the bill.

XXXIV. It admits that the part of the consideration given by this defendant for the several patents and other rights assigned and transferred to it, which was paid to the Alien Property Custodian in money, amounted to the sum of $271,850. It is without knowledge or information sufficient to form a belief concerning the allegation contained in paragraph Forty-fourth of the bill as to the original cost of procuring or registering said patents and other rights, and therefore denies the same. Except as herein in this paragraph admitted or denied, it denies each and every allegation contained in said paragraph of the bill.

[24] It further alleges that only a relatively small

number of the patents sold, assigned and transferred to it by the Alien Property Custodian were of any commercial value whatever; that concerning a large number of them there has never been any request from any one for a license thereunder; that the defendant purchased said properties without any investigation into or certification of the validity thereof by counsel, and without warranty by or recourse upon said Alien Property Custodian; that a number of said patents have been challenged as invalid; that a large number of them had but a short period to run when sold, assigned and transferred to the defendant; that the greater part of them required the erection of costly plants for experiment, exploitation and development, or extensive and costly experiment and investigation before proper or effective use thereof was possible; that, under the terms imposed by the Alien Property Custodian upon the defendant when it acquired said patents, which terms had been originally fixed by said Palmer while acting as such Custodian, the defendant had no monopoly rights in any patent sold, assigned and transferred to it, but was required, on the contrary, to issue non-exclusive licenses to all qualified persons, firms and corporations without discrimination and upon equal terms, provided only that they were either American citizens or qualified American corporations, and was further required to and did give a free license to the United States under all of said patents; that the copyrights, labels, trade-marks and other rights, other than patents and patent contracts and rights, sold, assigned and transferred to it, were and are of no commercial value; and that it was understood and agreed by the Alien Property Custodian, the President and the defendant when said patents and other rights were sold, assigned and transferred [25] to it, that the defendant was acquiring said patents and other rights solely in the public interest to hold the same as trustee for the Americanization of such industries as might be affected thereby, and for the exclusion or elimination of alien interests hostile or detrimental to said industries, and for the advancement of chemical and allied science and industry in the United States.

XXXV. It admits the allegation contained in paragraph Forty-sixth of the bill that some of the records relating to transactions set forth in the bill were in the possession or under the control of the Alien Property Custodian, and certain of his assistants, attorneys and agents, and that, during the time that certain officers of the defendant were also assistants, attorneys, or agents of the Alien Property Custodian, they, as such assistants, attorneys or agents had access to such records in the possession of the Alien Property Custodian. It denies that all the alleged facts or records relating to the transactions set forth in the bill were at any time in the possession or under the control of the Alien Property Custodian, or those of his assistants, agents and attorneys who were also officers of or connected with this defendant; that any records whatever of the office of the Alien Property Custodian were removed from his possession or control to this defendant by any person, and that any of the facts set forth in the bill have only recently come to the knowledge of the plaintiff. The defendant alleges that such possession or control by the Alien Property Custodian, or his subordinates, wherever it existed, was at no time either kept secret from or exclusive of any other department or bureau of the Government. It further alleges that all the facts relating to the transactions set forth in the bill were at all times since the same took [26] place fully within the knowledge of the plaintiff. It is without knowledge or information sufficient to form a belief concerning the allegations in said paragraph of the bill as to the alleged investigation therein referred to and the various stages thereof, and it therefore denies the same. It admits the other allegations contained in said paragraph.

XXXVI. It denies each and every allegation contained in paragraph Forty-seventh of the bill.

XXXVII. It admits the allegation contained in paragraph Forty-eighth of the bill that it has instituted various suits under section 10 of the Trading with the Enemy Act against persons, firms and corporations holding licenses from the Federal Trade Commission covering certain patents referred to in the bill, in which suits the Treasurer of the United States is also made a defendant, but it denies that in any of said suits it is claiming any recovery for the use or enjoyment of any of said patents during a period prior to the respective dates when the same were duly transferred and assigned to it by the Alien Property Custodian. It admits that proceedings in said suits were stayed by stipulation until the 15th day of September, 1922, and that the patents involved in said suits are among those sold and transferred to it by the Alien Property Custodian. Except as thus admitted or denied, it denies each and every other allegation contained in said paragraph of the bill.

XXXVIII. It admits the allegations contained in paragraph Forty-ninth of the bill that it has spent a large proportion of its revenues derived from royalties on licenses issued under certain of the patents conveyed and transferred to it by the Alien Property Custodian, for [27] its running expenses and in publicity which it has deemed necessary to accomplish the purposes of its charter, and that it appears from its books and records that the amount of money so spent by it has exceeded its income. It avers that such expenditures were necessary and proper and tended to fulfill its charter purposes and to carry out the intent of the agreement under which it acquired said patents and other rights. The defendant denies that it is insolvent, and, except as above admitted or denied, it denies each and every other allegation contained in said paragraph of the bill.

FOR A FIRST SEPARATE AND AFFIRMATIVE DEFENSE TO THE BILL, the defendant shows to the Court and alleges that—

XXXIX. It appears upon the face of the bill that no valid cause of action entitling the plaintiff to equitable relief against the defendant is stated therein, and therefore the defendant prays that the bill be dismissed.

FOR A SECOND SEPARATE AND AFFIRMATIVE DEFENSE TO THE BILL, the defendant shows to the Court and alleges that—

XL. Prior to the commencement of this suit more than three years had elapsed since the largest part of the property, now sought to be recovered by the plaintiff, was sold, assigned and transferred to the defendant by the Alien Property Custodian, and during all of said period the plaintiff and its officers and agents had full notice and knowledge of the facts relating to the said sales, were duly put upon inquiry in respect thereof, and had ample means and due opportunity to inquire into said matters and facts and fully learn thereof. The Alien Property Custodian on or about February 22, 1919, after [28] the granting of the defendant's charter and prior to the transfers to or by the defendant, made to the President, and the President on March 1, 1919, transmitted to Congress, the report, a part whereof is the Defendant's Exhibit 2, which described the plan for the organization of the defendant, its objects and proposed activities, the intended transfer to it of said patents and other rights, and the considerations to be given by it therefor. Notwithstanding the making, receipt and transmission of said report to Congress as aforesaid, no step was at any time taken by any officer or department of the plaintiff to interfere with or prevent the carrying out of the plan and purposes detailed in said report, until the service of the demand which is annexed to the bill as Exhibit M. During said period the defendant, without interference, challenge, warning, or question by the plaintiff, dealt with the patents and other rights so sold to it as the owner thereof, held itself out as such, incurred large liability to its licensees and others, materially altered its position to its detriment by making large expenditures and doing and performing the duties and tasks imposed upon it in and by its charter and the agreement with the Alien Property Custodian under which it obtained said patents and other rights, and, pursuant to the provisions of said charter and for valuable considerations, made numerous licenses of patents so sold to it to divers innocent third parties, permitting them thereby to make use of said patents and other rights, and acting under said licenses, numerous of said licensees made large and substantial investments of capital in order to operate under said licenses, and sold to the public large quantities of products thus made by them,—all of which matters and things [29] the plaintiff knew, or in the exercise of reasonable or ordinary care could have known. During said period, the plaintiff had and retained and still has and retains all the pecuniary considerations paid by the defendant for said patents and other rights, as well as a large and ever-increasing part of the non-pecuniary considerations therefor given, released and promised by the defendant. Notwithstanding the knowledge and notice aforesaid, th plaintiff, during all of said period, acquiesced in an permitted said acts and transactions of the defendan its agents, officers, stockholders and licensees an failed to object to any of them.

XLI. The net income or revenue derived by the defendant from the properties sold, assigned and transferred to it by the Alien Property Custodian has bee substantially less than the aggregate of the pecuniar considerations paid by it for said properties; but nevertheless, the plaintiff has not and does not no in its bill offer to return or pay back, nor is it abl to return or pay back, said difference.

By reason whereof the defendant submits to th Court that the granting of the relief prayed for i the bill would be contrary to equity, justice and goo conscience.

FOR A THIRD SEPARATE AND AFFIRMATIVE DEFENSE T THE BILL, the defendant shows to the Court and allege that—

XLII. Both prior to the enactment of the amendment of November 4, 1918, to the Trading with the Enemy Act, which, among other things, expressly gave to the Alien Property Custodian the power to seize enemy-owned patents, and after such enactment, an investigation of the chemical industry in the United [30] States and Germany was conducted by certain of the attorneys and assistants of the then Alien Property Custodian, A. Mitchell Palmer, and under his supervision and direction, to ascertain and determine the relation of such industry to the duties and rights of the Alien Property Custodian and the relation thereof to the conduct of the pending war. Said investigation, as reported to said Custodian, among other things, revealed, and said Custodian thereupon in good faith and upon due showing and consideration found and determined, among other things, as follows, viz.:

(a) That the common defense of the United States could not be adequately provided for, nor the resumption or renewal of hostilities properly guarded against, nor modern warfare successfully waged, nor the general welfare of the people of the United States promoted and secured, without the control of large and adequate supplies of organic chemicals.

(b) That the entire organic chemical industry was essentially dependent upon the manufacture of dyestuffs from coal tar products.

(c) That prior to the outbreak of war in Europe in August, 1914, a group of six German dyestuff manufacturers dominated and monopolized the markets of the world, including those of the United States, as to dyes, dye intermediates and numerous important drugs and other chemicals produced as derivatives or by-products thereof. That this supremacy of the German industry had been brought about and was maintained by many years of research and study by highly trained German chemists, by the systematic fostering care of the German Government, by the bribing of employees of foreign competitors, and by a ruthless policy of so-called "full [31] line forcing," and destructive underselling or so-called "dumping" in order to ruin American and other competitors. That the control and monopoly obtained by means of these methods in the United States were in large part gained and maintained by the taking out by said German concerns or their employees of thousands of United States patents purporting to cover almost the entire known field of organic chemistry, many of which did not disclose fully or frankly the true nature of the proce or product covered thereby, but, nevertheless, we intended and actually operated to deter Americ manufacturers from competing with the patente through fear of suit for infringement of patents.

(d) That because of these conditions, the Germ manufacturers, prior to said World War, were ab to and did control the American market by means imports from Germany, and that there was no su stantial organic chemical industry in the United Stat commensurate with the needs of the country and a equate for the common defense thereof. That oth vitally important industries, such as the textile, pape leather, varnish and paint industries, were also large part thus made dependent upon said Germ dyestuff industry.

(e) That after the outbreak of said World War a the subsequent interruption of trade between Germa and the United States, the American organic chemic industry made some substantial, but inadequate pro ress, although seriously handicapped by the lack working knowledge of the German formulae and pro esses of manufacture. That in the meantime, a prior to April 6, 1917, said group of German dyestu manufacturers had been combined into one carte trust, or monopoly, with vastly increased capital a organization, so that it [32] was manifest that, the return of peace conditions, said new cartel woul be able to destroy the organic chemical industry this country or to dominate it as before, and that th future menace of this concentrated power was dete ring and preventing American enterprise and inves ment in such industry, which result was placing th United States at a great disadvantage in preparin for the common defense and the promotion of the general welfare of the country.

(f) That during said war the importance of said organic chemical industry to the United States and its people was strikingly demonstrated. That various trades and arts languished because of the absence of various dyestuffs, which could be produced only in Germany, and great suffering was occasioned by the shortage of necessary drugs, which in the early days of the World War could not be produced in the United States at all or in any sufficient quantity to meet the needs of the Army and Navy and of the people of the United States.

(g) That during the period between the outbreak of said World War and the entrance of the United States as a party belligerent therein, said German cartel or monopoly and the German government oppressively withheld necessary chemicals, dyes and drugs and used their control thereof as a means to coerce or force the United States to take such political or diplomatic action as would result in or tend to compel the lifting of the British and French blockade against Germany, regardless of the loss and suffering occasioned in the United States by the withholding of such supplies; and that in other ways the German control and monopoly of said industry was made use of by the German Government contrary to the neutrality laws of the United States and to the detriment of the [33] commerce and prosperity of the United States, and was a constant menace and source of danger thereto.

(h) That said war had demonstrated that the organic chemical industry constituted the basis for the manufacture of high explosives and toxic gases, whose destructive power, enhanced by the development of the aeroplane, had become the dominant factor in modern warfare.

(i) That the principal means whereby said German cartel, trust, or monopoly and the German Government accomplished their said control, domination and oppression, and the principal barrier which stood in the way of the development of an independent and self-sufficient organic chemical industry in the United States, consisted of the United States patents and patent rights then owned and possessed by German nationals.

(j) That said German nationals had taken out and were using many of said patents in violation of the purpose, intent and spirit of the provisions of the laws and Constitution of the United States. That said German nationals had taken out said patents pursuant to their scheme to control and monopolize the organic chemical industry in the United States, and in order thereby to strengthen their military, as well as their commercial, supremacy. That although said United States patents were both process and product patents, yet the Germans owning the same did not intend to and did not in fact produce thereunder in the United States. That this resulted in preventing the manufacture and production of such patented articles by any American manufacturers whatever, stifled American industries and prevented the growth and development in the United States of organic chemical science and skill, all by means of patents granted under the laws and Constitution of the United States, [34] whose express purpose and intent it was to promote the progress of science and the useful arts in the United States.

XLIII. Prior to the amendment of the Trading with the Enemy Act, approved March 28, 1918, while the Alien Property Custodian was merely a conservator of the sequestered enemy-owned property, his management and control of such property disclosed to him and he in good faith found and determined:

(a) That German industrial concerns through branches and subsidiaries in the United States had obtained control of many American industrial plants which bore important relation to the successful prosecution of war by the United States, and that many of such German branches or subsidiaries were centres of German propaganda, espionage, sabotage, intrigue and sedition.

(b) That the operation by the Alien Property Custodian of many sequestered enemy-owned properties would result in large profits, due in most instances to the war, which profits, if Congress ultimately determined to return said sequestered properties to their original German owners, would be accountable to such owners, thereby giving to enemies a benefit directly attributable to a war caused and precipitated by their government.

Thereupon the Alien Property Custodian reported the foregoing facts to Congress, and as a result the policy of the Government in relation to the treatment and disposition of enemy-owned property in the United States was altered, and the Act of March 28, 1918, amending the Trading with the Enemy Act, was accordingly passed to carry out a new policy, namely, that the Alien Property Custodian should be no longer a mere conservator, that enemy-owned property should be sold by the President, [35] acting through the Alien Property Custodian, whenever the President deemed it for the best interests of the United States, and even at private sale, if the President in the public interest should so determine, and that the control theretofore acquired by Germans of important American industries should thus be permanently destroyed and prevented in the future.

XLIV. In further pursuance of said last mentioned policy, Congress determined that in order completely to destroy the aforesaid control by Germans of important and essential American industries, it was necessary expressly to authorize the seizure and sale by the Alien Property Custodian of enemy-owned patents, trade-marks and other rights, and thereupon Congress passed said Act of November 4, 1918, and authorized such seizure and the disposition thereof in like manner as other sequestered property.

XLV. After the passage of said Act of November 4, 1918, the President and the Alien Property Custodian, acting thereunder and in order to carry out said governmental policy, in good faith duly determined that it was essential to the due and effective prosecution of the war, the common defense and the peace, health and welfare of the people of the United States that the American organic chemical industry should be freed from the control thereof by any German monopoly. Accordingly, the Alien Property Custodian, with the approval of the President, determined to seize the enemy-owned patents relating to said industry and to utilize the same so as to promote the common defense and the effective prosecution of the pending war or any renewal thereof and to aid said industry and emancipate it from foreign and hostile domination. To these ends he did thereafter from time to time demand [36] and seize said enemy-owned patents and other rights.

XLVI. Thereafter said Palmer, as Alien Property Custodian, as a means to the ends and for the purposes aforesaid, suggested and co-operated in the organization of the defendant as a corporation, with the charter, by-laws and personnel substantially as set forth in the bill, and arranged, subject to the approval of the President or his representative, to sell to the defendant the enemy-owned patents, trade-marks and copyrights and other rights relating to said industry, so seized by him, in order that the same might be utilized in the Americanization of said industry and in adequately preparing for the defense of the country,—all as will more fully appear from the annual report of said Alien Property Custodian to the President, dated February 22, 1919, and transmitted by the President to Congress pursuant to law on March 1, 1919, which is Defendant's Exhibit 2 hereto.

XLVII. Said plan of dealing with such enemy-owned patents, trade-marks and copyrights was then submitted by said Palmer to Frank L. Polk, who had theretofore been appointed by the President as his representative and delegate to exercise the power and authority conferred upon the President by the provisions of section 12 of the Trading with the Enemy Act as amended (other than the executive administration of the provisions of said section 12 pertaining to the designation of a depositary or depositaries), which section, among other things, conferred upon the President and the Alien Property Custodian the power to sell and dispose of enemy-owned property as fully to all intents and purposes as could the absolute owner thereof,—all as will more fully appear by reference to the executive order of the President dated December [37] 3, 1918, (Defendant's Exhibit 1, above referred to). Said plan thereupon received the approval of said Frank L. Polk as such representative and delegate, and such approval was evidenced by his orders duly made and dated respectively February 26, 1919, and April 5, 1919, copies of which are hereto annexed, made part hereof and marked Defendant's Exhibits 3 and 4, respectively. Thereafter said plan and the sales contemplated thereby were ratified and approved by the President, and such approval was evidenced by his executive order duly made and dated February 13, 1920, a copy of which is hereto annexed, made part hereof and marked Defendant's Exhibit 5.

XLVIII. On or about March 3, 1919, the President appointed Francis P. Garvan as Alien Property Custodian, to succeed said Palmer, in order that said Garvan might carry into effect the plan of sale as formulated and agreed upon by said Palmer. Said Garvan had for a considerable time prior thereto been Chief of the Bureau of Investigation and director of the New York office of the Alien Property Custodian and was the same Francis P. Garvan as was referred to in the report of said Palmer as Alien Property Custodian made to the President and Congress (Defendant's Exhibit 2). Said Garvan was recommended to the President by said Palmer for appointment as his successor in the office of Alien Property Custodian, because said Garvan was familiar with the aforesaid investigations of the chemical industry in the United States and had participated therein and knew the results thereof, and was fully informed as to the aforesaid plan formulated by his said predecessor Palmer for the sale of said patents to the defendant and approved the same. Said Garvan thereupon proceeded [38] to carry into effect said plan of sale as formulated and agreed upon by his predecessor, with the approval of the President and the President's said representative, Frank L. Polk.

Shortly after his appointment and on April 6, 1919, said Garvan as such Alien Property Custodian deemed it his official duty to communicate to the public, as well as to Congress and the executive department of the Government, certain facts in reference to the dye industry of the United States which had come to his knowledge in the course of his investigations as head of the Bureau of Investigation of the Alien Property Custodian's office and as Alien Property Custodian as aforesaid, and likewise in reference to the menace to the public interests then existing and which would continue to exist in war and peace unless effective steps were taken and adequate provisions were made for promoting the development and perfection of the dye industry of the United States and to make known his purpose to carry out and effectuate all and singular the plans theretofore conceived, devised and formulated by his said predecessor A. Mitchell Palmer as Alien Property Custodian, as aforesaid. Thereupon and for such purpose of publicity and information, said Garvan as such Alien Property Custodian delivered and widely published throughout the United States an address substantially as set forth in the copy hereto annexed which is made part hereof and marked Defendant's Exhibit 6. A copy of said address containing all and singular the statements contained in said exhibit was sent by said Garvan to the President, to said Frank L. Polk, to each member of Congress, to each member of the President's cabinet and to other officers of the Government.

[39] XLIX. Relying upon the knowledge by the President and his said representative Frank L. Polk of the aforementioned plan for dealing with said enemy-owned patents and other rights, and the approval thereof by the President and his said representative, the defendant proceeded to and did complete

its organization and financing in the manner disclosed to and approved by the President and the Alien Property Custodian. In so doing, it offered its stock for subscription to several thousand persons, firms and corporations, being those known to be interested in chemical and allied industries, by means of certain prospectuses, copies of which are hereto annexed, made part hereof and marked Defendant's Exhibits 7 and 8, respectively. As a result one hundred and fifty-eight of such persons, firms and corporations became and now are stockholders of this defendant, to the great advantage of the industry and the corresponding benefit to the Government and people of the United States.

L. Relying upon such full public disclosure and report and the knowledge and approval of the President and his said representative Frank L. Polk, the defendant entered into agreements with the Alien Property Custodian for the purchase of the patents and other rights involved in this suit and purchased the same. In connection with such purchase the defendant paid to said Custodian the cash consideration mentioned in the various instruments of sale and assignment, but each separate transfer was made upon the following further conditions and considerations moving from the defendant to the Alien Property Custodian, to wit:

(1) That the defendant should release to the United States the right to prosecute claims against the United [40] States for past infringements under the patents and other rights, sold, assigned and transferred to the defendant as aforesaid.

(2) That the defendant should license the United States in such manner as to grant to it during the life of each and all said patents, the right, free of

charge, to make or have made for its own use and to use the several processes and products covered by said patents so sold, assigned and transferred to the defendant, and to dispose of surplus products manufactured thereunder.

(3) That the patents and other rights so sold, assigned and transferred and the revenues derived by the defendant therefrom should be employed under, and in the manner provided for, in the defendant's charter, for the advancement of American chemical science and industry and the elimination of hostile alien interests.

LI. In conformity with the terms of sale, the defendant has since executed and delivered to the United States and the latter has accepted an instrument releasing it from all claim for past infringements under any of said patents and other rights, and licensing it to make or have made for its own use and to use, free of charge, the products and inventions covered by any of the patents transferred to the defendant, and to dispose of surplus products manufactured thereunder.

LII. In order effectively to carry out the intent and terms of said sale and the objects of its charter, the defendant at great expense catalogued and circulated among manufacturers and others who might be interested therein, lists of the patents and other rights so sold to it by the Alien Property Custodian as aforesaid, together with information concerning their availability and usefulness. [41] In cases of inventions which it seemed especially important to have rapidly and thoroughly developed, from the standpoint of the industry, public welfare, or common defense, it caused special study and research to be conducted in order to determine the availability thereof and caused its findings to be made known to the industry, and urged American concerns to manufacture under such patents. As a result thereof, to this date licenses under 422 of the patents so sold, assigned and transferred to it have been issued, non-exclusively, to a large number of American manufacturers, who have operated and continue to operate thereunder, and who, in the course of said operations, have expended millions of dollars in research and experimentation and the erection of necessary plant for the exploitation of the patents so licensed to them. Many of the chemical products which are now abundantly manufactured in the United States under such licenses were not heretofore produced in the United States, or were produced only in quantities wholly insufficient for domestic consumption and the needs of the common defense. Largely as a result of the licensing and other activities of the defendant, American manufacturers are now able to provide for approximately ninety per cent of the needs of the people of the United States for colors and dyes, as to which, prior to said war and the sale, assignment and transfer of said patents to the defendant, the American people were entirely dependent upon importations from Germany. Many of the products now abundantly produced under said licenses are chemicals which during the late war demonstrated their importance as basic elements of explosives and of modern defensive or offensive warfare, and others are of great value as therapeutic agents, and the ability to produce such chemicals abundantly and quickly is essential to the common [42] defense and general safety of the United States and its people.

LIII. In the licensing of said patents the defendant entered into numerous written contracts with licensees, whereby, among other things, it agreed to indemnify and hold harmless the licensees from infringement suits by third persons arising out of the making, using, or selling under such licenses, and to prosecute third parties infringing upon the patents covered thereby. Such agreements are still outstanding as obligations of the credit of the defendant which may not be released or assumed by another save with the consent of the licensees, which has not been given.

LIV. In further conformity with the terms of sale to it and with the objects of its charter, the defendant has co-operated with various branches, bureaus and departments of the United States Government concerned with such matters, and with various universities, colleges, scientific and technical societies, with the object of diffusing knowledge among the people of the United States concerning the vital importance to them of the science of organic chemistry and the necessity for the development and employment thereof for the up-building of American organic chemical industry and the general welfare and common defense of the country. This work has been in part accomplished by the widespread distribution of books and pamphlets treating of said subjects, procured and distributed by the defendant at large expense to it, and in part by contributions and subsidies made by the defendant to various institutions engaged in scientific research. In so doing the defendant has expended a total of approximately $300,000 to June 30, 1922, and has thereby [43] greatly stimulated public interest in and knowledge of the subjects aforesaid.

LV. In further conformity with the terms of sale to it and with the objects of its charter, the defendant has devoted special effort to promoting the manufacture in the United States of arsphenamine and neo-arsphenamine (otherwise known as "Salvarsan" and "neo-Salvarsan"), which are the most effective known remedies for the disease of syphilis. Since the sale, transfer and assignment to the defendant of the patent covering these remedies, it has, by diligent exploitation thereof in the public interest, procured additiona American manufacturers to produce the same, in al instances, however, under the regulations in that behalf prescribed by the United States Public Healt Service, with the result that this indispensable therapeutic agent, for which the United States and its people heretofore were totally dependent upon importation from Germany, is now produced in the Unite States in safer form and in ample quantities so tha the same is now supplied to sufferers from said disease at an average price of sixty to seventy-five cent per dose as against the average price of three dollar and fifty cents per dose prevalent during the perio just preceding the recent war when the United State was wholly dependent upon importations thereof from Germany.

LVI. In part as a result of these and other activities on the part of the defendant and of its adherenc to the terms of sale and to the objects, purposes an limitations of its charter, the American organi chemical industry has definitely and substantially progressed toward complete emancipation from the domination of the German chemical trust or monopoly, t the great benefit of the said industry and of the plaintiff and the American people.

[44] LVII. In performing the terms of the sai sales agreement with the Alien Property Custodian the defendant has expended large sums of money i excess of its receipts from the patents and other rights acquired by it from the Alien Property Custodian, t the great loss of itself and its stockholders.

LVIII. If the sales of said patents and other rights to this defendant be now rescinded by decree of this

Court, the United States cannot restore to the defendant the benefits which it and its people have received from the sale of said patents and other rights and from the performance by the defendant of the terms of sale as aforesaid, but, on the contrary, said benefits will remain with the United States and will continue to contribute to the safety, common defense, general welfare, health and prosperity of its people; nor yet can the defendant be made whole as to its expenditures of money and effort in the performance of said undertakings, nor can it be relieved from its obligation to defend its licensees from infringement suits resulting from their operation under said licenses, nor from its aforesaid obligation to prosecute infringers, nor can the licensees be restored to the respective situations in which they were prior to their acceptance of such licenses. Wherefore the defendant is advised and believes and therefore alleges that the United States as plaintiff ought not in equity, justice and good conscience, to have the remedy of rescission which it seeks by its bill.

Further answering the bill the defendant shows to the Court and alleges that—

LIX. The allegations contained in the bill charging parties, other than the defendant, with having monopolized [45] and attempted to monopolize, and with having conspired and done acts in pursuance and furtherance of an alleged conspiracy, and with having misrepresented and suppressed facts, and with having defrauded divers persons, and principally the allegations to that effect contained in paragraphs Eighteenth to Twenty-fifth inclusive, Twenty-seventh to Twenty-ninth inclusive, Thirty-first, Thirty-second, Thirty-fourth to Thirty-eighth inclusive, Fortieth, Forty-fourth and Forty-seventh of the bill, are insufficient and irrelevant, in that they do not charge or connect the defendant with any of the alleged wrongs and wrongful acts which they attempt to set forth, and have no relation to any of the relief prayed for by the plaintiff, and are therefore manifestly impertinent and should be stricken out and dismissed from the bill.

Further answering the bill, the defendant shows to the Court and alleges that—

LX. The allegations contained in the bill charging that necessary and essential facts with regard to the seizure, sale and disposition of the patents and other rights referred to in the bill were not stated or disclosed to the President, or to his representative, Frank L. Polk, but were withheld and suppressed from them, and that other facts in connection therewith were misstated and misrepresented to them, and principally the allegations to that effect contained in paragraphs Thirty-fourth and Thirty-fifth of the bill, are insufficient, vague, uncertain and indefinite, in that they are mere conclusions of the pleader, wholly unsupported by allegations of any facts, and are not charged against or connected with the defendant, and are therefore manifestly impertinent and should be stricken out and dismissed from the bill.

[46] WHEREFORE the defendant prays that the relief prayed for in the bill be denied and the bill dismissed.

THE CHEMICAL FOUNDATION, INCORPORATED,
Defendant,
By (Sgd.) FRANCIS P. GARVAN,
Its president.

(Sgd.) WILLIAM G. MAHAFFY,
GUTHRIE, JEROME, RAND & KRESEL,
Solicitors for defendant,
Equitable Building,
Wilmington, Delaware.

(Sgd.) WILLIAM D. GUTHRIE,
(Sgd.) BERNARD HERSHKOPF,
(Sgd.) LUCIEN H. BOGGS,
of counsel.

State of New York, }
County of New York. } ss.:

Francis P. Garvan, being duly sworn, deposes and says: I am the President of The Chemical Foundation, Incorporated, the defendant named in the foregoing answer; I have read the said answer and know the contents thereof, and the same is true of my own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters, I verily believe it to be true.

(Sgd.) Francis P. Garvan.

Subscribed and sworn to before me this 26th day of October, A. D. 1922.

[Notarial Seal] (Sgd.) William Rand, Jr.,
Notary Public, New York County, N. Y.

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[47] DEFENDANT'S EXHIBIT No. 1.

(Offered and Admitted in Evidence as Plaintiff's Exhibit No. 11.)

EXECUTIVE ORDER

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," known as the "Trading with the enemy Act," approved October 6, 1917, and the amendments thereto, I hereby make the following orders and rules and regulations:

I. I hereby vest in the Alien Property Custodian the executive administration of all of the provisions of subsection (c) of section 7 of said "Trading with the enemy Act" as amended by an Act entitled "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918; and said Alien Property Custodian shall have the power and authority to prescribe forms and procedure for the exercise of the powers and authority vested in him.

II. In the executive administration of said sub-section (c) of section 7 of said "Trading with the enemy Act," the Executive Orders heretofore issued by me by virtue of the authority vested in me by said "Trading with the enemy Act" shall apply; and said Alien Property Custodian is hereby vested with all of the powers and authority heretofore granted to him or vested in him by all Executive Orders heretofore issued by me not inconsistent with this Order.

III. The power and authority heretofore vested in the Federal Trade Commission to issue, pursuant to the provisions of sub-section (c) of section 10 of the "Trading with the enemy Act," or to withhold or refuse a license to any citizen of the United States or any corporation [48] organized within the United States, to manufacture or cause to be manufactured a machine, composition of matter or design, or to carry on or cause to be carried on a process under any patent, or to use any trademark, print, label or copyrighted matter owned or controlled by an enemy or ally of enemy, is hereby continued in full force and effect, provided:

(1) That said Federal Trade Commission shall not have the power or authority to issue any such license whenever the patent, trademark, print, label or copyright with respect to which application for such license is made, shall have been conveyed, transferred, assigned or delivered to the Alien Property Custodian, in pursuance of his requirement, or seized by him;

and whenever any patent, trademark, print, label or copyright shall be or shall have been conveyed, transferred, assigned or delivered to the Alien Property Custodian, in pursuance of his requirement, or seized by him, the Federal Trade Commission shall have no further power or authority with respect thereto.

(2) That said Federal Trade Commission shall notify the Alien Property Custodian of all applications made to it for licenses under said sub-section (c) of Section 10 of the Trading with the enemy Act, so that he may, if he so desires, appear at any hearing and object to the issuance thereof. The Alien Property Custodian, in case of appearance, may file with the Federal Trade Commission objections to the issuance of any such license. In no event shall any license be issued until after the expiration of fifteen days after such notice of the application shall have been given to the Alien Property Custodian.

IV. The Alien Property Custodian is hereby authorized to take all measures and do all things that may be necessary or expedient to administer the powers and authority conferred by this Order.

[49] V. I hereby vest in Frank L. Polk all power and authority conferred upon the President by the provisions of Section 12 of said "Trading with the Enemy Act" as amended, other than the Executive Administration of the provisions of said Section 12 pertaining to the designation of a Depositary or Depositaries, which Executive Administration was vested in the Alien Property Custodian by Executive Order of October 29, 1917, and which Executive Order is expressly ratified and continued in full force and effect; provided that this order shall not be construed to revoke or cancel the power and authority vested in the Attorney General by Paragraph XXXII of the Executive Order of October 12, 1917.

Nothing in this Order shall nullify or impair any license heretofore granted by the Federal Trade Commission, pursuant to the provisions of Section 10 of An Act of Congress entitled "An Act to define, regulate, and punish trading with the Enemy, and for other purposes," approved October 6, 1917.

WOODROW WILSON.

THE WHITE HOUSE,
3 December, 1918.

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[50] DEFENDANT'S EXHIBIT No. 2.

(An Excerpt From the Report of A. Mitchell Palmer, as Alien Property Custodian, Dated February 22, 1919.)

CHAPTER II.

NOTE: This excerpt was offered and admitted in evidence as Plaintiff's Exhibit No. 12. For convenience this excerpt is printed with Defendant's Exhibit No. 30, which embodies other portions of the report of A. Mitchell Palmer, as Alien Property Custodian.

[111] **DEFENDANT'S EXHIBIT No. 3.**

(Also Offered and Admitted in Evidence as Plaintiff's Exhibits No. 91 and No. 728-B, and as Defendant's Exhibit No. 4-B.)

ORDER BY FRANK L. POLK UNDER AUTHORITY OF EXECUTIVE ORDER OF DECEMBER 3, 1918.

An Order Concerning the Sale, Transfer and Release of Certain Rights Under Letters Patent, Trade-marks and Similar Rights Determined to Belong to or to be Held For, By, on Account of or on Behalf of or for the Benefit of Persons Determined to be Enemies not Holding a License or Licenses Granted by the President Within the Purview of the Trading With the Enemy Act and the Amendments Thereto.

By virtue of the authority vested in the President by an Act of Congress entitled "An Act to define, regulate and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of War expenses and for other purposes," approved March 28, 1918, and the amendment to such Act embodied in "An Act making appropriations to supply deficiences in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of War expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive Order No. 3016 and signed by the President under the third day of December, 1918, I hereby, in the public interest make the following determination and order:

The Alien Property Custodian may release and discharge the United States of America and any department thereof upon such terms and conditions as to the Alien [112] Property Custodian may seem proper, from any and all claims and demands arising from any alleged infringement of the letters patent, trade-marks and rights under letters patent and trade-marks hereinafter referred to.

The Alien Property Custodian may sell at private sale without public or other advertisement to the Chemical Foundation, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware at such place and upon such terms and conditions as to the Alien Property Custodian or his authorized agent may seem proper, all of the letters patent, trade-marks and rights under letters patent and trade-marks, including all profits and damages recoverable at law or in equity for the past infringement thereof which the Alien Property Custodian may seize or may have seized under the provisions of the said Trading with the Enemy Act and the amendments thereto, now or hereafter enacted and which he from time to time shall determine relate to the objects and purposes of said The Chemical Foundation, Inc., as expressed and defined by its charter.

My reasons in the public interest for the foregoing determination, order, rule and regulation are:

First: Said letters patent, trade-marks and similar rights can not be sold to the best advantage at public sale after public or other advertisement.

Second: The Chemical Foundation, Inc., has been incorporated for the purpose of holding letters patent, trade-marks and similar rights relating to the chemical and allied sciences as a trustee for American industry, for the purpose of the Americanization of such industries as may be affected thereby, of eliminating alien interests hostile to said American industries and of the advancement of chemical and allied industry in the United States. The Chemical Foundation, Inc., is obligated to grant non-exclusive licenses upon equal terms at a uniform royalty to qualified American manufacturers and is empowered to grant free licenses to the United States for any use the [113] United States may desire to make of the inventions covered by said letters patent, and similar rights.

Third: The public interest will be best served by a wide use of the inventions covered by said letters patent and similar rights, and such wide use can be most readily promoted by the licenses which the said The Chemical Foundation, Inc., is by its charter obligated to grant.

Fourth: A private sale will prevent said letters patent, trade-marks and similar rights from falling into the hands of purchasers who would be unwilling or unable to put the inventions covered thereby into use, or would use them for purely speculative purposes.

Fifth: It would be impossible to make a public sale of the said letters patent, trade-marks and similar rights so as to secure the foregoing benefits to the public.

Sixth: Unnecessary expense, delay and inconvenience may be avoided by a private sale.

Done in the District of Columbia, this, the 26th day of February, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America, the one hundred and forty-third.

Frank L. Polk.

[114] **DEFENDANT'S EXHIBIT No. 4.**

(Also Offered and Admitted in Evidence as Plaintiff's Exhibits No. 94 and No. 728-E, and as Defendant's Exhibit No. 4-E.)

ORDER BY FRANK L. POLK UNDER AUTHORITY OF EXECUTIVE ORDER OF DECEMBER 3, 1918

An Order Concerning the Sale, Transfer and Release of Certain Copyrights, Applications for Letters Patent and Applications for the Registration of Trademarks and Copyrights Determined to Belong to or to be Held for, by, on Account of or for the Benefit of Persons Determined to be Enemies not Holding a License or Licenses Granted by the President Within the Purview of the Trading With the Enemy Act and the Amendments Thereto.

By virtue of the authority vested in the President by an Act of Congress entitled "An Act to define, regulate and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30th, 1918, and prior fiscal years on account of War expenses and for other purposes," approved March 28, 1918, and the amendment to such Act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of War expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive Order No. 3016, and signed by the President under the third day of December, 1918, I hereby, in the public interest make the following determination and order:

The Alien Property Custodian may release and discharge the United States of America and any department thereof upon such terms and conditions as to the Alien Property Custodian may seem proper, from any and all [115] claims and demands arising from any alleged infringement of the copyrights hereinafter referred to.

The Alien Property Custodian may sell at private sale without public or other advertisement to The Chemical Foundation, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware, at such place and upon such terms and conditions as to the Alien Property Custodian or his authorized agent may seem proper, all of the copyrights, the certificates of registration thereof and the publications upon which said registrations were granted, applications for letters patent and for the registration of trademarks and copyrights and all rights thereunder which the Alien Property Custodian may seize or have seized under the provisions of the said "Trading with the Enemy Act" and the amendments thereto now or hereafter enacted and which he from time to time shall determine relate to the objects and purposes of said The Chemical Foundation, Inc., as expressed and defined by its charter.

My reasons in the public interest for the foregoing determination, order, rule and regulation are:

First: A similar order, rule and regulation relating to letters patent, trademarks and similar rights has been made by me the twenty-sixth day of February, 1919, and this order is supplemental thereto and necessary to fully carry out the objects and purposes of said order of February twenty-sixth, 1919.

to such act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, and all other powers and authorities me hereto enabling, I do hereby make the following determination and order:

Whereas by Orders dated February 26, 1919, and April 5, 1919, made by Frank L. Polk under the authority of Executive Order No. 3016 of December 3, 1918, the Alien Property Custodian was authorized to sell and convey to the Chemical Foundation, Inc., a corporation organized and existing under and by virtue of the laws of [118] the State of Delaware, certain choses in action and rights, interests and benefits heretofore determined to belong to, or to be held for, by, or on account of, or for the benefit of persons heretofore determined to be enemies; and

Whereas it was the intention of the said Executive Orders to authorize the said Custodian to sell and convey thereunder, all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description including rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, trademarks or tradenames, which the Alien Property Custodian may have seized under the provisions of the "Trading with the Enemy Act" as amended, and which he had from time to time determined to relate to the objects and purposes of the said The Chemical Foundation, Inc., as expressed and defined in its charter; and

Whereas doubt has arisen as to the authority of the said Alien Property Custodian to sell and convey to the said The Chemical Foundation, Inc., certain of the said choses in action, rights, interests, benefits under agreements, and rights and claims including rights to receive moneys by way of royalties or otherwise, as compensation for the use of patents, trademarks or tradenames;

Now, Therefore, I, Woodrow Wilson, President of the United States of America, do hereby in the public interest, determine and order that the Alien Property Custodian is hereby authorized to sell at private sale, without public or other advertisement, to The Chemical Foundation, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware, at such place and upon such terms and conditions as to the Alien Property Custodian may seem proper, all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description which the Alien Property Custodian may seize or may have seized under the provisions of the "Trading with the Enemy Act" and the amendments thereto now or [119] hereafter enacted and which he from time to time shall determine relate to the objects and purposes of the said The Chemical Foundation, Inc., as expressed and defined in its charter.

The Alien Property Custodian is also hereby authorized in the case of sales heretofore made by him of any property which he is hereby authorized to sell, but as to which his authority to sell the same under the said Orders of February 26, 1919, and April 5, 1919, may be deemed doubtful to confirm and ratify the said sales by the execution and delivery of a suitable instrument of confirmation.

My reasons for the foregoing determination and order are stated in the said orders of Frank L. Polk of the 26th of February, 1919, and the 5th of April, 1919; and in addition thereto, the public interest will be best served by the elimination of any enemy interest adverse to American citizens arising by reason o said choses in action, or rights, interests and benefit under agreements and by the devoting of any payments made by reason of said choses in action or unde said agreements by The Chemical Foundation, Inc., t the promotion of the objects stated in its charter.

Done in the District of Columbia this 13th day o February in the year of Our Lord One Thousand Nin Hundred and Twenty, and of the Independence of th United States the One Hundred and Forty-fourth.

WOODROW WILSON.

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[120] DEFENDANT'S EXHIBIT No. 6.

(Offered and Admitted in Evidence as Plaintiff's Exhibit No. 16.)

ADDRESS
OF
FRANCIS P. GARVAN, ALIEN PROPERTY CUSTODIAN,
BEFORE
THE NATIONAL COTTON MANUFACTURERS' ASSOCIATION

April 6, 1919

For nineteen months I have been engaged in a stud of German industrial life and its manifestations an activities in the United States, and I come here to giv you as briefly as I may a few of the incontrovertibl facts which my experience has made clear.

First and foremost, be it understood that this wa an industrial war, brought on by industrial German in her lust-mad haste to capture the markets of th world. Industrial Germany in its arrogance and prid preferred the formidable hazard of battle to the progressive and sure infiltration which within ten o twenty years might well have given her the world domination she sought from complacent and unthinking peoples.

Industrial Germany was in control of Imperial Germany. Industrial Germany sympathized and participated in the preparation for this war. Industrial Germany waged this war. Industrial Germany was the first to see defeat and forced the military peace, in order that with her industrial equipment intact she might continue that same war by intensified and concentrated economic measures.

Her ambitions are the same in peace and in war. Her methods are the same in peace and in war. Destroy your business competitor by state aid, cartel combination, dumping, full-line forcing, bribery, theft of patents or inventions, espionage, and propaganda! Destroy your [121] military adversary by tearing up sacred treaties, by unlicensed and unbridled submarine and poisonous gas warfare, by the destruction of factories, mines and vineyards, by terrorism and vandalism!

You or I have yet to hear one word of a change of heart or purpose; one word of regret or shame; one word of dispraise for any leader in the past holocaust. On the other hand, hold to the fact that at this moment the four men best fitted to conduct a ruthless economic war upon this country, the four men who planned, instigated and paid for all the black history of lawlessness under which we suffered for two and a half years, Dr. Albert, Dr. Dernburg, Captain Boy-Ed, and von Bernstorff, are the helmsmen of the present German Government. Dr. Heinrich Albert is now Under-Secretary of State; Herr Bernhard Dernburg is now Minister of Finance; Boy-Ed is Director of the Intelligence Section of the Foreign Office, the Espionage and Propaganda Division; and that arch-criminal, Bernstorff, is over them all, directing and leadin the new Government.

Has the war ended for you?

It was Germany's chemical supremacy that gave he confidence in her avaricious dream of world empir It was Germany's chemical supremacy that enable her to wage four years of pitiless warfare. And it i Germany's chemical supremacy upon which she relie to continue this war; and for that supremacy she pay homage to her dye industry, and counts upon that dy industry to maintain it.

Since 1866 Germany has recognized the fact tha upon the development of the dye industry rested he entire development of organic chemistry, that upo the development of organic chemistry rested, in a ever-increasing measure, all the development of modern business, and modern warfare.

And so she cherished the industry with wisdom an prevision while it was still in its childhood, and b her patience, by her persistence, by the willingnes of her [122] people to sacrifice in unselfish co-operation, she has gradually transformed the plans mad in the year 1866 into the reality of today.

And now she realizes that her dye industry constitutes her keenest wedge with which to force her wa back into the world trade. She calls the dye industr her chief "Protective Industry," and has laid out fo it a program of state protection and aid which shoul startle us. She proposes to use the alleged necessities of the world for her dyes to force all her othe exports. In other words, she proposes to use it as club with which to fight her way back into commercial society.

Prior to the war the German dye industry wa united into three cartels with some independent companies outside. All are now united into one monste cartel, the I. G. Company, with Mr. Weinberg, the ol head of the Cassella Color Company, as its president, and a capitalization of hundreds of millions of dollars. Germany has taken it under state aid and protection; she has decided to establish a guaranty fund whereby all industries share the losses the cartel may be compelled to face through dumping, bribery, or other expense incurred in reasserting her dye monopoly of the world. She looks forward to granting it trade export premiums, freight rebates, intensified consular service, and state guarantees against labor troubles.

As a result, our young but vigorous industry stands here today in direct competition, not only with the great cartel I. G., but with that great cartel sustained and supported and subsidized by the entire strength and wealth of the German kingdom.

Over three billion dollars of annual business in America, including yours, are dependent upon the dye industry. Is there any doubt that the destruction of the American industry means your enslavement to that cartel, and your destruction when it becomes the whim of that cartel?

For years that three billion dollars of annual business was dependent upon the graciousness of German ambition. [123] The time had not come when it seemed to their self-interest to cripple or destroy it, but when the war came on, in an instant Germany felt the force of your dependence and attempted to use your necessities to influence the policies of your Government. There was a considerable period when Germany could have relieved your distress; but would not. There was a period thereafter when her branches here might have assisted you; but they would not.

Listen! April 25, 1915, Boy-Ed, of ill-smelling fame, writes to Albert: "Very Honorable Privy Counsellor. Today's *World* prints the enclosed short article on the alleged erection of dye factories in New Jersey by Germans. In case you are not able to take any steps to prevent an undertaking of this kind, I am requesting you to indicate to whose attention I could call the matter. With greetings, etc." Signed, Boy-Ed.

Albert answers, April 28, 1915: "Very Honorable Captain: With regard to dyes, I got into touch with local experts in order to determine what truth there is in the news. According to my knowledge of things, the matter is a fake, inasmuch as our factories have bound themselves orally and by word of honor to do nothing in the present situation which might help the United States." . . .

But even greater than the importance of the dye industry in commercial life is its absolute necessity in modern warfare. I quote from Dr. Schweitzer:

"In no other field has German efficiency proven its superiority as in that of chemistry. While this was anticipated before the present war, it is no exaggeration to state that the German chemist has so far contributed as much, if not more, to the success of the campaign than the strategist, the army and the navy, and that, therefore, the present holocaust may be justly called the 'chemists' war.' "

Eighty per cent of her explosives, and all her poisoned gases, were manufactured by Germany's dye factories . . .

[124] A Commission appointed by the Allied Governments has just reported to their respective Governments: "At first, chlorine and phosgene were the main requirements, but afterwards a variety of organic substances were employed, all of which were made by the factories of the I. G. combination, and many of these substances were new and difficult to prepare, and rapid production was only possible owing to the speed with which the peaceful organization of the dye factories could be utilized for these purposes.

When the Government wished to introduce a new gas, a conference of the various firms was held at Berlin to determine how the manufacture should be subdivided in order to use the existing plant to the best advantage. For instance, the initial stages of the manufacture of mustard gas were carried on at Ludwigshafen, and the final stage at Leverkusen."

They go on: "In the future it is clear that every chemical factory must be regarded as a potential arsenal, and other nations cannot, therefore, submit to the domination of certain sections of chemical industry, which Germany exercised before the war. For military security it is essential that each country should have its chemical industry firmly established, otherwise we are leaving Germany in possession of a weapon which will be a permanent menace to the peace of the world.

"The key to Germany's war production of explosives was the Haber process for the production of ammonia from atmospheric nitrogen. Without such a process Germany could not have made the nitric acid required for her explosive program, nor obtained fertilizers for food production after the supply of Chile saltpetre had been stopped by our blockade, and it is probable that she could not have continued the war after 1916. In the event of another war, we might be cut off from supplies of saltpetre, while Germany would be independent of them."

Gas warfare, and its development, even if forbidden by the League of Nations, cannot safely be left in German hands, and organic substances will be employed which [125] we do not know today. Any country without a well-developed chemical industry is in danger.

Useless your armies and your navies, your U-boats and your aeroplanes, unless by means of a developed dye industry you keep abreast with modern chemical warfare.

But this industry has had, and now has, another great function in Germany's machine. It was, and is, the basis of her espionage and propaganda system.

True it is that we had in this country the Orenstein Arthur-Koppel Company, a German concern owning a large plant at Koppel, near Pittsburgh. The chief business of that company was the manufacture and installation of what is known as "inside transportation," that is, narrow gauge railways, dump cars, traveling cranes, and machinery of a similar sort used in large industrial plants. It was the American branch of a great German house with connections in all the great countries of the world. For twenty years it has put in bids based upon the plans and specifications of every big industrial plant built in this country; and for that same twenty years, blueprints of these specifications and floor plans and elevations have gone on file in the Government office in Berlin.

True it is that in this country we had eighteen branches of German insurance companies, largely engaged in the reinsurance business; and that these companies collected for their own use detailed plans of all property insured by them, with especial reference to the hazard of the insured buildings from fire, explosion or other causes; and duplicates of these plans and drawings also found their resting place in the Berlin office. And we wondered at the accuracy of our factory fires and explosions!

True it is that Germany, through the Bosch Magneto Company, the Eisemann Magneto Company and the Boonton Rubber Company, had a practical monopoly of the ignition systems in America, and through this combination the files of the central office in Berlin were kept [126] up to date with all plans for improvements in military trucks, gasoline boats and aeroplanes.

Let me read you Manager Otto Heins' report to Dr.

Albert of the activities of the Bosch Magneto Company in this your country, at that time neutral:

"Honored Mr. Albert: In connection with the obstruction policy upon which we agreed at the beginning of the war in matters concerning deliveries of our products, especially the special magneto apparatus, I should like in the following to make several statements from which one will clearly see that the accomplished obstruction policy has in every way been successful. In short, we had great difficulty at the beginning of the war in withholding the much-needed special aeroplane apparatuses from the Allies, and in preventing the Allies, especially the English, from immediately attempting to manufacture them for themselves. Special apparatuses are involved in flying machines, airship and speed boats. These apparatuses are very different from the normal apparatus used on automobiles and motorcycles. We have freely supplied them with ordinary apparatuses; but, *in accordance with our agreement,* we have entered into apparent negotiations with the representatives of the Allies, creating in their minds the impression that they would receive also the special apparatuses at the present time. These negotiations began immediately after the first declaration of war, and it was possible, on account of their technical character, to extend them many months into the war. Our policy lulled them into the certainty that they would receive the special apparatus, and only now, November 30, fifteen months after war began, have they realized our duplicity."

He goes on to state that this policy has been carried out despite the fact that these contracts were in many instances subcontracts with American firms; and he gloatingly continues that as a result of his activities in this country England, in October, 1915, found herself unable to defend London against their air raids, and states [127] that France was in a much better position to protect herself against air raids because of her confiscation of the Bosch factories in Paris at the beginning of the war. I wonder how many women and children were killed!

True it is that the Hamburg-American Line and the Nord Deutsche Lloyd kept faithful tab for Berlin on a thousand details of our business life which came under their observation; that not a ship left our harbors, not a cargo was loaded or unloaded, but that some member of its organization watched and reported every detail to be sent by code to the German Government.

But greater than all, and forming the foundation of her entire espionage and propaganda system, stood the dye industry. Her trained observers enjoyed full access to the business they supplied, and regularly and faithfully reported each and every detail of the three billion dollars of annual business dependent upon the dye industry in this country. As long as you were supplied by the "Big Six," your business had no secret unknown to Berlin. In Berlin you will find a card index system which recites every fact connected with each and every one of your concerns that can be of any possible value to your rivals over there.

The head of that system in this country for years before the war was Dr. Hugo Schweitzer, president of the Bayer Company. Right here you will be glad to know that the Bayer Company is now 100 per cent American, having been bought by loyal Americans. He was given his Secret Service number by the Imperial Minister of War, 963,192,637. He came to this country, became a citizen on the instruction of the German Government, eventually was made the head of the Bayer Company, and led the espionage and propagandist movements here down to the day of his sudden death in November, 1917. His regular reports to Germany are the story of your prewar slavery and the story of the activity of each and every representative connected with the old "Big Six" to perpetuate that slavery. When Albert came here, to [128] assume the leadership of that system, it is to Schweitzer he first turns. And then we find Schweitzer bringing to Albert's office from day to day those other smiling gentlemen who sold you the "peerless dyes" in the past. From that moment Germany's trade outposts in this country were turned into ministers of lawlessness and destruction.

A word or two of his activities. Schweitzer was the inventor of the idea of the purchase of the New York *Evening Mail.* Schweitzer was the inventor of the idea of the German Publication Society, formed to publish, for our delectation, the literature of German Kultur. Schweitzer, with Henry Weissmann, president of the German-American Alliance, we see forming the Printers and Publishers' Association, another attempt to create an English-language newspaper to present Germany's side of the war. Over thirty trained chemists, his lieutenants, are now interned.

We find Albert, about to go home, in January, 1917, turning over to Schweitzer $1,178,882.08; and again, on February 2, $300,000, all to be spent in espionage and propaganda. We find Schweitzer using the chemical branches of the "Big Six" in this country to form the Chemical Exchange, by which all available phenol supply in America was turned away from the manufacture of picric acid for explosives for the Allies, with a profit, out of America's pocket, to Germany of $1,650,000.

Listen to Albert's praise:

"The breadth of high-mindedness with which you at that time immediately entered into the plan has borne fruit as follows: One and a half million pounds of carbolic acid have been kept from the Allies. Out of this one and a half million pounds of carbolic acid four and one-half million pounds of picric acid can be produced. This tremendous quantity of explosive stuffs has been withheld from the Allies by your contract. In order to give one an idea of this enormous quantity the following figures are of interest:

[129] "4,500,000 pounds equals 2,250 tons of explosives. A railroad freight car is loaded with 20 tons of explosives. The 2,250 tons would, therefore, fill 112 railway cars. A freight train with explosives consists chiefly of 40 freight cars, so that the 4,500,000 pounds of explosives would fill 3 railroad trains with 40 cars each.

"Now one should picture to himself what a military coup would be accomplished by an army leader if he should succeed in destroying three railroad trains of forty cars, containing four and a half million pounds of explosives.

"Of still greater and more beneficial effect is the support which you have afforded to the purchase of bromine. We have a well-founded hope that, with the exclusion of perhaps small quantities, we shall be in a position to buy up the total production of the country. Bromine, together with chloral, is used in making nitric gases, which are of such great importance in trench warfare. Without bromine these nitric gases are of slight effect; in connection with bromine, they are of terrible effect. Bromine is produced only in the United States and Germany. While, therefore, the material is on hand in satisfactory quantities for the Germans, the Allies are entirely dependent upon importation from America."

Gentlemen, did you intend by your support of the German dye industry to leave the Allies defenseless against the poison gas made by that German dye industry?

But that is not the worst. At Bogota, New Jersey, in the New Jersey Agriculture Chemical Company, Dr.

Schweitzer employed Dr. Walter Scheele, who was the inventor, in that little town of New Jersey, in 1913, of mustard gas, the formula of which he transmitted through Captain von Papen to Germany as soon as the war broke out. This is the mustard gas which laid low your brothers on the plains of France. And for Scheele, Dr. Schweitzer laid out the plans for the preparation of the bombs which destroyed your ships in your harbors.

Untold millions were spent by this man in propaganda [130] and espionage in the United States. In the two years before we entered the war, the Bayer Company drew $2,000,000 from the profits of its Orient and South American houses, which money was spent here, for what purposes we can well imagine. Practically all the dye salesmen you saw were only nominally in the employ of the branches here; all had secret and personal contracts with the home office.

All that I have said of Schweitzer is typical of practically all representatives of German dye houses in this country. Wherever we have found espionage or propaganda activity, there you will find those names so familiar to you in the days of your slavery. You will find the same gang returning, decrying our dyes, selling apparently Swiss or unmarked dyes, telling you tales of German distress, serving as ever their Fatherland. Be on your guard.

Coincident with the development of Germany's dye industry came the general development of her chemical strength. It offered great incentives to young men. It developed a large body of trained scientists. It encouraged and fostered the spirit of research in all lines, and added to the effectiveness of practically every industry in the empire. Nowhere is this more striking than in the supremacy Germany was attaining in chemical medicine.

One other thought I want you to have in mind is this: For four years now the chemical science developed by the dye industry of Germany has focussed its mind largely upon substitutes for the raw material she has hitherto received from the outside world. The leader of her chemical industry in this country, Dr. Hugo Schweitzer, of whom I will have more to say later on, wrote to his Government:

"All these endeavors to substitute cotton may appear ridiculous to us who have been brought up with the idea that Cotton is King and that America has been designed by fate to supply this fiber to the civilized world. The farmers who cultivated the madder root, and the planters [131] who raised indigo, were also inclined to jest when they were apprised of the fact that German chemists had succeeded in reproducing in the laboratories the dyes which their crops furnished; but when the manufactured materials drove the natural products from the market, and left the farmers and planters without a job, hilarity ceased. History may repeat itself and willow-bark and nettle, or some other substitute, raised on German soil, may, in the near future, depose King Cotton. The German chemist has a duty to perform, and with his perseverance and application he does not shrink from any problem, however difficult it may appear to outsiders."

Gradually Germany was obtaining control of the pharmaceutical industry of the world, and gradually it was dawning upon her that this development too might put in her hands an even more powerful weapon than explosives or poisonous gas in her conscienceless conquest of the world. Most of the great discoveries in chemical medicine came directly from the dye laboratories. Are you content that the development of chemical medicine shall remain the exclusive possession of the German nation as we now know it?

Briefly then I have tried to give you a picture of the situation of this country in its relation to the dye industry, as our daily experience of the past eighteen months unrolled it before us. Do you wonder that A. Mitchell Palmer and all those who fought under him were shocked beyond measure, and could not rest until Congress had amended the Act and had given us the power under which we have rooted out each and every branch of that system and sold it into the hands of patriotic Americans?

But that was not enough. Germany had misused our patent system, just as she had misused and violated our Sherman Law, our anti-dumping laws, our anti-bribery acts, our business code, and our common code of honesty. She had taken out patents for all her developments, covering, in many instances, not only the processes, to prevent manufacture here, but also the product, to prevent [132] our taking advantage of any possible development in the dye industry of other countries.

4,500 of these patents which applied to chemistry Mr. Palmer has sold for the benefit of American industries to a quasi-trustee corporation, called the Chemical Foundation. This company is capitalized for $500,000, $400,000 being six per cent preferred stock and $100,000 common stock, also limited to dividends of six per cent.

The stock has been all underwritten by members of the Dye Institute, each and all taking their share, and is now in process of distribution through the dye producers and, eventually, through the consumers. It is the intention that ultimately no one will own more than a thousand dollars' worth of stock, eight hundred preferred and two hundred common.

All license fees accruing to the Foundation will be used first to pay back the preferred stock. All surplus then above the six per cent actually invested will be expended for the development of research and the encouragement of the chemical industry of America.

Its executives serve with enthusiasm and without pay. All its stock is trusteed for a period of seventeen years. Its management and its policies are controlled by a Board of Trustees, consisting of Otto Bannard, President of the New York Trust Company, Chairman; Cleveland H. Dodge; George L. Ingraham, late Presiding Justice of the Appellate Division of the New York Supreme Court; Ralph Stone, President of the Detroit Trust Company; and Benjamin Griswold, of Brown & Son, Baltimore. These gentlemen have been serving as the Advisory Sales Committee of the Alien Property Custodian for over a year. They represent the highest standard of American patriotism and disinterestedness. Long lives of manifested ability, long lives of unselfish service to their country, guarantee the character of the Chemical Foundation.

Its counsel is Joseph H. Choate, who as a dollar-a-year man, has given eighteen months of tireless and efficient [133] service in the exclusive study of the chemical situation. Its patent counsel is Ramsay Hoguet.

This Foundation proposes to license to any competent, equipped and patriotic American, individual, firm or corporation, such of these patents as, with the help and encouragement of the Foundation, may be utilized. This Foundation proposes to begin to fight at the customs gate against any violation of the patents now owned by it, whether they appear as denationalized or camouflaged products seeking to enter through neutral sources. It proposes to establish an Intelligence Department which will co-ordinate, preserve and utilize all the chemical information gathered by every department of the Government during the war, and make that information available to the American public that they may know the exact truth as to the past, and may be kept apprised of all German activity, either through its own agents or its American connections, during every stage in the coming struggle.

It proposes to match with watchfulness and pitiless publicity all future attempts at espionage or propaganda in our land. It proposes to expose all unfounded criticism directed against our productions, and, on the other hand, to do what it can to prevent producers or dealers here casting reflection upon our industry by the marketing of inferior or dishonestly described products.

It proposes to encourage and foster chemical research by co-operation with the forces already at work; by offering some hope of protection and reward to the loyal research men in the United States Government Service, who now by Department rule have to dedicate their inventions to the public, a course which results only in Germany transferring these inventions to her own laboratory system for development or exploitation.

It proposes to bring about a closer union of the university and the factory. It has taken over all German copyrights, and will thus free much scientific literature [134] from the shackles of the German language. It proposes to place all possible information on our situation before Congress, and ask the passage of a law establishing a license system governing all chemical importations for a period of ten years. It is intended that this license system shall act at one and the same time as a guarantee to you and all other dependent industries for proper importations to enable you to meet the competition of other lands, and to protect and guard our growing chemical independence. In this we ask no more than England, France, Italy and Japan have already decided to grant on behalf of their own independence. This request we base upon the following grounds:

1. Fairness to the $450,000,000 invested in the chemical business by loyal Americans in the hour of our need.

2. Independence and freedom of the textile, leather, paper, paint and varnish, pharmaceutical three-billion dollar essential American business.

3. The necessity of our national defense.

4. The destruction and prevention of the German system of propaganda and espionage in our land.

5. The advancement of pure science and research.

6. The advancement of medical science.

The granting of this license system is not a question of conflicting economic schools. It is the question of our national independence, safety and education.

Once we are assured time in which to work out our salvation, we hope to turn to our dearest objective. Already we have started to make a survey of our laboratory equipment, Governmental, university and factory. Already company after company have passed resolutions through their Boards of Directors, placing at the disposal of our Trustees, under such terms and conditions as those Trustees may dictate, their entire research capacity. Government laboratories and university laboratories have also been assured us. Gentlemen, we know that offer will be unanimous.

[135] We will soon be able to go to the medical profession of America and offer to them the entire capacity of the country for experiment and research for the betterment of mankind. One medical chemist in one dye factory in Germany discovered the cure for syphilis, the deadliest enemy of mankind. The same medical chemist, in the same dye factory, discovered the cure for the sleeping sickness of Africa which made a continent habitable. What can we not hope for when the American medical profession is given unbounded scope and opportunity?

We are assured that somewhere within that realm lies the hope of the cure for consumption, cancer, and many of the seizures which rob us of our little ones. Can it be that herein lies the opportunity of converting the forces which up to now have been directed only toward desolation and destruction into the channels of alleviation and helpfulness to humanity? Can it be that through this medium idealist America may snatch the torch of misapplied Science from the barbarian, and place it in the hands of an enlightened civilization?

Gentlemen, Drs. Albert and Bernstorff reported to their Government that America could never establish the dye and pharmaceutical industry in this country, as we lacked the moral power for the creation of such an industry; that here each party pursued its own selfish interests, but nobody kept the whole in mind; that this problem could only be solved through regard for all points of view, and that the conflicting selfishnesses of this country rendered that solution impossible.

The Chemical Foundation answers this statement with a challenge, and if it can only become the coordinating forum for American patriotism, American sacrifice, and American ability, it awaits the issue with serenity.

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[136] DEFENDANT'S EXHIBIT No. 7.

(Offered and Admitted in Evidence as Plaintiff's Exhibit No. 17.)

PROSPECTUS
THE CHEMICAL FOUNDATION, INC.

The Chemical Foundation is a corporation organized *at the suggestion of the Alien Property Custodian,* by members of the American Dyes Institute, the American Manufacturing Chemists' Association, and other gentlemen engaged in various branches of the chemical industries, to buy from the Alien Property Custodian and hold for the chemical industries and for the country at large, the German-owned United States chemical and allied patents taken over by the Alien Property Custodian under the amendment of November 4, 1918, of the "Trading with the Enemy Act."

The Company is a Delaware corporation, capitalized at $500,000.00, of which $400,000.00 is preferred stock, and $100,000.00 common stock. Each of these stocks is limited so that it can receive no more than 6% dividends. The preferred has a preference as to both principal and income, but has not voting power except upon the question of amendment of the charter. The common stock has full voting power. None of the stock of either class can be transferred except by consent of the Board of Directors. The charter provides that the preferred stock shall be subject to redemption as a whole at par on January 1, 1921, or on any first of January thereafter, as the directors may determine, and that it shall be so redeemed whenever the accumulated surplus amounts to 100% of the total issued and outstanding stock of all classes. The common stock is to be issued under an obligation to deposit it in a voting trust which is to continue until January 1, 1936.

The trustees, in whom under the voting trust agreement, the control of the Foundation will be lodged, are the following gentlemen, who have been serving for many [137] months as the Advisory Committee which has passed upon all sales made by the Alien Property Custodian:

Otto T. Bannard, Esquire. (Chairman The New York Trust Company, N. Y.)

Hon. George L. Ingraham. (Late presiding Justice Appellate Division, First Department, New York Supreme Court.)

Cleveland H. Dodge, Esquire.

B. Howell Griswold, Jr., Esquire. (Of Alexander Brown & Sons, Baltimore.)

Ralph Stone, Esquire. (President, Detroit Trust Company, Detroit, Michigan.)

The Trust Agreement gives those trustees the power to fill vacancies in their board, so that during the continuance of the trust they will be a self-perpetuating body. They elect the directors of the Company, whose resignations are always in their hands.

The officers and directors of the Foundation are as follows:

President, Mr. Francis P. Garvan. (The Alien Property Custodian.)

Vice-President, Col. Douglas I. McKay. (Late Colonel, General Staff, Vice-President of J. G. White & Co., and Deputy and Police Commissioner of the City of New York under Mayors Gaynor, Kline and Mitchel.)

Treasurer and Secretary, Mr. George J. Corbett.

Assistant Secretary, Central Union Trust Company.

These gentlemen are for the present serving without salary. For its patent counsel the Foundation has retained Mr. Ramsay Hoguet, of the New York firm of Emery, Varney, Blair & Hoguet, to whom, as patent counsel for the Alien Property Custodian has been due the successful accomplishment of the enormous task of finding and transferring the German patents. The General Counsel of the Company is to be Mr. Joseph H. Choate, Jr., who for the past year has been entirely occupied in the chemical part of the work of the Alien Property Custodian's Bureau of Investigation. Substantially the whole [138] of the special knowledge, in this field, acquired by the Alien Property Custodian and his staff, is thus at the disposal of the Foundation. It is believed that all of the trustees, officers and counsel of the Foundation are completely dissociated from the dye-producing and dye-consuming industries.

The entire capital stock of the Foundation was underwritten by the members of the American Dyes Institute and the Manufacturing Chemists' Association, and these underwriters have provided in advance so much of the capital as is required for the purchase of the patents. In this underwriting, however, the greater portion of the subscriptions came from a few of the larger manufacturers. In order to render it certain that the control of the Company can never be vested, even at the termination of the voting trust, in any small group of interested parties, the underwriters are now endeavoring, under the supervision of the Alien Property Custodian, to distribute the stock subscribed for as widely as possible among the chemical and allied industries. In any event no subscriber will be allowed to hold more than two, and possibly not more than one, share of the common stock, which has the voting power. It is hoped that when this distribution is complete, no single subscriber will retain more than $5,000.00 of the preferred stock. If this can be realized, the Foundation will remain, even after the dissolution of the voting trust, the impartial representative of all the industries affected. After the success of the Company shall have been demonstrated in actual operation, it is hoped that the consuming industries may also be brought in.

To the Foundation as thus organized, the Alien Property Custodian has sold for the sum of $250,000.00 substantially all of the German dye and chemical patents seized by him, except those which were included in the sale of the Bayer Co., Inc., which took place before the organization of the Foundation. The patents cover a very wide field, the classification including metallurgy, [139] fertilizers, fixation of nitrogen, hydrogenation of oils, etc., and number approximately forty-five hundred. Arrangements for the transfer of these patents are nearing completion, and should be wholly completed by April 10th. They will be used to encourage manufacture in this country and discourage importation from Germany. The Foundation will issue non-exclusive licenses under them, on reasonable and equal terms, to manufacturers whose Americanism and competence are unquestioned. It will also prosecute with all possible vigor, suits against all persons who attempt to import any infringing product. Since many of the patents are product patents, the Foundation should be able to exclude infringing goods from any source whatever, and should thus be able to give effective protection to a part at least, of the new American dye industry.

In addition to the patents, the enemy trademarks taken over by the Alien Property Custodian have likewise been sold to the Foundation. A plan is being formulated under which it is hoped that the Foundation will be able to license American manufacturers to use these trademarks. The intention is to issue such licenses only when the goods to which the mark is to be attached, are found on examination by the Foundation itself, to be equal or superior to those of the original owner. Such trademarks would then represent to the public a guarantee of quality furnished by an impartial body, and would thus give American manufacturers an important advantage over foreign competitors.

The Foundation also hopes to purchase the German copyrights covering the indispensable literature of science. By this means it should be able to render vastly more accessible than at present many of the necessary scientific publications. The Foundation also has power under its charter, to purchase new patents, and it is hoped that this may become an important field of its activities. It seems clear that an immense stimulus will be offered to chemical invention by the provision of such a disinterested [140] and impartial possible purchaser; at the same time, such purchase would be valuable to the public at large, as all inventions thus produced will be available for immediate use by any suitable manufacturer, and cannot be suppressed.

The chief usefulness of the Foundation, however, is expected to be as a centre of research. Its charter provides that after the redemption of the preferred stock, the free net earnings of the Corporation shall be "used and devoted to the development and advancement of chemistry and allied sciences in the useful arts and manufacture in the United States." If the patents turn out to be as valuable as is hoped, this provision should render a considerable income available for research purposes, and for this work the Foundation is in a position of unique advantage. It forms a link of a type heretofore unknown between industrial and academic research. It is in a position to bring about in this country co-operation between the laboratories of the university and those of the dye works as close as that which has worked such wonders in Germany. Informal offers have already been received from important laboratories, placing their facilities at the disposal of the Foundation, and resolutions looking to the same end are already pending before the governing bodies of various large Companies and institutions. As a preliminary step in this direction, the Foundation intends to take a laboratory census of the country, a thing which it is believed has never been attempted, and hopes thus to create a Bureau of Information where any scientist at the start of an important research, may be able to ascertain where the facilities which he needs are obtainable, and what institution has already made progress along similar lines. This Bureau should also be able to aid in bringing together those who wish to undertake and those who are interested in such researches. These activities will furnish an important aid in what is perhaps the most important work now before [141] the country, the advancement of chemical science in the industries, and particularly in medicine.

The Foundation has taken offices in the Market and Fulton Bank Building, 81 Fulton Street, New York, but these are not obtainable until May 1, 1919. Until that date the temporary office will be maintained in the law offices of Evarts, Choate & Sherman, 60 Wall Street, New York City.

April 4th, 1919.

THE CHEMICAL FOUNDATION, INC.

FRANCIS P. GARVAN
DOUGLAS I. MCKAY
GEORGE J. CORBETT
Directors.

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[142] **DEFENDANT'S EXHIBIT No. 8.**

(Offered and Admitted in Evidence as Defendant's Exhibit No. 320.)

THE CHEMICAL FOUNDATION, INCORPORATED

In order to free the American manufacturing chemical industry from the limitations imposed upon it by the Enemy owned United States chemical patents, The Chemical Foundation, Incorporated, has been organized to buy, and has bought from the Alien Property Custodian, the greater part of all such patents in all branches of the chemical industries. The Foundation is a quasi-trustee corporation organized not for profit, but to hold and defend present and future patents for the benefit of American industry, and to act as a center of industrial and scientific research. As such it is believed that its work will profoundly affect most chemical enterprises in the United States. It is therefore desirable from the point of view both of the public and of those engaged in the industry, that the stock should be held, not in large blocks by a few companies, but in the greatest possible number of small holdings. To this end subscriptions to the stock of the Foundation are invited.

The subscription requested is for one thousand dollars ($1000) of the stock, or such less amount as may be allotted, in the proportion of four shares of preferred to one of common. This indefinite form is adopted in order to procure the widest possible distribution, and so that if enough subscriptions are received the amount held by each purchaser may be reduced to a minimum. The Foundation reserves the right to reject in whole or in part any subscription even though made in response to this statement, and also to close the subscription books at its discretion without notice.

The authorized capital of the Foundation, all of which is to be issued, is $500,000, divided into four thousand shares of preferred and one thousand shares of common stock, each share being of the par value of $100. Each [143] class of stock is limited *to not more than six per cent* annual dividends. The limitation of each class of stock and the rights of its holders are set forth in the Charter, of which a copy is enclosed. Each is transferable only with the consent, endorsed thereon, of the Corporation.

The preferred stock is preferred as to principal and is entitled to a fixed cumulative dividend when and as declared of six per cent, but is subject to redemption as a whole at par and accumulated dividends on January 21, 1921, or any first of January thereafter. It is hoped that this power will be exercised and the whole of the preferred stock redeemed as early as possible. This class of stock has no voting power except upon the question of the amendment of the charter.

The common stock has full voting power, but is also limited as to dividend to six per cent, payable only after payment of all accumulated dividends due upon the preferred Surplus earnings, over the sum required for this dividend, and to be applied first for the redemption of the preferred, and thereafter for research and the advancement of science. A trust agreement has been prepared for the purpose of placing in the hands of trustees the entire issue of common stock, and none will be issued except upon a subscription, in the form enclosed, authorizing the directors to issue such common shares as may be allotted to the subscriber, directly to the Trustees, who will thereupon issue to the subscriber trust certificates in place thereof. The Trust-certificates, like the stock, will be non-transferable except with the consent of the Foundation. They will entitle the holder to such dividends as may be received by the Trustees on the stock represented thereby, and also of course to delivery of the stock itself on the dissolution of the Trust-agreement. The Trust is to continue till January 1st, 1936.

Under subscriptions made in accordance with this offer, the subscriber, if accepted, will receive eight shares or less of preferred stock, and voting trust certificates covering two shares or less of common stock. The preferred [144] will give the subscriber a voice in the amendment of the charter. The common will give a vote, after the dissolution of the trust, in all corporate affairs. As the Foundation may be expected to develop into a permanent and powerful body, this may be a right which no important business can afford to do without. The common stock, however, cannot be a source of profit, since the charter requires surplus to be used for public purposes. It should also be noted that stock gives its holders no special privilege in regard to the obtaining of licenses from the Foundation.

As will appear from the foregoing, this offer represents an opportunity, not to make a profitable investment, but to support an undertaking which the directors deem of vital importance and value both to your industry and to your country. This belief is based upon the following facts in regard to the personnel and purposes of the corporation.

The trustees, in whom under the trust agreement, the control of the Foundation will be lodged, are the following gentlemen, who have been serving for many months as the Advisory Committee which has passed upon all sales made by the Alien Property Custodian: Otto T. Bannard, Esq. (Chairman The New York Trust Company). Hon. George L. Ingraham (Late presiding Justice Appellate Division, New York Supreme Court). Cleveland H. Dodge, Esq. B. Howell Griswold, Jr., Esq. (Of Alexander Brown & Sons, Baltimore). Ralph Stone, Esq. (President, Detroit Trust Company). The officers and directors of the Foundation are as follows: President, Mr. Francis P. Garvan (The Alien Property Custodian). Vice-President, Col. Douglas I. McKay. Treasurer and Secretary, Mr. George J. Corbett. The legal advisers of the Foundation are the following: General Counsel, Mr. Joseph H. Choate, Jr. Patent Counsel, Mr. Ramsay Hoguet.

The Trust Agreement gives these trustees the power to fill vacancies in their board, so that during the continuance [145] of the trust, they will be a self-perpetuating body. They elect the directors of the Company, whose resignations are always in their hands.

To the Foundation as thus organized substantially all of the chemical, dye and allied patents and processes acquired by the Alien Property Custodian with the exception of those which were included in the prior sale of the Bayer Co., Inc., have been sold by him for the sum of Two hundred and fifty thousand dollars ($250,000). These patents and processes cover a very wide field, the classification including metallurgy, fertilizers, fixation of nitrogen, hydrogenation of oils, etc., and in number approximate four thousand (4,000). The transfer thereof to the corporation has been completed. They will be used to encourage manufacturing thereunder in the United States and to prevent infringing importations from Germany or elsewhere.

Non-exclusive licenses will be granted to competent American manufacturers, whether stockholders or not, by the corporation upon reasonable and equal terms, subject to the power of the directors to refuse licenses when in their opinion the condition of the business is such as to make the grant of further licenses unfair, or disadvantageous to the public. Importations of infringing products will be prosecuted with all possible vigor and in view of the fact that many of the patents are product patents, an effort will be made to exclude infringing goods from any source whatsoever and thus give effective protection to a part of the new American chemical and dye industry.

The Alien Property Custodian has also seized certain trade-marks and copyrights covering indispensable literature of science, which have likewise been sold to the corporation and a plan is now being formulated under which it is hoped licenses may be issued to use the same.

The full powers which the corporation has under its charter to purchase or otherwise acquire such personal property as may be necessary, useful or advisable in [146] connection with any or all of the objects specified in its charter (particularly new patents), may be taken advantage of, in order to stimulate chemical invention and at the same time to create a new field for its activities.

It is the intention of the Trustees and the Board of Directors to make the corporation eventually a center of research and thereby fulfill the provision of its charter which provides that "after the full redemption of the preferred stock, the net earnings of the corporation over and above such amounts as may be necessary for the purpose of working capital shall be used and devoted to the development and advancement of chemistry and allied sciences, in the useful arts and manufactures in the United States." If the patents and processes acquired prove to be as valuable as they at present appear, a considerable income will be available for research purposes. The corporation should form a link heretofore unknown between industrial and academic research, and be in a position to bring about co-operation between the laboratories of the universities and those of the chemical and dye works as close as that which has existed in Germany in the past.

Informal offers have already been received from important laboratories placing their facilities at the disposal of the corporation and resolutions having for their object the same purpose, are now pending before the governing bodies of various large Companies and Institutions.

The corporation intends to conduct a laboratory census of the United States, a step which it is believed has never been attempted; and as a result thereof, it is hoped that a Bureau of Information can be established wherein a scientist engaged in an important research may be able to ascertain where the resources most necessary to him can be obtained and what progress has been made in similar branches of research. The country's facilities for research would thus be rendered more available and material aid would no doubt be rendered in the advancement of chemical science, particularly in medicine.

[147] Subscriptions must be made upon the enclosed form and must be accompanied by a certified check for one thousand dollars ($1,000), payable to the order of the Central Union Trust Company of New York, and both should be mailed to The Chemical Foundation, Inc., 81 Fulton St., New York City, N. Y. Such portions of such payments as represent subscriptions rejected in whole or in part will be promptly returned, but no interest will be allowed on such payments. Delivery may be made in the form of interim certificates, exchangeable for Definitive Preferred Stock and Voting Trust Certificates as soon as the same can be prepared.

THE CHEMICAL FOUNDATION, INCORPORATED.

TRANSCRIPT OF RECORD.

(IN TWELVE VOLUMES)

IN THE

Supreme Court of the United States

October Term, 1926.

No. 512

UNITED STATES OF AMERICA,

Appellant,

vs.

THE CHEMICAL FOUNDATION, INCORPORATED,

Appellee.

Volume II.

TESTIMONY.

(Pages [illegible] to [illegible] inclusive.)

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF DELAWARE.

No. 502.

IN EQUITY.

UNITED STATES OF AMERICA,
Plaintiff,
v.
THE CHEMICAL FOUNDATION, INCORPORATED,
Defendant.

Wilmington, Delaware,
June 4, 1923, at 9 o'clock A. M.

Before:
HON. HUGH M. MORRIS, U. S. District Judge.

Present:
Henry W. Anderson, Esq.,
Herman J. Galloway, Esq.,
William W. Wilson, Esq.,
William M. Offley, Esq.,
Thomas E. Rhodes, Esq.,
Spier Whittaker, Esq.,
James J. Lenihan, Esq.,
James H. Hughes, Jr., Esq.,
Of Counsel for Plaintiff.
William D. Guthrie, Esq.,
Isidor J. Kresel, Esq.,
Bernard Hershkopf, Esq.,
(Of Guthrie, Jerome, Rand & Kresel)
Lucien H. Boggs, Esq.,
William G. Mahaffy, Esq.,
Of Counsel for Defendant.

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PROCEEDINGS AT TRIAL IN OPEN COURT.

Mr. Galloway: If the Court please, we wish to call to the attention of your Honor at this time the Plaintiff's motion to amend the Bill of Complaint, which motion was filed some time ago. The motion is, very briefly stated, a motion to amend by striking out the following allegation in the Bill:

> "to confirm and validate the orders aforesaid or pretended orders of Frank L. Polk and any actions taken by the Alien Property Custodian thereunder."

Mr. Kresel: What page is this, Mr. Galloway?

Mr. Galloway: This is page 40, beginning on line 5, of page 40, Mr. Kresel, and reading:

> "to confirm and validate the orders aforesaid or pretended orders of Frank L. Polk and any actions taken by the Alien Property Custodian thereunder."

To strike out the part which I have just read, your Honor, and also beginning with the word "sought" line 27 on page 40 and ending with the word "order" on line 28 of page 40, which is as follows:

> "sought to be confirmed and validated or authorized by said Executive order."

Also to strike out beginning with the word "sought" in line 9 of page 41 of the Bill of Complaint, and ending with the word "order" on line 11 of page 41, which portion reads as follows:

> "sought to be confirmed, validated and authorized by said Executive order."

If the Court please, we feel that that is merely a construction of a legal document, and we feel that the allegation we have made is not material, and in addition we feel after careful consideration that the amendment which we request will state the true facts; and we do not feel that it prejudices the right of the defendant in any way in the preparation for this trial if we were entitled to an order granting the same.

Mr. Guthrie: We do not object, except that we do not acquiesce in the suggestion that it is immaterial, but say that it is material to a construction of the action of the President, which we rely upon. Plainly and clearly the effect of the President's action, with the allegations put in the Bill, by inadvertence—we are not here to object to its being stricken out, but we are not here to acquiesce in the suggestion that it is immaterial:

The Court: As I understand you then, Mr. Guthrie, you have no objection to the amendment, but you do not desire to be estopped from insisting that the Executive Order when placed in evidence in this case shall not be construed as they say in the paragraph of the Bill it should be construed?

Mr. Guthrie: We want to be at liberty to say that the Government has heretofore construed the Order exactly as we have construed it.

The Court: The amendment is granted without prejudice to the right of either party to urge such construction with respect to the Order as they may be advised.

Mr. Galloway: If the Court please, I wish to add that the statement "immaterial" was intended to be immaterial so far as the Court is concerned, it is not binding on him, what construction the parties made in their pleading.

Would your Honor care to take up the motion at this time, the motion to strike out the portions of the answer, and the motion to dismiss the Bill, and other motions contained in the Answer?

The Court: What is the desire of counsel for the Defendant in regard to those motions, that they be heard now or be heard at a late stage in the case?

Mr. Guthrie: We understood at the prior session that your Honor intimated your preference that those motions should be taken up after the testimony had been adduced. We are, of course, ready to proceed with them now. We will be guided by whatever your Honor desires.

The Court: Shall we, without determining that matter, proceed in this order: Will counsel for the Government state the issues as they are now pleaded and the questions that will arise under the pleadings as they now stand, and then I will hear the counsel for the Defendant as to their views of the issues raised by the pleadings as they now stand, and we will then determine whether we will hear these motions now or after the testimony has been presented.

OPENING STATEMENT BY MR. ANDERSON.

Mr. Anderson: May it please the Court; In the statement of this case and the issues which are presented by the pleadings and the positions for which the Government will contend, I shall ask the indulgence of the Court, while I make the statement somewhat more elaborate than is probably usual in such cases, because of the character of the case and the confusing nature of these various Statutes, Executive Orders, Regulations, and so forth, which surround the facts pleaded, and under which those facts are to be considered.

In addition to that consideration, it is the desire of the Government that its position at the outset shall be very clearly understood by Court and counsel, and that the fullest exposition of any facts bearing directly or indirectly upon this matter, should be presented to the Court in this trial, because we feel, and it is the feeling of the department representing the Government, that in a case of this character, the Court should have all the facts available, and if there are any which we do not know of, we are prepared to produce them, to the end that justice may be done under the law. The high aim of the Government is, of course, the attainment of justice regardless of the issues in this case.

At the outset, I shall ask leave of the Court to state certain matters which are matters of common and historical knowledge, and of which the Court will take judicial notice; but the frame-work of the case is best presented by a review and brief statement of those statutes and treaties.

By Resolution of Congress of April 6, 1917, War was declared between Germany and the United States, or rather declared to be then in existence as a recognized status, resulting from the acts of the German Government. That Declaration was predicated upon a Message or Address by the President, which stated with a clearness and brilliancy, probably unequaled and certainly unsurpassed in the history of the United States, the ideals and the aspirations of the United States in the conduct of that great enterprise, and I think I am not overstating the facts when I say that that Address changed the whole status of the war before the world, and gave it a broader and deeper significance, and perhaps a higher and more idealistic significance, than had theretofore been realized.

The President, speaking for the people of the United States, and expressing their aspirations and ideals, with unusual felicity, declared that the people of this country entered upon this serious adventure with no selfish purpose, but with the greater and more idealistic purpose of preserving peace, administering justice, maintaining right, and formulating and establishing a basis whereby the international relations of the world might be founded upon justice and right rather than upon force or selfish interests.

In response to that noble appeal, Congress passed the resolution of April 6, 1917, reciting the acts of the German Government, and declaring a state of war to be in existence.

That war was prosecuted for nearly two years —about eighteen months—and was brought to a successful issue by the United States in collaboration with other associated governments. An armistice agreement was entered into between the United States and Austria (between which countries war had subsequently been declared), on the 3rd day of November, 1918, and between the United States and Germany on the 11th day of November, 1918, by the terms of which agreements the military operations of the war were terminated, and certain adjustments pending negotiations for peace were made. Those negotiations were thereupon undertaken, which resulted, under the leadership of the President himself, so far as the United States was concerned, in three treaties, negotiated at Paris, one known as the Treaty of Versailles, between Germany and the Allied Associated Governments, signed on June 28, 1919; the Treaty of St. Germain, between Austria and the Allied Associated Governments, on September 10, 1919; and the Treaty of Trianon, between Hungary and the Associated Governments, on June 4, 1920.

These treaties, and especially the Treaty of Versailles, which is the chief one of these instruments here involved, were submitted to the Senate of the United States, as provided by the Constitution, but the Senate never advised or consented to the ratification thereof, and they never became effective so far as the United States was concerned.

These conditions therefore continued until July 2, 1921, when the Congress of the United States passed a joint resolution, declaring a state of peace to have been restored or to exist. This resolution was finally contained in the United States Statutes, but I might state its terms briefly:

By the terms of that resolution, the United States Congress declared that a state of peace existed betwen the United States and Germany, but subject to the conditions that all of the provisions of the Treaty of Versailles in favor of the United States, should run to and accrue to the United States, and among other things, that all property of the German Government or of German citizens or Nationals, in the possession of the United States, or which had been seized or demanded by the United States, and had not been otherwise disposed of in accordance with the law, should be held until the German Government complied with the terms of that treaty, and, among other things, reimbursed citizens of the United States, and their Nationals, for any losses which had been sustained by the acts of the German Government before and during the war.

That, in a general way, was the substance of the treaty, so far as of immediate importance here.

In pursuance of that resolution, the treaties were negotiated—and similar resolutions were passed and treaties negotiated as to Austria and Hungary. The first was the Treaty of Berlin, of August 21, 1921, which became effective on November 11, 1921, which treaty followed substantially the terms of the resolution of July 2, 1921, in that it provided in effect, that peace, which was adjusted thereby, was conditioned upon the recognition by Germany of all the rights running to the United States under the Treaty of Versailles, and also the agreement by Germany that any property of German Nationals, or of the German Government, which had been seized by the United States, or for which demands had been made by the United States during the progress of the war, should be held until and unless Germany reimbursed the Nationals of the United States for their losses, for which it was held to be liable under the terms of the Treaty of Versailles, and pay the claims of the Nationals of the United States. Germany also agreed to reimburse its own Nationals for private property of such Nationals seized during the war, and subject to said treaties.

The other treaties I need not bother with—Vienna and Budapest—they were substantially the same; and the real issue here is the question of Germany.

It will appear in this case that the German Government and the Austrian Government have never complied with the terms and provisions of those treaties, which were made conditions precedent to any surrender of property, or any obligation to surrender property of their Nationals held by the United States to await the compliance with the terms of those treaties. Upon that situation as well as the other provisions of the law, and the acts to which I will refer in a moment, or which were mentioned in the bill the contention of the Government is that the property of German Nationals which is involved in this case, as well as other property of German Nationals seized during the war, as I will point out in a moment, was primarily held by the United States for the benefit of the people of the United States, and especially for the benefit of those persons who have claims against the Imperial German Government, or its successors. It is therefore in that sense public property, with the power in Congress and the right in Congress to return any of that property at any time it sees fit, to the German Nationals, by any legislation and subject to any condition that Congress may deem just, wise, or expedient.

As the matter then stood, therefore, in the treaty of August 21, 1921, effective of November 1, 1921, the United States held large amounts of German property, that is, property of German Nationals seized during the war, which, under the terms of seizure as I shall point out in a moment, was to be held for final disposition as might be directed by act of Congress, but by the terms of these treaties, the German Government, acting on behalf of its Nationals, and waiving all rights to that property, until at least it had complied with the terms and provisions of those treaties, with which it has never complied, agreed to reimburse its own Nationals if the property were taken under the terms of those treaties applied to the benefit of the Nationals of the United States.

That briefly is the essential legislation up to or covering in a broad way the situation which will be presented to the Court.

I shall now come to the conditions under which this property was seized, and mention briefly the terms of the so-called Trading with the Enemy Act. Of course I recognize that your Honor is familiar with much of this, but it will lead up to what I wish to say.

After war had been declared and had been in progress for some time, the Congress of the United States passed an act, October 6, 1917, which is commonly called the Trading with the Enemy Act. It was, as the Supreme Court has held, clearly a war measure enacted under the power of Congress to declare war, grant Letters of Marque and Reprisal, and make rules and regulations in respect to captures on land and sea. That act might be divided generally into two general classes. One related to the prohibitions and limitations upon the trading with the enemy during the time of war, prohibiting, of course, any commercial intercourse between the Nationals of the two countries unless licenses were granted by the President for the carrying on of that business, he being authorized to grant such licenses.

The other general provision of the act, or branch of the act, related to the dealing with alien enemy property in the United States during the period of the war. It is with this second provision that this case has to deal. I shall call attention first to Section 5 of the act. After giving generally to the President certain powers, this section provides:

> "And the President may exercise any power or authority conferred by this act through such officer or officers as he shall direct."

I might hand the Court a copy of this act.

Mr. Kresel: The Court has a copy.

Mr. Anderson: He has a copy. It is very kind of counsel for the defendant to print it in large type. Page 11 of the print by counsel, Section 5, provides:

> "And the President may exercise any power or authority conferred by this act through such officer or officers as he shall direct."

Then, Section 6 provides:

> "That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed $5000 per annum) of an official to be known as the alien property custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this act; and to hold, administer, and account for the same under

> the general direction of the President and as provided in this act."

Section 7 of the act provides for the seizure of or taking possession of alien property, requiring the same to be reported and delivered to the Alien Custodian, the terms being very broad.

Mr. Anderson: Section 7 of the original act provided for the seizure of property and the holding of same by the Alien Property Custodian, taking it over, and Section 12 of the original act to which I wish to call attention is:

> "The Alien Property Custodian shall be vested with all the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded."

It may not be inappropriate, as it will become an important question in this case, to call the attention of the Court to the fact that there was at this point, at the very outset of this legislation, a distinct declaration as to the interests of the United States in such property and the rights of such persons as might be ultimately entitled thereto, the ultimate determination of the persons who would be entitled thereto being by the act itself vested in or reserved to Congress. The act provided that at the conclusion of the war, any claim either to the property or the proceeds thereof, should be disposed of as Congress might direct.

That act as originally passed was construed by the distinguished gentleman who was thereafter appointed Alien Property Custodian, as we shall show in this case by his declarations to be an act for the custody of the alien property and the preservation thereof, and it imposed upon the Alien Property Custodian, as the hand or agent of the United States, the very high duty of a Trustee. The act uses the term "Common-Law Trustee." I am frank to say I do not know just what that means, but I suppose it probably means a Trustee under the principles of equity as administered by the Chancery Court of Great Britain, and adopted by the United States. But in any event whether that word had been used or not, the provisions of the act itself, and the duties imposed upon the Alien Property Custodian, were such as to constitute the highest character of trust for the preservation of the property; and authority for the sale thereof was at that time limited to the prevention of waste.

Under that act, the Alien Property Custodian was appointed, as I will point out more at length hereafter. Then, by an act of March 28th, the General Deficiency Bill of March 28, 1918, there was an amendment of this section, which amendment will be found on pages 36 and 37 of the act as printed and now before the Court to which I will call your Honor's attention. The immediately pertinent provision is as follows:

> "The Alien Property Custodian shall be vested with all of the powers of a common-law

> trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof, or make any disposition thereof, or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: PROVIDED, That any property sold under this act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President, stating the reasons therefor, in the public interest shall otherwise determine: PROVIDED FURTHER, That when sold at public sale, the Alien Property Custodian, upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct."

Now, in connection with this section as thus amended, and as it stands today, it is necessary, in order to get the picture, to refer briefly to Section 9 of the act, which I will not read, but merely state its terms. Under Section 9 of the act, any person whose property was seized and who claimed that the property was wrongfully seized, because he was not an enemy or an ally of an enemy, or for other reasons stated in the act, had the right to apply to the President for restoration of his property, and if it was not restored within sixty days, he had the right to apply to the United States District Court, and have the matter adjudicated. In the meantime, the act required that the Alien Property Custodian should hold the property to await the final adjudication of such claim.

Now, then, taking these sections together, and as a little section out of this long Statute, the facts stood on March 28, 1918, that the Enemy Property Custodian had the power to seize property of persons determined to be enemies or allies of enemies, and to take it into his custody; that he had the power of a common-law trustee to hold that property and administer it, that was the power conferred upon him. Powers were conferred direct upon the Alien Property Custodian, by the act, but his management of the property, his disposition of the property, his accounting for the property, were all placed under the control and direction of the President, and he was given, by this act, as amended, power of sale; power to make a good title to the purchaser, but in order to do so, he must sell at public auction—leaving out sales to the United States—to the highest bidder, after due advertisement at the place where the majority of the property was located, unless the President, stating the reasons thereof in the public interest should otherwise determine.

I will take up the Alien Property Custodian next. Under the provisions of this act the President, on October 12, 1917, signed an Executive order by which in pursuance of the provisions of Section 5, which I first read to your Honor, giving to the President the right to exercise the powers conferred upon him, through such officer as he might direct, the President directed the exercise of the powers with which he was clothed under this act, and the discharge of the duties under this act by various officers of the Government. He assigned certain duties to the Secretary of State, created the War Trade Board, and assigned the regulation and issuing of licenses and other duties in regard to communication and other relations with the enemy to that. He created the War Trade Council and made that an advisory council as to the exercise of certain duties under the act. He assigned certain duties to the Secretary of War, certain duties to the Secretary of the Navy, certain duties to be exercised under the act to the Secretary of Commerce, certain other duties, and especially those under Section 9, with respect to the determination whether the property was correctly seized or not, and control of litigation relating thereto to the Attorney General. Thus, the various duties under the act appropriate or pertinent to the various departments of Government were directed to be exercised by them or by the War Boards or Commissions created for that purpose.

Then by one clause of this order he provided that the administrative features of Section 12 of the act and of Section 7, as I recall, and possibly others, should be exercised by an Alien Property Custodian as provided by the act itself, to be thereafter appointed.

Almost immediately thereafter he appointed the Honorable A. Mitchell Palmer, Alien Property Custodian, and Mr. Palmer, having duly qualified, discharged those duties until the 4th of March, 1919, when he became Attorney General of the United States. Mr. Francis P. Garvan was then appointed Alien Property Custodian in his stead. Up to that time Mr. Garvan, as the record will show, had been the head of the Bureau of Investigation of the Alien Property Custodian, with an office in New York, and a very active assistant to the Alien Property Custodian. Mr. Garvan qualified on March 4, 1919, and continued to exercise the duties of the office of the Alien Property Custodian until about March 12, 1921, when Colonel Thomas W. Miller was appointed Alien Property Custodian, and has since so continued.

Among the other duties assigned by the President in the order of October 12, 1917, was a duty assigned to the Federal Trade Commission to license the use of enemy patents. By Section 10, of the Alien Property Act, to which he referred, provision was made for the right to the alien under the conditions therein prescribed, to prosecute applications for patents, the payment of fees and things of that kind, under the regulations of this act, and also for the licensing by the President of the use of alien enemy patents which have been granted in the United States. The President, by the provisions of the order to which I have referred, Sections 17 to 21 thereof, directed the exercise—to use the correct language of the act—of this function so imposed upon him, through the Federal Trade Commission, and thereafter from time to time the Federal Trade Commission did license various persons to use the enemy patents in the United States. I think the record will show that approximately 128 such licenses had been granted up to the time of the transactions under review in this suit.

The original act did not provide for the seizure of enemy patents, but it was construed by the Attorney General and, as I think the record will show, by other officers, including the Alien Property Custodian himself, not to authorize a seizure of patents, of enemy-owned patents, it being contemplated that the use of these patents would be controlled under Section 10 of the act through license by the President, which power to license was assigned to and exercised by the Federal Trade Commission.

But we shall undertake to show to your Honor that after the passage of the amendment of March 28, 1918, and indeed before the passage of that amendment, the question of the seizure of enemy patents had been considered by the Alien Property Custodian's office and the opinion of the Attorney General was obtained as to whether they could be seized, and it was held that they could not be.

Finding that condition to exist, the Alien Property Custodian, it appears from the record, was confronted with some embarrassment in the sale of property. For instance, he would seize an enemy-owned plant such as the Bayer Chemical Company and others, and find that that plant was operated to a large extent in the manufacture of patented articles or articles covered by German patents. He wanted to sell the plant. The buyer might obtain licenses from the Federal Trade Commission to operate the plant, and the Federal Trade Commission could issue exclusive or non-exclusive licenses. It confined itself with few exceptions to non-exclusive licenses. It could and did issue licenses for the life of the patent. But under Section 10 the owner of the patent at the conclusion of the war would have the right to come into court and not only claim the amount of the royalties, but also have the court ascertain whether the royalty fixed by the license was a fair royalty or not; and, of course, this offered some obstacle to the sale of plants operating for the manufacture of patented articles, since there was some uncertainty as to the terms of the use of the patents even when licensed for the term of the patents by the Federal Trade Commission.

The Alien Property Custodian brought these conditions to the attention of Congress and asked for an amendment to Section 7 of the act. That amendment was passed late in October, 1918, and was actually approved by the President on the 4th of November,

1918. It will be found at pages 19 to 21 of the act, to which I want to call your Honor's attention.

Not only, I might say, was there embarrassment, apparent from the record, as we will show to your Honor, in the matter of the sale of plants using enemy patents, but there was also some embarrassment in connection with the transfer of property where the certificates of stock of the corporations were held abroad or were not available to the Alien Property Custodian, and therefore he asked for an amendment to the Statute authorizing him to require the issue of new certificates of stock or what might be called alternative certificates of stock, where he could not obtain the originals in order to effectuate his transfer. There were some other questions involved in the matter, such as the complications which might arise in connection with suits under Section 9.

All of this we will undertake to exhibit to the Court in the proper way. For instance, property like stocks in a corporation might be seized and sold the next day, they might be seized and very promptly sold, and there would be no opportunity for the person to make a claim or anything of that kind. It was not desired by the Alien Property Custodian and he thought it unwise to have that situation stand as it was, so he wanted an amendment to the act which would transfer the right of the owner of the property from the actual property itself to the proceeds of the property sold, and confine his subsequent right to the enforcement of his claim to the proceeds and not to the property. It was very much like a foreclosure sale in a suit in equity, in a railroad foreclosure, before the lien is ascertained. They do not ascertain the lien, they sell the property and let them fight the matter as to liens on the proceeds.

Those considerations called for the following amendment to that Statute, approved by the President on the 4th day of November, 1918:

"If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade-marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belong or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered, and disposed of as elsewhere provided in this act."

In other words, the act was broadened from its original terms in relation to other property, to include expressly the power to seize patents, trademarks, copyrights, etc., which, as I have pointed out, the Attorney General held were not within the contemplation of the original act.

"Any requirement made pursuant to this act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances"—

That is a method of seizure, and is rather immaterial. The act further provides:

"Whenever any such property shall consist of shares of stock or other beneficial interest in any corporation, association, or company or trust, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel upon its, his, or their books all shares of stock or other beneficial interest standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy, and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custodian or otherwise, as the Alien Property Custodian shall require."

That provision was put in to meet the embarrassment as to the stock certificates. Then the final paragraph of the amendment:

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States."

If your Honor please, that is the law, as far as I now recall, dealing with the material aspects of this case, other than Presidential orders, which I shall take up in their order presently. We shall contend, in order that your Honor may understand the application of any evidence presented, that the situation thus presented was that the Alien Property Custodian became and was at the time of the transactions to be reviewed in this suit authorized to seize and take over enemy patents the same as any other enemy property, to hold the same as Trustee under the terms of the act, with the power of sale vested in the Trustee, of that character, of the property, but subject to the limitation that it must be sold at public auction to the highest bidder after due advertisement of the time and place thereof, with a description of the property and its location; with only one exception, that the President, stating the reasons therefor in the public interest, might determine otherwise as to the method of sale.

We will present evidence which we think is pertinent to show that the conditions and considerations which I have outlined were presented to the Committee of Congress which passed upon this act and amendment, and were presented to the President of the United States as the purpose of this amendment; that is, to enable them to seize patents in order to sell patents and effectively convey title thereto, to issue stock, and relieve any embarrassment growing out of the operations of Section 9 by expressly transferring the rights of the property owner from the property, when sold, to the proceeds of sale held in the custody of the United States, like the proceeds in the custody of the Court.

THE COURT: Will it be convenient for you at this point to tell me what your ultimate conclusion will be from those premises?

MR. ANDERSON: Yes, your Honor, I will tell you that now. I would be glad if your Honor would ask me such questions, because I am not feeling very well this morning—and am not perhaps as clear as I should be.

My ultimate conclusion from that will be this—

that the Alien Property Custodian in this case, acting as I shall assume from the highest of motives—I am trying to eliminate from this case any question as to motives in the exercise of legal rights and discharge of legal duties, because that is for the Court to determine—that Alien Property Custodian, acting in co-operation with the large interest in the country engaged in the manufacture and sale of dye stuffs and chemicals, sold this property to a corporation, or sold some 4500 patents, or 4800 patents, trade-marks, etc., from time to time, to a corporation organized under the laws of Delaware, in which the interests concerned in the use of those patents were the sole stockholders, and substantially all the interests concerned in the use of those patents were combined for the purpose of buying the same.

The Court: I think possibly I did not state what I had in mind very clearly. You were dealing with the Statute and as I understood you, you said that the representations to Congress and the representations to the President were that the amendments were asked for for a specific purpose, namely, to enable them to dispose of alien property, physical property.

Mr. Anderson: Yes.

The Court: And I assumed that you were going to draw a conclusion that by reason of those representations the amendments were either unlawful or that they should be limited in their construction.

Mr. Anderson: No, sir. I am very glad your Honor interrupted me, because I was anticipating my statement in order to answer your Honor's question. I have to get more facts before the Court before I can state my conclusions on the whole case.

Our contention there is that at the time this act was passed it was contemplated and it was the purpose of the act to facilitate the sale of physical property; that subsequent to that time, as we aver in the

Bill, at the inducement of persons who had large financial interests in the accomplishment of that result, the purpose of the act, though possibly within its terms, its purpose was greatly enlarged, and that these patents which were in no way connected with property to be sold by the Alien Property Custodian were then seized in large quantities and in bulk, and sold in bulk upon the inducement of persons who had interests to serve in having them sold, and that, therefore, that is one of the circumstances which, while it may be within the terms of the act and probably is, is one of the aggravating circumstances—I will state it that way—of this case which the Court must consider.

I come now to that phase of the matter. It is averred in the Bill in this case and we think will be shown, and in fact is admitted and stated in one of the exhibits of the answer, that prior to the transactions here involved, 1917 and 1918, there had been developments of the dye and chemical industry in this country looking to the control thereof by certain large interests in that industry, through the combination of those in control.

If your Honor please, I want to make it quite clear when I begin the statement of this phase of this case, that we are not here to try strictly a monopoly case or a case under the Sherman Anti-Trust Act in restraint of trade. I am avoiding in this statement, and hope we can avoid throughout any contention of intentional wrong. Men differ. But I think it is pertinent to this case as bearing upon the sale of this property the subsequent sale to a corporation all of the stock of which was held by the interests to which I refer, to show such a combination of bidders for the purchase of trust property, which is one of the elements which is to be considered in ascertaining if the sale be valid, to show the development of this combination, and its leading up to the fact and purpose of getting control of these patents, and bringing about a private sale thereof, under terms which we will contend were ridiculous as to the matter of consideration, through such combination of bidders, which, of course, is one of the facts which equity will consider. Whether there should develop in this case what is commonly called a monopoly, or such transactions in restraint of trade as would affect the validity of the sale, may or may not become important. But in dealing with the sale of trust property any facts tending to show that there was a combination of the bidders and a deliberate combination of the bidders which made a fair and open sale of the property impossible, are of the greatest importance as going to the validity of that sale.

It is more in that connection that I wish to refer to this matter than it is in a desire to bring criticism upon or to challenge at least the integrity of the acts of those engaged in this trade. In fact I may say, that there may be no misunderstanding of my position in this case, that I feel that there will be great service to this country in making it a self-sustaining unit so far as practicable in all the essentials of life and defense. I would not take one brick from the structure of the commercial glory of the United States. But there are legitimate means for the protection of the American industry and the advancement of American industrial interests. The policy in that regard and the means to be adopted to that end are questions to be determined by the Congress of the United States and not by the industries themselves if they transcend the rights of other persons, or by any private corporation, however high may be its motive or however sincere its beliefs. If I were in Congress myself I think I would vote for very decided protection to the character of business mentioned, but that consideration is for Congress and does not affect the legal rights of the parties to this suit.

It will appear, and we will undertake to show by the evidence in this case, that prior to the middle of 1918 there had been very large combinations of these dyestuffs and chemical industries into certain corporate organizations by merger. That is admitted and stated in the exhibits to the answer. The first result of the largest of those mergers at that immediate time was the National Aniline Company. It will further appear that these companies and others engaged in the same business were, soon after that time, consolidated into the much larger consolidation of the Allied Chemical and Dyestuffs Corporation, and that there were other measures taken to bring about a combination of interests and a general control by certain of these interests—I am not calling off any names, because I am trying to keep them out of this case, it is immaterial who they were—for the control of the dyestuffs and related chemical industry of the United States. Among others, as we shall show to your Honor, was the organization of the American Dyes Institute in the early part of 1918, when the termination of the war in due time was, of course, in contemplation and when it was but natural that the dye people and other manufacturers engaged in business of this character should be looking to the period beyond termination for the protection and safeguard of their interests.

They organized this institution in April, 1918, and while the membership did not embrace all the manufacturers, according to the evidence as we will show to your Honor it embraced at least 90 per cent of the production. That is, the production of those who were members totaled at least 90 per cent of the stuff produced. They had among other things the methods and plans, as we will show, for the exchange of information among themselves.

THE COURT: Which do you mean?

MR. ANDERSON: The American Dye Institute—for the exchange of information among themselves and for the open price plan or Eddy Open Price Plan, so-called, which was recently condemned by the Supreme Court in the Hardwood cases, and was then promptly abandoned by the dye people.

They thus developed a close association of interests and a purpose. As early as the summer of 1918, before this act was amended by that amendment allowing the seizure of patents, leading representatives of that Institution and of the large corporate interests represented thereby, conferred with the representatives of the Alien Property Custodian and called to see them for the purpose of discussing the question of these German patents after the war.

And as a result of these conferences thus initiated, there gradually developed an increasing interest in these German patents, which it was claimed, and is not clear, as I understand, and certainly is stated in the Answer, exercised a potential, if not the actual control over the dye stuffs and chemical industry of the United States.

It was represented, and I think the evidence clearly shows, and the Answer sets it up, that many of these patents control essential products of the United States, they being the processes of manufacture or being product patents covering both the manufacture and the importation thereof from other countries; and that through the processes and product patents thus held by Germans, granted by the Government of the United States to Germans before the war, a substantial or potential control over that branch of American industry could be exercised.

That was the claim. Whether it was true or whether it is true, will be one of the facts to be developed in this case, but we will take it for the present and for the purpose of my discussion as a claim.

Under these circumstances, as I have said, the interest in these German patents and their disposition after the war became naturally greatly increased with the approaching end of the war.

When the act of November 4th was passed, the war was substantially at an end so far as active operations were concerned, and immediately after its termination, as your Honor knows, the President went to Paris to negotiate the Treaty of Peace, on December 4, 1918, just one month later than the signing of this amendment to the act allowing the seizure of patents.

It appears that the seizure of patents during that period of two months, we will say, following the passage of this act, was confined to those patents which related to industries which the Alien Property Custodian proposed to sell—that is, which were in use in or connected with those industries.

However, in January 1919, the question of the great bulk of the German patents, issued in the United States, especially those relating to dye stuffs and chemicals, seems to have become acute, and was the subject of numerous conferences and negotiations between the representatives of the American Dyes Institute and the representatives of the Alien Property Custodian, or, in some instances, himself.

As a result, along about January, 1919—I think it was the 22nd or 23rd—the exact date is immaterial —or in January, prior to that date, there had been held a number of meetings of the Executive Committee and the membership of the American Dyes Institute, to consider means by which these patents could be obtained in their interests or I will say, to use their own euphonious expression—in the interest of American Industry.

As a result of these conferences, a Committee of the American Dyes Institute was appointed, to take up this matter with the Alien Property Custodian, and they did so take it up.

They held a conference in Washington on January 27, 1919. The Alien Property Custodian being ill, was not present. At that conference there were a number of representatives of the Alien Property Custodian and of the American Dyes Institute—leading men in that business; and it was agreed—I might say that there was first some discussion of selling these patents direct in groups or classes to the various manufacturing interests which might be interested in that particular class of patents, that was first considered. It was finally at this conference determined that they would organize a corporation to take over all of these patents and hold the same, licensing their use to persons who desire to use them; manufacturing interests, American interests; confining those licenses to American citizens or to corporations in which a certain controlling proportion of the stock was held by American citizens; or to the United States. And at that conference, it will appear that there was a good deal of discussion as to the number of patents which would be seizable as applying to these classes which we will call "Dye and Chemical patents."

One of the representatives of the Dyes interests of the National Aniline, I think, present, suggested that there would probably be a thousand patents. Another, one of the representatives of the Alien Property Custodian, suggested that there might be three thousand patents.

The question of sale was considered, and it was suggested by the Patent Counsel of the Alien Property Custodian, that a price of $250,000 be given for all the patents; the exact number at that time obviously not being known, as shown by the record of that meeting; and then it was decided to let that question be submitted to the Advisory Sales Committee.

As a result of that conference, however, it was determined to organize this corporation, and it was further determined to proceed at once to seize—have the Alien Property Custodian seize—all of the German patents which related to the subjects under discussion; and it was further arranged, either at this conference or just before—whether just before or immediately after is immaterial—that in order to facilitate that seizure, which it was then deemed very necessary to hurry as much as possible, because the general belief was that the Treaty of Peace would be signed in a very short time—to facilitate that seizure the Counsel for the National Aniline and Dye Stuffs Company, and for the duPont Company, largely interested in this business, should be sent to Washington and put in the Patent Office to select or aid in the selection of these patents which were to be seized.

So that we will contend, and we think the evidence in the case will show, that as a matter of fact the determination as to what patents should be seized and the patents actually seized and sold under the arrangement which had been agreed upon substantially in advance, was made, not by the Alien Property Custodian, but by the representatives of the dye industry, through their counsel stationed in the Patent Office at Washington.

It appears further that these counsel were sent to Washington immediately, and that a representative of the Alien Property Custodian's office, patent lawyer, was put in the Patent Office with them, and they worked night and day and Sunday, in listing all patents which they thought could relate to this subject. Some of them, as we will point out, did not. And, finally having made up the list—and as they made them up, the seizures or demands took place in accordance with the act. I need not go into the detail of that. And that work was completed in about three weeks, as I recall it, and the great bulk of these patents had been listed or seized by the latter part of February, 1919.

Now, I want to go back for a moment at this point to get the set-up of the situation at that time.

Prior to this transaction which I have just been reviewing, and after the passage of the amendment of March 28, 1918, which was the amendment clarifying and possibly enlarging the power of sale—the amendment to Section 12, authorizing the sale—the Alien Property Custodian, in order to carry out those enlarged powers of sale, organized under the direction of the President, a sales organization. He had a Manager of Sales, and he created by orders formulated by himself, and promulgated, certain advisory organizations in connection with those sales. There was a Washington Sales Commitee, made up of certain representatives of his office, which were supposed to pass upon all sales, the propriety thereof and the necessity therefor, and so forth—a comprehensive organization.

Then there was an Advisory Sales Committee, which was supposed to pass upon the price, and advise the Alien Property Custodian as to the sale.

This Advisory Sales Committee consisted of five gentlemen of high standing and character, of whom I desire to make no criticism whatever. If I recall them for the moment they were: Mr. Cleveland H. Dodge, Mr. Otto T. Bannard, Mr. Ralph Stone, of Detroit, Mr. B. Howell Griswold, Jr., and one other—

I have forgotten his name—Mr. George H. Ingraham, of New York; men of the highest character.

Then, the Alien Property Custodian, after formulating this organization, issued instructions or regulations controlling the sale. He issued regulations to the effect that the sales must be at public auction unless the President otherwise provided, and all cases of private sales would be submitted to the President; that subject to certain general rules, sales would be made at public auction whenever it was possible to do so, and unless the Advisory Committee recommended a different procedure. The plan provides that: "This not only applies to sales by the Alien Property Custodian, but also to sales by and in the name of corporations, controlled by him." And further: "Under no circumstances will any person in the employ or connected with the organization of the Alien Property Custodian be permitted to bid for or purchase any property or be interested directly or indirectly in any such purchase or in any corporation or syndicate interested therein. This provision also applies to local representatives and local attorneys in the sales of properties in respect of which they have represented or acted for the Alien Property Custodian."

These regulations were in effect at the time of the transactions here under review.

In pursuance of the agreement which had been made as heretofore between representatives of dyestuffs industry, or 90 per cent, thereof, through the American Dyes Institute and the Alien Property Custodian, or its representatives, arrangements were made to organize the defendant, The Chemical Foundation, Incorporated, under the laws of this State. It was organized in February, 1919, and then arrangements were perfected for the sale of that property, of the patents so seized as I have indicated, to this Corporation.

I stated that the American Dyes Institute furnished the counsel who seized or who made the lists of the seizure of the patents at Washington. I should have stated also that the American Dyes Institute provided the money to pay the expenses of making these lists and this seizure.

The Court: Was the American Dyes Institute a corporation or an unincorporated association?

Mr. Anderson: I think it was a corporation, sir, but it assessed this cost upon certain of its members, as they contributed proportionately. It was a New York corporation.

Now, the American Dyes Institute advanced all money for meeting the expenses of counsel and of clerical hire, in making up these lists in the Patent Office, at Washington, amounting to something over $6000. It was subsequently reimbursed out of the purchase price of the patents, it may be justly said, I think, as a fair conclusion to be drawn from the situation, as we will undertake to present it in the evidence, that the Dyes Institute not only inaugurated this scheme, if I may call it such without offense, for taking over these forty-five or forty-eight hundred patents, copyrights, and so forth, for the seizure thereof and for the transfer thereof to the defendant, but, as a matter of fact, they actually did the work in connection with the matter, advanced the money necessary to carry it into effect, and that their representatives made up the lists of patents which were to be seized or transferred.

Now, the Charter of the Chemical Foundation was granted on the 19th day of February, 1919, under the laws of this State. That is at page 90 of the Bill of Complaint as printed; and I will ask your Honor's attention to its provisions.

After the formal provisions, it says:

> "The nature of the business of the corporation and the objects and purposes proposed to be transacted, promoted, or carried on by it are as follows, to wit: (a) To acquire by purchase from the Alien Property Custodian, under the provisions of an act of the Congress of the United States, known as the "trading with the enemy act" (act October 6, 1917, as amended by act of March 28, 1918, and further amended by act of November 4, 1918), patents, and applications therefor, trade-marks, choses in action, and rights and claims of every character and description, owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy, as defined by said act, which the Alien Property Custodian is authorized by said act, and amendments thereto, to require and seize, and to sell and convey, and also to acquire from any person, firm, or corporation any and all letters patent, and applications therefor, trade-marks, and similar rights granted by the United States, or any other country or government, licenses and the like, or any other interest therein, or any inventions which may seem capable of being used for or in connection with any of the objects or purposes of said corporation, and to hold any such property and rights so acquired in a fiduciary capacity for the Americanization of such industries as may be affected thereby, for the exclusion or elimination of alien interests hostile or detrimental to the said industries, and for the advancement of chemical and allied science and industry in the United States."

If your Honor please, I will pause for a moment at that point to make a comment which will make clear one of the issues in this case. The Alien Property Act provides that the Alien Property Custodian shall be a common-law trustee, whatever that is; but this Charter provides that The Chemical Foundation shall hold these properties, which it was organized to purchase before the sale was authorized—a curious coincidence—in a beneficial capacity for the Americanization of American Industry.

I believe that one of the most famous matters in litigation in the United States, was the so-called Tilden will. One of the great lawyers of this country drew a will which was quite obviously, I think, invalid, and so held by the Courts; and certainly, the language of that Charter, if it was intended to create a trust obligation, or any obligation enforceable by the Courts in favor of anybody, is obviously void, as to such intention. It means nothing at all, because, who is American industry, and who can Americanize American industry, and what controls the Americanization of American Industry? Who is going to determine what American industries are affected thereby, directly or indirectly, or what is hostile to these industries; and if they determine it wrongly, how can a Court determine that question or administer this as a trust?

So that language in this Charter might as well be a blank piece of paper, so far as any obligation on The Chemical Foundation is concerned.

Clause 13 says:

> "In furtherance of such objects and purpose, the Corporation may"—I ask your Honor to note the expression—"may grant non-exclusive licenses only to make, use and sell the inventions covered by any of the patents under their control, or owned by them, to the United States of America, upon such terms as the Board of Directors may determine."

They thus reserve to themselves the right which they would have, anyhow, under any Charter, as the owner of the property, to license to the United States of America the use of these patents, which they were going to acquire from the United States of America, such license if given to be non-exclusive, so that the United States could not get any exclusive rights in them—although it would have had the right if it had taken them for itself—such license to be

> "upon such terms as the Board of Directors may determine."

In other words, the United States had that right anyhow, and the rights of the United States, if any, to receive a license, unless it should exercise the power of eminent domain and condemned the patent, would be such as the three men constituting the Board of Directors of this Corporation, might see fit to impose, whoever they might be in the future.

And then the license should be non-exclusive. The United States could not get any exclusive rights, although it held this stuff, with the right to do with it as they saw fit, as we point out later. The licenses were also to be

> "upon reasonable and equal terms and without advantage, as between licensees to the following:
>
> (1) Natural persons, citizens of the United States;
>
> (2) Co-partnerships, all the members of which are citizens of the United States; and
>
> (3) Corporations organized under the laws of the United States or of any State, Territory, or dependency of the United States, of which not less than three-fourths of the capital stock and the beneficial interest therein, is owned by stockholders who are citizens of the United States, and who were not prior to the 'end of the war' as used in the trading with the emeny act, enemies or allies of enemies, as defined by said act, and the amendment thereto."

Therefore, we find that ation, as we shall undertake to point out by the dence and under the law, organized before the authority for sale was ever obtained, in pursuance of a plan or agreement which had been entered into at a conference between the dyestuff industry and the Alien Property Custodian office three weeks before they could be sold at private sale, I think I should say that the evidence shows that the Alien Property Custodian was in favor of a public sale and that he was induced to agree to a private sale according to the testimony given before the Committees of Congrees.

However, he was not present at this conference and in accordance with the agreements there made where the price subsequently paid was suggested without knowing the number of patents, whether it was one thousand, three thousand or five thousand—it was finally 4500—the Corporation organized to buy them, though no authority had yet been given to sell them. That Corporation pointed out in its prospectus, as we shall show by an exhibit, as part of this record, filed with the Answer—"that it was authorized to grant to the United States licenses without compensation;" but did not say upon such terms as the Board of Directors might see fit; and further, by implication, at least, that it was bound to grant non-exclusive licenses to any member of the industry of the United States, whatever that may mean.

The Court: I missed that, Colonel Anderson. Will you point it out?

Mr. Anderson: I say they certainly stated by implication, if not by the direct language, which I have not before me, and I hesitate to make the statement unless I have the language—that they were authorized and required to grant non-exclusive licenses to any members of the industry of the United States under these patents:

> "that the Board of Directors may refuse to issue any license, or may revoke any license granted by the Corporation, and may prescribe the terms and conditions of said licenses;"

but when you come to the Charter, you find——

The Court: What was it you said about the prospectus?

Mr. Anderson: The prospectus of The Chemical Foundation filed with the exhibit to the Answer; I will not take time to read. Now, therefore, not only will your Honor find when you come to examine this record, that this Corporation was under no requirement to grant any licenses to the United States, exclusive or non-exclusive, which could be enforceable by the United States, but that if it did grant a license, it has to be non-exclusive, and subject to such terms and conditions as this Corporation Board of Directors might prescribe.

Not only was it not required to grant any license to any member of the industry who might be a little recalcitrant in its subsequent use, but they had the authority to decide for themselves by the Board of Directors consisting of three men, who might refuse to issue any license, or to revoke any license granted by the Corporation, and prescribe the terms and conditions of said licenses. This Charter further provides that:

> "It shall be the duty of the Corporation to defend and enforce the rights acquired by, and to protect the rights of its licensees of any license granted to it."

It then goes on to say:

> "To purchase and otherwise acquire property of every kind in the State of Delaware," and so forth. "To do each and everything necessary and useful and advisable for the accomplishment of these objects."

And then follow the provisions usual in Charters of that kind of a general character.

Now, the capital stock of the Corporation——

THE COURT: I was wondering whether it would be a relief to you to have five or ten minutes recess, at this time.

MR. ANDERSON: Just as your Honor chooses. I can stop now. I shall be very glad to stop for five minutes, if agreeable to you.

THE COURT: Five-minute recess.

(After a short recess.)

MR. ANDERSON: At the time of the recess, I was discussing the Charter. I think I should go on in order to make my statement complete and call attention to the further provision of organization. The Charter provided for a capital stock of four hundred thousand dollars preferred and one hundred thousand dollars common, of shares of $100 each, and the preferred was limited to 6 per cent dividends. The Charter further provided that the Corporation should have a perpetual existence; that the property of the stockholders should not be liable for the debts, and so forth; that the number of directors should be fixed from time to time by the by-laws, and increased, as therein provided; that in case of any vacancy in the Board of Directors, for any cause, the stockholders should select a successor, to hold the office for the unexpired term. It then provided that the Board of Directors:

> "should, from time to time, fix and determine the uniform license fee or royalty that shall be paid by the persons, firms, or corporations mentioned in paragraph (b) of article 3 of this certificate, and the license fee or royalty so fixed shall be binding and conclusive on the corporation and upon all of its licensees."

Now, if your Honor will turn to paragraph B on page 91, you will find that that provision covers not only the Government of the United States, if it became a licensee, but all other persons who would receive licenses from this Corporation.

Now, on page 95 is the following:

> "In furtherance, but not in limitation of the powers conferred by law, the Board of Directors are expressly authorized——
>
> (a) To hold their meetings outside of the State of Delaware,"—and so forth.

To remove any officer or employee; to issue stock, of such classes as they may see fit, and then, by Section 9, it was provided the Charter may be amended from time to time by a vote of three-fourths in number and amount, of the preferred and common stockholders, at any annual or special meeting of the stockholders.

The Corporation was formed by three gentlemen here locally, who subscribed to the minimum amount of stock, in the usual form, and then retired in favor of the regular interests concerned. The By-laws will be found attached, but I do not recall any provision in them to which I deem it necessary at this time to call your Honor's attention.

That was in February, 1919.

It is now necessary for me to go back a bit. I have said that the President left America on the 4th of December, 1918, for Paris. On December 3, 1918, the day before he left, he signed an Executive order, which is one of the important documents in this case, and therefore I ask leave to read it at length. It is very short. It will be found on page 47 of the Answer, Defendant's Exhibit No. 1:

> "By virtue of the authority vested in me by 'An Act to define, regulate and punish trading

with the enemy, and for other purposes,' known as the 'Trading with the enemy Act,' approved October 6, 1917, and the amendments thereto, I hereby make the following orders and rules and regulations:

"I. I hereby vest in the Alien Property Custodian the executive administration of all of the provisions of sub-section (c) of section 7 of said 'Trading with the enemy Act' as amended by an Act entitled 'An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes,' approved November 4, 1918; and said Alien Property Custodian shall have the power and authority to prescribe forms and procedure for the exercise of the powers and authority vested in him.

"II. In the executive administration of said sub-section (c) of section 7 of said 'Trading with the enemy Act,' the Executive Orders heretofore issued by me by virtue of the authority vested in me by said 'Trading with the enemy Act' shall apply; and said Alien Property Custodian is hereby vested with all of the powers and authority heretofore granted to him or vested in him by all Executive Orders heretofore issued by me not inconsistent with this Order.

"III. The power and authority heretofore vested in the Federal Trade Commission to issue, pursuant to the provisions of sub-section (c) of Section 10 of the 'Trading with the enemy Act,' or to withhold or refuse a license to any citizen of the United States or any corporation organized within the United States, to manufacture or cause to be manufactured a machine, composition of matter or design, or to carry on or cause to be carried on a process under any patent, or to use any trademark, print, label or copyrighted matter owned or controlled by an enemy or ally of enemy, is hereby continued in full force and effect, provided:

"(1) That said Federal Trade Commission shall not have the power or authority to issue any such license whenever the patent, trademark, print, label or copyright with respect to which application for such license is made, shall have been conveyed, transferred, assigned or delivered to the Alien Property Custodian, in pursuance of his requirement, or seized by him, the Federal Trade Commission shall have no further power or authority with respect thereto.

"(2) That said Federal Trade Commission shall notify the Alien Property Custodian of all applications made to it for licenses under said sub-section (c) of Section 10 of the Trading with the enemy Act, so that he may, if he so desires, appear at any hearing and object to the issuance thereof. The Alien Property Custodian, in lieu of appearance, may file with the Federal Trade Commission objections to the issuance of any such license. In no event shall any license be issued until after the expiration of fifteen days after such notice of the application shall have been given to the Alien Property Custodian.

"IV. The Alien Property Custodian is hereby authorized to take all measures and do all things that may be necessary or expedient to administer the powers and authority conferred by this Order.

"V. I hereby vest in Frank L. Polk all power and authority conferred upon the President by the provisions of Section 12 of said 'Trading with the enemy Act' as amended, other than the Executive Administration of the provisions of said Section 12 pertaining to the designation of a Depositary or Depositaries, which Executive Administration was vested in the Alien Property Custodian by Executive Order of October 29, 1917, and which Executive Order is expressly ratified and continued in full force and effect; provided that this order shall not be construed to revoke or cancel the power and authority vested in the Attorney General by Paragraph XXXII of the Executive Order of October 12, 1917.

> "Nothing in this Order shall nullify or impair any license heretofore granted by the Federal Trade Commission, pursuant to the provisions of Section 10 of An Act of Congress entitled 'An Act to define, regulate, and punish trading with the Enemy, and for other purposes,' approved October 6, 1917.
>
> "(Signed) WOODROW WILSON."

MR. ANDERSON: Now, I would ask the especial attention of the Court in connection with the facts that we wish to present, to Section 5 of this Order:—

> "V. I hereby vest in Frank L. Polk all power and authority conferred upon the President by the provisions of Section 12 of said 'Trading with the enemy Act' as amended,"—and so forth.

At that time, as the evidence will show, Mr. Polk was Counsellor of the State Department, and in the absence of Mr. Lansing, who went to Paris with the President, became acting Secretary of State, the day after this Order was made.

The provision of the Order to which I refer is obviously intended to be an exercise of the power given by Section 5 of the Act.

> "That the President may exercise the powers granted by this Act, through such officers as he may direct."

That is the substance of it, and I think that is practically the language.

I am conscious of a very decided embarrassment in undertaking to present to your Honor the contentions which the Government will undertake to make in this connection, and the facts relevant thereto, because of my very high esteem for Mr. Polk; and of course every one who has the proper feelings of a citizen of the United States approaches the discussion of the acts of the President with an attitude of profound deference, and with great hesitation also; but I need hardly say to this Court, as the Supreme Court has so often said, that the President, at last, is but an agent of the people, created by law, with only such powers as are given him by the Constitution or implied therefrom, or such as are conferred upon him by express Acts of Congress.

In this instance, the exercise of the power involved, was not a constitutional power in any sense. The President was not discharging in this connection, the functions imposed upon him, as the Chief Executive of the nation, directly by the Constitution, in which it must be admitted that he could exercise, and must exercise broad discretion which no one will question, and question only when it is necessary to preserve the limitations of the Constitution. In this particular instance, the President was an agency named by the Act of Congress, for the exercise of certain specific powers with which he was clothed by that Act, the highest and most appropriate agency that could have been selected for that purpose. If, therefore, it should be found, as we will with all possible respect contend, that the President misconstrued his powers, and misinterpreted this Act, then, of course, the Courts, as they have often done before, would be constrained to hold that if he acted outside the scope of his agency, just as any other agent, his act was void.

Now we shall undertake to contend in this case that the President had the power to exercise the general functions and duties imposed upon him by this Act either personally or through any officer which he might direct, and that an officer within the contemplation of that Act is an officer within the contemplation of the provision of the Constitution of the United States, that is, an officer appointed by the President, by and with the consent of the Senate, which are the only officers of the United States within the contemplation of the Constitution, although he has the power to appoint subordinate officers and agents to carry out those duties. There will be no intention to controvert the recognized rule that when the President is discharging a function of his office through an appropriate agency, such as the functions of war, through the Secretary of War, or the exercise of the power over the Navy, by the Secretary of the Navy, or the control of litigation like this, through the Attorney General, it is the act of the President, because he is exercising the function through that officer. But it will be contended that even the President with his great power can not vest the executive functions vested in him by law, in any person he may see fit, and permit or authorize that person to legitimately exercise those functions in his behalf.

It will further be contended in this case that the particular power here involved was one which the President could not delegate to any one, under the terms of the Act itself construed in the light of all its provisions.

Let me first make clear my position with respect to the appointing of Mr. Polk, and it is this: Mr. Polk was Counsellor of the State Department, and afterwards Acting Secretary of State; but the President did not vest in the Secretary of State or the Acting Secretary of State the authority which he sought to confer. In every other instance in this entire Act, in its administration, the President vested the exercise of the powers in the office, in the Secretary of State, in the Secretary of War, in the Attorney General, in the Federal Trade Commission, and so on, and if the person holding that office died, or if the person holding that office were incapable of acting, and someone else was acting in his place, the act of that person for the time being would be the act of their office, and thus the act of the President. But in this case, however, as Mr. Polk expressed it to me himself, he undertook to make Mr. Polk, for the purposes of this Act, the Acting President of the United States personally. He did not vest these powers assuming he had the power to do so, in an officer of the United States. What he undertook to do was to vest these executive powers in Mr. Polk personally, Frank L. Polk, and Mr. Polk, as I shall show your Honor, signed every one of these orders personally. Not one of them bears any title or evidence that he was acting in an official capacity, and he did not claim to so act.

If the President can confer an executive power of this importance upon Mr. Polk—for whose ability I have the highest esteem—he could have conferred it upon anybody who happened to be passing the White House at that minute, by picking him on the sidewalk. If he could have conferred it upon Mr. Polk without Mr. Polk taking the Oath of Office which the Constitution requires the President of the United States to take before he can exercise his functions, then the President of the United States can clothe anybody with executive functions whenever he sees fit to do so, and such person can exercise those executive functions, without complying with the constitutional requirement, to take the Oath of Office. Mr. Polk never took any Oath of Office in connection with the discharge of these duties.

It is not surprising, perhaps, that the President, in the rush of that time, could not look at all these things, but that he was badly advised perhaps with the best intention, on the part of the people who advised him. I do not question that for a minute, but that they entirely misapprehended both the function of the President and the intent of this Act, and that this effort to delegate that authority to Mr. Polk, not to the office and not to an officer of the United States, was void, as a delegation of the executive power to a person who had never taken the oath of office to exercise that power, a delegation to him personally in his personal capacity, and lastly, if it be construed otherwise, it constitutes an effort to create an office of the United States which can only be done under the Constitution by an Act of Congress.

Now, in the next place, we shall contend here that that was a void effort to delegate power, because it was a power incapable of delegation, even by the President.

Again, I want to say that I recognize the lines of decisions, even the decision on this Act, that the acts of officers of the Government, acting under the President, and exercising the functions imposed upon him within the general scope of their duties are in contemplation of law, the acts of the President for obvious and practical reasons. That is settled law of course. But there are certain powers the President can not delegate, and the question of whether he can delegate those powers is a question of the construction of the law by which the power is conferred. For instance, I assume that no one would contend that the President of the United States could delegate the power to pass upon a court martial, although he is the Commander-in-Chief of the Army. The Secretary of War acts in his name, and orders given by the Secretary of War are his orders; but he must personally pass on the court martial. This the Supreme Court has held.

I do not suppose anybody would contend that the power of pardon could be exercised by the Attorney General, and it would be the act of the President. In this particular case it will be noted that this act is very interesting in one aspect — that every power practically in this Act is one which is in its general administration; the Courts have often said, that powers of general administration with which the President is clothed, must be exercised by others, as a matter of physical necessity. The general administration of this Act is vested in the Alien Property Custodian, that is as to some of its provisions, no matter who holds that office. As of others, the administration is vested in the Secretary of War, and so on. These are powers of general administration. The Alien Property Custodian is given the power to determine whether the property is the property of an enemy or the ally of an enemy. That is an exercise of a discretion, but it is a discretion essential in the exercise of the administrative features of the Act. It was something that the President could not possibly do personally, and must, therefore, be done through some other officer, just as various officers exercise discretion over public lands, and so forth, in the name of the President.

But in this particular case, Congress, even in time of war, manifested a care with respect to the sacred obligations assumed by the United States as to enemy property, a trust of the highest character, as Chief Justice Marshall once said, and would not even give the President himself the general discretion to deal with the subject.

If your Honor will notice the provision of Section 12, it says that the Alien Property Custodian shall have the powers of the common-law trustee to hold and administer this property, and "under the direction of and under regulations prescribed by the President, shall manage, hold and sell the same;" and then——

> "Provided also that he shall sell at public auction to the highest bidder, after due advertisement at the place where the majority of the property is located"——

eliminating the United States for the moment. Those are four things absolutely required for a fair sale. Why? A fair sale of trust property was to be a public sale. But there were certain conditions which might arise in the progress of the war, such as actually did arise, where it is necessary to qualify the directors of the Corporation to act as directors, when you would not want to put up three shares of stock at a public sale, in order that the director might buy it, or where the amount of property involved was so small that it would not justify the expense, or where other conditions prevailed, so that Congress provided for a public sale in all instances.

> "Unless the President"—stating the reasons therefor, "in the public interest shall otherwise direct."

Now, that is one of the few times, as I recall, in the history of the United States where even the President himself, in the exercise of discretion, has been required to state the reasons therefor; and it shows that such reasons must be in the public interest in order to violate the principle and settled rule, that public property must be sold at public auction to the highest bidder. This was public property, and the interests of the United States therein had already been declared by Congress.

Now, we contend to take that act as a whole, that duty was clearly non-delegable, upon familiar principles which I need not discuss before this Court, but we will discuss if necessary. The President recognized this as non-delegable, and so construed it. He delegated practically every other executive or administrative power in that Act, not only administrative but executive, but he never delegated *this* until he went to Paris. There were any number of executive orders authorizing private sales of two hundred bales of cotton, or some tobacco, or stock, or this or that, or property under $10,000, in value, every one of them was signed by the President himself. He did not allow anybody to exercise that function; but in this instance, in the hurry and haste of departure to the heavy duties which he had assumed, he undertook not only to delegate the power, but to vest in Frank L. Polk all power and authority, and thus divest himself, as President, of all power and authority, because he could not vest all power and authority in one man, and exercise it himself. He, thus, divested himself of every authority under this Act, as President of the United States. Authority and discretion which Congress had vested in him, out of consideration for his high character and high position and known sentiments of humanity, he undertakes to vest in another, and while he chose a man also of the highest character and highest position, if he had the power to so divest himself, he could vest it in anybody, a man on the street, as well as anybody else. The exercise of that, the highest function which had been reserved to him personally by Congress, as a control over this extraordinary method of selling property which the Government held in trust, I say, in the language of Mr. Justice Field, if your Honor please, that it would be a most mischievous doctrine if any such transactions could be sustained on behalf of the agents of the people who operate the Government of the United States, however high they may be, and however noble may be their purpose. Therefore, we shall make these contentions, that the Act or Order of December 3, 1918, was absolutely void so far as the effort to vest this authority in Mr. Polk was concerned.

That Order was entered on the 3rd of December, and the President left on the 4th. He returned to America on the 24th of February, reached Washington on the 25th of February, 1919. He went back on the 5th of March.

On the 26th of February, 1919, with the President in the White House, Mr. Polk entered an Order prepared by the office of the Alien Property Custodian—in New York really—and sent to him, with a letter requesting him to execute it. Upon that Order rests the title to the property involved in this suit. Therefore, we had better get it straight. It will be found at page 111 of the Answer. After reciting the provisions of the Act: "By virtue of the authority vested in the President by Act of Congress," and so forth—"which authority has been delegated to me by the Executive Order No. 3016 and signed by the President under the third day of December, 1918, I hereby, in the public interest make the following determination and order." Signed, as your Honor will notice, "Frank L. Polk." In what capacity I do not know, except as an individual. The Order then provides:

> "The Alien Property Custodian may release and discharge the United States of America and any department thereof upon such terms and conditions as to the Alien Property Custodian may seem proper, from any and all claims and demands arising from any alleged infringement of the Letters Patent, trade-marks and rights under Letters Patent and trade-marks hereinafter referred to."

That particular provision of this Order is not involved in this suit, but as indicating the entire misapprehension of the meaning of this Act and of the powers which Mr. Polk was seeking to exercise, it is well to stop to inquire where in this Act there is any authority given to Mr. Polk or anyone else to release the rights of enemy owners in property to the United States or any one else. Unless such authority is clearly given, under the war power, it is an Act of confiscation, and therefore void. It is not my province to discuss that question, but it is well to consider it as bearing upon this general aspect. The Order further provides:

> "The Alien Property Custodian may sell at private sale without public or other advertisement to The Chemical Foundation, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware, at such place and upon such terms and conditions as to the Alien Property Custodian or his authorized agent may seem proper, all of the Letters Patent, trade-marks and rights under Letters Patent and trade-marks, including all profits and damages recoverable at law or in equity"——

Now, your Honor will just look at that language for a minute—

> "all profits and damages recoverable at law or in equity for the past infringement thereof which the Alien Property Custodian may seize or may have seized under the provisions of the said Trading with the Enemy Act and the amendments thereto, now or hereafter enacted, and which he from time to time shall determine relate to the objects and purposes of said The Chemical Foundation, Inc., as expressed and defined by its Charter."

In other words, this gentleman, the acting President of the United States, in so far as this matter is concerned, if authorized to act at all, undertakes to release and to transfer to this company not only the patents which had been seized, with all future rights as to them, but all rights to possible infringements or wrongs as to the former owners; and also not only patents thus seized, but those which might thereafter be seized, not only under the then Act, but which under future act of Congress which might be passed as an amendment to this Act, the Alien Property Custodian might determine belonged or related to the business of the Chemical Foundation, Incorporated. In other words, the President has vested all power and authority in Mr. Polk, and Mr. Polk, in turn, vests all power and authority in the Alien Property Custodian, to make private sale of anything that he may determine relates to the purpose of The Chemical Foundation.

Then:

"My reasons in the public interest for the foregoing determination, order, rule and regulation are:

"First: A similar order, rule and regulation relating to letters patent, trade-marks and similar rights has been made by me the twenty-sixth day of February, 1919, and this order is supplemental thereto and necessary to fully carry out the objects and purposes of said order of February twenty-sixth, 1919."

Then: "Second: Said copyrights, applications for letters patent and for the registration of trade-marks and copyrights can not be sold to the best advantage at public sale after public or other advertisement."

Well, that is a matter of opinion. It was a question, if to be determined at all in such broad terms, was to be determined by Congress or by the President himself. That was to be his opinion, with his large experience and with his known views on the subject. It never was his opinion, so far as this order shows. He was in the White House, and we will show your Honor that he was so busy that he could not give it consideration.

"Third: The Chemical Foundation, Inc., has been incorporated for the purpose of holding letters patent, trade-marks and similar rights relating to the chemical and allied sciences as a trustee for American industry, for the purpose of the Americanization of such industries as may be affected thereby, of eliminating alien interests hostile to said American industries and of the advancement of chemical and allied industries in the United States."

Trustee for American industry. I have already pointed out that such a trustee was created to be void from the day it was created, but at any event that is what it is. That is what it was organized for.

> "The Chemical Foundation, Inc., is obligated to grant non-exclusive licenses upon equal terms at a uniform royalty to qualified American manufacturers and is empowered to grant free licenses to the United States for any use the United States may desire to make of the inventions covered by said letters patent, and similar rights."

Now, if your Honor please, I will try to point out in this trial that while the Chemical Foundation was authorized to grant licenses to the United States, it does not say a free license. It says upon such terms and conditions as the Board of Directors may determine—three men,—but I have not been able to find any provision requiring or compelling it to grant non-exclusive licenses to any qualified American manufacturers; and therefore the order does not state the facts as to the Charter, so far as I can find, and the very terms of the Charter itself provide, so far as to giving authority to grant non-exclusive licenses to any qualified manufacturer,—the Charter itself provides the Board of Directors may refuse to issue any license, or may revoke any license.

There is the essential, fundamental fact in connection with this whole matter, misstated in the face of the order, and the whole purpose is misrepresented on the face of the order. I do not charge anybody with wrong in intentionally doing it. I say, predicating an order upon those facts, assuming they had a right to enter the order,—that it is based upon a misrepresentation of facts.

> "Third: The public interest will be best served by a wide use of the inventions covered by

> said letters patent and similar rights and such wide use can be most readily promoted by the licenses which the said The Chemical Foundation, Inc., is by its charter obligated to grant."

That is a matter of opinion, too. We will probably show in this case that the general licensing of patents does not contribute to the wide use, and in any event, Congress by acts which have been in existence for almost one hundred years, by the patent laws themselves, have reached the conclusion that the development of patented articles is best promoted by exclusive use or a monopoly under the patent for seventeen years.

Now, Congress having determined that to be the fact in the United States upon what would be predicated the proposition that Congress is wrong, as to the policy in the use of patents?

> "Fourth: A private sale will prevent said letters patent, trade-marks and similar rights from falling into the hands of purchasers who would be unwilling or unable to put the inventions covered thereby into use, or would use them for purely speculative purposes."

How did he reach that conclusion? Is not that true of all properties sold? What are we looking to in the sale of alien property? Are we looking to the benefit of the purchaser, or are we looking to the benefit of the trust which we are administering?

If the purpose of this situation is to look to the interest of the purchaser, as is contended by counsel and will be contended by them, as I understand, there may be some justification for this finding. I am going to point out presently the status of the trade. But we are looking to the interests of the trust; the Trustee does not consider the welfare of the purchaser; his business is to see that the trust property realizes the most that can be realized for the benefit of the *cestui que trust* which, in this case, under the Act of Congress, was primarily the people of the United States.

"It would be impossible to make a public sale of the said letters patent, trade-marks and similar rights so as to secure the foregoing benefits to the public.

"Unnecessary expense, delay and inconvenience may be avoided by a private sale."

If your Honor please, it appears that at this time —and it has been urged in testimony before Committees of Congress and officers of the Government, and in reports of officials—the necessity for this private sale arose out of the fact that all of the persons engaged in the manufacture of chemicals and dyes or in that business in the United States were substantially all of them then stockholders of The Chemical Foundation, and had been combined into the Chemical Foundation for the purpose of making this purchase.

I venture to say that it is the first time in the history of American law or English law where the combination of possible bidders has been deliberately brought about by a trustee, or aided by him. And that is not intended as a reflection on the Alien Property Custodian, because his objects and purposes will appear in this case, and we may concede that they are of a high character. But it is the first time through a mistaken conception of the law, a trustee has ever brought about a combination of all purchasers or possible purchasers of the trust estate, and then asked authority to sell that trust estate privately because there would be no legitimate bidders to bid at a public sale.

If there is any such case has ever happened in the English or American law I cannot find it. It may be, but I do not believe there is. Because if there is any one principle that is established beyond further controversy in the English and American law, it is that a trustee, whether he be the President or any other officer, in the sale of trust property or public property, must make a fair sale, and that a combination of bidders even at a judicial sale will be a ground for setting aside the sale and making it invalid.

Yet that is the basis on which this sale is predicated by Mr. Polk. I do not doubt for a minute Mr. Polk was a very busy man, and I hope nothing that I say here will be taken as a reflection in the slightest degree upon him, his ability or his purpose, because I hold no man in higher esteem in the United States. But men were busy; especially at this time when he had thrown upon him the burden of others' duties, and he could not read and consider all these factors, and if he inadvertently made a mistake in the law which is prejudicial to the people of the United States or to this trust, and the Alien Property Custodian inadvertently made a mistake, too, then the function of the Court is to correct that mistake, and that is what we are here for.

Under that order and another order issued on the 5th day of April, which is substantially in the same terms (found at page 114 of the Answer), except that it covers trade-marks, copyrights, certificates of registration thereof, etc., which are not covered by the other, these sales took place. This latter order just enlarges the character of property, and I will not read it all over, because it is the same in principle.

Under those two orders this sale took place. I have stated the law up to that point; I will go back to the facts. When I left the history of the situation we were up to the incorporation of this company, which I had reviewed. The incorporation of that company was brought about. Its Charter was drawn in New York and submitted to counsel here in this city, I think. It was brought about by co-operation between the representatives of the Dyestuffs Institute and the representatives of the Alien Property Custodian's office. In the meantime the seizing of the patents was going on upon the list, as I have stated, made up by counsel for these different interests. Some forty-five hundred of them were first seized and arrangements were made to sell them to The Chemical Foundation, Incorporated, for the lump sum of $250,000, out of which there was to be paid, reimbursed to the Dyestuffs Institute and the members, four thousand, five thousand or six thousand dollars, or whatever it was which was paid in the seizing of patents. Subsequently sales were made bringing the patents, trade-marks, copyrights, etc., up to something like $272,800. They were sold for less than fifty dollars apiece, and it was brought up to $271,000, or practically an average of forty dollars apiece.

Those forty-five hundred patents were sold at the price which had been suggested at the Conference in January between the representatives of the Dyestuffs people and the Alien Property Custodian's office, at which the Alien Property Custodian was not present. That price was suggested before they knew the number of patents. Some said it would be one thousand, some said three thousand; they were not listed then. The evidence of various gentlemen of the Alien Property Custodian's office, including the Alien Property Custodian himself, is that the price was arbitrarily fixed. That is obvious. You could not fix the price when you did not know what you had seized or what you would convey, or what value it had. The sum of $250,000 was paid and the conveyance was made, and I want to call your Honor's attention to one provision of that conveyance. I am not going to read the whole thing, the assignments. Page 416 of the Bill, after describing patents, trade-marks, etc., states that that conveyance provides that the benefits, together with "rights, interests and benefits under agreements issued by said A. Mitchell Palmer, as Alien Property Custodian, or by me as Alien Property Custodian without any reservation or qualification whatsoever, whether by reason of anything contained in the Charter or By-laws of the said Chemical Foundation (Inc.), or otherwise."

Mr. Polk had issued this order on the theory that the Chemical Foundation's Charter created a trust in favor of American industry, and presumably upon the theory that the United States could enforce that trust as a public trust, which I think was a wrong theory; because it did not create any trust and the United States had divested itself of all interest. It might have done it in the interest of the public, but they did not leave that open. This clause Mr. Polk so carefully put in about the trust, so far as the United States is concerned, is gone if this conveyance is valid, because the assignment says they are conveyed by Mr. Garvan as Alien Property Custodian without any reservation or qualification whatsoever, whether by reason of anything contained in the Charter or By-Laws of The Chemical Foundation, Inc., or otherwise.

In other words, nobody, neither the United States nor any person, assuming that they could have enforced this alleged trust, can ever touch the use of these things, and the Chemical Foundation, Inc., could be dissolved under the laws of Delaware tomorrow and transfer and divide this property in private ownership, and nobody in the world complain, if that assignment is valid—not a living soul. And this is done notwithstanding the fact that the authority to sell, if it existed, is predicated upon the existence of a trust.

If your Honor please, I want to go back a minute. The Alien Property Custodian in the orders and regulations for sale to which I have referred not only provided that no officer or agent of the Alien Property

Custodian should be interested in the purchase or an officer of the corporation making the purchase, but provided that it is necessary that every precaution shall be taken to enable properties to be sold fairly and for a proper price, without any possibility of favoritism or undue advantage in favor of any particular purchaser, and that the views of the Advisory Committee would be especially needed in guarding against any such possibility. Right. Absolutely, you could not sell trust property on any other condition. Then he went on and said no officer directly or indirectly connected with the corporation shall be interested in the purchase.

What happened? Mr. Palmer became Attorney General on the 4th of March, 1919, and Mr. Francis P. Garvan was appointed Alien Property Custodian in his stead, as I stated, and took office on the 4th of March, 1919. This sale was then in process of negotiation and final settlement. The order had been issued by Mr. Polk on the 26th of February, two days before the end of the month. The President was there. Why it was not conveyed I don't know; there is some reason, probably, for the delay. They had to prepare the papers. On the 8th of March, four days after Mr. Garvan took office as Alien Property Custodian, the first real meeting of the stockholders of The Chemical Foundation was called and held, and at that meeting Mr. Garvan was elected President. But the record shows and we will show here that it had been agreed some time before that he should be President. He agreed to accept that office. I have no doubt that he felt that he was performing a great public service in accepting it. He was President. Colonel Douglas I. McKay, of New York, was made Vice-President. Colonel McKay, as the record will show, was acting then as a Director in various corporations being administered by the Alien Property and also a Director in various corporations which the Board of Directors.

The stock of the corporation, as your Honor will recall—I do not know that I stated it—had been underwritten by the Dyes Institute. The counsel for the Chemical Foundation was appointed general counsel on that day, on the 8th of March I think it was, at the same time this Board was elected, and that officer was Mr. Joseph H. Choate, Jr., who was the head of the Chemical Bureau, a part of the bureau of investigation of the Alien Property Custodian. I think I have stated it correctly; there may be some variance from a correct description. The patent counsel of the Chemical Foundation appointed that day was Mr. Ramsey Hoguet, who was the patent counsel of the Alien Property Custodian and had been practically from the beginning of the work.

So that we have the Chemical Foundation organized with the Alien Property Custodian as its President, the representatives of the Alien Property Custodian in various corporations as its Vice-President and Secretary, and those three constituting its Board, which must of course perform its functions. We have the general counsel of the Chemical Foundation Mr. Choate, who was really the chemical counsel of the Alien Property Custodian in charge of that Bureau, and we have the patent counsel of the Alien Property Custodian the patent counsel of The Chemical Foundation on the 8th of March. But, as I have already said, the Alien Property Custodian when he set up his sales organization set up an organization known as the Advisory Sales Committee, consisting of gentlemen of high character. I do not mean to reflect upon any of these gentlemen in the slightest when I outline these relationships, but they are merely facts in the case.

Those five men I have named were made the voting trustees for the common stock of The Chemical Foundation. I should have said that common stock was put into a voting stock to run until 1936. That is in the record. Those men who had to pass upon the sale and make the purchase were made the voting trustees and therefore the holders of all the common stock, and the voting power was vested exclusively in the common stock, so for voting purposes they controlled it.

So we have that set-up, in the face of the law which is as old as the English law, even the common law trustee law, whatever that may be, in the face of the law which has been declared by the Supreme Court of the United States so often that it would be a work of supererogation even to refer to it and certainly an affectation of learning to read it, that a trustee cannot be buyer and seller at the same time, and in most decisions holding that such a transaction is *ipso facto* void, and in all of them holding that such a transaction is voidable at the election of the beneficiary of the trust.

In the face of that law, in the face of the regulations established by the Alien Property Custodian himself, by authority of the President, that no person of his organization should be interested in the purchaser, we have here a purchase by a corporation every officer of which and all the stock of which, voting stock, was held by persons who were officers of the Alien Property organization, and the head of that trust organization, the Alien Property Custodian himself.

Then if the law be still the law, that a trustee cannot occupy two inconsistent positions, cannot be buyer and seller, the case ends there, because that law applies just as well to the officers of purchasing corporations as it does to a purchase by the person in his own interest. And there need not be any financial interest involved one way or the other, because it is founded upon the deeper principle, as stated by the Supreme Court of the United States, that human nature is so constituted that the policy of the law will not permit a man occupying a fiduciary relation to become the purchaser of property sold at his own sale directly or indirectly, or through any agency, simply because the temptation is too great, and while it may often result in benefit to the trust estate, the Court cannot stop to inquire into that question.

If your Honor please, what was a proper consideration for that sale? The consideration was $250,000 for forty-five hundred patents, which these gentlemen reported and have since testified and now declare in their answer to completely control the dyestuffs and chemical industry of the United States. In other words, the Alien Property Custodian reported to the President that the dyestuffs importations into the United States are $25,000,000 a year. The business has grown beyond that. And yet he also reported at the same time that these patents in the hands of Germans completely control that industry and gave to the owner the power to throttle that industry, not only through the control of essential processes which they represented, but by a larger factor of the control of the ports of entry by product patents, to the end that no products covered by those patents could be imported, not only from Germany, but from England, France or any other country of the world.

That entire list of patents, running as Mr. Garvan has once testified, eight and a half years in the average and many of them seventeen years, were sold to this corporation, every share of stock of which except that qualifying stock was held and owned in beneficial interest by the dyestuffs interests of the United States, every officer of which was an officer making the sale, taking part in making the sale, for the pitiful sum of forty dollars apiece, which was less than it cost to get the patent out of the Patent Office.

But, to go a little further, at the time that that sale took place there were 128 of these patents being used in the United States on a license of the Federal Trade Commission. There was a large number of contracts for patent rights under these patents which had been seized by the Alien Property Custodian. That is an alien enemy-owned contract, and contract rights are rights of royalty. There had accrued on the patents so licensed—only 128 of the forty-five hundred—and under contracts so held by the Alien Property Custodian revenues in excess of $250,000 on the day that the sale took place. Therefore, the Government of the United States through the Alien Property Custodian not only turned over this important trust property held primarily for the benefit of the people of the United States—not for the Germans—to a purchaser who was incapable of bidding because of its personnel at private sale authorized upon a misunderstanding of facts, and also turned it over for a consideration which was less than the accrued revenues upon the property.

Your Honor, I say again I recognize the confusion there is existing in this law. I recognize the difficulty that confronted the administration at this time. I recognize the high character of the men involved. But I do say that all of us make mistakes, and that if that transaction can stand as to trust property held in a sacred trust for the benefit of the people of the United States on any ground, then we have got to wipe out the law of this country in respect to trusts and open the doors to dangers such as those no man would dare to face with equanimity in the administration of a public office.

Therefore, we shall contend upon that general record and facts which will elaborate the situation as I have undertaken to outline it and as I hope as clearly as I can to present it, that sale was absolutely void *ab initio* and if it is not void *ab initio*, at any rate it was voidable at the election of the United States, representing the people who were the beneficiaries of that trust.

There is one other aspect of this case which I now want to present briefly and then I hope I will be through.

THE COURT: If you are going to take up a new point, we are going to take a recess in three minutes.

MR. ANDERSON: I will stop here then, sir.

THE COURT: You can make your own election.

MR. ANDERSON: I would like to cut it off here, your Honor. I am nearly through.

THE COURT: Mr. Kresel, I shall permit you at the conclusion of the opening to make such opening and argument or arguments for your side as you desire. It is not my purpose to restrict either of you in your opening statements or arguments.

MR. KRESEL: Does your Honor expect to sit late enough this afternoon to enable us to finish our opening?

THE COURT: You may use your own discretion as to that Mr. Kresel.

MR. ANDERSON: I want to suggest to the Court that if it is feasible we could fix by agreement some hours that the Court will sit unless some particular circumstances arise to change it; because we are going to be under a good deal of strain here in the next few weeks, and would be glad to have some recreation.

THE COURT: I should be very glad to have counsel confer during the noon recess, which will be one hour and a quarter in length, and tell me your pleasure at the meeting this afternoon. In recent cases we have been beginning at 8.15 Standard time and taking a noon recess of an hour and a quarter at 11.45 Standard time, and making up in the afternoon I think either an hour and three-quarters or two hours, whatever is necessary to make up the five hours. I will sit earlier or later or both, at the convenience of counsel. We will take a recess until two o'clock Standard time.

AFTER RECESS

MR. ANDERSON: If the Court please, at the time of adjournment, I had just concluded the statement of the facts as we expect to show them, and the theories for which we will contend, as applied to those facts, as to the actual sale of these patents, or the first group thereof, for the sum of $250,000.

I should say, perhaps, that the essential facts, so far as bearing upon that question, that is, the relationship of the parties, is admitted in the Answer. There is no controversy on this subject.

MR. KRESEL: Will you kindly raise your voice? It is most difficult for me to hear.

MR. ANDERSON: I have a bad throat today. Your Honor doubtlessly has noticed it; but I will do the best I can. I have not a good voice anyhow, but I will try to keep it up the best I can.

Before taking up the next main question in the case, I would like to call—I think it is due, that I should call attention to one aspect in regard to the sale which I overlooked—that is, for making a fair presentation of the case, as I see it.

There were a series of assignments. After the original assignment, covering some forty-five hundred patents, copyrights and trade-marks, there were a number of small assignments, covering the period of 1919 from time to time—covering anywhere from two or three to say fifty or one hundred patents, based on a varying consideration per patent, which was in most cases about fifty dollars per patent.

I think it will appear in this case that among the patents originally assigned, or certainly at a subsequent date, were such important patent rights as salvarsan, neo salvarsan, novocain, and the Haber patents, as nitrogen and the like, substantially all of the dye patents and dyestuffs and intermediates, which are referred to in the report of the Alien Property Custodian's official document, as controlling the dye industry of the United States.

From time to time it appears and will appear in the record inquiries were made by various persons as to purchasing these patents. That is, a man would be using a patent in his business and he would ask leave to purchase that patent. In some cases he suggested that the sale should be made at private sale. A number of those instances will be brought to the attention of the Court during the presentation of the evidence; I do not want to refer to them in detail now but simply to summarize what they were.

In those instances the inquiry was often, if not generally, made of the Chemical Foundation by the Alien Property Custodian as to whether they would be interested in that patent. In some instances they had been seized and in some instances they had not. It will appear that in instances where they had not been seized an inquiry was made in a desire to purchase the patent on the part of the person using it, of the Chemical Foundation, inquiry being made whether they would be interested, and if they were, the patent was seized and conveyed to the Chemical Foundation, and the prospective purchaser was notified that he should apply to them for license.

I mention those facts and they will be introduced to show that even in those isolated cases of subsequent conveyances, where a very much larger consideration could have been realized and persons stood ready to pay a larger consideration, the Alien Property Custodian conveyed the patent to The Chemical Foundation for a nominal consideration, and in some of those instances there were accrued royalties in the hands of the Government applicable to such patents, amounting to from a few thousand to many thousands of dollars—and they were conveyed for fifty dollars each.

For instance, there was one instance we will show here, where in the case of a certain patented appliance or process, or whatever it was, of a sanitary character, used by the cities for the disposition of garbage and sewage, the persons then using that patent applied for leave to purchase the same and indicated a willingness to pay a fair price. The exact amount I do not recall. The Chemical Foundation was asked if they were interested in that patent, which had no relation directly to chemicals or dyestuffs, but to sanitation. They were. The patent was conveyed to them. At that time there were accrued royalties of $27,000, on those patents—there were a number of them—and I think the price was $250 that the Chemical Foundation gave, or fifty dollars apiece, and the person using the patent offered to the Alien Property Custodian to pay, I think, $2,000 for the patent alone and to dedicate the patent to the public use of any city that desired to use it, without any royalty or charge, and take it over and use it as it had been used in the past.

The Chemical Foundation acquired the patent for $250. It immediately entered into a contract giving to this proposed purchaser and then user an exclusive contract to act as its agent in the use of that patent, charging a royalty therefor which gave it a return many times the amount that it paid for the patent, and there was then $27,000 accrued under that patent available, and they paid $250 for it.

I mention these cases, if your Honor please, as instances which we will bring to your Honor's attention as demonstrating the character of the transactions and the amounts, and the utter inadequacy and ridiculous consideration which I think every one of us will admit in the light of the record of the case and in the light of the testimony—the absurd inadequacy of the matter from the standpoint of a sale. I cannot conceive that these transactions could have been made except upon a wrong theory of the law as to the duties and purposes of the Alien Property Custodian and the officers acting under that Act. I make that statement because I do not want to be understood as charging any wilful misappropriation or misuse of property of the United States. But I think the fundamental trouble here, as your Honor will find when you come to examine this situation and the evidence produced, with the authorities, which I will not state now—your Honor will find the fundamental trouble in this case is the essential difference in the theory of this law. And your Honor will be called upon to determine who is right.

We take the view that the law made the Alien Property Custodian and to the extent of his duties thereunder the President himself, as agent of the United States, trustees for the benefit primarily of the people of the United States, with the right in Congress to declare any other beneficiary that it saw fit and proper, and thereby broad powers of sale were given, as in many trust deeds and in decrees of foreclosure, for the purpose of making the property free to achieve its commercial purposes in this time when it was needed; that that power of sale was at last to be exercised by a trustee for the benefit primarily of the people of the United States and all of such other beneficiaries as Congress might in its discretion determine; that that power of sale must be exercised so as to produce a fair sale. That is, it must be made without combination of bidders, to prevent its bringing an unfair price, it must be made under the conditions most favorable for the realization of the best price; it must be made upon terms most favorable to the trust, because the duty of the trustee is to look to his trust; it must be made for a consideration which at least is adequate, and it cannot be made to the trustee himself or persons interested in the execution of the trust, since under the familiar principle they cannot be both seller and buyer, and therefore incapacitated to bid. Whether they receive any benefit or consideration is immaterial.

If that view of the law is correct, these being all elements of a fair sale, then the facts which we will show and which I have indicated would seem to clearly require in the interests of the people of the United States that the sale should be set aside upon equitable grounds and an accounting had in accordance with the principles of equity.

As I understand the position of counsel upon the other side, it is that this Act contemplated originally the conservation of this property, as I have indicated, with the strictest regulations of trust, but as time developed and the war developed further information, it was the intention of Congress that the Alien Property Custodian should use his position in control of this property as an actual soldier in the war, that he should seek to destroy the interests of the Germans in American property as a part of the contests of war, and that in the end he or the President under whom he acted was given the power to use this property as they might see fit—first to eliminate the German interests in American industry, and, second, to advance and promote the interests of American industry concerned therein.

Your Honor will observe that there is therefore a distinct point of cleavage in the fundamental conceptions of this Act, which we will at the proper time argue, without direct reference to its specific terms and the production of authorities thereon, but those two theories are incompatible, for the obvious reason that if the Trustee is clothed with the usual obligation—common law or otherwise, whatever they are, on the Trustee, whether he be the President or any other officer, his high and first duty is to look to his trust estate and the benefit of the persons interested in that trust estate, as Congress may determine; that is, the question of the conduct of the military operations of the war or commercial operations, do not concern him. They are for Congress. He is not the General Staff. He is not to determine what will win the war. He is as such trustee not to consider the interests of American industry, although that interest may be of the highest consequence, as I concede it is, and should appeal strongly to the friendly action of Congress and the Government of the United States, but his duty is that of a trustee and the policy in dealing with American industry and the policy in connection with the promotion of the welfare of American industry, and the policy with respect to the limitation of foreign elements in American industry, were all questions of national policy, which could only be determined by Congress. So long as the Government remains a Government under the control of the Legislative, Executive and Judicial organizations, the questions of policy, however important, cannot be determined by any individual or by any private corporation or any group of individuals, but only by Congress itself.

Now, following these various assignments which were made under the two orders of Mr. Polk, to which I have referred, the President returned to the United States on June 28, 1919.

It does not appear that after the President's return any order was ever issued divesting Mr. Polk of all power and authority which the President had vested in him, assuming the validity of that Act.

The record will show in this case the fact of which I think the Court will take judicial notice in any event, that the President was taken ill, on the 28th of September, 1919, and his illness, serious to himself and to the country, continued for practically the remainder of his term of office.

On February 13, 1920, there was prepared in New York, I think the record will show, by Mr. Hoguet, who, as your Honor will recall, was patent counsel both for the Alien Property Custodian and for The Chemical Foundation, an Executive order, which after having been passed upon and to some extent modified by council for the Alien Property Custodian in Washington, was sent by the Alien Property Custodian, then Mr. Garvan, to the White House, for the signature of the President.

The correspondence will be presented to your Honor, from which it will appear that this order, together with the letter of Mr. Garvan, stating that some question and doubt had arisen as to whether the former assignments under the orders of Mr. Polk were broad enough to cover rights of action and choses in action under these various patents, copyrights, and so forth, which I take it applied to the accrued royalties, and so forth, which were in the hands of the Trade Commission and of the Alien Property Custodian, under the contracts of licenses to which I have referred.

Therefore this order was presented to the President with this letter explaining that that doubt existed, and in order to remove that doubt they desired him to execute this order.

The order was sent to the President's Secretary and was sent in to the President with a personal note, asking that it be executed, and subsequently it appears that the President did execute it.

That order will be found at page 136—no, I beg your pardon.

THE COURT: Page 117?

MR. ANDERSON: Yes, page 117 of the answer. And I would like to call your Honor's attention to certain of its language.

After reciting the powers under the Act and reciting the order of December 3rd appointing Mr. Polk, and that Mr. Polk's orders had authorized the sale and conveyance to the Chemical Foundation, Incorporated, of certain choses in action, rights and interests and benefits and so forth:

"Whereas it was the intention of the said Executive orders to authorize the said Custodian to sell and convey thereunder all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description, including rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, trademarks or tradenames, which the Alien Property Custodian may have seized under the provisions of the "Trading with the Enemy Act" as amended, and which he had from time to time determined to relate to the objects and purposes of the said The Chemical Foundation, Inc., as expressed and defined in its charter; and

"Whereas doubt has arisen as to the authority of the said Alien Property Custodian to sell and convey to the said The Chemical Foundation, Inc., certain of the said choses in action, rights, interests, benefits under agreements, and rights and claims, including rights to receive moneys by way of royalties or otherwise, as compensation for the use of patents, trademarks or tradenames;

"Now, therefore, I, Woodrow Wilson, President of the United States of America, do hereby in the public interest, determine and order that the Alien Property Custodian is hereby authorized to sell at private sale, without public or other advertisement, to The Chemical Foundation Incorporated, a corporation organized and existing under and by virtue of the laws of the State of Delaware, at such place and upon such terms and conditions as to the Alien Property Custodian may seem proper, all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description which the Alien Property Custodian may seize or may have seized under the provisions of the 'Trading with the Enemy Act.' "

"All choses in action, rights, interests and benefits under agreements and rights and claims of every character and description which the Alien Property Custodian may seize or may have seized under the provisions of the 'Trading with the Enemy Act' and the amendments thereto now or hereafter enacted and which he from time to time shall determine relate to the objects and purposes of the said The Chemical Foundation, Inc., as expressed and defined in its charter."

There again we have the language "provisions of the 'Trading with the Enemy Act' and the amendments thereto now or hereafter enacted and which he from time to time shall determine relate to the objects and purposes of the said The Chemical Foundation, Inc."

"The Alien Property Custodian is also hereby authorized in the case of sales heretofore made by him of any property which he is hereby authorized to sell but as to which his authority to sell the same under the said Orders of February 26, 1919, and April 5, 1919, may be deemed doubtful to confirm and ratify the said sales by the execution and delivery of a suitable instruction of confirmation."

Now, I call your Honor's attention to that language. The recital in the order is that doubt has arisen—this is the reason for the order—a doubt has arisen as to whether there is authority under these orders to sell these choses in action, rights of action and accrued royalties, in brief terms; and the President authorized him to assign those things. There have now been three orders, one as to the original patent rights, the second one of Mr. Polk, to include trademarks and copyrights and so forth, contracts and applications for the same; and now the order giving to the Alien Property Custodian the further right to sell any accrued royalties, and to assign any choses in action which had arisen. Of course, under general law the right to any chose in action which arose subsequent to assignment, if the assignment is valid, goes with the property; but the question of whether the assignment of personal property carries with it any accrued rights is a very doubtful question; and this order was undoubtedly intended to cover that point.

"My reasons for the foregoing determination and order are stated in the said orders of Frank L. Polk, of the 26th of February, 1919, and the 5th of April, 1919;"—

I pointed out to your Honor this morning that the reasons stated in there, every one of them, were predicated upon a mistake of fact or were mere matters of opinion.

"And in addition thereto, the public interest will be best served by the elimination of any enemy interest adverse to American citizens arising by reason of said choses in action, or rights, interests and benefits under agreements and by the devoting of any payments made by reason of said choses in action or under said agreements by The Chemical Foundation, Inc., to the promotion of the objects stated in its charter."

In other words, that the interests of the public would be advanced by paying over to The Chemical Foundation, Inc., the accrued royalties and amounts which had accrued under these contracts, which, as I stated this morning, I think we will show to your Honor at that time represented more than the entire purchase price paid for the patents and the other rights themselves.

Now, under that order, which was signed by the President in 1920, February 13th, the Alien Property Custodian, Mr. Garvan, on the first day of March, 1921, over a year thereafter, executed an additional assignment. I have not my hand on it. I will have it in a moment, sir.

Mr. Kresel: 180 of the Bill. (*Record, page 472.*)

Mr. Anderson: I thought it was in the other. I have it right here. I had it laid open. That is Exhibit I in the Bill, page 180. (*Record, page 472.*)

It recites the Act and the right to seize property and the amendments to the Act, and the authorization claimed of the Alien Property Custodian to sell this property by orders of February 26th and April 5th, which are the Polk orders; and then it goes on to say:

"Pursuant to said authority vested in me, for valuable consideration, and at such places and upon such terms and conditions as to myself, as Alien Property Custodian, seemed proper, did sell to said The Chemical Foundation (Inc.), at private sale without public or other advertisement, certain of the said letters patent and other property," and so forth; and goes on to describe them. And then it lists the various assignments in their order, and goes on to state:

"Whereas it was the intention of myself as Alien Property Custodian and of said The Chemical Foundation (Inc.), in agreeing upon the said sales and in executing, delivering and receiving the said assignments, that the said assignments should assign and convey to said The Chemical Foundation (Inc.), not only the letters patent and other property specifically referred to in and assigned by the said assignments, but also with such exceptions as are specifically stated in said assignments, all rights, claims, demands, interests and choses in action of every character and description acquired by the Alien Property Custodian by virtue of the seizures whereby the said letters patent and other property were seized; and

"Whereas doubt has arisen as to whether the language of the said assignments is in fact and in law sufficient and effectual to carry out the true intent and purpose aforesaid of the said sales and to assign and convey to said The Chemical Foundation (Inc.) all of the said rights, claims, demands, interests and choses in action acquired by the Alien Property Custodian as aforesaid; and

"Whereas doubt has arisen as to the authority of the Alien Property Custodian to sell and convey to the said The Chemical Foundation (Inc.) certain of the said choses in action, rights, interests, benefits under agreements and rights and claims including rights to receive moneys by way of royalties or otherwise, as compensation for the use of patents, trade-marks or trade-names; and

"Whereas in one of the above-mentioned Executive orders, the same being dated February 13, 1920, among other things it is recited that it was the intention of the above-mentioned orders"—it recited the Executive orders—I need not read that. And

"Whereas the Alien Property Custodian is authorized by said Executive order dated February 13, 1920, to sell at private sale, without public or other advertisement, to said The Chemical Foundation (Inc.)

at such place and upon such terms and conditions as to the Alien Property Custodian may seem proper, all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description which the Alien Property Custodian may seize or may have seized under the provision of the 'Tradng with the Enemy Act' and the amendments thereto, then or thereafter enacted and which he from time to time shall determine relate to the objects and purposes of the said The Chemical Foundation (Inc.), as expressed and defined in its charter; and

"Whereas the Alien Property Custodian is also authorized by said Executive order dated February 13, 1920, in case of sales theretofore made by him of any property which he is authorized to sell by virtue of said Executive order dated February 13, 1920, but as to which his authority to sell the same under the said orders of February 26, 1919, and April 5, 1919, may be deemed doubtful to confirm and ratify the said sales by the execution and delivery of a suitable instrument of confirmation:

"Now, therefore, I, Francis P. Garvan, as Alien Property Custodian, by virtue of the authority conferred upon me by said 'Trading with the Enemy Act,' as amended, and by the Executive orders, orders and proclamations issued in pursuance thereof and hereby for the purpose of effectuating the true intent of the parties to said assignments, confirm and ratify the sale and assignment to said The Chemical Foundation (Inc.), of, and do hereby for valuable consideration heretofore received by me, sell, assign, transfer and set over to said The Chemical Foundation (Inc.), all property, including (but not thereby limiting the generality of the foregoing) letters patent, rights under letters patent, applications for letters patent and rights thereunder, copyrights, rights under copyrights, certificates of registrations thereof, the publications upon which such registrations were granted, trade-marks, rights under trade-marks, together with the good will and business pertaining thereto, including all profits and damages recoverable at law or in equity for past infringement with respect to any and all of the foregoing, choses in action, rights, interests and benefits under agreements, and rights and claims of every character and description with respect to all of the foregoing, seized by me as Alien Property Custodian, or by my predecessor in such office specially referred to in and assigned by said assignments, and I do hereby confirm and ratify the sale and assignment of and do hereby sell, assign, transfer and set over to said The Chemical Foundation (Inc.) all choses in action, rights, interests and benefits under agreements, and rights and claims of every character and description growing out of and appurtenant to the ownership of said property, including (but not thereby limiting the generality of the foregoing) rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, copyrights and trade-marks, and all right, title and interest in and to the choses in action and the funds referred to in Section 10, subsection (f) of the 'Trading with the Enemy Act,' as amended, acquired by the Alien Property Custodian by virtue of the seizures by which there were seized patents, copyrights or trade-marks, under which a license had theretofore been granted in accordance with the provisions of Section 10, subsection (c) of said act, as amended, all of which property I, as Alien Property Custodian, from time to time have determined and do hereby determine to relate to the objects and purposes of said the Chemical Foundation (Inc.), as expressed and defined in its charter; the intent and purpose of this instrument being to vest in said The Chemical Foundation (Inc.) every right, title, interest, claim and demand, save such as are specifically excepted in and by the said assignments, acquired by the Alien Property Custodian by virtue of the seizures whereby the said property was seized."

Now, if your Honor please, we shall contend in the first place that the orders of Mr. Polk, being void in the first instance, cannot be ratified so as to make them effective, and no act done thereunder is valid, since a void act cannot be made valid by ratification.

In the second place, we shall contend that the order of th President of February 13, 1920, was obviously predicated upon a want of knowledge of the actual facts, and a mistake as to the actual facts and rights with respect to The Chemical Foundation.

We shall further contend in that connection that the order of the President did not seek to ratify the acts of Mr. Polk, but only undertook to authorize the extension of the conveyance to embrace the accrued royalties and choses in action attached to the patents and patent rights at the time that they were sold, and by its terms it was expressly limited with respect to ratification to the rights authorized to be sold by that order.

That this instrument of ratification executed by Mr. Garvan was without a scintilla of consideration in so far at least as it sought to convey property not conveyed by the original assignments, and that the original assignments, having been made for a consideration of approximately fifty dollars a patent, or copyright, or whatever it was, and there having been then in the hands of the Trade Commission, under this subsection 10, which is not referred to in the President's order, you will notice—under section 10, there then being approximately $150,000 in the hands of the Trade Commission, and approximately as much more —I do not mean to say the actual amount—accrued under the contracts held by the Alien Property Custodian and seized as enemy contracts which had accrued at the time that the effort to make the conveyance took place, that there was a deliberate—I do not mean to use the word "deliberate" in any wrongful sense—but there was a deliberate turnover of approximately $300,000 of money in the Treasury of the United States, or where it would go into the Treasury of the United States, for the benefit of the people of the United States, or as Congress might direct—turn it over to this corporation without one cent of consideration of any kind for it; and that the Alien Property Custodian found as a fact that that money related to the purposes and objects of The Chemical Foundation; I have not a doubt that it did, because money relates to the purposes and objects of all corporations and persons as well. In that sense it undoubtedly related to it, but it had no relation to it in any other respect.

Upon that state of facts, accumulating step by step, the series of events, in an assignment very much broader in its terms than anything contained in the Presidential Order, an effort to ratify, not the things authorized by the Presidential Order, the choses in action or rights to royalty, but to ratify all sales made a year or more before the Presidential Order was entered, an assignment made just before the termination of the administration—that that cannot stand as a conveyance of property of the United States to a private corporation no matter what may be the benefits to American industry or any other private interests.

Your Honor will observe, therefore, that this transaction, aside from the general principles applicable to sales by trustees, which principles of law, of course, are familiar to the Court and to us all, is founded first upon the vesting in Mr. Polk as an individual of an authority which Congress required should be exercised by the President personally; that

Mr. Polk's act, in our contemplation of law, and assignments thereunder were void; that the President did not undertake to ratify those acts and that he could not ratify in any event acts which were void, or which he as trustee for the American people could not have authorized to be done under the circumstances of this case, even if he had personally done it; and that the final so-called ratification assignment is very much broader than that of the Order of the President, and that the whole transaction is therefore void as matter of law and cannot be sustained. This is aside from the question of the sale by a trustee to himself.

The other aspect of this case which we will present will involve bringing in quite a good deal of evidence, perhaps. So far I have been discussing this matter practically on the facts which are matters of record. I have already pointed out the want of adequate consideration owing to the fact that there accumulated in the hands of the Government, or accrued at least, more than the entire consideration paid at the time it was turned over. But the facts further show that The Chemical Foundation, although it has only issued 422 licenses, including those I understand issued by the Federal Trade Commission, has collected by various sources up to the first of last January—I think the amount aggregates about $700,000, and of that amount several hundred thousand dollars is money collected at the ports through the exercise of the alleged rights under these patents to prevent importation from any foreign country of the products which they cover.

Therefore, it would seem to require no testimony as to value of the patents to demonstrate beyond any controversy that if our theory is right, the property must be sold as trust property for fair consideration and under fair terms, with these accumulated funds turned over as a gift to The Chemical Foundation, aggregating more than the entire purchase price, with such patents as Salvarsan, Neo-Salvarsan and Novocain, to say nothing of the dye patents included in the sale at $50 apiece, their value being a matter of common knowledge, and with dye patents giving, according to the reports of the Alien Property Custodian and the statements of the President of The Chemical Foundation himself, the complete control of the dye industry of the United States, amounting to over twenty-five million dollars a year in business—I say it should require no argument, and certainly no evidence beyond that, if the principles for which we contend are sound, that the sale was not for an adequate but for only a nominal consideration, and however good and high may be the purposes and however beneficial they may have been to the industry of the United States, upon the suit of the United States as trustee for all its people, the transaction must be set aside and the parties restored to their original rights as far as practicable.

There is one other reason for that action. Assuming that this is true and leaving aside for a moment the whole question of the sale by the Trustee, it is our contention and will be our contention in this case that the transactions here involved constituted a confiscation of this property which the President himself did not have the power to make and which could only be made by Congress. Therefore whatever may have been the effort on the part of the President or any one else, whatever may have been the good faith, and their sublime confidence in the high purpose and benefits of the Act, it was a violation of the fundamental laws of this country and cannot stand.

Upon what facts will that theory be predicated? Many of them have already been stated to your Honor. It is contended in the answer and apparently one of the strongest theories of this case on behalf of the defendant, that the defendant as a part of the consideration for this sale, gave to the United States the license to use these patents free of all charge, or such of them as were useful to the Government.

It will be shown here no doubt that certain licenses have been issued in fact to the United States for the use of these patents during the year of 1921 and that those licenses were issued without consideration at all or for nominal consideration. It will further be shown, no doubt, that the United States has been released by The Chemical Foundation as the owner of these patents from all claims for past infringement during the war or otherwise. It will also be shown that the licenses issued by The Chemical Foundation were nonexclusive licenses required by the charter so to be, subject always to the right of the Board of Directors to determine who should be licensees and who should not. The license might be non-exclusive in terms, but exclusive in fact, if it only licensed one person, and the Board had absolute discretion on that subject.

Therefore, it would be contended that all of these benefits to the American people or American industry, as they call it, and to the Government itself, through these licenses, were benefits which constituted a valuable consideration to the Government and should be taken into consideration in sustaining this transaction, they say. I hope I state their position fairly. I think that is fairly drawn from their pleadings.

The Alien Property Custodian was the trustee. Let us take these elements up in their order. Suppose I was trustee for a piece of property on the outskirts of Wilmington worth $100,000, and I believed in the public interest that property would be enormously valuable to everybody concerned if I could dedicate it to a public park, and therefore I dedicated it for a public park or dedicated it with certain rights and easements to the public thereon—the right to maintain a lake on it, we will say, and to go back and forth on that lake, and a place of amusement for children, or to build upon it some institution like a hospital, a children's hospital for the saving of the lives of children, a cause which appeals to us all as the greatest benefit to mankind; and then having put that hospital on it or dedicated it to the public use, as the case might be, I undertook, as trustee, to sell it to somebody, and because instead of getting one hundred thousand dollars for it I only got ten thousand, and that was a fair value for it subject to the easements which had thus been created, would any Court of Equity in the world relieve me of the obligation to account for the full value of the property? And would it be set aside in the event that I undertook to join in the purchase myself, or to be the head of the hospital institution and buy on its behalf the interest which I had given? Would there be any question in that case that if that act were sustained, I would have confiscated for the public use nine-tenths of the value of that property; and can that be justified under any known law of the United States, no matter how great the benefit?

Take another instance. Suppose, for instance, that I had accrued on that property a large amount, on some property in my hands as trustee, a large amount of rights and choses in action against somebody, resulting from past use, which I could collect, and suppose I should say that the development of this community of Wilmington will be greatly aided, and every man will be aided to the extent of $2.00 for every dollar that it will cost to this community, therefore I will yield all these past rights in this property to that person for the benefit of the public. Can there be any question but that would be an invalid transaction on my part as trustee?

Or, if the Government came in and undertook to take those accrued benefits for the benefit of the people of the United States, would that be a confiscation of property in violation of the fifth amendment and the decisions of the Supreme Court? I am not arguing that it is not of enormous benefit to the industry of the United States to give them a right to use these patents. I am not arguing at all, and I am not going to argue that the conferring of these rights upon a corporation or anybody else for the benefit of a certain class of industry may not develop that industry and in the end make America even more of a self-sustaining unit than it is today, and provide for its material advancement. But I am arguing and I stand here to uphold that proposition to the end—that if this thing is to be done even as a war act, it can only be done by Act of Congress clearly declaring that purpose; that if it is not to be done as a war act, it cannot be done at all except for just compensation.

Let us see. The Supreme Court has held that this was a war measure, founded upon the power of Congress to make rules for captures on land and sea, based on the Constitution and on that alone. Where do we stand? Congress passed an act and every section of it indicates that it was an act of conservation and not an act of confiscation. It provided for the right to come in under Section 9 if the property was wrongfully seized and recover it. It provided for continued use of patents under licenses under Section 10. It provided for various uses of enemy property throughout the act, which I am not going into in detail, which are utterly and wholly inconsistent with any idea of confiscation; but to remove that from all possible doubt Congress finally declared that any claim to this property or the proceeds thereof should be settled after the war as Congress might determine.

It reserved absolutely the power of final disposition. And to show its construction, it has not only by amendments to the Act returned property of persons who were alien enemies at the time that their properties were seized, but are now members of States which have been created and are now friendly to the United States, but it has gone further and returned all property under $10,000 in value and income of less than $10,000. Whether that is wise or unwise, I am not called upon to consider, nor is this Court, I respectfully submit. It is within the discretion of Congress. But until it does exercise that discretion under the Treaty of Berlin and the Treaty of Vienna, this property is held for the benefit of the people of the United States, with the power in Congress to finally determine its disposition.

But we will be told, no doubt, that under the amendment to Section 7 providing that the sole remedy of the owner should be against the proceeds, and the amendment giving the President the power to sell, that in effect was an act of confiscation. Let us see. The President's power is limited to four things. When he finds it in the public interest and so determines, and states his reason therefor, to substitute a private for public sale, to substitute a private sale without advertisement for advertisement, to advertise if he desires at some place other than where the property is located, and, if need be, to sell to others than citizens of the United States. Those are the four things that are required and those are the four things as to which the President is given power. But always it is a sale—there is not a suggestion of anything else; always there is a sale by a trustee, because the same section provides that the Alien Property Custodian is a trustee, and, of course, the terms of the act make him a trustee whether it says so or not. The power of sale is vested in him.

Therefore, the exercise of the discretion excepting it from the general and universal rule of the sale of public property merely applies to the method of the sale and not the sale itself. In the last analysis it must be a sale under fair terms and for a fair consideration, or it is invalid, whether done by the authority of the President or any one else, because the Courts have held without question that the public property of the United States cannot be given away or sacrificed unduly by any office of the Government, however high.

Therefore, that it is not intended to authorize a confiscation—clearly not. Every Court that has passed upon this question, that has considered the nature of the Act with relation to confiscation, as I shall point out to your Honor when I come to argue this case, has held without exception that this Act is an Act of conservation, seizure and sequestration, and not an Act of confiscation. They have also held, and since the case of Brown versus United States in 8 Cranch. is no longer open in this country, in an opinion by Mr. Chief Justice Marshall which reviewed the whole question of the confiscation of property seized on land in time of war—that while the power to confiscate did exist in the Government of the United States—a doctrine which is seriously questioned now by very able publicists, but which, of course, we take as correct—yet that power could not be exercised by anybody but Congress, and a declaration of war did not declare an intention to confiscate, did not operate to confiscate, but that an express declaration of Congress was essential to that end.

The same theory was followed during the Civil War in cases where Congress did confiscate by proceedings in *rem* property in the Southern States which were then in rebellion. And so all the way through; the Courts and the decisions on this Act itself, without exception, have held what is obvious from a reading of the Act, that it is not an act of confiscation.

Yet we have here the serious contention that a private corporation can take over this property for a nominal consideration with an accrued revenue on it of more than the amount of the consideration paid, and therefore take it over for nothing, as a gift, controlling as it does, one of the largest industries in America, with a large earning power even under the limited and restricted conditions of the sale—take that property, release to the United States all claims for past infringement, license the United States without compensation, and then license any other person who desires to use it in the discretion of the Board for what they see fit, and under those circumstances in effect to confiscate this property to a private corporation for the benefit of American industry, and do that by an act of an officer of the Government under executive order, under an Act which contemplated its conservation and sequestration and handling in accordance with the principles of trust.

I say with all possible deference to the distinguished officers involved in this transaction, from the President down, that that cannot be done so long as the laws of the United States prevail.

However high may have been the purpose and however beneficent it may have been, I say again, the fact is that it cannot be done, and it is the duty of the United States to set aside such a transaction.

We will present certain facts going to the question of the value of the property—not very elaborate, I hope—upon which we will predicate the argument as to compensation.

I should have said that there is one other factor in this situation which must be considered—that this property was sold for a lump sum, a total amount. There were 4800 patents here owned originally by numerous persons and held by the United States as individual trusts, taken from different persons, with the right of Congress to return them to the persons. Therefore, there was that trust relationship in them. One of the grounds upon which a Court will set aside a sale is that the property has been sold as a mass when it should have been sold separately, and when to sell it as a mass would not be to the best interests of the owner or the trust estate. As a matter of fact, this property was sold for $250,000, and it has never been allocated, and never has been allocated to any patent on the books of the Alien Property Custodian. Therefore, a patent such as Salvarsan, worth, we will say, anywhere from $100,000 to a million dollars—I am not discussing values now, but certainly very valuable, and the exhibits filed with the answer show its value—or Novocain, or the control of the dyestuffs industry through the patents and processes they have, worth very large sums of money, are not segregated from patents which had no value whatever, if that may be the case, and the result is that a man with a property in trust worth half a million dollars is given just fifty dollars, while the man with the property of no value is given the same fifty dollars. That is confiscation of property, there is not any question about that. Therefore, it is another factor which would make it impossible, as I see it, for this Court to sustain this transaction.

I have thus, if your Honor please, reviewed what seemed to me to be the main issues in this case. It appears and is charged in the Bill that this corporation has wasted its assets in propaganda and other things of like character, large expenditures of its revenue, so that it is practically unable to respond to a decree should one be entered requiring return of this property and an accounting for the proceeds thereof in accordance with the prayer of the Bill. It will be contended here that the Government has been guilty of undue delay in bringing this suit, and that the Government has not tendered back the consideration paid for the patents of $271,000.

I want to say just a word about both of those contentions, and that is this: In so far as the last is concerned, I think there are abundant authorities to the effect that you do not have to tender back the consideration in a case of this kind, where you submit the rights of the respective parties to a Court of Equity and the consideration is available to respond to its decree. Where the property also is in the hands of a defendant and the Court in shaping its decree can protect the defendant, give the defendant any protection that is equitable and just in the light of the facts as they may be developed, there is no reason why that tender should be made. In the next place, the prayer of the Bill is that the accounting shall be agreeable to the principles of equity. If, therefore, it should appear that the defendant is entitled to credit for the amount of the purchase price, the Court can shape its decree accordingly and the credit will be given.

In the second place, it is contended that there has been great delay, and it will be shown to your Honor that until March, 1921, the control of this office was in the hands of the Alien Property Custodian, who made the conveyance and who was President of The Chemical Foundation; that this suit was brought in the summer of 1922. The reasons for the delay are stated in the Bill, and in any event laches does not run against the Government and neglect of its officers, even if it existed, cannot prejudice its rights. That is too well settled to need discussion.

In the third place, it is contended that the rights of certain parties as licensees have attached under these licenses of The Chemical Foundation and that it would be unjust to disturb the situation at this time. The Answer is that any person taking property conveyed or assigned by the Government of the United States takes with notice of the powers and the duties and the obligations of the agents of the Government and the limitations upon their powers. But in any event, in order to remove any possibility of wrong being done to any licensee, the prayer of this Bill contains the unusual provision that at the proper stage the Court will permit any licensee to intervene in this suit, set up his claim as a licensee, have a Court pass upon it, and render such decree as to those claims and licenses as may be equitable and just. The Government therefore invites the intervention of these licensees at the proper time to the end that nobody may be prejudiced and that nobody may be wronged.

The Answer in this case sets forth a long so-called third defense, and with a few remarks about that I will conclude this unusually long statement. In effect that third defense sets up the history of the war, the development of German industry, the control of the Germans over the dyestuffs business, the fact that the control of these patents allowed them to control the American dyestuffs industry and prevented the development of the industry in the United States, the necessity to the industry of the United States for its development, both from an industrial standpoint and as a matter of public defense, that the purpose of this whole transaction from beginning to end was to eliminate the German interest from American industry and to develop and improve the dyestuffs and chemical industry of the United States, with immense benefit to this country and to its safety, and then that under the licenses which have been issued by The Chemical Foundation since this thing started, the dyestuffs industry had developed to a point where it now supplied 90 per cent of the dyestuffs and ingredients of that character needed for the markets of the United States, is prosperous and growing, and would be injured if this transaction were set aside.

It further shows the purpose of this transaction was to control and prevent the importation from Germany, as well as other countries, by the control of the product patent, and to enable dyestuff people under this license to manufacture the essential ingredients in this country for the development of that business. If your Honor please, I am in thorough sympathy with all of the legitimate aims which have thus been expressed. I believe that the development of industrial interests of the United States is important. I believe in the development of this chemical industry,—since the future civilization of the world will largely depend upon the application of chemical principles, under natural law to industrial elements,—that this development is a matter of the greatest importance to the United States, and to its preparation for national defense; but I conceive that no one will seriously argue that this is a question which may be determined by Congress, and must be determined by Congress.

Congress has recently, after urgent solicitation of these very gentlemen, refused an embargo in the interests of that industry. They have thus undertaken to establish an embargo, by the use of these patents, in direct conflict with the policy which Congress has seen fit to establish. There can not be two legislative bodies in the United States—there must be one; and while Congress may be unwise in its refusal to afford the protection which this industry asks, it is not the province of an individual, or officers of the Government, or of the industry itself, or private corporations, to take public property, held by the Government in trust, and through the use of that property, to accomplish that which Congress might refuse to sanction, or to fix or determine a national policy.

Therefore, while I sympathize with all of these objects, it seems to me that they are entirely irrelevant to this case. We made a motion to strike out that part of the defense, that it might shorten the trial. It is a matter largely of indifference, unless it would shorten the trial, because it is our desire, and the desire of the Government, that all the facts which the Court may think may have any bearing, however remote, upon this transaction, shall be brought to the attention of the Court, to the end that justice may be done once and for all, and this question may be determined once and for all by the Courts. But in any event, I fail to see where there can be the slightest bearing upon the issues which I have outlined in this case. Assuming the motives which actuated these gentlemen in this transaction to be of the highest, or the benefits which may accrue to American industry from this transaction to be great, yet since it was not within the contemplation of the law or the Alien Property Act, or Congress, that such a transaction should be performed for the benefit of American industry, it cannot be lawfully or validly done.

Someone has said that the question in this case is a question of German or American. If your Honor please, I do not think that question has anything whatever to do with it. The Government of the United States is representative of all the people of the United States, and this suit was brought by direction of the President of the United States, personally, as the record will show in this case, in the discharge, we must assume at least, of his conception of his duty to the people of the United States.

If this property is returned to the Government and its proceeds accounted for, it will remain in the hands of the Government until Congress acts, with the power on the part of the Government to allow the industry to use it, just as fully as a private corporation can allow the industry to use it.

If Congress should see fit, it can confiscate every one of these patents to the Government of the United States for the public use, and let anybody use them. If it sees fit, it may amend the Patent Law, or it may return them or not, on such conditions as it may impose. But all of these are matters which are within the Congressional discretion. As it stands today, these patents are the right on the part of the owner to maintain a monopoly in the production of his product, or against the importation of his product. Congress has declared that monopoly to exist to be in the public interest, and that monopoly cannot be destroyed, arising from that patent, by virtue of any private action, without confiscating the private right arising therefrom, and Congress alone can do that. The Answer says:

"It is believed that the country will prosper in this industry and be ready, not only to serve its dye industry, which is vital, but to build up a large export business for the benefit of the world." When I read that part of the Answer, which is summarized, I was reminded of a little incident in my own experience. In the winter of 1918, the President of the United States wrote a message to the Pope of Rome, stating America's object in this war, and why it could not then enter into negotiations for peace. Probably the spirit of American civilization, and the spirit of the American people had never been better stated than in that letter.

At that time I happened to be in the western edge of Russia—Rumania. The country was desolate. It was dissolving under the forces of the Russian Revolution. Whole villages were being wiped out by starvation and disease and by war—ruthless, bitter war. When that message came by wireless—the only way it could reach us—that whole country seemed to take in a breath of new life. At last someone had interpreted the aspirations, and expressed the longing in the hearts of the great toiling, suffering masses of the world. In every place in Rumania, every village which I passed through, they had made American flags. They did not have any cloth. They made the flags of paper; they painted them on wood, and not knowing the American flag, sometimes they had 72 stars, sometimes they had 30 stars, sometimes too many stripes—at least it was the American flag. Why? Not because America had great reserves of soldiers. It had been in the war for nearly a year and those flags had not appeared. Not because of its immense commercial strength and its great and growing industry or the fact that it would be an essential and controlling factor in winning the war,—not for all these things, they had long known,—and there had been no such popular response among these far-off people, many of whom did not know where America was. It was because the President had voiced the spirit of American civilization. He had interpreted its ideals, and had given to the world, in concrete formula, a new ideal toward which mankind could strive, with hope of its ultimate attainment.

The President said, America does not seek any selfish gain out of this war. It does not seek any advantage. It will not take any advantage. It does not seek any enlargement of its power, political or otherwise. It does not seek wealth. It does not seek commercial strength. It seeks only justice, and that the world may be established upon the basis of right,—the right of the weak to live and of mankind to know freedom in the true sense of that word.

And his voice reached out to this far-off country, not because he spoke for a great people, in number, in size, and in resources, but because he voiced the heart of the civilization of America.

Turn from that ideal to this. The whole excuse for this transaction, the whole explanation, is founded on two theories: The first is destruction after the war is over (because the war was over when all this was done) of the alien interest; and the second the development of the commercial interest of America. While I recognize the importance of that interest, I hope that the future may read the history and ideals of my country not in transactions of this character, however much they may mean to its commercial wealth; but that the people from afar looking to America, as well as its own people, may see that the war is over, that hatred can not be the basis of peace, and above all, that when they look to this country they may not see alone its tall buildings, and its great commercial resources, for it is too great to rest upon such a shifting foundation, but shall see over above all this material strength the spirit of America, as expressed by the President, and realize that America is great, because America is just.

It is in that spirit that we shall present this case to this Court; not in any criticism of anyone; not in the abuse of anyone; but simply with the hope that justice, whatever justice may be in accordance with the highest ideals of national and international right, may prevail.

The Court: Colonel Anderson, just for the purpose of enlightening me on one or two words, not at all in criticism if I understand you correctly, fraud will develop, and necessarily develop in the progress of the case or the trial of the case or in the decision of the case; is or is not that inevitable?

Mr. Anderson: Fraud in law, yes, sir. Fraud in fact—I hope not.

The Court: I understand that distinction. Now then, will that fraud in law—I am just asking this for future enlightenment and guidance in the trial of the cause—in your conception of the case not fall upon the individuals who are connected with the Alien Property Custodian's office at the time of this transaction, or with those interested in the Chemical Foundation, the defendant in this cause?

Mr. Anderson: I might answer briefly to some extent, both. Of course the legal—I say wrong in a strictly legal sense of a sale by the Alien Property Custodian to the Corporation of which he and his officers were in control—would be purely a fraud in law so-called, and not involve any moral turpitude at all, and that would be as far as necessary to inquire; but in this aspect—those who co-operated or induced this action as alleged in the Bill might be held to be guilty also of a wrong in combining to purchase this property, and in seeking to bring about its sale for the purposes set forth in the Bill and in the manner set forth in the Bill—

The Court: And inducing—

Mr. Anderson: The officers of the Government to execute these instruments—

The Court: And under your theory they are guilty of a breach of trust—

Mr. Anderson: They are guilty of a breach of trust, that might be called an actual fraud, and yet men may do it without thinking of what it amounted to, and I do not want to bring that element in any more than necessary.

The Court: I only want to understand your theory of the case on that point.

Mr. Anderson: Yes, I think that is so. I thank you.

Mr. Kresel: If your Honor please, in view of the lateness, and my desire to finish the opening for the defendant without interruption, I should like to ask your Honor's indulgence and let the case stand over now until tomorrow morning. It must be quite evident to your Honor that it will take counsel for the defense more than half an hour or an hour to deal with this case.

The Court: You may have your option to go on now and stop at a quarter of three by that clock, or begin now and stop when you are through, whether that is six o'clock by that clock or not, or you may begin afresh in the morning at 9:15, whichever you prefer.

Mr. Kresel: I should prefer, if your Honor will permit me, to begin in the morning.

The Court: Adjourned to tomorrow morning, 8:30 o'clock, standard time.

(Whereupon, at 2:30 P. M., standard time, the case was adjourned until Tuesday morning, June 5, 1923, at 8:30 o'clock Standard time.)

SECOND DAY.

Wilmington, Delaware,
June 5th, 1923, at 9:30 o'clock a. m.

Before:

Hon. Hugh M. Morris, U. S. District Judge.

Appearances:

as before.

Opening by Mr. Kresel on Behalf of the Defendant.

Mr. Kresel: If your Honor please, at the outset of my statement, which, while I shall endeavor to make it as short as possible, must under the circumstances be rather lengthy, I think I voice the sentiments of all my associates in this case when I say that the opening statement made yesterday on behalf of the Government was one of the clearest and most dignified statements heard in a Court of law.

When counsel are prone not only to over-estimate the strength of their case but also to take opportunity to reflect upon the motives and the purposes of those opposed to them, it was indeed refreshing to hear the Government state that those who are responsible for the transaction now under review by your Honor were actuated by no selfish or base motives, that they were patriots, though mistaken patriots and that no fraud is charged against the President, Mr. Polk and the other officers of the Government who are concerned in this transaction.

The Colonel said that perhaps fraud in law might be spelled out. We as lawyers understand the distinction between fraud in law and fraud in fact. I think the Colonel would desire to have it made perfectly plain that the Government charges against the President, Mr. Polk and the other officers of the Government no fraud whatsoever. Indeed, your Honor has read the Bill of Complaint and your Honor can see that there is no charge of fraud either in law or in fact contained in that Bill as against the President and the other officers of the Government.

Your Honor asked Colonel Anderson the direct question whether there was a claim that fraud had been committed, and he stated that insofar as the persons who are said to have induced the action by the Government officials were concerned, fraud is claimed in law at least, and he hoped not in fact.

Now, the Government's opening, admirable as it was, was to our mind incomplete in many essential details.

In our view, this case involves much more than the mere question as to whether the Government shall be permitted to repossess itself of the patents involved. Were that the only question in this case, or even the most important one, the Government in its Bill would not have charged as it does, the entire chemical industry of this country with a conspiracy to perpetuate a monopoly and incidentally to defraud the Government. And may I say in passing, that it was significant that throughout the Colonel's statement and argument yesterday, he never once mentioned the word "conspiracy." Yet your Honor will read this complaint, and you will find it expressly charges that certain persons and corporations named, and others not named, had entered into a conspiracy to do certain things which I shall discuss in a minute.

Now, whether these charges of conspiracy are mere inducements, as the Government claims, or whether they are in fact of the essence of the complaint, they are serious charges, and they throw into bold relief the indisputable fact that this is a controversy not simply between the Government and The Chemical Foundation, but between the Government and the chemical industry of the country. Nor, as we see it, your Honor, is the Government the only plaintiff in this case. True on the face of the Bill, the United States Government appears as sole plaintiff, but we shall show your Honor that there is here an invisible plaintiff, in the person of the great German Chemical Trust, the so-called Interessen Gemeinschaft, otherwise known as the "I. G.," and it was certainly fitting and proper that the first witness sworn in this case should have been the representative and the spokesman of the great I. G. I say to your Honor that in the last analysis it will be found that the controversy here is between that Government controlled monopolistic German chemical trust and the chemical industry of this country.

The charge is made that certain named chemical concerns in this country and others not named, having obtained a monopoly of the chemical industry of the country, desiring to perpetuate that monopoly, but fearing that after the war, the Germans by means of certain United States patents owned by them, could destroy that monopoly, entered into a threefold conspiracy, namely: First, to induce the Alien Property Custodian to seize those German patents; secondly, to organize this defendant, The Chemical Foundation, and to control it and to use it as an instrument to perpetuate that monopoly; and thirdly, to induce the President and the other Government officers to sell these German patents so seized, to the defendant, The Chemical Foundation. And it is charged that that conspiracy was successful, that by means of false representations, concealment of essential facts and deceit, the Alien Property Custodian was induced to seize these German patents and to sell them to the defendant, The Chemical Foundation; and it is charged that the sale was made for a consideration so inadequate as to shock the conscience of a Court of Equity.

Now, we shall show your Honor that this sale was made under the express direction of the President of the United States, acting through Mr. Polk, the Under Secretary of State, and that thereafter the President, over his own signature, ratified and confirmed that sale. The other persons concerned in this sale were A. Mitchell Palmer, the Alien Property Custodian, and later Attorney General of the United States; Francis P. Garvan, who was the Director of the Bureau of Investigation in the office of the Alien Property Custodian under Mr. Palmer, and his successor in the office of Alien Property Custodian; Mr. Joseph H. Choate, who, during the war volunteered his services to the Alien Property Custodian and was one of those despised dollar-a-year men, and who, while in that office, had particular charge of the investigation of German-owned chemical industries in this country, and Ramsey Hoguet, one of the best known patent attorneys in the country, who, during the war did patent work for the Alien Property Custodian.

Now, as I say, the Complaint does not charge the President and these officers with fraud; but the charge is that facts were misrepresented to them, that they were deceived, and that facts were concealed from them. Now, a decent respect for the high office of President, even though the incumbent be of a political faith opposed to those who are responsible for this charge, would have dictated the expediency, if not the legal necessity, of setting forth the particulars, the facts, that were concealed from the President; the manner in which he was deceived, and the names of the persons who are responsible for that deceit. You would have thought that those who had the temerity to charge Woodrow Wilson with having permitted himself to be duped into a sale, which, according to the Bill of Complaint amounts to a fraud upon the Government, and a violation of a sacred trust, would have seen the wisdom, if not the fairness, of stating the facts upon which such a serious charge is based. But your Honor will read this long Complaint from beginning to end without finding an allegation of a single fact to support that charge.

There are two paragraphs in this Complaint, one of which makes the allegation of deceit of the President and the other the allegation of deceit and concealment from Mr. Polk. With your Honor's permission I shall read to you those two paragraphs. I read first the Thirty-fifth Paragraph of the Complaint. I do not read from the beginning thereof, because that statement is mere inducement; but the charge of deceit is as follows:

> "Complainant is informed, believes, and therefore avers and charges, that said Executive order"

That refers to the confirmatory order by the President of February 13th, 1920—

> "was prepared by or at the instance or procurement of said defendant, the Chemical Foundation, Incorporated, at the instance or procurement of said persons, firms and corporations in control of said dyestuffs and chemical industry and parties to said scheme or conspiracy hereinbefore set forth."

And when your Honor goes back to the paragraph of the Complaint which charges that conspiracy, your Honor will find that the allegation is made that The Allied Chemical and Dye Company and the duPonts and others whose names are not given entered into that alleged conspiracy:

> "That the facts hereinbefore set forth and other necessary and essential in relation to said seizure and proposed and pretended sale of said patents, copyrights, and other rights, and rights arising out of or incident thereto, * * * were not disclosed to the President at the time of or before the signing of said Executive order and that the same was signed and issued upon an entire misunderstanding or mistake of facts which, if the same had been truly stated and known to the President, would have prevented his signing or issuing of the said order."

What facts were there that were concealed from the President, that are now made the charge of a conspiracy to deceive the President of the United States? What facts are there which, if the President had known, he would have acted differently? Who was it that made these misrepresentations? Who is it that is responsible for that deceit? Not an allegation in the Complaint to answer those questions!

And when your Honor turns to Paragraph Thirty-fourth of the Complaint, the allegation with reference to Mr. Polk is this:

> "Complainant is informed and believes, and therefore avers that said orders of said Frank L. Polk were in fact prepared by or at the instance of the said defendant, The Chemical Foundation, Incorporated, and at the instance and procurement of the persons, firms, and corporations in control of said dyestuffs and chemical industry, in pursuance of the scheme and conspiracy as hereinbefore set forth; that necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of said patents and other rights mentioned in said orders at private sale were not stated or disclosed to said Frank L. Polk."

Again we ask, what facts were there that were necessary and essential in regard to the seizure that were not disclosed to Mr. Polk? They go on and say that such facts were not only not disclosed to Mr. Polk.

> "but were withheld from him and suppressed; that other facts in connection therewith, and especially the attitude of the Federal Trade Commission, charged with issuing licenses under the enemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk."

What facts were misrepresented and misstated and what was the attitude of the Federal Trade Commission that was not disclosed to Mr. Polk?

I venture to say, your Honor, that this is the first time in our political history that any administration, no matter what its political complexion, has sought to invoke the judicial arm of the Government in an effort to set aside a solemn act of a President taken in time of war. Certain it is, and to our lasting glory be it said, that no administration ever before sought to pillory a President and other high officers of the Government upon such unfounded and insufficient allegations as I have just read.

And so at the threshold of this case we say that we are glad of the opportunity to come into this Court to meet these charges. We say that the Government has not alleged facts in support of these allegations, because there are no such facts. We say that the Government will not prove these allegations because they can not be proved. We go further and say that we shall show affirmatively that the President and Mr. Polk acted in this manner with a full knowledge of all the facts, and that they and the other officers of the Government who were responsible for this transaction acted in the best of motives and solely for the best interests of the Government and the people.

Indeed, we go further and say that we have nothing to palliate or excuse, that we are proud of our part in this transaction, and that only those who are blinded by partisanship or self-interest can fail to see that the transfer of these patents to The Chemical Foundation, in trust for the chemical industry and the country at large, was one of the greatest constructive achievements that has come out of the war.

No one can understand or probably appraise the motives of the President and the others concerned with him in this transaction without a knowledge of the conditions that gave rise to the organization of this corporation and the transfer of the patents to it. This involves a consideration of the legislation creating the office of Alien Property Custodian and a consideration of the policy of the Government in handling enemy-owned property during the war.

It leads us into a consideration of these particular patents and of their relation to the chemical industry of the country. It suggests a consideration of the importance of a chemical industry for the national defense, the public health and the proper economic development of industry; and it necessitates a consideration of the use that the Germans made of their United States patents here, and of the effect thereof upon a proper development of an organic chemical industry in this country.

Now, the Governmental policy with regard to enemy property during the war, is first reflected in the Trading with the Enemy Act, as originally enacted in October, 1917. Under the Act as then enacted, the Alien Property Custodian was a mere conservator of enemy property; and as pointed out yesterday, his only power with regard to such property was contained in Section 12 of the Act which in substance provided that the Alien Property Custodian shall hold the property, "and under such rules and regulations as the President shall prescribe, may manage such property, and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise and exercise any rights which may be or become appurtenant thereto or the ownership thereof, if and when necessary to prevent waste and protect such property—" "If and when necessary to prevent waste."

Now, it will be shown to your Honor, that when the office of Alien Property Custodian began to function in October, 1917, and the reports required by that Act to be filed with the Alien Property Custodian showing what German property there was in this country, began to pour in, it was a revelation to the Government to see how much German property there was in this country, and how numerous were their commercial enterprises here, and how far-reaching was their control in many essential commercial enterprises.

Mr. Palmer surrounded himself with a staff of men imbued with the idea that we were in a war, and that the war had to be won, not only by those who faced the Germans in the trenches, but by those who stayed behind, and they went to work, your Honor, and they had not been going long, when it was realized that the position of the Government was an utter absurdity; that here we were in a war, in a death grapple with Germany, and yet under this Act constituting the Alien Property Custodian a mere conservator, the Custodian was going on conducting German business here, making huge profits out of the very war that the Germans had forced on us, and under that Act such profits had to be held for the benefit of the Germans.

I know, I am not losing sight of the fact that the Statute speaks of the interest of the United States and the owners; but the interest of the United States as then understood, and as now understood, were the interest of a conservator. And so Mr. Palmer went to the President and went to Congress and pointed out the absurd position that we were occupying; that the policy of the Government in holding this property as conservators was a mistaken policy; that here the Government had something that could be used as a weapon against Germany rather than to hold it for them until the war was over.

And he asked that Congress for an amendment of the Act, an amendment that was subsequently passed and that I shall presently discuss. But I want to bring your Honor's mind, if I can, back to the time when that amendment was proposed and passed. I want your Honor to realize the military situation that existed at that time. It was March, 1918. The Germans were pouring across conquered France, headed straight for Paris. Our own Secretary of War, coming back from abroad, announced at that time that the channel ports were sure to fall. It was about that time when their 75-mile gun threw shells into the streets of Paris. Everybody thought that the war was about to be lost; and it was at that time that Congress sat down to consider whether it did not have another weapon at hand with which to strike Germany. And so they passed this amendment, which struck out what Senator Underwood called the "Weasel words in the belly of this Act," namely, the phrase that we were to hold this property and we were to do nothing with it except to prevent waste; and they gave to the President, as Commander-in-Chief of the Army and Navy, the widest power to do with this property what in his best judgment the military situation, the welfare of the country, demanded. And so they said, striking out the words referring only to the prevention of waste, that "the President shall have power to manage such property and to do any act or things in respect thereof or make any disposition thereof or of any part thereof by sale or otherwise." Please note the word "otherwise." "By sale or otherwise: and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof, in like manner as though he were the absolute owner thereof." The English language could not well have expressed it any broader than that—"that he shall have the power of disposition of this property by sale or otherwise, just as if he were the absolute owner thereof."

I agree with counsel for the Government that this case is going to depend very largely upon a construction of this Act. I say, however, that it will illustrate what Congress intended, if with your Honor's permission I read a few short extracts from the statement made by Mr. Palmer to the Committee of the Senate that had charge of this bill which subsequently became the amendment; and then also I desire to read to your Honor two paragraphs from a statement made in the Senate and the House.

Mr. Palmer said when he was before this Committee, "one of these amendments gives the President the right to buy; the other gives the Alien Property Custodian the right to sell."

There were two amendments before the Senate at that time. One of them had to do with the Hamburg-American docks situation, as your Honor will recall, and the other was this amendment that we are concerned with.

Now, Senator Smoot said: "Not only this property but any other property."

Mr. Palmer said, "Of course. What that amendment means is just this: As the law stands today, I am simply a conservator."

Senator Hardwick interrupted and said, "a stakeholder?" Mr. Palmer continued: "I cannot sell anything. I list this property. I sit up here and take it in by the millions and hundreds of millions and I see it grow day in and day out with enormous profits which I have got to account for when the war is over."

And then the Chairman said, "You are doing business for the German people instead of your own country." Mr. Palmer said "Absolutely." And then Senator Tillman said, "You are engaged in making money for those whelps over there." And Senator Owens said, "He is." And then again, Mr. Palmer said, "Since we have become acquainted with the enemy property in this country; since we have seen how the German Empire through its financial operations has put an industrial and commercial chain all the way across this country and through our insular possessions, we have become thoroughly convinced that it would be wise and proper and highly desirable at this time if the enemy ownership in some of those properties could be permanently taken away."

And again, "It is a very interesting question at least whether as an effective weapon in the war we ought not to consider re-organizing that sort of a concern by putting the proceeds in cash in the Treasury of the United States to there await distribution at the end of the war. Otherwise I find myself in this position, said Mr. Palmer, "I am today operating factories and mills and industries all over the United States through my directors representing the enemy stock. I am making chocolate in Connecticut, rails in Pennsylvania, woolens in Worcester and New Jersey, dyes and chemicals in New York, lumber in Florida, raising sugar in Porto Rico and Hawaii, raising tobacco in many states in the South, making beer in Chicago, lead pencils in New Jersey, and conducting all these various kinds of business and many others, most of which are making enormous profits by reason of the very conditions for which the enemy is responsible, namely, the war conditions. If I must simply sit here holding the stock of these companies and making these enormous profits out of the war with a possibility of returning both principal and profits to the German owners at the end of the war, I am doing a tremendous favor to the German Empire, our enemy."

And then when the matter was before the House of Representatives, and they were debating this very amendment, and especially that part of the amendment which provides "that any property sold under this Act except when sold to the United States, shall be sold only to American citizens at public sale to the highest bidder after public advertisement of time and place of sale, unless the President, stating the reasons therefor in the public interests, shall otherwise determine." When they were discussing that particular part of the amendment, the question was raised as to the meaning thereof, and Mr. Shirley, one of the most brilliant men that ever sat in the Lower House of Congress, who had this bill in charge, said:

"When it came to the second amendment, the provision as it had passed the Senate, while doubtless intended to safeguard the disposition of this property might have and in many instances would have resulted in transferring the property back into the hands of the very people that we desire to take it from."

Note that language—"The people that we desire to take it from." The purpose of Congress was to take this property and never return it. Call it "confiscation" if you will; it is still the fact.

"Because by having an absolute requirement that the sale must be made to American citizens at public auction to the highest bidder, in many instances it meant that the minority interests, American in name only, would have been the actual purchasers and the property would really be held in the future as in the past, for Germany. No greater blow and no more legitimate blow can be struck in this country against our enemy, Germany, than by depriving her of the industrial control that she had through ownership of many corporations and many industries in America." That is what they were legislating about. "And we would be lacking in ordinary common sense, to say nothing of patriotism, if we did not provide for a separation of these German citizens from control in great industrial matters. We provide that when the property is sold, it shall be sold at public sale, after public advertisement, where the property or the major portion of it is situated, to the highest bidder, who shall be an American citizen. That," says Congress, "is the broad rule that we lay down as being the policy that ought to be followed in all these cases where there is not some compelling reason otherwise; but having laid down that general principle, we provide that the President, for reasons stated, shall have the right to order the disposition of this property by private sale or otherwise—by private sale or otherwise. And we further provide that after the sale has been made, the Alien Property Custodian may, upon order of the President, set aside such sale for reasons stated and subsequently the property may be sold at public sale or otherwise as the President may direct.

"In other words, we state as the judgment of Congress, that the property, unless there be special reasons to the contrary when sold shall be publicly sold; but we give to the President the power in the interests of the Nation to declare that it shall be disposed of otherwise, when, in his judgment, it is necessary so to do, in order to protect national interests."

Now that was the frame of mind of Congress when this amendment was before it, that was the purpose that Congress had when they said that the President shall have the right of disposition of German-owned property by sale or otherwise in the same manner as though he were the absolute owner thereof.

And we say, your Honor, that under that Statute, the President could dispose of German-owned property, just as the Statute says, in any way that he thought was necessary for the national interests and for the winning of the war. This was a war measure as the Supreme Court has held, enacted at the very height of the war, at a time when it looked very gloomy; when we were casting about for every weapon that we could lay our hands on to smite the enemy; and we say that if the President had thought it was necessary for the protection of the nation, for the winning of the war, to have taken any of this property, or have given or privately sold it to any of our allies under this power, he would have been thoroughly justified. If, in the conduct of the war, it had seemed to the President proper and necessary that any of these patents should be sold for a small sum to any manufacturer here, who was engaged in urgent war work, to enable him to do that work properly and speedily, we say that the President would have been thoroughly justified under this Act in so disposing of that patent.

We do not admit for a moment that either the President or the Alien Property Custodian occupied the position of a Trustee in the sense that the Government would have your Honor hold. They criticize the language in our Charter, as to our fiduciary capacity. May I not use the same argument against them? For whom was the President—for whom was the Alien Property Custodian—trustee? We contend that the fiduciary relationship, the trustee relationship, this phrase "common-law trustee" which so puzzled Colonel Anderson, means nothing more nor less than that the Alien Property Custodian was an officer of the Government and as such officer was in a fiduciary capacity to the Government.

A great statesman once said that a public office is a public trust. It is in that sense that the Alien Property Custodian and the President were trustees of this property. But how can it be argued in the face of this amendment giving to the President the absolute power of owner of this property, that he was nevertheless a trustee, bound to see to it that the very last penny was realized from every particle of this property, to disregard the necessities of the country, to lay aside the fact that we were in a war, and to have his mind single and directed solely to the purpose of getting every dollar out of this property in order to hold the money for the Germans?

Indeed, our position is not compatible with that of the Government. I am not afraid of the word "confiscation." As I read this Statute, the amendment of March 28th, Congress did give to the President the power, if he thought it necessary for the preservation of the nation and the conduct of the war, to confiscate German property. But in fact we have no confiscation in any sense in this case.

And now if your Honor will permit me, I want to read a short extract from a statement made by Senator Underwood in the Senate, when they were debating this very section, because it is so apt and apposite on the question of confiscation. He said:

> "Now why is this a blow to the German interests? And why is it necessary to protect our country that this provision should be passed? We are fighting the German peasants behind St. Mihiel, we are attempting to destroy the lives of men who had nothing to do with bringing on this war, who probably have no desire to continue it and who are doing it because they are hurled to the battlefield by an autocratic power. What we want to do is to wipe them out of the way so that we can win the victory.
>
> "But this property is owned by the junker-class of Germany, not the men on the battlefield, but the millionaires, the titled class, lords of the manor, the Kaiser himself, and they have shown every hour and by every act their desire to protect this property, own it and control it, when the war is over. I would far rather fire a shot at Berlin and at the junker class of Berlin who brought on this war and keep it going, than I would fire a shot at St. Mihiel, at the peasant of Germany.
>
> "It is necessary for us to take over this property, not only its control and possession, but absolutely to Americanize it to protect American interests. It is necessary for us to take it over and let the German junker class know that America has her back against the wall, that we are fighting this war in earnest, that we are willing to fight it all along the line, and that there is no surrender on our part until a victorious settlement of the issues involved.
>
> "We are too slow, already we ought to move

> faster. I can understand how there are some interests in America that are apprehensive of the passage of this legislation. There are some interests in America that own property in Germany. I understand from Mr. Palmer's testimony—he so states—the largest ownership of property in Germany is in the Standard Oil Company. Most of the property that American citizens own in Germany is controlled by great corporations. Now, I do not desire to see their property confiscated in Germany"—
>
> "Confiscated in Germany," your Honor—"but Mr. Palmer said, and we know it to be the fact, that where there is one dollar's worth of American property invested in Germany there are more than a hundred dollars of German property in America. Where they strike one blow at us in confiscating American property, we strike the blow a hundred fold in taking theirs."

And so I do not recoil at the word "confiscation." I say that by this amendment Congress, which had the power to confiscate, gave that power to the President when in his discretion the public interest demanded it, to exercise that power if necessary; although, your Honor, it is not necessary for us to argue that this transaction amounted to a confiscation. When I come to a discussion of the consideration paid for this property I think I shall show your Honor,—I do not expect that I can convince you by my argument, because this is not supposed to be an argument; but I say that the sworn testimony coming from the witnesses will convince your Honor in the end that the consideration paid for this property, was every dollar and every cent that that property was worth.

So I am not invoking the power of confiscation that I say is lodged in the President by this amendment, but I say we are not frightened by the word "confiscation," that, if necessary, the Court will hold that for the purpose of winning this war the President had the power to dispose of this property by the sale or otherwise—and "otherwise" means just what it says.

So this Act of March 28th was the adoption by the Government of an entirely new policy. The Alien Property Custodian was no longer to be a mere conservator and authorized to sell this property only to prevent waste, but he, acting under the authority of the President, was given the widest power of disposition.

Mr. Palmer went on, seized enemy property which ran up into the hundreds of millions of dollars, and sold a great part of it in an effort to carry out what he considered to be the new policy of the Government, namely, to root out the German industries in this country and to Americanize them. And he had not gone far in his program of sale and disposition when he found that the patent situation was not covered by legislation that made him free to act with respect to that property, as he could with respect to other property.

It is alleged in the Bill that the Alien Property Custodian himself was in doubt as to whether under the Act of March 28th, 1918, he had the power to seize enemy patents. That is not the fact. The Custodian and his office at all times insisted that they had that power. But the Attorney General ruled otherwise, and so the Custodian took up with the President the question of having an amendment of the Act to remove that doubt.

And that amendment was the amendment of the 4th of November, 1918, which, as your Honor knows, expressly provided that the Alien Property Custodian might seize enemy-owned patents and dispose of them, either by sale or otherwise, in the same way that he could other German-owned property.

Now, why was it important to seize enemy-owned patents? It is charged in the Bill that a statement was made by Mr. Bradley, who was General Counsel to the Alien Property Custodian, at the time that this November, 1918, amendment was before Congress, that the sole purpose was to enable the Custodian to sell enemy-owned property which had as a component part thereof enemy-owned patents. Well, whatever statement Mr. Bradley made there is of record, but I do not understand that the Government contends that whatever statement Mr. Bradley made in any way limits either the intent or the purpose or the force of the act. The act did give the broad power to seize, sell and dispose of enemy-owned patents.

And now what was the great importance of these patents? This leads me, your Honor, to a discussion of the situation here in the United States, at the outbreak of the war, and during the war, especially in connection with industries, United States industries, that were controlled by Germans, and that were in most cases affected by United States patents.

Your Honor will not be able to understand the purposes of the Government in making this transaction with The Chemical Foundation, unless your Honor clearly understands what the situation was here, when the war broke out; how these patents stood in the way of the progress of the chemical industry, because you have to judge the act and the purposes of the Government in the light of the situation that existed.

Now, I said that Mr. Choate had charge in the Alien Property Custodian office, special charge, of investigating the German-controlled chemical industries in the United States. Mr. Choate was engaged in that investigation for many months; and with that keen perception that characterized the work of his illustrious father, Mr. Choate has written a chapter on the chemical industry in the United States, and the relation of the German chemical industry to it, in Mr. Palmer's report to the President, that is a classic, and that will live long after we are all gone. And it is upon that report, your Honor, and the facts therein contained, that we shall show that the President, Mr. Polk, and the Alien Property Custodian, all acted. It was in the light of the revelations therein contained that the President determined that it was for the best interests of the nation that this transaction should be put through; and I say this, your Honor, in explanation for the time that I am going to take, because I consider it important in pointing out to your Honor in some detail what that investigation disclosed, because it was in the light of the result of that investigation that the Government acted in this transaction.

Now it was found beyond any question, that prior to the war, Germany had a world-monopoly of the dyestuffs industry. I say a world-monopoly, and I mean what I say. That monopoly included the United States. And not only did they have a monopoly of the dyestuff industry, with all its ramifications that I shall point out in a little while, but also a monopoly of many essential drugs, essential to the welfare and the health of our people.

I wish that I knew something about chemistry, so that I might really picture with the proper effect the necessity, the national necessity of any country being chemically independent. Someone has said that chemistry is the life of every nation, as it is the life of every individual. I wish I knew the subject well enough to picture to your Honor the effect of a country dependent upon others for a chemical industry. But chemists are born and not made, and I am free to say that I know very little about chemistry. It is said, your Honor, that the dye industry is based upon a piece of soft coal. All these beautiful colors and dyes that delight the eye, are the product of soft coal. They take soft coal and distill it. From it they get coal-tar. They distill the coal tar a little more. From it they get what they call the ten crudes. Then they go on distilling, and by adding certain acids and other things to some of the crudes, they produce these wonderful colors.

There are about three hundred so-called intermediates, that is, the raw product, from which the colors are made, and we shall show that there are several thousand different colors, and that in 1914, before the outbreak of the war, there were imported into the United States alone, from Germany, about a thousand different dyes and colors.

Now, we used to get our colors—they used to be natural colors. For instance, what used to be known as turkey red was alizarin, which used to be obtained from the madder root. Now, they make it in the laboratory. Indigo used to be made from the indigo plant, which was very extensively grown in India. Now they make it very much better in the laboratory; and so I could go on. In other words, there are now synthetic drugs and synthetic dyes.

Now, it was an Englishman that discovered the aniline dyes; but Great Britain was just as backward in the development of a chemical industry as we were, and what the Englishman discovered, the Germans continued to improve, with the result, as I have stated, that at the outbreak of the war, Germany had a monopoly of the dye industry of the world.

Now, among the drugs that are by-products of the dye industry, are such essential drugs as salvarsan, as to which I need say nothing further; novocain, mentioned by Colonel Anderson, yesterday, and luminol, the drug that prevents epileptic seizures—of those two Germany had the monopoly.

Now Germany, from her point of view, was much more far-sighted in her treatment of the chemical industry that we were in this country. I say, from her point of view, she subsidized the industry. She protected the industry. She encouraged the manufacturers of dyes to combine, where we here have a law against combination. It was her pet industry. It was her most prosperous industry. It was the key industry, the industry that she used as a wedge for her chemical world-supremacy that she was after in every country, and so she used it in the United Steaes.

Thus, in 1914, there were six large manufacturers of dyestuffs and pharmaceuticals in Germany, and those six formed two combinations known as "Cartels." There was the Badische concern, of which your Honor saw a representative here. There was the Bayer concern, and the Berlin concern. These are not the full names of the concerns. I am using short terms. That was one Cartel. The other Cartel consisted of the Farbwerke-Hoechst concern, the Cassella, and the Kalle. These concerns were capitalized at enormous amounts.

In 1916, these two cartels joined hands and formed one large cartel, the Interessen-Gemeinschaft, the so-called "I. G.." Their capitalization is upwards of a half a billion of dollars. In gold marks, it is about a billion and a half, over a billion and a half.

They pooled profits, they divided territory and they interchanged patents or processes, and all of them at the outbreak of the war had agencies in the United States, agencies that had the exclusive right to sell the product of the cartel; and although many of our essential industries, such as the textile industry, the leather industry, the paint industry, the wall paper industry, the carpet, furniture and ink industries—although they were all dependent upon a supply of dyes and although many essential medicines and drugs, as I have pointed out, were manufactured in Germany, we here in the United States, at the outbreak of the war had but four concerns, none of them really making dyes; they were no more than assembling plants, so-called, importing their raw material from Germany and producing such dyes as they could make out of those.

None of them ever made what are known as the "fast" dyes—fast to light. Now, why was it? Why was it that Germany had this monopoly? We have soft coal in this country; plenty of it; and that is the raw product that they need.

We shall show your Honor, as we go along, that for years before the war, there were far-seeing citizens that saw the importance of developing a chemical industry; that they took samples of our soft coal and sent it abroad to Germany to have analyzed, and see whether dyestuffs could be made out of it, and always got the report back that it was not any good.

There were times before 1914 when here and there some venturesome manufacturer would start up and try to make a dye or two, and then be struck by the German competition and have to succumb.

Now, what was it that prevented a development of the industry here? The Germans were very careful to patent every invention that they made in every country where they did business. We were more liberal in our patent laws than most countries. In France, for instance, you can not patent a medicinal preparation. I do not believe there is another country in the world, other than the United States, which will permit a foreigner to obtain a patent without requiring him to manufacture in that country under that patent.

There are very few countries that issue what are known as "product patents," patents that protect not only the process of making the article, but the article itself. But in the United States the Germans found a safe harbor. They came here and took out patents by the thousands, both process and product, enabling them not only to prevent anybody in this country from manufacturing the article according to the process described in the patent, and thereby stifling the development of an industry here, but also preventing any other country from importing such article into the United States. And they did not have to work their patents here, and they did not.

Now, that was the legitimate thing to do, and when Colonel Anderson, in discussing the consideration paid for these patents, pointed to our statement that these patents controlled the industry, and said, how can it be argued that a consideration of $250,000 for patents that controlled an industry amounting to $25,000,000 was adequate—he was talking about the control by the Germans. Of course, such control as the Germans had was worth more than $250,000. But when you use your patents lawfully and not unlawfully, as I shall show the Germans did, it is an entirely different matter, and they are not worth nearly so much. We shall prove that these patents cover only about five per cent of the production of dyes and dyestuffs, and we shall show, as I have stated before, that the consideration paid for them was ample and every dollar that they were worth.

But I say the Germans used these patents unlawfully. What did they do? How could they, with patents which controlled only about five per cent of the output of dyes—how could they control and obtain a monopoly as they did?

Now, I will show your Honor how they did it: They had a favorite game which they called "full-line forcing." Very simple—simple in its application. They would go to a manufacturer that used dyes. He would say "I want so much of this dye and so much of another," and they, knowing what he really required in his business, would say, "Well, how about indigo?" "Oh, well, we are buying indigo from John Smith." They would simply refuse to sell him the others. In other words, they made it absolutely impossible by their full-line forcing to have anybody here survive, either the manufacturer of the dyes or the man that used the dyes, without those few dyes that they controlled with their patents.

And then they had another favorite way which they called "dumping." We shall show your Honor that here and there somebody would start up manufacturing a certain dye or chemical. What would the Germans do? They would not care for a tariff. In one instance, Congress did, in order to protect this little industry, put a duty of ten per cent on certain dyestuffs but that did not make any difference to the Germans. They would undersell; they would dump their product here. They would give it away rather than let anybody start up in business here. And it was perfectly easy for them to do. What the Badische lost in underselling here, they made up in raising their prices in the Argentine. It was a world-monopoly. What the Hoechst lost was made up by the whole pool. Any man that started up here to make dyes was fighting the whole monopoly, not just one manufacturer.

And then, they did not stop at that, your Honor. It will be shown and was graphically described in Mr. Palmer's report, that these Germans took no chances; that even though we had no dye industry here, they organized what was known to be the widest and most far-reaching bribery of dyers in the plants of manufacturers that was ever conceived by anybody. The whole textile industry was honey-combed with bribery. So much so that, as the Government knows, suits were brought here based upon revelations of that bribery, which resulted in the payment by these Germans of hundreds of thousands of dollars back to the textile industry that had been paid in the way that I have described.

And so, by full-line-forcing, by dumping, by bribery, they were enabled to exercise that control by means of these patents, which, although they covered only five per cent of the total output, constituted a complete barrier to the development of any dye industry in the United States.

So that when the war broke out Germany had this monopoly and we had no chemical industry to speak of. The result of our dependency upon Germany was soon made apparent. We declared war on Germany on the 6th of April, 1917, but Germany declared war on us in August, 1914. For no sooner had the Germans declared war against England than Germany placed an embargo upon the export of dyestuffs, not only to the countries that she was at war with, but to the United States.

Here we were, our industries absolutely dependent upon those dyes. The textile industry had only sixty days' supply of dyestuffs; they were in utter panic when the supply was cut off. They had no home industry to turn to for their supplies. But Germany cut the export right off, with the purpose and cunning far-seeing, as I shall presently show.

What was the meaning to this country of the cutting off of these dyes? It is not measured merely by the $25,000,000 that Colonel Anderson speaks of, which is the value of the dyes. Industries manufacturing fabrics and other products worth over three billions of dollars were dependent in this country upon dyes. Over two millions of people are employed directly and indirectly in industries that were dependent upon dyes, and Germany knew when she cut off the supply that she was throwing our industries into an utter panic and, if she had succeeded, would have thrown over two millions of our people out of employment.

Germany knew what she was doing. They had an ambassador here named Bernstorff. Bernstorff had some advisers here. There was a Consul General, who was the commercial adviser; then there was a privy councillor named Albert, who came over here to boss the job for Germany.

With your Honor's permission I want to read two or three extracts from communications that passed between Germany and her representatives here, showing the purpose that Germany had in cutting off the dye supply to this country. Because it is all important. Those are the facts that were before the President and the other officers when they did what they did do with these patents. When they put through the transaction that is here attacked the President knew of these facts that I am stating. Bernstorff says to his Government:

"It is reported to me by Hossenfelder"—Hossenfelder was the Consul General here, the trade adviser—"that the stock of dyes in this country is so small that by a German embargo about four million American workmen might be thrown out of employment. (Signed.) Bernstorff."

Mr. Bernstorff overestimated the number of people that would be thrown out of employment. It was not four million, it was only about two million. But he was cabling to his Government the situation that we were in with respect to dyes, and that an embargo, a German embargo on dyestuffs, would throw four million American workmen out of employment.

Privy Councillor Albert, as I said, was here and had charge of the German interests, their spy system, and all the work that they were engaged in before we entered the war and subsequently. Based upon this cable of Bernstorff and the information therein contained, he cables Berlin. It is a blind cable, but the explanation of it is in Albert's letter, which I shall read. The cable is this:

"Hamilton Yerkes and associates urgently request preventing all Hoechst and similar shipments. Inform immediately."

Signed, of course, not by Albert, but signed in the name of Charles Suchard. Then Albert writes to Brother Hossenfelder, explaining this telegram as follows:

"Dear Dr. Hossenfelder—Sunday night the following wireless message went to Berlin through the agency of the Deutsche Bank"—

Then he quotes the telegram.

" 'Hamilton' means 'Embassy,' I am Yerkes. Unfortunately there was no code word for consulate general, so we had to designate you by the word 'associates.' In the stress of business I had no time to ask your assent, as you know we were agreed on the matter.

"The reference to 'Hoechst' is meant to convey at the same time a warning in regard to Mr. Metz."

Mr. Metz is a gentleman who will be a witness here. Your Honor I am sure will gain much information from Mr. Metz.

"I assume that this is understood over there. I purposely refrained from direct mention of Mr. Metz, as well as the definite war character of the dyestuffs, because it had to be taken into account that the American Government will be informed of the contents of the message both directly and indirectly through the English."

Bear this in mind, your Honor: This is dated April, 1915, two years before we declared war on Germany. "For evident reasons it would not be advisable that the advice from official sources here not to ship dyestuffs and potash should come to the attention of the American authorities."

And so the result was that they absolutely shut down on our supply of dyestuffs.

Then there were people here that were taking counsel as to what should be done in the matter, and finally it appears—and this again we find in connection with Mr. Albert—that the New York World had an editorial in which, among other things, they pointed out the following. The editorial was headed "Helping us out," and in it was said:

"Two large German chemical and aniline dye concerns are reported to be establishing in New Jersey to supply American demands hitherto supplied from Germany."

That did not escape the eagle eye of the German spies here, and they had a man named Boy-Ed here. Boy-Ed during the war made himself very famous, as your Honor well knows. Boy-Ed finds this editorial and so he writes to his boss, Privy Councillor Albert. I will read his letter. This again is April, 1915, mind you, two years before we were in the war. He says:

"Today's World contains the enclosed little article on the alleged erection of dyestuff factories in New Jersey by Germany. In case you can take no steps to prevent an undertaking of this kind I beg you to state whose else attention I can call to the matter."

And Albert answers him in a letter, and as to this particular point says this:

"With regard to dyes, I got into touch with local experts in order to determine what truth there is in the news. According to my knowledge of things the matter is a fake, inasmuch as our factories have bound themselves orally and by word of honor to do nothing in the present situation which might help the United States."

Albert, Privy Councillor of the German Government, vouches for the fact that the German factories had agreed among themselves orally and upon their honor to do nothing that will help out the United States, in April, 1915, two years before we went into the war.

Of course, if we had had a chemical industry in the United States, if we had not been dependent upon Germany for these very essential supplies, upon which millions of our people depended for a livelihood, it would have made no difference what machinations these German spies went through. But this was a matter of the utmost importance to our country and to our industries.

Then, again, they not only cut us off from the supply of dyestuffs and drugs, but also from the supply of potash. Your Honor knows that for many years we were dependent upon Germany for a supply of fertilizer for our farms. And what the Germans intended to do with the United States regarding such essential supplies as Germany had control of is well indicated by a statement made by one of their famous scientists, Professor Ostwald, who says:

> "America went into the war like a man with a rope around his neck, which is in his enemy's hands and is pretty tightly drawn. With its tremendous deposits, Germany has a world monopoly in potash, a point of immense value which cannot be reckoned too highly when once this war is going to be settled. It is in Germany's power to dictate which of the nations shall have plenty of food and which shall starve."

That was the way that Germany thought of her control of these essential supplies. They would starve America; they would keep the hypnotic from the epileptic; they would keep the Salvarsan from the man afflicted with that dread disease; they would throw millions of our people out of employment—anything to serve Germany's world interests?

And those are the facts that the President had before him; those are the facts upon which he acted; those are the facts that induced him to exercise the power that Congress gave him by this act of March 28th. They talk about our drugs. I have here a statement made by one of our foremost scientists before a Committee of Congress that was investigating this very subject, who said, with reference to the cutting off of essential drugs:

"The pitiful calls of our hospitals for local anaesthetics to alleviate suffering on the operating table, the frantic appeals for hypnotic that soothes the epileptic and staves off his seizure, the almost furious demands for remedy after remedy that came in the early years of the war, are still ringing in the hearts of many of us."

They come here and speak of the duty of the President to get the last dollar out of this property. I wonder what they think a Government is for; whether it is a Government to protect its own interests and its own people, or whether it is a Government that must throw away every safeguard that God Almighty has placed in its hands to satisfy a subtle refinement or notion of what is required of a representative of a Government that seizes property of an enemy that can stoop to the things that Germany did here to the United States in this war.

Now, while our sick in the hospitals, upon whom so-called "Bulgarian" operations had to be performed, because the necessary anaesthetics could not be obtained were writhing in their misery, we find the German representatives here gloating over the situation in which the United States found itself. We have here a letter from this very man, Hossenfelder, a report from him to his Government, in which he says:

> "To enumerate the industries which are suffering from the scarcity of German chemicals would lead too far. I may, however, mention that the cry for help which comes from the ill, the physicians, is becoming louder and louder and more and more insistent. The country, however, is being hit hardest by the lack of dye stuffs which makes itself felt more and more every day, in regard to which I may refer to the report of the business expert. What the United States is able to produce in dyestuffs, is neither in quality nor in shades the remotest, sufficient to meet the existing demand—"

Mind, your Honor, that is the German reporting to his Government—

> "It is now acknowledged here on all sides, that the reports to the contrary of Mr. Norton are not only too optimistic, but directly untrue. I shall speak of Mr. Norton later in estimating the effect which will be produced by cutting off the importation of potash, chemicals, and dyestuffs. It should be taken into consideration that the circle of persons affected is very extraordinarily large—"

—he is counselling his Government—

> "through the lack of dyestuffs alone, not only to a whole list of important industries, wool, cotton, leather, paper, gradually made lame, but for the great public, living becomes more expensive, both through the rise in price, as well as through the small durability of all products for whose production colors are used."

And then after they had placed the embargo on dyestuffs, drugs, potash, and other chemicals, a situation arose when the German Government felt it was to its interest to lift this embargo for a little while. Do not let us be fooled—it was not to help the United States. It was a war move by the German Government, and so they lifted the embargo and said: We will let you have dyes and drugs and potash, but we will let you have them only on condition that you make the British Government lift the blockade that it has established in this war against Germany. Reflect for a moment, your Honor, what that means —Germany was dictating to us our foreign policy. In 1915 she said: We will starve you by not giving you potash. We will make your people suffer by not giving them drugs. We will throw your people out of work by the millions unless you make Great Britain lift her blockade. And they had the audacity through one of their representatives here to write direct to the President and tell him so in so many words. Here is a letter written on the 16th of June, 1915, almost two years before we went into the war, written by this gentleman, Metz, who will delight us with his testimony, directed to President Wilson at the White House, in which he says:

> "My dear Mr. President:
>
> I know that you are conversant with the serious situation that confronts the textile and other industries of this country through the failure to continue the receipt of dyestuffs and chemicals. Efforts are being made to have the recent Order in Council—
>
> That refers to the British Order in Council—
>
> "—allowing two shipments to pass, modified somewhat, so that shipments will be allowed through on a basis that Germany will agree to. In this connection an extract from a letter received from Justizrath Dr. Adolph Haeuser—"

May I stop here to explain that Dr. Adolph Haeuser is the President of the Farbwerke Hoechst

Company, one of the six that comprise the German Trust, who, during the war were at the head of all the combined German chemical industries—

> "received from Justizrath Dr. Adolph Haeuser, President of the Verein zur Waehrung der Interessen der chemischen Industrie Deuthschlands, in Berlin."

—which I am a sufficient German scholar to be able to translate, that he means that he was the President of the combination that had charge of the disposition of the output of all the chemical concerns in Berlin, and, here, Brother Metz explains it thus—

> "and which is composed of all the dyestuff and chemical manufacturers in the German Empire, dated May 26, which will probably interest you—"

That is, he says to the President, here is a letter or an extract from a letter of this man which will interest you, it is as follows:

> "I note that you have carried out your plan" meaning Metz, "to organize an American dyestuff consumers' association. We here are gladly ready to send dyestuffs to America, but we rest on the standpoint that we can not accept this as a favor or gracious act on the part of England, but that we can only send dyestuffs when England recognizes the right of America to receive goods from us, and you send us cotton in exchange for such dyestuffs. This is also the standpoint of our Government. Any other standpoint would be unworthy of America or Germany."

I think he might well have left America out of it—

> "We are, of course, somewhat accustomed—"

Listen to this language directed to the President of the United States:

> "We are, of course, somewhat accustomed to seeing the American Government look at situations through two pairs of spectacles, according to whether Germany or England is concerned in the question. England can simply deny American suggestions off-hand, and the American people yield with astonishing submission, although the entire carrying on of the war on the part of England and her allies depends entirely upon the good-will of America. When Germany, however, does anything toward using her own good rights, the act is decried in America. I hope America will succeed in forcing England to stop interfering with commerce between Germany and America, and if so, you will find us only too glad to give you all the dyestuffs that you need."

That is the extract of Dr. Haeuser's letter to Mr. Metz, which Mr. Metz sends to the President of the United States, and then he adds:

> "I submit this to show you the situation as it is viewed by Dr. Haeuser, who, at the present time, represents officially the entire chemical industry, as President of the Berlin organization. This simply indicates that they had available goods in Germany which we need here which we can get if Germany is assured that the goods will not be taken off by England, and that she will get cotton in return.
>
> "I submit the extract to you for what it is worth, knowing that you appreciate the situation, and assuring you that so far as I am concerned, I fully appreciate the delicacy of the situation."

I wonder, your Honor, what our situation would be today, where we would be today, if this transaction that they are now criticising, had not been put through and the chemical industry had not been permitted to use these patents; if thereby we had not been successful in founding and developing a chemical industry of our own, which, as I shall show your Honor, is almost 90 per cent. sufficient to take care of our interests today.

I say, I wonder where we would be today, in the present political situation over in Europe, with France having possession of the Ruhr, with Germany having possession of the dye works, if she still had her monopoly here. I wonder if Dr. Haeuser would be writing, for the information of the President of the United States, that they would again starve our people by denying us potash, make our sick suffer, and throw our people out of work, if we did not insist upon France evacuating the Ruhr.

The situation might well have arisen, had not the President and his advisers been sufficiently far-seeing to realize that the war was not won on November 11, 1918, when the Armistice was signed; that the war was not won simply because we beat Germany back. This was a commercial war. The war was won when the Administration saw to it that our country, our industries, were freed from the German slavery.

I have spoken of the importance of the dye industry to commerce. I have spoken of it in its importance in medicine. I have spoken of the potash industry in its importance in supplying us with food, but we had to have a bloody war to show us its greatest importance to us as a Nation; and that is, the importance of it in its relation to our National defense.

It was not until our soldiers were choked with poison gas in the trenches; it was not until they shot poison bombs into the streets of London and Paris, that the world realized that the war of the cannon and the musket had passed, that the future war would be a war of chemistry; and when we went into the war, we found ourselves absolutely unprepared to meet the German mustard gas or the chlorine gas or the phosgene gas; those deadly weapons were made in the dye factories. They were made from by-products of the coal tar industry.

It was not until Germany knew that she had so far developed her dye industry that she could overnight practically turn every dye factory into an arsenal, to produce poison gas; it was not until she realized that she was free in her supply of nitrates, that she was no longer dependent upon Chilean nitrates, but had what she calls her Haber process, so that she could make her nitrogen out of the air; it was not until then, that Germany was ready to declare war.

It is very significant that the Haber process was perfected as late as 1913, and that Germany declared war shortly thereafter.

Now, where were we, without a chemical industry here at all? How were we to meet this onslaught of the Germans?

And those were facts that were before the President when he came to dispose of these patents, the patents that covered the very processes by which they produced the poison gases that killed our soldiers.

The importance of that was realized, and I want to read a letter from the man that should know the importance of the dyestuff industry as a National defense. I have a letter here from General Pershing, which was submitted to a Committee of Congress, which was considering an embargo to be placed against German importation of dyestuffs after the war; and, as I speak of an embargo, I want to correct a statement made by Colonel Anderson yesterday that Congress refused the chemical industry an embargo. The fact is that Congress gave to this industry an absolute embargo against German importations which lasted for a year and a half, and that only at the last session of Congress did Congress decline to put a further embargo into the permanent Tariff Bill, but gave to the industry instead the highest protection by way of duties that has ever been placed upon chemicals and dyes.

Now, General Pershing, writing to Honorable Nicholas Longworth, at the House of Representatives, under date of July 15, 1921, says:

"With reference to the protection for the dye industry in this country, it can be stated that the coal tar products of which dyes are the most important at present in peace, is the base of practically all of our high explosives and most of our war gases. Our shortage of chemical plants in general and dye plants in particular prior to the World War, made it difficult for us to obtain a supply of high explosives and gases until we had been in the war for several months.

"From the above," says General Pershing, "the importance of the chemical industry from a military standpoint will be readily seen."

And then I have an extract from the letter written by Secretary Weeks, our Present Secretary of War, also written to a member of Congress with reference to the same legislation, in which the Secretary says:

"The use of high explosives and war gases will unquestionably be far greater in future struggles than in the World War, inasmuch as the coal tar industry, which is the base of all dyes, is also the base of all high explosives and most of our war gases; it is of the most vital importance to preparedness that the dye industry be developed to the fullest possible extent in this country."

I need no better authority for the statement that the dye industry in this country must be looked to by our Government and our future generations for the National Defense, just as we have to look today for some of our most essential drugs, and just as we have to depend upon potash for our food.

Now, I repeat—I cannot repeat it too often, your Honor—that those were the facts that were before the President, before Mr. Polk, before Mr. Palmer and his associates, when this "iniquitous" scheme that they speak of was put through, when we are alleged to have sacrificed this property and violated our sacred duties as trustees.

Now, that was the situation when the war broke out; when we were cut off from dyes and potash and drugs.

The old saying that "Necessity is the mother of invention" never showed its truth any more than it did in this instance.

Our people went to work to repair the damage that Germany had done us. Our people went to work and started building from the bottom; started to make good the loss that the country had sustained by tamely submitting to German monopoly for years; and they started building up a chemical industry; we had the raw materials; we had the brains. German agents used to go around here among our factories and say that only German brains could evolve the formulas for the manufacture of these chemicals and dyes. We had the brains if we would only use them; and necessity made us use them; and so we went to work and we practically created a chemical industry. The war helped us, of course. There was great demand for the product. Price was no consideration. Labor could be paid what it demanded; and then our people helped along. They changed their styles. They did not demand those wonderful hues and colors that they had from Germany. We did not use them; and so, gradually, your Honor, there was built up in this country a chemical industry that today supplies over 90 per cent of the country's requirements of dyestuffs.

And when this industry went before Congress and begged for an embargo, and finally received this high protection, it was not because we still needed German dyes; it was in order to prevent Germany sending in this ten per cent of dyes that we could not yet make, and resorting to her old scheme of full-line-forcing, her old scheme of dumping, and her old system of bribery; and thus again seek to undermine this industry that had created itself during the war, when there were people who were willing to invest large amounts of money in an effort, not only to make money for themselves, but, I am willing to give them credit, and I think Colonel Anderson will—in an effort to free this country forever of its dependence upon Germany.

There is nothing wrong about the combination of the National Aniline with other concerns into the Allied Chemical & Dye Company.

Colonel Anderson well said yesterday we were not trying here a Sherman Anti-Trust case. If the Government feels it is true that a monopoly was established, it has its remedy under the Sherman Anti-Trust Act; and although they have disclaimed any intent to try a Sherman Anti-Trust Act case here, they did not hesitate to make the charge in this Bill that a monopoly was established.

Now, the Du Pont Company, right here in Delaware, was willing to put its millions into this industry, and they have founded here, or over there, as your Honor will know better than I, at a place called Deepwater Point, one of the greatest dyestuff factories that there probably is now in the world. They have opened a research laboratory where, I am told, they employ several hundred chemists, and they do that wisely because it was the German research, it was the German connection between the factory and the

University that gave Germany the power to monopolize this industry all over the world.

And so we find that by the time we got into the war, this industry was going pretty well. To be sure, they could not use the German patents and they did not, and therefore they were not able to make what are called the fast dyes. The latest form of dyes that the Germans invented; but the country had to be satisfied to take what it could get, and did without fast dyes.

When we got into the war and the Trading with the Enemy Act was passed, your Honor will recall that under Section 10 of that act, the Federal Trade Commission had authority to issue licenses to anybody here to use the German patents; and we shall show your Honor that before the sale of these patents to The Chemical Foundation, the Federal Trade Commission had exercised that power; they had issued four or five licenses, for instance, to persons who undertook to make salvarsan; they issued many licenses to the DuPont Company and to the General Chemical Company and to other concerns here, to use the German dye patents, to try to use the Haber process patents.

The trouble was that to have a patent and to be able to read it is one thing, and to know how to produce under the patent is an entirely different thing. It is the "Know-how," so-called, that is the really valuable part of the process; and we shall show your Honor, as one of the elements that affected the consideration, the value of these patents, is the fact that with these German patents we did not get the "Know-how;" that in point of fact it cost those who went into our industry millions of dollars in research, in building of plant, and in finding out how to make the things covered by the patents.

And so, even after the Federal Trade Commission was enabled to give licenses covering these German patents, our industry still had to feel its way along. Millions of dollars still had to be laid out in research, plant and investigation before we could succeed in making most of the dyes that were covered by those patents.

And then, after the Alien Property Custodian, under the authority vested in him by the act of November 4, 1918, had seized these German patents, the question arose what was to be done with them?

Now, what was the situation? We had this infant industry. It had succeeded in making some of the colors and dyes. It could not make the fast colors. Many millions of dollars had been invested in it. They were operating under licenses issued by the Federal Trade Commission, under which they had to pay a royalty which, under Section 10, as your Honor will recall, would go back to the German owner of the patent if nothing were done, so that after the war, if these patents had not been sold to this industry an American manufacturer would have had a differential between himself and his German competitor of the amount of the very royalty that he was paying into the pockets of his German competitor.

So that it was perfectly plain that the American industry after the war, if the patents ever went back to the Germans, could never compete with the Germans. We would be back in exactly the same position that we found ourselves in in 1914.

And so, I say, we sat down and considered the situation and we arrived at the conclusion that after consideration, your Honor will see in an instant that these patents constituted in our hands a weapon that we could use against the Germans in the same way that they had used it against us; that where they stood at our ports with their patents in their hands and said "No; no other country can import into the

United States any dyes because we have a product patent," so, if the American industry took those patents, they could turn around and say to Germany: "You cannot import any dyestuffs here because we have the patents."

And since it was determined that whatever the final disposition of these patents should be, it was to be a disposition that would throw open the use of those patents to the industry in general; that no one should get those patents that could use them in the monopolistic way that the Germans used them. The Government was not going to substitute any American monopoly for a German monopoly. And the next question was: How can that be accomplished?

Well, we had one example of what a public sale of patents meant. The Alien Property Custodian had taken over the Bayer Company. That was a branch of one of the German Cartels here and was the only branch, I may say, in passing, that undertook to do any manufacturing here in this country at all; and they did not manufacture their intermediates, they imported their intermediates and then assembled them here. Their most important product was aspirin; they imported the raw material from Germany and put it together here.

The Bayer concern owned about 1200 German patents covering their particular processes. And before the Custodian and his advisers and the President had an opportunity to decide upon a general and basic plan for the disposition of patents, the Bayer Company was sold—sold according to the amendment of March 28th, at public auction, to the highest bidder, at the place where located, and to American citizens. The property brought a large amount of money—something over five million dollars, I think. The purchaser was a concern called the Sterling Products Company.

What did that mean? It simply meant that to that extent the German patent monopoly in the United States, which had brought about our pitiable situation at the beginning of the war, had passed from the German hands into the hands of an American who, with full right under our laws, could exercise that monopoly as long as those patents were alive. The Sterling Products Company could take those patents and lock them up in a safe, never put them to any use so there would be no development of the industry. They could hold them, and when our war with Germany was over, they could sell them back to the Germans and we could not say nay. They could license somebody to work under them or not license them, as they pleased. They could give one man a license at one royalty and insist that the other man pay twice as much, and nobody could interfere.

When the Alien Property Custodian realized that the result of a public sale of so many of these patents was simply to substitute an American monopoly to that extent for the German monopoly, he realized that his duty to his Government and his people demanded that some other method must be found, that the chemical industry that had grown up during the war was entitled to a chance to live, and that his duty as trustee, if you please—call him what you may—was not to get the last dollar out of every enemy-owned patent, but to see to it that under the direction of the President those patents, as any other property seized during the war, should be used for the best interests of the public in the carrying out of the purposes of the war, a power that was contained in a war act.

If the other side should say that all I am now talking about was after the Armistice—and that is true—I answer that the war was still on, that the Supreme Court of the United States has held that up to July 2, 1921, the war for all legal purposes was still on; that Congress by very special legislation excepted the Trading with the Enemy Act when it repealed all other war measures. And I say that our aims, our interests, our purposes in this war were not realized when the President returned from Paris, but were realized when, not only the Treaty of Peace was signed, but when we took advantage of every weapon that the war put into our hands, not only to smite Germany during combat, but to protect ourselves against Germany's intrigues and monopolies after the war.

The next question, your Honor, was how it was possible to so dispose of these patents that we should not change masters, that we should not substitute an American monopoly for a German monopoly. If we went and sold these patents at public auction, we had to sell them to the highest bidder no matter who he was, with the sole exception that under the act, the President could set aside a sale and order re-sale or other disposition.

The buyer might speculate with the patents and not work them, which was just the thing we wanted to prevent. That is just what brought us to the condition that we were in in 1914, that the patents were not worked, that there was no industry created here. The buyer might license or refuse to license; he might hold the patents and sell them back to the Germans, as Senator Underwood pointed out in his debate. Besides, there were a great many of these patents the sale of which the law required should be advertised. It would have been a tremendous expense to advertise the sale of 4200 patents. The advertisement, to be of any use at all, would have to contain a description of these patents; it would have to be a country-wide advertisement, and there was not any money available to the Alien Property Custodian to do any such thing as that.

Indeed they criticise us for having permitted the dye industry to advance the money necessary to make the search for these patents in the Patent Office, and to record the instruments of transfer. It only illustrates, your Honor, that the Alien Property Custodian was without funds, not only to advertise, but even to search the titles. If we were to sell them at public auction, what were we to do—offer each patent separately? Who would buy it? Offer them in groups—how were you to determine the value? Who knew anything about these patents to enable him to say, when he went to an auction sale, that a patent was worth that much? I venture to say, your Honor, and of course it is not capable of proof, that if the Government had offered these patents at public auction, there would not have been a bidder for them. No man will buy anything that he knows nothing about; and as to the reasons for the defendant buying them, I shall advance them in a minute.

Now, consideration was given to the question of the Government taking the patents, we did not go into this thing blindly. Here were these patents held by the Government. Everybody recognized the advisability from every point of view; from the point of view of national defense; from the point of view of industry; from the point of view of public health—everybody recognized the advisability of so to speak "nationalizing" these patents; and consideration was given to the question as to whether the Government, through some agency of its own, could not take these patents and administer them; and that was discussed not only by the Alien Property Custodian and his assistants, but with Mr. Polk and the President, the situation was thoroughly canvassed, and it was determined, not only because the Government is averse to going into business, but because it had no instrumentality that could administer these patents in the way to do most good to the industry.

If the Government had these patents, who would prosecute infringers for them? One of the most important features of the transaction with the defendant was—one of the most important considerations, that there was an agency that would enforce the rights under these patents, would prosecute infringers of them, would prevent the Germans from coming here and re-establishing themselves.

And so it was seen that it was not possible to have the Government take over these patents; and the next step was perfectly plain, namely, to place them in the hands, if not of a public office as near a public office as could be created, a quasi-public office, and so the idea was conceived of organizing this quasi-public corporation, officered, if you will, by officers of the Government. The very fact that every important officer of this concern, when organized, either was a public officer connected with the Alien Property Custodian's office or worked in that office, is an indication of the purpose of the Government that this corporation should have an official standing, a connection with the Government, co-operation with the Government, and why—because its purpose was to carry out the governmental policy.

Now, how did we organize this corporation? How did we know what the industry needed? We turned to the industry and inquired what its requirements were, and right here let me say that it is not the fact that the industry came to the Alien Property Custodian, on the contrary, the Custodian went to the industry. He went to the Dyes Institute, which was the representative body of the dye industry. If anybody wanted to find the sentiment of the bar of this city, they would probably go to the Bar Association of this city. We went to the dye industry represented by the Dyes Institute, and we took up with them the question of how this industry could best be served, and we had conferences with them, and as the result of those conferences, they drafted a letter directed to the Custodian, in which they outlined the industry's requirements and pointed out how important it was for the preservation of the industry that these patents should be placed in the hands of some one who would be obligated to give each man in the industry an equal chance to use them.

With your Honor's permission, I want to read this letter. It is dated February 7, 1919. It is directed to the Hon. A. Mitchell Palmer, Alien Property Custodian.

> "Dear Sir:
>
> The Chemical industries of this country and particularly the dye industry will find itself in a peculiarly critical position so far as the patent situation is concerned, unless steps are taken to relieve the industry of the burden of enemy-owned monopolies.
>
> The Badische Anilin und Soda Fabrik owns nearly five hundred patents in the United States, not one of which has been the subject of any use by an American manufacturing concern. These patents have been held solely for the purpose of preventing manufacturing in this country which might compete with the importation of the German-made article. This situation exists also in connection with the United States patents owned by several other of the large German chemical manufacturers, notably Meister, Lucius & Bruning, the Kalle Chemical Company, Aktien Gesellschaft fur Anilin Fabrikation (Berlin Anilin), Greisheim-Elektron and others. It seems obvious that unless the chemical industry in this country obtains manufacturing rights under these patents upon conditions that would justify their embarking into manufacture, that the German patent owners will be in a position to enforce their monopolies in this country after the war, and to a great extent nullify the efforts which have been

> made to establish this industry in this country, independently of Germany. This would imperil an enormous investment made in the establishment of dye and other chemical plants in this country, which amounts, excluding explosive plants, to upwards of $150,000,000, and it might prevent the establishment of a thoroughly American dye and chemical industry, which is universally recognized to be a necessity for the United States.
>
> Under the Trading with the Enemy Act two courses are apparently open to the chemical industry, one, securing license rights from the Federal Trade Commission under Section Ten of the act; and two, the purchase of all the patents outright from the Alien Property Custodian by a holding corporation under Section 7-c as amended and Section 12 of the act. The first of these courses is considered by the trade to be entirely impracticable for the following reasons: (1) It subjects the American manufacturer to a payment of a five per cent royalty to his direct German competitor, thus establishing a ten per cent differential between the American manufacturer and his competitor. (2) The licenses are terminable at the pleasure of the Court, so that a manufacturer is obliged to make a large investment on a mere chance of being able to continue operations or will refrain from making the investment because of the uncertainty of the license.''

Your Honor will recall the provision of Section 10 giving the power to the Court to re-arrange the amount of royalty and to extend the licenses or revoke it.

> ''(3) Licenses under Section 10 require opening of the books of the American companies to German competitors. (4) The rate of royalty fixed by the Federal Trade Commission is a mere tentative rate subject to increase after the war, so that a manufacturer is never certain to what extent his manufacturing cost may be increased.

"The second possible mode of procedure, if regulated in the proper manner is considered by the trade, as represented by this Institute to be the only practical solution. It should be pointed out that under the power of sale vested in the Custodian, he may dispose of the German-owned patents in any way that the actual owner of the patents might dispose of them since he is vested with the entire title thereto. He may therefore either sell the patents in whole or in groups outright to individual manufacturers or he may make a sale under the terms of which the industry as a whole may benefit.

"This Institute considers that the sale of the patents or any part of them outright, without restriction, to an American manufacturer would not effect the desired result, since it would merely substitute an American patent owner for a German patent owner and would thus hamper the free development of the other chemical companies. It is also probable that if a sale of this kind were made, an American purchaser would find himself in possession of a large number of patents which he could not possibly use, because of the limitations of his plant or equipment, but which he would nevertheless monopolize, and that these patents would therefore lie idle, and the industry as a whole suffer in consequence.

"It therefore seems that the greatest benefit to the industry as a whole will be obtained by selling the German-owned American patents in such a way as to entitle any American corporation operating in the industry affected, to obtain manufacturing rights if it desires.

"In order to carry out this plan, this Institute has appointed a sub-committee of its Executive Committee to formulate a proposal to be made to the Alien Property Custodian whereby the desired plan may be put into effect."

And then he goes on to enclose a copy of a proposed organization plan.

Mr. Anderson: Mr. Kresel, whose is that letter? You did not say who it was from.

Mr. Kresel: The American Dyes Institute.

Mr. Anderson: I did not catch it.

Mr. Kresel: Signed by the American Dyes Institute, by its President and Secretary, by the Executive Committee. That, your Honor will see, is dated February 7, 1919. This was after conferences had been had between representatives of the Custodian and representatives of the dye interests.

This brings me to a consideration of the organization of this defendant. As stated by Colonel Anderson, this was organized under the laws of the State of Delaware. I may say in passing that the organization of it and the subsequent placing of its stock in a voting trust was under the direction and advice of Judge Gray, of this city, than whom I understand no man stands in higher esteem at the Bar.

This certificate of incorporation provides for the acquisition of these patents from the Custodian, which the Foundation was to hold in a fiduciary capacity for the Americanization of such industries as may be affected thereby, for the exclusion or elimination of alien interests hostile or detrimental to the said industries, and for the advancement of chemical and allied science and industry in the United States.

One need but read the opening statement of the purposes of this corporation to see that it is not a charter of a private corporation acquiring property to do with what it pleases, but that it was a charter given to a corporation that had public purposes, public duties and national duties; because it was to use this property for the elimination of alien interests hostile or detrimental to the industries of this country.

Colonel Anderson says this statement of the trust feature amounts to nothing, nobody can enforce it, that it was a trust void *ab initio,* that this corporation now having the property can do with it what it pleases. Well, if he means thereby that it has the physical power to do so, of course anybody has the physical power to violate a trust, to break a law, to go back on an obligation. If he asks us who has the power to make us live up to that trust, I say it is the United States Government that has that power, that power this corporation will never question, that power this corporation has admitted before Congressional Committees, a power that we have not only admitted to that extent, but to the extent that we have said to these committees that if there is anything in our structure of organization which, to the mind of Congress, does not meet the situation, we are perfectly willing to have it reorganized.

Indeed, Mr. Garvan, the "arch conspirator" here, said to the Committee of Congress: "All of us are willing to step out, put in your own people; we will do everything that can be done to carry out the purpose that the Government had if this does not carry it out. But there is one thing we will not do—we will not return these patents to the Germans." We took this property in trust and we shall show your Honor that we have carried out that trust to the utmost limit.

The charter provides that the corporation may No fiduciary ever carried out a trust more faithfully. grant non-exclusive licenses only. Note the word "may," said Coloned Anderson yesterday, implying thereby that there was some alternative left to us that we had a right to grant exclusive licenses. On the contrary, the only grant of any power to us to grant licenses, is the power to grant non-exclusive licenses.

If we undertake to grant exclusive licenses we are outside of the four corners of our charter. When the paper says "may grant non-exclusive licenses," it is grant of a power expressed as all other such powers are expressed. So we have to grant non-exclusive licenses.

Then in our charter we are to grant a license to the United States. But, says Colonel Anderson, they tell you that they have to give the United States a free license, and I do not find anything like that in this charter. Well, I am not going to spend any time in arguing with him on that proposition. The language of the charter is sufficient to bear the construction that we are to give the United States a free license. But whether it is or no, we shall show your Honor that it was a part of the arrangement whereby these patents were conveyed to us that we had to give the Government a free license, and I have in my hand a photostat copy of the license that was given by the Chemical Foundation to the Government. It was a free license, the Government accepted it, and not only accepted it, but accepted it with this recital in it, namely:

"Whereas the Foundation among other things is obligated by the terms and the conditions of the aforementioned sales to it by said Alien Property Custodian to release and forever discharge the Government from any and every claim or demand which the Foundation acquired by virtue of the aforementioned sales for profits and damages recoverable at law or in equity for any past infringement by the Government of any and all letters patent, applications therefor * * * and to grant to the Government free and without cost a non-exclusive and non-assignable license to make, use and sell the inventions covered by any and all letters patent and applications therefor owned or controlled by it."

In other words, in the instrument that we gave them, we recited that we were obligated under the terms and conditions of the sales made to us to give them that free license. And with that recital in the instrument they accepted it, and accepted it in these words: "The above release and license is hereby accepted according to the terms and conditions thereof"—signed by Theodore Roosevelt, the Acting Secretary of War.

To say to us that we issued a prospectus in which we claim that we had to give the Government a free license and that that was not true, I think is going beyond what the facts will bear out. Not only were we obligated to give the license and to give the Government a release for all past infringement, but we scrupulously observed that obligation. We gave them the release, we gave them the license, and we gave it to them free; and they are exercising the rights under that instrument to this day.

And now under our charter we are obligated to issue non-exclusive licenses.

Mr. Anderson: Mr. Kresel, would you mind stating the date of that license? I do not know it.

Mr. Kresel: The 17th of November, 1921.

Mr. Anderson: 1921?

Mr. Kresel: Yes, sir.

The Court: Does that cover all the licenses?

Mr. Kresel: It covers all the patents, applications—everything.

The Court: That were acquired by the defendant here?

Mr. Kresel: That were acquired by the defendant here.

And as long as the Colonel has asked me for the date, it may not be amiss for me to state the reason for the delay, as we shall show. At first the War Department and the Navy Department came to the Alien Property Custodian and asked him to seize certain particular patents, said the Government needed those for our national defense. Then they started thinking as to whether they wanted the patents conveyed to the Government or whether they wanted licenses only, and that took them months. They finally decided they did not want the patents conveyed to the Government; they decided they preferred to have a license from the Chemical Foundation and a release from it. Then we said to them, "Now, as to those individual patents that you want, send us a list as to which the Navy Department wants and which the War Department wants." That took time. With 4200 patents to list, and with the schedules which were attached to this list—because this is not the whole instrument, you know, schedules of hundreds of pages were attached to it. It took time. But at no time was there any question but that we were under obligation to give to the Government this free license, and at no time was there any question raised by anybody even suggesting that the Government was not entitled to it and was not to have it.

I say we had to issue non-exclusive licenses, to everybody in the trade, "upon reasonable and equal terms and without advantage as between licensees." And right here I might say that that is an obligation, and we have so carried it out. It obligates us to give a license not only to stockholders of the Chemical Foundation, not only to members of this Dyes Institute, which is so assailed, but to every person in the chemical industry. And that has been the way in which we have administered this trust.

I think Mr. Garvan testified under examination before some one of these investigating committees that there is but one instance where the Chemical Foundation refused to grant a license to a person, and that was the instance where a man applied for a license who had no plant, no factory, and The Chemical Foundation knew that the man's purpose was to use that license as a basis for a stock jobbing scheme. And they said to him, "No, we will not allow you to use us in your scheme, you go and build a factory, and if you show us you really intend to manufacture you will get a license."

Colonel Anderson said that under this charter the Board of Directors may refuse to issue a license or may revoke any license. Quite true. Every trustee has got to use some discretion. What was there to prevent a man, if there was not that reservation, forcing us to give a license and using it in just the way this man did that Mr. Garvan was speaking of? In every transaction in life you have got to depend on the integrity of the people you are dealing with to some extent.

Who is it that said Otto Bannard and Judge Ingraham, Mr. Griswold and Mr. Dodge and these other men would use this property in any other way than in the strictest sense as trustees, under which they took it? And our record during these three years will show —and the Government has had access to our files and has thoroughly investigated us—that we have scrupulously carried out the trust that was reposed in us, that the industry has prospered, that the industry has benefited by this arrangement, that the Government has benefited by it.

May I say here, because it is in the same connection, that everybody has benefited but the stockholders of this corporation. There were two issues of stock, a preferred and a common. Our charter says that no more than six per cent shall ever be paid on the preferred. Colonel Anderson called attention to that. He did not call attention to the fact that our charter also says that no more than six per cent shall ever be paid on the common. Nor did he call attention to the fact that to this very day neither the preferred nor the common has received a penny on its stock.

This is not a money-making scheme. Indeed, we did not look for the last dollar for this German property; that is not the kind of a trustee this defendant is. We will show your Honor that so far from making any money in this transaction, of the four hundred and some twenty-eight thousand dollars of capital that has been put into this thing, we have used up all but about $30,000.

You can call us extravagant if you wish, but we will show the purposes for which we spent the money. We did not spend it in bribery as the Germans did; we spent it in an endeavor by education to bring home to as many citizens of this country as we could reach the importance of a chemical industry, the necessity of research, the desirability of sustaining universities and colleges which had courses in chemistry, the importance of the industry for our national defense and for our public health.

This trusteeship is for a period of seventeen years. We make it seventeen years in order to cover the life of the youngest patents, and we selected as trustees men who are entirely disassociated with the industry. We did not want to give anybody an opportunity to say that it was the industry that was using this as a monopoly. These voting trustees are self-perpetuating. They control the corporation, they elect the directors. We went further and said we will not permit any aggregation among our stockholders to control here. And so we have adopted the rule that no stockholder shall have more than two shares of the common stock of the company. Your Honor will find that there is not anybody owns more than two shares of our stock.

We threw around this corporation every safeguard that the fertile brain of Judge Gray and Judge Ingraham and the other legal advisers of the corporation could think of, to prevent just the very thing that the Government is now claiming, namely, to prevent substituting an American monopoly for a German monopoly, and we think we have succeeded. And then this corporation by its charter has a duty which Colonel Anderson did not dwell upon, namely, "It shall be the duty of the corporation to defend and enforce the rights acquired by it."

Think of that. This corporation imposing upon itself the duty to defend these patents. That was put in to meet the very situation that I pointed out, where a private owner might take these patents, put them in a safe, forget them, and let the Germans bring in their stuff.

We are under a duty by our Charter to prosecute infringements because that is the only way that this industry that has been created here will be able to survive. You give this industry another three or four years and it will stand erect on its own feet, and even the German monopoly will not be able to touch it.

Now, the sale was made at private sale, under this Section 12, as amended March 28, 1918, which gives to the President the right to make any disposition of the property "by sale or otherwise and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof."

The Government contends that the provision for the method of sale, namely, that it should be at public auction, is modified by the provision reading, "unless the President stating the reasons therefor in the public interests shall otherwise determine"—that that modification applies only to the method of sale. That was his argument. That is to say, the Government contends that the President, under that proviso, has no right to say that the property shall not be sold to the highest bidder.

How the President—

Mr. Anderson: Mr. Kresel, I know you do not want to misrepresent me. I said that the President's duties under that related to the four things set forth. He could change any one of them or all of them.

Mr. Kresel: So far from desiring to misquote you, Colonel, I am always careful, and I shall read to you what you said:

> "The President's power" (I read from Page 127, at the bottom of the page) "The President's power is limited to three things. When he finds it in the public interest and so determines, and states his reason therefor, to substitute a private for public sale, to substitute a private sale without advertisement, to advertise if he desires at some place other than where the property is located and, if need be, to sell to other than citizens of the United States."

Mr. Anderson: Then I went on to say further—

Mr. Kresel: Wait a minute. I am going on.

> "Those are the four things that are required and those are the four things as to which the President is given power. But always it is a sale—there is not a suggestion of anything else; always there is a sale by a trustee, because the same section provides that the Alien Property Custodian is a trustee, and, of course, the terms of the Act make him a trustee whether it says so or not."
>
> And then later on he says:
>
> "In the last analysis it must be a sale under fair terms, and a fair consideration or it is invalid"—

Mr. Anderson: You will find that I discussed the provision permitting the President to set aside the sale and order a new sale.

Mr. Kresel: Right. Now I say that the Government does not concede, and if it does, I would like to know it now, that under this proviso, namely, that

> "unless the President stating the reasons therefor in the public interests shall otherwise determine,"

I understand that the Government does not concede that under that the President can sell and not to the highest bidder.

I say that I cannot see how you can have a private sale and yet be obligated to sell to the highest bidder; but be that as it may, the argument is that the proviso always speaks of a sale. No question about that, Colonel, is there?

Mr. Anderson: That is all right. I stick to that.

Mr. Kresel: I say that that is wrong, because the statute says:

> "That the President may make any disposition thereof or any part thereof by sale or otherwise"—not only a sale—"by sale or otherwise."

We cannot just forget this word "otherwise," and under that provision, I say that the President has a right at private sale to fix whatever price he deems proper; and I say that in the war—and the purpose of it was to put into the hands of the President a war power, he had the right to take this property and put it to a war use, regardless of whether he received the highest consideration or no.

The Court: It is now 11:45. What is your pleasure, Mr. Kresel? To finish?

Mr. Kresel: Your Honor, I am perfectly willing to do whatever your Honor desires. It is time now for the regular adjournment. I think perhaps it might be better if we did take our adjournment.

After Recess

Mr. Kresel: If your Honor please, during the recess my attention was called to the fact that in speaking of the license given by the defendant to the United States and in calling attention to the acceptance thereof by Mr. Theodore Roosevelt, I read as his office the Acting Secretary of War. That was an error. That should be the Acting Secretary of the Navy.

And while I am speaking of that, may I call your Honor's attention to the fact that this license was accepted by the Government in November, 1921, long after the passing of the Administration that is responsible for the transaction involved in the conveyance of these patents. And, moreover, I am informed that since the bringing of this suit the Government has sent this particular license to the Patent Office for recording, and that the original is now in the Patent Office.

I mention that, if your Honor please, in its bearing upon the suggestion made yesterday by Colonel Anderson, when he accounted for the delay of three years since this transaction was put through, the delay of three years before this action was brought, when he said that of course up to March, 1921, the Administration in power was the Administration that was responsible for the transaction.

Here we have an Act of the present Administration, an acceptance by the present Administration, of an instrument which on its face recites that it is given in order to fulfill the conditions and the terms of the sale; and I venture to suggest that if there is anything in the doctrine of ratification a court might well take into consideration whether that is not a ratification by the Government.

The Government attacks the validity of the transaction as a matter of law. They say first that the power to dispose of property, granted to the President by the Act of March, 1918, is a power that he cannot delegate; second, that if he could delegate it, the dele gation to Mr. Polk was void, and therefore the Executive orders made by Mr. Polk were without authority.

Section 5 of the Trading with the Enemy Act defining powers of the President under the Act, says:

"And the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct."

I have read diligently the report of Colonel Anderson's statement in this connection, and I fail to find any ground assigned by him upon which he bases the contention that the President had no right to delegate this authority.

The Act itself is perfectly plain. It says "that the President may exercise any power or authority conferred by this Act." The power and authority to deal with the German property is granted in this Act by Section 12 thereof, so it seems to me perfectly plain from a clear reading of the Statute, that that is one of the powers that the President was authorized by the very Act to delegate to any officer or officers.

And in that connection I call your Honor's attention to the recent decision of the Supreme Court entitled "Commercial Trust Company of New Jersey against Thomas W. Miller, as Alien Property Custodian," in which the question was raised as to the power of the President to delegate to the Alien Property Custodian the right to make the determination of enemy status which must be the basis of any seizure of enemy property. That certainly is a power at least as important, at least as sacred, as the power to dispose of this property for war purposes according to the amendment.

Mr. Justice McKenna, writing for the Court, says:

"They decide"—referring to certain cases that he had mentioned—Central Trust Company against Garvan and Stoehr against Wallace—"they decide that the President's power under Section 5 of the Act may be delegated to and exercised by the Custodian and that the determination of the Custodian is conclusive, whether right or wrong."

And then to point to the basis for the statement, Mr. Justice McKenna puts a star after that statement, and at the bottom of the page puts the following note:

"By Section 5 the President is in terms authorized to exercise *any* of his powers"—quoting the word "*any*"—"Through such officer or officers as he shall direct."

I pass therefore from the unsupported contention that the President had no power to delegate, and come to the question of whether the delegation was a proper and valid one. The argument there is that Section 5 provides that the President may exercise any of his powers through an officer, and that in this instance the Executive order of the 3rd of December, 1918, says:

"I vest in Frank L. Polk"—without saying after "Frank L. Polk" "Assistant Secretary of State" or "Under Secretary of State," whatever his legal title was.

Now, there is no doubt that Mr. Polk was an officer, and the Courts have held that they will take judicial cognizance of who are officers of the United States. Indeed, they have gone so far in one case as to hold that they will take judicial cognizance of who is the consul in a foreign port.

So we start with the proposition that the delegation of this power was to an officer of the United States, and a high officer in the Government at that. He was not only Under Secretary of State, but during the period of the President's absence in France and Mr. Lansing's absence there, he was the Acting Secretary of State. Colonel Anderson referred to him as the "Acting President." I do not know whether he meant that in a serious or in a comic vein, but he was the Acting President in the absence of the President and the Secretary of State. So we have it that the delegation was to an officer of the United States, and he was an officer under the definition that Colonel Anderson invokes, namely, that he was the holder of an office by appointment of the President, by and with the advice of the Senate.

So we have the delegation to an officer of the United States, and we say that the omission of the words "as Secretary of State" or "Acting Secretary of State" or "Under Secretary of State" is absolutely immaterial. Indeed, we say that there is no requirement in the law that the designation or the delegation should be in writing. The President could well have called Mr. Polk to his office and have delegated the power to him verbally, and does anybody seriously contend that if the President had said: "Polk, I want you to do thus and so," that that delegation would be unenforceable, because he did not say: "Polk, Under Secretary of State, I want you to do thus and so"? The Statute says the delegation should be to an officer of the United States. Indeed, that language is subject to the interpretation that the President could by the very delegation, create that office. It does not say to an existing officer. It says that he may exercise the power or authority through such officer or officers as he shall direct.

Now, the suggestion that the President might have picked up somebody passing the White House at the particular moment and have entrusted him with this important duty is hardly worth while answering. Nobody would for a moment contend that any President would so far forget the duties of his office as to violate a Statute of Congress, or to entrust any power given to him by Congress to a person not connected with the Government at all; and while the delegation is to Mr. Polk, without mentioning his title, of course, it follows that if Mr. Polk had resigned his office, that he could no longer have exercised this power, because then he would no longer be an officer, and the Statute would not be complied with.

But there was a good reason, a very good reason, why the President did not give this power to the office of Assistant Secretary of State; he gave it to the person that occupied that office.

Colonel Anderson called attention to the fact that in all other delegations of power by the President it was a delegation to the office—the Secretary of War, the Secretary of the Navy, the Federal Trade Commission, War Trade Board. This one was to Polk.

I say the President no doubt had good reason for putting it in just that way. He wanted to know who it was that was going to exercise this executive power granted to him by Congress while he was abroad. And apparently he was unwilling to run the risk of having this power exercised by anybody who might at some particular time happen to occupy the office of Assistant Secretary of State. And who will deny that under this Statute the President was not only authorized, but indeed in the discharge of his duties he should have taken good care that that power should be exercised by a person in whom he had the utmost confidence?

It seems to me that when they say the name of the office is not appended or added to the name of Mr. Polk that that is immaterial. Would anybody claim, for instance, that the President's letter directed to Colonel Miller, the Alien Property Custodian, which is annexed as an exhibit to the Bill of Complaint here and which refers to the bringing of that suit—would anybody claim that because it is signed "Warren G. Harding" and not "Warren G. Harding, President."

that that was not an official document and an act of Warren G. Harding as President?

And so Mr. Polk, authorized by this executive order of December 3, 1918, made the two orders of February 26 and April 5, 1919. Now we shall show your Honor that when Mr. Polk made those orders he was in possession of all the facts, all of the facts that surround this transaction; that he knew the price, that he knew the person to whom the conveyance was to be made; that he knew what patents were to be conveyed; that he knew the reason for the conveyance; that he knew the purposes of the new corporation; that he knew that Mr. Palmer had arranged for the matter, and that he knew that Mr. Garvan was to be president of the new corporation.

I say he knew all that, as we shall show, and we shall show that he knew it not only through personal interviews with Mr. Palmer, but he knew it because it appeared in Mr. Palmer's report to Congress, which was submitted to Mr. Polk at the time when he was asked to sign the first order of the 26th of February, 1919.

I shall have occasion to read to your Honor a portion of that report of Mr. Palmer. I pass now to the proposition that after Mr. Polk had made these orders the President ratified them. And in that connection I say that the President knew all the facts when he ratified them; that he knew everything that Mr. Polk had known about this transaction; that he was not only in thorough sympathy with the purposes of the transfer, but that he had been conferred with as to it before the orders were made; that he knew what the purchase price was to be; that he knew what was to be conveyed; that he knew Mr. Garvan was to be the president of the new corporation.

Indeed, we shall show your Honor that Mr. Garvan was appointed by the President for the very purpose of carrying out the arrangement that Mr. Palmer had made for the transfer of these patents to The Chemical Foundation; that it was the President's purpose to have Mr. Garvan Alien Property Custodian and at the same time president of this corporation, so that the intimate touch between the corporation and the Government should be preserved. And we shall show your Honor that when Colonel Miller was appointed Alien Property Custodian, Mr. Garvan went to him and told him that he thought it was for the best interests of The Chemical Foundation and the chemical industry, and therefore for the country, that he, Miller, as Alien Property Custodian, shall be connected with The Chemical Foundation; that he offered him a directorship in the corporation and that he accepted it; that he was to be made vice-president of the corporation and he accepted it; and that Mr. Garvan, further, told him that just as soon as he was sufficiently familiar with the workings of that corporation and the purposes of it, he, Garvan, thought that he ought to step out and have Mr. Miller succeed him as president, because he thought the Administration and The Chemical Foundation should work together, and, inasmuch as he, Garvan, was not of the political faith of the present Administration, it might be better for all concerned that Colonel Miller, who was, should succeed him as president.

Now, the President knew these facts, I say, not only from personal interviews with Mr. Palmer, but from this report. And that brings me to the report, your Honor, and I am going to so far impose upon your patience as to read a portion of it, because, as I said in the beginning, the action of the Government was predicated upon this report that was the result of the investigation conducted by Mr. Choate.

We shall show your Honor that this report was made by Mr. Palmer as Alien Property Custodian, to the President. It is quite a document, as your Honor will see. The text of it is not so much, but there are exhibits which make it quite voluminous.

That report is accompanied with a letter of transmittal from Mr. Palmer to the President, and that letter is dated February 22, 1919.

Your Honor will recall Colonel Anderson brought out yesterday that the President returned to the country on the 25th of February, 1919. It will appear, I think, that this report, though the letter is dated the 22nd of February, was sent to the President about the 26th or the 27th of February.

Certain it is that on March 1, 1919, the President sent this report to Congress, and the Congressional Record shows the receipt of the report by Congress and its reference to the Judicial Committee with instructions to print it as a public document.

If, as a matter of fact, this report shows all the details of this transaction in the form of a report by the man that had put the transaction through, and the report is made to the President and the President adopts it as his own and sends it to Congress, is it a far-fetched argument to say that thereby the President adopts the transaction and ratifies and confirms it?

If in point of fact, the President knew about this transaction, and, having this report before him, which contains a full report thereof, he accepts the report and sends it to Congress, is that not in itself a confirmation by the President?

But we do not have to rely upon that, because on the 13th of February, 1920, the President expressly ratified and confirmed these transactions in the order of ratification over his own signature. And so, with your Honor's permission, I want to read to you a portion of this report to support my argument and my statement that this report contained all the details of the entire transaction, that it became a public document as early as March 1, 1919, more than a month before the first assignment of a single patent was ever made to this corporation.

And so I read from Mr. Palmer's report as follows—this appears at the end of the section of the report which is entitled "Chemical Industry":

> "The amendment of November 4th to the Trading with the Enemy Act presented for the first time an opportunity for what appears to me to be the most important piece of constructive work which has been possible in my department. Until the enactment of this amendment it had not been possible to take over German patents. These patents, as had been already indicated, formed a colossal obstacle to the development of the American dyestuff industry. Evidently they had not been taken out with any intention of manufacturing in this country or from any fear of American manufacture, which the Germans apparently thought could not be successfully carried on under conditions prevailing in this country in regard to costs and to the supply of technicians and skilled labor. Upon consideration, however, it seemed that these patents offered a possible solution for the problem, hitherto unsolvable, of protecting the new American dye industry against German competition after the war. If they were not taken out in order to prevent American competition, they must have been obtained as a weapon against competing imports.
>
> "If they were sufficient to stop importation of competing Swiss, French and English dyes, they would presumably serve, in American hands, to stop the importation of German dyes. This was particularly probable in the case of the product patents, since most of the coal-tar dyestuffs are definite chemical combinations to which a product patent is entirely applicable.
>
> "The idea was accordingly conceived that if the German chemical patents could be placed in the hands of any American institution strong enough to protect them, a real obstacle might be

> opposed to German importation after the war, and at the same time the American industry might be freed from the prohibition enforced by the patents against the manufacture of the most valuable dyestuffs. Accordingly, these considerations were laid before various associations of chemical manufacturers, notably the Dyes Institute and the American Manufacturing Chemists' Association."

The "conspirators," your Honor, telling about the whole of the conspiracy to the President and to Congress—

> "The suggestion was met with an instantaneous and enthusiastic approval, and as a result, a corporation has been organized"—

They are speaking in the past now—

> "A corporation has been organized to be known as The Chemical Foundation (Inc.), in which practically every important American manufacturer will be a stockholder, the purpose of which is to acquire by purchase these German patents and to hold them as a trustee for American industry,"—

Quoting, your Honor—

> " 'For the Americanization of such industries as may be affected thereby, for the exclusion or elimination of alien interests hostile or detrimental to the said industries and for the advancement of chemical and allied science and industry in the United States.' "

And that quoted part was taken directly from the charter of The Chemical Foundation.

> "The voting stock is to be placed in a voting trust of which the trustees are to be the five gentlemen who for months have been acting as the sales committee which passes upon sales made by my department, that is to say, George L. Ingra-

> ham (former presiding justice of the Appellate Division, First Department, New York Supreme Court); Otto T. Bannard (President, New York Trust Co.); Cleveland H. Dodge; B. Howell Griswold, Jr. (senior partner of Brown Bros., bankers, Philadelphia); Ralph Stone (president, Detroit Trust Co.), and the charter is so framed that under the patents non-exclusive licenses only can be granted on equal terms to all proper applicants, and must be granted to the United States free of cost."

Permit me to stop there for a minute to say that this Advisory Committee, consisting of the five gentlemen named, were originally appointed to this Advisory Committee by the President himself. To be sure he did not designate them as the voting trustees under this voting trust, but their official position with the Government was an official position given to them by the President of the United States, and will your Honor note also please that in this report Mr. Palmer says that The Chemical Foundation must grant a license to the United States "free of cost"?

That was written in February, 1919, before any of these patents were conveyed to The Chemical Foundation, indicating, as I have stated, and as the preamble to the free license actually shows, that that condition for a free license to the Government was one of the conditions of the original transaction and a part of the consideration.

The report goes on to say:

> "The Company is capitalized at $500,000, of which $400,000 is to be 6 per cent cumulative preferred stock and $100,000 common stock, also limited to 6 per cent dividends. The first president of the Chemical Foundation (Inc.) will be Francis P. Garvan, of the New York bar, to whose clear vision and indefatigable industry I am chiefly indebted in the working out of this plan."

Remember, your Honor, this was written in February, 1919, while Mr. Garvan was still only a Director of the Bureau of Investigation in the office of the Alien Property Custodian. He did not become Alien Property Custodian until March 4, 1919; but here is the plain statement to the President, to Congress, to the whole country, that Francis P. Garvan, was to be the first president of The Chemical Foundation.

"By Executive order obtained under the provisions of the Act"—"obtained," speaking in the past, your Honor—"obtained under the provisions of this Act, I have sold to this Company" — speaking of it again as an accomplished fact, and I dwell upon that because of the criticism that was unjustly directed against Mr. Garvan, that in this transaction he acted in a dual capacity, that he was both buyer and seller. According to this official report, the transaction was made before Mr. Garvan became Alien Property Custodian. "I have sold to this Company for the sum of $250,000"—there is your consideration expressed—

> "Approximately 4500 patents, the remaining $250,000 has been provided for working capital, so that the company may be able to commence immediately and prosecute with the utmost vigor infringement proceedings whenever the first German attempt shall hereafter be made to import into this country."

The charter of the corporation provides that surplus income is to be used for the retirement of the preferred stock and thereafter for the advancement of chemical and allied science and industry. And when your Honor reads the charter of the corporation, you find it says:

"After the full redemption of the preferred stock the net earnings of the corporation over and above such amounts as may be necessary for the purpose of working capital shall be used and devoted to the development and advancement of chemistry and allied sciences in the useful arts and manufactures in the United States."

Think of a private corporation binding itself by its charter to devote all above its running expenses, all of its profits and expenditures, for the advancement of chemical industry and science in the United States. "The price thus paid," says Mr. Palmer in this report, "was necessarily determined somewhat arbitrarily. The great majority of the patents were presumably worthless."

Permit me to stop here. Much was said yesterday about the purchase price having been arrived at arbitrarily. Well, that is no secret. We published it to the world before the conveyance was made. But what does the word "arbitrarily" mean? Does it mean any more, as Mr. Palmer will explain to your Honor, than the fact that there was no way of determining what each of these patents was worth? It was an impossibility, notwithstanding the German expert who undertook to tell your Honor here that certain fifty-eight patents were worth $17,000,000. I say to your Honor, and we shall show it, that there was no possible way under heaven to decide how much each of these patents was worth, but that all of the considerations that entered into the question of value, applied to all of the patents, in view of the purpose to which they were to be put in view of the purchaser and the way it was to use them—that that was the only way value could be arrived at. But here is Mr. Palmer in his official report saying to the President and to Congress that this consideration of $250,000 was somewhat arbitrarily arrived at because the great majority of the patents were presumably worthless.

We shall show your Honor that less than ten per cent of these forty-two or forty-five hundred patents that they talk about have ever been inquired about by anybody, have ever attracted anybody to come to us and ask us for a license to work under them. In other words, ninety per cent of them are there in our possession, apparently valueless, apparently, because of the conditions of them, because of the inability to work them, unable to attract any capital to try and make use of them.

"The value of the remainder was entirely problematical," says Mr. Palmer, "and impossible to estimate. Substantially the entire industry having combined for the purpose of this purchase it would have been impossible at public sale to find as a bidder any legitimate manufacturer."

That brings me to a comment upon the argument made yesterday by the Colonel, that he had burnt the midnight oil to try to find an authority or a reported case in which it was ever argued to a Court that because the bidders had combined, that a sale should be confirmed, in as much as there were no other bidders, and he stated that if for no other reason, for that reason this sale ought to be set aside.

The trouble is with the point of view of the Government. Colonel Anderson very justly summarized it yesterday and I will take the opportunity to read his summary of the two conflicting contentions, but substantially it was that we contend that this property was to be used for the people; but he contends that the property ought to be used for the Germans. Now, I know he did not say the Germans. Colonel Anderson would not stand up here and say that it is the purpose of the Government to return this property to the Germans. I think I shall show your Honor and perhaps even convince my learned friend on the other side, that if the Government should succeed in this suit, it is inevitable that these patents shall go back to the Germans—but that in good time.

But I say, as to the combination of the bidders, if we are right, that this was a war use of enemy property by the President under the war powers given to him in a Statute which said to him: You can do with this property anything that you could do with it if you were the absolute owner of it. If it was to be devoted, as we say to the development of the chemical industry of the country, then it made no difference whether there was a combination of bidders or no; it made no difference, just as long as the ultimate purpose was served, namely, that these patents should be placed at the disposal of the Government and the industry for the advancement of the industry and, of course, the advancement of the Government.

But here, in this public report, this "conspiracy" is revealed in its darkest hue. It is set forth that, "The value of the remainder was entirely problematical and impossible to estimate. Substantially the entire industry having combined for the purpose of this purchase,"—Mr. Palmer goes on to say: "No other bidder could, therefore, have been found on public sale except some speculative individual who might have bought them for purposes practically amounting to commercial blackmail. The combination was not objectionable to public policy"—Mr. Palmer was looking ahead almost with prophetic vision, because apparently he had in mind that someone might claim that the combination was objectionable to public policy, and so he points out that, "The combination was not objectionable to public policy since it was so organized that any genuine American, whether a stockholder of the company or not, could secure the benefits of the patents on fair and equal terms."

"It is submitted"—says Mr. Palmer—"that the organization of this institution constitutes the most important step that has been taken for the protection of the new industry. Tariff protection has proved utterly unavailing in the past. The German industry as hitherto organized, and still more as now organized, has had so much to gain by extending its foreign trade and by destroying the industry in other countries that it would undoubtedly give away its goods in this country for nothing in order to recover the American market. The Chemical Foundation, however, should prove a power sufficient to discourage in a most effective manner any German attempts in this direction. If, as their newspapers boast, the Germans have during the war worked out entirely new dyes superior to their past productions, the protection afforded by it will be invaluable."

Talk about consideration with that in mind.

"It has been the uniform experience of the industry that the introduction of new classes of dyestuffs follows only several years after the patenting of the original inventions on which their manufacture depends. Accordingly, the later dyes of today depend largely upon the patents of three or four years ago. The patents transferred to the Chemical Foundation include many German patents of 1917 and even of 1918, and also many applications still pending. These patents undoubtedly include the results of the research upon which must be based the manufacture of any new dyes which the Germans are now able to produce and market. Accordingly, at the very least, the institution will be able to protect the American industry for a considerable period, and this should be all it needs. It appears to be the universal view of the more competent manufacturers in this country that, given five years of freedom from German competition, the American industry can hold its own. Probably only a measure such as the embargo which appears to have been imposed by the British and French against all foreign dye importations can furnish this protection to the degree necessary to insure the safety of the American industry; but short of such an embargo, the Chemical Foundation would seem to furnish all the aid that possibly can be given.

"At the same time the new institution promises an incalculable benefit not only to the dye and chemical industries but to the whole American manufacturing world. The opportunities which it can offer and the rewards which it can hold out to competent research scientists should far exceed those of any institution unconnected with industry, and it may well, therefore, form the nucleus of the greatest research organization in the country."

Now, that report, your Honor, was before Mr. Polk when he put his pen to the paper to sign his name to the first executive order, namely, the one of February 26, 1919. And who shall say that with that report before him there was a single essential fact in connection with this transaction that was not laid before him?

When the President ratified Mr. Polk's orders on February 13, 1920, he had not only learned from personal interviews with the Alien Property Custodian all about this transaction, but he had had this report before him before March 1, 1919, when he sent it to Congress; and we shall show that when the President went abroad early in March, 1919, Mr. Palmer was careful enough to see to it that a copy of this report was given to a gentleman in the President's party, with instructions to see to it that the President got it and read it on the way over; and we shall show that the President did read it and knew all about it before he ratified this act.

Was there any concealment about this transaction? Did the Alien Property Custodian and these "conspirators," of the American Dye Institute, go somewhere and lock themselves in a room and put this transaction through?

Is it the act of people that are acting not in good faith to publicly set forth in a public document and publish to the world every detail of the transaction? Or does it show that everybody concerned in this transaction was actuated with the highest motives, that their interest was solely for the good of the Government and the people?

But they say that the President had no right to ratify. They say that Mr. Polk's order was a nullity and was void; and that there are authorities to the effect that you cannot ratify a void Act.

There is a difference in law between a void act and an unauthorized act. We do not concede that Mr. Polk's act was unauthorized, but assuming for the purposes of the argument that it was, it was an act that the President could have performed himself, and it is well recognized law that you can ratify anything that you could have done yourself.

The Supreme Court in Marsh versus Fulton County, 10 Wallace 676, says:

> "A ratification is in its effect upon the act of an agent equivalent to the possession of him by a previous authority. It operates upon the act ratified in the same manner as though the authority of the agent to do the act existed originally."

This act of Mr. Polk, even assuming that the delegation was inoperative because his official title was not added to his name, was at most unauthorized, and the President had a perfect right under the law to come back and say, "I adopt it and ratify it because I myself could have done the act." It is far different from a transaction which is void *ab initio*. A man may not be able to ratify a forgery, for instance.

Moreover, as to the President's knowledge of the situation of the chemical industry, I desire to direct your Honor's attention to something that your Honor will take judicial cognizance of, namely, a message of the President to Congress. Bear in mind, your Honor, that the President was abroad between March and, I think, September, 1919.

Mr. Anderson: June.

Mr. Kresel: Was it June?

Mr. Anderson: Late in June.

Mr. Kresel: Late in June, 1919—and indicating that he was fully alive to this chemical situation, I quote from a message of the President to the Congress sent by wireless when the Congress was considering tariff legislation. It is under date of May 20, 1919. See how closely in touch he was with the situation. He was over there trying to make peace. The President says this:

> "The experiences of the war have made it plain that in some cases too great reliance on foreign supplies is dangerous and that in determining certain parts of our tariff policy domestic considerations should be borne in mind which are political as well as economic. Among the industries to which special consideration should be given is that of the manufacture of dyestuffs and related chemicals. Our complete dependence upon German supplies before the war made the interruption of trade a cause of exceptional economic disturbance. The close relation between the manufacture of dyestuffs on the one hand and of explosives and poisonous gases on the other, moreover, has given the industry an exceptional significance and value.
>
> "Although the United States will gladly and unhesitatingly join in the program of international disarmament, it will nevertheless be a policy of obvious prudence to make certain of the successful maintenance of many strong and well-equipped

> chemical plants. The German chemical industry, with which we will be brought into competition, was, and may well be again, a thorough monopoly capable of exercising a competition of a peculiarly insidious and dangerous kind."

Think of that language from President Wilson abroad, sitting at the peace table, face to face with the Germans, trying to arrange an end of a war that had drenched the world in four years of bloodshed! He was thinking, not of reparations; he was thinking of what could be done for that key-industry in our country, which is the basis of the explosives, the poison gas—the dye industry of the country; the industry that any nation that wants to survive must have in the future; and he, a Democrat and not a protectionist, was advising a Democratic Congress that in considering tariff legislation, they must take care to protect this key industry, because he saw with almost supernatural vision that therein lay the safety of the country; that the dye factories were the potential arsenals of any future war. Can it be denied that when he, eight months thereafter, ratified this very act of the transfer of these patents, he did so with a complete and full knowledge of the importance of the step and the purpose that it was sought to subserve?

But, then, they say—true there is a confirmation by the President, but the confirmation does not confirm everything; that the confirmation covers only the conveyance of certain choses in action. Well, I shall not spend much time in a discussion of that, except to point to the language of the confirmation, and it reads as follows. Your Honor will please turn to page 119 of our Answer—I shall read only that part of it which covers the confirmation of previous parts. It says:

> "The Alien Property Custodian is also hereby authorized in the case of sales heretofore made by him of any property which he is hereby authorized to sell, but as to which his authority to sell the same under the said orders of February 26, 1919, and April 5, 1919, may be deemed doubtful to confirm and ratify the said sales by the execution and delivery of a suitable instrument of confirmation."

It may well be, and we may admit, that some of these instruments might have been better drawn. It may well be, and we may now admit, that if we had had in mind that any administration would ever come into a Court to seek to set aside this transaction, we would have been more careful in crossing our t's and dotting out i's in this transaction. We would have acted as conspirators would act. We would have taken no chances with instruments of ratification and confirmation. We would have seen to it that there could not ever be a semblance of an argument based upon what they please to call the dual position of Mr. Garvan, both as president of The Chemical Foundation and as Alien Property Custodian. But the very fact, your Honor, that they are able to point to these so-called imperfections in our coat of armor indicates the good faith in which we were acting. This was not a transaction at arm's length between the Government and some outsider. This was a transaction between the Government and its own creature. We say this Foundation is as much a creature of the Government as the Sugar Equalization Board, for instance, was during the war, where they organized a Delaware corporation and took all the stock into the United States Treasury.

> "This ratification and confirmation ratifies any sales heretofore made by him of any property which he is hereby authorized to sell, and

> he is hereby authorized to sell all choses in action, the rights, interests and benefits under agreements and rights in claims of every character and description which the Alien Property Custodian may seize."

If we are going to split hairs and stand on narrow legal constructions, "choses in action" certainly include patents. The Courts have held that a patent is a chose in action. What more is it than the basis upon which a litigant can go into a Court and seek its relief against an infringer? But is there any question but that the parties interested in the transaction from the President down understood that it was the purpose by this instrument to ratify the sales made under Mr. Polk's orders? The orders are mentioned and described by dates—February 26th and April 5th—and the February 26th one covered all the patents; and then under the power thus granted to him by the President, the Alien Property Custodian did execute an instrument of confirmation, which in its terms has not been criticized; which is an instrument that directly and specifically confirms every transfer of patent application and copyright that had theretofore been made by the Alien Property Custodian to The Chemical Foundation.

Now, your Honor will have observed that I have confined myself strictly to a discussion of facts. It had been the intention, and if your Honor desires it, it will be carried out, to have Mr. Guthrie outline to your Honor the questions of law that are bound to arise in this long trial; but owing to the length of time that your Honor has devoted to hearing opening statements of counsel, we thought that perhaps it would be better if I were to outline to your Honor the most important question of law from our point of view that will arise in this case. I say it is the most important, but I say at the same time that it is not the only one, and the question that we present to your Honor is—that this is a case that involves an exercise of the power by the President over which the Courts have not jurisdiction and which they have heretofore declined to review. Expressing it in more formal language, it is what is known in the law as a non-justiciable question. It is the exercise of power by the President under a war act, the exercise of a discretion that was committed to him by Congress, which the Courts heretofore have held to be a matter with which they will not interfere, and if you will bear with me, I will call your attention to two or three of the leading cases on the proposition; and I am happy to say that we have been able to find a decision made by this Court involving the same question.

In the first place, it is now settled by the decision of the Supreme Court in Stoehr vs. Wallace, in 255 U. S., that the Trading with the Enemy Act is strictly a war measure and finds its sanction in that provision of the Constitution which empowers Congress "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." And may I be pardoned if I quote the language of President Wilson in connection with the purposes of this measure in this war, when he said that "this is a war of resources no less than of men, and perhaps even more than of men."

The Courts have also held that the Armistice did not put an end to the war and have expressly pointed out that the Trading with the Enemy Act survived the war. This was decided by the Supreme Court in the recent decision that I quoted this morning, Commercial Trust Company of New Jersey vs. Miller, decided at the October term of the Court on April 23rd of this year.

Congress gave the President power to decide whether a public sale of enemy property should or should not be had in accordance with what the public interest required. He decided in this case, as he did in many other instances, that there should be a private sale. It is our contention that the Courts will not review that decision either upon the question as to whether it should or should not be a private sale or upon any other question involved in the transaction—conditions, price, terms, time or place; the decision under the Act of Congress lay with the President in the exercise of a war power which the Courts hitherto have held to be beyond the power of the Courts to review.

The first case, the leading case upon this proposition, is, as your Honor no doubt well knows, the case of Martin vs. Mott, in 12 Wheaton, at page 19, in which Mr. Justice Story wrote for the Court. In that case the Courts were asked to review the exercise of the President's discretion as to whether such a situation existed in a particular state as to authorize the President to call out the militia. The Supreme Court said no, that that was the exercise of a power entrusted to the President under the Constitution which the Courts would not review. And before I read the extract from the opinion of the Court, if your Honor will reflect, you will see the wisdom of the rule of law established by the Courts in this particular.

The President acts in matters of state upon many considerations and things that might be utterly ruinous to the country's interests to divulge. He acts upon information that comes to him in a confidential capacity that might be more injurious to the country to disclose than it would be to carry through the act complained of. The President cannot be dragged into a court of law or equity to give account, to state the reasons which actuated him in taking some executive action in a matter entrusted to him by the Constitution or the Statute.

But the Court expressed it in much better language than I can. Mr. Justice Story said:

"Is the President the sole and exclusive judge whether the exigency has arisen, or is it to be considered as an open question upon which every officer to whom the orders of the President are addressed may decide for himself and equally open to be contested by every militiaman, who shall refuse to obey the orders of the President? We are all of opinion that the authority to decide whether the exigency has arisen belongs exclusively to the President, and that his decision is conclusive upon all other persons. We think that this construction necessarily results from the nature of the power itself and from the manifest object contemplated by the Act of Congress. While subordinate officers or soldiers are pausing to consider whether they ought to obey or are scrupulously weighing the evidence of the facts upon which the Commander-in-Chief exercises the right to demand their services, the hostile enterprise may be accomplished without any means of resistance. Besides, in many instances the evidence upon which the President might decide that there is imminent danger of invasion might be of a nature not constituting strict technical proof or the disclosure of the evidence might reveal important secrets of state which the public interest and even the safety might imperiously demand to be kept in concealment. The law does not provide for any appeal from the judgment of the President or for any right in subordinate officers to review his decision and in effect to defeat it. Whenever a statute"—here is the language: "Whenever a statute gives a discretionary power to any person to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts.

"And in the present case we are all of opinion that such is the true construction of the Act of 1795. It is no answer that such a power may be abused, for there is no power which is not susceptible of abuse. The remedy for this, as well as for all other official misconduct, if it should occur, is to be found in the Constitution itself. In a free government the danger must be remote, since, in addition to the high qualities which the executive must be presumed to possess, of public virtue and honest devotion to the public interests, the frequency of elections and the watchfulness of the representatives of the Nation, carry with them all the checks which can be useful to guard against usurpation or wanton tyranny."

And then your Honor will certainly recall your Honor's own decision in Dexter & Carpenter, Inc., v. United States, reported in the 275th Federal Reporter, at 566, in which your Honor was called upon to construe the President's power under the so-called Lever Act:

Acting under the Statute, the President had taken the plaintiff's coal for the use of the governmental operated railroads. The language of the act there in question read, that the President was authorized to requisition fuel if necessary, to the support of the Army or the maintenance of the Navy or any other public use connected with the common defense. May I stop there a minute to look back at our own Statute that we are here considering?

When Congress, by Section 12, said to the President: We give you the power to dispose of this enemy-it was necessary for a public use or connected with the owned property by sale or otherwise, and we give you the power to exercise any rights or powers which may be or become appurtenant thereto in like manner as though you were the absolute owner thereof—when that power was given to the President to exercise in his discretion for the purposes disclosed by the records to which I referred this morning, for the purpose of rooting out these German industries, for the purpose of winning the war, enacted at a time when we were in the thick of the war, it is certainly parallel to the power given to the President here to seize coal necessary to the support of the Army or the maintenance of the Navy.

In that case the plaintiff failed to allege in its petition for reasonable compensation for the requisition of coal, that the coal was in fact taken because common defense, and therefore a demurrer was interposed to the complaint.

Your Honor overruled that demurrer and your Honor declared that the railroads were being operated as a war measure and as part of the common defense, and then your Honor added this significant language:

"It clearly appears from the petition that the executive branch of the Government had legal power and authority to take coal for a public use connected with the common defense and that the plaintiff's coal was taken for that purpose. Whether the taking was necessary was for the exclusive determination of the executive branch of the Government," said your Honor, "and its decision upon that matter is not subject to judicial review and consequently is not here in issue."

In this case Congress confined to the President the decision whether or not it was necessary to dispose of this property, and in what way, in the exercise of this war power and in the conduct of the war; and he was to decide it as the Commander-in-Chief of the Army and Navy. And we say that whether his decision that it was necessary to dispose of this property in the way that he directed it should be disposed of is, in the language of your Honor, "for the exclusive determination of the Executive and a matter which is not subject to the review of the Courts."

One other very good decision on this point, your Honor, is found in the late case of Commercial Cable Company versus Burleson, reported in 255 Fed., at page 99. That also involved a question of the exercise of a war power, namely, the seizure by the Government of the Commercial Cable Company's marine cables.

In that case the President was acting under a joint resolution of Congress, which provided that the President could take possession of the cables during the war, "whenever he shall deem it necessary for the national security or defense." There again was the delegation of an authority to the President for him to determine when the national interests required the exercise of that authority; just as was provided in this case, that the President was not only to have all the powers of an absolute owner, but he had the power to decide whether in the public interest it was advisable to dispose of the property in one way or another.

In the case I am discussing the cables were seized five days after the Armistice was declared. In the Bill of Complaint, the plaintiff denied, in view of the Armistice, that there was any necessity for the seizure of the cables. The case came up for decision before Judge Learned Hand of the Southern District of New York, for whose opinions I know your Honor has the greatest respect. The Court dismissed the Bill upon the ground that it involved a non-justiciable question, and in its decision said:

> "Did Congress intend to bestow upon the President possession at his mere assertion that he wished it?"

He answers that question:

> "Without doubt. The language of the resolution is that he may seize the cables whenever he shall deem it necessary. His conclusion is the single condition."

The language here that we are concerned with says, not only that he shall have the powers of an absolute owner, but also that if he states the reasons therefor in the public interest, and so determines, the property shall be disposed of as he directs.

> "The occasion lent color to this interpretation," says Judge Hand. "The war was at its height, the nation was using every energy and resource towards its effective prosecution. The President as its executive head was responsible for its success, and the purpose of concentrating in him a power commensurate with that responsibility was obvious in all contemporary legislation."

Who shall say that the condition of this country in March, 1918, in the darkest days of war, were not such as to induce Congress to place into the hands of the President every weapon that it could lay its hand to with which to smite the enemy? If it were true that five days after the Armistice was declared the President's declaration that it was nevertheless necessary to take over the cables was beyond question by the Courts, who will say that a power granted to the President under the circumstances that I have detailed, if the President makes the determination, is nevertheless a question that the Courts can review?

Judge Hand says:

> "That Congress should have contemplated the possibility that he should be compelled"—meaning the President—"at the suit of an individual to disclose and justify the reasons for his act is be-

> yond possibility. He had to act quickly, certainly, and without the counsels of Courts and private interests. Indeed, it would be a limited comprehension of the scope and variety of modern war which limited its activities to the immediate theatre of military operations. The espionage system of the enemy, we are told, was not limited to belligerents."

At least, it may be so, and if there is any proof in this case we shall present to your Honor it will be proof to substantiate the truth of that statement—that the espionage system of the enemy in this late war was not confined to the belligerents in the theatre of war.

> "Provisions for supplies and material could not be made without an eye to the resulting scarcity at home and the available substitutes abroad. In a war which has called for the last resources of the belligerent powers, and where the United States was in active military co-operation with many of these belligerents, it is quite impossible to say that means of telegraphic communications anywhere in the world were not appropriate to its prosecution. If the President, who by virtue of his office was charged with the successful conduct of the war, decided that any such means were necessary, his decision was final. . . .
>
> "Again, as in assistance to the conduct of war, if the cables be appropriate to a discharge of the President's constitutional duty, the number seized and the service rendered under governmental operation is not open to examination. The decision may be wrong; it may even be actuated by purposes other than those intended by Congress; but the relief is not from judges. The considerations which might dictate it are so obviously political in character as to preclude the possibility of their public disclosure or of their judicial determination. If possible, they are more foreign to the questions which courts may settle

than those determining the propriety of the seizure of an instrument of active warfare."

Now, I shall go no further your Honor, in a discussion of this question of law. My sole purpose is to bring it sharply to your Honor's attention.

In our argument upon our motion to dismiss the Complaint, we will, of course, argue all points involved. As I said, we will argue that motion today after the closing of my opening, or we will defer the argument, just as your Honor desires; but lest your Honor decide that you prefer to let the argument stand over until the evidence is all in, we thought it advisable to direct your attention to this basic question of law that lies at the root of this case; namely, that what is here involved is an application to a Court of Equity, to review the decision of the President, made by him in connection with the exercise of a discretionary power vested in him by Congress, by a war act passed in the heat of the war and carried out for the purpose of fighting the war.

With that statement I resume the consideration of the transaction here involved, and the next point that I desire to discuss is the question of the price paid for this property. We shall show your Honor that when it was determined to convey these patents to a corporation organized upon the lines that have been outlined and the industry represented by this American Dyes Institute was taken into conference and consultation, it was not a question of how much can be realized for these patents at public auction, because for the reasons that I have already discussed a sale of these patents at public auction was unthinkable. It was not practical. It could not be done. It was a physical impossibility. It probably would not have realized $10,000. It would not have realized enough to cover the expense of the sale; but the industry said, as will be shown: We can raise only so much money. They said they could raise $500,000; and as Mr. Palmer pointed out in his report to the President, $250,000 of that sum was reserved for the purposes of the corporation, and the other $250,000 was paid in as a part consideration for the patents.

Now, of course, if this had been a transaction between two parties dealing at arms' length, the fact that the purchaser needed his money for some other purpose would have been immaterial to the question of price to have been paid; but we say to your Honor, and we shall always contend, that this corporation is not a mere outsider; that this corporation was conceived and was intended to be an agency of the Government; that it has acted in that capacity; that the Government has recognized it in that capacity; that when the Government wanted patents seized, they went to the Custodian and told him to seize them and give them to The Chemical Foundation, and then they took a license from The Chemical Foundation, and when parties deal in that way, the monetary consideration to our mind was the least important, and for the reasons that I have stated, the amount of $250,000 was agreed upon.

Now, Colonel Anderson said yesterday, and repeated it twice, that at the preliminary conference between representatives of the American Dyes Institute and representatives of the Alien Property Custodian, when they did not even know how many patents were to be seized, somebody said a thousand, and somebody said three thousand, that at that time the price of $250,000 was mentioned or determined upon, and I take it that he mentioned that and emphasized it as indicating that the parties really did not care how many patents they were getting or would get for this price.

Now I think Colonel Anderson is in error. I have read, since I heard him speak, the stenographic report of the conference that he mentions and I find no mention of any $250,000 by anybody. There is discussion as to how many patents there were to be. It was said by some one man that it was a thousand, and by another that it might be three thousand; but Colonel Anderson will find upon reading the record, that he was in error when he said that the price of $250,000 was at that time either discussed or determined upon.

But I say that aside from that, from our point of view, the monetary consideration here was the least important of the considerations. It was the public use to which these patents were to be put. That was the real consideration that passed to the Government; but if we consider, your Honor, the elements that enter into the consideration, even if we look at this transaction as between two parties dealing at arms' length, I say, and I repeat, that the price of $271,850 that was paid for these patents was the full price, and the full value of these patents, notwithstanding Dr. Karl Holdermann, who said that some of them were worth $17,000,000. And may I say here in passing, when I talk of Dr. Karl Holdermann, that his estimate of the value of these Haber process patents, not only that it was based, as your Honor will recall, upon German, not American conditions, but that in the almost three years—no, the three and a half years that the Chemical Foundation has owned those patents, its sole return thereon has been the munificent sum of $900. Patents worth $17,000,000, says this man—and if you are to judge the value of a thing by its return,—you have had our books, and you have seen how much we have been able to realize on licenses under those patents.

But I am not going into a specific discussion of these patents your Honor. As the testimony comes in and is developed, your Honor and all of us, when we are through here, I hope will know more about chemistry than we know now; but the fact is that when these people, when the Chemical Foundation was considering what should be paid for these patents, here are the elements that have to be taken into consideration: First, that the company was obligated to issue non-exclusive licenses. Now, what is a patent worth that does not give you a monopoly? A patent in its very nature is supposed to be a monopoly; and Colonel Anderson argued yesterday in support of that policy of the Government, which gives to a patentee a monopoly; when we took these patents, we took them with the obligation to issue non-exclusive licenses to any American whether he was a stockholder or no. Where then is the value of the monopoly if we are compelled to let anybody work under the patent, where is the value of the monopoly? When you buy a patent—and we shall show this from the mouths of witnesses who know, the valuable thing that you get is not the text of the patent. That you can get from the Patent Office without paying any more than the fee for transcribing it.

What you get with the patent is what they call the "know-how," the practical way of putting the patent into operation. When The Chemical Foundation took these patents they did not get the know-how; the Germans had it locked in their breasts and would not give it up. When we took these patents we took them subject to licenses that had been issued by the Federal Trade Commission. We shall show your Honor that as to the important patents covering salvarsan there were five licenses outstanding. We could not interfere with those licenses. Under the law the Federal Trade Commission had a right to issue them and the licensees had a right to operate under them, and we had to take the patents subject to those licenses. The Federal Trade Commission had issued licenses upon many of the important dye patents likewise, and we had to take the patents subject to those licenses.

When you buy a patent ordinarily, you get what you would get when you buy a piece of real estate, a warranty deed, practically—a warranty that the patent is good, valid. We got no such warranty deed from the Government; we took the patents for what they were worth.

When we took these patents we took them for an industry that was not well prepared to operate under them except by the building of plant, by the prosecuting of research and exploration. That we shall show your Honor entailed the expenditure of almost untold millions of dollars; and when you come to consider the value of a patent you must consider the market that you have for the patent. I grant that these patents were very valuable to the Germans. Indeed they were. Using them as they had been using them, exercising a monopoly as they had been, of course, they were very valuable to them. But when you look at the other side of the picture, with an undeveloped chemical industry, with no personnel, no chemists, no skilled men, nobody who knew anything about these patents, the patents not freely disclosing the information sufficient to use them, without the "know-how," the value of the patents was an entirely different consideration.

The result has shown that what was paid for these patents was all they were worth. Of the forty-two or forty-five hundred patents only about ten per cent of them have ever been applied for by anybody for licenses. Everybody knows, the Government I am sure will concede, that thousands of the patents that we took over were absolutely worthless. The result shows that of the forty-five hundred only ten per cent have been used and the balance are worthless.

They said yesterday just see what a fraudulent transaction this was; they paid $250,000 and there was almost that amount of money—anyhow, I think Colonel Anderson said $250,000 in accrued royalties. It was, he said, as if you bought a business for $250,000 that had in its cash treasury $250,000 in money.

Now, if Colonel Anderson does not know, I am glad to inform him now: First, that the Chemical Foundation never received accrued royalties. Second, that it never wanted the accrued royalties; and third, that if there is any question about it, we have notified the Alien Property Custodian that we do not claim those accrued royalties.

I have before me here a copy of a letter written by The Chemical Foundation to Colonel Miller, the Alien Property Custodian, dated May 23, 1922, which was before this litigation was instituted, wherein we say as follows:

"Dear Sir: As you are no doubt aware, Section 10 of the Trading with the Enemy Act provides that suit to recover compensation for use and enjoyment under licenses granted by the Federal Trade Commission may be brought within one year after the end of the war, which date has been fixed as July 2, 1922. The Chemical Foundation, Inc., as owner of various properties under conveyances from the Alien Property Custodian is now preparing and will file before said date suits to recover such compensation from the licensees of said properties. After careful consideration of the provisions of the Trading with the Enemy Act the Foundation has determined to make claim only for such compensation as has accrued since the respective dates of the conveyances of such property by the Alien Property Custodian to the Foundation. It disclaims all rights to compensation under such licenses prior to such dates."

And two days thereafter, Colonel Miller acknowledged the receipt of this letter.

The Court: What is your desire, Mr. Kresel? I see it is now time for our usual adjournment. Is it your desire to conclude your argument this afternoon?

Mr. Kresel: I should like to conclude, your Honor, and I think I can do it, if your Honor will give me a half hour.

The Court: Is there any objection on the part of the plaintiff?

Mr. Anderson: No, there is not.

The Court: You may proceed.

Mr. Kresel: Colonel Anderson also said yesterday that The Chemical Foundation had earned $1,300,000 on these patents. Well, Colonel Anderson is misinformed. His accountants have been over our books, and they know exactly what we have received. The total amount that has been received up to December 31, 1922, is $660,000. I am not giving the exact amount. It is a few hundred dollars more or a few hundred dollars less; and of that amount we shall show your Honor, when we come to put in the figures, that a large majority was realized not from manufacture in this country, but from the Germans, who imported under certain conditions some of the articles that are covered by these patents.

Now, I will pass over without much comment the argument of Colonel Anderson, that the Government being a trustee of this property, could not by giving a free license to somebody, thus depreciate the property, and he gave that very graphic illustration, of the trustee who held a piece of property and then dedicated it for the use of a park and then sold what was left.

Well, the difficulty with that illustration is that in this case even if we consider the Government to be a trustee in any other sense than an officer is a trustee, what was given away was given to the *cestui* *que trust.* In other words, the free license that depreciated the value of these patents was a free license that was given to the Government.

And Colonel Anderson repeatedly stated in his argument that the President and the Alien Property Custodian were trustees for the Government of the United States.

I think I have already sufficiently covered the point that is made that Mr. Garvan acted in a dual capacity. If I have not, may I simply point out this one fact—that Mr. Polk's order is dated February 26, 1919; that Mr. Garvan did not become Alien Property Custodian until March 4, 1919; that Mr. Palmer's report is dated February 22, 1919, made public and was sent by the President to Congress on the 1st of March, 1919, when the transaction was spoken of as a completed fact, and that it was not until the 4th of March thereafter that Mr. Garvan became Alien Property Custodian. And all that Mr. Garvan did in this connection was to carry out a transaction that had been agreed upon, and carried out to a certain extent by the issuing of the executive order, carrying out a transaction that his predecessor had agreed upon, and the conditions for which had all been laid down and agreed upon.

They say Mr. Garvan is president. Yes, he is. They say Mr. Choate, who was connected with the Alien Property Custodian, is general counsel for The Chemical Foundation. He is. And so is Mr. Hoguet. And I say that it was the purpose of the Administration, the President, Mr. Polk, that this corporation should be officered by men who were connected with the Alien Property Custodian. That it was done purposely in order that it might be administered in the way that the Alien Property Custodian felt it should be administered, in order that it may be administered upon the lines and conditions laid down in the original agreement.

And we shall show your Honor that what induced the President to appoint Mr. Garvan Alien Property Custodian was his connection with this transaction, and the purpose that the President had in mind was to see to it that this transaction was carried out in the spirit in which it was conceived.

Now, they criticize the form of the assignments of the patents. They point out that notwithstanding the provision in our by-laws and in our certificate of incorporation, that we were to issue non-exclusive licenses; that we were to give the Government a free license—notwithstanding all that, the first assignment drawn says that it is without any conditions and specifically that it was without any conditions laid down in our charter. And they point it out as an evidence that all this business about these other conditions were either afterthoughts or that no one intended to carry them out.

Your Honor is familiar with the doctrine of patent law that no holder of a patent can come into Court to prosecute any one upon a charge of infringement if he is not the whole owner and the absolute owner without conditions of the patent. Your Honor no doubt has had occasion to refer to the case of Mackenzie versus Waterman, which strictly lays down that doctrine that no one can be heard to prosecute an infringer who cannot show that his title is complete and that there are no outstanding rights in the patent to any one else.

We shall show your Honor that our reason for that stipulation in this particular assignment was that the Custodian was advised that if the conditions—namely, non-exclusive licenses, a free license to the United States and the other conditions that I mentioned there—were put into the assignment, there were two dangers: First, that it might be claimed that there was some residue of interest in these patents remaining in the Government or the Alien Property Custodian; and, second, that if there were such a residue of title remaining, after the war it would go back to the Germans and we would be in a position where, whenever we sought to protect these patents, we would have to deal not only with the infringer, but with the Germans.

We shall show your Honor, of course, that notwithstanding that reservation, the conditions were complied with, as I have already shown, the license was given, that we have issued non-exclusive licenses; and, moreover, when Mr. Garvan came to make his confirmatory assignment pursuant to the ratification of the President, your Honor will find that in that assignment there is no statement that the transfer is made without any conditions and notwithstanding the provisions of our charter.

And so I say to your Honor that we have performed our trust, we have given the license to the Government, we have released the Government from any claims for infringement, we have issued non-exclusive licenses to every American, we have put the stock in a voting trust, we have devoted our income to education, we have served no selfish interests, we are carrying out our trust as laid down in our charter, our stockholders have received no monetary return upon their investment, and even the Government does not claim that this was a money-making scheme or arrangement.

But if we have not carried out our trust, if, as the Government claims, our charter is indefinite, if under it, were we so minded, we could avoid the trust, if the people who are now in control of the corporation should they be succeeded by others who are less public spirited, might turn it away from the lines that have been laid out—we say here what we have repeatedly said before congressional committees, that we submit ourselves to the Court, that we will follow any suggestion or any judgment of this Court for the amendment of our charter, for making more absolute, positive and binding, if you please, the trust relationship that we have undertaken.

There is one thing we will not do: We will not give up these patents unless this Court says we must. Because we know that if we give them up they are going back to the Germans. The situation today, your Honor, is that the chemical industry is almost a self-sustaining industry. We are making about 90 per cent of the dyes required in this country. Indeed, a man whom I consider to be perhaps the best informed man on the subject, has said that if Germany never manufactured another pound of dyes and never sent another pound of dyes into this country, we would not miss it.

We have so far progressed here under the embargo which the Government granted, under the high protection which now exists, under the power to use these patents, that we are now practically independent of Germany. Where there were four or five assembling plants in 1914, I think the Tariff Commissions' Report shows there are now about 160 dye manufacturing concerns in the country.

But, your Honor, while we are free of the German domination of our industries, while Germany can no longer inflict upon our sick the misery that they were subjected to when Germany placed her embargo upon the importation of pharmaceuticals in this country, while our national safety is assured since we now have a self-sustaining dye industry which, just as the Germans did in 1914, can be turned into arsenals if, the Lord forbid, we should ever again go into a war—all this freedom from German domination, all this independence of German monopoly, all this assurance and safety from German poison gas warfare, dearly bought as it has been, would vanish in an instant should the day ever come when Germany could re-establish her chemical industry and her control thereof in the United States.

That she will do, your Honor, just as certainly as the night follows the day, should she ever get these patents back. Give these patents back to Germany and she will again be in a position to dictate to our industries, to snatch the drug that heals from the lips of our sick, and to throttle us with her poison gases.

If your Honor please, it is not for us to question the motives of the Government in bringing this suit. We may assume that the Government is acting in the utmost good faith. But it is true, nevertheless, that if a decree in this case is entered in favor of the Government, the inevitable result will be that these patents will go back to the Germans. And I shall show your Honor why. Under our treaty with Germany, as Colonel Anderson pointed out, we are obliged to hold German property until Germany makes reparation for our claims and the claims of our citizens.

Colonel Anderson said that Germany has not complied with that condition, but he cannot have forgotten that there is today sitting in Washington the Mixed Commission that is considering claims against Germany, and that sooner or later Germany will supply the necessary funds with which to meet those claims. There is no Statute of Limitations under the treaty. There is no period of time within which Germany must do that. Certain it is that if we are to observe our treaty with Germany, if these patents are to be returned to the Government, the Government cannot sell them. They have to hold them until Germany satisfies our claims.

It is no longer possible to utilize the agency of the Federal Trade Commission to issue licenses under these patents, because the power to issue licenses under the Trading with the Enemy Act is specifically given only during the war, and the war is at an end. The Alien Property Custodian has now neither the authority nor the facilities to issue any licenses under these patents. Congress alone can, by legislation, take this property and put it to any other uses than return it to the Germans.

The Germans know that if a decree ever passed in favor of the Government in this suit, and the Government got these patents back, that the Germans will have them. The Germans are watching this litigation with the keenest interest.

THE COURT: Mr. Kresel, I am wondering what the judiciary has to do with that matter. I do not want to interrupt you, but it seems to me a matter which we can probably clear up at the threshold of this case. Is not the question before me merely as to whether or not The Chemical Foundation is entitled to these patents under the orders and assignments which were made and which are recorded in the Bill and are exhibits to the bill and the answer, and not what disposition Congress or any other Department of the Government would make of these patents, should the decree of this Court be to set aside the assignments herein granted?

MR. KRESEL: I think your Honor is quite right, that the main question here is for your Honor to decide upon the basis of the transaction as originally made whether the Government is entitled to a decree. I am speaking of the effect of such a decree in its reflex relation, and in the light that it throws upon the purposes of the Administration when it entered into this transaction.

I am speaking of it as indicating, your Honor, why it was considered important by the President and his advisers to do with this property what was done with it; and I am pointing out what may be the effect if this Court should undertake to undo the transaction. I was almost through with that end of it, your Honor.

THE COURT: Very well.

MR. KRESEL: But I am quite willing that your Honor should interrupt me.

THE COURT: I misunderstood your argument, and I rather thought it was indicating a principle or a thought that the Court should take into consideration in reaching a conclusion as to the wisdom——

MR. KRESEL: No, your Honor. I can not urge that upon the Court. I wish I could. I do not think that the Court's decision can be influenced one way or the other by a consideration of what the effect will be.

I had but one other thought, if your Honor please, that I wanted to suggest, and that was, that I am in agreement with Colonel Anderson in his admirable statement of the incompatibility of the theories regarding this case which are entertained by the Government and by the defendant.

I said earlier in my statement that I would read what Colonel Anderson said. I read from page 659 of the record. He says:

> "Your Honor will observe that there is therefore a distinct point of cleavage in the fundamental conceptions of this Act, which we will at the proper time argue, without direct reference to its specific terms and the production of authorities thereon, but those two theories are incompatible, for the obvious reason that if the Trustee is clothed with the usual obligation—common law or otherwise, whatever they are, on the Trustee, whether he be the President or any other officer, his high and first duty is to look to his trust estate and the benefit of the persons interested in that trust estate, as Congress may determine; that is, the question of the conduct of the military operations of the war or commercial operations, do not

concern him. They are for Congress. He is not the General Staff. He is not to determine what will win the war. He is not to consider the interests of American industry."

Now, I say that our conception of the question involved here would be admirably stated if in every one of these phrases where the word "not" occurs, you would strike out the word "not." I say that it was not the prime duty of the President during the war to consider how he can get the last dollar out of this property for the Germans; I say his highest duty was to find how to win the war. I say his highest duty was that of Commander-in-Chief of the Army and Navy. I say that when Congress gave him this power under the Act of March 28th, it was a power that was given him in order to win the war, not a power given to him in order to get the last dollar out of this property.

I say that upon that issue, so clearly drawn by Colonel Anderson in his admirable statement, we are ready to submit this case to your Honor.

I need not say that I am greatly indebted to your Honor for the patience that you have exhibited in listening to me these four or five hours, but your Honor can not overestimate the importance of this litigation that is now before you.

It is important to the Government. It is important to the defendant. We have deemed it necessary to outline at this length our views of this case, because we think it is of service to your Honor that you should have a clear conception of our contention, so that you may be able properly to weigh the evidence as it will come in here.

It is bound to be a long trial, and we want to assist your Honor in keeping your Honor's mind directed to the real considerations of this case; those considerations that we have in mind, and that we are trying to urge upon your Honor as reasons why the Government acting in the best of motives, has not only mistaken its legal rights here, but I think has mistaken its public duty.

I thank you.

The Court: I have listened with a great deal of interest to the very able remarks of counsel on both sides, but there are one or two questions that I would like to ask counsel for both sides now if you do not mind answering them. I think probably they can be answered simply by yes or no.

The first is that, as I understand, the judicial power with respect to legislative acts is that that power is limited and restricted to the inquiry of whether the legislature, that is, Congress, had the power to act; and second, whether it has so acted. There the judicial power stops, as I understand it, in respect of legislative act.

Mr. Kresel: Quite so, your Honor.

Mr. Anderson: I agree, except to determine its intent, I suppose that is included in the general——

Mr. Kresel: If the act is ambiguous, of course.

The Court: The construction of the legislative act.

Mr. Anderson: Involves the general question whether it so enacted.

The Court: That is whether it has the power to act, whether it has acted, and, of course, the construction and meaning of what it has done.

Mr. Anderson: Yes, sir.

The Court: I am wondering if counsel on either side contend that the judicial power with respect to executive acts or executive action is different from what it is with respect to legislative action.

Mr. Kresel: If your Honor means thereby

whether the Court has the right to set aside executive action—is that the Court's question?

THE COURT: The point is this, that is the point of inquiry, the point of judicial inquiry, as I understand it, stops, when it finds two things, or finds an absence of one or both of these two things, namely, as to whether Congress, under the constitutional power, had the power to do that which it had purported or undertaken to do; and second, if there is any question with respect to its Constitutional power, then our only inquiry is as to whether it has acted. For instance, I recall in this State, a question with regard to the signature of the President of the Senate, to a Bill, whether it was or was not signed, and then the question as to whether the legislative action had been consummated, or had been undertaken, and had not become complete; so that the judiciary can not go into the motives or intent or policy of the law, as I understand it. Now then, I am wondering whether the judicial power with respect to Executive acts is different, in the mind of either of the parties to this suit, or whether the judicial inquiry with respect to executive acts is identical with respect to legislative acts.

MR. GUTHRIE: I think the limit of judicial power is very much more restricted. The judicial power is very much more limited in reviewing executive acts, and especially acts by the President in his double capacity of the Executive and Commander-in-Chief of the Army and Navy. If the Statute clearly vests the power and authority in the President, the head executive officer of the Government, to do a particular act, it is beyond the judicial power to review that act. Of course, if the question is one of statutory construction as to whether the President had power to do it, that is within the judicial power; that is a matter of the construction of the Constitution or a Statute as to whether the officer, particularly the President, had the power; but where, as in this case, as we contend, the power is vested in an officer, his discretion, whether right or wrong, in the exercise of that power, is not within the jurisdiction of the Courts. As Mr. Chief Justice White said in the Dakota case which your Honor cited in the Dexter and Carpenter case, the decision of the Executive may have been plainly wrong, but the Courts have no power to review it. The power was vested in the Executive to determine whether certain action should be taken.

Mr. Anderson: Did your Honor wish to hear me in respect to Mr. Guthrie's statement?

The Court: I beg your pardon.

Mr. Anderson: I do not agree with Mr. Guthrie's statement entirely. I agree with some of the general statement, but in its application to this case, of course, I do not agree with him, and I am a little afraid, while I am delighted to answer any question that your Honor would ask, that it would involve the opening of a somewhat extended discussion. I was somewhat puzzled in my own mind, whether, in view of the question being raised by counsel, and not being discussed by me yesterday, I should ask your Honor for permission to submit some views on that subject, before we went on with the evidence, to clear up our respective views.

The Court: Each side may answer that in the morning. If you have anything further to say, Mr. Kresel or Mr. Guthrie, in the morning, before hearing Colonel Anderson, I shall be glad to hear you.

Mr. Anderson: Certainly.

The Court: I hope I have not misled you. I think, Mr. Guthrie, I did not make clear my mind——

Mr. Guthrie: Evidently not, if your Honor will state your mind.

The Court: The purpose of my inquiry was to see if we could not eliminate that question from many difficulties which will continue to arise during the case.

I will ask this question so that it will be thoroughly understood, and the understanding with each party with respect thereto shall be thoroughly understood at the threshold of this case, and it is this: If I understand the constitutional law or rather the power of the judiciary, with respect to the acts of the Legislative Department of the Government, it is this, that the judiciary may inquire and determine as to whether in the performance of an act done by Congress, Congress acted within its constitutional field, or whether, in passing the particular Act in question, it has gone beyond its constitutional bounds. If the Judicial Department finds that Congress has gone beyond the judicial bounds, it ignores the acts and gives voice and effect to the Constitution. There is a second question which I thought possibly might be raised here in analogy with respect to the order. The second question is as to whether Congress has acted, that is, as to whether an Act has been passed, as to whether, for instance, you can conceive of it arising—as to whether the Act might not have required, in our State Legislature, for instance, for just a moment I asked about Congressional Acts—as to whether the Act did not require more than a majority, for instance, a two-thirds vote, then it would be a question as to whether Congress has acted. Now then, so far as I can see at the moment, no other question could arise with respect to Executive action.

Mr. Anderson: Might I add one third point?

The Court: Yes.

Mr. Anderson: As an inquiry to your Honor if this third point would not arise. Then assume that Congress had acted.

The Court: Yes.

Mr. Anderson: Within the Constitutional power.

The Court: Yes.

Mr. Anderson: The question then would arise what did Congress mean by that act?

The Court: Which is the construction of the act.

Mr. Anderson: The construction of the act.

The Court: Then so you may have fully the application of my inquiry to this case, it is this: If those two things are the only points that the judiciary may consider when an executive act is questioned before it, then would come first the inquiry as to whether the President in this case, I take it, had the power to do what he purported to do or what he undertook to do, and second, if he had that power, did he do it?

Mr. Anderson: Then would come, in the exercise of executive functions, a third question.

The Court: Yes.

Mr. Anderson: Under the case of United States vs. Barlow, and that line of decisions, as to whether the President in the exercise of his discretion had before him a knowledge of the facts, or his representative in the exercise of discretion—correct knowledge, which would lead that discretion to do an act or to act upon a mistaken set of facts, which would always be ground for setting aside, which the Supreme Court held in United States vs. Barlow.

The Court: I am not familiar with that case. To get that answer or such other information as you may have is the purpose of my inquiry, because I am not familiar with that case, and I shall be very glad if you will help me further in that regard.

Mr. Anderson: I will. Your Honor has been so patient with us——

The Court: You have been helping me.

Mr. Anderson: But possibly we will save a great deal of time by taking up more time in discussion at the beginning. I was going to ask if I might tomorrow morning refer to a few points in Mr. Kresel's remarks which I had not anticipated, so you may get the issues between us perfectly clear on the facts and the law.

Mr. Guthrie: May I ask Colonel Anderson to give us the reference to that case?

Mr. Anderson: It is 132 United States.

Mr. Guthrie: I take it that your Honor might like to look at it over night.

Mr. Anderson: I should be glad if you would look at it. It is 132 United States.

The Court: What is the case?

Mr. Anderson: It is United States against Barlow.

Mr. Guthrie: And you say it held what?

Mr. Anderson: It held that where the facts were not known to the Government Executive or agent exercising the discretion, that it was not in effect an exercise of that discretion, on the familiar principle that any act founded upon a mistake of fact, an essential fact, becomes not an act at all.

The Court: Would the same principle apply to the Act of Congress?

Mr. Anderson: I do not know as to Congress, because I would not know whether it was possible to prove that Congress did not know it.

The Court: May I ask this one further inquiry. I am not sure if it is quite pertinent, except in dealing with the construction of the Act, but I am wondering, if you say that the President did not have the power to do what he undertook to do, and that not at all dealing now with these orders of Mr. Polk and the President, whether they were valid or not, but if the President did not have the power to do that which he did, or undertake to do, what power now exists, what power do you contend now exists in and by virtue of the Trading with the Enemy Act, to deal with these patents, or do you contend that Congress still exercises legislative power, even though the war is ended, by now making provisions with respect to the patents, or by now amending the Trading with the Enemy Act, so as to permit a disposition of these patents, should they come back to you. I am not sure that I made myself clear.

Mr. Anderson: I will undertake to answer that immediately to this extent, reserving of course offhand replies, which, like offhand arguments are very rough. Congress has power, if it should elect, to return this property at all, which it is under no obligation to do under the Treaties, if it should elect to do so at all has the power to impose any conditions upon its return that it sees fit, and therefore there is no limitation upon the power of Congress in that regard, and no one can enforce any limitation upon that power, so far as I know, in dealing with this particular property.

Mr. Guthrie: In other words, it is well established that Congress, if it sees fit, can violate the Treaty.

Mr. Anderson: Undoubtedly pass an act repealing the Treaty.

Mr. Guthrie: As Mr. Kresel pointed out, as the law now stands, all that the Government could do would be to hold these patents ultimately or to return them.

Mr. Anderson: I beg your pardon, but Mr. Kresel failed to point out that the Treaty provides with the exception of any property heretofore or afterwards disposed of in accordance with the law.

Mr. Guthrie: This was not disposed of in accordance with the law, of course, you claim.

Mr. Anderson: But it can be disposed of in accordance with the law.

The Court: To go back, I do not know whether I am taking you into a field which must be excluded or not. I have not determined that, and my only purpose in asking, is to get your view of the construction of the Act, broadly speaking, and not what disposition or what Congress would do with these patents, that is forestalling it, and that is a matter for Congress and not for me.

Mr. Anderson: Exactly.

The Court: As I understand you, the power to sell would still exist.

Mr. Anderson: Offhand. I have not the Treaty or Statutes.

The Court: That would be determined, as I understand you, under the Treaty and the Trading with the Enemy Act.

Mr. Anderson: It would be determined by Congress in its discretion, and Congress is not bound by the terms of that Treaty, if it wants to repeal it; but I assume that Congress would act in accordance with that Treaty, and I take it that that under that Treaty, and the Trading with the Enemy Act, and other provisions all together, Congress is free to deal with these patents as it sees fit. If your Honor will permit me to suggest, however, with all deference, I am perfectly willing to argue the power of Congress to deal with them. I do not think it is a question that the Court can consider as to whether the Government is entitled to recover them. The Government determines its own policy with regard to those things, after it is recovered or not recovered.

The Court: What I was trying to get clear in my own mind was your construction of the Trading with the Enemy Act. Probably my question was too broad. It was merely to see whether your position is that there is a present power under the Trading with the Enemy Act to make a sale.

Mr. Anderson: I do not know that I could without going over the Act undertake to answer your Honor's question directly, but the present power in Congress, the full legislative power of the United States, exists in Congress, and therefore if the Act does not give the power, Congress can pass such acts as it sees fit. I am not in a position without going through the Act——

The Court: Probably that question will not help, and it may delay us.

Mr. Anderson: Possibly I do not quite catch your Honor's point. I will say this—that Congress from the beginning had undoubted power—I may have personally a little difference with this, but under the decisions of the Supreme Court of the United States, which I think we all abide by, it had undoubted power to confiscate this property if it wanted to do it at any stage in the proceeding.

The Court: I understood that from your argument.

Mr. Anderson: Then the question of the power of Congress now will require a very careful study of these Treaties, but I have no doubt of the power of Congress to deal with the situation as it may require.

The Court: I wanted merely to get your view from that standpoint, of the construction——

Mr. Anderson: If you will allow me to say this. Your Honor will recall that the Act expressly provides that any claim of any person to this property or the proceeds thereof after the war shall be disposed of as Congress shall direct.

The Court: I recall that provision.

Mr. Anderson: So I think Congress has full power.

The Court: If I understand you, the broad difference between you is this, that you are contending that, conceding that there was a power of some sort, and I am not trying to confine you to the four corners of that field, just now, but conceding there was some power vested by the Trading with the Enemy Act, by

Congress, in the Executive, that power was so limited and restricted that he was required to make a sale of those patents, if a sale he did make, through himself or his agents, his subordinate officers, solely as if he were a Receiver, a Sheriff or a Marshal, that is, he would be acting as a ministerial officer in the exercise of that power, and in doing that his sole purpose would be in realizing for such interest as should ultimately establish his right, the greatest sum of money that it was possible to realize from those patents. Now then, if I understand you, Mr. Kresel, you deny that that is a proper aspect with which to view the Executive acts under the circumstances then existing?

Mr. Kresel: Under the Act.

The Court: Under the Act and under the circumstances then existing, and that the viewpoint with which this should be approached by the Chief Executive and his subordinate officers was what disposition would be for the best interests of the United States and the people thereof, and that if the monetary consideration for the patents was an element in such disposition it was not the sole element, not the main element, but under the circumstances then existing it was possibly a minor and subordinate element.

Mr. Kresel: I think your Honor has stated it admirably.

Mr. Anderson: The first part of your statement, the part in which you undertake to state my position, is not quite as broad as I would make it. I would beg leave to amend also the second part.

The Court: I would be very glad to have you do so.

Mr. Anderson: In the first place I take the view that under the Act the Alien Property Custodian was a Trustee and that he not only had the powers, full power of sale of a Trustee, which is given that power, but that he had also the obligations of a Trustee, and that the President even, acting under that Act, allowing the largest possible leeway that a reasonable construction of that Act would give, was also bound by the intent and purpose of that Act to carry it out in accordance with that purpose, and therefore that he must make a fair sale of this property, which is a test of the Act of a trustee.

In a fair sale many considerations enter and there may be trusts of broader powers and trusts of narrower powers, and your illustration of the Marshal or the Sheriff is hardly a fair illustration of the broader powers under this Act.

The Court: I understand.

Mr. Anderson: In the second place, while I do not undertake to state Mr. Kresel's position, the position taken in the answer is that the advancement of the industry, when you say the interests of the people of the United States, that becomes a very, very broad question of the most indefinite character. But that the controlling impulse here should be the advancement of the industry interested in these patents with an indirect benefit to the people of the United States. Therefore the answer in this case does not take as broad a position. Your Honor will see the difference as to what is to the interest of the people of the United States may be the most indefinite and far-reaching thing. But here the interest of a specific industry in the United States is asserted to be the controlling principle. With that amendment I accept your Honor's statement.

The Court: I am very much obliged to you for bringing that to my attention, and making that statement.

Mr. Kresel: As I understand it, Colonel Anderson would like tomorrow morning not only to answer the questions that your Honor has just put to us, but also to answer some part of the statement that I have made in opening the case. Is it your Honor's desire that that should be done?

The Court: I think that was restricted to questions of law, was it not, Mr. Anderson?

Mr. Anderson: Yes, except where there was some little error in the statement of my position which I would like to get correct. I think I am entitled to that. But it will take me a very few minutes, in any event.

The Court: Very well, I will let you do that. I think it is to the interest of both sides.

Mr. Kresel: I have no objection to their replying to me as long as your Honor gets the questions clearly drawn.

The Court: I have no objection either.

Mr. Kresel: Take all the time you want.

The Court: Each of you recognize you have gone far afield of the usual opening.

Mr. Kresel: This has been more than an opening.

The Court: I think you help me materially. I think you have disclosed to each other the positions which each of you occupy, so that the case may be now tried clearly on the merits.

Mr. Anderson: I think so, and if I say anything more in the morning beyond answering your Honor's questions, it will be very brief and only to make my position quite clear on those points.

The Court: I will adjourn Court until tomorrow morning at 8.30 Standard time.

(Whereupon, at 3.45 P. M., an adjournment was taken until Wednesday, 6th of June, 1923, at 8.30 o'clock, Standard time.)

THIRD DAY

Wilmington, Delaware,
June 6th, 1923, at 8.30 o'clock A. M.

Before:
HON. HUGH M. MORRIS, *U. S. District Judge.*

Appearances:
As before.

STATEMENT OF MR. GUTHRIE.

MR. GUTHRIE: If the Court please, I gathered from the questions put at the close of the argument yesterday that the Court would like to discuss this morning the general philosophy of this question of judicial power and how far the Courts may go in reviewing the exercise of power by the legislative branch on the one hand and by reviewing the exercise of power by the executive branch of the National Government on the other hand, and the latter inquiry divides itself naturally into how far the Court may review the action of the President, the supreme executive officer of the nation, and the action of ordinary heads of departments.

The power to review the action of the legislative department, a co-ordinate branch of Government, is of course well limited, and the inquiry always is whether the legislature has acted within the power conferred upon it by the Constitution if we are dealing with Federal legislation, or has acted in conflict with constitutional limitations if we are dealing with State legislation.

It is solely a question of power. The expediency, the wisdom, the justice of the legislation is wholly beyond the sphere of the judicial power. A court can determine only whether the supreme law of the land, which is above the legislature, did or did not authorize the particular enactment which is before it.

Very analogous to that limitation of power upon the Courts in dealing with the acts of the legislative power is the limitation when the Courts are called upon to deal with the acts of the President of the United States in time of peace, and, likewise, but more strictly still, in time of war.

Your Honor will recall—you probably had in mind yesterday when you referred to the power to investigate whether an act had been passed in conformity with certain procedure—the famous case of Field versus Clark, relating wholly to Federal legislation; and what I have just referred to as the philosophy of that question of jurisprudence was discussed by Mr. Justice Harlan.

The fundamental reasons why the Courts can not go behind the certificate of the constituted officer, the President or the legislative officers, as to the validity of a statute in respect of mere legislative procedure, is the impossibility of investigating such a question by judicial process and the calling of witnesses as to what did or did not occur in a legislative body. That is closed to the judiciary, and whether you call the certificate or the signature of the President or legislative officer conclusive or you say, in the more modern term, that the question is not justiciable, it is beyond the power of the Courts as a co-ordinate branch of our national government to go behind such a certificate.

Similarly, with respect to any exercise of discretionary power by the President of the United States, the Courts can not investigate his reasons or subpoena the President and compel him to state the reasons which actuated him, or place him upon the stand to be examined and cross-examined, as to what he knew or believed, or what had been disclosed to him, perhaps State secrets, with the power of a Court to believe or discredit the President of the United States as it saw fit and substitute its judgment or discretion for the judgment or discretion of the President. It is as it seems to us, against public policy, as it would be highly unseemly, that the propriety of the exercise of discretion by the Chief Executive of the Nation should be subjected in time of peace to the supervision of or control by the Courts. And if that be true in time of peace, is it not even more true in time of war?

Let us for a moment reflect what the result would be if the exercise of the great powers of the President under war Statutes vesting power in him, not only as Executive but as Commander-in-Chief, charged with the duty of waging war, charged with the duty of the common defense, a duty not imposed upon Congress, a duty not imposed or shared with the judiciary, a duty and responsibility imposed upon the President, the whole duty and the whole responsibility, if this exercise of discretion were subject to review by the Courts.

It would, we submit, be a highly improper thing, highly unseemly, highly prejudicial to the best interests of the country and its safety and defense, if a President of the United States in the exercise of the power so vested in him, frequently requiring prompt and immediate and emergent action, had to reflect that everything he did, that every exercise of discretion might have to be justified before some Judge or jury later and that every act that he took or determination that he arrived at in the common defense and in the waging of the war was subject to judicial review, upon the suggestion as contained in this bill, that the President did not know what he was doing, that he did not properly investigate what it was his duty to investigate, that he did not know this or that fact, and that he might have reached some wiser conclusion. And this high duty and power exercisable during the war follows the war, especially during a period of the mere suspension of hostilities, with the possibility, if perhaps not probability, in his mind, that there might be a renewal of hostilities.

When the President of the United States went to Paris on December 4, 1918, he must have had in mind that if the terms of peace were not agreed to by the vanquished, there might necessarily have to be a resumption of hostilities. During all the period that you are reviewing, there was an Armistice, that is, a mere suspension of hostilities, and there was incumbent upon the President of the United States the duty to contemplate that there might be and possibly would be a renewal of hostilities with hundreds of thousands of our troops on the soil of France ready to renew those hostilities if he as our Commander-in-Chief gave the order. Therefore we must consider this action of the President as carefully and with as grave and anxious a concern as if a renewal of hostilities were likely or it had been taken when this Act of Congress was passed on March 28, 1918, and so many believed that the war would be lost, when the French Government was again preparing for the contingency of having to retire from Paris, and when the world stood in the face of the greatest calamity that has ever befallen humanity—a victory by the Germans.

Indeed, it was the duty of the President to contemplate the renewal of hostilities. As your Honor will recall, in the case of Stewart against Kahn, the Supreme Court said that the war power extended not only to the waging of war, during active hostilities, but to the prevention of the renewal of hostilities, and, what is further, the remedy of any evils which the war in its progress had developed and shown to exist.

It so happened that it was my duty to argue to the Supreme Court of the United States, that the Armistice constituted to a great extent the termination of the war, and a restoration of the peace status, and that what might have been justified during the progress of the war, was not justified after the Armistice.

The Supreme Court of the United States, however, unanimously reasserted the doctrine of Stewart against Kahn, in 11 Wallace—I am now referring particularly to the case of Hamilton against the Kentucky Distilleries Company—that a state of war, for all purposes of judicial cognizance, still continued, and it follows that if a state of war still continued, it was the duty of the President, as the Chief Executive and as the Commander-in-Chief of the Army and Navy, to take all measures which he conceived to be wise, necessary and prudent to prevent the renewal of hostilities, and to remedy the evils which had arisen and the menace which had faced us during the progress of the war.

Now, we assert, with confidence, that the acts of the President of the United States are different from the acts of an ordinary head of a department, like the Postmaster General, or the Secretary of the Interior, or other head of department in whom power is vested, or to whom discretion is given by Statute. We say that, although in many cases the exercise of discretion and the exercise of power by such heads of departments may be justiciable, because they can be made to come before a Court and justify their acts, where they are charged to have been an abuse of power, or to have been arbitrary or fraudulent, in the case of the President of the United States, that can not be done, and that because one Administration happens to differ with a prior Administration as to the necessity or policy of a war measure, the successor Administration cannot bring the exercise of discretion or the war measures of the prior Administration before a Court of Justice for the Judges to substitute their judgment of the emergency and of the necessity, and of the remedies necessary not only for the existing evil, but for the future in the Nation's defense, to the test of their individual judgment, varying as judicial minds vary.

Now on what do we base the absolute stand that we take; a stand which we say is necessary for the protection of the Nation, a stand which we say is necessary unless the decision of the Courts is going, perhaps, to paralyze the Executive and Commander-in-Chief of the Armies of the United States in the future conduct of war, unless hereafter in the conduct of a war which may involve the freedom and existence of the United States, the President, at his peril, must consider whether his acts will pass judgment before a Court of Justice, and whether the Courts will or will not approve them and review his exercise of a discretion vested in him by Statute? Those dealing with him would have to consider not the great office, and not the discretion and power, which of necessity should vest in that office—the office of Executive and Commander-in-Chief of the Army and Navy of the United States—but whether the particular facts and surrounding circumstances depending frequently on the fleeting memories of men, did or did not justify the act; and of course, if this can be done today, four years after this transaction took place, by a succeeding Administration, because there has been a change of power, we can conceive of its being done twenty years from now, upon the plea that the President of the United States did not wisely exercise this discretion or did not know what was best for the interests of the country at a critical period, and thereupon the Courts may substitute their judgment for his.

Now, as early as the days of Marshall and Story, that question came before the United States Supreme Court for decision; I mean the first branch of the question, as to the power of the President. It is true in contemplation of possible hostilities, but at a time of peace, an Act of Congress had vested certain discretion in the President as to whether or not he should call out the militia, and it was asserted in litigation before the Courts that the facts existing at the time did not justify the action of the President, it was wholly fanciful and arbitrary, and that therefore it was illegal and beyond the authority conferred upon him.

Mr. Justice Story, writing the opinion of the Court and declaring with emphasis that he spoke the opinion of every one of those great Judges, pointed out that there were a great many reasons why the exercise of discretion by the President of the United States should not be the subject of investigation by the Courts, among others pointing out that there were secrets of State and that there were reasons which could not be properly or duly disclosed in the course of litigation, and that where Congress saw fit to vest in the President discretion in regard to any step to be taken, either in the common defense or in the waging of war, or indeed in any other conduct of the National Government, it meant a discretion to be exercised by him and not by the Courts, and when the discretion was exercised by him it was conclusive, wholly irrespective of the reasons which he might assign and, indeed, if he assigned no reasons at all.

Therefore, in this case, if there were no reasons before you, if there were not the full explanation contained in this exhaustive report of Mr. Palmer which was submitted to Congress and was given the broadest possible publicity; if there was no explanation to be found in this message which the President sent to the Congress of the United States—for he sent the Palmer report for the information of Congress, to advise it as to the reasons why he ratified and approved this transaction—if there were no reasons whatever, your Honor would have in our judgment to hold that it must be presumed that the President of the United States had abundant and sufficient reasons, and that even if the reasons assigned by the President of the United States were in the judgment of the Court inadequate or insufficient, nevertheless, it must be presumed that there were other reasons which the President may not have seen fit to disclose and which governed him in reaching this most solemn of all duties in the performance of the highest trust which a free people can repose in its head Executive.

Now, if your Honor please, this very question of the power of the judiciary to grant relief, where the President is alleged to have acted arbitrarily or unnecessarily or precipitately or without due facts or without warrant in the surrounding circumstances, was argued before the Supreme Court of the United States in the Dakota Telephone case, and there is no escape from the reasoning of the Chief Justice. He did not say that the reasons or the explanations advanced on behalf of the Government by the Solicitor General at that time were sufficient or adequate, or that the circumstances surrounding the seizure of the telephone wires and prescribing of rates interstate were sufficient. The Court practically said that, conceding that they were not sufficient, their sufficiency was beyond the investigation of the judicial power.

I will ask your Honor's indulgence whilst I read this language of the lamented Chief Justice, speaking the opinion of the Court.

Mr. Chief Justice White says:

"The proposition that the President in exercising the power exceeded the authority given him is based upon two considerations: First, that there was nothing in the conditions at the time the power was exercised which justified the calling into play of the authority."

Just as here it is to be contended that there was nothing in the circumstances that existed in February, 1919, to justify the disposition as made of these enemy-owned chemical patents which could be used so disastrously in waging war against us, or which could be used so advantageously by our people in the common defense.

The claim was that there was nothing in the circumstances justifying at that time the exercise of the power, the Court adding: "Indeed, the contention goes further and assails the motives which it is asserted induced the exercise of the power."

Apply that test to the arguments addressed to you on behalf of the Government. The motives of the President of the United States or his duly constituted representative are brought before you for review, for you to overrule if you happen to differ. The answer of the Court was: "But as the contention at best concerns not a want of power, but a mere excess of power or abuse of discretion in exerting a power given, it is clear that it involves considerations which are beyond the reach of judicial power. This must be since as this Court has often pointed out, the judicial may not invade the legislative or executive departments so as to correct alleged mistakes or wrongs arising from asserted abuse of discretion."

Yet your Honor is here asked to correct the alleged mistake and the alleged wrong of President Wilson as well as of his duly constituted delegate, the Assistant Secretary of State, Mr. Polk, alleged to arise from abuse of discretion, in the very teeth of the doctrine authoritatively laid down by the Supreme Court of the United States.

And then finally, in closing the opinion, as your Honor will readily recall, Chief Justice White said:

"In saying this, however, we must except suggestions as to want of wisdom or necessity for conferring the power given or as to precipitate or uncalled for exertion of the powers as conferred" Exactly what is argued here. Mr. Chief Justice White added: "From all of which we have turned aside, because the right to consider them was wholly beyond the sphere of judicial power." And it is in our judgment impossible to distinguish the principle of what I prefer to call the philosophy, the political, the sound political philosophy of that decision, without recognizing the infinite danger that would result if any other course were permitted; if it be said that it might result in tyranny, if the President's discretion were not subject to review by the Court, that it will result in placing unrestrained power in the President of the United States, the answer is that our form of Government is the Presidential form of Government, that we elect a President for the very purpose of vesting in him certain unrestrained discretionary powers, and that his responsibility is not to the Courts but to the people; and if he abuses that power, if he abuses that discretion, wrongly, fraudulently or even corruptly, the remedy is not with the Courts; it is with impeachment in a glaring case, or with the people when the due time comes, for them to determine whether the man who has so abused his power shall or shall not be re-elected if presenting himself for re-election.

I take it that it was in this very Court that it was argued on behalf of the Government before you in the case of Dexter & Carpenter, Inc., against the United States, that the United States would not be liable under the Lever Act unless it was shown that the act of its officer was necessary and hence authorized; in other words that under the Act even as a measure of war necessity it was incumbent to show that the seizure of the coal was absolutely necessary. And your Honor, citing and relying on this Dakota case, brushed that plea to one side, and said substantially, "It is not for the judicial power, it is not for the courts, to pass upon the question of the necessity of an Act by the Executive power. The Courts must conclusively assume that it was necessary and are bound by the Executive action."

The converse is presented here. If the Government advanced in that case the argument that the act of its representative was not authorized by the Statute because in fact the seizure of the coal was not necessary, and your Honor ruled that you would not permit any evidence or would not consider whether it was or was not necessary because you were not going to substitute your judgment, not for that of the President, not for that of the Fuel Administrator, but for the third instrumentality, the Director General of Railroads; if your Honor at the plea of the United States refused then to inquire whether the action of the Director General in that case was or was not necessary because it was beyond the judicial power to investigate, why is not the same principle and the same rule applicable here, when again the United States is claiming that its officer, the President of the United States, and the Alien Property Custodian acted improperly, acted without authority, acted without necessity, acted improvidently, did not get every dollar that they should have gotten, did not see that the documents were so drawn that there was no possible escape from the obligations which the Chemical Foundation was agreeing to assume? Why is not the precedent of that case on all fours with the question now presented to you?

Again, your Honor will recall the famous case of Commercial Cable Company against Burleson. There never was a bill of complaint which charged more serious or grave misconduct; not against the President, but the President's nominee, Mr. Burleson. It charged fraud, charged ulterior motives, charged oppression, charged that the act done was baseless and arbitrary, that it had no authority in the facts and in the surrounding circumstances; that it was an abuse of power, an abuse of discretion, and that it was a case not within the intent or contemplated by Congress in the enactment then involved.

And in an admirable opinion by Judge Learned Hand it was declared that if there ever was a case which would justify investigation by a court of the propriety of the acts of the President or his deputy in the exercise of the war power, the allegations of that bill, conceded by the motion of the United States, presented such a case, provided such a case, in any aspect, however improper, however oppressive, however abusive of discretion the acts challenged might be, was within the power of the Courts—and he held that it was not within the power of the Courts.

I shall not take your Honor's time to read the opinion of Judge Hand, but it is most persuasive. It points out the great question of governmental philosophy involved here, and no one can read it, no one having due consideration for the future welfare and the national defense can read that opinion without the conviction that it is wise and necessary that this discretionary power, although capable of abuse, should be vested somewhere, and nowhere more properly than in the President of the United States or such officers as he might see fit to designate.

It is true that the Commercial Cable Company-Burleson case became moot while pending on appeal of the Commercial Cable Company in the Supreme Court of the United States, and was therefore, in accordance with the practice of the Court, in order to prevent *res adjudicata,* reversed without prejudice. But we stand upon the reasoning of that decision, which we are profoundly convinced is sound; and I may add, if your Honor please, that no counsel could argue such a question as this without being profoundly impressed with the responsibility cast upon them—a case which, if it should go against our contention, would in our judgment immeasurably cripple the President of the United States, and in crippling the President, the Government of the people of the United States in the future, not only in the conduct of possible war, but in those measures which a President should take to prevent the renewal of war and provide for the common defense and welfare.

If tomorrow President Harding should deem it necessary under some proper Act of Congress vesting similar power in him as contained in the Trading with the Enemy Act to do exactly what was done here, because he thought the measure was necessary to provide for the common defense or general welfare, to prepare against the renewal of hostilities, to fortify the country against possible future attack, is it conceivable that the Courts would have power to sit in review upon his action, and that he would have to satisfy the Courts that the danger was real and existing, that he would have to satisfy them that there was a real danger to the country that required some such action in the national defense; that unless he could undertake or would be prepared to so satisfy Judges throughout the United States, he was to stand paralyzed with folded arms unable to take the necessary measures, although a Statute of Congress vested discretion in him. It would be little short of calamitous if this Court, or any Court, should hold that the action of the President of the United States during the recent war, of a great President, of a President who will live in history as the most efficient Executive in the greatest of all wars, of a President who inspired this country to an exaltation of patriotic fervor unequalled in the history of the world; that that President whose singleness of purpose no one has dared to question, is to have his motives investigated and criticized and his knowledge and purposes investigated in a court of justice in a suit instituted by his successor, or instituted by some private individual.

It seems to us that the whole argument and criticism of the action of the President, advanced on behalf of the Government of the United States, is most unseemly.

Now, if your Honor please, you have undoubtedly noticed the peculiar and unlimited extent of the authority conferred by the Act of March 28th. I shall not argue further the question presented by Mr. Kresel, that it was the deliberate intention of Congress to adopt a new policy in March, 1918, at the darkest hour of the war, and when the necessity for effective measures was most urgent. I shall assume that your Honor will perceive that there was a fundamental change in policy, and that it was the intention of Congress to vest in the President, if need be, what would in practical effect be the power of confiscation, because no language could have been drawn that was more comprehensive in its scope than the language which was adopted.

Your Honor will remember that after striking out all provisions in regard to the limitation of power to sell in case of waste and leaving the language as it stood originally, that he might "make any disposition thereof by sale or otherwise and exercise any rights or power which may be or become appurtenant thereto, or to the ownership thereof." Congress went then further and added these far-reaching words—"in like manner as though he were the absolute owner thereof."

Your Honor has not failed to observe that the argument of the Government gives absolutely no force or effect to that language. The argument of the Government is based upon a construction of this Act, as if that language had not been inserted; as if there had been no declaration by Congress, that the President should have, in respect of all property that he might seize, the fullest power which an owner of property could exercise, which meant, of course, if he saw fit to give the property away, if he saw fit to give these patents to the manufacturers of munitions or otherwise, it was clearly within the scope of that power, and he was to be untrammelled. He was to be authorized to do with the property, not as a trustee might deal with property, but as an absolute owner, to do with it as he saw fit. There can be no doubt that the members of Congress who voted for that amendment deliberately intended that the Great President of the United States, who was then waging the war, should be trusted with an unlimited power to do whatever he thought was necessary in the waging of the war, in the common defense, in preparing against the renewal of hostilities, and in protecting the interests of the country.

Now, if your Honor please, there has been some suggestion that the President did not act in this matter, and some challenge of the appointment of Mr. Polk. I shall rest with the presentation of Mr. Kresel, because it seems to us apparent that the President of the United States in appointing Mr. Polk, appointed a person who was then an officer of the United States, and not only an officer, but a constitutional officer; but if there were any question as to the authority of Mr. Polk—and I am going to argue this aspect now upon the assumption that there might be some question as to the authority of Mr. Polk and as to the action of the President—as to the necessity that the supervision and direction provided for in the Act of Congress shall be by the President himself before anything shall be done, on the theory that Congress in the language of the debate wanted the personal supervision and the personal direction of the President; notwithstanding the express provision of the Statute that he may exercise any power or authority vested in him by such officers or officer as he might see fit to appoint.

Before anything was done, before this transaction was consummated, the President, on the 28th of February, two days after the Executive Order of Mr. Polk, sent Mr. Palmer's report to Congress with a letter reading as follows:

> "As required by Section 8 of the Trading with the Enemy Act, I transmit herewith for the information of Congress a detailed report by the Alien Property Custodian of all proceedings had by him under said Act during the calendar year 1918 and to the close of business on February 15th, 1919."

In that report there was set forth every reason which would justify the act of the President. Your Honor can not read that report without realizing how full and exhaustive the disclosure was.

Every aspect of this situation, every aspect of the importance of this chemical industry to the United States, not only in regard to dyes and chemicals of one kind and another, but in the common defense, in connection with the manufacture of explosives and of poison gases, every aspect of this question and every detail of the menace which existed to the welfare of the United States, from permitting these patents to remain in the ownership of the Germans, was set forth in the utmost detail.

Not only was the whole history of the industry and its menace to America, and the injury that the Germans had wrought by the control of these patents to America set forth, but every detail of the transaction, consideration, the grantee, the fact that Mr. Garvan was to be the first president of the concern, every feature which is now criticized, every material feature which is now criticized, was disclosed in that report.

What is more, in that report reference is made to the Executive order of Mr. Polk, the Executive order that Mr. Polk had signed two days before, the Executive order which the President practically says to Congress "I ratify and adopt," because he sends the report to Congress with the reference to this Executive order, authorizing this very transaction which his delegate or appointee, Mr. Polk, had made; and under those circumstances we submit that it is little short of preposterous to criticize the fact that the order was made by Mr. Polk and that Mr. Polk was not acting President, when you find that before the signature is dry upon the paper, the President of the United States adopts it, practically approves it, sends Mr. Palmer's report to Congress, containing the statement that the transaction was authorized by an Executive order. Of course the Executive order referred to is the order of Mr. Polk dated two days before, February 26. In addition to that, even if the President had not by sending that report to Congress, ratified the action of Mr. Polk, he certainly ratified the action of Mr. Polk a year afterwards when in the omnibus ratification of February 13th, referring expressly to the two Executive orders made on his behalf, and presumably under his supervision and direction, by his nominee, the President of the United States practically ratifies the whole transaction.

We submit that under those circumstances the transaction is absolutely binding upon the Government and conclusive.

Now, there is another aspect to which your Honor referred, or at least we understand you to refer, and perhaps which we ought to discuss; although we think that it is not involved in this controversy and not germane to any issue presented, and that is: what is the rule applicable to heads of departments?

THE COURT: I did not inquire as to that. I would be very glad to have you discuss it, but I did not inquire as to that.

MR. GUTHRIE: You will remember that the learned counsel for the Government cited the case of United States against Barlow, in 132 United States, which involved the question whether in a case of fraud practiced upon the Postmaster General, the United States could sue for the recovery of money as upon one of the common counts; and therefore, assuming that we were not discussing here that this whole procedure had to be under the supervision and direction of the President, and that it was as matter of fact by public documents, of which you are bound to take judicial cognizance under the supervision and direction of the President and ratified by him in a message sent to Congress, assuming that we were considering simply the power of the Alien Property Custodian disassociated from any supervision or direction of the President, what would be the question presented?

You would then again come back to the fact that the broadest possible discretion and power had been vested in this head of department. He was not to act as trustee; under certain circumstances he was to act as any owner might act. He was authorized, of course, to act only in the common good; but he was also authorized, untrammelled by any limitation, to deal with this property as any individual owner might deal with it.

The discretion was vested in him to do this act just as plainly as if the act said, "And in his discretion to transfer these patents to The Chemical Foundation if he sees fit to do it," because any owner of property could do it.

Now, we assert that where absolute discretion, in the broadest conceivable language, is vested in the head of a department, in this unique and unparallelledly broad language, that discretion is not subject to review by the Courts.

Of course, it is otherwise if the power of the head of a department is exceeded; but we submit that there is no excess of power here, because there is given the broadest possible power.

If there is proof of fraud by him, or practiced upon him—(and you heard the solemn withdrawal of charges of fraud, and the substitution of the euphemism of fraud in law)—if there is actual fraud, if there is a mutual mistake, if there is any fact that has been stated to you that would justify a finding that there was a mutual mistake (but everything that they did, and the purpose and the detail and the intent, and the fact, were all set forth)—if there was arbitrary action, that is, action without any rhyme or reason or without any justification; and here we insist was the fullest justification shown by this officer, that what he did was to protect the United States—unless those elements exist, the Courts have no power to interfere with the exercise of discretion.

There are two among many cases which have discussed this question, if your Honor please. The one is the case of Bates & Guild vs. Payne, in 194 U. S., which states the rule very appositely, as follows:

"The rule upon this subject may be summarized as follows—that where the decision of questions of fact is committed by Congress to the judgment and discretion of the head of a department, his decision thereon is conclusive; and that even upon mixed questions of law and fact, or of law alone, his action will carry with it a strong presumption of its correctness, and the courts will not ordinarily review it, although they may have the power, and will occasionally exercise the right of so doing."

And then in a late case, Leach vs. Carlile, in 258 U. S., the Court said:

"This was a question of fact which the statutes cited committed to the decision of the Postmaster General, and the applicable, settled rule of law is that the conclusion of a head of an executive department on such a question, when committed to him by law, will not be reviewed by the Courts where it is fairly arrived at and has substantial evidence to support it, so that it cannot justly be said to be palpably wrong and therefore arbitrary."

We submit that within that rule no facts have been either stated in the argument of counsel or alleged in the bill which would warrant a court in setting aside the conclusion arrived at by the Alien Property Custodian in the exercise of his discretion.

But we desire to repeat, and we cannot emphasize it too often, that in our judgment that is not the character of the question presented for your Honor's decision and that after all the testimony that you may take, after all the time that may be spent in investigating this question, you will come back to the real question involved, and that is not whether the acts of a head of a department in whom discretion is vested by an Act of Congress may be reviewed by the courts and to what extent, but whether the action of the President of the United States in the exercise of the war power of the Nation, or rather of war-power discretion duly vested in him by Act of Congress is subject to review by the courts, and whether the courts have the power or can with any judicial propriety investigate so as perhaps to determine whether or not they should substitute their judgment for the judgment of the Executive and Commander-in-Chief of the Army and Navy, upon whom the Constitution and Trading with the Enemy Act imposed the duty and the sole duty to deal with these questions.

THE COURT: May I make one or two inquiries before you begin, Colonel Anderson? Perhaps they may as well be addressed to Mr. Guthrie also.

Mr. Anderson: I beg your pardon, I did not know your Honor wanted to discuss it now.

The Court: They are addressed to both of you. As I understand you, then, Mr. Guthrie, the issues that are decisive of this case are whether or not the Trading with the Enemy Act vested the President with power to dispose of these properties in the way that he did dispose of them—that, as I understand you, is the broad underlying question.

Mr. Guthrie: Necessarily.

The Court: And that involves merely a construction of the Trading with the Enemy Act, and particularly the amendments of March—and November?

Mr. Guthrie: I take it the criticism of the November 4th amendment has been abandoned. I do not gather from the argument of Colonel Anderson that he will suggest to your Honor that the theory advanced in the Bill has any foundation whatever.

The Court: Misrepresentation to Congress.

Mr. Guthrie: Yes, I have not argued that, although, of course, we are prepared to argue it, because we think it would be a waste of time.

The Court: I do not care to hear you now, but may subsequently. Then the only other question that would be legally possible, the only other issue, as I understand you—I am not stating conclusions—I am only trying to get clear in my own mind and make sure that I have in my own mind the contentions of counsel—the only other issue, then, as I understand you, that will be legally possible, would be whether or not fraud had been practiced upon the President of the United States by this defendant? That is, I assume you are not denying that if actual fraud had been committed upon the United States, or upon the President or the Alien Property Custodian by the defendant, then the United States, whether of the same or a different Administration, might, through a suit by the United States, have the transaction set aside on the ground of fraud?

Mr. Guthrie: It is proper that we should state our contention, because even to the extent of asserting that the issue as to whether or not the President was defrauded presents almost insuperable difficulties for investigation in a Court of Justice, because it would require, as we readily can conceive, the calling of the President of the United States or an ex-President and his submission to cross-examination; but we are not here to advance or insist upon the proposition that if a fraud was clearly shown as having been practiced upon the President of the United States, the Government would be precluded from so showing and obtaining proper relief. We are ready to try any such issue, and if the Government says that this Bill means that a fraud, actual fraud, was practiced upon the President of the United States, by anybody for whom this defendant is responsible, of course we are prepared to meet that issue; but we call your Honor's attention to the fact that the allegations of the Bill and also the opening of Colonel Anderson, fail to show any fraud whatever.

Indeed, Colonel Anderson has spoken of almost everything under the sun, except actual fraud practiced upon the President or practiced upon Mr. Polk. What were the facts concealed from or misrepresented to the President of the United States in view of the Palmer report? What were the facts fraudulently concealed by Mr. Palmer from the President of the United States, or by The Chemical Foundation from Mr. Palmer? What were the frauds practiced upon and the misrepresentations made to Mr. Polk—or the material facts concealed from Mr. Polk by the Alien Property Custodian or by The Chemical Foundation?

We have yet to hear or to see any argument, or anything that would justify, as we submit, a court of justice undertaking for weeks to investigate a case where the Government cannot formulate any definite allegations of fraud.

THE COURT: Then, as I understand your contention, it is two-fold. First, as you said in your opening yesterday, Mr. Kresel, as I recall, that the ultimate determination of the issues of this case will depend upon, in large measure, if not entirely, upon the construction placed upon the Trading with the Enemy Act, and that construction being, as I assume, for the determination of the question as to whether or not the President had power to deal with these patents and otherwise, in the manner in which he did deal with them. Now, then, with your reservation, your second contention is that the only other issue available in a case of this character, and you think that it is not available—but the only other possible issue would be to determine whether the defendant did, in fact, practice fraud in order to secure the rights which it did get, that is the only other legal issue, as I understand your contention.

Now, your other contention is with respect to the orders delegating the power of the President to Mr. Polk, as I understand it, that those orders cannot be a nullity in the sense that they cannot be ratified, and that if they were almost a nullity, even the United States is not in a position, in view of the other acts done by the United States, to assert their nullity; that you contend, as I understand you, that the Bill itself, together with the exhibits and the Answer, is sufficient to show a purpose and intent on the part of the United States to vest the title of these patents in the defendant, and if there is a defect, as I understand your argument, it would be inequitable for a Court of Equity to set aside a transaction of this kind, but rather it would be more in keeping with equity to perfect that title than otherwise, as I understand your contention, and that, if found defective, it would be more in keeping with the principles of equity, to correct any defect than it would be to defeat a transaction which it was the purpose of the United States to enter into through its duly authorized officers, assuming they were duly authorized to carry into effect. Is that your contention?

Mr. Guthrie: Will your Honor permit me to add one suggestion?

The Court: Yes.

Mr. Guthrie: In order that the thought will be complete in your mind.

The Court: I shall be glad to have it, because I am only trying to see from your standpoint whether I have your contention, because it will help during the trial of this case, if I have your several contentions, and I will get Colonel Anderson's in a moment.

Mr. Guthrie: Assuming that the Polk executive orders were void, because as now argued by the Government, the President had no power, notwithstanding Section 5 of the Act to exercise this very important authority and power conferred upon him through an officer, I nevertheless say that the record shows that the Act of Congress was complied with, and it will take but one minute, in a few sentences, to state our contention.

The Court: I am glad to hear it.

Mr. Guthrie: The Act of Congress says that the action of the Alien Property Custodian shall be taken under the supervision and direction of the President. Had there been no order on February 26th, no Executive order of February 26th, signed by Mr. Polk, and Mr. Palmer had in his report simply stated: I have conveyed these patents to The Chemical Foundation; and the President had then taken that report stating that the Alien Property Custodian had so conveyed them, and sent that report to Congress, submitting it for the consideration of Congress as a *fait accompli*, we contend that the Government or the President could not be heard to contend that after all the transaction had been without the supervision and direction of the President; and again eliminating all reference to Mr. Polk's orders of February 26th and April 5th, as alleged nullities, we have the ratification of February 13, 1920. Certainly if President Wilson were now in court, he could not be heard to say: Why, this transaction was all done without my knowledge, supervision and direction, and I am not bound thereby.

THE COURT: That suggests another thing that I had in mind, and that is, is the legal effect of this case any different than what it would be if there had been no change of Administration? Is there any difference in the slightest degree in the issues of this case from what there would have been if there had been no change in the Administration?

MR. GUTHRIE: We are not contending anything of the kind. When we do suggest in argument, the change of Administration, we think it is a perfectly legitimate consideration for a Court to consider in analyzing the general nature of the judicial power it is asked to exercise; but President Wilson would practically be estopped, because the Government can be estopped; President Wilson would be estopped from claiming that this act was done without his supervision and direction when the record shows that he knew all about it and submitted it to Congress for its information.

THE COURT: And that estoppel would run against the United States.

MR. GUTHRIE: And that estoppel would run against the United States. If your Honor wants the authorities——

THE COURT: No, I do not want them.

MR. GUTHRIE: They are familiar. The same underlying principles of good faith and honest dealing which may create an estoppel against an individual principal apply to the action of the President, as well as to individuals. Of course, no individual under the present circumstances would be permitted to say that this act by his agent was done without his supervision and direction, when it appeared that he had taken a report which told the whole story and had sent it to Congress for its action and consideration.

THE COURT: And then, I think your contentions are reasonably clear, and Colonel Anderson may—

MR. KRESEL: Will your Honor permit me one more minute before Colonel Anderson starts?

THE COURT: I shall be glad to hear you, Mr. Kresel. I am sure you have no objection, Col. Anderson.

MR. ANDERSON: Not at all, sir, if you give me half the time that these gentlemen have had, I shall be satisfied.

THE COURT: You can have all the time you wish.

MR. KRESEL: I ask the liberty of asking your Honor to give me a few minutes, because your Honor, in the questions put to Mr. Guthrie, was careful to inquire as to our position with respect to the alleged invalidity of the orders made by Mr. Polk, in view of the argument on behalf of the Government that the delegation of authority from the President to Mr. Polk was invalid.

In that connection it seems to us to be proper to bring to your Honor's attention the fact that the two orders made by Mr. Polk which are involved in the transaction now before your Honor, are not the only two Executive orders applying to private sales of property by the Alien Property Custodian that were made by Mr. Polk in the exercise of the authority conferred upon him by the President.

I think your Honor is entitled to know that in the exercise of that authority, based upon the same delegation that Mr. Polk acted upon when he made the two orders involved here, he signed scores of orders authorizing the Alien Property Custodian to sell at private sale property held by him, and that such sales so authorized were sales to be made not only to private individuals, but also to agencies of the Government itself, and that those orders involve the disposition of property running into the millions of dollars. And when I say millions of dollars I mean, not based upon any Holdermann estimate of the value of property.

For instance, your Honor, the entire wireless system owned by the Germans here at the outbreak of the war, which was taken over by the Alien Property Custodian and subsequently conveyed by him to the defendant, that conveyance was made pursuant to an Executive order signed by Mr. Polk. All the patents covering the superheater process which were taken over by the Railroad Administration, patents valued at untold millions we are told, patents that were involved in a litigation which the Government itself conducted only recently in another Federal Court, where the Government's contentions were sustained as to the title to those patents—those were sold to the Railroad Administration under an order made by Mr. Polk pursuant to the delegation to him by the Executive order of the President.

THE COURT: Were the orders challenged in that case?

MR. KRESEL: No, there was no question raised there. Of course, the Government did not raise the question there. There the Government was interested in sustaining the authority of Mr. Polk to make the order which was at the base of that transfer. And, if your Honor please, when we come to putting in our case we shall present to your Honor these various orders signed by Mr. Polk. We think they are material. I say there are a number of them. I have not counted them, but they are all printed in a public document here. Here is one dated the 4th of December, 1918, the very next day after the delegation of authority to him by the President. This one covered, for instance, two thousand shares of the capital stock of the International Insurance Company valued at $576,500. Here is another one which involved the sale of certain rights of a German co-partnership, the Susquehanna—

THE COURT: You need not go into them.

MR. KRESEL: I won't go into the details of it, your Honor, but I thought it was very material that this should be brought to your Honor's attention, lest your Honor should have the idea that the two orders made here by Mr. Polk, which are challenged by the Government, were the only two orders made by him under that delegation of the President. I am sorry to have taken all this time.

THE COURT: I wonder, Colonel Anderson, if you would be good enough to help me out on this point while you are on your feet. I am not just clear if it has any bearing upon the issues of this case, and if it has not I will be very glad if you will tell me, so we can stop there. If it has any bearing on the issues of this case I shall be very glad to have your assistance in properly connecting it with the case, and if it has a bearing I shall be very glad if you will help me in determining the weight that ought to be given to that matter, if it should be considered at all. And, frankly, in the thought I have given to it, I have not tried to reach any conclusions, and I am not trying to reach any conclusions as I go along.

MR. ANDERSON: I understand, your Honor.

The Court: No question that I ask should indicate that I have drawn any conclusion, because I am not going to try and prejudge this case or any issue thereof. Mr. Kresel yesterday referred to a possible invisible power, and indicated, as I construed his argument, that that must be true, because the evidence which he would present and which was referred to in the pleadings in this case or indicated in the pleadings in this case, would show that the possible preservation of this country and possibly the independence of this country was dependent upon this country being able to build up a chemical industry—not so much for commercial purposes, possibly, but for the National defense; that consequently these patents could not be turned back under any circumstances to Germany; that therefore it was merely a question of compensation or the amount of compensation that Germany should receive in the adjustment of the financial affairs between the two governments, for these patents.

I am not just sure whether that argument is a matter for consideration in this case or not. I am not deciding that now. But if he is right that far, and the policy of the Government has not changed with respect to the turning back of the patents, then is the United States estopped from making such adjustment, financial adjustment, with the German Government, from making such adjustment as the Government sees fit, without regard to the consideration, the financial consideration, which was received by the Government for these patents? That is, isn't that a question which is not here involved? Isn't that a Governmental, International question, and not a question here involved in any way?

I am asking for your views on this. I remember your arguments in this respect, which I listened to with much interest, and I may say as to both of you, Mr. Kresel and yourself, that I have not listened to abler arguments than those made by Mr. Kresel, by yourself and Mr. Guthrie.

Mr. Anderson: Your Honor is very kind.

The Court: If that is not involved, then there is no question but that this Government may be in a position to adjust it; that is, if this was not a proper consideration, then the Government is not estopped from paying what consideration it deems proper. So that, even if the question of policy were reviewable at all, and I assume you will say that it is not, it was a part of the exercise of power or the existence of power given by the Alien Enemy Act, and the only question then would be as to whether the Government got enough dollars for the patents, I take it.

I have stated that roughly and crudely, and if I have not made my difficulties clear I will be very glad to elaborate on them.

Mr. Anderson: I quite understand your Honor's position. Your Honor has asked a question which I had at the head of memorandum of notes or points which I was to touch upon this morning. Therefore, if your Honor will permit me to answer you in the order that I have in view, if I do not fully answer it, it does not disturb me in the slightest to be interrupted.

I wish to say in that connection, if your Honor please, that your Honor has been most kind in referring to the statements, or arguments, more properly, of myself and counsel for the defendant, and I hope that your Honor will permit me to express what I know they feel and my associates feel—that at no time in our experience have we appeared before a Court that has shown such consideration and allowed perhaps such latitude.

I really feel, however, even with the long time consumed, that time is being saved; because these questions will have to be argued during the presentation of the case, in the admission of evidence and its relations and therefore the argument and re-argument during the trial would probably take up more time than the clarification of those questions at this time. That is my opinion.

I also want to join with your Honor in expressing my appreciation of one of the most interesting statements I ever heard, made yesterday, as well as one of the ablest, and my gratification that the presentation of this case thus far—and I hope it will continue—has been upon a plane of professional relationship that is most delightful.

There were certain statements made by counsel which probably are unavoidable in the discussion of matters of this kind, which possibly as a member of the Bar, representing the Government, as well as in my humble capacity here in this particular case it is appropriate that I should mention, to the end that there may be no misunderstanding. The first comes up with respect to your Honor's first question. That is with respect to the so-called invisible plaintiff.

I am sure counsel did not intend it, but that language taken in its natural meaning would be a decided reflection upon the President of the United States and upon the Government; because nothing is more to be condemned than for any one to come into court claiming a right without disclosing the interest in which that right is claimed, and certainly for the Government of the United States to take a position before its own courts and assert what it claims to be its own rights, while surreptitiously asserting it upon an invisible power, would be an unthinkable thing.

The statement, therefore, makes it necessary in my opinion for me to bring to your Honor's attention before it is introduced in evidence the communication upon which this proceeding is based. It is from the

President of the United States. And let me say in that connection, before I read that letter, that I was most gratified to hear your Honor suggest what to me seems obvious—that there is but one Government of the United States, and it is a continuing organization; for it is a Government of law, and law continues throughout the whole period of its existence. The change of persons is nothing. Who may today occupy the office of President and who may occupy it tomorrow is a matter of no consideration, and once that consideration enters the judicial department of the Government, we shall at once have a Government of men and not of laws.

Therefore, I yield to none in my respect for the former President of the United States as well as the present President of the United States—personally and as officers—and all others who have gone before them, with their splendid qualities, and their human imperfections. But when we come into the courts we forget their names, and even more do we forget their politics, and my reference and only reference to the question of a change in administration was in relation to the charge in the answer that there had been undue delay.

We cannot overlook the fact that the Government is administered through agents and persons, and naturally persons—it matters not who they are—taking one view, will not assert an opposite view, and therefore that is a legitimate reference. But the fact that there has been a change of the political character of the Administration is a matter which, to use Mr. Guthrie's own language, seems to me unseemly to mention in a court. For myself I may say in the capacity in which I speak, that when I come into this court I come as an officer of the court charged with the same responsibilities as your Honor is charged with—and I would not think of political considerations any more than your Honor would think of them, and that I would not even suggest.

Therefore, the change of personnel has nothing to do with this case. It is a continuing office, the office of President, and that office should be treated with the greatest possible respect, as should the men occupying or who have occupied that office. But at last it is but an office created for the exercise of the sovereignty of the United States, vested in the people of the United States, and the acts of any occupant thereof are subject to review with deference and with respect, and with every possible presumption of fairness and consideration, in those tribunals which are established by the Constitution for such review.

With that statement I wish to read the letter of the President directing this litigation, and that answers your Honor's question. It is addressed to Colonel Miller, he being the Alien Property Custodian:

> "Washington, July 1, 1922.
>
> My Dear Colonel Miller:
>
> My attention has been called by the Department of Justice to the fact that a corporation known as the Chemical Foundation has brought suit against the Treasurer of the United States and certain licensees of the Federal Trade Commission for an accounting alleged to be due the said Chemical Foundation on royalties due it for the use of certain patents originally seized under the authority of the Alien Property Custodian and sold to the Chemical Foundation by the custodian during the previous administration. On the face of such an action it became so apparent to me that an inquiry should be made, that I asked for a report by the Department of Justice on the sale of this enemy property to the Chemical Foundation. It appears that the sale was made at so nearly a nominal sum that there is reason to believe that this Government has not faithfully observed the trust which was implied in the seizure of this property. The circumstances relating

> to the entire transaction are of such a character that full investigation becomes a public duty. Moreover, I feel that your office is obliged to maintain the sacred character of the trust to which the Alien Property Custodian is committed by the law.
>
> You are, therefore, directed to forthwith proceed as follows:
>
> 1. Make written demand upon the Chemical Foundation (Inc.), in form to be approved by the Attorney General, to immediately return, transfer, and assign to the Alien Property Custodian all patents, trademarks, copyrights, contracts, applications, or other properties or rights transferred to it by the Alien Property Custodian as aforesaid, and to account to you for any and all rents, profits, license fees, or other proceeds thereof realized by said Chemical Foundation (Inc.) from said properties or rights, or any of them, from the date of transfer thereof to the Chemical Foundation (Inc.), to the date of restitution.
>
> 2. Take any other action which may be advised or approved by the Attorney General, by suit or otherwise, to fully and in every respect protect the rights or interests of the United States and any other person or corporation interested therein, in and to the properties and rights aforesaid, and any proceeds, income, or profits therefrom in the hands of the Chemical Foundation (Inc.), or its officers, agents, or employees.
>
> In carrying out these instructions you will act under the advice of the Attorney General.
>
> Very truly yours,
>
> (Signed) WARREN G. HARDING."

I think, if your Honor please, that it would be a work of supererogation and probably not in the best of taste for me to go behind that letter and even discuss the purposes or motives which actuated the President.

This morning I am not going to argue the questions on issues of fact but merely state our position.

The next point to which I refer is to the argument of very able counsel who spoke yesterday, and this to some extent relates to your Honor's inquiry. That argument, the first half of it, was an indictment of the Germans. If I had been sitting on a jury trying the Germans for offenses against the United States I should have found a verdict for the plaintiff. But we are not engaged in that trial. Those questions and the wrongs done have been tried in a higher Court—that is, in the International Court of War.

The people of the United States have expressed their opinion as to the acts of the Germans in that regard, and others even more offensive might have been added, and in order to correct the wrongs done, if possible, and prevent their continuance, have spent the lives of thousands of their soldiers and billions of their money to win a great war.

Therefore, these questions are no longer open for debate. I yield to no one in my condemnation of those acts. A large part of the remainder of counsel's able presentation was addressed to the unwisdom of the monopoly in these particular patents, and especially a monopoly in foreign hands. Congress by Act has provided for the monopoly of the owner of patents and for the granting of patents even to foreigners. If the argument of counsel had been addressed to Congress and I had been a member of that body I should have voted upon that statement for an amendment of the Patent Law. But this is not the place for the consideration of whether that is wise legislation or unwise legislation, or whether the policy which Congress has followed and which brought about some of the conditions which he has described is a wise policy or an unwise policy. It is the law, and the Court sits to administer the law as it is.

If your Honor please, when that evidence is produced and when it is tendered we shall except to it as utterly immaterial. If your Honor should wish to permit the evidence to go in, of course we shall yield; but we are not going to argue that question any further. We regard the whole discussion of the German relationship and the entire discussion of the wisdom or unwisdom of patent legislation and the conditions which resulted therefrom as outside of this case in every respect and outside of the province of this court.

Therefore we are brought down to this situation: Eliminating all of that which I think must be eliminated, conceding if need be that all that is said is true—of course, if it were pleading I should demur to it without the slightest hesitation and go up on the law—we are brought down to what was the purpose of Congress under this Act, what was the intent of Congress in enacting this Act, and whether that intent has or has not been carried out.

It is true that in arriving at that intent it is sometimes interesting and sometimes helpful for the courts to have before them the historical events leading up to the enactment of the legislation provided the legislation itself is not clear, to the end that the purpose of the legislative body may be fully carried into effect in the light of the surrounding facts and circumstances. But as that is only a rule of construction, we look first to the Act, and if the Act is not clear, we only then turn to the historical events and even to the debates of Congress in a most limited way to aid in arriving at that intent.

Therefore the statements, the very interesting statements of such great men as Senator Underwood and others—and I might refer in that connection to one of the very best reports made on these acts by former Governor Montague of Virginia, when he presented it to the House—all of those things may be interesting if we arrive at the point where it is necessary to consider extraneous matters in order to ascertain the meaning of the language used in the Act. But first we must arrive at that point, and the question is, What is the Act?

I shall concede for the sake of the argument—though I wish to say here, parenthetically, perhaps, that if I have been understood to abandon any positions in this case, I wish to remove that impression at once. In the presentation of this case I followed what I conceived to be—let me use the word a decent course—to underestimate if possible the position of the Government, and if possible to avoid the slightest reference to any person which might in any sense be offensive. Sometimes it is necessary in courts for us to use unpleasant terms, but it should never be done unless it is necessary.

Therefore, if the purposes of the Government can be accomplished without aspersing the motives of anyone, I should very much prefer that it be done, and that is what I meant when I said I hoped not actual fraud. It should not be necessary. But the Government's case here is stated in the Bill, and I have not intended, if anything was so construed, to abandon any position taken in that Bill, and shall not do so in this case. We rest upon the bill, and we will try the case upon the pleadings. The oral statements of counsel often made in the hurry, and roughly, should not be understood as modifying the pleadings unless it is clearly stated upon the record to that effect.

I am perfectly willing to concede for the sake of the argument here that there was an enlargement, it may be, of the policy of Congress by the Act of March 28, 1918. I say enlargement because it was not a change of the fundamental purpose of Congress. Judge Hand in one of his decisions under the Alien Property Custodian Act said that the Act of March 28, 1918, if it did not enlarge, clarified or made more definite the power of sale. Possibly that is a very good way to express it. I think it enlarged the power of sale, frankness compels me to say, because the limitation originally imposed upon the power of sale was to prevent waste.

But here I think the power of sale was given as to a trustee in a will, who is given the power to sell at discretion and reinvest. I think the power of sale was given very fully. And I am prepared to concede for the sake of this argument and for the present discussion, to make our positions clear, that Congress intended to authorize the divesting of an active German interest in American property—that is, factories and things of that kind—during the period of the war.

In other words, the obligation of the Government was to take under international law, (which the Supreme Court once said must be assumed to have been adopted in its most modern and improved state), that under international law the obligations of the Government, although it had power to vary that, was simply to take possession of, if it desired to, seize this property, sequestrate it during the period of the war, to prevent it being used adversely to the Government, and to conserve it during the period of conflict. Its primary purpose was to do that, but if it appeared to the Government that owing to the war itself, the earning capacity of these properties was enormously increased at the expense of the people of the United States, its obligation would be fully met by selling that property to American citizens at a fair value, and transferring the rights of the enemy-owner to the proceeds, because the Government's obligation was limited to returning the property which it took, or its equivalent, assuming that obligation to exist.

Therefore, there was no obligation on the Government to let this property go on and pile up enormous earnings during the period of the war. It might have been a generous thing, but it was not an obligation of International Law.

Its obligation was to return the property or its equivalent that it received, and if therefore in its discretion it deemed it wise to transfer the ownership of an important factory to Americans that to the end such a factory might perform its service during the war, without increasing the property which had been taken from the alien enemy, it would be entirely legitimate that it should do so, and entirely just to the alien enemy.

That would be an entirely different thing, however, from the confiscation of the property. That would be accomplished by the sale of the property, just as the foreclosure of a railroad by this Court would transfer the property into private ownership and operation free from the restrictions of a receivership, so that it could perform its functions and be developed, in the meantime substituting in the registry of this Court, the proceeds of that property, upon which the rights of any creditors might be determined in this Court. That is done in every foreclosure sale in the United States Court, where the sale is made in advance of ascertainment of liens.

Now that was all that the Act of March 28, 1918 intended. Taken in connection with the other provisions of the Act which were continued in full force it can be given no other reasonable construction; and as I shall point out to your Honor, I shall not stop to do it now, that in every decision in which this question has been considered—there is not a single one to the contrary that I can find, and there are a number of them—where the question of the meaning and intent of this Act has been under consideration, it has been expressly held that it was not an act of confiscation, but was purely and simply an act of sequestration, with a power to sell and that Congress had not determined upon the policy of confiscation, either under the original act or the amendments.

Now, therefore, I am perfectly willing, to concede for the sake of this argument, that the policy—the generous policy—adopted at the beginning of the war, was slightly modified—was modified and enlarged to the extent which I have indicated, for economic reasons, or other reasons satisfactory to the legislative mind, which reasons are not subject to review. The only thing is what did they mean to do I will come to what the Act meant presently, so that on that issue, if it be an issue, we do not disagree, perhaps, as to the purpose, but we disagree as to the extent to which that purpose was carried out. Counsel on the other side contend that it was an act of confiscation, we contend that it was an act of sequestration, with a full power of sale.

That brings me to the consideration in the broader aspect, of the inquiry of your Honor of last evening, and of Mr. Guthrie's very eloquent and able presentation this morning. I conceive that that question involves one of the most serious questions that any Court can be called upon to consider. I agree with Mr. Guthrie that it was one of a delicacy which can not be lost sight of at any stage, involving as it does, the delicate functions of the Government, which should be approached with the greatest care, and handled throughout with the greatest care, and consideration of every possible meaning and effect of the structure of our law. I want to notice here the suggestion indicated by counsel on the other side yesterday, and by Mr. Guthrie this morning, that anything that I said was an assault upon the President or of the Presidential Office. I think your Honor will bear me out that it was not justly capable of any such construction, because I guarded my remarks with the greatest care, not only from an appreciation of my duty as a member of the Bar, addressing a Court of the United States, but as a matter of personal propriety if I may say it that way.

If anything I have said has been construed as a criticism of the President of the United States former or present, I want to correct that impression at once. I do not indulge in that kind of criticism in the Courts.

I recall, if I may, that while I was in Europe, especially in 1919 when the war feeling ran very high, I frequently had people approach me and start to criticize the policy of the President, and I had a fixed answer, that there was but one flag in the United States, and the President of the United States spoke for that, and when he spoke for it, within the limits of the law, he spoke for every citizen of the United States. That is my position now.

Therefore, when we deal with that great office, while it is an office of limited power, we deal with it with the deference and with the recognition of the fact, that not only is it the greatest office in the world in our view, and certainly of America, but that any man chosen to that office by the people of the United States, is entitled to every possible consideration and respect. We may differ sometimes legitimately, but as to those differences, the Courts are not the place to discuss them.

Now let us in that spirit and with those reservations approach this subject as lawyers, and as a Court, without criticism and without any attack upon anybody's motives. The power to confiscate property rests only in Congress. Mr. Guthrie and Mr. Kresel yesterday stated that they took the position that this Act gave to the President of the United States the power to confiscate property, or to give it away, if he desired. On that question we take direct issue. In the first place the President of the United States has no power to give away property. He can not do it under the Great Seal of the United States. He can not do that. No matter how high his motives he can not give away the property of the United States; and the Supreme Court of the United States has even refused to hold that Congress can subsidize anybody, even as a matter of policy. In the Sugar Subsidy cases, it expressly reserved the question as to whether the power to subsidize existed in Congress, and said that the moral obligation of the United States in that case justified the legislation.

Since the case of Brown against the United States there has been no question that under the laws of this country the power of confiscation of alien property, seized on land, was vested solely in Congress, and that the power, it being in derogation of the International Law, which was adopted in this country in its most improved form, as declared in Ware against Hildon, and in derogation of International right, the purpose to confiscate must be clearly expressed in the Legislative Act, and it must be performed in the manner and for the purpose prescribed by the Constitution and laws of the United States.

I will not read the authorities this morning, I will possibly refer to one of Mr. Guthrie's citations, but what I have said is established in the case in Ware against Hildon and subsequent cases, where it has been held that under International Law, there was no right to confiscate property seized on land outside of the war zone, but that by Municipal Law, that right might be asserted, the power existing in the legislative body of the Government, I am speaking of a right under the International Law, but that the power might be asserted by Municipal Law; and Chief Justice Marshall held in Brown against the United States, that the property seized by the United States under an Alien Property Act, almost similar in terms and in purpose to the Act now under consideration, was not confiscated; that the Act was not confiscation but a sequestration Act, and that only by the clear and definite intent and purpose of Congress, expressed by legislation, could the power of confiscation, which resided in Congress, ever be exercised.

Following then Brown against the United States there have been any number of decisions along the same line; and here I want to point out with your Honor's permission, a very curious position which I assume is taken by counsel on the other side inadvertently. Counsel on the other side have referred in a number of instances to the war power of the President, as Commander-in-Chief of the Army and Navy of the United States. Now, if your Honor please, under that war power of the President, he may seize property in the military zone, and do those things which a military commander can do. He has also many other powers. But the sequestration of alien property, and the handling of alien property is not under the war power of the President. Without Municipal legislation on the part of Congress, the President can not sequester or seize alien property in time of war. It requires municipal legislation, as stated by Chief Justice Marshall, in Brown against the United States.

Now, let us see if I am right. In the case of Stoehr against Wallace, 255 United States, construing this Act which was decided by the Supreme Court recently, Mr. Justice Van Deventer, in that decision said:

> "The Trading with the Enemy Act, whether taken as originally enacted, October 6, 1917, or as since amended, March 28, 1918, November 4, 1918, July 11, 1919, June 5, 1920—"

that is an Act for the return of certain property, and those are all the amendments—originally, or as amended, it is strictly a war measure, and finds its sanction, or not, in the war power of the President.

> "Finds its sanction in the constitutional provision, Article I, Section 8, Clause 11, empowering Congress 'to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.' Brown v. United States," etc.

Now therefore unless Congress vested in the President, or in some other officer of Government, which it did, and could do, the carrying out of this war power, which was exclusively a legislative and Congressional power, that is, unless it vested the administration of this Act and its administration features in the President, the President had nothing to do with it, except as an executive to approve the Act. Now, let us see here again if the President had anything to do with it—I am speaking in the legal sense. Of course he had a great deal to do with it in the moral sense, but I am speaking now strictly of the legal sense. What powers therefore did Congress confer—that is the question before us. The President, as I pointed out in my opening statement, was not exercising his constitutional functions; that is what I meant when I referred to constitutional function—that is the function of the Commander-in-Chief of the Army and Navy. He was not exercising those powers. He was exercising a power conferred by Congress under the Congressional war power, and could therefore only exercise such powers as Congress confers and subject to such limitations as Congress imposed. That is the simple law of agency.

Let us see what were the powers and limitations. Counsel on the other side have fallen into another very curious inadvertence here, if I may suggest it. If your Honor had not read this Act, and had listened to their very delightful arguments on the Act, I am sure that you would have reached the conclusion, as any one else would have done, that the power of sale given by this Act, was vested in the President, and we have had a great deal here to say about questioning the right of the President to exercise the power of sale. But no such power was vested in the President. What was his power, and who had the power of sale and what were the limitations? The limitations imposed by the Act would have been the same whether imposed upon the President or anybody else, except that there is a certain consideration for the office of President, which is unavoidable, and which is natural and proper. It is psychological. But the law on the subject has been stated by the Supreme Court of the United States, discussing this very question. The acts of executive officers of the United States or heads of departments acting in the name of the President, are his acts. Nothing is better settled than when an executive officer acts, like the Secretary of War, it is the act of the President, if it is within the scope of his powers. But the law fixes the powers. The law was stated in the Floyd Acceptances case, as to the power of government officers:

> "The answer, which at once suggests itself to one familiar with the structure of our Government, in which all power is delegated, and is defined by law, constitutional or statutory, is, that to one or both of these sources we must resort in every instance. We have no officers in this Government, from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority. And while some of these, as the President, the legislature, and the Judiciary, exercise powers in some sense left to the more general definitions necessarily incident to fundamental law found in the Constitution, the larger portion of them are the creation of statutory law, with duties and powers prescribed and limited by that law."

Something has been said by Mr. Guthrie about the unseemly character of any action or words which question the acts of the President of the United States in time of war. I agree wih him that this should be done with great care. In the discussion of this case, I do not mean to suggest that the great President of the United States who led us through this war ever thought of using any power that he had for improper purposes, but no man, however great, could personally consider and pass upon all the questions he had to determine in the crush of that duty. If he was mistaken as human beings are mistaken, or if he was badly advised, as human beings often are, the highest and the lowest, and has made a mistake, then it is not only the right, but it is the duty of the Government of the United States, representing all the people in their continuing, and I hope, eternal capacity, to question the exercise of that power. and to restrain it, with deference and consideration, within the limitations imposed by law. If we have any doubt about that question, turn to the case of the United States against Lee—

THE COURT: I am familiar with that.

MR. ANDERSON: Your Honor is familiar with the case?

THE COURT: Yes.

MR. ANDERSON: But if there was ever a question where every possible tendency would have been to sustain the acts of President Lincoln in taking possession of the property at Arlington, in the heat of a Civil War, where the soldiers of the country were buried in its soil, and every consideration was in favor of sustaining the war Act of the President, it was in the case of the United States against Lee; but it will stand as the eternal monument to the impartiality and the greatness of the American judiciary, that even against the leader of what was known as a rebellion against the authority of the United States, the Supreme Court raised its hand and said—no, it can not be done. This is the law today and the law is supreme.

I may add that this principle is universal, and did the occasion require it, as it does not, I should not hesitate to come into this Court, representing even an enemy of my country with the capacity to sue with the assurance that the Courts of the United States would administer justice according to law with even greater care, and with as much freedom from human passion, where rights of former enemies were involved, as they would in the case of the humblest citizen of our own country, or the government itself.

Now, in the light of these authorities, let us examine this Act. The Alien Property Custodian, not the President, "shall be vested with all of the powers of a common law trustee"—that is a direct power—"in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto,"—

Now, up to that point, the President is not mentioned. The power is in the Alien Property Costodian. He acts as trustee—

> "and, in addition thereto, acting under the supervision and direction of the President."

Merely a supervisory power, not power, but the right to supervise—"under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe."

Who shall have the power—the Alien Property Custodian—

> "to manage such property and to do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, or exercise any rights and powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof."

Now, if your Honor please, in the discussion of counsel on the other side, all those words were tied up to the President of the United States. He had the power to sell; he had exercised the power of sale; he was the absolute owner; and he had all these things to do. This is not the case as to any one of them. They are every one vested in the Alien Property Custodians, and the power and the duty of the President under this Act of Congress, from which he gathers all his power, and accepts them under its limitations—the power and duty of the President is the power of supervising and directing and prescribing rules and regulations for the exercise by the Alien Property Custodian of the authority and power conferred directly upon the Alien Property Custodian.

Therefore, with the exception of the question of whether the President could or did confer power upon Mr. Polk, or did exercise the powers given him in the next sentence, which I will read, the power of the President is not involved here. We are not discussing the rules and regulations prescribed for the exercise of those powers by the Alien Property Custodian. This was the Alien Property Custodian, who had this power, a subordinate officer of the Government.

Now, let us look ahead. Where does the President come in? But before I leave that sentence, I want to call attention to one thing. Yesterday, the distinguished counsel for the defendant, then addressing the Court, emphasized the words "or otherwise," in the statute, and read the power into the Alien Property Custodian to confiscate the property of enemy aliens into that word; the power is not vested in the President. It is the Alien Property Custodian who is thus claimed to have the power to confiscate property through the word "otherwise."

I could present to your Honor at the present time any number of authorities construing that exact phrase, and without exception they hold that under the familiar doctrine of *ejusdem generis,* "otherwise" applies to similar methods. He could have leased this property for long-term. He could have exchanged this property for other property. He could have made any disposition of the character of the nature of a sale, having the same result, that is, a transfer of property to another, for a valuable consideration, representing the fair value of the property, which a trustee must always get. That is all "otherwise" means, and all you can read into it.

By that sentence, therefore, we find the Alien Property Custodian vested with a power of sale, with the President having only this limited control and supervision, by establishing the rules and regulations, the road by which he could travel, and the fences along that road. Now, let us take the next—"Provided"—here is a limitation upon the power of sale. I agree that the Alien Property Custodian can sell or dispose of the property with the same legal effect as if he were the owner, subject to the terms of the trust. That is given in wills to any number of trustees. It merely means that he can perfect title without obligation to the purchaser, to look to the application of the purchase money, which is provided with respect to trusts. It does not give him the right to divest himself of the trust imposed upon him, and which would be imposed upon him if the word "trustee" did not appear in this Act, because trusteeship is the result of the powers imposed, and the obligations imposed, and not the use of words. Absolute words may create a trust if they result in such relationship.

Now, let us take the provision, this power of sale, this limitation—"That any property sold under this Act,"—they have not said anything about giving anything away yet—"any property sold under this Act, except when sold to the United States," "shall be sold,'' first, only to an American citizen, second, at public sale, third, to the highest bidder, fourth, after public advertisement of time and place of sale; fifth, it shall be where the property or the majority thereof is located. Those are the limitations, and you have got to follow that rule; but here now we have a subsequent power in the President at last—''unless the President stating the reasons therefor, in the public interest shall otherwise determine.''

What does ''otherwise determine'' mean? It means that he can determine whether there shall be a public or private sale. He can do that. It means that he can determine whether it should be sold to an American citizen. He can sell it to an Englishman or a Frenchman; he could not sell it to a German, but he could have sold it during the war to anybody but an enemy. It may be that he could have sold it to other than the highest bidder though I express no opinion on that. He might have said I will not sell it to the highest bidder in view of all the circumstances, as long as it was a fair sale. ''After public advertisement.'' He might have waived that, as well as time and place. Now, there is a Charter fixed by the Congress of the United States, and beyond that the Alien Property Custodian or the President or anybody else could not go, and there is not a suggestion of anything but a sale. Now, there is one other power in that section given to the President: ''Provided further, That when sold at public sale, the alien property custodian upon the order of the President stating reasons therefor, shall have the right to reject all bids''—

Shall the President have the right to give it away—not at all—''reject all bids and resell such property at public sale or otherwise as the President may direct.'' Under this section there are three powers given the President—first, the power to prescribe rules and regulations to govern the Alien Property Custodian in the exercise of the substantive powers conferred upon him direct by Congress; second, the power to sell privately or to modify the conditions of sale prescribed by this Act. I have enumerated them; and his power is limited to those conditions. He can not go beyond them. Third, to set aside and reject a bid at a public sale, and re-sell. He can not reject a bid and say: I will let somebody else have it, or give it away. If he rejects the bid, he has got to order a re-sale at public or private sale.

The President's power is regulatory, as to every one of them. The power of sale is vested only in the Alien Property Custodian.

Having sought to make the Act clear, I will come to your Honor's question of yesterday more specifically. I have now laid the foundation of what I want to say, and in that connection I wish to say further that there is not a suggestion of confiscation in all that business, not a suggestion. If your Honor will turn to the general provisions of the Act, you will find every one of them are inconsistent as Chief Justice Marshall pointed out, in Brown against the United States, with any idea of the intent of Congress to exercise the questionable power of confiscation; and when I say questionable, I mean questionable as to propriety and policy, and not as to power if exercised by Congress.

Therefore, you find not only that statute, but every Act of Congress since, has recognized the trust relationship with respect to alien property, and even so late as the Winslow Bill, the express words are used: "that the Alien Property Custodian may pay over property held in trust by him to certain persons"—

The Court: For whom?

Mr. Anderson: They would not say for whom. Congress having designated the beneficiary to the extent of the payment authorized, he immediately becomes trustee for the beneficiary named. Up to that time, he was trustee for such beneficiary as Congress might name, although there was an undefined or contingent right in the persons who originally owned this property, which could not be disregarded until Congress cut it off. Now, Congress,—to leave no question on that as to the construction of the law,—Congress declared that any claim to this property, or the proceeds thereof—there can not be any proceeds if we are going to confiscate, there are no proceeds if you confiscate, because the proceeds have gone into the public Treasury. They are the public property: "any claim to this property or the proceeds thereof, shall be settled as Congress shall direct."

Therefore Congress was to determine who should be the beneficiary of the trust, and it declares by amendment to Section 7 of November 4, 1918, that the right and the sole right of the person whose property was seized or sold under this Act, shall be as against the proceeds thereof. If you are going to confiscate it, why do you give anybody the right against the proceeds?—Of course the whole Act is inconsistent with any such idea;and the Courts have held, without a single exception, that this is an act of confiscation. Now, if it were not an act of confiscation, then of course, it necessarily must be a trust. I do not care whether you use the word "trustee" or not, because if you take property in trust, you are merely holding it as an officer of the United States, because he always holds property in trust for the people of the United States in one sense; but when you take the property of an alien to which primarily the officers of the United States owe no obligation, and Congress, in allowing you to take it says that you shall hold it and administer it not only as trustee, but that you shall finally dispose of it to such persons as Congress may direct, necessarily you hold the legal estate for the benefit of the people who have an interest in its final disposition, which interest may be perfected only by Act of Congress. That is undoubtedly the legal effect.

Taking that situation, let us deal with the question of discretion. If your Honor please, I will yield to no one in my conception of the unassailable character of the discretion, political discretion vested in the legislative and executive branches of the Government of the United States. I am a nationalist. I am as a lawyer a follower of John Marshall and I believe in the principles which he taught, but I also believe as John Marshall said, that this is a Government of limited powers, and while we respect that discretion, when it is clearly given it is the duty of the Court to say where the limits are.

Now, I entirely accept Mr. Guthrie's argument as to the philosophy of the law on this subject. It would be an unthinkable thing that the political discretion of the President of the United States, in time of war or peace, should be drawn into question by a Court, and he be required to justify the exercise of that political discretion, just as it would be an unthinkable thing that the Congress of the United States, or the legislature of this State should be called into Court to say why they voted for a certain Bill, and why they thought certain legislation was wise. We do not need any argument on that in any Court. In the review of Acts of the legislature, the sole question is one of constitutional power. The power being conceded, then the wisdom is not subject to review. In the review of acts of the Executive, who is an agency for the administration or execution of the law, there are two questions, or to speak more accurately, there are two divisions to the question of power; the one is the question of constitutional power, which is very indefinite, —or political power. As to the political discretion, there can be no question whatever that the Courts can not review it, and the decisions cited by Mr. Guthrie, are merely decisions illustrating that truth. For instance, the decision of your Honor in the Dexter case. There the Act gave the President the power, when he found it to be necessary in the public interest, to take certain property over, the railroads, and also gave to the Railroad Administration, the power to seize certain coal, when it was in the public interest, and gave power to the President to fix the price, I do not recall all the details.

The question of when the necessity existed, would not be subject to review, because that is a question which takes into consideration the welfare of the United States, and that is a matter of discretionary consideration, on which two men might honestly differ; and if the Court undertakes to exercise that discretion it puts its judgment in the place of the elected officer, that is obvious.

Then there are administrative powers in the executive. The question then is whether the administrative officer, in the exercise either of an administrative duty, which is subject to mandamus, or in the exercise of administrative discretion, which is not subject to mandamus, is acting within the scope of the agency which he is exercising; that is, where the power of his agency is fixed and limited by the legislative act. The constitutional power is very indefinite. For instance, take the Martin case. That case involved the right or the power of the President to call out the militia. It had already been passed upon by Chief Justice Marshall. The Court said that it could not review that power, because Congress had said that whenever in the opinion of the President it was necessary in the public defense, or even in anticipation of a condition requiring public defense, to call the militia into active service, the President could do it. He was the Commander-in-Chief of the Army and Navy, and the only person to do it, and the exercise of that discretion, as to when that necessity arose, was not subject to review by the Courts. That is obviously true.

The Dakota case, as cited by counsel, involved a question as to whether the Executive ought or ought not to have dealt with the Telephone Company, or some officer of the Government exercise that discretion. That was a question whether the public interest required the exercise of powers admittedly conferred upon him by Congress, and you could not inquire as to whether the discretion was good or bad.

Now, take the Burleson case, which was reversed, but I am perfectly willing to take the opinion as it stands. It holds nothing further than that the exercise of a discretion to determine when the necessity for an act arose in the interests of the public, which involves the consideration of the welfare of the public, is not reviewable, but it is reviewable as to whether the President or anybody else, and especially a subordinate officer like the Alien Property Custodian, acted within the scope of his agency created by Act of Congress. In the Burleson case, Judge Hand used an expression which is extremely interesting in this connection, and brings to your Honor's attention a phase of this act which counsel have not commented upon. Judge Hand says: "It is true that Congress might, if it chose, have required the President to state the occasion which he thought made his possession necessary and the uses to which he would put it; but that is not the point."—Congress did not. Congress might have done this. Now, in this particular act dealing with the delicate trust with respect to the Alien Property Custodian, it did do it.

The Court: Are those cases subject to judicial review?

Mr. Anderson: Undoubtedly. As one of the decisions cited by Mr. Guthrie said, in regard to review, one of the later decisions of the Supreme Court, the name of which I do not recall for a moment, such executive acts would not be reviewed, they would not be set aside if they were clear, or if they were reasonably clear; I will put it stronger still—unless the reasons given were clearly insufficient. The President here is exercising, not a broad constitutional function, but the function of a limited agency requiring him to give the reasons for his acts. Those reasons are subject to review, and especially are they subject to review, if it appears from the very statements themselves that they were founded upon a mistake. Now, I will come to that in a minute. In the case cited it was being contended before Judge Hand that the Court might review the reasons and ascertain whether those reasons were sound, which induced the President to take over the railroads, we will say, or whatever the thing involved was. Does your Honor wish to stop here?

THE COURT: Go on.

MR. ANDERSON: It was being contended there when no such limitation existed upon the Presidential acts, that the Court could find out whether the reasons justified the President in fact, under the terms of the law, in taking over the property. Judge Hand says —it is true that Congress might, if it had chosen, have required the President to state the occasion which he thought made his possession necessary, and the uses to which the property should be put. If Congress did choose to so require the President or any other agency of the Government to state such reasons, then, necessarily, the Court must ascertain, or somebody must ascertain, whether the President complied with that requirement. The validity of his reasons, of the Alien Property Custodian or anybody else, in the absence of very strong evidence to the contrary, would be accepted; but if his mere statement of any reason would be sufficient, then, you avoid the entire provisions of the act, because what is the use of requiring him to state his reasons in the public interest if you cannot ascertain what his reasons were?

THE COURT: Would it interfere with you if I state my difficulties there?

MR. ANDERSON: Not at all, sir.

THE COURT: My impression is that those reasons were required, not for the purpose of judicial review, but so that the President might not for secret reasons, or in the absence of any reason, have to give an account before a jury, or a body, to pass upon those reasons, or even before Congress, with its power of impeachment, or the power of the public exercising its authority through the ballot box—

MR. ANDERSON: I am entirely willing to accept that view.

THE COURT: That is not a conclusion, so that I will get you to give me, if you disagree with that, your authorities, if you can find them.

MR. ANDERSON: Yes, I will. Your Honor has stated what is in fact a debatable question. I think the authority read by Mr. Guthrie this morning, I do not recall the name of the case for the moment, in which he stated that in the review of authority under legislative act, the lack of reason must be obvious, in order to have the Court review it, but that power to review existed. Now, the power to review exists, but it will not be exercised—every reasonable presumption will be given in favor of the validity of the act. I agree as to that; but the power of this Court to review, exists under the terms of this act, while it did not exist under the terms of the act reviewed by Judge Hand, and Judge Hand recognized that. I wish to make that point clear.

There is a third phase of the exercise of administrative, as distinguished from constitutional, discretion, or as distinguished more clearly from political discretion, and that is that the discretion must have been founded upon a reasonable knowledge of the facts.

Mr. Guthrie in his very able and delightful argument this morning conceded that if a fraud were practiced upon the President, that that could be reviewable by the Court, and would operate to invalidate the act, or at least make it void at the time, or, as was said by one Judge: "No act is so solemn, no transaction so complete that fraud will not vitiate it;" but fraud is not the only ground. Mistake—honest mistake is just as effective as fraud, because every transaction to be valid must involve the intentional exercise of a mental process to a certain result. In a contract, it must be the meeting of the minds. If it be the unilateral act, it must be an act to accomplish a certain purpose predicated on certain facts, and an error, whether induced by fraud, or a mistake, is always a ground for review of an administrative act of that character. Mr. Guthrie referred to the case of the United States against Barlow. That is one authority to which I wish to call your Honor's attention, because I raised this point last night. Of course, as he pointed out this morning, and as we all know when the Cabinet officers exercise their powers—they not being provided for by the Constitution at all, the whole executive power being vested in the President—they exercise it at the command of the President, their acts and the acts of the President. Therefore the rule of law with respect to administrative acts, and the review thereof, including administrative discretion, is quite the same with regard to a Cabinet officer as the President. It must be, as a matter of course.

Now, in this case, which is the leading and controlling case, the Postmaster General made a contract for the carrying of mail over the mountains in Colorado. At certain seasons of the year this road was quite impassable on account of snow. The mail contractor represented to the Government that he could carry this mail around the mountains, a longer distance, but that he would require more teams and men, and on that idea the Government awarded, and finally paid to him, considerable additional compensation.

The question came up, and it was charged that this mail contractor was guilty of fraud, but the Courts waived that aside. Of course, they said if it was fraud, it would end the whole thing, if he induced the payment by fraud. This is what Justice Field said:

> "We admit that where matters appertaining to the postal service are left to the discretion and judgment of the Postmaster General, the exercise of that judgment and discretion can not in general be interfered with, and the results following defeated. But the very rule supposes that information upon the matters upon which the judgment and discretion are invoked is presented to the officer for consideration, or knowledge respecting them is possessed by him. He is not at liberty, any more than a private agent, to act upon mere guesses and surmises, without information or knowledge on the subject."

Now, with regard to political discretion, the President can act upon guesses or surmises, or he can act arbitrarily. As has been so often said, the only remedy is by impeachment or by the ballot box. But when the officers of the Government of the highest and the lowest, as stated in the cases, come to exercise the administrative discretion of the Government, then the exercise of that discretion must be predicated upon a correct state of the facts or knowledge of the subject. Then the Court said:

> "If the defendant . . . intended no fraud by his letter . . . if, in contradiction to his positive assertions, his testimony can be taken, that he did not know at the time anything about the matter in relation to which he was writing . . ."

In other words, he said he did not know. He thought that was true when he wrote it, but he could not know, because he never had tried, he did not know anything about the matter—

> "and that the officers of the department were well aware that he had no knowledge or information on the subject; then they acted upon his guesses only, and not upon evidence upon the subject, and their decision cannot be received as conclusive.
>
> "It would be, indeed, a mischievous doctrine in its consequences if a decision thus made could preclude the Government from recovering its money, paid for additional stock and carriers, which were never required and never employed in its service."

And I may say, your Honor, that it would indeed be a mischievous doctrine if the President or the Alien Property Custodian could have founded action on their part in the execution of the sacred obligations imposed by this act, upon a mistake of fact or a misstatement of the fact, however honestly made, and thus prejudice the United States in its rights or obligations, when, if they had known the truth, we may assume they would not have so acted.

Therefore, under the three conditions regarding the review by this Court of discretion of the executive or of the subordinate officers of the Government, there is a natural disposition to hesitate when we approach the Presidential Office, the rule of law is the same as stated in the Floyd Acceptances case.

The three rules are that the exercise of political discretion, either legislative or executive, can not be reviewed. The power being conceded, that ends the matter so far as legislation is concerned, because it is not administrative action. The exercise of administrative discretion may be reviewed in several instances. First, when the exercise of that discretion is not within the terms of the Statute, by which it is given, that is the act of the legislature. That applies to political as well as administrative acts—it is a question of power. Second, to ascertain whether it was exercised in accordance with the act, that is, the method prescribed; and further whether it was exercised upon a reasonable knowledge of the facts, so as to make it an actual exercise of intelligent discretion. Judicial discretion would not be judicial discretion if the Courts undertook to go up on the bench and decide a case without reading the Pleadings, and without knowledge of facts and that would not be a judicial discretion at all.

The same thing applies here. Therefore it follows that in this case, since the act of the Congress is the chart by which we must go, if it should appear that the President even undertook to vest in Mr. Polk a discretion of which he could not divest himself, or to vest it in Mr. Polk as an individual and not in an office, or that Mr. Polk did not exercise it as an official, and did not intend to do it; if it should appear that he undertook to go beyond the discretion vested in him by the act to order private sale or do away with public advertisement, or anything of that kind, but in effect undertake to give away this property or to sell it under conditions which would not make it a fair sale, then these acts would be subject to review in the Courts.

That brings us back to the intent of the whole act. These gentlemen must either take this as a sale or as a confiscation—it cannot be both. One moment they say it is a fair sale because there was a fair consideration and the next minute they turn around and say it was within the power of the President to give this property away and they need not try to get a fair price for it, that the money consideration was a very small matter.

We had much to say about the President in this matter. As a matter of fact, the President never took but one act in connection with it, all the rest was done by the Alien Property Custodian, and he was the officer authorized by law to make the sale.

Therefore, in the argument and the conduct of this case when I say the President, except in the limited sense stated, I mean the Alien Property Custodian. I say the Alien Property Custodian in making this sale, under a mistaken sense of his duties, possibly with the highest motives, believing that he was rendering a public service, went beyond the scope and the intent of this act. If that is true, the sale is void at the instance of the United States and the property must be returned to the United States, to do with as Congress shall determine, and not as the Court or anyone else may think best.

And that brings me to the last point, with which I will finish in just a moment. Your Honor asked yesterday what is the present power of Congress. Your Honor rather indicated this morning something of your view on that subject. I would suggest with all possible deference that that is not a question before the Court in this case.

THE COURT: I am inclined to agree with you and I do not think you need to argue that.

MR. ANDERSON: I will not.

THE COURT: Unless you desire.

Mr. Anderson: No, sir, I do not. I merely want to make this statement—that under the Treaty of Versailles the full power of the disposition of alien enemy property is reserved to the Allies. There are sales of enemy property being made today under this act by the Alien Property Custodian, and the full power of disposition and the power of disposal of these patents, speaking generally, rests in Congress. Beyond that I do not care to go; because if the Government is entitled to the property back, then the question of what it shall do with it is a matter for Congress to decide.

In concluding, there were one or two points that I wanted to mention to make my position perfectly clear, and Mr. Kresel referred to them yesterday. They are minor points which we have not been able to carry in our minds, and your Honor has been so patient I will not take them up further.

The Court: You will all have a chance to be heard at the conclusion of the testimony.

Mr. Anderson: Yes. I did want to say one thing, your Honor, on the question of estoppel. I do not think it is necessary for us to argue that question of estoppel at this time, but we will present to the Court authorities to show that there can be no estoppel on the Government of the United States. You may estop an officer of the Government personally from his assertion of a right, but not as an officer. Further than that, there can be no estoppel of the United States by the neglect or the mistakes of officers of the Government of the United States. We will point out those authorities, and I take it so far as this license to the Navy is concerned, which I did not refer to because, frankly, I have not had it in my possession, that the President has directed what shall be done with this property, and fixed the position of the Government with regard to it. This license only gave to the Government the right to manufacture and use these products created under these patents for its own use. That is, it could be used by them to operate Muscle Shoals—it would be only for its own use. Those are discussions which will come up in the trial of the case, and I do not think they are of sufficient importance at this time as bearing on the case for me to discuss them. I thank your Honor.

THE COURT: I am very glad to hear you, and it seems to me the arguments of counsel have led to this conclusion—that no evidence can be offered on the part of the Government that in the view of the defendant would be admissible, that the question from the standpoint of the defendant must be resolved in favor of the defendant on the issues of law raised by the Government's pleadings. From the standpoint of the plaintiff the only evidence that can be introduced by the defendant that would be relevant or legally admissible would be with respect to the value of the patents sold; that is, as to whether the price of $271,000 was such as not to shock the conscience of the Court and to make it a fair sale within the intent of the act.

Under those circumstances I suggest that in view of the fact that I assume the counsel engaged on neither side of this case will abuse the privilege, that each side take such testimony as it believes is proper in support of its case, reserving to the other side the right to full exception to that evidence, and that time be not consumed during the taking of the testimony in arguing questions which have been here presented. If there are some minor questions or some questions arise or are suggested by a question, those questions may be briefly argued; but inasmuch as the issue of fact is so narrow from the standpoint of the defendant and there is practically no issue of fact from your standpoint (addressing defendant's counsel), that is to be supported by evidence, I assume we can make headway and do just as complete justice by letting each side put upon the record the facts upon which they desire to stand in the Appellate Courts.

Mr. Anderson: That will be entirely agreeable.

The Court: Is that a satisfactory arrangement, Mr. Guthrie?

Mr. Guthrie: If your Honor please, I do not think that you desired to preclude us from showing the surrounding circumstances under which this action is taken, under supervision of and by the direction of the President. That will necessarily involve showing the conditions which operated in his mind to warrant the approval of the plan outlined in the report of Mr. Palmer.

The Court: I did not intend to preclude either side from putting in any evidence that in the opinion of counsel for that side is proper matter for consideration, and I assume that you would contend, possibly properly, from my standpoint I do not pass on that now, that if the Government should attempt to support some of its issues by evidence you would feel it incumbent upon you to meet that evidence by the line of testimony which you suggest.

Mr. Kresel: Will your Honor give me a minute. Of course, Colonel Anderson has already stated that he does not abandon any of the allegations in his Bill. I do not understand your Honor to be ruling now—

The Court: I am not ruling on anything.

Mr. Kresel: (Continuing)—that this whole question is, as to our side, a question of consideration, as to the Government side a question of power. My understanding of your Honor's statement is this: Of course, we all have in mind the provision of the equity rule that even after objection the Court is bound to take the answer so that the Appellate Court may have the testimony before it, but that in view of the argument that has been had here and the narrowing of the issues, so to speak, at least in our own minds and your Honor's mind, you look to counsel to be careful not to press the admissibility of evidence by argument or otherwise, at length, in the course of the taking of the testimony, and to put in, of course, such testimony as each side thinks is necessary to its case. That is my understanding of your Honor's suggestion.

THE COURT: And the thing that I expressly disclaim is that you should be guided in putting in your testimony by what I stated I conceive to be the Government's idea as to the only valid testimony that you could put in—namely, that the Government concedes, as I understood Mr. Anderson's last argument, that you are entitled to show, if you can, that a sale for $271,000 was a fair sale. You do not dispute that, I assume.

MR. ANDERSON: I do not dispute the right to put in the testimony as to the fair sale. I quite accept your Honor's view, for the practical reason, aside from the very great wisdom of your Honor's ruling on my suggestion at this time. Because we have argued every proposition that bears on the evidence. We have a right to put the evidence on the record anyhow, and all the Government shall do is to treat your Honor perfectly fairly; if a question comes up that has not been argued here we will just state our position in a few words or sentences, and very often not state it at all, but let it go on. Because if the objection is sustained it goes in anyhow.

MR. KRESEL: I think we all understand your Honor.

THE COURT: I give you as liberal power as I can give you without a resort to Rule 46 or further argument; because you all want this case when it goes up to have everything in the record, to enable the Appellate Court or the Supreme Court of the United States, or both, to decide it on the merits.

Mr. Anderson: Exactly.

The Court: I assume that you are all ready to start with your evidence. We will begin that at one o'clock rather than now.

Mr. Anderson: Yes, we would very much prefer it.

The Court: Then we will take a recess until one o'clock Standard time.

After Recess

PLAINTIFF'S PROOFS.

Mr. Anderson: If your Honor please, this afternoon we will probably take up in introducing documentary evidence. Mr. Galloway will take charge of that and introduce that evidence in its logical order as nearly as practicable.

Mr. Galloway: Your Honor please, we have, in an effort to expedite the hearing of this case, entered into a stipulation trying to remove the necessity of proving the authenticity of certain documents. It is not the desire of counsel to cause that stipulation to be put of record at this time unless some differences occur between them, in which event we will ask your Honor to consider the stipulation, as we do not want to encumber the record with the same, as it is rather lengthy.

I think, perhaps, it might be well, as Colonel Anderson suggests, to read the stipulation itself and leave out the exhibits, so that the Court will understand the purpose of the stipulation and the purpose for which we are offering it here, in an effort, as I say, to expedite the trial.

The stipulation reads as follows:

"In order to avoid undue delay in the introduction of evidence and to facilitate the trial of the above-entitled cause, it is, solely for the purposes of this case and any re-trial thereof, stipulated and agreed by the respective parties hereto, by their respective solicitors of record, as follows:

I.

"*Documents, Records and Correspondence.*

"The respective parties may offer in evidence either original, duplicate, photostat, certified or other true copies of the documents, minutes of meetings or conferences, papers, records, accounts, letters of correspondence or any part or parts thereof listed and described in the lists hereto annexed, and identified as to each page thereof by the initials of one of the solicitors of record of the respective parties without formal proof of the execution, signing, delivering, transmission or recordation (where required) of any such document, paper, record, account, letter or correspondence, with the same force and effect as if the original thereof had been produced and the execution, signing, delivery, transmission and recordation (where required) thereof had been formally and duly proved *(but if and when offered*, the same shall be subject to the same objections, if any, as to relevancy, materiality and competence as evidence, which might be made to the original thereof if the same had been presented and duly and formally proved); provided, however, that either party hereto may at any time during the trial and before the taking of evidence is concluded, produce the original or a certified copy of any such document, paper, record, account, letter, or correspondence, or show that the copy so introduced is in any respect incorrect, in which event the original shall upon request be substituted for such copy, or the same shall be corrected to conform to the facts as shown to the Court. Should the corrections made require the submission of additional evidence or the recalling of any witness, either side shall have the right to do so if the Court permit. The lists herein referred to need not be made a part of the record in this case, but an initialed original or duplicate of said lists shall be in the possession of counsel for each side and in the event of difference, may be submitted to the Court.

II.

Testimony before Congressional Committees, Commissions and other Govermental Bodies, Public Statements, Books, etc.

"That the testimony of witnesses and exhibits thereto attached or submitted by said witnesses, contained in the official Government publications of proceedings before Congressional Committees, Commissions and other Governmental bodies referred to in lists initialed as aforesaid, and statements of counsel therein contained; the official Government prints of the reports of the Tariff Commission, the Department of Commerce and the other Governmental Departments, officers or bureaus, referred to in such lists; the public addresses of representatives of the defendant, referred to in such lists; may be used by either side without formal or other proof of the authenticity or correctness thereof, to show that such testimony was in fact given, or that such statements of counsel, addresses of the defendant's representatives or reports of said departments, officers and bureaus were in fact made *(but if and when offered,* the same shall be subject to the same objections, if any, as to relevancy, materiality and competence as evidence, which might be made to the original thereof if the same had been presented and duly and formally proved); provided, however, that this stipulation shall not be construed as limiting the legal effect of such official documents or reports. The aforesaid exhibits referred to in this paragraph, may be used by either side to the same extent as if the originals thereof were produced and formally proved, subject, however, to the objections, if any, as to competency, relevancy and materiality that might be made to the originals thereof, provided, however, that either party hereto may at any time during the trial produce the original or a certified copy thereof, or show that the copy so introduced is in any respect incorrect, in which event the original shall upon request be substituted for such copy, or the same shall be corrected to conform to the facts as shown to the Court. Should the corrections made require the submission of additional evidence, or the recalling of any witness, either side shall have the right to do so, if the Court permit.

III.

Matter to be Read in Evidence Without Formal or Other Proof.

"Subject to the objections as to competency, relevancy and materiality, copies initialed as aforesaid of the following may be introduced and read in evidence without calling witnesses thereon or making formal or other proof thereof, to wit:

"List of underwriters of The Chemical Foundation, Inc.

"List of stockholders of The Chemical Foundation, Inc.

"List of patents, copyrights, trade-marks, etc., reassigned by The Chemical Foundation, Inc., showing the assignee and the date of such assignment.

"Lists of patents, copyrights, trade-marks, etc., that have expired since the conveyance thereof to The Chemical Foundation.

"Lists of licenses granted by The Federal Trade Commission under patents, trade-marks, etc., involved in this suit, together with the identification of the patents so issued, the date of such licenses and the name of the licensees, the royalty rate and a statement of the royalties due under said licenses according to the records of the Federal Trade Commission.

"Copy of the testimony of Lee C. Bradley, Esq., before the sub-committee of the Committee on Appropriations of the United States Senate, 65th Congress, Second Session, on H. P. 13086.

"Statement from the books and records of the Alien Property Custodian showing the receipt of money from The Chemical Foundation, Inc.

"Uncertified copies and classified lists of any patents, applications, trade-marks, copyrights, or contracts and assignments thereof made by the Alien Property Custodian to The Chemical Foundation, and of any licenses issued by the Federal Trade Commission or the Chemical Foundation, Inc., covering any of said patents, applications, trade-marks, copyrights, or other similar rights.

IV.

Facts Agreed.

"The following facts are stipulated and agreed as facts in this case, to wit:

"That the ratification of the Treaties of Versailles, Saint Germain and Trianon was never advised or consented to by the Senate of the United States as required by the Constitution and said Treaties as such never became binding or obligatory upon the United States. Upon any trial or re-trial or any appeal of this cause either party hereto, or the Court, may read, refer to or use any copy of either of the Treaties of Versailles, Saint Germain en Laye or Trianon which may have been published and issued by or under the direction of the Senate or any department of the Government of the United States to the same extent as if the said treaties had been introduced in evidence and made a part of the record in this cause.

"That neither the Imperial German Government nor the Imperial or Royal Austro-Hungarian Government or any successor or successors of said governments, or either of them, has complied with the conditions and provisions mentioned in the reservation contained in the Treaties of Berlin, Vienna or Budapest, respectively, nor of the joint resolution of Congress approved July 2, 1921. (Public Resolution No. 8, 67th Congress.)

"And it is further agreed that a letter from the executive clerk of the White House as to the dates of President Wilson's departure for 'Europe and his return to the United States during 1918 and 1919 and the date when he became ill, may be admitted in evidence on offer of the plaintiff, the plaintiff to furnish the defendant with a copy thereof prior to said offer.

V.

Exhibits With Bill of Complaint and Answer.

"The various exhibits annexed to the bill of complaint and to the answer in this cause (with the exception of Exhibit G annexed to the bill of complaint herein, which is covered by a separate stipulation) shall be considered and read as in evidence for the respective parties whose pleadings contain such exhibits in this cause, without being further or formally proved or introduced in evidence, but subject to the right to the adverse party to object to the same or any of them as being immaterial or irrelevant, by noting such objection, if any, on the record at any time during the trial and before the taking of evidence is concluded, and the Court may rule upon such objection as if the matter so objected to were being then offered in evidence, and subject to the further right of either party to call attention to and have corrected any errors in said exhibits, if any there be, at any time during the trial."

Mr. Galloway: I might, if the Court please, just pause a moment to say that Exhibit G to the Bill was the exhibit which contained the long list of patents, and counsel for the plaintiff and defendant have agreed upon a correct list; and I think we have everything completed now except signing the stipulation to that, which we will sign in due time. The next is:

VI.

Books of Account.

"It is further stipulated and agreed that the defendant need not produce its books of account upon the trial unless the plaintiff specifically requests the production of some particular book or books; that either side may use transcripts or extracts from said books subject to the right of either party to call attention to and have corrected any errors in such transcript, extract or compilation at any time during the trial and that in connection with the testimony of any witness as to compilations based on entries in said books, it shall not be necessary as a basis for such testimony to put said books in evidence."

That is signed by myself as Special Assistant to the Attorney General, Solicitor for the plaintiff, and by Mr. Boggs, as counsel for defendant.

Mr. Anderson: Was it not understood that was going into the record at this point?

Mr. Kresel: As I understand it, the stenographer was taking down what Mr. Galloway read, and of course it becomes a part of the record.

Mr. Anderson: That is what I wanted to show, yes.

Mr. Galloway: If the Court please, I wish first to offer in evidence and read Exhibit M in the Bill of Complaint, which is, under the terms of the stipulation——

Mr. Kresel: Which is that?

Mr. Galloway: Exhibit M of the Bill of Complaint, being the letter of the President (reading): "The White House, Washington, July 1, 1922—"

Mr. Kresel: I doubt whether it is necessary to read it. Colonel Anderson has already read it to your Honor, I think, only this morning. If Mr. Galloway will just offer it, it can be considered as in evidence. Although from my point of view it is immaterial, I shall not object.

Mr. Galloway: If the Court please, it was read before in argument, but it has not yet been read in evidence, and we wish to do that now.

The Court: The letter is admitted without objection. I think, unless you press it, it need not be re-read. It is annexed as an exhibit to the Bill, and that may be referred to by this Court in the Bill, for the purpose of ascertaining its contents.

Mr. Galloway: If your Honor please, I wish next to read in evidence the letter written by the Alien Property Custodian to The Chemical Foundation, which is also a part of Exhibit M in the Bill of Complaint, and which has not yet been read to your Honor, so I understand it.

The Court: I have read it, and if it is for my benefit, you need not read it.

Mr. Galloway: I do not want to burden your Honor, but I wish to have it considered as read in evidence here, and if your Honor does not care to hear them, if you so indicate, I will not do so.

The Court: This, without objection, will be admitted under the same conditions as the letter of the President, and to ascertain the contents, reference may be made to the exhibit.

Mr. Mahaffy: May I suggest that these be numbered 1 and 2, to facilitate matters?

Mr. Galloway: I think we had better start that practice.

Mr. Anderson: I suggest that these exhibits which are exhibits in the Bill be referred to by the number given them in the Bill, and then when we introduce any new matter, that that be referred to as Plaintiff's Exhibit No. 1, 2 and so forth. That is, if it is a paper that appears in the Bill, it will have the same exhibit number that it has in the Bill, and where it is a new paper being put in evidence, it will be identified by Plaintiff's Exhibit 1 and so forth.

Mr. Kresel: That is satisfactory.

Mr. Galloway: We wish next to read in evidence the letter by the Chemical Foundation, Inc., the defendant herein, to Thomas W. Miller, Alien Property Custodian, of July 15, 1922, which is also a part of Exhibit M attached to the Bill of Complaint.

The Court: Admitted under like conditions.

Mr. Galloway: We wish next to offer in evidence the executive order of the President, of October 12, 1917, and read therefrom Paragraphs 17 to 21, both inclusive, and Paragraphs 19 to 34, both inclusive.

Mr. Anderson: Do you mean 29?

Mr. Galloway: Yes, I do. I beg your pardon. 29 to 34, both inclusive.

Mr. Kresel: Where will we find that, Mr. Galloway?

Mr. Galloway: That is in accordance, Mr. Kresel —

Mr. Kresel: No; I say where will we find it?

Mr. Galloway: It is in the printed pamphlet.

Mr. Anderson: That is No. 15 on the list.

The Court: Are you offering a physical exhibit?

Mr. Galloway: Yes. I think we will be able to offer this as a physical exhibit. It begins, Mr. Kresei, on page 22, and the particular portions to which I refer are on pages 25, 26 and 27.

Mr. Kresel: You are offering the whole order, are you?

Mr. Galloway: The whole order in evidence, and I ask leave to read certain portions thereof to your Honor.

Mr. Kresel: There is no objection on our part. I would suggest that the stenographer now mark, or the clerk or whoever does the marking in this Court, now mark in Mr. Galloway's pamphlet that as Exhibit 1.

Mr. Galloway: Plaintiff's Exhibit 1.

The Court: Will you present to the clerk, so that he may mark as Exhibit 1, the document which is now admitted?

Mr. Galloway: Yes. It begins at the center of page 22 (handing to clerk).

Received in evidence and marked "Plaintiff's Exhibit No. 1." (*See Exhibits, Vol. I, page 1.*)

Mr. Kresel: May I make this suggestion—at least, I want the instructions of the Court, as to whether it is your desire that the stenographer should copy these exhibits into the record, because it would make a tremendous record.

The Court: No. That is the reason why I say that if that was a physical exhibit, it can be offered instead of having it read.

Mr. Galloway: And the reading of the particular portion of it?

Mr. Kresel: If you insist upon it; although I see no purpose of even having the stenographer copy the part of the exhibit that you read.

Mr. Anderson: Why could we not do this, if I may suggest, Mr. Galloway: That we offer the physical exhibit in evidence and then say "That I wish to read for the information of the Court certain part, but that not to be taken down by the stenographer." He just notes the exhibit. It would be for the information of the Court.

The Court: You rely mainly on certain sections?

Mr. Galloway: Yes.

The Court: You can tell me what those sections are without reading them in full detail, and you can probably tell me in three or four words what will take thirty or forty lines.

Mr. Galloway: I can tell you, if the Court please, that Sections 17 to 21 are the Sections in which the President delegates to the Federal Trade Commission the authority to issue licenses for the use of patents under the Trading with the Enemy Act.

Sections 29 to 34 are the provisions of the Executive order of October 12, 1917, under which the President vests in an Alien Property Custodian to be thereafter appointed, the Executive Administration of Section 7 and so forth, namely, the seizure, and similar provisions of the Trading with the Enemy Act.

Mr. Galloway: I wish now, if the Court please, to read in evidence a statement—

Mr. Anderson: If the Court please, Mr. Kresel and I were just conferring. Of course, this is going to be an enormous record—

Mr. Kresel: Your Honor does not mind if we have these little talks aside. I think it is going to save time for everybody.

Mr. Anderson: Our thought was this: If counsel in introducing in evidence an exhibit, makes the statement "I offer in evidence as Plaintiff's Exhibit No.— such and such document, and wish to direct the attention of the Court to such and such parts thereof," or facts from you by specific questions to which Mr. Kresel will have an opportunity to object. Can you answer that yes or no?

(RDQ. 1568 repeated as above recorded.)

A. Yes, an agreement was made.

RDQ. 1569. Have you any written evidence of that agreement?

A. Nothing in writing. I did not think it would be permitted to get out of Germany at that time.

Mr. Kresel: I object.

The Court: I am not sure from what he has said that he can answer that yes or no.

The Witness: They would have taken it. It could not pass the English lines, I thought; they would have taken everything away from my brother.

Mr. Kresel: I object to that.

Mr. Anderson: I consent to strike out the rest. The statement that it was not allowed to get out of Germany at that time will remain?

The Court: Yes. The remainder is volunteered and will be stricken out.

RDQ. 1570. Have you ever had in your possession in America any such agreement in writing?

A. No, I have never had the agreement. I had my brother's statement to me, that is all, of the contents of the agreement.

RDQ. 1571. Was the agreement so far as you were concerned for any period?

A. No, sir.

Mr. Kresel: Colonel, if you will remember, the witness testified here yesterday that it was for the life of the patent. Is it possible he now wants to say that that was not correct?

Mr. Anderson: What is the meaning of the life of the patent?

Mr. Kresel: You know what the life of a patent is—

Mr. Anderson: Certainly I do.

Mr. Kresel: And he knows what the life of a patent is.

Mr. Anderson: Suppose it was for an indeterminate period and he construed it to be the life of the patent. That is the construction of the agreement. I am arguing with counsel instead of addressing your Honor.

The Court: That is all right, so long as it does not consume too much time.

Mr. Kresel: That is all. I am through, your Honor.

The Court: Of course, you will recall his answer of yesterday.

Mr. Anderson: Yes, sir. Then I will ask him this question:

RDQ. 1572. It appears that you testified yesterday that the agreement was for the life of the patent. Were there any specific terms of agreement on the subject of period and, if so, state what they were?

Mr. Kresel: It now appears that this agreement is in writing. I object to this witness undertaking to state the contents of that agreement.

Mr. Anderson: He has already stated it on cross-examination, I think.

Mr. Kresel: I beg your pardon, he did not state it on cross-examination.

The Court: Have you not two difficulties now, Colonel Anderson, the one presented by Mr. Kresel and also the further one that in his answer a moment ago, which you said I think need not to be taken down, that his brother had stated to him the contents of this document?

Mr. Anderson: Yes.

Mr. Kresel: Which is hearsay.

The Court: Which is not only the statement of the contents of a written document, but also hearsay with respect to such a conversation.

Mr. Anderson: I think your Honor's objection is well taken for the whole evidence on the subject. I think I will leave the matter right there. I did not mean to say your Honor's objection, I meant your Honor's suggestion.

I now offer in evidence a letter from the Treasury Department, Bureau of Public Health, dated March 14, 1919, addressed to Mr. Metz, signed by Rupert Blue, Surgeon General, which is offered in connection with Defendant's Exhibit, No. 23, on yesterday and ask that the same be read as Plaintiff's Exhibit 443, the letter being as follows:

The Court: Admitted under the same conditions as the preceding documents.

Received in evidence and marked "Plaintiff's Exhibit, No. 445." (*See Exhibits, Vol. II, page 851.*)

RDQ. 1573. On cross-examination you were asked as to your visit to Germany in the year 1922 and your alleged meeting with certain gentlemen, Mr. Oppenheim and others who were then on their way to America. Will you state just what took place?

Mr. Kresel: Will you ask him to fix the date, please, as near as possible?

RDQ. 1573. (Continuing) Will you fix the date as near as you can that you met these gentlemen and state what took place, how you happened to meet them and what happened?

A. As near as I can fix the date, it was early in June. I was in Berlin and received a telegram to see Assessor Oppenheim who was leaving that night for London to come to America. I saw him for about fifteen minutes at his residence.

Mr. Kresel: May I interrupt a minute to ask whether the witness has the telegram?

RDQ. 1574. Have you that telegram?

A. I haven't it with me. It is a routine thing.

Mr. Kresel: If he hasn't it, will he state from whom it was?

A. (Continuing) It was from the Hoechst people, the Farbwerke people. I saw Dr. Oppenheim for a few moments, about ten or fifteen minutes at his residence. He was packing his bag to leave on a train for London. He was going over, he told me, in answer to a telegram that he had received from Washington attorneys that suits for the recovery of the license fees had to be claimed before July 1st, I think it was, or whatever date the law specified; and he was going over in connection with those suits. That is the only one I saw, the only gentleman I saw connected with that expedition until he came back from America some time in August—yes, August, I think it was. I didn't know the others were going.

RDQ. 1575. Was there anything said in connection with any suit against the Chemical Foundation for the recovery of these patents?

A. Not a word, sir.

RDQ. 1576. Had you at that time ever heard of any suggestion of bringing a suit for the recovery of the patents?

A. I can not recall having ever heard a suggestion with regard to that.

RDQ. 1577. How long were you abroad, Mr. Metz?

A. I was abroad, I believe, until September 6th. I sailed from Cherbourg. I was in Paris for quite a while with my family and I was in Switzerland. I sailed on September 6th and got home about the 15th of September, 1922.

RDQ. 1578. If you recall, state when you first heard of any suggestion of proceedings by the Government to recover the patents here in controversy?

A. I received a telegram—

Mr. Kresel: I object to that. The question is when he heard it, just simply the date.

A. (Continuing) I can not recall. It was after it was begun, after the President's demand for the return of the patents.

RDQ. 1579. Did you ever suggest to any official of the Government of the United States that this suit be brought?

Mr. Kresel: I object to that. I object to it as an indefinite question. He either had conversations with somebody about it or did not. If he did, then of course, you can ask what the conversation was.

RDQ. 1580. Did you ever have any conversation with any officer of the Government of the United States in regard to bringing this suit before it was instituted; and if so, with whom and where?

A. I can not recall a single conversation. I don't think I had any with any official of the United States or anyone else before that time on this point, on the point of asking for the patents or the suit. I don't recall anything of the kind.

RDQ. 1581. I think you testified on cross-examination that your trade-marks salvarsan, neosalvarsan and novocain had been seized by the Alien Property Custodian or demanded by the Alien Property Custodian?

A. Yes, sir.

RDQ. 1582. Was any such demand ever made upon you personally?

A. I think there was; I am quite sure; in the list of trade-marks and so forth, it came.

RDQ. 1583. Have you ever demanded the return of those trade-marks?

A. Yes, sir.

RDQ. 1584. Have they ever been returned to you?

A. No, sir. I would like to qualify that. Demand was made on the Chemical Foundation by my attorney when he knew they had claimed them, as against the Alien Property Custodian, I meant to say. I didn't know they had them. Didn't consider it.

RDQ. 1585. Mr. Metz, you testified on cross-examination that you did not pay any money to the German Company, the then owner of these patents, for the right which you claim or allege to have obtained in 1916 to use the same or to manufacture thereunder. I am going to ask you this question which I will ask you not to answer until counsel can be heard. From your familiarity with this business, as indicated in the evidence which you have already given, and bearing in mind the evidence here disclosed as to conditions with respect to the exportation of salvarsan, neosalvarsan and novocain from Germany in 1916, would you regard the continued manufacture and sale of these articles under these patents in the United States, or in the exportation from the United States, when manufactured in the United States, of value to the owners of the patents?

Mr. Kresel: We object to that question, if your Honor please, object to it as to form if it is a question put to an expert, as I must assume it is.

Mr. Anderson: It is a fair assumption.

Mr. Kresel: And upon the ground that it is not founded upon any facts in the case or either upon an assumption of facts. I recognize that you may assume a state of facts when you put a question to an expert, as I did upon my cross-examination of this witness. The question is based upon conditions in 1916, whereas the only materiality, if it has any materiality at all, must be directed to conditions in 1919, at the time when this sale was made. It calls for the witness's conclusion as to what he believed was in the minds of Germans as to whether a certain situation was of value to them or was not of value to them. It does not call for this witness's estimate of the value of any particular thing such as the trade-mark or the patent. It is asking him to construe the frame of mind of the Germans as to whether they in 1916 believed that a continuance of manufacture here was of value to them. I do not think that that is the subject for expert testimony.

Mr. Anderson: I beg your pardon, I thought you were through.

Mr. Kresel: I was going to add, if you will permit me, the ground urged, and further upon the ground that the testimony is for that reason immaterial and irrelevant, we object to it.

The Court: Before I hear you, Colonel Anderson, I will state my difficulty so you may reply to it. I am having this difficulty with respect to the agreement of December 5th, 1916, and the agreement of June, 1918, and the written document which did not come out of Germany—a confusion of the terms of those several agreements.

Mr. Kresel: Will your Honor permit me to give you in very few words the contents of those agreements?

The Court: I wish you would.

Mr. Kresel: First, the agreement of December 5th, 1916, was an agreement between the Dermatological Laboratories and Mr. Metz, the Farbwerke-Hoechst Company. By that agreement the Laboratories agreed to dismantle their plant in which they had been manufacturing a product.

The Court: I have that.

Mr. Kresel: You have that.

The Court: Yes. You need not state any

more about that. I have the terms of that agreement.

Mr. Kresel: Very well. The terms of the June, 1918 agreement between the persons who were conducting the Dermatological Laboratories, Drs. Schamberg, Raiziss, etc., and Mr. Metz—

The Court: I have that.

Mr. Kresel: Your Honor does not need anything further on that?

The Court: No. Colonel Anderson, it seems to me that this question is immaterial because the matter with which we are concerned and the issue to which it would be pertinent if relevant would be that of value at the time of the sale, would it not?

Mr. Anderson: Yes, sir.

The Court: And that only. Then that value is ascertained by the conditions existing at the time of sale. I do not see the logical sequence in that connection between the business wisdom of the Germans permitting the manufacture here when they could not export from Germany and import into the United States, and the sale value of the salvarsan, neosolvarsan and novocain patents in 1919. If you think it is relevant I will take the answer without further discussion, or I will hear you.

Mr. Anderson: I think that probably I should state to your Honor why I have asked the question, that your Honor may see why it is relevant. I have already indicated, and we shall contend here, that assuming the agreement of 1916 can be considered in this case—and it is all subject to objection from one side or the other—then it follows that the question on cross-examination was directed to one of two things, either to show that the right was of no value to manufacture in the United States or for the purpose of showing that the witness had nothing that he paid for, paid any money for under this agreement, and that therefore the limitation alleged to have been created upon the patent use by this agreement gave to and would give to the owner of the patent or its successor no right to revenue which would come in.

The Court: Your question was what?

Mr. Anderson: No right to revenue.

The Court: No, but your question?

Mr. Anderson: My question was assuming that they could not export to the United States—I will put it that way if you wish—which the evidence here shows, assuming that there was a business in the United States which the evidence shows, assuming that the person manufacturing in the United States could export to other countries, which necessarily follows, then the value of maintaining that business during the period of suspension to the German owner was enormous.

The Court: I understand your respective theories, and if you want to put it of record you may do so.

Mr. Anderson: Of course, it will be a debateable question, but there are going to be lots of them here, and I want to get the record in such shape that we can argue the reasonableness of the position. In view of the objection I will reframe the question, because I would just as soon put it the other way.

RDQ. 1586. Assuming that in the year 1916, at which time you testified as to some right acquired to manufacture under the salvarsan and neosolvarsan patents, the exportation of this product from Germany to the United States was substantially cut off by blockade and the export thereof from Germany to other countries was substantially cut off, and assuming that there were then large sales of this article in the United States and other countries and a large demand therefor, would you as a person familiar with this business, as you have indicated in your testimony, regard the continuance of the manufacture in the United States, the sale of this article in the United States, and the exportation thereof to other countries from the United States during the period of such suspension of exportation from Germany owing to the conditions described, as of value to the German owner of these patents or his successor.

The Court: The question I assume, is subject to all objections which you have heretofore made to this or indicated with respect to other questions?

Mr. Kresel: Yes, your Honor.

The Court: The answer will be taken subject to your general and specific objections.

A. Yes, sir.

RDQ. 1587. From your familiarity with the business could you make any reasonable estimate of what you would regard the value of such a continuation of the business as I have described to be to the owner of the patent during the period which I have described, resulting from these conditions?

Mr. Kresel: Please just say yes or no.

A. Yes or no to the question? What is the question?

RDQ. 1588. What do you say?

A. Perhaps I can not say yes or no to the question.

The Court: That is, can you make an estimate of value?

RDQ. 1589. Just say whether you can, whether you think you can estimate its value?

A. No, not definitely. It would be enormous.

Mr. Kresel: May I have the latter part stricken out, your Honor?

read it all, as the case may be then, if he read it all, if the paper required reading, there need not be any necessity for having it all appear in the record; or if you undertake to state the substance of it, that the stenographer be directed not to take down that statement, because the exhibit speaks for itself, and it will just duplicate the record thereby.

The Court: The difficulty in doing that is that you are leaving for the stenographer's determination what he shall and shall not take down.

Mr. Anderson: I suggest in every case that he say to the stenographer, with leave of the Court, not to take it down.

The Court: So far as I am concerned, you can introduce these exhibits, and until there is objection you need not bother about telling me what they are, and when you have gotten them all in, then go ahead and tell me what the record is. That is, at the end of the session, when the stenographer need not be taking notes of it, because it will be in the nature of an argument or a statement of the case rather than the introduction of the testimony. So far as I am concerned, you need not tell me anything about the contents until say the beginning of the next session, the next morning.

Mr. Anderson: Will your Honor permit us to state briefly the contents? We are following the paragraphs of this Bill, and tomorrow morning we would have to go back and re-state it all over again.

The Court: Then, state it as briefly as you like. I do not like to lumber the record up, but I have found from time to time sometimes we leave out just the thing which we want to have.

Mr. Mahaffy: If the Court please, would it not be better and probably save a disagreement between counsel, if counsel, when they offer exhibit number so and so, say "We rely on Paragraphs A, B and C,"

The Court: Yes.

RDQ. 1590. Would you regard it as of great value, nominal value, or small value, without stating any figures?

Mr. Kresel: Object to it upon the grounds already urged; further upon the ground that it is a subject it seems to me which can not be valued. No one can undertake to say what, if any, value there is to such an ephemeral and fleeting thing as a desire to continue operations.

Mr. Anderson: Good-will? I think it was a pretty valuable property. The Supreme Court of the United States has held it was.

The Court: That involves too many questions for me to discuss.

Mr. Anderson: Yes. I do not want to discuss it.

The Court: It seems to me that your answer would not be of much value, because it would be vague and indefinite.

Mr. Anderson: I concede that it possibly would be argumentative and I think probably it is better to argue it from the record than otherwise. I will therefore waive any answer to the question.

RDQ. 1591. Early in this examination we introduced in evidence certified copies of your registration of trade-marks "salvarsan," "neosalvarsan," and "novocain." You recall those, do you not?

A. Yes, sir.

RDQ. 1592. It appears in the evidence that these trade-marks were originally assigned to your American corporation, Farbwerke-Hoechst Company; were they not?

A. Yes, sir.

RDQ. 1593. And the abstract which I have before me also shows that they were assigned to the H. A. Metz Laboratories?

A. Yes, by the Farbwerke-Hoechst Company.

Mr. Kresel: Are they both in evidence, Colonel?

Mr. Anderson: All in evidence, yes. Apparently the one assignment from Farbwerke to—

Mr. Kresel: I did not recall it. That is the reason I asked.

Mr. Anderson: I will put that in evidence. In order to complete the record I now offer in evidence certified copy of assignment recorded July 24, 1918, from the Farbwerke-Hoechst Company, a New York Corporation, to the H. A. Metz Laboratories, Incorporated, a New York corporation, to be identified and read as Plaintiff's Exhibit, No. 446.

Mr. Kresel: Same objection that we raised to the others.

The Court: Received under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 446." (*See Exhibits, Vol. II, page 851.*)

RDQ. 1594. Assuming, for the sake of this question that the law of the United States authorizes the registration of trade-marks at the Custom House, and when so registered prevents the importation of articles under such trademark names or trade names into the United States without the consent of the owner of the trade-mark, would that fact, in your opinion increase the value of American trade-marks, including the marks "Salvarsan," "Neosalvarsan," and "Novocain," so registered?

Mr. Kresel: We object to that upon the ground that unless it is for the purpose of having this witness change or modify his testimony as to the value of these trademarks, which he has already given, it is immaterial and irrelevant.

We further object upon the ground that what the law of the land is is something that the Court will take judicial cognizance of, and that it is not proper to ask this witness as an expert upon values to base his opinion as to the value of a trademark merely upon the law as stated by counsel, assuming that counsel stated it correctly.

Mr. Anderson: Unless I did state it correctly, in substance—I thought you were through, sir.

Mr. Kresel: I am not challenging the correctness of your statement. I am going to assume for the present that it is correct.

The Court: I do not follow the second point of your objection, Mr. Kresel, because it seems to me that this witness would have been entitled to place a value upon this trademark on various assumptions, although one of those assumptions would be a condition of fact that would be regulated by law, and this question is assuming that certain conditions existed which would be brought about by the operation of law.

But it seems to me, Colonel Anderson, that there is merit in the first point, particularly if carried a step further, and that is: This goes to values which you have gone into quite fully in your examination in chief, and that you are now covering not strictly in re-direct, but rather anew, although in slightly different manner, the same question into which you went in detail. However, if you want it, you may put it in the record.

Mr. Anderson: I think your Honor's second suggestion is probably a good objection to this question. The value was gone into on the original examination, and to assume additional elements of value might reopen it and possibly make it subject to that objection. So I will leave that without an answer.

The Court: Question withdrawn.

Mr. Anderson: The question will be withdrawn and I will ask this question:

RDQ. 1595. Have you ever undertaken to register your trademarks Salvarsan, Neosalvarsan, and Novocain, or either of them, in the Custom House of the United States?

A. Yes, sir.

RDQ. 1596. Was such registration allowed?

A. No, sir.

RDQ. 1597. Can you state, and if you have it in writing, produce the writing, why you were informed that you could not register the trademark?

Mr. Kresel: I object to that upon the ground that it is immaterial and irrelevant, that this Court can not undertake to pass upon the propriety of the refusal to register these trademarks or no. It is not a matter in issue here.

Mr. Anderson: Your Honor please, I will state what I want to prove by this witness. I wish to show by the witness, in connection with the evidence taken on cross-examination, that the witness made an effort to register his trademarks which he claimed to own as an American citizen and that the Chemical Foundation, under the claim of ownership of those trademarks by virtue of the assignment here in question, objected at the Custom House to the registration thereof on the ground that they were the owners and upon that state of facts he was advised by the Collector of Customs that he could not register the trademarks. I think that is material as bearing upon this situation.

The Court: I will not pass upon the materiality, but will let you take your answer subject to the objection.

RDQ. 1597. (continuing) Just go ahead and state the facts.

A. The facts as stated are not quite correct, Colonel Anderson.

RDQ. 1598. I stated them the best I could.

A. I do not know that the Chemical Foundation objected, but because of the Patent Office record—

RDQ. 1599. You just state the facts as they were.

Mr. Kresel: Will you just pardon me a minute. Before the witness undertakes to state the facts, I ask you, Colonel, if there are any writings in the matter. If so, the writings speak for themselves, if the Court rules that the matter is material.

The Court: I am not going to rule that it is material.

Mr. Kresel: I withdraw that, your Honor. If the Court rules that the evidence should be taken, then I think the best evidence should be taken.

RDQ. 1600. If you have any writings, let me have them, please.

A. The trademark, the certified copy filed with the Custom House, is the one that would give the information, Colonel. You have those, I think. The registration was refused because of the records showing—

RDQ. 1601. Have you got any writings?

A. You have it here, the certified copies—I don't know the legal phrase—the record of the ownership in the Patent Office. It was on the strength of that that I was refused, because that showed the Chemical Foundation claimed ownership.

Mr. Kresel: I object to that.

The Court: Don't say what that shows.

A. (continuing) You have the record here, gentlemen. I haven't got the record.

RDQ. 1602. Did you receive any communication from the Custom House on that subject, and if so, what

was the communication? If you have it there, let me have it?

A. I don't know as I have it. You have got it. I think I gave it to you gentlemen. The substance was—

THE COURT: No.

A. (continuing) I have to find it then, if you please.

RDQ. 1603. You have not any writing with you on this subject?

A. Not here. There is such a paper in Washington, I know. I have seen it.

MR. KRESEL: Would you mind asking him the date of that communication?

RDQ. 1604. Have you knowledge of the date of the communication?

A. The communication will show. I haven't it offhand, but the papers can be submitted and found over here.

RDQ. 1605. Will you see if you can find it a little later and if so I will then introduce it in evidence in connection with this question. If it requires explanation, I will ask leave to ask the question.

A. I have the further correspondence on the subject though, Colonel.

RDQ. 1606. Let me see the further correspondence?

A. That the Custom House agreed—

THE COURT: Don't say what the papers showed.

RDQ. 1607. Is this the paper to which you refer?

A. Yes. This is the letter from the Treasury Department referring to the trademark.

RDQ. 1608. You have not the letter that I want. I will have to get a certified copy from the Patent Office at Washington. You spoke yesterday of "Nuisance value" which is a term that has been used here a great many times. I would like to have you define what you mean by "nuisance value" of a patent?

Mr. Kresel: May I suggest, Colonel, that you ask him that question with reference to these patents, not generally.

Mr. Anderson: I will ask him first for the definition.

RDQ 1609. You spoke yesterday of the nuisance value of patents covering dyestuffs and things of that kind. I will ask you what you meant; what is your definition of the term "nuisance value"? What do you mean by it?

Mr. Kresel: Colonel, I must object to that in the form that you put it. He did not testify yesterday generally as to the nuisance value of dye patents. He testified specifically yesterday that he had testified before a Committee of Congress that these patents here in question had only a nuisance value. Now, I recognize your right to ask him about that, but I do object to your going into a general discussion with this man about the nuisance value of patents with which we have nothing to do.

The Court: What you want, I take it, Colonel Anderson, is what he meant by the term "nuisance value" used by him in his prior testimony.

Mr. Anderson: That is all; and I will put the question as his Honor stated it.

The Witness: How is the question?

RDQ. 1610. What did you mean by the term "nuisance value" as used in your prior testimony taken on cross-examination and before the Committees?

A. The value inherent in a patent that prevents others from doing business with a competing product of any kind, although the owner did not do anything himself with it. That would be a nuisance value.

RDQ. 1611 Has the Chemical Foundation ever asserted against you the claim of ownership of salvarsan or silver salvarsan; and if you have it in writing, please let me have it.

Mr. Kresel: Do you mean the patents or trademarks?

Mr. Anderson: No, I mean the trademarks.

A. Yes, sir.

Mr. Anderson: I offer in evidence letter dated July 16, 1921, signed by Harry D. Nims addressed to H. A. Metz Laboratories, Incorporated, to be marked as Plaintiff's Exhibit No. 447. You will admit, Mr. Kresel, that Mr. Nims represented the Chemical Foundation?

Mr. Kresel: I think that is correct. Yes, he did.

The Court: Admitted subject to the general objections of the defendant.

Received in evidence and marked "Plaintiff's Exhibit No. 447." (*See Exhibits, Vol. II, page 854.*)

Mr. Anderson: The letter is as follows (reading).

Mr. Kresel: Was there any reply?

RDQ. 1612. Did you ever make any reply to that letter?

A. My attorneys took the matter up with the Patent Office.

Mr. Kresel: I ask that that be stricken out.

RDQ. 1613. Did you ever make any reply direct?

A Through my attorneys, undoubtedly.

Mr. Kresel: Has he a copy? Can he produce it?

A. (continuing) I think you have it there. My attorneys certainly made a reply.

RDQ. 1614. You have not the reply with you, have you?

A. No, sir. I have no reply with me. I haven't got it.

RDQ. 1615. Mr. Metz, you were asked yesterday by counsel for the defendant as to the amount of royalties paid on your sale of novocain under the Federal Trade Commission license?

A. Yes, sir.

RDQ. 1616. And I think that you made some explanation as to the royalties being less than five per cent. of the total sales?

A. Yes, sir.

RDQ. 1617. Have you in your possession one of the packages of novocain which you sold that represents the sample which you sold under those conditions?

A. Yes, sir; the novocain and the tablets made from novocain.

RDQ. 1618. In order to make your evidence clear, would you produce that?

A. Yes, sir (handing packages to counsel).

Mr. Anderson: I offer in evidence two packages, one of novocain and the other of tablets, produced by the witness.

Mr. Kresel: I can not understand, your Honor, the purpose of such an exhibit. I can not understand what materiality and relevancy there can be to these issues.

The Court: How many exhibits have we now, Colonel Anderson? Four hundred and what?

Mr. Anderson: 447.

The Court: I am wondering if the purpose that you have in mind is not this, that novocain as sold commercially or the product sold commercially as novocain was not 100 per cent novocain.

Mr. Anderson: Quite so.

The Court: But that the commercial product contained other things besides novocain and that this witness has testified that he paid royalties not on the product as sold but only on the percentage of that product which was novocain; isn't that it?

Mr. Anderson: That is right. And he also said he testified that the large part of the expense or cost of the product sold was in the bottles and labels which were necessary; and I want to make his evidence perfectly clear.

The Court: All right; admitted.

Mr. Anderson: I will merely identify this stuff and leave it on the record.

RDQ. 1619. Do you desire to in any way enlarge your testimony of yesterday on that subject to make it clear? And if so, state exactly how you came to make the returns of royalties on this novocain?

A. Yes, sir. On novocain as such we pay 5 per cent. That is the product under the license. Novocain tablets contain novocain plus other products, including superaniline, and other patented high priced products, and the cost of labor of making tablets and bottles is much greater than the novocain itself. We sell novocain to various manufacturers who make these specialties, tablets and solutions.

We therefore charge ourselves on a manufacturing account with the amount of novocain that goes into these tablets and pay royalty upon that novocain by arrangement with the Federal Trade Commission, and keep a separate account; and that was checked up by the representative of the Alien Property Custodian and the Commission, and I have those checked records here. They are not on our books. They are separate records for manufacturing purposes.

Might I add further on that, Colonel, in further elaboration?

RDQ. 1619. (continued) In response to the question, yes.

or "pages so and so, from a certain point to a certain point?" That would earmark the matter which counsel particularly relied upon.

Mr. Galloway: If the Court please, that is not practical for one reason especially, as some of these things may be pertinent to several paragraphs of the Bill of Complaint, and it would be very hard to confine them with any degree of accuracy to any one paragraph.

Mr. Mahaffy: I did not make myself plain. I was not referring to the Bill, but to the parts of the particular exhibit, rather than describing what it is.

Mr. Kresel: In other words, Mr. Galloway, we do not want to be bound by your construction what certain paragraphs provide.

The Court: You are not, and he is only indicating, without binding either side as to the contents of the exhibit.

Mr. Kresel: I am quite sure we all understand what we are trying to do.

The Court: So you may state as briefly as you can the information that you desire me to have with respect to any particular document that is in evidence.

Mr. Galloway: The plaintiff next offers and asks to read in evidence the statement by A. Mitchell Palmer, Alien Property Custodian, as the same appears in the Depository Manual, issued by the Alien Property Custodian; this being dated August 1, 1918, and being under Item 61 of the stipulation. I shall be glad to show it to Mr. Kresel (handing to Mr. Kresel).

Mr. Kresel: Will your Honor pardon me a minute?

The Court: Yes.

Mr. Kresel: If your Honor please, I have just read the exhibit that is being offered. It purports

A. On account of the figures I gave. I had a telephone call to come down next morning with the figures, and I asked for them, and they gave me the totals instead of separating the specialties from the novocain. That was the cause of my statement as to those amounts. They are now separated.

RDQ. 1620. At an earlier stage I asked you a question in regard to your having obtained samples of the dyes used by other manufacturers, merchants or consumers in the United States. At that time counsel suggested that there was no testimony on the subject. I find at page 1754 of the record a letter introduced in evidence or read by counsel, addressed to you, which he states was from the Farbwerke Company in Germany, dated June 20, 1913. In that letter is a statement:

> "It is very interesting that you now receive the samples of competing factories on the part of dyers for examination. I can nevertheless imagine that an uncomfortable situation may sometimes arise for you because of it."

How did you come to procure those samples, and why?

A. The representative of the Textile Alliance, in their efforts to stamp out the abuses in the industry, had to have information as to the value of goods purchased by the various mills which came to them for advice. The samples from these mills were sent to me by their representatives for my opinion as to money value, on whether they were getting money value for the goods they paid for, and I made the tests and reported to them.

RDQ. 1621. Was the Textile Alliance the organization of which Mr. A. M. Patterson was President?

A. Yes, sir. And the reference to the uncomfortable position was that my competitors or some of my customers—

Mr. Kresel: I object to his interpreting the thoughts of the writer of the letter. He was not the writer.

The Court: No, he can not do that.

Mr. Anderson: I think that is all I want to ask the witness.

Re-Cross-Examination.

By Mr. Kresel:

RXQ. 1622. Mr. Metz, first I would like to straighten out with you the novocain figures as to which you have just testified. On your direct you gave, in answer to Colonel Anderson's questions, the amount of your sales of novocain for the years 1919, 1920, 1921 and 1922. Without repeating the exact figures that you gave as they now appear in the record, the total thereof was upwards of a million dollars?

A. Yes, sir.

RXQ. 1623. In addition to that you gave the amounts of royalties that you paid under your Federal Trade Commission licenses under those sales?

A. Yes, sir.

RXQ. 1624. I understand you to say that in point of fact the figures of your sales of novocain that you gave included other ingredients?

A. Yes, sir.

RXQ. 1625. Can you state the real amount of sales of novocain you made during those four years?

A. I have the five years—

RXQ. 1625. (continued) Five years?

A. From 1918 to 1922, inclusive.

RXQ. 1625. (Continued) Yes.

A. The actual amount of novocain sold as novocain and in the preparation was $477,961.98, on which the royalty was paid.

RXQ. 1626. Those were sales for a period of how many years?

A. 1918, 1919, 1920, 1921 and 1922—1922, up to and including July 1st, only.

RXQ. 1627. I noticed upon your re-direct examination you had available to you a lot of correspondence running way back to 1915, correspondence with officials of the Government and others. Have you your correspondence with Mr. Dieters that you have had with him this year?

A. I told you as I did not know if I had any copies. If I had I would be glad to bring them.

RXQ. 1628. I did not even ask you about copies only. Have you any correspondence with him, letters from him or copies of letters by you to him?

A. Yes, sir.

RXQ. 1629. Please produce them.

A. Colonel Anderson has them.

Mr. Anderson: Here is the only one I have got. (Handing witness.)

The Witness: I received a letter—

RXQ. 1630. No, please produce them, let me see them.

A. This is the correspondence and papers Colonel Anderson has came with them.

Mr. Anderson: If your Honor please, I wish to call your attention to this fact, that I did not ask a single question in regard to this subject on re-direct, and I do not think that counsel has a right to reopen this subject for further cross-examination. I stated I was perfectly willing on any matter on which there was any doubt whether it was direct or re-direct to permit further cross-examination, but I did not consent and can not consent to reopening the cross-examination generally. Therefore I object to that question.

Mr. Kresel: I do not propose to reopen the cross-examination generally. Your Honor will recall that upon the cross-examination I asked this witness for the correspondence and he said he would look it up. It seems to me that I have a right to ask him now the result of his search. I am not reopening the cross-examination.

Mr. Anderson: I do not recall that, but if counsel makes that statement, of course he has a right to call for it.

Mr. Kresel: There is not any question about that, Colonel, that I asked the witness, and the witness will admit it.

The Court: I will take it any way, Colonel. There is now in the hands of Mr. Kresel a certain document produced by the witness, which of course Mr. Kresel can without further questioning mark for identification and stop there.

Mr. Anderson: I only want to reserve the right to further examination.

Mr. Kresel: I shall not reopen the cross-examination. I am quite content to let it go as it is. There are three papers here and I will have marked the first one, for identification only for the present.

Marked for identification "Defendant's Exhibit I,"

Mr. Kresel: And the two annexed thereto as I-1 and I-2.

Marked for identification "Defendant's Exhibits I-1 and I-2."

The Court: Being the papers produced by the witness.

RXQ. 1631. Mr. Metz, you have produced one letter, a typewritten memorandum and a printed memorandum. Is that all of the correspondence that you ever had with Mr. Dieters?

A. That is all I had with me. There were other letters from him at various times which I have not got and I do not think I kept. Those are all I had and when I looked at my papers I found them.

RXQ. 1632. Have you not now here in Court other letters from Mr. Dieters to you?

A. No, sir; with those papers came some copies of reports which I handed Colonel Anderson, which he mailed to me without—I did not even read them, affidavits and such that he has been talking about for two years.

Mr. Anderson: I do not think I have those papers.

Mr. Kresel: I am not charging you with the possession of them yet.

Mr. Anderson: Well, if I had them I would produce them.

RXQ. 1633. You say that you received from Deiters certain affidavits?

A. Yes, sir; copies of affidavits—claimed to be copies of affidavits.

RXQ. 1634. You mean not signed affidavits but copies?

A. I don't know, Mr. Kresel. They are here in Court. I did not even look at them. He had so much talk about affidavits that I never bothered with them after that.

RXQ. 1635. In addition to those affidavits as you call them, was there not other correspondence that you had with him?

A. I do not recall, Mr. Kresel.

RXQ. 1636. Have you not a single copy of any letter that you ever wrote to him?

A. Not with me, and if there is home, I will get it as I told you the other day.

RXQ. 1637. I have been questioning you on this subject now for three days, Mr. Metz, and apparently you have the matter in mind, because you thought it wise to produce what you have now produced. Why have you not produced the balance?

A. Because I think I brought everything I have, and that is what I found in the papers I have. I have not been home since, Mr. Kresel, and no one else could find it but myself. I put things everywhere in my place and I have got to look for them. I will be very glad to do so.

RXQ. 1638. When you received from Mr. Deiters this bill which is in evidence now, you told me on cross-examination that you were indignant at any such demand made by this man and you thought you wrote to him. It is that letter that I would like you to produce.

A. If I have it, I certainly will, Mr. Kresel.

RXQ. 1639. But when? Can you get it by tomorrow morning?

A. No. No one will know where to find it. I have to look in a dozen places for it. I never kept those things together.

RXQ. 1640. All right. Mr. Metz, with the Court's permission I am going to ask you to get the copy of that letter written by you to Mr. Deiters and copies of all other letters written by Mr. Deiters to you and I shall ask the Court's permission to use those as soon as you can get those here?

A. I shall be very glad to comply with that request.

RXQ. 1641. Even though the Government's case should be closed.

A. Anything I have I shall be glad to send you, Mr. Kresel. Mr. Deiters probably has the originals if they were sent, and you can get them that way.

RXQ. 1642. Notwithstanding this unfounded demand that he made on you last October, you still continued in correspondence with this man Deiters, and continued to receive affidavits from him; is that right?

A. I can not help what he sent me.

RXQ. 1643. Did you or did you not?

A. He continued to send me stuff, yes, I will put it that way.

RXQ. 1644. All right. And you continued corresponding with him, did you not?

A. I do not know as I did correspond. If I did I will find the copies and bring them. He has the letters if I did. I do not recall, Mr. Kresel.

RXQ. 1645. And in such correspondence as you had with him do you not recall that you assumed toward him a friendly attitude?

A. I was very sorry for the man having lost his position at all times, yes, sir, because he tried to do the right thing, I think.

RXQ. 1646. Now look at this letter and tell me whether that is a letter that you wrote to Mr. Deiters on March 23, 1923? (Handing witness).

A. Yes, that is the acknowledgment of that letter in all probability.

RXQ. 1647. "Yes" is the answer?

A. That is the answer.

Mr. Kresel: May I have that marked for identification?

Marked for identification "Defendant's Exhibit J."

RXQ. 1648. I noticed yesterday that amongst the large batch of correspondence that was introduced, that you had in 1914 and 1915 concerning these dyes importations, there was a letter of introduction given to you by Secretary of State Bryan to Ambassador Gerard in Berlin?

A. Yes, sir.

RXQ. 1649. That was on the occasion of your visit in the latter part of 1914?

A. Yes, sir.

RXQ. 1650. At the same time you testified you carried a letter of introduction from Dr. Albert?

A. Yes, sir.

RXQ. 1651. Why do you not produce that one?

A. Because I left that in Germany with the people it was addressed to.

RXQ. 1652. Have you not a copy of it?

A. No, I never had a copy of the letter. Certainly not. It was a sealed letter presented to some one in Europe and I presented it.

Mr. Anderson: I think, if your Honor please, I should note an objection to any examination on the matter introduced yesterday in the form of correspondence, on the ground that it was stated at the time it was introduced it was for the purpose of meeting the evidence on cross-examination and completing the evidence as to the relations of this witness to the matter of dye importations, which was brought out purely and solely on cross-examination. Your Honor will recall this was purely a value witness so far as the Government is concerned.

The Court: Yes, but is there not this difficulty with that situation, Colonel Anderson,—that it was introduced to offset certain of the testimony introduced in answer to questions of Mr. Kresel, and if this creates a new situation I take it that the re-cross-examination would be allowed.

Mr. Anderson: I did not understand your Honor's rule on that subject. I want to state that I have not the slightest objection to re-cross-examination, provided that on any matter which is brought out I may have the right to re-examine again on those points. But I did not know that your Honor's rule was that way.

Mr. Kresel: I am through with that point; I am going to pass on to something else.

Mr. Anderson: I did not know the rule of this Court.

RXQ. 1653. About this talk that you had with Mr. Oppenheimer, or Dr. Oppenheimer, in Berlin, the telegram which you received asking you to see Dr. Oppenheimer was from the Farbwerke-Hoechst Company, of Germany?

A. The Farbwerke vorm. Meister Lucius & Bruning, the German name. We speak of it as Farbwerke-Hoechst. The Farbwerke of Hoechst, we will put it that way, or somebody connected with it. I do not know what individual, but of that concern.

RXQ. 1654. You can produce the telegram?

A. I may have it in my papers and I will look when I get home and be glad to give it to you, Mr. Kresel, very glad to give it to you.

RXQ. 1655. You have not known him before that time?

A. No, sir.

RXQ. 1656. He was a total stranger to you?

A. Yes, sir. I knew that there was one Dr. Oppenheimer there.

RXQ. 1657. But he was a total stranger to you up to that time?

A. Yes, sir.

RXQ. 1658. And the telegram simply asked you to see him?

A. Yes, sir.

RXQ. 1659. Then you went to see him?

A. Yes, sir.

RXQ. 1660. Then I assume the telegram gave his address.

A. I do not know. I looked him up in the telephone book. I found him any way, and saw him.

RXQ. 1661. All you had was a telegram come to see Dr. Oppenheimer?

A. Of the Berlin Company.

RXQ. 1662. Of the Berlin Company?

A. He represented the Berlin Aniline Company.

RXQ. 1663. What do you mean, one of the Big Six?

A. One of the Big Six. He was their attorney.

RXQ. 1664. That is, one of the Big Six firms in Germany?

A. Yes, sir.

RXQ. 1665. So you went to see Dr. Oppenheimer and you had a fifteen minute talk with him?

A. About that, yes, sir.

RXQ. 1666. Only fifteen minutes?

A. Not much longer.

RXQ. 1667. He was in a great hurry?

A. Yes, sir.

Mr. Anderson: May I suggest that this matter has been gone over fully in the cross-examination, and nothing further was brought out except to enlarge and complete his statement on that subject. I think that is hardly a subject for re-cross examination. We will be going on indefinitely if we beat the bush over and over again.

Mr. Kresel: No, we will not do that. On the contrary this is entirely a new matter. Your Honor will recall that I asked this witness whether he had conversations with Germans abroad with reference to the return of these patents. He testified first that he did not and then I read to him his testimony before the House Ways and Means Committee, and then he said that he had. He never once mentioned Dr. Oppenheimer in that connection.

The Court: You may take the aswer subject to the general and specific objections of counsel for the Government.

RXQ. 1668. You say that Dr. Oppenheimer was in a hurry, he was packing his bag, on his way to London. I want you to tell us as nearly as you can everything that was said between you and Dr. Oppenheimer on that occasion?

to be a statement by Mr. Palmer—I say "purports"—I do not challenge the authenticity of it at all, but it purports to be an interpretation by Mr. Palmer of what he understood to be the effect of a certain statute.

Now, I have no objection to your Honor knowing what Mr. Palmer's interpretation was as written down here, but I trust that if we do not object to it, it may not be taken as an admission by this defendant that Mr. Palmer's interpretation was a correct interpretation if in point of fact—

THE COURT: Certainly not.

MR. KRESEL: If in point of fact your Honor should hold that his was not the proper interpretation. Have I made myself clear?

THE COURT: Yes. Admitted under those conditions.

MR. KRESEL: With that understanding, we have no objection.

Received in evidence and marked "Plaintiff's Exhibit No. 2." (*See Exhibits, Vol. I, page 12.*)

(Plaintiff's Exhibit No. 2 read by Mr. Galloway.)

THE COURT: Mr. Galloway, is it your purpose to read any of these at length now?

MR. GALLOWAY: Your Honor, we will try to avoid reading any more than we feel is absolutely essential, in order to call the Court's attention to things that are very pertinent, so that the Court may have it as we go along.

THE COURT: When I want to see the exhibits I can turn to the exhibit book, even if it is not copied in the record; and if it is copied in the record, it is confusing. Unless there is objection, we will get the stenographer now to strike out what you read, and simply make a memorandum there, "Exhibit read by Mr. Galloway."

A. He told me that they had received a telegram from a firm of Washington attorneys, somebody and Brown; a gentleman from Cincinnati, a Judge, I do not recall the name at the moment, and Brown was the firm; that they would have to put in their claim under the law for the royalties on the German patents before or prior to a certain date, and on the strength of that telegram he was coming over here to take up the question and put in those claims if it was necessary. That was the only subject of conversation and the only conversation. And I gave him the address of Mr. Vandiver and Mr. Wilcox, told him they had studied the questions and to see them when he came here, and he did. That is all I had to say. The other things were purely personal, family matters and in general, but there was nothing else on this to discuss.

RXQ. 1669. My question was as broad as I could possibly make it, namely that you should state everything between you. Have you done that?

A. That is the substance of all there was to the best of my recollection. Yes, Mr. Kresel, that was the substance of the conversation. With regard to the suits for the licenses—for the fees.

RXQ. 1669-a. With reference to the trade-marks you have produced a letter from a lawyer named Nims on behalf of The Chemical Foundation. Have you not other correspondence with the Chemical Foundation concerning those trade-marks?

A. Not with me. I shall be glad to look it up when I get back and send you what I have.

MR. KRESEL: That is all.

MR. ANDERSON: You may stand aside, Mr. Metz.

THE COURT: Are you through with the witness, both sides?

MR. ANDERSON: I am through with him.

THE WITNESS: May I return home now?

Mr. Anderson: It will be understood that he is discharged from the subpoena with the understanding if he finds any correspondence he will let Mr. Kresel have it as promised.

Mr. Kresel: No, I would rather have it, Colonel, that whatever correspondence he has he should submit to you, as he is your witness, and then, if you will, be good enough to let me see it.

Mr. Anderson: I will do it with great pleasure. Can he be discharged from the subpoena?

Mr. Kresel: Yes.

Mr. Anderson: On the general understanding that if we need you, Mr. Metz, you will return upon request at any time?

The Witness: Yes, on notice.

The Court: Then you need not return unless requested by counsel for one side or the other.

The Witness: Thank you. I want to thank you for your courtesy, your Honor.

Mr. Anderson: We will ask permission now to take up the introduction of additional documentary evidence which was interrupted by this testimony. I am sorry that this has to be done.

The Court: Is that the remainder of your documentary evidence?

Mr. Galloway: We have the remainder ready and we shall put it in at this time.

Mr. Kresel: May I ask Mr. Metz one more question, if he has not already left.

RXQ. 1670. I direct your attention to the memorandum which is marked Defendant's Exhibit I for Identification, wherein I find this statement relating to the cases which the Department of Justice now has under investigation at Wilmington. That refers to this case, does it not?

A. I do not know what he refers to.

RXQ. 1670-a. Read it and just tell me.

A. (Examines letter). I presume that is this case, yes, sir.

RXQ. 1671. And also please look at the letter Defendant's Exhibit I-1 for Identification, in which I notice the concluding sentences as follows:

> "I am enclosing herewith copy of all information which I have in the hope that you may find use for same at Washington."

A. That man wrote me that.

Mr. Anderson: I did not object because I do not think the witness can interpret the letters. I am perfectly willing to let the letters go into evidence, but I do not think the witness's interpretation of letters is admissible.

Mr. Kresel: Oh, yes, the witness's knowledge as to these letters is admissible.

Mr. Anderson: But the objection has been made in this case a number of times when an effort has been made to explain his correspondence, and I respectfully suggest that that correspondence should either be put in evidence or—

Mr. Kresel: I am going to put it in evidence now.

Mr. Anderson: Then I move to strike out the answer of the witness as to the reference, and your Honor can reach your own conclusions on argument or in any other way as to what that correspondence means.

Mr. Kresel: Not at all. I object to that procedure, if your Honor please.

The Court: Are we not in this position: We can not tell possibly from incomplete correspondence the meaning of all the terms. If Mr. Metz produces the entire correspondence, the correspondence as a whole would speak for itself, but until that is produced is not testimony of the witness as to the meaning of terms in there, which were not self-explanatory, pertinent? I do not mean pertinent, because I do not mean to say that any of the testimony is going to be pertinent, but proper.

Mr. Anderson: Your Honor asked the question and I should certainly say no, sir, that it is a letter from someone else to him. What that person may have meant by that letter, which he said was not and does not appear to be in response to anything, where he is undertaking to interpret the other person's mental processes or state of mind, I quite agree is utterly immaterial. Yet I respectfully suggest that that evidence is wholly illegal and incompetent. What the letters mean is shown by the letters; let the letters go in, let the papers go in, I have not the slightest objection to it, subject to my general objections as to immateriality and irrelevancy and as outside of the direct examination, etc. But as to this evidence I would have to move to strike out because I regard it as a violation of the law of evidence for the reasons stated.

The Court: You have offered the letters?

Mr. Kresel: I am now offering them. I offer in evidence Defendant's Exhibit I for identification.

The Court: Admitted, subject to the Government's objections heretofore stated.

Received in evidence and marked "Defendant's Exhibit No. 26." (*See Exhibits, Vol. IV, page 2089.*)

The Witness: May I ask your Honor a question?

(Witness speaks to Court.)

The Court: Will both of you hear what Colonel Metz has to say and make any inquiries you wish to make?

Mr. Anderson: I beg to ask an additional question, if counsel will permit me.

Mr. Kresel: May I proceed with these exhibits?

The Court: Yes, you may proceed with these exhibits and make further inquiry afterwards.

Mr. Kresel: I read Defendant's Exhibit No. 26. (Reading).

Now I offer in evidence Defendant's Exhibit I for identification.

The Court: Admitted under like conditions.

Received in evidence and marked "Defendant's Exhibit No. 27." (*See Exhibits, Vol. IV, page 2089.*)

Mr. Kresel: I now read Defendant's Exhibit 27 (Reading).

Mr. Anderson: I want to make the further objection to the introduction of that memorandum that it is pure hearsay and has absolutely nothing to do with the issues of this case.

The Court: Is that a communication to the witness?

Mr. Anderson: To the witness. It is a memorandum sent to the witness with this letter, it does not appear by whom made—but was sent to him by this man in Washington; and I shall show in a moment without his having any knowledge of it until he received it.

Mr. Kresel: And I have his reply thereto, which I shall read in a minute.

The Court: Your objection is noted, Colonel Anderson.

Mr. Kresel: I now offer in evidence Defendant's Exhibit I-2 for identification.

The Court: Admitted under like conditions.

Received in evidence and marked "Defendant's Exhibit No. 28." (*See Exhibits, Vol. IV, page 2090.*)

Mr. Kresel: I shall not stop to read that. That appears to be an extract from the Congressional Record. I shall simply introduce it.

The Court: It was another enclosure in the same letter?

Mr. Kresel: Yes, in the same letter, your Honor. I now offer in evidence Mr. Metz's acknowledgment of the receipt of those papers, which was previously marked Defendant's Exhibit J for identification.

Mr. Anderson: Same objection.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 29." (*See Exhibits, Vol. IV, page 2097.*)

Mr. Kresel: Now let me read that (Reading). That is all.

Mr. Anderson: I will ask a question or two in view of that correspondence.

The Court: Is there a question pending?

Mr. Anderson: No, sir.

Re-Direct Examination.

By Mr. Anderson:

RDQ. 1672. I want to ask if you, prior to this correspondence knew anything of the matter that this Mr. Dieters wrote you about?

A. Mr. Dieters called me on the telephone.

Mr. Kresel: I object.

A. (Continuing) No. Yes; I will say yes, and qualify it.

Mr. Kresel: Wait a minute. Yes is an answer.

RDQ. 1673. Then say what you did know about these matters?

Mr. Kresel: About what matters?

Mr. Anderson: About the matters referred to in the letter and correspondence.

A. Mr. Dieters called me on the telephone and said he had some information I ought to have. He wanted to come to New York to tell me. I said, "Don't you bother to come to New York to tell me anything. If you want to tell me anything, send it to me by mail." "Well, I don't dare mail this. I don't want my name to appear on it." I said, "Put it in a separate envelope and I will tell you if I received it."

I think they came in two separate letters; the copies I gave you and the statement in one letter, and the other letter in a separate one. That is my recollection. There was no use of him coming to New York. I would have had to pay his fare if he came. I said to him, "Don't bother me. If you have anything, send it to me. I don't care what they say about me." That was the substance of the communication.

He was always coming with things of that sort to me without my suggestion or request. He used to hang around Mr. Moses' office and was giving me things all the time, telling me why he lost his position, because he tried to put me on to facts, that they were trying to injure me in the Chemical Warfare Service.

RDQ. 1674. And that is the whole connection of this correspondence?

A. Absolutely. I gave him money purely on charity, because he lost his position. He had had $3,500 a year and he was out of a job, and his wife was sick, and a mortgage on his house, and he was ailing all the time. He was even in my office last week before I came down here and said they were going to subpoena him. I said, "Well, go down and tell the truth. Don't bother me with that stuff." Then he asked me, "You don't want anything?" "Not a thing." He said, "Will you give me some money to go home?" I gave him ten dollars, and I told him if they served him with a subpoena, he should go and tell the truth; that is all he should do, and that is what I told him; and there are witnesses in my office who will testify that is what I said. That is all I told him, sir.

Mr. Kresel: Is that all?

Mr. Anderson: That is all.

The Court: Does that conclude your case?

Mr. Galloway: I think probably we will have some other witnesses. We plan to bring those on this afternoon.

FOURTEENTH DAY.

Wilmington, Delaware,
June 25th, 1923, at 8.30 o'clock A. M.,
Standard Time.

Before:

Hon. Hugh M. Morris, U. S. District Judge.

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Anderson: May it please the Court, on Friday, I think, of last week, we had the cross-examination of Mrs. Wilson, the representative of the Federal Trade Commission. She was asked as to a letter of transmittal of notice of accrued royalties on licenses issued under the direction of the Federal Trade Commission, informing the Alien Property Custodian of such accruals, and counsel asked if she had the letter. She did not at the time. I have this morning a letter dated August 29, 1919, signed by Mrs. Wilson, Chief of Enemy Trade Division, addressed to the Alien Property Custodian, covering one of those transmittals, as a sample of the letter, and I am informed that the letters were substantially of the same form, except with such variations as were necessary owing to the change of facts in each case. I have spoken to Mr. Kresel and he agrees that this letter may be introduced without recalling Mrs. Wilson.

I therefore offer in evidence letter dated August 29, 1919, addressed to the Alien Property Custodian, signed "M. R. Wilson, Chief of Enemy Trade Division," on the letterhead of the Federal Trade Commission; and ask that the same may be admitted, identi-

Mr. Galloway: I see; that is, in order to shorten the record?

The Court: Yes.

Mr. Galloway: That is perfectly all right, your Honor.

Mr. Anderson: I think it would be a violation against the rule against duplication anyway.

The Court: The duplication may be saved by not printing this in the exhibit book.

Mr. Anderson: It would be better, I think, simply to leave out the reading from the record, and refer to the exhibit book.

The Court: The stenographer will now strike out what has been read by Mr. Galloway of the exhibit, and I will instruct the stenographer that whenever an exhibit is read he should not take down the reading of the exhibit, but simply make a memorandum to the fact that the exhibit was read. But, if any comment is made on the exhibit, that should be taken down.

Mr. Galloway: If your Honor please, the plaintiff now offers and asks leave to read in evidence Plaintiff's Exhibit No. 3, being the statement or rules and regulations of A. Mitchell Palmer, as Alien Property Custodian, dated June 6, 1918. This Item No. 47 on the stipulation.

Mr. Kresel: The objection that we take to it is the same that we took to the last exhibit, namely, that while we do not object to the Court having before it any rules or regulations made by the Alien Property Custodian, it is our claim that the defendant is not bound thereby.

Mr. Anderson: If your Honor will permit me, I will state that the act expressly provides, and the Executive order appointing the Custodian provides and fixes his duties, and in fixing his duties it provides that he shall fix rules and regulations.

fied and read in evidence as Plaintiff's Exhibit No. 406.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 406." (*See Exhibits, Vol II, page 761.*)

Mr. Anderson: By consent of counsel on the other side, I should like to interrupt the cross-examination of Mr. Metz this morning to call Colonel Miller, who is compelled to leave the city for the West today at 10:50, and might not return before the Government close its case. Mr. Kresel has very kindly consented.

Mr. Kresel: No objection.

Mr. Anderson: I will call Colonel Thomas W. Miller.

THOMAS W. MILLER.

Thomas W. Miller, called as a witness on behalf of the Plaintiff, being duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Please state on the record your full name and place of residence?

A. Thomas W. Miller, Wilmington, Delaware.

Q. 2. Do you now hold any official position with respect to the Government of the United States?

A. Alien Property Custodian.

Q. 3. Before you became an officer of the Government, what was your business, Colonel Miller?

A. Most of the time before I accepted this appointment I had been in the service of the Government either in the Army or at Washington in Congress. Previous to that I was a State official; before that a law student; and before that I had been in the manufacturing business away from Delaware.

Q. 4. Were you an officer in the Army in the late war?

A. Yes, sir.

Q. 5. What was your official rank?

A. I came up through the various grades, from enlisted man to Lieutenant Colonel when I was discharged.

Q. 6. When were you in Congress?

A. The Sixty-fourth Congress, from 1915 to 1917.

Q. 7. When were you appointed and when did you qualify as Alien Property Custodian?

A. I was appointed March 12, 1921. I was sworn in March 16, 1921.

Q. 8. You have been discharging the duties of that office since that time?

A. I have.

Q. 9. Colonel Miller, it appears in the record in this case that there were two assignments from the Alien Property Custodian to the Chemical Foundation, Incorporated, as Alien Property Custodian, one dated the 27th day of April, 1921, and the other the 5th day of November, 1921. These instruments are filed as exhibits J and K with the Bill of Complaint and have been introduced in evidence here. You executed those instruments, did you?

A. I did.

Q. 10. I will take up first the assignment of April 27, 1921. At the time that you executed that assignment had you ever seen or read the Charter of The Chemical Foundation, Incorporated?

A. I had not.

Q. 11. You had then been Alien Property Custodian—

A. As to whether I had ever seen it, it may have been in pamphlets in my office, but I had not read it.

Q. 12. You had then been Alien Property Custodian about five or six weeks, had you?

A. Yes, sir.

Q. 13. Had you any personal knowledge of the character of the corporation known as The Chemical Foundation, Incorporated?

Mr. Kresel: Pardon me a minute. I object to that question as being indefinite. I do not know what is meant by "the character of the Chemical Foundation."

The Court: I think your objection is well taken.

Mr. Anderson: I will withdraw the question. I was trying to shorten it.

Q. 14. Will you state all the facts within your own knowledge as to your execution of that order for the assignment of the patents mentioned therein, which are commonly called the Norma Company of America?

Mr. Kresel: I am sorry, Colonel Anderson. But I must object to the indefinite character of that question. This is direct examination.

The Court: I think the objection is well taken.

Mr. Anderson: Colonel Miller has got to leave on a train at 10:50 and I am trying to shorten it. Of course, if there is an objection, I withdraw the question.

Q. 15. Did you have any talk with any of the officers of The Chemical Foundation, Incorporated, Mr. Garvan, Mr. Hoguet or Mr. Choate, prior to the execution of that instrument?

A. Yes, sir.

Q. 16. With whom?

A. Mr. Francis P. Garvan and myself had not met until a fortnight after I was Alien Property Custodian.

Mr. Kresel: Pardon me a minute, Colonel. I ask that that part of the answer be stricken out as not responsive. The question is with whom he had talked.

THE COURT: Let it be stricken out.

Q. 17. With whom had you talked?

A. May I say, Colonel Anderson, this has nothing to do with the Norma patents.

Q. 18. I will ask you this: Did you have any talk with Mr. Garvan prior to that time?

A. Yes, Mr. Garvan and myself met—

MR. KRESEL: Pardon me a minute, please. Prior to what time, Colonel?

MR. ANDERSON: The assignment. Of course, I am talking about the assignment on the 27th day of April, 1921.

MR. KRESEL: I simply wanted to know which assignment you were talking about.

MR. ANDERSON: I said I was going to discuss the one of the 27th at this time.

A. Mr. Garvan and myself met at my office, as near as I can recollect it, on the last day of March, 1921. It was the first time I had had the pleasure of meeting him.

Q. 19. You had some talk with him at that time?

A. Yes, sir.

Q. 20. Tell as nearly as you can what took place, what was the conversation; that is, what he said and what you said, and what was the subject of discussion?

A. Mr. Garvan called upon me as an act of courtesy to officially turn over the keys and discuss certain affairs relating thereto, as a predecessor would discuss with his successor.

In the course of our conversation, he discussed with me the general subject of the chemical business in the United States, told me of his connection with The Chemical Foundation and indicated to me that The Chemical Foundation would be very glad to have me as a director and as one of their officials.

I can not remember the details of a personal conversation as between us two, but it was along those general lines.

Q. 21. What, if anything, did you then know of The Chemical Foundation?

A. At that time I knew very little about The Chemical Foundation, because it had been wholly divorced from any associations that I had had in connection with the war work. I indicated to Mr. Garvan that naturally I was interested in the matter of American commercial enterprises, and I at that time indicated a degree of acquiescense in the proposition that he put to me.

Q. 22. What proposition did you mean?

A. That I go on the directorate and become an official. I will say right there, if I may be permitted, that the office of Alien Property Custodian is perhaps larger in scope and more versatile than most any other Government department; and when The Chemical Foundation had first come to my attention, I knew Mr. Garvan was President, I considered it, I will say in all candor, as a portion of the duties of the Alien Property Custodian at that time. At that time, now, we are talking of up to March, 1921.

Q. 23. Talking about 1921. Now, in regard to this particular assignment which appears in evidence as an assignment of certain patents or patent rights to the Norma Company of America, do you recall when that matter was first brought to your attention?

A. It was brought to my attention some time in April, 1921, by one of my subordinates, who came to me in the usual routine manner and asked me whether I would be willing—

> Mr. Kresel: Just a minute, Colonel. We must object to any conversation between the Colonel and his subordinates as not binding upon the defendant, immaterial and irrelevant.

A. (continued) Well, I will say it this way—

Mr. Kresel: Pardon me a minute, Colonel, The Court has not ruled yet.

The Court: Do you or do you not insist upon the answer?

Mr. Anderson: He has answered the question; it came to his attention, was brought to his attention by one of his subordinates some time in April.

The Court: What is your position with respect to the objection taken by Mr. Kresel?

Mr. Anderson: My position is that I do not desire the conversations between him and his subordinates; but I do think it is important in this case, or, at least, a part of the case presented by the Bill, to show how and when the matter came to his attention, and what he did.

The Court: There is no objection to that?

Mr. Anderson: That part of the answer is not responsive. Colonel Miller was going on to explain; but I have no desire for that.

A. Well, I have not finished it yet, if I may be permitted. Mr. Nones of the Norma Company of America called me in the usual course of business in April, 1921, and indicated his desire to purchase.

Mr. Kresel: One minute. I object to what Mr. Nones' desire was as hearsay and not binding on the defendant.

The Witness: May I put it this way: that an offer—

Mr. Anderson: One minute, Colonel. If your Honor please, the question here is the circumstances under which this gentleman made this assignment. I do not care for the conversations with Mr. Nones. I only want what instructions he gave and do not care for the conversation.

The Court: You do not ask for that?

Mr. Anderson: Mr. Nones' calling on him has been a fact in the case. That is all, I do not care for the conversation with him at all.

Q. 24. Mr. Nones called on you and the matter was called to your attention by one of the subordinates of your department?

A. Yes.

Q. 25. Those are the two facts. Do you recall executing the assignment of April 27th; do you recall anything about it yourself?

A. It came up to me in the usual routine manner and was signed by me; because I had agreed—

Mr. Kresel: One minute, please.

The Court: The objection is well taken.

Q. 26. It came to you in the usual routine manner and was signed by you. At that time had you read the Executive order theretofore issued by Mr. Polk or the Executive order theretofore issued by the President in regard to the sale to The Chemical Foundation, all of which were introduced in evidence?

A. No, sir.

Q. 27. Do you know by whom the matter of this sale to The Chemical Foundation of the patents embraced in this suit was actually handled in your office?

A. This was a corporate management matter.

Q. 28. Do you know what officer of your department handled it?

A. Well, I dealt directly with Mr. Paul Smith, who was my Chief of Corporation management.

Q. 29. Did you at that time know the history of the organization of the defendant Chemical Foundation?

A. Only in a general way.

Q. 30. Did you know at that time of the fact that The Chemical Foundation or the stock of The Chemical Foundation had been subscribed by the members of the American Dyes Institute?

Mr. Kresel: One minute, please. We object to that on the ground it is immaterial and irrelevant as to whether this witness knew that fact or not.

Mr. Anderson: It is averred affirmatively in the answer, the witness already knew the history and organization of this defendant. The answer avers that the witness was fully informed of and knew the history and organization of this defendant; second, the impelling and inducing motives of its creation; third, its charter and purposes; fourth, the muniments of title; fifth, the considerations given for each and all of the patents and other properties and rights sold, assigned and transferred to it. Those averments are made in the answer as affirmative averments. I have a right to ask the witness if he did know those.

Mr. Kresel: It does not make the slightest bit of difference what is averred in the answer. It is no part of the plaintiff's case, and to the plaintiff's case under the pleadings it is immaterial and irrelevant whether this witness knew at the time when he executed this assignment the fact that is sought to be elicited. If the defendant desires to show that, it is the defendant's duty to show it and not the plaintiff's, but upon the plaintiff's case we say it is immaterial and irrelevant.

Mr. Anderson: I do not have to recall witnesses in rebuttal where there is an affirmative allegation; I can meet that allegation in the *prima facie* case.

The Court: That is part of the judicial discretion involved in the conduct of the trial.

Mr. Anderson: Certainly.

The Court: You may take your answer under the general rule. But you understand, Colonel

Anderson, that if you go into that in chief you must go into it fully and it is not open to you in rebuttal.

Mr. Anderson: My reason for going into it—

The Court: No, I do not care anything about your reasons; but if you go into it in chief you do not have another opportunity to go into it in rebuttal.

Mr. Anderson: I understand, sir, and in view of the objection, and to save time, because I want to get this witness off, I will withdraw it, stop where I am on that, and perhaps go into it later.

Q. 31. Colonel Miller, it appears here that there was another assignment?

A. Are we all off that April 27th one?

Q. 32. Yes.

A. I must say I had not finished.

The Court: You are in the hands of your counsel.

Mr. Anderson: We will stop there for the moment.

Q. 33. As to the one of the 5th day of November, 1921, which is in evidence, which undertakes to confirm certain sales theretofore made of patents, trademarks, etc.; do you know how this matter first came to your attention?

A. It came in the usual routine way.

Mr. Kresel: Please answer just yes or no.

A. Why, I know, yes.

Q. 34. Please state how it came to you and by whom it was brought to your attention?

Mr. Kresel: I do not object to the question in so far as it asks by whom it was brought to his attention. I do object to the question as to how it came to his attention, as being too indefinite.

The Witness: Can I tell the individual?

The Court: Just a minute, Colonel.

Will you divide your question, then, Colonel Anderson, or do you press it as it stands?

Mr. Anderson: It will probably simplify it if I divide it, so as to save time.

Q. 35. First, I will ask you if you know who brought it to your attention?

A. It was brought to my attention by Mr. Zimmerman, who was chief of my patent section, and Mr. Ewing, who was in the Bureau of Law.

Q. 36. Could you state whether you had at that time ever read the charter of The Chemical Foundation?

A. No, sir.

Q. 37. Could you say whether at that time you were familiar with the orders entered by Mr. Polk and the Executive Order of the President of February 13, 1920?

A. No, sir.

Q. 38. Do you recall what, if anything, was stated to you at the time you signed or authorized this order?

A. I directed it—

Mr. Kresel: Pardon me a moment. Do you mean authorized or signed?

Mr. Anderson: I withdraw the word "authorized."

Q. 39. At the time you signed this order or when it was brought to you?

A. This order came to me—

Mr. Kresel: Please answer yes or no.

A. State that question again, please.

(Q. 38 repeated as above recorded.)

A. Yes, I recall it.

Q. 39a. Can you please state what was said to you on the subject by Mr. Zimmerman?

Mr. Kresel: I object to the question upon the

The Court: The paper will be admitted, with the privilege to each side at the time of argument to make such use thereof or to deny either the admissibility or the weight of it, if they so desire.

Received in evidence and marked "Plaintiff's Exhibit No. 3." (*See Exhibits, Vol. I, page 14.*)

(Mr. Galloway read from Plaintiff's Exhibit No. 3.)

The next provides with reference to the Auditor's report, and I am not going to read that unless your Honor wants that especially; and I go down to page 8 of this exhibit, which I do wish to read to your Honor, beginning "General Rules."

(Reads from Plaintiff's Exhibit No. 3.)

It sets out, if your Honor please, a proposed form of order and sale which I shall not read. I read again from page 13 of these Rules and Regulations, beginning "The sale organization."

(Continues reading from Plaintiff's Exhibit No. 3.)

Mr. Galloway: Your Honor please, we next offer in evidence and ask to read in evidence, the supplemental orders of A. Mitchell Palmer as Alien Property Custodian, dated July 16, 1918.

Mr. Kresel: To that, your Honor, we make the same objection as to the preceding exhibit, and I take it that your Honor will make the same ruling.

The Court: The same ruling.

Paper admitted in evidence, marked "Plaintiff's Exhibit No. 4." (*See Exhibits, Vol. I, page 27.*)

The Court: Do you desire exceptions noted to the rulings against you?

Mr. Kresel: I do not know what the rule is here, your Honor, and of course we do not want to lose the benefit of an exception. In some jurisdictions the Court simply orders the stenographer to note an ex-ground that the defendant cannot be bound by any conversation between this witness and his subordinate, Mr. Zimmerman.

Mr. Anderson: I do not deny that the defendant can not be bound, but I do respectfully suggest that the witness can state the circumstances under which he executed this order, for the knowledge of the Court. I will further show in this case that Mr. Zimmerman is now and has been long since an employee of The Chemical Foundation; and, therefore, I must rely upon this witness.

Mr. Kresel: Of course, the latter fact, can have no effect upon the question that is pending. The fact that Mr. Zimmerman is said to be in the employ of The Chemical Foundation, it seems to me, has no bearing upon the question as to whether this particular question is open to objection or not. Colonel Anderson concedes that the conversation between Colonel Miller and Mr. Zimmerman can in no way bind the defendant; and if that is so, it is immaterial and irrelevant, and we object to it.

The Court: Have you anything further to say, Colonel Anderson?

Mr. Anderson: No, sir.

The Court: I think the objection is well taken, but you may put your answer of record if you desire, under our general rule.

Q. 39b. (continuing) Please answer the question, Colonel Miller?

A. I had given instructions to have these records brought up to date, it really being a routine arrangement, in order to clear the titles and to enable American users of these trade-marks to obtain them from The Chemical Foundation properly.

Mr. Kresel: Just a minute please. I did not interrupt Colonel Miller because I felt that perhaps he would get on to the conversation. He has been asked about a conversation. The answer up to the present has not stated a word of the conversation.

The Court: Let the answer be stricken out and the question repeated.

Q. 40. What were the representations to you as to the situation that brought about this order?

Mr. Kresel: I object to the question in that form.

The Court: The objection is sustained. Let the prior question be repeated, unless it is withdrawn, Colonel Anderson.

A. I can not give the exact words, but I know it was in compliance with my orders that these records be brought up to date. The asignment was brought to me and I signed it on the first of November, 1921.

Q. 41. Could you state approximately how many documents you sign a day in your position?

Mr. Kresel: If the Court please, I object to that upon the ground that it is immaterial and irrelevant, and I do not understand that Colonel Anderson desires to use the fact of the number of documents as an excuse, if an excuse is needed by Colonel Miller, for the signing of these documents. I object to it upon the ground that it is immaterial and irrelevant.

The Court: The objection is sustained.

Mr. Anderson: I note an exception.

Q. 42. You stated that you had a talk with Mr. Garvan about becoming director of The Chemical Foundation, as I understand it, in March, 1921; is that true?

A. Yes, sir.

Q. 43. It appears in the minutes of The Chemical Foundation introduced in evidence here, that on April

4, 1921, you were elected a director of The Chemical Foundation; and, thereafter, the minutes contained the following entry:

> "The President then stated that Mr. Thomas W. Miller, who had been elected director of the Corporation at the adjourned annual stockholders' meeting held on the 4th day of April, 1921, had communicated to him that owing to the demands on his time, he found it impossible to accept the honor of being a director of The Chemical Foundation, Incorporated, and for that reason had declined to qualify."

I have read from the minutes of the Board of Directors of the 21st day of June, 1921. Can you state whether you ever served either as director or as vice-president of The Chemical Foundation?

A. I did not qualify; therefore I could not serve.

Q. 44. Did you have any talk with Mr. Garvan on the subject after the one you mentioned in March?

A. Yes. I can not recall the exact date; but Mr. Garvan and I talked this over a number of times; and we both mutually agreed that because of the pressing official duties I could not accept or qualify.

Mr. Anderson: The witness is with you, Mr. Kresel.

Cross-Examination.

By Mr. Kresel:

XQ. 45. Colonel, how long before your appointment as Alien Property Custodian—I mean your actual appointment—did you know that you were to be appointed?

A. About a week, Mr. Kresel.

XQ. 46. During that week did you undertake to inform yourself in any way about the duties of Alien Property Custodian or the history of that office?

A. Right there, I was sworn in the 16th of March, and the week is running back from the 16th of March. No, sir; I needed all the time I had, Mr. Kresel, to—

XQ. 46a. Well, you did not do it?

A. No, sir.

XQ. 47. Just let us stop there. Now, before you became Alien Property Custodian, of course, you had a general knowledge of what that office was?

A. I must confess, Mr. Kresel, I did not. Of all the wartime activities I know least about that.

XQ. 48. Well, you did not?

A. Did not.

XQ. 49. On the 16th of March, 1921, when you were sworn in, you surely had a general knowledge of what the office was that you were about to take?

A. As I—yes, a general knowledge, very general.

XQ. 50. That is all I am asking. At least you knew who had been your predecessor?

A. I had not had the pleasure of meeting him, but I knew who he was.

XQ. 51. And you knew that your immediate predecessor was not the first officer that occupied the office of Alien Property Custodian?

A. Yes.

XQ. 52. In other words, when you were sworn in as Alien Property Custodian you knew that Mr. A. Mitchell Palmer had occupied that office?

A. Yes.

XQ. 53. And that he had been preceded by Mr. Garvan, whom you were succeeding?

A. Yes.

XQ. 54. And you knew, did you not, that that office ad been in existence since the fall of 1917?

A. Yes.

XQ. 55. When you entered office, you certainly then set about to inform yourself of what the office was, what the duties of the Alien Property Custodian were, what property he had in charge; in a general way to understand your job, so to speak, did you not?

A. Yes, sir, and I am still engaged in that practice.

XQ. 56. And I assume that one way that you had of informing yourself upon the subject was the records of the office?

A. Oh, yes.

XQ. 56a. And you certainly had access to those and made use of those in so far as you felt it necessary?

A. As the cases arose, when it was necessary.

XQ. 57. Well, it was not very long after you became Alien Property Custodian that you learned that your predecessor had made a report to Congres as to the activities of that office, is that not right?

A. The report that you refer to was February 27, 1919, by A. Mitchell Palmer?

XQ. 58. February 22nd.

A. February 22nd, yes, by A. Mitchell Palmer.

XQ. 59. You were familiar with that report?

A. Oh, I knew that—there was only one copy in the office, but I had access to it.

XQ. 60. And you certainly availed yourself of whatever information that document disclosed, did you not?

A. Well, Mr. Kresel, I wouldn't swear on the stand today that I read it through from cover to cover immediately.

XQ. 61. Oh, I understand that; but it was not very long after you became Alien Property Custodian that you did refer to that report, was it?

A. A trust company that has—

XQ. 62. Now just answer my question, please.

A. I won't say that I have—

XQ. 63. Very well, then, I will have to be satisfied with your answer; but please do not go off into something else. At all events, the time did arrive when you read that report; not from cover to cover, as you suggest; but you read it?

A. Well, my familiarity—

XQ. 64. No, no; now did you?

A. I did not rely on that report to familiarize—

XQ. 65. I did not ask you anything about relying on it. Now, if you will please pay attention to my question: I say, a time arrived when you did read that report, did there not?

A. Under oath here I will not say that I have read that report in its entirety, no.

XQ. 66. I did not ask you whether you had read it in its entirety.

A. I have refered to it, yes, sir, and still refer to it.

XQ. 67. All right. And when you referred to it, you could not have failed to observe that in that report there was a statement as to The Chemical Foundation; is that not right?

A. I did not read that, as far as I recollect, Mr. Kresel.

XQ. 68. You mean that as you sit there now on the witness stand you do not know that that report refers to The Chemical Foundation?

A. Why, naturally it does, because that is one of the trusts in the office—

XQ. 69. Now, all right; it does.

A. (continued) Of fifty thousand.

XQ. 70. It refers to the organization of The Chemical Foundation, doesn't it?

A. I—

XQ. 71. Doesn't it?

A. I presume it does.

XQ. 72. It refers to the sale of the patents here in question to The Chemical Foundation, does it not?

A. I presume it does.

XQ. 73. It refers to the price paid for the patents, does it not?

A. I presume it does.

XQ. 74. It refers to the conditions of its charter, does it not?

A. I presume it does.

XQ. 75. Well now, among the records of the Alien Property Custodian's office when you assumed charge in March, 1921, there were copies of the assignments that had been made by your predecessor to The Chemical Foundation, were there not?

A. No, Mr. Kresel. I had to go to the Patent Office for those.

XQ. 76. There were not?

A. There were not.

XQ. 77. That is your answer?

A. To the best of my knowledge and belief.

XQ. 78. You had a search made?

A. Yes, sir.

XQ. 79. And could not find it?

A. Yes, sir.

XQ. 80. When did you institute the search?

A. I have no recollection, Mr. Kresel.

XQ. 81. Well, I am not pinning you down to a specific date. What month? What year?

A. I really can't answer that with any degree of certainty.

XQ. 82. How soon after you became Alien Property Custodian?

A. I can not answer that with any degree of certainty.

XQ. 83. Well, approximately?

A. I know this: that when the time came—

XQ. 84. No, no; now, please. Approximately when was it that you instituted a search for these assignments and could not find them?

A. I can not give you any approximate date.

XQ. 85. Was it shortly after you became Alien Property Custodian?

A. Why, Mr. Kresel, I really don't know.

XQ. 86. Was it before this suit was instituted?

A. Oh, it must have been before that; it must have been.

XQ. 87. You know this suit was instituted in September or October of last year?

A. Yes.

XQ. 88. So it was before that, anyway?

A. Oh, yes, certainly.

XQ. 89. Now, did you find any records in your office with reference to the transaction between the Custodian and The Chemical Foundation?

A. Oh, yes; there were records there, Mr. Kresel.

XQ. 90. Surely records from which you could learn and did learn what the transaction was that had taken place?

A. My general information—my information on the transaction was more of a general character, that I arrived at from discussions with friends of mine who were interested in it.

XQ. 91. I do not want to go into that, Colonel. You did learn what the amount of money was that had been paid to the Alien Property Custodian by The Chemical Foundation?

A. Yes, that was a matter of common knowledge. I knew that.

XQ. 92. Well, quite aside from being common knowledge, do you mean that your records, the Alien Property Custodian's records, did not show it?

A. Well, they must show it, Mr. Kresel.

XQ. 93. Did they not show it?

A. Well, I am not going to say on the stand under oath that I personally looked at the records that showed it.

XQ. 94. I did not ask you whether you looked.

I am trying to find out what you, as Alien Property Custodian, know about the records of your own office.

A. I know the records must show that a quarter of a million dollars was paid for the patents.

XQ. 95. Don't you know that they do show exactly what was paid?

A. I cannot qualify my answer any more than I have, Mr. Kresel.

XQ. 96. The best you will do is that they must show; is that it?

A. Yes.

XQ. 97. And that information was available to you the minute you put your foot into the office of Alien Property Custodian, was it not?

A. Together with information—

XQ. 98. Wasn't it?

A. (continuing) —on fifty thousand other matters.

XQ. 99. Well, wasn't it?

A. Yes.

XQ. 100. When you went into the office of Alien Property Custodian on March 16th—I think you said that was the date?

A. Yes.

XQ. 101. (continuing) 1921, you knew that Mr. Garvan was the President of The Chemical Foundation, did you not?

A. Oh, I knew that.

XQ. 102. You knew at that time that when the transaction between The Chemical Foundation and the Alien Property Custodian took place involving the sale of these patents Mr. Garvan had been the Alien Property Custodian?

A. Yes, sir.

XQ. 103. You say that you knew the amount of money that had been paid, whether from the records or from general conversation?

A. Yes, sir.

XQ. 107. You knew that the patents that were sold to The Chemical Foundation were German patents that had been seized by the Alien Property Custodian?

A. Yes, sir.

XQ. 108. You knew when you became Alien Property Custodian that the sale of the patents to The Chemical Foundation had not been a sale at public auction?

A. Yes, sir.

XQ. 109. You knew, therefore, that it had been at a private sale?

A. Yes, sir.

XQ. 110. You knew, did you not, that in order to have a private sale, there had to be an Executive order?

A. If the property was valued at over $10,000.

XQ. 111. And, of course, you knew that this property was valued at more than $10,000?

A. Yes.

XQ. 112. You knew that The Chemical Foundation was issuing licenses on these patents that had been transferred to it?

A. I knew that, Mr. Kresel, when the first transaction of that character came to my attention after taking office.

XQ. 113. How soon after taking office was that?

A. This Norma Company transaction.

XQ. 114. That was in April?

A. Yes.

XQ. 115. That was only about a month after you became Alien Property Custodian?

A. Yes.

XQ. 116. You knew when you took office who the voting trustees of the stock of The Chemical Foundation were?

ception to an adverse ruling, in favor of the party against whom the ruling is made. Perhaps that is not the way it is done in this District, and so, if your Honor will permit me, I desire to note an exception to your Honor's ruling on my objection to the preceding exhibit and now to this exhibit.

The Court: If you deem yourself properly protected by this ruling, you may rely on it. If not, you may ask an exception in each instance: Inasmuch as the indications are that the mass of testimony introduced on each side, will be over the objection of the opposing party, I suggest that it be understood that each side takes an exception to all rulings against it, unless it otherwise notes at the time.

Mr. Kresel: I think that is a very good suggestion, and we would like to have that done. Is that agreeable, Mr. Anderson?

Mr. Anderson: It is entirely agreeable to me and I shall be very glad if each side will regard it as a stipulation that exceptions are taken to all adverse rulings of the Court, without further exceptions being taken, and this will apply to all rulings which may be adverse on an objection, throughout the trial.

Mr. Kresel: Yes.

Mr. Galloway: I wish to read this, your Honor, and ask the reporter not to repeat it in the record.

(Mr. Galloway reads Plaintiff's Exhibit No. 4.)

If your Honor please, we next ask leave to offer in evidence and read in evidence the Executive order of July 16, 1918, as the same appears upon page 54 of the printed pamphlet. If your Honor please, I do not wish to burden you with much of this, but I do wish to read a little of this—or I can state a summary of it as you wish.

The Court: Whichever you prefer.

Same admitted in evidence, marked "Plaintiff's Exhibit No. 5." (*See Exhibits, Vol. I, page 29.*)

A. I know I did not, Mr. Kresel.

XQ. 117. Did not Mr. Garvan in his conversation with you on the 31st of March tell you that Judge Ingraham and Mr. Bannard and Mr. Cleveland Dodge and two others whose names I do not now recall were the voting trustees?

A. Yes, he certainly did. But that was not when I took office. That was fifteen days later. You asked me if I knew when I took office.

XQ. 118. All right. Fifteen days later.

A. I want to be specific as long as you want me to be.

XQ. 119. Fifteen days later you knew that?

A. Yes.

XQ. 120. But up to the time of the talk with Mr. Garvan on the 31st of March, you had not read the charter of The Chemical Foundation; that is your statement?

A. No, sir.

XQ. 121. Nor had you read it prior to the execution by you of this assignment of April 26th?

A. No, sir.

XQ. 122. I want to take you back for a minute to your conversation with Mr. Garvan on the 31st of March, 1921. As I understand it, that was the first time you met Mr. Garvan?

A. Yes, sir

XQ. 123. And he called on you at your office?

A. Yes, sir

XQ. 124. That is, the Alien Property Custodian's office?

A. We had a long distance telephone conversation previously, but just merely perfunctory.

XQ. 125. At that conversation, Mr. Garvan told you in some detail of his connection with The Chemical Foundation, did he not?

A. Oh, yes.

(No Q. 126.)

XQ. 127. He told you the purposes of the Foundation?

A. In a general way; yes, sir; and brought me some very interesting books to read.

XQ. 128. Brought you some books to read, but not the charter.

A. I can not recollect, Mr. Kresel, whether in these pamphlets there might have been the charter.

XQ. 129. He told, did he not, that The Chemical Foundation had been organized with the assistance and co-operation of the chemical industry?

A. Yes, I understood that, of course.

XQ. 130. He told you, did he not, that the reason for putting these patents in the hands of a corporation like The Chemical Foundation was, whether true or no, in order that they might not get back to the Germans?

A. Now, Mr. Kresel, I can not swear to these exact words.

XQ. 131. Of course not; substantially that?

A. I know the general outline and I had no hesitancy in saying a while ago that I gave my acquiescense.

XQ. 132. He told you substantially that any way, did he not? I am not asking you to repeat the exact words. Of course, you can not.

A. Yes, I would know that as I got into the matter.

XQ. 133. He told you, did he not, that The Chemical Foundation was issuing non-exclusive licenses?

A. Well, I do not know whether he told me, but I knew it.

XQ. 134. He told you, did he not, that the stockholders of The Chemical Foundation could in no event get more than 6 per cent return on their stock?

A. I do not know whether he told me that or not, but that is a well understood statement.

XQ. 135. Did he not tell you that The Chemical Foundation was issuing licenses to all American citizens at the same rates, at equal rates?

A. I knew that.

XQ. 136. Did he not tell you or did you not know at that time that all earnings of The Chemical Foundation over and above the 6 per cent return on the stock were to be used for the advancement of chemical science in the country?

A. I naturally knew that.

XQ. 137. You knew, did you not, that Mr. Choate, who had been active in the work of the Alien Property Custodian's office during the war, was general counsel of The Chemical Foundation?

A. No, I had not had the pleasure of knowing Mr. Choate up to this time we are discussing.

XQ. 138. I did not ask you whether you knew him personally.

A. No, I would say his name had not impressed itself on me at that time.

XQ. 139. Then you did not know that fact on the 31st of March?

A. No, I do not think I did.

XQ. 140. How soon after that did you learn that?

A. I really do not know.

XQ. 141. It was very shortly thereafter?

A. I must have known that he was the counsel, but I do not know the exact date.

XQ. 142. I mean at the time you were elected director, for instance, you certainly knew that?

A. I might very well have known it.

XQ. 143. Yes. All right.

A. On the other hand, I won't swear that I did.

XQ 144. Did you know that Mr. Hoguet, who had been patent attorney during the war for the Alien

Property Custodian, was patent attorney of The Chemical Foundation?

A. Well, my same answer with regard to Mr. Choate would apply to Mr. Hoguet.

XQ. 145. You think that, but not on the 31st of March?

A. If you want me to swear to it, I will say no, I do not think I did.

XQ. 146. Can you tell me when you learned that fact?

A. No, I can not give the approximate date.

XQ. 147. Was it shortly after you became Alien Property Custodian?

A. Naturally, the name Hoguet came to my attention in my dealings with The Chemical Foundation. I do not know whether I have ever had the pleasure of meeting him or not.

XQ. 148. You verified this Bill of Complaint, did you not?

A. Yes, sir

XQ. 149. You are an attorney, though you are not practising law, and when I speak of verifying the Complaint you know what I mean?

A. Yes.

XQ. 150. That is, you swore to this affidavit that is attached to the Complaint?

A. Yes, upon advice of counsel.

XQ. 151. What is that?

A. Upon advice of counsel, which in this instance is the Department of Justice.

XQ. 152. I see. I will come to that in just a minute. Before you verified this Complaint you received a letter from the President, did you not?

A. Yes, sir

XQ. 153. And that was on or about July 1, 1922?

A. Yes, sir.

XQ. 154. You have seen the copy of the letter which is attached to the Bill of Complaint, and there is no doubt that that is a correct copy?

A. Yes, sir; I have the original with me.

XQ. 155. Did you before bringing this suit make a demand upon The Chemical Foundation in accordance with the instructions contained in the President's letter to you?

A. I followed the instructions of the President.

XQ. 156. You did?

A. Through the—

XQ. 157. Well, you did. You made the demand, did you not?

A. I made the demand, yes.

XQ. 158. And The Chemical Foundation declined to comply with it?

A. Yes, sir.

XQ. 159. Do you remember when you made that demand?

A. One minute, I will give you the exact date.

XQ. 160. Well, it was July 8, 1922, and if my date is wrong you may correct me later.

A. All right.

Mr. Kresel: He won't stop to do that now.

Mr. Galloway: July 8th is right.

Mr. Kresel: July 8, 1922.

XQ. 161. You verified this Complaint on the blank day of September, 1922—I have it in my Bill. It was filed September 8, 1922, and, subject to correction, Colonel Miller, please assume that.

A. Yes, sir.

XQ. 162. Now reading to you from the letter of the President to you, the President says, after describing what the transaction had been:

> "On the face of such an action it became so apparent to me that an inquiry should be made."—

will you follow me, please?

A. Yes, I am (examining book).

XQ. 163. (continuing) —"that I asked for a report by the Department of Justice on the sale of this enemy property to The Chemical Foundation. It appears that the sale was made at so nearly a nominal sum that there is reason to believe that this Government has not faithfully observed the trust which was implied in the seizure of this property. The circumstances relating to the entire transaction are of such a character that full investigation becomes a public duty." Prior to your making the demand on The Chemical Foundation what investigation did you make regarding this transaction? When I say "you" I mean in your official capacity, of course.

A. I can not say, Mr. Kresel, that The Chemical Foundation was the subject of any particular investigation by me personally or by my office.

XQ. 164. That answers my question. Who did make an investigation, to your knowledge?

A. I can not answer that, outside of my own department.

XQ. 165. Then you do not know?

A. I do not know, Mr. Kresel, that—I do not believe that The Chemical Foundation Trust was the subject of any particular investigation by my office.

XQ. 166. Then you do not know that anybody made an investigation of this transaction between the Alien Property Custodian and The Chemical Foundation; is that your answer?

A. That is, not to my knowledge; but that would not mean that it had not occurred.

XQ. 167. That is all I am asking—to your knowledge. Do you know a man named C. C. Bennett?

A. No, I don't.

XQ. 168. Have you ever met Gaston B. Means?

A. I have met him occasionally, yes.

XQ. 169. He was brought to your office along about the time when this suit was brought, was he not?

A. No, sir.

XQ. 170. Or was it prior thereto?

A. I can give you—

XQ. 171. No.

A. I want to give you the date now that I knew him first.

XQ. 172. Yes, please.

A. In October, 1921, I think I first saw this man.

XQ. 173. October, 1921?

A. Yes.

XQ. 174. That was after you had become Alien Property Custodian?

A. Yes, sir.

XQ. 175. He was brought to your office?

A. He came there as an agent from the Department of Justice for some information which I—

XQ. 176. And was or was not that information in connection with The Chemical Foundation?

A. I must answer it this way: It was either The Chemical Foundation or the Bosch Magneto.

XQ. 177. Well, do you not know it was with reference to both?

A. When I swear to something, I want to be specific.

XQ. 178. Of course you do, Colonel.

A. But this man has talked to me in his official capacity as an agent of the Department of Justice about both those matters and I do not know which one came first. It was the first time I had met him.

XQ. 179. But he has in his official capacity as a representative of the Department of Justice talked to you at one time or another before the bringing of this suit with reference to the Alien Property Custodian and The Chemical Foundation?

A. And may I say there —

XQ. 180. Just say yes or no and then we will see whether you may say something more.

A. Yes.

XQ. 181. Before you received the President's letter on the first of July had you been consulted about it?

A. I had not been directly consulted.

XQ. 182. That is all. You did not know that the President was about to issue any such communication?

A. Do you mean on the 1st of July?

XQ. 183. Before the receipt of the letter?

A. Well, no, I did not know that the letter would arrive that day.

XQ. 184. Then you missed my point? Whether you knew that it would arrive that day or no, my question is did you know that the President was about to send you a communication of that sort?

A. No, I did not.

XQ. 185. Were you consulted about bringing this suit prior to the time that you were asked to verify the Bill of Complaint?

A. I was consulted about the advisability of taking some action, but not within the few days previous to July 1, 1922.

XQ. 106. I think you misunderstand me, Colonel. This suit was not instituted until the 8th of September, 1923.

A. Oh, I see.

XQ. 187. My question is whether prior to the date when you verified this Bill of Complaint you had been consulted about the bringing of this suit?

A. Well, my office, Mr. Kresel?

XQ. 188. No, I mean you.

A. Me personally?

XQ. 189. Yes.

A. Yes, I had been called to the Attorney General's office, I remember, for one conference after the demand had been refused by The Chemical Foundation.

XQ. 190. That is, after July 8th?

A. Yes, sir.

XQ. 191. And can you give me the date when you were called to the Attorney General's office?

A. It must have been some time between July 8th, and say, the middle of August. I can not give you the date. I know if I had my—

XQ. 192. Between July 8th and the middle of August?

A. I could give it if I had my memorandum.

XQ. 193. That is near enough. Of 1922?

A. Yes, sir.

XQ. 194. I am not going to ask you for any conversations; I am simply going to ask you to whom you talked there.

A. In conference, you mean?

XQ. 195. Yes.

A. The Attorney General of the United States, Colonel Henry W. Anderson, Special Assistant, Mr. Galloway, W. W. Wilson, and I don't want to miss any others, but there may have been some there.

XQ. 196. Mr. Wilson, whom you have just mentioned, is your present general counsel?

A. Yes, sir.

XQ. 197. That is, the general counsel of the Alien Property Custodian's office?

A. Yes, sir.

XQ. 198. At the time when this conference was had, did you know a suit was going to be brought against The Chemical Foundation?

A. Well, I had reason to know, Mr. Kresel—

XQ. 199. Well, did you or did you not?

A. Well, my natural assumption is after the President's letter that an action would be brought upon the refusal of the demand.

XQ. 200. Colonel, I do not want to fence with you about it.

A. If it will save time, I will say yes, then.

XQ. 200-a. That is all right, then. And did you know at that time—that is, at the time of this conference in the Attorney General's office that you would be asked to verify this Complaint?

A. Well, I presume that I would have something to do with it.

XQ. 201. I do not want you to presume.

A. No, I did not know I would have to sign it.

XQ. 201a. Is it not a fact, Colonel Miller, that not until the day when the bill was presented to you for signature, did you know that you would be asked to verify it?

A. I will answer in the affirmative.

XQ. 202. I knew you would. That is why I asked you. Now, when you verified this bill, of course you did not read it?

A. I read it. Yes, I read it, naturally.

XQ. 203. Of course, you would. You would not sign and swear to this sort of document without reading it. You remember the form of the verification, do you not?

A. Yes.

XQ. 204. You swear here that you have "read the foregoing Bill of Complaint and that the matters and things therein stated of which the defendant has knowledge are true and that the matters and things therein stated upon information and belief he believes to be true."

A. But may I say there, as you know, the Department of Justice is the counsel for my office.

XQ. 205. Oh, yes, I know that.

A. And you know the system in preparing suits or answers to suits.

XQ. 206. I do not know and I think my knowledge

(Mr. Galloway then read from Plaintiff's Exhibit No. 5.)

I wish to omit a portion, and go to paragraph 5 of this exhibit, if your Honor please.

(Continues reading.)

If your Honor please, we next offer in evidence and will ask leave of the Court to read a letter which we ask to have marked Plaintiff's Exhibit 6, from Ramsay Hoguet to Mr. Lee C. Bradley, dated January 24, 1918.

(At this point the discussion ensued among Court and counsel off the record.)

Mr. Kresel: May counsel, following out the suggestion that was just made by your Honor, state for our information the reason for the offer of this present exhibit. It is quite a long document. It is a letter and an opinion of counsel. We would like to know in what respect the Government feels that is material to any issue in this case.

The Court: No ruling has been made on this as yet?

Mr. Kresel: None at all. It was just offered.

Mr. Galloway: If the Court please, this letter, which I shall not read before I make the statement, is a letter from Mr. Ramsay Hoguet, then Patent Counsel of the Alien Property Custodian, to Mr. Lee C. Bradley, then general counsel of the Alien Property Custodian, being advice upon patent matters, which indicates grave doubts, if not a conclusion, upon the part of Mr. Hoguet, the patent counsel, as to the Alien Property Custodian's right to seize the patents, which is in accordance with the allegations, or rather in proof of the allegations of paragraph 15 of the Bill, where it says: "It was determined by the Alien Property Custodian and others charged with the administration thereof and under his direction, and by the Attorney the administration of this act had determined that the act did not permit the seizure of patents?

A. Only my general information with regard to legislation.

XQ. 218. That is, all you knew about it was that it was not until the Fall of 1918 that a specific amendment authorizing the seizure of the patents was passed, is that it?

A. Yes; and I of course had access to my records, where they were hearings that my predecessors had taken part in. I can not specifically say, Mr. Kresel, when and how I learned it; but I knew that an amendment was necessary to permit the sale of patents.

XQ. 219. What records did you see before you verified this Bill?

A. I am unable to answer specifically what records.

XQ. 220. Were there any records that you saw from which you learned that the Alien Property Custodian had so determined? And if so, what are the records?

A. I am unable at this time to answer that in detail such as you request.

XQ. 221. You say that the Alien Property Custodian and others charged with the administration of the act had so determined. Who were the others?

A. I presume his—

XQ. 222. Not what you presume, Colonel. Please let us not presume.

A. Well, the others were undoubtedly his Bureau chiefs under him.

XQ. 223. Who were they?

A. I do not know the exact persons.

XQ. 224. Did you know when you verified the Bill?

A. I did not know the names of the personnel, no.

XQ. 225. I direct your attention to Paragraph 16th of the Bill, on Page 17. Before that allegation the Bill sets forth that Mr. Bradley, representing the Alien Property Custodian, had appeared before a Congressional Committee and had given certain testimony. You are familiar with that?

A. Yes.

XQ. 226. In the sixteenth paragraph you say this:

> "Acting upon the faith of the representations aforesaid and solely for the purposes aforesaid, Congress did, by an Act entitled 'An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and prior fiscal years on account of war expenses and for other purposes,' approved November fourth, 1918, amend sub-section (c) of section 7," and so on.

How did you know so that you could swear upon knowledge, that acting upon the faith of the representations made by Mr. Bradley and solely upon that Congress passed that amendment?

A. Well, Congressional committees undoubtedly—Congressional committees follow the recommendations of the Division or Bureau Chief or his subordinates involved when legislation is before them affecting those offices.

XQ. 227. Is that all you want to say about that?

A. Yes. I am giving it to you as I understand it.

XQ. 228. Well, do you think or did you know that every Congressman that voted for that amendment did so relying solely upon what Mr. Bradley had said to the committee?

A. No, I did not know that.

XQ. 229. When this was presented to you, you could not have failed to observe that statement. Did you ask any question about that to satisfy yourself whether that was true?

A. No, not that I recollect.

XQ. 230. I direct your attention to page nineteen of the Bill, Paragraph Eighteenth:

> "Complainant is informed and believes"

Now, you see here you are stating this upon information and belief.

> "and therefore avers that for several years prior to the declarations of war aforesaid various persons, firms, and corporations engaged in the production, manufacture, and sale of dyes, and the ingredients thereof, and of kindred or similar chemical materials and products, had been engaged in the formation and development of plans for the complete monopolization and control of the dyestuffs and organic chemical industry in the United States."

First, I want you to tell me who were the persons, firms and corporations that had thus been engaged in the formation and development of plans for the monopolization of the dyestuffs industry?

A. I can not give all the names that have been brought to my attention. Therefore, I do not care to name any of them.

XQ. 231. Did you know that you verified in this Bill the names of the various persons, firms and corporations engaged in that monopoly?

A. I can't say, Mr. Kresel, that I could recite them. I know that—

XQ. 232. Did you know who they were?

A. Well, answering generally, no.

XQ. 233. Of course, if you had known, you would have insisted upon putting in the names, would you not?

A. I do not know whether I would or not, Mr. Kresel.

XQ. 234. You realize that that would have been the proper thing to do, don't you?

A. Well, in—

XQ. 234. (Continued) And that is the reason why you hesitate to mention even any names?

A. Any advice as to how this Bill should be drawn had better be given to the Department of Justice. They drew it.

XQ. 235. Who to your knowledge had a complete monopolization and control of the dyestuffs and organic chemical industry in the United States, as you allege here?

Mr. Anderson: I beg your pardon. I know counsel does not wish to misstate the allegations; but he does not state on his knowledge; he states on information and belief.

Mr. Kresel: I withdraw the question.

XQ. 236. What information did you have as to the persons who had a complete monopolization and control of the dyestuffs and organic chemical industry?

A. The only information that I had personally—

XQ. 237. Not what you have now, what you had when you verified the Bill.

A. No, had then.

XQ. 237. (Continued) Yes.

A.—had come from my interest and association personally with those who were interested in a dye embargo.

XQ. 238. That does not give me the answer. Who were they?

A. I said, Mr. Kresel, I could not commence to name all these corporations. Therefore, I do not—will not single one out or two out to talk about them.

XQ. 239. And you said you did not know at the time. You want to stand by that answer, don't you?

A. That I did not know any of their names?

XQ. 240. Yes.

A. Oh, I certainly knew the names of some of the chemical corporations.

XQ. 241. I am not asking you what you know about them.

A. Well, I knew them. I could not have been associated in a personal capacity, as I was at Washington without knowing.

XQ. 242. Colonel, I did not ask you that. You are missing my question. I ask you whether, when you verified this Bill, you knew the names of the persons, firms and corporations who were engaged in the production, manufacture and sale of dyes and who had been engaged in the formation and development of plans for the monopolization of that industry?

A. No, I did not know them in their entirety.

XQ. 243. I will have to ask you then, Colonel, though you seem to hesitate to give them, to tell me such names as you did know?

A. Well, I will tell you, Mr. Kresel, I would prefer not to name any individual corporations. If I have not satisfied you with my answers—it is not because I care to evade anything.

XQ. 244. I know, Colonel, and please do not think that I am intimating in the slightest degree that you are evading anything.

A. You know—

XQ. 245. I know that.

A. You know very well that I know a good many sides of this question.

XQ. 246. No, I do not.

A. I thought I—

XQ. 247. I plead complete ignorance.

A. Well then, we do not know each other as well as I thought we did.

XQ. 248. But that is neither here nor there. My question is this: Did you or did you not, when you verified this Bill of Complaint, know who were the various persons, firms and corporations that had been engaged in monopolizing the dyestuffs industry of the country?

A. Now, how is this? Not specifically.

XQ. 249. My question stands as I put it.

A. Well then, let it go in as "No."

XQ. 250. "No," that is an answer. Now I direct your attention to page 23 of the Bill, Paragraph Twenty-Third. You say as follows:

> "Complainant is informed and believes and therefore avers that in pursuance of said plan, scheme, and conspiracy the persons, firms, corporations, and associations aforesaid, parties thereto, about or soon after June, 1918, through their duly authorized representatives, and especially through one Morris R. Poucher, representing and acting for said conspirators," etc.

You have named Morris R. Poucher. I want to know who the other duly authorized representatives are that you speak of in that paragraph?

A. I can not give them to you, Mr. Kresel.

XQ. 251. Did you know who they were at the time when you signed and verified this Bill?

A. No, sir.

XQ. 252. I direct your attention to Paragraph Twenty-Fourth of your Bill, page 25: You say, first sentence at the top of page 25:

> "Said parties thereupon arranged with the Alien Property Custodian immediately following the enactment of said amendment approved November 4, 1918, of the 'Trading with the Enemy Act' that a patent attorney who was then engaged by and represented the E. I. duPont de Nemours & Co. and another patent attorney who was then engaged by and represented the National Aniline and Chemical Company, together with the necessary assistants who were employed by the said two corporations," and so on.

Now I want to know who were the parties that thereupon arranged with the Alien Property Custodian, as you say there, to do the things that you say?

A. I do not know who they were.

XQ. 253. Did you know at the time when you verified this Bill?

A. I knew from the advice given to me by the Department of Justice officials who prepared this Bill, that they had discovered evidence in the files which would substantiate them in putting this in the Bill.

Mr. Kresel: I ask that that answer be stricken out, your Honor, as not responsive.

The Court: Motion granted.

XQ. 254. Did you know who were the parties that made this arrangement that you specify here in the Bill?

A. No, sir.

XQ. 255. Did you know at the time when you verified the Bill?

A. Same answer.

XQ. 256. "No, sir," all right. I direct your attention to page 27 of the Bill. In the Twenty-Fifth paragraph thereof you say as follows:

> "Further carrying out and in pursuance of said scheme or conspiracy, the persons, firms, corporations, and associations aforesaid, acting through their common representative or representatives as aforesaid, procured and induced the said Francis P. Garvan,"

And so on, to do certain things. Now, you have already testified that you did not know who the persons, firms, corporations and associations were. I now ask you to say whether when you signed and verified this Bill, you knew who the common representative or representatives were that you speak of there?

A. No, sir.

XQ. 257. Now I turn to page 29 of the Bill, twenty-eighth paragraph, where you say:

> "In the further carrying out of said scheme or conspiracy, the parties aforesaid engaged in the organization of said defendant corporation for the purposes aforesaid and in order to prevent and avoid any competitive bidding for said patents and other rights when sold, undertook to induce, and did in fact induce substantially all of the persons, firms, and corporations engaged in said dyestuffs and chemical industry who might become bidders for said patents, copyrights,"

and so on, to do certain things. I want to know who were all of the persons, firms and corporations, substantially all as you say, who were in the dyestuffs and chemical industry.

A. I can not name them.

XQ. 258. Did you know at the time when you verified the Bill?

A. Not in detail, no.

XQ. 259. Did you know any of them?

A. I can not give their names Mr. Kresel.

XQ. 260. Please turn to page 39 of the Bill, paragraph Thirty-Four. I want you to follow me closely on this, if you will:

> "Complainant is informed, believes, and therefore avers that said orders of said Frank L. Polk—" you know what orders are being spoken of there?

A. Yes.

> XQ. 261. "—were in fact prepared by or at the instance of the said defendant, The Chemical Foundation, Incorporated, and at the instance and procurement of the persons, firms, and corporations in control of said dyestuffs and chemical industry, in pursuance of the scheme and con-

General of the United States, that said Trading with the Enemy Act as amended, did not authorize the seizure and sequestration or sale or other disposition of enemy-owned patents, copyrights, trade-marks, labels or other similar rights or applications therefor." We offer this, your Honor, under that paragraph.

Mr. Kresel: This simply illustrates the wisdom of your Honor's suggestion. We object to the exhibit as offered upon the grounds that from the statement of counsel, it appears to be immaterial and irrelevant. The date of this letter is January 24, 1918, and applies to the situation of the law with reference to patents as it then existed. Now, it is already before your Honor, with the amendment of the Trading with the Enemy Act, that finally authorized the seizure of patents, which was passed in November, 1918. Now, whatever opinions may have been entertained by the Custodian or his counsel, as to whether he did or did not have the power to seize patents before that amendment, seems to us to be entirely immaterial and irrelevant.

Mr. Galloway: If the Court please—

The Court: You need not argue it, Mr. Galloway. I say that notwithstanding that, I am at the moment inclined to agree with you, Mr. Kresel, but I am assuming, as I did this morning, at the close of the case, that counsel on either side will not offer anything unless they believe that it has some probable value in this case; and I shall extend the same line of reasoning, when you introduce your side, Mr. Kresel; because Rule 46 makes it necessary that it be put on record, in substance, in any event; and I think we can proceed more expeditiously, if we proceed by making rulings admitting the testimony offered, without in any way by such rulings indicating, or binding the Court in its final determination of the value of the evidence submitted, because a ruling that this document will be

> spiracy as hereinbefore set forth; that necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of said patents and other rights mentioned in said orders at private sale were not stated or disclosed to said Frank L. Polk, but were withheld from him and suppressed."

What facts with regard to the seizure and proposed and pretended sale and disposition of this property did you know when you verified this Bill had not been stated or disclosed to Frank L. Polk or had been withheld from him and suppressed?

A. The evidence as collected by the Department of Justice officials and brought to me in the Bill was the only information that I had.

XQ. 262. Colonel, that does not answer my question, if you will permit me to say so. I want to know what facts you knew of and had been informed of which had been suppressed and withheld from Mr. Polk.

THE COURT: I understood the witness in his answer to say that the only information he had on that matter was what was disclosed by the Bill and the exhibits which were presented to him for execution. Does that not answer your question?

XQ. 263. Was that your answer?

A. Yes, that is just as I said it.

XQ. 264. You go on and say:

> "that other facts in connection therewith, and
> mission, charged with issuing licenses under the
> especially the attitude of the Federal Trade Com-
> enemy-owned patents and other rights aforesaid,
> with respect thereto, were misstated and misrepresented to said Frank L. Polk."

What facts did you know, when you verified this Bill, had been misstated and misrepresented to Mr. Polk?

A. The same answer that I gave to the previous question.

XQ. 264. Colonel, that does not satisfy me on this point. You are making a serious charge here. You are making a charge that somebody, whom you have not named yet, had made a deliberate misrepresentation and had deliberately misstated facts to Mr. Polk. Surely, before you verified this Bill, you must have asked what there was upon which to adduce such a statement. Now please tell me what it was?

A. I can not give you anything on that point in answer to your question. But you must know—and I do not know whether you will strike it out of the answer or not,—the way—

XQ. 265. Pardon me a minute.

> Mr. Kresel: I move to have stricken out from the answer the statement beginning with the words "but you must know." He answers that he can not give the information. That satisfies me.

A. And does the previous answer stay in there, that I desire to give the same answer to the previous question?

XQ. 266. Oh, yes; you have already given it.

A. All right.

XQ. 267. You say, "that his signature," speaking of Mr. Polk,

> "to said order and the issuance thereof by him were procured as aforesaid through such suppression and misrepresentation of the facts, which, if the same had been known by said Frank L. Polk, would have prevented his signing and issuing said orders."

Did you ever talk to Mr. Frank L. Polk upon this subject?

A. Not about this subject.

XQ. 268. Did you, when you signed and verified this Bill, know that if he had known certain facts, that you now can not tell me what they were, he would not have signed this order?

A. I was led to believe so by my counsel, the agents of the Department of Justice, who had interviewed Mr. Polk.

XQ. 269. And now that your recollection is refreshed, what is it that you were told by your counsel, the Department of Justice, had been misrepresented to Mr. Polk?

A. My recollection is not refreshed. The Department of Justice, as I have said all along through my answers, were my counsel and my agent in these matters; and they interviewed Mr. Polk and they brought this testimony, they brought in facts which they put in this Bill, which I signed.

XQ. 270. Well, what was it that they told you they had learned from Mr. Polk indicating that things had been misrepresented to him?

A. Specifically I can not answer that, Mr. Kresel.

XQ. 271. I wish you to turn now to paragraph Thirty-fifth of the Bill wherein you say at page 40 that you were informed and believe, and therefore aver that the Executive Order (this is the Executive Order which was signed by the President) "was prepared by or at the instance or procurement" of the defendant, The Chemical Foundation, Incorporated, and "at the instance or procurement of said persons, firms, and corporations in control of said dyestuffs and chemical industry and parties to said scheme or conspiracy hereinbefore set forth; that the facts hereinbefore set forth and other facts necessary and essential in relation to said seizure and proposed and pretended sale of said patents, copyrights, and other rights, and rights arising out of or incident thereto, (and I skip the next sentence because it has been amended) were not disclosed to the President at the time of or before the signing of said Executive Order and that the same was signed and issued upon an entire misunderstanding or mistake of facts."

Now, surely, when you were signing this Bill, you realized the importance of that allegation did you not?

A. I can not say that I did above any others.

XQ. 272. Didn't you know when you were verifying this Bill that you were alleging that the President of the United States had made an Executive Order and that he did not know the facts upon which he was acting?

A. If you want to read that into the language, it is your privilege.

XQ. 273. Well, isn't that the language? Don't you so read it?

A. I have no comment to make on that.

XQ. 274. With that language before you, you surely realize the importance of it; and now I ask you to state what you knew, what facts there were that had not been disclosed to the President at the time of the signing of this order?

A. No facts other than what my agents, the Department of Justice, had brought into this bill or to this case.

XQ. 275. But what were they?

A. I can not discuss them, Mr. Kresel, because I am not familiar with them at this time.

XQ. 274. Did you know them when you signed the Bill?

A. Only in a general way, as I have indicated to you, when I signed the Bill.

XQ. 275. The fact is, Colonel, that this Bill was presented to you by the Department of Justice, you were asked to sign it; you relied upon the Department of Justice as your counsel who told you it was all right; and you signed it; isn't that so?

A. That is what I have said all along substantially; and, acting upon the original letter of the President, who is my chief.

XQ. 276. You make a charge in this Bill of conspiracy and monopoly. Do you want to add anything to what you have already testified which in your belief, knowledge or imagination even will go to substantiate the charge of conspiracy or monopoly?

A. I have no other evidence to offer than what the Department of Justice offers.

XQ. 277. Who was it that presented this Bill to you from the Department of Justice?

A. Either Colonel Henry W. Anderson or Herman J. Galloway.

XQ. 278. You testified before a Committee of Congress called the Winslow Committee, do you remember?

A. Yes, sir.

XQ. 279. That was in 1922?

A. Well, it ran over.

XQ. 280. When was it?

A. In December, 1922 and January, 1923.

Mr. Anderson: If your Honor please, I do not wish to interrupt the cross-examination of this witness, but I only want to say that when taking him outside of the cross-examination, counsel makes him his own witness. I have no objection on any other grounds.

XQ. 281. Colonel, I understand you want to get away early this morning?

A. Yes, sir.

XQ. 282. I want to be as obliging as I can. If it is important for you to catch your train, I will stop now, though I am not through with you and I doubt whether I can get through with you in less than a half hour. I will do anything the Court and counsel desire me to do about it.

A. Unfortunately, Mr. Kresel, it is absolutely mandatory for me to catch a train in thirty-five minutes. I am very loath to leave at this present moment, but I suggest, if you care to, that you go ahead with me until I really have to leave.

XQ. 283. I will do anything that you want?

A. Thank you.

XQ. 284. Will you indicate to me when you desire to leave and I will stop instantly?

A. Thank you for your courtesy.

XQ. 285. Before this Committee, the Committee on Interstate and Foreign Commerce of the House of Representatives, Sixty-seventh Congress, Fourth Session on H. R. 13,496, supplemental to the Trading with the Enemy Act, you appeared as a witness on the 21st day of December, 1922, according to this record?

XQ. 285. (Continued) At page 32, speaking of the capacity in which you consider yourself to be as Alien Property Custodian, you said:

> "I merely am a stakeholder, and last June, previous to July 2, 1922, as trustee for the enemy, I brought a great number of suits," etc.

The point I wanted to direct your attention to is that you testify that you were trustee for the enemy; that is correct, is it not?

A. No.

> Mr. Anderson: Just a minute now. If your Honor please, I think I will note an objection to that question on the ground that it asks for the construction of the act. Otherwise I do not object to it, but I think the question as to what the wit-

ness may have thought is immaterial. It is merely a question of what his position was.

The Court: I am inclined to think I will not take time to hear discussion now.

Mr. Anderson: No, I did not mean to enter into any.

The Court: We will not discuss it at this time, whether the objection is well taken or not, but at some later stage.

The Witness: I would like to answer the question if I am not prevented from so doing.

XQ. 286. No, sir; you have answered the question I have asked you, whether you so testified, and you said you did, did you not?

A. You want no elaboration?

XQ. 287. No, but you did so testify?

A. Can't a witness have some—

The Court: No, Colonel, you are consuming time. Your counsel may bring it out on re-direct if necessary.

The Witnss: Because I am the author of that Act.

XQ. 288. Pardon me?

A. I am proud of the fact that I am the author of that Act. That is, I had a good deal to do with drawing it up.

XQ. 289. I do not know what act you are referring to, but please do not let us go into that.

A. All right. The one on the third page there, that you just referred to.

XQ. 290. As long as you insist on that I will let you do it. You are speaking now of the Winslow Bill?

A. Yes, sir.

XQ. 291. You mean the bill that was passed by Congress authorizing the Alien Property Custodian to return to the Germans all property that you as Alien Property Custodian held up to the sum of $10,000?

A. Yes, sir.

Mr. Anderson: I do not admit that construction of the Winslow Bill. I think while you can identify the bill or the witness may say if he wishes that he was the author of it, the meaning of the bill should not be put upon the record by counsel. I therefore object to that question.

The Witness: Could I, then, say this to Mr. Kresel—

XQ. 292. No, we will get along, Colonel, if you will be the witness and let me be the lawyer. Whatever the construction of the act is, and I am not asking you to construe it, that is the act you say you were the author of?

A. Well, I was stating it a little strongly I recommend it, and for very good reasons, having an interest in the American claims against the Germans. I want that to go on the record, because if you read the testimony you will see what I said in there. I am unwilling to have it go in just briefly on the one or two points you want to bring out.

XQ. 293. Colonel, you say that is the bill you recommended. We will take it that way.

A. Yes.

XQ. 294. And as long as you have insisted upon having that in the record, I am sure you will say, because you so testified before the committee, that that bill was an administration measure, will you not?

Mr. Anderson: What is that?

XQ. 395. Wasn't it?

Mr. Anderson: If your Honor please, I do not think that is a proper question here and I do not think it is one we should go into.

Mr. Kresel: I am not going into it, but your

Honor sees that he insisted on having it in the record.

Mr. Anderson: An Act of Congress is simply an Act of Congress; it is not an administration act or anything else.

The Court: Colonel, do I recall correctly that part of your Bill in which you allege that Congress passed an act upon representations made to it solely for that purpose by Mr. Bradley?

Mr. Anderson: Yes, sir.

The Court: How can you reconcile your present objection with that allegation?

Mr. Anderson: In this way—that if counsel wish to have this witness say that he recommended the thing or that he was the only witness who appeared, I have not the slightest objection; but what was an administration measure is a conclusion, and the administration consists of the entire Executive part of the Government, and therefore I have never averred and would not aver that the thing was an administration measure.

The Court: And therefore that calls for a conclusion of fact?

Mr. Anderson: It calls for a conclusion, and in addition to that calls for the action of the entire Executive Department. Any specific act of a specific person is a fact.

The Court: There can be such a thing, I take it, as an administrative measure, can there not, Colonel Anderson?

Mr. Anderson: I am frank to confess, your Honor, that I do not know that I could conceive of that description in America. It would be in England, because there it is the act of Parliament. But here the only person who can speak for an administration, whatever you may call that, is the President, perhaps in his official communications to Congress; and therefore he, not being a member of Congress, could not state that. A bill is introduced by a Senator or Congressman and passed as an act of Congress. There might be some definite interpretation of that in England, but not in this country.

Mr. Kresel: This witness's time is short, your Honor, and all I am asking him is this:

XQ. 296. Did you not testify before this committee when you were urging the passing of this bill which you say you were recommending, that it was not only you that was urging it but that it was an administration.

A. Yes, sir.

XQ. 297. Surely you are not ashamed of that, are you?

A. I am certainly not ashamed of it.

XQ. 298. Then I will come back to my original question. And at page 33 of your testimony before this committee you said, did you not: "Why, as trustee for the aliens, I want, of course, to see all their rights preserved"?

A. I conceived that to be my duty, yes.

XQ. 299. That is all right, I am not quarreling with your duty, I just want to get on the record what you said. And at page 34 you said this: "I have already indicated to you my personal view as to the situation that might be existing in connection with the Government suit against the Chemical Foundation, but as I have said I am a trustee for these people and the guardian of their property." "These people" were the Germans?

A. Austrians and Hungarians, whose property admitted, does not mean under the circumstances of this case, that any weight or value will be attached to the documents or evidence so admitted, when the case is all in, and taken up for final consideration and determination. For that reason, and that reason only, I overrule the objection.

Mr. Kresel: Now that your Honor has made that ruling, it seems to me also that this is probably the proper time at which to make the objection, which I now make to this particular exhibit, upon the ground that if it be offered in evidence as a step in an attempt thereby, and by other evidence to seek to have this Court inquire into the reasons that actuated the President and under his directions, the Alien Property Custodian, in transferring these patents to the defendant, for the considerations that may appear in the evidence were paid therefor, and if it be the purpose in introducing this evidence and other evidence of a similar nature that may follow, to ask this Court to set aside this sale upon the grounds that the reasons that actuated the Executive and under his direction the Alien Property Custodian, that such evidence is incompetent, immaterial and irrelevant, upon the specific ground, among others, that the Court has no jurisdiction to pass any such judgment. I assume, as your Honor has already indicated, that your Honor will take the testimony; that your Honor will overrule the objection, and that in order that we may not waste any time in repeating such objections to further testimony upon the same line and for the same reasons, may it be understood that our objections shall lie to all such evidence when directed for the purposes that I have indicated?

The Court: And all other purposes that you have indicated in the arguments made at the opening of this case.

Mr. Kresel: Thank your Honor for the addition.

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was still in my possession. I wish you would read that portion which relates to the American claims, if you have time to do it.

XQ. 300. I do not know what portion you refer to, but I shall not object to Colonel Anderson reading in anything he wishes of what you said, because I realize absolutely you are truthful about it.

A. I think the Bill is a life saver for the American Claims situation.

XQ. 301. Yes, I quite understand that that is your belief. At page 74 before this committee you testified as follows: "Just at that point, Mr. Chairman, it might be interesting for me to say to the committee that as the common law trustee for the enemy interests in all this property I have, since I took over the office, contemplated bringing a friendly action in the courts, as trustee for these people, to determine whether the compensation of $100,000 and other considerations paid for these patents, was really a sufficient sum of money, but due to the whole patent situation I have not done so. To my mind it would be found that the compensation paid at the time was inadequate."

Mr. Anderson: Would you mind saying to what patents that refers?

Mr. Kresel: Yes, I am coming to that.

XQ. 301. (Continued) There you were referring to the fifty-seven hundred odd patents that the Alien Property Custodian seized and conveyed to the War and Navy Departments, or as to which he gave a free license to the War and Navy Departments, and released the Government from all claims for damages by reason of the infringement of those patents during the war upon the payment of $100,000 by the United States Government to the Alien Property Custodian?

Mr. Anderson: If your Honor please, I am constrained to object to that question as an effort to state the contents, meaning and intent of documents which are not in evidence in this case, and as to which the documents themselves are the best evidence. Any facts in connection with that matter which are deemed pertinent by the Court I should not object to, but I must respectfully urge an objection to the testimony as to documents, of that very far-reaching character, of which I personally or as counsel have no knowledge. I do not think he should undertake to state the legal effect, the number of patents, or what was done about them, without producing the record.

THE WITNESS: You do not want me to answer that?

MR. ANDERSON: No, not yet.

MR. KRESEL: No, because the Court has not ruled yet. If your Honor please, I am not asking the witness for the contents, I am simply asking him to identify the transaction.

THE COURT: I understand that you are not attempting to put a construction on the documents but merely use the language that you did to indicate the transaction referred to and identify it.

MR. KRESEL: Yes, sir, all I ask him is to identify it.

THE COURT: As I construe the question to mean that and that only, I will overrule the objection and let you discuss it at a later time.

MR. ANDERSON: And permit me to note an exception at this time.

THE COURT: Yes.

A. Those are my words, and it is bearing out my policy to keep this fund as large as possible as a guarantee against the final settlement of American claims against Germany. That was one of my actuating reasons.

Mr. Kresel: I ask that all the answer be stricken out except that portion of it wherein the witness says that was his language.

The Court: Strike out all of the answer after the words, "Those are my words."

XQ. 302. Colonel, all I am asking is whether what you were referring to there by that language is this patent transaction between the Alien Property Custodian and the War and Navy Departments?

A. Yes, sir.

XQ. 303. It had nothing to do with the Chemical Foundation patents?

A. No, sir.

Mr. Anderson: I would like to get the record straight on that, because at some time this might become a question. I understand that counsel does not rely upon the statement upon the record or any answer of the witness in this matter as any evidence of the transaction between the War Department and the Alien Property Custodian, the assignment of the patents or the number of patents, or any matter of that kind. In other words, if that is relied upon as evidence, I respectfully ask that the best evidence be produced.

Mr. Kresel: The record, your Honor, will speak for itself. Whatever its effect is, the Court will give it that effect.

Mr. Anderson: Perhaps I misunderstood the ruling.

The Court: I understand your position to be, Colonel Anderson, that if the purpose of the inquiry was other than to identify the subject matter of his statement, you object to it?

Mr. Anderson: Very much, sir.

The Court: I do not understand that it is offered to prove the fact, but only as identifying the subject matter of his statement before the committee.

Mr. Anderson: I say any evidence of the transfer of patents or the consideration therefor, or any release of claims against the War Department or otherwise, any other matter relating to that which was in writing, we have to ask for the best evidence.

Mr. Kresel: Certainly. I will produce it in due time.

Mr. Anderson: Very well.

Mr. Kresel: I will produce it.

XQ. 304. At page 15 of this record before the Winslow Committee you put into the record a statement which I shall show you, of the transfer of patents by the Alien Property Custodian to the United States, licenses issued on patents by the Custodian to the United States, re-transfers, etc., and now I will show it to you and ask you whether that is the statement, and whether that is correct (handing witness book)?

A. That is correct.

XQ. 305. Please read the first item there, if you will.

Mr. Anderson: Will you let me see that before he answers?

Mr. Kresel: Yes, I will let Colonel Anderson see it first (handing counsel book).

Mr. Anderson: As I have never seen those documents, though I do not wish to interrupt the examination at this point, I will object to the introduction of that evidence, which is merely an abstract of what was done by writing. I make that objection at this time so as to reserve the point and later on examination of the documents if I find that that is correct and that it does not require the production of the long documents, I will withdraw my objection.

Mr. Kresel: We can use it subject to correction. If this abstract which Colonel Miller put in evidence proves to be incorrect, of course we will correct the matter then.

Mr. Anderson: Or incomplete.

Mr. Kresel: Or incomplete, certainly.

Mr. Anderson: Therefore I object on that ground, with that understanding.

Mr. Kresel: The witness states that he prefers to go now, your Honor, and I am quite willing to suspend at this time.

The Court: Are both sides now through with the witness?

Mr. Kresel: I am not through with him, your Honor.

The Court: You want him to return?

Mr. Kresel: I do, sir.

Mr. Anderson: I would not have put Colonel Miller on the stand except that we thought last night that both of us could get through with him. It may be that the Government will rest its case before he gets back and his further evidence is introduced, and therefore I would like to have the examination of Colonel Miller continued at this point and put into the record immediately following this. I do not know whether that could be done, but I do not want to have it appear in the defendant's case.

The Court: It may go in at this point.

Mr. Kresel: Will you be back Thursday, Colonel?

The Witness: Yes, or on Friday—or Saturday, if you are sitting.

July 11, 1923.

THOMAS W. MILLER resumes the witness stand.

MR. KRESEL: Let the record show that the witness is being recalled for cross-examination which was interrupted by the witness's departure at a time when he was under examination.

CROSS-EXAMINATION (Continued).

By MR. KRESEL:

XQ. 306. Colonel Miller, the Treaty of Peace with Germany, about which you testified before the Winslow Committee—I am going to call it the Winslow Committee just as an abbreviation. It was the Committee on Interstate and Foreign Commerce of the House of Representatives—was made in July, 1921, was it not?

A. No, sir. My appearance, that I assume you refer to, was in June, 1921, before the House Committee on Foreign Affairs in connection with the then pending Knox-Porter Peace Resolution.

XQ. 307. No, I was not referring to that. I was referring to your appearance before the Winslow Committee.

A. The first appearance before the Winslow Committee was in December, 1922, and January, 1923.

XQ. 308. I am glad to have the dates, but what I was trying to get was the date of the Peace Treaty. That was July, 1921, was it not?

A. Yes, sir; July 2, 1921.

XQ. 309. Since that time have you as Alien Property Custodian sold any property?

A. Yes, sir.

XQ. 310. Are you now making sales of property?

A. Yes, sir.

XQ. 311. Speaking of this German Treaty, you testified before the Winslow Committee as follows:

A. Pardon me, what page, please?

XQ. 312. Page 17, toward the bottom of the page:

> "Mr. Miller. My personal opinion is that the Government does not at this time favor the immediate return of all of it."

That referred to enemy property in your possession, did it not?

A. Yes, sir.

XQ. 313. "Because of the very provisions that your Congress put in the Knox-Porter Peace Resolution to which I have referred." That is what I have termed the Treaty of July 2, 1921, is that right?

A. Yes, sir.

XQ. 314. "That contains the last official instructions that any of us have had from Congress and Congress makes the laws, namely, that this shall be retained by the Government until such time as the former enemy government shall respectively have made suitable provision for the satisfaction of all claims against these Governments. That is the last instruction we have in any law on the subject." You so testified?

A. Yes, sir.

XQ. 315. And that was true?

A. Yes, sir.

XQ. 316. In other words, you as Alien Property Custodian regarded it as the last instruction of Congress contained in that peace resolution that the enemy property in your possession should be retained by the Government until such time as the former enemy governments shall respectively have made suitable provision for the satisfaction of all claims against those Governments?

A. That is the way I so understood the language in the peace resolution.

XQ. 317. And have you so governed your conduct as Alien Property Custodian as to be in compliance with that edict of Congress? In other words, let me put it concretely: Have you retained all enemy property in your possession as directed by Congress until Germany and Austria should make provisions for the satisfaction of claims against them?

A. Unless there was a provision of law which required me to return a piece of property for which a claim was made.

XQ. 318. With that exception you have retained all such property?

A. I have retained all of the property that could not be returned under the then existing law or the amendments to the law passed since the date of this hearing.

XQ. 319. But you do say that, notwithstanding the treaty as contained in the Knox-Porter Peace Resolution, you have been selling enemy property?

A. Yes, sir, because—

XQ. 320. "Yes, sir," is an answer.

A. All right.

XQ. 321. You testified before this same committee that you are trustee for the German owners of the property that was taken over by the Alien Property Custodian, did you not?

A. Yes, in substance that was it, Mr. Kresel.

XQ. 322. Not only in substance, but in language did you not so testify?

A. Any language I used in there I stand by; yes, sir.

XQ. 323. Very well, let me direct your attention to your language.

A. What page, please?

XQ. 324. Please turn first to page 29, to about the middle of the page. You said as follows: "The Alien Property Custodian today in all these industrial

The Court: You may re-state your objections urged, so far as I am concerned, at the final hearing, and so far as I have power to give you that power, to urge in any Appellate Court, with respect to the admissibility or error, in admitting the testimony, and erroneous conception on my part of any principle that you have stated or referred to in your opening argument, because I think—now we have a new one, I am not excluding that.

Mr. Kresel: I understand that.

The Court: Now, this ruling does not go so far possibly as to indicate to counsel for the complainant that there is no limit to what they may do under that ruling. I do not mean that, because I think it will not be raised, but at the same time—

Mr. Kresel: Our understanding of the effect of Rule 46 even as to that, we do not understand the Court to sit and simply hear, as a person taking any testimony that is offered. The Court, of course, has the right to exclude testimony.

The Court: For instance, privileged communications.

Mr. Kresel: Yes. All right. We understand that, your Honor. Thank you.

The Court: Admit it.

Received in evidence and marked "Plaintiff's Exhibit No. 6." (*See Exhibits, Vol. I, page 41.*)

Mr. Galloway: If your Honor please, I will not read anything from this, but submit it in evidence with the statement I have made as to its purpose.

We next offer in evidence and ask leave to read a letter by Mr. Ramsay Hoguet, then patent counsel to the Alien Property Custodian—

Mr. Kresel: What is the date of that?

Mr. Galloway: To the Alien Property Custodian dated January 30, 1918, being No. 62, Mr. Kresel.

plants and corporations that he is operating stands in the shoes of a stockholder. He has seized and is holding that stock as a common law trustee or guardian." You so testified, did you not?

A. Yes, sir.

XQ. 325. Now turn to page 32 of the same record, to about the middle of the page: "I merely am a stockholder, and last June, previous to July 2, 1922, as trustee for the enemy I brought a great number of suits," etc. You so testified?

A. Yes, sir.

XQ. 326. Now, turning to page 33 of the same record, about the middle of the page, again you say "Why, as a Trustee for the aliens, I want of course to see all their rights preserved." You so testified, did you not?

A. Yes, sir.

XQ. 327. And then turn to your testimony before the sub-committee of the Committee on the Judiciary, You testified there, did you not, on the same Bill, the Winslow Bill?

A. In the Senate.

XQ. 328. Yes.

A. Yes, sir.

XQ. 329. At page 63 of that record you testified as follows, at the bottom of the page, the testimony given January 11, speaking of the Alien Property Custodian, "He also may administer this property as a common law trustee." Senator Cummings puts this question to you:

"A Trustee for whom?

"Mr. Miller. For the former enemy-owners." You so testified, did you not?

A. Yes, sir, if it is there.

XQ. 330. And then again at page 64 of this same record, Senator Cummings again puts the question to you:

"A trustee for the former enemy-owners."

"Mr. Miller. Yes, sir."

You so testified did you not?

A. Yes, sir.

XQ. 331. And when you verified this Bill of Complaint in the action of the United States against the Chemical Foundation, you were then a trustee for the enemy owners of this property, were you not?

A. I was a trustee, Mr. Kresel, as I construe it, under Section 12 of the Trading with the Enemy Act, which uses that very term that you have been referring to.

XQ. 332. Colonel, just listen to my question. When you signed and verified the Bill of Complaint in this action, you were then Trustee for the alien enemy owners of property in your possession, were you not?

Mr. Anderson: One moment please. If your Honor please, I do not want to object to the examination, but I recognize that counsel can ask the witness what he understood, perhaps, of his position; but he testified about his position and it may have a bearing; but I respectfully suggest that the question of what was the position of the Alien Property Custodian under the law, is a question of law. What the witness may have understood, may or may not be evidence in that connection, and whether it is or not I am going to object to his saying, but whatever he understood his position—that was a position fixed by Statute and that alone can be determined by the Court, not what he thought.

Mr. Kresel: There is no doubt about the principle that Colonel Anderson is invoking.

Mr. Anderson: Then the question is improper.

Mr. Kresel: Not at all. The question is not at all improper. On the contrary, the question is entirely proper.

XQ. 333. Colonel Miller, you understand that I am asking you to state whether on the day when you verified this bill of complaint you considered yourself as trustee for the enemy owners of this property? Did you or did you not?

The Court: The question being modified accordingly?

Mr. Kresel: Yes, sir.

A. If you want me to limit my answer, Mr. Kresel, to just a mere yes or no, I think it is due me that I have some opportunity to go at length into how I construed my position.

XQ. 334. Colonel, you will have every opportunity upon the re-direct examination, I am sure, to make your explanation. I should like you, if you can, to answer the question yes or no.

Mr. Anderson: I wish to direct the Court's attention to the fact that while counsel can ask for a yes or no answer, the witness has a right to explain what he means by "yes" or "no," if it is necessary to make his answer complete, I think, even on cross-examination. I submit that for the decision of the Court.

Mr. Kresel: I do not think that the answer requires any explanation. He either did or did not consider himself to be a trustee for the enemy. I am perfectly willing to have him say one or the other.

The Court: If either an affirmative or negative answer can not be given unqualifiedly, the witness may state the qualification to such affirmative or negative answer; not his reasons and not his reasoning, but the modification or qualification of the answer that he may give.

XQ. 335. You understand, Colonel, the Court's ruling?

A. Yes, I so considered it under the provisions of Section 12 of the Trading with the Enemy Act.

XQ. 336. You verified the Bill of Complaint in this case, and as one of the grounds of complaint you set forth in the bill of complaint that the consideration paid by the Chemical Foundation for these patents was inadequate, did you not?

A. Yes, sir.

XQ. 337. So that you as trustee for the enemy owners of property are seeking to recover these patents, are you not?

A. Seeking to recover them for the custody of the Government.

XQ. 338. You are seeking to recover them, to have them turned back to you as Alien Property Custodian, are you not?

A. If the Government is successful that will be the result, sir.

XQ. 339. And that is what you are seeking in this action, is it not?

A. Yes, sir.

XQ. 340. And if recovered, you will hold them as trustee for the enemy owners, will you not?

> Mr. Anderson: I will have to note the further objection that how he will hold them is absolutely a question of law. The witness holds them under the Alien Property Act in his official capacity, I say again that while I do not think it is evidence, I am not going to object to his having the witness testify as to what he thinks his duties are under the Alien Property Act, although I can not see that that has any relation to this subject; but when it comes to asking him a direct question of how he will hold them, or what his duties are

under the Alien Property Act, then I think that is purely a question of law involving the construction of the Act, which alone the Court can determine.

The Court: Anything to say, Mr. Kresel?

Mr. Kresel: I will modify the question to see if I can meet the objection. I will withdraw the question.

XQ. 341. If the Gevernment is successful in this action and the patents here in question are turned back to you as Alien Property Custodian, you believe that you will be holding them as trustee for the alien enemies, do you not?

A. I will be holding them as Alien Property Custodian under the provision of the law and the treaty which states that this property shall be held until such time as Congress may determine the disposition thereof.

XQ. 342. And your construction is that you will hold them as trustee for the enemy owners, is it not? You have so testified.

A. Partially, Mr. Kresel.

XQ. 343. Why partially, in what way partially?

A. Because, sir, this property, the remaining property, is held under the provision of the Peace Treaty for the settlement of American claims; and I consider the Alien Property Custodian as also holding this property as a guarantee of claims against Germany when they are adjudicated by the Mixed Claims Tribunal.

XQ. 344. You will hold it then as a guarantee that the Germans will pay the claims and if paid, then the property goes back to the Germans, does it not?

A. If in the future the German claims can be satisfied without confiscating German property, yes. If this administration is in power, it will go back.

XQ. 345. That is what I thought. So that if the Government is successful in this suit and the patents are returned to you as Alien Property Custodian and the Germans pay the claims which are made against them, the patents will go back to the Germans?

A. If they have not expired; if the life of the patent has not expired.

XQ. 346. That is true, is it not?

A. It will be treated in the same category as any other alien property, that is in our office now.

XQ. 347. And they will go back to the Germans, will they not?

A. I cannot predict what action Congress is going to take, sir, in the future.

XQ. 348. You have just said, have you not, that you are holding this property only as a guarantee that the German claims will be paid. Now I say to you, if the German claims are paid, will they not go back to the Germans?

Mr. Anderson: If your Honor please, we have gotten the views of the witness without objection. The terms under which this property is held are fixed by Act of Congress and by the Treaties and the Act of Congress expressly provides that the property shall be disposed of as Congress may direct.

Therefore, while I did not want to object to this evidence, except my general objection which applies to all of it, and I did not want to interrupt although I think the evidence is illegal in any event, and I have no objection except my general objection that it is immaterial, irrelevant and incompetent; yet I think that to press a question of law when it is fixed by Act of Congress, and asking a witness on the stand to undertake to construe an Act of Congress, is not legal and therefore I have to object to any further examination along that line.

Mr. Kresel: On the contrary, sir, I am not asking him to construe; I am asking his view as to what he considers his official duties demand.

The Court: I think the objection is well taken, Mr. Kresel, on two grounds, first that the objection as stated is valid and also because the witness has answered as I understand it, the identical questions only two or three questions back. If there is a distinct difference between this question and the one he answered about two questions back—

Mr. Kresel: If your Honor will permit the Stenographer to read those two or three questions:

The Court: Very well.

Mr. Kresel: Your Honor's recollection is probably better than mine on that, and if it is a fact I shall not press the question any further.

(XQ. 343 and XQ. 344, with the answers, read as recorded above.)

The Court: The last is the part.

Mr. Kresel: I am glad that your Honor directed my attention to that. I withdraw the last question.

XQ. 349. Speaking of yourself, in your official capacity, at page 21 of your testimony before this Committee, you testified under cross-examination by Congressman Hawes, at the bottom of page 21, as follows:

"Mr. Miller. As I told Mr. Rayburn a while ago, Mr. Hawes, that is a determination of policy that is absolutely up to Congress and the President or the State Department. I am the administrative officer and custodian. Personally I have not hesitated to say here today that the sooner we are divorced from this alien-property business and it is cleaned up and out of the way the better it will be. Nobody will be better satisfied than I, but it will take longer than the time I can spare to do it.

"Mr. Hawes. Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible?

"Mr. Miller. Yes, sir."

Was that your testimony?

A. Yes, bearing in mind the American claim situation which I have dealt with in my testimony, in my answers to your questions. And may I interject there, this was the result of some parliamentary fencing before a Congressional Committee, and I was not sworn. I am endeavoring to give my testimony today bearing in mind I am under oath.

XQ. 350. You mean this statement I read to you, at the bottom of page 21, would have been different had you been under oath?

A. I would have qualified it, Mr. Kresel, as I told you today, bearing in mind the American claims situation.

XQ. 351. Let me put the question to you as it was put to you by Mr. Hawes: Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible? Will you answer that?

A. I think it should be returned as quickly as possible, when the American claims situation is adjudicated by the Mixed Claims Tribunal.

XQ. 352. At page 12 of this record, speaking of the way in which the property was being held as a guarantee, you testified as follows:

"And I want to reiterate again that when we say guarantee we do not mean that we are to eventually confiscate a dollar of this property to pay claims."

You so testified?

A. Unless it was necessary to take the proceeds of this property to adjudicate the claims, if Germany was unable to pay the bill.

XQ. 353. When you say in this passage that I have just read to you "that when we say guarantee we do not mean," to whom did you refer by the plural personal pronoun "we"?

A. I am trying to find this in here, Mr. Kresel.

XQ. 354. I will point it out to you. (Indicating).

A. Oh, yes. "We" referred, editorially as it were, to the United States.

XQ. 355. And there is no question about it, Colonel, that this Winslow Bill that you were urging the passage of at the time you were giving this testimony, was as you termed it here, an administration measure.

Mr. Anderson: One moment. If your Honor please, when that question was asked before I felt constrained to object. I do not understand that there is anything in the United States known as an administrative measure in the technical sense. The Executive Department of the Government, which is usually spoken of as the Administration, has no part in legislation, except the power of veto in the President, and therefore the question of Bills in Congress is purely a question for Congress. Therefore, I am constrained to object, that under our system of Government there is no such thing and can be no such thing as an Administrative Bill.

Mr. Kresel: I will withdraw the question.

XQ. 356. I direct your attention to your testimony at page 18 of this record and read to you from the bottom of the page as follows: "Mr. Huddleston" —He was one of the representatives, was he not?

A. Yes, sir.

XQ. 356. (continuing) "Mr. Miller, I understood you to say that you thought this matter should be dealt with acording to a consistent policy of our Government. That is correct, isn't it?

"Mr. Miller: Yes, sir, Generally speaking.

"Mr. Huddleston: Then I assume that this Bill represents, as far as it goes, the present policy of our Government?

"Mr. Miller: I should say it represents the desire of the present administration, surrounded as they are by the provisions in the peace resolu- Did you give that testimony?

A. That is my language, and I could not express it better at this moment.

XQ. 357. It is true, is it not?

A. Yes, sir.

XQ. 358. That is true?

A. Yes.

XQ. 359. Now, I return to my preceding question, when you said at page 12, these words: "We say guarantee. We do not mean that we are to eventually confiscate a dollar of his property." To whom were you referring when you said "we"?

A. With whom? I should say I can not qualify it any better than I did a moment ago by saying we—the United States. Perhaps I was assuming too much to say that.

XQ. 360. Very well, all right. So you said, speaking for yourself as Alien Property Custodian at least —

A. Yes, sir.

XQ. 361. That it was not intended even though the claims were unsatisfied, to confiscate any of this property?

The Court: And its purpose being to support what allegation of the Bill?

Mr. Galloway: That is the same purpose as the previous exhibit, if your Honor pleases.

The Court: It is admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 7." (*See Exhibits, Vol. I, page 43.*)

Mr. Anderson: I would like to state in view of Mr. Kresel's remarks and statement on the record, that in stating the purpose of these exhibits, we are following the paragraphs of the Bill paragraph by paragraph, and the primary purpose may relate to that paragraph, but the evidence will bear upon other paragraphs also in the Bill, and in stating the purpose merely for the purpose of introduction of evidence, I hope it will not be understood as a limitation upon the right to use the evidence for any legitimate purpose in the argument—I want to make that clear on the record.

The Court: Is that your understanding, Mr. Kresel?

Mr. Kresel: That is my understanding, of course, and that is the reason that I urge the larger objection, and upon the broader grounds, because eventually all this evidence must be directed to the basic purpose underlying this whole case.

Mr. Anderson: Perhaps it will make it clearer if I make this additional statement: A great many of the allegations of the Bill, which are essential to the leading up to the ultimate issues, are either denied on information and belief, or without information and belief, sufficient to reply to. Therefore, in order to establish the allegations of the Bill as we conceive, it will be necessary, although they may be somewhat remote from the immediate issues, these proofs are necessary in the step, that is one reason, primarily.

A. Oh, no, you can not read that—

XQ. 362. Do I misconstrue that?

A. You can not read that into my language, Mr. Kresel, in fairness to me.

XQ. 363. I do not want to read it in fairness or unfairness to you; but is that what you meant by that statement, or is it not?

A. No, sir, I did want to see American claims paid before the remaining property of my office was returned.

XQ. 364. I see. I understand you.

A. And I so stated it time and again.

XQ. 365. Upon the books of the Alien Property Custodian, how are the patents carried, I mean at what value?

> Mr. Anderson: What patents, would you mind saying?
>
> Mr. Kresel: All patents, any patents.

A. The audit that was made by Lybrand, Ross and Montgomery.

XQ. 366. Now, Colonel, I did not ask about the audit, but I want you to answer my question, please.

A. As I recall it, Mr. Kresel—

> Mr. Kresel: That is all I ask for.
>
> The Witness: One dollar.
>
> The Court: Each or all?
>
> The Witness: Each one, sir.
>
> Mr. Kresel: Each patent.

XQ. 366a. Now, the Winslow Bill had become a law, had it not?

A. Yes, sir.

XQ. 367. Subsequent to your giving this testimony from which I have just read?

A. Yes, sir.

XQ. 368. Now, I do not want now to stop to put in a copy thereof, but listen to me clearly and see whether I do not substantially state the terms thereof. The provisions of the Bill are that out of every property belonging or taken over from an alien enemy, that you as Alien Property Custodian hold, whether it amounts to less than $10,000, or to more than $10,000, an amount up to $10,000 should be returned; is that not right?

A. Generally, yes, sir.

XQ. 369. Under that law, you have returned German patents, have you not?

A. No, sir.

XQ. 370. None at all?

A. I specifically directed that when any claim was filed covering the return of a patent, that it be referred to my patent section and taken up with me personally. There has to my knowledge, Mr. Kresel, been no application for the return of a patent so far.

XQ. 371. Do you say then that since the passage of the Winslow Bill, no patents had been returned by the Alien Property Custodian?

A. I will have to refer, Mr. Kresel, to my records, to swear to that, but they should not have been returned under the $10,000 return principle.

XQ. 372. Did you not return approximately 150 patents to Germans—now, I am not going to confine you to any period either subsequent to or prior to the enactment of the Winslow Bill?

A. Well, now, I do not know, sir, but at the danger of meeting with an objection from you, I would like to say this, and if it is not what you want in the testimony, you can strike it out. In considering the Winslow Bill the question came up as to the patent assigned or sold to The Chemical Foundation and the War and Navy Departments. I personally was in favor of having a provision in the law that would exempt them from any of the provisions of the $10,000 return bill.

A section was so drawn and came in from the Navy Department and the War Department. I considered that all patents not heretofore sold and assigned to those various agencies, the War and Navy Departments, or The Chemical Foundation, were practically useless or they would have been applied for before for non-exclusive or exclusive license or purchase; and the patent section in the Winslow Bill was intentionally drawn so as not to prevent the divorcing from the books of my office of those so-called useless patents that had not already been sold or assigned to The Chemical Foundation or the War and Navy Departments.

Now, sir, as to whether my patent section and my law department has divorced itself of any of those patents, I will have to refer to the records of my office to ascertain the facts.

XQ. 373. At page 74 of this record, you testified as follows:

> "Mr. Miller: Just at that point, Mr. Chairman, it might be interesting for me to say to the Committee that as the common law trustee for the enemy interests in all this property I have, since I took over the office, contemplated bringing a friendly action in the Courts, as trustee for these people,"—

"These people" means the enemies?

A. Yes, sir.

> XQ. 373. (continuing) "to determine whether the compensation of 100,000 and other considerations paid for these patents, was really a sufficient sum of money, but due to the whole patent situation I have not done so. To my mind it would be found that the compensation paid at the time was inadequate, but we must bear in mind that at that time we were at war and were seizing everything we had within our power to make war with, and I am considering this proposition on the assumption we are trying to clear up this matter on a peace time basis."

You so testified?

A. That is my language, sir.

XQ. 374. And that is true?

A. You mean what I say there is true?

XQ. 375. That was true, was it not?

A. Well, I believed it; yes, sir; or I would not have stated it. May I—

XQ. 376. Now, just preceding that statement made by you, you heard the statement made by Mr. Neagle. Who was Mr. Neagle?

A. He is the Solicitor of the Navy Department.

XQ. 377. And he was testifying before this same Committee with reference to the 5700 patents that were licensed by the Alien Property Custodian to the Navy and War Departments, was he not?

A. And in support of the same patent amendment that I referred to at some length in the previous answer.

XQ. 378. Mr. Neagle said as follows in your hearing:

> "I can probably give you a partial answer to that question. The negotiations on the part of the Navy Department—"

Those were the negotiations with reference to the 5700 patents that were licensed, were they not?

A. Yes, sir.

XQ. 378. (continued) "—were carried on by Commander Norton, who has since died, and I do not know that any record was made of it. So that it is very likely that so far as the Navy Department is concerned, it is not practicable to get that information." You heard him give that testimony?

A. Yes, sir.

XQ. 379. This license for 5,700 patents, Colonel Miller, is already in evidence, so I am not going to burden the record with a recital of all of its terms. But you know, do you not, that in substance that instrument licensed the Government to use certain 5,700 patents therein described and released the Government from all claims for damages for having infringed those patents during the war and that the Government paid the Alien Property Custodian as a consideration one hundred thousand dollars. That is your recollection?

A. I will take your statement as a fact, Mr. Kresel.

XQ. 380. Very well; thank you. Now, you were considering then as Alien Property Custodian to bring a suit to test the validity of that transaction because, as you have testified there, you thought the consideration of $100,000 was inadequate; is that right?

A. I don't want to answer you with just a plain "yes." You can strike this out if it does not suit you: Yes, partially. I am desirous of seeing the funds in the hands of the Alien Property Custodian as large as possible as a guarantee against the settlement of these claims, whether those funds are derived from other governmental agencies or not.

XQ. 381. In other words, one of the reasons that is actuating you in contemplating this suit against the Government is, as I understand you, to get into your possession so that you as Alien Property Custodian have it to meet these German claims, whether that money comes from the United States Treasury or no; is that it?

A. That is one of the controlling features, and you may strike this out if you do not like it—

XQ. 382. No, no, just answer my question.

A. Well, I must illustrate, sir.

XQ. 383. I will let you illustrate in a minute. Won't you please answer my question. That is one of the reasons?

A. Yes, sir.

XQ. 384. Now then, go ahead and illustrate it any way you want?

A. As, for instance, I am in a number of cases endeavoring to save very heavy assessments by the Internal Revenue Bureau of the Treasury Department against the trusts in my office, because I stand in the shoes of the enemy owners—stockholders, if you want to call them that— and I feel it is my duty to protect those trusts.

XQ. 385. Colonel, you testified about this license covering 5700 patents before this Committee; do you remember?

A. Yes, sir.

XQ. 386. And you will recall that you inserted in that record a statement with reference to this particular license and with reference to other assignments and sales of patents made by the Alien Property Custodian to the Government. Do you remember that?

A. Yes, sir.

XQ. 387. You will find it at the bottom of page 15 in that record. Now, I assume that in the discharge of your duties as trustee for the enemy owners you are considering bringing an action against the Government, not only to test the validity of the transaction with reference to the 5700 licensed patents, but also with reference to all other transfers of patents made by the Alien Property Custodian to the Government, are you not?

A. I can not say that I am, Mr. Kresel.

XQ. 388. You can not say?

A. No.

XQ. 389. That is an answer.

A. I meant—I am not evading anything—I do not think so.

XQ. 390. I do not charge you with evasion at all. Have you not considered in the discharge of your duties as trustee for the alien enemy owners whether the consideration paid by the Government for the other assignments of patents was or was not adequate?

A. I presume, Mr. Kresel, if the matter that you are referring to—the 5700 patents for $100,000—is ever taken up, that they will all be followed up, but—

XQ. 391. All of them will be tested?

A. But without prejudicing any other government department. The matter is merely resting. Nothing has been done on it since the date of my testimony.

XQ. 392. Well, there is no secret about this feature of it, is there, Colonel, that you are resting because you are waiting to see the outcome of this suit?

A. I will have to refer you—

XQ. 393. Isn't that so? I am asking you as Alien Property Custodian, you who have the duty, as you say?

A. Well, if the Government should win this suit, it would of course give us a precedent to go by.

XQ. 394. Certainly; that is exactly what I thought.

A. (continuing) Covering this and all other sales.

XQ. 395. Yes, sir. By the way, as long as we are on that proposition, do you happen to be familiar with an opinion written by a man named Brown, a lawyer in Washington, with reference to the validity or invalidity of transfers by the Alien Property Custodian?

A. That is John Wilson Brown, third?

XQ. 396. Yes.

A. I do not take what he writes seriously, and I have not read it.

XQ. 397. Has it been brought to your attention?

A. If it had, I would not read it.

XQ. 398. Let me ask you this, and I shall not dwell on it, Colonel, except for this question: Do you not know that John Wilson Brown, third, wrote an opinion for his German clients wherein he pointed out that the only way to attack these transfers of patents and other property made by the Alien Property Custodian was upon the question of the inadequacy of the consideration?

A. I will take your statement as a fact; but please do not link me up as an ally of Mr. Brown in any way.

XQ. 399. No, indeed; I would not make any such intimation. Now, when you were considering suing the United States Government to make it pay an adequate consideration for this license covering 5700 patents, did you take the trouble to examine that license and to see what patents it covered?

A. I have read that, Mr. Kresel,—

XQ. 400. All right.

A. And—

XQ. 401. That is all I wanted to know, if you have read it. And is it the fact that that license covers patents for mobile guns, sights for guns, cartridges for ordnance, gun carriages, explosive projectiles, percussion fuses for shells, field guns, trigger mechanisms, automatic firing devices, and similar military apparatus?

A. I am familiar with that situation, because—

XQ. 402. And is that the fact, that that license does cover patents embracing those subjects?

A. Yes, and I do not countenance the stealing of some of those patents from the War Department since the war started. I am familiar with that situation.

XQ. 403. I do not know what you are referring to; but the only interest I have in that is, do you charge us with stealing them?

A. Oh, certainly not. I am referring to a situation that developed in connection with the discussion on the patent treaty with Germany last year.

XQ. 404. I know nothing about that, and I do not want to go into it.

A. I thought you did.

XQ. 405. No, I do not. And is it a fact, Colonel, that these 5700 licenses given by the Alien Property Custodian on German patents, which you intend to challenge the validity of, covers patents on artificial eyes and artificial legs, surgical devices for setting fractured legs, inhalers, devices for lifting sick people in bed and moving them, manufacture of iodine preparations, cardiac trusses and other surgical instruments?

A. I will take that as your statement.

XQ. 406. No, I want your statement. Is it not the fact that that license does cover patents which embrace those subjects?

A. I must examine it again; but I will take your statement that that license covers those particular articles you read.

XQ. 407. So we have it, Colonel, that you, as trustee for the German former owners of these patents, intend to sue the United States Government to recover from the Government moneys for using during the war processes covering munitions and surgical instruments that were used by us during the war, because you consider $100,000 an inadequate consideration, and that you are waiting only for the bringing of that suit to see whether the Government wins this suit or no?

> Mr. Anderson: If your Honor please, I object to that question on the ground that it does not state correctly the witness's testimony. The witness was first read a statement by him from the evidence before the Committee, in which he said he had considered that question of whether a suit of that kind should be brought, and he said nothing had been done on it since he had testified. He has not said that he intended to bring any such suit at the present time, nor has he said that he was

awaiting the result of this suit. He said that he supposed this suit would be a precedent. If we are going to summarize the witness's testimony, it ought to be summarized correctly.

Mr. Kresel: I submit, your Honor, that I have truthfully stated this witness's testimony, and unless your Honor can see that I have not, I prefer to stand by the question as I have put it.

The Court: If you have misquoted or misinterpreted his testimony, the witness may point that out in his answer to the question.

(XQ. 407 repeated as above recorded.)

A. That is a double question and the answer is necessarily divisible. I must say, Mr. Kresel, you do not intentionally do so, but you ignore my continued statements that in addition to being a trustee for the enemy I have considered my office as a trustee with regard to the American claim situation. I need not elaborate on that. Secondly, the language used by me before the Winslow Committee is not necessarily going to be the policy of the Department of Justice or higher authority. If any such action is brought, of course, it must await the decision in this case, and if it is brought, it is brought, as far as I am concerned, if I am in office, for the purpose of clearing our records, and if an inadequate sum has been paid, to have the fund added to which is used as a guarantee of American claims against Germany.

XQ. 408. You were present before this Winslow Committee and heard the testimony of Mr. Neagle to the effect that the damages that would be claimed against the Government for the use of these patents covered by the license for 5700 of them would run up into the hundreds of millions of dollars, did you not?

A. If Mr. Neagle said that, yes, sir, but I had no such figure in mind.

Mr. Kresel: Of course, that does not at all settle the materiality.

Mr. Anderson: Oh, no.

Mr. Kresel: Simply that you have read something in the Bill.

The Court: That does not change the ultimate result of the evidence when admitted, because mere allegations cannot make a case.

Mr. Galloway: If your Honor please, I wish to read just one or two lines from the Plaintiff's Exhibit No. 7, which was a letter by Mr. Hoguet, the patent counsel to the Alien Property Custodian, in which he says: "The Alien Property Custodian should not take over applications for Letters Patent nor Letters Patent."

The plaintiff next offers in evidence, and asks leave of the Court to read the minutes of the noon conference on April 6, 1918, being No. 56. This is quite short, so I will just read it.

Mr. Kresel: Let me see that. (Paper handed over.) With regard to this present exhibit that is being offered, your Honor, I think the wisdom of your Honor's suggestion made at the conference at your desk is apparent. This is an exhibit dated April 6, 1918. It consists of a single sentence, and I am going to ask the Clerk to let your Honor look at it, and then I am going to urge my objection upon the materiality, and see whether your Honor does not agree with me.

Mr. Galloway: All right.

(Paper handed to the Court.)

Mr. Kresel: Now, the reasons that actuated the Alien Property Custodian in coming to that determination, being dated six months before November 4th amendment, which dealt with the patents particularly with that doubt in the case that there was after it entertained the right of the Alien Property Custodian to seize or sell any of the patents before that

XQ. 409. I read to you from page 76 of Mr. Neagle's testimony:

> "Mr. Neagle. For the use by the Government of their patents. I should like to give you an illustration with reference to that. In the case of radio patents"—

You remember those were conveyed by the Alien Property Custodian to the Government, do you not?

A. Yes, sir.

XQ. 409. (continued)

> "In the case of radio patents that were used by the Government, the various inventors, and there were quite a large number of them, put in claims against the Government for millions and millions of dollars. I am ashamed to say what I remember it to be, but I think it was $300,000,000."

You remember that testimony?

A. It is in there, yes, sir.

XQ. 410. And do you not remember the testimony given by Colonel Hull, representing the War Department, before this very Committee before which you were testifying on the Winslow Bill; and I read from page 59. You know Colonel Hull, do you not?

A. I certainly do.

XQ. 411. I read from page 59 of this record the following testimony:

"Mr. Graham." He was one of the Congressmen, was he not?

A. Yes.

> XQ. 412. "Mr. Graham. If I ask you any question you do not care to answer, you decline to do so. I do not want, of course,"—do you follow me?

A. Yes, sir.

XQ. 412. (continuing) "—to expose any military secrets, but in making high explosives, such as were used during the war, you used German patents, did you not?

“Colonel Hull: Yes, sir.

“Mr. Graham: Was there any high explosive that we used during the war in which you did not use a German patent?

“Colonel Hull: I do not know, sir.

“Mr. Graham: Take picric acid, for instance; that uses a German patent, does it not?

“Colonel Hull: Yes, sir.

“Mr. Graham: And the various high explosives that were used in shells probably used substances in which aliens had patent rights.

“Colonel Hull: The explosives industry and the dye industry are pretty nearly synonymous terms.

“Mr. Graham: Absolutely; they come back to the same thing. Now, you take the process that was used at Muscle Shoals and that is used today, and in those processes, both the Haber process and the cyanamid process, you use alien patent rights, don't you?

“Colonel Hull: Yes, sir.

“Mr. Graham: You can not get along without them, so far as your present knowledge is concerned, can you?

“Colonel Hull: Well, we had to use them.

“Mr. Graham: And you are using them and used them all through the line of explosives and in connection with everything we made war with, did you not?

“Colonel Hull: We had to.

“Mr. Graham: Suppose you could not have used them, what kind of shape would we have been in?

“Colonel Hull: The question carries its own answer.

“Mr. Graham: So it was a matter of national preservation that we used those things, was it not?

“Colonel Hull: Certainly.

“Mr. Graham: Now, then, the patents were granted originally as an act of grace by this Government, were they not?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: A patent right is a different proposition from the ownership of a horse or cow or $5 in the bank, is it not?

"COLONEL HULL: I think so, and so expressed myself this morning.

"MR. GRAHAM: Can not the same power that originally granted those patent rights take them away?

"COLONEL HULL: Or limit them; yes, sir.

"MR. GRAHAM: And there is not any question in anybody's mind that understands the situation today but what we ought to, is there?

"COLONEL HULL: That is the question I was submitting."

MR. ANDERSON: One minute, Mr. Kresel. If your Honor please, I wish to object to the reading of that testimony into the record, in the manner in which it has been done, if it is read in to ask the witness whether he heard it. I can not see the relevancy of any of this testimony; I can not see that it has anything to do with the case.

MR. KRESEL: Let me put my question. I have not put a question yet.

MR. ANDERSON: Yes, but you read the evidence on the record.

MR. KRESEL: Yes.

MR. ANDERSON: Go ahead and put the question.

MR. KRESEL: Now let me put the question.

MR. ANDERSON: Very well.

XQ. 412. (continued) It is the patents as to which Colonel Hull was testifying, as I have read to you, covered by this license given by the Alien Property Custodian to the Government, namely, the license for 5700 patents, as to which you say you were contemplating suing to set aside the transaction because the amount was inadequate; was that it?

Mr. Anderson: Just one minute. I wish to note an objection to this evidence which I have not up to the present time felt it necessary to make.

The Court: I did not quite hear you Colonel.

Mr. Anderson: Up to the present time I had not thought it necessary to make it. My throat is very bad, may it please your Honor. Therefore, I did not want to make it, because I thought it unnecessary. It is entirely immaterial to this inquiry what this witness may have desired to do or thought it best to do with respect to 5700 patents assigned to the Government of the United States by the Alien Property Custodian. They are not in evidence in this litigation.

Of course, there was no direct examination upon it, and this is, in effect, direct and making the witness his own. Therefore, all of this evidence is entirly foreign to any inquiry here. I suppose the policy of the Government of the United States with respect to its litigation is fixed by the President and the Attorney General, I suppose the policy of the Government with respect to its general welfare and National Defense is fixed by Congress, and therefore it is not a matter taken up in the way it is being taken up here.

Coming now to the specific testimony, the testimony of Colonel Hull, he appears, according to the statement of counsel as the representative of the War Department. Whoever Colonel Hull may be, he does not represent the Government of the United States in the sense of fixing its policy. Whatever his opinion on questions of law, which are the questions here involved, as to the rights to and the use of these patents, it is certainly not a matter of testimony.

If this witness heard this statement made, how can that affect the situation in the slightest, how can it affect the issues in this case in the slightest? Suppose this witness's view of the situation was right or was wrong, how can it affect the legal rights of the parties here in the slightest?

Suppose the witness had desired to bring a suit against the Government to recover more money for those patents which were assigned; suppose he had been right or wrong; how can that affect the interests of the Government of the United States here? Therefore, I respectfully object to all this testimony, and should have, perhaps, objected earlier, but I did not want to do it, but I specifically object to this question in that it undertakes to inject into the record, in addition to the general objection stated, injecting into the record the opinions of Colonel Hull given before a Congressional Committee, not under oath, Colonel Hull belonging to a Department of the Government to which the witness does not belong, and it not appearing here that Colonel Hull's expressions or views had the slightest bearing on the action of the Government of the United States and therefore it is pure hearsay.

The Court: Just a moment. Before you begin, Mr. Kresel, from now on, objections with respect to the admissibility of testimony, and the arguments thereon, will be restricted to three minutes on each side; so you are now placed under that rule. You may have three minutes.

Mr. Kresel: To begin with, your Honor the testimony that I have read of Colonel Hull, is not testimony of opinion at all. Colonel Anderson misunderstands the testimony that I have read, or did not follow it closely enough, because if he does follow it closely he will see that Colonel Hull was testifying as to what the War Department was doing during the war, and was not giving any conclusion or any opinion.

Now as to its materiality. We must never get away from the fact that this complaint is based primarily upon a charge of conspiracy, omitting the question of monopoly altogether; and Colonel Anderson has reserved unto himself the right at any time, and upon the final arguments, to charge fraud and conspiracy against anybody, not only against those whom he has expressly named in his Bill, so that we must anticipate that the officers of the Government who are responsible for this transaction that is here being attacked, will be eventually charged with fraud in the transaction. Now, I ask in all fairness, whether those officers are not entitled to show to the Court that in their dealing with their own Government, they dealt and acted upon exactly the same principles that they acted upon in the transaction here involved; and when we have here a responsible official of the present Government, who before a Congressional Committee has stated, and states now, that he intends to attack the validity of one of those transactions, upon the ground that the consideration was inadequate, is it not proper for us to show the circumstances under which that transaction was made, so as to show the connection between that act of the officials that are responsible for the transaction here, attacked in the light of the other transactions? That is all, your Honor.

Mr. Anderson: I only want to say, sir, that Colonel Hull's testimony on that subject, if they wish it, the way to get it into evidence, is to call Colonel Hull, so that I may raise proper objections and cross-examine him.

Mr. Kresel: No. I have read that only to show the witness, and ask him whether or not that is the thing that he is talking about.

The Court: Will you read me the question, please.

(The question was repeated as follows: XQ. 412 (Continued) It is the patents as to which Colonel Hull was testifying, as I have read to you covered by this license given by the Alien Property Custodian to the Government, namely, the license for 5700 patents as to which you say you were contemplating suing to set aside the transaction if such amount was inadequate, was that it?)

Mr. Anderson: Preceding that was the reading from the record. That is what I object to.

The Court: I understand. I do not see the relevancy of that, Mr. Kresel. I have not ruled on the question of relevancy in any instance; consequently, I shall not rule on that now, and it may be taken under the General Rule. My impression is that the question would not attempt to disclose facts which are relevant. If the testimony of Colonel Hull has any bearing upon the issues in this case, I take it that the relevancy would be to the issue of fraud and conspiracy raised by this Bill of Complaint. If it has that bearing, it seems to me it would be as to whether this witness was familiar with those facts as testified to by Colonel Hull, or had heard that testimony prior to the time be charged and swore to it, as verified by the Bill of Complaint—that might be relevant, but as the question now stands, I fail to see the relevancy.

Mr. Kresel: But, your Honor, I understood that the witness had said that he had heard the testimony, or I should not have proceeded with it. I will ask the witness—

XQ. 413. Having heard this testimony read now, Colonel Miller, is it not the fact that you were present and heard that testimony given by Colonel Hull?

A. Yes, sir.

THE COURT: It might have been that I have failed to make my thought clear. I may be wrong. I assume that this question will be a preliminary question—

MR. KRESEL: That is all, your Honor. I have done that in order to identify the thing that I am asking him about.

MR. ANDERSON: I wish to call your Honor's attention to the fact that this testimony was given four months after the Bill in this case was filed.

THE COURT: Is that true, Mr. Kresel?

MR. KRESEL: That is true, your Honor. It was given in January, 1923.

MR. ANDERSON: The Bill of Complaint was filed in September, 1922.

THE COURT: Then, is it relevant to the charge of conspiracy here, because it is continued to be pressed?

MR. KRESEL: Why, of course, your Honor, not only to be pressed but justified here in Court.

THE COURT: You may take the answer.

MR. KRESEL: Would you like to have the question re-read, or will you answer it?

THE WITNESS: No. Wait a minute—

A. (to XQ. 413) Yes, sir.

XQ. 414. Now, Colonel, I want to take up with you the two assignments to the Chemical Foundation that you signed. Those were drawn in your office, were they not?

A. Why certainly; any order that I sign is drawn in my office.

XQ. 415. Well, those were drawn in your office, were they not?

A. Yes, sir.

XQ. 416. And they were drawn by your employees?

A. Yes, sir.

XQ. 417. And they were drawn after conference with you?

A. Yes, sir. You—

XQ. 418. Do you want to add something?

A. I would prefer, if I may, to discuss the two assignments separately.

XQ. 419. I am going to take them up separately. When you signed each of those assignments, you knew that you were signing instruments conveying certain property to the Chemical Foundation, did you not?

A. Yes, sir.

XQ. 420. When you verified the bill in this action you knew of your own knowledge, did you not, the reasons that had actuated you in making each of those two assignments?

A. Do you want me to give those reasons?

XQ. 421. No, I am simply asking you whether you knew of your own knowledge when you signed this bill of complaint what reasons had actuated you in making those two assignments?

A. Yes; and I hope I may be permitted to state the reasons.

XQ. 422. In your bill, you allege on information and belief that the assignments were prepared by or at the instance and procurement of the defendant. Did you not know when you signed this bill whether these assignments had been prepared by or at the instance and procurement of the defendant?

A. Mr. Kresel, I can not elaborate in any answer I may give in the future any more than I have already told you about the circumstances surrounding my signing of that bill.

XQ. 423. When you verified the bill, did you not know of your own knowledge what the facts were in the matter of the making of these two assignments?

A. I knew, Mr. Kresel—

XQ. 424. Didn't you?

A. —that the Norma—

XQ. 425. Well, didn't you know the facts? I am coming to the facts. Didn't you know them? You didn't have to have somebody tell you what they were, did you?

A. Why, yes; any Government official that runs an office the size of mine has to rely on his subordinates.

XQ. 426. You misunderstand my question. When you signed this bill of complaint didn't you know of your own knowledge, without anybody telling you, all of the facts surrounding the making of those two assignments when you made them?

A. I thought I did, sir, yes.

XQ. 427. Now, you say in this bill of complaint, on information and belief, that you executed the assignments without knowledge of the facts herein set forth and other necessary and essential facts; is that true?

A. At the time I signed them I thought it was perfectly all right to sign them.

XQ. 428. You do not get my question. In the bill of complaint you say, on information and belief that you executed the assignments—I am talking now about the assignments and not the bill—without knowledge of the facts herein set forth and other necessary and essential facts; is that true?

A. I can not give you any more of a qualified answer than I have, Mr. Kresel.

XQ. 429. That is an answer. What are the facts that you were ignorant of when you executed these two assignments?

A. I wish you would discuss these assignments separately, because there are different circumstances.

XQ. 430. Take them separately. I am very glad

November 4th amendment, with that statement made to your Honor that the Attorney General subsequently reached that the Alien Property Custodian had no right to seize patents, and that therefore the amendment was asked for, does it not seem that this sort of thing is immaterial and irrelevant?

The Court: If I were called upon to rule upon it now if it were necessary or proper, in view of the widely divergent contentions of counsel for the respective parties, I should say it was wholly irrelevant and immaterial.

Mr. Galloway: If the Court please, I would like to make just one remark before we pass that, referring to the defendant's Answer where it says:

> "and on information and belief alleges that said Custodian would have exercised the right in respect of enemy-owned patents, to sequestrate and sell the same, but for the said determination of the Attorney General of the United States."

Now, here, if your Honor please, is—

The Court: Even if I should strike out these allegations, if it would expedite matters, until the case is all in, you cannot tell exactly what the fact evidence will lead to, and I do not think that those allegations at the moment are material, after what you indicated to me this morning and yesterday you were coming down to. I think it is wholly immaterial, but under the General Rule for the admission of evidence, I overrule the objection.

Mr. Galloway: I offer that. I will not read it under your Honor's ruling.

Received in evidence and marked "Plaintiff's Exhibit No. 8." (*See Exhibits, Vol. I, page 54.*)

The Court: In expressing my views on this, I did not mean to indicate that I shall express views upon each document offered, but shall merely make a ruling, to do that. Take each of them separately. Take the first one. What are the facts that you were ignorant of when you signed that assignment?

A. It is very difficult to answer a negative question. May I answer it in a positive way?

XQ. 431. I beg your pardon, Colonel. I am not asking you a negative question.

A. You asked me what facts I was ignorant of. I can tell you what facts—

XQ. 432. Listen to me, please. You say in the bill of complaint that at the time you signed these assignments you did not know the facts; do you not?

A. That is in the bill, sir; yes.

XQ. 433. Now I am asking you to tell me what facts there were that you now say you did not know?

A. Well,—

THE COURT: You mean what facts were within his knowledge at the time he signed the bill and verified the bill, or now?

MR. KRESEL: Now.

THE COURT: That he did not know at the time he executed the assignment?

MR. KRESEL: Exactly.

XQ. 434. What facts are there that you know now or when you signed the bill of complaint that you did not know when you signed the assignment? Now, have I made it plain?

A. As your question, Mr. Kresel, concerns two different questions by me, I must discuss in my answer the two assignments separately.

XQ. 435. I wish you would.

A. I would not have signed the second assignment of November 1, 1921, had I known all of the information brought to me by my counsel, by the Department of Justice, at the time the Chemical Foundation suit came up. I would sign the first transaction of

April 27, 1921, over again and I have got no apologies for it and I criticize no one for bringing it to me.

XQ. 436. Now, then, Colonel, I am thankful to you for letting me disregard now the first assignment. We are going to assume now that the first assignment is all right, is it? You have no complaint to make?

A. I can not qualify what I have said any more than in my previous answer.

XQ. 437. I am sorry, but I shall have to press you, Colonel. In your complaint you say that the first assignment was unlawful and void. Do you now say that it was right and proper? You are the witness. I can not answer for you.

A. No, I do not permit that construction, Mr. Kresel, to be placed on my remarks.

XQ. 438. But you have just said that there is nothing wrong about it and if you had to do it over again, you would do it?

A. All right.

XQ. 439. Therefore, listen to my question. You say therefore, that as to that first assignment, you have no criticism to make of it?

A. I have no apologies to make for it.

XQ. 440. I did not ask you anything about apologies. Please listen to my question.

A. I am endeavoring to answer it.

THE COURT: Just a minute. Will you put another question, Mr. Kresel?

XQ. 441. As to the first assignment, therefore, the one of April, 1921, do you now say that it was a proper and valid assignment and that you have no criticism to make of it?

MR. ANDERSON: I object if your Honor please. The witness may say what he thinks and what he thought of the assignment. He can not say that it is a proper and valid assignment, because the question of its validity is a question of law pure and simple.

Mr. Kresel: But he is the complainant, your Honor.

Mr. Anderson: No, he is not. He is merely an officer of the Government who swore to the bill. The complainant here is the United States Government.

Mr. Kresel: He represents it in this suit.

Mr. Anderson: Not at all. He merely verified the bill as an accountant might have verified a bill. He does not represent the Government in this suit. The Department of Justice represents the Government in this suit by direction of the President of the United States.

Mr. Kresel: That is a novel proposition, your Honor, that the person who verifies the bill is not at all responsible for it.

Mr. Anderson: I did not say that. A person who verifies a bill can be asked as to knowledge of its contents, if that is of any desire, but I mean to say that the person who verifies the bill does not necessarily represent the complainant, especially where the complainant is the Government of the United States, because many of these bills are sworn to by various subordinate persons, by accountants who know the facts.

Mr. Kresel: What may be done in other matters I am not concerned with. We are here now in court, brought in here upon a bill that is signed by this officer of the Government and he is not an accountant or a clerk. He is an officer of the Government. Is it contended here that this gentleman can not speak for the Government as to this particular action?

Mr. Anderson: I mean to say, this bill is signed by the District Attorney of the District of Delaware and the Attorney General of the United States: By the United States, by the District Attorney, and by the Attorney General. It is verified by this witness who is supposed to have known more about the facts than other officers. The District Attorney and the Attorney General are the only two officers of the Government who are authorized to sign this bill under the law.

MR. KRESEL: Now, your Honor, is it not proper that the defendant should be apprised whether Colonel Miller can speak for the Government or no? I have got to leave that to your Honor's decision.

MR. ANDERSON: I will answer that.

MR. KRESEL: Pardon me a minute.

MR. ANDERSON: I thought you asked me a question.

MR. KRESEL: Don't get excited.

MR. ANDERSON: I am not getting excited.

MR. KRESEL: Is not the defendant entitled to be now apprised whether the Government still contends that this assignment that the witness has just spoken of, of April, 1921, is or is not a valid assignment? Do they still contend that it is invalid?

MR. ANDERSON: The Government of the United States contends that that assignment is invalid as represented by the Attorney General of the United States by direction of the President of the United States and will contend to the conclusion of this case that that assignment was absolutely invalid as a matter of law.

THE COURT: Will you refer to the paragraph in the bill to which you called the witness's attention a moment ago; that is, the allegation?

MR. KRESEL: Yes, your Honor.

XQ. 442. Colonel Miller, in the 39th paragraph of the bill of complaint, at page 53, I find the following allegation:

> "The said Francis P. Garvan resigned as Alien Property Custodian on the 12th day of March, 1921, and was succeeded in said office on said date by Thomas W. Miller, who thereafter, as Alien Property Custodian, executed and delivered to the defendant, The Chemical Foundation, Incorporated, two additional instruments of alleged sale, transfer, and assignment, as follows:
>
> "1. An instrument of alleged sale, assignment and transfer from Thomas W. Miller, Alien Property Custodian, to defendant, The Chemical Foundation Incorporated, dated the 27th day of April, 1921, purporting to sell, transfer, and assign to said defendant the patents and other rights mentioned and listed in Schedules A and B therewith, a true copy of said instrument, together with the accompanying schedule, is hereto annexed as Exhibit J and prayed to be read as a part hereof."

Now, please skip the next paragraph and I direct your attention to the succeeding paragraph on page 54, which reads as follows:

> "Complainant is informed, believes, and therefore avers that said instruments of alleged sale, assignment, and transfer were prepared by or at the instance and procurement of said defendant, The Chemical Foundation, Incorporated; that said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had

> the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration, and especially said instrument of November 5, 1921, was made, executed and delivered without any consideration whatever; that said alleged sales, transfers, and assignments were otherwise irregular and contrary to law, and were and are in all respects null, void, and of no effect in law or equity."

Colonel Miller, you will notice that the last paragraph which I read to you, wherein it is alleged that certain assignments were null and void and of no effect in law or equity, covered the Assignment of April 27, 1921.

XQ. 443. That is the assignment with reference to which you have testified a little while ago and now say, as I understand you, that you have no criticism to make of it; that if you had to do it again, you would do it again and that no facts with respect thereto were withheld or suppressed from you. Now, am I right about that?

A. I would have sold the patents to the Norma Company through the Chemical Foundation, if I had to do it over again, bearing in mind the date and conditions existing between the Chemical Foundation and myself at that time. Now, if that is not what you want, please ask me another question, because I want to be understood on these two assignments.

XQ. 444. No, I do not think I will ask you another question. I will repeat my former question then as to the second assignment of November, 1921. I want to know what were the facts with reference to that, that you were ignorant of at the time that you signed that assignment of November, 1921?

A. Mr. Kresel, these paragraphs that you have been reading from pages 53, 54 and 55 concern two transactions by me as Custodian. I understand they were included in the bill because my actions were open to attack by the Government as well as those by my predecessors in connection with the Chemical Foundation transaction.

The November 5th assignment, true, was prepared in accordance with my orders by the chief of my patent division at that time. I was desirous at that time of continuing the arrangement that I found in force between my office and the Chemical Foundation when I came into office. It was a routine procedure.

If a patent or trade-mark or a copyright or any other piece of property which is covered by this bill was to be sold, assigned or licensed exclusively or non-exclusively, it was done through the channel of the Chemical Foundation and I have no apologies, official or personal, to make for these two transactions.

But if the Department of Justice has seen fit to attack my actions in this bill, that I did execute this assignment without information that I now have, it was this information. I understand, and I did so understand at the time that the November 5th assignment was in my office awaiting the approval of my immediate predecessor before I took office; and it was not executed. I executed it under the assumption that the copyrights or trademarks covered in the November 5, 1921, assignment had not been legally transferred to the Chemical Foundation by my predecessor and American users of those copyrights or trade-marks were prevented from getting proper use of them. That was one of the reasons why I executed it, to cut red tape, if you want to call it that.

I did not know that it had been waiting for my predecessor's attention before he came into office. I would not have executed that, Mr. Kresel, if it were put before me today because of the question that has been raised by, I might term it, my associates in the Government in Washington, over this transaction. I would most certainly execute the one of April 27, 1921, because I thought the Norma Company of America ought to have the right to use those particular patents. That is all I have to say.

XQ. 445. As I gather, Colonel, you executed this November, 1921, assignment because you felt that by reason of red tape, as you call it, American users who wanted to use these patents had not been able to, and you wanted to give them an opportunity to do so. Do I get that straight?

A. Those were the facts that were put up to me, yes, sir, as I recollect them, because of the validity of the previous assignment of the same copyrights to the Chemical Foundation.

MR. KRESEL: May I have that answer read?

(Answer to XQ. 445 read as above recorded.)

THE WITNESS: I mean the question of the validity.

XQ. 446. In other words you understood there was some question as to the validity of prior assignments of patents made by the Alien Property Custodian to the Chemical Foundation, and that you were making this assignment of November, 1921, to confirm and clear up the title to those prior assignments; is that it?

A. So that American users of these copyrights could use them legally.

XQ. 447. Yes.

A. And at that time, sir, the arrangement was still in force which utilized the Chemical Foundation as the channel between my office and all prospective purchasers of patents or licensees of patents.

XQ. 448. Therefore, the purpose that you had in mind in making this assignment of November, 1921, was to clear up any question of the validity of prior assignments made to the Chemical Foundation, so that any question of title should be removed and so that Americans might use the processes without any question as to their right to do so; is that it?

A. I have answered your question more fully than I can by any other answer.

XQ. 449. Is that the statement that you want to make?

A. In substance that is what I want to convey to you and the Court.

XQ. 450. Colonel, I have listened to your explanation and have not interrupted, but I must say that you have not answered my question, and I repeat it: What were the facts which, if you had known them in November, 1921, would have induced you not to sign that instrument?

> THE COURT: Do you mean what were the facts that had come to his attention prior to the signing of the bill?

> MR. KRESEL: Prior to the signing of the bill, certainly, because I am drawing his attention to that.

> THE COURT: Will you repeat that question, Mr. Kresel?

XQ. 451. What were the facts which came to your knowledge before you verified the bill of complaint herein which, if you had known in November, 1921, you would not have signed this assignment of November, 1921? Do you understand my question?

A. Yes, sir. Why, the bringing of this suit, which was brought at the direction of the President, upset what we might term the friendly relations existing between my office and the Chemical Foundation. And I certainly would not have executed the November 5, 1921, assignment had I known that the Chemical Foundation sale was going—

XQ. 452. The Chemical Foundation what?

A. (Continuing) That the Chemical Foundation sale was going to be questioned by the Department of Justice.

XQ. 453. Have you answered as fully as you want to?

A. I am answering you as fully as I know how. If there are any further facts you want to bring out—

XQ. 454. I do not want to interrupt you, but is that all you want to say in answer to that question?

A. Unless further questions develop the need of a further answer.

XQ. 455. You say in this paragraph that I have read to you that facts were withheld from you with intent and purpose to secure the execution by you of the aforesaid instrument. What facts were withheld and suppressed from you?

A. I cannot enumerate any facts at this time, Mr. Kresel.

XQ. 456. Can you enumerate anything in addition to what you have already enumerated?

A. Were this not on the witness stand I presume I could converse with you at length on this, but I cannot quite see that I can answer any more questions along your general line any more fully than I have.

XQ. 457. I beg your pardon, Colonel Miller; I want to be perfectly respectful to you. I am not asking you for anything general. My question is very specific. You say in your Bill that facts were withheld and suppressed from you. Can you not state what facts were withheld or suppressed from you?

A. I can not state any more facts in answer to your questions than I already have.

XQ. 458. Now, Colonel, you said upon your direct examination that you had never read the Executive order signed by Mr. Polk, and dated the 26th of February, 1919; do you remember that?

A. I remember your question and my answers.

XQ. 459. Not my questions; I beg your pardon. Those were Colonel Anderson's.

A. Did I say that I had never read them?

because I think the expression of views may be helpful either to you or to me or the Appellate Court.

Mr. Galloway: If your Honor please (discussion off the record).

The Court: We shall adjourn shortly, but will you offer it now?

Mr. Galloway: Yes, I will do so. The plaintiff next offers in evidence and asks leave to read the statement of Lee C. Bradley, Esq., general counsel to the Alien Property Custodian, before the Sub-Committee on Appropriations, United States Senate, Sixty-fifth Congress, Second Session, on H. R. 13086.

Mr. Anderson: I do not think it is in the Bill.

Mr. Galloway: The statement is Exhibit A to the Bill of Complaint.

Mr. Kresel: I think, your Honor, it will take not more than a minute for your Honor to dispose of this exhibit, and preliminary to our raising our objections, will the Attorney General state in what respect he contends that to be material and relevant to his case?

Mr. Galloway: If your Honor please—

Mr. Anderson: Do you want me to state that?

Mr. Galloway: Go ahead.

Mr. Anderson: If your Honor please, it will further appear in this case that the facts presented to Congress and upon which Congress passed this Act, were to the effect that the necessity for this amendment or the desirability of this amendment arose out of the difficulty of the sale of physical plants and property without the patents which, as I explained in my opening statement, were not seizable by the Custodian prior to the amendment, and the seizures and the sale thereof in connection with plants and properties was in contemplation at that time by the Alien Property Office and all concerned, and was the limitation upon the seizure and sale of patents. That subsequently or about that time the members of the dyestuffs and

XQ. 460. That you had not read them at the time you had made these assignments.

A. I have not, no, sir.

XQ. 461. By what authority did you think you were making this assignment?

A. I was naturally making it under the authority of the grant of the Custodian by—

XQ. 462. That very Executive order?

A. By that very Executive order, yes.

XQ. 463. In other words, you were signing an instrument wherein you were reciting that by virtue of an Executive order, identifying it by the name of the person who signed it and the date thereof, you were making this assignment, and yet you say that you had not read it.

A. No, I could not read an Executive order, Mr. Kresel, covering every transaction involving fifty thousand trusts in that office of mine. I have no apologies to make for that. I was operating with the Chemical Foundation, as I have described to you several times, in accordance with the routine arrangement I found in force when I came into the office.

XQ. 464. Did you know the provisions of that Executive order under the authority of which you were signing this instrument, whether you had in fact read it or no?

A. These two assignments—pardon me—I could have sold or licensed the patents and trade-marks in these two assignments under the Executive order of the President permitting the Alien Property Custodian to sell property of the value of ten thousand dollars and under.

XQ. 465. Now, Colonel, I did not ask you that. My question was very specific, and that is: Did you know the provisions of Mr. Polk's order of February 26th, 1919, when you made these assignments, whether you had read that order or no?

A. Well, I certainly was familiar with them in a general way, but I could not know them specifically, because I have testified I have not read the order.

XQ. 466. You knew, did you not, that that was an Executive order signed by Mr. Polk, authorizing the transfer of German patents from the Alien Property Custodian to the Chemical Foundation?

A. I must confess, Mr. Kresel, as far as my recollection serves me, I did not know that the original order in the Chemical Foundation had been signed by Mr. Polk and not by President Woodrow Wilson, until the question of the validity of this sale arose.

XQ. 467. Whether you knew who had actually signed the order, did you not know that there had been an Executive order authorizing the sale of these patents to the Chemical Foundation and that it was under that very order that you were undertaking to make this conveyance?

A. I knew that there had been an order.

XQ. 468. I am going to show you this order of Mr. Polk's dated February 26th, 1919, and I am going to ask you to point out to the Court anything in that order which, if you had read it, would have induced you to decline to make either of those two assignments. (Hands paper).

A. At the time I executed the two assignments, no. At this time, for the reasons that I have explained in my previous answers, yes.

XQ. 468-a. I must confess I do not understand your answer.

A. All right, sir.

XQ. 469. Perhaps you did not understand my question. Shall I repeat it to you?

A. No; I will endeavor to give you the kind of an answer that you want then.

XQ. 470. I beg your pardon, it is not the kind of an answer I want; I want an answer to my question.

A. It is evidently unsatisfactory. On April 27th, or November 5th, 1921, had I read the Polk assignment referred to, I would have executed those two assignments.

XQ. 471. You would or would not?

A. I would. By reason of the developments since that date, terminating in the bringing of this suit—

XQ. 472. Pardon me a minute; you have answered my question.

A. All right; that suits me, then.

XQ. 473. You also testified on your direct that you had not read the charter of the Chemical Foundation at the time when you made these two assignments. Do you remember that?

A. I do.

XQ. 474. Now I am going to show you the charter of the Chemical Foundation and I am going to ask you to point out what there is in that charter which, if you had read it and had known at the time when you made the assignments, would have induced you to decline to make it?

A. I can only give you—

XQ. 475. Wait a minute; let me show you the charter.

A. I thought I would save time.

XQ. 476. Very well. Are you now familiar with it?

A. No, I will go through the form of looking at it.

XQ. 477. Are you now familiar with it?

A. Let me have it, please.

XQ. 478. You would like it; very well. I show you the charter, which is Exhibit B to the Bill, beginning at page 90 thereof. (Handing paper).

A. Had I been familiar in detail with the charter of the Chemical Foundation at the time I executed the assignments of April 27th and November 5th, 1921, at that time I would have executed the assignments.

XQ. 479. Colonel, on or about the 31st day of March, 1921, you had a talk with Mr. Garvan in your office in Washington, did you not?

A. Yes, sir.

XQ. 480. Was that the only talk that you had with Mr. Garvan at about that time with reference to the Chemical Foundation?

A. That was my first conversation with him of any character. Between then and July 2nd, 1921, Mr. Garvan and I met frequently. We did not discuss Chemical Foundation each time. We may have. But we had occasion to meet quite often.

XQ. 481. Particularly at the time of the conversation of the 31st of March, 1921, did not Mr. Garvan quite fully tell you about the Chemical Foundation and its purposes?

A. He couldn't have gone into exhaustive detail because we only had about thirty minutes; but we discussed the general chemical business in the United States as relating to these German patents, and I made no secret of the fact that I was naturally interested in an industry—an American industry—and I had a very pleasant and satisfactory conversation with him.

XQ. 482. From that talk, Colonel Miller, did you not learn that it was the purpose of the Chemical Foundation to issue non-exclusive licenses upon the patents held by them?

A. I don't know whether it was on that day that I learned that fact, but I was, of course, familiar with the fact on or about that time.

XQ. 483. Were you not familiar with the fact and did you not know at or about that time that the Chemical Foundation had given to the Government of the United States, or was about to give to it, a free license covering all the patents that had been transferred to it?

A. That developed undoubtedly in our discussion as to the future relations between the Foundation and the Government.

XQ. 484. Did you not learn at that time, Colonel Miller, that the organization of the Chemical Foundation was such that the stockholders were confined to a return of 6 per cent on their investment?

A. These are the same questions that you asked me before, and I answered I presume so, because that is the only way I can answer them today.

XQ. 485. I am sorry if I am repeating. It is so long since I examined you before.

A. I know you asked me those questions.

XQ. 486. Very well, then, I shall not repeat them. The fact is that Mr. Garvan asked you to become interested in the Chemical Foundation, did he not?

A. Yes, sir.

XQ. 487. And the fact is that he told you that he wanted to get out, and wanted you to take his place, did he not?

A. As I recall it, he wanted me to go in as Vice-President, and I presume if I qualified properly, he wanted to get rid of the responsibility of being President.

XQ. 488. And he told you, did he not, at that time, whether in so many words, or in substance, that the reason he wanted you to become interested was because he felt that the Chemical Foundation could succeed only if it had the support of the Government, and that you were a part of the Government?

A. Generally speaking I am familiar with that phase of the discussion, but as to whether it was on that day or not, I do not know.

Mr. Kresel: That is all.

The Court: Any re-direct, Colonel Anderson?

Mr. Anderson: Yes, sir. I think it will be short.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 489. Colonel Miller, did you read over the Bill in this case, before you verified it?

A. Yes, sir, I read it over.

RDQ. 490. With whom did you read it over?

A. I read it over by myself, and undoubtedly there were present Mr. W. W. Wilson, my general counsel, who has been associated with your Department in the framing of the Bill.

RDQ. 491. You say Judge Wilson your general counsel had been associated with the Department of Justice in framing this Bill?

A. Yes, sir.

RDQ. 492. Was that by your direction?

A. Yes, sir.

RDQ. 493. Did you discuss this Bill with the Attorney General before it was completed, personally?

A. I was present in a conference with the Department of Justice when the Attorney General, yourself, W. W. Wilson, and others, sometime between July 8, 1922, and the date the Bill was filed.

RDQ. 494. Did you prior to making the demand upon the Chemical Foundation for the restoration of these patents in accordance with the instructions of the President go over the facts of the situation with your general counsel?

A. In accordance with the instructions of the President, I directed my general counsel and his staff to co-operate with your Department in carrying out the orders of the President.

RDQ. 495. As I recall, the concluding paragraph in the letter of the President, directs you to act in the matter under the advice of the Attorney General; is that true?

A. Yes, sir.

RDQ. 496. Did you so act?

A. I endeavored to.

RDQ. 497. Did you read a proof of the Bill before it was finally completed, with your general counsel, Judge Wilson?

A. I had in my possession a proof of the Bill which I read. I can not at this time testify as to who was present with me when I read it.

RDQ. 498. At the time of the assignment of April 27, 1921, you had been in office, I think you said, about two months, had you not?

A. Yes, sir.

RDQ. 499. Had you had an opportunity to study at that time, the relations between the Chemical Foundation and the Alien Property Custodian's office?

A. Only in the general way that I have stated from the stand today.

RDQ. 500. Yes. You were asked on cross-examination, when you were formerly here, whether you had read the report of Mr. Palmer. Had you at that time read Chapter II on the Chemical situation?

A. No, sir.

RDQ. 501. You had not. Have you read Chapter II of Mr. Palmer's report?

A. I am certain I have not, Colonel Anderson. I have had to refer to that report naturally, but I can not swear that I have read the language that you refer to.

RDQ. 502. Had you had submitted to you before July 8, 1921, any data dealing with the relations between the Chemical Foundation and the Alien Property Custodian's office, on the sale and assignments of the patents here in controversy?

A. Only as would grow out of my conversation with Mr. Garvan, that has been commented upon heretofore.

RDQ. 503. I am speaking now of July, 1921?

A. Yes. Well, that is when I was in office.

RDQ. 504. Oh, I meant to say July, 1922, at the time of the bringing of this suit. In other words, the President directed a letter to you, as the record shows, of July 1, 1922, and you made a demand on the Chemical Foundation on July 8, 1922. Did you in the intervening time have the data submitted to you, or make any investigation of the records in relation to the transactions here in controversy?

A. I was in receipt of a memorandum from my Bureau of Law in accordance with my directions that they prepare to follow out the President's directions to me.

RDQ. 505. Did that memorandum review the records to you on the subject?

A. Briefly, yes, sir.

RDQ. 506. On your cross-examination the other day, you were asked something about a call on you by a Mr. Means. Can you now state about the time of that call, and what it was about; have you refreshed your memory on that subject?

A. I am glad you asked me that question, because when it was asked me the other day, I anticipated no such question, and was naturally very hazy with regard to that matter. I have since checked my records, and find that this man called on me on May 18, 1921. You will recall that I previously gave it as the fall of 1921, and that he did not ask me for anything in connection with the Chemical Foundation, but I did confer with him on the Bosch Magneto matter in accordance with my understanding that he was a representative, and a duly accredited one of the Department of Justice.

RDQ. 507. Did he so represent to you.

A. He did.

RDQ. 507-a. Have you ever had any conference with Mr. Means with regard to The Chemical Foundation or the institution or prosecution of the present suit?

A. No, sir. I would like to qualify that a little more if I may.

RDQ. 508. All right, sir. Go ahead.

A. Being the head of the Department, that is concerned directly with this matter, I would certainly know if Means had had anything to do with regard to the Government side of this case, and he has not.

RDQ. 509. After the demand made by you upon the Chemical Foundation for the return of these patents, in July, 1922, was refused by the Chemical Foundation, did you then further take the matter up with your general counsel, Judge Wilson?

A. I directed him and his staff to co-operate with your department in carrying out the orders of the President, namely, that the suit be instituted with the advice and direction of the Department of Justice.

RDQ. 510. Did you verify this bill under advice of your general counsel Judge Wilson after reading it over?

A. Yes, and in addition the advice of yourself as the counsel for the Government.

RDQ. 511. Colonel Miller, there are one or two other matters in regard to your testimony before the Committee that I wanted to ask you about. I wanted to ask you if you ever refused to execute any assignment or any reassignment from the Chemical Foundation to you or instruments between the Alien Property Custodian and the Chemical Foundation?

A. I did.

RDQ. 512. You have just handed me a paper with certain correspondence attached which bears date the 11th day of April, 1922. It is signed by Francis P. Garvan and there is a blank for the signature of the Alien Property Custodian, and it is headed "Release by The Chemical Foundation, Inc., to the Alien Property Custodian, of all its right, title and interest in and to certain patents and trademarks.'' Were you asked to sign that instrument?

A. Yes, sir.

RDQ. 513. Did you decline to sign it?

A. Upon the advice of my general counsel I held it in abeyance.

Mr. Anderson: Mr. Kresel, I would like to put that in evidence, and I think the whole correspondence should fairly go in if any.

Mr. Kresel: May I examine it?

Mr. Anderson: You may, and I will go ahead at the present time with the examination of the witness and offer that after counsel has a chance to look at it.

RDQ. 514. Colonel Miller, I will ask you to state under what circumstances you gave the testimony which has been referred to a number of times by counsel in examination, before the Winslow Committee—what was then up?

A. The question arose as to the advisability of the Alien Property Custodian further administering or retaining in his possession the smaller trusts in the office. Ninety-three per cent—

Mr. Kresel: I do not like to interrupt and I have not up to the present; but that is not responsive to the question. The question is what was up before the committee. It was some bill, was it not?

Mr. Anderson: I think I have a right to ask the witness the circumstances under which he gave this testimony. I will make it as short as possible.

The Court: Your objection is that the answer is not responsive?

Mr. Kresel: Not responsive. He was asked what was up before the committee and he is going into a long history.

chemical industry, desiring to obtain control of these patents, not unknowingly, through some medium or agency, impressed upon the Alien Property Custodian a very much broader seizure of patents than was contemplated, and that as a result the transactions here spoken of were brought about by the trade improperly, as an inducement to the officers of the Government, in certain senses as alleged in the Bill. I have carefully avoided any personal reference in this Bill. I am particularly careful about statements in open court about people who are in business, in the industry, especially where they are not parties to the proceeding, and therefore I have not used any words of actual fraud. I said I hoped none would have to be developed, but it is the duty of the Government to put in its case fully and to disclose all those facts.

I am not going to argue at this time whether they are facts of sufficient importance or materiality to justify the action of a Court of Equity, but I want them on the record before this Court, when I come to argue, as well as the Court above, if I shall have to argue, a stronger position than I have had to take in the opening statement, desiring to be very conservative. I may have to do it or may not.

THE COURT: What particular effect would you give to that? Assuming that the facts are as you have stated, what legal effect would you give to them?

MR. ANDERSON: I would give this legal effect: That followed by other evidence which we shall introduce, showing a developed combination of these people to induce the sale of these patents, valuable Government property, that if it becomes necessary in the argument, as it may, we shall, the Government will insist that this case may probably develop a case of actual fraud.

THE COURT: You must have misunderstood me. My thought was just one step in advance of that. That

Mr. Anderson: I think it was responsive, sir. I asked him for the circumstances. I want to have the circumstances in order that the evidence might be interpreted in the light of those circumstances.

The Court: Then go ahead.

The Witness: I will endeavor to be brief, but I can not—

The Court: Go ahead with your answer.

A. (continued). 93 per cent of the trusts in the office were of a value of $10,000 and under, and of an average value of $784. They were being uneconomically administered and at more expense to the Government than their continued retention would warrant.

Mr. Kresel: It seems to me, your Honor, that is going too far.

Mr. Anderson: I think it is, and if you do not object to my leading I can shorten it.

Mr. Kresel: I have not ever objected to a question by you as leading, Colonel, and I shall not.

The Court: Is it your thought that that was responsive?

Mr. Anderson: No, sir, and I am perfectly willing to have it stricken out. I think the fact that there were a number of small trusts in the office is responsive, but the uneconomical part I do not care anything about.

The Court: Would you like it all to stay in?

Mr. Anderson: I would like it all to stay in simply because it is easier to do that than to strike out parts.

The Court: Very well.

RDQ. 515. I will ask you, Colonel, as I understand the committee had up the question of returning to the alien from whom this property had been taken or the then successor of such person the amounts of $10,000, whether that was not in effect the Winslow Bill—whether it was not the effect of it?

A. That was one of the main general principles.

RDQ. 516. And the effect of that would be to get rid of a large proportion of these small trusts; is that correct?

A. Yes, sir.

RDQ. 517. Your evidence has been read in a number of instances with respect to the question of your trust relationship. Was it in that connection that you used the language which has been referred to in your testimony?

A. Section 12 of the Alien Property—

Mr. Kresel: May not that question be answered directly, your Honor?

The Court: Do you want the answer to that question, Colonel Anderson?

Mr. Anderson: Yes, sir.

The Court: Then it may be read.

(RDQ. 517. Repeated as above recorded.)

The Witness: What language, Colonel Anderson?

RDQ. 518. The language as to your being a trustee.

A. I was endeavoring to carry out my duty under the law, Section 12 of which specifically uses the words "common law trustee."

Mr. Anderson: I would ask leave to introduce in evidence certain portions of Colonel Miller's testimony in order to complete as far as it can be done without introducing all of it, his statements on the various points that have been read. I would like to have until tomorrow morning to specify the parts, to the end that I may shorten it, as I have never had a chance to read this testimony on account of the pressure of other duties. If I had to put it in now I would probly put in more than I would tomorrow morning, because I can check it up and make his statements complete overnight.

Mr. Kresel: I have no objection to Colonel Anderson reserving the right to make his offer tomorrow. I do not say that I shall not object to any such offer, but I have no objection to his reserving the right to do it.

Mr. Anderson: With that understanding it is quite satisfactory. I shall try to shorten it and will renew the offer in the morning.

If your Honor please, Mr. Kresel wants to finish reading that correspondence. I will pick out this evidence and offer it in the morning. I do not think there will be half a dozen questions brought out by that, and but a few minutes will be taken in the morning. I think it will save time rather than to go over these papers now.

The Court: I have been just awaiting your convenience. The Court is adjourned until tomorrow morning at 8:30.

(Whereupon, at 3:40 o'clock Standard time, adjournment was taken until tomorrow, July 12, 1923, at 8:30 o'clock Standard Time.)

TWENTY-FIFTH DAY.

Wilmington, Delaware,
July 12th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:
Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Thomas W. Miller, resumed the witness stand.

Mr. Anderson: May it please the Court, there are one or two verbal corrections which the witness desires to make in his testimony of yesterday. At page 2173, in the answer at the bottom of the page, the witness said, "Seeking to recover them in the custody of the Government." He meant for the custody of the Government. The word "in" should be "for."

At page 2174, Question 343, there is clearly a typographical error, where the witness said in reply to a question "I consider the Alien Property Custodian as also holding thus"—which should obviously be "this property as a guarantee against claims against Germany." It should be "as a guarantee of claims against Germany." The word "against" is used there twice. He asks to correct that.

At page 2177, Question 351, the word "adjudicated" is used. I will ask the witness a question on that because I do not wish to substitute a word.

RE-DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

RDQ. 519. Colonel Miller, referring to that evidence at page 2177 of yesterday, XQ. 351, you were asked by counsel: "Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible? Will you answer that?

A. I think it should be returned as quickly as possible, when the American claims situation is adjudicated by the Mixed Claims Tribunal."

You said you wished to explain what you meant by the word "adjudicated."

A. I meant in my answer to that question, when the claims were paid.

> MR. ANDERSON: At page 2182, second line from the top of the page, the word "by" should be "or," so that it will read, "The War and Navy Departments or The Chemical Foundation."
>
> THE WITNESS: There is one other correction at page 2207.
>
> MR. ANEDRSON: Oh, yes. Next to the last line "because I thought the Norma Company of America ought to have the right to produce those particular patents" should be "ought to have the right to use those particular patents."

RDQ. 520. Colonel Miller, at various points in your evidence, you used the expression "these claims." I refer especially to page 2184, your reply to questions 380 and 381. Could you be a little more definite as to what you mean by "these claims?" The statement is ambiguous as it stands.

A. I mean by that language the claims of American citizens against Germany, Austria, or Hungary, for the loss of life and property at sea or damage to their property when held by those Governments during the war.

Mr. Anderson: On yesterday, if your Honor please, I stated that I would ask leave, in order to make complete Colonel Miller's statements before the Winslow Committee, without waiving my objection to that evidence, to put in additional statements related to the statements introduced. I have determined that I will only ask to insert in the record the statement on pages 4, 5 and 6 of this hearing before the Committee on Interstate and Foreign Commerce on which counsel examined Colonel Miller, yesterday. A part of that statement was read.

Mr. Kresel: Pages 4, 5 and 6?

Mr. Anderson: Beginning at the middle of page 4 and down to the end of page 6. I will ask that that entire statement be put in as an exhibit.

Mr. Kresel: What is the purpose of that offer?

Mr. Anderson: Simply to complete the statement of which you read a part on yesterday, so it will read as one consistent whole, and to show the circumstances under which the other statements were made.

Mr. Kresel: You are not offering it as proof of the facts, contained therein, are you?

Mr. Anderson: Yes, I think it would go as proof of the facts contained therein, with the same effect as the statements introduced on yesterday would be proof of the facts.

Mr. Kresel: Of course, you recognize, Colonel, that there is a difference between admissions made by the witness on cross-examination and your right to introduce as direct testimony and proof of facts a statement of this witness in this way. I object to that as not the proper way to do it. Moreover, if your Honor please, if this portion of the witness's testimony or statement before this Committee is to go in evidence, I shall ask leave to have inserted for the same purpose as the counsel is now offering that portion of the testimony, the entire testimony of this witness before this Committee.

Mr. Anderson: In reply to the first part of counsel's statement, I would say that I understood that when Mr. Choate's and Mr. Garvan's statements were put in, it was done in the method which I have indicated. If I was mistaken in that, —I am not sure as to the record; I have not looked at it—I would offer it to show the circumstances under which Colonel Miller made these statements. If counsel desire, I would be very glad to ask the witness if he made those statements, reading the three pages indicated, or ask him if he has read them, and if they are true. Probably that would be better. As to the remainder of the statement, I would have to make the objection that I make to all this evidence. I am offering this additional testimony without waiving this objection that this hearing took place long subsequent to the filing of this Bill, and that it is entirely immaterial and irrelevant in this case and not proper evidence; but as part of it has gone in subject to the final ruling of the Court, I would put this in to abide the result of that ruling.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 630." *(See Exhibits, Vol. III, page 1507.)*

Mr. Anderson: If your Honor will permit me, I will ask the witness this question:

RDQ. 521. Yesterday counsel on cross-examination asked you as to your testimony before the Committee on Interstate and Foreign Commerce on H. R. 13,496, taken in December, 1922, and January, 1923. Without waiving my objection to that evidence, I would like to ask you if you have read your statements at the beginning of that testimony, beginning on page 4 of the Hearing and going down to the bottom of page 6 of the Hearing?

A. I have read it, sir, yes.

RDQ. 522. Are the statements made by you on pages 4, 5 and 6, which I will not reread to you, correct to the best of your knowledge, information and belief?

> Mr. Kresel: Just a minute, Colonel Miller. To that we object, your Honor, on the ground it is not competent for counsel upon re-direct to prove by his own witness any facts by way of showing that in another proceeding made a certain statement.
>
> In that connection I desire to call attention to the fact that when Mr. Choate and Mr. Garvan were under examination and I sought to introduce a portion of their statements before various committees, in explanation of or in addition to such portions as Colonel Anderson had read upon their cross-examination, Colonel Anderson took the position that such testimony or statement was inadmissible under any circumstances, but that certainly it was not proof of the facts therein stated, and I think in answer to a question by the Court I stated that the evidence or the statement was not being offered as proof of the facts.
>
> I understand Colonel Anderson now to be offering this portion of the witness's statement before the committee as proof of the facts.
>
> That is not a consistent position for counsel

to take and, whether consistent or inconsistent, the objection that I make is that that is not the way to prove facts, namely, by showing that at some other place the witness had made certain statements. Moreover, your Honor has not indicated whether I will be permitted, as I desire to be permitted, to insert the balance of this witness's testimony, given upon the same subject and at the same time. I think if this portion goes in, whether it be proof of the facts or no, the balance should go in under the same conditions.

THE COURT: I will have to pass upon that last matter when you make the application.

MR. KRESEL: Very well.

THE COURT: The statement is not now offered as proof of facts, as I understand the situation; it is offered, and I said admitted. The question now is as to whether the statements therein made are true, which is testimony independent of the facts there given, and it can be brought out by a series of questions rather than by the single question, if objection is made on that point.

MR. ANDERSON: I do not know whether there is an answer to the question.

(RDQ. 522 repeated by the Stenographer.)

MR. ANDERSON: I will leave out all after the word "correct."

A. They are.

MR. ANDERSON: That is all. May it please the Court, on yesterday, I asked the witness as to this matter which I then handed to Mr. Kresel, if your Honor will recall, before I offer it in evidence. I wish to connect that.

MR. KRESEL: Page 2219 of the record.

RDQ. 523. On yesterday, you testified that you had declined to sign a certain paper, which I then identified. It is a re-assignment by The Chemical

Foundation, and is described in re-direct question 512, and you answered you declined to sign it upon the advice of general counsel and it was held in abeyance. Is this the paper which I now show you, to which you referred at that time? (Handing paper.)

A. Yes, sir.

Mr. Anderson: If your Honor please, I would ask leave, counsel having examined these papers, to introduce the papers to which the witness refers in evidence as Plaintiff's Exhibit No. 631. In order to make the record complete, I would ask leave to introduce in connection therewith, the correspondence bearing thereon, to be read as Plaintiff's Exhibit No. 631-a to 631-n, if the Clerk can identify the letter.

Mr. Kresel: Before these documents are marked, we raise the objection that they are immaterial and irrelevant and are not competent evidence. Perhaps the Court ought to be informed as to these documents, and if you will permit me I will state their purpose, because I have examined them. The instrument in question is an instrument whereby The Chemical Foundation undertook to return to the Alien Property Custodian two certain patents. The instrument was executed by The Chemical Foundation and sent to Colonel Miller, as Alien Property Custodian, and he did not sign it. The correspondence which is offered as a part of the exhibit, is correspondence relating to this proposed re-assignment. Now, I do not see how either the correspondence or the un-executed instrument are material upon the issues here. It is not what this witness did not do as Alien Property Custodian, that is material; it is what he did do.

Mr. Anderson: I just wish to state, if your Honor please, that on cross-examination, the wit-

Paper received in evidence and marked "Plaintiff's Exhibit No. 631." *(See Exhibits, Vol. III, page 1514.)*

Correspondence received in evidence and marked "Plaintiff's Exhibit No. 631-a to 631-n," inclusive. *(See Exhibits, Vol. III, pages 1517-1530.)*

RDQ. 524. On yesterday, Colonel Miller, you stated that under the same circumstances as the sale of the so-called Norma Company of America in April, 1921, and under the same facts, you would have executed that assignment to the Norma Company. I refer to your evidence especially on page 2205. I would be very glad if you would state the circumstances as far as they are within your knowledge that led up to the execution of the assignment?

Mr. Kresel: Colonel, I object to that question because it does not correctly state the evidence of the witness to begin with. He did not state that this was a sale to the Norma Company or an assignment to the Norma Company. It was an assignment to The Chemical Foundation. Nor did he say that under the same circumstances, he would make a sale to the Norma Company. There is no sale to the Norma Company involved.

Mr. Anderson: If that is your objection, Mr. Kresel, I withdraw the question and I will turn to the evidence.

RDQ. 525. At page 2205 of your testimony on yesterday, this question was asked you:

> "That is the assignment with reference to which you have testified a little while ago and now say, as I understand you, that you have no criticism to make of it; that if you had to do it again, you would do it again and that no facts with respect thereto were withheld or suppressed from you. Now, am I right about that? A. I would have sold the patents to the Norma Company

through The Chemical Foundation, if I had to do it over again, bearing in mind the date and conditions existing between The Chemical Foundation and myself at that time. Now, if that is not what you want, please ask me another question, because I want to be understood on those two assignments."

Would you please state the conditions existing at that time to which you refer; and if you have any correspondence on the subject, I will be glad to have you produce it.

Mr. Kresel: We object to the question, your Honor, unless it be shown that the conditions that the witness is about to disclose were conditions that were known to The Chemical Foundation. In other words, you can not impair the validity or the force of an instrument which conveys property rights to one of the parties by showing that there was some undisclosed reason in the mind of the vendor or the person that makes the conveyance. I do not know what evidence is sought to be disclosed here, but I must be careful and must make my objection in due time; and so we object upon the ground that it is immaterial and irrelevant as to what conditions were in the mind of this witness, unless such objections had been disclosed and were known to The Chemical Foundation at the time this conveyance was made.

The Court: And are first shown by the witness, before answering the question, to have been within the knowledge of the defendant?

Mr. Kresel: Yes, your Honor.

The Court: I think the objection is well taken. The answer may be received under our general rule.

RDQ. 526. Will you state the conditions?

Mr. Anderson: I think his answer will probably disclose that the facts were known to The Chemical Foundation.

A. The date was April, 1921. The conditions were as follows: I found that the routine of the office existing at that time provided that all licensing, assignment or sale of patents would be through the channel of The Chemical Foundation and at that time The Chemical Foundation, its officers and my office and myself were proceeding under that procedure of routine. As I said yesterday, there had been no interruption of what I will term the friendly relations existing between The Chemical Foundation and my office and myself at that date, April, 1921. I think those facts were known to The Chemical Foundation, their officers and employees.

RDQ. 527. Then state the circumstances surrounding the assignment of these patents covered by the instrument of April 27th; what is within your knowledge of the subject or came to you officially?

A. A request was made by Mr. Nones, of the Norma Company, for the purchase or license of these patents.

Mr. Kresel: Pardon me, Colonel, if I interrupt you here.

We object, your Honor, to any further statement, especially as to statements made by third parties to this witness in the absence of the defendant, upon the ground that such statements are not binding upon the defendant and can not affect the validity of this instrument. Moreover, your Honor, we object upon the ground that this line of testimony is immaterial and irrelevant for this reason: As we understand the Bill of Complaint, it is not sought to set aside this particular assignment upon any ground other than that the assignment was made without a knowledge of the facts, and because certain facts were suppressed from the witness, although the facts so suppressed are not disclosed in the Complaint, nor did the witness indicate them yesterday upon his examination. Now, that is the ground upon which the assignment is being attacked. If so, we are confined to an inquiry as to those grounds. The witness is now proceeding to state what conversations he had with third parties which led him to make this assignment.

THE COURT: There is no allegation that it was made by reason of the friendly relations between Colonel Miller and the officers of The Chemical Foundation?

MR. KRESEL: No, your Honor, not at all.

MR. ANDERSON: There is a statement in the Bill, I think, if your Honor please, that the assignment was otherwise illegal and void. That is, of course, a conclusion of law.

MR. KRESEL: It is a mere legal conclusion.

MR. ANDERSON: Counsel for the Government will, of course, insist that this assignment was unauthorized for reasons of law appearing from the face of the Bill. The witness having been cross-examined as to the circumstances here involved, I think he is entitled to show those circumstances, and I understand——

THE COURT: Do I understand, Colonel Anderson, that you are offering evidence in support of an allegation in your Bill, which allegation is a conclusion of law?

MR. ANDERSON: No, sir, I am offering evidence explaining the transaction as to which the witness was asked on yesterday.

THE COURT: What is the specific allegation to which the testimony now sought is directed?

MR. ANDERSON: The specific allegation to which this testimony is directed is that the facts were not understood by this witness and that they were not in fact known to him at the time he executed this assignment, because the facts, as he understood them, were not the true facts.

THE COURT: I should like to ask you to turn to the Bill and point out the allegation to which this testimony relates.

MR. ANDERSON: I shall be very glad to do that, sir.

MR. KRESEL: Colonel, you will find the relevant portions at pages 54 and 55 of your Bill.

MR. ANDERSON: Thank you.

> "Complainant is informed, believes, and therefore avers that said instruments of alleged sale, assignment, and transfer were prepared by or at the instance and procurement of said defendant, The Chemical Foundation, Incorporated; that said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration, and especially said instrument of November 5, 1921, was made, executed, and delivered without any consideration whatever; that said alleged sales, transfers, and assignments were otherwise irregular and contrary to law, and were and are in all respects null, void, and of no effect in law or equity."

Then there is another later allegation.

THE COURT: That does not answer my question. I did not ask you for your general allegations. I asked you for your specific allegation to which this testimony is directed, if you care to answer.

Mr. Anderson: That is the allegation covering the thirty-ninth paragraph following the detailed description, and then the general allegation in the Bill as to the invalidity of all these assignments follows in a subsequent paragraph, but it probably does not enlarge that excepting in very general language.

The Court: Then, as I understand you, you do not care to answer the question which I asked you?

Mr. Anderson: I have answered to the best of my ability, if your Honor please. If your Honor will make it more specific, I shall do my best. That is the allegation which I read.

The Court: The objection is well taken; but you may take the answer under the general rule.

A. An offer was made to me as Alien Property Custodian for the purchase or licensing of the eleven patents referred to in this assignment of April 27, 1921. The Norma Company of America, through its proper officers, desired these eleven patents to complete the purchase of the property which they had bought from my predecessor. They proved to my satisfaction that they should have had these patents when they bought the Norma Company originally, and my entire official interest in the whole transaction was merely the carrying out of my official desires, namely, that the Norma Company should be in possession or use of these eleven patents, which, by the way, deal with ball-bearings, and it was for that purpose that I directed that a paper which afterwards turned out to be this assignment of April 27, 1921, be drawn up by the proper official in my office carrying out the terms of the sale or the licensing of these patents to the Norma Company.

RDQ. 528. Who had charge of this matter in your office?

A. The chief of my Corporation Management Division, Mr. Paul Smith, is the officer to whom I gave these directions.

Mr. Kresel: Before you put another question, Colonel, in order to preserve our record I now move to strike out the answer to the last question on the ground it is immaterial, irrelevant and not binding.

The Court: I think the motion is well made, and if we were trying the case under the strict rules of evidence the motion would have to be granted. Under the general rule which we have adopted for this case, the motion will be denied.

Mr. Anderson: Subject to your Honor's ruling, of course, I wish to offer in evidence some correspondence relative to the matters to which the witness just testified.

RDQ. 529. The correspondence which I now hold in my hand, and which you handed me, is the correspondence relative to the matters to which you have just testified?

A. Yes, sir, it is.

Mr. Anderson: I now ask leave to offer in evidence the following correspondence upon this subject. Letter dated December 4, 1918, A. Mitchell Palmer to Henry B. McCormick, Esquire, 305 North Front Street, Harrisburg, Virginia.

Mr. Kresel: We object to the introduction of this letter, your Honor, upon the grounds that I urge to the testimony of the witness given in answers to the last few questions. Further, I object upon the ground that there is nothing in this letter to indicate that it refers to the transaction that the witness is testifying about, and I direct attention to the fact that this letter is dated December 4, 1918, antedating by two and a half years the advent of Colonel Miller as Alien Property Custodian. The evidence does not show that he knows anything about either the circumstances that gave rise to the writing of the letter or what it refers to.

RDQ. 530. Colonel Miller, was this letter taken from your official files in the office of the Alien Property Custodian, upon that subject (handing witness)?

A. Yes, sir; that is the photostat of a letter from my official files.

RDQ. 531. Was the endorsement "Norma Company of America" on it when it came into your possession?

A. Yes, sir; that is just as it came out of the files, as I found them in the office.

RDQ. 532. It came from the file on the subject of the Norma Company of America, did it?

A. Yes, sir.

Mr. Kresel: I contend, sir, that that is no proof. Simply because the instrument is entitled "Norma Company of America" is no proof that it has anything to do with this transaction.

By The Court:

Q. 533. When have you seen it, Colonel, do you recall?

A. Your Honor, I would have seen that letter in examining the file of the Norma Company in April, 1921; also in going over papers that would be transmitted to the Department of Justice in connection with the bringing of this action.

Q. 534. Have you any distinct and specific recollection of having seen it on either of those two occasions; and, if so, on which?

A. No, sir.

The Court: Do you press your offer?

Mr. Anderson: Yes, sir.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 632." *(See Exhibits, Vol. III, page 1531.)*

Mr. Anderson: I next offer in evidence a letter on the letter-head of Emery, Varney, Blair & Hoguet, signed by Mr. Varney, addressed to Lucien H. Boggs, Esq., dated March 15, 1920, as Plaintiff's Exhibit No. 633. Counsel has asked me to let him read the whole file before I offer any more. I shall be glad to do so with your Honor's permission.

Mr. Kresel: Now go ahead.

Mr. Anderson: I understand you do not object to the authenticity of this?

Mr. Kresel: No. I have never raised that objection.

The Court: Its purpose is the same?

Mr. Anderson: The same as the other correspondence in relation to the assignment of April——

The Court: That goes to show what?

Mr. Anderson: I will read it, your Honor.

The Court: I do not mean the facts, but I mean it is directed toward what point?

Mr. Anderson: It is directed to show the circumstances under which the assignment of April 27, 1921, which covered eleven patents on ball bearing appliances, which was assigned to The Chemical Foundation, and under which the Norma Company of America took a license, and it shows the accompanying circumstances as to that assignment.

The Court: Does your Bill seek to set aside that assignment?

Mr. Anderson: Yes, sir.

FOURTH DAY.

Wilmington, Delaware,
June 7th, 1923, at 9:30 o'clock A. M.

Before:
Hon. Hugh M. Morris, U. S. District Judge.

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Anderson: If your Honor please, at the time of adjournment yesterday, there was, I believe, a question as to the relevancy or materiality of the statement by Mr. Bradley, being Exhibit A with the Bill. At the time of that adjournment, the question of its admissibility was under discussion; and I do not wish to say anything in that connection further than simply make a statement of our position, because I think it is a waste of time for argument under the circumstances.

The Bill in this case charges that the sale of these patents, among other things, was brought about as a result of a scheme or plan, or what is called a "conspiracy" to acquire this property for private interests. And therefore, of course, the latitude of evidence on this subject is very broad. Anything that has any remote bearing is admitted. This particular matter, in our view, bears upon that aspect of the case, as well as being necessary to a clear exposition of the surrounding facts and circumstances. Whether it should become necessary to consider surrounding facts and circumstances when we come to the argument of this case, its meaning and intent I do not think can be determined in advance, and therefore it may be

THE COURT: And this correspondence is offered to show what?

MR. ANDERSON: To show that the facts and circumstances under which that assignment was made, that the witness was acting upon a mistaken conception of the facts when he made that assignment, as shown by the assignment and the accompanying correspondence.

MR. KRESEL: But that is not the allegation.

MR. ANDERSON: It will show all the circumstances surrounding the assignment which has been questioned.

THE COURT: I am not concerned with all the circumstances surrounding the assignment. I am concerned only with such facts and circumstances as will tend to support your allegation showing that the assignment was made under fraud, accident, mistake or conspiracy, and I do not understand that there are any other equitable grounds for setting aside, other than fraud, accident, mistake or conspiracy. Does this evidence now offered tend to show fraud, accident or mistake?

MR. ANDERSON: In my opinion, it tends to show a mistake, and a mistake of facts, upon which the Polk order was predicated.

THE COURT: And the mistake of fact was what? Was it a mutual mistake of material facts, or a mistake of fact on the part of the assignee, or on the part of the assignor, and if so, how was the mistake of fact on the part of the assignor induced?

MR. ANDERSON: The mistake of fact on which the officer acted, I think I can briefly state as follows: That the request had been made for an assignment to the Norma Company of America of these patents, on the idea that they were included in a prior sale as he has testified to. He turned it over to his subordinates to prepare the necessary papers, believing them to be true. The Polk order, if valid——

The Court: Now, Colonel Anderson, I am not asking you a single thing about power. Power is entirely a different thing, and if there is any question as to the power of these people to make these assignments, that is one thing; but when I am asking for evidence with respect to fraud, accident or mistake, it is not an answer to tell me that there was a lack of power.

Mr. Anderson: No, I am merely telling you that the Polk order undertook to authorize the assignment of property which related to the purposes and objects of The Chemical Foundation. Now, our contention is, as to this specific fact, that the witness at that time was not familiar with the Polk order, and that he was mistaken as to this being related——

The Court: Let us stop there. Is it your contention that the fact that the witness had failed to familiarize himself with the Polk order is sufficient ground in and of itself or in connection with other facts to enable the Government to ask the ground of fraud, accident, or mistake?
that this assignment of April 19th be set aside on

Mr. Anderson: That is only one of a number or series of facts which I was trying to recite; and that therefore, the assignment of this matter to The Chemical Foundation, which was prepared by the Corporation Department and brought to the witness, was an assignment of matter which was made by an entire mistake of the character of stuff that could be assigned by the Alien Property Custodian to The Chemical Foundation and that it was made under a misunderstanding of the relations of The Chemical Foundation to that office. That is as accurately as I can state it. If I introduce evidence that does not sustain the point, then of course, it will not have any value.

The Court: Have you alleged in the bill, as one of the equitable grounds for setting aside this assignment, any mistake on the part of Colonel Miller, any mistake of facts?

Mr. Anderson: I have alleged a want of knowledge of the facts, which is a mistake of facts or misunderstanding of the facts.

Mr. Kresel: On the contrary, your Honor, may I read from page 54 of the bill:

> "That said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth"——

That is, in the bill set forth; and there is nothing in this bill about any mistake about this particular assignment.

> "——and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration."

The charge here is not mistake. The charge is that facts were withheld from this witness.

Mr. Anderson: That is not the whole charge. The first part of the charge relates expressly to a mistake of facts or a misunderstanding of facts.

Mr. Kresel: It says that he acted on the matter without knowledge of the facts herein. That is not a mistake of fact. And that he acted without knowledge. How are we to be injured thereby, because he did not know what he was doing? How are we responsible for that? It is not charged that we misrepresented to him or that we withheld facts from him.

Mr. Anderson: I have undertaken to state to your Honor as accurately as I could the theory on which I think this evidence is material.

The Court: I understand that and I think it has no bearing, that it is not binding in any way upon the defendant, and that it not only constitutes no ground for setting aside the assignment, but the evidence offered is no justification in any way. It may be put on the record under our general rule.

Letter dated March 15, 1920, last referred to, received in evidence and marked "Plaintiff's Exhibit No. 633." *(See Exhibits, Vol. III, page 1532.)*

Mr. Kresel: It is understood, is it, that all this correspondence which is now being offered is subject to the objection I raised to the first letter?

Mr. Anderson: Certainly.

I offer in evidence letter of April 26, 1921, addressed to Colonel Miller by W. M. Nones, President of the Norma Company, to be identified and read in evidence as Plaintiff's Exhibit 634.

Received in evidence and marked "Plaintiff's Exhibit No. 634." *(See Exhibits, Vol. III, page 1533.)*

Mr. Anderson: I offer in evidence letter dated March 23, 1920, addressed to Messrs. Emery, Varney, Blair & Hoguet, attention of L. E. Varney, signed Lucien H. Boggs, General Counsel, to be identified and read in evidence as Plaintiff's Exhibit 635.

Received in evidence and marked "Plaintiff's

Exhibit No. 635." *(See Exhibits, Vol. III, page 1535.)*

Mr. Anderson: I offer in evidence a letter dated February 17, 1921, signed by Messrs. Emery, Varney, Blair & Hoguet, this being a copy. I suppose it will be admitted that it was signed by them. The signature is not on it.

Mr. Kresel: Yes.

Mr. Anderson: Dated February 17, 1921, addressed to Mr. Paul Smith.

By Mr. Anderson:

RDQ. 535. I believe you said Mr. Paul Smith was Chief of the Corporation Division of the Alien Property Custodian?

A. Yes, sir.

Received in evidence and marked "Plaintiff's Exhibit No. 636." *(See Exhibits, Vol. III, page 1536.)*

Mr. Anderson: I offer in evidence letter addressed to the Alien Property Custodian, signed Kalish & Kalish, dated January 24, 1921, with respect to the patents in question.

Received in evidence and marked "Plaintiff's Exhibit No. 637." *(See Exhibits, Vol. III, page 1540.)*

RDQ. 536. Now, Colonel Miller, you have presented to me a memorandum dated the 4th of April, 1921. Do you recall a conference on about April 14, 1921, at your office, in regard to this matter?

A. Yes, sir.

RDQ. 537. Can you recall who was present at that conference or any of those persons present?

A. Mr. William M. Nones of the Norma Company of America, Mr. Paul Smith, and myself.

RDQ. 538. Can you say whether this is a memorandum presented to you at that time by Mr. Nones on this subject?

A. Yes, sir.

Mr. Anderson: I offer in evidence the memorandum which the witness has just identified, dated the 8th of April, 1921, to be identified and read in evidence as Plaintiff's Exhibit 638.

Mr. Kresel: In addition to the other objections that we have urged against the correspondence which has just been put in, we object upon the additional ground to this memorandum as a statement by a third party, namely, this man Nones, not at all official; it is not an expression of even an opinion by the Alien Property Custodian or any official act of his department, and is not binding upon the defendant.

The Court: I do not know of any rule of evidence under which it may be admitted, save under our general rule.

Received in evidence and marked "Plaintiff's Exhibit No. 638." *(See Exhibits, Vol. III, page 1541.)*

RDQ. 539. Colonel Miller, do you recall how the price named in this instrument of $550 for eleven patents was arrived at?

A. As near as I can recollect the general price of $50 per patent was the basis of the offer.

RDQ. 540. What do you mean by "general price?"

A. As I recall it, that was the average price agreed upon in the transaction. We were to accept fifty dollars a patent, which made a total of $550.

Mr. Anderson: I think that is all, if your Honor please, that I wish to ask the witness.

Re-Cross-Examination.

By Mr. Kresel:

RXQ. 541. Colonel Miller, as I understand your statement with reference to this Norma transaction, it is this: that you wanted the Norma Company to have these patents and that you were using The Chemical Foundation simply as a conduit through which these patents might be transferred or a license given thereunder to the Norma Company; isn't that right?

A. Yes, and in accordance with the routine in my office at the time.

RXQ. 542. The Chemical Foundation did not ask you to transfer these to it, did they?

A. No, the initial request came through the Norma Company.

RXQ. 543. And before you signed this assignment you familiarized yourself with such facts as were available to you in this correspondence which has just been put in, the memorandum which Mr. Nones presented to you and the conferences that you had with him?

A. Oh, yes, I was familiar with the transaction.

RXQ. 544. You knew, did you not, that unless you had an Executive order authorizing you to dispose of these patents, you could not convey them either to The Chemical Foundation or to anybody else without putting them up at public auction?

A. The Executive order, Mr. Kresel——

RXQ. 545. Didn't you know that?

A. (continuing). ——is an Executive order providing that the Custodian can sell property of the value of $10,000 and under without a specific Executive order from the President.

RXQ. 546. Then in making this assignment you were acting under the Executive order made by the President authorizing the Custodian to sell any property at private sale if valued at less than $10,000?

A. Yes, sir.

RXQ. 547. I direct your attention to the assignment signed by you, page 480 of the Bill of Complaint, and ask you to read therefrom so much thereof as refers to the authority under which you were acting.

A. Well, according to that as I read it now, Mr. Kresel, it appears that the Norma Company transaction was made under the so-called Polk order. I am just glancing over it hastily. Is that what you want to bring out?

RXQ. 548. Yes, that is exactly what I want to bring out.

A. And I have just said, as far as my recollection serves me, that my selling of these patents to the Norma Company was in my mind under that Executive order of the President which permits the Alien Property Custodian to sell property of the value of $10,000 and under without additional Executive orders, and it appears from these pages which you have asked me to look at that the assignment which I signed was under the Polk order.

RXQ. 549. But, Colonel Miller, we can not know what was in your mind.

A. I am telling you now frankly.

RXQ. 550. Pardon me a minute. Do not let us talk together, or at the same time.

A. Pardon me.

RXQ. 551. Wait for my question. I say we can not tell what was in your mind; but the instrument that you signed shows, does it not, that you were making this assignment pursuant to the order signed by Mr. Polk, February 26, 1919?

A. There is no denial of that fact.

RXQ. 552. Isn't that right?

A. It is right there.

RXQ. 553. Surely at that time you knew what the Polk order provided, did you not?

A. I did not, sir. Mr. Kresel, I have endeavored to tell you and the Court in answer to all questions, as I said yesterday, that the detail of this original Executive order, the selling or assigning of these patents originally to The Chemical Foundation, the fact that it had been signed by Frank L. Polk and not by President Woodrow Wilson, did not come to my attention as far as I recollect, until after this sale was questioned.

RXQ. 554. But, Colonel, I am not speaking about the name of the person who signed it, and I am not drawing that distinction now. Do you mean to say that you signed this instrument basing it upon the authority of that Executive order without knowing what it provided; is that what you want to say?

A. Mr. Kresel, if you want to read that construction into my testimony——

The Court: That will require a yes or no answer, Colonel Miller. If you want to explain it afterwards, you may, but it calls for yes or no.

The Witness: May I have it stated again, your Honor?

(RXQ. 554 read as recorded above.)

A. Yes, but I would like to qualify my answer.

RXQ. 555. Now go ahead and qualify it.

A. I have endeavored to show that in the operation of my office it was necessary for me to act on a number of matters which I could not scrutinize personally and with great care, and, as I stated a moment ago in answer to Mr. Kresel's question, I was honestly of the opinion that the original sale of these patents to the Norma Company was executed under the authority of an Executive order other than the so-called Polk order.

RXQ. 556. Is that all you want to say about it? Because I want to give you every opportunity to say anything you like.

A. Unless you have further questions, sir.

RXQ. 557. When you made this assignment you did know that there was an Executive order authorizing the Alien Property Custodian to sell at private sale property valued at less than $10,000, did you not?

A. Yes, sir.

RXQ. 558. Had you read that Executive order?

A. That was in the——

RXQ. 559. Had you read it?

A. That was in the manual, the printed manual of the Alien Property Custodian's office.

RXQ. 560. Had you read it?

A. Why, certainly.

RXQ. 561. Do you mean that the order of Mr. Polk was not in the printed manual?

A. If it is, sir, I have not seen it there.

Mr. Kresel: It is in evidence as one of the plaintiff's exhibits.

RXQ. 562. Is this the book that you referred to? (Handing it to the witness.)

A. Yes, that is the one.

RXQ. 563. I direct your attention to the fact that the Polk order appears here in full at pages 92 and 93 of this book. (Handing it to the witness.) Do you see it?

A. Yes, I see it.

Mr. Kresel: What I was showing to the witness was Plaintiff's Exhibit No. 1—the book marked Plaintiff's Exhibit No. 1.

Mr. Galloway: I think Plaintiff's Exhibit No. 1 is only one order in that, Mr. Kresel.

Mr. Kresel: I mean the book in which Plaintiff's Exhibit No. 1 is contained.

RXQ. 564. Colonel, knowing that you had the authority as Alien Property Custodian to sell property at private sale if valued at less than $10,000, why did you not transfer these patents direct to the Norma Company under that authority?

A. I have said a number of times, Mr. Kresel, that I followed the routine procedure existent in my office at the time which, in connection with the sale and licensing of patents, trademarks, copyrights, etc., was that in the final conclusion this matter will have little or remote connection with that aspect of the matter. It may be that in this Court or in the Appellate Court if the matter went there, that that may be deemed an important light and side-light upon the general situation.

Therefore, for both reasons, as tending to show the change of policy, and thus the effect, and indicating that some other influence was brought into the situation, and as also possibly bearing upon the construction of this quite complicated Act, it seems to me that the statement for what it is worth—I do not undertake to discuss its weight, is at least admissible in evidence.

The Court: Mr. Kresel.

Mr. Kresel: If your Honor please, I have given consideration to this proposition since our adjournment yesterday afternoon, and I think this affords a good opportunity to have another one of our basic understandings, because as your Honor very wisely said yesterday, this is a long case, and we better understand one another before we go very far into it.

Your Honor knows, of course, that this particular piece of evidence that is now being offered, was alleged in the Bill as having been the basis of the action taken by Congress in enacting the November 4th amendment.

Indeed, the Bill charges in the Sixteenth paragraph,

"That acting upon the faith of the representations aforesaid and solely for the purposes aforesaid" —the "aforesaid" referring to this testimony of Mr. Bradley, Congress went on and enacted this Act.

When Colonel Anderson in his opening was referring to this testimony of Mr. Bradley, I recall that your Honor asked Colonel Anderson whether he was claiming that, assuming that that testimony was misleading and that Congress acted on it and enacted the

the use of The Chemical Foundation as the channel thereof.

RXQ. 565. You knew, did you not, that you had no authority to transfer to The Chemical Foundation anything that did not pertain to the purposes of that corporation?

A. If you ask me specifically at this date whether I knew that or not, I can not answer you. I, of course, know it now and have known it for some time past.

RXQ. 566. When you signed this instrument in April, 1919, did you not know that your authority to make transfers to The Chemical Foundation was circumscribed by that consideration?

A. I told you that I have no recollection of having read the so-called Polk Executive order.

RXQ. 567. But you did read this clause before you made the assignment, did you not, which I read from the assignment:

> "Whereas, I have determined that the Letters Patent of the United States and the applications for Letters Patent of the United States enumerated in Schedules A and B, hereto attached and made a part hereof, relate to the objects and purposes of the said The Chemical Foundation (Inc.) as expressed and defined in its charter?"

You certainly saw that, did you not?

A. I will not swear to that; and I will say further, if you will permit me, that my confidence in the man who brought it to me was sufficient to cause me to sign that assignment——

RXQ. 568. Without reading it?

A. Yes, sir. I have done that often, as many a public official is required to do in the execution of his duties. That is a well-known fact.

RXQ. 569. I am not concerned with that, Colonel. Do you now say you signed this instrument without reading it?

A. I am unable to answer your question specifically under oath.

RXQ. 570. Then I will put it in a different form. Did you read this instrument before you signed it?

A. I can not recall that I read it in its entirety.

RXQ. 571. In the clause that I have just read to you it is said that you as Alien Property Custodian determined that the patents in question related to the objects and purposes of The Chemical Foundation as expressed in its charter. Had you read its charter?

A. You know full well, Mr. Kresel, that public officials execute papers on the recommendations of their subordinates time and time again, and that was the way this was executed.

RXQ. 572. Having made that statement, will you answer my question? Had you read its charter at that time?

A. I testified a number of times heretofore no.

RXQ. 573. This assignment was made subsequent to your talk with Mr. Garvan, was it not?

A. Yes, sir.

RXQ. 574. From your talk with Mr. Garvan did you understand that ball bearings referred to the purposes and objects of The Chemical Foundation?

A. I don't think that detail ever came out in my conversation with Mr. Garvan.

RXQ. 575. These patents you knew when you made the assignment did cover a process of making ball bearings?

A. Yes, sir.

RXQ. 576. But one thing is certain, Colonel, isn't it—that before you signed the instrument you read the correspondence which Colonel Anderson put in in connection with this matter?

A. I certainly went over the file which included that correspondence.

RXQ. 577. In one of these letters put in by Colonel Anderson, namely Plaintiff's Exhibit No. 634, which is a letter from Mr. Nones to yourself as Alien Property Custodian, dated April 26, 1921, a letter from you to him of the 23rd of April is referred to. Can you produce a copy of that letter?

A. Yes, sir; but not this morning. I will have to get it from my files.

RXQ. 578. I wish you would send it to Colonel Anderson.

A. May I make a note of that, then?

RXQ. 579. Yes, April 23rd, 1921, from yourself to Mr. Nones.

A. All right, sir, I will send that up.

RXQ. 580. You noticed, did you not, in this correspondence that some suggestion was made as to how much these patents should be sold for?

A. There must be. I have not read that recently, Mr. Kresel. If you want to examine me on that I would like the privilege of looking at it for a moment.

RXQ. 581. I will show it to you in a minute, but I am trying to test your recollection at present. Was there not some discussion between Mr. Nones and yourself with reference to how much should be paid for these patents?

A. Oh, undoubtedly so.

RXQ. 582. Mr. Nones made no payment to you for these patents, did he?

A. No. Not under the terms of the assignment.

RXQ. 583. Nor his company?

A. No.

RXQ. 584. The $550 which is recited as a consideration was paid to you by The Chemical Foundation?

A. Yes, sir.

RXQ. 585. But in your discussion with Mr. Nones, you do recall, do you not, the question of how much should be paid therefor was discussed?

A. It was undoubtedly discussed, Mr. Kresel.

RXQ. 586. Do you remember what was suggested as a consideration to be paid?

A. I can not unless I refer to the records.

RXQ. 587. Look at one of the letters put in by Colonel Anderson, Plaintiff's Exhibit No. 633, which is a letter from Mr. Varney to Mr. Boggs, in which, you see, Mr. Varney says:

> "Mr. Hoguet and I advised that in every such case, the purchaser be permitted to acquire, for a small sum, a naked license—a license which amounts simply to a waiver of suit thereunder—so that he will be immune from prosecution in the future under such patent or patents. As we left the matter, I understand that you were agreeable to this course and that you would take up the matter at once with the Custodian and fix the consideration for such a license. In my opinion, this should be paid as a lump sum and I think ten dollars per patent would be fair, reasonable and proper under all of the circumstances."

You were familiar with that at the time you made this assignment, were you not?

A. I can not testify today, Mr. Kresel, that that paragraph you have just read was paramount in my mind or had impressed itself upon me.

RXQ. 588. Well, did you have an appraisal made of the value of these patents?

A. No, sir, not that I can recall.

RXQ. 589. Did you have anybody advise you as to the relative value of each of these eleven patents?

A. I can not recall that I did.

RXQ. 590. You sold them at $50 apiece.

A. I presume, Mr. Kresel——

RXQ. 591. Did you not?

A. I presume, Mr. Kresel, that the amount of $50 apiece was probably derived from the general average upon the original sale of 4,500 patents to the Foundation, I presume so.

RXQ. 592. In other words, you, as Alien Property Custodian, if I understand you correctly, were making this transfer pursuant to the original arrangement that had been made for the transfer of all the other patents; is that what you want to say?

A. And in accordance with the routine procedure that I found in my office at that time.

RXQ. 593. And at the same price?

A. General average, yes.

RXQ. 594. Regardless of what the value was, insofar as you knew anything about it?

A. I was controlled, as I have told you, by the routine procedure I found in my office existing at that time between my office and The Chemical Foundation.

RXQ. 595. Now, when did you finally determine as Alien Property Custodian, that you were no longer controlled by the routine procedure?

A. The exact date, sir, I can not recall, but one moment——

RXQ. 596. Give it to me approximately as near as you can?

A. You know full well—I will answer it this way: With the possibility of a question in this sale, naturally, I was careful in my transactions, as is evidenced by the assignment put up to me in May, 1922, which was discussed here yesterday, and which I did not execute, upon the advice of my counsel.

RXQ. 597. So we have it that it was not until May, 1922, that you finally determined, as Alien Property Custodian, that you had to exercise independent judgment and discretion and that you were no longer bound by the routine that you found in your office regarding transactions between the Alien Property Custodian and The Chemical Foundation?

A. It was evidently around that time.

RXQ. 598. Now let me ask you, Colonel: Around that time, too, the question was being broached as to attacking the sale to The Chemical Foundation, was it not?

A. It had been broached, as you know, in debates in Congress, in the newspapers, and from other quasi-public sources.

RXQ. 599. And you know, Colonel, that that is not what I am referring to. I say, about May, 1922, the Government, you as Alien Property Custodian, the Department of Justice, was bestirring itself to start this suit?

A. No, sir; I can not testify today that in that particular month or any particular day in that month of 1922 I had received any official or unofficial communication, written or verbal, on the bringing of this suit.

RXQ. 600. But was it not at or about the time when this suit was about to be broached that your dealings with The Chemical Foundation, as you have outlined them, changed?

A. I——

RXQ. 601. Now, frankly, isn't that so?

A. I may say this: In the spring——

RXQ. 602. Now, isn't that so?

A. Well, I have no objection to answering in the affirmative, if that will help you.

RXQ. 603. Then won't you please answer?

A. Yes.

RXQ. 604. And it was because of the impending action to set aside the sale to The Chemical Foundation, namely, this suit, that you declined to sign this reassignment of the two patents from The Chemical Foundation, was it not?

A. I can not elaborate any more than I have in my previous——

RXQ. 605. I am trying to fix the time, simply. It was about that time?

A. You can not fix by my testimony today any specific date in the year 1922. I will have to refer to my memory and my records.

RXQ. 606. All right. Now, the instrument that you declined to sign was an instrument reassigning to the Alien Property Custodian two certain patents, was it not?

A. That is true.

RXQ. 607. In other words, The Chemical Foundation was offering to give back to you for no consideration whatsoever two certain patents, isn't that right?

A. Yes, sir.

RXQ. 608. And you declined to accept it, is that right?

A. Yes, sir.

RXQ. 609. At whose request was it that The Chemical Foundation was tendering the return of these two patents? Was it not at your request?

A. Mr. Kresel, I have not examined that file, and to answer it properly I will have to examine it.

MR. KRESEL: Mr. Clerk, let me have the correspondence that went into that, please?

THE WITNESS: I wish you would. That will answer the question.

RXQ. 610. I direct your attention to the first of this series of correspondence. It is addressed to The Chemical Foundation from your office, dated November 19, 1921, and reads as follows:

> "On examination of our records I find that patents Nos. 912,352 and 1,108,307 were assigned to The Chemical Foundation on April 10, 1919. They were also licensed to the Government on April 3, 1920, and they were sold along with other assets of the C. P. Goetz American Optical Company and assigned by the Custodian to Merton E. Grush, the purchaser of that company, under an assignment dated June 8, 1920.
>
> "Will you kindly take this matter up with Mr. Garvan and ask him for me if he will care to quitclaim these patents to Merton E. Grush?"

Does that refresh your recollection?

A. I will stand on anything that is in those records, Mr. Kresel.

RXQ. 611. Very well. Then do you not see that your office was asking The Chemical Foundation to quitclaim these two patents?

A. I won't deny that fact.

RXQ. 612. And your office having made that request of The Chemical Foundation, and The Chemical Foundation agreeing to it, sending you a form of assignment, you declined to accept it because this suit was about to be brought; is that it?

A. Because of what I have termed the change in the friendly relations existing between my office and the Foundation.

RXQ. 613. That is very good.

A. (No answer.)

Mr. Anderson: I would like to call Mr. Dold now for cross-examination.

The Court: Do you withdraw the application that you put in the remainder of the testimony?

Mr. Kresel: No, your Honor. I was about to make it.

The Court: Are you through with Colonel Miller on both sides?

Mr. Kresel: I am through with my questions; yes, sir.

Mr. Anderson: I am.

(Witness excused.)

Mr. Kresel: I now offer the balance of the testimony of Colonel Miller given before the Committee on Interstate and Foreign Commerce of the House of Representatives, which begins at the top of page 7 of this volume entitled, "Hearings before the Committee on Interstate and Foreign Commerce of the House of Representatives on H. R. 13496," extending therefrom to Page 43 of

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UNITED STATES V. CHEMICAL FOUNDATION, INC.

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November 4th amendment—whether Colonel Anderson was claiming that that either vitiated the Act or would lead the Court to construe it in any other way than its plain language imported. And of course Colonel Anderson is too good a lawyer to make any such statement, and he disclaimed it.

They are now abandoning the basis upon which they urged in the Bill of Complaint that that testimony was relevant and are now seeking to have it introduced upon the ground that it is some evidence in the support of the conspiracy that is alleged in the complaint.

It must be evident that it can be material upon the question of conspiracy only if it be connected with evidence that some one or more of the alleged conspirators induced Mr. Bradley to make that statement. Of course your Honor has no such evidence before you up to this point.

Your Honor could not have failed to observe that the charges of conspiracy in this complaint, while broad, are not specific. They mention some of the alleged conspirators and say that there were others. Among these conspirators they speak of the Textile Alliance and other corporations. These concerns are not parties before this Court in this proceeding. It seems to me that before your Honor permits any evidence to go into this case in support of a conspiracy, unless that evidence upon its face shows that it is a step in the conspiracy, it ought not to be admitted.

In other words, it is our position that until there is some evidence that there was a conspiracy, a statement made by an official before Congress, which upon its face purports to be an official statement, ought not to be thrown in here simply upon the vague statement that it may be material upon the question of conspiracy.

The Government cannot be aided by delaying in-this volume, and again, beginning at Page 74 of the same volume. There are only two answers on that page. Also at Page 83 of this volume, and Page 84. Also at Page 144 of this volume and 145. Also at Page 255 of this volume, extending to Page 258, and Pages 272 and 273.

The Court: Has it been testified that Colonel Miller so testified at that time? Is there any evidence that Colonel Miller gave that testimony before the Committee?

Mr. Kresel: Under our general stipulation, your Honor, it has been agreed between us that the fact that witnesses did so testify in these various proceedings is conceded. Am I correct, Colonel Anderson?

Mr. Anderson: Without calling witnesses to prove that they did so testify?

Mr. Kresel: Yes.

Mr. Anderson: I did not undertake to recall the exact language of the stipulation, but I think if Colonel Miller were called to the stand, he would say that that was a true transcript of his statement at that time. He was not under oath. That was a statement.

Mr. Kresel: Colonel, is that not our stipulation?

Mr. Anderson: I do not recall the exact language and therefore I do not want to undertake to verbally state what the stipulation was. But I will not raise the question and will waive the necessity for calling Colonel Miller and having him say that he so testified before this committee, as to the statements contained in the record referring to him and attributable to Colonel Miller. There are many other statements by other persons in that transcript which I think are subject to objection.

⑤

No. ~~512~~ 127

In the Supreme Court of the United States

OCTOBER TERM, 1925

UNITED STATES OF AMERICA, APPELLANT

v.

THE CHEMICAL FOUNDATION, INCORPORATED,
APPELLEE

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

TESTIMONY OF A. MITCHELL PALMER

withstanding that, in view of the unusual expression by counsel of his opinion as to what has been accomplished in this case, I do not think it would be fair to the Government to have that statement without the statement on the part of the Government that while we recognize and it is hardly necessary to say that when counsel enter upon a defense of a case, they do not waive any of their positions in the law, but rather seek to sustain their positions, and while I recognize also the weight of the consideration upon counsel of a desire for a full exposition of any facts in connection with the case, and the Government at the outset of this case declared its desire to the same end—indeed I think the Government has gone beyond the usual practice in putting in evidence, in stepping over the usual strict limitations confining itself to evidence that might be helpful to itself, to the end that the full facts may go in. But with all that, since counsel has expressed his opinion, I think it is fair to say that the Government feels and will argue in this case that it has established every claim that it made in this case and introduced evidence under every paragraph except one as to which reservation was made yesterday; and, in the second place, that upon the law of this case the Government is entitled to a decree.

If counsel want to test that question at this stage we are glad to do it; if not, we are very glad to have the defense go in fully, and prefer it, to the end that all sides may be fully heard. But I have always taken the position in this case that it is a question of law and this case might properly be disposed of upon the bill and answer but for its peculiar character requiring, as we view it, an exposition of the facts.

A. MITCHELL PALMER.

A. Mitchell Palmer, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Your name is A. Mitchell Palmer?

A. That is right.

Q. 2. And your residence is where?

A. Stroudsburg, Pennsylvania.

Q. 3. You are by profession a lawyer?

A. A lawyer.

Q. 4. Did you hold the office of Alien Property Custodian?

A. I did.

Q. 5. Do you remember when you were appointed to that office?

A. I was appointed late in October. I think my commission was dated October 22, 1917.

Q. 6. And prior to your appointment of Alien Property Custodian, had you held any other public office?

A. Yes, I had.

Q. 7. Will you state what office you did hold?

A. I had been a member of Congress from 1909 to 1915 and was, at the time of my appointment as Alien Property Custodian, Chairman of the Pennsylvania District Board under the Selective Service Act.

Q. 8. How long did you remain in the office of Alien Property Custodian?

A. From October 22, 1917, to March 4th, or possibly March 5, 1919.

Q. 9. Were you then appointed to a public office?

A. On March 5th, I qualified as Attorney General of the United States.

Q. 10. And for how long a period did you continue as Attorney General of the United States?

A. Until March 4, 1921.

Q. 11. The office of Alien Property Custodian was created by an Act of Congress?

A. It was provided for in the Trading with the Enemy Act, so-called.

Q. 12. Prior to the enactment of that legislation, was there any such office as Alien Property Custodian?

A. There never had been such an office in the history of the world.

MR. ANDERSON: I do not know that that is material, but the distinguished witness is an able lawyer and I will ask him to confine his answer to responses to the question. It is a rather broad answer to say there never was such an office in the history of the world. The true evidence of that would be the Statutes, and so forth. I am not going to object to getting the preliminary examination in, but at this time I think it would be well to suggest that the questions be limited to direct answers to the question.

MR. KRESEL: You think I should put in the Statutes of the world.

MR. ANDERSON: No, sir, I am not interested in anything outside of this Statute.

MR. KRESEL: I have no objection to striking out the remark.

THE COURT: There is no motion to that effect.

A. The answer is no.

Q. 13. At all events, when you took office in October, 1917, did you organize this office?

A. Yes.

Q. 14. Will you, in a general way, please state how you organized it; what bureaus you established; how you sought to administer this office?

Mr. Kresel: That is simply preliminary, Colonel.

Mr. Anderson: I am not going to object at present, unless it goes too far.

A. We built an organization, so far as we could foresee, of a kind that would provide for all the various duties of the Alien Property Custodian under the Trading with the Enemy Act, conceiving that the Alien Property Custodian could not possibly perform all the duties that were laid upon him by the act, in person, but that he had to build an institution for that purpose.

The Act provided, for instance, that after investigation the President might determine that property was enemy-owned and by demand take it over, and that power was delegated to the Alien Property Custodian.

Mr. Anderson: If your Honor please, I am very reluctant to interrupt a witness; but I think that possibly it would be better if counsel should direct his questions to specific points. Statements such as the witness is making and explanations such as he is making necessarily involve statements of law, statements of powers, things of that kind, which are not proper subjects for testimony; and I think, if I may suggest, that it will save me the necessity of objecting, as I am not going to be particularly technical, and will also facilitate matters if it could be possible to ask for the specific facts which counsel desire.

Mr. Kresel: I shall do that as far as it is possible; but in these preliminary matters it is not possible to ask specific questions. I shall no doubt direct the witness's attention specifically to points as we go along. I think, Colonel, you will find that there is nothing that he will say that will be detrimental to your interests in this respect.

Q. 14. (continuing). Will you proceed, Mr. Palmer?

A. So we divided the organization into several bureaus, putting at the head of each a chief of the bureau, and the bureau in every case expanded as the business of the office grew. They were, first, a Bureau of Administration, which was really a chief clerk's office having to do with the personnel and operation of the Alien Property Custodian's office as a department of the Government; a Bureau of Investigation, charged with the duty of passing upon all reports on enemy property which were received, and is a preliminary way for the custodian's attention deciding as to whether it was enemy property, and also charged with the duty of investigating all questions of alleged enemy ownership of property in order to determine the facts. Of that bureau I made Mr. Francis P. Garvan, of New York, the chief.

Mr. Anderson: May I ask if there was any written order creating this bureau?

Mr. Kresel: I am going to inquire.

Mr. Anderson: If so, I think it should be produced.

Q. 15. Was there a written appointment?

A. I do not think so.

Mr. Anderson: I mean the written orders creating this organization, because the written orders would be the best evidence of what was the organization.

Mr. Kresel: Not necessarily, Colonel. It is not the sort of a thing I need prove by documentary evidence when I have the man who had the power and did the act.

Mr. Anderson: If he gave orders, the orders are the best evidence.

A. (continued). I doubt very much if there was any written order. You understand, when I started this work I had no precedent to go by. The City of Washington was crowded with war workers. I was shoved off into a little back room behind a tailor shop, with nothing to begin work with except a lead pencil and a colored messenger at the door, and I had to work fast and build rapidly, and we did a great many things by oral orders which in normal times we possibly would do in the usual, careful and routine method of Government departments.

Q. 16. You have spoken of the Administration Department and the Bureau of Investigation. What other departments did you build up?

A. Then we created a bureau for the purpose of managing all the properties which came into our possession pursuant to our demands, and we called that, after some discussion, the Bureau of Trusts, and of that I made Ralph Stone, who was then president of the Detroit Trust Company, of Detroit, Michigan, the chief.

We had also a Bureau of Audits, charged with the duty of directing all the auditing of the office and all the auditing of enemy concerns and enemy properties which we took over, of which I made Haskins & Sells, certified public accountants, the chief, who acted through Mr. Homer A. Dunn, a member of their firm. I think possibly at the very beginning that work was done by Ross Brothers, Lybrand and Montgomery. Mr. Dunn soon succeeded them.

We had also a Bureau of Law, which, as its name implies, was composed of attorneys whose duty it was to advise all the other bureaus with respect to their legal rights, powers and duties. Of that bureau, after a little while, Mr. Lee C. Bradley, of Birmingham, Alabama, became chief.

We had also a Bureau of Sales, created after the so-called Sales Amendment of March, 1918, of which Joseph S. Guffy, of Pittsburgh, formerly general manager of the Philadelphia Company, was the chief.

That was the skeleton of the organization. The way the business flowed through the office was about in that order. Under the Act all persons having enemy property in their possession or owing money to an enemy person were required to make written reports to the Alien Property Custodian.

My first act almost was to give public notice that these reports must be filed within a certain period. I think I named thirty days. I extended that time from time to time until as I recall it the last day for filing reports under the law was December 20th.

Q. 17. 1917?

A. 1917. After our forms had gone out and our notices had been given wide publicity, the reports came in in a perfect torrent until I had received before Christmas something like 35,000 separate reports. Those reports were all examined by the Bureau of Investigation, whose people worked for weeks, day and night, in three shifts, twenty-four hours a day, to get through them; and it was only after they had passed them and sorted out the duplicates and that sort of thing, that the demands for the property were issued.

Q. 18. May I stop you there a minute, Mr. Palmer. You spoke of reports and now you have spoken of demands. Did you adopt forms on which such reports were being made?

A. Yes.

Q. 19. And as to demands, did you adopt forms of demands?

A. Yes.

Q. 20. You had to adopt those yourself? I mean, you had no precedents, or anything of that sort?

A. We had to prepare and adopt them, both.

Q. 21. Did you want to say anything further when I interrupted you?

A. I was going on to describe, if I understood your question properly, how the business flowed through the office; that is all.

Q. 22. Yes, please go right on.

A. After these reports were gone over by the Bureau of Investigation, if it was determined by my subordinates that it was enemy property, demands for the property were prepared for my signature. I signed the demands and they were served; and when the property came in, it was taken charge of by that division in the so-called Bureau of Trusts which had to do with that particular kind of property.

There were a large number of divisions in that bureau. They continued to manage it and to operate it, to see that depositaries were appointed for the funds and income received and properly credited and deposited in the Treasury of the United States, under the advice of the Bureau of Law, which had a man assigned to each one of these divisions as its special counsel, and acting constantly in conjunction with the Bureau of Audits, who were directed to make any examinations of these properties that the divisions in the Trust Bureau saw fit to require.

Q. 23. In addition to the Bureau of Investigation in your own office, which was under the immediate direction of Mr. Garvan, did you avail yourself of other information from governmental agencies as to the enemy property?

A. Yes.

Q. 24. Prior to the amendment of the Trading with the Enemy Act that was passed in March, 1918, had you as Alien Property Custodian received information with reference to the extent of German property in the United States?

A. Yes.

Q. 25. I wish you would state as briefly as you can what information came to you in your official catroducing this testimony; it will be here two weeks from now as it is here today. We claim it is only common fairness to the concerns whose names have been bandied around here, named in this complaint as conspirators, that any evidence which it is claimed is a step in the conspiracy, unless on the face of it it shows that, ought to be withheld until there is some foundation laid by real evidence of a conspiracy.

THE COURT: I will hear you, Colonel Anderson.

MR. ANDERSON: If your Honor please, I think that counsel must be allowed very considerable latitude in the introduction of evidence, subject always to the questions of law, and it is a matter of opinion as to the order in which the evidence is introduced. Their judgment must be largely controlled, so that the Court may of course withhold the exercise of that discretion.

I am not going into an elaborate argument on this matter, but to the charges in the bill of this character in order to build up the evidence in an orderly way, it is often necessary to put in at certain stages evidence which will have to be connected up at a later stage of the proceeding. Otherwise you confuse the documents, the story is all entangled, and nobody who has not made a very exhaustive detailed study can possibly understand its significance.

Therefore those are questions largely of the discretion of counsel to be finally tied up in the case and dealt with by the Court in the final hearing which before a jury might be more strictly construed. In so far as the question of conspiracy is concerned, as I have stated, and it is perfectly obvious from this Bill, the conspiracy charged of a plan or scheme to get control of these patents for private purposes affects both aspects of this situation; either the question of the trust relationship or the question of confiscation; and therefore any evidence tending to show that there was a change of policy, connecting that change of policy, pacity with reference to the extent and character of German holdings in the United States?

Mr. Anderson: May it please the Court, I understand of course that all this evidence is taken subject to the general objection. I have not made it yet, I overlooked it for the time. Therefore, I wish now to put upon the record the fact that the plaintiff objects to all evidence of this witness heretofore taken, and, to the end that the objection may be made in form, moves to strike out the same as immaterial and irrelevant to the issues in this case, and for the further reasons stated in my opening statement to the Court, which I will not repeat in view of the method under which we are proceeding, and in the various discussions before the Court which have taken place as appear on this record.

For convenience I will ask that counsel agree and the Court consent that this objection may be taken as applying to every question and every answer and, if the same be admitted by the Court, that an exception be awarded the plaintiff thereon, saving the necessity for its constant renewal. Is that satisfactory, Mr. Kresel?

Mr. Kresel: Yes, sir.

Mr. Anderson: Then with that understanding I will avoid objections as far as possible during the examination of the witness unless some specific reason comes up.

As to the particular question, I feel constrained to object on the ground that it is too indefinite and calls for information of such voluminous character if answered in accordance with its terms, that it would be equivalent to a complete history of the work of the Alien Property Custodian, which I assume cannot be relevant to this issue.

I will have to ask that counsel make his questions specific as to the information which he desires, to the end that I may make such objections thereto as may be necessary. I cannot object to a question of this kind specifically, for the reason that some of the information as to which the witness is asked might be relevant to this case and some might not.

In the next place I wish to specifically object upon the ground already indicated in the argument, that any evidence in this case as to the activities of the Germans prior to our entrance into the war—which, as I have already pointed out, have been tried and settled in a higher forum, and as to which I can join in condemnation equal to that of counsel for the defendant—cannot be material to this case. That has been argued and I am not going to do more than state it.

I do not know whether I have made my objections very clear, but I hope they are clear enough for your Honor to understand the position of the plaintiff, to the end that we may avoid repetition. But as to this specific question I must object on account of its generality and indefiniteness, and must respectfully ask that counsel put his questions specifically to the end that there may be specific answers, that I may be able to object to the question and also prevent evidence going in which would be not responsive to a proper question.

Mr. Kresel: I shall endeavor, if your Honor please, in my examination of this witness, in so far as possible to put specific questions to elicit specific answers. These matters that I am now inquiring about are preliminary matters having to do with the organization and the operation of the office of Alien Property Custodian in the early days.

The Court: The purpose being to give a setting for the specific acts here in question?

Mr. Kresel: Exactly; and, as your Honor will notice from the question, I am tending toward the time when the March 28, 1918, amendment to the Trading with the Enemy Act was before Congress. We all realize the importance of that particular amendment.

I do not agree with Colonel Anderson that the operation of the Alien Property Custodian's office is immaterial in this case. On the contrary, I think it is of great materiality, and while it is not my purpose to burden this record with a complete history of the operation of that office, did I think it was necessary for the protection of the interests of this defendant to place before the Court a complete history of the operation of that office, I should have no hesitation to argue before your Honor that we would be entitled to do that.

My present question is directed to showing by this witness what information he had before him in his official capacity as to the extent and character of the German property in the United States. I shall follow that by inquiring as to what he had done in managing that property between the time that he took office and the time that the March amendment was presented to Congress; because it is my purpose to show that whereas one policy was being pursued by the Government under the Act as it was originally enacted, namely, that of having the Alien Property Custodian simply conserve the property, the amendment of March, 1918, made a complete change in the policy of the Government for the treatment of this property.

Mr. Anderson: May I reply very briefly, sir. The question that counsel has asked for calls for a complete statement of the information of the witness prior to March 28, 1918.

Mr. Kresel: A statement as to the kind and character of property?

Mr. Anderson: Yes. The witness has said that prior to the thirty-first day of December, I think, some 35,000 different properties or trusts were reported to him. If the question were answered in accordance with the terms of it, it would be necessary for him to tell about the entire 35,000. There is one trust involved here. I could not object to the question specifically or to have the answer of the witness go out as not responsive to the question for the reason that the witness could, with great ability, and I do not doubt with great interest to us all, as a matter of historical knowledge, speak from now until adjournment time this afternon, in response to that question, and never go outside of the limits of the question.

Of course, while I recognize that this witness, being a distinguished lawyer, will not even avail himself of such a large opening to make a speech of that kind or go outside of what he concedes to be relevant to the question, yet, in the defense of the interests which I represent here, I must ask for a more specific opportunity to limit this evidence and I therefore object to the question very earnestly.

In the next place, the policy of Congress in this matter is, I presume, to be taken from the Acts of Congress. What the witness may have known about the German property can have no bearing upon the situation, as I see it, or what his knowledge may have been on the subject, because, while he had been a leading member of that body, he had, of course, resigned when he became Alien Property Custodian.

For all those considerations, I think it is very essential, or I would not make this objection, that we be given the opportunity which was given the other side. If your Honor will recall, your Honor held me quite strictly—and I do not say that with the slightest suggestion of criticism—in the examination of witnesses for the plaintiff here to specific questions, many of them being objected to on account of being too general. I recognized that the technical objection was good in many cases and required the witnesses to confine themselves very strictly in their responses. Now, I must respectfully ask that the same rule—as I know your Honor will—be applied to this evidence, no matter who the witness is or what the conditions are.

Mr. Kresel: I am certainly not asking the Court to apply any different rule.

Mr. Anderson: I did not mean that you were. I simply say that that rule was followed.

Mr. Kresel: I do not think it was necessary to call attention to that. I press my question. I think I am entitled to have it answered in the form I have put it.

The Court: May I be told what the question is?

(Q. 25 repeated as recorded above.)

Mr. Kresel: I have limited it, as your Honor will see, simply to the character and the extent of the holdings.

The Court: Now, then, as to its materiality. With respect to a few questions asked by the Governor, I have expressed my views. At times, I did not. At no time did I rule upon the materiality or relevancy or pertinency of the testimony. All questions and all facts that the Government desired to put in, it was invited to put in, prior to its formal close.

I have no desire or purpose or intent to apply a different rule in any particular to the testimony offered by the defendant than to that offered by the Government.

So far as the specific question is concerned, if my view of it is correct, namely, that its purpose is merely to furnish a background or setting from which the acts here specifically in question may be more intelligently understood, I take it that the question is not objectionable. But if the purpose of the question is to call forth from this witness a prolonged, detailed statement of facts which will do more than furnish a setting for the transaction herein complained of, I take it that it is objectionable and I think it proper, therefore, that counsel for the defendant should at this time so modify or amend the question now put to this witness as to indicate the scope, as well as the character of the information now called for.

Q. 26. Mr. Palmer, I wish you would state what information you had as Alien Property Custodian as a result of the operations of your office between October, 1917, and March, 1918, with reference to the amount of property German-owned in the United States?

Mr. Anderson: Same objection, sir; and in addition, I think he is asking this witness for information derived from the operations of his office, which is an extremely general source of information and might call for the most indefinite hearsay, newspaper clippings and everything else, because he stated he kept them; and I ought to be able to test, at least, whether it is his own knowledge or coming from newspapers and things of that kind.

The Court: I want to add to what I said with respect to the previous question that I take it, Colonel Anderson, you do not deny that where the terms of a Statute of Congress, as well as a contract, are open to different interpretations or constructions, that interpretation or construction may be aided by the surrounding circumstances and facts, namely, the situation which it was intended to remedy or relieve.

Mr. Anderson: I do not deny, if your Honor please, the general principle of law which your Honor has stated. Of course, it is well recognized. But I do state that in this case, as to this particular statute, it has no application because the language of the statute is perfectly clear. I want to say, however, that your Honor may not misunderstand me, that while I object to it as immaterial and irrelevant, I recognize under your Honor's ruling in this case that that would probably be overruled, provided the question was properly limited and specifically expressed.

The Court: I thought I probably had not made clear the reason for stating that I was willing to hear the facts which constituted the background or setting, which probably did not indicate my true meaning. The question is what?

(Q. 26 repeated as above recorded.)

Mr. Anderson: I would like to add one further objection, if your Honor would allow me: that all this information is already in the record in the form of an official report from this witness.

The Court: Is that report in as a disclosure and statement of facts; or is it in merely as a report?

Mr. Anderson: I understood counsel to introduce it as an official report of the Government. What its value is as evidence, I am frank to say I do not know.

Mr. Kresel: May I answer that question, your Honor?

The Court: Yes.

Mr. Kresel: If the report which Colonel Anderson refers to is the chemical section of the report of Mr. Palmer to the President in February, 1919, then I direct attention to the fact that that portion of the report was introduced by the Government as its evidence, and I quite agree with Colonel Anderson that that report is in evidence, speaks for itself, and is proof of the facts therein contained, and that the Government is bound thereby beyond any question. But that is no reason why I cannot have this witness answer the particular question that is now pending.

Mr. Anderson: The counsel introduced the entire report, if your Honor will remember, and also the chemical section was included as an exhibit in the answer in this case by the stipulation that was introduced by both sides.

The Court: Are you willing, then, to concede now, in order that there may be no question about it in the future, that the report introduced as Defendant's Exhibit No. 30, being report of Mr. Palmer, as Alien Property Custodian, to the President, and by him submitted to Congress, shall be taken as evidence of all facts therein stated? Is that agreed upon by counsel?

Mr. Kresel: I did not know whether the question was directed to me or to Colonel Anderson.

The Court: The question is directed to each of you.

Mr. Kresel: Of course, in so far as we put in that report we put it in as proof of the facts therein contained, and certainly the Government must take that position with reference to the section of the report that it introduced.

The Court: What I am trying to get is whether it is conceded on both sides that not the chemical section only of the report, but the entire report may be looked at by the Court in considering this case as evidence of the truth of the facts therein stated, or must it be viewed merely as a statement of the situation contained in the report and submitted to Congress, and as not evidence of the truth of those statements?

Mr. Kresel: May I say to your Honor, I have already answered the question directly as far as the defendant is concerned. May I state further, with all due deference to your Honor, that the question is not open for decision by counsel. The authorities are to the effect not only that official reports are proof of the facts therein contained, subject, of course, to be disproved by the opposing side, but where, as in this case, the Government itself places in evidence the whole or a portion of an official report, the Government is bound thereby, not only to the extent that it shows that a report was made containing certain statements of fact, but is bound by it as proof of the facts as though they had called a witness who had under oath testified to those facts. There is no question about—I say there is no question; my reading of the authorities has convinced me that that is a question that is beyond any doubt.

The Court: I thought possibly counsel might be able to agree upon this, so that that question could be behind us for all time.

Mr. Kresel: So far as we are concerned, we answer your Honor's question in the affirmative immediately, namely, that we feel that the proof of the report is proof of the facts and the truth thereof. We have not yet heard from counsel for the Government.

The Court: Do you question that statement?

Mr. Anderson: That it is proof of the facts and the truth thereof?

The Court: Yes.

Mr. Anderson: I am perfectly willing to have those reports considered to be proof of the facts to the same extent as if testified to by a witness. I am not objecting to that, but the legal effect of it I do not concede as counsel has stated.

The Court: Then, if we cannot agree to that, may we have the question?

(Q. 26 was repeated as follows):

"Q. 26. Mr. Palmer, I wish you would state what information you had as Alien Property Custodian as a result of the operations of your office between October, 1917, and March, 1918, with reference to the amount of German-owned property in the United States?"

Mr. Anderson: I have one point, your Honor, which I do not think I made clear. Assuming that what your Honor has said would apply in this case, that the prior facts and circumstances would be considered as a construction of this act, which I, of course, do not concede, what Mr. Palmer may have known is a matter of not the slightest consequence so far as that is concerned (I do not mean that is any suggestion that Mr. Palmer's knowledge was not important in connection with this whole matter); but as to what Congress did, the only thing that Congress could be affected by would be matters that were actually within its knowledge officially, and it is rather difficult to prove what those facts are, I should imagine; but we may say, with the interests with which we are particularly concerned, in securing control of these properties, is a persuasive fact as tending to show that organization and that influence in the procurement of this sale.

Now, in order to show that change of policy, you have got to develop the entire policy of the Alien Property Custodian office, in order to show the steps in the change. In the other aspect of the matter while I would of course contend that a statement made in connection with an Act, by any Chairman of Committee, in reporting an Act, or any other matters introduced to Congress for the purpose of getting an Act passed, would authorize a Court to set aside a legislative Act, or would be controlling in its construction, it is sometimes of some little use or value, where there is a doubt as to the meaning and intent and proposed scope of the Act.

Now, these Statutes taken together, we have argued at great length, and I am not going to discuss them; but it is my view—or I would not offer this evidence that this matter, whether a controlling influence or not, taken in connection with other matters which are going to be put in as rapidly as we can, would have that effect. Now, in stating that, I take it that if you put the matter on the record, the only effect of excluding it would be to prevent its being read, and that this Court would not consider it; and therefore I suggest, with all possible deference, that that being the case, that an extended argument on this question to show it is going to be connected up, would be irrelevant, burdensome and a waste of time.

The Court: Assume, Colonel Anderson, if you will, for a moment, that the only relevancy or pertinency that this bit of evidence would have, is one of the acts, an overt act, if you please, of the conspirators, then it is your intention that such overt acts the question calls for the knowledge of this witness, and as he was not a member of Congress, I cannot see that it would have any relation to it.

The Court: As now advised, I do not see the pertinency of this question. I do not see that it is subject to any other objection than that of irrelevancy. So the answer to it may be taken under the general rule, if counsel so desire.

Q. 26. (Continued.) Will you answer, please? A. The reports which I have mentioned and which were filed during that period, all of which were voluntary reports, made under the law, disclosed enemy-owned property in this country aggregating more than five hundred million dollars in value, according to the appraisals which we had made, property located in practically every—well, you asked only as to the amount.

In addition to that, there was a large body of enemy-owned property whose ownership was at that time undisclosed, but as to whose enemy ownership we had knowledge from various official sources.

We had at our command all of the Secret Service and Intelligence Agencies of the Government in every department, who were under instructions to send to us all information which came to them relative to enemy-owned property in the United States, including the War Trade Intelligence, the War Department Intelligence, the Naval Intelligence, the Bureau of Investigation of the Department of Justice, the Treasury Secret Service; and we had, in addition to that, reports in writing constantly from the Secret Service and Intelligence Bureaus of all the allied countries, who were constantly sending to us through their diplomatic representatives and otherwise, all the information they had relative to the ownership of German property in this country.

In addition to that, we had at our command all of the wireless messages which had been transmitted across the sea between Germany and the United States for a very considerable time immediately preceding the war, running into tens of thousands of messages, concerning which I employed a large force of persons to decode and translate and pick out of the messages those which referred to transfers of German property made in this country by their owners in Germany for the purpose of avoiding the consequences of a state of belligerency between the two countries. Based upon that information at that time, not disclosed by reports from the persons having the property in charge, but from these various agencies, there were in addition to the five hundred millions of property possibly a couple of hundred millions more, most of which we afterwards got.

Q. 27. We will come to that. We have now spoken of the extent of the German holdings here in amount. Will you please very briefly indicate the industries in which you found such German holdings?

Mr. Anderson: Same objection.

A. The German investment in this country was in a wide variety of industries and in a wide variety of commercial and financial operations, extending into practically every State in the Union, in Porto Rico, the Virgin Islands, Panama, Hawaii, Alaska and the Philippines.

They had large interests in textile manufacturing, chiefly in New Jersey. They had large interests in metal concerns in New England and Philadelphia. They were raising rice and tobacco and sugar in the South and in Hawaii and in the Philippines. They had large interests in some railroads in this country. They were in the cement business, in the banking business, in the manufacture of ship valves, of machinery of various kinds, especially the so-called inside transportation machinery; they were in chemicals, dyestuffs and pharmaceuticals.

They made—oh, pretty nearly everything. I used to say "from candy to lead pencils." I think the first concern we took was a lead pencil factory.

Q. 28. You took over as Alien Property Custodian such concerns as you determined to be German-owned. Did you operate them if they were going businesses? I am speaking now only of the period prior to March, 1918, you understand.

A. Yes. If the German interest in the American business was stock in an American corporation owning the business, I demanded and took over the stock. If that stock was a controlling interest in the company, I ousted the Board of Directors and elected directors representing the new stockholder, namely, the A. P. C. If it was a minority interest only in the company, I demanded and always received representation on the Board of Directors proportionate to the ownership of the A. P. C. in the stock. In that way, through my stockholders whom I was appointing,' I operated all these American businesses enemy-owned.

Q. 29. And, speaking generally, prior to March, 1918, were the operations of such concerns profitable?

A. They were highly profitable.

Q. 30. Was there any special reason therefor?

Mr. Anderson: If your Honor please, I object.

Mr. Kresel: I withdraw that.

Q. 31. Did you, prior to March, 1918, as Alien Property Custodian sell any enemy-owned property?

A. It seems to me I sold a little, some commodities; that might be to prevent waste. I am not certain when that was, but we made some early sales of commodities.

Q. 32. In other words, under the act as originally enacted, you, as Alien Property Custodian, made sales of enemy-owned property in your possession only when necessary to prevent waste?

Mr. Anderson: If your Honor please, I object.

The Court: I think the objection is well taken, to the form of the question.

Mr. Kresel: There was no answer to it, your Honor, so I will reframe the question.

Q. 33. Did you make any sales of enemy-owned property prior to the amendment of March, 1918, except in cases where it was necessary to prevent waste?

Mr. Anderson: I object also to that.

The Court: I think the question is still open to the same objection.

Q. 34. Prior to the amendment of the act in March, 1918, did you sell any enemy-owned property in your possession that was not perishable?

A. No.

Mr. Anderson: I object to that, on the ground that the question whether it was perishable is a conclusion. The law is perfectly clear in this case, and one man may think a thing is perishable and another may not.

The Court: Who, in your judgment, Colonel Anderson, was to determine that? Was that a justiciable question that had to be determined by the courts before it could be acted on by the Alien Property Custodian?

Mr. Anderson: I think that this witness can state, and subject to my general objections I do not object to his stating, what property he sold, which is a matter of record, and therefore, the best evidence is the record evidence. I think he can state or it can be shown here what property was sold and the character of that property and then the question of the construction of the law, which, of course, the witness is getting at, can be taken up by the Court. But if we are going into the sales of property, he can only show the fact that he sold certain property and the character of that property; and the best evidence of that is the record of the sales, and I object to any other evidence. If we are going into that question, let us get it right.

MR. KRESEL: I think, your Honor, the question was answered before Colonel Anderson made his objection. I may be mistaken. Of course, if it was, it may be stricken out for the purpose of your Honor considering it.

THE COURT: The question now is what?

(Q. 34 repeated as above recorded.)

THE COURT: I think the objection to that is well taken. You may take the answer under the general rule, if you want to.

MR. KRESEL: Will you answer the question, please?

A. No, I did not.

Q. 35. There was an amendment to the Trading with the Enemy Act pending before Congress in March, 1918. Did you in your official capacity have anything to do with proposing that amendment?

A. I prepared it, and under the direction of the President, submitted it to the Congress.

MR. ANDERSON: If your Honor please, what the witness did in his official capacity I will have to object to, and I move to strike out the reference to the direction of the President upon the ground that it is not responsive to the question. He was asked whether he had anything to do with the passage of that amendment in his official capacity. The only people who could pass that amendment was Congress; and if he had anything to do with it, assuming that the evidence is admissible at all, which, of course, we do not admit, then he can state what he did. But he cannot go back into directions of other peole and what they communicated to him.

Mr. Kresel: Colonel Anderson forgets the form of the question. I did not ask this witness what he had to do with the passing of the amendment. I asked him whether he had anything to do with proposing the amendment.

Mr. Anderson: He can state what he did, but the question of who directed him or how he was directed is not within the question.

Mr. Kresel: I consent to strike out the words "Under the direction of the President." I will bring that out by specific question .

The Court: Is the question as now amended objected to, Colonel Anderson?

Mr. Anderson: Only the general objection, sir.

The Court: You may proceed, Mr. Kresel.

Q. 36. Prior to your proposing this amendment, did you have a conference about it with the President of the United States?

A. I did.

Mr. Anderson: That is objected to.

The Court: Your general objection?

Mr. Anderson: Yes, the general objection and I think the question is subject to further objection that if there were any written communications on this subject, they must be produced. But I do not know that the question quite called for that.

Mr. Kresel: The question has been answered, your Honor.

Q. 37. Please state your best recollection of the conference that you had with the President of the United States with reference to this proposed amendment to the Trading with the Enemy Act, giving the date as near as you can of the conference. Do not answer until Colonel Anderson has an opportunity to object.

> MR. ANDERSON: If your Honor please, in addition to my objection as to its immateriality and irrelevancy and the further objection as to matters relating to the Act of Congress, which we claim is perfectly clear, I want to add the further objection that the Constitution of the United States provides the manner by which the President may communicate to Congress his wishes.
>
> Unless such communication was made to Congress, it is of no materiality in this case, even assuming that it would be in that event, because what this witness may have known and what the President may have said to him or he may have said to the President, I take it, is a matter of no importance—assuming that that question can be gone into at all in this connection.
>
> In the third place, if there was any communication of the wishes of the President to Congress, it must be addressed to Congress in a constitutional manner to have any effect upon Congress or to have the force of a communication by the President. If, therefore, it is intended to connect up the President with the passage of this Act, I respectfully suggest that the only means by which that can be done would be by producing the message or communication from the President to Congress.
>
> I think that is of very great importance as a precedent. If we are going to inquire into the relations between Congress and the President, other than those official relations expressed in the message, I think we are going into a very broad field and a very dangerous field.
>
> Your Honor may suggest and perhaps coun-

sel may suggest that the Government has in this case entered upon the inquiry as to the communications to the President, but they have only been as to the statement of facts upon which the President predicated the exercise of his discretion, and not beyond that.

As to the communications between the President and Congress, I think that they can only be inquired into, if at all, to the extent of official communications; and whatever the President may have said to this gentleman or whatever he may have said to the President is certainly immaterial here and I conceive that it has no possible bearing upon the case and I do not think it would be a proper subject of inquiry.

Mr. Kresel: Colonel Anderson entirely misconceives the purpose for which I am seeking to elicit this testimony. I am not seeking to elicit the fact that the President sent any message to Congress by Mr. Palmer. It is not the law that such messages must be in a certain way, even if I were trying to prove that. But that is immaterial.

What I am trying to show is that this officer who, according to the Trading with the Enemy Act, must at all times be acting under the direction and control of the President, reported the results of his investigations and what the administration of his office up to that time had taught him to the President, who was responsible for the administration of this Act, and discussed with him the necessity of having the Act amended.

What Congress did I shall show in a minute, but I am not seeking this information upon the theory that the President was, by means of Mr. Palmer, sending any message to Congress. I claim I have a right to show what information was conveyed to the President and what instructions were given by the President to Mr. Palmer.

The Court: The charge of the bill of complaint in this case and the position of the plaintiff in this case is that the President of the United States was misinformed, mislead, and in effect deceived with respect to the facts. It seems to me that under such allegations and charges the inquiry of the defendant, with respect to facts within the President's knowledge, should not be restricted to the particular facts but that it should be open to the defendant to show, if it so desires, the full nature and scope of the information with respect to the alien property that was within the knowledge of the President of the United States at any time prior to the execution by him of the orders of December 3d and subsequent orders.

I think the objection to this question is not well taken and you may take the answer.

Mr. Anderson: Your Honor will allow an exception, of course.

The Court: An exception to all adverse rulings throughout the case will be understood to be reserved by either party.

Mr. Kresel: Mr. Palmer, will you proceed.

A. The date of the conference I cannot give exactly, but it was early in the month of March, 1918, immediately after the President had directly submitted to a committee of the Senate a proposed amendment to the Trading with the Enemy Act.

Mr. Anderson: If your Honor please, that is certainly not responsive to the question.

Mr. Kresel: He is just fixing the time.

The Court: I understand that he is fixing the time and not attempting to prove the facts. It is simply an attempt on the part of the witness to fix the precise time, and has no other purpose, so that it may be checked up by subsequent evidence in this case.

Mr. Kresel: That is the entire purpose.

Mr. Anderson: Then I take it that counsel concedes that the submitting of any amendments by the President is not evidence of the facts stated therein, but merely for the purpose of connecting up this interview.

Mr. Kresel: What is that?

Mr. Anderson: The statement by the witness that the President submitted to the Senate some paper or some recommendation, which, of course, was in writing, is not to be taken as evidence of that fact, because if he is going to testify what he submitted to the Senate in the way of an amendment, I want to see it.

Mr. Kresel: Colonel Anderson, I will say now that this mention by Mr. Palmer of the fact that the President had submitted to Congress something is not to be binding on you. It was mentioned simply to fix the time of this conference. Is that satisfactory?

The Court: You may complete your answer, Mr. Palmer.

A. (continuing) And I told the President that I had observed that he had sent down a proposed amendment to the Trading with the Enemy Act giving him the power——

Mr. Anderson: That is in writing, is it not?

Mr. Kresel: This is the conversation he is telling now. Hasn't he a right to tell the conversation?

The Court: I understand the nature of your objection, Colonel Anderson. I will let you state it at length after Mr. Palmer has finished. I think it is not well taken. I think Mr. Palmer is relating conversation with the President and not may be shown prior to your having shown, *prima facie*, at least a conspiracy.

Mr. Anderson: No, sir. I would not make that contention. I would say this, that in the putting in of evidence, that might be tentatively received, with the understanding, as a matter of convenience in the presentation, that unless the charge was sustained later, the evidence would be stricken out. That is frequently done, because it is very often necessary almost in the presentation of the case, but it would be tentative; it would be conditional reception of the evidence. Now, on the other hand, I would say that this is not presented as an overt act of so-called conspirators. I will endeavor to avoid the use of that expression, because I do not think it is necessary to use it too much, not as an overt act in that connection, but let me assume this state of facts to the Court: Let us suppose that the Alien Property Custodian had a fixed policy upon the original enactment of this statute, a policy defined by the Alien Property Custodian himself, let us suppose that by the amendment of March 28, 1918, that policy was enlarged and somewhat modified; let us further suppose what the documentary record and the exhibits show here clearly, that this legislation was procured by the Alien Property Custodian for perfectly proper purposes, but for an obviously limited purpose at that time the whole record taken together would show that limited purpose.

Now then, assuming that the Act of Congress was broad enough to cover a larger purpose, but for the purpose of the case let us further assume that it will appear that for some time after this Act was passed, its operation and execution was limited, its administration was confined to this comparatively limited purpose which was in view in securing its passing. Then let us assume that a situation developed, that we find those who not unnaturally, were deeply interested in attempting to give primary evidence of written documents.

A. (continuing) ——to take over the Hamburg-American Line and North German Lloyd Line docks and terminals at New York and that it seemed to me that it was the proper time, in connection with that amendment, to have the Congress carry in the same appropriation bill, as that amendment was being proposed to the appropriation bill as a rider, another amendment which would give to the Alien Property Custodian the full and unrestricted power of sale of enemy property.

He called my attention to the fact that I had issued, immediately after becoming Alien Property Custodian, a public statement which I had submitted to him and which he had criticized and corrected; the statement finally going out in the form entirely approved by him, which statement had been to the effect——

MR. ANDERSON: As to that statement, I would like to have it produced.

MR. KRESEL: May this witness finish his answer, then Colonel Anderson make any suggestion?

MR. ANDERSON: But I must interrupt for the purpose of making an objection.

THE COURT: You are now identifying the statement to which he called your attention in this conversation?

THE WITNESS: I am detailing my conversation with the President, in which we recalled to each other what that statement was at the beginning.

THE COURT: Then you may proceed.

A. (continued) ——that the Alien Property Custodian was a mere conservator of these enemy properties, that the properties were being taken over by the Government, and would be managed and operated by the Alien Property Custodian solely or chiefly because of the fact that their owners were under a disability growing out of the war conditions to provide for their own property, and giving assurance to the country that the property of Germans resident in the United States would not be touched, and that sales or transfers were not contemplated.

I told him that we were both agreed at the time that that statement was issued that that was not only what the act meant, but that is what our policy ought to be and would be, and that it had been my policy up to that time. And he then wanted to know what has caused me to desire a change in that policy or suggest a change in that policy. I told him that we had found out a great many things about German property since I had been in office, that no one had ever known or suspected before. I told him that, speaking in a broad and general way, the German property in the country naturally fell into two classes, in the one class was the private investment of the individual German subject in this country, who was led to invest his savings, generally in small amounts, in mortgages or other property in the United States, because he was satisfied that the opportunity for profitable returns upon his investment here was great, without any other thought than simply making a safe investment; that those investments constituted the majority in number of German holdings here but only a very small minority or a very small portion of the total amount; that the second and larger class, and far more important class of German investment in this country, my investigations had shown me to consist of investments made in more or less large amounts in commercial and industrial concerns in the United States, very frequently key industries of great importance, by interests in Germany of the same kind that we generally understood at that time to be behind the war, the so-called junker class, and in many cases, my information was financed and actively supported and aided by the great German financial institutions; that many of these concerns were closely affiliated with all the powers that be in Germany, members of the royal family itself having made investments over here of a peculiar and interesting nature which I described to him, and that we had become convinced, I told him, that all this investment was in a sense hostile to American interests as a part of the deliberate plan of Germany to conquer the world by trade—it was an invasion of American commercial and industrial fields purely for the German benefit.

I told him that in addition to that I had found many of these industrial concerns, in fact most of them, were manned by Germans, frequently not naturalized citizens, sometimes naturalized; that we had run into cases where managers of these plants had been naturalized under written instructions from the Germany owners, in order to be more effective in their work; that many of them were even then what I called spy centers, filled with German propagandists and all of them would be sedition centers if they were allowed to continue in their present way.

I cited some instances. For instance, the German-American Lumber Company I recall as one example, a concern worth several million dollars, located in Florida on Pensacola Bay, in which a member of the royal house of Germany was a chief stockholder. He had never seen the property, he had never taken anything out of it, he had continued to increase his investment until his concern owned every advantageous place on the finest harbor in the Gulf of Mexico, the nearest harbor on American soil to the Panama Canal. When we took that plant, instead of finding its files filled with interesting and important data with reference to the lumber business, as we expected, we found it was a mere storage place for Pan-German literature, a distribution center for propaganda in this country.

I called his attention to the fact that we had discovered other properties which were being similarly used, going into some detail. He asked me why I thought that even that was sufficient justification for changing our program and selling these properties instead of simply continuing to conserve them. I told him that my observation had been that practically all of these great properties that I was managing were profitable, most of them were profitable due entirely to war conditions, they were engaged in the manufacture of articles necessary for the war or whose price had been largely enhanced by the war conditions, and that it seemed to me, as I hoped it would seem to him and to the Congress, an absolutely unmoral proposition that the Government of the United States should at its own expense be carefully operating these great properties and making tremendous money, which would presumably be returned to their stockholders eventually, out of the very war for which the stockholders and their other friends in Germany were responsible.

It offended my sense of decency and justice, and I said I thought we would be doing all we would have to do if at the end of the war we made an accounting for the value of the properties as the Germans left them and as we took them over, rather than for the enhanced and tremendously increased values growing out of our management of the war and out of the war itself.

For instance, over in New Jersey the great textile mills were engaged in making millions and millions of dollars worth of army cloth, and practically all of them were making their money out of the war. Not only that, I told him, was I convinced was a good reason why we should convert these properties into money, but it seemed to me that the time had come when we had sensed the German program in its desire to conquer the world, that what it was most anxious to do was to capture all the markets of the world and strengthen its foothold everywhere, and especially was that true of America, where it hoped to increase its commercial and industrial hold, that we could, it seemed to me, strike no more effective blow as a war measure than to do that which would give notice to Germany and to the powerful financial and industrial industries behind the Kaiser in the war, that no matter how many armies they might defeat, or how many French cities they might destroy, or how many countries in Europe they might overrun, one thing was gone, and their war had been lost on the American battle front, that they had separated from themselves forever all of these tremendously valuable properties in the United States which were, in their mind, the gateway, the entrance to a great expansion of German control of industry and commerce in the United States.

I told him from what I had been able to learn that was a matter of vital concern to Germany, what we were going to do with respect to these properties was being very seriously considered over there, and that the time had come right then in my judgment to strike a highly effective blow in the war. I called his attention to the fact that it was a time when every nation in the world was getting together every weapon it could lay its hands on to swat the Germans with, if I may use that term. It was the darkest hour of the war.

I referred to the fact of the conditions on the war front, with which, of course, he was entirely familiar, and we discussed them. It was about the time that General Haig had said that Great Britain was fighting with its back to the wall. I told him of the recent statement that Mr. Baker had made to me and to others.

Q. 38. Secretary Baker?

A. The Secretary of War—who, on returning from the front, told a party of twenty men at the house of

Mr. Hugh Wallace, who were gathered there for the purpose of listening to him, the very day he got back, that it was the general opinion of leaders of the allied forces in Europe, and it was his opinion that Paris was about to fall, and that the Channel ports would be turned. Although that was serious, he said he thought it was not fatal; but to the rest of us men of the Administration gathered there it sounded fatal. At any rate, it brought gloom to every countenance and distressed every heart.

That was the time when it was generally believed that things were at their very lowest. I asked the President to let me go down to the Congress and ask the Congress to hit the Germans where it would hurt, to strike a blow from which they knew they could never recover, and let them know right now, as an act of war, that we proposed to Americanize this property which they had.

He said he had come to the conclusion that that was the correct view to take of the situation; that his idea in asking for this amendment with reference to the Hamburg-American Line docks and the North German Lloyd Line terminals was that it would put into the Treasury a certain amount of money representing their value, put the title to the properties in the United States, so that when the United States finally got to the Peace Conference, it could be said that the matter of the sale was a closed incident, the money was in the Treasury, and they would negotiate with reference to the disposition of that, but they would not even consider the question of ever returning the docks and the terminals. He wanted to be in that position.

And with the understanding between us that the policy was to be changed in respect to these industrial and commercial and important properties in the United States, and that the private investment of the individual German subject was to be left intact, so that if we wanted to, it might be returned in kind, I submitted to him the amendment which I proposed to the act. He acquiesced in it. He asked me to go down and submit it to the Congress and urge its passage.

Q. 39. Did you submit the amendment?

A. I did.

MR. ANDERSON: One minute, please. If your Honor please, I want to move to strike out this very interesting statement of the witness for the reasons already stated; for the further reason that much of it relates to matters in no way referring to this act, such as the Hamburg-American terminals, conversations with other persons and the President of the United States, statements of other persons which are purely hearsay and not evidence; but I will make objection to the end that I may reserve the point for future consideration, and that is, that in view of the fact that the President of the United States, and, as I take it, an ex-President of the United States, cannot be summoned into this court to testify, either under law or propriety, that a conversation with him is not evidence.

THE COURT: Colonel Anderson, I have been puzzled by this throughout. Will you help me? Then, is it possible to charge a President of the United States with ignorance, and by that charge convict him of it without an opportunity for denial?

MR. ANDERSON: No, sir.

THE COURT: Then, how would it be denied?

MR. ANDERSON: It would be denied in this way: that you could not in any proceeding, in my judgment, since you cannot call the President of the United States into a court, and, in my judgment, you could not call an ex-President to testify as to any matter that occurred while he was President——

The Court: I think there is no doubt about that, Colonel Anderson.

Mr. Anderson: If you could do it, you would not do it.

The Court: That does not call for an opinion. I think it cannot be done.

Mr. Anderson: And, therefore, the only thing that could be produced in the event that the condition became such that it was necessary to show that the President was not informed, or was misled, would be written evidence of that fact, and the conclusions would have to be drawn from that written evidence or documents, and, of course, all the surrounding conditions.

I would suggest, and, therefore, present for the consideration of the Court, that conversations with the President of the United States are not, in any event, admissible. And I will say in that connection that but for the fact that we took the position that Mr. Polk was acting in a purely personal capacity and entirely outside of any authority of the President of the United States, as a matter of law, I should not have called Mr. Polk into court. I hope I have made myself clear.

The Court: Entirely clear.

Mr. Anderson: And I may be unsound on it. I recognize that since the Burr case, so far as I know, the question has never arisen, and it is such a delicate question that I discuss it with great hesitancy; but I feel it my duty to raise the question.

Mr. Kresel: The question has arisen as to the power of the Court to summon the President into court. That is settled law.

Mr. Anderson: No, I do not mean that. I mean the question of matters concerning the President.

Mr. Kresel: And that question likewise has been discussed by the cases.

Mr. Anderson: I do not recall it for the moment.

Mr. Kresel: The cases have uniformly held, as Mr. Guthrie in his argument pointed out to the Court, that the courts would decline to entertain jurisdiction of matters which the Executive had determined upon, which were, in his discretion, in the exercise of his authority.

Mr. Anderson: That raises our entire argument, if your Honor please.

The Court: My difficulty with that, Colonel Anderson, is that it seems to me that a person who is subjected to a charge before a court, in any event should not be charged without the opportunity of a defence. It seems to me that the inevitable conclusion to be drawn from your contention and logic is that the only thing necessary to do to convict a President of the United States of acting without justification, without warrant, in ignorance, and by guess, is an allegation in a bill to that effect.

There is still doubt in my mind as to the power of the Judicial Department of the United States to review any act that is within the presidential discretion, assuming power to exist. I believe, notwithstanding my opinion, that a President or ex-President of the United States may not be summoned into a court to defend his acts, that when charged with an improper act, whether by the United States or not, there is no avenue or no character of evidence that has evidential value that may not be used under such circumstances to show that he did not so act. The motion to strike is denied.

(At this point a short recess was taken by direction of the Court.)

Mr. Anderson: Will your Honor permit me. Your Honor made one statement which, I think, was inadvertent in the language used, but which might place myself and the plaintiff in a position which I have tried to avoid in this case, and that is, you said the President was charged with certain acts. I do not think the bill in this case, or any language which I have used in court, is capable of an interpretation that any charge has been made against the President of the United States in any way. It certainly has not been so intended. But the President, of course, is human, and in the manifold duties of his office, or any other officer, including this Court, might be misled as to the facts; and if such were the case, it might affect the legal effect of his action, just as this Court might be misled as to facts and would be subject to review or re-hearing before the Court. It is only in that sense that the President's name is used at all, and great care has been used not to even suggest that the President even knew of the matters which we claim affect this case.

The Court: I thank you very much for correcting any misstatement or any inference that might be a wrongful interpretation of the plaintiff's position in this case. But I was under the impression, Colonel Anderson, that the bill did charge——

Mr. Kresel: May I read it, your Honor?

The Court: I should be glad to have you.

Mr. Kresel: I read from the thirty-fifth paragraph of the bill:

these patents and the effect thereof, came in contact with and were in constant communication with the Alien Property Custodian's Office and worked out a scheme or plan or conspiracy, if you choose to call it that, for obtaining these patents for private industries, and that, as the result or contemporaneous with such a transaction, there was an entire change of policy and a broadening of the policy by the Alien Property Custodian's Office, flowing immediately from such circumstances.

Now then, it would be perfectly legitimate, under the very broad rule of evidence, with regard to matters of that kind to show all of those facts, the development of all those facts. They would not be conclusive in establishing a so-called conspiracy. Their weight might be comparatively small or great, but as your Honor knows, the Supreme Court has said that you can not prove transactions of that kind where all the parties are adverse, except by putting in all the facts and circumstances which point to a certain result, and from which a conclusion, if properly sustained can be drawn by the Court. This is only one circumstance. It may be one of comparatively little importance; and the fact that it is pleaded as showing that that was the sole consideration which induced Congress to amend this measure, that is pure conclusion. It does not prevent its being useful in other connections, and you do not have to plead, a fact or a piece of documentary evidence, in every connection that you are going to use it. That was a proper stage to put it into the Bill. That is all. Now, all those circumstances—we are just on the threshold of this case —we expect to develop, but this is one step in that connection.

Mr. Kresel: I think your Honor has put your finger upon the proposition, by a single question which was brought out and which I in my imperfect

"That the facts hereinbefore set forth and other facts necessary and essential in relation to said seizure and proposed and pretended sale of said patents, copyrights and other rights, and rights arising out of or incident thereto, sought to be confirmed and validated or authorized by said Executive order, were not disclosed to the President at the time of or before the signing of said Executive order and that the same was signed and issued upon an entire misunderstanding or mistake of facts which, if the same had been truly stated and known to the President, would have prevented his signing or issuing the said order; that said Executive order was not authorized by law, and that the same was and is for the reasons aforesaid and for other reasons, without force and effect to authorize, confirm, or validate the pretended sale or disposition of said patents, copyrights and other rights and rights arising out of or relating thereto, sought to be confirmed, validated and authorized by said Executive order."

THE COURT: Thank you very much, Mr. Kresel. It does charge a misunderstanding. I understand you fully, Colonel Anderson. I think the record fully and amply discloses that you charge no improper motives on the part of Mr. Palmer or any other Government officials, but that the bill does charge a misunderstanding.

I will, however, state an impression that I am gathering, and I will get you to answer it at a later time and not now, because I want to proceed with this testimony. I have not read Mr. Palmer's report at all. I have not had it in my hands. I know its contents only by what has been read to me and stated to me at the bar. But I am wondering, if it makes a full disclosure of the state and condition of the alien property, particularly of the facts with relation to the chemical industry—and I have understood from such reading that it does—how there is actual fraud involved—I must use the legal term, because I have got to use it sooner or later and I might as well use it now—and if there is actual fraud involved, whether the grossest fraud, if fraud existed, is not upon the governmental officials who acted with knowledge rather than upon the representatives of the several companies that were engaged in the manufacture or sale of dyes and chemicals? For, in the one case, that is, the Government officials, it seems to me that probably they acted with full knowledge, and in so acting, they acted in breach of trust, while the representatives of the dye and chemical industry only attempted to have them so act.

I am afraid I have stated that rather crudely and in such a way as to indicate that I have an opinion with respect thereto, while, as a matter of fact, I have only tried to indicate that my impression now is that if the Government succeeds in establishing fraud in this case and a full disclosure of the facts before the Government officials acted, the inevitable conclusion of the Government's contention would be that the grossest fraud would be on the governmental officials rather than on the persons engaged in the industry.

I will hear you at any time after this morning that you desire to be heard on that.

Mr. Anderson: I will be glad to reply to your Honor's suggestion whenever it suits your Honor, but I do not care to do it now. I think I get your Honor's idea, and when I take it up, if I do not develop it, your Honor will make it clear.

THE WITNESS: I would like to explain that while, as I said, I had the interview with the President before the amendment was submitted, he and I discussed the matter upon other occasions up to the very time the bill was signed which carried the amendment into law, and what I have here said as to the conversation between us may not all have happened the first time. That is what I wanted to say.

Q. 40. When this amendment which we talk of here, Mr. Palmer, in the case as the March, 1918, amendment, was before the committees of Congress, did you appear and testify before the Senate Committee that had charge of the bill-

A. I did.

Q. 41. That was the sub-committee of the Committee on Appropriations of the United States Senate?

A. Yes, sir.

MR. KRESEL: Without stopping, your Honor please, to read any portion thereof, I offer in evidence the official report of the testimony of Mr. Palmer before that committee, which was delivered by him on March 7, 1918.

THE COURT: The same committee before which Mr. Bradley's statement was made?

MR. KRESEL: No, your Honor; Mr. Bradley's statement was with reference to an entirely different amendment. That was the amendment of November, 1918.

THE COURT: Yes, and this is of March.

MR. KRESEL: March, 1918.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 31." (*See Exhibits, Vol. IV, page 2228.*)

Q. 42. Mr. Palmer, when the amendment was originally presented to Congress do you recall whether it contained what now appears therein namely, the provision with reference to sales at public auction, the provision with reference to the exception which says that the sales were to be at public auction unless the President, in the public interest, stating his reasons therefor, should otherwise direct? Do I make myself plain as to that?

Mr. Anderson: I object in addition to the general grounds stated that if there was any such amendment presented to Congress it was in writing, and that is the best evidence of what it contains. I would like to see it.

The Court: Does not your inquiry call for the bill as presented rather than the recollection of the witness with respect thereto?

Mr. Kresel: Your Honor, I do not happen to have before me the bill as presented; and, of course, this witness has not a copy, he is no longer in possession of the record. I will put in a copy of the bill as originally presented, and with that promise is there any objection to my proceeding?

Mr. Anderson: Not at all, it being understood it is merely leading up to that.

Mr. Kresel: Yes.

The Court: All right, you may answer the question, then.

A. No, it was not in the original amendment.

Mr. Kresel: I now offer in evidence a resume of extracts from the proceedings before Congress, showing the history of the amendment, how it was originally proposed, how it was amended on the floor of the Senate, and how it was subsequently amended in conference between committees of the Senate and the House.

The Court: Taken from what, Mr. Kresel?

Mr. Kresel: Taken from the Congressional Record.

Mr. Anderson: In addition to the objection made, I will have to call for the production of the original record; because there must have been a good deal of discussion on that subject, and I do not think a resume of that discussion would be fair to the plaintiff here if this evidence is going to be considered at all. We must know what Congress considered.

The Court: Are these extracts copies or restatements?

Mr. Kresel: No, sir; they are copies from the records.

The Court: Then is Colonel Anderson's objection to the fact that those extracts are taken from the Congressional Record, or is the objection that those extracts are not all of them matters pertaining to the same matter?

Mr. Kresel: I understand the objection to be that it is not all pertaining to the matter. The same rule applies to Colonel Anderson as applied to me. He may put in anything else he pleases.

Mr. Anderson: Very good. Has counsel the record here?

Mr. Kresel: We will produce it, yes. We have not the record here in court; we have been using copies.

Mr. Anderson: If counsel can produce the record, as we have not it here, to the end that we may use it in cross-examination or to the end that we may put in other parts of it at the appropriate time on rebuttal——

Mr. Kresel: Certainly.

Mr. Anderson: I will not raise the question of primary and secondary proof, because we are proceeding under an agreement.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 32." *(See Exhibits, Vol. IV, page 2263.)*

Mr. Kresel: I will direct your Honor's attention to but two paragraphs of this in the Congressional Record of the Sixty-fifth Congress, bound volume, page 3328, under date of March 11, 1918. It appears that while this bill was before the Senate, on the floor of the Senate, Senator Frelinghuysen offered the following amendment, which was adopted by the Senate, namely, to add to the bill as it was then before the Senate the following sentence: "And provided, further, That any property, other than that sold to the United States, sold under this act shall be sold at public auction to citizens of the United States only and to the highest bidder."

I also read from bound volume page 3942 of the Congressional Record an extract showing that after the disagreement between the House and Senate, the bill having been thererd to conference, the Conference Report made to the Senate, which was Senate Document 204, shows that this phrase was added to the bill in conference, namely, "unless the President, stating the reasons therefor, in the public interest shall otherwise determine."

The Court: Where was that added?

Mr. Kresel: In conference.

The Court: In conference?

Mr. Kresel: Yes, your Honor. On the same day, that is March 23, 1918, when the Conference Report was presented there was debate on the bill in the Senate, and Senator Gallinger directed his remarks with reference to these amendments, and he said:

"Did I understand the reading of the conference report correctly, that, notwithstanding the provision is for public sale, the President may order the property sold otherwise? If so, I should like to know why that provision is modified to that extent?"

And Mr. Underwood, who had the bill in charge, made this reply: "I was coming to that. The only modification in that respect is that it does not leave everything to the Alien Property Custodian. The proposed change is 'when the President shall "determine,"' not 'prescribe.' As I understand, when we provide that the President shall 'prescribe,' he may make rules and regulations, but the change here is that 'when the President shall determine,' which will require the personal act of the President. That change has been made because there may be conditions arise in the disposition of this property where it would be impossible to sell it at public auction without it possibly going into the hands or control of alien enemies or persons who are unfriendly. The committee of conference thought that was wise and that it was within the line of the original bill as it passed the Senate, because when the alien property act originally passed the Senate there was no limitation whatever. Now, this merely gives the right to the Alien Property Custodian in an exceptional case to appeal to the President to allow a certain portion of such property to be sold not by public auction but by negotiation. Then the President must indicate in writing why he has done so. I think the situation is thoroughly guarded from the standpoint of the Senator from New Hampshire."

The same volume of the Congressional Record shows that the Conference Report was not voted on on that day, and that on March 23, 1918, the Conference Report No. 405 was made in the House, and that there was debate in the House on the matter March 26, 1918, and that the Conference Report was finally adopted on March 26, 1918.

Mr. Anderson: May I state in regard to Exhibit No. 32 that I do not object to the paper as introduced, but I would like to have it understood that the parts underscored are not to be printed in italics.

Mr. Kresel: No, of course, not.

Mr. Anderson: Because I have known that to be done, and it has caused a great deal of confusion. I once had to make up an entire record over on that account.

The Court: It will be so understood.

Mr. Kresel: I now offer in evidence the following Executive orders issued by the President, dealing with the carrying out of the Trading with the Enemy Act.

Mr. Anderson: Are they in that book?

Mr. Kresel: Yes.

Mr. Anderson: We agreed that either side could use it.

Mr. Kresel: No; not these particular Executive orders. What we agreed was that the Executive orders with reference to sales could be used; but I now propose to put in specific Executive orders issued by the President with reference to the administration of the act. Some of them I think you did put in, but these you did not.

Mr. Anderson: There is no objection to any of them. The only question was whether we had agreed according to the record.

The Court: My recollection corresponds with yours, Colonel Anderson, that anything in that booklet might be read by either party at any time.

Mr. Anderson: And if it will save time, we agree to it now.

Mr. Kresel: May I, then, simply indicate on the record that I desire specifically to have in evidence the following Executive orders, to wit: The Executive order of February 26, 1918; the Executive order of April 2, 1918; the Executive order of July 15, 1918; the Executive order of July 16, 1918; all of which are printed in this booklet which contains Plaintiff's Exihbit No. 1, and is entitled "Trading with the Enemy Act."

Mr. Anderson: Now we agree, sir, that they may be used upon the trial, re-trial or argument of this case on appeal; with the same effect as if they were in evidence, without being printed in the record.

The Court: And subject to all the objections.

Mr. Anderson: And in accordance with the same stipulation that we made before covering this subject.

Q. 43. With reference to the Executive order of July 15, 1918, Mr. Palmer, did you write to the President this letter, dated July 11th, of which I show you a copy?

A. I did.

Mr. Kresel: I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 33." *(See Exhibits, Vol. IV, page 2272.)*

Q. 44. With reference to the Executive order that was made by the President under date of July 16, 1918, did you write a letter to the President under date of July 11th, a copy of which I now show you?

A. I did.

Mr. Kresel: I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 34." *(See Exhibits, Vol. IV, page 2272.)*

Mr. Kresel: I desire to read this, your honor. (Reading.)

Q. 45. Mr. Palmer, with reference to the gentlemen who constituted the Advisory Sales Committee, statement has been made here by me that they were appointed by the President. Will you state what the fact is about that?

Mr. Anderson: Same objection.

A. There were no appointments in writing, but the President asked me to convey to them his requests that they should serve the Alien Property Custodian in that capacity.

Q. 46. And did you convey that?

A. I did.

Q. 47. And did the gentlemen accept the appointment?

A. They all accepted.

Mr. Kresel: I also desire to offer in evidence a statement by Senator Underwood on the floor of the Senate, made March 11, 1918, at a time when this March, 1918, amendment was before the Senate, the statement being found at page 3593 of the unbound Congressional Record under date of March 11, 1918.

Mr. Anderson: That is, of course, subject to all objections.

The Court: I understand nothing is being offered on either side that is not subject to objection and exception.

Mr. Kresel: I enclose the portion that I refer to within blue pencil marks.

argument did not bring out. This evidences an overt act of a conspiracy, or it is a document showing the agreement or conspiracy; those are the only two elements in a conspiracy, evidence showing an agreement, and then an overt act pursuant to the agreement.

Now, they say that it is not an overt act. It certainly is not any part of an agreement.

Colonel Anderson admits that he has no right to put in here any evidence of an overt act without first proving the agreement of conspiracy.

Under certain circumstances, we recognize that the Court has the discretion to allow evidence to go in before it, that would naturally come in certainly if counsel promises to connect. And if this were the testimony of a witness who was here under subpoena, and to whom it would be a convenience to have examined and let him go, I would say that perhaps the Court would exercise that discretion. But here is a piece of evidence that cannot get away from the Government, and that does not need to be put in immediately now.

Why is it not proper that we should have that withheld until the Government has put in some evidence that there was a conspiracy. We think we are entitled to have this piece of evidence kept out for the present.

THE COURT: Colonel Anderson, I think the objection is well taken. I think, as far as the record now goes, that this evidence does not indicate that it is material with respect to the validity or the construction of the Trading with the Enemy Act; nor do I think in the matter of a conspiracy which requires a procedure in the admission of evidence all its own, that this evidence should now be admitted or introduced or accepted.

Consequently, it seems to me that the general rule that we have been following in this case should now

Received in evidence and marked "Defendant's Exhibit No. 35." *(See Exhibits, Vol. IV, page 2273.)*

Q. 48. Subsequent to the passage of the March, 1918, amendment and these Executive orders issued by the President and the organization of your sales force, did you sell a large amount of German-owned property?

A. I did.

Q. 49. In connection with your program of selling, was the question of German-owned patents brought to your attention?

A. It was.

Q. 50. How? I mean in what connection your attention was first directed to that feature of the administration of alien property?

A. One of the first properties that my sales organization had ready to sell—and it was a considerable chore to get these properties in shape to be sold—was the Bosch Magneto Company, and my attention was immediately called to the fact, when we began to consider advertising that property for sale, that a very important part of its assets was the right to do business under certain patents, which, however, did not belong to the Bosch Magneto Company, but the title to which seemed to be in the name of Robert Bosch, of Stuttgart, Germany, the same person who held the title to nearly all of the stock of the Bosch Magneto Company, who had been permitting the Bosch Magneto Company, an American corporation, to use his patents. We saw immediately that if we expected to get a purchaser for the Bosch Magneto stock we would have to find some way to dispose of the patents at the same time to the same purchaser.

Q. 51. While that particular piece of property brought the patent question pointedly before you, were there other enemy properties under your care in patents. That was my opinion, and I urged it very strongly.

Q. 59. In that connection did you have patent counsel in your office?

A. Yes.

Q. 60. Who was he?

A. Mr. Ramsay Hoguet, of New York, was the Chief Patent Counsel.

Q. 61. Did you take his advice upon this question as to whether the Alien Property Custodian had the right to seize enemy patents?

A. I did.

Q. 62. And did you get an opinion from him in writing?

A. I did.

Mr. Kresel: I offer in evidence this opinion from Mr. Hoguet.

Mr. Anderson: In addition to the general objection of immateriality and irrelevancy, I make the specific objection that the orders already introduced show that the Alien Property Custodian acted under the advice of the Attorney General of the United States, and that his opinion is the only opinion that could be a guide to the Alien Property Custodian in matters of his authority, and therefore it matters not what opinions he may have gotten from other counsel as to matters of this kind. The Attorney General's opinion was the only one controlling.

Mr. Kresel: I am bringing that out only in answer to the allegation in the bill that the Alien Property Custodian entertained the opposite opinion; that is all. Of course, I shall show in a minute that the Alien Property Custodian, because of the difference of opinion, submitted the matter to the Attorney General and, of course, followed his advice.

Mr. Anderson: Then how could this opinion have any relevancy?

The Court: My difficulty is twofold: First, as to whether the several opinions that Mr. Palmer got are relevant, when he has told us what his opinion was; and second, if he did get other opinions, whether that fact is all that may be inquired of and not the reasons upon which the conclusions of Mr. Hoguet were based.

Mr. Kresel: May I suggest, as to your Honor's first difficulty, I think I can resolve that by pointing to the bill, which says that not only the Alien Property Custodian, but also others charged with the administration thereof, held this contrary opinion.

The Court: Objection overruled. Admitted.

Received in evidence and marked "Defendant's Exhibit No. 36." *(See Exhibits, Vol. IV, page 2275.)*

Q. 63. I also show you a copy of another communication from Mr. Hoguet, addressed to Lee C. Bradley. Was he your general counsel?

A. General counsel.

Q. 64. And ask you whether that is another opinion rendered by Mr. Hoguet upon this question under date of September 25, 1918?

A. Yes. That was more in the nature of a brief to be presented to the Department of Justice, stating the position of the Alien Property Custodian's office, and arguing for it.

Q. 65. Which one do you mean, this last one?

A. This last one.

The Court: Same objection, I assume, Colonel Anderson?

Mr. Anderson: Yes, same objection, and some in addition.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 37." *(See Exhibits, Vol. IV, page 2285.)*

Q. 66. On the 10th of August, 1918, did you write this letter to the Attorney General of the United States, submitting this question that we are now discussing to him for an opinion (handing paper)?

A. Yes, sir.

Mr. Kresel: I offer that in evidence.

The Court: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 38." *(See Exhibits, Vol. IV, page 2300.)*

Q. 67. The opinion of the Attorney General was that you had no right to seize patents, was it?

Mr. Anderson: Can we not get that opinion?

Mr. Kresel: I do not need it. You allege in your bill that that was the opinion of the Attorney General. I am not going to encumber the record with unnecessary documents.

The Court: You object to his quoting the allegations of your bill?

Mr. Anderson: I do not, sir; I will stand by the allegations of the bill; but, with the greatest deference to the witness, I am not so sure I would want his testimony on it.

The Court: If his answer is not satisfactory, you may have a right to challenge it. So you may take the answer.

Q. 68. Will you answer it?

(Q. 67 repeated as above recorded.)

A. It was.

Q. 69. Do you remember, Mr. Palmer, that in the fall of 1918 there was pending before Congress an amendment to the Trading with the Enemy Act covering patents, trade marks, copyrights, which subsequently became a law and is known as the November 4, 1918 amendment?

A. I do.

Mr. Anderson: One moment. If the Court please, in addition to the usual objection, the question asked him if he remembered that there was an amendment pending before Congress to the Trading with the Enemy Act. Up to that point, if he remembers it, I presume he could testify; but it goes on to say what the substance of the amendment was and what the law subsequently passed was. As to both, I respectfully suggest that the only evidence that is proper is not in the form of question of counsel, but is the act itself.

The Court: I assume that the question is merely to direct the witness's attention to a specific amendment and not to place a construction upon it.

Mr. Kresel: Simply to identify the amendment.

The Court: You may take the answer.

Mr. Kresel: He has already answered.

Q. 70. Did you personally, or did your office, that of Alien Property Custodian, have anything to do with proposing that amendment?

A. It was drafted in my office and was presented to a committee of the Congress at my direction by Mr. Lee Bradley, I think, who was general counsel.

Q. 71. General counsel for your office?

A. General counsel for the Alien Property Custodian.

Q. 72. Do you know whether, before the amendment was proposed that was finally passed, known as the November 4, 1918, amendment, you or your office had urged a similar amendment which had failed of passage?

A. I had personally urged the passage of such an amendment before the committee.

Q. 73. And will you state the month when that was pending before Congress?

A. I think it was before the Committee on Interstate and Foreign Commerce of the House early in June, 1918, I think June 4th, in support of a long amendment which we had prepared and which we were urging that committee to put on to the Trading with the Enemy Act.

Q. 74. After the amendment passed through Congress (I am now speaking of the amendment that is known here as the November 4, 1918 amendment), and while the amendment was before the President for his approval, did you write to the President a letter, of which this is a copy (handing paper)?

A. I did.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: Isn't that already in?

Mr. Kresel: I have never seen it. And I might say, gentlemen, if I offer any instrument which it is your recollection is already in, please call my attention to it.

Mr. Anderson: We will do so.

Mr. Kresel: I read two paragraphs, if your Honor will permit me, of this letter. It is dated October 31, 1918. (Reads from exhibit.)

My attention is called to the fact that this letter is already in evidence as Plaintiff's Exhibit 10. With the Court's permission, therefore, I would like to recall this letter.

The Court: It will be withdrawn.

Mr. Kresel: So that Defendant's Exhibit No. 39 is withdrawn. And it may appear that I was reading from Plaintiff's Exhibit No. 10.

Q. 75. Prior to the approval of this November 4th amendment by the President, did you have any conferences with the Federal Trade Commission or any member of that body as to the effect of this proposed new law with reference to the administration of enemy patents as between the Federal Trade Commission on the one hand and the Alien Property Custodian on the other?

A. Prior to the amendment being passed?

Q. 76. Yes.

A. Yes, I think I did.

Q. 77. Who representing the Federal Trade Commission conferred with you about it?

A. Chiefly Governor Fort, who I think was then chairman, I am not certain, and Mr. Victor Murdock. They changed their chairman every year, and I cannot remember now who was chairman, but members of the Commission.

Q. 78. Will you state the views urged by Governor Fort on behalf of his Commission, with reference to the powers of that Commission over enemy patents and the views that you expressed to Governor Fort with reference to the same subject?

> Mr. Anderson: If your Honor please, I think it appears in evidence that there is certain correspondence between Mr. Palmer and Governor Fort. But Governor Fort is dead, and I do not think that conferences or conversations between Governor Fort and the witness are evidence in any event, because he was not subject to the jurisdiction of the Federal Trade Commission, and whatever conferences they might have had about the duties and scope of the Federal Trade Commission were not matters he had to deal with, but were fixed by law. In the next place, what Governor Fort may have said as to the scope, the powers and duties of the Federal Trade Commission is not evidence, and especially are these conversa-

done. The Government pursued that same course when they offered particular Executive orders.

THE COURT: The suggestion is adopted.

MR. ANDERSON: That suggestion is entirely agreeable to us, with the understanding of course that in view of the change of status, we will have a chance to go over the book and indicate at some time during the trial what amendments we desire to go into the record.

MR. KRESEL: There will be no objection.

THE COURT: You may have that opportunity.

Executive Order Dated February 26th received in evidence and marked "Defendant's Exhibit No. 32-A." (Same as Plaintiff's Exhibit No. 690. *See Exhibits, Vol. III, page 1778.)*

Executive Order dated April 2nd received in evidence and marked "Defendant's Exhibit No. 32-B." (Same as Plaintiff's Exhibit No. 691. *See Exhibits, Vol. III, page 1788.)*

Executive Order dated July 15th received in evidence and marked "Defendant's Exhibit No. 32-C." *(See Exhibits, Vol. IV, page 2270.)*

Executive Order dated July 16th received in evidence and marked "Defendant's Exhibit No. 32-D." (Same as Plaintiff's Exhibit No. 5. *See Exhibits, Vol. I, page 29.)*

By MR. KRESEL:

Q. 79. Mr. Palmer, I shall repeat to you the question which remains unanswered: Will you state the views urged by Governor Fort on behalf of his Commission, with reference to the powers of that Commission over enemy patents and the views that you expressed to Governor Fort with reference to the same subject.

A. Before the amendment of November 4, 1918, Governor Fort took the position that patents were not property and the Alien Property Custodian could not demand and take them over. After the Attorney General had decided that patents were not property and could not be taken by us, we prepared the amendment and then discussed the administration of the new law with Governor Fort and other members of the Federal Trade Commission.

Q. 80. Will you give the other names so that the Government may know with whom?

A. Well, I remember particularly Governor Fort and Mr. Murdock. I think possibly on one or two occasions another member of the Commission sat in, but I would not like to say who it was, because I had many subsequent conferences with the Commission. I may get them confused. I know that Fort and Murdock were both present at practically all of those conferences. Their position was that the method of administering enemy patents under Section 10 was right, and that it should be interfered with just as little as possible by our administration of the amended law.

They insisted that they should have the right to continue to issue licenses for enemy-owned patents. They even insisted at one time that they should have the right to issue licenses on patents owned by American corporations in which the enemy held a majority or controlling interest, which of course I very vigorously opposed because those corporations were under my control and were American citizens; and I insisted that they had no right to issue such licenses.

When we came to working out our plans they opposed every suggestion I made looking to a seizure and sale of the patents chiefly because they expressed the fear that it would result in a continuance of the patent monopoly in American hands and the people would be no better off than they had been theretofore under the patent monopoly in German hands. They insisted that under Section 10 they could issue non-exclusive licenses and build up competitive industries, and especially Mr. Murdock had very strong views on the whole

November 1, 1918. (Reads Defendant's Exhibit No. 39.)

Mr. Kresel: In order that the reading may be intelligible, I will read paragraph 1 of this proposed Executive Order.

The Court: May I make this inquiry: This proposed Executive order was the one suggested by Mr. Murdock or who?

Mr. Kresel: Governor Fort.

The Court: Governor Fort, after the passage of the second amendment of November 4, 1918?

Mr. Kresel: Of November 4, 1918. And I shall show—I may anticipate; this will serve to clarify the situation—I shall show by Mr. Palmer that after this Executive order was proposed, the matter was presented by both gentlemen to the President, and that the Executive order of December 3, 1918, was the result. But I think your Honor should have the views of both.

The Court: Yes; that helps me to understand what you are reading.

Mr. Kresel: Paragraph 1 of this proposed order reads as follows (reading). I now proceed with the reading of the letter (reading). Now I will read simply the proviso which the Governor refers to . It is this (reading). I think that is all that I need read with reference to that.

Q. 83. Before I leave the subject of your conferences with Governor Fort, I want to ask you specifically whether in those conferences you and Governor Fort discussed the situation in which the American industries were placed by reason of these alien enemy patents?

A. Yes, we did.

Q. 84. And upon the desirability of relieving the American industry from those incumbrances, I understand there was no difference of opinion between you and Governor Fort?

A. None whatever.

Mr. Anderson: Not quite so leading, Mr. Kresel, please.

Q. 85. Did Governor Fort mention to you a report made to him by Mr. Edward S. Rogers?

A. Well, he said that he had reports from some of his experts in the Commission relative particularly to the effect upon the American industry of the German patents on dyes and kindred things; but whether he mentioned Rogers's name to me, I do not remember. I afterwards learned of the Rogers' report, but I cannot say that he told me it was Rogers who made it.

Mr. Kresel: Colonel Anderson, I want to offer this report to Governor Fort by Edward S. Rogers, who was with the Federal Trade Commission at the time when the report was made. If there is any question about Mr. Rogers' position, I promise to prove that he was with the Federal Trade Commission and assisted them in the patent situation.

Mr. Anderson: I never heard of him.

Mr. Kresel: That is the report. I want to offer it.

Mr. Anderson: If your Honor please, there is no disposition on the part of the Government to object to any copies of papers, because we are working on that basis. But I have never seen this paper and I do not think it can be admitted in this case unless it can be proved to have been submitted to Governor Fort and to have been the basis of some action on his part, and also to have afected the issues in this case. I do not see how it can. I do not know where it came from. It is not even signed. It does not appear to be addressed to anybody. It appears to be a memorandum for

Governor Fort and that is all. I do not know whether he ever saw it. I do not think we could admit that paper as evidence of the facts contained therein in this case.

I am perfectly willing to admit, if any reasonable evidence can be produced, that the report was submitted, but I do not think we could fail to object to the admission of it as proof of the facts contained therein, as the record stands.

Mr. Kresel: I have already stated that if the Government declines to stipulate that Mr. Rogers was in the employ of the Federal Trade Commission at this time—that is dated January 16, 1918—I shall prove it.

Mr. Anderson: I do not question the fact, but I would like to satisfy ourselves. I do not question counsel's statement. I assume he has spoken from hearsay too. I would not object on the ground of its not being primary evidence, or that that does not prove that this gentleman was in the employ of the Federal Trade Commission. I am willing to let it go on the record in any way that that can be established, but my objection goes to other phases of the matter which I have indicated.

Mr. Kresel: I am going to address myself to the other phases that you have indicated.

It being established that this man was in the employ of the Federal Trade Commission, here then we have a report made by him to the Chairman of the Commission, Governor Fort, and we claim, and we agree with the Government, that any report, any official report, is admissible here, as the Government contended with reference to another Federal Trade Commission report as proof of the fact.

For instance, your Honor will recall that Colonel Anderson read here from a report of the

Federal Trade Commission a portion as to the amount of money that it cost the Federal Trade Commission to administer these licenses for a particular year; and I was very careful to inquire of Colonel Anderson at that time whether he was claiming that that was admissible evidence as proof of the facts therein contained, upon the ground that the statement was contained in an official report, and he took the position broadly and said that was exactly what he was contending.

Now I have here the report made by an official of the Federal Trade Commission to that Commission.

The Court: As I understand Colonel Anderson's objection, he questions that, and says in effect that you have not shown that, the report was ever made, in fact, by Rogers to the Federal Trade Commission. That is my understanding of his objection. If I am in error, he will correct me.

Mr. Anderson: Your Honor has substantially stated my position.

Mr. Kresel: Very well then. I now say that I shall prove that this report was made by Mr. Rogers to Governor Fort of the Federal Trade Commission, and that Mr. Edward S. Rogers was at that time an official of the Federal Trade Commission. Now, have I met the requirements? If I do not prove it, of course it goes out.

The Court: But is there this further point in Colonel Anderson's statement, namely, that the connection of the Federal Trade Commission is not here relevant or material, and only such facts as came to the knowledge of the Alien Property Custodian, Mr. Polk, the President, or Mr. Garvan are here material.

Mr. Anderson: There is one other suggestion in order that counsel may address himself to it.

I think that an official report, made under the law to Congress, such as a Federal Trade Commission report is *prima facie* proof of the facts contained therein, subject of course to being modified or disproved. But this is merely a communication by a gentleman, whom I have never heard of, and I do not question at all that he is the man to whom Mr. Kresel refers, and I am not going to require any technical proof on the subject if we can agree on the facts. But this is a letter addressed by him to one of the members of the Federal Trade Commission and is not in the true sense an official report within the meaning of the law, as I take it. I do not know where it came from. I do not know anything about it.

Therefore, I think that there would have to be very definite proof, and I doubt then if it would be proof of the facts contained therein, unless the gentleman were called here, Mr. Rogers, who I assume is alive, and put on the stand so that his knowledge might be tested.

The Court: I do not understand you, Colonel Anderson, because it seems to me that is a repudiation of your concession a moment ago. I assume, of course, that it is not.

Mr. Anderson: No, sir, not so intended.

The Court: That is, if this is an official report, I rather understood you a moment ago to say that then it proves itself, or rather it is proof of the facts therein stated, and I understand you now to be questioning that.

Mr. Anderson: No, sir, I have tried to make myself clear and I am sure I am not very clear. The question of this man being an employee of the Federal Trade Commission at that time—in whatever capacity—I think we can get by with a mutual concession. If it is proved that this report was made to Governor Fort and actually reached him, etc., that I will facilitate in every possible way I can. But we come then at last to the question if this was an official report as required by law, by either an officer or an official of the Government in the discharge of his duties, though how far that doctrine will go I am not prepared to say, it might be contended that it proved the facts therein contained in a prima facie manner. Glancing at the first few lines of the report it is a discussion of conditions in a certain industry in the United States.

MR. KRESEL: And at the end of it there are certain suggestions as to what should be done.

MR. ANDERSON: I do not know that this gentleman had any knowledge from which he could write of things of that kind, or that came within the duties of his office in any way, and therefore within the nature of an official report or clearly within the scope of an official body, as required by law. Therefore I think if those facts are going to be proved as facts, as to the condition of the industry in the United States, of the dye industry, I should be able to examine into the sources of this gentleman's information and his qualification to speak on that subject. I might write a letter from hearsay on the conditions of an industry, the steel industry, and it would mean nothing.

THE COURT: If this is an official report, it either is or is not primary evidence of the facts therein contained.

MR. ANDERSON: I think this particular kind of report is probably not primary evidence of the facts, because of the peculiar circumstances I have outlined. I do not know as I have made myself very clear, but I hope I have.

The Court: Yes, I understand. What do you undertake to prove?

Mr. Kresel: I shall prove, your Honor, that this gentleman was in the employ of the Federal Trade Commission, had charge of what was known in the Federal Trade Commission as the Enemy Trade Division, and he had charge of issuing these licenses. This is a report made by him in his official capacity to the chairman of the Commission, in which he reviewed certain facts and ended up by making certain recommendations to the Commission.

The Court: Are you going to trace the information therein contained not only to Governor Fort but to Mr. Palmer and to the President, or to any of them?

Mr. Kresel: I have already asked Mr. Palmer——

The Court: Yes, but he has not stated that the information he got was the information therein laid down, has he?

Mr. Kresel: He has stated that the name of the writer of the report was not mentioned to him, or at least he does not recall it.

The Court: I do not gather that from his testimony.

Q. 86. Mr. Palmer, in the course of your discussions with Governor Fort, did you discuss with him the general question of the effect of the German patents upon American industry?

A. I did.

Q. 87. Did Governor Fort indicate to you that his office, that is, the Federal Trade Commission, had been making any investigations upon the subject?

Mr. Anderson: If your Honor please, I know your Honor's ruling on that subject, but I do think the questions in this case, if they are of any importance at all here, should follow the rules of evidence and ask what was said or what was done about a certain matter. I do not think counsel ought to put (I do not want to put it in an unpleasant way)—to put the question in such a way that it puts on the record facts that he desires to be there with a yes or no answer. While I recognize your Honor is rather liberal on that point, in the particular cases I do feel that we ought to follow the rules of evidence.

THE COURT: It seems to me that the prohibition against leading questions was laid down to obtain certain results; and that the nature of this suit is such that it challenges the existence of the power exercised by the Alien Property Custodian, by Mr. Polk, and by the President, challenges the knowledge of each of those persons with respect to the facts as to which they acted, and that it also challenges the sufficiency of the reasons for their actions. It seems to me that the reports, the contents of which came to the knowledge of those persons, or any of them, are available and admissible in evidence to show the information on which they acted. On your undertaking heretofore made and in your understanding of this testimony that the contents of this report were communicated to Mr. Palmer, it is admitted subject to the general and specific objections of counsel for the Government.

MR. KRESEL: Very well, your Honor.

Received in evidence and marked "Defendant's Exhibit No. 40." *(See Exhibits, Vol. IV, page 2306.)*

MR. KRESEL: I shall not stop to read that now, your Honor. It is rather lengthy.

MR. ANDERSON: What is the date of it, please, Mr. Kresel?

Mr. Kresel: January 16, 1918.

Q. 88. Referring now to Governor Fort's letter to you of November 1, 1918, with which he enclosed a proposed executive order, I read the last paragraph of his letter, wherein he says: "Of course, I do not know the views of the President on this matter, and would therefore prefer if you apply for the order in my absence that you should show this letter to him, but if larger power than this is asked, the Commission would like to be heard." Having that in mind, I ask you whether you sent to the President any proposed executive order in this connection?

A. I either sent it or took it.

Q. 89. Did you have a conference with the President about such Executive order?

A. I did.

Q. 90. Was Governor Fort present at the conference?

A. He was present at the conference?

Q. 91. And at that conference did you state your views about the matter, and did Governor Fort state his views about the matter?

A. Yes.

Q. 92. I now show you Executive order made by President Wilson and dated December 3, 1918, and ask you to state whether after that conference at which you and Governor Fort were present the President made that Executive order upon this subject?

A. He did.

Q. 93. Please look at that Executive order and state whether it is in the form that you proposed it, or whether the President made any changes therein?

A. It is as I prepared it, with the exception, I think, that in Paragraph V in the draft submitted to the President, the name of the person in whom the power and authority of the President were to be vested was blank. One other change was made by the

President, and that was the addition of the last sentence.

Q. 93. (Continued.) In the order?

A. (Continued.) Which is: "Nothing in this order shall nullify or impair any license heretofore granted by the Federal Trade Commission pursuant to the provisions of Section 10 of an Act of Congress entitled 'An Act to define, regulate and punish trade with the enemy, and for other purposes, approved October 6, 1917.'" Those words were added by the President to my draft.

Q. 94. You spoke of the insertion of the name of someone. The insertion is the name of Frank L. Polk?

A. Yes.

MR. KRESEL: In order that your Honor might understand, this is the same order that appointed Mr. Polk.

THE COURT: I understand that. Order of December 3, 1918.

MR. KRESEL: Yes, your Honor.

Q. 95. Did you get a letter from President Wilson dated November 27, 1918?

MR. KRESEL: I have a copy here. Will you produce the original?

(Original letter produced by counsel for defendant, and handed to witness by Mr. Kresel.)

A. Yes, sir.

Q. 96. I notice in that letter there is this sentence.

MR. KRESEL: I will offer the whole letter, Colonel, to make it intelligible.

MR. ANDERSON: May I look it over?

MR. KRESEL: Look at the copy (handing paper).

Q. 96. (Continued). I read this sentence: "Dear Palmer: I dare say you are right and I was wrong about the method of completing the sales you have already undertaken, and I will sign the proclamation I

Mr. Galloway: If your Honor please, the plaintiff next asks leave to offer in evidence the letter of A. Mitchell Palmer to the Honorable Thomas W. Gregory, Attorney General, dated October 31, 1918.

The Court: Admitted without objection.

Received in evidence and marked "Plaintiff's Exhibit No. 9." (*See Exhibits, Vol. I, page 54.*)

Mr. Galloway: I wish to read only a very short paragraph, your Honor, from that.

(Reads from Plaintiff's Exhibit No. 9.)

The plaintiff, your Honor, next offers in evidence a letter from A. Mitchell Palmer to the President of the United States, dated October 31, 1918.

Mr. Boggs: What was that date, Mr. Galloway?

Mr. Galloway: October 31, 1918.

Mr. Kresel: No objection, your Honor.

The Court: Admitted without objection.

Received in evidence and marked "Plaintiff's Exhibit No. 10." (*See Exhibits, Vol. I, page 56.*)

Mr. Galloway: If the Court please, this is rather short and important, and I shall ask to read it, without duplication.

(Mr. Galloway reads Plaintiff's Exhibit No. 10.)

The remainder of it, your Honor, refers to the stock certificates which are in Germany and is not pertinent to this issue.

The plaintiff next offers in evidence the Executive order of December 3, 1918, which has been discussed before your Honor here—which is the Executive order appointing or attempting to appoint Mr. Polk to exercise the powers of the President.

The Court: Admitted without objection.

Admitted in evidence and marked "Plaintiff's Exhibit No. 11." (*See Exhibit 1 to Answer, Record, Vol. I, page 547.*)

The Court: That is the Exhibit No. 1 to the answer, I assume?

returned to you the other day if you will return it to me. Your plan of the disposition of enemy property in the United States meets with my approval in principle, and I dare say will meet with it in detail when I have a chance to compare it with the proposals that will be made on the other side. I am going to take the document over with me as a basis for discussion." Now, with that letter before you I would like you to state what you said to the President at the conference that he refers to in this letter, and what was the plan for the disposition of enemy property that he says met with his approval in principle and would probably meet with his approval in detail.

Mr. Anderson: May I ask if the plan was ever submitted in writing?

Mr. Kresel: We have no copy.

The Witness: I think it was with the letter.

Mr. Kresel: We have no copy. We have been unable to obtain a copy. Of course, we have not access to these papers.

The Court: Have you given the Government notice to produce?

Mr. Kresel: We have not been giving each other notice to produce, your Honor.

Mr. Anderson: I never heard of this particular correspondence.

Mr. Kresel: We undertook to agree in advance that we might submit copies, and so on. We have obviated all that. But I am going to inquire whether that was one of the documents that we asked for and that was stipulated by the Government. No, Mr. Boggs says that it was not. We have no copy, your Honor; it it not available to us. If counsel desires that I withhold further questioning on this point until he can produce the only copy that is available, which is in their possession, why, I am perfectly willing to do that.

You can get it from the files of the White House or the files of the Alien Property Custodian. We can not.

Mr. Anderson: I will state, if your Honor please, that we do not know whether we can get it or not. This letter is an official letter, and we have never seen or heard of it.

The Court: You are the Government of the United States.

Mr. Anderson: I know; but if your Honor please, we did not have charge of these files and we find lots of papers coming in here that we have never heard of before. This paper was never produced by us. We do not know anything about it. We will undertake to produce it if it is in the records of the United States; but I cannot say that it is in the records of the United States, the files of the Alien Property Custodian. We have searched them and we have no record of any such paper and never heard of any such paper.

Mr. Kresel: You do not know what the paper was. You can not tell.

Mr. Anderson: We made a search of the files to find out if there was such a paper.

The Court: If there is objection, the objection is sustained.

Mr. Anderson: We will make a further effort.

The Court: Until you have an opportunity to say whether you can furnish the paper.

Q. 97. Without, then, Mr. Palmer, discussing the contents of the plan that you submitted to the President, I would like you to state if you will in the conversation that you had with the President which gave rise to the writing of this letter, and particularly I would like you to state what it is that the President is referring to in the first sentence wherein he says, "I dare say you are right and I was wrong about the method of completing the sales," and that he would sign a proclamation. Will you please just address yourself to that?

A. I sent to the President a draft of the proclamation which I wanted him to issue, declaring a large number of persons there named to be enemy persons.

Q. 98. Will you stop there a minute, please?

A. Certainly.

Mr. Kresel: If your Honor please, your Honor will recall that under the Trading with the Enemy Act, an enemy was defined in certain ways, and in addition thereto the President by proclamation could designate even a German resident here as an enemy. I simply wanted to call your Honor's attention to that because that is what Mr. Palmer is now referring to. Your Honor will find it in Section 2, I think, of the Act.

Q. 99. Will you go on, Mr. Palmer.

A. Such other persons or classes of persons as the President might by proclamation declare to be enemies. We were in the habit before we sold one of these enemy properties, to make assurance doubly sure, that the stocks which we were selling belonged to enemy persons, to have the President proclaim that those particular persons were of the enemy class. So that in addition to the original determination of their enemy character we had this proclamation. I sent to the President a proclamation covering some three hundred enemy persons, and he replied to me returning the proclamation, showing that he questioned whether we should proceed with the sales program——

Mr. Anderson: Pardon me, Mr. Palmer. Have you got that letter, Mr. Kresel?

Q. 100. Was that in the form of a letter?

A. That was in the form of a letter.

Q. 101. Have you the letter?

A. I have the letter.

Q. 102. Will you find the letter here, please, November 29, 1918, is the date of the proclamation.

A. I would like to say a word, if I might be permitted, to you, in answer to the intimation that these official letters of the President of the United States were taken from the record.

MR. ANDERSON: I did not mean to make any unpleasant intimation.

MR. KRESEL: The intimation has been made.

MR. ANDERSON: I am entirely agreeable that Mr. Palmer make any statement on the subject that he wishes.

A. (Continuing.) The letter is in my possession. It is a very common practice in the departments at Washington to put letters from the President in a separate file and to put either photostatic copies or actual copies in the regular file. These letters appear in this file on that account. They are all letters from the President of the United States. Photostatic or other copies of every letter are in the official files at Washington. This is the letter.

MR. KRESEL: I offer in evidence the letter which Mr. Palmer has produced, from the President to Mr. Palmer, dated November 22, 1918. I ask your Honor to permit us to substitute copies of these letters so that the originals may be retained by Mr. Palmer.

Considered marked "Defendant's Exhibit No. 41," copy to be produced later. *(See Exhibits, Vol. IV, page 2310.)*

MR. KRESEL: I now read the letter. (Reading).

Q. 103. After you had received this letter, you received the letter from the President of November 27, 1918; is that right?

A. Yes, sir.

Mr. Kresel: I now offer in evidence that letter and I have a copy thereof which I ask be marked instead of the original.

The Court: Is it satisfactory that the copy should go in instead?

Mr. Anderson: Entirely so.

Received in evidence and marked "Defendant's Exhibit No. 42." *(See Exhibits, Vol. IV, page 2311.)*

Q. 104. In this letter of November 27, 1918, the President says to you: "I dare say you are right and I was wrong about the method of completing the sales you have already undertaken and I will sign the proclamation I returned to you."

Did you then send back to the President the proposed proclamation?

A. I did.

Q. 105. And did he sign it?

A. He did.

Q. 106. I now show you a proclamation printed in this Trading with the Enemy booklet, beginning at page 121, and asking you to state whether that is the proclamation at the bottom of the page?

A. That is the proclamation.

Mr. Kresel: I offer in evidence the proclamation which commences at page 121 of this book. It is dated November 29, 1918.

Received in evidence and marked "Defendant's Exhibit No. 43." (Same as Plaintiff's Exhibit No. 729-F. *(See Exhibits, Vol. III, page 1940.)*

The Court: Is that the proclamation or draft of the proclamation which you were inquiring about a moment ago, Colonel Anderson?

Mr. Kresel: No, your Honor; it is not. The other was a different document which the Government is going to try to get for us.

Q. 107. Mr. Palmer, you know Mr. Joseph H. Choate, Jr.?

A. Yes, sir.

Q. 108. Was he in your office when you were Alien Property Custodian?

A. Yes, sir.

Q. 109. What did he have particular charge of?

A. He was in the Bureau of Investigation, in particular charge of the investigation into the chemical industry and the German chemical interests in the United States.

Q. 110. Did he perform his duties under your direction or under the immediate direction of some one else?

A. I would say under the immediate direction of Mr. Francis P. Garvan, the head of the Bureau of Investigation.

Q. 111. And were you kept informed of what he was doing?

A. I was.

MR. ANDERSON: If your Honor please, that is a clear conclusion. It might cover the entire situation of reports here. If counsel wants to know what was reported, and how, and the facts about it, all right. If a man is kept informed of what Mr. Choate is doing, he only knows from information he receives. That question would cover every possible thing that Mr. Choate did while he was connected with the office. I think that is too general.

THE COURT: Do you press the question, Mr. Kresel?

MR. KRESEL: No, your Honor. Strike it out.

Q. 112. Are you familiar with the report made by you to the President in the month of February, 1919?

A. I am.

Q. 113. Do you know whether Mr. Choate co-operated in framing any part of that report?

A. Mr. Choate prepared the draft of the chapter on chemistry for inclusion in the report, at my request, and submitted it to me.

Q. 114. Can you state how long, before the report was actually sent by you to the President, you had before you Mr. Choate's report on the chemical situation either in its final form or in draft form?

A. You mean by his report the draft of the chapter on chemistry or chemicals?

Q. 115. Yes.

A. My recollection is that it was in my hands for a couple of weeks at least before it was transmitted to the White House.

Q. 116. Do you remember when you sent the report to the President?

A. On the 27th of February, 1919.

THE COURT: This has reference to your Exhibit 30?

MR. KRESEL: That refers to Defendant's Exhibit 30.

Q. 117. Before this report Defendant's Exhibit No. 30 was sent to the President, did you formulate any general policy in your office with regard to patents?

A. I did.

Q. 118. I show you this memorandum dated January 13, 1919. Does that embody the policy with reference to patents, that was to be pursued by your office? (Handing witness paper).

A. With a slight modification that was made when my attention was called by Mr. Hoguet to another part of my arrangement with the Federal Trade Commission, this is the policy that was then publicly announced.

Q. 119. Will you state what the additional matter was?

A. That it would be the policy of the office to demand and take over enemy-owned patents which the Government might require for its own use.

Q. 120. That was additional to the policy outlined in that memorandum that I showed you?

A. Yes, sir. In this statement I divided the patents into three classes. There really should have been four, and there were. It was modified in writing I think.

MR. ANDERSON: It was modified in writing?

THE WITNESS: Mr. Kresel has it.

MR. KRESEL: Yes, I will produce the writing. My recollection, gentlemen, is that this was put in by you. Am I wrong about that?

MR. ANDERSON: I think it is very probable.

MR. KRESEL: I find that it was not, so I will now offer this in evidence.

Received in evidence and marked "Defendant's Exhibit No. 44." *(See Exhibits, Vol. IV, page 2312.)*

MR. KRESEL: It is dated January 13, 1919, "Memorandum of conference in regard to patent situation. Present: Mr. A. M. Palmer, Mr. Caton, Mr. Horne, Mr. Whitaker, Mr. Keohan, Mr. Whitmore, Mr. Gordon, Mr. Ferry."

Q. 121. Were all those gentlemen whose names I have called officials in your office?

A. I do not place Mr. Whitmore. I remember all the others as officials in the office.

(Mr. Kresel then read further from Defendant's Exhibit No. 44.)

MR. KRESEL: I have not read all of it, but I have read all that I care to.

Q. 122. I notice that Mr. Hoguet was not present at that conference. Did you direct that a copy of that memorandum be sent to Mr. Hoguet?

A. I did.

Q. 123. And was it sent to him?

A. It was.

Q. 124. Then did Mr. Hoguet call your attention to this omission that you speak of?

A. Yes.

Q. 125. Is this a copy of the letter that you received from Mr. Hoguet upon the subject, the letter being dated January 16, 1919? (Handing witness).

A. Yes, sir.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: It is so long that I will not try to read it. I will just let it go in without reading it.

THE COURT: It is admitted.

MR. KRESEL: Is there any objection to it?

MR. ANDERSON: No, except the general objection. I won't offer any objection. It is a photostat copy?

MR. KRESEL: Yes. Perhaps you will withdraw all objection because my attention is called to the fact that that is already in as Plaintiff's Exhibit No. 49.

MR. ANDERSON: If that is the case, then I will withdraw the objection.

THE COURT: The exhibit is withdrawn?

MR. KRESEL: Yes, sir. I now read from Plaintiff's Exhibit No. 49 just one paragraph.

THE COURT: I think it should be made clearly to appear that Colonel Anderson had not fully examined the exhibit at the time that he made his objection.

MR. KRESEL: Yes, certainly.

THE COURT: And that he was just making the general objection so as to cover all contingencies. That I think should be of record.

Mr. Anderson: I thank your Honor.

Mr. Kresel: I am reading the second paragraph. (Reads from Plaintiff's Exhibit No. 49).

Q. 126. You spoke this morning of discussing with President Wilson in your conferences preceding the March, 1918, amendment the subject of another amendment then pending before Congress, bearing upon the acquisition by the Government of the German steamship docks. I think you spoke of the Hamburg-American line docks and the North German Lloyd docks?

A. Yes, sir.

Q. 127. Did you have any further conversation with the President upon the subject of those docks; and if so will you state the time and what the conference was?

A. I had such a conference a few days before the President left for Paris, the first time, he came to my office, the office of the Alien Property Custodian and asked me——

Q. 128. I want to fix the date. He left in December, 1918, I think.

A. My recollection is he left on December 4th.

Mr. Anderson: That is right, sir.

Q. 129. December 4, 1918?

A. Yes, sir. It was a few days, not more than a week before that. He said that he wanted me to hurry up the business of making a final transfer of the title of the Hamburg-American line and North German Lloyd line terminals at New York, in order that he might pay over the money to me for those properties, and have it an absolutely closed incident before he arrived at the Peace Conference, and he stated the reasons which led him to that desire.

Q. 130. And what were those?

Mr. Galloway: Yes, sir. We therefore ask your Honor that this be not duplicated in the record.

The Court: Let Exhibit No. 1 of the answer stand for the physical exhibit.

Mr. Galloway: That is satisfactory.

The Court: Is that satisfactory, Mr. Kresel?

Mr. Kresel: Yes, sir. It will be a little confusing, because the order of the exhibits will not be consecutive. It seems to me if it be considered as marked in its consecutive order, but not to be repeated later by offering the one annexed to the answer, that will serve your purposes.

Mr. Galloway: Yes.

The Court: And in the compilation of the original exhibits, instead of spreading this at large, it shall be found as Exhibit 1 in the answer.

Mr. Kresel: Exactly.

Mr. Galloway: And let it stand as Exhibit No. 11 now.

Mr. Kresel: Exactly.

Mr. Galloway: If your Honor please, the plaintiff next offers in evidence an excerpt from the Exhibit No. 2 to the answer, which Exhibit No. 2 to the answer is an excerpt from the report of A. Mitchell Palmer as Alien Property Custodian, dated February 22, 1919. We wish to call the Court's attention especially to the part on page 70 of the answer.

Mr. Kresel: Do I understand, Mr. Galloway, that you are asking to have marked as an exhibit only a portion of Exhibit 2 annexed to the answer.

Mr. Galloway: We have no objection to the entire exhibit going in.

Mr. Kresel: It seems to me, your Honor, when it goes in the whole thing should go in.

The Court: Then let the excerpt from the report of A. Mitchell Palmer as Alien Property Custodian, dated February 22, 1919, found as Exhibit 2 in De-

A. They were that he desired to be in a position at the Peace Conference to refuse to enter into any negotiations whatever for the return of the terminals but to say that that matter was closed, that the character of the enemy interests had been changed from terminals into cash in the Treasury of the United States.

THE COURT: May I stop you there for a moment, Mr. Palmer?

THE WITNESS: Certainly.

THE COURT: I am wondering, Mr. Kresel—I realize the position in which you are placed by the allegations of this bill—but I am wondering now whether your inquiry does not go into such relations and such disclosures by the President to an official in the Executive Department that should not be inquired of unless absolutely necessary for your protection.

Mr. Palmer is answering your question, as is proper, but it seems to me the duty falls upon me, under the peculiar character of this case, to make this inquiry at this time; because, surely, the evidence now called for by you, and the reasons of the President of the United States for his action in international relations, seem to me a matter that a court should not require to be disclosed, and if disclosed, the Court is without power to review. Consequently I make this inquiry at this time.

MR. KRESEL: Upon your Honor's slightest intimation, I shall desist from further inquiry into the subject. May I say, however, that not only is this matter relevant with reference to the allegations in the bill, but particularly upon the proposition that the transaction that the witness is now describing was put through pursuant to an amendment to the Trading with the Enemy Act passed at the same time and by the same Congress as this amendment of March, 1918, that we are dealing with. In other words, I present, or I was going to present—because as I say to your Honor, I shall immediately desist——

THE COURT: I am making an inquiry and not a ruling so far, Mr. Kresel.

MR. KRESEL: In other words, the President proposed an amendment covering these docks. Mr. Palmer, as Alien Property Custodian, with the consent of the President, proposed the other amendment with reference to generally selling enemy property. Both amendments were before Congress at the same time and were passed at the same time and were amendments of the same Section, of the same Act at the same time.

What I was going to show was the transaction that the President had with the Alien Property Custodian with reference to those docks under that amendment in order to show what interpretation should be placed not only upon the amendment that they were acting under with reference to the docks, but the concurrent amendment under which the properties here involved were sold.

But as I said to your Honor when I started, I shall ask no further questions about it.

THE COURT: Do not misunderstand me. I am making so far merely an inquiry. I should be glad to hear Colonel Anderson.

MR. ANDERSON: If your Honor please, I did not object to the evidence, because I am trying not to object; but I think that the evidence is objectionable from two standpoints, since your Honor has asked me. First, the standpoint which your Honor has suggested, which seems to me to have very strong weight; and the further standpoint that upon the statement of counsel this is clearly foreign and irrelevant matter.

The Court: Just at the moment I will ask you to confine yourself to the other ground.

Mr. Anderson: I was going to say, when your Honor asked the question, as to the first ground, I recognize the difficulty that confronts the Court and counsel in drawing the line of discrimination in this matter, and I have no desire in the world to undertake to limit the evidence, if it can be avoided; but I do not think that questions of international relationships should be brought into this case.

I think, representing the Government, in the humble way that I do here, it is probably my duty to object to that, and even the President's desire to hasten the transaction involved in these properties is a matter that might (I do not know) be a subject of some international embarrassment; and certainly his reasons for doing so (I do not know what they were) might be also a very serious difficulty. Now, if it is appropriate on direct examination, it must be equally appropriate for full searching on cross examination, and therefore it would place the Government in a rather embarrassing position, and one which I say in advance I would resolve against the cross-examination.

The Court: Now then, my difficulty is increased by this fact, namely, that this is a suit instituted by the Government of the United States, and by the further fact that owing to the characteristics of this suit and the incidents connected with it, we have adopted a broad rule allowing all oral and documentary evidence which in the opinion of counsel upon either side is pertinent or relevant to be admitted and placed of record in the case.

Now, if the Government of the United States institutes a suit which is of such a nature that the defendant, in order to protect itself is required to go into those matters, the question in my mind is ultimately presented whether or not the plaintiff, namely, the Government of the United States, has not by bringing the suit waived all rights that it might have to object with respect thereto, and while as a matter of public policy such testimony would ordinarily be excluded, is not the rule that the Government of the United States, when it institutes a suit, is estopped from asserting it if such evidence should be pertinent to the defense?

MR. ANDERSON: Your Honor, that is a very delicate question. Will your Honor permit me to answer, because it places the Government in such a position that it must respond.

THE COURT: Yes.

MR. ANDERSON: The Government in this case has raised no question as to international rights of any kind. The question is purely between the Government and its officers and citizens. Therefore, as to the policy of selling the property here in question, the wisdom of making a sale of the property, assuming that the proper methods and statutory proceedings were carried out, the Government has raised no question, so far as I recall, in this bill. In fact, I think I have stated with the greatest clearness that I can express that as to the political wisdom of doing a thing of this kind, I would be one of the first to challenge the right of any court to inquire into—the political wisdom; and the sole position of the Government on that question is, first, a challenge of the power to do this thing in its various phases, which I need not go into, but your Honor understands from the argument; and second, a question which is a nice one, I concede, but on our view of the authorities is perfectly reviewable, whether the person exercising the discretion, assuming the power to have existed to exercise discretion, acted upon such a mistake of fact or want of knowledge of the fact as to make the exercise of discretion a guess. To use an analogous instance, suppose a court were to pass on a case, and the Judge was taken ill, and another Judge came in and never read the record at all, passed on the case without reading the record, in that event it would be really a guess on the results; it would not be a judicial determination at all.

Now, assuming the facts here involved, our view is that this peculiar statute, an amendment added by Congress, required to an unusual degree an ascertainments of those facts. Whether that is true as a matter of law, or whether the facts were sufficiently ascertained, and what were the facts presented are matters of record. What the President said, what he did, in my humble judgment is not called into question in this case.

The sole question is whether somebody so advised him. I hope I have made myself clear on that, and that merely goes to the fact of whether he exercised a discretion founded upon fact or not, and that has related chiefly to the order of Mr. Polk.

In the second place, if by any intendment this bill can be construed to involve any question of international policy or relationship, I do not recall it, and therefore I have not inquired into that question.

Your Honor will recall that in the evidence given by Mr. Polk my direct examination was limited to a very narrow scope, and the cross-examination broadened out a great deal, and on my re-direct I only asked him as to specific data that was presented to him. I did not ask him as to his reasons for doing anything, even though I took the position that he was acting as an individual and not as an officer.

If I have made myself clear, I hope I have answered your Honor's question, that I think that the case does not call into question here any matter of political wisdom or policy, either domestic or international; and my view of the right of the Court to inquire into presidential discretion, I wish to state again, is limited to the question of an inquiry into the power to do the act, in the first place; second, into whether the method of performing the act conformed to the requirements of the act under which the Executive officer was acting, whether the President or anyone else; and third, where he is required to act upon a state of facts, whether those facts were available or before him to an extent that presented a question of discretion.

I think it has been reviewed a great many times and I do not want to go into the authorities. The Courts have drawn that nice distinction, with due reference to the Executive Department and I think very clearly. I hope I have stated it accurately. I am trying to state what I understand to be the decisions of the Supreme Court of the United States and I do not wish this case to be in any wise enlarged beyond the construction of those decisions, as I recognize the extreme delicacy of this matter. The other objection I will not discuss.

THE COURT: I wanted this argument on the assumption that it is pertinent. The other question is an independent one which we have not given much attention to.

Mr. Anderson: I hope I have made myself clear, your Honor.

The Court: Have you anything to say, Mr. Kresel?

Mr. Kresel: I think, your Honor, that the situation that has arisen is but another proof in support of your Honor's statement as I recall it, during Mr. Polk's examination, of the wisdom of the rule laid down by the Courts, that the Courts will not inquire into the reasons actuating the exercise of a discretionary act by the Executive, where such discretion was committed to him by Congress.

I shall prosecute this inquiry no further. I shall immediately go to another subject.

Mr. Anderson: Of course, I understand that the answer, so far as it went, is taken subject to the objections which I have indicated.

The Court: I assume that all testimony taken upon the part of the plaintiff was subject to any objection that the defendant might at any time raise thereto and that all testimony taken on behalf of the defendant is subject to such objections as may be taken at any time before final decree with respect thereto.

Q. 131. Mr. Palmer, among the properties in your charge as Alien Property Custodian, did you have any property of the Bayer Company?

A. We had the capital stock of the Bayer Company owned by enemy persons transferred to the Alien Property Custodian, and as stockholder operated the Bayer Company.

Q. 132. What was the business of that company?

A. They were distributors, possibly makers, of some pharmaceuticals, particularly the medicinal preparation called aspirin.

Q. 133. Was the corporation operating under patents?

A. Yes.

Q. 134. Did you have those patents? I mean had you seized those patents?

A. We took those patents.

Q. 135. As German property?

A. As enemy property.

Q. 136. And do you recall in whose names those patents were or some of them?

A. My recollection is they were in the name of the German owners of the stock of the Bayer Company.

Q. 137. But they were not in the name of the Bayer Company here whose stock you seized?

A. No.

Q. 138. Did you sell the Bayer Company?

A. I sold the Bayer Company.

Q. 139. Do you remember what month it was, and what year?

A. I think in December, 1918.

Q. 140. Did you sell the stock that you had seized?

A. I did.

Q. 141. Did you sell at the same time the patents that you had seized?

A. Yes.

Q. 142. That is, the patents that were being used in the Bayer Company's business?

A. That is right.

Q. 143. Up to that time, that is up to the time of the sale of the Bayer Company, had you seized any patents that were not attached, so to speak, to a going business which you had or in which you had stock?

A. No, I think not.

Q. 144. Do you recall to whom the Bayer Company and the patents were sold?

A. The Sterling Products Company of West Virginia, was the purchaser as I recall it.

Q. 145. And it brought a considerable sum of money?

A. Considerable.

Q. 146. Can you tell us about how much?

A. Something more than five million dollars.

Q. 147. At that time did you know that there were other German patents here in the United States?

A. Yes, we knew that.

Q. 148. Had you caused an investigation to be made by Mr. Choate with reference to such German patents?

A. Mr. Choate had been making at my request an investigation into the entire chemical situation as affected by the German ownership of patents, American patents or otherwise, in this country.

Q. 149. The sale of the Bayer plant to the Sterling Products Company carried with it not only the stock of the Bayer Company but also the patents?

A. There were sold at the same time something like 1200 patents.

The Court: Do you mean the capital stock or the tangible assets?

Mr. Kresel: No, the capital stock of the corporation.

The Witness: Yes, that is what we sold.

Q. 150. And 1200 patents, as I understand, you had seized as the property of some Germans?

A. In the management and operation of the Bayer Company's business, through a Board of Directors appointed by me representing the enemy-owned stock which had been assigned to me, as Alien Property Custodian, we discovered that they were using patents the title to which was in enemy persons and not in the Bayer Company. When we got that property ready for sale or approached the time that we desired to sell it, in order that all assets might go to the purchaser, we demanded and took over all those patents and sold them along with the stock of the company at public sale to the highest bidder.

Q. 151. Was there a subsidiary of the Bayer Company?

A. Yes.

Q. 152. Do you recall the name of that?

A. There was a company which we treated as in the Bayer nest called the Synthetic Patents Company, which owned some patents.

Q. 153. Some of those 1200 patents?

A. That is my recollection.

Q. 154. And who owned the stock of the Synthetic Patents Company?

A. The Bayer Company.

Q. 155. Then is it a fact that when you sold the stock of the Bayer Company, that carried with it the stock that you owned of the Synthetic Patents Company?

> Mr. Anderson: I think that is a question of law. He has stated the relationship, and I have not called for the evidence of it that is usually required. I think it is a question of law what the sale carried with it. Whether the stock was owned by the corporation and what would be the effect of the sale is purely outside the scope of an examination of the witness here.
>
> The Court: Can there be any doubt it is a legal conclusion if the witness disclosed that the stock of this subsidiary company was in fact all owned by the Bayer Company?
>
> Mr. Kresel: There is no doubt that it is a legal conclusion, but I was not aware that there could be any doubt as to what the conclusion is.
>
> Mr. Anderson: Then why ask the question?
>
> The Court: I think the objection is well taken.

Q. 156. Subsequent to the sale of the Bayer fendant's Answer, be admitted as Exhibit No. 12 of the plaintiff's exhibits.

Received in evidence and marked "Plaintiff's Exhibit No. 12." (*See Exhibit 2 to Answer, Record, Vol. I, page 550.*)

Mr. Galloway: And we ask that it be not duplicated in the record.

Mr. Kresel: Mr. Galloway, if it would not interfere with your order of proof, would you just as leave, in order to keep the continuity of the exhibits, put in the extract from the Congressional Record of February 28, 1919, showing that the report which you have just now marked in evidence was sent by the President to Congress?

Mr. Galloway: I have no objection to that, but I do not happen to have a copy of it for the Court at this time.

Mr. Kresel: I have one I think.

Mr. Galloway: We also ask, in that event, your Honor, to put into the record the letter of transmittal by the Alien Property Custodian to the President, which shows that it is dated February 22nd, and that the report is made as of February 15th.

Mr. Kresel: Yes, there is no objection, your Honor. The fact is, just as Mr. Galloway stated, that the report was made as of February 15th, that the letter of transmittal to the President is dated February 22nd; but it does not, however, follow from that, that it was sent to the President on February 22nd. The fact is, as we understand it, that it was not sent until February 27th.

Mr. Galloway: We do not concede that fact, of course. We do not know it, your Honor.

Mr. Kresel: Yes, but I simply did not want the record to indicate that we conceded that.

The Court: Admitted without objection.

Mr. Galloway: If the Court please, I ask leave

Company did you in any way change the policy that you had outlined with respect to the seizure of the patents?

A. Well, the Bayer Company sale opened my eyes to one phase of the situation that I had not before fully realized.

Mr. Anderson: I think I would like to ask for a direct answer to that question.

The Witness: Of course, I am trying to.

Mr. Anderson: You are leading up to it, but just for legal reasons.

The Court: Will you have a yes or no answer to that, Mr. Kresel?

Q. 157. Will you answer that yes or no, please.

A. Yes.

Q. 158. Will you state just what change you made and what led to the change?

Mr. Anderson: And what time, please.

Mr. Kresel: Yes, please state the time.

A. Well, immediately after the Bayer sale I realized in the first place that it was a very dangerous thing to sell a large batch of patents——

Mr. Anderson: If your Honor please, may I interrupt one minute. I have no objection except the general objections which I have stated, to the witness's stating whether there was a change of policy and when that change took place, but if there is any written evidence of it I ask that they produce the evidence. I do not think the reasons underlying it are evidence now. If I examine him on cross-examination I might test his reason, but I do not think that counsel could follow the reasons which may have actuated this witness to change a policy. The essential fact is whether he changed it or not, and that is all to be said about it

Mr. Kresel: I want to be heard on that, your

Honor. The charges made here are that the change of policy was brought about by conspiracy. Your Honor will recall the charge in the bill that, whereas Mr. Bradley appearing before the Congressional Committee urging the adoption of this 4th of November amendment, is alleged to have stated that the only purpose was in order to enable the Custodian to sell patents which went with a going business, that then they draw the conclusion that that was the sole reason why Congress passed the legislation and they then go on and say that the conspirators got together and got the Custodian to practically misuse the November 4, 1918 amendment in order to enable the conspirators to carry out their conspiracy. I have a right to show by this witness what in fact it was that changed his policy, and I do not have to wait upon the chance that counsel on the other side will bring it out by cross-examination.

THE COURT: I think for the reasons stated by you, Mr. Kresel, and also for other reasons, this testimony is admissible. You may take the answer.

MR. ANDERSON: Exception.

THE WITNESS: What is the question?

(The question was repeated as follows.)

Q. 159. Will you state just what change you made and what led to the change, and please state the time?

A. Immediately after the Bayer sale, when I realized that a large number of chemical patents had gone in one sale to a single purchaser, with all that all might imply by way of monopoly of the product, etc., and that the Bayer Company was practically the only one of these German chemical companies which had a going business in this country, where we could have an actual sale either of the stock or of its assets and place them in American hands, I saw that if I adhered to the policy of only taking over and selling such patents as were directly affiliated with or connected with some going concerns which I was proposing to sell I would miss the accomplishment of the purpose we had in mind of Americanizing the industry. Therefore. I would have to do just what I announced on January 13th as my policy, that we would seize or take over and sell enemy-owned patents where they were important to an industry in America in which the Alien Property Custodian had any concern or interest, and from that time on our policy was of that sort.

Q. 160. When you came to the conclusion of the policy that you have outlined what steps did you take, what instructions did you give, to carry out that policy?

A. The first consideration of it was in a conference immediately after the Bayer sale, with Mr. Garvan, chief of the Bureau of Investigation, who felt as I did on the subject. We were agreed that some course, neither of us then knew what, had to be pursued which would result in taking these other patents not associated with any going business, in the dye and chemical line, from the German owners and Americanizing them.

Mr. Anderson: Could you state the time and place of that?

Mr. Kresel: I am coming to that.

A. (Continued.) Immediately after the Bayer sale in my office in Washington, when Mr. Garvan came down from New York, where his offices were, we had the first conference on the subject.

We were both impressed by the fact that the Bayer sale demonstrated that if that policy was going to be continued, we were at the end of our rope as far as making an American industry out of the chemical industry was concerned and I asked Mr. Garvan to

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give consideration to the matter, to have Mr. Choate and Mr. Hoguet work upon it, and to bring back to me, when they were ready, some feasible plan by which we could accomplish the purpose that we had in mind, of putting these patents in a way where they might be used for the general public benefit in the building up of a competitive chemical industry in this country, to the end that the Government might be protected and safeguarded in the future, in peace and in war, by a great chemical industry, with all the possibilities of weapons of defense coming out of it as by-products and all that. That, Mr. Garvan went to work at.

Q. 161. May I stop you there. I wonder if you would enlarge somewhat or be a little more specific as to your meaning of the statement that if you pursued the policy that was pursued in the Bayer sale, you would be at the end of your rope. I do not quite get the meaning of that?

A. Well, my information was that practically speaking—I may not be absolutely accurate about it—but practically speaking the Bayer Company was the only chemical property that we would be likely to have for sale, the only one where there was a going business in this country. The other German chemical companies had agencies over here, but they were mere selling agencies as a rule. There was not anything for us to take and seize and sell to the public at public sale.

Therefore, if we did not take the patents which these other concerns in Germany owned, we would not have any means of putting into American hands the control of the chemical industry, outside of that, which the Bayer had, which at that time was in German hands.

Of course, by that time I knew what Mr. Choate had found out, not only from himself, but also from Mr. Garvan himself. Choate and I saw each other frequently and he told me what he was learning. Garvan made it a practice to come to Washington every week and spend a day, and frequently a large part of the night, telling me what had been accomplished in the investigation of enemy ownership in various properties and particularly, this difficult and interesting and important problem of the chemical patents. So that by the time the Bayer Company came around to be sold and was sold, I knew, as Mr. Garvan knew, what the situation was.

Q. 162. How long had Mr. Choate been working on this investigation?

A. Nearly a year at that time, since February 1st.

Q. 163. 1918?

A. Since February 1, 1918.

Q. 164. Now then, in your conferences with Mr. Garvan, Mr. Choate and Mr. Hoguet, as to working out some plan of accomplishing the purpose that you had in mind as to the disposition of these German patents, did you take into consideration the advisability of learning what the chemical industry in the United States, such as it was, desired in the matter?

A. Yes.

Mr. Anderson: I just want to note an objection, if your Honor please, to this examination, as being very leading. I think it would very much relieve the necessity for my objection if counsel would ask this gentleman, whose knowledge and ability is beyond question, to say what he did do rather than to state what he did and ask him to say yes or no.

Mr. Kresel: I have to lead up to it.

The Court: I think the leading questions are not detrimental. They save time. But I am going to sustain the objection and ask Mr. Kresel to sacrifice the time and present this testimony in a non-leading form.

Q. 165. Mr. Palmer, you are familiar with the charges in this bill of complaint? You have read it?

A. I have read it.

Q. 166. Substantially, the allegations in the bill are that beginning about June, 1918, certain named corporations and individuals, trade associations and others not named, entered into conspiracy to induce you as Alien Property Custodian to seize those German patents; and further, the conspiracy was to organize a corporation and to induce you as Alien Property Custodian to sell these patents to that corporation, which it is alleged the conspirators were to control, and thereby the conspirators were to perpetuate a monopoly of the chemical industry which it is alleged they had already obtained. I am going to ask you whether, prior to the organization of The Chemical Foundation, which it is in evidence was incorporated on the nineteenth day of February, 1919, you ever met any of the representatives of the American Dyes Institute, the Textile Alliance——

Mr. Anderson: Mr. Kresel, the name of the Textile Alliance has been stricken out of the bill.

Q. 166. (Continuing.) Or the Manufacturing Chemists' Association, and whether any of them or any of their representatives spoke to you or made any representations to you with reference to these German patents?

A. I never met any of the gentlemen connected with those institutions so far as I know; and none of them ever said a word to me about these German chemical patents or any other patents.

Q. 167. Some of the other corporations that are mentioned are the National Aniline & Chemical Company, the General Chemical Company, the Solvay Process Company, the Semet-Solvay Company, the Barrett Company, E. I. duPont de Nemours & Company. As far as you know, did any representatives of any of these companies approach you or make any representations to you with reference to these German patents?

A. None whatever.

Q. 168. Mr. Morris R. Poucher is particularly named in the bill of complaint as the representative of these interests and it is alleged in the twenty-third paragraph of the complaint "that these firms, corporations and associations, through their representatives aforesaid, and especially through said Morris R. Poucher, urged upon said Alien Property Custodian and his assistants" and so on, "the pretended necessity for the protection of American industry of securing control or ownership of said enemy-owned patents, and urged upon them their pretended duty in the public interest to seize, sell, or dispose of the same." Up to the time of the organization of The Chemical Foundation, had you ever met Mr. Poucher?

A. I never had met Mr. Poucher.

Q. 169. Have you met him since?

A. I have met him since.

Q. 170. When was the first time you ever met him?

A. Oh, long after I ceased to be Alien Property Custodian I met him for the first time.

Q. 171. But were you aware, as Alien Property Custodian, that your associates, Mr. Garvan, Mr. Choate, and Mr. Hoguet, were in touch with representatives of the chemical industry and discussing with them this question of the disposition of these German patents?

A. I was aware of it.

Q. 172. Did you instruct them to do that?

The Court: Colonel Anderson has intimated that he has an objection to your leading questions. This one is leading.

Mr. Kresel: I shall not argue about that. I do not think it is leading.

The Court: Maybe I am wrong. Colonel Anderson, do you object?

Mr. Anderson: I think so, sir. I hope the Court will understand——

The Court: We will not discuss it. We will assume that it is leading.

Q. 173. Had you any talk with Mr. Garvan, Mr. Choate and Mr. Hoguet, or any of them, about the chemical industry in relation to these patents?

A. I had had talks with all of them, had told them what my purpose was in a very broad and general way, and left to them the working out of the details of a plan by which that broad purpose could be carried out. They were perfectly familiar with my plan, and they kept me familiar with their working out of the details.

Q. 174. Please state when it was that Mr. Garvan, Mr. Choate and Mr. Hoguet reported to you what progress they were making in this matter. I mean the first time that anything definite was reported to you?

A. I would say that their report to me of their plans taking some definite shape began to come late in January.

Q. 175. Of what year?

A. Of 1919, or some time in January of 1919.

Q. 176. Do you remember anything about a meeting held in your Washington office at which representatives of the chemical industry were present?

A. I remember about the meeting being held.

Q. 177. Do you know how that meeting came to be held?

A. Yes, I do.

Q. 178. Will you state how the meeting came to be held?

A. By that time, Mr. Garvan and Mr. Hoguet and to supply those exhibits later, as I do not have them at hand.

THE COURT: I think Mr. Kresel is going to furnish you with a copy.

MR. KRESEL: We will supply a copy.

THE COURT: Are you ready now to do it?

MR. KRESEL: Yes.

MR. GALLOWAY: The letter referred to, if the Court please, transmitting this report, the letter of the President transmitting this report, is found on page 4880 of the Congressional Record of the 65th Congress, third session, of March 1, 1919, and we ask that it be marked and introduced in evidence here.

THE COURT: But let the letter from Mr. Palmer to the President precede this.

MR. GALLOWAY: Yes, we should have that preceding this one.

MR. KRESEL: Yes.

MR. GALLOWAY: Have you a copy of that?

MR. KRESEL: Yes.

THE COURT: This will be marked 14 and the letter of Mr. Palmer will be marked 13.

MR. GALLOWAY: Yes, it should precede it. As Exhibit No. 13 we offer in evidence the letter from A. Mitchell Palmer to the President, dated February 22, 1919, which forwards a report according to the Act of Congress, and states that the report is made as of the close of business February 15, 1919.

THE COURT: Admitted without objection.

Received in evidence and marked "Plaintiff's Exhibit No. 13." (*See Exhibits, Vol. I, page 58.*)

THE COURT: The letter of the President to Congress just referred to by you, Mr. Galloway, a moment ago, is marked 14.

Received in evidence and marked "Plaintiff's Exhibit No. 14." (*See Exhibits, Vol. I, page 59.*)

MR. KRESEL: May I make another suggestion. Mr.

Mr. Choate, either one or all of them, had advised me that they had been in touch with representatives of the chemical industry, and that together they had discussed this problem from the viewpoint of my plan that I had announced to them.

Q. 179. May I interrupt you there. Did they say to you whether they had approached the industry or whether representatives of the industry had approached Mr. Choate, Mr. Garvan and Mr. Hoguet?

Mr. Anderson: If the Court please, I am constrained to object to that question. Mr. Garvan, Mr. Hoguet and Mr. Choate are available to testify in this case, and I do not think that the information and conversations between them about this matter, when they are available, should be given by the distinguished witness now on the stand; but if there are any written reports, I am perfectly willing that those reports should go in, subject to our general objection. But I do not think that these conversations are evidence.

Mr. Kresel: I do not understand the point of view of Colonel Anderson with reference to written documents. I do not understand the sanctity of a written document. A witness may state what was told him, whether subsequently there was a report made of it or no. As to whether conversations are admitted between Mr. Palmer and the other gentlemen, which I think is the real point of the objection, the Government has undertaken to put in here a vast amount of documentary proof of what statements were made by Mr. Hoguet to Mr. Palmer, and what Mr. Choate said to Mr. Hoguet. Why, the records are full of that. It seems to us that we are entitled to show what information Mr. Palmer had from those associated with him, upon which he took the action which I shall show he did take.

THE COURT: It seems to me that the evidence is clearly admissible and that the allegations of the bill charge that a certain Government official (I think it was Mr. Palmer) was deceived. Now, whether he was deceived is a question that makes it necessary to know what representations were made to him by Mr. Choate, Mr. Hoguet and Mr. Garvan. An independent inquiry is, I take it, whether they did or did not approach the representatives of the manufacturers or sales organizations of the dye and chemical industry in this country; but another and a separate and an independent inquiry is as to the representations those persons made to the Alien Property Custodian. I think the objection should be overruled and the answer should be taken.

A. You understand, I laid out a plan in a broad way of what we desired to accomplish, and I sent these gentlemen, who were my representatives, out to work out the details and bring me back a perfected plan for my consideration. I instructed them to do what was necessary to work up that kind of a plan.

When I first learned of the interest of the representatives of the industry in the plan, it was my understanding that that was in response to my instructions to my representatives to consult with the industry and with everybody that might be interested, to aid them in building up such a plan; and they went to the representatives of the industry for the purpose of seeking assistance and ideas and suggestions as to the practical working out of a plan to accomplish the purpose which I had in mind and had announced to them. I think you originally asked me how these gentlemen came to attend the meeting.

Q. 180. Yes, I am coming back to that.

A. All right.

Q. 181. You speak of the general plan that you had laid out, giving instructions to Mr. Garvan, Mr. Choate and Mr. Hoguet to work it out in detail. I am going to ask you to state what the general plan was that you laid out to them?

Mr. Anderson: I think I asked if that was not presented in writing, awhile ago, and he testified that that was his policy and plan of the 13th of January, a memorandum.

Mr. Kresel: No, that was not the plan at all.

Mr. Anderson: Modified by letter from Mr. Hoguet?

Mr. Kresel: No.

Q. 181 (continued). Mr. Palmer, will you answer the question?

A. The information that I had received had impressed me with the importance of several things in relation to this chemical patent business, all of which were factors in the working out of the problem. The tremendous development of the chemical science and industry for war purposes, as the war had demonstrated, made the chief and largest impression upon my mind. The absolute necessity, as demonstrated by Germany, of having a war industry in this country—I mean having a chemical industry in this country, if we were going to be adequately prepared for the kind of wars the last war showed the next war to be, led me to declare that we must work out some plan by which this German grip upon the chemical industry, so far as it applied to America, must be transferred to a new American industry under such conditions as would safeguard the Government in the use of every product of the chemical industry which it might require for its own safety and protection in the future; that it ought to be built up and developed in such a way that the Government could constantly have the benefit of it.

That was the one broad phase of the plan that I laid down to these gentlemen. The other was, and it was not my own entirely, but largely the result of the Federal Trade Commission's views and of what I knew to be the general policy of the administration, that in the building up of that industry a plan had to be worked out by which it should be a competitive industry and no monopoly should result from it.

Now, those were the two big ideas. It was all nebulous in my mind. It was very general and very broad. The purpose was plain. We wanted to build up an American industry in order that the Government and the people should benefit from it. We wanted to do it in a way that would make that absolutely certain forever and in a way that would not result in monopoly. Now, with that broad and general plan these men went out and tried to work out the plan.

Q. 182. I am coming back to that meeting about which I questioned you. I asked you whether you could state how the meeting came to be held. In other words, who called it, if you know?

A. Yes. Well, I asked either Mr. Choate or Mr. Garvan, who told me that these gentlemen had been discussing the matter together and with them and that they had ideas upon the subject which they would like to have me hear and discuss with them.

In response to that statement or report, I asked Mr. Garvan or Mr. Choate, I do not know which, to say that I would be glad to see them, and ask them to come down to Washington in a body so that we could make it as brief as possible, and let them all state their views to me. A day was fixed and they accepted the invitation, a large number of them, several, and came. Unfortunately, when they got there I was ill at home and unable to leave the house; so that I asked a report of everything that was said at the meeting be made and submitted to me, and a stenographic report was made and given to me the next day.

Q. 183. I show you Plaintiff's Exhibit No. 28, which is a report of this conference. I do not ask you to read it through, but just glance at it and state whether that is what was submitted to you as a report of what took place at this meeting?

A. Yes.

Q. 184. And did you read it?

A. I did.

Q. 185. I notice that according to the minutes of this meeting there were present representing the Alien Property Custodian, besides Mr. Choate and Mr. Hoguet, Mansfield Ferry. What was his position?

A. He was then general counsel for the Alien Property Custodian.

Q. 186. And F. J. Horne; what was his position?

A. He was then director of one of the bureaus.

Q. 187. And Mr. W. T. Gordon?

A. I think Gordon was the chief of the Patent Division. I am not sure. I can't remember what position he held. He was a part of the organization somewhere.

Q. 188. After you read the report of the proceedings of this meeting, did the suggestions made therein meet with your approval?

A. You mean the suggested plan for the formation of a corporation?

Q. 188 (continued). Yes.

A. Yes. I had discussion about it before I announced any approval of it.

Q. 189. With whom?

A. With Mr. Garvan and Mr. Choate.

Q. 190. And then did you give them any further instructions?

A. Yes, I told them to go ahead and work out the plan along that line.

Q. 191. Do you remember receiving this letter from the American Dyes Institute dated February 7, 1919, which is now Plaintiff's Exhibit No. 30?

A. I remember that letter. I have seen it.

Q. 192. Do you remember receiving with that letter a report of the Executive Committee of the American Dyes Institute, which is marked Plaintiff's Exhibit No. 29?

A. Yes, sir.

Q. 193. And subsequently there was a letter written by the American Dyes Institute which substituted another report for this one. Do you recall that?

A. I recall that; but I think from the original letter the wrong report had been sent.

Q. 194. All those communications were brought to your attention, were they?

A. They were.

Q. 195. And you saw from those what the plan was as to the organization of a corporation to take over these patents?

A. Yes, sir.

Q. 196. And did that meet with your approval?

A. It did.

Q. 197. How soon after the enactment of the amendment of November 4, 1918, did you begin to seize German patents; I mean, demand and seize German patents?

A. Immediately.

Q. 198. And when you discussed with Mr. Hoguet and Mr. Choate and Mr. Garvan your plan and instructed them to consider how it could be effected, were you at that time seizing German patents?

A. We had at that time seized a large number.

Q. 199. Colonel Anderson calls my attention to the fact that I am in error in speaking of conferences between yourself, Mr. Choate, Mr. Garvan and Mr. Hoguet. His recollection seems to be that you did not represent Mr. Hoguet in those conferences. Am I wrong about that?

A. Oh, yes, I did. I certainly intended to.

Q. 200. That was my understanding about it?

A. I will not say that the conferences consisted of the four of us.

Q. 201. At all times?

A. At all times. I was in the habit of holding conferences with every one of them. We had them at all hours of the day and at all places. Frequently I would see Mr. Hoguet by himself, frequently Mr. Choate, frequently Mr. Garvan, and sometimes all of them.

Q. 202. Will you state how soon after the sale of the Bayer plant, which as I recollect your testimony, you said occurred in December, 1918, you had the first of these conferences with your associates at which you discussed the necessity of making the disposition that you have outlined and discussed this plan?

A. The very first one was immediately after the sale and was with Mr. Garvan. Whether it was the next day or two days after, I do not remember; but the thing was the freshest thing in our minds at the time.

Q. 203. But the proposition began to be discussed immediately after the Bayer sale?

A. Immediately.

Q. 204. As plans were being perfected for The Chemical Foundation were you kept informed thereof?

> Mr. Anderson: I do not think he can answer that. I think he can say what information was conveyed to him, and when, but how does he know that he was kept informed of all information.
>
> Mr. Kresel: I did not ask him whether he was advised of all the information.
>
> The Court: I think the question is objectionable.
>
> Mr. Kresel: I will withdraw it.

Q. 205. Did you have any information submitted to you about the organization of The Chemical Foundation before its incorporation?

A. Yes.

Q. 206. Will you state what information in that respect was submitted to you, by whom and when?

A. Well, Mr. Garvan reporting for the three of them as to what had been done was telling me every time I saw him about what progress had been made in the organization or the proposed organization of the institution which we had planned. He told me when they had settled upon the name and what the name was to be. He told me when they came to a final agreement as to how much the capital stock would be, and these agreements were all tentative, subject to my approval, as he explained to them, and that is the reason he was reporting them to me. He advised me of the plan for the number of directors to be had. He advised me when it was suggested to him that he should be president of the company, saying that he was disinclined to accept it because he was tired of this job and wanted to get out, and I very earnestly and strongly urged him to accept it.

I think it was entirely upon my insistence that he did so. I was advised by them that the preparation of the charter itself was in the hands of Judge Ingraham, who was on our Advisory Sales Committee and had been Judge of the Appellate Division, I think, of the Supreme Court of New York, and of Judge Gray of Delaware, and they submitted to me several drafts, a couple of drafts, I do not know how many, of the proposed charter for my suggestion or criticism, approval or disapproval. I think I may say that I watched every detail with all the care that I could and we realized or thought we realized we were doing a big thing, and we wanted to do it with care and think of everything we possibly could think of to safeguard the interests of the country and make certain the carrying out of our purpose. So we counseled together constantly. I think these gentlemen told me everything they were doing and we exchanged our minds on the subject.

Mr. Anderson: I move to strike that out.

The Witness: Well, I know they did.

Mr. Anderson: He could not know that they told him everything; it is a physical and mental impossibility.

Mr. Kresel: If counsel for the Government desires to have that answer stricken out I will consent to it.

The Court: Just what portion?

Mr. Kresel: That portion wherein he said "these gentlemen told me everything."

The Court: Yes.

Q. 207. Did you know it was a part of the plan that Mr. Choate should be the general counsel of the new company?

A. I certainly did.

Q. 208. Did you know that it was the plan that Mr. Hoguet was to be the patent counsel of the new company?

A. I did.

Q. 209. Did you know that it was the plan to have a voting trust covering the common stock of the company?

A. I did.

Q. 210. Did you know that it was the plan that the common stock was to be the voting stock of the company?

A. Yes, I knew that.

Q. 211. Did you know that it was the plan to have this voting trust extend—well, I won't lead you. How long to your knowledge was it the plan to have the voting trust extend?

A. Well, our plan was to make it extend long enough to cover the life of the longest lived patent that we took over and sold to The Chemical Foundation, which was seventeen years.

The Court: We have reached a point now where we probably could suspend.

I have to take up some other matters. There is one question I want to ask. I am not suggesting its materiality, and I do not know whether it may be material or not, but it has been referred to several times. That is the importance of the chemical industry in America to a possible further war as essential for the protection of America. I do not want to unnecessarily go through the question whether I may take judicial notice of that at the time I am writing the opinion, and if either side deems it material, I hope they will show the reasons for that, rather than let me spend a half a day or so examining the authorities.

Mr. Kresel: May I state to the Court that it is our purpose to put in proof upon that point.

The Court: I do not want to have to be troubled with the question of whether I should take any judicial notice of that, if it becomes material. I do not know whether it is material or not.

Mr. Kresel: One more thing, if your Honor please; I am informed that Defendant's Exhibit 32-D is already in evidence as Plaintiff's Exhibit No. 5. Therefore, I ask leave to withdraw Defendant's Exhibit 32-D.

The Court: Let it be withdrawn.

Mr. Anderson: What is 32-D, may I ask?

Mr. Kresel: It is one of the Executive orders.

(Whereupon, at 3.30 o'clock Standard Time, an adjournment was taken until Friday, June 29, 1923, at 8.30 o'clock a. m., Eastern Standard Time.)

Galloway may follow it or not, as he deems wise. The letter to the President which has just been marked in evidence, and the President's letter to Congress, refer, of course, to the whole report. Mr. Galloway has put in as an exhibit only a portion of the report, namely that portion which we annex as an exhibit to our Answer. Would it not be just as well that the entire report be considered in evidence?

Mr. Galloway: No, if your Honor please, I object to the entire report going in if for no other reason than there that we do not want to put in the record. that there is a great mass of immaterial matter in

Mr. Kresel: I withdraw the suggestion. We will put it in in our case.

Mr. Galloway: There is a great mass of detail and statistics there that we do not care to encumber the record with. If they want to do it, all right.

Mr. Kresel: Of course I was not going to ask that it be copied in the record. All my suggestion was going to be was that it be considered in evidence and each side might refer to such parts of it as they wished. Still, as you do not care to follow the suggestion——

Mr. Galloway: I do not care to follow it. We also, if your Honor please, wish to call the Court's attention to the parts of Mr. Palmer's report which are found on Pages 69 to 71 of the Answer. I wish the record to show this: Pages 69 and 71 of the Answer, and Pages 101, 102, 103 and part of 104.

Mr. Kresel: He is asking the Court to take particular notice of parts of the Answer. That I understand to be his suggestion. Of course, we have no objection to that. We would like the Court to take particular notice of the entire Answer.

The Court: You want that particularly examined now, Mr. Galloway?

EIGHTEENTH DAY.

Wilmington, Delaware, June 29, 1923, at 8.30 o'clock a. m. Standard Time

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Kresel: If your Honor please, the last exhibit that I put in yesterday was Defendant's Exhibit 44. My attention is called to the fact that that document is already in as Plaintiff's Exhibit No. 453. I therefore desire to withdraw Defendant's Exhibit 44.

The Court: Let it be withdrawn.

A. Mitchell Palmer, resumed the stand.

Direct Examination (Continued).

By Mr. Kresel:

Q. 212. Mr. Palmer, I asked you yesterday about the relationship between the Synthetic Patents Company and the Bayer Company. Do you remember?

A. Yes.

Q. 213. With reference to the disposition of the Bayer patents you stated, as I recall it, that the Synthetic Patents Company was a subsidiary of the Bayer Company. Do you desire to make any correction in that?

A. I had first stated that the patents were largely owned by the same persons who were the owners of the stock of the Bayer Company, and you then asked me if there was not a subsidiary company, and I said yes. Strictly speaking, the Synthetic Patents Company was not a subsidiary of the Bayer Company. It was, I might say, an affiliated company. It was a corporation formed for the purpose of holding and exploiting patents and it owned most of the patents which the Bayer Company used. The stock of the Synthetic Patents Company was not owned by the Bayer Company, but by the German interests who owned the patents and the stock of the Bayer Company.

Q. 214. And did you seize the stock of the Synthetic Patents Company?

A. Well, I took it over. In the early days we did not seize. We demanded and received. We got to seizing later on.

Q. 215. And when you made the sale of the Bayer property, did you at the same time and as a part of that transaction sell the stock of the Synthetic Patents Company?

A. Yes, at the same time, in the same sale, to the same purchaser.

Q. 216. I now, Mr. Palmer, desire to question you with reference to the order made by Mr. Polk, dated February 26, 1919, which has already been put in evidence, authorizing the sale of these chemical patents to The Chemical Foundation. I should like you to state what conferences, if any, you had with Mr. Polk, with reference to the making of that order, giving the time, if you will, and who was present?

A. I first went to see Mr. Polk on the morning of February 26th at his office in the State Department and found that he was engaged, I think, at the White House. I waited for him for a time. He did not return and I could not wait any longer; so I went back to my office and wrote him a letter enclosing the Executive order, a draft of the Executive order, and enclosing also part of my report which was then ready for transmittal to the President.

Q. 217. What part was that, may I interrupt you?

A. What is that?

Q. 218. What part was that that you enclosed?

A. That portion of the report which had to do with chemicals, Chapter 2, I think it is, in the report; and I marked with pencil marks on the report the portion that I particularly desired him to read. Later in the day I got in touch with him and saw him and we had a conference at his office in the State Department.

Q. 219. Before you proceed to state the conference, I show you Plaintiff's Exhibit No. 90 and ask you whether that is a copy of the letter you say you wrote to Mr. Polk, with which you say you sent him the proposed Executive order and the portion of your report?

A. It is.

Q. 220. Will you proceed, please?

A. At this conference I repeated to him what I had said in the letter; and in addition to that went very fully into the chemical situation, describing to him at least all the high points in the report which we were making, which showed the facts and the history of the German control of the chemical industry, sketched its importance to the country and to the Government, and outlined to him in detail the plan that I had devised of selling these chemical patents to The Chemical Foundation; describing what The Chemical Foundation was, what our understanding with it was and the cash price which was to be received for the transfer of the patents to the Foundation and the other considerations which had moved me in making the sale.

I remember that our talk was longer than I expected it to be, because to my surprise and satisfaction, Mr. Polk was intensely interested in the thing and had a great deal of knowledge about it himself which he seemed to have acquired from other sources and we discussed it at length. He signed the order.

Q. 221. In this letter Plaintiff's Exhibit No. 90 I find this concluding paragraph: "I would go to the President about it, but you know the situation at the White House and I see no reason why you should not make the order." Will you state what you were referring to there, as to the situation at the White House?

A. Well, the President had just gotten back to the White House I think the evening before. We all knew he was going to stay only until the 4th of March, and everybody around him was trying to save him as much as possible. He did not have time to do the hundredth part of the things he was being called upon to do and we who were the heads of various departments in the city were all endeavoring to save him everything possible. It was only that which led me to say to Polk, who knew exactly as I did and who was trying to do what I was trying to do, save the President everything possible, that he should sign the order.

Q. 222. Your report to Congress, which is Defendant's Exhibit 30, was made as of the close of business February 15, 1919. Do you recall that?

A. As of.

Q. 223. Yes.

A. Yes, sir; as of the 15th of February.

Q. 224. The letter of transmittal to the President is dated February 22, 1919. You testified yesterday that notwithstanding the date of the letter, the report was not actually sent to the President until the 27th of February, 1919?

A. Yes, sir.

Q. 225. In your report, speaking of the transfer of these patents to The Chemical Foundation, you say: "By Executive order obtained under the provisions of the Act, I have sold to this company for the sum of $250,000 approximately 4500 patents," etc. You say, "I have sold." At the time when you sent this report to the President, that is on February 27, had the transaction actually been made by you?

A. Yes.

Q. 226. The Executive order had been signed the day before?

A. Signed on the 26th.

Mr. Anderson: I object, if your Honor please. The only evidence of sale by the Alien Property Custodian must be the written evidence. It is all a matter of writing. And therefore I wish to note, in addition to our general objection, the objection that this matter is a matter of writing, the contract between the parties is in writing, the transaction of sale is in writing, and cannot be varied by parol evidence.

Mr. Kresel: I think, sir, that this is as good a time as any to have an understanding about that. Quite true that the instrument of assignment was dated the tenth day of April, 1919; but it is our contention, and the evidence now is, that the sale, the actual sale, was made and agreed upon before the twenty-seventh day of February, 1919. I do not understand what Colonel Anderson means by his contention that a sale by the Alien Property Custodian must be in writing. An agreement to sell may be oral or may be in writing. The actual instrument whereby the transfer is made was in writing here, but that does not fix the date when the transaction was made. We contend that the transaction was made and completed by the twenty-seventh day of February, 1919, and while Mr. Palmer was still Alien Property Custodian. That is our contention.

Mr. Anderson: In order to make the record complete, I wish to move to strike out all the evidence of the witness as to the alleged sale and the date thereof, on the ground that the record in regard to this subject is in writing, whether required to be or not, the instrument of conveyance is in writing, and that speaks for itself and cannot be modified either as to date or otherwise by parol testimony or by the evidence of this witness. I mean, to add to that that the record of the sale is the assignment, and the date of the transaction and consummation thereof is the deed, and stated in the deed.

The Court: Is it your contention, Colonel Anderson, that Mr. Kresel cannot show the time when the agreement to make the sale was consummated; that is, as a separate matter or matter separate and apart from the consummation of the sale?

Mr. Anderson: It is my contention, sir, that this whole matter is a matter of record; so far as of any force at all, binding upon both parties to the transaction; and that that record is conclusive and cannot be varied.

The Court: I am afraid I did not make my question clear, because what I had in mind was whether or not it is your contention that the defendant may not show when the agreement to make the sale and the details of the sale to be made were completed.

Mr. Anderson: That is my contention in the face of this record, substantially. But the defendant has not undertaken to show that. He has just said it was prior to a certain date, and that date is prior to the date stated in the record evidence of the transaction itself; and I submit that that evidence in the first place, is too indefinite to mean anything, and in the second place, that it is wholly incompetent and illegal.

THE COURT: Is not the best evidence, Mr. Kresel, of the actual sale and the consummation of the sale, the assignment, or do you contend that the sale was a matter that consisted of the agreements which were entered into and binding, and that the assignment is the mere execution, or has merely the effect of an execution?

MR. KRESEL: Your Honor has stated my contention exactly. Our contention is that the agreement to sell, and the agreement as to all conditions of the sale were made before February 27, 1919.

THE COURT: Then I understand your contention. But is not Colonel Anderson's objection, even under that contention of yours, valid to the extent that you are asking the witness when the sale was consummated, which probably would be open to different interpretations? That is, if you use the word "sale" and the witness used the word "sale," without making clear as a fact that to which you are both referring by the use of the word "sale," the record is open, it seems to me, to the express objection of Colonel Anderson and also to such further objections as the objection stated may necessarily imply. I do not mean to say that the use of the word "sale" would be prohibited. I do not know that it would, if you have made clear what you mean by the word "sale."

MR. ANDERSON: Let me make myself clear, because this will probably become an issue and we might as well settle it here. What constitutes a sale is a matter of law to be concluded from facts. Certain transactions may be a sale and certain transactions may not be a sale.

It must appear who the parties were and that their minds meet in a contract. It must appear that all of the legal essentials exist, and where it is a written transaction, by deed— and in this case I take it the law would require a written transaction or conveyance by the Alien Property Custodian—the deed is the only evidence of what took place so far as the actual transaction is concerned.

We shall most earnestly object to going into any prior negotiations as to the sale, but if the Court should even allow the prior negotiations, objection to which is covered by our former statement, then they must state only the facts of what took place and when they took place, to the end that it may appear whether or not there was such a transaction as this Court would hold to be a contract or a meeting of the minds and how far that contract would be legal.

THE COURT: I think you have stated it, Colonel Anderson, in a much clearer and better way than the Court tried to express it in the statement to Mr. Kresel a moment ago.

MR. ANDERSON: I did not know whether I made that clear to the Court; and I wanted to be sure.

THE COURT: Now then, after these facts are assumed, if the word "sale" should perchance be used, it will be understood, I take it, to mean that aggregation of facts rather than a conclusion of law which must be drawn by the Court.

MR. ANDERSON: Will your Honor rule on the motion to strike out?

THE COURT: That motion is denied on the undertaking by Mr. Kresel that he intends to supplement that by the facts which you have referred to in your last statement and also on the understanding that the word "sale" as used by him meant only that and is not a conclusion of law. That was my understanding of your undertaking, Mr. Kresel.

Mr. Kresel: Yes, your Honor, quite right. I will come back to this point in a little while. I am not going to follow it up at this time.

Mr. Anderson: I suppose your Honor will give me an exception.

The Court: An exception goes to all adverse rulings.

Mr. Anderson: I move to strike the last answer out, about the signing of the Executive order, as not the best evidence.

Mr. Kresel: The motion is to strike out because he cannot give the date when it was signed?

Mr. Anderson: I mean to say that the order speaks for itself as to the date of signing.

The Court: What is the date of the order?

Mr. Kresel: The 26th of February.

Mr. Anderson: I think it is the 26th. I am making this objection, if your Honor please—and I do not want to be captious, but in reading over this evidence yesterday it seemed to me that I probably was—well, not as careful as I should have been, and I certainly do not want to yield any rights here. But I do not want to be captious, I am trying not to be.

The Court: I did not know you were open to that criticism.

Mr. Anderson: I am glad that your Honor does not think so, but I felt so; because I think, not in criticism at all, that a very large proportion of the evidence was elicited in answer to questions so indefinite and general as to be clearly objectionable on that ground according to my view, submitting of course to your Honor's better judgment and knowledge, and also that the answers were not responsive but were argumentative rather than direct responses to questions of fact. I do not wish to be unreasonable, and do not wish to be unpleasant in this trial, especially with this witness on the stand, but I do wish to ask that in the conduct of these examinations we conform to the rules of evidence to the end that I may make objection and take exceptions in the proper way. So far as this particular matter is concerned and its materiality, if the answer is that it was signed on the 26th I do not care so much about it and I will withdraw the motion as to that, but I made the objection for the purpose of raising the leading question.

Q. 227. Mr. Palmer, I think you testified that you became Attorney General on the 4th of March—or 5th of March, you said?

A. On the 5th of March.

Q. 228. 1919?

A. 1919.

Q. 229. Shortly before that time did you see President Wilson?

A. Yes.

Q. 230. When was it you saw him?

A. Do you mean when I saw him last before that time?

Q. 231. Yes, please.

A. The evening of the 3d was the last time I saw him.

Q. 232. The evening of the 3rd of March, 1919?

A. Yes, sir.

Q. 233. At that time did you discuss with him the sale of these patents to the Chemical Foundation?

A. Yes.

Q. 234. I wish you would state now fully as nearly as you can, the conversation between the President and yourself upon that subject?

Mr. Anderson: For the sake of the record I wish to renew my objection as to this conversa-

Mr. Galloway: I wish to read a paragraph from Page 69.

The Court: You may do so.

Mr. Galloway: "From all the foregoing it will be seen that the all-important portion of the chemical industry, the branch in which the work of the Alien Property Custodian would necessarily be most arduous, and in which its results might be most beneficial was the dye industry. The vital character of that industry was due not to its financial importance, since the consumption of dyes in the United States at the time of the outbreak of the war did not exceed $25,000,000 a year in cost to the consuming industries, nor to the fact that these dyes were absolute essentials to industries producing perhaps $2,500,000,000 of goods annually, but most of all to the fact that the technical skill and equipment provided by a most successful dye industry furnished the means, and almost the sole means, to which every nation must look for advances in the application of chemical science to practical undertakings. No other industry offers a livelihood to any such large numbers of highly-trained scientific chemists, nor any such incentive to continuous and extended research."

I also wish to call the Court's attention to the statement on Page 70, of that, in which it says:

> "The outbreak of the war cut off the importation of dyes from Germany,"

—which is part of our theory here.

And on Page 71, where it says:

> "The largest of the existing producers"——

perhaps I will go back a little, to show the connecting link that comes in; going back again to Page 70:

> "There immediately sprang up a number of American companies, mostly small, organized to

tion, and base it with your Honor's permission upon the reasons stated yesterday so that I will not prolong the statement by a repetition.

THE COURT: The purpose, as I understand it, being to have the witness state particularly the information imparted by him to the President?

MR. KRESEL: Exactly.

THE COURT: And such statements of the President as will indicate what knowledge the President had of the matters here in controversy?

MR. KRESEL: Exactly, sir. It is to meet the allegation that the President, when he made the subsequent order, was acting in ignorance of all the facts.

THE COURT: I will take the answer.

MR. ANDERSON: Your Honor will understand that the objection includes the general objection of immateriality and irrelevancy.

THE COURT: I understand the objection to all testimony taken by either side includes all objections that are indicated by the opening statements of counsel and any specific objections made by counsel prior to the objection to the immediate question; and exceptions go without so stating, in each instance, to all adverse rulings. You may answer, Mr. Palmer.

A. Late in the afternoon of March 3, 1919, I called at the White House and saw the President, and spent about an hour with him. I explained that in view of my appointment as Attorney General I would place my resignation as Alien Property Custodian in his hands, and suggested that the business of the office required that somebody be immediately appointed to succeed me. He asked me if I had any recommendation to make as to my successor. I told him that I unhesitatingly and very strongly recommend that he appoint Mr. Francis P. Garvan. I then explained to him who Mr. Garvan was, what his duties had been in the Alien Property Custodian's office, and the large extent and great value of his service in that office. I explained to him that I recommended him particularly, because, as I conceived it, the greatest and most important piece of work that we had on hand was the final actual consummation of the Amerizanization of the German chemical patents, and Garvan was more familiar with this situation than anybody in the country, had agreed to become President of the Chemical Foundation which was the instrument that we had created for the purpose of diverting these German chemical patents into general public use for the public benefit in this country, and I considered that so important a piece of constructive work on the part of my department that I was sure that if he agreed with me Garvan was the man to complete it.

I explained to him again what the chemical situation was, talked to him at length about the Chemical Foundation and what its purposes were, what we had in mind, the great work it could do in being the means of building up a great chemical industry for the advantage of the Government and the people.

Mr. Anderson: Just one minute, Mr. Palmer, if you please. If your Honor please I shall now interrupt the witness, to move to strike out the statements of the conversation with the President, on the ground in addition to those already stated that it is stating merely conclusions, and if a conversation took place and is to be recited, he must recite as nearly as possible what was said and what was stated. Everything is stated as as a conclusion, a view, an argument, and if the conversation is to be allowed the actual facts stated to the President and what the President actually said or the substance of what the President said should be given, and not the conclusion of the witness or the effect of it.

Mr. Kresel: I must say, your Honor, that I do not think that the witness's answer up to the present is subject to any such criticism, and I am sure that Mr. Palmer is giving his best recollection of what was said between him and the President.

Mr. Anderson: I am not denying that. I am not denying that at all, but I mean to say that it is merely the effect of his conversation and not what was said or the facts stated. There has not been a single fact stated. Permit me to illustrate, if your Honor please. How in the world can I meet any evidence of this kind, assuming that I was going to try to meet it.

Suppose it was a conversation with the witness that I could give; the witness stated that he stated to the President the situation with respect to the chemical industry in the United States; that he stated to the President the plans that they had for the chemical industry in the United States, and so on. I might go on and recite his statements. Now, those are perfect conclusions as to what he stated, the effect of conclusions as to what he stated in his own mind, and not facts upon which an examination could take place or evidence could be adduced to meet a fact.

Mr. Kresel: But, Colonel Anderson, you did not wait until the witness had finished his answer.

Mr. Anderson: But I objected to that part.

Mr. Kresel: Pardon me a minute. For all that appears, he may have gone on to say exactly what he did tell the President about the Chemical Foundation, exactly what he did tell him about the chemical industry. Now let him finish the answer.

If by that time he has not stated fact, then I can see some force in the point that you are raising.

Mr. Anderson: A statement of facts is the only thing that can be stated at all. Up to this time it has been a statement of conclusions. Therefore, I thought it better and more courteous to object to the evidence at this time to the end that my objection might be known before the witness went on to make a long statement of that kind. I do not think the character of evidence that the witness is giving, with due respect to the witness, is evidence at all.

Mr. Kresel: Not at all. I do not agree with that. Suppose that all the witness had said to the President was, "I think this is important." Have I not a right to show that that is what he said to him?

Mr. Anderson: If he said that, yes.

The Court: There may be some instances in the statement of the witness thus far in reply to the questions that are open to the objection of Colonel Anderson. I think it unnecessary for me to attempt to separate those from the others at the present time. It seems to me that the objection, Colonel Anderson, offered by you goes to the evidential value of the testimony, and I believe that we cannot finally weigh that evidential value until all the facts with respect to the answer of this witness have been had to the inquiry. You are not deprived by this ruling of the right to urge, at any time you see fit, the immateriality and lack of evidential value of any statements made by the witness.

Mr. Anderson: I understand, sir. Without prolonged discussion, may I suggest to the Court this: that if I were trying to meet this evidence, and it must be tested by that if it is admissible at all, would there be any possibility of my being able to meet as a fact the statement of the witness that he explained the chemical industry to the President of the United States?

Mr. Kresel: May I answer that, your Honor? Certainly, you could ask the witness, did Mr. Palmer on such and such a day explain to him the importance of the chemical industry.

The Court: It seems to me, Colonel Anderson, the question is admissible.

Q. 234 (continued). Will you proceed, Mr. Palmer?

A. I was simply trying to abbreviate——

Q. 234 (continued). Please do not abbreviate.

A. It will take me an hour to tell everything that took place in an hour's conversation.

The Court: You may take such time as may be found necessary.

Q. 234 (continued). Go on, Mr. Palmer.

A. I told him that at my instance the Chemical Foundation had been formed, and that it had been incorporated, and that the purpose of the Chemical Foundation, according to its charter and according to the agreement which we had with those who were organizing it——

Mr. Anderson: I object to any evidence of agreement outside of the charter. The purposes of the corporation are fixed in the charter.

The Court: Colonel Anderson, this witness is not attempting to state as a fact what was in the charter; but he is stating what he told the President. If that is untrue, you will have an opportunity to meet it. You may proceed, Mr. Palmer.

(Answer to Q. 234 repeated as above recorded.)

A. (continued). ——was to issue non-exclusive licenses for these patents which were conveyed to the Foundation upon fair and reasonable terms to all persons or firms or corporations in the United States who desired to use the same, with the intention of building up a competitive chemical industry in the country.

That in addition to that it would do such other things as it might be able to in promoting and encouraging the building up of a general chemical industry in the country by educational means and otherwise. I did not have the charter before me and did not undertake to quote it exactly, stating only its broad purposes.

That the Government would be given a free license to use any or all of those German patents as might be necessary for Government purposes and that many of them, we believed, were of a kind which were highly important to the Government, in that the processes or products covered by them had been used by the Government during the war and would probably be used again by the Government both in peace and in preparation for another war or in another war, and that that, we felt, was a very large and important consideration, that the Government should have this free service.

I explained to him further that it was not a money-making proposition in any sense and that nobody was going to be permitted to make any money out of it; that we had, after much effort, succeeded in getting persons who were in the chemical lines of business in the country, a large number of them, to subscribe for the stock of the Chemical Foundation, with the understanding, which was to be amply secured, that in no event should their investment ever return them more than 6 per cent. per annum; that all earnings of the Chemical Foundation growing out of royalties on patents in excess of 6 per cent. per annum to the stockholders should be and must be used in general research work and other work which in the judgment of its Board of Directors might be necessary to encourage and promote the building of a chemical industry in the United States.

I told him that in order to secure these purposes and to make certain that all of our plans were carried out not only in the letter but in the spirit in which they were conceived, I had made it a condition that the organization as it started should be named by myself, that its personnel should be of those who had been particularly and intimately associated with the work of investigating the German hold upon the chemical industry in America and those who by reason of that had collaborated with me most closely in building this organization and working out its plan and purpose.

I explained to him that that was the reason I thought Mr. Garvan ought to be president of the company and that I had directed that he should be elected. I told him that I had insisted with those who put up the money that, contrary to the usual plan, they should not name the directors or the officers, but I would do so and I would see that they were continued, by insisting that all future stock should be trusteed.

In order to make certain that that trust would be faithfully carried out and that our purposes would be executed by the voting trustees so far as they could, in the control of the corporation through the stock, I suggested as the voting trustees the five persons whom the President himself had appointed, most of whom he personally knew and who had served me as members of the Advisory Sales Committee during our sales program; and that that had all been agreed to and that Mr. Polk had signed the Executive order and the sale to the Chemical Foundation was an absolute, accomplished and finished fact.

Mr. Anderson: I object to the last statement, sir.

Mr. Kresel: That is what he said he stated to the President. You can't strike that out.

The Court: Do I understand, Mr. Palmer, that all you are stating now is what you stated to the President?

The Witness: Yes.

The Court: What the witness is stating is not the conclusion that the sale was an accomplished fact, but he is stating that he so stated to the President. His whole testimony is merely of what transpired at this meeting with the President. Motion denied. You may proceed.

A. (Continuing.) And that my purpose in urging Mr. Garvan's appointment as Alien Property Custodian was quite largely in view of the fact that he had undertaken to be the president of this corporation and I knew he could be absolutely trusted to carry out its plans and purposes to the letter and in their full spirit. I would not have felt so safe in putting this plan over if I had not been able to pick out from my organization men of that kind who could and would operate it not only as we wanted it to be run but with a patriotic desire to serve their country.

I told him that Mr. Choate would also be associated with the company. I am not certain that I at that time told him the names of the directors. I do not know.

I had with me the commission in blank as Alien Property Custodian, and after this statement the President took the commission and with his own hand wrote the name of Francis P. Garvan in the blank which I had left for the name of the appointee, and I took the commission and handed it to Mr. Garvan that evening.

Q. 234 (continuing). Mr. Palmer——

A. (continuing). Now, if I am to tell all about this conversation, you will have to let me go on.

Q. 235. We will come to that in a minute.

The Court: I understood the witness to say that he had not completed the conversation with the President.

Mr. Kresel: I did not so understand. I thought he was speaking of the conversation with Mr. Garvan.

The Witness: Oh, no.

Q. 236. I wish you would continue the conversation with the President, because I was going to direct your attention to some portions of it.

A. From that talk we drifted into a more general discussion of the disposition of enemy property and I told him the amount of property which we had sold up to that time, in a general way. I cannot give now the details of what I told him as to the names of the properties and the amounts, but I remember that I made a report to him in a sketchy manner of our selling program and how it had been carried out and told him that I thought, with the program then on the way, when it was completed, that we would have rooted out of American industry and commerce the more obnoxious German interests and would have transferred them to American hands in line with our purpose in carrying out the act, and that I hoped the Peace Conference would make certain that that course of procedure with respect to the treatment of enemy property would be sustained and protected in the Treaty, and so forth. We had a discussion about the Treaty.

The President then said he thought it would be wise to have somebody representing the Alien Property Custodian at his side at the Peace Conference, somebody who was familiar with everything that we had done and the reasons for it and who was familiar also with the plan which I had outlined to him for the purpose of providing for and advising with Congress as to the future disposition of this enemy property.

He asked me if I had such a man who was available and who could be of service over there. I told him I had. He asked me who it was. I suggested Mr. Bradley W. Palmer. Mr. Palmer is no relation of mine. He is a Boston lawyer with the firm of Story, Thorndike, Palmer & Dodge, one of the leaders of the Boston Bar, who had been working in the Alien Property Custodian's office at a dollar a year, having charge of some of the more difficult problems which we had to handle, who was entirely familiar with the whole work of the Alien Property Custodian; and I recommended to the President that he be chosen. The President said that he would be glad if I would ask him to come to Paris at once. I saw Palmer that evening and in forty-eight hours he was aboard ship, Paris bound, and stayed there until the Treaty was signed.

We had some discussion also about the importance of the chemical industry in war and I told him of the developments which had come to my attention during the war, especially in Germany, where the dye plants——

> Mr. Anderson: Just one moment, Mr. Palmer. If this evidence is intended purely as a statement of what the witness said to the President, under your Honor's ruling, I recognize that it goes in. If it is intended as evidential of any facts as to the chemical industry in the war, I wish to oject.
>
> The Court: I assume it is not offered for that. The purpose of this, as I understand it, is to meet the allegation of your bill that the President was ignorant of what he was doing. What did you state your contention was, Colonel Anderson?
>
> Mr. Anderson: I stated if it was merely evidence that the witness said these things to the President, whatever he said, then under your Honor's ruling, subject to my objection, I of

embark in the manufacturing business. By strenuous efforts these companies contrived to avert the threatened dye famine which the curtailment of the German supply apparently rendered inevitable. Commencing with those dyes which were easiest to produce, and gradually extending to a limited number of the more essential and well-known of the non-patented colors, the production increased until at the time when I took office the requirements of the textile trade were being met and a considerable export business had sprung up. The quality of dyes produced was, except in the matter of standardization, comparable with the German dyes of similar character, but the fast alizarin and anthracene colors were not being produced, nor was synthetic indigo, the consumption of which is larger than that of any other dye. The largest of the existing producers, that is to say, Schoelkopf Aniline & Chemical Works, W. Bekers Aniline Co. and the Standard Aniline Co. of Wappingers Falls, have been combined with the aniline oil works of the Benzol Products Co. and with the appropriate portions of the business of the General Chemical Co., the Semet Solvay Co., and the Barrett Co., into a single large corporation known as the National Aniline & Chemical Co. This combination has since produced considerably more than half of the dyes consumed in America. During the same period the Dupont Co. had begun to construct an enormous plant at Deepwater, Del., established an immense laboratory employing approximately 200 chemists, and had bought the plant of the United Piece Dye Works, in which the latter company had succeeded in producing a number of the most valuable dyes applicable to silk. Among other important concerns the Dow Chemical Co., Messrs. Ault & Wiborg, the Sherwin-Williams Co., and the Newport Chemical Works were preparing for the production of colors on a large scale, while many other companies were turning out appreciable quantities. The prices of course rose enormously and the results for a time were correspondingly profitable."

course do not wish to interrupt him. If it is intended to be used as evidence of the facts which he stated, then I do object and wish to be heard.

THE COURT: As I understand it, what the witness is now detailing is offered merely and solely as a conversation between the President and the witness and is not offered as proof of the facts so stated.

MR. KRESEL: That is the purpose, your Honor. Of course, some of the things that he told the President, he knew of his own knowledge, and as to that, those were facts.

THE COURT: No, I do not so understand this statement of the witness.

MR. KRESEL: This coming statement?

THE COURT: No. that any statement the witness may have disclosed to the President is evidence of anything more than a mere disclosure. If you want to get from this witness whether the statements made by him were true or otherwise, you will have to get that on independent questions and not now.

MR. KRESEL: All right, your Honor.

THE COURT: Is that your contention, Colonel Anderson?

MR. ANDERSON: With that limitation, of course, I will not interrupt to renew the objection, because it is limited to merely what he said to the President. Whether they were existing facts or not is a question to be determined later.

THE COURT: Correct.

MR. KRESEL: Will you proceed, Mr. Palmer.

MR. ANDERSON: I am compelled to call the attention of the Court to the fact that the knowledge that had come to his attention, and the importance of the German industry in war, is hardly a statement of a fact. It is a statement that he had a lot of information, but what it is does not appear on this record.

THE WITNESS: I was going on to say what it was.

Q. 237. Will you go on, Mr. Palmer.

A. —which information was to the effect that the great dye factories along the Rhine, which during the war had been combined into one great institution under state guidance, if not control, had been converted during the war into practically munition plants; the by-products of the industry being of great value and importance in the manufacture of high explosives and noxious gases which the Germans had employed to a great extent in the war.

I expressed the opinion to him that we could never hope to equal that sort of performance, if we ever had to, unless we had a chemical industry of our own in this country; that my information had been that the Germans had a practical monopoly of it not only in Germany but in the world and certainly in America and that the way to break that monopoly was to carry out the plan that I had worked out.

In explanation of the manner in which they had been able to control the American monopoly, I explained to him that all of these patents which we had seized had been taken out by the Germans not for the purpose of promoting the development of the chemical industry but for impeding it and that as a general proposition they were used to keep down and destroy the industry in this country, rather than to build it up, in order that the German products might come here and control the market; that that was an additional fact which, in the history of these patents, had led me to have little compunction about taking them from the Germans and selling them to American interests. He was very familiar with the progress of the development of chemistry in the war.

THE COURT: Just a moment.

Q. 238. Did he state that?

THE COURT: Let us strike that out. Colonel Anderson indicated that he had an objection to that last sentence.

THE WITNESS: I am sorry.

THE COURT: I think the objection to that sentence is well taken. Will you strike it out. That is the statement that he was very familiar.

THE WITNESS: Do I understand it is improper for me to say what the President said?

THE COURT: Probably unconsciously, Mr. Palmer, you stated that the President was very familiar——

THE WITNESS: I meant to say he said he was familiar. Whether it was true or not I do not know.

He said he was familiar with the progress of chemistry on the other side, in the development of munitions particularly, and as I recall it, he told me he had publicly talked about it. But my recollection is not very definite about it. I think that about covers it, sir.

Q. 239. Did you in this conference with the President mention the number of patents approximately that were sold to The Chemical Foundation.

MR. ANDERSON: I object to the question as leading.

MR. KRESEL: After the witness has exhausted his recollection, I have a right to ask him that.

THE COURT: Objection overruled.

A. I certainly did. I knew about what the amount was, and I told him all about it.

Q. 240. What did you state to him upon that subject?

A. That there were all told perhaps more than four thousand of these patents.

Q. 241. And did you mention to him the cash price that was to be paid by The Chemical Foundation?

A. Yes, I said that, I think.

Q. 242. I do not recall your saying; but will you say it now?

> THE COURT: He did cover that in his statement. You may get him to repeat it, if you desire.
>
> MR. KRESEL: I do not recall it.

Q. 242. (Continued) You did tell the President that?

A. I told him the amount of the capital stock of The Chemical Foundation and $250,000 of it was to be used for the purpose of paying a cash consideration for these patents.

Q. 243. Did you mention to the President at that time your report?

A. I do not know. I cannot recall. It was then in his hands or had been transmitted by him to Congress.

Q. 244. In connection with that part of the conference referring to Mr. Bradley W. Palmer, I show you copy of a cablegram from Mr. Palmer in Paris, and ask you whether that cablegram was brought to your attention at or about the time of its receipt?

A. Although this was after I left the Alien Property Custodian's office, it was brought to my attention, as were all the messages from Mr. Bradley W. Palmer at the Peace Conference. They were all shown to me.

> MR. ANDERSON: I ask to strike out the last part of it and make the answer responsive to the question, for two reasons——
>
> MR. KRESEL: You do not have to assign any reasons. I will consent rather than have your reasons. I now offer in evidence this cablegram from Mr. Palmer.
>
> THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 44." (*See Exhibits, Vol. IV, page 2312.*)

Mr. Anderson: Have you the original of that?

Mr. Kresel: I haven't it here. I suppose it is available. Would you like to see the original?

Mr. Anderson: No, I will not object to the introduction of the copy but I would like to see the original.

Mr. Kresel: I will see if I can obtain it.

Mr. Anderson: You understand I am not objecting to the introduction of this.

Mr. Kresel: I understand.

Mr. Anderson: But I would like to see the original.

Mr. Kresel: Your Honor, this is a cable dated Paris, April 23, 1919, and reads as follows: (Reads Exhibit.)

Q. 245. I now show you a copy of a cablegram sent by Mr. Garvan to Mr. Bradley W. Palmer in Paris, and ask you whether that is the answer to the cablegram just read, and whether it was brought to your attention at the time of its despatch? (Handing witness.)

A. It was, and that is the answer.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: Have you the original of which that is a copy?

Mr. Kresel: I suppose that is available.

Mr. Anderson: I would like to see it.

Mr. Kresel: Colonel Anderson, my information is from the gentlemen who know that all these cables, or the original and copy of these two I am just introducing are in the State Department files; and you will recall, of course, that you put in here a portion of this very correspondence. I think I should like to have all the rest of it produced from the State Department files. I just happen to have these two, there may be others I would like to use. May this be marked now.

Received in evidence and marked "Defendant's Exhibit No. 45." (*See Exhibits, Vol. IV, page 2313.*)

Mr. Anderson: If you will specify, Mr. Kresel, exactly what you want I shall make every effort to get it from the State Department if it is in its files. I cannot bring the whole State Department files of the Peace Conference correspondence.

Mr. Kresel: No.

Mr. Anderson: You have had access to them.

Mr. Kresel: No, we have not had access to them.

Mr. Anderson: I do not know how we can get those, because I have never seen them.

Mr. Kresel: I should like to have produced, if you will, all other cablegrams from Mr. Bradley W. Palmer during his stay there in Paris at the Peace Conference.

Now I will read the answer, your Honor. It is dated April 24, 1919, addressed "Ammission." That is American Mission, I take it. It is addressed to Paris, for Bradley W. Palmer, from Garvan, and in that connection I may say that Defendant's Exhibit No. 44 also has the words above "From Ammission." (Reads Defendant's Exhibit No. 45.)

Q. 246. Do you remember, Mr. Palmer, how soon after this conference with the President on the evening of March 3, 1919, the President left the country to go abroad again?

A. I think he left Washington on the evening of March 4th and left New York on the morning of March 5th.

Q. 247. Do you know Admiral Grayson.

A. Very well.

Q. 248. Did you speak to Admiral Grayson before the President again left the country to go abroad, which you say was about March 4, 1919, with reference to your report, Defendant's Exhibit No. 30? Just say yes or no.

A. Yes.

Q. 249. Did you give Admiral Grayson a copy of your report?

A. I gave him two copies, as I recall it.

Q. 250. What did you ask him to do with reference to those copies?

Mr. Kresel: Do you object to that?

Mr. Anderson: I do. It is subject to the same objection I have made to all these conversations.

Mr. Kresel: I mean do you object to it because it is hearsay; is that the point?

Mr. Anderson: I do.

Mr. Kresel: Very well, I won't press the question. Does your Honor understand that there is objection to this?

The Court: Yes. I did not grasp the nature of the objection.

Mr. Kresel: Will Colonel Anderson state it then?

Mr. Anderson: In addition to the general objection which I have already stated, I object to all of these conversations, and I do not care to repeat all that unless necessary. This is a specific conversation with an Admiral of the Navy, whose position, of course, we all know perfectly well; but it is utterly immaterial to this situation, and a conversation between Mr. Palmer and

Admiral Grayson is purely hearsay, and therefore I object to it in any event.

Mr. Kresel: Is there objection to my stating——

The Court: I know your purpose; you have stated it to me before. But the hearsay is what?

Mr. Anderson: Of course, what he stated to Admiral Grayson probably is not hearsay but if he is going to ask for what Admiral Grayson said to him — if under your Honor's ruling this evidence is admissible I suppose he could state what he said to Admiral Grayson, but if you are going to follow up——

The Court: No, I am not sure it is, unless you are going to prove by Admiral Grayson a fact the nature of which was heretofore indicated in the several statements. Have you proposed to do that?

Mr. Kresel: I do, your Honor. I think, sir, I can clear it up by a letter which I am about to introduce.

The Court: Very well.

Q. 251. Did you receive a letter from Admiral Grayson, of which this is a copy? (Handing paper.)

A. I received a letter from him.

Q. 252. I would rather show you the original. Is that the letter you received? (Handing paper.)

A. Yes, this is the paper.

Q. 253. Do you know whether Admiral Grayson accompanied the President abroad on this trip?

A. He did.

Mr. Kresel: I offer this letter in evidence.

Mr. Anderson: I object, if your Honor please. What Admiral Grayson wrote to Mr. Palmer is not evidence of what Admiral Grayson said to the President. Admiral Grayson is available, subject to the subpœna of this Court, and if they want to introduce any evidence from him, they will have to call him and subject him to cross-examination.

THE COURT: Are you offering this letter for the purpose of showing that Admiral Grayson carried out the request made by him to Mr. Palmer? As I understand it, you have stated heretofore that Mr. Palmer made a certain request of a person who accompanied the President, and I suppose he is now identified as Admiral Grayson.

MR. KRESEL: Yes, your Honor.

THE COURT: Then is not Colonel Anderson's objection well taken?

MR. KRESEL: No, I do not think so. I think that we have a right to show that Mr. Palmer, through anybody (I do not care who the agent was), brought to the President's attention certain facts or certain documents (in this case it is a document), and my sole purpose in introducing this letter is to show that it was delivered to the President.

THE COURT: But there is my difficulty. You are not offering sworn evidence of the fact that it was so delivered and you are only offering the signed statement of the Admiral that it was so delivered: I assume; I know nothing about the contents of the letter. That, as I understand the rule on evidence, does not have evidential value. I am reasonably clear on that. I think the objection is well taken. If you have any doubt about it, you may put the letter in under our general rule.

MR. KRESEL: I have adopted in this case, your Honor will have noticed, the rule not to take advantage of your Honor's very generous offer to let either side put in anything although the Court does not think it is material. I will not do that. I may later call Admiral Grayson; I may not.

Q. 254. Mr. Palmer, bearing upon the salvarsan patents, do you remember an interview that you had with Dr. Stieglitz?

A. Yes.

Q. 255. Do you know who Dr. Stieglitz is?

A. I have known him to be a very eminent man in the chemical profession, if you mall call that a profession. I do not know whether he is a teacher or an active man. I really do not know. I have heard of him.

Q. 256. Did he come to you with a letter of introduction from Governor Fort of the Federal Trade Commission?

A. I think he did come that way.

Q. 257. And is that a copy of the letter (handing paper)?

A. He came to see me on March 4th, that day. I assume that is the letter he brought. It is a letter addressed to me. I do not recall it.

Mr. Kresel: I offer the letter in evidence. Any objection to that?

Mr. Anderson: No.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 46." (*See Exhibits, Vol. IV, page 2313.*)

Q. 258. Will you state briefly the conversation that you had with Dr. Stieglitz upon this subject of salvarsan?

Mr. Anderson: I object, if your Honor please. I do not see what materiality there is in a conversation between Dr. Stieglitz and Mr. Palmer after he had resigned as Alien Property Custodian on the 4th of March, when he said he tendered his resignation.

I also wish to call the Court's attention to the paragraph on Page 72, where it is stated:

> "At the time when I took office, therefore, the American dye industry was active and profitable and in almost undisturbed possession of the field; but it required only the slightest investigation to show that the new-born industry's hold on life was of the most insecure description."

Mr. Kresel: Mr. Galloway, would you mind if I read one sentence of the same paragraph that you were just reading from? I think the Court would like to hear that in the same connection.

Mr. Galloway: What page are you referring to?

Mr. Kresel: Page 72, where it says:

> "but it required only the slightest investigation to show that the new-born industry's hold on life was of the most insecure description."

Later on, in the same paragraph, it is stated:

> "In the case of all the faster dyes Germany's patents had prevented every attempt at American production, and while the Trading with the Enemy Act authorized issuance of licenses under these patents, the terms were such that no licensee could hope to continue the manufacture in competition with the Germans after the war."

Mr. Galloway: All right. It is now in the record anyhow. We have no objection to its being called to your Honor's attention at this time.

I wish to call the Court's attention and to read certain extracts from Page 100 of that report:

> "The amendment of November 4 to the Trading ,with the Enemy Act presented for the first time an opportunity for what appears to me to be the most important piece of constructive work which has been possible in my department. Until the enactment of this amendment it had not

THE COURT: I will hear Mr. Kresel, because I do not understand the purpose, Colonel Anderson, and then I will hear you further.

MR. KRESEL: We offer this evidence to show what information was conveyed to Mr. Palmer upon this particular subject. Now, while it is true that the information was conveyed to him on the 4th of March, which I think was a day after he had resigned as Alien Property Custodian, it is nevertheless material, in my view, under the allegations under the Bill of Complaint charging conspiracy on the part of the dye interests to induce the transaction which is being here attacked. When Mr. Palmer resigned on the 3d of March, 1919, as Alien Property Custodian, he did not sever his connection as an official of the Government. He became the law officer of the government. The plaintiff has introduced here numerous exhibits connecting Mr. Palmer with this transaction long subsequent to the third of March, 1919.

THE COURT: For instance, what exhibits? I do not now recall.

MR. KRESEL: Let me see if I can recall some of them. As I recall it, in the Flush Tank transaction there is a letter addressed to Mr. Palmer subsequent to the 4th of March, 1919. I wonder if I could get the number of that exhibit. That is only one. I think in this series of correspondence —what is the name of that patent?

THE COURT: I recall those early documents. they were received on March 26th as having been received on March 25th, according to your contention.

MR. KRESEL: Yes.

THE COURT: But I was unaware heretofore of their being sent to the witness.

MR. KRESEL: There is no doubt that some were sent to the witness. Moreover, as I recall it—of course, there have been so many documents here, your Honor, that it is difficult to remember them all——

Mr. Galloway: Was that letter introduced in evidence, Mr. Kresel?

Mr. Kresel: Which one?

Mr. Galloway: The one in March to Mr. Palmer, after he became Attorney General.

Mr. Kresel: I think it was. I am trying to locate it now.

Mr. Galloway: I do not think it was.

The Court: I do not know; but the letters that I recall were two. Mr. Kresel called attention to the fact that they were stamped as having been received March 25th. I understand what you have in mind.

Mr. Kresel: May I also say this, your Honor: We shall show that when the Alien Property Custodian, Mr. Palmer's successor, gave to the Government a free license on some of the patents (I think that was in February, 1920), but which was subsequently cancelled by the big licenses, as appears from the terms of it, that was delivered to the Attorney General of the United States as the law officer of the Government and representing the Government. We will show that.

In other words, Mr. Palmer's connection with this transaction did not really cease on the third of March. In his official capacity as Attorney General of the United States he still had connection with this transaction, and in view of the broad charge in the complaint that he was induced by this conspiracy to do what he did do in connection with this transaction, I think we have a right to show all the information that was available to him, If it is not too remote.

Your Honor will see this is the very next day after he resigned, and as I recall Mr. Palmer's testimony, he did not actually leave the Alien Property Custodian's office until the fifth of March.

The Witness: I continued to be Alien Property Custodian until I qualified as Attorney General on the fifth of March.

The Court: And this communication was when?

Mr. Kresel: Fourth of March.

The Court: I will hear you, Colonel Anderson.

Mr. Anderson: I thought it would be the quickest way to dispose of this matter to simply say Mr. Palmer terminated his connection with this matter officially. That he continued to occupy the position of Attorney General, no one questions, but there is not a suggestion in this bill that anything Mr. Palmer did as Attorney General is in question here.

But supposing he had continued until 1920 or 1921 to be Alien Property Custodian, why is a conversation between Dr. Stieglitz, of Chicago, and Mr. Palmer admissible in this case, if Dr. Stieglitz is available to testify to any facts he knows, if he told to Mr. Palmer any facts relating to this matter?

Therefore, if they want to prove any facts in connection with the matter within the knowledge of Dr. Stieglitz, and I assume he would not have told Mr. Palmer anything that was not within his knowledge, the person to call is Dr. Stieglitz to prove what he knew at that time. But certainly a conversation between Mr. Palmer and Dr. Stieglitz is not the best evidence of the facts in this case.

The Court: The only difficulty that I have now that the time has gone to the fifth day of March, Colonel Anderson, is this: The judicial department functions only on sworn statements or agreed statements of fact. My information is that it is the only one of the three departments that does so function, or whose duty it is to so function. Now, whether this was a misrepresentation or a correct representation and a truthful representation to the witness, I am wondering whether he would not have a right to disclose the information which came to him upon which he acted, without having the burden put upon him of staying his hand until after he had had each representation supported in such a manner as to enable it to be received in a Court of Law.

Mr. Anderson: If your Honor please, I am not arguing now that Mr. Palmer, as Alien Property Custodian, or as Attorney General, would have to have the information presented to him under oath or as a Court. I am not arguing that. I am reserving very earnestly my objections to these various conversations for the reasons which I have undertaken to outline and others which appear of record; but I do object to an attempt to prove a fact in Court by what Dr. Stieglitz told Mr. Palmer.

The Court: There is no need debating that, because I concede that you are right on that, and I assume that there is no dispute about that; is there?

Mr. Kresel: None at all. I am simply trying to show what information this witness had.

The Court: Whether it was correct or incorrect?

Mr. Kresel: That is a matter which if we do not show by other evidence the Government can argue is not proof of the fact stated in the information.

Mr. Anderson: I do not want to put the Government in the position that it must go through this record and argue as to each of these statements that they are not proof of the fact, if there is any claim that they are proof of the fact. That is the reason I am raising this objection.

The Court: Let me ask this question: as I indicated yesterday, and I have been considering it at all odd moments since, as to whether the inevitable conclusion to be drawn from your allegations, although in a very courteous way you declined to charge the Governmental officials who were instrumental in the consummation of this transaction with fraud, and very graciously said that while they might possibly be guilty of legal fraud, you did not desire even to use that term in connection with them and you hoped you would not be required to prove actual fraud, or something to that effect (you were stating it much more graciously than I can) yet the tendency and the necessities of the case under the allegations of the bill seem to me to drive the plaintiff inevitably to this conclusion, particularly in view of the testimony in this case up to this point: That if this witness, knowing the facts which he has stated that he does know or did know, was the moving spirit in the consummation of this transaction, and in so doing became a party to the conspiracy, is there any escape from the conclusion that he was the most guilty participant in the transaction, those greatest interested in the dye and chemical industry not excluded? And if that conclusion of mine be in any degree sound, is it proper to deprive this witness, although not a party defendant, of the opportunity of disclosing in full measure the information upon which he acted?

Mr. Anderson: Your Honor has asked a question which I have to consider a little, because I want to answer it, with the witness on the stand, with the greatest frankness that I can. My respect for this witness and the consideration due him as a former high official of the Government of the United States and a distinguished citizen is such that I want to avoid saying anything which by any implication could be taken to have a different construction from that feeling.

I have always taken the view that actual fraud is a matter which must be drawn from the entire record, be argued before the Court upon the entire record, and should be very carefully avoided in the presentation of a case, where only the facts should be proved and let the Court draw its conclusion. Because fraud, of course, is a conclusion from facts proven, and not a fact.

Therefore, if it were necessary or if in the study of this case it should be deemed necessary to do what the Government of the United States may conceive it to be its duty to do, I should not hesitate to argue for any conclusion which might be drawn from the evidence, however reluctant I might be to do so. Because, of course, the witness himself would be one of the first to disclaim any idea that any citizen of the United States is above the law, as he said, the administration of the law was in his charge. Therefore, if it is consistent with a frank answer to your Honor's question I prefer not to argue the question as to what this record will disclose or may disclose at the present time without a very careful study of the record, and I certainly would not contend for actual fraud unless I felt the record clearly sustained it.

The Court: But I do not mean your personal——

Mr. Anderson: I understand. I am speaking officially; I have no personal status.

The Court: I understand. But must I not now, so far as the admission of evidence is concerned——

Mr. Anderson: I understand, and I was going to answer that.

The Court: (continuing) ——or any question with respect to evidence, have in mind your position? Not whether you have succeeded in establishing a case, but your contention; because whether you have established a case or not, or made out a case, is a matter for final determination.

Mr. Anderson: I understand, sir; entirely so.

The Court: But I am confronted with your contention, that contention which I stated a moment ago, though you have not put it so and it seems to me you have put the premises a little differently, must be borne in mind in reaching the conclusion. If that is true, I see no escape from it.

Mr. Anderson: Let me go ahead. Would your Honor permit me?

The Court: I should be glad to hear you.

Mr. Anderson: Because this is a matter on which I would like to make my position clear if I can in an offhand way. It is my view that the distinguished gentleman who is now on the witness stand entirely misconceived the meaning of this law and his duties thereunder.

The Court: I missed your last statement.

Mr. Anderson: His duties thereunder. I say that with great respect for his views. But I think so; and that the Government was probably acting upon a wrong theory of this statute. If that is true, it is perfectly proper for us to bring it to the attention of the courts.

Let us assume that the Alien Property Custodian at that time was wrongfully advised as to his legal duties. I quite agree with Mr. Palmer that if the office which he occupied at that time authorized him to discharge the duties which he outlined here and on the theory which he has outlined, then it was the most remarkable office in the existence of the world; I agree with his statement of yesterday, there is nothing to equal it in the history of the world, certainly since the Roman Empire. But I do not think so.

Let us assume now that he honestly entertained that view, which I do not question, and that the people who were interested in securing these patents — notwithstanding his statement of his participation in this matter; turning to other evidence in this case their purpose and aim are of record, contemporaneous record—took advantage of that view and of a natural enthusiasm to render what he conceived to be a wise public service to secure these patents under conditions which would be a violation of the rights of the United States. Then in such event the element of actual fraud, even though he assumed responsibility and even though he participated in this matter at the time in the manner in which he has described, might be entirely absent because of the want of fraudulent intent. It might be due to a mistake of law, a mistake of fact, or any other consideration, but which would not relieve the situation in any way. But I have proceeded on that theory. It must be obvious to the Court now that a great deal of the original record in this case was not available to the Government at all, and I assume the been possible to take over German patents. These patents, as had been already indicated, formed a colossal obstacle to the development of the American dyestuff industry. Evidently they had not been taken out with any intention of manufacturing in this country or from any fear of American manufacture, which the Germans apparently thought could not be successfully carried on under conditions prevailing in this country in regard to costs and to the supply of technicians and skilled labor. Upon consideration, however, it seemed that these patents offered a possible solution for the problem, hitherto unsolvable, of protecting the new American dye industry against German competition after the war."

"If they were not taken out in order to prevent American competition, they must have been obtained as a weapon against competing imports. If they were sufficient to stop importation of competing Swiss, French, and English dyes, they would presumably serve, in American hands, to stop the importation of German dyes. This was particularly probable in the case of the product patents, since most of the coal-tar dyestuffs are definite chemical combinations to which a product patent is entirely applicable.

"The idea was accordingly conceived that if the German chemical patents could be placed in the hands of any American institution strong enough to protect them, a real obstacle might be opposed to German importation after the war, and at the same time the American industry might be freed from the prohibition enforced by the patents against the manufacture of the most valuable dyestuffs. Accordingly, these considerations were laid before various associations of chemical manufacturers, notably the Dye Institute and the American Manufacturing Chemists' Association. The suggestion was met with an instantaneous and enthusiastic approval, and as a result a corporation has been organized to be known as the Chemical Foundation (Inc.), in which practically every important American manufacturer will be a stockholder, the purpose of which is to acquire erty at the conclusion of this case to argue for it. I say that, as your Honor has said, as counsel and in presenting the case and in the argument of the case I am going to take that position with the greatest consideration that I can, not inconsistent with my duties.

The Court: Now then, the other question.

Mr. Anderson: I beg your Honor's pardon.

The Court: As I understood you, at the concluding part of your previous statement, you said that many of the exhibits in this case, many of the documents, were not open to you. I did not understand you.

Mr. Anderson: Your Honor has seen a number of papers or correspondence produced that are produced not from the records of the Government at all. For instance, as I stated to your Honor the other day, the original letter from Mr. Palmer to Mr. Polk, a copy of the letter, was not in our possession.

The Court: Do you mind telling me again what you said, because I did not get that fully, and after that I may want to ask you another question about it.

Mr. Anderson: I will. I intended to say this: First, I called the attention of Mr. Palmer yesterday to the fact that those important letters of the President, the originals, were in his possession. I am not imputing any improper motives. We have never seen them before. We have never been able to find them and I am going to show that they are not in the office of the Alien Property Custodian, if I have to, if it is material.

There is proof here that a number of papers were packed up and sent away from the Alien Property Custodian's office. I have tried to avoid that unpleasant situation here and that is what I referred to when I said that I reserved the question under Section 46 of the bill. Counsel and I have agreed that possibly we will not have to go into that question. If I have to, I will do it.

If the evidence was coming at all, I preferred it to come from their side and not from us. A number of these papers were discovered and returned to the Government two weeks before this trial started. Among them was a number of copies of letters to the President, a copy of the letter of Mr. Palmer to Mr. Polk, and other papers of great importance in this case. It was discovered by counsel among their papers and promptly returned to us.

Those things were not in our possession at the time. They are developing here. We had to draw this bill upon the facts as we had them. We are in a position to show here that many of the records, original records of the Alien Property Custodian, are not there; and when I say that, unless I have very definite evidence that it is in the possession of these gentlemen, I want to be most careful in making any suggestion of that kind, or certainly to asperse their motives in the matter.

I have made that statement for the reason that I think it is due the Government I should make it. I made it, I think, at the outset. I made it the other day when the letter to Mr. Polk was produced. I said that neither the original nor a carbon copy of that letter had ever been seen by us until two weeks before this trial.

The Government has been in a position where it had to draw its case upon the facts before it; and the delay in investigation here—I mean the delay in bringing this suit—of several months, we state in the bill, was induced by our inability to get hold of the records. Colonel Miller testified the other day that there were no copies of these assignments, these fundamental papers on which this case is based, in the Alien Property Custodian's office when he went there.

I am not here to try that kind of a question, but I am saying those things in view of the claim here that the Government is guilty of laches, which as a matter of law does not amount to anything, because the Government cannot be guilty of laches. It is stated in the bill as a reason why this thing has been delayed.

I have not mentioned that because I imagined that when Mr. Garvan went on the stand, in view of the statement in the bill, he would probably explain that and I would rather the situation should come from him and not from me. My statement on the record, of course, is merely in response to your Honor's question.

THE COURT: I did not understand what you meant by the statement. I did not understand it and consequently did not know what you meant by it.

MR. ANDERSON: Have I made myself clear?

THE COURT: Entirely so. I did not understand the legal conclusion that you wanted me to draw from it. Mr. Kresel, I will be glad to hear from you.

MR. KRESEL: I think your Honor, that I cannot let this colloquy between the Court and Colonel Anderson go by without stating the defendant's position in the matter, and it is this: that the Government at all times had in its possession every document that has been produced in this case, including the copy of the letter that Colonel Anderson says was written by Mr. Palmer to Mr. Polk and which he says was not at the time of the drawing of the bill available to him.

Mr. Anderson: Well, now——

Mr. Kresel: I do not mean to say that Colonel Anderson is telling something that is not a fact, to his knowledge.

Mr. Anderson: I want to hear Mr. Kresel and then I will reply.

The Court: I will hear you at the end of Mr. Kresel's statement.

Mr. Kresel: For example, your Honor Colonel Anderson says that the Government did not know of these letters from the President to Mr. Palmer, some of which Mr. Palmer produced here yesterday. Copies of those letters were on file at the White House. The fact that Mr. Palmer had the originals did not deprive the Government of knowledge of those letters.

He says that there were no copies of the assignments to us in the files of the Alien Property Custodian. Assuming that it be true, the fact is nevertheless true that the originals were on file and on record in the Patent Office. He says that he has proof in this case that two boxes of papers were taken away from the Alien Property Custodian's office and sent to the Chemical Foundation. He has not stated to your Honor that it appears from the letter which he calls the proof that the two boxes contained copies of demands and copies of assignments of the very patents that are included here; muniments of title to which this defendant was entitled.

That no secret of the fact was made that they were shipped to the Chemical Foundation is shown by the fact that the Government has been able to produce the letter written by Mr. Goldstein, of the Alien Property Custodian's office, to Mr. Hoguet advising him that the shipment was being made.

There have been hints here and there that documents were taken away improperly. We resent that. They have made the statement in their Bill of Complaint that documents were sent to the Chemical Foundation. We had assumed that when they put in the letter of Mr. Goldstein with reference to those two boxes, that that was their their proof, and we were willing to meet it.

Now, if they have got any other proof on the subject, let them produce it. But this business of stating here that the Government did not know the facts is unfounded. These attacks upon the Chemical Foundation and the chemical industry here have been the subject of five investigations before Congressional committees. Surely, the Government knew everything about those. Why, this Chemical Foundation has been investigated, as I say, five times from top to bottom and the Government knew and was chargeable with knowledge of everything that has been brought out here today or ever since we started this trial.

Not a new thing has been developed. And for the Government to come in here now and plead at the breaking of their case that they did not know the facts when they drew their bill of complaint is disingenuous, to say the least. They knew everything and we resent any imputation that anybody connected with this case took away any documents that he was not entitled to. You may answer.

Mr. Anderson: All right, sir.

I am not going to indulge in epithets, if your Honor please. But since this question has been raised, much to my regret, possibly through an inadvertent statement of mine, I am going to state the facts and, if necessary, I am going to prove the facts.

Mr. Kresel: Now, I object to any statement of facts upon a subject of this sort. If there is any proof, let it be produced.

The Court: Colonel Anderson, you have stated your point. Mr. Kresel has stated his. Is there anything further to discuss?

Mr. Anderson: There is, sir, because there have been statements made here that, I take it, I am disingenuous, which is one of the few suggestions I have ever had of that kind—I think probably the first I ever have had in court; and, therefore, I shall claim the privilege of replying to that statement.

The Court: I am going to give you that privilege, Colonel Anderson; but I hope that you will not, under the plea of personal privilege, which shall not be denied you, go further afield than if you replied to that statement tomorrow morning instead of this morning.

Mr. Anderson: I am not. Your Honor rather implies that I am irritated by it. I would be out of court, but I am not in court. I am here officially and therefore I will not be any more irritated at the bar than I would if I were on the bench. So you are not going to find me overstepping the limits of what I conceive to be propriety because of any irritation.

The Court: But isn't it this, Colonel Anderson? I have led to this by what I have deemed and what I now consider necessary in order to determine the admissibility of a letter. You have both gone a little far afield.

Mr. Anderson: Possibly.

The Court: Now, then, I do not see that there is anything that calls for a reply. You will have the opportunity, if you want it. It seems to me that we are discussing here the admissibility of statements made to the witness on the fourth day of March, 1919. The consideration of that question brought up other questions as incidental thereto. It seems to me that is the question that is before me and that other questions are immaterial. I do not see that there is any particular reason for claiming personal privilege, but I am going to let you be the judge of that and not myself.

Mr. Kresel: I made no reflection upon Colonel Anderson personally. I do not see whether the question of privilege comes in.

The Court: What is that?

Mr. Kresel: I say, I have made no reflection upon Colonel Anderson personally whatsoever and did not intend to.

The Court: That was my understanding, Mr. Kresel.

Mr. Anderson: I think the charge that the Government had been disingenuous and the flat denial of my statement that the Government did not have these papers available, according to my view, would, outside of the court room be regarded as a very serious reflection; but in the court room I am going to treat it in an official way. Therefore, I am simply going to say, if your Honor please, that the Government did not have these papers available.

The Court: Now, you made that before, Colonel Anderson.

Mr. Anderson: I know.

The Court: I know, but that was made surely in support of your case. The defendant denies it. If that becomes an issue in this case, let us not debate it.

Mr. Anderson: In the second place——

The Court: There has come an issue of fact, not of veracity between counsel. If in my judgment your integrity or veracity were challenged, I should be very glad to hear you.

Mr. Anderson: Then I understand your Honor does not wish to hear the subject discussed any further and I withdraw——

The Court: I think you have indicated on each side a difference of view with respect to certain facts in your professional capacity.

Mr. Anderson: There has been a recital of facts by counsel on the other side which he claims supports his view. I have not recited the facts in connection with those matters. He makes specific statements of that kind. I will either reply to them or not, as your Honor desires. Unless I can reply to them fully, I do not want to reply to them at all.

The Court: Colonel Anderson, I am hearing you at length because I realize you are taking an entirely different viewpoint with respect to the matter. It seems to me you have each stated your view of the facts fully and frankly and you differ. There is no challenge of either side of improper motives.

Mr. Anderson: I do not think I have stated the facts fully in reply to those statements made by counsel, but this is your Honor's court, and I never argue with a Court. If your Honor does not feel that it is desirable or necessary that I should make any further statement on the subject, I am perfectly willing to take my seat and drop the matter there.

The Court: One mistake you made there. This is not my court. This is a court of the United States for the District of Delaware, of which I am a mere incident. While sitting on this bench, I am functioning, not in any personal capacity whatsoever, but purely in an official capacity.

Mr. Anderson: I am addressing your Honor in your official capacity. As an official, you are the presiding Judge of this court, and what you say goes in it as far as I am concerned, and I am not going to argue.

The Court: Colonel Anderson, it seems to me that you are entitled to do this: If you disagree with counsel as to the statement of facts, as to your view of the facts, you are entitled to say so of record. You have expressed your view and Mr. Kresel has expressed his. Now then, if you want to reaffirm that the statement made by you can be established by the facts, that is all right; but we are getting into a matter that is purely collateral, and, it seems to me, foreign to the issue.

Mr. Anderson: If that is your Honor's judgment, I waive any personal claim whatever. I never make a personal claim in court.

The Court: I thank you.

I think the objection to the letter offered in evidence is not well taken. It is now admitted.

Mr. Kresel: There was no offer of a letter, your Honor. It was as to a conversation.

The Court: Yes. The witness was asked to detail the conversation had between him and Dr. Stieglitz on the fourth day of March, 1919. Will you proceed, please, Mr. Palmer.

A. I had a very brief conversation with him. He started to talk about salvarsan and its tremendous importance and the importance of the patents. I explained to him that that was my busy day; I was cleaning up my desk to get out; I was leaving, and I really could not talk to him at length. I asked him if he woud not commit to writing his views and what he desired to present to me; and he said he would.

By **Mr. Kresel**:

Q. 259. And did you subsequently receive from him a letter upon the subject?

A. I did.

Q. 260. Just look at that and state whether that is a copy of the letter?

A. This is a letter I received from him.

(At this point a short recess was taken by direction of the Court.)

Mr. Kresel: I would like to mark this, please.

The Court: Is the letter offered?

Mr. Kresel: That was offered. Colonel Anderson was examining it when we took the recess.

The Court: What is its date?

Mr. Kresel: Dated March 14, 1919.

The Court: Admitted.

Letter received in evidence and marked "Defendant's Exhibit No. 47", memorandum annexed "Defendant's Exhibit No. 47-A." (*See Exhibits, Vol. IV, pages 2314 and 2316.*)

Mr. Anderson: Would your Honor permit me, in addition to the general objection, to renew my objection to that letter on the ground that it was addressed to the witness after he had retired from the office of Alien Property Custodian and addressed to him as Attorney General of the United States and not as Alien Property Custodian. It has statements of fact in there, and is introduced for the purpose of stating the fact which the writer should be called to make, and not be proved by a letter from a person we know nothing about, to an officer who had nothing to do with this transaction; and therefore we think it is entirely incompetent and inadmissible for these reasons, in addition to the reasons we have urged in the objections reserved to this testimony.

The Court: It has been admitted not as proof by purchase these German patents and to hold them as a trustee for American industry, 'for the Americanization of such institutions as may be affected thereby, for the exclusion or elimination of alien interests hostile or detrimental to the said industries and for the advancement of chemical and allied science and industry in the United States.' The voting stock is to be placed in a voting trust of which the trustees are to be the five gentlemen who for months have been acting as the sales committee which passes upon sales made by my department, that is to say, George L. Ingraham (former presiding justice of the Appellate Division, First Department, New York Supreme Court); Otto T. Bannard (president, New York Trust Co.); Cleveland H. Dodge; B. Howell Griswold, Jr. (senior partner of Brown Bros., bankers, Philadelphia); Ralph Stone (president, Detroit Trust Co.), and the charter is so framed that under the patents non-exclusive licenses only can be granted on equal terms to all proper applicants, and must be granted to the United States free of cost. The company is capitalized at $500,000, of which $400,000 is to be 6 per cent cumulative preferred stock and $100,000 common stock, also limited to 6 per cent dividends. The first president of the Chemical Foundation (Inc.) will be Francis P. Garvan, of the New York bar, to whose clear vision and indefatigable industry I am chiefly indebted in the working out of this plan. By Executive order obtained under the provisions of the act, I have sold to this company for the sum of $250,000 approximately 4,500 patents, the remaining $250,000 has been provided for working capital so that the company may be able to commence immediately and prosecute with the utmost vigor infringement proceedings whenever the first German attempt shall hereafter be made to import into this country. The charter of the corporation provides that surplus income is to be used for the retirement of the preferred stock and thereafter for the advancement of chemical and allied science and industry. The price thus of the facts therein contained, but as statements made to the witness prior to the execution of the assignment.

Q. 261. Upon receipt of this letter did you send it to Mr. Garvan, who was then Alien Property Custodian?

A. I referred it to the Alien Property Custodian, yes, sir.

MR. KRESEL: I want to read two paragraphs of this communication: (Reads from exhibit.)

MR. ANDERSON: If your Honor will permit me, in view of what has been read, I renew my motion to strike out this letter and the testimony in relation thereto, including the conversations with Mr. Palmer, for the reasons already stated; and directing attention especially to the letter, it will be observed from reading it that it is, I presume, read to have your Honor know that this gentleman, who was Chairman of the National Research Council and recommended certain things, and the papers attached, are his reasons for making the recommendation. Therefore, I respectfully suggest again that the only competent evidence of his reasons, if it were competent at all, would be the testimony of this witness.

I conceive that it would be impossible to separate the facts from the facts that were communicated to the witness, even if that were material, and if the letter were read before a jury, which of course is a test of evidence, it would be most prejudicial, if it had any relevancy whatever, which I do not think it has to the case, to introduce the views of this witness, his recommendations, etc., and have them read in that way without an opportunity for cross-examination or for testing his knowledge. I present that very earnestly, because I feel that that class of evidence is wrong. I am not going to insist upon it further than that.

THE COURT: I admit it not as proof of the facts, but as representations made to this witness and referred by him to the then Alien Property Custodian prior to the date of the assignment to the defendant in this case. I doubt myself whether such evidence will eventually be found material in any way, even though those facts were true, to the decision of the issues in this case.

Q. 262. Mr. Palmer, do you recall a conference with representatives of the War Department about the disposition of these chemical patents?

A. I do.

Q. 263. There is in evidence here a memorandum made by you of that conference, and I mention it only to fix the date. Do you recall the date of the conference?

A. January 12th, I think.

Q. 264. February 12th is the memorandum.

A. February 12th.

Q. 265. Now, will you state what that conference was, as briefly as possible?

THE COURT: Same objection, I assume, Colonel Anderson.

MR. ANDERSON: Yes, sir. In addition to the usual objection, I should suggest, if we are going to have this evidence at all, that we ought to have the date, time, place, persons present and what they said, and not what the conference was.

Q. 265. (Continued). You understand that to be my question, Mr. Palmer?

A. Yes, sir.

MR. ANDERSON: And who said it, and what was exactly said.

MR. KRESEL: I understand that there is objection to his stating what was said?

THE COURT: There is the general objection to stating what was said; but that is overruled. The suggestion that the witness give the time, place and persons present is I think a good one.

MR. KRESEL: May I ask whether the Government objects to the giving of this conversation, in view of the fact that the Government has introduced what purports to be a memorandum of that conversation made by these army officers?

MR. ANDERSON: Then the contemporaneous memorandum is the best evidence of what took place.

MR. KRESEL: In other words, we are bound, are we, by a memorandum made?

MR. ANDERSON: I thought it was a memorandum made by Mr. Palmer.

MR. KRESEL: Even so, and I do not know whether it was introduced, but even if it were, hasn't he the right to give the conversation? In other words, what I am questioning is whether the Government is raising objection to giving this conversation in view of the record.

THE COURT: I understand Colonel Anderson stands by the objection that he made. You may proceed Mr. Palmer.

A to Q. 265. (Continued). On the 12th of February, 1919, three Army officers in uniform called at my office, the office of the Alien Property Custodian, 16th and P Streets, Washington. They were named Holcombe, Swenarton, or Swinnerton, or something of that sort. I do not remember their rank. They were officers in uniform; and a third officer whose name I have forgotten. I am not sure that I knew at the time.

As I recall it, Holcombe—Major Holcombe, I think—was the spokesman for the party, and he said they came from the War Department to discuss with me the matter of the patents on dyes and chemicals; that there were many of them in which the War Department was interested; and he handed me a letter, I think it was signed by himself, which contained what he desired to present. I read the letter.

Q. 266. I will ask you to stop there a moment. I show you this letter, Plaintiff's Exhibit No. 87 (handing witness). Will you state whether that is the letter that they presented?

A. Yes, that is the letter.

Q. 267. Now will you proceed?

A. After reading the letter and listening to his statement, which was along the same lines, I explained to him that his proposal that I should sell to the War Department, or should seize all the German patents and sell them all to the War Department at wholesale, was quite impossible, I could not consider such a thing for a moment, that it would mean an entire abdication of all my power and authority in the premises and was contrary to my arrangement with the Federal Trade Commission, which arrangement I explained to him as I have heretofore explained it on the stand. He then asked if an arrangement would be made by which the Government could be given free license to use such patents as the Government might need for its own use from any purchaser of these patents to whom we might sell them, and I told him that that was considered as a part of our policy, and that I would suggest that he see Mr. Hoguet as to the working out of that part of it. Immediately after the conversation I made a written memorandum of it and left it in the files.

Q. 268. Mr. Palmer, I read from this letter, Plaintiff's Exhibit No. 87, which Major Holcombe presented to you, the following:

> "It is belived that whatever action can be taken with respect to any patents of the classes referred to should be taken with respect to all enemy-owned patents. The amount of labor involved in investigating and determining what patents the Government will require protection

> against is much more than would be involved in drafting blanket terms of sale for all enemy-owned patents, whether relating to war materials or not, for the purpose of ensuring adequate protection to the United States therefrom."

Did Major Holcombe and his associates who were there state that their desire was that you should execute a blanket form of sale to the War Department for all enemy-owned patents?

A. They wanted me to seize all the patents in this country owned by Germans and sell them all in one blanket assignment to the War Department.

Q. 269. At that conference did these gentlemen discuss with you specifically the nitrate patents?

A. I do not recall that they did.

Q. 270. Now I show you Plaintiff's Exhibit No. 88, and ask you whether that is the memorandum that you say you made of the conference on the same day that you had the conference (handing witness)?

A. That is a copy of it.

Q. 271. Yes, of course.

A. Signed by my initials.

Q. 272. Did you fix the price of $250,000 as the money consideration for the sale of these patents to the Chemical Foundation? Do not answer yet, please.

THE COURT: The question is leading, Mr. Kresel, and the Government objects to leading questions.

MR. KRESEL: I am sorry, sir.

Q. 273. Please state what conversations you had, and with whom, with reference to the money consideration and the other conditions of the sale of the patents to The Chemical Foundation?

A. My conversations with reference to the consideration were with Mr. Hoguet, Mr. Choate and Mr. Garvan, who were representing me in negotiations and conferences with the persons who were to organize the Chemical Foundation and supply the capital.

Q. 274. Will you state as briefly as is possible under the circumstances what you said upon the subject, and if you gave any reasons therefor you will state those?

A. I told them that I felt that if the other conditions which we were imposing were complied with, satisfactorily arranged for and secured, they would constitute a very large consideration for the transfer, and that there should, however, be a fair money consideration in addition thereto. Who first suggested as the money consideration the sum of $250,000, in those conferences that I had with them I am not certain, but I know that I approved it and finally fixed it as the cash consideration for the transfer.

Mr. Anderson: Would you mind having him state the date of this.

Mr. Kresel: I will.

Q. 275. Will you as near as you recall state the date when that was determined on by you?

A. Well, that was during February.

Mr. Anderson: Can he be more specific?

The Witness: Of 1919.

Mr. Anderson: Can he be more specific?

Q. 276. Can you fix it more specifically?

A. I cannot very well fix it more specifically than that, I had so many conferences with them about the details of this matter. It was before February 22d, I know that, because on February 22d, I closed up the report and signed the letter of transmittal to the President, and by that time I had fixed the price. So that it was some time between early February and the twenty-second.

Q. 277. You said if the other conditions were complied with and secured. You have not yet stated what the conditions were.

A. What I meant by that was that a corporation should be organized which would be willing to accept these patents either subject to a reservation that the

Government should have the free license to use them for its own use during the life of the patents, or by agreement make a subsequent conveyance to the Government for the same purpose, each of which would have the same effect.

Mr. Anderson: I move to strike out "each of which would have the same effect," sir.

Mr. Kresel: I consent to have the words "each of which would have the same effect" stricken out.

The Court: It may be stricken out.

Q. 278. Proceed, Mr. Palmer.

A. And the understanding that we had would be properly arranged and secured, to make certain that the corporation would issue non-exclusive licenses on equal terms and upon fair and reasonable royalties to all applicants for the use of these patents, and generally have the corporation so framed, by its charter rights, duties and responsibilities, and its organization, as would ensure to our satisfaction the purpose which we had in mind of using it as a mere conduit through which these patents should flow for general public use in building up a great chemical industry in the country, to the end that the people might have the benefit from the development of pharmaceuticals and medicines and the Government might have the security which would come from its ability to control the development of the science in the manufacture of munitions, the preparations for war, etc. Those things were done as I planned them to be done, the details satisfactorily worked out, and I considered $250,000 additional in cash as the fair and reasonable price, and I accepted it as so fixed.

Mr. Anderson: I object to the last statement about his opinion as to the value.

The Court: I think it has value apart from that, or may have value apart from that. I deny the motion.

Q. 279. Had you finished, Mr. Palmer.

A. Yes, sir.

Mr. Anderson: The witness is finished, so I now ask your Honor to strike out so much of the answer to this question as relates to any matters which are not shown in the agreement of transfer of these patents to have been the considerations named for the conveyance thereof. In other words, what Mr. Palmer, Mr. Hoguet and Mr. Choate may have agreed upon, in whatever capacity they may have been acting, is concluded by the subsequent deed to this property, and a consideration not named in that deed or indicated in that deed is not the subject of evidence, as outside of the written instrument causing the conveyance.

The Court: My understanding was that the witness was asked first about the cash consideration and then the other conditions that he required in connection with the transfer, the primary purpose being, as I understood the questions, to ascertain the grounds upon which this witness in his official capacity determined that $250,000 was an adequate cash consideration for these patents.

Mr. Kresel: Your Honor is entirely correct; and I had not concluded that branch, I was going on to another question on the same subject.

The Court: I am not passing on the weight of the testimony, nor am I receiving the evidence to change any of the conditions under which the patents were transferred or to indicate there were any other conditions. For such other purposes as it may be used, the evidence will be permitted to remain, and the motion denied, with an exception noted.

Q. 280. Mr. Palmer, in fixing the cash consideration at $250,000, did you have in mind and did you convey to these gentlemen with whom you were conferring about it the reasons for considering, as you have testified, that $250,000 in cash and these other considerations constituted a fair and reasonable price for the patents? If so, will you please state those reasons.

Mr. Anderson: The question is objected to, first, because it indicates clearly, I think, the answer; in the second place, what the witness had in mind is certainly not a matter for consideration here. To make my objection clear, though not to argue, I respectfully suggest that the matter was concluded by the Alien Property Custodian who was the successor to this gentleman.

The Court: That is your contention.

Mr. Anderson: I used the expression "concluded." The conveyance was made, there can be no question about that. We will stick to the record. The conveyance was made in writing. The conveyance was made officially by an acknowledged instrument. If these gentlemen had in mind getting ten million dollars for these patents, if they had discussed getting ten million dollars for these patents, and if they had agreed upon selling them for ten million dollars, it would not be evidence in this case, when they sold them for $250,000 and the instrument states the consideration. I may add, sir, that the question as now framed does not state his answer to the preceding question.

The Court: I think this question is improper in form and I shall sustain your objection on that ground; but inasmuch as you make a second objection, I do not see in view of your statements, how I can assume that the motives of the officers who participated in this transaction will not be attacked in the final hearing on this case or the appeal. Consequently, I shall take the answer and permit the testimony called for in substance by this question to be received if the question is put in proper form.

Mr. Kresel: Your Honor thinks the question is objectionable in form?

The Court: Objectionable in form.

Mr. Kresel: I will try to reframe it.

Q. 281. Please state, Mr. Palmer, all the considerations that moved you to fix the price at $250,000 in cash upon the conditions that you have named, and state whether you conveyed these reasons or motives to Mr. Garvan or Mr. Choate in these conferences you have been telling about?

A. Well, all the reasons that actuated me in fixing those prices, to answer the last part of your question first, were conveyed by me to these gentlemen, Hoguet, Choate and Garvan, in the conferences which we had on the subject. There were many reasons which led me to that conclusion, most of them based upon information which I believed to be correct and which I had gathered from sources in which I had confidence. Some of them, of course, not many, because I was no chemist nor patent man, based upon my own knowledge. In the first place, without regard for the character of the purchaser and the conditions under which the purchaser was to operate these patents, passing that by for the moment, it was obvious that the value of the patents under the peculiar circumstances was not to be fixed as patents are ordinarily valued.

They had been seized by me from their owners, who were hostile, of course, to us, and very bitterly opposed to that act, as I knew. Not only, therefore, would the purchaser get none of the benefit whatever of the knowledge of the inventor and the original patentee, which in the usual sale of patents is always provided for to be given to the assignee, but the purchaser would have the active, I knew, hostility and paid was necessarily determined somewhat arbitrarily; the great majority of the patents were presumably valueless. The value of the remainder was entirely problematical and impossible to estimate. Substantially the entire industry having combined for the purpose of this purchase, it would have been impossible on public sale to find as a bidder any legitimate manufacturer. No other bidder could, therefore, have been found on public sale except some speculative individual who might have bought them for purposes practically amounting to commercial blackmail. The combination was not objectionable to public policy since it was so organized that any genuine American, whether a stockholder of the company or not, could secure the benefits of the patents on fair and equal terms.

"It is submitted that the organization of this institution constitutes the most important step that has been taken for the protection of the new industry. Tariff protection has proved utterly unavailing in the past. The German industry as hitherto organized, and still more as now organized, has had so much to gain by extending its foreign trade and by destroying the industry in other countries that it would undoubtedly give away its goods in this country for nothing in order to recover the American market. The Chemical Foundation, however, should prove a power sufficient to discourage in a most effective manner any German attempts in this direction. If, as their newspapers boast, the Germans have during the war worked out entirely new dyes superior to their past productions, the protection afforded by it will be invaluable. It has been the uniform experience of the industry that the introduction of new classes of dyestuffs follows only several years after the patenting of the original inventions on which their manufacture depends. Accordingly, the later dyes of today depend largely upon the patents of three or four years ago. The patents transferred to the Chemical Foundation include many German patents of 1917, and even of opposition of the inventor and patentee. Not only could he not get any knowledge of how to work the patent from the Alien Property Custodian, who was selling it, but he could not get in touch with the original owner and patentee, because he lived 4,000 miles away across the sea.

So that there was grave doubt as to whether the patents could be utilized successfully in this country. My information was that if they were to be utilized with any degree of success, it would only be after a tremendous amount of research and study by experts, experiments and other work, which would entail a large amount of time and effort and great expense. So that the value of the patents, therefore, was reduced, or I felt that that had to be very seriously taken into consideration before fixing any value.

In addition to that, under the Trading with the Enemy Act, ever since the beginning of the war the Federal Trade Commission had been issuing licenses to use these patents. There had been built up in the country something of a chemical industry, forced by the necessity of the war situation to grow to some extent, and this industry was watching these patents, and they had taken out some licenses from the Federal Trade Commission, and the sale that I was to make had to be subject to the rights of all licensees: As a considerable time had gone by since the beginning of the war, I did not doubt that the most valuable of the patents had probably been taken up in that manner.

Q. 281. (continued) You mean by licenses?

A. By licenses from the Federal Trade Commission, and that they were being used in the country. Whether those licenses would be surrendered to the Federal Trade Commission and new licenses taken out from the person who purchased from me or not, I had no means of knowing. I did not anticipate that they would be taken out from the new purchaser, so that the purchaser was bound to take these properties subject to, from what my information then looked like, the use of them by others in the industry to a very considerable extent.

I may say that another reason which impelled me, and which I discussed with these gentlemen at that time was this, a matter to which I had as Alien Property Custodian given public expression before that time: these patents were taken out by the enemy persons originally in open, and to my mind flagrant violation of the spirit of our laws. The Germans had violated our hospitality, if I may call it such. They were, after all, mere privileges granted by the Government under an Act of Congress——

> Mr. Anderson: If your Honor please, I do not want to interrupt this witness; but the laws of the United States are matters of record. The acts of persons who take out patents under the laws of the United States are matters of record. If these patents did not conform to the law, then there was no reason for seizing them, because they were invalid anyhow, and the Alien Property Custodian in seizing them accepted them as legal documents, as a purchaser would. If they did not conform to the law, they gave nobody any rights, alien or anybody else. If they did conform to the law, then whatever rights the patentee got the Alien Property Custodian got subject to any existing licenses.
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> Now, it is obviously impossible for this witness to know the motives and purposes of people in Germany. He may be able to say, if he knows, whether anybody was actually using the patents in this country, that is, provided he can say so in a manner provided by the law with respect to proof of the use of patents. But for the witness to undertake to go into an argument of the fact

that the Germans had certain motives and somebody else had some motives, and that they had violated the spirit of a law is not evidence. There is but one thing that violates a law, and that is, a violation of the law, and therefore that involves a question of conclusion at which it is sometimes very difficult for a Court to arrive, and certainly is not a matter for the testimony of a witness. I therefore move to strike out all that part of the answer for the reasons stated, in addition to the objections already made to this testimony.

THE COURT: The motion is denied. The witness is giving his reasons for acting as he did. As I understand your statements, you hold yourself in readiness to take the position at the final argument of this case that the bill of complaint is an indictment against Mr. Palmer and others of like position. I think, therefore, Mr. Palmer is entitled to show the reasons which moved him to act in this matter. Whether those reasons were legally sufficient is another question.

MR. ANDERSON: May I suggest, then, sir: the bill of complaint, of course, I am not going to undertake to construe, and that is the limit of our rights in this case, no matter what I say here either one way or the other. In the second place, as I understand it, even in the case of a man charged with fraud, he cannot testify as to his motives; he can only testify as to facts. Well, there is no charge of fraud in that bill against Mr. Palmer. Therefore he can testify as to facts within his knowledge, but I respectfully submit to your Honor that even in a direct charge of fraud no man can get on the stand and testify as to what his motives were and his reasons.

THE COURT: I think, Colonel Anderson, you are probably right. I am not passing upon the materiality or the weight of this, any more than I pass upon the materiality of the evidence of Mr. Metz, and particularly much of the documentary evidence that was introduced by you. I am leaving you to show its value, or the defendant to show its lack of value, at the final hearing. This testimony is of the character that it will be admissible under our general rule, and I do not now express any opinion or indicate any opinion by permitting it to be taken under our general rule.

Mr. Anderson: Your Honor, I would like to state then that I will ask leave on the rebuttal to go into this whole question. Your Honor has indicated it is his purpose to limit the rebuttal, and in that event I shall have to give notice now that I will ask leave at that time to go into the whole question.

In addition to that, I take it that this evidence in any event can be received only as evidence of purpose, motive and intent, and not of the facts stated. For instance, certainly this witness cannot testify as to the motives in the minds of the Germans in taking out patents in the United States.

The Court: No.

Mr. Anderson: And it is either taken as evidence of intent and motive on his part or it is not evidence at all, because it cannot be evidence of fact.

The Court: You may proceed, Mr. Palmer.

A. (continuing) I was stating what was one of the facts which led me to fix this price.

The Court: I rather gathered that you were stating one of the reasons that led you to fix that price, from facts as you understood them and not facts as you now represent them actually to be.

A. (continuing) I think I said what my information was and I was acting upon that information.

My information was that these chemical patents had not been worked in this country and I had a fund of information which led me to be satisfied that it was a fact that they were held by the Germans for the purpose of making it possible for them to import their products into this country and make it impossible for an American industry to develop and grow up into any size.

I believed that since that was plainly contrary to the purpose of our patent laws, as indicated by the Constitutional provision that patents might be issued to promote the sciences and the useful arts, and it having been a privilege granted by the Government which had been thus abused, in any accounting that the Government might make thereafter, or after the war, for such property taken, it could not under those circumstances be expected to any more than compensate the patentees for the cost of taking out the patents, at the outside, and this cost, of course, was comparatively small, a matter of $50.00 apiece or something in that neighborhood; and, the patents having on the average run half their time, on any such basis as that, $250,000 in itself would have been a large consideration.

Then there was, of course, the very important element, that in making the sale, I was not warranting the title. I was giving simply a sort of a quit claim.

Mr. Anderson: I wish to move to strike that out, if you Honor please, on the ground that the instrument of sale is in writing and the legal construction thereof is a question for the Court and not for the witness.

The Court: Have you anything to say, Mr. Kresel?

Mr. Kresel: No, your Honor, I do not think I need answer that.

The Court: Motion denied.

A. (Continuing.) And the purchaser was bound to face serious question and possibly extensive litigation before he could profitably operate under them, as there was always the possibility that the ownership of some of the patents might have passed out of German hands lawfully before I seized them. I might have taken patents that did not belong to the Germans, either inadvertently or because I did not have the facts before me. And there might be a recovery of a very considerable number of such patents. Patents might, for instance, have been sold to neutrals, when there was under the law a perfect right for the enemy to sell these patents to neutrals. And I might find that while I was purporting to convey a very large number of patents, I was not in fact conveying them.

In addition to that, there was of course the consideration that as these patents never had been operated in America, had never been worked here, when they began to work them they might find themselves opposed by others who claimed that they were infringing American patents. In other words, none of these patents had been judicially determined as to their metes and bounds, if I may use such an expression.

Those, in a general way, were the general considerations that led me to believe and announce that this was a fair price and that it was all that ought to be charged.

Of course, in addition to that, obviously, was the fact that the terms of the sale imposed conditions which very seriously affected the money value of the patents and consequently very seriously affected the question of money consideration.

The value of a patent, as everybody knows, is based on the fact that it gives to the patentee a monopoly. We were selling these patents in such a way that that feature of it was to be destroyed. Nobody was to get the exclusive right to manufacture or produce or sell under these patents. I made that a *sine qua non* at all times from the beginning to the end of the consideration of this question; and of course, it was fatal to the idea of a large money price.

Further than that, it was a part of the plan, for the purposes which I have outlined here on the stand and which I shall not repeat, and which we believed not only sufficient and proper, but highly important; it was a part of that arrangement that this institution which was to buy these patents should not make any money and we saw to it that the thing was secured in such a way that they would never make any money out of the patents; I mean, that the stockholders, the individuals who put up the money were restricted to six per cent. on their investment.

That, of course, had its effect, must have had its effect on the value of the patents to the purchaser. I had to consider not only the value of the patents generally and the value to the seller; but in view of the fact that I had, for the reasons that I have stated, created a purchaser for the purpose of making the purchase, I had to consider the value to the purchaser.

So that, considered from all these angles and from all these points of view, I believed then and I believe now that $250,000 was a fair, adequate price and consideration.

THE COURT: We will now take the usual recess.

(Recess until 1.00 o'clock P. M., Standard Time.)

AFTER RECESS.

MR. ANDERSON: May it please the Court, on yesterday counsel introduced in evidence a paper signed by Edward S. Rogers and stated that Mr. Rogers was a representative or employee of the

Federal Trade Commission. I was not informed on the question and reserved the question on that point. I have since made inquiry and it appears from the best information I can get, that Mr. Rogers was, at the time of that paper, officially connected with the Federal Trade Commission as counsel, perhaps, and that one or more of the licenses issued by the Federal Trade Commission and put in evidence in this case was attested by Mr. Rogers as acting counsel in charge.

I refer especially to the license dated January 17, 1918, Plaintiff's Exhibit No. 228. From those facts I assume that Mr. Rogers occupied that position and am willing to admit that fact unless it be shown to the contrary during this case, and I do not think it will. Without waiving my objection to the evidence, I admit that specific fact.

By Mr. Kresel:

Q. 282. Mr. Palmer, the order of February 26, 1919, executed by Mr. Polk, with reference to the sale of these patents to The Chemical Foundation, authorized the sale at private sale. I wish you would state the reasons which actuated you in recommending to Mr. Polk that these be sold at private sale instead of at public auction.

The Court: I understand this is subject to all the objections that you made to similar testimony this morning, Colonel Anderson.

Mr. Anderson: Yes, sir. General and specific objections.

The Court: It will be taken under the general rule.

A. The sale of the Bayer Company, carrying with it 1200 or more chemical patents to a single purchaser, taught me the danger of selling these chemical patents by an ordinary public auction to the highest bidder. Those patents had belonged to the Bayer Company of Germany, one of the six great concerns which during the war had been combined into a single trust. I feared that they covered, without knowing exactly what they did cover, a wide range of chemical processes and products.

We knew that they would ramify generally into the industry and I saw that if the rest of the patents, chemical patents, were sold in the same manner to a single purchaser, a monopoly would obviously be created in this country having the same effects as far as the Government and the people were concerned as the German monopolistic control of the industry in this country had had in the past. The purchasers of the Bayer Company having already put $5,000,000 into that property and being the owner of that many patents were in a much better position than anybody else to become a purchaser, and there would be great danger that they would be the purchaser and there would then come under a single hand, under a single control, all these patents, with the same powers pertaining to them as the Germans had held.

Therefore, I early concluded that whatever sale was made would have to be made subject to conditions which would protect us against repetition of what had happened and which would, as I have explained, ensure the opportunity of the Government to have the benefit of the developing chemical industry.

So I determined upon the conditions. Having done that, I readily saw that at public sale it would be impossible to get anybody to accept these patents subject to those conditions, conditions that would require them to give equal rights to all in the way of licenses, conditions that would require them to give to the Government a very valuable portion of what they were proposing to buy, and conditions that would make it certain that no monopoly should be created.

When the conditions shaped themselves in our minds, conditions under which we desired to sell, I saw that it would be impossible to hold a public sale and hope to get any purchaser, and therefore created The Chemical Foundation for the purpose of becoming the purchaser, in order to make sure that those conditions would be carried out. In addition to all that, of course, there was at all times the very striking possibility that if we sold at public sale and were compelled to sell to the highest bidder the patents might ultimately go back directly or indirectly into the hands of the same people from whom we had taken them.

While I know the law provided that no such person could become a purchaser, there was no way by which we could guard against that happening. After the war was over, the chances were that it would slip back into the same old groove. We knew in that connection the purpose and intent of many Germans who had property in this country taken from them and sold at public sale to re-acquire them in some kind of fashion when the war should be over. We knew that was in their minds with this tremendously important war key industry. I could not have prevented that thing happening if I had had an open public auction selling to the highest bidder. Therefore, I determined upon a private sale to this purchaser which we had created for the purpose of becoming the purchaser, which is the only concern that I knew about that was willing to accept them on the conditions that we had imposed.

THE COURT: If I understand you, Mr. Kresel, the witness is merely giving the reasons which impelled him in his official capacity to recommend an Act as he did, in connection with this matter.

MR. KRESEL: That is it, your Honor.

> 1918, and also many applications still pending. These patents undoubtedly include the results of the research upon which must be based the manufacture of any new dyes which the Germans are now able to produce and market. Accordingly, at the very least, the institution will be able to protect the American industry for a considerable period, and this should be all it needs. It appears to be the universal view of the more competent manufacturers in this country that, given five years of freedom from German competition, the American industry can hold its own. Probably only a measure such as the embargo which appears to have been imposed by the British and French against all foreign dye importations can furnish this protection to the degree necessary to insure the safety of the American industry; but short of such an embargo, the Chemical Foundation would seem to furnish all the aid that possibly can be given.
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> "At the same time the new institution promises an incalculable benefit not only to the dye and chemical industries, but to the whole American manufacturing world. The opportunities which it can offer and the rewards which it can hold out to competent research scientists should far exceed those of any institution unconnected with industry, and it may well, therefore, form the nucleus of the greatest research organization in the country."

Mr. Galloway: If the Court please, I wish to read two short paragraphs from this answer on Page 110:

> "As a further step toward the Americanization of industries in the United States, the Alien Property Custodian is now engaged in collaborating with representative bodies in the dye and chemical industries in an effort to relieve these industries in the United States from the burden of German patent monopoly. Further details of the incorporation and purposes of The Chemical Foundation, Inc., through which the plan will be

THE COURT: You are not relying on such statements of the witness to establish any fact other than that fact, I take it.

MR. KRESEL: That is right, your Honor.

THE COURT: Now, then, are you going to make inquiry now as to how he knew what was in the minds of the Germans?

MR. KRESEL: I am going to ask him that now.

THE COURT: Very well.

Q. 283. You spoke of knowing that it was in the minds of the Germans to re-acquire, if they could, the property that you had seized. Will you state what information you had on that point?

A. The information I had was gained chiefly from the correspondence between the German owners of American properties and their agents and other people in this country, which had been going on by wireless——

MR. ANDERSON: You have not stated what time.

MR. KRESEL: He is coming to that.

A. (continuing) ——which had been going on by wireless just before we got into the war and after, in fact, we got into the war, but principally before, at a time when the Germans realized that we were going to get in. We had numberless cases in which instructions were given by the German owners to their friends in America or to their agents and representatives here that title to the property should be transferred to them until after the war.

Q. 284. Can you give some examples?

A. Yes, I can give some examples.

Q. 285. Will you, please?

A. I remember one interesting and well-known case was the case of the Hamburg-American Lines terminal at St. Thomas, in the Virgin Islands, where, acting under instructions from the Hamburg-American Line in Germany, the title to the property was conveyed to a man by the name of Jorgensen, who gave his note for the purchase price, amounting, I think, to $290,000, and at the same time executed an agreement with the representative of the Hamburg-American Line that the note should be renewed whenever it became due.

Mr. Anderson: I will have to object to that. If it has any materiality whatever, I do not think the details of that transaction should be presented here without the written evidence.

The Court: I think I created the difficulty by my inquiry, so I will sustain the objection.

Mr. Kresel: I followed your Honor's suggestion.

Mr. Anderson: I beg leave at this time to move to strike out the two preceding answers on the special ground that they contain matter which upon the face of the answers is not within the witness's knowledge and on the ground that they contain statements of what other people purported to do and thought and what was in their minds and upon the further ground that the matters to which he refers were obviously founded upon correspondence, if at all, prior to the war.

The Court: I wonder, Colonel Anderson, if I am laboring under a misapprehension. If I am, will you not help me? Is, from your standpoint, the information upon which the Alien Property Custodian acted at all relevant here? I understand you fully, I think, that the ultimate questions, as you stated briefly and tersely yesterday and the day before, are whether the Alien Property Custodian and Mr. Polk and the President had the power to do what they purported to do; that is, under the Act of Congress. That is the broad question. And then whether they actually did what they purported to do, namely, the validity or effectiveness of the several Executive orders.

Then value comes in and the private sale comes in, because if these were sold for what would have been their full and complete value separate from any and all other conditions of sale, there would be left, as I understand it, but the single question of whether or not, as you put it, the buyer and seller were the same party.

Conspiracy is a thing which I have seen somewhere is difficult to prove, and when proved, is difficult to disestablish. Now, you contend that you have proved the alleged conspiracy, and as you stated yesterday, proved the allegations of the Bill except the forty-sixth paragraph, if my recollection serves me right, with respect to which you reserved the right to put in further evidence. Now, one of the constructions, at least, whether valid or not, would be that which I indicated yesterday and attempted to indicate this morning, and it seems to me for that reason possibly (understand, I am not determining this finally) that the information upon which those people acted, the Alien Property Custodian, Mr. Polk and the President of the United States, becomes of importance, but of course does not control the question or have any value in the determination of the question as to whether the statute gave them the power to make the sale at the price and under the terms and conditions under which it was made; but it seems to me that there is a probability of materiality. Do you think that is so?

Mr. Anderson: No, sir. Taking the theory of the case that your Honor has indicated, any proper and legal evidence of any actual facts upon which the action of the officers of the Government was predicated is, I take it, probably material. The line of where it is and where it is not material is not easy to draw, and, therefore, of course, the latitude and discretion of your Honor must be followed; and unless that were clearly a mistake, it would not be reviewable.

The reasons which actuate a person, as distinguished from the facts upon which he acted, I take it, are never evidence after the fact, whether he be charged with fraud or mistake. The facts, the knowledge that he possessed may be material. But, assuming the facts to have been correctly represented, it then becomes a question of power and whether or not he followed the procedure required by law. What may have been his reasons, acting within his legal rights and in the manner prescribed by law, and with knowledge of the actual facts or a correct understanding of the actual facts, I have contended throughout and in accordance with your Honor's view, were not reviewable. But if this is considered on the ground of conspiracy or fraud, it matters not what may have been his reasons or his motives, they must be inferred from his acts and cannot be proved by direct testimony.

THE COURT: I do not think there is any difference in our views with respect to that, with one possible exception. I use the word "information" and not "reasons." I realize that the witness did incorporate in part of his answer this morning some reasons and I wondered at the time just where the line was there, whether he was not stating his reasons rather than information. But I decided to let that go in under the general rule. But it seems to me reasons become of some moment here, because I understand the statute to be that the reasons of the President must be stated in the order——

Mr. Anderson: And only those.

The Court: Authorizing the private sale. Won't you help me with respect to that for a moment?

Mr. Anderson: Yes, sir.

The Court: I have forgotten what you said with respect to those reasons and your attitude with respect to them—that is, what in your view the Court's attitude with respect to those reasons must be, whether they may be demurred to in effect as insufficient, whether the accuracy in fact of those reasons can be here challenged by you, or just exactly what your position was with respect to that matter.

Mr. Anderson: I will try to make my position clear, with your Honor's permission. The act provides that the President, stating his reasons therefor, in the public interest must determine this. No other reasons other than those stated by the President can be considered, because the act has required that he state his reason. It is an unusual act—very unusual. In the other acts where he was required to determine certain things, as in taking over the railroads or the telegraph lines, power had merely been given him to determine in the public interest, and you could not get behind that because you did not know what was in his mind.

But here he must state his reasons therefor in the public interest. I think the authorities, such as the Chinese Exclusion Acts, requiring the exercise of discretion founded upon certain facts, allowed the review of the reasons; after giving all reasonable presumption in favor of the validity of the act of an executive officer the Court, if he has clearly misunderstood or was wrongfully advised to use the English idea, as to those facts, will review them to the end that the law may prevail. To that extent your Honor can go into it.

THE COURT: That is, review them as to their correctness.

MR. ANDERSON: As to their sufficiency for the predication, and whether in that case those reasons were within the contemplation of the law.

THE COURT: From your standpoint can we go into the accuracy of the statement of the reasons?

MR. ANDERSON: No, sir; the accuracy of the statement of the reasons is conclusive, I should say, on all parties. He states, "These are my reasons"—1, 2, 3. Those are the only reasons to be considered.

To use an extreme illustration, suppose the President or the officer exercising this power should say that he finds it is a warm day, and something else, and that such and such conditions, which are entirely irrelevant, would justify this in the public interest. In my judgment the Court could review that, because that would be clearly not a sufficient predicate for his action.

THE COURT: In brief, you say the reasons may be demurred to?

MR. ANDERSON: The reasons—instead of being against the pleader, in favor of the pleader. Your Honor understands that position, of course.

THE COURT: I cannot go back of the fact.

MR. ANDERSON: You cannot go back of the wisdom of his action if the reasons are sufficient. I want to make it very clear, because I do not want to limit the scope of this proceedings at all, and in this hurried debate at the bar it might be so construed. You can look at his power, first to perform the act, second the method of performance of the act, that it followed the law; third, you can look into the facts upon which his act is predicated, because mistake of fact is always a ground——

THE COURT: Then you can go behind the reasons stated?

MR. ANDERSON: The facts on which his reason is predicated—that is, the facts known to him at that time. Do I make myself clear? Let me use an illustration. For instance, suppose I come to this Court—and nothing is more familiar to us than the rule of the exercise of judicial discretion. Assuming jurisdiction, and assuming the Court to have known the facts, the exercise of judicial discretion may be reviewed only as to its correctness.

THE COURT: I understand.

MR. ANDERSON: In the same way exactly an officer of the Government, who is an agent of the people, the people speaking through the law have declared can only do a certain thing in a certain manner. You inquire into that. If it says he must exercise discretion. You can inquire into the fact whether he was misinformed as to the fact, because that is like a mistake of fact which this Court could set aside or correct by its decree, just as a fraud on the Court would set aside a decree. The Court would not be responsible, it would be somebody else would be responsible; the Court would never be presumed to be responsible for a thing of that kind.

The same with an Executive officer. When you come to the last stage of the proceeding you inquire into the actual fact upon which he acted. You inquire second, into whether the reasons which he states in the public interest are such as will sustain his action.

I am frank to say to your Honor that in inquiring into that every reasonable presumption will be in favor of the reasons which are assigned, but if they would be clearly insufficient and without the scope of the act, and due to an error entirely of the meaning of the act, the Court would set them aside.

The Court: Of the same effect as if no Statute had been passed. That is, if the Statute did not give him the power to do it, it could no more allow the Trading with the Enemy Act to support the act.

Mr. Anderson: And if he stated reasons which are obviously not sufficient to sustain his action.

The Court: I understand that.

Mr. Anderson: But the inquiry into his reasons must be limited to the reasons which he gave in the order.

The Court: I understand that, but there is another point which you have probably stated with all clearness, and yet I have not got it.

Mr. Anderson: Possibly I am not very clear today.

The Court: I have been wondering just where that leads to. As I understand you, there is no question but that the power can be inquired into, and you both agree to that.

Mr. Anderson: Yes, sir, both as to the power to do the act and the method of doing it.

The Court: I do not know whether you differ or not as to whether judicial inquiry may be had into the reasons stated by the President.

Mr. Anderson: I think we disagree as to that.

The Court: I assume you disagree as to that. I can understand you there. I do not know what my conclusions will be, but I understand you. I am not sure, however, that I understand your other contention, and I am not sure that I understand exactly what it is, but if I do it is something of this nature—that you can not only inquire into the sufficiency of the stated reasons, assuming them to accurately represent the facts embodied in the reasons, but you may also go behind the stated reasons to inquire into the accuracy in fact.

Mr. Anderson: Yes.

The Court: And also to determine whether there were other facts which were in existence, but absent from the mind of the President, which if they had been known to him, would in the judicial opinion have led to a different conclusion. Have I stated it clearly?

Mr Anderson: Your Honor has stated, I would say—I do not like to use the expression—with reasonable accuracy what I am trying to express. It is very difficult, because the line of distinction there is extremely fine and I would really have to have the authorities before me for analysis, which I haven't got. But your Honor has stated in general the thought that is in my mind.

On the other hand, assuming those conditions to have been met, as to the wisdom of the action, the exercise of the discretion, of course we all agree. But in addition to that, what I am objecting to here is that the distinguished witness upon the stand cannot give his reasons for his action and cannot give his motives for his action, because if a man could give his reasons and motives when a question of this kind arose, you never could prove the contrary. You must assume that from the facts stated.

Mr. Kresel: I desire to be heard on that, your Honor.

Mr. Anderson: I did not intend to go into an argument.

The Court: I will hear you, but it seemed to me this. I realize in one or two instances statements have been injected into the case which might be considered as pure reasoning apart from facts. But my difficulty with most of this testimony is as to whether the information which came to the knowledge of the Executive officer and the information that Executive officer must have—I assume they cannot have all facts judicially determined before they make a decision——

Mr. Anderson: Certainly not.

The Court: It seemed to me that the information was proper evidence to be received under the general rule without an immediate determination of whether or not it is material.

Mr. Anderson: Your Honor will allow me to say that when I am making these objections, of course, I am not making them captiously—I need not say that—but I recognize your Honor's position and when I state them over, it is not intended to re-argue but merely to keep the record straight that we may have these questions open for consideration when we come to argue.

The Court: You understand the unusual nature of this case makes me proceed at a great expense of time.

Mr. Anderson: I quite understand.

The Court: I will hear you, Mr. Kresel.

Mr. Kresel: We contend, your Honor, that not only may this officer state the information that he had upon which he acted, as your Honor has very well pointed out that the Executive officers must act upon information and not wait for judicial construction or determination of the facts, but we also say that it is admissible upon the ground that there is a conspiracy charged here.

> worked out, are shown in another part of this report.
>
> "It is hoped that other industries which may be injuriously affected by enemy-owned patent monopolies in the same manner as the dye and chemical industries will endeavor to take similar action, and in this way assist in the Americanization of their industries and their relief from enemy-owned patent monopoly."

If the Court please, the plaintiff next offers in evidence the constitution of the American Dyes Institute. By the way, we have only a galley sheet, and if you can supply it in more convenient form, Mr. Kresel, I would appreciate it. I think a more convenient form would be better to put in the record. I ask that this be marked.

Mr. Kresel: Just a minute, Mr. Galloway. We object to the introduction of this instrument. Your Honor has in mind what it purports to be, according to Mr. Galloway. It is a galley proof of the constitution and by-laws of the American Dyes Institute, is that it?

Mr. Galloway: Yes.

Mr. Kresel: We have not asked the Government to indicate the purpose for which it is offered, but it must be quite apparent that it is being offered upon the question of conspiracy. Am I right, Mr. Galloway?

Mr. Galloway: It is being offered, if the Court please, on the question of the allegation in the Bill that certain persons in the industry planned and agreed and schemed to get the patents which were finally transferred to the Chemical Foundation.

Mr. Kresel: I used the more descriptive word. It is a charge of conspiracy. The position we take as to this instrument is the position that we took with respect to the instrument that your Honor already

It is charged that these officers did not act upon their own volition; that they were imposed upon; that they were carrying out the purposes and desires and the conspiracy of others. Therefore I contend that this officer can give what reasons he had that actuated him to do what he did, so as to show that they were his own reasons; that he was acting upon reasons that appealed to him and not because somebody else tried to get him to do the thing. Have I made myself plain, your Honor?

The Court: Yes. You may take such evidence you believe to be relevant or material, and such evidence will be taken under our general rule, and I will pass upon any necessary question with respect to it eventually.

Mr. Anderson: Under that statement I will avoid objecting unless I think that I should point out additional objections.

Mr. Kresel: I do not think there was any unanswered question, so I will proceed to the next question.

Q. 286. In the order signed by Mr. Polk, of the 26th of February, 1919, one of the reasons in the public interest assigned by Mr. Polk for making of the order reads as follows:

> "Sixth: Unnecessary expense, delay and inconvenience may be avoided by a private sale." I wish you would state what the facts were with reference to the expense, delay and inconvenience that would have been entailed in a public sale as distinguished from a private sale.

A. We never made a public sale of any of the enemy properties under our published regulations without having the properties appraised by an independent appraisal company and without having a critical

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audit by certified public accountants of the books and accounts which were pertinent and which might be important for bidders to know about. Of course, to have made an appraisal of these patents would have required a large amount of time and a great expenditure of money. The sales which we made were made after advertisement in accordance with the statute, and we construed it to mean the distribution of a prospectus which we carefully prepared and in which we inserted all the data with respect to the property that was possibly obtainable from every source, and the advertisement for a long period in all of the prominent newspapers throughout the entire country. And this would have entailed delay and great expense about a property of this sort.

Q. 287. Did you have funds available for that purpose?

A. We had no funds available except such as we might get out of the purchase price. We would pay the expenses of the sale, including appraisal and auctioneer and advertising and that sort of thing out of the purchase price; but without any assurance that we could sell at public sale or get anybody to bid anything for it, we would have been stuck. The expenses that we would have incurred there would have been no way of paying whatever. We had no appropriation for it.

Q. 288. In cases of the sale of a going property that was in your charge, how did you pay the expenses there in the first instances?

A. Expenses of the sale?

Q. 288. (Continuing). Yes, advertising and so on.

A. We paid them out of the purchase price.

Q. 289. Did you in the first instance pay them out of the property? For example, take the Bayer sale. You had control of the property; it was a going concern; it had money in its treasury; did it not?

A. Yes.

Q. 290. In a case of that sort did you use the funds of the property itself to pay these expenses as they were incurred?

Mr. Anderson: I will have to object to this examination as leading, sir.

The Court: The question is leading in form.

Q. 291. Mr. Palmer, did you have your general appropriation for the payment of expenses in the sale of property?

A. No, no appropriation at all.

Mr. Kresel: I think that is all.

Mr. Anderson: You can stand aside, Mr. Palmer.

Mr. Kresel: No questions?

Mr. Anderson: No.

The Witness: Does that mean I am excused?

Mr. Kresel: Is the witness excused?

Mr. Anderson: As far as I am concerned.

(Witness excused.)

Mr. Kresel: I will call Mr. Garvan.

The Court: Of course, the interests of Mr. Kresel's client have a greater weight than Mr. Polk's convenience.

Mr. Anderson: Of course, and the interest of the Government I do not think will suffer.

FRANK L. POLK.

Frank L. Polk, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination.

By **Mr. Anderson:**

Q. 1. Mr. Polk, will you please state on the record your full name and place of residence?

A. Frank L. Polk, New York City.

Q. 2. You were during 1918 and 1919 Under-Secretary of State of the United States, were you not?

A. Counsellor for Department of State up to July 1, 1919, and from that time on Under-Secretary of State. It was the same office, but at the time it was changed.

Q. 3. Yes, I know. And during the absence of the Secretary of State in Paris after December 3rd until the middle of the next year you were Acting Secretary of State?

A. Yes, sir.

Mr. Kresel: December 3, 1918?

Mr. Anderson: Yes, December 3, 1918.

Q. 4. Mr. Polk, you are generally familiar with the questions involved in this case, are you not? I mean the controversy here.

A. In a general way.

Q. 4-a. It appears from the exhibits filed with the answer in this case that about December 3, 1918, the President on his departure for Paris signed an

Executive order by which he vested or undertook to vest in you all the power and authority given by the Trading with the Enemy Act to issue Executive orders under Section 12 of that act except as expressed in the order itself. You recall that circumstance?

A. Yes, sir.

Q. 5. It also appears that acting or purporting to act in pursuance of that authority you issued two orders signed by yourself—which I will show you if you wish, but undoubtedly you are familiar with them. —one dated February 26, 1919, and the other dated April 3, 1919, in relation to the sale by the Alien Property Custodian of certain former enemy-owned patents which had been seized by him, the sale to be to The Chemical Foundation, Incorporated, the defendant here. I should be very glad if you would state to the Court the facts in connection with the signing of that order and present any correspondence you may have dealing with that subject, and make the full statement, and in that connection, if you would do so—you have heard my statement at the Bar—would you make any statement on that subject which you desire to make?

A. I am very glad of the opportunity, Colonel. May I look at a copy of the order?

Mr. Kresel: Just a minute, please.

The Court: You may refresh your recollection in any way you desire.

Mr. Kresel: Just a minute before the witness answers the question. The defendant objects to the question upon the ground that it is immaterial, irrelevant and incompetent, on the ground that it is an effort by testimony about to be introduced to have the Court pass upon a matter which by act of Government was given into the discretion of the President acting through such officers as the President may appoint according to that act, and that such discretion was exercised by the

President acting through such officers as he appointed; that, therefore, the act of the President is one that the judiciary can not interfere with or review. In support of this objection, we desire your Honor to take into consideration and to consider as specifically urged the grounds urged by Mr. Guthrie in his argument before your Honor upon this very question of the non-justiciability of the question here presented.

Mr. Anderson: Then, if your Honor please, the question is withdrawn. I am through with the witness.

Mr. Kresel: That is all, Mr. Polk.

The Court: You mean, Colonel Anderson, that I should take that as a waiver of your position?

Mr. Anderson: No, sir. I insist upon my legal position, that if the question is objected to, I withdraw it.

Mr. Kresel: It seems to me, your Honor, we have come to a place now where we might as well understand the Government's position. The Government can not blow hot and cold here. Our position has been made perfectly clear from the outset, that we contend the Court has no jurisdiction to review the act which the Government has asked the Court to review.

The Government has come in here by its Complaint and has sought to have the Court review this act. They have called a witness here and have sought to elicit from him evidence in support of the allegations in their Bill. We take our objection, as we have a right to, in order to support the position that we have taken. The Government says to your Honor now, "Well, if that is the position of the defendant, we won't bring out this testimony."

It seems to me that all this question of frankness with the Court must be somewhat discounted if those are going to be the tactics of the Government. They either ask the Court to review these acts of the President or they don't.

The Court: Your position has been made clear from the beginning and that, as I understand you, is one of the crucial contentions that you shall urge and have urged.

Mr. Kresel: Certainly.

The Court: Now then, as to whether, however, in the absence of a specific objection when the question is clearly and definitely presented, the Government wants to take a position antagonistic to your position is for it to determine and not for him.

Mr. Kresel: Certainly.

Mr. Anderson: I want to make my position clear, since counsel desires to raise a question as to the frankness of the Government. I have offerred this evidence and have stated my reasons for offering it. If it is not objected to, I am perfectly willing for it to go in. If it is objected to, I do not have to press the question.

The Court: You do not. But can you require the defendant to withdraw any objection if you have exercised your option of withdrawing the witness instead? But it seems to me, Colonel Anderson, that the witness having been called, the control of your case is in your hands. I am not criticizing your suggestion, but it seems to me possibly that in the ultimate determination of this case, I will be confronted with this fact. What my conclusion may be, I do not know and I do not intend to prophesy. It seems to me that I will be confronted with this condition.

The Government contends by its allegation in its Bill, and by its position in open Court up to this point, and made clear and very clear in your opening statement, Colonel Anderson, that it is within the power of the judiciary to determine, under the facts of this case, as to whether the orders made by Mr. Polk and by the President are subject to review by the Courts for the reasons stated in the Bill.

The answer of Mr. Kresel to that, and Mr. Guthrie, throughout has been, before we reached that point, that the Courts must stop, that they have no power to review executive acts, that the Courts have no power to review the executive discretion. Now then, we have met just now for the first time on that issue, more substantially now than heretofore. If you withdraw from that position when it is forcefully challenged, I do not undertake to say what the psychological effect may be as well as the legal effect.

Mr. Anderson: The question here is on an objection to particular evidence. I can present any evidence to support my position on that point, I submit with deference, that I may see fit. The evidence is documentary, as a matter of fact, on that subject and I was going to put in certain documentary evidence which under stipulation I am entitled to read in without identification on this subject.

I would like to have your Honor rule now, to raise the question whether my failure to insist upon the oral testimony of Mr. Polk can affect in any way my legal right to urge that the Court can look into those questions upon such evidence as I may present.

Mr. Kresel: That is a moot question, your Honor. I am in no position to argue that; and, ruled on, namely the testimony of Mr. Bradley before the Congressional Committee; that it is unfair and improper to permit such fragmentary evidence in support of an allegation of conspiracy until the Government has introduced at least a *prima facie* case of conspiracy.

Moreover, we urge the additional objection that the constitution and by-laws of the American Dyes Institute can in no way be binding upon this defendant, unless the Government shows that we had some connection with the drafting of the instrument or that we had some connection with the American Dyes Institute. For both of those reasons, we object to the introduction of this evidence.

Mr. Anderson: If your Honor please, to relieve Mr. Galloway of the entire burden, I will just simply say that the Bill in this case charges that these gentlemen connected with this industry were engaged in two things:

One, a conspiracy to obtain control, so-called, of these patents; that as a part of the purpose in obtaining control of the patents was the illegal purpose of perfecting and developing a monopoly, or restraint of trade—call it that if you choose—in the United States.

This evidence is admissible on either of those questions, as showing a combination and agreement among these people, having for its purpose the things charged in the Bill. We are going to offer later the entire minutes of the Dyestuffs Institute, the records of the Dyes Institute and the manufacturing association, showing that they came together in combination and appointed a committee for the purpose of going to Washington to secure the control of these patents and worked out a scheme to do it.

The Court: What are the prayers of your Bill?

Mr. Anderson: The prayers of the Bill are for of course, your Honor is not going to rule upon such a moot question.

THE COURT: That is the difficulty.

MR. ANDERSON: The question I submit is presented by the insistence of my putting this witness on the stand.

THE COURT: No, I am not insisting that you put him on the stand. I was just wondering whether there was any legal ground which would prevent your arguing or presenting the question with the full force that you might in other conditions. But I have no conclusions about it. I will make some when it becomes necessary. But the point is not now presented, so you are entirely within your rights and I do not know that you will be damaged. I only wanted you to consider that now. It is not for me to consider, but for you to consider. I do not know that you are in any danger, Colonel Anderson.

MR. ANDERSON: I am very frank to say that I think I am well within my rights in presenting any other evidence as to any question raised here. If any question is raised here, I have said at the beginning and I say now that I want all the facts in this case to come out, but I do not feel obligated to bring facts out over objection.

THE COURT: Of course, you are not.

MR. ANDERSON: (Continuing) That are adverse to the Government or may be regarded as adverse to the Government. However, I am going to resolve every doubt in this case in favor of the Court having all the facts, and therefore I will recall Mr. Polk and ask him to answer the question in view of that fact.

FRANK L. POLK recalled.

THE COURT: Do you recall the question?

THE WITNESS: Yes, I recall the question.

Mr. Kresel: I understand your Honor overrules my objection.

The Court: Without finally determining that issue, which is one of the crucial ones of the case, as I understand it, I shall take this testimony and overrule the objection under your general and specific objections.

A. (to Question No. 5.)

The Witness: In February, 1919, February 26th, a letter was sent me from the Alien Property Custodian's office, signed by Mr. A. Mitchell Palmer, then Alien Property Custodian, in regard to an order which he desired that I should sign. I have the original letter here. The letter was brought over by one of the legal force of the Alien Property Custodian's office. Who it was, I do not recall. With the letter came the proof sheets of the report that Mr. Palmer had prepared dealing with this subject, and he called my attention in the letter to certain pages—certain paragraphs—of the report. I read the letter, read the particular pages he called my attention to, and skimmed over very hurriedly the other part of the report, taking one or two high points.

Later in the day, Mr. Palmer either came over to see me, or we got in touch over the telephone, I am not quite clear which it was, and we discussed the matter at some length, the question of my signing this particular order permitting him to sell at a private sale certain patents. I remember that in our talk I asked the question whether this had been approved, this particular sale had been approved by his so-called Sales Committee, consisting of Mr. Bannard, Mr. Dodge, Mr. Griswold, Judge Ingraham, and one other. He said it had been. I signed the order. I forgot to state he explained to me why it was necessary for me to sign the order. The President had just returned from abroad the day before or the day before that, and he was tremendously pressed with a great deal of executive work, and it was towards the end of the session of Congress. There was a deadlock. Legislative deadlock. He was having to see a great many Senators and Congressmen in order to get through the necessary appropriation bills, and the situation was such at the White House that it was very difficult to get him to give the time to consider this particular question, so that was the reason Mr. Palmer advanced for my signing the order, and I signed the order.

Q. 6. Would you let me see that letter?

A. Yes, sir, that is the original, Colonel.

Q. 6-a. This is the original letter from Mr. Palmer to you, transmitting the order?

A. Transmitting the order, yes, sir.

Mr. Anderson: If your Honor please, the plaintiff offers in evidence letter from Honorable A. Mitchell Palmer to Honorable Frank L. Polk, dated February 26, 1919, which has been identified by the witness, and asks that it be identified and read as Plaintiff's Exhibit No. 90.

Received in evidence and marked "Plaintiff's Exhibit No. 90." (*See Exhibits, Vol. I, page 279.*)

Mr. Kresel: We will substitute a copy.

Mr. Anderson: We will substitute a copy. I will hand it back to him with leave to substitute a copy.

The Court: Is there any objection?

Mr. Kresel: Yes, your Honor, we raise the same objection, and in order that I may not interrupt again during Mr. Polk's testimony with similar objection, may it be understood that our objection heretofore urged lies to the entire testimony that is about to be given by Mr. Polk upon this subject.

THE COURT: I understand.

MR. KRESEL: And that we may have an exception to your Honor's ruling.

THE COURT: Yes, your exception applies to all like cases.

THE WITNESS: If your Honor will permit me, I would like to refer to Mr. Anderson's statement.

MR. ANDERSON: One minute. Let me get this letter—Plaintiff's Exhibit No. 90?

THE COURT: Plaintiff's Exhibit No. 90.

MR. ANDERSON: In order to return this letter to Mr. Polk, I will, with permission of counsel, sign and copy the signature on the bottom of a copy, and file the copy.

MR. KRESEL: Yes.

THE COURT: Have they been compared?

MR. KRESEL: I assume that it is a correct copy. I have not compared it, but I am quite sure that it is a correct copy.

MR. GALLOWAY: It is subject to correction anyhow under the stipulation.

MR. KRESEL: It is subject to correction anyhow.

MR. ANDERSON: In order to make it clear, that it is a copy, if your Honor will permit me, and the stenographer not take it down, I will read the letter and have the Clerk compare it right now.

THE COURT: Will you give it to Mr. Kresel?

MR. ANDERSON: Yes. (Handing to Mr. Kresel, and reading.)

Q. 7. Now, you can proceed with your statement, Mr. Polk?

A. Colonel Anderson referred to the visit he paid me last fall, when he had a talk in my partner's, Mr. John Davis' room, in regard to this case. He told me he had been retained by the Government, and asked me what my recollection was. I told him that my recollection was very vague, that I signed a great many orders, I remembered this particular transaction in a vague way, but none of the details. Later on— as a matter of fact, I think it was after your office, or possibly Mr. Kresel, within the last two months, supplied me with a copy of the letter that has just been read. I was then able to refresh my recollection and I went through my papers and found the original letter and the report referred to in the letter was sent me. I then read the report, and in that way I was able to piece together a story, and my recollection was considerably refreshed.

Q. 8. You heard my statement at the Bar this morning, did you not, of our conversation?

A. I did.

Q. 9. That was substantially correct, was it not?

A. Substantially correct, Colonel, yes. I think I told you, as I recollect, that I had signed a great many of these, while I remembered this particular transaction for the moment, I could not remember the details of it.

Q. 10. All right. That is the same thing. Now, Mr. Polk, it appears—

Mr. Anderson: At this time, if your Honor please, we will offer in evidence—it is already in evidence.

Mr. Kresel: In the answer.

Mr. Anderson: That is in evidence. You have introduced it under the stipulation, the order signed by Mr. Polk, to which that letter refers will be found as Exhibit No. 3 with the answer in this case, and under the stipulation is introduced subject to the rule we are following as to objections.

The Court: It is now offered?

Mr. Anderson: It has been introduced already.

Mr. Kresel: I do not recall.

Mr. Anderson: The stipulation provides that the exhibits with respect to the Bill and Answer are introduced by the respective parties subject to any objection; if there is any question, I will introduce it.

Mr. Kresel: Colonel, we are following a different rule.

Mr. Anderson: If there is any question we will introduce it.

The Court: I think we have been following a different rule.

Mr. Anderson: I will then introduce the order of Frank L. Polk, dated February 26, 1919, which is in the record as Defendant's Exhibit No. 3 of the printed Bill.

The Court: Answer.

Mr. Kresel: Printed Answer.

Mr. Anderson: With the printed Answer; and to avoid duplication, I will not present another copy, but refer to that, and have it marked as "Plaintiff's Exhibit No. 91."

The Court: So admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 91." (Same as Exhibit No. 3 to answer. *See Record, Vol. I, page 551.*)

Mr. Kresel: Do you want to introduce the second one?

Mr. Anderson: No, I am going to that.

Q. 11. Now, Mr. Polk, it further appears that you signed another order, dated April 5, 1919. Would you state to the Court any recollection that you have about that, and if you have any correspondence relating to that, present it also?

A. That letter was signed by me while I was at White Sulphur Springs.

Mr. Kresel: You mean that Order, you said the letter.

The Witness: That Order. Thank you. I was called up, as I recall, on the long distance telephone by someone from the Alien Property Custodian's office, saying that they had an Order that was necessary to be signed, and asked me when I would be back. I said I would be there two days more, and they said they would send the Order down. They sent the Order down from Washington to White Sulphur Springs, West Virginia, and I signed the Order there. A letter came with the Order, but I have not a copy of the letter. I have not the original letter. I have seen a copy, and the copy I have seen I recall as having received.

Mr. Anderson: I am getting the copy now, sir.

Q. 12. I hand you a photstat of the letter, dated March 31, 1919, and addressed to Honorable Frank L. Polk, and unsigned. Will counsel admit that this letter was signed by Mr. Garvan (handing to Mr. Kresel)?

Mr. Kresel: I think that is the fact, Colonel. I have a copy here which appears to be signed by Mr. Garvan.

Mr. Anderson: Just scratch that reference out, will you?

Mr. Galloway: Here is a certified copy, Colonel, if you want that. (Handing.)

Mr. Kresel: You do not need a certified copy. There is no question about that.

Q. 13. I hand you herewith a copy of a letter dated March 31, 1919, addressed to yourself and signed by Francis P. Garvan. Would you see if you can identify that as the letter to which you refer? (Handing to witness.)

A. I recall that letter, Colonel.

Mr. Anderson: We now offer in evidence copy of a letter dated March 31, 1909, addressed to Honorable Frank L. Polk—

Mr. Kresel: 1919.

Mr. Anderson: 1919. Signed by Francis P. Garvan; to be read and identified as Plaintiff's Exhibit No. 92.

The Court: Admitted under the same conditions as the preceding letter

Received in evidence and marked "Plaintiff's Exhibit No. 92." (*See Exhibits, Vol. I, page 280.*)

Mr. Anderson: The letter is as follows: (Reading.)

In order to maintain the connection of the record, I would like to offer in evidence under the stipulation, a photostat copy of an original letter from Mr. Ramsay Hoguet to Mansfield Ferry, Esq., of the Alien Property Custodian's office, at Washington, dated New York, April 1, 1919, on the stationery of the Alien Property Custodian, which letter is as follows:

The Court: It may be admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 93." (*See Exhibits, Vol. I, page 281.*)

Mr. Anderson: The letter is as follows: (Reading.)

Now, we offer in evidence—have you got that second Order?

Mr. Kresel: Yes (handing).

Mr. Anderson: We offer in evidence the Order signed by Frank L. Polk, dated the 5th day of April, 1919, filed as Defendant's Exhibit No. 4 with the Answer in this cause, printed page of Answer 114, to be identified and marked as Plaintiff's Exhibit No. 94.

THE COURT: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 94." (Same as Exhibit No. 4 to answer. *See Record, Vol. I, page 554.*)

Q. 14. Mr. Polk, do you recall any further connection with this matter on your part, any other facts you want to state to the Court?

A. I think not. I think that is everything.

Q. 15. I will ask you if at the time these Orders were signed, and especially the first Order which related to that, you knew or had any knowledge of any negotiations between the War Department and the Alien Property Custodian, looking to the acquisition of the nitrogen fixation patents by the War Department?

A. Not that I can recall.

Q. 16. Did you know what patents, copyrights, trade-marks, or any of them, would be sold under the Order?

A. Well, yes. I knew that they were these German patents controlling the dye and the chemical industry.

Q. 17. And that they were patents that had not been used?

A. That had not been used.

Q. 18. You derived your information on that subject entirely from Mr. Palmer's report and his statements to you, to which you have referred, did you not?

A. Yes, sir.

Q. 19. Did you know at that time the number of patents, or other rights which had been licensed by the Federal Trade Commission, or whether any had been licensed by the Federal Trade Commission?

A. I knew that some had been licensed, but I did not know the number, or which ones.

Q. 20. And you did not know what patents they were, or anything about them?

A. No.

Q. 21. Did you take the matter up at all with the Federal Trade Commission before this Order was signed?

A. Not before the Order was signed, no.

Q. 22. I believe you stated that the source of your information on the subject as related to this Order and its purpose was derived from Mr. Palmer, as to the first Order, and from Mr. Garvan as to the second Order, in the manner you have stated?

A. Yes, in so far as this particular sale was concerned. Of course, I knew something of the dye and chemical patents.

Q. 23. Yes. But I mean the purpose of this Order, you only discussed the matter with Mr. Palmer in connection with his report, and the second Order you only discussed over the telephone with the gentleman in the Alien Property office?

A. In both instances, in addition to that, Colonel, the Orders were brought by some assistant in the Legal Department of the Alien Property Custodian's office, and in each instance I discussed it with the man, whoever it was, who brought the Order.

Q. 24. Could you identify in either instance the person who brought this Order?

A. I thought it was Mr. Ferry; and Mr. Ferry says not. I thought Mr. Ferry brought the second Order, but he said not.

Q. 25. Could you identify in any way the person that brought the first one?

A. No. I could not. I thought Mr. Ferry brought the first or second. He tells me he brought neither one. As I understand it, he says—so he tells me.

Q. 26. What you have said covers completely your knowledge and recollection of this entire transaction and the surrounding facts and circumstances; is that true?

setting aside this sale, for an accounting, an injunction, and for general relief in substance.

But as a ground for setting aside this sale, if it appears this sale was induced by legal or actual fraud, by conspiracy to obtain property of the United States for private purposes for an inadequate consideration, or that they were induced as a part of the general scheme to create a monopoly in the United States, then that affects the sale as going presumably to the intent of the Alien Property Custodian—not that he was guilty of those acts, but that he was induced to do these things which, if he had known about, these things would not have been done.

All of that conspiracy charge and the purpose of creating a monopoly has two aspects. One is the aspect of having induced this sale, of having brought it about for an illegal consideration; and certainly, it has the aspect of having brought it about as a part and for the purpose of achieving the end which was illegal in the United States. The Government has the right to prove either of those facts by any testimony that it can produce; and they all enter into the facts and circumstances surrounding this transaction, which is covered with a good deal of difficulty.

It seems to me an essential either that the entire question of so-called conspiracy, combination, inducement by fraud, whether legal or actual, contained in the Bill must be entirely stricken out, and we will meet that question right now, or this evidence—except that I do think that it probably might lead to another trial, which everybody wants to avoid—must be admitted if these allegations of the Bill are to stand.

THE COURT: Before you reply, Mr. Kresel, may I ask you to address yourself to this point for a moment sometime during your reply; and that is, at the moment it seems to me that the evidence now offered is not of the same character as that rejected a few

A. Yes, sir.

Q. 27. At the time that you had signed this Order you had never seen the Charter of The Chemical Foundation, had you?

A. No, sir.

Q. 28. Neither of these orders?

A. No, I had not seen that

MR. ANDERSON: I think that is all.

CROSS-EXAMINATION

By MR. KRESEL:

XQ. 29. I do not suppose, Mr. Polk, that you have with you now or can locate the proof of Mr. Palmer's report that came with his letter of February 26th, that was put in evidence this morning, have you?

A. I made a search for it, but could not find it, Mr. Kresel.

XQ. 30. You could not find it?

A. No, sir.

XQ. 31. But it was the proof of what we have been calling here, "The Chemical Section" of Mr. Palmer's report to the President.

A. Yes.

XQ. 32. Now, I will show you Mr. Palmer's report to the President which was transmitted to the President, acording to Plaintiff's Exhibit No. 13—which was transmitted with a letter dated February 22, 1919?

A. February 26th?

XQ. 33. 22nd. The letter of transmittal is dated then. When it was actually transmitted is not yet in evidence; and I will direct your attention to that part of the report which commences with the word "The amendment of November 4th," and will ask you to take a few minutes to glance over that, and to the end of the report, and state whether that is not the portion of the report that Mr. Palmer marked with an "X" as he called it to your attention in this letter?

Mr. Kresel: May I see that letter, please? The one of February 26th, from Mr. Palmer to Mr. Polk. (Handed to Mr. Kresel.)

The Witness: What is the question, Mr. Kresel?

XQ. 34. My question is whether that is the portion of the report that was sent to you in proof form that was especially marked with an "X" to call it especially to your attention, as appears from Mr. Palmer's letter to you?

A. Yes, as I recall it, that is the same thing.

XQ. 35. Now, just hold that there, please, because I shall probably want to ask you some questions about it.

The Court: What is the paper that you now hand him?

Mr. Kresel: That is the report and it contains—

The Court: Which is in evidence as Exhibit Number what?

Mr. Kresel: The letter of transmittal is in evidence as Plaintiff's Exhibit No. 13, and the portion of the report which is known as the Chemical Section—I do not recall what number that is.

Mr. Mahaffy: Plaintiff's Exhibit No. 12 admitted.

The Court: And the portion you there refer to is what?

Mr. Kresel: Is a part of Plaintiff's Exhibit No. 12.

The Court: And how can I determine what portion that is?

Mr. Kresel: May the record show then that it is that portion of the report which commences with the words "The amendment of November 4th to the Trading with the Enemy Act presented for the first time an opportunity for what appears to me to be"—and so on, to the end of the Chemical Section of that report.

XQ. 36. Now, although you can not recall the name of the person who brought Mr. Palmer's letter to you together with the proposed Order that you subsequently signed, and the proof of the report, I understand you to state that it was some one from the Law Department of the Alien Property Custodian's office?

A. That is my recollection.

XQ. 37. And that at least it was a person who knew about this transaction and with whom you then discussed it?

A. Yes.

XQ. 38. I assume that you asked him questions to elicit any information that you wanted, and that he answered them?

A. Yes, my recollection is that most of my conversation—I had some conversation with him—but the conversation on this particular Order was with Mr. Palmer himself.

XQ. 39. Exactly. So that after this proposed Order was brought to you with Mr. Palmer's letter and the proof of the report, you had a conversation with Mr. Palmer, either in your office when he called on you, or over the telephone.

A. Yes.

XQ. 40. You cannot recall which; but whether it was a personal interview or over the telephone, was it on the same day, that is, the 26th of February, 1919?

A. The same day.

XQ. 41. And it is certain that it was before you signed the Order?

A. Yes.

XQ. 42. Of February 26th?

A. Yes.

XQ. 43. From your talk with Mr. Palmer, from your talk with the gentleman that brought the proposed order to you, and from a reading of the proof of the report which Mr. Palmer sent you, you gained certain information?

A. Yes.

XQ. 44. Before you signed this Order?

A. Yes.

XQ. 45. Did you know at that time and before you signed the Order that it was proposed to sell these patents to the chemical industry?

A. To the Chemical Foundation.

XQ. 46. Incorporated?

A. Chemical Foundation, Incorporated, yes.

XQ. 47. Beside the fact that the name of the concern was The Chemical Foundation, did you know that the purpose was to make this sale in order to make the patents available to the chemical industry of the country?

A. It was so stated.

XQ. 48. Did you know that is was purposed that The Chemical Foundation, Incorporated, was to hold these patents, as is set forth in that report, as trustee for the chemical industry of the country?

A. Yes, as stated in the report.

XQ. 49. Did you know that the voting stock of the corporation, The Chemical Foundation, which was the common stock, was to be placed in a voting trust?

A. Yes.

XQ. 50. Did you know who the voting trustees were to be?

A. Yes.

XQ. 51. Did you know that they were to be the same gentlemen who were the Advisory Sales Committee of the Alien Property Custodian.

A. Yes.

XQ. 52. Did you know any of those gentlemen personally?

A. I knew three.

XQ. 53. Who were they?

A. I knew Judge Ingraham, Mr. Bannard and Mr Dodge; and I have met Mr. Stone.

XQ. 54. Did you have any confidence in their integrity and honesty of purpose?

Mr. Anderson: If your Honor please, the character of these gentlemen is not in question here and I do not think the question of whether this witness had confidence in them is material. He knew these gentlemen and nobody is questioning that they are men of character. I do not think that that is the question involved here at all.

Mr. Kresel: We contend that we have a perfect right to show what was in the mind of Mr. Polk when he signed this Order, no matter where he got his information. We have a right to show what it was that moved him to take this action which is now being discussed.

The Court: If this testimony is admissible at all.

Mr. Kresel: If it is admissible at all. Of course, it is entirely subject to the objection we have taken.

The Court: The objection will be overruled in keeping with our general rule of practice adopted for this case.

XQ. 55. I say, when you were considering this matter, knowing these three men as you say you did, did you have confidence in their integrity and honesty of purpose?

A. I was very much influenced by that—the three men that I did know, their recommendation and the position that they would hold.

XQ. 56. Did you know at that time and before you signed this Order that it was intended that the corporation that was to buy these patents was to issue only non-exclusive licenses?

A. It was so stated.

XQ. 57. And you believed it?

A. Yes.

XQ. 58. Did you know that such non-exclusive licenses were to be issued to any American upon equal terms?

A. Yes. Wait. Let me hear that question again.

XQ. 59. Upon equal terms, I said, and reasonable terms?

A. As stated in the report.

XQ. 60. And was it not also stated to you by Mr. Palmer, when he discussed it with you?

A. I cannot recall that we discussed that particular feature.

XQ. 61. Did you know that the corporation was to grant to the United States, free of charge, a license covering all these patents?

A. Yes.

XQ. 62. That was not only stated in the report that you had before you, but did not Mr. Palmer tell you that?

A. Yes, I recall that, because it affected the Army and Navy. At least I had been told that it would.

XQ. 63. And you know, do you not, that such a license has been given to the Government?

A. I have been told that. I do not know it.

XQ. 64. You knew what the capitalization of this proposed corporation was to be, did you not?

A. Yes.

XQ. 65. You knew that the stock, both preferred and common, was limited to a dividend of six per cent?

A. Yes.

XQ. 66. You knew that it was the purpose of this proposed corporation to use any surplus profits over and above the six per cent. dividend for the advancement of the chemical industry and science in this country

A. It was so stated in the report.

XQ. 67. You knew that Mr. Garvan was to be the first President of the corporation, did you not?

A. I was told that and it was in the report.

XQ. 68. And you knew that there were about 4500 patents that were to be conveyed, did you not?

A. The report stated the number. I had no knowledge other than that.

XQ. 69. And that they were patents that covered the dye industry and chemicals in general?

A. Yes.

XQ. 70. And you knew that all this was being done in order, as it is stated in the report, that this industry might be Americanized, did you not?

A. Yes.

XQ. 71. You knew that the price, I mean the cash price, was to be $250,000, did you not?

A. Yes.

XQ. 72. I want you to turn, if you will, Mr. Polk, to this Order of the 26th of February, 1919.

A. I think I have a copy in my pocket.

XQ. 73. I am looking now at page 112 of the Answer. I direct your attention to the paragraph in your order which is marked "Second." the second reason that you assign for making this Order, which, with his Honor's indulgence, I shall read:

"The Chemical Foundation, Inc., has been incorporated for the purpose of holding letters patent, trade-marks and similar rights relating to the chemical and allied sciences as a trustee for American industry, for the purpose of the Americanization of such industries as may be affected thereby, of eliminating alien interests hostile to said American industries and of the advancement of chemical and allied industry in the United States." Now the next sentence: "The

Chemical Foundation, Inc., is obligated to grant non-exclusive licenses upon equal terms at a uniform royalty to qualified American manufacturers." I would like to stop there a minute. That statement in your order was based not only upon what you found to that effect in the proof of the report that you had before you, before you signed this order, but also upon what Mr. Palmer told you in your interview with him, wasn't it—namely, that the corporation was obligated to issue non-exclusive licenses upon equal terms at a uniform royalty to qualified American manufacturers?

A. Yes, he told me that in substance.

XQ. 74. You say that you had not at that time read the charter of The Chemical Foundation?

A. I had not.

XQ. 75. Was it your understanding when you signed this order that you were signing it upon the agreement contained in that report and the statement made to you by Mr. Palmer?

Mr. Anderson: I do not think he can testify to his understanding.

Mr. Kresel: Certainly he can.

Mr. Anderson: He has stated the fact and the Court will draw the conclusion.

Mr. Kresel: I am asking him purposely; because your Honor will recall that Colonel Anderson in his opening statement challenged this portion of Mr. Polk's order and said that it was founded upon a misstatement of fact, and his argument was that because the certificate of incorporation, according to his reading of it, does not bear out this statement, therefore it was founded upon a misstatement of fact.

The Court: May I have the question, please?

(The stenographer then repeated Question No. 75 above recorded.)

The Court: The agreement made in the report, Mr. Kresel? I am sure I do not understand the meaning of it.

Mr. Kresel: I withdraw that. I do not think that does express the thought I had in mind.

Q. 76. Was it your understanding, Mr. Polk, when you signed this order, that an agreement was being made between the Alien Property Custodian and The Chemical Foundation, Incorporated, whereby the corporation was obligated to issue non-exclusive licenses to all American citizens on equal terms, as stated in your order here?

The Court: The same objection or not to that, Mr. Anderson?

Mr. Anderson: I note the same objection.

The Court: Same ruling.

Mr. Kresel: You may answer, Mr. Polk.

A. My understanding was that The Chemical Foundation was bound to grant licenses on equal terms to all American manufacturers.

XQ. 77. Whatever its charter may say to the contrary?

A. Well, I did not—

Mr. Anderson: If your Honor please, I do not think that is fair. We are not arguing this case.

The Court: I think the question is argumentative, Mr. Kresel.

Mr. Kresel: I withdraw it.

XQ. 78. And you also understood, did you not, Mr. Polk, when you signed this order, that The Chemical Foundation, Incorporated, was obligated to give to the United States Government a free license covering these patents?

A. I did not know as they were obligated. I understood that they were to be obligated; put it that way. I did not know that the actual contract had been made.

XQ. 79. Did you, in your discussion with Mr..

Palmer, take up with him or he with you the question of this cash consideration that was being paid and how it was arrived at, and what were the reasons that led to the fixing of that amount?

Mr. Anderson: If your Honor please, I did not understand the witness to testify to that on the direct. He will have to make him his own witness on that point.

Mr. Kresel: No, I do not concede that I am making him my own witness on anything here.

Mr. Anderson: All right, I just give the notice on the record. I do not ask the Court to rule.

The Court: I think that is in cross-examination, Colonel Anderson. I think your questions were broad enough to open the door to any knowledge or lack of knowledge that Mr. Polk might have had at the time of the sale. I overrule the objection.

A. Let me have the question again, please.

XQ. 80. Would you like to have the question read?

A. Yes, please.

XQ. 81. (Question No. 79 read as recorded above.)

A. We discussed the amount that would be paid, but I do not know that we went at length into the reasons.

XQ. 82. Do you recall Mr. Palmer stating to you several reasons that affected the value of these patents? I will take them up with you in a minute, but I want you to answer if you can the general question first.

A. I recall he laid stress on the fact that the patents had not been used in this country and that in many instances they did not know what they were.

XQ. 83. Or how to use them?

Mr. Anderson: Now let the witness testify, please.

moments ago. It seems to me that this is not evidence of the overt act. I am not passing upon the point now. It would seem to me if it has any value, it tends to show the agreement of conspiracy or the conspiracy, rather than an overt act under that agreement.

Mr. Anderson: May I add just one sentence with Mr. Kresel's permission. I want to read, your Honor, of course not in evidence, but that you may consider it——

Mr. Kresel: I have no objection.

Mr. Anderson: The first paragraph, Article I, of the Constitution, that the name shall be American Dyes Institute.

> "Article II. * * * A. To promote and encourage the manufacture and use of American dyes; to co-operate with Congress, the Tariff Commission, the Federal Trade Commission and all governmental agencies to secure protection against unfair competitive methods by foreign producers, who at the conclusion of the war may seek to destroy a new and necessary industry and to again monopolize the American market, not only in dyestuffs but in chemicals essential to national protection."

In other words, in no way questioning their belief that they were doing a good thing for the trade, they stated there what happened——

The Court: I can not help wondering, Colonel, if your conclusion follows on that—and I am not passing on it—just where we would be permitted to stop.

Mr. Anderson: It is a broad inquiry, but we are going to narrow it as much as we can, and I think we will narrow it.

Mr. Kresel: Of course, your Honor, we do not contend that the Government is not permitted to undertake to prove the allegations of conspiracy and

Mr. Kresel: I thought he had finished. I thought he had finished.

XQ. 84. Had you finished?

A. I had finished. Well, I was—

XQ. 85. Do you not remember, Mr. Polk, that Mr. Palmer pointed out to you that the American chemical industry did not get if they would buy these patents—did not get with the patents what is known in the chemist's parlance as the know-how?

A. No, I do not recall discussing that.

XQ. 86. Namely, the information which would enable any purchaser of the patent to work the patent and get the results; don't you recall his discussing that with you?

A. As I said when I answered the question before, they did not know even what the patents were. Beyond that I do not think we went.

XQ. 87. You recall that you say in your order here as the first reason for the making of it, as follows: "First: Said letters patent, trade-marks and similar rights can not be sold to the best advantage at public sale after public or other advertisement." Colonel Anderson's comment upon that part of your report in his opening statement was that was mere opinion on your part. Now I want to know what information you had before you, from talk with Mr. Palmer, upon which you based the opinion expressed in that paragraph. Do you recall?

A. I do not recall very clearly.

XQ. 88. What is your best recollection?

A. My best recollection was that as to the great body of patents it would be very difficult to sell them in a lump, that if they were sold to individuals the individuals would take the patents to the exclusion of the American market, they might fall into the hands of people that would not use them, that they might be bought up by people who would hold them, not manufacture under them, and we would be in the same situation as far as the German patents were concerned as we were before the war.

XQ. 89. Do you remember Mr. Palmer stating to you that the very purpose at the basis of this whole transaction was to break up the German monopoly?

A. Oh, that was clearly the intention.

XQ. 90. And that if he offered these patents at public sale somebody might buy them who would be substituted as the monopoly in the place of the German monopoly?

A. As I expressed the thought, that someone might buy them and not use them.

XQ. 91. Don't you remember that he pointed out to you that under the statute if he sold them at public auction he had to sell them to the highest bidder, no matter who he was, as long as he was an American citizen?

A. I knew that. I do not know whether we discussed it.

XQ. 92. And that such purchaser could take those patents, never work them—

> Mr. Anderson: If your Honor please, I think this is arguing this case with the witness. The witness said that his whole knowledge on this subject was derived from this report which came here and a telephone conversation with Mr. Palmer. Now we have an argument, a discussion by counsel with the witness, and I think it is doubtful whether counsel, with a witness who is reviewing his own trasactions, which position is necessarily adverse to the Government, really has a right to cross-examine him. He must be confined to the rules of direct examination. Here the counsel is testifying in this case and arguing the case with the witness. I think there is a limit, if I may suggest, if your Honor please, to things of that

kind. We are not getting at anything; we are getting argument.

The Court: No, I think we are getting two things, Colonel Anderson. You stated first that your allegations of the bill with respect to misinformation or withheld information from Mr. Polk, when he signed his orders, stood. So long as that stands and so long as you open the door, I assume that Mr. Kresel has the power and the right and the privilege of going into that in detail, although you stopped with broad generalities. But is seems to me the direct examination and cross-examination is demonstrating most clearly and forcefully the iniquity of a Court of Justice going into matters affecting and appealing to the discretion of the Executive or his designated agent. I had a clearly open mind on that question when the cross-examination began. I am feeling most strongly that I have erred and seriously erred in opening the door to this question.

Inasmuch, however, as I have opened the door, I am reserving that for consideration after final argument. I shall keep the door open, but it seems to me there could not be a better demonstration of the iniquity of that procedure than that which has taken place here this morning; because if we go beyond the question of power, then we get into the question of international relations and the reasons moving the Executive in designating representatives in such matters, matters with which this Court and so far as I know no other Court has any concern. If it is a question of power, then the Courts have a right to say whether the statutes should be so construed or is open to the construction to give to the President or his designated representative the power to do that which they did do, but as to the things which moved them apart from the reasons stated in the order, I have grave and serious doubts, and I am almost convinced at this stage of the case that the Courts have no power to go behind the reasons stated in the order. I shall, however, inasmuch as the door has been opened, unless objection be raised by the witness himself for reasons of state, allow this testimony.

The Witness: Your Honor, if I may say so, I am not the one to pass on the question of public policy now. It is very difficult for me to fairly state always the motives that moved me in signing Executive orders. I want to do entire justice to both sides of this case, but it is very difficult for me to state frankly and freely all that then was in my mind.

Mr. Kresel: Your Honor, it is just because of the situation that has been developed by reason of the Government's contentions here that we are trying to search the witness' mind. Of course, I shall not insist that Mr. Polk state anything here that he considers the public interests require should not be stated. I should be the last one to insist on that; and if I did, your Honor would not compel the witness to answer. I know that. But in so far as it is compatible with the public interests that the information should be given, I think we are entitled to have upon the record of the Court here, since the Court is inquiring about it, what the motives were that induced Mr. Polk, acting in the high capacity that he did, to take the action that he did.

The Court: Then there is another phase of it which is unusual and which does not occur in many instances, and that is that the United States and not a private litigant is opening the door and asking that the door be opened with respect to the reasons. In view of the witness's statement, and in view of the fact that it is now several years past, and he has in several instances given you generally the reasons and his recollection of the reasons that moved him to this action, I am wondering whether you have not gone as completely into detail with respect to the reasons moving him to the execution or signing of this Order as may properly be done, as may effectively be done; because the witness has just stated, and he has stated several times, that he had before him certain things, Mr. Palmer's statement and Mr. Palmer's report and Mr. Palmer's letter; that is all.

Now then, there are certain facts which he says he knew himself and necessarily did know. Do not those documents, together with the general statement, weigh as much in favor of or against you as any further detailed testimony that the witness, necessarily having to draw on his reasoning, and necessarily having to draw on vague recollection, as he stated, that he might give.

MR. KRESEL: I shall follow your Honor's suggestion. I shall desist from further inquiry as to particulars, but I do want to ask the witness two or three other questions as to what other general sources of information he had.

THE COURT: May I hear Colonel Anderson before you put that question?

MR. ANDERSON: I wish to state, if your Honor pleases, that there was not a suggestion in my examination, nor is there a suggestion in these Pleadings, of an attack upon the motives of any officer of the Government in signing these Orders; and the reference to motive is purely outside of either the Pleadings of the Government or any statement I have made or any statement I elicited from the witness.

The Court: I used the word thoughtlessly, Colonel Anderson, because you have disclaimed throughout any attack upon the motives. But what I meant by that was that you have alleged, as I understand you, and as I recall, that Mr. Polk in signing this Order did so without having had first disclosed to him the complete facts and circumstances with regard to the transaction.

Mr. Anderson: Yes.

The Court: If I used the word "motives," I did it inadvertently.

Mr. Anderson: As to any examination, either direct or cross-examination, that went to the fact of what was disclosed to Mr. Polk, he stated in concluding his direct examination that all that was disclosed to him was the talk with Mr. Palmer on the telephone, the report to Mr. Palmer, a portion of which he read, and the letter to Mr. Palmer. Those facts that were disclosed to him I concede are the proper subject of inquiry. Matters outside of those disclosures, which do not involve international relations—and it is merely a matter of what was disclosed to him and does not involve any other thing—are subjects of inquiry, as I have pointed out in my argument and will not repeat, as affecting whether or not he acted upon a full knowledge of facts or mistake of facts. That applies to any executive officer in exercising political discretion, which is an entirely different situation.

I want to make very clear here that if the Court has understood that the Government opened by its Pleadings, by its statements, or by its examination, the question or inquiry into political discretion or international relations, or those delicate questions which pertain to the general executive duties, it was not so intended and it will not be done in this case.

The Court: While I understand your statement with respect to that, Colonel Anderson, and while you understand just exactly where that line may be drawn in the trial of this case, because you have undoubtedly given days and weeks of study to the questions that have been raised in this case, I am not sure that I yet see where, in practice, that line is to be drawn. Will you help me on that now?

Mr. Anderson: I will now; yes, sir. I think the line is to be drawn here. Your Honor can inquire into the facts that were presented to the witness at the time that he signed this Order. Your Honor can inquire into the facts upon which that Order was predicated. I confined my investigation to the facts recited in the Order and to whether he got a letter from Mr. Palmer and whether he examined Mr. Palmer's report, which for the first time today I knew.

On that question, as to the facts presented in the administration of an act for the sale of property held by the United States, in my judgment, it would be a subject for proper examination, even in dealing with the President himself, exercising that delicate care not to go beyond that into other questions which might be of the President's own knowledge.

I do not speak of Mr. Polk's general information on this subject. I have not a doubt that he knew a great deal about the relations between the Germans and the Americans prior to our entering into the war. I claim that to be entirely immaterial.

But he stated that his action in signing this specific Order authorizing a specific sale was predicated upon this letter, the pages of the report of Mr. Palmer, which he was asked to read and did read hurriedly, and skimming as I recall it the remainder of the report, and upon a telephone conversation with Mr. Palmer, the hour and day not identified, but which I will ask him about—as to those matters put up to him we can inquire. But if we undertake to broaden that inquiry into the general international relationships, then I think we would be going into the political powers of the President and not into the specific power delegated to him by this Act of Congress.

THE COURT: I think I understand you, but the difference between you and the defendant with respect to that is, as I understand it, that the Executive Department is a separate and distinct and co-ordinate department of Government with no supervisory power in the judiciary, and, if I understand your position, Mr. Kresel, it is that there is as much lack of power in the judicial department to inquire as to the reasons or the soundness of reasons or the correctness of the statement of fact embodied in those reasons, in the Order of Mr. Polk, as there would be with respect to a certain treaty, for instance. That, as I understand it, is the defendant's position, and that in practice it would be difficult to draw the line.

MR. KRESEL: If your Honor will permit me to state my reasons.

THE COURT: I shall be very glad to have you state them instead of me.

MR. KRESEL: If the Colonel is quite through with his statement.

MR. ANDERSON: No I am not quite through, because I would like to answer the Court's suggestion.

If I may be permitted to suggest, one of the important functions of the Court is to draw the delicate lines. It is not easy to draw general lines where one starts and the other stops. Therefore, I recognize that the Court approaches with great hesitancy, as every right-thinking man does, as a member of the Bar does, the consideration of these delicate powers of Government. So that, in arguing this question, if even in the earnestness of my position as counsel I should overstate that situation, I do not want the Court to understand that I am in any way wanting in appreciation of the delicacy of the questions presented, and I certainly would not present them if I did not think it was absolutely necessary to the position taken by the Government and its duties.

THE COURT: I have no doubt of that, Colonel Anderson.

MR. ANDERSON: Therefore, with that understanding, I want to say that the delicate line to be drawn there is this: If in the exercise of administrative as distinguished from executive powers or constitutional powers of the President—assuming that Mr. Polk was here authorized to act for the moment, which is a legal question—if in the exercise of those administrative functions which are conferred by Congress and Congress alone—since, as I already called your Honor's attention to the fact this is a Congressional power, that is, the control of alien property, and not an executive power; the President has nothing to do with that, primarily, I may say deferentially; the President's office is not concerned with alien property until Congress acts, and then only to the extent that Congress says—now, then, when the President has appointed an agent Alien Property Custodian or any one else, with limited powers, when in the exercise of those powers as prescribed by the Act, if it appears that he acted contrary to the intent of the Act with the best of purpose, being badly advised, or mistaken; or if it appears that he acted upon a mistake of material fact, then the Court, in order to determine the validity of the Act, which is a judicial function often calling for the exercise of the most delicate discretion and taste, must inquire into it. As an illustration, I called your Honor's attention the other day to the great case of Lee against the United States, probably one of the most delicate ever passed upon by the Courts of this country, in which the Courts were called on to pass upon similar questions involving the acts of President Lincoln.

Therefore, while yielding to no one in my deference and respect for the Presidential office, and in my appreciation of the absolute importance of maintaining every possible safeguard around Executive discretion, I conceive that it is not only the power, but the duty of the Government, and the Courts, in adjudicating the rights of the Government, to consider these questions, when properly presented, with proper regard to the proprieties of the situation, what Mr. Justice Holmes once called "equitable propriety." When so presented, the Court should receive and consider the facts upon which the administrative discretion of a limited agency, even by the high office of the President himself, should be controlled, or upon which that discretion was exercised.

That is our view, I recognize, as your Honor has said, that this matter should be handled with the greatest possible delicacy, and I have tried to so handle it.

The Court: I have no fault to find with the position that you take. Whether it is sound as to this particular transaction is for me to deter-monopoly that are contained in the Bill, but what we do contend is that there should be applied to that part of the trial of this case as nearly as possible the rules of evidence which will not only afford the legal protection to this defendant—which, by the way, is not charged to be a member of the conspiracy—but also that it should be done in a way that will be fair to the people whose names have been mentioned as conspirators and who are not parties to the litigation.

In other words, we ask the Court to so far enforce the ordinary rule of the admissibility of evidence upon a charge of conspiracy, which is that there must first be shown a *prima facie* case of conspiracy before any overt acts are permitted to be proved, but that that rule should be so far applied here as to protect the corporations and individuals whose names are mentioned as conspirators.

Of course, if this is proof of the agreement of conspiracy, it would come clearly within the rule that I have contended for. And if your Honor by taking this instrument can say that it is any proof of an agreement of conspiracy, of course my objection is untenable. Or if counsel will point out to your Honor anything in that instrument which could be made the basis of a claim that it is evidence of an agreement or conspiracy, my objection can not stand.

What counsel has just read, namely, the purposes of this Institute, certainly do not show that they were entering into or contemplating entering into a conspiracy. They say that they were organizing themselves into an institute for the protection of their industry, for the protection of their industry against foreign competition. What right has any one to say that because that was the purpose of the organization, that is evidence that they were entering into a conspiracy to maintain a monopoly and to commit a fraud upon the mine primarily. But I am wondering this, Colonel Anderson: If your position be sound, the position taken in your last statement, whether Mr. Kresel has overstepped or even approached the limit of cross-examination that he would be entitled to in searching the knowledge of a Congressional representative through the Order of the President, and whether he would not be entitled to examine him as to each statement and each sentence embodied in Mr. Palmer's order—"Did you know this?" and the witness would probably answer, "It was so stated in the order." He could stop there or he could say he had further knowledge of that fact. I will get you to help me on that, if you will. Assuming for a moment that this is cross-examination proper and not examination in chief, I do not see just where the line stops.

Mr. Anderson: If your Honor please, my objection, if your Honor will recall, was that the counsel was arguing with the witness as to the interpretation of the orders and papers which were presented to him. I did not object, although I think it would be valid to object. Under the circumstances stated to the Court, this witness is really not subject to cross-examination, but each party must examine him under the rules controlling on the direct. But I did not object to that, because I did not mind it.

However, I think that he has gone as far as he ought to go in view of the peculiar circumstances under which this witness is put on the stand.

The Court: But I am wondering whether you are aiding me in the general consideration of the case. You recall that Mr. Kresel said he would not go further on that line, but he had some general questions he wanted to ask.

Mr. Anderson: All right. I am perfectly willing.

Mr. Kresel: Does your Honor desire to hear me further as to our position on the general and underlying basic question of law, or shall we go on?

The Court: I think not, Mr. Kresel, because you stated it most admirably and so did Mr. Guthrie; and you have called attention to it two or three times in the progress of the case.

Mr. Kresel: May I make this one observation, however, that it is our contention, that if your Honor is to determine whether the discretion given to the President by Congress was properly exercised, we are entitled to show all the grounds that moved the President and his representative in coming to the conclusion, not only such information as Mr Polk had that was conveyed to him by Mr. Palmer, or that was contained in that report, or that was contained in Mr. Palmer's letters, but all information that Mr. Polk had bearing upon the question which induced the action taken by him. And may I recall to your Honor and to Colonel Anderson the fact that upon his direct examination Mr. Polk was careful to say that he had other information in his other official capacity. I have sent for the stenographic record of his direct testimony, because I want to read that to your Honor.

Mr. Anderson: I am perfectly willing to concede it; that Mr. Polk did say that he had other information.

Mr. Kresel: Then does not your Honor see that upon the very direct examination of this witness he states substantially that his action was induced not only by what he learned from Mr. Palmer, the report and the letter, but by other information that he had in his official capacity?

As I said to your Honor, I shall not insist upon Mr. Polk's stating here anything which in his judgment ought not to be stated because of reasons of State. But I do want to ask him, as I say, with your Honor's permission, the various official capacities in which he acted and the sources of information that were available to him upon this very subject.

The Court: You may proceed along those lines.

By Mr. Kresel:

XQ. 93. Before I come to that, Mr. Polk, after you signed this Order of the 26th of February, 1919, did you have any talk with the President of the United States about it?

A. No extended talk. My recollection is that I told him as a matter of news that I had signed the Order. But we did not discuss it at all. That was some time between that date and the date he sailed. He sailed, I think, the 5th of March to go back to France.

XQ. 94. So that between the 26th of February and the 6th of March, 1919, you did state to the President of the United States that you had signed this particular Order of February 26, 1919?

A. I think I told him we had signed two orders, as I recall it. I merely stated it to him as a piece of information, that I had assumed to act, although he was there, in the country.

XQ. 95. And was that the reason that moved you to mention the matter to the President?

A. Of course.

XQ. 96. Namely, that you signed this Order although the President was in this country?

A. Although he was in this country.

XQ. 97. As counsellor of the State Department, which was your official position during this time, were you in close touch with the Secret Service and Intelligence Department of the Government?

A. Yes.

XQ. 98. Will you please tell the Court, if it is a fact, how the Intelligence Department of the Governmental Departments centered in the State Department of which you were counsellor?

Mr. Anderson: Your Honor, please, I object to that.

Mr. Kresel: Pardon me. Let me finish the question.

XQ. 98. (Continuing) I do not mean to ask you to give any information, you understand. I simply would like to have the Court understand the arrangement—how it was that the Intelligence Department, if it did, centered in the State Department?

Mr. Anderson: If your Honor please, I must object, not only because it is utterly immaterial here how it centered in the State Department—the witness has said he was in touch with it—but I do not think it is at all proper to go into the question of the relations of the Secret Service and Intelligenee Department with the various departments of the Government. It is not called for by this examination. It cannot have any relation to this matter, what the witness may have known, if pertinent. I am not objecting to it at this time, but I do object to going into that question of the relations of the Secret Service and Intelligence Department of the Government with the State Department.

Mr. Kresel: Your Honor will understand that I am not asking him to tell me a single word as to what he learned.

Mr. Anderson: Even the connection is important.

The Court: It seems to me, Colonel Anderson, I am going to sustain your objection, but will you help me on this? Going back to your previous statements, I am wondering whether, in the delegation of power by Congress or the conference of power by Congress upon the President, there is not a different condition existing than if it conferred that power on an individual, for instance, the Alien Property Custodian, and whether we should not be more restricted in our inquiring into the exercise of discretion or the reasons moving the exercise of discretion, when that power has been given by Congress to the President, than if given to some other person.

It seems to me that that is one of the incidental difficulties involved in the major issue which was just discussed. Now, then, with respect to this question, it seems to me that if you stop with an answer, if the answer were available, then you have only raised a query in my mind as to whether he did not get some information from that source; and that query, without its being given an affirmative background by the disclosure of the facts, would disturb rather than aid. If you should raise that suspicion or that belief, that probability, then the other side would surely be entitled to inquire as to what you got, except where reasons of State would prevent.

Mr. Kresel: My position, your Honor, if I may interrupt you, is that I have a right to have this witness state what information he did have from that source. But, as I said, I shall not insist upon getting that. I concede to the Government the right to inquire of this witness, if it so desires, as to what information he had from that source. But all I am now seeking to show are the sources of information that this witness had.

The Court: He has told you, Mr. Kresel.

Mr. Kresel: All he said is that he had other sources of information.

The Court: No, as I recall, he did state that his position was such that he had this Intelligence Department as a source of information.

Mr. Anderson: And that he had known something of German activities before the war, as counsellor of the State Department.

The Court: Your immediate question is the connection or the details of the connection between the Intelligence Department of the Government of the United States and the position which Mr. Polk held at that time.

Mr. Kresel: I am not asking for the details, your Honor. My question was simply whether it is a fact that during the time that Mr. Polk was counsellor to the State Department, the Intelligence Departments of the Government centered in the State Department.

Mr. Anderson: That would be most improper.

Mr. Kresel: Why is that improper?

Mr. Anderson: For the reason that the relations between the various departments of the Government, especially the Secret Service and Intelligence, are matters that nobody is allowed to know about.

Mr. Kresel: But I am not asking what the Secret Service said or did.

The Court: Let us go back to the question. Will you please repeat the question? (Q. 98 repeated as recorded above.)

I sustain the objection.

Mr. Kresel: May I have it appear upon the record, if your Honor please, that we claim the right to elicit from this witness every bit of information that he had before him when he signed this Order, from whatever sources he derived it, saving only such information as upon the witness's statement it is contrary to public policy and to the welfare of the country to reveal, which the Court may rule he should not state.

I state to your Honor that we claim that right because the Government has brought us into this Court and has directly challenged the act of Mr. Polk and of the President, for whom he acted in a matter where discretion had been vested in the President by Congress.

We say that, the Government having taken that position, it cannot now close the door and on one side attack the validity of this Order, say that it is founded upon a misrepresentation of fact and upon suppression of facts, and stop us from showing what information the witness had upon which he acted.

Of course, we bow to your Honor's ruling. If your Honor says we cannot inquire into that, we are stopped. But I want it clearly to appear upon the record what our position is in the matter.

Mr. Anderson: I will ask your Honor's indulgence for a moment that you can get our position clear. The Government charges in Paragraph 34 of the Bill:

> "that necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of said patents and other rights mentioned in said orders at private sale were not stated or disclosed to said Frank L. Polk, but were withheld from him and suppressed; that other facts in connection therewith, and especially the attitude of the Federal Trade Commission, charged with issuing licenses under the enemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk;"

out regard to such purpose on the part of the chemical and dye industry to eventually profit by the taking over of those patents.

Mr. Anderson: Your Honor will recall that the Statute provides that the order must state the reasons therefor in the public interest; and my view is that in view of the terms of that Statute, the only reasons that can be considered are those stated in the order.

Mr. Kresel: Yes, but the reasons which actuated the President or Mr. Polk in assigning those reasons in the order are just as effectual and just as important as the reasons which are stated as the basis of them.

The Court: If I recall, Colonel Anderson, you stated that you could challenge and question the reasons.

Mr. Anderson: As stated in the order, whether those reasons were sound and whether they completely stated the facts, that is, whether the facts upon which they were predicated were completely stated. I can question that. But I take it here that no reason can be taken to justify this sale by a private sale except the reasons stated in the order, and that we can only inquire into the facts that underlie those reasons.

Mr. Kresel: Let me give an illustration, your Honor.

The Court: Pardon me, Mr. Kresel.

Mr. Anderson: The President must state the reasons. Otherwise the order is not valid.

The Court: Then your contention is that you may inquire into the accuracy of the facts stated in those reasons.

Mr. Anderson: Yes, the accuracy of the facts.

The Court: You may take issue not only by

Government by taking these patents without adequate consideration.

It is just as your Honor has said, where are we going to stop? Colonel Anderson tells us that he proposes to put in all the minutes of this Institute. How are we bound by all the minutes of this Institute? When they are offered, of course we shall make such objection as we deem we are entitled to make. But here is a galley proof of the constitution and by-laws of an Institute, and if the Government can not point out any more than they have already pointed out, as to how that shows that an agreement of conspiracy was being entered into or contemplated, we say it is no evidence of any such thing, and, being no evidence, it is not admissible at this time or at any other time—certainly not at this time—until there is some proof of a conspiracy.

The Court: You have made your position clear for the record, haven't you, Colonel—so far as the record is concerned?

Mr. Anderson: Yes, so far as necessary.

The Court: I understand you to offer this not as an overt act in carrying out the conspiracy, but as evidence, which, from your point of view, has some value as tending to establish the alleged conspiracy.

Mr. Anderson: That is what it is for.

The Court: On that ground it seems to me that this evidence now offered comes within the general rule which is laid down for the general guidance of the evidence in this case, and, Mr. Kresel, it seems to me that the test of your objection possibly may come after Colonel Anderson has offered all the evidence which he deems relevant or material to establish his allegation of conspiracy, and when he thereunder offers evidence of an overt act, it is then, I take it, that I will be in a position to pass upon the admissibility of any evidence of an overt act, and it will then be for me to way of demurrer to the reasons, but by a denial or traverse upon the accuracy of the facts.

Mr. Anderson: In other words, I take it, where we show the order was prepared by some one else and sent to the President as stating the reasons, in the public interest, or through Mr. Polk, that we can inquire as to whether those reasons were accurately or correctly stated, but we cannot inquire into what knowledge Mr. Polk may have had, which were not stated in the order, in the public interest. Because, if that were true, the provision in the Act requiring the President to state his reasons would be an absolute nullity.

Mr. Kresel: Your Honor will grant me a few minutes. I think I can by one illustration show the fallacy of the argument on the other side. Take the first reason that is assigned in this order by Mr. Polk, namely, that the Letters Patent, trademarks and similar rights cannot be sold to the best advantage at public sale.

Let me assume an extreme case. Let me assume that Mr. Polk in his official position had knowledge that the German Government had made an arrangement with some particular person to go and bid these patents in at a public sale. Just let us assume that for the purpose of the argument.

Is it contended by the Government that Mr. Polk and the President, if your Honor is to inquire as to their reasons, are to be estopped from telling your Honor what they had in mind as a basis for making that statement? Is it possible that they can attack the transaction and yet stop us from showing the justification of it? I do not understand Colonel Anderson's reasoning in this matter. He is always very clear in his reasoning. But I must confess I do not understand this.

They cannot attack the transaction and yet stop us from showing the justice of it and the fairness.

The Court: Mr. Smart, will you turn back to the last question, please.

(XQ. 98 repeated as recorded above.)

The Court: Has counsel any objection to my inquiring, as I am taking up again the question that I overruled, from Mr. Polk as to whether the facts called for by your question are facts that are well known or are known only to the department?

Mr. Kresel: Your Honor recalls the question. It was as to whether the Intelligence Department centered in the State Department. I see no objection to your Honor making the inquiry.

Mr. Anderson: We have no objection to your Honor making any inquiry.

By The Court:

Q. 99. The question I would like to ask is whether the facts called for by that question of Mr. Kresel are facts that are known generally to the public and are generally available to the public, or does the question call for facts which are known or should be known only to the Executive Departments?

A. The particular question would call for a reply that is known to the public.

The Court: Then inasmuch as the objection was sustained, mainly for reasons of State and not otherwise, I shall withdraw my ruling sustaining the objection and allow the general rule of practice that we have adopted in this case to apply to that question as well.

Mr. Anderson: Will your Honor permit me to put my objection in a little more specific form?

The Court: I thought you had.

Mr. Anderson: I want to make the objection to the question specifically. I want to object to this question and any answer thereto, and at the same time move to strike out all the examination thus far that relates to matters which are not the basis of the facts stated in the executive order.

I wish to object to this question specifically on the ground, in addition to being immaterial and irrelevant, that it makes inquiry as to matters relating to the Government which are not involved in this case and which, with deference, we think, should not be inquired about.

Second, that under the Statute under which this order was entered or purported to be entered, the executive officer or person exercising the power was required to state his reasons for his action, and it is not pertinent to inquire into matters that are not covered by the reasons given in the executive order.

THE COURT: I think this inquiry comes specifically under the first reason assigned, as illustrated by Mr. Kresel's last statement.

If you recall the question, Mr. Polk, will you answer it; and if an inquiry is made from you, either by Mr. Kresel or Colonel Anderson, which calls for disclosures that should not be made public for reasons of State, will you indicate by saying so.

By MR. KRESEL:

XQ. 100. Mr. Polk, I am going to ask you some questions. I will not ask you what the information was that you had, and, with Colonel Anderson's permission, in order to avoid eliciting any such facts, I am going to make my questions leading. Of course, if the Colonel objects to it, I shall try to mend my way.

Mr. Anderson: I have not objected on that ground yet.

Mr. Kresel: You did on one occasion.

XQ. 101. As counsellor of the State Department, did you have charge of arranging with the British and French authorities for permission to allow German drugs to be passed through the blockade?

A. Drugs and dyes, yes.

Mr. Anderson: Your Honor understands that this is all subject to objection.

The Court: I understand that that all is, and I gave you permission to take the answer to the preceding question, Mr. Kresel?

Mr. Kresel: Pardon me.

The Court: I overruled the objection to your preceding question. You may take the answer to that, if you want to.

Mr. Kresel: I understood it had been answered.

The Witness: No, it had not.

Mr. Kresel: I beg your pardon. Will you now answer it, please?

The Witness: What was the question?

XQ. 102. The question was whether it was a fact that the Intelligence Department of the Government centered in the State Department?

A. Not exactly.

XQ. 103. Will you state what was the fact?

A. Prior to our entering the war, in the fall of 1915, all the secret service agencies sent their information into my office. That office was made a clearing house for secret service information.

XQ. 104. That is all I desire to establish.

A. The reason I answer that question is, that was published in the papers at the time.

XQ. 105. Now, to return to my other question, that I was inquiring.

A. But, as I say, that ceased in April or May, 1917, after we got into the war. We still had information, but it was not a clearing house.

XQ. 106. Now, do you recall what drugs were imported from Germany pursuant to this arrangement that you made with the British and French Embassies?

A. The arrangement was not made with the British and French. The arrangement was made with the British.

XQ. 107. With the British.

A. In regard to the drugs, and that was for the importation of particularly salvarsan and novocaine.

XQ. 108. Prior to your acting in such a way as resulted in getting the British to agree to this, had you received any information as to the necessities of the country for such drugs?

A. Yes.

XQ. 109. Had you been in consultation with officers who represented to you, in your official capacity, the necessities of the country for those drugs?

A. We received from the drug houses and from the heads of institutions statements that there was a crying need for those particular drugs.

XQ. 110. Had you received any information as to the effects of substitute drugs?

A. I recall that some of these people stated that the so-called substitutes that were either manufactured or imported from elsewhere into this country, were in some instances ineffective; in other instances, dangerous.

XQ. 111. Now, as to dyes. Did you have information in your official capacity that with the outbreak of the European war the importation of German dyes ceased?

A. Very much curtailed and at one time it was prohibited by an embargo in Germany.

XQ. 112. Was information brought to you in your official capacity of the requirements of the country for such dyes?

A. Yes, I discussed the question with the Secretary of Commerce.

XQ. 113. Mr. Redfield?

A. Mr. Redfield.

XQ. 114. I am not inquiring what your discussion was, but I am inquiring of you as to whether you knew, had gained information before you made this order, of the importance of the dye industry and of the dependence that this country had on Germany for dyes?

A. Yes.

XQ. 115. You knew that to be a fact?

A. I knew that to be a fact.

XQ. 116. Do you remember any particular institution that made representations to you in your official capacity as to the importance of the dye industry in the country from a point of view of munition supplies and dyes?

Mr. Anderson: I will have to object, if your Honor please, if we are going into representations and hearsay. I do not know where we will stop.

Mr. Kresel: I frankly admit, your Honor, that this testimony might be hearsay, but I claim that we have a right to show it as information in the possession of this official as a basis of his action.

The Court: Will you turn to the third reason assigned by Mr. Polk: "The public interest will be best served by a wide use of the inventions covered by said letters patent and similar rights and such wide use can be most readily promoted by the licenses which the said The Chemical Foundation, Inc., is by its charter obligated to grant."

Mr. Kresel: Yes, sir, that is certainly pertinent to that, isn't it—to show that he in his official capacity knew of the importance of a chemical industry to a country, because it was the source of the supply of munitions in time of war and of dyes and drugs in time of peace.

The Court: It is not sufficiently clear, your objection, to apply the general rule to that question that was applied to the other.

Mr. Anderson: Does your Honor wish me to make the objection clearer, or is that for the status of the record?

The Court: No, I do not mean the objection is not sufficiently specific. You may have the answer.

Mr. Kresel: May I have the question read?

Mr. Anderson: I note an exception.

The Court: Yes, the exceptions, Colonel Anderson, will be implied in all cases.

Mr. Anderson: Yes. Thank you.

(XQ. 116 read as recorded above.)

A. Individuals pointed out the close relation between dyes and chemicals in the production of munitions and pointed out our dependence on the Germans for certain processes and patents.

XQ. 117. Was it pointed out to you by representatives of our industries that if the Germans had these patents that were here involved they could after the war destroy any chemical industry that might be built up during the war?

A. That was pointed out.

XQ. 118. Without asking you to state what your conversation with Secretary Redfield was, will you state whether it was in connection with building up a dye industry in this country?

A. It was.

XQ. 119. Was the question of building up a dye industry in this country discussed with the President?

A. Yes.

Mr. Anderson: Well, did he discuss it, or who discussed it?

Mr. Kresel: I am coming to that.

XQ. 120. Was it discussed at Cabinet meetings?

A. Not at any of the Cabinet meetings at which I was present.

Mr. Anderson: If your Honor please, I do not think we have a right to go into Cabinet meetings here. If we are going into Cabinet meetings, I am going into them, too, at a later time. I will have to.

Mr. Kresel: That is right.

Mr. Anderson: I would not do it, but if we are going into Cabinet meetings here we might get very far afield.

The Witness: I would not feel at liberty to answer any question bearing on the discussion at Cabinet meetings anyway, Colonel.

Mr. Anderson: If you say it was discussed at Cabinet meetings—

The Witness: No, I say not when I was present. I do not know whether it was discussed or not.

Mr. Anderson: Oh, I thought you said it was discussed.

The Witness: No, I hope the answer was not that way.

The Court: I am not going to hear any discussion now; I am going to let you put another question and then we will hear any discussion upon that.

The Witness: I would not answer such a question.

XQ. 121. I will ask you this question—whether as the result of the representations that were made to you in your official capacity, the discussions with Secretary Redfield, the conviction that the country was dependent upon Germany for these essential dyes and drugs and munitions—whether the Government formed any policy as to building up a dye industry in this country. Just say yes or no to that.

Mr. Anderson: One moment. I first would like to ask what was the answer to the preceding question, if I may ask, sir, on the discussion at Cabinet meetings.

Mr. Kresel: He said he was not present.

(The reporter read as follows: "The Witness: No, I say not when I was present. I do not know whether it was discussed or not.")

Mr. Anderson: I wish to object to the particular question that was asked, first because it is undertaking to draw a conclusion of the witness.

The Court: This is the last question, Colonel?

Mr. Anderson: The last question.

The Court: Which was what?

(XQ. 121 read by the stenographer as above recorded.)

Mr. Anderson: Now I would object to that on the ground that it is asking generally to state as a result of representations made to the witness, without specifying who, where, when, whether it was ten years ago or one year ago; second, it undertakes to predicate his answer upon a conviction—of whom? The country? The witness? Whose conviction? Therefore, it would be a legal error. Third, that the policy of the United States with respect to business is fixed by Congress and not by the witness, however distinguished may have been his position or his qualifications, and therefore I do not think that any witness could be asked as to what policy was formulated unless that policy was put into the form of law, an order by an authorized administration, and then it would have to be produced.

Mr. Kresel: May I say that I will show the law—I will follow it up with the law.

Mr. Anderson: Then the law speaks for itself.

The Court: Colonel Anderson, your contention is that the Trading with the Enemy Act did not confer the power?

Mr. Anderson: That is the question.

The Court: Your contention is that the Trading with the Enemy Act did not confer the power for the Executive Department to decide upon a policy.

Mr. Anderson: Certainly.

The Court: Yes, that is your contention.

Mr. Anderson: Yes, certainly.

The Court: But Mr. Kresel's contention is the opposite, that there was a conference of power which was broad enough to enable them to do this very thing, and now he is inquiring as to the reasons why they did it. Unless I determine *in limine* whether your contention of the law is right or whether Mr. Kresel's contention of the law is right, then I have got to take evidence that may be considered under each of those contentions, have I not?

Mr. Anderson: Yes. If your Honor will permit me—I regret to take the time but, if your Honor will permit me, the law speaks for itself as to what it means and the witness can not testify as to that.

The Court: Surely.

Mr. Anderson: That is first. Second, the policy of Government must be drawn from that law, because Congress alone can fix a policy with respect to industry.

determine, *prima facie* at least, as to whether or not there is any evidence in the record sufficient to establish the conspiracy. Consequently, I overrule the objection and allow you an exception.

Mr. Kresel: Yes, sir. May I now make the suggestion to counsel for the Government, as to whether it is necessary to put in this whole constitution and by-laws. Is there not some particular part of it that you want to use—so that we do not encumber the record with the whole of it.

Mr. Anderson: I think it is all necessary. Yes, I think it is necessary both in the spirit of fairness and necessary to prove the case.

Mr. Galloway: This is the original I have here.

Mr. Kresel: While the Clerk is marking the exhibit, Mr. Hershkopf suggests to me that I bring this question to your Honor's consideration, because I think it is very relevant: Here your Honor is permitting a large mass of evidence to go into the record. Of course, Colonel Anderson has all the time until he closes his case within which to put in any part he wishes. We recognize that to be his right. Ought there not to be some understanding that the defendant may have some definite time after the close of the taking of evidence within which to move to strike any part of it?

In other words we do not want to be foreclosed from the opportunity of moving to strike any part of the evidence the minute the taking of evidence is closed. We shall all have a great deal to do while the trial is in progress, and my suggestion is that your Honor grant to the defendant now say five days after the closing of the testimony within which to file with your Honor and serve upon the other side a motion to strike any part of the evidence.

The Court: Unless the counsel for the Government has some objection to make, I am inclined to be

The Court: Are you not overlooking this assumption? You have gotten in your mind probably, that this act does not confer the power, that you are overlooking the undecided question as to whether the power is there, and there is a latitude of discretion for the Executive Department, in which the Executive Department could move.

Now then, Mr. Kresel's question assumes the existence of power, and what the Executive Department decided to do in the proper exercise of that power, as it saw.

Mr. Anderson: If your Honor will permit me, my third point leads up to just what your Honor suggested, and that is, if we are going to concede that the Executive Department fixes a policy, if the witness can fix the policy, he can state what the policy was. He can state the facts.

Mr. Kresel: That is what he was asked for.

Mr. Anderson: But he was asked for the policy, the policy that had been fixed, as a conclusion, I presume, by the entire Executive Department. Certainly I would not say that one witness could get on the stand, however distinguished that witness was, and undertake to say what the fixed policy of the Government was, unless it brought in something that represented the action of the Executive Department of the Government.

The Court: The order of the President giving Mr. Polk the power to authorize a proper sale under the Trading with the Enemy Act, enables him to say, and he is the one person who would be authorized to say, as to whether the Government had the policy. I will overrule the objection, and you may take an exception.

Mr. Anderson: Exception.

XQ. 122. I was asking you, Mr. Polk, whether it was the policy of the Government at this time, in view of the information that the Government was in possession of, as to the dependence of the country upon Germany for a supply of these essential dyes and munitions and drugs, to build up a chemical industry in this country?

Mr. Anderson: My objection is noted, and exception?

The Court: Yes.

A. You mean the policy of the Executive Department?

XQ. 123. Yes, of course.

A. Yes.

XQ. 124. Now, do you remember?

A. Wait, pardon me. Mr. Kresel—when do you mean?

XQ. 125. I mean at the time.

A. Before we were in the war?

XQ. 126. Before we were in the war, certainly. When we were threatened with it.

A. I do not know that I can answer that question. I mean, when you say the whole—there were some members of the Executive Department who felt and were permitted to urge legislation, and legislation was enacted, but that was——

XQ. 127. That is the extent to which you want to testify as to the policy?

A. Yes.

XQ. 128. Very well. I will take that. Now, the legislation you talk of is what?

A. It was a Bill introduced by the late Representative Hill, Ebenezer Hill, of Connecticut, Republican member from Connecticut.

XQ. 129. Now I do not want to go into the details of that legislation, except to ask you whether it is a fact that pursuant to this policy that you have stated, the administration was in favor and urged, although it was a Democratic administration, high tariff upon importations of dyes?

Mr. Anderson: I think the record will speak. It is urged. The only possible way to be urged was either by a message by the President or by a report of a committee or by legislative act.

The Court: There is record evidence of that which has been put in evidence, or which you have called attention to, I think, a message from Ferry to President Wilson. There is no better evidence on that point than is there.

Mr. Kresel: By the President?

Mr. Anderson: By President Wilson. There is no better evidence on that point than is there.

That message was May, 1919, and the Bill to which Mr. Polk refers was before we went into the war, so I do not think that message could have any relation to it, but I do respectfully insist that if there is any such urgency upon Congress or any other body, the only person that can co-operate with Congress is the President, and that is the only way the Executive power can speak.

The Court: I think the objection is well taken. I will hear you, if you wish.

Mr. Kresel: No, your Honor. If your Honor is convinced of that, I shall not pursue it.

XQ. 130. Did you personally, in your official capacity, urge the passing of this Hill Bill?

Mr. Anderson: I object to that.

Mr. Kresel: Have I not a right to show that?

Mr. Anderson: This is a court of law, and it does not speak for the administration.

The Court: This is not the Trading with the Enemy Act?

Mr. Kresel: No, it is not the Trading with the Enemy Act.

Mr. Anderson: It is before we ever went into the war.

The Court: I do not see at all that we are concerned with the policy of any administration with respect to dyes and chemicals before we went into the war. It seems to me if we are concerned with a policy, it is with the policy for a limited period of time immediately prior to February 26, 1919, the date on which Mr. Polk signed this order.

Mr. Kresel: No, your Honor. You will pardon me if I will argue it with you. The point that we make is that when Mr. Polk signed this order, in February, 1919, he had information and he could divorce himself from it as to the dependence of this country upon Germany for a supply of essential chemicals and dyes. Information that he had obtained in an official capacity, information that came to him quite apart from Mr. Palmer's talk with him, or Mr. Palmer's report or Mr. Palmer's letter. That is what I am trying to show, and it seems to me, with all due deference to your Honor's opinion, that it makes no difference when he obtained that information —whether it was before the enactment of the Trading with the Enemy Act or subsequent thereto, as long as it was prior to his making this order.

The Court: And you show continuity, of course.

Mr. Kresel: Yes, of course.

The Court: I assume you are approaching it from a different aspect than I did. I was approaching it from the date of the order on going back, and you are going forward.

Mr. Kresel: I do not want to take any more time with that than necessary. May the witness

A. (continuing): Because I felt, your Honor, here was an opportunity to build up a real chemical industry in this country; something we never had before. As I stated, we were completely at the mercy of Germany. These patents were, many of them, not being used in this country, were being held, for instance Swiss and French patents, being brought in. I say that was the effect; whether they were held for that purpose I do not know, but that was the effect; and for that reason it appealed to me that this was a wise plan, to make the American people independent of foreign controlled patents.

XQ. 135. I assume that the consideration that munitions of war were so closely related to the dye industry and covered by some of the patents, had some influence with you?

A. At that moment, that was not so pressing as the other causes, because we were negotiating peace. That is also a consideration for the order.

XQ. 136. Now, Mr. Polk, it is also alleged in the Bill that—I think I had better read the Bill so as not to mis-state it. It is stated in the Bill (I am reading from paragraph 34):

> "that other facts in connection therewith, and especially the attitude of the Federal Trade Commission, charged with issuing licenses under the enemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk."

Now, I am not now asking you whether any such facts were misrepresented or misstated to you. My question at this time is whether you knew that by the same order, Executive order of December 3, 1918, made by President Wilson, by which he delegated to you the power to be exercised under this amended Section 12 of the Trading with the Enemy Act, he at the same time defined the respective duties and responsibilities with reference to enemy property as between the Federal Trade Commission and the Alien Property Custodian?

A. I knew he had done it. I did not know it was in the same order.

XQ. 137. Yes. You knew, therefore, when you signed this order, that whatever rights and duties of those two respective departments were concerned, were not only fixed by the Trading with the Enemy Act, but were regulated by an Executive order of the President?

A. I knew there was such an order.

XQ. 138. And now I ask you whether any facts with respect to the attitude of the Federal Trade Commission were misstated or misrepresented to you by anybody?

A. I do not recall any discussion.

XQ. 139. Either with Mr. Palmer or with the gentleman who brought you the order?

A. I do not recall any discussion at that time.

XQ. 140. Was your signature to this order of February 26, 1919, and the one of April 5, 1919, and the issuance of those orders procured from you by the suppression or misrepresentation of any facts?

A. Not that I have since ascertained.

Mr. Anderson: If your Honor please, I object to it, and move to strike that answer out. That is an absolute conclusion. It does not appear whether the witness knew all the facts in this matter; and I ask that the question and answer be stricken out.

Mr. Kresel: But the allegation is a conclusion. They do not tell us what facts were misrepresented, as I pointed out in my opening.

Mr. Anderson: That is a question of argument to the Court. My point is that this witness can not say that all the facts were stated.

THE COURT: I understand your contention, Colonel Anderson. I will take the answer under the general rule, and as I see it, it should be limited to such facts as he shall have disclosed when he leaves the witness stand, he is now familiar with; and not such facts as are not now brought to his attention or shown elsewhere to have been brought to his attention.

XQ. 141. As far as you know, Mr. Polk, were any necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of these patents, not stated or disclosed to you but withheld from you and suppressed, as alleged in the Bill?

MR. ANDERSON: I object, for the same reason.

THE COURT: Same ruling.

MR. ANDERSON: Exception.

A. Not that I know of.

XQ. 142. Do you know of any facts which have been called to your attention by the Government upon its examination, or upon my examination, which if you had known at the time you signed these two orders, you would have declined to sign them?

A. No.

XQ. 143. Is it true, as alleged in the Bill, that you signed these orders without knowledge of the facts?

MR. ANDERSON: That is going a little far.

MR. KRESEL: I am reading what is alleged in this Bill.

THE COURT: That is not a physical impossibility, but it is a logical impossibility, for him to answer that; because I do not know that he knows all the facts now. I do not see how it is possible to answer that question; do you?

MR. KRESEL: If your Honor asked me that directly, I should say yes; and I think this witness who has now been examined by both sides, who has tried to refresh his recollection, who knows about the transaction, can state whether all the essential facts are before him or not.

The Court: Well, he has told us what facts were before him. He has answered those last two or three questions, which I will not repeat. I think that must be a conclusion from the general evidence of this witness and all the other evidence in the case.

I do not think that the answer, if he stated it, whatever it might be, would help you. It would not serve me at all. Whether it would serve some other purpose or not, I cannot say.

Mr. Kresel: Of course, your Honor is well aware of the rule that in cases where fraud is charged, or misrepresentation or suppression of facts, as is charged here, that the person so charged or as to whom it is so charged, is usually asked to categorically deny the statements.

I can not supply the facts, because the Government has not alleged them. All I can do is to repeat the language of the Bill.

The Court: I do not see how the witness can answer the question. I do not see what good it would do if he did answer it, because it is the facts, and you have a multitude of facts on both sides that have been elicited from this and other witnesses.

Mr. Kresel: Very well, your Honor, I will not pursue that.

XQ. 144. Now, Mr. Polk, the Government has claimed here that the order of the President, delegating the power to you under which you made the orders in question, was invalid because the order is made to you, "Frank L. Polk," and not to you "Frank L. Polk, Counsellor of the State Department"—or Under-Secretary of State, whichever was your designation. It is therefore necessary for me to inquire of you how this appointment came to you; if you will state?

Mr. Anderson: If your Honor please, I wish to note an exception now. These are all documents. They speak for themselves. Mr. Polk has exercised the power, signed orders, and everything of that sort; and it is a matter of construction of what those orders mean; and Mr. Polk cannot testify on that subject.

The Court: That is as I see it, Mr. Kresel. I do not see how Mr. Polk can help us by stating the facts which led the President to designate him. Now then, you have shown already the office which he then held.

Mr. Kresel: I am going to ask one more question on that.

The Court: Yes.

XQ. 145. At this time when the designation was made by the President authorizing you to exercise this power, you were counsellor of the State Department?

A. The official title was "Counsellor for the Department of State."

XQ. 146. "Counsellor for the Department of State"—and is that an office of the United States?

Mr. Anderson: I object. That is a matter of law absolutely.

The Court: The objection is sustained. That involves a construction of the Constitution and of the Statutes, and if counsel can show that, while I would take the witness's opinion ordinarily on it, I do not think it is a matter of testimony.

XQ. 147. Were you an officer of the United States?

Mr. Anderson: I make the same objection, that it is a conclusion of law.

even more liberal than you suggest, and that is, allow each side that privilege on the day of argument and up to and including the day of argument——

Mr. Anderson: And in addition—was your Honor through?

The Court: With the additional reservation and condition that if there be any portion of it stricken out at that time, which is more or less technical and which can be remedied, that I would then permit you to correct it in so far as you can.

Mr. Anderson: I was going to make that suggestion. I beg your pardon for interrupting you.

Mr. Kresel: I thank your Honor. That is a very liberal ruling.

Received in evidence and marked "Plaintiff's Exhibit No. 15." (*See Exhibits, Vol. I, page 60.*)

Mr. Galloway: If the Court please, I wish to read, and ask that it not be reproduced in the transcript, certain portions of this. I shall be as brief as I possibly can.

The Court: The minutes have been admitted?

Mr. Galloway: Just the Constitution.

The Court: You are reading from what?

Mr. Galloway: The Constitution.

The Court: Very well.

(Mr. Galloway reads from Plaintiff's Exhibit No. 15.)

Mr. Galloway: I do not care to read any further.

Mr. Kresel: I was going to suggest to your Honor that we do not need the reading at this time as to whether this was an open price association or no. The defendant is not being tried for that now. It seems to me it is a waste of time.

The Court: I shall have to let counsel for each side determine that——

Mr. Kresel: There ought to be some limits, your Honor.

The Court: Objection sustained. You may show what—

Mr. Kresel: I am going to, your Honor.

XQ. 148. Were you nominated for that office by the President of the United States?

Mr. Anderson: I want to object to that, because I would not want to put him to the trouble of bringing a record. I am willing that the witness testify to it.

Mr. Kresel: What has become of this desire to get all the facts before the Court?

Mr. Anderson: I object to that.

Mr. Kresel: Maybe you will make me bring the Constitution, so as to prove that.

The Court: Are you prepared to concede the fact, or do you want to elicit it from the witness?

Mr. Anderson: I am perfectly willing to stipulate on the facts that Mr. Polk was nominated to the office as Under-Secretary of State, by the State Department, and was confirmed by the Senate—

The Court: Prior—

Mr. Anderson: Prior to the 3rd day of December, 1918.

The Court: Filling that office and exercising his powers and duties at the time of the execution by him of each of these orders of his that has been put in evidence?

Mr. Anderson: That his occupation—what I mean is, that he continued in that office without resignation until after—what was the date of your final retirement?

The Witness: June 15, 1920.

Mr. Anderson: Whether he was exercising the functions, I do not know.

The Court: I think that covers the facts that you want, Mr. Kresel?

Mr. Kresel: Yes.

Mr. Anderson: I want to object to these remarks by counsel. I do not want to have personal controversy in this case, but I will not submit, with all due deference to the Court, to any insinuations of that kind by counsel. I want to be understood on that.

The Court: There have been very few on either side, Mr. Anderson, and I hope that there will be fewer on both sides.

Mr. Anderson: I am sure I shall co-operate.

The Court: You may proceed, Mr. Kresel.

By Mr. Kresel:

XQ. 149. Now, pursuant to that order of the President, of December 3, 1918, did you sign other Executive orders in addition to the two here involved, those others likewise relating to the disposition of property in the hands of the Alien Property Custodian?

Mr. Anderson: I object to that on the ground that it is immateral, what orders Mr. Polk signed. The question of the validity of these orders, if they are valid, is a question of law; if they are invalid, he might have signed a thousand and they would not have affected the validity of these in the slightest.

Mr. Kresel: I desire to show, if your Honor please, that this authority by Mr. Polk was exercised during a period of eight months—yes, more than eight months; that he signed under that authority many like and similar orders authorizing private sales and rejection of bids at public sales of property in the hands of the Alien Property Custodian.

I shall follow up that testimony, if allowed in, with evidence that in no case has the Government of the United States challenged the validity of any such orders, and that in one case the Government of the United States based its title to property involved upon an order so made by Mr. Polk under this designation.

The Court: I shall take such testimony this afternoon under our general rule of practice adopted in this case, without expressing any view as to whether it is ultimately to be deemed relevant or material. We will now suspend this case, in order to go over our trial list, and charge the Grand Jury, and I think that will take half an hour. I think probably we had better convene again at 1:15 o'clock, Standard Time.

After Recess.

Mr. Kresel: If your Honor please, I now offer in evidence copies of orders made by Mr. Polk under the authority of the Executive order of December 3, 1918, the first one being dated December 4, 1918, and the last one being dated July 8, 1919, said copies being found at pages 90 to 113 inclusive of this book, which is a Government document entitled, "Trading with the Enemy Act and amendments thereto, together with proclamations, Executive orders and orders issued by Frank L. Polk, Acting Secretary of State, under authority of Executive order of December 3, 1918, issued thereunder, to and including November 25, 1919."

I understand that under our stipulation with the Government there is no question as to the authenticity of these instruments. Is that correct, Mr. Galloway?

Mr. Galloway: That is right. The book is not covered by the stipulation, but we do not object to it.

The Court: Then you offer this documentary evidence instead of taking the answer to the question that was unanswered?

MR. KRESEL: Exactly, your Honor. I think it will shorten our inquiry.

THE COURT: Admitted.

MR. ANDERSON: May I suggest to counsel if it would be possible—those are very long documents and I do not understand the terms of the order relate to any matter that you want to put in; do they?

MR. KRESEL: Yes, I am very anxious to have before the Court the forms of these orders and the reasons which are assigned in each case by Mr. Polk for the making of the orders, as required by the Statute. Does your Honor see?

THE COURT: As indicating the caution that must be exercised in invalidating the orders here challenged by the Government.

MR. KRESEL: That is one of the reasons, yes, sir.

MR. ANDERSON: If your Honor please, we do not object to the introduction of this evidence upon any question of its authenticity, and admit it, and agree that in any matter of formal proof authenticity is waived. We do object to the evidence as being irrelevant and immaterial to the issues of this case.

MR. KRESEL: As to the length of them, Colonel, as we have already agreed with you on another matter—I do not recall it now—we will endeavor to shorten these as much as possible. I think we can do that.

THE COURT: By agreement.

MR. KRESEL: By agreement of counsel.

THE COURT: That you may not leave out anything that the other side wants. They may be admitted. You have no objection to their being admitted out of order?

Mr. Anderson: I do not raise any objection on that ground.

The Court: They will be admitted, each order having a separate number.

Mr. Kresel: I think that would be better, your Honor.

Mr. Anderson: If I might say in addition, that I understand that the objection of irrelevancy and immateriality, without repeating it, carries with it the objections generally stated to this character of evidence in our opening statement.

Mr. Kresel: I so understand.

The Court: And all evidence which is offered at any time in the cross-examination or in defense by the defendant, is objected to by you save only that of the value of these patents at the time of their assignments; and that all such testimony is admitted over your objection and exception, is conclusively presumed to have been entered.

Received in evidence and marked respectively "Plaintiff's Exhibits Nos. 4, 4-A, 4-B, 4-C, 4-D, 4-E, 4-F, 4-G, 4-H, 4-I, 4-J, 4-K, 4-L, 4-M, 4-N, 4-O, 4-P, and 4-Q." (Same as Plaintiff's Exhibits Nos. 728 to 728-Q, incl. *See Exhibits, Vol. III, pages 1874 to 1924, incl.*)

The Court: Are you through with your examination, Mr. Kresel?

Mr. Kresel: Yes, your Honor.

Re-Direct Examination

By Mr. Anderson:

RDQ. 150. Mr. Polk, I failed to ask you one question this morning that I would like to ask now, and of course leaving it open to cross-examination if it is necessary or desired, and that is, were you notified of your election as a member of the Board of Directors of The Chemical Foundation about June 22nd, 1922?

A. Was I notified?

RDQ. 151. Yes.

A. June?

RDQ. 152. About June 22nd, 1922, something like that?

A. No.

RDQ. 152-a. You do not recall at all your election to membership on the Board?

A. Colonel, some one mentioned that my name was being considered, but I was never told that I had been elected. I never said that I would accept.

RDQ. 153. You never said that you would accept?

A. No; I mean the decision was never put up to me. Whether there was an election or not I do not know, but I was never told. I do not recall that I was told that there was an election, but I was never asked whether I would serve.

It may have been that they said I had been elected, and for some reason it was never put up to me to say yes or no to it.

RDQ. 154. You never did agree to serve as a member of the Board, did you?

A. No.

RDQ. 155. Mr. Polk, I understood you to say on cross-examination that your action in this matter was taken in order that the industry (meaning the chemical and dye industry) affected by these patents, might be Americanized; did I catch your statement correctly?

A. That was the idea. I did not use quite those words. In other words, we should create—it should be created in this country—chemical and dye industry.

RDQ. 156-7. Your idea then in this matter was that by making this sale in the manner which has been discussed with you this morning it would be of benefit to the American industry?

A. That was one of the reasons, yes.

RDQ. 158. Do you recall when you first heard of the proposal to sell these German patents affecting the chemical and dye industry to the Chemical Foundation?

A. No, I could not state that positively, Colonel.

RDQ. 159. The letter of Mr. Palmer transmitting this first order to you on the 26th referred to the fact that he had hoped to see you that morning but arrived too late. Can you now locate about the time of your telephone conversation with Mr. Palmer?

A. No, it was some time during the day; it was within two or three hours of the receipt of the letter.

RDQ. 160. Did you not state to Mr. Palmer in that conversation that if he would prepare his order and send it over to you, you would sign it?

A. I do not recall it. My recollection is that the conversation was after the letter was received.

RDQ. 161. After the letter was received?

A. That is my recollection, but I would not be sure.

RDQ. 162. Is it or not true that your first information as to the proposed sale of these patents, trademarks, etc., was really the receipt of that letter?

A. The first official information, yes.

RDQ. 163. Well, did you have any other information on the subject that you recall now independently?

A. Well, I would not want to state that positively, Colonel. I have a recollection that there was some general discussion in which I had taken no part.

RDQ. 164. In which you took no part?

A. In which I took no part at all. I heard it discussed some time about February 26th, somewhere prior to that, but I would not be positive about that.

RDQ. 165. Do you know whom you heard discuss it?

A. No.

RDQ. 166. Just a current, desultory discussion?

A. Yes, I imagine so, something in the Department, either brought up by the trade adviser or some subordinate; I am not sure of that.

RDQ. 167. You do not remember anything that was said at that discussion, do you?

A. No. As a matter of fact, the first definite information I received was that order of the 26th.

RDQ. 168. At the time that you signed that order then, the information which you had on the subject, this particular subject covered by the order, was the information contained in that letter and in the accompanying report, was it not?

A. In the report and the letter and such conversation as I had with the man who brought it over, which was probably very brief, and with Mr. Palmer.

RDQ. 169. Can you state approximately how long was that conversation with Mr. Palmer over the telephone on the subject?

A. Either telephone or in the office, I am not sure which; but I have no definite recollection on that.

RDQ. 170. Mr. Polk, do you remember anything that was said in that conversation with Mr. Palmer in addition to his report? Have you any independent recollection of it?

A. I remember the question I asked.

RDQ. 171. Would you state it?

A. I asked whether this transaction had been approved by the so-called Sales Committee.

RDQ. 172. You were told that it had?

A. Told that it had been.

RDQ. 173. When you speak of this transaction, do you mean the entire transaction, price and everything of that sort?

A. I could not very well separate it in my mind. The impression on my mind was the whole transaction. That is the impression I have now.

RDQ. 174. The whole transaction as embodied in Mr. Palmer's report had been approved by the Sales Committee, was the impression you got?

A. I don't know whether the report was approved by the Committee. I didn't mean that.

RDQ. I did not mean the report. I mean the essentials of the transaction?

A. Yes, that the sale to the Chemical Foundation was approved by the Sales Committee.

RDQ. 176. You stated this morning that you discussed the question of price with Mr. Palmer. Were you advised or did you gain the idea in the discussion that the question of price had been taken up with the Sales Committee?

A. I separated that question. I rather assumed that it had been.

RDQ. 177. You assumed that it had been?

A. Yes.

RDQ. 178. In other words, you assumed and gathered the impression from the facts presented to you at that time, either in the report or in personal conversation or telephone conversation as the case might be, that all of the essential elements of this transaction had been approved by the Sales Committee?

A. That was my impression.

RDQ. 179. In this order you state that the Alien Property Custodian may sell all Letters Patent, trademarks and rights under Letters Patent and Trademarks, including all profits and damages recoverable at law or in equity for past infringements thereof, which the Alien Property Custodian may seize or may have seized under the provisions of said Trading with the Enemy Act and amendments thereto now or hereafter enacted, and which he from time to time shall determine relate to the objects and purposes of The Chemical Foundation, Inc., as expressly defined in its Charter. Did you know at that time or was it stated to you to what extent the seizure of these patents had been carried and how many of them had been seized?

A. How many were actually in hand, do you mean?

RDQ. 180. Yes.

A. No.

RDQ. 181. Did you know or did you have a list of the patents, trade-marks, etc., which had actually been acquired by the Alien Property Custodian?

A. The whole 4500?

RDQ. 182. Well, whatever they were at that time?

A. No, I do not think I did.

RDQ. 183. You did not have any list?

A. No.

RDQ. 184. You did not know at that time what was the name of the trade-marks which were proposed to be seized, since you left that to be determined, their character and relation to the business of the Chemical Foundation, by the Alien Property Custodian; am I right in that?

A. Yes.

RDQ. 185. Something was said to you about the price to be paid. There was no price mentioned in your order you observe that?

A. Yes.

RDQ. 186. Was the question of price really considered in connection with the matter; was it not the question of promoting, if I may use that word, the American industry, by the use of these patents?

A. Well, it was an arbitrary price.

RDQ. 187. Yes?

A. But I do not know that we considered the values of the patents as a whole. In other words, The Court: I think I shall have to let counsel for each side determine that at least for the present. I should like to have you point out to me some time—I do not want you to stop and do it now—what difference would it make if in the determination of the Alien Property Custodian, or the President for that matter, in the Americanization of the dyes industry, and in the determination of a monopoly according to the Sherman Law, if a person or the organization to whom is turned over the patents or to which the patents were sold was a complete American or not? I, for the moment am having difficulty in determining how that could be relevant, because the Alien Property Custodian, while the President was in Europe, might well say that is all right, we will Americanize the industry, and then take care of the monopoly under the Sherman and Clayton Acts.

I do not care to have you answer that now, because you might probably get into one of your basic discussions; but I shall be very glad to have you help me on that from time to time as you go on.

Mr. Galloway: We shall do that, your Honor.

The plaintiff next offers in evidence excerpts from the speech by Mr. Francis P. Garvan, which was published in a booklet, "The Chemical Foundation," and is also made a part of defendant's answer, as Exhibit No. 6.

The Court: No. 6.

Mr. Galloway: Exhibit No. 6 in the answer. We ask that the same be not duplicated in the record.

The Court: Let it be admitted without objection as Plaintiff's Exhibit No. 16.

Mr. Anderson: May I make this suggestion, to avoid confusion: It occurs to me that the stipulation provides that all exhibits that are already introduced are introduced subject to objection to review the introduction. Therefore they are now introduced as Ex-whether you take what they could have sold them for at auction, because that is what they desired to avoid.

RDQ. 188. As a matter of fact you did not know what the patents and trade-marks were, so you could not consider their value?

A. Well, I had a general idea what they covered. That is, I knew there were certain processes and—

RDQ. 189. Your real object then, in making the sale under the terms prescribed in your order was to promote the development of this industry, dyes and chemical industry, through the use of these patents to the extent they could be used; is that true?

A. That is one of them.

RDQ. 190. As a matter of fact wasn't that the real controlling purpose in the matter?

A. No, I do not think it was the only one. As I recall it it was the policy that had been pursued in connection with these valuable German patents. In other words, turning them over to the Government or semi-Government agencies—not necessarily for the benefit of those industries, but to be used in this country.

RDQ. 191. You said you had not seen the charter of the Chemical Foundation. You regarded it as a semi-Government agency?

A. Yes.

RDQ. 192. And you understood from the report and statements from Mr. Palmer that it was a semi-Government agency, or would be, did you?

A. Well, I read the report. I assumed that it was not a money-making organization.

RDQ. 193. Of course, the thing might not be a money-making institution; for instance, a hospital.

A. Well, of course it was not a semi-Government, because after all there is no such thing as a semi-Government, strictly speaking.

RDQ. 194. Yes.

A. But of course it was created by Government officers with the knowledge of the Executive for a specific purpose. To that extent it was semi-official. Of course, that is a loose expression on my part. I used it.

RDQ. 195. You said it was created by Government officials with the knowledge of the Executive. The President had only returned the day before, had he not?

A. No, but I think the—yes, that is true.

RDQ. 196. And you stated this morning that he was so engaged that he could not consider this matter, which was the reason why you signed this order?

A. Yes, but I did not necessarily mean the President as the Executive, of course.

RDQ. 197. You stated in this order as the first reason that the trade-marks and similar rights can not be sold to the best advantage at public sale after public or other advertisement. Mr. Palmer did not in his letter but did he in his conversation with you state any reason upon which you based that statement?

A. I recall that was one question I usually asked, why it could not be sold at public sale.

RDQ. 198. What was the reason stated, if you recall?

A. As I recall, the reason stated was that these might be bid in by individuals who would hold them, not operate them, and defeat the very purpose that the Alien Property Custodian had in mind, and also fall into the hands of people who would use them purely for speculative purposes.

RDQ. 198-a. Well, was it not stated to you, as indicated in your order—reading it; you are familiar with it—that these patents and their control of importations were vital to American industry? In fact Mr. Palmer in his letter, if you will remember, states that the ownership of these patents by Americans was vital to American industry.

A. Yes.

RDQ. 199. Was that made clear to you, how they were vital to American industry?

A. Well, I had that experience in 1915 and 1916 when the patents were held here and they were not manufacturing here, but the existence of the patents prevented the bringing in of Swiss and French dyes.

RDQ. 200. The existence of the patents here prohibited the bringing in of Swiss and French dyes?

A. The ownership by the Germans of the patents here, prohibited the Swiss and French dyes being brought in, because they were in infringement of the German patents which were not being operated.

RDQ. 201. To get back to the question, if Mr. Palmer stated that is the reason why he thought they were vital to American industry?

A. I could not recall that.

RDQ. 202. You could not recall?

A. No.

RDQ. 203. In this third paragraph of the reasons, stated in your order, it recites as follows: "The public interest will be best served by a wide use of the inventions covered by said letters patent and similar rights and such wide use can be most readily promoted by the licenses which the said The Chemical Foundation, Inc., is by its charter obligated to grant."

Mr. Polk, as you have stated it, you had never seen the Charter, and I assume you made that statement in the order upon the statement presented by Mr. Palmer?

A. Yes.

RDQ. 204. You personally had no knowledge as to the character of licenses which the Chemical Foundation was authorized or required to grant by its charter except such as was represented to you in Mr. Palmer's report, his statement and letter?

A. Entirely his statement and letter, yes.

RDQ. 205. Did you know at the time that you signed this order or were you advised, as to who were to be the stockholders of the Chemical Foundation, Incorporated?

A. I can not be sure that I was told the names of all the individuals. I was told they were to be large users of the patents.

RDQ. 206. You mean large interests?

A. I meant to say large interests, chemical and dye interests.

RDQ. 207. Would own the stock?

A. Would own the stock.

RDQ. 208. Did you ever talk to any member of the Advisory Committee? You know to what committee I refer?

A. Yes.

RDQ. 209. Before you signed this order on this subject?

A. No.

Mr. Kresel: You mean the Advisory Sales Committee?

Mr. Anderson: I refer to the Advisory Sales Committee.

The Witness: I so understood it.

RDQ. 210. That is the committee you mentioned this morning as knowing three members of it?

A. Yes.

RDQ. 211. You stated in your answer to a question by Mr. Kresel that you were informed at the time you signed this order that the Chemical Foundation was obligated to give free licenses for the use of these patents, trademarks, etc., to the United States. Was that true?

A. Yes.

RDQ. 212. Was it your understanding or was the information given to you to the effect that the Chemical Foundation would give to the United States free and unrestricted licenses for the use of these patents, non-exclusive, of course?

A. That was my understanding.

RDQ. 213. Can you recall whether that question was specifically discussed between you and Mr. Palmer?

A. There was no discussion on it. I remember up in regard to other patents that had been assigned that statement was made because we had the question to the Army and Navy.

RDQ. 214. That statement was made to you by Mr. Palmer?

A. Yes, that is my recollection.

RDQ. 215. You stated, Mr. Polk, I think that you made the statement to the President, in the few days that he was in Washington, that you had signed this order, or these orders rather?

A. I stated to him merely as a matter of information that I had signed two or three, I have forgotten the number now, of those Alien Property Custodian orders, although he was in the city at the time.

RDQ. 216. You did not state the character of them?

A. I did not go into any detail at all.

RDQ. 217. The President was overwhelmed, I suppose, during the few days he was there, by Congressional duties and you could not discuss things of that kind?

A. No. I did not attempt to discuss them.

RDQ. 218. You stated in your cross-examination that the meaning of your statement in your Executive order, was to the effect that the sale of these properties at private sale was better, that a public sale would give to individuals the control of the American market through the monopoly which the patents gave and thus create the same situation as there was before, except that the monopoly would be in the hands of American interests. Did I understand you correctly? I have that note there.

A. I think that is substantially correct.

RDQ. 219. And was that condition represented to you by Mr. Palmer as a reason why the private sale should be made?

A. I cannot be sure of that, Colonel, whether we discussed that feature of it or not. I remember that was in my mind.

RDQ. 220. That was in your mind and actuated you attitude. You said something about discussing this matter of the dye industry with former Secretary of Commerce Mr. Redfield. Was that at the time that you signed these orders or at a subsequent time, or about when?

A. That was in 1915 and 1916.

RDQ. 221. That was back in 1915 and '16?

A. I do not recall any discussion with him at that time at all.

RDQ. 222. That was before we went into the war?

A. That was before we went into the war. That was on the general question of importation of dyes and chemicals.

RDQ. 223. As a matter of fact, you do not recall discussing this matter with anyone except with Mr. Palmer and possibly with a representative of the Alien Property Custodian who brought you this order at the time you signed it, do you?

A. Not at the time I signed it, no.

RDQ. 224. Were you told, Mr. Polk, that there was any understanding or arrangement between the

Alien Property Custodian and the Federal Trade Commission and the President with respect to the seizure of enemy owned patents and the disposition thereof or limitations upon the seizure and sale?

A. I knew there had been a discussion on that subject.

RDQ. 225. You did not know what the arrangement was?

A. I can not testify now that I did. Of course, I have seen the order. That may refresh my recollection. I do not think I could testify that I really knew at the time the exact contents of that order.

RDQ. 226. I do not mean the order.

A. I thought you were referring to that order of December.

RDQ. 227. No, I am just speaking of whether you were advised of any arrangement other than that order between the Alien Property Custodian and the Federal Trade Commission or any arrangement or agreement with the President as to the seizure or sale?

A. Not other than the order of December.

RDQ. 228. Other than the contents of the order of December, that was your full information on that subject?

A. As I recall it, yes.

RDQ. 229. I understood you to testify—and in asking this question I would ask the Court to understand that I do not waive my objection to the question—that the policy of building up the dye industry was the great factor in this transaction. Possibly I do not use your exact language. Did I understand you correctly?

A. It was a factor. I do not think I said "the great factor." I think I said "a factor."

RDQ. 230. Is it or is it not a fact that you and Mr. Palmer in your conference considered the effect upon the dye industry as the one object in view, as indicated in his report that you read?

A. I do not think that was the only object, Colonel. I remember that was an object. Of course, it was a question not only of building up our own industry but it was also putting in use—giving the American people the use of these patents. Of course, you could not do one without the other. Those were two of the factors.

RDQ. 231. Those two were the controlling factors in the situation?

A. Undoubtedly, yes.

The Court: May I have the question and answer repeated?

(Question No. 231 and answer repeated).

A. (Continued) Those were two of the factors.

The Court: You were both talking at the same time and I wanted to make sure that Mr. Polk understood you.

(Question No. 231 repeated).

A. Those were two of the factors.

RDQ 232. In view of your statement this morning that the policy was to build up the dye industry, and in connection with that you say you signed this order, and in view of the statements in Mr. Palmer's report as to the urgency of that and the vital necessity to the dye industry of these patents, wouldn't you say that that was the controlling factor in the sale of these patents, in the method in which it was made?

A. I do not want to seem to be avoiding your question.

RDQ. 233. I understand. I know you would not.

A. They were two, of course, very important factors in it. Of course, there were other factors but undoubtedly those were the two important factors.

I do not know that they were controlling factors, but they were two very important factors.

RDQ. 234. You stated this morning in your cross-examination that the ownership of these patents might be used to prevent the importation of dyes from England or Switzerland or France and that they had been used by the Germans to prevent the importation of such dyes prior to the war. Did I understand you correctly?

A. So I understood, yes.

RDQ. 235. From your familiarity with the situation, which you indicated in a prior question, can you state whether the use of these patents had prevented the importation of Swiss and English dyes prior to the war?

MR. KRESEL: You do not mean the use of these dyes. You mean the use of these patents.

RDQ. 235. (Continuing) The use of these patents, copyrights, trademarks, or whatever they were?

A. I can cite an instance where I was told that it had prevented. The question came up in regard to certain —

RDQ. 236. If it was hearsay, I think I would rather not go into it.

A. It is not hearsay. It came to the Department in this way. An application was being made to bring in German dyes. There was an embargo and they could not be brought in. The suggestion was then made that they be brought from Switzerland and the statement made that they could not be brought from Switzerland because those Swiss processes would be a violation of certain patents in this country which would not then be operative.

RDQ. 237. You mean German patents?

A. German patents.

RDQ. 238. Do you know whether those patents were included in the list thus sold?

A. That I do not know.

RDQ. 239. Do you recall whether Mr. Palmer stated to you at the time that you were asked to sign this order, in the conference to which you have referred, that the ownership of these patents by private interests would have the effect of controlling the importation of dyes affected thereby?

A. I do not recall he stated that to me, Colonel.

RDQ. 240. Do you recall whether that is stated in his report?

A. No, I am not sure enough to state. If you will let me have the report, I will tell you.

RDQ. 241. No. I just wanted to know whether you remembered it?

A. I do not know that—

RDQ. 242. Were you told, Mr. Polk, that the dye and chemical industry were all interested in the Chemical Foundation, and therefore that there would be no bidders outside of the Chemical Foundation if a public sale were made?

A. I do not know. I do not recall that statement.

Mr. Anderson: I think that is all as far as I wish to examine the witness.

Mr. Kresel: That is all, Mr. Polk.

The Court: Now, Mr. Polk will not be needed further under the subpoena.

Mr. Kresel: No, your Honor.

Mr. Anderson: As far as we are concerned he can be discharged from the subpœna.

In the event we should want to recall you for anything, I have no doubt you will come back upon request?

The Witness: All right.

(Witness excused).

Mr. Anderson: I call Mr. Harry S. Brown.

hibits in the Bill and Answer. If we introduce them again as Plaintiff's Exhibit so and so, or so and so, it may cause a good deal of confusion.

The Court: My understanding is that an exhibit in the pleadings does not become evidence until admitted.

Mr. Anderson: I might say that the stipulation of counsel in this case was that that would be considered as if introduced, without further offer in evidence, and subject to your Honor's ruling, as if offered.

Mr. Kresel: Your Honor, that is quite true, and we recognize that. The only reason we suggest that they be marked in successive numerical order is so as to avoid confusion.

Mr. Anderson: All right. I was trying to avoid confusion altogether.

Received in evidence and marked "Plaintiff's Ex-No. 16." (*See Exhibit 6 to Answer, Record, Vol. I, page 560.*)

Mr. Galloway: And I wish, if the Court pleases, to——

Mr. Kresel: What exhibit number is that?

Mr. Galloway: Plaintiff's Exhibit No. 16.

I wish to call your Honor's attention especially to certain portions which appear on page 131 and following, of the answer. (Reading from page 131 and so forth of answer.)

The plaintiff next offers in evidence the prospectus of The Chemical Foundation, Incorporated, as the same appears in Defendant's Exhibit 7 of the answer herein, and I ask that the same be not duplicated in the record.

The Court: It will be marked Plaintiff's Exhibit 17.

Received in evidence and marked "Plaintiff's Ex-Exhibit No. 17." (*See Exhibit 7 to Answer, Record, Vol. I, page 577.*)

HARRY S. BROWN.

HARRY S. BROWN, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By **MR. ANDERSON**:

> **MR. ANDERSON**: I would like to state on the record for your Honor's convenience in reading the record, as Mr. Brown's testimony will relate to a matter of the accounts which has not been reached, on account of his personal position, I have agreed to put him on the stand out of the order, with your Honor's permission. That statement is merely to enable you to apply the evidence when you come to the record, sir.

Q. 1. Please state your name, your present place of residence and occupation?

A. Harry S. Brown, New York City; statistician and secretary.

Q. 2. Were you at any time connected with the office of Alien Property Custodian at Washington?

A. Yes, sir.

Q. 3. State in what capacity and for what period, the time that you began and the time that your connection ended?

A. I was an assistant to the Chief of the Division of Accounts from the fall of 1917, shortly after the Custodian's office opened, until February 19. I then became Chief of the Division and was there until May, 1922.

Q. 4. During the period from February, 1919, down to the time you left in 1922, you were Chief of the Division of Accounts?

A. That is right.

Q. 5. In that capacity you had charge of the

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Mr. Kresel: Which do you offer, Mr. Galloway? There are two of those.

Mr. Galloway: Page 136, Mr. Kresel.

If the Court please, I do not wish to bother your Honor with reading the first page. I shall begin at the bottom of page 136 and call certain portions to the attention of the Court. (Reading from Exhibit 17.)

If the Court please, the plaintiff next offers in evidence a letter dated June 14, 1918, from A. M. Patterson, President of the Textile Alliance, to Mr. Francis P. Garvan.

Mr. Kresel: Mr. Patterson is here in Court, your Honor, under subpoena by the Government; and I assume that he will be called very shortly. Wouldn't you rather withhold that, Mr. Galloway, until he is called, so that I may have an opportunity to examine him about it?

Mr. Galloway: I imagine you will have every opportunity after we call him.

Mr. Kresel: It seems to me, if the witness is going to be called, that correspondence by him ought to be withheld until he is called so that counsel may examine him about it.

Mr. Galloway: He certainly cannot testify to the contents when we have the document itself that we offer in evidence.

The Court: Do you question the authenticity of the document, Mr. Kresel?

Mr. Kresel: Oh, no, your Honor, we make no question about that.

Mr. Anderson: That is covered by the stipulation.

Mr. Kresel: We do not question its authenticity.

Mr. Galloway: If it pleases the Court, I wish to suggest that the purpose of introducing it at this time is in a chain of two or three letters which come together here which we would like to get before the Court.

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APPELLANTS

BRIEF

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 512

UNITED STATES OF AMERICA, APPELLANT

v.

THE CHEMICAL FOUNDATION, INCORPORATED,
Appellee

BRIEF ON BEHALF OF APPELLANT, UNITED STATES OF AMERICA

The voluminous record in this case results from the action of the District Court in refusing to hear the case on defendant's motion to dismiss the bill and plaintiff's motion to strike out portions of the Answer (Rec. Vol. 2, pp. 593 and 594) and directing all statements and arguments of counsel to be made part of the record (Rec. Vol. 2, p. 946). In the view of the Government the case is controlled by fundamental principles of law which could have been decided upon the pleadings and these motions.

OPINIONS OF THE COURTS BELOW

The opinion of the District Court below is reported in 294 Fed. 300, and is found in the Record, Vol. 7, at pp. 4910–4967.

The opinion of the Circuit Court of Appeals is reported in 5 Fed. (2d) 191, and is found in the Record, Vol. 7, at pp. 4985–5047.

PROCEEDINGS IN COURTS BELOW

This is a suit in equity, instituted by the United States of America, through the Attorney General, by direction of the President, against The Chemical Foundation, Incorporated, a Delaware corporation. The object of the suit is to have declared null and void and to set aside certain alleged sales, assignments, and transfers of patents, copyrights, trade-marks, and other similar rights claimed to have been sold and assigned to the appellee by the Alien Property Custodian evidenced by twenty-one instruments of assignment, the first of which is dated April 10, 1919, and the last November 5, 1921; to require the appellee to reconvey said properties and rights to the United States, and to account to the United States for the income and revenues derived therefrom during the period of possession by the appellee.

The bill was filed in the United States District Court for the District of Delaware on the 8th day of September, 1922. The appellee duly appeared, and, thereafter, on the 27th day of October, 1922, filed its answer. The answer contains certain alleged affirmative defenses to the bill, which may be briefly summarized as follows: (1) A motion to dismiss the bill for want of equity (Par. XXXIX, answer; Rec. Vol. 1, p. 528); (2) alleged laches and acquiescence on the part of the Government (Pars. XL and XLI, Answer; Rec. Vol. 1, pp. 528 and 530); (3) an effort to justify the alleged sales on the grounds that the same were made with good motives and in good faith, and for the purpose of promoting the interests of the dye and chemical industry of the United States (Pars. XLII to LVIII, Answer; Rec. Vol. 1, pp. 530 to 545).

On the 3d day of May, 1923, the appellant filed a motion to strike out certain portions of the answer, including that part thereof which undertakes to set up a third separate and affirmative defense, upon the ground that the averments therein contained do not constitute a valid defense to the cause of action set up in the bill of complaint. (Rec. Vol. 1, p. 501.) On the same day it moved the court to set the case for hearing on the motions to dismiss the bill and strike out portions of the answer. On objection by appellee this application was denied and the case went to trial without any hearing on the motions to dismiss. After trial and argument, the District Court held that the Government was not entitled to the relief sought for reasons stated in its opinion. (Rec. Vol. 7, p. 4910–4967.) An order was thereupon entered dismissing the bill and decreeing cost against the Government. (Rec. Vol. 7, p. 4968.) From this order an appeal was taken to the Circuit Court of Appeals for the Third Circuit (Rec. Vol. 7, pp. 4969 to 4983), which affirmed the decision of the District Court (Rec. Vol. 7, pp. 4985 to 5047). From that decree of affirmance the case was appealed to this Court. (Rec. Vol. 7, pp. 5048 to 5063.)

JURISDICTION

The decree of the Circuit Court of Appeals was entered on March 26, 1925. (Rec. Vol. 7, p. 5045.) An appeal was taken to this Court under the provisions of Section 241, Judicial Code.

Appellant, out of an abundance of caution, in June, 1925, petitioned this Court for a Writ of Certiorari to the Circuit Court of Appeals for the Third Circuit under the provisions of Section 240 (a), Judicial Code, and asked that such petition for Writ of Certiorari be held in abeyance pending the determination by this Court of this appeal.

PRINCIPAL ISSUES STATED

The principal issues raised by the assignments of error may be briefly summarized as follows:

I

The court erred in its construction of the Trading with the Enemy Act, and especially the provisions of Section 12 thereof conferring upon the Custodian power of sale of Enemy Property in his custody pending final disposition thereof by Congress; and in holding that the Act authorized the Executive Officers of the Government to confiscate Enemy Property when they deemed such confiscation in the public interest. (Assignments of Error I, II, and IX. Rec. vol. 7, pp. 5048–5050 and 5053–5054)

The Government contends that the power of sale and disposition of Enemy Property given to the Alien Property Custodian by the Trading with the Enemy Act was a power given to a public officer in trust, to be exercised in accordance with and subject to the limitations of the statutes and principles of law applicable to such powers when granted to a public officer or fiduciary. The Court below held that this statute gave to the executive officers of the Government charged with the duties prescribed therein "unlimited power" to dispose of this property as the absolute owners thereof and to effect a confiscation thereof if and when they determined such confiscation to be in the public interests. It is further contended by the Government that the construction given by the Courts below would render the statute unconstitutional.

II

The Court erred in holding that the provisions of Section 41 of the Criminal Code of the United States and the principles of law and equity forbidding sales by public officers or fiduciaries of property in their custody, to themselves or to corporations of which they are officers, had no application to this case. (Assignments of Error III and IV and part of VII. Rec. vol. 7, pp. 5050–5051 and 5052–5053.)

The Government contends that the transactions in question, being sales by a public officer of property placed and held in his possession under the law for the benefit of others, to himself or to a corporation of which he and his associates were executive officers, were in direct violation of Section 41 of the Criminal Code, and of the rules of law and principles of equity applicable to such sales when made by public officers or fiduciaries, The Court: I do not know the contents of the letter. What is its purpose?

Mr. Galloway: It introduces Mr. Poucher to Mr. Garvan and states some things perhaps of interest in that connection.

The Court: That would come under our general working rule and you will have an opportunity to cross-examine with respect to it when Mr. Patterson is called.

Mr. Anderson: In order that there may be no misunderstanding, in regard to Mr. Patterson, it may be that he will not be called at all. But under our stipulation admitting authenticity, we are entitled to put this evidence in as if he were called and this was produced as his evidence. As to the method of the introduction of evidence, I submit counsel must have a certain amount of discretion on that subject and I do not think counsel on the other side should undertake to tell us how to put in our evidence.

Mr. Kresel: That is farthest from my mind. I do not want to tell you how to put in your evidence. But if there is any question about Mr. Patterson's being called as a witness here, I want to urge an objection to the introduction of this letter. I would submit, with your Honor's permission—I will read the letter to your Honor—and we will take the objection to it that without an explanation of it, given by Mr. Patterson as to the purpose of the letter and what Mr. Poucher's connection was with these patents or the alleged conspiracy, it is inadmissible and incompetent and irrelevant, even though its authenticity be admitted, as we do admit it. Certainly, if it is anything at all, it is an overt act in the alleged conspiracy. So, under your Honor's ruling, it cannot be admitted at this time.

The Court: What have you to say, Mr. Anderson, to the last suggestion of Mr. Kresel, that, if it has any and were therefore void. The District Court held that the Trading with the Enemy Act was the "supreme law" as to the disposition of Enemy Property, and gave to the executive officers acting thereunder "unlimited power" with respect to such sales or disposition; that neither the general statutes of the United States nor rules of law nor principles of equity generally applicable to such transactions had any application to this case or imposed any restraints upon such officers or upon their acts. The appellate court concurred in this view, but based its decision upon the further ground that in order to constitute a violation of the provisions of Section 41 of the Criminal Code, the Government officer or agent making the sale to himself or a corporation of which he was the officer must have directly or indirectly a beneficial interest in the pecuniary profits or contracts of such corporation.

III

The court erred in holding that there was any lawful authority to make private sales of these properties to the appellee. (Assignments of Error V and VI. Rec. vol. 7, pp. 5051–5052)

The Government contends that the Alien Property Custodian had no power to make a private sale of Enemy Property unless and until authorized by the President in the manner prescribed in the Act; that the sales which are the subject of this litigation were not so authorized and were void. The court held that the alleged orders under which it was claimed the Alien Property Custodian acted were adequate, and that private sales were lawfully authorized thereby.

IV

The court erred in holding that the sales were valid since even if lawfully authorized, they were irregular in many particulars, and especially in that there was no effort to arrive at the value of the property, the price was nominal and arbitrarily fixed and was grossly inadequate, and that the procedure did not comply with the terms and intent of the Act, or of the alleged Executive orders under which they were made. (Assignments of Error VII and VIII. Rec. vol. 7, pp. 5052–5053)

The Government contends that even conceding there was authority to make the sales, they were irregularly conducted for the reasons stated, among others, and that they were void under the provisions of the Act and recognized principles of law and equity. The Court held that under the Trading with the Enemy Act the Custodian was given unlimited power to make sales of this property as the absolute owner; that he could make such sales under conditions which in effect constituted a devotion thereof to the public interests and destroyed the monetary value of the property; or could confiscate the property and in effect donate the same where he regarded such transactions in the public interests.

V

The court erred in not holding that these transactions were made in pursuance of and in the accomplishment of an unlawful scheme or conspiracy. (Assignment of Error X. Rec. vol. 7, p. 5054)

The Government contends that these transactions were induced, brought about, and accomplished in pursuance of a scheme or conspiracy to do or cause to be done a lawful act in an unlawful manner and for an unlawful purpose. Both courts below held that this conspiracy was not established for reasons which will be hereinafter considered.

VI

The Court erred in ordering the taxation of costs of the cause against the United States. (Assignment of Error XVIII. Rec. vol. 7, p. 5056)

The Government contends that the costs of the suit can not be taxed against the United States. Both Courts below ordered that the costs be taxed against the United States.

STATEMENT OF CASE

In order that the pertinency of the facts to be stated may be appreciated, it is deemed desirable first to state briefly the status of the law at the time of the acts under review.

A state of war with Germany was declared on April 6, 1917. The Trading with the Enemy Act was approved October 6, 1917. (40 Stats. 411.) The general purpose of this Act was to define the status of "enemies and allies of enemies" and to regulate intercourse and transactions with persons occupying this status during the existence of war, and as an incident of such regulation to provide for the treatment of enemy property within the jurisdiction of the United States outside of the area of military operations.

The term "enemy or ally of an enemy" as defined in this Act related rather to the actual than the international status of the person, the enemy status being determined by the "residence" of the person involved. German citizens in the United States were not deemed enemies unless expressly so declared by Presidential Proclamation, and a large proportion of the Germans residing in this country never became enemies, nor was their property subject to seizure. On the other hand, American citizens, or citizens of Allied Countries residing in Germany or occupied territory acquired the status of enemies, and their property in the United States became subject to seizure. The reasons for this arbitrary classification are obvious.

The classes of persons who were subject to its provisions as "enemies or allies of enemies" having thus been defined, the sections of the Act most pertinent to this inquiry provide for—

> (1) The seizure by the President of property of such "enemies or allies of enemies." (Sec. 7.) This power might be exercised through such officer as the President might select, and was in fact exercised through the Alien Property Custodian.
>
> (2) The holding and management of the property so seized by the Alien Property Custodian, with the powers of "a common-law trustee," and with power to make sales to prevent waste. (Sec. 12.)

(3) The final disposition of the property by Congress. (Sec. 12.)

(4) The proceedings for seizure being summary, giving absolute right to possession whether the owner was "an enemy" as defined in the Act or not, it was provided by Section 9 that in event of an error being made the owner might apply to the President for return of his property, and if refused seek relief by suit in the Courts of the United States.

This was the very simple scheme prescribed by Congress for the seizure, handling, and disposition of enemy property, and was in entire accord with modern practice of civilized nations. The Act was clearly one of conservation of enemy property under the strictest principles of trust. This is admitted by all counsel, and was so decided by both courts. (Rec. Vol. 7, pp. 4998, 4999, 5018.)

Honorable A. Mitchell Palmer was appointed Custodian. On November 14, 1917, he issued an official statement approved by the President, in which he stated that his function was that of a trustee or conservator to administer and care for the property while the disability exists; that there was, of course, no thought of the confiscation or dissipation of the property thus held in trust. (Rec. Vol. 4, pp. 2533 and 2534.) We thus have a starting point at which all parties are in agreement.

The President designated the Custodian as the officer through whom the power of seizure should be exercised. (P. Ex. 1, Rec. Vol. 8, pp. 10 and 11.) These seizures soon placed in the hands of the Custodian large amounts of property owned or partially owned by enemies or allies of enemies as defined by the Act, including many manufacturing and other plants engaged in the production of materials which were needed for the purposes of war or the commercial use of the country. They were operated by the Custodian under war conditions at considerable profit. (See testimony of Mr. Palmer, Rec. Vol. 4, p. 2536.)

In these circumstances, after conference with the President, Mr. Palmer presented to Congress an amendment to Section 12 of the Act enlarging the power of sale. (Rec. Vol. 4, pp. 2538 and 2539.) It will be recalled that Section 12 of the original Act only authorized sale of this particular property in order to prevent waste—in other words, as a matter of protection or conservation. The amendment now proposed was to give to the Custodian, acting under direction of the President, the power to sell enemy property in his discretion, in order to convert such property into cash to be placed in the Treasury of the United States in lieu of the property. The effect of such transaction would be to place these active properties which were supplying the military or commercial needs of the country in private American ownership; to substitute therefor in the hands of the Government the fair equivalent in cash, and to hold this equivalent for final disposition by Congress as provided in the Act. The enemy would then receive, if and when Congress returned the property, that which had been taken from him or its equivalent, and could not justly complain, while the people of the United States would have the use of the property and the profits accruing therefrom as the result of war conditions. The purpose of the amendment was clearly stated by Mr. Palmer himself in the hearing before the Subcommittee on Judiciary of the Senate on July 27, 1922, on Senate Bill 3852, as follows:

> The intention simply was to convert it into money and to hold that money for all the purposes for which the original property was to be held under the Trading with the Enemy Act.

This was the view taken by Congress, as clearly shown in the statements of the leaders of that body at the time the amendment was under consideration (pp. 3, 5, 6, and 16, Hearings on H. R. 9867 before Senate Committee on Appropriations, 65th Cong., 2d sess.; Cong. Rec., Vol. 56, part 4, pp. 3262, 3263, 3316, 3317, 3319, 3322, 3328, 3942, 3944, 4003, 4083).

The amendment as enacted and approved March 28, 1918 (40 Stat. 459), provided in effect that the Custodian should in respect of all property other than money coming into his possession be vested with all the powers of a common-law trustee, and in addition thereto, acting under the direction of the President, should have the power to manage the property and to do any act or thing in respect thereof or disposition thereof by sale or otherwise, as though he were the absolute owner. It was provided, however, that all sales other than those to the United States should be made at public auction and subject to certain other conditions therein stated, unless the President, stating his reasons therefor in the public interests, should otherwise determine. The power of final disposition of the property or the beneficial interest therein represented by the purchase price, was retained by Congress as in the original act.

The basic question in this case is the proper construction of this Act and the powers conferred thereby. The Government contends that the powers given were those of an ordinary trustee with full power of sale similar to the powers daily conferred by deeds and wills in the United States. The appellee contends and the courts below held that this amendment conferred "unlimited power" upon the Custodian acting under direction of the President to dispose of the property in any way he saw fit, even to the extent of confiscating the same and transferring it to private industry for a nominal consideration. These positions will be discussed later.

Acting under authority of this amendment, the Custodian created an elaborate sales organization and began to make sales of enemy property under his control. Full provision was made for ascertainment of the value of such properties by accounting and appraisement, and they were then offered at public auction. The sales were to be approved not only by the Custodian but by a Sales Committee created for that purpose, consisting of five men. (P. Ex. 3, Rec. Vol. 8, pp. 14 and 15.)

From time to time private sales of property were authorized by Executive Order of the President, stating the reasons therefor, these sales consisting chiefly of small amounts of goods or merchandise located on piers needed for military purposes, or at other points, where a public auction could not be judiciously held or a public sale was inexpedient. (For example, see P. Exs. 693, 694, 695, 696, 697, 698, Rec. Vol. 10, pp. 1791, to 1800.)

In making sales under this amendment three difficulties arose:

(1) The question was presented as to title which the Custodian could convey. It had been held under the Civil War Acts that a conveyance by a custodian or Government officer in making sale of property so seized, like a sheriff's sale, only carried the title which he had acquired. If, therefore, it subsequently developed that the property had been wrongfully seized and was not in fact enemy property, while the Custodian acquired possession, he did not acquire title, and the title which he would thus convey would be defective. (P. Ex. 10, Rec. Vol. 8, p. 56.)

(2) Where the control of the property was through shares of stock which had been seized as enemy owned, and it was desired to sell these shares of stock, it was found that there were certificates outstanding held abroad and the corporations refused to issue new certificates to the grantee of the Custodian without surrender of the old certificates unless protected by law. (P. Ex. 10, Rec. Vol. 8, pp. 56 and 57.)

(3) It was found that in many of these manufacturing plants German-owned patents were used, the use of which was deemed essential to the successful conduct of the plant. The original Act had not provided for the seizure of enemy-owned patents and similar rights, but had provided for licensing the same by the President, which power was being exercised by the Federal Trade Commission. It was deemed desirable by the Custodian that patents in use by manufacturing plants which he desired to sell should be seized and sold with the plants, thus giving to the owner the complete right to use the same. (P. Ex. 10, Rec. Vol. 8, pp. 56 and 57.)

To meet these conditions, an amendment was proposed and was enacted to Section 7–c of the Act on November 4, 1918, a few days before the Armistice. (40 Stat. 1020.)

This amendment in effect authorized the President to seize enemy-owned patents and other similar rights, with power in the Custodian to hold and dispose of any patents so seized in like man-value, it is as an overt act under a conspiracy which has not yet been established.

MR. ANDERSON: If your Honor please, we are not proving overt acts of a conspiracy. You cannot prove, if I may say so, a conspiracy all at once, or to put it the other way, evidence should not be excluded in the development of the arrangement or agreement between the parties because you have not proved the acts of the conspiracy. If it is not properly connected up at the conclusion, it may be disregarded. As the Supreme Court has so often said, these facts must be proved; even any fact that has a remote bearing.

If we do not prove later that Mr. Poucher had something to do with the matters that are under investigation here, without going into the details of them, then this letter from Mr. Patterson to Mr. Garvan introducing Mr. Poucher might be immaterial because it proved nothing.

But if we do show that Mr. Poucher was one of the most active people in connection with this matter or who had anything to do with it, the letter is relevant, not necessarily as proof of any overt act of the conspiracy, but to prove one of the elements in the development of the purpose—we are not trying a criminal case; we are trying a civil case—which finally resulted in this arrangement that brought about the sale of these patents.

I might take a thousand acts one after another to demonstrate to the Court's mind the truth of the charge. But we would not have to prove a conspiracy before we put in evidence of those acts. If we did, we would never be able to prove a case. These acts taken together constitute evidence of the final agreement or purpose. They are each a step in the evidence. It may be that we might be unable to prove but one overt act in the conspiracy. As a matter of fact, as I take it, under the Criminal Law, you do not ner as other property. It required corporations to issue new certificates for shares of stock seized by the Custodian without the return of the old certificates, and protected them against liability for such action. It transferred the interest or claim of any person in and to property sold by the Custodian to the proceeds derived from such sale in the hands of the United States. This last clause gave to the owner of the property, whether an enemy or nonenemy, the right to claim against the proceeds instead of against the original property. If, as was clearly contemplated, the proceeds should be the fair equivalent of the property no real harm was done even to an American citizen or nonenemy whose property was erroneously seized. It thus enabled the Custodian to give good and complete title to the property sold.

The purpose of this amendment is clearly stated by Lee C. Bradley, General Counsel to the Alien Property Custodian, in a hearing before the Committee on Appropriations, Sixty-fifth Congress, second session, H. R. 13086, pp. 81 to 88. (Rec. Vol. I, pp. 75 to 90) to which the Court is referred.

This was the state of the law and the status of affairs when the Armistice was signed on November 11, 1918.

We have observed that the Trading with the Enemy Act as originally passed did not authorize the seizure of enemy-owned patents, copyrights, and similar property rights. Section 10 of the statute contained elaborate provisions for the protection of these rights and authorized the President to grant licenses for the use of such patents and other rights to American citizens during the War, a tentative license fee to be fixed by the Federal Trade Commission issuing the license and paid by the licensee to the Alien Property Custodian and by him deposited in the Treasury of the United States. A final reasonable royalty for the use of such patent to be determined by the courts upon a suit provided for in the Act by the owner of such patent within a year after the end of the war, such tentative license fee as well as judgment for the value of the use thereof to be disposed of as provided in the Act.

This power the President exercised through the Federal Trade Commission. (P. Ex. 1, Rec. Vol. 8, pp. 7 and 8.) Under this arrangement a considerable number of the more important patents, chiefly relating to dyes and chemicals and now involved in this case, had been licensed by the Trade Commission to American manufacturers and were in active and successful use. (P. Exs. 216 to 275, Rec. Vol. 8, pp. 515 to 599; P. Exs. 276 to 335, Rec. Vol. 8, pp. 605 to 682; P. Exs. 401, 401A, 401B, Rec. Vol. 8, pp. 703 to 717.) There seems to have developed between the Custodian and the Trade Commission some difference of opinion, if not as to the Act itself at least to the administration thereof. The Commission favored the continuance of the system of licensing enemy-owned patents, while the Custodian desired to make seizures under the amendment. The matter was apparently taken to the President and an arrangement was reached by which the Custodian should limit his seizures to those patents intimately connected with or necessary to companies in which the Custodian held a predominant stock interest or which were connected with and important to companies in which the Custodian had an actual interest through stock ownership or otherwise. All other patents were to remain under the jurisdiction of the Federal Trade Commission and not subject to demand by the Custodian. This arrangement was embodied in a memorandum by Mr. Palmer dated January 13, 1919. (Rec. Vol. 9, pp. 859-860.) (See Testimony of Mr. Palmer, Rec. Vol. 4, pp. 2564 et seq.: memorandum by Mr. Palmer of January 13, 1919, embodying this agreement, P. Ex. 453, Rec. Vol. 9, pp. 859 and 860; letter from Mr. Hoguet, Patent Counsel to Mr. Palmer, dated January 15, 1919, P. Ex. 49, Rec. Vol. 8, pp. 149 to 155; Executive Order of December 3, 1918, Vol. 1. p. 547.)

The President left for Paris to attend the Peace Conference on December 4, 1918. (P. Ex. 106, Rec. Vol. 8, p. 297.) Before his departure Mr. Palmer prepared and presented to him an Executive Order distributing the duties under the amendment of November 4, 1918, to Section 7-c of the Act, as between the Custodian and the Commission, which substantially confirmed the arrangement above recited. This order was signed on December 3, 1918. (Rec. Vol. 1, p. 547.)

By Section V of that order the President undertook to vest in Frank L. Polk all power and authority conferred upon the President by the provisions of Section 12 of the Act as amended, subject to the limitations therein stated, which included the power to authorize private sales of property, "stating the reasons therefor in the public interests." The Government insists that this order was invalid and conferred no authority upon Mr. Polk, since the power vested in the President by Section 12 as amended involved an exercise of discretion personal to himself and could not be vested in another person. This subject will be discussed later.

It appears, therefore, that as late as January 13, 1919, when the Memorandum filed by Mr. Palmer with respect to the seizure of patents was made (P. Ex. 453, Rec. Vol. 9, pp. 859 and 860), the situation was substantially as follows:

(1) The President was in Paris negotiating peace.

(2) The Trading with the Enemy Act had been amended on November 4, 1918, to authorize seizure of patent rights, copyrights, and similar rights by the President.

(3) Section 12 of the Act as amended authorized sale of property by the Custodian as already stated.

(4) The President had by Executive Order of December 3, 1918, authorized the exercise of the power of seizure of patents through the Custodian, had continued in full force and effect the power of the Federal Trade Commission to license all patents not seized, and had undertaken to vest in Mr. Polk the power, vested by the Act in the President, to authorize private sales of this property by the Custodian when he should determine it to be in the public interests to make such private sales instead of public sales, and to state the reasons therefor.

(5) An arrangement had been made between the Federal Trade Commission and the Custodian, apparently with the approval of the President, for the administration of the Act with respect to the seizure of patents, whereby seizures would be limited to those patents related to or necessary to business or industries in which the Custodian had a control or an interest, and that all other patents were to be continued as before and licensed by the Federal Trade Commission as directed by the Order of the President.

In the organization of his staff the Alien Property Custodian had appointed Francis P. Garvan, Esquire, Chief of the Bureau of Investigation, Joseph H. Choate, Jr., Esquire, serving under Mr. Garvan, in charge of investigation of enemy interest in the chemical and dye industry, and Ramsey Hoguet, Esquire, Patent Counsel. These officers have an important part in the events now to be recited.

At the beginning of the War the dye and chemical industries in the United States were comparatively small. (D. Ex. 30, Rec. Vol. 11, pp. 2098, 2141.) A large proportion of the most important dyes used by the textile industry, and of the more necessary chemicals and medicines, were imported from Germany or manufactured under German patents. (Rec. Vol. 1, p. 506; D. Ex. 30, Rec. Vol. 11, p. 2098 at 2142 and 2143.) This situation had been the source of some embarrassment to these American industries during the earlier period of the War owing to the difficulties of importation resulting from the existence of blockades. (Rec. Vol. 1, p. 506; D. Ex. 30, Rec. Vol. 11, p. 2098 at 2147.) As a result of these conditions the dye and chemical industry of the United States had developed very rapidly. When the United States entered the war all importations from Germany ceased, but the German patents covering many of the more important dyes and chemicals were made available to American industry under the licensing system through the Federal Trade Commission as provided by Section 10 of the Trading with the Enemy Act. As a consequence the dye and chemical industry of the United States had by March, 1919, developed to a point that it could supply great quantities of dyes, chemicals, and medicinals required in the

United States, of a quality quite equal to those formerly imported from Germany. (D. Exs. 47 and 47a, Rec. Vol. 11, pp. 2314 et seq.; D. Ex. 130, Rec. Vol. 12, pp. 2726 to 2730.)

In connection with the development of this business there had been organized two Trade Associations, known as the American Dye Stuffs Manufacturers Association and the American Dyes Institute, and there also existed several Chemical Associations of similar character. The two organizations of dye manufacturers mentioned were consolidated early in 1918 into the American Dyes Institute (P. Ex. 53, Rec. Vol. 8, p. 158 at 169), which was an unincorporated trade association, including in its membership concerns which manufactured at least 90% of the dye stuffs produced in the United States (P. Ex. 28, Rec. Vol. 8, p. 85 at 87).

These industries were naturally concerned as to the effect of the restoration of peace between the United States and Germany with the resumption of importations, especially if the German patents in the United States were restored to the owners. This uneasiness was increased by the signing of the Armistice and the peace negotiations then pending.

As early as August, 1918, a joint committee of the Chemical Alliance, the American Dye Stuff Manufacturers Association, and the American Dyes Institute had been appointed to appear before the War Industries Board and urge the importance of the protection of these industries. (P. Ex. 511, Rec. Vol. 9, p. 1011.) Between that time and January, 1919, conferences were held between Mr. Garvan and his associates named, representing the Alien Property Custodian, and the representatives of these industries, looking to the development of some plan by which the German dye and chemical patents which had not then been seized might be acquired by the representatives of the dye and chemical industry through seizure and sale by the Alien Property Custodian. (Rec. Vol. 4, pp. 2601, 2603.) In the letter from Mr. Hoguet, Patent Counsel for the Alien Property Custodian, to Mr. Palmer, dated January 15, 1919 (P. Ex. 49, Rec. Vol. 8, pp. 149 to 155), in which he refers to the agreement with the Trade Commission embodied in the memorandum of Mr. Palmer of January 13, 1919 (P. Ex. 453, Rec. Vol. 9, pp. 859 and 860), and the attitude of the President with respect to seizure of patents, he makes reference to these conferences and the desire of the representatives of the industry to acquire and control these patents.

In a postscript to this letter he states that he had a conference with a representative of the Dupont Company, the largest dye manufacturer in the country, and that the representatives of the American Dyes Institute would "make a request to the Custodian that he take and sell the German-owned American patents on the ground that proper protection was not afforded by Federal Trade Commission licenses." (P. Ex. 49, Rec. Vol. 9, p. 149 at 155.) This is the first definite statement of the plan which subsequently developed into the transactions which are the subject of this suit.

It should be observed that the attitude of the Custodian and the members of his staff toward the property seized and held by him under the Trading with the Enemy Act had undergone a profound change since his original declaration that the Act was one of conservation of enemy property to be held in trust, and that there was no thought of confiscation or dissipation of such property. (See testimony of Mr. Palmer, Rec. Vol. 4, pp. 2533 to 2539, 2474 to 2681, and the Report of Mr. Palmer as Custodian, D. Ex. 30, Rec. Vol. 11, pp. 2179 and 2180.) The Custodian and the members of his staff and the representatives of the industry were therefore in accord in seeking to devise some plan whereby the Custodian might seize these patents and make them available to the American industries concerned after the War.

Mr. Palmer states that he referred to Mr. Garvan the matter of working out some plan to this end. (Rec. Vol 4, pp. 2599 and 2600.) Mr. Choate and Mr. Houget were associated with Mr. Garvan in these negotiations. (Rec. Vol. 4, pp. 2600 and 2601.) The dye and chemical industries were represented by a committee of the Dyes Institute and by counsel of some of the larger manufacturers. These parties or some of them conferred informally in New York, which resulted in the arrangement of a conference at the office of the Custodian in Washington on January 27, 1919, of which minutes were kept and are now a part of this record. (P. Ex. 28, Rec. Vol. 8, pp. 85 to 109.)

Neither Mr. Palmer nor Mr. Garvan were present at this conference. The Custodian was represented by Mr. Choate, Mr. Hoguet, and several other members of the staff. The dye and chemical interests were represented by a committee of the Dyes Institute and several counsel of the leading manufacturers. (P. Ex. 28, Rec. Vol. 8, p. 85.) None of the patents involved had then been seized. A number of the more important patents were being used extensively under licenses from the Federal Trade Commission.

The stated purpose of this conference was to devise some plan for the sale of all enemy-owned dye and chemical patents—none of which had been seized—to the dye and chemical interests of the United States or a corporation to be organized by them. (P. Ex. 28, Rec. Vol. 8, pp. 85 and 86.) It was suggested that the sale should be public, but the representatives of the industries insisted upon a private sale. (P. Ex. 28, Rec. Vol. 8, pp. 88 and 89.) The number of patents of the classes named was not known, but the probable number was discussed and estimated at from 1,000 to 3,000. (P. Ex. 28, Rec. Vol. 8, pp.

even have to charge an overt act in a conspiracy. But if all of these acts are brought together, any one of which taken alone would not constitute a conclusive evidence of a conspiracy, if they satisfy a jury that an agreement was made, you can prove the agreement, because the parties to the agreement are charged with responsibility for all acts under it.

THE COURT: You do not have to prove a specific act, but what I was trying to get you to tell me, Colonel Anderson, was whether you offered this in support of your allegation of conspiracy or as evidence of an overt act.

MR. ANDERSON: Not necessarily. We offer it under the allegation of a conspiracy or scheme to get these patents.

THE COURT: Admitted under the general working rule.

Received in evidence and marked "Plaintiff's Exhibit No. 18." (*See Exhibits, Vol. I, page 68.*)

MR. GALLOWAY: We offer it in evidence and ask that it be marked. We next offer in evidence, if the Court please, a letter of the same date by Mr. A. M. Patterson to Mr. Francis P. Garvan.

THE COURT: What is the purpose?

MR. GALLOWAY: The purpose is the same as the previous letter offered, if your Honor please.

MR. KRESEL: Of course your Honor, our objections to this line of testimony are unavailable, if, upon the mere statement of counsel for the Government, that the document is being offered as evidence of the conspiracy, and not as evidence of an overt act, it is sufficient to let the evidence go in. Again, I would like your Honor to look at this document, and again I take the position that this is not, and can not be evidence of the conspiracy, but if it is anything at all, it is evidence of an overt act. (Handing paper.)

THE COURT: I would rule with more caution, Mr.

96 and 97.) Mention was incidentally made as to the price which might be paid, and it was suggested that since the average cost of securing a patent from the Patent Office was about $50 each, the price should be fixed on this basis. (P. Ex. 28, Rec. Vol. 8, pp. 96 and 97.) No decision was reached on this point (P. Ex. 28, Rec. Vol. 8, pp. 98 and 99), but it is interesting to observe that 6,475 patents, applications, trade-marks, copyrights, and contracts were subsequently transferred at an average price of $41.98 each, which was less than the estimated cost of obtaining a patent, allowing nothing for the property value thereof. As stated, at that time a number of these patents were in use under nonexclusive licenses issued by the Federal Trade Commission or under contracts held by the Custodian, and were then yielding a revenue at the rate of approximately $300,000 per annum (P. Exs. 198 and 198a, Rec. Vol. 8, pp. 473 to 477), which amount was being paid to the Custodian and by him into the Treasury of the United States as required by the Trading with the Enemy Act, to await final disposition as provided by that Act.

It seems to have been the conclusion of this conference to proceed with the development of the plan for the sale of these patents along the general lines discussed, although no definite agreement was reached as to any point. While Mr. Palmer does not appear in these transactions, he testifies that he was in touch with the situation through Mr.

Garvan and approved of these plans. (Rec. Vol. 4, pp. 2603 and 2604.) The matter remained in the hands of Mr. Garvan, Mr. Choate, and Mr. Hoguet. On the next day Mr. Hoguet reported to Mr. Palmer that the representatives of the dye industry had remained over another day to see him and having failed to do so would "submit their recommendations in brief form in a few days." (P. Ex. 35, Rec. Vol. 8, p. 136.)

The representatives of the Dyes Institute, not having seen Mr. Palmer, returned to New York, held a meeting of the executive committee of that Institute, at which the matter was fully reported and approved. The Dyes Institute adopted resolutions to the effect that they would finance the expense of the transaction, including the seizure of patents, and take steps to finance the proposed purchasing corporation. (P. Ex. 29, Rec. Vol. 8, p. 110 at 114.) The matter then stood substantially as follows:

(1) The development of a plan and the conduct of the negotiations to that end on behalf of the Custodian were in the hands of Mr. Garvan, who became president of the proposed purchasing corporation.

(2) The organization of a proposed purchasing corporation was in the hands of Mr. Choate, chief of the chemical division, bureau of investigation of the Custodian, who became general counsel of the purchasing corporation.

(3) The matter of seizure and transfer of patents was in the hands of Mr. Hoguet, patent counsel of the Custodian, who became patent counsel of the proposed purchasing corporation.

(4) The matter of financing the proposed purchasing corporation was in the hands of the committee of the Dyes Institute, representing the dye and chemical industries, who subsequently owned all of the stock of the corporation.

It was immediately arranged that two patent counsel representing the Du Pont Company and the National Aniline Company, two of the largest dye manufacturers in the country, should be placed in the Patent Office to list all patents which it was desired should be seized by the Custodian and transferred to or for the benefit of the dye and chemical industry. (P. Ex. 29, Rec. Vol. 8, p. 110 at 113; P. Ex. 33, Rec. Vol. 8, p. 131.) Mr. Gordon, a patent attorney on the staff of the Custodian under Mr. Hoguet, was assigned to duty to abstract the title to all patents so listed by counsel for these manufacturers acting on behalf of the Dyes Institute. (Rec. Vol. 2, pp. 1054 and 1055.) After the patents were abstracted Mr. Gordon prepared demands to be made upon the Commissioner of Patents by the Custodian which constituted the act of seizure. (Rec. Vol. 2, p. 1055.) These demands were then initialed by Mr. Hoguet, signed by the Custodian, and served upon the Commissioner of Patents, which action perfected the seizure and brought the patent rights into the possession of and under the control of the Custodian. (Rec. Vol. 2, p. 1068.) The number of patents which the dye and chemical interests desired to acquire proved to be greater than was estimated. The number finally seized and conveyed was 4,764, exclusive of applications, contracts, copyrights, etc., which brought the total number of properties seized and transferred up to 6,475. These proceedings required some time and none of the patents were in fact seized by the Custodian until the 3rd day of February, 1919, when actual seizure was taken of a small number thereof. (Ex. G to Bill of Complaint, Rec. Vol. 1, pp. 124 to 403.) Practically all other seizures were made by Mr. Garvan, after he succeeded Mr. Palmer as Custodian on March 4, 1919, and who was also at the time of such seizures president of the purchasing corporation.

While these proceedings were being taken for the seizure of patents under the direction of Mr. Hoguet, Mr. Garvan and Mr. Choate were busy in the development of the plan looking to the transfer of the patents to a corporation representing the dye and chemical industries and the organization of that corporation. A number of conferences were held between them and the representatives of the Dyes Institute as disclosed by the records of that Institute and contemporaneous correspondence, as well as the testimony in this case. (P. Ex. 449, Rec. Vol. 9, p. 855; P. Ex. 33, Rec. Vol. 8, p. 123 at 126 and 127; P.

Ex. 528, Rec. Vol. 9, p. 1127 at 1132 and 1133; P. Ex. 32, Rec. Vol. 8, p. 122; P. Ex. 533, Rec. Vol. 9, pp. 1149 and 1150; P. Ex. 534, Rec. Vol. 9, p. 1151 at 1154; P. Ex. 535, Rec. Vol. 9, p. 1157 at 1160; P. Ex. 538, Rec. Vol. 9, p. 1182 at 1183; Ex. B. to Bill of Complaint, Rec. Vol. 1, p. 90.)

On February 14, 1919, Mr. Garvan appeared before the Advisory Committee on Sales of the Alien Property Custodian, consisting of Mr. Bannard, Mr. Ingraham, Mr. Dodge, Mr. Griswold, and Mr. Stone. (P. Ex. 115, Rec. Vol. 8, p. 316 at 318.) As we have seen, this Committee was created for the purpose of passing on all sales of alien property. (P. Ex. 3, Rec. Vol. 8, pp. 14, 15, and 16.) The minutes of the Committee (P. Ex. 115, Rec. Vol. 8, p. 318) show that Mr. Garvan proposed a "plan in reference to a sale of enemy-owned patents covering certain chemicals and dyes, etc., to a corporation or association to be formed, the new corporation to license the patents to the American trade; after consideration, this committee approves the plan as a general proposition." This was done before the details of the plan had been developed; before any price had been fixed, as shown by Mr. Garvan's testimony (Rec. Vol. 4, pp. 2799 to 2803); before the number of patents was known; before the patents had been seized; before it was known who were the officers of the corporation; before any authority to make private sale had been obtained from the President or from Mr. Polk, to whom the

Gordon, the patent attorney, testified that he was urged by Mr. Hoguet to complete the work promptly, in order that the matter might be presented to the President when he returned as a completed matter, because "rather than ask permission to do a certain thing, if we could show that the thing had already been done, there would be more likelihood of its being approved." (Rec. Vol. 2, pp. 1070 and 1071.)

Up to this time great care had been exercised not to let the Federal Trade Commission, authorized by the President to handle and license these patents, know of the proposed transaction. (Rec. Vol. 2, p. 1111.) Great secrecy was enjoined by representatives of the Dyes Institute. (P. Ex. 34, Rec. Vol. 8, pp. 135, 136.) Mr. Polk, who it is claimed was empowered by Executive Order of December 3, 1918, to authorize private sales, had not been consulted or advised of the proposed plan. (Rec. Vol. 2, pp. 1194–1196, 1252 and 1253.) Mr. Palmer prepared his annual report to Congress (D. Ex. 30, Rec. Vol. 11, p. 1299) as of the 15th day of February, 1919, and it was formally transmitted to the President by letter dated February 22, 1919 (P. Ex. 13, Rec. Vol. 8, pp. 58 and 59), for transmission to Congress, in which report he mentioned this transaction as a concluded matter, although the terms of sale had not been agreed upon when the report was prepared; the purchasing corporation had not been incorporated; no authority to make private sale had been obtained; and the purchasing corporation was not organized until the 8th day of March, 1919, after Mr. Garvan became Custodian. We shall show that the proposed transaction as reported was not only not concluded but was very different in many essential particulars from the transaction which was finally consummated.

It now became necessary to obtain authority to make a private sale, and Mr. Palmer appears actively in the matter for the first time. The President returned to Washington from Paris on the evening of February 25, 1919, and left again for Paris on March 4, 1919. (P. Ex. 106, Rec. Vol. 8, p. 297.) Mr. Palmer had prepared an Executive Order authorizing the sale of enemy patents to The Chemical Foundation, Incorporated, at private sale. This order was prepared for the signature of Mr. Polk, who it is claimed had been authorized by Executive Order of December 3, 1918, to exercise the power conferred upon the President by Section 12 of the Act as amended, to determine upon a private sale in lieu of public sale of property, stating the reasons therefor in the public interests. Although the President was in the White House, Mr. Palmer took this Order personally to Mr. Polk's office in the Department of State early on the morning of February 26th. (Rec. Vol. 4, p. 2616.) Mr. Polk being absent, later in the day Mr. Palmer transmitted the Order with a letter. (P. Ex. 90, Rec. Vol. 8, p. 279.) He also transmitted part of the proof of his report to Congress. (Rec. Vol. 4, p. 2617.) In this letter it is stated that it was proposed to sell German-owned patents "which were never used in this country," although at that time a number of the more important of these patents were in active use by American manufacturers under licenses from the Federal Trade Commission. Mr. Polk signed the Order the same day. (D. Ex. 3 to Answer, Rec. Vol. 1, pp. 551 to 553.) Mr. Polk testified that he had never before heard of the matter, never saw the charter of the corporation, and knew nothing of the transaction except as stated by Mr. Palmer, and from information gained in glancing over portions of the proof of his report transmitted with the letter. (Rec. Vol. 2, pp. 1252 and 1253.)

It should be observed that at the time this order was entered substantially none of these patents had been seized by the Custodian; the number and character of the patents was not known; the proposed purchasing corporation had not been organized. The Order sought to authorize the Custodian to sell at private sale on such terms and conditions as the Custodian might fix all letters patent, "including all profits and damages recoverable at law or in equity for the past infringement thereof which the Alien Property Custodian may seize or may have seized under the provisions of said Trading with the Enemy Act and the amendments thereto, now or hereafter enacted and which he from time to time

Kresel, were it not true that you will have a full opportunity to have the Court pass deliberately upon whether or not they have established a conspiracy at a later stage of the case.

Mr. Kresel: May I also urge upon your Honor this consideration, that in the admissibility of these documents written by third parties, for whom of course we are not responsible, if those documents go in evidence for the purpose of showing the truth of the statements made therein, without producing the person who wrote the document, to give us an opportunity to cross-examine, we are deprived of an essential and important right.

The Court: This is tried before a Court of Equity and not before a Jury, and there is no such thing, Mr. Kresel. It is admitted under the general rule.

Received in evidence and marked "Plaintiff's Exhibit No. 19." (*See Exhibits, Vol. I, page 69.*)

Mr. Galloway: If your Honor please, this is a letter from Mr. Patterson to Mr. Garvan, and there are only one or two pertinent paragraphs to which I would like to call your Honor's attention.

The Court: Have you submitted that to Mr. Kresel?

Mr. Galloway: This is the same letter.

The Court: I looked it over, and you can tell me what those paragraphs are if you will. That comes down to Mr. Kresel's last objection. What is your standpoint with respect to the value or admissibility of that letter for any purpose than to show that Mr. Patterson did give that letter of introduction, introducing Mr. Poucher? You cannot put that in to bind these defendants, as to the truth of those allegations?

Mr. Galloway: Absolutely not, your Honor.

Mr. Kresel: Will your Honor permit me to interrupt? I was in conference with Colonel Anderson, shall determine relate to the objects and purposes of said Chemical Foundation, Incorporated, as expressed and defined in its charter." (Rec. Vol. 1, p. 552.)

The power which had been conferred by Congress upon the President himself to order private sale, to be exercised so sparingly that it required him to state his reasons therefor in the public interests, was thus sought to be conferred upon and exercised by Mr. Polk personally. He in turn did not undertake to determine the property to be privately sold, the terms of sale or to ascertain or determine himself the reasons for private sale, but, without knowledge of the charter of the purchasing corporation or of the transaction other than that gained from the Custodian, sought to confer upon the Custodian the power to determine in the present and in the future what property should be sold privately, the terms and conditions upon which such sales should be made, and all of the essential elements thereof, which, under the law, the President himself was required to determine and state as a restraint upon the power of the Custodian.

Among the reasons stated in this Order for directing a private sale is that The Chemical Foundation, Incorporated, was incorporated to hold these properties as trustee for American industries, to grant non-exclusive licenses on equal terms to American citizens and free licenses to the

United States. The charter of the corporation itself then in existence but not submitted to Mr. Polk expressly gave to the board of directors of the corporation, consisting of three members, the power to grant or refuse licenses upon such terms as they might see fit, and was an ordinary business corporation charter under the very broad laws of the State of Delaware. (Rec. Vol. 1, p. 90.)

The alleged authority for private sale having thus been obtained, no further steps were immediately taken in the matter, and Mr. Hoguet advised Mr. Gordon in charge of the seizure of patents that the need for haste was past as the Order had been signed. (P. Ex. 71, Rec. Vol. 8, p. 253.) Mr. Palmer resigned as Alien Property Custodian on March 4, 1919, and, on his recommendation, Mr. Garvan was appointed Custodian in his place. He stated that in a conference with the President on that day he informed the President of the facts in regard to these patents. It may be observed that his statement of the proposed transaction to Mr. Polk and the President as set forth in his testimony and in his report to Congress was very different from the transaction as it was subsequently carried into effect by Mr. Garvan.

Mr. Garvan having become the Alien Property Custodian and the matter being then entirely in his hands to act for both sides, steps were taken to complete the organization of the proposed purchasing corporation. A meeting of the incorporators was held, the minimum stock originally subscribed by the nominal incorporators was transferred to Mr. Garvan and two other gentlemen, who were elected directors and the latter were promptly appointed to positions as directors of various corporations under control of the Custodian, at liberal compensations. (Rec. Vol. 5, pp. 3031–3033, pp. 3055–3060.) Mr. Choate, who was on the staff of Mr. Garvan as Custodian, was elected General Counsel, and Mr. Hoguet, Patent Counsel of the Custodian, was appointed Patent Counsel of the corporation. (Rec. Vol. 5, pp. 3064–3069; P. Ex. 613, Rec. Vol. 10, p. 1480.)

The seizure of patents and other similar properties was then prosecuted with considerable vigor by Mr. Garvan under the direction of Mr. Hoguet. It was discovered, however, that the Executive Order signed by Mr. Polk only related to patents, trade-marks, and rights under letters patent and trade-marks, etc. They then discovered a number of valuable copyrights and other similar rights. An additional Order was therefore prepared by Mr. Garvan and forwarded to Mr. Polk at White Sulphur Springs, West Virginia. (Rec. Vol. 2, p. 1192; P. Ex. 92, Rec. Vol. 8, p. 280; P. Ex. 93, Rec. Vol. 8, p. 281.) It was there signed by him on the 5th day of April, 1919, authorizing on the same terms of the former order the sale to the Chemical Foundation, Incorporated, of copyrights, applications for patents, and other similar rights. (Rec. Vol. 1, pp. 554 to 557.) An instrument of conveyance or assignment was thereupon prepared by Mr. Hoguet whether on behalf of the Custodian or The Chemical Foundation is not clear, as he was Counsel for both, and approved by Mr. Hoguet apparently in both capacities, conveying and assigning to The Chemical Foundation, Incorporated, 3,854 patents, including all of the valuable patents then under license by the Federal Trade Commission, 243 applications, 850 trade-marks, 492 copyrights, and 46 contracts for the use of patents, for the lump sum of $250,000, or $21.94, each.

At that time the 128 patents under license by the Federal Trade Commission, included in this lot, were yielding in revenue at the rate of approximately $300,000 per annum. (P. Exs. 198 and 198a, Rec. Vol. 8, pp. 473 to 477.) This assignment and conveyance was executed and delivered by Mr. Garvan as Custodian to The Chemical Foundation, of which he was also president, on the 10th day of April, 1919. (P. Ex. 58, Rec. Vol. 8, p. 187.)

On various dates subsequent thereto Mr. Garvan as Custodian seized other patents, copyrights, and other similar rights relating to various industries which The Chemical Foundation located and desired to acquire, and by instruments of conveyance transferred them to The Chemical Foundation, Incorporated, for a nominal consideration. (Rec. Vol. 1, pp. 292 to 389; pp. 410 to 472.) The dates of these conveyances, the properties conveyed, and the consideration in each case are shown by the following table. All of these conveyances were made by Mr. Garvan to The Chemical Foundation, Incorporated, while he was Custodian and president of The Chemical Foundation, Incorporated, with the exception of the last two, which were made by his successor and were largely confirmatory of former transactions.

Statement of costs of properties acquired from Alien Property Custodian as verified with original assignments and in the case of April 10th assignment with photostatic copy of assignment

[See Defendant's Exhibit 92, Rec. Vol. 11, p. 2666.]

Date of assignment	Patents	Applications	Trade-marks	Copyrights	Contracts	Total cost	Average cost
1919							
Apr. 10	3,854	243	850	492	46	$250,000.00	$21.94
May 2			2		1	50.00	16.66
May 6	14					500.00	35.71
May 15	1					50.00	50.00
June 17	52	19			1	3,650.00	50.70
June 21	1	1	2		3	450.00	64.28
Oct. 17	21					1,050.00	50.00
Dec. 9		22				1,100.00	50.00
1920							
Mar. 9	26		20			2,300.00	50.00
May 4	32	1				1,750.00	53.03
May 15	401					5,000.00	12.46
Dec. 21	2					100.00	50.00
1921							
Feb. 19	351					5,000.00	14.25
Feb. 28					6	300.00	50.00
Apr. 27	9	2				550.00	50.00
Nov. 5 [1]							
Total	4,764	288	874	492	57	271,850.00	41.98

[1] Assignment of Nov. 5, 1921, for 136 trade-marks is included in assignment of Apr. 10, 1919. Total properties acquired, 6,475.

It will be observed that substantially all of the important properties were conveyed from April 10, 1919, to June 21, 1919, inclusive. The parties were apparently uneasy as to their title. On June 28, 1919, Mr. Hoguet, patent attorney for both the Custodian and the Foundation, wrote the Attorney General suggesting that " a more than friendly " suit be " immediately " brought and conducted " in a thorough understanding " to determine in a litigation " which we could control " the right of the Foundation to receive royalties under licenses issued by the Federal Trade Commission prior to transfer of these patents. Of course, a decree in favor of the Foundation in such a suit would have confirmed its title to these properties. The Assistant Attorney General to whom the matter came advised Mr. Hoguet that any such suit would have to be conducted " in every respect at arms length." (See correspondence Rec. vol. 8, p. 372, which we ask the court to read.) The suit was never brought.

This statement has been made in some detail on account of the size of the record. We have undertaken to avoid collateral questions and present the essential features of the transactions involved. Where any facts bearing upon any collateral matter or defence have been omitted as not material to the main case they will be noticed in the discussion of those points.

Viewed as a whole there can be no controversy as to the main features of these transactions or their results. They may be briefly summarized:

(1) Six thousand four hundred and seventy-five patents, copyrights, and other similar rights of widely different values, owned by thousands of persons, were in existence. Some of the more important of these rights had been licensed under the law to American citizens by the Federal Trade Commission acting for the President, and were then yielding an annual income of approximately $300,000. Any or all of them might have been so licensed to any American citizen desiring to use them.

(2) These properties were seized by the Alien Property Custodian on behalf of the United States, and thus came into the custody and possession of the United States, with full right in the United States to use them or to license them for use by any American citizen, and power reserved in Congress to dispose of them after the war. So long as they were held by the Custodian they were held under the law and subject to control of Congress.

(3) By the action of the Custodian and his associate officers or agents of the United States charged with the custody of the properties they were transferred en masse and without appraisal or apportionment of value to a private business corporation organized by those same officers, of which corporation they were also the executive

ficers at the time of the respective sales and
ansfers.

(4) The result is that the ownership of these
atents and other properties is now claimed to be
this corporation and under the complete control
f the persons as private citizens who formerly
eld them for the United States as public officials,
nd they have the full power to grant or refuse
censes for their use by American industry af-
cted thereby on such terms and conditions as
ey see fit, and to control all manufacture or
le, importations into or exports from the United
tates of products covered by said patents.

(5) The United States, on the other hand, have
ly the pitiful sum of $271,000 in the Treasury to
present property which was seized and had a
lue of many millions. If Congress should order
return of enemy property the United States
ill be in the humiliating position of being unable
return this property or even its proceeds, since
e small amount in the Treasury is incapable of
portionment among the thousands of former
ners upon any equitable basis. In any event
would not be enough to cover the actual cost and
pense of securing the issue of the patents, and
presents no property value therein.

(6) There will thus have been effected by execu-
ve officers of the Government charged with the
stody of property of others, for the United
ates, a complete confiscation of that property
against the original owners, and as against the
nited States a transfer thereof to themselves

for the benefit of private industry, in a manner which gives them control of that industry; and the powers of Congress over this property and the ability of the Government to discharge its international obligations as to the same are completely defeated.

When this situation was brought to the attention of the President of the United States, he, by letter to the Custodian, dated July 1, 1922, directed him forthwith to demand of The Chemical Foundation, Incorporated, a return of these properties to the Government and an accounting for the income thereof; and if this demand was refused, to take such action by suit or otherwise as the Attorney General might advise to protect and enforce the rights of the United States or any other persons concerned. (Rec. Vol. 1, p. 492.) This demand was made and refused. (Rec. Vol. 1, pp. 493 to 496.) This suit was then instituted.

Matters eliminated

Before taking up the discussion of the issues presented by the record, it seems desirable to eliminate certain matters which are deemed wholly immaterial, but which were the subject of elaborate statement and discussion by counsel and by the respective courts below.

(a) The seizure of the patents and other properties in question

Much of the discussion in the courts below was devoted to a justification of the seizure of these properties as against the enemy owners. This question is not involved in this case. The overnment does not question either the power seize or the legality of the seizure. It was ithin the power of the Custodian, and was done. t placed the properties in the custody and ossession of the United States. The issue in his case is confined to the legality of the sales r transactions by which they were transferred rom the United States to a private corporation hrough what are claimed to be unauthorized and llegal acts of officers and agents of the United tates.

) The alleged wrongs committed by the Germans against the United States and its industrial interests

A large proportion of the record in this case onsists of testimony and documents claiming to how alleged wrongs of the Germans against the nited States and its industrial interests. A rge part of the respective opinions of the courts elow, especially that of the District Court, is evoted to the same subject.

We then insisted and now respectfully suggest at all of this is wholly immaterial. Wrongs by ermany do not justify wrongs by us. If Germany or its citizens have committed any wrongs gainst the United States or its citizens they are uestions for the Government of the United tates in the international forum, or for the courts proper proceedings in a domestic forum. This not the place to seek to redress those wrongs. his is a suit by the United States against one of s own corporate citizens to recover property and I did not hear what Mr. Galloway said. May it be read by the Stenographer?

The Court: He was reading the last exhibit which made certain statements of fact with reference to Mr. Patterson and I asked him whether he presses those, in view of your last objection, and he said he does not.

Mr. Galloway: The plaintiff next offers in evidence, if the Court please, a letter dated June 26, 1918, from Mr. M. R. Poucher to Mr. Francis P. Garvan, enclosing the letter from Mr. Patterson to Mr. Garvan, introducing Mr. Poucher, and saying that he desires to be of service to Mr. Choate and Mr. Garvan.

Mr. Kresel: I assume, your Honor, that this is being offered on the same theory as the last two preceding exhibits were.

I feel so strongly about this, your Honor, that I am afraid perhaps I have not urged the strongest consideration that can be urged against the admissibility of this evidence at this time.

The counsel for the Government will agree with me that Mr. Patterson in this respect was acting as the President of the Textile Alliance. The Textile Alliance is specifically charged in this Bill with being one of the conspirators. They are not a party to this proceeding. I do not represent them, and in so far as it reflects upon the defendant that I do represent, it may be utterly immaterial whether this evidence does or does not go in, but inasmuch as the Textile Alliance has no standing here and can not speak for itself, I simply urge upon your Honor the unfairness of it—that they ought not to be charged here with a conspiracy indirectly this way; that evidence might be introduced which might reflect upon them. If in the end no charge of conspiracy will be proved, then the only remedy that there will be left will be to move to strike out. The damage will have been done.

formerly held by the United States and claimed to have been transferred illegally to this corporation by officers of the United States who were in custody thereof. This is an issue between the United States and its own citizens, with which the Germans have nothing whatever to do. The wisdom or unwisdom of the acts under review is not a question for the courts. The issue is purely one of law. If the acts complained of were within the power of the officers concerned and were lawfully done, they should be sustained. If they were not, they should be set aside, for the law is supreme. If the property in question is restored to the United States in accordance with the prayer of the bill, the question of its disposition will be one for Congress and for Congress alone.

We shall confine ourselves, therefore, to the discussion of the law as applicable to the essential facts of this case, and not burden that argument or obscure the issues by a consideration of the acts or policies of the Germans which are not before this Court.

(e) The importance and necessities of the dye and chemical industries

A large part of the briefs of counsel for appellee and of the opinions of both courts below has been devoted to a discussion of the importance of the dye and chemical industries to the commercial interests and the national defense of the United States. If the courts were charged with the duty of deciding upon the wisdom or policy of these transactions or of plans for the national defense these discussions might be pertinent. But this is not the function of the courts. Organic chemistry is undoubtedly a fascinating study, but it does not aid us in determining what is the law. As to its importance to the interests of the United States there is no controversy, but the courts are not charged with the duty of deciding what is or is not in the interest of American industry or the national defense; nor do we find anything in the law which vests this power in the Alien Property Custodian. This is the function of Congress. The question for the courts to determine is what was the law applicable to this case, whether the acts complained of were within the power conferred by law upon executive officers involved, and, if so, whether these powers were lawfully exercised. If these questions are determined in the affirmative, the acts are valid whether they were in the interest of American industry and the national defense or not; if in the negative, they are void, it matters not how beneficial they may have been. It is purely a question of law.

The government, therefore, contends that the question of whether the acts complained of were or were not wise or expedient or beneficial to American interests is not involved in this case, and is not one within the proper cognizance of the courts. It will therefore be eliminated from the discussion.

(d) The motives of the parties concerned

Much of the answer of defendant, argument of counsel, and the opinions of the courts below is also devoted to a justification of these transactions on the ground of the high and patriotic motives of the Custodian and his associates, their desire to promote the interests of American industry, and similar altruistic purposes. This is not deemed material. The law presumes that men intend the natural and probable consequences of their acts, and takes cognizance of the recognized qualities of human nature. These parties are not on trial. The issues here presented relate to the legality of their acts and the validity of the title of appellee claimed through those acts as against the United States.

We shall, therefore, eliminate these questions from our discussion of this case, and confine ourselves to a consideration of the legality of the transactions under review.

ARGUMENT

Point I

The court erred in its construction of the Trading With the Enemy Act

This point involves directly a consideration of assignments of error I and II, and (Rec. vol. 7, pp. 5048–5050) in its more general bearing it affects all of the assignments of error going to the merits, since a proper construction of the Trading With the Enemy Act (40 Stat. 411) is the fundamental issue in this case. It would serve no good purpose in this Court to go into an extended discussion of the nature and source of power of the Government to deal, in time of war, with the property of enemies outside of the zone of military operations. This question is no longer open for debate. It has been frequently held by this Court, and is now a settled principle of our law that, by Article I, section 8, clause 11, of the Constitution, this power is vested solely in Congress and may be exercised only to the extent and in the manner prescribed by Congress.

Brown v. *United States,* 8 Cranch, 110.
Conrad v. *Waples,* 96 U. S. 279.
Mrs. Alexander's Cotton, 2 Wall. 404.
Miller v. *United States,* 11 Wall. 268.
Stoehr v. *Wallace,* 269 Fed. 827, 255 U. S. 239.

It follows that where the subject matter is entirely under the control of Congress no executive officer, from the President down, has any power to deal with it except to the extent and in the manner authorized and prescribed by acts of Congress. If an executive officer undertakes to exercise, as to such subject matter, a power not conferred by an Act of Congress, or undertakes to exercise a power so conferred in a manner not authorized by, or contrary to, those Acts, then his acts and transactions are, to that extent, void as against the United States. This is as true in time of war as in time of peace. These principles are so obvious from the nature of our Government and have been so often stated by this Court that they may now be deemed elementary in our law.

Brown v. *United States*, 8 Cranch, 110.
The Floyd Acceptances, 7 Wall. 666.
Ex parte Milligan, 4 Wall. 113.
United States v. *Lee*, 106 U. S. 196, 220.
United States v. *Cohen Grocery Co.*, 255 U. S. 81, 88.

In the Trading With the Enemy Act, Congress, in the exercise of its Constitutional power, fixed the policy of the United States with respect to enemy property during the late war, conferred upon executive officers certain powers and duties with respect thereto, and prescribed by whom and in what manner these powers should be exercised and duties performed, subject to such limitations and restrictions as might be prescribed by law. If, when examined and tested by law, the transactions complained of are found to be within the powers conferred by law upon the respective executive officers and to have been performed in the manner prescribed by or not in conflict with law, then they are valid. If not, they are void as against the United States, for the officers of our Government, whether high or low, are only agents of the law. The wisdom or expediency of these acts or transactions, the benefits or injuries to the United States, or its industrial interests, which may flow therefrom, the good or bad motives of the parties concerned, are not now under consideration. These principles, as to our system of Government, are no longer open to controversy. They are clearly stated and applied in the following decisions of this Court, among others, which may be cited:

The Floyd Acceptances, 7 Wall. 666.
Ex parte Milligan, 4 Wall. 113.
United States v. *Lee*, 106 U. S. 196, 220.
Mitchell v. *Harmony*, 13 Howard 115.
Morrill v. *Jones*, 106 U. S. 466.
Moore v. *Robbins*, 96 U. S. 530.
Interstate Commerce Commission v. *Illinois, etc., Railroad Co.*, 215 U. S. 453.
Dakota, etc., Co. v. *South Dakota*, 250 U. S. 163.

1. Pertinent provisions of the Trading With the Enemy Act

The general purpose of this statute was to define the term "enemy or ally of an enemy," to declare who came within this description, and to regulate intercourse with such persons during the existence of a state of war. The provisions relating to the seizure, management, and disposition of enemy property constitute only a part of the Act.

The provisions which are pertinent to the issues in this case are embodied in Sections 2, 5, 6, 7, 9, 10, and 12 of the Act. The essential features of these Sections have already been stated. (Ante, pp. 8 to 18.)

The plan thus devised by Congress for dealing with "enemy" property and embodied in these sections of the statute provided:

(*a*) Who should be deemed "enemies" and how this status should be determined. (Section 2.)

(*b*) For the seizure and taking possession of property of persons found to occupy the "enemy" status as so defined, and the exercise of certain other powers under the Act. (Sections 5 and 7.)

(*c*) For the licensing to the Government or to American citizens of the right to use enemy-owned patents, copyrights, etc., the seizure of which was not authorized by the original Act. (Section 10.)

(*d*) For the custody and management of such property while in possession of the United States by an Alien Property Custodian created for that purpose, acting under the "supervision and direction" of the President. (Sections 6 and 12.)

(*e*) For a method of relief by application to the President, or through the Courts, to any person whose property was erroneously or wrongfully seized under the Act. (Section 9.)

(*f*) It reserved to Congress the determination of and control over the disposition of the property seized or the proceeds thereof "after the end of the war." (Section 12.)

This statute as originally passed was clearly an Act for the seizure of enemy property, its conservation during the war in accordance with well-recognized principles applicable to property held in trust, and its final disposition after the end of the war, as Congress might then direct. As to this construction of the original Act, all parties were and are in agreement. (Rec. Vol. 7, pp. 4998, 4999, and 5018.)

2. Amendments to the act

There have been a number of amendments to the Trading with the Enemy Act. While some of these amendments have only an indirect bearing upon the issues in this case, they may all be enumerated in their order for convenience.

(*a*) Amendment of March 28, 1918 (40 Stat. 459), to section 12 enlarging the power of sale conferred upon the Custodian. The construction of this amendment is one of the chief issues in the case and will be hereinafter fully considered.

(*b*) Amendment approved July 1, 1918 (40 Stat. 645), which provides in effect that all taxes assessed against money or property held by the Custodian shall be paid out of such money or property or if that is not sufficient, out of other monies of the same enemy. This shows the purpose and intent of the Act to create and maintain separate trusts as to each property seized and each "enemy."

(*c*) Amendment of September 24, 1918 (40 Stat. 966), as to foreign exchange.

(*d*) Amendment of November 4, 1918 (40 Stat. 1020) to section 7c. The purposes of this amendment have already been referred to, and are fully explained in the statement of Mr. Bradley, General Counsel for the Custodian, to a Committee of

Congress. (Rec. Vol. 1, pp. 75–90.) We have seen that the original Act did not authorize the seizure of patents and similar properties, but that the use thereof under license was provided for by section 10. The Custodian represented to Congress that it was desirable to have authority to seize patents used in or essential to industries which he wished to sell. He also desired provisions requiring corporations to issue and deliver shares of stock without surrender of outstanding certificates in enemy hands; and some provision by which the title of the purchaser of property sold by him, under section 12, would be fully protected. This amendment accomplished these three purposes by (1) authorizing the President to seize patents, copyrights, etc.; (2) requiring the issue of certificates of stock by corporations on demand of the Custodian without surrender of outstanding certificates; and (3) limiting the right of any person having an interest in or claim to property sold by the Custodian, to an interest in or claim to the proceeds thereof similar to the usual provisions of a decree of foreclosure. This amendment is important in this case.

(*e*) Amendment of July 11, 1919 (41 Stat. 35), authorizing the return of property to certain classes of persons.

(*f*) Amendment of June 5, 1920 (41 Stat. 977) providing further for return of property to certain persons formerly citizens of Germany and Austria.

(*g*) Amendment of February 27, 1921 (41 Stat. 1147) providing further for return of property.

(*h*) Amendment of December 21, 1921 (42 Stat. 351) extending time for claims under section 9.

The four amendments last recited have no bearing upon this case, except as indicating the policy of Congress in the exercise of the power reserved to itself under section 12 to determine upon a disposition of this property after the war.

(*i*) The last amendment is the so-called Winslow bill, approved March 4, 1923 (42 Stat. 1511), which provides for the return of not exceeding $10,000 of the principal of each trust held for the account of former enemies, and the net income from any property "held in trust for such person" to an amount not exceeding $10,000 per annum. This amendment is important in many particulars, especially as a declaration by Congress of the true meaning and intent of the Act and the purpose of Congress with respect to this property. This will be considered further hereinafter.

It will be observed that the three amendments which have a direct bearing upon the issues in this case are those of (1) March 28, 1918, to section 12; (2) November 4, 1918, to section 7c; and (3) the Winslow bill of March 4, 1923. We shall now consider the pertinent sections of the Act as so amended.

The Court: The Court of Appeals of this Circuit has held, Mr. Kresel, that evidence of a conspiracy even by the principals will be given in a criminal case in the absence of those persons to show guilt of the parties who are connected with it. It is true unless this is connected up with your client, the Chemical Foundation here, it can not have any value here nor can it at all be taken as prejudicial to the absentees because they can be produced. It is admitted under the ruling of the Court.

Received in evidence and marked "Plaintiff's Exhibit No. 20." (*See Exhibits, Vol. I, page 71.*)

Mr. Anderson: The Government in this case does not propose to be unfair or to appear to be put in an awkward position. I wanted to talk a little further with Mr. Patterson at luncheon, for the purpose of ascertaining whether it was really necessary to put him on the stand, but I do not propose to be put in a position here that the Government wants to hold back any evidence of any kind, and I will call Mr. Patterson right now and have him identify these letters and let him go on the stand and explain his visits.

The Court: The authenticity is not questioned. There is nothing before the Court on that. I am going to get you to proceed.

Mr. Anderson: I will call him later then.

The Court: Do not discharge him, Colonel Anderson, without the consent of the Court, so that we may first ascertain whether the other side wants him to be kept here under the subpoena; do not discharge any witnesses that have been subpoenaed without calling it to the attention of the Court.

Mr. Kresel: I am perfectly willing, if your Honor will permit it, to consent that Colonel Anderson now call Mr. Patterson.

The Court: That is entirely for Colonel Anderson to decide.

3. Section 12 as amended

The essential provisions of this section as originally enacted and as amended are as follows (the words in the amendment which were not in the original Act are for the sake of convenience italicized):

ORIGINAL	AS AMENDED
The alien property custodian shall be vested with all the powers of a common-law trustee in respect of all property, other than money, *which shall come into his possession* in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds	The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, *which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him* in pursuance of the provisions of this Act, and *in addition thereto,* acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, *shall have power to* manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights *or powers* which may be or become appurtenant thereto or to the ownership thereof *in like manner as though he were the absolute owner thereof: Provided, That any property*

thereof, may be preserved and safeguarded. * * * The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him. * * *	*sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: Provided further, That when sold at public sale, the alien property custodian upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct.* * * * The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him. * * *
After the end of the war any claim of an enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct.	After the end of the war any claim of an enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct.

Since the construction of this section of the A as amended is a basic issue in this case, it seer important, before taking up the discussion of t section, to state clearly the positions of the parti on this issue.

The Government takes the view that this w an Act for the seizure and conservation of enem property during the war and until Congress shou exercise the powers expressly reserved to mal disposition thereof after the war. This is a mitted as to the original Act.

The Government then contends that the amen ment made no change in the nature and gener purpose of the statute, but only changed the a ministrative powers of the Custodian by givi him a general power of sale instead of a power sell to prevent waste, etc., as in the original se tion; that the amendment then imposed limitatio upon the exercise of this power by requiring public sale in every instance, unless the Preside for reasons which must be stated determined upo a private sale, in which event the Custodian mu exercise the power as a trust power and sell pr vately in accordance with the statute and rules o law applicable to such sales by trustees or publ officers. It is the view of the Government th this power of sale was nothing more than an ord nary power such as is being exercised daily b trustees and other fiduciaries under deeds an wills, and must be so exercised as to substitute fo the property sold what is in law its fair equivalent to be held for final disposition by Congress.

On the other hand, it is contended on behalf of appellee that the Amendment of March 28, 1918, to Section 12 effected an entire change in the character and purpose of the Act; that whereas the original act was one of conservation of enemy property, the amendment changed it into an act of confiscation, giving to the Custodian full power, acting under the supervision and direction of the President, to make final disposition of this property and any beneficial interest therein in his discretion, as though he were the absolute owner thereof, both as against the former enemy owners and the United States. The Courts below, adopting this view, held that while the transactions in question must be sustained, if at all, as sales (Rec. Vol. 7, pp. 4914, 5022), they were sales made for a nominal and inadequate consideration in money, under such conditions as destroyed the "monetary value of the property (Rec. Vol. 7, pp. 4926, 5025, 5041–5042)," and were in effect a "devotion" of the property to the public interests (Rec. Vol. 7, p. 4955) which is, of course, but another name for confiscation. (Rec. Vol. 7, pp. 5024–5026.)

It is admitted by all parties that our interpretation of the statute as originally passed is correct, that it was purely an act of conservation, providing for the custody and conservation of this property until after the War and until Congress should direct its final disposition. It is admitted that if the sales in question had taken place under the original statute they would have been unlawful and void as against the United States. We thus have the original section to aid us in construing the amendment.

The original section provided that as to all property coming into his hands the Custodian should " be vested with all the powers of a common-law trustee." This language is unchanged in the amendment. It is assumed that this means the powers of an ordinary trustee in equity under the chancery practice as derived from England. These powers are well known and are very limited.

The next clause in the original act provided that he should act under the " supervision and direction of the President, and under such rules and regulations as the President shall prescribe." The only change in this clause made by the amendment is to insert the words " in addition thereto " after " and," which means exactly the same thing. In other words, in addition to the limited powers of a " common law trustee " it was proposed, by the section originally and as amended, to confer certain powers well known to the law of trusts and in daily exercise under our law, and these powers should be exercised under the supervision and direction of the President. Nothing is more common than to provide that trustee powers shall be exercised under the supervision and direction of someone else, but that does not change the nature of the trust powers. It only tends to guard against their abuse. The record shows that after the amendment was passed, the Custodian did, in June 1918, apparently with the approval of the President, promulgate elaborate rules for the conduct of sales under this act, requiring, before the sale of any property, an accounting of its earnings for three years, appraisal of its value, full advertisement, and other provisions to ensure a fair sale, all of which were in strict accord with the accepted practice with respect to sales of trust property. (P. Ex. 3, Rec. Vol. 8, pp. 14–27.) But none of these steps were taken and none of these rules applied as to the sales here in question. This provision and its administrative application only confirms our construction as to the strictly trust character of this statute.

The next clause of the original section provides that the Custodian (acting under the supervision and direction of the President) "may manage such property and do any act or thing in respect thereof or make any disposition thereof or any part thereof *by sale or otherwise* and exercise any rights which may be or become appurtenant thereto or to the ownership thereof." (Italics ours.) This language is unchanged in the amendment, except that for the word "may" in the original are substituted the words "shall have power" in the amendment, which certainly does not change the meaning in any way; and for the words "exercise any rights" in the original are substituted the words "exercise any rights or powers" in the amendment. A power with respect to property is a right and *vice versa.* We do not think it will be contended that these slight and immaterial changes in verbiage affected the nature or meaning of the section.

A good deal was said in argument and in the opinions of the courts below as to the words "by sale or otherwise." It was claimed that these words gave unlimited power to dispose of the property as the Custodian saw fit. Both of the lower courts emphasized this language and then held that the words "or otherwise" *had nothing to do with this case, since only sales were authorized, and the transactions must be sustained as sales if they were sustained at all.* (Rec. Vol. 7, pp. 4914, 5022.)

This language was in the original statute and was unchanged by the amendment. The facts as to the use of this expression in the original statute, as shown by the record, were that when the original act was under consideration it was brought to the attention of the Committee of Congress that much of the property that would come into the hands of the Custodian would be in the form of stocks and bonds; if only a power of sale was given it might not authorize an exchange of securities in reorganizations and other similar transactions which would be of benefit to the trust, and would cause embarrassments to these corporations and to legitimate industry. To meet this situation the words "or otherwise" were inserted. Under the familiar doctrine of *ejusdem generis,* they would in any event be construed only to authorize transactions similar to sales, i. e., a transfer of property or evidence of property for its equivalent.

Words and Phrases, Vol. 6, 5105.
Williamson v. *Berry,* 8 How. 495, 543.
Woodward v. *Jewell,* 40 U. S. 247, 249.
Tallent v. *Fitzpatrick,* 253 Mo. 10, 19.

Since, however, these words were in the original statute, which is admitted and held by the courts below to be one of conservation and would not authorize the transactions under review, and since those courts held that these transactions were sales and must stand or fall as such, it is difficult to see what bearing these words can have on this case. We are only concerned with sales and the courts below so held.

Down to this point there was certainly no material change even in the words of the statute resulting from the amendment. We now come to the provisions which it is claimed wrought a fundamental change in its nature and purpose. The original section provided that the power of disposition " by sale or otherwise " and other powers enumerated might be exercised " if and when necessary to prevent waste and protect such property, and to the end that the interests of the United States in such property and rights or of such other persons as may ultimately become entitled thereto or to the proceeds thereof may be preserved and safeguarded." This language conferred no additional power. It only expressed the purposes for which the powers given were to be exercised. It was really surplusage, for this was clearly the object of and the purpose for which trust powers such as those given are and should always be exercised.

The amendment, after enumerating the powers given in substantially the exact language of the original act, instead of stating the purpose, declared that the Custodian might exercise these powers "*in like manner* as though he were the absolute owner thereof." [Italics ours.] It is upon this language that the courts below hang their decision that the Act authorized a confiscation of property and a disposition such as was accomplished by the transactions under review. The reasoning proceeds as follows: An absolute owner has power to make complete disposition of property in any manner he sees fit. The Custodian was given power to dispose of this property " as though he were the absolute owner thereof." Therefore the Custodian must be deemed to have been given power to dispose of this property in any manner and for any or no consideration, in his absolute discretion. (See District Court opinion, Rec., Vol. 7, pp. 4913–4916; C. C. A. opinion, Rec., Vol. 7, pp. 5021–5025.)

In reaching this conclusion the Court omitted an important part of the language. It says (Rec. vol. 7, p. 4915) the statute grants express power to use the property " as though he were the absolute owner thereof." The statute, however, says that these powers may be exercised "*in like manner* as though he were the absolute owner thereof." (Italics ours.) The two things are very different. One assumes absolute ownership, the other prescribes the *manner* in which powers given in trust shall be exercised. The Appellate Court seems to fall into the same error. Both courts place much emphasis on the language authorizing the Custodian to make "any disposition" thereof "by sale or otherwise," apparently overlooking entirely that this exact language was used in the original section, which they hold was a strict trust for conservation, and would not have authorized the transactions in question. They then hold that this language has no bearing on this case, as these transactions were sales and must be sustained as such. Then why emphasize that which is immaterial? We confess our entire inability to follow the reasoning of either court on this point.

Viewed in the light of the context this language seems perfectly plain and incapable of such a strained construction. This property was held by an officer of the United States for the United States or such persons as Congress after the War might determine. It was held under an express trust. To say that the Custodian had or could have any ownership absolute or otherwise therein was to state an obvious impossibility. If he had no ownership, he could not sell "as though he were the absolute owner." But he could be given power

Mr. Kresel: I do not think it will take very long, and Mr. Patterson is a gentleman who has come here purposely—was asked by the Government to be here this morning, at this particular time.

The Court: It is a matter over which the Court has no control, because that is within the discretion of counsel for the Government.

Mr. Kresel: Very well.

Mr. Anderson: Without it going on the record, I will state to Mr. Kresel that Mr. Patterson will be called during the day.

Mr. Galloway: This Exhibit No. 20 is dated June 26, 1918, from Mr. M. R. Poucher to Mr. Garvan. (Reads Plaintiff's Exhibit No. 20.)

The plaintiff next offers in evidence a letter dated November 18, 1918, from Mr. C. Cyril Bennett, Secretary of the American Dyestuff Manufacturers' Association, to Mr. H. E. Danner, Secretary of the National Association of Cotton Finishers, in which there is enclosed a synopsis of the plan, and which it is stated the American dye industry considers the most satisfactory way of protecting the industry.

The Court: For the same purpose as the preceding exhibit.

Mr. Galloway: For the same purpose.

Mr. Anderson: All of this evidence has that same purpose.

The Court: The same objection, Mr. Kresel?

Mr. Kresel: Same objection.

The Court: Same ruling.

Admitted in evidence and marked "Plaintiff's Exhibit No. 21." (*See Exhibits, Vol. I, page 72.*)

Mr. Galloway: This letter, if your Honor please, is from C. Cyril Bennett, Secretary of American Dyestuff Manufacturers' Association, to H. E. Danner, Secretary of the National Association of Cotton Finishers. (Reads Plaintiff's Exhibit No. 21.)

of sale as a trust power, to be exercised "in like manner" as if he were absolute owner. The property was held in trust: the power was a trust power, given in trust, to be exercised for the purposes of the trust. But he was given broad discretion as to what property should be sold, the time of sale, the manner of sale except as limited by the Act, and the title conveyed by him was to be complete. All of these are elements of discretion which an owner may exercise or are conditions incident to sale by an owner. But at best he was not owner; he must make a sale, and it must be a sale of trust property by a public officer. While he had discretion as to the matters stated, he must not dissipate his trust but must by sale place in the hands of the United States what the law regards as the equivalent in value of the property sold. A sale is "a transfer of the absolute or general property in a thing for a price in money or its equivalent."

> Benjamin on Sales, Sec. 1.
> *Williamson* v. *Berry*, 8 How. 495, 543.
> *Illinois* v. *McFarland*, 110 U. S. 471.
> *DeBarry* v. *Lover*, 101 Fed. 425, 427.

On the other hand, the transfer of property of another for public use for no consideration or a nominal consideration or the "devotion" thereof to the public use is confiscation, pure and simple.

> Bouvier Law Dictionary, Rawle's ed., "Confiscation." 1 Kent Comm., 52 *et seq.*

There is no mystery about this language giving to fiduciaries power of sale "in like manner" as an absolute owner. This very expression is in constant use in trust instruments, and is universally held to confer only a power in trust, to be exercised under the rules respecting trusts and for the purposes of the trust.

In re Bauernschmidt's Estate, 97 Md. 35. 51.

Stocker v. *Foster,* 178 Mass. 591.

In re Coger, 111 N. Y. 343.

Tallent v. *Fitzpatrick,* 253 Mo. 10.

Terry v. *Rector,* etc., 79 App. Div. (N. Y.) 527.

Smith v. *Bell,* 6 Peters 68.

Brandt v. *Virginia,* etc., Co., 93 U. S. 326.

Bradley v. *Westcott,* 13 Vesey 445.

Following the power thus given is the proviso, not in the original act, placing strict limitations upon the exercise of that power, so that while the amendment gave the Custodian enlarged powers as to making sales it actually imposed further limitations upon the method or manner of sale. The language of the proviso is as follows:

> *Provided,* That any property sold under this act, except when sold to the United States, shall be sold only to American citizens at public sale to the highest bidder, after public advertisement of the time and place of sale, which shall be where the property or a major portion thereof is situate.

As we shall see, Congress carefully considered this language. It was added, after the bill was reported, for the express purpose of safeguarding this trust and having this property or its fair equivalent in the custody of the United States for disposition by Congress after the War. (Cong. Record Vol. 56, Part 4, pp. 3328, 3942, 3944.)

We have now dealt with all of the powers given to the Custodian under this section originally and as amended. There is nothing in the language to change the statute from one of conservation and administration of trust property to one authorizing a confiscation or donation thereof by the officer charged with its custody. On the contrary, the amendment, instead of loosening the *powers of sale,* actually imposed additional restrictions upon their exercise. The Custodian could have sold publicly or privately under the original section; under the amendment he could only make public sales under strict limitations.

We now come to the power of the President under the last clause of the proviso to the amended section. It will be noted that the power of sale was vested in the Custodian, not in the President. Under the original section there was no method of sale prescribed, but under the amended section sales by the Custodian were required to be public sales subject to the various limitations stated. We all know, however, that in the administration of both public and private trusts conditions arise which render public sales injudicious or even prejudicial to the trust estate. In such cases a court of chancery may, as to private trusts, generally order a private sale, stating in its order its reason for varying from the accepted practice of public sales of trust property. Congress was familiar with these precedents. To provide against these contingencies, Congress, after careful consideration and debate (Cong. Rec., Vol. 56, Part 4, pp. 3328, 3942, 3944, 4003), inserted at the end of the proviso requiring public sale the words, " unless the President, stating the reasons therefor, in the public interest shall otherwise determine."

This language is a part of the proviso referring to property " sold under this Act." It, therefore, relates entirely to sales, and the Court of Appeals so held. (Rec. Vol. 7, p. 5023.) When the President, for reasons stated, determined upon a private sale and so ordered, the Custodian then had power to make a private sale, the same to be conducted fairly as sales by public officers must be, and in a manner which would substitute for the property the proceeds thereof, representing in law its fair equivalent, to be held to await final disposition by Congress. This language, and the purpose and intent thereof, seem too clear to require extended discussion.

Having thus provided for sales of this property, the amendment contained a further provision authorizing the Custodian on order of the President " stating the reasons therefor " to reject bids and make resales. This provision is not involved in this case, except that it shows the extreme care exercised by Congress to insure fair sales of this property. Finally, in the amendment, the lan-

guage of the original act reserving to Congres
power of final disposition of the property " afte
the end of the war " is continued unchanged.

Both Courts below held that as to the trans
actions in question only sales were authorized o
attempted, and that these transactions must b
sustained, if at all, as sales. (Rec. Vol. 7, pp
4914, 5022.) Both Courts held that as sales th
consideration to the Government, viewed in th
light of the value of the property, was inadequate
The District Court held that this was conceded
(Rec. Vol. 7, pp. 4926, 5025, 5041–5042.) Th
Court of Appeals held that the consideration wa
"grossly inadequate," basing its conclusion o
the single fact that some 126 of these patent
which were being used under nonexclusive license
from the Trade Commission or under contract
held by the Custodian, were yielding a revenue o
approximately $300,000 a year at the time tha
they were all sold for a gross consideration o
$271,000. (Rec. Vol. 7, p. 5039.) No other con
clusion seems possible. It would seem to follow
as a matter of course that the transactions wer
void as against the United States.

The Courts below in avoiding this conclusion
take an entirely different view of the statute
The District Court holds in effect that the Custo
dian, "acting under the supervision and direction
of the President," had power to dispose of thi
property as " though he were the absolute owner "
thereof (Rec. Vol. 7, p. 4914), under terms an

conditions which might destroy its "monetary value" (Rec. Vol. 7, p. 4918), and in effect constitute a devotion thereof "to the public use" (Rec. Vol. 7, p. 4918).

The Court of Appeals affirming this view held in effect that the statute as amended gave power of "final disposition" of the property, although such disposition operated as a confiscation as to the original owners, and a disposition "for less than their value to the United States." (Rec. Vol. 7, p. 5025.) Both Courts held that the Custodian in making sales of this property could take the benefits to the public or "public interests" as he might determine them as "consideration" in whole or in part, or *quid pro quo* for the transfer of the property. (Rec. Vol. 7, pp. 4914, 5025.)

The Government contends that these positions are erroneous on two general grounds:

(*a*) Because there is nothing in the language of the statute to justify such conclusions. As we have pointed out, the statute gave the Custodian a simple and familiar power of sale, such as is exercised daily by Government officers as to property owned by or in the custody of the Government, the proceeds to be paid into the Treasury for disposition by Congress. There is not a suggestion of confiscation as against the original owners; not a suggestion of a grant of power to the Custodian to devote property in his custody to the public use. Every provision of the statute negatives such a suggestion. While the stat requires the President to state his reasons " the public interest" for *ordering a private s* it does not refer to the public interest as to exercise of power of sale by the Custodian, a certainly does not suggest any power or author in him to determine upon the "public interes and accept benefit to the public presumed to ar from the use of the property as the considerat for the sale or transfer thereof. This is pure c fiscation and entirely inconsistent with the i of sale which was the power given. Section 6 the Act required the Custodian to hold and " count for" property which came into his han It is difficult to see what effect is to be given to t section if it is held that he had power to ma absolute disposition thereof "as though he w owner."

(2) There could have been no public inter served by this grant for nominal considerati If there was a confiscation of this property " the public interest" it must have vested in t United States. The United States would th have had full power to use or permit the use the same in any manner which the public inter might require. It is impossible to conceive any public interest which could then be served a grant from the United States to a private co poration for a "grossly inadequate" consider tion, or any benefit to the public which cou serve as a valid "consideration" for the gra

The United States is quite as capable of serving the public interests as a private corporation. A sale for an adequate consideration is one thing; a grant of property in the custody of the United States for a nominal or "grossly inadequate" consideration (C. C. A. Rec. Vol. 7, p. 5039) is another thing, and we find no suggestion of authority for such a transaction in this statute.

We can not better conclude the discussion of this point than to quote the language of Hon. A. Mitchell Palmer, who was Alien Property Custodian when this Act was passed, and thereafter until March 4, 1919, when he became Attorney General of the United States. Mr. Palmer testified in this case that he drew the Amendment of March 28, 1918, to Section 12, and appeared before the Committee to urge its passage. (Rec. Vol. 4, pp. 2539, 2545.) In a hearing before a subcommittee of the Committee on Judiciary of the Senate on July 27, 1922, on Senate Bill 3852 to further amend this Act, Mr. Palmer appeared as a witness. In discussing this amendment of March 28, 1918, to Section 12, he said:

> The purpose of that amendment was merely to convert the property of the Germans in this country into cash, and behind that was the purpose to dislodge the Germans' foothold in American industry and commerce. There was no intention of taking this property out of the provisions of the Trading with the Enemy Act; but the intention simply was to convert it into

> money and to hold that money for all th purposes for which the original proper was to be held under the Trading with th Enemy Act.

This is the construction of this statute give by the man who drew it and administered it Custodian and was afterward Attorney Genera given three years after the transactions herei mentioned took place and about one month befo this suit was brought. It is the construction f which the Government contends. It is in dire conflict with the construction now given by th Court.

This construction, drawn from an examinatio of the language of the Section as amended, is su tained and confirmed by its legislative history, th administrative construction of the Act, and b pertinent judicial decisions which will now b examined.

4. The legislative history of the amendment to Se tion 12

The original act is conceded to have been only a act of seizure and conservation. The extraordinar powers now claimed are predicated upon th amendment. We shall only refer therefore to th legislative history of the amendment.

This amendment to Section (12) was submitte along with another amendment which the Presiden had requested, authorizing the acquisition of dock piers, and other terminal properties of the Ham burg-American Line and the North German Lloy

Line at Hoboken. (Rec. Vol. 4, pp. 2538, 2539.) In presenting these, Mr. Palmer, Alien Property Custodian, after explaining that these piers and docks belonged to two American corporations, the entire capital stock of which was owned by the two German steamship companies and which had all been seized by him as Custodian, and in stating the reasons for submitting the two amendments to Section 12, said:

> Mr. Palmer. The suggested amendment rewrites section 12 of the trading with the enemy act. Practically the only change, however, is to omit the following words:
>
> "If and when necessary to prevent waste and protect such property, and to the end that the interests of the United States in such property and rights, or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded."
>
> Senator Jones of Washington. As I understand, if we should adopt that, it would leave that section substantially as the Senate passed it.
>
> Mr. Palmer. Substantially as the Senate passed it; so that the power of sale of the Alien Property Custodian would read:
>
> "The Alien Property Custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, delivered, or paid over to him"—

The Memorandum is also attached here, and shows that it is in substance a plan proposed by the British, which is an embargo. I do not care to read that.

The plaintiff next offers in evidence——

Mr. Kresel: Before you state that, I wish to point out to the Court that this last exhibit you just put in is from the Secretary of the American Dyestuffs Manufacturers' Association, which is not mentioned in the Bill as one of the conspirators, to the Secretary of the National Association of Cotton Finishers, and that one is not mentioned in the Bill as one of the conspirators. In other words, here we have now a communication between the secretaries of two organizations who are not at all mentioned in the Bill as conspirators, put in here——

The Court: And who are not mentioned as "persons unknown?"

Mr. Kresel: I do not know whether they are part of the "persons unknown." We have no means of knowing.

The Court: I mean they are not mentioned in the Bill.

Mr. Kresel: Pardon me, your Honor?

The Court: They are not identified in the Bill or mentioned as persons unknown to the——

Mr. Kresel: Not as far as I know.

The Court: But you do know whether they are so alleged in the Bill or not.

Mr. Kresel: Here is the allegation—that the persons named and others unknown entered into a conspiracy. The allegation is this, in the eighteenth paragraph of the Bill:

> "Complainant is informed and believes and therefore avers that for several years prior to the declarations of war aforesaid various persons, firms and corporations engaged in the production, manufacture, and sale of dyes, and the ingredients

> It put in "has been or shall be" because of the fact that we had been taking over property—
>
> "In pursuance of the provisions of this act and in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof." (Hearings on H. R. 9867 before Senate Committee on Appropriations, 65th Cong., 2d sess., p. 16.)

This statement of both the purpose and the effect of the amendment desired is concise and clear and just what the Government contends Congress intended to enact and did enact.

On March 9, 1918, these two amendments to the Trading with the Enemy Act were submitted to the Senate as a Committee of the Whole, upon consideration of the Bill H. R. 9867, which was the Urgent Deficiency Appropriation Bill for the fiscal year ending June 30, 1918. These two provisions under consideration were inserted as amendments to this bill under the heading of "Alien Property Custodian." (Congressional Record, Vol. 56, pt. 4, pp. 3262 and 3263.)

On March 11, 1918, the Senate was again considering these matters, and Senator Martin, chairman of the Committee on Appropriations, in explaining the purpose of this amendment to Section 12, said:

> This amendment simply provides that this property *shall be put fairly on the market;* that it shall be sold; and that the proceeds shall be put in the Treasury of the United States and invested in liberty bonds or the proceeds in some way used for the prosecution of this war, which has been precipitated upon us by the barbarous conduct of the German Empire. We do not go at all into the policy after the war. (Congressional Record, Vol. 56, pt. 4, p. 3319.)

Senator Underwood, during the discussion before the Senate on March 11, 1918, stated that the amendment to Section 12 then before the Senate simply put back the Trading with the Enemy Act as it stood when the Senate first passed the original act in 1917, when it was admittedly an act of seizure and conservation. (Cong. Rec. Vol. 56, pt. 4, p. 3322.)

At this same session of the Senate, Senator Frelinghuysen offered an amendment to this amendment of Section (12) under consideration, which later developed into the two provisos found in the amendment as enacted. (Congressional Record, Vol. 56, pt. 4, p. 3328.)

On March 23, 1918, Senator Underwood presented to the Senate the report of the Committee of Conference on amendments to the Bill H. R.

9867. In this conference, the amendments to t
Trading with the Enemy Act, the first as to t
docks and the second as to the fourth paragraph
Section (12) were at last agreed upon in the form
which they were finally passed and approved
the President. (Congressional Record, Vol. 5
pt. 4, p. 3942.)

In discussing these changes, Senator Underwoo
stated as follows:

> Mr. Underwood. I see no reason why th
> report should go over. There are no gre
> changes in the bill as it passed the Senat
> In the alien property custodian provisi
> the conference report brings the bill ba
> substantially as it passed the Senate. Th
> only exception to it is that it strikes out th
> original amendment offered by the Senat
> from New Jersey (Mr. Frelinghuysen) an
> in lieu thereof the House conferees propos
> a suggestion, which was agreed to, provi
> ing for all the Frelinghuysen amendme
> provided for in the way of a public sale, bu
> in addition to that, providing that the
> should be advertisements in the newspaper
> that the property should be sold where th
> larger portion of the property was locate
> and that it should not, under pains an
> penalties of the law, be sold to an alie
> enemy. That is all the change.
>
> Mr. Gallinger. Did I understand th
> reading of the conference report correctl
> that, notwithstanding the provision is f
> public sale, the President may order th
> property sold otherwise? If so, I shoul

like to know why that provision is modified to that extent?

Mr. UNDERWOOD. I was coming to that. The only modification in that respect is that it does not leave everything to the Alien Property Custodian. The proposed change is "when the President shall determine," not "prescribe." As I understand, when we provide that the President shall "prescribe" he may make rules and regulations, but the change here is that "when the President shall determine," which *will require the personal act of the President.* That change has been made because there may be conditions arise in the disposition of this property where it would be impossible to sell it at public auction without it possibly going into the hands or control of alien enemies or persons who are unfriendly. The committee of conference thought that was wise and that it was within the line of the original bill as it passed the Senate, because when the alien property act originally passed the Senate there was no limitation whatever. Now, this merely gives ~~the right to~~ the Alien Property Custodian in an exceptional case to appeal to the President to allow a certain portion of such property *to be sold not by public auction but by negotiation.* Then the President must indicate in writing why he has done so. I think the situation is thoroughly guarded from the standpoint of the Senator from New Hampshire.

> Mr. Gallinger. Is it specifically provided that the President shall give his reasons in writing for the exception?
>
> Mr. Underwood. It is provided that he shall give his reasons in writing. It says he shall determine and state his reasons in writing. (Congressional Record, vol. 56, pt. 4, p. 3944.)

Further discussing the amendment to Section 12 of the Act, Senator Underwood said (Congressional Record, vol. 56, pt. 4, p. 4003):

> As to the item referred to by the Senator from New Jersey, the only changes made in that item were to specify more distinctly the terms and conditions of public sale and to authorize the President, when he directed that it should be done and gave in writing his reason for so doing, to set aside one of these sales.
>
> The personal action of the President is required to accomplish that result and he is required to give in writing his reasons therefor. It seems to me clear that there ought to be that opportunity under the Act. Cases may arise when you can not reach *the desire of the Government to protect this property or the desire of the Government to take it away from an alien enemy by public sale*, and if the President of the United States, acting himself and not through an agent, determines that it is necessary to be done, and in writing gives his reasons for doing so, it seems to me that is ample protection to the public and to the property.

On March 26 these amendments were discussed in the House. Mr. Shirley, in presenting the conference report, with reference to the amendment to Section (12), said (Congressional Record, vol. 56, pt. 4, p. 4083):

> *We also recognized the desirability of safeguarding, so far as it can be done, the disposition of this property, which runs into the hundreds of millions, having in mind the major purpose of the legislation,* and that presented the real problem to the conference, a problem that was not entirely easy of solution. We present to you the report in the belief that it has been intelligently solved. We provide that when the property is sold it shall be sold at public sale, after public advertisement, where the property or the major portion of it is situated, to the highest bidder, who shall be an American citizen. That is the broad rule that we lay down as being the policy that ought to be and shall be followed in all these cases where there is not some compelling reason otherwise. But, having laid down that general principle, we provide that the President, for reasons stated, shall have the right to order the disposition of this property by private sale or otherwise——
>
> Mr. LONGWORTH. Will the gentleman yield?
>
> Mr. SHERLEY. In a moment. And we further provide that after the sale has been made the Alien Property Custodian may upon order of the President set aside such

> sale for reasons stated, and subsequently t
> property may be sold by public sale or othe
> wise, as the President may direct. In oth
> words, we state as the judgment of the Co
> gress that the property, unless there be sp
> cial reasons to the contrary, when sold, sh
> be publicly sold, but we give to the Preside
> the power in the interest of the Nation
> declare that it shall be disposed of otherwi
> when in his judgment it is necessary so
> do in order to protect national interes
> Now I yield to the gentleman.

* * * * *

After this amendment was passed, Mr. Palm
then Custodian, in a hearing before the Hou
Committee on Interstate and Foreign Comme
on Bill H. R. 12338 (p. 35) in June, 1918, made t
following statement on this amendment.

> Therefore our plan is to keep these co
> porations going, in the same efficient mann
> as they have been operated heretofore, wit
> out cutting prices or cutting down profi
> entering into the usual competition
> American business, and finally sell them n
> for junk, which they would be sold for
> we smashed them in the meantime by th
> kind of treatment, but for a fair a
> adequate price, which we can put into t
> Treasury and say to the enemy owners wh
> the war is over, "*We will deal with y*
> *about this money we have got in t*
> *Treasury, which is the fair value of yo*
> *property, and not about the property itsel*
> [Italics ours.]

If there be any doubt from the language of the act itself, this record should be conclusive as to its purpose and intent, and therefore as to its proper construction. The intent as expressed by the unanimous voice of those who drew and enacted the statute is in direct conflict with the construction thereof given by both of the lower courts.

5. In the administration of the act the construction contended for on behalf of the Government has been uniformly adopted with the sole exception of the transactions now under review

Very soon after the amendment of March 28, 1918, was adopted the then Alien Property Custodian, at whose suggestion and request the amendment was made, created in his organization a Bureau of Sales and, under date of June 6, 1918, promulgated Rules and Regulations to govern the sales to be made under the authority of this amendment. (P. Ex. 3, R. Vol. 8, p. 14.)

This order of June 6, 1918, in stating the purpose and object of creating these committees and promulgating these rules, says:

> It is necessary that every precaution shall be taken to enable properties to be sold fairly and for a proper price, without any possibility of favoritism or undue advantage in favor of any particular purchaser. The experience and views of the Advisory Committee will be especially desired in guarding against any such possibility. (P. Ex. 3, Rec. Vol. 8, p. 16.)

The order then states in considerable detail th general plan for making of sales and consistentl and completely requires the taking of every precaution to insure a fair sale and realization of the fai value for properties at sales, such as any truste or fiduciary, realizing fully the responsibilities o the trust imposed upon him, would take. In eac case public accountants were to make an auditor' report showing the values of the properties no only for the information of the Custodian, but fo the benefit of prospective purchasers, and it is expressly stated that—

> Under no circumstances will any person i the employ, or connected with the organization of the Alien Property Custodian, b permitted to bid for or purchase any property, or be interested, directly or indirectl in any such purchase or in any corporatio or syndicate interested therein. (P. Ex. Rec. Vol. 8, p. 21.)

In the course of carrying out this plan, it wa found in a considerable number of cases that th properties had been sold for what was considere less than a fair value thereof. The record discloses numerous cases in which, on the order of th President, sales were set aside for the expresse reason that the purchase price was inadequate and, so far as the record in this case disloses, thes transfers to the Chemical Foundation constitut the only disposition of property made withou reference to value or without any attempt made t ascertain what the value might be.

Mr. Palmer, in his report to the President, in speaking of the legislative intent as expressed in the Trading with the Enemy Act, says:

> The Trading with the Enemy Act makes ample provision for the full protection of American citizens whose just claims or property rights may be affected by the administration of the Alien Property Custodian's office. Property in his hands is in *custodia legis* in a large sense, and the Government can be relied upon at the conclusion of the war to make adequate provision for the just disposition and distribution of all this property. (D. Ex. 30, R. Vol. 11, p. 2110.)

This language expresses the interpretation of the Act for which the Government now contends, and this language is directly in conflict with the theory, for the first time advocated upon the trial of this cause by the learned counsel for the appellee, to the effect that the Custodian, "If he saw fit to give the property away; if he saw fit to give these patents to the manufacturers of munitions or otherwise, it was clearly within the scope of that power, and he was to go untrammeled." Rec. Vol. 1, p. 820.)

In advocating the continuation of the liquidation and selling of enemy-owned business, Mr. Palmer says:

> Again, enemy property which is now being sold was all demanded and taken over by the Alien Property Custodian many

> thereof, and of kindred or similar chemical materials and products, had been engaged in the formation and development of plans for the complete monopolization and control of the dyestuffs," etc.

That is the general allegation. Then they go on and say in the twentieth paragraph:

> "Complainant is further informed, believes and therefore avers that by or before June, 1918, the aforesaid plans and purposes for the complete control and monopolization of said dyestuffs and chemical industry had developed to a point where the essential basic and intermediate ingredients in the manufacture of dyes * * * were controlled by a limited number of corporations."

Then there are mentioned some corporations, none of which is either of these two concerns that we have just been speaking of. Then it goes on to say:

> "Further control of said industry had then been or was then being effected and accomplished through or by means of agreements between said corporations"——

meaning those that have been mentioned——

> "and other persons, firms, and corporations engaged in like business in America and foreign countries, and through or by means of the trade organizations, among others the American Dyes Institute, the Chemical Manufacturers' Association of the United States, the Textile Alliance, Inc., and their affiliated organizations."

Mr. Anderson: It will be shown that the two were then in process of merger and affiliation.

The Court: I beg your pardon?

Mr. Anderson: It will be shown that the American Dyestuff Manufacturers' Association and the

> months before the armistice was signed, and the jurisdiction of the Alien Property Custodian having attached there can be no legal reason why the signing of the armistice should operate to prevent the change of character of that property which is the only effect of the sale. *The proceeds, constituting the fair and adequate value of the property, are deposited in the Treasury of the United States and held for precisely the same uses as the property itself was held.* (D. Ex. 30, R. Vol. 11, p. 2116.) [Italics ours.]

There could be no clearer expression than this of the contention of the Government now being made. A substitution of the fair value of the property in cash for the property itself is what takes place whenever upon a foreclosure action or other proceeding property in the hands of the court is sold, free from liens, and the claims thereafter settled and paid out of the proceeds, or where a trustee, acquiring tangible property from a testator, sells the property and invests the proceeds in bonds or other securities, in which by law or by the terms of the will he is authorized to invest and reinvest. This construction gives full force and effect to the amendment of March 28, 1918, and still preserves intact the clearly expressed purpose of the Act, which was to leave for settlement after the termination of the war final disposition of the property.

The precise question now under discussion was, on June 14, 1919, formally ruled upon by Mr.

mer after he became Attorney General. (31 ns. Atty. Gen. 463.) The Secretary of War ded to purchase from the Alien Property Cusian certain enemy-owned patents (including the ipp Gun Patents), and requested a ruling, first, ether the Government could acquire title, and, ond, whether the patents could be acquired for ominal consideration or whether the Governit would have to pay full value. This opinion en by an Attorney General who up to three nths before had been Custodian, who drafted amendment to section 12 of the act and had ninistered it for one year, was written within months after the first and principal assignit in this case was made, is too long to be ted in full, but the pertinent part thereof fols:

DEPARTMENT OF JUSTICE,
June 14, 1919.

SIR: I have the honor to acknowledge receipt of your letter of May 10, 1919, informing me that the War Department is considering the purchase of United States patent No. 923052, which is owned by the Krupp Co. of Essen, Germany, and which dominates a patent covering the split trail construction of the United States Model 1916, 75-m/m. field gun. You state that the Alien Property Custodian has been requested to seize this Krupp patent, and it is inferred that he has done so. You ask my opinion whether the Trading with the Enemy Act and its amend-

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ments authorize the Alien Property Custodian to sell this patent to the War Department acting for the United States either for a nominal consideration or for a fair and substantial consideration. You further ask me whether such a sale would deprive the Krupp Co. of such compensation as it would otherwise be entitled to for the use which the United States may already have made of its patent.

Under the Trading with the Enemy Act as originally enacted the Alien Property Custodian was vested with the powers of a common law trustee over property which came into his possession and had power to sell such property—"if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded." (40 Stat. 423, sec. 12.)

This language clearly did not authorize a sale for a nominal consideration.

Section 12 was amended by the act of March 28, 1918. (40 Stat. 460.) As so amended the Custodian remained vested by it with all of the powers of a common law trustee "and in addition thereto" was authorized in broad terms to manage and sell property which came into his possession as though he were the absolute owner. This power, however, was to be exercised under the supervision and direction of the President and under such rules and regulations as the President should prescribe, and it was provided that sales under the Act, except sales to the United States, should be made at public auction and after advertisement, unless the President should expressly otherwise determine.[1] The chairman of the Committee on Appropriations of the House of Representatives, in reporting the action of the conference committee which had recommended this amendment to section 12, stated this proviso was intended to safeguard the disposition of enemy property (56 Cong. Rec. 4083). As a part of the same act of March 28, 1918, the United States was authorized to acquire certain enemy property belonging beneficially to certain German steamship lines, and was expressly required to make just compensation therefor. Reading together the manifest intention of the original act with the amendment considered in the light of attending consequences, *I am of opinion that it was the intention of the Congress that any disposition by sale of property which comes into the possession of the Alien Property Custodian should be only at a substantial and fair consideration, the proceeds, of course, under other provisions of the Act being paid into the Treasury of the United States, there to await the further action of the Congress.* **[Italics ours.]**

---

[1] The President did by Executive orders, dated July 16, 1918, and December 3, 1918, make rules and regulations governing sales by the Custodian, but nothing contained in these alters the conclusions herein expressed.

> In view of the express language of the act of March 28, 1918, I am of opinion that the Alien Property Custodian can sell any property, of which he becomes possessed, to the United States, but, as I have stated, *I think he can not sell it for a merely nominal consideration, but must require the payment of an amount which fairly represents the value of the property to so transfer it.* [Italics ours.]
>
> * * * * *
>
> Respectfully,
>
> A. Mitchell Palmer.
>
> To the Secretary of War.

It is difficult to harmonize this opinion with the views expressed by Mr. Palmer as a witness in this case. In any event, to the extent that administrative construction of an Act has value in the Courts, this record should be conclusive.

6. All of the decisions which have been rendered under the Trading with the Enemy Act, or where that act has been called in question, have held the act to be not an act for the confiscation of enemy property but for the conservation of it, subject to further disposition by Congress

A number of decisions by various Courts have expressly stated that the act was not a confiscation measure. Some of these may be mere *dicta*, but the uniformity with which the courts have reached this result is extremely persuasive.

See:

Banco Mexicano v. *Miller et al.*, 289 Fed. 924.

Stoehr v. *Wallace*, 269 Fed. 827; affirmed 255 U. S. 239.

Kahn v. *Garvan*, 263 Fed. 909.

Mayer v. *Garvan*, 278 Fed. 27.

In re Greggs Est., 266 Pa. 189; certiorari denied 252 U. S. 588.

Biesantz v. *Royal Arcanum*, 106 N. Y. Misc. 545.

Techt v. *Hughes*, 229 N. Y. 222.

In each of these cases the Court declared that Congress had not by this statute adopted a policy of confiscation. We can find no case in which any court has ever suggested that this statute authorized or contemplated confiscation of enemy property, directly or indirectly, until the decisions of the lower courts in this case.

7. The construction given by the courts below would render the act unconstitutional

This point involves the discussion of Assignment of Error No. IX (Rec. Vol. 7, pp. 5053–5054), which is considered at this time in order to complete the discussion of the construction of the statute.

If an Act of Congress is susceptible of two constructions, one of which would render the Act unconstitutional and under the other it would be valid, the latter will be accepted.

Sinking Fund cases, 99 U. S. 700, 718.

Knights Templars Co. v. *Jarman*, 187 U. S. 197, 205.

United States v. *Delaware, etc., Co.*, 215 U. S. 366, 407.

Plymouth Coal Co. v. *Penna.*, 232 U. S. 531, 546.

If the construction of this Act adopted by the courts below be accepted, which construction is necessary to sustain the transactions in this case, then the Custodian, acting under the supervision and direction of the President, could, under a power of sale, transfer any property in his custody to any person or corporation which he might select, for no consideration or a nominal consideration, upon the ground that he thought it would promote the interest of American industry or otherwise serve the public interest. The District Court referred to such a transaction as a "devotion" of the property "to the public interest," which is but another way of saying that as to the owners it is a clear confiscation and as to the United States a donation of property in its custody and in which it has at least a contingent interest, to private industry as a subsidy. Aside from the fact that no authority for such a transaction can be found in the language of the Act, it would seem that had Congress attempted to vest any such powers in an executive officer the Act would have been unconstitutional.

Confiscation is in derogation of common right and of the uniform practice of civilized nations for two hundred years prior to the passage of the Act. The intent of Congress to effect this result, therefore, must be clearly and unmistakably expressed.

Murray v. *Charming Betsy*, 2 Cranch, 64.
Brown v. *United States*, 8 Cranch, 110.
Ware v. *Hylton*, 3 Dallas, 199, 254, 255.
Kent's Commentaries, Section 1 et seq.
Alexander Hamilton Camillus Letters Nos. XVIII, XIX.
Mrs. Alexander's Cotton, 2 Wall. 404.
Hanger v. *Abbott*, 6 Wall. 532.

President Wilson's statements:

Address to Congress, April 2, 1917. (P. Ex. 730, Rec. Vol. 10, p. 1979.)
Message to the Pope, August 27, 1917. (P. Ex. 731, Rec. Vol. 10, p. 2003.)
Address to Congress, December 4, 1917. (P. Ex. 730½, Rec. Vol. 10, p. 1991.)

The Trading with the Enemy Act did not provide for confiscation, or establish any machinery for that purpose. It provided for three steps or phases in dealing with enemy property.

(*a*) There was to be a seizure of the property either under order of the President or by voluntary surrender, all of which was provided for in Section 7.

(*b*) When the property was seized or surrendered it came into the possession and custody of the Custodian with power of administration and sale. The power of sale did not effect a disposition of the beneficial interest, but a sale only effected a change of form or character. It matters not what was the purpose of the sale, the legal character of the transaction is the same. These acts of administration, including sale, did

Dyes Institute were then in process of negotiation for merger and were affiliated in the operation.

THE COURT: On the statement of counsel, what have you to say, Mr. Kresel?

MR. KRESEL: I have nothing to say, your Honor. Of course, if it is admissible at all, as your Honor has ruled, and if they say that they will show these two concerns were affiliated with some of those that are mentioned, I assume they have a right to put it in.

THE COURT: You may proceed, Mr. Galloway.

MR KRESEL: Mr. Galloway, have you a reply to this last exhibit you have put in?

MR. GALLOWAY: I am just reading it now. I have just reached it. The plaintiff next offers in evidence a letter from the Secretary, H. E. Danner, of the National Cotton Finishers' Association, to Mr. C. C. Bennett, Secretary of the American Dyestuffs Association, acknowledging the receipt of the above plan and commenting upon it.

THE COURT: Admitted under the same ruling.

Received in evidence and marked "Plaintiff's Exhibit No. 22." (*See Exhibits, Vol. I, page 75.*)

MR. BOGGS: What is the date of it, Mr. Galloway?

MR. GALLOWAY: Dated November 20th, 1918. (Reads Plaintiff's Exhibit No. 22.)

We next offer in evidence a letter from H. E. Danner to Frank Hemingway, Esq., member of the Executive Committee of the American Dyes Institute, dated August 1st, 1918.

MR. KRESEL: We object to this on the ground, your Honor, that it has upon its face no reference to the alleged conspiracy or to the defendant. I will submit it to your Honor in an instant. As I see it, it is a communication between some of the officers of the American Dyes Institute with reference to the appointment of a committee to urge upon the War Industries Board the importance of protecting the indusnot in contemplation of law prejudice or affect the rights of the original owner in any way (*Garvan* v. *Shares of Stock,* 276 Fed. 206), and being acts of internal administration, did not as between the Government and the purchaser involve the war power any more than the administration of any other public property involves the war power.

(*c*) The third phase was the final disposition of the property after the war, which was expressly reserved for future legislation of Congress in section 12 of the Act. The exercise of this power and the accomplishment of this third and distinct phase of the matter necessarily required that the management and sales of this property should be so conducted as to have the property or its equivalent in law on hand after war for disposition as Congress might then determine and negatived any procedure which would operate as a confiscation or "devotion to the public interest," or any other "final disposition" of the beneficial interest in the property.

A sale of property of another by the Government under conditions which destroy its value, or a "devotion" of property "to public use" by taking assumed benefits to the public as consideration for the transfer, as both Courts below held was done in this case (Rec. Vol. 7, pp. 4914, 4918, 5025, 5026), is nothing but confiscation.

Smyth v. *Ames,* 169 U. S. 466.

Reagan v. *Farmers, etc., Co.,* 154 U. S. 362.

Chicago, etc., R. R. Co. v. *Minnesota,* 134 U. S. 418.

Knoxville v. *Water Co.,* 212 U. S. 1.

Minnesota Rate Cases, 230 U. S. 352, 434.

Houston v. *Southwestern, etc., Co.,* 259 U. S. 318.

No power could have been vested in executive officers to confiscate property in their discretion under our law for it would have involved a transfer to them of the political and legislative functions of Congress to determine upon confiscation and the property to be confiscated. The Act as so construed would have been clearly unconstitutional.

The Act as construed by the Courts below would also be unconstitutional in that it would have empowered the Custodian to confiscate the property of American citizens not having enemy status whose property was erroneously seized and transferred for nominal consideration or for no consideration as the Courts below held might be done. We do not deny that the Government may destroy the property of American citizens located in the military zone where such act is in their judgment necessary in the prosecution of war. We do not deny that it may seize the property of American citizens who by virtue of their residence or acts acquire the status of enemies, and deal with such property as enemy property. But the property of American citizens not "enemies," which is located outside of the military zone, is under the protection of the Constitution as much in time of war as in time of peace.

United States v. *Lee,* 106 U. S. 190.
Floyd Acceptances, 7 Wall. 666.
Ex parte Milligan, 4 Wall. 113.
United States v. *Cohen Grocery Co.,* 255 U. S. 81.

It was inevitable that errors should be made in the seizure of property, under this act, and that the property of citizens entitled to such protection should be erroneously seized. Section 9 was inserted in the Act to give them their remedy.

Stoehr v. *Wallace,* 255 U. S. 239.

But when the power of general sale was given by amendment to section 12 it was recognized that property might be seized and sold without knowledge of the owner, although he was not an enemy. It was therefore provided by amendment to section 7 (c) that his rights should be transferred to the proceeds which were in law deemed the equivalent of the property. The courts have held that this provision made the act Constitutional for the reason that the proceeds of a fair sale would be in law the equivalent of the property taken.

Garvan v. *Shares of Stock,* 276 Fed. 206, 283 Fed. 746.

If, however, as held by the court, and was done in this case, property could be seized one day and sold the next for a nominal consideration or for no consideration, or devoted to "the public use," then there would be nothing in the place of the property of nonenemies so seized and transferred. It would be a clear taking of private property without compensation in violation of the Constitution. (See authorities cited supra.)

This is exactly what took place in this case. Numerous instances were presented of the seizure and sale to appellee of patents of American citizens, non-enemies, without their knowledge. (Record Vol. 2, pp. 1061, 1062; Rec. Vol. 3, pp. 1531, 1532, 1570 to 1572; P. Ex. 209, Rec. Vol. 8, p. 498; P. Ex. 214, Rec. Vol. 8, p. 508; P. Ex. 487, Rec. Vol. 9, pp. 907 to 922.) In many instances the property was returned by the appellee, but if the transaction was valid there was no obligation to so do. An American citizen, while fighting for his country, might thus have his property taken and given away or "devoted to public use," and if the construction of the act by the courts below be sound he would have no redress. The Act as so construed would be unconstitutional.

When we come to consider the other aspect of this matter in the light of the conditions which have been reviewed, the invalidity thereof seems manifest.

The courts found in effect that the transaction was a devotion of the property to the public use even though thereby its monetary value for purposes of sale was substantially destroyed, and th part of the consideration received by the Cust dian was the establishment of this industry in th United States. (Rec. Vol. 7, p. 5042.)

This was actually and in legal effect a grant subsidy or bounty of the property to the privat firms and corporations owning the purchasing co poration, and thus obtaining the beneficial owne ship in and use of this property free from a interest in or control of the same by the Unite States.

We shall later consider whether this was "public use." The first question is whether the was or could have been authority vested in Execu tive offices to make such a grant of a subsidy o bounty at all.

This Court has indicated great doubt as t whether Congress itself can grant a bounty o appropriate public property for the promotion o private commercial industry.

United States v. *Realty Co.,* 163 U. S. 42
United States v. *Carlisle,* 5 App. D. C. 13
Field v. *Clarke,* 143 U. S. 649.

The State Courts have held that legislatio granting a subsidy to private industry is unconsti tutional.

Michigan Sugar Co. v. *Auditor Genera* 124 Mich. 674, 83 N. W. 625.

Minnesota Sugar Co. v. *Iverson,* 91 Min 30, 97 N. W. 454.

Oxnard Beet Sugar Co. v. *State,* 73 Nebr. 57, 102 N. W. 80.

People v. *Township Board of Salem,* 20 Mich. 452, 4 Am. Rep. 400.

But if such power is vested in Congress, it can only be exercised by Congress as a legislative function, and can not be delegated to or exercised by executive officers.

Field v. *Clarke,* 143 U. S. 649.

United States v. *Eaton,* 144 U. S. 687–688.

United States v. *Maid,* 116 Fed. 650.

United States v. *Blasingame,* 116 Fed. 654.

United States v. *Matthews,* 146 Fed. 306.

Since Congress could not delegate this legislative function (even though it was possessed by Congress) to Executive officers to grant the beneficial interest in this property as a subsidy to or for the benefit of private industry, or even to confiscate and appropriate or dedicate it to a public use, it would seem entirely immaterial whether the Custodian (or even the President) thought it was wise to do so or not. It was a question of authority or power in the *disposition* of property held by the Government, and the power to do this could not and did not exist in executive officers.

It must be clear that the Act did not seek to confer any such power. It *authorized a sale.* The orders under which the Custodian acted (assuming them to be valid) only authorized sales. Both Courts below held that these transactions were sales. (Rec. Vol. 7, pp. 4910, 4914, 5022.) Congress reserved for future legislation the disposition of the beneficial interest. Neither the Act nor the orders suggested or sought to confer any authority to grant subsidies or bounties to anyone, or to devote the property to "a public use," or a private use. The whole Act is a denial of any such purpose or power.

The fact that these patents were once owned by persons who were determined to be enemies gave the Government power to seize them under Act of Congress during war, and if they had been confiscated they would have become public property owned by the Government. This power could not be exercised for private benefit.

Miller v. *United States*, 11 Wall. 268.
Mrs. Alexander's Cotton, 2 Wall. 404.

The nature of the property was in no way changed by the seizure and custody. It remained private property in Government custody and subject to Government control.

But it would seem clear in any event that the transactions in question did not constitute a "devotion of the property *to public use*."

A public use is a term clearly defined in law. It is a use which is governmental or *quasi* governmental in character, the latter being commonly illustrated in public service corporations. The devotion of property to private commercial enterprise, however beneficial it may be to the country indirectly, is in no sense a public use.

> *Loan Assn.* v. *Topeka,* 20 Wall. 655.
>
> *Cole* v. *LaGrange,* 113 U. S. 7.
>
> *Kaukauna, etc., Co.* v. *Green Bay, etc., Co.,* 142 U. S. 254.
>
> *Fallbrook District* v. *Bradley,* 112 U. S. 155.

In the case of *Loan Association* v. *Topeka,* 20 Wall. 655, this question was fully considered: The city of Topeka issued bonds purporting to be payable to a bridge manufacturing and ironworks company of Topeka to aid and encourage that company in establishing and operating shops in the city of Topeka. The holder of certain of the bonds brought an action against the city of Topeka on interest coupons attached. In the opinion Mr. Justice Miller discusses the question involved and decisions at considerable length, and distinguishes cases sustaining the validity of bonds voted to aid the construction of railroads and similar enterprises on the ground that such corporations and their businesses serve a public purpose and were affected with a public interest.

In his opinion, at page 665, he says:

> But in the case before us, in which the towns are authorized to contribute aid by way of taxation to any class of manufacturers, there is no difficulty in holding that this is not a public purpose, as we have

> been considering. If it be said that a benefit results to the local public of a town by establishing manufacturers, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good and equally deserving the aid of the citizens by forced contributions. No line can be drawn in favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or town.

At another point in the same opinion (p. 664) it is said:

> To lay with one hand the power of the Government on the property of the citizen and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.

It would seem that further discussion of this question is unnecessary. The Custodian held this property as an officer of the Government to manage the same with power of sale until Congress should decide upon its final disposition. It was in his hands subject to control by the Government and subject to future legislation of Congress. He undertook under form of sale for a nominal consideration to transfer the property from the present control and future action of Congress to a private corporation of which he was President and which was officered by his assistants. That corporation now seeks to hold this property against the Government and to justify this transaction on the ground that it was done to promote the dye and chemical industry, a purely private business, and that the property of that industry might be of benefit to the country. The same might be said of any industry.

We submit that this action was unauthorized by statute and void against the United States—

(1) Because Congress could not confer and did not undertake to confer upon the executive officers of the Government the power to confiscate this property, and this was first in effect a confiscation thereof.

(2) Because Congress could not confer, and did not undertake to confer, upon executive officers of the Government the power to grant this property as a subsidy or bounty for the aid or development of any commercial enterprise or industry, and that the attempted grant in this case was clearly a subsidy or bounty to promote or in aid of industry.

(3) That the Trading with the Enemy Act, as construed by the court on this point, would be clearly unconstitutional for reasons which have been discussed.

try. If I have not properly stated the contents of it, Mr. Galloway will correct me.

THE COURT: I will hear you if you have anything to say, Mr. Galloway, because I am not sure that I understand it and I am not sure that I understand this line of testimony. I mean to say the real purpose of the testimony offered; as was said by Colonel Anderson in opening, this is not a trial under the Sherman Act, nor do I understand at the moment that if this is a conspiracy or tends to support a conspiracy, why every Manufacurers' Association in the United States would not be subject to indictment.

MR. ANDERSON: I will just say this: We would like to ask your Honor to keep in mind the ultimate point. We will show that this combination, the dyestuffs people, the dyestuff industry, controlled 90 per cent, by their own statement, of the industry in the United States, and we are now showing the development of their agreement; that their purpose was, and one of their main purposes, to get control of these great patent interests for the purpose of protecting or as one of the elements of the protection of a monopolistic condition.

The power of preventing importations in international commerce is the same as anything else. If your Honor will permit me, we will show that it was a part of the conspiracy also to get this property for, not the public purposes now, except that the advancement of all industry is of benefit to the public, legitimate advancement—that they had an open price association, that they had all the elements of a monopolistic situation; but further, even if there is not such charge in the Bill, every word of this evidence, I submit with deference to your Honor, would be admissible on the further ground that I discussed at the time that I said I was not undertaking to prove a Sherman antitrust case or monopoly and was not going into that

CONCLUSION ON POINT I

The construction of this Act contended for by the Government is in accord with the language of the Act, would give full force to the power of sale, accomplish to the fullest extent the intent of Congress, and would preserve this property or its proceeds representing the fair value thereof in possession of the Government for final disposition by Congress after the war, as the Act directs. It is supported by the legislative history of the Act, the administrative construction, the decisions of the courts, and the enlightened policy of this and other civilized nations. As so construed the Act would be constitutional.

The construction contended for by the appellee and adopted by the Courts below is not sustained by the language of the Act; it converts a simple power of sale given to a public officer in trust into a discretionary power of confiscation, and of donation or subsidy to private industry; it effects a final disposition of the property and defeats the express reservation of power to Congress to dispose of the property after the war. It is contrary to the legislative history and administrative construction of the Act and to the decision of every court which has passed upon the Act prior to this case. It would clearly render the Act unconstitutional.

It is submitted that the construction adopted by the Courts below is therefore erroneous, and should be reversed; that since the transactions under review in this case were clearly unauthorized by and contrary to the Act as properly construed, they are unlawful and void as against the United States, and should be set aside; and that relief should be granted to the United States in accordance with the prayers of the bill.

POINT II

The Court erred in holding that the alleged private sales were authorized by the orders of Frank L. Polk of February 26, 1919, and April 5, 1919; that the legal defects therein, if any, were cured by ratification of the President; and that the sales were made in accordance with said orders

This point involves a consideration of assignments of error, Nos. V and VI. (Rec. Vol. 7, pp. 5051, 5052.)

1. The Executive Order of December 3, 1918, seeking to vest in Frank L. Polk "all power and authority" to order private sales of property, which was vested in the President by Section 12 as amended, was unlawful and void

The sales and assignments involved in this suit were all private sales. The entire authority of the Custodian to sell property in his custody was contained in Section 12 of the Trading with the Enemy Act as amended by Act of March 28, 1918. This section, as amended, expressly required that all sales by the Custodian should be at public auction to the highest bidder after due advertisement, etc., "unless the President, stating the reasons therefor in the public interest, should otherwise determine."

It is conceded that this proviso gave the President authority to order private sales "stating the reasons therefor in the public interest."

The question here presented is whether this was lawfully done as to the private sales in question. If not, there was no authority to make private sales and the same were void for want of power through failure to comply with the conditions precedent in the Act.

United States v. *Jonas,* 19 Wall. 598.

It is admitted in this case that the President did not himself determine upon private sales of these properties. The appellee claims in its answer and the Courts below held that by the Executive Order of December 3, 1918, the President vested in Frank L. Polk the power and authority to determine upon a private sale of property under this Act by the Custodian, and to state the reasons therefor in the public interest. Mr. Polk was at that time Counsellor of the Department of State. It is admitted that the President did issue such an Executive Order of December 3, 1918 (Rec. Vol. 1, p. 547), and that Frank L. Polk by Orders dated February 26, 1919 (Rec. Vol. 1, p. 551), and April 5, 1919 (Rec. Vol. 1, p. 554), did undertake, for the reasons stated in said orders, to authorize the Custodian to substitute a private for a public sale of the respective properties in controversy. The question of law then arises as to whether this action of the President and of Frank L. Polk was valid and lawful and operated to authorize a private sale of the properties.

It must, of course, be admitted that an act of an officer beyond the powers lawfully vested in him can not bind or estop the United States.

> *Hunter* v. *United States,* 5 Peters, 173.
> *The Floyd Acceptances,* 7 Wall. 666.
> *Humboldt* v. *Long,* 92 U. S. 642.
> *United States* v. *Alexander,* 110 U. S. 325.
> *United States* v. *San Jacinto, etc., Co.,* 125 U. S. 274, 307.

The principle is well stated in the case of *United States* v. *Jonas,* 19 Wall. 598, 604, upon a state of facts very similar to those in the case at bar. The court held the sale invalid, and at page 604 said:

> It is manifest, if any effect is to be given the act invoked by the solicitor as the basis of his authority, that he could not proceed at all without the approval of his superior. The legislation of Congress would be wholly ineffectual to prevent the evils which it was designed to remedy if this approval should not be treated as a substantial requirement, a thing essential to give validity to the sale. The question is one of power, and the power is given to sell when the Secretary thinks it advisable to do so. His approval is a condition precedent without which the solicitor has no authority whatever to act.

The General rule with respect to the delegation of powers vested in a public officer or agent is so well settled that it does not require extended cussion or citation of authorities. In *Sug on Powers,* page 266, the principle is stated follows:

> So, wherever a power is given over real personal estate, and whether the execut of it will confer the legal or only the equ able right on an appointee, if the power pose a personal trust and confidence in donee of it to exercise his own judgm and discretion, he can not refer the power the execution of another.

This is a Government of limited power, and officers of the Government are only agents of law for the exercise of the powers granted them. The extent and limit of their powers fixed by law.

Floyd Acceptances, 7 Wall. 666, 676.
U. S. v. *Lee,* 106 U. S. 196, 220.
Ex parte Milligan, 4 Wall 113.

Executive powers are divided into seve classes. There are political powers, which President is required by the Constitution or by law to exercise, and which he can exercise in p son, or to a limited extent (where the exercise personal discretion is not required) through appropriate offices of the Government created Congress as provided by the Constitution. Wh so exercised, the acts of such offices are deemed acts of the President himself. There are admini trative powers which may be exercised in the sa way. But there are certain other powers as to which a personal trust is imposed in the President, and a personal discretion or judgment is to be exercised by him. With respect to these powers the President is required to determine in his own opinion or in his own judgment when the power shall be exercised, or to determine certain facts requiring his personal act. Such powers can not be delegated.

In the leading case of *Martin* v. *Mott*, 12 Wheat. 19, 30, the Supreme Court, in referring to a discretionary power of this kind, says:

> Whenever a statute gives a discretionary power to any person to be exercised by him upon his own opinion of said facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts.

In the case of *Runkle* v. *U. S.*, 122 U. S. 543, 557, the Supreme Court says:

> Here, however, the action required of the President is judicial in its character, not administrative. As Commander-in-Chief of the Army he has been made by law the person whose duty it is to review the proceedings of courts-martial in cases of this kind. This implies that he is himself to consider the proceedings laid before him and decide personally whether they ought to be carried into effect. Such a power he can not delegate. His personal judgment is required, as much so as it would

have been in passing on the case if he had been one of the members of the court-martial itself.

To the same effect see:

Anderson v. *Crawford,* 265 Fed. 504–506
United States v. *Page,* 137 U. S. 673.
United States v. *Fletcher,* 148 U. S. 84.
Coquard v. *Chariton County,* 14 Fed. 203

The difficulty, if any, arises in the application of this settled principle. Applying the rule stated by the Supreme Court in *Martin* v. *Mott,* it seems clear that the power given to the President to determine upon a private as distinguished from a public sale was intended as a safeguard to the interest of the United States and any other person interested in this property; and that the exercise of the discretion there given, to determine upon a private sale, guarded by the unusual provision that he must state his reasons therefor in the public interest was only to be exercised by him personally, and to rest upon his personal judgment. The history of the Act, the surrounding facts and circumstances at the time of its enactment, and the contemporaneous construction thereof by the President himself conclusively sustain this view. (See discussion, ante, pp. 48 to 91.)

Senator Underwood, in charge of the bill, in the discussion of March 11, 1918 (D. Ex. 32, Rec. Vol. 11, p. 2264), expressly states that this provision "will require the personal act of the President"; that the policy of Congress was to require public sales, but that this amendment gave the Custodian the right "in exceptional cases to appeal to the President to allow a certain portion of such property to be sold not by public auction but by negotiation."

Again on March 28, 1918, Mr. Underwood, in discussing this provision immediately before the passage of the Act, says (Rec. Vol. 7, p. 4872):

> The personal action of the President is required to accomplish that result and he is required to give in writing his reasons therefor. It seems to me clear that there ought to be that opportunity under the Act. Cases may arise when you can not reach the desire of the Government to protect this property or the desire of the Government to take it away from an alien enemy by public sale, and if the President of the United States, *acting himself and not through an agent,* determines that it is necessary to be done, and in writing gives his reasons for doing so, it seems to me that is ample protection to the public and to the property. (Italics ours.)

It is a rule of construction that where there is doubt as to the meaning of an act, the contemporaneous construction thereof by the executive officer charged with the duty prescribed in it will be given great weight, and in the absence of clear error will be accepted by the courts.

U. S. v. *Moore,* 95 U. S. 760.
Hahn v. *U. S.*, 107 U. S. 402.
Brown v. *U. S.,* 113 U. S. 568.

The record in this case shows that under the authority given by the provisions of Section 5 of said act the President exercised through various executive offices or departments of the Government substantially all of the administrative powers conferred upon him. But from the passage of this Act in March, 1918, down to December 3, 1918, when he was leaving for Paris, although he was carrying the burdens of a great war, he exercised this particular power of determining upon a private sale personally, and every executive order authorizing a private sale from March until December (there were a number) is signed by the President personally. These orders are in the Record. (P. Exs. 685 to 726, Rec. Vol. 10, pp. 1759 to 1873.) The power was exercised by him with great caution and very sparingly. (Statement of Ferry in conference of January 27, 1919, P. Ex. 28, Rec. Vol. 8, p. 85 at 89.)

Standing, therefore, on the nature and purpose of the power granted, the language of the statute illumined by the statement of the able Senator in charge of the bill, accepted by the Senate and confirmed by administrative construction of the President himself, the government contends that this delicate and discretionary power of ordering a private sale of property in the custody of the United States to await final disposition by Congress was a power personal to the President and could not be delegated to another person. Judge

Buffington so held in his concurring opinion in this case. (Rec. Vol. 7, p. 5044.)

2. The contention that Section 5 of the Act authorized this delegation of power

Section 5 of the Act (40 Stats. 411) after conferring certain powers upon the President, provides that " the President may exercise any power or authority conferred by this Act *through such officer or officers* as he shall direct." (Italics ours.) This language was in the original act and if there is any conflict between this provision and the amendment the amendment will of course control. They must be read together and effect given to the intent of Congress.

Alexander v. *Alexander,* 5 Cranch, 1.
Stockdale v. *Freeman,* 3 How. 556, 564.
Cope v. *Cope,* 137 U. S. 682, 688.
New York, etc., R. R. Co. v. *Peninsular Exchange,* 240 U. S. 34.

But we do not think there is any conflict between the two. The language of Section 5 must be held to refer to powers which in their nature are capable of exercise " through " another. The very terms of the amendment to Section 12 excludes the power given to the President from this class.

It is contended, and the majority of the Court of Appeals held (Rec. Vol. 7, p. 5037), that the power of the President to exercise his powers under the Act through others has been sustained by this Court.

Primarily that is not the purpose, that is merely one of the incidents leading up to the question whether this was a fair sale. That is all the question is at issue here—whether it was a proper sale.

If there was an inducement to this sale which in itself was illegal, if this sale was brought about by a conspiracy to obtain property which primarily belonged to the Government of the United States for a nominal consideration, for the benefit of private industry, it was illegal in its very inducement. If there was a combination of bidders, a developed combination of bidders for this property, a combination and union of all the practical bidders in this country, it was illegal, and if it had applied to lands would be criminal.

Now eliminate conspiracy—and I undertook as far as I could to keep that word out, because I hate the word, to be quite frank about it—eliminate that, eliminate monopoly entirely, and every word of this evidence is admissible as showing a development preliminary to and leading up to this sale of a combination of bidders in this property, which included every practical bidder in the United States. On that ground, if there was not any other ground in the case at all, that ground itself I shall argue at the proper time should set aside this sale, and all this proof goes to establish that ground.

THE COURT: It is admitted under our general rule; but these rulings, I may repeat now, are not intended to indicate any ultimate conclusion upon the weight or relevancy of the evidence so offered, but we want one trial only in this case, and I shall let each side make its record, unless I am convinced that there is——

Received in evidence and marked "Plaintiff's Exhibit No. 23." (*See Exhibits, Vol. I, page 76.*)

Central Union Trust Co. v. *Garvan,* 254 U. S. 554.

Stoehr v. *Wallace,* 255 U. S. 239.

That is true as to the power to determine when the owner of property was an "enemy," as defined in the Act, and to seize property under Section 7. The President exercised these powers through the Custodian, and this was sustained. But these powers were purely administrative and involve no exercise of personal judgment or discretion. Congress defined an "enemy" under the Act.

The situation here is entirely different. Congress did not undertake to say that any private sales should be made or to define the circumstances under which they might be made in any particular case. The discretion as to whether a private sale should be made at all, what property might be sold privately, when and under what circumstances this might be done, subject always to the provisions of the law, was all left to the discretion of the President. He was required to state "the reasons therefor in the public interest." This required an exercise of the personal judgment of the President and a statement of his reasons (not those of another) for his act. This was by its very nature a power and discretion which could not be delegated to or "vested" in another.

It should further be observed that Section 5, even if it has any application, did not authorize delegation of executive power as was sought to e done in this case.

Section 5 of the Act provided that the President ight "*exercise*" the powers under the act '*through* such *officer* or *officers* as he shall direct."

By Section V of the Order of December 3, 1918, rawn by the Custodian (Rec. Vol. 4, p. 2575) and signed by the President, it was provided:

> *I hereby vest in Frank L. Polk all power and authority* conferred upon the President by the provisions of Section 12, etc. (Rec. Vol. 1, p. 547 at 549.)

There is a wide difference between exercising a ower "through" another and "vesting" all ower under a statute in another. The President ecessarily exercises many of his administrative owers through Cabinet Officers and others, and heir acts in such cases are directly under his supervision and become in law his acts. When, owever, he undertakes to "vest" in Frank L. Polk "all power and authority" vested by Congress in the President by Section 12 of the Act as amended, which included not only the power of eciding upon and ordering private sales under the amendment, but the power of supervision and irection of the Custodian, he necessarily divested imself of these powers, if the order was valid, and ransferred them to Mr. Polk, to be exercised by Mr. Polk in his discretion. It seems clear, therefore, that even if the power given to the President n Section 5 of the Act has any reference to a power requiring the exercise of his personal judgment and discretion and the statement of his own reasons, yet the order of December 3, 1918, was not in conformity with Section 5 of the Act, for the reasons stated, and was clearly unauthorized by law.

There is another very serious objection bearing directly upon the legality of this order. The President exercises many of the administrative functions of his office through other officers of the Government. But before they can discharge these duties they must be officers and must take an oath of office faithfully to discharge the duties of the particular office. They act as officers, not as persons, for this is a "government of laws, not of men." The duty is imposed upon the office, not the man. The man may resign or die, but the office continues with the duties attached thereto. This has always been recognized as fundamental in our Government.

The order of December 3, 1918, drawn by Mr. Palmer and signed by the President just before he left for Paris, is the first and only instance in the history of this government, so far as we can find, where the President undertook to "vest" a power conferred upon him by law in an individual by name, and without any reference to the office.

The distinction between a power conferred upon (as distinguished from "exercised through") an *officer,* and a power conferred upon a *person* is obvious and has frequently been emphasized by the Courts. For instance, a power conferred upon the office of executor or trustee as such survives the death or resignation of the person occupying that position and may be exercised by his successor, while the same power conferred upon a person by name, who may be executor or trustee, falls upon the death of such person and can not be exercised either by his successor or by a Court of Chancery.

Partie v. *Thomas et al.*, 11 Fed. 769.
Doe v. *Ladd,* 77 Ala. 223.
Security Co. v. *Snow,* 70 Conn. 288, 66 Am. St. Reps. 107.
Simmons v. *McKinloch,* 98 Ga. 733, 76 S. E. 80.
Woodwards Estate, 8 Phila. 211.
Young v. *Young,* 97 N. C. 132.
In re Bierbaum, 40 Hun. 504.
Kiplinger v. *Macubbin,* 58 Md. 203.

The fact that Mr. Polk happened to be counsellor of the Department of State at the time is entirely immaterial. The power was not vested in the officer, but in the man. If he had resigned next day, he could still have acted under the order. If these powers were vested in him they are, so far as this record shows, still vested. His successor could not have exercised these powers. The office had nothing to do with it. The powers mentioned were not sought to be exercised through that officer as such, but assigned to or "vested" in the person. They were not inci-

Let us examine the orders of Mr. Polk in the light of the statute and of these principles. The pertinent language is identical in both orders. (Rec. Vol. 1, pp. 551, 554.) The order provides that the Custodian may sell the property mentioned on "such terms and conditions" as to him or his authorized agent "may seem proper." Mr. Polk authorizes a private sale and leaves all the "terms and conditions" to be determined by the Custodian "or his authorized agent" as to him or such agent "may seem proper." The limitations imposed by Congress upon the sales of this property in the custody of the United States are gone and the Custodian is free to do what he pleases. This was not a compliance with the Act. It certainly would not be sustained as to a private trust.

The power of determining upon a private sale as an exception to the rule of public sales established by the Act necessarily involved a determination of what property was to be sold privately. This is self-evident. If the President had undertaken in the face of this statute to authorize the Custodian to sell privately "at such place and upon such terms and conditions" as he saw fit all of the manufacturing plants or all of the stocks and bonds which were seized under the Act, we do not believe anyone would attempt to sustain the validity of such an exercise of power under this Statute. Yet that is exactly what Mr. Polk undertook to do as to all property the seizure of which was authorized by the Amendment of November 4, 1918. The orders purport to authorize the Custodian to sell privately all patents and similar rights described which the Custodian "*may seize* or *may have seized* under the provisions of the said Trading with the Enemy Act and *amendments thereto now or hereafter enacted,* and which *he* from time to time shall determine relate to the objects and purposes of said The Chemical Foundation, Incorporated, as expressed and defined by its charter." When we turn to the charter of the Foundation (Rec. Vol. 1, p. 90), which Mr. Polk testifies he never saw (Rec. Vol. 2, p. 1196), we find that it is that of a commercial corporation with "all the powers conferred by the laws of the State of Delaware upon business corporations, it being hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner such general powers"; and with power to do the things set forth therein, "to the same extent and as fully as a natural person might do" (Rec. Vol. 1, p. 92). It follows that the Custodian could very properly under the order of Mr. Polk have determined that every enemy-owned patent in the United States related to the "objects and purposes" of the Foundation as "expressed and defined by its charter," and could have sold all or any of them privately at "such place and upon such terms and conditions" as to him or his authorized agent might "seem proper."

We thus have a case in which Congress careful
guarded the power of sale given to the Custodia
by making it subject to the "supervision ar
direction of the President" and requiring publ
sales in all cases, except where the Presider
should otherwise determine, and requiring eve
the President to state "the reasons therefor in th
public interest"; the President undertook t
"vest" all of this "power and authority" in M
Polk; Mr. Polk, in turn, undertakes to vest th
power as to the essential elements of the dete
mination of the property to be sold privately, th
place and terms and conditions of private sale, i
the Custodian whose powers were intended to b
limited by these very provisions. As to this grea
mass of property, the seizure of which had onl
been authorized by the Amendment of Novembe
4, 1918, the extent and value of which was entirel
unknown, the essential provisions of Section 12 o
the Act imposing strict limitations upon the powe
of sale of the Custodian were as effectively re
pealed as if they had been wiped from the Statut
books.

We next come to the facts stated by Mr. Poll
in his order as the basis of his "reasons therefo
in the public interest."

The basic "reasons in the public interest'
stated in the order (Rec. Vol. 1, p. 553) and tes-
tified to by Mr. Polk (Rec. Vol. 2, pp. 1259 an
1260; pp. 1200 and 1201) were that the Foundatio

was incorporated for the purpose of holding patents, etc., "as a trustee for American industry," etc.; that it was "obligated" to grant "non-exclusive licenses upon equal terms and at a uniform royalty to qualified American manufacturers"; and "empowered" to grant free licenses to the United States "for any use the United States might desire to make of the inventions," etc.

Aside from the fact that the patents, etc., when seized were held in trust by the United States exactly on the conditions stated, let us see what were the facts.

As to the Foundation taking the patents as "trustee for American industry" it need only be said that the expression is a legal absurdity and creates no enforceable obligation of any kind. If it was intended to create or imply a trust it was absolutely void.

Wheeler v. *Smith,* 9 How. 55.

Kain v. *Gibbony,* 101 U. S. 362.

Tilden v. *Green* (Tilden will case), 130 N. Y. 29.

Board of Foreign Missions v. *McMaster,* Fed. Cases No. 1586.

Morice v. *Bishop of Durham,* 10 Vesey, 521.

Attorney General v. *Aspinwall,* 2 Mylnor, C. 613.

Wicker v. *Hume,* 14 Beav. 509.

Story Eq. Juris, 14th ed. Vol. 2, Sec. 1332; Vol. 3, Sec. 1446.

Perry on Trusts (5th ed.) Sec. 697, p. 326.

Mr. Galloway: I will read that as follows: This is dated August 1, 1918.

Mr. Kresel: The Court has already read this.

Mr. Galloway: Has your Honor read this?

The Court: Yes.

Mr. Galloway: Then I shall not repeat what it contains. The next, plaintiff offers in evidence a copy of the same letter which was sent to Mr. M. R. Poucher. I do not care to refer to or read it, other than offer it here, and ask to have it marked.

The Court: It is admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 24." (*See Exhibits, Vol. I, page 78.*)

Mr. Galloway: Plaintiff next offers in evidence a letter dated August 6, 1918, from Mr. M. R. Poucher, Director of Dyestuffs Sales Department of the DuPont Company to H. E. Danner, Secretary, American Dyes Institute, and asks leave to read the same.

The Court: It is admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 25." (*See Exhibits, Vol. I, page 80.*)

Mr. Galloway: This is dated August 6, 1918, addressed to H. E. Danner (reading exhibit).

Mr. Kresel: I trust your Honor is not under the impression that the Chemical Alliance is the same as The Chemical Foundation. They are talking about an entirely different organization.

The Court: I understand.

Mr. Galloway: If the Court please, we next offer in evidence and ask leave to read minutes of the American Dyes Institute, of January 22, 1919. If the Court please, that shows the appointment of a Committee to go to Washington and consider with the Alien Property Custodian the question of the purchase of these dye patents, and we think it is very material.

Mr. Kresel: It is the Executive Committee, Mr. Galloway.

As to the Foundation being "obligated" by it charter to grant licenses on equal terms, etc., t American manufacturers, we need only turn to th charter (Rec. Vol. 1, p. 91) to see that there is n such "obligation." On the contrary the charte expressly provides that—

> The board of Directors may refuse t issue any license or may revoke any licens granted by the corporation and may prescribe the terms and conditions of sai licenses.

No comment seems necessary.

As to the granting of licenses to the Unite States, it may be observed that the United State had the patents when seized. So far from the corporation granting free licenses to the Unite States "for any use the United States may desir to make of the inventions," the provision of th charter quoted above expressly negatives this statement, while Section (b) of the charter expressl provided that the corporation might grant non-exclusive licenses to the United States "upo such terms as the Board of Directors may determine."

Then to remove the possibility of any clai being made in future that anything in the order of Mr. Polk or the charter of the corporation imposed any obligation or limitation as to the us and enjoyment of these properties in the conveyance made on April 10, 1919, covering the large part of the patents, etc., and in some of the subse quent conveyances, all of which were executed by Mr. Garvan as Custodian to a corporation of which Mr. Garvan was president, the grant was made "without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws of the said The Chemical Foundation, Inc., or otherwise." (See instrument of grant, Rec. Vol. 1, pp. 404, 408.)

These are the bald facts taken from the written documents. They speak for themselves. These orders were drawn by the Custodian and sent to Mr. Polk. He testifies that he knew nothing of the facts, that he never saw the charter of the corporation. (Rec. Vol. 2, p. 1196.)

For the reasons stated and discussed herein it is submitted (1) that there was no lawful authority in Mr. Polk to make the orders which are vouched in the answer as authority for the alleged sales, and (2) that had he possessed this power the orders would be and are void (*a*) as being unauthorized by and in violation of the statute, and (*b*) predicated upon a clear mistake of the essential facts.

3. The alleged ratification of the Polk orders by the President

In a concurring opinion Judge Buffington, of the Court of Appeals, sustained the contention that the power of ordering a private sale given to the President by Section 12 imposed a personal trust and duty on the President which could not be delegated, and that the effort to vest these powers in

Mr. Polk was "without warrant of law," but also held that the orders of Mr. Polk attempting to authorize these sales were ratified by subsequent acts of the President. (Rec. Vol. 7, p. 5044.) We shall now examine this position.

No law is better settled than that the act of an officer or agent, or one purporting to act as an officer or agent, of the United States, done without "warrant of law," to use the words of Judge Buffington, or contrary to law, is absolutely void as against the United States.

Ex Parte Milligan, 4 Wall. 113.
Floyd Acceptances, 7 Wall. 666.
United States v. *Lee,* 106 U. S. 192.
United States v. *Jonas,* 19 Wall. 598.
Prosser v. *Finn,* 208 U. S. 67.
Waskey v. *Hammer,* 223 U. S. 85.
Ewert v. *Bluejacket,* 259 U. S. 129.

It is equally well settled that while a voidable act may be ratified an act which is void is incapable of ratification. This is upon the simple and incontrovertible principle that an act which is void is not an act at all in contemplation of law, and does not exist, and that which in the eyes of the law was not an act or does not exist can not be brought into existence by ratification. There is nothing on which ratification can operate. It requires entirely new authority and an entirely new act of performance under that authority.

United States Bank v. *Owen,* 2 Peters, 527.

Miller v. *Ammon,* 145 U. S. 421.
Insurance Co. v. *Hull,* 51 Ohio State, 270.
Shippey v. *Eastwood,* 9 Ala. 198.
Shenk v. *Phelps,* 6 Ill. App. 112.

If, as we contend for the reasons already stated, and as Judge Buffington held, the authority sought to be conferred on Mr. Polk by the order of December 3, 1918, was without "warrant of law" and void; if the Polk orders based on that order were also void; if the sales made on the alleged authority of the Polk orders were also void, all of which would necessarily follow; and if a void order or transaction of an officer or agent of the United States is incapable of ratification, as is clearly the law on principle and authority, then it is difficult to see how the question of ratification comes into this case at all.

Assuming, however, that these orders of Mr. Polk were capable of ratification, it is submitted that there is in the record no adequate evidence to support a ratification thereof by the President. On principle and authority it is clear that in order to establish a ratification by an officer of the United States, the party claiming it must show (1) that the act was capable of ratification; (2) that there was power in the officer whose ratification is claimed to ratify; (3) a knowledge of the facts on the part of the officer whose ratification is claimed; (4) some adequate act of ratification by such officer; and (5) an intention to ratify. The failure to show any of these essential elements defeats the claim of ratification.

Steele v. *United States*, 113 U. S. 128, 134.
Marsh v. *Fulton County*, 10 Wall. 676, 684.
Williamson v. *Berry*, 8 How. 495.
Davies County v. *Dickinson*, 117 U. S. 657.
Williams v. *Vreeland* (C. C. A. 3d Ct.), 244 Fed. 346, 350.
Doon v. *Cummings*, 142 U. S. 366, 376.
Norton v. *Shelby County*, 118 U. S. 425, 451.
Kelly v. *Milan*, 127 U. S. 139, 150.
Wardens v. *Church of Redeemer*, 45 Barb. (N. Y.) 356.

There are three matters in this record on which the claim of ratification is based.

The President by executive order of December 3, 1918, had undertaken to vest in Mr. Polk the power given by the act to order private sales of property. He was absent from the country until the 25th of February, 1919. He again left the country on March 5, 1919, and did not return until early in July of the same year. (P. Ex. 106, Rec. Vol. 8, p. 297.) The orders of Mr. Polk were signed on the 26th day of February, 1919 (Rec. Vol 1, pp. 551–553), and the 5th of April, 1919 (Rec. Vol. 1, pp. 554–557), respectively. At the time that the first order was entered, it does not appear that the President had any information on the subject.

The report of Mr. Palmer, as Custodian, to Congress for the year preceding, which described the sale of these patents as an accomplished fact (D. Ex. 30, Rec. Vol. 11, p. 2098 at pp. 2180–2183), (although none of the patents had then been seized and no sale had been made) was delivered at the White House on the 27th of February, 1919 (Rec. Vol. 2, p. 910), and forwarded by the President to Congress on March 1, 1919 (P. Ex. 14, Rec. Vol 8, p. 59). It was prepared before the first order of Mr. Polk was signed and was transmitted by letter dated February 22, 1919. (P. Ex. 13, Rec. Vol. 8, p. 58.) It could not have conveyed any information as to the orders of Mr. Polk, the first of which was not made until February 26, 1919.

Mr. Palmer testified (Rec. Vol. 4, pp. 2625 to 2636) that he discussed the sale of these patents with the President on the evening of March 3rd, 1919.

The President does not seem to have expressed himself as to the transaction, and he certainly took no action in the matter. The Statute required that if he authorized a private sale he must state his reasons therefor in the public interest. At that time only very few of the patents had been seized and only one of the orders of Mr. Polk had been signed. It does not appear, therefore, that the President gave the matter any consideration or that he ratified or attempted to ratify any action taken in connection therewith or to do anything else about it.

The other basis of this claim is an order of the President signed February 13, 1920. (Rec. Vol. 1, p. 557.) Some question had been raised as to whether the orders of Mr. Polk were broad enough to authorize a valid conveyance of rights of action as to, and rights to, receive royalties under licenses of these patents issued prior to sale. To meet this situation the General Counsel of the Foundation prepared an Executive Order and further assignment covering these rights and sent them to Mr. Garvan, who was both president of the Foundation and Custodian, to obtain the signature of the President to the order, and then himself to execute the assignment as Custodian. The matter was the subject of much correspondence between the two offices. (P. Ex. 137, Rec. Vol. 8, p. 331; P. Ex. 149, Rec. Vol. 8, p. 343.) On February 11, 1920, Mr. Garvan sent this order to the President, with a personal letter to his Secretary requesting him to get the President's signature thereto. The President had been ill since September, 1919. (P. Exs. 146, 146a, and 147, Rec. Vol. 8, pp. 341 to 343.) The President's signature to the order was obtained on February 13, 1920. (P. Ex. 149, Rec. Vol. 8, p. 343.)

This order recited in the preamble the making of the orders of February 26, 1919, and April 5, 1919, by Mr. Polk, and the doubt as to whether these orders authorized a conveyance of certain rights, and then authorizes the Custodian to sell to the Foundation "choses in action, rights, interest, and benefits, under agreements including rights to receive money by way of royalties or otherwise as compensation for use of patents," etc. It then provides that in case of sales theretofore made of "any property *which he is hereby authorized to sell,*" but as to which his authority to sell "may be deemed doubtful," he is authorized to ratify the sales.

There is here no suggestion of ratification of the Polk orders. So far as the record shows, the President never saw them. He was not asked to ratify them. He exercised no judgment or discretion as to these orders or authorizing a sale of the patents and other properties covered thereby. The order is carefully confined to authority to transfer certain intangible rights, including the right to receive royalties under existing agreements. That is all the authority it sought to give, all the property to which it related. If the Polk orders were valid they needed no ratification; if they were void the patents were in law still in the custody of the Government. The President did not undertake to act on that or to authorize any sale of these properties. Had he been asked to do so, he might have called for the facts. As it was, his order had no relation to the properties themselves. He did not attempt and clearly did not intend to ratify the alleged authority to sell these patents or other properties, or to ratify any order of sale or anything else, except as to the rights to which the order was by its terms strictly limited.

For the reasons herein stated it is submitted that the decision of the lower courts holding that private sales of the patents and other properties involved in this suit were lawfully authorized under the Act was erroneous and should be reversed.

4. Even if the orders of Mr. Polk were lawful and valid, they did not authorize the sales or transfers of this property as made in this case

In the present discussion we shall only consider these transactions in their relation to the authority to make the same, alleged to have been granted by the orders of Mr. Polk, and endeavor to show that even if these orders gave to the Custodian lawful authority to make private sales, they did not authorize or attempt to authorize the sales as actually made.

It is, of course, elementary that where a trustee or an officer of the United States is authorized to sell property in his custody he must conform strictly to the authority given or the sales will be void as against the beneficiary of the trust or the United States.

Thatcher v. *Powell,* 6 Wheaton 119.
United States v. *Jonas,* 19 Wall. 598.
Steele v. *United States,* 113 U. S. 128.

The orders of Mr. Polk did contain certain specific and basic conditions upon which the alleged authority to make the sales or transfers of the properties was predicated. They are stated as the basis of the "reasons" in "the public interest" for making private sales. Let us see how far they were complied with.

The first was that the Foundation was to hold these properties as "trustee for American industry" and the authority to sell was predicated upon this obligation being in the charter. Mr. Polk testifies that he understood that the transaction was in pursuance of a policy of turning over these patents "to the government or semigovernmental agencies," and although he had not seen the charter he regarded the Foundation as "a semigovernmental agency." (Rec. Vol. 2, p. 1256.) The corporation to which the sale was made as actually organized was not a "semigovernmental" agency; it was an ordinary commercial corporation with the broadest powers, in no way connected with the United States Government or under its control or supervision. (See Charter, Rec. Vol. 1, p. 91.) It could make free use or disposition of its property, its charter could have been amended, or it could have been dissolved at any time and the patents, etc., sold or distributed to its stockholders, the dye and chemical manufacturers, in its discretion, subject only to the laws of Delaware. The only reference to any "fiduciary capacity" as to this property was the expression of a purpose which could have been changed the next day, created no obligation and was too indefinite for enforcement if it had

Mr. Galloway: Did I state otherwise? If so, I wish to be corrected if I did.

Mr. Kresel: We have no objection.

The Court: Admitted without objection.

Received in evidence and marked "Plaintiff's Exhibit No. 26." (*See Exhibits, Vol. I, page 81.*)

(Mr. Galloway reads from Plaintiff's Exhibit No. 26.)

The Court: If I understand you, Mr. Galloway, all these documents are presented in evidence by you to show that the moving impulse of all these parties was greed and not patriotism—is that the sum and substance of it?

Mr. Galloway: I do not know that we care to state at this time what the moving impulses of these parties were. I think that the evidence will best show.

The Court: As I am going along, I am trying to appraise, the best I can, the documents that you are offering in evidence.

Mr. Galloway: I do not know that we would care to call it greed. I would perhaps call it the advancement of their own personal business interests.

I do not know that we care to call it greed.

The Court: That answers that. Business interests instead of greed. "Greed" is probably an extreme word.

Mr. Galloway: I think so. We do not care to go to that extent at this time.

We next offer, if your Honor pleases, a letter by Mr. H. E. Danner, Secretary of the American Dyes Institute, to Mr. W. H. Cottingham, President of the American Dyes Institute, dated January 25, 1919, in which he transmits a copy of the minutes which we have just introduced, and comments some upon those.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 27." (*See Exhibits, Vol. I, page 84.*)

done so. Then, to remove any possible doubt about it, the Custodian making the sale under these orders in the first assignment of April 10, 1919, covering substantially all the patents, etc., made to the corporation of which he was president, expressly provided that sale and grant was made to that corporation "without any *reservation or qualification whatsoever* whether by reason of *anything* contained in the *charter or by-laws of said The Chemical Foundation, Inc., or otherwise.*" (Rec. Vol. 1, p. 408.) [Italics ours.]

The same provision was inserted in all of the subsequent assignments until it was discovered by one of the counsel for the Custodian, not connected with these transactions, about a year later, when on his insistence it was dropped in later instruments. (P. Ex. 143, Rec. Vol. 8, pp, 338–339.) But substantially all of these properties had then been conveyed and with this provision in the grant.

The next condition upon which Mr. Polk acted and which was inserted in his order was that the Foundation was "obligated" to "grant non-exclusive licenses upon equal terms at a uniform royalty to qualified American manufacturers." (Rec. Vol. 1, p. 551 at 553.) Aside from the difficulty of deciding who was "qualified" the charter of the corporation as organized contained no such "obligation." (Rec. Vol. 1, p. 91.) It provided that "the corporation *may* grant non-exclusive licenses only * * * upon reasonable and equal terms and without advantage as between licensees," etc., and then provided that—

> The board of directors may refuse to issue any license or may revoke any license granted by the corporation, and may prescribe the terms and conditions of said licenses.

Then to remove any possible "obligation" on the subject and allow them to amend their charter or do anything they saw fit, the assignment or grant of the property made by the Custodian contained the remarkable provision quoted, that the patents and other properties were conveyed "without any *reservation* or *qualification* whatsoever, whether by reason of anything contained *in the charter or by-laws* of said The Chemical Foundation, Inc., *or otherwise.*" [Italics ours.]

The only other provision of the orders which we shall consider in this connection is the condition stated therein that the corporation was "empowered" to grant free licenses to the United States "for any use."

Mr. Polk testified to the effect that he understood that the United States should have *free* and "unrestricted" licenses "for any use." (Rec. Vol. 2, pp. 1204, 1260.) The charter of the corporation as organized provided that the corporation "*may* grant *nonexclusive* licenses only * * * to the United States *upon such terms as the Board of Di-*

rectors may determine" [Italics ours], and th followed the further provision giving the board directors complete power to grant or refu licenses and fix the terms and conditions of licenses. (Rec. Vol. 1, p. 91.) This was then fo lowed by the provision in the instrument of a signment making the grant "without any *reserv tion* or *qualification* whatsoever, whether by reas of anything contained *in the charter or by-laws* said The Chemical Foundation, Incorporated, *otherwise.*" (Rec. Vol. 1, p. 408.)

It was and will be contended by appellee th these sales were also ratified by the President, f there is a pathetic persistence in the effort to u the President as a screen for all of these transa tions. The answer is simple and brief. Asi from the principles already discussed, that vo acts are incapable of ratification, the power making sales was not vested in the President. was empowered to determine upon and authori private sales. He could not ratify that which had no power to do.

Marsh v. *Fulton County,* 10 Wall. 67 684.

Williamson v. *Berry,* 8 Howard, 495.

Davies County v. *Dickinson,* 117 U. 657.

Doon v. Cummings, 142 U. S. 366, 376.

But even if he had the power, there is no color ground for claiming that he ratified these sal as made in violation of the orders of Mr. Pol

The report of Mr. Palmer as Custodian, the conversation of Mr. Palmer with the President on March 3, 1919, from which it is claimed that the President derived knowledge of this plan, all occurred before the second order of Mr. Polk was made; before but very few of the patents were seized; before the organization of the corporation was effected; and before the first assignment of April 10, 1919, and all subsequent assignments were made. He certainly could not then have been told of the manner in which the sales were subsequently conducted.

The record does not indicate that the President, or Mr. Polk either, for that matter, ever heard of the manner in which these transactions were carried out.

As to the Executive Order of February 13, 1920 (Rec. Vol. 1, p. 557), it was by its terms limited to rights of action, and rights to receive royalties under prior agreements seized and transferred by the Custodian. The authority to ratify was strictly limited to these rights, as to which authority to sell was deemed doubtful, and had no reference whatever to the properties themselves. Even if the President could be held to have ratified the Polk orders, which for the reasons already stated we controvert, he certainly could not ratify and did not attempt to ratify or authorize the ratification of these sales made *in violation and negation of these orders,* and of which he had no knowledge or means of knowledge.

It is submitted, therefore, that there was no law ful authority for the alleged private sales of the properties; that the alleged sales as made were n in conformity with and were in direct violation the orders claimed as authority therefor; and th the same were void as against the United State

Point III

The sales and assignments to appellee were illegal a void, as being in violation of section 41 of the Cri inal Code of the United States and of those principl of law and equity which forbid a public officer fiduciary making sale of trust property in his custo to himself or to a corporation of which he is t head

This point involves a discussion of the issu raised by Assignments of Error III and IV (Re Vol. 7, pp. 5050 and 5051) and part of Assig ment of Error VII (Rec. Vol. 7, pp. 5052 a 5053).

Rules of law and principles of equity as o as our jurisprudence, and established by a lo line of decided cases, forbid a public officer trustee making a sale of property in his custod from making such sale directly or indirectly himself or to a corporation for which he acts officer or agent. He can not be seller for t Government or for his trust and buyer for hi self or for his corporation. This principle founded upon the recognized limitations of huma nature. As an officer of the Government or trustee he owes his first and highest obligati to his government or his trust, and human nature is so constituted that he can not possibly discharge this obligation if, as to the subject matter thereof, he assumes a directly opposite position as purchaser in his own interest or in the interest of a corporation for which he acts. No question of motive, of good or bad faith, of benefit or injury to the trust enters into it. The rule is absolute. As was said by Justice Story for this Court in *Wormley* v. *Wormley,* 8 Wheat. 421:

> No rule is better settled than that a trustee can not become a purchaser of the trust estate. He can not be at once vendor and vendee. He can not represent in himself two opposite and conflicting interests. As vendor he must always desire to sell as high, and as a purchaser to buy as low, as possible; and the law has wisely prohibited any person from assuming such dangerous and incompatible characters.

Again, Justice Wayne in the opinion of this court in the leading case of *Michoud* v. *Girod,* 4 How. 502, stated the basis of the rule as follows:

> In effect he is not allowed to unite the two opposite characters of buyer and seller, because his interests, when he is the seller or buyer on his own account, are directly conflicting with those of the person on whose account he buys or sells.

So, in *Downs* v. *Rickards,* 4 Del. Chanc. 416, the Court well stated the absolute character of the rule as follows:

> The rule is one of the widest application. It applies not only to trustees in the strict technical sense but to all persons holding fiduciary confidential relations, such as assignees in bankruptcy, executors, and administrators, attorneys, and solicitors, and with the greatest stringency to guardians. (Citing authorities.) The prohibition does not depend upon any question of fraud or improper representation made by the purchaser. *However fair the sale and adequate the price, the court will set it aside. In view of the difficulty of unraveling fraud in these transactions, the policy of the rule is to exclude the possibility of it by making the prohibition absolute.* [Italics ours.]

It has been repeatedly held by this Court that transactions by public officers or trustees in violation of this absolute rule of law are void.

> *Wormley* v. *Wormley,* 8 Wheat. 421.
> *Michoud* v. *Girod,* 4 How. 502.
> *Stephen* v. *Beall,* 22 Wall. 329, 340.
> *United States* v. *Carter,* 217 U. S. 286, 308.
> *Magruder* v. *Drury,* 235 U. S. 106, 120.
> *Jackson* v. *Smith,* 254 U. S. 586.

Congress has not been willing to rest the control of officers of the United States solely on this rule or principle of law, however absolute. At an early period in our government statutes were passed embodying this rule in its strictest terms for the regulation and control of public officers in the administration of the government, and imposing penalties for the violation thereof. The scope of these statutes has been enlarged and extended until they now embrace every branch and activity of the Government.

See Rev. Stats. Sections 243, 244, 452, 2078, 3339, 3168, 3152, 3342, 3741, and 5498; Criminal Code, Sections 41, 109, 114, 115, 123, 124, and 226.

A number of these statutes have been before this Court and they have always been liberally construed to accomplish their obvious purpose. Without exception this Court has held that regardless of any penalties imposed, transactions of public officers in violation of these statutes are void and that no rights as against the United States can be derived therefrom.

Prosser v. *Finn,* 208 U. S. 67.
Waskey v. *Hammer,* 223 U. S. 85.
Ewert v. *Bluejacket,* 259 U. S. 129.

Some of these statutes and cases construing and applying the same will be examined more at length in the discussion which follows. With the principle stated, we shall first bring to the attention of the Court the statute which it is contended by the Government controls this case and the facts to which the provisions of that statute are to be applied.

1. The transactions were void as being in violation of Section 41 of the Criminal Code

At the time the transactions here in question took place, section 41 of the Criminal Code of the

United States, as amended in 1909, was, and still is, in full force and effect. This section reads as follows:

> SEC. 41. *No officer or agent* of any corporation, joint stock company or association, and no member or agent of any firm or *person directly or indirectly interested* in the pecuniary profits or *contracts* of such corporation, joint stock company, association, or firm, shall be employed or *shall act as officer or agent of the United States for the transaction of business with such corporation,* joint stock company, association, or firm. Whoever shall violate the provisions of this section shall be fined not more than $2,000 and imprisoned not more than two years. [Italics ours.]

This section embraces within its terms and applies to *any and all officers or agents* of the United States. The principles of the statute were made specially applicable to the officers and agents dealing with enemy property by rules and regulations promulgated by the Custodian, as he testified, with the approval of the President, in June, 1918, which rules and regulations were in full force and effect at the time the transactions in question took place. (P. Ex. 3, Rec. Vol. 8, p. 14.)

Among the rules so established to govern sale of alien property was the following (P. Ex. 3, R. Vol. 8, p. 21):

> Under no circumstances will *any person in the employ, or connected with* the organ-

ization, of the Alien Property Custodian be permitted to *bid for or purchase any property or be interested directly or indirectly in any such purchase, or in any corporation or syndicate interested therein.* * * * [Italics ours.]

Mr. Garvan testified that he was familiar with these regulations. (Rec. Vol. 5, p. 3085.)

It appears that at the time these sales and assignments were made (with the exception of the last two, which are immaterial) the relations of the parties conducting these transactions for the Government and for The Chemical Foundation, the seller and purchaser, respectively, were as follows:

FOR THE SELLER, THE GOVERNMENT OF THE UNITED STATES	FOR THE PURCHASER, THE CHEMICAL FOUNDATION, INCORPORATED
Francis P. Garvan, Alien Property Custodian, charged by law with the duty of holding, managing, and disposing of this property and to protect the interests of the people of the United States, and any other person having an actual or contingent interest in the property.	**Francis P. Garvan**, president of The Chemical Foundation, Incorporated, and as such charged with the duty to protect the interests of the purchaser, The Chemical Foundation, Incorporated, and to secure said property at the lowest price and on the best terms practicable for the purchaser.
Douglas I. McKay, a director appointed by Francis P. Garvan, while Alien Property Custodian, to represent the Custodian and the interests of the United States in various corporations, for	**Douglas I. McKay**, vice president of The Chemical Foundation, and charged with the duty to promote and advance the interests of that corporation in said purchase and to secure said property

(Mr. Galloway reads from Plaintiff's Exhibit No. 27.)

Plaintiff now offers in evidence, if your Honor please, a transcript of minutes of a conference held in Washington on January 27, 1919, by a committee of the American Dyes Institute, consisting of M. R. Poucher, Chairman; Henry Wigglesworth, August Herz, R. C. Jeffcott, B. C. Hesse, F. E. Barrows, representing the National Aniline; C. Protto and Judge Laffey, representing E. I. duPont, and certain representatives of the Alien Property Custodian, as follows:

Mansfield Ferry, F. J. Horne, W. T. Gordon, Joseph H. Choate, Jr., and Ramsay Hoguet.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 28." (*See Exhibits, Vol. I, page 85.*)

Mr. Galloway: I have read the title page, your Honor, before; so I shall not repeat it. That states who was present and those in attendance.

Mr. Kresel: It is quite a long statement. Do you intend to read it all?

Mr. Galloway: I do, because practically every word of it is material. We shall try to eliminate any of it that we possibly can. I hate to take the time of the Court, but I shall have to ask your indulgence.

The Court: We will take a recess today at 11:30 standard time, instead of 11:45, and we will not take the usual short recess.

Mr. Galloway: This is in dialogue form, and I shall read the names as they speak. (Reading from Plaintiff's Exhibit No. 28.)

I think I can perhaps omit something there, which I shall do. (Reading further from Plaintiff's Exhibit No. 28.)

I hope I can omit some more, your Honor, that I do not think is especially interesting.

which he received compensation in excess of $5,000 per annum.	at the least price and on the best terms practicable for the purchaser.
George J. Corbett, an officer and director appointed by Francis P. Garvan while Alien Property Custodian, in various corporations controlled by the custodian, representing the interests of the United States therein, and receiving large compensation therefor.	George J. Corbett, secretary and treasurer of The Chemical Foundation, Incorporated, and as such charged with the duty of protecting the interests of said corporation in said purchase and securing said property at the least price and on the best terms possible for the purchaser.
Francis P. Garvan, Douglas I. McKay, George J. Corbett, holding the positions and charged with the duties to the United States just set forth.	Francis P. Garvan, Douglas I. McKay, George J. Corbett, constituting the board of directors of The Chemical Foundation, Incorporated, and charged with the duty of managing the affairs of said corporation, and authorizing and approving said purchase upon terms most favorable to The Chemical Foundation, Incorporated, and its stockholders.
Joseph H. Choate, Jr., chief of the Chemical Division, Bureau of Investigation, Alien Property Custodian, in special charge of the investigation of dye and chemical matters, who possessed large information as to these patents, trade-marks, and so forth, obtained exclusively in the course of his official duties, and active in negotiating said sale on behalf of the United States.	Joseph H. Choate, Jr., general counsel of The Chemical Foundation, Incorporated, and as such charged with the duty of representing and advancing the interests of said purchaser in the purchase of said patents and other property.

Ramsey Hoguet, patent attorney for the Alien Property Custodian and advising in matters relating to patents, trade-marks, and so forth, who was active in negotiating said sale on behalf of the United States.	Ramsey Hoguet, patent attorney for The Chemical Foundation, Incorporated, charged with the duty of advising said purchaser and aiding said purchaser in securing the patents, trade-marks, and other property on the best terms possible.
Otto T. Bannard, George L. Ingraham, Cleveland H. Dodge, Benjamin H. Griswold, Jr., Ralph Stone, constituting the Advisory Sales Committee of the Alien Property Custodian, appointed by the President and charged with the duty, as agents of the United States, of determining upon sales of specific property, approving the terms of sale, and the price, seeing that there was a fair sale, and that the purchaser was qualified to purchase.	Otto T. Bannard, George L. Ingraham, Cleveland H. Dodge, Benjamin H. Griswold, Jr., Ralph Stone, voting trustees of the common stock of The Chemical Foundation, Incorporated, and as such trustees for the stockholders thereof, and in control of said corporation, and charged with the duty of promoting in every legal way the interests of said corporation and the stockholders thereof in the purchase of said properties and otherwise.

The essential facts leading up to these transactions have been stated in the "Statement of Case," *ante,* pp. 8 to 44. It will be recalled that the active steps to obtain a seizure and transfer of these patents and properties began in January, 1919. They were carried on by conferences between Mr. Garvan, Mr. Choate, and Mr. Hoguet, representing the Custodian, and a Committee of the dye and chemical manufacturers. (Rec. Vol. 4, pp. 2603 and 2604; Rec. Vol. 5, pp. 2985 and 2986.) These conferences developed a plan for the seizure of the patents, etc., and the transfer thereof by private sale to a corporation to be organized, the stock of which was to be, and was afterwards, all owned by members of the dye and chemical industries. The plan had developed to the point that the "price" to be paid by the corporation had been agreed upon, though the parties to this arrangement can not be identified (Rec. Vol. 5, pp. 2986 and 2988); the charter of the corporation had been obtained, but it had not been organized; some 450 in number of patents had been seized, and the first order of February 26, 1919, had been obtained from Mr. Polk.

When that stage in the development of the plan had been reached Mr. Palmer resigned as Custodian on March 4, 1919. On his recommendation Mr. Garvan was appointed in his stead and qualified on that day. (Rec. Vol. 4, p. 2632; Rec. Vol. 5, p. 2995.) When Mr. Garvan thus became Custodian on March 4, 1919, all of the persons named above were members of the staff of the Custodian in the capacities stated except Mr. McKay and Mr. Corbett. They were appointed to the positions named at or about the time they became officers and directors of the Foundation under Mr. Garvan (Rec. Vol. 5, pp. 3032, 3055–3061), which was one month before the first assignment was executed on April 10, 1919.

The official organization of the corporation was consummated on March 8, 1919, four days after

Mr. Garvan became Custodian. On that day Mr. Garvan was elected President, and the other persons named were elected or appointed to the respective positions stated above in the corporate organization. (P. Ex. 56, Rec. Vol. 8, pp. 173–178.) The status of these persons as to the United States and the corporation is thus definitely established by contemporaneous official records. This status continued thereafter, except that some time later, after the principal conveyances had been made, Mr. Choate severed his official connection with the Custodian's office, but continued as General Counsel of the Foundation and counsel for the Dyes Institute, to which latter position he had been appointed during the course of these transactions. (Rec. Vol. 5, pp. 3163 and 3164.)

At the time of the appointment of Mr. Garvan as Custodian on March 4, 1919, and his election as president of the Foundation on March 8, 1919, less than 500 of these patents and other properties had been seized. (Rec. Vol. 1, p. 124.) As to the others, more than 6,000 in all, the owners had not then been determined to be enemies, and no seizure thereof had been made. They were subsequently seized by Mr. Garvan as Custodian while he was also president of the Foundation at various times covering a period of two years, although the greater part thereof, including substantially all of the important patents, were seized by him between March 4, 1919, and April 10, 1919, and included in the assignment to the Foundatio made on the later date.

(For dates of seizure see columns marke "Date of Filing and Recording" of Exhibit G t Bill of Complaint, Rec. Vol. 1, pp. 124 to 39 For Assignment of April 10, 1919, Rec. Vol. 1, p 124 to 292.)

The Corporation authorized the purchase of th properties covered by the first assignment at meeting of the board of directors held on the 4t day of April, 1919, Mr. Garvan being present an voting thereon as one of the three members of th Board. The other two were attached to his staff a custodian. This is the first evidence of any agree ment by any identified person to purchase thes patents. (P. Ex. 58, Rec. Vol. 8, p. 187.)

Mr. Garvan obtained the second order from Mr Polk on April 5, 1919. (Rec. Vol. 1, p. 554.)

The status of the transaction involved in th first and principal assignment (which was substantially the same as to all others except tw immaterial transactions in March, 1921), and the status of the parties thereto and their relations to the United States the grantor, and the Foundation the grantee, are thus clearly established by the records. If there were any doubt it is set forth in the Answer, which is, of course, binding on appellee (Rec. Vol. 1, p. 538), as follows:

> Said Garvan was recommended to the President by said Palmer for appointment as his successor in the office of the Alien

> Property Custodian because said Garvan was familiar with the aforesaid investigations of the chemical industry in the United States and had participated therein and knew the results thereof and was fully informed as to the aforesaid *plan* formulated by said predecessor, Palmer, for the sale of said patents to defendant, and approved the same. Said Garvan thereupon *proceeded to carry into effect said plan of sale as formulated and agreed upon by his predecessor."* [Italics ours.]

These are the facts. The application of the simple and plain language of Section 41 to these facts can, the Government contends, lead to but one conclusion, and that is that these transactions so conducted were in direct and flagrant violation of the statute and void as against the United States. If this conclusion, which seems obvious, be correct, that ends this case.

In view, however, of the varied arguments made in the Courts below in an effort to meet the situation thus created, and in view of the position of those Courts, a more detailed examination and application of the language of this statute seems necessary.

The statute is in the *disjunctive* and provides that—

(a) No officer, *or*

(b) Agent of *any* corporation, joint-stock company, or association, and

(c) No member, *or*

(d) Agent of *any* firm, *or*

(e) Person directly interested in the pecuniar profit, *or*

(f) Contracts of such corporation, joint-sto company, association, or firm,

(1) shall be *employed,* or

(2) shall *act* as an officer or agent of the Unite States *for the transaction of business* with suc corporation, etc.

We thus have six distinct classes of persons wh are forbidden to *be employed* or *to act* as office or agents of the United States in the "*transactio of business*" with the corporation, joint stock com pany, association, or firm with which such perso may have *any one* of the six relations stated. I is important to observe that it is not necessary th *any two* of these conditions should be combined t fall within the prohibition. If a person is a "officer" or "agent" of the corporation he doe not have to have an interest in the "profits" o "contracts." The statute is in the disjunctive an clearly makes the existence of any one of the rel tionships stated sufficient to bring the perso within the absolute prohibition thereof.

Mr. Garvan was, prior to March 4, 1919, chie of the bureau of investigation of the Custodia He was therefore an agent of the United State Mr. Palmer testified that he referred to M Garvan the matter of working out some plan fo the transfer of these patents for the use of the i dustry, but was advised of and approved wha was done. (Rec. Vol. 4, pp. 2599, 2600, 2603, 2604.) Mr. Garvan testified that he conducted the negotiations with the representatives of the industry. (Rec. Vol. 5, pp. 2985 and 2986.) He further testified that he with Mr. Choate and Mr. Hoguet conducted the negotiations at which the "price" was fixed (Rec. Vol. 4, p. 2800), and that about the same time he agreed to become President of the proposed purchasing corporation (Rec. Vol. 5, pp. 2951 and 2952). Mr. Palmer did not appear in these transactions at all until he obtained the order from Mr. Polk on February 26, 1919, and he did nothing further in relation to the carrying out of the proposed plan. He resigned on March 4, 1919. Therefore on their own testimony Mr. Garvan conducted all of the negotiations prior to March 4, 1919, in the development of the plan looking to a transfer of these patents, etc., to the corporation of which he had agreed about the middle of February, 1919, to become president. (Rec. Vol. 5, pp. 2951 and 2952.)

When Mr. Garvan became Custodian he had agreed to become president of the corporation but had not been elected. Mr. Palmer testifies as to his recommendation of Mr. Garvan for Custodian (Rec. Vol. 4, p. 2632):

> My purpose in urging Mr. Garvan's appointment as Alien Property Custodian was quite largely in view of the fact that he had undertaken to be the president of this

> corporation, and I knew he could be abs
> lutely trusted to carry out its plans a
> purposes to the letter.

Thus upon Mr. Palmer's own testimony he re
ommended that Mr. Garvan be "employed"
act for the United States in contemplation of
direct violation of the express language of the st
ute. Mr. Garvan testified that he did not kn
of the statute. (Rec. Vol. 5, pp. 3084, 3086.)
must be assumed that Mr. Palmer was in the sa
position or he would have advised the Preside
of its provisions.

We are not dealing with the criminal aspects
this statute or charging anyone with crime. T
obvious purpose and effect of the prohibitive pr
visions of this statute is to *incapacitate* any pers
who is an officer or agent of a corporation, et
from "being employed" or "from acting" as
"officer" or "agent" of the United States in t
"transaction of business" with such corporatio
etc.

Mr. Garvan became Custodian on March
1919. From and after March 8, 1919, he w
president and director of the Foundation.
was "employed" and "acted" as an officer a
agent of the United States. As director of t
corporation he voted on the 4th day of Apr
1919 (P. Ex. 58, Rec. Vol. 8, p. 187), for the co
poration to purchase these patents from hims
as Custodian, and pay the purchase price the
for. As Custodian he consummated, or to use t

words of the Answer in this case (Rec. Vol. 1, p. 538) he "proceeded to carry into effect said plan of sale" by causing to be prepared and making the conveyance to and accepting the purchase price from the corporation of which he was president. If this is not the "transaction of business" with the corporation, it would be hard to say what is.

As to the remaining eighteen assignments executed by him, the conditions were exactly the same, except that as to these cases he conducted all negotiations leading up to the transactions as Custodian. Mr. Palmer was then Attorney General and had nothing to do with these "transactions of business."

It is suggested that Mr. Garvan had no "pecuniary" interest in the corporation in that he received no salary as President and owned no stock. This is not denied. He served as President without compensation, and held only qualifying shares of stock without beneficial interest therein. But the statute does not require that an "officer" or "agent" shall have a "pecuniary interest" to bring him within its terms or incapacitate him to act as officer or agent of the United States.

Mr. Choate, while agent of the United States on Mr. Garvan's staff, participated with Mr. Garvan in the negotiations, organized the corporation, and as General Counsel thereof participated in the consummation of the sales. (Rec. Vol. 4, p. 2801; Rec. Vol. 5, p. 3066.) Mr. Hoguet, as Patent Counsel of the Custodian and as such agent of the

The Court: It is about time for recess. Will you look that over during recess and probably you can arrange to abbreviate it somehow.

Mr. Anderson: Before your Honor leaves the bench I want to say, as a matter of personal privilege, in one aspect, that I have been struck with the facility and efficiency of the stenographic reports which have been taking place. But I have had my universal experience, being a very rapid speaker, and probably not always a clear speaker, of being quite erroneously reported in many instances here. For instance, I am quoted as saying that the President was "biased." I said "badly advised." Indeed, the two could be easily mistaken in sound.

I only want to say for the record that if this opening statement and argument are going to be considered, there are a great many vital errors in the statement. If it is not going to be made a part of the record, of course, I do not want to go to the trouble.

The Court: I think it should be part of the record here and above, because, without that, the Appellate Court does not get the viewpoint with which we approach the case here. Then, again, there is the statement that I made yesterday that a general objection, which may have for its basis the entire argument, or anything mentioned in the argument, may be made, to save time and to expedite the case. Consequently, it seems to me that, without changing the points or increasing the argument, either side ought to be allowed to correct prior to printing the original record.

Mr. Kresel: Perhaps I might make this suggestion, your Honor; that within the time your Honor gave each side to move to strike out parts of the testimony, each side may suggest to the other corrections in the record either in argument or in testimony, United States, also became Patent Counsel of the corporation on March 8, 1919. He prepared or approved the various instruments of assignment executed by the Custodian to the corporation. (Rec. Vol. 5, p. 3129; P. Ex. 58, Rec. Vol. 8, p. 187.) The other parties named were in similar positions, but their respective parts in these transactions were less important. We submit that these transactions are unique in the history of this government and are clearly void as against the United States. This Court has in several cases passed upon transactions of officers or agents of the United States in similar though less aggravated cases, and has without exception held them void.

A leading case on this subject is *Prosser* v. *Finn*, 208 U. S. 67. In that case a man named Prosser was a special agent of the General Land Office, and made an entry upon public lands. There was a statute which provided as follows:

> The officers, clerks, and employees in the General Land Office are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land; and any person who violates this Section shall forthwith be removed from his office.

Prosser having made the entry while he was special agent of the Land Office, continued in possession after he retired from the service and subsequently a patent was issued to him. The Commissioner of the General Land Office held that the special agent was not within the terms of the statute, since it only applied to "the officers, clerks, and employees in the General Land Office." A suit was brought by a conflicting claimant for the cancellation of Prosser's patent. The court held the entry to be void and decided that the patent must be cancelled. In reaching this conclusion the court said:

> Being employees in the General Land Office, it is not for the court, in defiance of the explicit words of the statute, to exempt them from its prohibition. Congress has said, without qualification, that employees in the General Land Office shall not, while in the service of that office, purchase or become interested in the purchase directly or indirectly of public lands. * * * The prohibition in the existing statute is not restricted to any particular officers or particular employees of the Land Office, but embraces "employees in the General Land Office," without excepting any of them.

In the case of *Waskey* v. *Hammer*, 223 U. S. 85, it appeared that one Whittren in 1903 discovered placer gold on certain land in Alaska and made location of the same under the mining laws. In 1904 he made conveyance of this land to Hammer and others. At the time that the location was made Whittren was an employee of the Land Office within the meaning of Section 452. It was contended that he did not come within the terms of the statute, since he was not "in the Land Office" and only acted at the solicitation of owners of claims and was paid by the owners and not by the Government. It will be observed that the suit was against Hammer, who claimed under conveyance from Whittren and had nothing to do with the illegal act. Whittren had no interest in the suit. The court held that Hammer *being a claimant under a conveyance from Whittren under a location which was void because of Whittren's connection with the Government, Hammer could have no rights in the property.* In discussing the case the court said at page 93:

> The purpose of the prohibition is to *guard against the temptations and partiality* likely to attend efforts to acquire public lands, or interests therein, by persons so situated, and thereby to *prevent abuse and inspire confidence in the administration of the public-land laws.* [Italics ours.]

The court then stated the rule, as follows:

> The general rule of law is that an act done in violation of a statutory prohibition is void and confers no right upon the wrongdoer, but this rule is subject to the qualification that when, upon a survey of the statute, its subject matter, and the mischief sought to be prevented, it appears that the legislature intended otherwise, effect must be given to that intention. *Miller* v. *Ammon,* 145 U. S. 421, 426; *Burck* v. *Taylor,* 152 U. S. 634, 649; *Connolly* v. *Union Sewer Pipe Company,* 184 U. S. 540, 548. Here we think the general rule applies. The acts described in Sec-

> tion 452 are expressly prohibited under penalty of dismissal. *There is in its language nothing indicating that its scope is to be confined to the exaction of that penalty, Prosser* v. *Finn, supra, or that acts done in violation of it are to be valid against all but the Government.* Nor is there anything in its subject matter or in the mischief sought to be prevented which militates against the application of the general rule. On the contrary, it is reasonably inferable, from the language of the Section and the situation with which it deals, that it is intended that violations of it *shall be attended by the ordinary consequences of unlawful acts.* We therefore are of opinion that the readjusted location was void. [Italics ours.]

It seems to have been admitted that the transaction would have been void as against the Government.

The case of *Ewert* v. *Bluejacket,* 259 U. S. 129, involved the action of a special assistant to the Attorney General in purchasing from an Indian certain allotted lands. Section 2078 of the Revised Statutes provided that:

> No person employed in Indian affairs shall have any interest or concern in any trade with the Indians except for, and on account of, the United States; and any person offending herein shall be liable to a penalty of $5,000 and shall be removed from his office.

After determining that Ewert came within the prohibition of the statute the court stated at page 138:

> The general rule of law is that an act done in violation of a statutory prohibition is void and confers no right upon the wrongdoer. *Waskey* v. *Hammer,* 223 U. S. 85, 94, and cases cited. The qualifications of this rule suggested in the decisions are as inapplicable to this case as they were to the *Waskey* case. *The mischief sought to be prevented by the statute is grave and it not only prohibits such purchases but it renders the persons making them liable to the penalty of the large fine of $5,000 and removal from office.* * * * *The purchase by Ewert, being prohibited by the statute, was void.* [Italics ours.]

It is, of course, settled law that transactions by public officers in violation of the Statutes of the United States are void and confer no rights upon anyone as against the United States.

> *Ewert* v. *Bluejacket,* 259 U. S. 129, 138.
> *Waskey* v. *Hammer,* 223 U. S. 85, 94.
> *United States* v. *San Jacinto Tin Co.,* 125 U. S. 274, 307.
> *Pine River, etc., Co.* v. *United States,* 186 U. S. 279, 291.
> *United States* v. *Alexander,* 110 U. S. 325.
> *Humboldt* v. *Long,* 92 U. S. 642, 648.
> *The Floyd Acceptances,* 7 Wall. 666, 677.
> *Hunter* v. *United States,* 5 Peters, 173, 186.

It is submitted, therefore, that the transactions in question, being in direct violation of the prohibition contained in Section 41 of the Criminal Code applicable to any and all officers or agents of the United States, were void as against the United States.

2. Contentions of appellee and positions of the Courts below on this point

In the trial court counsel for defendant, when confronted by this statute, devoted much time and ingenious argument to an effort to evade its plain and sweeping provisions. These arguments were chiefly founded upon the contention that the sales were in fact made by Mr. Palmer as Custodian and not by Mr. Garvan. While this would not have cured the illegality of the transactions, it was a rather startling contention in view of the fact that Mr. Palmer ceased to be Custodian on March 4, 1919, and the first of these conveyances was made on April 10, 1919, and the others during the two years following when Mr. Garvan was Custodian and Mr. Palmer was Attorney General, and more particularly in view of the Answer in this case. (Rec. Vol. 1, p. 538.)

We shall first consider the facts. There is no pretense that any agreement was made with anyone for the sale of these properties prior to February 15, 1919, although the matter had been generally discussed. We may, therefore, take this as a starting point. Mr. Palmer testifies that he referred the whole matter to Mr. Garvan in January, but was kept informed of developments by Mr. Garvan and approved what was done. (Rec. Vol. 4, pp. 2603 and 2604.)

He did not attend any of the conferences and did not appear in the matter of sale at all except in securing the order from Mr. Polk on February 26, 1919. He did nothing more about it until he resigned on March 4, 1919. It follows, therefore, that the alleged agreement, if made prior to Mr. Palmer's resignation, must have been made by Mr. Garvan. There is no record evidence of any agreement. The only testimony on the subject is that of Mr. Garvan. He states that about the 15th or 16th of February, 1919, there was a conference in New York at which he, Mr. Choate, and Mr. Hoguet were present as representatives of the Custodian, and that the price to be paid for the patents, etc., to be assigned was agreed upon as $250,000. That was all. (Rec. Vol. 4, pp. 2799, 2800; Rec. Vol. 5, pp. 3002–3003.) He was carefully examined as to this conference. He could not definitely tell the name of a single person present except the three persons representing the Custodian. He could not tell a thing that was said by anyone. No record was kept or note made of the conference. (Rec. Vol. 5, pp. 2985–2989.)

This is the entire basis for the claim that a contract of sale was made prior to the resignation of Mr. Palmer. At that time very few of the patents had been seized; the corporation which afterwards made the purchase had not even been chartered; authority to make a private sale had not been obtained, and was not until ten days later. There was, therefore, no authority to sell, nothing to sell, and no purchaser in existence. The persons present at the conference can not be identified, and not a single person or corporation can be named who or which assumed any obligation, present or future, as to any purchase of these patents.

The Court of Appeals, in its opinion on this point, says (Rec. Vol. 7, pp. 5031–2):

> This finding may be challenged on the ground that at the time Mr. Palmer was Alien Property Custodian and the contract was made the Chemical Foundation had not been incorporated and therefore it was not in existence. That is true. But it is familiar business practice for persons to negotiate and fully complete contracts for the benefit of corporations intended to be organized, and, of course, not in existence, and the courts sustain such contracts when later the corporations are organized *and they assume* the contracts. [Italics ours.]

The principle and practice stated is admitted, but the facts are absent. Who entered into a contract "for the benefit" of this corporation? Mr. Garvan was asked and could not name anyone. What were its terms? Nobody knows. When was it made? What was the promise or consideration? Not a single element of contract on the part of any purchaser of these patents appears in the record until the directors of the corporation, of which Mr. Garvan was one, passed a resolution on the 4th day of April, 1919. (P. Ex. 58, Rec. Vol. 8, p. 187.) To purchase these properties and pay $250,000 therefor; and, although Mr. Garvan was present and voted on the resolution, nothing was said about assuming any preexisting contract. This was as to the first assignment only. The Court ignores all the others.

The answer of the defendant is conclusive on this point. That answer (Rec. Vol. 1, p. 538) avers that Mr. Palmer had " formulated " a " plan of sale " of said patents. Of course a plan by a prospective seller is not a contract to sell or a contract of sale. The answer then states " That said Garvan thereupon proceeded to *carry into effect said plan* of sale as formulated and agreed upon *by his predecessor.*" That ends this discussion so far as appellee is concerned, although this answer was evaded by counsel and ignored by the Courts. Mr. Palmer, acting through Mr. Garvan, " formulated " a " plan." Mr. Garvan after he became Custodian " carried into effect said plan of sale " by (1) organizing a purchaser, (2) securing a second order from Mr. Polk enlarging the alleged power of sale, (3) making a contract of sale wherein he acted both as Custodian for the United States and as president and director of the corporate purchaser, (4) executing the contract of sale by making the conveyance, and (5) receiving the purchase money from the purchaser. This applies to the properties covered by the assignment of April 10, 1919. As to the other eighteen assignments made by Mr. Garvan to the corporation of which he was president in the course of two years, Mr. Palmer clearly had nothing to do with the negotiations or sales. They were negotiated and made by Mr. Garvan as Custodian.

Neither of the Courts below based its decision to the effect that this statute did not apply to the transactions in this case on the positions advanced by counsel which have been discussed, nor did the Courts themselves base their conclusions on the same grounds.

The District Court held that the application of this statute was prevented by a clause in Section 7 (c) of the Trading with the Enemy Act (Rec. Vol. 7, p. 4966), a point suggested for the first time by the Court after the case was submitted.

We submit that there is no conflict or inconsistency between Section 41 of the Code and Section 7 (c) of the Act and no indication that Congress intended that the one should override or limit the general application of the other, but even had this existed, the court should have so construed and applied the two acts as to give effect to both. This will more clearly appear from an examination of the language of Section 7 (c) of the act, the connection in which it is used, and the nature of the transactions here under review.

As we undertook to show in the beginning of the discussion of *Point I*, with reference to the inter-because there are bound to be some errors made by the stenographer.

The Court: Of course, changes in the testimony are a matter of more importance; and unless it is a plain stenographic error, it ought not to be changed.

So far as the argument is concerned, I see no reason why counsel on either side may not correct errors of diction or faulty phraseology, which might happen more frequently in my case than in yours; so that I see no reason to limit you except in substance on your arguments. But unless counsel can agree as to corrections with respect to testimony, then it will have to be determined in some other way.

Mr. Anderson: That is understood, sir, that until the trial is finished I cannot go over all this matter; but I noticed this morning a great many statements which were not quite natural to me, as a stenographer myself, and the sound of my voice does not always carry well. I am not criticizing the reporter, but merely stating I would not like to be bound by them.

Mr. Kresel: We noticed similar examples, for instance, in Mr. Guthrie's argument yesterday. That is unavoidable, of course.

The Court: Undoubtedly, that is true. So you may make your corrections pursuant to arrangement between counsel; and in the absence of arrangement, if you cannot agree, I will fix it up. We will adjourn to one o'clock, standard time.

AFTER RECESS

Mr. Galloway: If your Honor please, continuing reading the document which we were reading when the noon adjournment came, I will omit a paragraph or so there and continue reading as follows: (Continues reading exhibit.)

pretation or construction of the Trading with th Enemy Act, that Act deals with numerous, separate, and distinct questions. The seizure an holding of enemy property was only one phase o the subject matter.

Section 7 of the Act deals exclusively with th seizure or taking possession of enemy property It has no relation whatever to the administrativ acts of the Government or its officers in holdin and dealing with that property *after it is seized* including the sale or conversion into cash, pendin the final action of Congress for the dispositio thereof. These phases of the matter are deal with in Section 12, and by Section 6 of the Ac requiring the Custodian *to account therefor.* Th power of seizure was vested in the President, tha of administration and sale in the Custodian.

Section 7, as amended and in force at the tim of the transactions referred to, is divided into fiv subsections, indicated by the letters (a) to (e) inclusive. Subsections (a) to (c), inclusive, provide for the seizure of property by the President which power he exercised through the Custodian In effect, these sections provided that any person firm, or corporation in the possession of property which the President might determine to be the property of an enemy or ally of an enemy, as defined in the act, should, upon demand of the President, pay over or deliver such property, including shares of stock and other similar evidences o property, to the Custodian. This was a summary proceeding, and the courts have held that these provisions of the statute gave to the President, or to the Custodian exercising this power on his behalf, the right to immediate possession of the property, or the evidence thereof, even though he made a mistake in the determination that the property was that of an enemy or ally of an enemy. It even gave the power to the President to take possession by force, if necessary.

Miller v. *Kaliwerke, etc.,* 283 Fed. 746.
Bank v. *Garvan,* 273 Fed. 43.
Garvan v. *Commercial Trust Co.,* 275 Fed. 841.
Stoehr v. *Wallace,* 269 Fed. 827.

It was found that in some instances where corporations had stock outstanding, the certificates of which were beyond the jurisdiction of the United States, the Custodian could not obtain the certificates of stock which were necessary for him to hold, as evidences of enemy interest in the corporation, to be voted in the administration thereof. To remedy this condition the section was amended by Act of November 4, 1918, requiring corporations and other similar organizations to cancel such outstanding certificates on their books, without surrender thereof, and issue new certificates to the Custodian. This left the corporation with two certificates outstanding, representing the same shares, and it was obviously necessary to afford some protection to the corporation in such circumstances.

These three subsections (a) to (c), inclusiv
thus provided for the summary seizure of th
property, or evidences of property, under orde
of the President, and upon determination that t
owner thereof was an enemy or ally of an enem

Subsection (d) of Section 7 deals with a di
ferent condition. This subsection provides that
not required to pay over, convey, or transfer su
property, any person not an enemy or ally of a
enemy who holds money or property for the bene
of an enemy or ally of an enemy, or to whom an
obligation or liability to an enemy or ally of a
enemy is presented for payment, "*may, at h*
option, with the consent of the President, pa
convey, transfer, assign, or deliver to the Alie
Property Custodian said money or other propert
under such rules and regulations as the Preside
shall prescribe." [Italics ours.]

We thus have in this statute two methods b
which money or property, or evidences thereo
may come into the possession of the Custodian
(1) By *seizure,* under order of the President, a
provided in Subsections (a), (b), and (c); or (2
By *voluntary delivery* made by the person in pos
session or in control of such property for th
benefit of an enemy or ally of an enemy.

These conditions presented serious dangers t
persons holding property of another in makin
delivery thereof, whether by order of the Presi
dent under Subsections (a), (b), and (c), or vol
untarily under Subsection (d).

While the statute and acts of executive officers, in pursuance thereof, if clearly done within their authority, might afford protection, yet if the acts of an executive officer should ultimately be found to be beyond his authority, the holders of property might in the absence of express statutory provision to the contrary be held liable for making delivery and for any loss resulting therefrom. This was particularly true as to persons who made voluntary deliveries to the Custodian, since they would be acting at their own risk in so doing. The law is well settled that the act done under an order of an executive officer, including the President of the United States, affords no protection to the person who acts in obedience thereto, unless such order was within the authority of the executive officer, and the act done was within the scope of the order. *Little* v. *Barreme*, 2 Cranch, 170.

Subsection (e) was inserted to meet this situation, and the report of the Senate Committee on Commerce, No. 113, August 31, 1917, page 8, contains the following reference to this subsection:

> Section 7 (e) contains provisions giving protection to any *person who may have performed any act in pursuance of an order, rule, or regulation made by the President*, and provides also for acquittances and discharges *to any such person paying or conveying property* to the alien property custodian. [Italics ours.]

The language of Section 7 (e), so far as he
involved, is as follows:

> (e) No person shall be held liable in a
> court for, or in respect to, anything do
> or omitted in pursuance of any order, ru
> or regulation made by the President und
> the authority of this Act.
>
> Any payment, conveyance, transfer, a
> signment, or delivery of money or proper
> made to the Alien Property Custodian her
> under shall be a full acquittance and di
> charge for all purposes of the obligation
> the person making the same to the exte
> of same.

It will be noted that this language, and eve
part thereof, is essential to meet the conditio
presented by the four preceding subsections.

Clause (1) of Subsection (e) exempts from li
bility any person who may deliver property,
otherwise comply with the *order* of the Preside
requiring the delivery of property as provided
Subsections (a), (b), and (c) preceding.

The second clause of Subsection (e) relates e
clusively to persons who *voluntarily* make delive
of money or property to the Custodian, as pr
vided for in Subsection (d) preceding. This
manifest from the language used. Subsection (
authorizes persons therein described to voluntari
"*pay, convey, transfer, assign,* or *deliver* to t
Alien Property Custodian said *money or oth*
property." [Italics ours.] The second clause
Subsection (e) provides that "any *payment, co*

veyance, transfer, assignment, or *delivery* of *money or other property* made to the Alien Property Custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same." [Italics ours.]

The first clause would not protect a person making voluntary payment *without* a Presidential order, and the second clause would not apply to a person who surrendered possession in *response to seizure under Presidential order.* We thus have a logical and reasonable construction of these clauses, giving effect to every word thereof applied to the subject matter in connection with which they are used, and carrying out the obvious purpose and intent thereof to the fullest extent. This meets every rule of construction.

The courts have in a number of cases had Section 7 (e) under consideration and in every case have given it the construction for which we contend.

In the case of *Kahn* v. *Garvan,* 263 Fed. 909, the court refers to the remedy which is given to claimants by Section 9 of the act, particularly with reference to their right of action in the district court within six (6) months after the conclusion of peace. The court states at page 914:

> But Section 9, having created this remedy, concludes with a paragraph which makes all captured property immune from process in any court and thus cuts off any remedy in

> rem or in personam. Moreover, as a necessary corollary, Section 7 (e) provides immunity in personam *to any person who shall comply with any demand of the Alien Property Custodian.* The language of the section it is not necessary to give in extenso; *it provides in the most explicit way for the complete protection in every court of the bailee, trustee, agent, obligor, or other person called upon to yield to the Alien Property Custodian's symbolic act of capture.* [Italics ours.]

See also:

> *Stoehr* v. *Wallace*, 269 Fed. 827, 834.
>
> *Garvan* v. *Marconi Wireless Telegraph Co.*, 275 Fed. 486.
>
> *Garvan* v. *Commercial Trust Co. of New Jersey*, 275 Fed. 841, 844.
>
> *American Exchange National Bank* v. *Garvan*, 273 Fed. 43, 47.
>
> *Miller* v. *Kaliwerke Aschersleben, Aktein-Gessellschaft*, 283 Fed. 746, 757.

But even if we assume (which we do not admit) that Section 7 (e) applied to the Alien Property Custodian and provided immunity for him as against any suit for anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act, still the Custodian would not be entitled to such protection in this transaction, because (1) there was no order, rule, or regulation of the President authorizing these transactions (see pp. 105 to 138 of this brief); (2) such transactions were not in accordance with the provisions of the orders of Frank L. Polk, purporting to authorize them (see pp. 132 to 138 of this brief; and (3) neither the President nor Mr. Polk had any authority under this Act to issue any orders, rules, or regulations which would authorize these transactions. However, let us go still further, and assume without admitting that the immunity applied to the Custodian, that there were valid and lawful orders by the President authorizing these transactions; that the President had authority under the Act to make such orders, and that these transactions were in accordance with such orders; still such Section will not defeat the right of the Government in this suit. The most that can be claimed with all of these assumptions is that the Alien Property Custodian is protected and that this Section relieves him from official or personal liability. The Government is not seeking in this suit to hold Mr. Garvan liable. The issues are between the Government and the appellee, and the Government seeks to have the appellee return these properties. The appellee did not act in pursuance of any order, rule, or regulation made by the President. It acted upon orders of its board of directors. Even if this section saves Mr. Garvan and his associates from liability (a question not here raised), it certainly can not give to appellee a good title to these properties acquired and held against the United States under acts of its officers in violation of the provisions of an Act of Congress, or confer upon them capacity to do something forbidden by Act of Congress.

In *Waskey* v. *Hammer,* 223 U. S. 85, this Court, in speaking of a similar but far less comprehensive statute, said that the purpose of the statute was to "guard against temptations and partiality" and to "prevent abuse and inspire confidence in the administration of the public land laws." Again, in *Prosser* v. *Finn,* 208 U. S. 67, this Court said as to a similar statute:

> Congress has said without qualification that employees in the General Land Office shall not, while in the service of that office, purchase or become interested in the purchase, directly or indirectly, of public lands. * * * The prohibition in the existing statute is not restricted to any particular officers or particular employees of the Land Office, but embraces "employees in the General Land Office" without excepting any of them.

This is even more true of Section 41 of the Code. It embraces all "officers" and "agents" "of any corporation," and prohibits their being "employed" or "acting" as "officers" or "agents" of the United States in the "transaction of business" with such corporation. The language is all inclusive; the prohibition is absolute. The Government asks that the principles stated in the cases cited supra may be applied, and that these transactions may be held to be within the prohibition of the clear language of the statute, and therefore void as against the United States.

The Court of Appeals, in holding that Section 41 of the Code did not apply to these transactions, approved the position of the District Court, which has been discussed, but did not place its decision on that ground. It went further and inadvertently, of course, rewrote Section 41 of the Code, substituting the conjunctive "and" for the disjunctive "or," both as to the classes of persons within the prohibition of the Statute and their "interest" in the corporation. In its statement of Section 41 the language of the statute is not quoted. It is summarized as follows (Rec. Vol. 7, p. 5031):

> In defining the offense the statute discloses that it has several elements; (*a*) that the offending person shall hold opposite and incompatible positions, in that (*b*) he shall be an officer or agent of the United States and (*c*) at the same time an officer or agent of a corporation engaged in a transaction with the United States, *and* (*d*) *as such* he shall be directly or indirectly interested in the pecuniary profits or contracts of such corporation.

We submit that this is not what Section 41 says at all. As the statute is stated by the Court it would be necessary, in order to bring a person within the prohibition of Section 41 of the Code, that such person should be (1) an officer or agent of the corporation, and (2) "*as such*"

Mr. Kresel: It is apparent, your Honor, that there are some differences between the copy from which Mr. Galloway was reading and the copy that we have. I simply desire it to be understood that we have the privilege of getting together to make such corrections as are necessary.

Mr. Anderson: May it please the Court, I would ask leave to interrupt the orderly presentation of the documentary evidence to call Mr. Patterson, who is the head of the Textile Alliance, Incorporated, and is so situated that he is very anxious to leave. I think his testimony will be very short.

ALBERT M. PATTERSON.

Albert M. Patterson, a witness callel on behalf of the plaintiff, being first duly sworn, testified as follows:

Mr. Anderson: If your Honor please, before examining this witness, in view of the statement made this morning, I think on behalf of the Government I should make a motion. At the time that the Bill was drawn in this case, as your Honor knows, under the law a person or corporation could only be sued in the district in which he or it resided, and therefore no one could be made a party defendant to this Bill who was not a resident of this district. I say that because of the criticism of counsel this morning of not making certain persons or corporations parties defendant.

At the time the Bill was drawn there was in the possession of the Government the evidence which has been introduced here this morning and other evidence of a secondary character, which it was believed was confirmed, which led us to a reasonable belief, the counsel of the Government to a reasonable belief that should have a direct or indirect interest in the pecuniary profits or contracts of the corporation. If either element were absent the statute would not apply. This is not the statute as enacted by Congress and then in force. It reads:

> No "*officer* or *agent* of any corporation, joint-stock company, or association, and no member or agent of any firm, *or* person directly or indirectly interested in the pecuniary profits *or* contracts of such corporation, joint-stock company, association, or firm shall, etc.

The essential difference between the statement of the statute by the Court, upon which its decision is predicated, and the language of the statute itself is manifest. The statute is disjunctive. It provides that if a person is an "officer" or "agent" of "any corporation" (nothing more) he is within the prohibition of the statute as to the "transactions of business" between the United States and that corporation. It does not require that he shall, in addition to being an "officer" or "agent," have "as such" or otherwise an interest in the "pecuniary profits or contracts" of the corporation. If, on the other hand, he is in any way, not *"as such,"* "interested directly or indirectly" in the (*a*) "pecuniary profits" or (*b*) "contracts" of the corporation, he does not have to be an "officer" or "agent" thereof to come within the prohibition of the statute. A stockholder having an interest either in the pecuniary profits or in the contracts of a corporation is as much prohibited from acting as officer or agent of the United States in transactions with the corporation as is an officer or agent of the corporation. The Court not only held, therefore, that the two conditions must exist as distinguished from only one required by the statute, but that the *pecuniary interest* must arise out of his official position, of which there is not a suggestion in the statute. A man might be both president of a corporation, serving without compensation, and owner of three-fourths of its stock, and through that ownership have enormous prospective profits from a government contract, if secured; yet under the decision of the Court he would not be prohibited from acting for the government in making that contract with the corporation, because although he was an officer of the corporation he did not " as such " participate in the profits. This is not only an unwarranted change by the Court in the language of the statute, it is a destruction and in effect a repeal of the statute by interpretation.

The Court then applies the statute so modified and interpreted to this case. It first finds that a contract to sell these patents was made while Mr. Palmer was Custodian, but this alleged contract was *performed* by Mr. Garvan after he became Custodian and while he was president of the corporation. This brings the transaction of this business within the express prohibition of the statute. In finding that a contract was made the court fails to refer to any evidence on which this finding is based. We have seen that Mr. Garvan, who conducted the negotiations, was unable to identify any person with whom any agreement was made prior to March 4, 1919; that at the time Mr. Palmer ceased to be Custodian only a few of the patents had been seized and the corporation had not been organized. In order to make a contract which could be assumed by the corporation when organized, there must have been some one to contract for the purchase, and no person is or could be identified in this evidence. But even if the contract was made to sell something which the Custodian did not have to a purchaser unidentified or not in existence, the Court finds that the contract was *performed* after Mr. Garvan became Custodian and president of the Corporation, by Mr. Garvan and his associates, which is in accord with the answer in this case and brings it within the express terms of Section 41.

The Court holds that as to Mr. Garvan "there was present the element of two official positions and in these positions, it is true, he *carried out* the contract previously made"; but held that the statute did not apply to his case, as he was a "Dollar a Year Man" and received no compensation as president of the corporation, and therefore had no "direct or indirect interest" in the pecuniary profits or contracts of the Foundation. The statute does not require any interest in the profits or contracts where the person is an officer or agent of the corporation, nor does there appear to be any exception in favor of "Dollar a Year Men."

As to Messrs. McKay and Corbett, it holds that because they were not stockholders there was lacking the element of pecuniary interest in the profits or contracts. The statute does not require "pecuniary interest" where the person is an officer or agent of the corporation, nor does it refer to "pecuniary interest" at all, but to a direct or indirect interest in the "pecuniary profits or contracts." It is difficult to see how the president, vice president, and active manager, and the secretary and treasurer of a corporation can be held not to have any interest in the "pecuniary profits" or in the "contracts" of the corporation of which they are such officers. The law charges them with such an interest.

As to Mr. Choate, the court holds that he was a "Dollar a Year Man" in the service of the Government, but does not refer to the fact that he was an officer and agent of the corporation at the time these transactions took place and received compensation as such. (Rec. Vol. 5, p. 3068.) He comes within the terms of the statute even as stated and interpreted by the court.

As to Mr. Hoguet, it refers to his position at the time the alleged contract was made, but not at the time that it was carried out by Mr. Garvan with his assistance. He was then patent attorney for both the Foundation and the Custodian, and was receiving compensation in both capacities. (Rec. 10, pp. 1480, 1557.) He comes within the exp terms of the statute even as stated and interpre by the court.

As to the Members of the Advisory Sales C mittee, they were undoubtedly agents of the Un States with respect to this subject matter, and voting trustees of the corporation holding all of voting stock it could hardly be said that they did have a direct or indirect interest in the pecuni profits or contracts of the corporation.

The spirit and attitude of the learned C below in considering this matter could not be ter demonstrated than by its language (Rec. 7, p. 5033) in finally disposing of this point. says:

> If the ten persons named violated cited Criminal Statute, they did it with full knowledge and complicity of the ot participants—Mr. Palmer, Mr. Polk, Ju Gray, and President Wilson.

The Court thus places the Government, in serting its rights as to title to property agains private corporation, in the position of preferr a criminal charge against the men named. statement is not warranted by the facts of case. The Government is not preferring a cri nal charge against anyone. It is asserting tha the position which the parties named occupied the time they were incapacitated by express st ute from making sales and conveyances of th properties to this corporation which could confer a valid title or any title against the United States. It is only relying upon the prohibitive aspects of the statute as was done in *Prosser* v. *Finn* and other cases cited, *supra*, and is not dealing with the criminal aspects at all.

Even more unjustifiable is the suggestion as to Mr. Palmer, Mr. Polk, Judge Gray, and President Wilson. Not one of these men had any connection with this corporation or had anything whatever to do with the carrying "into effect" of these transactions; certainly after March 4, 1919, after which date every sale and conveyance here in question was made or "performed" on the finding of the Court itself. No one of them was an "officer" or "agent" of or had any interest whatever in the corporation.

It was claimed in the Courts below that these transactions were validated by the knowledge or approval of the President. This contention is clearly unsound on two grounds—one of law and the other of fact.

If the transactions as carried into effect by these parties occupying the positions stated were prohibited by statute, as the Government contends, they could not be authorized nor given validity by the approval of the President. The President is as much bound by the laws as anyone else, and has not power either to suspend or annul them. For this proposition no authority is required, but a few among many may be cited.

In a book entitled "Our Chief Magistrate an His Powers," the present Chief Justice of thi Court says, at pages 139 and 140:

> The grants of executive power are nece sarily in general terms in order not to em barrass the executive within the field o action plainly marked for him, but hi jurisdiction must be justified and vindicate by affirmative constitutional or statutor provisions or *it does not exist.* [Itali ours.]

In the great case of *Ex parte Milligan,* 4 Wal 2, 120, this Court, in holding invalid an act o President Lincoln which he deemed necessary fo the safety of the nation in a great war crisis, said

> The Constitution of the United States i a law for rulers and people, *equally in wa and in peace,* and covers with the shield of it protection all classes of men at all times an under all circumstances. No doctrine in volving more pernicious consequences wa ever invented by the wit of man *than tha any of its provisions can be suspended du ing any of the great exigencies of govern ment.* Such a doctrine leads directly t anarchy or despotism. [Italics ours.]
>
> See also, *Floyd Acceptances,* 7 Wall. 66 676; *United States* v. *Lee,* 106 U. S. 196, 22 *Kendall* v. *United States,* 12 Peters, 52 610.

It follows that even had the President unde taken by express order to have authorized thes transactions to be done, or had subsequently u dertaken to ratify them (and he did neither), when done by persons occupying the positions and relations stated, in the manner in which they were carried into effect, they would have been entirely void as against the United States, as being in violation of the express provisions and prohibitions of an Act of Congress, and for want of capacity in these persons so situated to perform them on behalf of the United States. But the President never undertook to approve the transactions as "carried into effect" (see Answer, Vol. 1, p. 538) by Mr. Garvan and his associates.

There is not a suggestion in the evidence that the President ever had any actual knowledge of these transactions as "carried into effect" by Mr. Garvan and his associates. The President returned to Paris on March 5th, 1919, and all of these sales were carried out after that date.

The order of February 13, 1920 (Rec. Vol. 1, p. 557), is also relied upon in this connection. This order, when sent to the President, was accompanied by no information as to how or in what manner these sales had been or were being conducted. It was strictly limited by its terms to the rights of action and rights to receive royalties therein mentioned. It did not authorize any sales of any of these patents, etc., themselves or the ratification thereof, but limited its application in the clearest language to the rights therein "authorized" to be sold. It certainly did not refer to the relationships of the parties who had effected or were effecting these sales, and there is no evidence that the President had any knowledge of these relationships.

Even had the President been informed as to these transactions and had actually undertaken to authorize these persons to transact this business on behalf of the United States, it could have had no effect as against the express prohibition of the statute, which incapacitated them while officers of the corporation to "transact any business" with that corporation as officers and agents of the United States. Mr. Garvan continued to occupy the dual relationship stated until March 12, 1921, when he ceased to be Custodian, and after these transactions had been performed.

For the reasons stated, it is submitted that the transactions in question as "carried into effect" by Mr. Garvan and his associates named were in direct violation of the prohibitory provisions of Section 41 of the Criminal Code and were therefore void, and conferred no title upon the appellee as against the United States.

3. Said alleged sales and assignments were illegal and void, being in conflict with settled rules and principles of law and equity applicable to such transactions

The relations of the parties at the time that the sale was made have been set forth. Under settled principles of law applicable to such transactions by persons in a fiduciary position or public officers, regardless of statutes and regulations, this transaction, upon this state of facts, is absolutely void. The questions of good or bad faith and of adequacy or inadequacy of consideration are entirely immaterial. The law declares and the courts hold such transactions to be void on principles of public policy, on account of the obvious incapacity of persons to act in conflicting positions and the requirement of the law that a person who accepts and assumes the obligations of a fiduciary position or a public office *owes his first and entire allegiance to that office or trust* and can not occupy a conflicting or adverse position in dealing with that office or trust or the subject matter thereof.

This principle or absolute rule of law has been briefly discussed in the opening pages of the argument on this point. (Ante, pp. 138 to 141.) It is stated and applied to varying states of facts by the following authorities and decisions of this Court among many others which might be cited:

Story Eq. Jurisprudence, 14 Ch. Vol. 3, Sec. 446.

Pomeroy Eq. Jurisprudence, Vol. 1, Sec. 958; Vol. III, Secs. 1077, 1079.

Wormley v. *Wormley,* 8 Wheat. 421.

Michoud v. *Girod,* 4 How. 502.

Stephen v. *Beall,* 22 Wall. 329, 340.

United States v. *Carter,* 217 U. S. 286, 308.

Jackson v. *Smith,* 254 U. S. 586.

Magruder v. *Drury,* 235 U. S. 106, 120.

Downs v. *Richards,* 4 Del. Chy. 416.

the Textile Alliance was one of the organizations or corporations or associations which was active in bringing about this combination of bidders and conspiracy which is charged in the Bill.

I have not had a chance to go over the matter with Mr. Patterson, who is the president of that organization, who was then absent abroad, nor with Mr. Coudert, his counsel, until today, and after going over his correspondence, which has been very freely submitted to my inspection, I have reached the conclusion that while there were certain connections at certain stages which I am going to bring out by this witness, that there is no just ground for charging the Textile Alliance with being a member of the combination with respect to which we have been introducing proof.

In view of these circumstances and what I conceive to be the policy of the Government never to charge a wrong upon any citizen unless it has reasonable proof, which it thought it had, and if it finds it is wrong to frankly say so, as a duty to its citizens, I want to move to strike the name of the Textile Alliance from the Bill. It only appears once in the Bill. I will make that motion and then I will examine this witness afterwards.

Mr. Kresel: Of course, your Honor, there is no objection on the part of the defendant. I want to say that I am very glad that Colonel Anderson has been able to reach that conclusion.

The Court: Let the motion be granted. Colonel Anderson, in order that the Clerk's record as well as the stenographer's record may show these amendments —this is the second one—I will get you to submit and file in writing the different amendments that you have made and see fit to make.

Mr. Anderson: The former amendments have been filed.

The Court: They were filed.

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UNITED STATES V. CHEMICAL FOUNDATION, INC.

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CARD III

Ex parte Bennett, 10 Vesey, 393.
Morse v. *Royal*, 12 Vesey, 372.

It is suggested in this case that Mr. Garvan, the Custodian, had no financial interest in the purchase, since he claimed to have held no stock in the appellee corporation and accepted no salary as president. The answer is that the interest adverse to the trustee need not be a financial interest, but the principle forbids a trustee to act as seller and buyer or be interested in a transaction both as seller and buyer, whether that be financial or otherwise. He is, in fact, incapacitated in law from acting in both positions. As we have seen, the rule is founded upon the policy of the law which forbids a fiduciary to occupy an adverse position with respect to a transaction in which he is interested as such fiduciary.

Perry on Trusts, vol. 1, sec. 207.
San Diego v. *San Diego, etc., Co.*, 44 Calif. 106.
Wardens of St. James v. *Church of Redeemer*, 45 Barb. (N. Y.) 356.
Matter of M. E. Society v. *Perry*, 51 Hun. (N. Y.) 104.
Aberdeen, etc., Co. v. *Blackie*, 1 McQueen (H. of L.) 461.

Applying these principles to the facts of this case, which have already been briefly outlined, it seems that the conclusion is inevitable that the transactions here involved were void as against the United States.

The record shows that the Custodian seized and had under his control property of the value of more than $500,000,000, exclusive of the property here in controversy. If he could dispose of these valuable patents, trade-marks, copyrights, and other rights in this manner he could have disposed of all of this property in the same manner. He could have organized a corporation consisting of himself and his associates and conveyed to it the entire $500,000,000 worth of property, including some of the most important commercial properties in this country, for nominal considerations, and thus have removed this property from the control of Congress and from the exercise by Congress of the right and power of final disposition reserved in the Act, and then in justification of such transactions he could have stated that he believed it was in the public interest to have this property under the control of himself and associates rather than to have it retained in the control of the United States. A construction of this simple statute creating a sacred trust with a carefully guarded power of sale, which might lead to such results, should not require serious discussion.

We submit that the transactions in question were in clear violation of Section 41 of the Criminal Code of the United States and of the principles of law and equity applicable to such sales, and that the same were void as against the United States.

POINT IV

Assuming but not admitting that private sales were lawfully authorized, the sales as made and conducted by the Alien Property Custodian were illegal and void and conferred no title upon the purchaser

This point involves a discussion of the issues raised by assignments of error Nos. VII and VIII (R. Vol. 7, pp. 5052 and 5053).

The consideration of the questions here presented is predicated upon the discussion of the provisions and construction of the Trading with the Enemy Act contained in Point I of this brief, and we ask the Court, therefore, to keep in mind the views there presented and the authorities cited without repetition thereof.

1. The transactions of sale and assignment by the Alien Property Custodian were in violation of the order of Frank L. Polk (alleged to have authorized a private sale) and therefore void

We have already pointed out that the sales or transactions were made by Mr. Garvan after he became custodian in such manner as to entirely destroy the conditions stated by Mr. Polk in his orders; and that to remove any doubt on this subject the principal assignments contained an express provision that the grants were made "without any reservation or qualification whatsoever, whether by reason of anything contained in the charter of The Chemical Foundation, Incorporated, or otherwise." (Rec. Vol. 1, p. 408.) We have discussed this point fully, *ante* pp. 132 to 138, to which discussion the Court is referred.

2. No effort was made to ascertain the value of the property

The rules and regulations made by the Custodian recognized that in the sale of this property the Custodian would be acting for the Government, and that in exercising the powers of a public officer, with power of tax, he would be subject to the limitations imposed by law upon trustees. One fundamental essential of a sale by a trustee or a person occupying a fiduciary position is that it must be a fair sale in every sense of the word, and the property must be sold under such conditions as will enable it to bring its fair equivalent in money.

Wormley v. *Wormley*, 8 Wheat. 421.
Lamar v. *Micoux*, 112 U. S. 452.
Melich v. *Voorhees*, 24 N. J. Eq. 305.
Hill v. *Shoemaker*, 8 D. C. 305.
Hoppes v. *Cheek*, 21 Ark. 585.
Beall v. *Dingman*, 227 Ill. 294.
Perry on Trusts, 5th Ed., Vol. 2, Sec. 770.

With this object in view the rules and regulations required the appraisal and valuation of property, including a complete audit of going concerns covering a period of five years, and other proceedings which would enable the Custodian and prospective purchasers to know what was the fair value of the property; the advisory committee was created to pass upon such value; and those charged with the making of sales were required to see that they were so made that the purchaser would be induced to give that value. (P. Ex. 3, Rec. Vol. 8, pp. 14 to 27.)

In this case none of these proceedings were taken. The income at the rate of about $300,000 per annum then being derived from a few of the patents licensed (P. Exs. 198 and 198A, Rec. Vol. 8, pp. 473–477) does not appear to have been considered. There was some discussion of price at the conference of January 27, 1919 (P. Ex. 28, Rec. Vol. 8, p. 85 at 96 and 97), but the number of patents was not then known and no conclusion was or could then have been reached. (P. Ex. 28, Rec. Vol. 8, p. 85 at pp. 96–99.) There was apparent agreement on the principle that no amount in excess of the actual fees and expenses of issue of a patent, which was estimated at $50 each, should be paid. (P. Ex. 28, Rec. Vol. 8, p. 85 at pp. 96 and 97.) Mr. Palmer testifies that this was the basis of determining the price. (Rec. Vol. 4, p. 2679.) Of course, this method gave no consideration whatever for the property in the patent. Mr. Palmer testifies that he considered the "value to the purchaser" under the terms of sale. (Rec. Vol. 4, p. 2681.) Mr. Garvan testifies that in fixing the price they considered the interests of the industry and the amount of money they were willing to raise. (Rec. Vol. 5, p. 3029.) Mr. Choate says the price was "a guess." (Rec. Vol. 5, pp. 3167, 3170.) The Court of Appeals finds that the price was fixed at an amount which the purchaser was willing to pay. (Rec. Vol. 7, p. 5012.)

It should not be necessary to discuss at length the question of the validity of a sale by a public officer of property in his custody made in this manner.

3. The patents, trade-marks, copyrights, and other similar property covered by these alleged sales or assignments, though taken from many separate owners and held by the Custodian in many separate trusts, were all sold in bulk and not in a manner which would constitute a fair sale

An examination of the list of patents and other rights claimed to have been sold (Record Vol. 1, pp. 124 to 404) will show that these patents and other properties originally belonged to and were seized or captured from thousands of different independent owners; and the record shows that some of those owners were American citizens. (P. Ex. 487, Rec. Vol. 9, pp. 907–922.) They were held in many separate trusts by the custodian, each trust representing a separate owner. The Custodian was required by Section 6 of the statute to account therefor. Many of these patents were sold on the day after or a few days after they were seized. They were sold for one gross price, under each assignment, which the testimony shows was at an approximate average of $40 each. There was no allocation of the purchase price to any patent or group or groups of patents, or to any owner, but it was paid into the Treasury as a lump sum and there so remains. It is now impossible to allocate it among the thousands of owners. The record shows that the regulations of the Custodian required property seized from each owner to be carried in a separate and distinct trust, and the law would require this to be done in any event. See Amendment July 1, 1918 (40 Stat. 645), providing for payment of taxes out of property of each "enemy." It is contended and we think requires no argument to show that such a sale of trust property is illegal and void.

> *McCullough* v. *McCullough,* 44 N. J. Eq. 313.
> *Fowler* v. *Colt,* 25 N. J. Eq. 202.
> *Salisbury* v. *Colt,* 27 N. J. Eq. 492.
> *Perry on Trusts and Trustees,* Vol. 1, Sec. 463.

4. The sales were invalid because of the combination of substantially all of the prospective purchasers into one organization, which not only stifled competition but absolutely prevented the possibility of any other purchasers

We direct attention to the fact that the regulations controlling the sales issued by the Custodian on June 6th, 1918, expressly provided (P. Ex. 3, Rec. Vol. 8, p. 16):

> It is necessary that every precaution shall be taken to enable properties to be sold fairly and for a proper price, without any possibility of favoritism or undue advantage in favor of any particular purchaser.

This regulation was merely declaratory of the settled law with respect to the sale of public property by a public officer. In *Thatcher* v. *Powell,* 6 Wheaton, 119, Chief Justice Marshall said:

> That no individual purchaser can sell or convey good title to the land of another, unless authorized to do so by express law, is

> one of those self-evident propositions to which the mind assents without hesitation, and that the person invested with such power must pursue with precision the course prescribed by law, or his act is invalid, is a principle which has been repeatedly recognized in this court.

In *Cocks* v. *Izard,* 7 Wallace, 559, the Supreme Court said:

> The law will not tolerate any influences likely to prevent competition at a judicial sale, and it accords to every bidder a chance for a fair sale and full price; and if he fails to get these in consequence of the wrongful interference of another party, who has purchased his property at a price greatly disproportionate to its value, equity will step in and afford redress, either by setting aside the proceedings under the sale or by holding the purchaser to account.

See also:

Slater v. ***Maxwell,*** 6 Wallace, 268.
Smith v. ***Ayer,*** 101 U. S. 320, 327.
Perry on Trusts, 5th Ed., Vol. 2, Sec. 781.
Ord. v. *Noel,* 5 Madd. 440.
Taylor v. ***Tabrum,*** 6 Sim. 281.
Connolly v. ***Parsons,*** 3 Ves. 628.
Mortlock v. ***Buller,*** 10 Ves. 292, 309.
Johnson v. ***Dorsey,*** 7 Gill. 269.
Hintze v. ***Stingel,*** 1 Md. Ch. Dec. 283.
Penny v. *Cook,* 19 Iowa, 538.

Mr. Anderson: This one I only decided on at luncheon, while going over it.

The Court: You can file it at your convenience *nunc pro tunc.*

Mr. Anderson: I will file that on Saturday while the Court is in adjournment, and have an order allowing the amendments.

Direct Examination

By Mr. Anderson:

Q. 1. Mr. Patterson, please state your name, residence and occupation with respect, if any, to the Textile Alliance, Incorporated.

A. My name is Albert M. Patterson. I reside at 118 East Seventy-ninth Street, New York City. I am president of the Textile Alliance. My occupation is that of woolen manufacturer.

Q. 2. How long have you been President of the Textile Alliance?

A. Since its organization in the spring of 1914.

Q. 3. State in as few words as possible, what is the Textile Alliance?

A. The Textile Alliance is a membership corporation, non-profit making, organized under the laws of the State of New York for the purpose of preventing frauds and unjust exactions and abuses in the sale of mill supplies and raw materials. It was organized by the nominees of the five principal textile associations of the United States for that purpose. Shall I state the associations?

Q. 4. You need not, no. It is immaterial.

A. (Continuing.) To which there have since been added two other textile associations the nominee of a committee of the trade which was unorganized and a nominee of the Dyes Institute.

Q. 5. Mr. Patterson, there has been introduced

We have already pointed out how the dye and chemical interests were combined in this purchase so as to prevent any possible competitive bid.

P. Ex. 28, Rec. Vol. 8, pp. 85–87.
P. Ex. 29, Rec. Vol. 8, pp. 110–111.
P. Ex. 49, Rec. Vol. 8, p. 155.
P. Ex. 26, Rec. Vol. 8, pp. 81–82.
P. Ex. 34, Rec. Vol. 8, p. 135.

There is no controversy on this point. In his report to Congress, made in February, 1919 (D. Ex. 30, Rec. Vol. 11, p. 2181), Mr. Palmer, then Custodian, says:

> Substantially the entire industry having combined for the purpose of this purchase, it would have been impossible on public sale to find as a bidder any legitimate manufacturer.

In his testimony in this case, Mr. Palmer said (Rec. Vol. 4, p. 2681):

> I had to consider not only the value of the patents generally and the value to the seller, but in view of the fact that I had for the reasons stated created a purchaser for the purpose of making the purchase *I had to consider the value to the purchaser*. [Italics ours.]

A public officer in making a sale of property for the United States gives as his reason for making a private sale the fact that all prospective purchasers were combined with his approval, thus eliminating competitive bidding; and that in arriving at the price he considered the value to the purchaser! The fundamental evils and illegality of these transactions are clearly illustrated by those two statements.

5. The sales were invalid because purposely made in such a manner as to destroy, in whole or in part, the value thereof

The courts below held that only sales were authorized and that the transactions in question must be sustained as sales. (Rec. Vol. 7, pp. 4914 and 5022.)

In the case of *Nicholls* v. *Peak,* 12 N. J. Eq. 69, the court, in discussing this subject, says:

> If the trustee violates his trust and the purchaser lends his aid and countenance he is not entitled to protection. If the property is sold *not for the purpose of executing the trust but for any other purpose,* and the purchaser knows it, he participates in the fraud and is involved in its consequences. [Italics ours.]

In Pomeroy on Equity Jurisprudence, Vol. III, Sec. 1067, the principle is thus stated:

> The trustee is bound to protect the trust property in every reasonable manner during the continuance of the trust. He must therefore with due diligence obtain possession of the trust property, and must then retain it securely under his own control. He can not divest himself of the trust by conveying or assigning the property away to third persons, unless the trust itself is for the very purpose of a sale or disposition; *and even then he can only dispose of*

> *the property in pursuance of the trust and to carry out its objects.* [Italics ours.]

See also:

> *Melich* v. *Voorhees,* 24 N. J. Eq. 305.
> *Green* v. *Green,* 23 Wall. 486, 490.
> *Union Pacific R. R. Co.* v. *Durant,* 95 U. S. 576.
> *Lamar* v. *Micoux,* 112 U. S. 452, 465.
> *Wormley* v. *Wormley,* 8 Wheat. 421.
> *Wadsworth* v. *Adams,* 138 U. S. 380.

The answer in this case, and especially the third affirmative defense therein stated, seeks to justify this transaction upon the express ground that it tended to promote the interests of the dye and chemical industry of the United States *and was made for that purpose.* (See also testimony of Mr. Garvan, Record Vol. 5, pp. 3092–3.)

In the report of Mr. Palmer, made at the time this sale took place (Def. Ex. 30, R. Vol. 11, p. 2179), he says:

> The idea was accordingly conceived that if the German chemical patents *could be placed in any American institution strong enough to protect them a real obstacle might be opposed to German importation after the war, and at the same time the American industry might be freed from the prohibition enforced by the patents against the manufacture of the most valuable dyestuffs.* [Italics ours.]

He then states that the matter was placed before the leading dye and chemical manufacturers and met with their enthusiastic approval, and as a result the organization of the appellee and the sale of the patents to the appellee were undertaken.

See also testimony of Mr. Garvan, Rec. Vol. 5, pp. 3092–3093.

The District Court in its opinion (Rec. Vol. 7, p. 4911) says:

> It [the Government] asserts that the conditions of sale were partially destructive of the selling value even to American citizens. This is likewise conceded.

The Circuit Court of Appeals takes the same view. (Rec. Vol. 7, pp. 5039–5042.)

The facts are admitted by appellee in its answer and throughout the record, and the transactions are sought to be justified in law on the ground that they were done in the interest of "American industry." Both Courts below justify them in law on this ground. We find nothing in the statute which makes the Custodian the guardian of the interests of American industry or authorizes him to use the property in his custody to subsidize that industry or any part thereof in his discretion, especially through a corporation of which he happens to be president. An application of the terms of the statute and the most elementary principles of law stated and illustrated in the authorities cited to the facts thus found and admitted should demonstrate the illegality of these transactions as against the United States.

6. The sales were illegal and void on account of the relation of the parties conducting the same to each other and to the subject matter

The consideration of this subheading involves a discussion of the legal effect on these transactions of the admitted facts that the Custodian making the sales as an officer of the Government was at the same time the President of the purchasing corporation, and that the other officers of said corporation and voting trustees for its stock were, at the time said sales were made, also officers and agents of the United States, connected with the office of the Custodian, and charged with the duties relating to these properties and to the sales thereof. It is therefore contended that these sales were void as against the United States, both under the provisions of Section 41 of the Criminal Code and under the rules of law and principles of equity applicable to such transactions.

The issues thus presented have been fully discussed under Point III of this brief (ante, pp. 138 to 185), and the court is referred to that discussion without a repetition thereof at this point.

7. The sales were illegal and void for the reason that the price was grossly inadequate

We have seen that the imperative duty of a fiduciary or public officer clothed with power of sale is, when that power is exercised, to make a fair sale in the interest of his trust. Since a sale is a transfer of property into its fair equivalent in money (*Williamson* v. *Berry*, 8 How. 495, 543), no sale can be fair which does not substitute what is in law a just equivalent in money for the property transferred. The most elementary and fundamental test of a fair sale is to be found in the manner in which the price is arrived at, and in the measure or adequacy of the consideration.

Benjamin on Sales, Sec. 1.
Williamson v. *Berry,* 8 How. 495, 543.
Five Per Cent Cases, 110 U. S. 475.
Perry on Trusts, 5 Ed., Vol. 2, Sec. 781.
Oliver v. *Court,* 8 Price, 165.
Hill v. *Shoemaker,* 8 Dist. Col. 305.

This principle was especially applicable to sales of property in the custody of the Alien Property Custodian on account of the character of the property, the various relations involved, and the fact that Congress had by express reservation in the Act required the property or its proceeds to be held for final disposition by Congress after the war. An improvident sale for an inadequate consideration would, therefore, mean a sacrifice of the interests of the public, and when Congress came to make final disposition of the property it might involve the honor and good faith of the Government itself. The power of sale given to the Custodian must be read and exercised in the light of other provisions of the Act, recognized principles of law, the circumstances surrounding this property and the contingencies stated.

In the case of ***Wormley*** v. ***Wormley,*** 8 Wheat. 421, the Supreme Court, in an opinion by Justice

Story, reviewed this subject, and among other things said:

> But his acts, nevertheless, are subject to the scrutiny of the law; and if that opinion has not been fairly and honestly exercised, if it has been swayed by private interests and selfish objects, if the sale has been made at a price utterly disproportionate to the real value of the property and the evidence demonstrates such facts, a court of equity will not sanction an act that thus becomes a fraud upon innocent parties.

In the case of *Stevens* v. *Austin*, 7 Juris, N. S., 873, the Court of Queen's Bench of Great Britain was called upon to consider this question. In discussing the inadequacy of consideration the Court quoted with approval the following rule as stated by Lord St. Leonard in The Law of Vendors and Purchasers, 13th Ed., page 50:

> Every trust deed for sale is upon the implied condition that the trustees will use all reasonable diligence to obtain the best price and that in the execution of the trusts they will pay equal and fair attention to the interests of all persons concerned.

The rule thus stated is so elementary that we do not deem the citation of additional authorities at this point necessary.

The District Court found that the "price for which the property was sold was far less than the property was worth to the Germans from whom it was seized" and that "the conditions of sale were partially destructive of the selling value even to American citizens." (Rec. Vol. 7, p. 4911.) How about its value in the hands of the United States!

Upon the question of inadequacy of consideration the Circuit Court of Appeals said:

> If, in looking at it in one way, inadequacy of price means that the $250,000 paid was not enough in that it was less than the value of the patents in the hands of their previous German owners, we promptly say the price was grossly inadequate. (Rec. p. 5039.)

And again it says:

> Difficult as the problem is, we are nevertheless of opinion that $250,000, if paid for the outright unlimited and unconditional purchase of these patents by American citizens at a supposed public sale, would be inadequate, ***and we base our conclusion on the royalties which were being paid and received for some of them in 1919.*** [Italics ours.] (Rec. p. 5041.)

Under the Charter of the Corporation and the terms of the assignment (Rec. Vol. 1, pp. 90, 408) the purchase was "unlimited and unconditional."

The record shows that there were transferred through the Custodian to the appellee in this case: Patents, 4,764; applications for patents, 288; trade-marks, 874; copyrights, 492; contracts calling for the payment of money for the use of patents, 57; making a total number of properties sought to be transferred to the purchaser of 6,475. (D. Ex. 92, Rec. Vol. 11, p. 2666.)

The total consideration paid for all of these properties seized from several thousand separate owners was $271,850, or an average consideration of $41.98 each. The average consideration for the patents and other similar properties conveyed by the 19 several instruments of assignment varied from $12.46 each in the assignment of May 15, 1920, to $64.28 each in the assignment of June 21, 1919. The average for the largest assignment, of April 10, 1919, was $21.94 each. A tabulated statement of these sales and the consideration in each case has already been given in the statement of facts and will be found in the record. (D. Ex. 92, Rec. Vol. 11, p. 2666; see *ante*, p. 37.)

The principles of law by which the fair value of property of another taken for public use or sold by the government is to be arrived at are familiar to this Court and need not be discussed. A few of the leading authorities in which these principles are stated and applied are cited for the convenience of the court should it desire to examine them:

Lewis on Eminent Domain, 2 ed., Sec. 478, 479.

Boom Co. v. *Patterson*, 98 U. S. 403.

Simpson v. *Shepherd*, 230 U. S. 451.

United States v. *Chandler, etc., Co.*, 229 U. S. 53, 77.

Boston Chamber of Commerce v. *Boston*, 217 U. S. 189, 195.

Patents or applications therefor and similar rights are properties to be valued in the same manner as other property:

Cammeyer v. *Newton,* 94 U. S. 225.
James v. *Campbell,* 104 U. S. 356.
Seymour v. *Osborne,* 11 Wall. 538.
United States v. *Palmer,* 128 U. S. 262.
Hills v. *Iron Works,* 210 Pac. 17.
Hamilton, etc., v. *Wolf Bros.,* 240 U. S. 251, 259.

Patents are in the nature of franchises and are of the most important elements of value in earning capacity where it is available. Where this is not available all elements must be considered to arrive at the fair value.

Seymour v. *Osborne,* 11 Wall. 538.
Monongahela, etc., Co. v. *U. S.,* 148 U. S. 312, 329.
Hills v. *Iron Co.,* 210 Pac. 17.
Article 843, Reg. 62, U. S. Int. Rev. Act, 1921.
Westinghouse v. *Wagner,* 225 U. S. 604.
Hamilton, etc., Co. v. *Wolf Bros.,* 240 U. S. 251, 261.

Applying these principles and authorities to the facts in this case it will be seen that the witnesses for defendant all testified to the enormous value of these patents, and sought to justify taking them on that ground.

In his Report to Congress, just before these sales were made (D. Ex. 30, Rec. Vol. 11, p. 2125), Mr. Palmer discusses the value of these patents.

in evidence here a letter dated June 14, 1918, purporting to be from yourself to Mr. Francis P. Garvan, introducing Mr. M. R. Poucher. That was a letter written by you, was it not?

A. It was.

Q. 6. You need not bother with the letter because it is in evidence. We will identify the reference as Plaintiff's Exhibit 18. There was also a letter introduced, which was Exhibit 19, I think, in which you wrote Mr. Garvan and asked him to introduce Mr. Poucher to Mr. Choate. You were in the courtroom when those letters were introduced, were you not?

A. I was what?

Q. 7. You were in the courtroom when those letters were introduced?

A. Yes, I was.

Q. 8. You heard them read?

A. I do not remember the letters by dates. I was looking to see which they were.

Q. 9. You heard those letters read?

A. Yes, sir.

Q. 10. They were, so far as you could tell, substantially in accordance with your recollection, were they not?

A. They are in accordance with my record.

Q. 11. You have copies now in your possession?

A. I have the original duplicates.

Q. 12. Mr. Patterson, state to the Court just how you came to give those letters?

A. I would like to very briefly.

Q. 13. Yes.

A. I was at that time a Government employee, being a member of the War Industries Board. I was also President of the Textile Alliance, which had an arrangement with the War Trade Board, whereby, among other things, it was obliged to give information to the War Trade Board.

After pointing out that the German owners had realized as high as $700,000 a year from importations into the United States under some of these patents, he says (Rec. Vol. 11, p. 2145):

> From the foregoing it will be seen that the all-important portion of the chemical industry, the branch in which the work of the Alien Property Custodian would necessarily be most arduous and in which its results would be most beneficial, was the dye industry. The vital character of that industry was due not to its financial importance, since the consumption of dyes in the United States at the outbreak of the war did not exceed $25,000,000 a year in cost to the consuming industries, nor to the fact that these dyes were absolutely essential to industries producing perhaps $2,500,000,000 of goods annually, but most of all to the fact that the technical skill and equipment provided by a successful dye industry would furnish the means, and almost the sole means, to which every nation must look for advances in the application of chemical science to practical undertakings.

Mr. Garvan also testified before the Congressional committees on this question of value, which testimony was read into this record. He stated that the patents were of "tremendous" commercial value (Rec. Vol. 3, pp. 1434, 1437, 1442).

In a meeting of the stockholders of the Foundation, held December 2, 1919 (P. Ex. 63, Rec. Vol. 8, p. 207), Mr. Hoguet said (p. 236) that the vat dye patents alone would yield an assurred income of $200,000 a year. These were only a very small proportion of the patents, to say nothing of the other properties.

There are certain elements to be applied to the revenues derived from the use of these patents by appellee peculiar to this case. The claim is made that appellee was not organized for profit (Rec. Vol. 5, pp. 3014 and 3016), but merely to hold these patents, etc., and license the use of the same by American manufacturers and others chiefly members of or stockholders in appellee. It is obvious, therefore, that appellee did not undertake to derive the largest practical return from these properties (Rec. Vol. 5, p. 3016), but to so use the same as to give to the licensees thereof, chiefly its stockholders, the largest benefit which could be derived by them, only taking from such licensees such royalties as might be desired for the conduct of the business of appellee. The District Court refused to permit inquiry into this profit (Rec. Vol. 6, p. 4125), and the Court of Appeals approved this ruling (Rec. Vol. 7, p. 5043).

The actual revenues derived from these patents under such conditions only tends to show the minimum, not the actual value thereof.

By reference to plaintiff's Exhibit 199 (Rec. Vol. 8, pp. 479 and 480) and the testimony in connection therewith (Rec. Vol. 3, p. 1476, and following), it will be seen that after making every allowance in favor of the appellee and every deduction which the appellee could claim, the actual revenues derived from the patents licensed by the Federal Trade Commission under these licenses at the low rate of 5% royalty stated, and the contracts held by the Custodian, to June 30, 1919 (which was the date agreed upon as representing the period prior to the sale), an average of less than one year from the date of the licenses was as follows:

From licenses of the Federal Trade Commission	$169,606.88
From contracts held by the Custodian	122,758.04
Total for period	$292,364.92

This income for one year was rapidly increasing. The patents had an average of eight years to run. (Rec., Vol. 1, pp. 124–355.)

In addition to the revenues derived under licenses issued by the Federal Trade Commission, which continued subsequent to the sale, amounting from date of sale to December 31, 1922, to $321,964.50 (P. Ex. 199, Rec. Vol. 8, p. 479), which The Foundation now claims as its property; the Foundation itself derived, under its own licenses, from the date of purchase of the patents to December 31, 1922, $672,888.43 (P. Ex. 199, Rec. Vol. 8, p. 479), making a total of revenues derived from patents and trade-marks subsequent to the date of sale of $994,852.93 (P. Ex. 199, Rec. Vol. 8, p. 479). This was for a period of three and a half years, or an average of $284,243.70 a year of actual revenues from a comparatively small number of patents and trade-marks, so licensed. It not permit the Government to go into this aspect of the matter. The real value of the patents could not therefore be shown. (Rec. Vol. 6, p. 4125.)

It is also contended that the German patents involved in this case did not have the value claimed because of absence of full disclosure and want of "know how." Much evidence was taken on this point. This was obviously all afterthought devised for defense. The answer is that on the evidence of the parties themselves the patents controlled important parts of the dye and chemical industry (Rec. Vol. 6, p. 4077); that they controlled importations of these products (D. Ex. 30, Rec. Vol. 11, p. 2179); that these products were in fact in every instance being manufactured and sold under these patents, under licenses issued by the Trade Commission before these transfers and afterwards by the Foundation (P. Exs. 216–335, Rec. Vol. 8, pp. 515–682; P. Exs. 198–198A, Rec. Vol. 8, pp. 473–477; Rec. Vol. 6, p. 4262; Rec. Vol. 6, p. 4024; Rec. Vol. 5, p. 3346), and all of this is confirmed by the anxiety of these parties to get them (P. Ex. 28, p. 85; P. Ex. 29, p. 110; P. Ex. 30, p. 118; P. Ex. 33, p. 123; all in Rec. Vol. 8). In view of this record, this contention made for the first time in this case hardly merits serious discussion.

In conclusion of this point, it is to be observed—

(1) That these properties were in the poss
sion of the United States with full power to
or license the same.

(2) That many of the most valuable of th
patents had been recently granted and that th
all had an average of eight years to run. (R
Vol. 1, pp. 124–355.)

(3) That they controlled to a large degree
dye and chemical industry, including impo
and exports of the products covered thereby. (
Ex. 30, Rec. Vol. 11, pp. 2179, 2180.)

(4) That some 126 of the principal pate
had already been licensed by the Trade Comm
sion and were yielding a revenue at the rate
about $300,000 a year. (P. Exs. 198 and 19
Rec. Vol. 8, pp. 473–477.)

(5) That the Foundation continued some
these licenses and issued others, and althou
granting low licenses and not checking the lic
sees it continued to realize more than $300,00
year therefrom. (P. Ex. 199, Rec. Vol. 8,
479 and 480.)

(6) That the consideration paid was less th
the cost of issue of the patents, and admitte
represented nothing for the property value there
(D. Ex. 92, Rec. Vol. 11, p. 2666; See ante, p. 3

(7) That the Courts below both held that
consideration paid did not represent the value
the property, but the transactions as made
stroyed the "monetary value" for purposes
sale. (Rec. Vol. 7, pp. 4911, 5039, 5041.) Yet

Courts below held that the orders of Mr. Polk only authorized sales, and that these transactions were sales and must be sustained if at all as sales. (Rec. Vol. 7, pp. 4914 and 5022.)

We submit that as sales they can not be sustained under the statutes of the United States or principles of law applicable thereto; that they violated every known rule of law as to sales by an officer of the United States of property in his custody; and that these transactions in form of sales are void and conferred no title upon the purchaser.

POINT V

The transactions of alleged sales and assignments of the patents and other properties involved in this suit were illegal and void in that the same were induced, brought about, and accomplished in pursuance and as a result of an unlawful scheme or conspiracy

This point involves Assignment of Error X. (Rec. Vol. 7, p. 5054.)

A conspiracy has been defined as—

> A combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means. (*Pettibone* v. *United States,* 148 U. S. 203.)

It is claimed that the transactions in question were brought about and accomplished in pursuance and as a result of a scheme or conspiracy to secure and effect a transfer of these properties from the United States to defendant corporation, without substantial consideration, in a manner and by proceedings which were in violation of the laws of the United States; and that this was done with the purpose and effect of combining in the hands of this corporation all of the enemy-owned patents relating to these industries and controlling domestic manufacture and sale as well as imports and exports of these products, and thus creating in the purchasers a combination and monopoly which was in violation of the statutes of the United States.

The more essential facts leading up to these transactions are stated in their order in the "Statement of Case" (ante, pp. 8 to 44), and need not be repeated. It is the contention of the Government that these facts as disclosed by contemporaneous records and the testimony of the parties establish a scheme entered into by and between Mr. Garvan and his associates, representing the Custodian, and certain members of the dye and chemical industries carrying on these negotiations to bring about a transfer in form of sale of these patents and other properties of great value for no substantial consideration from the United States to a private corporation of which Mr. Garvan and his associates were to be officers and which was to be owned by the members of the industry, and that this scheme was carried into effect in the manner which has been fully stated after Mr. Garvan became Custodian and president of the purchasing corporation.

It is contended that in conception and execution this was a scheme or conspiracy to transfer or to secure a transfer of this property from the Government in violation of the terms and intent of the Trading with the Enemy Act, Section 41 of the Criminal Code and other laws of the United States, which have been discussed, and that no title to these properties could be vested in the grantee corporation through or as a result of these transactions which could be valid as against the United States.

The Government further contends that this scheme was conceived and carried into effect for an illegal purpose. This purpose was to consolidate all of these patents and other properties controlling the manufacture and sale of the products covered thereby, and the importation and exportation of these products into the hands of this single corporation with unrestricted power in the board of directors thereof to " refuse to issue any license or revoke any license granted by the corporation, and prescribe the terms and conditions of said licenses " in its discretion. The purpose and effect of this arrangement was to vest in this corporation full power to monopolize and to control and restrain the dye and chemical trade, including exports and imports of the United States.

This purpose is fully disclosed in the contemporaneous records hereinbefore recited leading up to these sales. It is definitely stated in the report of Mr. Palmer (Def. Ex. 30, Rec. Vol. 11, The giving of that letter of introduction was one of a long series of similar acts, all in the nature of giving information and assistance in relation to any enemy property and enemy transactions to Government Departments under the circumstances which I have mentioned. The two letters which I wrote about that time to the Alien Property Custodian related to such information. The former letter—I think the date was May 10th—related to some information which I secured from another source and caused to be sent to the Alien Property Custodian. The letter of introduction was given in the following manner:

I was trustee for two alien property corporations; and being in the office in connection, as I recollect it, with their business or with the business of the Textile Alliance, in relation to other concerns, I met Mr. Choate and entered into conversation with him on the subject of German dyestuff corporations.

The result was that, as I recollect it, I volunteered to get him certain information relating to German patents. I then asked, according to my recollection, Mr. Poucher to furnish me with such information, and I found that a list of German patents were already in process of preparation. Mr. Poucher gave me one list which I forwarded in writing. He sent it to me by mail, and I have the letter of transmittal, stating to me that he would send me other lists later.

I went abroad for the War Industries Board early in July, and just before my departure, having been unable to arrange an interview between Mr. Poucher and any one in the Alien Property Custodian's office, and wishing to leave the matter in the hands of a man whom I had known for many years and always found to be thoroughly reliable, I wrote a letter to Mr. Garvan commending Mr. Poucher. I gave Mr. Poucher the letter of introduction, and I then went away and pp. 2179, 2180); it is stated in the minutes and correspondence of the Dyes Institute (P. Ex. 30, Rec. Vol. 8, pp. 118, 121; Vol. 9, pp. 1426, 1444, 1446); it is disclosed in the charter of the Foundation (Rec. Vol. 1, p. 91); it is stated in the form of license issued by the Foundation, which expressly forbade the licensees to import these products into or export them from the United States, or to use any such products made outside of the United States (P. Exs. 168, 168–a, Rec. Vol. 8, p. 403, at 408); it is disclosed in the prospectus of the Foundation, which expressly states its purpose to prevent importations into the United States " from any source whatever " (Rec. Vol. 1, p. 581).

The Act of July 2, 1890 (26 Stat. 209), provides that—

> Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations is hereby declared to be illegal.

See also Act of August 27, 1894 (28 Stat. 57), as amended by Act of February 12, 1913 (37 Stat. 667).

It was admitted on the record that these products were moving in interstate commerce (Rec. Vol. 5, pp. 3510 and 3511) and the records cited show that they were the subject of commerce with foreign nations.

While every patent confers a monopoly as to the product covered thereby, this court has frequently held that a combination of patents covering or substantially controlling any essential product of interstate or foreign commerce, into the control of one corporation, or any agreement to secure that end, is a violation of the Anti-Trust laws of the United States and void.

> *Standard, etc., Co.* v. *United States*, 226 U. S. 20, 49.
>
> *Montague & Co.* v. *Lowry*, 193 U. S. 38.
>
> *Straus* v. *American Pub. Assn.*, 231 U. S. 222, 234.
>
> *Blount Mfg. Co.* v. *Yale, etc., Co.*, 166 Fed. 555, 562.
>
> *National Harrow Company* v. *Hench et al.*, 83 Fed. 36, 38.

All of this was brushed aside in the Courts below apparently on the ground that these parties were actuated by good motives and were seeking to promote the interests of the dye and chemical industries of the United States. We are not discussing motives beyond applying the principle stated that the law conclusively presumes that men intend the natural and probable consequences of their acts, or where their purposes, as in this case, are expressed in contemporaneous records. But this Court has disposed of the question of good motives in a number of similar cases.

In *Standard, etc., Co.* v. *United States*, 226 U. S. 20, 49, this Court said:

> Nor can they be evaded by good motives. The law is its own measure of right and wrong, of what it permits or forbids, and the judgment of the courts can not be set up against it in a supposed accommodation of this policy with the good intention of the parties.

In *Thomsen* v. *Cayser*, 243 U. S. 66, 86, the Court in disposing of this argument said:

> We have already seen that a combination is not excused because it was induced by good motives or produced good results, and yet such is the justification of the defendants.

For the reasons stated it is submitted that the transactions in question were induced, brought about, and consummated in pursuance of a scheme or conspiracy which was in act, purpose, and effect in violation of law; that the same were void and conferred no valid title upon this corporation as against the United States.

POINT VI

The court erred in the taxing of the costs against the United States

This point involves directly the consideration of assignment of error XVIII. (Rec. Vol. 7, p. 5056.) The final decree entered by the District Court in this suit contained the following paragraph:

> That the Chemical Foundation, Incorporated, defendant, do recover from the United States of America, plaintiff, the

> moneys advanced by the defendant under the orders of the Court herein entered May 7, A. D. 1923, and July 23, A. D. 1923, for fees in taking testimony and expenses in printing the record in pursuance of said orders, the amounts thereof to be taxed by the Clerk as costs in this cause. (Rec. Vol. 7, p. 4968.)

On May 7, 1923, the District Court appointed one Wm. F. Smart as—

> official stenographer in this cause to take down such testimony and furnish a transcript or transcripts thereof, his fee for taking such testimony and furnishing a transcript thereof to the court to be ultimately taxed as a part of the costs in this cause. The expense of taking a deposition and furnishing a transcript or transcripts thereof shall be advanced by the party calling the witness. (Rec. Vol. 7, p. 4909.)

On July 23, 1923, the court ordered that the entire record in this cause be prepared and printed as reported, including the statement of counsel at the opening of and during the trial. The same order provided that—

> And it is further ordered by the court, counsel of record for the parties consenting in this behalf, that the expense of printing 100 copies of said transcript shall be advanced from time to time and borne in equal amounts by the plaintiff and defend-

> ant and form part of the taxable costs of said cause; the cost of additional copies, if any, which may be furnished to the parties, respectively, shall be borne by the party or parties receiving such additional copies. (Rec. Vol. 7, p. 4910.)

The Government contends and submits that the District Court had no authority to appoint an official reporter and require the United States of America to pay any part thereof.

But the District Court in addition to this ordered the cost of the printing of a hundred copies of the record to be taxed as costs and by the final order has undertaken to require the United States of America to pay to the appellee herein the proportion of such costs which appellee has expended. The Government contends that such an order or decree constitutes error.

The Circuit Court of Appeals, without discussion, sustained the judgment of the District Court. (Rec. Vol. 7, p. 5044.)

The Supreme Court of the United States in the case of *Pine River Logging Co.* v. *U. S.*, 186 U. S. 279, at 296, says:

> While the rule is well settled that costs can not be taxed against the United States, the rule is believed to be universal in civil cases, at least, that the United States recover the same costs as if it were a private individual.

To the same effect see:

U. S. v. *North American Co.*, 253 U. S. 330, 336.

Stanley v. *Schwalby*, 162 U. S. 255, at 272.

Reeside v. *Walker*, 11 Howard, 271, 289.

U. S. v. *McLemore*, 4 Howard, 286, 288.

CONCLUSION

In the presentation and discussion of this case in the Courts below every effort was made to put the Government in the position of making charges reflecting personally upon the former officers or agents of the Government who were directly or indirectly connected with the transactions under review. This effort finds some reflection in the opinions of these Courts where it is suggested that by taking the position as a matter of law that these transactions of sale as actually done by the parties thereto were in violation of the prohibitive provisions of the statutes, the Government was charging these parties, even the President himself, with improper acts or with crime.

Nothing is further from the facts as we see them or from the intentions of the Government. The Government in this equity suit against a private corporation is relying upon the prohibitive provisions of the statutes to show that these transactions were unlawful and void. It is not discussing the criminal aspects of the statutes nor charging anyone with crime.

The respectful presentation of these questions of power and of law is no more a reflection upon the President or other officers mentioned than was the presentation of the questions raised and decided by this Court in *Martin* v. *Mott* a reflection upon President Washington; or in *Brown* v. *United States*, 8 Cranch, 110, a reflection upon President Madison; or in *Ex parte Milligan* or *United States* v. *Lee* a reflection upon President Lincoln; or the numerous decisions of this Court holding Acts of Congress invalid reflections upon the integrity and good faith of that body. The record clearly shows that the President was in Paris when the greater part of these transactions took place and could have had no direct connection with any of them.

Mr. Polk's sole connection with these transactions was the signing of the orders of February 26, 1919, and April 5, 1919, as prepared by the Custodian, one being signed in Washington and the other at White Sulphur Springs.

Mr. Palmer's only act under review in this case was in having prepared and procuring the signature of Mr. Polk to the order of February 26, 1919. He assumes responsibility for the negotiations which were conducted prior to March 4, 1919, and says that he was informed of what was going on; but he clearly took no part therein, and his information was derived from others.

As to the other officers or agents of the Government who were connected with these transactions, their acts have been considered in the light of the law and of the conclusive presumption of law that they intended the natural and probable consequences of these acts. Their motives have not been considered further than through the application of this principle, or as stated by them.

The Government of the United States is an impersonal agency of the people charged with the high duty of enforcing the law and protecting the rights and interests of the people of the United States to the extent that they are committed to its care. In the discharge of this duty it knows no persons and refrains from personalities. The source of its existence and, in this regard, its sole rule of conduct and measure of duty is the law.

It is the imperative duty of the Legal Department of the Government, with prejudice toward none and courtesy toward all, but unrestrained by any false sense of delicacy, to bring these questions, involving the rights and obligations of the Government as an agency of the people, in an orderly manner before this court for consideration and decision. It can not do more, and it certainly should not do less.

This view can not better be expressed than in the language of the then Attorney General of the United States, in closing his oral argument in this case, before the Circuit Court of Appeals, in which he said:

> I have no apologies to make for continuing this case which was brought by my predecessor. * * * I certainly would be very remiss in my duty, in the light of these transactions, if I did not ask the Court to

> return that property into the custody the United States. It will be a dark da for this Republic when public official charged with public duties and respons bilities, can do the acts disclosed by th record without any consequences to the and those who claim under them. It woul be a sadder day if the Attorney General the United States, in the face of this recor did not present the matter in court and as for relief for the United States.

For the reasons herein stated and discussed, is respectfully submitted that the decisions of th learned Courts below in this case are erroneou that they should be reversed and the final orde therein should be set aside; and that this cas should be remanded with instructions to grant the United States the relief prayed in the Bil and for such other proceedings as may be appr priate.

William D. Mitchell,
Solicitor General of the United States.
Herman J. Galloway,
Assistant Attorney General.
Henry W. Anderson,
Special Assistant to the Attorney General.

November, 1925.

APPENDIX

Criminal Code

Sec. 41. No officer or agent of any corporation, joint stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint stock company, association, or firm. Whoever shall violate the provisions of this section shall be fined not more than two thousand dollars and imprisoned not more than two years.

Judicial Code

Sec. 240. (a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

Sec. 241. In any case in which the judgment or decree of the circuit court of appeals is not heard no more of the transaction until in February, 1919, about six weeks after my return from abroad.

(No. Q. 14.)

Q. 15. Have you any letter from Mr. Poucher requesting this letter of introduction to Mr. Garvan, do you recall?

A. No; I have no letter of introduction, no letter from Mr. Poucher requesting a letter of introduction to Mr. Garvan.

Q. 16. Now, you said you came back from abroad about January, 1918?

A. My recollection is it was December 23, 1918.

Q. 17. December 23, 1918. Did you have any further correspondence with the Alien Property Custodian or with Mr. Poucher in regard to this matter subsequent to your return?

A. Yes.

Q. 18. Would you mind producing that correspondence?

A. I will produce it.

Q. 19. Let me have it, please.

A. Let me find it, if you do not mind. It begins here (indicating). There are some here (indicating).

Mr. Anderson: If your Honor please, this is just a series of letters, and I will ask the witness to read them in series. They are very short, and I will ask him to read them into the record if counsel does not object.

Mr. Kresel: No objection.

Mr. Anderson: I am merely asking this so that he may explain his position fully on the record.

A. On December 28, 1918, upon my return from abroad, I wrote to Mr. Poucher:

"Dear Mr. Poucher:—

"I am now back from abroad. When you are next in New York, I should be glad to see you."

made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs. (36 Stat. L. 1157.)

THE TRADING WITH THE ENEMY ACT AND AMENDMENTS.

ACT OF OCTOBER 6, 1917.

[PUBLIC—NO. 91—65TH CONGRESS.]

[H. R. 4960.]

AN ACT To define, regulate, and punish trading with the enemy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Trading with the enemy Act."

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(*c*) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

The words "to trade," as used herein, shall be deemed to mean—

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with.

* * * * *

SEC. 5. (a) That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof, and to perform any act made unlawful without such license in section three hereof, and to file and prosecute applications under subsection (b) of section ten hereof; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act; and the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b) That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed.

Sec. 6. That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed $5,000 per annum) of an official to be known as the alien property custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this Act; and to hold, administer, and account for the same under the general direction of the President and as provided in this Act. The alien property custodian shall give such bond or bonds, and in such form and amount, and with such security as the President shall prescribe. The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the provisions of this Act: *Provided,* That such clerks, investigators, accountants, and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law: *Provided further,* That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof.

Sec. 7. (a) That every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall, under such rules and regulations as the President may prescribe and, within sixty days after the passage of this Act, and at such other times thereafter as the President may require, transmit to the alien property custodian a full list, duly sworn to, of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company, or trustee has reasonable cause to believe to be an enemy or ally of enemy resident within the territory, or a subject or citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, of any ally of any nation with which the United States is at war, together with the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest.

The President may also require a similar list to be transmitted of all stock or shares owned on February third, nineteen hundred and seventeen, by any person now defined as an enemy or ally of enemy, or in which any such person had any interest; and he may also require a list to be transmitted of all cases in which said corporation, association, company, or trustee has reasonable cause to believe that the stock or shares on February third, nineteen hundred and seventeen, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another: *Provided, however,* That the name of any such officer, director, or stockholder shall be stricken permanently or temporarily from such list by the alien property custodian when he shall be satisfied that he is not such enemy or ally of enemy.

Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this Act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the alien-property custodian by written statement under oath containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen: *Provided,* That the name of any person shall be stricken from the said report by the alien-property custodian, either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy. The President may extend the time for filing the lists or reports required by this section for an additional period not exceeding ninety days.

(b) Nothing in this Act contained shall render valid or legal, or be construed to recognize as valid or legal, any act or transaction constituting trade with, to, from, for or on account of, or on behalf or for the benefit of an enemy performed or engaged in since the beginning of the war and prior to the passage of this Act, or any such act or transaction hereafter performed or engaged in except as authorized hereunder, which would otherwise have been or be void, illegal, or invalid at law. No conveyance, transfer, delivery, payment, or loan of money or other property, in violation of section three hereof, made after the passage of this Act, and not under license as herein provided shall confer or create any right or remedy in respect thereof; and no person shall by virtue of any assignment, indorsement, or delivery to him of any debt, bill, note, or other obligation or chose in action by, from, or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy have any right or remedy against the debtor, obligor, or other person liable to pay, fulfill, or perform the same unless said assignment, indorsement, or delivery was made prior to the beginning of the war or shall be made under license as herein provided, or unless, if made after the beginning of the war and prior to the date of passage of this Act, the person to whom the same was made shall prove lack of knowledge and of reasonable cause to believe on his part that the same was made by, from or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy; and any person who knowingly pays, discharges, or satisfies any such debt, note, bill, or other obligation or chose in action shall, on conviction thereof, be deemed to violate section three hereof: *Provided,* That nothing in this Act contained shall prevent the carrying out, completion, or performance of any contract, agreement, or obligation originally made with or entered into by an enemy or ally of enemy where, prior to the beginning of the war and not in contemplation thereof, the interest of such enemy or ally of enemy devolved by assignment or otherwise upon a person not an enemy or ally of enemy, and no enemy or ally of enemy will be benefited by such carrying out, completion, or performance otherwise than by release from obligation thereunder.

Nothing in this Act shall be deemed to prevent payment of money belonging or owing to an enemy or ally of enemy to a person within the United States not an enemy or ally of enemy, for the benefit of such person or of any other person within the United States not an enemy or ally of enemy, if the funds so paid shall have been received prior to the beginning of the war and such payments arise out of transactions entered into prior to the beginning of the war, and not in contemplation thereof: *Provided,* That such payment shall not be made without the license of the President, general or special, as provided in this Act.

Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in section ten hereof: *Provided, however,* That an enemy or ally of enemy licensed to do business under this Act may prosecute and maintain any such suit or action so

On January 3rd, Mr. Poucher replied to me:

> "My dear Patterson:
>
> "I have your letter of the 28th ultimo., and am very glad to hear that you are back in the United States. We must arrange to have luncheon together; I will call you up sometime when I am in New York.
>
> "I take it that you were abroad up to the time of the armistice; there is so much coming through that is misleading that I would be glad to get the real facts from the point of view of one who has been there and observed."

On February 6, 1919, I wrote to Mr. Poucher:

> "I enclose some correspondence with your former chiefs and would like your comments thereon, as I think that considerable weight will be paid to whatever I tell the A. P. C."

I have no recollection of that correspondence, but the following reply from Mr. Poucher dated the 10th day of February, 1919, explains it:

> "Dear Mr. Patterson:
>
> "Your letter of the 6th instant. I am reenclosing the correspondence"—

and then there is a note in my secretary's handwriting:

> "Kuttroff, Pickhardt & Co., Inc."

The letter continues:

> "If you will stop in to see Mr. Joseph H. Choate, Jr., at the office of the Alien Property Custodian, 42nd Street just off of 6th Avenue, I am sure he will tell you all about it.
>
> "I would advise you to see him before you take any action in the matter."

As I say, I have no recollection whatever of that correspondence. My correspondence with the Alien Property Custodian's office, you also asked for?

Q. 20. One moment. Is that all the correspond-

far as the same arises solely out of the busine
transacted within the United States under suc
license and so long as such license remains in fu
force and effect: *And provided further,* That a
enemy or ally of enemy may defend by couns
any suit in equity or action at law which may b
brought against him.

Receipt of notice from the President to th
effect that he has reasonable ground to belie
that any person is an enemy or ally of enemy sha
be prima facie defense to any one receiving th
same, in any suit or action at law or in equit
brought or maintained, or to any right or set-o
or recoupment asserted by, such person and base
on failure to complete or perform since the be
ginning of the war any contract or other obliga
tion. In any prosecution under section sixtee
hereof, proof of receipt of notice from the Presi
dent to the effect that he has reasonable cause t
believe that any person is an enemy or ally o
enemy shall be prima facie evidence that th
person receiving such notice has reasonable caus
to believe such other person to be an enemy o
ally of enemy within the meaning of section thre
hereof.

(c) If the President shall so require, any mone
or other property owing or belonging to or hel
for, by, on account of, or on behalf of, or for th
benefit of an enemy or ally of enemy not holdin
a license granted by the President hereunder
which the President after investigation shall de
termine is so owing or so belongs or is so held
shall be conveyed, transferred, assigned, delivered
or paid over to the alien property custodian.

(d) If not required to pay, convey, transfer, assign, or deliver under the provisions of subsection (c) hereof, any person not an enemy or ally of enemy who owes to, or holds for, or on account of, or on behalf of, or for the benefit of an enemy or of an ally of enemy not holding a license granted by the President hereunder, any money or other property, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, may, at his option, with the consent of the President, pay, convey, transfer, assign, or deliver to the alien property custodian said money or other property under such rules and regulations as the President shall prescribe.

(e) No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee. The President shall issue to every person so appointed a certificate of the appointment and authority of such person, and such certificate shall be received in evidence in all courts within the United States. Whenever any such certificate of authority shall be offered to any registrar, clerk, or other recording officer, Federal or otherwise, within the United States, such officer shall record the same in like manner as a power of attorney, and such record or a duly certified copy thereof shall be received in evidence in all courts of the United States or other courts within the United States.

* * * * *

SEC. 9. That any person, not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy, or ally of enemy, whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the alien property custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application, or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the alien property custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if suit shall be so instituted then the money or other property of the enemy, or ally of enemy, against whom such interest, right, or title is asserted, or debt claimed, shall be retained in the custody of the alien property custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or deliver by the defendant or by the alien property custodian or Treasurer of the United States on orde of the court, or until final judgment or decree sha be entered against the claimant, or suit otherwis terminated.

Except as herein provided, the money or othe property conveyed, transferred, assigned, delivered, or paid to the alien property custodian sha not be liable to lien, attachment, garnishmen trustee process, or execution, or subject to an order or decree of any court.

This section shall not apply, however, to mone paid to the alien property custodian under sectio ten hereof.

SEC. 10. That nothing contained in this Ac shall be held to make unlawful any of the following Acts:

(a) An enemy, or ally of enemy, may file an prosecute in the United States an application fo letters patent, or for registration of trade-mark print, label, or copyright, and may pay any fee therefor in accordance with and as required b the provisions of existing law and fees for attorneys or agents for filing and prosecuting such applications. Any such enemy, or ally of enemy who is unable during war, or within six month thereafter, on account of conditions arising ou of war, to file any such application, or to pay an official fee, or to take any action required by la within the period prescribed by law, may b granted an extension of nine months beyond th expiration of said period, provided the nation o which the said applicant is a citizen, subject, o corporation shall extend substantially simila privileges to citizens and corporations of the United States.

(b) Any citizen of the United States, or any corporation organized within the United States, may, when duly authorized by the President, pay to an enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents and trade-marks, prints, labels, and copyrights; and any such citizen or corporation may file and prosecute an application for letters patent or for registration of trade-mark, print, label, or copyright in the country of an enemy, or of an ally of enemy after first submitting such application to the President and receiving license so to file and prosecute, and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the President.

(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding $100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

(e) Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this Act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided* *further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided,* That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts.

(h) All powers of attorney heretofore or hereafter granted by an enemy or ally of enemy to any person within the United States, in so far as they may be requisite to the performance of acts authorized in subsections (a) and (g) of this section, shall be valid.

(i) Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *Provided,* That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner of Patents that, in violation of said order, said invention has been published or that an application for a patent therefor has been filed in any other country, by the inventor or his as-ence you had with Mr. Poucher relating to the matter of the dyestuffs patents or the matters in relation to the matter?

A. No; there was one here, which I was coming to second in order.

Q. 21. All right; very good.

A. On February 28—I will read it out of order, Colonel Anderson.

Q. 22. If you will, just read it.

A. On February 28th, 1919, Mr. Poucher wrote me:

"My dear Patterson:

> "I enclose copies of documents which are self-explanatory. The important thing is, I think, the point Mr. Garvan made yesterday afternoon, namely, that the dye industry in the United States is in accord with the dye industry in Great Britain on a plan of licensing imports of all Coal-tar dyestuffs, Intermediates, Pharmaceuticals, etc., for a period of at least ten years.
>
> "The Memorandum of the 'British Scheme' is a copy of 'White Papers' given me by the British Embassy in Washington.
>
> "I wish you would remember me kindly to Sir Richard Crawford. I hope his health has improved.
>
> "Wishing you a good trip and above all a safe return"—and so on.

The enclosures are the following: One is headed "American Dyes Institute." "The following is a copy of resolution presented to the Office of intermediate section of the War Industries Board, at a conference in Washington, November 6, 1919."

Mr. Anderson: Unless there is objection by counsel I will omit that. It is a long document and has no immediate bearing.

Mr. Kresel: No objection.

The Court: And strike out the portion that has been read?

signs or legal representatives, without the consent or approval of the commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the President above referred to shall tender his invention to the Government of the United States for its use, he shall, if he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government.

* * * * *

SEC. 12. That all moneys (including checks and drafts payable on demand) paid to or received by the alien property custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such securities shall be sold and the proceeds deposited in the Treasury.

All other property of an enemy, or ally of enemy, conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depositary, or depositaries, of property of an enemy or ally of enemy, any bank, or banks, or trust company, or trust companies, or other suitable depositary or depositaries, located and doing business in the United States. The alien property custodian may deposit with such designated depositary or depositaries, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities, or property (except money or checks or drafts payable on demand which are required to be deposited with the Secretary of the Treasury) and such depositary or depositaries shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depositary or by the alien property custodian into the Treasury of the United States as hereinbefore provided.

The President shall require all such designated depositaries to execute and file bonds sufficient in his judgment to protect property on deposit, such bonds to be conditioned as he may direct.

The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.

Any money or property required or authorized by the provisions of this Act to be paid, conveyed, transferred, assigned, or delivered to the alien property custodian shall, if said custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the alien property custodian.

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: ***Provided, however,*** That on order of the President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further,* That the Treasurer of the United States, on order of the alien property custodian shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee.

AMENDMENT OF MARCH 28, 1918.

EXTRACT FROM PUBLIC NO. 109, 65TH CONGRESS.

ALIEN PROPERTY CUSTODIAN.

For expenses of the Alien Property Custodian authorized by the Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October sixth, nineteen hundred and seventeen, including personal and other services and rental of quarters in the District of Columbia and elsewhere, per diem allowances in lieu of subsistence not exceeding $4, traveling expenses, printing and binding, and necessary supplies and equipment, $225,000.

The President is authorized to acquire the title to the docks, piers, warehouses, wharves, and terminal equipment and facilities on the Hudson River now owned by the North German Lloyd Dock Company and the Hamburg-American Line

Terminal and Navigation Company, two corpor
tions of the State of New Jersey, if he shall dee
it necessary for the national security and defens
Provided, That if such property can not be pr
cured by purchase, then the President is autho
ized and empowered to take over for the Unit
States the immediate possession and title thereo
If any such property shall be taken over as afor
said, the United States shall make just compens
tion therefor to be determined by the Presiden
Upon the taking over of said property by t
President, as aforesaid, the title to all such pro
erty so taken over shall immediately vest in t
United States: *Provided further,* That sectio
three hundred and fifty-five of the Revised Sta
utes of the United States shall not apply to a
expenditures herein or hereafter authorized
connection with the property acquired.

The fourth paragraph of section twelve of th
"Trading with the enemy Act," approved O
tober sixth, nineteen hundred and seventeen,
amended to read as follows:

"The alien property custodian shall be veste
with all of the powers of a common-law truste
in respect of all property, other than money, whic
has been or shall be, or which has been or shall b
required to be, conveyed, transferred, assigned, de
livered, or paid over to him in pursuance of th
provisions of this Act, and, in addition thereto
acting under the supervision and direction of th
President, and under such rules and regulation
as the President shall prescribe, shall have powe
to manage such property and do any act or thing
in respect thereof or make any disposition thereo
or of any part thereof, by sale or otherwise, an

exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: *Provided,* That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: *Provided further,* That when sold at public sale, the alien property custodian upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct. Any person purchasing property from the alien property custodian for an undisclosed principal, or for re-sale to a person not a citizen of the United States, or for the benefit of a person not a citizen of the United States, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than $10,000, or imprisonment for not more than ten years, or both, and the property shall be forfeited to the United States. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him."

Approved, March 28, 1918.

AMENDMENT OF NOVEMBER 4, 1918.

EXTRACT FROM PUBLIC NO. 233, 65TH CONGRESS.

ALIEN PROPERTY CUSTODIAN.

Subsection (c) of section seven of the "Trading with the enemy Act," approved October 6, 1917, is amended to read as follows:

"(c) If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

"Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded.

"Whenever any such property shall consist of shares of stock or other beneficial interest in any corporation, association, or company or trust, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel upon its, his, or their books all shares of stock or other beneficial interest standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy, and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custodian or otherwise, as the Alien Property Custodian shall require.

"The sole relief and remedy of any person ha
ing any claim to any money or other proper
heretofore or hereafter conveyed, transferred, a
signed, delivered, or paid over to the Alien Pro
erty Custodian, or required so to be, or seized
him shall be that provided by the terms of th
Act, and in the event of sale or other dispositi
of such property by the Alien Property Custodia
shall be limited to and enforced against the n
proceeds received therefrom and held by t
Alien Property Custodian or by the Treasurer
the United States."

Approved Nov. 4, 1918.

AMENDMENT OF DECEMBER 21, 1921

[PUBLIC—NO. 115—67TH CONGRESS]

[S. 2780]

AN ACT To amend section 9 of an Act entitled "An Act to defi
regulate, and punish trading with the enemy, and for other pu
poses," approved October 6, 1917, as amended.

*Be it enacted by the Senate and House of Re
resentatives of the United States of America
Congress assembled,* That section 9 of the A
entitled "An Act to define, regulate, and punis
trading with the enemy, and for other purposes,
approved October 6, 1917, as amended, is hereb
amended by striking out the words "six months
in such section and inserting in lieu there
"eighteen months."

Approved, December 21, 1921.

AMENDMENT OF MARCH 4, 1923.

[PUBLIC—No. 536—67TH CONGRESS.]

[H. R. 14222.]

AN ACT To amend the Trading with the Enemy Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9 of the "Trading with the Enemy Act," as amended, is amended to read as follows:

"SEC. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the

Mr. Anderson: No, sir. Merely to identify so as to show what he means by the correspondence.

A. (Continuing) The next is headed "Memorandum for the British Scheme for assistance to the Dye industry" and it is very long. Do you wish me to read it?

Mr. Anderson: I do not if there is no objection on the part of counsel.

Mr. Kresel: There is none.

A. (Continuing) The next is a copy of a letter addressed to the Honorable A. Mitchell Palmer, Alien Property Custodian, dated February 7, 1919, and signed by the American Dyes Institute, the President, Secretary and counsel's signatures blank and Executive Committee signatures blank.

Mr. Kresel: That has already been read in.

Mr. Anderson: I think that has been read into evidence already; therefore you need not read it now.

A. (Continuing) Next is a memorandum dated—

Mr. Anderson: One minute.

Mr. Galloway: It has not been read yet, but I think we will refer to that later on in the presentation of this case, under the stipulation.

Mr. Kresel: I read it in my opening statement.

Mr. Galloway: It has not yet been read in evidence.

The Court: Then it need not now be read?

Mr. Anderson: No.

A. (Continuing) The next is a memorandum dated February 7, 1919, headed "Report of Sub-Committee of the Executive Committee of American Dyes Institute" in the matter of conference with the Alien Property Custodian concerning proposal to acquire enemy-owned patents.

Mr. Anderson: That will be introduced as documentary evidence later, and we will omit it if it is agreeable.

prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

"(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

"(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

"(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or

"(3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased; or

"(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

"(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

"(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

"(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

"(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

"(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

"(10) A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000, is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided,* That no insurance partnership, association, or corporation, against which any claim or claims may be filed by any citizen of the United States with the Alien Property Custodian within sixty days after the time this paragraph takes effect, whether such claim appears to be barred by the statute of limitations or not, shall be entitled to avail itself of the provisions of this paragraph until such claim or claims are satisfied; or

"(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however,* That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection;

"Then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian: *Provided,* That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become, ipso facto or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a citizen or subject of such nation. And the receipt of the said owner or of the person by whom said money or other property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said money or other property, or compensation or damages arising from the capture of such money or other property by the President or the Alien Property Custodian: *Provided further, however,* That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

"(c) Any person whose money or other property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such money or other property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such money or other property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof.

"(d) Whenever a person, deceased, would have been entitled, if living, to the return of his money or other property hereunder, then his legal representative may proceed for the return of such money or other property as provided in subsection (a) hereof: *Provided, however,* That the President or the court, as the case may be, before granting such relief shall impose such conditions by way of security or otherwise, as the President or the court, respectively, shall deem sufficient to insure that such legal representative will redeliver to the Alien Property Custodian such portion of the money or other property so received by him as shall be distributable to any person not eligible as a claimant under subsections (a) or (c) hereof.

"(e) No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.

"(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

"(g) The legal representative (duly appointe
by a court in the United States) of a person, de
ceased, whose money or other property has bee
conveyed, transferred, assigned, delivered, o
paid to the Alien Property Custodian or seized b
him hereunder and held by him or by the Treas
urer of the United States, may (if not entitled t
proceed under subsection (d) of this section
proceed under subsection (a) for the recovery o
any interest, right, or title in any such money o
other property which has, by reason of the deat
of such person, become the interest, right, o
title of a citizen of the United States, unles
such citizenship was acquired through naturaliza
tion proceedings in which the declaration of inten
tion was filed after November 11, 1918. Suc
legal representative shall give a bond, in a pena
sum and with sureties satisfactory to the Presi
dent or the court, as the case may be, conditione
that he will redeliver to the Alien Property Cus
todian all such money or other property not dis
tributed to such citizen, or, if deceased, to hi
heirs or legal representatives.

"(h) The aggregate value of the money o
other property returned under paragraphs (9)
and (10) of subdivision (b) to any one person
irrespective of the number of trusts involved
shall in no case exceed $10,000.

"(i) For the purposes of paragraphs (9) an
(10) of subsection (b) of this section accumu
lated net income, dividends, interest, annuities
and other earnings, shall be considered as part o
the principal.

"(j) Subsection (g) and paragraphs (9) an
(10) of subsection (b) of this section shall not ap

ply to any patent, trade-mark, print, label, copyright, or right therein or claim thereto, conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him, or to the proceeds received from the sale, license, or other disposition of any such patent, trade-mark, print, label, copyright, or right therein or claim thereto; but the Alien Property Custodian is authorized and directed to return to the person entitled thereto, whether or not an enemy or ally of enemy and regardless of the value, any patent, trademark, print, label, copyright, or right therein or claim thereto, which has been conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him, and which (1) has not been sold, licensed, or otherwise disposed of under the provisions of this Act, and (2) is not involved (at the time this subsection takes effect) in litigation in which the United States, or any agency thereof, is a party.

"(k) This section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof."

SEC. 2. That the "Trading with the Enemy Act," as amended, is amended by adding thereto the following sections:

"SEC. 20. That no money or other property shall be paid, conveyed, transferred, assigned, or delivered under this Act to any agent, attorney, or representative of any person entitled thereto, unless satisfactory evidence is furnished the President or the court, as the case may be, that the fee of such agent, attorney, or representative for services in connection therewith does not exceed 3 per centum of the value of such money or other

Mr. Kresel: That is quite agreeable.

A. That is all the correspondence I have here with Mr. Poucher. You asked for my correspondence with the Alien Property Custodian's Office.

Q. 23. Yes, on this subject.

A. On this subject, I understand.

Q. 24. I am not referring to letters that passed—

A. On February 21st, 1919—one moment——

Q. 25. Before you leave Mr. Poucher's correspondence, as I understand this document you have identified as copies of minutes of February 7th, and so forth, were transmitted to you by Mr. Poucher?

A. Simply for my information, yes.

Q. 26. Yes, I understand.

A. I am now reading the correspondence with the Alien Property Custodian's Office, subsequent to my return from abroad. The first is a letter dated February 21st, 1919, addressed to "Joseph H. Choate, Jr., Esq., 110 West 48th Street, New York.

> "Dear Mr. Choate:
>
> I return herewith the proof of Mr. Palmer's report. I have read it with a great deal of interest. There has been nothing more exciting written in connection with the war to one who has been familiar with the dye-stuff industry as long as I. Incidentally it furnishes complete corroboration of everything that we contended during our fight over bribery and adulteration and I should like to see a copy of it put in the hands of every textile manufacturer in the United States.
>
> Would it be possible to arrange also to send a few copies to London as soon as possible for the Enemy Trading Officials? I suppose they will not be ready by the 1st of March, on which date I sail."

On the 25th of February, 1919——

Q. 27. Before you introduce that, that letter you just read was in response as I take it, to a letter from Mr. Choate transmitting to you?

property; but nothing in this section shall be construed as fixing such fees at 3 per centum of the value of such money or other property, such 3 per centum being fixed only as the maximum fee that may be allowed or accepted for such services. Any person accepting any fee in excess of such 3 per centum shall, upon conviction thereof, be punished as provided in section 16 hereof.

"SEC. 21. That the claim of any naturalized American citizen under the provisions of this Act shall not be denied on the ground of any presumption of expatriation which has arisen against him, under the second sentence of section 2 of the Act entitled "An Act in reference to the expatriation of citizens and their protection abroad," approved March 2, 1907, if he shall give satisfactory evidence to the President, or the court, as the case may be, of his uninterrupted loyalty to the United States during his absence, and that he has returned to the United States, or that he, although desiring to return, has been prevented from so returning by circumstances beyond his control.

"SEC. 22. No person shall be entitled to the return of any property or money under the provisions of this Act who is a fugitive from justice from the United States or any State or Territory thereof or the District of Columbia.

"SEC. 23. The Alien Property Custodian is directed to pay to the person entitled thereto, from and after the time this section takes effect, the net income, dividend, interest, annuity, or other earnings, accruing and collected thereafter, on any property or money held in trust for such person by the Alien Property Custodian or by the Treasurer of the United States for the account of the Alien Property Custodian, under such rules and regulations as the President may prescribe; but no person shall be paid, under this section, any amount in excess of $10,000 per annum.

"SEC. 24. The Alien Property Custodian is authorized to pay all taxes (including special assessments), heretofore or hereafter lawfully assessed by any body politic against any money or other property held by him or by the Treasurer of the United States under this Act, and to pay the necessary expenses incurred by him or by any depositary for him in securing the possession, collection, or control of any such money or other property, or in protecting or administering the same. Such taxes and expenses shall be paid out of the money or other property against which such taxes are assessed or in respect of which such expenses are incurred, or (if such money or other property is insufficient) out of any other money or property held for the same person, notwithstanding the fact that a claim may have been filed or suit instituted under this Act."

Approved, March 4, 1923.

THE FEDERAL ANTITRUST LAW.

[Act of July 2, 1890 (26 Stat., 209).]

AN ACT To protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

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OPINION

SUPREME COURT OF THE UNITED STATES.

No. 127.—October Term, 1926.

United States of America, Appellant, *vs.* The Chemical Foundation, Incorporated.	Appeal from the Circuit Court of Appeals for the Third Circuit.

[October 11, 1926.]

Mr. Justice Butler delivered the opinion of the Court.

Suit was brought by the United States in the District Court for Delaware to set aside sales made by it to the Chemical Foundation of a number of patents, copyrights, trademarks, and other similar properties—which for brevity will be referred to as "patents"—seized pursuant to the Trading with the Enemy Act of October 6, 1917, c. 106, 40 Stat. 411, as amended by the Act of March 28, 1918, c. 28, 40 Stat. 460, and the Act of November 4, 1918, c. 201, 40 Stat. 1020, and other Acts. The complaint alleges that a number of domestic manufacturers as a result of war conditions had been able to combine and monopolize certain chemical industries in this country; and, fearing that at the end of the war German competition would destroy the monopoly, they conspired to bring about transfers and sales of the patents at nominal prices to themselves or to a corporation controlled by them; that the patents so obtained would control the industries in question and perpetuate the monopoly, and that the sales were procured through the fraudulent deception of the President, the Alien Property Custodian, and other officials. The answer denies conspiracy and fraud and asserts that the transfers were made in good faith and pursuant to law and that they are valid. There was a trial at which much evidence was taken. The District Court dismissed the complaint (294 Fed. 300); and its decree was affirmed by the Circuit Court of Appeals. 5 F. (2d) 191. Both courts found that no unlawful scheme, combination or conspiracy was shown, and that there was no deception or fraud. The United States took an appeal under § 241, Judicial Code, and has applied for a writ of certiorari under § 240. The decree of the Circuit Court of Appeals was entered March 26, 1925, prior to the taking effect of the Act of February 13, 1925, amending the Judicial Code. C. 229, 43 Stat. 936. Since this is not a case in which the decree of that court is made final by § 128, the United States had the right of appeal. The application for certiorari is therefore denied.

The chemical industries in question are closely related to the production of explosives, gases, and other things directly used in waging war as well as to the production of dyestuffs and medicines essential to the welfare of the people. At the outbreak of the war many necessary medicines and other substances as well as most of the dyestuffs used in this country were imported from Germany or were manufactured under patents owned by enemy Germans. The amount of such things here produced was small. Importations were hindered by the blockade and ceased when this country entered the war. To meet the demand numerous plants were developed and by 1919 chemicals, dyestuffs, medicines and the like were being produced here in large quantities. A number of associations of manufacturers were formed for the advancement of such industries; they included in their membership the producers of nearly all the dyestuffs and like chemicals made in this country. Mr. A. Mitchell Palmer was the Alien Property Custodian until he was appointed Attorney General, March 4, 1919. In order to protect the United States against enemy and foreign control of its chemical industries and to stimulate production here, he favored the seizure and sale of the patents in question. To that end a number of conferences were held between his representatives and those of the industries. The plan that was carried into effect was formulated under his direction.

In February, 1919, the Chemical Foundation was incorporated under the laws of Delaware. The certificate of incorporation discloses that it was created and empowered to purchase enemy-owned patents seized by the Custodian and to hold the "property and rights so acquired in a fiduciary capacity for the Americanization of such industries as may be affected thereby, for the exclusion or elimination of alien interests hostile or detrimental to the said industries, and for the advancement of chemical and allied science and industry in the United States"; to grant to the United States non-exclusive licenses to make, use and sell the inventions covered by the patents, and also to grant like licenses, on equal terms and without advantage as between licensees, to American citizens and corporations under control of American citizens. The board of directors is authorized to prescribe the terms and conditions of such licenses. It may refuse to issue any license or may revoke any license granted by it. The corporation is required to enforce its rights and to protect the rights of its licensees. The authorized capital stock is $500,000 consisting of 5,000 shares of the par value of $100 each: 4,000 shares constitute non-voting preferred stock, the holders of which are entitled to a cumulative dividend of six per centum per annum, and 1,000 shares constitute the common stock, the holders of which are entitled to dividends not exceeding six per centum per annum after dividends on the preferred stock have been provided for. The preferred stock is subject to redemption at par plus accumulated dividends, if any, and after such redemption net earnings not needed for working capital "shall be used and devoted to the development and advancement of chemistry and allied sciences, in the useful arts and manufactures in the United States, in such manner as the board of directors may determine." The holders of the common stock have all the voting power. The certificate provides that, without the approval of the board of directors, stockholders may not sell any of their stock. The board of directors consists of three members. The executive officers are president, vice president, and a secretary and treasurer. The president and vice president are required to serve without pay. The shares of the Foundation were subscribed by those interested in the chemical and dye industries. But a voting trust agreement was made, pursuant to which all common stock was deposited with, and all voting power was vested in, five trustees. Directors and officers were chosen March 8, 1919. Francis P. Garvan, Douglas I. McKay and George J. Corbett were made directors and constituted the board. Mr. Garvan, then Alien Property Custodian, was elected president. Mr. McKay was elected vice-president, and Mr. Corbett secretary and treasurer. Otto T. Bannard and four others were made voting trustees. All the directors, officers and voting trustees were chosen by or in accordance with the direction of Mr. Palmer, given while he was Custodian.

The President, by executive order December 3, 1918, declared: "I hereby vest in Frank L. Polk all power and authority conferred upon the President by the provisions of Section 12" of the Trading with the Enemy Act as amended. Mr. Polk was then Counselor for the Department of State, but was not so described in the order. He made two orders dated respectively February 26, 1919 and April 5, 1919, to authorize the Custodian to sell at private sale to the Foundation without advertisement at such places and upon such terms and conditions as to the Custodian might seem proper all patents found to relate to the objects and purposes of the Foundation as expressed in its charter. These orders contained a statement of the reasons therefor in the public interest. Briefly they were: that the patents could not be sold to the best advantage at public sale after advertisement; that the Foundation had been incorporated to hold the patents as a trustee for American industries affected by the patents, to eliminate hostile alien interests and to advance chemical and allied industry in the United States, and that it was obligated to grant non-exclusive licenses upon equal terms to qualified American manufacturers and was empowered to grant free licenses to the United States; that the public interest would be best served by a wide use of the inventions, which most readily could be promoted by licenses which the Foundation was obligated to grant; that a private sale would prevent the patents from falling into the hands of purchasers unwilling or unable to use the inventions or who would use them for speculative purposes; that it would be impossible to make a public sale that would secure these benefits, and that a private sale would avoid unnecessary expense, delay and inconvenience.

Prior to and contemporaneously with the organization of the Foundation, the representatives of the chemical industries cooperated with those of the Custodian in making lists of the patents to be seized and sold by the Custodian to the Foundation. Mr. Garvan, the Custodian, from time to time commencing April 10, 1919, executed and delivered to the Foundation various assignments of the patents. The considerations paid by the Foundation to the Custodian amounted in all to $271,850.00. The President, February 13, 1920, made an executive order which was held by both courts below to constitute a ratification of the transactions. And pursuant to that order, the Custodian confirmed the assignments theretofore made.

We come to the question whether, as held below, the Act as amended March 28, 1918, empowered the President to authorize, and the Custodian under his supervision to consummate, these sales.

The pertinent provisions of the Act are in § 12 as amended. "The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: *Provided*, That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: . . . . [40 Stat. 460].

"After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: . . ." 40 Stat. 424.

It is conceded that when seized the patents belonged to enemy Germans and that they were lawfully taken over by the Custodian. The purpose of the Trading with the Enemy Act was not only to weaken enemy countries by depriving their supporters of their properties, (*Miller* v. *Robertson*, 266 U. S. 243, 248) but also to promote production in the United States of things useful for the effective prosecution of the war. Section 10(c) authorized the President, if he deemed it for the public welfare, to grant licenses to American citizens or corporations to use any inventions covered by enemy-owned patents. Subsection (c) of § 7 of the Act as amended November 4, 1918 authorized the seizure of enemy-owned patents and provided that all property so acquired should be held and disposed of as provided by the Act. And there is no ground

A. I have no letter transmitting.

Q. 28. But he did transmit to you a copy of that report?

A. I received a copy, but I have no recollection of any letter, and there was none filled in our office.

Q. 29. I see. Very good.

A. On February 25th, 1919, I wrote to Mr. Garvan, whose name my stenographer spelled "Garvin":

> "In accordance with your kind permission I explained to three of the four members of the Executive Committee of the Textile Alliance Inc., at its meeting today the purpose of the Dye Stuffs Foundation Inc., and suggested the possibility of some sort of an arrangement with the Textile Alliance Inc. Subject to the production of a satisfactory-plan for the next meeting of the Executive Committee I have no doubt that the Committee will recommend to the Annual Meeting in May that the two Corporations, which appear to have a common purpose, should in some manner join their forces.
>
> I shall be glad to discuss with you immediately upon my return from abroad and before the Annual Meeting the devising of such a plan."

That was the 25th of February.

Q. 30. Did you take the matter up with your Executive Committee, Mr. Patterson?

A. It was taken up with the Executive Committee, after I left, by our Treasurer and the Executive Committee decided adversely and nothing was ever done about it whatever.

Q. 31. And that was the end of your connection with this matter?

A. That was entirely the end of my connection with that matter.

Mr. Anderson: The witness is yours.

Mr. Kresel: Have you finished with the correspondence?

for contending that the seizure and transfers did not tend to lessen enemy strength and to encourage and safeguard domestic production of things essential to or useful in the prosecution of the war. There is nothing to support a strict construction of the Act in respect of the seizure and disposition of enemy property. On the other hand, contemporaneous conditions and war legislation indicate a purpose to employ all legitimate means effectively to prosecute the war. The law should be liberally construed to give effect to the purposes it was enacted to subserve.

As originally enacted, § 12 gave the Custodian in respect of properties in his possession "all of the powers of a common-law trustee". He was authorized, acting under the supervision and direction of the President and under rules and regulations prescribed by the President, to manage the property and do any act or things in respect thereof or make any disposition of it by sale or otherwise and to exercise any rights appurtenant to its ownership "if and when necessary to prevent waste and protect such property and to the end that the interests of the United States in such property and rights, or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded." The Custodian was a mere conservator and was authorized to sell only to prevent waste. But brief experience made it clear that this restriction on the power to dispose of enemy property sometimes operated to defeat the purpose of the Act and brought profit and advantage to the enemy. The amendment of March 28, 1918, eliminated the restriction upon the power of sale. It stated that the other powers given were "in addition" to those of a common-law trustee. And it authorized the Custodian under the President to dispose of such properties by sale or otherwise "in like manner as though he were the absolute owner thereof".

There is no support for a construction that would restrain the force of the broad language used. Congress was untrammeled and free to authorize the seizure, use or appropriation of such properties without any compensation to the owners. There is no constitutional prohibition against confiscation of enemy properties. *Brown* v. *United States*, 8 Cranch 110, 122; *Miller* v. *United States*, 11 Wall. 268, 305, *et seq.; Kirk* v. *Lynd*, 106 U. S. 315, 316; *Stoehr* v. *Wallace*, 255 U. S. 239, 245; *White* v. *Mechanics Securities Corp.*, 269 U. S. 283, 300. And the Act makes no provision for compensation. The former enemy owners have no claim against the patents or the proceeds derived from the sales. It makes no difference to them whether the consideration paid by the Foundation was adequate or inadequate. The provision that after the war enemy claims shall be settled as Congress shall direct conferred no rights upon such owners. Moreover the Treaty of Berlin prevents the enforcement of any claim by Germany or its nationals against the United States or its nationals on account of the seizures and sales in question.*

While not denying the power to confiscate enemy properties, the United States argues that as construed below the provision in question is unconstitutional because it attempts to delegate legislative power to the Executive. But the Act gave the Custodian, acting under the President, full power of disposition. No restriction was put upon dispositions other than by sales. And sales to the United States were not regulated. The general rule laid down was that all dispositions by sale or otherwise should be made in accordance with the determinations of the President; the proviso made an exception including a class of sales; and, upon the failure of the President otherwise to determine stating the reasons therefor in the public interest, it required that such sales should be made as there specified. It was not necessary for Congress to ascertain the facts of or to deal with each case. The Act went as far as was reasonably practicable under the circumstances existing. It was peculiarly within the province of the Commander-in-Chief to know the facts and to determine what disposition should be made of enemy properties in order effectively to carry on the war. The determination of the terms of sales of enemy properties in the light of facts and conditions from time to time arising in the progress of war was not the making of a law; it was the application of the general rule laid down by the Act. When the plenary power of Congress and the general rule so established are regarded, it is manifest that a limitation upon the excepted class is not a delegation of legislative power. *Field* v. *Clark*, 143 U. S. 649, 692; *Buttfield* v. *Stranahan*, 192 U. S. 470, 496; *Union Bridge Co.* v. *United States*, 204 U. S. 364, 377; *United States* v. *Grimaud*, 220 U. S. 506, 516.

The language of the statute is too plain to be misunderstood. Except as affected by the proviso, the Custodian's dominion over

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*Part X, Section IV, Article 297, and Annex paragraphs 1 and 3, Treaty of Versailles, adopted by Article II(1), Treaty of Berlin, 42 Stat. 1939, 1943.

the property and power to dispose of it—acting under the Preside
as provided—were as unlimited as are the powers of an absolu
owner; and the power of the President to determine terms a
conditions of sales or other disposition was not restricted. He w
authorized, stating the reasons therefor in the public interest,
dispense with any or all requirements specified in the proviso a
to substitute others for them. Cf. *Levinson* v. *United States*, 2
U. S. 198. When the amended section is read in comparis
with the original enactment and regard is had to the chemical wa
fare and other conditions existing at the time of the amendmen
March 28, 1918, the inevitable conclusion is that it empowered t
President to authorize, and the Custodian acting under him to co
summate, the sales in question.

The United States argues that the executive order of Decem
ber 3, 1918 was void, and that the one of February 13, 19
did not authorize or ratify the transactions.

Section 5 (a) of the Act provides that "the President ma
exercise any power or authority conferred by this Act through su
officer or officers as he shall direct." The language of the exec
tive order is: "I hereby vest in Frank L. Polk all power a
authority conferred upon the President by the provisions of Sectio
12 . . ." Obviously all the functions of his great office cann
be exercised by the President in person. The contention that pow
to determine how enemy property should be sold could not
delegated to another is not sustained. This court has had occasio
to consider a like question in *Central Trust Co.* v. *Garvan*, 254 U.
554, 567; *Stoehr* v. *Wallace*, *supra*, 244, and *Commercial Tru*
Co. v. *Miller*, 262 U. S. 51, 53. These decisions sustain the deleg
tion here involved.

It is argued that the order was not made in conformity wit
the statute because to "vest" power in another is not to "a
through" him, and because the order did not show that Mr. Pol
was an officer. But, if two constructions are possible, and one o
them would render the order useless and the other give it validity
the latter is to be adopted. Cf. *Panama R. R. Co.* v. *Johnson*
264 U. S. 375, 390; *United States* v. *Coombs*, 12 Pet. 72, 75-76
The intention to exert the power conferred under § 5 is plain
Meticulous precision of language was not necessary. *Russell Co.* v
United States, 261 U. S. 514, 523. While the use of the word
"vest" was not accurate, it must be deemed sufficient when th

context and circumstances are considered. Mr. Polk was an officer through whom the President was authorized to act. He was Counselor for the Department of State, appointed by the President and confirmed by the Senate. *United States* v. *Germaine*, 99 U. S. 508. No particular form of designation was required. It would be unreasonable to read the order otherwise than as meaning that, in respect of the matters covered by § 12, the President determined to act through Frank L. Polk, Counselor for the Department of State.

And the validity of each of the orders made by Mr. Polk is attacked by the United States on the ground that it was too broad and constituted an attempt to give to the Custodian the very power granted to the President by the Act; that is, the power to determine that enemy properties should be disposed of otherwise than as specified in the proviso. But the contention cannot prevail. Each of the orders sufficiently described the patents seized and authorized a private sale to the Foundation without advertisement. This was enough to indicate a determination to take these sales out of the class covered by the proviso. And it is insisted that the orders were induced by misrepresentation and were made without knowledge of the material facts. But both courts found that the United States failed to establish any conspiracy, fraud or deception alleged. Findings of fact concurred in by two lower courts will not be disturbed unless clearly erroneous. *Washington Sec. Co.* v. *United States*, 234 U. S. 76, 78. Under this rule the findings must be accepted. The presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties. *Confiscation Cases*, 20 Wall. 92, 108; *United States* v. *Page*, 137 U. S. 673, 679-680; *United States* v. *Nix*, 189 U. S. 199, 205. Under that presumption, it will be taken that Mr. Polk acted upon knowledge of the material facts. The validity of the reasons stated in the orders, or the basis of fact on which they rest, will not be reviewed by the courts. *Dakota Cent. Tel. Co.* v. *South Dakota*, 250 U. S. 163, 184; *Monongahela Bridge* v. *United States*, 216 U. S. 177, 195; *Martin* v. *Mott*, 12 Wheat. 19, 30. Cf. *Levinson* v. *United States*, *supra*, 201.

We agree with the lower courts that the sales and transfers of the patents were ratified and confirmed by the President's order of February 13, 1920. It is urged that there was no ratification because it is not shown that the President had knowledge of the m terial facts; that he did not intend to ratify the sales of patent and that the language used in the order is not broad enough to i clude the patents, trademarks and copyrights in question.

The Polk order of February 26, 1919, described the propert covered as "all of the letters patent, trade-marks and rights und letters patent and trade-marks, including all profits and damag . . . for the past infringement thereof which the Alien Pro erty Custodian may seize or may have seized . . . and whic he from time to time shall determine relate to the objects and pu poses" of the Chemical Foundation. The President's order o confirmation recites that the Polk orders authorized the Custodia to sell "certain choses in action and rights, interests and benefit heretofore determined to belong to, or to be held for, by, or o account of, or for the benefit of persons heretofore determined to b enemies." The language last quoted was used to define the sam properties that were covered by the Polk orders. That is, "chose in action and rights", etc., were used to include "letters patent trademarks", etc. The President's order also states that it was th *intention* of the Polk orders to authorize the Custodian to sell "al choses in action, rights, interests and benefits under agreements an rights and claims of every character and description includin rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, trademarks or tradenames which the Alien Property Custodian may have seized . . . and . . . determined to relate to the objects and purposes" of the Foundation. It recites that doubt had arisen as to the authority of the Custodian to sell and convey to the Foundation "certain of the said choses in action", etc., "including rights to receive moneys by way of royalties or otherwise." And the President expressly authorized the Custodian to sell at private sale without public or other advertisement to the Foundation upon such terms and conditions as to the Custodian might seem proper "all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description which the Alien Property Custodian may seize or may have seized" under the Act. The President further authorized the Custodian by a suitable instrument to confirm and ratify sales theretofore made by him of any property as to which his authority under the Polk orders might be deemed doubtful. And he stated that his reasons for the determination and order were given in the Polk orders and in addition specified other reasons which need not be quoted.

This order authorizes sales of the patents to be made and ratifies and confirms those theretofore made by the Custodian. The President will be presumed to have known the material facts and to have acted in the light of them. His intention to ratify the sales is plain. The comprehensive language used is broad enough to include the patents. Moreover the statement that his reasons for the determination are given in the Polk orders shows the intention to cover the properties there referred to. As the transactions in question were ratified, it is unnecessary to consider the objections made by the United States to the procedure of the Custodian under the Polk orders.

The United States contends that the sales were void because made in violation of § 41 of the Criminal Code, 35 Stat. 1088, 1097, and the rule of law forbidding sales by a public officer or fiduciary of trust property in his custody to himself or to a corporation of which he is the head.

Section 41 provides: "No officer or agent of any corporation . . . and no . . . person directly or indirectly interested in the pecuniary profits or contracts of such corporation . . . shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation . . ." Violators are made punishable by fine and imprisonment. The United States lays much stress on these facts: Mr. Garvan, while director of the bureau of investigation, Joseph H. Choate, Jr., chief of the chemical division of that bureau, and Ramsey Hoguet, patent attorney for the Custodian, conferred with the representatives of the chemical industries to arrange to make the seizures and sales of the patents. Later, Mr. Garvan, then Custodian, acted for the United States in making the transfers to the Chemical Foundation of which he was the President. Mr. McKay and Mr. Corbett were directors and officers appointed by the Custodian of various corporations of which he had taken control. Before the transfers were made, Mr. Choate became the general counsel and Mr. Hoguet the patent attorney of the Foundation. Mr. Bannard and the other voting trustees were members of the Advisory Sales Committee —appointed by the President to see that sales of enemy properties were fairly made to qualified buyers. Without further referenece to the facts relied on to support its contention, we assume in favor of the United States that those who acted for it in the transactions complained of were at the same time directors and officers of the corporation; that the members of the Advisory Sales Committee, while they were voting trustees, participated in the fixing of the prices paid for the patents by the Foundation, and that such prices were much less than the value of the properties and would have been inadequate to constitute just compensation if the patents belonged to non-enemy owners and were taken for public use under the power of eminent domain.

Section 41 was enacted when there was no war, and long before the Trading with the Enemy Act. It lays down a general rule for the protection of the United States in transactions between it and corporations and to prevent its action from being influenced by anyone interested adversely to it. It is a penal statute and is not to be extended to cases not clearly within its terms or to those exceptional to its spirit and purpose. *United States* v. *Noveck*, — U. S. —; *Baender* v. *Barnett*, 255 U. S. 224, 226; *Hawaii* v. *Mankichi*, 190 U. S. 197, 212; *United States* v. *Kirby*, 7 Wall. 482, 486; Bishop on Statutory Crimes (3d ed.), § 235. At the time of the enactment, there were no enemy properties to be dealt with; and, save the generality of the language used, there is nothing to indicate a legislative purpose to deal with that subject. The Trading with the Enemy Act is a war measure covering specifically, fully and exclusively the seizure and disposition of enemy properties. The authority of the President to authorize sales and to determine terms and conditions in lieu of those specified in the proviso undoubtedly included the power to cause the Chemical Foundation to be incorporated to purchase and hold the patents as specified and to direct the selection of the directors, officers and voting trustees. The President, and under him the Custodian, acting for the United States, the seller of the patents, caused the Foundation to be created to buy and hold them and caused it to to be controlled by officers or representatives of the United States acting exclusively in its interest. Neither Mr. Garvan nor any of the others who acted for the United States had any financial interest in the Foundation, its profits or its contracts. All the corporate shares were subscribed and paid for by others—those interested in the chemical industries. They furnished the money to carry out the plan formulated by or under the direction of Mr. Palmer while he was Custodian. Under the voting trust agreement, reholders were divested of all voice in the control, business affairs of the corporation. All shares are to be held by the ing trustees for 17 years, within which all patents will expire. d by charter provisions dividends were limited to six per centum annum. Transferable certificates of beneficial interest were ied by the trustees to the shareholders, but these cannot be used control the corporation. The arrangement was intended to ount to a public trust for those whom the patents will benefit d for the promotion of American industries, and to give to them right to have on equal and reasonable terms licenses to make, use d sell the inventions covered by the patents. The Foundation is operly to be considered an instrumentality created under the di- tion of the President to effect that disposition and subsequent trol of the patents which he determined to be in the public inter- . The transactions complained of did not involve any of the evils ed at by § 41. The Act will be construed and applied as not alified or affected by that provision of the Criminal Code. *Utah wer & Light Co.* v. *United States*, 243 U. S. 389, 406; *Kepner* v. *ited States*, 195 U. S. 100, 125; *Townsend* v. *Little*, 109 U. S. 504, 2; *In re Rouse, Hazard & Co.*, 91 Fed. 96, 100. And, as the power dispose of the properties by sales on the terms and conditions ecified was included in the grant made by the statute, it follows at the rule in respect of sales of trust properties by fiduciaries es not apply.

Before the commencement of the trial, the District Court und that it was necessary that the testimony be taken down in orthand and transcribed, and appointed an official stenographer r that purpose; and it was ordered that his fees be ultimately xed as a part of the costs. By another order, counsel consenting, e court directed that the expense of printing 100 copies of the anscript, to be available for use in that court and on appeal, be lvanced from time to time and borne in equal amounts by the rties and form a part of the taxable costs. The decree directs at the Chemical Foundation recover from the United States the oney advanced by the Foundation on account of such fees and penses, and orders the amount to be taxed as costs in the case. he government insists that this is erroneous.

The general rule is that, in the absence of a statute directly thorizing it, courts will not give judgment against the United tates for costs or expenses. *United States* v. *Hooe,* 3 Cranch 73,

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CARD 112

The Witness: I have omitted to read you two letters, one to Mr. Choate and one to Mr. Poucher. They are identical and they are merely introductions of our Treasurer, Mr. Denton.

Q. 32. Merely introductions?

A. That is right.

Q. 33. To whom did you say they were?

A. One was addressed to Mr. Poucher, the other to Mr. Choate. Shall I read them?

Q. 34. Introduction of your Treasurer, Mr. Denton, to these gentlemen?

A. Yes, sir.

Q. 35. Unless they bear upon this matter, you need not read them?

A. They bear upon it.

Q. 36. They do?

A. Yes, sir.

Q. 37. Suppose you read them so we may have this complete?

A. (Reading).

"My dear Poucher:

> "This will introduce to you Mr. W. B. Denton, of the Textile Alliance Inc. Mr. Denton is a member of the Bar who came to us during the War for the purpose of assisting in War work. His connection with the Textile Alliance as at present planned will be permanent and he has now, and will have charge of its legal matters under our general counsel, Messrs. Coudert Brothers.
>
> "I have spoken to him about the matter which we discussed yesterday and have arranged with him that as soon as my return is known the matter shall be put before a meeting of the Board of Directors called during my absence to meet upon my arrival. This will save several weeks' time. If there are any developments in which we can assist please communicate with Mr. Denton, who will place himself entirely at your service."

91, 92; *Shewan and Sons* v. *United States*, 267 U. S. 86; *United States* v. *Davis*, 54 Fed. 147, 152, *et seq.* But the Foundation insists that under Equity Rule 50, taken with the consent of counsel and the orders, the court was authorized to direct that these items be taxed as costs and to give judgment against the United States therefor.

Equity Rule 50 in general terms provides that stenographers' fees shall be fixed by the court and taxed as costs, but it does not specify costs or judgment for money against the United States. The rule does not mention the United States and does not affect the sovereign prerogative not to pay costs. Congress alone has power to waive or qualify that immunity. But no statute authorizes the giving of judgment against the United States for these items or authorizes the Attorney General or other counsel in the case to consent to such a judgment. No such authority is necessary for the proper conduct of litigation on behalf of the United States, and there is no ground for implying that authority. It follows that the direction for judgment against the United States for costs cannot be sustained. That part of the decree will be eliminated; and the decree, so modified, will be affirmed.

Decree modified and affirmed as modified.

Mr. Justice SUTHERLAND and Mr. Justice STONE took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

END

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CARD 12

Q. 38. The matter to which you refer there was the matter of some connection or relationship between the Chemical Foundation and Textile Alliance?

A. Yes, sir; my own suggestion entirely.

Q. 39. But that was disapproved by the Executive Committee and never culminated?

A. Never consummated.

Mr. Anderson: If your Honor please, I think it is due I should say before turning the witness over for cross-examination that we called the witness because of the circumstances which I felt were enumerated in my original statement as the basis for our action in moving to strike out the name; because it is obvious that they refused to become associated with this movement, and it is due the Textile Alliance as a citizen of the United States and its officers that that fact should appear.

In turning over the witness to the other side for examination I wish to say that if the defendant takes up any matter outside the direct examination, I shall give notice now that it makes him its own witness.

Mr. Kresel: It seems to me, your Honor, that the statement just made by Colonel Anderson rather detracts from what appeared to be a voluntary and a laudable amendment of the pleading. I think that Colonel Anderson misunderstood the witness, if he understood him to say that his Executive Committee declined to go into this arrangement, and I think Colonel Anderson means this arrangement is something that could be criticized, and I shall by examination of the witness seek to develop just what it was, what the arrangement was that they contemplated, and I shall indicate, I think, by this witness, that it had absolutely nothing to do with the taking over of these patents, so that the attempt of the two organizations to get together could not possibly have been the basis of the charge that was made in the complaint.

CROSS-EXAMINATION

By MR. KRESEL:

XQ. 40. In the first place, in this letter of February 25, 1919, from you to Mr. Garvan, that you read, you speak of having explained to three or four members of your Executive Committee the purpose of the Dyestuffs Foundation, Inc. Who was the Dyestuffs Foundation, Incorporated?

A. I regret to say that I was so ignorant of your whole plan or Mr. Garvan's whole plan that I did not even know the correct name of the corporation.

XQ. 41. Then when you wrote "Dyestuffs Foundation, Inc.", you meant this corporation whose real name is The Chemical Foundation, Inc.?

A. Yes, sir.

XQ. 42. When you considered a co-operation between the Textile Alliance and the Chemical Foundation, Inc., and when you said in this letter that the two corporations which appear to have a common purpose should in some manner join their forces, what did you have reference to?

A. I had reference to the corporate objects of the Textile Alliance, which was the abuse, the correction—I am quoting from memory—of unjust and unlawful exactions, abuses and frauds in the sale of dyestuffs and mill supplies and raw materials.

XQ. 43. Did you have in mind at all anything about taking over the German patents and allowing the Chemical industry to have common use of them or anything of that sort?

A. Yes, insofar as the Chemical Foundation, through its ownership of German patents, might be in a position to combat successfully the conditions that existed before the war.

XQ. 44. In other words—and I want to make it entirely clear just for your own interest and for the organization that you represent—this was not a bid by you to enter into a conspiracy with the Chemical Foundation for any purpose?

A. No, sir. If it is proper for me to say so, my motives were partly selfish. We had worked on this matter—I had worked continuously since 1911; and when the Textile Alliance had accumulated certain funds amounting to some twenty or $25,000, I thought it was a very convenient opportunity for me to unload my responsibilities upon Mr. Garvan and at the same time contribute to a limited extent to the finances of the new corporation.

XQ. 45. And that is what you had in mind when you made the suggestion for the co-operation between the two organizations?

A. Yes, sir; it was.

XQ. 46. You have mentioned twice now, as I recall it in your testimony, that the Textile Alliance had for one of its purposes the elimination of frauds in the textile industry and especially in dealing between mills and dyestuff manufacturers. I want to ask you, Mr. Patterson, whether prior to the organization of the Textile Alliance in 1914 you had been instrumental in running down such practices as you have described. Just say yes or no, please?

A. Yes.

Mr. Anderson: If the Court please, I do not care to argue, but I merely want to note an objection to any evidence of matters or dealings with the Germans in their so-called relationship to the industry prior to the war in the United States. I do not think it has any relation to this matter and therefore I want to note an objecion.

The Court: Your objection is not that it is not cross-examination?

Mr. Anderson: It is both. It is outside of the direct examination, but I recognize the right of counsel to make this gentleman his own witness on any matter as long as they want to do it.

Mr. Kresel: I am perfectly willing to make Mr. Patterson my witness on this branch of the case.

Mr. Anderson: But I object. I am not going to be technical about making him your own witness, but I do object to going into matters that I think are entirely irrelevant.

The Court: Then you have concluded your cross-examination, Mr. Kresel, and you want to use the witness while on the stand to bring out some matters connected with your own case.

Mr. Kresel: I have not concluded my cross-examination, but if this question in Colonel Anderson's opinion will elicit anything that was not brought out on the direct examination, I am perfectly willing to abide by the rule that I am making him my witness for that purpose.

The Court: For this question?

Mr. Kresel: For this question and any question pursuing this particular line of inquiry. There will be very little of it.

Mr. Anderson: I did not hear you, Mr. Kresel.

Mr. Kresel: I say that if it be your claim that this question is going to elicit anything that was not developed on the direct examination, I am perfectly willing to take Mr. Patterson as my witness.

The Court: I sustain the objection to the question as not being cross-examination and you may take the answer as if he were your witness, under the agreement of counsel.

Mr. Kresel: The answer had already been given. It was in the affirmative.

XQ. 47. Now, Mr. Patterson, I wish you would state whether prior to the war you were in the woolen business?

A. Yes, sir.

XQ. 48. What was the name of your concern?

A. The Waterloo Woolen Manufacturing Company.

Mr. Anderson: As I understand, all this evidence is subject to the same objection, without renewing it each time.

The Court: Your objection that it is not in cross-examination is sustained; and the answer will be taken as in direct examination, by agreement of counsel. As I understand you, Colonel Anderson, you have no objection to his taking advantage of the presence of the witness on the stand to bring out any facts which he may deem relevant or proper to his side of the case.

Mr. Anderson: Which he could bring out if he called the witness himself. I have no objection whatever. In order to save interruption, if Mr. Kresel will agree that all this testimony is admitted subject to the objection on the further ground that it is irrelevant and immaterial to the issues of his case, I will not interrupt by any further objection.

The Court: Then all further testimony will be considered brought out as if Mr. Patterson had been called by you, Mr. Kresel, unless you desire in the case of some specific questions to call attention to the fact that they are in cross-examination.

Mr. Anderson: And each question and answer is considered objected to on the ground that it is immaterial and irrelevant.

The Court: As to that, the objection will be overruled and the answer taken under our general working rule.

Mr. Anderson: Yes, with an exception.

XQ. 49. Had you been in the woolen business for many years prior to the outbreak of the European War?

A. Since 1896.

XQ. 50. And was your concern a large user of dyes and dyestuffs?

A. Comparatively.

XQ. 51. And did you have personal charge of buying the dyes for your company?

A. For a time.

XQ. 52. And in that way were you familiar with the dye situation here?

A. Yes, sir.

XQ. 53. Prior to 1914, did you know Mr. Poucher?

A. I knew Mr. Poucher from about 1898, as nearly as I could tell.

XQ. 54. In what connection did you meet him?

A. As a customer.

XQ. 55. You were a customer of his?

A. Yes, sir.

XQ. 56. You were purchasing dyes from him?

A. From his company.

XQ. 57. What was the name of his company?

A. It had various names at different times: Kuttroff-Pickhardt & Company; The Kuttroff-Pickhardt Company, Incorporated and I think the Badishe Company and the Continental Color & Chemical Company. But I do not pretend those names are correct.

XQ. 58. Did you understand that during your dealings with Mr. Poucher that this concern of his, whatever its name was, was representing in the United States the Badishe Company of Germany?

A. It so represented itself.

XQ. 59. And the dyes that you were buying from Mr. Poucher were German dyes?

A. Yes, sir.

XQ. 60. Is it the fact, Mr. Patterson, that prior to 1914, most dyes used in the United States did come from Germany?

A. Yes, sir.

XQ. 61. Was there any dye manufacturing business here in the United States prior to 1914?

A. Yes, but a very small one and I did not know it personally because they made nothing suitable for our use.

XQ. 62. The activities that you speak of in which you were engaged, to correct abuses in the relations between dye sellers and the dye users in the United States; did those antedate 1914?

A. They began about 1911.

XQ. 63. And were you active in those attempts to correct those abuses?

A. Yes, sir.

XQ. 64. Was there anybody associated with you therein?

A. I was a member of a Committee of the American Association of Woolen & Worsted Manufacturers and there were two other members of that Association connected with me.

XQ. 65. Now then, prior to the incorporation of the Textile Alliance in 1914, did you three gentlemen as representing this other organization you have just mentioned conduct this investigation into the abuses that you speak of?

A. Yes, sir.

XQ. 66. As a result of your activities and those of your two associates whom you have mentioned, did you make a report concerning what you found to have been the condition in the dye industry?

A. Yes, sir.

XQ. 67. Is this a copy of that report and does it contain to your knowledge a correct statement of the situation that was developed by your investigation (handing a pamphlet to witness)?

A. I was not personally familiar with the—

Mr. Anderson: I would object further to that testimony because it is not an official report of the Government or anything of that kind and it is not proof of the facts which it contains. Unless they are within the knowledge of this witness—and if they are within the knowledge of this witness, he can testify to it now and not put in the written report—

The Court: I think that is true. Your objection will have to be sustained. Have you had an opportunity to see this report?

Mr. Anderson: No, sir.

The Court: The only thought that I have is as to whether that is a brief statement which he would here repeat if necessary. It will not go in in this way, over your objection. If you want to examine this document now, Colonel Anderson, you may do so.

Mr. Anderson: Will your Honor allow us a few moments to look it over to see if we can get by it.

Mr. Kresel: I think it would shorten it really if we were allowed to do this.

The Court: If your objection is pressed, we will not take it in this form. Do you want a recess in order to examine it?

Mr. Anderson: If your Honor please, in order to save time, Mr. Patterson wants to get away, and I will ask, if counsel agree, that they go ahead and put the report in as the answer of the witness with leave on my part to move to strike it out, if I so decide, after examining it this afternoon. He says if I insist upon that motion—and I shall not, if I believe it to be fairly stated—that he will either prove it by someone else or recall Mr. Patterson at a later date.

The Court: That should be with the further reservation to you, Colonel Anderson, that if after examining the report you find that there are matters there as to which you would desire to cross-examine—

Mr. Kresel: Then we will produce Mr. Patterson.

The Court: Mr. Patterson will be available for further cross-examination.

Mr. Anderson: Of course, this is also subject to my general objection as to each question on the ground that this is irrelevant and immaterial.

THE COURT: I understand there is no testimony that can be offered by the defendant except as to the value of patents.

MR. KRESEL: Will you mark that. How do you run the defendant's exhibits, by initials?

THE COURT: The same way. Defendant's Exhibit 1. You have no objection, Colonel Anderson, to it being admitted out of order?

MR. ANDERSON: I will not make any point of that. It can be admitted out of order. The only question is that I would like to be sure there is nothing prejudicial.

Received in evidence and marked "Defendant's Exhibit No. 1."

XQ. 68. This report which is now marked Defendant's Exhibit 1, is that a correct resume of what was developed in your investigation?

A. Yes, sir; but I should like to say that I was not personally familiar with every fact contained in it.

XQ. 69. Certainly not.

A. But I relied largely on the statements of the counsel in the cases.

MR. ANDERSON: I should then have to make a further objection to it as hearsay, your Honor.

THE COURT: Then what have you to say as to the granting or denial of Col. Anderson's motion to strike out?

MR. KRESEL: I have this to say, your Honor—that if Colonel Anderson insists upon his motion I shall ask the witness to detail what he knows of his own personal knowledge, and I wanted to avoid that in view of the lateness of the hour.

THE COURT: I do not see how you can, in view of the witness's last answer, which was full and frank, that only certain facts therein contained he knows of production of the pleadings. He may have been told these things; he naturally could not know them. He believes them—I do not question that; but as evidence, if we go into proof of matters of this kind we go into the trial of all those suits over again, as to what they were about. In addition to the materiality and relevancy, I respectfully submit that I am compelled if for no other reason than to keep the record within reasonable limits, if we are going to apply this evidence to matters which only can be within his personal knowledge and as to which he can testifiy without hearsay, I move to strike out his answer thus far, and each paragraph thereof.

Mr. Kresel: As to his personal knowledge, I shall come to that in a minute. I think your Honor is entitled to know the theory upon which this evidence is being offered. Your Honor will recall that I stated in the opening statement for the defendant that one of the means whereby the Germans maintained their monopoly here was a widespread bribery system that they maintained among the manufacturers, in bribing the manufacturers to use only German dyes. It is that which I am trying to bring out through this witness; it is that that was involved in these suits. Of course, we are not here to try these suits, all I am trying to establish is the fact. This witness says that he knows of his own knowledge what the facts were as to that. He himself was a user of dyes to a large extent. He came in contact with the situation. And that is all I am trying to bring out from him.

The Court: Yes, but does not the answer of the witness dispute and deny the soundness of your contention? That is, does not the witness, notwithstanding his general answer that he knows, disclose that he does not know in the sense that is required to enable him to speak as a witness? That is Colonel Anderson's objection. So far as the admission of a certain representative of a dye industry in Philadelphia that he had been guilty of bribery is concerned, it is almost admissible as it now stands, but not quite, so that it will take other questions—I don't know whether that was the German dye industry or Japanese dye industry or American dye industry. So that as that stands it is not, as I view it, in a position to remain in the record. Now then, as to the suits, I did not get fully what the witness's answer is. I did not follow that.

Mr. Kresel: The witness had not gone far enough.

The Court: Will you reserve your motion, then, for a few more questions?

Mr. Anderson: I want to make it timely, but I do not want to make it before the developments.

The Court: No, I meant this: Unless the connection is made which in your view is sufficient to enable it to stay of record, I will entertain your motion, but I think possibly it may be a little premature at this moment.

Mr. Anderson: Certainly, sir.

XQ. 77. Mr. Patterson, the one instance that you spoke of where an agent of a dye concern made an admission that there had been bribery—what concern was that that you were referring to?

A. That was the Farben Fabriken of Elberfeld Company, who employed a salesman named Nathan Litchfield, who is the man who made the admission to me.

XQ. 78. The Farben Fabriken of Elberfield, was that a German dye concern?

A. It was the American house of the concern that is known as the Bayer Company.

XQ. 79. A German concern?

A. A German concern known as the Bayer Company.

XQ. You were interrupted by Colonel Anderson's objection and you were about to state something about a suit, and I was saying to you that I wanted you simply in a general way to state the basis of the suit. I do not mean that you should tell us what was in the complaint or the answer; what was it that was involved?

A. There were many suits, there were a large number of suits, and the same principle was involved in all of the suits against the German houses.

XQ. 81. Namely?

A. Namely, the fact that they were in a combination in restraint of trade and that in pursuance of that combination they resorted to unfair trade practices.

XQ. 82. What unfair trade practices?

A. Chiefly bribery and adulteration, but there were other allegations in certain cases which did not affect all of the defendants. I suppose I might call it sabotage.

XQ. 83. Bribery of whom?

A. Bribery of the buyers' employees.

XQ. 84. Of the American users of the dyes?

A. Yes, sir, the American customers' employees.

XQ. 85. When you speak of adulteration, adulteration of what?

A. Adulteration of the dyes delivered to customers.

XQ. 86. Dyes delivered to the customers by the agents of the German concerns?

A. By the vendors.

Mr. Anderson: He is your witness, but I would rather you would let him testify—not you.

The Court: The question was leading, but his answer is made without respect to the leading question.

Mr. Anderson: I will let the answer stand, but I was merely suggesting there was a limit.

XQ. 87. It was subsequent to that investigation that the Textile Alliance was organized?

A. Yes, sir.

XQ. 88. And did I understand you to say in answer to Colonel Anderson's question that the purpose of the Textile Alliance was to root out these trade practices that you have described?

A. May I read the corporate purposes?

XQ. 89. No, just state it in a general way, if you will.

Mr. Anderson: I would like to have him read it.

XQ. 90. Please read it.

A. (Reading) "The particular objects for which the corporation is to be formed are: The protection of mill owners and operators from and the prevention and reform of abuses, unjust and unlawful exactions, deceptions and frauds in the manufacture and sale of mill supplies, and the prevention and prosecution of unlawful, illegal and improper actions, misdemeanors and crimes in connection therewith."

XQ. 91. The membership of the Textile Alliance was made up of whom?

A. The voting membership, in which I assume you are interested—

XQ. 92. Yes.

A. (Continuing)—consisting of nominees of the principal textile associations plus the officers of the Textile Alliance itself.

XQ. 93. You said there were five such textile associations originally?

A. At that time.

XQ. 94. Was one of them the association three of whose members had had the investigation in charge before the incorporation of the Textile Alliance?

A. Yes, sir, the American Association of Woolen & Worsted Manufacturers.

XQ. 95. So that may we say that the purpose of the organization of the Textile Alliance, among other things, was to continue the work that this committee of yours had been doing prior to the incorporation?

The Court: Do not answer. The question is leading. Is there an objection, Colonel Anderson? My views about leading questions are these—that they sometimes save much time, particularly where you have a credible witness on the stand who has a mind of his own. Now then, in such cases I think a leading question does no harm.

Mr. Anderson: That is quite my view, sir. I do not object. Where the question was extremely leading if your Honor would follow the English rule and tell counsel to put it the other way, it will save me objecting. Unless I see that it is prejudicial I am not going to object to form.

The Court: I do not think a leading question does any harm with this witness.

Mr. Anderson: I quite agree. I do not object, except that I would rather he confined himself to the question.

The Court: Read the question.

XQ. 96. (Question No. XQ. 95 repeated as recorded above.)

A. Yes, sir.

XQ. 97. You spoke of having the Textile Alliance giving information to various Governmental agencies. You mentioned the Alien Property Custodian. I think you mentioned the War Trade Board?

A. Yes, sir.

XQ. 98. Were there any other Governmental agencies to whom you gave information with reference to any property and enemy activity?

A. Yes, sir; the Department of Justice, the—well, I am under the impression the Treasury Department, but I should like to consult with my associates before I say positively.

XQ. 99. All right. Now with reference to the

Alien Property Custodian particularly, do you recall receiving a letter from them way back in November 1917?

A. November 15, 1917, signed by H. L. Garsin, Bureau of Investigation, and on an Alien Property Custodian letterhead.

XQ. 100. Would you mind reading that?

Mr. Kresel: Your Honor sees no objection to that —so we do not use it.

A. (Reading) "November 15, 1917. Textile Alliance, Inc., 45 East 17th Street, New York City.

> "Dear Sirs:
>
> "I trust that any infromation which you may now have or which may hereafter come into your possession with reference to property in this country owned by alien enemy you will advise this Department.
>
> "For your information I am enclosing a copy of the law and would appreciate your co-operation. I understand you may have in your possession some data as to quantities of wool which were taken from interned ship in New York Harbor.
>
> Very truly,
> H. L. GARSIN,
> Bureau of Investigation."

XQ. 101. And did you answer that letter?

A. We acknowledged it on November 16th and on November 27th we advised him that we handed him therewith a memorandum of shipments of wool, twine, rope and sheepskins on hand in this country owned by alien enemies, of which we have been advised.

XQ. 102. Was it in this way, that is by the opening of this correspondence, with the letter of November 15, 1917, that you have just read, that you and the Textile Alliance came into contact with the Alien Property Custodian's Office?

A. Well, I can go farther back than that. I think that the reason Mr. Garsin wrote to us was that he was advised to do so by the Bureau of Imports of the War Trade Board, because I have been so informed by the director of that Bureau.

XQ. 103. You spoke of having been Trustee, I think you described it, of two concerns in the hands of the Alien Property Custodian.

A. Yes, sir.

XQ. 104. What were the names of those two corporations.

A. Dr. Jaeger Sanitary Underwear Company and Dresden Lace Works.

XQ. 105. That was another connection between yourself and the Alien Property Custodian's Office?

A. Yes, sir.

XQ. 106. Did you also have anything to do with the management of the Passaic Mills?

A. The War Trade Board and the Alien Property Custodian requested us to appoint a Custodian for wool stored in their possession or in process of manufacture, which we did. That is to say, we suggested him and they appointed him jointly, and when he resigned the same process was repeated with another man, and there was considerable correspondence and negotiation concerning those companies which I could not give you without reference to the file. It extended for a very protracted period.

XQ. 107. In the work that you were engaged in with reference to this German bribery, did Mr. Poucher have anything to do with that?

A. Yes, sir.

XQ. 108. Was he working with you or against you?

A. He was working with us.

XQ. 109. That is all I want to know. When you went abroad in July, 1918, and stayed abroad until the 23rd of December, 1918, during that time did you have any communication or any connection with the Alien Property Custodian?

A. I have no record of it and no recollection of it.

XQ. 110. How did you first learn about the purpose to form or organize the Chemical Foundation?

A. I caused our files to be searched, and to the best of my recollection and from an examination of the files I believe that I first learned of it from newspaper reports on or about the 20th of February, 1919.

XQ. 111. You went abroad again at the end of February 1919, did you not?

A. The 28th of February or the 1st of March.

XQ. 112. And how long did you stay abroad then?

A. Until June.

XQ. 113. While abroad did you have anything to do, officially, I mean, with the matter of the importation of dyes or dyestuffs into the United States?

A. Yes, sir.

XQ. 114. In what connection?

A. Just after I arrived in London I was summoned to Paris by the Economic Section of the American Mission to the Peace Conference, and I remained in Paris for some six weeks as technical adviser on dyes and on textiles, in spite of my disclaimer that I was not competent to advise on dyes.

XQ. 115. That was the period during which the Peace Conference was in session abroad?

A. Yes, sir.

XQ. 116. And this conference that you speak of, the Economic Conference, was that connected with our Peace Delegation abroad?

A. I meant to describe the American Section, the Economic Section of the American Mission to the Peace Conference.

XQ. 117. Did this official Commission or Economic Section of the Commission consider and inquire about importations of dyes from Germany into the United States?

A. Yes, sir; it was the constant subject of discussion.

XQ. 118. And was there any plan that was being considered in that connection?

A. Well, there were several plans being considered. Of course, the principal one was that finally embodied in the Treaty of Peace itself, but there were interim plans suggested and considered for the purpose of immediate requirements of German dyes on many different schemes or plans, none of which went through, although there was finally such a purchase made by our own Government independent of any such scheme or plan.

XQ. 119. In the consideration of plans to import or to allow the importation of German dyes into the United States during that period was the question considered as to dumping?

A. Yes, sir; the Treaty was framed with reference to the protection of both consumers and manufacturers of dyes in this country, from not only dumping but from the opposite, which—I do not know exactly how to describe it, but putting on pressure by withholding supplies of necessary dyes not made in this country.

XQ. 120. Full line forcing?

Mr. Anderson: One moment, if your Honor please, I will have to move to strike out the witness's answer. I do not think any witness can testify for what the Treaty of Versailles was framed, and I do not think it is competent for him to undertake to say the purposes of the makers of that Treaty in framing it. If they want to ask what the Treaty means, that is another question.

Mr. Kresel: I did not certainly understand that the witness intended to be here interpreting the Treaty. My question, as your Honor will recall—

Mr. Anderson: The purpose of the negotiation.

Mr. Kresel: I will consent to strike it out.

The Court: Let the answer be stricken out.

XQ. 121. Mr. Patterson, my inquiry is as to the consideration that was given by this Section with reference to the German importations of dyestuffs and what it was that was being considered in connection therewith. You spoke of dumping—now, what else?

Mr. Anderson: May I suggest, being considered by whom?

Mr. Kresel: This Section of the Peace Commission to which he was adviser.

Mr. Anderson: If your Honor please, we cannot go into the peace negotiations. There were I think some thousand people over there engaged in the negotiation of that Treaty on the part of the United States. To undertake to testify at this time what was being considered—what does it matter what was being considered? The whole question is what was done, and if it was done, then it becomes either binding or not binding and is the law; but if we go into the trial of the negotiations and what took place, and Mr. Patterson will testify one thing and we will call witnesses to testify another thing, we will be re-negotiating the Treaty of Peace on the records here. Certainly, in addition to my general objections, that is going further afield than any pleading, I submit.

Mr. Kresel: Colonel Anderson, that is not my purpose. I am not trying to fight out the Treaty with you.

Mr. Anderson: I might add that it infringes upon the rights of the Senate.

Mr. Kresel: Well, Senator Lodge ought to make that objection. All I am trying to bring out from the witness is that the conditions we describe with reference to dumping and full line forcing were conditions that prevailed and were being considered at the time by this Economic Commission, when the question again arose as to the importation of dyes from Germany after the war. Now, I made that statement. If it were a different witness I would not make it, because it would show him what I wanted from him; but Mr. Patterson is not that sort of a witness. That is what I am trying to bring out, and we have a right to bring that out; because it shows a condition that prevailed here prior to the war which had an influence on the Alien Property Custodian, the President, and what they did here.

The Court: Isn't the difficulty with your contention and its unsoundness, if it is unsound, that the discussions in Paris pertaining to conditions, even assuming the full line forcing, dumping and other unfair methods of competition existed and were taken advantage of by the Germans to monopolize the American market for their products manufactured abroad—would the discussion of that at Paris be relevant to the issues of this case? Isn't that the fact, and whether it was discussed at Paris or not, if you show the conditions and the action of the Alien Property Custodian, and possibly the President, then you have occupied your whole field without going to Paris?

Mr. Kresel: Yes, sir. Yes, that is quite right. The only reason I was asking him about the situation in Paris was because that led me into a discussion with him or evidence from him with reference to this dumping and full line forcing. I propose to ask him then to state if he knew what the situation was with reference to that prior to the war.

The Court: That brings me back to Colonel Anderson's motion to strike out. My difficulties are these: So far as the admission of the German agent or the agent of the American house in the German industry is concerned, my thought is that the fact that he did not have authority to admit the nature of his acts is not a sound objection. Then when you ask this witness now about suits which were based upon alleged wrongful acts of the German industry, unless you follow that by an adjudication, there is no judicial determination of those acts and those suits or facts apart from those wrongful acts, and if that testimony is admissible at all it is admissible apart from the best evidence rule, admissible, as I see it, only as tending to establish the reputation among the trades in this country of the German industry. Whether that reputation has evidential value in this case apart from the facts themselves, I am not sure at this moment, and I will hear you on both sides. Now, if you are dealing with the reputation of the German methods of competition or methods of placing their products in the American markets, then I am led to the inquiry as to whether you cannot take the discussions and statements of the discussions at Paris in your Economic Section, and whether it is admissible on that ground. Now then, if it is not admissible on that ground, I think it is wholly inadmissible.

Mr. Kresel: Very well, your Honor, if there is an answer to that question I am perfectly willing to let it go out.

The Court: Strike it out.

Mr. Kresel: Because I can ask him the direct questions, what the facts were prior to the war with reference to this dumping and full line forcing.

XQ. 122. Mr. Patterson, will you state what your knowledge is with reference to those two methods of unfair competition of the Germans?

A. I am afraid I cannot, Mr. Kresel; I have no knowledge whatever of either of those practices before the war.

XQ. 123. Then if you cannot, you cannot, that is all that is necessary.

Mr. Anderson: That saves me the necessity of making an objection.

XQ. 124. Prior to the war you were a buyer of dyes. Was there any competition?

A. There was competition, not in the true sense, but a competition between agencies. Each agent trying to secure a maximum.

XQ. 125. And when you speak of the agencies, what agencies do you refer to?

A. There were six principal German dyestuff vendors, divided into two groups, and those groups allied—

Mr. Anderson: One minute, Mr. Patterson. If your Honor please, what is competition? This is getting into a very broad field of inquiry. The witness might have an opinion that there was no competition and I might have an opinion that there was. The facts must be established and the Court must reach a conclusion as to whether there is competition, if we are going to try that issue.

The Court: I think that does not prevent your getting the facts; but I think this objection will be sustained, and I assume that what you really asked the witness was whether there was any competition between the American industry and the German industry.

Mr. Kresel: No, your Honor, I was asking whether there was any competition among people who had dyes to sell, to his knowledge, he being a purchaser of dyes.

Mr. Anderson: I submit, if your Honor please, if that could be asked of a witness, the trial of anti-trust cases would be one of the easiest jobs that was ever assigned to a lawyer.

Mr. Kresel: Well, we are not trying that.

Mr. Anderson: So that is clearly iadmissible evidence.

Mr. Kresel: And that is directed, if your Honor please, to the allegation in the Bill wherein they charge that at the time of the sale of these patents there was a monopoly. I propose to go on from showing what the situation was in 1914 to what it was in 1919.

The Court: I think your question is open to Colonel Anderson's objection, but why can't you state that question so that it is not open to objection, and elicit the facts?

Mr. Kresel: All right, I will try to do that.

XQ. 126. Mr. Patterson, you have already stated that you were a buyer of dyes, and was that true during 1914 and for years before that?

A. It was true for many years before that. As to the exact moment, 1914, in the first part of the year, I had supervisory functions; I did not actually buy the dyes myself.

XQ. 127. You were the President of your concern?

A. Yes, sir.

XQ. 128. And you knew from whom your concern was buying dyes?

A. Yes, sir, I followed it closely.

XQ. 129. What I want to know is whether there were many concerns in the United States from whom you could buy dyes?

A. Yes, sir; there were a great many concerns.

XQ. 130. How many were there?

A. I have no idea. A great many.

XQ. 131. The dyes that you needed?

A. No, the dyes that I needed in my own business, there were only about four or five at first hand, sir. There were a great many jobbers and there were a great many people at second hand from whom we could buy dyes.

XQ. 132. German dyes?

A. German dyes, Swiss, to a limited extent, English to a limited extent. When they came in that manner you rarely knew what they were.

XQ. 133. You spoke of there having been agencies here of the German dye concerns. How many were there?

A. Six to the best of my knowledge.

XQ. 134. Could you buy your supply of dyes from each of those six?

A. Each of them did not make all that we wanted, but we could buy some part from—there were usually two or three making each thing, with the exception of a few patented colors, a good many of the patented colors, which were confined. Those did not, however, in my own business, concern me so much.

XQ. 135. So that is it the fact that you derived or bought your supply of dyes from some one or more of these agencies of the German concerns?

A. One or two Swiss.

XQ. 136. After 1914 did you get German dyes?

A. In 1914?

XQ. 137. Yes.

A. The shipment of German dyes practically stopped.

XQ. 138. And from that time on and until after we had gone into the war, and during the time that we were in the war, do you know whether there had been development in the United States of the chemical industry?

A. I know there has been a very large development of the chemical industry.

XQ. 139. In 1919 and in 1918 did you buy any dyes from the American manufacturers?

A. Would you give me the dates again?

XQ. 140. 1918 and 1919?

A. Oh, yes.

XQ. 141. Did you find that you could get most of your requirements from American manufacturers?

A. Well, in 1918 and 1919 we got much of it. Since then we get practically all; not all, but practically all.

XQ. 142. During 1918 and 1919, did you find that the market for dyes was such that there were people competing for your custom?

A. Yes, sir.

XQ. 143. Did you find that in 1918 and 1919 there was any monopoly of the dye industry in the United States?

Mr. Anderson: Just one moment.

Mr. Kresel: I purposely put it in that way because it is so charged in the Bill.

Mr. Anderson: If your Honor please, I do not suppose we can put experts on the stand to prove the existence of a monopoly in the United States, nor can we put witnesses on the stand to prove that a monopoly does not exist.

The Court: Colonel Anderson, I think your objection is sound for this reason. A Pleading consists of an allegation of the ultimate fact. An ultimate fact is not the evidential fact but the thing to be proved by evidential facts. So that I take it, Mr. Kresel, you are asking for an ultimate fact and not an evidential fact.

Mr. Kresel: I have got the evidential fact and I think I should be permitted to ask the ultimate fact.

The Court: I do not know what the evidential facts are which would support the negative of the allegations in the Bill.

Mr. Kresel: The witness has already testified that during 1918 and 1919 he bought his supplies from American manufacturers and that there was competitive bidding for his custom.

Mr. Anderson: Of course, that was subject to motion to strike out, but I did not want to object to the question generally, making so many objections; but when he comes to ask him to reach the conclusion that the Court has got to reach one way or the other, I think we are going too far.

Mr. Kresel: A man is entitled to state, certainly, what the fact was as he knew it in his own business.

Mr. Anderson: Monopoly is not a fact. It is a conclusion of law from facts.

Mr. Kresel: Before your Honor rules, it seems to me that the man who buys dyes can be permitted to say that he had the choice of buying from half a dozen people and that they were competing for his custom.

The Court: I think that is not your question.

Mr. Kresel: That question has already been asked and answered.

The Court: I do not think we can permit the witness to draw a conclusion or state an ultimate fact from that. I think you must depend upon your evidential facts. I sustain the objection. You may put in your answer under Rule 46, if you desire.

Mr. Kresel: Oh, no, your Honor; there is nothing in that.

The Court: Objection sustained.

Mr. Anderson: I move to strike out the answer of the witness to the effect that there was competition in the United States in 1918 and 1919. I thought it came under the way in which we are moving, but since counsel raised that objection, I move to strike it out. The witness can testify that he bought from various manufacturers. He can testify that these manufacturers were seeking his trade. But competition and monopoly are two of the most difficult things to establish. They are conclusions to be drawn from a very large series of facts.

The Court: I am wondering, Colonel Anderson, as to whether it would be worth while to discuss that at length, because I assume that any Court would draw from the Answer as it stands, merely apparent competition. Unless the witness goes on and states further facts; then I should assume at least that what he meant was apparent competition, and I assume—or I have no right to assume it—but if you object to that testimony being so interpreted or so understood.

Mr. Anderson: Not at all, sir.

The Court: Then we may not foreclose any other conclusion by saying to Mr. Kresel now that that will be the interpretation put upon it, and if he desires other interpretation or any other conclusion to be drawn judicially, he must offer further evidence to show that that was in fact competition and not merely apparent competition.

Mr. Anderson: I am quite willing to let the record stand that way, sir.

XQ. 144. Mr. Patterson, during 1918 and 1919, do you know how many manufacturers of dyes and dyestuffs there were in the United States?

A. No, sir, I do not.

XQ. 145. Do you know from how many your concern bought dyes?

A. No sir, I do not.

XQ. 146. Do you know the names of any of them?

A. Yes, the National Aniline Company and the duPont. I cannot give you the full name of the duPont Company, I am sorry to say, but it will identify it sufficiently to say the duPont Company, of Wilmington.

XQ. 147. Just what are all those that you can recall?

A. The Calco Chemical Company. I have not been in charge of this since the war. I am no longer familiar with the details. Unless I ask I am not told.

XQ. 148. You have not been buying your dyes since 1919?

A. Since 1914, I have not been in personal charge of it.

XQ. 149. But you have been supervising it, I think you said?

A. Supervising it.

XQ. 150. So that you can not recall any more than the three that you have mentioned?

A. No, sir.

XQ. 151. But you have bought your supply almost—your total supply—from American manufacturers, that you do know?

A. Yes, sir. May I add two more to that list which have occurred to me. We also bought from the Franklin Import & Export Company, and from the Textile Alliance, Inc.

XQ. 152. That was this organization of which you are President.

A. Yes, sir.

XQ. 153. Was that in the business of dealing with dyes?

A. We dealt in the reparation dyes which we brought over at the request of the State Department.

XQ. 154. What are those dyes that you speak of as the reparation dyes?

A. Annex VI of the Peace Treaty provided for the impounding of certain German stocks which existed at the time of the Armistice, and 25 per cent of the annual German production thereafter to be distributed under the supervision of the Reparation Commission on behalf of all of the Allies. Each of the Allies shares, or to be more accurate, has a right to share in that distribution. The share of the United States was approximately one-fifth. In September, 1919, the State Department requested the Textile Alliance to take charge of that distribution, and under several successive agreements affecting the reparation dyes, and one purchase which I referred to before, made by a representative of the State Department under option, the Textile Alliance has distributed many million dollars in three years—in four years.

XQ. 155. It is only in that connection that the Textile Alliance was in the dyes industry?

A. No, in nineteen—

XQ. 156. It did not manufacture, did it?

A. It was not a manufacturer.

XQ. 157. It owns no factories?

A. No, sir.

XQ. 158. Mr. Coudert suggests that the Textile Alliance did not go into this reparation dye business for profit?

A. No, sir, it went into it at the request of the State Department, and under these various agreements to which I have referred. Complete arrangements for the distribution of any surplus receipts were made. None of them could accrue to the Textile Alliance.

XQ. 159. Are there profits accrued?

A. Only surplus of receipts over expenditures; no profits accrued to the Textile Alliance.

XQ. 160. And what has become of that surplus?

A. Part of it has been distributed in accordance with the terms of the agreement and other portions are still held to be distributed in the same manner.

XQ. 161. Distributed under whose authorization?

A. A part of them under the authorization of our own Board of Directors; part of them under the authorization of the State Department; and part of them under the supervisions of underwriters of a certain fund which was made up for the purchase of certain of these dyes.

XQ. 162. But in so far as the Textile Alliance as an organization is concerned, did it make any profit out of this reparation dye transaction?

A. No, sir, it did not.

XQ. 163. Or you personally?

A. Nor I personally in any way.

XQ. 164. Did you ever receive a salary as officer?

MR. ANDERSON: That is objected to.

MR. KRESEL: I withdraw it.

MR. ANDERSON: Is your Honor willing to sit for a little while longer?

THE COURT: How much longer?

MR. ANDERSON: I should think for only a very short time.

THE COURT: We will run until half past three, then.

MR. ANDERSON: I think I can get through with any questions that I want to ask Mr. Patterson in a very short time.

RE-DIRECT EXAMINATION

By MR. ANDERSON:

RDQ. 165. Mr. Patterson, you said that you brought in these dyes—reparation dyes—in the name of the Textile Alliance?

A. Yes, sir.

RDQ. 166. Under arrangement with the State Department?

A. Yes, sir.

RDQ. 167. Did you pay any license to the Chemical Foundation as the holder of German patents for importing those dyes?

A. We paid approximately ten per cent on all dyes on which patents were held by the Chemical Foundation or by other holders of the patents.

RDQ. 168. Do you know how much you paid The Chemical Foundation?

A. I have the amount here and will give it to you.

RDQ. 169. Well, let us have it?

A. I hold in my hand a certificate of public accountants, Messrs. Garraway, Guthrie & Co., as follows:

"June 5, 1923. To whom it may concern:

We certify that the Textile Alliance, Inc., has paid in royalties on imported dyes."

RDQ. 170. If it is a long paper, Mr. Patterson, you can state the amount. There is no use in reading the whole paper here. We will accept that statement.

Mr. Coudert: Just the sum total.

The Witness: I am sorry; they have given me the wrong paper. I have certificates of two concerns.

Mr. Coudert: He has brought down the wrong one. Can you remember roughly?

The Witness: "We certify that the Textile Alliance, Inc., has paid in royalties on imported dyes to the Chemical Foundation, Incorporated, up to and including December 19, 1922, the sum of $208,880.90, and the further sum of $6,107.46, in 1923, for royalties up to and including April, 1923. Yours very truly, Barrow, Wade, Guthrie & Co."

The total is $215,000 approximately.

RDQ. 171. Can you say whether that represented approximately 10 per cent of the value of these dyes?

A. Approximately 10 per cent. There may be a slight adjustment for discount one way or the other. It is approximately 10 per cent.

RDQ. 172. So that you paid royalties to the Chemical Foundation on all reparation dyes under the Treaty of Peace—imported under the Treaty of Peace, which were covered by former German patents owned by The Chemical Foundation?

A. Yes, sir.

RDQ. 173. And this amount which you have stated represents to the best of your knowledge and belief the actual aggregate amount paid on that item?

A. Yes, sir.

RDQ. 174. You said that the control of those dyes —reparation dyes—was vested in part in the State Department, I think, and also in part in certain underwriters?

A. Yes, sir.

RDQ. 175. To whom did you refer in the term "Underwriters?"

A. After the first two distributions of the reparation dyes had been made, there remained in stock under the control of the Reparation Commission, several thousand tons which they proposed to return to the Germans unless they were immediately taken up by the participating—the countries entitled to participate in their distribution.

RDQ. 176. Now, Mr. Patterson, not to make the record too long—

A. It won't be long. It is very short.

RDQ. 177. If you were just to state what they were—well, go ahead.

A. It won't be long.

RDQ. 178. All right, go ahead.

A. I was in Paris at the time and there were only a few days and I agreed to underwrite the funds necessary to secure $100,000 worth of these dyes and a friend of mine who was in Paris agreed to write another $100,000 worth. Cabling this to the United States, the formal underwriting agreement was drawn up, approved by the Secretary of State and about forty underwriters, amounting to the sum of $400,000 were secured. I have the names and the amounts here if you wish it.

RDQ. 179. May I ask you this—I do not want to put in what is not necessary—were those underwriters, so far as you know, members of the American Dyes Institute or not?

A. So far as I know, they were not. There may have been a few individuals. Almost all of them participated, because they wished to secure some part of the funds for educational and scientific institutions in their own localities; and the agreement with the Department of State provided that neither the Textile Alliance nor the Underwriters should profit from this arrangement, but that all of the funds should be divided in the following manner: Three-fourths should be paid to the Treasury Department, to be dealt with by Congress upon the recommendation or after the recommendation of the Secretary of State, and the other fourth was to be distributed by the Underwriters in return for this underwriting, to educational and scientific institutions, or rather, to be more accurate, for educational and scientific purposes.

RDQ. 180. When you say that the proceeds were to be distributed, you mean the net proceeds after deducting the royalties?

A. The net proceeds, yes, sir.

RDQ. 181. Those licenses for importation of dyes were controlled by a Committee of the War Trade Board. Were they not originally? Or did that apply to the reparation dyes which you have mentioned?

A. The licenses were originally controlled by the War Trade Board.

RDQ. 182. Yes.

A. Which had an Advisory Committee.

RDQ. 183. Do you remember who constituted that Board?

A. Oh, yes, I have a list of them here. Give me the list. (List handed to witness.)

November 20, 1919, the War Trade Board announced the appointment of an Advisory Committee on Dyes. The Committee was composed of the following gentlemen: Mr. Henry B. Thompson, Mr. Frank D. Cheney, Mr. Franklin Hobbs, Mr. Morris R. Poucher, Mr. August Merz, Mr. W. H. Watkins, Dr.

Charles H. Herty; all of whom were Civil Service employees. Do you wish the changes in the Committee?

Mr. Anderson: I neglected to say, if your Honor please, what I should have said at the beginning of this cross-examination, as to the matters opened up by counsel, that I did so without waiving my objections. I cross-examine subject to that.

RDQ. 184. Mr. Patterson, you spoke of buying dyestuffs in 1913 and 1914 from various concerns; you said, with the exception of patented dyes, there were always several manufacturers of the same color or dye, did you not?

A. Not always, but in many cases there were.

RDQ. 185. Did you buy from American manufacturers as well as German manufacturers in that year?

A. As far as I recollect, we bought nothing or practically nothing from any American manufacturer at that time.

RDQ. 186. At that time?

A. Yes.

RDQ. 187. You bought from German manufacturers and Swiss manufacturers?

A. With possibly a very little from English, but that is negligible.

RDQ. 188. There were Swiss manufacturers and English manufacturers and German manufacturers selling in the United States, were there not?

A. Yes, sir.

RDQ. 189. When you spoke of the six German companies, you did not mean to include in these companies the Swiss and English manufacturers, did you?

A. No, sir; I did not.

RDQ. 190. And they did not include any of the few American manufacturers, so far as you know,

A. In what sense do you mean "include"? They were entirely separate, so far as I knew.

RDQ. 191. That is what I meant. You spoke of certain groups, etc. These groups of German manufacturers or importers, as the case may be, do not include such American manufacturers as there were, English or Swiss, or other foreign producers?

A. They do not include them, with one possible exception, as to the truth or falsity of which I do not know. It may be in connection with the Swiss, of which I have no knowledge.

RDQ. 192. You have no knowledge; so, if you do not know it, we do not want it.

A. In the other case, I am certain there were none.

RDQ. 193. You spoke, subject to my objection, of certain trade methods, such as bribery and what you call—what is it, full line?

A. Full line forcing is the term.

RDQ. 194. Full line forcing, and things of that sort. Mr. Patterson, did you know of these things of your own knowledge? Or did you learn it from others dealing directly?

A. I learned of it from others. I never knew of any of it from my own knowledge.

> Mr. Anderson: I renew my action to strike out all that evidence.
>
> The Court: It is immaterial whether it goes out or stays in, under the circumstances.
>
> Mr. Anderson: I think so, but I renew the motion in order that the record may be complete.
>
> The Court: I will deny the motion, Colonel Anderson, so that the record may stand as it is. It does not mean that there is any weight to be given to the testimony because of the last answer.
>
> Mr. Anderson: That is quite satisfactory to me, sir. I merely wanted to get the record straight.

The Court: I do not think it has any bearing, because I think it is too remote from the issues of this case. I do not know that I am concerned at all with these German practices, if they existed.

Mr. Anderson: I do not think your Honor possibly could be, but that is for your Honor to determine. I merely want to get my record straight as I go along, and we will debate all those things, I suppose, at the conclusion of the trial.

RDQ. 195. You also spoke of certain suits that were brought. By whom were those suits brought?

A. The suits were brought by the individual plaintiffs who had been injured by these acts on the part of the vendors.

RDQ. 196. Were you one of these plaintiffs?

A. No, sir, I was not.

RDQ. 197. Do you of your own personal knowledge know anything of those suits? Were you in Court or did you ever see the Pleadings, or know anything about them?

A. Yes, sir; I read the Pleadings in many of them.

RDQ. 198. And your information is derived solely from those Pleadings; you had no interest in the suits yourself?

A. I had no interest in the suits myself. I carefully refrained from having any interest in them whatever.

RDQ. 199. You had no knowledge of the matters charged in those Pleadings except from what you gathered from the Pleadings themselves, did you?

A. From what some of the witnesses in the case told me.

RDQ. 200. Had told you?

A. Told me.

RDQ. 201. Your knowledge on the subject was purely hearsay from others including what you read in the Pleadings?

A. I could not say that I had not seen some documents from time to time relating to it.

RDQ. 202. That also would be a matter written by other people, would it not? That was not in the Court room?

A. No.

RDQ. 203. And if you read a document or paper, it was by somebody not in this Court-room now?

A. Yes, that is correct.

Mr. Anderson: I renew the motion to strike out all that evidence.

RDQ. 204. You read, I think, as the purposes of the Textile Alliance, under examination, the protection of mill owners and operators from, and the prevention and reform of abuses, unjust and unlawful exactions, deceptions and frauds in the manufacture and sale of mill supplies and in the prevention and prosecution of unlawful, illegal and improper actions, misdemeanors and crimes in connection therewith. Is it not a fact that all of the members of your Association were American concerns?

A. You mean all the voting members of the Textile Alliance?

RDQ. 205. Yes, all the organizations which they in turn represented?

A. I can not say that that is a fact. There may have been foreign concerns that were members. In fact, I am quite certain that some of them were.

RDQ. 206. Was it not the practice of your organization to restrain, and if necessary, to prosecute what you regarded as improper practices on the part of American manufacturers as well as others?

A. Well, as a matter of fact, I am obliged to tell you that the war came on so soon after the Textile Alliance was organized that its original purpose of prosecution of these frauds for the sake of fraud itself was never carried out. We have never had time or opportunity to carry that out and the work was diverted to the unjust abuses and exactions provision under which the importations of mills which we dealt with for the War Trade Board were carried on and under which our dealings with the State Department were also carried on. In that connection I have here the letter from the State Department in which that matter was finally dealt with, and in which their reason for the allocating of this work to the Textile Alliance was explained.

Mr. Anderson: Do you want that letter to go in, Mr. Kresel?

Mr. Kresel: As long as he has it.

Mr. Anderson: I have not the slightest objection to its going in, but I do not think it has any relevancy.

Mr. Kresel: I think you called it out by your question.

Mr. Anderson: That is not in response to my question at all.

The Court: Do you want it out or shall it stay in?

Mr. Anderson: I move that it be left out. We will have enough of a record any way without that.

The Court: Shall we strike the answer out completely and then have the question repeated?

Mr. Kresel: You do not want the whole answer to go out. It is only the latter portion to which you referred, Colonel Anderson.

Mr. Anderson: I haven't any objection to the entire answer staying in and just leaving the letter out, because it simply has nothing to do with the situation—unless you feel, Mr. Patterson, that it is due to your organization that it should go in, in which event, I am perfectly willing, if counsel consents, to have it go in.

THE WITNESS: May I ask my own counsel what his views are.

MR. ANDERSON: Certainly.

MR. COUDERT: That is a letter in which the State Department asked you to undertake that. I think it would be proper to read that into the record, to show this was an agency of the Government.

THE COURT: The witness' organization has been omitted from any charge of wrong doing in the Bill and we have stricken it out. I do not see any reason for embodying that letter in evidence unless it pertains to the issues of this case.

MR. ANDERSON: I quite agree; and unless there is some very good reason, I would like to leave it out, because it is a matter of character and we do not question their character.

MR. COUDERT: That is satisfactory to us in view of what you have done.

RDQ. 207. You testified earlier in your evidence that you obtained from Mr. Poucher a list of German-owned patents in the United States?

A. Yes, sir.

RDQ. 208. And sent it to Mr. Garvan, I think?

A. Handed it to him, my recollection is.

RDQ. 209. About what time was it you obtained this list?

A. The 13th of May 1918. That was the date that I handed it to him, as shown by a note on the letter.

RDQ. 210. You handed that list to Mr. Garvan at that time?

A. The memorandum is "Delivered to F. P. Garvan, May 13, 1916." I have no recollection of it apart from this letter.

RDQ. 211. But your letter shows that you did receive it from Mr. Poucher?

A. Yes, sir.

Re-cross Examination

By Mr. Kresel:

RXQ. 212. Can you state, Mr. Patterson, what became of those suits that you have mentioned?

A. I can state what one of the German's agents who was himself a defendant in one of the suits told me.

Mr. Kresel: No, you can not do that.

Mr. Anderson: It would not be admissible anyhow.

RXQ. 213. Other than that, do you know about any of the suits?

A. Other than I have stated, only what he told me, and gossip.

Mr. Kresel: Then we can not have that.

The Court: Are you through on both sides with this witness?

Mr. Anderson: Yes, sir. I think, with your permission, he can be permitted to go home.

The Court: He is discharged from the subpoena?

Mr. Anderson: Yes, with the understanding that if we should need him again, we can call him without further subpoena.

The Court: Adjourned until 8:30 tomorrow, Standard Time.

(Whereupon at 4 P. M., Standard Time, adjournment was taken until tomorrow, June 8, 1923, at 8:30 o'clock A. M., Standard Time.)

FIFTH DAY.

Wilmington, Delaware,
June 8, 1923, at 9:30 o'clock A. M.

Before:

Hon. Hugh M. Morris, U. S. District Judge.

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Anderson: If your Honor please, I should like to call this morning the Secretary of the American Dyes Institute, with the privilege of cross-examining him as an adverse witness.

The Court: I did not understand the latter part of that statement.

Mr. Anderson: I say with the privilege of cross-examining as an adverse witness.

The Court: If you establish that fact or if it becomes necessary for you to examine as in the case of cross-examination, then I will hear you. You may call the witness, and then if it is necessary for you to proceed as in cross-examination, we will determine that after the witness has demonstrated that fact.

Mr. Anderson: I thought I would state that in advance. I did not know what your Honor's practice was in that regard.

HARRY E. DANNER.

Harry E. Danner, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination.

By **Mr. Anderson**:

Q. 1. Will you please state your name, place of residence and occupation?

A. My name is Harry E. Danner. Do you mean my home address?

Q. 2. Yes.

A. I reside at 293 Prospect Avenue, Mount Vernon, New York. I am engaged now at 320 Broadway, New York City, as a Secretary.

Q. 3. Secretary of what?

A. Of the National Association of Finishers of Cotton Fabrics.

Q. 4. How long have you been the Secretary of the National Association of Finishers of Cotton Fabrics?

A. Since July, 1914. That is about eight years, or just short of eight years.

Q. 5. Mr. Danner, were you ever connected with the American Dyes Institute in any official capacity?

A. I was.

Q. 6. If so, state what?

A. I was the Treasurer of the American Dyes Institute and for a period of time the Secretary of an Open Price Section of that Institute.

Q. 7. Do you remember how long you occupied the position of Treasurer and how long you occupied the position of Secretary of the Open Price Section of the Institute?

A. Well, I was Treasurer during the entire existence of the Institute. My recollection is the Institute was organized in the early part of 1918 and I was relieved of the Treasurership last March, I think, or April.

Q. 8. How long were you Secretary of the Open Price Section, as you call it?

A. The Open Price Section, I was Secretary during the period it functioned, which was from the inception of the organization until, I think, until April or May of 1920.

Q. 9. April or May of 1920. Was that, what you call an Open Price Section, what is commonly known as the Eddy Open Price System or method?

A. Yes, it was.

Q. 10. Could you state briefly what was the meaning of the Open Price Section, so-called, or how it operated?

Mr. Kresel: One minute, please. We object to that, if your Honor please, on the ground that it is immaterial and irrelevant. We can not see the bearing of this upon any of the issues that are tendered by the Bill of Complaint.

The Court: Will you read the question, Mr. Stenographer?

(Question No. 10 repeated as recorded above.)

The Court: I presume this is further evidence to show that the purpose of the persons who eventually became associated, at least as stockholders, in the defendant corporation, were moved by purposes other than patriotism.

Mr. Anderson: That is a very good way to put it, sir. It also bears upon the charge of combination, the Eddy Open Price Section being recognized as one of the methods employed by this Institution was condemned in the Hardwood case by the Supreme Court as being a means for the creating of combinations and monopolies in trade.

The Court: Yes, but I am not able to see yet, Colonel Anderson—I do not mean I am stating a conclusion, because I have not reached a conclusion.

Mr. Anderson: Of course, I understand your Honor's aim.

The Court: But I do not see yet how that is relevant to the issues of this case. You think it is, so I am going to take your testimony over the objection of the defendant; but it seems to me possibly that the Government officials, whoever they may have been, the President or Alien Property Custodian, Mr. Polk or anybody else, may have realized that the purposes of the persons who were associated as stockholders of The Chemical Foundation may have had as their prime moving purpose, or the reason for their action, the prime reason for their action, business gain.

Now then, it seems to me that the President or such other officers as may have acted, may have said or reasoned, as American citizens or American organizations, they can have that purpose in mind, but the Sherman Act and the Clayton Act and other similar acts now on the Statute books or being put on, will take care of that. Our purpose is to get this industry in the hands of American citizens, who will be subject to America's control and regulations.

I may not have reasoned far enough, and I have not tried to reason it out, but it seems to me that the objection is valid. I am going to overrule it under our general working understanding.

Mr. Anderson: May I make a statement so that your Honor might probably understand—just a few words?

The Court: Yes.

Mr. Anderson: What your Honor says is quite true. There is nothing wrong, and I hope never will be anything wrong in American citizens following legitimate methods, trying to advance their own interests. That is fundamental in economical life, and I would be the last to criticize it. The sole question is whether they follow legitimate methods. If it should appear that not only the American Dyes Institute, which I think the evidence now shows to have been the moving spirit in this whole matter, was engaged in the development of and in the operating of an illegal combination—with the best of purposes perhaps, but illegal—and if it should further appear that their desire to obtain and their efforts to obtain the consolidation of these patents into one organization, which they own, was but a step in the perpetuation of that monopoly, so-called, or control, and especially with reference to the prevention of competition from outside—English as well as German or anybody else—then I think it would be material as one of the steps in the development of that purpose, to show all of their relationships leading up to that act, and then the purchase of these patents and the formation of The Chemical Foundation would be in itself founded upon an illegal purpose.

THE COURT: I see your line of thought. My difficulty is, Colonel Anderson, in seeing how that is relevant to a sale to The Chemical Foundation. I am trying to reason it out. I probably have not reasoned, of course, as much as you have; but it seems to me that if The Chemical Foundation had been a complete monopoly—American monopoly—and had that fact been known to the Government officials dealing with it, that that would not, in and of itself, invalidate the sale. That is merely an impression which I have, and I give voice to it now only because of the objection that has been made. Now, if you were trying the Sherman Act case or a monopoly case, it would seem to me that would be pertinent; but as it stands now, I think the objection is well taken; but that is only a temporary ruling.

Mr. Anderson: I shall not argue the question further at this time. I think I can show your Honor that if the evidence is going in subject to objection, when we come to argue that question I can argue the legal aspects very much more fully.

Mr. Kresel: May I also suggest to your Honor that whatever the purpose of this open price section might have been it no doubt appears in writing in some way, either they had a constitution or by-laws or agreement and what not, and that of course would be the best evidence, and I suggest to the Colonel that he inquire of the witness whether there was any such agreement in the way that I have indicated.

Mr. Anderson: We have already introduced the Constitution in evidence. As a matter of fact we have taken up a good deal of time about a question which was really connecting up. If there is any serious objection to the question, I will withdraw it.

Mr. Kresel: Very well.

The Court: If you go ahead with this witness, you are going to come to the same issue in other questions.

Mr. Anderson: Suppose we let the witness answer. If it is not material, it won't be considered.

The Court: I think the best evidence rule, that is my recollection, does not extend to matters so remote as this, but it can be extended to the more direct issues of the case.

The Witness: I am afraid I will have to ask you to repeat the question now. I have lost it.

(Question No. 10 repeated as recorded above.)

Mr. Anderson: Please strike out the last words, "so-called," from the question.

A. The Open Price Plan was a method by which the seller was placed in the same position as the buyer in respect to obtaining, collecting and having before him accurate information as to the actual conditions in the trade in respect to prices.

Q. 11. Did the members of the Open Price Section report their prices from time to time on their business through the organization?

A. Under that plan, yes.

Q. 12. Mr. Danner, yesterday there was a letter introduced as Plaintiff's Exhibit No. 21, written by Mr. C. Cyril Bennett to H. E. Danner, Secretary of the National Cotton Finishers' Association, Mr. Bennett writing as Secretary of the American Dyestuffs Association. I hand you a photostatic copy of that exhibit, and ask you if you recall that letter and can identify it as a letter received by you?

A. I recall this letter, yes.

Q. 13. That is a letter received by you and the attached memorandum accompanied it so far as you recall?

A. Yes, outlining the British plan of embargo, as I recall. That was addressed, was it not, to me as Secretary of the Cotton Finishers' Association?

Q. 14. Yes.

A. No connection with the Institute.

By Mr. Kresel:

Q. 15. That is, no connection with your connection with the Dyes Institute?

A. Yes.

By Mr. Anderson:

Q. 16. You were at that time Secretary of this Open Price Section of the Dyes Institute?

A. Yes, I was.

Q. 17. Yesterday there was introduced as Plaintiff's Exhibit No. 23, a letter from yourself as Secretary, dated August 1, 1918, to Mr. Frank Hemingway, in which attention was called to a meeting of the industry at Hotel Biltmore, on June 25, 1918, and the appointment of a special committee to represent the Dyestuffs Manufacturers and urge upon the War Industries Board the importance and the necessity of establishing the manufacture of dyes and intermediates as an essential industry, and other matters. I show you a copy of the letter. Were you present at that meeting of the Association?

A. I was.

Q. 18. Do you recall what plans, if any, were discussed for establishing the manufacture of dyes and intermediates as an essential industry?

A. My recollection is—it is a long time ago—that this was a question that involved the shipment of coal and the necessity of getting coal to run the plants during the war period and that we talked over at that time the importance of presenting to the War Trade Board or the proper authorities in Washington the necessity of the dyes industry being provided with the necessary coal to run their plants during the period of the war.

Q. 19. I read from this letter which I have referred to dated August 1, 1918:

> "It was the judgment of this Committee that in order to obtain a proper hearing they must be officially accredited as representing the industry, and therefore Dr. Matthews is preparing to submit to the executive committee of the American Dyestuff Manufacturers' Association, Inc., and also the executive committee of the Chemical Alliance, the advisability of both organizations appointing Mr. Patterson, Mr. Green, and Mr. Hasson as their representatives before the War Industries Board.
>
> "In line with the above, I am therefore ad-

> dressing this letter to each member of the executive committee, and would ask that you kindly advise by return mail, if possible, if you, as a member of the executive committee of the American Dyes Institute vote to appoint the above mentioned gentlemen as a committee to represent the American Dyes Institute in the matter outlined aboye.
>
> "If The Chemical Alliance, The American Dyestuff Manufacturers' Association, Inc., and The American Dyes Institute through their executive committees appoint this special committee, it will feel more confident of receiving proper recognition by the War Industries Board."

So far as you recall, the only thing discussed which called for the appointment of this committee to have representation of the business or industry before the War Industries Board was a matter of coal?

A. That is my recollection.

Q. 20. That is all that was discussed at that time?

A. Yes.

Q. 21. On January 25, 1919, it appears that you wrote to Mr. Cottingham, as President of the American Dyes Institute, a letter which was introduced yesterday as Plaintiff's Exhibit No. 27, a copy of which I will hand you for your examination?

A. I recall the letter, Colonel Anderson.

Q. 22. You state that this matter referred "to the possibility of the members of the American Dyes Institute undertaking to purchase all the present German patents and operating licenses held by the Alien Property Custodian. Mr. Poucher explained that the Alien Property Custodian was anxious to wind up his affairs and had proposed that the above mentioned patents be purchased by a corporation, who would, in turn, re-sell same to those interested," etc. Were you present at the time that this matter was discussed in the American Dyes Institute?

A. I believe I was.

Q. 23. Do you recall the testimony in any way?

A. Well, I recall that Mr. Poucher reported that the Alien Property Custodian was anxious to close his office and that the suggestion had been made that the patents that had been seized be sold to a corporation.

Q. 24. The patents which had then been seized?

A. That is my recollection.

Q. 25. Did Mr. Poucher say when he had this conference with the Alien Property Custodian; did he report when he had this conference with the Alien Property Custodian?

A. I do not recall that he did. He may have or he may have not. I do not know.

Q. 26. Do you recall whether there was any statement made as to what patents had been seized or anything in connection with the character of the patents which had been seized?

A. Well, it was the German patents for dyestuffs taken out in this country.

Q. 27. And that referred to the German patents which had then been seized and which the Alien Property Custodian wanted to get rid of in order to close up his office, as you understand it?

A. That is my recollection.

Q. 28. It appears that on January 22, there was a meeting of the executive committee of the American Dyes Institute, the minutes of which were introduced yesterday as Plaintiff's Exhibit No. 26. This is the meeting to which you refer, is it not, in your letter?

A. The 22nd of January is the date?

Q. 29. Yes?

A. Yes.

Q. 30. In the minutes of that meeting it is stated that the question of the practicability and advisability of the American Dyes Institute undertaking (through a properly organized corporation) to purchase all German owned patents (for the manufacture of dyes and intermediates) from the Alien Property Custodian, was discussed at length. Then it goes on and states the general purposes, and upon that statement, a special committee was appointed to investigate the subject and make recommendations to the members of the Institute at the next regular meeting. That committee consisted of Mr. M. R. Poucher, Chairman, Mr. Wigglesworth, Chairman of the National Aniline and Chemical Company, Mr. August Merz, of the Heller & Merz Company, and Mr. Cottingham, ex-officio member of the Sherwin-Williams Company. Mr. Cottingham was then President of the Association, was he not?

A. He was.

Q. 31. You recall the appointment of that Committee?

A. Yes, I do.

Q. 32. You notified the members of the committee of their appointment, did you?

A. I did.

Q. 33. Did you attend any meetings of that committee or conferences between them?

A. Of that sub-committee?

Q. 34. Of that sub-committee?

A. No, Colonel. I do not recall that I ever was with them at all. Subsequently I was at a meeting where they reported to an executive committee meeting.

Q. 35. You have referred to a meeting at which that committee reported to the executive committee. I hand you a photostatic copy of what appears to be the minutes of the meeting of January 31, 1919, of the executive committee of the American Dyes Institute, signed by you as Secretary. I will ask you to examine it and say whether those are the minutes of the meeting which you now referred to at which the committee reported?

A. That is correct. That is the meeting to which I refer now.

Mr. Anderson: We offer in evidence, if your Honor please, as Plaintiff's Exhibit No. 29, the minutes of the meeting of the executive committee of the American Dyes Institute of January 31, 1919, identified by the witness, and ask that it be marked.

Mr. Kresel: To which, if your Honor please, we object upon the same grounds that we urged to the exhibits that were introduced yesterday.

The Court: Admitted under like conditions and for the same reasons.

Received in evidence and marked "Plaintiff's Exhibit No. 29." (*See Exhibits, Vol. I, page 110.*)

Mr. Anderson: I will ask permission to read this (reading from Plaintiff's Exhibit No. 29).

Q. 36. To interrupt the reading of the exhibit you recall the submission of that report by Mr. Poucher, do you not, Mr. Danner?

A. Yes, I do.

Q. 37. You have looked at these minutes. Would you say that was the report as submitted, certified by you?

A. Yes.

(Mr. Anderson continues reading from Plaintiff's Exhibit No. 29.)

Q. 38. Who was Mr. Barrows, do you know?

A. I think he was connected with the National Aniline Company.

Mr. Kresel: The minutes show, the minutes that you read, you see, he was one of the representatives of the National Aniline Company. Do you see that, the third name?

Mr. Anderson: I beg your pardon.

The Witness: That is my recollection, he was with the National Aniline.

Mr. Anderson: He was connected with the National Aniline.

(Mr. Anderson continues to read Plaintiff's Exhibit No. 29.)

Q. 39. I hand you a photostat copy of what purports to be a letter or a copy of a letter, unsigned, by the Secretary of the American Dyes Institute to Honorable A. Mitchell Palmer, then Alien Property Custodian. Did you write that letter or can you recall it (handing witness)?

Mr. Kresel: What is the date?

Mr. Anderson: It is the 7th of February, I think.

The Witness: February 8th, I think.

Q. 40. February 8th?

A. I think that is an "8." It is rather blurred. It is February 8th.

Mr. Kresel: Yes, it is February 8th in my photostat.

Mr. Anderson: I have got the wrong letter, so I will strike that out. I will scratch that matter, with the permission of counsel. This is February 7th, Mr. Kresel, the one I wanted.

Mr. Kresel: Yes. I think that was offered yesterday, was it not?

Mr. Galloway: No, that was not offered yesterday.

Q. 41. Mr. Danner, I hand you what purports to be a letter from the American Dyes Institute to Mr. A. Mitchell Palmer, Alien Property Custodian, dated

February 7, 1919. Do you know anything about that matter, or can you identify it (handing witness)?

Mr. Kresel: What is the question? What do you mean, whether he knows anything about it?

Mr. Anderson: I mean do you know whether that letter was sent.

Mr. Kresel: We will concede it was sent and received by the Alien Property Custodian; so there is no question about that.

Mr. Anderson: Very well. I thought the letter was written by this witness; but with the permission of counsel and your Honor I will strike out the reference to the letter, and introduce it direct at this point on the record.

The Court: It is now offered?

Mr. Anderson: Offered. I now offer in evidence a letter dated February 7, 1918—

Mr. Kresel: 1919.

Mr. Anderson: 1919, signed American Dyes Institute (blank), President, Secretary, Counsel.

The Court: Same objection?

Mr. Kresel: Yes, your Honor.

The Court: Same ruling. It is admitted.

Mr. Anderson: The original of this letter is signed by Walter H. Cottingham, President, H, E. Danner, Secretary, A. L. Eddy, Counsel, and by the Executive Committee, J. Merritt Matthews, William T. Miller, Frank Hemingway, August Merz and M. R. Poucher.

Q. 42. I notice you signed that letter as Secretary. That is your signature to the letter, is it not?

A. Yes, I recall signing the letter. It is A. J. Eddy—not "A. L."

Mr. Anderson: I offer in evidence the letter above referred to as Plaintiff's Exhibit No. 30.

Mr. Kresel: The objection has already been urged, your Honor, and I understood that your Honor has already ruled.

THE COURT: Same ruling, for the same reason.

Received in evidence and marked "Plaintiff's Exhibit No. 30." (*See Exhibits, Vol. I, page 118.*)

MR. ANDERSON: The letter is presented, all this correspondence bears directly on the meat of the case, and I ask leave to read it. It is addressed to Mr. Palmer, dated February 7, 1919, on the stationery of the American Dyes Institute (reading from Plaintiff's Exhibit No. 30).

THE COURT: Is not that the same letter which you read in your opening?

MR. KRESEL: I did, your Honor.

THE COURT: I recall that very clearly, and that will save the trouble of reading it now.

MR. ANDERSON: I will be very glad to have it just understood that it is read. I only want to state at this point, that that is a letter transmitting this report which I have just read, to Mr. Palmer. That is my main purpose in reading it; so as to connect it up.

Q. 43. Now, Mr. Danner, I hand you photostat copy of what appears to be a letter of February 8, 1919, addressed by yourself to Honorable A. Mitchell Palmer; and will you say if you wrote and sent that letter?

A. Yes, this is the one you showed me just before.

Q. 44. You identify that letter?

A. Yes, sir.

MR. ANDERSON: We offer in evidence letter dated February 8, 1919, from Mr. Danner, as Secretary of the American Dyes Institute, to Honorable A. Mitchell Palmer, Alien Property Custodian, attention of Mr. Loder, which we ask to be marked as Plaintiff's Exhibit No. 31.

Mr. Kresel: The same objection, your Honor.

The Court: Admitted under like conditions as the preceding exhibits.

Mr. Kresel: That will be Exhibit 31?

Mr. Anderson: 31, yes.

Received in evidence and marked "Plaintiff's Exhibit No. 31." (*See Exhibits, Vol. I, page 122.*)

Mr. Anderson: The letter is as follows: (Reading.) I also offer in evidence letter dated February 8, 1919, addressed to Mr. M. R. Poucher, of the E. I. DuPont de Nemours and Company, signed by Mr. Danner, as Secretary American Dyes Institute, which goes in under the stipulation, and I ask that the same be identified as Plain-Exhibit No. 32."

The Court: Admitted under like conditions.

Mr. Kresel: Yes, sir; and in addition to that, we desire to urge as to this letter, that it is addressed to Mr. Poucher, not to the Alien Property Custodian nor to the defendant here, and in our view, is not binding upon us.

Received in evidence and marked "Plaintiff's Exhibit No. 32." (*See Exhibits, Vol. I, page 122.*)

Mr. Kresel: What number is that?

Mr. Anderson: No. 32. To Mr. Poucher (reading from Plaintiff's Exhibit 32).

The Court: I assume that this record is going to be printed before it is taken up for consideration by me.

Mr. Anderson: .Yes, sir.

The Court: Because I have the same difficulty in reading photostat copies as you do, I suppose, and it is practically impossible for me to decipher them, and it retards the speed with which the work can be done a great deal. If it is going to be printed, I am not concerned with it, but if it is not going to be printed I want you to put in evidence something other than photostat copies.

Mr. Anderson: May I have a little discussion with counsel on the subject, not going on the record?

The Court: Yes. I had supposed you were going to print your record anyway, because you can use the same record for the Appellate Courts as here.

Mr. Kresel: Did you want to know anything, Colonel?

Mr. Anderson: Do you happen to know where they are?

Mr. Kresel: I do not. They are possibly in the office of the Dyes Institute.

Mr. Galloway: I believe it was stated it was in your safe deposit box of exhibits.

Mr. Kresel: We have carbons.

Mr. Anderson: I quite agree with your Honor. I would not read those things for anybody in the world.

Mr. Kresel: It is very trying on the eyes.

Mr. Anderson: Have you copies of those?

Mr. Kresel: Yes.

Mr. Anderson: I now offer in evidence the minutes of the meeting of the Executive Committee of the American Dyes Institute, of February 7, 1919, containing the report of the Committee referred to in this letter.

Q. 45. Is the report of the Committee embodied in those minutes the one you sent in substitution for the other?

A. I presume it is. I have no record of it.

Mr. Anderson: Now, I will not read that

report, if your Honor please. I offer it in evidence as Exhibit Number whatever it is.

Mr. Kresel: Are you offering the entire minutes, or only the report?

Mr. Anderson: I am offering the entire minutes.

Mr. Kresel: We raise the same objection, your Honor, that it is immaterial and irrelevant, and may I see that, because I do not seem to have a copy of that (handed to Mr. Kresel).

Mr. Anderson: They are the February 7th minutes. I was going to read some part of it.

Mr. Kresel: Well, Colonel, what went to the Alien Property Custodian with that letter of February 8th, Plaintiff's Exhibit 31, was only the report; not the minutes?

Mr. Anderson: I understand. It is understood that only the report as embodied in these minutes went to the Alien Property Custodian for substitution for the report already introduced, but I want to introduce at this point the entire minutes including the substituted report.

Mr. Kresel: Your Honor has noted our objection?

The Court: Yes. I am assuming that all this testimony is subject to your objection, whether you make it when the exhibit is offered or the question asked or not, because I understand from your opening, that all this is immaterial and irrelevant, from your standpoint.

Mr. Anderson: Yes, I understood that also.

Received in evidence and marked "Plaintiff's Exhibit No. 33." (*See Exhibits, Vol. I, page 123.*)

Mr. Anderson: While marking that exhibit, I will not read the subsequent report, but merely call the attention of the Court to two changes in it. One is the omission of the sentence to the effect that Mr. Hoguet suggested informally the price of $250,000. The exact language I do not recollect. The second is that the last clause of the original report, substituted the following: "Pursuing the matter further, your Committee had a conference with the Executive Committee of the Manufacturing Chemists' Association, in company with Mr. Joseph H. Choate, Jr., and Mr. Ramsay Hoguet, representing the Alien Property Custodian. The result of this conference was a resolution endorsing the plan and promising co-operation.

Mr. Kresel: Colonel, of course, you are aware that there are other differences between the two reports?

Mr. Anderson: I was not aware there were any material differences, but if there are, the comparison will show.

Mr. Kresel: Those will speak for themselves. I simply did not want you to be quoted as saying that those are the only two differences.

Mr. Anderson: If there are others—those are the only two I now recall. That was the purpose of introducing the two reports, to call that to the attention of the Court, for what they may mean. The only part of these minutes that I will read at this point is certain correspondence embodied in the minutes as their conclusion (reading).

The Court: Colonel Anderson, I wondered if the sole purpose of that is not to call my attention to the fact that certain funds were advanced by the industry to the Alien Property Custodian.

Mr. Kresel: Which is not denied, your Honor. It is admitted in our Pleading.

The Court: I know, but I wondered, if that is all you want to show, whether we could not save—

Mr. Anderson: No, your Honor, there is another purpose.

The Court: I am sorry.

Mr. Anderson: I would prefer not to state the purpose because it will open up a good deal of discussion. But I am through with that letter, just through reading it.

The Court: Since we have stopped for a moment, Mr. Kresel, may I make this suggestion in the interest of expedition; that is, all questions and all exhibits that are asked and offered may be taken as objected to by you without you making express objection to each question, and it will not be necessary for you to object to each question and note an exception, because you may have that generally, unless you have something to offer which has not been called to the attention of the Court in any specific objection to the Court heretofore stated or in your argument. Merely in the interests of expediency.

Mr. Kresel: Your Honor, we are simply careful in order that we may not be confronted hereafter with the suggestion that our objections were only general and that no grounds therefor were assigned. Therefore, we are very glad to accept your Honor's suggestion, provided it is understood, your Honor, that the objection is based upon all the grounds that were heretofore urged; and if, as your Honor says, any specific objection or ground occurs to us, we will call it to your Honor's attention.

The Court: Other than such as may be drawn and properly drawn from your whole opening argument.

Mr. Kresel: The opening.

The Court: Or any objection that —

Mr. Kresel: Any ground of objection that we have heretofore urged.

The Court: Heretofore made. Is that satisfactory—in the interest of expedition, Colonel Anderson?

Mr. Anderson: Yes, if your Honor please. It is entirely agreeable to me and I am very glad indeed to have it understood that that will be the case.

The Court: Because I think both you and I understand the general nature of their objections and—

Mr. Anderson: While it would be desirable if they have to add to their general nature they indicate it, in order that I may meet it if I think it is well taken.

Mr. Kresel: Certainly.

Mr. Anderson: Beyond that I do not require counsel to object to every question.

The Court: And you waive now any right you have in this Court or in the Appellate Court to raise any question on that ground?

Mr. Anderson: On the ground that exception is not taken to each question; yes, sir.

Mr. Kresel: And on the ground that the grounds of the objection are not urged to each specifically.

Mr. Anderson: In order to make it perfectly clear—because these things sometimes become the subject of controversy—I will state that the Government here agrees, stipulates on the record, that counsel for the defendant will be taken to have objected to every question and every exhibit presented in the record on the present subject of investigation, until further notice and that the objections taken are on the general grounds already stated upon the record, that only where special and additional grounds are urged is it required that an objection be required upon the record.

MR. KRESEL: And in considering the grounds of our objections, that it must be taken into consideration in connection with the claims made in the opening of counsel in behalf of the defendant.

MR. ANDERSON: I am perfectly willing that that should be the case.

MR. KRESEL: All right. Thank you very much.

MR. ANDERSON: In order to conclude this correspondence, although it is a letter, not from this witness, but which under the stipulation can be introduced as proved, I offer, on behalf of the plaintiff, a letter dated February 21, 1919, from Mr. M. R. Poucher to C. C. Bennett, Secretary of the American Dyes Institute, which I will ask to be identified as Plaintiff's Exhibit No. 34.

THE COURT: Admitted under like conditions.

Admitted in evidence and marked "Plaintiff's Exhibit No. 34." (*See Exhibits, Vol. I, page 135.*)

MR. KRESEL: What was the date of that?

MR. ANDERSON: That was February 21st.

(Mr. Anderson then read Plaintiff's Exhibit 34.)

Q. 46. Do you know who Mr. Weston was?

A. I have seen Mr. Weston. He was connected with the DuPont Company and the publicity end of their business. That is my recollection.

Q. 47. Did you have anything further to do with this matter of the sale by the Alien Property Custodian and the purchase by the Chemical Foundation of these patents, other than the correspondence which has been indicated?

A. Nothing whatsoever.

Q. 48. Did you have anything to do with the organization of the Chemical Foundation, Incorporated?

A. Nothing whatsoever.

Q. 49. Your connection with the matter then terminated at the termination of the correspondence which has been read here in all respects?

A. That is correct.

Q. 50. You know nothing of your own knowledge

A. (To Question 49 continued) Except in so far as advancing that money.

Q. 51. Oh, you did advance the money in the name of the Dyes Institute for the payment of the expenses of searching for these patents at Washington, or listing them, or whatever it was?

A. That is correct.

Q. 52. To whom did you make those advances?

A. To Mr. Gordon.

Q. 53. At whose direction?

A. Well, I was instruced to do so by the Institute.

Q. 54. With whom did you confer or advise as to the handling of that matter in New York other than the Institute, if anyone?

A. Well, I saw Mr. Hoguet at one time and asked him how I would send this money down and to whom I would send it.

Q. 55. Do you recall the amount advanced by the Institute; I mean the aggregate amount.

A. Why, it was in the neighborhood of $9500; something less than $9500.

Q. 56. Was that money ever repaid to the Institute?

A. Yes.

Q. 57. By whom?

A. By the Chemical Foundation.

Q. 58. How was the money raised? Did it come out of the treasury funds of the Institute or by contribution?

A. There was $5000 of that total which was advanced by, I think, five individual members each subscribing $1000. That was kept as a loan fund. That was repaid to those members.

Q. 59. Do you recall who those members were?

A. Why, I think the Heller & Merz Company, I think the Grasselli, the DuPont Company and the National.

Q. 60. You mean the National Aniline & Chemical Company?

A. The National Aniline. How many is that, four?

Q. 61. Four.

A. I think the Newport would be the fifth.

Q. 62. The Newport Company?

A. Yes.

Q. 63. They advanced a thousand dollars, which aggregates $5000, and then how did you raise the balance?

A. The balance came from the treasury of the Institute and was kept in that special account so that we knew the total advanced.

Mr. Anderson: That is all.

Mr. Kresel: Before asking Mr. Danner any questions, I think it is proper that I should suggest that the suggestion made by Colonel Anderson, when he called the witness, that he was calling him as a hostile witness, with the right to cross-examine, has been shown by the testimony of the witness to have been unnecessary, if I may use that term. I think that will be conceded by Colonel Anderson.

Mr. Anderson: I did not intend to reflect upon the witness in any way and I explained to him in advance that I was going to make that request and that it was not a personal reflection, but a technical method of procedure.

The Court: And which was found unnecessary.

Mr. Anderson: I have not cross-examined the witness and therefore, obviously, I did not find it necessary.

Cross-Examination

By Mr. Kresel:

XQ. 64. Mr. Danner, your attention was called to the fact that on February 7th, there was sent to Mr. Palmer, the Alien Property Custodian, a letter from the Dyes Institute with which there was enclosed a report. Do you follow me that far?

A. I do.

XQ. 65. That on the next day, a letter was written to Mr. Palmer, for the attention of his Secretary, enclosing another report with the request that the second be substituted for the first; do you follow me there?

A. I do.

XQ. 66. Is it a fact that the first report enclosed with the letter of January 7th was the original report of the sub-committee of the Executive Committee of the Dyes Institute that had this matter in charge?

A. I am afraid you confuse me a little, Mr. Kresel.

XQ. 67. Well, perhaps I do.

A. Just repeat the last part of that. I followed you up to that point pretty well.

XQ. 68. I see the report which was sent to Mr.

Palmer with the letter of February 7th was a report of a sub-committee of the Executive Committee?

A. Yes, and made to the Executive Committee.

XQ. 69. And made to the Executive Committee. The report which was substituted for that one was a report of the Executive Committee itself presented to the full meeting of the Dyes Institute held on the 13th of January,or rather, the 7th of February?

A. 8th of February.

Mr. Anderson: If your Honor please, I think the minutes speak for themselves as to what that report was. That is purely argumentative.

Mr. Kresel: Not at all.

Mr. Anderson: The minutes show who signed both reports.

The Court: Do you differ at all from Mr. Kresel, as indicated by his question?

Mr. Anderson: Oh, yes. As I recall, both reports are signed by the same sub-committee.

Mr. Kresel: Oh, no. Let me have the exhibits. I do not think we need to have any differences on that point, certainly.

Mr. Anderson: Then if there is no difference, why ask the witness?

The Court: Will counsel confer before arguing it.

Mr. Kresel: Will you just repeat the last question?

(XQ. 69 repeated as recorded above.)

A. My recollection is it was the following day. I am very poor on dates.

XQ. 70. I show you Plaintiff's Exhibit 33. You notice the meeting of the Dyes Institute was February 7th?

A. Yes, this is the meeting of the Executive Committee of the Dyes Institute on February 7th.

XQ. 71. Was it at that meeting that the special committee made a report to the full committee of the Executive Committee?

A. Yes, this report is embodied here.

XQ. 72. Mr. Danner, in one of these letters that were introduced in evidence, the suggestion was made, in so far as advances made by the Dyes Institute to finance the search of these patents that an account should be kept and submitted. Was there an account submitted to the Dyes Institute indicating how the money was spent?

A. By Mr. Gordon?

XQ. 73. I do not know by whom?

A. Yes: Mr. Gordon. I can answer directly. He did submit a full accounting of his expenses in connection with the searching of the titles.

Mr. Kresel: Mr. Galloway, have you that accounting?

Mr. Galloway: We have not. You have the papers of the Dyes Institute here. They are in your offices. That is where we got them from.

XQ. 74. Do you know where that accounting now is?

A. They are presumably filed with the books and records of the Treasurer, which were turned over to the Institute.

XQ. 75. Mr. Danner, please look at this photostat copy of a letter dated February 28, 1919, addressed to you as Treasurer of the American Dyes Institute—it is not signed. My information is it was written by Mr. Gordon. State whether that is the letter you refer to with which Mr. Gordon sent an account of how the money was spent?

A. That is correct. That is the letter I had in mind.

Mr. Kresel: Subject to correction of it by comparison with the original, gentlemen, may I have that introduced?

The Court: No objection to its being admitted out of order, is there, Mr. Galloway?

Mr. Galloway: None whatever.

Received in evidence and marked "Defendant's Exhibit No. 2." (*See Exhibits, Vol. IV, page 2029.*)

Mr. Galloway: I shall not stop to read that at present, your Honor.

That is all, Mr. Danner.

The Court: Is Mr. Danner under subpoena?

Mr. Anderson: He is. If there is no objection, I am perfectly willing to release him.

Mr. Kresel: There is no objection on our part.

The Court: You are discharged from any obligation to return under the present subpoena.

The Witness: Thank you very much.

Mr. Anderson: If we should want you again, you would come back on call?

The Witness: Oh, yes, indeed.

Mr. Anderson: If your Honor please, the record now in its proper development has reached the point where we are compelled to introduce additional documentary evidence. We tried to stop some of the witnesses who were on their way here today. Mr. Wigglesworth is here and I would like to ask that he be excused at the present time; not released from the subpoena, but excused.

The Court: He is under your control until the case is closed.

Mr. Anderson: I only want that understood. He will come back some time next week.

Mr. Kresel: Of course, we cannot object to any arrangement the Colonel can make with his witnesses.

Mr. Anderson: I did not want to do that without the consent of the Court.

Mr. Galloway will proceed with the introduction of the documentary evidence, if your Honor please.

The Court: In so far as you can, Mr. Galloway—I do not think I need to suggest it—if you will state the substance of the papers rather than read them, it will help me. I find it impossible to remember the details of a long document or even a short document and unless you state its purpose, the chances are that I will not fully understand it. So if you will help me in that way, I will be very much obliged.

Mr. Galloway: I am very glad to say, if your Honor please, which I think will encourage us all, that the longer documents have practically all been submitted and that what follows will be largely the shorter ones.

The Court: I shall not undertake to limit you, but if you can state the main purpose of each document, it will be helpful.

Mr. Galloway: I will be very glad if I can, your Honor. It is only those which we consider especially important which we shall ask to read.

The plaintiff now offers in evidence an Alien Property Custodian office memorandum from Mr. Hoguet to Mr. Palmer, dated January 28, 1919. This is quite short and I will ask your Honor for permission to read it.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 35." (*See Exhibits, Vol. I, page 136.*)

(Mr. Galloway then read Plaintiff's Exhibit 35.)

Mr. Galloway: Plaintiff next offers, under the stipulation, a copy of a letter from H. E. Danner to August Merz, dated February 11, 1919. This, in substance, states, your Honor, that it was decided, at the meeting of the Dyes Institute, that it was necessary to establish a fund for the payment of the expenses for the search of these patents and that Mr. Poucher had already paid $500, and it was agreed that the firms represented on the Executive Committee should each pay a thousand dollars. He therefore asks for his remittance.

The Court: Who is Mr. Merz?

Mr. Galloway: The letter shows it is Mr. August Merz, of the Heller-Merz Company, Newark, New Jersey.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 36." (*See Exhibits, Vol. I, page 137.*)

Mr. Galloway: Plaintiff also offers in evidence, under the stipulation, an identical letter, except for the addresses.

Mr. Kresel: May I interrupt you, Mr. Galloway? When you say "under stipulation," you mean under the stipulation waiving authenticity?

Mr. Galloway: Absolutely. That is correct.

Mr. Kresel: I do not want the record to be confused because without a suggestion of that sort from me, it might be deemed that we had stipulated that these should go in.

Mr. Galloway: Not at all.

Mr. Kresel: So, if you will just omit the word stipulation. Of course, the stipulation speaks for itself.

Mr. Galloway: I will be very glad to do that.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 37." (*See Exhibits, Vol. I, page 138.*)

Mr. Galloway: Plaintiff's Exhibit 37 was addressed to W. T. Miller, Secretary of the National Aniline & Chemical Company.

I also offer in evidence, on behalf of the plaintiff, an identical letter except as to the addressee, this letter being addressed to Mr. M. R. Poucher, of the E. I. duPont Company.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 38." (*See Exhibits, Vol. I, page 139.*)

Mr Galloway: I have here, and offer in evidence on behalf of the Plaintiff, a letter from M. R. Poucher, Director Dyestuffs Sales Department, duPont Company, to Mr. H. E. Danner, Secretary, American Dyes Institute, dated February 12th, in which he states he has passed on his request for a thousand dollars for the Washington fund.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 39." (*See Exhibits, Vol. I, page 140.*)

Mr. Galloway: No. 81. The plaintiff now offers in evidence a letter from the Secretary of the American Dyes Institute, Mr. Danner, to Mr. Will T. Gordon, dated February 19, 1919, stating that he is sending a check to be used—a check for $2000 to be used in the expense of searching title.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 40." (*See Exhibits, Vol. I, page 140.*)

Mr. Galloway: The plaintiff next offers in evidence letter dated February 21, 1919, to Mr. H. E. Danner, Secretary, American Dyes Institute, from M. R. Poucher, Director, Dyestuffs

Sales Department, duPont Company; and it is rather short and I will read a portion of it. I will not read all of it.

The Court: Admitted under like conditions. In future I am going to take them all under like conditions and let that be understood.

Received in evidence and marked "Plaintiff's Exhibit No. 41." (*See Exhibits, Vol. I, page 141.*)

Mr. Galloway: This letter, if your Honor please, reads in part as follows: (Reading.)

The plaintiff next offers in evidence a letter from Mr. H. E. Danner to M. R. Poucher, of the E. I. duPont Company, dated February 24, 1919, replying to the letter which we have just read.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 42." (*See Exhibits, Vol. I, page 142.*)

Mr. Galloway: This letter, if your Honor pleases, summarized, states than an additional check for $2000 has been sent to Mr. Gordon, and it makes a total of $4000 to February 24th. That they have received a thousand dollars each from the Heller & Merz Company, the Sherwin-Williams Co., the E. I. duPont de Nemours & Co., the Calco Chemical Company, and the National Aniline and Chemical Company, Inc., and that this leaves Frank Hemingway, Inc., The Grasselli Chemical Company and the Ault & Wiborg Company missing.

The plaintiff next offers in evidence a letter from Mr. Danner, Secretary of the Dyes Institute to Mr. M. R. Poucher, of the E. I. duPont de Nemours & Co., dated February 26, 1919.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 43." (*See Exhibits, Vol. I, page 143.*)

MR. GALLOWAY: This letter, if your Honor pleases, states an additional $2000 has been sent to Mr. Gordon, and that they believe it will cover the total cost, and they understand the work has been completed, and there is a total of 4500 patents.

MR. KRESEL: May I see that, to see if I have a copy of it? (Handed to Mr. Kresel,) It says a total of 45,000 patents.

MR. GALLOWAY: Yes, a total of 45,000 patents.

MR. KRESEL: That is the reason I wanted to see the Government's copy. My copy says 45,000 patents and this says the same. I do not know what the explanation is. I assume the plaintiff will show some explanation.

(Mr. Galloway reads from Exhibit No. 43.)

MR. GALLOWAY: Plaintiff next offers in evidence a letter from Mr. Danner to Will T. Gordon of the Alien Property Custodian's office in Washington, dated March 12, 1919.

THE COURT: It is admitted.

Admitted in evidence and marked "Plaintiff's Exhibit No. 44." (*See Exhibits, Vol. 1, page 144.*)

MR. GALLOWAY: This is a letter concerning the payment of money. I do not think I shall read it to your Honor.

THE COURT: That is not a new exhibit.

MR. GALLOWAY: No, it is the last one I offered. It is a letter concerning the payment of money between the Dyes Institute and Mr. Gordon.

We next offer in evidence a letter dated March 14th, from Mr. Danner to Mr. Gordon, enclosing a check for $2,350.

THE COURT: That is admitted.

Admitted in evidence and marked "Plaintiff's Exhibit No. 45." (*See Exhibits, Vol. 1, page 144.*)

Mr. Galloway: We next offer in evidence a letter dated September 24, 1919, to Mr. Danner of the American Dyes Institute from the E. I. duPont de Nemours Company, requesting the return of a thousand dollars that they had paid for this purpose, and stating that Mr. Poucher advised some time ago that he would take up with them and that they would like to have some idea as to when this money would be received back.

The Court: It is admitted.

Admitted in evidence and marked "Plaintiff's Exhibit No. 46." (*See Exhibits, Vol. I, page 145.*)

Mr. Galloway: We offer in evidence next a letter dated September 24, 1919, to Mr. Clymer of the E. I. duPont de Nemours Company, by Mr. Danner, which is in response to Plaintiff's Exhibit No. 46 which has just been introduced here.

The Court: It is admitted.

Admitted in evidence and marked "Plaintiff's Exhibit No. 47." (*See Exhibits, Vol. I, page 146.*)

Mr. Galloway: This letter states that the duPont Company is correct in its understanding that this one thousand dollars is to be returned as soon as the Institute is repaid by the Foundation, and that they have requested the Foundation to pay him, but they have not received their remittance, and it says: "We have asked Mr. Poucher to take this matter up with the Chemical Foundation."

We next offer in evidence a letter dated February 28, 1919, to the American Dyes Institute, from F. E. Barrows. Mr. Barrows is one of the patent attorneys.

Mr. Kresel: What date is that?

Mr. Galloway: February 28, 1919.

The Court: The addressee is whom?

Mr. Galloway: The American Dyes Institute.

The Court: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 48." (*See Exhibits, Vol. I, page 147.*)

Mr. Galloway: That letter is only about two pages and I think it is quite important, so I will ask your Honor's indulgence. (Reads Plaintiff's Exhibit No. 48).

The Court: By whom is it signed?

Mr. Galloway: It is signed by F. E. Barrows.

The Court: And to whom?

Mr. Galloway: To the American Dyes Institute. Mr. Barrows, you will recall, was a patent attorney for the National Aniline.

Mr. Kresel: Have you another copy that you might let us have? We do not seem to have a copy. But do not delay on my account, though.

Mr. Galloway: I think very probably I can find it in a minute here, Mr. Kresel, and give it to you.

Mr. Kresel: Go ahead, Mr. Galloway, don't bother about that.

Mr. Galloway: No, I do not find it, Mr. Kresel.

Mr. Kresel: Very well, go right ahead.

Mr. Galloway: Did you want this exhibit, Mr. Kresel? Did you want that now?

Mr. Kresel: I would like to see it. I want to get a copy of it because we have no copy.

Mr. Galloway: Mr. Offley suggests it is incorporated in the minutes of the Dyes Institute.

Mr. Kresel: Very well, then, don't bother.

Mr. Galloway: The Plaintiff next offers in evidence a letter dated January 15th, 1919, from Mr. Ramsay Hoguet, to Honorable A. Mitchell Palmer, Alien Property Custodian.

The Court: An inter-departmental letter?

Mr. Galloway: No, your Honor, it is a formal letter, Mr. Hoguet was in New York. It is not a memorandum.

The Court: It will be admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 49." (*See Exhibits, Vol. I, page 149.*)

Mr. Galloway: That is defendant's request No 6. I do not know whether I should read this, your Honor.

The Court: Use your own discretion, but resolve all doubts in favor of not reading it.

Mr. Galloway: This outlines the discussion between Mr. Palmer and Mr. Hoguet as to the method of handling this and I think it is rather important. (Reading).

Mr. Kresel: Now, what is the number of that?

The Clerk: 49.

Mr. Galloway: The plaintiff next offers in evidence, letter dated January 17, 1919, from Ramsay Hoguet to Mansfield Ferry, office of Alien Property Custodian, enclosing a copy of a letter which we have just read, to Mr. Palmer.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 50." (*See Exhibits, Vol. I, page 156.*)

Mr. Galloway: The Plaintiff next offers in evidence a letter from Joseph H. Choate, Jr., to Mr. M. R. Poucher of the E. I. duPont de Nemours Company dated January 17, 1919—No. 165 under the stipulation.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 51." (*See Exhibits, Vol. I, page 156.*)

Mr. Galloway: This is quite short; it is only a few lines; and I will just read it. It is from Mr. Choate to Mr. Poucher, dated January 17, 1919. (reading).

We next offer in evidence a letter from Mr. Will T. Gordon, to Mr. Ramsay Hoguet.

Mr. Kresel: From whom was that?

Mr. Galloway: From Mr. Will T. Gordon, to Mr. Ramsay Hoguet, dated July 9th, in which it says: (Reading).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 52." (*See Exhibits, Vol. I, page 157.*)

Mr. Galloway: If your Honor please, the plaintiff next offers in evidence, the Minutes of the American Dyes Institute of December 9, 1918, held at the Hotel Biltmore in New York City, which sets out—I do not wish to read this—but I just wish to summarize it, and I think Mr. Kresel will very readily dispense with the reading, or waive the reading; which shows the amalgamation of the Manufacturing Chemists' Association or the American Dyestuffs Manufacturing Association and the American Dyes Institute which were two separate organizations at that time.

Mr. Kresel: What was the date of that?

Mr. Galloway: December 9th, 1918.

The Court: Admitted.

Mr. Kresel: There is nothing in the Bill of Complaint about that nor any indication as to how it is material or relevant.

Mr. Galloway: If your Honor please, I do not know that it is necessary to elaborate upon it under the ruling which your Honor has heretofore made.

Mr. Kresel: All right. It is admitted under the general rule. Go ahead.

The Court: I will hear you specifically at the time of argument upon all these matters.

Received in evidence and marked "Plaintiff's Exhibit No. 53." (*See Exhibits, Vol. I, page 158.*)

Mr. Galloway: Calling especial attention to page 8 of those minutes. I just want the record to show that.

Mr. Kresel: Are you putting in the whole minutes?

Mr. Galloway: Yes, the whole minutes.

Mr. Kresel: Do they all refer to that?

Mr. Galloway: No, just the minutes of that date.

Mr. Kresel: I mean the minutes of that date. Do the entire minutes refer to this amalgamation?

Mr. Galloway: No, we are quite willing to put in only the pertinent parts of the minutes and pick them out, if you wish. I said page 8 of the minutes.

Mr. Kresel: Unfortunately, I have not those minutes. May I look at them.

Mr. Galloway: We got them from your people this morning. Page 8 is the pertinent part.

Mr. Kresel: Without my taking up the time now to go through this, as I understand you, Mr. Galloway, you are only offering so much of these minutes as refers to the amalgamation of these two institutions.

Mr. Galloway: We will be glad to have it considered that way.

Mr. Kresel: I think at least it should be limited to that.

Mr. Galloway: We will be very glad to have it so limited.

The Court: Will you indicate now the portion which you desire admitted under that arrangement.

Mr. Galloway: Very glad to, your Honor.

The Court: You may indicate the portions during recess.

Mr. Kresel: I think that would be wise. We will not disagree as to that, Mr. Galloway.

Mr. Galloway: I will take it up in detail at that time, your Honor.

Plaintiff now calls attention to and offers in evidence the Articles of Incorporation of the Chemical Foundation, Incorporated, which are Exhibit B in the

Bill of Complaint. We ask that they be not duplicated in the record.

Mr. Kresel: Of course, they will not be duplicated, but you better give them an exhibit number so as to have the exhibits run in consecutive order.

Mr. Anderson: Why not call it exhibit so and so of the Bill?

The Court: We will consider it marked Plaintiff's Exhibit 54 in the record and it will be found as Exhibit B of the Bill.

Considered marked "Plaintiff's Exhibit No. 54." (Same as Exhibit "B" to bill of complaint. *See Record, Vol. I, page 90.*)

Mr. Galloway: Plaintiff next offers in evidence, if your Honor please, the By-Laws of the Chemical Foundation. I think we should offer them in connection with the articles of Incorporation, because Exhibit B of the Bill includes both the certificate of incorporation and the By-Laws. So I would like to make the last exhibit include the certificate of incorporation and the By-Laws, which are Exhibit B of the Bill of Complaint, and ask that they be not duplicated in the record.

Mr. Kresel: There is no objection. May I make the suggestion, if there are any amendments that have been made to those By-Laws up to the date of your bill, I think those should go in.

Mr. Galloway: If you gentlemen have any such amendments, we shall be very glad to understand that they may be stipulated as in at this time and at this place.

Mr. Kresel: If I find there are any such, we will submit them to the Government and they may be included in this exhibit.

Mr. Galloway: We also ask to introduce at this time and offer in evidence a list of subscribers to the

Chemical Foundation, Incorporated, as the same appears in Exhibit C of the Bill of Complaint, and ask that the same be not duplicated in the record, with the statement that we are informed by counsel for the defendant that this exhibit should be corrected by adding a subscription by Merck & Company in the sum of $10,000.

Received in evidence as "Plaintiff's Exhibit No. 55, Exhibit C of the Bill." (Same as Exhibit "C" to bill of complaint. *See Record, Vol. I, page 107.*)

The Court: The authenticity of that list and accuracy is admitted under your stipulation?

Mr. Kresel: It is conceded under the stipulation, with the one addition, that of Merck & Company $10,000.

Mr. Galloway: Yes.

The Court: Admitted as corrected.

Mr. Galloway: The same appears at Page 107 of the Bill, and I wish to call your Honor's attention to the subscription of $125,000 by the E. I. duPont de Nemours Company, $50,000 by the General Chemical Company, $30,000 by the Grasselli Chemical Company, $20,000 by Heller & Merz Co., $50,000 by Marden, Orth & Hastings (Calco Chemical Co.), $37,500 by the National Aniline & Chemical Co., and $20,000 by The Newport Co.

The plaintiff next offers in evidence the minutes of the meeting, the first meeting of incorporators of The Chemical Foundation, dated March 3, 1919, at its principal office in Wilmington, Delaware.

The Court: That is not an exhibit to the Bill, is it?

Mr. Galloway: That is not an exhibit to the Bill.

The Court: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 56." (*See Exhibits, Vol. I, page 173.*)

Mr. Galloway: I do not wish to read this, of course, to your Honor, I merely wish to state for the purpose of continuity in the presentation here that this shows the incorporation of this at the meeting by N. M. Clancy, P. B. Drew and H. E. Knox, incorporators, and it shows that Mr. Clancy owned thirteen shares of stock, P. B. Drew one share and H. E. Knox one share, and that the Charter and the By-Laws were there adopted.

Mr. Kresel: Mr. Galloway, is there any question but that this incorporation was attended to by the Corporation Trust Company, and as usual in those cases, they put in their own nominees as incorporators?

Mr. Galloway: Yes, but I called attention to that merely because I am going to another thing which I wish to read to the Court.

Mr. Kresel: I think the Court is entitled to know that that is the fact.

Mr. Galloway: The secretary presented transfers of subscription from M. M. Clancy, P. B. Drew and H. E. Knox to Francis P. Garvan, Douglas I. McKay and George J. Corbett for fifteen shares of common stock, to take effect at the close of the meeting, and the original transfers are thereto attached—attached to these minutes. It shows that Mr. Francis P. Garvan was transferred thirteen shares of the common stock at that time.

Mr. Kresel: Do you mean a subscription to that amount?

Mr. Galloway: A subscription was transferred.

Mr. Kresel: Not the stock.

Mr. Galloway: A subscription to thirteen shares of the common stock at that time, and Mr. Corbett and Mr. McKay were each transferred one share. It then shows an election of directors; Mr. Francis P. Garvan, Mr. Douglas I. McKay and Mr. George J. Corbett were elected directors following that.

Mr. Anderson: I think it may be understood that the defendant may substitute copies of those minutes and withdraw the original.

Mr. Kresel: Yes, we will do that. Colonel Anderson suggests, and I am very much obliged to him for the suggestion, that he is willing to stipulate we may substitute copies of the minutes for the originals.

The Court: And in doing that when the counsel confer probably it can be materially shortened.

Mr. Kresel: Very likely.

Mr. Anderson: We shall be very glad to do so.

Mr. Galloway: The plaintiff next offers in evidence the minutes of the first meeting of directors of the Chemical Foundation, held on March 8th, 1919, at 110 West 42nd Street, New York City, and this shows the presence of Mr. Francis P. Garvan, Mr. Douglas I. McKay, and Mr. George J. Corbett, the members of the Board, and it shows the election of Mr. Francis P. Garvan as President, Mr. Douglas I. McKay as Vice President, and Mr. George J. Corbett as Secretary and Treasurer. It also shows:

> "Further resolved that Joseph A. Choate, Jr., Esq., be retained as general counsel of the Company."
>
> "Further resolved that Ramsay Hoguet, Esq., be retained as patent counsel for the Company."

Mr. Kresel: We conceded all that in our Answer, didn't we, Mr. Galloway?

Mr. Galloway: Yes, I think you did, perhaps.

The Court: Then it is not an issuable fact.

Mr. Kresel: That was all alleged in the Bill and was all admitted by our Answer.

The Court: Then if the defendant admits all that you would have shown by those minutes had it denied them, do you want those minutes in?

Mr. Anderson: If your Honor please, I think it would be wise, not so much for this Court, but in going to the record, to have in that part of those minutes, and then at the conclusion of the reading of those minutes I was going to suggest to counsel for the defendant, that in preparing substitute copies for these exhibits, we cut down the minutes by agreement and attach a little stipulation saying that these extracts from the minutes should take the place of the original minutes.

THE COURT: I am not going to begin to restrict you now on a matter of that kind, but I do not think the exhibit has any place at all in the record. But in view of the facts intended to be shown thereby, having been admitted by the Answer, however, that is a minor matter.

MR. ANDERSON: We will make it very short.

MR. GALLOWAY: The minutes also show the subscription to this document of Mr. Garvan, which has not been admitted by the defendant, and which are new.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 57." (*See Exhibits, Vol. I, page 179.*)

THE COURT: If there are eventually such an amount of matters of this kind as you think should not be, your protection is—

MR. KRESEL: Moving to strike out?

THE COURT: You may make your motion to strike out, but simply keep the record as it is, but your protection will be a matter of course, that is in taxing costs.

MR. KRESEL: I know the Government is not going to put in much that is not necessary.

MR. GALLOWAY: If the Court please, the plaintiff next offers in evidence minutes of the Board of Directors' meeting of the Chemical Foundation held at the office of the Alien Property Custodian, 110 West 42nd Street, New York City, on Friday, April 4, 1919, Present: Mr. Garvan, Mr. McKay, and Mr. Corbett, which shows, Mr. Joseph H. Choate, Jr. of counsel for the company, presented and read a form of prospectus intended to be used in securing the distribution of the underwritten stock, the same was adopted. (Mr. Galloway continuing reading).

The Court: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 58." (*See Exhibits, Vol. I, page 187.*)

Mr. Galloway: If your Honor please, we offer next in evidence minutes of the meeting of the Board of Directors of the Chemical Foundation held June 19, 1919, in New York (present: Mr. McKay and Mr. Corbett), which shows that Mr. Ramsay Hoguet, patent counsel of the company, presented and read a form of assignment from the Alien Property Custodian to the Chemical Foundation, Inc., covering fifty-three patents and twenty applications for letters patent in consideration of the sum of $3,650, and that said assignment was approved.

Received in evidence and marked "Plaintiff's Exhibit No. 59." (*See Exhibits, Vol. I, page 203.*)

Mr. Galloway: If your Honor please, plaintiff next offers in evidence a list of subscribers of the Chemical Foundation as the same appears in Exhibit D of the Bill of Complaint and subject to such corrections as the defendant may, in accordance with the records, make. I am informed that there is some correction to that, Mr. Kresel. I have asked for a corrected copy.

Mr. Kresel: That is all right. Subject to correction there is no objection.

The Court: Admitted in accordance with the understanding of counsel.

Mr. Galloway: And with the request that it be not duplicated in the record.

Received in evidence and marked "Plaintiff's Exhibit No. 60." (Same as Exhibit "D" to bill of complaint. *See Record, Vol. I, page 108.*)

Mr. Galloway: Plaintiff next offers in evidence a voting trust agreement as to the stock of the Chemical Foundation, as the same appears in Exhibit E of the Bill of Complaint on page 110 thereof and asks that the same be not duplicated in the record.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 61." (Same as Exhibit E to bill of complaint. *See Record, Vol I, page 110.*)

Mr. Galloway: Plaintiff next offers in evidence, if your Honor please, minutes of a meeting of the Board of Directors of The Chemical Foundation, Incorporated, held in New York City, on November 20, 1919 (present: Mr. Francis P. Garvan, Douglas I. Mc Kay and George J. Corbett).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 62." *(See Exhibits, Vol. I, page 204.)*

Mr. Galloway: In these minutes I wish to call the Court's attention to the following (reading from Plaintiff's Exhibit No. 62).

If the Court please, we next offer in evidence the minutes of the stockholders' meeting of The Chemical Foundation, Inc., held at the offices of The Chemical Foundation, in New York, on December 2, 1919, at 2:30 P. M.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 63." (*See Exhibits, Vol. I, page 207.*)

Mr. Galloway: We wish to call the Court's attention at this time to those portions of the meeting which state, being the remarks of Colonel McKay, the vice-president of the company—it says (reading).

The Constitution was then read.

Mr. Kresel: It is annexed to your Bill, as I recall.

Mr. Galloway: It is annexed to the Bill, and I am not going to read it.

Page 118, if your Honor please, of the Bill.

Mr. Hershkopf: That has to be corrected. There were some typographical errors in the exhibit.

Mr. Galloway: Yes. All these are subject to correction anyhow under the stipulation.

It appears on page 118 of the bill, if your Honor please.

The Court: That is a part of the exhibit last admitted, or is this a new exhibit which you offer?

Mr. Galloway: I shall offer this draft later; I shall offer later the minutes.

The Court: Very well.

Mr. Galloway: The Constitution, I should say, and By-Laws.

Mr. Howard, speaking in that meeting, states (reading).

I also wish to call the attention of your Honor to the statement by Mr. Choate in that meeting, commencing: "The Foundation owns a great number of patents, some of which must be of great potential value." (Reading further.)

The minutes go on and show a long discussion, after which the Constitution was adopted.

Plaintiff next offers in evidence, if your Honor please, the Constitution and By-Laws of The Chemical Foundation Advisory Committee, being Exhibit F to the Bill of Complaint, and asks that the same be not duplicated in the record.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 64." (Same as Exhibit "F" to bill of complaint. *See Record, Vol. 1, page 118.*)

Mr. Anderson: If your Honor please, it was anticipated that with the testimony of Mr. Danner this morning and this formal evidence, the day would be consumed up to the hour of adjournment; and, therefore, as the time for recess has been nearly reached, I shall ask the Court to suspend here.

THE COURT: You have reached a point where it is convenient for you to stop?

MR. ANDERSON: I think it would save time, because we have not organized the evidence as yet.

THE COURT: Then the case will be resumed at 8:30 o'clock A. M., standard time, Monday morning.

(Whereupon, at 12:15 P. M., adjournment was taken until Monday, June 11, 1923, at 8:30 o'clock A. M., standard time.)

SIXTH DAY.

Wilmington, Delaware,
June 11, 1923, at 8:30 o'clock a. m.,
Standard time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. ANDERSON: Is your Honor ready to proceed?

THE COURT: At your convenience.

MR. ANDERSON: I ask to call Mr. W. T. Gordon to the witness stand.

WILL T. GORDON.

WILL T. GORDON, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Please state your name and place of residence?

A. Will T. Gordon, Washington, D. C.

Q. 2. What is your profession?

A. I am an attorney at law, specializing in patents.

Q. 3. Were you at any time in 1918 and 1919 connected with the Office of the Alien Property Custodian, and if so, in what capacity?

A. I entered the employ of the Alien Property Custodian in the latter part of 1918, about the first of September, and served as an attorney in the Bureau of Investigation until the first of January of the following year. I then was assigned to the patent investigation.

Q. 4. State what took place, if anything, in connection with your assignment to the "patent investigation," as you call it—how that came about?

Mr. Kresel: If that calls for conversation, I should like to know with whom the conversation was had.

Mr. Anderson: If you state any conversation, I would like you to limit it to the Alien Property Custodian, or the officers of the Alien Property Custodian, or the officers of The Chemical Foundation.

The Court: And designating the persons.

Mr. Anderson: Designating the person in each case.

A. I think the beginning of that was when Mr. Garvan came to Washington and assigned me to get all available information from various Government departments with respect to dyes and chemicals and particularly tariff schedules, and any speeches that had been made in Congress with respect to those particular schedules; and I supplied him with, oh, quite a bit of that information.

Mr. Kresel: Did Mr. Gordon fix the time about when this was?

Mr. Anderson: January 1st, he said.

A. (Continuing) That was prior to January 1st—probably a month prior to the date that I was actually assigned to the patent work.

Q. 5. You speak of Mr. Garvan. Do you mean Mr. Francis P. Garvan?

A. That is true.

Q. 6. He was at that time head of the Bureau of Investigation in New York, was he not?

A. Yes.

Q. 7. Then he came down to Washington and asked you to get this information, and you sent him the information referred to?

A. That is true.

Q. 8. Then state what next took place in connection with or leading up to this assignment, limiting your evidence, as indicated, to conversations.

A. He sent for me to come to New York about the 1st of January, and I fix that date by reason of the fact that I remember spending New Year's Eve with some friends in New York, and either the day before New Year's Eve or the day after he sent me to Mr. Ramsay Hoguet, who was the patent adviser to the Custodian, to discuss ways and means of seizing enemy-owned patents.

Q. 9. Mr. Garvan sent you to Mr. Hoguet?

A. That is true.

Q. 10. Had you known Mr. Hoguet before that time?

A. No.

Q. 11. Now, state what took place on occasion of that visit to Mr. Hoguet?

A. Mr. Hoguet called a conference in his office of several patent attorneys who were interested in the dye and chemical business. Mr. Barrows was one of them.

Q. 12. Who was Mr. Barrows?

A. Mr. Barrows was with the firm of Pennie, Davis, Marvin & Edmonds, and I believe they represented the American—yes, the American Aniline & Chemical Company.

Mr. Kresel: The National Aniline.

Q. 13. Are you not mistaken in that? Isn't it the National Aniline?

A. National Aniline & Chemical Company.

Q. 14. And Mr. Barrows was present? Who else was present?

A. Mr. Prindle was present, who I understood represented the duPont Company.

Q. 15. Anybody else present at this conversation?

A. I think there were one or two others whose names I do not remember.

Q. 16. State now as far as you can what took place at the conference?

A. At that conference a discussion arose as to whether it was preferable to seize these enemy-owned patents or whether it was preferable and in the interest of the corporations interested in them to license them through the Federal Trade Commission under Section 10 of the Trading with the Enemy Act, and then in the event of seizure what character of patents would be of the greatest interest to seize, and it was determined that the most work that could possibly be accomplished would be the seizure of the chemical and dye patents, as there would not be time to seize others, and the result of that was reported to Mr. Garvan, I believe, the following day.

Mr. Kresel: When you say that, who made the report?

Mr. Anderson: I will bring that out. It is better to take it in the regular order, I suggest. Let me examine him, and, of course, then you can cross-examine him to test his knowledge.

Q. 17. Did you see Mr. Garvan the following day?

A. I did.

Q. 18. And you reported the substance of that conference to Mr. Garvan, did you?

A. I did, with Mr. Hoguet.

Q. 19. It was then, as I understand it, determined at this conference at Mr. Hoguet's office to seize the dye and chemical patents.

Mr. Kresel: One minute. I object to that. That is not testimony.

Mr. Anderson: That was the conclusion; but I withdraw the question.

Q. 20. Did Mr. Garvan approve the suggestion of the seizing of the dye and chemical patents on the day following the conference at Mr. Hoguet's office when these suggestions were reported to him?

A. He did.

Mr. Kresel: I object to that as calling for the witness's conclusion. The conversation is perhaps admissible.

Mr. Anderson: If counsel wants to be technical, and wants me to ask what Mr. Garvan said—

Mr. Kresel: I think so, on a matter of this sort. We ought to have the conversation.

The Court: Of course, I cannot tell whether it is technical or not. I do not know about the ability of this witness to judge of the soundness of his conclusion. It would be better to let him give the conversation.

Q. 21. State as far as you can what was done after your report, done or said by Mr. Garvan after your report to him of the conference at Mr. Hoguet's office when you and Mr. Hoguet called on him, as you have stated?

A. I was primarily interested in the expense incident to conducting the investigation involved—

Mr. Kresel: Will you pardon me a minute, Mr. Gordon. I object to that and ask that it be stricken out as not responsive. The question was as to what the conversation was.

The Court: I assume you have no objection to doing that.

Mr. Anderson: No.

(Q. 21. repeated as recorded above.) That is, what was done at that meeting with Mr. Garvan; what Mr. Garvan said or directed?

A. The matter of the expense was discussed. I think I probably brought up the subject. I cannot remember in detail what took place, but I do remember stating that it would require quite a little money to conduct the investigation; and probably Mr. Garvan stated, or Mr. Hoguet, that the Custodian was broke and had no funds to pay for such an investigation, and a discussion then went on between Mr. Garvan and Mr. Hoguet as to raising funds to pay for that investigation; and I believe Mr. Garvan suggested, "Ramsay, we had better give a dinner to the boys and suggest some means of assistance or raising funds for the purpose of this investigation."

Q. 22. Well, what was finally the conclusion of the matter so far as you recall it?

A. The conclusion was that I was designated as Ramsay Hoguet's assistant, and directed to return to Washington and start certain preliminary work prior to the actual investigation of title to the patents, which I did.

Q. 23. After that conference you returned to Washington, did you?

A. That is true.

Q. 24. State to the Court so far as you recall what you then did at Washington in connection with this matter.

A. It was necessary to determine what patents had been reported to and seized by the Custodian in order that we would not make duplicate seizures. The records of the division had been poorly kept, and I spent a great deal of time going over those records to get that information prior to the actual abstracting of title of patents that had been reported or seized, and I devoted some time to that and general preliminary work prior to the beginning of the actual investigation.

Q. 25. You said you were assigned to that work as assistant to Mr. Hoguet?

A. That is true.

Q. 26. Did you report to Mr. Hoguet your work at that time?

A. Yes, he was my superior officer and I was directly under him and responsible to no one else.

Q. 27. You reported to him?

A. Yes.

Q. 28. Now, Mr. Gordon, you have now covered, as I understand it, the period of early January, 1919. The matters that you refer to were in that period, were they?

A. That is true.

Q. 29. Now, it appears in evidence here, by the minutes of a certain conference held at Washington, on the 27th day of January, 1919, the minutes of which have been put in evidence, between Mr. Choate, Mr. Hoguet, Mr. Ferry, Mr. Horne and a special committee of the Dyes Institute, and Judge Laffey, and others, that you were present at that conference. Do you recall that conference?

A. I do.

Q. 30. Have you read, to refresh your memory, the minutes of that conference as introduced here?

A. I looked it over hurriedly last night and this morning.

Q. 31. Do those minutes state substantially your recollection of what took place?

A. They do.

Q. 32. After that conference, did you have anything further to do with the matter of seizure of German dye and chemical patents?

A. Yes. I employed abstractors, typists, stenographers, and attended to all of the printing of the special forms, any reports and demands, and naturally directed the investigation of titles and passed on enemy status.

Q. 33. Yes.

A. And titles pertaining to all patents seized.

Q. 34. Were you still acting as assistant to and reporting to Mr. Hoguet?

A. Yes.

Q. 35. Did you take up this work actively after this conference?

A. I did.

Q. 36. Did you devote your entire time to it?

A. I did, from eighteen to twenty hours a day.

Q. 37. Now, I will ask you to state as accurately as you can what was done and with whom you worked in this matter—that is, who co-operated and who was working with you, how you did it; just take the proceeding and tell the Court what took place?

A. Before I started the investigation, I insisted that I have money to pay the abstractors, for the reason that from circumstances unnecessary to relate now I doubt if I could have secured men without they had absolute assurance that they would get their money weekly, and—

Q. 38. If I may interrupt, with your permission, it appears in evidence here by letter from you to Mr. M. R. Poucher, dated February 3, 1919, you wrote Mr. Poucher by instructions of Mr. Hoguet you had arranged for several abstractors to report to you on

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February 4th, and begin work on Classes 8 and 23, and that it would be necessary for you to have money to pay these abstractors, and that you drew on him for $500. Do you recall that, these circumstances?

A. I do.

Q. 39. You did draw on Mr. Poucher then for the sum of $500 with which to begin this work?

A. I did.

MR. KRESEL: Colonel, would you mind if I interrupted you a minute?

MR. ANDERSON: No.

MR. KRESEL: Is there any claim on the part of the Government that that was a personal contribution by Mr. Poucher? Was not that a sum of money that was subsequently repaid by The Chemical Foundation?

MR. ANDERSON: I do not deny that the money was subsequently repaid by The Chemical Foundation or that it was advanced on behalf of The Chemical Foundation, but it is one of the steps in the proceeding in this matter.

MR. KRESEL: Yes.

MR. ANDERSON: And I am not suing Mr. Poucher for that amount.

MR. KRESEL: I am not objecting to the evidence. I simply wanted, at this proper point, to have it understood that there is no claim on the part of the Government that Mr. Poucher personally made the contribution.

MR. ANDERSON: Not the slightest. That he advanced this money on behalf of the American Dyes Institute, and the evidence clearly shows that, already introduced, and I did not get the exhibit and read it, to save time.

MR. KRESEL: That is all right.

MR. ANDERSON: The substance is all here.

Will you read the question, please? I believe he answered. What is the answer?

(The answer to Q. 39 read as recorded above.)

Q. 40. Mr. Poucher actually sent you the $500?

A. He honored my draft.

Q. 41. With that sum you began work in abstracting or listing these patents for seizure; is that correct?

A. I first deposited that sum in the Washington Loan and Trust Company in the name of Will T. Gordon, agent for M. R. Poucher, I believe. I remember signing all checks as agent.

Q. 42. Who, if any one, was assisting you in this matter of getting these patents ready for seizure, whatever the proceeding was, and how?

A. Mr. Barrows and Mr. Squair were the first men assigned to that assistance.

Q. 43. You have stated that Mr. Barrows was the counsel or one of the counsel for the National Aniline. Do you know who Mr. Squair was?

A. He was a representative of the Patent Department of the duPont Company.

Q. 44. They were sent down to assist you in the Patent Office; is that correct?

A. They were sent down to select the proper character of patents to be seized; and that was quite a task, for the reason that it was necessary to have a printed copy of the patent itself, and in many cases necessary to read the specification and claims, and in all cases necessary for the purpose of getting the full name of the inventor and other information necessary before starting abstracting of title. They did that in an independent office, in the McGill Building, and submitted either printed copies of patents or memorandums containing the information necessary for an abstract of title prior to the actual abstracting of title and report and demands.

Q. 45. Did Messrs. Barrows and Squair select the patents to be seized by you or demanded by you under the arrangement?

A. They did.

Q. 46. Then I understand that they first made a selection and lists of the patents which were desired to be seized?

A. They made that largely from the list of enemy-owned patents compiled by the Federal Trade Commission.

Q. 47. Was that list of enemy-owned patents one which had been compiled by the Federal Trade Commission in connection with Section 10 of the Act, if you know?

A. I think that was the purpose of compiling it.

Q. 48. Did they then check those patents against the records in the Patent Office to get the list complete, or verify it, do you know?

A. I do not know of any way that they could have checked it except buying the individual patents at so much per copy.

Q. 49. After they had made the selection of patents to be seized, did they furnish you lists of patents which they desired seized?

Mr. Kresel: Which they desired to seize?

Mr. Anderson: I will put it this way: Which were desired to be seized.

Mr. Kresel: May we know whose desire this is that is being expressed?

The Court: Yes.

Mr. Anderson: Well, the witness has testified —of course, I can go through a very elaborate detail to get up to it—the witness has testified that Mr. Barrows and Mr. Squair made up the lists that were to be seized and furnished him those lists. Now, then, I want to follow that through to show what he did.

Mr. Kresel: I beg your pardon, Colonel, but I did not so understand the witness to testify. He did not testify that the lists were of patents which were to be seized.

Mr. Anderson: All right.

Mr. Kresel: The contrary will appear, I think.

The Court: The word used was "select." I am waiting myself to find out what is meant by the word "select."

Mr. Anderson: Very good, sir.

Q. 50. State to the Court exactly the proceeding which was followed as between yourself and Messrs. Barrows and Squair in arriving at the patents to be seized?

A. I am not a chemist and would not recognize or would not at that time have recognized all patents of value pertaining to the dyes and chemical industry that would have been the most valuable for seizure. Mr. Barrows and Mr. Squair were specialists in that particular branch of patent law, and for that reason their assistance was very valuable in selecting the proper character of patents to be seized.

Q. 51. How did they select them and how did they indicate to you, if at all, what patents they had selected?

A. By sending them over to me in lots of anywhere from fifty to two or three hundred, depending upon the number they could finish in the course of a day or evening, and I arranged them in proper order and assigned attorneys to abstract title to the particular patents they referred to me. Now, when I say patents, I mean copies of patents that they sent to me.

Q. 52. Yes.

A. To be abstracted—printed copies of patents.

The Court: I would like to have the question read.

Mr. Anderson: Please read the question that I put.

(The stenographer then read Q. 51 recorded above.)

Q. 53. Were those lists that they sent over to you written lists of patents?

A. Only written in cases where the printed copy was exhausted.

Q. 54. No, I mean was the list a written list; did they list the patents by numbers or how?

A. No.

Mr. Kresel: There was no list, as I understand it.

The Witness: They bought—

Q. 55. They sent over to you copies of the patents?

A. They bought from the Patent Office copies of patents and submitted actual copies of patents.

Q. 56. To you?

A. To me. In cases where those printed copies were exhausted, they may pencil or pen notations as to the number, name, title and date, and other information necessary to make an abstract of title.

Q. 57. Did you confine your abstracting of the patents to those thus furnished to you by Messrs. Barrows and Squair?

A. I did until the work was practically complete, and then Mr. Hoguet would send me letters every few days suggesting additional patents that had not been seized, and just the general finishing up of the work, we seized patents—I believe Mr. Barrows and Mr. Squair both wrote several letters down after they had finished the main part of the work, and I seized patents that they wrote me about, and then applications, on information furnished us from the Patent Office.

Q. 58. When you speak of the main part of the work, state what you refer to by the main part of the work?

A. Well, until after the first four or five thousand patents were seized. The first forty-five hundred, I believe, were included in the first sale.

Q. 59. Until that work was completed, that first list, you followed the patents furnished you by Messrs. Barrows and Squair?

A. That is true.

Q. 60. And confined yourself in abstracting and in seizing entirely those patents, did you?

A. To the lists they furnished.

Q. 61. After they furnished you those lists, Mr. Gordon, state briefly, not in a technical way, what procedure you followed?

A. I directed both the day and night force of twenty to thirty typists and stenographers and both the day and night force of attorneys actually making abstracts of title and passed upon all outstanding contracts and other instruments of record where such were found as to where title was vested and generally supervised the work being done.

Q. 62. In other words, you examined title to the patents, in brief language, is that it?

A. That is true.

Q. 63. Then did you examine it to ascertain whether it was enemy-owned within the meaning of the Act?

A. That is true.

Q. 64. After you determined or ascertained by your examination that in your view it was enemy-owned, what did you do then?

A. May I explain that word "enemy-owned," Colonel?

Q. 65. Yes, if you wish.

A. There was no way to determine definitely enemy status in the case of a German inventor who received a patent prior to the declaration of war, stating he was a resident of Germany. He may have since moved from Germany to this country or to some neutral or allied country; and if that should have been the case, he would not have been an enemy, nor his property subject to seizure, and we had no way to determine, other than the statements in the patent, that he was a resident and a citizen of Germany.

In some cases, I knew, of course, that the German might be a resident of this country, and I made an agreement with Mr. Hoguet that whatever disposition was made of these patents that they would quit claim title to any patents where seizures had been made through mistake. If such mistakes were made, they were unavoidable at that time because of our inability to know definitely the residence or then citizenship of the alleged enemy.

Q. 66. Well, you said you made an arrangement with Mr. Hoguet. Did you know at that time that Mr. Hoguet was going to represent the purchaser of these patents?

A. At that time I don't know that a purchaser had been definitely arranged for. But I knew Mr. Hoguet was getting full credit for the seizure and would probably represent any interests who were interested in those patents.

Q. 67. Now, after you determined that the patent was enemy owned, subject to the limitation which you have stated, what did you do then?

> THE COURT: I wonder if it would interrupt your examination if I would get him to explain his last answer, if it would not interrupt the course, I would like you to ask him why, at that point, because I do not understand his last answer at the place he stops.

Mr. Anderson: I would be very glad to, sir.

Q. 68. You stated, in your last answer, that it was understood that Mr. Hoguet was getting credit for the seizure. What period are you speaking of, the period of the early part of February, after the conference of the 27th?

A. Yes.

Mr. Kresel: That was not his whole answer, Colonel, and I doubt whether that was the part that the Court had reference to.

Mr. Anderson: I am leading up to try to get what the Court wants.

Q. 69. What did you mean by saying that you understood that Mr. Hoguet would represent the purchaser? State that to the Court, as far as you can.

A. Mr. Hoguet was a dollar-a-year man, and during that period had made various reports, and prior to that period had made various reports to the Custodian as to the patent assets of corporations in which the Custodian had seized a majority of the stock, and had been paid a fee for such investigations and such reports, and knowing Mr. Hoguet and his reputation somewhat at that time for charging fees, I had little idea that Mr. Hoguet was entirely moved by patriotic motives, devoting his time to such an investigation. There may have been various conferences between Mr. Hoguet and myself, as I saw him at least once a week and sometimes two or three times a week, that would have led me to believe that.

Mr. Kresel: Colonel, I did not quite get the witness, whether he said that Mr. Hoguet was or was not moved by patriotic motives. I did not quite get that.

The Witness: I stated that I did not believe that Mr. Hoguet was actuated entirely by patriotic motives to devote as much time as he did to the matter, for a dollar a year.

Mr. Kresel: I think, your Honor, that with the explanation which the witness has now made, it is quite apparent that his former statement, that he thought that probably Mr. Hoguet would represent the purchaser, was a mere speculation.

The Court: I think, Mr. Kresel, that must be left for eventual determination in determining the main issues of the cause, as to whether this testimony is of value, and if so, of what value.

Q. 70. I want to ask you one additional question—going back to your original conference with Mr. Hoguet, did Mr. Hoguet arrange in your presence for Messrs. Barrows and Squair to come down and assist you in this work?

A. I do not think that was arranged at the original conference, but possibly at the conference at the Alien Property Custodian's office.

Q. 71. You mean the conference of the 27th, of which the minutes have been presented?

A. I think that is the date. I know that Mr. Barrows—I understood at that time, Mr. Barrows would assist me, and whether Mr. Squair was assigned at that time or later, I do not remember.

Q. 72. Do you recall whether or not it was agreed at the conference of the 27th that there should be a sale of these patents, chemical and dye patents, to a corporation to be formed, representing the dye industry.

Mr. Kresel: One minute, please. I object to that, certainly, as calling for a conclusion.

The Court: Will you reframe your question, Colonel Anderson? If you agree, will you kindly reframe your question? If not, I will hear you.

Mr. Anderson: With the Court's permission, I will scratch the question and start again.

Q. 73. Do you know whether or not there was a of directing the witness's attention to the particular matters you want to inquire about. Am I wrong or right?

Mr. Anderson: You are right, if your Honor please. I can make it clearer. I am trying to shorten it. I could ask a more technical question, but here is the idea: I am examining this witness as to matters that happened four years ago. I am not even handing him the papers to refresh his memory. I ask him about how he reached the conclusion that Mr. Hoguet was to represent the purchaser at this sale. I am taking him over the question of his memory of what took place, to the end that we may know all his knowledge of the situation.

The Court: Now then, I think in the Eibel case, a patent case recently decided by the Supreme Court of the United States, in an opinion written by Mr. Justice Taft, it seems to me he pointed out in that case the danger of the witness drawing on his unaided recollection through a long period of years.

It seems to me that if this witness is asked to give his conclusions with respect to transactions or conversations happening years ago, it would have the double iniquity not only of his being asked for conclusions, but being asked for conclusions as to things happening many years ago; and I think in those cases we must not have his conclusions, particularly more so than if it were an occurrence of yesterday. So I do not believe the fact that you are inquiring about the transactions of years ago will justify the witness in giving conclusions rather than facts. Now, it may be that I have misunderstood you.

Mr. Anderson: It is so immaterial, if your Honor please, that to shorten it, I will accept your

Honor's ruling and the objection to the question is sustained. That is the easiest way to get about it.

Q. 74. Mr. Gordon, when you were interrupted, I was asking you about the question of what you did after these lists were furnished you by Messrs. Barrows and Squair in the method which you have described. You testified, as I recall, in effect, that you then made an abstract or title examination of the patents and ascertained whether subject to the limitations you have explained, they were enemy-owned. Then after you ascertained that, what did you do?

A. I had a corps of stenographers and typists to prepare reports and demands or seizures, as they were called.

Q. 75. To whom did you submit those demands for approval?

A. Mr. Hoguet came down about once a week and initialed each one with the initials R. H. and they were then submitted to the Custodian for signature.

Q. 76. And the Custodian would sign them?

A. That is correct.

Q. 77. When he signed them they were returned to you?

A. Well, they went through the Division of Patents at the Custodian's office for proper records to be made and they were then returned to me.

Q. 78. Then what did you do next?

A. (continuing). For service upon the Commissioner of Patents to be recorded.

Q. 79. And when served upon the Commissioner of Patents and recorded, seizure was regarded as complete, is that true?

A. That is true.

Q. 80. Was the proceeding which you have outlined, beginning with the selections of Messrs. Barrows and Squair and going through the proceeding indicated—was that procedure followed with respect to the seizure of all of these patents and other rights included in what you call the sale of 4,500 patents?

A. That was followed in the first sale in so far as the patents were concerned. I believe there were certain copyrights that were reported by a Mr. Evarts who was employed by Mr. Hoguet's firm; and in addition to the patent rights, if any contractual interest was seized, such seizures were based on reports made to the Custodian and probably I attended to that without the assistance of either Mr. Barrows or Mr. Squair.

Q. 81. Was that done by Mr. Evarts at your suggestion?

A. No, only the copyrights by Mr. Evarts.

Q. 82. The copyrights were handled by Mr. Evarts?

A. The contractual rights seized was done by me at Mr. Hoguet's direction.

Q. 83. If I understand you correctly, and I am not mistaken, all of these proceedings taken by you were under Mr. Hoguet's direction?

A. That is true.

Q. 84. Going back a little, you spoke of a conference with Mr. Garvan on the day following the first conference you had with Mr. Hoguet, at which, with Mr. Hoguet, you reported the result of the conference on the day before. Was there at this conference with Mr. Garvan any discussion of the question of the number of patents to be seized?

A. Yes, it was estimated that within the limited time in which the investigation would have to be made, approximately 1,500 patents might be seized.

Q. 85. Would you explain a little more fully what you meant by the "limited time within which the seizure had to be made?"

A. Well, the President was then in France and we were expecting every day that word would be received that no further seizures of enemy property could be made; and the rush was occasioned on account of that fact and the fact that we wanted to get all seizures made prior to the time the seizures were stopped.

Q. 86. Were seizures, so far as you know, ever stopped?

A. Not while I was with the Custodian's office, that I remember.

Q. 87. It is alleged in the Bill in this case that arrangements were made to keep the Patent Office open and the work was done night and day and Sunday; is that correct?

A. That is true.

Q. 88. Did you work your force at night hours and Sunday shifts also in order to secure these patents?

A. That is true. In fact, I had two forces, Colonel, one as a day force and another as a night force.

Q. 89. Were you doing that on the instructions of Mr. Hoguet or Mr. Garvan or whom?

A. Under the instructions of Mr. Hoguet.

Q. 90. Did Mr. Hoguet tell you why it was necessary to do this work in such a hurried manner?

A. I do not recall Mr. Hoguet's direct statement to that effect, but from a general discussion with respect to the patent investigation, I know that that was the reason for the rush. I do not remember definitely what Mr. Hoguet said with regard to the rush, but I know that that was a reason for it.

Q. 91. Did you endeavor to make the seizure a *fait accompli* before the return of the President in March?

A. I endeavored to get all seizures possible before the President returned. In fact, I remember specifically now Mr. Hoguet's statement to the effect that rather than ask permission to do a certain thing, if we could show that the thing had already been done, there would be more likelihood of its being approved.

Q. 92. How did you get people into the Patent Office at night and Sundays?

A. By employing the Chief of the Assignment Division and his assistant as abstractors and explaining to the Commissioner that their work would be confined to night and Sunday work, and one of them as a representative of the Patent Office would be present at all times while others were working there.

Q. 93. Who were these two persons that you employed?

A. Mr. McGruder as Chief of the Assignment Division and Mr. Mulvey as his assistant.

Q. 94. Did these gentlemen occupy those positions at that time?

A. They did at that time and still are.

Q. 95. Did you employ these two officers of the Government to assist you in making this search?

A. I did, but their work was confined to after office hours; in other words, after 4.30, when the Patent Office was closed, so far as their official duties were concerned.

Q. 96. Do you recall what you paid them?

A. Four dollars an hour.

Q. 97. From what funds did you pay this amount?

A. From the funds furnished me initially by Mr. Poucher, and subsequently by Mr. Danner, who was an officer of the Dyes Institute, either Secretary or Treasurer.

Q. 98. Do you recall the aggregate amount of funds furnished you by Mr. Poucher and Mr. Danner?

A. I do not, but they have receipts for the entire amount. It was all paid by check and the check in itself was a receipt.

Q. 99. And you kept all that money in a separate account in your own name as agent, and paid these various expenses as the work progressed from that fund?

A. That is true.

Q. 100. And among other expenses you paid Mr. Mulvey and Mr. McGruder for their work after office hours and at nights and on Sundays in abstracting to aid in the completion of the work which you have outlined?

A. That is true.

Q. 101. By this arrangement, then, as I understand it, you had access to the Patent Office both at night and on Sundays?

A. That is true.

Q. 102. Did Mr. Barrows and Mr. Squair have access to the Patent Office during those extra hours also?

A. They did, but their work was not actually in the Patent Office. They worked in an office in the McGill Building.

Q. 103. Were they in the Patent Office at those hours on Sundays and at night?

MR. KRESEL: If he knows.

MR. ANDERSON: If you know.

A. There probably were times, but I cannot state that definitely.

Q. 104. It appears in the Exhibit G with the Bill of Complaint in this cause that there are listed as having been seized and sold to the defendant Chemical Foundation various patents such as aeroplane propellers and mechanical appliances and electric boat appliances and other things of that kind which have no apparent connection with the chemical or dye industry. Could you say how it came about that those patents were included in that list?

MR. KRESEL: If he knows.

MR. ANDERSON: Yes, of course, if he knows.

I said, could you say. Of course, he would not answer if he did not know.

A. Yes. At a conference in the New York office of the Alien Property Custodian at which Mr. Hoguet and Mr. Garvan and Mr. Choate and one of the members of Mr. Barrows' firm, I believe Mr. Pennie, and —oh, fifteen or twenty other gentlemen attended—the question of what is chemistry and its allied industries and what patents would relate to the allied industries was discussed, and I remember Mr. Pennie or whichever member of Mr. Barrows' firm was there, stating that they were in a receptive mood and that chemistry or its allied industry covered practically everything under the sun, and for that reason I did not pay any attention to eliminating any patents, seizure of which was suggested.

Q. 105. Suggested by whom?

A. By Mr. Barrows or Mr. Squair or anyone else interested in the work, Mr. Hoguet or——

Q. 106. These men were then in a receptive mood and you proceeded on that theory, did you?

A. Yes.

Mr. Kresel: I object to the theory upon which he proceeded.

The Court: I will take the answer and let you have an exception, Mr. Kresel.

Q. 107. Did you not in fact know, Mr. Gordon, that during the entire period that you were working on this matter all these patents were going to be transferred to this corporation to be formed afterwards, known as The Chemical Foundation?

Mr. Kresel: Pardon me a minute. Your Honor will see that it is becoming important as to when this witness had the knowledge. During the entire period, as the question is, is too broad; it does not give us any information.

Mr. Anderson: I will limit it, between the period of the conference of the 27th of January or the period of the 4th of February, when you first began this work, and the time it was concluded as to the seizure of the original list of forty-five hundred patents.

Q. 108. Didn't you know that all those patents were in fact to be sold to the corporation to be formed, which was afterwards called The Chemical Foundation?

Mr. Kresel: Preliminary to that, it does not yet appear when he finished this work on the forty-five hundred patents, Colonel.

Mr. Anderson: I thought he testified that it was finished in about three weeks.

Mr. Kresel: I do not recall that testimony.

Mr. Anderson: I may be mistaken.

Mr. Kresel: I do not recall that testimony.

Mr. Anderson: The evidence shows that. Mr. Barrows' letter shows it.

The Court: You withdraw the question?

Mr. Anderson: But I withdraw that question and strike it out.

Q. 109. About when did you conclude the work of listing and seizing these original forty-five hundred patents, approximately, that were sold at the first sale to The Chemical Foundation?

Mr. Kresel: Of course, the witness has not said anything about a first sale of the forty-five hundred patents. You see, you put that in your question, Colonel.

Mr. Anderson: I beg your pardon.

Mr. Kresel: I do not want to keep objecting to your questions, but you are including in them things which are not in evidence either by this witness or by anybody else.

Mr. Anderson: If your Honor please, I will agree that the sale to The Chemical Foundation of the forty-five hundred patents—the list of patents is not in evidence yet, and I spoke to Mr. Kresel on that subject a moment ago; we are going to put it in in a very short time, and it has all been stipulated. Therefore, I did not want to interrupt to put it in now. I understood the witness to say that he concluded the work of the original seizure of those originally sold in the first sale to The Chemical Foundation earlier in his testimony, embracing about forty-five hundred patents, and that he made those seizures upon lists, exclusively upon lists, furnished by Messrs. Barrows and Squair. Now I am asking him about this list which he says concluded the work as to the original sale, and I did not say anything about the date of the sale because I was going to show that later by the evidence.

The Court: Now let me have the question.

(The stenographer then read Q. 109 as recorded above.)

The Court: Can't you eliminate the difficulty? I do not remember whether he said that in his direct testimony or not, but, as I understand it, your objection would be met by eliminating the number of patents.

Mr. Kresel: Yes, and by the sale to The Chemical Foundation. I think if it is confined to the question of the seizure of the first batch of patents, which he says, that would be sufficient.

Mr. Anderson: He said originally that was forty-five hundred in round numbers, you know.

Mr. Kresel: I do not even recall that.

Mr. Anderson: He did say that.

Mr. Kresel: Perhaps my memory may be at fault, but I do not recall the witness putting the limit at 4,500. Did you, Mr. Gordon?

Mr. Anderson: I will ask the witness this, then:

Q. 110. Did you not state in your earlier testimony that the original list of patents seized by you in the method described was about forty-five hundred?

A. Yes.

Mr. Anderson: It was certainly clear in my mind.

Q. 111. When was the work of the seizing of that original list of patents completed, approximately?

A. I think it required longer than three weeks to complete the seizure, but I do not remember exactly the time that that required.

Q. 112. I hand you herewith a letter dated February 28, 1919, addressed to Mr. H. E. Danner, Treasurer of the American Dyes Institute, and ask you if you can identify that letter as written by you (handing witness)?

Mr. Anderson: There is no necessity for it; because it was stipulated.

A. Yes, I can identify that. I wrote that letter to Mr. Danner making my report of the work accomplished up to that time.

Mr. Anderson: In order to remove any more apprehension, I ask leave to read this letter?

Mr. Kresel: Do you offer it now?

Mr. Anderson: All right, I offer in evidence the letter dated February 28, 1919, identified by the witness as having been written by him to H. E. Danner, Treasurer of the American Dyes Institute, and identified as Plaintiff's Exhibit No. ——

Mr. Kresel: May I see it?

Mr. Anderson: I beg your pardon, I thought you knew all about it. It was stipulated.

Mr. Kresel: I do not recall which one this is (taking paper from counsel).

The Witness: Colonel, may I correct that last answer? I did not notice whether that was the original or a copy, but I did glance at the substance of it and I remember writing such a letter.

Mr. Anderson: I may state to your Honor we have stipulated the authenticity, and that these letters were sent and received, and I merely wanted to refresh the witness's memory by it.

The Court: As I understand it, the witness wants to inspect the letter again and see whether he did in fact sign it.

The Witness (taking paper): Just whether it is an original or a copy. This seems to be a carbon, but I well remember the letter and know that I wrote the original.

Mr. Anderson: I will state to the Court the original is not now in our possession, and this has been stipulated in its stead.

The Court: The letter is admitted without objection. Mr. Kresel, does the general objection apply to this or not?

Mr. Kresel: Yes, your Honor.

The Court: Then admitted under the conditions of the exhibit last week.

Received in evidence and marked "Plaintiff's Exhibit No. 65." (*See Exhibits, Vol. I, page 240.*)

Mr. Anderson: I ask leave to read this very briefly, or part of it. It is addressed to Mr. Danner by the witness and dated February 28, 1919.

The Court: February what?

Mr. Anderson: February 28th, 1919. (Reads from Exhibit 65.) May I amend the offer so as to include those schedules in the letter?

Mr. Kresel: Yes, quite right. I understand the schedules which are attached to the letter go with the letter.

Mr. Anderson: Yes, that is all right. (Continues reading Exhibit 65.)

Q. 113. Now, Mr. Gordon, you refer in this letter to the fact that the amount of work had been very far in excess of that anticipated, and that the maximum amount of patents which it was expected would be seized was two thousand, including the Badische patents. From whom did you derive the information as to the number of patents expected to be seized, or from what source?

A. I believe that was discussed the first time I met Mr. Hoguet, in January, or shortly after then, as to the possible amount of work that could be accomplished in a very few weeks' time.

Q. 114. Why was the work limited to be a very few weeks' time?

A. Because they expected any day that the Custodian's right of seizure would be stopped.

Q. 115. Then, it was not known at any time between February 4th, when you began this work, and the time of this report, how many patents you would actually be able to seize for sale?

A. No, it was not; it was not known.

Q. 116. Did you continue to seize patents even after this report was made?

A. For quite a while after.

Q. 117. So that even at the time this report was made, you did not know how many patents would be seized?

A. In addition to that number, no.

Q. 118. The work was still in progress?

A. Yes.

Q. 119. At no time during the month of February, could you form any definite estimate of the number of patents you would be able to seize during the time it was expected that the work was to go on?

A. No.

Q. 120. You stated, I think, earlier in your testimony that you originally estimated that you could seize about 1,500?

A. No, that was the estimate that could be seized in a period of a few weeks. It may have been 2,000. 1,500 or 2,000.

Q. 121. And as a matter of fact, you state in this letter, that the estimate on which you based the work originally was 2,000 patents, including the Badische; is that right?

A. That would have made my original estimate of 1,500 right, because we did not have to abstract the Badische patents. That left 1,500 that we did abstract.

Q. 122. You spoke here of moving back to the Alien Property Custodian's office. You were in the employ of the Alien Property Custodian all the time that you were doing this work, were you not?

A. Yes.

Q. 123. How did it come that you were reporting to Mr. Danner on your work?

A. Well, Danner was paying for it.

Q. 124. Did you receive any instructions from Mr. Hoguet to report to Mr. Danner what you did?

A. I do not remember whether Mr. Hoguet instructed me to report to Mr. Danner or whether Mr. Danner asked me to report to him, or whether I did it voluntarily in order to get those bills paid up and additional funds for any other work that was necessary.

Q. 125. Where did you have your office doing this work?

A. In the Washington Loan & Trust Building, for convenience, as it was right across the street from the Patent Office.

Q. 126. Then you did not conduct this work, although you were the representative of the Alien Property Custodian, you did not do this work from his office at all?

A. No.

Q. 127. And the expense of the office down there was a part of the expense that you paid out of the money advanced by Mr. Danner?

A. That is true.

Q. 128. After you moved back, as you said you would do "tomorrow" in this letter—that is, it would be the first of March—after you moved back to the Alien Property Custodian's office you continued the work along the same lines, did you, after the first of March?

A. Yes; for some time, but I do not remember just how long. There were subsequent seizures made, and a great many of the abstracts of title to subsequent seizures were made by me personally.

Q. 129. Mr. Gordon, how did you happen to come to draw on Mr. Poucher for the original $500; had you ever met Mr. Poucher?

A. Yes, I had met him once or twice in the Custodian's Office. I do not remember now whether in the Custodian's office in New York or not, but I was instructed to draw on him by Mr. Hoguet.

Q. 130. Did you see him during the progress of this work at all?

Mr. Kresel: See whom, Hoguet?

Mr. Anderson: Mr. Poucher.

A. Yes, I think he was in Washington several times, and I cannot remember just the dates that I saw him, but I saw him in the Custodian's Office several times, I know.

Q. 131. Did you ever discuss this work with him while it was in progress?

A. Not in detail, but he knew, of course, what I was doing from my first letter to him for funds to cover initial expenses.

Q. 132. You knew that Mr. Poucher was a member of the Special Committee of the American Dyes Institute that attended this conference?

A. I did.

Q. 133. And that Mr. Danner was Secretary of the American Dyes Institute, or Treasurer?

A. I did not at that time, but later I was instructed by Mr. Poucher, if I remember, to draw on Mr. Danner for subsequent expenses.

Q. 134. I hand you a letter, dated February 6, 1919, addressed to you and signed by "M. R. Poucher, Chairman of Committee American Dyes Institute." Will you say whether you received that letter?

A. Yes, I received that letter.

Q. 135. Do you recognize Mr. Poucher's signature there?

A. No; I can't say that I ever saw his signature on more than probably two or three letters; it may or may not have been signed by him.

Mr. Kresel: There is no question of the authenticity of it.

Mr. Anderson: The authenticity is admitted anyhow. I only want to complete the identification.

I offer in evidence a letter dated February 6, 1919, addressed to Will T. Gordon, Director, Bureau of Investigation, Alien Property Custodian, signed "M. R. Poucher, Chairman of Committee American Dyes Institute," to be identified and read as "Plaintiff's Exhibit No.——

The Court: Admitted subject to general objection.

Received in evidence and marked "Plaintiff's Exhibit No. 66." *(See Exhibits, Vol. I, page 246.)*

Mr. Anderson: The letter is as follows. (Reading.)

Mr. Anderson: In view of the fact that this correspondence is stipulated as to authenticity and receipt, I will not go through the form of showing it to the witness.

I now offer in evidence copy of a letter dated February 10, 1919, purporting to be from Mr. W. T. Gordon, though unsigned, to Mr. H. E. Danner, Secretary and Treasurer, American Dyes Institute. You will admit that was signed by Mr. Gordon, won't you, Mr. Kresel?

Mr. Kresel: Yes, no question about it.

The Court: Admitted subject to the general objection.

Received in evidence and marked "Plaintiff's Exhibit No. 67." (*See Exhibits, Vol. I, page 247.*)

(Mr. Anderson reads Plaintiff's Exhibit 67.)

Q. 136. I call your attention to the second paragraph of that letter which states that "Mr. Ramsay Hoguet was here last week and instructed me that our work must be completed in much less time than we at first contemplated." Do you recall whether Mr. Ramsay Hoguet stated the reasons why the work must be completed in much less time than at first contemplated, and if so, state what he said as far as you can recall?

A. I have nothing to refresh my memory on that point, Colonel. If I wrote it, it probably took place. I do not deny writing that letter at all, but what conversation Mr. Hoguet and I carried on at that time, I cannot recall. It is five years ago.

The Court: I was wondering if you will help me a little at this point, Colonel Anderson, so that I may weigh the testimony as it goes in as well as at the conclusion of the case. I am not sure whether I understand your contention in one particular. Is it your contention that the seizure as well as the sale was invalid?

Mr. Anderson: No, sir. I am not attacking the title of the Government to these patents. I do not claim at this time that the seizure was invalid. I do not know what the evidence may develop. But I do claim that the entire matter here set forth was a part of a general scheme to get control of these patents in a manner and for a purpose which we shall argue was illegal.

THE COURT: That helps me some. I was just wondering whether the testimony was offered for an underlying purpose of showing that the conspiracy, if established, would antedate the seizure and consequently invalidate the seizure as well as the sale or not.

MR. ANDERSON: I will not contend that because the Government is not going to attack its own title to these patents. But it will contend that this is evidence of a purpose in dealing with this subject by the representatives of the industry and evidence also of methods of dealing with this subject which, we shall point out in considerable detail when we come to analyze the evidence, will make the transaction of the sale invalid. Whether it will affect the title of the Government, I am not prepared to say, because the Government certainly is not going to attack its own title.

THE COURT: Now then, if you do not mind helping me further——

MR. ANDERSON: Not at all.

THE COURT: If you cannot answer these questions now, I will be very glad to have you say so. Assume just for the purposes of this question and for the immediate purpose of this question only that you should succeed in establishing your alleged conspiracy and that the alleged conspiracy antedates the seizure and that in the opinion of this or some other Court that a conspiracy was sufficient to set aside the seizure as well as the sale. Would the fact that the United States was a party plaintiff here preclude the judicial department from a decree to that effect? Would the fact that you are the plaintiff prevent a decree to that effect?

Mr. Anderson: If the sale itself was invalid?

The Court: If the seizure as well as the sale was invalid.

Mr. Anderson: I have not considered that question, sir; and I frankly would not care to answer it, because naturally I do not know that the Government could be heard to attack the title under which it itself claims.

In my judgment, offhand, reserving the right to even modify this offhand statement, because I have not considered the effect on the seizure, desiring to be entirely frank as a matter of courtesy to the Court, it seems to me that the seizure of these patents, if taken by the Alien Property Custodian in pursuance of law, would vest in the Alien Property Custodian the title to the patents; and especially since that has been confirmed by treaties, no one under those treaties is in a position to attack the title of the United States to this property, because the treaties have recognized these acts.

But taking the seizure under the acts and the very broad powers of the acts, in connection with the Treaties of Versailles and Berlin, it would probably protect completely any title of the United States, even if it were shown that the circumstances leading up to the seizure were such as in a private transaction between persons might affect the validity of the act.

But if these transactions were all in pursuance of a purpose to obtain control of these patents, in which the seizure by the Government and vesting title in the Government was merely one act, then the act of conveying title from the Government to the people who brought about this seizure in this manner, as a part of that purpose and of a larger purpose which I have outlined in my opening argument and will not re-state, would in itself be strong evidence as against the validity of the transfer as being not only affected by the circumstances which entered into the transaction taken as a whole, but by the purpose of the transaction.

It is very difficult for me to outline to your Honor fully what I regard as the bearing of this evidence without really stating at very considerable length what I believe to be the legal principles applicable; and I know your Honor does not want me to do that.

THE COURT: I do not want you to do that, but I was interested in this point of knowing whether your contention was two-fold or not.

MR. ANDERSON: We do not propose to attack our title to these patents. In other words, we will endeavor to maintain it at every cost.

MR. KRESEL: Will your Honor permit me a minute upon the question which you have raised?

THE COURT: Certainly.

MR. KRESEL: If your Honor please, the question that your Honor has raised is a question that has been in our minds for some time and was one of the grounds upon which our objectin to this line of testimony has been based, although not specifically urged.

I am rather surprised to hear Colonel Anderson now state that the Government does not claim that the seizure was invalid or illegal. I say that I am surprised at that, in view of the allegations of the Bill. Your Honor will find in the 22nd paragraph of the Bill the following statement:

(Page 22.)

> "That with the object and purpose of securing such control of said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor, and for the purposes hereinbefore stated, said persons, firms, corporations, and trade associations and others associated with them in said industry and in the control and monopoly thereof conceived and entered into a scheme, combination, and conspiracy prior to or about November, 1918, to induce and procure the seizure of said enemy-owned patents, copyrights," and so on, "by the Alien Property Custodian."

Here we have a direct allegation that these alleged conspirators had, as one of the purposes of their conspiracy, the inducement of the Alien Property Custodian to make these very seizures. Your Honor will also find in subsequent paragraphs of the complaint that it is alleged that, pursuant to such conspiracy, they succeeded in inducing the Alien Property Custodian to make these seizures.

We had been proceeding upon the theory here that this evidence which they have been offering was in support of that allegation or those several allegations. I am not quite clear whether Colonel Anderson now desires to be relieved of these allegations in his Bill of Complaint, whether he now withdraws the charge that the seizure was induced by these conspirators who induced the Custodian to make the seizure in order to carry their conspiracy into effect.

It is quite evident, your Honor, as your Honor pointed out, that if the seizure was illegal, then this property could not possibly go back to the United States Government. There is no power in the Government now to make any seizure; and if the original seizure was illegal and invalid, because tainted with conspiracy as alleged in this complaint, then these patents, if your Honor should decide that we were not entitled to them, could not possibly go back to the United States Government. They would then belong to the Germans, because there would then have been no legal seizure thereof. It would be inevitable. I can well understand why Colonel Anderson now seeks to withdraw from his allegations in the Bill, because he is too good a lawyer; he knows that the effect of any decision by this Court that the seizure was illegal would be that this property would go back to the Germans, as we claim it eventually will; and certainly it would make it impossible for your Honor to grant the relief which your Honor asks. Your Honor could not direct that this property go back to the Government.

The Court: The judicial power is purely a non-political one and it has nothing to do with international relations.

Mr. Kresel: True.

The Court: That is a matter for the legislative and Executive Departments and not for the Judicial Department.

Mr. Kresel: True.

The Court: So that if I understand Colonel Anderson's contention and your contention, you differ on this one point: I did not intend to raise any discussion. I was only asking for a little aid.

Mr. Kresel: I am very glad your Honor did raise that question.

The Court: My thought was this, that I wanted to know whether the purpose of the testimony was directed to the invalidity of the seizure as well as the sale, so that I might consider that as we go along. But as I understand Colonel Anderson, he says that even though he may show and establish a conspiracy of the dye industry—let us call it that—about November, 1918, prior to the seizure, that the seizure was induced by the dye industry as a step in the conspiracy and the first real act of that conspiracy, yet the judicial decree here may not invalidate all the acts of that conspiracy but may invalidate only the consummating act of that conspiracy. While, as I understand your contention, Mr. Kresel, it is that if a conspiracy be established so as to invalidate one act resulting from that conspiracy, the judicial power has no authority or right or discretion to stop there, but must invalidate all acts leading up to the ultimate result.

Mr. Kresel: It would seem to me that would be the logical conclusion. May I have one other word?

The Court: Yes.

Mr. Kresel: In view of the statement of Colonel Anderson now that there is no claim on the part of the Government that the seizure was illegal or invalid, I now move to strike the testimony of this witness, upon the ground that upon the statement of counsel for the Government it becomes absolutely immaterial and irrelevant. If it be not for the purpose of proving the invalidity of the seizure, what materiality or competency or relevancy has it to show what this witness did, what reports he made to Mr. Danner, who it was that advanced the money necessary to pay the expenses? It is not denied that the act of seizure was the act of the Alien Property Custodian; it is not denied that the demands made for these patents were demands signed by the Alien Property Custodian. It is not denied that this gentleman was an employee in the office of the Alien Property Custodian, and what he did he did for the Alien Property Custodian.

The Court: If I may ask one more question, and I am sorry to interrupt the taking of testimony long enough to get this help, but unless I get it as I go along it is going to be more difficult in the end. Do you contend if Colonel Anderson's contention with respect to the ratification of the seizures by International Treaties is sound, assuming that to be a fact, do you contend that that ratification would preclude Colonel Anderson from raising any contention as to invalidity of the sale; that is, the acts of the Dye Industry having been approved by the United States by its International Agreement, that thereby you could not go behind the seizure and you must then begin your evidence with respect to conspiracy after the seizure and merely during the interim between seizure and sale?

Mr. Kresel: My contention, your Honor, as to the Treaty is this—that the Treaty undertook to ratify, as I read it, all acts of the Alien Property Custodian in the seizure of property. Now, seizures were made by the Alien Property Custodian under the provisions with the Trading with the Enemy Act, under the direction of the President, and under rules and regulations approved by the President. Such direction and rules and regulations laid down a method of making a seizure. At the basis of a seizure there must be a determination of alien enemy status. My contention is that the Treaty did not and was not intended to ratify any seizure of property that was not in accordance with our Trading with the Enemy Act, and the direction and rules and regulations laid down by the President. And if it be a fact, as claimed here, that these seizures were induced by these conspirators in order to carry out their purpose, it seems to me it must follow that such a seizure is invalid and illegal. It cannot possibly be made the basis of a legal act. How can this Court or how can the Government claim that one purpose of the conspiracy is valid and another purpose of the conspiracy is invalid?

MR. ANDERSON: It can ratify.

MR. KRESEL: Who can ratify an illegal act? How can the Government ratify an unlawful act? I understood Colonel Anderson himself to argue with respect to the ratification by the President of Mr. Polk's action, which is not said to be unlawful or criminal—they do not claim that, they claim it was unauthorized, and yet they claim that could not be ratified by the Government or by the President. Is it possible that the Government is now taking the position here, that notwithstanding this seizure was the result of an unlawful conspiracy, they nevertheless ratified that?

MR. ANDERSON: No, it does not.

MR. KRESEL: If that is the purpose of the Government, I should like to understand it. They either stand by their Bill of Complaint as we have read it, or they withdraw it. If they will now say that the seizure was perfectly lawful, well and good; but if they say that, then this evidence is immaterial and irrelevant. They cannot blow hot and cold here. They cannot seek to bind us by testimony of this gentleman and various documents and interviews and correspondence between the Dyes Institute and this gentleman representing the Alien Property Custodian if it has no materiality in the case. If it is not for the purpose of showing that the seizure was made pursuant to this conspiracy, what is the purpose of this testimony?

Mr. Anderson: If your Honor please, I will answer Mr. Kresel now on his various points very briefly; because if we are going to argue this question before we get through the case we will be arguing all the week.

The Court: I did not intend that.

Mr. Anderson: Your Honor did not intend that—I know it. In the first place, Mr. Kresel has referred in a number of instances to my withdrawing from a certain position or not standing by a certain position. I want to repeat what I have already said, that the Government except to the extent that it has applied for formal amendments, absolutely stands by and will try this case upon every allegation in this Bill, without any modification whatever. And it does not withdraw any position. Distinguished counsel and myself may take different views as to the meaning of a Bill, but as we understand the Bill we stand by its allegations without the slightest change of any kind, and that applies to this entire trial unless we formally on the record take a different position. So that I hope that will not be the subject of any further discussion.

This Twenty-second Paragraph of the Bill, Mr. Kresel did not read it all, and reading down to a comma rarely expresses the intention of the draftsman. It is on page 22:

> "That with the object and purpose of securing such control of said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor,"——

that was for the purpose of requiring these things for their ends——

> "said persons, firms, corporations, and trade associations and others associated with them in said industry and in the control and monopoly thereof conceived and entered into a scheme, combination, and conspiracy prior to or about November, 1918, to induce and procure the seizure of said enemy-owned patents, copyrights, trade-marks, labels and other similar rights and applications therefor by the Alien Property Custodian, and the sale, transfer, and assignment thereof by said Alien Property Custodian to themselves or to some corporation, agency, or institution controlled by them."

The seizure was only one of the steps. In what? In the effort to obtain control. The seizure as between the original owner, the enemy-owner so-called, and the Government of the United States, may have been an entirely legal act as between those two. And nobody can raise the question as to the legality of the seizure except the enemy owners or the Government of the United States. Certain this defendant, claiming under title from the Government of the United States, can not raise the question of the validity of that seizure. Therefore, it cannot be involved in this case as affecting the title of the United States, because that can only be raised by the person who has an interest in it in a judicial proceeding, who has a case to present on it, and he can not present it for two reasons: First, as against him the formal requirements of the Statute were followed; second, if there had been any question about it, the Treaty ratifies a seizure and the acts of the Alien Property Custodian in making the seizure.

And it also, so far as the German owners were concerned and the Government of Germany was concerned, ratifies all acts of the Alien Property

Custodian in making sales of property in pursuance of law; that is, a legal sale. Therefore, so far—

The Court: Will you not tell me that again? It ratified all—what does?

Mr. Anderson: The Treaty of Berlin. The Treaty is as much a law, of course, as the Constitution or the Statutes.

The Court: Yes.

Mr. Anderson: Of course, your Honor, it had to do with the international relationships, but the Treaty is a law.

The Court: Of course.

Mr. Anderson: Therefore, so far as the Government of the United States is concerned, even if there had been a power in the alien enemy, who is the only person who had that power, to question the title of the United States to these patents, the Government by contract with Germany and including an agreement on the part of Germany to reimburse its nationals for the property so taken as a part of the consideration for the Treaty, has completely, so far as the United States is concerned vested the title in the United States by those acts.

Now therefore, we have the title in the United States. Anybody can not raise that question of title. The Courts have held in these various cases here that where the persons, the owners of the patents, undertake to sue for an infringement in an injunction case, that the United States was the only one that could raise that question.

Judge Hand said it directly.

The Court: The only one that could raise the question of what?

Mr. Anderson: That could raise the question of whether there was an infringement of the patent that had been seized, don't you see? That is, the German owner was no longer the owner; the patent was no longer owned or controlled by him within the meaning of the Act, since it had been seized by the Government of the United States, and that seizure had been affirmed and confirmed by treaty; therefore he had no position or standing in Court to question the use of that patent; whatever might be the rights of the United States against the person who is using the patent.

Now, that is as to injunction. Now, so far, we have the title in the United States. The United States could have brought this suit if it had not any interest—property interest—in these patents; and could have obtained this decree if it had not had any property interest in the patents.

In the Beebe case and other cases, the Supreme Court has held that where the United States owes a public duty to the people of the United States to sue, although the effect of the suit may be to vest title in somebody else, they can maintain the suit in discharge of that public duty. There is no controversy on that subject in this country, because this duty to the people is as necessary to the protection of the interests of those people and the property rights of those people, and the Courts sit to enforce both.

Now, in the next place, the allegations of this Bill taken together lead to this conclusion, whether it is a sound conclusion will be for the Court to determine when we get to argue the question—that these gentlemen, conceiving it to be the interest of the dye industry to get control of these patens, which we think now has been proven beyond question by their own documents, went to work to carry out a scheme to get control of them; that in pursuance of that scheme they went further and become the active agencies in bringing about their seizure. Now, if they stopped with the seizure, although they might have been the active agencies inducing it and bringing it about, yet they would have secured no benefit, and therefore the seizure would have been valid. They might have been mistaken in their judgment, but the seizure would have been valid; Germany would have been divested, and if it had stopped there, the Government would have had no cause to complain except perhaps if there had been evidence of the violation of duty toward the Government, such a transaction might have been brought within the civil or criminal statutes; but I am not discussing that aspect of the case here, and it is not involved in this cause. Here they did not stop. The seizure was only one of the steps in securing that title, in securing the patents for themselves. They could not get them any other way. Therefore, if as is charged, they induced the Alien Property Custodian to seize the patents and immediately to convey them to him, and in fact the seizure was made for the purpose of making that conveyance, there might have been a good title as between Germany and the Government vested in the United States, especially when that title was confirmed by subsequent treaty, made two years after, but the history and circumstances leading up not to the seizure as the final and culminating act, but to the question of title by the parties who were doing these things, or causing them to be done in their interest, in which the seizure was only one step, becomes relevant to the question whether that transaction is one which a Court of Equity will sustain against the Government of the United States.

Now, in its larger aspects, which I have indicated in my argument, because I do not want to go into it fully, it involves also the question of whether a transaction developed through such a combination of conspiracy as here intended, as here obviously intended, to acquire control of the foreign commerce of the United States, and monopolize a business of the United States, is invalid and the act can constitute a legal basis for a contract which the Courts can sustain. Of course, that is a very much larger question, a very involved question and one which I have not argued except to state it, and one I would not argue, because it will take a day. Now, that question and all that evidence makes this evidence especially relevant, and the law of conspiracy, if there is one law that allows you to introduce almost anything that relates to any part of the transactions of the parties, it is the law of conspiracy, on the criminal side, and on the civil side it is even more lax.

Now, in the second place, a conspiracy to require a lawful act to be done—that is the seizure—is not essentially actionable in itself, but if the acts of the parties who were the parties to that transaction are such as to indicate, develop and show a purpose to secure the doing of a lawful act, as one of the essential steps in the ultimate accomplishment of the unlawful purpose, then all those steps leading up, while it might not affect the lawful act, might affect the ultimate purpose and the ultimate transaction which had been involved.

All of those circumstances lead me to conclude, and I do not see how I can get out of it, that this evidence is clearly admissible and is of the very essence of the *res gestae* in this cause, on this phase of the case.

The Court: Colonel Anderson, do not let me get you into any further discussion, because we will have to decide this on the testimony and the record eventually and not by argument; and it is no concern of mine, or the Judicial Department as I understand it, where the chips fall. The question is what is the right and law of the matter; but it is essential that an opinion be filed or at least it is the practice. In supporting a contention—let us assume for a moment—or in supporting a conclusion that you have established a conspiracy, if that should be the conclusion—I have no thought now as to whether it will be or not until I have heard the case——

Mr. Anderson: Certainly.

The Court: But it would then be essential to show, if this evidence is convincing, that the conspiracy antedated the seizure. That is all of the question.

Mr. Kresel: Would your Honor care to hear anything about this Junkers case, that Mr. Anderson mentioned?

The Court: I think not, Mr. Kresel. Thank you very much. I think I have generally both your contention and Colonel Anderson's, and that is all I wanted to know. I merely wanted to know his contention and not particularly his reasons for it as to whether or not you are going to contend that not only the sale but the seizure as well is involved.

Mr. Anderson: I would not have given any reason, except in response to the argument of counsel.

Mr. Kresel: I move for the striking of the testimony. I take it, your Honor, that your Honor denies that motion?

The Court: Yes. And if you desire, you

may include this among your general reasons for contending that testimony is irrelevant and immaterial or otherwise objectionable.

Mr. Kresel: I would like to have that privilege, your Honor.

The Court: Very well.

Q. 137. Now, Mr. Gordon, going back to a question I asked awhile ago, did you not at the time that you were working on this matter of the seizure of these patents, subsequent to February 4th or 5th, and prior to March 1st, know that these patents were being seized to be sold to a corporation formed or to be formed which was afterwards called the Chemical Foundation, Incorporated?

Mr. Kresel: To that, your Honor, we object, as immaterial and irrelevant, as to whether he knew that. It does not make any difference whether he knew it or not.

Mr. Anderson: It makes a very decided difference.

The Court: In view of the argument just had, I am not sure if it does not make some difference, if that is decided in favor of one or the other.

Mr. Anderson: I understand that all this is subject to his objection.

The Court: He is raising another objection, a minor one to be sure, that it is immaterial as to whether this man knew it or did not know it, and I am not sure whether Colonel Anderson's arguments may be sound, whether it is immaterial.

Mr. Kresel: The point I have is this: If this witness were alleged to be one of the conspirators —you will pardon me for making that assumption, Mr. Gordon—I can quite see the purpose, under the theory of the Government, the fact that he knew that the sale was intended to The Chemical

Foundation might have influenced his official action. That is not his claim here, nor is there any claim that his official action was influenced by the knowledge we will assume that he had, that it was intended to sell these patents to the Chemical Foundation.

Now, if that is the fact, why is it relevant or material as to whether he knew that it was——

THE COURT: I will have his answer.

A. He was. I know Mr. Hoguet proceeded to sell those patents to a corporation. My first knowledge of Hoguet's idea was at my original meeting with him, about the 1st of January. At that time I believe he suggested a name as American Patents, Incorporated; and then at a subsequent time the name of the Chemical Foundation was finally decided on, and at the meeting in the Alien Property Custodian's office, at which time the minutes he referred to awhile back——

Q. 138. The 27th of January, 1919?

A. Were written; I do not know whether the name of the corporation was discussed at that time, and others, but it was generally understood that if the sale could be made and approved, that it would vest title to those patents in a corporation.

Q. 139. It appears in the evidence here that the Chemical Foundation was incorporated on the 19th of February, 1919. Did you know in the latter part of February, when you made this report to Mr. Danner, that the sale would be to that corporation?

MR. KRESEL: Same objection, your Honor.

A. I attended a meeting——

MR. KRESEL: I ask for an answer yes or no, if your Honor please.

MR. ANDERSON: I think he can answer that question, and explain.

MR. KRESEL: I would like to have the question read.

The Court: The rule here is he must answer yes or no to such inquiries, and then if he needs to add a modification, if it needs a modification or explanation, he can follow with that.

Mr. Anderson: Answer the question first, and then if you want to add any explanation, you may.

The Witness: Will the stenographer please repeat the question?

(Question 139 repeated as recorded.)

A. I knew if the sale was made at all, it would be made to that corporation.

Mr. Kresel: I ask that the answer be stricken out, your Honor, as not responsive.

The Court: Do you think that is responsive?

Mr. Anderson: I do, sir, because he could not say if the sale would be made at all.

The Court: Let the answer remain.

Mr. Anderson: Apparently, he did not know the transaction.

Q. 140. Had you heard Mr. Hoguet state that the sale would be made to The Chemical Foundation, Incorporated; and if so, about when and where?

Mr. Kresel: I object to that as leading.

The Court: It is leading. If it is objected to as leading, you had better modify it, notwithstanding I think there is no merit.

Mr. Anderson: I will put two questions.

Q. 141. Had you heard Mr. Hoguet make any statement as to the sale being made to The Chemical Foundation after its incorporation?

A. Yes, a great many statements, particularly with reference——

Mr. Kresel: One minute. I object to that. The witness has answered the question "yes."

Mr. Anderson: All right, I will ask another question.

Q. 142. Please state what those statements were?

Mr. Kresel: I would like to know when, and have the time fixed.

Q. 143. And approximately when and where, and who was present; let us get those?

A. I cannot quote exactly Mr. Hoguet's statements made five years ago from memory, but being his direct assistant, he made many statements to me relative to "putting the thing over," I believe was an expression I can remember that he used; and as to the probability of the sale being made and whether or not it would be approved——

Mr. Kresel: Just a moment, pardon me.

The Witness: ——he always being optimistic to the effect that it would be approved. Just the exact statements I cannot remember.

Mr. Kresel: One moment.

The Court (to witness): You ought to know that you should not answer against opposing counsel when he is making an objection. I will allow that to pass, and we will strike out the last statement. Will the stenographer kindly repeat that last part. (Answer repeated as recorded.)

Stop with "and whether or not it would be approved." I believe that is the part where the objection was made. Now, read the balance, so that we may see that we have it right.

(Latter part of answer repeated, as follows: "He always being optimistic to the effect that it would be approved. Just the exact statements I cannot remember.")

The Court: Strike that part out. He is merely giving now his impressions from the statement.

Mr. Anderson: I quite agree, the part about being optimistic is a conclusion rather than Mr. Hoguet's statement. The first part of the answer stands, your Honor, as I understand it?

The Court: Yes.

Q. 144. Did Mr. Hoguet ever discuss with you the matter of getting the approval of the sale by Executive order; do you recall; now speaking of the time in February that we are now discussing?

A. From memory I cannot recall the dates, but I do remember Mr. Hoguet stating that Mr. Palmer would present the matter to Mr. Polk for approval.

Q. 145. That is all you remember about that, is it?—I do not think I want to ask that general question. Strike it out, because it is too general.

Mr. Anderson: Now, without taking time for identification, I will offer in evidence a letter dated February 16, 1919, from Mr. Ramsay Hoguet to Mr. Will T. Gordon, Bureau of Investigation, office of the Alien Property Custodian, and ask that the same be identified as "Plaintiff's Exhibit No. 68."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 68." *(See Exhibits, Vol. I, page 248.)*

Mr. Kresel: Admitted subject to the same objection?

The Court: The same general objections, as were all exhibits last week.

Mr. Anderson: That is understood.

The Court: Yes.

(Mr. Anderson reads from Plaintiff's Exhibit 68.)

Mr. Anderson: I offer in evidence letter dated February 19, 1919, from H. E. Danner, Secretary American Dyes Institute, to Mr. Will T. Gordon.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 69." *(See Exhibits, Vol. I, page 249.)*

(Mr. Anderson reads Plaintiff's Exhibit No. 69.)

Mr. Anderson: I offer in evidence a letter dated February 28, 1919, from Ramsay Hoguet to Will T. Gordon, to be identified as Plaintiff's Exhibit No. 70, together with the memorandum attached, referred to in said letter, being a part of the exhibit.

The Court: There being how many pages altogether?

Mr. Anderson: There being three typewritten pages altogether; the attached memorandum being signed by W. H. Swenarton, Captain of the Ordnance Department, U. S. A. You have seen that, haven't you, Mr. Kresel?

Mr. Kresel: I do not recall it. There are some pencil memoranda on this letter.

Mr. Anderson: Will we strike those out?

Mr. Kresel: You do not offer those.

Mr. Anderson: That part down there (indicating) ought to go out.

Mr. Kresel: I just want to know whether that is included in the offer.

Mr. Anderson: The pencil memoranda here is included in the offer, but that at the bottom is not.

Mr. Kresel: Will you ask the witness about that.

Q. 164. Mr. Gordon, it appears that on the memoranda attached to the exhibit which I have offered, signed by Mr. Swenarton and addressed to Mr. Ramsay Hoguet, are certain pencil notes apparently referring to the patents of the several numbers listed in that letter of Captain Swenarton. Would you say, if you can, in whose handwriting those notes are and whether they were made by you; and, if not, by whom (handing witness paper)?

A. A part of that is my handwriting and a part of it is not. The pencil memoranda in which it says

"Reported to be owned by Badische Company" and the other part "858094 reported to be owned by Wilhelm Oswald" is my handwriting.

Q. 147. Are the notes opposite the several numbers in your handwriting?

A. No, they are not.

Q. 148. Do you know whose handwriting they are in?

A. May I read this?

Q. 149. Yes.

A. To see if I have any recollection of the transaction. (Examines paper.) That is probably the handwriting of some clerk in my office at the time, in checking that list.

Mr. Anderson: If your Honor please, in offering this exhibit I will strike the pencil memoranda and ask that those be rubbed off, and the Clerk can rub them off, by agreement of ourselves.

The Court: The pencil memoranda on the typewritten memoranda.

Mr. Anderson: Yes, accompanying the letter.

The Court: Are not included in your offer?

Mr. Anderson: No, they can just be rubbed off.

The Court: The exhibit will be admitted and printed without that memorandum.

Mr. Anderson: Yes, and I ask that the Clerk be authorized to rub that off so as to cause no confusion in printing—the pencil marks. With the statement as to the pencil notes above this exhibit is offered and I understand is admitted.

The Court: Yes.

Mr. Anderson: As Plaintiff's Exhibit No. 70.

Received in evidence and marked "Plaintiff's Exhibit No. 70." (*See Exhibits, Vol. I, page 250.*)

(Mr. Anderson read from Exhibit No. 70.)

Mr. Anderson: The accompanying memorandum or letter from Captain Swenarton, the United States Army Ordnance Department, to Mr. Ramsay Hoguet, headed "Nitrate Division," in so far as I think it is necessary to read it, is as follows: (Reading further from Plaintiff's Exhibit No. 70.)

I may explain that I introduced this letter at this time because I did not want to put in a part of a paper referring to another matter, but at a later time other letters bearing upon the matter there referred to will be introduced so that the matter may be clear.

(A short recess was taken at this point at the direction of the Court.)

Q. 150. Mr. Gordon, did you as representative of the Alien Property Custodian's office ever have any conference with the Federal Trade Commission about this matter, the sale of these patents; and, if so, about when?

A. Yes. The first one was prior to my first meeting with Mr. Garvan and Mr. Hoguet in New York in an effort to secure——

Mr. Kresel: Wait a minute, he has not been asked yet to state what it was.

Q. 151. The first one was prior to your meeting in New York. Did you have a further conference after that meeting with the Trade Commission?

A. I had several conferences and I think some of them were afterwards. During the period between the first of January and the period of actually starting the investigation.

Q. 152. That was in the month of January?

A. Probably was.

Q. 153. The investigation appearing to have started about the 5th of February. Will you state to the Court the subject of that conference and what was generally the result thereof?

Mr. Kresel: To that we object upon the ground that it cannot be binding upon the defendant; it certainly can not be binding upon the Alien Property Custodian. It does not appear that this witness was authorized to make any representations on behalf of the Custodian, if this talk was in his official capacity, which has not yet been made to appear.

Mr. Anderson: I asked him in my original question whether he as a representative of the Alien Property Custodian had had any conferences with the Federal Trade Commission on this subject. I think it appears, sufficiently appears, that he was the representative of the Alien Property Custodian in dealing with this entire subject.

Mr. Kresel: I can not quite agree with Colonel Anderson's statement of the appraisal of that situation; but however that may be, any talk that was had between this witness and a third party is not binding upon this defendant, certainly if the third party was not one of the alleged conspirators—and it is not claimed that the Federal Trade Commission was. Nor can it be binding upon the Alien Property Custodian unless it be shown that he was authorized to represent the Alien Property Custodian in this particular matter and was authorized to make representations on behalf of the Alien Property Custodian. And even if it should appear that that was the fact, we should still claim that it is not binding upon the defendant here.

Mr. Anderson: My position is briefly this. The defendant has vouched here as a part of its answer an exhibit which is a report of the Alien Property Custodian. In that exhibit, a voucher by the defendant of those evidential facts, it appears that there were discussions between the Alien Property Custodian and the Federal Trade Commission; and it further appears in the correspondence already introduced, taken in connection with that exhibit, that there was some understanding with the President on that subject as to what patents would be seized.

Possibly the statement in the report and in the letter of Mr. Ramsay Hoguet with respect to the understanding with the President as to what patents would be seized and the limitations upon the seizure, are not very clear.

I want to show from the evidence of this witness that as a representative of the Alien Property Custodian's office he went to confer with the Federal Trade Commission on this subject and that he further wrote a letter to Mr. Hoguet in which he urged that the matter should not be discussed further with the Federal Trade Commission.

All of those are facts bearing upon the general development of this scheme. I admit that in an ordinary case of a trial of a definite specific issue not involving conspiracy, it might be a little remote, although a conference between officials of the Government bearing upon the transactions involved, might even then be admissible. But in this case, I do think it is admissible. I do not wish to argue it any further than that. I am just going to offer the evidence.

Mr. Kresel: We consider it, your Honor, of sufficient importance to ask to be heard further on it, if your Honor will hear me. This only illustrates the point that I tried to make in arguing upon the question of whether the seizure was or was not illegal. Whether this witness made any statements to the Federal Trade Commission certainly can not in any way affect the right of the Alien Property Custodian to make seizure under the Trading with the Enemy Act. Even assuming that there was an understanding between the Alien Property Custodian and the Federal Trade Commission defining the sphere of each office with respect to these patents, the right of the Alien Property Custodian to make seizure can not be affected.

I do not understand that it is desired to have this witness state what the understanding was between the President and the Alien Property Custodian. I do not think your Honor understands that to be the purpose. Now then, if that is not the purpose, to affect the right of the seizure, I say that it is immaterial and irrelevant as to what this witness said to the Federal Trade Commission or what the Federal Trade Commission said to this witness; and it seems to me that we ought not to be sitting here and taking testimony that is so far afield as the question suggests. We claim that it is not binding upon us, what arrangement there was between the Federal Trade Commission and the Alien Property Custodian. For that reason, we object to it as immaterial, irrelevant and incompetent.

The Court: I fail to see myself the relevancy or materiality of any answer that this witness may give to this inquiry. But in view of the magnitude of the importance of the proper determination of the issues of this case, I think that our general rule is a proper one in this case, and that the Gvernment, having instituted this case, should possibly not be as strictly bound in the putting in of its evidence—I am speaking not from a strictly legal standpoint now——

Mr. Kresel: I understand.

The Court: But in order that there may be an ultimate determination of this case, that the Government may have a record of everything which it may consider as even remotely relevant to the issues of this case. Colonel Anderson assures me that he believes this will be connected up so as to have value. If he does not, it will not aid him in the ultimate determination by me of the issues of this case. If he does, then I would make a mistake in rejecting it at this time.

The general rule will apply, Mr. Kresel, although in this instance I do not see how it is going to be relevant. But if you think you can show that ultimately, you may proceed.

Mr. Anderson: I think I might personally make an explanation to the Court. Much of this evidence is documentary. Nearly all the persons concerned are now connected with the defendant in some way and therefore the orderly showing of this evidence is very difficult and I recognize that if I put evidence in which is of doubtful admissibility, since there is no jury here involved, neither this Court nor the Appellate Courts will consider evidence which is illegal.

The Court: Of course, I need not make this statement that counsel will not offer evidence unless they believe it to have value.

Mr. Anderson: I certainly would not, sir.

The Court: I have no doubt in my own mind about that.

Mr. Anderson: I may be mistaken, but I would not offer it unless I felt that I could consider it if I had to decide the case.

The Court: You understand that I will be just as liberal with the defendant.

Mr. Anderson: I stated at the outset, the Government wants all the facts in this case that can have any bearing.

Mr. Kresel: You were not so very good to me when you tried to put in with this gentleman that very report. But that is all right. I am not finding fault with you.

(Q. 153 and answer repeated as recorded above.)

Q. 154. I would ask you to state, if you can do so, substantially, the substance of this conference between yourself and the Trade Commission, and who was present representing the Trade Commission or any other organization?

Mr. Kresel: And when, if possible.

Mr. Anderson: Approximately when, if you can—any information that will identify the time, place, persons present and the substance of these conferences or this conference.

Mr. Kresel: Was there more than one, Mr. Gordon?

The Witness: Yes, there were several.

Mr. Kresel: Can he give the time of any of them?

Mr. Anderson: Yes.

Q. 155. You stated, I think, that you could not identify the exact dates but some of them were in the month of January?

A. That is true.

Q. 156. And that one you thought was prior to January?

A. That is true.

Q. 157. Now go ahead and state if you can what took place at these several conferences or what took place in your conferences with the Trade Commission, and if possible, who was present representing the Commission, and whether there was any one representing Mr. Hoguet or any one else was present. In other words, give the Court the facts as far as you can give them?

A. At one conference I met Commissioner Murdock and Commissioner Fort and another gentleman whom I think was a Commissioner, but whose name I have forgotten, having been referred to them for the purposing of securing a copy of the list of German patents compiled by some officer of their Bureau, and they were very insistent that I tell them what the purpose of that list was and why we wanted it, and I said possibly the Custodian will be interested in seizing certain patents, I can not tell you definitely the policy of the Custodian, because I do not know, and so far as I am advised it has not been decided yet; and they were rather inquisitive as to what patents would be seized and for what purpose, and recited to me their understanding with the President of the United States at the time he signed the amendment permitting the seizure of patents—

Mr. Kresel: Just a minute, please.

The Court: Do you want to go any further on that?

Mr. Anderson: I do very much.

Mr. Kresel: May I make a suggestion, your Honor. May I ask Colonel Anderson whether he was seeking to prove some understanding with the President and whether his theory is that that was a matter which would affect the right of the Alien Property Custodian to make seizure? Because from my point of view that would be the only purpose.

The Court: You do not need any more information on that point than I do; because I do not understand it at all, Colonel Anderson, and I shall get you to help me on that before allowing this witness to answer. And unless you establish it

I am not going to take that answer, and you can put it in the record under Rule 46 if you want to.

MR. ANDERSON: If your Honor please, I do no wish to go into a full discussion of that subject, but I think the allegation in the Answer, the statement in the report of Mr. Palmer, the statement in the letter of Mr. Hoguet, addressed to Mr. Palmer, which has been introduced here, which states that there was an agreement with the Federal Trade Commisison and an agreement with the President with regard to the seizures and sales, opens the door to showing what was the agreement with the Federal Trade Commission and the President. I feel that that is the case, but I do not want to argue it, because it involves a very elaborate review of the whole evidence in this case and we can not argue one point on a matter of evidence in this case without arguing it all, and if your Honor should rule either way I do not think—

THE COURT: Isn't the answer towards which the witness is tending open to a two-fold objection? Suppose a third person—or we won't suppose it at all, we will just assume the fact as indicated by the witness, that somebody, it does not matter to me who it was, told him that the President had said a certain thing, it seems to me that is sufficient to deny him the privilege or the right to speak further.

MR. ANDERSON: Possibly you mean under the—

THE COURT: The hearsay rule.

MR. ANDERSON: I thought possibly you meant under the law of privilege.

THE COURT: Well, no, I think the hearsay rule stops the mouth of the witness at this point—that is, that alone. In the second place, unless you are going to attack the seizure I do not see what the understanding of the President about the seizure had to do with it, assuming such understanding existed. So far as the interpretation of the law is concerned, that must speak for itself, and we can not go, if this tends in that direction, and I assume it does—we can not go into the understanding of the President as to what the law was, because that is a judicial function and you can not trespass upon the President's prerogatives.

Mr. Anderson: Can not trespass upon the Government's.

The Court: I mean an executive intrepretation, where it would be regarded with the highest respect the same as the Congressional interpretation, yet it is a thing the Courts do not inquire into. So that, legally, I do not see where this evidence tends and I—

Mr. Anderson: Your Honor will now perceive the reason for offering the statement of Mr. Bradley early in this proceeding and which your Honor refused to take in on the ground that we had not laid the foundation or that it might not be legal evidence.

The Court: May I inquire again there, because there are so many issues coming in here that it is a question which is subordinate and which is the dominating issue to support which you are offering it. Mr. Bradley's statements were offered not to affect the construction or the validity of the act but as one of the steps in the conspiracy, either in its formation or consummation, and we thought at the time it was offered as an overt act and consequently could not be established. I do not see how you can produce hearsay evidence either with respect to the Bradley statement as you were going to offer direct evidence on that. If there was the same effort with respect to the Executive as you contend there was in the Bradley statement to the Congressional Committee still that can not be done by hearsay. Now I am speaking of hearsay evidence.

Mr. Anderson: I understand, sir.

The Court: Because it seems to me I must meet that at the threshold of this objection.

Mr. Anderson: I think perhaps we will save time, if your Honor please, if you will just let me take that answer under Rule 46, and then if it is not shown in the final argument to be of any validity, I do not think this Court or any other Court would ever consider it.

Mr. Kresel: I do not understand your Honor, that under Rule 46 the Court will take hearsay evidence in any event. Under Rule 46, as I understand, you may take testimony which it is claimed is immaterial or irrelevant, but it has got to be competent and the rules of evidence have got to be observed.

Mr. Anderson: Rule 46 would not mean anything if it has to be competent.

Mr. Kresel: Yes, it would, because, suppose the Court should rule on my objection that something was immaterial, you could still insist upon its going in.

The Court: I think it is not worth while to discuss it, Mr. Kresel, although I am glad to hear you at any time, as I am Colonel Anderson. But Rule 46 does not compel the Court to take an answer. You have stated as I recall it, the purpose of this inquiry. Let us turn to Rule 46. There it says:

"In all trials in equity the testimony of

> witnesses shall be taken orally in open Court ***. When evidence is offered and excluded, and the party against whom the ruling is made excepts thereto at the time, the court shall take and report so much thereof, or make such a statement respecting it, as will clearly show the character of the evidence, the form in which it is offered, the objection made, the ruling, and the exception."

Now you may make such objection with respect thereto as you think would be proper, Colonel Anderson.

Mr. Anderson: Very good, sir. I would just as soon do that. The plaintiff offers to prove by the testimony of this witness that he, acting as the representative of the Alien Property Custodian, dealing with these matters of patents which are the subject of investigation, held a conference with the Federal Trade Commission and the members thereof which he has already stated on the record; that at that conference it was reported to him by the Federal Trade Commission that they had an understanding with the President that no patents, copyrights, etc., would be seized and sold with the exception of those relating to properties seized by the Alien Property Custodian or the stocks of which were seized by the Alien Property Custodian, and which were to be sold as a part of said properties, to be used in connection therewith; and that the President in fact came to the office of the Federal Trade Commission to confer with them and made that statement before he signed the Act of November 4, 1918, amending the law so as to allow the seizure of patents.

The Court: I think the offer is in conflict with the rules of evidence which exclude hearsay evidence. I think it would not bind the future acts of the President of the United States under the Act, subsequent to his approving it. I think that would deal with an administration policy and not a matter of right; that the Executive of the Nation would have a right to modify his policy, assuming that the right existed, and that it would have no bearing upon any issue of this case so far as I understand it. You may have your exception.

Mr. Anderson: I note an exception. I now offer in evidence a letter dated February 26, 1919, signed Ramsay Hoguet, addressed to Mr. Will T. Gordon, 1916 Washington Loan & Trust Building, Washington, to be identified as Plaintiff's Exhibit No. 71.

The Court: It will be admitted.

Mr. Kresel: The same ruling, I assume, your Honor.

The Court: Yes.

Received in evidence and marked "Plaintiff's Exhibit No. 71." (*See Exhibits, Vol. I, page 253.*)

Mr. Anderson: Would you like to see it?

Mr. Kresel: I would like to see it, though I know these very well.

(Mr. Anderson reads Plaintiff's Exhibit No. 71.)

Mr. Anderson: This is dated the 26th of February, 1916.

Mr. Kresel: 1919.

Mr. Anderson: 1919. This is the day the Executive Order was signed.

I offer in evidence a letter dated March 4th, 1919, addressed to W. T. Gordon, signed F. E. Barrows, on the letterhead of Pennie, Davis, Marvin & Edmonds, Counsellors-at-Law, New York, to be identified as Plaintiff's Exhibit No. 72.

Received in evidence and marked "Plaintiff's Exhibit No. 72." (*See Exhibits, Vol. I, page 254.*)

Mr. Anderson: If you will read it, if your

Honor please—I do not care to read it myself if your Honor will read it.

The Court: I will let you read that. I was not sure that I caught the date of the preceding exhibit.

Mr. Anderson: This is March 4th, 1919, addressed to Mr. W. T. Gordon, Alien Property Custodian's Office, sent by F. E. Barrows.

(Mr. Anderson reads Plaintiff's Exhibit No. 72.)

Q. 158. Was the Mr. F. E. Barrows who signed that letter the gentleman whom you identified this morning as the counsel for the National Aniline & Chemical Company?

A. He was.

Mr. Anderson: I offer in evidence letter dated March 4, 1919, addressed to W. T. Gordon, Esq., from F. E. Barrows, on the letterhead of Pennie, Davis, Marvin & Edmonds, Counsellors-at-Law, New York, which letterhead shows that Mr. Barrows was identified with that firm, and ask that it be identified as Plaintiff's Exhibit 73.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 73." (*See Exhibits, Vol. I, page 255.*)

(Mr. Anderson reads from Plaintiff's Exhibit No. 73.)

Mr. Anderson: The rest of it is personal.

The Court: Who signed it?

Mr. Anderson: That is signed F. E. Barrows.

Q. 159. This is the same Mr. Barrows to whom you have already referred in your testimony, is it not?

A. It is.

Mr. Anderson: I offer in evidence a letter dated March 6, 1919, initialed "W. T. G." to F. E. Barrows, Attorney and Counsellor-at-Law, New York. It will be admitted, I presume, that W. T.

G. means W. T. Gordon and that this letter was written by him?

Mr. Kresel: Yes.

Mr. Anderson: I ask that it be identified as Plaintiff's Exhibit 74.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 74." (*See Exhibits, Vol. I, page 257.*)

(Mr. Anderson reads Plaintiff's Exhibit 74.)

Mr. Anderson: I offer in evidence letter signed by Ramsay Hoguet on the letterhead of the Alien Property Custodian addressed to Mr. Will T. Gordon, dated New York, March 7, 1919, to be identified and read as Plaintiff's Exhibit No. 75.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 75." (*See Exhibits, Vol. I, page 258.*)

(Mr. Anderson reads Plaintiff's Exhibit No. 75.)

Mr. Anderson: I offer in evidence a letter dated March 10, 1919, signed by F. E. Barrows, addressed to Will T. Gordon on the lettedhead of the firm with which I have already indicated Mr. Barrows was connected, to be identified and read in evidence as "Plaintiff's Exhibit 76."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 76." (*See Exhibits, Vol. I, page 258.*)

(Mr. Anderson reads Plaintiff's Exhibit No. 76.)

Mr. Anderson: I offer in evidence a letter dated March 11, 1919, from W. T. Gordon, of the Bureau of Investigation, to Mr. Ramsay Hoguet, initialed "W. T. G." with the same agreement that it means W. T. Gordon, to be identified as "Plaintiff's Exhibit 77."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 77." (*See Exhibits, Vol. I, page 259.*)

(Mr. Anderson reads Plaintiff's Exhibit No. 77.)

Mr. Anderson: I offer in evidence a letter dated March 13, 1919, to H. E. Danner, Treasurer of the American Dyes Institute, signed W. T. Gordon, to be identified as "Plaintiff's Exhibit No. 78."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 78." (*See Exhibits, Vol. I, page 260.*)

(Mr. Anderson reads Plaintiff's Exhibit No. 78.)

Q. 160. The Danner referred to there is the H. E. Danner who was Secretary of the American Dyes Institute, is it not?

A. That is true.

Mr. Anderson: I offer in evidence a letter signed by Ramsay Hoguet, dated March 15, 1919, addressed to Will T. Gordon at Washington, to be identified and read as "Plaintiff's Exhibit 79."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 79." (*See Exhibits, Vol. I, page 261.*)

(Mr. Anderson reads Plaintiff's Exhibit No. 79.)

Q. 161. You were, at the time that letter was written, still in the service of the Alien Property Custodian, were you not?

A. I was.

Q. 162. You had then moved your office back to the Alien Property Custodian's Office, had you not? That was on the 15th of March, 1919?

A. I cannot answer that, Colonel, because I do not remember.

Q. 163. Yes. Did you place at the disposal of Dr.

Tucker the facilities of the Alien Property Custodian's Office on this subject in accordance with the request of that letter?

A. All facilities relating to the patent investigation and to patents in which he was interested.

MR. ANDERSON: I offer in evidence a letter dated March 15, 1919, addressed to Mr. Ramsay Hoguet, and initialed "W. T. G." to be read in evidence as "Plaintiff's Exhibit No. 80."

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 80." (*See Exhibits, Vol. I, page 263.*)

(Mr. Anderson reads from Plaintiff's Exhibit 80.)

MR. ANDERSON: I offer in evidence a letter dated New York, March 29, 1919, on the letterhead of the Alien Property Custodian, addressed to Mr. Will T. Gordon, and signed "Ramsay Hoguet," to be identified and read as "Plaintiff's Exhibit No. 81."

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 81." (*See Exhibits, Vol. I, page 264.*)

MR. ANDERSON: I will read the letter by Mr. Hoguet to Mr. Gordon just identified (reading).

Q. 164. Who was the Mr. Mulvey there referred to?

A. Mr. McGruder's assistant in the assignment division of the Patent Office.

Q. 165. He was the officer in the Patent Office of that name to whom you have already referred, was he?

A. Yes, sir.

Q. 166. He was the gentleman who was employed after office hours, at night and on Sundays, for the reasons you have stated, at the conversation which you have stated, at $4 a day, to help in this work; is that right?

A. An hour.

Q. 167. Four dollars an hour to help in this work?

A. Yes.

Mr. Anderson: I offer in evidence letter dated March 28, 1919, addressed to Mr. Ramsay Hoguet, initialed "W. T. G." for Bureau of Investigation.

Mr. Kresel: What is the date?

Mr. Anderson: It is the letter referred to in this letter. I should have put that in first.

Mr. Kresel: All right, put it in now.

The Court: The authenticity is admitted?

Mr. Kresel: The authenticity is admitted, yes.

The Court: Admitted.

Rceived in evidence and marked "Plaintiff's Exhibit No. 82." (*See Exhibits, Vol. I, page 264.*)

Mr. Anderson: I will not read that letter, so that will close that question.

The Court: We will take a recess until one o'clock, Standard Time.

After Recess.

Mr. Anderson: Would your Honor permit me to finish reading certain evidence with Mr. Kresel, and then I hope to make an agreement, by which it will take about ten minutes or so, to get rid of a witness. Or would you prefer me to go on now and finish that afterwards?

The Court: No, choose your own course.

Mr. Kresel: It would be only a few minutes, your Honor.

Mr. Anderson: Would you permit me to speak to the witness a minute?

The Court: Yes.

Mr. Anderson: I won't interrupt the proceedings, I will do it after adjournment. He wants to get away on a train. He wants to leave on a train, and we think we can agree on certain evidence.

Q. 168. Mr. Gordon, do you know whether it was or was not the practice of the Alien Property Custodian's Office to have property appraised before it was sold?

A. That is the practice.

Q. 169. Do you know if any appraisal of the patents here in question was ever made?

A. I do not. If there was any I never heard of it.

Q. 170. You never heard of it?

A. No, sir.

Q. 171. Did you hear of any suggestion that an appraisal be made, of the patents?

A. Yes, Mr. Hoguet told me that they had engaged Dr. Hesse, who was a chemist of one of the Aniline Chemical Companies, to appraise separately the patents seized; but so far as I know that was never carried out.

Q. 172. Did Mr. Hoguet ever discuss with you the value of this property—these patents?

A. He may have in general discussion, but I don't recall particular instances other than his statement that the big electric companies carried their patent assets on their books at a dollar each. Now, I cannot recall the date of that, but I do remember specifically that statement.

Q. 173. Was there any suggestion ever made by him or anyone else in your presence that the price fixed bore any relation to the value of the property?

A. Not that I remember.

Q. 174. Did you ever hear them discuss the method by which the amount paid was arrived at?

A. I did not. I carefully avoided all questions of value of the patents, because primarily—

Mr. Kresel: One minute, please. He has answered the question and I object to a further statement as to what he avoided and the reasons for it.

Mr. Anderson: I will not insist upon going into that if the witness has answered.

Mr. Kresel: Of course, not.

Q. 175. Do you know approximately the cost of obtaining a patent from the Patent Office? You said you are a patent lawyer.

A. The Government fees at the time these seizures were made were $35, and it has since been raised to $40. My minimum fee—

Mr. Kresel: One minute, please. I object to that.

The Court: We are not concerned with that, Colonel Anderson, what this witness's minimum fee is.

Mr. Anderson: No, I did not ask him for that. I just wanted to know what was the cost generally of obtaining a patent from the Patent Office.

The Court: The Government fees or counsel fees?

Mr. Anderson: The counsel fee is almost an inevitable incident of that cost and if the witness could say generally without going into his particular charge, if he knew what was generally the approximate cost of obtaining a patent, I would like for him to say so.

The Court: Without regard to his prime cost?

Mr. Anderson: Average cost. For instance, the evidence shows that at the conference, Mr. Barrows said that the average cost was $100 each. I want to know if the witness could state on this subject, and if he can, I want to have his general experience. I do not care for his specific fees, because I do not think that would be evidence.

MR. KRESEL: Our objection is that it is immaterial and irrelevant as to what the cost was or might have been.

THE COURT: Many patents are worth many times the cost and many are not worth anything?

MR. KRESEL: Exactly.

MR. ANDERSON: I understand that. Could the witness answer generally if he knows what is the general cost of obtaining patents. Is there any sum generally for all patents?

THE WITNESS: Yes, sir, from $100 to $150.

Q. 176. That covers the fees of the Patent Office and the usual average attorney fees as you understand them?

A. Yes, sir.

Q. 177 And the expense of printing, and so on?

A. That is right.

MR. ANDERSON: That is all.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 178. Mr. Gordon, did you have any official designation while you were associated with the Alien Property Custodian's Office?

A. My original appointment read as attorney in the Bureau of Investigation.

XQ. 179. And that was under Mr. Garvan's charge at that time?

A. That is true.

XQ. 180. And you still held that appointment when you testified this morning you were assigned by Mr. Garvan to the work that you described this morning?

A. That is true.

XQ. 181. Mr. Hoguet, whom you described as a dollar-a-year man; did he have any official position with the Alien Property Custodian?

A. I understood that he was patent advisor to the Custodian.

XQ. 182. Well, prior to this time, about the 1st of January, I think you said, 1919, when you were detailed to this work, you knew Mr. Hoguet, did you not?

A. I did not. I had never seen Mr. Hoguet prior to my first visit to his office.

XQ. 183. Well, did you know, prior to your visit to his office that there was a Mr. Hoguet who was Patent Attorney for the Alien Property Custodian?

A. I did.

XQ. 184. And while we are on that, Mr. Gordon, prior to the seizure of these patents that you testified about this morning, the Alien Property Custodian had seized other patents, had he not?

A. Yes.

XQ. 185. Indeed, I think you said this morning that one of the first things you did was to see what seizures had already been made?

A. That is true.

XQ. 186. So that you did not demand and seize the same patents all over again; you remember that?

A. That is true.

XQ. 187. And subsequent to the seizures which are involved here, the Alien Property Custodian seized other patents, did he not?

A. I have no direct knowledge. Yes, I have; the War Department seizures, I am sure.

XQ. 188. Of course. Don't you remember they seized as many as 5,600 other patents?

A. I don't know the number but I know there was a large number.

XQ. 189. A very large number running into the thousands?

A. Yes.

XQ. 190. And that, having seized those patents, the Alien Property Custodian turned them over to the War and Navy Departments; you knew that?

A. I don't know what disposition was ever made—

> Mr. Anderson: I think, if your Honor please, that would be a matter of record. If they were turned over to the office, I think that would be the proper record.
>
> Mr. Kresel: He says he did not know it, so I cannot press it any further.
>
> Mr. Anderson: I did not hear his answer.

XQ. 191. I understood you to say that?

A. I do not know what disposition was ever made of it.

XQ. 192. Did you have anything to do with the seizure of those patents?

A. Mr. Garvan suggested—

XQ. 193. Just tell me yes or no, please?

A. Well, a very limited—

XQ. 194. For instance. Did you make title searches of those patents?

A. No.

XQ. 195. You did not?

A. I could answer that question in just a few words.

XQ. 196. Well, go on and answer it?

A. Mr. Garvan assigned me to assist those gentlemen in any way I could.

XQ. 197. Which gentlemen?

A. Those who were in charge of the War and Navy Department seizures, if I may designate them as such. I offered my services and all available information I had acquired in connection with the previous investigation, but they did not seem disposed to accept it, preferring to do the work themselves and my help to them was very limited, if any.

XQ. 198. And those gentlemen were officers of the

War and Navy Departments. I mean, they were connected with the War and Navy Departments?

A. I am quite sure they were, though I have forgotten right now who directed it.

XQ. 199. I think there was a letter put in this morning in which a gentleman named Swenarton was mentioned. Do you know Mr. Swenarton?

A. I do not.

XQ. 200. Do you know whether he was one of the gentlemen that you now mention as having the matter in charge for the War and Navy Departments?

A. I do not. But being an officer in the Army, I do not think he assisted in the conduct of that investigation.

XQ. 201. Your work in connection with the seizure of these patents that you testified about this morning was done by you under the direction of Mr. Hoguet?

A. That is true.

XQ. 202. And whatever you did in this connection, you did as an employee of the Alien Property Custodian's Office?

A. That is true.

XQ. 203. Did you know Mr. Barrows prior to January 1, 1919?

A.No, I met him the first time in Mr. Hoguet's office at that conference. I do not remember the exact date of it.

XQ. 204. We will come to that in a minute. How about Mr. Squair? Is it Squire or Squair?

A. Squire, I think.

XQ. 205. Well, we will call him Squire. The spelling is S-q-u-a-i-r, I understand it. However, did you know him before this conference in Mr. Hoguet's office?

A. I did not.

XQ. 206. Your recollection is that you were assigned to this work by Mr. Garvan either the day before New Year's of 1919 or the day after?

A. That is true.

XQ. 207. And is it your recollection that either on the same day that you were assigned to this work by Mr. Garvan, or on the day following, you want to see Mr. Hoguet?

A. Yes.

XQ. 208. When did you do the first work pursuant to this assignment by Mr. Garvan?

A. During January.

XQ. 209. During January?

A. Yes, sir.

XQ. 210. Did you commence immediately after your return to Washington?

A. To the best of my recollection I did.

XQ. 211. That would be the 3rd or 4th of January?

A. Yes.

XQ. 212. Well, what did you do pursuant to that assignment before you received any patents or copies thereof from Mr. Squair?

A. To the best of my recollection, the first thing was to determine what patents had been previously seized by the Custodian.

XQ. 213. By the Alien Property Custodian?

A. Yes.

XQ. 214. That you did first?

A. Which was quite a task.

XQ. 215. Is that all you did before you received these copies of patents from Mr. Barrows and Mr. Squair?

A. No, I had the demands and reports printed, and organized the force of abstractors, and engaged office space, and got such equipment as I then thought necessary together.

XQ. 216. You are quite certain that you started on this early in January?

A. Just what do you mean by "this"?

XQ. 217. This work.

A. Yes, I am quite certain as to the day I was assigned as Mr. Hoguet's assistant if that is what you mean.

XQ. 218. Yes, that is what I do mean?

A. Yes.

XQ. 219. Did you write this letter which I show you, to Mr. Hoguet (Handing witness)? That has not yet been put in evidence?

A. Yes, that is a photostat of my letter and my signature.

XQ. 220. Before I put it in evidence, Mr. Gordon, you notice the date of it is February 3d, 1919?

A. Yes.

XQ. 221. After reading that letter is your recollection refreshed as to when you started working on these patents pursuant to Mr. Garvan's designation?

A. You mean as to the exact date the abstracting started?

XQ. 222. Yes, I mean as to the actual work of the seizing of the patents.

A. No, I do not.

XQ. 223. And making demands?

A. I know it was the first part of the year, probably the latter part of January or the first of February, but I cannot remember the exact date.

XQ. 224. Let me call this to your attention: The meeting to which Colonel Anderson called your attention, of which there was a stenographic report, which you say you read—

A. Yes.

XQ. 225. That was held on the 27th of January, 1919?

A. Yes.

XQ. 226. Do you recall whether you did any of this abstracting work before that meeting?

A. Yes, I recall that none was done before that meeting.

XQ. 227. None was done. So, at least we have it then that it was not until after the 27th of January, 1919, that you did any of the abstracting work?

A. That is true.

XQ. 228. So that the period preceding that and between the first of January, when you say you saw Mr. Garvan, as I understand it you spent in looking over your records to see what patents had already been seized engaging your quarters, engaging help, and having the forms printed; is that about right?

A. Yes, that is true.

Mr. Kresel: I now offer in evidence this letter of February 3rd; is it all right?

Mr. Anderson: All right.

Mr. Kresel: There is an enclosure with it, copy of a letter to Mr. Poucher, which I would like to go in.

The Witness: May I see the enclosure, to see if I can identify that with certainty? I did not look at anything but the original letter.

Mr. Anderson: If it is duplicated in the record, it will not be printed.

Mr. Kresel: No. The gentleman called my attention to the fact that the enclosure with this letter has probably gone in as part of the minutes of the American Dyes Institute. I have an indistinct recollection that that is the fact. If so, it will not be duplicated.

The Court: If that be true, then at this point in the record it may appear that it is admitted, but if it appears at any other part of the record, there will be no duplication.

Mr. Anderson: Yes, sir.

Mr. Anderson: Other than that, there is no objection to the offer at this time. Subject to the general objection that both sides are taking? I have no objection to this going in but the only thing, it is with the understanding that if it is in the record it will be properly identified and not duplicated.

The Court: Then it will be admitted out of order and otherwise without objection.

Mr. Anderson: Yes, sir.

Received in evidence and marked "Defendant's Exhibit No. 3." (*See Exhibits, Vol. IV, page 2035.*)

The Witness: Do you want me to identify that enclosure?

XQ. 230. Yes, if you will.

A. It does not bear my signature, but I remember dictating the letter.

Mr. Kresel: This letter is from the witness Gordon to Mr. Ramsay Hoguet. The enclosure is from Mr. Gordon to Mr. Poucher. The letter is dated February 3rd—they are both dated February 3rd.

The Court: Let the enclosure take the exhibit number followed by the letter "a."

Received in evidence and marked "Defendant's Exhibit 3-A." (*See Exhibits, Vol. IV, page 2036.*)

XQ. 231. Now, Mr. Gordon, as I understand your testimony as to the work done by Mr. Squair and by Mr. Barrows, it was the preliminary work of selecting patents which were subsequently submitted to you and which you used in making your title searches?

A. That is true.

XQ. 232. And I think you will recall, Mr. Gordon, that at the meeting of the 27th of January, at which you were present, there was a suggestion made that the patent counsel of the Chemical concerns that were there representd would assist the Alien Property Custodian because of their familiarity with the subject to the extent of making such selections?

A. I think that is true.

XQ. 233 Now, insofar as the searches are concerned, those were made by you and those working under you?

A. That is true.

XQ. 234. And after you had made your searches, you made reports to the Alien Property Custodian?

A. That is true.

XQ. 235. It was upon those reports so made by you that the Alien Property Custodian determined the enemy status of a person or corporation whose patent was being seized?

A. Yes.

XQ. 236. And it was you, or under your direction that the demand, the form of demand, was made and filed with the Patent Office which created the seizure?

A. Yes; if I may clear you on that point, the reports—

XQ. 237. I wish you would?

A. The reports and demands were made simultaneously; and for the sake of order, attached together and sent to the Custodian's office in that way.

XQ. 238. You stated that Mr. Hoguet initialed the demands.

A. That is true.

XQ. 239. And that after you had drawn them and he had initialed them they went to the Alien Property Custodian for his signature?

A. That istrue.

XQ. 240. And when you speak of the Alien Property Custodian in this connection you mean A. Mitchell Palmer?

A. Either Mr. Palmer or Mr. Garvan. Mr. Garvan came in before the work was completed, I believe.

XQ. 241. Prior to the 4th of March, of course, you mean Mr. Palmer?

A. Prior to Mr. Palmer's resignation. I do not remember the date.

XQ. 242. In other words, demands prior to March 4th were signed by Mr. Palmer.

A. Yes.

XQ. 243. Subsequent to March 4th by Mr. Garvan?

A. Yes.

XQ. 244. As to what patents should be seized, that was a question that you, Mr. Hoguet and Mr. Palmer decided; isn't that so? I did not mean to put you at the head of the list, but in the evolution you come first.

> Mr. Anderson: I think, if your Honor please, the question calls for the conclusion of the witness. As to who decides the question is a question of law. The facts in relation to and leading up to his decision is a matter as to which the witness can testify.
>
> Mr. Kresel: I do not think that, properly speaking, I am calling for a conclusion; but even if I were, I am cross-examining this witness.
>
> The Court: I think you may have the answer, and if there is any doubt about it you may clear it up on re-direct examination.

XQ. 245. Would you like me to re-frame that question?

A. I would like to hear the question again.

XQ. 246. I will withdraw that question. The determination of what patents were to be seized, which determination was subsequently carried out, was made by Mr. Palmer as Alien Property Custodian after you had made the investigation and after it had been O. K'd by Mr. Hoguet; isn't that right?

A. In theory that may be true—

XQ. 247. I am not asking you about the theory.

A. (Continuing) But in practice it was not, because in signing that many demands, Mr. Palmer could not have possibly told by the name and title of the invention whether it was a proper patent to seize or not. He simply signed them one at a time, with somebody else blotting his signature, as fast as he could.

XQ. 248. And he acted in that respect upon your report and upon your investigation, did he not?

A. Yes.

XQ. 249. Coupled with Mr. Hoguet's?

A. Coupled with Mr. Hoguet's initials.

XQ. 250. His O. K.?

A. "R. H." on each demand.

XQ. 251. That is quite right. You did not seize and when I say you I mean the Alien Property Custodian did not seize, all of the patents copies of which were sent to you by Mr. Barrows and Mr. Squair, did you?

A. No.

XQ. 252. And after Mr. Barrows and Mr. Squair had sent their copies the Alien Property Custodian represented by yourself and Mr. Hoguet subsequently seized patents which were not on Mr. Squair's and Mr. Barrow's lists at all; isn't that right?

A. That is true.

XQ. 253. Now I would like to return with you to the first conversation which you say you had with Mr. Garvan about the 1st of January, 1919. Would you mind stating whether anybody else was present at that interview but Mr. Garvan and yourself?

A. There may have been, but I do not remember anybody else.

XQ. 254. Was it at Mr. Garvan's office in New York?

A. That is true.

XQ. 255. That is the Alien Property Custodian's Office?

A. That is true.

XQ. 256. Will you state, as near as you can now recall, the substance of the conversation which you there had with Mr. Garvan?

A. Briefly, "I want to seize all German patents and I consider Ramsay Hoguet as our expert on patents and I want you to go down and talk to Hoguet and decide what can be done and how it can be done and report to me and we will follow Mr. Hoguet's and your recommendation." That is substantially the conversation.

XQ. 257. And when Mr. Garvan spoke to Mr. Hoguet, while you did not know Mr. Hoguet personally, you knew who he meant?

A. Yes.

XQ. 258. Namely, the gentleman who had been acting as Patent Counsel for the Alien Property Custodian before that?

A. Yes.

XQ. 269. It is your recollection, then, that either on the same day or on the following day you went to see Mr. Hoguet?

A. Yes.

XQ. 260. At his office?

A. Yes.

XQ. 261. In New York?

A. Yes.

XQ. 262. Did you notify Mr. Hoguet that you were coming; did you make an appointment with him?

A. I think someone from the 42nd Street Office called him up and told him I was coming down.

XQ. 263. At this interview in Mr. Hoguet's office who was present besides Mr. Hoguet and yourself?

A. No one in the first part of the interview, and subsequently during the day he called in Mr. Barrows and Mr. Prindle.

XQ. 264. Prindle?

A. Prindle.

XQ. 265. Yes.

A. And possibly one or two others that I don't remember.

XQ. 266. Then you had an interview with Mr. Hoguet when just you and he were together?

A. That is true.

XQ. 267. Now, please tell us as near as you recall it what conversation you had with Mr. Hoguet on that occasion?

A. Largely with respect to the manner in which the assignment records of the Patent Office were kept and the information necessary in order to make an abstract of title and report on the patents investigated.

XQ. 268. I assume that when you met M. Hoguet you told him of Mr. Garvin's instructions?

A. That is true.

XQ. 269. Given to you?

A. That is true.

XQ. 270. You told him, I assume, that Mr. Garvan had assigned you to this work, to be done by you under Mr. Hoguet's instructions?

A. I beg your pardon, but I think it was the following day when Mr. Garvan designated me as Hoguet's assistant, when Hoguet and I reported to him together.

XQ. 271. Then shall we take it that at your first interview with Mr. Garvan he did not designate you to this work, but told you that he wanted the work done and asked you to see Mr. Hoguet and make the arrangement; is that it?

A. Well, substantially, yes. He had not directed me to do a specific thing, but to discuss with Mr. Hoguet that thing.

XQ. 271-a. In other words, he had not formally designated you to the work?

A. No, his instructions were very general.

XQ. 272. But he did formally designate you to be Mr. Hoguet's assistant and to have charge of the work under Mr. Hoguet's supervision the day after your interview with Mr. Hoguet?

A. That is my recollection.

XQ. 273. Then to return to Mr. Hoguet's office, you told him of your interview with Mr. Garvan and you and he discussed the *modus operandi* for doing the work; is that it?

A. That is the best of my recollection.

XQ. 274. And that is substantially, as far as you recall, the subject of the conversation that you then had with Mr. Houget?

A. Do you mean when only the two of us were present?

XQ. 275. That is all I am speaking of at the present time?

A. Yes.

XQ. 276. And you recall nothing further than that as to that interview?

A. No.

XQ. 277. Did you wait in Mr. Hoguet's office until these other gentlemen joined the conference or was there a second conference on the same day about it?

A. I think we went to lunch together and met them when we came back. He telephoned them in my presence and some time during the afternoon, probably just after lunch, they met there.

XQ. 278. At Mr. Hoguet's office?

A. Yes.

XQ. 279. And your recollection now is that there were present beside Mr. Hoguet and yourself, Mr. Squair and Mr. Barrows and two others?

A. I beg your pardon. I did not say Mr. Squair.

XQ. 280. I misunderstood you.

A. I do not think he was present.

XQ. 281. Mr. Barrows was present?

A. Yes.

XQ. 282. Two others?

A. Mr. Prindle and I think one or two others whom I don't remember. Mr. Prindle and Mr. Barrows are the only two that I definitely remember.

XQ. 283. As to the other two, do you recall whom they represented?

A. No, I do not.

XQ. 284. Now then, there are four of you at least at this conference, aren't there?

A. That is true.

XQ. 285. Please tell us the substance of the conversation that was had at that time?

A. The general discussion as to whether it was advisable to license patents under Section 10 of the Act, or whether it would be better to seize those patents, and through some corporation in which title might be vested, to license from such coroporation; and then quite a discussion followed on the meaning of Section 10 and the responsibility or liability assumed by a licensee under a Federal Trade license.

XQ. 286. All this discussion as to whether it was better to seize or to license, and what the proper construction of Section 10 of the Act was, was entirely contrary to what Mr. Garvan had told you he wanted done, was it not? He told you he wanted these German patents seized, isn't that right?

A. Yes.

XQ. 287. Can you recall and can you state here either in so many words or in substance what Mr.

Hoguet said at this interview and what you said at this interview, what part Mr. Barrows took at the interview and what part Mr. Prindle had; or was it such a general discussion that you can not now recall?

A. It was a general discussion; and all of those gentlemen being my seniors in the practice, I left the discussion largely to them.

The only thing I definitely remember stating was that if I represented a client, I would advise direct infringement rather than a license, because a licensee under the law as it stood was in no better or worse position than an infringer, as he was liable to suit at any rate.

XQ. 288. You mean a licensee under Section 10 of the Act?

A. Yes, Mr. Hoguet took the leading part in the discussion, I might say.

XQ. 289. Other than you have told us now, and you have tried as I understand to give us your best recollection of the substance of the conversation at that interview—you have given it to us now as far as your recollection serves you?

A. That is true. There was no written memorandum or minutes made that I know of and it is purely a matter of memory.

XQ. 290. The reason I am questioning you so closely about this particular interview, Mr. Gordon, is that this morning upon your direct examination you said, as I made the note, that there was a discussion there as to what patents should be seized in the interest of the interested companies. I think I am quoting your exact language. Did anybody say anything about seizing patents in the interest of any interested companies, or was that your conclusion?

A. Well, if I may explain that question—

XQ. 291. I would rather, Mr. Gordon, if you can, that you would answer my question directly. Did anybody at that interview speak of seizing patents in the interest of the interested companies?

A. Yes; Mr. Barrows, for one.

XQ. 292. What did Mr. Barrows say?

A. He told of his experiences in connection with procuring licenses through the Federal Trade Commission; and so far as I remember, none of these gentlemen represented anything other than a chemical industry.

XQ. 293. You mean the gentlemen who were present?

A. That is true. And necessarily, they were the things— I mean, they were the class of patents that they were most interested in, chemical patents.

XQ. 294. Is that all you want to say in answer to my question?

A. No, I would like to preface that remark by saying, with respect to Mr. Garvan's general statement of all German owned patents, we discussed, the character of patents in which Germany led and dominated in this country, at that interview.

XQ. 295. That is, you and Mr. Garvan discussed that?

A. No, Mr. Hoguet and Mr. Barrows; and I remember it was mentioned that the American people probably led in agricultural implements and inventions and probably certain other lines in which Germany had made very nominal progress so far as inventive ingenuity was concerned, but their efforts had been confined largely to chemical dyes and such schedules in which they practically dominated the industry.

XQ. 296. You see, Mr. Gordon, I have not interrupted you purposely. I wanted you to finish your answer; and if you have finished, I want to direct your attention to the fact that that does not answer the question.

The Court: Had you finished?

The Witness: I had.

XQ. 297. What I am trying to have you recall, if you can, and tell us, is what anybody at that conference said with respect to seizing patents in the interest of any interested companies?

A. I think instead of an interested company, the industry as a whole was discussed.

XQ. 297a. Now, that is different. There is, as I understand it, the substance of this interview in addition to a discussion as to licenses under Section 10 as distinguished from a seizure—that those present discussed the advisability of doing one or the other in its relation or its bearing upon the chemical industry of the United States; is that it?

A. Yes.

XQ. 297b. All right. Now, of course, your instructions from Mr. Garvan prior to this conference in Mr. Hoguet's office were to see Mr. Hoguet and work with him in seizing all German patents, is that it?

A. Yes.

XQ. 297c. Do I understand that Mr. Garvan did not qualify that, did not say all German chemical patents, but all German patents?

A. To the best of my recollection he did not.

XQ. 297d. "All German patents" is your recollection?

A. Yes.

XQ. 297e. Now then, with that instruction in mind, you did not state to those present that that was Mr. Garvan's instructions?

A. No, I made no reference to anybody but Mr. Hoguet, as to Mr. Garvan's instructions.

XQ. 297f. Now, may I pass from that with the understanding that you have now given me your best recollection of everything that was said at that interview by all those that were present?

A. Did I in my former statement mention the experience of one or two of the gentlemen in licensing patents under the Federal Trade Commission? There was a general discussion as to their experiences in procuring licenses, I remember.

XQ. 297g. Can you tell us what was said upon that subject?

A. No, I cannot.

XQ. 297h. Well, as far as you can now recall, was the experience recited there with the Federal Trade Commission, experience that indicated satisfaction with that arrangement or dissatisfaction?

A. It is my impression that it was an expression of dissatisfaction.

XQ. 297i. All right. Now, after that interview and on the next day, I think you said you and Mr. Hoguet had an interview with Mr. Garvan?

A. That is true.

XQ. 297j. At the A. P. C. office in New York?

A. That is true.

XQ. 297k. Well, did you or did Mr. Hoguet, or did both of you report to Mr. Garvan what had taken place at this conference the day before?

A. Mr. Hoguet did most of the talking, if my recollection serves me right.

XQ. 297l. And was it upon this occasion that Mr. Garvan definitely assigned you to this work?

A. It was.

XQ. 297m. And he did that in the presence of Mr. Hoguet?

A. That is true.

XQ. 297n. And his instructions were that you were to do the work under Mr. Hoguet's guidance and supervision?

A. His instructions were that he designated me as Mr. Hoguet's assistant.

XQ. 297o. Yes.

A. Whatever that meant.

XQ. 297p. All right. Now, other than this arrangement so made that you have now described, involving your assignment as Mr. Hoguet's assistant, what else was said at this interview with Mr. Garvan?

A. I cannot recall. He said in jest just what my duties would be, that I would spend my time between New York and Washington and that I would have a tremendous big job in front of me and several comments to that effect. That it was an opportunity to do a wonderful piece of work or words to that effect.

XQ. 297q. But that was Mr. Garvan's comment?

A. Yes.

XQ. 297r. Well, you were quite willing to do the work?

A. I accepted it.

XQ. 297s. You considered this was work within the line of your duty?

A. I did.

XQ. 297t. Both your official and your professional duty?

A. I did.

XQ. 297u. And then you went to Washington and made your arrangements as you have described to start on the work of abstracting just as soon as the copies of the patents which you had to have for your work could be supplied to you?

A. Yes.

XQ. 297v. In addition thereto, of course, you made a search to see what patents had alreay been seized?

A. That was probably the first thing I did.

XQ. 297w. The first thing. Very well. Now, Colonel Anderson asked you this morning whether Mr. Barrows and Mr. Squair furnished you lists of patents. Now, my understanding of it is, and if I am wrong, please correct me—that what they furnished you were copies of a large number of patents?

A. That is true.

XQ. 297x. There were no lists, such as I could understand it.

A statement giving a number and a description of a patent, were there?

A. Not that I know of other than the list the Federal Trade Commission compiled.

XQ. 297y. That was a list that was available to you with or without Mr. Barrows or Mr. Squair?

A. That is true.

XQ. 297z. Now, other than to furnish you with the copies of those patents, what other aid and assistance did you, representing the Alien Property Custodian in this way, receive from Mr. Barrows or Mr. Squair or the persons that worked with him?

A. I believe Mr. Barrows brought down two stenographers from New York at one time and they worked for a short period of time and went back; and the investigation with respect to patents owned by some of the larger German corporations was made under Mr. Barrows' direction by having what is known as an assignee search made of the records at the Patent Office; and so far as I know, that was the principal assistance rendered by Mr. Barrows and Mr. Squair.

XQ. 297aa. Now then, as I have it, they furnished you with copies of the patents; they supplied the services of two stenographers, and they made assignment searches with reference to certain of these patents?

A. I beg your pardon, assignee searches.

XQ. 297bb. Assignee searches. Thank you. Just a little different in the Patent Office. That is a little different in the Patent Office from an assignment search.

XQ. 297cc. Well, you see I am not a Patent attorney. Assignee searches?

A. That is true.

XQ. 297dd. Did they assist in making these assignee searches that you had made, your searches as to title?

A. The work was going on at the same time.

XQ. 297ee. Simultaneously?

A. Yes.

XQ. 298. Now, in so far as employing of abstractors, hiring space, employing stenographers, employing people in the Patent Office to do work after office hours, and in all your activities in connection with the search of these patents, making of the demands, filing of those—you did all that, and in all those respects you acted for the Alien Property Custodian?

A. That is true.

XQ. 299. Now, you spoke this morning of another conference, at the New York office of the Alien Property Custodian, at which you said there were present Mr. Hoguet, Mr. Garvan, Mr. Choate, Mr. Pennie and 15 or 20 others. Do you recall that statement?

A. Yes.

XQ. 300. Can you fix the date of that?

A. I cannot.

XQ. 301. Was it subsequent to this meeting of the 27th of January, 1919?

A. I think it was.

XQ. 302. Was it after Messrs. Barrows and Squair had furnished you with these copies of the patents?

A. Yes, because a great number of patents had been seized at that time.

XQ. 303. Had already been seized?

A. Yes.

XQ. 304. And while we are on that, do you recall the date when you first made any seizure of the patents that are here involved?

A. I cannot, but that is a matter of record.

XQ. 305. Was it in the month of February, or was it later?

> Mr. Anderson: I think it is a matter of record.
>
> Mr. Kresel: Of course it is a matter of record, but I am trying to see if he can give me the date so that I can use it and go ahead with it.

A. I think it was in February.

XQ. 306. You think it was February?

A. Yes.

XQ. 307. And you continued to make seizures of patents way into the month of March?

A. Way into summer time.

XQ. 308. And into the summer of 1919?

A. Yes.

XQ. 308a. All right. Now to return to this conference at which that large body of men were present, will you state the substance of what was discussed there at that interview?

A. I think that was a meeting called to read the charter and other organization papers of the Chemical Foundation.

XQ. 309. Well, now let us stop there a minute, if you will. It is already in evidence that the organization was formed, that is, the charter was filed on the 19th of February, 1919. Is it your recollection that this conference that you are now talking about was before the filing of the charter or after?

A. I do not know.

XQ. 310. You do not know?

A. A copy of the charter, of course, and possibly the by-laws were discussed; and in other words the organization of the Company was discussed at that time.

XQ. 311. Very well. And in discussing the charter were amendments of the provisions therein discussed and considered at that meeting, or changes in it?

A. I do not remember, but I think they were. I think they were. I was not interested in the provisions.

XQ. 312. You were not particularly—

A. It was not part of my business.

XQ. 313. I see. Now, besides reading the charter and by-laws and discussing them, possibly making amendments or additions thereto, what else was done at that meeting?

A. I do not remember.

XQ. 314. The gentleman named Pennie, whose name you mentioned, as being one of those present—

A. Yes.

XQ. 315. Was that the same Mr. Pennie who was mentioned in the letter put in by the Government this morning as the man who went abroad to Paris to advise the President with reference to patent matters?

A. Yes; but I think, if you remember my testimony this morning, I referred to him as a gentleman who I thought to be Mr. Pennie—certainly a member of that firm.

XQ. 316. I understand. Now, this morning, as I recall your testimony as to this particular conference, you said that at that conference Mr. Garvan directed you to seize everything practically. Now, am I wrong about that?

A. I think you are.

XQ. 317. You do not recall that any such thing happened at that time?

A. I do not.

XQ. 318. And as you sit there now, you have given us your best recollection of everything that was done or said at that meeting?

A. No, there are one or two little immaterial incidents that I can relate, if you want me to.

XQ. 319. Of course, if they are immaterial, I am not interested in it. But the meeting was held there, and what was of importance was the reading of these organization papers and discussion of them?

A. To the best of my recollection.

XQ. 320. When was it that Mr. Hoguet suggested as the name of this new corporation American Patents Corporation?

A. Some time prior to that.

XQ. 321. To what?

A. To the date of that meeting. I believe my testimony this morning stated that possibly at the first meeting in his office the first time I ever met him or—

XQ. 322. That would be about the 2nd or 3rd of January?

A. Yes—or shortly after then.

XQ. 323. At all events, it was before January 27th, 1919.

A. You mean the date of the meeting in Washington?

XQ. 324. Yes.

A. I think it was.

XQ. 325. Considerable stress was laid this morning upon the fact that you arranged with employees of the Patent Office after hours and to permit you to do work there nights and Sundays and holidays. Did you make that arrangement?

A. I did.

XQ. 326. You made that arrangement, I assume, under Mr. Hoguet's direction?

A. I did. He knew of it, rather.

XQ. 327. Pardon me?

A. He did not direct me specifically what to do, but he knew of it—with his approval.

XQ. 328. You used your own judgment and discretion—

A. Certainly.

XQ. 329. In a matter of that sort?

A. Certainly.

XQ. 330. And whatever compensation was paid by you was paid by you for these services?

A. That is true.

XQ. 331. During those war times a great deal of work was done at the Alien Property Custodian's office after hours and at night?

A. Probably so.

XQ. 332. In fact Mr. Garvan's department, the Investigation Department, it was very often that you gentlemen had to work nights?

A. That is true.

XQ. 333. And after office hours?

A. That is true.

XQ. 334. And for such work as was done after office hours and at night, it was frequently the case that extra compensation was paid?

A. Not that I ever heard of.

XQ. 335. Well, you did not get any.

A. Certainly not to me.

XQ. 336. You did not get any. You never heard of that?

A. No.

Mr. Kresel: May I have those letters that were put in this morning? There is one particular one that I would like to get. Let me see that letter of February 3rd again, that I put in. It may be that one. Let me see the last one that I put in—just let me look at that.

XQ. 337. In this Defendant's Exhibit No. 3 which is a letter from you to Mr. Hoguet, dated February 3, 1919, that I showed you, with the enclosure of the copy of your letter to Mr. Poucher—you remember those?

A. Yes.

XQ. 338. I notice that you say in this letter to Mr. Poucher as follows:

> "Mr. Hoguet was very positive Saturday in instructing me as to the direction of this work which is being done primarily for the Alien Property Custodian, and after Mr. Barrows and Mr. Squair have determined the classes of patents to be searched at the expense of the Institute, the only further service I could suggest for them for the time being is the work of abstracting, should they see fit to engage in such work."

In point of fact they never did engage in the work of abstracting?

A. Yes, their time was too valuable.

XQ. 339. I say, they did not engage in it?

A. No, to the best of my knowledge they did not.

XQ. 340. That was the part of the work that you had charge of?

A. That is true.

XQ. 341. And that was done under your direction?

A. Yes.

XQ. 342. So that what they did was to determine the classes of patents to be searched as you say in this letter, and after they had finished that work, there was no further service that you could suggest for them except the searching of the patents?

A. That is true.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 343. Mr. Gordon, during the period of stress of the heavy work which you mentioned this morning, covering the seizure of some 3500 patents, you did devote your entire time to the search of patents which were furnished to you or selected by Messrs. Barrows and Squair?

A. I did, or to directing that search. There were a number of them engaged in it.

RDQ. 344. You spoke, in reply to one question, of rches made by you. What did you mean by arches" in that connection?

A. After the main rush of the work was over, I sonally abstracted title to various patents, a ll list of them—I might say anywhere from three four to probably fifteen or twenty—at different es up until the middle of the summer.

RDQ. 345. But during the period from February we will say, to the end of February, when this ch of patents was being seized, the original selec- or search was made by Messrs. Barrows and air, and then you searched the title on the patents ished by them or had it searched, it that true?

A. I had it searched.

RDQ. 346. You spoke of other patents which had seized prior to the time that you undertook this ial work. Do you know from your investigation of matter whether those were patents relating to orations seized by the Alien Property Custodian he conduct of his business?

A. They were.

RDQ. 347. Can you say whether up to the time this particular work of seizing this large group of nts, which you undertook in connection with srs. Barrows and Squair you found any patents had been seized that were not connected with g concerns or business or were needed by the War Navy Departments?

A. No, sir. So far as I know, there were none.

RDQ. 348. Did you ever know of the failure of Alien Property Custodian to sign any demand that presented in connection with the work under in- igation, prepared by you and initialed by Mr. uet?

A. I did not.

RDQ. 349. They were all signed?

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A. So far as I know.

Mr. Kresel: There are some letters in this series of correspondence, Colonel, that you have not put in. You may not have had them before you, and I am going to offer some of them.

Mr. Anderson: I have no objection to their being offered at this time, so far as we are concerned, sir.

The Court: Are you through with the witness on both sides?

Mr. Anderson: Yes, he can stand aside.

The Court: Was it brought out in the first few questions of Mr. Gordon's examination as to whether he was a regular employee of the Alien Property Custodian's Department, or was he a dollar-a-year man also?

Mr. Kresel: We did not ask him that.

Mr. Anderson: I would like to ask that question.

RDQ. 350. You were a regular employee on a regular compensation, were you not?

A. I was. I was not fortunate enough to be a dollar-a-year man.

RDQ. 351. When did you terminate your employment with the Alien Property Custodian?

A. Immediately after Mr. Garvan resigned. I think I was the first man under the former administration to resign when Mr. Miller was appointed.

RDQ. 352. The record shows that it was March, 1921. Then your services with the Alien Property Custodian terminated at that time?

A. That is true.

RDQ. 353. You have not been connected with the Government in any way since that time, have you?

A. No.

RDQ. 354. You are here under subpoena, are you not?

A. That is true.

Mr. Anderson: Any further question you desire asked, your Honor?

The Court: No; I do not know that it makes any difference.

Mr. Anderson: Is there any reason now, Mr. Kresel, why this witness should not be discharged from the subpoena?

Mr. Kresel: Not in the slightest

Mr. Anderson: If so, if we need you in the future you will respond to the request, Mr. Gordon?

The Witness: Certainly.

Mr. Anderson: I will ask that he be discharged.

The Court: You are discharged from further attendance under the subpoena.

The Witness: Your Honor, may I thank you and both counsel for plaintiff and defendant for promptly disposing of me as a witness.

Mr. Kresel: I think, your Honor, upon second consideration, I will not inject this correspondence which is really part of my case. I think I better withhold it.

The Court: Unless it is necessary, I should be glad to have you wait until you open.

Mr. Anderson: The remaining time we will take up putting in exhibits. We have caught up with our exhibits this afternoon and with your Honor's permission we will call no more witnesses until tomorrow morning.

The Court: Proceed in your own way, Colonel Anderson.

Mr. Anderson: I wanted to explain that so your Honor will see the reason for not calling them.

Mr. Galloway: If your Honor please, the

plaintiff next offers in evidence a copy of the subscription blank of the defendant, The Chemical Foundation, Inc., which we ask to be considered as read in evidence, as Plaintiff's Exhibit No. 83.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 83." (*See Exhibits, Vol. I, page 266.*)

Mr. Galloway: There is nothing I care to read in that, except to call attention to the fact that it provides that the stock should be issued to the voting trustees.

The plaintiff next offers in evidence a letter from Thomas Ewing. Mr. Kresel, can it be agreed that Thomas Ewing was Chairman of the Munitions Board of the War Department?

Mr. Kresel: I think that is the fact. Patent Board.

Mr. Galloway: Munitions Patent Board.

Mr. Kresel: Munitions Patent Board—which was, as we understand it, a joint board of the Army and Navy dealing with patents during the war.

The Court: Admitted.

Mr. Galloway: It is dated November 10, 1918, a letter from Thomas Ewing, Chairman of that Board, to Ramsay Hoguet.

Mr. Kresel: Mr. Galloway, may I inquire what that deals with and what is the purpose of it?

Mr. Galloway: Yes, just a minute.

Mr. Kresel: If you will tell me.

Mr. Galloway: This is a letter in which it says: "It has been suggested by the Patent Section of the Federal Trade Commission that it might be desirable for the War Department to take out licenses under enemy-owned patents where the question of infringement is likely to be raised after the war, particularly in cases where the rights have been infringed by contractors for the Government and the Government has agreed to hold the contractors harmless." I might say, Mr. Kresel, we are bringing this in now to lead up to the Haber nitrogen patents, and this is a preliminary step to that.

Mr. Kresel: I know this correspondence, and you know it, but the Court does not. Don't you think it would be well for the sake of clarity that the Court may understand the purpose of all this, to make a statement to the Court of what was proposed and what the final decision of the War Department was?

Mr. Galloway: We think that the record as we progress will do that.

Mr. Kresel: You do not think you would care to make any such statement?

Mr. Galloway: The record as we shall read it here or offer to read it will show it step by step, we think, in that regard.

Mr. Kresel: You see, Mr. Galloway, from our point of view unless it is for the purpose of connecting up with what the Foundation did subsequently pursuant to the request of the War Department and the Navy Department, it is absolutely immaterial; and I thought, as the Court has so often said there is no jury here to prejudice anybody, we might agree upon a statement we could make to the Court of what it was that the War and the Navy Departments proposed, what the Foundation did, and then you can go ahead and put in the correspondence.

Mr. Galloway: There are several intermediate steps before we get to the transaction between the War Department and the Navy Department and the Chemical Foundation.

Mr. Kresel: Is it your purpose to put in the entire line of correspondence?

Mr. Galloway: I cannot say that we shall put in the entire file, because many things we consider as perhaps immaterial to the contentions that we make here; but we do propose to put in all that we do think is material to those contentions.

Mr. Kresel: If your Honor will permit me one more minute—do you propose to put in the minutes of this proposed Munitions Patent Board, as those are material, I think; you will realize that.

Mr. Galloway: I think there are some in that.

Mr. Kresel: All right, we will go along this way then.

Received in evidence and marked "Plaintiff's Exhibit No. 84." (*See Exhibits, Vol. I, page 268.*)

Mr. Galloway: Plaintiff next offers in evidence a memorandum of conference between Honorable Thomas Ewing, Chairman of the Munitions Patent Board, and Major A. M. Holcombe.

The Court: What is that last name?

Mr. Galloway: Major A. M. Holcombe; Lieutenant S. H. Graves, of the Ordnance Department, and Mr. Ramsay Hoguet, Patent Counsel of the Alien Property Custodian, of April 23, 1919.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 85." (*See Exhibits, Vol. I, page 269.*)

Mr. Boggs: Mr. Galloway, have you our stipulation number on that?

Mr. Galloway: 205.

Mr. Kresel: 205 or 209?

Mr. Galloway: 210, Mr. Boggs. Here is an extra copy.

The following papers were submitted to Mr.

Ewing in advance of the conference: Captain Swenarton's letter of April 16, 1919, to Lieutenant Graves; Major Holcombe's letter to Mr. Prindle, of April 18th, Mr. Dorr's letter in reply thereto, April 18, 1919; Lieutenant Graves, as to endorsement on Captain Swenarton's letter; letter from Mr. Hoguet to Major Holcombe, dated April 21, 1919; Mr. Ewing stated that in the absence of some express provision in the Peace Treaty (reading).

Mr. Mahaffy: If the Court please, may it be understood that these documents, the two prior ones and this one, are admitted subject to the general objection?

The Court: That is true, not only of these two, but of all documents.

Mr. Mahaffy: Unless there is some special objection.

The Court: Unless the counsel for the respective parties change their position, there is no evidence that I can conceive of in this case that is admissible on either side in view of the opposite side, save only such testimony as may be presented by the defendant with respect to the actual value of the German patents, when sold, and so on. All other testimony is admitted subject to any objection that may be reflected by the opening arguments on either side.

Mr. Kresel: The observation is peculiarly fitting at this time, in view of this last exhibit that was just read. Of course, your Honor, under no circumstances can this defendant or the Alien Property Custodian be bound by Mr. Ewing's legal opinion as to what he could or could not do. I do not know who Mr. Ewing is.

Mr. Galloway: You say that you do not know who Mr. Ewing was?

Mr. Kresel: I do not know the gentleman at all.

Mr. Galloway: It was stipulated that he was the Chairman of the Munitions Patent Board.

The Court: Even if he is, you do not contend, as of course, that his views—I do not know just the purpose of the last argument, so when it comes time to argue I should be glad to have that pointed out.

Mr. Galloway: The plaintiff next introduces a letter from the Chief of Ordnance to the Assistant Secretary of War dated February 7, 1919, with reference to sales of enemy-owned patents, by the Alien Property Custodian.

Received in evidence and marked "Plaintiff's Exhibit No. 86." (*See Exhibits, Vol. I, page 272.*)

The Court: What is the purpose of that? Are you going to read it?

Mr. Galloway: I am only going to read a very small portion of that, if your Honor please.

The Court: Won't you tell me where we are pointing, or what you are offering these documents to support?

Mr. Kresel: That was my suggestion.

The Court: Because I am dealing in the dark and if you will, I wish you would help me out.

Mr. Galloway: If your Honor please, I think we will show with reference to the Haber patents and the correspondence coming out of the War Department upon this question, that these patents the War Department wanted, that The Chemical Foundation got them at a certain consideration, and that the Government of the United States at the time of that transfer was ready to pay more money for them, which we think goes materially to the question of value, as well as other questions material in this case.

The Court: Then it deals with value?

Mr. Galloway: It deals with value largely, it deals largely upon the aspect of value and we think upon other aspects of this case. We think it deals also with the question that the President of the United States at the time that the Executive order of Frank L. Polk was signed, did not, and did not at the time of these other Executive orders, have full knowledge of the facts relative to this sale.

Mr. Anderson: It goes to the purpose, if I may suggest to my associate, that it is stated here that The Chemical Foundation was acting in the public interests in taking over these patents, for the protection of the public, and if it should appear at the very time they were taken over, the Government was trying to get these patents itself, and the Chemical Foundation took them for less than the Government was willing to pay, it is responsive to that allegation.

The Court: Less than the Government was willing to pay?

Mr. Anderson: They took them over at a price less than the Government was willing to pay. It not only shows they were not acting in the public interest, but that they were acting against the public interest, and the Government is supposed to represent the public interest.

Mr. Kresel: I am sure, your Honor, that Colonel Anderson and Mr. Galloway would not make any statement that they did not believe was a fact; but a very important feature of this case must have escaped us if there is any evidence that will be presented to your Honor that the Government of the United States was offering to pay any price whatsoever. But it seems to me that the statement that should be made to your Honor——

THE COURT: I wonder if I can trouble you there?

MR. KRESEL: Certainly.

THE COURT: May I interrupt you there? Because there comes another one of my difficulties. Does this evidence indicate from your viewpoint that the Government of the United States was prepared to buy these patents from the Alien Property Custodian?

MR. ANDERSON: Leading directly up to that, now I am going to show in a moment, notwithstanding Mr. Kresel's suggestion to the contrary, that the President actually authorized their purchase at a price four times what The Chemical Foundation paid for them. The President himself over his own signature; and before this sale was made, and after the Executive Order was entered. We will show it all. Therefore, suppose I make this suggestion to Mr. Kresel, as he thinks we have not the evidence—suppose we go ahead and put it in and then see.

THE COURT: My difficulty, and the reason I asked the question was whether the United States, being the antagonist of the German Government, could not only seize but could buy from itself. I had been under the impression that if there had been such a seizure and confiscation by the United States—that is a refusal to deliver up title—then the compensation would be purely a question between Germany and the United States and not a question between the United States and its Alien Property Custodian, and that was my difficulty.

MR. ANDERSON: May I suggest a reply to that suggestion?

Custodian declined to give them to the Government. I do not yet see that anything Colonel Anderson has read goes to substantiate in the slightest degree the statement made by him.

On the contrary, I say to your Honor now that when all his evidence is in, your Honor will find that the Secretary of War and this Munitions Patents Board decided that they did not want to take the patents from the Government, that the Government did not want to own the patents, that the Government insisted upon having a license rather than owning the patents, and that it was pursuant to that request that not only did the Alien Property Custodian give to the Navy Department a license covering 5,700 patents which never went to the Chemical Foundation at all, but pursuant to that request, the Chemical Foundation at the request of the Alien Property Custodian gave to the Government a license which I referred to in my opening statement covering all the patents that it took over.

That is the reason why, your Honor, I suggested when Mr. Galloway started reading this line of correspondence, that a statement be made to your Honor so that you could understand the relevancy of this. You will find that the eventual decision of the War Department authorities, notwithstanding anything that went before, that what they wanted was a license and not to own the patents.

Mr. Anderson: Now then, I will make the statement on the record, as long as counsel has made his statement on the record. We shall prove, if they want, that before these Haber patents for fixation of nitrogen were ever turned over to the Chemical Foundation, the authorized and qualified offices of the Government did advise the Alien Property Custodian that the Government of the United States desired to acquire them and that they were necessary in connection with its Muscle Shoals and Sheffield development on which it was spending millions of dollars; that in pursuance of that desire, as they claim and the correspondence indicates, a promise on the part of the Alien Property Custodian was made to let them have them; that they were seized and sold by the Alien Property Custodian to the Chemical Foundation; and that while that seizure was going on and at the very time your Honor will recall before the actual assignment took place on April 10th, and after the seizure in March, the President himself authorized the expenditure of $10,000 and additional funds for investigation for the use of these patents in connection with Muscle Shoals; that when they went back to get these patents from the Alien Property Custodian they were told that they had been sold to the Chemical Foundation and that they could go to the Chemical Foundation for a license; that the officers of the War Department were outraged and their correspondence so shows——

THE COURT: Were what?

MR. ANDERSON: Were outraged at what they regarded as the failure to give them the protection they had expected; but being left to no other resort, they went to the Chemical Foundation and asked for a license to use these patents; that in the face of the Act of Congress, authorizing the Government of the United States to construct the plant at Muscle Shoals and to sell the surplus nitrogen produced for commercial purposes, fertilizer purposes, in the interest of agriculture, the Chemical Foundation replied that they would not license these patents to the United States Government except upon an express limitation that the stuff produced under these patents would be only for Government use and that they could not sell it for commercial purposes or allow any contractor to use these patents for the production of stuff for the Government itself; that it was only for the Government use and that the product must be used exclusively by the Government—which made the operation of Muscle Shoals absolutely impossible, standing idle today, and that The Chemical Foundation refused a license under those conditions and that the Government of the United States with a $20,000,000 or $100,000,000 plant, or whatever it was, suspended in mid-air because they could not get a license under which they could operate. That is the purpose of this evidence. Your Honor has it clear now, I think. I was not going to anticipate it, but I will state it on the record.

The Court: I am glad you did, because I could not properly weigh it as it stood, unless I had known the ultimate purpose of it.

Mr. Anderson: Certainly, sir.

Mr. Kresel: You know, I enjoy arguing with Colonel Anderson so much that I cannot refrain from answering him if your Honor will permit me.

Mr. Anderson: That applies to both of us, then.

Mr. Kresel: May I make one observation. Colonel Anderson is speaking of the Muscle Shoals plant. He knows that the Muscle Shoals plant is not working under the Haber process at all. It is known as the cyanamic process, which has nothing to do with the Haber patent.

Mr. Anderson: That may be a question.

The Court: You do not seem to be any closer on this than on other things.

Mr. Anderson: I am prepared to say in reply that plant No. 1 is for synthetic processes, and I have Mr. Garvan's statement that it cannot be used without the Haber patents. I am taking Mr. Garvan's own statement for that.

The Court: You may proceed with the exhibits, Mr. Galloway.

Mr. Kresel: At least we have enlightened the Court to some extent.

The Court: You may state the contents of those documents in so far as possible, without reading them into the record.

Mr. Galloway: I shall do so. This is a letter from Major General C. C. Williams, Chief of Ordnance of the United States Army, to the Assistant Secretary of War, dated February 7, 1919, in which, among other things—it is entitled, "Subject: Enemy-owned patents pertaining to munitions." Among other things, this letter sets out that they had received unofficial information concerning recent sales of corporations by the Alien Property Custodian, including patents, especially a number relating to chemical processes and some of which may be more or less directly involved in the manufacture of munitions, and that they are not informed as to whether the right of the United States Government to use these patents has been protected, and that if that is not taken care of probably the United States will have to pay large royalties upon such patents which are now being purchased at reasonable rates from the Alien Property Custodian, and that it is also conceivable that private parties or corporations purchasing these patents might through the control of an industry or any certain process, restrict the development of that industry and process and control the need of the United States. I had better read this part. I would rather read that in there, because it is pretty important. (Reads from Plaintiff's Exhibit No. 86.) And then it goes on and states that, having no direct rights under the patent the Government would be handicapped and embarrassed if this should continue. It says that in regard to most of them it is essential that the United States should be assured that adequate facility and experience for working these processes are available in the United States. (Continues reading Plaintiff's Exhibit No. 86.)

Mr. Boggs: Pardon me, Mr. Galloway, what is the stipulation on this last one?

Mr. Galloway: That is 205, and the next I am coming to is 110, Mr. Boggs.

The plaintiff next offers in evidence a letter dated February 11, 1919, from A. M. Holcombe, Major, Ordnance Department, and representative of the Munitions Patents Board, to the Alien Property Custodian.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 87." *(See Exhibits, Vol. I, page 274.)*

Mr. Galloway: I ask that the same may be read as Plaintiff's Exhibit No. 87. If your Honor please, this letter states that Major Holcombe at the request of the Assistant Secretary of War asks for a conference with the Alien Property Custodian with reference to the seizure and disposal of enemy-owned patents, in order to secure protection for the interests of the United States, and states that this matter has been discussed informally with Mr. Hoguet, of the Custodian's office, "who has given assurance that no sale of any enemy-owned patents of any class relating to munitions or materials entering into the prosecution of the war will be made by you in advance of notice thereof to the War Department." It goes on to state that Mr. Hoguet has suggested that a list of enemy-owned patents in which the War Department was interested might be prepared, and that in view of the large numbers this was not practicable.

Mr. Kresel: Would you mind reading the fourth paragraph of that exhibit?

Mr. Galloway: (Reads from Plaintiff's Exhibit No. 87).

Mr. Kresel: That is all. That is what I wanted the Court to hear.

Mr. Galloway: We are very glad to have it here.

Mr. Kresel: There is no question at all of selling the patents to the Government. It is a question of license.

Mr. Anderson: Do you not think we ought to wait to argue this out until we get through?

Mr. Kresel: Yes, we ought to.

Mr. Galloway: This letter than continues and I better read another paragraph here. (Reading.)

He goes on to state that the interests then of the United States in these patents is considerable because of the extensive use that might have been made of them during the war and that these things are suggested as merely indicative of the great interest of the United States.

The Court: Are the 5,700 patents that were referred to a while ago purchased by the United States?

Mr. Galloway: They were purchased by the United States.

Mr. Kresel: No, a license was given.

Mr. Galloway: A license, yes.

Mr. Kresel: They were not purchased at all by the Government.

The Court: Were any enemy Alien patents bought by the United States at any time?

Mr. Galloway: I cannot answer that.

Mr. Kresel: With reference to the 5,700 patents, as long as the Court has inquired, I am sure there can not be any difference about the fact. The Government paid to the Alien Property Custodian $100,000, for which it received a free license during the life of those patents and release for any claim for damages for infringement of those patents and all other patents owned, taken over by the Alien Property Custodian during the war. That is the fact.

Mr. Galloway: I do not think we can agree that license was broad enough to include all others.

Mr. Kresel: I did not say the license. I said the release. The license covered the 5,700 patents.

Mr. Anderson: It was a non-exclusive license.

Mr. Kresel: Certainly. A non-exclusive license.

Mr. Galloway: Another thing, the release you refer to was a release that was executed without any consideration at all, as to the Alien Property Custodian, on April 10, 1919.

Mr. Kresel: No, Mr. Galloway.

Mr. Galloway: There was another release executed without any consideration.

Mr. Kresel: You are mistaken, Mr. Galloway, but the Court has inquired with reference to the 5,700 patents.

Mr. Anderson: Of course, your Honor will understand we do not admit the correctness of Mr. Kresel's statement on the record.

The Court: I am having just a little difficulty in working out in my own mind; it may be perfectly clear to you and the rest of you, it is not to me yet—just how any negotiations between the United States Government and the Alien Property Custodian amounted to anything. It may be entirely clear. It seems to me that is entirely a question that may be entirely clear to you but is not entirely clear to me. It seems to me that is a question like the combination of the alien patents which would be purely a question whether the United States is not going to give them back. It does not have to. It has power to keep them. It would seem to me it is merely a question whether the Government is going to pay Germany or not. That would be a peace controversy and not a judicial controversy.

Mr. Galloway: That gets back rather to the question of the meaning of the Act and whether or not it was confiscation.

The Court: It may go beyond that. It may be even deeper than that, but you may proceed.

Mr. Galloway: The plaintiff next offers in evidence a letter, or a memorandum rather, from the Alien Property Custodian, initialed "A. M. P.," to Mr. Hoguet, dated February 12, 1919; and asks that the same be received in evidence as Plaintiff's Exhibit No. 88.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 88." (*See Exhibits, Vol. I, page 276.*)

Mr. Galloway: That is 184, Mr. Boggs, under the stipulation.

This letter, if your Honor please, refers to a meeting that Mr. Palmer had held with these representatives of the War Department and I wish to read this. It is short. (Reading.)

Plaintiff next offers in evidence a memorandum by Major A. M. Holcombe, from the files of the War Department, which is a memorandum by him of the same conference.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 89." (*See Exhibits, Vol. I, page 277.*)

MR. BOGGS: What is the date of that, Mr. Galloway?

MR. GALLOWAY: That is February 12, and is No. 111 under the stipulation.

This memorandum is concerning the same interview and says that the interview was held with Mr. Palmer pursuant to instructions—to the memorandum of February 7th, from the assistant director of munitions, that Major Holcombe, Captain Dix and Captain Swenarton, of the Nitrate Division of the Office of Chief of Ordnance, went to the conference; and that they handed Mr. Palmer a letter at that time and that the Alien Property Custodian said that he would be glad to sell to the War Department for a nominal sum, any patents in which the War Department is interested; as had already been done in the case of certain wireless patents in which the Navy Department was interested, but that he did not propose to sell enemy-owned patents to Americans generally, except in connection with the sale of enemy-owned businesses actually carried on in this country or in special cases in which the patents dominated the control of an American industry.

He said that the matter of patents was largely in the hands of Mr. Hoguet, and that he would be glad to have the War Department present to Mr. Hoguet for consideration the form of the purchase agreement for use in disposing of patents to American purchasers which would safeguard the interests of the United States in so far as past use is concerned. He did not look with favor upon requiring the purchasers to give the United States free license to use the inventions in the future, but stated that he would consider any recommendations which Mr. Hoguet might make.

He further stated (reading).

THE COURT: Adjourn Court until tomorrow, 8.30 o'clock Standard time.

(Whereupon at 3 o'clock Standard time, the case was adjourned until tomorrow, 12th of June, 1923, at 8.30 o'clock Standard time.)

SEVENTH DAY.

Wilmington, Delaware,
June 12, 1923, at 8:30 o'clock, a. m.,
Standard Time.

Before:
HON. HUGH M. MORRIS, U. S. District Judge.

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. ANDERSON: If your Honor please, I would ask permission to interrupt the regular order of the evidence this morning, which was dealing with another matter, as Mr. Frank Polk, former Under-Secretary of State is here and I do not wish to keep him any longer than necessary on account of other engagements.

In that connection, I would like to make a brief statement which I think is due myself perhaps and

Mr. Polk, and will ask him to confirm it. When this Bill was being drawn, I had a personal talk with Mr. Polk in New York to ascertain what, if anything, he recalled as to the signing of these orders. At that time he stated to me that he did not have any distinct recollection on the subject and as I recall he said that it was done formally as other matters came before him.

At that time he had not been able to find any correspondence relating to the order at all and Mr. Polk did not know of any, could not locate any. Therefore, from that statement as well as other matters which will appear in evidence and need not be mentioned now, certain allegations were put into the Bill on that ground.

Since that time, Mr. Polk tells me that his memory has been refreshed and he has gone over and made a careful study of the situation and does recall certain matters in connection with it and also has discovered this letter from Mr. Palmer. Therefore, in the ordinary course, he would not be a witness for the Government. He would not be called for the Government. However, I want all the facts, as I stated, to come before the Court; and instead of postponing Mr. Polk's testimony, as it would naturally come in for the defense, I want to ask this morning that he go on the stand and I will just ask him to state the facts as he now recalls them and as the records disclose them, that the Court may have all the facts before it. But I do not want to call him as a Government witness. If I have to do that, I will do that even. But, if your Honor will understand the circumstances, I do not want to be in the position of being bound by his statements as I would ordinarily; and therefore, even under those circumstances, I would call him because Mr. Polk's statements, of course, will be in accordance with his recollection at the present time. I will therefore ask Mr. Polk to take the stand.

Mr. Kresel: Do I understand from this that the Government is asking the Court to rule that the Government is not to be bound by what Mr. Polk may say?

The Court: Will you state your position again with respect to that, Colonel Anderson.

Mr. Anderson: I mean to state this, that at the time Mr. Polk was summoned, I assumed that his evidence would be in accord with his original conversation with me and I want to make it very clear that there is not a suggestion of want of frankness or criticism of Mr. Polk, because I know very well that business men who are busy frequently find things afterwards that they did not know of at the time.

Under those circumstances, I would not ordinarily call Mr. Polk as a witness. But having been summoned, I feel it would not be frank to the Court if I did not let him go on the stand when he came here, even though his memory of the situation was different from what it was at the time that I made the statement.

I could say that I called Mr. Polk as an adverse witness. That would not be true because it would imply that he had a mental adversity to the position of the Government. I do not believe that for a moment and therefore I want the Court to have all the facts in this case. But I do not think, even with that statement, as I ordinarily would not call him, that the Government ought to be required as a matter of accommodation to Mr. Polk to put him on the stand, even though at the present time the Government may wish to take a position adverse to his testimony, from other testimony in the case.

As I stated to the Court, I want to be absolutely frank in this matter, but I want to protect the interests of my client in accordance with the rules of law, and the only way I can do that is to state my position to the Court frankly and ask the Court what it desires done.

THE COURT: I think you have placed your position on a very broad plane, Colonel Anderson. The only question is the question raised by Mr. Kresel as to whether you may introduce, I assume, other evidence in conflict with that given by Mr. Polk, should you put him on the stand. Now then, I do not understand from your inquiry, Mr. Kresel, that you intend to indicate that the Government may not argue or debate or contend at the conclusion of the case, make any contention that it desires, that is supported by any testimony in this case, whether produced by you or by the Government.

MR. KRESEL: Of course, the Government is entitled to draw any inference or base any argument upon any testimony that is in the case. Of course I do not understand the Government can call a witness and elicit testimony from the witness and then say "We are not bound by what he said."

THE COURT: That is the ordinary rule, of course.

MR. ANDERSON: The ordinary rule, but that is the reason why I want to make my position entirely clear. That is due to Mr. Polk and to the Court. I want the facts to come out, but I do not want to put the Government in a position for this Court or any other Court to say that the Government introduced certain evidence. If I am forced into that position, then, I would have to say frankly to the Court that having ascertained that Mr. Polk's views are different now from those which I originally understood when he was summoned, that I did not desire to call him, and state the reasons; but I do not think it is fair to Mr. Polk, if he is going to testify at any time in the case, to require him to come over here twice for that purpose. I am perfectly willing to have him go on the stand at this time and we have known the Court itself to call witnesses. I am perfectly willing for the Court to take his evidence.

THE COURT: I do not need to take the initiative in the case when the case is handled by counsel as it is in this case.

MR. ANDERSON: Certainly not.

THE COURT: So that if there is an objection, I shall not change the ordinary rules with respect to the production of witnesses and the binding effect of their testimony. Now, in making that statement, Mr. Kresel, I am not even indicating or suggesting that you are doing anything, even approaching anything improper, in giving any reason and objection to this.

MR. KRESEL: Before we take our position in the matter, I desire to have a little more information from Colonel Anderson as to the respects in which he states Mr. Polk's recollection of the transaction is different now from what he says Mr. Polk stated it was at the time when Colonel Anderson went to see him.

MR. ANDERSON: I shall be very glad to state it.

MR. KRESEL: Pardon me just one minute.

MR. ANDERSON: I beg your pardon.

MR. KRESEL: Your Honor will recall that the allegation in the Complaint is—I think I read it to your Honor yesterday—that facts were misrepresented to Mr. Polk, that essential facts were suppressed from him—

MR. ANDERSON: Not suppressed—withheld.

MR. KRESEL: "Suppressed," I think is the word.

MR. ANDERSON: All right. It is the same thing.

MR. KRESEL: That by means of these representations and suppression of facts he was induced to sign these orders, and that if he had known the facts that had been suppressed from him and had known the true facts, and not those that were misrepresented to him, he would not have signed the orders.

Now, I want to know from Colonel Anderson whether when he saw Mr. Polk, during the time that he was drawing this Bill of Complaint, Mr. Polk told him that facts had been misrepresented to him, that facts had been suppressed from him, that if he had known the true facts he would not have signed those orders. Of course, if that was the statement made to Colonel Anderson by Mr. Polk I can see the justification for the Government now coming in and saying one certain state of facts was represented to us when we were drawing the bill and now, without any reflection on Mr. Polk or anybody else, a different state of facts is represented to us.

Mr. Anderson: I am perfectly willing to answer Mr. Kresel's question and argument. In the first place, if Mr. Polk goes on the stand—I am perfectly willing without his going on the stand to make the statement as a member of the Bar. I went to see Mr. Polk in New York, he and Mr. John W. Davis and myself were sitting down talking about this matter. I asked him, as far as I can now recall, what was his recollection of what took place. He stated that he had practically no recollection of the matter, it was very indefinite in his mind, he had not investigated it at that time, and that he had no recollection on the subject, except in the most hazy way, if at all. I further asked him if—I will try to get it straight—I think I asked him if the matter of the purpose of this sale was explained to him, and he said as far as he could remember the order was signed as a formal matter that went through the office, that he was very busy, and that he had all these duties imposed upon him at that time, and that it was signed as a formal matter, like anything else, he had no further recollection on the subject.

The allegations of the Bill are to the effect that facts were withheld, because if no further facts than that were disclosed to Mr. Polk to make any impression on his mind, the other facts in the case that we knew then were not disclosed and were withheld, and the conclusion that I have stated there—and I shall also, and did in my opening statement indicate that I would argue that the face of the order itself indicated that the facts were misrepresented. I do not mean to say intentionally, I do not mean to say a fraud was worked on Mr. Polk. I am not saying that now and I hope I won't have to say it, as I stated before. But the other conclusions are conclusions drawn from the whole facts as they were before me, in connection with the fact that Mr. Polk had no recollection of any of these matters being brought specifically to his attention.

I think that is a fair statement. There was quite a long discussion between us on the subject, but I believe Mr. Polk will bear me out that that is a fair statement of what took place between us and is within what took place between us.

Now, under those circumstances I made the allegations in the bill, or the Government made the allegations in the bill, drawn from all the record and all the facts and circumstances; and, therefore, if now Mr. Polk, in making an investigation of this subject finds that his then recollection is different now—which very many men do, and I might or anyone else—and going over this record completely recalls certain things, then I want those facts to go before the Court. But I do not want it to appear that the Government calls him as a witness to disprove the facts.

THE COURT: I am sure that I understand your mental attitude on one thing, Colonel Anderson.

MR. ANDERSON: Yes, sir.

THE COURT: And, that is, let me assume that Mr. Polk's recollection is different now; that is, his recollection has been refreshed, and he recalls the transaction.

MR. ANDERSON: Yes.

The Court: I can very readily understand how a man having so many transactions lets one transaction escape his mind.

Mr. Anderson: Yes.

The Court: I recall being on the witness stand myself when a fact that was clearly documentary escaped my attention and I recalled it from a record. Do I understand that should Mr. Polk's testimony not support the allegations in your bill, that you would call other witnesses to support those allegations?

Mr. Anderson: At the present time, if your Honor please, I do not know of any other testimony that we could put in which would be in direct conflict with that position; because I do not think I can bring anybody probably to testify what Mr. Polk recollected. Therefore, I do not think the direct conflict would arise. But your Honor knows how often the Courts say the plaintiff's own testimony shows so and so, and ordinarily if I had that experience and had examined a witness under your Honor's subpoena I would complain to the Court and say that under the circumstances I did not want to call that witness. But this witness is of a different type and I felt that frankness required me, and the method under which I am conducting this case, to come before the Court and state the whole facts.

Mr. Kresel: I think Colonel Anderson's position is admirable, and I am quite certain, your Honor, if Colonel Anderson had had the information before him that he now has, that allegation in the bill would not have appeared.

Mr. Anderson: That is a matter I will argue later.

Mr. Kresel: But with the information that we now have as to what took place between Colonel Anderson and Mr. Polk at their interview, I cannot yet see, your Honor, how the statement of a witness that he had no recollection can be made the basis of an allegation that misrepresentations were made to him and that facts were suppressed from him and that if he had known the true facts he would not have acted in that way.

Colonel Anderson can do one of two things: He can either withdraw that allegation or, if he desires, he can put Mr. Polk on in the regular way and be bound by what he says; and I will say to Colonel Anderson now that if he declines to put Mr. Polk on and declines to withdraw the allegation in the complaint, then in due time when our case comes on we shall put Mr. Polk on. Now, that is our position.

Mr. Anderson: Then, if your Honor please, I do not withdraw the allegation, because I think the record in this case will support the allegation—justify the allegation. But with the statement which I have now made upon the record explaining my position, and as a convenience to Mr. Polk, who is a very busy man and entitled to every consideration, if Mr. Kresel takes that position, in order to prevent him from having to come back here at a later stage in this case, I will call Mr. Polk and take the risk of his testimony.

The Court: I assume that you do not mean any substantial criticism of Mr. Kresel's position—

Mr. Anderson: Not at all, because he is acting within his rights.

The Court: Because he has the duty of protecting his clients.

Mr. Anderson: Not at all; he is acting within his rights entirely. I have not criticised counsel and do not mean to; but I mean if he feels obligated, probably it would be better to take that position, have Mr. Polk come back later, when for the convenience of Mr. Polk I am going to take the chance and let the Court have the facts. With that explanation on the record I take his testimony.

The Court: Of course, the interests of Mr. Kresel's client have a greater weight than Mr. Polk's convenience.

Mr. Anderson: Of course, and the interest of the Government I do not think will suffer.

FRANK L. POLK.

Frank L. Polk, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Mr. Polk, will you please state on the record your full name and place of residence?

A. Frank L. Polk, New York City.

Q. 2. You were during 1918 and 1919 Under-Secretary of State of the United States, were you not?

A. Counsellor for Department of State up to July 1, 1919, and from that time on Under-Secretary of State. It was the same office, but at the time it was changed.

Q. 3. Yes, I know. And during the absence of the Secretary of State in Paris after December 3rd until the middle of the next year you were Acting Secretary of State?

A. Yes, sir.

Mr. Kresel: December 3, 1918?

Mr. Anderson: Yes, December 3, 1918.

Q. 4. Mr. Polk, you are generally familiar with the questions involved in this case, are you not? I mean the controversy here.

A. In a general way.

Q. 4-a. It appears from the exhibits filed with the answer in this case that about December 3, 1918, the President on his departure for Paris signed an

Executive order by which he vested or undertook to vest in you all the power and authority given by the Trading with the Enemy Act to issue Executive orders under Section 12 of that act except as expressed in the order itself. You recall that circumstance?

A. Yes, sir.

Q. 5. It also appears that acting or purporting to act in pursuance of that authority you issued two orders signed by yourself—which I will show you if you wish, but undoubtedly you are familiar with them. —one dated February 26, 1919, and the other dated April 3, 1919, in relation to the sale by the Alien Property Custodian of certain former enemy-owned patents which had been seized by him, the sale to be to The Chemical Foundation, Incorporated, the defendant here. I should be very glad if you would state to the Court the facts in connection with the signing of that order and present any correspondence you may have dealing with that subject, and make the full statement, and in that connection, if you would do so—you have heard my statement at the Bar—would you make any statement on that subject which you desire to make?

A. I am very glad of the opportunity, Colonel. May I look at a copy of the order?

Mr. Kresel: Just a minute, please.

The Court: You may refresh your recollection in any way you desire.

Mr. Kresel: Just a minute before the witness answers the question. The defendant objects to the question upon the ground that it is immaterial, irrelevant and incompetent, on the ground that it is an effort by testimony about to be introduced to have the Court pass upon a matter which by act of Government was given into the discretion of the President acting through such officers as the President may appoint according to that act, and that such discretion was exercised by the

President acting through such officers as he appointed; that, therefore, the act of the President is one that the judiciary can not interfere with or review. In support of this objection, we desire your Honor to take into consideration and to consider as specifically urged the grounds urged by Mr. Guthrie in his argument before your Honor upon this very question of the non-justiciability of the question here presented.

Mr. Anderson: Then, if your Honor please, the question is withdrawn. I am through with the witness.

Mr. Kresel: That is all, Mr. Polk.

The Court: You mean, Colonel Anderson, that I should take that as a waiver of your position?

Mr. Anderson: No, sir. I insist upon my legal position, that if the question is objected to, I withdraw it.

Mr. Kresel: It seems to me, your Honor, we have come to a place now where we might as well understand the Government's position. The Government can not blow hot and cold here. Our position has been made perfectly clear from the outset, that we contend the Court has no jurisdiction to review the act which the Government has asked the Court to review.

The Government has come in here by its Complaint and has sought to have the Court review this act. They have called a witness here and have sought to elicit from him evidence in support of the allegations in their Bill. We take our objection, as we have a right to, in order to support the position that we have taken. The Government says to your Honor now, "Well, if that is the position of the defendant, we won't bring out this testimony."

It seems to me that all this question of frankness with the Court must be somewhat discounted if those are going to be the tactics of the Government. They either ask the Court to review these acts of the President or they don't.

The Court: Your position has been made clear from the beginning and that, as I understand you, is one of the crucial contentions that you shall urge and have urged.

Mr. Kresel: Certainly.

The Court: Now then, as to whether, however, in the absence of a specific objection when the question is clearly and definitely presented, the Government wants to take a position antagonistic to your position is for it to determine and not for him.

Mr. Kresel: Certainly.

Mr. Anderson: I want to make my position clear, since counsel desires to raise a question as to the frankness of the Government. I have offerred this evidence and have stated my reasons for offering it. If it is not objected to, I am perfectly willing for it to go in. If it is objected to, I do not have to press the question.

The Court: You do not. But can you require the defendant to withdraw any objection if you have exercised your option of withdrawing the witness instead? But it seems to me, Colonel Anderson, that the witness having been called, the control of your case is in your hands. I am not criticizing your suggestion, but it seems to me possibly that in the ultimate determination of this case, I will be confronted with this fact. What my conclusion may be, I do not know and I do not intend to prophesy. It seems to me that I will be confronted with this condition.

The Government contends by its allegation in its Bill, and by its position in open Court up to this point, and made clear and very clear in your opening statement, Colonel Anderson, that it is within the power of the judiciary to determine, under the facts of this case, as to whether the orders made by Mr. Polk and by the President are subject to review by the Courts for the reasons stated in the Bill.

The answer of Mr. Kresel to that, and Mr. Guthrie, throughout has been, before we reached that point, that the Courts must stop, that they have no power to review executive acts, that the Courts have no power to review the executive discretion. Now then, we have met just now for the first time on that issue, more substantially now than heretofore. If you withdraw from that position when it is forcefully challenged, I do not undertake to say what the psychological effect may be as well as the legal effect.

Mr. Anderson: The question here is on an objection to particular evidence. I can present any evidence to support my position on that point, I submit with deference, that I may see fit. The evidence is documentary, as a matter of fact, on that subject and I was going to put in certain documentary evidence which under stipulation I am entitled to read in without identification on this subject.

I would like to have your Honor rule now, to raise the question whether my failure to insist upon the oral testimony of Mr. Polk can affect in any way my legal right to urge that the Court can look into those questions upon such evidence as I may present.

Mr. Kresel: That is a moot question, your Honor. I am in no position to argue that; and, of course, your Honor is not going to rule upon such a moot question.

The Court: That is the difficulty.

Mr. Anderson: The question I submit is presented by the insistence of my putting this witness on the stand.

The Court: No, I am not insisting that you put him on the stand. I was just wondering whether there was any legal ground which would prevent your arguing or presenting the question with the full force that you might in other conditions. But I have no conclusions about it. I will make some when it becomes necessary. But the point is not now presented, so you are entirely within your rights and I do not know that you will be damaged. I only wanted you to consider that now. It is not for me to consider, but for you to consider. I do not know that you are in any danger, Colonel Anderson.

Mr. Anderson: I am very frank to say that I think I am well within my rights in presenting any other evidence as to any question raised here. If any question is raised here, I have said at the beginning and I say now that I want all the facts in this case to come out, but I do not feel obligated to bring facts out over objection.

The Court: Of course, you are not.

Mr. Anderson: (Continuing) That are adverse to the Government or may be regarded as adverse to the Government. However, I am going to resolve every doubt in this case in favor of the Court having all the facts, and therefore I will recall Mr. Polk and ask him to answer the question in view of that fact.

FRANK L. POLK recalled.

The Court: Do you recall the question?

The Witness: Yes, I recall the question.

Mr. Kresel: I understand your Honor overrules my objection.

The Court: Without finally determining that issue, which is one of the crucial ones of the case, as I understand it, I shall take this testimony and overrule the objection under your general and specific objections.

A. (to Question No. 5.)

The Witness: In February, 1919, February 26th, a letter was sent me from the Alien Property Custodian's office, signed by Mr. A. Mitchell Palmer, then Alien Property Custodian, in regard to an order which he desired that I should sign. I have the original letter here. The letter was brought over by one of the legal force of the Alien Property Custodian's office. Who it was, I do not recall. With the letter came the proof sheets of the report that Mr. Palmer had prepared dealing with this subject, and he called my attention in the letter to certain pages—certain paragraphs—of the report. I read the letter, read the particular pages he called my attention to, and skimmed over very hurriedly the other part of the report, taking one or two high points.

Later in the day, Mr. Palmer either came over to see me, or we got in touch over the telephone, I am not quite clear which it was, and we discussed the matter at some length, the question of my signing this particular order permitting him to sell at a private sale certain patents. I remember that in our talk I asked the question whether this had been approved, this particular sale had been approved by his so-called Sales Committee, consisting of Mr. Bannard, Mr. Dodge, Mr. Griswold, Judge Ingraham, and one other. He said it had been. I signed the order. I forgot to state he explained to me why it was necessary for me to sign the order. The President had just returned from abroad the day before or the day before that, and he was tremendously pressed with a great deal of executive work, and it was towards the end of the session of Congress. There was a deadlock. Legislative deadlock. He was having to see a great many Senators and Congressmen in order to get through the necessary appropriation bills, and the situation was such at the White House that it was very difficult to get him to give the time to consider this particular question, so that was the reason Mr. Palmer advanced for my signing the order, and I signed the order.

Q. 6. Would you let me see that letter?

A. Yes, sir, that is the original, Colonel.

Q. 6-a. This is the original letter from Mr. Palmer to you, transmitting the order?

A. Transmitting the order, yes, sir.

Mr. Anderson: If your Honor please, the plaintiff offers in evidence letter from Honorable A. Mitchell Palmer to Honorable Frank L. Polk, dated February 26, 1919, which has been identified by the witness, and asks that it be identified and read as Plaintiff's Exhibit No. 90.

Received in evidence and marked "Plaintiff's Exhibit No. 90." (*See Exhibits, Vol. I, page 279.*)

Mr. Kresel: We will substitute a copy.

Mr. Anderson: We will substitute a copy. I will hand it back to him with leave to substitute a copy.

The Court: Is there any objection?

Mr. Kresel: Yes, your Honor, we raise the same objection, and in order that I may not interrupt again during Mr. Polk's testimony with similar objection, may it be understood that our objection heretofore urged lies to the entire testimony that is about to be given by Mr. Polk upon this subject.

THE COURT: I understand.

MR. KRESEL: And that we may have an exception to your Honor's ruling.

THE COURT: Yes, your exception applies to all like cases.

THE WITNESS: If your Honor will permit me, I would like to refer to Mr. Anderson's statement.

MR. ANDERSON: One minute. Let me get this letter—Plaintiff's Exhibit No. 90?

THE COURT: Plaintiff's Exhibit No. 90.

MR. ANDERSON: In order to return this letter to Mr. Polk, I will, with permission of counsel, sign and copy the signature on the bottom of a copy, and file the copy.

MR. KRESEL: Yes.

THE COURT: Have they been compared?

MR. KRESEL: I assume that it is a correct copy. I have not compared it, but I am quite sure that it is a correct copy.

MR. GALLOWAY: It is subject to correction anyhow under the stipulation.

MR. KRESEL: It is subject to correction anyhow.

MR. ANDERSON: In order to make it clear, that it is a copy, if your Honor will permit me, and the stenographer not take it down, I will read the letter and have the Clerk compare it right now.

THE COURT: Will you give it to Mr. Kresel?

MR. ANDERSON: Yes. (Handing to Mr. Kresel, and reading.)

Q. 7. Now, you can proceed with your statement, Mr. Polk?

A. Colonel Anderson referred to the visit he paid me last fall, when he had a talk in my partner's, Mr. John Davis' room, in regard to this case. He told me he had been retained by the Government, and asked me what my recollection was. I told him that my recollection was very vague, that I signed a great many orders, I remembered this particular transaction in a vague way, but none of the details. Later on—as a matter of fact, I think it was after your office, or possibly Mr. Kresel, within the last two months, supplied me with a copy of the letter that has just been read. I was then able to refresh my recollection and I went through my papers and found the original letter and the report referred to in the letter was sent me. I then read the report, and in that way I was able to piece together a story, and my recollection was considerably refreshed.

Q. 8. You heard my statement at the Bar this morning, did you not, of our conversation?

A. I did.

Q. 9. That was substantially correct, was it not?

A. Substantially correct, Colonel, yes. I think I told you, as I recollect, that I had signed a great many of these, while I remembered this particular transaction for the moment, I could not remember the details of it.

Q. 10. All right. That is the same thing. Now, Mr. Polk, it appears—

Mr. Anderson: At this time, if your Honor please, we will offer in evidence—it is already in evidence.

Mr. Kresel: In the answer.

Mr. Anderson: That is in evidence. You have introduced it under the stipulation, the order signed by Mr. Polk, to which that letter refers will be found as Exhibit No. 3 with the answer in this case, and under the stipulation is introduced subject to the rule we are following as to objections.

The Court: It is now offered?

Mr. Anderson: It has been introduced already.

Mr. Kresel: I do not recall.

Mr. Anderson: The stipulation provides that the exhibits with respect to the Bill and Answer are introduced by the respective parties subject to any objection; if there is any question, I will introduce it.

Mr. Kresel: Colonel, we are following a different rule.

Mr. Anderson: If there is any question we will introduce it.

The Court: I think we have been following a different rule.

Mr. Anderson: I will then introduce the order of Frank L. Polk, dated February 26, 1919, which is in the record as Defendant's Exhibit No. 3 of the printed Bill.

The Court: Answer.

Mr. Kresel: Printed Answer.

Mr. Anderson: With the printed Answer; and to avoid duplication, I will not present another copy, but refer to that, and have it marked as "Plaintiff's Exhibit No. 91."

The Court: So admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 91." (Same as Exhibit No. 3 to answer. *See Record, Vol. I, page 551.*)

Mr. Kresel: Do you want to introduce the second one?

Mr. Anderson: No, I am going to that.

Q. 11. Now, Mr. Polk, it further appears that you signed another order, dated April 5, 1919. Would you state to the Court any recollection that you have about that, and if you have any correspondence relating to that, present it also?

A. That letter was signed by me while I was at White Sulphur Springs.

Mr. Kresel: You mean that Order, you said the letter.

The Witness: That Order. Thank you. I was called up, as I recall, on the long distance telephone by someone from the Alien Property Custodian's office, saying that they had an Order that was necessary to be signed, and asked me when I would be back. I said I would be there two days more, and they said they would send the Order down. They sent the Order down from Washington to White Sulphur Springs, West Virginia, and I signed the Order there. A letter came with the Order, but I have not a copy of the letter. I have not the original letter. I have seen a copy, and the copy I have seen I recall as having received.

Mr. Anderson: I am getting the copy now, sir.

Q. 12. I hand you a photstat of the letter, dated March 31, 1919, and addressed to Honorable Frank L. Polk, and unsigned. Will counsel admit that this letter was signed by Mr. Garvan (handing to Mr. Kresel)?

Mr. Kresel: I think that is the fact, Colonel. I have a copy here which appears to be signed by Mr. Garvan.

Mr. Anderson: Just scratch that reference out, will you?

Mr. Galloway: Here is a certified copy, Colonel, if you want that. (Handing.)

Mr. Kresel: You do not need a certified copy. There is no question about that.

Q. 13. I hand you herewith a copy of a letter dated March 31, 1919, addressed to yourself and signed by Francis P. Garvan. Would you see if you can identify that as the letter to which you refer? (Handing to witness.)

A. I recall that letter, Colonel.

Mr. Anderson: We now offer in evidence copy of a letter dated March 31, 1909, addressed to Honorable Frank L. Polk—

Mr. Kresel: 1919.

Mr. Anderson: 1919. Signed by Francis P. Garvan; to be read and identified as Plaintiff's Exhibit No. 92.

The Court: Admitted under the same conditions as the preceding letter

Received in evidence and marked "Plaintiff's Exhibit No. 92." (*See Exhibits, Vol. I, page 280.*)

Mr. Anderson: The letter is as follows: (Reading.)

In order to maintain the connection of the record, I would like to offer in evidence under the stipulation, a photostat copy of an original letter from Mr. Ramsay Hoguet to Mansfield Ferry, Esq., of the Alien Property Custodian's office, at Washington, dated New York, April 1, 1919, on the stationery of the Alien Property Custodian, which letter is as follows:

The Court: It may be admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 93." (*See Exhibits, Vol. I, page 281.*)

Mr. Anderson: The letter is as follows: (Reading.)

Now, we offer in evidence—have you got that second Order?

Mr. Kresel: Yes (handing).

Mr. Anderson: We offer in evidence the Order signed by Frank L. Polk, dated the 5th day of April, 1919, filed as Defendant's Exhibit No. 4 with the Answer in this cause, printed page of Answer 114, to be identified and marked as Plaintiff's Exhibit No. 94.

THE COURT: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 94." (Same as Exhibit No. 4 to answer. *See Record, Vol. I, page 554.*)

Q. 14. Mr. Polk, do you recall any further connection with this matter on your part, any other facts you want to state to the Court?

A. I think not. I think that is everything.

Q. 15. I will ask you if at the time these Orders were signed, and especially the first Order which related to that, you knew or had any knowledge of any negotiations between the War Department and the Alien Property Custodian, looking to the acquisition of the nitrogen fixation patents by the War Department?

A. Not that I can recall.

Q. 16. Did you know what patents, copyrights, trade-marks, or any of them, would be sold under the Order?

A. Well, yes. I knew that they were these German patents controlling the dye and the chemical industry.

Q. 17. And that they were patents that had not been used?

A. That had not been used.

Q. 18. You derived your information on that subject entirely from Mr. Palmer's report and his statements to you, to which you have referred, did you not?

A. Yes, sir.

Q. 19. Did you know at that time the number of patents, or other rights which had been licensed by the Federal Trade Commission, or whether any had been licensed by the Federal Trade Commission?

A. I knew that some had been licensed, but I did not know the number, or which ones.

Q. 20. And you did not know what patents they were, or anything about them?

A. No.

Q. 21. Did you take the matter up at all with the Federal Trade Commission before this Order was signed?

A. Not before the Order was signed, no.

Q. 22. I believe you stated that the source of your information on the subject as related to this Order and its purpose was derived from Mr. Palmer, as to the first Order, and from Mr. Garvan as to the second Order, in the manner you have stated?

A. Yes, in so far as this particular sale was concerned. Of course, I knew something of the dye and chemical patents.

Q. 23. Yes. But I mean the purpose of this Order, you only discussed the matter with Mr. Palmer in connection with his report, and the second Order you only discussed over the telephone with the gentleman in the Alien Property office?

A. In both instances, in addition to that, Colonel, the Orders were brought by some assistant in the Legal Department of the Alien Property Custodian's office, and in each instance I discussed it with the man, whoever it was, who brought the Order.

Q. 24. Could you identify in either instance the person who brought this Order?

A. I thought it was Mr. Ferry; and Mr. Ferry says not. I thought Mr. Ferry brought the second Order, but he said not.

Q. 25. Could you identify in any way the person that brought the first one?

A. No. I could not. I thought Mr. Ferry brought the first or second. He tells me he brought neither one. As I understand it, he says—so he tells me.

Q. 26. What you have said covers completely your knowledge and recollection of this entire transaction and the surrounding facts and circumstances; is that true?

A. Yes, sir.

Q. 27. At the time that you had signed this Order you had never seen the Charter of The Chemical Foundation, had you?

A. No, sir.

Q. 28. Neither of these orders?

A. No, I had not seen that

MR. ANDERSON: I think that is all.

CROSS-EXAMINATION

By MR. KRESEL:

XQ. 29. I do not suppose, Mr. Polk, that you have with you now or can locate the proof of Mr. Palmer's report that came with his letter of February 26th, that was put in evidence this morning, have you?

A. I made a search for it, but could not find it, Mr. Kresel.

XQ. 30. You could not find it?

A. No, sir.

XQ. 31. But it was the proof of what we have been calling here, "The Chemical Section" of Mr. Palmer's report to the President.

A. Yes.

XQ. 32. Now, I will show you Mr. Palmer's report to the President which was transmitted to the President, acording to Plaintiff's Exhibit No. 13—which was transmitted with a letter dated February 22, 1919?

A. February 26th?

XQ. 33. 22nd. The letter of transmittal is dated then. When it was actually transmitted is not yet in evidence; and I will direct your attention to that part of the report which commences with the word "The amendment of November 4th," and will ask you to take a few minutes to glance over that, and to the end of the report, and state whether that is not the portion of the report that Mr. Palmer marked with an "X" as he called it to your attention in this letter?

Mr. Kresel: May I see that letter, please? The one of February 26th, from Mr. Palmer to Mr. Polk. (Handed to Mr. Kresel.)

The Witness: What is the question, Mr. Kresel?

XQ. 34. My question is whether that is the portion of the report that was sent to you in proof form that was especially marked with an "X" to call it especially to your attention, as appears from Mr. Palmer's letter to you?

A. Yes, as I recall it, that is the same thing.

XQ. 35. Now, just hold that there, please, because I shall probably want to ask you some questions about it.

The Court: What is the paper that you now hand him?

Mr. Kresel: That is the report and it contains—

The Court: Which is in evidence as Exhibit Number what?

Mr. Kresel: The letter of transmittal is in evidence as Plaintiff's Exhibit No. 13, and the portion of the report which is known as the Chemical Section—I do not recall what number that is.

Mr. Mahaffy: Plaintiff's Exhibit No. 12 admitted.

The Court: And the portion you there refer to is what?

Mr. Kresel: Is a part of Plaintiff's Exhibit No. 12.

The Court: And how can I determine what portion that is?

Mr. Kresel: May the record show then that it is that portion of the report which commences with the words "The amendment of November 4th to the Trading with the Enemy Act presented for the first time an opportunity for what appears to me to be"—and so on, to the end of the Chemical Section of that report.

XQ. 36. Now, although you can not recall the name of the person who brought Mr. Palmer's letter to you together with the proposed Order that you subsequently signed, and the proof of the report, I understand you to state that it was some one from the Law Department of the Alien Property Custodian's office?

A. That is my recollection.

XQ. 37. And that at least it was a person who knew about this transaction and with whom you then discussed it?

A. Yes.

XQ. 38. I assume that you asked him questions to elicit any information that you wanted, and that he answered them?

A. Yes, my recollection is that most of my conversation—I had some conversation with him—but the conversation on this particular Order was with Mr. Palmer himself.

XQ. 39. Exactly. So that after this proposed Order was brought to you with Mr. Palmer's letter and the proof of the report, you had a conversation with Mr. Palmer, either in your office when he called on you, or over the telephone.

A. Yes.

XQ. 40. You cannot recall which; but whether it was a personal interview or over the telephone, was it on the same day, that is, the 26th of February, 1919?

A. The same day.

XQ. 41. And it is certain that it was before you signed the Order?

A. Yes.

XQ. 42. Of February 26th?

A. Yes.

XQ. 43. From your talk with Mr. Palmer, from your talk with the gentleman that brought the proposed order to you, and from a reading of the proof of the report which Mr. Palmer sent you, you gained certain information?

A. Yes.

XQ. 44. Before you signed this Order?

A. Yes.

XQ. 45. Did you know at that time and before you signed the Order that it was proposed to sell these patents to the chemical industry?

A. To the Chemical Foundation.

XQ. 46. Incorporated?

A. Chemical Foundation, Incorporated, yes.

XQ. 47. Beside the fact that the name of the concern was The Chemical Foundation, did you know that the purpose was to make this sale in order to make the patents available to the chemical industry of the country?

A. It was so stated.

XQ. 48. Did you know that is was purposed that The Chemical Foundation, Incorporated, was to hold these patents, as is set forth in that report, as trustee for the chemical industry of the country?

A. Yes, as stated in the report.

XQ. 49. Did you know that the voting stock of the corporation, The Chemical Foundation, which was the common stock, was to be placed in a voting trust?

A. Yes.

XQ. 50. Did you know who the voting trustees were to be?

A. Yes.

XQ. 51. Did you know that they were to be the same gentlemen who were the Advisory Sales Committee of the Alien Property Custodian.

A. Yes.

XQ. 52. Did you know any of those gentlemen personally?

A. I knew three.

XQ. 53. Who were they?

A. I knew Judge Ingraham, Mr. Bannard and Mr. Dodge; and I have met Mr. Stone.

XQ. 54. Did you have any confidence in their integrity and honesty of purpose?

> MR. ANDERSON: If your Honor please, the character of these gentlemen is not in question here and I do not think the question of whether this witness had confidence in them is material. He knew these gentlemen and nobody is questioning that they are men of character. I do not think that that is the question involved here at all.
>
> MR. KRESEL: We contend that we have a perfect right to show what was in the mind of Mr. Polk when he signed this Order, no matter where he got his information. We have a right to show what it was that moved him to take this action which is now being discussed.
>
> THE COURT: If this testimony is admissible at all.
>
> MR. KRESEL: If it is admissible at all. Of course, it is entirely subject to the objection we have taken.
>
> THE COURT: The objection will be overruled in keeping with our general rule of practice adopted for this case.

XQ. 55. I say, when you were considering this matter, knowing these three men as you say you did, did you have confidence in their integrity and honesty of purpose?

A. I was very much influenced by that—the three men that I did know, their recommendation and the position that they would hold.

XQ. 56. Did you know at that time and before you signed this Order that it was intended that the corporation that was to buy these patents was to issue only non-exclusive licenses?

A. It was so stated.

XQ. 57. And you believed it?

A. Yes.

XQ. 58. Did you know that such non-exclusive licenses were to be issued to any American upon equal terms?

A. Yes. Wait. Let me hear that question again.

XQ. 59. Upon equal terms, I said, and reasonable terms?

A. As stated in the report.

XQ. 60. And was it not also stated to you by Mr. Palmer, when he discussed it with you?

A. I cannot recall that we discussed that particular feature.

XQ. 61. Did you know that the corporation was to grant to the United States, free of charge, a license covering all these patents?

A. Yes.

XQ. 62. That was not only stated in the report that you had before you, but did not Mr. Palmer tell you that?

A. Yes, I recall that, because it affected the Army and Navy. At least I had been told that it would.

XQ. 63. And you know, do you not, that such a license has been given to the Government?

A. I have been told that. I do not know it.

XQ. 64. You knew what the capitalization of this proposed corporation was to be, did you not?

A. Yes.

XQ. 65. You knew that the stock, both preferred and common, was limited to a dividend of six per cent?

A. Yes.

XQ. 66. You knew that it was the purpose of this proposed corporation to use any surplus profits over and above the six per cent. dividend for the advancement of the chemical industry and science in this country

A. It was so stated in the report.

XQ. 67. You knew that Mr. Garvan was to be the first President of the corporation, did you not?

A. I was told that and it was in the report.

XQ. 68. And you knew that there were about 4500 patents that were to be conveyed, did you not?

A. The report stated the number. I had no knowledge other than that.

XQ. 69. And that they were patents that covered the dye industry and chemicals in general?

A. Yes.

XQ. 70. And you knew that all this was being done in order, as it is stated in the report, that this industry might be Americanized, did you not?

A. Yes.

XQ. 71. You knew that the price, I mean the cash price, was to be $250,000, did you not?

A. Yes.

XQ. 72. I want you to turn, if you will, Mr. Polk, to this Order of the 26th of February, 1919.

A. I think I have a copy in my pocket.

XQ. 73. I am looking now at page 112 of the Answer. I direct your attention to the paragraph in your order which is marked "Second." the second reason that you assign for making this Order, which, with his Honor's indulgence, I shall read:

"The Chemical Foundation, Inc., has been incorporated for the purpose of holding letters patent, trade-marks and similar rights relating to the chemical and allied sciences as a trustee for American industry, for the purpose of the Americanization of such industries as may be affected thereby, of eliminating alien interests hostile to said American industries and of the advancement of chemical and allied industry in the United States." Now the next sentence: "The

Chemical Foundation, Inc., is obligated to grant non-exclusive licenses upon equal terms at a uniform royalty to qualified American manufacturers.'' I would like to stop there a minute. That statement in your order was based not only upon what you found to that effect in the proof of the report that you had before you, before you signed this order, but also upon what Mr. Palmer told you in your interview with him, wasn't it—namely, that the corporation was obligated to issue non-exclusive licenses upon equal terms at a uniform royalty to qualified American manufacturers?

A. Yes, he told me that in substance.

XQ. 74. You say that you had not at that time read the charter of The Chemical Foundation?

A. I had not.

XQ. 75. Was it your understanding when you signed this order that you were signing it upon the agreement contained in that report and the statement made to you by Mr. Palmer?

Mr. Anderson: I do not think he can testify to his understanding.

Mr. Kresel: Certainly he can.

Mr. Anderson: He has stated the fact and the Court will draw the conclusion.

Mr. Kresel: I am asking him purposely; because your Honor will recall that Colonel Anderson in his opening statement challenged this portion of Mr. Polk's order and said that it was founded upon a misstatement of fact, and his argument was that because the certificate of incorporation, according to his reading of it, does not bear out this statement, therefore it was founded upon a misstatement of fact.

The Court: May I have the question, please?

(The stenographer then repeated Question No. 75 above recorded.)

The Court: The agreement made in the report, Mr. Kresel? I am sure I do not understand the meaning of it.

Mr. Kresel: I withdraw that. I do not think that does express the thought I had in mind.

Q. 76. Was it your understanding, Mr. Polk, when you signed this order, that an agreement was being made between the Alien Property Custodian and The Chemical Foundation, Incorporated, whereby the corporation was obligated to issue non-exclusive licenses to all American citizens on equal terms, as stated in your order here?

The Court: The same objection or not to that, Mr. Anderson?

Mr. Anderson: I note the same objection.

The Court: Same ruling.

Mr. Kresel: You may answer, Mr. Polk.

A. My understanding was that The Chemical Foundation was bound to grant licenses on equal terms to all American manufacturers.

XQ. 77. Whatever its charter may say to the contrary?

A. Well, I did not—

Mr. Anderson: If your Honor please, I do not think that is fair. We are not arguing this case.

The Court: I think the question is argumentative, Mr. Kresel.

Mr. Kresel: I withdraw it.

XQ. 78. And you also understood, did you not, Mr. Polk, when you signed this order, that The Chemical Foundation, Incorporated, was obligated to give to the United States Government a free license covering these patents?

A. I did not know as they were obligated. I understood that they were to be obligated; put it that way. I did not know that the actual contract had been made.

XQ. 79. Did you, in your discussion with Mr.

Palmer, take up with him or he with you the question of this cash consideration that was being paid and how it was arrived at, and what were the reasons that led to the fixing of that amount?

Mr. Anderson: If your Honor please, I did not understand the witness to testify to that on the direct. He will have to make him his own witness on that point.

Mr. Kresel: No, I do not concede that I am making him my own witness on anything here.

Mr. Anderson: All right, I just give the notice on the record. I do not ask the Court to rule.

The Court: I think that is in cross-examination, Colonel Anderson. I think your questions were broad enough to open the door to any knowledge or lack of knowledge that Mr. Polk might have had at the time of the sale. I overrule the objection.

A. Let me have the question again, please.

XQ. 80. Would you like to have the question read?

A. Yes, please.

XQ. 81. (Question No. 79 read as recorded above.)

A. We discussed the amount that would be paid, but I do not know that we went at length into the reasons.

XQ. 82. Do you recall Mr. Palmer stating to you several reasons that affected the value of these patents? I will take them up with you in a minute, but I want you to answer if you can the general question first.

A. I recall he laid stress on the fact that the patents had not been used in this country and that in many instances they did not know what they were.

XQ. 83. Or how to use them?

Mr. Anderson: Now let the witness testify, please.

Mr. Kresel: I thought he had finished. I thought he had finished.

XQ. 84. Had you finished?

A. I had finished. Well, I was—

XQ. 85. Do you not remember, Mr. Polk, that Mr. Palmer pointed out to you that the American chemical industry did not get if they would buy these patents—did not get with the patents what is known in the chemist's parlance as the know-how?

A. No, I do not recall discussing that.

XQ. 86. Namely, the information which would enable any purchaser of the patent to work the patent and get the results; don't you recall his discussing that with you?

A. As I said when I answered the question before, they did not know even what the patents were. Beyond that I do not think we went.

XQ. 87. You recall that you say in your order here as the first reason for the making of it, as follows: "First: Said letters patent, trade-marks and similar rights can not be sold to the best advantage at public sale after public or other advertisement." Colonel Anderson's comment upon that part of your report in his opening statement was that was mere opinion on your part. Now I want to know what information you had before you, from talk with Mr. Palmer, upon which you based the opinion expressed in that paragraph. Do you recall?

A. I do not recall very clearly.

XQ. 88. What is your best recollection?

A. My best recollection was that as to the great body of patents it would be very difficult to sell them in a lump, that if they were sold to individuals the individuals would take the patents to the exclusion of the American market, they might fall into the hands of people that would not use them, that they might be bought up by people who would hold them, not manufacture under them, and we would be in the same situation as far as the German patents were concerned as we were before the war.

XQ. 89. Do you remember Mr. Palmer stating to you that the very purpose at the basis of this whole transaction was to break up the German monopoly?

A. Oh, that was clearly the intention.

XQ. 90. And that if he offered these patents at public sale somebody might buy them who would be substituted as the monopoly in the place of the German monopoly?

A. As I expressed the thought, that someone might buy them and not use them.

XQ. 91. Don't you remember that he pointed out to you that under the statute if he sold them at public auction he had to sell them to the highest bidder, no matter who he was, as long as he was an American citizen?

A. I knew that. I do not know whether we discussed it.

XQ. 92. And that such purchaser could take those patents, never work them—

> Mr. Anderson: If your Honor please, I think this is arguing this case with the witness. The witness said that his whole knowledge on this subject was derived from this report which came here and a telephone conversation with Mr. Palmer. Now we have an argument, a discussion by counsel with the witness, and I think it is doubtful whether counsel, with a witness who is reviewing his own trasactions, which position is necessarily adverse to the Government, really has a right to cross-examine him. He must be confined to the rules of direct examination. Here the counsel is testifying in this case and arguing the case with the witness. I think there is a limit, if I may suggest, if your Honor please, to things of that

kind. We are not getting at anything; we are getting argument.

The Court: No, I think we are getting two things, Colonel Anderson. You stated first that your allegations of the bill with respect to misinformation or withheld information from Mr. Polk, when he signed his orders, stood. So long as that stands and so long as you open the door, I assume that Mr. Kresel has the power and the right and the privilege of going into that in detail, although you stopped with broad generalities. But is seems to me the direct examination and cross-examination is demonstrating most clearly and forcefully the iniquity of a Court of Justice going into matters affecting and appealing to the discretion of the Executive or his designated agent. I had a clearly open mind on that question when the cross-examination began. I am feeling most strongly that I have erred and seriously erred in opening the door to this question.

Inasmuch, however, as I have opened the door, I am reserving that for consideration after final argument. I shall keep the door open, but it seems to me there could not be a better demonstration of the iniquity of that procedure than that which has taken place here this morning; because if we go beyond the question of power, then we get into the question of international relations and the reasons moving the Executive in designating representatives in such matters, matters with which this Court and so far as I know no other Court has any concern. If it is a question of power, then the Courts have a right to say whether the statutes should be so construed or is open to the construction to give to the President or his designated representative the power to do that which they did do, but as to the things which moved them apart from the reasons stated in the order, I have grave and serious doubts, and I am almost convinced at this stage of the case that the Courts have no power to go behind the reasons stated in the order. I shall, however, inasmuch as the door has been opened, unless objection be raised by the witness himself for reasons of state, allow this testimony.

The Witness: Your Honor, if I may say so, I am not the one to pass on the question of public policy now. It is very difficult for me to fairly state always the motives that moved me in signing Executive orders. I want to do entire justice to both sides of this case, but it is very difficult for me to state frankly and freely all that then was in my mind.

Mr. Kresel: Your Honor, it is just because of the situation that has been developed by reason of the Government's contentions here that we are trying to search the witness' mind. Of course, I shall not insist that Mr. Polk state anything here that he considers the public interests require should not be stated. I should be the last one to insist on that; and if I did, your Honor would not compel the witness to answer. I know that. But in so far as it is compatible with the public interests that the information should be given, I think we are entitled to have upon the record of the Court here, since the Court is inquiring about it, what the motives were that induced Mr. Polk, acting in the high capacity that he did, to take the action that he did.

The Court: Then there is another phase of it which is unusual and which does not occur in many instances, and that is that the United States and not a private litigant is opening the door and asking that the door be opened with respect to the reasons. In view of the witness's statement, and in view of the fact that it is now several years past, and he has in several instances given you generally the reasons and his recollection of the reasons that moved him to this action, I am wondering whether you have not gone as completely into detail with respect to the reasons moving him to the execution or signing of this Order as may properly be done, as may effectively be done; because the witness has just stated, and he has stated several times, that he had before him certain things, Mr. Palmer's statement and Mr. Palmer's report and Mr. Palmer's letter; that is all.

Now then, there are certain facts which he says he knew himself and necessarily did know. Do not those documents, together with the general statement, weigh as much in favor of or against you as any further detailed testimony that the witness, necessarily having to draw on his reasoning, and necessarily having to draw on vague recollection, as he stated, that he might give.

Mr. Kresel: I shall follow your Honor's suggestion. I shall desist from further inquiry as to particulars, but I do want to ask the witness two or three other questions as to what other general sources of information he had.

The Court: May I hear Colonel Anderson before you put that question?

Mr. Anderson: I wish to state, if your Honor pleases, that there was not a suggestion in my examination, nor is there a suggestion in these Pleadings, of an attack upon the motives of any officer of the Government in signing these Orders; and the reference to motive is purely outside of either the Pleadings of the Government or any statement I have made or any statement I elicited from the witness.

The Court: I used the word thoughtlessly, Colonel Anderson, because you have disclaimed throughout any attack upon the motives. But what I meant by that was that you have alleged, as I understand you, and as I recall, that Mr. Polk in signing this Order did so without having had first disclosed to him the complete facts and circumstances with regard to the transaction.

Mr. Anderson: Yes.

The Court: If I used the word "motives," I did it inadvertently.

Mr. Anderson: As to any examination, either direct or cross-examination, that went to the fact of what was disclosed to Mr. Polk, he stated in concluding his direct examination that all that was disclosed to him was the talk with Mr. Palmer on the telephone, the report to Mr. Palmer, a portion of which he read, and the letter to Mr. Palmer. Those facts that were disclosed to him I concede are the proper subject of inquiry. Matters outside of those disclosures, which do not involve international relations—and it is merely a matter of what was disclosed to him and does not involve any other thing—are subjects of inquiry, as I have pointed out in my argument and will not repeat, as affecting whether or not he acted upon a full knowledge of facts or mistake of facts. That applies to any executive officer in exercising political discretion, which is an entirely different situation.

I want to make very clear here that if the Court has understood that the Government opened by its Pleadings, by its statements, or by its examination, the question or inquiry into political discretion or international relations, or those delicate questions which pertain to the general executive duties, it was not so intended and it will not be done in this case.

THE COURT: While I understand your statement with respect to that, Colonel Anderson, and while you understand just exactly where that line may be drawn in the trial of this case, because you have undoubtedly given days and weeks of study to the questions that have been raised in this case, I am not sure that I yet see where, in practice, that line is to be drawn. Will you help me on that now?

MR. ANDERSON: I will now; yes, sir. I think the line is to be drawn here. Your Honor can inquire into the facts that were presented to the witness at the time that he signed this Order. Your Honor can inquire into the facts upon which that Order was predicated. I confined my investigation to the facts recited in the Order and to whether he got a letter from Mr. Palmer and whether he examined Mr. Palmer's report, which for the first time today I knew.

On that question, as to the facts presented in the administration of an act for the sale of property held by the United States, in my judgment, it would be a subject for proper examination, even in dealing with the President himself, exercising that delicate care not to go beyond that into other questions which might be of the President's own knowledge.

I do not speak of Mr. Polk's general information on this subject. I have not a doubt that he knew a great deal about the relations between the Germans and the Americans prior to our entering into the war. I claim that to be entirely immaterial.

But he stated that his action in signing this specific Order authorizing a specific sale was predicated upon this letter, the pages of the report of Mr. Palmer, which he was asked to read and did read hurriedly, and skimming as I recall it the remainder of the report, and upon a telephone conversation with Mr. Palmer, the hour and day not identified, but which I will ask him about—as to those matters put up to him we can inquire. But if we undertake to broaden that inquiry into the general international relationships, then I think we would be going into the political powers of the President and not into the specific power delegated to him by this Act of Congress.

THE COURT: I think I understand you, but the difference between you and the defendant with respect to that is, as I understand it, that the Executive Department is a separate and distinct and co-ordinate department of Government with no supervisory power in the judiciary, and, if I understand your position, Mr. Kresel, it is that there is as much lack of power in the judicial department to inquire as to the reasons or the soundness of reasons or the correctness of the statement of fact embodied in those reasons, in the Order of Mr. Polk, as there would be with respect to a certain treaty, for instance. That, as I understand it, is the defendant's position, and that in practice it would be difficult to draw the line.

MR. KRESEL: If your Honor will permit me to state my reasons.

THE COURT: I shall be very glad to have you state them instead of me.

MR. KRESEL: If the Colonel is quite through with his statement.

MR. ANDERSON: No I am not quite through, because I would like to answer the Court's suggestion.

If I may be permitted to suggest, one of the important functions of the Court is to draw the delicate lines. It is not easy to draw general lines where one starts and the other stops. Therefore, I recognize that the Court approaches with great hesitancy, as every right-thinking man does, as a member of the Bar does, the consideration of these delicate powers of Government. So that, in arguing this question, if even in the earnestness of my position as counsel I should overstate that situation, I do not want the Court to understand that I am in any way wanting in appreciation of the delicacy of the questions presented, and I certainly would not present them if I did not think it was absolutely necessary to the position taken by the Government and its duties.

THE COURT: I have no doubt of that, Colonel Anderson.

MR. ANDERSON: Therefore, with that understanding, I want to say that the delicate line to be drawn there is this: If in the exercise of administrative as distinguished from executive powers or constitutional powers of the President—assuming that Mr. Polk was here authorized to act for the moment, which is a legal question—if in the exercise of those administrative functions which are conferred by Congress and Congress alone—since, as I already called your Honor's attention to the fact this is a Congressional power, that is, the control of alien property, and not an executive power; the President has nothing to do with that, primarily, I may say deferentially; the President's office is not concerned with alien property until Congress acts, and then only to the extent that Congress says—now, then, when the President has appointed an agent Alien Property Custodian or any one else, with limited powers, when in the exercise of those powers as prescribed by the Act, if it appears that he acted contrary to the intent of the Act with the best of purpose, being badly advised, or mistaken; or if it appears that he acted upon a mistake of material fact, then the Court, in order to determine the validity of the Act, which is a judicial function often calling for the exercise of the most delicate discretion and taste, must inquire into it. As an illustration, I called your Honor's attention the other day to the great case of Lee against the United States, probably one of the most delicate ever passed upon by the Courts of this country, in which the Courts were called on to pass upon similar questions involving the acts of President Lincoln.

Therefore, while yielding to no one in my deference and respect for the Presidential office, and in my appreciation of the absolute importance of maintaining every possible safeguard around Executive discretion, I conceive that it is not only the power, but the duty of the Government, and the Courts, in adjudicating the rights of the Government, to consider these questions, when properly presented, with proper regard to the proprieties of the situation, what Mr. Justice Holmes once called "equitable propriety." When so presented, the Court should receive and consider the facts upon which the administrative discretion of a limited agency, even by the high office of the President himself, should be controlled, or upon which that discretion was exercised.

That is our view, I recognize, as your Honor has said, that this matter should be handled with the greatest possible delicacy, and I have tried to so handle it.

The Court: I have no fault to find with the position that you take. Whether it is sound as to this particular transaction is for me to determine primarily. But I am wondering this, Colonel Anderson: If your position be sound, the position taken in your last statement, whether Mr. Kresel has overstepped or even approached the limit of cross-examination that he would be entitled to in searching the knowledge of a Congressional representative through the Order of the President, and whether he would not be entitled to examine him as to each statement and each sentence embodied in Mr. Palmer's order—"Did you know this?" and the witness would probably answer, "It was so stated in the order." He could stop there or he could say he had further knowledge of that fact. I will get you to help me on that, if you will. Assuming for a moment that this is cross-examination proper and not examination in chief, I do not see just where the line stops.

Mr. Anderson: If your Honor please, my objection, if your Honor will recall, was that the counsel was arguing with the witness as to the interpretation of the orders and papers which were presented to him. I did not object, although I think it would be valid to object. Under the circumstances stated to the Court, this witness is really not subject to cross-examination, but each party must examine him under the rules controlling on the direct. But I did not object to that, because I did not mind it.

However, I think that he has gone as far as he ought to go in view of the peculiar circumstances under which this witness is put on the stand.

The Court: But I am wondering whether you are aiding me in the general consideration of the case. You recall that Mr. Kresel said he would not go further on that line, but he had some general questions he wanted to ask.

MR. ANDERSON: All right. I am perfectly willing.

MR. KRESEL: Does your Honor desire to hear me further as to our position on the general and underlying basic question of law, or shall we go on?

THE COURT: I think not, Mr. Kresel, because you stated it most admirably and so did Mr. Guthrie; and you have called attention to it two or three times in the progress of the case.

MR. KRESEL: May I make this one observation, however, that it is our contention, that if your Honor is to determine whether the discretion given to the President by Congress was properly exercised, we are entitled to show all the grounds that moved the President and his representative in coming to the conclusion, not only such information as Mr Polk had that was conveyed to him by Mr. Palmer, or that was contained in that report, or that was contained in Mr. Palmer's letters, but all information that Mr. Polk had bearing upon the question which induced the action taken by him. And may I recall to your Honor and to Colonel Anderson the fact that upon his direct examination Mr. Polk was careful to say that he had other information in his other official capacity. I have sent for the stenographic record of his direct testimony, because I want to read that to your Honor.

MR. ANDERSON: I am perfectly willing to concede it; that Mr. Polk did say that he had other information.

MR. KRESEL: Then does not your Honor see that upon the very direct examination of this witness he states substantially that his action was induced not only by what he learned from Mr. Palmer, the report and the letter, but by other information that he had in his official capacity?

As I said to your Honor, I shall not insist upon Mr. Polk's stating here anything which in his judgment ought not to be stated because of reasons of State. But I do want to ask him, as I say, with your Honor's permission, the various official capacities in which he acted and the sources of information that were available to him upon this very subject.

THE COURT: You may proceed along those lines.

By MR. KRESEL:

XQ. 93. Before I come to that, Mr. Polk, after you signed this Order of the 26th of February, 1919, did you have any talk with the President of the United States about it?

A. No extended talk. My recollection is that I told him as a matter of news that I had signed the Order. But we did not discuss it at all. That was some time between that date and the date he sailed. He sailed, I think, the 5th of March to go back to France.

XQ. 94. So that between the 26th of February and the 6th of March, 1919, you did state to the President of the United States that you had signed this particular Order of February 26, 1919?

A. I think I told him we had signed two orders, as I recall it. I merely stated it to him as a piece of information, that I had assumed to act, although he was there, in the country.

XQ. 95. And was that the reason that moved you to mention the matter to the President?

A. Of course.

XQ. 96. Namely, that you signed this Order although the President was in this country?

A. Although he was in this country.

XQ. 97. As counsellor of the State Department, which was your official position during this time, were you in close touch with the Secret Service and Intelligence Department of the Government?

A. Yes.

XQ. 98. Will you please tell the Court, if it is a fact, how the Intelligence Department of the Governmental Departments centered in the State Department of which you were counsellor?

Mr. Anderson: Your Honor, please, I object to that.

Mr. Kresel: Pardon me. Let me finish the question.

XQ. 98. (Continuing) I do not mean to ask you to give any information, you understand. I simply would like to have the Court understand the arrangement—how it was that the Intelligence Department, if it did, centered in the State Department?

Mr. Anderson: If your Honor please, I must object, not only because it is utterly immaterial here how it centered in the State Department—the witness has said he was in touch with it—but I do not think it is at all proper to go into the question of the relations of the Secret Service and Intelligence Department with the various departments of the Government. It is not called for by this examination. It cannot have any relation to this matter, what the witness may have known, if pertinent. I am not objecting to it at this time, but I do object to going into that question of the relations of the Secret Service and Intelligence Department of the Government with the State Department.

Mr. Kresel: Your Honor will understand that I am not asking him to tell me a single word as to what he learned.

Mr. Anderson: Even the connection is important.

The Court: It seems to me, Colonel Anderson, I am going to sustain your objection, but will you help me on this? Going back to your previous statements, I am wondering whether, in the delegation of power by Congress or the conference of power by Congress upon the President, there is not a different condition existing than if it conferred that power on an individual, for instance, the Alien Property Custodian, and whether we should not be more restricted in our inquiring into the exercise of discretion or the reasons moving the exercise of discretion, when that power has been given by Congress to the President, than if given to some other person.

It seems to me that that is one of the incidental difficulties involved in the major issue which was just discussed. Now, then, with respect to this question, it seems to me that if you stop with an answer, if the answer were available, then you have only raised a query in my mind as to whether he did not get some information from that source; and that query, without its being given an affirmative background by the disclosure of the facts, would disturb rather than aid. If you should raise that suspicion or that belief, that probability, then the other side would surely be entitled to inquire as to what you got, except where reasons of State would prevent.

Mr. Kresel: My position, your Honor, if I may interrupt you, is that I have a right to have this witness state what information he did have from that source. But, as I said, I shall not insist upon getting that. I concede to the Government the right to inquire of this witness, if it so desires, as to what information he had from that source. But all I am now seeking to show are the sources of information that this witness had.

The Court: He has told you, Mr. Kresel.

Mr. Kresel: All he said is that he had other sources of information.

The Court: No, as I recall, he did state that his position was such that he had this Intelligence Department as a source of information.

Mr. Anderson: And that he had known something of German activities before the war, as counsellor of the State Department.

The Court: Your immediate question is the connection or the details of the connection between the Intelligence Department of the Government of the United States and the position which Mr. Polk held at that time.

Mr. Kresel: I am not asking for the details, your Honor. My question was simply whether it is a fact that during the time that Mr. Polk was counsellor to the State Department, the Intelligence Departments of the Government centered in the State Department.

Mr. Anderson: That would be most improper.

Mr. Kresel: Why is that improper?

Mr. Anderson: For the reason that the relations between the various departments of the Government, especially the Secret Service and Intelligence, are matters that nobody is allowed to know about.

Mr. Kresel: But I am not asking what the Secret Service said or did.

The Court: Let us go back to the question. Will you please repeat the question? (Q. 98 repeated as recorded above.)

I sustain the objection.

Mr. Kresel: May I have it appear upon the record, if your Honor please, that we claim the right to elicit from this witness every bit of information that he had before him when he signed this Order, from whatever sources he derived it, saving only such information as upon the witness's statement it is contrary to public policy and to the welfare of the country to reveal, which the Court may rule he should not state.

I state to your Honor that we claim that right because the Government has brought us into this Court and has directly challenged the act of Mr. Polk and of the President, for whom he acted in a matter where discretion had been vested in the President by Congress.

We say that, the Government having taken that position, it cannot now close the door and on one side attack the validity of this Order, say that it is founded upon a misrepresentation of fact and upon suppression of facts, and stop us from showing what information the witness had upon which he acted.

Of course, we bow to your Honor's ruling. If your Honor says we cannot inquire into that, we are stopped. But I want it clearly to appear upon the record what our position is in the matter.

Mr. Anderson: I will ask your Honor's indulgence for a moment that you can get our position clear. The Government charges in Paragraph 34 of the Bill:

> "that necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of said patents and other rights mentioned in said orders at private sale were not stated or disclosed to said Frank L. Polk, but were withheld from him and suppressed; that other facts in connection therewith, and especially the attitude of the Federal Trade Commission, charged with issuing licenses under the enemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk;"

> Mr. Kresel: Will you read the next sentence?
> Mr. Anderson (continuing): "that his signature to said order and the issuance thereof by him were procured as aforesaid through such suppression and misrepresentation of the facts, which, if the same had been known by said Frank L. Polk, would have prevented his signing and issuing said orders."

The Government's contention is that the sole inquiry under that allegation and in relation to that allegation is whether or not the facts were disclosed to Mr. Polk.

The Court: What facts?

Mr. Anderson: The material facts relating to the signing of this order, upon which he predicated his action in signing this order. The charge is that the facts were not disclosed to him.

The Court: Do you care to be still more specific, Colonel Anderson?

Mr. Anderson: Yes, sir. You mean as to what material facts?

The Court: Yes.

Mr. Anderson: Then I would say that any fact which it was the duty of those asking the order to disclose and actively state, which was not disclosed or not actively stated, would come within that limitation. But as to what Mr. Polk may have known or what any one else may have known who exercised this function at that time, there is not a suggestion here as to what he knew or did not know.

The complaint is not of Mr. Polk, but of those who asked the order of him; and the sole inquiry is what they did and what they disclosed. If they disclosed all the facts that they were called upon to disclose, or if they disclosed facts that they purported to disclose, accurately, then the question as to what Mr. Polk knew in addition would not be subject to inquiry.

Have I made myself clear on that subject? I hope I have.

THE COURT: Yes, but it seems to me there is that difficulty, Mr. Anderson. I can see from your standpoint that possibly any evidence which would tend to show that The Chemical Foundation was endeavoring, or those who were its common stockholders, for selfish or financial reasons, to secure a sale of these patents, a private sale to The Chemical Foundation, and that the stockholders were not induced solely by patriotism, would be a fact which might be the determining fact from your standpoint as to whether Mr. Polk should or should not have signed that order.

I can likewise see the standpoint of Mr. Kresel. If I understand his contention correctly, it is that that would necessarily be an incident, that is, the possible commercial profit to any persons who were engaged in the chemical or dye industry in this country, and that going through years of building up such an industry would be a condition or a fact that would necessarily be presupposed by any individual familiar with the business, and particularly a person of the experience of a President or of any person connected with the State Department, and that the person authorizing such sale might consider that such interest would be a necessary incident of such sale, and that if the persons so purchasing patents engaged in practices in violation of the Sherman or Clayton Act, that those improper practices could be dealt with by the Government subsequently; and that for reasons which were known to the Department of State and to the President, the order might have been signed wholly without regard to such purpose on the part of the chemical and dye industry to eventually profit by the taking over of those patents.

Mr. Anderson: Your Honor will recall that the Statute provides that the order must state the reasons therefor in the public interest; and my view is that in view of the terms of that Statute, the only reasons that can be considered are those stated in the order.

Mr. Kresel: Yes, but the reasons which actuated the President or Mr. Polk in assigning those reasons in the order are just as effectual and just as important as the reasons which are stated as the basis of them.

The Court: If I recall, Colonel Anderson, you stated that you could challenge and question the reasons.

Mr. Anderson: As stated in the order, whether those reasons were sound and whether they completely stated the facts, that is, whether the facts upon which they were predicated were completely stated. I can question that. But I take it here that no reason can be taken to justify this sale by a private sale except the reasons stated in the order, and that we can only inquire into the facts that underlie those reasons.

Mr. Kresel: Let me give an illustration, your Honor.

The Court: Pardon me, Mr. Kresel.

Mr. Anderson: The President must state the reasons. Otherwise the order is not valid.

The Court: Then your contention is that you may inquire into the accuracy of the facts stated in those reasons.

Mr. Anderson: Yes, the accuracy of the facts.

The Court: You may take issue not only by way of demurrer to the reasons, but by a denial or traverse upon the accuracy of the facts.

Mr. Anderson: In other words, I take it, where we show the order was prepared by some one else and sent to the President as stating the reasons, in the public interest, or through Mr. Polk, that we can inquire as to whether those reasons were accurately or correctly stated, but we cannot inquire into what knowledge Mr. Polk may have had, which were not stated in the order, in the public interest. Because, if that were true, the provision in the Act requiring the President to state his reasons would be an absolute nullity.

Mr. Kresel: Your Honor will grant me a few minutes. I think I can by one illustration show the fallacy of the argument on the other side. Take the first reason that is assigned in this order by Mr. Polk, namely, that the Letters Patent, trademarks and similar rights cannot be sold to the best advantage at public sale.

Let me assume an extreme case. Let me assume that Mr. Polk in his official position had knowledge that the German Government had made an arrangement with some particular person to go and bid these patents in at a public sale. Just let us assume that for the purpose of the argument.

Is it contended by the Government that Mr. Polk and the President, if your Honor is to inquire as to their reasons, are to be estopped from telling your Honor what they had in mind as a basis for making that statement? Is it possible that they can attack the transaction and yet stop us from showing the justification of it? I do not understand Colonel Anderson's reasoning in this matter. He is always very clear in his reasoning. But I must confess I do not understand this.

They cannot attack the transaction and yet stop us from showing the justice of it and the fairness.

The Court: Mr. Smart, will you turn back to the last question, please.

(XQ. 98 repeated as recorded above.)

The Court: Has counsel any objection to my inquiring, as I am taking up again the question that I overruled, from Mr. Polk as to whether the facts called for by your question are facts that are well known or are known only to the department?

Mr. Kresel: Your Honor recalls the question. It was as to whether the Intelligence Department centered in the State Department. I see no objection to your Honor making the inquiry.

Mr. Anderson: We have no objection to your Honor making any inquiry.

By The Court:

Q. 99. The question I would like to ask is whether the facts called for by that question of Mr. Kresel are facts that are known generally to the public and are generally available to the public, or does the question call for facts which are known or should be known only to the Executive Departments?

A. The particular question would call for a reply that is known to the public.

The Court: Then inasmuch as the objection was sustained, mainly for reasons of State and not otherwise, I shall withdraw my ruling sustaining the objection and allow the general rule of practice that we have adopted in this case to apply to that question as well.

Mr. Anderson: Will your Honor permit me to put my objection in a little more specific form?

The Court: I thought you had.

Mr. Anderson: I want to make the objection to the question specifically. I want to object to this question and any answer thereto, and at the same time move to strike out all the examination thus far that relates to matters which are not the basis of the facts stated in the executive order.

I wish to object to this question specifically on the ground, in addition to being immaterial and irrelevant, that it makes inquiry as to matters relating to the Government which are not involved in this case and which, with deference, we think, should not be inquired about.

Second, that under the Statute under which this order was entered or purported to be entered, the executive officer or person exercising the power was required to state his reasons for his action, and it is not pertinent to inquire into matters that are not covered by the reasons given in the executive order.

The Court: I think this inquiry comes specifically under the first reason assigned, as illustrated by Mr. Kresel's last statement.

If you recall the question, Mr. Polk, will you answer it; and if an inquiry is made from you, either by Mr. Kresel or Colonel Anderson, which calls for disclosures that should not be made public for reasons of State, will you indicate by saying so.

By Mr. Kresel:

XQ. 100. Mr. Polk, I am going to ask you some questions. I will not ask you what the information was that you had, and, with Colonel Anderson's permission, in order to avoid eliciting any such facts, I am going to make my questions leading. Of course, if the Colonel objects to it, I shall try to mend my way.

Mr. Anderson: I have not objected on that ground yet.

Mr. Kresel: You did on one occasion.

XQ. 101. As counsellor of the State Department, did you have charge of arranging with the British and French authorities for permission to allow German drugs to be passed through the blockade?

A. Drugs and dyes, yes.

Mr. Anderson: Your Honor understands that this is all subject to objection.

The Court: I understand that that all is, and I gave you permission to take the answer to the preceding question, Mr. Kresel?

Mr. Kresel: Pardon me.

The Court: I overruled the objection to your preceding question. You may take the answer to that, if you want to.

Mr. Kresel: I understood it had been answered.

The Witness: No, it had not.

Mr. Kresel: I beg your pardon. Will you now answer it, please?

The Witness: What was the question?

XQ. 102. The question was whether it was a fact that the Intelligence Department of the Government centered in the State Department?

A. Not exactly.

XQ. 103. Will you state what was the fact?

A. Prior to our entering the war, in the fall of 1915, all the secret service agencies sent their information into my office. That office was made a clearing house for secret service information.

XQ. 104. That is all I desire to establish.

A. The reason I answer that question is, that was published in the papers at the time.

XQ. 105. Now, to return to my other question, that I was inquiring.

A. But, as I say, that ceased in April or May, 1917, after we got into the war. We still had information, but it was not a clearing house.

XQ. 106. Now, do you recall what drugs were imported from Germany pursuant to this arrangement that you made with the British and French Embassies?

A. The arrangement was not made with the British and French. The arrangement was made with the British.

XQ. 107. With the British.

A. In regard to the drugs, and that was for the importation of particularly salvarsan and novocaine.

XQ. 108. Prior to your acting in such a way as resulted in getting the British to agree to this, had you received any information as to the necessities of the country for such drugs?

A. Yes.

XQ. 109. Had you been in consultation with officers who represented to you, in your official capacity, the necessities of the country for those drugs?

A. We received from the drug houses and from the heads of institutions statements that there was a crying need for those particular drugs.

XQ. 110. Had you received any information as to the effects of substitute drugs?

A. I recall that some of these people stated that the so-called substitutes that were either manufactured or imported from elsewhere into this country, were in some instances ineffective; in other instances, dangerous.

XQ. 111. Now, as to dyes. Did you have information in your official capacity that with the outbreak of the European war the importation of German dyes ceased?

A. Very much curtailed and at one time it was prohibited by an embargo in Germany.

XQ. 112. Was information brought to you in your official capacity of the requirements of the country for such dyes?

A. Yes, I discussed the question with the Secretary of Commerce.

XQ. 113. Mr. Redfield?

A. Mr. Redfield.

XQ. 114. I am not inquiring what your discussion was, but I am inquiring of you as to whether you knew, had gained information before you made this order, of the importance of the dye industry and of the dependence that this country had on Germany for dyes?

A. Yes.

XQ. 115. You knew that to be a fact?

A. I knew that to be a fact.

XQ. 116. Do you remember any particular institution that made representations to you in your official capacity as to the importance of the dye industry in the country from a point of view of munition supplies and dyes?

> MR. ANDERSON: I will have to object, if your Honor please, if we are going into representations and hearsay. I do not know where we will stop.
>
> MR. KRESEL: I frankly admit, your Honor, that this testimony might be hearsay, but I claim that we have a right to show it as information in the possession of this official as a basis of his action.
>
> THE COURT: Will you turn to the third reason assigned by Mr. Polk: "The public interest will be best served by a wide use of the inventions covered by said letters patent and similar rights and such wide use can be most readily promoted by the licenses which the said The Chemical Foundation, Inc., is by its charter obligated to grant."
>
> MR. KRESEL: Yes, sir, that is certainly pertinent to that, isn't it—to show that he in his official capacity knew of the importance of a chemi-

cal industry to a country, because it was the source of the supply of munitions in time of war and of dyes and drugs in time of peace.

THE COURT: It is not sufficiently clear, your objection, to apply the general rule to that question that was applied to the other.

MR. ANDERSON: Does your Honor wish me to make the objection clearer, or is that for the status of the record?

THE COURT: No, I do not mean the objection is not sufficiently specific. You may have the answer.

MR. KRESEL: May I have the question read?

MR. ANDERSON: I note an exception.

THE COURT: Yes, the exceptions, Colonel Anderson, will be implied in all cases.

MR. ANDERSON: Yes. Thank you.

(XQ. 116 read as recorded above.)

A. Individuals pointed out the close relation between dyes and chemicals in the production of munitions and pointed out our dependence on the Germans for certain processes and patents.

XQ. 117. Was it pointed out to you by representatives of our industries that if the Germans had these patents that were here involved they could after the war destroy any chemical industry that might be built up during the war?

A. That was pointed out.

XQ. 118. Without asking you to state what your conversation with Secretary Redfield was, will you state whether it was in connection with building up a dye industry in this country?

A. It was.

XQ. 119. Was the question of building up a dye industry in this country discussed with the President?

A. Yes.

Mr. Anderson: Well, did he discuss it, or who discussed it?

Mr. Kresel: I am coming to that.

XQ. 120. Was it discussed at Cabinet meetings? A. Not at any of the Cabinet meetings at which I was present.

Mr. Anderson: If your Honor please, I do not think we have a right to go into Cabinet meetings here. If we are going into Cabinet meetings, I am going into them, too, at a later time. I will have to.

Mr. Kresel: That is right.

Mr. Anderson: I would not do it, but if we are going into Cabinet meetings here we might get very far afield.

The Witness: I would not feel at liberty to answer any question bearing on the discussion at Cabinet meetings anyway, Colonel.

Mr. Anderson: If you say it was discussed at Cabinet meetings—

The Witness: No, I say not when I was present. I do not know whether it was discussed or not.

Mr. Anderson: Oh, I thought you said it was discussed.

The Witness: No, I hope the answer was not that way.

The Court: I am not going to hear any discussion now; I am going to let you put another question and then we will hear any discussion upon that.

The Witness: I would not answer such a question.

XQ. 121. I will ask you this question—whether as the result of the representations that were made to you in your official capacity, the discussions with Secretary Redfield, the conviction that the country was dependent upon Germany for these essential dyes and drugs and munitions—whether the Government formed any policy as to building up a dye industry in this country. Just say yes or no to that.

Mr. Anderson: One moment. I first would like to ask what was the answer to the preceding question, if I may ask, sir, on the discussion at Cabinet meetings.

Mr. Kresel: He said he was not present.

(The reporter read as follows: "The Witness: No, I say not when I was present. I do not know whether it was discussed or not.")

Mr. Anderson: I wish to object to the particular question that was asked, first because it is undertaking to draw a conclusion of the witness.

The Court: This is the last question, Colonel?

Mr. Anderson: The last question.

The Court: Which was what?

(XQ. 121 read by the stenographer as above recorded.)

Mr. Anderson: Now I would object to that on the ground that it is asking generally to state as a result of representations made to the witness, without specifying who, where, when, whether it was ten years ago or one year ago; second, it undertakes to predicate his answer upon a conviction—of whom? The country? The witness? Whose conviction? Therefore, it would be a legal error. Third, that the policy of the United States with respect to business is fixed by Congress and not by the witness, however distinguished may have been his position or his qualifications, and therefore I do not think that any witness could be asked as to what policy was formulated unless that policy was put into the form of law, an order by an authorized administration, and then it would have to be produced.

Mr. Kresel: May I say that I will show the law—I will follow it up with the law.

Mr. Anderson: Then the law speaks for itself.

The Court: Colonel Anderson, your contention is that the Trading with the Enemy Act did not confer the power?

Mr. Anderson: That is the question.

The Court: Your contention is that the Trading with the Enemy Act did not confer the power for the Executive Department to decide upon a policy.

Mr. Anderson: Certainly.

The Court: Yes, that is your contention.

Mr. Anderson: Yes, certainly.

The Court: But Mr. Kresel's contention is the opposite, that there was a conference of power which was broad enough to enable them to do this very thing, and now he is inquiring as to the reasons why they did it. Unless I determine *in limine* whether your contention of the law is right or whether Mr. Kresel's contention of the law is right, then I have got to take evidence that may be considered under each of those contentions, have I not?

Mr. Anderson: Yes. If your Honor will permit me—I regret to take the time but, if your Honor will permit me, the law speaks for itself as to what it means and the witness can not testify as to that.

The Court: Surely.

Mr. Anderson: That is first. Second, the policy of Government must be drawn from that law, because Congress alone can fix a policy with respect to industry.

The Court: Are you not overlooking this assumption? You have gotten in your mind probably, that this act does not confer the power, that you are overlooking the undecided question as to whether the power is there, and there is a latitude of discretion for the Executive Department, in which the Executive Department could move.

Now then, Mr. Kresel's question assumes the existence of power, and what the Executive Department decided to do in the proper exercise of that power, as it saw.

Mr. Anderson: If your Honor will permit me, my third point leads up to just what your Honor suggested, and that is, if we are going to concede that the Executive Department fixes a policy, if the witness can fix the policy, he can state what the policy was. He can state the facts.

Mr. Kresel: That is what he was asked for.

Mr. Anderson: But he was asked for the policy, the policy that had been fixed, as a conclusion, I presume, by the entire Executive Department. Certainly I would not say that one witness could get on the stand, however distinguished that witness was, and undertake to say what the fixed policy of the Government was, unless it brought in something that represented the action of the Executive Department of the Government.

The Court: The order of the President giving Mr. Polk the power to authorize a proper sale under the Trading with the Enemy Act, enables him to say, and he is the one person who would be authorized to say, as to whether the Government had the policy. I will overrule the objection, and you may take an exception.

Mr. Anderson: Exception.

XQ. 122. I was asking you, Mr. Polk, whether it was the policy of the Government at this time, in view of the information that the Government was in possession of, as to the dependence of the country upon Germany for a supply of these essential dyes and munitions and drugs, to build up a chemical industry in this country?

Mr. Anderson: My objection is noted, and exception?

The Court: Yes.

A. You mean the policy of the Executive Department?

XQ. 123. Yes, of course.

A. Yes.

XQ. 124. Now, do you remember?

A. Wait, pardon me. Mr. Kresel—when do you mean?

XQ. 125. I mean at the time.

A. Before we were in the war?

XQ. 126. Before we were in the war, certainly. When we were threatened with it.

A. I do not know that I can answer that question. I mean, when you say the whole—there were some members of the Executive Department who felt and were permitted to urge legislation, and legislation was enacted, but that was——

XQ. 127. That is the extent to which you want to testify as to the policy?

A. Yes.

XQ. 128. Very well. I will take that. Now, the legislation you talk of is what?

A. It was a Bill introduced by the late Representative Hill, Ebenezer Hill, of Connecticut, Republican member from Connecticut.

XQ. 129. Now I do not want to go into the details of that legislation, except to ask you whether it is a fact that pursuant to this policy that you have stated, the administration was in favor and urged, although it was a Democratic administration, high tariff upon importations of dyes?

Mr. Anderson: I think the record will speak. It is urged. The only possible way to be urged was either by a message by the President or by a report of a committee or by legislative act.

The Court: There is record evidence of that which has been put in evidence, or which you have called attention to, I think, a message from Ferry to President Wilson. There is no better evidence on that point than is there.

Mr. Kresel: By the President?

Mr. Anderson: By President Wilson. There is no better evidence on that point than is there.

That message was May, 1919, and the Bill to which Mr. Polk refers was before we went into the war, so I do not think that message could have any relation to it, but I do respectfully insist that if there is any such urgency upon Congress or any other body, the only person that can co-operate with Congress is the President, and that is the only way the Executive power can speak.

The Court: I think the objection is well taken. I will hear you, if you wish.

Mr. Kresel: No, your Honor. If your Honor is convinced of that, I shall not pursue it.

XQ. 130. Did you personally, in your official capacity, urge the passing of this Hill Bill?

Mr. Anderson: I object to that.

Mr. Kresel: Have I not a right to show that?

Mr. Anderson: This is a court of law, and it does not speak for the administration.

The Court: This is not the Trading with the Enemy Act?

Mr. Kresel: No, it is not the Trading with the Enemy Act.

Mr. Anderson: It is before we ever went into the war.

The Court: I do not see at all that we are concerned with the policy of any administration with respect to dyes and chemicals before we went into the war. It seems to me if we are concerned with a policy, it is with the policy for a limited period of time immediately prior to February 26, 1919, the date on which Mr. Polk signed this order.

Mr. Kresel: No, your Honor. You will pardon me if I will argue it with you. The point that we make is that when Mr. Polk signed this order, in February, 1919, he had information and he could divorce himself from it as to the dependence of this country upon Germany for a supply of essential chemicals and dyes. Information that he had obtained in an official capacity, information that came to him quite apart from Mr. Palmer's talk with him, or Mr. Palmer's report or Mr. Palmer's letter. That is what I am trying to show, and it seems to me, with all due deference to your Honor's opinion, that it makes no difference when he obtained that information —whether it was before the enactment of the Trading with the Enemy Act or subsequent thereto, as long as it was prior to his making this order.

The Court: And you show continuity, of course.

Mr. Kresel: Yes, of course.

The Court: I assume you are approaching it from a different aspect than I did. I was approaching it from the date of the order on going back, and you are going forward.

Mr. Kresel: I do not want to take any more time with that than necessary. May the witness answer the last question, or does your Honor——

THE COURT: No, I think the objection is well taken, Mr. Kresel. You may take his answer under Rule 46, if you wish.

MR. KRESEL: No. That is enough.

XQ. 131. Mr. Polk, it is charged in this Bill of Complaint that certain corporations who are named in the Bill, engaged in the chemical industry in this country, and certain other concerns not named, likewise engaged in the chemical industry in this country, and certain trade associations entered into a conspiracy to establish and maintain a monopoly of the dye industry of the country, and that pursuant to that conspiracy, and in order to enable them to perpetuate their monopoly, they conspired to induce the Alien Property Custodian to make this sale of the patents here involved to the Chemical Foundation. Now, I am going to ask you whether, assuming that you had known as a fact that there was a monopoly here such as I have described, as is alleged in the Bill of Complaint, whether you would nevertheless have authorized the sale of these patents?

A. That is surely a hypothetical question.

XQ. 132. Of course, but I have to put it in that way.

A. Well, I would assume that the Clayton law, and the Sherman law would have protected the country from a monopoly; and in view of the statement that these patents were to be sold to all who might require them——

XQ. 133. Licenses, you mean?

A. Licenses. I would have signed it.

THE COURT: Might I ask why?

MR. KRESEL: Yes, sir.

XQ. 134. The Court is asking why?

A. Why I would have signed the order?

THE COURT: Yes.

A. (continuing): Because I felt, your Honor, here was an opportunity to build up a real chemical industry in this country; something we never had before. As I stated, we were completely at the mercy of Germany. These patents were, many of them, not being used in this country, were being held, for instance Swiss and French patents, being brought in. I say that was the effect; whether they were held for that purpose I do not know, but that was the effect; and for that reason it appealed to me that this was a wise plan, to make the American people independent of foreign controlled patents.

XQ. 135. I assume that the consideration that munitions of war were so closely related to the dye industry and covered by some of the patents, had some influence with you?

A. At that moment, that was not so pressing as the other causes, because we were negotiating peace. That is also a consideration for the order.

XQ. 136. Now, Mr. Polk, it is also alleged in the Bill that—I think I had better read the Bill so as not to mis-state it. It is stated in the Bill (I am reading from paragraph 34):

> "that other facts in connection therewith, and especially the attitude of the Federal Trade Commission, charged with issuing licenses under the enemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk."

Now, I am not now asking you whether any such facts were misrepresented or misstated to you. My question at this time is whether you knew that by the same order, Executive order of December 3, 1918, made by President Wilson, by which he delegated to you the power to be exercised under this amended Section 12 of the Trading with the Enemy Act, he at the same time defined the respective duties and responsibilities with reference to enemy property as between the Federal Trade Commission and the Alien Property Custodian?

A. I knew he had done it. I did not know it was in the same order.

XQ. 137. Yes. You knew, therefore, when you signed this order, that whatever rights and duties of those two respective departments were concerned, were not only fixed by the Trading with the Enemy Act, but were regulated by an Executive order of the President?

A. I knew there was such an order.

XQ. 138. And now I ask you whether any facts with respect to the attitude of the Federal Trade Commission were misstated or misrepresented to you by anybody?

A. I do not recall any discussion.

XQ. 139. Either with Mr. Palmer or with the gentleman who brought you the order?

A. I do not recall any discussion at that time.

XQ. 140. Was your signature to this order of February 26, 1919, and the one of April 5, 1919, and the issuance of those orders procured from you by the suppression or misrepresentation of any facts?

A. Not that I have since ascertained.

Mr. Anderson: If your Honor please, I object to it, and move to strike that answer out. That is an absolute conclusion. It does not appear whether the witness knew all the facts in this matter; and I ask that the question and answer be stricken out.

Mr. Kresel: But the allegation is a conclusion. They do not tell us what facts were misrepresented, as I pointed out in my opening.

Mr. Anderson: That is a question of argument to the Court. My point is that this witness can not say that all the facts were stated.

The Court: I understand your contention, Colonel Anderson. I will take the answer under the general rule, and as I see it, it should be limited to such facts as he shall have disclosed when he leaves the witness stand, he is now familiar with; and not such facts as are not now brought to his attention or shown elsewhere to have been brought to his attention.

XQ. 141. As far as you know, Mr. Polk, were any necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of these patents, not stated or disclosed to you but withheld from you and suppressed, as alleged in the Bill?

Mr. Anderson: I object, for the same reason.

The Court: Same ruling.

Mr. Anderson: Exception.

A. Not that I know of.

XQ. 142. Do you know of any facts which have been called to your attention by the Government upon its examination, or upon my examination, which if you had known at the time you signed these two orders, you would have declined to sign them?

A. No.

XQ. 143. Is it true, as alleged in the Bill, that you signed these orders without knowledge of the facts?

Mr. Anderson: That is going a little far.

Mr. Kresel: I am reading what is alleged in this Bill.

The Court: That is not a physical impossibility, but it is a logical impossibility, for him to answer that; because I do not know that he knows all the facts now. I do not see how it is possible to answer that question; do you?

Mr. Kresel: If your Honor asked me that directly, I should say yes; and I think this witness who has now been examined by both sides, who has tried to refresh his recollection, who knows about the transaction, can state whether all the essential facts are before him or not.

THE COURT: Well, he has told us what facts were before him. He has answered those last two or three questions, which I will not repeat. I think that must be a conclusion from the general evidence of this witness and all the other evidence in the case.

I do not think that the answer, if he stated it, whatever it might be, would help you. It would not serve me at all. Whether it would serve some other purpose or not, I cannot say.

MR. KRESEL: Of course, your Honor is well aware of the rule that in cases where fraud is charged, or misrepresentation or suppression of facts, as is charged here, that the person so charged or as to whom it is so charged, is usually asked to categorically deny the statements.

I can not supply the facts, because the Government has not alleged them. All I can do is to repeat the language of the Bill.

THE COURT: I do not see how the witness can answer the question. I do not see what good it would do if he did answer it, because it is the facts, and you have a multitude of facts on both sides that have been elicited from this and other witnesses.

MR. KRESEL: Very well, your Honor, I will not pursue that.

XQ. 144. Now, Mr. Polk, the Government has claimed here that the order of the President, delegating the power to you under which you made the orders in question, was invalid because the order is made to you, "Frank L. Polk," and not to you "Frank L. Polk, Counsellor of the State Department"—or Under-Secretary of State, whichever was your designation. It is therefore necessary for me to inquire of you how this appointment came to you; if you will state?

Mr. Anderson: If your Honor please, I wish to note an exception now. These are all documents. They speak for themselves. Mr. Polk has exercised the power, signed orders, and everything of that sort; and it is a matter of construction of what those orders mean; and Mr. Polk cannot testify on that subject.

The Court: That is as I see it, Mr. Kresel. I do not see how Mr. Polk can help us by stating the facts which led the President to designate him. Now then, you have shown already the office which he then held.

Mr. Kresel: I am going to ask one more question on that.

The Court: Yes.

XQ. 145. At this time when the designation was made by the President authorizing you to exercise this power, you were counsellor of the State Department?

A. The official title was "Counsellor for the Department of State."

XQ. 146. "Counsellor for the Department of State"—and is that an office of the United States?

Mr. Anderson: I object. That is a matter of law absolutely.

The Court: The objection is sustained. That involves a construction of the Constitution and of the Statutes, and if counsel can show that, while I would take the witness's opinion ordinarily on it, I do not think it is a matter of testimony.

XQ. 147. Were you an officer of the United States?

Mr. Anderson: I make the same objection, that it is a conclusion of law.

THE COURT: Objection sustained. You may show what—

MR. KRESEL: I am going to, your Honor.

XQ. 148. Were you nominated for that office by the President of the United States?

MR. ANDERSON: I want to object to that, because I would not want to put him to the trouble of bringing a record. I am willing that the witness testify to it.

MR. KRESEL: What has become of this desire to get all the facts before the Court?

MR. ANDERSON: I object to that.

MR. KRESEL: Maybe you will make me bring the Constitution, so as to prove that.

THE COURT: Are you prepared to concede the fact, or do you want to elicit it from the witness?

MR. ANDERSON: I am perfectly willing to stipulate on the facts that Mr. Polk was nominated to the office as Under-Secretary of State, by the State Department, and was confirmed by the Senate—

THE COURT: Prior—

MR. ANDERSON: Prior to the 3rd day of December, 1918.

THE COURT: Filling that office and exercising his powers and duties at the time of the execution by him of each of these orders of his that has been put in evidence?

MR. ANDERSON: That his occupation—what I mean is, that he continued in that office without resignation until after—what was the date of your final retirement?

THE WITNESS: June 15, 1920.

MR. ANDERSON: Whether he was exercising the functions, I do not know.

THE COURT: I think that covers the facts that you want, Mr. Kresel?

Mr. Kresel: Yes.

Mr. Anderson: I want to object to these remarks by counsel. I do not want to have personal controversy in this case, but I will not submit, with all due deference to the Court, to any insinuations of that kind by counsel. I want to be understood on that.

The Court: There have been very few on either side, Mr. Anderson, and I hope that there will be fewer on both sides.

Mr. Anderson: I am sure I shall co-operate.

The Court: You may proceed, Mr. Kresel.

By Mr. Kresel:

XQ. 149. Now, pursuant to that order of the President, of December 3, 1918, did you sign other Executive orders in addition to the two here involved, those others likewise relating to the disposition of property in the hands of the Alien Property Custodian?

Mr. Anderson: I object to that on the ground that it is immateral, what orders Mr. Polk signed. The question of the validity of these orders, if they are valid, is a question of law; if they are invalid, he might have signed a thousand and they would not have affected the validity of these in the slightest.

Mr. Kresel: I desire to show, if your Honor please, that this authority by Mr. Polk was exercised during a period of eight months—yes, more than eight months; that he signed under that authority many like and similar orders authorizing private sales and rejection of bids at public sales of property in the hands of the Alien Property Custodian.

I shall follow up that testimony, if allowed in, with evidence that in no case has the Government of the United States challenged the validity

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of any such orders, and that in one case the Government of the United States based its title to property involved upon an order so made by Mr. Polk under this designation.

The Court: I shall take such testimony this afternoon under our general rule of practice adopted in this case, without expressing any view as to whether it is ultimately to be deemed relevant or material. We will now suspend this case, in order to go over our trial list, and charge the Grand Jury, and I think that will take half an hour. I think probably we had better convene again at 1:15 o'clock, Standard Time.

After Recess.

Mr. Kresel: If your Honor please, I now offer in evidence copies of orders made by Mr. Polk under the authority of the Executive order of December 3, 1918, the first one being dated December 4, 1918, and the last one being dated July 8, 1919, said copies being found at pages 90 to 113 inclusive of this book, which is a Government document entitled, "Trading with the Enemy Act and amendments thereto, together with proclamations, Executive orders and orders issued by Frank L. Polk, Acting Secretary of State, under authority of Executive order of December 3, 1918, issued thereunder, to and including November 25, 1919."

I understand that under our stipulation with the Government there is no question as to the authenticity of these instruments. Is that correct, Mr. Galloway?

Mr. Galloway: That is right. The book is not covered by the stipulation, but we do not object to it.

The Court: Then you offer this documentary evidence instead of taking the answer to the question that was unanswered?

Mr. Kresel: Exactly, your Honor. I think it will shorten our inquiry.

The Court: Admitted.

Mr. Anderson: May I suggest to counsel if it would be possible—those are very long documents and I do not understand the terms of the order relate to any matter that you want to put in; do they?

Mr. Kresel: Yes, I am very anxious to have before the Court the forms of these orders and the reasons which are assigned in each case by Mr. Polk for the making of the orders, as required by the Statute. Does your Honor see?

The Court: As indicating the caution that must be exercised in invalidating the orders here challenged by the Government.

Mr. Kresel: That is one of the reasons, yes, sir.

Mr. Anderson: If your Honor please, we do not object to the introduction of this evidence upon any question of its authenticity, and admit it, and agree that in any matter of formal proof authenticity is waived. We do object to the evidence as being irrelevant and immaterial to the issues of this case.

Mr. Kresel: As to the length of them, Colonel, as we have already agreed with you on another matter—I do not recall it now—we will endeavor to shorten these as much as possible. I think we can do that.

The Court: By agreement.

Mr. Kresel: By agreement of counsel.

The Court: That you may not leave out anything that the other side wants. They may be admitted. You have no objection to their being admitted out of order?

Mr. Anderson: I do not raise any objection on that ground.

The Court: They will be admitted, each order having a separate number.

Mr. Kresel: I think that would be better, your Honor.

Mr. Anderson: If I might say in addition, that I understand that the objection of irrelevancy and immateriality, without repeating it, carries with it the objections generally stated to this character of evidence in our opening statement.

Mr. Kresel: I so understand.

The Court: And all evidence which is offered at any time in the cross-examination or in defense by the defendant, is objected to by you save only that of the value of these patents at the time of their assignments; and that all such testimony is admitted over your objection and exception, is conclusively presumed to have been entered.

Received in evidence and marked respectively "Plaintiff's Exhibits Nos. 4, 4-A, 4-B, 4-C, 4-D, 4-E, 4-F, 4-G, 4-H, 4-I, 4-J, 4-K, 4-L, 4-M, 4-N, 4-O, 4-P, and 4-Q." (Same as Plaintiff's Exhibits Nos. 728 to 728-Q, incl. *See Exhibits, Vol. III, pages 1874 to 1924, incl.*)

The Court: Are you through with your examination, Mr. Kresel?

Mr. Kresel: Yes, your Honor.

Re-Direct Examination

By Mr. Anderson:

RDQ. 150. Mr. Polk, I failed to ask you one question this morning that I would like to ask now, and of course leaving it open to cross-examination if it is necessary or desired, and that is, were you notified of your election as a member of the Board of Directors of The Chemical Foundation about June 22nd, 1922?

A. Was I notified?

RDQ. 151. Yes.

A. June?

RDQ. 152. About June 22nd, 1922, something like that?

A. No.

RDQ. 152-a. You do not recall at all your election to membership on the Board?

A. Colonel, some one mentioned that my name was being considered, but I was never told that I had been elected. I never said that I would accept.

RDQ. 153. You never said that you would accept?

A. No; I mean the decision was never put up to me. Whether there was an election or not I do not know, but I was never told. I do not recall that I was told that there was an election, but I was never asked whether I would serve.

It may have been that they said I had been elected, and for some reason it was never put up to me to say yes or no to it.

RDQ. 154. You never did agree to serve as a member of the Board, did you?

A. No.

RDQ. 155. Mr. Polk, I understood you to say on cross-examination that your action in this matter was taken in order that the industry (meaning the chemical and dye industry) affected by these patents, might be Americanized; did I catch your statement correctly?

A. That was the idea. I did not use quite those words. In other words, we should create—it should be created in this country—chemical and dye industry.

RDQ. 156-7. Your idea then in this matter was that by making this sale in the manner which has been discussed with you this morning it would be of benefit to the American industry?

A. That was one of the reasons, yes.

RDQ. 158. Do you recall when you first heard of the proposal to sell these German patents affecting the chemical and dye industry to the Chemical Foundation?

A. No, I could not state that positively, Colonel.

RDQ. 159. The letter of Mr. Palmer transmitting this first order to you on the 26th referred to the fact that he had hoped to see you that morning but arrived too late. Can you now locate about the time of your telephone conversation with Mr. Palmer?

A. No, it was some time during the day; it was within two or three hours of the receipt of the letter.

RDQ. 160. Did you not state to Mr. Palmer in that conversation that if he would prepare his order and send it over to you, you would sign it?

A. I do not recall it. My recollection is that the conversation was after the letter was received.

RDQ. 161. After the letter was received?

A. That is my recollection, but I would not be sure.

RDQ. 162. Is it or not true that your first information as to the proposed sale of these patents, trademarks, etc., was really the receipt of that letter?

A. The first official information, yes.

RDQ. 163. Well, did you have any other information on the subject that you recall now independently?

A. Well, I would not want to state that positively, Colonel. I have a recollection that there was some general discussion in which I had taken no part.

RDQ. 164. In which you took no part?

A. In which I took no part at all. I heard it discussed some time about February 26th, somewhere prior to that, but I would not be positive about that.

RDQ. 165. Do you know whom you heard discuss it?

A. No.

RDQ. 166. Just a current, desultory discussion?

A. Yes, I imagine so, something in the Department, either brought up by the trade adviser or some subordinate; I am not sure of that.

RDQ. 167. You do not remember anything that was said at that discussion, do you?

A. No. As a matter of fact, the first definite information I received was that order of the 26th.

RDQ. 168. At the time that you signed that order then, the information which you had on the subject, this particular subject covered by the order, was the information contained in that letter and in the accompanying report, was it not?

A. In the report and the letter and such conversation as I had with the man who brought it over, which was probably very brief, and with Mr. Palmer.

RDQ. 169. Can you state approximately how long was that conversation with Mr. Palmer over the telephone on the subject?

A. Either telephone or in the office, I am not sure which; but I have no definite recollection on that.

RDQ. 170. Mr. Polk, do you remember anything that was said in that conversation with Mr. Palmer in addition to his report? Have you any independent recollection of it?

A. I remember the question I asked.

RDQ. 171. Would you state it?

A. I asked whether this transaction had been approved by the so-called Sales Committee.

RDQ. 172. You were told that it had?

A. Told that it had been.

RDQ. 173. When you speak of this transaction, do you mean the entire transaction, price and everything of that sort?

A. I could not very well separate it in my mind. The impression on my mind was the whole transaction. That is the impression I have now.

RDQ. 174. The whole transaction as embodied in Mr. Palmer's report had been approved by the Sales Committee, was the impression you got?

A. I don't know whether the report was approved by the Committee. I didn't mean that.

RDQ. I did not mean the report. I mean the essentials of the transaction?

A. Yes, that the sale to the Chemical Foundation was approved by the Sales Committee.

RDQ. 176. You stated this morning that you discussed the question of price with Mr. Palmer. Were you advised or did you gain the idea in the discussion that the question of price had been taken up with the Sales Committee?

A. I separated that question. I rather assumed that it had been.

RDQ. 177. You assumed that it had been?

A. Yes.

RDQ. 178. In other words, you assumed and gathered the impression from the facts presented to you at that time, either in the report or in personal conversation or telephone conversation as the case might be, that all of the essential elements of this transaction had been approved by the Sales Committee?

A. That was my impression.

RDQ. 179. In this order you state that the Alien Property Custodian may sell all Letters Patent, trademarks and rights under Letters Patent and Trademarks, including all profits and damages recoverable at law or in equity for past infringements thereof, which the Alien Property Custodian may seize or may have seized under the provisions of said Trading with the Enemy Act and amendments thereto now or hereafter enacted, and which he from time to time shall determine relate to the objects and purposes of The Chemical Foundation, Inc., as expressly defined in its Charter. Did you know at that time or was it stated to you to what extent the seizure of these patents had been carried and how many of them had been seized?

A. How many were actually in hand, do you mean?

RDQ. 180. Yes.

A. No.

RDQ. 181. Did you know or did you have a list of the patents, trade-marks, etc., which had actually been acquired by the Alien Property Custodian?

A. The whole 4500?

RDQ. 182. Well, whatever they were at that time?

A. No, I do not think I did.

RDQ. 183. You did not have any list?

A. No.

RDQ. 184. You did not know at that time what was the name of the trade-marks which were proposed to be seized, since you left that to be determined, their character and relation to the business of the Chemical Foundation, by the Alien Property Custodian; am I right in that?

A. Yes.

RDQ. 185. Something was said to you about the price to be paid. There was no price mentioned in your order you observe that?

A. Yes.

RDQ. 186. Was the question of price really considered in connection with the matter; was it not the question of promoting, if I may use that word, the American industry, by the use of these patents?

A. Well, it was an arbitrary price.

RDQ. 187. Yes?

A. But I do not know that we considered the values of the patents as a whole. In other words, whether you take what they could have sold them for at auction, because that is what they desired to avoid.

RDQ. 188. As a matter of fact you did not know what the patents and trade-marks were, so you could not consider their value?

A. Well, I had a general idea what they covered. That is, I knew there were certain processes and—

RDQ. 189. Your real object then, in making the sale under the terms prescribed in your order was to promote the development of this industry, dyes and chemical industry, through the use of these patents to the extent they could be used; is that true?

A. That is one of them.

RDQ. 190. As a matter of fact wasn't that the real controlling purpose in the matter?

A. No, I do not think it was the only one. As I recall it it was the policy that had been pursued in connection with these valuable German patents. In other words, turning them over to the Government or semi-Government agencies—not necessarily for the benefit of those industries, but to be used in this country.

RDQ. 191. You said you had not seen the charter of the Chemical Foundation. You regarded it as a semi-Government agency?

A. Yes.

RDQ. 192. And you understood from the report and statements from Mr. Palmer that it was a semi-Government agency, or would be, did you?

A. Well, I read the report. I assumed that it was not a money-making organization.

RDQ. 193. Of course, the thing might not be a money-making institution; for instance, a hospital.

A. Well, of course it was not a semi-Government, because after all there is no such thing as a semi-Government, strictly speaking.

RDQ. 194. Yes.

ter except such as was represented to you in Mr. Palmer's report, his statement and letter?

A. Entirely his statement and letter, yes.

RDQ. 205. Did you know at the time that you signed this order or were you advised, as to who were to be the stockholders of the Chemical Foundation, Incorporated?

A. I can not be sure that I was told the names of all the individuals. I was told they were to be large users of the patents.

RDQ. 206. You mean large interests?

A. I meant to say large interests, chemical and dye interests.

RDQ. 207. Would own the stock?

A. Would own the stock.

RDQ. 208. Did you ever talk to any member of the Advisory Committee? You know to what committee I refer?

A. Yes.

RDQ. 209. Before you signed this order on this subject?

A. No.

MR. KRESEL: You mean the Advisory Sales Committee?

MR. ANDERSON: I refer to the Advisory Sales Committee.

THE WITNESS: I so understood it.

RDQ. 210. That is the committee you mentioned this morning as knowing three members of it?

A. Yes.

RDQ. 211. You stated in your answer to a question by Mr. Kresel that you were informed at the time you signed this order that the Chemical Foundation was obligated to give free licenses for the use of these patents, trademarks, etc., to the United States. Was that true?

A. Yes.

RDQ. 212. Was it your understanding or was the information given to you to the effect that the Chemical Foundation would give to the United States free and unrestricted licenses for the use of these patents, non-exclusive, of course?

A. That was my understanding.

RDQ. 213. Can you recall whether that question was specifically discussed between you and Mr. Palmer?

A. There was no discussion on it. I remember up in regard to other patents that had been assigned that statement was made because we had the question to the Army and Navy.

RDQ. 214. That statement was made to you by Mr. Palmer?

A. Yes, that is my recollection.

RDQ. 215. You stated, Mr. Polk, I think that you made the statement to the President, in the few days that he was in Washington, that you had signed this order, or these orders rather?

A. I stated to him merely as a matter of information that I had signed two or three, I have forgotten the number now, of those Alien Property Custodian orders, although he was in the city at the time.

RDQ. 216. You did not state the character of them?

A. I did not go into any detail at all.

RDQ. 217. The President was overwhelmed, I suppose, during the few days he was there, by Congressional duties and you could not discuss things of that kind?

A. No. I did not attempt to discuss them.

RDQ. 218. You stated in your cross-examination that the meaning of your statement in your Executive order, was to the effect that the sale of these properties at private sale was better, that a public sale would give to individuals the control of the American market through the monopoly which the patents gave and thus create the same situation as there was before, except that the monopoly would be in the hands of American interests. Did I understand you correctly? I have that note there.

A. I think that is substantially correct.

RDQ. 219. And was that condition represented to you by Mr. Palmer as a reason why the private sale should be made?

A. I cannot be sure of that, Colonel, whether we discussed that feature of it or not. I remember that was in my mind.

RDQ. 220. That was in your mind and actuated you attitude. You said something about discussing this matter of the dye industry with former Secretary of Commerce Mr. Redfield. Was that at the time that you signed these orders or at a subsequent time, or about when?

A. That was in 1915 and 1916.

RDQ. 221. That was back in 1915 and '16?

A. I do not recall any discussion with him at that time at all.

RDQ. 222. That was before we went into the war?

A. That was before we went into the war. That was on the general question of importation of dyes and chemicals.

RDQ. 223. As a matter of fact, you do not recall discussing this matter with anyone except with Mr. Palmer and possibly with a representative of the Alien Property Custodian who brought you this order at the time you signed it, do you?

A. Not at the time I signed it, no.

RDQ. 224. Were you told, Mr. Polk, that there was any understanding or arrangement between the

Alien Property Custodian and the Federal Trade Commission and the President with respect to the seizure of enemy owned patents and the disposition thereof or limitations upon the seizure and sale?

A. I knew there had been a discussion on that subject.

RDQ. 225. You did not know what the arrangement was?

A. I can not testify now that I did. Of course, I have seen the order. That may refresh my recollection. I do not think I could testify that I really knew at the time the exact contents of that order.

RDQ. 226. I do not mean the order.

A. I thought you were referring to that order of December.

RDQ. 227. No, I am just speaking of whether you were advised of any arrangement other than that order between the Alien Property Custodian and the Federal Trade Commission or any arrangement or agreement with the President as to the seizure or sale?

A. Not other than the order of December.

RDQ. 228. Other than the contents of the order of December, that was your full information on that subject?

A. As I recall it, yes.

RDQ. 229. I understood you to testify—and in asking this question I would ask the Court to understand that I do not waive my objection to the question—that the policy of building up the dye industry was the great factor in this transaction. Possibly I do not use your exact language. Did I understand you correctly?

A. It was a factor. I do not think I said "the great factor." I think I said "a factor."

RDQ. 230. Is it or is it not a fact that you and Mr. Palmer in your conference considered the effect upon the dye industry as the one object in view, as indicated in his report that you read?

A. I do not think that was the only object, Colonel. I remember that was an object. Of course, it was a question not only of building up our own industry but it was also putting in use—giving the American people the use of these patents. Of course, you could not do one without the other. Those were two of the factors.

RDQ. 231. Those two were the controlling factors in the situation?

A. Undoubtedly, yes.

THE COURT: May I have the question and answer repeated?

(Question No. 231 and answer repeated).

A. (Continued) Those were two of the factors.

THE COURT: You were both talking at the same time and I wanted to make sure that Mr. Polk understood you.

(Question No. 231 repeated).

A. Those were two of the factors.

RDQ 232. In view of your statement this morning that the policy was to build up the dye industry, and in connection with that you say you signed this order, and in view of the statements in Mr. Palmer's report as to the urgency of that and the vital necessity to the dye industry of these patents, wouldn't you say that that was the controlling factor in the sale of these patents, in the method in which it was made?

A. I do not want to seem to be avoiding your question.

RDQ. 233. I understand. I know you would not.

A. They were two, of course, very important factors in it. Of course, there were other factors but undoubtedly those were the two important factors.

I do not know that they were controlling factors, but they were two very important factors.

RDQ. 234. You stated this morning in your cross-examination that the ownership of these patents might be used to prevent the importation of dyes from England or Switzerland or France and that they had been used by the Germans to prevent the importation of such dyes prior to the war. Did I understand you correctly?

A. So I understood, yes.

RDQ. 235. From your familiarity with the situation, which you indicated in a prior question, can you state whether the use of these patents had prevented the importation of Swiss and English dyes prior to the war?

Mr. Kresel: You do not mean the use of these dyes. You mean the use of these patents.

RDQ. 235. (Continuing) The use of these patents, copyrights, trademarks, or whatever they were?

A. I can cite an instance where I was told that it had prevented. The question came up in regard to certain —

RDQ. 236. If it was hearsay, I think I would rather not go into it.

A. It is not hearsay. It came to the Department in this way. An application was being made to bring in German dyes. There was an embargo and they could not be brought in. The suggestion was then made that they be brought from Switzerland and the statement made that they could not be brought from Switzerland because those Swiss processes would be a violation of certain patents in this country which would not then be operative.

RDQ. 237. You mean German patents?

A. German patents.

RDQ. 238. Do you know whether those patents were included in the list thus sold?

A. That I do not know.

RDQ. 239. Do you recall whether Mr. Palmer stated to you at the time that you were asked to sign this order, in the conference to which you have referred, that the ownership of these patents by private interests would have the effect of controlling the importation of dyes affected thereby?

A. I do not recall he stated that to me, Colonel.

RDQ. 240. Do you recall whether that is stated in his report?

A. No, I am not sure enough to state. If you will let me have the report, I will tell you.

RDQ. 241. No. I just wanted to know whether you remembered it?

A. I do not know that—

RDQ. 242. Were you told, Mr. Polk, that the dye and chemical industry were all interested in the Chemical Foundation, and therefore that there would be no bidders outside of the Chemical Foundation if a public sale were made?

A. I do not know. I do not recall that statement.

Mr. Anderson: I think that is all as far as I wish to examine the witness.

Mr. Kresel: That is all, Mr. Polk.

The Court: Now, Mr. Polk will not be needed further under the subpoena.

Mr. Kresel: No, your Honor.

Mr. Anderson: As far as we are concerned he can be discharged from the subpœna.

In the event we should want to recall you for anything, I have no doubt you will come back upon request?

The Witness: All right.

(Witness excused).

Mr. Anderson: I call Mr. Harry S. Brown.

HARRY S. BROWN.

Harry S. Brown, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct Examination.

By Mr. Anderson:

> Mr. Anderson: I would like to state on the record for your Honor's convenience in reading the record, as Mr. Brown's testimony will relate to a matter of the accounts which has not been reached, on account of his personal position, I have agreed to put him on the stand out of the order, with your Honor's permission. That statement is merely to enable you to apply the evidence when you come to the record, sir.

Q. 1. Please state your name, your present place of residence and occupation?

A. Harry S. Brown, New York City; statistician and secretary.

Q. 2. Were you at any time connected with the office of Alien Property Custodian at Washington?

A. Yes, sir.

Q. 3. State in what capacity and for what period, the time that you began and the time that your connection ended?

A. I was an assistant to the Chief of the Division of Accounts from the fall of 1917, shortly after the Custodian's office opened, until February 19. I then became Chief of the Division and was there until May, 1922.

Q. 4. During the period from February, 1919, down to the time you left in 1922, you were Chief of the Division of Accounts?

A. That is right.

Q. 5. In that capacity you had charge of the books and accounts of the Alien Property Custodian, did you?

A. That is right.

Q. 6. Mr. Brown, it will appear in evidence in this case that about September, 1919, the sales manager of the Alien Property Custodian, Mr. Guffey, remitted to the Washington office certain funds, approximately $250,000, in payment for groups of patents, copyrights, trade-marks, etc., which had been sold by the Alien Property Custodian to the Chemical Foundation. Do you recall that matter?

A. I recall that was some time in the fall, I do not recall the month. I recall that the money came in that fall.

Q. 7. I hand you herewith a photostat of what appears to be a leaf of an individual trust ledger of the Alien Property Custodian at Washington, duly certified by the acting Alien Property Custodian, under the seal of the office, and would ask you whether that appears to be a correct copy of the record on that subject? (Handing witness paper).

A. You merely mean the photostatic sheet? You do not mean this, this is a separate matter.

Q. 8. Yes.

A. Yes, that is undoubtedly.

Mr. Kresel: What is that? I did not get the answer.

Mr. Anderson: He said Yes, it is, undoubtedly.

The Witness: It is undoubtedly a certified copy.

Mr. Kresel: If it is certified all right.

Mr. Anderson: I now offer in evidence a photostat certified by the acting Alien Property Custodian under the seal of the office, of Sheet No. 1, Individual Trust Ledger, Alien Property Custodian, Washington, Trust Number 46542, to be read in evidence as "Plaintiff's Exhibit No. 95."

Mr. Kresel: We object to that, your Honor, upon the ground that it is immaterial and irrelevant; on the further ground that it is a self-serving declaration which is not binding upon the defendant. In other words, our position is that the Chemical Foundation can not be bound by any entries made by the Government in its books.

The Court: Do you dispute that, Colonel Anderson?

Mr. Anderson: When the Chemical Foundation can be bound by the correctness of the entry? The method of keeping the account is a foundation for what I am going to ask the witness as to this fund. I think the evidence is also admissible as a contemporaneous record of what took place on this subject—the official records of the Government as to what took place on this subject.

The Court: You mean that this docket entry made by the Government with respect to the disposition of the consideration paid by the Chemical Foundation after the consummation of the transaction, would serve to invalidate the transaction?

Mr. Anderson: It would have a bearing upon the validity of the transaction when, as I shall show and as the record now discloses, the President of the Chemical Foundation was himself the Alien Property Custodian and directed this extract to be made.

The Court: It is admitted under our general rule.

Received in evidence and marked "Plaintiff's Exhibit No. 95." (*See Exhibits, Vol. I, page 283.*)

Q. 9. Mr. Brown, I notice that the entries on the sheet just introduced in evidence—the first three entries are made at the following dates: August 30, 1919, July 9, 1920, August 28, 1920, and December 10, 1920. Who was the Alien Property Custodian at that time?

A. At the time the check actually came to Washington, Mr. Garvan was actually the Alien Property Custodian, but in July, when Mr. Guffey received the money, I would not want to rely on my memory.

Mr. Kresel: There is no dispute about it.

Mr. Anderson: That is all a matter of record. I only want to connect it up.

Mr. Kresel: We will concede, beginning with the 4th of March, 1919, and down to, I think, the 10th of March, 1921, Mr. Garvan was the Alien Property Custodian.

Mr. Anderson: Yes. I only want to connect up his memory on the subject. That is admitted in the evidence and has been proven.

Q. 10. I notice that you have carried here to this Trust No. 46,542, the sum of $249,775. Does that represent the amount remitted as a purchase price on account of these patents, sold by the Alien Property Custodian to the Chemical Foundation up to that date?

Mr. Kresel: Just a minute. We object to that, if your Honor please. The record is now in evidence and must speak for itself. It does not appear that this witness has any personal knowledge of this transaction and is not competent to interpret the record.

Mr. Anderson: It is not an interpretation, sir. The witness said he was in charge of these books. I will ask him the direct question if the entries were made by him or under his direction.

The Court: All right.

Q. 11. That was true, was it not; was that entry made by you or under your direction?

A. The record reads the proceeds of sale of sundry patents was $254,000, against which was $4,925 of expenses, leaving the balance which went into the

Treasury. You were looking at the entry where the amount goes into the treasury, the net amount which was $249,000.

Q. 12. The question was, that record was kept by you or under your direction, was it not?

A. Yes, sir.

Mr. Anderson: Now, if your Honor please, I am going to prove later the remittance by the manager. For the reasons stated, I have not proved it. To the officers in Washington, the Sales Manager, of this sum as representing the net sales price of the various patents in issue here. Of course, that should have been proved first. I am going to now prove that that entry was made at the direction of Mr. Garvan who was at the same time the President of the Chemical Foundation.

The Court: I am afraid I do not understand your purpose, Colonel. Will you tell me, is it merely to show the amount that was paid in fact?

Mr. Anderson: No, sir. It is to show this, if your Honor please: That the amount of the proceeds for these patents, belonging to thousands of different persons originally, and seized from the thousands of different persons, was never allocated and could not have been allocated, and that they were all sold for a lump sum, and the amount of the proceeds was turned over by the Chemical Foundation in a lump sum, which should have preceded this evidence, but I thought I could get this in this way.

The Court: I am not complaining of the order.

Mr. Anderson: But that it never has been allocated, and frankly, can not be allocated to the several trusts involved, and I think the best evidence of that is the records made under the supervision of the Alien Property Custodian, who was President of the Chemical Foundation and made the payment.

The Court: Do you object to it for that purpose, other than it is irrelevant and immaterial?

Mr. Kresel: No, your Honor, we are quite content to have the Government undertake to prove what was done by Mr. Garvan as Alien Property Custodian. The position that I took here was that the record speaks for itself, and that the witness should not be—

The Court: I understood your position to be that the record will speak for itself, or that this witness would have to qualify himself to explain that.

Mr. Kresel: Yes, sir.

Mr. Anderson: Certainly.

The Court: Has he answered it?

Mr. Anderson: Yes, that this record has been kept under his direction.

The Court: Now, what explanation do you want?

Mr. Kresel: May I add, if your Honor please, That the question as to the right to sell this property for a lump sum comes under our general objection that that is a question, with all due respect to the Court, we claim that the Court can not review.

The Court: It is a matter for the determination of the executive department under the authority of the Trading With the Enemy Act, if authority was thereby given.

Mr. Kresel: Yes, sir.

Mr. Anderson: That is understood, sir.

Q. 13. Now, Mr. Brown, will you state to the Court whether it was the practice of the Alien Property Custodian's Office at the time that Mr. Garvan was Alien Property Custodian to keep separate individual accounts representing the sales of individual property for individual trust?

A. It was.

Q. 14. It was the practice?

A. Yes, it was.

Q. 15. This item, as I understand you to read from the record, is an entry for sundry patents?

A. Yes, sir.

MR. ANDERSON: I will state that I will prove later what those sundry patents were.

Q. 15. Now I will ask how you came to make this entry, my question being directed to the inquiry as to whether it was done under the direction of Mr. Garvan and his representatives, and you will state the facts to the Court as to how it came about in that connection?

A. In the natural course of events any money that came into the office representing the sale of property was credited to the Trust account for the owner of that property. In this particular case, the property having been sold in a lump, and property of various people having been sold for one lump price, and there being no way to see how much each of these properties was sold for, it was necessary to provide some other way of making this accounting. This final way that was adopted was my own suggestion, and made with Mr. Garvan's approval at the time.

Q. 17. Can you say what discussions you had with Mr. Garvan on the subject and what were his instructions?

A. We had various discussions at one time or another and considered various propositions. We considered dividing the amount of money by the number of patents, but that did not seem fair or practical, and that was abandoned. It was also considered possibly appraising the patents and then apportioning the money in accordance with the appraised values, but that would have been too expensive; so finally, when this suggestion was made partly by me and partly by other people there, Mr. Garvan agreed and said to go ahead and we went ahead and did it.

Q. 18. How did you take care of the individual interests of the various persons from whom these patents and trademarks had been seized?

A. We had established separate accounts for each owner of a patent, and in each one of those accounts we set the patents up, each patent had a nominal value of one dollar. We then made a cross reference against each of those patents for this account, a photostat of which I have here, showing and explaining in that account that the patents had been sold and the proceeds were credited to Trust Account 46,542, and were held there pending the disposal as might be ordered by Congress or otherwise.

Q. 19. You spoke of identifying each individual Trust by cross reference. Did you make any memorandum upon the record to indicate that interest?

A. Why, we—where each patent was entered at a dollar, we took a green stamp and put a star at the top of the account. Many accounts had ten or fifteen or one hundred patents, perhaps, and each patent had a star when it was sold to the Chemical Foundation, and then at the top of the ledger account, the particular account, we had an explanation referring to the star and saying just what the star meant.

Q. 20. Can you refresh your memory from that memorandum and say whether that was the explanation put upon the record?

A. Yes, sir.

Q. 21. If so, read it to the stenographer?

A. This is the explanation: There is a star and "These items starred represent possible equity in patent rights, and so forth, or the proceeds thereof, said rights having been sold to The Chemical Foundation. See account "A"—and that "A" is changed to "46542."

Q. 22. Then, that reference of the memorandum which you have read, is the reference to the general account which has been introduced in evidence here?

A. Yes.

Q. 23. Exhibit 95. The Alien Property Custodian made sales of other patents than to the Chemical Foundation, did he not?

A. Oh, yes, many more.

Q. 24. In the case of those other patents, were individual accounts kept, individual Trusts set up for each ownership of patents, for each owner?

A. Individual accounts were set up in every case, yes, sir.

Q. 25. When these patents were sold, did you not set up an individual trust account for each owner before the remittance was received?

A. We did not set up a separate account for each owner before, because the records went through so fast that there was not time to do that. In many cases there were disputes as to who was the actual owner of the patent, and we had to have that determined, so that there were probably a pretty good percentage of them that were not actually set up on the books until after the money had come in.

Q. 26. But it was the practice of the office while Mr. Garvan was there to set up an individual trust account for each property sold, at the time of the sale, was it not?

A. For each owner, yes.

Q. 27. Yes, for each owner, and then when the proceeds came in it was credited to that trust?

A. That is right.

Q. 28. And was debited to the Treasury of the

United States, the money being paid into the Treasury?

A. That is right.

Q. 29. In this case the credit was made of the entire proceeds to this general account which has been introduced in evidence, and the charge of the entire fund made to the Treasury of the United States on the other side; is that true?

A. That is true.

The Court: Have counsel a copy of the treaty entered into between this Government and Germany that I may use or have?

Mr. Anderson: Yes, sir. Yes, we have a compilation of all those treaties, including the Treaty of Versailles.

The Court: I should be very glad to have a copy of it for use, if I may.

Mr. Kresel: Yes, we will hand a copy to the Court.

(Mr. Hershkopf hands Mr. Anderson copy).

Mr. Anderson: Of course, at the proper time we will bring to your Honor's attention the provisions of the Treaty of Versailles relating to this matter, because anybody having to read it—

The Court: Yes, it has been referred to many times, and I would be very glad to have it so as to refer to it from time to time: I did not mean to interrupt you.

Mr. Anderson: Here is a copy now, if your Honor please, of both Treaties, which counsel have very kindly furnished me, and later I will undertake to furnish you copies with larger print; because I could not undertake to read that at all, and your Honor may have some difficulty. (Hands Court copy).

Q. 30. I will ask you to look at this photostat of individual account of Abraham Vraustein, Trust No.

36501, and ask if you identify that as one of the individual accounts in which you set up one dollar against each?

A. That is one of those accounts.

Mr. Anderson: I offer in evidence the individual account, Sheet No. 1, Trust No. 36501, to which I have referred, as a sample of the individual accounts referred to by the witness. There being some five thousand of them, we will just take one.

The Court: Admitted under like conditions as the preceding documents.

Received in evidence and marked "Plaintiff's Exhibit No. 96." (*See Exhibits, Vol. I, page 284.*)

Q. 31. Mr. Brown, as an accountant, would you state whether in your opinion it was possible to allocate the aggregate sales price of the patents represented by the accounts introduced to the various individual owners?

Mr. Kresel: We object to that, if your Honor please on the ground in the first place that it is not a subject for expert testimony. Secondly, this witness has not been qualified for this particular purpose. Certainly the Court does not require expert testimony upon that subject.

Mr. Anderson: I think that is a subject of expert testimony. It is a matter of accounting of the most intricate character. But if the objection is that the witness has not been sufficiently qualified, I will do that.

The Court: I am not concerned with that.

Mr. Kresel: Further than that, may I urge, if your Honor please, that it calls for this witness's conclusions, and it also falls under our general objection that it is an attempt to offer evidence for the purpose of having the Court pass upon a discretionary act of the President.

The Court: I understand that objection goes to really all the evidence offered by the Government.

Mr. Anderson: That is agreed.

The Court: I do not see that this is the subject of expert testimony. It has been stated time and again that it was an arbitrary price, an aggregate price which was not distributed among the several patents, and consequently if that were true, any distribution among the several interests in these patents, would necessarily be arbitrary. So I do not see how expert testimony would help us. If you want it you may take it under our general rule.

Mr. Anderson: I think I will take it, and in order that your Honor may understand, I would like to say that the Government some time is going to settle these trusts and one of the elements of a valid sale is the effect upon the possibility of the equitable administration of the trust; and if it is not possible, in the opinion of expert accountants, to allocate this fund to these several interests upon any known principle of values, then it would necessarily follow that that would be a circumstance to be considered in considering whether this was an equitable sale.

The Court: As to whether it was possible to allocate it, is that the question? Read the question.

(Q. 31 repeated as recorded above.)

The Court: Of course, it can be done by ascertaining the relative value of all of these 4500 patents and then apportioning that accordingly. Whether it may be done by an accountant prior to that being done, is another question. I do not see how it is going to help us.

Mr. Anderson: For the moment, your Honor, I shall not insist upon the question, because I will have other witnesses to take the stand. It may be that I will ask your Honor, if I find it desirable, to have the question answered.

The Court: You may take the answer under our general rule, if you want it.

Q. 32. Suppose you just answer that question and give your opinion on it?

A. No, it was not possible to do it fairly from an accounting standpoint.

Q. 33. In your several conferences that you said you had with Mr. Garvan in regard to this allocation or accounting of this fund, did he express any views or make any statement as to the relation, if any, between the price paid for these patents and their value?

A. Why, yes. Mr. Garvan said, or the impression I got from his words—I do not recall his exact words, of course—was that the value of the patents had nothing to do with the matter.

Cross-Examination.

By Mr. Kresel:

XQ. 34. Mr. Brown, were all patents taken over by the Alien Property Custodian carried on the books of that office at one dollar each?

A. So far as I recall, every patent was carried at one dollar; yes, sir.

XQ. 35. And that is not confined simply to the patents that were subsequently sold to the Chemical Foundation?

A. No, sir.

XQ. 36. In other words, there were lots of other patents that the Alien Property Custodian took over and seized which, when possession was obtained thereof, were put on the Custodian's books at one dollar each?

A. Yes.

XQ. 37. As to these individual trusts, I just want to see whether I understand your testimony. I understand you to say that whenever the Custodian took over a piece of property, whatever it was, belonging to a particular enemy, there was an account opened on the books of the Alien Property Custodian under the name of that enemy and to that account the property seized was credited?

A. That is right.

XQ. 38. And if when such property was sold, the proceeds of the sale were credited to that individual account?

A. Yes.

XQ. 39. And if and when paid into the Treasury of the United States, the amount of the proceeds was debited to the Treasurer of the United States; is that correct?

A. That is true.

XQ. 40. This transaction with the Chemical Foundation which, as you have testified, was a sale of this large number of patents for a lump sum, was not the only transaction of a sale by the Alien Property Custodian of various properties made in one sale for a lump sum, was it?

A. It was not the only one. I think it was the first, but not the only one.

XQ. 41. And in the other cases where such sales were made for a lump sum, of properties belonging to various enemies, how did you treat the proceeds, the lumped proceeds that were received?

A. Of course, it depended on whether the property sold was all property of the same kind. If the property was shares of stock, for instance, there was no difficulty.

XQ. 42. Exactly, but there were cases where the property was not of the same kind.

A. In those cases we adopted a similar method, or adopted the same method that we adopted in this case.

XQ. 43. In this case was the proceeds of the sale transmitted by the Custodian to the Treasury of the United States?

A. The proceeds less certain expenses, yes.

XQ. 44. In other words, the net proceeds that were sent by the Custodian to the Treasury of the United States, according to this Plaintiff's Exhibit No. 95, was $249,775; is that correct?

A. $249,775.

XQ. 45. And in the other similar transactions where properties of various enemies and of different characters were sold for a lump sum and in one sale, did you follow the same practice and remit to the Treasury of the United States the lump sum?

A. We always remitted the lump sum to the United States, the Treasury, yes.

XQ. 46. In addition to transactions of sales of various classes of property belonging to various enemies for a lump sum, there were also transactions, were there not, where property belonging to an individual enemy, but which consisted of patents and of other property, was sold for one lump sum?

A. I would not want to say offhand. If you let me think a minute I may be able to recall.

XQ. 47. Certainly, I wish you would. May I give you an example, and perhaps that will refresh your recollection.

A. I think I recall one now.

XQ. 48. Do you?

A. I think so.

XQ. 49. What do you recall; which transaction do you recall?

A. I think it was the sale of the trademark "Pebeco."

XQ. 50. The trademark "Pebeco"?

A. I think that was the case. I would not swear to it offhand.

XQ. 51. Was that sold in connection with other property belonging to that particular name?

A. That is my recollection now, yes.

XQ. 52. Where such a sale was made for a lump sum, did you undertake when you received the lump sum to allocate a portion thereof to the patents and the balance thereof to the other property?

A. Not if it was sold for a lump sum.

XQ. 53. Certainly not. Do you remember the case of Werner-Pfleiderer Company?

A. I do.

XQ. 54. Well, apparently that recalls something interesting to your mind. If I do not state the facts correctly in my question please correct me, but as I understand the facts they were these: In that case there was a sale made of certain stock belonging to several enemies, that there was also sold together with that stock certain patents belonging to some of those enemies and belonging to other enemies, that it was all one sale for a lump sum and that it was the lump sum that was received by the Alien Property Custodian.

A. That is right.

XQ. 55. Is that correct?

A. That is true.

XQ. 56. In that case did you undertake upon the books of account of the Custodian to allocate a portion of this lump sum to the patents and a portion to the stock?

A. No, sir; I did not.

XQ. 57. You remember, do you not, the payment by the United States Government to the Alien Property Custodian of $100,000 made for past infringement by the Government of a large number of German patents which had been seized by the Custodian?

A. I remember the payment of $100,000 from, I think, the Navy Department.

XQ. 58. The Navy Department?

A. I do not recall it was for the past infringement.

XQ. 59. Well, it referred to a large number of patents, don't you remember?

A Yes, I recall it referred to a large number of patents, but my impression was it covered more the use of the patents in the future, more than—

XQ. 60. A license, then; a license of those patents. Did you undertake to allocate that $100,000 received from the United States to these various patents; and there were about 5700 of them?

A. No, sir; I did not.

> Mr. Anderson: If your Honor please, we do not admit there were 5700 of them. If you are going to show the number or anything of that kind—
>
> Mr. Kresel: I will do that. I will say to your Honor I shall connect that. I may be ten or fifty patents out of the way, but substantially it was 5700 patents. That is my information and I shall prove it.
>
> Mr. Anderson: Then I do not object to counsel's statement, if he will prove it.

XQ. 61. You took that $100,000 so received from the Government, without allocating it to each of this large number of patents, and sent it on to the Treasurer of the United States?

A. Yes, sir.

XQ. 62. Mr. Brown, in answer to Colonel Anderson's question as to whether Mr. Garvan had ever in your presence said anything with reference to the value of the patents, you said as I took it down that

Mr. Garvan said that the value of the patents had nothing to do with the matter?

A. That is my recollection—in connection with what we should do with the money, not in any other connection.

Mr. Kresel: That is all, sir.

Re-Direct Examination.

By Mr. Anderson:

RDQ 63. Mr. Brown, counsel has asked you if other patents of which the Gevernment took possession were not set up on your books on individual trusts at one dollar when the possession was taken, and you stated there were. Not when—

Mr. Kresel: He was going to say something.

A. (continued) I was going to say not when they were taken, but soon after. Sometimes it was a matter of months, because we were working under high pressure, but as soon as we could do it we set each patent up at a dollar.

RDQ. 64. What did you do when the patent was sold?

A. When the patent was sold, in case the patent was sold for one sum—one patent sold for a lump sum?

RDQ. 65. Yes.

A. In that case we credited the trust with the amount of the proceeds and charged the Secretary of the Treasury with the proceeds.

RDQ. 66. So that your accounting did not close with the possession of the patent but only when the proceeds came in and were sent to the Treasury; is that true?

A. Yes.

RDQ. 67. There was some reference made to other similar transactions. Are the two instances you mentioned the only two that you recall where there were lump sum sales—

A. No.

RDQ. 68. Which made an apportionment impracticable?

A. No, I think there were more; at least half a dozen.

RDQ. 69. Were those sales made while Mr. Garvan was Alien Property Custodian, as far as you can recall?

A. I think some of them were made while Mr. Palmer was there, some while Mr. Garvan was there. One of the earliest sales we had was one of that kind, as I recall, so it must have been when Mr. Palmer was there.

RDQ. 70. But some were made by Mr. Palmer and some by Mr. Garvan, and some half a dozen, you now recall, of that character?

A. Yes.

RDQ. 71. You spoke of the trade-mark "Pebeco" in reply to a question. What did that trade-mark bring, do you recall?

MR. KRESEL: What was that, please?

MR. ANDERSON: You asked him to state an instance of this kind and he stated the trade-mark "Pebeco" and the method of dealing with that fund. I want to know what that fund was—how much was it.

THE COURT: You mean whether it was more than a dollar?

MR. ANDERSON: Yes, sir.

THE COURT: You are not concerned with whether it was many times a dollar, but just simply whether it was more than a dollar?

MR. ANDERSON: I am concerned with what they did have to dispose of in dealing with that situation.

The Court: You may take the answer under the general objection that it is immaterial and irrelevant and furnishes no assistance in the determination of the issues of this case, nor do I think any of the evidence that is now being given is of any help whatsoever, because I see nothing to prevent the Alien Property Custodian, who had the power either by public sale or private sale to sell all the patents that remained on the day before the Treaty was signed at a lump sum, and then let it be allocated, and then the several persons in interest to be taken care of financially across the peace table or across the reparations table and across the judicial bench.

Mr. Anderson: I see. I will argue the question on that when I come to it, if your Honor please.

The Court: With that understanding you may take the testimony.

Mr. Anderson: All right.

A. Will you read the question to me, please?

RDQ. 72. What did the trade-mark bring?

A. My impression is the net proceeds of the trade-mark and some other items sold with it was a million dollars, but I do not like to guarantee that.

RDQ. 73. That all belonged to the same enemy, did it not?

A. That all belonged to the same enemy.

RDQ. 74. And a number of the other instances that you have mentioned belonged to the same enemy, did it not?

A. When I said there were six cases at least I recall half a dozen cases?

RDQ. 75. Yes.

A. No, I meant there were probably half a dozen cases where they did not belong to the same enemy.

RDQ. 76. And in cases where they belonged to the same enemy it was carried as one trust?

A. There were no difficulties there.

Mr. Anderson: I think that is all I want to ask the witness.

Mr. Kresel: That is all, Mr. Brown.

Mr. Anderson: The witness, with the consent of counsel, can now be discharged, if your Honor please.

Mr. Kresel: We consent.

The Court: The witness is excused.

Mr. Anderson: With the usual understanding that if we need you, you will come back on request.

(Witness excused.)

Mr. Anderson: If your Honor please, I am afraid we have confused the record a good deal today by going ahead of our regular order. I am very sorry, but now I will ask that we pursue the introduction of the documentary evidence where we left off last night; which related, as your Honor will recall, to the desire of the War Department to purchase certain of these patents, the nitrate patents.

The Court: You may proceed with the documentary evidence. We shall adjourn at three o'clock Standard time.

Mr. Galloway: The plaintiff next offers in evidence a letter dated February 12, 1919, from the Assistant Secretary of War to the Chief of Ordnance, relating to the subject of enemy-owned patents, pertaining to munitions. I think I shall summarize this rather than read it to your Honor. The letter refers to a communication.

Mr. Kresel: Mr. Galloway, may I interrupt you? I do not desire, if your Honor please, to renew my objection to each of those. I will renew it once this afternoon, and it may be understood that it applies to al this correpsondence that is now being offered.

The Court: You mean all other evidence offered by the plaintiff—unless you express the contrary view. Very well.

Mr. Galloway: It refers to a communication which has been addressed to the Alien Property Custodian as to the extent of enemy-owned patents relating to chemicals, and as to whether or not the United States has been protected in any sales that have been made; that it is advised by the Alien Property Custodian that it is proposed to dispose of a large number of these patents for chemical inventions, but that no sale or assignment has as yet been made and that few, if any, of the patents in which the War Department was interested, have been sold.

Mr. Kresel: May I ask the date of that letter, so I may follow you?

Mr. Galloway: February 12, 1919, Stipulation No. 193. The letter also directs attention to the National Defense Act which authorizes the President to purchase, by condemnation or otherwise, plants for the manufacture of nitrates and munitions, and plants for the production of nitrates useful in the manufacture of fertilizer and other useful products and it states that perhaps that would be adequate protection; and that the Custodian has also signified his willingness of adopting a general policy requiring the purchaser of patents covering inventions in which the War Department is interested to release the United States on account of past use for the future.

The Court: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 97." (*See Exhibits, Vol. I, page 285.*)

Mr. Galloway: Plaintiff next offers in evidence a letter dated February 16, 1919 (Stipulation No. 194), from Ramsay Hoguet to Honorable A. Mitchell Palmer. This letter is rather short and has a good deal in it that I should like to call to the Court's attention. (Reading.)

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 98." (*See Exhibits, Vol. I, page 286.*)

Mr. Galloway: Plaintiff next offers in evidence a memorandum by Captain W. R. Swenarton, of the Nitrate Division of the Ordnance Division of the War Department, to Major Holcombe, Chief of the Patent Section, dated February 19, 1919 (Stipulation No. 237). This letter refers to a letter from Mr. Hoguet, patent counsel for the Custodian, containing a clause relating to the release of the United States from liability on account of the use of enemy-owned patents which it is probable will go into the Peace Treaty. Then it goes on and discusses that clause. I do not care to read the letter to your Honor.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 99." (*See Exhibits, Vol. I, page 288.*)

Mr. Galloway: Plaintiff next offers in evidence a letter dated March 7, 1919, addressed to Ramsay Hoguet, written by Spier Whitaker, assistant general counsel of the Washington Committee on Sales of the Custodian's office. This letter states: (Reading.)

The Court: Admitted.

Received in evidence and marked "Plaintiff's

Exhibit No. 100." (*See Exhibits, Vol. I, page 292.*)

Mr. Galloway: Plaintiff next offers in evidence a memorandum from Mr. Whitaker to Mr. Garvan in regard to the nitrate patents, which states that: (Reading.)

The Court: Admitted.

Received in evidence and marked "Plaintic's Exhibit No. 101." (*See Exhibits, Vol. I, page 292.*)

Mr. Galloway: Your Honor please, the plaintiff next offers in evidence letter dated March 13, 1919, to the President of the United States, by B. Crowell, acting Secretary of War. This letter in part is as follows. I shall omit what I think is not pertinent. (Reading from letter.)

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 102." (*See Exhibits, Vol. I, page 293.*)

Mr. Galloway: Plaintiff next offers in evidence a memorandum for the acting Chief of Ordnance, signed by B. Cromwell, Assistant Secretary of War, dated March 11, which states: (Reading.)

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 103." (*See Exhibits, Vol. I, page 294.*)

Mr. Galloway: Plaintiff next offers in evidence a memorandum for the Secretary of War signed by Woodrow Wilson, President, dated April 8, 1919, in which he states: (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 104." (*See Exhibits, Vol. I, page 295.*)

The Court: Is that the fourfold price that was referred to yesterday as being ready to be offered by the Government of the United States for certain of these patents?

Mr. Galloway: Yes.

The Court: For ten thousand dollars?

Mr. Galloway: Yes.

The Court: And not a million dollars?

Mr. Galloway: No; ten thousand dollars and $340,000 for investigation.

Mr. Kresel: In order, perhaps, that your Honor might be able to more clearly understand this, does it not, if you care to say so—does not this offer apply to what we call here the Haber processes?

Mr. Galloway: The Haber processes of some fifty-nine patents, I think.

Mr. Kresel: And those are the patents which the German witnesses said are worth $17,000,000?

Mr. Galloway: Yes, the same group of patents.

Mr. Kresel: And that was what the Government was offering $10,000 for, to buy them for $10,000?

Mr. Galloway: That is right.

Mr. Anderson: And, to make it complete, the Chemical Foundation paid $50 apiece for five thousand of those patents.

Mr. Kresel: To make it complete—I withdraw that. I will not argue it.

The Court: I understand your several contentions, I think, quite fully. You may proceed with the introduction of documentary evidence.

Mr. Galloway: The plaintiff offers in evidence a letter, dated April 4, 1919, from Mr. Ramsay Hoguet to Mr. G. H. Dorr, Assistant Director of Munitions, Washington, D. C. This letter states: (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 105." (*See Exhibits, Vol. I, page 296.*)

THE COURT: We will adjourn until 8:30 o'clock, Standard Time, tomorrow morning.

(Whereupon, at 3 o'clock Standard Time, adjournment was taken until tomorrow, June 13th, 1923, at 8:30 A. M. Standard Time.)

EIGHTH DAY.

Wilmington, Delaware,
June 13, 1923, at 8:30 o'clock A. M.,
Standard Time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. MAHAFFY: With the permission of the Court, on page 1289 of the record the Government offered in evidence memoranda from the Secretary of War, signed by the President, dated April 8, 1919. It does not appear that that was formally admitted. I only wanted to have the record straight. It would be Exhibit 104. Exhibit 105 was formally admitted by the Court.

THE COURT: You have no objection to that, have you, Colonel Anderson? There is no question but what it was admitted?

Mr. Anderson: Yes, sir.

The Court: Let it be so noted on the record.

Mr. Anderson: If your Honor please, the Treaties of Versailles, St. Germain and Trianon, referred to in the Bill, were not ratified by the Senate and are therefore not laws. I think it is probable the Court would take judicial notice of them anyhow as historical documents, but in order to remove any question, and so as not to burden the record by putting those long documents into it, I have suggested to Mr. Kresel and he agrees, I understand, that it be agreed and stipulated by counsel on the record that at this trial or any re-trial, or any appeal in any Court in this cause, those three treaties or documents as printed officially by the Government of the United States or on direction of the Senate of the United States may be used and read from by either party, with the same force and effect as if they were in the record.

Mr. Kresel: It is so stipulated.

Mr. Galloway: If your Honor please, by stipulation the parties have agreed that a letter from the Executive Clerk of the White House may be read in evidence here, showing the absences of President Wilson in France and the times of his departure. I have that letter and ask to introduce the same in evidence, offer it in evidence, and ask that it may be read as Plaintiff's Exhibit No. 106.

The Court: Admitted.

Mr. Mahaffy: Mr. Galloway, have you a copy of that letter?

Mr. Galloway: Yes, I gave Mr. Boggs a copy.

Received in evidence and marked "Plaintiff's Exhibit No. 106." (*See Exhibits, Vol. I, page 297.*)

Mr. Galloway: This letter, if your Honor please is addressed to the Attorney General and is signed by Mr. Rudolph Forster, Executive Clerk. It says (Reading.)

We shall now continue with the War Department files. Plaintiff next offers in evidence a memorandum for the Patent Section of the Purchase, Storage and Traffic Division of the War Department, signed by H. W. Dix, Captain, Ordnance Department, U. S. A., concerning a conference between Mr. Dorr, Mr. Glasgow, Colonel White and Burns, Townsend and Brickenstein, and later Mr. Hoguet. I ask that the same may be read as Plaintiff's Exhibit 107.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 107." (*See Exhibits, Vol. I, page 298.*)

Mr. Galloway: Briefly, this memorandum states that there was a conference among the gentlemen mentioned and it states the nature of The Chemical Foundation and that its object is to take over certain patents and extend licenses to manufacturers for the processes; and it says that The Foundation Company will give to the United States at a nominal fee practically any type of license to manufacture, have manufactured, use and sell, any particular product that it may desire. (Reading further from Plaintiff's Exhibit No. 107.)

Plaintiff next offers in evidence a memorandum for Mr. Dorr from Major Holcombe concerning the transfer of enemy-owned patents relating to the production of nitrates, dated April 14, 1919, and asks that the same be read as Plaintiff's Exhibit 108.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 108." (*See Exhibits, Vol. I, page 300.*)

Mr. Galloway: This is from Major Holcombe and states (reading).

Mr. Anderson: I would like to call Major Swenarton as a witness now.

W. HASTINGS SWENARTON.

W. Hastings Swenarton, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Please state your name, place of residence, and occupation.

A. W. Hastings Swenarton, Montclair, New Jersey, patent lawyer.

Q. 2. State briefly your experience as a patent lawyer dealing with patent matters?

A. After graduation from Yale in the chemical course in 1900, I entered the dyestuff business as a chemist for two years. Subsequently I became an Examiner in the Patent Office, where I was assigned to the Chemical Division.

Q. 3. The Patent Office of the United States?

A. The United States Patent Office.

Q. 4. In the Chemical Division?

A. Yes, sir.

Q. 5. When did you leave there, and how long were you there?

A. I remained there three years, meanwhile studying law, and admitted to the Bar in 1905. From 1905 to date I have continuously practised patent law, specializing in chemical matters in New York City.

Q. 6. Were you connected with the War Department during the late war, and if so, state generally the time you entered the service, when you left the department, and with what branch you were connected?

A. I was a Captain in the Ordnance Department from August, 1918, until May, 1919. Up to the time of the Armistice I was assigned to the Procurement Division, where my duties involved the purchase of chemicals for explosives. Immediately following the

Armistice I was put in charge of the patent work of the Nitrate Division, another department of the Ordnance Department.

Q. 7. Did you continue in the service after you were discharged in May, 1919, for any period of time?

A. After I resigned from the service I was engaged as consulting patent counsel for about eight months for the Nitrate Division.

Q. 8. When I said "discharged" I meant discharged from the Army officially.

A. Yes.

Q. 9. Since that time you have been practicing your profession in New York, have you not?

A. I have.

Q. 10. Major Swenarton, would you state whether you had anything to do with negotiations which appear from the record to have been conducted primarily with the Alien Property Custodian and afterwards with the Chemical Foundation, in regard to securing for the War Department certain German or alien enemy-owned patents relating to nitrogen and nitrogen fixation?

A. I did.

Q. 11. Would you tell the Court so far as your own knowledge goes just about the time these negotiations were taken up, and develop what took place, within your knowledge—within your official or personal knowledge?

> Mr. Kresel: Just a minute, Major. Do I understand, Colonel Anderson, you are asking the witness for certain conversations?
>
> Mr. Anderson: If it is a conversation, you will confine the conversation to the Alien Property Custodian or the conferences with The Chemical Foundation officials, as far as practicable.
>
> Mr. Kresel: I beg your pardon. Apparently, the Government considers this testimony about to

come as important, and I therefore suggest that instead of this blanket question, for him to state everything, that the witness' attention be directed to some particular conversation, so that he may say with whom it was and when it was, and we may be able to check it up.

THE COURT: Time and place and persons present?

MR. KRESEL: Yes, your Honor, that is right.

MR. ANDERSON: I am perfectly willing to go through the series of questions if counsel insist or the Court thinks it is better. I am trying to shorten the examination.

MR. KRESEL: That is the only way we can check it.

MR. ANDERSON: The witness himself is a lawyer and I assume he would follow the usual procedure.

THE COURT: The only means of protection to the defendant, of course, is to have your witness designate the time, place, and persons present; otherwise the defendant will be at a loss to meet your testimony.

MR. ANDERSON: I am perfectly willing to do it, sir. I wanted to save time.

THE COURT: And the witness may do that without having you reframe the question.

Q. 12. You have heard the statement of the Court. Will you take the question as presented and state the matter which I have asked, elaborating your answer so as to comply with the suggestion of the Court?

A. May I have some of that correspondence?

Q. 13. Yes, have it all.

MR. ANDERSON: I will introduce it as he proceeds with it (handing witness papers).

A. I might preface this statement by an explanation of what the Government was doing in the Nitrate Division. They had two plants—

Mr. Kresel: One minute, please. We object to that, if your Honor please. To begin with, it is not responsive to any question and, secondly, we object to it as immaterial and irrelevant at this time, as to what the Government had.

Mr. Anderson: If your Honor please, probably I could save time by asking the question and getting a specific objection.

Q. 14. These conferences started some time in February, 1919, these conferences with the Alien Property Custodian primarily with reference to these patents, did they not?

Mr. Kresel: Does that mean conferences between this witness and the Alien Property Custodian?

Mr. Anderson: Yes.

Mr. Kresel: You understand that to be the question, Major?

The Witness: I did not hear you?

Mr. Kresel: I say, do you understand that the question is whether your conferences with the Alien Property Custodian started in February, 1919?

The Witness: Yes. There was only one conference and that was with—

Q. 15. You were present at one conference with the Alien Property Custodian in relation to this matter, were you?

A. I was.

Q. 16. About what time was that?

A. It was some time prior to April first. I can give you the exact date in a minute.

Mr. Kresel: Well, Colonel, there is no question about the date. May we not agree upon it? It was February 12, 1919.

A. (Continuing) February 12, 1919.

Mr. Anderson: There were several conferences at one or two of which Major Swenarton was not present. I just want to identify those at which he was present.

Mr. Kresel: The one you are asking him about now, at which he was present, was held on the 12th of February, 1919.

A. (Continuing) I am very sure that is it.

Q. 17. At the time of the conference on the 12th of February, 1919, did the Government of the United States own any plants for the production of nitrogen either complete or in process of construction?

Mr. Kresel: Now, Major, before you answer that, we object to that line of investigation upon the ground that it is immaterial and irrelevant. Under your Honor's rulings a large amount of correspondence has been put in evidence bearing upon the relations between the War Department and the Alien Property Custodian with reference to these German patents.

Frankly, I do not see the materiality or relevancy of that correspondence. It cannot affect the question of value. It certainly can not be used as evidence of any fraud, alleged fraud or conspiracy or monopoly. That the War Department may have had one view of what should be done with these patents and the Alien Property Custodian a different view, it seems to me is not in issue here. But the evidence has gone in. I do not think that that field should be enlarged, however.

I do not think that we are called upon here to meet any issue as to whether the Government had certain nitrate plants which it could or could not dispose of to good advantage. I do not see that we are called upon by the Bill here, which we have to answer, to meet any such issue; and I thought it proper, for the protection of my client, to stop that inquiry if I could right at the threshold, because I can see that if your Honor will permit the Government to go into that, it will call upon us to put in evidence to offset any testimony that the Government might be able to adduce.

In so far as this testimony can be of help to the Court, in elucidating the correspondence that has already gone in, or in introducing additional correspondence along that same line, I take it that under your Honor's ruling the Government may do so. But I do say that we ought not to branch out into other inquiries of a similar nature. Therefore, we object to it as immaterial and irrelevant.

Mr. Anderson: Of course, I know all this evidence is subject to that objection, but I think probably it is due the Court, in view of Mr. Kresel's statement, that I should state what the purpose of this evidence is, so that the Court may know.

Your Honor will recall that the Answer in this case and the opening statement of counsel was to the effect that the Government of the United States had been given every advantage including free licenses for the use of these patents and that it had really been in the public interest as that interest was represented by the Government of the United States, to have these patents in this defendant.

The correspondence which we have introduced, we shall contend, taken in connection with the correspondence, which I am now introducing by this witness, to the end that it may be better applied, will show as we contend—whether it does your Honor will determine—that at the very time that this sale took place, the Government of the

United States was endeavoring to secure these nitrate patents; that the Government of the United States had two plants as to one of which it was at least deemed by the officers of the United States these patents were vital; that they had been constructed at enormous cost; that when these negotiations were going on by the Government with the Alien Property Custodian and subsequently with Mr. Garvan himself, when he became the Alien Property Custodian, these patents were transferred to the defendant and the Government knew nothing of the transfer until it was actually made, and in the meantime was taking steps to obtain and had obtained, before the transfer was actually made, the authority of the President to buy these patents at a price four times what they actually brought on the apportionment of price as indicated to The Chemical Foundation.

Therefore, in the second place, it will further appear here that they then tried to get a license from The Chemical Foundation to the end that this plant might be protected in dealing with the chemical companies who would naturally be purchasers, and that they were unable to get a license from The Chemical Foundation except a limited license, and which prohibited the use of the process except by the Government itself, or the use of the product under those patents for sale or any use except for the Government use. And that the Government could not operate these plants for its own use in time of peace, because this demand for that purpose was very nominal, while the very act under which the plants were created and constructed at an enormous cost, provided for the sale of the product for commercial purposes; and, therefore, not only in connection with the evidence offered yesterday, that this sale was authorized, if at all, with the express understanding that the Government of the United States would have the free license as to these patents for all purposes, but also in connection with the claim of the defendant in its answer and open statement, that the Government was given this right, this evidence is directly material.

It is also material on the question of values. We are not discussing values now, but if the Government of the United States, which had a right to take these patents over and use them and did, the records show, used many patents during the war without paying anything for them, was willing to pay $10,000 to get them, and they were sold for $2500, that in itself is evidence of difference of values. All those facts bear directly upon every issue in this case, that is, this evidence, and I have stated it fully so that the Court might see its various relations, but I have not stated all of its relations, because that would require practically a re-statement of the case.

Mr. Kresel: I am certain that your Honor will not construe my silence, in not meeting the suggestion that $10,000 for the Haber patents is four times what we paid for them, as an admission of the correctness of that arithmetic.

However, we will meet that situation when it arises; but I think Colonel Anderson's statement is rather helpful to the position that we take in this matter. It certainly can not be contended that it is proper or material to this inquiry, as to whether Major Swenarton, for whose opinion I have the highest regard, thought that it was advisable that the War Department should buy these patents, instead of having a license or whether he did not think so.

Major Swenarton was only one officer of the War Department; and I think if your Honor will pursue this inquiry with this witness, it will be made to appear that notwithstanding Major Swenarton's views, his views were overruled by his superior officer, and the contrary policy to his views was adopted.

I am only pointing that out, your Honor, as indicating that if your Honor will permit the inquiry which the Government is now seeking to make, it will of necessity enlarge the issues here being tried. It will compel the defendant to introduce, instead of the 30 or 40 documents which have now already been introduced, perhaps twice as many again; because you can not take a section of a long line of correspondence and throw it into a case with any fairness or completeness; and it is my endeavor to try to shorten this if it is possible.

Of course, if your Honor in your discretion deems that the inquiry should be pursued, we will go ahead with it, but I thought it is proper that right at the threshold it should be stopped, if possible.

I press my objection, upon the ground of immateriality and irrelevancy.

The Court: My momentary impression is that the evidence offered is not admissible and not relevant and not material. I fail to see how the fact either that the purchase was authorized, or the fact that the War Department deemed it expedient for the United States to take title to a group of these patents, when under the Trading with the Enemy Act the custody and control and disposition of the patents was a matter specifically given to the Alien Property Custodian by Congress, how the views of any other department with respect to what should be done by the Alien Property Custodian or his department, can be relevant or material.

If your argument be unsound, Colonel Anderson—I do not say that it is—it seems to me that it is in this: That in making your statements in respect to the action of the Alien Property Custodian and his department, you speak of him as the Alien Property Custodian, which is correct, but then you deal with the other departments as the Government, so that it seems that therein is one flaw, probably, but the nature of this case is such, Colonel Anderson, that in the present and in the future, as in the past, I propose to let you put of record anything which you deem vital to the case unless I am perfectly convinced that in your zeal you are going far beyond bounds.

Mr. Anderson: I appreciate your Honor's statement. I did not mean to refer to one office of the Government in a different connection from another, but my reference there was to the effect that the President of The Chemical Foundation, according to the evidence, at that time was an officer of the Government.

Your Honor's ruling, however, is all I desire at this time, reserving the right to pursue that question. If I did not think it was material, I certainly would not prolong this record.

The Court: I understand your views and ordinarily, in an ordinary case, Colonel Anderson, while I should listen with much respect to views of counsel, I should not allow counsel's views to be the guide of what is admissible or what is not admissible, without repeating myself.

Mr. Anderson: I understand.

The Court: Unless I am convinced that your zeal has overcome the rules of evidence, I shall permit you to put of record anything that you deem proper and, Mr. Kresel, you have the full opportunity to meet this testimony by any evidence which you may deem proper to produce.

Mr. Kresel: I think, your Honor, in this connection I should like to inquire whether your Honor would deem it an imposition on my part, if upon cross-examination of this witness I put in the balance of this correspondence.

The Court: No.

Mr. Kresel: And I say it may take forty or fifty documents.

The Court: You may identify it all, and whether you put it in now or put it in when you open your case will depend upon whether there is an objection from Colonel Anderson to its going in out of order. But you may have this witness identify all the documents that he can identify, so that you can offer them now or when the defendant opens.

Q. 18. Major Swenarton, my former question was to this effect: Whether the Government at the time of the conference in February, 1919, owned or had in process of construction plants for the manufacture of nitrogen from the air?

A. It did. It had three plants practically completed and one plant which had been abandoned. One of the plants was at Muscle Shoals, which was the largest and cost in the neighborhood of sixty million dollars. That was a plant for the production—for the fixation of nitrogen, for the production of ammonia and nitric acid by the cyanamid process, which was a process that the Government had procured under license from the Cyanamid Company of America, who owned certain German patents known as the Frank and Caro patents. That process was purely an absorption process and not what they call a contact or catalytic process. At Sheffield, Alabama, they had another plant which was essentially what you might call a contact or catalytic process plant, whereby two gases, nitrogen and hydrogen, are brought together over a body that has the power of bringing those into chemical combination, and is commonly termed a catalyst for that reason. The so-called Haber patents are essentially contact or catalytis patents for the fixation of nitrogen and they have claims of such broad scope that it was considered advisable by the War Department to acquire—

Mr. Kresel: One minute, please. I object to permitting this witness to voice what he says was the policy—I do not recall just the word he used.

The Witness: I will say the Chief of Ordnance then.

Mr. Kresel: What the policy of the War Department was. It is objectionable in one of two aspects; either he is giving us hearsay—

The Witness: Oh, I have got the correspondence.

Mr. Kresel: Pardon me a minute, Major.

The Court: Don't interrupt.

Mr. Kresel: Please do not argue with me. Either he is giving us hearsay testimony and it is objectionable from that point, or he is voicing his own sentiment. If that be the case, if he is simply giving us his own views and will state so, then I will urge my objection on the ground it is not binding on the War Department. But for him simply to state that the War Department felt thus and so does not lead us anywhere, and I object to that general statement by this witness.

The War Department's policy is probably in writing in some way. If there is any such correspondence, I assume that under your Honor's ruling it would go in with that other correspondence. But I object to this witness interpreting the desires or the purposes of the War Department.

Q. 19. Have you the memorandum of the conference with the Alien Property Custodian of February 12, 1916?

Mr. Kresel: 1919.

Mr. Anderson: Yes, 1919.

Mr. Kresel: I think, Colonel, that is already in evidence.

Mr. Galloway: It is already in the record.

Mr. Anderson: I did not mean to interrupt you. Your Honor may have wanted to reply, but I did not want to go further with that.

Mr. Kresel: That is already in evidence.

Mr. Anderson: It is already in evidence.

The Court: Is there an answer to the question to which you objected, which you wanted to strike out?

Mr. Kresel: No, your Honor, I stopped him right at the threshold.

The Witness: The other plant—there was another plant at Saltville, Virginia, which was what was called a cyanide process for making ammonia that also involved certain American patents and not enemy-owned patents. Also a fourth under construction at Toledo, which was abandoned.

Q. 20. You have covered the four?

A. Yes.

Mr. Anderson: Would you identify for me, Mr. Galloway, the exhibit at that conference of February 12th?

Mr. Kresel: I have a copy of it here. Would you like to use it, Colonel?

Mr. Anderson: I would if you will permit me.

Q. 21. I notice in the memorandum already introduced, dated February 12, 1919, Plaintiff's Exhibit No—

Mr. Kresel: We have a list of those exhibits and I can probably tell you what that one is.

Mr. Anderson: It is February 12.

Q. 21. (Continued) In Plaintiff's Exhibit 83, there was a statement by Mr. Palmer that the matter of the sale of the patents, nitrogen patents, to the Government was in the hands of Mr. Hoguet and he would be glad if the members present representing the War Department would take it up with Mr. Hoguet. You recall that statement?

A. I do.

Q. 22. I also note that in Plaintiff's Exhibit 85, already introduced, it appears that a conference was held with Mr. Hoguet by Major Holcombe and Lieutenant Graves, of the Ordnance Department, at 160 Broadway, New York, on April 22, 1919, at which a letter of April 16, 1919, from you to Lieutenant Graves was presented to Mr. Hoguet. Is that the letter you wrote on April 16, 1919 (handing paper to witness)?

A. It is.

Mr. Anderson: I offer in evidence, under the stipulation, copy of a letter dated April 16, 1919, by Captain W. H. Swenarton, Nitrate Division, to Lieutenant S. H. Graves, Administration Division, Patent Section, and ask that the same be read and identified as Plaintiff's Exhibit 109.

Mr. Kresel: If your Honor please, we object to the introduction of that paper and I shall ask your Honor to be good enough to look at it, upon the ground that it is immaterial and irrelevant and is simply a reflection of this witness's personal view and not the view of the War Department, which view, if material at all, is the only view to be considered.

Furthermore, we object to it upon the ground that upon its face, it does not refer to the patents that were transferred to this defendant. It refers to other patents as to which there was a question as to whether those should be transferred to the defendant Chemical Foundation.

Upon both of those grounds, we urge that this paper is immaterial and irrelevant and not binding upon this defendant.

The Court: How many persons were there connected with the War Department at that time?

Mr. Kresel: Your Honor, I have no idea, but there certainly were thousands of them.

Mr. Anderson: If your Honor please, my reason for introducing here all of this evidence is to connect—

Mr. Kresel: Will you show that to the Court, please.

Mr. Anderson: It all ought to go in as far as we think it is pertinent and I will not object to counsel on the other side putting in any that relates to this subject by way of a general objection. But here was a letter brought to the attention of Mr. Hoguet, who was then acting as patent counsel for The Chemical Foundation and patent counsel of the Alien Property Custodian. If this communication had been an expression merely of the views of the witness or any other subordinate officer of the War Department, the objection might apply; but it was a matter brought directly to the attention of this defendant through its patent counsel and directly to the attention of the patent counsel of the Alien Property Custodian who was designated by the Alien Property Custodian as the person who was handling this matter, and for that reason I think it is material.

Mr. Kresel: I will assume, Colonel, that the statement you make is a fact, namely, that it was brought to the attention of Mr. Hoguet. The mere fact that the personal view of one of the officers of the War Department is disclosed to the defendant does not in any way change the situation. That is not the view of the War Department; it does not express the desire of the War Department. Why should we be called upon to follow the personal views of some particular officer of the War Department, no matter whether high or low?

If your Honor will look at the first paragraph of that paper, the one marked No. 1, your Honor will see it says: "Confirming conference with you over the telephone today as to proposed transfer of enemy-owned patents to The Chemical Foundation in addition to the forty-five hundred odd patents already acquired by it." The instrument shows on its face that it is dealing with patents that have nothing to do with the forty-five hundred patents, if that is the number transferred to The Chemical Foundation.

This witness there was giving his personal views as to what should be done in the future with regard to other patents. How is that in any way binding or material in this case?

Mr. Anderson: I would reply simply by saying that there were twenty-one transfers in this case which continued throughout two years and it was an official act of an officer of the War Department dealing with this question, communicated to the defendant and communicated to the Alien Property Custodian. It shows the effort on the part of the Government to obtain these patents and to deal with those patents.

THE COURT: It shows an effort on the part of whom, Colonel Anderson? I do not understand the distinction that you make between the Alien Property Custodian and the Government.

MR. ANDERSON: I make this distinction, sir, that when I speak of the Government as dealing with these patents, I speak of the officers of the War Department designated to deal with this particular subject of nitrates. When I speak of the Alien Property Custodian after the 3rd of March, I am speaking of an officer who was also the President of The Chemical Foundation. The Alien Property Custodian was an officer of the Government.

THE COURT: When were these assignments made?

MR. ANDERSON: These assignments were made on the 10th of April.

THE COURT: And this letter is the 16th of April?

MR. ANDERSON: Yes, sir. It shows the conference; and the whole history of this transaction can only be developed by this correspondence. There were subsequent assignments. Your Honor will recall that while we have talked about an assignment on the 10th of April, there will be put in in a few minutes all of them. The reason we have not put them in is that we have been stipulating certain things about them. There were twenty-one of these assignments altogether.

This correspondence which begins in February and leads up to April is by authorized officers of the War Department and was directed first to the Alien Property Custodian and then to The Chemical Foundation, first to obtain the patents, and second, to obtain a license; and neither succeeded. Now, certainly that is a very material fact in this case, in view of the statements here so often made that the Government of the United States was to be given and was given free use of these patents. We will show that they were never given any license at all as a matter of fact.

Mr. Kresel: Colonel Anderson does not really mean to say that there was no license given.

Mr. Anderson: I mean to the War Department on these patents. The Government today, the War Department today, has no license on these Haber patents.

Mr. Kresel: Colonel, you are wrong about that. There is, and the War Department now has, and it is being recorded in the Patent Office, a full and free license to every patent that was ever conveyed to The Chemical Foundation. Now, Colonel, if you don't know it, you should know it. We have a copy of it. Mr. Galloway knows that the original instrument is in the possession of the Government. It was accepted by Mr. Roosevelt as Assistant Secretary of the Navy.

Mr. Anderson: There has never been a license issued to the War Department covering these Haber patents.

Mr. Kresel: It is issued to the Government. It is not issued to any particular department.

Mr. Anderson: I beg your pardon. It is issued to the Navy Department.

The Court: If you have a copy here, why debate it?

Mr. Anderson: I did not intend bringing that in, sir.

Mr. Kresel: But you say no license was given when the evidence is the contrary.

The Court: Let us see the license.

Mr. Anderson: I think all this matter when it goes in will be shown to be very material. I do not want to anticipate my case by arguing about the license, because we have a much larger question than that.

Mr. Kresel: But you make the statement.

The Court: Colonel Anderson, I want you to put every letter, every paper, every syllable, as well as every syllable of oral evidence that you have, upon this record for any purpose that you may make of it. But I do not want to be put in the position myself of admitting evidence which under any rule of evidence ever adopted by any Court would be inadmissible. Now then, so far as I now can see, there is no reason why, if this letter is admissible, the letters not only of every officer of the War Department, but by any individual or private citizen in the expression of his views as to what should be done with these patents, written to the Alien Property Custodian, should not be admitted in evidence.

I do not see that it establishes a governmental policy. I do not see that there is any policy that could be established with respect to the disposition of these patents on the part of the Government save by Congress, the President, Mr. Polk, and the Alien Property Custodian's office. Surely, the custody and disposition of these patents did not extend beyond those circles, even assuming that those persons all had power, which you deny.

Mr. Anderson: May I reply to your Honor. Is your Honor through?

The Court: Yes.

Mr. Anderson: I know your Honor does not want to put me in the position of offering evidence here which your Honor suggests is not admissible under any rule ever adopted by any Court.

The Court: I say, so far as I can see. I may be in error.

Mr. Anderson: Of course, I am quite conscious of the fact that counsel in the trial of a case frequently feel that evidence is important which the Court may not feel and which in the final development of the case even counsel realize is not so important. That often happens. But I do not think that that is the case in this instance.

The Court: I will admit it.

Received in evidence and marked "Plaintiff's Exhibit No. 109." (*See Exhibits, Vol. I, page 302.*)

Mr. Kresel: Will your Honor permit me, as long as the question has arisen, I cannot allow, unless your Honor stops me, to go unchallenged the statement made by Colonel Anderson that we did not give the Government a license.

I hold in my hand a photostatic copy of the original license which was issued by this Foundation—not to the Navy Department, Colonel, but to the Government of the United States, which covers every Department of the Government—upon every patent that has ever been conveyed to The Chemical Foundation; and you may have it. It shows the acceptance of that instrument by the Acting Secretary of the Navy acting for the Government; and it is our information from Mr. Galloway of counsel for the Government that that instrument is actually now being recorded in the Patent Office.

How under such circumstances counsel can state here for the record that we declined to give the Government a license is beyond my comprehension.

Mr. Anderson: I was not making the statement for the record, but I must, with all deference, without arguing this license at this time, take the position—and I am going to take it in this case, and counsel may as well know it now as at any other time—that this license is not a license for the free use of these patents by the Government, without even assuming that it would give other departments than the Navy Department the right to use the patents—which I do not now propose to discuss, because that is a question to come up later—that it is not a free license to use them, but it is expressly limited to the use of the patents and the products by the Government itself and therefore makes this license absolutely inapplicable to the operation, use or sale of the product of these large plants constructed by the Government under the Act of Congress for the use of surplus for fertilizer purposes.

THE COURT: That is, it limits the Government to the use of the patents for Governmental purposes.

MR. ANDERSON: Strictly Governmental purposes.

THE COURT: And not commercial purposes.

MR. ANDERSON: And not commercial purposes. It does not allow the patents or products to be used for commercial purposes and therefore is in direct conflict, as I will contend, since we have gotten into the discussion of it, with not only the Executive order issued, but all the evidence as to what was understood up to the present time.

MR. KRESEL: I will submit at the proper time, and if your Honor desires now, I will submit a copy of the license so that your Honor may construe it.

MR. ANDERSON: Of course, the Court will construe it on that point, but I want to get the record clear, if we are going to discuss it now.

THE COURT: Colonel Anderson, is it your contention that there was an agreement on the part of this defendant to give to the Government a free and unrestricted license for commercial uses as well as governmental uses?

MR. ANDERSON: I will not only contend that, but I will contend that the order issued by Mr. Polk, which I speak of as an Executive order without admitting that it is an Executive order, was predicated upon that express statement to him and that he so testified yesterday, and that was a material statement in this case; that he acted upon a mistake of fact and that his order is void even if he had authority to execute it.

I am going to contend all that and therefore all this is most practical. I am going to show that this Chemical Foundation absolutely refused to issue a general license to the Government within six weeks, after these patents were transferred. All this evidence is very material. I did not want to enlarge this discussion on the evidence so far, if I could help it. But I think I can show when I come to argue this case that this evidence is vital as going to the very meat of this case. Then I understand your Honor permits this evidence to go in. I introduce that memorandum.

To save time, I am just going to put these letters in and get along with it. I offer in evidence a letter dated April 21, 1919, by A. G. Glasgow, who appears to have been Assistant to the Secretary of War, to G. H. Dorr, Assistant Director of Munitions, with respect to the position of Mr. Hoguet with respect to the issue of these patents, and ask it be read in evidence as "Plaintiff's Exhibit No. 110."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 110." (*See Exhibits, Vol. I, page 305.*)

Mr. Anderson: The letter is very brief, in which he states: (Reading.)

I now offer in evidence communication dated April 25, 1919, signed by A. M. Holcombe, Major, United States, office Chief of Patent Section, Purchase Branch, to Mr. G. H. Dorr, who has already been identified; to be identified and read in evidence as Plaintiff's Exhibit No. 11.

Mr. Boggs: What is the date of that letter, Colonel?

Mr. Anderson: It is April 25, 1919.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 111." (*See Exhibits, Vol. I, page 306.*)

Mr. Anderson: It is to Mr. Dorr from Major Holcombe, and reads: (Reading.)

I offer in evidence a communication dated August 19, 1919, addressed to the Chief of Ordnance, Washington, and unsigned, which it will be conceded, I presume was signed by D. I. McKay, initialed "D. I. M.," Vice-President of The Chemical Foundation, Inc.

Mr. Kresel: May I see it?

Mr. Anderson: On the letterhead of The Chemical Foundation, Incorporated. Do you object to putting the signature in these?

Mr. Kresel: No, I will just verify it, Colonel.

Mr. Anderson: Yes, and then put his signature in, so when the Court reads it, it will know who it is.

Mr. Kresel: Yes. All right, Colonel, I have put Mr. McKay's signature there, as you suggested.

Mr. Anderson: Yes. The letter is as follows:—

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 112." (*See Exhibits, Vol. I, page 307.*)

This letter, in view of the discussion becomes important, so I shall read it. (Reading.)

Mr. Kresel: Now that your Honor has heard the letter read, I did not raise this objection, because I wanted your Honor to hear the letter read. I now move that it be stricken from the record upon the ground that it shows preliminary negotiation in a transaction which culminated in the making of an agreement between the parties in the form of the license that I have called your Honor's attention to; that it can neither vary nor assist nor aid that final agreement; that that agreement speaks for itself and is binding upon the parties, and that any previous negotiations are merged in that agreement.

Mr. Anderson: Let me see your license.

Mr. Kresel: Yes, I will be glad to give it to you. Here it is. (Handing.)

Mr. Anderson: In the first place, if your Honor please, it appears here that patents are bought by the Navy Department and the War Department as separate organizations.

The Court: It appeared what?

Mr. Anderson: It appeared yesterday that the Navy Department paid one hundred thousand dollars for certain patent rights for the Navy Department.

The Court: Who is the grantee, Colonel?

Mr. Anderson: The Alien Property Custodian.

The Court: I did not mean the grantee. I mean the assignee of such patents. Is the War Department a separate entity?

Mr. Anderson: It is not a separate entity; and I am frank to say to the Court that I do not know how they handle it, but apparently they deal as separate entities for purchases of this kind, and their appropriations are entirely different, and it gets into a very complex situation, which I am frank to say I have never been able to straighten out; that if one buys under that appropriation, the other apparently does not use it; but, in any event, aside from that situation, this license, said to have been accepted by the Assistant Secretary of the Navy, and not yet in evidence, is dated the 17th day of November, 1921.

Now, there is absolutely no connection, so far as I know and so far as this record discloses, between these negotiations of the War Department for particular patents in relation to particular plants with which the Navy had nothing more to do than any other institution.

The Court: Unless you can show me that the license is restricted to Naval uses, I shall not recognize any distinction between the Navy and the War Departments, if it be shown in this case that the license was given to the Government for Governmental uses.

The license is not now in evidence, so your motion will have to be reserved until the license shall have been placed in evidence, if it should be placed in evidence.

I therefore suspend action upon the motion of counsel for the defendant. You may proceed, Colonel Anderson.

Mr. Anderson: Very well, sir. I offer in evidence a report by Captain W. H. Swenarton to Major Gaillard, of the Nitrate Division, dated September 4, 1919, of the conference of August 11, 1919, with Mr. McKay, with which that letter is apparently connected, and it gives the whole story.

I will ask that it be received and read in evidence as Plaintiff's Exhibit No. 113.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 113." (*See Exhibits, Vol. I, page 309.*)

The Court: That is from whom to whom?

Mr. Anderson: That is from Captain Swenarton to Major Gaillard, reporting this conference which Mr. McKay wrote about in his letter to the Chief of Office.

The Court: Reporting to whom?

Mr. Anderson: Reporting to Major Gaillard, Chief of the Nitrate Division of the War Department.

The Court: I did not realize that. I thought that was from Captain Swenarton to somebody in The Chemical Foundation or the Alien Property Custodian's office.

Mr. Kresel: You see, your Honor, there again is an interchange of communication between two officers in the War Department. How can we be bound by that?

The Court: You can not. I pass upon that now.

Mr. Kresel: Or how can it be material as to what those two officers thought or said?

The Court: You may put it on the record, but will you call my attention, Colonel Anderson, to the rule of evidence by which that is relevant?

Mr. Anderson: I will sir, with great pleasure. It is headed Report of Conference, and on August 11th a conference was held at the office of The Chemical Foundation, with Mr. McKay, Vice-President, Ramsay Hoguet, Patent Counsel, and Mr. Tucker, Chemist. It goes on and states he reports to his superior officer what took place at that conference with The Chemical Foundation with respect to the effort of the War Department to secure this license. That same conference is referred to in the letter of Mr. McKay which I just introduced. Therefore, a report of an officer to his superior, of a conference with the defendant's officers, about a matter affecting an issue in this case, according to our contention and in my judgment is admissible as evidence.

The Court: Why, Colonel?

Mr. Anderson: Admissible as evidence of what took place at that conference. It is a contemporaneous official report of the Government between officers of the Government. Any official report by an officer to another officer is admissible in evidence, as I understand it.

The Court: But here is a letter containing statement of facts, which letter was never brought to the attention of this defendant, or its contents communicated to it prior to or at the time it was written, or the time that it was received, and to some third person or party, or individual, at least, and the fact that it is a document on file in the War Department or in the Governmental records it seems to me clearly comes under the prohibition of *res inter alia acta* and can not—

Mr. Anderson: I quite agree, if your Honor please, but what I should have done beforehand I was going to do afterwards, but I was trying to save time—to ask this witness as to this report.

I quite agree that the facts in this report might be subject to question as a correct report if there could be question of what took place, and I want the witness himself to prove what took place at that conference with Mr. Hoguet, I put this letter in evidence and I am going to have the witness testify that he wrote this report and that it is a correct report of what took place in the conference with Mr. McKay. I put it in first when I should have taken his oral evidence first.

THE COURT: There is no question about its authenticity.

MR. KRESEL: No, I am not raising that question.

MR. ANDERSON: That is the reason I put it in.

MR. KRESEL: May I say, your Honor, that Colonel Anderson is familiar with this document and so am I, but that your Honor is not. But this is not simply a report of what took place at the conference; it gives comments of this gentleman upon other people who are not concerned with this case. It criticizes other people for having taken certain positions; he draws upon his imagination as to what ought to have been done. It is not simply a report of what took place.

MR. ANDERSON: Very good. I will ask the witness to testify what took place at the conference. I was trying to get along as fast as I could by introducing these papers.

THE COURT: I said that paper was admitted.

MR. ANDERSON: Just strike it out, if your Honor please—strike the paper out.

THE COURT: You may under that ruling, as under the other ruling, make your record.

MR. ANDERSON: I would like to keep the paper on the record. I was going to identify it.

THE COURT: Very well.

Mr. Anderson: I will withdraw my statement there and strike it out, your Honor will rule upon it yourself at my final request.

Q. 23. Major Swenarton, will you state whether you were present at a conference held about August 11, 1919, at the office of The Chemical Foundation in New York between Mr. Douglas I. McKay, vice-president; Mr. Ramsay Hoguet, patent counsel; Mr. Tucker, chemist, and yourself, with respect to the so-called nitrogen patents?

A. I was.

Q. 24. I hand you what purports to be a report from you of that conference in order to refresh your memory, and would be glad if you could state to the Court as briefly as you can what took place at the conference, confining your answer to the matters of discussion relating to the nitric patents?

Mr. Kresel: May I say that while I recognize that the conversation took place a long time, if Major Swenarton desires to refresh his recollection by any paper—

The Witness: I do not need to refresh my recollection.

Mr. Kresel: (continuing) I do not raise any objection, but I would prefer that he gives his recollection unaided by any paper, if he can.

The Court: He says he does not need to refresh his recollection by the use of any paper, so you may take back the paper which you gave him, Colonel Anderson.

Q. 25. Give me the paper.

A. (Handing counsel). Except as to the date. Of course, I do not remember the exact date.

Q. 26. You will proceed with the answer.

A. What was the date there?

Q. 27. The date was August 11, 1919, shown by this paper?

A. The date of the conference?

Q. 28. Yes.

A. On August 11, 1919, I was sent to New York by the Ordnance Department to arrange if possible and negotiate a license—

Mr. Kresel: One minute, please. I object to that and ask that it be stricken out.

The Court: Sustained.

Mr. Kresel: We are not bound by any instructions that he received. He is simply asked to tell what happened at the conference.

The Court: Sustained on the ground mentioned, and on the further ground that it is not responsive.

The Witness: Shall I start again?

The Court: Yes.

The Witness: I went to a conference on April 11, 1919—

The Court: April or August?

The Witness: April.

Mr. Kresel: August, isn't it?

Mr. Anderson: August.

The Witness: Yes, August. I thought he said April.

Q. 29. August 11, 1919.

A. August 11, 1919, at the New York office of The Chemical Foundation, between Mr. McKay, Mr. Hoguet and myself, with a view to—

Mr. Kresel: I object to what view he had.

The Court: You need not state that. Your question, Colonel Anderson, was as to what transpired at this conference?

Mr. Anderson: I asked him to state as accurately as he could what transpired at that conference and its result.

The Witness: I told Mr. McKay that both in the public press and to representatives of the War

Department The Chemical Foundation represented that if it took over these German-owned patents, particularly those in which the Nitrate Division was interested, the Government would be given a free license, and that as the Government had no department which could effectively bring suit for infringement of patents, the Chemical Foundation by its acquisition of these patents would be in a better position to protect the monopoly without in any way prejudicing the Government's position. I therefore asked Mr. McKay if he would arrange to give such free license as had been indicated in connection with the various negotiations for the acquisition of these patents from the Alien Property Custodian to the War Department. He said he thought that they could arrange such a free license, but of course that would be limited to a license for the War Department use or, as he expressed it, for munition purposes only, and that the Government could not sell fertilizer or nitrates produced at its plants in the open market. I told him that I did not think that would be at all satisfactory, as the main object of the Nitrate Act was to provide a plant not of only sufficient capacity for war purposes but for fertilizer purposes after the war ended, and that the war having ended, the Government probably had more nitrate in stock than it would use in the next ten years. He said he would take up this matter with the officials of the Foundation and would advise us later, which he did.

Q. 30. Did he express any views on the subject himself?

A. Well, he was very emphatic that—

Mr. Kresel: I object to a characterization of Mr. McKay's attitude. There can be no objection to what Mr. McKay said.

THE COURT: Sustained.

A. (continued). As I recollect it, Mr. McKay stated that if the Government desired to operate these plants and produce more product than it could consume itself, selling the surplus in the open market, it would have to be placed on the same basis as any private manufacturer, as it would not be fair to the private manufacturer to have the Government competing without paying a royalty such as was required from the private mnaufacturer, and furthermore, that even such a license would not be granted to the Government unless it was specifically stated that it was revocable at the will of the Chemical Foundation. He later wrote a letter to that same effect to the War Department.

Q. 31. You heard read the letter from Mr. McKay which I read at the bar a few moments ago, did you not?

A. I did.

Q. 32. Did that substantially state what you understand his position to be in that conference?

A. It did.

Q. 35. Was Mr. Ramsay Hoguet present at that conference?

A. He was.

Q. 34. Did he take any part in the discussion?

A. Very decidedly.

Q. 35. Can you recall what he said on the subject, if anything?

A. Not specifically, no. It was in accord with practically everything Mr. McKay said. In fact, I think it was what inspired Mr. McKay to say what he did.

MR. KRESEL: I ask that that last remark be stricken out.

THE COURT: Motion granted.

MR. ANDERSON: I want to offer one other letter, if your Honor please, and under your Honor's indicated ruling a moment ago between officers of the War Department, and if your Honor would permit it to go in, I shall show it to counsel.

The Court: I shall permit it to go in but you will have to convince me of its value.

Mr. Anderson: I will show it to counsel and show it to your Honor. I will not read it because your Honor in effect does not admit its value in evidence.

Mr. Kresel: Are you going to offer this, Colonel?

Mr. Anderson: I will just show it to the Court, if you will allow me—or without showing it to him I just offer it and say what it is, and the Court can make its ruling.

Mr. Kresel: Colonel, the Court has already indicated its purpose.

Mr. Anderson: Quite true.

Mr. Kresel: To admit the letter if you offer it, over my objection. Therefore, there is no necessity for any argument on it; and I assume that you want it in.

Mr. Anderson: I do.

Mr. Kresel: It is simply subject to our objection.

Mr. Anderson: I offer in evidence a letter dated September 9, 1919, from Mr. George J. Roberts, Special Assistant to the Chief of Ordnance. Captain S. H. Graves as Chief of the Patent Branch, Advisory Section, Administrative Division, on the subject of Chemical Foundation patents, to be identified and read as Plaintiff's Exhibit No. 114. I assume the same objection is made, and I won't read the letter because of your Honor's ruling.

Received in evidence and marked "Plaintiff's

Exhibit No. 114." (*See Exhibits, Vol. I, page 314.*)

Mr. Anderson: I think that is all I want to ask the witness.

The Court: Any cross-examination, Mr. Kresel?

Mr. Anderson: It is all I want to ask the witness on this branch of the case; I may want to call him on another branch of the case, but it is entirely disconnected with this.

Mr. Kresel: Are you through, Colonel?

Mr. Anderson: I am through with the witness.

Mr. Kresel: I have no questions of this witness, your Honor.

(The witness excused.)

Mr. Anderson: I am sorry to have to say, sir, that the evidence now of the Government is documentary.

The Court: It is no fault of yours, Colonel Anderson.

Mr. Galloway: If your Honor please, the plaintiff next offers in evidence the minutes of the meeting of the Advisory Committee on Sales of the Alien Property Custodian of February 14, 1919, and asks that the same may be read as Plaintiff's Exhibit No. 115.

The Court: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 115." (*See Exhibits, Vol. I, page 316.*)

Mr. Galloway: That is under the stipulation —No. 57. This shows that the meeting was held in New York on Friday, February 14, 1919, at 10 o'clock a. m. There were present Messrs. Otto T. Bannard, George L. Ingraham, Cleveland H. Dodge, Benjamin H. Griswold, Jr., Ralph Stone, excused; by invitation, Hon. A. Mitchell Palmer, Alien Property Custodian, and Messrs. Francis P. Garvan, Director Bureau of Investigation; Ralph J. Baker, Assistant General Counsel; Joseph F. Guffey, Director Bureau of Sales; F. X. Anglim, Assistant Director Bureau of Sales; H. D. Green, and George P. Wagner, Secretary of the Committee. "Re Patents on Dyes and Chemicals." (Reads from Exhibit 115.)

The Plaintiff next offers in evidence copies of nineteen assignments. We are coming now to the assignments, Mr. Kresel—so that you may follow this.

Mr. Kresel: Assignments?

Mr. Galloway: The assignments. The plaintiff now offers in evidence copies of nineteen assignments exclusive of the schedules therein mentioned from Francis P. Garvan, Alien Property Custodian, to defendant, The Chemical Foundation, incorporated, which copies of said instruments are filed as Exhibits H-1 to H-19, both inclusive, with the Bill of Complaint, with the respective captions thereof, the same being of the following respective dates:

H-1, April 10th, 1919; H-2, May 2nd, 1919; H-3, May 6th, 1919; H-4, May 15th, 1919; H-5, June 17th, 1919; H-6, June 21st, 1919; H-7, October 17th, 1919; H-8, December 9th, 1919; H-9, February 26th, 1920; H-10, February 26th, 1920; H-11, March 9th, 1920; H-12, May 4th, 1920; H-13, May 15th, 1920; H-14, July 20th, 1920; H-15, December 21st, 1920; H-16, December 21st, 1920; H-17, December 21st, 1920; H-18, December 21st, 1920; H-19, February 19th, 1921.

These respective instruments purport to as-
trademarks and other property or rights therein
sign to the defendant certain patents, copyrights,
mentioned and in the schedules which are thereto

annexed, and which will be next introduced. We ask that these respective instruments be not duplicated in the record, but said Exhibits H-1 to H-19 inclusive with the Bill so introduced, be identified in evidence as Plaintiff's Exhibits 116-A to 116-S inclusive.

Mr. Anderson: I suggest that we just make it Exhibit 116, because otherwise it will confuse the schedules. The entire exhibit as 116.

Mr. Kresel: Very well.

The Court: We will do what Colonel Anderson suggests.

Mr. Anderson: The next exhibit will be the schedules accompanying those assignments and it will confuse them if you mark the exhibit—

The Court: I wonder if it would not prevent confusion, Colonel Anderson, if we did either one of two things—that is, give each assignment a separate number and then letter the schedules alphabetically. Why not do that?

Mr. Galloway: I think that was the original idea, that we should have them all in one exhibit and number them—

The Court: No, if you give each assignment a separate exhibit number and then give the schedules to that assignment alphabetical letters.

Mr. Anderson: The reason I suggested that is that we made quite a study of this matter the other night, and your Honor is probably right. That was our first intention, but these later assignments and the schedules which accompanied the same, being Exhibit G, which will be presently introduced, and the assignments not being in Exhibit H due to an oversight in the arrangement of the exhibits. I was a little afraid that it might confuse it, but perhaps we can work it out. The matters attached to the Bill are quite easy of identification.

The Court: Yes. I believe if we give them each an exhibit number, then identify the schedules by letters of the alphabet, for instance, 116-A, 116-B, while each assignment takes a separate exhibit number, that would be better. Have you any suggestion, Mr. Kresel?

Mr. Kresel: I think any suggestion your Honor makes about that is satisfactory to us. I was going to call attention to the fact, however, that the list of assignments which Mr. Galloway just read is not a complete list.

Mr. Anderson: No.

Mr. Galloway: There are two others.

Mr. Anderson: There are three others.

Mr. Galloway: Yes, there are three others.

Mr. Kresel: There are two others that I know of.

Mr. Anderson: And the final assignment of Mr. Garvan.

Mr. Kresel: There are two assignments, your Honor, which are likewise attached as exhibits to the Bill of Complaint, as Exhibit J and K.

Mr. Galloway: We are coming to those.

Mr. Anderson: We are going to introduce those.

Mr. Kresel: What?

Mr. Anderson: We are going to introduce those.

Mr. Kresel: Very well.

The Court: Let these assignments, then be admitted, and let them receive their respective alphabetical and numerical marks.

Received in evidence and marked "Plaintiff's Exhibits Nos. 116 to 134" inclusive.

Mr. Galloway: Plaintiff now offers in evidence copies of nineteen schedules, filed as Exhibits G-1 to G-19 inclusive, with the Bill of Complaint, with the respective copies thereof. This however, to be subject to correction by stipulation which we have agreed upon now, except as to the signing thereof. I think they can be presented perhaps after lunch.

Mr. Kresel: That is satisfactory.

Mr. Galloway: I will consider that as signed then, and present it all together. I think we had better start that over again to get it right: We offer in evidence copies of the nineteen schedules filed as Exhibits G-1 to G-9, both inclusive, to the Bill of Complaint, together with the stipulation of counsel covering the same, and making corrections therein, and ask that the whole, together with said stipulation and corrections may be identified in evidence as Plaintiff's Exhibit No. 135.

Now the question comes of whether we are going to assign the alphabetical number or alphabetical designations to these exhibits, or not.

Mr. Anderson: I would suggest now, if I may suggest, since the clerk has assigned numbers 116 to 134, that we assign individual designations—116-A, 116-B, and so on, and then additional numbers to the stipulation and to the corrections.

Mr. Kresel: Yes.

The Court: There is one of those schedules which accompanies each of the assignments, I assume?

Mr. Anderson: Yes.

Mr. Galloway: Yes, that is true.

The Court: Have you arranged them in the same order as the exhibits in the Bill, as you did the assignments, so that G-1 will be 116-A?

Mr. Galloway: Yes. We therefore ask that G-1 be 116-A, G-2, 116-B—

Mr. Kresel: No. 117-A.

Mr. Anderson: 117-A.

Mr. Galloway: No. 116-A.

The Clerk: 117-A.

Mr. Kresel: And G-3 will be 118-A, and s on?

Mr. Galloway: G-1 as 116-A, G-2 as 116-B.

Mr. Mahaffy: So that the assignment and exhibit will be the number and the A.

Mr. Hershkopf: That does not now take car of the stipulation.

Mr. Galloway: We will put that in, when w put the other schedules in. We ask that G-1 o the Plaintiff's Bill of Complaint be 116-A; G-2 117-A; G-3, 118-A; and so on.

Mr. Kresel: Let the Clerk fix that.

Mr. Galloway: And we can understand tha they continue in the same order until the con clusion.

The Court: Yes.

Mr. Anderson: The last number there is 134

The Clerk: Yes, 134.

Mr. Anderson: Then you will identify the stip ulation and the correction as 135 and 136.

Mr. Galloway: And we ask also, in order t avoid duplication—

The Court: The Clerk will take care of that

The Clerk: The stipulation is 135.

Mr. Galloway: We will consider that you an I signed this, Mr. Boggs?

Mr. Boggs: Yes.

Stipulation received in evidence and marke "Plaintiff's Exhibit No. 135." (*See Exhibits, Vo I, page 330.*)

Mr. Galloway: The plaintiff next offers i evidence a stipulation between the solicitors fo the parties plaintiff and defendant herein, co cerning corrections in Exhibit G to the Bill of Complaint, which stipulation is as follows (reading).

The other facts are the dates of seizure and such things concerning the title of the Alien Property Custodian (further reading from Plaintiff's Exhibit 135.)

Plaintiff next offers in evidence the corrections to Exhibit G which consist of pages 1 to 55, both inclusive.

The Court: Are those corrections divided into nineteen classes?

Mr. Galloway: These corrections are taken by page number and the same appears on the Bill of Complaint.

The Court: Should not those be 116-B, all in one?

Mr. Boggs: Your Honor, they are not divided by exhibits. For the purpose of reference they were made by pages.

The Court: The correction of the schedules will be Exhibit No. 136.

Received in evidence and marked "Plaintiff's Exhibit No. 136." (Corrections embodied in Exhibit G to bill of complaint. *See Record, Vol. 1, page 124.*)
Exhibit No. 136."

Mr. Galloway: Plaintiff next offers in evidence a letter dated November 14, 1919 from J. H. Choate, Jr. to L. H. Boggs of the Alien Property Custodian's office. It will be stipulated, will it, that Mr. Boggs was General Counsel of the Alien Property Custodian's office?

Mr. Hershkopf: At that time, yes.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 137." (*See Exhibits, Vol. 1, page 331.*)

Mr. Galloway: If your Honor please, we are coming now to the Executive orders signed by President Wilson in February, 1920. This letter, dated November 14, 1919 to Mr. Boggs from Mr. Choate reads at least in part as follows. I shall omit such portions of it as I feel I can. (Reading from Plaintiff's Exhibit No. 137).

Plaintiff next offers in evidence another letter from Mr. Choate to Mr. Boggs dated November 18, 1919 and asks that the same be read as Plaintiff's Exhibit 138.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 138." (*See Exhibits, Vol. I, page 332.*)

MR. GALLOWAY: This letter being from Mr. Choate to Mr. Boggs reads as follows (reading from exhibit).

Plaintiff next offers in evidence a memorandum by Mr. Goldstein of the Custodian's office to Mr. Boggs, dated November 21, 1919, with reference to the transaction that we were just discussing now.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 139." (*See Exhibits, Vol. I, page 333.*)

MR. GALLOWAY: This memorandum states (reading).

MR. KRESEL: Mr. Galloway, have you the proposed assignment that they are talking about here?

MR. GALLOWAY: No, we do not have it, but we think the subsequent correspondence will show the portions referred to.

Plaintiff next offers in evidence a letter from Mr. Boggs to Mr. Dunbar. I think it will be stipulated that Mr. Dunbar was also in the office of the Alien Property Custodian.

Mr. Kresel: Yes, it will be so stipulated. He was Assistant General Counsel of the Alien Property Custodian's office.

Mr. Galloway: And Mr. Boggs was general counsel at that time?

Mr. Kresel: And Mr. Boggs was general counsel at this time.

Mr. Galloway: This is dated December 20, 1919.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 140." (*See Exhibits, Vol. I, page 334.*)

(By direction of the Court, a short recess was then taken at this point).

(After short recess.)

Mr. Galloway: I think we had made an offer.

The Court: It has been admitted, but you had not stated its contents.

Mr. Galloway: This is a letter written by Mr. Boggs while he was on the train enroute from Washington, to his assistant, stating among other things, that he had objected to the phraseology of the proposed assignment, and that Mr. Goldstein, who was familiar with the matter (reading).

Mr. Kresel: Mr. Galloway, it is apparent from what you have just read, that there is a letter from Mr. Boggs to Mr. Choate in between this last one and the one that precedes it.

Mr. Galloway: Yes.

Mr. Kresel: Have you that letter?

Mr. Galloway: No. We do not have that letter. If you have a copy of it we will be glad to put it in.

Mr. Kresel: I have not it.

Mr. Galloway: The plaintiff next offers a letter from Mr. Dunbar to Mr. Choate, dated December 22, 1919, and asks that the same may be read in evidence as "Plaintiff's Exhibit No. 141."

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 141." (*See Exhibits, Vol. I, page 335.*)

MR. GALLOWAY: This refers to the correspondence between Mr. Boggs and Mr. Choate, and that Mr. Boggs is out of the city and that Mr. Goldstein has made a search of the records, and that there is no trace of an assignment in the files (reading).

It is suggested that the word "act" is evidently meant for "now," which we think is correct and we are quite willing to make the correction here in the record.

Plaintiff next offers in evidence a letter from Mr. Choate to Mr. Dunbar, dated December 30, 1919, with reference to this matter, which we do not care to read. It merely fills in a gap.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 142." (*See Exhibits, Vol. I, page 337.*)

MR. GALLOWAY: Plaintiff next offers in evidence a letter from Mr. Boggs, general counsel of the Alien Property Custodian's office, to Mr. Choate, dated January 7, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit 143.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 143." (*See Exhibits, Vol. I, page 338.*)

MR. GALLOWAY: This letter states (reading).

Plaintiff next offers in evidence a letter from Mr. Choate to Mr. Boggs, dated January 21, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit 144.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 144." (*See Exhibits, Vol. I, page 340.*)

MR. GALLOWAY: This letter is in part as follows, Mr. Choate writing to Mr. Boggs, says (reading).

Plaintiff next offers in evidence a memorandum from Mr. Dunbar, who it has been admitted was Assistant General Counsel of the Alien Property Custodian, to Mr. Garvan, dated February 10, 1920.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 145." (*See Exhibits, Vol. I, page 341.*)

MR. GALLOWAY: This is as follows (reading).

Plaintiff next offers in evidence a letter from "Frank," which I think the defendant is willing to concede is Francis P. Garvan, Alien Property Custodian.

MR. KRESEL: His name is Frank. There is no doubt about that.

MR. GALLOWAY: There is a letter to Joseph P. Tumulty, by Frank, whom the defendant concedes to be Francis P. Garvan, dated February 11, 1920, and I ask that the same be read in evidence as "Plaintiff's Exhibit No. 148."

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 146." (*See Exhibits, Vol. I, page 341.*)

MR. GALLOWAY: This letter is on the letterhead of the Alien Property Custodian, dated February 11, 1920, to Honorable Joseph P. Tumulty, the White House, Washington (reading). And the notation "Who is Frank?" And the initials "W. W."

The Plaintiff next offers in evidence a letter to the President—

MR. KRESEL: Mr. Galloway, I assume that it will be conceded that this very pertinent inquiry as to "who is Frank"? is in the handwriting of President Wilson, and that the initials are his?

MR. GALLOWAY: We are quite willing to concede that, and we are also willing to put in, for the further information of the Court, the memorandum which we received from the White House, which is as follows: "Dear Governor: Frank is Francis P. Garvan, the Alien Property Custodian," signed "The Secretary W. F. J."

MR. KRESEL: And "W. F. J." stands for what?

MR. GALLOWAY: I am not informed. That is why I did not offer it.

MR. KRESEL: And the date of the memorandum?

MR. GALLOWAY: Is February 12, 1920. Is that conceded to be appended?

MR. KRESEL: Yes.

MR. GALLOWAY: I am quite willing that should go in also, your Honor.

THE COURT: As part of the last exhibit?

MR. GALLOWAY: As part of the last exhibit.

THE COURT: Give the memorandum the letter "A."

Received in evidence and marked "Plaintiff's Exhibit No. 146-A." (*See Exhibits, Vol. I, page 342.*)

MR. GALLOWAY: Plaintiff next offers in evidence a letter dated February 10, 1920, to the President, by Francis P. Garvan, Alien Property

Custodian, transmitting the Executive order which I am just leading up to, and ask that the same be read in evidence as "Plaintiff's Exhibit No. 147," from Mr. Garvan to the President.

Mr. Hershkopf: What is the date of that memorandum?

Mr. Galloway: February 10, 1920.

This letter reads as follows—

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 147." (*See Exhibits, Vol. I, page 342.*)

Mr. Galloway: This letter reads as follows (reading).

Plaintiff next offers in evidence the Executive order of February 3, 1920, as the same appears in Exhibit 5 to defendant's answer and asks that the same be Plaintiff's Exhibit 148 and that it be not duplicated in the record.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 148." (Same as Exhibit No. 5 to answer. *See Record Vol. I, page 557.*)

Mr. Galloway: Plaintiff next offers a letter from J. P. Tumulty, Secretary to the President, to Mr. Francis P. Garvan, Alien Property Custodian, dated February 13, 1920, and asks that the same may be read as Plaintiff's Exhibit No. 149.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 149." (*See Exhibits, Vol. I, page 343.*)

Mr. Galloway: This letter, if your Honor please, says (reading).

The Court: What is the evidential value of that letter?

Mr. Galloway: If your Honor please, we are going to raise the question, and I think it has already been raised, that this is not an attempt by the President to confirm the prior sales of patents and that the correspondence, both leading up to and at the time of the execution of this instrument, shows that it was not so intended by the President and it was not so presented to him; and in fact that the wording of the Executive order itself bears out that contention.

THE COURT: And that the letter of transmittal by the Secretary of the President of the United States is to be considered in the judicial construction of that document?

MR. GALLOWAY: In the event that there may be any ambiguity contended for by either party.

THE COURT: I shall not so hold, but you may put it in the record.

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the meeting of the Advisory Committee on Sales of the Alien Property Custodian of Friday, March 28, 1919, and asks that the same may be considered as Plaintiff's Exhibit No. 150.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 150." (*See Exhibits, Vol. I, page 344.*)

MR. GALLOWAY: We wish to call the Court's attention only to the portion relating to the Chemical Foundation, Incorporated.

MR. KRESEL: Do the minutes show who was present at the meeting?

MR. GALLOWAY: We shall call that to the Court's attention. The minutes show a meeting of the Advisory Committee on Sales held at the New York office of the Alien Property Custodian on March 28, 1919. Present: Messrs. George L.

Ingraham, presiding; Ralph Stone; Benjamin H. Griswold, Jr.; Cleveland H. Dodge; Otto T. Bannard, excused; by invitation: Messrs. Joseph F. Guffey, Director, Bureau of Sales; F. X. Anglim, Assistant Director; Spier Whitaker, Assistant General Counsel; and George P. Wagner.

The minutes relating to the Chemical Foundation are as follows (reading).

Mr. Kresel, are you prepared to stipulate that these are the only two minutes of the Advisory Committee?

Mr. Kresel: The Government asks the defendant to stipulate that the two extracts from the minutes of the Advisory Sales Committee just put in are the only extracts in the minutes of that Committee that refer to The Chemical Foundation. I state that in so far as I know now, that is a correct statement and I am perfectly willing to concede it, subject to correction. If we find other mention thereof, I desire the privilege of correcting it.

Mr. Galloway: If any other such minutes are found by either party, they will be submitted in evidence here. Otherwise, it is admitted and stipulated that these are the only ones.

Mr. Kresel: Subject to correction, we are willing to so stipulate.

Mr. Galloway: Plaintiff next offers in evidence the minutes of a conference with Mr. Ramsay Hoguet in regard to The Chemical Foundation by the Federal Trade Commission held in Washington, June 10, 1919, and asks that the same may be read as Plaintiff's Exhibit No. 151.

Mr. Kresel: May I inquire as to the theory upon which that is being offered? This is June, 1919, subsequent to all the orders by Mr. Polk, subsequent to the original assignment. I should like to know what the purpose of that is.

Mr. Anderson: There are a number of purposes, if your Honor please. There are a great number of these patents that are licensed by the Federal Trade Commission. Some of them were sold at that time. There were various assignments made at various times and this conference related to the dealing with the patents by the Chemical Foundation and the Federal Trade Commission, and especially with regard to the licensing thereof. It relates to a number of issues in this case and therefore we feel a very important document, as it was a conference between the Federal Trade Commission and the gentlemen who were recognized as the chief active representatives of The Chemical Foundation.

Mr. Kresel: Now Colonel, in order that the Court may understand what that document is and make an intelligent ruling, I think you will agree with me that that was a conference at which there was a discussion between the Federal Trade Commission and Mr. Hoguet upon the proposition of the two departments co-operating to induce holders of licenses from the Federal Trade Commission to surrender such licenses and take out licenses from the Chemical Foundation. I think that is the substance of everything that went on there. I claim that that is absolutely immaterial and irrelevant. It can have no bearing upon the issues in this case. It does not even reflect what was referred to here as the attitude of the Federal Trade Commission.

The Court: It does not show fraud or conspiracy.

Mr. Kresel: Fraud or conspiracy or monopoly. It is subsequent to the event.

Mr. Anderson: On the contrary, if your Honor please, a greater part of this evidence would be admissible as admissions by the chief representatives of this corporation as against the position taken in the answer and against the position taken in the opening statement. If no other reason existed for it, the admissions of Mr. Hoguet are clearly binding upon this corporation, in the first place, as to the transactions which preceded and what their purpose was. In the second place, it deals with the question of licensing and royalties, which is one of the many questions which will come up, as your Honor observed —we have taken a different position on the law in regard to that—and much of this relates to that subject. A good deal of it is admission which would be admitted on that ground, if on no other.

The Court: Admissions with respect to what particular thing?

Mr. Anderson: Without going over the paper—I could not state the exact language——

The Court: I do not want you to do that.

Mr. Anderson: But admissions first as to the nature of the Chemical Foundation and its objects; admissions, second, as to the rights of The Chemical Foundation to license fees; claims of The Chemical Foundation as to license fees made by its representative authorities. All of those matters are clearly admissible in evidence in a case of this kind and they bear both upon the question of the rights of the parties in this case and our general charge of conspiracy and of scheme to get control of these patents.

We are going to contend in that connection that it was done without the knowledge of the Federal Trade Commission; that it was never intended even by Mr. Polk, and we think the record

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will bear us out; that the patents licensed by the Federal Trade Commission never came within the alleged authority given to sell them; that it was an invalid sale as to them; that they did not come within the authority.

The Court: Invalid sale of what?

Mr. Anderson: Of the patents licensed by the Federal Trade Commission.

The Court: That is, that any patents which had been licensed could not be sold?

Mr. Anderson: Exactly. We will contend that and we think the record and the documents will bear that out.

The Court: Will this document bear on that?

Mr. Anderson: Very much on that point. It also helps as showing—here is a complete statement contemporaneous with this event covering the situation by one of the leading representatives of this organization and its patent counsel who dealt with this particular feature of it and also who was patent counsel of the Alien Property Custodian.

Even if it were a conspiracy case in one aspect, even if it did not have the broad issues involved here, nearly all of it would be admissible as admissions, and if we were willing to put it all in, to make the statement complete, it would all be admissible on that ground if for no other cause because I think the law is well settled that admissions of officers of corporations in dealing with the present position of that corporation, either in pleadings or upon statements, are admissible as to subsequent events.

The Court: Colonel Anderson, did you no raise an objection one day last week, to some question—your objection was that it had not been shown that this officer had been authorized?

Mr. Anderson: There might be such a limi tation, and there is such a limitation, but I think the evidence here is abundant to show that every matter that came up in regard to these matters was referred to Mr. Hoguet by Mr. Palmer, and a number of letters were put in by Mr. Palmer saying he would deal with it, and he appears there as representative of The Chemical Foundation to deal with these matters before the Federal Trade Commission.

The minutes of The Chemical Foundation show he was elected or appointed as patent counsel.

The Court: You need not argue that. I will be very glad to hear you if you want to discuss it, but it seems to me we have gone further and further afield, and that the issues in this case can not be determined by this. The question which you say bears upon it must be determined upon other evidence which it is unnecessary for me to discuss at this time, as I see it.

Before I rule, I will hear you, Mr. Kresel.

Mr. Anderson: May I just say one thing more, sir, before he replies.

Mr. Kresel: Certainly.

Mr. Anderson: I quite appreciate your Honor's position, and that your Honor feels that this is largely a question of law in this case upon practically undisputed facts. I am frank to say that I think many of the controlling questions, many of the very essential, if not the controlling questions, could have been determined on the Pleadings. Therefore I asked your Honor to hear argument on the Pleadings in advance. I took that position from the first.

Mr. Kresel: I now understand that the offer is made upon the theory that it contains admissions made by an officer of the defendant.

Mr. Anderson: That is one theory, not the only theory.

Mr. Kresel: Now, as to that theory, assuming now that Mr. Hoguet was authorized to bind the corporation by these admissions, then the only portion of that instrument that is admissible upon that theory, are the admissions made by Mr. Hoguet.

If your Honor will look at the instrument, you will see that it contains a running fire of questions and answers between the members of the Federal Trade Commission on one hand and Mr. Hoguet on the other. Certainly, no statements made by the Federal Trade Commission are admissions binding on us; so that upon that theory, the only thing that is admissible is what Mr. Hoguet said.

I understand the Government is offering the whole instrument, is not confining its offer to Mr. Hoguet's statement; that is one point.

Now, as to the claim made by the Government that there was no power in the Alien Property Custodian to make a sale of a patent upon which the Federal Trade Commission had issued a license——

The Court: You need not discuss that now. That is a clear question of law, unless you think you want to put of record your position on it now.

Mr. Kresel: I should like to say that the Statute itself is so plain upon the proposition that I think if Colonel Anderson will give the question more mature consideration, he will come to the conclusion that he is in error about that.

Moreover, as we pointed out, I think, yesterday, if your Honor please, the order of President Wilson, dated December 3, 1918, clearly defined the powers and duties with respect to these patents as between the Alien Property Custodian on one hand and the Federal Trade Commission on the other; and if your Honor will take the trouble to look at that, you will see that that Executive Order expressly provides that the Federal Trade Commission shall issue no license upon any patent without first giving the Alien Property Custodian notice thereof. That the Alien Property Custodian was to have fifteen days within which to make seizure, if he so desired, and further provided that in so far as the Alien Property Custodian is concerned, his duties were in no way limited by any Federal Trade Commission license that had been issued. All that the Order says was in the last paragraph thereof.

As a historical fact, I think it is interesting for me to say to your Honor that that paragraph is written in President Wilson's own handwriting, wherein he provides that that Executive Order shall not in any way affect any licenses that had theretofore been issued by the Federal Trade Commission. But that can not be made the basis of an argument that thereby the power granted by Congress to the Alien Property Custodian to seize and sell was in any way interfered with.

However, I think that question is not involved in the present objection that I have urged to this instrument. Our objection is that it is immaterial, irrelevant, and not binding upon this defendant.

Mr. Anderson: I wanted to make this additional statement, that I did not, by stating the grounds I did state, intend to limit myself to those grounds.

The Court: You intend to make use in this Court and in the Appellate Court of anything that you have in the record that you can make use of?

Mr. Anderson: Yes, sir, and I think it is pertinent and relevant evidence. If there is any part of it that is not pertinent, the Court will determine when it comes to consider it.

The Court: Are you going to read it in?

Mr. Anderson: No, sir.

The Court: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 151." (*See Exhibits, Vol. I, page 351.*)

The Court: You may call my attention to such pertinent portions of it, Mr. Galloway.

Mr. Galloway: I understand. I do not think that we want to read it in. I do not think we want to read any of the exhibit which has just been admitted except to say that it is a conference between Mr. Hoguet and the Federal Trade Commission, in which Mr. Hoguet is contending for the right of the licensees to surrender their Federal Trade Commission licenses and the same to be accepted, the surrender to be accepted, so that The Chemical Foundation may get first hand the royalties payable under the licenses. I merely make that statement in order to connect up with the thing which I intend to show.

The Court: Now, in your briefs, you may, in briefing the facts, refer again to such portions of any of your documentary evidence as you believe to be pertinent upon the issues of fact, if there are any.

Mr. Galloway: Plaintiff next offers in evidence a letter from Mr. Ramsay Hoguet to Honorable A. Mitchell Palmer, Attorney General, dated July 28th, 1919, referring to the bringing of suits, to collect these very royalties referred to, and asks that the same may be read in evidence as "Plaintiff's Exhibit No. 152."

Received in evidence and marked "Plaintiff's

Exhibit No. 152." (*See Exhibits, Vol. 1, page 372.*)

Mr. Galloway: This letter is to Honorable A. Mitchell Palmer, Attorney General, June 28, 1919. (Reads Plaintiff's Exhibit 152.)

We next offer in evidence two memoranda on the letter-head of the Private Secretary of the Attorney General, and a notation thereon by Mr. LeRue Brown with reference to this letter, which is preliminary to the answer to the letter which we just read.

The Court: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 153." (*See Exhibits, Vol. 1, page 374.*)

Mr. Galloway: This is from R. T. Scott, to Mr. Brown, dated July 3rd (reads from Exhibit No. 153). A notation following that, addressed to Mr. Whitaker and initialed "L. B.," who it later appears was LeRue Brown, Assistant Attorney General. (Continues reading exhibit.)

The plaintiff next offers in evidence a letter signed by LeRue Brown, Assistant Attorney General, to Mr. Ramsay Hoguet, dated July 8, 1919.

The Court: Admitted.

Mr. Galloway: I ask that the same may be read in evidence as Plaintiff's Exhibit No. 154.

Received in evidence and marked "Plaintiff's Exhibit No. 154." (*See Exhibits, Vol. 1, page 374.*)

Mr. Galloway: It is addressed to Mr. Ramsay Hoguet, 149 Broadway, in re Chemical Foundation, Incorporated, and signed by LeRue Brown, Assistant Attorney General. (Reads Plaintiff's Exhibit No. 154.)

Mr. Kresel: Now may I have those last three exhibits. I have a motion to direct to the Court with respect thereto. Your Honor will notice that

I raised no objection to these last three exhibits, because I did not want the defendant's position to be misconstrued with respect thereto, more especially in that the first letter was written by Mr. Hoguet, who is an officer of this Court and who I think is entitled to the protection of the Court.

We now move to strike out those three letters upon the ground that they are immaterial and irrelevant, that the only purpose for which they could be put in here would be to cast a reflection upon Mr. Hoguet, for the purpose of construing that he was making an improper suggestion to the Attorney General of the United States as to how a litigation was to be conducted. It does not bear upon the conspiracy charge, because it is not charged that the Chemical Foundation or Mr. Hoguet or the Attorney General of the United States was in the conspiracy. The letters show that the litigations were put into the hands of Mr. Spier Whitaker, who now sits as counsel for the plaintiff in this litigation, and nobody will say that Mr. Whitaker allowed a litigation to be conducted for or against the Government in any but the proper way.

I call upon the Government now to justify the putting in of those three documents. I want to know what the purpose was, if it was not to cast a slur upon Mr. Hoguet.

Mr. Anderson: Your Honor please, I am in entire sympathy with the views of counsel as to the desirability and the propriety of avoiding as far as possible drawing members of the Bar and any member of the Bar of the United States into litigation. I want to express my regret for Mr. Hoguet, and my regret that in this case it has been necessary for us to put in a great deal of correspondence of members of the Bar. But at least members of the Bar acting in a business matter are outside the rule of privileged communications between client and attorney and are like other citizens subject to have their acts reviewed, and if it is done with due respect for their position it should be done as fearlessly with respect to them as with respect to any party to a litigation. In this matter the charge has been made that the purpose was to secure these patents and to protect their title to these patents, by the dye industry, and I think, and I shall certainly argue, that The Chemical Foundation is nothing more nor less than an agency of the dye industry.

THE COURT: I should be glad, Colonel Anderson, if at some time you will tell me what you mean by dye industry. It has been used by you and possibly by other counsel, but I recall one or two of your statements and I do not at the instant recall one by Mr. Kresel. I want to know whether you are speaking in the abstract, of those engaged in the industry. I am not criticizing you at all, but I have had that inquiry in mind.

MR. ANDERSON: I will answer your Honor's inquiry. I think it is a very natural one because it confused me a great deal when I took this case up. It begins in The Chemical Foundation's charter itself and the use of the expression probably comes from there—the Americanization of the chemical and dye industry. That has been spoken of here a great many times, that the dye industry comprised the people who were financing or underwriting this scheme. I would say that the full extent that that term could be applied in this case would be to those who appeared according to the record to be stockholders and members of this corporation and members of the American Dyes Institute and its immediate affiliated organizations referred to in the Bill or proved to have been connected with them in connection with these transactions. That in itself is, of course, a broad designation, but it is about the best I can make without calling any names. In any event, this corporation, which was merely the agency used for the purposes of that industry—whether legitimate or otherwise I am not saying—was represented in this matter by the distinguished gentleman to whom reference has been made. If it appears that acting on their behalf as their counsel he suggested a friendly litigation for the purpose of settling their title or their rights in any respect to the property under review in connection with this particular matter, he may not have had any improper motives in so doing, but it is one of the facts tending to show the purpose as charged in the Bill and the consummation of that purpose. Therefore, while it is with the deepest regret that correspondence of this kind should be presented and necessarily should come from a lawyer, I do not by introducing this correspondence mean to reflect upon Mr. Hoguet personally or professionally. I introduce this correspondence more as affecting the rights of his client. We are not trying a case of that kind. I think the correspondence is very pertinent in that connection and it is necessary that the Government should put it in, otherwise I certainly would not have put it in. I hesitated a long time for the very reason that Mr. Kresel has indicated, but it seemed to me that it was my duty representing the Government to put that in. It is certainly not intended as reflecting on Mr. Hoguet, but as affecting his client's interests. We are not concerned particularly with Mr. Hoguet in offering this.

Mr. Kresel: I do not know, your Honor, that we are any more informed as to the purposes of the Government now than we were when I put ficer of the Court, and I think he is entitled to such protection as the Court can give him.

Mr. Anderson: I hope that counsel does not mean to imply by that that I have said anything that requires protection.

Mr. Kresel: No, no; but your actions sometimes speak as loud as your words.

The Court: I think that that matter is ended.

Mr. Anderson: My words were not intended to make that reflection upon Mr. Hoguet. What they speak I stand by.

Mr. Galloway: If the Court please, the plaintiff next offers in evidence an assignment by Francis P. Garvan as Alien Property Custodian to the defendant, The Chemical Foundation, dated March 1st, 1921, and asks that the same be considered as read in evidence as "Plaintiff's Exhibit No. 155," as the same now appears as Exhibit I in the Bill of Complaint and that it be not duplicated in the record.

The Court: So admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 155." (Same as Exhibit I to bill of complaint. *See Record, Vol. I, page 472.*)

Mr. Galloway: Plaintiff next offers in evidence an assignment by Thomas W. Miller, Alien Property Custodian, to the defendant, The Chemical Foundation, Incorporated, dated April 27th, 1921, and asks that the same be received in evidence as Plaintiff's Exhibit No. 156, as it now appears in Exhibit J to the Bill of Complaint and that it be not duplicated in the record.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 156." (Same as Exhibit J to bill of complaint. *See Record, Vol. I, page 480.*)

Mr. Galloway: Plaintiff next offers in evidence an assignment by Thomas W. Miller, Alien

Property Custodian, dated November 5th, 1921, to the defendant, The Chemical Foundation, Incorporated, as the same appears in Exhibit K to the Bill of Complaint and asks that the same be read in evidence as "Plaintiff's Exhibit No. 157," but that it be not duplicated in the record.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 157." (Same as Exhibit K to bill of complaint. *See Record, Vol. I, page 485.*)

THE COURT: Are these assignments for additional patent rights, or do they pertain to patents theretofore assigned?

MR. GALLOWAY: The assignment by Mr. Garvan was the attempted confirmatory assignment of all prior assignments. The first assignment by Colonel Miller was an assignment of rights not theretofore covered by any of the prior assignments. The second assignment by Colonel Miller covered only rights which had theretofore been attempted to be conveyed to The Chemical Foundation, Incorporated.

THE COURT: Was it a blanket assignment?

MR. GALLOWAY: No, it had a schedule attached.

MR. ANDERSON: You have not introduced the second yet.

MR. GALLOWAY: Yes, we have introduced the second, but we have not introduced the schedule as yet.

MR. KRESEL: You are going to put in the schedules now?

MR. GALLOWAY: Yes, that is what I am finding right now, Mr. Kresel. Plaintiff introduces or offers in evidence, and asks that the same be considered as read in evidence, as the same appears in Schedule 20 of Exhibit G of the Bill of Complaint on page 390 thereof, the schedule attached to the assignment of April 27th, 1921, which has been admitted in evidence heretofore as Plaintiff's Exhibit 156.

The Court: Then this schedule will take the marking of 156-A.

Received in evidence and marked "Plaintiff's Exhibit No. 156-A." (Same as Schedule 20 of Exhibit G to bill of complaint. *See Record, Vol. I, page 390.*)

Mr. Galloway: Plaintiff next offers in evidence Schedule 21 of Exhibit G of the Bill of Complaint as the same appears in the Bill of Complaint on page 391, and asks that the same may be read in evidence as Plaintiff's Exhibit 157-A, as the schedule attached to Exhibit 157 heretofore introduced.

The Court: So admitted.

Received in evidence and marked "Plaintiff's Exhibit 157-A." (Same as Schedule 21 of Exhibit G to bill of complaint. *See Record, Vol. I, page 391.*)

Mr. Kresel: Mr. Galloway, will you permit me?

Mr. Galloway: Surely.

Mr. Kresel: The Court asked a question as to the extent of these two assignments made by Colonel Miller. As to Exhibit K, that is, the assignment of November, 1921, if your Honor will permit me to state, that was an assignment made by Colonel Miller, wherein after reciting all the prior assignments made to The Chemical Foundation, he says that "I, Thomas W. Miller, as Alien Property Custodian, have determined that it is proper, to fully carry out the objects, intention and purposes of said assignment and to perfect the title of said Chemical Foundation to the said trade-marks and registrations thereof," and so on, "with the good will," and then he says that he "determines that these are matters that refer to The Chemical Foundation," and then he goes on and in the broadest language possible confirms said assignments and says that he made demands himself for some of these things. So that, as I intimated in my opening statement, your Honor, it will be the claim of the defendant——

Mr. Galloway: I do not see that we are called upon to argue these things at this time and the legal conclusions to be drawn therefrom, because there will be other evidence that will follow later upon these assignments.

Mr. Kresel: That is quite true. I am not arguing the case now. I thought that the Court did not get very clearly the answer to its question.

Mr. Anderson: If your Honor please, the usual time for luncheon has arrived.

The Court: Is it convenient for you to stop now?

Mr. Anderson: Yes, sir. May I ask, with the consent of counsel, that the Court adjourn until tomorrow morning. There are a number of figures and accounts showing the income, and so forth, and other matters. We have been trying to stipulate as much as we could as we went on, but we have not been able to get together. Both parties have their accountants here and I wanted to put them in this afternoon, but I do not think we can get ready within the luncheon hour to do it. So I wanted to suggest that we adjourn, if it is agreeable to the Court, until tomorrow morning, so we can get all these unsettled matters in shape that we have between us, as far as we can, and then go on quickly with it tomorrow morning. Would that be agreeable to the Court?

Mr. Kresel: I have no objection at all, of course, to anything that is for the convenience of the Government.

timate is that it will take us ten Court days in which to put in our defense.

THE COURT: With respect to your motion in which you expect to raise the question of the sufficiency of the evidence to support the allegations of the Bill or to warrant a decree, that you mean in the nature of a non-suit or something of that sort?

MR. KRESEL: Yes, your Honor. It had been our plan, I may say, that after the Government rests, especially if the Government rests on Friday, that that will give us three days—as I understand your Honor will not hold Court for this matter on Monday—to get a fair view of what is in and then come prepared here on Tuesday to present to your Honor a motion to dismiss.

THE COURT: Does a motion in the nature of a motion for non-suit lie in equity until you have also rested? I will not go into that now, but I will take that under consideration.

MR. ANDERSON: My reason for stating what I have is; I think I can get through by Friday to give counsel three days; but certainly we would not take over half a day on Tuesday, I am sure. That will be just to connect up things and get the record complete.

MR. KRESEL: We shall be prepared to go on Tuesday with our case, if your Honor shall hold that we are to go on; so that there will be no delay on our part.

MR. ANDERSON: Then we will proceed tomorrow morning and we will have everything in shape.

THE COURT: Tomorrow morning at 8.30 Standard time.

(Whereupon at 11.45 A. M., adjournment was taken until Thursday, June 14th, 1923, at 8.30 o'clock A. M., Standard time.)

TRANSCRIPT

OF

RECORD

TRANSCRIPT OF RECORD.

IN THE

Supreme Court of the United States

October Term, 1925.

No. 512

UNITED STATES OF AMERICA,

Appellant,

vs.

THE CHEMICAL FOUNDATION, INCORPORATED,

Appellee.

Volume III.

TESTIMONY.

(Pages [illegible] to [illegible] inclusive.)

FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

NINTH DAY.

Wilmington, Delaware,
June 14th, 1923, at 8.30 o'clock A. M.,
Standard Time.

Before:
Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Galloway: The plaintiff next offers in evidence a letter dated February 5th, 1919, from the Assistant Director of the Bureau of Trusts of the Alien Property Custodian's office to the Pacific Flush Tank Company. We are beginning now, if your Honor please, on some of these isolated instances where properties were sold by the Alien Property Custodian to The Chemical Foundation, concerning which there has been previous inquiry, which we think bear on the question of value as well as the regularity of the Trustee's Sale.

The Court: This is from whom to whom?

Mr. Galloway: This is from the Assistant Director, Bureau of Trusts, Alien Property Custodian, to the Pacific Flush Tank Company, Chicago, Ill., who it will be shown later received an agency contract from The Chemical Foundation, Incorporated.

The Court: Is there objection, Mr. Kresel, or did your general objection——

Mr. Kresel: I understand this is subject to our general objection.

The Court: It is subject to your general objection.

Mr. Galloway: Your Honor, we ask to introduce this in evidence and ask that it may be read as Plaintiff's Exhibit No. 158. It is stipulation No. 150.

The Court: It may be admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 158." (*See Exhibits, Vol. I, page 376.*)

Mr. Galloway: This letter is in reply to a letter of January 29th, written by the Pacific Flush Tank Company and is concerning a request by them for a deduction of five hundred dollars from the royalties owing on a contract with the enemy which had been seized by the Custodian. There had been five hundred dollars paid to the Federal Trade Commission by the Flush Tank Company for a license from the Commission, and the Alien Property Custodian's office states that they may file their claim for that, but they can not deduct it from the license fees.

Mr. Galloway: Plaintiff next introduces or offers in evidence, a letter dated February 12, 1918, addressed to F. J. Horn, Assistant Director, Bureau of Trusts of the Alien Property Custodian, from the Federal Trade Commission, signed by L. L. Bracken, Secretary, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 159.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 159." (*See Exhibits, Vol. I, page 377.*)

Mr. Galloway: This letter states that the impression of the Commission is that the $500 license fee might be chargeable to the enemy, and they ask for an expression of views of the Custodian's office.

THE COURT: The letter is from whom to whom?

MR. GALLOWAY: The letter is from the Secretary of the Federal Trade Commission to the Alien Property Custodian.

MR. KRESEL: I have not raised any specific objection to this exhibit and the one that preceded it. I must say that upon reading them, I do not see the relevancy of them at all. There was some question about returning a license to somebody, and the Federal Trade Commission thought one way and——

THE COURT: In order to save time, I will say to you, Mr. Kresel, that I do not either. But I think the Attorney General should be at liberty to put on this record every document, paper or record which the Attorney General's office deems that they can make any use of in any way whatsoever; but I do not see the relevancy. If the power existed in the President and the Alien Property Custodian to make a sale, then they necessarily must have used some judgment about it, and whether their judgment and discretion is subject to judicial review is one of the questions in this case raised by you; and so, under the circumstances, I do not see they are relevant or material or pertinent to the issues in this case.

I shall admit them in order that the Attorney General may make such record in this case as he deems should be made.

MR. GALLOWAY: Plaintiff next offers in evidence a letter signed by E. L. Bennett, for the League of Minnesota Municipalities, addressed to Mr. A. Mitchell Palmer, Alien Property Custodian, dated March 13, 1918, with reference to the patents of which we have just been speaking, commonly called the "Imhoff patents," and ask that it may be read in evidence as Plaintiff's Exhibit No. 160.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 160." (*See Exhibits, Vol. I, page 378.*)

Mr. Galloway: I wish to read some excerpts from this letter, if your Honor please.

The Court: Yes.

Mr. Galloway: This letter, to the Alien Property Custodian by the League of Minnesota Municipalities, states in part as follows (reading from Plaintiff's Exhibit No. 160).

The Court: Won't you be good enough, Mr. Galloway, to help me with that, for apparently I am missing the point of that letter and I am sure that you have some purpose in introducing it and that the purpose is relevant to the issue. But in order that you may see the difficulties I am in, it looks to me as if you are contending now that the Government or the Alien Property Custodian or Mr. Polk or the President of the United States should not have sold these patents or some of them or all of them for $250,000, but should have given them away. Surely, that is not your contention.

Mr. Galloway: If your Honor please, we shall follow this with correspondence which shows in substance the following facts: that following this letter there were other letters which show that the enemy had licensed the patent to an American Corporation called The Pacific Flush Tank Company. The license by the Federal Trade Commission will show that the Commission had also licensed that Company. The evidence will further show that the Pacific Flush Tank Company made an offer to the Alien Property Custodian's office to purchase these patents for two thousand dollars cash and immediately dedicate them to the use of the American public.

The evidence will further show, by memoranda from the office of the Alien Property Custodian, that there was at that time the sum of approximately $27,000 in royalties due upon this set of patents, which I think consists of four; and this is in a way preliminary to show that it was the desire and purpose of the public to get these for their own use and that the Alien Property Custodian had an opportunity to do that, but did other things with them. We feel that that is material to point out the question of value and the question of whether or not it was a sale in the best interest of what we contend is a trust estate and perhaps the question of whether or not the public interest had been best safeguarded. The latter, perhaps, is a minor consideration in comparison with the others. Do I make myself clear?

The Court: Yes.

Mr. Galloway: Plaintiff next offers in evidence a letter from E. L. Walcott, Vice-President of the Pacific Flush Tank Company to A. Mitchell Palmer, Custodian, dated March 20th, 1918, and asks that the same be read in evidence as Plaintiff's Exhibit No. 161.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 161." (*See Exhibits, Vol. I, page 381.*)

Mr. Galloway: This letter being a letter from the Pacific Flush Tank Company to A. Mitchell Palmer, Alien Property Custodian, dated March 20th, 1918—I might also state to your Honor that an examination of the exhibits in the Bill will show that this correspondence occurred prior to the assignment to The Chemical Foundation—states that a Secret Service Officer of the Naval Intelligence Department called on the Pacific Flush Tank Company (reading further from Plaintiff's Exhibit No. 161).

The plaintiff next offers in evidence a memorandum to Mr. Horn from R. C. Goldstein, Division of Patents, dated March 22, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 162. I think, Mr. Kresel, if it does not already appear of record, that it will be perhaps conceded that Mr. Horn was an officer of the Alien Property Custodian and so was Mr. Goldstein.

Mr. Kresel: It is so conceded. I do not know that you would call them officers.

Mr. Galloway: They were at least employees.

Mr. Kresel: I am informed Mr. Horn was the Director of the Bureau of Trusts and Mr. Goldstein was an employee there.

Mr. Galloway: I think that is quite right.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 162." (*See Exhibits, Vol. I, page 382.*)

(Mr. Galloway then read Plaintiff's Exhibit 162.)

The Court: That is from whom to whom?

Mr. Galloway: That was from Mr. Goldstein of the Patents Division to Mr. Horn, the Assistant Director of the Bureau of Trusts of the Alien Property Custodian's office.

The Court: If you do not mind helping me just a little bit, how many patents were involved in that, Mr. Galloway?

Mr. Galloway: My recollection is there were four. Am I correct, Mr. Boggs?

Mr. Boggs: I have not the data before me from which I can check that.

The Court: Then without regard to the number, is the only purpose of this evidence—I can not say without regard to number, but is the purpose of this evidence to indicate that the Government had a better offer for these patents, financial offer for these patents, than was made to it by The Chemical Foundation?

Mr. Galloway: That is one of the purposes, your Honor, yes.

The Court: And the other purpose is what?

Mr. Galloway: The other purposes are to show that this was not—well, I see that the other purposes are perhaps connected with the one that you have just suggested, that the sale was not in the interest of the trust estate which we contend the Alien Property Custodian represented.

The Court: Will you tell me what you mean by the Trust Estate?

Mr. Galloway: Your Honor, I felt it was made fairly clear in the opening statement.

The Court: Yes, I think it was, but I may have lost it.

Mr. Galloway: I am quite willing to repeat it, and I wish to state that what I am saying now is in accordance with my conception of what Colonel Anderson stated, and I think we are in agreement on it—that our theory is that the Alien Property Custodian holds this property as Trustee for a beneficiary to be determined by Congress and which will be determined by Congress in accordance with the terms and provisions of the Trading with the Enemy Act, and that he now holds it as Trustee, and that the proceeds as well as the property in kind prior to sale is trust property in his hands in a fiduciary capacity.

THE COURT: Was he precluded by the terms of that Trust from considering the general welfare of the United States of America and its people?

MR. GALLOWAY: I do not think that he was entirely, except in this: In this instance, if your Honor please, our contention is that they had an opportunity to effect and accomplish the same results which they desired to accomplish, and perhaps more so, relieving the public entirely from royalties.

THE COURT: And then you are asking the judicial department to review, if there was a discretion in the matter, the policy or the judgment of the Executive Department as to whether that was or was not for the general interest or for the best interests of the United States or its people.

MR. GALLOWAY: We question, your Honor, whether the Alien Property Custodian himself had any discretion to exercise, but that it was his duty to handle this property as a Trust Estate absolutely.

THE COURT: Then, that is where you cause difficulty in my mind. The minute that you say that under a private sale something other than monetary return could be considered, then that was a question of judgment or discretion there involved, was it not?

MR. GALLOWAY: We are not contending here so much that other than monetary consideration should be considered, but if the Court feels that it should be, we think the facts of this instance are sufficiently strong to show that they were not considered.

THE COURT: You may proceed.

Mr. Galloway: I find there are five of these, your Honor, five patents.

The Court: But do you contend that if the Executive Department was empowered to consider other things, the Judicial Department may review its consideration of those other things and the judges determine for themselves what was for the best interests of the country and review the power of the Executive Department in that respect? I am afraid those things will not reconcile; will they, Mr. Galloway?

Mr. Galloway: Well, I think the contention which the Government has already advanced has been that the Judicial Department of the Government does have the right to review the acts of the Executive in the administration of a delegated power.

The Court: A Congressional delegation of power?

Mr. Galloway: A Congressional delegation. Perhaps not in a political power, but in an administrative power, yes. That was the contention of the Government.

The Court: As I understood Colonel Anderson, so far as the Executive exercise of constitutional power is concerned, the judiciary may say nothing, but so far as the President is exercising a power conferred upon him by Congress, then the judiciary may review and determine for itself whether there has been a proper exercise of that power and may go further to determine when the power existed and may determine whether there was a proper exercise of that power. That is, as I understand, your position.

Mr. Galloway: I think that your Honor is right so far as the last is concerned, that in respect of the exercise of a power delegated by an

Act of Congress, the judiciary has the right of review. There may be certain exceptions even to the Constitutional powers, depending upon the nature of the power, that I do not think it is necessary for us to consider at this time.

The Court: I am having difficulty right there, and I do not see how, unless these documents bring it clearly before me, how it is possible for me sitting as a Judge to determine what was for the best interests of the country, if that power existed. Now then, if you establish that in the exercise of this power and the exercise of this Trust, it was the duty of the Executive to obtain the highest possible dollar for these patents, of course that is a question that may possibly be determined. But the minute you concede, which you do not concede, as I understand you, that the Executive should take into consideration in the performance of this Trust, in selling these patents, not only whether he was getting the most for them but the general welfare of the country, that is a subject that I do not just understand.

Mr. Galloway: Of course, it is my understanding that the situation in this case has developed so that it is first the question of power that must be decided.

The Court: Undoubtedly.

Mr. Galloway: And then after the question of power has been decided, if it should be decided, which we do not concede of course, that the power does exist in the President to do these things, then the question of the review of his discretion.

The Court: No doubt about it.

Mr. Galloway: That was my theory of the case.

The Court: But these documents raise clearly the question of review of Executive discretion.

Mr. Galloway: We also think, your Honor, that if the question of power should be decided—that he did not have the power——

The Court: Then we stop there. Then these are immaterial.

Mr. Galloway: We think we want to at least prove questions of value and we think that these are admissible at least upon that if not upon other grounds. They may be admissible, your Honor, upon a further ground that I would like to call your attention to, and that is this: to show that all of the facts were not brought to the attention of the Executive when he attempted to exercise this power.

The next letter, your Honor—and I shall shorten these as much as possible in order to get the facts before the Court—which the plaintiff offers in evidence is a letter dated January 9th, 1919, to A. Mitchell Palmer, Alien Property Custodian, signed by S. Fisher Miller, President of the Pacific Flush Tank Company. We ask that the same may be read in evidence as Plaintiff's Exhibit No. 163. (Reading.)

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 163." (*See Exhibits, Vol. I, page 386.*)

Mr. Galloway: Plaintiff next offers in evidence a memorandum to Judge Broadhead from Mr. Goldstein, dated February 18, 1919.

Mr. Kresel, I think perhaps, for the Court's information, you would stipulate that Judge Broadhead and Mr. Goldstein were both employees of the Alien Property Custodian's office.

Mr. Kresel: Yes, we will concede that, your Honor.

Mr. Galloway: —And asks that the same

may be read in evidence as "Plaintiff's Exhibit No. 164."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 164." (*See Exhibits, Vol. I, page 388.*)

Mr. Galloway: I am not going to read all this; just a certain portion of it.

The Court: Does that disclose any facts which you think the President should have had before him?

Mr. Galloway: This discloses the further fact, on the question of value, if your Honor please, that up to this time there was approximately $27,000 due for royalties for use of this patent.

Mr. Mahaffy: What letter is that?

Mr. Galloway: I am just trying to find it here, Mr. Mahaffy.

I think, your Honor, that I was in error in stating that that document showed that there was $27,000 in royalties; that it is the next one which I am coming to here.

The Court: Are you still dealing with the flush tank?

Mr. Galloway: With the Pacific Flush Tank.

Mr. Kresel: Do I understand that it is the claim of the Government that there was $27,000 that had actually been collected and was waiting for somebody to take?

Mr. Galloway: No, we do not contend that it had been collected and was waiting for anyone to take. We contend that there was due upon this patent the sum of $27,483 for royalties.

Mr. Kresel: You do not contend that it had actually been collected? You know the contrary to be true, do you not, that it could not be collected?

Mr. Galloway: This letter will show that there had been $6,000 already collected.

Mr. Kresel: Now you are going to another figure and I am talking of this one figure $27,000.

Mr. Galloway (continuing): Leaving uncollected $27,483.

Mr. Kresel: Yes, but I am asking you whether you will not concede that that $27,000 you are talking about not only had not been collected but never was collected, could not be collected and has not been collected to this day.

Mr. Galloway: If that is a fact we are prepared to concede it, of course; but I am not informed of the fact upon that, Mr. Kresel. Our contention is that the royalty which was due goes to the question of the value of the patent rather than what was actually paid into the Alien Property Custodian's office under it—whatever it earned.

Mr. Mahaffy: My thought was, the Exhibit 162, a letter from Mr. Goldstein to Mr. Horn, being substantially the same in substance as this letter, that counsel might not desire to duplicate the matter.

The Court: As I understand Mr. Galloway's position it is that this act of the President in signing the Executive order would have been invalid if the Alien Property Custodian had failed to present to him the facts disclosed by these letters or any of them.

Mr. Mahaffy: Yes, I understand that.

Mr. Anderson: I was not here at the time Mr. Galloway made his statement and I do not know what took place, but there is an additional fact that even assuming that the sale was authorized, it must be a sale for a fair consideration, and whether that is a sound position or not the Alien Property Custodian, who was the authorized officer to sell, had no power to sell except at a fair consideration either at private or public sale, and therefore this evidence goes to the question whether or not it was a fair sale.

The Court: Let me see if I understand you. I do not want to bring about an argument of the case, necessarily, with these documents, Colonel Anderson, but I try to determine for myself as each document is presented whether I am going to consider that in the future or not.

Mr. Anderson: Certainly, sir.

The Court: I will consider it if you point out in your brief or in your future argument that it has any value.

Mr. Anderson: Of course.

The Court: And I would like to know whether you and Mr. Galloway disagree with respect to the documents.

Mr. Anderson: No, sir.

The Court: I want to know if you do. You are aware of Mr. Galloway's position?

Mr. Anderson: I was not in the courtroom when Mr. Galloway made his statement and I merely meant to supplement his statement with the further reason for this evidence and for its admissibility.

The Court: It seems to me this group of exhibits presents this question which I will state, and probably I can get enlightenment here much better than I can in dealing with this particular point in a day's argument by you later. This is dealing with what you call the flush tanks?

Mr. Anderson: Yes.

The Court: The flush tank patents. Much of this documentary evidence deals with a request that they be donated to the American public or seized by the Government and dedicated to the American public so that any city or municipality may use these devices for the general public welfare and public health, without the payment of a royalty. That presented the question, assuming the power—which of course is the first bridge we have got to cross.

Mr. Anderson: Of course.

The Court: But assuming the power —as to whether those things are relevant; whether the interpretation desired to be put upon them by the Attorney General is that the President should not have so authorized the private sale. Because this was a private sale. That is why I refer to the President. I understand the sale as such is a Custodian matter and the private sale —

Mr. Anderson: The authority to make a private sale.

The Court: Yes, the authority to make a private sale, is a President matter. If he can dedicate them, seize them and dedicate them to the American public under this act, then it indicates that the President in disposing of these patents could take into consideration matters other than the financial return therefor.

Now then, in discussing that, Mr. Galloway said another point that he thought was supported by this documentary evidence was that they disclosed facts which were not called to the President's attention at the time he signed this order.

Mr. Anderson: Does you Honor desire me now to answer your question?

The Court: I will get you to help me on this, if you will, and that is whether you differ with Mr. Galloway on the last point, and if you do whether it is your contention that all files of the Alien Property Custodian with respect to these patents would not only have to be represented to the President but read by him befre he could sign the Executive order, the Executive order for private sale.

Mr. Anderson: I will try to just summarize the position.

The Court: Yes.

Mr. Anderson: Without argument at all. In response to your Honor's question, I would say first that we do not contend that either the Alien Property Custodian or the President had the power to dedicate any property to the public use; and that this correspondence (of which I do not know exactly how far the reading has gone), will, when completed, demonstrate that the offer of the Flush Tank Company was to purchase them for $2,000, and dedicate them itself, which of course it would have a right to do after they had purchased them. That is a private act of a person dedicating his own property to the public interests.

Now, second, we do not contend that the President would have to read over all the correspondence in every instance in entering an order authorizing a private, as distinguished from a public sale, but we do contend that the material facts as to that particular property to be sold, or any of it, must be brought to the attention of the President, to the end that he may state his reasons in the public interests as required by the Act, and that if such material facts were not brought to the attention of the President, then he would act upon a mistake or incomplete statement of the facts, or guess, as the Court said in the Barlow case, and his act, although with the best intention, would have been invalid.

In the second place, we most earnestly contend that the President has not the power to sell except for a fair consideration, and that the fact that there were existing circumstances as to various patents or groups of patents, all of which were sold under circumstances indicated in this evidence, in a group, without taking up the particular facts as to each group or presenting the material facts as to each, is an evidence of a confusion of action which would not only make impossible the exercise of the discretion by whoever it was to be exercised by, as contemplated by Congress and carefully guarded by courts, but would make impossible the sale of what we contend was a trust estate in accordance with the rules of law controlling the sales of trust estates. Of course, your Honor, I need not state those are some of the answers to your Honor's question. They go first to the question of the exercise of a discretion to make a private sale; second, to the character of the sale, and nothing is more general than the facts entering into whether a sale by a trustee is a fair sale or an unfair sale; that is, whether it is a proper sale; and the courts guard that very carefully.

Now, in the third place, it goes to the question of the value of these patents, as showing not only that they had great value even with the public interests fully protected and with the public interest advanced by dedication to the use of the cities, but that they had a great value in themselves.

Those are some of the reasons that occur to me off-hand, why these papers should be put in, and you will notice that they bear upon substantially every important and vital issue in this case.

Mr. Kresel: Does your Honor desire me to take that up?

The Court: No, thank you, Mr. Kresel.

Mr. Anderson: Of course your Honor understood me to include in my statement with respect to the President directing that a private sale might be made, that even if he directed the sale, he had nothing to do with the trust, but that the Trustee or the Alien Property Custodian would then have it.

The Court: I missed that comment, Colonel Anderson.

Mr. Anderson: If the President directed a sale, I take it the question would have nothing to do with the question of price, but that the President would direct that the circumstances justified a private sale and the sole power is vested in the Alien Property Custodian who would have to exercise that power in making a private sale, just as he would in a public sale to get a fair price.

The Court: And that the general welfare of the country could not be taken into consideration at all in making such sale.

Mr. Anderson: I do not say that it could not be taken into consideration, but the reasons therefor would have to be stated in the Presidential order, or by whoever signed it, the reasons in the public interest. All he could do then was merely to authorize a private sale as distinguished from a public sale and then the Alien Property Custodian would have to make that private sale under such rules and regulations as the President may prescribe, for a fair consideration, as he would have to sell any other trust property or Government property.

The Court: Let me see if I understand you just this far, Colonel Anderson, because I think you can help me now.

Assuming that the actual value of all this group of patents was $17,000,000. Assume that that is a fact.

Mr. Anderson: Yes.

The Court: And the Executive Department or branch of the Government acting under a power conferred upon it by Congress—we will assume the existence of this power for this question — determines that a condition has arisen under which the country will be greatly benefiited and possibly its independence preserved by a specific act, namely, by the sale of these patents for a sum of $250,000 to the Chemical Foundation, Incorporated; that thereby, should future wars arise, they will be in a position to be independent chemically from any foreign power, that America will be in a position to develop the chemical science commercially and thus put it in a position to have the Government better protected than it would be if the Government directed only its own energy to the development of the chemical science; and that there could be no question, viewed from that standpoint, but that this disposition of the patents was the wisest one possible. Then do you contend that the Executive was required to offset against that the number of dollars and cents under this act?

Mr. Anderson: Your Honor has gone to the root of one of the most important issues in this case, as your Honor of course realizes. At the proper time I shall present authorities to support what I am going to say.

Your Honor has in your question followed the method of the greatest of all Chief Justices, Chief Justice Marshall, in assuming a premise which I cannot concede without conceding the possibility of a conclusion which I would have to deny.

In the great Dartmouth College case, if anybody reads the opinion, once you assume the premise, you cannot come to any other conclusion. But the question is as to the premise. Therefore, if I may answer your Honor's question this way:

If you concede the power to do the things which your Honor has indicated in the President—

THE COURT: I am not passing on the power. I want your idea.

MR. ANDERSON: But your Honor said, conceding that for the sake of argument. Then your Honor's suggested conclusion would probably follow. But the question goes back to the point that I am going to argue, that the power with respect to all that matter of policy is in Congress.

If Congress passed an act under the conditions which your Honor has outlined, which might appeal very strongly to its discretion, authorizing the seizure and confiscation of alien properties seized on land, and the method of confiscation was in accord with the Constitution, then I do not pretend that after Congress passed that act, the courts could inquire into the motives or the wisdom of the legislation, but only into whether it conformed to the Constitutional requirements.

The power is undoubtedly in Congress to confiscate. Therefore, as your Honor will see, the power is not in the Executive to confiscate. That has been decided by the Supreme Court of the United States and I do not think it will be controverted.

Therefore, your Honor's question brings us right up to the question of whether this statute was an act of confiscation or of sequestration and seizure with power to convert property into money in the public interest, so long as the right of property involved was protected.

If it was an act of sequestration and the power of confiscation does not exist, then the sale can not defeat or unduly impair the property right involved and must be for a fair consideration.

Therefore, if this was an act of sequestration, which I contend it is, and not confiscation, although the President might have felt or the Alien Property Custodian might have felt that the public interests would be seriously endangered by not confiscating this property or selling it at a nominal price, which is confiscation under the decisions of the Supreme Court, and they might have felt it very strongly; yet, if Congress did not act to clearly give that power, then their act for that purpose would have been invalid under the decisions.

If that was true, the power of the President or of the Alien Property Custodian—I will first take up the power of the President here—was merely to direct one method of sale as distinguished from another method of sale, where the public interests required the employment of the second method as distinguished from the first method. It was purely a method. It did not affect the principles which should control the sale in any way, except to the extent enumerated in the act, which I outlined, the four or five points such as advertisements and so on. That is all method, all method. And it might even go so far as to give the power to sell to a neutral as distinguished from an American citizen. But the sale and sale only is contemplated, and not confiscation.

Therefore, when the President in the exercise of his power—assuming that he had it and did exercise it—determines for reasons in the public interests, which must be stated in the order, under the act of Congress, that a private sale would be better than a public sale, that is all right. You could make the private sale provided he was not misled as to the facts and did not exercise that power upon mistake of fact, or fraud—which we are not discussing. I make myself clear that far.

Then when the President acted, the Alien Property Custodian would stand in the position, according to our contention, of a Trustee who ordinarily would be required to sell at public sale but had been authorized by the Court in this instance, or by the President—the same thing would apply in a court sale—to sell privately. Now, what must he do? He must sell, not confiscate; and he must sell as a Trustee.

Therefore, when he sells privately, he must get the full value of the property. If he depleted the value of the property to any material extent in the public interest, and with the best of intentions, he was exercising a function of Congress and confiscating to that extent and not selling; and therefore his act would be invalid even though he got some consideration. I hope I have made myself clear that far.

THE COURT: Yes.

MR. ANDERSON: I am speaking slowly because I am trying to get very definite my position.

When he sells, therefore, he must consider all of the conditions which are involved in a Trustee's sale, which are familiar law to your Honor. He was not required to sell en masse. The President merely authorized a private sale. He did not say, "You must sell them all together." The Alien Property Custodian made twenty-one sales. He could have made fifty sales, so as to better ascertain the respective values. He could have made 100 sales. There might have been more trouble, but the duty of a Trustee is not controlled by such considerations.

He must not confuse the property of various trusts unduly. That would be a question of equitable consideration. There must be no combination of bidders to prevent an adequate price. He could not sell to himself. He could not be both buyer and seller and negotiate on both sides.

He could not sell properties of great value with properties of no value and not allocate the prices to the trusts.

All of those and numerous other elements which enter into the consideration by a Court of Equity of a sale, whether private or public, of trust estates would have to be considered after he got the authority merely to follow a different method from that generally followed in the act. That is all the authority the President gave him and that is all the authority the act gave the President to give him.

The President was not like a Court of Equity. If your Honor offered property at public auction and you could not get an adequate price, you might authorize the Commissioners of the Court to sell it privately. But your Honor would confirm that sale in the light of all facts or set it aside. It would be a conditional offer until your Honor confirmed it.

But the President had absolutely no power to confirm. He only had the power to authorize the Alien Property Custodian to reject and re-sell. See how careful Congress was. It did not give him the power to confirm the sale, if the Alien Property Custodian had done that, private or public, but merely gave him the power to re-sell, to use their expression, at public or private sale,— the same thing— and subject to the same conditions. He could again reject, but he could not confirm.

Therefore, if I have made my position clear now, as I hope I have, first, the power of considering the public interest as affecting the proper sale of trust property and allowing it to be sold or in part confiscated or devoted to the public interests, was purely in Congress. If this was an act of confiscation, then assuming the other condition to exist, and Congress exercised that power, that would be the end of it, whether right or wrong.

Second, the power of the President was merely to prescribe the method and not to sell or to confirm the sale. Further, when he prescribed a different method from that ordinarily followed, he had to state his reasons; showing that Congress most carefully guarded this unusual treatment of property, which Chief Justice Marshall once said in one of his opinions was the highest known trust, that is, alien property in the hands of the Government.

When the President said, "You can follow this method instead of the one generally prescribed," that ended his power. That is all Congress gave him power to say and to state his reasons therefor.

Then the Alien Property Custodian, as trustee, following the method which the President had indicated and authorized, would have to be controlled by all the considerations which would enter into a public sale; and even though he sold at less than the fair price or under conditions which made it not a fair sale within the contemplation of equity, the President could not come in and confirm it. Although he might think it was a wise thing, he could not do a thing. All he could do was to authorize the rejection of the bid. And, if the Alien Property Custodian accepted it and it violated in any material respect the rules of equity with respect to trusts, then under the obvious intent of Congress and the familiar rules of law, you would have to set aside that sale. The President could not do anything about it but reject it, and the Court would have to reject it. That then is subject to review like any other act of an officer in the courts, where the rules for his guidance have been fixed by an act of Congress, which alone fixes the policy of this Government.

Have I made myself clear?

THE COURT: Yes, except that you stop just where I hoped you would not stop; and that is, you debated or told me your views and contentions with respect to the power under the act. I understand that and that is a matter about which I am forming no conclusions. For the purposes of all this evidence, I am assuming he had the power.

These Flush Tank letters deal in greatest measure, not with price, because you could get that in three lines, that the offer had been made, $2,000 for five patents, if that is what is disclosed; but letter after letter about them being dedicated to the public interest and things of that sort are being introduced, and for what I have been trying to determine. They do not deal with power because if the purpose of introducing those letters is to indicate that the President even from the public's standpoint made a wrongful use of his power, then you are asking me to review not a wrongful use but an unwise use; that is, you are asking me to review an exercise of conceded power. I do not mean conceded for all purposes.

MR. ANDERSON: I understand.

THE COURT: Then it seems to me that if

there is one thing a Court can not do, it is to substitute its opinion of what is for the greatest public interest for the judgment of the President or Mr. Polk or Mr. Palmer, or—

Mr. Anderson: Any other authorized official with discretion.

The Court: Any other authorized or empowered official.

Mr. Anderson: With discretion. I am in entire accord with your Honor's view on that subject to the limitations I have outlined. Assuming the discretion to be vested in the officer and assuming that the officer in the exercise of that discretion has complied with the method which Congress has prescribed and has acted upon the known facts, which is always a ground for review, then the wisdom or the unwisdom of the exercise is not subject to review. There is no question about that. Now I am going to answer your Honor's question.

The Pacific Flush Tank case bears upon all the provisions of this in the lines I have indicated and which I am not going to restate. In the first place the matter of the dedication to the public interest is material only as showing that even with the obligation assumed by the Pacific Flush Tank Corporation to make the dedication, which I want your Honor to bear in mind, because it was not the public making the dedication, it was the owner making the dedication, which he had a right to do, they were willing to give a price in excess, far in excess of the price paid by the Chemical Foundation; second, that the Chemical Foundation's defense is that they were making these things available for the public and in the public interest. The President did not pass directly upon the Pacific Tank case in specific terms, but it can not be conceived that if those facts had been represented to the President—and they were not —he could have authorized the sale to a private corporation when the owner exercising the right was then willing to give many times what the private corporation paid, and to dedicate it absolutely to the public interest so far as the use by the citizens is concerned. Therefore, it goes to show a failure to disclose facts to the President which were material, and further it shows the impossibility of the method of sale followed—that it was a violation of the whole intent of this Act that the President should exercise the power in the whole sale, not only as to property heretofore seized, but as to property hereafter seized, without knowing the amount, character, facts or value, or any of the essential bases of the exercise of that discretion; that the President or Mr. Polk, if he had the authority, was badly advised in the haste and confusion of this situation in signing an order under those conditions, because the order was contrary to the intent of Congress as manifested by the act.

THE COURT: I wonder if you will help me for just another moment.

MR. ANDERSON: Yes, sir, I will go further with you.

THE COURT: Congress did not intend to do a military thing in passing this Act, did it?

MR. ANDERSON: No, sir.

THE COURT: There were 4800 of these patents?

MR. ANDERSON: Yes, sir.

THE COURT: The President had some other things to do besides considering these patents, did he not?

MR. ANDERSON: He certainly did.

The Court: There is no question in your mind but what Congress intended to vest in the President the power to authorize a private sale?

Mr. Anderson: A private sale.

The Court: Of any alien property.

Mr. Anderson: Upon the facts presented; yes, sir.

The Court: How many groups of these patents have you which are in a more or less similar condition with the Flush Tank?

Mr. Anderson: Well, we have no case where a man has offered to dedicate it.

The Court: No.

Mr. Anderson: But in general the patents group themselves into dye stuffs, pharmaceuticals, and certain trademarks and copyrights, all of which are described in the Bill, and they have no operating relation to each other and the ownerships have no relation to each other.

The Court: It would have taken how long to disclose the facts pertaining to these Flush Tanks to the President?

Mr. Anderson: About five minutes, sir. You could have put it in one executive order. I will tell your Honor now that I am going to introduce in evidence, just as counsel yesterday introduced the various orders signed by Mr. Polk—so I am going to ask your Honor to permit us to introduce in evidence the various orders signed by the President, for two reasons, to show that the President personally signed the orders, to show that he recognized it as a personal duty, and second, to show that it mattered not, with the exception of one general order to sell anything under $10,000 in value, which would go obviously—that the costs would justify that, and he states that in so many words; that in every instance, even as to a few shares of stock, two hundred bales of cotton, a little tobacco, he entered a special Executive order.

Now, those orders, as appear here, were drawn in the Alien Property Custodian's Office, and he presented the facts upon which the President was asked to act, and the facts as to any such thing as this, any group of patents, any merged group owned by any individual, could have been sent up by separate order to Mr. Polk, and he could have signed it; and suppose, in the administration, it did take a little more time, this was a Trust, and I can not conceive that the Government of the United States could ever reach the state where, unless Congress made its intentions very clear, it would confiscate or destroy the property of aliens under its control, without taking the necessary time to do the act in a proper and legal way.

THE COURT: I am sorry to trouble you so much, Colonel Anderson, but you are clarifying the issues for me. Suppose those Flush Tank patents were worth not $2,000, but $20,000, or, we will say, $50,000, because your colleague says there was $27,000 due, and a portion of which was uncollected, and the patents had a term to run; the difference between $250 and $2,000, when placed opposite $50,000, would be relatively small; but I am wondering whether the Government would not have power to seize those patents and keep them for itself?

MR. ANDERSON: Your Honor has asked me a very delicate question, but my representation of the Government is limited to this case, and therefore anything that I say would not be construed as binding the Government as to other matters.

THE COURT: No.

Mr. Anderson: Because Congress would undoubtedly have the power to seize this property or any other property, enemy-owned property, I mean, and confiscate it to the public use as it did.

The Court: Did what?

Mr. Anderson: Confiscate it to the public use, as it did in the Civil War. That has been sustained by the Supreme Court. Your Honor will recall that the Confiscation Acts and the Alien Property Acts, in the Civil War, by judicial proceeding *in rem,* confiscated property, including real estate and other property in the South, and devoted the proceeds to the use of the Army, to the maintenance of the Army, and as I construe the decision in Mrs. Alexander's Cotton case in 20 Wallace, the Supreme Court held that it could be confiscated to the public use, but could not be for private benefit.

That is my construction of that decision, so that a distinction exists between public use and the purposes here involved, which I contend is for a private industry; but I have no doubt in my own mind, not the slightest, that any effort on the part of Congress, I mean any effort on the part of the Executive Department of the Government, to take alien property during the war or after the war, after the Armistice and before the Treaty, for the public use under this Act, would have been absolutely invalid; and that unless the Treaty provided for the release and foreclosed the original owner of the property, assuming that he would have been permitted to sue the United States, (which I doubt) then he would have had a right against the United States for the taking of his property without confiscatory Act of Congress, just as any other person would, after the war was over; but that involves the question of the right to sue the United States. Even if he had the right, he could not enforce it, because the Government could not recognize it.

Mr. Anderson: But the Treaty would have foreclosed, if he had waived any claim against the United States, assuming that his Government could have waived that claim. Now, in this case, I do not want to stop there, because if I do I might leave your Honor under a misapprehension. In this case the situation is entirely different. The Government could do for public purposes what an officer of the Government could not do for private benefit. He can not subsidize industry. He can not, for a private benefit, violate the Acts of Congress, the Sherman Anti-trust Act, for instance, making a contract in violation of that Act. An officer of the Government can not do that. That is outside of his power because he takes an Oath to uphold that Act. That is a question of power.

Now, in addition to this being a private industry, although the advancement of that industry may have been in the opinion of many, including the President himself, in the public interest, there is no power in the President, or any other officer of the Government, to subsidize anything that he may think is in the public interest.

Your Honor will see, therefore, that the situation is entirely different in this case than a case in which the Government itself seized this property and appropriated it to the public use. But that power would not have existed unless there was an Act of Confiscation, and it would have been a violation of the law unless the persons whose interests were violated had been stopped by a subsequent Treaty.

Now, this Treaty—this Act provided that this property should be held for the benefit of the

United States and such other persons as might be interested therein. That is what it said the Alien Property Custodian was holding it for, and that Congress would determine at the end of the War who should be interested therein. Therefore, it was a Trust for an undisclosed beneficiary, with a power to appoint the beneficiary in Congress—reserved in Congress; and it necessarily follows that it was a duty of the Trustee—I use that expression—or Alien Property Custodian, in making the sale in the method authorized by the President, to sell it only for a fair and proper consideration. The Courts have held that any number of times, that a sale without adequate consideration is outside of the power of the Government officer, no matter how high he is. They have set aside sale after sale for that.

Now, in the second place, he can not sell public property except as provided by law. In this particular case he was selling trust property in addition to the public interests involved—contingent public interests. That brings us right back to where we were before, that he can not sell it for that purpose; cannot consider anything but a fair sale for a fair consideration.

Your Honor will observe that this is an act of sale and not of confiscation.

Now then, if this Government had taken all of these patents over to the War Department or Navy Department, or the Government of the United States in general, you would have had a different question, but even then it would have been invalid without express power from Congress. The final treaty here, your Honor will recall, did not approve the sale of this property. It provided that the property should be held. The Treaty with Germany, today the law of this country, provides that this property should be held by the Government of the United States to await certain things to be done by Germany, unless it has been disposed of as provided by law; that is, unless there has been a legal disposition, lawful disposition thereof. And the provision that Congress will finally determine who it belongs to is still a part of the Statute Laws of the United States. Therefore, while the Treaty released the United States from anything it may have done, infringements and otherwise, it provided that this property should be held to be finally disposed of as Congress may direct, Congress must determine who shall have it.

Therefore, if I have made myself clear, the question your Honor asked presents a very delicate question, probably a moot question because of the Treaty position, one which has been determined by the Supreme Court of the United States as being entirely different from the question before the Court here; but it is very confusing. I will say to your Honor quite frankly, that I have studied this question, and that the very question your Honor has asked me now, gave me perhaps the greatest difficulty in getting the distinction clearly in my mind; and that justifies me in taking the time I have taken.

The Court: Now then, if I understand you, Colonel Anderson, I am not trying to debate this.

Mr. Anderson: I understand.

The Court: If I understand you then, the issues of this case are restricted to, first, the power in the President; second, to whether he properly exercised that power in two ways; first, by the delegation of power or attempted delegation of power, to Mr. Polk; and second, whether he accomplished anything by his order whenever it was.

Mr. Kresel: February 26.

Mr. Anderson: December 3rd was the order of delegation appointment.

The Court: The subsequent order of ratification.

Mr. Anderson: February 13th, 1920.

The Court: Then you challenge all three of those orders?

Mr. Anderson: I challenge the last because of the fact of the power of ratification and its terms.

The Court: I am not trying now to get the reasons. You challenge the power?

Mr. Anderson: Yes.

The Court: You challenge the power to delegate, you challenge the power to ratify, then you come to the sale. As I understand, you come ultimately, each time, to the question as to whether the Alien Property Custodian got enough money for these patents, and that only?

Mr. Anderson: No, sir. If your Honor so understood me, you understood me wrong. If the Alien Property Custodian had gotten more than these patents were worth, this would have been an invalid transaction.

I stated at the outset that this was a sale by the Trustee to himself; and the Courts have set aside that even where they got more than it was worth, because of incapacity to bid and to act as buyer and seller; and second, that the consideration paid is only one of the elements of a fair sale.

To be quite frank with your Honor, I am going to put in evidence here, I am going to show the value of these patents. I stated to Mr. Kresel last night that I did not think that was on me at all, but we are going to make proof of every paragraph of our Bill, on the theory that I started out with to try this case. I think the burden is on the defendant entirely. So that all of the elements of a fair sale must be complied with in a Court of Equity. Not one. And consideration is only one.

The Court: And the other is that the defendant was in no position to bid?

Mr. Anderson: That is one, yes, sir.

The Court: Were there other elements besides those two?

Mr. Anderson: A consideration and defendant's position to bid.

The Court: Yes.

Mr. Anderson: And failure to present the facts to the President.

The Court: You are going back to authority.

Mr. Anderson: That would be a mistake of fact. I will put it that way. Third, would be a combination of bidders. If there was not anything else in this sale, in my judgment the sale should be set aside. Fourth, would be—and I undertook to make this clear in my opening argument, and I want to repeat it: that this would be an absolutely invalid transaction if there was no other fact in it than that its obvious purpose was to create a monopoly and restrain the interstate and foreign commerce of the United States, which acts, the Sherman Act declares to be unlawful, both of them; and no officer of the Government can make an unlawful contract.

The Court: Thank you very much.

Mr. Anderson: Those are some of them. There are other reasons, but I will merely state those.

Mr. Kresel: Am I to stay out of this very interesting discussion?

The Court: I still do not see the relevancy of the Flush Tank documents save only as to the price that was offered for them, and the further possible relevant feature that those letters or facts therein disclosed were not presented to the President prior to his signing the order.

Now, Mr. Kresel, I am not inviting an argument, but I shall be glad to hear you.

Mr. Kresel: There are only two or three points, it seems to me, your Honor, in this very interesting discussion that are so interesting and to our mind so clear, that perhaps your Honor will permit me to call them to your attention: Now, as I understand the Government's position, at the very basis of their contentions lies the proposition that the Alien Property Custodian was a mere naked Trustee of this property and as such owed to the *cestui que trust* the duties which we lawyers understand the law has laid out for Trustees, and that there has been no change in the position of the Custodian in that respect by any amendment of Congress or by any of the treaties, and that today, as I understand Colonel Anderson's argument, it is still the duty of the Alien Property Custodian as Trustee of this property, if he makes any sale, to see to it that he gets every dollar out of the property that it is worth, notwithstanding any public considerations whatsoever.

Now, I desire to call your Honor's attention first to the fact that whatever may have been the position of the Alien Property Custodian with respect to this property under the Trading with the Enemy Act, as originally enacted, and whether that position was or was not changed by the amendment of that Act of March 28th, 1918, it was clearly changed by the Treaty of Versailles, which, although it was not approved by the Senate and therefore did not become a Treaty with this Government, was nevertheless taken advantage of and expressly so stated in our Treaty with Germany, among other things, in so far as it related to enemy property; so that the provisions of the Treaty of Versailles are today a part of our Treaty with Germany, in so far as the provisions of the Versailles Treaty relate to enemy property.

There is an express provision in the Treaty of Versailles ratifying every act taken by any agency of any of the allied Governments with respect to enemy property. So, if there were no express ratification of this act by the President, there is a ratification taken advantage of by our Government and approved in our Treaty with Germany, ratifying every act of the Alien Property Custodian and the President up to that time with respect to enemy property, and of course we all agree that a treaty at least has the force of an Act of Congress if it is not superior to that.

So we have now, in our organic law, so to speak, a ratification of every Act of the Alien Property Custodian with respect to the disposition of enemy property, and of course this was disposed of before the Treaty with Germany was made.

Therefore, without discussing any further the question as to what the original duty of the Alien Property Custodian may have been with respect to this property, whether it was the duty as contended for by Colonel Anderson, simply to see to it and solely to see to it that he protected this property, and if he sold it, that he got everything that it was worth. Whatever that may have been, today, as we stand here before your Honor, this Act was approved by the Treaty between ourselves and Germany, and has the force of an Act of Congress as if Congress had passed a special Bill, and said: "We approve the Act of the Custodian in making this sale." And, if it be confiscation, I repeat what I said in my opening statement, that we are not afraid of the word; if it be confiscation, it was confiscation by Congress, which Colonel Anderson concedes the right to confiscate.

Now, as your Honor will recall, we do not place our position solely on that ground. Our contention is that long before our Treaty with Germany and the Treaty of Versailles, Congress, by the Act of March 28, 1918, gave to the President the very power that he exercised here.

One other point. Colonel Anderson repeated in his very interesting argument this morning, the contention that he made in opening the case, to the effect that all that the amendment of March, 1918, empowered the President to do was to direct a different method of sale than that provided by the Act; and as a corollary to that proposition, he argues that the President had no power even though he ordered a private sale, to fix any price at which such sale should be made, unless that price, in his language, "was fair and reasonable." Going back to his original proposition that this was a trust relationship and that the best price must at all events be obtained, public policy notwithstanding.

I wonder if your Honor is familiar with the very late decision of the Supreme Court which in our view decides this question, and, strangely enough, is a case that we sometimes run across, which on its facts is so nearly alike to the facts in this case that it is really remarkable; and in that case the United States was a party, as it is here.

THE COURT: Party plaintiff?

MR. KRESEL: Party plaintiff. The title of the case, in the Supreme Court, was Levinson against the United States. It is reported in the 258th United States, decided March 13th, 1922, and like this case grew out of the late war. In that case, the Secretary of the Navy made a sale of a vessel owned by the Government, and the sale was made under an Executive order.

The Act of 1883 provided that no sale of public vessels should be made without an appraisal and without public advertisement for a period of three months; but the Act went on further to say: "But no vessel of the Navy shall hereafter be sold in any other manner than herein provided," namely, appraisal, advertisement—"or for less than such appraised value unless the President of the United States shall otherwise direct in writing."

Now, may I stop there and compare this act with the Act of March 28th, 1918. In each case the Act provides, starts out with the provision that there is to be a public sale, public advertisement. In this case there even had to be an appraisal of the property, but in each case there was this proviso: "Unless the President of the United States shall otherwise direct in writing."

Now, that being the Statute, the Secretary of the Navy advertised that he would sell to the highest bidder a certain vessel belonging to the Navy, and he advertised it for the required period of time. A bid was received by a man named Levinson, and the Secretary of the Navy, thinking that that was the highest bid received, accepted it and gave Levinson a Bill of Sale. Levinson paid the money. Shortly thereafter it was discovered that a man named Johnson had also sent in a bid, and that Johnson's bid was the higher of the two, and so the Secretary of the Navy concluded that he would like to accept the higher bid; so he went into the Court, the United States Government went into Court and brought a Bill which the Supreme Court, in its Opinion, describes as "A bill to determine the rights of the parties;" and then, it was made to appear that the provision of the Act of 1883 was for an appraisal and a public sale after advertisement; that the President had exercised the power given to him to direct a departure from the maner of sale and that the Secretary of the Navy, had, pursuant to that power, taken the property which had been assigned to Levinson and gave it to Johnson.

The order of the President, if I may read it, or just an extract from it, provided that if the owner of the vessel would not purchase at the appraised value, "the Secretary of the Navy shall sell at public sale for such price as he shall approve"—as the Secretary of the Navy shall approve. Just like us, the Secretary of the Navy did not advertise for the three months and he allowed a variation—I am reading from the opinion of the Court—from the Statute in the form of deposit required and undertook to deliver this vessel to the other bidder.

The Court said that notwithstanding the mistake that was made, the sale to Levinson was a proper sale, notwithstanding that he was not the highest bidder, and that the Secretary of the Navy, having delivered a deed of the vessel to Levinson, Levinson's title could not be attacked.

The Court says, if I may read just a few sentences: "The power of the President to direct a departure from the Statute is not confined to a sale for less than the appraised value, but extends to the manner of the sale."

In other words, here the Court says under a provision similar to ours where the sale had to be made to the highest bidder the President had the power to direct that a lower bid be accepted, he had the right to set the price. Because the Court says that the power is not confined to a sale for less than the appraised value, but extends to the manner of the sale. As Mr. Choate calls to my attention, he had the right to authorize the Secretary of the Navy to fix the price, as he did. And, as in our case, the Executive order reads that the Alien Property Custodian shall sell upon such terms and conditions and for such price as he shall determine, as was done here.

The Court says, "The word 'unless' qualifies both the requirements of the concluding clause," and so we claim in our case that the word "unless" qualifies every condition that precedes it, and the one of price is included.

(Reading from opinion) "The Executive order seemingly so construes the Statute for it merely provides that if the former owner of the vessel will not purchase at the appraised value the Secretary of the Navy shall sell at public sale 'for such price as he shall approve.' The Secretary construed the order to like effect. He did not advertise for three months and he allowed a variation from the Statute in the form of deposit required."

"It seems to us," says the Court, "that the practices of ordinary business dealing ought so far to bind the United States that the ostensible authority given by the Executive order, the Secretary's declaration that Levinson's bid was the highest, his approval of the price and his execution of a bill of sale, should be held conclusive in favor of Levinson.

"The fact that the Secretary advertised that he would sell to the highest bidder could not limit his authority or diminish the effect of his acts. Even if Johnson's bid had made a contract automatically by being the highest," says the Court, "it would not follow that Levinson's title was bad. But a bid had no such effect, as the right to reject it was reserved.

"We can see no justification beyond the wish to secure a higher price, for the refusal to allow the appellant to remove his yacht."

Of course, your Honor, when we come to argue this case, we shall argue the other points of law involved, but I could not refrain from answering these two points that were made by Colonel Anderson in his very interesting argument.

Mr. Anderson: May I just refer to the Levinson case?

The Court: I do not care to have you distinguish that just now, Colonel Anderson, because I did not intend by my inquiries to lead you back into the construction of the Statute or the orders signed by the President or any of them. I only wanted to get clear in my own mind just what your purpose was in introducing these letters.

You may proceed, Mr. Galloway.

Mr. Galloway: If your Honor please, the plaintiff next offers in evidence a letter dated March 28, 1919, from J. Davis Broadhead, who was the Judge Broadhead of whom we spoke a few moments ago, to Honorable Francis P. Garvan, Alien Property Custodian, in re the Imhoff patents for the building of city sewage disposal plants. I ask that the same may be read in evidence as Plaintiff's Exhibit No. 165.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 165." (*See Exhibits, Vol. I, page 392.*)

Mr. Galloway: If your Honor please, this letter repeats the things that have been stated in the prior correspondence and also states that the contract which the Pacific Flush Tank Company held from the enemy provided for thirty per cent of the royalties to go to the American agent and 70 per cent to the enemy; that the Federal Trade Commission in 1917 granted an exclusive license to this company to continue to represent the enemy under the same terms as set forth in the contract; that the Custodian has issued a demand for the 70 per cent due the enemy, of which about $6,000 has been collected and paid into the treasury of the United States, leaving outstanding and uncollected as yet $27,483; that the Custodian has seized the patents subject to the rights and the exclusive license granted to the Flush Tank Company. Then it repeats the offer of the Flush Tank Company and outlines possible procedure in the disposition of these patents.

Attached to this is an exhibit showing some 6½ pages of towns from which the royalties have accrued.

Plaintiff next offers in evidence a report from the files of the Alien Property Custodian from J. R. Zimmerman. Will it be conceded that Mr. Zimmerman was in the Patent Section of the Alien Property Custodian's office?

Mr. Hershkopf: If that is the fact, it will be so stipulated. What is the date of that report?

Mr. Galloway: This is an undated report and refers to the fact that these patents have been conveyed, that is, the Imhoff patents, to The Chemical Foundation.

Mr. Hershkopf: To whom is the report?

Mr. Galloway: It is from the files of the Alien Property Custodian—in re report No. 1106.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 166." (*See Exhibits, Vol. I, page 401.*)

Mr. Galloway: If your Honor pleases, plaintiff next offers in evidence a letter to Mr. F. C. Yeomans, Asheville, North Carolina, from Robert C. Goldstein, Chief of Division, Patents, of the Alien Property Custodian's office, dated August 6, 1919, with reference to these Pacific Flush Tank or Imhoff patents, which in substance directs this licensee to pay all royalties in the future to The Chemical Foundation, because of the alleged purchase.

The Court: Who signed it?

Mr. Galloway: Robert C. Goldstein, Division of Patents, Alien Property Custodian's office.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 167." (*See Exhibits, Vol. I, page 402.*)

Mr. Galloway: Plaintiff next wishes to call attention to the minutes of The Chemical Foundation of August 2, 1921, in which The Chemical Foundation appoints the Pacific Flush Tank Company as the exclusive agent of The Chemical Foundation to issue licenses for it upon practically the same terms and royalties as the enemy contract provided.

Mr. Kresel: Are those minutes in evidence?

Mr. Galloway: We were planning to offer the minutes all together. However, I can offer them at this time. I merely called the attention of the Court to them.

Mr. Kresel: Just the portion which relates to that. You do not want the whole minutes, do you?

The Court: I do not see the relevancy of that clause after considering all the thoughts suggested by Colonel Anderson and yourself, but you may put it on the record.

(At this point a short recess was taken at the direction of the Court.)

Mr. Galloway: If your Honor please, the plaintiff at this time offers in evidence the meeting of the Board of Directors of the defendant, The Chemical Foundation, Incorporated, dated August 2, 1921, and calls attention especially to the discussion concerning the license to the Pacific Flush Tank Company.

The Court: Do you want the minutes as a whole admitted?

Mr. Galloway: We are quite willing, if your Honor please, to eliminate at this time the portion of the minutes referring to the balance sheet of The Chemical Foundation.

The Court: Will you mark it or indicate in some way what portions you are offering?

Mr. Galloway: We had in mind, if the Court please, that it might be possible for the plaintiff and the defendant, perhaps afterward, when we are making up the record, to agree upon the elimination of a lot of these things that are immaterial and irrelevant, and we shall be glad to take up—

Mr. Kresel: Are you now talking about the minutes only?

Mr. Galloway: Perhaps other things, Mr. Kresel.

Mr. Kresel: You do not concede that you

have put in other things that are immaterial and irrelevant?

Mr. Galloway: Only in connection with things of this sort, where there is a portion of a document that is irrelevant.

Mr. Kresel: To confine ourselves to the minutes, you are now offering the minutes of this particular meeting.

Mr. Galloway: That is what we are offering now.

Mr. Kresel: The whole of them; is that so?

Mr. Galloway: I should be willing to eliminate the portion of these minutes beginning with the words "Balance sheet" and ending with the word "Adjourned," which consists of a balance sheet of the corporation as of June 20, 1921, and the formal part adjourning the meeting; including, however, in the minutes the signature of the Secretary, George J. Corbett. We also wish to have included in this exhibit a form of license by The Chemical Foundation, which is attached to the minutes of this meeting.

The Court: The portion of the minutes so indicated will be admitted, taking its numerical exhibit number, and the license will be given the same number followed by the letter "A."

Portion of minutes marked Plaintiff's Exhibit No. 168; license marked Plaintiff's Exhibit No. 168-A.

Received in evidence and marked "Plaintiff's Exhibit No. 168." (*See Exhibits, Vol. I, page 403.*) And No. 168-A (*See Exhibits, Vol. I, page 406*).

The Court: Will you mark the omitted portions in such a way that you may be able to identify them, Mr. Galloway?

Mr. Galloway: Yes, sir. The plaintiff next offers in evidence minutes of a Directors' meeting of the defendant, The Chemical Foundation, of October 5, 1921, excluding therefrom or omitting from such offer the portion beginning on the second page of such minutes with the words "Mr. George Corbett" and ending with the word "Adjourned;" including, however, the signature of the Secretary. We also ask to have admitted as a part of this exhibit to be numbered in its numerical order a copy of the form of license adopted for use in the license to the Pacific Flush Tank Company.

The Court: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 169." (*See Exhibits, Vol. I, page 421.*) (Portion of minutes.) License marked "Plaintiff's Exhibit No. 169-A." (*See Exhibits, Vol. I, page 423.*)

Mr. Galloway: Plaintiff next offers in evidence a copy of the contract between The Chemical Foundation, Incorporated, and the Pacific Flush Tank Company, dated August 12, 1921.

The Court: Admitted.

Mr. Galloway: I ask that the same may be read in evidence as Plaintiff's Exhibit No. 170.

Received in evidence and marked "Plaintiff's Exhibit No. 170." (*See Exhibits, Vol. I, page 427.*)

Mr. Galloway: The plaintiff offers in evidence a letter dated December 31, 1918, to Fred K. Seymour, by the Assistant General Counsel and Counsel to Washington Sales Committee of the Alien Property Custodian's office, with reference to the sale of two certain patents mentioned and an application mentioned. This letter, if your Honor please——

Mr. Kresel: May I see it?

Mr. Galloway: Surely.

The Court: From whom?

Mr. Galloway: From Mr. Whitaker, the Assistant General Counsel of the Alien Property Custodian to Fred K. Seymour and states that they do not want to sell certain patents at private sale. This is leading up to another instance where they refused to sell to a private corporation, and then afterwards sold to The Chemical Foundation.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 171." (*See Exhibits, Vol. I, page 438.*)

Mr. Mahaffy: Is that signed? The copy I have does not bear any signature.

Mr. Galloway: Mr. Kresel, will you stipulate that that is signed by Mr. Whitaker?

Mr. Kresel: If you say so, I will so stipulate. "S. W." stands for Spier Whitaker, doesn't it? I will concede it.

The Court: Will you put the signature on it so we will not have to turn back to the record?

Mr. Kresel: I notice that that letter refers to a letter from the gentleman named Seymour. Have you that? I think the letter to which this is a reply ought to go in.

Mr. Galloway: I do not have it here, but I should be glad after luncheon to put that in, Mr. Kresel.

Plaintiff next offers in evidence a letter from Joseph A. Hart to Honorable A. Mitchell Palmer, dated February 5, 1919, referring to the same four patents and asking if they could be put up for sale and that Mr. Goldstein was familiar with that matter.

The Court: Admitted.

Received in evidence and marked "Plaintiff's

Exhibit No. 172." (*See Exhibits, Vol. I, page 439.*)

Mr. Galloway: We next offer in evidence a memorandum from R. C. Goldstein to Mr. A. Mitchell Palmer, dated February 20, 1919, with reference to these patents, and ask that the same may be read in evidence as Plaintiff's Exhibit 173. This states (reading).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 173." (*See Exhibits, Vol. I, page 440.*)

Mr. Galloway: Plaintiff next offers in evidence a memorandum from A. M. P., which says "Memorandum from the Custodian to the Washington Sales Committee," dated February 22, 1919, and asks that the same be considered as read in evidence as Plaintiff's Exhibit 174.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 174." (*See Exhibits, Vol. I, page 440.*)

Mr. Galloway: Plaintiff next offers in evidence a memorandum dated March 3, 1919, from the Custodian, initialed "A. M. P." to Mr. Whitaker, in re Klipstein & Sons Company and asks that the same may be read in evidence as Plaintiff's Exhibit 175. (Reading.)

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 175." (*See Exhibits, Vol. I, page 441.*)

Mr. Kresel: Who writes that?

Mr. Galloway: A. M. P.

Mr. Kresel: Mr. Palmer?

Mr. Galloway: Mr. Palmer.

Plaintiff next offers in evidence a letter from

Ramsay Hoguet to Mr. Spier Whitaker, of the office of the Alien Property Custodian, dated March 10, 1919, concerning Klipstein & Sons and the Badische Aniline & Sode Fabrik matter and asks that the same be read in evidence as Plaintiff's Exhibit No. 176.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 176." (*See Exhibits, Vol. I, page 442.*)

MR. GALLOWAY: This letter states (reading).

We now come to another set. I may state, if the Court wishes to follow it, these patents we are discussing were conveyed to The Chemical Foundation.

Plaintiff next offers in evidence a letter dated May 20, 1919, to the Alien Property Custodian from E. Leitz, Incorporated—I cannot tell the signature of the General Manager—and asks that the same be read in evidence as Plaintiff's Exhibit 177.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 177." (*See Exhibits, Vol. I, page 443.*)

MR. GALLOWAY: This letter refers to a certain patent for a color-measuring device and states that if the patent is for sale, they desire to know how it can be purchased.

Plaintiff next offers in evidence a letter from E. Leitz, Incorporated, by the General Manager, to the Alien Property Custodian, dated May 29, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 178.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's

Exhibit No. 178." (*See Exhibits, Vol. I, page 444.*)

Mr. Galloway: This letter states that they have received no reply or answer to their previous letter and asks the same question again.

Plaintiff next offers in evidence a letter from Mr. Goldstein, Chief of the Division of Patents, Alien Property Custodian's office, to E. Leitz, Incorporated, dated May 31, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 179.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 179." (*See Exhibits, Vol. I, page 445.*)

Mr. Galloway: This letter acknowledges receipt of the prior letters and refers to the patents for a color-measuring device and states "This request is receiving attention" and they will be advised later.

Plaintiff next offers in evidence a letter of the same date, May 31, 1919, to Mr. Ramsay Hoguet, 149 Broadway, by Mr. Robert C. Goldstein, Chief of Division of Patents, of the Alien Property Custodian's office, and asks that the same be read in evidence as Plaintiff's Exhibit 180.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 180." (*See Exhibits, Vol. I, page 446.*)

Mr. Galloway: This letter says (reading).

We turn now to another specific instance. Plaintiff next offers in evidence a letter dated April 22, 1919, from Ramsay Hoguet to the Arabol Manufacturing Company, 100 William Street, New York City, and asks that the same may be read in evidence as Plaintiff's Exhibit 181.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 181." (*See Exhibits, Vol. I, page 446.*)

Mr. Galloway: This letter, if the Court please, states that the interest of the enemy in a certain contract between the enemy and this corporation to whom the letter is written including the right to receive future royalties has been seized by the Custodian and sold to the Foundation and that the Foundation thus becomes entitled to the royalties, and that in the future the same should be paid to the Foundation and the terms of the licenses are unaffected by this transfer.

Plaintiff next offers in evidence a letter from The Arabol Manufacturing Company, by A. F. Voight, Vice-President, to the Alien Property Custodian, dated April 24, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 182.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 182." (*See Exhibits, Vol. I, page 448.*)

Mr. Galloway: This letter states (reading).

Plaintiff next offers in evidence a letter dated May 6, 1919, from Robert C. Goldstein, Chief of the Division of Patents, of the Alien Property Custodian, to the Arabol Manufacturing Company and asks that the same may be read in evidence as Plaintiff's Exhibit 183.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 183." (*See Exhibits, Vol. I, page 449.*)

Mr. Galloway: This letter merely states, answering their inquiry (reading).

Plaintiff next offers in evidence a letter from the Chinosol Company to the Alien Property Custodian, dated March 21, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 184.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 184." (*See Exhibits, Vol. I, page 450.*)

MR. GALLOWAY: This letter written in March, 1919, refers to a patent, giving the number, and states that the patent is the property of the Chinosol Company and that it was assigned to them May 6, 1911. It gives the liber and the page of the records of the Patent Office where such assignment is recorded, and that there is not now a single penny of alien enemy money invested in this company either directly or indirectly, and that they will not convey or transfer or deliver the patent to the Custodian, that it is the property of this company duly recorded, "And we ask for your reply notifying us that you have made an error in this instance." The record, by Exhibit G, will show that this patent had at that time been seized by the Custodian.

The plaintiff next offers in evidence a letter dated March 26, 1919, by Robert C. Goldstein, Chief of the Division of Patents of the Alien Property Custodian's office, to the Chinosol Company.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 185." (*See Exhibits, Vol. I, page 451.*)

MR. GALLOWAY: This letter merely acknowledges receipt of the prior correspondence and states that the matter is receiving attention and that they will be advised.

Plaintiff next offers in evidence a letter on which I do not see any date, but the Alien Property Custodian receipt mark shows October 11, 1919, written to the Alien Property Custodian from the Chinosol Company, signed by Charles Roome Parmele, President.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 186." (*See Exhibits, Vol. I, page 452.*)

Mr. Galloway: This letter again protests against the seizure of this patent, and reaffirms the statement that it is owned by the Chinosol Company, again citing the book and page where the transfer to it in 1911 is recorded.

Mr. Kresel: There is a paragraph in that letter, Mr. Galloway, that I wish you would call to the Court's attention, namely, the paragraph which says that the writer has received the letter from The Chemical Foundation releasing the patents and the rights.

Mr. Galloway: I call the Court's attention to this part of the letter:

"We have clearly stated our position in this matter and we hold official assignment of patent" —referring to the book and page—"By no possible procedure had you the authority to include this patent in the list of patents which were turned over to The Chemical Foundation. The officers of that organization have clearly seen that they have no right to the title to that patent and we have received from The Chemical Foundation a document duly signed by Mr. Douglas I. McKay, Vice-President, dated August 25, 1919, saying: 'Complying with request contained in your letter of August 22nd, I beg to state that The Chemical Foundation had no claim to letters patent'"—

giving the number. " 'A very serious injustice was done to us and a very considerable damage caused to our Company through the unwarranted inclusion of our patent among those which were turned over to the Chemical Foundation and we must now ask that you send us such document as will clear this matter up. It is not unreasonable for us to ask that you give this matter your prompt attention,' " etc.

The Court: Would you mind telling me the relevancy to the issues here of that letter?

Mr. Galloway: Your Honor please, We think we will show and evidence will be introduced to show the value of this patent which at the time that it was sold was included among those transferred to The Chemical Foundation. We think that the instance will also show that such course of procedure was not followed as should have been followed in a sale by a trustee.

The plaintiff next offers in evidence a letter dated October 14, 1919, by Mr. Goldstein, Chief of Division of Patents, Alien Property Custodian, to the Chinosol Company, referring to the same matter. I do not care to read that.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 187." (*See Exhibits, Vol. I, page 454.*)

Mr. Galloway: The plaintiff next offers in evidence a letter dated October 17, 1919, to the Alien Property Custodian from the Chinosol Company, signed by its President, again protesting about this matter and asking that the errors be properly corrected and straightened out.

The Court: Admitted.

Received in evidence and marked "Plaintiff's

Exhibit No. 188." (*See Exhibits, Vol. I, page 455.*)

Mr. Galloway: The plaintiff next offers in evidence a letter dated October 21, 1919, to The Chinosol Company, by the Division of Patents, Alien Property Custodian's office, and this is another unsigned copy. Would you be willing that we should write in the intials R. C. G.?

Mr. Kresel: We have no objection.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 189." (*See Exhibits, Vol. I, page 457.*)

Mr. Galloway: That refers to this controversy concerning the Chinosol patents.

The plaintiff next offers in evidence a letter dated October 21, 1919, to Ramsay Hoguet by Robert C. Goldstein, Chief of Division of Patents, calling to Mr. Hoguet's attention the Chinosol situation and asking that it be straightened out.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 190." (*See Exhibits, Vol. I, page 458.*)

Mr. Anderson: If your Honor please, we have introduced in evidence minutes of certain meetings of the American Dyes Institute. We have the entire minutes of the Institute and there is a great deal in these minutes that we want in evidence, but we want to exclude that part which is immaterial and irrelevant. I have had extracts made of the parts we think material, except that we probably want to show in some instances the persons present, which I have not included in these extracts. I have not finished them yet. I want to offer in evidence, therefore, the extracts from the minutes of the American Dyes Institute showing the persons present at the several meetings, extracts from which are introduced, and excluding at this point the minutes of those meetings which have already been introduced and identified, and I present a memorandum of the extracts from the several meetings which will be introduced, exclusive of the lists of persons present, a copy of which I will hand counsel for identification, and of course with the understanding that he will have leave to introduce any other parts of those minutes that he desires. Is that satisfactory, Mr. Kresel?

Mr. Kresel: Of course, subject to our objection as to its materiality and relevancy and with the understanding that we may be at liberty to refer to any other portion of the same minutes, why, there will be no objection to their putting in such portions as they desire.

Mr. Anderson: Of course, I concede the right of the defendant to introduce any parts he desires of the same minutes.

The Court: Do you want them admitted as one exhibit?

Mr. Anderson: As one exhibit, sir.

The Court: Or would you find it more convenient in briefing your facts to have them indicated alphabetically as well?

Mr. Anderson: These are quite short extracts and I think if we have just a short heading it would be all right. We can fix the exhibit up a little better. Perhaps it would be in better form if it was marked as an exhibit, and identifying so many sheets.

Received in evidence and marked "Plaintiff's Exhibit No. 191." (*Exhibit withdrawn as copies of several minutes afterwards admitted in evidence as separate exhibits.*)

THE COURT: Colonel Anderson, inasmuch as it is on my mind now, any exhibits or any evidence which have been ruled out I now give you leave to present at any time in this case, now or at any time you desire.

MR. ANDERSON: Yes, sir, I wanted to offer at this time in evidence, or to re-offer in evidence the statement of Mr. Lee Bradley as Exhibit A with the Bill of Complaint in this case, to be identified as Plaintiff's Exhibit No. 192.

THE COURT: In making that statement I am not ruling on any question of law or fact.

MR. ANDERSON: Certainly not.

THE COURT: I recall that this among other things had been included, and as we have thrown the door wide open, without any restriction, on other mattters, I wanted that to be applied to all matters. It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 192." (Same as Exhibit A to bill of complaint. *See Record, Vol. I, page 75.*)

MR. ANDERSON: It is already in the record and I do not suppose it is of any use to read it, but just to give it an identification number.

THE COURT: No.

MR. ANDERSON: There was one thing excluded. I think it was some list. At this point, if the Court please, I desire to offer in evidence, and ask leave to read into the record as admissions by the defendant or by officers of the defendant, who alone can make admissions, certain statements by Mr. Garvan and by Mr. Choate, the general counsel of the defendant, made under oath before certain committees of Congress and taken from the public hearings of those committees. I offer them as admissions against the position taken by the defendant in its answer in this case and in the opening statement of counsel. Do you object?

Mr. Kresel: Well, I want to see first what you are offering. Let me see what it is you are offering and I will tell you whether I object.

Mr. Anderson: I was a little surprised that you had not objected already.

Mr. Kresel: I am always a respectful listener when you speak. I just want to see what portions you want to read. (Takes papers from counsel.)

If your Honor please, we object to the proposal of Colonel Anderson to read extracts from Mr. Garvan's statements made before the Congressional committees, upon the ground that the capacity in which Mr. Garvan appeared there as far as we know was in his individual capacity and not for the purpose of binding this corporation by any admissions he might make. The proceeding was a Congressional and not a judicial proceeding, and unless and until the Government put in proof by Mr. Garvan or by someone who can speak for the corporation that Mr. Garvan in making these statements undertook to make them as President of the corporation, for the purpose of binding the corporation, they cannot be used against the corporation in this case.

Moreover, may I state that the Government, if your Honor should sustain my objection, will not be deprived of the benefit of showing that Mr. Garvan made these statements, because it is our intention to put Mr. Garvan on the witness stand and Colonel Anderson will then be at liberty in cross-examining Mr. Garvan to show, of course, any statement that he has made. Whether such statement will amount to an admission binding the defendant, of course, your Honor will decide in view of what the statement may be; but we must insist that the Court should not now permit the Government to select some disconnected portions of an examination of Mr. Garvan before a Congressional Committee and ssek to bind the corporation thereby.

The Court: I shall admit them without expressly or impliedly holding that the corporation is bound thereby, because I shall adhere to my main purpose not to restrict the Attorney General in any way whatsoever in making up his record in this case, and indeed he has leave to put upon the record any documentary or oral evidence which in his judgment he deems he should put of record, and whether or not he makes the documents or oral evidence of value is for him to determine in the first instance and for me to determine in the ultimate instance in this cause.

Mr. Kresel: In that view, your Honor, I desire you to rule now as to whether in case the Government now reads portions of Mr. Garvan's statement we have not the right to read any other portions.

The Court: You have.

Mr. Kresel: Or any other statements made by Mr. Garvan at this same examination.

The Court: Yes.

Mr. Anderson: Your Honor, would you hear me on that? Won't you hear me on that motion?

The Court: If you want a ruling I will give it to you. But I am not going to apply one rule to you and another rule to Mr. Kresel.

Mr. Anderson: Certainly not, but I think there is one point which I would like to suggest, which I think has not occurred to your Honor for the moment. I will state the law which I have here in Wigmore on Evidence. The rule as to admissions is that the statement of the adverse party made at any time prior to the trial may be admitted as against his position in the trial. Not for the purpose of impeachment; that is not the point. Not for the purpose of cross-examination, necessarily, but as substantive evidence to the contrary of what he now contends.

But the rule does not go to the extent, because those admissions are put in, to put in his own declarations favorable to his position, because he can go on the stand and testify to those. The purpose of the rule is to permit the opposite party to put in these admissions, what are called by Wigmore "quasi judicial admissions" or "quasi admissions"—it depends upon the character of it—as distinguished from a formal admission in the pleadings. The opposite party is permitted to put in that admission as substantive evidence, and if the witness wants to deny or explain, he can go on the stand and do it.

It is different entirely from reading from a document like the Dyes Institute minutes which are not the admissions or statements of the party to this suit. I am quite prepared to agree that Mr. Garvan's admissions as to matters not relating to The Chemical Foundation or as to matters at a time when he was not President of The Chemical Foundation would have no bearing. But when the very question was under investigation and he made certain statements, those statements can be put in, without permitting the reading of any other portions of his statement. I would not want your Honor to apply a different rule in the case of the Dyes Institute minutes. I would not ask you to do it. But in this case, the only thing that can be read into the evidence is an admission as substantive evidence and he can then testify, if he wants to. I think Wigmore completely bears out that statement and makes the very distinction I make.

The Court: I think you will find that Chamberlain, in his book on evidence, deals with that question quite fully, but I do not understand either Mr. Wigmore or Mr. Chamberlain, or any other text-book writers that I have read, or decisions I have heard, to hold that the only person who may determine as to what is relevant and admissible is the person who makes the selection from a particular document.

Mr. Anderson: Not at all. I will leave it to your Honor.

The Court: I do not mean to suggest for an instant that a wholly disconnected matter or wholly disconnected statement which would be self-serving, would be admissible. But if in the same transaction, if in the same investigation, Mr. Garvan has said other things which differ from that statement—I do not know whether he did or not; I am not concerned with whether he did or not—but if he made such a statement which might qualify in any way this statement, at that same investigation or under similar circumstances, then is it your contention that the subsequent statement could not be admitted as tending to modify or qualify the statement so made?

Mr. Anderson: Yes, he must go on the stand and testify to it and I think I can convince your Honor of that from the authorities. He has a perfect right to explain on the stand.

The Court: If in the same deed, for instance, or same letter, he says one thing on one page and on the next page he says, "You will understand that the statement on the previous page is made with this qualification and restriction," the second page could not go in under your statement.

Mr. Anderson: I think your Honor has stated a very extreme case of denying it. But I do think that the purpose of the whole law of admission could be defeated if he could put in any self-serving statements to offset the admissions. He must go on the stand.

The Court: Don't you mean independent self-serving statements?

Mr. Anderson: No, I mean self-serving statements in connection with the same matter, because the purpose of the admission is merely to show that he said that at a certain time. He can go on the stand and explain it.

The Court: Apart from that—I think I will be very glad to hear you on that at the time of final argument—but that would be excluding testimony offered by Mr. Kresel. If Mr. Kresel offers it, I am going to let it go in and determine in the final argument as to whether it has any value. I have thrown the door wide open. You have been the judge of the admissibility of all your evidence in this case. I have not kept out one syllable or one letter or one paper. I am going to continue to let you be the judge of the admissibility of all evidence that I am going to receive on the record in this case, every bit of evidence you offer and I am going to sustain any objection to any evidence. That has been the rule in the past, with one exception; and I have changed that exception.

Mr. Anderson: Now, if your Honor please, may I make this suggestion?

The Court: Yes.

Mr. Anderson: I recognize your Honor's ruling and of course I have no comment to make on that. But there are certain questions, even under so broad a rule, that I do not understand your

Honor would permit me to ask or Mr. Kresel. For instance, if I asked a distinctly leading question, your Honor would strike it out because that would be an improper method of examination. I also think that if we objected to secondary evidence, it would not be allowed.

THE COURT: I have not yet said that a single scintilla of evidence offered by you has any bearing.

MR. ANDERSON: I understand, sir. I am not speaking of value.

THE COURT: But that question raises a question of value. I do not mean to suggest for a minute that any evidence that Mr. Kresel puts in will be worth anything or will be legally admissible. But I do not intend in this case to have you restricted in any way whatsoever in presenting the evidence which you think will support your contention. I may have one idea as to its value; the Court of Appeals may have another and the Supreme Court possibly may have another.

I shall let you read from those books and spread on this record any portions thereof that you desire, and I will meet the other question when I come to it, with the thought, however, now expressed that I shall permit Mr. Kresel to read any portions thereof that he sees fit, of any statements made by Mr. Garvan at the same inquiry and investigation by Congress.

Do counsel mind sitting a quarter of an hour later this afternoon and taking the noon recess now?

MR. ANDERSON: Not in the slightest. I would rather do that, because your Honor's statement that you are not going to control the evidence at all has embarrassed me a little. I mean as to the extent of the proof.

The Court: No, I did not mean that. I mean that I am going to allow you to put on the record any facts or any evidential facts which you want, but I do not mean to say that you can be otherwise the determining factor.

Mr. Anderson: I mean the method of proof and rulings as to secondary and primary evidence.

The Court: If you should put in secondary evidence without the consent of the other party, I should let it go in, but then I should hold on final hearing that it is not worth anything because it was not by consent. You could put it on record, however, and some other Court may give it some value.

Mr. Anderson: If it is obviously inadmissible evidence, I hope your Honor will rule it out, so that we would not go up to another Court with something that was worthless.

The Court: I hope I have indicated my views pretty completely so as not to lead you into any misconception.

Mr. Anderson: You are entirely clear, your Honor, I will take this matter up after luncheon, and in view of Mr. Kresel's statement that he will put Mr. Garvan on the stand—

The Court: Mr. Kresel has served notice on you that he will move for dismissal at the end of your case.

Mr. Anderson: I hope he will. I will be glad to meet him on that issue right now.

The Court: I do not mean to pass on that. But if you are going to withhold this on the possibility that Mr. Garvan would be available to you, I wanted you to have that in mind. I do not know that he will make the motion, but I did not want you to be under any misconception.

Mr. Anderson: If Mr. Kresel can induce the

Court to dismiss and close his case by resting now, I would very much prefer to go upon the record as it is now without Mr. Garvan's statement than to have him put on the stand.

THE COURT: I do not want any application for a re-opening of the case after you have rested. I have had that experience recently. We will take a recess until 1 o'clock Standard time.

AFTER RECESS

MR. ANDERSON: If your Honor please, before adjournment your Honor said that you would permit the reading of these statements which we desired to introduce by way of admissions, reserving the question as to the right to read others when calling the witness, and, therefore, I will proceed to read them.

THE COURT: They have not been marked. Will you let the clerk mark them?

MR. ANDERSON: They are short, and I thought I would read them to the stenographer and let them get in evidence and identify what they are.

MR. KRESEL: I will accede to that procedure.

MR. ANDERSON: They are very short.

THE COURT: You may proceed with that.

MR. ANDERSON: I now desire to read in evidence, on behalf of the plaintiff, certain statements claimed by the plaintiff to be admissions from testimony of Honorable Francis P. Garvan, given before the Committee on Ways and Means of the House of Representatives, in the hearing on H. R. 2,706, "A Bill to amend an Act entitled An Act to increase the revenue and for other purposes," approved September 8, 1916 and H. R. 6, 495, "A Bill to regulate the importation of coal-tar products to promote the establishment of the manufacture thereof in the United States" and as an incident thereto to amend act of September 8, 1916, entitled "An Act to increase the revenue and for other purposes," which hearings were held on June 18th to 20th, and July 14th to 18th, 1919.

Under the stipulation of counsel filed at the beginning of this case, your Honor will recall that it was agreed that evidence given at these hearings would be considered as formally proved without calling witnesses to prove the same, but subject to the limitations in said stipulation contained; and I have therefore identified the evidence in that way.

Mr. Kresel: Well, Colonel, the stipulation was that either side could refer to these reports of the Congressional proceedings without being required to call the stenographer and prove that such statements and testimony were made or given. That is the entire scope of the stipulation. We did not stipulate that you may read them.

Mr. Anderson: No, but it was provided in the stipulation that such statement did not limit the right to any legal use that might be put to this evidence in the event it had been formally proven.

The Court: I understand you to mean that the stipulation meant that you need not formally prove it, but the stipulation did not concede the relevancy or the materiality or anything of that sort.

Mr. Anderson: That is right, subject to that exception, and it merely covered the formal proof and without limitation of any legal use, subject to the determination of the Court.

The Court: Is that right, Mr. Kresel?

Mr. Kresel: That is quite right. Now Colonel, you started out by saying that you were going to read from the testimony of Mr. Garvan.

Mr. Anderson: I will correct that by saying the statement of Mr. Garvan. Some of it was sworn to and some was not.

Mr. Kresel: He was not sworn in that proceeding.

Mr. Anderson: I have not finished identifying it. The statement of Mr. Garvan, from which the matter will be read, which we claim to be an admission applicable to this case, was a statement given before the Committee of the House of Representatives indicated above on July 14, 1919, and will be found at pages 222 to 256 of the official print of that hearing.

Mr. Kresel: Pardon me, Colonel, but there are other pages in that proceeding where Mr. Garvan made statements.

Mr. Anderson: I think that is so. I was going to refer to them when I came to them. But I will now read from this statement. It will be easy to identify them when I come to them. At the beginning of his statement at page 222, Mr. Garvan identifies himself as Alien Property Custodian, which office he then occupied. At page 245 this statement is made: a question by Mr. Green:

> "I asked the gentleman what he meant by efficiency in this connection. Instead of answering that directly he was drifting off into some other matter.
>
> "Mr. Garvan: I was illustrating."

Mr. Kresel: In order to make the subject matter that you are about to read intelligible, do you not think it is wise to go back several questions to see what was the meaning of the question wherein Mr. Green said he was asking Mr. Garvan about efficiency? If you leave it to just that one question and answer, it will have no meaning. However, if you insist upon reading it that way, that is your privilege, I assume.

Mr. Anderson: There was some personal controversy between Mr. Garvan and Mr. Green and I wanted to avoid that.

Mr. Kresel: You can omit that, Colonel, but if you look at page 244, you will see at the top of the page, beginning with a question by Mr. Moore, that question and Mr. Garvan's answer; then the question by Mr. Kitchin and Mr. Garvan's answer; and if you read those, you will see the connection with what you want to read at 245.

Mr. Anderson: What counsel has said is dealing with another matter, and I will ask leave to read it as it stands.

The Court: Read such portions as you desire, Colonel Anderson.

Mr. Anderson: Mr. Garvan replied: "I was illustrating. There is no efficiency in a Government-owned patent which is open to everyone, because no one will spend the money to develop an invention under such circumstances and fit up plants for the purpose of manufacture when a neighbor can put up another plant next door to him the next day. If these patents had been thrown open to the public we would have been in the same position and had no protection against a German project—

"Mr. Green (interposing). Let me show you how utterly irrelevant that is. You are proposing by this Chemical Foundation to permit non-exclusive licenses to be issued. That is, one man can put up a factory, and another man can get a license and may put up another factory, and by that same argument the Chemical Foundation would not know what the situation was.

"**Mr. Garvan**: To the capacity of the industry you will find in the charter."

The Court: You are putting into the record that Mr. Green was a representative?

Mr. Anderson: Well, Mr. Green was a representative of the Committee. I think that will be admitted, Mr. Kresel?

Mr. Kresel: Yes.

The Court: Do you want his statements to go in too?

Mr. Anderson: Only to the extent necessary to clarify the statement of Mr. Garvan. It has no evidential value whatever, sir, his statement, except to explain Mr. Garvan's statement there. I will next read from page 265 of the same report, Mr. Kresel, being the further statement of Honorable Francis P. Garvan, Alien Property Custodian, taken on the 15th day of July, 1919, at the same hearing. I will begin with the question by Mr. Moore in order to lead up to Mr. Garvan's statement. You will concede that Mr. Moore was the Chairman of the Sub-Committee?

Mr. Kresel: I do not know whether he was the Chairman or whether he was one of the members.

Mr. Anderson: Or a member of the Committee.

Mr. Hershkopf: He was not the chairman. Mr. Fordney.

Mr. Kresel: He was not the Chairman, I am told. Mr. Fordney. Mr. Fordney was the Chairman, I understand.

Mr. Anderson: Question by Mr. Moore, a member of the Committee:

"Mr. Moore: Yes; there was a good deal of that. We gave the President a great deal of power when we voted because of the urgency of war. The urgent deficiency bill approved March 28, 1918 (which was one of the bills to which Mr. Palmer had a rider attached), provided—

"That any property sold under that act, except when sold to the United States, shall be sold only to American citizens at public sale to the highest bidder, after public advertisement of time and place of sale, which shall be where the property or a major portion thereof is situated, unless the President, stating the reasons therefor, in the public interest shall otherwise determine.

"So that Congress, when it was induced to give this additional power, provided when this property was taken over from German owners it should be sold in the open, an open covenant openly arrived at, as it were, and not at private sale. Yesterday you stated that the property generally had been sold at public sale, and I asked you to be particular about that statement, because I intended to ask you some questions. I think at first you said all the property had been sold at public sale.

"Mr. Garvan: Practically all; and that is true, too. There was a provision covering private sales under $10,000 of commodities and things of that kind—

"Mr. Moore: Yes. I want to draw attention to that, because I think it is important.

"Mr. Garvan: Certainly. I am having an exact detailed statement prepared for you as to everything whatever that was sold except the commodities. You do not want to be burdened with that?

"Mr. Moore: If you will put that in the record later on, I will be pleased.

"Mr. Garvan: They would not reach more than five or six. I do not think they would reach more than one or two where the property was not sold to the United States Government."

Mr. Anderson: At page 272 of the same report the same member of the committee, Mr. Moore further inquiring of Mr. Garvan, the following statement is made:

"Mr. Moore: You were not Alien Property Custodian at that time?

"Mr. Garvan: No.

"Mr. Moore: Do you know who drafted that Executive order signed by Frank L. Polk?

"Mr. Garvan: I can give you my best belief, based upon the course of business in the office, that it was drafted by Mr. Mitchell Palmer after consultation with Mr. Bradley Palmer, and undoubtedly, after consultation with Mr. Hoguet, who was the principal adviser on patents.

"Mr. Moore: Mr. Ramsay Hoguet?

"Mr. Garvan: Yes.

"Mr. Moore: Who is associated with Mr. Choate as counsel of The Chemical Foundation (Inc.), of which you are president?

"Mr. Garvan: He is not associated with Mr. Choate, but he is our patent counsel.

"Mr. Moore: And Mr. Ramsay Hoguet, with whom Mr. Palmer probably conferred, as you say, over the drafting of this Executive order by Frank L. Polk, was named as associate counsel with Mr. Joseph H. Choate, Jr.?

"Mr. Garvan: Yes.

"Mr. Moore: Of The Chemical Foundation (Inc.), of which you are president?

"Mr. Garvan: Of The Chemical Foundation (Inc.), yes. And, furthermore I think you will find that order received the consulting advice of every big patent lawyer in the country representing these big manufacturers."

I read from the same statement, at page 296 of the same report, certain questions by Mr. Longworth, who, I presume, will be conceded to have been a member of the Committee?

Mr. Kresel: Yes.

Mr. Anderson: And answers by Mr. Garvan. I will read the questions to the end that the meaning of the answers may be more apparent:

"Mr. Longworth: That is to say that all the surplus you will receive, left over after paying the stockholders"—

Mr. Kresel: Pardon me a moment, I can not find that. I can not follow you. Page 296, you said?

Mr. Anderson: Page 296.

Mr. Kresel: Oh, yes, thank you; I have it.

Mr. Anderson: I will re-read:

"Mr. Longworth: That is to say that all the surplus you will receive, left over after paying the stockholders the maximum amount that is permitted, is devoted to the extension of chemistry, and particularly organic chemistry?"

I presume it will be conceded that the reference there is to the surplus of The Chemical Foundation?

Mr. Kresel: Yes.

Mr. Anderson: Without reading the preceding—

Mr. Anderson: (continuing)

"Mr. Garvan:

"Organic chemistry, yes; we will offer scholarships in the colleges. We hope to offer courses in dye manufacturing for the students, and while they are in college give them a course of two or three months in the chemical laboratory, which the colleges are very anxious to do during the four years that they are in the courses.

"Dr. Herty hopes that we can establish a great central medical laboratory for the investigation of all kinds of drugs, and have an increased fight for the purity of medical drugs. It is all a question of how much money comes in; it may not be a tremendous amount. We have practically 4,000 patents, which is a large number, but a great majority of them will amount to nothing at all. We just took the list of patents applying to all chemical subjects which were German-owned; the main source of income will be the vat dyes, and what that will amount to all depends upon the development of American manufacture, and how far they are able to develop it. If this bill were not passed, the money would immediately begin to pour into the Chemical Foundation, because the German plan was to flood our markets with their 20,000 tons of dye, which they are ready to send in here, and much of which came under our patents. On them we would be able to collect whatever fees we saw fit to collect from the Germans, so the passage of this bill cuts our income entirely down to the possibility of American development of these dyes. But as regards most dyes, of course, we have not patents covering them.

"Mr. Longworth. That is what I wanted to get at.

"Mr. Garvan. All the dyes practically, made in America today are without patent.

"Mr. Longworth. That is what I wanted to get at now. Of the 4,500 patents at least the ones that are of real value here, practically, relate to the vat dyes?

"Mr. Garvan. The vat dyes.

"Mr. Longworth. And which are not made in this country?

"Mr. Garvan: Not made in this country.

"Mr. Longworth. And are of great value to the American manufacturers?

"Mr. Garvan. Tremendous; that is the first aim.

"Mr. Longworth. Almost a necessity for certain kinds of cloth, are they not?

"Mr. Garvan. They certainly are.

"Mr. Longworth. And Germany has, as you said some 20,000 tons ready to ship into this country, either from Germany or through Switzerland?

"Mr. Garvan: Or through Holland.

"Mr. Longworth. That would practically prevent the development of the vat dyes in this country?

"Mr. Garvan. Certainly; to make vat dyes one company alone has already expended $1,800,000 without return.

"Mr. Longworth. Whereas, if an opportunity of four or five years were given to develop under these patents, for America to develop these vat dyes with a reasonable tariff, thereafter we would undoubtedly be able to exist as against Germany or any other country?

"Mr. Garvan. Certainly."

Mr. Kresel: Let me know if you are through reading.

Mr. Anderson: One more.

Mr. Kresel: I mean from those two pages.

Mr. Anderson: Yes.

Mr. Kresel: I do not want to interrupt, but I think you want to be entirely fair to Mr. Garvan and everybody else. You will concede, will you not, that notwithstanding Mr. Garvan's statement there that the passage of this bill that is being considered would cut from the income of The Chemical Foundation very largely, that notwithstanding that, he was in favor of the bill?

Mr. Anderson: I will concede that, if it is agreed that that was a bill for the licensing or embargo on the importation of these dyes.

Mr. Kresel: I will go this far, Colonel. I will consent that you put in the proposed bill and that will speak for itself.

Mr. Anderson: I do not mind you putting it in, although I have not read it. It is a public document of which the Court will take judicial notice in any event. The bill will be found in the Congressional Record. Can't we refer to it as we wish?

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Mr. Kresel: Yes. If you will identify it, Colonel, of course we can refer to it.

Mr. Anderson: It is identified by the bill numbers which I have already put in the record The bill was not passed.

Mr. Kresel: That is correct. I understand it was passed by the House but not by the Senate.

Mr. Anderson: It never became a law. That is what I mean.

I will next read certain statements of the Honorable Francis P. Garvan which were made in hearings before the Committee on Finance of the United States Senate, Sixty-sixth Congress, Second Session, on H. R. Bill 8078 entitled, "An Act to Regulate the Importation of Coal-tar Products; to Promote the establishment of the manufacture thereof in the United States, and, as incident thereto, to amend the Act of September 8, 1916, entitled 'An Act to Increase the Revenue, and for other purposes' ", which hearings took place at various dates from December 8th, 1919 to January 12th, 1920, and I shall read from the official Government publication of these hearings.

Mr. Kresel: I am informed, Colonel, that this hearing which you are about to read from was a hearing before the Senate on the same bill that had passed the House and as to which you have just read some testimony.

Mr. Anderson: If that is the fact, it will be conceded, and that the bill was not passed by the Senate.

Mr. Kresel: Not passed by the Senate.

Mr. Anderson: Very good. That is conceded.

At Page 520 of the official report, appears the statement of Honorable Francis P. Garvan, Alien Property Custodian. There was a question asked by Senator Calder, who in the absence of objection I will state was a member of the Senate Committee before whom the matter was being heard:

"SENATOR CALDER. I would like, if you will, to tell me how it was organized, and how the capital stock was arrived at, and what was paid for the patents?"

You will concede, Mr. Kresel, that "it" there refers to The Chemical Foundation, Incorporated, the defendant?

MR. KRESEL: Yes.

MR. ANDERSON: Mr. Garvan in reply:

"Having all this history, which I have only touched upon and picked out the salients without bothering you with the other, before me, the situation is this: We saw these patents there, which were of no benefit as they stood. It would be of no benefit to the duPont's or anybody else to develop them, if after the war Germany could come over and exercise the rights under the patent. So they had to be sold. They could be given to the country, but that wouldn't attain any purpose at all, because there would be nobody to enforce them as against Germans bringing goods in under them after the war. They would be just like patents under discoveries of people in the Patent Office, or people in the Department of Agriculture —they go fallow until some smart German comes along, takes them over to his laboratory in Germany, makes some little addition, and then makes them a going concern. We looked around. There was no institution that we could sell them to. Our attention was first attracted to it and to the danger we were in when we sold Bayer & Co. We had no thought of it before. Bayer had a number of patents. And right there I might add, the number of patents does not of itself amount to anything. A company may have a hundred patents around one compound. But they are very valuable when properly protected and put to use. We sold Bayer & Co. That was a going concern. That was the only concern that had any real property. It was at Renssalaer, New York. They had quite a big property and a tremendously valuable establishment, the aspirin business. They were making great big money. We sold it, I think for $5,400,000. The Sterling Products Co. are conducting the drug end, and the Grasselli Chemical Co. are taking the dye end of the patents, etc. We saw this situation. Here was the Grasselli Chemical Co., a great, big, powerful corporation, and they could go ahead, but there was no property attaching to the other patents, no buildings, or machinery, or organization, or anything. They could go ahead and buy these other patents for very little and have a monopoly for sure, and then they could just sit back and collect a royalty from the Germans after the war. They did not have to manufacture anything; they did not have to go into business.

"So I conceived the idea of forming the Chemical Foundation and putting all these patents into a quasi-public corporation, which would develop them and give them to chemical companies throughout the country. The way the salvarsan had worked out encouraged us. Mr. Metz was in fear of a monopoly here, he was not afraid of I. G. in Germany. The best answer is The Chemical Foundation. We have licensed six people to make salvarsan. Mr. Metz is the most successful one. We have given it to Squibbs, and three, I think altogether."

At Page 521 of the same report, a question by Senator Calder as follows:

"Will these patents be of any great value some day?"

"Mr. Garvan. They may or may not. They would be to any person who was going to try to make money out of them. For instance, anybody who owned these patents and wanted to make money out of them would not be urging you to pass this licensing bill. He would be sitting back asking for as large an amount of German goods to come in as possible, because then he could collect the highest kind of royalty from their coming in. It is a great loss of royalty to The Chemical Foundation to urge the licensing system, but that is not the reason for Foundation. It is to assist, encourage, and promote American industry. Take salvarsan, and that is the most valuable one—

"SENATOR CALDER (interposing). The most valuable patent?

"MR. GARVAN. Yes, sir. That patent in the hands of a private individual who wanted to confine the manufacture to one man and maintain the price of $3.50, would be worth any amount of money, because 10,000,000 syphilitics would want it. We gave it free to the New York State Board of Health, to Massachusetts State Board of Health, and will give it free to any State Board of Health which will equip itself to manufacture it safely.

"The Foundation will never get anything from them. We want, by experimentation, to help cure disease. Of course, that patent is not worth anything; I mean, as far as income is concerned, because we want it to help the public and not to make money out of it.

"Take the Badische patent on vat dyes; that is susceptible of income, but there is no income possible until somebody in America successfully manufactures the dyes—except upon importation, like this one here. It was suggested that 10 per cent was put upon it—Mr. Metz suggested as a license fee on that, coming in. That was fixed when the allocation right was given to the German agents here. It has been the policy of the executive committee of the Foundation to charge to any manufacturer whatever was needed to encourage him two per cent, three per cent, or five per cent, just whatever was necessary to encourage him to manufacture. But when a German agent wanted to import it we thought it proper to impose the 10 per cent royalty."

I next read similar statements of Mr. Garvan from his testimony given, as the record shows, in hearings before a Sub-Committee, of the Committee on the Judiciary, United States Senate, Sixty-seventh Congress, Second Session, pursuant to Senate resolution 77, creating a Special Committee to investigate the expenditures made on behalf of various propaganda and in the maintenance of lobbies in Washington.

I read from the official Government report, a volume entitled "Alleged dye monopoly."

In this instance the record will show, and I think counsel will agree that The Chemical Foundation and the American Dyes Institute were being investigated, or at least their activities and organizations were under investigation.

MR. KRESEL: Except in so far as you may show that by witnesses, I will not concede that at all.

MR. ANDERSON: I will read; the evidence is simply with reference to the resolution. I shall read from the testimony of Mr. Francis P. Garvan, given before the Committee on March 6, 1922, at Washington.

MR. KRESEL: Page 203, Mr. Garvan's statement starts.

MR. ANDERSON: It starts?

MR. KRESEL: Yes, it starts at page 203.

MR. ANDERSON: Thank you. At page 203 of this volume; evidence was taken on March 1, 1922; and he was asked by the Chairman of the Committee, after he was sworn:

"And your present connection with the matters under consideration is what?

"MR. GARVAN: President of The Chemical Foundation, and I might add, former Alien Property Custodian." At page 393, Mr. Garvan, in reply—

MR. KRESEL: Page 390?

MR. ANDERSON: Page 393; or page 392, I will begin there, at the bottom of the page; Mr. Garvan is asked by the Chairman:

"And you became the President of the Chemical Foundation when?

"Mr. Garvan: I was the president from the beginning. The date of the recordation of our certificate is the 19th of February, 1919. So that I was president of The Chemical Foundation at a time when I was a dollar-a-year man in the employ of the Government, but when I had no expectation of doing anything but step out and go back and devote myself to my private practice, and thus build up, if possible, the chemical industry in this country.

"The Chairman: You may go on with your statement.

"Mr. Garvan: The question of the compensation to be paid for those patents to The Chemical Foundation was, of course, the arbitrary fixing of a sum or sums. We had to take into consideration the fact that the patents were valueless as they stood, with the single possible exception of one or two, and even those were valueless unless capital should be invested in them. Furthermore, we must understand that the condition was made that they were sold to The Chemical Foundation only in trust; that is, that they must license each and every American manufacturer who cared to use a license for any of them, and that no exclusive license should be granted. In other words, we have to grant 10 licenses on each patent if there are 10 applicants, which, of course, is a simple proposition. If you were to put that proposition in a patent and then put that patent up and offer it for sale you could not get 5 cents for it."

At the bottom of the same page 393, Mr. Garvan, proceeding to discuss this matter, said:

"Senator King mentioned one manufacturer that he thought had been refused a license, but that was just some argument as to the terms with the Dow Chemical Co., who are one of our own stockholders, and which occurred a couple of years ago. But immediately upon our sitting down and talking over the situation the Dow Chemical Co. agreed to our conditions. It was nothing but an ordinary business argument at the time.

"We have never refused a license, with the exception of this one I referred to a moment ago, in a history now of three years that the Foundation has been running. And, furthermore, we have never given an exclusive license. We have never given a license that varied in its terms as between one and another on an article to be produced. Our rates vary on different patents, of course; some licenses are only for one-half of 1 per cent royalty or 1 per cent royalty, but all are based upon the idea of encouraging manufacturing. For instance, as I pointed out, our nitrate patents included a process of making nitrate from the air, which was another reason for getting those patents out of Government ownership. The possibility of developing Muscle Shoals is within those patents. The Muscle Shoals project could not go ahead without our nitrate patents. If those patents had been given back to Germany after the war, Muscle Shoals would be on your hands to a very great extent, for one of the large elements of value in those patents is the making of nitrates from the air, the so-called Haber process. Those were the patents the completion of which made the European War possible.

"THE CHAIRMAN: And The Chemical Foundation still owns these patents?

"MR. GARVAN. Yes, sir; and there are 110 of them. They were grouped together, and we speak of them as one patent.

"THE CHAIRMAN. Speaking of that group of nitrate patents as one, have any licenses been granted for the use of that patent?

"MR. GARVAN: Yes; we have worked hard to get anybody or everybody to go into that matter. We finally got the Semet-Solvay Co., a company up in northern New York, which is a branch of the

Allied Chemical Co., interested in the matter. They put in millions of dollars and built a plant, and are making ammonia from the air now, under our patents. And their license fee was nothing until a year after they were operating, so anxious were we to get them started. That means the Muscle Shoals plant would have the same license.''

And further on in the same page—

Mr. Kresel: Would you mind reading the next two or three sentences?

Mr. Anderson: I will read them for you if you want them. They are purely speculative. Yes, I will read on if you wish it, the record showing that you requested it:

''The Chairman: That is a branch of the Government?

''Mr. Garvan. If they are a branch of the Govenment, they would not pay anything. That is the provision in our charter.

''The Chairman. Manifestly, if the Government saw fit to go forward and develop Muscle Shoals it could make use of the patents free?

''Mr. Garvan. Yes, sir; that is another provision of the sale. As I say, the first element that went in to the making of dyes, and they are purely speculative, was the fact that we must license everybody and therefore would give no one a natural monopoly of a patent. The second provision was that we must give a license to the Government free; not only to the Government, but I understand to anybody manufacturing for the Government. So that if the Government makes a contract with anybody for anything covered by our patents, there is no license fee either payable by the Government or by the manufacturer under his contract with the Government.''

Mr. Kresel: Will you read the next paragraph there?

Mr. Anderson: No, I do not want to go into that other subject, because it is entirely outside, and relates to the Government and its license.

Mr. Kresel: It relates to what?

Mr. Anderson: It relates to licensing the Army and Navy, which I do not want to go into.

Mr. Kresel: Pardon me a minute, does it not relate to the others?

Mr. Anderson: It relates to two sets of patents and undertakes to tell what a license was to the Army and Navy. If your Honor please, the license has been handed around—

Mr. Kresel: I do not want to insist if you do not care to read it, Colonel.

Mr. Anderson: And I prefer to have the license itself say what the license was.

Mr. Kresel: All right.

Mr. Anderson: I am perfectly willing to put the license in or willing to have you put it in.

Mr. Kresel: Would you mind putting it in?

Mr. Anderson: No, I won't put it in my evidence—as your evidence.

Mr. Kresel: I thought you said you would be willing to put it in.

Mr. Anderson: No, I have all the evidence I want on that subject. There were some intervening questions and Mr. Garvan then made the following statement——

Mr. Kresel: On what page?

Mr. Anderson: Right down below on the same page:

> "Yes, sir; and that applies to anybody"——

Mr. Kresel: Wait a minute. Hadn't you better read the question to which that is an answer?

Mr. Anderson: Very well:

> "**The Chairman**. Without accounting to The Chemical Foundation."
>
> "**Mr. Garvan**. "Yes, sir"——

Mr. Anderson: Page 44. It is No. 2846, entitled, "An Executive order concerning a sale to be conducted by the Alien Property Custodian pursuant to the Trading with the Enemy Act and amendments thereof," which is read in evidence as Plaintiff's Exhibit 193.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 193." (*See Exhibits, Vol. I, page 460.*)

Mr. Anderson: I offer in evidence an Executive order of the President——

Mr. Kresel: You might offer all of these orders, just giving the page where they start and the page where they end, just as I did as to Mr. Polk's.

Mr. Anderson: How would it be to do this: If you agree that we may read from any of the Executive orders appearing there at any time?

Mr. Kresel: Yes.

Mr. Anderson: In order to shorten the record, it is stipulated in open Court by the solicitors for the respective parties, that the solicitors for the respective parties in this case may read from and use to the same extent as if the same were formally introduced in evidence any and all Executive orders and the orders of Honorable Frank L. Polk contained in a publication entitled "Trading with the Enemy Act," which has been marked by the Clerk as Plaintiff's Exhibit No. 1, either in this Court at this trial or at any re-trial thereof, or in any Appellate Court on any hearing thereof. Is that agreed?

Mr. Kresel: That is all right.

Mr. Anderson: That is agreed.

Mr. Kresel: Of course, Exhibit No. 1 is only one order in that book.

The Court: He means the book containing Exhibit No. 1.

Mr. Kresel: Yes.

Mr. Anderson: The book containing Exhibit No. 1. That will save us all some time, sir.

GEORGE W. STORCK.

George W. Storck, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By **Mr. Anderson:**

Q. 1. Please state your name and your place of residence?

A. George W. Storck, Hasbrouck Heights, New Jersey.

Q. 2. What is your business or profession?

A. I am a Certified Public Accountant, in the employ of the Department of Justice, Washington.

Q. 3. How long have you been connected with the Department of Justice?

A. Since 1910.

Q. 4. As an Accountant, Official Accountant of the Department?

A. Yes, sir.

Q. 5. How long have you been a Certified Public Accountant and under the laws of what State?

A. Under the laws of the State of New Jersey, since 1904.

Q. 6. You have been constantly engaged in the practice of your profession from that time down to the present?

A. Yes, sir.

Q. 7. Have you in connection with your duties had occasion to examine the accounts of large corporations in connection with Government matters, and testifying in Court?

Mr. Kresel: I will concede this gentleman's competency.

Mr. Anderson: Very good, sir.

The Court: The question is withdrawn.

Mr. Anderson: Yes. The question is withdrawn.

Q. 8. Mr. Storck, have you made an examination of the records and accounts of the Alien Property Custodian to ascertain what, if any, payments have been made to the Alien Property Custodian under contracts with respect to patent rights seized by the Alien Property Custodian and transferred to The Chemical Foundation as set out in Exhibit G with the Bill of Complaint in this case, with which I understand you are familiar?

A. I have.

Q. 9. You are familiar with the contracts to which I refer as described in the schedules of Exhibit G with the Bill of Complaint in this case?

A. Yes, sir, contract rights assigned.

Q. 10. Yes. Will you please present, if you have one, a statement showing the earnings under those contracts which were so seized and transferred?

Mr. Kresel: Before this witness proceeds further, your Honor, I desire to have a stipulation with the Government that whatever testimony is here given with reference to these contracts and with reference to the Federal Trade Commission licenses which I understand is another subject which you will take up with this witness——

Mr. Anderson: Yes.

Mr. Kresel: ——is to be without prejudice to this defendant in any other litigation. I make this request, because as Colonel Anderson knows, there are many suits now pending in various

Courts all over the country, and I think one in your Honor's Court, involving the question of ownership of these license moneys or some of them, and I do not desire to run the risk of having some one of the Government hereafter claim that the matter will be *res adjudicata* between the parties upon the questions that are here involved.

Is there any objection to that, gentlemen?

Mr. Anderson: None whatever, Mr. Kresel; and I am perfectly willing, in response to Mr. Kresel's statement, to say that in consideration of our agreeing that this evidence is solely for the purposes of this case so far as the Government is concerned, he has waived certain requirements as to technical proof, and therefore I think it is entirely proper that that should be understood.

Mr. Kresel: Please, Colonel Anderson, put it on a different footing.

Mr. Anderson: I wanted to protect you by saying you had done it for a consideration, so it would be binding on the Government.

Mr. Kresel: I have not done it for any consideration at all. I have waived and shall waive any question of formal proof here because I want to facilitate the Government, and do not want to stand in the way of proving its case in its own way.

The Court: In any event, it is stipulated that the testimony now given is not available for use in any other suit, and is solely in examination and cross-examination restricted to the purposes of this suit.

Mr. Kresel: That is right.

Q. 11. Then, Mr. Storck, will you present the statement to which you refer? (Witness hands statement to Mr. Anderson.)

Q. 12. Mr. Storck, you have presented to me a statement entitled, "In re Chemical Foundation, Statement of Monies received by Alien Property Custodian on account of the following described contract rights assigned by A. P. C. to Chemical Foundation?"

A. That is correct.

Q. 13. Did you make up that statement from the records of the Alien Property Custodian?

A. Yes, I did.

Q. 14. You can testify to its correctness from those records yourself, can you?

A. I can.

Mr. Anderson: I will offer the statement in evidence as Plaintiff's Exhibit No. 194, that it may now be identified.

Mr. Kresel: Before that is received, your Honor, we specifically raise the question that this statement is inadmissible because it is irrelevant and immaterial. I take no objection to its competency, because it has not been proved by the books; upon the ground that it is an effort to thereby ask the Court to go behind the determination of the President and the Alien Property Custodian as to the price at which this property was to be sold, and was sold; and further, we object to it upon the ground that the amounts listed on that statement are amounts which cover the period both prior to April 10th, 1919, when the assignment was made to the defendant, and subsequent thereto; our point being that if the evidence is admissible at all, its sole materiality can be only upon the question of value, and that if that be so, that then only the receipts prior to the date when we took the assignment can be of value, because whatever happened afterwards, that is hindsight and not foresight. We could not tell in advance what would happen afterwards; so I say that if it is admissible at all, only that portion of it that purports to show what the receipts were prior to the 10th of April, 1919, is admissible.

Furthermore, Colonel, I think that our stipulation is that it should be made to appear that since the date that the Chemical Foundation has owned these contract rights, its sole return thereon has been the sum of $2,442.06. Is that correct, Colonel?

MR. ANDERSON: Yes; I will have the witness say that in a moment.

By MR. KRESEL:

Q. 15. That is correct, Mr. Storck?

A. Yes, that is correct.

MR. KRESEL: And further, Colonel, that of the sums shown on that statement that you are now offering, no part thereof has ever been received by The Chemical Foundation, or claimed by it?

MR. ANDERSON: I understand that to be the truth; is it not?

THE WITNESS: I so state, yes, sir.

MR. ANDERSON: He can testify to all those facts. I will bring them out. I want to get the statement identified.

THE COURT: Admitted under the general rule of practice adopted in this case.

Received in evidence and marked "Plaintiff's Exhibit No. 194." (*See Exhibits, Vol. I, page 463.*)

By MR. ANDERSON:

Q. 16. Mr. Storck, I will ask you whether or not the amounts shown on this statement, Plaintiff's Exhibit No. 194, were all earned prior to the assignment of these contracts to The Chemical Foundation?

A. They were not.

Q. 17. How much was earned afterwards?

A. May I take the statement a moment.

Q. 18. Yes, sir. (Statement handed to witness.) How much was earned before and how much was earned after?

A. From December 31st, 1917, down to and including June 30th, 1920, the total amount of royalties earned were $152,801.77, of which there should be deducted an item of $30,000, which was moneys received on Trust No. 12,681, of the American Kitchen Products Company, which was a payment on principal. That would leave the amount of $122,801.77.

Q. 19. Was that last amount that you have named all earned before assignment to The Chemical Foundation?

A. Before April 10th, 1919, I think it was.

Q. 20. Could you state how much The Chemical Foundation had received on account of these contracts subsequent to the assignment to the Foundation?

A. They received nothing.

Q. 21. I thought you said they received——

A. Only that $2,246.

MR. KRESEL: No. The correct amount is $2,442.06.

THE WITNESS: That is correct.

Q. 22. That is the amount then received from these contracts since they were turned over?

A. Yes, sir.

Q. 23. As I understand it——

MR. KRESEL: Pardon me a moment, so as to get it entirely straight. When you say "since," you mean from April 10th, 1919, to December 31st——

THE WITNESS: 1922; as shown on the books of The Chemical Foundation, not here.

Q. 24. Shown on the books of The Chemical Foundation?

A. Yes, sir.

Q. 25. You have also examined the books of The Chemical Foundation, have you not?

A. I have, yes, sir.

Q. 26. Now, going back a moment to the item of the net balance of $122,801.77, which you arrive at after deducting the $30,000, that appears to have been paid on account of principal, from the $152,801.77, accrued to the Alien Property Custodian?

A. Yes, sir.

Q. 27. Can you say whether any part of this amount which was in the hands of the Alien Property Custodian has ever been paid over to The Chemical Foundation?

A. It has not.

Mr. Anderson: That answers your question, does it not?

Q. 28. Do the records show that so much has been paid and is still in the Treasury of the United States?

A. Still in the Treasury of the United States.

Q. 29. You referred to one trust under which certain payments were made apparently on account of principal?

A. Yes, sir.

Q. 30. You mentioned it as the American Kitchen Products Company, contract dated May 10, 1909. Can you turn to page 339 of the Bill of Complaint in this cause and to the Exhibit G therewith, which has been introduced in evidence, Schedule 10 of said exhibit, and identify the contract to which you refer?

A. That is the contract that I refer to.

Q. 31. The one at the bottom of page 339?

A. Yes, sir; a contract between Karl W. Rademacker and the American Kitchen Products Company, dated May 10, 1909.

Mr. Anderson: I would like at this time, for the orderly presentation of the evidence, to offer in evidence a copy of contract between Karl W.

Rademacker and the American Kitchen Products Company dated May 10, 1909, entitled "Steero," which will be described in Schedule 10 of Exhibit G with the Bill of Complaint which has been introduced in evidence. Counsel have very kindly agreed to furnish it tomorrow morning and we agree that it be handed to the Clerk then.

THE COURT: Let it be admitted under those conditions.

Received in evidence and considered marked "Plaintiff's Exhibit No. 195." (Same as Plaintiff's Exhibit No. 402. *See Exhibits, Vol. 1, page 720.*)

MR. KRESEL: Now, Colonel, in order to complete our understanding, will you also state that you will introduce, as a portion of this witness's testimony and in connection with this contract matter, a statement showing the expiration dates of these various contracts, as to which that statement appears?

MR. ANDERSON: Yes. I also offer in evidence a statement compiled by the witness in co-operation with a representative of the defendant showing the expiration dates of these various contracts assigned by the Alien Property Custodian to The Chemical Foundation as described in Exhibit G to the Bill of Complaint and which are referred to in the statement just filed by the witness showing the earnings thereof, which has been marked Plaintiff's Exhibit 194.

THE COURT: Which will be produced at a subsequent time.

MR. ANDERSON: Yes.

THE COURT: Admitted.

Received in evidence to be marked "Plaintiff's Exhibit No. 196." (Withdrawn as embodied in Plaintiff's Exhibit No. 400. *See Exhibits, Vol. I, page 699.*)

Q. 32. Mr. Storck, have you a certified statement of the details of the accounts of the Alien Property Custodian from which the compilation, which you have presented and which has been introduced as Plaintiff's Exhibit 194 was made?

A. Yes, sir; I have a certified statement here.

Mr. Anderson: We now offer in evidence a statement consisting of seven typewritten sheets of the details which the witness has testified were the basis of making up the compilation already introduced, accompanied by the certificate of H. W. Schmito, Assistant Chief, Division of Trust, Alien Property Custodian, dated August 17, 1922, and ask that it be identified and read as Plaintiff's Exhibit 197.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 197." (*See Exhibits, Vol. I, page 465.*)

Q. 33. Mr. Storck, have you made an examination of the books and records of the Federal Trade Commission to ascertain what their records show as to earnings from licenses issued by the Federal Trade Commission on patents subsequently received and transferred to The Chemical Foundation, Incorporated?

A. Yes, sir, I have.

Q. 34. Have you prepared a compilation of the earinngs from royalties or other sources under the licenses issued by the Federal Trade Commission under patents transferred to The Chemical Foundation and included in those described in the Bill of Complaint in this case?

A. Yes, sir.

Q. 35. Will you please present it?

A. (Handing paper to counsel.)

Mr. Anderson: We now offer in evidence statement consisting of two large sheets with a summary sheet on the face thereof, which has just been presented by the witness, purporting to show the earnings from royalties under licenses issued by the Federal Trade Commission under patents, trade-marks, etc., subsequently seized by the Alien Property Custodian and transferred to the defendant, as alleged in the Bill of Complaint in this case and ask that the same may be read in evidence as Plaintiff's Exhibit No. 198.

Mr. Kresel: In addition to the general objection, your Honor, that we have urged, we have several specific objections to this exhibit and to this testimony. First let me make plain to your Honor what this exhibit purports to show. It purports to show that according to the records of the Federal Trade Commission it was reported to that Commission that under licenses issued on patents subsequently transferred to The Chemical Foundation, certain royalties had accrued. I desire your Honor to bear in mind that I use the word "accrued." This exhibit does not purport to show that the license fee had been paid, because your Honor will recall that under Subdivision F of Section 10 of the Trading with the Enemy Act, while the Federal Trade Commission was given authority to issue the licenses, payments of royalties had to be made to the Alien Property Custodian and by him covered into the Treasury of the United States; and I understand this witness to be presenting this statement based upon the records of the Federal Trade Commission and not based upon the records of the Alien Property Custodian. So that it is clear that this purports to be a statement of royalties accrued and not paid.

We object to that, first, upon the ground that if it is offered upon the question of value of the patents, it is admissible and immaterial for this reason:

Sub-division F of Section 10 of the Trading with the Enemy Act provides that after the war, the owner of the patent, whoever he may be, whether it be the alien if the patent had not been seized, or whether it be somebody to whom the patent may have in the meantime been transferred may come into a Court of Equity and ask the Court to do three things.

First, he may ask the Court either to increase or decrease the amount of royalties, and the Court is given the power to do so. In addition thereto, the licensee is given the express right to make any and all defenses which would be available were no license granted. In other words, the licensee, notwithstanding the fact that he holds a license, may challenge the title of the owner of the patent or the validity of the patent. The Court is given further the power to discontinue the license altogether or to rearrange the license fee or to extend the license until the end of the life of the patent. I have already said that the Court may increase or reduce the royalty from the beginning.

That being the state of the law, and this being a statement of royalties accrued under such licenses, it needs no argument to show that even if it could be shown that the Alien Property Custodian had knowledge of what the records of the Federal Trade Commission showed; even if it could be shown that the purchaser of the patent, The Chemical Foundation here, had knowledge of what the Federal Trade Commission records showed, it can not be said that that was an element which to any purchaser of the patent would indicate what the value of the patent was that he was purchasing. And so I say that it is immaterial upon the question of value and that is the only purpose, I understand, that the evidence is being offered for. That is the first point.

Second, we urge upon your Honor this consideration. It was conceded by the Government, and if it is not, you will correct me, that not a penny of this money which according to the statement about to be offered had accrued as license fees, if paid over to the Alien Property Custodian, has ever been paid to this defendant. That is correct, isn't it?

The Witness: That is absolutely correct.

Mr. Kresel: It is also a fact, your Honor, and will not be denied that the liecnses issued by the Federal Trade Commission, especially on what are known as vat dyes, were in many instances, as shown by that very exhibit which is now being offered, licenses covering several patents in the same license and the license had a clause therein providing that the licensee is given the right to use the processes covered by the patents whose numbers were specified in the license; not only those, but any other enemy-owned patent referring to the same subject.

Any return from a holder of such a license to the Federal Trade Commission showing that a certain amount of royalty had accrued, unless it undertook to specify how much thereof accrued under the specified patents, the numbers of which were given in the license, and how much on any other enemy-owned patents that he could use under the license—unless that evidence is presented, your Honor cannot say whether any of the royalties so reported or subsequently paid were royalties under patents that were conveyed to The Chemical Foundation or were royalties on patents owned by other alien enemies with which we had nothing to do.

So there again, the evidence can not be used, certainly cannot be used by a Court which deals as far as it can with exact matters as a basis or as evidence of value of these patents.

It is also a fact, your Honor, that many of the patents that were conveyed to The Chemical Foundation had in fact expired at the time of the conveyance. This exhibit which is now being offered shows among other things alleged accrual of royalties on such expired patents. Certainly, your Honor can not use such evidence as evidence of the value of the patents that were conveyed to us. So for that reason, the evidence now offered is immaterial upon the question of value.

Moreover, the exhibit on its face shows that in many instances returns are listed there of several patents, the return being a single return covering several patents. Those patents expired at different periods. You will have, for instance, a return of $100 on four patents. One would expire one year. The other two or three will expire two or three years thereafter. Unless there is a segregation of how much of that return is to be apportioned to each of the four patents, as an example, your Honor has nothing upon which to base any conclusion as to the value of each of those four patents.

I have pointed out these matters and I realize that it is difficult for the Government to make this proof. As your Honor knows, Colonel Anderson and I have done our level best to come to an agreement upon the subject, and as your Honor sees, I have waived all questions of formal proof. I am not raising any question that this is secondary evidence or that this witness did not make the personal examination, or anything of that sort.

The objections that I am making go to the substance of the matter, not to the form; and for the reasons that I have urged, we say that this evidence is inadmissible and immaterial.

One other point: The statement covers not only the period prior to April 19, 1919, but also the period subsequent thereto and to December 31st, 1922. We object to any evidence as to the accruals of royalties subsequent to April, 1919, because what was realized thereafter was not known to anybody on the 10th of April, 1919, and could not, of course have had any effect upon the determination of the value that was to be paid for the patents at that time.

Mr. Anderson: May it please the Court, I will make only a very brief statement for the record in reply to Mr. Kresel, because I assume, under your Honor's ruling this morning, you will let the evidence in, and for me to take my own responsibility as to its weight. Much of his argument is addressed to the weight and not to the admissibility of the evidence, he having waived the formal question of proof.

In the first place, Mr. Kresel is mistaken as to this showing only the earnings of these patent licenses. The statement shows also the payments. But since the witness has not made a specific examination of the books of the Alien Property Custodian who received these payments, but only the books of the Federal Trade Commission as to payments, I shall put on later evidence verifying the statement here as to payments; and if there are any errors, they will be corrected. So that, while it will go in now, subject to verification in a method which Mr. Kresel and I have agreed to adopt, waiving the formalities, but subject to his objection as to substance, I will put that evidence on certainly the first day next week. That meets that question for the present. I recognize I must put in the additional evidence.

Mr. Kresel: That evidence, Colonel, will be not only the amount received by the Alien Property Custodian upon these licenses but the dates when received.

Mr. Anderson: Yes.

Mr. Kresel: You recognize, of course, that the dates when received are important.

Mr. Anderson: Yes. Mr. Storck and your representative will go to Washington and check the accounts together of the Alien Property Custodian and both of them will be prepared to verify this statement as to the evidence of payment and the date of payment. What its value is as evidence will be another question. That meets that.

In the second place, counsel has referred to the matter of royalties accrued. Our contention is and will be that we are not at this time undertaking to prove an accounting against the Alien Property Custodian for any payments. If the prayers of the bill should be granted by the Court, I assume then that the matter will be referred to an auditor of the Court to make the accounting. So that we are introducing this evidence now not with a view of establishing a definite and specific account against the defendant of amounts which it would be liable for upon the theory of the bill, but of establishing evidence of value of these patents themselves and copyrights.

The accrued royalties under licenses issued are evidence of value and earning capacity of the patents. The actual payment of the royalties, assuming the persons to be solvent, would be necessary if we came to have an accounting for the proceeds.

In the third place, as to the contention that the defendant had no notice of these accruals in the hands of the Federal Trade Commission——

THE COURT: I do not think that point was made.

MR. ANDERSON: Yes.

MR. KRESEL: Yes, your Honor.

MR. ANDERSON: There are two answers to that. One is that a person purchasing property must take notice of conditions of this character and is charged with knowledge of them. In the second place, the President of The Chemical Foundation was at the time of these transfers the Alien Property Custodian who collected this money and had these licenses reported to him. So I do not think that that would be a very serious question in this matter.

MR. KRESEL: I think, Colonel, you misunderstood me; and I do not want to be misunderstood by you or by the Court. The point that I was making, was that neither The Chemical Foundation nor Mr. Garvan as Alien Property Custodian can be charged with knowledge of what the records of the Federal Trade Commission showed.

Mr. Garvan, as the Alien Property Custodian, might, it is conceivable, be chargeable with knowledge of what the records of his office showed, even though he had no personal knowledge; and that knowledge may, if you can satisfy the Court, be imputed to The Chemical Foundation. But how can they be chargeable with notice of what the

Federal Trade Commission records showed? That was the point I was making.

Mr. Anderson: As to this particular matter, it was done by both the Federal Trade Commission and the Alien Property Custodian, because the Federal Trade Commission issued the license, it was reported to the Alien Property Custodian, and the money was payable to the Alien Property Custodian.

Mr. Kresel: And that is the reason it is so important to show what the records of the Alien Property Custodian showed.

Mr. Anderson: I am going to show that.

Then in addition to that, if Mr. Garvan did not know, he was charged with the obligation to sell these properties, in the position of Alien Property Custodian, and I respectfully suggest, without imputing any criticism to Mr. Garvan, that he should have known—and I have no doubt he did know.

In the second place, as to the more general objection and the chief objection, I take it, of counsel that we cannot show any earnings on these properties after the date of the assignment—and counsel is mistaken in speaking of the date as April 10th; there were different dates of assignment, but the principle is the same—I respectfully suggest that the earnings of these patents under licenses issued by the Federal Trade Commission after the period of assignment are a very material element here, since that was a then earning power which was continuing, and I think this record shows—if it does not, it will—that with one or two exceptions, all of these licenses were for the life of the patents; and therefore, not only did it tend to show the value of the patents—not conclusive evidence on that subject, but merely evidence among others to be weighed—but it shows something that The Chemical Foundation was actually buying. That is a current income under those licenses and that is a part of the property it bought. It bought it subject to the license, but also bought it with the right of the license.

So that that would clearly be, it seems to me, not only valuable evidence from that standpoint, but the continuing earning capacity, if it got it, would be evidence of value provided it got the right to that value—and as stated on the record by Mr. Kresel, suits have been instituted by The Chemical Foundation to get those royalties.

The question of the right of the Court to review these royalties after the war—and the period for the review is now past—might be one of the arguments that might be considered in weighing this evidence. That is all. It would not affect its validity as evidence.

I do not care to extend the argument further but merely state this reply on the record so that when the Court comes to read it, it will read not only one side of the argument. As I understand the rule under which your Honor is proceeding, you will permit this evidence to be introduced for whatever it may be worth in the argument, which will be a subsequent question for consideration; and I will therefore not extend my remarks.

Mr. Kresel: Permit me, if your Honor please, because I want to make sure that I covered this ground, as I consider this important. There is one other consideration that I wanted to urge that I omitted and that is this.

We shall claim that unless the Government proves in connection with the income, so to speak, on these licenses, what it costs the Government to administer the licenses, the Court can not take into consideration what was received without knowing what was expended in connection therewith.

To make myself clear, the Federal Trade Commission has charge of issuing these licenses. They no doubt had a separate department that had charge of this matter. The Government certainly paid the expenses of that department. The Alien Property Custodian collected these moneys, kept accounts showing what moneys were collected and the Government had to pay the expenses of the Alien Property Custodian who took charge of that end of it. Then the matter went to the Treasurer, where the moneys were paid in and found their final resting place. The Secretary of the Treasury Department certainly incurred some expenditure in taking care of that end of it.

If they were trying to show the return on these licenses to a private individual or a private corporation, the very first question that would arise would be, what did it have to expend in connection therewith? And so I say that the Government can not stop short by simply showing what was taken in. They have to show also what went out.

As to the suits over these very license fees which Colonel Anderson mentioned, which are now pending, as is the fact, I think it is proper to say that while the Chemical Foundation is party-plaintiff in some of these suits, the German owner claims these very moneys and the United States Government stands between them and likewise makes claim to them. I think the Court should know that when it comes to weigh the importance of this evidence as indicating what was the value of the patents.

The Court: Have you anything further to say, Colonel Anderson?

Mr. Anderson: Only this, just a word. First as to the first point, I shall introduce evidence showing the cost to the Federal Trade Commission Office for running this thing, although I think that is really only a matter going to weight of the evidence; because suppose the Federal Trade Commission Office had been very expensive or very economical, or the Chemical Foundation had been very extravagant, those things would not be conclusive at all, and they are really matters for the defense to put in, and certainly the last point as to the condition of this litigation is a matter of evidence for the defense, and if counsel have not shown those matters on the record I presume they will show them at the proper time.

The Court: May I inquire, Colonel Anderson, whether you contend that you would be justified in introducing a statement of the arbitrary royalties on an uncertain number of patents, only a portion of which had been acquired by the defendant?

Mr. Anderson: No, sir. That is a point I want to reply to. There is in the provision of the license which has not been introduced as a matter of convenience on this point—there is, I concede, a provision giving a right to use other patents in this same connection at the same royalty, I presume, if the licensee desires to do it. If we introduce a statement and evidence showing the patent covered by the license and the fact that it has produced so much revenue, though I have not given the matter serious consideration, I think that the burden would be upon the defendant to show that there was other income derived from other sources. The *prima facie* case would be made. I may state, if your Honor please, that your Honor may understand my position, that I am introducing this evidence because I take the position as a matter of fairness to the Court and the parties I should of course prove every paragraph in this bill. My idea is if I was trying a case under ordinary conditions that I would take that view, that upon the record in this case the burden is upon the defendants to show a fair sale, your Honor having gotten by the other questions of Trust, that the burden immediately shifted to the defendant. But I want to put in all the evidence I have got on this subject, and I am going to do it.

The Court: May I ask you one further question, Colonel Anderson?

Mr. Anderson: Yes, sir.

The Court: Mr. Kresel made the suggestion or contended that this report fails to distinguish between those patents which expired prior to the first assignment and those patents which did not. You did not reply to that.

Mr. Anderson: No, sir, because of this fact: The question which patents have expired is merely a matter of figuring from the record, because we know the life of a patent by Statute and we know the dates of issue. That appears in the record. We have not gone over it to analyze the expirations. Suppose there were four patents assigned to certain licensees, and suppose one or two or three of them expired at certain dates. The income, if affected by the expiration, would for the subsequent dates show the effect of that expiration on the income. Suppose all of those patents were seized and transferred to the Chemical Foundation, what does it matter which one has earned, so far as this suit is concerned? They did not stop to think about that when they sold 4500 in a lump, and why should we undertake to analyze the revenue from any particular patent when the sale was as a whole and the attack upon the sale is as a whole? We are not here trying to get back any one patent. We are here trying to get them all back.

The Court: You mean there were some expired patents which were transferred?

Mr Anderson: No, some have expired since they were transferred. That is perfectly obvious.

Mr. Kresel: You did not get the point that I made. Shall I re-state it?

The Court: I thought the point was as I shall state it and if I have not got it, Mr. Kresel, I will be very much obliged to you if you will re-state it. After the licenses were acquired by the assignment there were some patents which expired, and this statement does not show which or how many of those patents under which licenses were granted under the Federal Trade Commission had expired, and—

Mr. Anderson: Yes, sir it does.

The Court: It does?

Mr. Anderson: Yes, it shows the amount of revenue from every patent. Your Honor can take Exhibit G, which gives the date of issue of the patent and the date of assignment of the patent, and of course we will have to help your Honor. We do not expect you to do it, but you will find this statement gives the date of assignment and the patent number. Those correspond with Exhibit G. If that patent were issued more than seventeen years before the date of the transfer, then it obviously has expired. If it expired, it is not shown as earning anything after the date of expiration. It might be contended here, if the defendant is not entitled to recover the royalties accrued prior to the date of transfer, which is a question of law and the construction of these assignments on which I take no position, upon the showing that that patent had expired before the transfer, the revenue therefrom included—

The Court: The revenue?

Mr. Anderson: The revenue therefrom included in this statement, if any, would have to be deducted. That might be contended. Do I make it clear? Suppose we take Patent No. 100 and see that it was assigned, it was in the assignment and it was duly licensed here. Before the assignment was made that patent had actually expired, we will say, the date of issue and everything being shown. Suppose during the year 1918 before this assignment was made there accrued on that patent a thousand dollars. Upon showing that that patent had expired before this assignment was made, that thousand dollars would be taken out here.

The Court: It would be taken out of this sum?

Mr. Anderson: It certainly would, out of the sum total.

The Court: Your contention is that it is to that extent incorrect, and therefore should not be admitted?

Mr. Kresel: Yes.

The Court: Mr. Kresel, it seems to me as I understand your contentions that if your first point were the only one made by you, I think that should be overruled on the ground, not that the statement would be of any material value or any substantial value, but it might indicate the extent of user. It being an arbitrary Statutory license, it would not give me values, it would be the extent of user. If I could find from other parts of the record whether these patents were valid or had been challenged, then it might indicate generally, which is the only word I can think of, or be some indication of general value. But if the statement is uncertain and can not be made certain from other portions of the record as to the patents for which that royalty is received, or whether you acquired those patents under the assignment, then I take it that the statement the document is so uncertain as to be probably misleading unless that may be checked from other parts of the record.

Mr. Kresel: May I point to a concrete example of what I have been trying to make plain as to expired patents?

The Court: Yes.

Mr. Kresel: The point I make is that this statement from the records of the Federal Trade Commission in some instances shows a lump sum received on several patents some one or more of which had expired before we took any patents, because the Federal Trade Commission kept its records, as I understand, for six months' periods.

The Witness: It did.

Mr. Kresel: I have a concrete example here before me. Under date of June 28th, 1918, there is a return made according to this statement by the National Aniline and Chemical Company of royalties that had accrued on six patents.

I will not burden your Honor with reading the numbers of the patents, but the first of those numbers is of a patent that had expired before we took any patent at all.

Unless they can show that the entire amount of money that was so reported as having accrued on the six patents was not earned, and the one that had expired, have I not the right to claim that it had? And if it had accrued on the one that had expired, then certainly it cannot be any evidence of the real value of the others.

Have I made myself clear?

THE COURT: Yes.

MR. KRESEL: That is the point I make and that is only one example.

MR. ANDERSON: If your Honor please, I think that the evidence would be admissible in any event. I am not going to argue. I think the evidence would be admissible. I think that the difficulties incident to the complicated proofs of this matter, involving as it does so many complicated angles and so many different officers, are very great. I recognize that. We propose after this evidence has been put in to fill up any gaps to the fullest extent we can from the records, but now we are merely discussing the admissibility of the evidence and even upon the statement of Mr. Kresel, I think there are several grounds perhaps upon the identification of patents of similar character that you could admit the evidence as a supplement to it perhaps in some of the details, which I propose to do. But the statement itself could go in, and then the additional evidence could be taken certainly as to payments and possibly as to the explanation of certain of those patents, which I am frank to say I thought we had agreed on. However, I do not want to take up further time in discussion, if the exhibit will go in.

THE COURT: I am going to let you put it in. I have very grave doubt, as it stands, as to whether it will furnish me any help in ascertaining value, because unless those things are pointed out; there was one instance pointed out by Mr. Kresel in his last statement, where that can not furnish me any guide in determining values. It is introduced.

Mr. Anderson: I quite understand that.

The Court: I do not know that it has value, unless you can point out to me from further evidence just what parts of it are reliable. There is a part of it which is unreliable. Now then, what parts of it are reliable. I think that the burden of that will be on you, Colonel Anderson.

Mr. Anderson: I think if I am going to vouch for the statement, the burden is on me to make it as strong as I can make it from the proof available and make it valid evidence.

The Court: You misunderstood me. The burden will be on you now, even though that is admitted, to make clear to me in view of the deficiency of the document in one particular, wherein it is not deficient and wherein I may use it with a reasonable degree of certainty. It is admitted under our general rule of practice adopted in this case.

Received in evidence and marked "Plaintiff's Exhibit No. 198." (*See Exhibits, Vol. I, page 475.*)

Mr. Kresel: Are you making the summary as a separate exhibit, that small sheet?

Mr. Anderson: It all goes in as one.

The Court: If you want to refer to it separately, you may mark one with the number and the other with the letter.

The Clerk: The summary is 198-A.

Received in evidence and marked "Plaintiff's Exhibit No. 198-A." (*See Exhibits, Vol. I, page 477.*)

Q. 36. Mr. Storck, will you please take these exhibits 198 and 198-A, and state the amount of accrued royalties, first, up to the 31st of March, 1919, which is a convenient date for division, and then from March 31st, 1919, up to the 31st of December, 1922, and then the aggregate of the two?

A. Prior to the date of assignment, which would be April 10th, there was $169,609.88, earned in royalties. Subsequent to assignment there were $321,964.50, making a total of $491,571.38 from December 31st, 1917, to December 30th, 1922.

Q. 37. Do you know, from your present examination of the records, whether any of those patents had expired prior to the assignment thereof to the Chemical Foundation, and if so, would you identify the patents which had expired prior to that time?

A. There had been some expirations on License No. 10, which was issued to Lembcke Von Bernuth & Company on January 17, 1918, License 709,799 expired.

Mr. Kresel: You do not mean "License"; you mean "patent"?

The Witness: Patent, rather; pardon me; expired on December 23, 1919.

Q. 38. What date was it assigned to the Chemical Foundation?

A. On April 10th, nineteen—that went into that bunch of patents; I can not tell you the exact date. I should imagine April 10th, 1919.

Q. 39. 1919?

A. Yes, sir.

Q. 40. It was one of that April 10th, 1919, assignment?

A. Yes, sir.

Mr. Kresel: Then, he is not answering your question. Your question was what had expired prior to the assignment?

Mr. Anderson: Yes.

Q. 41. That is prior to assignment to the Chemical Foundation, if you can find any.

A. None of these had.

Q. 42. None of the patents shown on that sheet, under which licenses were issued, had expired prior to the assignment to the Chemical Foundation?

A. Not prior to April 10th, 1919, no, sir.

Q. 43. Were there any of them that expired subsequent to April 10th, 1919, or prior to December 31st, 1922?

A. Yes, sir.

Q. 44. The last date given by you; and if so, state the numbers of those patents?

A. That is the one that I have previously referred to, Patent No. 709,799, expired on December 23, 1919.

Q. 45. Yes. How much revenue do you show as having accrued on that patent?

A. On that particular patent?

Q. 46. Yes.

A. $47,178.72.

Q. 47. $47,178.72?

A. Yes, sir.

Q. 48. How much of that accrued prior to March 31st, and how much subsequent to March 31st, 1919, if you can state?

A. There was $1,279.91 earned to December 31st, 1918, and there was $644.56 earned between December 31st, 1918, and June 30th, 1919.

Q. 49. Now, dividing that last amount in half and adding it to the earnings up to December 31st, 1918, what would be the aggregate earnings up to the 31st of March, approximately, on that patent?

Mr. Kresel: Now, what is the question, Mr. Stenographer? (Q. 49 repeated as recorded).

The Witnesss I will have to correct that. I could not follow this line on this statement across.

This is the correct one: Up to December 31st, 1918, the royalties amounted to $10,598.59, and up to December 31st, 1919, they amounted to $10,133.71. Dividing that last figure $10,133.71 in half, it would be $5,056.85. That, added to the first figure, would be $15,655.44.

Q. 50. As the earnings up to March 31st?

A. No, that would be the earnings to June 30th.

Q. 51. What year?

A. 1919.

Q. 52. 1919?

A. Yes, sir.

Q. 53. Is that a part of the patents assigned on April 10th?

A. Well, it is in that period. You know there were several assignments.

Q. 54. Yes. That is up to June 1st?

A. Yes.

Q. 55 You can not figure the exact amount to April 10th, can you?

A. I can not.

Q. 56 Do you know of any other patents under which licenses were issued that expired within the period covered by these accounts?

A. No; that is the only one that I see.

Q. 57. Now, Mr. Storck, have you also examined the books of the Chemical Foundation, Incorporated?

A. Yes, sir, I have as to royalties.

Q. 58. Can you state what has been the royalty earnings on the Chemical Foundation, Incorporated, under the patents, trademarks, and so forth, assigned by the Alien Property Custodian, from the time of the assignment down to—

A. December 31st, 1922?

Q. 59. December 31st, 1922?

Mr. Kresel: I raise the objection, your Honor, that that is immaterial and irrelevant.

A. From the date of the inception by the Company of the receipt of royalties down to December 31st, 1922, the amount of royalties was $677,511.38.

Q. 60. Now, are there any deductions to come off that?

A. Yes, sir.

Q. 61. Have you made a consolidated statement now, showing the total amount of accrued revenues on these patents, including the amounts accrued to the Alien Property Custodian on contracts, the amount as to which you have testified, the amounts accrued under the Federal Trade Commission licenses accrued to the Chemical Foundation?

A. I have.

Q. 62. Will you present such a statement?

Mr. Kresel: Now, one minute, please. We object to that, if your Honor please, because we do not desire your Honor to get a misleading impression as to these large figures.

Our point is that insofar as an examination made of our books is concerned, those are open books, and we have no objection to this witness testifying as to what they show, because we are bound by them, and they show receipts of money. But we do object to being bound here by any statements on the records of the Federal Trade Commission as to what they think had accrued prior to the conveyance of these patents to us; and we do object to any statement of what the Alien Property Custodan's books may show prior to that date upon the ground that they are not binding upon us. We have not received the money; they deny that it belongs to us. There is no evidence here that we had any knowledge of what moneys had accrued, and there is no evidence that the money had in fact been paid to the Alien Property Custodian. To take and simply for the purpose of giving a large figure to include what our books show we had actually received, and speculate as to whether the Alien Property Custodian did in fact receive what the Federal Trade Commission said they ought to have received, is simply speculative. It is not evidence in a Court of law.

The Court: What was the question? (Q. 61 and Q. 62 repeated as recorded).

The Court: Do you want to be heard on it, Colonel Anderson?

Mr. Anderson: I merely want to say this, sir: that counsel, if they can attack the correctness of these statements, are quite at liberty to do so; but I do not understand that they make any objection as to the form of proof?

Mr. Kresel: No, I do not.

The Court: But it does, and you will put it on record if you want to.

Mr. Anderson: Yes, sir.

The Court: Why is not Mr. Kresel's argument on that sound? I shall be glad to hear you on that, because I have a very strong impression that it is sound, and that is, that the Federal Trade Commission's records, unless you bring it home to the Alien Property Custodian, Mr. Garvan, or some of those people who subsequently became connected with the defendant here, why would those arbitrary statutory accruals bind this defendant? It may be quite patent but I missed that.

Mr. Anderson: In the first place, it is part of what they bought. That is, the right to the accruals on those patents so far as they are now running. He bought that. Certainly after the date of the assignment. In the second place, suppose Mr. Garvan and the Chemical Foundation had not in an infringement suit, your Honor. We are engaged in ascertaining value. The most common way of ascertaining value in condemnation proceedings, is to show the value of other similar property in a community; but certainly, if you can show the earning value of the property for several years before it was taken over for a number of years before it was taken over in the condemnation of real estate, the current and first evidence is what it had been earning; and second, the opinion of competent witnesses as to what it is worth for any use it can be put to.

Now, we are here in a position practically of ascertaining value on that principle, because fair value is the value of the property. If we were here to ascertain an infringement, that would be the question of right of infringement as to other property; but suppose we can prove that this property had a value; if we can prove that this thing had a value, it is the business of the Alien Property Custodian to find that out by proper proceedings and sale.

THE COURT: You pass from conspiracy now to whether or not a fair value was obtained for it.

MR. ANDERSON: I am discussing that particular aspect of the case. Now, in another aspect of the case, in the conspiracy aspect of the case, these gentlemen could not deal with this public property. There had accrued and were accruing large revenues; especially as they all occupied official positions with respect to the Government, and then when they are charged with an accounting, they come in and say, "We do not know anything about that." They are chargeable in law with all facts that were reasonably ascertainable as to the value of this property and its earning capacity at the time they took it over, and if they deliberately close their eyes to that fact and come in here and claim that they did not know it, that itself would be strong evidence of neglect of duty and probably even an ultimate purpose which I am not discussing in this case at the present time; so that in both aspects and in others which I do not think I need to discuss, this evidence would be clearly admissible. And I go further and say that the best evidence perhaps of the value of these patents, the primary and first evidence is their earning capacity throughout a period of years.

We can not arrive at it in dollars and cents, in actual figures. You can not any more in this case than you can in real estate; but that is very strong evidence of the value, in connection with general experience, in increasing or decreasing values over various periods. The evidence would be that its net earning capacity in any event, and I take it that the Supreme Court of the United States has said it in a number of cases with regard to patents, that the net earning capacity or advantage that the purchaser would gain by virtue of the ownership of the patent over what rights or advantage he would have if he did not own the patent, is one of the best evidences of value of the patent as a whole, and also evidence in infringement.

Now, he does not have to bring that to his notice. If he does not find that out, and he is charged with having made a sale contrary to law, he must take notice of it, because those are principles of law that he can not neglect.

All that, of course, is going into a very large discussion, which we will argue at the proper time.

The Court: Yes; you may put it of record.

Mr. Anderson: I offer in evidence statement entitled "Chemical Foundation, Incorporated, adjustment of earnings as shown by Plaintiff's statement from properties assigned to the Chemical Foundation"; and I ask that the same be read in evidence as Plaintiff's Exhibit No. 199.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 199." (*See Exhibits, Vol. I, page 479.*)

THE COURT: We will adjourn now and resume at 8.30 o'clock Standard time, tomorrow morning.

(Whereupon, at 3:30 o'clock P. M., Standard time, adjournment was taken until tomorrow, June 15th, 1923, at 8:30 o'clock A. M., Standard time).

TENTH DAY.

Wilmington, Delaware,
June 15th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

Counsel present as before noted.

TRIAL RESUMED BY THE COURT.

GEORGE W. STORCK, resumed.

DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

Q. 63. Mr. Storck, last evening before adjournment I put into evidence Plaintiff's Exhibit No. 199, being the statement from earnings of royalties on the patents, trade-marks, etc, here involved as therein set forth, I would be glad if you would take that statement and give me the amounts of such earnings from the various sources; that is, the Alien Property contracts, licenses of Federal Trade Commission and earnings of The Chemical Foundation, Incorporated, and the aggregate?

A. The total earnings were $491,571.38 for the Federal Trade Commission; for the Alien Property Custodian the total earnings were $152,801.77, against which we must deduct $30,000, resulting in $122,801.77; The Chemical Foundation $677,511.38, against which me must deduct $2,166.28, or $675,345.10, or a grand total of $1,289,718.25.

MR. KRESEL: A grand total of what?

THE WITNESS: Earned royalties.

Q. 64. The grand total being from those sources?

A. Yes, sir.

Q. 65. Have you made up a statement showing these earnings by periods?

A. Yes, sir.

Q. 66. Will you present it?

A. (Hands counsel.)

THE COURT: Have you another one of those sheets, Colonel Anderson?

MR. ANDERSON: I think we have, yes, sir.

MR. KRESEL: I think, sir, this is a copy. (Handing Court.)

THE WITNFSS: That is a copy.

MR. ANDERSON: I now offer in evidence the statement entitled "In re Chemical Foundation, Consolidated Statement showing Royalties earned or paid to Federal Trade Commission, Alien Property Custodian, and Chemical Foundation, compiled from records prepared by the Federal Trade Commission, Alien Property Custodian, and reports of Auditors for The Chemical Foundation, from December 31, 1917, to December 31, 1922," showing such amounts by periods of six months, with a summary at the bottom thereof, which I ask to be read in evidence as Plaintiff's Exhibit No. 200.

THE COURT: This is subject to the same objection as usual.

MR. KRESEL: Subject to the same objection.

Colonel Anderson, I think you had better point out—

MR. ANDERSON: I am going to have him point out the changes.

MR. KRESEL: This last exhibit does not agree with the other exhibit.

MR. ANDERSON: I am going to have him compare the two and show the differences.

MR. KRESEL: They are entirely different.

THE COURT: Admitted under the same conditions as the preceding document.

Received in evidence and marked "Plaintiff's Exhibit No. 200." (*See Exhibits, Vol. 1, page 481.*)

Q. 67. Now, Mr. Storck, I would thank you if you would take Plaintiff's Exhibit No. 200 and Plaintiff's Exhibit 199. I note that there are some differences in the total. Explain the differences and the reasons therefor.

A. Yes, sir. In Exhibit 200, the totals are shown, that is, for the Federal Trade Commission, the Alien Property Custodian and The Chemical Foundation as being $1,327,335.24, while in Plaintiff's Exhibit No. 199 the totals are shown as $1,289,718.25. The differences are made up as follows:

On The Chemical Foundation we are to deduct $2,166.28, being moneys received by the Foundation on Linz & Mansfield patents not assigned to the Foundation by the Alien Property Custodian. That would bring the total, as I testified before, to $675,345.10.

On the Federal Trade Commission, we are to separate, that is, royalties earned to June 30, 1919. From December, 1917 to December 31, 1918, $98,740.57. From December 31, 1918, to June 30th, an amount of $64,382.13, from which we are to deduct 50 per cent or $32,191.06. The next item is adjustment——

Q. 68. Before you take up the next item, why did you make that division of the 50 per cent?

A. Because the total amount was $64,382.13 and we have agreed to make that on a 50 per cent basis, half.

Q. 69. Half represents what?

A. Prior to April 10, 1919 and the balance after April 10th, subsequent.

Q. 70. In other words, in order to arrive at the approximate date of April 10th, you have made a division based upon fifty-fifty between the period before April 10th and after April 10th?

A. Yes, sir.

Q. 71. But the sum total for the whole period remains the same, does it?

A. Yes, sir.

The next item is adjustment of income on duPont license No. 19, the amount being $61,884.98; the amount applicable to prior period being fifteen twenty-fourths thereof or $38,675.25. That would give us prior to the date of assignment $169,606.86, and subsequent to assignment $321,964.50 or total earnings of $491,571.38, as testified to.

Q. 72. In order to get that clear, when you said "prior to asignment" and "prior period," you mean prior to April 10, 1919 and subsequent to April 10, 1919?

A. Yes, sir.

The next item that we have is, the Alien Property Custodian earned prior to assignment $152,801.77. We are to deduct $30,000, the item of $30,000 being payment against principal on the sale of a contract.

Mr. Anderson: I would state, your Honor, that I have asked for the contract and counsel are getting it for me. I will introduce that contract which will explain more fully the meaning of this evidence.

A. (Continued) The amount shown as earnings from the Alien Property Custodian was $152,801.77. Therefore, by deduction of $30,000, gives $122,801.77.

Q. 73. As shown in Exhibit 199?

A. Yes, sir, shown in Exhibit 199.

Q. 74. With those exceptions—

A. I have one more, sir.

Q. 75. I beg your pardon.

A. The Chemical Foundation, as shown by the Accountant's report, and which I have verified, showed earnings of $677,511.38. We are to deduct the Lindsay-Mansfield patent of $2,166.28, leaving $675,345.10.

Those are the differences between Exhibit 199 and Exhibit 200.

Q. 76. And the methods which you have described are the methods by which those adjustments are arrived at as shown in those differences?

A. Yes, sir.

Q. 77. You spoke of the Accountant's work. Did you refer to the report of Messrs. Pasley & Conroy, accountants of The Chemical Foundation?

A. Yes, sir, Pasley & Conroy, Certified Public Accountants of New York.

Q. 78. You referred to the report of Messrs. Pasley & Conroy, expert accountants, on the books of The Chemical Foundation. Is that report dated February 3, 1923, which I now show you? (Handing to witness.)

A. Yes, sir.

Q. 79. Was that report presented to you by The Chemical Foundation for your checking?

A. It was.

Q. 80. I refer you to Exhibit B, Schedule 1, of that report, entitled "Royalties and license fees summary of detail sheets numbered 1 to 19;" does that give the figures or the several accounts upon which you based your statement a while since that you had taken the figures of The Chemical Foundation from their accounts?

A. Yes, sir, it does.

Q. 81. I notice an item of "Miscellaneous Income" in that statement of $2,456.67; will you check that and find out what that is—that is not royalties, is it?

A. I believe it is, miscellaneous income from royalties. I can tell you though (looking at document). No, it is not, the amount being $2,456.67.

Q. 82. Was that considered by you in making up your statement of royalties?

A. It was.

Q. 83. That should be deducted?

A. That should be deducted.

Q. 84. With that deduction and the explanations which you have made, does this Exhibit B in the report of Pasley & Conroy agree with your figures?

A. Yes, sir.

Mr. Anderson: I offer in evidence Exhibit B, the report of Messrs. Pasley & Conroy, dated February 3, 1923, and noted as Schedule 1, and entitled "Royalties and license fees summary of detail sheets number 1 to 19," to be read as Plaintiff's Exhibit No. 201.

Mr. Kresel: If your Honor please, if Colonel Anderson is willing to put in the whole report, I shall raise no objection to it. I do object, however, to putting in one page out of an accountants' report, especially so in view of the fact that the witness has stated that his computation, in so far as it refers to The Chemical Foundation matter, is based upon this very report.

The Witness: And the checking of the accounts.

Mr. Kresel: Which the witness says he has since checked. Under those circumstances, it seems to me that the whole report should be before the Court. Otherwise the Court can not properly judge of the figures.

The Court: I shall let Colonel Anderson put in such portion of it as he pleases and I shall give you the right now, if there is no objection on the part of Colonel Anderson, to put in the remainder. If not, I shall give you the right to put it in either on the opening of your case or at any time during the progress of your case.

Mr. Anderson: I shall be very glad to have counsel put in the entire report at this time, and have it identified properly, so that it be taken together, except that I have not personally had a chance to go over all this report, and I do not want to introduce it as the plaintiff's evidence, but I am perfectly willing to have it go in with the understanding that this page we introduce, and the remainder of the report is introduced by counsel for defendant.

Mr. Kresel: I shall not at this time interrupt the Colonel's presentation of the case, to put in an exhibit of mine. I understand your Honor to say that I may put it in upon our case.

I have a further suggestion to make, and that is, that the Colonel should at least put in the schedules referred to in that summary, of which it is a summary. You see, Colonel, each one of those items refers to a schedule, sheets 1 to 3, sheet 4. It seems to me that at least you ought to put in the underlying schedules.

Mr. Anderson: One minute. Are you going to put this report in evidence?

Mr. Kresel: I shall probably do so, but I say I do not want to do it now and interrupt your case, stick in one of my exhibits among a mass of your own. If you are satisfied with that one sheet, all right.

The Court: I understand, of course, Mr. Kresel, that my suggestion to you that you put in the remainder does not meet technically the objection made by you.

Mr. Kresel: Yes.

The Court: But I overrule the objection; and in compliance with the rule and in conformity with the rule with respect to admitting evidence that we have adopted for this case.

Mr. Kresel: Yes, sir.

Received in evidence and marked "Plaintiff's Exhibit No. 201." (*See Exhibits, Vol. I, page 483.*)

Mr. Anderson: In view of Mr. Kresel's statement, I will offer this sheet, and if Mr. Kresel should later put in the entire report as to which he exercises his entire discretion, I shall ask that this be not duplicated in the record and just be put in as a part of the whole, that is, the schedule.

The Court: Admitted.

Q. 85. Mr. Storck, you have just presented to me certain cards showing details of royalties earned under licenses issued by the Federal Trade Commission, with certain memoranda attached giving further details of the matter contained on those cards. These cards are O. K'd in purple ink by "W. R. W." Are those cards taken from the records of the Federal Trade Commission?

A. They were, yes, sir.

Q. 86. Have you checked them yourself?

A. I have as to amounts.

Q. 87. Are they correct in accordance with the records of the Federal Trade Commission?

A. They are.

Q. 88. Do the cards so presented give the details of the figures presented on your large Exhibit No. 198 of yesterday?

A. Yes, sir; that is the source from which I complied those exhibits—those cards.

Mr. Kresel: Will you let somebody else count them so that we do not spend time on that, Colonel?

Mr. Anderson: Yes.

Mr. Kresel: Have you offered those, Colonel?

Mr. Anderson: No, I will now offer in evidence 58 cards, with attached typewritten memoranda of detail sheets which have been identified by the witness, from the records of the Federal Trade Commission, and ask that the entire lot be introduced as Exhibit 202, A. to 202—whatever the letter is. Your Honor, I have a long distance call. Mr. Kresel, you may go ahead and Mr. Galloway will take my place while I am gone.

Mr. Kresel: Mr. Galloway, are you all attention?

Mr. Galloway: Just a moment.

Mr. Kresel: I do not want to take you by surprise.

Mr. Galloway: There are 58 items in the last offer.

Mr. Kresel: Before your Honor rules upon the admissibility of these cards, I ask the privilege of asking the witness a few preliminary questions.

The Court: You may proceed.

By Mr. Kresel:

Q. 89. Mr. Storck, these cards that you have presented are not the original cards, are they?

A. They are not.

Q. 90. You have stated that they are certified. Will you indicate to me the certification of these cards?

A. They are O. K.'d, sir. The last initial is Wilson, I think.

Q. 91. No, no. Just read from this card that I present to you what you call the certification?

A. In purple ink it is written here: The amount, "O. K."—M. R. W."

Q. 92. On that particular card the certification consists of the following: "$87,975.39 O. K. M. R. W."

A. That is correct.

Q. 93. Have you ever personally seen the original card?

A. Yes.

Q. 94. Is this card that I now show you an exact copy of the original?

A. No, sir.

Q. 95. As to the typewritten memorandum that is attached to this card, do you know when this memorandum was made?

A. I do not.

Q. 96. Do you know who made it?

A. Only by hearsay.

Q. 97. Do you know whether that is a memorandum compiled from the records of the Federal Trade Commission?

A. I do not believe it is myself.

Mr. Kresel: We object, if your Honor please, to the introduction of these cards upon the ground that they are not properly certified, even admitting as I am not admitting now that certified copies may be introduced in evidence; furthermore, that it now appears from the statement of the witness that they are not copies of the originals, but are copies of portions of the originals and specifically we object to the typewritten memoranda that are attached to each of these cards upon the ground that we have no information as to the source thereof or what they purport to be,

Mr. Galloway: If your Honor please, we do not contend that these are the original records, but quite frankly we did not understand that any question of formality as to the authenticity was to be raised and we therefore ask at this time to withdraw the offer of these cards because we agree quite readily that they are not the original cards here.

I would offer at this time a document which Mr. Kresel requested yesterday should go in as preceding a document which I then was offering and which I stated I would offer at a later time.

Mr. Kresel: I did not request. I merely suggested.

Mr. Galloway: You suggested and I am quite happy to comply with the suggestion.

The Court: Meaning thereby, Mr. Kresel, that this document is open to the same objection as the other?

Mr. Kresel: Yes, your Honor. I simply called attention to the fact that there was a preceding document.

The Court: And that the other document is not complete without this one.

Mr. Kresel: Certainly.

Mr. Galloway: Plaintiff offers in evidence letter dated December 27, 1918 from Frederick Seymour to the Washington Sales Committee of the Alien Property Custodian with reference to Badische Tanning patents and asks that the same may be read in evidence as Plaintiff's Exhibit No. 170 and one half.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 170½." (*See Exhibits, Vol. I, page 435.*)

By Mr. Anderson:

Q. 98. Mr. Storck, will you obtain from the Federal Trade Commission the original cards together with the memoranda attached?

A. No, sir, I have not the originals. These are duplicates.

Q. 99. Will you obtain them and bring them to the Court by next week?

A. Yes, sir.

Q. 100. Have you in your possession photostats of the records of the Sales Manager of the Alien Property Custodian showing the dates of the several payments and the entries upon the books of the Sales Manager representing the amounts paid by The Chemical Foundation for the patents, trade-marks, etc., involved in this suit?

A. Yes, sir.

Q. 101. I hand you six photostats of sheets entitled "Alien Property Custodian, Washington Bureau of Sales, General Ledger" and will ask you if those are photostats of the original ledger records on that subject?

A. They are.

Q. 102. Have you examined the originals yourself and can you identify them?

A. Yes, sir.

Q. 103. They constitute the complete ledger record on that subject of the payments made by The Chemical Foundation to the Alien Property Custodian for these patents, etc.?

A. Yes, sir, up to that date, the final date.

Q. 104. Up to the date shown here—June 10, 1920?

A. Yes, sir.

Q. 105. They cover the transactions from March 19, 1919, to June 10, 1920, and are complete within those dates?

A. Yes, sir.

Mr. Kresel: Colonel Anderson, according to our records this is not complete.

Mr. Anderson: I say for those dates. You are at perfect liberty to put in additional dates.

Mr. Kresel: If your Honor please, in so far as this exhibit now being offered shows the amount of money that was paid the defendant for a portion of these patents, this exhibit does not purport to show all of the payments. We have no objections, but we do object to the comment which appears in the entry of the receipt of the money. Those we say are, if anything, self-serving declarations that we are not bound by.

Mr. Anderson: If your Honor please, I think the record of the Alien Property Custodian at the time of these receipts must always be some evidence of what the entry on the book is as to the receipt, and if there is anything wrong in this entry it is quite competent for counsel to show it was contrary to the fact. But whatever record they made at that time is a record which is relevant in this case. As to its not being complete, I have already asked as to the dates and between what dates it is complete. I am informed by counsel that there were some subsequent payments, but they do not know whether they were made through the Sales Manager or not. This is a transcript of the record of the Sales Manager of the receipt of these moneys. That is all I am going to put in. If there were any other payments, I shall not object to counsel putting them in, showing through what sources they went. I will put them in myself if they want it done to show the total.

THE COURT: May I see the paper, please?

MR. ANDERSON: Yes.

MR. KRESEL: I desire to be heard further on the matter before your Honor rules.

MR. ANDERSON: I was going to say in addition that the record shows Mr. Garvan was both President of this company and the Alien Property Custodian when these records were made up. The Bill in this case avers that the total sum paid under all these assignments, including those made by Mr. Garvan and two made by Colonel Miller, was $271,000.

MR. KRESEL: $271,850.

MR. ANDERSON: $271,850. The answer admits that, so there is no controversy as to the amount paid, but I want to produce this record on the question of dates of payments and times of payments, and I think in the circumstances which I have indicated, the entire record is proper evidence.

MR. KRESEL: You see, your Honor, Colonel Anderson's own statement indicates the vice of putting this in. There is no dispute as to the amount paid, so he does not have to put that in to show that. There can be no dispute as to the dates when paid, and if there is we will concede the dates; but what he is trying to do is bind us by certain statements made in that record; as to the purpose of the payment or the source whence it came, I say that is not binding on us.

I am perfectly willing to agree with the Colonel as to the dates when these payments were made. As to the amount, there is no dispute.

Now, what other purpose can there be of putting this in except to bind us by the entry itself? I say we cannot be bound by it.

Mr. Anderson: I am very much obliged to counsel, but I think I have a right to put in the records of the Sales Manager, showing when the Alien Property Custodian received this money, and the entries on the books of the Sales Manager as to the receipt of this money, because that is the essential of this whole transaction.

Now, your Honor, if there are any mistakes in those entries, in the expressions used or the facts presented by those books, it is quite competent for counsel to introduce evidence to show those transactions; but I have the right to show the contemporaneous records, and put those records in, to show what took place. When I say the right, I mean the right to offer the direct evidence; and especially that is true under the peculiar facts of this case, where it is the Alien Property Custodian's records I present, and he was also the President of the defendant.

Mr. Kresel: Counsel, I contend, your Honor, can not put upon us the burden of this proving an unauthorized statement placed upon the books. I do not care whether they are the books of the Alien Property Custodian or of anybody else. We can not be bound thereby.

The Court: I do not understand the theory upon which you can be bound thereby. The documents can not be received in evidence as indicative of the amounts paid, because that fact is not in issue, the allegation in the Bill having been admitted by the answer, so it is no longer before the Court.

The documents of the plaintiff are not evidence under any statute of the United States. They are not evidence under any statute of the State of Delaware, so that I do not understand the theory upon which they can be admitted save for our broad rule I would reject them. You may put them on the record.

Mr. Anderson: I want to note, in view of your Honor's statement, on the record—I will not reply. There is no use of enlarging the record.

Received in evidence and marked "Plaintiff's Exhibit No. 202." (*See Exhibits, Vol. I, page 484.*)

Mr. Anderson: Reserving the right to recall the witness as indicated yesterday, for the purpose of proving the list of contracts which was to be prepared, giving his testimony after checking the records of the Alien Property Custodian as indicated yesterday, and one or two other matters that were passed by, I will now terminate the direct examination, and will state to counsel that he can either examine now or when the witness is recalled, as he may prefer, with my consent.

Mr. Kresel: I should like, if your Honor please, to ask this witness at this time a few questions. Of course, when he returns, I shall have some other questions.

Mr. Anderson: That is perfectly satisfactory. You may go ahead with your cross-examination now and then continue it later.

CROSS EXAMINATION.

By **Mr. Kresel**:.

XQ. 106. Now, Mr. Storck, I wish you would take, if you have not now before you, the duplicate of that statement—I do not remember the exhibit number.

A. 199.

XQ. 107. You have that?

A. Yes, sir, 199.

XQ. 108. I want to make perfectly clear, if I can, with you, that except for the sum of $675,345.10, which you say according to the books of The Chemical Foundation is the amount received by it as a return upon the patents assigned to it by the Alien Property Custodian, The Chemical Foundation received no other money which you have listed on this exhibit?

A. No, sir.

XQ. 109. That is right, is it not?

A. That is correct.

XQ. 110. So that, of the grand total which you have compiled here, of $1,289,718.25, the only sum received by The Chemical Foundation was this $675,345.10?

A. That is absolutely correct.

XQ. 111. And now, if you will turn please to the statement that refers to the contracts—it is 194—may we have it please? (Handed to counsel.) On that Exhibit 194, you show that according to the books of the Alien Property Custodian, there had been received by that official $152,801.77, as a return upon certain contracts that were subsequently assigned to The Chemical Foundation?

A. That is correct.

XQ. 112. From that sum you have deducted $30,000, leaving a net return on those contracts collected by the Alien Property Custodian, $132,801.70?

A. $122,801.77.

XQ. 113,—114. 122,801.77?

A. Yes, sir.

XQ. 115. This exhibit does not show when these payments were received, does it?

A. It does not.

XQ. 116. No part of that money was received by The Chemical Foundation, was it?

A. Absolutely not.

XQ. 117. And your examination of the books of The Chemical Foundation has disclosed that since the assignment of these contracts by the Alien Property

Custodian to The Chemical Foundation, that corporation has received on these contracts only the sum of $2,442.06?

A. That is right.

XQ. 118. When each of these contracts is to expire, we do not know yet; that is to be put in later?

A. That is true.

XQ. 119. Please take your long exhibit. Have you a copy of it?

A. I have not a copy, but I remember the amounts.

XQ. 120. And this summary with it. This exhibit that we call the long one, is number what?

A. 198-A.

XQ. 121. 198 and 198-A; the Summary is 198-A.

A. That is right.

XQ. 122. Those purport to show what was reported to the Federal Trade Commission as having accrued in the form of royalties under licenses issued to the Federal Trade Commission covering patents that were subsequently assigned by the Alien Property Custodian to The Chemical Foundation?

A. That is correct.

XQ. 123. And those licenses were issued by the Federal Trade Commission before the patents were assigned by the Alien Property Custodian to The Chemical Foundation?

A. That is correct.

XQ. 124. Whether any payments were actually made, you do not know?

A. I do not.

XQ. 125. When the payments were actually made, if made, you do not know?

A. No, sir.

XQ. 126. Your exhibit does not show?

A. No, sir.

XQ. 127. Of course, payments of royalties under licenses issued by the Federal Trade Commission are not made to the Federal Trade Commission, are they?

A. No, they are not.

XQ. 128. So, if you turn to your Exhibit No. 198, this long exhibit, the columns headed "Paid," "Unpaid," and "Over Paid" must be disregarded?

A. No, their cards show that there were payments made, but I can not tell you as to dates.

Mr. Kresel: May I have the cards, please?

Mr. Anderson: They did not go in.

XQ. 129. Do you mean the Federal Trade cards?

A. Yes.

Mr. Kresel: I want to show them to him.

XQ. 130. I want you to show me anything on any of these cards showing that anything was paid?

Mr. Anderson: If your Honor please, I do not think counsel can examine the witness as to those cards if they are not in evidence. I think I stated that I am going to produce the originals on account of his objection to the copies, but I do not think he can examine him on matters not in evidence.

The Court: I will sustain your objection, if you press it, with the inevitable consequences of it.

Mr. Anderson: The inevitable consequences are, of course, that unless we can produce the originals, those payment columns would mean nothing.

Mr. Kresel: That is all I want to get from the witness. It that is conceded, I will stop right here.

Mr. Anderson: We have yesterday agreed to produce the original Alien Property Custodian records showing the dates of these payments and this morning stated, in view of his objection, that we will produce the original cards and original records.

Mr. Kresel: All I want to have the record show, your Honor, is that we are not bound by that part of this exhibit which is now in evidence, which purports to show when the payments were made.

Mr. Anderson: I made the statement yesterday clearly that I would produce this additional evidence and if they are not supported, I will state to the Court that these columns will not be relied upon.

The Court: Do you withdraw the question, Mr. Kresel, then?

Mr. Kresel: I withdraw the question.

XQ. 131. On this Exhibit No. 198, I notice that many of the licenses cover more than one patent?

A. Yes, groups of patents.

XQ. 132. You do not show on this exhibit the date of the expiration of each of those patents, do you?

A. No, sir.

XQ. 133. You do not show on this exhibit which of the patents covered by these licenses had in fact expired prior to the assignment of any patent to The Chemical Foundation?

A. I believe in only one instance.

XQ. 134. In only one instance you do show it?

A. But I do not recall the date. It gives the date of expiration, yes.

XQ. 135. You apparently did not get my question. I am asking you whether this Exhibit 198 shows any of the patents covered by any of the licenses had in fact expired before the assignment of the patents to The Chemical Foundation?

A. No, it does not.

XQ. 136. Did you make any examination to determine whether in fact any of the patents upon which any license was issued, as shown by you in this exhibit, had in fact expired before any assignment to The Chemical Foundation?

A. No, sir.

XQ. 137. Of course you see, do you not, Mr. Storck, that if it be the fact that some particular license covers a patent that had in fact expired before any assignment was made to The Chemical Foundation, the return on such patent can not be the basis of trying to find out what the value of the patent was?

Mr. Anderson: One moment. If your Honor please, I think the Court's function is to determine those questions, sir, and not the witness. That is a pure argument and I most respectfully suggest those are questions I want to argue to the Court and not to the witness, on the whole record, including the terms of the assignments themselves, and the witness is not capable of speaking on this record.

Mr. Kresel: This witness is called as an expert, your Honor, and I am asking him as an accountant whether it is not true that if a return is made on a number of patents, a lump return, and it appears in fact that one or more of the patents covered by the particular license had expired, that the lump return can not be made the basis of a valuation.

Mr. Anderson: That is a question of law and fact, and I do not agree with counsel on the law at all.

Mr. Kresel: I did not expect you to agree with me.

Mr. Anderson: I mean it does not qualify him as an expert on law, and that is a legal question.

Mr. Kresel: I am asking him not as a question of law, I am asking him as a question of accountancy.

Mr. Anderson: The witness as an accountant can speak as to figures and methods of keeping accounts, and matters of that kind; but when it involves a legal question, then he must state the facts, and, I respectfully suggest, give us a right to argue that question before the Court, and not undertake to preclude that question by a conclusive answer on the subject. I must object most earnestly to that examination.

Mr. Kresel: Of course, we are not getting anywhere by the Colonel calling it a question of law and I calling it a question of accountancy. We have got to submit the question to your Honor.

The Court: Is your question merely one of inducement or an ultimate question of fact, taken from your standpoint?

Mr. Kresel: Certainly not an ultimate question of fact. In other words, I am not seeking to have this witness give your Honor expert testimony as to value; I understand perfectly he has not been called for that purpose. I am asking him as a certified public accountant whether the fact that one license covered a number of patents and that one of those patents had in fact expired before there was any conveyance to us, does not make it impossible to use the figure as a basis.

The Court: I think the question you present is one for me to answer and I can answer it that the conclusion which you indicate is inevitable; but that is for me to determine and not for the witness, as I say. So the objection is sustained.

XQ. 138. Mr. Storck, you know that the Federal Trade Commission license contains a clause permitting the licensee to use not only the patents specifically covered by the license but all other enemy-owned patents in the same class?

A. I do not know it.

XQ. 139. You do not know it?

A. No, sir.

XQ. 140. I assumed that you tried to present a fair statement here to the Court?

A. I certainly did.

XQ. 141. I am not assuming that you tried to do anything else. Did you not seek to find out whether the reports made to the Federal Trade Commission as to royalties accrued under licenses were such as covered patents that were conveyed to the Chemical Foundation?

A. Yes.

XQ. 142. That was the only thing that you wanted to show here, was it not?

A. All I wanted to show was the royalties, sir, that had been earned.

XQ. 143. On patents assigned to the Chemical Foundation?

A. To the Chemical Foundation.

XQ. 144. And you recognize, do you not that this statement—not purposely; I do not mean to be at all offensive to you—would be misleading if in fact it showed returns on other patents than those assigned to the Chemical Foundation?

A. It would be, but it does not take any of them in.

XQ. 145. Did you find out whether in fact the returns covered not only under licenses referring to patents conveyed to the Chemical Foundation but also all other patents in the same class owned by alien enemies?

A. That statement only contains patents that were transferred to the Alien Property Custodian.

Mr. Anderson: To the Chemical Foundation.

XQ. 146. To the Chemical Foundation.

A. Pardon that expression. I mean the Chemical Foundation rather than Alien Property Custodian.

XQ. 147. You say it does contain only such. Where did you get the information from?

A. The sources of information were the Alien Property Custodian's Office.

XQ. 148. What did you get out of the Alien Property Custodian's office that you used in compiling this Exhibit 198?

A. Not Exhibit 198; that is from the Federal Trade Commission.

XQ. 149. That is the only thing I am talking about now, so we will disregard the Alien Property Custodian. Now go on and answer the question.

A. That would be the Federal Trade Commission's cards.

XQ. 150. Did you see the licenses issued by the Federal Trade Commission—

A. I did not.

XQ. 151. (Continuing) So as to convince yourself that those covered only patents that were conveyed to the Chemical Foundation?

A. No.

XQ. 152 What record was it that you took, I mean record of the Federal Trade Commission, as a basis of this Exhibit 198?

A. Cards that were furnished by the Federal Trade Commission.

XQ. 153. Just the cards?

A. Yes, sir

XQ. 154. You mean those cards that were offered here by Colonel Anderson?

A. That is true.

XQ. 155. I notice on this Exhibit 198, under license No. 27, which I will ask you to look at, under date of June 28, 1918—do you see?

A. Yes, sir.

XQ. 156. There were six patents given there by number, which were covered by that one license, do you notice that?

A. Yes, sir.

XQ. 157. And after the last number you have the symbol "etc." What does that mean?

A. It means there were others and I could not get them in there.

XQ. 158. Other patents?

A. Yes.

XQ. 159. How do you know that those were patents that had been conveyed to the Chemical Foundation?

A. Because it appears on that card, sir, under that license.

XQ. 160. What appears on the card? Just get the card you are talking about.

A. Surely. It gives all the numbers.

XQ. 161. Just get the particular card that we are talking about now?

> Mr. Anderson: I am afraid that I have to urge my objection again. I do not want to restrict the cross-examination further than necessary but if we are going to produce the original cards, would you not rather ask that question when the original card is here?
>
> Mr. Kresel: No. Perhaps the Colonel misunderstands. I am searching this witness's memory as to the basis for the making up of this statement. He says that he used these very cards. He does not say that he used any other cards. Have I not the right to question him as to the card, whether it is in evidence or not? If he said that he used the original cards, I might see some force in the Colonel's statement and objection.
>
> The Court: The Exhibit No. 198, as I understand it, was put in evidence over your objection, to show the income by way of royalties received

by the Federal Trade Commission upon the patents that were assigned by the Alien Property Custodian to the Chemical Foundation, Incorporated. You are challenging now, by cross-examination, the correctness of that exhibit by pointing out that the licenses issued were for certain patents and for such others—I do not recall the class exactly—but for other patents of the same class. You are trying now to ascertain from this witness whether or not by any chance, this Exhibit 198 does include royalties received from patents other than those assigned by the Alien Property Custodian to the Chemical Foundation?

Mr. Kresel: To the Chemic*al* Foundation.

The Court: This witness has indicated that it does not, and that he got his information from certain cards, and you are asking him to refresh his recollection from those cards.

Mr. Kresel: And to point out to me what there is on the card to substantiate the statement that he has made.

Mr. Anderson: That last part can not go in without putting in the card.

The Court: You can have the cards marked for identification if you refuse to deliver the cards to Mr. Kresel.

Mr. Kresel: I do not understand that the Colonel takes that position.

The Court: You can have the cards marked for identification, or Mr. Kresel can put it in. You can go ahead.

Mr. Anderson: Are you ready, Mr. Kresel?

Mr. Kresel: Certainly.

Mr. Anderson: I understand your Honor overrules the objection?

The Court: If you mean to say that he can not use these cards, and you are willing to produce them, I will overrule that. If you mean to say that the cards must speak for themselves, and they are not put in, this evidence will go out, but I do hold now that this witness may use these cards to refresh his recollection and to indicate thereon the data which he used in compiling this report or this Exhibit 198.

Mr. Anderson: Then, in order to get the record clear, if the witness can state the basis of his information from the cards, Mr. Kresel can cross-examine on the cards, but we can not put cards in.

The Court: You have a different state of facts here but I will have to rule on that after you put the card in if it becomes proper to do so. There has been no offer which has been passed on by me so far.

Mr. Anderson: There was an offer, and he objected upon the ground that it was secondary.

Mr. Kresel: That was not upon my cross-examination. That was upon my direct.

Mr. Anderson: I will let it go for the present.

Mr. Kresel: We have lost sight of the question, I think now. (XQ. 161 repeated as recorded.)

The Witness: You wanted to know why I had only put these six patent numbers in, I mean right behind.

XQ. 163. That was not the question. We had passed that. Your answer to that was, that there were a lot of patent numbers, and you did not want to put them all in?

A. Yes, that is it.

XQ. 164. My next question was this: What information you had from which you were enabled to say in your testimony and in this exhibit that the patents on which these licenses were issued were patents that were conveyed to The Chemical Foundation, and you said, a card?

A. Yes, sir.

XQ. 165. Now, I want you to show me the card?

A. I have the card here.

XQ. 166. Let me see it, please? (Witness hands card to counsel.)

THE COURT: Do you want the card marked for identification?

MR. KRESEL: In just a minute, your Honor.

XQ. 167. Look at that card again, and I will ask you again whether there is anything on that card mentioning The Chemical Foundation in any way?

A. No, and not any of the others either.

XQ. 168. Now, then, what did you mean when you said that the card was the basis for your statement?

A. The Federal Trade Commission states to me that these are—

XQ. 169. Now, I do not want you to give me any conversation.

A. All right, sir.

XQ. 170. You said the card showed it to you. You now say it does not, do you not?

A. That does not show Chemical Foundation, no.

XQ. 171. That is all. Now, let me have it, please?

A. Sure. (Handing.)

MR. KRESEL: Now, I want to have that card marked for identification.

THE COURT: Let it be so marked.

Marked "Defendant's Exhibit A for Identification."

XQ. 172. Mr. Storck, again referring to Exhibit 198, is it not the fact that that exhibit shows that returns reported to the Federal Trade Commission were lump returns under each license, even though the license covered several patents?

A. That is true.

XQ. 173. For instance, this one license No. 27

that I called your attention to, according to Exhibit 198, covered six patents, the numbers of which you have inserted in your exhibit, and a lot of others, the numbers of which you did not put in.

A. Yes, sir.

XQ. 174. Have you shown on that exhibit or in any exhibit that you have prepared and put in here how much of that lump return referred to each patent?

A. Oh, no.

XQ. 175. I notice on Exhibit 198 the word "out" in the first column. What is the significance of that?

A. It means that, for instance, license 25 is Chemical Foundation; License 26 was not Chemical Foundation, and therefore it is marked "out."

XQ. 176. What you mean is that where you have the word "out" it is a license that you did not take into consideration in that exhibit?

A. Surely; because it is not Chemical Foundation.

Mr. Kresel: I ask that the last part of it, that "it is not Chemical Foundation," be stricken out because the witness has already shown that he knows nothing about it.

The Court: What is your motion?

Mr. Kresel: I move to strike out his comment that it was not Chemical Foundation, the witness having already shown that he had no information upon the subject whatsoever.

Mr. Anderson: If your Honor please, I do not think that is a fair statement of the witness's position. Mr. Kresel has only asked the witness whether a certain card identified these patents as relating to The Chemical Foundation. The witness started to explain his information from the records of The Chemical Foundation as to the cards, and he could have explained how he identified them. He only was allowed to answer that portion of the question. Now he is asked why he marked out a certain license on that paper. He is entitled to make a full explanation of why he marks "out." In other words, he cannot stop him in the middle of a sentence. If he can show that he did not have any information as to what was assigned to The Chemical Foundation and what was not, then that might be a different question. But he has not shown that. He has merely shown that on a certain card, there was nothing on that card to show Chemical Foundation. But the witness showed in his direct examination and has shown in his cross-examination that he made a careful examination of the records of the Federal Trade Commission and of the Alien Property Custodian for the purpose of bringing this information before the Court in this suit, in which suit all these patents are numbered and designated.

Mr. Kresel: If your Honor please, I have not asked the witness why. I am always careful to ask no witness on cross-examination the question why, because I know that opens the whole world to him. But I did ask him, and my question was this, what is the significance of the word "out."

The Court: Yes.

Mr. Kresel: Now, he states that that means that he did not take that particular numbered license into consideration, and his subsequent comment as to the reason why he did not do it, I did not ask him for, and I do not want him to put that in. I am not bound by it.

The Court: It is that portion that you move to strike out?

Mr. Kresel: Exactly, your Honor.

The Court: I did not understand that you addressed yourself to that particular matter, Colonel Anderson, did you?

Mr. Anderson: I do; yes, sir. I object to it being stricken out because I think the witness is entitled not to be left with his answer suspended in mid-air and a portion stricken out.

The Court: This is cross-examination. If you want to bring that out in direct, Colonel Anderson, you may put that question at the proper time. But it is not responsive; it is a voluntary statement not called for by the cross-examining counsel. You do not contend that a voluntary statement should stay in, do you?

Mr. Anderson: Not a voluntary statement, but I think a reasonable explanation of what he did is properly within the bounds of cross-examination.

The Court: I think not. It will go out. If you want to bring that out, you may do so by recalling him on re-direct.

XQ. 177. Your Exhibit 198 does not show the rate of royalty under these licenses issued by the Federal Trade Commission?

A. No, sir.

XQ. 178. You know, do you not, that the rate of royalty differed?

A. It did.

XQ. 179. In some licenses it was one amount and in other licenses it was a different amount?

A. Yes, sir.

XQ. 180. The figures that you have given, that you say you obtained from the records of The Chemical Foundation—do they include returns to The Chemical Foundation not only on patents, but also on contracts, copyrights and trademarks assigned to it by the Alien Property Custodian?

A. They do, sir.

XQ. 181. And your compilations and the figures that you have presented here cover the period from December, 1917, to December 31, 1922?

A. Yes, sir.

XQ. 182. In your Exhibit No. 200, under the heading "Period Covered," you give as the first item December 31, 1917?

A. Yes.

XQ. 183. The period covered really antedates December 31, 1917, does it not?

A. Yes, sir.

XQ. 184. How far back of that date do these figures that you have compiled cover?

A. Some as far back as 1916.

XQ. 185. What month in 1916?

A. That I do not recall, sir; but it is to December 31, 1917.

XQ. 186. I quite understand that, but I am trying to find out when you started?

A. I took from the very first that they had there, but I do not recall the date.

XQ. 187. That was some time in 1916?

A. Yes, sir.

XQ. 188. And the figures that you have presented cover the total for the entire period beginning 1916 some time to December 31, 1922?

A. Yes, sir; that is right.

XQ. 189. Confining ourselves to the records of The Chemical Foundation, will you tell us how much was received by it on patents from April 10, 1919, to December 31, 1922?

A. May I have Pasley & Conroy's account?

XQ. 190. I am handing the witness a book containing Plaintiff's Exhibit No. 201. (Your Honor will recall there is only one page in there that is an exhibit.) Now, have you the question?

A. Yes, sir.

XQ. 191. Will you answer it?

Mr. Anderson: May I have the question read?

(XQ. 199 repeated as recorded above.)

Mr. Anderson: If your Honor please, I have only introduced in evidence the one exhibit from the records of The Chemical Foundation and counsel have not put the remainder in. I do not know the purpose of this question.

Mr. Kresel: I will tell you the purpose. It is no secret. I want to get on the record how much of this total that the witness has testified was received by The Chemical Foundation was received by it on patents, how much on trademarks, how much on copyrights, how much on contracts; that is all I want. If he wants to use that to refresh his recollection, there certainly can be no objection.

The Court: Do you withdraw your objection, Colonel Anderson?

Mr. Anderson: Yes, sir. If that is the limit of the purpose, I have no desire to object to its going in.

Mr. Kresel: Yes, that is the entire purpose.

A. (To Q. 189) I am reading from Exhibit B, Schedule 1 of Plaintiff's Exhibit 201, being Pasley & Conroy's report, royalties and license fees, summary of detail sheets Nos. 1 to 19.

XQ. 192. Will you stop there a minute, please. I have got to interrupt you. I do not want Pasley & Conroy's statement. I want your testimony. You understand?

A. Yes, sir.

XQ. 193. If you want to adopt Pasley & Conroy's report, that is up to you?

A. I am perfectly willing to do that.

XQ. 194. That is all right, but I am asking you for your testimony. I want to know what your examination of the books of this defendant shows, you see?

A. I have vertified these—

Mr. Anderson: I do not want to interrupt, but I do think that this fact should be brought to your Honor's attention. The witness testified that his figures of The Chemical Foundation were based upon a report made by the expert accountants of The Chemical Foundation, being reputable accountants, which report was furnished to him by the officers of The Chemical Foundation for making up his figures. We accepted that.

The Court: You mean that he stated in direct examination that he has no information pertaining to their books except from what is disclosed by this report?

Mr. Kresel: Why, he expressly testified, your Honor, that he made an examination of the books and records of The Chemical Foundation.

The Witness: I certainly did, sir.

Mr. Anderson: I had understood, and I think I must state this, that we would accept the report of these expert accountants of The Chemical Foundation as an examination of the books, which our accountants could check, and that would be accepted in court as an examination of the books. Now, if counsel propose to go back into the books of The Chemical Foundation, then I ask for the production of the books, and I will have them examined from the beginning and checked. I understood that we were proceeding on an arrangement that the report would be accepted as an examination of the books of The Chemical Foundation.

Mr. Kresel: Colonel Anderson does not misunderstand me, and, Colonel, any books you want produced you can say so and we will produce them.

You do not have to threaten me with that. We will produce them.

Mr. Anderson: I am not threatening.

Mr. Kresel: I understood this witness to say upon his direct that he had made an examination of the books and accounts of The Chemical Foundation. I understand him now to verify that. If there is any doubt about that, I ask leave now to ask him the question.

By Mr. Kresel:

XQ. 195. Mr. Storck, is it not a fact that you made an examination of the books and records of The Chemical Foundation and were working at it for a period of six weeks?

A. Not me, sir; no, sir.

XQ. 196. Who did, for the Government?

A. The Department of Justice did.

XQ. 197. And when?

A. Last year.

XQ. 198. And were you not personally in charge of that examination?

A. I was for several days.

XQ. 199. And only as late as last Monday, didn't you go to the office of The Chemical Foundation and make some examination?

A. Yes, I certainly did.

XQ. 200. When you said yesterday in answer to the direct examination that you had made an examination of The Chemical Foundation books, you meant just that, did you not?

A. I meant that I had taken the figures of Pasley & Conroy's report and verified them.

XQ. 201. Very well. And in verifying them, you looked at the original books, did you not?

A. Surely.

The Court: Now, then, what is the question?

Mr. Kresel: The question is, how much of the total that he has testified was received by The Chemical Foundation was received by it in return on patents.

THE COURT: Is there objection there, Colonel Anderson?

MR. ANDERSON: There is no objection to that question, but I would like now to have a distinct understanding from counsel as to whether he is going to object to this evidence on the ground that it is not the best evidence.

MR. KRESEL: No, sir. I have so stipulated.

MR. ANDERSON: Either on our side or their side. I have been proceeding on the theory here—

THE COURT: Either I am mistaken as to this or you are, Colonel Anderson. It is purely a question of getting an understanding of Mr. Kresel's position. He is trying to cross-examine this witness, and that alone, as I understand it, to get to the accuracy of the exhibits which have been put in by you as having been compiled and made up by this witness. As I understand the question, it is not directed at all to challenging the stipulation which you have now disclosed to me.

MR. KRESEL: No, sir. I have stipulated here that I shall not object to the introduction of these papers upon the ground that they are not the formal and proper proof, and I think I have observed that stipulation.

MR. ANDERSON: What I meant was this, and I do not want to do Mr. Kresel an injustice, but very often we naturally misunderstand each other. I intended to wait until the conclusion to say this, but the questions which he has directed to this witness would, if he insisted upon it and made it the subject of objection, entirely destroy all these statements because of the fact that they are not the best evidence. You have to prove them formally.

I did not imagine for a moment or suggest that Mr. Kresel was not keeping and going to keep any agreement between us fully, but simply as to whether I understood him. We might have misunderstood each other in the best of faith, and now is the time to find out. Therefore, I merely want to make it very clear on the record that this matter, if made the subject of objection of formal character, might throw out this evidence.

Mr. Kresel: Not at all. It was not intended to go to that point, and I repeat I raise no objection to these compilations upon the ground that they are not the best evidence.

Mr. Anderson: If they are going to the question of testing the witness's knowledge or the correctness of these things, assuming them to be formally proved, of course I am not going to object to it.

Mr. Kresel: You see, the point I have, Colonel, is that this witness said Pasley & Conroy's report shows that. That is not what I want. I want his testimony, and he shows he can give it, because he checked it back to the books.

Mr. Anderson: Quite willing to have you do that.

XQ. 202. Now, please give us the answer to the question, how much did they receive on patents?

A. For the licenses of patents for manufactured products they received in license fees $28,200, and total royalties down to December 31, 1922, of $267,973.02.

XQ. 203. The total of those two items is the total of all returns received by The Chemical Foundation according to their books during this period on patents?

A. Right.

XQ. 204. Now, tell me how much according to their books they received on these contracts so assigned?

A. On contracts acquired from the inception of the company to December 31, 1922, $2,442.06.

XQ. 205. How much did they receive on copyrights?

A. It is not stated here; it is not stated.

XQ. 206. Do you know—

A. I do not.

XQ. 207. (Continuing) whether they received anything on copyrights?

A. No, sir.

XQ. 208. You do not know, or they did not receive anything?

A. I say I do not know. It does not show.

XQ. 209. In your examination of the books and records of The Chemical Foundation did you not try to find out whether those books showed that The Chemical Foundation had received anything on such copyrights?

A. No, I did not go particularly into the copyrights. I went into trademarks and everything that represented royalties.

XQ. 210. Will you say whether their books show that they received anything on trademarks?

A. Yes, sir.

XQ. 211. How much on trademarks?

A. Down to December 31st—that is, from the inception of the company?

XQ. 212. Yes, down to December 31, 1922?

A. $8,596.76.

XQ. 213. Mr. Storck, in your examination of the Federal Trade Commission you said, did you not, that a license had been issued by the Federal Trade Commission on what are known as the Haber patents?

A. I would not know, sir.

XQ. 214. What?

A. I would not know the names of those patents.

XQ. 215. You would not know them?

A. No, sir.

XQ. 216. I am going to ask you when you make this further examination of the books and records of the Federal Trade Commission to pay particular attention to the license issued by the Federal Trade Commission on the Haber patents, because I shall ask you about that when you resume the witness stand?

A. Would you give me the numbers of the patents, Mr. Kresel?

XQ. 217. Yes. I will be very glad to do that. Now, when you made the examination of the books and records of The Chemical Foundation, did you get everything you asked for?

A. I certainly did.

XQ. 218. They gave you every facility to make the examination?

A. They did.

XQ. 219. You made such copies of their records of books as you desired?

A. I did, sir.

XQ. 220. Did you find whether Mr. Francis P. Garvan, as president, received any salary?

Mr. Anderson: I object, if your Honor please. That is not within the direct examination. We are not going to expenses of The Chemical Foundation, and that is entirely outside of the direct examination. That is a question for counsel to prove by his own witnesses if he puts in his records. The best evidence of what Mr. Francis P. Garvan received is certainly the testimony of himself and the original records of his receipts, and not the information of this witness, except from what he may get from their books, which would be purely a declaration in their own interest.

Mr. Kresel: I desire to be heard on that, your Honor. Of course, the Government is not going into the question of our expense. They are not doing that because in their view that is not part of their case, but your Honor would certainly want to know what expense was entailed in administering these patents, because if this evidence that is being placed before your Honor of our receipts is given only for the purpose of having your Honor being in a position of determining the value of these patents, there can be no such determination unless the Court has before it the evidence of what expense there was in connection therewith.

Now, have I not a right upon cross-examination of their own witness, to bring out whatever I can with reference to those expenditures? Of course, he has no personal knowledge of them, but I am asking him what he saw on our books, that he says he examined for the Government; and I claim upon cross-examination that I have an absolute right to have this witness tell me everything he saw in those books, that the Court will say is material. And I am reminded of the fact that the Government alleges in its Bill that we are wasting its assets and that the Court will not be in a position to enforce a judgment against us.

What better or more credible witness does the Government want upon those facts as disclosed by our books than their own witness, their own accountant? I have a right to show just what our books show, by this man; and I propose to do it unless the Court stops me.

Mr. Anderson: If your Honor please, I do not deny the right of counsel to show what their expenses are. I do not deny the right of counsel to show whether they are wasting or conserving their assets at all. I do not question that. But I do deny the right of counsel to interrogate witnesses that I may put on the stand for a specific and limited purpose, and take them outside on cross-examination and try to make their case when the Government is presenting its case. If they want to call this witness as their own witness, at a later date, he will be available. If they want to put on witnesses to prove their expenses, or to prove their conservative management, if such exists, they are at perfect liberty to do so, and reply to the allegations of the Bill all they want; but my objection goes absolutely to the point that counsel cannot take a witness put on the stand for a specific purpose, and go outside and undertake to prove their own case by what this witness may have found on their own books, relating to something as to which he was not examined on direct examination, bringing in their books in their own favor apparently by a Government witness on a matter on which he never investigated.

Mr. Kresel: If your Honor please, this witness has undertaken to testify as to what our books show was our income. It is my claim that I have a right to show by the same witness, and upon cross-examination of that witness, to offset any effect that his direct testimony may have, what our expenditures were, according to the same source of information from which he derived his information as to our income.

Now, there cannot be any question about that, and I have a right to do it upon cross-examining this witness.

The Court: I think the extent to which you can go is to inquire as to whether this statement introduced in evidence purports to negative the fact that The Chemical Foundation had any expense. It purports on its face, as I understand it, merely to show the income. There might arise from that an implication that there were no expenses and that this was consequently net income. Whether it is gross income or net income you may infer.

Mr. Kresel: Does not that appear on the exhibit?

Mr. Andrson: You can ask that question now. I have no objection in the world to your asking that question now.

Mr. Kresel: No; I am not going to be confined to one question about it.

The Court: You may inquire as to whether this is net income or gross income. There, I think, in cross-examination, you will have to stop. If this is merely shown to be gross income, the remainder of your argument goes to the value of these exhibits.

XQ. 221. Mr. Storck, the amount of $675,345:10, which, according to your Exhibit No. 199, was the income of The Chemical Foundation from its inception to December 31, 1922, on properties assigned to it by the Alien Property Custodian, was that gross income or was that net income?

A. That was gross income.

XQ. 222. In other words, you have not deducted from their income anything for expenses?

A. I have not, sir; no, sir.

XQ. 223. Of course, they have had expenses, according to the books, as you saw them?

Mr. Anderson: I object to that, if your Honor pleases.

The Court: Do you press the question?

Mr. Kresel: No. No, I do not press the question.

XQ. 224. Can you tell us what the books showed was the capital of this Company?

A. Yes, sir.

Mr. Anderson: I have to make the same objection, sir. The records disclose what the capital was, I think, in other connections.

Mr. Kresel: No, it does not.

Mr. Anderson: Then I object to it because that is a matter that was not taken up at all on direct examination.

The Court: This question is not strictly cross-examination.

Mr. Kresel: Will you not permit me, your Honor, at this time bowing entirely to your Honor's ruling, that this is not cross-examination, to make this witness my own for the purpose?

The Court: Not over the objection of the Attorney General.

Mr. Kresel: Do you object to that, Colonel Anderson?

Mr. Anderson: I am afraid I have to, because I do not want to get into that question at the present time.

Mr. Kresel: In other words, having shown that we have received $675,000, you will not now let me show what our expenses have been, is that it?

Mr. Anderson: I must say that if we are going into that we will be in this matter for a very long time. I think that is affirmative defense, and I must confine myself to that.

Mr. Kresel: But your Honor's ruling is that I cannot do it over objection?

The Court: On the ground that it is not in cross-examination. That they have undertaken to show your gross income only, and have not attempted in any way to show your net income.

Mr. Kresel: Well, now, let me ask this:

XQ. 225. You have been testifying here about receipts on patents. Will you tell us how many patents you referred to that these receipts apply to?

A. I cannot tell you that, Mr. Kresel.

XQ. 226. Did the books not show it?

A. I did not count the patents.

XQ. 227. Did not the books that you examined, of The Chemical Foundation, show on how many patents they received this return?

A. I suppose it did. I cannot tell you directly, though.

XQ. 228. Did not the books show how many patents had been assigned to The Chemical Foundation by the Alien Property Custodian?

A. Yes, sir.

XQ. 229. Will you tell us how many, according to their books?

A. Off-handedly, I would say between forty-five and forty-seven hundred.

XQ. 230. I do not want to know what you did off-handedly. You are an expert accountant, and I assume that you are exact in your statements?

A. Exactly.

XQ. 231. Do you not know how many?

A. I did not count the patents; no, sir.

XQ. 232. I did not ask you whether you counted the patents. Do not misunderstand me.

A. Yes.

XQ. 233. There was a record on their books, was there not, of what patents they had received?

A. Certainly.

XQ. 234. All right. Now, I want to know how many there were?

A. I do not know.

XQ. 235. Their books showed, did they not, the number of each patent on which a return was received?

A. Yes, sir.

XQ. 236. All right; now, tell me on how many patents they had any receipts at all?

A. I would have to make an analysis of that.

XQ. 237. You did not do that

A. No, sir; certainly not.

XQ. 238. Their books showed how many patents had expired since April 10, 1919, and to December 31, 1922, did they not?

A. Yes, sir.

XQ. 239. How many expired?

A. I do not know.

MR. KRESEL: That is all.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 240. Mr. Storck, you were asked whether your exhibit, 197 I think it was, showed when the money was paid to the Alien Property Custodian, that is the first, the Alien Property Custodian's money?

A. Yes, sir.

RDQ. 241. Did you say that it did not show the dates of payments?

A. It does not show that.

RDQ. 242. The dates of actual payments?

A. No, sir.

RDQ. 243. It shows the periods between which the payments were made?

A. Yes, sir.

RDQ. 244. Now, I will ask you to get from the records of the Alien Property Custodian the dates of payment, if you can do it. Can you do that?

A. Yes, sir; I have asked for that already and they are here, but I have not had a chance to go over them.

RDQ. 245. But you will make that up and submit a copy of the statement and also the records to counse on the other side, will you?

A. Yes, sir.

RDQ. 246. And be prepared to testify?

A. Yes, sir; and arrange with their accountants.

RDQ. 247. You were asked when the payment under the Federal Trade Commission licenses wer made to the Alien Property Custodian. As I understand, the amounts accruing under those licenses ar paid direct to the Alien Property Custodian, are they

A. Yes, sir.

RDQ. 248. And you included those payments o your statement, Exhibit 198, but I believe testifie yesterday that you had not checked the actual date of payment on the books of the Alien Property Custodian?

A. No, sir; I have not. That is also arranged for

RDQ. 249. You will check that?

A. Yes, sir.

RDQ. 250. And furnish a copy of the information together with the records, the original records, to th accountant representing the defendant here, and b prepared to testify?

A. It is so understood; yes, sir.

> Mr. Kresel: It is my understanding, Colonel that our accountant is to have the privilege o seeing the record.
>
> Mr. Anderson: Oh, absolutely; and if there are any of the records that are not here, that yo want to see, we will either have them brought her or you will have free access to them in Washington, if they are too voluminous. There is no limi to that agreement.

RDQ. 251. You spoke of cards accompanyin memoranda in the records of the Alien Property Custodian, one of which was identified, and questions aske you as to the same. The originals of those cards an memoranda are in the office of the Federal Trade Commission, I should have said; is that true?

A. That is correct; yes, sir.

RDQ. 252. Will you get those originals here and have copies made, furnishing the same, together with the originals, to the accountants for the defendant, to the end that they may be verified?

A. Do you mean have copies made of them again?

RDQ. 253. No, the present copies or other copies, see that they conform absolutely to the originals, to the end that we won't have to introduce the originals of Government records:

A. Yes, sir.

RDQ. 254. And furnishing them to the other side before you testify again, to the end that that information may be put in.

A. I will do that.

Mr. Kresel: Colonel, we desire the privilege of seeing the originals.

Mr. Anderson: Oh, you will see the originals, and the originals, together with the copies, will be furnished you; and if the record is not complete to your satisfaction, we will arrange for your full access to the original records in Washington before we put in the proof.

RDQ. 255. Does your Exhibit 198 show the dates of issue of the various patents or licenses, as shown on that exhibit?

Mr. Kresel: Is it the license under the patents you are talking about?

Mr. Anderson: I am talking about the issue, the date of issue of the original patents or the licenses.

A. It does not.

RDQ. 256. It shows the date of issue of the license?

A. No; the date of the issue of the license is not shown. All I have is the date it was assigned to T Chemical Foundation, but not the date of issue anything else.

RDQ. 257. On your statement of accounts th are the amounts accrued under the Federal Trade Co mission licenses?

A. Not on 198. It would be the Alien Prope Custodian.

RDQ. 258. Is it 198. I thought it was 199.

A. 199, I believe, would be the Federal Tra Commission exhibit.

RDQ. 259. That large exhibit?

A. The large one.

RDQ. 260. Does that show the date of the licens

A. No, sir.

RDQ. 261. Then I will ask you to obtain a bring here the original licenses.

Mr. Anderson: Are they in your possessio

Mr. Kresel: No, sir.

RDQ. 262. They are in the possession of t Federal Trade Commission?

A. Yes, sir.

RDQ. 263. Copies of them, at least. Bring t originals here, Mr. Storck, by next week, if you c do it, will you?

A. I do not believe I can get the originals. I c get the copies.

Mr. Anderson: The originals would be in t hands of the licensees.

Mr. Kresel: Get the copy, if you will, whi the Federal Trade Commission has.

The Witness: I will do that.

Mr. Kresel: I will take their copy if th say it is a copy.

The Witness: I will do that.

Mr. Anderson: That is what we want. W will get that in. Mr. Kresel, I will ask you

you are willing to agree to this, and if not, I will strike it off the record so there is no reference to it. I ask you if you are willing to agree that The Chemical Foundation have instituted suits against the Treasurer of the United States and others to recover the royalties accrued under the Federal Trade Commission licenses, and will you furnish me a statement of what those suits are and what licenses they cover, together with a copy of one bill which I can say is identical with the others—was it, I mean in the essential features?

Mr. Kresel: Similar.

Mr. Anderson: Yes, in essential features.

Mr. Kresel: Colonel, I am very glad that you made this suggestion, but, of course, if we give the Court a peep into this we are going to let the Court see the whole thing.

Mr. Anderson: Oh, of course.

Mr. Kresel: All right. There are not only suits by us, but suits by the Alien for the same money, and the Government stands in the middle between them and says that it owns the money. I am perfectly willing that the Court should know all about it, and I will co-operate with you in arranging for a stipulation such as you suggest, and a sample complaint by all the complainants in all the suits.

Mr. Anderson: Very good. Then we will try to have that arranged out of court instead of stipulating it here now. I don't think we could now.

Mr. Kresel: Yes.

Mr. Anderson: So I won't examine on that question at all.

Mr. Kresel: You could not do that now.

RDQ. 264. Mr. Kresel asked you as to the earnings or receipts of The Chemical Foundation from these royalties since the assignment of the patents. You gave some of the items—that is, trademarks—and you said, I think, you found nothing as to copyrights—

Mr. Kresel: And he gave the patents, too.

Mr. Anderson: And he gave the patents.

RDQ. 264. (Continued) Did the items which you then gave cover all the items making up the sum total, the net total which you gave?

A. No, sir.

RDQ. 265. Would you give them all?

A. Surely.

RDQ. 266. Let us get them all together.

A. The ones that were omitted were Imported Products under War Trade Board licenses, the amount being $154,539.02; miscellaneous income, $2,456.67; and license fee of $30,900.

RDQ. 267. The miscellaneous income, I understand you to say, did not relate to the royalties?

A. It relates to royalties, but it is a big and long number of schedules in here. It is carried on this summary of detail royalties and licenses, so it must relate to royalties.

Mr. Anderson: Won't you agree that that was in settlement of certain infringement controversy?

Mr. Kresel: Colonel, I am willing to take your statement as to that.

Mr. Anderson: Will you agree that that item was an adjustment of miscellaneous infringement matters?

Mr. Kresel: Not all. There were others. It is a miscellaneous account of odds and ends.

Mr. Anderson: That is all right.

The Witness: Well, that would bring up the total, sir.

RDQ. 268. That would bring up the total?

A. Yes, sir.

RDQ. 269. The items into which you have divided the earnings of the Chemical Foundation are revenues from royalties under patents—

A. Under manufactured products—imported products, contracts acquired, licenses, trademarks, imported products under War Trade Board licenses and miscellaneous income.

RDQ. 270. And those items together make up the total which you have already given?

A. Yes, sir.

Mr. Anderson: Of course, we will have to call him both for re-direct and cross when we get this additional data. With that understanding I will let the witness stand aside.

The Court: Any further cross now?

Mr. Kresel: No, your Honor.

CHARLES ROOME PARMELE.

Charles Roome Parmele, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Please state your name and place of residence?

A. Charles Roome Parmele, New Brighton, Staten Island, New York.

Q. 2. What is your business, Mr. Parmele?

A. Manufacturing chemist.

Q. 3. Are you the officer of any manufacturing chemical corporation, and, if so, state what?

A. President of the Chinosol Company and president of the Parmele Pharmacal Company.

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Q. 4. Where are those corporations loc Where is their business?

A. 47 West Street, New York.

Q. 5. That is your office there, is it not?

A. Yes, sir.

Q. 6. State generally what the business of corporations is?

A. I manufacture pharmaceutical prepara which are sold through the medical profession.

Q. 7. Yesterday there was put in evidence several letters between the Alien Property Custo and The Chemical Foundation relating to Patent 906,918 issued December 15, 1908, originally take by Leopold Ostermann, of Germany. Are you your company the owner of that patent; if so, was it acquired?

Mr. Kresel: In the first place, we object the ground that that is calling for the conclu of this witness; but, aside from that, your H will recall that there was considerable corresp ence put in yesterday over our objection bea upon this gentleman's claim. I think your H will recall that it appeared from that evid that the patent in question, though originally veyed to The Chemical Foundation, was give that they finally wrote this gentleman that had no claim on it and gave it up. Of cou I do not know what more this gentleman testify, nor what more the Government desire prove by him, but as to this particular ques inasmuch as there is a question of owners this witness ought not to be permitted to f close the Court by his opinion as to whethe was the owner. If he became the owner, he it by assignment, and that assignment will s for itself, or, if he was the inventor, the pa was issued to him, and that will speak for its

Mr. Anderson: So far as the first point made by counsel is concerned, I do not want to review the issues of this case to show that this evidence is relevant on at least three issues, and I take it under the rule under which the Court is operating we do not want to go into a discussion of that if I make that statement to the Court. On the second point, if the counsel urges his objection, we must produce the original papers. I am willing to concede that the question cannot be answered without the production of the original papers. Then I would have to have the witness stand aside and have him produce the original papers if he has not got them—that is, from the Patent Office, or copies, which I understand they will permit to go in, and assignments. Is that true? In other words, under our stipulation you will allow copies of the Patent Office to go in. We have agreed on that. Also copies of the assignments from the Patent Office?

Mr. Kresel: We did not agree on the specific thing, but I will not object to the copies if you say they are correct copies.

Mr. Anderson: If that objection is urged, of course I will get those original papers.

Mr. Kresel: I do urge the objection.

Mr. Anderson: Would you be willing to let this witness testify on my assurance that the copies of those papers will be produced, and, if they are not produced, the witness's evidence may be stricken out?

Mr. Kresel: Yes, you may do that.

Mr. Anderson: Then so far as that is concerned, we will proceed in that way. I do not want to recall him.

Q. 8. Subject to the further proof with respect to your ownership of this patent, the number of which

I have referred to, I would be very glad if you would state when or about when it was acquired by you, and then I will ask you to produce an assignment.

Mr. Kresel: We object to that, if your Honor please, upon the ground that it is immaterial and irrelevant when this gentleman obtained the patent.

Mr. Anderson: If your Honor please, I think I might just as well make the relevancy of this evidence perfectly clear, and if the technical objection is insisted upon, I will call the witness again. The defendant here contends two things: First, that they were not dealing with patents which were in active use at that time in American industry.

Mr. Kresel: Where is there any such claim?

Mr. Anderson: I said in active use at that time in American industry. I have read into the record any amount of evidence to the effect that this applied only to patents which were not in use in American industry. They were lying idle in the Patent Office. Second, that the great aim and purpose of the Dyes Institute in acquiring these patents—

Mr. Kresel: You do not mean the Dyes Institute.

Mr. Anderson: Well, The Chemical Foundation, all the stock of which was owned by the Dyes Institute, that has been proven—

Mr. Kresel: That is not quite right, either.

Mr. Anderson: (Continuing) To acquire these patents was to protect American industry from German invasion. I will put it that way. It is averred in the answer in this case that in every instance where it has been found that patents were owned by Americans or where the patent related to something not connected with the chemical industry they would return it. It is further claimed here that the purpose of The Chemical Foundation was to advance the interests and aid legitimate American industry. That is what it is claimed it was organized for. Our contention, to the contrary, is that from the very inception this proceeding which has been under investigation was conceived, organized and carried into effect for the one purpose and the controlling purpose of securing for the benefit of a private industry property held in trust by the United States, without, I ought to say, seeking to attack the purposes of all these gentlemen, but on the mistaken idea that such an act was of such public benefit as to be within the scope of the power of the Alien Property Custodian. I will put it that way.

We claim that that object and purpose was not only a conspiracy to obtain property without any adequate consideration, but that it was a direct violation of the Statutes of the United States and a contract made with that object and purpose was *ab initio* void as to the United States. That goes to the very basis of this whole thing.

If we show here—and we have shown a number of instances; it has been a laborious task, and this is a laborious case—that the Alien Property Custodian, I will put it first—in the haste which was manifested in the conveyance of this property belonging to hundreds of people, without regard to the consideration or to the rights of the respective owners or their values or anything else, seized property of American citizens of great value, and after notice which probably would conform to the provisions of Section 9 and therefore suspend the right of the Alien Property Custodian to convey; that after written notice to the Alien

Property Custodian, the property, which was the property of American citizens and claimed accordingly, was conveyed to this defendant, for $50, when it had a value of thousands of dollars; and that when this was done and this fact was brought to the attention of the Alien Property Custodian, he did nothing whatever, and at the time the Alien Property Custodian was president of The Chemical Foundation, and for six months no reply could be obtained; and finally when he was pressed to the point, referred it to the officers of The Chemical Foundation for adjustment, although under Section 9 of this Act once a property had been seized nobody but the President of the United States had the right to return it and determine that the person was not an alien enemy (except a Court under a suit); that the Custodian left to the officers of this corporation the right to return this property, and thus to exercise the function of the President; and that this corporation, instead of returning it, went to work and demanded of the owner that he take a license from them and pay them a royalty for the purpose of using his own property in an admitted American industry. I say that all those facts, which we will bring out, are most material and relevant as showing the character of this transaction, of its utter failure to conform to every requirement of a trustee's sale in handling property; of its utter disregard of the rights of the very industry they are talking of protecting and advancing, and of the irregularities in every phase and aspect of this sale, as well as a direct violation of the law, which would tend to invalidate the transaction *ab initio*.

Now, whether we are right in our conclusions of law or not, we are entitled to have those matters on the record for the consideration of the Court, because, in the consideration of equitable principles applicable to setting aside transactions for fraud, mistake, inadequate consideration, combination of bidders, or other improper sale; everything that will bear upon the equities of the situation must be considered.

If there was undue haste, if there was disregard of the rights of the property interests concerned, if there were any other considerations which tended to show that the Trustee, as we claim here, disregarded the obligations of his trust and was actuated or controlled more by other interests than the interests of his trust, then all those questions, must go to the Court for its consideration.

I beg your Honor's pardon. I did not intend to go into the argument of this question, but I regard this evidence, these various instances and illustrations of the way this matter was conducted —although probably not as connected as we would like to connect it—as most material and one of the most interesting and instructive phases of this whole case, when we come to its consideration. I can not point out all those things every time, unless it is insisted upon.

The Court: Colonel Anderson, I shall permit you in this case to give not only cases illustrating the principles that you now refer to, but you may put in every case and give evidence as to every instance of facts of this nature that you can find or know of.

If you have anything to say in reply, I will hear you, Mr. Kresel.

Mr. Kresel: No, your Honor. Your Honor has already ruled.

Mr. Anderson: If your Honor please, we

have a good many of these cases. We have put in some. We shall put in others.

THE COURT: I shall place no limit——

MR. ANDERSON: I thank your Honor.

THE COURT: (continuing) —on the number of cases of which you may give evidence.

MR. ANDERSON: I am very grateful to your Honor.

THE COURT: Colonel Anderson, your other engagement in Virginia is such that you will not be able to be back here until what time?

MR. ANDERSON: If your Honor please, I think I will have to ask until Thursday morning. I am going to ask that the case be advanced.

THE COURT: Thursday at 8:15?

MR. KRESEL: That is satisfactory, your Honor.

THE COURT: Then when we adjourn, I will take a noon recess and this case will be suspended owing to your engagements until 8:15 Standard Time, Thursday next.

MR. ANDERSON: I thank your Honor very much.

I will start this examination over on the assumption that I have produced a copy of this patent, a copy of the assignment to this witness or his company; and if I do not produce those, this evidence will all go out if objected to.

Q. 9. Mr. Parmele, will you state the date on which you claim that this patent was assigned to you, and I will ask you to let me have a copy of the original of your assignment so that I can produce it?

A. May 6, 1911.

Q. 10. Where is the original of that assignment; in the Patent Office?

A. The original must be there.

Q. 11. Where is the original of the assignment to you?

A. I think I have it.

Q. 12. You have it?

A. In my safe.

Q. 13. Would you let us have it long enough to present it here so that we may produce a copy?

A. Certainly.

Q. 14. Were you operating pour business under that patent from 1911 down to the spring of 1919?

A. I was.

Mr. Kresel: One minute. To that we object upon the ground that it calls for the witness's conclusion as to whether he was using this patent or was not using this patent, and further upon the ground that it is immaterial and irrelevant.

Mr. Anderson: Very good.

Q. 15. I will ask you this question. Did you use these patents in your business from the time of its assignment to you down to June, 1919?

Mr. Kresel: I raise the same objection as I raised to the preceding question.

Mr. Anderson: I do not want to argue, sir.

The Court: I think the objection is well taken. You may take the answer of record.

Q. 16. Just answer the question?

A. From May 11th.

Q. 17. From May 11th down to the present time?

A. Up to now.

Q. 18. From May 11th, 1911, down to the present time you have had this patent. Has it been in active use in your business?

The Court: As I understand, your objection runs to all this testimony?

Mr. Kresel: Yes, your Honor.

The Court: I think all those objections are well taken, but you may take the answer of record.

A. It has.

Q. 19. I will ask you further if you had a trademark in connection with this patent?

Mr. Anderson: I will produce primary evidence of that if you wish, Mr. Kresel.

Mr. Kresel: I raise the same objection, your Honor.

The Court: I think the objection is well taken. You may take the answer if you desire.

A. I did.

Q. 20. Now I will ask you what if any correspondence you had with the Alien Property Custodian with regard to Patent No. 906,918 and ask you to produce the originals of that correspondence wherever you have it, and state the facts in regard to the same?

Mr. Kresel: I object to his stating any facts in regard to the same. I object to any such indefinite question as that; and as to the correspondence, I direct counsel's attention to the fact that the correspondence is in. We certainly do not want to duplicate that, do we?

Mr. Anderson: We do not, except to the extent that it is not in. Where it is in, I will not duplicate that, but I can not say until it is produced.

Mr. Kresel: Then the question is simply that he should produce the correspondence.

The Court: To that question you do not object.

Mr. Kresel: Certainly not.

Mr. Anderson: I was trying to shorten it; that is all.

A. (Handing papers to counsel.) That first thing is simply a memorandum to refresh my memory. There is the first letter.

Q. 21. I will give you that back. You made that memorandum yourself, did you?

A. I did.

statement is a brief statement, as I recall, in every instance of the reason just a brief memorandum of the reason of assignment. Some of those reasons, as I remember were prepared at the time the statement was prepared.

Now, I would not undertake to go over all of these re-assignments and analyze them all, but there are certain of them that we think illustrate certain principles which we are going to argue for in this case, and we will put the record in. Now, that answers your Honor's question the best I can at this time.

THE COURT: I do not know whether that means that you have got now before us an instance of a case that is indicative of fraud and an intent on the part of the Alien Property Custodian's office to seize patents which it was not authorized to seize. I do not know now whether this instance is the only instance of that kind you have, or the only instance that you propose to prove, because I shall assume for my part—that is all I am concerned with—that you will prove every case which in your view has any bearing, nearly or remotely upon the issue of fraud.

With that in mind, I was a bit curious to know how many of these instances you are going to prove.

MR. ANDERSON: Go into the details of?

THE COURT: Yes.

MR. ANDERSON: Not a great many. We will introduce or have introduced in proof, substantially the cases that we know of, but we will not go into details of but very few of them; and I may say that I do not mean to say that the seizure of this patent was an actual fraud. I do not believe that the Alien Property Custodian was committing an actual fraud with intent to seize something that did not belong to him, but there may be such a disregard to the rights of other people as to constitute in equity, a legal ground for action.

The Court: I am a bit sorry but I do not undersand you, Colonel Anderson.

Mr. Anderson: Very well, sir. I will see if I can not make it clearer.

The Court: Would you mind my making one further inquiry.

Mr. Anderson: No, sir.

The Court: These seizures were made in the spring of 1919, were they not?

Mr. Anderson: Yes, sir.

The Court: In the period from January to April, or thereabouts?

Mr. Anderson: No, sir. They were made or taken about, a few of them made in February, the Bill shows, and the greater part of them in March and some of them in April; and they continued on through the next two years.

The Court: Before I ask that one question, what is there if it was not in the seizure? Then what is there that indicates fraud here, in your present proposals?

Mr. Anderson: I prefer to answer your Honor's question a little differently from that. I am going to show the facts, with your Honor's permission, and let your Honor conclude, fraud being a conclusion, from such arguments as we can make, whether there was fraud or not. I have avoided carefully a reference to these things, simply because—not because I am afraid of it, as counsel suggests, but because personally I have a very great objection to the use of epithetic fraud as Mr. Justice Holmes once said.

The Court: Let us see if we can get at it from some other angle. What is there in the proposals that you think will tend to establish your right to a decree setting aside the sale or seizure and sale of the Alien owned patents and the transaction of the Government with the Chemical Foundation?

Mr. Anderson: That I am ready to answer, sir. This: That this instance, taken in connection with many others that I need not mention but will be argued, tends to show and goes far to establish an entire disregard not only of legal procedure established by the Alien Property Custodian in the form of regulations, but of the most elementary principles in relation to the dealing with property of this character. Now, assuming that when this property was actually seized, it was a good faith mistake, which I believe it was at that time, but a mistake which was brought about by an anxiety of which I will produce further evidence.

This is evidence of the very essence of that situation that when they seized this property without the slightest regard to the rights of anybody and it was brought to their attention formally before they were ever assigned to this Chemical Foundation, that they went straight on assigning to the Chemical Foundation and then told the man to look to the Chemical Foundation although he was an American citizen and the owner; and then when he went to the Chemical Foundation, he was told: "You take a license with us and pay us a royalty for the use of your own property."

Now, that is inconsistent with every statement in this Answer practically, and that series of facts, taken in connection with all the evidence we have produced here of this combination of the dye stuffs people who really organized this corporation and of whom it is merely an agency, to obtain these patents and to obtain control of the industry, goes to support the idea of the conspiracy in which through a mistaken conception of his duty, as I see it, the Alien Property Custodian either joined or allowed himself to be used.

It goes to show such a disregard of property rights in charge of the Alien Property Custodian as in itself throws a serious question upon this whole transaction, assuming that other elements did not exist.

Now, your Honor has spoken of fraud. I say I dislike the "epithetic fraud," I suppose as much as anybody in the world, because we are all so disposed when we are getting into a case of this kind to use language which is not fair where people are not able to reply; and I do not want to. But I do say that the legal consequences of such things as I have outlined here, are the same, and that in one aspect of the case we are proving facts from which we can argue at least those legal consequences. And should it appear from the evidence when it is all in—I am not anticipating—I do not know what evidence these gentlemen will put in—and therefore I do not want to argue offensive conclusions at this time, but if it should appear that the facts presented lead as a reasonable conclusion even to any other fraud I shall not hesitate to argue it on the part of the Government.

I do not want to be understood here as waiving any claim of the Government, but merely as undertaking to conduct this case within the facts and with due regard to what I conceive to be the proprieties, when I can avoid those unpleasant expressions.

If I have made myself clear, then this evidence and instances of this character tend to confirm the conspiracy which we have charged, the scheme which we have charged, and to show that it not only permeated the offices of the industry since the defendant here was an agency of and represented by the Dyes Institute, and that it permeated the office of the Alien Property Custodian. That with a mistaken conception of his duties and with enthusiasm perhaps for the interest of a certain industry which he regarded as essential at the expense of those who were the enemies of our country—not an unnatural feeling—he misconceived and violated his duties, and that these are evidences of the violation of his duties. Not only the facts of the whole case, but these are exaggerated instances of the utter disregard of his duties, which tends to show entire misconception; and further he seized indiscriminately patents engaged in American industry, being used by American industry and being employed, of great value, along with those of aliens; lumping them together, whether they were being used or not used, and selling them for what was obviously an arbitrary and nominal consideration. If that can be shown, then of course, we are proceeding upon a theory that such a transaction could not be sustained. At an appropriate time, I think, I can show to your Honor, that this could not be done. Have I answered your Honor's question? If I have not, I will try my best again. I am suffering from a headache this morning and I am afraid I am not clear.

THE COURT: My inquiry was prompted by this: That if you are going to stop when you show that one patent was seized which belonged to an American or an American industry, and was mistakenly seized under the Act, it seems to me that it was pinning a lot of faith on that one act.

MR. ANDERSON: Yes, I would think so, too.

The Court: Now then, it seemed to me the value or attention that should be given to this testimony would depend upon the number of instances. As I understand you, your reply is that you are pinning your faith not on the number of instances, but on this instance and certain other facts, namely, that the officers of the Alien Property Custodian's office, or some of them, or the officers of the Chemical Foundation, and the other instances you have named, and not on the number of instances of mistakes which might be unintentional.

Mr. Anderson: Your Honor did not quite understand me. I said there were a large number of instances. I do not know whether your Honor caught the significance of my statement. I do not know how many, because I do not recall now, but among them was the Pacific Flush Tank Company.

Mr. Kresel: Wait a minute. That had nothing to do with this. The Pacific Flush Tank Company had nothing to do with the seizing of patents.

The Court: That need not be argued. I recall that very distinctly. I made a number of inquiries about the Pacific Flush Tank Company and one of the answers to that by your colleague, Mr. Galloway, one of the arguments was that it was evidence of your contention that all the facts had not been called to the President's attention. I did not mean to stop you on the Flush Tank. I recall it.

Mr. Kresel: That is all. I do not want to take any more time.

Mr. Anderson: I want to say further. There appears and here is a list of abstract of reassignments by the Chemical Foundation, Incorporated.

Mr. Kresel: Will you put that in now? I do not believe that has been marked.

Mr. Anderson: I think that is in.

Mr. Kresel: No, it is not in.

Mr. Anderson: I will put it in as soon as I get through this witness's testimony.

Mr. Kresel: All right.

Mr. Anderson: I thought it was in. That was one of the papers stipulated in the case, though.

The Court: I did not mean to interrupt you. Were you intending to direct your remarks solely to the Flush Tank or to this?

Mr. Kresel: I was going to speak on this, your Honor, but I do not want to interrupt Colonel Anderson. If he is to go on with this witness, I would like to finish him this morning.

The Court: All right.

Q. 24. I hand you a letter, dated March 26, 1919, Robert C. Golstein to the Chinosol Company in re Trust G 36983; you received that letter from Mr. Gold-tein did you not?

Mr. Kresel: If your Honor please, I call attention to the fact that that letter is already in evidence. What is the use of asking the witness whether he received it?

Mr. Anderson: Very good.

The Witness: I did.

Q. 25. And you replied to it?

A. I did.

Q. 26. Without duplicating the record, I refer to te letter as Plaintiff's Exhibit already introduced, o. 185. Now, yesterday we introduced certain letters rom Mr. Goldstein to yourself, dated October 14th, nd a letter dated October 17th, from you to Mr. Gold-tein, Plaintiff's Exhibits Nos. 187 and 188. I would sk you if you had any conference with the officers of ne Chemical Foundation, Incorporated, about this time, and if so, state as nearly as you can the date and who was present?

A. It was about June 13th, 1919, after the receipt——

Mr. Kresel: Just state who was present. That is the question.

A. Mr. McKay, the Vice President, and Mr. Ramsay Hoguet.

Q. 27. Did you learn at that conference that Mr. Hoguet was counsel for the Corporation?

Mr. Kresel: That is conceded. You do not have to prove that.

Mr. Anderson: All right. I only wanted to know if he knew it.

Q. 28. State as far as you can the substance of what was stated to you by these officers of the Chemical Foundation, what took place in regard to this patent?

Mr. Kresel: Our objection, your Honor, is the same as to the correspondence, and I assume that your Honor's ruling will be the same.

The Court: Same ruling.

Mr. Anderson: Let us have the question again, please. (Q. 28. repeated as recorded.)

A. They told me that.

Mr. Kresel: Who told you?

The Witness: The two gentlemen present, I do not remember which one; both of them, that the Chemical Foundation has received an assignment of my patent 906,918, I think it is. I explained to them that the Alien Property Custodian had no right to transfer that patent to them; that it was my property, and I had so stated in a letter sent to the Alien Property Custodian by registered mail.

Q. 29. Which letter is one of those introduced here today?

A. Yes, sir, this one.

Mr. Kresel: Just give the date of it, please.

The Witness: March 21, 1919. (Referring to Plaintiff's Exhibit No. 184.) We talked the matter over pretty thoroughly. They wanted to know whether they could come to any arrangement with me about the handling of my patent.

Mr. Kresel: I suggest, your Honor, that that be stricken out, and the witness be asked to give the conversation. He is giving now his conclusions.

The Witness: I am trying to, sir.

The Court: Is this a conclusion or is this a statement of what occured?

Mr. Anderson: I will ask him to give the statement of what occurred.

Q. 30 Give, as far as you can, what they said to you, or the substance of it. Of course, you can not remember the detail——not its effect, but I mean just follow the conversation as if you were accounting what took place?

A. Both gentlemen seemed to admit the accuracy of my statement.

Mr. Kresel: Stop there, please. I asked that be stricken out.

The Court: Will you not help? The witness is undoubtedly unfamiliar with legal procedure in this particular. Will you not make it clear to him as to what we want?

Mr. Anderson: Yes, sir.

Q. 31 Mr Parmele, remember you must only say, as far as you can remember, what they said. That is, if Mr. Hoguet or Mr. McKay said something to you, state in substance as far as you can state, what he said to you, and not the conclusion as to whether or not they admitted something?

A. Yes.

Q. 32. If they said "I admit that this is your right," then that is a statement; but your conclusion that they had admitted it, is not what they said. Do I make myself clear?

A. Either Mr. McKay or Mr. Hoguet asked whether I would join the Chemical Foundation. I said no. Then they wanted to know whether I would permit them to retain the patent and manufacture for us, we paying them a royalty. I replied that I could see no reason on earth why I should pay them a royalty on something that I owned.

Q. 33. Any further conversation, that you recall?

A. There were several conferences, and as a result of the conference either Mr. McKay or Mr. Hoguet promised that Mr. Hoguet would communicate with me and arrange for a definite time, when I could learn just what the Chemical Foundation would be willing to do.

Q. 34. Yes.

A. Not hearing from Mr. McKay or from Mr. Hoguet, I went to the office and I was told that Mr. Hoguet——

Mr. Kresel: One minute.

Q. 35. Told by whom?

A. Either by Mr. McKay or the other gentleman who was there in charge of the business of both of those gentlemen. I think he was the chemist.

Q. 36. Was his name Tucker?

A. I think it was Tucker. I may be mistaken, but it was some gentleman there in charge of the office of the Chemical Foundation, and I was told——

Mr. Kresel: When was this, please?

The Witness: That was in June, 1919. Mr. Hoguet then did telephone to me, stating that I would hear from him on the 19th of June. I did not hear from him on the 19th, and did not hear from him on the 20th; so I then wrote to Mr. Hoguet on June 20th a letter, of which this is a copy. (Handing to counsel.)

MR. KRESEL: That is not in our stipulation, is it?

MR. GALLOWAY: No, that is not in the stipulation, Mr. Kresel.

MR. KRESEL: All right, I will not object to it.

MR. ANDERSON: We introduce in evidence copy of a letter dated June 20th, 1919, addressed to Mr. Hoguet, signed by the witness.

THE COURT: Admitted.

MR. ANDERSON: As Plaintiff's Exhibit No. 204.

Received in evidence and marked Plaintiff's Exhibit No. 204." *(See Exhibits, Vol. I, page 493.)*

MR. ANDERSON: The effect of this letter is to urge a prompt reply to the question of his patent and so on.

Q. 37. Proceed with your statement, Mr. Parmele, being careful when you make a statement to be sure you state by whom, and what was said, as distinguished from your own conclusion?

A. The next thing was letter dated June 21st, 1919, from the Chemical Foundation, signed S. A. Tucker, Chemist, and saying——just give me the letter, please.

THE COURT: Are you going to offer it?

MR. ANDERSON: Yes, sir.

THE COURT: Admitted under like conditions.

MR. ANDERSON: I offer in evidence original letter dated June 21st, 1919, to the Parmele Pharmacal Company, signed the Chemical Foundation, Incorporated, S. A. Tucker, Chemist. The subject is with respect to a request to call at the office.

Received in evidence and marked "Plaintiff's Exhibit No. 205." *(See Exhibits, Vol I, page 494).*

The Witness: I then received a letter June 23d, 1919, from Mr. Ramsey Hoguet.

Mr. Anderson: Let me see it. (Handed counsel.)

Mr. Anderson: I offer in evidence origin letter addressed to the witness, signed Ramse Hoguet, dated June 23d, 1919, as Plaintiff's E hibit No. 206.

The Court: Admitted.

Received in evidence and marked "Plaintiff' Exhibit No. 206." *(See Exhibits, Vol. I, page 495.*

Mr. Anderson: I will read it, of course, dis claiming any intention to be discourteous, Mr Hoguet says: (Reads Exhibit No. 206).

Q. 38. Go ahead, Mr. Parmele.

A. As a result I went to the office of the Chemical Foundation. I do not remember whether Mr. McKay and Mr. Hoguet were there together or whether there was only the one or only the other.

Q. 39. One or the other was there?

A. One or the other was there as I now remember it. Each referred me to the other, so I thought it was immaterial which one I was talking to. I discussed this whole situation, told them that it was damaging me seriously, that the report had gotten out in the trade that I no longer controlled the product, dealers were not sending their orders to me, my competitors were spreading the news that it was no longer obtainable and it was a serious damage. They agreed to that and said they would see what they could do. As a result, I received on August 21st or the next day afterwards, August 22nd, this letter dated August 21st, signed by Mr. Ramsay Hoguet or signed for him, and I replied over the telephone first to Mr. McKay verbally.

Mr. Anderson. I offer in evidence letter dated August 21, 1919, addressed to the witness signed

"Ramsay Hoguet," to be read as Plaintiff's Exhibit No. 207.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 207." *(See Exhibits, Vol. I, page 496.)*

Mr. Anderson: The letter says (reading).

Q. 40. Have you that agreement?

A. I have not.

Q 41. What did you do with it?

A. I sent it back to them with this letter. Here is a copy of the letter. I sent it by messenger from my office.

Mr. Anderson: I offer in evidence a copy of letter dated August 22, 1919, addressed to Ramsay Hoguet, Esq., signed Charles Roome Parmele, President, Chinosol Company, to be read as Plaintiff's Exhibit 208.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 208." *(See Exhibits, Vol. I, page 497.)*

Mr. Anderson: The letter is as follows (reading).

Q. 42. What then took place, Mr. Parmele?

A. I then received a letter from Mr. Douglas I. McKay, Vice President, of which this is a copy. The original was sent to the Commissioner of Patents in Washington and he still has it.

Mr. Anderson: I offer in evidence copy of letter dated August 25, 1919, from the Chemical Foundation, Incorporated, signed "Douglas I. McKay, Vice President," to the witness to be read as Plaintiff's Exhibit 209.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 209." *(See Exhibits, Vol. I, page 498.)*

Mr. Anderson: The letter is simply this (reading).

Q. 43. Was there any further correspondence or conference about this matter with the officers of the Chemical Foundation?

A. I then received this copy of assignment of the patents. Before handing this assignment to me Mr. Hoguet said he wanted me to agree that I would waive any possible cause of damage against either the Chemical Foundation or the Alien Property Custodian. I was anxious to get my patents straightened out and went along the lines of least resistance and signed that, sir.

Mr. Kresel: I ask that the lines of least resistance be taken out of the answer.

The Court: Do you object?

Mr. Anderson: Not at all. You do not object to this, do you? It is a discharge of all claims against the Chemical Foundation.

The Witness: I acknowledged that letter in which they said they had no interest in Chinosol, with those copies (handing counsel).

Q. 44. You say you acknowledged the letter disclaiming interest by a letter of August 27, 1919?

A. Yes, sir.

Mr. Anderson: I offer in evidence copy of letter of August 27, 1919, to Mr. Douglas I. McKay, signed by the Chinosol Company, by the witness, its President, as Plaintiff's Exhibit No. 210.

The Court: Admitted.

Mr Anderson: I will not take the time to read it; it confirms what he says.

Receivd in evidence and marked "Plaintiff's Exhibit No. 210." *(See Exhibits, Vol. I, page 499.)*

Mr. Anderson: The witness now produces and I offer in evidence a paper called "release and discharge," signed by the witness, which purports to release and discharge the Chemical Foundation from any damages on account of this matter.

Mr. Mahaffy: What is the date of it?

Mr. Anderson: Dated 29th day of November, 1922, after this suit.

Mr. Kresel: There must be some mistake about that

Mr. Anderson: No, that is right.

The Witness: Maybe that is the trade-mark, sir. Just a moment and I will see. That is the trade-mark.

Mr. Anderson: I know that was the date of one of them. Then I will not have that marked yet.

The Witness: Let me see just what that is (taking paper). These unfortunately both relate to trade-marks, sir. I thought one referred to the assignment of the patent.

Q. 44. Did you in fact execute any paper to the Chemical Foundation at the time they gave you that disclaimer of any interest?

A. Shortly subsequent thereto, yes.

Q. 45. Did that paper purport to release the Chemical Foundation from all claims for damages?

A. Yes, sir; also the Alien Property Custodian.

Q. 46. Mr. Parmele, did you have a trade-mark covering this same product Chinosol? If you did, please produce your evidence of the ownership of that trade-mark?

A. I haven't it here.

Q. 47. You will send it to us to be presented, will you?

A. I will.

Q. 48. What was the name of that trade-mark?

A. Chinosol.

Q. 49. What is the number?

A. I do not remember the number of the trade-mark. I think I can tell you.

Q. 50. That shows on your original evidence of it?

A. Yes, sir.

Q. 51. It appears on the list stipulated by counsel, which will be later introduced as trade-mark No. 28,750?

A. Correct.

Q. 52. In the list stipulated as one of the reasons assigned is that the Chinosol Company was the owner of the trade-mark at the time of seizure. Had you acquired this trademark prior to the war with Germany?

A. Yes, sir.

Q. 53. When did you discover that this trade-mark had been seized or attempted to be seized by the Alien Property Custodian?

A. Not until the matter came up in a suit of mine in the Federal Court.

Mr. Kresel: Just the date, please?

A. (Continuing) I can't tell you, sir.

Mr. Kresel: That answers the question.

A. (Continuing) It was early last fall or late last spring.

Q. 54. It was during the summer or early fall of 1922 then?

A. Yes, sir.

Q. 55. What did you then do about it?

A. My attorney, Mr. Prindle, aided me in securing an assignment from the Chemical Foundation of their interest in the Chinosol trade-mark.

Q. 56. You had been using this trade-mark right along, had you not?

A. Yes, sir.

Q. 57. And you never knew it had been seized or that anybody claimed title to it other than yourself until the time that you indicated, late in 1922?

A. Yes, sir.

Q. 58. State what further transactions you had in connection with it, if any, with the Chemical Foundation, and if you state conversations, state the time and place and with whom?

A. I do not remember the officer with whom I had the conversation, but someone at the office of the Chemical Foundation; and as a result, they sent me an assignment of their assignment of the Chinosol trademark.

Mr. Anderson: That is in the stipulation. I do not want to put it in evidence, unless you wish.

Mr. Kresel: I do not care anything about it.

Q. 59. Did you at that time execute also a release of all claims for damages against the Chemical Foundation and the Alien Property Custodian?

A. Yes, sir.

Q. 60. Mr. Parmele, how much did you expend in advertising this trade-mark?

Mr. Kresel: I object to that as being immaterial and irrelevant.

The Court: What is the purpose of it?

Mr. Anderson: I am going to ask him what he spent and will later follow it up with evidence of the value of the trade-mark. I think what he had expended in developing the trade-mark is one of the evidences of value. It is not conclusive, but it is one of the evidences of value.

The Court: Have you any authority to support that contention?

Mr. Anderson: I have not an authority here, if your Honor please. I have authorities in abundance to the effect that in arriving at the value of patents, trade-marks and so forth, the evidence will be admitted on two lines, among others. One is as to the advantage of having the trade-mark or patent over and above the advantages that one would have without the trademark or patent. Among other elements entering into that advantage are the expenditures which have been made in developing it up to the point to which you have developed it, since in a trademark, its familiarity to the public is the sole, practically the sole basis of its value. Then in addition to that, that any person who is familiar with the circumstances, although not an expert, can testify as to the value of that trademark or patent in his opinion, subject to a test of his knowledge by cross-examination. I am going to follow this and with proof of the advantage to be gained if he spent $100,000 or $500,000 advertising this trademark, and that he had a business under it which was earning a good return on that expenditure, and that that was an advantage which he would not have had to forego if he had not done that advertising and developing of that trademark. It is not a conclusion. It is one of the factors in arriving at this elusive thing which we call value.

The Court: Then you regard the value of this trade-mark, notwithstanding the fact that it was assigned as part of or one of a great number, as one of the issuable facts in this case?

Mr. Anderson: Absolutely so, sir; because that is one of the things assigned to the Chemical Foundation for $250,000.

The Court: Which was not worth anything to the Chemical Foundation Company?

Mr. Anderson: They did not have any title to it. Naturally it was not worth anything to them. In other words, as going to show the validity and the character of this transaction, if they had assigned to the Chemical Foundation or undertaken to assign some of my property worth $10,000,000, if I ever had that much, even if they could not give good title to it, it would show an utter disregard of the question of value. The fact that the Chemical Foundation did not get any value and had to return it does not in any way affect the value of the evidence showing an utter disregard of value manifested by the trustee when he sold this property. That is very strong evidence not only that it was inadequate, but an utter disregard, a perfectly arbitrary disregard of that feature.

Mr. Kresel: I think, your Honor, we have gone a little astray. The particular question asks that the witness state how much money he had spent in advertising. We object to that as immaterial and irrelevant upon all issues, even on the question of value. The amount that this gentleman may think he spent in advertising in my view can have no legitimate bearing upon the question of the value of the property. He may have spent a million dollars and yet it may not have been worth ten cents after he spent that million dollars.

Mr. Anderson: I will ask him, if you want, how much he spent in the development of this trade-mark.

The Court: That is your question in another form.

Mr. Anderson: It is the same question.

The Court: I do not follow the reasoning by which that can aid in a conclusion of value. Consequently, I think the objection is sound, but you may put the evidence in, and I will overrule the objection.

Mr. Kresel: What is the question—what he spent in advertising or developing it?

Mr. Anderson: I will put it both ways—advertising and developing this patent and trademark.

A. Advertising and developing?

Q. 61. Yes.

A. Over $100,000.

Q. 62. Mr. Parmele, how long have you been in this chemical business?

A. Thirty years.

Q. 63. Thirty years as a chemical manufacturer. I will ask, how long do you say you have been using this patent, since 1911?

A. 1911.

Q. 64. What in your opinion would have been the fair value of this patent and the accompanying trade-mark at the time that they were attempted to be seized and assigned to the Chemical Foundation?

> Mr. Kresel: We object to that upon the ground that the witness has not been qualified as an expert to give any testimony upon value; that no proper foundation has been laid for the admissibility of such testimony; that no facts have been adduced upon which this witness, even if he were an expert, could base an opinion. It is therefore immaterial, irrelevant and inadmissible.

> Mr. Anderson: I do not want to argue that, if your Honor please.

> The Court: You will have to establish its validity for me, because it seems to me it is not admissible now. I am perfectly willing to have it in the record, but I do not understand the theory on which this question is asked. You may, however, take the answer.

> Mr. Anderson: Go ahead and answer, Mr. Parmele.

A. Over $100,000.

Q. 65. Did the business which you did under this patent and trade-mark in 1919 yield you a return of over $100,000.

> Mr. Kresel: I object to that upon the grounds,

first, that it is leading; second, that even if it were the fact, it would be no proof of the value of the trade-mark or the patent unless there was proof that the return was the result of the trade-mark or the patent.

The Court: If sold.

Mr. Kresel: If sold.

The Court: I think the objection is sound.

Mr. Anderson: All right. I cannot ask it all at once. I am going to follow that with the question as to whether it was the result, and whether he could have earned any of this if he had not owned this patent and trade-mark. But I cannot ask all these questions at once, sir. Did your Honor say he may answer?

The Court: No, I was just wishing that patent cases were so determined and accounting cases were so determined. You are familiar with the Westinghouse and other cases?

Mr. Anderson: Yes, sir, I am familiar with them, and I think that this case, if your Honor please, bears a very much stronger relation to a condemnation proceeding than it does to an ordinary infringement case.

The Court: But you are getting value.

Mr. Anderson: I am getting value, and in a condemnation proceeding I am entitled to ask a witness, even though not an expert, as to the value of lands in the neighborhood, or if he lives in that neighborhood and is reasonably familiar with their use and employment. The Court or Commissioners must say what would be the weight of that testimony. Of course, nothing is so difficult to prove as values, to the satisfaction of everybody, because no two men agree on them. But this is evidence, as I see it, which is in the particular circumstances of this case about the best evidence that is available on this subject, otherwise I would not offer it. The witness does not have to qualify as an expert to give this evidence. I am not dealing with an infringement suit at all; I am dealing with the question what this thing was worth to the man at the time it was taken away from him.

Mr. Kresel: Inasmuch as counsel has indicated what he thinks his witness has testified about it, I object. Counsel now states he wants the witness to say what it was worth to him. The Court is not concerned with that. If it is a question at all, the question is what was the value, not what was the value to this witness.

Mr. Anderson: I asked the question that way. I asked what was the fair value of that patent and trademark at the time they were seized and transferred to the Chemical Foundation.

Mr. Kresel: We also object on the ground the question is improper in that it does not seek to elicit the fair market value of the property.

Mr. Anderson: All right, I will put it both ways rather than discuss it.

Q. 66. What was the fair market value of this patent and trade-mark at that time?

Mr. Kresel: The same objection, your Honor, upon the grounds I have heretofore urged.

The Court: The same ruling.

A. Shall I answer?

Q. 67. Yes, sir.

A. I was offered $50,000 for a half interest in it, and declined it.

Mr. Kresel: I ask that that be stricken out as not responsive.

Mr. Anderson: All right, I will just strike out the answer, and I will ask this:

Q. 68. What was your opinion of the fair market value at the time this alleged transfer took place?

A. Over $100,000.

Q 69. Now I will ask you if you have any bona fide offer for the patent and trade-mark, or any interest therein?

Mr. Kresel: I object to that as calling for the conclusion of the witness, as immaterial and irrelevant.

Mr. Anderson: Just to save time and get through with it, I will take the answer under Rule 46, if your Honor will allow it.

The Court: You need not take any of the testimony under Rule 46, you may take the testimony under our general rule which has been applied to all this evidence. Incidentally, Colonel Anderson, this general rule does not apply to your rebuttal; this rule applies to your evidence now.

Mr. Anderson: I understand that.

The Court: And any rebuttal will be restricted absolutely to rebuttal.

Mr. Anderson: Of course, I will not be able to go far afield in rebuttal; I must confine myself to the rebuttal, of course.

The Court: I happened to think of that just now and I did not want you to be misled. I will take the answer.

A. What is the question?

Q. 70. Have you had any offer for any interest in this patent or trademark?

Mr. Kresel: No, the question was have you had a bona fide offer.

Q. 71. I will leave out "bona fide" and ask have you had any offer?

A. Yes.

Mr. Kresel: One minute, please. All right, he has already answered.

Q. 72. About when?

A. Four years ago.

Q. 73. For what interest?

A. A half interest.

Q. 74. In what?

A. The Chinosol business.

Mr. Kresel: One minute.

Mr. Anderson: I am coming to it. I know your objection. I will correct it.

Mr. Kresel: I now ask that the last four or five questions and answers given by the witness thereto, with reference to an alleged offer, be stricken out on the ground that it now appears that it did not relate to the patent or the trade-mark.

Mr. Anderson: I am coming to that question; and unless I make it appear that it does, of course it will be stricken out, because I am talking about the patent and trade-mark.

Q. 75. I will ask you to state whether or not the business of the Chinosol Company is dependent upon this patent and trade-mark.

Mr. Kresel: I object to that upon the ground that it calls for this witness's conclusion, immaterial and irrelevant.

Mr. Anderson: He conducts the business. He ought to know.

The Court: The question can not help me, can not help anybody. Of that I have no doubt.

Mr. Anderson: If your Honor please, if the Chinosol business yields a revenue and the sale of its article is dependent entirely upon this patent and trade-mark, and you could not conduct the business without it, this is admissible.

The Court: You are asking for his opinion indirectly.

Q. 76. Then I will ask you this: Do you conduct any other business for the Chinosol Company except under this patent and trade-mark?

A. No.

Mr. Kresel: One minute, please, I ask that the answer be stricken out to give me a chance to object to the question. I object to it again upon the ground that it calls for this witness's conclusion, that it is immaterial and irrelevant and calls upon him to construe the patent and the trademark so as to determine whether he is conducting business thereunder. That is not only a conclusion of fact but also a conclusion of law.

The Court: And also goes to the question of validity of the patent. The patent may or may not be valid.

Mr. Anderson: The presumption of validity applies when you prove the patent.

Mr. Kresel: But when you are asking him to say whether he is conducting his business under that patent or operating under it, don't you see that if his patent is invalid, he is not operating under it and he has no patent?

Mr. Anderson: All right. If you prove it to be invalid, we will agree to that.

Mr. Kresel: Not at all. The burden is not upon me to prove it invalid.

The Court: You can put the answer in the record. I do not think that the testimony will have any value. I do not see how it can, Colonel Anderson. I am stating that so that you will not be taken by surprise if I reach the conclusion eventually that it has not.

Mr. Anderson: I recognize your Honor's position. I have got this witness here and I will put the evidence in the record and argue the question of its value later with your Honor's permission.

Q. 77. Was all of the product of the Chinosol

Company sold under the trademark ''Chinosol'' which you have referred?

A. Yes.

By **Mr. Kresel**:

Q. 78. During what period is this?

A. Ever since we had it.

By **Mr. Anderson**:

Q. 79. Ever since you had the patent and trac mark?

A. It is not known under any other name.

Q. 80. And Chinosol is manufactured under t process described in the Chinosol patent, is it; I mea the stuff is manufactured?

Mr. Kresel: I object to that as immateri and irrelevant. We have not the patent before u

Mr. Anderson: I have told you I will produ the patent.

Mr. Kresel: One minute. We do not kno anything about the process. There is no wa that I have by which to test the gentleman's te timony here; and I do not think we can be boun by it, Colonel, as to what his conclusion is as whether he is operating under this patent.

Mr. Anderson: I do not expect you to b bound by it, but I will introduce it for what it worth. If I had the patent, I would give it you. I am going to introduce the patent. The if you wish to recall this gentleman for cross-e amination with the patent before you, I will ca him back.

Mr. Kresel: I am simply putting my obje tion on the record as I have to.

A. It is.

Q. 81. Based upon that experience, you regar this patent and trade-mark as worth in excess of $100 000 at the time of the transfer?

A. The patent and the trade-mark?

Q. 82. Yes.

A. Yes, sir.

Mr. Kresel: Don't you think you had better ask him how much over $100,000? Perhaps we ought to know that.

Q. 83. How much over $100,000?

A. I should say $150,000.

Q. 84. What would you regard the patent as worth alone?

A. The patent alone?

Q. 85. Yes.

A. That is problematical. The trade-mark is the valuable thing now because the patent is running to a conclusion.

Q. 86. But the trademark is the valuable part of it today?

A. Yes, sir

Mr. Anderson: That is all.

The Court: Do you want to cross-examine the witness now?

Mr. Kresel: If your Honor please, if it is agreeable to your Honor, I should prefer not to do so now. I have been contemplating taking a train out of here at 1:36.

The Court: I was going to indicate my intention of stopping now, but I wanted to know whether you were going to defer your cross-examination so that the witness would be notified to come back.

Mr. Kresel: When are we going to resume?

Mr. Anderson: I am afraid I will have to ask the Court to adjourn over to Thursday.

The Court: This case will be resumed Thursday morning next, 8:30 Standard time.

(Whereupon, at 12:30 o'clock P. M., adjournment was taken until Thursday, June 21, 1923, at 8:30 o'clock A. M., Standard time.)

ELEVENTH DAY.

Wilmington, Delaware,
June 21st, 1923, at 8:30 o'clock A. M.
Standard Time.

Before:

Hon. Hugh M. Morris, U. S. District Judge.

Upon motion of Herman J. Galloway, Esq., of counsel for Plaintiff, William G. Mahaffy, Esq., of counsel for Defendant consenting in this behalf, the trial of the above case was adjourned until tomorrow at 8:30 o'clock in the forenoon, Eastern Standard Time.

TWELFTH DAY.

Wilmington, Delaware,
June 22nd, 1923, at 8:30 o'clock A. M.,
Standard Time.

Before:

Hon. Hugh M. Morris, U. S. District Judge.

Counsel Present as before noted.

Trial Resumed Before the Court.

Charles Roome Parmele resumes the stand:

Direct Examination (Continued).

By Mr. Anderson:

Q. 87. Mr. Parmele, you are the same Charles R. Parmele who was on the stand last Friday, a week ago today, are you not?

A. I am.

Q. 88. At that time you were asked to produce the original or copy of the United States Patent No. 906,918, as to which you testified. Will you please produce that patent, a copy of it?

A. That is it, sir. (Handing counsel).

Q. 89. This is a printed copy of the patent as originally issued to Leopold Ostermann, which you get from the Patent Office of the United States, is it?

A. It is.

Mr. Anderson: We offer in evidence the United States Patent No. 906,918, identified by the witness, patented December 15, 1908, the copy being offered under the stipulation in lieu of a certified copy.

Mr. Kresel: The defendant objects, if your honor please, upon the grounds heretofore urged to this entire testimony.

The Court: Admitted under the same conditions as the prior exhibits.

Received as evidence and marked "Plaintiff's Exhibit No. 211." *(See Patent Exhibit Book.)*

Mr. Anderson: That can be identified and read as "Plaintiff's Exhibit No. 211."

Q. 90. You were asked also to produce the original or a copy of the trade-mark Chinosol, registered with the Patent Office, as to which you testified, the number being, as identified by you in your former testimony 28750.

A. Yes, sir.

Mr. Anderson: The witness has produced and we now offer in evidence printed registration of United States Patent Office, of the trade-mark Chinosol, number 28750, registered August 11, 1896.

Mr. Kresel: Same objection.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 212." *(See Exhibits, Vol. I, page 501.)*

Q. 91. You were requested to produce original or certified copy of the assignment of this patent and trade-mark already identified and introduced, to you, which assignment you testified took place in 1911. Have you the original or a certified copy of that paper?

A. That is a correct copy, sir (handing paper to counsel).

> Mr. Anderson: Plaintiff offers in evidence certified copy of instrument dated 3rd day of April, 1911, signed "Franz Fritzche" by "Franz Fritzsche seal" and by "Dr. L. Ostermann," together with the certificate of registration of the Patent Office thereon, to be identified and read in evidence as "Plaintiff's Exhibit No. 213."
>
> The Court: Is the authenticity of this document admitted?
>
> Mr. Kresel: We do not question it, your Honor.
>
> The Court: Admitted under like conditions as preceding exhibits.
>
> Received in evidence and marked "Plaintiff's Exhibit No. 213." *(See Exhibits, Vol. I, page 504.)*

Q. 92. I note that in the certified copy of the assignment of the patent and trademark to you last introduced, there is reference made to an agreement between the persons named as assignors and the Chinosol Company, dated June 1, 1908. Have you that agreement or a copy thereof?

A. I searched for it, and I cannot find it. I am afraid it is lost. We had a fire in our establishment a few years ago and a great many documents were ruined. My letter books were destroyed. My letter files were destroyed, a great many of them. I do not know where that document is and can not find it.

Q. 93. You have made a careful search for the agreement there mentioned and you can not locate it anywhere?

A. I have.

Q. 94. Do you know whether that agreement was ever recorded in the Patent Office in 1908?

A. I think it was.

Mr. Anderson: We will have a search made, gentlemen. If we can find it, we will produce it.

Mr. Herschkopf: I do not think it was recorded, Colonel.

Q. 95. You have no record in your possession of its record in the Patent Office, or any copy of the agreement or anything of that sort, have you?

A No, sir.

Q. 96. Now that the copy of your patent, No. 906,918, with the assignment to you has been introduced, I would ask you what you manufactured under that patent, and what you did under that patent in the manufacture?

Mr. Kresel: When, please?

Q. 96. (Continued) Between 1911, the date of the assignment, and the date of the seizure in 1919, and at the time of the seizure in 1919?

A. In 1918 and in 1919—

Q. 97. Yes.

A. I manufactured dioxychinolin and sulphide under that patent.

Q. 98. Then, proceed to tell us exactly what you did?

A. I purchased oxychinolin and purchased alcohol. I purchased sulphuric acid, and turned them over to my chemist, with instructions to strictly follow the process as outlined in that patent.

Mr. Kresel: I ask that the instructions to his chemist be stricken out.

Mr. Anderson: I think that is admissible.

Mr. Kresel: I ask that be stricken out as hearsay.

Mr. Anderson: A manufacturer personally

can not manufacture everything. We will find out exactly what he did, and we will argue to the Court whether that is in conformity with the patent.

THE COURT: I think the objection is well taken, Colonel Anderson, on the ground that the chemist would be the one who would be able to say what happened or what was done, and not his instructions to the chemist. Mr. Parmele apparently was not the supervisor or manager of that branch, and the best evidence, I think, would come from the person who was familiar with that; but under the general rule the testimony would be allowed to remain.

Q. 99. Now, did you observe the work which you have described, going on?

A. I did.

Q. 100. Are you able to say whether the method which you have described was followed?

A. I should say that it was.

Q. 101. Did you have the product so produced as you have described, analyzed, after its production?

A. I did.

Q. 102. What was the result?

MR. KRESEL: Wait a minute. I object to that, as calling for the witness's conclusion. It does not indicate that he has any personal knowledge of it. The question is indefinite.

THE COURT: This witness did not make the analysis, did he?

MR. ANDERSON: I asked him if he had it analyzed. I suppose, in the amount he turned out, he could not make it all himself, sir; therefore, I asked him what was the result; if he had it analyzed, what was the result?

THE COURT: I do not think the question is admissible. You may take the answer, but I do not think his testimony will disclose the nature of the thing.

Mr. Anderson: I venture to suggest, if your Honor please, that if a man is conducting a business, the results as reported to him in his business, such as done under his direction, would be evidence. It might not be conclusive evidence on the subject, but it would be evidence on the subject because it is in the course of his business; just like an accountant keeping a lot of accountants working under his direction, and he is prepared to say that those accounts are correct although he did not make the actual entries. He can do that; because it might take years to bring every accountant that makes an entry on the books under consideration; and the same thing here.

The Court: You might take the answer.

Mr. Anderson: I will just take the answer and go ahead. What was the result?

A. I took each batch to the Pease Laboratories, Dr. Pease himself, asked him to examine them and ll me whether they were di-oxychinolin sulfate.

Mr. Kresel: One minute, please. We object to this, if your Honor please. We do not understand the purpose of this testimony. There is not anybody here challenging this patent. The defendant is not challenging this patent. There is no claim made by anybody that something that this gentleman manufactured was not according to the patent. Why should we now go into an inquiry as to whether what was produced was what this gentleman says or was not what this gentleman says? I would like to know.

Mr. Anderson: I would be very glad to answer that. I think myself that for the purpose of this case the general statements testified to on last Friday were sufficient to show that this man owned this patent and was going ahead. All that testimony was objected to, and therefore it becomes necessary for me to go back and go through the detailed proof, which I did not think was desirable or necessary, in order to show his ownership of this patent, to show that he acted under this patent and that he regarded it as worth the money which has been testified.

Mr. Kresel: The ownership of the patent is not going to be decided by the result of a chemical analysis of what he manufactured. I do not see that that is material at all.

Mr. Anderson: We do not want to go into the details if Mr. Kresel admits this.

Mr. Kresel: Very well, let us stop on this line.

Mr. Anderson: On your statement, I am perfectly willing to stop right where I am.

Q. 103. Mr. Parmele, with the original evidence of these patents on the record I will again ask you what in your opinion was the value of this patent and trade-mark both of which were assigned to you together, when it was seized and assigned to the Chemical Foundation as testified by you on last Friday?

Mr. Kresel: We object to that, first upon the ground that the witness has already testified on the subject, and unless he desires now to change his testimony in that respect, he ought not again to be asked the same question. Furthermore, we object upon the grounds that we urged heretofore, to his testifying as to value, upon the ground that no proper foundation has been laid for the giving of such testimony, that it is patent that what this witness is telling about is what he thinks it is worth to him, not what the market value of the patent and trade-mark were, and therefore such testimony is incompetent.

Mr. Anderson: He had not answered, and

therefore I don't know whether he is. I asked him what he regarded as the fair value of this patent.

Mr. Kresel: He did answer that last Friday; why ask him the same thing?

Mr. Anderson: We will save time, I think, by getting it now. I want to put that in after this original evidence is in the record.

The Court: His answer to that question as the record now stands will not be of any service to me. You may put the question if you want to, but it will not elicit any information that will be of any service to me in reaching a conclusion as to the value of this patent. You may put it in the record if you desire.

Q. 103. (Continuing) Answer the question, please.

A. Over a hundred thousand dollars. I was offered—

Mr. Kresel: I object to that. He has answered the question now.

The Court: Objection sustained. We have had his testimony with respect to the offer and it is not necessary to repeat that.

Mr. Anderson: Yes. I wanted to be sure that we have covered all those objections.

Q. 104. Under what trademark did you sell the product as to which you have testified?

A. Chinosol.

Q. 105. You sold it under the mark which has been identified here?

A. Yes, sir.

Q. 106. That trade name "Chinosol" is applied to this particular product that you have described as manufactured by you?

A. It is.

Q. 107. What do you regard that trademark as worth?

Mr. Kresel: I object to that upon the ground that the question has already been asked and answered and upon the further ground that no foundation has been laid for this testimony and that it is incompetent, irrelevant and immaterial.

THE COURT: I think the objection is well taken on both points, but you may put his answer in.

Q. 107. (continuing) Go ahead.

A. Over a hundred thousand dollars.

Q. 108. How much have you expended in the development of that trademark?

MR. KRESEL: I object to that upon the ground that that question was asked at the last hearing; and upon my objection, your Honor indicated that it was an improper question and counsel withdrew it. I again urge the objection that it is incompetent, immaterial and irrelevant.

THE COURT: I think the objection is well taken on both points.

MR. ANDERSON: Your Honor will permit the answer?

THE COURT: Oh, yes.

Q. 108. (continuing). Answer the question?

A. Over a hundred thousand dollars.

Q. 109. You have actually expended that amount in the development of this trademark, have you?

A. Yes, sir.

MR. ANDERSON: That is all.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 110. Mr. Parmele, do you know when this patent was issued by the United States Patent Office?

MR. ANDERSON: If you Honor please, I think the best evidence of that is the patent itself and it has been introduced at the request of counsel. I do not think even on cross-examination he can ask him as to a matter that is a matter of record, and which can be proved only by the record.

Mr. Kresel: Upon cross-examination, your Honor, I have a right to test not only the credibility but the recollection of this witness. He has undertaken to give testimony of value.

The Court: I assume Colonel Anderson the question is not intended to obtain the date of issuance of this patent, but it is simply an introduction to some other question which he shall ask the witness.

Mr. Kresel: Yes, your Honor.

XQ. 110. (continuing). Will you answer, Mr. Parmele?

A. What is the question again, sir?

XQ. 111. When the patent was issued.

The Court: If he knows.

A. I do not know.

XQ. 112. Do you know how long your patent had to run in April, 1919?

A. The patent expires in 1925.

X.Q 113. Then in 1919 it had how many years still to run?

A. Six.

XQ. 114. You were not the inventor of this process which is patented?

A. No.

XQ. 115. You got your rights by assignment from the inventors?

A. Yes.

XQ. 116. And that assignment is what you produced this morning and is now marked Plaintiff's Exhibit No. 213?

A. Yes.

XQ. 117. You have been asked to produce an agreement which is mentioned in this assignment as the agreement between Messrs. Fritzsche and Ostermann and the Chinosol Company which was dated June 1, 1908, and you tell us that you can not find it. That is right, is it not?

A. Correct.

XQ. 118. You were with the Chinosol Company in June, 1908?

A. Yes.

XQ. 119. And you were instrumental in having that agreement of June 1st, 1908 made?

A. Yes.

XQ. 120. I read to you from the assignment Plaintiff's Exhibit No. 213, the following:

> That assignment is "to be held and enjoyed by the said Chinosol Company of New York for its own use and behoof and for the use and behoof of its successor and legal representatives to the full end and term for which the said Letters Patent are granted."
>
> That you understand, do you not?

A. Yes.

XQ. 121. "And the said trademark or trade name may be enjoyed, as fully and entirely as the same would have been held or enjoyed by them if this assignment and sale had not been made, and for so long a time as the above mentioned agreement of June 1, 1908, shall be in force and valid."

A. Yes, sir.

XQ. 122. You understand that, did you not?

A. Perfectly.

XQ. 123. In other words, that your rights to this trademark and to this patent were dependent upon the agreement of June 1st, 1908, remaining in full force and effect?

A. Yes, sir.

XQ. 124. Then I read to you the following: "It being understood that this assignment shall be nil and void in the event of a breach of the contract by the parties thereto of the second part'' (that is, the Chinosol Company), ''the assignees in this present assignment, and that this assignment of trademark and patent shall become completely nil and void either by breach or abandonment of the said agreement of June 1st, 1908, by the parties thereto of the second part.''

A. Yes, sir.

XQ. 125. You are sufficiently familiar with language and legal documents to realize that by the terms of this assignment, your rights in the trademark and the patent were dependent upon the observation of the terms of the agreement of June 1st, 1908?

A. Which were all lived up to.

XQ. 126. Wait a minute. Yes or no?

A. Yes.

XQ. 127. Don't you volunteer anything to me, please. That agreement you have not produced?

A. No.

XQ. 128. You first learned of the seizure of the patent by the Alien Property Custodian, I think you testified, in June, 1919, was it?

A. About that time.

XQ. 129. Didn't the Alien Property Custodian send you the demand by which the seizure of the patent was made?

A. I submitted the letter received from the Alien Property Custodian when I was here last week.

XQ. 130. With the demand?

A. Yes.

XQ. 131. The demand came to you?

A. Yes.

XQ. 132. And you remember, you returned it?

A. I did.

XQ. 133. To the Alien Property Custodian?

A. Yes.

XQ. 134. Did you read that demand before you returned it?

A. I did.

XQ. 135. I show you Plaintiff's Exhibit No. 20 A. That is the demand, isn't it?

A. Isn't the original here, sir?

XQ. 136. That is the original. That is what w produced by counsel for the Government. Perhaps th will aid you. Here is Exhibit No. 203 which was t letter with which that demand came to you. Do yo see it?

A. Just let me read this, please. (Reading) Tha is it, sir.

XQ. 137. I now read to you from this documen Plaintiff's Exhibit 203-A as follows:

> "I, A. Mitchell Palmer, Alien Property Cus todian, duly appointed, qualified, and acting unde the provisions of the Act of Congress," and so on "under and by virtue of the authority vested in m as Alien Property Custodian, after investigation do determine that Leopold Ostermann, Hamburg Germany, is an enemy not holding a licens granted by the President; * * * * and I do further, after investigation, determine that certain Letters of the United States, identified as follows: Patents No. 906,918, date of issue December 15, 1908—"

That is the patent you are talking about, is it not?

A. It is.

XQ. 138. That is the one you claim is yours?

A. Yes, Sir.

XQ. 139. "And every right, title and interest with respect thereto, including all damages and profits recoverable at law and equity from any person, firm or corporation or government, for past infringement thereof, subject to the rights of Chinosol Company, New York, N. Y., belongs to, or is held for, or on account of, or on behalf of, or for the benefit of said enemy, Leopold Ostermann."

Don't you see what the Alien Property Custodian demanded from you was whatever right Leopold Ostermann had and that it was subject to whatever rights the Chinosol Company had?

Mr. Anderson: One moment; if your Honor please, I object. That is a pure question of law for your Honor to determine on argument. The construction of the written instrument is a question of law for your Honor to determine on argument here if at all, and certainly this witness is not qualified to answer the question.

Mr. Kresel: I asked him whether he read it and I want to know what he understood by it.

Mr. Anderson: That is not the question. You asked him whether he did not know the meaning of that instrument.

The Court: May I ask you now, Colonel Anderson, what your contention is with respect to the construction. of that instrument.

Mr. Anderson: For the present, I prefer not to answer, because I have not examined the instrument very carefully.

Mr. Kresel: Colonel, do you not see that all that the Alien Property Custodian seized is what the Germans had, and it is expressly subject to the rights of the Chinosol Company?

Mr. Anderson: All right; we will argue that when we come to argue finally.

The Court: Either that is your contention, Colonel Anderson, or necessarily will be, and you necessarily have considered it, and if your contention is different from what Mr. Kresel indicated—unless your contention is different from what the reading of this indicates, I do not see the purpose of Mr. Parmele's testimony in that particular; but I do not see how the seizure with respect to this patent, not of the patent, but with respect to the seizure of the German interest, if any, in thi patent, indicates any overstepping, any fraud o any neglect or any carelessness on the part of th Alien Property Custodian.

Mr. Anderson: Now, if your Honor please, i the first place, a construction of that instrumen must be taken, all of it, altogether, and the correspondence thereupon, introduced in evidence here. In the second place, even if Mr. Kresel's construction of the instrument were correct, which we do not concede, and I would make that very clear, and which is a question of law for the Court and not for the witness—that is my particular objection, and that is what my objection goes to. The subsequent dealing with this situation is, in my judgment, a very material fact in connection with this case taken in connection with other cases of similar character, some of which have been introduced, and others of which will be introduced; and show the course of dealing in this particular incident. You can not go through 4500 patents and prove them, but we can prove a good many of them and that, in my judgment will become a matter for argument in this case and on the argument of this case will be a very material question of dealing with the other larger issues involved.

I do not want to go into this this morning, unless it is necessary. In so far as that instrument is concerned, what it may or may not mean may come up for discussion, but I frankly do not think that its construction—

The Court: It is not open to construction by this witness, that is a burden which is mine.

Mr. Anderson: I reckon so. That is all I contend for.

The Court: If Mr. Kresel's question is an ultimate question and not one by way of inducement, then your objection is undoubtedly well taken.

Mr. Anderson: Would your Honor have the question read? Could it be anything but a conclusive question?

Mr. Kresel: I desire to be heard on that before the Court rules on it.

Mr. Anderson: I would just like the Court to have the question read before you are heard, so we can get it clearly before us. I understood it to be a clear-cut construction of the instrument.

(The stenographer then read XQ. 139 as recorded above.)

Mr. Anderson: Isn't that a clear construction of the instrument?

The Court: It is what?

Mr. Anderson: Doesn't that call for a construction of the instrument? I do not ask your Honor to answer that question, but I just say that as argumentative.

Mr. Kresel: All I ask is whether he did not see that in the demand which he had before him. That is all I ask him. I am not asking him to construe it.

Mr. Anderson: He said he read the demand.

The Court: Is it your purpose, Mr. Kresel, to follow that up with another question, using his answer as a basis for it?

Mr. Kresel: As a basis, yes, your Honor. It is mere inducement; I am not trying to get him to construe it.

The Court: That is only a question as to whether he did not see that, as I understand it. If this is an ultimate question of construction, then your object is not open to debate, it is clear and sound.

Mr. Anderson: Certainly.

The Court: But if it is by way of inducement then I think the question may be put. It may b defective in form as it now stands. Will you rea that again.

Mr. Anderson: Your Honor will permit me t note an exception.

The Court: Yes. Will you read the questio as amended, please, Mr. Stenographer?

Mr. Kresel: Shall I put it again, your Honor

The Court: Yes.

Mr. Kresel: It takes too much time to go back.

The Court: All right.

XQ. 140. Mr. Parmele, all I am trying to get from you is whether you did not see when you read this demand the portion that I read to you, wherein the Alien Property Custodian says that he seizes this patent subject to the rights of the Chinosol Company. Didn't you?

A. I did.

XQ. 141. And did you not further observe in this same instrument the following language: "As such Alien Property Custodian I do seize said letters patent and every right, title and interest with respect thereto including all damages and profits * * * subject to the rights, if any, of Chinosol Company"? You saw that, did you not?

A. I demurred—

XQ. 142. Did you or did you not see that?

A. Yes.

XQ. 143. Just answer my question, please.

A. Yes.

XQ. 144. And in your correspondence with the Alien Property Custodian's office subsequent to the seizure I ask you whether you did not get from the Alien Property Custodian a letter dated October 21, 1919. Look at this (handing witness paper). You got that letter from the Alien Property Custodian, did you not?

THE COURT: The exhibit being what?

MR. KRESEL: Plaintiff's Exhibit 189.

A. I did.

XQ. 145. You will observe that in that letter the Alien Property Custodian says this: "As the record in the Patent Office now stands the patent has been demanded by the Alien Property Custodian and conveyed to The Chemical Foundation, Incorporated, subject to whatever rights you may have therein." You observed that, didn't you.

A. I did.

XQ. 146. Prior to the outbreak of the European War you were the selling agent here for the German manufacturers of this product called Chinosol, were you not?

A. Never.

XQ. 147. Did you prior to the outbreak of the European War import this product called Chinosol?

A. I did.

XQ. 148. And prior to 1914, the outbreak of the European War, did you ever manufacture Chinosol here in the United States?

A. No.

XQ. 149. But since 1911 you had this assignment of the patent and the trademark?

A. Yes.

XQ. 150. So at least for a period of three years, from 1911 until 1914, while you were the assignee of the patent and the trademark, you did not manufacture the product here?

A. No.

XQ. 151. And prior to 1914 you had never manufactured it here, had you?

A. No.

XQ. 152. You used to import this product at about $2 a pound, did you not?

A. I don't remember what it did cost, the prices have varied so.

XQ. 153. Try to put your mind on it and tell me whether you did not import this product from Germany prior to the outbreak of the European War at about two dollars a pound?

Mr. Anderrson: One minute. If your Honor please, I do not know what relation this has to the direct examination. Therefore I will have to object to it as being outside the direct examination, unless counsel wishes to make the witness his own, which I will not object to.

Mr. Kresel: It has a direct bearing upon your question of value.

Mr. Anderson: All right, I want to make that note on the record.

The Court: Do you withdraw your objection, Colonel Anderson?

Mr. Anderson: What do you say, sir?

The Court: Do you withdraw your objction?

Mr. Anderson: No, sir; I do not withdraw the objection. I do not object to the examination at this time, even if it is outside of the direct examination, because I do not want this witness to come here two or three times. But I do want notice given that counsel makes him his own witness.

The Court: I think that objection is well taken. It seems to me the testimony of this witness, Colonel Anderson, is offered probably on two grounds: First, to denote carelessness of the Alien Property Custodian in making any seizure with respect to this patent; second, on the value of the patent seized. It seems to me that these questions are within the scope of that recent inquiry by you.

XQ. 154. Will you please answer the question?

A. I think I did answer it; didn't I?

XQ. 155. No, you did not.

A. I said yes.

XQ. 156. Oh, I am sorry that I missed that. Just in a very few words won't you tell us what this stuff Chinosol is; what does it do?

A. It is an antiseptic used by the medical profession.

XQ. 157. Well, I assume it is used by the medical profession, but what does it cure?

A. We don't say that it cures anything. We are not permitted to in accordance with ethics.

XQ. 158. I did not ask you that. I want to know what it cures, if you can tell me; if you can not, we will pass on to something else.

A. I can only quote from the literature of the medical profession. I don't know. We publish the statements of the medical profession.

XQ. 159. You publish statements of your own and not from the medical profession, do you not?

A. Yes, but we do not say—

XQ. 160. Yes is the answer; now let me put my next question. In this pamphlet you state what it is that this Chinosol cures, do you not?

A. I don't think we have ever made the statement over our own name that it cures.

XQ. 161. Well, what statement do you make about it?

A. We say that that is "of value in."

XQ. 162. "Of value in." Well, I will adopt your language. What is it of value in?

A. Cuts, burns, scalds and general antiseptic as that term is implied.

XQ. 163. Well, you say that it "should be used in all cases where you have splinters, cuts, bruises, burns, scalds, chilblain, frost bite, chafed surfaces, prickly heat, ingrown toenails, insect bites, ivy poisoning, pimples, chapped hands, as a tooth wash, in tooth cavities—(and pain resulting therefrom), irritated gums, after shaving, for removing dandruff"—now, is that all it does?

A. That is strictly correct.

XQ. 164. And that is what you advertise?

A. Yes, sir.

XQ. 165. Do you also say that—"In intense pain caused by the indigestion of tainted food, place one tablet Chinosol in tumbler of hot water and drink contents. If pain continues after 15 minutes send for a physician?

A. Correct.

XQ. 166. You also say that if after applying Chinosol to a tooth ache, "the tooth ache persists, place small piece of Chinosol tablet in the cavity, plug with small piece of wet absorbent cotton and then go to your dentist."

A. Strictly correct.

XQ. 167. Then, are there any other uses of this drug?

A. A great many.

XQ. 168. You use it for cleaning nursing bottles, do you not?

A. Yes, sir.

XQ. 169. This is your advertising, is it not? (Showing to witness.)

A. Yes, sir.

Mr. Kresel: Will you just mark that for identification, please?

Marked "Defendant's Exhibit B for Identification."

XQ. 170-171. Now, this patent was seized in the month of March, 1919, was it not?

A. I do not know just when it was seized.

XQ. 172. Well, Plaintiff's Exhibit No. 203-A, which is the demand, is dated March 1st, 1919?

A. That is the demand, but they did not state that they seized it.

XQ. 173. Well, I will not argue that with you. When did you first learn that it was seized? I will put it that way.

A. I think it was in June.

XQ. 174. June, 1919; when was it returned to you?

A. I testified the other day when I—

XQ. 175. November, 1919, was it not?

A. Either November or October.

XQ. 176. October or November, 1919. So that up to the time that you learned of the seizure, nobody interfered with you in the enjoyment of this patent?

A. Yes, sir. General gossip in the trade—

XQ. 177. I did not ask you that. I said who?

A. The whole trade.

XQ. 178-179. Did anybody manufacture under the patent?

A. I do not know.

XQ. 180. That is what I mean. Did anybody interfere with you; did anybody try to stop you from using the patent?

A. No.

XQ. 181. No. Now, from June, 1919, when you discovered that it had been seized, and until October or November, when it was returned to you, did anybody interfere with you; did anybody try to stop you from using this patent?

A. I can not answer that question yes or no. It is impossible.

XQ. 182-183. I want to know whether anybody tried to stop you or said anything or raised any objection to your using this patent between June and October or November, 1919?

A. I can not answer the question that way, sir.

XQ. 184. Did anybody come to you and say to you that you had no right to use that patent during those months?

A. No, sir.

XQ. 185. Now, as to the trade mark, you testified that you did not learn of the fact that it had been seized until many months after it had in fact been seized?

A. Correct.

XQ. 186. And that as soon as you learned of it, you went to The Chemical Foundation, and they immediately re-assigned it to you, did you not?

Mr. Anderson: I beg your pardon. If your Honor please, the witness did not testify to that. He put a letter in here with the date of the assignment. I do not want to interrupt and I do not think that counsel did it intentionally, but I do not think that it should be stated even unintentionally, and there should be no mistake about it, he did not so testify.

XQ. 187. Did you not so testify?

A. I did not testify they reassigned it immediately to me, no, sir.

The Court: Just a moment, Mr. Kresel. What is your specific objection, Colonel Anderson?

Mr. Anderson: It has been relieved now, because the witness has said he did not so testify. My specific objection was that the quotation of the witness's testimony was erroneous and in making my objection it was to call attention to that error.

The Court: Then there is nothing now before the Court on that objection?

Mr. Anderson: No, sir. The witness has answered that he did not so testify, and that clears it up.

XQ. 188. How soon after you learned that it had been seized, was it assigned to you?

A. I do not remember, sir.

XQ. 189. How many months elapsed between the time that you found out that it had been seized, and the time when it was assigned to you?

A. My letters to The Chemical Foundation ought to tell, but I do not seem to have the memorandum here, sir. This is all in reference to the patent, not to this trademark, sir. I do not remember just how long.

XQ. 190. Do you remember the month when you found that it had been seized?

A. It was either last spring or early in the fall.

XQ. 191. Of 1922?

A. 1922.

Mr. Kresel: Now, may I have the assignment of that? You say you put that in? I do not recall any such assignment was put in.

Mr. Anderson: I might have overlooked it. You can go ahead. I will put it in. Go ahead and use it.

The Witness: I have it here.

Mr. Kresel: The witness has it.

The Witness: It was handed to me, and I wondered why I had that.

Mr. Kresel: There it is. The witness has it and it is marked Plaintiff's Exhibit No. 211.

The Clerk: That is not in evidence. It was offered the last time and marked 211, and then withdrawn and was not put in evidence.

XQ. 192. Use that paper and tell me the date when you got your trademark back?

A. This is dated November 29th, 1922.

XQ. 193. All right. That is all I wanted.

A. Do you wish this, Mr. Kresel?

XQ. 194. No.

Mr. Anderson: Give it to me, please. (Paper handed to Mr. Anderson.)

XQ. 195. When did you first, if ever, manufactu Chinosol in the United States?

A. I think it was in 1918.

XQ. 196. What part of 1918?

A. I don't remember.

XQ. 197. Well, that is a very important thing i your business experience, is it not?

A. Not so very.

XQ. 198. No so very; that is all I want. Was i the latter part of 1918?

A. I do not remember.

XQ. 199. Well, how much Chinosol did you manu facture in 1918?

A. That I do not remember.

XQ. 200. How much Chinosol did you sell in 1918

A. I could not tell.

XQ. 201. When you say you manufactured Chino sol, did you manufacture the intermediate or did yo buy that?

A. Bought it.

XQ. 202. What is the name of the intermediate

A. We used two or three.

XQ. 203. What were they?

A. One was oxychinolin, and the other was orth aminophenyl.

XQ. 204. The latter is not covered by the paten is it?

A. No.

XQ. 205. So you were manufacturing Chinosol a least in part in a way not covered by the patent?

A. Not at all.

XQ. 206. You were using an intermediate for th manufacture of Chinosol which was not the interme diate described in the patent?

A. Because we—

XQ. 207. I did not ask you why; did you not?

A. Yes.

XQ. 208. So you bought your intermediate from Germany?

A. No.

XQ. 209. Have you bought any intermediate from Germany since 1914?

A. No.

XQ. 210. Have you imported Chinosol since 1914?

A. Yes.

XQ. 211. When did you start importing again since 1914?

A. I do not remember the exact date.

XQ. 212. Well, was it this year or last year?

A. Before both.

XQ. 213. 1920?

A. As soon as the permits were granted by the War Trade Board.

XQ. 214. Yes. You made applications to the War Trade Board for permission to import this just as soon as the Armistice was signed, did you not?

A. I did.

XQ. 215. And they declined to give you licenses, did they not?

A. They declined and—

XQ. 216. Did they not, yes or no?

A. Yes and no.

Mr. Anderson: Both.

Mr Kresel: That is all right. If you are satisfied with that, I am.

Mr. Anderson: I am.

XQ. 217. And during 1918 and 1919, the War Trade Board refused to issue you such licenses, did they not?

A. No and yes.

XQ. 218. Very illuminating?

A. Well, it is the truth.

XQ. 219. Please do not argue with me.

Mr. Anderson: I do not want to object, if your Honor please, but the witness should have a chance to answer. You can not confine a witness on cross-examination to a categorical yes or no, if it is not the truth. He has a right to state the facts.

Mr. Kresel: You can bring out the facts on your re-direct examination.

Mr. Anderson: The witness has a right, on cross-examination, to make a complete statement. You can not have him make a half statement.

Mr. Kresel: If there is anything that is settled, it is that the cross-examiner has a right to decline to accept any voluntary statements from the witness.

Mr. Anderson: But the witness also has the right to make a true statement; not a voluntary statement, but as long as it is responsive to the question, he can not be required to answer categorically yes or no. There is vast authority for that.

XQ. 220. In 1914——

Mr. Anderson: One minute. I would like your Honor's ruling on that question because I think your Honor is entitled to.

The Court: Were you asking a question or proceeding to discuss this question?

Mr. Kresel: No, I was asking a question and that question was interrupted.

Mr. Anderson: He interrupted the witness and refused to let him make a complete answer.

The Court: Did you want to qualify your categorical answer in any way?

The Witness: I did.

The Court: Then I shall accept his qualification, Mr. Kresel, allowing you to state your objection and question if you desire. But the witness must stick in his explanation to facts and not reasons.

The Witness: At first the War Trade Board declined to give me a license. I appeared before the Board in Washington. They granted me the license. I next applied for a license and they granted that. The goods were on the way here and they cancelled that license. I went down to Washington, explained that my merchandise was on the ocean in accordance with a license that they had granted. They told me that some one was manufacturing——

The Court: You do not want that, do you?

Mr. Anderson: No, sir, that is hearsay. Just say what it is.

The Court: The question restricted you as to whether you had a license or had not a license and you have already gone a little out of the scope of that. Now then, did they grant you another license? Not what they said, but did they grant you another license? You may state that.

The Witness: The license was renewed and none has been refused since.

Mr. Kresel: Now, have you finished?

The Witness: Yes, sir.

XQ. 221. All I want to know is, when the first license was granted and then cancelled?

A. I can not tell you the dates.

XQ. 222. What year?

A. I can not tell you that.

XQ. 223. What month?

A. Nor that.

XQ. 224. Now, in 1914, what was the amount of the sales of Chinosol?

A. I prefer not to state.

XQ. 225. What is that?

A. I prefer not to state.

XQ. 226. What were they in 1915?

A. Greater than 1914.

Mr. Kresel: I ask that that be stricken ou I asked for a figure.

XQ. 227. What were they in 1915?

A. I can't tell you.

XQ. 228. What?

A. I can't tell you.

XQ. 229. What were they in 1916?

A. I don't know.

XQ. 230. What were they in 1917?

A. I don't know.

XQ. 231. What were they in 1918?

A. The same answer.

XQ. 232. In 1919?

A. The same.

XQ. 233. 1920?

A. Same answer.

XQ. 234. 1921?

A. Same answer.

XQ. 235. 1922?

A. Same answer.

XQ. 236. Now, when you say "the same answer," is it that you do not know or that you prefer not t tell?

A. I couldn't tell you.

XQ. 237. What were your gross profits on th sale of Chinosol in 1914?

A. That is a personal question. I refuse t answer.

XQ. 238. What were they in 1915?

A. The same answer.

XQ. 239. What were they any year since tha time?

A. The same.

XQ. 240. What was your net profit on the sale in 1914?

A. I decline to answer.

XQ. 241. Is your answer the same as to each year since that time?

A. Yes, sir.

XQ. 242. Under your agreement of the first of June, 1908, with the Germans, how much were you paying them?

A. I don't remember.

XQ. 243. That agreement is still in force?

A. No.

XQ. 244. When did it come to an end?

A. After we had completed——

XQ. 245. When, when, when? Just the date.

A. I don't know.

XQ. 246. You don't know. That is an answer.

MR. KRESEL: I now move to strike out from the record every answer made by this witness wherein he undertook to assign a value to this patent and trademark, not only upon the grounds that I have urged in objections to the testimony as it was adduced, but upon the further ground that the witness has now declined to furnish information in answer to questions which is relevant both for counsel and for the Court upon which to appraise the worth of his testimony as to the value.

THE COURT: As to the value of what?

MR. KRESEL: Of the patent and the trademark.

THE COURT: I have missed a fact, Mr. Kresel, as to the trademark. I am not asking for further evidence. I am only asking whether these facts are disclosed by the evidence already in, and that is, where the Chinosol Company got the trademark. Was it new with them or did they acquire it?

MR. KRESEL: No, your Honor; the trademark came to them by assignment from the Germans by the same instrument as the patent.

The Court: And under the same conditions?

Mr. Kresel: Under the same conditions exactly. If your Honor desires, I shall read that portion.

The Court: No, not unless it is questioned. Have you anything to say, Colonel Anderson?

Mr. Anderson: Of course, we insist that the evidence is clearly material and relevant. We object to the motion. We do not care to argue it.

The Court: The motion is based on grounds that are sound and well taken. There are no facts before this Court which will enable this Court to reach any conclusion as to the value of this patent from the testimony of this witness, oral or documentary. But the motion is denied under the general rule we have adopted with respect to the evidence. So far as this Court is concerned, no further attention will be paid to the testimony of this witness under these circumstances.

Mr. Kresel: That is all, sir.

Mr. Anderson: That is all right, sir. I want the evidence to stay on the record, but I do not care to argue it at this time.

The Court: It has got to be argued now or not at all, before me.

Mr. Anderson: I do not want to argue it before your Honor, but I want it on the record, because with the greatest possible deference, I differ with your Honor as to the value of the testimony. If your Honor does not think it has any value, then of course you will not consider it. If we were trying the case before a jury, your Honor would strike it out, with an exception to the plaintiff. I quite recognize that, and consequently I will not trouble your Honor to hear argument on evidence that you do not think is material. At the same time, I want to retain it in the record. I may be wrong.

The Court: I may be wrong, Colonel Anderson. But there is only one time to debate this question, and that is now. There is only one time to correct my ruling on this, if it is in error, and that is now. You now have that opportunity. If this question is to be debated or there is any doubt about it in your mind, I desire to hear you now. If you do not care to be heard, I shall consider it an abandorment of this testimony.

Mr. Anderson: You mean for your consideration?

The Court: It must be taken as an acknowledgment of the soundness of the motion to strike out. If you can get any other Court to take any other view of it, that is your privilege, but I shall make it very clear that your action here is such as to amount to——

Mr. Anderson: Then I will state among other things why I think the evidence is material. But I do not want to argue it.

The Court: I did not mean that, Colonel Anderson.

Mr. Anderson: I will state in the first place that, I think so far as the question of value is concerned, this witness having had experience in the manufacture of materials of this character and having had experience with the use and development of trademarks of this character, he is competent to come on the stand and give an opinion without any further evidence of his qualifications, as to the value of this trademark and this patent, and that that principle is exactly the same as the principle under which we receive evidence of non-expert persons—without conceding that this gentleman would not qualify as an expert. It is the same principle as that under which we receive evidence of non-expert persons in condemnation proceedings and other proceedings for the ascertainment of value of property, and of those who are familiar by experience with values in that neighborhood or properties of a similar character.

Therefore, if this witness had never manufactured a pound of Chinosol, if he had never owned a trademark, but had dealt with the subject of trademarks and familiarized himself with them in a general way, he would be competent upon the facts in this record to come here and give his opinion of the value. I quite concede that it is for your Honor to weigh the value of that opinion, and you may give it no weight or you may give it much weight, as you see fit; but it is clearly admissible evidence in my view, with all deference to your Honor's view.

In the second place, it appeared on the direct examination that this patent was seized. What the seizure means is a question of law and I do not care to argue that unless your Honor desires me to. But it was seized, and the Alien Property Custodian advised this gentleman that they could not—we will put it in the narrowest terms—clear his title on that seizure without conveying to him something that they had conveyed to The Chemical Foundation, and they said they had seized this patent and conveyed it to The Chemical Foundation. The correspondence is in the record. The Chemical Foundation when approached on the subject not only did not reconvey this patent for over a year afterward, in 1920 as the evidence here shows, but in addition to that undertook first to induce this manufacturer to take out a license from them to use his own product, and in addition to that not only undertook to make him take a license, but to have him release them from all damages that they had done him by holding this patent. He testified that he had suffered serious damage in the trade when the knowledge had gone out to the trade of what had happened. Those were the circumstances. Whatever the evidence may be worth, and I am not going to argue its weight at this time, that evidence is admissible as showing a course of dealing in a case which charges a conspiracy to acquire these properties for the selfish purposes of the company acquiring them.

The Court: May I ask you, Colonel Anderson, what constitutes a seizure under the law, and what is the evidence in this case which shows the seizure and what was seized?

Mr. Anderson: As I understand it, the demand is *ipso facto* a seizure, that the demand operates immediately to seize. I may further state that the first communication to the Alien Property Custodian that this patent was owned by this Company and recorded, giving the record book and place, reached the Alien Property Custodian's office, as shown by this correspondence, before this patent was ever assigned to The Chemical Foundation.

The Court: I did not understand that. Will you repeat that last statement?

Mr. Anderson: That the claim of this gentleman that he owned this patent, by return of the demand, service not accepted, and the notice to the Alien Property Custodian that he as an American citizen owned it, that it was recorded in such and such a book and at such a place, and that there was no German interest in it, an absloute assignment, was communicated to the Alien Property

Custodian before any assignment was ever made of this patent to The Chemical Foundation.

THE COURT: May I ask this question, Colonel Anderson, because I ought to know this and want to know it, and it seems to me the time to know it is now. Assume there was a contingent German interest depending upon the happening of a future event or events, is it your contention that such an interest could not be seized under the Trading with the Enemy Act?

MR. ANDERSON: If it were a purely contingent German interest—and that involves a construction of that assignment, which we claim is absolute——

THE COURT: I understand.

MR. ANDERSON: We claim that assignment is absolute under the law, that the limitation upon it is void and can not be enforced, and it is an absolute assignment. Therefore, there was no contingent German interest in this patent on the face of the return.

THE COURT: That is, you contend that the assignment to the Chinosol Company was an absolute assignment?

MR. ANDERSON: Was an absolute assignment in law.

THE COURT: Let me see just where your contention is on that. It purported on its face to be not an absolute assignment, did it not?

MR. ANDERSON: There were certain terms of limitation and violation of contract questions involved in it that were conditions of its contingency.

THE COURT: From your standpoint what was the duty of the Government of the United States with respect to the seizures in such cases—to resolve all doubts and questions against it or to resolve them in favor of the United States? I am speaking of seizures and not sales.

Mr. Anderson: Your Honor, I will answer the question as best I can. In my judgment when the Government of the United States received notice, returning this demand, which until served was not a seizure, that this patent absolutely belonged to an American company and that there was no German interest in that company, and that this assignment was recorded at a certain place, it was absolutely wrong—I will put it that way—for the Government of the United States to proceed without further investigation and immediately seize that patent by formal service of a demand, and thus put a cloud upon this man's title, seriously injure his business, and then assign it to a third person.

The Court: That is, the Government should then have taken the position with respect to this assignment that it now takes?

Mr. Anderson: The Government should then have taken the position that in view of this notice from an American citizen it would inquire into the situation fully and if it developed that there was a German interest it would seize it; but the respect for the rights of American citizens is the highest function of the Government and a reckless disregard of them is absolutely wrong.

The Court: I am sorry to press you further, Colonel Anderson.

Mr. Anderson: I want you to press me further, sir.

The Court: But I have missed some of your reasoning, I am sure. The seizure, as I understand it, did not purport to seize the patent, but only to seize such interest as did not exist in the Chinosol Company.

Mr. Anderson: It was subject to such rights as the Chinosol Company might have, whatever they were. It seized the patent, it seized the trademark, but subject to the rights that the Chinosol Company might have. That immediately created a cloud upon the title of this property. It was just as if they had gone and taken my real estate, my home, taken possession of it and said, "I seize this property because at some time a German had an interest in it, and you can show what your rights are or whatever rights you have," and if that were the only property I had it would destroy my credit. Suppose they seized my bank stocks or anything else. The Government of the United States has the duty to find out the facts and resolve the facts in favor of American citizens.

The Court: Then what is the Government's present contention the Governmental agency should have done with respect to this patent?

Mr. Anderson: My answer to that is this, sir—that these people should first have investigated this record carefully enough to have known the status of this patent before they seized it.

The Court: And then what?

Mr. Anderson: Second, when they found the status, if they had any suspicion that there was a German interest in this patent, they should have notified the American using it and if necessary forwarded to him a demand and asked him to accept it and disclose that German interest, as the Statute requires. He was subject to penalties if he did not. If he came back and said that there was no German interest in this property, that he had an absolute assignment, and said, "Here is my record of title," it should have carefully investigated before it took possession of his property and thus injured his business which was resting on good will and this trademark before it made the seizure. Then if it was convinced that there was a German interest involved, it could have made the seizure of that German interest, carefully conserving his interest in the meantime. But to have gone on after notice and immediately seize and demand this property, although Section 9 of this Act stopped the right to dispose of this property when notice was given—to have gone on and seized it and transferred it to The Chemical Foundation and then refer him to The Chemical Foundation, was an outrageous invasion of his rights.

The Court: Then as I understand you the situation with respect to this patent and its status, and the several interests therein, was disclosed by the agreement which was of record in the Patent Office?

Mr. Anderson: It was disclosed that this patent had been assigned to this American, that is all.

The Court: The Patent Office record disclosed the several interests of the parties in this patent—that is, it was documentary evidence only?

Mr. Anderson: The assignment is here and it speaks for itself, sir. It is an absolute assignment. But they did not rest there. If they had seized this patent without any notice, if this man had come back and accepted that service or had not given them notice he owned this patent absolutely and had not given notice that there was not a German interest therein, there might have been some justification; but to seize it after notice that there was no German interest there—if your Honor will observe, there is not another letter from the Alien Property Custodian to this man after he had given notice that he owned this patent and trademark, for the next six months. They never paid any attention to it after that until he again insisted upon a reply.

THE COURT: But was not the assignment of record? As I understand you, the assignment disclosing this agreement was of record in the Patent Office. Am I right about that?

MR. ANDERSON: The assignment was of record, yes, sir, but the assignment as I construe it is absolute. May I suggest with all possible deference to your Honor that there was no obligation on these people to hurry the seizure of this property. The war was over and the President had so declared in his address to Congress. This property was owned by an American citizen, being used by an American citizen in the United States. What was the need of haste in getting it if they were not trying to profit through The Chemical Foundation in it? There was not any obligation to seize this property. It was mere authority. Yet when the man notifies them it is his property and he is an American citizen, entitled to the protection of its Constitution and laws—and the Act only relates to foreign property—they do not inquire into it at all, but go to work and seize it. But they do not stop there, they do not only seize it when the Government could redress the wrong, but they assign it to a private corporation, which in turn asks him to pay a royalty on his own property. If that does not show the character of this transaction, what can?

I did not mean to go into all this argument, and do not want to argue this case in anticipation, but I say every word of this testimony shows evidence of irregularity, to put it very lightly.

Mr. Kresel: I do not suppose your Honor desires me to answer all this at this time.

Mr. Anderson: I would not have stated this but your Honor stated that you felt I abandoned this testimony unless I did state it.

The Court: Yes, I did say that.

Mr. Anderson: I am undertaking to state my chief reasons. In other words, if your Honor please, I want to make it clear here again that the Government is not only going to contend that this was a sale by a trustee to himself and therefore void *ab initio* on the familiar principle, that it was a confiscation of property and therefore outside the power of anybody except Congress, but that this whole transaction, the sale of this property and the seizure of this property, was part of a conspiracy to get control of this whole business for the purpose of restraining interstate and foreign commerce in the United States, and absolutely void and against the express mandates of the Statutes of the United States no matter who did it. And that conspiracy is an essential part of this case and surrounds it all. This sale was only one of the acts in that conspiracy, and all these transactions which are collateral are merely evidence of the conspiracy and the adoption thereof by the parties concerned in this transaction.

Under those circumstances we are entitled to show any facts which lead to that. It has been suggested here that when I make that charge I also question the validity of the seizure by the Government and therefore the title of the Government. I do not to this extent—that that seizure has been confirmed in the Government of the

United States by treaty and is the law of the United States; but this sale has not been confirmed by any treaty nor in any other way, as I shall contend at the proper time. And if it had been confirmed, permeated as it is from the very first to the last transaction with an obvious purpose here which is contrary to the laws of the United States, it would be absolutely void anyhow.

I do not want to get into all of this broad argument, but this evidence is absolutely material as bearing upon those issues. And when I say I do not want to get into it, I want your Honor to understand that I am willing to answer your Honor's questions, of course, and that when I hesitated to state my reasons for insisting upon this evidence and your Honor insisted if I did not it was an abandonment, your Honor will please not understand there is any intention other than to be absolutely open and frank with this Court, except that I do not want to get into these long arguments.

THE COURT: I merely wanted your position. I could not think of any theory upon which you could predicate any value in this testimony.

MR. ANDERSON: As that question has come up, may I state my position on that, for if I state my position a little more fully it may save us time.

THE COURT: You have indicated that you do not care to state any more at this time than you have to. I am willing to let this question terminate at the present time in this manner: That I still do not see in view of the language of the assignment in fact, whatever its legal construction may be, where fault is to be found with the seizure of such interest in this patent as did not exist in an American. He may have had the temporary full possession, but that may have been subject to being defeated by his subsequent act, and then if defeated the title would revert to German owners. So far as I can see now, that contingent interest or possible contingent interest if it existed was subject to seizure, though I am not passing on the construction of that assignment. If they did not get anything that is another matter.

Now then, whether the demand and seizure were technically correct, that is, whether they should have been seized and obtained subject to his interest, or whether they should have seized such interest as may now or hereafter be determined to be German interests, seems to me to present another question. The testimony may remain subject to such future use as you may disclose it is entitled to.

Mr. Anderson: Your Honor understands then that the question of waiving this testimony for any future use is removed by this discussion?

The Court: Yes.

Mr. Anderson: Very good, sir.

Mr. Kresel: What is removed? I do not quite get that.

The Court: That Mr. Anderson has made clear that he does not abandon.

Mr. Kresel: We can take that for granted. Colonel Anderson announced in very positive terms that he never abandons anything.

Mr. Anderson: That is right; not under the allegations of this Bill.

Mr. Kresel: There is just one point, Colonel. I think you would like to be corrected if you make a statement which is unwittingly wrong. You stated in your argument that the seizure was made subsequent to the receipt of a letter from this witness protesting that he was the owner of the patent. That was your statement.

Mr. Anderson: That was my understanding.

Mr. Kresel: I now point, if your Honor please, to page 223 of the Bill, wherein it is stated that the seizure of this patent was made on the 25th of March, 1919. Your Honor will see under patent No. 906,918—that is the number of this patent—under the heading "Date of service and filing," March 25th.

If your Honor will turn to Plaintiff's Exhibit 185, which is a letter that Colonel Anderson says was written by this witness, wherein he protested that he was the owner of the patent, your Honor will find that the letter was receivod by the Alien Property Custodian on the 26th of March, which is the day after the seizure.

The Court: You need not go into it further now, Colonel Anderson.

Mr. Anderson: I am very much obliged to counsel for the suggestion. If I am in error in any statement I make, I am always glad to be corrected. But I do not concede his conclusions.

Re-Direct Examination.

By Mr. Anderson:

RDQ. 247. You were asked on cross-examination as to a certain agreement mentioned in the assignment of the patent and trademark in question to you, which agreement is referred to as dated 1908. I will ask you whether you have ever had any notice of termination of your rights under said assignment or any objection from the original owner as to your use of the patent or trademark?

Mr. Kresel: I object to that. I object to it upon the ground that it calls for his conclusion, upon the ground that it calls for his construction of a document which he has failed to produce, upon the ground that it calls for hearsay evidence and upon the ground that it is immaterial and irrelevant.

THE COURT: What is the materiality, Colonel Anderson?

MR. ANDERSON: In this, that he has stated he could not produce the agreement because it was lost. He was asked on cross-examination as to the agreement and now I want to know whether the original owner has ever demanded of him the termination of the agreement or given him any notice that this patent was not completely in him. It is not a question of the construction of the agreement, but merely whether he had any demand from the original owner—for what it is worth.

MR. KRESEL: But your Honor, with the agreement not before us, this witness is asked to state whether he has ever received notice of termination of the agreement. That certainly calls upon him to construe the notice which we have not before us.

THE COURT: But apart from that, I do not see that the answer can be material. It seems to me, depending upon the construction of the Trading with the Enemy Act and depending upon the construction of the assignment, if there was a possible German interest in the patent which the Government was authorized and empowered to seize, whether that interest has become an actual present interest or still remains a contingent interest, seems to me is immaterial. I do not see how that would make any difference.

MR. ANDERSON: They never made any claims at all.

The Court: I do not see it, Colonel Anderson, because it seems to me if they were going to seize everything that belonged to the Germans, they would have seized contingent interests as well as actual interests. It seems to me that possibly it might be relevant on your theory as to whether that had been done at the time of seizure, not since.

RDQ. 248. I will say up to the time of seizure. I will cover the whole thing in one question.

A. I had not.

RDQ. 249. You were asked whether there was any interference with the use of this patent. I will ask whether or not the officers of The Chemical Foundation undertook to induce or require you to take out a license under this patent.

The Court: Have you not already gone into that?

Mr. Kresel: That was all covered by his direct testimony.

Mr. Anderson: I am not sure that it is covered by the direct testimony.

The Court: Of course, if you mean his conclusion, it was not. If you mean the facts, it was, unless you have some new facts.

Mr. Anderson: He was asked as to whether there was ever any interference, but he was not allowed to say anything, except yes or no. He was asked on cross-examination.

The Court: His relations with The Chemical Foundation were gone into fully by you and it would be improper for you to go into them again. This question does go right back to the facts or is irrelevant because it calls for a conclusion.

RDQ. 250. Have you the re-assignment to you of this trademark by The Chemical Foundation?

A. I have.

RDQ. 251. May I see it? (Handing paper to counsel.)

Mr. Anderson: I now offer in evidence an instrument of assignment from The Chemical Foundation, signed by Francis P. Garvan, President, to the Chinosol Company, dated the 22nd day of November, 1922, together with the stamp of the Commissioner of Patents showing the recordation thereof, with the place of recordation, on December 8, 1922, to be identified as Plaintiff's Exhibit 214.

The Court: Admitted under the same conditions as previous exhibits.

Received in evidence and marked "Plaintiff's Exhibit No. 214." *(See Exhibits, Vol. I, page 508.)*

Mr. Anderson: I will ask that the Plaintiff have leave to substitute a copy and withdraw the original, as it is the witness's evidence of title.

Mr. Kresel: No objection.

Mr. Anderson: I now offer in evidence a duplicate original, apparently, of a paper called "Release and Discharge" signed by the Chinosol Company, by this witness as President, dated the 29th day of November, 1922, to be identified and read in evidence as Plaintiff's Exhibit No. 215.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 215." *(See Exhibits, Vol. I, page 510.)*

Mr. Anderson: As this seems to be an original record of the witness, I would also ask that we be allowed to substitute a copy later on in the trial and withdraw the original.

Mr. Kresel: No objection.

The Court: A copy may be substituted.

Mr. Anderson: That is all, if your Honor please.

Mr. Kresel: That is all.

Mr. Anderson: With your Honor's permission, I would like Mr. Parmele to be discharged from the subpoena.

Mr. Kresel: No objection on our part.

The Court: You are not required to return under your subpoena, Mr. Parmele.

(Witness excused.)

Mr. Anderson: I will call Mrs. Wilson.

MARGARET R. WILSON.

Margaret R. Wilson, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Please state your name and place of residence?

A. My name is Margaret R. Wilson. My address is Washington, D. C.

Q. 2. What is your present position or employment?

A. I am Chief of the Division of Enemy Trade of the Federal Trade Commission.

Q. 3. Are you in Court under subpoena from this Court?

A. I am.

Mr. Anderson: May I explain to the Court that the Statute prohibits the production or opening of any of the records of the Federal Trade Commission under heavy penalty by any employee, unless under subpoena of the Court. I wish to make it clear on the record, and I will make the statement with the consent of counsel, that Mrs. Wilson was summoned on yesterday by subpoena *duces tecum* to produce the records of the Federal Trade Commission, as to which I will inquire.

Q. 4. Did this subpoena served upon you require you to produce certain records of the Federal Trade Commission?

A. It did.

Q. 5. Have you the records in Court called for by that subpoena?

A. I have.

Q. 6. Have you in Court the original or duplicates of licenses issued by the Federal Trade Commission under various enemy patents from October 6th, 1917, down to date?

A. I have.

MR. KRESEL: Are they originals or duplicates?

Q. 7. Have you the originals or the duplicates?

A. I have the original licenses.

Q. 8. Will you produce those papers?

A. Witness produces papers.

Q. 9. Are the documents which you now hand me the original licenses issued by the Federal Trade Commission to various licensees under the Trading with the Enemy Act, from October, 1917, down to date?

A. They are the original licenses.

Q. 10. Do you know how many of them there are?

A. There are approximately sixty. Some are group licenses. That is, there are three or four sections involving the one license, as under Salvarsan, but approximately sixty.

Q. 11. Approximately sixty licenses?

A. Those are not all the licenses that were issued by the Commission, you understand. Those were all that were involved in this present suit.

Q. 12. These are all of the licenses that you know of issued by the Federal Trade Commission or in its records relating to the patents described in the Bill of Complaint in this cause?

Mr. Kresel: We object to that upon the ground that this witness is not competent to determine.

Mr. Anderson: Very well. I will withdraw the question. I am trying to shorten it. The licenses will speak for themselves and that is the best evidence.

I now offer in evidence an original document entitled, "United States of America, Federal Trade Commission, License issued to The Dermatological Research Laboratories, date of License November 26, 1917," the document itself consisting of five pages and accompanied by various exhibits mentioned therein, and also by a letter or paper entitled, "Cancellation of Licenses," signed by "J. P. Yoder, Secretary," under seal of the Federal Trade Commission, all of which papers are included in the folder or cover marked as I have described; which papers are identified as Plaintiff's Exhibit No. 216.

Mr. Kresel: To all of which the defendant objects upon the ground that the evidence is immaterial, irrelevant and incompetent. I do not think it is necessary to repeat the objections I urged to the testimony given here by Mr. Storck in support of which I understand this present document is offered. That is my understanding, Colonel.

Mr. Anderson: It is offered as the original basic evidence on which we will build further the statements already introduced by Mr. Storck and additional statements relating to the same subject.

Mr. Kresel: I simply desire that our objection should be considered as being upon the grounds I urged to the testimony and the evidence given by Mr. Storck, and further now upon the ground that it is immaterial and irrelevant.

The Court: That may be placed of record under our general rule. Were you about to ask that the remainder be admitted under some arrangement that you had in mind?

Mr. Anderson: Yes, sir. First I wanted to ask that the Government be given leave to withdraw this original and substitute a photostat copy, which we have in Court now.

Mr. Kresel: There is no objection to that of course.

Received in evidence and marked "Plaintiff's Exhibit No. 216." *(See Exhibits, Vol. I, page 515.)*

Mr. Kresel: May we have a copy, if you have copies to spare?

Mr. Anderson: We have only one copy. We have not had time to make them.

The Court: Then it will be introduced and true copy be substituted for the original. Do you want to deal with the remainder of those licenses now?

Mr. Anderson: Let me have the copy. Just one moment, your Honor.

Mr. Kresel: May the record show the number of this license?

The Court: The Trade Commission number?

Mr. Kresel: Yes. It will assist in checking up.

Mr. Anderson: The license numbers are: No. 1-A, No. 1-B and No. 1-C; the paper and the document.

Mr. Kresel: Thank you.

Q. 13. Mrs. Wilson, there have been produced in Court photostatic copies of the various licenses, the originals of which you have produced. You have checked those photostats with the originals and they are true photostat copies, complete, are they?

A. I checked them and they are true and complete.

Q. 14. They are full and complete?

A. Absolutely, yes, sir.

Mr. Anderson: I understand that you do not question the correctness of the copies, subject to correction.

Mr. Kresel: If Mrs. Wilson states that she has checked them, that is satisfactory.

Mr. Anderson: Now, if the Court please, I would like to shorten the introduction of these papers by submitting the number of documents that are bound together, and perhaps the best thing to do would be to describe them by numbers.

The Court: Do you want all the documents within the folder to be admitted?

Mr. Anderson: Yes, sir.

The Court: Then, can not that be done without lengthening our record at this point? You do not have to refer to each paper in the folder in each instance.

Mr. Anderson: No, sir.

The Court: I am wondering whether your colleague can not arrange for their numbering and for the substitution of the copies for them, and you go ahead.

Mr. Anderson: Yes, sir. Then, I now ask leave of the Court, and with the agreement of counsel, that in order to save time of offering each of these sixty odd folders of papers in detail, that I be permitted to offer them each as a separate exhibit—that is what number?

The Clerk: 216.

Mr. Anderson: 216 to whatever number they run to, and that they be numbered by the Clerk in co-operation with representatives of the respective sides, and considered as all introduced in evidence formally. Can we do that?

Mr. Kresel: There is no objection. Of course, our objection is the same to these others as I have urged to the first one, and subject to that, of course, I have no objection to any reasonable arrangement about the marking.

The Court: So ordered, Colonel Anderson.

Mr. Anderson: And with leave to substitute photostat copies in each case——

The Court: For the original?

Mr. Anderson: For the original. The exhibit number to apply in each case to all the documents embraced in each package tied with red tape and now presented to the Court. Is that agreeable?

Mr. Kresel: Absolutely.

The Court: And rivetted together.

Mr. Kresel: I trust that the Court is not holding us responsible for the introduction of all this mass of stuff. I want the responsibility to stop with the other side.

The Court: That is purely a matter of costs to be determined later.

Mr. Anderson: Since counsel called for the original evidence, I do not see any way for us to avoid producing them.

Mr. Kresel: I want to straighten the record on that right now, because if the Court should ever criticize somebody in this case for having loaded up the record with immaterial and inconsequential statements or documents, I do not want to be charged with it. Now, Colonel, you say that I demanded the original records. I made no such demand. On the contrary, I specifically stated here that I raised no question of formal proof; and I repeat that now.

Mr. Anderson: I think, if your Honor please, this may become important on the question of costs and therefore I wish to state that I understand the record to show, and I have checked it over, counsel did waive the question of formal proof of documents, but insisted that the figures in the statement presented by the witness Mr. Storck, of the revenues derived from these patents and contracts, as described in the evidence last Friday, was not admissible because it was not the best evidence, and that the originals must be produced.

Mr. Kresel: May I stop you here, Colonel, because you are in error. I made no such objection.

Mr. Anderson: I read it.

Mr. Kresel: And if I am in error, I shall be pleased to have you turn to the record and point to it. I made no such objection. Now, I will tell you what my position was, if you desire it.

Mr. Anderson: I would like very much to know.

Mr. Kresel: My position was this: That the statement put in by Mr. Storck did not disclose the dates when the money was received, and that I insisted that until such evidence was admissible at all, if it had any materiality, the dates of the payments were important, and I understood that perhaps Mr. Storck was to go to the Alien Property Custodian, to whom the payments were made, so as to be prepared here to testify as to that. Now, that was my position. You can put in anything.

Mr. Anderson: I perhaps misunderstood you, but I certainly understood that you objected to the validity of that proof on the ground that it was not the best evidence as to these licenses, and I called on Mr. Storck in open Court to produce the best evidence, and he said he would bring it here today.

Mr. Kresel: Yes, but you are entirely mistaken, Colonel. The question that I raised about the licenses was this; I want to put you straight: That I called the attention of Mr. Storck to the fact that some of the licenses issued by the Federal Trade Commission covered not only specific licenses, but a class wherein and whereby the licensee was enabled to use all other licenses. You remember that, do you not?

Mr. Anderson: I remember that, and I wanted to get the licenses.

Mr. Kresel: And then Mr. Storck said he did not know anything about that.

Mr. Anderson: Yes. And then you asked us whether we ought not to produce the licenses and now we are producing them.

Mr. Kresel: Do not misunderstand me. I do not want to foreclose you except by such objections that I make, from putting in anything you want, but I do not want to have the responsibility placed on my shoulders for throwing in a lot of records like that into this case.

Mr. Anderson: Since the counsel insists upon the provisions of the licenses, the best and only legal evidence of the provisions of these licenses are the licenses themselves.

Mr. Kresel: That is all up to you.

Mr. Anderson: And since he objected to this evidence on the ground that those licenses contained provisions which affected both the admissibility and the materiality of that evidence, then I think I suggested that we might agree on the provisions of the licenses.

Mr. Kresel: You did not make any such suggestion, because I am open to the suggestion and I am open to it now. You never made any such suggestion until this present moment.

Mr. Anderson: It might be that we may be able to stipulate this matter out and withdraw it; but we certainly could not agree last Friday and can not agree now, and we will go ahead and then we might ask leave to withdraw it or omit it from the printed record.

Mr. Kresel: That is up to you.

Q. 15. Mrs. Wilson, the subpoena issued called on you to produce the original cards of entry of the Federal Trade Commission, showing the royalties or license fees or other revenues accruing under the licenses which have been introduced, and any other information contained on the cards with reference to the same. Have you produced those cards? Have you those cards in Court?

A. I have.

Q. 16. And you now produce them?

A. Yes, I now produce them.

Q. 17. Do you know how many of those cards there are?

A. Just one for each license; approximately sixty; one for each license; approximately sixty.

Q. 18. Those cards are the original entries in the Federal Trade Commission office of which you were in charge, showing the fees charged against the licenses under the various licenses introduced here, are they not?

Mr. Kresel: Just a minute. I desire the privilege of examining the witness on that. I do not think the witness should be led to state the contents of the documents in that way. Are you going to offer those now?

Mr. Anderson: I am. I will go a little further.

Q. 19. Were these cards among the original records of the Federal Trade Commission under your charge?

A. They were.

Q. 20. Were they made up by you and under your charge?

A. By me and under my supervision.

Mr. Anderson: All right.

Mr. Kresel: May I ask the witness a question or two, your Honor?

The Court: Yes.

By Mr. Kresel:

Q. 21. Mrs. Wilson, you did not state when you became the Chief of this Division. When was it?

A. As far as I can give the exact date, about February, 1919, but I have been in charge of that branch of the work since the inception of the work in 1917.

Q. 22. That is, you did the work, although you did not have the title, is that it?

A. No. When I went in originally, in charge of the entire clerical force and managing clerk for the division, as such having charge of the files and records; later I was made Chief of the Division.

Q. 23. These cards that are being offered now you say were either kept by you or under your supervision?

A. Yes.

Q. 24. You mean that on some of them you made the entries yourself?

A. On some I made the entries, and on those on which I did not make the entries I either checked off with the Clerk who did, or supervised it or reviewed it.

Q. 25. Now, the payments of royalties under licenses issued by the Federal Trade Commission, are not made to the Federal Commission, are they?

A. No, payments are not.

Q. 26. And were not made under any of these licenses that you have here produced?

A. The original payments were not made.

Q. 27. That is what I am speaking of; the payments were not made to the Federal Trade Commission?

A. Not in every instance. In many instances they were sent to us, the check drawn to the Custodian, and transmitted by me to the Custodian with a detailed report.

Q. 28. That is, in some instances that was the rule?

A. In every instance the report, with the figures, came to me direct, in many instances accompanied by the check.

Q. 29. I was coming to that. But the payments were made to the Custodian?

A. The actual payments were made to the Custodian, who in turn receipted to me.

Q. 30. Receipted to you in writing?

A. Yes.

Q. 31. Are those receipts available?

A. My original entry of the receipt is on the card.

Q. 32. Well, but the receipt was conveyed to you in writing?

A. Let me explain it in this way: When the report came to me from the licensee, I advised the Custodian of the amount.

Q. 33. In writing?

A. In writing, a regular form of the amount that was due, and which amount the licensee was to pay to him direct, and with the report enclosed, in receipt form, which the Custodian in turn filled out and returned to me to complete my file records, as soon as the remittance came in, in such cases as the check did not accompany the report.

Q. 34. Such receipts signed by the Custodian are part of the records of the Federal Trade Commission?

A. Yes, sir.

Q. 35. Have those been produced?

A. Not all, because the original entries of payment I——

Q. 36. I do not want to know why. You say they have not been produced?

A. No.

Q. 37. Are they available?

A. Not at this moment.

Q. 38. I mean, they have not been destroyed or lost?

A. No, they can be produced.

Q. 39. They can be produced; very well. Now, I notice that on these cards that are being offered, there is a column headed "Royalty paid." You notice that?

A. Yes.

Q. 40. And under that heading there is "Dates?"

A. Yes.

Q. 41. Do I understand that you got the information as to the dates of payment from the receipts signed by the Custodian, which he sent to the Federal Trade Commission?

A. In the instances when the check accompanied the report, the date of the entry there is the date on which I myself handed the check to the Custodian. In the other instances where the check did not accompany the report, the date represents the date of actual payment as receipted by me to the Custodian.

Mr. Kresel: That is all.

Mr. Anderson: Have you any objection?

Mr. Kresel: Yes. Have you made your offer?

Mr. Anderson: We offer in evidence the orig-

272 US 1 U.S. SUP. CT. RECORDS, BRIEFS
UNITED STATES V. CHEMICAL FOUNDATION, INC.

1926 FO
NO. 127

Microcard Editions
An Indian Head Company
A Division of Information Handling Services

CARD 19

inal cards, consisting of sixty separate cards or bunches of cards, there being in some instances a number of these cards, the information continuing from one to another, attached by steel brads. They constitute sixty separate papers or documents, and I would ask that they be admitted and identified and read in evidence as Plaintiff's Exhibit Nos. 217 to 335 inclusive.

Mr. Kresel: Just a minute, please. We object to these upon the grounds we have already urged, and specifically upon the ground that these documents are not the original entries, or do not contain the original entries with reference to the dates of the receipt of these moneys, and for that reason are incompetent, immaterial and irrelevant.

Mr. Anderson: If your Honor please, they are according to the testimony of the witness the original entries of the date that they received the receipt for these moneys from the Alien Property Custodian. I shall later introduce evidence—I can not do both at once—showing the date on which these moneys were received by the Alien Property Custodian, and the documents supporting the same, and the evidence showing the date that these moneys were deposited with the Treasurer of the United States by the Alien Property Custodian; but I am now introducing the original documents of entry, or record of entry of the Federal Trade Commission, showing the record of the transaction through their office, and I will follow it through the others.

Mr. Kresel: In view of the statement by Colonel Anderson just made, I desire to say that if he offers, as he says he will, testimony upon the same point from the records of the Alien Property Custodian, I shall take the position that that is cumulative and burdening up this record with unnecessary documents. If the purpose is to show when this money was received, inasmuch as it is conceded that it was received by the Alien Property Custodian, it would seem to me—of course, the Colonel will try this case as he pleases—but it would seem to me that the records of the Alien Property Custodian's office should be the records to show that.

Now I say that now to introduce this mass of records from the Federal Trade Commission, to show what their records show as to payments, and then to follow it up with the records of the Alien Property Custodian, to show what their records show as to payments, is, well, I need not state.

Mr. Anderson: If your Honor please, I am very much obliged to counsel, but on last Friday he was protesting that we were not producing records enough, and I thought we were producing too many. I am sorry I can not please him, but it is my purpose to trace these payments so there can not be any question in this Court or anywhere else of the record as to these payments in the Federal Trade Commission office, in the Alien Property Custodian's office, and in the office of the Treasurer of the United States, if the Court will allow me. So if it is a duplication, I am sorry, but I will meet the situation as it presents itself to me, so that there can not be any question as to the proof of the amount of revenue accrued and the amount of revenue received under these patents.

The Court: You may, as far as I am concerned, do that; but you are bearing the necessary consequences in the way of costs, if it be found that you have exceeded the rules with respect to such matters. So, without expressing any view under the circumstances, you may go ahead and put that of record.

Mr. Anderson: I now ask leave to substitute in lieu of the originals of those cards, which are the original records of the Federal Trade Commission, photostatic copies thereof; and I will ask the witness:

By Mr. Anderson:

Q. 42. Have you checked these photostatic copies and can you testify that they are true copies of the originals which you have identified?

A. I have checked them and they are true copies of the originals.

The Court: I understand, Mr. Kresel, you make no objection to the substitution?

Mr. Kresel: No, your Honor. Are they being marked as one exhibit?

Mr. Anderson: No. They will be marked as Exhibits 217 to 335, inclusive.

The Court: Let the substitution be made.

License No. 1 (d) (Patent) issued by the Federal Trade Commission to The Dermatological Research Laboratories, dated March 4, 1918, received in evidence and marked "Plaintiff's Exhibit No. 217." (*See Exhibits, Vol. I, page 531.*)

License No. 2; 2a; 2b and 2c, issued by the Federal Trade Commission to Takamine Laboratory, Inc., dated November 26, 1917, received in evidence and marked "Plaintiff's Exhibit No. 218." (*See Exhibits, Vol. I, page 532.*)

License No. 2 (d) issued by the Federal Trade Commission to Takamine Laboratory, Inc., dated March 4, 1918, received in evidence and marked "Plaintiff's Exhibit No. 219." (*See Exhibits, Vol. I, page 533.*)

License No. 3 (Patent) issued by the Federal

Trade Commission to Farbwerke-Hoechst Company, dated November 26, 1917, received in evidence and marked "Plaintiff's Exhibit No. 220." (*See Exhibits, Vol. I, page 533.*)

License No. 3 (a) issued by the Federal Trade Commission to Farbwerke-Hoechst Company, dated March 4, 1918, received in evidence and marked "Plaintiff's Exhibit No. 221." (*See Exhibits, Vol. I, page 534.*)

License No. 4, issued by the Federal Trade Commission to Farbwerke-Hoechst Company, dated December 17, 1917, received in evidence and marked "Plaintiff's Exhibit No. 222." (*See Exhibits, Vol. I, page 535.*)

License No. 5, issued by the Federal Trade Commission to Rector Chemical Company, Inc., dated December 17, 1917, received in evidence and marked "Plaintiff's Exhibit No. 223." (*See Exhibits, Vol. I, page 535.*)

License No. 7 (Patent) issued by the Federal Trade Commission to Pacific Flush Tank Company, dated December 17, 1917, received in evidence and marked "Plaintiff's Exhibit No. 224." (*See Exhibits, Vol. I, page 536.*)

License No. 8 Arsephenamine, issued by the Federal Trade Commission to Diarsenol Company, Inc., dated January 12, 1918, received in evidence and marked "Plaintiff's Exhibit No. 225." (*See Exhibits, Vol. I, page 543.*)

License No. 8 (d) (Patent) issued by the Federal Trade Commission to Diarsenol Company, Inc., dated March 4, 1918, received in evidence and marked "Plaintiff's Exhibit No. 226." (*See Exhibits, Vol. I, page 544.*)

License No. 9 (Patent) issued by the Federal Trade Commission to The Abbott Laboratories, Chicago, Illinois, dated January 10, 1918, received in evidence and marked "Plaintiff's Exhibit No. 227." (*See Exhibits, Vol. I, page 545.*)

License No. 10 (Patent) issued by the Federal Trade Commission to Lembcke, Von Bernuth Company, Incorporated, dated January 17, 1918, received in evidence and marked "Plaintiff's Exhibit No. 228." (*See Exhibits, Vol. I, page 545.*)

License No. 12, issued by the Federal Trade Commission to The Calco Company, dated February 18, 1918, received in evidence and marked "Plaintiff's Exhibit No. 229." (*See Exhibits, Vol. I, page 548.*)

License No. 13, issued by the Federal Trade Commission to French Battery & Carbon Company, dated February 18, 1918, received in evidence and marked "Plaintiff's Exhibit No. 230." (*See Exhibits, Vol. I, page 548.*)

License No. 15 (Patent), issued by the Federal Trade Commission to The Abbott Laboratories, dated March 23, 1918, received in evidence and marked "Plaintiff's Exhibit No. 231." (*See Exhibits, Vol. I, page 549.*)

License No. 18 (Patent), issued by the Federal Trade Commission to E. I. Du Pont De Nemours & Company (Anthracenes), dated January 21, 1918, received in evidence and marked "Plaintiff's Exhibit No. 232." (*See Exhibits, Vol. I, page 549.*)

License No. 18 (a) (Patent), issued by the Federal Trade Commission to E. I. Du Pont De Nemours and Company (Hydrosulfites), dated January 21, 1918, received in evidence and marked "Plaintiff's Exhibit No. 233." (*See Exhibits, Vol. I, page 558.*)

License No. 19 (Patent), issued by the Federal Trade Commission to E. I. Du Pont De Nemours and Company (Indigo), dated January 21, 1918, received in evidence and marked "Plaintiff's Exhibit No. 234." (*See Exhibits, Vol. I, page 558.*)

License No. 20 (Patent), issued by the Federal Trade Commission to E. I. Du Pont De Nemours and Company (Sulphur Dyes), said license being dated January 21, 1918, received in evidence and marked "Plaintiff's Exhibit No. 235." (*See Exhibits, Vol. I, page 560.*)

License No. 21 (Patent), issued by the Federal Trade Commission to E. I. Du Pont De Nemours and Company (Azo Dyes), dated January 21, 1918, received in evidence and marked "Plaintiff's Exhibit No. 236." (*See Exhibits, Vol. I, page 561.*)

License No. 22 (Patent), issued by the Federal Trade Commission to Albert B. Moses, dated April 8, 1918, received in evidence and marked "Plaintiff's Exhibit No. 237." (*See Exhibits, Vol. I, page 562.*)

License No. 23 (Patent), issued by the Federal Trade Commission to F. L. Smidth & Company, dated July 16, 1918, received in evidence and marked "Plaintiff's Exhibit No. 238." (*See Exhibits, Vol. I, page 563.*)

License No. 24 (Patent), issued by the Federal Trade Commission to E. C. Klipstein & Sons Company, dated April 8, 1918, received in evidence and marked "Plaintiff's Exhibit No. 239." (*See Exhibits, Vol. I, page 563.*)

License No. 27 (Patent), issued by the Federal Trade Commission to National Aniline & Chemical Company, Inc. (Anthracenes), dated June 28, 1918, received in evidence and marked "Plaintiff's Exhibit No. 240." (*See Exhibits, Vol. I, page 564.*)

License No. 28 (Patent), issued by the Federal Trade Commission to National Aniline & Chemical Company (Indigo), dated June 28, 1918, received in evidence and marked "Plaintiff's Exhibit No. 241." (*See Exhibits, Vol. I, page 565.*)

License No. 29 (Patent), issued by the Federal Trade Commission to National Aniline & Chemical Company, Inc. (Sulphur Dyes), dated June 28, 1918, received in evidence and marked "Plaintiff's Exhibit No. 242." (*See Exhibits, Vol. I, page 566.*)

License No. 30 (Patent) issued by the Federal Trade Commission to National Aniline & Chemical Company, Inc., dated June 28, 1918, received in evidence and marked "Plaintiff's Exhibit No. 243." (*See Exhibits, Vol. I, page 568.*)

License No. 32 (Patent) issued by the Federal Trade Commission to The Stearns-Roger Manufacturing Company, dated July 16th, 1918, received in evidence and marked "Plaintiff's Exhibit No. 244." (*See Exhibits, Vol. I, page 569.*)

License No. 33 (Patent) issued by the Federal Trade Commission to Merrimac Chemical Company, dated July 16th, 1918, received in evidence and marked "Plaintiff's Exhibit No. 245." (*See Exhibits, Vol. I, page 569.*)

License No. 34 issued by the Federal Trade Commission to H. A. Metz Laboratories, Inc., dated July 1, 1918, received in evidence and marked "Plaintiff's Exhibit No. 246." (*See Exhibits, Vol. I, page 570.*)

License No. 34 (a), issued by the Federal Trade Commission to H. A. Metz Laboratories, Inc., dated July 1, 1918, received in evidence and marked "Plaintiff's Exhibit No. 247." (*See Exhibits, Vol. I, page 571.*)

License No. 35, issued by the Federal Trade

Commission to H. A. Metz Laboratories, Inc., dated July 1, 1918, received in evidence and marked "Plaintiff's Exhibit No. 248." (*See Exhibits, Vol. I, page 571.*)

License No. 36 (Patent) issued by the Federal Trade Commission, to General Ceramics Company, dated July 19, 1918, received in evidence and marked "Plaintiff's Exhibit No. 249." (*See Exhibits, Vol. I, page 572.*)

License No. 38 (Patent), issued by the Federal Trade Commission to E. C. Klipstein & Sons Company, dated August 15, 1918, received in evidence and marked "Plaintiff's Exhibit No. 250." (*See Exhibits, Vol. I, page 573.*)

License No. 39 (Patent), issued by the Federal Trade Commission to Merck & Company, dated September 25, 1918, received in evidence and marked "Plaintiff's Exhibit No. 251." (*See Exhibits, Vol. I, page 579.*)

License No. 42 (Patent), issued by the Federal Trade Commission to The Draeger Oxygen Apparatus Company, dated December 16, 1918, received in evidence and marked "Plaintiff's Exhibit No. 252." (*See Exhibits, Vol. I, page 579.*)

License No. 43 (Patent), issued by the Federal Trade Commission to The Draeger Oxygen Apparatus Company, dated December 16, 1918, received in evidence and marked "Plaintiff's Exhibit No. 253." (*See Exhibits, Vol. I, page 580.*)

License No. 44 (Patent) issued by the Federal Trade Commission to the Draeger Oxygen Apparatus Company, dated December 16, 1918, received in evidence and marked "Plaintiff's Exhibit No. 254." (*See Exhibits, Vol. I, page 581.*)

License No. 46 (Patent), issued by the Federal Trade Commission to the Draeger Oxygen Apparatus Company, dated December 16, 1918, received in evidence and marked "Plaintiff's Exhibit No. 255." (*See Exhibits, Vol. I, page 581.*)

License No. 47, issued by the Federal Trade Commission to Reinschild Chemical Company, dated December 31, 1918, received in evidence and marked "Plaintiff's Exhibit No. 256." (*See Exhibits Vol. I, page 582.*)

License No. 48 (Patent), issued by the Federal Trade Commission to Arma Engineering Company, dated January 15, 1919, received in evidence and marked "Plaintiff's Exhibit No. 257." (*See Exhibits, Vol. I, page 583.*)

License No. 50 (Patent) issued by the Federal Trade Commission to The Ault & Wiborg Company, dated February 19, 1919, received in evidence and marked "Plaintiff's Exhibit No. 258." (*See Exhibits, Vol. I, page 583.*)

License No. 51 (Patent), issued by the Federal Trade Commission to Central Dyestuff & Chemical Company, dated February 19, 1919, received in evidence and marked "Plaintiff's Exhibit No. 259." (*See Exhibits, Vol. I, page 584.*)

License No. 52 (Patent), issued by the Federal Trade Commission to Ultro Chemical Corporation, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 260." (*See Exhibits, Vol. I, page 585.*)

License No. 53 (Patent), issued by the Federal Trade Commission to Consolidated Color & Chemical Company, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 261." (*See Exhibits, Vol. I, page 586.*)

License No. 54 (Patent), issued by the Federal Trade Commission to Consolidated Color & Chemical Company, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 262." (*See Exhibits, Vol. I, page 586.*)

A. When the license was issued by the Federal Trade Commission, the Alien Property Custodian's office was furnished a copy of each license, which contained, of course, the full description of the license, the subject matter, including the rate of royalty and other details; following the transmission of the license, each license required a semi-annual reporting as to gross sales.

MR. KRESEL: May I interrupt a minute. I am sorry, Mrs. Wilson. May I inquire whether this report to the Custodian was in writing, this notice to the Custodian of the issuance of the license, was that in writing?

THE WITNESS: It was a copy of the license with a letter of transmittal in writing.

MR. KRESEL: I now move to strike out the testimony of the witness and the answer to this last question up to this point, upon the ground that it is not the best evidence, on the ground that she is giving the contents of a written instrument.

MR. ANDERSON: Counsel called for the production of those originals, of transmittal, together with the copies of the papers.

MR. KRESEL: I am not calling for anything.

THE COURT: You are at liberty to put it that way, Colonel Anderson, but what the other side is doing is objecting to evidence which they say is manifestly not the best evidence.

MR. ANDERSON: All right, I will take a chance on this and go ahead.

THE COURT: Do you want to put this in?

MR. ANDERSON: I do, sir. I will take a chance on that. Under the modern rules of evidence, we are required to establish merely that a copy was transmitted. Then we will meet the requirement.

THE COURT: You understand, of course, that the same rules apply to that as heretofore.

Mr. Anderson: I understand, and I am going to take a few chances on it. If this case is going to rest on that ground, it does not interest me anyhow.

The Witness: Will you please repeat that question, Mr. Anderson?

(Q. 43. was repeated by the stenographer as recorded.)

A. (Continuing) The first step was to transmit to the Alien Property Custodian a copy of the original license, accompanied with a letter of transmittal. The license required a semi-annual accounting from the licensee, showing the gross sales under the license, together with the royalty accruing by reason of such sales, the report of sales required by the license was by the Trading with the Enemy Act required to be made direct to the Federal Trade Commission, with a further stipulation in the act that the payments were to be made direct to the Alien Property Custodian who, in turn, was to deposit these payments in the Treasury as a trust fund, against which the owner might ultimately sue. Pursuant to these arrangements, we required from each licensee the regular semi-annual accounting statement. When that was received it was sometimes accompanied, as I have previously stated, by a check drawn to the order of the Alien Property Custodian, in the amount accruing as license royalties. When that report was received by the Commission or by me, I checked over the figures to verify the accuracy; then made the entries in the proper fashion in the file and on the cards which have been produced, and then submitted to the Alien Property Custodian a report form which was partially typed, with blanks to be filled in, showing the amount accruing under the particular license, and other details which were essential for his files. I transmitted this report to the Custodian, and at the same time there was attached to the report a receipt form. With my letter of transmittal, I asked him when the amount was received by him to send me this formal receipt for the completion of my file. At the same time I directed the licensees, if the check did not accompany the report, to make payment direct to the Alien Property Custodian in the proper amount, also advising me, if necessary, when that payment was made. If the Custodian did not report the receipt in reasonable time, then we would remind him whether or not the payment had been made; if not, following that up by a reminder to the licensee that he was required to make the payment within thirty days after he rendered his report.

Mr. Kresel: Now, if the witness has completed the answer, as I think she has, I now move to strike out the answer upon the ground that it is apparent from it, that she has undertaken to give the contents of written instruments which are the best evidence. She has undertaken to interpret the provisions of the Trading with the Enemy Act. She has undertaken, by her answer, to define the duties of the Alien Property Custodian with reference to the deposit of moneys in the Treasury of the United States as a trust, against which the alien was to have certain rights. She has repeatedly stated that this course of dealing between the two governmental offices was in writing by means of communication sent from one to the other, and none of which have been introduced in evidence, and as to all of which she has undertaken to give secondary evidence.

I ask that the entire answer be stricken out upon the ground that is it incompetent upon the face of it.

Mr. Anderson: To which I wish to reply, that in so far as the witness undertakes to interpret the Trading with the Enemy Act and the duties of the respective officers thereunder, it is conceded that it has no binding effect either upon this Court or any other Court or upon any of the parties, that being a question for the Court; but that the witness may refer to these matters as her understanding of the act, and as a means to connect up the various courses of dealing. If the interpretation of the act given by her is wrong, it has no effect. It is merely an introduction to the various acts which she herself performed in relation to this matter, and therefore in the orderly production of evidence can do no harm, and means nothing except that it is for the purpose of connecting up the statements as to which she can testify, and is admitted to mean nothing more than that.

Q. 44. Mrs. Wilson, it appears that from these licenses which I have introduced in evidence, that there was an initial license fee charged by the Commission, of $100 on each license. I would ask you what was done with that $100 as it passed through your hands or your office?

A. The $100 license fee charged by the Commission was in some instances subject to refund in whole or in part. Consequently this fund was deposited with the Treasurer as a separate fund, against which we might make any necessary refunds, and the un-refunded balance is still with the Treasurer of the United States.

Q. 45. That was collected by the Commission itself?

A. Collected by the Commission itself.

Q. 46. And there was kept in the separate fund a deposit by the Commission to its credit with the Treasurer?

A. To its credit with the Treasurer.

Q. 47. You say you have handled this business of the licensing under this act since its inception, either as chief of the office or directly in charge, in another capacity?

Mr. Kresel: We did not so understand the witness to say. I understood she had charge of the records, not that she was handling the licenses. I did not understand her to say that.

Q. 48. Was it a fact that you handled that work?

A. I did not say that I handled the licenses themselves.

Mr. Kresel: That was the Colonel's question.

The Witness: No, I handled the reports and the files and the accounting end from the beginning, but so far as the drawing of the licenses was concerned, not until a little after the passage of the act, but I was managing clerk for the division when I went in. The Federal Trade Commission had other duties to perform than just the issuance of these licenses, and I went in to handle other matters and in addition to supervise the force of the Enemy Trade Division. In that capacity I handled the files and records and the reports; so I did not actually draw the licenses at the very beginning.

The Court: Does not that answer your question?

Mr. Kresel: Does that answer your question?

Mr. Anderson: Yes, that answers the question.

Q. 49. Did you have charge of the files continuing these licenses?

A. Absolutely.

Q. 50. You handled the entire work of the Commission with respect to these licenses except drawing them and executing them, did you not?

A. Yes.

Q. 51. How many assistants did you have in tha work?

A. Well, I could not answer that offhand, becaus —

Q. 52. I mean work now relating to this particula matter under inquiry, referred to in those cards?

A. Well, at what particular time?

Q. 53. You can state any time that you please, i you can remember?

A. In 1917, when the act was passed and we wer very busy, we had quite a large force because, as stated a moment ago, we did other things than jus issue the licenses, from time to time, and more particularly after the Alien Property Custodian's seizure of the patents in 1919 and the applications for license became very much less frequent, of course, the forc was decreased in size until for the last three year I have handled the work entirely alone with the exception of the assistance of one clerk.

Q. 54. What was the expense of your office fo handling this business in the fiscal year 1918, endin June 30, 1919?

> Mr. Kresel: I submit, your Honor, that thi witness has not been shown to be in possession o any facts which would enable her to make any answer to that question. I suggest that eithe Colonel Anderson elicit from her information o that subject, and see that she is qualified, or tha I be permitted to do that; I do not care which.

Q. 55. Have you—

The Court: Is the last question withdraw for the present?

Mr. Anderson: For the present, yes, sir.

Q. 56. Have you a copy of the official report o the Federal Trade Commission, annual report for th fiscal year ending June 30, 1920?

A. I have.

Q. 57. Will you produce it?
A. (Handing to counsel.)

Mr. Anderson: I now wish to introduce in evidence an extract from the annual report of the Federal Trade Commission for the fiscal year ended June 30, 1920, bearing the imprint of the United States, of the Government printing office at Washington, addressed to the Senate and House of Representatives, dated September 15, 1920. The portion which I wish to read is one paragraph from page 172.

Mr. Kresel: The one which you mark?

Mr. Anderson: Yes, sir, that one paragraph.

Mr. Kresel: Is it the position of the Government that this is admissible as proof of the facts therein contained?

Mr. Anderson: Yes, sir.

Mr. Kresel: Upon the ground that it is an official report of the Federal Trade Commission?

Mr. Anderson: Yes, sir.

Mr. Kresel: I simply wanted to understand your position. The paragraph is short and I wish you would read it instead of just marking it.

Mr. Anderson: I will.

Mr. Kresel: We make the same objection that we have made to this full line of testimony.

The Court: Do you object to this method of proving the facts; that is, if the facts are relevant?

Mr. Kresel: No, your Honor, I do not. I simply wanted to know what Colonel Anderson's theory was in introducing this evidence. As I understand it now, the position he takes is that that statement appearing in an official report, he has a right to put in proof of the facts therein stated. Have I stated your position correctly?

Mr. Anderson: Yes.

THE COURT: And you have no objection on that score?

MR. KRESEL: I do not object on that score.

THE COURT: In the absence of objection it may be introduced, and by agreement the pertinent portion from your standpoint, Colonel Anderson, may be read upon the record.

MR. ANDERSON: Yes, and the document not identified or marked. The paragraph which I wish to read at this time from Page 72 is as follows:

> "The grand total of royalties reported to date under all Federal Trade licenses amounts to $833,223.30, of this amount $480,726.18 having accrued under patents; $351,838.24 under trade-marks; and $668.88 under copyrights. Total royalties during the fiscal year ended June 30, 1920, aggregated $188,957.61, itemized as follows: $181,531.55 under patents; $7,297.88 under trade-marks; and $128.18 under copyrights.
>
> In this connection it may be added that the total expense incurred by the Enemy Trade Division of the Commission in its administration of the act amounted during the fiscal year to only $3,400."

MR. KRESEL: Lest there be misunderstanding, I think Colonel Anderson will concede that the figures given therein as to the amount of royalties received are royalties received on all licenses issued and not simply on those that we are inquiring into.

MR. ANDERSON: I want to make it quite clear, that the Government's position may not be misunderstood, that the question of the amount of royalties accrued or collected on the particular patents, trade-marks and copyrights here involved will be otherwise proved. The chief purpose of the introduction of the statement here was to show the amount of business done and the cost thereof. But that included other licenses than the particular licenses here involved. I will state to the Court that there were certain other documents that I wish to introduce at this point bearing upon this matter, which involved such a large volume of documentary evidence that they were not brought over this morning. So I would like to turn the witness over for cross-examination now with leave to introduce those documents after luncheon.

Mr. Kresel: I am very pleased to say I have no questions to ask Mrs. Wilson.

Mr. Anderson: You may stand aside, Mrs. Wilson, and I will put in the documents.

(Witness excused.)

Mr. Anderson: I am sorry those other documents are not here, and that evidence relates to another matter that I want to take up now. They will be here after lunch.

The Court: Have you another witness we can go ahead with now?

Mr. Anderson: Yes.

Federal Trade Commission cards received in evidence and marked "Plaintiff's Exhibits Nos. 276 to 335, incl. (*See Exhibits, Vol. I, pages 605 to 682, incl.*)

HARRY W. SCHMITS.

Harry W. Schmits, a witness called on behalf of the plaintiff, being first duly sworn, testifies as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Please state your name and place of residence?

A. Harry W. Schmits, Washington, D. C.

Q. 2. What is your present position or employment?

A. Accountant for the Alien Property Custodian.

Q. 3. Are you in the accounting service?

A. Yes, sir.

Q. 4. Of the Alien Property Custodian?

A. Assistant to the Chief of the Division of Accounts.

Q. 5. Assistant to the Chief of the Division of Accounts of the Alien Property Custodian?

A. Yes, sir.

Q. 6. How long have you been there?

A. Since November 11, 1917.

Q. 7. Have you occupied your present position since that time; if not, state what has been your relation to this work?

A. The entire time.

Q. 8. The entire time?

A. Yes, sir.

Q. 9. I requested you to produce the original individual trust accounts of the Alien Property Custodian, showing the amounts paid to the Alien Property Custodian under licenses issued by the Federal Trade Commission and under contracts seized by the Alien Property Custodian? Have you got those original sheets with you?

A. Yes, sir.

Q. 10. Will you produce them?

A. (Hands counsel.)

Q. 11. Do you identify these sheets which you have now handed me as original records of the Alien Property Custodian?

A. Yes, sir.

Q. 12. And taken from the original accounts under your charge?

A. Yes, sir.

Mr. Anderson: I would simply ask that these sheets be marked for identification for the use of a subsequent witness testifying from the original.

Not put in evidence, because I am not going to burden the record with them. Will that be satisfactory?

THE COURT: They will be so marked.

MR. ANDERSON: Just mark them for identification.

Marked "Plaintiff's Exhibit A for Identification" 6-22-23.

Q. 13. I have asked you to produce from the records of the Alien Property Custodian the original slips and tickets upon which the entries contained in the numerous ledger sheets which you have produced here and identify were made. Have you got those records?

A. Yes, sir.

Q. 14. Are they the records that you now hand me?

A. Yes, sir.

Q. 15. Then these are the original slips.

A. Yes, sir.

Q. 16. Or office records, from which the original entries on those sheets which you have already identified from the office of the Alien Property Custodian were made; is that true?

A. Yes, sir.

MR. ANDERSON: I would ask that this bunch of papers be merely identified as B, for the use of the subsequent witness.

THE COURT: It will be so marked.

(Marked Plaintiff's Exhibit B for Identification, 6-22-23.)

Q. 17. I notice that there are certain slips which appear to be deposit slips of the Treasurer of the United States for moneys deposited by the Alien Property Custodian, among the papers last mentioned and identified as B by you. Does that contain the Treasury deposit slips for all moneys deposited by the Alien

Property Custodian under these licenses and contrac

A. No, there were a few missing. We did
have sufficient time in order to get out all of the
so we produced an affidavit from the Treasury
partment covering those that are missing.

Q. 18. Will you hand me that affidavit or
davits?

A. Yes, sir (handing to counsel).

Mr. Anderson: If your Honor please, the
ness has handed me two affidavits purporting
be made by M. J. O'Reilly, Chief of the Divis
of Bookkeeping of the Treasury Department, w
statements annexed such as he has indicated;
I would ask that they be identified, along w
the other papers, as filling out the record.

The Court: Those affidavits were made wh
Were they made for this case?

Mr. Anderson: Yes, sir.

The Court: Were they made for the purp
of this case or were they made in connection w
the transaction of business between the two offic

Q. 19. May I ask whether these affidavits w
made and delivered to you for the purposes of
case of showing the explanation of the absence of th
papers?

A. They were made for the purposes of this ca

Mr. Anderson: Do you object to that,
Kresel?

Mr. Kresel: You are not offering them, I
derstand. You are simply asking that they
marked for identification.

Mr. Anderson: That is all at the present ti

Mr. Kresel: I can not prevent you fr
marking anything for identification.

The Court: I got the impression you w
offering them.

Mr. Anderson: No, sir.

(Marked Plaintiff's Exhibit C for Identification, 6-22-23.)

Mr. Anderson: That is all, Mr. Kresel.

Mr. Kresel: No questions.

(Witness excused.)

Mr. Anderson: The next witness, your Honor, will be Mr. Storck who will be recalled for examination on all these papers. I understood your Honor to say you wanted to adjourn at quarter to twelve and I did not think there was any use of calling him for one or two questions.

The Court: We will take a recess until 1:30 P. M., Eastern Standard Time.

AFTER RECESS

Mr. Anderson: If your Honor please, we now desire to offer in evidence a series of documents, the purport of which I think it is probably better for me to explain in advance.

Your Honor will recall that on Friday last, when Mr. Storck was testifying, the evidence as to the revenue accrued or derived from the patents licensed by the Federal Trade Commission and subsequently assigned to the defendant was questioned, on the ground indicated this morning that the Federal Trade Commission licenses contained a provision giving to the licensee the right to use any other patents, alien patents, I should say, which the Federal Trade Commission was authorized under the act to license, which were essential to the operation of this process covered by the patents actually named in the license. And it was contended that the defendant could not be charged, as evidence even of the value of the patents, with this amount of revenue, in view of the fact that it had not been and probably could not be segregated so as to show from what patents the revenue was derived.

I have here sixty-two Bills of Complaint filed by The Chemical Foundation, Incorporated, about June, 1922, in various United States District Courts of the country, the purport of which bills is to recover the accrued royalties under licenses issued by the Federal Trade Commission on the patents to which I have referred.

I shall first offer in evidence, in order that I may speak of it more definitely, a certified copy of a Bill of Complaint filed in the District Court of the United States for the Eastern District of Pennsylvania by The Chemical Foundation, Incorporated, as plaintiff, against the National Aniline & Chemical Company, Inc., a corporation, and Frank White as Treasurer of the United States, defendants, together with the exhibits with said Bill of Complaint, the same being a duly certified copy thereof.

The Court: And to show what, Colonel Anderson?

Mr. Anderson: Well, I offer this, the same to be identified and read in evidence as Plaintiff's Exhibit No. 336. As soon as I have that offered, I will explain the parts to which I wish to direct your Honor's attention.

The Court: The general purpose is what?

Mr. Anderson: To show that The Chemical Foundation in each of these bills, which cover all the patents assigned, taken together, under which license has been issued by the Federal Trade Commission, claims the accrued royalties from the date of transfer at least under all the patents mentioned and described in those bills of complaint, which by reference to the numbers are the patents mentioned and described in the exhibit to the Bill of Complaint under which licenses have been issued. In addition thereto the bill claims all the royalties accrued under those licenses, and I wish to read to your Honor the provision of the bill to that effect.

THE COURT: That is from the time of the making of the license by the Federal Trade Commission?

MR. ANDERSON: No, sir. The bill, I take it, sets forth a suit to recover the royalties from the time that the patents were transferred to The Chemical Foundation under those licenses, copies of which are attached to these bills being for the life of the patents, and they acquired the patents subject to that license unless it was surrendered by the licensee. After describing by number the specific patents mentioned in the license and attaching as exhibits copies of said patents and setting up the royalties claimed and the royalties accrued under such license, Article 9 of the Bill contains this clause, which reads as follows:

> "In addition to the inventions covered by the letters patent enumerated in paragraph III hereof, there were licensed by the aforementioned license such other inventions owned or controlled by an enemy or an ally of an enemy as might be found desirable in order to further the purposes and intent of said license, as more particularly set forth therein,"

That is the clause, your Honor will remember, was referred to.

> "and plaintiff is the owner of divers inventions covered by United States Letters Patent other than those specified in said paragraph III, which at divers times were determined by the Alien Property Custodian to be enemy or ally of enemy owned and as such were seized and sold to the plaintiff, and which may have been used by the defendant licensee as

> desirable for the furtherance of the intent and purposes of said license. Plaintiff is not informed as to which, if any, of said additional Letters Patent owned by it were so used by the defendant licensee, nor as to the nature or extent of such use; but such Letters Patent, if any there be, are hereinafter referred to as 'additional licensed patents.' With reference to each of such additional licensed patents, each and every the allegations so far as applicable of paragraph III hereof, and each and every the allegations so far as applicable of Paragraph VI hereof, are hereby by reference repeated and alleged as fully as though incorporated herein."

Those are the paragraphs alleging their rights to the royalties under those licenses.

> "By reason of the premises the plaintiff became and now is the sole owner of the said additional licensed patents and the inventions and discoveries covered thereby, and of every right, title and interest therein, including the rights inuring to the 'owner' of Letters Patent under Section 10 of the Trading with the Enemy Act."

In other words, there is a declaration in the suit against the Treasurer of the United States that the plaintiff here is not only the owner of all the patents specifically licensed, but is owner of all the patents which by virtue of the general clause the licensee would be entitled to use, and is therefore entitled to recover on its theory of this Bill all of the accrued royalties by virtue of its acquisition of all the patents which could have been used or were authorized to have been used by virtue of the premises of such license whether specifically included in the license or not, and it will be our contention, of course, that that is conclusive as to the question of the right to use the evidence of accrued royalties on all these patents under those Federal Trade Commission licenses as against the defendant corporation, and removes the objection to the evidence which is indicated.

Mr. Kresel: May I reply, your Honor?

The Court: Yes.

Mr. Kresel: Of course, if Colonel Anderson thinks that what he has just read removes the objection, why, that is up to him. Of course, I do not agree with his construction of the allegation that he has read from the Complaint, but what he has read to my mind simply gives point to the objection we have raised. It now appears from the allegation in this Bill that it is a fact that these licenses covered not only the specific numbered patents, but all other alien patents that could be used, and this Bill does not in any way assist in segregating the lump amount return as royalty as between the specifically named patents and the other patents so described in general terms, and that was the point that I raised. I do not see that this Bill in any way meets that objection, but if Colonel Anderson thinks it does, why, he may proceed on that theory.

If I understand Colonel Anderson, he is now offering that Bill of Complaint; is that correct?

Mr. Anderson: Yes, sir.

Mr. Kresel: We object to it upon the ground that it is immaterial, irrelevant and incompetent; that it in no way substantiates the exhibit which was put in upon the testimony of Mr. Storck, which it is sought to substantiate by that Bill. That is all I want to say now.

Mr. Anderson: I only wish, in reply, to say that these patents were sold to The Chemical Foundation in lump. It has been proved here that the purchase price was not allocated to any patent but that they were sold all together. Now, if it appears here that all these patents were at that time yielding or capable of yielding a revenue, it goes to the value of the property sold and there is no obligation on the plaintiff to segregate that to each of these patents, because we are not suing for the recovering of any individual patents, but for the cancellation of the entire sale.

Mr. Kresel: But the difficulty is, Colonel, that that statement in the license is not "All other enemy-owned patents conveyed to The Chemical Foundation." It is, "All other alien enemy patents." And for all that you have shown now, all the revenue return may have been earned upon patents that were never conveyed to The Chemical Foundation.

The Court: May I make this inquiry, Colonel Anderson?

Mr. Anderson: Yes, sir.

The Court: The patents that were conveyed by the Government to The Chemical Foundation may be ascertained from the assignments which you annexed to your Bill and the corrections made by agreement of counsel.

Mr. Anderson: Yes, sir.

The Court: Now then, do I understand that the exhibits now offered by you disclose whether or not the royalties received by the Government through the Federal Trade Commission licenses were received on account of the patents so assigned; and if so, what part thereof?

Mr. Anderson: Yes, sir. My position is in the first place that the evidence already shows here that these gentlemen claimed to have acquired all of the enemy-owned patents relating to the chemical and dyestuffs industry. That would include any patents that could be appropriately used for the purpose of these patents so described.

But here they claim in a formal plea that all of the patents which could have been used under that general clause of the license are in fact owned by The Chemical Foundation; and they can not deny that after putting it all in a pleading. At least, that is evidence from their own mouths over their own signature and seal.

I will not argue at this time the legal effect of all that. It goes into quite a question. But they have foreclosed themselves from asserting as against the Government of the United States certainly—whether they can do it against other people, I question—that they do not own every patent which could have been used under these licenses which were issued by the Federal Trade Commission.

The Court: You do not take that position, do you? You do not concede that?

Mr. Anderson: I do not concede, but I claim that as to them, every patent which could have been used under these Federal Trade Commission licenses was covered by these assignments. But I do not claim they are the only ones: It is a question that any patents which could have been used under these licenses could have been covered by the assignments to The Chemical Foundation.

The Court: Does that appear as a fact?

Mr. Anderson: We have a description of the actual patent licenses. You check the two against each other and they verify. But this allegation on their part over their signature and seal that they are the owners of all patents that could have been used under the Federal Trade Commission license is conclusive as to that, on that subject.

Mr. Kresel: Colonel, I do not read any such allegation that we are the owners of all patents. Won't you read that again, please.

Mr. Anderson: I will read it, but suggest that it be not put on the record again (reading).

With respect to that allegation, in brief they say they seize from time to time patents which could have been used under the terms of that license sold to them. (Continues reading.)

What are the additional Letters Patent. We describe them by name. With reference to such additional licensed patents, which, of course, include all the patents that could have been used under that license—

Mr. Kresel: No, it includes only such as we own.

> Mr. Anderson: "With reference to each of such additional licensed patents, each and every the allegations so far as applicable of paragraph III thereof, and each and every the allegations so far as applicable of paragraph number VI hereof, are hereby by reference repeated and alleged as fully as though incorporated herein. By reason of the premises the plaintiff became and now is the sole owner of the said additional licensed patents and the inventions and discoveries covered thereby, and of every right, title and interest therein, including the rights inuring to the 'owner' of Letters Patent under Section 10 of the 'Trading with the Enemy Act.' "

I do not suppose distinguished counsel and myself will ever agree as to the meaning of that language.

Mr. Kresel: I think we will.

Mr. Anderson: I do not think we will.

Mr. Kresel: I think we will.

Mr. Anderson: My construction of that language, and I do not think it is reasonably capable of any other construction, is that these gentlemen were confronted with a proposition that they were suing to recover the license fees accrued under this license

They would be confronted with exactly the same proposition with which they tried to confront us the other day—that you can not recover under those licenses because it does not appear that all this money accrued under licenses which you caimed to own. Therefore they put in, and truthfully so, I think, because they own all the enemy-owned dyes and dyestuff patents, formerly enemy-owned, this omnibus clause which states in effect that all of the patents which could have been used by the licensee under those patents are herein described as additional licensed patents and that they are the owners of those additional patents, and if that is true it does not matter whether the royalty was earned under the patents described or under the additional patents owned by them, under their theory of the law they are entitled to the royalty. It is on that question that we introduced this evidence, although there are some other aspects of the case to which it is applicable, but which are not necessary at this time, they aid us in other phases of the case.

Mr. Kresel: I predict, if your Honor please, that Colonel Anderson and I will agree on this language. It is a matter that I think the Court might as well understand now as when we come to the final argument. In the first place, may I take the liberty of handing up what Colonel Anderson has been reading from. It is this paragraph marked "X." (Hands Court.) I will take another copy of that while I relieve myself of some argument.

Mr. Anderson: You can keep yours and I will hand up to the Court the printed copy.

Mr. Kresel: It is all right, I have a copy.

The Court: You may put of record your position and then I will rule on it.

Mr. Kresel: Your Honor will see that the allegation starts out by stating that the license covered not only the Letters Patent which are enumerated in the license, but other licenses owned or controlled, or other patents, by an enemy or an ally of an enemy. Let us stop there. The allegation is not that it covered the specific numbered patenst and other patents owned by the Chemical Foundation, but other patents owned by an enemy or an ally of an enemy. That is the first allegation of this paragraph. Then it goes on to say that the plaintiff is the owner of diverse inventions covered by United States Letters Patent other than those specified in paragraph III. It does not say that it is the owner of all alien enemy patents, it says that it is the owner of certain specified patents—those specified in the Bill and others. Then it goes on to say that those other patents so owned by The Chemical Foundation were at diverse times determined by the Alien Property Custodian to be enemy or ally of enemy-owned and as such were seized and sold to the plaintiff, and which may have been used by the defendant.

In other words, the allegation is not only did the licensee use the specified patents, but he may have used some other patents owned by The Chemical Foundation. The plaintff is not informed as to which, if any, of said additional Letters Patent. When they talk of additional Letters Patent there, they do not refer to all other enemy or ally or enemy patents, they speak there of additional Letters Patent owned by The Chemical Foundation in addition to those specifically described by numbers. And then it says that we are not informed as to the nature or extent of such use, but such Letters Patent, if any there be, are referred to hereafter as additional Letters Patent. That makes it perfectly clear that the phrase "additional Letters Patent" refers to additional Letters Patent owned by the Foundation. Not the broad class which is included in the license as other enemy or ally of enemy-owned patents, and it is as to those additional patents owned by The Chemical Foundation that the plaintiff asks relief in this Bill.

To make perfectly plain that is all that was meant—and I think Colonel Anderson must agree with me on that—I direct your Honor's attention to the prayer of this Bill. The second prayer reads as follows:

> "That said defendant, E. I. du Pont de Nemours and Company be required to make full and true discovery of its operations under said license and its profits thereunder with respect to the Letters Patent involved in this proceeding from and after the time plaintiff became the owner thereof, as aforesaid, including the exact specification of the Letters Patent under which such operations were conducted."

In other words, we are seeking a discovery here to find out what Letters Patent were being used. If we were claiming that we were entitled to royalties on all patents granted there would be no point in asking for any discovery here. I think it is time that Colonel Anderson agreed with me.

Mr. Anderson: I do not.

Mr. Kresel: Of course, if he does not we will pass it.

Mr. Anderson: Why, certainly not. There is nothing that you have said which in the slightest way changes my view.

Mr. Kresel: Then let us pass on. I am sorry.

The Court: Do you want me to put an expression on the record as an expression of my views? It depends on you whether you want any expression of views at this time.

Mr. Anderson: That is for your Honor to decide at this time, sir.

The Court: Very well. You may put it of record.

Mr. Kresel: This is admitted under our objection, is it, your Honor?

The Court: Yes.

Received in evidence and marked "Plaintiff's Exhibit No. 336." (*See Exhibits, Vol. I, page 685.*)

Mr. Anderson: If the Court please, I desire to offer in evidence the sixty-one additional Bills of Complaint, with the exhibits accompanying the same, which have been duly certified and which I will identify as follows:

The Southern District of New York, the following Bills of Complain: The Chemical Foundation, Inc., vs. Takamine Laboratory, Inc.

Received in evidence and marked "Plaintiff's Exhibit No. 337." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

Mr. Anderson: The Chemical Foundation, Inc. vs. Rector Chemical Company, Inc.

Received in evidence and marked "Plaintiff's

Exhibit No. 338." (*See Exhibits, Vol. 1, page 692.*)

Mr. Anderson: I will just read these and I will ask that Mr. Galloway and Mr. Mahaffy arrange to put the appropriate numbers on.

Mr. Kresel: If you have a list there, would it not be just as well to hand the list to the Clerk?

Mr. Anderson: Yes, I will hand the list to the Clerk and he and Mr. Galloway can arrange to put the appropriate numbers on afterwards.

Mr. Kresel: And the Clerk will assign a separate number, as I understand it, to each one of those bills.

Mr. Anderson: There are four bills of complaint in the District of Delaware. The original bills are produced in Court, by the Clerk, and I ask leave to substitute in place thereof copies of such bills, and with that statement I will regard all these bills, with exhibits therewith, as offered in evidence, and your Honor rules that they be admitted and their identification numbers will be put appropriately on them.

Mr. Kresel: To the offer of each of those bills, your Honor, we raise the objection of immateriality and irrelevancy, and all the other objections that we have heretofore raised.

The Court: I think your objections are well taken, and the bills are admitted only under the general rule that we have adopted for this case.

(The following bills of complaint were received in evidence and respectively marked as indicated):

Southern District of New York.

The Chemical Foundation, Inc., vs. Bernuth Lembeke Co., Inc., as "Plaintiff's Exhibit No.

339." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 340." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 341." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 342." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 343." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. General Ceramics Co., as "Plaintiff's Exhibit No. 344." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. H. A. Metz Laboratories, Inc., as "Plaintiff's Exhibit No. 345." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. H. A. Metz Laboratories, Inc., as "Plaintiff's Exhibit No. 346." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. H. A. Metz Laboratories, Inc., as "Plaintiff's Exhibit No. 347." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. E. C. Klopstein & Sons Company, as **"Plaintiff's Exhibit No.**

348." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Merck & Co., as "Plaintiff's Exhibit No. 349." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corp., as **"Plaintiff's Exhibit No. 350."** (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corp., as "Plaintiff's Exhibit No. 351." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corp., as "Plaintiff's Exhibit No. 352." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corp., as "Plaintiff's Exhibit No. 353." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Reinschild Chemical Co., as "Plaintiff's Exhibit No. 354." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Ultro Chemical Corp., as "Plaintiff's Exhibit No. 355." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chemical Company, as "Plaintiff's Exhibit No. 356." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consoli-

dated Color & Chemical Company, as "Plaintif
Exhibit No. 357." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

The Chemical Foundation, Inc., vs. Conso
dated Color & Chemical Company, as "Plaintif
Exhibit No. 358." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

The Chemical Foundation, Inc., vs. Conso
dated Color & Chemical Company, as "Plaintif
Exhibit No. 359." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

The Chemical Foundation, Inc., vs. Conso
dated Color & Chemical Company, as "Plaintif
Exhibit No. 360." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

The Chemical Foundation, Inc., vs. Conso
dated Color & Chemical Company, as "Plaintif
Exhibit No. 361." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

The Chemical Foundation, Inc., vs. Conso
dated Color & Chemical Company, as "Plaintif
Exhibit No. 362." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

EASTERN DISTRICT OF NEW YORK.

The Chemical Foundation, Inc., vs. H. A. Me
Laboratories, Inc., as "Plaintiff's Exhibit N
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. H. A. Me

Laboratories, Inc., as "Plaintiff's Exhibit No. 364." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. H. A. Metz Laboratories, Inc., as "Plaintiff's Exhibit No. 365." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Ultro Chemical Corporation, as "Plaintiff's Exhibit No. 366." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Horatio Nelso Frazer & Chemical Refining Syndicate, as "Plaintiff's Exhibit No. 367." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

WESTERN DISTRICT OF NEW YORK.

The Chemical Foundation, Inc., vs. Diarsenol Company, Inc., as "Plaintiff's Exhibit No. 368." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 369." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 370." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 371." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National

Aniline & Chemical Co., as "Plaintiff's Exhibit No. 372." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

NORTHERN DISTRICT OF NEW YORK.

The Chemical Foundation, Inc., vs. Semet-Solvay Company, as "Plaintiff's Exhibit No. 373." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

DISTRICT OF NEW JERSEY.

The Chemical Foundation, Inc., vs. Takamine Laboratory, Inc., as "Plaintiff's Exhibit No. 374." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. E. C. Klipstein & Sons Co., as "Plaintiff's Exhibit No. 375." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. General Ceramics Company, as "Plaintiff's Exhibit No. 376." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 377." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 378." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 379." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit

No. 380." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 381." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 382." (*Not printed.* See stipulation Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 383." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

EASTERN DISTRICT OF PENNSYLVANIA.

The Chemical Foundation, Inc., vs. Schamberg et al (Dermatological Institute), as "Plaintiff's Exhibit No. 384." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chem. Co., Inc., as "Plaintiff's Exhibit No. 385." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chem. Co., Inc., as "Plaintiff's Exhibit No. 386." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chem. Co., Inc., as "Plaintiff's Exhibit No. 387." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

WESTERN DISTRICT OF PENNSYLVANIA.

The Chemical Foundation, Inc., vs. American Atmos Corporation, as "Plaintiff's Exhibit No. 388." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corporation, as "Plaintiff's Exhibit No. 389." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corporation, as "Plaintiff's Exhibit No. 390." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corporation, as "Plaintiff's Exhibit No. 391." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

DISTRICT OF DELAWARE.

The Chemical Foundation, Inc., vs. The Ault & Wiborg Company and Cincinnati Chemical Works, Inc., as "Plaintiff's Exhibit No. 392." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Horatio Nelson Frazer & Chemical Refining Syndicate, as "Plaintiff's Exhibit No. 393." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. E. I. duPont de Nemours & Co., as "Plaintiff's Exhibit No. 394." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. E. I. duPont de Nemours & Co., as "Plaintiff's Exhibit No. 395." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

SOUTHERN DISTRICT OF OHIO.

The Chemical Foundation, Inc., vs. The Ault & Wiborg Company and Cincinnati Chemical Works, Inc., as "Plaintiff's Exhibit No. 396." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

NORTHERN DISTRICT OF ILLINOIS.

The Chemical Foundation, Inc., vs. Pacific Flush Tank Co., Inc., as "Plaintiff's Exhibit No. 397." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. The Abbott Laboratories as "Plaintiff's Exhibit No. 398." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. The Abbott Laboratories as "Plaintiff's Exhibit No. 399." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

MR. KRESEL: Colonel Anderson, while you are waiting, I am reminded that on last Friday, when you asked us about these bills that you have just put in, I made the suggestion, to which you acceded, that if those were to go in at all, that the other set of bills in similar suits, those brought by the Alien Property Custodian being one set, and those brought by the alien enemy being another set, should likewise go in, and I would now request that you do put those in.

MR. ANDERSON: I should be very glad to comply with the request of counsel, but I can not see what possible reference these other bills can make or what bearing they can have to the purposes for which this evidence is introduced. This is purely a question between the Government and the Chemical Foundation, and it is not a question of whether suits have been brought. That is admitted in the answer; but it is introduced for the purpose of showing the pleadings in those cases.

THE COURT: That is under your control, Colonel Anderson.

Mr. Anderson: Therefore I could not do that at this stage.

Mr. Kresel: I am simply recalling what I understood to be an agreement with counsel.

Mr. Anderson: No, I did not agree. I said I had no objection to you putting them in, if they were admissible. I would object to their admissibility.

The Court: Will it develop at any stage of your case, Colonel Anderson; if so, I would like to ask you the theory of any bill brought by the Government interests. If it is wholly irrelevant, do not bother to tell me, but I have been trying from time to time as I have thought of it—I had no knowledge of it; I was wondering what the basis of such a bill could be.

Mr. Anderson: I understand, though I speak only from hearsay, that certain bills have been filed by persons claiming to be former owners, to recover licenses under Section 10. I can not see that they could have any possible reference to the issues in this case or any possible relevancy.

The Court: Then, that will not be disclosed by you.

Mr. Kresel: May I suggest, if your Honor will permit me, as to the relevancy of it, it is this: All of this evidence is being introduced by the Government on the question of value. Now, if it is made to appear that these moneys which are royalties under licenses have not only not been paid to the Chemical Foundation, but are being claimed by the Alien Property Custodian himself on one side, and by the alien enemy owner on the other, it is bound to have an effect as to whether the amount of money has any bearing upon the question of value.

The Court: I understand your contention.

Mr. Anderson: That would be a defense of course. I will recall Mr. Storck to the stand.

GEORGE W. STORCK resumed the stand.

RE-DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

RDQ. 271. You are the same Mr. Storck who was on the witness stand last Friday, are you not?

A. Yes, sir.

RDQ. 272. At that time I introduced in evidence your statement entitled "Statement of Money's Received by the Alien Property Custodian on account of the following described contract rights assigned by the A. P. C. to the Chemical Foundation," and it was marked Plaintiff's Exhibit No. 194. You recall that paper?

A. Yes, sir.

RDQ. 273. I then requested you to make an examination of the original records of the Alien Property Custodian's office to show among other things the exact date on which the payments there listed by you were made to the Alien Property Custodian under these contracts?

A. Yes, sir.

RDQ. 274. Have you made such examination of the original records?

A. I have.

RDQ. 275. Were you in Court this morning when Mr. Schmits produced and identified original records of the office of the Alien Property Custodian, which were identified as A and B?

A. Yes, sir.

RDQ. 276. Can you now examine those original records as presented by Mr. Schmits and tell me when the various payments listed on your Exhibit No. 194 were made to the Alien Property Custodian?

A. I have already examined them.

RDQ. 277. You have?

A. Yes.

RDQ. 278. Have you made up a statement giving that information from the original records?

A. Yes, sir.

RDQ. 279. I requested you also to afford to the accountant for the defense abundant opportunity to examine those records with you or separately as he desired. Has that opportunity been afforded?

A. Yes, sir.

RDQ. 280. Has he been with you when you checked these records?

A. He was.

RDQ. 281. Who was this gentleman?

A. Mr. Dold.

RDQ. 282. Do you know what his connection is?

A. Yes, sir; he is an accountant for Pasley & Conroy, New York, Certified Public Accountants.

RDQ. 283. And he has been referred to you by the defendants here or their counsel, as their accountant, has he, to do this work?

A. That is correct.

RDQ. 284. Now, Mr. Storck, I will be glad if you would present any statement you have showing the dates of payment and any other data in addition to that shown by your Exhibit No. 194, as taken from the original records produced here, referring to those records if necessary to verify the same?

> Mr. Kresel: All this, your Honor, is under our objection that I raised to this witness's testimony before.
>
> The Court: Yes.

A. I prepared a statement which showed the original trust number, to whom the license was issued, the date the patent issued, the patent number, the date of the contract, the date of the expiration of the contract, the date received by the Alien Property Custodian, the date of the deposit by the Alien Property Custodian with the United States Treasurer, remarks or affidavits of the United States Treasurer, the date of the Certificate of Deposit from the United States Treasurer, the number of the Certificate of Deposit and the amounts; and I have tied those amounts in with my statement.

RDQ. 285. Number 194?

A. No. 194, Government's exhibit.

Mr. Anderson: I would like to ask if counsel will permit the witness to refer to these original records without their being introduced in evidence, to the same extent as if they were introduced for the purposes of this testimony.

The Court: Is it your purpose to have this testimony to give orally the information that is disclosed by the statement which has been prepared by him, or is it your purpose to let the statement speak for itself without oral testimony.

Mr. Anderson: After he has verified the statement and says it is taken from these original records which are now in Court, I shall then ask leave to file the statement of the witness or I will let him give the oral evidence if the statement is objected to.

The Court: I assume that the statement would be objected to only for the same reasons that the oral testimony would be objected to, but that by the admission of the statement under those conditions we could save much time.

Mr. Anderson: That was my idea, sir.

I understood you to agree, Mr. Kresel, that he could testify as if these records were in, without actually putting them in.

Mr. Kresel: Yes, I agree to that.

RDQ. 286. You have handed me a statement entitled "In re Chemical Foundation, statement of payments to the Alien Property Custodian on pre-war contracts assigned to the Chemical Foundation"?

A. Yes, sir.

RDQ. 287. Is that the statement referred to in your former answer?

A. Yes, sir.

Mr. Anderson: We now offer this statement in evidence to be identified and read as Plaintiff's Exhibit No. 400."

Mr. Kresel: We object to it upon the grounds that we have urged to the other compilations made by this witness.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 400." *(See Exhibits, Vol. I, page 699.)*

RDQ. 288. I understood you to say that this statement just introduced into evidence was made up by you from the original records of the Alien Property Custodian which were produced in Court and are now before me, identified by Mr. Schmits this morning; is that true?

A. Made up under my supervision. The actual work was not mine, but the checking is all mine.

RDQ. 289. You have checked every item in this statement against the original record?

A. Yes, sir.

RDQ. 290. And you testify that every item on that statement is correct in accordance with the original records of the Alien Property Custodian's Office?

A. To the best of my knowledge and belief; yes, sir.

RDQ. 291. And the accountant for the defendant, Mr. Dold, checked that statement with you, did he not?

A. He checked it alone.

RDQ. 292. Mr. Storck I asked you also to check these original records against Exhibit G and the several schedules thereof with the Bill of Complaint in this cause as corrected and introduced, to ascertain for me whether or not the patents to which the contracts mentioned in your statement refer under which they were issued, were included in the patents and other properties assigned to the defendant, as shown by that exhibit. I understand you have not been able to complete that statement?

A. Not yet; I have not had the time.

RDQ. 293. I will ask you to complete that statement and I will file it at a later date.

A. I will.

RDQ. 294. I put in evidence this morning the original licenses issued by the Federal Trade Commission as identified by Mrs. Wilson. I will ask if you have made up a statement from those licenses and other records which I introduced at the time you were in the Court room, showing the royalties accrued under licenses issued by the Federal Trade Commission; and if so, will you present that statement and explain what it contains and the sources from which it was made up?

A. I have made up such a statement but it is my working sheets. I have not had time to have it typed, but it is here.

RDQ. 295. That does not matter. I will introduce the original.

THE COURT: He will need that, will he not, in making up his copies?

MR. ANDERSON: It is a very elaborate statement, if your Honor please, and it will take an enormous amount of time to copy it. We have not the force to do it and I will have to introduce the original and take our chances, without delaying the evidence.

THE COURT: Very well.

MR. ANDERSON: I have not a copy. I will have to do the best I can.

Mr. Kresel: Will you ask him to state what is.

Mr. Anderson: Yes, I asked him to state wh it is and how he made it up.

A. This is a statement of payments to the Alie Property Custodian on Federal Trade Commissio licenses covering patents assigned to the Chemic Foundation, Incorporated. It begins with the licen number and letter, the name of the party to whom i sued, the license number, the date the license wa issued the patent number, the patent date, the date expiration of the patent, the date of receipt of mon by the Alien Property Custodian, the date the mone was deposited with the United States Treasurer, th date of the Certificates of Deposit from the Unite States Treasurer, the number of the Certificate Deposit, and the amounts and totals; which tied with a few exceptions with my statement the other da Plaintiff's Exhibit No. 198.

By Mr. Kresel:

RDQ. 296: That is, you have reconstructed E hibit No. 198, is that it?

A. Yes, sir; with these additions, as I stated.

By Mr. Anderson:

RDQ. 297: You have handed me a statement co sisting of five sheets containing various columns a headings which you have just enumerated. Is that t statement to which you have just referred?

A. Yes, sir.

RDQ. 298. I would ask you to state from wh records you made up that statement?

A. From the original licenses, from the slips the Alien Property Custodian in which the money w received in the mailing room.

RDQ. 299. Are those slips among the pape identified by Mr. Schmits this morning and now in court?

A. Yes, sir.

RDQ. 300. All right.

A. From the duplicate deposit tickets of the Alien Property Custodian to the United States Treasurer remitting the funds.

RDQ. 301. Those papers are now in Court?

A. Yes, sir. From the certificates of deposit from the United States Treasurer to the Alien Property Custodian which are there.

RDQ. 302. Those certificates of deposit, I understood from Mr. Schmits, showed all of the amounts which had been deposited under these particular patents, with the exception of such as the Treasurer could not locate, and the affidavits introduced from the treasurer of the United States covering those that could not be located?

A. That is true.

RDQ. 303. And with that statement, those are the records now in Court?

A. Yes, sir.

RDQ. 304. Did you follow those certificates of deposit on to the record books of the Alien Property Custodian, the original entries?

A. Yes, sir; I followed them on to the original accounts which you have there.

RDQ. 305. And these large yellow sheets are the original accounts showing the entries of the various matters as to which you have just testified on the original books of the Alien Property Custodian?

A. Yes, sir.

RDQ. 306. The license number as shown in the first column of the statement which you identified was the license number taken from the original license, was it?

A. Yes, sir.

RDQ. 307. The date of the licenses was the da taken from the original licenses which were introduce in evidence this morning?

A. That is where it was ascertained, yes, sir.

RDQ. 308. The patent numbers were the pate numbers contained in the licenses introduced in ev dence this morning, were they?

A. Yes, sir.

RDQ. 309. The dates of the patents were th dates designated in those original licenses, were they

A. Yes, sir.

RDQ. 310. The date of the expiration of the pa ent; where did you get that information from?

A. To the date of the patents, seventeen yea were added unless it said "indeterminate" or othe wise.

RDQ. 311. So that is based upon the date of th original patent as introduced in evidence this mornin

A. Yes, sir.

RDQ. 312. How about the date of receipt money by the Alien Property Custodian?

A. That is taken from the small slips that we up to the cashier's desk.

RDQ. 313. And those are the slips I have he before me, identified by Mr. Schmits this morning original records?

A. That is correct.

RDQ. 314. And they are now in Court?

A. Yes, sir.

RDQ. 315. The date of deposit with the Unite States Treasurer?

A. That is a deposit ticket on a form that th Alien Property Custodian makes when he makes h deposit with the Treasurer of the United States.

RDQ. 316. And those forms and deposit ticke are among the tickets and original papers present this morning by Mr. Schmits, identified, and now before me in the Court room, is that true?

A. Yes, sir.

RDQ. 317. The date of Certificate of Deposit from the United States Treasurer?

A. That is taken from the Certificate of Deposit that is issued by the Treasurer of the United States to the Alien Property Custodian acknowledging his deposit.

RDQ. 318. And those certificates of deposit, so far as they have been found and are indicated on this sheet, are among the original papers introduced or presented this morning and identified by Mr. Schmits, and now before me, are they?

A. They are.

RDQ. 319. And they have been checked back against those original papers.

A. Yes, sir.

RDQ. 320. And where the sheet indicates that the original deposit certificate is not presented, it is based upon the affidavit of the Treasurer of the United States of the date he received the money, is that true?

A. Yes, sir.

RDQ. 321. You have a heading here "Number of Certificate of Deposit." That is derived from the same source as the date of the deposit, is it not?

A. Yes, the number appears upon the Certificate of Deposit.

RDQ. 322. And the amount is taken from the Certificate of Deposit and the original records of the Alien Property Custodian which you have here in the Court room, these sheets.

A. Yes, sir.

> Mr. Anderson: We offer in evidence a statement which has been identified by the witness entitled "In re Chemical Foundation, Statement of Payments to the Alien Property Custodian on

Federal Trade Commission licenses covering patents assigned to Chemical Foundation, Incorporated, to be identified and read as "Plaintiff's Exhibit No. 401."

Mr. Kresel: We object to it upon the ground that we have heretofore raised, and further upon the ground that no proper foundation has been laid for it.

Mr. Anderson: You do not object to the fact that the original evidence in the Court has not been introduced in evidence.

Mr. Kresel: I have already stated that I do not make that objection.

The Court: I am not sure that I understand your objection that no foundation has been laid. Will you elaborate on that, Mr. Kresel?

Mr. Kresel: Yes, your Honor. I may point out only one instance of that and that is that of course we are not bound by any affidavit made by somebody. We can not be trying law suits on affidavits.

The Court: I assume that that would be one of your objections. What have you to say with respect to that, Colonel Anderson.

Mr. Anderson: Simply this, sir, that in my judgment the date of deposit with the Treasurer of the United States is only necessary to make the record complete. If this money was paid to the Alien Property Custodian, as to which the original records are here, then that is all that is required, because he is the officer of the government to receive it. We are not suing for the money. I wanted to make the record complete and show the deposit with theTreasurer, to show that the law had been completely complied with. I am not going to go to the trouble and expense of calling the Treasurer of the United States to testify on this subject, but I will rest on the affidavit as it now stands. I recognize that it is not primary evidence, but I think under the circumstances the courts will receive it as evidence.

THE COURT: I will not pass upon the latter point, but if you want to annex the affidavits of the Treasurer of the United States to the document which you now offer, in order that this Court and any Appellate Court may determine for itself the particular items in this sheet which are based upon the affidavit of the Treasurer, you may.

MR. ANDERSON: I think the suggestion of your Honor is a good one because it will enable us when we come to study the record, to understand the situation much better, although the annotation in the statement shows what is based on the affidavit in each case. I think probably the affidavits had better be attached.

THE COURT: As part of the same exhibit and not as independent evidence.

MR. ANDERSON: I amend my offer so as to say, including two affidavits and accompanying statements of the Treasurer of the United States to which the witness has referred, all to be included as Exhibit No. 401.

Received in evidence and marked "Plaintiff's Exhibits Nos. 401-A and 401-B." (*See Exhibits, Vol. I, page 713; Vol. I, page 717.*)

RDQ. 323. Mr. Storck, you stated just now that you had tied in your statement filed as Exhibit No. 400 with your statement filed as Exhibit No. 194?

A. Yes, sir.

RDQ. 324. Will you now take these two exhibits and say if the tying in shows the same totals and what they are; and if not, what differences exist?

A. On Exhibit No. 194, the amount is shown as $152,801.77, while on Exhibit No. 400 the amount is shown as $152,758.04. But there are corrections. Trust No. 11,269 on the original statement was short $44.00, and on Trust No. 3816 it was 27 cents over, making a difference of $43.73, which should be added to the $152,758.04, which would make the amount $152,801.77, as shown on Exhibit No. 194.

RDQ. 325. Please state on the record the amount which was collected by the Alien Property Custodian as shown by his original records, in the manner which you have already testified, under these contracts, by periods, as stated on your summary, making up the total you have stated?

THE COURT: Does that appear on your statement, Colonel Anderson?

MR. ANDERSON: I really do not know, sir. I want to get it.

MR. KRESEL: It does.

THE COURT: It does appear on your statement.

RDQ. 326. Now I will ask you to take our old friend, No. 198, with the summary 198-A, and ask if you have tied your statement No. 405 just filed with the statements 198 and 198-A, and if so, give the results and the differences if any?

A. Will you please let me have 401?

RDQ. 327. Yes (handing witness).

A. Exhibit 198 shows the amount of $491,571.38, which represented royalties earned. In connection with 401 I could not show the royalties earned for the simple reason that the Alien Property Custodian's office does not show it, but they only show the amounts paid.

RDQ. 328. Let me get that straight. Your statement of royalties earned is made up from the original records in the Federal Trade Commission presented, identified and introduced in evidence by Mrs. Wilson this morning?

A. That is correct.

RDQ. 329. That showed the royalties earned by those licenses, and your statement 401 shows the actual royalties paid to the Alien Property Custodian, with the dates of payment; is that true?

A. That is correct.

RDQ. 330. What are the differences, if any?

A. The amount shown on Exhibit 198 as paid was $486,036.66, while the amount shown on Exhibit 401 was $484,513.65.

RDQ. 331. What was the amount of difference?

A. The difference would be $1,523.01. I have located such difference.

RDQ. 332. Tell where you located it and explain it.

Mr. Kresel: Does that appear from the statement?

The Witness: Sir?

Mr. Kresel: Does that appear from the statement, these differences?

The Witness: Yes, sir.

RDQ. 333. Explain how it arises.

A. Well, some were royalties accrued, not yet collected by the A. P. C.; others were excess adjustments and taking fractions, five points or over, like one cent.

RDQ. 334. And those differences are indicated in the "Remark" column of your statement, are they?

A. Yes, sir.

RDQ. 335. Then you need not go any further.

A. Then I credit amounts subsequently deducted, with dates shown when deducted.

RDQ. 336. Mr. Storck, with those modifications are you prepared to say that the facts as set forth on Exhibit No. 198 and your Exhibit No. 401 are correct in accordance with the original records of the Alien Property Custodian's office and the Federal Trade Commission office?

A. They are.

RDQ. 337. And they are made up from the original records which have been presented here and either introduced in evidence or now in Court identified?

A. Yes, sir.

RDQ. 338. I will now ask you to take your summary Exhibit No. 200 and say whether with the additional statements which you have put in and additional data which you have gathered from the original records as testified, that summary requires any modification in order to make it absolutely correct, and if so state what modification and explain the same?

A. It needs none.

RDQ. 339. The sum totals as shown on that statement for the various periods, then, are correct?

A. Yes, sir.

RDQ. 340. I will also ask you to take your statement No. 199, original filed in this case, and say whether in view of the additional statements filed there are any changes or corrections to be made i that or whether the results are correct?

A. They are correct as so stated.

RDQ. 341. The facts stated on that statement are correct in accordance with the original records t which you testify, are they?

A. Yes, sir.

Mr. Anderson: If your Honor please, I hav asked the witness to prepare one other statement but they have been working until two or thre o'clock in the morning. There is also one o[illegible] matter. He is engaged preparing two state[illegible]t for me, but I will recall him, and now turn [illegible]i over for cross-examination, and will recall him little later when they are ready.

Mr. Kresel: You will recall him, you say?

Mr. Anderson: A little later, on other mat ters entirely; but so far as this matter is concerned, it is concluded.

THE COURT: Would you like to reserve your cross-examination, Mr. Kresel?

MR. KRESEL: Your Honor, I would just as leave get through with as much of it as I can. I won't be very long. I would like to have Exhibit No. 400.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RXQ. 342. This reconstructed statement concerning contracts which is now marked Plaintiff's Exhibit 400, I notice that you have not deducted on that the $30,000 which has been paid as principal on one of these licenses.

A. No, sir; it has not.

RXQ. 343. Therefore to that extent this Exhibit 400 is different, or rather to that additional extent this Exhibit 400 differs from Exhibit 194?

A. It does; yes, sir.

RXQ. 344. In other words, there should be deducted from the total that you show on Exhibit 400, namely, the amount $152,758.04, the amount $30,000?

A. That is shown on another statement, Mr. Kresel, which Colonel Anderson asked me whether there was any change in. If you will get it for me I will show it to you.

MR. KRESEL: I would like to have now Exhibit 194, please.

THE WITNESS: I do not think that is the number.

MR. KRESEL: Well, I want Exhibit 194.

RXQ. 345. Exhibit 194 and Exhibit 400 are the two statements that you are reconciling, are they not?

A. Yes, sir, together with the additional information that was asked, such as the expirations of patents, dates of issue.

THE COURT: I can not quite hear you, Mr. Storck.

THE WITNESS: I said yes, sir, with the additional information that I put on, such as dates of patents, expiration of patents, and so forth, which does not appear on the original statement that I sumitted, 194.

RXQ. 346. In other words, on Exhibit 400 you have given some additional information?

A. Yes, sir.

RXQ. 347. That is, additional to that extent in Exhibit 194?

A. Yes, sir.

RXQ. 348. But as to the total of $152,801.77, which is the total appearing on Exhibit 194——

A. That would be the same.

RXQ. 349. Wait a minute now. (Continuing.) And the total of $152,758.04, which is your total on Exhibit 400, the difference of which you have explained, this item of $43.73, I say that there should be deducted on each of those statements $30,000, which was received as principal under this license and not as license royalty?

A. That is quite true, sure. It is shown on another statement, as I said.

RXQ. 350. Still referring to Exhibit 400, still that statement regarding contracts, can you tell me from this statement for what period the payments that are shown as having been received here were received?

A. No, sir.

RXQ. 351. Just to illustrate my question and your answer, the first item is a contract issued to General Ceramics Company, Inc., and as to that you show that on the 15th day of May, 1918, the Alien Property Custodian received $3,019.17?

A. That is correct.

RXQ. 352. What I am asking you is whether you can tell for what period that sum of money was paid?

A. On that statement?

RXQ. 353. On that statement.

A. Absolutely not. It was not prepared for that.

RXQ. 354. Can you give me the information outside of the statement?

A. Yes, I think I can.

RXQ. 355. Will you do it, please?

A. Surely. The name was National Ceramics?

RXQ. 356. General Ceramics Company.

A. I can not show it from here, but let me see the Federal Trade cards. (Takes and examines cards.)

RXQ. 357. Mr. Storck, are you not confused?

A. I do not think I am.

RXQ. 358. The Federal Trade cards do not show anything about these contracts.

A. That is true. That is true.

RXQ. 359. Mr. Storck, are you not confused?

A. I do not think I am.

RXQ. 360. The Federal Trade cards do not show anything about these contracts?

A. No, that is true.

RXQ. 360-A. Can you give me the information from any source?

A. No, I can not.

RXQ. 361. All right, I will pass on to the next thing then. Now, Colonel Anderson asked you with reference to Exhibit No. 200, as to whether that required any modification in view of your testimony today, and you looked at it and stated that it did not?

A. It did not.

RXQ. 362. Now, these changes between Exhibits 194 and 400, are they reflected in this Exhibit 200?

A. You are referring to the $30,000?

RXQ. 363. Yes.

A. No, sir.

RXQ. 364. The change of the forty-three odd dollars, though a small item, is that reflected in this Exhibit 200?

A. Yes, sir, it is accounted for in there.

RXQ. 365. Where is it?

A. It is in the amount of $152,800.

RXQ. 366. I understood you to say that was the original amount, but that you had to deduct $43 from it?

A. I said that I would have to add $43 to it because——

RXQ. 367. Very well, then if you add to it you would still have to make a change in that statement, would you not?

A. Oh, no, I do not.

RXQ. 368. Then I do not understand you.

A. I will try to explain it.

RXQ. 369. Please do.

A. I stated that when I prepared the first statements, showing $152,800——

RXQ. 370. Yes.

A. That was taken from the contracts as submitted by the Alien Property Custodian, and I went back to check their books and I found they had made a correction of $43.77, which would make my statement different. In order to balance, I would have to add $43.77.

RXQ. 371. And that you discovered after you made up this statement, Exhibit 200?

A. Yes, I discovered that.

RXQ. 372. I say, after you made up this statement, No. 200?

A. Yes, long after.

RXQ. 373. Do you not have to make the change in there so as to make it correct?

A. All right, I will change the $43 for you.

RXQ. 374. My dear man, I am not trying to bargain with you on $43. I am simply checking you up, as to your testimony that that does not require correction. You now admit that it does, do you?

A. Yes, sir, I will correct it for $43.

RXQ. 375. All right; that is all I wanted. Now, I asked you last Friday to be careful to acquaint yourself with whatever the records of the Alien Property Custodian or of the Federal Trade Commission showed with reference to licenses issued to what are known as the Haber Process patents; do you remember that?

A. I remember you stating that.

RXQ. 376. Did you discover that the Federal Trade Commission did issue a license on the Haber Process patents?

A. I want to state to you that it went right entirely out of my memory, Mr. Kresel.

RXQ. 377. You have not acquainted yourself with that?

A. No, sir.

Mr. Kresel: Now, Mr. Clerk, may I have, please, that bundle of cards, the Federal Trade Commission cards; have you those? (Handed to counsel.)

Colonel Anderson, so that we may not have to recall this witness for that purpose, will you concede that this Plaintiff's Exhibit No. 329 is the original Federal Trade Commission card, showing that a license, No. 61, was issued on the 4th day of March, 1919, to the Semet-Solvay Company, covering what are known as the Haber patents? If you desire to examine that, you will see from it that that is so indicated.

Mr. Anderson: The license is here in evidence. That is our copy. It has been introduced and withdrawn and a copy substituted. The e hibit number is on the paper.

Mr. Kresel: And the number of it?

Mr. Anderson: 269.

Mr. Kresel: In other words, it is concede is it, Colonel, that Federal Trade license No. dated March 4, 1919, which is now in eviden as "Plaintiff's Exhibit No. 269," is the licen issued by the Federal Trade Commission on t Haber patents?

Mr. Anderson: I do not know anything in t world about it other than that license is in e dence, and whatever it speaks for I am perfect willing to concede. If I knew the facts I wou concede them with the greatest pleasure.

Mr. Kresel: Let me see whether it is possi that this be conceded; otherwise I am going ask Mrs. Wilson to help us out while she is her

Mr. Anderson: I wish you would, because do not know very much about it.

Mr. Kresel: Here it is, Colonel. There is statement—Haber, Haber-Bosch, Bosch, Bos Those are the Haber-Bosch patents, for ammoni Perhaps I had better ask Mrs. Wilson about th

Mr. Anderson: Very good. I think y ought to, because I really do not know the fact

Mr. Kresel: All right; I will ask Mrs. W son about it. That is all, Mr. Storck.

Mr. Anderson: One minute, before you Mr. Storck.

Re-Cross-Examination.

By Mr. Anderson:

RDQ. 378. You spoke, on cross-examination, $30,000, paid on account of principal of a certain co tract. Could you identify that contract on your l there?

A. I could, if you would show me another exhibit. I do not know the number of it, but I can pick it right out.

RDQ. 379. State the date and the number of the contracts for identification to which you refer?

A. The item that Mr. Kresel asked me about refers to trust No. 12,681 of the American Kitchen Products Company, of which $30,000 was a payment on principal.

RDQ. 380. Where did you get the information that that was a payment on principal?

A. From the statement as submitted by the Alien Property Custodian.

Mr. Anderson: If your Honor please, I asked counsel last week to let me have a copy of that contract, the original being in their possession; and I wish to offer in evidence a copy of several separate papers constituting that contract and certain amendments thereto, furnished me by counsel this morning, to be identified and read as Plaintiff's Exhibit No. 402. The purpose of the offer is to see just what that payment was made on account of, the best evidence being the contract itself.

Mr. Kresel: Subject to our general objection as to the materiality and relevancy of this testimony, we have no objection to letting this copy go in.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 402." (*See Exhibits, Vol. I, page 720.*)

The Court: Are you through with Mr. Storck, on both sides?

Mr. Kresel: I am through.

Mr. Anderson: For the present, yes, your Honor. I will have to recall him later when he has finished this work upon which he is engaged.

Mr. Kresel: Colonel, while I am on this sub-ject, might I recall Mrs. Wilson for a question?

Mr. Anderson: Certainly.

Mr. Kresel: Would you mind, Mrs. Wilson

Margaret R. Wilson, a witness on behalf of th plaintiff, resumed, further testified as follows:

Re-Cross-Examination (Continued).

By Mr. Kresel:

RXQ. 58. Mrs. Wilson, did the Federal Trad Commission issue any license to any one covering wha are known as the Haber patents for the synthetic production of ammonia?

A. The license, I think, No. 61, to the Semet-Solvay Company.

RXQ. 59. Pardon me; I did not get it all.

A. The license to the Semet-Solvay Company, I think the number is 61, but I do not carry the number in my mind.

RXQ. 60. Yes. Please look at Federal Trade Commission License No. 61, which is now in evidence as Plaintiff's Exhibit No. 269, and state whether that is the license that was issued by the Federal Trade Commission covering those patents?

A. This is the license.

Mr. Anderson: You mean the patents mentioned therein?

Mr. Kresel: Yes. I will have her enumerate the patents.

Mr. Anderson: Very well.

RXQ. 61. Did the Federal Trade Commission issue any other licenses to anybody else covering any of those patents?

A. To the best of my knowledge and belief, no.

RXQ. 62. The particular patents that are covered by the license are specified in the license, are they not?

A. In that case, in the license, and I think in the schedule annexed to the license.

RXQ. 63. I am going to hand you the license, and I am going to ask you if you will be good enough to look at it and state how many of those Haber-Bosch patents are covered by that license?

A. When you speak of the Haber-Bosch patents, do you not mean this entire list, covering the production of ammonia?

RXQ. 64. Yes, that is what I mean.

A. And then you ask how many of these are covered in this license?

RXQ. 64-A. How many patents are covered by this license; that is my present question?

A. The license says, to carry on the processes and inventions of certain United States letters patent, owned or controlled by enemies or allies of enemies, copies annexed hereto, relating to the production of ammonia, for the terms of each of the respective patents, and the schedule annexed shows—I have not copied the number, but the group of patents covering the production of ammonia did indicate all that are in that group are covered by the license.

RXQ. 65. The license covers the entire group of patents for the synthetic production of ammonia?

A. So far as they are identified in this schedule and annexed to and forming a part of the license.

RXQ. 66. Then, I am asking you to be good enough to turn to that schedule and tell us how many licenses are specifically named there by number and description—how many patents are specifically described there by number and description.

THE COURT: Has the witness answered?

MR. KRESEL: Are you ready?

A. By my count, I make it 25.

RXQ. 67. Now, then, that license was issued o the 4th of March, 1919, is that right?

A. Yes, sir, that is correct.

RXQ. 68. I now show you the original card o the Federal Trade Commission relating to this licens No. 61, which card is now Plaintiff's Exhibit No. 329 First tell me whether that is the card relating to tha license?

A. This is the original card.

RXQ. 69. It is. Will you please state from that card, which is your record, how much royalties were reported as having been earned on that license?

A. No royalties were paid under this license.

RXQ. 70. No royalties either reported as earned or paid?

A. Not by the Semet-Solvay Company.

RXQ. 71. That is all I am talking about. I am talking about this license; and that record as to accrual of royalties or payment of royalties, runs from March 4, 1919, to what date—the present?

A. No. Our records closed on the 2nd of July, 1922.

RXQ. 72. So that up to the 2nd—or the 7th, did you say?

A. 2nd of July.

RXQ. 73. The 2nd of July, 1922, the licensee under that license reported no earnings or accrual of royalties under that license?

A. The Semet-Solvay Company, as licensee, reported no earnings or accrual of royalties.

RXQ. 74. You seem to be stressing the name of the licensee. Did anybody else pay any royalty?

A. Not under this license.

RXQ. 75. That is what I am talking about, this license; and you have told me as far as you know, and the records of your department were, there was no other license issued covering these ammonia patents?

A. Not by the Federal Trade Commission.

RXQ. 76. Now, you say that your records closed on the 2nd of July, 1922. Do you mean that there are no records of the Federal Trade Commission subsequent to that date?

A. No, I mean that by the one sub-section of the Enemy Trade Act the licensee was relieved of the liability of making any further payments after one year following the expiration of the war, during which time the enemy owner or the owner was entitled to sue against the license. If suit were entered, he was relieved for such time as he presentd it.

RXQ. 77. So that up to the time when the licensee had under the law to make reports to the Federal Trade Commission, all the reports on those licenses indicated that no royalties had accrued or been paid?

A. By the Semet-Solvay Company.

THE COURT: Or all others?

THE WITNESS: Yes.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 78. Mrs. Wilson, do you know anything about the character of these patents except shown in that license, except shown in the license issued as now in your hand?

A. The character of the patents?

RDQ. 79. Yes.

A. I do not know whether this is proper to add, but the explanation I would like to make in response to that question is——

MR. KRESEL: One minute, I object to any explanation.

RDQ. 80. What you have been testifying to is all taken from that record of that patent?

A. Yes, sir.

RDQ. 81. All taken from that record?

A. It is all taken from this record.

RDQ. 82. And you have spoken entirely from the record as far as it shows anything there?

A. Absolutely.

Mr. Anderson: Then I move to strike out the cross-examination. The record speaks for itself, as to what the patents are and everything about them.

The Court: Have you anything to say to that, Mr. Kresel?

Mr. Kresel: No, your Honor. I do not think I need answer that.

The Court: It may stay, at least under our general rule, Colonel Anderson.

Mr. Kresel: All right; that is all, Mrs. Wilson.

(Witness excused.)

Mr. Anderson: Now, if the Court please, I wish to read into evidence, as admissions against the answer in this case, and the position of the defendant, certain statements made by Joseph H. Choate, Jr., Esq., as general counsel of this company, before the Committee of Congress on certain hearings upon Bills, which I will identify.

Mr. Kresel: Now, if you will just tell me where you are reading from, I will see whether there is any objection to it.

Mr. Anderson: All right, sir.

Mr. Kresel: What page is it?

Mr. Anderson: The first one is from the Official Publication made by the Government of the hearings before the Committee on Ways and Means, House of Representatives, on H. R. 2706, entitled, "A Bill to amend an Act entitled 'An Act to increase the revenue, and for other purposes,' approved September 8, 1916, and H. R. 6495, A Bill to regulate the importation of coal-tar products, to promote the establishment of the manufacture thereof in the United States and, as incident thereto, to amend the Act of September 8, 1916, entitled, 'An Act to increase the revenue, and for other purposes'," the hearings being from June 18-20 and July 14-18, 1919.

At page 87, there is a title: "Statement of Mr. Joseph H. Choate, Jr., Counsel, The Chemical Foundation (Inc.) and American Dyes Institute."

Mr. Kresel: I ask that that be stricken out, as not binding upon the defendant.

Mr. Anderson: Very good.

Mr. Kresel: They are not responsible for what heading somebody puts in that record.

Mr. Anderson: I will just strike the heading out, because he stated himself on the next page, and I will read what he said. I thought it might shorten it.

On page 88, Mr. Choate is asked the following question, and he answered:

> "The Chairman: Give the name of the company you represent to the stenographer?
>
> "Mr. Choate: I appear here as counsel for The Chemical Foundation, into which I shall go in a moment, and also I have been asked to represent the American Dyes Institute, which is an association of all the dye-makers, or substantially all the important dye-makers in the country because they have exactly the same point of view presented by The Chemical Foundation today and are therefore properly represented by the same counsel."

Mr. Kresel: Is that the statement you want in the record?

Mr. Anderson: That is the statement I want in the place of the other statement.

Mr. Kresel: All right. Now, I object to that upon the ground that the statement of Mr. Choate is not binding upon this defendant unless it is made to appear that he was authorized to make statements on behalf of The Chemical Foundation. Your Honor will recall that the same subject was debated before your Honor at the time when Colonel Anderson read in certain statements of Mr. Garvan. I think the point now taken is even more in point as to Mr. Choate than as to Mr. Garvan.

Of course, under the general rule, your Honor permitted the statement of Mr. Garvan to be read, and I ask that your Honor will follow the same course with reference to Mr. Choate, but I want my objection to be noted.

The Court: I only briefly recall, Colonel Anderson. You may state on the record the grounds upon which you think this is binding on the company, if you so desire.

Mr. Anderson: If your Honor please, upon the evidence in this case already introduced, and Mr. Choate's own statement, which I have read, I think it abundantly appears that Mr. Choate was not only officially general counsel of The Chemical Foundation and counsel for the Dyes Institute, but that he was its active spokesman in most of the matters which concern its position and policy in respect to the Government of the United States. And therefore his statements would clearly be admissions against the defendant. I think that statement sufficiently covers it unless your Honor desires more.

Mr. Kresel: I assume your Honor will grant us leave, as you said you would with reference to Mr. Garvan's testimony, to read any portion of Mr. Choate's statement, from which portions are about to be read by the Government.

The Court: The general rule will apply to you also, Mr. Kresel.

Mr. Anderson: I shall object to that very strenuously, on the ground it is not permissible, but we need not argue that now, because we will come to it at the proper time.

On page 108 Mr. Choate is asked a question by Mr. Moore, a member of the Committee. It already appears on the record to that effect.

> "They"—the text shows, referring to the patents taken over by this company—"they did not belong to the German Government except as it might be that the Kaiser personally had some interest in the patents; and being private property or corporate property as the case might be. What return can we make, at the close of hostilities, in the peace settlement, for the property we have just taken and appropriated to ourselves or appropriated for the purposes of The Chemical Foundation (Inc.)?
>
> "Mr. Choate: Gentlemen, that is for you gentlemen of Congress to say. We have nothing to say about it. It is a matter of legislative policy to say what form of justice shall be meted out to the Germans.
>
> "Mr. Moore: But you have just stated that the idea originated with the Alien Property Custodian, who desired an amendment to the law in order that he might cover this very point for the purpose of seizure and sale.
>
> "Mr. Choate: In order that patents might be placed on precisely the same footing as other personal property?
>
> "Mr. Moore: He is in position to make an accounting now, as Congress expected?
>
> "Mr. Choate: Yes; because the law requires that he shall make an accounting."

At page 109, in further discussion of the matter, Mr. Choate said:

> "The patents have been sold precisely as necklaces, horses, and pictures, stocks, and bonds belonging to the Germans in this country have been sold."

Further, on the same page, a discussion of the price of these patents, $250,000, Mr. Choate was asked by Mr. Moore:

> "What was paid for those patents?
>
> "Mr. Choate: $250,000.
>
> "Mr. Moore: By an arrangement with the Alien Property Custodian, they were sold to The Chemical Foundation (Inc.)?
>
> "Mr. Choate: Yes.
>
> "Mr. Moore: He suggested this law in order to take them over?
>
> "Mr. Choate: Precisely.
>
> "Mr. Moore: May I ask how the terms were fixed?
>
> "Mr. Choate: Those terms were fixed by guesswork in the same manner as an individual would value patents by guesswork."

At Page 122 there is a further discussion of the matter begun by a question of Mr. Kitchin, who, I assume it will be admitted, was a member of the Committee.

Mr. Kresel: Yes.

Mr. Anderson: (Reading.)

> "Mr. Kitchin: I just wanted it to appear on the record. Now, your company, after the purchase by this chemical company of these 1,200 patents, was organized, and then the other patents were put on sale at public auction?
>
> "Mr. Choate: They were not sold by public sale by the Custodian, because it would have been impossible to do that for a variety of reasons. All the possible available bidders who could have bid in good faith for these patents as real manufacturers were already in the enterprise, because they were members of the American Dyes Institute. The

only other kind of bidder there could have been would be a hold-up artist who would buy the patents either for the benefit of his own pocket or who would buy them to hold them up from use. It required an Executive order from the President to effect that transfer."

Further down on the same page 122, Mr. Choate is asked:

"Mr. Kitchin: Offered separately, or were all the patents covering dyestuffs offered en bloc?

"Mr. Choate: They were sold in one transaction to The Chemical Foundation.

"Mr. Kitchin: What was the actual amount of cash that was paid for them?

"Mr. Choate: $250,000.

"Mr. Kitchin: You stated it before, but I want to get it in this connection. Now, did your patents cover any other part of the chemical products except dyestuffs?

"Mr. Choate: Yes, sir; all chemical products we could lay our hands on, but it is only in the dyestuffs that the patents are of great importance—dye and pharmaceutical goods—because it is only there that the patent is especially important. They covered salvarsan and other products and all the rest that we could get our hands on.

"Mr. Kitchin: Did any of the manufacturers of this country have the advantage of these patents, or were they allowed to make without protest on the part of the Government or anyone dyestuffs under these patents during the war?

"Mr. Choate: No, sir; but there was a provision in the 'Trading with the Enemy Act' that enabled them to get a license from the Federal Trade Commission, but under that provision they were required to pay a 5 per cent royalty to be held by the Alien Property Custodian for the benefit of the German competitor after the war, and also to buy a law suit, because the act provided that ther should be a determination by a Court of how much more than 5 per cent they should pay.

"Mr. Moore: Would the United State have suffered in the war if we had continue to hold those patents in the hands of the Alie Property Custodian until the close of th war?

"Mr. Choate: In this war, I doubt it.

"Mr. Moore: They were of no avail to u during the war?

"Mr. Choate: I think not.

"Mr. Moore: And of course the Germans could not use them here?

"Mr. Choate: It is a very difficult question, but I suppose that the patents on th dyestuffs products themselves would have little bearing on the war. It is their bearing o the dyestuff industry that gives them a colossal importance. We might have held all th property and given it back to the Germans.

I shall next read some statements of M Choate at the hearings before the Committee, fro a book or publication entitled, "Hearings befor the Committee on Finance, United States Senat Sixty-sixth Congress, Second Session on H. 8078, an act to regulate the importation of coa tar products; to promote the establishment of th manufacture thereof in the United States, and, a incident thereto, to amend the Act of Septembe 8, 1916, entitled 'An Act to Increase the Revenu and for other purposes'," hearings December 8, 10, 11, 12, 13, 1919, and January 12, 1920. I rea from page 113 of this report.

Mr. Kresel: Whose testimony is that?

Mr. Anderson: Mr. Choate's.

Mr. Kresel: I object to any reading of an testimony of Mr. Choate during these hearing upon the ground that it appears upon the face o the report that Mr. Choate in this proceeding was appearing simply as counsel for the American Dyes Institute. That appears at page 6 of this statement.

Mr. Anderson: I will read Mr. Choate's statement to which counsel refers. I am very much obliged to him for reminding me of it; I overlooked it. It will appear from the title and number of the Bill under consideration and no doubt be conceded by counsel that this was a hearing in the Senate of the Committee on Finance on the same Bill that was before the House at the former hearings. At page 6, when Mr. Choate was first called, he stated:

> "Mr. Choate: Mr. Chairman and gentlemen of the Committee, my name is Joseph H. Choate, Jr.; my residence is New York; and I am appearing before you as counsel for the American Dyes Institute, an association which includes the makers of, I think, upward of 90 per cent of the dyes produced in the United States, and nearly all those makers who produce a substantial quantity."

Mr. Kresel: Pardon me a minute. I object to the reading of that statement into the record if counsel thereby intends to hold that is proof of the fact, upon the ground, as I have stated, that any statement made by Mr. Choate at this time when, as appears here, he was appearing as counsel for the American Dyes Institute is not binding on this defendant.

Mr. Anderson: If your Honor please, I shall not argue the matter at length.

Mr. Kresel: Pardon me a minute. So as to keep my record straight, I ask that the statement just read by Colonel Anderson be stricken from the record.

Mr. Anderson: In order merely to state r
position on the record, it must certainly appe
obvious and will be contended by the Governme
in this case that the evidence has now reached
stage which shows by the positive testimony
the witnesses themselves, including Mr. Choa
and by the records which have been inroduc
here, that The Chemical Foundation and t
American Dyes Institute are one and the sa
thing; that The Chemical Foundation is nothi
in the world but the hand of the American Dy
Institute; that every dollar of money put into T
Chemical Foundation was subscribed by the me
bers of the American Dyes Institute; that th
organized it; that they are the real beneficiari
of its operations; that the American Dyes Ins
tute and The Chemical Foundation and those w
organized those companies are all parties to t
various transactions, the purpose of which w
to monopolize this industry, prevent and restra
foreign commerce, and bring about the conditio
which I enumerated this morning.

There is a charge of conspiracy here, and
course it is elementary law that where there is
conspiracy, and adopted by the various parti
even though they were not originally parties
it, admissions by one are good against them all
relation to any matter within the scope of th
scheme or transaction. There are various a
sundry reasons, therefore, why an admission
Mr. Choate at this stage of the record would
admissible not only against The Chemical Fou
dation, but the American Dyes Institute; and
go further and contend that a statement by a
official of the American Dyes Institute would
binding upon The Chemical Foundation as to the
matters, and a statement by any official of T

Chemical Foundation would be binding upon the American Dyes Institute.

The Court: Was the American Dyes Institute named in the Bill as one of the parties——

Mr. Anderson: It is not a party defendant, but we ask for relief with respect to them. It is named as one of the parties to the conspiracy.

The Court: One of the parties to the conspiracy?

Mr. Anderson: Yes, sir.

The Court: The record or booklet which you have before you discloses that Mr. Choate at the time he was speaking, was speaking for whom?

Mr. Anderson: The American Dyes Institute. He described himself as counsel for the American Dyes Institute.

The Court: Is the American Dyes Institute an incorporated body or is it an unincorporated association of persons?

Mr. Anderson: I think it was incorporated.

Mr. Kresel: No, I think not. It is unincorporated.

The Court: I will hear you now, Mr. Kresel.

Mr. Kresel: If The Chemical Foundation were charged to be a member of this conspiracy, then I could see the force of Colonel Anderson's argument on the law; namely, that if The Chemical Foundation was one of the conspirators, then any admission by any other conspirator would be binding upon it. But The Chemical Foundation is specifically exempted from the charge of conspiracy here. Your Honor will read this Bill from beginning to end and you will fail to find a single allegation to the effect that The Chemical Foundation was in this conspiracy. The conspiracy is laid against the American Dyes Institute, the Textile Alliance, Chemical Manufacturers and others

not named. Indeed, it is alleged in the Bill th
The Chemical Foundation was an innocent part
that it was being used in this conspiracy. Ho
then can an admission by one of the alleged co
spirators or by an agent of one of the allege
conspirators be binding upon the innocent party

Mr. Anderson: If your Honor please, I wi
reply. Counsel must have read this Bill very di
ferently from the way I read it.

Mr. Kresel: The trouble is you drew
and I read it.

Mr. Anderson: Yes, and I think I know wh
it intends to say. The Bill does not expressly e
empt The Chemical Foundation from the char
of conspiracy. It does not charge the Alien Pro
erty Custodian in specific terms with helping
bring about the conditions which resulted her
because we charged them then that these cond
tions were induced by the people who had an i
terest to serve by getting control of these patent
and that they induced the bringing about of t
conditions which resulted in the organization
The Chemical Foundation, that then, after th
was achieved, The Chemical Foundation had the
assignments procured and obtained the assig
ments from the officers of the Government
themselves in pursuance of such scheme and co
spiracy.

If that does not show that The Chemic
Foundation was in the conspiracy, I do not kn
how to charge it. They came into existence as
party of the conspiracy originally. They then b
came the agents and the active agents in carr
ing out the conspiracy, and they were the ha
used by the American Dyes Institute to get co
trol, the members of that Institute, for their o
benefit, of this situation. And therefore it wou

be clear, that not only has Mr. Choate identified himself as general counsel of The Chemical Foundation in this very inquiry, and not only has he appeared as the most active and really the spokesman for The Chemical Foundation—and when I say that of course I am not reflecting upon Mr. Choate personally in any way whatever; he was counsel for these organizations—but he was the active spokesman, spoke for them on practically every occasion as I will point out here, and therefore necessarily anything that he would say as counsel for the American Dyes Institute is also binding upon The Chemical Foundation, which is nothing but the shell; and nothing is better settled than that the Court will look beyond the shell in a case of this kind to the real parties in interest and adjudicate the rights of the parties upon the actual facts.

Mr. Kresel: Colonel, I am sorry to say you are getting away from the point. I say that your Bill does not charge The Chemical Foundation with being a conspirator; you say it does. The best proof is the Bill. I ask you now to point to anything in your Bill which charges The Chemical Foundation as being in the conspiracy.

Mr. Anderson: I would be very glad to oblige counsel, but I can not undertake to read this whole Bill to the Court again. I would practically have to go through the whole Bill, because these charges succeed each other——

The Court: Your theory of the admissibility of this evidence is predicated solely upon a conspiracy being both alleged and now established?

Mr. Anderson: Yes, on that, and further than that, on the fact that Mr. Choate was an officer elected at the first meeting of The Chemical Foundation and he was dealing with the affairs of The Chemical Foundation, was discussing their affairs here, and it is binding on him in every aspect.

The Court: I can not conceive of that, Colonel Anderson, although I can conceive that counsel may be counsel for certain concerns——

Mr. Anderson: Under certain circumstances, yes, sir.

The Court (continuing): And then speaking for one only. Without determining that a conspiracy has been established in fact, I shall permit you to put this evidence of record under the general rule.

Mr. Anderson: That is all I ask. I will read just a paragraph from page 113 of the publication to which I have already referred and which I have already described, in which Mr. Choate, speaking of The Chemical Foundation and of these patents, says:

> "We came to the conclusion that the patents could not have been held idle like that for any purpose except to prevent, on the one hand, American manufacture, and on the other, imports from possible competitors abroad. But the Germans did not appear to be in the least afraid of the American manufacturer; they regarded our chemists with contempt. As late as 1917 they were still writing about the ridiculous assumptions of superiority of American chemists and the absurdity of their daring to think that they could introduce the industry and build it up in this country. So it was apparent that the patents were not aimed against the American manufacturer, but chiefly against the importer.
>
> "It then occurred to me—I say 'to me' personally, because I think the original germ of this branch of the thing was in my own mind—that a product patent that was worth

> while for the Germans to procure as a means of keeping out Swiss dyes might be used by the United States to keep German products out. And so the question arose as to what could be done about it. As long as these products remained patented, we felt that the American dye industry could never get anywhere. These patented dyes had to be produced here sooner or later or the American dye industry would remain second rate and infant."

At page 115, the question by Senator Watson:

> "When you took them over did you have in mind that 90 per cent of them were worthless?"

Mr. Kresel: Pardon me, Colonel Anderson. You read from page 113 only a portion of Mr. Choate's answer to a single question. Do you not think you should read the whole answer?

Mr. Anderson: I do not, because the remainder of the answer is argument pure and simple, and I am merely trying to get in facts. I read a paragraph more than I expected to read because I wanted to give a fair connection; but I am introducing statements of fact and not arguments. I am not here to introduce Mr. Choate's arguments into the evidence.

Mr. Kresel: Would your Honor like to follow a copy of this as the Colonel reads?

The Court: No, you can put in such portions as you like when you are presenting your side of the case, Mr. Kresel.

Mr. Kresel: It does not give a fair picture to the Court to take a portion of a single answer and read it, and decline to read the full answer.

The Court: That may be true, and I can determine that after I read what you also put in, and I shall draw no temporary conclusions about it.

Mr. Anderson: If your Honor please, as a personal statement, I am inclined to be absolutely fair to Mr. Choate and I am reading more than in my judgment I am required by law to read.

The Court: You must each understand that you are not standing in the same position.

Mr. Anderson: I quite appreciate that.

The Court: One is viewing the case from his client's standpoint and the other is not.

Mr. Kresel: Will Colonel Anderson, then, permit me to read the balance of the Answer?

Mr. Anderson: I am sorry, but I cannot.

The Court: You can put it in after you have opened your case. You may proceed, Colonel Anderson.

Mr. Anderson: The balance of it is argument. At page 115 Senator Watson asked:

> "**Senator Watson**: When you took them over, did you have in mind that 90 per cent of them were worthless?
>
> "**Mr. Choate**: I think so. But even a worthless patent is a very excellent obstacle to a new industry, because a man working out a given new process frequently finds that his process infringes on a patent that is not worth the powder to blow it up, but is a hindrance to a fellow working on the same line.
>
> "The inspiration occurred to Mr. Garvan, as the solution of this question, that the way to deal with it was to form a quasi-trustee corporation which could be organized and owned by the industries affected by these patents, and let that corporation buy the whole lump en bloc, together with every other chemical patent we could lay our hands on."

Further down on page 116, Senator Watson asked, "I thought you said take over all other

American patents?" To which Mr. Choate replied, "All other German chemical patents, as well as dye patents.

> "SENATOR WATSON: You did not limit it to German patents? You said all other chemical patents, and I wondered whether you included all those hereafter taken out?
>
> "Mr. CHOATE: Oh, no. The idea was suggested to a gathering of as many of the representative men in the industries as we could get together, and they went out and organized their corporation, The Chemical Foundation. Then there came up the question of how we were going to sell it. The Alien Property Custodian, Mr. Palmer, and Mr. Garvan, were insistent that the sale should be by public auction. That was the ordinary way of disposing of German property, and it was the natural way, the generally desirable way.
>
> "We found the representatives of the industries unanimously opposed to that course for reasons stated by them which finally convinced me and convinced Mr. Garvan and convinced Mr. Palmer; and those reasons were these: Having interested in The Chemical Foundation substantially all the principal manufacturers whose business was affected by these patents, it included nearly all the possible manufacturers who might have been found at a public sale at auction as proper purchasers for the patents. Outside this group, a legitimate purchaser, therefore, could hardly be found. But even if that had not been the case, had the patents been put up at auction, either the same thing would have happened as happened in the case of the Bayer patents, and they would have been bought in one block or in a half dozen blocks, or 40 blocks by manufacturers, and thus closed to the rest of the American industry, or else —and this we feared still more—they would have been bought in by speculators, who would have bought them for their nuisance

value, out of which a speculator might well have made a handsome figure. It would have been impossible to detect and reject a speculator as purchaser, because he could easily have hidden under a perfectly respectable dummy or nominee.

"Accordingly, it was determined that it would be impossible and unsafe to put those patents up for public sale, and it was agreed that the matter should be presented to the President of the United States, with a request for an Executive order authorizing the private sale to The Chemical Foundation; and that was the course which was followed. The price of $250,000 that was fixed for the patents was, as you may well suppose, a guess. No human being could put a value on that block of patents; none of them had been used in this country, a very large proportion of them had not been used anywhere else. They were held for their nuisance value only, and no man could say what that nuisance value was. No one was disposed, I think, to lean backward in the way of over-valuing the nuisance value of a patent owned by an enemy, a nuisance value which reacted against an industry which we believed to be so important.

"Therefore, the figure of $250,000 was arrived at as the best obtainable guess on the part of anybody, and the transaction was put through on that basis.

"Mr. Garvan became president of The Chemical Foundation on the absolute insistence of Mr. Hoguet and myself, because it was perfectly evident that the Foundation would, from the first, be, as it has been, the subject of attack from every German in the country, and because it was absolutely essential that the chief officer of that company should be familiar with German personalities in this country, and German methods; and there was no man in the country that knew them as well, or whom they feared so much, as Francis P. Garvan."

The Court: Colonel Anderson, did you tell me some days ago that I could escape in this case a determination of the validity of the seizure of those patents?

Mr. Anderson: Oh, yes, because the question of the validity of the seizure can not really be raised in this case for the reason that the Government can not attack its own title, and The Chemical Foundation, claiming through the Government, certainly can not attack its title, because The Chemical Foundation has not any title.

In the second place, the original German owner can not attack the title of the United States because of the provisions of the Treaty ratifying and confirming the seizure and agreeing that this property should be held, under the Treaty, at least until Germany had complied with the conditions of the Treaty; and it is stipulated here that Germany has not complied with any of those conditions.

So far as this case is concerned, both the plaintiff and defendant claim through the same source their title; that is, seizure by the Alien Property Custodian. Therefore the question involved here is purely a question of whether there was a valid sale. If it was not, title revests in the United States and the United States holds it.

The Court: Although that may have been one of the steps, should we find a conspiracy, the seizure may have been one of the steps in the consummation of the acquisition of the patents by the industry.

Mr. Anderson: Undoubtedly. And in that event, if it could properly be raised, legally raised by the proper person, there might be a very nice question raised as against the Government of the

United States possibly. I am not prepared to pass on that. It is too complicated for me.

But here the whole question is that, if the agents of the Government were guilty of a conspiracy in making this seizure, the Government can not be estopped by their wrong. In other words, the Government has contracted with the Government of Germany in a treaty, which is the law of the United States, that its title as against the German owner is good and the only question is as between the Government of the United States and its assignee.

Mr. Kresel: Would your Honor permit me to partake in this debate for a moment?

The Court: That is your privilege, Mr. Kresel, if you desire.

Mr. Kresel: The difficulty with the Colonel's position is that he says the seizure is not void while his Bill says it is. That is the only difficulty. He can overcome it, possibly.

I call attention to the allegation in the 23rd paragraph of the Bill, wherein it is charged, "That in pursuance of said plan, scheme, and conspiracy the persons, firms, corporations, and associations aforesaid, parties thereto, about or soon after June, 1918, through their duly authorized representatives, and especially through one Morris R. Poucher, representing and acting for said conspirators, approached said Alien Property Custodian," and so on, and then if your Honor will turn to page 24, "And urged upon said Alien Property Custodian and his assistants, officers, and agents aforesaid, and others, the pretended necessity for the protection of American industry of securing control or ownership of said enemy-owned patents" and so on, "And urged upon them their pretended duty in the public interest to seize, sell, or dispose of the same; and after numerous conferences," and so forth.

There you have an express allegation that pursuant to the conspiracy, the conspirators urged upon the Alien Property Custodian the necessity of making the seizure, and then in the next paragraph they go on and say that, for the purposes of said scheme or said conspiracy, they urged the Alien Property Custodian to select, for the purpose of said scheme and conspiracy, certain enemy-owned patents, and thereupon the patents so indicated by the conspirators—I read now from page 26—were so selected and seized and demanded by and taken into the custody and control of the Alien Property Custodian.

Here are express allegations of the Bill, that the seizure was urged upon the Alien Property Custodian and that the seizure was made pursuant to the conspiracy. If that was so, it was an illegal seizure; and if it was an illegal seizure, it cannot be the basis of any legal sale, and that is the way they have argued it in this Bill. They come to that conclusion.

Mr. Anderson: No, no.

Mr. Kresel: The treaty which Colonel Anderson now refers to, if it is to be given any effect at all, in view of this complaint—and of course the United States can do away with any benefits that it has under the treaty if it wants to—but if it is to have any effect at all, I call attention to the fact that that treaty ratifies and confirms not only the title in the United States, but every act of the Alien Property Custodian; and by token of the same argument that counsel now uses, this very act that he is now attacking is confirmed by the treaty.

THE COURT: That is, as you understand th treaty, the seizure and sale stand or fall together

MR. KRESEL: Exactly, sir.

MR. ANDERSON: I would like to be heard o that.

THE COURT: I will hear you now.

MR. ANDERSON: In the first place, the allega tion of the Bill is that these parties—which fo convenience we will refer to as the representative of the dye industry or the American Dyes Institute—having in view the procurement of thes patents for an unlawful purpose, induced the Alie Property Custodian to seize them.

Nothing is more common in the prosecutio of a conspiracy than to get somebody to do a perfectly lawful act, to induce somebody to do a perfectly lawful act in a lawful manner, as one o the steps in the achievement of the ultimate unlawful result. That is all that the Bill charges. When the Alien Property Custodian had seized these patents, and this Bill charges that they induced him to seize these patents, which he had a right by law to do, and if he did it in the manner prescribed by law, his act was absolutely lawful up to that time and vested title in the United States; although the object of those who induced him to do it may have been unlawful, that could not have permeated his act as an officer of the United States.

If, however, after he seized those patents, he went further and co-operated in the organization of The Chemical Foundation with knowledge of its objects and purposes, which I do not now wish to argue, then he would be engaging in an unlawful act and also because he would then have adopted the conspiracy and been liable for every act in it *ab initio* from the beginning.

Also, if he made the sale and that sale was induced and brought about—although he may have been acting with the best intent and purpose in making the sale—by the persons who were beneficiaries of the sale, for an unlawful purpose, as a part of the conspiracy, the Government of the United States in the protection of its public rights and duties would have had the right to set aside that sale, no matter how good his faith was; because, bad faith inducement for a wrongful purpose is a fraud upon an officer of the United States, in plain and simple language, and that would set the sale aside. That is all the Bill charges. It is trying to avoid charging the Alien Property Custodian with an intentional fraud. The draughtsmen of the Bill thought the evidence showed that he could have been easily deceived and misled in this matter, and there was the allegation of the Bill. It is carefully drawn to protect fully the legal rights of the Government and try to avoid doing any injustice and draw it within the facts alone.

Let me take the second point. If the Alien Property Custodian and the Dyes Institute people had been guilty of a conscious, wilful and deliberate fraud in seizing this property—I do not say they were, understand that—I say, assuming—if they had been and had seized this property in a manner prescribed by law, it would have vested good title in the United States, because the United States as a Government could have availed itself of the legal action of its officer, which would have been in accordance with the statute, and repudiated his acts so far as they were wrong, as he is not representing the United States when he is committing a wrong. So that that would

have been a valid seizure, even if he had wilf
and deliberately participated in the fraud.

In so far as Germans are concerned, t
ratifies, so far as the Germans are concerned,
acts of the Alien Property Custodian where
had made a sale in accordance with the law or
position of any property in accordance with l
have not any right to come in here and prosec
this suit. You could plead that treaty agai
them any minute. But there is no treaty of
United States that can prevent the Governm
of the United States, as between itself and
officers, or as between itself and its citizens, fr
prosecuting its rights if its rights have been
vaded through the wrongful acts of its offic
or its citizens.

I agree entirely that in so far as the Al
Property Custodian is concerned and the Germ
Government or the German citizen, the trea
stands between those people and the enforceme
of any right against the Alien Property Custodia
I will concede that for the purpose of this su
I am not interested in that question. I do n
express any opinion on it beyond this suit becau
I have not considered it. But, conceding tha
that does not prevent the Government of t
United States from enforcing its rights to th
property of which it has been wrongfully deprive
assuming that to have been the case. Therefor
all of this evidence, going back to the evidenc
bears directly on that question. I hope that a
swers your Honor's point.

THE COURT: Will you help me just one poi
further, Colonel Anderson, please.

MR. ANDERSON: Yes, sir.

THE COURT: Do you mind indicating to m
now just how the Parmele testimony is relevan

unless it is relevant to show the invalidity of the seizure. There was something that was a completely invalid seizure, if anything, was it not?

Mr. Anderson: Yes, sir.

The Court: And will you also help me, if you will be so good, with respect to the testimony to the effect that Messrs. Squair and Barrows—I think those were the names of the persons who sat in the Patent Office—selected patents which were forwarded to the Alien Property Custodian for his action. I find difficulty in analyzing the testimony as I go along, and I would be glad to have you indicate to me as to whether that has any value apart from showing invalidity of seizure.

Mr. Anderson: I shall answer your Honor's question with the greatest pleasure, with this reservation. I know your Honor will appreciate that it is extremely difficult for a lawyer to state all the bearing that testimony may have right offhand, because it takes his mind off one thing and right on to another. Therefore, I will state what occurs to me as one hearing that testimony, but I do not want to be limited to that.

First, as to the Parmele testimony, as I undertook to point out to the Court this morning, in a conspiracy charge of this kind which bears both upon the sale and the effect of the Sherman Act, any evidence which tends to show a disregard of the duties of a public officer involved in that transaction—what I may call a reckless disregard—is in itself evidence, the value of which must be determined in the light of the whole record, which tends to support the general charge of misfeasance as distinguished from malfeasance, perhaps.

The Parmele incident and others which have been cited, and others which will be introduced as we go along, tend to show that the Alien Property Custodian, or the officers of the Alien Property Custodian, more properly speaking — because I think this record discloses the fact that Mr. Palmer, then Alien Property Custodian, knew very little of what was going on, as he was not at that conference and knew very little of it; it was brought to him through his assistants, as he was necessarily a busy man, and this was just before his appointment as Attorney General—that the officers of the Alien Property Custodian who were deeply interested in accomplishing this result—and we will assume for the sake of this discussion seeing only the benefit to the country—showed a precipitate haste and an utter disregard of the purpose, intent and really the provisions of the law on this subject, both in the seizure and sale of this property; and then being more interested in The Chemical Foundation than they were in the Federal obligation to the citizens of the United States, when the matter was brought to their attention, they neglected it for six months and then referred the complaining citizen, who was being seriously damaged, to The Chemical Foundation, a private corporation, for the ascertainment and adjustment of his rights, for which he had appealed to an officer of the Government of the United States. I say that that situation, taken in connection with the other facts in this record, manifest a dealing with this whole subject matter which is repulsive to a Court of Equity in its last analysis.

In that connection, the Barrows-Squair situation comes up. I have the highest regard for Mr. Barrows and Mr. Squair. They were discharging duties assigned to them. But when an officer of the United States, charged with the delicate duty of administering the highest known trust, that is, property of citizens of another country brought into that country and acquired in that country under faith of its laws and its protection—

The Court: There is where I fail to follow you and that is where I wanted you to help me, as well as with respect to the validity of the seizure; because the minute you tell me that the United States is going to hold these patents whatever happens, that it is going to dispute any title of Germans under any and all circumstances, then it seems to me that I have so far been unable to follow you at that point, and I interrupt you only to get you to help me.

Mr. Anderson: I will answer your Honor at once. Your Honor has entirely misunderstood me. I have not said the United States was going to hold these patents, and I have not said it was not going to hold them, because I haven't anything in the world to do with it.

The Court: I thought you told me that the United States was going to maintain its title to them at any and all cost.

Mr. Anderson: It will as against the Chemical Foundation, the defendant; and it will maintain its title against anybody else so far as its legal right is concerned, I assume. But that is not holding these patents. And if I may suggest it, with all possible deference to your Honor, which I know you will understand, the question of what the United States Congress may do with these patents is not for me to consider and I respectfully suggest it is not a question for consideration here.

The Court: No question about it.

Mr. Anderson: If the United States recovers these patents, it will be the duty of the Executive Department of the Government—I say that with-

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out any hesitation, although it is not involved this suit—to hold these patents until Congre acts and to hold them as long as Congress elec not to act; and the remedy against any misuse these patents, if such misuse is possible, lies the Congress of the United States where the pe ple have put their confidence and their faith. Th is the body they have created for the purpose creating their policy and formulating their poli in dealing with property of this country as well that of other nations.

Under the Treaty with Germany, the Unit States Government has the right to hold these pa ents. It certainly has the right to hold them, un Germany complies with the provisions of t Treaty, which will obviously be many, many yea as indicated by my distinguished friend tod (Mr. Guthrie) in his noble address.

But I believe it to be true, turning to an e amination of the Treaty of Versailles, to whi reference has been made, that the United Stat if it chose to do so might hold these patents pe manently and might take this property and ca upon the German Government to redress its p vate owners, pay its private owners.

Therefore, the United States has thr courses open if these patents are returned, as none of which have I, in my humble capacit anything whatever to do.

One is: Congress has the power to retu these patents to the owners under such conditio as it sees fit and protect any existing licensee and in fact this very bill goes to the very questi of asking your Honor to protect any existi licensees in their equitable rights to the exte that you can do so. Congress can do so on su conditions as it sees fit, or not return them at

Second, Congress may, feeling it in the interests of the United States, keep these patents for good and pass an act absolutely cancelling them and reimburse the German owners for their fair value. For myself, I say here that if Congress of the United States ever confiscates one dollar's worth of property of any alien, I hope it will have the courage and the sense of obligation and of justice, which has been recognized for two hundred years, if it does not want to give them back the property, deeming it injurious to the best interests of this country, to compensate the owners for the value of the patents without the slightest hesitation.

Congress can do more. It has the power of confiscation if it wants to exercise it. Under the Treaty of Versailles, I think it can exercise it. But it is my hope that it never will exercise it to the extent of not giving to the owner a just compensation for its property. It is to the credit of this country that it never has exercised that power except in a certain modified way during the Civil War, in the passions of a sectional strife; and I hope it never will.

That is my answer to that. Those are questions beyond the scope of this inquiry and of this court. The whole question that I am called upon to speak about for the Government is that the Government is entitled to this property back into its hands and its treasury, to be dealt with as Congress may direct, as prescribed by the act.

Now as to Mr. Barrows and Mr. Squair. If the Alien Property Custodian or his officers—he was not at the conference—were in such extreme haste to take over these patents, that he had to have the representatives of the industry so-called, or the largest beneficiaries of his public act, choose those to be taken over, the fact in itself presents a very strong persuasive evidence that the influence of those who desired to secure this property was working to the end of securing all the property that would be beneficial to them, and they selecting it to be seized by the United States.

The act in itself, while I think out of the usual, to call on the representatives of interested commercial interests to exercise the high function of determining what alien property should be seized —even that unusual act, and I will not put it any stronger, might not in itself, standing alone, be the subject of more than a question or a criticism.

Mr. Kresel: Will Colonel Anderson permit me to interrupt him for a moment?

Mr. Anderson: Yes.

Mr. Kresel: Has Colonel Anderson forgotten the testimony of Mr. Gordon who testified that they did not determine what should be seized but that it was the Alien Property Custodian who determined what should be seized?

Mr. Anderson: Formally, yes.

Mr. Kresel: What is the use of making a statement here if it is not supported by the record?

Mr. Anderson: I thank my friend. I thank him for calling my attention to it. He helps me every time he interrupts me. Mr. Gordon testified that whenever Mr. Barrows and Mr. Squair got copies of these patents and furnished them to him, he made out the formal demands, took them to Mr. Hoguet in large bunches, and he put his initials on them, took them to the Alien Property Custodian and the latter merely signed his name at the bottom as rapidly as he could.

Mr. Kresel: I am sorry, but pardon me, sir, as long as I have been drawn into this controversy, I must make it straight. Counsel forgets again what the testimony was. The testimony of Mr. Gordon was that simply because Mr. Squair and Mr. Barrows sent in a copy, it did not follow from that that those patents were seized; that there were many that they sent in that were not seized. That was his express testimony. You will find it in the cross-examination. The judgment as to what should or should not be seized was exercised by him, Mr. Hoguet, and upon their O. K.'s, was signed by Mr. Palmer.

Mr. Anderson: I will have to leave it to your Honor to determine what the evidence is.

Mr. Kresel: But you make a broad statement of that sort and base an argument upon it, Colonel, when the fact is the other way.

Mr. Anderson: I do not understand the evidence as Mr. Kresel states it. I know he does, but I do not.

The Court: There was this further testimony, as I recall it. I am going on recollection and that is one of the reasons for my making the inquiry which led to this explanation. The further testimony of Mr. Gordon was that Messrs. Squair and Barrows were asked to go to the Patent Office and pick out patents which pertained to the chemical and dye industries because they were more familiar with that than any other persons. Now then, it seemed to me, if you were going to contend that their acts constituted the seizure, I was going to have difficulty in drawing the line which you suggest. If their acts did not constitute the seizure, then I could possibly see how the line might be drawn between the seizure and the sale.

Mr. Anderson: I was coming right to that. I do not contend for a moment that their act constituted the seizure. I would not contend that, because if they had by any act of theirs seized this property, it would have been absolutely void. They were not the persons who were formally authorized to seize this property. That was for the Alien Property Custodian.

Mr. Kresel: The Court did not mean that.

Mr. Anderson: I did not mean to imply that, sir. But I will apply what I am going to say about Mr. Barrows and Mr. Squair. I meant to say that their act was one of a series of acts. These gentlemen got together in New York along in December or January—the correspondence is a little indefinite about that—and arranged for the Executive Committee meeting, that they must as they called it protect themselves against these patents. They sent a committee down to Washington for a conference. They had a number of conferences in New York and sent a committee down to Washington on the 27th of January. At that conference they said that they would have their counsel assist in making up a list of these patents. Mr. Gordon testified the haste was very great because they thought the right to seize them might terminate at any moment.

Their act in assisting in the seizure of these patents is one of the facts showing that this transaction was brought about by the men connected with the industry who desired, not unnaturally, to control these patents. The Alien Property Custodian made the seizure upon the list furnished him by Mr. Gordon. There is no question about that. But that list of Mr. Gordon's was suggested by the counsel for the very people who were interested, and who, we charge, were working to get control of these patents.

That is one of the transactions taken step by step that go to prove something which you can not prove by direct testimony, a purpose and an object which have an illegal result. There is the weight of Mr. Barrows' and Mr. Squair's position in this matter as dealing with the development of this purpose and conspiracy; and it will be for your Honor to determine just what effect to give to the testimony.

I do not believe for a minute that the Alien Property Custodian quite realized what he was doing, going into this job. But it is a thing that could naturally have appealed strongly to a man, rather an appeal to the imagination. But there was not very much imagination on the other side of this game. If you read the American Dyes Institute minutes, you will find there was not any imagination either. It was a straight case of wanting to get control of these patents and protecting their investment.

The Court: Let me ask you one more question, Colonel Anderson. You have spoken of a decree to protect the licensees under these patents. Would that prayer go so far as to warrant a decree of this character, namely, that in the event that this or some Appellate court should determine that the price received was not adequate, was not proper, and, for the purpose of ascertaining your views, assuming the proper price was a million dollars or five million dollars,—that the decree should be such that the Chemical Foundation might be directed to pay that sum into the Treasury of the United States within a specified time or surrender the patents?

Mr. Anderson: Your Honor is asking me a question, the first question I ever had to argue in the Court of Appeals in Virginia; and I answer "No," without the slightest hesitation. Your Honor's power in this matter is either to affirm or set aside the sale. It is either good or bad. You can not make a new sale. There is no power in the court to make a new sale.

There is a possibility—I do not wish to commit the Government to any position on that matter at this time—but speaking in reply to your Honor's inquiry, it has occurred to the Department in preparing this bill and in their desire not to do any injustice to any interest concerned, that there was a possibility, if it should appear after the principles of this cause were settled, that certain patentees had expended considerable money under these licenses, or something of that kind, that they ought to have a right to intervene and set up whatever equities they might have. It might be that some such circumstances, although I am frank to say I can not work it out in my own mind at this time, might give the Court the right there to recognize some such equities in its final decree. I am not expressing any opinion on that. Frankly, I have very grave doubts on the subject, but the Government felt that it was but fair to have the Court put in a position to pass upon that and therefore to invite the intervention.

Mr. Kresel: If your Honor please, this is a very interesting question that your Honor has brought forward for discussion. The hour is late. I would like to be heard on it. If it is agreeable to your Honor, I should prefer to be heard tomorrow morning, or if your Honor feels it ought not to be further discussed, I will forego it.

The Court: I have asked these questions for enlightenment and I should be glad, if you care to indicate your views with respect to the matter, to have you do so tonight so that we might proceed tomorrow with a full day of testimony.

Mr. Kresel: Very well, your Honor. I shall address my remarks simply to the question that I raised, namely, that by the Treaty of Peace between the United States and Germany, if it is to foreclose the question of seizure, the propriety of it or the legality of it, it at the same time forecloses any question as to the validity of this transfer.

We start out with the proposition that on the 25th of August, 1921, the United States and Germany made a treaty, and one of the clauses in the treaty is as follows: I am reading extracts from that treaty. Perhaps your Honor would like to follow me.

The provision is that Germany undertakes to accord to the United States and the United States shall have and enjoy all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles. That is the underlying agreement between the parties.

The next question is to determine what are the provisions of the Treaty of Versailles, the benefits and advantages of which the United States was to have, notwithstanding the fact that the United States did not ratify the Treaty of Versailles.

So, if your Honor will turn to the following page, your Honor will find that under Article 2 of this same treaty with Germany, the particular portions of the Treaty of Versailles the benefit of which was to go to the United States as specified. Turning to Article 297 of the Treaty, we find the following, that the question of private property rights and interests in an enemy country shall be settled according to the principles laid down in this section and the provisions of the annex thereto; that "As between the Allied and Associated Powers or their nationals on the one hand and

Germany or her nationals on the other, all the exceptional war measures, or measures of transfer, or acts done or to be done in execution of such measures as defined in Paragraphs 1 and 3 of the annex hereto shall be considered as final and binding upon all persons except as regards the reservations laid down in the present Treaty."

I will state to your Honor that none of those reservations has any reference to enemy-owned property.

The next point that arises is to find what was meant by the term "exceptional war measures" there. So we again turn to the Treaty of Versailles and your Honor will find on page 6 of this memorandum that your Honor has before you that Annex No. 3 to the Treaty defines the expression "exceptional war measures in the following terms, namely, that it includes measures of all kinds, legislative, administrative, judicial or others that have been taken or will be taken hereafter with regard to any property.

Now then, to return to Article 297. The provision is that "all acts taken under exceptional war measures shall be considered as final and binding upon all persons except as regards the reservations laid down." In Annex No. 1, the Treaty goes on to specify particular measures which the Treaty confirms and ratifies, namely, that "the validity of vesting orders and of orders for the winding up of businesses or companies, and of any orders, directions, decisions or instructions of any court or any department of the Government of any of the High Contracting Parties made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interests is confirmed."

Treaty between Germany and the United States. I have said that Germany could not question this matter as against the United States; but that Treaty does not undertake to ratify as between the United States and its officers an unlawful act. The Treaty must be construed with reference to the persons concerned and its purpose and object; that is obvious.

The Alien Property Custodian might yet be called to an account in a suit for an accounting for every cent of this money, and the Government of the United States could not be estopped by its Treaty with Germany; but Germany can not call him to an accounting and the citizens of Germany can not call him to an accounting; but the United States, dealing with its officers, is not estopped by a Treaty with Germany from requiring that officer to conform to its laws, or its Constitution either.

In the next place, so far as the seizure is concerned, the Supreme Court has held that a seizure by the Alien Property Custodian is final, that the seizure is final; his dealing with the property is another thing. Now, if he seizes fraudulently, the Government of the United States can always hold him to account. He is a servant of the people of the United States. He is their agent, and he must act in accordance with his agency, in good faith. But so far as a German is concerned, there is no obligation of the Alien Property Custodian to him; and here the Government of the United States, which is responsible as to aliens for all the acts of its officers, obtains from the German Government, for itself and its people, a complete ratification as to itself of all acts of its officers; but it would be a most remarkable circumstance to hold that that ratification went to the extent of keeping the Government of the United States from requiring is own officers to account for their wrongs. That is all I want to say.

The Court: Colonel Anderson, would you say there would have been a remedy on the part of a citizen or subject of Germany against the Alien Property Custodian in the absence of this Treaty?

Mr. Anderson: I recall something in the Trading with the Enemy Act itself which probably would have operated to the contrary. The rights are very limited under that Act. For instance, in the case to which I have referred—

The Court: I was wondering then, if there was any such power before the Treaty, just what the purpose of inserting that language in the Treaty was.

Mr. Anderson: Just this, sir: That the only thing that the act of the Alien Property Custodian could do that would be his lawful acts. Now, if he acted outside the law, he was not acting as an officer of the United States. Therefore a German citizen would have a right to sue him for trespass, for dealing with this property as acting outside his lawful rights.

The Court: Will you help me just one moment. If he was acting outside of the scope of his power, I assume that the United States could ratify his act, possibly.

Mr. Anderson: Undoubtedly it could.

The Court: What agency of the United States could make that ratification?

Mr. Anderson: I should think if it were void, if it were a void act, it could not be ratified. If it were outside of his power, it could not be ratified. If it was within his power and done in an illegal manner, or voidable act, it is possible it might be ratified, with knowledge of the effect to ratify.

The Court: By what agency?

Mr. Anderson: I should think there are some of his acts within the control of the President, probably could be ratified by the President, or some of them within the control of Congress could be ratified by Congress.

The Court: Has Congress ratified the seizure yet?

Mr. Anderson: I would think that would be an open question.

The Court: I see. Then if I should find the seizure not within the scope of his power and unratified by Congress, then would not I have to say so? We will adjourn until tomorrow morning at 8:30 o'clock Standard Time.

(Whereupon, at 4:40 o'clock Standard Time, adjournment was taken until tomorrow, June 23, 1923, at 8:30 o'clock Standard Time).

THIRTEENTH DAY

Wilmington, Delaware,
June 23rd, 1923, at 8:30 o'clock A. M.,
Standard Time.

fore:

Hon. Hugh M. Morris, U. S. District Judge.

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Anderson: May it please the Court, at the ljournment yesterday I had nearly concluded reading atements as admissions of Mr. Choate and I will reme that so as to finish it the first thing this morng. I refer now to page 134 of the publication from which I was reading yesterday, entitled "Hearings before the Committee on Finance, United States Senate, Sixty-fifth Congress, Second Session, on H. R. 8078," more fully identified in the evidence of yesterday. At Page 124 this question is asked:

> "SENATOR WATSON: What do you mean by that?
>
> "MR. CHOATE: I mean to say that when importations come in of goods covered by patents we expect sooner or later that The Chemical Foundation will be paid royalties on the sale of those goods.
>
> "SENATOR WATSON: Why?
>
> "MR. CHOATE: Because the patent conveys to The Chemical Foundation the sole right to sell those goods in the country, and it is by the charge of royalties that The Chemical Foundation has to obtain the income on which it is to live and do its work."

I next read from the statement of hearings before Committee on Finance, United States Senate, on the proposed Tariff Act of 1921, H. R. 7456, "Dyes Embargo, Government printing office, 1922." It is at Page 512.

MR. KRESEL: Before Colonel Anderson reads any portion of this, I understand this is a portion of the statement made by Mr. Choate before this Committee. We object to it upon the ground that it appears from the record of this proceeding that Mr. Choate was at that time and on that occasion representing the American Dyes Institute as appears from the opening statement by Mr. Choate at page 403 of this book. It also appears at page 509 of this book.

We object, therefore, to any statements made by Mr. Choate in that capacity as not binding upon this defendant; and further, upon the ground that it is immaterial and irrelevant, and upon all the other objections that we have heretofore urged to this sort of testimony.

The Court: It may be read under our general rule.

Mr. Anderson: I wish to state that I looked for a statement in this testimony as to the capacity in which Mr. Choate did appear. The heading inserted in the record, just the heading of his testimony, states that he appears—that Mr. Choate, representing the American Dyes Institute—but that, of course, is not a part of the testimony as suggested by counsel yesterday.

Mr. Kresel: That is true; but will you note that on the same page, Colonel Anderson, there is printed a brief of Joseph H. Choate, Jr., representing the American Dyes Institute.

Mr. Anderson: Yes, but that is a heading also. I went through.

Mr. Kresel: No. I assume that is part of the brief.

The Court: Of course, the burden is on the Government to show that he was acting in some capacity to bind the defendant. The burden is on the Government to furnish that.

Mr. Anderson: I would have read the capacity in which he appeared, if it had appeared in the evidence. I looked for it. I only wanted to explain my reasons for omitting that statement. In any event I am perfectly willing for that heading to appear, in the absence of any direct statement by Mr. Choate as to what capacity he did appear.

Mr. Kresel: I think, Colonel, you will find the direct statement of that effect in this statement made by Mr. Choate. Of course, you are not reading all of it, I understand.

Mr. Anderson: Yes.

Mr. Kresel: May I also direct your attention to page 417 of this record, wherein Mr. Choate submitted, according to the record there: "(The foregoing was submitted by Mr. Joseph H. Choate, Jr.)—meaning this brief—"representing the Amercan Dyes Institute, of which the following companies are members"—and then there is given a long list of members.

I do not find at any pont on this occasion where Mr. Choate undertakes to be speaking for The Chemical Foundation.

Mr. Anderson: That was my understanding, and I did not want to read from headings, because counsel objected only yesterday, but I am perfectly willing to say that what the record seems to disclose, without a direct statement from Mr. Choate, that he was appearing as counsel for the American Dyes Institute on this occasion. I think that is a fair statement of the record.

Mr. Kresel: All right.

Mr. Anderson: And the question of legality is another one.

Mr. Kresel: May I interrupt you once more? If you will pardon me, at page 417, it also appears that Mr. Choate appeared for eight concerns which are stated to be not members of the American Dyes Institute. You see that list there, do you not?

Mr. Anderson: That is all right. If you state it, I will not look it up. It does appear that he appeared for the American Dyes Institute, though.

Mr. Kresel: Yes, it does.

Mr. Anderson: Now, on page 512, following a discussion of the organization of The Chemical Foundation, Senator LaFollette asked the question:

> "Please give me again, will you, a description of the chief assets of this company?
>
> "Mr. Choate: The chief assets of the company are patents and cash.
>
> "Senator LaFolette: What patents are those to which you refer?
>
> "Mr. Choate: Those are the patents pur-

chased from the Alien Property Custodian, former German patents taken over by the Alien Property Custodian.

"Senator LaFollette: What number are they?

"Mr. Choate: Four thousand nine hundred and four originally. Some have expired: 466 have expired up to July 1st of this year. I should state that of these only 4,393 are still in the hands of the foundation, the small balance having been reassigned to persons who were found to be really entitled to the patents by reason of transactions which have taken place before the war and which were not known at the time the patents were seized by the Alien Property Custodian and sold to the foundation.

"Senator Smoot: Who proved to be American citizens?

"Mr. Choate: Yes.

"Senator Smoot: When a patent of that character was transferred to an American citizen, was the foundation paid back by the Government the amount that they originally paid for that patent?

"Mr. Choate: I think not. I do not recall, but I do not think any payment was made.

"Senator Smoot: Then the Foundation paid them a lump sum?

"Mr. Choate: Paid them a lump sum. It was impossible to allocate to any patent a particular value."

On page 518, Senator Smoot asked Mr. Choate the following question:

"Senator Smoot: As an attorney of The Chemical Foundation, do you think that $250,000 was all that those patents were worth?

"Mr. Choate: I think it was not all that they would have been worth to a private purchaser unlimited in the use of them. A private purchaser unlimited in the use of these patents could have made very large sums by holding up the industry with them. Their nuisance value was very large.

"SENATOR SMOOT: There are patents there outside of the nuisance value that are worth a great deal more than $250,000.

"MR. CHOATE: To a private purchaser, undoubtedly, outside of the nuisance value; but you forget that The Chemical Foundation, both by the terms of its charter and by the terms of the foundation, is absolutely limited in the use of these patents; so that it can not profit beyond the necessary sum to pay a 6 per cent dividend on its very small stock; so that all the rest of the money that is received has got to be used for the advancement of science; and, furthermore, it is so limited that it can not use the patents in the way in which an individual would, by the issue of exclusive licenses. It can only issue non-exclusive licenses, which must be issued on equal and reasonable terms to all American citizens, partnerships, and corporations.

"SENATOR MOSES: These licensees have profited, have they not?

"MR. CHOATE: I hope they have."

I next read a statement of the same gentleman from a hearing of the Sub-committee of the Committee on Judiciary of the United States Senate, Sixty-Seventh Congress, Second Session, "Pursuant to Senate Resolution Seventy-seven creating a Special Committee to investigate the expenditures made in behalf of various propaganda and in the maintenance of lobbies in Washington," volume of hearings published by the Government entitled "Alleged Dye Monopoly" with the additional title which I have read.

I shall read from page 528—I should say that at 525 of this volume, the heading inserted in the volume states that it is the testimony of Mr. Joseph H. Choate, representing the American Dyes Institute; but again, I am unable to find a direct statement from Mr. Choate to that effect, and I assume that the representation of the Committee is embodied in the heading, and that he did represent the American Dyes Institute at that hearing.

Mr. Kresel: Without repeating the grounds of our objection, your Honor, may it be noted we object to this reading upon the same grounds as urged to the other.

The Court: And all statements made before this or any other committee I assume to be objected to on the same ground?

Mr. Kresel: Yes, your Honor.

The Court: The same ruling.

At page 528:

> "The Chairman: Yes, you may proceed.
>
> "Mr. Choate: Of course, Mr. Chairman, I have been familiar with almost all of the activities of The Chemical Foundation from the beginning, because I had a part in its organization, and also in the action of the Alien Property Custodian with reference to it. That matter has been so fully covered by Mr. Garvan that I assume, except possibly in the way of cross-examination, you will not wish to ask me any questions in regard to it. Everything has been stated accurately by Mr. Garvan and the others, and documents relative to the subject have been produced. I shall not, therefore, go into that except in answer to questions.
>
> "In regard to the activities of the American Dyes Institute, I also conceive that the entire ground has been covered, with the exception of the references made by Senator King to the trip to Paris which I undertook for the American Dyes Institute in the Autumn of 1920. I do not know that Senator King made any definite statements in regard to that trip, but I felt that what he said makes it appropriate that that trip should be explained.
>
> "The Chairman: You went as the representative of what company or association?
>
> "Mr. Choate: Of the American Dyes Institute. I had been counsel for the American Dyes Institute since the spring of 1919; retained by

them to present to the Congress and the appropriate committees the case for special protection for the American Dye Industry, and in that capacity I had a part in all of the legislative activities; and I shall be very glad, of course, to answer any questions which may occur to you as to any of those activities. I think, however, they have been sufficiently explained to date.

"In September, 1919, the Legislative Committee of the American Dyes Institute communicated with me and stated that they were alarmed by reports which they had received as to the activities of the Reparation Commission under those sections of the Versailles Treaty which gave the Reparation Commission certain powers in the matter of dyes. The information which the Legislative Committee had received was included in a report made by Mr. Edward S. Chapin, the Paris representative of the Textile Alliance, to the advisory committee of the Department of State. This report was printed and bears date September 29, 1920, and I offer this copy of the printed copy of the report for the consideration of the committee."

It was received and marked as an exhibit.

In the absence of my memorandum, I will not read further at this time from these hearings. I may find something else that I want to put in later.

I will ask to call Colonel Herman A. Metz.

HERMAN A. METZ.

Herman A. Metz, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Will you please state your name, age, residence and occupation?

A. My name is Herman A. Metz; age, going on 56; New York City, Borough of Manhattan. I am President of H. A. Metz Laboratories and other corporations.

Q. 2. You say you are President of H. A. Metz Laboratories and other corporations. Will you state more fully what other corporations and the business generally of those corporations?

A. H. A. Metz Laboratories are manufacturers of pharmaceutical products. The Consolidated Color & Chemical Company, of which I am President, manufactures dyestuffs and intermediates, and other incidental compounds for textile purposes.

Q. 3. Out of consideration for the stenographer, I will ask you to talk as slowly as you can, without interrupting your thoughts.

A. The Central Dyestuff & Chemical Company, Newark, New Jersey, of which I am Vice-President and Treasurer, manufactures dyestuffs and intermediates. The Textile Leather Company, of which I am President, makes artificial substitutes for leather. There are several others, Colonel, if you want me to give them to you.

Q. 3. (Continuing.) Go ahead.

A. H. A. Metz & Company, Incorporated, dealers in dyestuffs and chemicals.

I am a director in the Interborough Rapid Transit Company, New York City, representing the public, I might say incidentally, not as a stockholder. There are a number of others, not allied with dyestuffs and chemicals.

Q. 4. Have you held any public office?

A. Yes, sir.

Q. 5. By election or otherwise; if so, state what?

A. I was elected Comptroller of the City of New York. I was a member of Congress and was appointed on various Commissions and Boards.

Q. 6. How long did you serve as Comptroller of the City of New York?

A. Four years.

Q. 7. During what time?

A. 1906 to 1910.

Q. 8. Where were you born?

A. New York City.

Q. 9. How long did you serve in Congress, and at what time?

A. Sixty-third Congress, 1913 to 1915.

Q. 10. How long have you been engaged in or connected with the business of the manufacture of pharmaceuticals and other similar products to which you refer?

A. The manufacture, only since 1916; but the handling and importing and selling for about forty years.

Q. 11. You have been handling, importing and selling these products for about forty years?

A. Over forty years connected with the firms doing it.

Mr. Kresel: I did not get that last statement.

The Witness: Connected with the firms doing it. I started as office boy in the firm originally.

Q. 12. Your whole life, then, has been devoted to this business?

A. Yes, sir.

Q. 13. Have you ever studied chemistry?

A. Yes, sir.

Q. 14. Are you a chemist?

A. I am not a chemist, but I studied chemistry.

Q. 15. State what your experience has been as a student of chemistry?

A. I was a student at Cooper Union about four years. I was assistant in the laboratory for at least two years and I worked in the laboratories and plants after that right along until a few years ago. I got out a number of chemical patents.

Q. 16. What training other than you have stated have you had in practical chemistry, and in connection with pharmaceuticals, the manufacture and sale thereof?

A. Well, seeing the processes carried out, helping to carry them out, devising methods, and running the business successfully.

Q. 17. Have you engaged as a merchant in selling these supplies?

A. Yes, sir.

Q. 18. How have you sold the supplies? I mean do you sell wholesale, retail, or what?

A. Any way people want to buy.

Mr. Kresel: Which supplies are these, Colonel?

Mr. Anderson: I referred to pharmaceutical supplies which he has imported or manufactured.

Mr. Kresel: Pharmaceuticals only, you are talking about?

Mr. Anderson: I am talking about pharmaceuticals and supplies which he has described in an earlier answer as being manufactured by him —medical supplies and pharmaceuticals.

The Witness: Pharmaceuticals that were sold—

Mr. Kresel: Pardon me a minute, I want to get this straight. The witness has stated, as I understand it, that he has dealt not only in pharmaceuticals, but also in dyestuffs.

Mr. Anderson: Yes.

Mr. Kresel: I simply want to know what it is he is now talking about.

Q. 19. Having heard the suggestion of counsel, Colonel Metz, I would ask you to state to the Court briefly but comprehensively the character of your practical experience in handling the dyestuffs or chemicals or pharmaceuticals, indicating which as far as you can, the sale and disposition thereof. I want to get your practical experience, a general view of it.

A. The pharmaceuticals are sold to the Government, State Boards, hospitals, wholesale druggists, retail druggists and physicians direct.

Q. 20. For how long a period?

A. Ever since I have been in business practically. Even since we first took up the handling of pharmaceuticals.

Q. 21. When you speak of pharmaceuticals you include medical supplies and chemicals used in medical supplies, do you.

A. Yes, sir.

Q. 22. You spoke of having connection with the dyestuff industry?

A. Yes, sir.

Q. 23. To what extent, practically, have you dealt with or had dealings with that?

A. I travelled for ten or fifteen years among the mills selling direct to the consumers, manufacturers of woolen, cotton, silk, paper, leather and other goods that use dyestuffs. I sold myself in the mills, demonstrated the use of them in the mills, and supervised the selling by a corps of salesmen in the branch houses.

Q. 24. By those mills you are now referring to dyes and dyestuffs mills?

A. Dyestuffs and mill products.

Q. 25. Did you, prior to the war, import and distribute or sell in this country products disposed of under the trade names of salvarsan, neo-salvarsan, and novocaine, or any of them?

A. All three of them.

Q. 26. All three of them?

A. Yes.

Q. 27. For approximately how long a period did you engage in the importation, sale and disposition of these articles?

A. I believe they appeared in the market first about 1911 or 1912, these products.

Q. 28. How long did that period of importation continue; was it stopped by the war?

A. Well, it was not stopped until 1916, November, 1916, I obtained the last shipments from Germany on British permits allowing them to pass the blockade.

Q. 29. After the United States went into the war, did you or any of your companies, and if so, state which, apply to the Federal Trade Commission for license to use the patents or trade-marks, under Section 10, of the Trading with the Enemy Act?

A. After the Trading with the Enemy Act was passed my companies applied for licenses to manufacture the three products.

Q. 30. Could you state the numbers of the licenses issued to you by the Federal Trade Commission? I will state that all these documents are in evidence and I will have you identify them as soon as I can get them.

A. I was granted license No. 3 for making salvarsan, No. 3-A for making neo-salvarsan, and No. 4 for making novocaine, granted to the Farbwerke-Hoechst Company, the name under which I was doing business at that time.

Q. 31. When, approximately, was that. We will identify the actual date.

A. That was, I think, the beginning of 1918 when they issued the licenses. They were all cancelled and new ones taken by H. A. Metz Laboratories, Inc.

Q. 32. Do you recall the dates that the transfer was made from the first company that you mentioned to the second?

A. No, but the record will show. I obtained licenses 34, 34-A and 35 in lieu of the original licenses.

Q. 33. Do you know the numbers of the licenses last issued to the—

A. Yes, sir, 34, 34-A and 35.

Q. 34. Those were issued to whom?

A. H. A. Metz Laboratories, Inc.

Mr. Anderson: I will have to wait until I get those.

The Witness: I have certified copies, Colonel, of the licenses. The originals were here yesterday. I saw them here yesterday.

The Court: The witness says he has certified copies.

Mr. Anderson: They are not full licenses. I have looked at them. They do not carry the patents and the exhibits, and they are the ones that we wanted.

The Witness: The originals do.

Mr. Anderson: I have sent for the originals, and I will use them as soon as I get them.

Q. 35. While waiting for those papers, I wanted to ask you, whether in addition to the pharmaceuticals you spoke of and your importing business prior to 1916, did you manufacture dyestuffs, and if so, to what extent, generally?

A. I manufactured dyestuffs in the Consolidated Color & Chemical Company and in the Central to more or less large extent before 1916, but not prior to 1914.

Q. 36. Between 1914 and 1916, you manufactured?

A. We increased daily our manufacture in our line of colors.

Q. 37. How long did you continue that business?

A. Up to date.

Q. 38. You still continue that business?

A. Oh, yes.

Q. 39. And are you president of that company?

A. I am president of the Consolidated, and vice-president and treasurer of the Central, and I am interested in others, but not as an officer.

Q. 40. I believe you said, Colonel Metz, that the original licenses issued by the Trade Commission to one of your companies, the name of which I do not recall—

A. Farbwerke-Hoechst Company.

Q. 41. Were?

A. Surrendered.

Q. 42. —were surrendered by you?

A. By me, and the new ones taken; that is, the new corporation which started just before we went into the war.

Q. 43. And the new licenses were taken out as a re-issue by the H. A. Metz Laboratories, Inc.?

A. Yes, sir, and now manufacturing.

Q. 44. You still hold those licenses, do you?

A. Yes, sir.

Q. 45. There was introduced in evidence on yesterday an original, and substituted a photostat copy of Federal Trade Commission license No. 34-A, issued to H. A. Metz Laboratories, Inc., under patent No. 13,848 re-issue?

A. That is neo-salvarsan.

Q. 46. The re-issue patent being dated December 15, 1914, the date of the license being July 1, 1918. I will ask you if you would examine that and see if that is one of the licenses to which you refer as having been issued to the H. A. Metz Laboratories, Inc., upon the surrender of your original license?

A. That is a certified copy of the license.

Q. 47. And you still hold that license?

A. Yes, sir.

Q. 48. That is, the H. A. Metz, Inc.?

A. I am working under it. That is the neo-salvarsan. H. A. Metz & Company.

Mr. Anderson: H. A. Metz Laboratories, Inc. Thank you very much.

The Witness: Mr. Choate knows more about my affairs than I do.

Q. 49. Now, there was another license introduced in evidence of yesterday, No. 34, under patent No. 986,148, dated March 7, 1911, date of the license July 1, 1918. Is this No. 34 the license issued to your Company in lieu of the original license of 1918 issued to your former company and which you surrendered for transfer?

A. Yes, sir. This was for salvarsan.

Q. 50. There was also introduced in evidence on yesterday a license by the Federal Trade Commission, No. 35, under patent No. 812,554, dated February 13, 1906, date of the license July 1, 1918. Is that one of the licenses issued to the H. A. Metz Laboratories, Inc., to which you referred in lieu of the original license issued to another corporation you described, and surrendered?

A. Yes, sir. That is for novocaine.

Q. 51. The three licenses which I have just had you identify are the three licenses of the Federal Trade Commission under which you now operate?

A. Yes, sir.

Q. 52. There were introduced in evidence on yesterday the original exhibits of three licenses issued by the Federal Trade Commission to Farbwerke-Hoechst Company, which licenses were issued under the following patents, that is to say: No. 3 under patent No. 986,146, dated March 7, 1911, date of license, November 26, 1917; No. 3 (a) under patent No. 13,848, re-issue, dated December 15, 1914; and No. 4. under patent No. 812,554, dated February 13, 1906, date of license, December 17, 1917; these three licenses being identified in evidence respectively as follows:

No. 3 as Plaintiff's Exhibit No. 220; No. 3 (a) as Plaintiff's Exhibit No. 221; and No. 4 as Plaintiff's Exhibit No. 222.

Will you take those three papers and state whether they were the three licenses oiginally issued to that company as you have testified?

A. They are the copies of the licenses originally issued and are similar to those later issued, except that I believe the conditions for testing were somewhat changed later on in the later licenses by the Public Health Service; and made a little more stringent.

Q. 53-54. And such changes will appear on the faces of the licenses?

A. In the faces of the licenses. I think they were changed before the new ones were issued.

Q. 55. I will ask you to take these licenses which you have identified, both the original issue and the subsequent issue, and state what you did under those licenses of the Federal Trade Commission and each of them?

Mr. Kresel: I have to object to such an indefinite question.

Q. 56. State what you did when you got the license. I will put it that way.

Mr. Kresel: He may have gone around the corner and bought something, but that is not material. It seems to me you ought to ask him some specific question.

Mr. Anderson: I will ask him a specific question, if your Honor please, but if I should ask him a specific question, from my experience, I am afraid counsel will object. I therefore ask him to state what he did.

The Court: Would you mind telling me, Colonel Anderson, what you propose to bring out by this group of questions.

Mr. Anderson: I propose to bring out that this witness proceeded to exercise his rights under these licenses by doing the things therein authorized to be done and as a manufacturer or seller of this material, he carried on certain business. It has been objected to and I recognize that this kind of an examination is necessarily very technical. To ask him for his conclusion is one thing. To ask him what he did is another.

Mr. Kresel: Of course, Colonel, if that is the purpose, I have no objection. I do not want to hamper you by keeping you down to any particular frame of question, but I simply wanted to be sure that we were not giving Mr. Metz the entire field; that is all.

Mr. Anderson: No, all I wanted Mr. Metz to do was to say what he did under these licenses.

The Court: Whether he operated under these licenses or not.

Mr. Anderson: Whether he operated under them has been suggested is a conclusion. So I asked him what he did.

Mr. Kresel: I have no objection to putting the question in that form.

The Court: You say you have no objection. Does that go to substance as well as form?

Mr. Kresel: Yes.

A. I continued to operate; I was operating prior to the licenses and continued the manufacture of the goods described in the licenses and to sell them.

Q. 57. Take each license and tell what you did as a licensee under that license?

A. Under license 3, I manufactured salvarsan. Under 3-A and 34-A I manufactured neo-salvarsan. Under 4 and 34 I manufactued novocaine—or rather 35. No. 4 was neo and 35 was novocaine—4 and 35.

Q. 58. What did you do with the product so manufactured?

A. Sold them to the consumers, to the Government, physicians, hospitals.

Q. 59. Did you sell it under any trade name or trade-mark?

A. Yes, sir; under the conditions of the license I was allowed to use my trade names in addition to the one prescribed by the license.

Q. 60. What trade name or trade-mark did you use in each case?

A. Under licenses 3 and 34 I used salvarsan and the generic name "arsphenamine" which was prescribed by the Public Health Service. Under license No. 3-A and 34-A I manufactured neo-salvarsan and neoarsphenamine.

Q. 61. Under what trade name did you sell it?

A. As neosalvarsan.

Q. 62. Under the other licenses which you have described, Nos. 4 and 35, what did you do?

A. I manufactured and sold novocaine and added the generic name of frocaine, which was prescribed by the Public Health Service.

Q. 53. Where did you manufacture these products which you have mentioned under these licenses?

A. In the plant and the laboratories of H. A. Metz Laboratories, Inc., in Brooklyn, 644 Pacific Street.

Q. 64. Can you state of your knowledge the amounts of royalties paid by you to the Alien Property Custodian under the licenses of the Federal Trade Commission by years?

A. Yes, sir.

Q. 65. Will you state it?

A. I have to refer to memoranda.

Q. 66. If you made the memoranda, yes; it is all right.

A. I saw it made and made it myself to some extent.

Q. 67. By year?

A. The salvarsan and neosalvarsan were grouped. orandum, but I have the receipts of the Custodian.

Q. 68. How much? State the years, beginning with the earliest year and on down.

A. Under licenses 34 and 34-A in 1919 we paid the Alien Property Custodian, on those licenses, $34,711.16.

The payments, the amounts, are grouped in this mem-

Q. 69. You say the year 1919; for what period of that year?

A. The year 1919, the full period.

Q. 70. That is for the full period of the year 1919. Proceed.

A. In 1920 we paid $51,485.79; in 1921, $37,145.56; in 1922 $16,512.67.

Mr. Kresel: I did not get that last figure.

The Witness: In 1922,, $16,000; it only ran up to July 1, 1922.

Mr. Kresel: How much?

The Witness: $16,512.67.

Q. 71. That was up to July 1, 1922?

A. Including July 1, 1922. Up to July 2nd, practically. July 1st was included as a separate day. I know in novocaine we paid in 1919 $4,863.74, in 1920, $4,750.14, in 1921, $5,025.37, and in 1922, $2,800.29, being five per cent of the gross sales.

Q. 72. That last was up to the 2nd of July?

A. July 2nd, the same way. Making a total of royalties—if you want that.

Q. 73. Yes.

A. Of $139,855.18 on the salvarsan and neosalvarsan and $17,259.54 on the novocaine.

Q. 74. Mr. Metz, do you know of your own knowl edge whether there were any other concerns licensed by the Federal Trade Commission?

A. Yes, sir.

Q. 75. To use these same patents and trademarks?

A. Yes, sir.

Q. 76. Could you state how many and what they were?

A. There were three licenses for salvarsan and neosalvarsan and, I think, four, including myself, for novocaine.

Mr. Kresel: Will you fix the time of that, please?

The Witness: I do not know. The records will show that.

Q. 77. You do not know the date?

A. No.

Mr. Anderson: I will state to counsel that the original licenses showing that patent issue and date are in the record. I only want to connect them up. They are all in the evidence.

Q. 78. Mr. Metz, are you personally familiar and can you speak of your own knowledge of the amounts of your receipts, your gross receipts and net profits from the sale of salvarsan, neosalvarsan and novocaine prior to the issuance to you of Federal Trade Commission licenses—that is, on your importations?

A. I can get it by referring to my notes, taken from my accountant's records handed to me, and which I saw made up.

Q. 79. Those notes were made up under your direction and for your use?

A. Yes. I supervised them.

Mr. Kresel: Is the question that he should tell you the figures now?

Mr. Anderson: If he knows. He has said yes, of his own knowledge.

Mr. Kresel: I am assuming that he knows it. Do you now ask him for the figures?

Q. 80. Will you now please state the amount of your gross receipts and the amount of your net profits from the sale of salvarsan, neosalvarsan and novocaine, respectively, during the years in which you imported them, prior to your license by the Federal Trade Commission?

Mr. Kresel: To that we object, if your Honor please, upon the ground it is immaterial and irrelevant, not binding upon the defendant, and can in no way have any bearing upon the value of the patent. I assume that this evidence is being offered as some evidence of value.

Mr. Anderson: You are quite right.

Mr. Kresel: Any figures that Mr. Metz may present with reference to his business prior to the war, which was business of his own and private, and not known to anybody else, the Alien Property Custodian or the Government or The Chemical Foundation, which was not in existence at that time, is immaterial and irrelevant.

The Witness: It was known to the Alien Property Custodian.

The Court: Just a moment, Mr. Metz.

The Witness: It is in the books.

Mr. Anderson: My idea was, if your Honor please—and I think it is sound—that in considering the very intangible thing whch we call value any facts showing the earnings on a property of this kind under a patent, at any period during the use of the patent, would be relevant evidence. Its value might be to some extent affected by the circumstances, intervening conditions and various other things; but it is one of the facts to be considered in arriving at the inquiry here—which is not a queston of establishing an actual value, but a question of establishing whether the price paid in this case had any relation to value.

Now, in that particular case, I think this evidence might be considered. I recognize that there are certain limitations that may be argued with reference to it and certain matters which may go to its weight, as to which I do not wish to discuss, but I think the evidence is relevant and material on this question, on which the Courts allow very great latitude on account of the various elements entering into it.

The Court: Colonel Anderson, I gather that the information that you are now trying to obtain from this witness is as to any source of information from which the purchaser or seller of these patents in the year 1919—

Mr. Anderson: I think I know what your Honor's inquiry is. Of course, I would not suggest it, but I think it is a very natural one.

The Alien Property Custodian, I take it, in view of the facts disclosed in this case, would have had opportunity to gather that information without difficulty if he wanted to.

The Witness: He had it, Colonel.

Mr. Anderson: Beg your pardon.

The Court: Do not answer again until you are interrogated. Do not forget that.

The Witness: All right, sir.

Mr. Anderson: The situation is this: I take it, if your Honor please, that the question of value is a question largely of fact. Now, the fact that the purchaser may not have had information as to value might affect what he was willing to bid, but would not affect the value. It is a duty of the person occupying the position of a Trustee—

The Court: I understand your theory. It is only an answer to the direct question that I wanted.

Mr. Anderson: I do not know further than this: That I think under the law this information will be clearly available to the Alien Property Custodian.

The Court: I will express no final view as to either the admissibility or inadmissibility or weight of the testimony, but will reserve that until the ultimate finding.

Mr. Anderson: I recognize the questions that may arise.

The Court: You may put it in under the general rule.

Mr. Anderson: Now, will you read the question, please. (Q. 80 repeated as recorded).

Mr. Kresel: Before the witness answers the question, I suggest to the Court and counsel that it might be well to develop with the witness as to the basis upon which he was dealing with these products at that time.

Mr. Anderson: I thought he testified to that.

Mr. Kresel: Whether he was agent or principal in the transaction, so that we might be able to judge the value of that.

Mr. Anderson: I am quite willing.

Q. 81. Mr. Metz, I understood you to say that you imported salvarsan, neo-salvarsan and novocaine for certain years which you stated prior to the war and into the early period of the war, from abroad; is that true?

A. Yes, sir.

Q. 82. Now, I will ask you to state, taking up first salvarsan, what were your gross receipts and net profits by years, if you can state it, from the sale of salvarsan which you imported during the period that you have described?

A. I can not give you salvarsan separately. I have them both together, both salvarsan and neo-salvarsan.

Q. 83. All right. Give them both together.

A. They went together always on our books. I have the figures from 1913 to 1917. The Farbwerke-Hoechst Company, at that time the agents and manufacturers of the product made in Germany.

Mr. Kresel: I ask that the statement that the Company was the agent be stricken out as the conclusion of this witness.

Mr. Anderson: I have no objection, sir. We will stop discussion on that.

The Court: So ordered.

Q. 84. Now, this Farbwerke-Hoechst Company, was the same Company which is described in the original licenses issued by the Federal Trade Commission?

A. Yes, sir.

Q. 85-86. It was an American corporation, was it not?

A. Yes, sir.

Q. 87. And you were the head of that corporation?

A. And owned all the stock, yes, sir.

Q. 88. It was practically your corporation?

A. Yes, sir, and is still.

Q. 89. State then, by years, what you made through importations by that corporation, that is, your receipts and net profits on salvarsan and neo-salvarsan, for the period of importation?

Mr. Kresel: I understand that he is about to give gross receipts and net profits; is that it?

Mr. Anderson: That is what I have asked for.

A. The sales in 1913 of salvarsan and neo-salvarsan were $383,818.74.

Mr. Kresel: May I interrupt you a moment? Do you understand that those are the gross receipts that you are talking about. When you say sales, you mean gross receipts received from sales?

The Witness: Gross sales, the amount received from sales.

Mr. Kresel: All right.

Q. 90. Your gross receipts from the sales of salvarsan and neo-salvarsan imported by you and sold in the United States during that period?

A. 1913.

Q. 91. 1913, amounted to how much?

A. $383,818.74.

Q. 91-a. What were your net profits during that year from those sales?

A. The net profits that year were $153,124.32.

Q. 92. Now, take the next year and give the same information of gross receipts and net profits?

A. In 1914, $502,986.77; net income $244,279.35.

Q. 93. Would you mind calling those figures over again?

A. $502,986.77; net income, $244,279.35.

Q. 94. That was for the year 1914?

A. 1914.

Q. 95. Now, take the year 1915?

A. 1915, $601,151.94.

Q. 96. What were your—

A. Sales?

Q. 97. Gross sales or receipts?

A. Receipts from sales?

Q. 98. From sales of this imported product which you have described?

A. Yes, sir; and the net income was $361,470.40. 1916, $969,176.41; net income $434,723.08.

Q. 99. And your importations were discontinued in 1916, as I understand it?

A. The end of 1916. We got the last shipment, November 1916, on permits.

Q. 100. Now, Mr. Metz, in order to follow that subject through, I will ask you to go on with salvarsan and neo-salvarsan and state your—you have already stated your sales and net profits under the license?

A. You have not got 1917 yet. I want to give you 1917, Colonel.

Q. 101. All right, 1917.

A. In 1917, we sold the stock we had on hand and some of the manufactured stuff.

Mr. Kresel: One minute, please. That has not been asked. All you have been asked for are figures. Please give that.

A. (Continuing) The figures are $628,753.80. The net income was $289,742.86.

Q. 102. Did you import any of this material, salvarsan or neosalvarsan in the year 1917?

A. No, sir. That was the stock that we had from 1916 and what we made here at that time.

Mr. Kresel: I ask that everything but "No, sir" be stricken out.

The Court: Motion granted.

Q. 103. Did you have any stock on hand at the end of your importations in 1916?

A. Yes, sir.

Q. 104. Did you sell that stock during 1917?

A. Yes, sir.

Q. 105. Now take novocaine by years and in the same manner, give the same information?

A. I ought to have qualified, Colonel, that some of these sales included product bought in the United States, made in Philadelphia, which we handled when the importations were scarce.

Q. 106. You mean 1917 sales?

A. I mean in 1917, yes; 1916 and 1917; some that we manufactured in 1916 and 1917.

Q. 107. The figures you have given represent the gross receipts and net profits of your business.

A. On those products.

Q. 108. Explained in the manner just indicated between importations in the United States in the later period?

A. On those two products.

Q. 109. Now, take novocaine and give the same information for the same periods, if you can do so?

A. Novocaine was very small. Here they are. The novocaine sales began in 1906.

Q. 110. Give such information as you can give, giving the gross receipts and net profits in each year for the period.

Mr. Kresel: Do I understand that he is about to give the figures with reference to novocaine imported?

Q. 110. (continuing) I asked you about novocaine imported.

A. That was all imported at that time. I have not the figures in dollars, but I have the amounts. I can not give you the figures in dollars. I have not got them. I have simply got the amounts, because those books—

Mr. Kresel: That is an answer; you have not got the figures.

A. (continued) Not the dollars. I can give you totals and the amounts and quantity for each year.

Q. 111. Give us the totals and quantity, and then I will ask another question.

A. I will give you the quantities in detail.

Q. 112. All right, give us the quantities.

A. In 1906, the first year, we sold in five-gram bottles 210 bottles of five grams each, that is, 17 ounces. In 1907 we sold 128 five-gram bottles, in 59 ounces and 14 pounds, single pound packages. In 1908, 370 five-gram bottles, and 84 ounces and 47 pounds. In 1909, 760 five-gram packages, 234 ounces and 51 pounds. In 1910, 1133 five-gram bottles, 368 ounces and 67 pounds. In 1911, 1503 five-gram bottles, 552 ounces and 48 pounds. In 1912, 2580 five-gram bottles, 867 ounces and 74 pounds. In 1913, 5746 five-gram bottles, 1798 ounces and 144 pounds. In 1914, 8562 five-grams, 3275 ounces and 242 pounds. 1915 and 1916 I have not got, except the importation in 1915 was 675 pounds—in 1916. That was after the war, we had trouble getting it.

Mr. Kresel: I do not want to interrupt Colonel Anderson's examination of this witness any more than I have to. It is understood, as I gather, that this testimony which refers to the period prior to April 10, 1919, is taken subject to our objection that it is immaterial, irrelevant, and not binding upon this defendant.

The Court: That is correct, Mr. Kresel.

Q. 113. Mr. Metz, what is salvarsan generally used for?

A. It is used almost entirely in the treatment of syphilis.

Q. 114. Neosalvarsan the same?

A. The same.

Q. 115. What is the general use of novocaine?

A. Novocaine is a local anaesthetic used largely by dentists and physicians in surgical operations.

Q. 116. After the beginning of the great war in 1914 were salvarsan and neosalvarsan manufactured in the United Etates?

A. In 1916, I think it was, a concern in Philadelphia started putting out a product that answered the requirements, and which I sold for them—or rather, I obtained it from them and sold it to the trade under an agreement with them.

Mr. Kresel: May that be stricken out, your Honor. It is volunteered and it is not responsive to the question.

Mr. Anderson: No objection, sir.

The Court: Let the entire answer be stricken out from the record.

Mr. Anderson: Read the question, please.

(Q. 116 repeated by the stenographer as above recorded.)

A. Yes.

Q. 117. Can you state approximately to what extent?

A. Enough to supply the demand; practically enough to supply the demand.

Q. 118. You stated in your answer to a former question that in 1917 you sold some of this product which you bought from a manufacturer in the United States at Philadelphia. Did you handle any of the United States product?

A. Yes, sir.

Q. 119. Could you state approximately how much of the stuff manufactured in the United States you sold?

A. Oh, several hundred thousand ampules, at least.

By Mr. Kresel:

Q. 120. When was this? In 1917?

A. This was—I will give you the exact date under the agreement under which I handled it, in just a moment.

By Mr. Anderson:

Q. 121. If you can state approximately, I would rather you would state—

A. I just want to get the date, Colonel. This was in December, 1916, or last part of 1916.

Q. 122. And you sold this product during 1917 of the American manufacture?

A. Until I began to make my own, yes, sir.

Mr. Kresel: May the latter part of the answer be stricken out?

The Court: Let the answer be stricken out and the question repeated.

(Q. 122 repeated by the stenographer as above recorded.)

A. Yes.

Q. 123. Did you manufacture any of this stuff prior to the time of the licenses that you received here?

A. Yes.

Q. 123-A. During the year 1917?

A. Yes.

Mr. Kresel: May I suggest that you inquire which of the products he so manufactured?

Q. 124. I will ask, in reply to that question of counsel.

A. Salvarsan and novocaine.

Q. 125. How did you import salvarsan during the years 1915 and 1916, with the blockade existing?

A. The blockade went into effect April 1, 1915. Prior to that time it came in regular shipments. After that I had to get permits from the British Government through the State Department to allow me to pass the blockade.

Q. 126. When you got those products in the United States, what did you do with them?

A. Sold them to the—

Mr. Kresel: One minute, please. I have no objection—he sold them.

A. (continued) Sold them in the regular course of business to the Government; sold to the Government, to hospitals and to physicians.

Q. 127. I believe you said that the sale of salvarsan and neosalvarsan in this country began about 1911 to 1912. Did I understand you correctly?

A. Yes, sir.

Q. 128. Mr. Metz, since the beginning of the sale of this product of salvarsan and neosalvarsan, and novocaine, too, have you been familiar with the market conditions and prices of these goods in the American market?

A. Yes, sir.

Q. 129. Does your business in the handling of these three articles which you have described, first, as importer, and second, as licensee and manufacturer, extend throughout the United States, or is it local?

A. I beg your pardon?

Q. 130. Does it extend throughout the United States, or is it local?

A. The sale?

Q. 131. Yes.

A. Throughout the United States and export—I exported to Germany within the last month or two 150,000 ampules.

MR. KRESEL: I ask that that part be stricken out.

THE COURT: Let the entire answer be stricken out and the question repeated.

(Q. 129 repeated by stenographer as above recorded.)

A. Throughout the United States.

Q. 132. Do you export any of the three articles named, since you became a manufacturer under license?

A. I have exported neosalvarsan to various countries.

Q. 133. Neosalvarsan?

A. Yes, sir.

Q. 134. You have not exported salvarsan or novocain?

A. Not recently. I have exported it, but not recently.

Q. 135. Approximately what quantity of salvarsan and neosalvarsan has your corporation sold under the licenses issued by the Federal Trade Commission, by years if you can state it?

A. Well, I can give the amounts to you, but the dollars and cents I gave you.

Q. 136. I meant the amounts.

A. I should say approximately a million ampules a year.

Q. 137. Do you mean salvarsan and neosalvarsan?

A. Yes, combined; both of them combined.

Q. 138. Can you say approximately how much of novocaine you sold?

A. I have not those figures exactly on novocaine. I have the amounts, but not the pounds.

Q. 139. The amounts, I mean, as licensee of the Federal Trade Commission.

A. From 1919 on I can give you the amounts on novocaine.

Q. 140. All right.

A. In 1919 the sales were $246,295.67, in 1920 $292,739.47, in 1921 $294,304.46, and in 1922 $302,283.40. Those were the gross sales.

Q. 141. But you cannot tell the exact amount sold, I mean, by quantity?

A. I have got them in the records, of course.

Q. 142. The quantities?

A. I have not them here.

Q. 143. If you cannot tell we will pass on.

A. I can get them for you. I have not my hands on that now.

Q. 144. I understood you to say that during the period that you have been licensed there were three other licensees for these same products?

A. On novocaine, yes.

Q. 145. And salvarsan and neosalvarsan?

A. There were three by the Federal Trade Commission and some afterwards by The Chemical Foundation.

Q. 146. Do you know what your profits were from the sale of salvarsan and neosalvarsan and novocaine during the period of the licenses by the Federal Trade Commission that you have described?

A. I have given you the salvarsan and neosalvarsan; I can give you the novocaine also.

Q. 147. You do know those amounts?

A. Yes.

Q. 148. I will ask you this question: Basing your knowledge upon your experience as an importer and as a merchant in this business and other knowledge which you have described, and your manufacturing experience, your knowledge of the profits of this business, including the profits of sale and manufacture, and from your familiarity with market conditions which you have described up to April 10, 1919, what in your opinion was the fair market value of Patent No. 986,148, which you have described as covering salvarsan, and reissue Patent No. 13,848, which you have described as covering neosalvarsan, on April 10, 1919?

> Mr. Kresel: Before the witness is permitted to answer the question, we object to the question upon the ground that the witness has not been qualified as an expert on the value of patents or of these particular patents; that no sufficient foundation for such a question as is now propounded to the witness has been laid; that there is no evidence that this witness has given or intimated which would lay a proper basis for any estimate of value of these patents to be given by hm. We object to it upon the ground that it is immaterial and irrelevant. We object to it upon the ground that we originally urged that this evidence is an attempt to get the Court to substitute its judgment for that of the action of the Executive in a discretionary matter that was given to the Executive by Congress. Upon all those grounds, we object to the question.
>
> The Court: The answer may be received subject to the objections, under our general rule.

A. Repeat the question, please.

(Q. 148 repeated as recorded above.)

A. It is hard to tell the value. I should have been very glad to pay a million dollars for the patents as they stood then.

Mr. Kresel: I ask that the answer be stricken out.

Q. 149. The question calls for your opinion of the fair value at that time.

Mr. Kresel: I suggest that the witness be first asked whether he can give an opinion.

Q. 150. Very good. I will ask you if you feel that you can give an opinion as to the fair value of those patents I have described at that time?

A. Yes, based on my knowledge of the profits of the business.

Mr. Kresel: I ask that everything but the word "yes" be stricken out.

Mr. Anderson: All right, I do not object, sir.

Q. 151. Since you have said that you can give an opinion and have testified as to your experience, you need not review that, but I only want to ask you what in your opinion would have been the fair value of these two patents on April 10, 1919, under the conditions you have outlined in your testimony?

Mr. Kresel: I object to the testimony if it calls for what would have been the fair value. The question should be, what was the fair value.

The Court: Your general objection is withdrawn to this question?

Mr. Kresel: Oh, no, your Honor. I urge all my objections, but I simply urge that to the form of the question.

Q. 152. Well, what was the fair value? I will correct my English.

A. At least a million dollars.

Q. 153. At least a million dollars?

A. Easily.

Q. 154. If these two patents had been put up for auction with the licenses outstanding which you have described, as shown here by the record, would you have bid as much as a million dollars for them?

Mr. Kresel: I object to the question upon the ground that it is hypothetical and upon the other grounds that we urged to the preceding question as to value.

The Court: I do not understand, Colonel Anderson, that this question can be disproved. You are really calling for the witness's present mental attitude with respect to a transaction four years ago. I do not see how that can possibly add anything to what you already have.

Mr. Anderson: I should have said, "Would you then have bid." That would be a fact of a desire at that time and a willingness to pay. In asking that question, if your Honor please, I am proceeding on a line of examination which has been admitted in many cases where questions of property values of real estate in condemnation and things of that kind have arisen.

The Court: I will permit you to take the answer.

Mr. Anderson: There may be a debatable question as to whether that adds anything to what has been said, but I would like to get it on the record.

Q. 155. If these two patents had been put up for sale at public auction, subject to the licenses which you have indicated, would you then have bid on the same and would you have been willing to bid?

Mr. Kresel: The same objections, your Honor, that I urged to the other questions.

A. I would have bid at least a million dollars and possibly more if I had the chance.

Q. 156. Now I will ask you with regard to novocaine, Patent No. 812,564. Basing your opinion upon the general facts outlined in the preceding questions, in which your opinion was asked, and not repeating it, and your knowledge upon this subject of market conditions, what in your opinion was the fair value of Patent No. 812,554 on April 10, 1919, if sold under the conditions outlined in your testimony, or subject to the conditions outlined in your testimony?

Mr. Kresel: I do not understand that, Colonel.

Q. 156. (Continuing) All right. If sold subject to the licenses which you have described.

Mr. Kresel: That is different. We object to the question upon the grounds that we urged to the preceding question as to the value of the salvarsan patent.

The Court: Same ruling.

A. At least $200,000.

Q. 157. If the novocaine patent No. 812,554 had been offered at public auction by the Alien Property Custodian subject to the licenses which you have indicated then existed, as issued by the Federal Trade Commission, would you have bid for the same; and if so, how much would you have bid as a minimum?

Mr. Kresel: Same objection, your Honor.

Mr. Anderson: That is understood.

A. At least $200,000.

Q. 158. Have you or the corporations which you have mentioned, with which you are connected, or which you control, ever registered any trade-marks covering salvarsan, neosalvarsan or novocaine?

A. Yes, sir. I had the trade-mark registered; transferred and registered.

Q. 159. Have you certified copies of those trademarks or copies of them in this courtroom?

A. They are here.

Mr. Anderson: I now offer in evidence the following documents to be read and identified by the following numbers:

A certified copy of an instrument, trade-mark No. 53,072, called "Novocaine," dated May 22, 1906, to be read as "Plaintiff's Exhibit 403." Do you want to see those, Mr. Kresel?

Mr. Kresel: I would like to see them. If you are going to offer them one by one, I want to register my objection to them. I understood you were going to offer them all together and I was waiting until you were through. May I see them, please? (Papers handed to counsel).

Colonel, my recollection of the question to the witness which brought forward these papers was whether he or his concerns had registered these. This paper that you hand me appears to have been registered in the name of a German concern.

Mr. Anderson: But I am going to offer the assignment. I will follow that with the assignment in each case.

Mr. Kresel: You now offer this paper.

Mr. Anderson: I offer that.

Mr. Kresel: We object to it upon the ground that it is immaterial and irrelevant.

The Court: You may put it of record under our general rule.

Received in evidence and marked "Plaintiff's Exhibit No. 403." (*See Exhibits, Vol. II, Page 741.*)

Mr. Kresel: What was the date of that, Colonel?

Mr. Anderson: 8th day of January, 1915. Right under that same offer, Assignment from the German Farbwerke, whose name appears as the original Registrar of the Trade-mark, to Farbwerke-Hoechst Company, dated the 8th day of

January, 1915, and shown by the certificate of the Patent Office to have been recorded on February 26, 1917, in the record as therein stated, to be identified and read as "Plaintiff's Exhibit 403-A."

The Court: Admitted under our general rule, subject to the general and specific objections.

Received in evidence and marked "Plaintiff's Exhibit No. 403-A." (*See Exhibits, Vol. II, page 745.*)

Mr. Anderson: Patent Office copy of Trade-mark 79,969, registered October 25th, 1910, called "Salvarsan," identified and read as "Plaintiff's Exhibit No. 404." (*See Exhibits, Vol. II, page 748.*)

The Court: Admitted under the same conditions as the preceding document.

Received in evidence and marked "Plaintiff's Exhibit No. 404." (*See Exhibits, Vol. II, page 748.*)

Mr. Anderson: Instrument called "Assignment of Trade-mark, No. 79,969," dated the 5th day of March, 1914, recorded May 6th, 1914, as stated in the certificate of the Patent Office, to be identified and read as "Plaintiff's Exhibit No. 404-A."

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit 404-A." (*See Exhibits, Vol. II, page 750.*)

Mr. Anderson: Trade-mark issued by the United States Patent Office, No. 88,862, registered October 29th, 1912, the name being "neosalvarsan," to be identified and read in evidence as "Plaintiff's Exhibit No. 405."

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 405." (*See Exhibits, Vol. II, page 755.*)

Mr. Anderson: An instrument called "Assignment of Trademark No. 88,862, dated October 25, 1912," which instrument of assignment is dated the 5th day of March, 1914, and recorded in the Patent Office May 6, 1914, as shown by certificate thereto annexed to be identified and read in evidence as "Plaintiff's Exhibit No. 405-A."

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 405-A." (*See Exhibits, Vol. II, page 757.*)

Q. 160. Colonel Metz, have you sold and distributed any products under the names indicated in the trade-marks which I have just introduced in evidence since the assignment to you on the dates named in said assignments?

A. Yes, sir.

Q. 161. Have those trade names or trade-marks and each of them been in constant use by you?

A. Yes, sir.

Q. 162. Could you state of your own knowledge what you have expended in advertising these three trade-marks and each of them in the United States since they were assigned to you?

MR. KRESEL: Can you separate them?

Q. 162. (Continued) Yes, can you separate them?

MR. KRESEL: I object to the question upon the ground that that is immaterial and irrelevant; that it is no basis for arriving at any value of the trade-marks; furthermore upon the ground that it has not been made to appear, and I do not under stand that it is charged, that these trade-marks were either seized by the Custodian or conveyed to the Chemical Foundation; is it?

MR. ANDERSON: I think they are included; yes.

MR. KRESEL: Is it? I did not know that that was your charge.

Mr. Anderson: That is in the list in Exhibit G.

Mr. Kresel: I did not understand that that was your charge. I withdraw the last ground, then, if that is the fact.

The Court: I am confused about that, Colonel Anderson. These assignments were made of the three products?

Mr. Anderson: Yes, sir.

The Court: I mean assignments of the trademarks of each of the three products were made to some corporation in which Mr. Metz was interested.

Mr. Anderson: Yes.

The Court: And they were made after the war began?

Mr. Anderson: Before the war, that is before we went into the war.

The Court: After the conflict abroad began, but before we entered?

Mr. Anderson: Yes, sir.

The Witness: Prior to the conflict abroad.

Mr. Anderson: One moment.

The Witness: I beg pardon.

Mr. Anderson: I understand that the assignments were made prior to the beginning of the war; at least the dates are stated on the face of the assignments.

The Court: Do these assignments appear to be absolute on their face?

Mr. Anderson: Yes, sir. They are in evidence.

The Court: And you have shown by the exhibits attached to your Bill, which have been introduced in evidence, that these three trademarks were seized and sold by the Alien Property Custodian?

Mr. Anderson: Yes, sir. The Bill in this case, if your Honor please, Exhibit G and the various schedules—just exactly which this is I do not recall, but that shows that these three trademarks were seized by the Alien Property Custodian and two days after seizure were transferred to the Chemical Foundation, that so far as the record of the Alien Property Custodian shows or we know, they were still held by or claimed by the Chemical Foundation. I am going to bring that out later. I wanted first to get this evidence in if it were appropriate, but I am perfectly willing to lay the foundation by bringing that out later.

The Court: I will take the answer.

Mr. Anderson: The question was how much he had expended in advertising these trade-marks.

The Court: I thought it was the value. You may take that answer, but I think I have indicated before how I feel, as to what weight there may be to it. I will take the answer.

Mr. Anderson: Yes, sir, I quite agree it is debatable.

Q. 163. That was for all these three trademarks together?

A. Approximately it was between $150,000 and $200,000 a year.

A. Practically, yes. I should say for the three. More than that probably, but at least that.

Q. 164. I will ask you to base your answer to the question I am now going to put on the general facts which I outlined in preceding questions when I asked your opinion as to the values of the patents, and say whether you can give an opinion as to the value of each of these three trademarks on April 10, 1919?

The Court: The answer to that is yes or no, whether you can.

A. I can; yes, sir.

Q. 165. Will you state in your opinion, basing it on the evidence you have given of your knowledge, etc., what was the fair value at that time of the two trade-marks salvarsan and neosolvarsan, which I understood you to say were used together; or, if you can give them separately, all right.

Mr. Kresel: The same objection, your Honor.

The Court: I understand that the objection goes to all this testimony.

Mr. Anderson: Yes.

A. Well, do you mean for some one to acquire them or what they are worth to me?

Q. 166. I mean what would be the fair value if they were put up at auction and sold?

A. Oh, a million dollars easily.

Q. 167. Do you mean for both of them or one?

A. I mean for the two.

Q. 168. The two together?

A. The two together.

Q. 169. Could you separate their value, approximately.

A. Yes, I should say 75 per cent. and 25 per cent.

Q. 170. For what?

A. 75 for the neosalvarsan and 25 for the salvarsan. That is based on the proportion of sales, of course.

Q. 171. Then approximately you would put the fair value of the trade-mark neosalvarsan on April 10, 1919, at not less than $750,000?

A. Easily.

Q. 172. And of salvarsan at not less than $250,000?

A. Yes.

Q. 173. Take novocaine, and say what in your opinion was the fair value of that trade-mark in April 1919, if it had been put up and sold to the trade?

A. At least $250,000.

Q. 174. Was any demand ever made upon you by the Alien Property Custodian for the three trademarks salvarsan, neosalvarsan and novocaine, which you have described, either or any of them?

Mr. Kresel: Objected to as immaterial and irrelevant.

Mr. Anderson: This goes to the inquiry as to seizure and sale.

Mr. Kresel: But it does not make any difference. If he had a right to seize he did not have to ask his permission.

Mr. Anderson: I asked if any demand was ever served on him.

A. I think so, along with all other trademarks. The Companies had been seized in whose name they stood.

Mr. Kresel: I ask that everything except "I think so" be stricken out.

The Court: Let the whole answer be stricken out and the question repeated. The answer will be taken, Mr. Kresel, under the general rule.

Mr. Kresel: Yes, your Honor.

The Court: Read the question.

Q. 175. (Q. 174 repeated as recorded above).

A. I think there was.

Q. 176. Are you the Metz who was a party to the suit of Metz against Garvan, which I think was decided about June 2nd, 1922?

Mr. Kresel: One minute, please. I object to that on the ground that it is immaterial, and I would like to ask Colonel Anderson in what respect he considers that to be material.

Mr. Anderson: I consider it material as showing the course of conduct of the Alien Property Custodian and the Chemical Foundation in dealing with these properties of this gentleman, who was an American citizen, and his companies which were American companies. Also as going directly to the question of the seizure and sale of these particular properties, the value of which he has discussed.

Mr. Kresel: Colonel Anderson knows perfectly well that the suit he is now inquiring about had nothing to do with the Chemical Foundation and had absolutely nothing to do with the patents or trade-marks here in question. Knowing that, I think Colonel Anderson has not stated in answer to my inquiry what the real purpose of this question is.

Mr. Anderson: Just hold on a minute and let us get ourselves straight on that proposition. Mr. Kresel may have omniscience, but he can not tell what I know and what I don't know. I do not know what the suit of Metz against Garvan referred to.

Mr. Kresel: You do not?

Mr. Anderson: I do not, but I do know that there was such a suit and I wanted to identify him as the Metz therein referred to. That is all that I was going to ask about it.

The Court: Then I shall sustain the objection and not let you take the answer.

Mr. Anderson: I want to make a further statement, if your Honor please.

The Court: Yes?

Mr. Anderson: Mr. Kresel by the latter part of his statement implies that I have not been frank with the Court.

Mr. Kresel: No.

The Court: No, we are not going to discuss that.

Mr. Kresel: No, I did not mean that, and if you gathered that meaning I withdraw it.

Mr. Anderson: I want to make that absolutely clear, that offer, because I want to be frank with the Court and counsel.

Mr. Kresel: I had no such intention.

The Court: We shall not now discuss it. I shall not assume any such implication resides in any remark of counsel on either side, particularly in view of the manner in which this case has been conducted during the last three weeks. So we will not have any discussion of that kind now.

Mr. Anderson: That is all right, sir, I just wanted to make that clear.

The Court: The question is what?

Mr. Anderson: I will withdraw the question in view of the statement of counsel that it refers to an entirely outside matter. I have not been able to look at the report; I did not have it. I know it refers to a suit.

The Court: Then you will put another question.

Mr. Anderson: Yes.

Q. 177. Colonel Metz, are you a member of the American Dyes Institute?

A. My company was.

Q. 178. Which company?

A. The Consolidated Color & Chemical Company.

Q. 179. Any other company of yours?

A. I do not recall whether the Central was or not. I know the Consolidated was; and I attended meetings there, as President of that Company.

Q. 180. Are you or any of your corporations stockholders in the Chemical Foundation?

A. Yes, sir, three of them.

Q. 181. Which companies?

A. The Consolidated Color & Chemical Company, the Central Dyestuffs Chemical, and H. A. Metz Laboratories, Inc., subscribed for $50,000 of the stock at the meeting at which subscriptions were taken for these companies.

Q. 182. Your companies still hold that stock, do they?

A. Yes, sir.

Q. 183. Now, I will ask you if you had any correspondence with the Alien Property Custodian or with the Chemical Foundation, or both, in relation to the seizure and sale of the three patents which have been here under discussion and the trade-marks which have been here under discussion, or any of them?

A. My counsel had with regard to the trade-marks.

Q. 184. Have you personally had any correspondence?

A. My counsel for me, as to their return.

Q. 185. Have you that correspondence in your possession?

A. Copies are here.

Mr. Anderson: I would like to look at it. (Handed to counsel).

Q. 186. The plaintiff here introduced in evidence yesterday, three bills of complaint, identified as Plaintiff's Exhibits Nos. 345, 346, and 347, being in each case suits in equity, filed in the United States District Court for the Southern District of New York, by the Chemical Foundation, Inc., against H. A. Metz Laboratories, Inc., a corporation, and Frank White, as Treasurer of the United States. Do you know whether the H. A. Metz Laboratories, Inc. is the company which you have described, of which you are the head and owner?

A. Yes, sir.

Q. 187. If so, state whether that is the case.

A. It is.

Q. 188. There also were introduced yesterday, bills of complaint in three suits which were instituted in the Eastern District of New York by the Chemical Foundation, Inc., against H. A. Metz Laboratories, and Frank White, Treasurer of the United States, identified as Plaintiff's Exhibits Nos. 363, 364 and 365. Is the H. A. Metz Laboratories, Inc., the company to which you have referred, of which you are the head?

A. I assume so; one of them.

Q. 189. You know that those suits have been brought against you?

A. I have been so informed by my counsel, yes, sir. I was in Europe when they were first brought. I was so advised.

Mr. Anderson: With the reservation stated, the witness may be cross-examined, sir.

Mr. Kresel: Just one minute.

The Court: Suppose we take the morning recess which we spoke of.

(After short recess.)

Q. 190. Colonel Metz, you are here testifying under subpoena issued by this court, are you not?

A. Yes, sir.

Cross-Examination.

By Mr. Kresel:

XQ. 191. Mr. Metz, I have noticed that throughout your testimony this morning you never once mentioned the fact that prior to the outbreak of the European War you were the representative of the German House of Hoechst. That is the fact, isn't it?

A. Not in that way. I was the agent for the sale of their goods; bought on my own account from them.

XQ. 192. I say, the fact that you were their agent or representative or had anything to do with them at all was not mentioned by you upon your direct examination?

A. It was not asked in the question.

XQ. 193. There is nothing in that relationship that you desire to disclose, is there?

A. On the contrary, I would be very glad of it.

XQ. 194. The fact is that for many years before the outbreak of the European War you had relationships with the Hoechst Company of Germany?

A. Yes, sir; for 30 years at least.

XQ. 195. And for many years before the outbreak of the European War you had the exclusive agency in the United States for the sale and disposition of products manufactured by the Hoechst Company?

A. Yes, sir.

XQ. 196. Such arrangements as there were between you and the Hoechst Company were in writing, weren't they?

A. Yes, sir.

XQ. 197. Have you those contracts with you?

A. I have, and they were all published in the hearings referred to by Mr. Anderson.

XQ. 198. Now, if you will just answer my questions, Colonel, we will get along very well.

A. I have them, Mr. Kresel.

XQ. 199. Please do not volunteer anything that is not asked.

Mr. Anderson: If your Honor please, to save interruption as far as I can, I wish to state on the record now that I object to any evidence in the cross-examination outside of matters covered by the direct; and that counsel makes the witness his own if he does it. I am not objecting to this examination because I think it relates to the general subject.

The Court: It would be well for you to call my attention specifically to any questions that you think are not in cross-examination.

Mr. Anderson: I will, sir.

The Court: Because it is not my purpose to let the cross-examination go beyond the proper bounds of cross-examination.

Mr. Anderson: I will endeavor to do so, but I did not want to interrupt counsel.

XQ. 200. You say that you have your contracts with the Farbwerke Hoechst Company of Germany here. Will you please produce them?

A. They are in my bag there. I will have them in a moment, Mr. Kresel. Here are copies of them—and the originals, I think.

XQ. 201. The last contract between you and the Hoechst Company was dated in 1912, was it not?

A. The last was in 1913.

XQ. 202. Let me see that one first, please, if you will.

A. There was one in 1912 and one in 1913. I have the 1912 one here, but not the 1913. It is in the record. I can point it out to you in the record, where Mr. Garvan put it in. I have the other ones from 1902, 1905 and 1912.

XQ. 203. Let me have what you can produce.

A. The 1913 one is the last one. That is in the record.

Mr. Kresel: All I ask is that these be marked for identification.

The Court: Let them so be marked.

Mr. Kresel: The first one I ask be marked as an agreement dated the 12th day of November, 1902, between Farbwerke vorm. Meister Lucius & Bruening, Herman A. Metz and others.

Marked Defendant's Exhibit C for identification 6-23-23.

The Witness: Those are prior to 1913, are they not, Mr. Kresel?

Mr. Kresel: The next one is an agreement dated August 4th, 1915, between the same parties.

Marked "Defendant's Exhibit D for Identification."

Mr. Kresel: The next is an agreement dated the 26th day of September, 1904, which is described as a Supplemental Agreement, made between the same parties.

Marked "Defendant's Exhibit E for Identification."

Mr. Kresel: The next is an agreement dated July 22nd, 1912, between the same parties.

Marked "Defendant's Exhibit F for Identification."

Mr. Anderson: It is not your intention to introduce those at the present time?

Mr. Kresel: Not at the present time.

The Witness: The 1913, may I put that one in? It is not fair to put in the others without the 1913 contract, which is the one on which the whole thing hinges.

Mr. Kresel: I would ask your Honor to instruct the witness that it is his duty to answer questions and not argue with me, or to suggest that anything that counsel does is either fair or unfair.

The Court: What was the statement made by the witness? Will you read that, please? (Record repeated).

Colonel Anderson, do you care to do what has been requested of the Court? I should be very glad to have it come from you rather than from me.

Mr. Anderson: I will, if your Honor prefers. I think very often witnesses who are not familiar with Court proceedings do not realize that they must confine themselves strictly to response to the question.

The Court: Colonel Anderson, I shall be very glad to have you inform this witness as to what a witness's functions are.

Mr. Anderson: I will. Colonel, in answering Mr. Kresel's questions under cross-examination, the rules of evidence require that you should confine your answers to what is fairly responsive to the question, and not go beyond his question. If there are any matters that are not brought out by that answer, my duty is to bring them out, if they are material, on Re-direct.

The Witness: Yes, sir.

Mr. Anderson: And in the next place, I would suggest that you have the right to make a complete answer to the question; that is an answer, if "yes" or "no" would not be true, you have a right to make a sufficient answer to make your reply the truth and the whole truth, but, of course, not to argue with counsel or to go beyond a fair, truthful statement in reply to his question. I think that covers it.

The Court: With this modification, Colonel Anderson: That if a question is asked him which calls for a yes or no answer, he must first answer "yes" or "no," and then qualify it and not attempt to reason it out, without the yes or no answer.

Mr. Anderson: I am glad your Honor made that suggestion. First answer "yes" or "no," and then explain or qualify as may be necessary, and only to the extent necessary to make your answer a truthful response to the question.

XQ. 204. Now, one of the products of the Farbwerke Company of Germany was salvarsan?

A. Yes, sir.

XQ. 205. At first there was only salvarsan and later they put out the product called Neo salvarsan?

A. Yes, sir.

XQ. 206. And subsequent thereto a third product called Silver Salvarsan?

A. Yes, sir.

XQ. 207. And up to the outbreak of the European War, you were the sole selling agent in the United States for those products?

A. Yes, sir.

XQ. 208. And except through you, no one in the United States could obtain those products?

A. They did.

XQ. 209. Except you, there was no one that sold those products for the Farbwerke Hoechst Company?

A. Not directly for them.

XQ. 210. You have stated in your direct examination that salvarsan is a drug, I think you said, was a specific for syphilis; indeed it is the most effective for that disease?

A. So held.

XQ. 211. And you were marketing that product and its subsequent development from the time when the formula for its production was first discovered, were you not?

A. From the time it first came on this market.

XQ. 212. And that, you say, was in 1911?

A. 1911 or 1912.

XQ. 213. Up to the time of the outbreak of the European War, was that product manufactured here in the United States?

A. No, sir.

XQ. 213-A. When was it first produced here in the United States by anybody, to your knowledge?

A. Early in 1916, I think. 1915, or early in 1916.

XQ. 214. Now, it is that product—salvarsan, that is covered by one of the patents as to which you undertook to give an opinion as to value?

A. Salvarsan was the trade-mark name which I had.

XQ. 215. I did not ask you about the trade-mark. I am speaking now about the patent. Salvarsan, Neo Salvarsan and Silver Salvarsan were all covered by the patent as to which you undertook to give value this morning?

A. No, sir.

XQ. 216. Which one was?

A. Salvarsan and Neo Salvarsan. Silver came later, after the War, after the Armistice.

XQ. 217. You have sold Silver Salvarsan?

A. Under license from The Chemical Foundation.

XQ. 218. You have given us the figures of the amount of your sales, have you not?

A. Not of silver salvarsan, no, sir. Only salvarsan and neo salvarsan.

XQ. 219. You did not include your sales of silver salvarsan?

A. No. They are separate.

XQ. 220. Nor include your profits in silver salvarsan?

A. No, sir.

XQ. 221. So you have given us today no figures as to silver salvarsan?

A. No, sir.

XQ. 222. Now, salvarsan and neo salvarsan were covered by the patents as to which you undertook to give value this morning?

A. Yes, sir.

XQ. 223. And those patents were owned prior to the outbreak of the European war by whom?

A. Farbwerke Vorm. Meister Lucius & Bruening of Hochst-on-the-Main, Germany.

XQ. 224. And that was the concern whose exclusive agent you were in the United States?

A. Yes, sir.

XQ. 225. Besides pharmaceuticals, this Farbwerke German concern also manufactured dyestuffs?

A. Yes, sir.

XQ. 226. And prior to the outbreak of the European war, you were their exclusive selling agent in the United States for those products?

A. Yes, sir. My company was; one of my companies.

XQ. 227. And those products were covered by patents owned by the German concern, weren't they?

A. Some of them were patented; others were not.

XQ. 228. Were any of the products covered by patents owned by the Farbwerke Company of Germany manufactured in the United States prior to the outbreak of the European war?

A. Not to my knowledge.

XQ. 229. Your relationship to the Farbwerke Company of Germany was extremely close, wasn't it?

A. Yes, sir.

XQ. 230. Indeed, it is a relationship that has existed, as you say, for a period of thirty years?

A. Yes, sir.

XQ. 231. Practically all your business life has been in co-operation and in conjunction with the Germans, has it not?

A. The Germans, the English, French and Swiss manufacturers.

XQ. 232. Mostly with the Germans?

A. Mostly with the Germans; with this one particular German house.

XQ. 233. What years did you say you were in Congress?

A. I was elected in 1912; went there in 1913; 1913, 1914, 1915. March 4, 1915, I think my term expired.

XQ. 234. The question of duties on importations of dyestuffs and pharmaceuticals was one in which you were interested as representative of this German concern, were you not?

A. Yes, sir, as an importer and as a dealer here.

XQ. 235. In both capacities?

A. Yes, sir.

XQ. 236. And, of course, the Farbwerke-Hoechst Company of Germany was interested in what duties were imposed by our Government upon importations of their products?

A. Yes, sir.

Mr. Anderson: If your Honor please, I wish to make my objection to this matter on the ground that it is not proper cross-examination, entirely outside of the direct, relating to matters not touched upon in direct. I object upon that ground.

Mr. Kresel: I say to your Honor that it is strictly cross-examination for the purpose of showing the interest and the bias of this witness, as I shall show by my further questions.

The Court: To show his interest in the transactions to which he has testified?

Mr. Kresel: Yes, your Honor; and affecting his credibility.

The Court: That objection, as not being proper cross-examination, will be overruled, if that is the purpose, because I think a very wide scope is given on cross-examination.

Mr. Anderson: I recognize that, sir, but I thought counsel was going into the question of import duties.

The Court: I think this is within the proper bounds of cross-examination and I will overrule the objection.

XQ. 237. While you were in Congress, did you receive instructions from the Farbwerke Company in

Germany as to what you should do with reference to duties to be placed upon products that they were manufacturing and importing into the United States?

A. No, sir. Emphatically not. Suggestions, but not instructions.

XQ. 238. Oh, you got suggestions?

A. Suggestions. Any manufacturer makes suggestions, naturally.

XQ. 239. There were suggestions made to you, who were then a member of Congress, as to what you should do with reference to import duties on products manufactured by the Hoechst Company?

A. No, sir; not as to what I should do for a moment; what they would like to have done.

XQ. 240. What they would like to have done?

A. Possibly. They expressed their opinion. That is all. It did not affect me any.

XQ. 241. Now, I read to you the following letter.

Mr. Kresel: Colonel, I am reading from page 499 of the proceedings before the Committee on Finance in the United States Senate, from which you read this morning.

XQ. 241 (continuing). Did you receive the following letter from the Farbwerke Company in Germany:

"Hoechst A. Main, June 20, 1913.

"My dear Mr. Metz:

"I received your two letters of the 4th and 10th of this month.

"As regards hydrosulfit, I can only explain to you once more that we invoice exactly according to the lowest market prices here, that we naturally deduct packing and freight from the duty invoice." * * * *

"It is very interesting, that you now receive the samples of the competing factories on the part of the dyers for examination. I can nevertheless imagine that an uncomfortable situation may some time arise for you because of it."

I will return to that paragraph in a minute. This is the paragraph that I have reference to:

> "We are naturally not interested that hydroblue or carbazol colors should be placed on the free list; would not, however, on our part come forth directly against Cassella; you will therefore on your part omit any direct work against Cassella. I also repeat, as I have already informed you in my communication of June 9, my opinion, that the best for all of us would be, if certain dyestuffs, including the alizarin dyes, would pay about 15 per cent duty, and only indigo remains on the free list. I should consider it a great success were you successful in leading up to such a change in the tariff."

Did you receive that letter?

A. Yes, sir, I did.

XQ. 242. This letter is dated June 20th, 1913?

A. Yes, sir.

XQ. 243. At that time you were a member of Congress?

A. Yes, sir.

XQ. 244. Now I want to call your attention to another letter and ask you whether you received that one, from the Farbwerke Company in Germany. This one is dated May 14th, 1913. I am not going to read the whole letter, I am going to read only that portion of it which refers to the question I have directed to you.

Mr. Anderson: What is the page?

Mr. Kresel: Page 500.

Mr. Anderson: Of what volume?

Mr. Kresel: Of the same publication.

XQ. 244 (continuing). "The Badische"—that refers to the Badische Aniline Company, does it not?

A. Yes, competitors of the concern I represented.

Mr. Kresel: I ask that the latter part be stricken out.

THE COURT: It is stricken out.

XQ. 244 (continuing).

> "I can readily imagine that you are unusually busy in Washington now. The Congressional Record, which you were kind enough to send me, I will read with much interest. From it one can best picture the situation.
>
> "The Badische is naturally not much pleased that alizarin has to pay a duty of 10 per cent, whereas the indanthrene and the remaining anthracene derivative must pay full duty. We trust, however, that you will be able to push through alizarins without any duty and have the duty on dyestuffs reduced. It would at any rate be very nice, though I can not really believe it possible, after we were so badly cut up by the revision of the tariff. I beg of you to forecast exactly the best results obtainable in delivering to your f. o. b. European ports."

Did you receive that letter?

A. I assume so. It is in the record.

XQ. 245. And at that time you were a member of Congress?

A. Yes, sir.

XQ. 246. Pursuant to the suggestions you say you got from these letters you did as a member of Congress undertake to put indigo on the free list, did you not?

A. Not pursuant to the suggestion in those letters; no, sir.

XQ. 247. I did not ask you that.

A. No, sir; I did not. That is the answer, then.

XQ. 248. Did you try as a member of Congress to have indigo placed on the free list?

A. Yes, sir.

XQ. 249. And you succeeded?

A. Yes, sir.

XQ. 250. Did you tell on the floor of the House of Congress that you were representing a German concern that was writing to you and making suggestions to you as to what you should do?

A. I don't know whether I did or not. There was no occasion for discussing it.

XQ. 251. Before we entered the war, Mr. Metz, you were violently pro-German, were you not?

A. No, sir; at no stage was I pro-German.

XQ. 252. That is an answer.

Mr. Anderson: I do not think that is a fair question, if your Honor please.

The Court: Absolutely no.

Mr. Anderson: What is pro-German is absolutely a question of——

Mr. Kresel: I am going to follow it up, Colonel. The question is answered.

The Court: I take it, Colonel Anderson, that the attitude of a witness with respect to such matters is a fact that might be considered and would be proper to be considered in weighing the testimony of a witness, might it not?

Mr. Anderson: I do not think, sir, that I could be questioned as to whether I was pro-German or pro-English. I could be questioned as to what I did and said, and from what I did and said——

The Court: I agree with you.

Mr. Kresel: I am coming to that. I am coming to the specific portions. Just give me a chance.

The Court: I think you are right on that, Colonel Anderson.

Mr. Anderson: I move to strike out that question as an offensive question, and I think it ought to be stricken out.

Mr. Kresel: Oh, Mr. Metz does not consider it an offensive question.

The Witness: I have heard it so often I do not like it, Mr. Kresel.

The Court: What is your application, Colonel Anderson?

Mr. Anderson: My application is to strike out that question and any answer thereto, because I do not think it is a fair question in the first place; in the next place, it is asking the witness for an opinion on a matter. Counsel has a perfect right to examine him on anything he did or said and your Honor can draw the conclusion.

Mr. Kresel: I have a right, your Honor, to ask him on cross-examination any question that goes to his credibility and his interest, and I offer this testimony on that ground and for that purpose.

Mr. Anderson: I concede that there can be broad examination going to credibility, but there is a limit even to evidence going to credibility, and that is admissible evidence of facts. The witness expressed the opinion and his answer is that he was not pro-German. Upon the facts your Honor might reach a different conclusion. The fact whether he was pro-German or pro-something else before the War, might be for you. In the second place, the matter is of no materiality here, and can not be, for the reason that the term has since the War acquired a significance which in friendliness between nations before the War it did not have, and therefore the use of that expression in the period before the War conveys an impression upon the record which was not and could not have been the fact prior to the War. Therefore, the witness can be asked as to what he did and what he said and your Honor can then draw your conclusion as to his attitude toward any question affecting this case.

THE COURT: The question has been answered, and I am not making any ruling. I will let the answer stand under the general rule with such exception as you desire.

MR. ANDERSON: Will your Honor permit me an exception to that ruling.

XQ. 253. In addition to being the exclusive selling agent of this German concern you had other interests here of a German character before the War, did you not?

A. I had some stock in the wireless—Sayville Wireless Company. I was President of that corporation; that was all.

XQ. 254. That is, you were President of the Atlantic Communication Company?

A. A short time, yes.

XQ. 255. Which was controlled by the Allgemeine Electricitats Gesellschaft of Berlin?

A. Yes, sir, the Telefunken Company.

XQ. 256. You were also part owner of the Evening Mail, were you not?

A. No, sir, I loaned some money——

XQ. 257. Did you have any interest in the Evening Mail?

A. Not until long after we were in the war.

XQ. 258. You knew Mr. Rumley, did you not?

A. Certainly.

XQ. 259. Didn't you own stock in the Evening Mail before we entered the war?

A. I do not think I did. I had some stock as collateral on some money I loaned Mr. Rumley.

XQ. 260. And that money was loaned by you to enable Mr. Rumley to buy the Evening Mail, was it not?

A. I so understood at the time, yes.

XQ. 261. And you did it at the request of Count von Bernstorff, the German Ambassador, did you not?

A. No, sir. I beg your pardon, I did not. It was after von Bernstorff went home, that I loaned him the money.

XQ. 262. I read to you from a letter that you wrote to J. A. Lyons, Esq., Room 746, Custom House, New York City. Do you remember writing to him?

A. Yes, sir.

XQ. 263. He was a Government agent that was investigating your connection with the Evening Mail, was he not?

A. I told him all I knew of it, yes, sir.

XQ. 264. I read the following passage:

> "My first acquaintance with Rumley came about through a telephone message from Count Bernstorff some time early in 1915 on my return from Europe."

That was true, was it not?

A. Yes, sir.

XQ. 265. So your first connection with Rumley was through Count von Bernstorff?

A. It was no connection. It was acquaintance.

XQ. 266. What?

A. Just an acquaintance with him; no connection.

XQ. 267. An acquaintance. And then you made this loan, as you call it?

A. Not until a long time afterwards.

XQ. 268. When did you make the loan?

A. I do not recall. Some time in 1917, I guess after the war started, I think I loaned Rumley some money.

XQ. 269. How much did you lend him?

A. I can not recall the figures. They are probably in there. I think it was—I do not remember. They were different amounts.

XQ. 270. What did you get for that loan?

A. I got his note and stock as collateral.

XQ. 271. Didn't you get a portion of the stock outright?

A. I do not think so. If I did, I did not want it. I do not remember the details.

XQ. 272. You do not remember that?

A. No, sir; simply a collateral proposition.

XQ. 273. I read again from this letter to Mr. Lyons: "According to my check book I gave Dr. Rumley a check on May 12, 1917, for $10,000, for which he gave me as collateral 250 shares of S. S. McClure newspaper stock, one-half of which was to belong to me and the other half he was to have the privilege of buying back."

A. I guess that is right.

XQ. 274. That refreshes your recollection?

A. Yes, after the war started.

XQ. 275. Besides your interest in the Atlantic Communication Company, and part owner of the Evening Mail, what other German interests did you have here?

A. None that I recall.

XQ. 276. Now, just think.

Mr. Anderson: One moment. I object, if your Honor please. The witness has not stated that he was a part owner of the Evening Mail. He expressly said he was not a part owner of the Evening Mail.

Mr. Kresel: I will amend that, your Honor.

Mr. Anderson: And if he is going to quote his testimony, I will ask him to quote it correctly.

Mr. Kresel: All right, I will correct that.

XQ. 276. Such interest as you had at all was——

A. Collateral interest.

XQ. 277. You did not misunderstand me?

A. I did.

XQ. 278. Oh, you did misunderstand me?

A. I knew what you were getting at.

XQ. 279. I am sorry.

A. I did not misunderstand you.

XQ. 280. You were part owner of the Atlantic Communication Company, were you not?

A. I had $10,000 worth of stock that I bought in that company.

XQ. 281. Well, you had connection with the Republic Trading Corporation, did you not?

A. That was a corporation——

XQ. 282. Didn't you, yes or no?

A. Yes.

XQ. 283. You were vice-president of that?

A. I do not recall that.

XQ. 284. You had some office?

A. Probably; they were all dyestuff people.

XQ. 285. And that corporation was organized to import German goods after the outbreak of the European War?

A. Yes, sir, German dyes.

XQ. 286. You were quite an intimate of Count von Bernstorff?

A. I don't think I was intimate.

XQ. 287. Well, you breakfasted with him?

A. So did others.

XQ. 288. Well, you breakfasted with him?

A. Certainly, I had a perfect right.

XQ. 289. That is all I wanted to know. You knew Dr. Albert, did you not?

A. Yes, naturally.

XQ. 290. Dr. Albert was a privy-counsellor of the German Empire?

A. I understood so.

XQ. 291. And you know that he was over here in the United States prior to our going into the war——

A. Handling commercial affairs.

XQ. 292. ——for two or three years?

A. Handling commercial affairs.

XQ. 293. You were very intimate with him?

A. Not intimate, no. I knew him and did business with him; had to.

XQ. 294. Conferred with him?

A. Had to, to get goods.

XQ. 295. You went abroad early in 1915, do you remember?

A. I went abroad late in 1914, at the request of the State Department.

Mr. Kresel: I ask that the latter part be stricken out.

The Court: Let the whole answer be stricken out and the question repeated.

XQ. 296. You went abroad the latter part of 1914 or the early part of 1915?

A. The latter part of 1914, and came back the same year, Christmas Day.

XQ. 297. And when you went abroad you carried a letter of introduction from Dr. Albert to the German officials?

A. Yes, sir.

XQ. 298. You went into Germany, did you not?

A. Yes, sir.

XQ. 299. I want to know whether this is the letter of introduction that you got from Dr. Albert? It is dated November 16, 1914.

Mr. Anderson: Will you state what you are reading from, Mr. Kresel?

Mr. Kresel: Page 494 of the Hearings before the Committee on Finance of the United States Senate.

XQ. 299 (continuing).

"My dear Benefactors and Friends. Assembled in Hohen Hause, Wilhelmstrasse, 74:

"Perhaps by the time when you receive these lines Herr H. A. Metz, of New York, will call with a letter of introduction. I wish earnestly to request you to take good care of him and treat him very nicely. Maybe you will take him to breakfast some time or show him other favors after the American fashion, in the event that Excellenz Richter or Dr. Muller do not do it. I am afraid they will be too busy.

"At the same time I call your attention to something which you will have the kindness to bring before the proper authorities:

"In considering all the favors to which Herr Metz is entitled it must not be forgotten that he is a competitor of the other dye works. For that reason I have just cabled you that the bonds covering re-export of dyestuffs are to be deposited with me. Also in alloting ship space for return freight it must be remembered that the other chemical works are to have a word to say. I earnestly recommend that this exportation of dyestuffs be somewhat more favored than has heretofore been the case, perhaps through my own suggestion, as otherwise there is danger that America itself will take up the production. Plans are already being prepared for a high protective tariff, which will be taken up by the Congress which meets in December. As Metz is a Member of the Congress, he is the right man to fight this measure."

That is the letter of introduction?

A. No, sir; I did not carry that letter.

Mr. Anderson: Then I move to strike the letter from the record. It is a communication from Dr. Albert to the German Government and Mr. Metz did not have it.

The Witness: I never saw it.

Mr. Anderson: And he says he has never seen it. Of course it goes out of the record, I assume.

Mr. Kresel: Just a minute, please. Not quite so fast about it going out of the record.

The Court: Just a moment, Mr. Kresel. It is embodied in a question and he denies having had it. I do not see how I can strike his question out of the record.

Mr. Kresel: He said at first, your Honor——

The Court: You will pardon me a moment, Mr. Kresel. But it necessarily is without value, although I do not see how I can strike out the question.

Mr. Anderson: May I suggest this. This letter is not addressed to the witness in any way. Therefore, while I did not wish to object to it not knowing what counsel's purpose was, I respectfully suggest that the question and any answer thereto be stricken from the record because it is a communication between a German who is claimed here to be an official of the German Government and his friends, whoever they may be, at some place in Wilhelmstrasse. The witness has never seen it and had nothing to do with it. I might have written a similar letter to the English Government.

The Court: I did not know that until after the witness answered.

Mr. Anderson: Neither did I. Therefore I submit that the question should be stricken. He was asked whether he had this letter of introduction.

The Court: But Colonel Anderson, you are advancing a proposition that is entirely new to me and I will get you to give me your authorities. I do not know of any authority of a Court to strike out a question. If counsel have used the privilege of asking questions—and I assume no suggestion is thought of by you at this stage, in view of the general rule which we have laid down in this case—there is one method of redress. The Court has power under such circumstances to protect itself, but I do not understand in an equity case that a question asked by counsel is ever stricken from the record, I have never known it, have you?

Mr. Anderson: I have known it, sir, where the question itself undertook to put on the record matter which was absolutely immaterial and which is improper in the record. I have known of it being done, but of course those things are largely in the discretion of the Court.

The Court: I can not conceive of any possible harm that it can do you, that is, that the question can do you.

Mr. Anderson: I might state, if your Honor please, that in the Appellate Court, if I may refer to the Appellate Court, when we come to the argument of this case on briefs, this record is going to be a good many thousand pages. That Court will never find time to examine this record carefully, never will read it, I assume, because I do not imagine they could ever take the time and do their other duties. Matters of this kind can be referred to and pointed out on the record, and unless elaborate briefs are filed calling attention to it—and even then it is very difficult—it is extremely prejudicial in a case of this kind to inject into the record matters which have absolutely nothing to do with the case and allow them to stay on the record.

I take it that the record in this case is absolutely under your Honor's control, subject of course, to the use of judicial discretion. This letter was never shown to this witness and he was not asked whether he ever saw it, but it was read on the record. Therefore, I respectfully suggest, and submit to your Honor's judgment of course, that it be stricken from the record, and that counsel be required—I do not use the word in an unpleasant sense, but I know he will—to ask his questions without putting on the record matter of this kind without first finding out from the witness whether or not the witness has any knowledge of it, so that we can make our objection at the proper time.

THE COURT: I will be glad to hear you, Mr. Kresel.

MR. KRESEL: I have nothing to add, your Honor. I asked this witness whether he carried a letter of introduction from Dr. Albert. He said he did. Then I read him the letter and asked him whether that was the letter and he said "No." That is where the record stands.

MR. ANDERSON: I suggest that that letter should have been shown the witness and not read into the record. If it had nothing to do with the record, it should be stricken from the record.

THE COURT: Colonel Anderson, the best I can do to protect you, as I see it, without laying down one broad rule for you and a narrower rule for the defendant, is to state here that that letter as it now stands is wholly without value in this record. The method of identifying the letter was not challenged prior to its being read. What the ruling would have been then, I shall not attempt to say because that is a past event. But as it now stands, I do not see how I can strike it from the record, the method of identifying it not having been objected to at the time. You may have such exception as you desire.

MR. ANDERSON: I will ask leave to note an exception.

XQ. 300. Let me have the letter of introduction that Dr. Albert gave you?

A. I haven't got it. It was left over there in all probability, unless it is in the record here.

XQ. 301. You did go to Europe, and on the way over, did you go to England?

A. No, I went to Holland. I went via Holland.

XQ. 302. You did not go to England at all?

A. No, I took a Dutch steamer to Holland, to Rotterdam. I passed through Dover.

XQ. 303. You remember giving an interview to the Brooklyn Eagle May 6th?

A. I do not recall, unless I see it.

XQ. 304. Look at it and also at the same time look at this letter that you wrote to Dr. Albert sending him the clipping?

A. Yes, that is right, substantially correct, an interview such as reporters usually get.

XQ. 305. Of course.

A. Without a chance of looking it over. They put in what you say and what they think you ought to say.

Mr. Anderson: Are you going to offer that in evidence?

Mr. Kresel: Just a minute.

XQ. 306. This letter is dated May 9, 1916, and speaks of the clipping as being from the Brooklyn Eagle of May 6, 1916.

A. Yes; before we entered the war.

Mr. Kresel: I did not even hear what he said, your Honor, but after the word "yes," I ask that it be stricken out.

The Court: Let it be stricken out.

XQ. 307. You were not neutral in the war, were you?

A. Yes, sir; I was neutral.

Mr. Anderson: I object. This gentleman has testified that he was a citizen of the United States and born in the United States; and a citizen of the United States is a neutral. What might be his conclusions as to a mental attitude is not evidence in this case.

XQ. 308. Didn't you say that you were not neutral?

The Court: Just a minute, Mr. Kresel. This is cross-examination, Colonel Anderson. What is the test of neutrality?

Mr. Anderson: The test of legal neutrality is the status in the country, by International Law.

The Court: What is the test of individual neutrality?

Mr. Anderson: I have no idea, sir. I do not know of any such thing as individual neutrality. Neutrality is a status in International Law; and while we were enjoined to think neutrally, I suppose that would be the real test of personal neutrality. I am frank to say that I do not think that it is a test, that there are any such things as neutrals. Any man who has red blood in his veins is not a neutral on any subject. Therefore the sole meaning of a neutral in law is the status of a citizen of a country and that status is fixed by law and by the Government.

The Court: We are not concerned with that.

Mr. Anderson: Certainly not. That being the case, it is perfectly competent, if it has any relevancy here—and I can not see any relevancy in any of this examination—but if it has any relevancy here, he can ask him what he did and what he said. But as to his mental attitude, whether he thought neutrally or whether he was a neutral, that involves a question of fact and law which is a conclusion and as to which nobody can speak except a most adroit lawyer. I can not. I am frank to say I can not state what a neutral is.

The Court: I shall permit the answer under the general rule.

Mr. Anderson: May I note an exception, please.

The Court: Certainly.

XQ. 309. Did you say in this interview published in the Brooklyn Daily Eagle that "the only neutrals I know of in this country are in Greenwood Cemetery?"

Mr. Anderson: I object on the ground that the evidence of what he said in that interview, it having been published, is the paper itself, which is the best evidence; and if they are going to examine him on it, I ask that it be introduced in evidence.

The Court: I do not see how you can reach that conclusion, Colonel Anderson. I think you must have overlooked the fact that he did not write the interview, so far as I know. Now then, he had an interview which was reported, I suppose, by the persons with whom he had it. There were two persons at least present at that interview. One was the person speaking. The other was the person spoken to. He is asking the person doing the speaking as to whether he made certain statements and I do not know of any better evidence than that, unless the interview was in writing.

XQ. 310. I think you answered just before Colonel Anderson had a chance to object.

A. What was the question?

XQ. 311. I will repeat it. Did you say in this interview that "the only neutrals I know of in this country are in Greenwood Cemetery?"

A. I may have expressed such a sentiment.

XQ. 312. Did you say in the interview as follows: "That my thoughts are with Germany in this war does not blot my Americanism?"

A. I do not know as I said that. I probably felt that way.

XQ. 313. Prior to the outbreak of the European

War, is it a fact to your knowledge that Germany had a monopoly of the dyes and pharmaceuticals?

A. Yes, sir.

XQ. 314. As you expressed it before the Shortride Committee, and I assume it was true, Germany had the whole world in their hands.

A. Practically.

XQ. 315. Practically?

A. Yes.

XQ. 316. And as you again expressed it before that Committee, Germany had the world by the throat——

A. Practically.

XQ. 317. ——with referenec to dyes and pharmaceuticals?

A. That is true.

XQ. 318. And it is true is it not that manufacturers in this and other countries that were using dyes were absolutely dependent on Germany for their supplies?

A. To a large extent, yes, sir.

> Mr. Anderson: Your Honor please, I wish to make the objection, not to the line of examination, although I think it is subject to technical objection, but to the fact that this matter is entirely outside of the original examination.
>
> I wish to make the objection at this time because I gave notice in my opening statement and I wish to repeat that notice now, that I am going to object to any evidence relating to Germany's position before the War or Germany's attitude prior to our entrance into the War, on this subject, on the ground that it is utterly immaterial and irrelevant to the issues in this case; that that was not a question for either the Alien Property Custodian or this corporation to consider, but one for Congress.

I want to make that objection now both on the ground that it is not cross-examination and that it is utterly immaterial and irrelevant in the second place. I am not going to renew the objection except where it is necessary apparently to make the record clear.

The Court: Colonel Anderson, may I make one inquiry before I hear from Mr. Kresel? Does not the soundness of your contention depend upon the ultimate construction of the Act of Congress, not in the way you stated it, but in this way? If the power of seizure and sale was vested by Congress in the Alien Property Custodian, and the power to sell at private sale was authorized by the President or some officer designated by him, is not one possible construction of that Act that the power originally vested in Congress was transferred by it to the Alien Property Custodian with or without the order of the President?

Mr. Anderson: I am going to try to answer that. I am just trying to get my answer direct to your Honor's question. If your Honor should hold that Congress had the power to delegate its legislative functions and discretion to the Executive Officer of the Government, then possibly there may be some contention of that kind.

The Court: I am not going to hold that.

Mr. Anderson: But you have to cross that bridge before you get to any such possible construction.

The Court: Is there any merit in this thought —and I am not trying to confuse the matter of construction of the Act.

Mr. Anderson: I understand, sir.

The Court: I am keeping away from the construction of the act. I will consider the act ultimately but not now. May not Congress be considered to have exercised that legislative function, and not to delegate its legislative power to an Executive officer, but to have conferred upon the Executive officer or have made him the agent or the instrumentality for carrying out the provisions of the Act, by which Congress exercised its own power. I do not know whether that is sound at all or whether there is any merit in it, I can make no suggestion as to that; but without going into that, it seems to me in view of the wide scope we have given to the admission of testimony, the testimony must be admitted on any theory that may with any soundness be advanced as a possible construction of the Trading with the Enemy Act, and that we must either construe that act now or admit testimony which may be relevant under any possible construction of the act.

Mr. Anderson: Your Honor, may I just say a word in reply? I bow to your Honor's decision without the slightest hesitation, but I wanted to get your Honor's consideration on this thought. I quite agree it is not only law but a fact that counsel should have the right in a case of this character, especially, to introduce any evidence which they think tends to support any reasonable theory of their case that they can advance, to the end that that theory may be properly argument to come before the Court. I quite agree with that. But in the second place, there is a limitation, of course, upon that principle, and of course it is for your Honor to determine how far now you are going to decide that limitation should go or where you are going to place it. Therefore, in making my objection I felt I ought to state that I can see—and I will make it deliberate—no possible construction of this act which can make the action of the German citizens or Government prior to 1919 of the slightest bearing upon the questions presented by this Bill and Answer for decision. I do not say that it is not a reasonable limitation.

THE COURT: I understand.

MR. ANDERSON: But I mean to say that no possible construction of the act can give that any bearing. Because if it can be considered, it involves the question of the highest policy which is vested in Congress exclusively and as to which Congress only can legislate or act, and it can not give that power to anybody else.

I have said this that your Honor might understand my position. I quite understand what your Honor's ruling is, that this evidence will go in, but I wish to note that I am objecting to all of this examination, without renewing the objection each time and taking exception, as has been done heretofore; and I further object to this examination as not being within the scope of the direct examination.

MR. KRESEL: The latter part is the only portion on which I would like your Honor to hear me. I consider this evidence directly bears on this witness's testimony as to value. Any history that we can present to your Honor with reference to this industry and the German control here prior to the war, as to which this witness has given your Honor figures as to his profits and as to his sales, I consider to be most material upon the question of value.

THE COURT: The immediate question before me now is what?

MR. KRESEL: Your Honor has ruled, as I understand, that the witness may answer the question.

THE COURT: I have forgotten what the question is and I do not know whether I have ruled on it.

Mr. Kresel: The last question was answered.

The Court: Then as to the scope of the cross-examination, we had that question with the first witness that was produced here, Colonel Anderson, and the same questions that are now arising arose there, substantially. So that I am not prepared to hold that this line is not in cross-examination. If you can at final argument throw doubt upon its value or show to me that the witness is answering questions that are not in cross-examination and that Mr. Kresel necessarily makes him his own witness as to them, I will hear you then; but I think at the present time they are not outside the scope of the cross-examination.

XQ. 319. Before the sub-committee of the Committee on the Judiciary of the United States Senate on Senate Resolution 77, at page 744, you testified as follows:

> "Germany had a practical monopoly in the production of dyes and pharmaceuticals."

That was true, was it not?

A. Yes, sir.

XQ. 320. And at page 745 on that same occasion you testified:

> "Germany had the monopoly; there is no question about that. They had the world in their hands. That is conceded, absolutely. There is no question about that. They had the whole world in their hands."

That was true, was it not?

A. Yes, sir.

XQ. 321. And at page 894 of the same record, the same proceeding, you testified as follows:

> "Germany had the world by the throat absolutely."

That was true, was it not?

A. Yes, sir.

THE COURT: We will take a recess until 1 o'clock, Standard time.

AFTER RECESS

MR. ANDERSON: Without, I hope, appearing insistent, if your Honor please, during recess I have had an opportunity to look at this record from which a letter was read this morning purporting to have been signed by Albert, which I move to strike out in view of the fact that the record from which counsel read contained, immediately following the letter, the statement by the witness, Mr. Metz, who was before the Committee, as follows:

> "Just want to say that I never saw such a letter, and if I carried it the contents were not known to me personally. I carried dozens of letters."

In view of that fact appearing on the record in connection with a letter as introduced before the Committee, I respectfully suggest that that letter should be stricken from the record. In saying that I do not wish to impute to counsel any ulterior purpose in reading that letter. Frequently during an examination counsel do it thoughtlessly, and I did not wish to interrupt. But I do think, in view of the record accompanying the letter at the time it was brought to the attention of the Committee, that it should be stricken from the record.

MR. KRESEL: If your Honor please, I do not object to your Honor's granting the motion, in view of what Colonel Anderson has just shown.

Personally, I was not aware of the statement that Colonel Anderson now speaks of, except that I may say this: that your Honor will recall that when I asked the witness whether he had a letter of introduction from Albert, he said he had, and then I read this letter, and when he said that was not the letter, why, that settled it. So if your Honor desires to grant the motion, I raise no objection.

THE COURT: The motion is granted by consent.

XQ. 322. Mr. Metz, after the European war broke out, Germany placed an embargo upon the exportation from Germany of dyestuffs, did it not?

A. I was so informed.

XQ. 323. And not only dyestuffs, but also pharmaceuticals?

A. Everything, practically.

XQ. 324. You were instrumental, if I may put it that way, in trying to get dyestuffs from Germany for the American market?

A. Yes, sir.

XQ. 325. And in connection with that effort you wrote a letter to Mr. Tumulty, the Secretary of President Wilson, did you not?

A. Yes, sir, quite a number of letters.

MR. ANDERSON: Your Honor will understand, of course, this is subject to objection, which I made this morning, as being outside the direct examination.

THE COURT: Yes.

MR. ANDERSON: But I do not want to renew it, as I understand this is all taken under that objection, except that your Honor wanted me to call your attention to it.

THE COURT: I think so, yes. My impression at the moment, Colonel Anderson, is that this is not outside the scope of cross-examination. So I overrule your objection to this question on that ground.

Mr. Anderson: Exception.

XQ. 326. Before I direct your attention to this letter that you wrote to Mr. Tumulty I want to ask you whether before writing that letter you did not organize a committee of dye users and call with them upon Mr. Tumulty in reference to these German importations of dyestuffs?

A. I did not organize a committee.

XQ. 327. Did you call with the Committee?

A. The Committee called on me and I went with them to see Mr. Redfield and Mr. Tumulty.

Mr. Kresel: That is all I wanted to know. Colonel Anderson, I am looking now at page 268.

Mr. Anderson: Of the same book?

Mr. Kresel: No, of the Hearings before the Sub-Committee of the Committee on the Judiciary of the United States Senate.

XQ. 328. Please look at this, Mr. Metz, beginning at the bottom of page 268 and running over onto page 270, and state whether that is a copy of the letter that you sent to the President's Secretary? (Handing witness book.)

A. I assume that is a copy.

XQ. 329. May I have it, please.

A. Certainly. (Handing counsel.)

XQ. 330. This letter is dated April 8, 1915. Up to that time had you succeeded in obtaining from Germany any dyestuffs or pharmaceuticals?

A. Yes, sir.

XQ. 331. Since the outbreak of the war?

A. Yes, sir, regularly.

XQ. 332. Up to April, 1915?

A. Up to the time of the Order in council which stopped further shipments.

XQ. 333. In other words, up to April, 1915, the American market had all the dyes it wanted?

A. It had sufficient dyes.

XQ. 334. You think it had sufficient dyes?

A. I think it had. We kept them supplied.

XQ. 335. But in April, 1915, there was this shortage, was there?

A. April 1st there was an order in council stopping all the importations.

XQ. 336. And a shortage occurred?

A. It gradually became short, naturally.

XQ. 337. And it was in connection with that that you wrote this letter to the President's Secretary?

A. Yes.

XQ. 338. You say in this letter: "My dear Mr. Tumulty"——This is addressed to Honorable Joseph P. Tumulty, White House, Washington, D. C.

> "My dear Mr. Tumulty: Referring to the visit of the committee that called on you Tuesday, I am enclosing herewith, as requested, extracts from some of the letters from textile manufacturers which I showed you.
>
> "I received all told about 450 replies in answer to about 1,000 circular letters which I sent out, mainly to the cotton, wool and silk mills, calico printers, job dye houses (that is, those dyeing for mills who do not do their own dyeing), and to some extent to the paper, wall-paper, leather, paint and printing ink, and other branches."

Prior to sending that letter then, you had sent circular letters to these various industries, had you?

A. I wrote to the industries inquiring of their needs.

XQ. 339. "I received approximately 270 replies giving definitely the number of employees in each mill which would be directly affected; a further 160 did not specify the number that would be out of work, but said they would be compelled to shut down within 30 to 60 days and discontinue operation." That is true?

A. Yes, sir.

XQ. 340. "Those who gave the number totaled 260,000 employees. Assuming the other 150 to employ the same number of people, this would give an aggregate of approximately 400,000 people directly affected in those mills that replied."

A. Yes, sir.

XQ. 341. "As there are probably 1,500 to 2,000 plants of the kind to which I wrote in the various industries throughout the United States, it is easy to assume that probably 2,000,000 operatives will be affected directly, without considering at all those occupations or trades to which the output of the factories goes, and for which it is really the raw material. In other words, the cutters, garment makers, etc., and the jobbers, wholesalers, and retailers who handle the product all along the line until it finally reaches the ultimate consumer. Then, furthermore, we must consider that when the cotton mill shuts down it is no longer using cotton, nor the woolen mill or carpet mill using wool. Their supplies of machinery, machinery oil, coal, belting, and the thousand and one other items that enter into manufacturing must also suffer in proportion."

Now, when you wrote as I have just read and you speak of "suffering in proportion," do you mean suffering because of the lack of dyestuffs?

A. Certainly.

XQ. 342. That is what you meant?

A. Certainly.

XQ. 343. Now I skip a paragraph, Colonel, because I do not want to take any more time than is necessary, and I read as follows from this same letter:

> "After leaving you I had a talk with Mr. Secretary Redfield,"

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Mr. Secretary Redfield was the Secretary of Commerce at that time?

Mr. Anderson: That is agreed.

XQ. 343 (continued). —"who seems imbued with the idea that we are going to take up manufacturing in this country and has been 'assured' by some people that they can do these things. I have no desire to reflect at all on Mr. Redfield's judgment, but these optimistic reports about what we are going to do here in regard to dyestuffs have caused enormous damage already. There have been practically no dyestuffs made in this country heretofore, excepting from raw materials or intermediate products imported from Germany." Was that true?

A. That is true.

XQ. 344. "The basic raw material we have we have always had here, and after July 1 will have enough for all possible contingencies, viz., the benzol obtained from coke ovens. The next step is to treat the benzol with nitric acid, making nitro-benzol, which can also be done here, and that in turn yields the next step, aniline oil. Aniline oil is used for dyeing black and also for making certain very primitive and very fugitve colors in connecton with beta-naphthol and other intermediate products previously imported and which a number of people are 'going to make'."

And you put quotations around the words "going to make."

"But so far nobody has made except in a very crude form at one plant, and for its use only."

That stated the facts as they existed at that time?

A. Yes, sir, entirely.

XQ. 345. As a matter of fact, you go on to say in this letter: "There are only three manufacturers of beta-naphthol in the entire world, all in Germany." That was true?

A. Yes, sir, to the best of my knowledge that was true.

XQ. 346. "The product heretofore used here, a refined, pure product containing no admixtures of other compounds, sold at about nine cents per pound including five per cent duty before the war. None has been imported since; in fact, no raw material or intermediate products, excepting in very limited amounts for specific purposes, have been allowed to leave Germany, probably for the reason that Germany did not desire to encourage manufacturing of colors to her own detriment." And that was true?

A. Certainly.

XQ. 347. I skip the next two or three paragraphs and I turn over to the next page, Colonel. You say as follows:

> "The plant I am interested in abroad cost about $50,000,000 to erect and is capitalized now for only $12,000,000."

I want to stop there. What plant is it that you are speaking of in that letter?

A. The Hoechst plant which I was agent for, whose products I imported.

XQ. 348. "It employs about 8,500 people. There are two other plants of the same size, with a half-dozen smaller ones. It is fair to figure, therefore, that there are invested in the coal tar color and pharmaceutical plants in Germany three or four hundred million dollars, and probably 25,000 people are employed in all of the plants I refer to. But these plants supply the whole world with these products directly or indirectly."

Those statements were true?

A. Practically true; cover the situation.

XQ. 349. In the next paragraph you say as follows:

> "It took the Germans 50 years to get to this point, and it will take us 20 years, with an exorbitant protective tariff, and then we would still be floundering, because it is more a matter of engineering and practice than it is of chemistry."

That was true?

A. I still maintain that opinion.

XQ. 350. You go on and say:

> "It may be well to establish an industry, but while we are doing it what is going to become of the people working in the mills, which will simply be forced to shut down, because the German products are not available and can not be substituted?"

That is what was bothering you, is it not?

A. It was bothering me for the sake of my business, yes, sir.

XQ. 351. You go on and say:

> "I know they are 'discovering' things"——

And again you put the word "discovering" in quotation marks.

A. Yes, sir.

XQ. 352.

> ——"in the newspapers every day, but the people who do it have no conception of the quantities involved or what the requirements of this country are. It is safe to say that 3,000 tons a month of various colors, which is practically what we have been getting from Germany since the war started, and which has kept us going fairly well, would not be two-thirds enough to keep us running if our mills were busy and we were running full."

That was a fair estimate, was it?

A. That is right.

XQ. 353. Now then, the fact is, is it not, that the same plants that were producing dyestuffs also produced pharmaceuticals?

A. Yes, sir. Some of them produced pharmaceuticals.

XQ. 354. Well, you say in this letter to the President's Secretary as follows:

> "I am not touching on medicines at all. Of most of these products we import there are probably three or four months' supplies here."

In other words, at the time you were writing there were three or four months' supplies of medicines here, medicines such as could be gotten only in Germany; is that right?

A. Shows that I was interested.

XQ. 355. Yes, that is what I am talking about.

A. Yes, sir.

XQ. 355-A. And then you say:

> "But the same plants that are making dyestuffs and chemicals are the ones that are making most of the synthetic and highly organic products, which have practically replaced most of the old things in medicine. We can go back and do the same as we did before they were invented, but it is not hard to see what that means. Undoubtedly some steps should be taken later on to make us a little more independent in some matters, through legislation or otherwise, but those things are for the future."

Mr. Anderson: Have you finished?

Mr. Kresel: I have finished as much of it as I care to read.

Mr. Anderson: If your Honor please, to save interruption of counsel, I would like to object specifically to the matter read from this letter, and to the questions and answers with respect thereto, on the ground that it is immaterial and irrelevant; on the grounds stated in my opening statement, and which need not be repeated; and on the further ground it is not within the direct examination and does not relate thereto. And I would suggest, if agreeable to counsel, that that objection be considered as applying to each specific question and answer thereto, and that, if overruled, an exception taken; provided your Honor should so decide. That would save me the necessity of interrupting.

Mr. Kresel: I have no objection to that at all.

Mr. Anderson: That is agreed.

The Court: I think Mr. Kresel has not yet gone beyond the bounds of cross examination.

Mr. Anderson: I just want to get my record straight.

The Court: I understand that your exception will be general, and that you may avail yourself of that at any time during this case, and you can make specific objection to any question that Mr. Kresel brings out.

XQ. 355-A (continued). At the time of the outbreak of the European War, were there any factories in the United States producing dyestuffs or colors?

A. Yes, sir.

XQ. 356. How many were there?

A. About half a dozen.

XQ. 357. Were there not only four?

A. Well, there were four larger ones?

XQ. 358. What were they?

A. The Schoelkopf plant in Buffalo, Heller & Merz in Newark, the Bayer plant in Albany.

XQ. 359. Yes?

A. My plant.

XQ. 360. When did that start?

A. That started back in '2 or '3 or even before that.

XQ. 361. When did the Central start?

A. That is quite a number of years back. It must have been twenty years before that.

XQ. 362. Before the war?

A. Yes.

XQ. 363. Were any of these factories that you have just mentioned manufacturing from intermediates that came from any other place than Germany?

A. Germany and England. Mostly Germany.

XQ. 364. All imported?

A. All imported.

XQ. 365. In other words, as you said as I have it here, before the Shortridge Committee, these four or six plants were what you would call assembling plants?

A. They were more than that because they imported much of their intermediates.

XQ. 366. Didn't you say they were assembling plants?

A. Well, practically, if you call it that.

XQ. 367. The Germans to your knowledge were seeking before the war to prevent any manufacturing of dyestuffs in this country; is that not right?

A. One of the German plants had a plant here.

XQ. 368. Will you answer my question?

Mr. Anderson: I will have to add to my general objection that the question here not only asks for a conclusion, but, of course, is entirely outside of what I went into. It asks the conclusion of the witness as to preventing something being done. Under your Honor's ruling and subject to the objections which I have indicated we recognize that the counsel can ask the witness as to any facts he knows as to what was done, but as to the purpose and intent thereof, they must be drawn by the Court from the facts so proved. Therefore, I think the examination is improper on that ground in addition to the general objection stated.

Mr. Kresel: Upon cross-examination, your

Honor, it seems to me in view of the manner in which the Government has been permitted to put in its case on the direct, that I should be permitted to put to this witness the question that I just put to him.

The Court: I think it goes to value on cross-examination. If it is admissible at all it is particularly admissible here by reason of the relation of this witness to the German industry which he has disclosed.

Mr. Anderson: I have no objection other than the general objection before stated. I am not renewing that objection because that is understood to apply to all this line of examination. The objection here was to the form of the inquiry which called for a conclusion of the witness and his judgment as to what the legal effect of a thing was.

The Court: This is cross-examination and that is given a very broad scope. You may take the answer.

Mr. Kresel: I think that question was answered, so I shall proceed to the next.

XQ. 369. Not only is it a fact that the Germans tried to keep anybody from manufacturing dyestuffs and pharmaceuticals here in the United States, but is it not a fact that they wrote to you and protested against your manufacturing here?

A. Yes, sir.

XQ. 370. I read to you a letter from page 668 of the Hearings before the Committee on Ways and Means, from Mr. Blank to the Farbwerke-Hoechst Company of Germany, dated August 5, 1915. I am going to ask you whether you received this letter. Suppose you look at it before I read it?

A. It is like a copy of one I received.

XQ. 371. Who is Mr. Blank?

A. Mr. Blank was a director of the Farbwerke-Hoechst.

XQ. 372. This letter is dated August 5, 1915, marked "confidential," and reads as follows:

"Dear Mr. Metz:

"Your friendly letter of the 14th ultimo received and I send my best thanks for your esteemed communication. I am still awaiting the receipt of the revised accounts sent by Mr. Spielhagen."

I want to stop there a minute. Have you a copy of your esteemed letter of the 14th that he is talking about here?

A. Not now; not with me.

XQ. 373. "Regarding the Bethlehem Coal and Iron Company and the Deutsche Bank, I have heard nothing, and I can hardly believe that under existing conditions the Deutsche Bank would support any such undertaking to the detriment of the German dyestuff industry.

"That Bayer is in back of it"—

Bayer refers to the Bayer Company, does it not?

A. The Farbenfabriken of Leverkusen, formerly Frederick Bayer & Company.

XQ. 373. (continuing) "That Bayer is in back of it, I believe even less, for I know from only recent reports that no German dye factory even considers during the present shortage of chemicals to manufacture anything new over there."

"Over there" refers to the United States, does it not?

A. Yes, sir.

XQ. 374. "Bayer would certainly not undertake, as far as one can see, to take up something new when the few articles (blue, Vesuvin, Bismark, brown, fuchsin) have already been delivered by them over there."

"We lay great stress upon the fact that you personally will not participate in any manufacturing enterprise.

"The present condition can not last much longer. If our successful movement in Russia continues in the same ratio as during the last week, the Russians will finally get war weary and they will then be compelled to sue for a separate peace which would quickly change the situation.

"As soon as normal conditions return, those who took advantage of the present abnormal and uncertain conditions to build up new enterprises will later have to suffer heavily."

You got that letter, did you not?

A. Yes.

XQ. 375. I show you another letter from Mr. Blank dated September 28, 1915, and ask you if you received that; and while you are looking at it, please look at the one following that, because I would like to to know, also, whether you received that?

A. Yes, both of them.

XQ. 376. I am now reading from page 668 of this same volume. This letter is dated September 28, 1915, Hochst on the Main, addressed to Mr. H. A. Metz, New york:

"Dear Mr. Metz:

"From competitive circles we received the information that despite the fact that you have no dyestuff factory and are therefore not compelled to further the interests of your dyestuffs customers by manufacturing some new product, you have begun the manufacture of tar products in a factory of Prochaska.

"We refer to our previous correspondence, and beg you to inform us over here what and where you have, in your name or with your support, begun manufacturing.

"Unfortunately, it appears to be true that Bayer's representatives over there is viewed by all the factories as being, under the stress of cirdent Wilson under date of November 7, 1914, which is reproduced at page 775 of these Hearings before the Sub-Committee of the Committee on the Judiciary of the Senate beginning there (indicating). Please glance over it?

A. That is right. That looks like a copy.

XQ. 392. In this letter—I shall read only portions thereof—you say to the President of the United States:

> "The manufacturers of the United States as well as those of every other country in the world are practically dependent upon the German manufacturers for their supplies of dyestuffs and chemicals."

A. Yes, sir.

XQ. 393. When you spoke of the manufacturers, did you include among those the textile industry?

A. Yes, sir.

XQ. 394. The cotton industry?

A. All consumers.

XQ. 395. I am trying to have you enumerate them. That is what I am after. The textile industry?

A. Yes, sir.

XQ. 396. The cotton industry?

A. Yes, sir.

XQ. 397. The wool industry?

A. Yes, sir.

XQ. 398. The silk mills?

A. Yes, sir.

XQ. 399. The calico printers?

A. Yes, sir.

XQ. 400. The leather manufacturers?

A. Yes, sir.

XQ. 401. Paper manufacturers?

A. Yes, sir.

XQ. 402. Wall paper?

A. Yes, sir.

XQ. 403. Paint?

A. Yes, sir.

XQ. 404. Ink?

A. Ink.

XQ. 405. Any other that I have omitted?

A. Some food products; every one that used color was interested.

XQ. 405-a. You say in this letter to the President:

> "At the outbreak of the war, Germany placed an embargo upon the exportation of all products of this kind. The supply in the hands of importers in the United States was about sufficient to run our mills from six weeks to two months."

That was the fact?

A. Substantially correct.

XQ. 406. You say that after allowing two or three small shipments to come through a new embargo was declared by the German Government, which insisted first that vessels flying the American flag must be provided to transport these goods and, second, that a guarantee must be provided by the United States that no goods would be exported to any country with which Germany was at war?

A. Yes, sir.

XQ. 407. That was true?

A. That was true.

XQ. 408. In connection with your efforts to get importations of dyestuffs from Germany during this critical period you not only wrote to the President and to his private secretary, but you also wrote to the Secretary of State Mr. Bryan at that time, did you not?

A. Yes, sir.

XQ. 409. And on the other side you were in communication with Mr. von Bernstorff?

A. Through the State Department and for the State Department.

XQ. 410. You were in communication with Mr. von Bernstorff?

A. Yes, sir.

XQ. 411. Who was the Ambassador of Germany to the United States at that time?

A. Yes, sir.

XQ. 412. Without going into great detail about it, is this what you accomplished: You arranged with von Bernstorff that Germany would allow two shipments by two vessels, one named the Matanzas and the other named the Sun, shipments of dyestuffs to come through, provided the persons to whom the shipment was to be distributed in the United States would give a bond that they would not export what was given to them and that the United States would guarantee them?

A. That request came from the State Department.

XQ. 413. I did not ask you where it came from.

A. I could not make the arrangements myself without the State Department.

XQ. 414. I asked you if that was the result of your efforts?

A. I can not say of my efforts. The State Department's efforts. I became the medium for the State Department.

XQ. 415. I tried to shorten this, Mr. Metz, but if you will insist on that I will read to you the documents.

A. Well, go ahead; I can not answer yes or no to that.

XQ. 416. Very well, I will take it up in another way. I read to you from this letter to the President, at page 776. Listen to this: "After consultation with the Acting Secretary of State and the Solicitor of the State Department"—this is what you are writing to the President.

A. Yes, sir.

XQ. 417. "And with their approval, I placed the matter before Count von Bernstorff, the German Am-basador, whereupon he telegraphed to his Government that there was no basis under our law permitting the United States Government to give or enforce such a guaranty; but that it would obtain, through me, from all importers a written guaranty that they would use every legal means to prevent exportation and a statement that they would agree to furnish any bond that the Government might prescribe." Now, that was the fact?

A. Those are the facts exactly.

XQ. 418. You say that in reply to this telegram Count von Bernstorff received official information from Berlin. How do you know that?

A. He told me.

XQ. 419. "That the German Government considered the guarantees to be filed with the State Department through me to be satisfactory, but nevertheless deemed it necessary to require a bond, and that such a bond should be given to me personally." Was that so?

A. Yes, sir; the letter is in the record stating that.

XQ. 420. In other words, Count von Bernstorff told you that his Government required as a condition of allowing dyestuffs to come through that a bond be delivered to you?

A. Yes, against re-exportation.

XQ. 421. Now, Mr. Metz.

A. I beg your pardon.

XQ. 422. Please. You have been very good, now please continue.

A. I will try to stay so.

XQ. 423. Were bonds subsequently delivered to you?

A. Yes, sir.

XQ. 424. And you held them for the German Government?

A. I held them against re-exportation, as directed by the Department of State.

XQ. 425. You held them for the German Government?

A. I held them for the importers—that they would not export.

THE COURT: Strike out the answer, Mr. Stenographer.

XQ. 426. Mr. Metz, did you not hold these bonds for the German Government?

A. I did not so consider myself. I considered I was doing it for the interests here.

XQ. 427. I read to you from page 746 of this record.

MR. ANDERSON: The same record?

MR. KRESEL: Yes.

XQ. 427. (continued) Perhaps this will refresh your recollection: "Mr. Metz. They would give a bond that they would not export these goods; that is, the people who receive these goods or these dyes from abroad, they could not export them.

"THE CHAIRMAN: Just a moment there: I want to follow that. Dyes imported or shipped to you?

"MR. METZ: No, no; not to me.

"THE CHAIRMAN: To whom?

"MR. METZ: To the consignees, who received these dyes from abroad.

"THE CHAIRMAN: Binding them to you—

"MR. METZ (interposing): The Government could not take the bond. I was to hold the bond for the German Government."

Did you testify that way?

A. I testified that way, yes.

XQ. 428. Was it true?

A. Certainly it is true.

XQ. 429. Then why did you fence with me a little while ago when I asked you a dozen times whether you hold them for the German Government?

A. Why didn't you ask the full question, Mr. Kresel?

XQ. 430. Do you mean that you will testify here only what I can read to you from books?

A. I will testify to facts as they exist.

XQ. 431. Well, you did take the bonds, did you not?

A. Yes, sir.

XQ. 432. And after you got through those two shipments Germany shut down again, did she not?

A. No, sir; she did not shut down.

XQ. 433. How many shipments did you get through?

A. I got no more. I was not interested further; but they came through, half a dozen more came.

XQ. 434. After those two shipments is it not a fact that no more dyes or pharmaceuticals came in from Germany until the submarine Deutschland got here?

A. No, sir; it is not true.

XQ. 435. How many more shipments came in?

A. There were two more on the Matanzas and two or three boats, I think, until April 30th, when the order in council went into effect, and some arrived after that

XQ. 436. What year was that?

A. 1915, when the British order in council went into effect.

XQ. 437. Between April 30, 1915, and the time when the submarine Deutschland got here did any dyes or pharmaceuticals come here from Germany?

A. Not to my knowledge.

XQ. 438. When did the Deutschland come?

A. I guess it was in—1916, was it?

XQ. 439. July, 1916?

A. On the first trip. She made two trips.

XQ. 440. The next one was in November, 1916?

A. I think that is in the record.

XQ. 441. You were one of the consignees of the lyes that came on the Deutschland, were you not?

A. Yes, sir.

XQ. 442. Were you not the one that was placed in harge by the Germans of distributing their dyes that ame on the Deutschland?

A. I was not.

XQ. 443. Who was?

A. I don't know as anyone was. I think Mr. Alert had charge of it.

XQ. 444. Doctor Albert?

A. I think so, yes.

XQ. 445. Is this letter that I have been reading rom, your letter to the President, the only letter that ou wrote him in connection with this dyestuff imporation?

A. I do not recall it. It is in the record. There ere others, I presume.

XQ. 446. Don't you remember writing another leter to him?

A. Yes.

XQ. 447. You were quite interested in this situaon, were you not?

A. Naturally.

XQ. 448. You went to the trouble of having rinted your correspondence with the President, the ecretary of State and the other officials about this atter?

A. For the use of the consumers; yes, sir.

XQ. 449. And you distributed it among consums?

A. Yes, sir.

XQ. 450. Look at this photostat of one of your amphlets and state whether that is a copy of another tter that you wrote to the President (handing witss)?

A. I assume so, yes, sir.

XQ. 451. What?

A. I assume so.

XQ. 452. I want to read this letter to you. It is dated June 16, 1915. As I get your testimony, it is that after April, 1915, and up to July, 1916, no dyes came from Germany?

A. July, 1916?

XQ. 453. Between April, 1915, and July, 1916?

A. Not until the submarine got here.

XQ. 454. On June 16th, 1915, you wrote to the President of the United States as follows:

"Hon. Woodrow Wilson, White House, Washington, D. C.

"My dear Mr. President: I know that you are conversant with the serious situation that confronts the textile and other industries of this country through the failure to continue the receipt of dyestuffs and chemicals."

May I stop there a minute to inquire what your interest was in this thing. Was it that you were missing the revenue that you had been obtaining from selling these goods?

A. I was in the dyestuff business. Naturally, I wanted to take care of my customers.

XQ. 455. That is all I wanted to know.

A. And I was a consumer.

XQ. 456. "Efforts are being made to have the recent 'Order in Council,' allowing two shipments to pass, modified somewhat so that shipments will be allowed through on a basis that Germany will agree to."

Were you speaking for Germany?

A. No, I knew the facts.

XQ. 457. You had no relation to Germany whatsoever?

A. None whatever. No interest.

XQ. 458. Your communications with Count von Bernstorff you could consider simply friendly intercourses?

A. For the purpose of getting dyestuffs to this country.

XQ. 459. Yes.

A. Absolutely, and no other reason.

XQ. 460. In this connection you go on to say to the President of the United States: "An extract from a letter received from Justizrath Dr. Adolph Haeuser, president of the 'Verein zur Waehrung der Interessen der Chemischen Industrie Deutschlands' in Berlin"—which I will translate in a minute—"and which is composed of all the dyestuff and chemical manufacturers in the German Empire, dated May 26th, will probably interest you." Before I read the quotation which you have here of this letter from Dr. Haeuser, I want to know where that letter is.

A. I gave it to the representative of the Alien Property Custodian who examined my books in my office, I assume. If it was there he got it.

XQ. 461. Where is it now?

A. I don't know. I did not get half of the stuff back.

XQ. 462. You got some back, did you not?

A. Some of it I got back, yes.

XQ. 463. Did you get that back?

A. That I do not know. That is where they got it, though.

XQ. 463-A. Will you look among your papers and produce here next Monday morning this letter of Dr. Haeuser a quotation of which you are sending to the President of the United States?

A. I do not think I can find it, because I got most of the stuff here now, and that was not amongst them. That was eight years ago.

XQ. 464. This is what you say Dr. Haeuser wrote to you: "I note that you have carried out your plan to organize 'an American Dyestuff Consumers' Association.' We here are gladly ready to send dyestuffs to America, but we rest on the standpoint that we can not accept this as a favor or gracious act on the part of England, but that we can only send dyestuffs when England recognizes the right of America to receive goods from us, and you send us cotton in exchange for such dyestuffs. This is also the standpoint of our Government.

"Any other standpoint would be unworthy of America or Germany. We are, of course, somewhat accustomed to seeing the American Government look at situations through two pairs of spectacles according to whether Germany or England is concerned in the question."

May I stop here a minute. Were those your sentiments?

A. Yes, and I think it was quite true. The general sentiments.

XQ. 465. "England might simply deny American suggestions off-hand and the American people yield with astonishing submission, although the entire carrying on of the war on the part of England and her allies depends entirely upon the good will of America. When Germany, however, does anything towards using her own good rights, the act is decried in America. I hope America will succeed in forcing England to stop interfering with commerce between Germany and America, and if so, you will find us only too glad to give you all the dyestuffs that you need."

That is what Haeuser wrote to you?

A. Yes, sir.

XQ. 466. And that is what you transmitted to the President of the United States?

A. Yes, sir

XQ. 467. In other words, you transmitted to the

President of the United States a statement by Haeuser who says that was also the sentiment of the German Government, that only if America would compel England to lift her blockade, could America get dyestuffs or pharmaceuticals from Germany?

A. He did not say that. He said if we gave them cotton, they would give us dyestuffs.

XQ. 468. I will read you again:

> "I hope America will succeed in forcing England to stop interfering with commerce between Germany and America."

A. Yes, sir.

XQ. 469. "And if so, you will find us only too glad to give you all the dyestuffs that you need."

Then you go on, writing to the President:

"I submit this was the situation as it is developed by Dr. Haeuser, who at the present represents officially the entire chemical industry as President of the Berlin organization. This simply indicates that they have available goods in Germany which we need here and which we can get if Germany is assured that the goods will not be taken back by England and that she will get cotton in return. I submit this extract to you for what it is worth, knowing that you appreciate the situation, and assuring you that so far as I am concerned I fully appreciate the delicacy of the situation that confronts us."

A. Exactly so, and I discussed it personally with the President.

XQ. 470. Now, Mr. Metz, you testified before the Senate Committee, page 298:

Mr. Anderson: Which volume is that?

Mr. Kresel: That is the Committee on Finance.

XQ. 470. (continued) "The Germans took out patents here for everything. They took advantage of our patent laws, which gave them a right to patent anything here, and we could do the same thing in Germany. Now, if the patent laws were at fault, you can not blame them for taking advantage of them. They patented everything in sight, which was perfectly right, so as to protect themselves. The patent laws gave them that advantage, and they said, 'Why should we build plants in America? We are all scattered now and America does not use ten per cent of our output.' "

Did you so testify?

A. That is the substance of what I had in mind, whether I testified or not.

Mr. Anderson: One minute. As this is apparently a new subject, I wish to renew the objection which I made at an earlier stage. Both the general objection of immateriality, irrelevancy and incompetency of this evidence, and that it is outside of any matter in the direct examination.

The Court: Will you tell me, please Colonel Anderson, just what, in your theory, is the limit to the testing of the credibility and the interest and possible bias of the witness?

Mr. Anderson: I think it is extremely difficult to lay down any rule on that question. That is a matter in which the discretion of the Court is necessarily broad. But I do not think that it is quite competent to show the relationship of the witness to any of the matters referred to in the testimony. That is not quite competent. But if a question of this kind, and I think the examination which has preceded it, had any relevancy here whatever, I should not object in the slightest. My chief objection is that I do not think we can fight the war over in this case. That has been settled on the field of battle. And the question just asked as to the fact that the Germans took out patents, what the Germans did in 1915 or before the war, certainly can not be relevant and can not have any possible bearing upon the decision of this case, or indeed, the testimony of this witness on direct examination, which went purely to the question of values.

THE COURT: Succinctly, what do you say is the specific objection to this inquiry taking into consideration that there are two fields that Mr. Kresel has a right to go into fully, namely, credibility, and the substance of his testimony, namely, values. May this not apply to either? If not, why not?

MR. ANDERSON: On the question of credibility you can show that a witness has made conflicting statements with those which he now makes. You can show any matter which tends to show mental prejudice against any factor in the case.

As I have said, the question of credibility is a very broad one, and I would not undertake to lay down, and I do not know of any authority that does lay down, any hard and fast rule on that subject. Every case must be decided by itself by the Court in the exercise of a sound judicial discretion.

I recognize that your Honor has a very broad discretion in allowing examination of this kind. I do not wish to interrupt it. I recognize that counsel should be given in this case rather unusually broad scope, on account of the character of the case. But I can not (it may be my own mental deficiency)—but I can not see the possible relationship to the issues in this case of the acts of the Germans in the effort either to gain an international advantage, in war or otherwise, before the war, when it has been fought out, or the fact that they did or did not import dyes, or any of the issues which were settled by this war.

In so far as they effect the credibility of this witness, if any connection between the two things can be pointed out, I recognize that your Honor's discretion will apply there. The only thing I can say under those circumstances when it seems to me to be not only absolutely immaterial and irrelevant upon any possible issue in the case, but also without any relevancy to the question of credibility or interest of this witness, that having been disclosed, is that it is not legitimate evidence

Therefore, I merely want to renew my objection, a new subject having been taken up, so that the record may be complete. Of course, I shall not attempt to argue against a ruling.

Mr. Kresel: If your Honor please,—

The Court: I was going to ask you if you would be good enough to state to me, Mr. Kresel, upon what issues the facts intended to be elicited by your question bear.

Mr. Kresel: As your Honor will see, the particular question to which objection has now been made refers to German patents. In other words, this question considers the very patents that are in issue here, as to which this witness undertook to give testimony. Furthermore, the passage that I have quoted here shows that the Germans did not work their patents here in the United States, and the reasons why the Germans did not do it, is given.

Now, upon the question of value, it is certainly material to show that the patents were not worked here, and not having been worked here, there was not the information necessary to make them valuable. This is of the utmost importance upon the question of value.

But quite aside from that, your Honor, I am glad of the opportunity that Colonel Anderson has given me, with a challenge that I am seeking here to re-fight the war. I am not. My examination of this witness is directed solely to showing his interest, to showing his German connection, to showing that he is the one behind this litigation—as I shall show.

When I said in my opening that there was an invisible plaintiff here, he is no longer invisible, sir. And when the Government comes here and asks your Honor to upset the solemn act of the President of the United States, upon the testimony of a witness like that, can we be estopped from showing to the Court every German act and every German connection that this man has? to show that he is today the representative of the Germans? to show that he is here; so that if your Honor should enter a decree that these patents should go back to the Germans, am I to be estopped from showing that within a year he has been in consultation with the Germans, telling them that he will get these patents back, and discussing with them what should become of them?

Mr. Anderson: Are you through?

Mr. Kresel: Yes.

Mr. Anderson: If your Honor please, I think counsel has gotten abnormally excited—

Mr. Kresel: Abnormally what?

Mr. Anderson: —upon the question. If he had asked a question which had any relation whatever to showing the things which he has suggested, outside of the pre-war association, I should not have objected, except for this reason:

I shall object here in the Court in the performance of my duties as I object now to the suggestion of counsel. I read to your Honor at the opening of this case a direction by the President of the United States to bring this suit, and it is brought by the Attorney-General of the United States, its highest law officer, in the name of the Government of the United States. I first deny in the most emphatic terms that I can put upon the record, that there is an invisible plaintiff in this case, or any other kind of plaintiff, except the Government of the United States—and I am not sure that in making that statement, I am not, to some extent, adding a certain quality of dignity to an attack upon the good faith of the President and Government of the United States which I should not give.

Now, I deny every statement with respect to any relationship of this witness to the bringing of this suit.

THE COURT: May I, Colonel Anderson, make this inquiry?

MR. ANDERSON: Yes, sir.

THE COURT: I take it that there is no suggestion or intimation on the part of Mr. Kresel towards questioning the bonafides of the act of the President of the United States. If so, and it is discovered, I will take care of that situation.

MR. ANDERSON: I feel sure that is true, but—

THE COURT: But I fail to see just the basis for your apparent criticism of the act, because, as I understand your position, you are here to challenge the acts of the President of the United States on the ground, not that he was acting in bonafides—

MR. ANDERSON: Certainly not.

THE COURT: —but on the ground that he was misinformed, and that he acted without sufficient information, or under misinformation or erroneous information. Do I state your position correctly, Colonel Anderson?

Mr. Anderson: I think substantially you state the position; that is, part of it.

The Court: Then as I understand Mr. Kresel, his argument is to the effect that one President of the United States has possibly acted in the same manner in which you charge another President of the United States acted. Am I correct, Mr. Kresel?

Mr. Kresel: Yes, your Honor. I want to say here, because—

Mr. Anderson: Allow me your, Honor—This is quite a delicate matter and I do not want to take up the time—

Mr. Kresel: May I answer the Court's question, Colonel, and then you shall be heard?

Mr. Anderson: Certainly.

Mr. Kresel: I do not want to be understood as in the slightest degree either directly or indirectly reflecting upon the good faith or the proper motives of the President, the Attorney General, or any of the gentlemen here concerned, who are trying this case.

But I do say—and I say we shall prove it—that this litigation was instigated by this witness and those whom he represents, and that such representations were made to the Government as to have led the Government to take this step which it has taken. In that respect, as your Honor has very well pointed out, the situation is no different from what the Government claims was the situation when President Wilson confirmed the act which they are now here attacking, or when the Alien Property Custodian conveyed the properties, which conveyance they are now here attacking.

I do not want to be understood as in any way reflecting upon the Government. I made that statement at the outset of the case. I recall upon the first occasion when we appeared before your Honor, when Dr. Holderman was being examined here, the Government counsel thought that there was claim being made that this action was not being prosecuted in good faith by the Government, and we disclaimed any such claim. But we do say that we have a right to show, as we shall show, who it is that is responsible for getting the Government to bring this suit, and what their motives are—not what the Government's motives are.

Mr. Anderson: Now, may I reply, if your Honor please?

I regard this matter as one of great delicacy.

If it were regarding myself as member of this Bar, I should not take up your Honor's time to make any statement at all. But in view of the fact that it is in regard to the actions of two Presidents of the United States and of the high officers of the Government, I think it is proper —and I may be mistaken, but I deem it almost essential—that I should make a brief statement in reply to what counsel has said, if your Honor will indulge me.

I am very glad to have the statement of counsel that he does not for a moment question either the purpose or the good faith of the Government of the United States at any stage, or of the President or Attorney General. So far as the counsel in this case are concerned, they are obeying the orders of their superiors and conducting the case in accordance with those instructions.

But, in the first place, the question asked had absolutely no relation to the subject under discussion here. It was brought in by counsel, and the very able counsel for the defendant here, with his ability in the choice and use of language, certainly was most unfortunate in the choice of such language if he did not intend his former statement to this Court, made with some excitement, to be a reflection upon the motives and purposes of the Government.

The Court: Colonel Anderson, I shall not let you proceed on that theory or on that discussion, because that has been developed by counsel openly and fully, and that is a closed matter.

Mr. Anderson: Certainly, I recognize that; but I am explaining why I brought the challenge.

I accept his statement fully on behalf of the Government; but I want to say, in the first place, that we are attacking here the legality of an act. We are attacking it with a respect for the hight officers concerned in that act, which, if I have not made clear, I desire to make clear.

But the right to attack the legality of an act is not only a right, but a duty of the Government of the United States, representing all the people, no matter how high the officer is, in the Courts, in an orderly and in a proper way. On the other hand, the legality of the act of bringing this suit can not be asailed except on one ground of improper motive.

The Court: There is no question about that, Colonel Anderson.

Mr. Anderson: Therefore, what possible relation can that have to the bringing of this suit, except by that method? It can not affect the issues in this case. It can not affect the legality, except in the effort to prove what counsel have already stated that there was an invisible plaintiff. Therefore, the position of the Government here in raising a strictly legal question—an absolutely legal question—as to an act of the officers of the Government, and on legal grounds, declaring that confidence in good faith and motive at the ver out set and throughout this Bill, carefully drawn with that end in view, is one thing; but an attack on the legality of the President's action in directing this suit, or that of any one else, is another thing and, therefore, it can have no bearing upon this issue.

The Court: The testimony is not offered on that ground, and the only reason for the discussion of that point, Colonel Anderson, as I understand it, was your remark challenging the propriety of any person questioning the act of the President when directing the bringing of this suit; and that involved, it seemed to me, an understanding on my part of just what was being discussed by counsel for the respective sides, and I asked you each if I stated correctly your views, approximately, and you said yes.

Mr. Anderson: I said, as far as you went.

The Court: Yes. Now then, we have come back to a legal basis, if I understand you, and that is a closed transaction—a closed incident.

Mr. Anderson: Certainly.

The Court: Now we are back to the question, are we not? Let us have the question read.

(XQ. 470 repeated as above recorded.)

The Court: I think, Colonel Anderson that the limitation of discretion is exceedingly broad in cross-examination with respect to the prior activities and views of the witness pertaining to the chemical or dye industry in any way, because we cannot stop with one factor or factors and get a clear and comprehensive idea of the witness's mental attitude towards the matters with respect to which he is testifying. He has placed values upon the patents and trademarks. What the value really is, I should assume, in the absence of information to the contrary, depends in large measure upon the situation and condition and status of the chemical science and the dye science of this country at the time of the sale in 1919. So that I take it that this question is not without its bearing or relevancy to both of those reasons for inquiry. I therefore overrule your objection and note for you an exception.

Mr. Anderson: All right, sir. I will call your Honor's attention only to the fact that this question relates to what happened long before 1919.

The Court: But is that not disclosing a condition of fact which has not been shown? I do not see how all these facts can be obtained or disclosed of record save by an inquiry covering a reasonable period of time prior to May, 1919.

Now, then, is there a thought in your mind, Colonel Anderson, that this inquiry is entirely wrong under any circumstances, regardless of the date?

Mr. Anderson: This is with regard to the taking out of patents prior to the war. Now, if your Honor will permit me to read this paragraph:

> "They took advantage of our patent laws, which gave them a right to patent anything here, and we could do the same thing in Germany. Now, if the patent laws were at fault, you cannot blame them for taking advantage of them. They patented every thing in sight, which was perfectly right, so as to protect themselves."

The Court: I wonder if there is not this difficulty in the way of your considering that matter in the way that it seems to me it should be considered. We are not dealing with facts as facts independently of this witness. We will assume his testimony goes to the value of the patents.

Now, must not those matters all be brought to the mind of the witness in order to determine whether, in view of all those facts which existed prior to 1919, were taken into consideration by him in placing his estimate of value on the patents?

Mr. Anderson: If your Honor asks the question, I will answer in just a few words that if any one can possibly connect the question of the value of these patents, all of which have been seized by the Alien Property Custodian in 1919, with the fact that the Germans took out the patents freely as provided by the Patent Law in 1913 or 1914—if there can be any connection between that value and the fact that these patents have been taken out freely, I would admit that there might be very intangible connection that might be established.

But I am frank to say that I probably can not understand it and therefore I did not want to get into a discussion of the matter. Your Honor will of course relieve me of that position. I only got up to renew my objection because it was a new subject, but we unfortunately got into a rather extended discussion.

The Court: I thank you, Colonel Anderson. I think the question is admissible. The weight of the answer is purely another matter.

Mr. Anderson: I wanted to make the statement that I would like to have that objection considered as made to each question and answer on this line of examination, as before, with an exception.

The Court: Very well. All questions are objected to with an exception noted to the taking of the answer.

XQ. 471. The question is, Mr. Metz, whether you testified as I read to you?

A. I do not recall what you read, Mr. Kresel. Will you repeat it?

XQ. 472. I do not want to repeat it over again, but it is this paragraph that I show you.

A. Yes, sir, that is correct.

XQ. 473. And that was true?

A. That was true.

XQ. 474. And with the exception of the Bayer plant up in Rensselaer, near Albany, N. Y., the Germans did not manufacture here?

A. Not so far as I know at that time.

XQ. 475. And even that plant manufactured with imported raw materials from Germany?

A. Some things.

XQ. 476. I read to you from page 865 of your testimony before this Committee on the Judiciary, as follows:

> "Mr. Garvan: Just assume for a moment that Germany wanted to sacrifice some money to regain control of the world market.
>
> "The Chairman: (Interrupting) That is what I was asking Mr. Metz a moment ago, and he, I think, answered it: They could depress the price so as to defeat the object we have in view.
>
> "Mr. Metz: Yes.
>
> "Mr. Garvan: They would only have to raise their price in countries that do not manufacture it.
>
> "Mr. Metz: Yes, certainly."

That was true, was it not?

A. That was true, undoubtedly.

XQ. 477. Prior to the war, did not the Germans to your knowledge use what is known and what you have described in your testimony, as I shall read in a minute, "full line forcing"?

A. Not the concern I was—

XQ. 478. Wait a minute. I had not finished my question.

A. All right.

XQ. 479. —by means of which to maintain their dye and pharmaceutical monopoly in the United States?

A. Never to my knowledge.

XQ. 480. Well, do you mean by that that they never tried it on you?

A. I never tried it with my customers.

XQ. 481. I didn't ask you that.

A. That is all I can answer. They didn't sell them. I sold them.

XQ. 482. Don't you know that the German factories that were represented here did that?

A. Not to my knowledge.

XQ. 483. What is full line forcing?

A. I understand it to be a system of pressure that you must buy of them to get a thing you want, probably.

XQ. 484. In other words, that the Germans declined to sell to a consumer any particular dye or color that he wanted unless he would buy all the colors and all the dyes that he needed; was that your understanding?

A. There was no German selling here, Mr. Metz—

Mr. Anderson: One moment. The witness did not testify to that.

Mr. Kresel: I was asking him.

Mr. Anderson: You did not summarize the witness's testimony. The witness has testified that he did not know of any such practice of his knowledge, and therefore when Mr. Kresel says the Germans did this, he is putting in the mouth of the witness something he did not say.

Mr. Kresel: I beg your pardon, Colonel. I think if you will bear in mind what I asked him before, you will see that the question is proper.

The Court: Will you repeat the last two or three questions, Mr. Stenographer.

(Repeated as recorded above).

The Court: There is injected into that question, I think, Mr. Kresel, an inference or implication, should he answer it, that the Germans did engage in that practice. I thought the question was the abstract one as to whether that was his understanding of full line forcing.

Mr. Kresel: May I withdraw the question?

The Court: Yes.

Mr. Kresel: I do not think it has been answered; so no harm has been done.

XQ. 485. Your understanding of the practice was that the Germans would decline to sell any particular color unless the customer would buy all of its colors from them?

A. I did not say so.

XQ. 486. I am asking you whether that is your understanding?

A. My understanding of full line forcing; not what the Germans did.

The Court: I will protect you, Mr. Metz, if you will take care of yourself.

The Witness: I thank your Honor.

Mr. Anderson: I submit, if your Honor please, that even with the particular latitude on cross-examination when you undertake to summarize the testimony of the witness, you can not put words in his mouth.

The Court: I understand your contention and I think your objection is well taken to this question.

Mr. Kresel: Well, I will try again.

XQ. 487. Will you tell me again what your understanding was of full line forcing?

A. My understanding of full line forcing is that a concern would compel a competitor or consumer or customer to buy everything from him in order to let him have a certain thing that he wanted, a certain product that he really needed. That would be full line forcing in my opinion.

XQ. 488. And did the Germans indulge in the practice called "dumping"?

A. I never heard of it.

XQ. 489. Never heard of that either?

A. No, sir. My people never did and I didn't.

XQ. 490. Tell us, please, what you understand by the word "dumping"?

A. By the word "dumping," I understand, selling goods below the cost of production for the sake of getting a market somewheres as against home manufacturers.

XQ. 491. And did the Germans resort to the bribery of dyers?

A. Not to my knowledge. The Germans never did. Their agents here may have.

XQ. 492. Did you?

A. No, sir; I did not.

XQ. 493. You were sued, were you not, in the State of Pennsylvania under the Sherman Anti-Trust Act and the allegation was made against you that you had indulged in bribing the dyers of the plaintiff to use your colors in preference to anybody else's?

A. That did not make it so.

XQ. 494. I did not ask you whether it made it so. You were sued, were you not.

A. There was such a suit.

XQ. 495. And you settled that suit by paying $40,000, did you not?

A. Settled the suit on the basis of a compromise with the people who sued.

XQ. 496. $40,000?

A. I can explain the reason for it. It is in the record.

XQ. 497. $40,000?

A. Yes, sir.

XQ. 498. I show you a letter printed at page 509 of the Committee on Finance of the United States Senate, dated at Hochst-am-Main, March 30, 1914 from Dr. Haeuser to you and ask you whether that is a copy of the letter you received.

A. Yes, sir, it is.

XQ. 499. I also show you a letter printed at page 677 of the hearings before the Committee on Ways and Means, a letter from Dr. Haeuser to Mr. Metz, dated July 31, 1913 and ask you whether that is a copy of a letter you received?

A. Which date is this, Mr. Kresel?

XQ. 500. July 31, 1913?

A. Yes, that is the letter.

> Mr. Kresel: I am simply having the witness identify these, your Honor, and when I am through with him, I will offer them in bulk and not stop here to offer them.

XQ. 501. Salvarsan was discovered by Professor Ehrlich in Germany, was it not?

A. Yes, sir.

XQ. 502. And he discovered it in the dye factory of the Farbwerke-Hoechst people?

A. No, sir; he did not discover it in the dye factory. He discovered it in his own laboratory in the Speyer House in Frankfort. He worked in connection with the dye factory. They furnished the materials.

XQ. 503. The technical name of the drug is arsphenamine?

A. No, sir; that is a name coined here. The technical name is diaminodioxyarecnobenzol—or benzene.

XQ. 504. Do you mean that the word arsphenamine is an American designation?

A. It is an American designation adopted here after the license was granted.

XQ. 505. The product is sometimes known as 606?

A. That was the original name before they gave it a trade name.

XQ. 506. And in 1911, the German Farbwerke-Hoechst Company took out United States letters patent covering that product?

A. I think that is the date.

XQ. 507. The date will be shown on the patent?

A. It will be shown by the patent, yes.

XQ. 508. When the war came on did you have any of that preparation on hand?

A. I had some stock.

XQ. 509. I mean when the European War broke out?

A. Yes.

XQ. 510. In August, 1914?

A. Yes, I had some.

XQ. 511. The United States Army was a very large user of that drug, was it not?

A. Not at that time.

XQ. 512. I mean when we went into the war?

A. Oh, yes, supplied in very large quantities.

XQ. 513. Indeed, as early as September, 1915, long before we went into the war, do you not recall that the United States Government was seeking to obtain salvarsan from you?

A. Yes, certainly.

XQ. 514. And that you could not supply it?

A. I didn't have any of it to give them any more and they had to get it from abroad and got it.

XQ. 515. You told them you could not supply it?

A. I did not have any stock probably at the time: I do not remember the details of how much I had.

XQ. 516. And is it not the fact that Germany in

1915. and 1916 refused to ship any salvarsan to the United States unless you distributed it?

A. I do not know as that is true. Possibly that is so, but I always did distribute when they were willing to ship. I know that.

XQ. 517. I mean, they insisted that you should be the only one to distribute?

A. I had a contract. They could not do anything else. I would hold them to it.

XQ. 518. I am asking you whether that is a fact that they insisted that as a condition of their shipping salvarsan to the United States, you must do the distributing?

A. If I recall, there was a condition that the Red Cross should have a hand in distributing it, so it would not be exported; only for our own use here. I think that was the condition in 1915 or '16, Mr. Kresel. The records will show that.

XQ. 517. I show you a letter from Charles A. Holder, the foreign trade adviser of the State Department directed to you. Did you receive that?

A. I assume so. Let me read it.

XQ. 518. Page 779 of the Shortridge Committee report?

A. That is right. That is the letter with the Red Cross. That is right.

XQ. 519. Now I will read this letter to you. This is directed to you, Herman A. Metz:

> "German Government informs Department of willingness to permit first shipment of 150,000 ampules salvarsan subject to the following conditions: 'Distribution to be effected by American representatives of Farbwerke-Hoechst' "—

That was you?

A. Yes, that is right.

XQ. 520. "Under supervision of American Red

Cross and American Government, to guarantee safe arrival." That is correct?

A. Yes, sir; that is correct.

XQ. 521. Did you not cable the Farbwerke-Hoechst Company in February 9, 1916 as follows: "State Department informs me permit for export of 150,000 ampules subject to guarantee safe arrival and Red Cross supervision distribution. American Red Cross entirely unofficial body; supervision unnecessary and impossible. Will personally guarantee proper distribution. The permit now in Rotterdam; absolute guarantee of safe arrival. Spurious and infringing products simply flooding this market during delay. Inform American Embassy, Berlin."

Did you so cable?

A. Yes, if it is there I did.

XQ. 522. The American Red Cross had nothing to do with the distribution?

A. No.

XQ. 523. It did not?

A. The American Red Cross refused to have anything to do with it.

XQ. 524. So you did the distribution?

A. Naturally, I was the agent for it.

XQ. 525. You were the distributor?

A. Yes.

XQ. 526. What did you sell salvarsan at in August, 1914, before the European War broke out?

A. I think the best wholesale price was $2.50 to the wholesaler and about $3.50 to the physician. As I remember the figures, that is about what it was, in large quantities.

XQ. 527. You came here to testify as an expert on values. You must certainly have armed yourself with your figures. You cannot tell me without guessing what you were selling that product for just before the outbreak of the war?

A. I told you $2.50 to the wholesaler.

XQ. 528. And how much to the retailer?

A. The retailer, I don't know what he sold it for. He sold it to the physicians. I did not sell it to the physicians at that time, only to the wholesaler.

XQ. 529. In other words, your testimony is that prior to the outbreak of the European War in August, 1914, you never sold to physicians direct, you sold only to wholesalers?

A. Oh, I won't say that, Mr. Kresel. There might have been an odd lot that a man came in to get; but that was not the usual course of business.

XQ. 530. I will amend my question, then. You said you did not as a rule sell to physicians direct, you sold only to wholesalers?

A. Mostly to wholesalers.

XQ. And the price you charged wholesalers was $2.50?

A. Yes, sir.

XQ. 532. An ampule?

A. Six-tenths of a grain.

XQ. 533. What were you paying the Germans for it?

A. I was paying 10 marks less 40 per cent. The German price was 10 marks to the consumer. It is $2.40 approximately to the individual.

XQ. 534. You were paying 10 marks less 40 per cent.

A. 6 marks net, and paid duty on that and charges.

XQ. 535. Did you pay the duty?

A. Certainly.

XQ. 536. That is, you paid the duty in addition to the 6 marks?

A. Certainly, and the charges, the insurance and the expense.

XQ. 537. How much was the duty?

A. I think it was either 25 or 30 per cent at that time. The record will show. I do not recall, under the tariff.

XQ. 538. 25 per cent?

A. 25 or 30 per cent.

XQ. 539. Ad valorem?

A. Yes, that was the duty, I am quite sure, 25 or 30.

XQ. 540. How much did an ampule cost you net after paying the duty and such other expenses as you have mentioned?

A. It cost me $1.50 plus 30 per cent., which would be about 50 cents, we will call it offhand. About $2, I should say.

XQ. 541. So you say now that you made a net profit of fifty cents on each ampule that you sold prior to August 1, 1914?

A. Approximately, yes, that is true. About 20 per cent of the selling price.

XQ. 542. In other words, after charging up all expenses, the cost of the product, your overhead, the duties, freight, insurance, everything that you can think of, it still left you a net profit of fifty cents an ampule?

A. With this proviso, that I believe at that time the overhead was charged back to the other side, that they allowed us for overhead and for advertising at that time. I think in 1914 they did that, or before 1914. Later on we paid it all ourselves.

XQ. 543. I want you to try and think a little more closely and tell me definitely whether prior to August 1, 1914, you had to pay the overhead here?

A. I cannot say that definitely. I paid part of it, I think, as I recall it. We charged some expense back to the other side. They had made us a certain allowance for advertising purposes.

XQ. 544. How much of an allowance?

A. That I do not recall exactly. My attention is called to that by the fact that our expenses jumped suddenly in one year over a previous year. The books showed all that. The Custodian had all that when he examined my books.

Mr. Kresel: I ask that the statement that the books showed all that and that somebody, whose name I did not catch, examined the books, go out.

The Court: Let the answer be read and the part of it you object to be stricken out. Read the answer.

(Answer to XQ. 544 read as above recorded).

The Court: The last sentence, Mr. Kresel, was the one you wanted out, or what portion?

Mr. Kresel: I want out what he said about the Custodian examining his books.

The Court: Strike out that last statement.

XQ. 545. Between August 1, 1914, and April, 1915, during which you testified you were still getting some salvarsan from Germany, did you have to pay any more for that product to the Germans?

A. I think so. They raised it from time to time, ten per cent. at a time, I think.

XQ. 546. Your books are available?

A. The old books? I don't know. That was the Farbwerke-Hoechst at that time. That was—

XQ. 547. No, no, you have answered my question. You undertook to give us figures this morning—

A. I will give them to you.

XQ. 547. (Continued) Way back to 1913, do you remember?

A. I have got them right here.

XQ. 548. I want to see the books from which you got those figures.

A. All right.

XQ. 549. Will you produce them on Monday?

A. I think the ledgers are in town now.

XQ. 550. All right, those books will show whether you had to pay more to the Germans for that product between August, 1914, and April, 1915, than you paid before August?

A. I know I did, whether the books show it or not.

XQ. 551. You do not mean to say that your books will not truthfully—

A. I do not.

XQ. 552. Let me finish my question, please.

A. Go ahead.

XQ. 553. You do not mean to say that your books will not truthfully reflect the situation?

A. I do not know whether those books, the ledgers, show that. The purchase books would and I have not those.

XQ. 554. You have some books that will show it?

A. I may have; I don't know.

XQ. 555. Those are the books I want to see.

A. I may have them. They are ten years old and I have not kept some of them, but some of them are in the files. But I know the facts.

XQ. 556. Where did you get the figures from that you quoted this morning in your testimony, wherein you showed what profits you had?

A. From my records, compiled from the books which I keep.

XQ. 557. How can you get your profits if you do not know your cost?

A. Because I kept them all the time, kept those records all the time.

XQ. 558. Those are the records I want.

A. All right, you can get those. They are on balance sheets and things of that sort.

XQ. 559. But I do not want the sheets, I want the books.

A. I have not got the books, but I have the sheets that I took from the books.

XQ. 560. We have it, then, that your books of account showing your transactions with the Germans between August, 1914, and April, 1915, are no longer in existence?

A. I won't say that. They may be; I do not know.

XQ. 561. Will you produce them on Monday?

A. I will try to have them here by Monday. I don't know, how can I get them here Monday. I can not get into the office Sunday and the office is closed today. I will have them here Tuesday. There is no physical way of getting them here Monday, Mr. Kresel.

XQ. 562. I am going to take your recollection until you produce the books, and I want your recollection as to how much more you had to pay the Germans for salvarsan after August, 1914, than you did pay prior to that date?

A. If I remember correctly it was 10 per cent. increase in price, with an increase in insurance and freight rates.

XQ. 563. You see, that does not tell me what I want to know. I want to know the amount of money.

A. I have to get that from the books, Mr. Kresel.

XQ. 564. Can't you tell me?

A. I do not keep with me a record of my books for thirteen years.

XQ. 565. Approximately?

A. No, I could not tell you within any amount. I can tell you by my records what the stuff cost at that time, and ten per cent could be added, and then you would have the figures.

XQ. 566. You said that the stuff cost you two dollars, approximately.

A. I got that right here.

XQ. 567. Then you add ten per cent and that would make it $2.20?

A. Yes, $2.20 later on.

XQ. 568. How much did you charge the War Department for salvarsan?

A. I think I charged them the cost price, $2.50, something of that kind, or $2.20, and offered them the plant when I started working it.

XQ. 569. Did you not charge them $4.50 an ampule?

A. I do not think I did, except possibly towards the end, when they had none at all and everybody paid that.

XQ. 570. You see, I did not ask you as to what the condition was; I asked you how much you charged the War Department. Now, did you not charge them $4.50?

A. I do not know, unless you give me the dates and the invoice. I will tell you then.

XQ. 571. Now I read to you a letter from W. C. Gorgas, Surgeon General of the United States, dated April 25, 1917—which you see was shortly after we went into the war.

A. What date?

XQ. 572. April 25, 1917. This will be found in the Congressional Record at page 4849, under date of July 9, 1917.

Mr. Anderson: One moment, Mr. Kresel. Let me get that clear, will you? You mean in the Congressional Record of debates in Congress?

Mr. Kresel: Yes.

Mr. Anderson: Have you got the record here?

Mr. Kresel: We probably have it. I have a photostat of it. Do you want me to produce the original?

Mr. Anderson: No, the only thing is that I want to be sure where it is so that I can follow it.

Mr. Kresel: I am giving it to you.

Mr. Anderson: You see, I have not got the Congressional Record.

Mr. Kresel: I will produce to you the original. I think we have it.

Mr. Anderson: I am perfectly willing to take your photostat or a copy, but I wanted to get something that I could compare with myself, look at it.

Mr. Kresel: This letter is headed "War Department, Washington, April 25, 1917," and it is addressed to Honorable Henry W. Wilson, House of Representatives, Washington, D. C.

Mr. Anderson: I do not think that would be admissible.

The Court: No, Colonel Anderson wants to know where in the Congressional Record he may find it, the proceedings of what date or what volume.

Mr. Kresel: I have given him the date, your Honor, July 9, 1917, page 4849 of the Congressional Record.

Mr. Anderson: Then I would note the further objection, if your Honor please, that it does not appear that this letter was addressed to the witness or that he ever heard of it, and therefore the counsel can ask him any question as to any matter contained in the letter but I do not know quite on what principle the letter can be put into the record, and therefore I shall have to object to the letter going into the record as not being a matter with which this witness has any concern.

Mr. Kresel: I shall connect it, your Honor, with this witness, and if the Colonel wants me to ask him about it preliminarily, I will.

The Court: But I do not recall at the moment what your question is. Will you state it, please?

Mr. Kresel: I asked him how much he had charged the Government for this arsphenamine or whatever it was.

The Court: There having been an objection by Colonel Anderson to the reading of the letter, at this stage of the inquiry I think the objection is well taken.

Mr. Anderson: I make that objection because I have never seen the letter and therefore I could not consent to it going into the record.

Mr. Kresel: I am not offering it in the record. Perhaps Colonel Anderson misunderstands me. I do not think he would want to object to this. I am reading it to ask this witness whether that does not refresh his recollection as to the date when he charged the Government $4.50 for his property.

Mr. Anderson: If counsel reads it, it necessarily goes into the record. I object to the letter being read into the record because, if the witness had written the letter or it was addressed to him, it would be a subject for refreshing his recollection, but a letter between General Gorgas and a member of a committee of Congress certainly has nothing to do with the recollection of this witness.

Mr. Kresel: I will offer it in a minute again. Let me ask him another question.

XQ. 573. You appeared before a committee of Congress which was headed by Honorable Henry W. Watson, that was considering the enactment of the Trading with the Enemy Act?

A. I did. The Trading with the Enemy Act?

XQ. 574. Yes.

A. I do not think Watson headed that.

XQ. 575. Then what was it?

A. Watson headed the Finance Committee on the tariff hearings.

XQ. 576. When?

A. You can go to the hearings of Congress. You have the records.

XQ. 577. 1917.

A. That was not Watson, to my knowledge, who was the Chairman of that meeting. I remember that committee. The Committee on Judiciary, I think it was, of the Senate.

XQ. 578. But you appeared before Mr. Watson's Committee, did you not?

A. I do not think Watson was Chairman of that Committee.

XQ. 579. Did you not write a letter to Mr. Watson?

A. I do not recall, unless you have it in the record. I wrote several on dyestuffs.

XQ. 580. You do not recall anything but what I show you here, do you?

A. I do. I recall everything that I know without your showing it to me.

XQ. 581. Do you not recall writing to Representative Watson protesting——

A. Oh, Representative Watson? I thought you said Senator Watson.

XQ. 582. I did not say Senator Watson; I purposely refrained from saying that. Now we will get it straight.

A. You mean Watson of Pennsylvania?

XQ. 583. That I am not aware of—where he comes from. Henry W. Watson, in the House of Representatives.

A. Not the Senate.

XQ. 584. You remember writing Watson?

A. Yes, I had a communication with him.

XQ. 585. You remember writing him in connection with these salvarsan patents?

A. Regarding a bill he had about the abrogation of the patents.

XQ. 586. You wrote him?

A. I did, sure.

XQ. 587. And you appeared before his committee, did you not?

A. I do not think so.

XQ. 588. Did you not testify before his committee?

A. I testified before the Senate Committee, not before the House Committee, as I remember it.

XQ. 589. But it was with reference to this legislation?

A. No, I appeared before the Senate Committee on the Alien Enemy Act. I do not believe the House had any hearing at that time.

XQ. 590. Do you not remember appearing before the Committee on Interstate and Foreign Commerce of the House of Representatives May 11, 1917?

A. I do not recall, but I would be glad to look at the record and see. I appeared so many times before Congress.

XQ. 591. And did you not address a letter to Honorable Charles Warren in the matter of the German patents (handing witness paper)?

A. I should not be at all surprised. I do not know that I appeared there, though. I do not know that I appeared. Let me see. (Examines paper). Yes, I recall that. Mr. Warren was in charge of the hearings on the Trading with the Enemy Act. I recall that.

XQ. 592. And did you not appear before the subcommittee of the Committee on Commerce of the Senate?

A. Yes, certainly, that is what I am talking about.

XQ. 593. With reference to this same legislation?

A. Yes, but not the House.

XQ. 594. At the time when Congress had under investigation the question of what to do with these German patents you were interested in the salvarsan patent?

A. Certainly.

XQ. 595. And do you not remember that you were questioned as to the price at which you were selling the product?

A. Yes, I would assume so, naturally.

XQ. 596. And do you not remember that it was made to appear there that you were charging the Army of the United States $4.50 an ampule for this?

A. I was charging everybody $4.50 after the war started, because of the increased cost of getting it. Everybody paid $4.50, the highest ever charged.

Mr. Kresel: I ask your Honor to strike out after the words "I charged everybody $4.50."

The Court: Let it be stricken out. Mr. Kresel does not want your reasons.

The Witness: I beg your pardon.

The Court: If he does he will ask you for them. Just answer his question as directly as you can.

The Witness: I will keep within bounds.

XQ. 597. You had access to these salvarsan patents from the day they were taken out, did you not?

A. Certainly. Every chemist had.

XQ. 598. You had?

A. I had.

XQ. 599. You could read them; they were in English?

A. Yes.

XQ. 600. You had a brother who was a chemist?

A. Yes.

XQ. 601. I assume a very good chemist?

A. Yes, I admit it.

XQ. 602. And he was in charge of your factory?

A. Yes.

XQ. 603. What is his name?

A. Gustav P., Ph.D.

XQ. 604. You sent him abroad in 1916, did yo not?

A. Yes, sir; early in 1916.

XQ. 605. You sent him abroad to the Farbwerke Hoechst Company at Hoechst am. Main to learn ho to make salvarsan?

A. To see the process they were using so that w could manufacture it here; yes, sir.

XQ. 608. And he spent four months there, di he not?

A. About that.

XQ. 607. And when did he return?

A. About four months after he left. I think som time in May or June of the same year.

XQ. 608. May or June of 1917?

A. 1916.

XQ. 609. When did you first produce any salvarsan here in the United States?

A. At the end of 1916 I should say.

XQ. 610. Not what you should say; I want t know exactly.

A. To the best of my knowldge at the end of 191 in the laboratory we produced it.

XQ. 611. I want to know the date when you firs produced any salvarsan in the United States.

A. I have no doubt at the end of 1916 we wer making sample lots right along and testing them out

Mr. Kresel: May I have that stricken out your Honor?

The Court: Yes.

Mr. Kresel: I am asking simply for a date.

The Court: Strike out the answer and the stenographer will read the question.

XQ. 612. (XQ. 611 repeated as recorded above).

A. I do not know the exact date.

The Court: Answer that as nearly as you can.

The Witness: Towards the end of 1916 we had the product finished and ready for the market. I can not give the exact date, your Honor.

The Court: Is that what you want, Mr. Kresel?

Mr. Kresel: Yes, I will take that.

XQ. 613. Did you sell any salvarsan that you made in the United States, in 1916?

A. No, not until June, 1917.

XQ. 614. When did you first sell any salvarsan
do not know offhand. Early in 1917.
that you made in the United States?

A. I can give you the records from my books. I

XQ. 615. Will you on Monday—

A. Not Monday.

XQ. 616. When you return here—please wait until I finish my question—be prepared to state from your books the date when you first sold any salvarsan that you made in the United States?

A. I can not on Monday, Mr. Kresel. I can not get the books. Tomorrow is Sunday and I do not know how to get at them. I will do it on Tuesday, if you will give until Tuesday.

XQ. 617. Before you sold or produced any salvarsan in the United States there was somebody else that produced it?

A. Yes, sir.

XQ. 618. Who was that?

A. That was the Dermatological Research Laboratories in Philadelphia, whose product I sold—bought and sold.

Mr. Kresel: I ask that the words "whose product I bought and sold" be stricken out.

The Court: It will be stricken out.

XQ. 619. When to your knowledge did the Dermatological Institute first produce and sell this product in the United States?

A. The latter part of 1915 or the beginning of 1916. The latter part of 1915, I should say.

XQ. 620. When you learned that they were producing this product did you not notify them that they were infringing your patents?

A. Probably—in 1915.

XQ. 621. Are you guessing at that?

A. No, I am quite sure I told them.

XQ. 622. All right, then please do not say probably. And did you not threaten them with prosecution for infringing your patent?

A. I do not think I did, no. I made an agreement with them by which I sold their product.

Mr. Kresel: I ask that everything after "I do not think I did" be stricken out.

The Court: He said no. Let that stay, but strike out the remainder.

XQ. 623. Did you not finally say to them that you will permit them to go on and manufacture the product only so long as you could not get it from Germany?

A. They agreed to do that.

The Court: Mr. Metz, you will have to answer those questions. I do not believe that you are intentionally evading.

The Witness: I am not, your Honor.

The Court: No, I do not think you are.

The Wtness: I can not recall the exact conversations.

The Court: Let the answer be stricken out, and repeat the question.

XQ. 624. (XQ. 623 repeated as above recorded).

A. There was an agreement made to that effect.

The Court: Strike out the answer. You will have to answer that, Mr. Metz.

The Witness: Well, I suppose I did, yes. Probably, yes.

THE COURT: Now, Mr. Metz, you are not supposing, understand.

THE WITNESS: Well, I did, then, your Honor—put it that way—because I got the agreement here.

THE COURT: Answer these questions as directly and specifically as you can, and I am going to watch your answers. Proceed, Mr. Kresel.

MR. KRESEL: I should like to proceed, your Honor, but I am anxious to catch a train at 3:30 if your Honor will so far indulge me.

THE COURT: The time is up, I did not realize it. We will adjourn court until Monday morning at 8:30 o'clock Standard time.

(Whereupon at 3:05 o'clock P. M. Standard time, adjournment was taken until Monday, June 25, 1923, at 8:30 o'clock A. M. Standard time.)

(CONTINUATION OF TESTIMONY ON JUNE 25, 1923)

HERMAN A. METZ resumes the stand.

CROSS-EXAMINATION.

By MR. KRESEL (Continued):

XQ. 625: You said, among other things on Saturday last, that while you were the sole agent for the distribution and sale of salvarsan prior to 1914 in the United States, some did come in not through you. What did you mean by that—smuggled in?

A. Not necessarily smuggled, but infringing; that is, dealers bought it and brought it in, sold it here, infringing the patent, infringing my rights.

XQ. 626. At all events, since the last shipment by the Deutschland in November, 1916, you have not imported any salvarsan?

A. Since when?

XQ. 627. November, 1916.

A. Oh, I have imported since the Armistice, yes, one or two lots.

XQ. 628. What year?

A. I presume in 1922 some came in. I am not certain. I would have to go to my records—1921 or 1922.

XQ. 629. And those you imported having obtained them from the manufacturer, the Farbwerke-Hoechst Company in Germany?

A. Those that we imported came from there direct under the condition of the Public Health Service.

XQ. 630. Have you been importing any dyes recently?

A. Yes, sir.

XQ. 631. You are importing considerable, are you not?

A. Not just now. We had all we could get orders for.

XQ. 632. When was the last importation that you received of dyes?

A. They are coming right along from unoccupied Germany.

XQ. 633. You are importing right now?

A. If I can get orders and they can be shipped, yes. I have orders there now.

XQ. 634. In 1919 were you importing any dyes or salvarsan?

A. 1919? No, that was—we probably were at peace; could not.

XQ. 635. At that time the importing business was dead, was it not?

A. Practically, except from Switzerland and other countries. From Germany it was dead.

XQ. 636. Prior to the outbreak of the European war there were six large dye factories in Germany, weren't there?

A. There were six plants known as "The Big Six." There were other plants, but there were six large ones. There were several smaller ones.

XQ. 637. You have always, when you have testified about them, called those the "Big Six"?

A. They were known as the Big Six.

XQ. 638. And those were the Badische, and the Bayer, and the Berlin; that was one group?

A. Yes, sir.

XQ. 639. And then there was another group of Hoechst and Cassella, and Kalle?

A. Yes, sir.

> Mr. Anderson: I simply want to make the statement on the record that if counsel takes the witness outside of the direct examination he makes him his own witness.

> The Court: As I indicated on Saturday, I think any testimony with respect to the German dye or chemical industry is relevant to the question of value.

XQ. 640. And as you have stated, in 1916 there was a combination in Germany of these six and several others into what is known as the Interessen Gemeinschaft?

A. I have no personal knowledge of such fact, except through the matters in the record put there by Mr. Choate mainly. I have no personal knowledge of such matters—at that time.

XQ. 641. Have you now?

A. Yes, I have been over there and found out since 1920.

XQ. 642. That that is a fact?

A. That it is a fact today, the Interessen Gemeinschaft is a combination of all the plants, which includes The Big Six.

XQ. 643. The Big Six and others?

A. And smaller ones that they have acquired.

XQ. 644. And that the combination was formed in 1916?

A. I do not know the date. I know it was under German law and I do not know the date.

XQ. 645. Under the German law?

A. I assume so from the records that have been put before Congress.

XQ. 646. But even before that time, and while you were still the representative here of the Farbwerke-Hoechst Company, territory and amount of sales that you could make as the agent of your company were regulated and divided abroad between your company and the other members of the Cartel, isn't that right?

A. On one or two products.

Mr. Anderson: I assume that it is not necessary for me to renew my objection this morning.

The Court: Not at all. The objection will be understood to be running through all these questions.

XQ. 647. And that was particularly true of sales of indigo, for instance?

A. Yes, sir.

XQ. 648. In other words, you here as the representative of the Farbwerke-Hoechst Company of Germany were not permitted, according to the arrangement between Farbwerke-Hoechst Company of Germany and the other members of the Cartel to sell any more than a certain proportion of indigo here in the **United States?**

A. That is not true.

Mr. Anderson: I object.

Mr. Kresel: He has answered "no."

Mr. Anderson: I want to say with regard to any arrangement between those parties, without waiving my objection, that the evidence of that arrangement would be written; and I will have to object to any testimony of an oral character as to an arrangement between the corporations or as to their organization, consolidation, or otherwise.

THE COURT: I think that objection is not well taken. You may take the answer, and an exception may be noted.

XQ. 649. You said "no, sir."

A. I said "no, sir," there was no such restriction.

XQ. 650. What was the restriction.

A. The restriction, as I understood it, that they exchanged abroad and my firm was allowed a certain per centage of the total sales, and Mr. Poucher's firm, the Badische, the other—the other two-thirds, and the thing was regulated abroad.

XQ. 651. Wasn't it that if you made a certain amount of sales over and above the amount allowed that your German principals had to make an allowance therefor to the Badische?

A. Yes, sir, that is what I said. I was not restricted. I could sell the whole business if I could; had no influence upon me personally, or my company.

XQ. 652. And your return on the sales of indigo, as an example here, were either increased or diminished in accordance with whether you sold more or less than the amount agreed upon between your principal and the others?

A. Mine were not, because I claim—

XQ. 653. Whose were?

A. I do not know. I had a profit on all I made by an arrangement with abroad.

XQ. 654. Did you not deduct from your returns that you made to your principals abroad, an allowance for an excess of sales made by you here?

A. I got it back from them over there.

XQ. 655. You got it back from them?

A. Yes, sir; that was a sort of extra account, part of the extra account that is mentioned in the agreement.

XQ. 656. I will come to the extras.

A. All right; that is the way it was.

XQ. 657. These dye factories abroad, in addition to turning out dyes, also turned out pharmaceuticals?

A. Some of them. The Hoechst people did.

XQ. 658. Among such pharmaceuticals you have testified were salvarsan and novocain. How about luminal?

A. That was the Bayer preparation. I know that.

XQ. 659. That is a dye factory?

A. That is a dye factory.

XQ. 660. And how about aspirin?

A. That is being made here by the Bayer plant in Albany, of which I have no personal knowledge except from the market reports.

XQ. 661. Last Saturday you testified that the Dermatological Institute late in 1915 started manufacturing this product which you are selling under the name of salvarsan?

A. A product which was sold for the same purpose.

XQ. 662. And a product that was just as efficacious?

A. Was said to be. I have no knowledge as to that. It was so considered by physicians in general. It differed somewhat from salvarsan.

XQ. 663. And when they started to manufacture it, you testified that you told them they were infringing your patents?

A. Probably.

XQ. 664. And when you speak of your patents, you mean these patents covering salvarsan as to which you undertook to give an estimate of the value last Saturday?

A. I didn't say my patents. I said *the* patents; the same patents under which I was a beneficiary in this country.

XQ. 665. You were the beneficiary of the patents in this country?

A. Yes.

By Mr. Anderson:

Q. 666. May I ask whether that arrangement was in writing?

A. I was the general agent for all their product.

Q. 667. I mean the arrangement between you and the Dermatological?

A. Yes, it was a signed contract and that is in the record.

The Court: Is it your understanding, Colonel Anderson, that cross-examination is limited to the disclosure of facts in writing and that the witness can not be asked to orally testify?

Mr. Anderson: As to any facts which are in a written document, the rule of the best evidence is exactly the same on cross that it is on direct. It must be the best evidence. The witness can not answer a question of knowledge without putting in the best evidence, if objection is made to the secondary.

Mr. Kresel: I am not asking him for the contents of the document or what the arrangement was. I am simply asking him what he said to the other people.

The Court: My understanding of that rule differs from yours, Colonel Anderson. You may be right. But I think cross-examination is not so restricted and the objection is also overruled on the ground that the contents of those documents is not now called for. Exception noted.

By Mr. Kresel:

XQ. 668. After telling them that they were infringing the patents of which you were the beneficiary in the United States, you told them that you would not interfere with their manufacture of this product as long as you could not get a supply from Germany?

A. Certainly, for the benefit of the physicians.

XQ. 669. Certainly. Please do not go on. Then you got a supply from Germany by the Deutschland?

A. No, sir. None came on the Deutschland.

XQ. 670. Well, in some other way?

A. Yes, some other way.

XQ. 671. And when you got a supply from Germany, did you not demand that the Dermatological Institute cease manufacturing it?

A. Under the agreement, probably, yes.

Mr. Kresel: May I have that answer stricken out, sir?

The Court: Let the answer be stricken out and the stenographer will repeat the question.

(XQ. 671 repeated as above recorded).

A. I notified them that I had a supply.

The Court: Let the answer be stricken out and the stenographer repeat the question.

A. Yes, sir.

The Court: You remember the caution of Saturday, Mr. Metz?

The Witness: Yes, sir.

The Court: I am not going to caution you any more.

XQ. 672. Did you also demand from them damages and an accounting for infringing the patents?

A. I do not recall that. I would have to refresh my memory.

XQ. 673. And did you not call upon them to dismantle their factory so that they could not make any more of that product?

A. I do not recall that either.

XQ. 674. On the 5th day of December, 1916, you made a written agreement with the Dermatological Institute, did you not?

A. I have the date.

XQ. 675. Have you that agreement?

A. I have a printed copy of it.

XQ. 676. Well, you introduced a copy of it before the Committee on Interstate and Foreign Commerce of the House of Representatives, 65th Congress. I now show you that copy beginning there (indicating) and ask you to state—

A. I want to get the date on this first.

XQ. 677. The date is on the following page, 5th day of December, 1916.

A. Is it the same one?

XQ. 678. Yes. Let me use my copy and you can follow me on your copy.

A. Yes, sir.

XQ. 679. I read from this agreement:

"Whereas Farbwerke, vormals Meister Lucius and Bruning, Hoechst on the Main (hereinafter designated for convenience and easy reference "The Foreign Corporation") is a foreign corporation duly organized and existing under the laws of Germany, Europe, and is the owner of, or the patentee, named in, certain patents of the United States, issued March 7, 1911, and November 11, 1913, and numbered 986,148 and 1,078,135, respectively, for a specific for syphilis, and process of making the same, which specific is known as diaminodioxyarsenobenzol, and when manufactured by or under instruction by The Foreign Corporation is known by the trade-mark 'Salvarsan' and '606' and 'Neosalvarsan;' and whereas Herman A. Metz"—that is yourself, is that right?

A. Yes, sir.

XQ. 680. "(hereinafter designated for convenience and easy reference 'Mr. Metz') is the President of Hoechst Company." Now, I will stop there. The Hoechst Company was the Farbwerke-Hoechst Company?

A. A New York corporation.

XQ. 681. "and represents that he is the sole owner of all of the capital stock issued by Hoechst Co. and that Hoechst Co. is a domestic corporation, duly organized and existing under the laws of the State of New York, and is solvent and has no indebtedness, and that The Foreign Corporation (that is the Farbwerke-Hoechst Company abroad) has assigned to Hoechst Company"—that is the New York corporation, is that right?

A. Yes, sir.

XQ. 682. "the sole and exclusive right of exploitation in the United States of America of salvarsan, and that Hoechst Co. is the sole licensee for the United States and Canada for salvarsan and for other modern medicinal preparations of The Foreign Corporation." Is that right? I want to stop there. That recital is true, is it not?

A. Yes, sir.

XQ. 683. The Farbwerke-Hoechst Company, a New York corporation, of which you were President, and all of whose stock you claimed to own, had therefore the sole and exclusive right of exploitation in the United States of America of salvarsan?

A. Yes, sir.

XQ. 684. And it continues to have that right to this very day?

A. Yes, sir.

XQ. 685. And this Hoechst Company was the sole licensee for the United States and Canada for salvarsan and for other modern medicinal preparations of

The Foreign Corporation; that was true when this contract was drawn?

A. Yes, sir.

XQ. 686. And is true to this day?

A. It is true as far as they control those products; yes.

XQ. 687. It was true in 1918?

A. Not after the seizure of the patents.

XQ. 688. It was true in 1918, was it not?

A. 1918, during the war?

XQ. 689. Yes?

A. All connections were broken at that time——

XQ. 690. I am not asking you about the legal construction. Did you and the Farbwerke-Hoechst Company abroad make any agreement in writing or otherwise which changed between you the status that you had occupied?

A. Not from 1914 on, after the World War started.

XQ. 691. That is all I ask.

A. Yes, sir.

XQ. 692. Now, you go on to recite in this agreement, "Whereas Mr. Metz and Hoechst Co. have requested The Laboratories"—that is the Dermatological Institute, is it not?

A. Yes, sir.

XQ. 693. "to discontinue the compounding and sale of arsenobenzol and to sell to their nominee about 12,000 ampules of arsenobenzol now held in stock by The Laboratories." That was true?

A. Yes, sir.

XQ. 694. In other words, on the 5th of December, 1916, you requested the Dermatological Institute to discontinue making that drug, and to sell whatever stock of it they had on hand?

A. Right; according to the agreement, yes. That was the arrangement arrived at.

XQ. 695. "And whereas," you say, "The Foreign Corporation and Hoechst Co. claim that the manufacture of arsenobenzol is an infringement of the said patents and other patents, recipes, and processes owned by them, and had demanded damages and an accounting of the profits arising from the sales of arsenobenzol, but which claim and the validity of which patents The Laboratories do not admit and which demand The Laboratories have refused." Was this true, that before making this agreement you did demand damages for infringement of the patents from The Laboratories?

A. Yes, sir.

XQ. 696. And I read on: "Whereas, at the request of Hoechst Co. and Mr. Metz, The Laboratories have dismantled that part of their laboratory which was constructed specially for the manufacture of arsenobenzol." Does that refresh your recollection as to your demanding that they dismantle their factory?

A. The matter was in agreement between their counsel and my counsel.

XQ. 697. Did you make that demand?

A. I would say yes, under the agreement, naturally, without anything specifically.

XQ. 698. I now read the paragraph marked 1, which says: "The Laboratories and Drs. Schamberg, Raiziss, and Kolmer shall not and will not, during the life, term, or non-suspension of said patents or either of them, either jointly, severally, individually, or directly or indirectly, except as hereinafter provided in paragraph 2, continue the compounding, preparation, or sale in the United States of America of arsenobenzol."

A. Yes, sir.

XQ. 699. That was the demand that you made upon the Dermatological Institute, namely, that they must cease to make this product because your principal in Germany owned the patents and you were the beneficial owner thereof in the United States; is that true?

A. That is practically true, except as provided in paragraph 2.

XQ. 700. And then the exception. I am coming to that.

A. Thank you.

XQ. 701. The exception is contained in paragraph 2, and is as follows: "The Laboratories shall have the right to compound arsenobenzol for the purposes of experiments in Dr. Schamberg's laboratory, and also for use only on charity patients, without charge for medicine or service in the hospital clinic of Dr. Schamberg, as long as said Dr. Schamberg is in charge of said hospital clinic. But the provisions of this paragraph are limited to one laboratory and one hospital clinic at a time."

A. Yes, sir.

XQ. 702. In other words, as long as Dr. Schamberg was willing to treat poor people who could not pay, you were not going to interfere with him in making enough to supply the poor people, is that it?

A. I presume that was the intent of this paragraph; certainly.

XQ. 703. But you provided in this agreement, did you not, that you had the right to call on Dr. Schamberg and his laboratory to manufacture for your use any amount of this stuff that they could manufacture?

A. I think that was provided.

XQ. 704. And you were buying it from them at $1.20 per ampule, were you not?

A. In 50,000 ampule lots.

XQ. 705. I did not ask you in how many lots.

A. No, sir; $1.50 for the 06, which was the average size.

XQ. 706. Didn't you buy it at $1.20 for the four-ounce size?

A. For the 04, yes, the smaller size.

XQ. 707. And for the six-ounce you paid $1.50?

A. Not six-ounce; six-tenths of a gram.

XQ. 708. $1.50.

A. $1.50 I paid.

XQ. 709. And you were selling it at $4.50?

A. No, sir; I was selling it for $2.50 to the physicians in small quantities.

XQ. 710. $2.50?

A. In small quantities. I had to repack it and everything else.

XQ. 711. And wasn't the reason that you sold it only at $2.50 because Dr. Schamberg insisted——

A. No, sir.

XQ. 712. Wait a minute. ——insisted that the only condition upon which he would give you any of this stuff was that you would charge no more than $2.50?

A. I don't say that is so. I agreed to that price. That was quite ample to cover my expense and profit.

XQ. 713. Didn't Dr. Schamberg insist that you should place a maximum on the sales price at $2.50?

A. I probably agreed with him on that.

XQ. 714. What?

A. I probably agreed with him as to that.

XQ. 715. He asked you and you agreed with him?

A. I don't know. I may have made the suggestion myself.

XQ. 716. Did you volunteer it?

A. Possibly, yes.

XQ. 717. At all events that was an agreement between you?

A. It was an agreement, certainly, and was carried out.

XQ. 718. You say here that you were the sole beneficiary in the United States of these patents and in the agreement you described yourself as having the sole and exclusive right of exploitation in the United States of America, as the sole licensee for the United States and Canada for salvarsan?

A. Where is that, Mr. Kresel?

XQ. 719. You will find it in the recital to the agreement that we have just been discussing. Would you like me to read it to you again?

A. I would like to be sure of the wording; that is all.

XQ. 720. Well, I will read it to you. Will you follow me?

A. Yes.

XQ. 721. The language is: "That The Foreign Corporation has assigned to Hoechst Co. the sole and exclusive right of exploitation in the United States of America of salvarsan, and that Hoechst Co. is the sole licensee for the United States and Canada for salvarsan."

A. Yes, sir.

XQ. 722. That is what you say in the agreement?

A. Yes, sir.

XQ. 723. Did you get that sole license in writing?

A. Yes, I had it for years.

XQ. 724. Have you got it here?

A. I put it in the contracts, all up to the last one, which I haven't got a copy of with me.

XQ. 725. I do not know what contracts you are talking about.

A. The contracts with the people abroad.

XQ. 726. Show me in your contracts here what you are referring to.

A. I will take the original contract. That was always continued. 1902 is the original agreement. Here is one paragraph in the contract of 1902.

XQ. 727. Wait a minute, please, so that we will identify the instrument.

A. That is the original contract.

XQ. 728. You are reading from the instrument which is marked Defendant's Exhibit C for Identification. Now go on and give me the page, please.

A. On page 8.

XQ. 729. Now, go on.

A. (Reading.) "And the said Farbwerke agrees that if the said Metz faithfully performs his obligations under this agreement, the said H. A. Metz & Co.,"—this covered dyestuffs and the same holds good for chemical and other products.

XQ. 730. I did not ask you about dyestuffs. I am talking about salvarsan.

A. That is all their products.

XQ. 731. If that refers to salvarsan, of course, you will read it.

A. Salvarsan was not made in 1902. My agreement is to handle their products. That continued to date, practically.

XQ. 732. Is there anything in that portion of the agreement that you want to read about salvarsan?

A. No specific reference. Their products are mentioned.

XQ. 733. Please tell me what you have in writing——

A. A contract.

XQ. 734. Wait until I finish. ——on which you base the claim in this agreement with Dr. Schamberg that you had the exclusive license in the United States for salvarsan?

A. I had no specific—I had a contract for all their products in the United States, everything they made.

XQ. 735. I will broaden my question. I will let you read anything that you have in any agreement, which you say sustains that claim. Now go on and read anything that you want.

A. (Reading.) "For the term of five years from said January 1st, 1903, shall have the exclusive sale of the products of the said Farbwerke in the United States of America; and the said Farbwerke during the said term, will not directly or indirectly sell any of its products to any other person, association or corporation in the United States of America, without the written consent of the said Metz first obtained." That was continued in each contract, as a renewal of the contract from the original contract of 1902.

XQ. 736. What is the date of the last contract you had with your principals?

A. The last was some time in 1913.

XQ. 737. Which you say you have not here?

A. Which is probably in the Court records in New York.

XQ. 738. You haven't it here?

A. No, I haven't it here.

XQ. 739. You had the contract of 1912 here?

A. I have all the previous ones here.

XQ. 740. Look at the 1912 contract and read me what there is there about it?

A. Here is a paragraph in here.

XQ. 741. Page what?

A. Page No. 11.

XQ. 742. What is the number of the exhibit?

A. It is the agreement of 1912; 22nd day of July, 1912 (Defendant's Exhibit F for Identification), paragraph 11.

XQ. 743. Go on.

A. (Reading.) "And the said German corporation agrees that if the obligations under this agreement by the other parties to be performed are faithfully performed by them, the said H. A. Metz & Co., so long as the said Metz remains President and General

Manager as aforesaid, shall have the exclusive sale of the products of the said German corporation in the United States of America; and the said German corporation during the said term will not, directly or indirectly, sell any of its products to any other person, association or corporation in the United States of America, without the written consent of the said Metz first obtained," and so forth.

"And during the said period it will sell its products to the said H. A. Metz & Co. at their lowest market prices, and will not, directly or indirectly, sell any of its products to any person, association or corporation in any part of the world, except to European manufacturers of goods similar to the products of said German corporation, at a lower price or upon more favorable terms than those given to the said H. A. Metz & Co."

XQ. 744. Is that all you want to read?

A. (Reading.) "This paragraph is understood to mean that the German corporation will, as to prices, in no event permit underselling of said H. A. Metz & Co. in the markets of the United States; but in case of extraordinary or special instances, arising in the sale of the products of the German corporation in other countries, when it is necessary to meet special competition in such other countries, the German corporation may, in order to meet such special competition, sell at prices below the 'lowest market price' above referred to, which 'lowest market price' means the general and ordinary lowest market price."

XQ. 745. Now, is that all?

A. Well, that is the agreement I had with them; that I had the sole right to sell all their products.

XQ. 746. Now please put the contract away if you are through with it.

A. Here is the pharmaceutical end, if you want that.

XQ. 747. I want you to read whatever you want to read in answer to that question.

A. Well, the question was, did I have the exclusive rights to the sale of their goods in this country.

XQ. 748. You misunderstood the question then.

A. What is the question?

XQ. 749. I will read it to you again. Were you, as you recited in this agreement with Mr. Schamberg, the sole licensee for the United States and Canada for salvarsan?

A. Yes, including their other products; sole licensee.

XQ. 750. Or were you simply an exclusive agent to sell that product? Now, which was it?

A. I had the license to sell under the agreement and was the exclusive agent, both. Nobody else had a right to sell it. I think that answers the question.

XQ. 751. You claim to have had a license, do you?

A. Will you define "license?"

XQ. 752. I would like you to do that. You were the one who made this agreement, were you not?

A. The counsel; my counsel and his counsel.

XQ. 753. Did you have a license or didn't you?

A. I had an agreement to sell, which is a license to sell, certainly.

XQ. 754. Did you have a license to make?

A. Not at that time. In 1916—yes, I had a license to make in 1916. 1916, yes.

XQ. 755. When did you get that?

A. I got that when my brother went to Europe in January to May, in 1916.

XQ. 756. And you had the exclusive license to manufacture in the United States, did you?

A. I had their permission under the patent to work those——

XQ. 757. Answer my question. Did you have an exclusive license to manufacture salvarsan in the United States?

A. Nobody else had to my knowledge.

XQ. 758. And that is what you were referring to in this recital that I have read to you?

A. Undoubtedly.

XQ. 759. Was that license in writing?

A. That license was in writing in Europe.

XQ. 760. Have you the writing?

A. No. I can explain why, if you will let me.

XQ. 761. And you say it was made when?

A. Early in 1916, while my brother was in Europe.

XQ. 762. And was it to be for the life of the patent?

A. There was no stipulation. I was allowed to make salvarsan for use in this country.

XQ. 763. Was it for the life of the patent?

A. I so assume.

XQ. 764. You understood that to be so?

A. I understood they could stop me if they wanted to later on, but I had a license to make it and did make it.

XQ. 765. I do not want your assumptions. Did you not claim to have the exclusive license for the life of the salvarsan patent to manufacture the product in the United States?

A. I do not know as I claim the life of the patent.

XQ. 766. How long did you claim?

A. It did not occur to me. I had a right to make it; that is all.

XQ. 767. Exclusive right?

A. The exclusive right from the patentees.

XQ. 768. You had that right in 1916, did you not?

A. Yes, sir.

XQ. 769. And in 1917?

A. Yes, sir.

XQ. 770. And in 1918?

A. Yes, sir.

XQ. 771. And in 1919?

A. Yes, sir.

XQ. 772. And in 1920?

A. Yes, sir.

XQ. 773. And up to this very day?

A. Up to date. And I am still doing it.

XQ. 774. And so when the Alien Property Custodian sold this patent to The Chemical Foundation, it was subject to that exclusive license of yours, was it not?

A. I so assume.

XQ. 775. You not only claimed that you had the exclusive license to manufacture salvarsan here, but you claimed that you owned the patents, did you not?

A. No, sir; I did not.

XQ. 776. Never?

A. I owned the trade-marks, not the patents.

XQ. 777. Did you never claim you owned the patents?

A. Never claimed I owned the patents. If I did, I was mistaken and didn't know what that meant.

XQ. 778. Well, you would not have made a mistake like that, would you, Colonel Metz?

A. I do not assume so.

XQ. 779. No, of course not.

A. The trade-marks I owned.

XQ. 780. So that, as you sit there, you do not recall any occasion when you ever made the claim that you owned the patents?

A. I do not recall such a claim. If I did, it was a mistake.

XQ. 781. I show you a letter to Dr. Sidney R. Miller dated May 9th, 1918, addressed to Sidney R. Miller, 11 East Chase Street, Baltimore, Maryland, signed by you. I just want to know whether you wrote it? Is that your signature?

A. It looks like it. It is a photostat of what may be my signature.

XQ. 782. I will read to you from this letter: "In the meantime, Dr. Schamberg here had begun to place his articles on the market. After conference with him I agreed on humanitarian grounds not to interfere with his product if I had all the patent rights and powers to sue and recover from him." Did you write that?

A. I had power to——

XQ. 783. Did you write that?

A. I did, yes, undoubtedly, and had the right.

XQ. 784. That is, you had all the patent rights, did you?

A. To sue and recover.

XQ. 785. Did you have all the patent rights?

A. No, but I had a power of attorney to sue and recover.

XQ. 786. You say you had a power of attorney?

A. Yes, sir, to sue.

XQ. 787. Is that what you mean by saying that you had all the patent rights and powers to sue and recover?

A. Yes, sir, that is what I meant, exactly.

XQ. 788. Where is your power of attorney?

A. It is in the file. I had a suit in Detroit, and it is in the record.

XQ. 789. Where is it? I do not care anything about your suit.

A. I do not have it here. It is in the record.

XQ. 790. What record?

A. One of the Congressional hearings.

XQ. 791. Well, find it during the lunch hour.

A. Yes, I will try to find it, if it is here. If not, I will endeavor to have a copy.

XQ. 792. Now, I have read that to you. Does it refresh your recollection that there were other occasions when you claimed to own the patents?

A. I sued on one occasion.

XQ. 793. What?

A. I sued on one occasion.

XQ. 794. I did not ask you about that?

A. Well, that is an occasion.

XQ. 795. You mean you brought a suit as owner of the patent?

A. No, as attorney to bring under the patent—to sue under the patent, to stop importation from Canada.

XQ. 796. You brought a suit, anyway?

A. Yes, sir, my attorneys did.

XQ. 797. Where was the suit brought?

A. Detroit, as I recall.

XQ. 798. When?

A. I do not recall the date; some time——

XQ. 799. What is the name of the party whom you sued?

A. I think it was A. C. Smith. It is all in the record. You can find it.

XQ. 800. "A. C. Smith?"

A. I think it was; in Canada, who sent goods to this country, to Detroit.

XQ. 801. Whatever rights you had or claimed, you have had up to this very day, have you not?

A. I assume so, yes, sir, certainly.

XQ. 802. And had them in 1919?

A. Yes, sir.

XQ. 803. And these are substantial claims by you, are they not?

A. What do you mean "substantial claims?"

XQ. 804. That is English, is it not?

A. The claims——

XQ. 805. Don't you understand the word "substantial?"

A. Yes, but in that connection is it substantial?

XQ. 806. They are not trumped up by you, are they?

A. No, sir, if that is what you mean.

XQ. 807. So anybody that bought these patents bought them subject to your claims, didn't they?

A. To allow me to continue, certainly.

XQ. 808. Didn't they?

A. Yes, certainly.

XQ. 808 (continued). Subject to whatever claims you had. Now, weren't there other occasions when you claimed to own these patents. Think, now.

A. I do not recall until we entered the war what claims I made. After that I made no claims.

XQ. 809. You may have made them, without knowing?

A. No. I could refresh my memory. I have got records, undoubtedly—may have.

Mr. Anderson: I do not care to interrupt the examination here, but the witness has expressly said that all he claimed to have was a right to sue in order to protect his rights under those patents; but counsel has, I think, inadvertently said a number of times that the witness claimed to own the patents. The witness has expressly stated he did not make any such claim.

The Court: What is your specific objection?

Mr. Anderson: My objection was to the form of the question, in which he recited the evidence of the witness incorrectly. He has put upon the record a statement as coming from the witness which the witness's evidence does not support, and I am objecting to the form of framing the question.

Mr. Kresel: Do you want to strike out the answer, Colonel?

Mr. Anderson: With that statement on the record, I would not go back to strike the question out.

Mr. Kresel: All right, let us leave it.

Mr. Anderson: That will be all right.

XQ. 810. Do you now say, Colonel, that you did not own these patents?

A. I never owned the patents.

XQ. 811. Did you ever have any interest in them whatsoever except such as you have now disclosed?

A. None, except the right to manufacture under them, and to handle——

XQ. 812. The exclusive right?

A. The exclusive right from the people abroad.

XQ. 813. Did you not have an agreement with the Germans who owned the patents that they should convey them to you?

A. No, sir, I tried to get them, but did not——

XQ. 814. Didn't you have such an agreement? You said, "No, sir," didn't you?

A. No, sir, I did not have.

XQ. 815. You appeared as a witness before the sub-committee of the Committee on Commerce of the Sixty-fifth Congress and there testified, and I shall read a portion of your testimony.

Mr. Anderson: At what time?

Mr. Kresel: Do you mean the date?

Mr. Anderson: Can you give it to me?

Mr. Kresel: October, 1917.

XQ. 815 (continued). I read to you the following: "I went over to Germany toward the end of 1914 and the beginning of 1915 and took up this question of transferring the patents. They had to consult with Professor Ehrlich and others. It was finally agreed that the patents should be transferred so that I could hold them." Is that true?

A. There was such an understanding——

XQ. 816. Is that true?

A. That is true, yes.

XQ. 817. And that agreement was made at the end of 1914 or at the beginning of 1915, was it?

A. At the end of 1914 when I was over there after the war started. It was a verbal agreement, to be carried out later on.

Mr. Kresel: May I, if your Honor please, have this witness not volunteer statements? I ask to strike out everything after "The end of 1914" as not responsive.

The Court: Read the question, please.

(XQ. 817 repeated as above recorded.)

The Court: What portion do you want stricken out, Mr. Kresel?

Mr. Kresel: The part in which he says that it was a verbal agreement to be carried out later on.

The Court: Let it be stricken out.

XQ. 818. You said on the same occasion: "I had our attorney some years before bring one suit against the infringer who bought the genuine German product and sold it in this country from Canada. I sued and enforced my sole rights in the patents against him." Is that true?

A. It should be "under the patents" instead of "in."

XQ. 819. Is that true?

A. I suppose I said that, yes. I said that undoubtedly.

XQ. 820. So you said before Congress that you had the sole rights in the patents, did you?

A. Under the patents is what I meant, no matter what I said.

XQ. 821. You testified before this committee also as follows: "After I got back from Europe I sent my brother over early in 1916, who is a trained chemist, for the patents, to have them finally transferred." Is that true?

A. Yes, sir; I intended to have it transferred.

XQ. 822. With your recollection now refreshed, do you recall any other occasion when you made the claim that you had the sole rights in the patents or that you owned them?

A. I never claimed to own the patents. I had the sole rights under them at all times. I made no secret of it but asserted it very often.

XQ. 823. And you made no secret of your claim to the sole rights in these patents, did you?

A. I had no rights in the patents. I had them under the patents, Mr. Kresel.

XQ. 824. The sole rights under the patents?

A. Yes, sir.

XQ. 825. When did you start to try to make salvarsan in the United States?

A. As soon as my brother got back from Europe with the data as to machines, and so forth.

XQ. 826. Well, when; in January, 1916?

A. Yes.

XQ. 827. You say he stayed there four months?

A. Approximately.

XQ. 828. That would bring it to May, 1916?

A. Approximately.

XQ. 829. So as soon as he returned you started to try to produce the product?

A. I started to install a plant, to buy machinery.

XQ. 830. Well, that was a preliminary step, of course.

A. Certainly; necessary to any production.

XQ. 831. When did you first produce salvarsan in the United States on a commercial basis?

A. I told you Saturday that I do not remember the exact date. I am having it looked up, when I first sold it. It was made in 1916. I will try to have the information for you later on.

XQ. 832. In what year?

A. The end of 1916. We made some in 1916, undoubtedly.

XQ. 833. When did you have it ready for the market?

A. I think early in 1917.

XQ. 834. Early in 1917?

A. I think so. I am getting the exact dates for you from New York. You requested that on Saturday and I am having that looked up.

XQ. 835. I show you a letter that you sent to Honorable Charles Warren, Assistant Attorney General, Department of Justice, under date of May 11, 1917 (handing witness). Did you send that?

A. I recall such a letter, yes. I assume this is a copy.

XQ. 836. I read from that letter, which is dated May 11, 1917, the following: "I have received from the German owners of these patents verbal permission to manufacture these products in this country and full information relative to the processes of manufacture; that I have the factory and machinery for such purpose and will be able to supply the market within the next month or two."

A. I so thought at that time.

XQ. 837. So in May, 1917, you thought you would be ready to supply the market either in June or July, 1917?

A. Yes, sir.

XQ. 838. That was more than a year after you started in to try to produce?

A. It took us months to get the machinery.

XQ. 839. It was a year after you started in to try to produce?

A. No, the year after I started to build the plant.

XQ. 840. All right, have it that way. Is it not a fact that you did not start to produce until June, 1918?

A. I must refresh my memory on that, Mr. Kresel. I am doing that. I am having these dates looked up in New York.

XQ. 841. Is it not a fact that during the last six months of 1918 you lost $38,000 in trying to make salvarsan?

A. I presume my records show that. I have got such a statement. Not in trying to make salvarsan.

XQ. 842. Listen, Mr. Metz, or Colonel Metz, I asked you a question.

A. Yes, sir.

XQ. 843. Is it the fact that during the last six months of 1918 in trying to make salvarsan you lost $38,000 on the transaction?

A. I did not try. I sold salvarsan for less than the cost of production, that is what it means, and at an agreed price with the Government. That is why I lost the money.

XQ. 844. Did you lose $38,000?

A. My records, I think show it. An examination of my books shows it—in one concern. I have those figures somewhere.

XQ. 845. And in 1918 your production of salvarsan was no good, was it?

A. Oh, no, I beg your pardon. It was as good as anybody else's, that went into the Government market. It passed the Government test or would not have gone into the market.

XQ. 846. Do you not remember the attack made on you by Dr. Sargent because when he used your stuff on five patients he almost lost them, they almost died?

A. I know they didn't know how to use it and had lots of deaths because they could not use the product.

XQ. 847. Do you not remember that article was printed in the Medical Journal and that you got your lawyers to write a letter to Dr. Sargent that you would hold him responsible for damages?

A. Yes, sir, because the same article was used elsewhere and proved satisfactory.

XQ. 848. And is it not a fact that as late as June, 1918, you did not know how to produce salvarsan?

A. I beg your pardon, I did know as well as anybody else.

XQ. 849. Is it not a fact that you got Dr. Schamberg to come and show you how to make it?

A. I did not. Dr. Stieglitz suggested it and we never got together.

XQ. 850. Did you not sign an agreement with Dr. Schamberg in June, 1918, to come and show you how to make salvarsan?

A. Dr. Stieglitz prepared some such agreement in the interest of the consumers of the country to get together and make a satisfactory product that was alike all around.

Mr. Kresel: I ask that the answer be stricken out.

The Court: The answer will be stricken out and the question repeated.

XQ. 851. (XQ. 850 read as recorded above). Just say yes or no, please.

A. I do not recall signing it. I remember such an agreement.

XQ. 852. Now let me show you a copy of it.

A. It was never carried out.

XQ. 853. I ask you do you recognize your signature on it (handing witness)?

A. Certainly, I am willing to do anything at all to satisfy you.

XQ. 854. Is that your signature?

A. Let me see it. Yes, that is my signature—a copy of it.

XQ. 855. Now I will read to you from this agreement.

Mr. Anderson: Will you have it identified, Mr. Kresel?

Mr Kresel: Yes I will just mark it for identification.

Same marked "Defendant's Exhibit G, for Identification."

XQ. 854. (continued) "The Dermatological Research Laboratories through Doctors Schamberg, Kolmer and Raiziss and others, having expert knowledge and experience concerning the manufacture of arsphenamine of a minimum and safe degree of toxicity agreed to place their knowledge and experience at the service of Mr. H. A. Metz and his laboratories without unnecessary delay and in a sincere effort to bring his product up to the standards demanded by the Government without delay, in such a way however, that the manufacturing of arsphenamine of the Dermatological Research Laboratories shall not be crippled or interfered with. To accomplish this, Dr. Raiziss will, without delay, arrange his management of the manufacturing plant in such a way as to be in a position to give time and attention to the task of improving the product of the Metz Laboratories." That was the agreement you signed?

A. What was the date of that?

XQ. 855. June 8, 1918.

A. And what was the Sargent letter?

XQ. 856. I will answer questions when you are through answering them. I read further from this agreement.

The Court: Was the question answered?

Mr. Kresel: Yes, sir.

XQ. 856. (continued) "In return for this valuable assistance, rendered by the Dermatological Research Laboratories, Mr. Metz will agree for himself, that the companies in which he is interested and his assignees: (a) In the event that the Treaty of Peace should for any cause nullify the license of the Dermatological Laboratories to manufacture arsphenamine as at present, these laboratories under the trusteeship of Doctors Schamberg, Kolmer and Raiziss or their successors, will be permitted to continue to manufacture and sell arsphenamine to the extent of a minimum of 3,000 ampules of 0.6 grams per week and not to exceed 10,000 tubes per week or 10 per cent of the needs of the country in arsphenamine, (or its derivatives), in case Mr. Metz or any of his companies or assignees should have control of the German rights in any way after the Treaty of Peace has been signed."

A. Yes, sir; perfectly true.

XQ. 857. That was your agreement?

A. Yes, sir; my position exactly.

XQ. 858. And then you agreed: (b) In the event that the Treaty of Peace does not nullify the license of the Dermatological Research Laboratories to manufacture arsphenamine after the war or in the event that Mr. Metz is not in the position to guarantee to the Dermatological Research Laboratories the right to manufacture arsphenamine after the war to the extent indicated in paragraph a, Mr. Metz and his Laboratories for the valuable services received will pay the Dermatological Research Laboratories a royalty on the manufacture of salvarsan under license from the Federal Trade Commission for the duration of the war."

A. Yes, sir.

After Recess.

XQ. 859. Mr. Metz, I was asking, when we adjourned for recess, about this agreement of Dr. Schamberg or the Dermatological Laboratories, dated June 8, 1918, and in connection with that you asked me if I could give you the date of the letter from Dr. Sargent. You remember that?

A. Yes, sir.

XQ. 860. I show you now a copy of Dr. Sargent's letter as it was printed in the Journal of the American Medical Association under date of March 30, 1918. So you will see that that letter of Dr. Sargent's preceded the agreement of June 8, 1918?

A. That shows it.

XQ. 861. So we have it now, Mr. Metz, that as late as June 8, 1918 your product, salvarsan, was not up to the standard demanded by the Government?

A. I don't admit that, sir. The Government passed it before it was sold.

XQ. 862. I read to you from the agreement: "The Dermatological Research Laboratories, through Dr. Schamberg, Kolmer and Raiziss and others, having expert knowledge and experience concerning the manufacture of arsphenamine of a minimum and safe degree of toxicity agree to place their knowledge and experience at the service of Mr. H. A. Metz and his laboratories without unnecessary delay and in a sincere effort to bring his product up to the standards demanded by the Government without delay."

A. That does not follow. It was passing the Government's standards.

XQ. 863. You mean to say that you signed this agreement with that statement in it, and that that was not true?

A. That was not true. We were passing the Government's requirements.

XQ. 864. You signed this agreement and that was not true?

A. That is not true. I signed the agreement, and the fact is we did pass the Government standards.

XQ. 865. You signed the agreement notwithstanding that what I have just read was not true, is that it?

A. I signed the agreement. It was not true. It was up to Government standards. I signed it to help to get these things—

XQ. 866. I am simply asking one question at a time. I say that you signed this agreement with the statement in it that I have read, and yet that that statement was then untrue; is that what you say?

A. I can not say it was untrue. I said we did pass the Government's standards, despite that statement, and I signed that statement, if that is what you want.

XQ. 867. By this agreement you asked Dr. Schamberg to improve your product?

A. Dr. Stieglitz asked him and I signed it at his request. There you are; that is the statement.

XQ. 868. Did you ask Dr. Schamberg to help you improve your product?

A. Dr. Stieglitz asked him and I agreed to let him and signed that agreement.

XQ. 869. Well, your product needed improvement?

A. They said so. I did not think so. The Government test did not show it.

XQ. 870. And in return for these valuable services you agreed to pay them a royalty?

A. If they were earning it, yes.

XQ. 871. And that was June, 1918, more than two and a half years after your brother had gone abroad and had spent four months through the German factory learning how to make salvarsan, was it not?

A. The dates are there, yes. The questions were raised.

XQ. 872. And for all this time and for years prior thereto you had before you and open to you the patent on salvarsan?

A. And were working and putting out marketable goods.

Mr. Kresel: I ask that "were working and putting out marketable goods" be stricken out.

The Court: The motion is granted.

XQ. 873. After we went into the war I think you testified upon your direct that the Federal Trade Commission issued four licenses to manufacturers to make salvarsan?

A. Yes.

XQ. 874. You knew that such licenses were being granted by the Federal Trade Commission, did you not?

A. Naturally.

XQ. 875. You knew that the Massachusetts State Department of Health was asking for a license to manufacture salvarsan, did you not?

A. I had been informed they were doing it for their own hospitals. I did not know about the license.

XQ. 876. Did you know they were asking for a license?

A. Possibly. I cannot say definitely.

XQ. 877. Did you know that the New York State Board of Health was asking for a license from the Federal Trade Commission?

A. I knew later on that they had a license for manufacturing, yes.

XQ. 878. And did you not protest against the Federal Trade Commission issuing licenses to these State Boards of Health?

A. As a matter of fact, I protested against all licenses.

XQ. 879. Did you or did you not?

A. I did, against all licenses.

XQ. 880. I show you a letter from yourself to Dr. G. W. McCoy, Director of Hygienic Laboratory, Public Health Service, Washington, D. C. Did you write that letter to him (handing witness)?

A. Yes, sir.

XQ. 881. That letter is dated March 14, 1919, and appears at page 839 on the Hearings on Resolution

No. 77. You say in that letter: "My dear Dr. McCoy: I wrote to the Federal Trade Commission today in regard to the application of the Massachusetts State Department of Health for licenses. I also protested against a license being granted to the New York State Board of Health. I feel in doing this I am justified in the position I take and I would like to hear from you whether you favor the various State Boards making their own product or not. Personally my experience with the New York City Board of Health when I was Controller satisfied me that it was a very unfair competition against private enterprise."

A. Yes, sir.

XQ. 882. That was your humanitarian point of view?

A. That was my commercial and humanitarian.

XQ. 883. Was it?

A. Yes, sir. I did not think it was fair to private individuals.

XQ. 884. In other words, you objected to the Federal Trade Commission giving a license to the State of Massachusetts and the State of New York to manufacture their own salvarsan?

A. To anything in competition with private enterprise; yes, sir.

XQ. 885. Up to the time of the war you had a monopoly of salvarsan in the United States?

A. Yes, sir.

XQ. 886. And up to the time of the war you were selling to physicians, you told us—no, you were selling it at wholesale at $2.50 a dose?

A. Yes, sir.

XQ. 887. And during the war you raised the price to $4.50 a dose?

A. To physicians direct, in small lots.

XQ. 888. And to the Government?

A. No, I do not recall that. I sold to the Government for $1.17.

XQ. 889. Didn't you charge the Government $4.50 in 1915?

A. You have made that claim and I have got to verify it. I do not know; I took your word for it.

XQ. 889-a. You testified to that last Saturday. Do you want to take it back?

A. I will want to qualify it after I look at my record. You may have said the imported stuff. I will tell you why I did it if you want to know.

XQ. 890. I do not want to know why did you it. So that when you had the monopoly, you were charging $2.50 wholesale, and until you satisfy the Court that you were wrong on Saturday, I will take it that your testimony stands that you were charging $4.50 during the war?

A. I did to physicians. I admit that.

XQ. 891. You admit charging that to the physicians?

A. Direct to the physicians.

XQ. 892. Since the war and since the Federal Trade Commission issued licenses for the manufacture of this product and since The Chemical Foundation have issued licenses on this product, what is it selling at now?

A. I sold to the Government at $1.00 when I started making it.

XQ. 893. What is it selling at now?

A. I made a bid last Monday to the Government, thirteen cents a dose for its requisitions. That is the cost price.

XQ. 894. Thirteen cents a dose; and what are you selling it to physicians at?

A. I do not recall without going to my records.

XQ. 895. Sixty cents a dose, isn't it?

A. Possibly in single packages. We are required to go to a different expenditure than with the Government's stuff.

XQ. 896. And there is keen competition in the market now, is there not?

A. Yes, sir.

XQ. 897. You no longer have the monopoly, have you?

A. No, sir.

XQ. 898. And there is no monopoly in the product of salvarsan, is there?

A. No, sir. I should say no in the sense that monopoly is a control.

XQ. 899. What was that last? I did not get it.

A. In the sense that monopoly is a control.

XQ. 900. I do not want to know your sense. You understand the word "monopoly." I asked you whether to your knowledge there is a monopoly in the market of the supply of salvarsan?

> Mr. Anderson: If counsel will permit me, I do not think the question asked for anything but a conclusion. What is a monopoly is a conclusion of law founded on facts.
>
> The Court: This witness has found no difficulty, Colonel Anderson, in testifying about a monopoly in previous answers. I shall assume that he knows the meaning of "monopoly" as embodied in that sentence. The objection is overruled.
>
> Mr. Anderson: Exception.

XQ. 901. Is there, Colonel Metz?

A. In the ordinary sense of monopoly, no.

XQ. 902. Did you testify before the Shortridge Committee as follows; I read from page 818. The Chairman said to you:

> "Is there any other company manufacturing the same article?"

You said:

> "Oh, yes. The Federal Trade Commission licensed four manufacturers, and Mr. Garvan, or The Chemical Foundation, I think, licensed, I think, four or five others, but of those he licensed, I think only one is producing, in a liquid form.
>
> "THE CHAIRMAN: Is there any combination between you and other manufacturers of salvarsan?
>
> "MR. METZ: No, sir; no combination of any kind."

That was true?

A. Yes, sir.

XQ. 903. And is it true today?

A. As far as I know, yes. None that I am interested in.

XQ. 904. At page 869, the Chairman asked you:

> "Is there any monopolistic arrangement between you and any other concerns?
>
> "MR. METZ: No, sir; not even an understanding.
>
> "THE CHAIRMAN: Do you know of any combination?
>
> "MR. METZ: Not at the present time.
>
> "THE CHAIRMAN: Do you know of any combination at all now or in the past?
>
> "MR. METZ: Not in these things I am talking about."

Was that true?

A. Yes, sir; absolutely.

XQ. 905. And is it true now?

A. Yes, sir; so far as I know.

XQ. 906. And is it not the fact that the American product salvarsan is as good as the German ever was, and better?

A. It is so conceded by the Government testers and by physicians that are using it.

XQ. 907. Now, coming to the dye industry, Mr.

Metz, you have told us that before August, 1914, there were in this country no factories producing dyes, but that there were, I think you said, six assembling plants?

A. They were called assembling. They were dye-producing plants; but they were practically assembling dyes. That is the term used in the reports of Mr. Choate or anybody else.

XQ. 908. Since the war and since these patents were seized—I mean the German patents covering dyes that are here in question—and since The Chemical Foundation has been operating, has the number of producers of dyes in this country increased or decreased?

A. It has increased, but not because of the patent.

XQ. 909. I did not ask you——

A. I beg your pardon.

Mr. Kresel: May I ask that that be stricken out after "it has increased?"

The Court: Let it be stricken out.

XQ. 910. And can you tell us how many manufacturers there are today in this country producing dyes?

A. No, sir.

XQ. 911. Can you give us an approximate number?

A. No, sir.

XQ. 912. Are there as many as 160?

A. I should not say there were that many producing, no, sir. They claim to be, but they are not producing dyes, really.

XQ. 913. Are there as many as a hundred?

A. I should say no; emphatically no.

XQ. 914. Are there more than six?

A. Oh, yes.

XQ. 915. Well, you are one of the producers——

A. (interrupting). I am two of them.

XQ. 916. ——aren't you? What?

A. I am two of them.

XQ. 917. You have taken out licenses from The Chemical Foundation, haven't you?

A. Not for colors. I took from the Federal Trade Commission for colors, one of my plants.

XQ. 918. So you hold no licenses covering dyes from The Chemical Foundation?

A. No, sir. Oh, for importation, yes; not for manufacturing.

XQ. 919. You notice I did not restrict my question to manufacturing, did I?

A. Well, we were talking of manufacturing, Mr. Kresel. Pardon me if I did not cover the full ground. We pay licenses when we import patented colors, as they come in.

XQ. 920. And is it not a fact that today the American chemical industry is producing 90 per cent of the United States dyes in that way?

A. Undoubtedly; of the unpatented products.

MR. KRESEL: May the last part be stricken out—"of the unpatented products?"

THE COURT: Let it be stricken out.

THE WITNESS: I beg your pardon, your Honor.

XQ. 921. And the dyes that are being produced by American manufacturers are as good as the German ever were?

A. Many of them, yes.

XQ. 922. And we are no longer dependent upon Germany for our dyestuffs, are we?

A. Thank God, no—and I helped bring it about.

XQ. 923. And we are neither dependent on them for dyes nor for pharmaceuticals?

A. That is right, we are independent of them.

XQ. 924. Of course, you believe in an American dye indsutry?

A. Absolutely.

XQ. 925. Your heart is wholly here?

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A. My money is in it.

XQ. 926. No part of it back in Germany?

A. Not money, no, except a little stock I own here, and that I bought since the war.

XQ. 927. You believe in protecting and fostering the American industry?

A. Absolutely.

XQ. 928. Yes. Indeed, you have been very active in trying to do that?

A. In getting a satisfactory duty on it, yes, sir.

XQ. 929. Haven't you?

A. Yes, sir, I have been.

XQ. 930. When there was a petition before Congress to have an embargo against the importation of German dyestuffs, you were in favor of it, weren't you?

A. I was against it as unfair and unnecessary.

XQ. 931. Although you were a manufacturer, and if the German dyes had come in they would have been in competition with you?

A. I wanted——

XQ. 932. Isn't that right?

A. If they had come in free of duty, yes. I wanted a high duty to protect me as a manufacturer, and so stated on every occasion.

XQ. 933. You have been very anxious to import German dyes, haven't you?

A. No, sir; not anxious at all. I give my customers what they want.

XQ. 934. You have been asking the Government's leave to import German dyes, haven't you?

A. On customers' licenses.

XQ. 935. Haven't you?

A. On customers' licenses.

XQ. 936. I did not ask you on what.

A. No, sir, I did not ask to import dyes——

XQ. 937. Haven't you been asking the Government ever since 1919 to be permitted to bring in German dyes?

A. My customers asked for licenses which I imported for them under the embargo act.

XQ. 938. And haven't you been importuning the Government to allow you to bring in German salvarsan?

A. Yes.

XQ. 939. Yes.

A. For physicians who desired it, on one occasion.

XQ. 940. Indeed, you are now bringing in German salvarsan, are you not?

A. I did bring in two lots, I think for physicians who wanted it and stated they preferred it for their own reasons.

XQ. 941. Now, you were not only active in investigations before Congress on the question of dyes, but you financed investigations of that sort, did you not?

A. No, sir, I never financed any of them.

XQ. 942. Let us see whether you did not. Do you know a man named Pickerel?

A. He is in my employ; certainly.

XQ. 943. Do you know a man named Dieters?

A. I met such a man in Washington; he used to be with the Chemical Warfare Service.

XQ. 944. Just met him casually?

A. He came to me.

XQ. 945. What?

A. Came to me with some stories.

XQ. 946. Came to you? I see.

A. Certainly.

XQ. 947. Did you employ him?

A. No, sir, I did not employ him for a moment.

XQ. 948. Did you pay him any money?

A. I loaned him some money, and I gave him some money when he lost his position.

XQ. 949. How much did you loan him?

A. I do not recall the figures. Several hundred dollars I presume. He came to me and told me he lost his position. That is my best recollection, Mr. Kresel.

XQ. 950. Now, Mr. Metz, it is not up to me to warn you and I do not propose to intimate that you are not telling the truth.

A. I am doing the best I can, Mr. Kresel.

XQ. 951. But I ask you again whether it is not a fact that you employed this man Deiters to get for you affidavits to be used in the dyes investigation, and that you paid him $6,000 in cash——

A. Oh, no.

XQ. 952. Wait a minute.

A. Go on.

XQ. 953. And that he rendered you a bill on the 23rd of October, 1922, for $14,765 for such services?

A. I have no such recollection.

XQ. 954. Is it simply a matter of recollection with you, Mr. Metz?

A. Mr. Deiters sent me a bill for something, and I sent it back. I don't know what the amount was.

XQ. 955. Oh, he did send you a bill?

A. He did send me a bill. I do not know what the amount was.

XQ. 956. Never mind what the amount was.

A. May I correct that?

XQ. 957. What did he send you a bill for?

A. May I correct that?

XQ. 958. No.

A. It was not a bill.

XQ. 959. What did he send you a bill for?

A. I don't know. He said he needed some money, and sent me a memorandum.

XQ. 960. Sent you a memorandum or a bill because he needed money, did he?

A. Yes.

XQ. 961. And how much money did he need?

A. I don't remember the figures. I have got to look it up. I never gave it any attention, Mr. Kresel. I will have to refresh my memory. I do not know.

XQ. 962. Now look at the bill or memorandum and see if that refreshes your recollection (handing paper)?

A. Yes, that is it; but there is no basis for it.

XQ. 963. No, wait a minute; "that is it," that is enough.

A. But no basis for it.

Mr. Kresel: I ask that it be marked for identification.

The Court: Let it be so marked.

Paper marked "Plaintiff's Exhibit H: for Identification."

The Witness: Pardon me, Mr. Kresel——

XQ. 964. Just a minute; there is no question pending.

A. Well, I want to modify that one.

XQ. 965. You had a conference with Mr. Deiters at the University Club in New York, did you not?

A. I do not recall the University Club.

XQ. 966. What club was it?

A. I was at a hotel with Senator Moses, as I recall it.

XQ. 967. What hotel?

A. I think it was the Chatham, but I am not certain. Senator Moses——

XQ. 968. In New York?

A. In New York.

XQ. 969. When you mentioned Senator Moses you mean United States Senator Moses?

A. George H. Moses, of New Hampshire, yes.

XQ. 970. And when was it that you had this conference?

A. I do not recall. During one of the hearings in Washington.

XQ. 971. What year was it?

A. I do not recall. It was a hearing before the Senate Committee I presume. You have got the record here. I do not know which one of those hearings.

XQ. 972. When you speak of the Senate Committee, do you mean the Committee over which Senator Shortridge presided?

A. No, previous; the Senator Watson Committee, I think it was called, or the one that he was Chairman of, I think. I believe that is the time.

XQ. 973. And at that meeting you engaged Mr. Deiters to obtain for you, to be used by Senator Moses, affidavits to show that the War Department of the United States was in favor of the dyes embargo and in favor of The Chemical Foundation, because it had been induced to take that position by a certain manufacturer of dyes?

A. I did not engage him, no, sir.

XQ. 974. Did he offer to do that?

A. Senator Moses asked him to.

XQ. 975. Senator Moses asked him to?

A. Asked him to get those records for him, yes, sir, which he had mentioned to Senator Moses.

XQ. 976. You knew that Mr. Deiters was an employee of the Government, did you not?

A. At that time, yes.

XQ. 977. That he was an employee of The Chemical Warfare Service of the Government?

A. Yes, sir.

XQ. 978. And you say now, do you, that Senator Moses, of the United States Senate, and not you, asked this employee of the Government to produce affidavits reflecting upon the actions of the War Department?

A. If he was asked, it was by Senator Moses, not by me. I never asked him to produce those affidavits for me.

XQ. 979. Well, whether Senator Moses asked him or whether you asked him, is it not the fact that you promised to pay him for producing those affidavits?

A. I did not; I beg your pardon; I did not.

XQ. 980. And is it not a fact that you did pay him for it?

A. After the man lost his position, I gave him money; not for the affidavits, no, sir; never with that understanding, directly or indirectly, never.

XQ. 980a. And this bill or memorandum that you have identified is the bill or memorandum that Mr. Dieters sent you for his services in that connection?

A. I am not responsible for his bill.

XQ. 981. But that is what he sent you?

A. He sent me a bill. I won't say that is the one. He sent me a bill.

XQ. 982. You just said it was?

A. I beg your pardon. I am not sure. I was going to withdraw it and say he sent me a bill. I can not identify the copy you have there.

XQ. 983. Didn't you less than ten minutes ago say that this is a copy of what he sent you?

A. When I said that, you said there was no question. You put your hand up. I am modifying it now. I can't tell until I see my bill home. I do not believe it is such an amount.

XQ. 984. Where is your bill home?

A. I don't know if I ever kept it.

XQ. 985. So that you can not find the bill home?

A. I may be able to. I don't know. I never paid any attention to it. I laughed at it.

XQ. 986. Didn't you a few moments ago testify that you sent it back to Dieters?

A. I think I did; yes, sir. I am not sure.

XQ. 987. Then you haven't got it home?

A. I may have a copy of it home. I don't know. I never paid any attention to it. That is what I am trying to tell you. He sent me a bill which I indignantly repudiated.

XQ. 988. When he sent you the bill, didn't he send you a letter with the bill?

A. I do not recall, Mr. Kresel.

XQ. 989. Look at this letter and see if that refreshes your recollection?

A. I can't help what another man does. That is his construction of it. I had a letter from him. That may be it.

XQ. 990. And when you received this letter and the bill, I want to ask you what you wrote to Mr. Dieters?

A. I don't recall, Mr. Kresel.

XQ. 991. Did you write a letter to him denying what he said in this memorandum?

A. Possibly. No doubt I did.

XQ. 992. Well, will you produce any such letter?

A. If I sent it, how can I produce it? I paid no attention to it.

XQ. 993. Don't you keep copies of your letters?

A. No, I don't, not of very many things. I don't keep copies of personal things. They don't influence me.

XQ. 994. Listen, Mr. Metz——

A. You may have things that I have never seen.

XQ. 995 (reading). "Washington, D. C., October 23, 1922. I, Edward W. Deeters, hereby submit to Mr. H. A. Metz my bill for fees and expenses incurred by me in securing information and affidavits to be used by Senator George H. Moses, of New Hampshire, in the case of the dye embargo as per agreement between Mr. Metz, Senator Moses and myself, made in New York City, New York, in October, 1921, to wit: 1. That all information, evidence, or affidavits secured by me should be used by Senator Moses and turned over to him or other persons designated by him. 2. That Mr. H. A. Metz take charge of the financial part of this agreement, defraying all fees and expenses incurred by me. Expenses: Personal fee for services rendered, $7,200; traveling expenses, $453; clerical help, $1,000. Special Expenses: (Securing affidavits, maintenance, and traveling expenses of persons making affidavits): Affidavit No. 1, $1,429; Affidavit No. 2, $1,163; Affidavit No. 3, $447; Affidavit No. 4, $942; Affidavit No. 5, $1,319; Affidavit No. 6, $812. Total, $14,765. Received on account, $5,000. Balance due, $9,765." Now I ask you to produce to this Court any copy of a letter from you to Mr. Deeters denying the truth of the statements that he made in this.

A. I will be glad to if I can find such a letter. I shall be glad to look it up just as soon as I go back. If I have a copy I shall certainly submit it, because I deny such statements.

XQ. 996. How much did you pay him?

A. I have not any idea.

XQ. 997. Just try to approximate it for us?

A. Nowhere near that amount.

XQ. 998. He says $5,000. How much do you say you paid him?

A. I gave him a thousand dollars at one time towards a mortgage on his house, I recall that. I do not recall the figures, Mr. Kresel.

XQ. 999. Well, a thousand dollars. Any more than that?

A. I recall one thousand dollars on a mortgage. His wife was sick, and his child, and I gave him a thousand dollars to pay on his mortgage.

XQ. 1000. You gave him a thousand dollars. Is that all?

A. No, I gave him smaller amounts at various times.

XQ. 1001. How much more?

A. As little as ten dollars at various times.

XQ. 1002. How much more?

A. I don't recall, Mr. Kresel.

XQ. 1003. Did you give him the thousand dollars by check?

A. I do not recall that, but I can look it up and see.

XQ. 1004. If you did, will you produce the check?

A. If I did, I certainly will.

XQ. 1005. Is it a fact that you gave it to him in cash?

A. Possibly I did. He was in New York and he came there crying about his house, to save him from being foreclosed. I will try to look it up and try to locate the date.

XQ. 1006. You did it just because he had to pay a mortgage on his house?

A. Because he lost his job because he tried to get this thing straight with Senator Moses, and I sympathized with the man on that account.

XQ. 1007. I see.

A. Absolutely, and no other reason, Mr. Kresel.

XQ. 1008. When he wrote you sending this letter under date of October 24, 1922: "My dear Colonel: I am enclosing herewith a statement. You understand how I am situated financially. I explained to you that it is necessary for me to have the money at this time. Taking over your work entailed great sacrifice on my part, and you of course are not willing that I should endure any further hardship. It is absolutely necessary that I receive a check from you by return mail. Very truly yours." Was it after receiving this letter that you gave him a thousand dollars to pay his mortgage?

A. I do not recall, but I sent no check by return mail, I can assure you.

THE COURT: I think he has had it in full measure, and if you think the witness needs any protection you should come to his rescue.

MR. ANDERSON: No, I do not, but I think at the proper time if the question is improper——

THE COURT: I think Mr. Kresel has shown the utmost restraint, Colonel Anderson, and I shall no longer hesitate to say so.

MR. ANDERSON: Your Honor's judgment will of course control, but I feel that way and I can only address the Court. You are the only person I can address myself to.

THE COURT: But I think the objection is not well taken. I think instead of criticism of Mr. Kresel at this time he is to be commended for the restraint he has shown. The time has come when this witness must answer these questions or abide by the consequences. You have observed him with care. I have observed you observing him. I have observed him throughout. The time has come, and from now on, evasion, will not be tolerated.

MR. ANDERSON: I quite agree with your Honor that evasion is not to be tolerated under any circumstances.

THE COURT: I appreciate your position, Colonel Anderson.

MR. ANDERSON: I was not impressed with the fact that the witness was undertaking to evade.

THE WITNESS: I assure your Honor that I have not evaded.

THE COURT: I can not hear you, Colonel Anderson.

MR. ANDERSON: He was going over a very long record. I do not want to argue with the Court on the subject, but merely to note an objection.

The Court: I do not want to discuss it either, because the thing amounts now to a demonstration and not an opinion on my part. So if you can help the witness by suggesting to him what I suggested to him on Saturday and this morning you will be doing the witness a favor—and that is to stop evasion and answer questions, and stop argument. This is not the place for that.

Mr. Anderson: I quite agree, if your Honor please, and I am not undertaking to testify, nor am I undertaking to control the examination in any respect. I have not interrupted it, I have even refrained from making objection where I thought I should object, because I believe in the utmost latitude. If your Honor thinks the witness is evading I should be very glad to say that the witness should not evade.

The Court: This Court will be glad to protect in full measure any witness, as I advised Mr. Metz on Saturday or Friday, unless he undertakes to protect himself. He has not needed protection from aggression of counsel. There is no need of discussing it further, Colonel Anderson.

Mr. Anderson: I was not doing it, but my duty is to address myself to the Court when the question is raised.

The Court: I understand.

Mr. Anderson: I never argue with this Court or any other Court when it has reached its conclusion.

XQ. 1022. I asked you whether you had not testified that you had discussed with the Germans on your trip abroad the question of the return of these patents to them. Do you say now that you had?

A. In 1920 I did, yes, sir, when I went abroad.

XQ. 1023. In 1920 you said you discussed that?

A. Yes, sir.

XQ. 1024. Not in 1921?

A. I do not recall. In 1920 I discussed it with all the people who had patents here.

XQ. 1025. Did you not also discuss it with them in 1921?

A. Not specifically, I don't think.

XQ. 1026. You were abroad in 1921?

A. And 1922.

XQ. 1027. Now I read to you your testimony before the Shortridge Committee at page 877, as follows: "Undoubtedly our patent laws, in not providing for carrying out invention are to blame for conditions that existed, and in my discussion of this point with the foreign concerns last summer, they conceded this and said that they would be perfectly willing to continue licenses granted under their patents, if their property were returned to them."

A. That is true. That was their statement.

XQ. 1028. Now you were testifying to that in 1922?

A. That is right.

XQ. 1028a. And you state that conversation took place "last summer." That was 1921, was it not?

A. It also took place in 1920.

XQ. 1028b. Well, did it take place in 1921?

A. Apparently, yes; but in 1920, positively.

XQ. 1029. Is it not a fact that, after you had gone abroad and discussed with the Germans the question of the return of these patents to them, that they sent a commission here early in 1922 consisting of Dr. Oppenheimer, Dr. Holdermann and Dr. Wagner to get these patents back, is it not?

A. I do not think that that was the purpose of the commission.

XQ. 1030. Didn't you meet them in New York in your own lawyer's office?

A. I did not. I was in Europe when they came here. I met one of the gentlemen before he sailed from Berlin, Dr. Oppenheimer.

XQ. 1031. Didn't you send them to your own lawyer?

A. I gave Dr. Oppenheimer a note to Mr. Vandiver the night before he sailed.

XQ. 1032. Mr. Vandiver is your lawyer?

A. He was my counsel in the proceedings against the Alien Property Custodian.

XQ. 1033. He was then your lawyer?

A. And still is.

XQ. 1034. And he is in Court here with you now?

A. Yes, sir; as my counsel.

XQ. 1035. Did you testify before the Shortridge Committee as follows: I read from page 883. Talking about dyestuffs, Senator Shortridge, the Chairman, questioning you said: "At the present time is there or is there not competition among the manufacturers?

"Mr. Metz: There is the strongest kind of competition, because everybody is trying to get rid of the stock on hand and turn it into cash."

Did you so testify?

A. Yes, sir; that is a fact.

XQ. 1036. Was it true?

A. Yes, sir.

XQ. 1037. At page 894, you were questioned by the Chairman as follows:

"Mr. Metz, I have been very much interested in your statement. I suppose we all agree that we want to continue the dye chemical industry in America." and you said:

"Absolutely.

"The Chairman: It gives employment to our people and legitimate profit to capital invested and to be invested. Now there was a time when we were, in a sense, almost wholly dependent upon Europe."

And you said:

"The whole world was on Germany; let us put it more concretely.

"The Chairman. Well, I have understood that Switzerland supplied some proportion of these things.

"Mr. Metz: Only a small per cent.

"The Chairman: I have understood that Switzerland manufactured a very considerable quantity.

"Mr. Metz: And they got their crudes and intermediates from Germany.

"The Chairman: Well, then, we will assume as a fact, fixing a time in 1913 and 1914, say—and then you interrupted and said:

"Germany had the world by the throat, absolutely.

"The Chairman: Yes. Now then for reasons which have developed, America has come to be a very important producer of dyes and chemicals. That is true, is it not?

"Mr. Metz: Yes, sir.

"The Chairman: An embargo was effected, resulting from the war and the laws which have existed since the determination of the great war. Now it is charged by many, and believed by many, that there has already grown up and exists today in America what is called a monopoly in this industry. From your knowledge would you say there is or is not a monopoly?"

And you said:

"I would say that at the present time there is not." Was that true?

A. Yes, sir; that was true in my opinion.

XQ. 1038. And that was true of pharmaceuticals?

A. Yes, sir.

XQ. 1039. And of course you are opposed to monopoly are you not?

A. I don't believe in a monopoly in the ordinary sense. I believe there should be free competition.

XQ. 1040. You remember when the Alien Property Custodian sold the Bayer plant and with it twelve hundred German patents; you remember that, do you not?

A. I remember that, yes. It is a matter of information and belief.

XQ. 1041. And you remember at a meeting of the dyes institute and learned that Mr. Matheson who was in control of the Cassella plant here in the United States was selling the Cassella patents to the National Aniline Company, did you not?

A. He claimed, I believe, to have transferred them.

XQ. 1042. You learned that at that time?

A. Yes, sir; that is right.

XQ. 1043. And you saw at that time that that would give the National exclusive control of the manufacture of such products as the Cassella patents covered, did you not?

A. Yes, sir.

XQ. 1044. But you saw the danger of it, did you not?

A. No, sir; I didn't think Matheson had a right to do it.

XQ. 1045. Didn't you see the danger of it?

A. That was not my point.

XQ. 1046. Didn't you so testify before the Shortridge Committee?

A. They would have a monopoly of course, naturally, under the patents.

XQ. 1047. Now, you see you switch again.

A. I am trying to give you my attitude of mind, Mr. Kresel.

XQ. 1048. Didn't you at that time, when you learned of the possibility of these Cassella patents going to the National, see the danger of that, that it would create a monopoly?

A. In those particular products, yes, naturally.

XQ. 1049. Before the Shortridge Committee you testified:

> "I was making salvarsan and novocain and I had licenses for various patents covering vat colors; and at that meeting of the institute, a claim was made that Mr. Matheson had transferred the Cassella patents to the National and that they would have exclusive control of the manufacture of such patents as the Cassella patents covered. I saw the danger of this."

A. Yes; that is correct.

XQ. 1050. And when you saw the danger of this, what did you do about it?

A. I spoke to Mr. Garvan about it, if I remember correctly.

XQ. 1051. Oh, you did? You spoke to Mr. Garvan about it. Now, that was in 1921, was it not?

A. I do not recall the date. The records will show.

XQ. 1052. When you spoke to Mr. Garvan about it, was Mr. Garvan then the President of the Chemical Foundation?

A. I do not think it existed at that time, Mr. Kresel.

XQ. 1053. That was before the organization—

A. I would have to look up the date.

XQ. 1054. And that was before the organization of the Chemical Foundation. Mr. Garvan, however, was the Alien Property Custodian?

A. Yes. The dates I do not remember.

XQ. 1055. It was the Alien Property Custodian that had sold these Bayer patents?

A. Yes, sir.

XQ. 1056. And shortly after you talked to Mr. Garvan about the danger that you saw in having such a large number of patents go into the hands of a single manufacturer, do you not recall attending a meeting at which Mr. Choate appeared and outlined the proposed organization of The Chemical Foundation?

A. I do. I well remember it.

XQ. 1057. That was the meeting of the Manufacturing Chemists' Association?

A. Of which I am a member; yes, sir.

XQ. 1058. Of which you were a member. And it is Mr. Joseph H. Choate that you are talking about now, is it not?

A. Yes, the gentleman sitting here.

XQ. 1059. And Mr. Choate explained what it was intended to do about the remaining German patents, did he not?

A. Yes, sir.

XQ. 1060. He explained that the Alien Property Custodian proposed to sell those patents to The Chemical Foundation?

A. Yes, sir.

XQ. 1061. He explained that it was for the purpose of having The Chemical Foundation give non-exclusive licenses on these patents to any qualified American citizen?

A. Yes, sir.

XQ. 1062. Upon equal terms and upon equal rights?

A. Yes, sir.

XQ. 1063. He explained that the United States Government was to have a free license to those patents?

A. I think that was part of the explanation.

XQ. 1064. He explained that they were to be sold for $250,000, did he not?

A. Yes, sir.

XQ. 1065. He explained that Mr. Garvan was to be the President of the Corporation, did he not?

A. Well, I knew he was to be. Whether it was explained at that meeting or not I don't know. But I knew that was going to come.

XQ. 1066. And after you learned what you have just stated of the purposes of the organization of this corporation and of the intended sale to it by the Alien Property Custodian of these patents, you joined the organization and subscribed $50,000 to it?

A. I did at that same meeting, around the table.

XQ. 1067. Now, you knew at that time as much about the value of these patents as you know today, didn't you?

A. I certainly did.

XQ. 1068. If your testimony is true, you knew that the salvarsan patent alone was worth a million dollars?

A. I certainly did.

XQ. 1069. And yet you were willing to become part and parcel of this organization that you knew was to buy the whole kit and crew of them for $250,000?

A. I saw a good thing as a stockholder and was perfectly willing, yes.

XQ. 1070. That is your attitude, is it?

A. That is my answer on that. I had no interest in the Germans.

XQ. 1071. And so, seeing a good thing, you became a stockholder and are still a stockholder of The Chemical Foundation?

A. Yes, I still hold certain shares for three companies.

XQ. 1072. Did you ever receive a dividend on your stock?

A. Not to my knowledge.

XQ. 1073. Wouldn't you know if you had?

A. I am quite sure I have not.

XQ. 1074. You were also a member at that time of the Dyes Institute?

A. The Consolidated Color Company was; yes, sir.

XQ. 1075. You are aware that the Government charges in this case that the American Dyes Institute and its members were in a conspiracy to defraud the Government of this property?

A. I have read the charge.

XQ. 1076. You are one of the conspirators then?

A. I was not on the Executive Committee.

XQ. 1077. I see. You were not on the Executive Committee. When you learned that The Chemical Foundation was about to take over these patents you thought that there was safety in that for the American industry, did you not?

A. It didn't make any difference.

XQ. 1078. I want to know yes or no whether you thought there was safety in that?

A. I did not think it made any difference to the industry, Mr. Kresel.

THE COURT: Will you suspend a minute, Mr. Kresel?

Mr. Galloway, will you come to the Bench?

(Messrs. Anderson, Galloway and Kresel then conferred with the Court, and a short recess was declared).

XQ. 1079. Now, Mr. Metz, as you have been reflecting upon your testimony of the past twenty minutes, has it occurred to you that there is anything about the Deeters transaction that I inquired about that you have not stated?

A. I do not recall anything, Mr. Kresel, that I have not told you.

XQ. 1080. You know Gaston Means, do you not?

A. No, sir.

XQ. 1081. You mean you have never met him?

A. Never met him to my knowledge.

XQ. 1082. Or spoken to him?

A. Never to my knowledge saw him.

XQ. 1083. You know Cyril Bennett, do you not?

A. Yes, sir, very well.

XQ. 1084. You employed him, did you not?

A. No, sir, never employed him.

XQ. 1085. Did you pay him any money?

A. I loaned him money, yes, sir, on various occasions.

XQ. 1086. You endorsed his note to the bank, did you not?

A. When he was with—

XQ. 1087. Yes or no? I did not ask you when.

A. Yes, I endorsed a note for him at one time for the bank.

XQ. 1088. What bank was it?

A. Gotham National, if I remember.

XQ. 1089. Yes, you remember correctly. And how much?

(No answer.)

XQ. 1090. And how much was the note?

A. I do not recall that, Mr. Kresel. I think it was $5,000 for the Dyers Colors Institute, Dyers Trade Journal.

XQ. 1091. Didn't you know that Bennett and Gaston Means made the investigation of this matter which resulted in this case?

A. No, I don't know it, no, sir; only from hearsay I have heard it mentioned.

XQ. 1092. You have heard it.

A. I have heard it rumored, that is all.

XQ. 1093. And you know, don't you, that Gaston Means was a German spy here during the war?

A. I do not know it.

XQ. 1094. Don't you know that it was so testified before the Overman Committee in the Senate?

A. I do not recall such testimony, Mr. Kresel; never read it.

XQ. 1095. Before the Committee of Ways and Means of the House on June 18, 1919, did you testify as follows: "Now, Mr. Chairman, there is another great danger as I view it. The question has been raised of the Chemical Foundation taking over these patents. Well, there is safety in that." Did you so testify?

A. Yes, sir.

XQ. 1096. And this was in June, 1919. You realized then, did you not, that this arrangement that Mr. Choate had outlined at the meeting of the manufacturers for the conveyance of these patents by the Alien Property Custodian to The Chemical Foundation would avoid the very danger that you saw in the transfer of the Bayer patents and the Cassella patents?

A. Yes, sir.

XQ. 1097. That is it would avoid these German patents which had controlled the dye industry, which had permitted Germany to have a monopoly of the dye industry, getting into the hands of somebody else that could monopolize it; is that it?

A. So far as the patents were concerned; yes, sir. That would kill us.

XQ. 1098. And you thought that the arrangement outlined by Mr. Choate for the conveyance of these patents to The Chemical Foundation was an arrangement that was desirable in the public interests, did you not?

A. Yes, for those interested. Yes, sir, in that way.

Mr. Kresel: I ask that the part wherein he says "for those interested" be stricken out.

THE COURT: Read the question and the answer.

(XQ. 1098. Read as above recorded, with the answer thereto).

XQ. 1099. I ask you to answer the question directly.

THE COURT: No, I deny that motion, Mr. Kresel. You may have the question repeated, if you wish, or you may repeat it, but I deny your motion.

XQ. 1100. Did you think that the arrangement was in the public interest?

A. No, not in the general run—did not give that a thought, Mr. Kresel. I thought it was the industry that was interested in the patents.

XQ. 1101. It was the interest of the chemical industry?

A. To that extent, yes, certainly. The American industry.

XQ. 1102. You testified before the Shortridge Committee in 1922 that you were not competent to give the value of these patents, did you not?

A. I can't give all of them. I must have testified that.

XQ. 1103. Did you so testify? If you do not remember I will read it to you.

A. I probably did testify to that. I could not testify to it on all the patents.

XQ. 1104. If you did so testify I want to know when it was you became competent to testify to the value?

A. I knew at once on the salvarsan and novocain patents. Not all of them I could not tell you, Mr. Kresel.

XQ. 1105. I will read to you what you said before the Committee: "I am not competent to discuss the value of the patents taken over by The Chemical Foundation, but based on Mr. Garvan's statement they would not seem to amount to much." You testified to that, did you not?

A. Based on Mr. Garvan's statement.

XQ. 1106. Now I want to know the time when you became competent to testify as to the values that you undertake to testify here?

Mr. Anderson: What page is that on, Mr. Kresel?

Mr. Kresel: Page 867.

A. I always was on the salvarsan patent, Mr. Kresel.

XQ. 1107. Listen to what you said about the salvarsan patent in the same connection: "So far as salvarsan is concerned I made a statement before the Finance Committee that on a basis of one million dollars for that patent I could on the basis of the royalty itself, which is only five per cent of the selling price, pay ten per cent for ten years. That patent has about seven more years to run." You remember that?

A. Yes, sir.

XQ. 1108. You did not there undertake to say that in your opinion this salvarsan patent was worth a million dollars, did you?

A. Salvarsan is about $700,000 on a basis of ten per cent for ten years. That is what I testify.

XQ. 1109. You did not there testify in your opinion the patent was worth a million dollars, did you?

A. I testified what stands in there. I did not testify here it was worth a millions dollars; I said the two of them were worth a million dollars.

XQ. 1110. Which two?

A. The neo and the salvarsan together.

XQ. 1111. When you were testifying before this

Finance Committee that you speak of you were testifying about both, were you not?

A. Approximately, yes. Ten per cent for seven years, or ten years, I figured at the time.

XQ. 1112. I am not asking you what the income was. I am pointing out to you that even there you did not testify that in your opinion this one or both of those patents was worth a million dollars, did you?

A. I was not called upon to do so specifically, Mr. Kresel.

XQ. 1113. That is your answer.

A. Yes, sir.

XQ. 1114. But now you say that the two salvarsan patents are worth a million dollars?

A. Yes, sir.

MR. ANDERSON: He said they were worth a million dollars.

XQ. 1115. Were worth a million dollars?

A. Yes, sir.

XQ. 1116. In April, 1919?

A. Yes, sir.

XQ. 1117. You mean they were worth that to you?

A. To any one who had them.

XQ. 1118. And that the Novocain patent was worth $200,000?

A. At least that, I testified, I believe.

XQ. 1119. Will you not be a little more liberal with us? Is it not worth more than that?

A. Only had four years to run, Mr. Kresel. The neo was worth more.

XQ. 1120. You think it was worth over $200,000?

A. Well, the returns show it.

XQ. 1121. I did not ask you about the returns.

A. I think it was worth over that; at least $200,000.

XQ. 1122. Were the salvarsan and neosalvarsan patents worth a million in April, 1919?

A. In my opinion, yes.

XQ. 1123. What were they worth in 1920, in your opinion?

A. They were worth that ever since; worth it today in my opinion.

XQ. 1124. So in your opinion the value of these patents has neither increased nor diminished since April, 1919.

A. The royalties accumulating or accumulated, make it worth that in my opinion.

XQ. 1125. Please answer my question?

A. Yes, sir; I think it is still worth that.

XQ. 1126. It has neither diminished nor increased?

A. That is a matter of opinion. They are still worth a million dollars in my opinion.

XQ. 1127. Have they since April, 1919, and the present day been worth more than a million dollars?

A. I should not estimate any more than that. It is a speculation.

XQ. 1128. So that at all times between April, 1919, and the present date, in your opinion, these two patents are worth a million dollars?

A. They still are.

XQ. 1129. Were they ever worth more than a million dollars?

A. I could not say that. I never estimated beyond the returns on them, in an off-hand way.

XQ. 1130. Did you ever estimate that they were worth more than a million dollars?

A. I never went beyond the figure that I would give that much for them at the time.

XQ. 1131. I understand that that is your testimony, that you would have been willing to pay a million dollars for them. But did you ever estimate their value to be greater than a million dollars?

A. I never considered it further, Mr. Kresel.

XQ. 1132. Did you ever testify they were worth five million dollars?

A. I might have said so, yes, and they would have been to some folks. They would have been to me if I had them exclusively.

Mr. Kresel: I ask that the answer be stricken out.

A. (continued). I think I did mention that figure once, Mr. Kresel.

The Court: Motion granted.

XQ. 1133. Did you not testify before the Committee on Finance of the United States Senate that in your opinion these two patents were worth five million dollars?

A. Yes, they may have been worth that. I think I mentioned that figure once.

XQ. 1134. Now, which is it? Were they worth a million dollars or five million dollars?

A. It would depend upon the time and the conditions what they were worth.

XQ. 1135. I have asked you the time. You have told me that at all times since April, 1919, to the present day there has been no difference in the value of them, have you not?

A. I said I would give a million dollars at any time.

XQ. 1136. Did you not say that?

A. That was my opinion of their value, yes.

XQ. 1137. And yet in 1921 you testified they were worth five million dollars?

A. Even on five they would pay a return, Mr. Kresel.

XQ. 1138. Did you testify that?

A. Yes.

XQ. 1139. What do you want the Court to take now? A million dollars as your testimony or five million dollars?

A. The figures are there. I did not verify them. I think at a million absolutely. That is the figure I swore to I would have paid, Mr. Kresel.

XQ. 1140. What do you want to say now? Were they worth a million dollars or were they worth five million dollars?

A. I should say they are worth a million easily, possibly five. You can verify that figure, as I told you.

XQ. 1141. And you would have been willing to pay five million dollars for these two patents, would you not?

A. Under certain conditions, certainly.

XQ. 1142. If they had been put up by the Alien Property Custodian for sale, you would have been willing to bid five million dollars for them, would you not?

A. It would depend on the conditions, Mr. Kresel.

XQ. 1143. No conditions at all; just the conditions that existed at that time, namely, that there were the patents and there were four licenses that had been issued thereon by the Federal Trade Commission. Under those circumstances would you have been willing to bid five million dollars for them?

A. No, sir. I would have been willing to bid one million with the licenses.

XQ. 1144. I read to you from your testimony before this Committee on Finance given by you in the month of August, 1921:

> "Mr. Metz: On the basis of $75,000 and a five per cent royalty and the profit they made here, anybody that paid five million dollars for that patent would have a very cheap bargain, because they would have a monopoly, and with a

monopoly I could on the present output make a great profit. I would gladly have paid five million dollars for it if I could have gotten it."

Did you so testify?

A. Under a monopoly, yes, sir. Under an absolute patent, yes.

XQ. 1145. You knew that with those four licenses issued with the Federal Trade Commission, you could not get a monopoly?

A. Then it was not worth five million dollars. I said if it was so; I so testified.

XQ. 1146. You knew that the Alien Property Custodian could not sell them without their licenses, did you not?

A. But with them I would have paid a million on them. I would not have paid five million.

XQ. 1147. Let us see: If you had bought these patents, you could have imported the products covered by them, if you had wanted to, could you not?

A. Yes, sir.

XQ. 1148. You could have refused to issue licenses under them to anybody that you wanted, could you not?

A. Further licenses, yes.

XQ. 1149. You would have been receiving a five per cent royalty from the four licensees under the Federal Trade Commission?

A. I could have claimed those.

XQ. 1150. That would have paid you a ten per cent differential, would it not, as between you and a manufacturer and those four others?

A. Yes, sir, certainly.

XQ. 1151. How long would it take you with that differential to have driven the others out of the market?

A. Even if I did not drive them out and continued at the same price, it was worth a million dollars.

XQ. 1152. Would you not have had a monopoly if you had bought these patents?

A. If I wanted to exercise it, certainly, Mr. Kresel, and that is what made the value, exactly.

XQ. 1153. So that when you say that these patents are worth a million dollars, you are placing a value on them as a monopoly?

A. No, sir; as they stand today with the licenses.

XQ. 1154. As they stood in April, 1919, not today.

A. Yes, sir, with the royalties in 1919, yes, sir; with the licenses on them.

XQ. 1155. And you admit that if you had gotten them, you could have had a monopoly?

A. I have always said I was against a monopoly on an article of that kind.

XQ. 1156. Do you not admit that you could have had it, if you had wanted it?

A. Any one that bought it could have had it, subject to the licenses.

XQ. 1157. You do not mean to say that the million dollars value which you placed on these two patents was a market value, do you?

A. I mean to say the returns would have——

XQ. 1158. Do you or do you not mean to testify that that is the market value of those patents at that time?

A. What do you mean by "market value," Mr. Kresel?

XQ. 1159. That is just it. I want to know what you mean by it?

A. That it is worth that to any one.

XQ. 1160. I do not know anything about it. What did you mean when you answered Colonel Anderson's question that the fair market value of those patents was a million dollars?

Mr. Anderson: I did not say "fair market value." I said, "the fair value."

Mr. Kresel: "Fair value;" excuse me.

Mr. Anderson: I did not say "market value."

Mr. Kresel: Excuse me. I stand corrected.

XQ. 1161. Did you mean to testify to the fair market value or the fair value?

A. To the fair value to anyone that bought those patents.

XQ. 1162. Did you mean to testify to the fair value or the fair market value?

A. Fair value, I should take it, to anyone.

XQ. 1163. You know, do you not, that there is no market value of patents?

A. In the ordinary sense, certainly.

XQ. 1164. There is or is not?

A. There is not, certainly; I know that.

XQ. 1165. Now let me read to you the question that Colonel Anderson put to you. I read from page 1719:

> "Q. 148. I will ask you this question: Basing your knowledge upon your experience as an importer and as a merchant in this business and other knowledge which you have described, and your manufacturing experience, your knowledge of the profits of this business, including the profits of sale and manufacture, and from your familiarity with market conditions which you have described up to April 10, 1919, what in your opinion was the fair market value of patent No. 986,148 which you have described as covering salvarsan, and re-issue patent No. 13,848, which you have described as covering neo-salvarsan, on April 10, 1919?"

Do you remember that question?

A. I do recall it from the record.

XQ. 1166. Now then, do you still say that the fair market value of these two patents was one million dollars in April, 1919?

A. I say the fair value of these patents. There was no market value, of course.

XQ. 1167. And what you mean by that is that you would have been willing to pay that for them?

A. Yes, sir; gladly.

XQ. 1168. If you had bought these patents, you would have been in a position to fix any price for the product that you pleased, would you not?

A. Not with the license outstanding.

XQ. 1169. With the ten per cent differential you have already told me that you could drive those out of the market, could you not?

A. I do not believe the ten per cent would have made the difference.

XQ. 1170. Well, if you could import from Germany, as you would have imported——

A. I would not have imported, Mr. Kresel.

XQ. 1171. As you could have imported, you could have driven your competitors out of business here, could you not?

A. That would depend upon how much cheaper they could manufacture.

XQ. 1172. Well, you know they manufactured cheaper, don't you, over there, than here?

A. I am speaking of the American manufacturer.

XQ. 1173. No, no, I am speaking of the German, if you please.

A. I never had in mind closing American plants and taking German stuff at that time.

XQ. 1174. I didn't ask you that. Please listen to my question. You know, don't you, that the Germans produced this article at a much lower price than the Americans can?

A. I don't know it today, Mr. Kresel.

XQ. 1175. Well, did you know it in 1919?

A. No, sir; I did not know it.

XQ. 1176. Did you know it in 1920?

A. No, sir.

XQ. 1177. When you were abroad in 1920 and 1921, don't you know what they were selling them at?

A. For export, at much higher than the market price in Germany and higher than our price here in some instances.

XQ. 1178. You mean that you are now importing from Germany and paying more for the product than you could buy it here for?

A. With the duty, yes; more than we could make it for here; the small amounts I have imported.

XQ. 1179. And you are importing it from your former principals?

A. I am only——

XQ. 1180. You are importing it from your former principals?

A. I am not importing. I had imported two lots, special orders.

XQ. 1181. Of course you knew, didn't you, that at the price you paid for these patents, it would eventually go back to your German friends?

A. Oh, no, it wouldn't. Why should it?

XQ. 1182. Didn't you think that the money would be returned to them by the Government?

A. I had no reason to form an opinion.

XQ. 1183. Had you never thought of it?

A. I never thought of that. Our claims against Germany would even that up.

XQ. 1184. You mean that when you were considering the value of these patents it never occurred to you that no matter what you paid for them, the Germans would get what you paid?

A. I had no such thing in mind, Mr. Kresel.

XQ. 1185. No such thing; that was farthest from your mind?

A. I didn't give it a thought. The question wasn't up.

XQ. 1186. Well, your arrangement with the Germans still continues?

A. To what extent, Mr. Kresel?

XQ. 1187. I don't know to what extent. Your exclusive license, you told us this morning, still continues?

A. Yes, sir.

XQ. 1188. Your agency still continues?

A. Yes, sir.

XQ. 1189. And when you started manufacturing salvarsan here, you did that contrary to your arrangement with the Germans, didn't you?

A. On the contrary, with their permission, when I started manufacturing under the patent.

XQ. 1190. Contrary to your contract, didn't you?

A. The contract was amended and I had the right to do it in 1916.

XQ. 1191. It was contrary to your written contract of 1912, was it not?

A. There was a change in the contract.

XQ. 1192. Was it contrary to the written contract of 1912?

A. It was not under the terms of the 1912 contract. It was a new contract, a new arrangement, an amendment thereto, if you put it that way.

XQ. 1193. Did not the 1912 contract prohibit you from manufacturing salvarsan here?

A. I couldn't manufacture salvarsan. The patent prohibited me from doing it. I had no right to until I got permission.

XQ. 1194. Did not the terms of your contract prohibit you from manufacturing?

A. It didn't mention the fact that I couldn't manufacture. It mentioned that I was agent for their goods.

XQ. 1195. When you were manufacturing here, you expected to have to account to your Germans for doing that, didn't you?

A. No, sir; that was never mentioned.

XQ. 1196. Didn't you so tell Mr. Choate when he was examining you?

A. Possibly that might have happened later on, but there was no mention at the time, Mr. Kresel.

XQ. 1197. I didn't ask you anything about any particular time. Didn't you tell Mr. Choate, when he was examining you in the office of the Alien Property Custodian, that you expected to have a severe session with the Germans after the war for making salvarsan at all?

A. I do not recall using those words, Mr. Kresel. I may have said something of the kind.

XQ. 1198. Let me read it to you.

A. I should be glad to have you.

XQ. 1199. I read from the stenographic report of your examination, page 22, as follows. The date is September 23, 1918. Question by Mr. Choate:

> "Mr. Metz, I can very easily see why, as long as you were under the contract of 1912, you kept the pharmaceutical and general business separate. But what was the point after you had them both?"

And your answer was:

> "I had a factory in Brooklyn, Herman A. Metz, doing pharmaceutical work. That building belonged to me and that was a separate thing entirely. You see the reason for that"——

And then Mr. Choate interposed by putting this question:

> "You are quite sure that that was not done with a view to making the accounting easier?"

And your answer was:

> "No, nothing whatever to do with that. There can not be any accounting on that now. After the war, I think I will have a severe session for making salvarsan at all."

A. That probably was true at that time.

Mr. Anderson: Where are you reading that from?

Mr. Kresel: I am reading from a report of an examination of Mr. Herman A. Metz before Mr. Joseph H. Choate in the office of the Alien Property Custodian on September 23, 1918.

Mr. Anderson: Is it in the official record? I have never seen it.

Mr. Kresel: It is an official record of the Alien Property Custodian, I suppose, or a copy of it.

XQ. 1200. Your estimate of a million dollars as the value of these two patents was based upon the assumption that you would have these patents and that you would be under no obligation to license anybody; isn't that right?

A. Quite right, sir.

XQ. 1201. And upon the assumption that you would be under no obligation to give to the United States a free license on all those patents; isn't that right?

A. Yes, that is true, naturally.

XQ. 1202. And upon the assumption that you would not be limited to a six per cent return upon your investment?

A. Certainly.

XQ. 1203. And upon the assumption that you would not have to devote all above six per cent for the advancement of the chemical industry?

A. Certainly.

XQ. 1204. Now I am going to ask you to tell this Court what in your opinion those two patents were worth, upon these conditions; namely, that the purchaser had to issue non-exclusive licenses on these patents to all Americans upon equal terms and upon equal royalties; that the purchaser had to give a free license upon all the patents to the United States Government; that the purchaser had to give away for public purposes everything that was made above six per cent on the investment?

Mr. Anderson: If your Honor please, I have to note an objection to that question, because it does not state the facts in the record and it is not based upon any facts shown in the record. It is a hypothetical question, and of course it must be predicated upon facts. It is contended here, and will be very earnestly contended in this case, that the charter is not susceptible of any such construction; and that being the case, a question predicated upon that construction of the charter, no part of which question we think can be sustained by the language of the charter itself, would be of course an improper question. I therefore subject the objection to the question.

Mr. Kresel: I desire to be heard, your Honor. I deny entirely Colonel Anderson's view of what is proper in a hypothetical question. I purposely refrained from assuming those to be the facts. This man has taken it upon himself to qualify as an expert on the values. I am asking him to assume certain conditions. Whether those conditions prevailed here or no I am not discussing with this witness, that is a matter that we have to discuss with your Honor. But I am entitled to have this expert assume a state of facts and give an answer thereon.

Mr. Anderson: I would say in reply that I think a hypothetical question must be predicated upon a state of facts appearing in the record where it is not taken in advance of the hearing on the promise to prove those facts to exist, and then if they are not proved the hypothetical question goes out, along with the answer. In the next place, I must take exception to the suggestion of counsel that the witness has assumed, as I think he said, to qualify as an expert. The witness is here under subpoena and he was asked questions by counsel on direct examination which we assume qualified him as an expert.

The Court: Tell me this, Colonel Anderson. Suppose it should be determined, though I am not now determining it, that the charter of this defendant is open to such construction, which you deny, would the answer to Mr. Kresel's inquiry then be pertinent to the issues in this case?

Mr. Anderson: I will put it this way, your Honor: I do not venture to suggest the question to counsel, but he might say, assuming so and so to be the truth, what then would be your idea of the value of the patents. But if it is put as a fact, then it must appear of record in order to be a proper question.

Mr. Kresel: I think, Colonel, if you will permit the stenographer to read the question you will agree with me it is not open to the criticism you have just made.

The Court: Do you care to have it read, Colonel Anderson?

Mr. Kresel: I have assumed, and I will ask him to assume that. If it does not meet that, I will correct it.

(XQ. 1204 read by the reporter as above recorded.)

Mr. Anderson: That was under these conditions.

The Court: As I understand, Mr. Kresel is ready to make it correspond to your ideas.

Mr. Kresel: May I reframe the question?

The Court: Yes.

XQ. 1205. Mr. Metz, I want you to assume for the purposes of this question that the purchaser of these patents would have had to issue non-exclusive licenses thereon to any qualified American citizen, that he would have had to issue such licenses upon equal terms and equal royalties to all, that he would have had to issue a free license upon all the patents to the United States Government, that he would have been entitled to retain of all the profits made only six per cent upon his investment, and that he would have been obligated to devote everything above six per cent to the advancement of the chemical industry of the country. Upon those assumptions will you tell the Court what in your opinion those patents were worth on the 10th of April, 1919?

Mr. Anderson: The objection to the form of the question as not predicated upon a fact is removed, and therefore it brings directly before the Court the point which I wish to submit by way of objection. If the question is predicated upon a state of facts in the record it is clearly material; if the question is predicated upon a state of facts not in the record, we can go on guessing eternally, and it is clearly immaterial. Therefore it brings us to the direct issue that it is immaterial and irrelevant because it assumes as a predicate for the answer conditions which do not exist in this record and did not surround this sale.

The Court: That objection is based on your construction of the charter, as I understand it.

Mr. Anderson: And upon the full record.

The Court: The answer may be taken under our general rule.

Mr. Anderson: Will your Honor permit me to add something, because I wanted to get that definitely before you?

The Court: Yes.

Mr. Anderson: This is more a reason for

supporting it than an additional suggestion. I think it becomes an important question in this case that to have divested a patent, which is nothing but an exclusive right granted by the Government, of the exclusive right, which was its character, as I indicated in my opening statement, and withdraw from it those rights and then ascertain its value, essentially assumes a confiscation of its essential elements or a destruction of its essential elements before you sell it, and that of course would not be a sale within the contemplation of the law. That is enlarging to some extent the direct point that I make.

THE COURT: I understand that contention from the standpoint of your previous objection. I will take the answer under our general rule and determine that later.

A. The value would be very largely destroyed and I should not have bid for it.

THE COURT: Are you practically through with your cross-examination?

MR. KRESEL: No, your Honor, I shall probably be another hour with this witness.

THE COURT: The time for adjournment has arrived. Colonel Anderson, at the time of an objection made by you this afternoon I probably displayed some irritation. I want to assure you, Colonel Anderson, such irritation was not due to your objection or the manner of its making. You were strictly within your rights in making an objection and the manner of its making is not open to criticism. I am sorry, sir, if my manner indicated the contrary.

MR. ANDERSON: I thank your Honor very much.

(Whereupon, at 3.05 o'clock P. M., Standard time, adjournment was taken until tomorrow, June 26, 1923, at 8.30 o'clock A. M., Standard time.)

FIFTEENTH DAY.

Wilmington, Delaware,
June 26, 1923, at 8.30 o'clock A. M.,
Standard Time.

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Herman A. Metz resumed the stand.

Cross-Examination (Continued).

By Mr. Kresel:

XQ. 1206. Mr. Metz, you testified that in 1919 you paid $34,711.16 as a royalty to the Federal Trade Commission under the salvarsan license?

A. I have the figures here, yes, sir.

XQ. 1207. Will you tell me, please, when you made that payment?

A. (Witness refers to papers).

XQ. 1208. Do you think you can give us that information?

A. I am looking for it, Mr. Kresel, if you please, just a moment. I have here royalties paid that I testified from, the figures.

XQ. 1209. Do you find the item that I call your attention to?

A. What is the amount, do you say—thirty-four thousand?

XQ. 1210. $34,711.16, you testified?

A. Yes, sir, I have got here royalties on salvarsan and neosalvarsan, 1919, $34,711.16.

XQ. 1211. My question is when the payment was made, if you can give me that?

A. When the payment was made? I have got all the receipts here. I have two receipts here from the Alien Property Custodian for about that amount, Mr. Kresel. I suppose that was taken from my books, my statement. That is $34,000 something on there, as I figure it offhand. That would probably be the same item, as I take it, with a possible difference in figures of a small amount. I presume those are the receipts for those two payments make that total. There is a slight difference there in the amount. I do not see just how much it is. There were always slight adjustments on these matters.

XQ. 1212. Subject to any further correction that you may desire to make, then, I understand your testimony to be that the sum of $34,711.16 which you paid for royalties in 1919 was paid in two instalments, for which you produce these two receipts?

A. One for salvarsan and one for neosalvarsan, I think it is, Mr. Kresel.

XQ. 1213. Now, all I am interested in are the dates. One of these receipts is dated March 7, 1919, and is for $17,807.84, is that right?

A. Yes, sir.

XQ. 1214. And the other is dated July 22, 1919, and is for $16,241.25?

A. Yes, sir; shows the 1919 payments.

XQ. 1215. You know, do you not, that the Novocain patent expired in February of this year?

A. Yes, sir.

XQ. 1216. Now, Mr. Metz, I want you to assume for the purposes of this question that the purchaser of the novocain patent, which you valued at $200,000, according to your testimony, would have had to issue non-exclusive licenses thereon to any qualified American citizen, that he would have had to issue such licenses upon equal terms and equal royalties to all, that he would have had to issue a free license upon all the patents to the United States Government, that the royalties that he was to charge would have to be reasonable royalties, that he would have been entitled to retain of all the profits made only 6 per cent upon his investment, and that he would have been obligated to devote everything above 6 per cent to the advancement of the chemical industry of the country. Upon these assumptions, will you tell the Court what in your opinion those patents were worth on the 10th day of April, 1919?

Mr. Anderson: I ask leave, if your Honor please, to submit an objection to that question on the ground that it assumes facts which are not facts in this case and is not complete in the statement of the alleged evidence upon which it is predicated and that it is obviously predicated upon an erroneous construction of the evidence, and especially the charter of the defendant corporation; and therefore, in addition to the general objection which I have had placed upon the record, I wish to note this special objection.

Mr. Kresel: That is the same question that your Honor passed on just as we were adjourning yesterday. I purposely read from the question just as I put it yesterday, which your Honor allowed.

Mr. Anderson: It is probably fair to Mr. Kresel and to the Court that I should state it occurs to me that there are certain defects in the question which I think I should point out, perhaps, in addition to the contention I made yesterday, which I need not repeat now. The statements of assumed facts in the question are not drawn out by the record or especially the charter.

The Court: Is this the same question, with respect to the novocain patent——

Mr. Kresel: That I put yesterday with respect to salvarsan. Exactly the same.

Mr. Anderson: I agree to that. My objection is really sufficient, but in view of the fact that some question may be raised to which I did not point out the specific points of my objections, I want to do that in order to make it more specific. The following objections occur to me now, without limiting my general objection.

I desire to say in the first place the purchaser of these patents was not obligated to issue non-exclusive licenses thereon to any qualified American citizen. The charter does not contain any such provision. Second, that he would have had to issue such licenses upon equal terms and equal royalties to all. I believe you inserted "reasonable" there—reasonable royalties to all. I think the evidence negatives that situation and the record does not bear out that construction. That he would have to issue a free license on all patents to the United States Government. There is no such obligation in the charter, as we contend. That he would have been entitled to retain, of all the profits made, only six per cent upon his investment. That there is nothing to that effect in the charter. The limit of the amount that can be paid upon the stock of the corporation is six per cent, but there is no limit upon the expenses which can be incurred by the corporation in the way of salaries or otherwise, and therefore a purchaser, if he had owned this corporation, if he had bought under the charter of this corporation, would have been at liberty to allow himself any amount of compensation that he saw fit for his services, and the directors of this corporation can do likewise.

Therefore, the limitation there imposed is only as to the net profits distributable upon the stock, and does not in any way affect the rights of the parties. I do not want to argue this now, but I think it is due I should state this.

The next point is that he would have been obligated to devote anything above six per cent to the advancement of the chemical industry of the country, and, as I indicated in my opening statement, while there is language of that kind in the charter, it is so utterly indefinite that it is incapable of enforcement.

The Court: As I understand you, you contend and urge that there is a difference between this question and what it would be if he were asked what he would give if it were bought under the terms and conditions of the charter.

Mr. Anderson: No, sir. Of course, I would object to that as an illegal question, because he would have to construe the charter, and no layman can do that.

The Court: I do not mean a question——

Mr. Anderson: I understand what you mean.

The Court: But your main objection, as I understand you, is that this involves a construction of the charter with which you do not agree.

Mr. Anderson: With which I do not agree and which I claim to be entirely unjustified by the charter itself.

The Court: Yes.

Mr. Anderson: And, in the second place, that it does not fully state the evidence in the case, for the reason that there is evidence here at least of one case where an exclusive agency was conferred. There is evidence here that there was an accruing income on these patents, and all of those matters should be stated; in a hypothetical question the substantial elements of the evidence must be stated.

I want to state, if your Honor please, that I have elaborated my objection to the end that the Court may understand and counsel may understand its general character. I do not mean to limit it by that elaboration.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: No, your Honor.

THE COURT: I think it states the evidence substantially. It probably does not incorporate the fact disclosed by the evidence which was called to my attention by your last remark, namely, that there were accruing royalties on some of these patents. I do not recall offhand whether that was true with respect to novocain or not.

MR. ANDERSON: Yes, that is true.

MR. KRESEL: Your Honor will excuse me, but I was talking to someone and did not get your last remark.

THE COURT: My remark was this, Mr. Kresel: that I think the question represents substantially the fact, with this exception, which was just called to my attention by Colonel Anderson, that the evidence does not disclose, as I recall, that there were accruing royalties on novocain, which fact is not embodied in your question.

MR. KRESEL: I understand that; but there is no question about those royalties, since the purchaser did not get them. That is the reason I did not include it. I quite understand that that is the contention of the Government.

THE COURT: Have you shown that those royalties were released in any way, or merely not purchased?

MR. KRESEL: They were not only not purchased, but we have not had a chance to show that they were released. But your Honor will recall that in my opening I read to your Honor a letter from the Foundation to the Alien Property Custodian, waiving any claims to those royalties whatsoever.

THE COURT: You may take the answer.

XQ. 1217. Mr. Metz, would you like me to repeat the question?

MR. ANDERSON: I do not understand your Honor's saying that this conforms to the facts as in any way expressing a view upon the charter.

THE COURT: No, I am not taking his word for that.

MR. ANDERSON: I do not want to argue that.

A. I made no calculation on that basis, Mr. Kresel.

XQ. 1218. I want you to make a calculation right now and tell the Court what, in your opinion, under those conditions stated in my question, the value of that novocain patent was?

A. Under those conditions I should not want the patent.

XQ. 1219. I did not ask you that?

A. I have no way of forming a conclusion as to what it would be worth without having all the facts, Mr. Kresel.

XQ. 1220. You stated yesterday in answer to a similar question with reference to the salvarsan and neosalvarsan patents as follows:

> "The value would be very largely destroyed and I should not have bid for it."

Is that your answer to the present question?

A. Yes, sir, that would be the same answer to that question.

XQ. 1221. You testified that you were the owner of two trade-marks, a trade-mark covering salvarsan and a trade-mark covering novocain.

A. And neosalvarsan; three trade-marks.

XQ. 1222. And neosalvarsan.

A. Yes, sir.

XQ. 1223. Of course, you were not the owner; the owner according to the papers that counsel introduced here was the Farbwerke-Hoechst?

A. Yes, my company, naturally, in which I own all the stock; now The Laboratories.

XQ. 1224. You stated that those trade-marks were seized by the Alien Property Custodian?

A. Yes, sir, they were demanded.

XQ. 1225. Is it not the fact that they were seized by the Alien Property Custodian after he had seized the stock of the Farbwerke-Hoechst Company as German property?

A. I should assume so, because he first seized—

XQ. 1226. I do not want you to assume, please.

A. It must be so, because he seized the property first.

XQ. 1227. I do not want your reasons. I simply want to know whether it is the fact.

A. To the best of my knowledge, yes.

XQ. 1228. You have testified that in your opinion the value of the salvarsan and neosalvarsan trade-marks was a million dollars?

A. Yes, sir.

XQ. 1229. A round million.

A. Yes, sir.

XQ. 1230. I want you to assume, for the purposes of this question, that the purchaser of those trade-marks would have had to issue non-exclusive licenses thereon to any qualified American manufacturer to use the same; that he would have had to issue such licenses upon equal terms and equal and reasonable royalties to all; that he would have had to issue a free license upon those trade-marks to the United States Government; that he would have been entitled to retain of all the profits made on the said trade-marks only 6 per cent upon his investment; and that he would have been obligated to devote everything above 6 per cent to the advancement of the chemical industry of the country.

Upon those assumptions, will you tell the Court, what, in your opinion, those salvarsan and neosalvarsan trade-marks were worth on the 10th day of April, 1919?

Mr. Anderson: Will your Honor permit me to renew the objection stated to the previous question of a similar character on the same grounds, in addition to the general grounds stated, and on the further grounds that the laws of the United States do not permit the licensing of a trade-mark. Therefore, the assumption is illegal.

The Court: I will hear you on the last objection, Mr. Kresel.

Mr. Kresel: I do not agree with counsel that there is any such law. On the contrary, not only is there no such law, but the fact is that The Chemical Foundation did license the United States Government to use those very trade-marks, as we shall show.

The Court: I have this difficulty: my impression with respect to the law of trade-marks was this: that it was an evidence of the good-will of the manufacturer; it was the brand, so to speak, indicating that it was manufactured by a certain person, and thus indicated a quality which was reflected in the good-will or good-will and quality, whichever way you may view it.

Possibly, this question raises more particularly one of the fundamental questions involved in this case, if my view of the law be correct, whether what was undertaken to be done by The Chemical Foundation with respect to trade-marks was not in reality a destruction and actual confiscation of the trade-marks—not of the patents but of the trade-marks; and if you care to give me the benefit of your views on that at the present time, I shall be glad to have them, Mr. Kresel.

Mr. Kresel: Well, I think your Honor is absolutely correct in the view that a trade-mark is a representation that the merchandise sold thereunder is the product of a particular manufacturer.

One of two things is true. Either these trade-marks were of no value to The Chemical Foundation, because they could not properly represent that merchandise manufactured by somebody else and using that trade-mark was the merchandise that was manufactured by the persons or concerns that owned those trade-marks originally; or else, if they used them at all, whether by license or otherwise, it was upon the theory that they stepped into the shoes, so to speak, of the former owners of the trade-mark, and therefore had a perfect right to represent that the merchandise offered under that name was the merchandise of the successor of the original owners.

What I am trying to get from this witness is what, in his opinion, the value was of those trade-marks under the conditions that I have laid down, whether those conditions were properly exercised or not. That is a matter that your Honor has to determine.

The Court: But is it a question that can be answered?

Mr. Kresel: I think so, sir. Indeed, I have no doubt of it.

Mr. Anderson: May I supplement my statement, if your Honor please. In view of your Honor's inquiry and the reply of counsel, I think it is proper that I should say, without at this time undertaking to argue the question, that the Government will contend in this case that while the Government could have seized these trade-marks to prevent their being used during the war, just as it could any property or right, for its protection, that any assignment of these trade-marks with a general obligation to give anybody the right to use them, was in effect a cancellation of the trademark; and therefore, the question is predicated upon a legal assumption which essentially destroys the thing which is sought to be valued and counsel is clearly asking this witness to assume a state of facts which answers itself.

Therefore, in addition to the other objections, the contention of the Government is that the counsel for the defense is asking the witness, in effect: Suppose the Government had confiscated and cancelled by act of Congress every one of the trade-marks here involved, what would you then think they were worth?

THE COURT: Is it not the law that a trademark can not be assigned apart from the business?

MR. KRESEL: No, your Honor. That is not my understanding.

THE COURT: If the witness can answer the question, we will put it of record, reserving the legal questions. If he can not answer it, let him say so, or let him answer it on various assumptions, so as to complete the question.

XQ. 1231. Have you the question in mind?

A. Yes, sir. I should have opposed any such transfer to an American owner of an American trademark.

MR. KRESEL: I ask that that be stricken out.

THE COURT: That does not answer it. Suppose we have the question repeated.

XQ. 1232. Do you want the question re-read?

A. I know the question. I understand the question.

XQ. 1233. You do know the question?

A. Yes. Assuming those were the conditions, I would not give anything for it.

XQ. 1234. Now without repeating the question at length, I ask you the same question with reference to the novocain trade-mark, and is your answer the same?

Mr. Anderson: Your Honor will note the same objection in each case?

The Court: Yes, and an exception noted.

A. The same answer. It would have been destroyed.

XQ. 1235. What did the Farbwerke-Hoechst Co. pay to the Germans for the assignment of the salvarsan trade-mark?

A. They paid nothing at the time, except the continuation of the business.

XQ. 1236. They paid them nothing. That is all I want to know. What did the Farbwerke-Hoechst Company pay the Germans for the assignment of the novocain patent?

A. Same conditions. Carried it on.

XQ. 1237. Mr. Metz, what in your opinion is the value of a patent upon which the owner has to issue non-exclusive licenses?

A. Based upon earning capacity. I would have to know the earning capacity.

XQ. 1238. Has it any value?

A. Yes, sir.

XQ. 1239. In your opinion?

A. Yes, sir.

XQ. 1240. Take the salvarsan patent and the neosalvarsan patent, which I understand you are considering together——

A. Yes, sir.

XQ. 1240 (continuing). ——and tell me what in your opinion those two patents were worth on the 10th day of April, 1919, to a purchaser who would have had to issue non-exclusive licenses thereon?

A. Based upon the earnings, under those conditions, and the royalties, they were worth what I said, easily.

XQ. 1241. They were worth what?

A. The amounts I said, at least a million dollars, with their earnings under the same conditions as you stated.

XQ. 1242. Is it not a fact that in your opinion a patent on which the owner had to issue non-exclusive licenses was worth nothing at all?

A. It depends upon the income.

XQ. 1243. I am talking now about these salvarsan patents?

A. He could fix the income and it would be worth accordingly, Mr. Kresel, in my opinion.

XQ. 1244. Have you not testified that the patents which are involved here, owing to the fact that non-exclusive licenses had to be issued thereon were worth nothing?

A. I said the value had been largely diminished, but I would not have bid on them is what I said, I think.

XQ. 1245. Have you not testified that they were worth nothing?

A. I do not think I so testified, Mr. Kresel. I should like to be shown.

The Court: Do you mean in this case, Mr. Kresel?

Mr. Kresel: No, your Honor, before a Congressional Committee.

The Witness: Oh, well——

The Court: Did you understand the question to be that, Mr. Metz?

The Witness: I understood the question. He said I testified so. Possibly. I do not recall.

Mr. Anderson: May I ask, to make it perfectly clear, whether this was before the Congressional Committee that he testified?

Mr. Kresel: The Court has asked and I answered it.

Mr. Anderson: I did not hear it.

The Court: Mr. Kresel said he referred to testimony elsewhere than here, and the witness said he understood the question.

Mr. Anderson: I see. I could hear very little of the evidence.

XQ. 1246. What is your last answer?

A. I do not recall such testimony, unless you show it to me.

XQ. 2147. Before I read you your testimony I want to ask you the same question as to a trade-mark. Have you not testified that a trade-mark which was not exclusive was worth nothing?

A. Certainly. A trade-mark is exclusive in my opinion, and must be necessarily.

XQ. 2148. Then you have so testified?

A. I assume if I was asked that question I should have answered in that way. A trade-mark is exclusive, naturally.

XQ. 2149. Now I read to you from page 879 of the record before the Sub-Committee of the Committee on Judiciary of the United States Senate. At the bottom of the page, the question by the Chairman:

> "You claim to own the trade-mark of 'salvarsan?'
>
> "Mr. Metz: I claim to own the trade-mark on salvarsan—salvarsan, neosalvarsan, and novocain. They were transferred to me by the Germans before we went into the war.
>
> "Mr. Garvan: What is the value of a non-exclusive right in a trade-mark?
>
> "Mr. Metz: Of a non-exclusive?
>
> "Mr. Garvan: Yes.
>
> "Mr. Metz: Well, I don't believe you can

grant a license in an exclusive trade-mark. A trade-mark refers to a certain thing.

"Mr. Garvan: We can not give an exclusive license.

"Mr. Metz: Well, why interfere with me, then, if you can not?

"The Chairman: You claim exclusive ownership in the trade-mark?

"Mr. Metz: I claim exclusive ownership in the trade-mark. It is worth nothng if it is not exclusive. It must be exclusive, or it is worth nothing.

"The Chairman: What is that?

"Mr. Metz: It must be exclusive, or it is worth nothing.

"The Chairman: And that is practically so in respect to a patent.

"Mr. Metz: Yes."

Did you give that testimony?

A. I suppose I did; yes, sir. I am quite sure I did. That is my opinion.

XQ. 2150. Mr. Metz, what in your opinion were the salvarsan and neosalvarsan patents worth on the 10th of April, 1919, if in fact some person had an exclusive license to manufacture under them in the United States?

A. Exclusive license?

XQ. 2151. Yes, sir?

A. At least five million dollars—exclusive.

XQ. 2152. I will repeat the question. What in your opinion were those two patents worth to a purchaser on the 10th day of April, 1919, if he had to take them subject to an exclusive license in the hands of someone else, to manufacture under them in the United States?

A. What do you mean, exclusive license to somebody else?

The Court: I am not sure that I understand your question.

Mr. Kresel: May I reframe it, sir?

The Court: Yes. I assume you mean an outstanding?

Mr. Kresel: Yes, sir.

The Court: Very well.

XQ. 2153. Did you understand that?

A. I don't know how——

XQ. 2154. Well, let me try to put it again. What in your opinion were those two patents worth on the 10th day of April, 1919, to a purchaser who had to take them subject to an outstanding license in the hands of a third party, giving that party an exclusive right to manufacture under the patents in the United States?

Mr. Anderson: In addition to the objections already urged to this evidence, which apply to each question, I wish to add the additional objection that there is no evidence in this case that there was any exclusive license outstanding. I know that there was evidence yesterday—and I wish to say that so we may not entirely misunderstand the evidence—by Mr. Metz that he claimed an exclusive license under a verbal right from the owners in Germany before these patents were seized; but that could give no right in the United States unless it were a written assignment or license recorded in the Patent Office, and therefore there can be no such condition existing upon the evidence in this case, and there is no such evidence in the record.

The Court: I have a note to make inquiries about three or four matters, of which this is one: I was not sure whether the testimony had so far disclosed that the property seized by the Alien Property Custodian was, as to this patent, subject to the rights of Mr. Metz and his company. There is no evidence with respect to that, is there?

Mr. Anderson: I will reply to that question.

As I understand it, the witness was asked yesterday if he claimed a license to use these patents, acquired prior to the war. He said he got a verbal right to manufacture in 1916 and that he did claim a license. There is in this case no evidence that such license was ever recorded or that it was in writing, which would be necessary in order to make it good against a purchaser of that patent. And therefore upon that state of facts and upon that evidence, whatever the witness may have claimed, if he wants to say subject to the claim of this witness, why, that is all right.

The Court: May I ask two questions?

Mr. Anderson: Yes, sir.

The Court: The first is that my recollection of the testimony is that that agreement permitting Mr. Metz or his company to manufacture was in writing. I may be mistaken about that.

Mr. Kresel: I have it right here; may I read it to your Honor?

The Court: No. Any way, I was under that assumption. The second is, whether it was in writing or not and whether recorded or not, it is such an agreement as may be enforced against the parties though not recorded, is it not? My understanding of the recording acts, and I may be in error, is that they are for the protection of other parties than those to the document.

Mr. Anderson: Yes. The agreement between Mr. Metz and those companies abroad might be enforced, assuming there is no Statute prohibiting the enforcement.

The Court: Then that would be enforceable. My next thought is this: If that is enforceable against the German owners, when the United States makes the seizure it does not get any broader or greater rights than the German owner had, I assume.

Mr. Anderson: I would say that it would get whatever right was existing of record in that patent. The Alien Property Custodian by virtue of the seizure, I take it, becomes in legal effect a purchaser for value, and Mr. Metz, if he has not recorded any rights there, they stand in the German so far as the record is concerned.

The Court: That raises a question I do not want to determine now. So I will take the answer under our general rule. Mr. Kresel, will you repeat the question.

Mr. Kresel: I will ask the stenographer to read it.

(XQ. 1254 repeated as recorded above.)

A. I have not made such calculation, but it would be based upon the earning power and what had been accumulated in the way of royalties.

XQ. 1255. Would it be worth anything other than the royalties that had accumulated?

A. Yes, the continuing business thereafter and its earning capacity.

XQ. 1256. What is that?

A. The continuing business thereafter and its earning capacity.

XQ. 1257. But you do not get the question, Mr. Metz.

The Court: Won't you reframe that question once more, Mr. Kresel?

Mr. Kresel: Yes, sir.

XQ. 1258. My question is what in your opinion was the value of those two patents on the 10th day of April, 1919, to a purchaser who would have to take them subject to an outstanding license held by a third party, giving that third party the right to manufacture under the patents in the United States. Do you understand my question?

A. Yes.

XQ. 1259. All right. Will you answer it.

A. To me they would have been worth a million dollars easily.

XQ. 1260. I did not ask you what they were worth to you.

A. What they were worth to someone else I can not say, your Honor.

XQ. 1261. You do not know what the value would be to you?

A. I know what they would be worth to me—salvarsan and neosalvarsan.

XQ. 1262. You say they would be worth to you a million dollars?

A. Certainly, on my calculation.

XQ. 1263. I am coming to your calculation now. If you had bought the patents you could have worked under them, could you not?

A. I was working under them, yes, sir, certainly.

XQ. 1264. I did not ask you what you were doing.

A. Certainly I could have worked under them.

XQ. 1265. You could have worked under them because it was you who had the outstanding license to manufacture?

A. Yes, sir. In either case I could have worked under them.

Mr. Kresel: May I have that stricken out?

The Court: Yes.

The Witness: Yes, sir, I could have worked under them.

XQ. 1266. Anybody that had purchased them under the conditions that I have set forth in my question could not have worked them, could he?

A. No one but the three licensees; no one else—or four licensees.

XQ. 1267. Assume, if you will, that they were bought by a person who had no license. Do you understand?

A. Yes, sir.

XQ. 1268. All right. Perhaps you misunderstood my question and I will ask it of you again. Assume that the purchase was made by a person who had no license, Federal Trade Commission or any other, and assume that there was an outstanding license giving some one else the exclusive right to manufacture in the United States, what in your opinion would have been the value of those patents on the 10th of April, 1919, to such a person?

A. That is a matter of legal—it would depend on the law and I would have to look it up first to see just what rights there were and what they would have brought in.

XQ. 1269. You would want to see the law first?

A. Certainly. I could not determine that off-hand, a matter of that kind, with so many of those questions.

XQ. 1270. What in your opinion was the value of these two patents on the 10th of April, 1919, assuming that there was an outstanding agreement between the Germans and an American citizen made before the United States went into the war, for the transfer of those patents to the American citizen?

A. Will you repeat that, Mr. Kresel?

Mr. Anderson: That is subject to the same objection.

The Court: Oh, yes.

Mr. Kresel: The stenographer will read it.

(XQ. 1270 repeated as recorded above.)

A. That would depend on his rights also, as to the royalties collected and the legal questions involved; but I can not pass on that.

XQ. 1271. What do you mean "royalties collected"? What are you talking about now?

A. The royalties paid on the licenses existing up to that time. There was about $300,000 which he could claim probably.

XQ. 1272. Assume, for the purposes of this question, that the sale of the patents did not include the accrued royalties. Upon that assumption, what in your opinion was the value of these patents on the 10th day of April, 1919, in the face of an outstanding agreement between the German owners of the patents and a United States citizen, made before the United States went into the War, to transfer those patents to the American citizen?

Mr. Anderson: It is possible, your Honor, that I do not catch the question of counsel; but in addition to the objection I have already made, I wish to add this objection: that the question is predicated upon and assumes a state of evidence which is contrary to evidence here, or, at least, an incomplete statement of evidence in another particular which I have not pointed out. The evidence is perfectly clear, your Honor, that there were licenses outstanding under the Federal Trade Commission, which were earning royalties under all these patents.

The Court: Neosalvarsan?

Mr. Anderson: Salvarsan and neosalvarsan and novocain; and the amount of royalties being paid annually has been testified to by these long statements, and that that was a continuing license for the life of the patent.

Your Honor will observe, therefore, a revenue continuing, and if there were no remaining value in the patent at all, the right of a purchaser to receive those continuing royalties under that patent for the life of the patent is certainly a valuable right, because that is like the lease of a house.

The Court: I think I understand you.

Mr. Anderson: In the second place, if it is an assumption that there was a grant or an effort to grant to this witness, or anyone else, by the

German interests before the seizure, of a license to use these patents exclusively, and that license or contract, which was identified but not put in evidence here, as I recall (it may have been put in), gave to the seller or the licensor, whichever it might be, a right to receive a continuing interest in the business, profits or royalties, or in any other form, then it necessarily follows that if the patent was conveyed subject to that exclusive right, assuming such was the truth, then the purchaser of that patent from the Alien Property Custodian would necessarily have received the right to whatever benefits accrued under that contract during the period of the contract. If the contract continued, the benefits would continue. If it ended, then it was no longer a burden.

Therefore I submit to your Honor that a hypothetical question asking for an opinion of the witness as an expert must set forth the facts accurately, to the end that he may predicate upon accurate facts, and not upon a partial statement of them.

The Court: See if I understand you, Colonel Anderson: Depending upon the different theories in the case, two hypothetical questions might be asked, I take it: (1) What would be the value of this patent on April 10, 1919, subject to an outstanding license under the terms and conditions set forth in the agreement between this witness or his company and the German owner? That would call for one answer on one basis. You could say probably, very properly, that would depend upon the terms of that agreement.

(2) What would be the value of that property on the same day, subject to four licenses which had theretofore been issued by the Trade Commission?

Mr. Kresel: And if counsel had waited, that would have been my next question.

The Court: Now then, of course you do not contend, I assume you do not contend—and I am asking this merely to see whether I am right in my assumption—that the Trade Commission license royalties are in and of themselves any indication of the value of the patent? These royalties paid to the Trade Commission are arbitrary royalties, are they not?

Mr. Anderson: Five per cent.

The Court: As I recall the statute, they are subject to no royalties or such royalties as the Court may subsequently allow; and that is a purely arbitrary statutory royalty.

Mr. Anderson: That involves a great many questions in this case. I take it that the presumption would be clearly in favor of the continuance of the royalty under the license issued by the Federal Trade Commission in the absence of anything else, because the presumption is always in favor of the validity of an act of an official of the Government.

May I answer your Honor's question a little more fully, because this is an important question?

The Court: Yes, certainly.

Mr. Anderson: I recognize I am on an intricate and technical question of law and I do not claim to be an expert in patent law. I am old enough now to say I don't know.

In the first place, I assume that a number of hypothetical questions might be asked this witness: First, assuming that there were no licenses on this patent and it was perfectly free to be transferred without any restrictions or burdens, what would be its value?

The Court: That was your question.

Mr. Anderson: No, sir. My question was, what its value was subject to the Federal Trade Commission license in every instance; because the evidence was that it was subject to that license for the life of the patent. In every instance, that was my question. I went over it last night and found out that that was true. That would be a question, where there were no limitations and where the people were free to deal with the patent as they saw fit.

Then there might be a question predicated upon the contracts which have been identified here and read from but not put in evidence. I doubt if they can be made the basis of a question unless they are put in evidence. I don't think they can.

The Court: I wonder if you would not be left in this difficulty. Suppose in the eventual determination of the case the facts should be found different from those assumed by you in your question; then would you have any evidence of value on the real facts?

Mr. Anderson: Possibly, unless there was other evidence on which the value could be predicated with reasonable accuracy, I might be left without adequate evidence of value. There would be some. I will state what I stated to your Honor the other day, that in my view of the law in this case, which I can not be assured your Honor is going to accept, there is no burden on the Government to show any value in this case. I am doing it because we averred certain facts and are going to prove them if we can. When we once call for an accounting of the trustee and prove that the property came into his hands, the burden shifts to him and that is where he has to discharge his responsibility.

But aside from that law point which we will argue when we come to it, I was saying that there might be a question first on an actual free transaction.

Second, assuming that the evidence not put in the record here can be made the basis of a hypothetical question, and counsel assumes in his hypothetical question the fact that there was, whatever it was, a possible outstanding interest in the witness or anyone else derived from the German owners before the seizure, validly derived, then of course the value would depend upon the construction of that contract, the rights under that contract, the limitations upon the rights of the owner or grantor and the right of the owner or grantor to receive benefits thereunder, all of which would be a question of very delicate construction. That would be the second phase.

Assuming that right to be outstanding, we might go one step further and assume the existence of valid licenses of the Federal Trade Commission, of four licenses. Then you would be predicating on five propositions. Your Honor now sees my position?

The Court: Yes, but I am wondering if there is not a flaw in that theory. I do not know. But if there was an outstanding exclusive license in Mr. Metz or his companies, and then getting to a matter of law, assuming that the United States took only the rights of the Germans and did not take his rights, then you would be confronted with the proposition, would you not, that the Federal Trade Commission licenses were invalid?

Mr. Anderson: Undoubtedly.

The Court: In view of these various questions of law, which we are not deciding as we go along, I am going to permit Mr. Kresel, subject to your objection, to predicate as many questions on as many different theories as he desires.

Mr. Anderson: Of course. I am not going to argue the matter further. There were other phases of it.

The Court: I did not intend to preclude you.

Mr. Anderson: I was coming to the very phase your Honor indicated, that if there was a valid exclusive license outstanding which the Government would have to recognize then the question would come up—what if any rights the purchaser had under the Federal Trade Commission license and what right if any he had to any accrued royalties if any.

Then we come to the third proposition, whether he was estopped to raise the question of the validity of the Federal Trade Commission licenses as long as he had taken them out himself. We are getting into an extremely delicate situation and I think that this question is entirely incomplete as a basis for value.

The Court: No more so than yours, Mr. Anderson, is it?

Mr. Anderson: Possibly not complete as to my own, but I had to take the evidence that was then in. All the other evidence was not in, I frankly did not know it or I would have put it in.

The Court: I think the only practical way of disposing of this matter is to allow Mr. Kresel to predicate his questions on the various theories he has in mind.

Mr. Anderson: I simply wanted to point out the various difficulties, to the end that they might be overcome, if possible.

THE COURT: I thank you very much, Colonel Anderson.

XQ. 1272. (continuing) Mr. Metz, have you the question in mind or would you like to have it read to you?

A. The last question, please.

(XQ. 1272 repeated as follows) "Assume, for the purposes of this question, that the sale of the patents did not include the accrued royalties. Upon that assumption, what in your opinion was the value of these patents on the 10th day of April, 1919, in the face of an outstanding agreement between the German owners of the patents and a United States citizen, made before the United States went into the war, to transfer those patents to the American Citizen?"

A. I can not answer that question.

XQ. 1273. You can not answer it?

A. I don't believe anybody could.

XQ. 1274. You mumbled there. I can't get it.

A. I don't believe anybody could answer that question.

XQ. 1275. That is an answer. You can not give it and you do not believe anybody could. Now, I want you to assume, Mr. Metz, that on the 10th day of April, 1919, these patents were offered for sale—we are talking only, you understand, about the salvarsan and neosalvarsan patents—that they were absolutely free except for the three or four Trade Commission licenses that were then outstanding and that the sale would include and carry with it all accrued royalties up to that day. What in your opinion under those circumstances were those patents worth?

A. At least a million dollars, I have testified.

XQ. 1276. Assume that on the 10th day of April, 1919, these patents were absolutely free except for the Federal Trade Commission licenses then outstanding, but that the sale did not carry with it the accrued royalties; what in your opinion were they worth on that day?

A. That would be based on the earning capacity then.

XQ. 1277. Not based. What were they worth?

A. Based on my knowledge of them, a million dollars still.

XQ. 1278. Still a million dollars?

A. Yes, sir; on the earning capacity.

XQ. 1279. Assume that on the 10th day of April, 1919, these patents, in addition to having the Federal Trade Commission licenses outstanding, were also burdened with a license granted by the Germans to an American citizen prior to our entry into the war, giving that citizen the exclusive right to manufacture thereunder in the United States; what, in your opinion, were the patents then worth under those circumstances?

Mr. Anderson: Subject to the same objection, your Honor.

The Court: Oh, yes.

A. They would be worth more to me than to anybody else.

XQ. 1280. I did not ask you that.

Mr. Anderson: I do not want to press the objection, but I want to make my position very clear here. I do not think that the question in the form asked is legal without at least having the alleged license introduced in evidence or stating what were the terms of the license, because, how can anybody estimate the value of a patent, subject to an exclusive license, without knowing the terms of the license?

The question is not fair. It is a question that can be misunderstood. It does not state the facts and may lead the witness into an entire misunderstanding. I am frank to say I can not follow it very easily myself.

The Court: Have you anything to say, Mr. Kresel?

Mr. Kresel: No, your Honor.

The Court: Why is there not merit in Colonel Anderson's objection that the record does not disclose, even though the witness may know of his own knowledge, what were the terms of the agreement between the German owners and his company?

Mr. Kresel: Why, your Honor, the witness testified that he was to pay nothing to the Germans for that license.

XQ. 1281. Didn't you?

A. Yes.

The Court: Your assumption is based on an error of fact, is it not, Colonel Anderson?

Mr. Anderson: No, the terms of the license do not appear. He may have said that he did not have to pay anything, but there may have been terms in the license which were very beneficial to the owners. It may have been an indeterminate license.

The Court: Aren't you shifting?

Mr. Anderson: No, sir. I am not conscious of shifting.

The Court: I am only asking the question. If the Germans got nothing for the license, then a person buying the Germans' interest would have gotten nothing.

Mr. Anderson: Let me suppose this case, in order to make my position clear. I do not know what the terms of these contracts are. I have not seen them. I want to have a chance to see them before I take up the re-direct examination of this witness, if I can.

Suppose in 1916 the German owner of this patent had realized that he could not ship into the United States and could not manufacture in the United States; and, therefore, if this market was not kept open for his product and its good will preserved and the business preserved, it would be an enormous loss to him. I am assuming now these facts. Everybody knew that the war was going to end. Everybody expected it to end about every six months.

Therefore, to have preserved this business right over here may have been of enormous value and so far as anything in this record shows, the licensee may have reasserted his right in America immediately. He may have been only too glad to have somebody take his patent and use it and manufacture under it and sell under it and develop that business during the period that he could not develop it—just as a man would be only too glad to have somebody else take his house and keep it in good condition while he was abroad, without any rent; it might be worth $10,000 a year.

Therefore, there are all kinds of elements that enter into value, depending upon the surrounding facts and circumstance; and to predicate a question of this kind upon the mere fact that a money payment was not to be made, assuming that to be the case (and that does not appear of record, except the witness has testified that he was not paid any money I believe. I do not recall; but I assume it is in the case)—that being the case, that does not give us the facts upon which you can predicate such a question. I can not possibly know those facts if they are not in evidence, and how can the witness know them? He might know them if they were in evidence; but he can only speak upon the record. I have merely suggested that as one of the suggestions that is apparent upon the face of the question. It is clearly an objectionable question.

THE COURT: Have you anything to say in reply?

MR. KRESEL: No, sir, I do not think I have anything to add.

THE COURT: What is the question, Mr. Stenographer?

(XQ. 1279 repeated as above recorded.)

THE COURT: By "exclusive license," of course, I shall assume that you mean a license that would run throughout the life of the patent without the payment of license fees or royalties.

MR. KRESEL: Yes, your Honor.

XQ. 1281. (continued) —and please assume that in my question, you understand?

A. That is the condition.

XQ. 1282. That was the condition?

A. That is the condition I maintained as to myself.

XQ. 1283. Of course, that is the condition of the license that you say you had, isn't that right?

A. Yes, sir.

XQ. 1284. All right, now, I want you to answer the question.

A. To me it would be worth a million dollars easily.

XQ. 1285. What would it have been worth to a person who did not hold that exclusive license, as you say you did hold it?

A. I can not judge that, Mr. Kresel.

XQ. 1286. Can give no estimate or opinion thereof?

A. It would be subject to law suits and everything else.

XQ. 1287. I did not ask you about that. Can you give any estimate of the value of the patents to anybody else other than yourself under the circumstances assumed in my question?

A. I have not considered that and I can't.

XQ. 1288. You can not?

A. I can not.

XQ. 1289. Now please assume that on the 10th day of April, 1919, these patents were absolutely free, except that there were outstanding the Federal Trade Commission licenses that you have mentioned and also there was outstanding an agreement made between the Germans and an American citizen before the United States entered into the war, to convey those patents to the American citizen. What, in your opinion, would the patents have been worth then?

A. I can only repeat the answer: To me, so much, and to others, I can not judge.

XQ. 1290. What to you?

A. At least a million dollars.

XQ. 1291. And how much to anybody else?

A. That is up to them to judge; I can't.

XQ. 1292. You can't give any answer to that?

A. I can not put myself in their position. I do not know, not without—

XQ. 1293. There you go again; I can't catch what you say.

A. Without looking up the details, I was going to say.

XQ. 1294. Looking only at the details that I have put in my question. Now please try to be a witness and not a lawyer. I mean that honestly, Mr. Metz.

A. I say I don't know that, Mr. Kresel.

XQ. 1295. You say you do not know?

A. I say I do not know.

XQ. 1296. You can not give an answer to that question?

A. Not offhand, no, sir.

XQ. 1297. You know enough about patents and manufacturing to understand the term "know-how" that is applied to patents, do you not?

A. Yes, sir; knowing how.

XQ. 1298. That means, does it not, the information and the technical knowledge to enable a person to manufacture an article that is covered by the patent?

A. The patent is supposed to convey that information to the man that knows how.

XQ. 1299. You know, of course, that patents do not?

A. Some do; some do not.

XQ. 1300. Some do and some do not; very well, we will come to that. As an example of the value of the "know-how" in connection with a patent, you have in mind, have you not, your own experience?

A. Yes, sir.

XQ. 1300. (continuing) As a manufacturer of salvarsan?

A. Yes, sir.

XQ. 1301. You had this patent available to you before the war and during the war; you were the representative of the owners of the patent before the war; you sent your brother abroad, who spent four months studying in the German factory how to make salvarsan; and yet, according to your testimony yesterday, it took you more than a year after he came back before you could produce it?

A. Because we had no machinery.

XQ. 1301. (continued) That is true, is it not?

A. Because we had no machinery, yes, sir; preparing a plant, not making salvarsan.

XQ. 1302. Now, Mr. Metz, you do not mean to say that that delay was only because it took you so long to install the machinery?

A. Largely.

XQ. 1302. (continued) In the face of the agreement that you made with Dr. Schamberg in June, 1918; do you?

A. You mean the Stieglitz agreement?

XQ. 1303. I call it the agreement with Dr. Schamberg of June, 1918?

A. I mean to say we were still hampered by machinery, yes, sir.

XQ. 1304. And that was your only hampering?

A. That was the main hampering, yes, sir.

XQ. 1305. And that you had no difficulty in producing the stock except because you did not have the machinery?

A. I say, we did produce the stock.

XQ. 1306. And that you had no difficulty in producing it except for the machinery?

A. No difficulty when we once got started, no, sir.

XQ. 1307. I am perfectly willing to leave it there. Now, as an example of the value of the "know-how" do you remember testifying that the Badische Company, for instance, had a patent on synthetic indigo and yet it took them twenty-five years and that they had to spend millions of dollars before they succeeded in producing indigo; do you remember testifying to that?

A. No, that is not true, Mr. Kresel.

XQ. 1308. It is not the truth?

A. They produced indigo, but not on a commercial scale, which is a great deal different.

XQ. 1309. Oh, that is what you mean?

A. That is what I mean, certainly, to produce it commercially.

XQ. 1310. What is the value of a patent if you can not produce it commercially?

A. That is an open question.

XQ. 1311. That is true, is it not?

A. That is an open question. From a scientific standpoint, it may be very valuable.

XQ. 1312. And you remember you testified, speaking upon this subject, that chemists know the why, but it is the practical man that knows the how?

A. Yes, sir.

XQ. 1313. And you remember testifying as follows, do you not, speaking of the licenses granted under these very patents. I am reading from page 719 of the Hearing before the Committee on Ways and Means:

> "Licenses have been obtained for some time past from the Federal Trade Commission by a number of concerns under the patents for vat colors, and yet none of them has so far been manufactured in this country. This would seem to indicate that more than the mere patents have stood in the way of manufacturing, since otherwise these vat dyes would have appeared in the market by now."

A. Yes, sir.

XQ. 1313. (continued) That was true?

A. That was true.

XQ. 1314. Of course, you know that when The Chemical Foundation bought these patents, they did not get the "know-how" from the Germans, did they?

A. Whatever was in the patent they got and nothing else.

XQ. 1315. And you know, do you not, that you could not produce under these patents?

A. I know we did in the laboratory, but had no raw material for the commercial operation.

XQ. 1316. I am not speaking particularly of salvarsan?

A. I am speaking of colors.

XQ. 1316. (continued) Just a moment; I am not through.

A. I am speaking of colors.

XQ. 1316. (continued) Just a moment. I am not through. I am speaking generally with reference to the patents which are here in question. Do you not know that you could not work with those patents any way?

A. I do not know. I know that we did work in the laboratory under our license for vat colors, but had not the raw material to make it commercially and could not obtain it in this country.

XQ. 1317. Did you not testify before the House Committee on Ways and Means that you could not work under these patents any way?

A. You can on some and some you can't; in a general way, certainly.

By The Court:

Q. 1318. The question is whether you so testified or not?

A. I assume I did, yes. I think I made that statement several times.

By Mr. Kresel:

XQ. 1319. And it was true, was it not?

A. In a general way, yes; but under specific patents it isn't.

By The Court:

Q. 1320. Which is true? What you just said or what you testified before the Committee?

A. That is what I testified. In a general way it is true, I will say that again; but if you will give me a certain—

By Mr. Kresel:

XQ. 1321. Let me read you what you testified.

The Witness: (continuing): But if you will give me a certain patent; it will be different with individual patents.

XQ. 1321. (continued) I read from page 24 of this record before the Committee on Ways and Means:

"Now, Mr. Chairman,"

you said,

> "there is another great danger, as I view it; the question has been raised of The Chemical Foundation taking over these patents. Well, there is safety in that. In other words, the patents have no value as such except for the purpose of keeping out infringing products."

You testified to that, did you not?

A. I did, yes, sir.

XQ. 1322. "They were simply clubs used to keep out other manufacturers."

You testified to that, did you not?

A. Many of them were, certainly.

XQ. 1323. Didn't you so testify?

A. Yes, yes, yes, it is there.

XQ. 1324. "You can not work with those patents any way."

Did you not so testify?

A. Yes.

XQ. 1325. "And there are a great many of these patents that under the patents we can allow goods that we will not make here to come in, and it is going to do it."

Did you so testify?

A. Yes.

XQ. 1326. And was that testimony true?

A. Yes, to a large extent.

XQ. 1327. And is it true today?

A. To a large extent, yes.

XQ. 1328. Well, wasn't it true as you testified? Never mind your "to a large extent."

A. Well, you have got to give me specific—

XQ. 1329. Wasn't it the truth?

A. Yes.

XQ. 1330. And isn't it true today?

A. Yes, practically true.

XQ. 1331. And did you not testify also that these patents have only a nuisance value?

A. Well, it is not only; they had a nuisance value.

XQ. 1332. Did you not say that they had only a nuisance value?

A. It is not fair to pin me down to statements made before the Committee in a general way.

XQ. 1332. (continued) Please don't argue with me.

A. I will say yes, then.

By The Court:

Q. 1334. Did you or did you not so testify?

A. I did at the hearing, undoubtedly.

By Mr. Kresel:

XQ. 1335. Talking about the "know-how," Mr. Metz, you remember you tried to manufacture beta-naphthol, did you not?

A. That was not patented. We did manufacture. We are manufacturing.

XQ. 1336. I did not say it was patented.

A. We are manufacturing. We are manufacturing.

XQ. 1337. You remember that when you started in to make beta-naphthol you had a man who claimed to know how to make it, do you not?

A. Yes, sir.

XQ. 1338. You know, do you not, that after working for a long time, all that you could get was a laboratory quantity, and finally gave it up?

A. Oh, I don't think that is true. We built a large plant, and one of the largest consumers—

XQ. 1339. When you started to make it, the best you could do for months was to produce laboratory quantities?

A. We had no plants; naturally. When we had a plant we made it.

XQ. 1340. Let me understand what you mean by "plant." Do you mean brick and mortar and iron and steel; or do you mean—

A. I mean—

XQ. 1340. (continued) Wait a minute. Or do you mean your machinery and the skill of people who knew how to make it?

A. By "plant" I mean brick and mortar and the machinery necessary to make it; proper machinery.

XQ. 1341. That is all you mean?

A. That is what I mean by "plant," yes, sir.

XQ. 1342. So that you say now that you were able to make beta-naphthol. You had no difficulty at all except that your building and machinery did not come in quick enough?

A. That was the main drawback, we had—

XQ. 1343. Was it the entire drawback?

A. You have got to experiment around before you get a thing finished, naturally, Mr. Kresel, with the crude materials which you get?

XQ. 1344. Then it was not only the fact that your building did not go up fast enough?

A. It was a combination of circumstances during the war, and you could not get raw material.

XQ. 1345. It is a fact, is it not, that the patents that are here involved, namely, the patents that were conveyed by the Alien Property Custodian to The Chemical Foundation cover only 10 per cent of the dyes that were produced?

A. As to the number of dyes, yes, sir; approximately 10 per cent, I should say.

XQ. 1346. Now, what do you mean "as to the number of dyes?" You see, you qualify your answers so that I don't know where I am at with you.

A. Well, 10 per cent, whether you figure it on money value or on quantity is quite different.

XQ. 1347. Oh, no; I am not speaking of money value; I am speaking of dyes as dyes.

A. On bulk produced or as the names of dyes, the individual dyes? That is a great difference, Mr. Kresel.

XQ. 1348. Is it not a fact that they cover only 10 per cent of the bulk of dyes?

A. I can not say that, Mr. Kresel.

XQ. 1349. Is it not a fact that 90 per cent of the dyes that are produced in this country are free of patents?

A. Yes, sir, if you put it that way, yes, sir; at least 90 per cent.

XQ. 1350. Lest there be any question as to what you mean by that answer, I will read to you from your statement made to the House Committee on Ways and Means. I read from page 728 of this record. You said:

> "Over 90 per cent of the tonnage and of the individual dyes used in the United States will be free from any patent restraint within the next four years. Over 75 per cent of the dyes are now in that condition."

Was that true?

A. That is true, to the best of my knowledge and belief, Mr. Kresel; and was true then.

XQ. 1351. How high a royalty did you pay the Federal Trade Commission on novocain?

A. I will give you the figures.

XQ. 1352. I did not ask the figures; I mean the rate of royalty?

A. 5 per cent.

XQ. 1353. 5 per cent?

A. On the gross sales.

XQ. 1354. 5 per cent on the gross sales. Now, did you testify that your gross sales of novocain for 1919 were $246,295.67?

A. Let me see if that is correct. I have the figures. (Refers to papers.) How much?

XQ. 1354. (continued) $246,295.67?

A. What year did you say, Mr. Kresel, please?

XQ. 1354. (continued) 1919?

A. $246,295.67, yes, sir.

XQ. 1355. Well, that is the figure I gave you.

A. That is right, sir.

XQ. 1356. Now, I wish you would calculate 5 per cent on that and tell me the result?

A. The royalties I have here are forty-six hundred—

XQ. 1357. I did not ask you anything about that. Now please answer my question. I want you to tell me, if you can (if you can not, you can say so), what 5 per cent is on the gross sales that you have just given me for 1919?

A. (Witness makes calculation.)

MR. ANDERSON: On what page does he give his gross sales, Mr. Kresel?

MR. KRESEL: Page 1718.

XQ. 1357. (continued) Can you give us the result?

A. I am trying to get at it, Mr. Kresel; in just a moment.

XQ. 1358. I am afraid you do not figure rapidly enough to suit me.

A. No, I have got figures here. I do not know exactly how they—

XQ. 1359. I want to know if you can give us the result of that. If not, I will pass on.

A. Well, I have got the figures we paid here—

XQ. 1360. I did not ask you what you paid. I want to know if you can give me the result of 5 per cent on $246,295.67?

A. Yes, I will give it to you in just a second.

XQ. 1361. What is it?

A. Just let me have one moment.

XQ. 1362. In round figures it is about $12,000, is it not?

A. $12,000? Yes.

XQ. 1363. All right. Now, you testified that you paid as royalties on novocain to the Federal Trade Commission in 1919 $4863.74, did you not?

A. $4683.

XQ. 1364. $4863.74 is what the record shows.

A. Well, that is a mistake. It is forty-six hundred in my record here.

XQ. 1365. $4600. I will take your correction; $4683.74. Now will you explain to the Court how it is that you did not pay to the Federal Trade Commission the entire amount of royalties due, if you are right in saying that those were your sales?

A. Yes, sir. The sales include the tablets and the solutions. We only pay upon the novocain in the tablets and the solutions, which was arranged with the Commission and checked up by Mr. Buffum and Mrs. Wilson at my office. The bottles and the other products going in do not pay a royalty; only the novocain in those solutions; and we had the whole thing in our books as novocain sales, and got a separate memorandum of the stuff in there, which was checked up. I told you I have not the quantities of novocain at that time.

XQ. 1366. Are you through?

A. Yes, sir. That explains the difference.

XQ. 1367. Are you through?

A. Yes, sir.

XQ. 1368. You say now that you did not pay royalty on all your novocain sales?

A. On all the novocain sales as novocain, yes; absolutely every ounce of it, every gram of it.

XQ. 1369. You say, Mr. Metz, that you did not have to pay a royalty to the Federal Trade Commission for all your novocain sales?

A. I did not say that, Mr. Kresel.

XQ. 1370. Were all your novocain sales $246,295 in 1919?

A. They were novocain preparations and—

XQ. 1370. (continued) No, no, no, no; answer my question.

A. Not on that basis that they contained other things than the tablets; but the sales book shows the total. This is taken from our sales book.

XQ. 1371. Did you not testify on your direct that your sales of novocain in 1919 were $246,295.67?

A. Yes, but I want to modify that by saying—

XQ. 1371. (continued) Now, —

A. Yes, I did.

XQ. 1372. Do you want to change that?

A. I want to modify that to say—

XQ. 1373. All right, modify it any way you want.

A. The sales of novocain other than the novocain preparations, which are all in the same book and checked up by the representative of the Custodian and Federal Trade Commission.

XQ. 1374. How much were the sales of your novocain preparations so-called?

A. I had that straight here on novocain and I gave them to you. I will have to look that up. I can not give you the amounts. I will give you the figures.

XQ. 1374. (continuing) What do you mean you can not give me the amounts; you will give me the figures?

A. I have not got the tablets and the solutions separate. I have simply got novocain as such; but I have got the amounts in pounds and ounces, which are separate. I will have to check those back, Mr. Kresel. That escaped me; I am very sorry.

XQ. 1375. Now, Mr. Metz, I am waiting for your attention if you will give it to me.

A. I beg your pardon, Mr. Kresel; I was looking for a paper; pardon me.

XQ. 1376. The reason that you say you paid only $4683.74 in royalties to the Federal Trade Commission in 1919 was that you did not have to pay a royalty on novocain preparations; is that your answer?

A. On the products that went into them besides novocain, yes, sir. We paid for the novocain in the preparation.

XQ. 1377. I will repeat the question. Is it your claim that you did not have to pay a royalty on what you have called novocain preparations?

A. That is not my answer. My answer is—

XQ. 1378. All right, now. If that is not your answer, let me put another question: You said that your sales were $246,295.67. Is it true that those were sales of novocain?

A. Novocain and—

XQ. 1379. Yes or no?

A. Not entirely.

XQ. 1380. What is included there in that figure in addition to the novocain?

A. Novocain tablets and solutions.

XQ. 1381. Are not novocain tablets novocain?

A. There are the small bottles—

XQ. 1381. (continued) Aren't they novocain?

A. Novocain and a mixture, in some cases, of something else.

XQ. 1382. Novocain tablets that you sold and that you included in that figure, were they not novocain?

A. They contained novocain.

XQ. 1383. Were they not novocain?

A. Some were not novocain, no, sir; they contained novocain.

XQ. 1384. Under what name did you sell them?

A. "Novocain tablets E," "T," and so forth, which are different combinations.

XQ. 1385. Is it your claim that under your Federal Trade license you did not have to pay a royalty on such novocain tablets, E, T, and so on?

A. Only on the novocain in those tablets; that is my claim was my arrangement with the Commission.

XQ. 1386. You speak of an arrangement with the Commission. Was that in writing?

A. I went down and saw them.

XQ. 1387. Was it in writing?

A. I do not recall. I know they checked it up and were satisfied with those conditions.

XQ. 1388. You know, do you not, that you did not pay to the Federal Trade Commission either during 1919 or 1920, or 1921 or 1922, an amount equal to five per cent on the sales that you gave us?

A. Not on the sales, because the sales, as I say now are—

XQ. 1389. Well, not on the sales, that is the answer.

Mr. Kresel: May I have the rest beginning with "because" stricken out?

The Court: Motion granted.

A. Not on the sales I gave you as covering novocain.

XQ. 1390. You did not give me any sales, I beg your pardon; you gave them upon your direct examination.

A. Yes, sir.

XQ. 1391. That is all I want to know.

A. I would like to correct that, your Honor.

THE COURT: The witness says he wants to qualify something.

XQ. 1392. Certainly, now you may qualify it.

A. Those sales contain the total of the sales of the novocain, but in which are included the bottles and the ingredients that enter into the tablets, that are not novocain, and therefore require no license, and so arranged with the Federal Trade Commission. They contain, however, all the sales of novocain in every form, plus these outside propositions, which should have been deducted, and I regret that that has not been done or had not been done when the list was handed to me. But that can be done at any time and I will be glad to do it.

XQ. 1393. I asked you on last Saturday to produce your books showing the amount of your sales in 1919, 1920, 1921 and 1922. Have you them here?

A. I sent my bookkeeper back for some of them and I think he brought them here to the hotel.

XQ. 1394. Will you produce them?

A. I can bring them here.

XQ. 1395. They are not here?

A. They are in the hotel.

THE COURT: Are you going to take up the books now?

MR. KRESEL: I would like to see them, sir.

(At this point a short recess was taken at the direction of the Court.)

XQ. 1396. Before the recess, Mr. Metz, I asked you to produce your books showing the amount of your sales during the years 1919 to 1922, inclusive. Have you those?

A. My man informs me there are 25 sales books. He did not bring all the sales books. He brought the sheets which were checked from the books.

XQ. 1397. I did not ask for sheets and I do not want anything about them. I would like to see the books.

A. I haven't got those books. They were not asked for. The sales book for 1914, the first sale of salvarsan to the Government was asked for and that I have got. I sent my man for that and these sheets he brought from the books.

XQ. 1398. If you misunderstood me on Saturday, very well. I state to you now that I want to see your books which show that you made the amount of sales that you testified to here on the direct. How long will it take you to get them?

A. Is it necessary to bring 25 sales books down here from New York to check up?

XQ. 1399. How long will it take you to get them?

A. We can send to New York to bring them down. I have the records from the books checked up, if you want those.

XQ. 1400. Can you get them here this afternoon?

A. No, not possible.

XQ. 1401. Can you get them in the morning?

A. I can send my man. I can't get them. I have the sheets here. I can't do business without my books.

XQ. 1402. Can you have them tomorrow?

A. If the Court so orders me.

The Court: Mr. Kresel, I am going to let you proceed in your own way, but I am wondering whether you care to inspect these sheets and then determine whether you want the books or not.

Mr. Kresel: I will do that, your Honor.

Mr. Anderson: Would your Honor permit me to make this suggestion to counsel. The witness, I understand, has his ledgers. He has the sheets showing the royalties paid in detail, which have been checked by the representative of the Federal Trade Commission, and Mr. Buffum, who is now representing The Chemical Foundation. Would it not be a little unreasonable—I do not mean that counsel means to be unreasonable—to require the whole 25 sales books?

The Court: No, Colonel Anderson, but haven't we made progress? Mr. Kresel said he would examine the sheets.

Mr. Anderson: I did not hear that.

Mr. Kresel: I am going to look at the sheets and then examine Mr. Metz.

Mr. Anderson: I can not hear back here.

Mr. Kresel: I am going to speak louder. May I proceed, sir?

The Court: Yes.

XQ. 1403. You testified upon your direct examination as to the amount of profits that you made. You started in by giving your alleged profits beginning with 1913.

A. Yes, sir.

XQ. 1404. Have you in Court here the books which will show what those profits were?

A. I have the ledgers from which the Treasury reports are made.

XQ. 1405: You have the ledgers?

A. I am not a bookkeeper. My bookkeeper will account for all that, Mr. Kresel.

XQ. 1406. Please, Mr. Metz; you say you have your ledgers?

A. The ledgers are here; yes, sir.

XQ. 1407. Will you take your ledgers and point out to me therein the entry of the profits that you made during the years for which you undertook to give figures?

A. Personally I would not recognize them in my books. My bookkeeper can do that. I am not a bookkeeper, Mr. Kresel.

XQ. 1408. Your answer is you can not do it?

A. Personally I can not. I do not think I can.

XQ. 1409. All right, that is an answer. I asked you yesterday whether you had ever met Gaston Means. Do you remember that?

A. Yes, sir.

XQ. 1410. You testified that you never saw him. Does that mean that you never spoke to him?

A. It means to the best of my knowledge I never saw the man or spoke to him. To the best of my knowledge and belief. I do not recollect ever seeing or speaking to him, ever.

XQ. 1411. And that you never wrote to him?

A. That I do not know officially, if we had a communication. I do not recall it, if I did. I do not know the man, that is all I could say. I would not know him if he was in the courtroom.

XQ. 1412. And that you never received any communication from him?

A. I do not recall any such communication, Mr. Metz, to the best of my recollection.

XQ. 1413. You testified that you had been informed that this man Means had been making an investigation of this case?

A. Newspaper reports so stated.

XQ. 1414. Did you not confer with Means about this case?

A. I never did to my recollection; no, sir, never.

XQ. 1415. Do you mean to say that you have forgotten whether you did confer with him about this case?

A. I mean to say if it was Means I did not know it, and to my recollection I do not know. And I could positively swear to that, Mr. Kresel, and I am under oath.

XQ. 1416. You did confer with Bennett?

A. Bennett came to see me time and again in my office. You do not call that a conference, do you?

XQ. 1417. You did talk with Bennett?

A. Bennett came to me time and again, yes, sir.

XQ. 1418. And you talked with him?

A. He talked with me and mentioned facts, but it did not interest me one bit.

XQ. 1419. And you talked with him about this case?

A. Undoubtedly, Mr. Kresel, in the course of the conversation.

Mr. Anderson: I think you will have to say what time.

Mr. Kresel: I am coming to that.

Mr. Anderson: But you are asking the witness, and that ought to come first.

Mr. Kresel: Please do not criticize me. If you have an objection, please raise it. I do not like counsel telling me that I should put one question ahead of another.

Mr. Anderson: I am sorry, your Honor, if I offended counsel.

The Court: Colonel Anderson, there is no question before the Court now. Let it pass, and let us have the next question.

XQ. 1420. Mr. Metz, you had talks with Bennett before this suit was brought, did you not?

A. Oh, yes; he has talked to me very often.

XQ. 1421. And you met Bennett in Washington, did you not?

A. I saw him there undoubtedly when I was there and he came there.

XQ. 1422. And you saw him in your office in New York, did you not?

A. Yes, at various times.

XQ. 1423. And you gave him information with regard to The Chemical Foundation and these patents, did you not?

A. Not specifically; in conversation possibly; answered questions if he asked them.

XQ. 1424. And you talked with him about your trip abroad?

A. Undoubtedly, in general conversation, certainly.

XQ. 1425. And you told him that you had talked with your former principals about the return of these patents, did you not?

Mr. Anderson: I shall have to object.

The Court: The time, place and persons will have to be specified, Mr. Kresel.

XQ. 1426. I am speaking, Mr. Metz, only of the conversations that you had prior to the bringing of this suit, which was September, 1922. Do you understand me?

The Court: That does not comply with the general rule, as I understand it, and does not comply with the local rule which requires, for purposes of contradiction, that you designate and specify in your question the time and place and persons present.

Mr. Kresel: All right, your Honor.

Mr. Anderson: In addition to my general objection, I wish to renew very earnestly my objection to this examination as being entirely immaterial and irrelevant.

The Court: As I understand the purpose of the examination, all of it has been either on one or two grounds, or on both, namely, the interest, the bias, the credibility of this witness, or his testimony with respect to values; and I understand this question is leading up to a matter which goes to a question of credibility.

XQ. 1427. Did you not on or about the 6th day of September, 1921, have a conference with Mr. C. Cyril Bennett and with Mr. Pickerell, as to whom you testified yesterday that he was in your employ, with reference to The Chemical Foundation and the patents here involved and the proposed suit to be brought thereon by the Government?

A. I have no recollection of such a conversation or any idea of a suit being brought.

XQ. 1428. I will ask you the same question and shall omit the statement that a suit was to be brought.

THE COURT: The question does not embody the place. The way those questions are framed here is whether the witness did not at a certain time and at a certain place, with certain persons present, make a statement, specifying the statement, or use words to that effect. We are probably very strict about those rules here; and unless that is put in more or less that form, we do not permit contradiction.

MR. KRESEL: All right, your Honor; I will observe the rule.

XQ. 1429. Did you not on or about the 6th day of September, 1921, in Washington, D. C., have a conference with Mr. C. Cyril Bennett, at which Mr. Pickerell was present, and at which time you asked Mr. Bennett to obtain for you from the files of the Alien Property Custodian information regarding the patents conveyed to The Chemical Foundation?

A. I have no such recollection. Those lists were available. I had them in New York—the patents transferred or obtained. They were all published. I had them. There was no use asking Bennett to get them and I don't recall that I did.

THE COURT: Will you repeat the question, Mr. Kresel? I do not think the witness understood.

MR. KRESEL: I will repeat it. Indeed, I should prefer to have the stenographer repeat it, if your Honor will permit it.

(XQ. 1429 repeated as above recorded.)

A. I do not recall such a meeting.

XQ. 1430. And at that meeting, is it not a fact that Mr. Bennett stated to you that the only way he could get that information was through Senator Moses and that he would request Senator Moses to get you that information?

A. That may be true. I don't recall.

MR. ANDERSON: He has stated, sir, he did not recall any such meeting.

MR. KRESEL: He has now answered.

XQ. 1431. Look at that copy of a letter I now hand you. Do you recognize the handwriting of your employee, Mr. Pickerell, in that letter?

A. Yes, sir. That looks like Dr. Pickerell's letter.

XQ. 1432. Let me have it, please.

A. May I read it?

XQ. 1433. No, let me have it. All I asked you was to identify the handwriting.

A. (Witness returns letter to counsel.)

XQ. 1434. Now, I am going to ask you to read the letter and state whether that does not refresh your recollection about this conference that I have just been questioning you about?

A. I never saw the letter and I do not recall anything in connection with it, Mr. Kresel.

XQ. 1435. You say that that does not refresh your recollection?

A. No, not specially.

XQ. 1436. Now, don't let us misunderstand or fall between "specially" and "generally."

A. I do not recall any details connected with it; no, sir.

XQ. 1437. I didn't ask you about any details. I am asking you whether that does not refresh your recollection that you had the conference that I questioned you about, in Washington; that there were present Mr. Bennett and Mr. Pickerell, and that the statements that I embodied in my question were made?

A. There were many conferences. I do not deny it. Possibly. I don't recall, Mr. Kresel. That's all I can say—to the best of my knowledge and belief.

MR. KRESEL: I ask to have this paper marked for the present for identification.

THE COURT: Let it be so marked.

Marked Defendant's Exhibit H for Identification, 6-26-1923.

XQ. 1438. Mr. Metz, you testified yesterday that you had endorsed a note for Mr. Bennett in the sum of $5,000?

A. I think that was the amount; yes, sir.

XQ. 1439. You endorsed other notes at the Gotham National Bank, didn't you?

A. May I explain the conditions on which I endorsed them?

XQ. 1440. No, please first answer my question. Then you will explain.

A. Yes, I did.

XQ. 1441. You endorsed a note for $300,000, didn't you?

A. $300,000?

XQ. 1442. Yes.

A. Oh, no. $300,000?

XQ. 1443. Yes.

A. For who?

XQ. 1444. Now, wait a minute. Did you endorse a note for $300,000 for Mr. Bennett?

A. Certainly not—$300,000.

XQ. 1445. How much was it that you endorsed in addition to the $5,000?

A. There were various notes, as he paid off on the $5,000. I endorsed new notes as I recall it.

XQ. 1446. You mean that the total of your endorsements for Mr. Bennett was only $5,000?

A. That is my recollection, Mr. Kresel.

XQ. 1447. You mean that the maximum that you ever endorsed for him was $5,000?

A. To my recollection, yes. He had another note in a bank in Jersey when he was with the Dyers Trade Journal, that I endorsed for him, or some paper that he was on as co-endorser.

XQ. 1448. How much was that?

A. I don't recall the amount; $1200 or more.

XQ. 1449. About $1200?

A. That is my recollection. I had to pay one of them myself.

XQ. 1450. That is in addition to the $5,000?

A. Yes; and he paid off in installments.

XQ. 1451. Please don't let us travel away from the City of New York. Please confine yourself to the Gotham National Bank in New York?

A. Yes, sir.

XQ. 1452. To repeat the question, have you not endorsed for Bennett in that bank more than $5,000 of notes?

A. At one time, I don't think I did.

XQ. 1453. Did you endorse any notes for the

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Manchester Union and the Manchester Leader, of Manchester, New Hampshire?

A. Not to my knowledge, no.

XQ. 1454. Or for anyone that used the proceeds of those notes for the purposes of those two publications?

A. I never heard of them before.

Mr. Anderson: It seems to me, assuming that this evidence is admissible at all, that the limit of counsel's right to ask the question would be to specify whether he endorsed the note for specific persons; for certainly, it is rather general to ask a witness whether he endorsed a note for someone who used the proceeds for something.

The Court: It is very vague. Of course, it is cross-examination. I assume it is preliminary, to be followed up; is it not?

Mr. Kresel: Yes, sir.

The Court: If not, I do not see its value myself. If the witness recalls and is able to testify from such a general question, then a more specific one is not necessary. If he does not recall, and a more specific one is not asked, I see no benefit to be derived from answering the question.

XQ. 1455. Do you know Mr. J. A. Muehling?

A. Who?

XQ. 1456. J. A. Muehling?

A. A. J. R. Murling?

XQ. 1457. I may have his initials wrong.

A. I know such a man—A. J. R. Murling, yes.

XQ. 1458. Just for the purpose of identification, what is his business?

A. I do not know what he is doing now. He used to be with the Bayer Company years ago. He was their manager, if that is the man you mean.

XQ. 1459. No, that is not the man I mean; so we do not agree.

A. Then I do not recall, Mr. Kresel.

XQ. 1460. The man I am asking about is J. A. Muehling?

A. I do not recall such a name, Mr. Kresel.

XQ. 1461. You remember in April, 1922, you were in the United States, were you not?

A. April, 1922?

XQ. 1462. Yes.

A. I sailed in May.

XQ. 1463. You sailed away in May?

A. I went to Europe in May, 1922.

XQ. 1464. And were you in Europe in July, 1922?

A. Yes, sir.

XQ. 1465. In April, 1922, you remember visiting Mr. Bennett at his house on an occasion when he was ill?

A. Yes, sir; I recall that.

XQ. 1466. You visited him several times there, did you not?

A. Yes, sir. He was laid up for quite a while.

XQ. 1467. And you gave him money?

A. He borrowed money to pay his rent with on one occasion.

XQ. 1468. You gave him money?

A. Yes.

XQ. 1469. Now, in July, 1922, you were abroad?

A. Yes, sir.

XQ. 1470. You remember receiving a long letter from Mr. Bennett while you were abroad?

A. I think so.

XQ. 1471. Have you that letter?

A. No, sir.

XQ. 1472. Where is it?

A. I presume I destroyed it. I don't carry that kind of stuff.

XQ. 1473. Don't presume.

A. I am sure I did. I didn't bring those letters back.

XQ. 1474. That is an answer.

A. I am quite sure I destroyed it.

XQ. 1475. Will you tell the Court—and here you can make any explanation that you like—for what services you paid Bennett, for what services you endorsed notes for him, and for what services you paid notes of his in the bank?

A. A full explanation?

XQ. 1476. Go ahead; you have got the field open to you.

A. Yes, sir., Mr. Bennett was connected with the Color Trade Journal, which was the new journal of the color industry. He needed money to develop it, and the first note I understand was for that. Then he went into another journal—sort of a dry goods economist on that line—and I believe I endorsed their note for him. As I recall it, he paid off on installments the Gotham note. I had to pay one note of his that I recollect in a Jersey bank, I think over in New Jersey. Mr. Bennett was interested or had been interested with The Chemical Foundation and sent me a telegram calling for the first installment on the stock of The Chemical Foundation. Mr. Bennett was secretary of one of the dye manufacturing concerns, I forget which one, when it was organized, or shortly after it, and Mr. Bennett, in association with Dr. Matthews, had this dye journal, which was a very promising proposition, and which I was very glad to help him develop, and I think—no, he did not buy it; Merritt Matthews bought it, as I understand, bought out Bennett's interest, as I understand. Bennett was interested in the embargo, the dye embargo, which I opposed on general principles, opposed any embargo.

He conferred with Dr. Pickerell, who was formerly the chemist of the Appraiser Stores in New York, and later on, some years afterwards, I employed him as an expert on tariff matters, and in the laboratories, and he was in Washington on all those sessions. I think he conferred with Bennett and every one interested on those things. Those are the only cases I had an interest in or knew anything about. Bennett was living on Central Park West and several times came to me and said he needed money to pay his rent and other things, and I made it as a loan each time, and Bennett so understood it, and said, "As soon as I am able I will pay it back." That is the whole situation as I recall it, Mr. Kresel, and the only interest I had.

Mr. Kresel: That is all.

The Court: Do I understand, Mr. Kresel, that you want the production of some more books?

Mr. Kresel: I will during recess, your Honor, examine these papers.

The Court: You are through with cross-examination—

Mr. Kresel: Except for that.

The Court: Any re-direct, Colonel Anderson?

Mr. Anderson: Yes, sir.

The Witness: Will you take these now, Mr. Kresel (handing counsel papers). Your Honor, if you please, those are originals, and I would like to get them back eventually. They are my office records.

The Court: Mr. Metz requests, Mr. Kresel, that you return them to him at your convenience.

Mr. Kresel: Certainly.

The Witness: There is no hurry, but I want to get them back eventually.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 1477. You have said that Mr. Bennett was the secretary of one of the dye manufacturers' associations. May I ask if he was Sescretary of the American Dyes Institute?

A. I do not think he was Secretary of the American Dyes Institute. I think the one prior to that. I am not certain. The records would show that, Colonel; I am not certain. I do know this, however, Colonel Anderson—

MR. KRESEL: One minute, I object to that. The question has been answered.

RDQ. 1478. Were you a member of the association of which you understood he was secretary?

A. I don't recall. This was the beginning of these transactions. I do not remember. I was a member of the Dyes Institute, I recall that.

MR. KRESEL: I object to that. The answer is "I don't remember."

THE WITNESS: I don't remember; I cannot recall. The records would show.

RDQ. 1479. You have stated on direct examination, if I recall correctly, that you were a member of the American Dyes Institute?

A. Yes, sir.

RDQ. 1480. Mr. Metz, there were produced here and presented and marked for identification several contracts between—

MR. KRESEL: Colonel Anderson, may I interrupt you a minute. I do not want to take you by surprise. I propose to offer in evidence a number of letters that I used in the cross-examination of the witness, and with them in evidence you may want to use them to re-direct him. Therefore will you permit me to interrupt you to offer them now?

MR. ANDERSON: Yes, sir.

The Court: There is no objection to having them offered out of order?

Mr. Anderson: Not the slightest.

The Court: Very well, then.

Mr. Kresel: I offer in evidence, if your Honor please, contract between the Dermatological Research Laboratories and the Farbwerke Hoechst Company, dated December 5, 1916, as to which I questioned the witness yesterday and which he identified. I have it here in this form (handing counsel).

Mr. Anderson: I do not object to that, though I have not looked at it. I do not object to it.

The Court: Admitted.

The Witness: I can give you a printed copy, Mr. Kresel, if you care for it.

Mr. Anderson: I do not object to it, except that I make the general objection to which all this evidence is subject. I do not object to it as to form.

The Court: It is so understood, Colonel Anderson.

Received in evidence and marked "Defendant's Exhibit No. 5." (*See Exhibits, Vol. IV, page 2042.*)

The Witness: If you want that, there is a printed copy and you can substitute that for the original (handing counsel).

Mr. Kresel: He has a printed copy and we can put that in.

Mr. Anderson: Yes.

The Court: You may substitute that later if you desire.

Mr. Kresel: Very well, your Honor, I just want to make sure it is a copy.

The Court: You may compare it.

Mr. Kresel: If I may have the privilege, I will substitute it later.

The Witness: I thought it was clearer, Mr. Kresel, that is all.

Mr. Kresel: I offer in evidence the agreement between the Dermatological Research Laboratories, Dr. Schamberg, Dr. Raiziss and Herman A. Metz, dated Philadelphia, June 8, 1918.

Received in evidence and marked "Defendant's Exhibit No. 6." (*See Exhibits, Vol. IV, page 2049.*)

Mr. Kresel: I offer in evidence a letter of James C. Sargent to the Journal of American Medical Association, printed in the issue of that magazine under date of March 30, 1918, which the witness identified.

Received in evidence and marked "Defendant's Exhibit No. 7." (*See Exhibits, Vol. IV, page 2052.*)

Mr. Kresel: I offer in evidence a letter from Dr. Hausser to Mr. Metz, dated June 20, 1913, which is printed at page 499 of the hearing before the Committee on Finance of the United States Senate, on H. R. 8078. And may I with the permission of the Court have the privilege of substituting typewritten copies of these letters which are printed in these books. There is no use putting the book in. We will give it a number now. That is the one of June 20, 1913.

Received in evidence and considered marked "Defendant's Exhibit No. 8" (to be furnished). (*See Exhibits, Vol. IV, page 2055.*)

Mr. Kresel: I offer in evidence letter from Dr. Haeuser to Mr. Metz, dated May 14, 1913, which appears at page 500 of this same volume of hearings before the Committee on Finance.

Received in evidence and considered marked Defendant's Exhibit No. 17 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2344.*)

Mr. Kresel: I offer in evidence a letter from Mr. Metz to Honorable Robert F. Rose, Foreign Trade Adviser, Washington, D. C., dated October 23, 1914, printed at page 7766 of the hearings bethe Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 18 (to be furnished). (*See Exhibits, Vol. IV, page 2080.*)

Mr. Kresel: I offer in evidence a letter from Herman A. Metz to Woodrow Wilson, President of the United States, dated June 16, 1915, and printed at page 274 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 19 (to be furnished). (*See Exhibits, Vol. IV, page 2081.*)

Mr. Kresel: I offer in evidence a letter from Herman A. Metz to Honorable William J. Bryan, Secretary of State, Washington, D. C., dated March 6, 1915, printed at page 255 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 20 (to be furnished). (*See Exhibits, Vol. IV, page 2083.*)

Mr. Kresel: I offer in evidence a telegram from Charles A. Holder, Foreign Trade Adviser, to Mr. Metz, printed at page 779 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 21. (*See Exhibits, Vol. IV, page 2083.*)

Mr. Kresel: I offer in evidence a letter from the Farbwerke-Hoechst Company. I can not read the name of the person who has signed it. Could you not help me with that (handing witness)?

The Witness: That is J. H. Martin. That is one of my clerks.

Mr. Kresel: Signed by Farbwerke-Hoechst Company, J. H. Martin, addressed to Drs. Brown and Jack, Decatur, Illinois, April 26, 1917. That will be marked now.

Received in evidence and marked Defendant's Exhibit No. 22. (*See Exhibits, Vol. IV, page 2084.*)

Mr. Kresel: I offer in evidence a letter from Herman A. Metz to Dr. G. W. McCoy, dated March 14, 1919, printed at page 839 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 23 (to be furnished). (*See Exhibits, Vol. IV, page 2085.*)

Mr. Kresel: I offer in evidence a letter from Edward W. Dieters to Mr. Metz, addressed as "My dear Colonel," dated October 24, 1922.

Received in evidence and marked "Defendant's Exhibit No. 24." (*See Exhibits, Vol. IV, page 2086.*)

Mr. Kresel: I offer in evidence as a separate exhibit the enclosure that came with that letter.

Received in evidence and marked "Defendant's Exhibit No. 24-A." (*See Exhibits, Vol. IV, page 2087.*)

Mr. Kresel: I offer in evidence the letter now marked Defendant's Exhibit H for identification.

Received in evidence and marked "Defendant's Exhibit No. 25." (*See Exhibits, Vol. IV, page 2088.*)

Mr. Kresel: That is all, your Honor.

The Court: Each is admitted subject to the general and specific objections of the Government.

Mr. Anderson: If the Court please, there are a number of these documents of yesterday that I have not been able to examine. It is within ten minutes of the time of recess. Would it be agreeable to the Court to take the recess at this time and convene ten minutes earlier?

The Court: No, we will meet at the same time. We will take a recess until one o'clock Standard time.

RDQ. 1481. You identified on cross-examination an agreement of November 12, 1902, between the German firm mentioned therein and the Consolidated Color and Chemical Company, which I think you said was one of your companies, is that true?

A. Yes, that was changed in the other contracts. They were continuing contracts as to my agency for their products, that is all, that feature of it.

Mr. Anderson: As this paper was not offered in evidence, I would like to make a reoffer. I now offer in evidence this paper which has been identified as Exhibit C for Identification, of the defendant, to be read as Plaintiff's Exhibit No. 407.

Mr. Kresel: Just our general objection, your Honor, as to materiality and relevancy.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 407." (*See Exhibits, Vol. II, page 762.*)

RDQ. 1482. There was also identified by you on yesterday another agreement dated August 4, 1905, between certain German firms and H. A. Metz and the Consolidated Color Company. This was one of the same series to which you referred?

A. Yes, sir, the continuation of the previous one.

Mr. Anderson: We offer in evidence the agreement already identified and mentioned above, dated August 4, 1905, to be read as Plaintiff's Exhibit No. 408.

The Court: Admitted under the same conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 408." (*See Exhibits, Vol. II, page 782.*)

Mr. Anderson: I should have offered preceding the former agreement, but do now offer the agreement of September 26, 1904, which was identified by the witness on yesterday and marked for identification Defendant's Exhibit E, between the German firms mentioned and Herman A. Metz and others. I now offer that agreement in evidence, to be identified and read as Plaintiff's Exhibit No. 409.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 409." (*See Exhibits, Vol. II, page 792.*)

Mr. Anderson: The witness also identified on yesterday an agreement dated the 22nd day of July, 1912, between the German firms mentioned therein, and Herman A. Metz, H. A. Metz & Company, Victor Koechl & Company, which was marked for identification as Defendant's Exhibit F. I ask that the same be identified as Plaintiff's Exhibit No. 410.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 410." (*See Exhibits, Vol. II, page 797.*)

RDQ. 1483. Colonel Metz, you stated on yesterday that there was another agreement dated in 1913. Have you a copy of that agreement?

A. I have not. That is in the Court in Detroit. I have not got a copy.

RDQ. 1484. Have you made a search for it?

A. I did, sir, before I came down.

RDQ. 1485. By reference to one of the exhibits of the Answer, found at page 88 of the printed Answer in this cause, I find the following statement:

> "A prolonged negotiation ensued, the Germans being very reluctant to make any change. At last, in the summer of 1913, it was arranged that the 1,990 shares held by the German concern should be transferred on the books to Mr. Metz; that in return he should execute a demand promissory note without interest for the sum of $597,000; that the note should be delivered to the German company and the stock, together with a suitable transfer properly executed, should be deposited to the sole order of the German concern in a Montreal bank, as security for the note."

Can you state whether the transaction there mentioned is the matter covered by the agreement of 1913, which you have been unable to find?

Mr. Kresel: We object to the question upon the ground, first, that it is not proper re-direct; secondly upon the ground that it is immaterial and irrelevant; third, upon the ground that the instrument speaks for itself and that this witness can not interpret in the way that he is undertaking to do.

If you have a copy of the agreement, Colonel Anderson, I shall not object to your putting it in.

Mr. Anderson: No, I have not. I can not find a copy and I can not locate the original. I will state to your Honor that we have tried to find it. The witness of course has not been able to go to New York himself to get it. We have done everything we could to find it.

In addition to that, as to the first point, I think the cross-examination opened up this entire subject and it certainly would not be fair to the witness to put in a part of his series of transactions and not put in all, that the full truth may appear.

I recognize the entire right of counsel on cross-examination to limit it to such inquiry as he thinks is appropriate to his particular position, but in the interest of re-direct, I have the right to put in evidence of the entire transaction for the consideration of the Court. If I had the agreement or a copy, I would produce it.

Mr. Kresel: Colonel, may I direct your attention to the statement of the witness on cross-examination that there was a copy of it printed in one of those records. Maybe you can locate it that way.

Mr. Anderson: We have made a search and can not locate that contract in the record. If we can, I will be glad to produce it.

Mr. Kresel: I want to say to your Honor and Colonel Anderson, for your information, that I am pretty familiar with these records before Congressional committees and I do not remember ever having seen any copy of that instrument, nor have I ever seen the original.

Mr. Anderson: Well, that is my experience, sir. I did not know anything about it until this matter was brought up on cross-examination.

The Court: Whether it is re-direct, in order that it may possibly make it unnecessary for you to recall the witness I will let you take it so far as that point is concerned under the general rule, because it is only a question as to whether there would be further examination upon it.

Mr. Anderson: I would not object to it, sir.

The Court: The second point is that it is immaterial. On that ground I have found it necessary to lay down a general rule to take whatever counsel believes is material, because of the many conflicting views—that is, in view of the fact that your views vary with respect to all matters in this case except one single one. With respect to a conclusion, I think at the moment that question does call for a conclusion, Colonel Anderson. Won't you have the question read to you?

Mr. Anderson: I think the question does call for a conclusion but I merely want to identify the character of the transaction from that evidence. I will put the question this way:

RDQ. 1486. Can you state whether the agreement of 1919 to which you refer related to the sale or alleged sale to you of the 1990 shares of stock mentioned in the paragraph of the Answer which I have read?

Mr. Kresel: I won't object.

The Court: You will not?

Mr. Kresel: I will not object.

A. It did, and I know where there is a copy, I think.

Mr. Anderson: If your Honor please, I will ask this question:

RDQ. 1487. Did you have a suit in the United States District Court for the Southern District of New York in which H. A. Metz was complainant and Francis P. Garvan as Alien Property Custodian was the defendant, in which this transaction was involved?

Mr. Kresel: I object to that on the ground that it is immaterial and irrelevant; further, upon the ground that it calls for the witness's conclusion as to what was involved in the suit.

Mr. Anderson: I think upon technical grounds, possibly the second part, that it is a conclusion, would be a good objection; but it was merely leading up and as an inducement to something I wanted to introduce. I did not want him to say what was in the suit, but whether it related to this agreement, whether that agreement was involved.

Mr. Kresel: Further I urge the objection that it is not re-direct. In fact I understand your Honor has ruled generally—

The Court: No, I have ruled with respect to the other matter, because it would require a great many niceties probably to inquire whether all these are proper or not. But Colonel Anderson says he will have no objection to your re-cross examination—

Mr. Anderson: Not the slightest.

The Court: With respect to any matters you want to inquire about. In that case, it seems to me the objection that it is not re-direct falls. But I think, Colonel Anderson, you are right that it does fall unless it is pure inducement to something else, and more by way of recital than a statement of fact. If that fact becomes material to your part of the case, I take it you do not ask me to accept this statement as binding?

Mr. Anderson: I will not, sir. It could only be possible as connecting up.

The Court: I will take the answer and I will see what the next questions are and then determine it.

A. What was the question, Colonel, please?

(RDQ. 1487 repeated as recorded above.)

Mr. Anderson: I will change it, the latter part, to read: "In which this contract was involved." I will put it that way.

A. Yes, sir.

Mr. Kresel: Which contract?

Mr. Anderson: The contract of 1913 was involved. I merely want to bring that out. I should have said at the beginning, though I did not, that in my re-direct examination on these points I still reserve my objections to the evidence on them opened up on cross-examination.

THE COURT: I do not understand you have waived them.

MR. KRESEL: I think we are assuming that, Colonel, from the very beginning—that you never abandon anything.

MR. ANDERSON: If your Honor please, I now wish to offer in evidence the unreported opinion of Judge Mayer, the District Judge in the case of Metz against Garvan, Alien Property Custodian, which opinion was rendered on the 2nd day of June, 1921. If it were reported, I would not offer it.

THE COURT: As tending to show what?

MR. ANDERSON: As tending to show that in the absence of all—

MR. KRESEL: Colonel, will you permit me to interrupt you?

MR. ANDERSON: Yes.

MR. KRESEL: You are misinformed as to its not being reported. It is reported.

MR. ANDERSON: In what book?

MR. KRESEL: It is reported in the Federal Reporter, of course.

MR. ANDERSON: If it is reported in the Federal Reporter, of course I do not want to offer the opinion, and I withdraw it.

MR. KRESEL: If you desire I will give you the citation.

MR. ANDERSON: I withdraw it and ask that the entire reference to that matter be stricken out.

I now ask leave to offer in evidence a certified copy of a decree of the United States District

Court for the Southern District of New York in the case of Herman A. Metz, plaintiff, against Francis P. Garvan, as Alien Property Custodian and successor in office to A. Mitchell Palmer, as defendant.

Mr. Kresel: May I see it first?

Mr. Anderson: Certainly (handing counsel).

Mr. Kresel: Your Honor, we object to the introduction of this decree. I am not objecting to it upon the ground of incompetency and that it is a copy; but I am objecting to it upon the ground that it is immaterial and irrelevant; that a decree between Mr. Metz, and Mr. Garvan as Alien Property Custodian, is not evidence against this defendant; that it appears from the face of the instrument that it has no reference to the patents here in suit; that if the decree goes in at all I shall ask that the entire record of the case go in, so that the Court may be able to determine what relevancy or materiality there is in the decree, judging by what was being litigated in the action, and in order that the Court may have before it the complaint and the answer and any other pleadings in the case, so as to see what issues there were in the case and what evidence there was to support this decree.

I think from any point that it is viewed, this is immaterial and irrelevant and not binding upon this defendant, and we therefore object.

Mr. Anderson: Counsel is, I concede, well within his rights in insisting that the remainder of the Court record go in. I recognize that; and if counsel desire that, then while I shall not object in any way to having the entire record here, for the purpose of making this record within some reasonable bounds, I shall withdraw this decree certainly for the present in order to have it certified. If I reach the conclusion that I must introduce it, I will do so later; but simply for the service of the record, I will withdraw that order, the opinion is sufficient.

RDQ. 1488. Colonel Metz, you were asked on cross-examination about negotiations looking to the importation of German dyestuffs in the years 1914, 1915 and 1916, and certain correspondence was introduced either to or from you bearing upon that subject. I would ask if you have any other original correspondence on that subject. If so, I will ask you to produce it.

A. Yes, sir, I have quite a number of letters from the State Department and from other officials.

RDQ. 1489. Will you let me have it?

A. (Witness hands papers.)

RDQ. 1490. I hand you what purports to be a telegram addressed to you and signed by W. J. Bryan, Secretary of State, and ask you if you can identify that as having been received by you?

A. Yes, sir.

Mr. Anderson: We offer in evidence a telegram dated Washington, August 21, 1914, addressed to Honorable Herman A. Metz, House of Representatives, signed W. J. Bryan, Secretary of State, to be identified and read as Plaintiff's Exhibit No. 411.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 411." (*See Exhibits, Vol. II, page 813.*)

Mr. Anderson: I will read this correspondence, as the remainder has been read, so your Honor can have the whole thing before you.

Mr. Kresel: I did not read it all, but I have no objection to your reading it.

Mr. Anderson: You read that part that interested you; so I will read this. The telegram is as follows. (Reading.)

RDQ. 1491. I hand you a telegram dated August 23, 1914——

Mr. Kresel: I will assume he will say that he received these things or sent them, whichever it is.

Mr. Anderson: They are all original papers and we agree, without having him identify them, that they may be introduced.

Mr. Kresel: Not without having him identify them, but without putting you to the trouble of asking him. May I just see them as you offer them, to see if I have any objection.

The Court: Will you offer such as you desire to offer, and when you have finished, I will admit them all subject to such general and specific objection as may now or hereafter be made by the defendant.

Mr. Anderson: Telegram dated Washington, August 23, 1914, addressed to Honorable Herman A. Metz, House of Representatives, Washington, signed "Bryan," to be identified and read in evidence as Plaintiff's Exhibit No. 412. (Reading.)

The Court: Admitted.

Exhibit No. 412." (*See Exhibits, Vol. II, page 814.*)

Mr. Anderson: I offer in evidence telegram dated September 17, 1914, addressed to Honorable Herman A. Metz, signed "Robert Lansing, Acting Secretary of State," to be identified and read as Plaintiff's Exhibit No. 413. The telegram is as follows (reading).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 413." (*See Exhibits, Vol. II, page 814.*)

Mr. Anderson: I offer in evidence carbon copy of a letter dated September 18, 1914, addressed to Honorable Robert A. Lansing, Acting Secretary of State, Washington, D. C., and initialed "H. A. M."

RDQ. 1492. You signed the original of that letter, did you not?

A. Yes, sir.

Mr. Anderson: For convenience of the record, I will put his name at the bottom of that letter, with the consent of counsel.

The Court: Admitted.

Mr. Anderson: The letter reads as follows (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 414." (*See Exhibits, Vol. II, page 815.*)

Mr. Anderson: I offer in evidence letter dated September 22, 1914, addressed to Honorable Herman A. Metz, signed Robert Lansing, Acting Secretary of State, to be identified and read as Plaintiff's Exhibit No. 415. (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 415." (*See Exhibits, Vol. II, page 816.*)

Mr. Anderson: I offer in evidence a letter from W. B. Fleming, Foreign Trade Adviser to the Department of State, to the Honorable Herman A. Metz, dated September 23, 1914, referring therein to two telegrams or drafts of telegrams attached as exhibits with the letter, all of which I ask to be identified, respectively, as Plaintiff's Exhibits Nos. 416, 416-A and 416-B. The letter is as follows (reading).

Received in evidence and marked "Plaintiff's Exhibits Nos. 416, 416-A and 416-B" respectively. (*See Exhibits, Vol. II, pages 817, 818.*)

Mr. Anderson: I offer in evidence a telegram dated October 9, 1914, to Honorable Herman A. Metz, New York, signed Robert Lansing, Acting

Secretary of State, to be identified and read as Plaintiff's Exhibit No. 417 (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 417." (*See Exhibits, Vol. II, page 819.*)

RDQ. 1493. Do you know who Mr. Poucher was?

A. Mr. Morris R. Poucher, Vice-President of Badische Company in New York, who went to Europe to meet the Matanzas.

RDQ. 1494. Do you know of your own knowledge whether Mr. Poucher was active in undertaking to secure the importation of dyestuffs?

A. He was; went over for that purpose.

Mr. Anderson: I offer in evidence a communication dated at Rotterdam, October 10, 1914, embargo on an export of dyestuffs from Germany, signed by S. Listoe, Consul General.

Received in evidence and marked "Plaintiff's Exhibit No. 418." (*See Exhibits, Vol. II, page 820.*)

RDQ. 1495. Do you know from what place you got this record?

A. Sent to me by the State Department.

Mr. Anderson: The communication is as follows. (Reading Plaintiff's Exhibit No. 418.)

I offer in evidence original telegram dated October 16, 1914, addressed to Honorable Herman A. Metz, signed "Robert Lansing, Acting Secretary of State," to be identified and read in evidence as Plaintiff's Exhibit No. 419. The telegram is as follows. (Reading.)

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 419." (*See Exhibits, Vol. II, page 822.*)

Mr. Anderson: I offer in evidence letter dated October 14, 1914, addressed to Honorable H. A. Metz, New York City, signed "Robert F. Rose, Foreign Trade Adviser," to be identified and read

in evidence as Plaintiff's Exhibit No. 420. (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 420." (*See Exhibits, Vol. II, page 823.*)

RDQ. 1496. Who was Charles H. Burr, do you know?

A. Charles H. Burr was the counsel for the committee that took up the investigation of abuses in the dyestuff industry with Mr. A. M. Patterson and his organization.

RDQ. 1497. Was that the textile organization?

A. Later on it became the Textile Alliance.

MR. ANDERSON: I offer in evidence telegram to Honorable Herman A. Metz, dated October 27th, 1914, signed "Robert Lansing, Acting Secretary of State," to be identified and read in evidence as Plaintiff's Exhibit No. 421. The telegram reads as follows. (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 421." (*See Exhibits, Vol. II, page 824.*)

MR. ANDERSON: I offer in evidence letter to Honorable Herman A. Metz, dated October 29th, 1914, signed "Robert Lansing, Acting Secretary of State," which will be found in the record of the Senate Committee Hearing on Resolution No. 77, page 775.

MR. KRESEL: No objection.

MR. ANDERSON: I will try to furnish a copy later. The letter is as follows. (Reading.)

THE COURT: Admitted.

Received in evidence, to be considered marked "Plaintiff's Exhibit No. 422." (*See Exhibits, Vol. II, page 825.*)

RDQ. 1498. Who was Count von Bernstorff?

A. German Ambassador.

RDQ. 1499. German Ambassador to the United States?

A. Yes, sir.

Mr. Anderson: I next offer in evidence a letter dated November 19, 1914, to the Honorable Herman A. Metz, signed Robert Lansing, Acting Secretary of State, to be marked Plaintiff's Exhibit No. 423.

Received in evidence and marked "Plaintiff's Exhibit No. 423." (Read by Mr. Anderson.) (*See Exhibits, Vol. II, page 826.*)

RDQ. 1500. The letter of November 7, 1914, that you referred to this morning, is that the letter that counsel for the defendant introduced in evidence before luncheon, do you recall?

A. I did not see what he introduced there, sir, but this is a copy of the letter I wrote to the President. There is another page missing. I presume it is among those introduced, I am not certain. There were several letters.

Mr. Kresel: The letter is in evidence, I assume.

Mr. Anderson: I will state that it is agreed the letter is the same as the one introduced by counsel.

The Witness: I am not quite certain that we had that letter, Colonel. I would like to make sure, because that is an important one in the record, under the circumstances.

Mr. Anderson: I will verify it. I now offer in evidence a letter dated November 12, 1914, to Honorable James W. Gerard, signed by W. J. Bryan, on the letterhead of the State Department at Washington, to be read as Plaintiff's Exhibit No. 424.

Received in evidence and marked "Plaintiff's Exhibit No. 424" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 826.*)

RDQ. 1501. Mr. Metz, did you take that letter with you to Germany in 1914?

A. I did, yes, sir.

RDQ. 1502. Did you present it to Mr. Gerard, the Ambassador?

A. He handed it back to me and told me keep it as a souvenir. I did not need any introduction.

RDQ. 1503. Do you want it as a souvenir? If so, I will produce copies.

A. I should like to have all those back. I may need those again.

MR. ANDERSON: Will your Honor permit, with consent of counsel, that we substitute copies for these originals; and if so substituted, return the originals?

MR. KRESEL: No objection.

THE COURT: Copies then may be substituted.

MR. ANDERSON: I offer in evidence cable dated December 2nd, 1914, from Rome, for department. The paper is headed, "Paraphrase of text of cipher telegram received December, 1914," and is signed by Nelson Page, American Ambassador (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 425." (*See Exhibits, Vol. II, page 827.*)

RDQ. 1504. What is indanthrene?

A. Indanthrene was a patented color, or a series of patented colors, controlled by the Badische Company, now the Kuttroff, Pickhardt & Company, of which Mr. Poucher was Vice-President.

RDQ. 1505. Is that an important dyestuff material?

A. Very important dyestuff.

RDQ. 1506. Indigo was also a patented material at that time, was it not?

A. Indigo itself was not patented. The process for manufacturing synthetic indigo was patented.

RDQ. 1507. But the indanthrene was a patented product?

A. The product was patented as well as the process. It covered a number of indanthrene vat colors.

Mr. Anderson: I offer in evidence telegram dated December 8, 1914, to H. A. Metz, New York, signed "W. J. Bryan, Secretary of State." (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 426." (*See Exhibits, Vol. II, page 829.*)

Mr. Anderson: I next offer in evidence telegram dated January 18, 1915, to Herman A. Metz, signed "W. J. Bryan, Secretary of State." (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 427." (*See Exhibits, Vol. II, page 830.*)

Mr. Anderson: I next offer in evidence a copy of a letter dated September 3, 1915, addressed to the Secretary of State and signed "W. G. McAdoo, Secretary," on the letterhead of the Treasury Department. I suppose the Court will take judicial notice of the fact that Mr. McAdoo was Secretary of the Treasury at that time (reading).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 428." (*See Exhibits, Vol. II, page 830.*)

RDQ. 1508. I note that this letter which I have just read from the Secretary of the Treasury to the Secretary of State states that the Treasury Department has requested you to deliver 500 tubes of salvarsan and 200 tubes of neosalvarsan at $2.25 per tube free of duty. Do you know whether you actually delivered those goods or not and whether they were imported?

A. I would have to refresh my memory. I assume I did, undoubtedly. If they came here, they were delivered.

Mr. Anderson: I offer in evidence a letter dated November 8, 1915, addressed to Mr. Metz, signed by Frank L. Polk, Counsellor to the State Department.

Mr. Kresel: Are you sure that is in his official capacity?

Mr. Anderson: I am not at all sure about it. This appears to be official. This is to be read in evidence as Plaintiff's Exhibit 429, together with a copy of a communication signed "Lansing" attached thereto, to be read in evidence as Plaintiff's Exhibit 429-A. The letter is as follows (reading).

The Court: Admitted.

Received in evidence and marked respectively Plaintiff's Exhibits 429 and 429-A. (*See Exhibits, Vol. II, pages 831, 832.*)

Mr. Anderson: If your Honor please, I will merely state that the enclosure is a long telegram addressed to the American Embassy at Paris, which appears to have been sent to the American Embassy at London also, containing instructions, information and data as to the importation of salvarsan, neosalvarsan and novocain, and measures to be taken to procure the free movement thereof through the blockade.

I offer in evidence letter from the Department of State dated January 6, 1916, to Mr. Herman A. Metz, signed, "For the Secretary of State, Alvey A. Adee, Second Assistant Secretary," together with typewritten enclosure, what appears to be a copy of telegram from American Embassy at Berlin, signed with stamp "James W. Gerard," to be identified and read in evidence as Plaintiff's Exhibits 430 and 430-A. (Reading.)

The Court: Admitted.

Mr. Anderson: The telegram from Mr. Gerard merely relates to the same matter, the substance of which is stated therein.

Received in evidence and marked "Plaintiff's Exhibits 430 and 430-A," respectively. (*See Exhibits, Vol. II, pages 835, 837.*)

Mr. Anderson: I offer in evidence a telegram dated Washington, February 8, 1916, addressed to Herman A. Metz, signed "Charles A. Holder, Foreign Trade Adviser," to be read in evidence.

Mr. Kresel: That is already in evidence. I put it in.

Mr. Anderson: I am informed that the telegram I have just offered has already been introduced by counsel for the defendant. I will withdraw the offer in order to avoid duplication of the record.

Mr. Kresel: What is the date of it? I do not want to mislead you.

Mr. Anderson: It is February 8, 1916, Mr. Kresel, addressed to Herman A. Metz.

Mr. Kresel: Yes, that is in as Exhibit No. 21.

Mr. Anderson: I offer in evidence copy of the telegram or cable dated New York, February 9, 1916, addressed to Farbwerke-Hoechst, Main, Germany, signed "Herman Metz," as Plaintiff's Exhibit No. 431.

Received in evidence and marked "Plaintiff's Exhibit No. 431" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 837.*)

RDQ. 1509. I show you, Mr. Metz, an original letter from Mr. Adee, Second Assistant Secretary of State, dated February 3, 1916, in which he refers to a letter from you dated January 17, 1916. Have you that letter or a copy of it?

A. Probably, in one of my bags. It is an official letter. May I say, Colonel Anderson, that these things have been back and forth and in Court so many times that I am losing them one by one. That is the reason I want to keep them this time. They have gone astray.

XQ. 1510. You have not in the papers that you have with you a copy of the paper showing these details?

A. No.

Mr. Anderson: Now I offer in evidence an original letter dated February 3, 1916, addressed to Honorable Herman A. Metz and signed for the Secretary of State, Alvey E. Adee, to be read in evidence as Plaintiff's Exhibit No. 432.

Received in evidence and marked "Plaintiff's Exhibit No. 432" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 838.*)

Mr. Anderson: I offer in evidence a telegram addressed to Herman Metz, dated February 12, 1916, from Farbwerke-Hoechst, to be identified as Plaintiff's Exhibit No. 433.

Received in evidence and marked "Plaintiff's Exhibit No. 433." (*See Exhibits, Vol. II, page 839.*)

Mr. Anderson: The telegram is as follows (reading).

I offer in evidence a letter dated February 10, 1916, to Charles A. Holder, Foreign Trade Adviser from State Department, to Herman A. Metz, to be identified as Plaintiff's Exhibit 434.

Received in evidence and marked "Plaintiff's

Exhibit No. 434." (*See Exhibits, Vol. II, page 839.*)

Mr. Anderson: The letter is as follows (reading).

I offer in evidence letter dated February 10, 1916, to Herman A. Metz, signed Charles A. Holder, Foreign Trade Adviser to State Department.

Received in evidence and marked "Plaintiff's Exhibit No. 435." (*See Exhibits, Vol. II, page 840.*)

(Letter read by Mr. Anderson.)

Mr. Anderson: I offer in evidence a telegram dated Washington, February 28, 1916, to Mr. Herman A. Metz, signed Robert Lansing, Secretary of State.

Received in evidence and marked "Plaintiff's Exhibit No. 436." (*See Exhibits, Vol. II, page 841.*)

(Letter read by Mr. Anderson.)

Mr. Anderson: I offer in evidence letter dated March 11, 1916, to Mr. Herman A. Metz, signed Charles A. Holder, Foreign Trade Adviser.

Received in evidence and marked "Plaintiff's Exhibit No. 437." (*See Exhibits, Vol. II, page 841.*)

(Letter read by Mr. Anderson.)

Mr. Anderson: I offer in evidence letter dated March 23, 1916, to Herman A. Metz, signed Alvey A. Adee, Second Assistant Secretary.

Received in evidence and marked "Plaintiff's Exhibit No. 438." (*See Exhibits, Vol. II, page 843.*)

(Letter read by Mr. Anderson.)

Mr. Kresel: Are those all, Colonel, because I now want to put my objection on the record.

Mr. Anderson: Yes.

Mr. Kresel: I understood your Honor to suggest that we withhold our objection and your Honor's rulings until all of them have been offered. We now object to the introduction of these letters and telegrams upon the ground that they are immaterial and irrelevant.

The Court: They will be received under our general rule.

RDQ. 1511. Were you or were you not in constant touch with the State Department during the period of these negotiations in 1915 and 1916?

A. Yes, sir, constantly.

RDQ. 1512. Mr. Metz, I think you have already testified you were born in the United States, have you not?

A. City of New York, yes, sir.

RDQ. 1513. You have been rather satirically called "Colonel Metz" a number of times by my friend, the counsel for the defendant. Are you entitled to that title?

A. Yes, sir; I am.

RDQ. 1514. If so, for what reason?

Mr. Kresel: I object as entirely immaterial and irrelevant whether this man is Colonel Metz or not Colonel Metz. You are the one who was calling him Colonel Metz when you put him on the witness stand. I did not know anything about it.

Mr. Anderson: The loyalty of this witness has, in a sense, at least by inference, been assailed; and I want to show that he has been in the public service and military service of the United States.

The Court: You may show it, but so far as I recall, he was first called "Colonel Metz" by you.

Mr. Anderson: He was called that by me because I was informed that was his title.

The Court: If you think it is material, you may show how he came by the title.

Mr. Anderson: I do, under the circumstances of this case. Otherwise, it would be utterly immaterial what his title was.

RDQ. 1514 (continuing). Will you answer the question?

A. I served in the New York National Guard about fifteen years. I was first lieutenant, then captain. I was in the Reserves when the war started and immediately when the United States went in, I rejoined my old regiment as Lieutenant Colonel, remained Lieutenant Colonel for about three years, and was then promoted to the staff of the Adjutant General of the State of New York as full Colonel, and I am now in the Reserves since the first of last January.

RDQ. 1515. You were asked on cross-examination, whether as a member of Congress you succeeded in getting indigo put on the free list. Can you say whether or not the representatives of the textile industry demanded that indigo be put on the free list at that time.

A. The consumers did.

Mr. Kresel: One minute.

The Witness: I beg your pardon.

Mr. Kresel: I object to the question on the ground that it is immaterial and irrelevant as to what the textile industry requires. Moreover, I object to it on the ground that the desires of an industry like that must be shown by documentary proof and that we can not be bound, if it is material, by the conclusion or the opinion of this witness as to what the industry desired.

Mr. Anderson: All right. I will put the question differently.

RDQ. 1516. Do you know whether the representatives of the textile industry appeared before committees of Congress at that time and urged the putting of indigo on the free list?

Mr. Kresel: I object to that on the ground that it calls for this witness's conclusion and interpretation as to what representatives of the industry asked Congress to do. If any such appeared before any committee of Congress, there is a way of showing it by the records of the committee.

RDQ. 1517. Then I will ask you this: What was your understanding of the desires of the industry as a member of Congress?

Mr. Kresel: I object to what this witness's understanding was of the desire of the industry, whether he was a member of Congress or not.

Mr. Anderson: If your Honor please, I put the question in three forms so as to avoid objection. But it goes deeper than that. The effort was made here to show that this witness while a member of Congress was instrumental in putting indigo upon the free list, the implication being that he was acting in the interest of German shippers. I objected then to it as immaterial and I thought it was utterly immaterial, because it had absolutely nothing to do with whether this sale of patents was valid or invalid, and we are not here trying the loyalty of a witness, as I understand it. But in view of that inquiry I regarded as both fair to the case and fair to the Government that the position of those directly interested in this industry and using this dye should be stated as the witness understood it, since his motive in Congress has been challenged.

The Court: Isn't that question open to objection? Would he not be required to disclose the facts rather than his understanding the facts? So far as I recall the other evidence to which you refer, it was evidence by documents which were produced. I do not see how you can ask this witness what his understanding of the desire of the industry would be.

Mr. Anderson: I have put the question in three forms, if your Honor please, to meet that. I agree there were technical objections to one or two of the questions. I think, however, the witness can testify whether representatives of the industry—and if further detail is desired, what representatives—appeared before the committees of Congress, if he knows, and what branch of the industry, whether textile or dye, and urged this action. It is not necessary that it should be in writing; these things are conducted personally. Four-fifths of the expressions of the will of the people brought to the attention of Congress are not in writing.

The Court: I have no objection to your disclosing the facts evidenced by your question, but I think the last question is open to the objection made by Mr. Kresel. However, I shall apply the general rule if you want me to.

Mr. Anderson: I will ask this question to try and meet as far as I can the technical objection:

RDQ. 1518. Speaking of your own knowledge, do you know whether persons representing or claimed to represent textile institutions and industries in the United States, came to Washington at the time that indigo was put on the free list and urged that it be free from duty in the interests of American industry?

Mr. Kresel: I object to that question upon the ground hitherto urged, that this is not the proper way to prove what was requested of Congress or of a committee of Congress, by anybody. May I direct your Honor's attention to the testimony that this witness gave to which counsel is now trying to apply this present testimony. I read from page 1757 of the record: "Did you try as a member of Congress to have indigo placed on the free list?" That was after I had introduced the two letters from the Farbwerke-Hoechst Company to this witness to do that, which he said he understood was not an instruction but a suggestion. His answer to the question was, "Yes, sir." "XQ. 249. And you succeeded? A. Yes, sir."

Now, that is the testimony.

Mr. Anderson: All right, then I will put the question this way, since you have called my attention to the express language of the testimony:

RDQ. 1519. Why did you try to have indigo put on the free list in Congress at the time that you testified?

Mr. Kresel: I shall not object to that question.

A. Indigo was on the free list and always had been. It was considered putting it on a 10 per cent basis in the Underwood Bill, which would have raised the price that much, and there was objection by the textile people and myself on the floor of the House, and it was retained on the free list in that territory.

RDQ. 1520. Do you know whether synthetic indigo was in fact made in the United States at all at that time?

A. It was not.

RDQ. 1521. Is it a dye material which has been extensively used in the trade?

A. Most extensive of any individual dye, I presume.

RDQ. 1522. It has been testified here that the Textile Alliance was organized for the purpose of eradicating and preventing bribery and other improper practices in the textile and dye trade of the

United States. That was the effect, I think, of Mr. Patterson's testimony.

Mr. Kresel: Colonel, my recollection is that you declined to let me prove by Mr. Patterson what the purposes of his organization were. Notwithstanding that, I shall not object to your question. I simply want to correct your recollection that that was the testimony.

The Court: You gentlemen need not debate that now if there is no objection to the question.

Mr. Anderson: Certainly.

RDQ. 1522 (continued). I will ask you if you were a member of or contributed to the Textile Alliance?

Mr. Kresel: I object to the question upon the ground that that is immaterial and irrelevant.

Mr. Anderson: I will agree with counsel, as I urged upon the Court in the cross-examination, that all of this evidence is immaterial and irrelevant; but the character, standing, loyalty, integrity and every other quality that this witness possesses, was attacked on cross-examination, and the witness was, with counsel acting well within his legal rights, and therefore I am not complaining, restrained to a very limited reply as to those questions.

While I agree that as to the issues in this case none of this evidence on cross-examination is material and relevant, or can affect it, yet I think it is not only the right of the Government, but that which is due in fairness to the witness himself, to let the facts as fully as I know them be brought out, so that the testimony of the witness may be complete for the consideration of the Court.

The Court: It is re-direct on the question of bias or lack of it; interest or lack of it; credibility or lack of it; and for no other purpose?

Mr. Anderson: That is right, your Honor; and no other purpose in the world.

The Court: Have you anything to say, Mr. Kresel?

Mr. Kresel: No, your Honor, I have nothing to add to my objection. Of course, if counsel will take this witness into new fields that were neither touched upon on the direct nor on the cross, I say now that it will unnecessarily lengthen any examination of him that I have to make. I am trying, and I had hoped that Colonel Anderson would help me, to finish with this witness as speedily as possible. Now, Colonel Anderson admits that the testimony is immaterial and irrelevant. I do not think it ought to go in. I have nothing further to add to my objection, your Honor.

Mr. Anderson: I might say, in reply to counsel, that I think the reasons which I have stated impose upon me a duty to put this evidence in, although the whole subject, in my judgment, is immaterial. I am as anxious as counsel to shorten this examination; but I do not want to shorten it at the expense of justice, either to an individual or to the case.

The Court: You may put it in under the general rule if you like. You of course know more about the institution of which he was a member than I do. I do not know whether he has been discredited; I am not assuming that he has or has not; and do not know whether it would have a tendency to rehabilitate him or not. You may take the answer.

RDQ. 1523. Will you answer the question?

(RDQ. 1522 read as above recorded.)

A. Yes; my firm was——

Mr. Kresel: "Yes." Now, "yes," is an answer, isn't it?

RDQ. 1524. Have you any written evidence of any such contribution?

MR. KRESEL: I object to that upon the ground that it is immaterial and irrelevant.

THE COURT: Do you not think that is going a little far?

RDQ. 1524a. I will ask you how much you contributed to the Textile Alliance?

MR. KRESEL: I object to that as immaterial and irrelevant.

THE COURT: It seems to me that that does not have any tendency on that line.

MR. ANDERSON: If your Honor will permit me—I am certainly not going to argue against your Honor's views, excepting to this extent: This man is engaged in a large business. I say again, counsel acting within his rights attacked this witness and his credibility and his character and loyalty with a severity that I do not recall having before witnessed, and the evidence already in this case justifies in my judgment the statement that this is but a part of a long-continued controversy.

Those things, unless the full facts are brought out as far as one can on sudden notice of this kind, are liable to do irreparable injury to an individual when there is no redress, because these things done in a court of justice afford no redress.

Therefore, while I deem all of that matter as immaterial, and have so stated, those questions having been gone into, in my judgment, it is my duty to the full extent that I on short notice have a chance to do so to bring out every fact in order that the whole picture may be observed, because on cross-examination a witness is not allowed to talk, he is not allowed to explain, he is not allowed to tell his motives, he is just pinned down to practically bare statements and half proof.

The Court: Colonel Anderson, do not understand me to indicate that I have any objection whatsoever to your asking any question that has a tendency, however remote, to do what you indicate it is your desire to do. But the thought that I tried to express was that at the moment I failed to see how his contributions to any commercial organization would have that tendency. However, rather than discuss it, let us put it of record under our general rule.

RDQ. 1525. How much did you contribute, do you know?

A. $5,000 on two occasions, I am quite sure. I offered for three years $5,000 each, and then when the war came, I do not believe the last contribution was called for.

Mr. Anderson: I offer in evidence letter dated October 1, 1914, from A. M. Patterson, who has been on the witness stand here, to H. A. Metz, acknowledging receipt of $5,000 as a contribution to the Dyestuffs Committee of the American Association of Woolen and Worsted Manufacturers, to be identified and read as Plaintiff's Exhibit No. 439 (reading).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 439." (*See Exhibits, Vol. II, page 843.*)

RDQ. 1526. Do you know whether the American Association of Woolen and Worsted Manufacturers had any connection with the Textile Alliance?

A. It was one of the associate members, a constituent member of the Textile Alliance; yes, sir. Mr. Patterson was president of that organization. Here is a previous payment, the letter I have there, which I happened to see; my letter to him.

Mr. Anderson: I offer in evidence copy of a letter dated May 15, 1914, addressed to Mr. Patterson by Mr. Metz, to be read and identified as Plaintiff's Exhibit No. 440, in which he says (reading).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 440." (*See Exhibits, Vol. II, page 844.*)

A. (continuing). I have the other two here, if you want them.

Mr. Anderson: I also offer in evidence copy of letter dated October 1, 1914, from Mr. Metz to Mr. Patterson enclosing a check of contribution for $5,000 for the improvement of conditions in the textile industry, to be identified and read as Plaintiff's Exhibit No. 441 (reading).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 441." (*See Exhibits, Vol. II, page 845.*)

RDQ. 1527. You were asked as to the price which you charged the Government of the United States for salvarsan during the years 1916, 1917 and 1918, I think it was. Can you state the prices at which you actually sold salvarsan to the United States during those years or any of them?

Mr. Kresel: That was not my question, but I do not object to your asking him that.

A. Yes, sir; I can answer that.

RDQ. 1528. If you can give that information, please give it as far as you can?

A. In 1917, August 22nd, I sold the Medical Supply Depot 2,400 ampules of 0.6 at $1.00. That was American product.

RDQ. 1529. When you say 0.6, apparently, from your former testimony, there were two sizes to this stuff?

A. Six-tenths of a gram and four-tenths of a gram are the usual sizes used.

RDQ. 1530. When you say 0.6, you mean the larger size, and when you say 0.4, you mean the smaller size?

A. Yes, I have the samples here.

By The Court:

Q. 1531. Are those the samples?

A. Yes, sir. I would be very glad to have you look at them.

The Court: Do you want those in?

Mr. Anderson: I do not think so, sir.

By Mr. Anderson:

RDQ. 1532. Go ahead, Mr. Metz, with your statement.

A. Do you want further figures, Colonel?

RDQ. 1533. You said first that you sold a number of ampules of what you call 0.6 at $1.00?

A. At $1.00.

RDQ. 1534. Now go ahead and state the date of the sales, the amount and the prices, as far as you can do it?

A. On August 22, 1917, 2,400 ampules of 0.6 at $1.00 to the Medical Supply Department of the Navy.

On December 6, 1917, 1,500 ampules to the U. S. Army, Medical Supply Depot, at eighty cents. That was 0.4.

On the same date, 1,000 ampules of 0.6 at $1.00.

On the same date, 1,200 ampules of one gram at $1.50.

On the same date, 200 ampules of 0.3 grams, at $2.00.

On the 27th of November, the same year, 1,500 ampules of 0.4 at 80 cents. On the same date, 1,000 ampules of 0.6 at one dollar, 1,200 ampules of one gram at $1.50, 300 ampules of two grams each, $3.00.

On December 7, 1917, 1,500 ampules of 0.4 at 80 cents, 1,000 6's at $1.00, 1,200 1's at $1.50, 300 2's at $3.00.

On November 5, 1917, to the Navy, 1,200 6's at $1.00, and to the Army on November 12th, 1,000 6's at $1.00.

The total that year was $30,100. That was 1917, after we started manufacturing.

In 1918, on February 18, 18,000 ampules to the Army at $1.00; on March 30, 100,006 6's at $1.00.

On March 30th, 25,000 ampules of one gram at $1.50, and 2,500 of two grams at $3.00. A total of $163,000 on those contracts.

Then I have the contracts for 1922 and 1923. There were none made in 1919, practically, except small shipments to the Public Health Service, but not to the Army and Navy. 1922 and 1923 I have got, but those were the average sales, and the price came down gradually from that time down to 1922, 30 cents for the 0.6, and in March to the Army and Navy I have here 18 cents, and 15 cents for the 0.3, 15 cents, neosalvarsan, 0.2, 14 cents, 0.3, 15 cents, 0.4, 16 cents, 0.6, 18 cents. The last quotation to the Army was 13 cents a few days ago, and I do not know who got the contract, with the United States Government Public Health Service.

Mr. Kresel: Would you mind my making a suggestion?

Mr. Anderson: No.

Mr. Kresel: You asked him first the question with regard to the price, basing it on your recollection of what my question was. My question referred to the time before we entered into the war, and as to that period he testified he was charging everybody $4.50, including the Army.

Mr. Anderson: I am going to ask him about that in a moment. I was referring now to his sales to the Army during the war.

Mr. Kresel: I simply did not want you to be misled about what the testimony was.

Mr. Anderson: I understood the testimony to relate to the period of the war.

RDQ. 1535. On cross-examination yesterday counsel for the defendant asked you as to sales of salvarsan or neosalvarsan to the Government of the United States at a price of $4.50. Have you any knowledge of any such sale or record thereof?

A. Yes, sir, my accountant brought me a memorandum last night that we had one sale of 1,200 ampules to the Army some time in 1915, at $4.50, the price at that time.

RDQ. 1536. Mr. Metz, do you know where you got that salvarsan from?

A. That salvarsan came from Europe, after being held up——

Mr. Kresel: I ask that the——

RDQ. 1537. All right, it came from Europe, just stop there. Do you know what it cost you to get it over here?

A. Not specifically. I know the cost was greatly increased.

RDQ. 1538. Do you know approximately what it cost to get it here?

A. We had to pay Mr. Burr 10 per cent of the invoice——

Mr. Kresel: One minute, please. The question is what it cost.

The Court: That is susceptible of a definite answer.

RDQ. 1539. Have you any record from which you can find out what it did cost to get it here?

A. Not the entire charge, because there were separate charges, commission for getting it through the lines, and so forth. It was materially increased over the old price. I can not give you the exact figures at this date. I have not got them.

RDQ. 1540. Was that a part of the salvarsan that was imported during the period of 1915, as shown by the correspondence which I have read between you and the State Department?

A. Yes, sir; I had to send a man to Rotterdam to get it out.

RDQ. 1541. Did you offer your plant to the Government of the United States in 1917, and if the offer is in writing, let me have it?

A. I did, sir, and I have copies of the letters here which I sent to the Government.

Mr. Anderson: We offer in evidence copies of three letters, one addressed to Dr. W. C. Stimpson.

Mr. Kresel: There is no objection on the ground that they are copies at all.

The Court: They will be admitted.

Mr. Anderson: The first is addressed to Dr. W. C. Stimpson, Assistant Surgeon General, Public Health Service, Washington, D. C., signed H. A. Metz, dated April 26, 1917; another dated June 2, 1917, addressed to Honorable Newton D. Baker, Secretary of War, signed H. A. Metz; another dated June 2, 1917, to the Honorable Josephus Daniels, Secretary of the Navy, signed H. A. Metz, the three to be read as Plaintiff's Exhibits Nos. 442, 442-A and 442-B.

Received in evidence and marked respectively "Plaintiff's Exhibits Nos. 442, 442-A and 442-B." (*See Exhibits, Vol. II, pages 845, 846, 847.*)

Mr. Anderson: In view of the evidence on this subject I am going to ask your Honor's indulgence while I read parts of these letters. T first to the Surgeon General I will read now. (Reads Plaintiff's Exhibit No. 442.)

The Court: What is the date of that, Colonel?

Mr. Anderson: April 26, 1917, just after the end of the war, sir.

(Mr. Anderson reads Plaintiff's Exhibit No. 442-A.)

Mr. Anderson: The same letter is addressed to the Secretary of the Navy and need not be read. I offer in evidence a letter dated November 7, 1917, from the Department of Health of the City of New York, in re tests of specimens of salvarsan.

Received in evidence and marked "Plaintiff's Exhibit No. 443," and read by Mr. Anderson. (*See Exhibits, Vol. II, page 848.*)

RDQ. 1542. Mr. Metz, you have been asked about a certain agreement with Schamberg and the Dermatological Laboratories, dated June, 1916, which was put in evidence by the defendant. I would ask you whether at that time you had any manufacturing plant of your own in this country?

A. Yes, sir.

RDQ. 1543. For salvarsan?

A. Yes, sir.

RDQ. 1544. Were you making salvarsan yourself in June, 1916?

A. June, 1916?

RDQ. 1544a. Yes.

A. No, not for the market. We had not got ready for the market in June, 1916.

RDQ. 1545. At that time then you were not in fact manufacturing?

A. Not in 1916.

Mr. Kresel: Colonel, you have the date wrong.

The Witness: Yes, the date is wrong.

Mr. Kresel: Will you pardon me. Don't try to do my job, too. The date of the agreement is December 5, 1916, not June; and then there is another agreement of June 8, 1919.

Mr. Anderson: I am very much obliged to you. My notes were wrong, having been taken down hurriedly.

RDQ. 1546. To correct my statement, the first agreement is dated 1916. At that time were you actually manufacturing salvarsan commercially?

A. What date ?

RDQ. 1547. December 5, 1916.

A. I had not begun to put it on the market. That was the agreement. I had been selling——

Mr. Kresel: One minute. You have answered the question.

RDQ. 1548. In the letter which I have just read, where you offered to sell to the War Department or the Surgeon General, you spoke of buying from Dr. Schamberg. Was that bought under that agreement?

A. I had been buying under that agreement before it was made for some time and that agreement finally settled the responsibility.

RDQ. 1549. There was another agreement put in here which was read to you by counsel for the defendant which was dated June, 1918. I will ask you whether you ever operated under the second agreement?

Mr. Kresel: I object to the question upon the ground that it calls for the witness's conclusion and for his interpretation of the agreement.

Mr. Anderson: I agree that the word "operated" calls for a conclusion, but it does not call for an interpretation of the agreement.

Mr. Kresel: Of course, how can he state whether he operated under the agreement unless he interprets the agreement?

The Court: The question is withdrawn.

RDQ. 1550. The first paragraph of this agreement provides in effect that Dr. Schamberg and his associates, having knowledge and experience in the manufacture of this article, place their knowledge and experience at the service of H. A. Metz and his laboratory without unnecessary delay, in a sincere effort to bring his product up to the standards demanded by the Government without delay; in such a way, however, that the manufacture of this article by the Dermatological Research Laboratories will not be crippled or interfered with, and to accomplish this, Dr. Raiziss will without delay arrange his management of the manufacturing plants in such a way as to be in a position to give time and attention to the task of improving the product of the Metz Laboratory.

I will first ask you whether Dr. Schamberg or his associates ever went to your laboratories and did any work there after the execution of this agreement?

A. No, sir.

RDQ. 1551. I will next ask you whether Dr. Raiziss ever went to your laboratories or took any part in the management thereof after the execution of this agreement?

A. No, sir.

RDQ. 1552. I will ask you whether anything was done by Dr. Schamberg or his two associates named under that clause of the agreement at your laboratories?

A. No, sir; he was never asked.

RDQ. 1553. The second paragraph of this agreement contains two clauses. The first is that in the event that the Treaty of Peace terminated the right of the Dermatological Institute to manufacture under Federal Trade Commission license, you would agree, if you or any of your companies should have control of the German rights in any way after the Treaty of

Peace had been signed, to let them manufacture to a limited extent. Did you ever do anything under that agreement, under that clause?

A. No, sir. May I give a history of the whole agreement? Is it proper?

Mr. Anderson: I am perfectly willing, if my friend, counsel for the defendant, will not object.

Mr. Kresel: Are you through questioning him specifically about the agreement?

Mr. Anderson: I am now and he said he would like to give the history of it if you do not object. I don't know what he is going to say.

Mr. Kresel: I don't either.

Mr. Anderson: Will you take the risk if I do?

Mr. Kresel: You are asking me to engage in a lottery?

Mr. Anderson: Well, yes.

Mr. Kresel: Well, Colonel, I do not want to keep out what he wants to say, but I will say this to you: That that may make it necessary for me to call Dr. Schamberg and Dr. Raiziss and somebody else to contradict him, and I am trying to avoid that. That is the only reason that I will not consent.

The Witness: May I withdraw the request?

Mr. Anderson: Under the objection of counsel, of course, it would not be competent for the witness to state what took place prior to the making of the agreement, and therefore I will not try to get it in because I think we would be stopped almost at once, going outside of the terms of a written agreement.

Mr. Kresel: Colonel, you are learning, I will say that.

Mr. Anderson: No, I think I learned that some years ago.

THE COURT: It is past three o'clock, and if there is going to be a discussion on immaterial matters, we will take an adjournment. If not, we can go ahead and try to finish with this witness.

MR. ANDERSON: It will take me another hour with this witness.

THE COURT: Do you want to go ahead for another hour?

MR. ANDERSON: I would prefer not. We are going to be in this case three weeks more, judging from the way we are going. I can not stand it physically. I would like to do it.

THE COURT: If there is any danger of that, I am going to ask counsel to lengthen the Court day from five hours to seven. We will begin earlier or stay later.

MR. ANDERSON: All I can say is that I hope to rest the Government's case tomorrow. I am prepared to rest tomorrow, and I think I can.

THE COURT: I do not want to ask you in weather like this to make it longer, if you can possibly avoid it.

MR. KRESEL: Before your Honor takes an adjournment, you will recall that before recess Mr. Metz handed me some documents, with the idea of my being able to determine whether I required the production of his books or whether these will be satisfactory.

These documents do not include any information with regard to novocain, which was the only product that I was questioning him about. These are solely documents relating to salvarsan. Therefore, they certainly do not answer the purpose.

THE COURT: And they are now returned to the witness?

Mr. Kresel: And are now returned to the witness.

Mr. Anderson: I will take it up with the witness after adjournment, if your Honor please, and if it is possible to get any record such as counsel have called for here tomorrow morning, I will try to get it done.

The Court: We will take an adjournment until 8.30 tomorrow morning.

(Whereupon, at 3.10 o'clock, Standard Time, an adjournment was taken until Wednesday, June 27th, 1923, at 8.30 o'clock A. M., Standard Time.)

SIXTEENTH DAY.

Wilmington, Delaware,
June 27th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:

Hon. Hugh M. Morris, U. S. District Judge.

Counsel present as before noted.

Trial Resumed Before the Court.

Herman A. Metz, resumed the stand.

Re-Direct Examination (Continued).

By **Mr. Anderson**:

RDQ. 1554. Yesterday, at the time of adjournment, I was asking you what if anything was done under the so-called Schamberg agreement of June 8th, 1918. The third paragraph of the agreement is to the effect that in the event the Treaty of Peace does not nullify the license of the Dermatological Research Laboratories to manufacture arsphenamine after the war, in the event that Mr. Metz is not in a position to carry out the guarantee to The Laboratories of their right to manufacture, that you would pay to The Laboratories a royalty on the manufacture of salvarsan under the license from the Federal Trade Commission for the duration of the war. Did you ever pay any royalties under that agreement?

A. No, sir.

RDQ. 1555. Then according to your testimony, nothing was ever done under that agreement?

A. Nothing, sir.

RDQ. 1556. Why not, Mr. Metz?

A. Didn't need their assistance; didn't demand it; didn't desire it and didn't use it.

RDQ. 1557. Under the agreement of December 5th, 1916, you were asked by counsel on cross-examination as to the provision in the agreement to the effect that you would not prosecute the Dermatological Institute for having manufactured, under the patents, salvarsan and neosalvarsan. You never did prosecute them, did you?

A. No, sir; I agreed not to.

RDQ. 1558. Why did you agree not to prosecute them?

A. I was willing to sacrifice—

Mr. Kresel: One minute, please. I object to that.

Mr. Anderson: I think it is perfectly legitimate to ask him why he did not prosecute them.

Mr. Kresel: No, I do not agree with you. There is a written agreement between the parties that speaks for itself.

Mr. Anderson: But I think he has a right to say why he did not prosecute.

The Court: I am not sure that I have the facts leading up to this question entirely clear in my mind. You are referring now to the agreement of June, 1918?

Mr. Anderson: No, sir; the agreement of 1916. I will put another question, which will probably make it clear.

RDQ. 1559. Counsel asked you something about your authority to sue in the prosecution of any alleged infringements of the rights of the then German owners of these patents, and I think he asked for the production of a power of attorney, or your authority.

Mr. Kresel: I did not ask him that, Colonel. He did say that he had some power of attorney, and if this is it and you want it put in, let me read it. I do not know that I will have any objection.

Mr. Anderson: All right.

Mr. Kresel: Do you want to offer that?

Mr. Anderson: Yes, I will offer it.

Mr. Kresel: Except as to materiality and relevancy, your Honor, we have no further objection.

Mr. Anderson: I offer in evidence an original power of attorney dated the 16th day of December, 1911, running from the German house which has been shown in evidence to be the owner of these patents, to the witness, the contents of which speak for themselves; to be read as Plaintiff's Exhibit No. 444; and would ask leave to withdraw this paper and substitute a copy if desired.

Mr. Kresel: There is no objection to that.

The Court: Admitted subject to the general and specific objections of the defendant.

Received in evidence and marked "Plaintiff's Exhibit No. 444." (*See Exhibits, Vol. II, page 849.*)

The Court: Now, was the other question withdrawn, or will you restate it?

Mr. Anderson: I will bring it up again.

RDQ. 1560. Now, you did not in fact sue the Dermatological Institute for infringement, as the representative of the German house, did you?

A. No, sir.

RDQ. 1561. They were manufacturing in 1916?

A. Yes, sir.

RDQ. 1562. May I ask why you did not sue to enforce the rights of the German house?

Mr. Kresel: To that, your Honor, we object upon the ground that it is immaterial and irrelevant.

The Court: I wonder if I may ask two or three questions which will help me on that; but I hope these questions can be answered without a discussion.

Mr. Anderson: Yes, sir; I will do that.

The Court: Because it seems to me that that is immaterial. It seems to me that many other facts are necessarily immaterial and unavoidably immaterial, and I mention these facts now so that if, perchance, my views happen to be more or less correct, we may eliminate them and in so doing save time on such matters as are clearly immaterial.

If I understand the testimony of yesterday and its value—and understand me, Colonel Anderson, I am not at any time during this trial unless I make it clear beyond all question definitely ruling on any issues of this case; for instance, on the power of the President to do what was done —I am not passing on that. I have read the Act once. I have not attempted to make any study of the Act. That is a matter lying at the foundation of the suit and I am not going to try and determine that until the whole case is in. But as I see it at the minute, it seems to me that the testimony of yesterday clearly presents these thoughts: First, you deny the contention of the defendant that the terms and conditions of the acquisition of the patents and trade-marks by The Chemical Foundation were such as contended by the defendant; second, if I understand your testimony—and I am asking this to get your help—you do not deny that if those terms and conditions were as contended for by the defendant, that the price paid by The Chemical Foundation for the property it acquired was at all inadequate.

If I am right in those two statements, I take it that the only questions that are open here really are, the ascertainment of the terms and conditions under which the patent rights, trademark rights and other rights acquired by The Chemical Foundation were so acquired by it, and if they were in fact and in law acquired under the terms and conditions contended for by the defendant, then the only question remaining is the power of the Executive Department to make such sale under those terms and conditions.

I take it you are not suggesting that the Judicial Department has power to review the acts, the discretion or wisdom of the acts, of the Executive Department, if acts there were, with respect to the dye industry, particularly in view of the American situation pertaining thereto disclosed and demonstrated by the documentary evidence introduced yesterday afternoon. Do I make myself at all clear, Colonel?

Mr. Anderson: I think you do. But I think your Honor has misunderstood my position, which was not unnatural in this confusion. I am going now to just answer it and not going to argue it at all.

The Court: Yes, if you will.

Mr. Anderson: In the first place, your Honor is right in your first impression. I do differ fundamentally from counsel as to the terms and conditions which surrounded this sale as disclosed by the record and as to the rights transferred thereby. I think we differ on every point in that respect.

I object most earnestly and shall at all times most earnestly, unless there is a very material change in anything I understand in this case, insist that, if every condition surrounding this sale which they insisted upon were true, that the price paid was wholly, utterly and shockingly inadequate.

The Court: Will you not point out to me now the testimony on which you are going to base that? I do not mean to argue.

Mr. Anderson: I am going to base it chiefly on the actual earnings of the property at the time of the sale. But I will go further. I do not want to argue the matter now. There is a great deal in the record that has not been brought to your Honor's attention specifically.

I will go further in that connection and say, as I have indicated in a number of instances, that while the Government has introduced evidence of the earning power of this property at the time of the transfer, which in our judgment is conclusive on the question of inadequacy, aside from the actual admissions on the record by the parties themselves of the arbitrary character of the arrangement as to price, yet the Government was under no legal obligation to do that.

Mr. Kresel: To do what?

Mr. Anderson: To introduce any evidence of value on its prima facie case in view of the fact that under principles of law so familiar that they are elementary, once it is shown that property which has come into the hands of the trustee has been disposed of, the burden shifts upon the trustee.

The Court: Do you mean to the purchaser?

Mr. Anderson: The burden is shifted to the trustee, in this case to the purchaser, and the purchaser takes notice of the power of the trustee and the duties of the trustee.

In other words, I am not going to argue, but am merely trying to state my position. If I were to be trustee for A, with power of sale, and A and B bought from me trust property, in the absence of any provisions in the trust relieving me from any responsibility—and there is none here—he would take subject to my powers of sale and with knowledge of my trust position and with the responsibilities attached to that position. He can get no higher position in that connection than a trustee himself takes under all the burdens of a trustee, and becomes a constructive trustee himself if there is any defect in the sale. That, of course, is elementary law.

In the third place, while I have introduced evidence here of various theories because I can not tell what view your Honor or any other Court will take, it is my contention that the question of value in this case is utterly and absolutely immaterial; because it is so well settled by the decisions of the Supreme Court of the United States and the English courts as to require no discussion, that when a man is both seller and buyer, the question of consideration does not enter. He might have paid more than it is worth and the sale is invalid. If that principle of law is adopted in this case, then the question of consideration becomes utterly without value.

Now, I outlined those positions to you, so that your Honor might get a reply to your question as full and as frank as I could make it at this time in connection with these questions of value; and in the fourth place, that if our position is correct in any of those respects, then the sale constitutes a confiscation which no one in the Government had the power to make.

The Court: Outside of Congress.

Mr. Anderson: Outside of Congress. I mean in the Executive Department.

The Court: The question is whether the Congress did exercise the power and authorize the Executive Department to execute that power.

Mr. Anderson: Yes. And of course, I would take the position there that Congress could not confer a power upon the Executive Department.

The Court: You need not debate that.

Mr. Anderson: No, sir, of course not.

Then I would say further in connection with the question of confiscation of property that all of the conditions of sale enter into that, and that becomes a question of a very careful analysis of the record. Therefore, this evidence that I am now offering goes really to the position taken by the defendant as to certain conditions surrounding this sale, a point which I assume they will argue, that the value of this property at that time was depleted. It also goes to the fact of the very indefinite and intangible thing which we call an attack upon the credibility of a witness. This particular question I took to be directed more to that than anything else, on cross-examination, and I am only going to ask one or two questions.

I am not very clear, I am afraid, this morning, because sometimes you think clearly and sometimes you do not, and I am afraid I am not this morning; but I have tried to make my answers as clear to your Honor as I could, and as brief. I do not mean that those answers are in any sense complete on the record.

THE COURT: It seemed to me that it was necessary for me to make those inquiries, particularly in view of the testimony of yesterday, because I had understood certain answers with respect to values if the conditions existed, which seemed to me antagonistic to any other conclusion. I just wanted to get your views. Do you want to be heard at all, Mr. Kresel?

MR. KRESEL: No, your Honor, I do not think so.

THE COURT: Then I shall take the answer under the general rule.

(RDQ. 1562 repeated as above recorded.)

A. I was anxious to keep the public supplied with a satisfactory product, and was willing to waive all my rights and interests for that purpose, and sacrifice them if necessary.

RDQ. 1563. You were asked on cross-examination if you did not write to or obtain from various textile interests and dye manufacturers samples of the dyes which they used some time, I think, in 1916, possibly during the war; I do not remember the date.

A. 1913.

RDQ. 1563. (Continued) 1913; and I think you said that you did—

MR. KRESEL: Pardon me a minute. I did not give that question. May I have it repeated?

(RDQ. 1563 repeated as above recorded.)

MR. KRESEL: Colonel, I do not recall any such question.

MR. ANDERSON: I have a note of that here.

THE COURT: I do not recall that inquiry, Colonel Anderson.

MR. KRESEL: I do not even know what it is that you are referring to or what the witness has in mind.

Mr. Anderson: I have a note here that the question was asked.

Mr. Kresel: I will not object to your bringing it out; but I am simply calling to your attention that there was no such question that I put to the witness, or any answer on that line at all.

Mr. Anderson: May I have the question answered? I have a note here that such a question was asked. May I have the question answered with the understanding that if there was no evidence brought out on cross-examination on that subject, the evidence will be disregarded so far as we are concerned?

The Court: I do not know whether I can do that, Colonel Anderson, because you may open up a field—

Mr. Anderson: For re-direct?

The Court: Yes.

Mr. Anderson: Then for the present I withdraw the question because I do not want to go into something that has not been gone into, on assurance of counsel that he does not recall the question. I may have misunderstood the witness.

RDQ. 1564. Mr. Metz, you were asked on cross-examination something about getting a transfer for salvarsan patents, neosalvarsan, and so forth, and you were asked a great many questions about the exclusive right which you claimed to use these patents. Did you ever get any transfer of these patents?

Mr. Kresel: One minute, please. Of course, that is asking for a conclusion. Do you mean whether he got a writing?

RDQ. 1565. I will ask you if you ever obtained any written assignment of these patents from the German house?

Mr. Kresel: In writing.

A. An assignment, no, sir.

RDQ. 1566. You testified on cross-examination that you claimed an exclusive right to manufacture under these patents based on some agreement of 1916?

A. Yes, sir.

RDQ. 1566-a. And that that was a verbal agreement so far as I recall?

Mr. Kresel: One minute, please. On the contrary, the witness testified that it was in writing.

Mr. Anderson: But he said he did not have it.

Mr. Kresel: He testified that it was in writing.

The Court: Your own witness, Colonel Anderson, said your question suggested the answer.

Mr. Anderson: I will withdraw it on that ground, your Honor.

RDQ. 1567. Have you any agreement of 1916 with your German house in regard to these patents in writing?

Mr. Kresel: He did not give the date, you will recall.

Mr. Anderson: I beg pardon; the record clearly shows that he gave that.

Mr. Kresel: No, you are in error. He did not give the date. If you like, I will refer you to the record.

Mr. Anderson: All right.

RDQ. 1568. Did you have any agreement with the German house made in 1916 with respect to these patents?

A. My brother made an agreement—

Mr. Kresel: One minute, please; I object to that. I think the witness should answer either yes or no.

The Court: You may answer yes, or no, and then Colonel Anderson may bring out the other facts from you by specific questions to which Mr. Kresel will have an opportunity to object. Can you answer that yes or no?

(RDQ. 1568 repeated as above recorded.)

A. Yes, an agreement was made.

RDQ. 1569. Have you any written evidence of that agreement?

A. Nothing in writing. I did not think it would be permitted to get out of Germany at that time.

Mr. Kresel: I object.

The Court: I am not sure from what he has said that he can answer that yes or no.

The Witness: They would have taken it. It could not pass the English lines, I thought; they would have taken everything away from my brother.

Mr. Kresel: I object to that.

Mr. Anderson: I consent to strike out the rest. The statement that it was not allowed to get out of Germany at that time will remain?

The Court: Yes. The remainder is volunteered and will be stricken out.

RDQ. 1570. Have you ever had in your possession in America any such agreement in writing?

A. No, I have never had the agreement. I had my brother's statement to me, that is all, of the contents of the agreement.

RDQ. 1571. Was the agreement so far as you were concerned for any period?

A. No, sir.

Mr. Kresel: Colonel, if you will remember, the witness testified here yesterday that it was for the life of the patent. Is it possible he now wants to say that that was not correct?

Mr. Anderson: What is the meaning of the life of the patent?

Mr. Kresel: You know what the life of a patent is—

Mr. Anderson: Certainly I do.

Mr. Kresel: And he knows what the life of a patent is.

Mr. Anderson: Suppose it was for an indeterminate period and he construed it to be the life of the patent. That is the construction of the agreement. I am arguing with counsel instead of addressing your Honor.

The Court: That is all right, so long as it does not consume too much time.

Mr. Kresel: That is all. I am through, your Honor.

The Court: Of course, you will recall his answer of yesterday.

Mr. Anderson: Yes, sir. Then I will ask him this question:

RDQ. 1572. It appears that you testified yesterday that the agreement was for the life of the patent. Were there any specific terms of agreement on the subject of period and, if so, state what they were?

Mr. Kresel: It now appears that this agreement is in writing. I object to this witness undertaking to state the contents of that agreement.

Mr. Anderson: He has already stated it on cross-examination, I think.

Mr. Kresel: I beg your pardon, he did not state it on cross-examination.

The Court: Have you not two difficulties now, Colonel Anderson, the one presented by Mr. Kresel and also the further one that in his answer a moment ago, which you said I think need not to be taken down, that his brother had stated to him the contents of this document?

Mr. Anderson: Yes.

Mr. Kresel: Which is hearsay.

The Court: Which is not only the statement of the contents of a written document, but also hearsay with respect to such a conversation.

Mr. Anderson: I think your Honor's objection is well taken for the whole evidence on the subject. I think I will leave the matter right there. I did not mean to say your Honor's objection, I meant your Honor's suggestion.

I now offer in evidence a letter from the Treasury Department, Bureau of Public Health, dated March 14, 1919, addressed to Mr. Metz, signed by Rupert Blue, Surgeon General, which is offered in connection with Defendant's Exhibit, No. 23, on yesterday and ask that the same be read as Plaintiff's Exhibit 443, the letter being as follows:

The Court: Admitted under the same conditions as the preceding documents.

Received in evidence and marked "Plaintiff's Exhibit, No. 445." (*See Exhibits, Vol. II, page 851.*)

RDQ. 1573. On cross-examination you were asked as to your visit to Germany in the year 1922 and your alleged meeting with certain gentlemen, Mr. Oppenheim and others who were then on their way to America. Will you state just what took place?

Mr. Kresel: Will you ask him to fix the date, please, as near as possible?

RDQ. 1573. (Continuing) Will you fix the date as near as you can that you met these gentlemen and state what took place, how you happened to meet them and what happened?

A. As near as I can fix the date, it was early in June. I was in Berlin and received a telegram to see Assessor Oppenheim who was leaving that night for London to come to America. I saw him for about fifteen minutes at his residence.

MR. KRESEL: May I interrupt a minute to ask whether the witness has the telegram?

RDQ. 1574. Have you that telegram?

A. I haven't it with me. It is a routine thing.

MR. KRESEL: If he hasn't it, will he state from whom it was?

A. (Continuing) It was from the Hoechst people, the Farbwerke people. I saw Dr. Oppenheim for a few moments, about ten or fifteen minutes at his residence. He was packing his bag to leave on a train for London. He was going over, he told me, in answer to a telegram that he had received from Washington attorneys that suits for the recovery of the license fees had to be claimed before July 1st, I think it was, or whatever date the law specified; and he was going over in connection with those suits. That is the only one I saw, the only gentleman I saw connected with that expedition until he came back from America some time in August—yes, August, I think it was. I didn't know the others were going.

RDQ. 1575. Was there anything said in connection with any suit against the Chemical Foundation for the recovery of these patents?

A. Not a word, sir.

RDQ. 1576. Had you at that time ever heard of any suggestion of bringing a suit for the recovery of the patents?

A. I can not recall having ever heard a suggestion with regard to that.

RDQ. 1577. How long were you abroad, Mr. Metz?

A. I was abroad, I believe, until September 6th. I sailed from Cherbourg. I was in Paris for quite a while with my family and I was in Switzerland. I sailed on September 6th and got home about the 15th of September, 1922.

RDQ. 1578. If you recall, state when you first heard of any suggestion of proceedings by the Government to recover the patents here in controversy?

A. I received a telegram—

Mr. Kresel: I object to that. The question is when he heard it, just simply the date.

A. (Continuing) I can not recall. It was after it was begun, after the President's demand for the return of the patents.

RDQ. 1579. Did you ever suggest to any official of the Government of the United States that this suit be brought?

Mr. Kresel: I object to that. I object to it as an indefinite question. He either had conversations with somebody about it or did not. If he did, then of course, you can ask what the conversation was.

RDQ. 1580. Did you ever have any conversation with any officer of the Government of the United States in regard to bringing this suit before it was instituted; and if so, with whom and where?

A. I can not recall a single conversation. I don't think I had any with any official of the United States or anyone else before that time on this point, on the point of asking for the patents or the suit. I don't recall anything of the kind.

RDQ. 1581. I think you testified on cross-examination that your trade-marks salvarsan, neosalvarsan and novocain had been seized by the Alien Property Custodian or demanded by the Alien Property Custodian?

A. Yes, sir.

RDQ. 1582. Was any such demand ever made upon you personally?

A. I think there was; I am quite sure; in the list of trade-marks and so forth, it came.

RDQ. 1583. Have you ever demanded the return of those trade-marks?

A. Yes, sir.

RDQ. 1584. Have they ever been returned to you?

A. No, sir. I would like to qualify that. Demand was made on the Chemical Foundation by my attorney when he knew they had claimed them, as against the Alien Property Custodian, I meant to say. I didn't know they had them. Didn't consider it.

RDQ. 1585. Mr. Metz, you testified on cross-examination that you did not pay any money to the German Company, the then owner of these patents, for the right which you claim or allege to have obtained in 1916 to use the same or to manufacture thereunder. I am going to ask you this question which I will ask you not to answer until counsel can be heard. From your familiarity with this business, as indicated in the evidence which you have already given, and bearing in mind the evidence here disclosed as to conditions with respect to the exportation of salvarsan, neosalvarsan and novocain from Germany in 1916, would you regard the continued manufacture and sale of these articles under these patents in the United States, or in the exportation from the United States, when manufactured in the United States, of value to the owners of the patents?

Mr. Kresel: We object to that question, if your Honor please, object to it as to form if it is a question put to an expert, as I must assume it is.

Mr. Anderson: It is a fair assumption.

Mr. Kresel: And upon the ground that it is not founded upon any facts in the case or either upon an assumption of facts. I recognize that you may assume a state of facts when you put a question to an expert, as I did upon my cross-examination of this witness. The question is based upon conditions in 1916, whereas the only materiality, if it has any materiality at all, must be directed to conditions in 1919, at the time when this sale was made. It calls for the witness's conclusion as to what he believed was in the minds of Germans as to whether a certain situation was of value to them or was not of value to them. It does not call for this witness's estimate of the value of any particular thing such as the trade-mark or the patent. It is asking him to construe the frame of mind of the Germans as to whether they in 1916 believed that a continuance of manufacture here was of value to them. I do not think that that is the subject for expert testimony.

Mr. Anderson: I beg your pardon, I thought you were through.

Mr. Kresel: I was going to add, if you will permit me, the ground urged, and further upon the ground that the testimony is for that reason immaterial and irrelevant, we object to it.

The Court: Before I hear you, Colonel Anderson, I will state my difficulty so you may reply to it. I am having this difficulty with respect to the agreement of December 5th, 1916, and the agreement of June, 1918, and the written document which did not come out of Germany—a confusion of the terms of those several agreements.

Mr. Kresel: Will your Honor permit me to give you in very few words the contents of those agreements?

The Court: I wish you would.

Mr. Kresel: First, the agreement of December 5th, 1916, was an agreement between the Dermatological Laboratories and Mr. Metz, the Farbwerke-Hoechst Company. By that agreement the Laboratories agreed to dismantle their plant in which they had been manufacturing a product.

The Court: I have that.

Mr. Kresel: You have that.

The Court: Yes. You need not state any more about that. I have the terms of that agreement.

Mr. Kresel: Very well. The terms of the June, 1918 agreement between the persons who were conducting the Dermatological Laboratories, Drs. Schamberg, Raiziss, etc., and Mr. Metz—

The Court: I have that.

Mr. Kresel: Your Honor does not need anything further on that?

The Court: No. Colonel Anderson, it seems to me that this question is immaterial because the matter with which we are concerned and the issue to which it would be pertinent if relevant would be that of value at the time of the sale, would it not?

Mr. Anderson: Yes, sir.

The Court: And that only. Then that value is ascertained by the conditions existing at the time of sale. I do not see the logical sequence in that connection between the business wisdom of the Germans permitting the manufacture here when they could not export from Germany and import into the United States, and the sale value of the salvarsan, neosolvarsan and novocain patents in 1919. If you think it is relevant I will take the answer without further discussion, or I will hear you.

Mr. Anderson: I think that probably I should state to your Honor why I have asked the question, that your Honor may see why it is relevant. I have already indicated, and we shall contend here, that assuming the agreement of 1916 can be considered in this case—and it is all subject to objection from one side or the other—then it follows that the question on cross-examination was directed to one of two things, either to show that the right was of no value to manufacture in the United States or for the purpose of showing that the witness had nothing that he paid for, paid any money for under this agreement, and that therefore the limitation alleged to have been created upon the patent use by this agreement gave to and would give to the owner of the patent or its successor no right to revenue which would come in.

The Court: Your question was what?

Mr. Anderson: No right to revenue.

The Court: No, but your question?

Mr. Anderson: My question was assuming that they could not export to the United States—I will put it that way if you wish—which the evidence here shows, assuming that there was a business in the United States which the evidence shows, assuming that the person manufacturing in the United States could export to other countries, which necessarily follows, then the value of maintaining that business during the period of suspension to the German owner was enormous.

The Court: I understand your respective theories, and if you want to put it of record you may do so.

Mr. Anderson: Of course, it will be a debateable question, but there are going to be lots of them here, and I want to get the record in such shape that we can argue the reasonableness of the position. In view of the objection I will reframe the question, because I would just as soon put it the other way.

RDQ. 1586. Assuming that in the year 1916, at which time you testified as to some right acquired to manufacture under the salvarsan and neosolvarsan patents, the exportation of this product from Germany to the United States was substantially cut off by blockade and the export thereof from Germany to other countries was substantially cut off, and assuming that there were then large sales of this article in the United States and other countries and a large demand therefor, would you as a person familiar with this business, as you have indicated in your testimony, regard the continuance of the manufacture in the United States, the sale of this article in the United States, and the exportation thereof to other countries from the United States during the period of such suspension of exportation from Germany owing to the conditions described, as of value to the German owner of these patents or his successor.

The Court: The question I assume, is subject to all objections which you have heretofore made to this or indicated with respect to other questions?

Mr. Kresel: Yes, your Honor.

The Court: The answer will be taken subject to your general and specific objections.

A. Yes, sir.

RDQ. 1587. From your familiarity with the business could you make any reasonable estimate of what you would regard the value of such a continuation of the business as I have described to be to the owner of the patent during the period which I have described, resulting from these conditions?

Mr. Kresel: Please just say yes or no.

A. Yes or no to the question? What is the question?

RDQ. 1588. What do you say?

A. Perhaps I can not say yes or no to the question.

The Court: That is, can you make an estimate of value?

RDQ. 1589. Just say whether you can, whether you think you can estimate its value?

A. No, not definitely. It would be enormous.

Mr. Kresel: May I have the latter part stricken out, your Honor?

The Court: Yes.

RDQ. 1590. Would you regard it as of great value, nominal value, or small value, without stating any figures?

Mr. Kresel: Object to it upon the grounds already urged; further upon the ground that it is a subject it seems to me which can not be valued. No one can undertake to say what, if any, value there is to such an ephemeral and fleeting thing as a desire to continue operations.

Mr. Anderson: Good-will? I think it was a pretty valuable property. The Supreme Court of the United States has held it was.

The Court: That involves too many questions for me to discuss.

Mr. Anderson: Yes. I do not want to discuss it.

The Court: It seems to me that your answer would not be of much value, because it would be vague and indefinite.

Mr. Anderson: I concede that it possibly would be argumentative and I think probably it is better to argue it from the record than otherwise. I will therefore waive any answer to the question.

RDQ. 1591. Early in this examination we introduced in evidence certified copies of your registration of trade-marks "salvarsan," "neosalvarsan," and "novocain." You recall those, do you not?

A. Yes, sir.

RDQ. 1592. It appears in the evidence that these trade-marks were originally assigned to your American corporation, Farbwerke-Hoechst Company; were they not?

A. Yes, sir.

RDQ. 1593. And the abstract which I have before me also shows that they were assigned to the H. A. Metz Laboratories?

A. Yes, by the Farbwerke-Hoechst Company.

Mr. Kresel: Are they both in evidence, Colonel?

Mr. Anderson: All in evidence, yes. Apparently the one assignment from Farbwerke to—

Mr. Kresel: I did not recall it. That is the reason I asked.

Mr. Anderson: I will put that in evidence. In order to complete the record I now offer in evidence certified copy of assignment recorded July 24, 1918, from the Farbwerke-Hoechst Company, a New York Corporation, to the H. A. Metz Laboratories, Incorporated, a New York corporation, to be identified and read as Plaintiff's Exhibit, No. 446.

Mr. Kresel: Same objection that we raised to the others.

The Court: Received under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 446." (*See Exhibits, Vol. II, page 851.*)

RDQ. 1594. Assuming, for the sake of this question that the law of the United States authorizes the registration of trade-marks at the Custom House, and when so registered prevents the importation of articles under such trademark names or trade names into the United States without the consent of the owner of the trade-mark, would that fact, in your opinion increase the value of American trade-marks, including the marks "Salvarsan," "Neosalvarsan," and "Novocain," so registered?

Mr. Kresel: We object to that upon the ground that unless it is for the purpose of having this witness change or modify his testimony as to the value of these trademarks, which he has already given, it is immaterial and irrelevant.

We further object upon the ground that what the law of the land is is something that the Court will take judicial cognizance of, and that it is not proper to ask this witness as an expert upon values to base his opinion as to the value of a trademark merely upon the law as stated by counsel, assuming that counsel stated it correctly.

Mr. Anderson: Unless I did state it correctly, in substance—I thought you were through, sir.

Mr. Kresel: I am not challenging the correctness of your statement. I am going to assume for the present that it is correct.

The Court: I do not follow the second point of your objection, Mr. Kresel, because it seems to me that this witness would have been entitled to place a value upon this trademark on various assumptions, although one of those assumptions would be a condition of fact that would be regulated by law, and this question is assuming that certain conditions existed which would be brought about by the operation of law.

But it seems to me, Colonel Anderson, that there is merit in the first point, particularly if carried a step further, and that is: This goes to values which you have gone into quite fully in your examination in chief, and that you are now covering not strictly in re-direct, but rather anew, although in slightly different manner, the same question into which you went in detail. However, if you want it, you may put it in the record.

Mr. Anderson: I think your Honor's second suggestion is probably a good objection to this question. The value was gone into on the original examination, and to assume additional elements of value might reopen it and possibly make it subject to that objection. So I will leave that without an answer.

The Court: Question withdrawn.

Mr. Anderson: The question will be withdrawn and I will ask this question:

RDQ. 1595. Have you ever undertaken to register your trademarks Salvarsan, Neosalvarsan, and Novocain, or either of them, in the Custom House of the United States?

A. Yes, sir.

RDQ. 1596. Was such registration allowed?

A. No, sir.

RDQ. 1597. Can you state, and if you have it in writing, produce the writing, why you were informed that you could not register the trademark?

Mr. Kresel: I object to that upon the ground that it is immaterial and irrelevant, that this Court can not undertake to pass upon the propriety of the refusal to register these trademarks or no. It is not a matter in issue here.

Mr. Anderson: Your Honor please, I will state what I want to prove by this witness. I wish to show by the witness, in connection with the evidence taken on cross-examination, that the witness made an effort to register his trademarks which he claimed to own as an American citizen and that the Chemical Foundation, under the claim of ownership of those trademarks by virtue of the assignment here in question, objected at the Custom House to the registration thereof on the ground that they were the owners and upon that state of facts he was advised by the Collector of Customs that he could not register the trademarks. I think that is material as bearing upon this situation.

The Court: I will not pass upon the materiality, but will let you take your answer subject to the objection.

RDQ. 1597. (continuing) Just go ahead and state the facts.

A. The facts as stated are not quite correct, Colonel Anderson.

RDQ. 1598. I stated them the best I could.

A. I do not know that the Chemical Foundation objected, but because of the Patent Office record—

RDQ. 1599. You just state the facts as they were.

Mr. Kresel: Will you just pardon me a minute. Before the witness undertakes to state the facts, I ask you, Colonel, if there are any writings in the matter. If so, the writings speak for themselves, if the Court rules that the matter is material.

The Court: I am not going to rule that it is material.

Mr. Kresel: I withdraw that, your Honor. If the Court rules that the evidence should be taken, then I think the best evidence should be taken.

RDQ. 1600. If you have any writings, let me have them, please.

A. The trademark, the certified copy filed with the Custom House, is the one that would give the information, Colonel. You have those, I think. The registration was refused because of the records showing—

RDQ. 1601. Have you got any writings?

A. You have it here, the certified copies—I don't know the legal phrase—the record of the ownership in the Patent Office. It was on the strength of that that I was refused, because that showed the Chemical Foundation claimed ownership.

Mr. Kresel: I object to that.

The Court: Don't say what that shows.

A. (continuing) You have the record here, gentlemen. I haven't got the record.

RDQ. 1602. Did you receive any communication from the Custom House on that subject, and if so, what was the communication? If you have it there, let me have it?

A. I don't know as I have it. You have got it. I think I gave it to you gentlemen. The substance was—

THE COURT: No.

A. (continuing) I have to find it then, if you please.

RDQ. 1603. You have not any writing with you on this subject?

A. Not here. There is such a paper in Washington, I know. I have seen it.

MR. KRESEL: Would you mind asking him the date of that communication?

RDQ. 1604. Have you knowledge of the date of the communication?

A. The communication will show. I haven't it offhand, but the papers can be submitted and found over here.

RDQ. 1605. Will you see if you can find it a little later and if so I will then introduce it in evidence in connection with this question. If it requires explanation, I will ask leave to ask the question.

A. I have the further correspondence on the subject though, Colonel.

RDQ. 1606. Let me see the further correspondence?

A. That the Custom House agreed—

THE COURT: Don't say what the papers showed.

RDQ. 1607. Is this the paper to which you refer?

A. Yes. This is the letter from the Treasury Department referring to the trademark.

RDQ. 1608. You have not the letter that I want. I will have to get a certified copy from the Patent Office at Washington. You spoke yesterday of "Nuisance value" which is a term that has been used here a great many times. I would like to have you define what you mean by "nuisance value" of a patent?

Mr. Kresel: May I suggest, Colonel, that you ask him that question with reference to these patents, not generally.

Mr. Anderson: I will ask him first for the definition.

RDQ 1609. You spoke yesterday of the nuisance value of patents covering dyestuffs and things of that kind. I will ask you what you meant; what is your definition of the term "nuisance value"? What do you mean by it?

Mr. Kresel: Colonel, I must object to that in the form that you put it. He did not testify yesterday generally as to the nuisance value of dye patents. He testified specifically yesterday that he had testified before a Committee of Congress that these patents here in question had only a nuisance value. Now, I recognize your right to ask him about that, but I do object to your going into a general discussion with this man about the nuisance value of patents with which we have nothing to do.

The Court: What you want, I take it, Colonel Anderson, is what he meant by the term "nuisance value" used by him in his prior testimony.

Mr. Anderson: That is all; and I will put the question as his Honor stated it.

The Witness: How is the question?

RDQ. 1610. What did you mean by the term "nuisance value" as used in your prior testimony taken on cross-examination and before the Committees?

A. The value inherent in a patent that prevents others from doing business with a competing product of any kind, although the owner did not do anything himself with it. That would be a nuisance value.

RDQ. 1611 Has the Chemical Foundation ever asserted against you the claim of ownership of salvarsan or silver salvarsan; and if you have it in writing, please let me have it.

Mr. Kresel: Do you mean the patents or trademarks?

Mr. Anderson: No, I mean the trademarks.

A. Yes, sir.

Mr. Anderson: I offer in evidence letter dated July 16, 1921, signed by Harry D. Nims addressed to H. A. Metz Laboratories, Incorporated, to be marked as Plaintiff's Exhibit No. 447. You will admit, Mr. Kresel, that Mr. Nims represented the Chemical Foundation?

Mr. Kresel: I think that is correct. Yes, he did.

The Court: Admitted subject to the general objections of the defendant.

Received in evidence and marked "Plaintiff's Exhibit No. 447." (*See Exhibits, Vol. II, page 854.*)

Mr. Anderson: The letter is as follows (reading).

Mr. Kresel: Was there any reply?

RDQ. 1612. Did you ever make any reply to that letter?

A. My attorneys took the matter up with the Patent Office.

Mr. Kresel: I ask that that be stricken out.

RDQ. 1613. Did you ever make any reply direct?

A Through my attorneys, undoubtedly.

Mr. Kresel: Has he a copy? Can he produce it?

A. (continuing) I think you have it there. My attorneys certainly made a reply.

RDQ. 1614. You have not the reply with you, have you?

A. No, sir. I have no reply with me. I haven't got it.

RDQ. 1615. Mr. Metz, you were asked yesterday by counsel for the defendant as to the amount of royalties paid on your sale of novocain under the Federal Trade Commission license?

A. Yes, sir.

RDQ. 1616. And I think that you made some explanation as to the royalties being less than five per cent. of the total sales?

A. Yes, sir.

RDQ. 1617. Have you in your possession one of the packages of novocain which you sold that represents the sample which you sold under those conditions?

A. Yes, sir; the novocain and the tablets made from novocain.

RDQ. 1618. In order to make your evidence clear, would you produce that?

A. Yes, sir (handing packages to counsel).

Mr. Anderson: I offer in evidence two packages, one of novocain and the other of tablets, produced by the witness.

Mr. Kresel: I can not understand, your Honor, the purpose of such an exhibit. I can not understand what materiality and relevancy there can be to these issues.

The Court: How many exhibits have we now, Colonel Anderson? Four hundred and what?

Mr. Anderson: 447.

The Court: I am wondering if the purpose that you have in mind is not this, that novocain as sold commercially or the product sold commercially as novocain was not 100 per cent novocain.

Mr. Anderson: Quite so.

The Court: But that the commercial product contained other things besides novocain and that this witness has testified that he paid royalties not on the product as sold but only on the percentage of that product which was novocain; isn't that it?

MR. ANDERSON: That is right. And he also said he testified that the large part of the expense or cost of the product sold was in the bottles and labels which were necessary; and I want to make his evidence perfectly clear.

THE COURT: All right; admitted.

MR. ANDERSON: I will merely identify this stuff and leave it on the record.

RDQ. 1619. Do you desire to in any way enlarge your testimony of yesterday on that subject to make it clear? And if so, state exactly how you came to make the returns of royalties on this novocain?

A. Yes, sir. On novocain as such we pay 5 per cent. That is the product under the license. Novocain tablets contain novocain plus other products, including superaniline, and other patented high priced products, and the cost of labor of making tablets and bottles is much greater than the novocain itself. We sell novocain to various manufacturers who make these specialties, tablets and solutions.

We therefore charge ourselves on a manufacturing account with the amount of novocain that goes into these tablets and pay royalty upon that novocain by arrangement with the Federal Trade Commission, and keep a separate account; and that was checked up by the representative of the Alien Property Custodian and the Commission, and I have those checked records here. They are not on our books. They are separate records for manufacturing purposes.

Might I add further on that, Colonel, in further elaboration?

RDQ. 1619. (continued) In response to the question, yes.

A. On account of the figures I gave. I had a telephone call to come down next morning with the figures, and I asked for them, and they gave me the totals instead of separating the specialties from the novocain. That was the cause of my statement as to those amounts. They are now separated.

RDQ. 1620. At an earlier stage I asked you a question in regard to your having obtained samples of the dyes used by other manufacturers, merchants or consumers in the United States. At that time counsel suggested that there was no testimony on the subject. I find at page 1754 of the record a letter introduced in evidence or read by counsel, addressed to you, which he states was from the Farbwerke Company in Germany, dated June 20, 1913. In that letter is a statement:

> "It is very interesting that you now receive the samples of competing factories on the part of dyers for examination. I can nevertheless imagine that an uncomfortable situation may sometimes arise for you because of it."

How did you come to procure those samples, and why?

A. The representative of the Textile Alliance, in their efforts to stamp out the abuses in the industry, had to have information as to the value of goods purchased by the various mills which came to them for advice. The samples from these mills were sent to me by their representatives for my opinion as to money value, on whether they were getting money value for the goods they paid for, and I made the tests and reported to them.

RDQ. 1621. Was the Textile Alliance the organization of which Mr. A. M. Patterson was President?

A. Yes, sir. And the reference to the uncomfortable position was that my competitors or some of my customers—

Mr. Kresel: I object to his interpreting the thoughts of the writer of the letter. He was not the writer.

The Court: No, he can not do that.

Mr. Anderson: I think that is all I want to ask the witness.

Re-Cross-Examination.

By **Mr. Kresel**:

RXQ. 1622. Mr. Metz, first I would like to straighten out with you the novocain figures as to which you have just testified. On your direct you gave, in answer to Colonel Anderson's questions, the amount of your sales of novocain for the years 1919, 1920, 1921 and 1922. Without repeating the exact figures that you gave as they now appear in the record, the total thereof was upwards of a million dollars?

A. Yes, sir.

RXQ. 1623. In addition to that you gave the amounts of royalties that you paid under your Federal Trade Commission licenses under those sales?

A. Yes, sir.

RXQ. 1624. I understand you to say that in point of fact the figures of your sales of novocain that you gave included other ingredients?

A. Yes, sir.

RXQ. 1625. Can you state the real amount of sales of novocain you made during those four years?

A. I have the five years—

RXQ. 1625. (continued) Five years?

A. From 1918 to 1922, inclusive.

RXQ. 1625. (Continued) Yes.

A. The actual amount of novocain sold as novocain and in the preparation was $477,961.98, on which the royalty was paid.

RXQ. 1626. Those were sales for a period of how many years?

A. 1918, 1919, 1920, 1921 and 1922—1922, up to and including July 1st, only.

RXQ. 1627. I noticed upon your re-direct examination you had available to you a lot of correspondence running way back to 1915, correspondence with officials of the Government and others. Have you your correspondence with Mr. Dieters that you have had with him this year?

A. I told you as I did not know if I had any copies. If I had I would be glad to bring them.

RXQ. 1628. I did not even ask you about copies only. Have you any correspondence with him, letters from him or copies of letters by you to him?

A. Yes, sir.

RXQ. 1629. Please produce them.

A. Colonel Anderson has them.

Mr. Anderson: Here is the only one I have got. (Handing witness.)

The Witness: I received a letter—

RXQ. 1630. No, please produce them, let me see them.

A. This is the correspondence and papers Colonel Anderson has came with them.

Mr. Anderson: If your Honor please, I wish to call your attention to this fact, that I did not ask a single question in regard to this subject on re-direct, and I do not think that counsel has a right to reopen this subject for further cross-examination. I stated I was perfectly willing on any matter on which there was any doubt whether it was direct or re-direct to permit further cross-examination, but I did not consent and can not consent to reopening the cross-examination generally. Therefore I object to that question.

Mr. Kresel: I do not propose to reopen the cross-examination generally. Your Honor will recall that upon the cross-examination I asked this witness for the correspondence and he said he would look it up. It seems to me that I have a right to ask him now the result of his search. I am not reopening the cross-examination.

Mr. Anderson: I do not recall that, but if counsel makes that statement, of course he has a right to call for it.

Mr. Kresel: There is not any question about that, Colonel, that I asked the witness, and the witness will admit it.

The Court: I will take it any way, Colonel. There is now in the hands of Mr. Kresel a certain document produced by the witness, which of course Mr. Kresel can without further questioning mark for identification and stop there.

Mr. Anderson: I only want to reserve the right to further examination.

Mr. Kresel: I shall not reopen the cross-examination. I am quite content to let it go as it is. There are three papers here and I will have marked the first one, for identification only for the present.

Marked for identification "Defendant's Exhibit I,"

Mr. Kresel: And the two annexed thereto as I-1 and I-2.

Marked for identification "Defendant's Exhibits I-1 and I-2."

The Court: Being the papers produced by the witness.

RXQ. 1631. Mr. Metz, you have produced one letter, a typewritten memorandum and a printed memorandum. Is that all of the correspondence that you ever had with Mr. Dieters?

A. That is all I had with me. There were other letters from him at various times which I have not got and I do not think I kept. Those are all I had and when I looked at my papers I found them.

RXQ. 1632. Have you not now here in Court other letters from Mr. Dieters to you?

A. No, sir; with those papers came some copies of reports which I handed Colonel Anderson, which he mailed to me without—I did not even read them, affidavits and such that he has been talking about for two years.

Mr. Anderson: I do not think I have those papers.

Mr. Kresel: I am not charging you with the possession of them yet.

Mr. Anderson: Well, if I had them I would produce them.

RXQ. 1633. You say that you received from Deiters certain affidavits?

A. Yes, sir; copies of affidavits—claimed to be copies of affidavits.

RXQ. 1634. You mean not signed affidavits but copies?

A. I don't know, Mr. Kresel. They are here in Court. I did not even look at them. He had so much talk about affidavits that I never bothered with them after that.

RXQ. 1635. In addition to those affidavits as you call them, was there not other correspondence that you had with him?

A. I do not recall, Mr. Kresel.

RXQ. 1636. Have you not a single copy of any letter that you ever wrote to him?

A. Not with me, and if there is home, I will get it as I told you the other day.

RXQ. 1637. I have been questioning you on this subject now for three days, Mr. Metz, and apparently you have the matter in mind, because you thought it wise to produce what you have now produced. Why have you not produced the balance?

A. Because I think I brought everything I have, and that is what I found in the papers I have. I have not been home since, Mr. Kresel, and no one else could find it but myself. I put things everywhere in my place and I have got to look for them. I will be very glad to do so.

RXQ. 1638. When you received from Mr. Deiters this bill which is in evidence now, you told me on cross-examination that you were indignant at any such demand made by this man and you thought you wrote to him. It is that letter that I would like you to produce.

A. If I have it, I certainly will, Mr. Kresel.

RXQ. 1639. But when? Can you get it by tomorrow morning?

A. No. No one will know where to find it. I have to look in a dozen places for it. I never kept those things together.

RXQ. 1640. All right. Mr. Metz, with the Court's permission I am going to ask you to get the copy of that letter written by you to Mr. Deiters and copies of all other letters written by Mr. Deiters to you and I shall ask the Court's permission to use those as soon as you can get those here?

A. I shall be very glad to comply with that request.

RXQ. 1641. Even though the Government's case should be closed.

A. Anything I have I shall be glad to send you, Mr. Kresel. Mr. Deiters probably has the originals if they were sent, and you can get them that way.

RXQ. 1642. Notwithstanding this unfounded demand that he made on you last October, you still continued in correspondence with this man Deiters, and continued to receive affidavits from him; is that right?

A. I can not help what he sent me.

RXQ. 1643. Did you or did you not?

A. He continued to send me stuff, yes, I will put it that way.

RXQ. 1644. All right. And you continued corresponding with him, did you not?

A. I do not know as I did correspond. If I did I will find the copies and bring them. He has the letters if I did. I do not recall, Mr. Kresel.

RXQ. 1645. And in such correspondence as you had with him do you not recall that you assumed toward him a friendly attitude?

A. I was very sorry for the man having lost his position at all times, yes, sir, because he tried to do the right thing, I think.

RXQ. 1646. Now look at this letter and tell me whether that is a letter that you wrote to Mr. Deiters on March 23, 1923? (Handing witness).

A. Yes, that is the acknowledgment of that letter in all probability.

RXQ. 1647. "Yes" is the answer?

A. That is the answer.

Mr. Kresel: May I have that marked for identification?

Marked for identification "Defendant's Exhibit J."

RXQ. 1648. I noticed yesterday that amongst the large batch of correspondence that was introduced, that you had in 1914 and 1915 concerning these dyes importations, there was a letter of introduction given to you by Secretary of State Bryan to Ambassador Gerard in Berlin?

A. Yes, sir.

RXQ. 1649. That was on the occasion of your visit in the latter part of 1914?

A. Yes, sir.

RXQ. 1650. At the same time you testified you carried a letter of introduction from Dr. Albert?

A. Yes, sir.

RXQ. 1651. Why do you not produce that one?

A. Because I left that in Germany with the people it was addressed to.

RXQ. 1652. Have you not a copy of it?

A. No, I never had a copy of the letter. Certainly not. It was a sealed letter presented to some one in Europe and I presented it.

Mr. Anderson: I think, if your Honor please, I should note an objection to any examination on the matter introduced yesterday in the form of correspondence, on the ground that it was stated at the time it was introduced it was for the purpose of meeting the evidence on cross-examination and completing the evidence as to the relations of this witness to the matter of dye importations, which was brought out purely and solely on cross-examination. Your Honor will recall this was purely a value witness so far as the Government is concerned.

The Court: Yes, but is there not this difficulty with that situation, Colonel Anderson,—that it was introduced to offset certain of the testimony introduced in answer to questions of Mr. Kresel, and if this creates a new situation I take it that the re-cross-examination would be allowed.

Mr. Anderson: I did not understand your Honor's rule on that subject. I want to state that I have not the slightest objection to re-cross-examination, provided that on any matter which is brought out I may have the right to re-examine again on those points. But I did not know that your Honor's rule was that way.

Mr. Kresel: I am through with that point; I am going to pass on to something else.

Mr. Anderson: I did not know the rule of this Court.

RXQ. 1653. About this talk that you had with Mr. Oppenheimer, or Dr. Oppenheimer, in Berlin, the telegram which you received asking you to see Dr. Oppenheimer was from the Farbwerke-Hoechst Company, of Germany?

A. The Farbwerke vorm. Meister Lucius & Bruning, the German name. We speak of it as Farbwerke-Hoechst. The Farbwerke of Hoechst, we will put it that way, or somebody connected with it. I do not know what individual, but of that concern.

RXQ. 1654. You can produce the telegram?

A. I may have it in my papers and I will look when I get home and be glad to give it to you, Mr. Kresel, very glad to give it to you.

RXQ. 1655. You have not known him before that time?

A. No, sir.

RXQ. 1656. He was a total stranger to you?

A. Yes, sir. I knew that there was one Dr. Oppenheimer there.

RXQ. 1657. But he was a total stranger to you up to that time?

A. Yes, sir.

RXQ. 1658. And the telegram simply asked you to see him?

A. Yes, sir.

RXQ. 1659. Then you went to see him?

A. Yes, sir.

RXQ. 1660. Then I assume the telegram gave his address.

A. I do not know. I looked him up in the telephone book. I found him any way, and saw him.

RXQ. 1661. All you had was a telegram come to see Dr. Oppenheimer?

A. Of the Berlin Company.

RXQ. 1662. Of the Berlin Company?

A. He represented the Berlin Aniline Company.

RXQ. 1663. What do you mean, one of the Big Six?

A. One of the Big Six. He was their attorney.

RXQ. 1664. That is, one of the Big Six firms in Germany?

A. Yes, sir.

RXQ. 1665. So you went to see Dr. Oppenheimer and you had a fifteen minute talk with him?

A. About that, yes, sir.

RXQ. 1666. Only fifteen minutes?

A. Not much longer.

RXQ. 1667. He was in a great hurry?

A. Yes, sir.

Mr. Anderson: May I suggest that this matter has been gone over fully in the cross-examination, and nothing further was brought out except to enlarge and complete his statement on that subject. I think that is hardly a subject for re-cross examination. We will be going on indefinitely if we beat the bush over and over again.

Mr. Kresel: No, we will not do that. On the contrary this is entirely a new matter. Your Honor will recall that I asked this witness whether he had conversations with Germans abroad with reference to the return of these patents. He testified first that he did not and then I read to him his testimony before the House Ways and Means Committee, and then he said that he had. He never once mentioned Dr. Oppenheimer in that connection.

The Court: You may take the aswer subject to the general and specific objections of counsel for the Government.

RXQ. 1668. You say that Dr. Oppenheimer was in a hurry, he was packing his bag, on his way to London. I want you to tell us as nearly as you can everything that was said between you and Dr. Oppenheimer on that occasion?

A. He told me that they had received a telegram from a firm of Washington attorneys, somebody and Brown; a gentleman from Cincinnati, a Judge, I do not recall the name at the moment, and Brown was the firm; that they would have to put in their claim under the law for the royalties on the German patents before or prior to a certain date, and on the strength of that telegram he was coming over here to take up the question and put in those claims if it was necessary. That was the only subject of conversation and the only conversation. And I gave him the address of Mr. Vandiver and Mr. Wilcox, told him they had studied the questions and to see them when he came here, and he did. That is all I had to say. The other things were purely personal, family matters and in general, but there was nothing else on this to discuss.

RXQ. 1669. My question was as broad as I could possibly make it, namely that you should state everything between you. Have you done that?

A. That is the substance of all there was to the best of my recollection. Yes, Mr. Kresel, that was the substance of the conversation. With regard to the suits for the licenses—for the fees.

RXQ. 1669-a. With reference to the trade-marks, you have produced a letter from a lawyer named Nims on behalf of The Chemical Foundation. Have you not other correspondence with the Chemical Foundation concerning those trade-marks?

A. Not with me. I shall be glad to look it up when I get back and send you what I have.

Mr. Kresel: That is all.

Mr. Anderson: You may stand aside, Mr. Metz.

The Court: Are you through with the witness, both sides?

Mr. Anderson: I am through with him.

The Witness: May I return home now?

Mr. Anderson: It will be understood that he is discharged from the subpoena with the understanding if he finds any correspondence he will let Mr. Kresel have it as promised.

Mr. Kresel: No, I would rather have it, Colonel, that whatever correspondence he has he should submit to you, as he is your witness, and then, if you will, be good enough to let me see it.

Mr. Anderson: I will do it with great pleasure. Can he be discharged from the subpoena?

Mr. Kresel: Yes.

Mr. Anderson: On the general understanding that if we need you, Mr. Metz, you will return upon request at any time?

The Witness: Yes, on notice.

The Court: Then you need not return unless requested by counsel for one side or the other.

The Witness: Thank you. I want to thank you for your courtesy, your Honor.

Mr. Anderson: We will ask permission now to take up the introduction of additional documentary evidence which was interrupted by this testimony. I am sorry that this has to be done.

The Court: Is that the remainder of your documentary evidence?

Mr. Galloway: We have the remainder ready and we shall put it in at this time.

Mr. Kresel: May I ask Mr. Metz one more question, if he has not already left.

RXQ. 1670. I direct your attention to the memorandum which is marked Defendant's Exhibit I for Identification, wherein I find this statement relating to the cases which the Department of Justice now has under investigation at Wilmington. That refers to this case, does it not?

A. I do not know what he refers to.

RXQ. 1670-a. Read it and just tell me.

A. (Examines letter). I presume that is this case, yes, sir.

RXQ. 1671. And also please look at the letter Defendant's Exhibit I-1 for Identification, in which I notice the concluding sentences as follows:

> "I am enclosing herewith copy of all information which I have in the hope that you may find use for same at Washington."

A. That man wrote me that.

Mr. Anderson: I did not object because I do not think the witness can interpret the letters. I am perfectly willing to let the letters go into evidence, but I do not think the witness's interpretation of letters is admissible.

Mr. Kresel: Oh, yes, the witness's knowledge as to these letters is admissible.

Mr. Anderson: But the objection has been made in this case a number of times when an effort has been made to explain his correspondence, and I respectfully suggest that that correspondence should either be put in evidence or—

Mr. Kresel: I am going to put it in evidence now.

Mr. Anderson: Then I move to strike out the answer of the witness as to the reference, and your Honor can reach your own conclusions on argument or in any other way as to what that correspondence means.

Mr. Kresel: Not at all. I object to that procedure, if your Honor please.

The Court: Are we not in this position: We can not tell possibly from incomplete correspondence the meaning of all the terms. If Mr. Metz produces the entire correspondence, the correspondence as a whole would speak for itself, but until that is produced is not testimony of the witness as to the meaning of terms in there, which were not self-explanatory, pertinent? I do not mean pertinent, because I do not mean to say that any of the testimony is going to be pertinent, but proper.

Mr. Anderson: Your Honor asked the question and I should certainly say no, sir, that it is a letter from someone else to him. What that person may have meant by that letter, which he said was not and does not appear to be in response to anything, where he is undertaking to interpret the other person's mental processes or state of mind, I quite agree is utterly immaterial. Yet I respectfully suggest that that evidence is wholly illegal and incompetent. What the letters mean is shown by the letters; let the letters go in, let the papers go in, I have not the slightest objection to it, subject to my general objections as to immateriality and irrelevancy and as outside of the direct examination, etc. But as to this evidence I would have to move to strike out because I regard it as a violation of the law of evidence for the reasons stated.

The Court: You have offered the letters?

Mr. Kresel: I am now offering them. I offer in evidence Defendant's Exhibit I for identification.

The Court: Admitted, subject to the Government's objections heretofore stated.

Received in evidence and marked "Defendant's Exhibit No. 26." (*See Exhibits, Vol. IV, page 2089.*)

The Witness: May I ask your Honor a question?

(Witness speaks to Court.)

The Court: Will both of you hear what Colonel Metz has to say and make any inquiries you wish to make?

Mr. Anderson: I beg to ask an additional question, if counsel will permit me.

Mr. Kresel: May I proceed with these exhibits?

The Court: Yes, you may proceed with these exhibits and make further inquiry afterwards.

Mr. Kresel: I read Defendant's Exhibit No. 26. (Reading).

Now I offer in evidence Defendant's Exhibit I for identification.

The Court: Admitted under like conditions.

Received in evidence and marked "Defendant's Exhibit No. 27." (*See Exhibits, Vol. IV, page 2089.*)

Mr. Kresel: I now read Defendant's Exhibit 27 (Reading).

Mr. Anderson: I want to make the further objection to the introduction of that memorandum that it is pure hearsay and has absolutely nothing to do with the issues of this case.

The Court: Is that a communication to the witness?

Mr. Anderson: To the witness. It is a memorandum sent to the witness with this letter, it does not appear by whom made—but was sent to him by this man in Washington; and I shall show in a moment without his having any knowledge of it until he received it.

Mr. Kresel: And I have his reply thereto, which I shall read in a minute.

The Court: Your objection is noted, Colonel Anderson.

Mr. Kresel: I now offer in evidence Defendant's Exhibit I-2 for identification.

The Court: Admitted under like conditions.

Received in evidence and marked "Defendant's Exhibit No. 28." (*See Exhibits, Vol. IV, page 2090.*)

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Mr. Kresel: I shall not stop to read that. That appears to be an extract from the Congressional Record. I shall simply introduce it.

The Court: It was another enclosure in the same letter?

Mr. Kresel: Yes, in the same letter, your Honor. I now offer in evidence Mr. Metz's acknowledgment of the receipt of those papers, which was previously marked Defendant's Exhibit J for identification.

Mr. Anderson: Same objection.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 29." (*See Exhibits, Vol. IV, page 2097.*)

Mr. Kresel: Now let me read that (Reading). That is all.

Mr. Anderson: I will ask a question or two in view of that correspondence.

The Court: Is there a question pending?

Mr. Anderson: No, sir.

Re-Direct Examination.

By Mr. Anderson:

RDQ. 1672. I want to ask if you, prior to this correspondence knew anything of the matter that this Mr. Dieters wrote you about?

A. Mr. Dieters called me on the telephone.

Mr. Kresel: I object.

A. (Continuing) No. Yes; I will say yes, and qualify it.

Mr. Kresel: Wait a minute. Yes is an answer.

RDQ. 1673. Then say what you did know about these matters?

Mr. Kresel: About what matters?

Mr. Anderson: About the matters referred to in the letter and correspondence.

A. Mr. Dieters called me on the telephone and said he had some information I ought to have. He wanted to come to New York to tell me. I said, "Don't you bother to come to New York to tell me anything. If you want to tell me anything, send it to me by mail." "Well, I don't dare mail this. I don't want my name to appear on it." I said, "Put it in a separate envelope and I will tell you if I received it."

I think they came in two separate letters; the copies I gave you and the statement in one letter, and the other letter in a separate one. That is my recollection. There was no use of him coming to New York. I would have had to pay his fare if he came. I said to him, "Don't bother me. If you have anything, send it to me. I don't care what they say about me." That was the substance of the communication.

He was always coming with things of that sort to me without my suggestion or request. He used to hang around Mr. Moses' office and was giving me things all the time, telling me why he lost his position, because he tried to put me on to facts, that they were trying to injure me in the Chemical Warfare Service.

RDQ. 1674. And that is the whole connection of this correspondence?

A. Absolutely. I gave him money purely on charity, because he lost his position. He had had $3,500 a year and he was out of a job, and his wife was sick, and a mortgage on his house, and he was ailing all the time. He was even in my office last week before I came down here and said they were going to subpoena him. I said, "Well, go down and tell the truth. Don't bother me with that stuff." Then he asked me, "You don't want anything?" "Not a thing." He said, "Will you give me some money to go home?" I gave him ten dollars, and I told him if they served him with a subpoena,

TRANSCRIPT

OF

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fied and read in evidence as Plaintiff's Exhibit No. 406.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 406." (*See Exhibits, Vol II, page 761.*)

Mr. Anderson: By consent of counsel on the other side, I should like to interrupt the cross-examination of Mr. Metz this morning to call Colonel Miller, who is compelled to leave the city for the West today at 10:50, and might not return before the Government close its case. Mr. Kresel has very kindly consented.

Mr. Kresel: No objection.

Mr. Anderson: I will call Colonel Thomas W. Miller.

THOMAS W. MILLER.

Thomas W. Miller, called as a witness on behalf of the Plaintiff, being duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Please state on the record your full name and place of residence?

A. Thomas W. Miller, Wilmington, Delaware.

Q. 2. Do you now hold any official position with respect to the Government of the United States?

A. Alien Property Custodian.

Q. 3. Before you became an officer of the Government, what was your business, Colonel Miller?

A. Most of the time before I accepted this appointment I had been in the service of the Government either in the Army or at Washington in Congress. Previous to that I was a State official; before that a law student; and before that I had been in the manufacturing business away from Delaware.

Q. 4. Were you an officer in the Army in the late war?

A. Yes, sir.

Q. 5. What was your official rank?

A. I came up through the various grades, from enlisted man to Lieutenant Colonel when I was discharged.

Q. 6. When were you in Congress?

A. The Sixty-fourth Congress, from 1915 to 1917.

Q. 7. When were you appointed and when did you qualify as Alien Property Custodian?

A. I was appointed March 12, 1921. I was sworn in March 16, 1921.

Q. 8. You have been discharging the duties of that office since that time?

A. I have.

Q. 9. Colonel Miller, it appears in the record in this case that there were two assignments from the Alien Property Custodian to the Chemical Foundation, Incorporated, as Alien Property Custodian, one dated the 27th day of April, 1921, and the other the 5th day of November, 1921. These instruments are filed as exhibits J and K with the Bill of Complaint and have been introduced in evidence here. You executed those instruments, did you?

A. I did.

Q. 10. I will take up first the assignment of April 27, 1921. At the time that you executed that assignment had you ever seen or read the Charter of The Chemical Foundation, Incorporated?

A. I had not.

Q. 11. You had then been Alien Property Custodian—

A. As to whether I had ever seen it, it may have been in pamphlets in my office, but I had not read it.

Q. 12. You had then been Alien Property Custodian about five or six weeks, had you?

A. Yes, sir.

Q. 13. Had you any personal knowledge of the character of the corporation known as The Chemical Foundation, Incorporated?

Mr. Kresel: Pardon me a minute. I object to that question as being indefinite. I do not know what is meant by "the character of the Chemical Foundation."

The Court: I think your objection is well taken.

Mr. Anderson: I will withdraw the question. I was trying to shorten it.

Q. 14. Will you state all the facts within your own knowledge as to your execution of that order for the assignment of the patents mentioned therein, which are commonly called the Norma Company of America?

Mr. Kresel: I am sorry, Colonel Anderson. But I must object to the indefinite character of that question. This is direct examination.

The Court: I think the objection is well taken.

Mr. Anderson: Colonel Miller has got to leave on a train at 10:50 and I am trying to shorten it. Of course, if there is an objection, I withdraw the question.

Q. 15. Did you have any talk with any of the officers of The Chemical Foundation, Incorporated, Mr. Garvan, Mr. Hoguet or Mr. Choate, prior to the execution of that instrument?

A. Yes, sir.

Q. 16. With whom?

A. Mr. Francis P. Garvan and myself had not met until a fortnight after I was Alien Property Custodian.

Mr. Kresel: Pardon me a minute, Colonel. I ask that that part of the answer be stricken out as not responsive. The question is with whom he had talked.

THE COURT: Let it be stricken out.

Q. 17. With whom had you talked?

A. May I say, Colonel Anderson, this has nothing to do with the Norma patents.

Q. 18. I will ask you this: Did you have any talk with Mr. Garvan prior to that time?

A. Yes, Mr. Garvan and myself met—

MR. KRESEL: Pardon me a minute, please. Prior to what time, Colonel?

MR. ANDERSON: The assignment. Of course, I am talking about the assignment on the 27th day of April, 1921.

MR. KRESEL: I simply wanted to know which assignment you were talking about.

MR. ANDERSON: I said I was going to discuss the one of the 27th at this time.

A. Mr. Garvan and myself met at my office, as near as I can recollect it, on the last day of March, 1921. It was the first time I had had the pleasure of meeting him.

Q. 19. You had some talk with him at that time?

A. Yes, sir.

Q. 20. Tell as nearly as you can what took place, what was the conversation; that is, what he said and what you said, and what was the subject of discussion?

A. Mr. Garvan called upon me as an act of courtesy to officially turn over the keys and discuss certain affairs relating thereto, as a predecessor would discuss with his successor.

In the course of our conversation, he discussed with me the general subject of the chemical business in the United States, told me of his connection with The Chemical Foundation and indicated to me that The Chemical Foundation would be very glad to have me as a director and as one of their officials.

I can not remember the details of a personal conversation as between us two, but it was along those general lines.

Q. 21. What, if anything, did you then know of The Chemical Foundation?

A. At that time I knew very little about The Chemical Foundation, because it had been wholly divorced from any associations that I had had in connection with the war work. I indicated to Mr. Garvan that naturally I was interested in the matter of American commercial enterprises, and I at that time indicated a degree of acquiescense in the proposition that he put to me.

Q. 22. What proposition did you mean?

A. That I go on the directorate and become an official. I will say right there, if I may be permitted, that the office of Alien Property Custodian is perhaps larger in scope and more versatile than most any other Government department; and when The Chemical Foundation had first come to my attention, I knew Mr. Garvan was President, I considered it, I will say in all candor, as a portion of the duties of the Alien Property Custodian at that time. At that time, now, we are talking of up to March, 1921.

Q. 23. Talking about 1921. Now, in regard to this particular assignment which appears in evidence as an assignment of certain patents or patent rights to the Norma Company of America, do you recall when that matter was first brought to your attention?

A. It was brought to my attention some time in April, 1921, by one of my subordinates, who came to me in the usual routine manner and asked me whether I would be willing—

Mr. Kresel: Just a minute, Colonel. We must object to any conversation between the Colonel and his subordinates as not binding upon the defendant, immaterial and irrelevant.

A. (continued) Well, I will say it this way—

Mr. Kresel: Pardon me a minute, Colonel, The Court has not ruled yet.

The Court: Do you or do you not insist upon the answer?

Mr. Anderson: He has answered the question; it came to his attention, was brought to his attention by one of his subordinates some time in April.

The Court: What is your position with respect to the objection taken by Mr. Kresel?

Mr. Anderson: My position is that I do not desire the conversations between him and his subordinates; but I do think it is important in this case, or, at least, a part of the case presented by the Bill, to show how and when the matter came to his attention, and what he did.

The Court: There is no objection to that?

Mr. Anderson: That part of the answer is not responsive. Colonel Miller was going on to explain; but I have no desire for that.

A. Well, I have not finished it yet, if I may be permitted. Mr. Nones of the Norma Company of America called me in the usual course of business in April, 1921, and indicated his desire to purchase.

Mr. Kresel: One minute. I object to what Mr. Nones' desire was as hearsay and not binding on the defendant.

The Witness: May I put it this way: that an offer—

Mr. Anderson: One minute, Colonel. If your Honor please, the question here is the circumstances under which this gentleman made this assignment. I do not care for the conversations with Mr. Nones. I only want what instructions he gave and do not care for the conversation.

The Court: You do not ask for that?

Mr. Anderson: Mr. Nones' calling on him has been a fact in the case. That is all, I do not care for the conversation with him at all.

Q. 24. Mr. Nones called on you and the matter was called to your attention by one of the subordinates of your department?

A. Yes.

Q. 25. Those are the two facts. Do you recall executing the assignment of April 27th; do you recall anything about it yourself?

A. It came up to me in the usual routine manner and was signed by me; because I had agreed—

Mr. Kresel: One minute, please.

The Court: The objection is well taken.

Q. 26. It came to you in the usual routine manner and was signed by you. At that time had you read the Executive order theretofore issued by Mr. Polk or the Executive order theretofore issued by the President in regard to the sale to The Chemical Foundation, all of which were introduced in evidence?

A. No, sir.

Q. 27. Do you know by whom the matter of this sale to The Chemical Foundation of the patents embraced in this suit was actually handled in your office?

A. This was a corporate management matter.

Q. 28. Do you know what officer of your department handled it?

A. Well, I dealt directly with Mr. Paul Smith, who was my Chief of Corporation management.

Q. 29. Did you at that time know the history of the organization of the defendant Chemical Foundation?

A. Only in a general way.

Q. 30. Did you know at that time of the fact that The Chemical Foundation or the stock of The Chemical Foundation had been subscribed by the members of the American Dyes Institute?

Mr. Kresel: One minute, please. We object to that on the ground it is immaterial and irrelevant as to whether this witness knew that fact or not.

Mr. Anderson: It is averred affirmatively in the answer, the witness already knew the history and organization of this defendant. The answer avers that the witness was fully informed of and knew the history and organization of this defendant; second, the impelling and inducing motives of its creation; third, its charter and purposes; fourth, the muniments of title; fifth, the considerations given for each and all of the patents and other properties and rights sold, assigned and transferred to it. Those averments are made in the answer as affirmative averments. I have a right to ask the witness if he did know those.

Mr. Kresel: It does not make the slightest bit of difference what is averred in the answer. It is no part of the plaintiff's case, and to the plaintiff's case under the pleadings it is immaterial and irrelevant whether this witness knew at the time when he executed this assignment the fact that is sought to be elicited. If the defendant desires to show that, it is the defendant's duty to show it and not the plaintiff's, but upon the plaintiff's case we say it is immaterial and irrelevant.

Mr. Anderson: I do not have to recall witnesses in rebuttal where there is an affirmative allegation; I can meet that allegation in the *prima facie* case.

The Court: That is part of the judicial discretion involved in the conduct of the trial.

Mr. Anderson: Certainly.

The Court: You may take your answer under the general rule. But you understand, Colonel

Anderson, that if you go into that in chief you must go into it fully and it is not open to you in rebuttal.

Mr. Anderson: My reason for going into it—

The Court: No, I do not care anything about your reasons; but if you go into it in chief you do not have another opportunity to go into it in rebuttal.

Mr. Anderson: I understand, sir, and in view of the objection, and to save time, because I want to get this witness off, I will withdraw it, stop where I am on that, and perhaps go into it later.

Q. 31. Colonel Miller, it appears here that there was another assignment?

A. Are we all off that April 27th one?

Q. 32. Yes.

A. I must say I had not finished.

The Court: You are in the hands of your counsel.

Mr. Anderson: We will stop there for the moment.

Q. 33. As to the one of the 5th day of November, 1921, which is in evidence, which undertakes to confirm certain sales theretofore made of patents, trademarks, etc.; do you know how this matter first came to your attention?

A. It came in the usual routine way.

Mr. Kresel: Please answer just yes or no.

A. Why, I know, yes.

Q. 34. Please state how it came to you and by whom it was brought to your attention?

Mr. Kresel: I do not object to the question in so far as it asks by whom it was brought to his attention. I do object to the question as to how it came to his attention, as being too indefinite.

The Witness: Can I tell the individual?

The Court: Just a minute, Colonel.

Will you divide your question, then, Colonel Anderson, or do you press it as it stands?

Mr. Anderson: It will probably simplify it if I divide it, so as to save time.

Q. 35. First, I will ask you if you know who brought it to your attention?

A. It was brought to my attention by Mr. Zimmerman, who was chief of my patent section, and Mr. Ewing, who was in the Bureau of Law.

Q. 36. Could you state whether you had at that time ever read the charter of The Chemical Foundation?

A. No, sir.

Q. 37. Could you say whether at that time you were familiar with the orders entered by Mr. Polk and the Executive Order of the President of February 13, 1920?

A. No, sir.

Q. 38. Do you recall what, if anything, was stated to you at the time you signed or authorized this order?

A. I directed it—

Mr. Kresel: Pardon me a moment. Do you mean authorized or signed?

Mr. Anderson: I withdraw the word "authorized."

Q. 39. At the time you signed this order or when it was brought to you?

A. This order came to me—

Mr. Kresel: Please answer yes or no.

A. State that question again, please.

(Q. 38 repeated as above recorded.)

A. Yes, I recall it.

Q. 39a. Can you please state what was said to you on the subject by Mr. Zimmerman?

Mr. Kresel: I object to the question upon the ground that the defendant cannot be bound by any conversation between this witness and his subordinate, Mr. Zimmerman.

Mr. Anderson: I do not deny that the defendant can not be bound, but I do respectfully suggest that the witness can state the circumstances under which he executed this order, for the knowledge of the Court. I will further show in this case that Mr. Zimmerman is now and has been long since an employee of The Chemical Foundation; and, therefore, I must rely upon this witness.

Mr. Kresel: Of course, the latter fact, can have no effect upon the question that is pending. The fact that Mr. Zimmerman is said to be in the employ of The Chemical Foundation, it seems to me, has no bearing upon the question as to whether this particular question is open to objection or not. Colonel Anderson concedes that the conversation between Colonel Miller and Mr. Zimmerman can in no way bind the defendant; and if that is so, it is immaterial and irrelevant, and we object to it.

The Court: Have you anything further to say, Colonel Anderson?

Mr. Anderson: No, sir.

The Court: I think the objection is well taken, but you may put your answer of record if you desire, under our general rule.

Q. 39b. (continuing) Please answer the question, Colonel Miller?

A. I had given instructions to have these records brought up to date, it really being a routine arrangement, in order to clear the titles and to enable American users of these trade-marks to obtain them from The Chemical Foundation properly.

Mr. Kresel: Just a minute please. I did not interrupt Colonel Miller because I felt that perhaps he would get on to the conversation. He has been asked about a conversation. The answer up to the present has not stated a word of the conversation.

THE COURT: Let the answer be stricken out and the question repeated.

Q. 40. What were the representations to you as to the situation that brought about this order?

MR. KRESEL: I object to the question in that form.

THE COURT: The objection is sustained. Let the prior question be repeated, unless it is withdrawn, Colonel Anderson.

A. I can not give the exact words, but I know it was in compliance with my orders that these records be brought up to date. The asignment was brought to me and I signed it on the first of November, 1921.

Q. 41. Could you state approximately how many documents you sign a day in your position?

MR. KRESEL: If the Court please, I object to that upon the ground that it is immaterial and irrelevant, and I do not understand that Colonel Anderson desires to use the fact of the number of documents as an excuse, if an excuse is needed by Colonel Miller, for the signing of these documents. I object to it upon the ground that it is immaterial and irrelevant.

THE COURT: The objection is sustained.

MR. ANDERSON: I note an exception.

Q. 42. You stated that you had a talk with Mr. Garvan about becoming director of The Chemical Foundation, as I understand it, in March, 1921; is that true?

A. Yes, sir.

Q. 43. It appears in the minutes of The Chemical Foundation introduced in evidence here, that on April

4, 1921, you were elected a director of The Chemical Foundation; and, thereafter, the minutes contained the following entry:

> "The President then stated that Mr. Thomas W. Miller, who had been elected director of the Corporation at the adjourned annual stockholders' meeting held on the 4th day of April, 1921, had communicated to him that owing to the demands on his time, he found it impossible to accept the honor of being a director of The Chemical Foundation, Incorporated, and for that reason had declined to qualify."

I have read from the minutes of the Board of Directors of the 21st day of June, 1921. Can you state whether you ever served either as director or as vice-president of The Chemical Foundation?

A. I did not qualify; therefore I could not serve.

Q. 44. Did you have any talk with Mr. Garvan on the subject after the one you mentioned in March?

A. Yes. I can not recall the exact date; but Mr. Garvan and I talked this over a number of times; and we both mutually agreed that because of the pressing official duties I could not accept or qualify.

MR. ANDERSON: The witness is with you, Mr. Kresel.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 45. Colonel, how long before your appointment as Alien Property Custodian—I mean your actual appointment—did you know that you were to be appointed?

A. About a week, Mr. Kresel.

XQ. 46. During that week did you undertake to inform yourself in any way about the duties of Alien Property Custodian or the history of that office?

A. Right there, I was sworn in the 16th of March, and the week is running back from the 16th of March. No, sir; I needed all the time I had, Mr. Kresel, to—

XQ. 46a. Well, you did not do it?

A. No, sir.

XQ. 47. Just let us stop there. Now, before you became Alien Property Custodian, of course, you had a general knowledge of what that office was?

A. I must confess, Mr. Kresel, I did not. Of all the wartime activities I know least about that.

XQ. 48. Well, you did not?

A. Did not.

XQ. 49. On the 16th of March, 1921, when you were sworn in, you surely had a general knowledge of what the office was that you were about to take?

A. As I—yes, a general knowledge, very general.

XQ. 50. That is all I am asking. At least you knew who had been your predecessor?

A. I had not had the pleasure of meeting him, but I knew who he was.

XQ. 51. And you knew that your immediate predecessor was not the first officer that occupied the office of Alien Property Custodian?

A. Yes.

XQ. 52. In other words, when you were sworn in as Alien Property Custodian you knew that Mr. A. Mitchell Palmer had occupied that office?

A. Yes.

XQ. 53. And that he had been preceded by Mr. Garvan, whom you were succeeding?

A. Yes.

XQ. 54. And you knew, did you not, that that office had been in existence since the fall of 1917?

A. Yes.

XQ. 55. When you entered office, you certainly then set about to inform yourself of what the office was, what the duties of the Alien Property Custodian were, what property he had in charge; in a general way to understand your job, so to speak, did you not?

A. Yes, sir, and I am still engaged in that practice.

XQ. 56. And I assume that one way that you had of informing yourself upon the subject was the records of the office?

A. Oh, yes.

XQ. 56a. And you certainly had access to those and made use of those in so far as you felt it necessary?

A. As the cases arose, when it was necessary.

XQ. 57. Well, it was not very long after you became Alien Property Custodian that you learned that your predecessor had made a report to Congres as to the activities of that office, is that not right?

A. The report that you refer to was February 27, 1919, by A. Mitchell Palmer?

XQ. 58. February 22nd.

A. February 22nd, yes, by A. Mitchell Palmer.

XQ. 59. You were familiar with that report?

A. Oh, I knew that—there was only one copy in the office, but I had access to it.

XQ. 60. And you certainly availed yourself of whatever information that document disclosed, did you not?

A. Well, Mr. Kresel, I wouldn't swear on the stand today that I read it through from cover to cover immediately.

XQ. 61. Oh, I understand that; but it was not very long after you became Alien Property Custodian that you did refer to that report, was it?

A. A trust company that has—

XQ. 62. Now just answer my question, please.

A. I won't say that I have—

XQ. 63. Very well, then, I will have to be satisfied with your answer; but please do not go off into something else. At all events, the time did arrive when you read that report; not from cover to cover, as you suggest; but you read it?

A. Well, my familiarity—

XQ. 64. No, no; now did you?

A. I did not rely on that report to familiarize—

XQ. 65. I did not ask you anything about relying on it. Now, if you will please pay attention to my question: I say, a time arrived when you did read that report, did there not?

A. Under oath here I will not say that I have read that report in its entirety, no.

XQ. 66. I did not ask you whether you had read it in its entirety.

A. I have refered to it, yes, sir, and still refer to it.

XQ. 67. All right. And when you referred to it, you could not have failed to observe that in that report there was a statement as to The Chemical Foundation; is that not right?

A. I did not read that, as far as I recollect, Mr. Kresel.

XQ. 68. You mean that as you sit there now on the witness stand you do not know that that report refers to The Chemical Foundation?

A. Why, naturally it does, because that is one of the trusts in the office—

XQ. 69. Now, all right; it does.

A. (continued) Of fifty thousand.

XQ. 70. It refers to the organization of The Chemical Foundation, doesn't it?

A. I—

XQ. 71. Doesn't it?

A. I presume it does.

XQ. 72. It refers to the sale of the patents here in question to The Chemical Foundation, does it not?

A. I presume it does.

XQ. 73. It refers to the price paid for the patents, does it not?

A. I presume it does.

XQ. 74. It refers to the conditions of its charter, does it not?

A. I presume it does.

XQ. 75. Well now, among the records of the Alien Property Custodian's office when you assumed charge in March, 1921, there were copies of the assignments that had been made by your predecessor to The Chemical Foundation, were there not?

A. No, Mr. Kresel. I had to go to the Patent Office for those.

XQ. 76. There were not?

A. There were not.

XQ. 77. That is your answer?

A. To the best of my knowledge and belief.

XQ. 78. You had a search made?

A. Yes, sir.

XQ. 79. And could not find it?

A. Yes, sir.

XQ. 80. When did you institute the search?

A. I have no recollection, Mr. Kresel.

XQ. 81. Well, I am not pinning you down to a specific date. What month? What year?

A. I really can't answer that with any degree of certainty.

XQ. 82. How soon after you became Alien Property Custodian?

A. I can not answer that with any degree of certainty.

XQ. 83. Well, approximately?

A. I know this: that when the time came—

XQ. 84. No, no; now, please. Approximately when was it that you instituted a search for these assignments and could not find them?

A. I can not give you any approximate date.

XQ. 85. Was it shortly after you became Alien Property Custodian?

A. Why, Mr. Kresel, I really don't know.

XQ. 86. Was it before this suit was instituted?

A. Oh, it must have been before that; it must have been.

XQ. 87. You know this suit was instituted in September or October of last year?

A. Yes.

XQ. 88. So it was before that, anyway?

A. Oh, yes, certainly.

XQ. 89. Now, did you find any records in your office with reference to the transaction between the Custodian and The Chemical Foundation?

A. Oh, yes; there were records there, Mr. Kresel.

XQ. 90. Surely records from which you could learn and did learn what the transaction was that had taken place?

A. My general information—my information on the transaction was more of a general character, that I arrived at from discussions with friends of mine who were interested in it.

XQ. 91. I do not want to go into that, Colonel. You did learn what the amount of money was that had been paid to the Alien Property Custodian by The Chemical Foundation?

A. Yes, that was a matter of common knowledge. I knew that.

XQ. 92. Well, quite aside from being common knowledge, do you mean that your records, the Alien Property Custodian's records, did not show it?

A. Well, they must show it, Mr. Kresel.

XQ. 93. Did they not show it?

A. Well, I am not going to say on the stand under oath that I personally looked at the records that showed it.

XQ. 94. I did not ask you whether you looked.

I am trying to find out what you, as Alien Property Custodian, know about the records of your own office.

A. I know the records must show that a quarter of a million dollars was paid for the patents.

XQ. 95. Don't you know that they do show exactly what was paid?

A. I cannot qualify my answer any more than I have, Mr. Kresel.

XQ. 96. The best you will do is that they must show; is that it?

A. Yes.

XQ. 97. And that information was available to you the minute you put your foot into the office of Alien Property Custodian, was it not?

A. Together with information—

XQ. 98. Wasn't it?

A. (continuing) —on fifty thousand other matters.

XQ. 99. Well, wasn't it?

A. Yes.

XQ. 100. When you went into the office of Alien Property Custodian on March 16th—I think you said that was the date?

A. Yes.

XQ. 101. (continuing) 1921, you knew that Mr. Garvan was the President of The Chemical Foundation, did you not?

A. Oh, I knew that.

XQ. 102. You knew at that time that when the transaction between The Chemical Foundation and the Alien Property Custodian took place involving the sale of these patents Mr. Garvan had been the Alien Property Custodian?

A. Yes, sir.

XQ. 103. You say that you knew the amount of money that had been paid, whether from the records or from general conversation?

A. Yes, sir.

XQ. 107. You knew that the patents that were sold to The Chemical Foundation were German patents that had been seized by the Alien Property Custodian?

A. Yes, sir.

XQ. 108. You knew when you became Alien Property Custodian that the sale of the patents to The Chemical Foundation had not been a sale at public auction?

A. Yes, sir.

XQ. 109. You knew, therefore, that it had been at a private sale?

A. Yes, sir.

XQ. 110. You knew, did you not, that in order to have a private sale, there had to be an Executive order?

A. If the property was valued at over $10,000.

XQ. 111. And, of course, you knew that this property was valued at more than $10,000?

A. Yes.

XQ. 112. You knew that The Chemical Foundation was issuing licenses on these patents that had been transferred to it?

A. I knew that, Mr. Kresel, when the first transaction of that character came to my attention after taking office.

XQ. 113. How soon after taking office was that?

A. This Norma Company transaction.

XQ. 114. That was in April?

A. Yes.

XQ. 115. That was only about a month after you became Alien Property Custodian?

A. Yes.

XQ. 116. Yon knew when you took office who the voting trustees of the stock of The Chemical Foundation were?

A. I know I did not, Mr. Kresel.

XQ. 117. Did not Mr. Garvan in his conversation with you on the 31st of March tell you that Judge Ingraham and Mr. Bannard and Mr. Cleveland Dodge and two others whose names I do not now recall were the voting trustees?

A. Yes, he certainly did. But that was not when I took office. That was fifteen days later. You asked me if I knew when I took office.

XQ. 118. All right. Fifteen days later.

A. I want to be specific as long as you want me to be.

XQ. 119. Fifteen days later you knew that?

A. Yes.

XQ. 120. But up to the time of the talk with Mr. Garvan on the 31st of March, you had not read the charter of The Chemical Foundation; that is your statement?

A. No, sir.

XQ. 121. Nor had you read it prior to the execution by you of this assignment of April 26th?

A. No, sir.

XQ. 122. I want to take you back for a minute to your conversation with Mr. Garvan on the 31st of March, 1921. As I understand it, that was the first time you met Mr. Garvan?

A. Yes, sir

XQ. 123. And he called on you at your office?

A. Yes, sir

XQ. 124. That is, the Alien Property Custodian's office?

A. We had a long distance telephone conversation previously, but just merely perfunctory.

XQ. 125. At that conversation, Mr. Garvan told you in some detail of his connection with The Chemical Foundation, did he not?

A. Oh, yes.

(No Q. 126.)

XQ. 127. He told you the purposes of the Foundation?

A. In a general way; yes, sir; and brought me some very interesting books to read.

XQ. 128. Brought you some books to read, but not the charter.

A. I can not recollect, Mr. Kresel, whether in these pamphlets there might have been the charter.

XQ. 129. He told, did he not, that The Chemical Foundation had been organized with the assistance and co-operation of the chemical industry?

A. Yes, I understood that, of course.

XQ. 130. He told you, did he not, that the reason for putting these patents in the hands of a corporation like The Chemical Foundation was, whether true or no, in order that they might not get back to the Germans?

A. Now, Mr. Kresel, I can not swear to these exact words.

XQ. 131. Of course not; substantially that?

A. I know the general outline and I had no hesitancy in saying a while ago that I gave my acquiescense.

XQ. 132. He told you substantially that any way, did he not? I am not asking you to repeat the exact words. Of course, you can not.

A. Yes, I would know that as I got into the matter.

XQ. 133. He told you, did he not, that The Chemical Foundation was issuing non-exclusive licenses?

A. Well, I do not know whether he told me, but I knew it.

XQ. 134. He told you, did he not, that the stockholders of The Chemical Foundation could in no event get more than 6 per cent return on their stock?

A. I do not know whether he told me that or not, but that is a well understood statement.

XQ. 135. Did he not tell you that The Chemical Foundation was issuing licenses to all American citizens at the same rates, at equal rates?

A. I knew that.

XQ. 136. Did he not tell you or did you not know at that time that all earnings of The Chemical Foundation over and above the 6 per cent return on the stock were to be used for the advancement of chemical science in the country?

A. I naturally knew that.

XQ. 137. You knew, did you not, that Mr. Choate, who had been active in the work of the Alien Property Custodian's office during the war, was general counsel of The Chemical Foundation?

A. No, I had not had the pleasure of knowing Mr. Choate up to this time we are discussing.

XQ. 138. I did not ask you whether you knew him personally.

A. No, I would say his name had not impressed itself on me at that time.

XQ. 139. Then you did not know that fact on the 31st of March?

A. No, I do not think I did.

XQ. 140. How soon after that did you learn that?

A. I really do not know.

XQ. 141. It was very shortly thereafter?

A. I must have known that he was the counsel, but I do not know the exact date.

XQ. 142. I mean at the time you were elected director, for instance, you certainly knew that?

A. I might very well have known it.

XQ. 143. Yes. All right.

A. On the other hand, I won't swear that I did.

XQ 144. Did you know that Mr. Hoguet, who had been patent attorney during the war for the Alien

Property Custodian, was patent attorney of The Chemical Foundation?

A. Well, my same answer with regard to Mr. Choate would apply to Mr. Hoguet.

XQ. 145. You think that, but not on the 31st of March?

A. If you want me to swear to it, I will say no, I do not think I did.

XQ. 146. Can you tell me when you learned that fact?

A. No, I can not give the approximate date.

XQ. 147. Was it shortly after you became Alien Property Custodian?

A. Naturally, the name Hoguet came to my attention in my dealings with The Chemical Foundation. I do not know whether I have ever had the pleasure of meeting him or not.

XQ. 148. You verified this Bill of Complaint, did you not?

A. Yes, sir

XQ. 149. You are an attorney, though you are not practising law, and when I speak of verifying the Complaint you know what I mean?

A. Yes.

XQ. 150. That is, you swore to this affidavit that is attached to the Complaint?

A. Yes, upon advice of counsel.

XQ. 151. What is that?

A. Upon advice of counsel, which in this instance is the Department of Justice.

XQ. 152. I see. I will come to that in just a minute. Before you verified this Complaint you received a letter from the President, did you not?

A. Yes, sir

XQ. 153. And that was on or about July 1, 1922?

A. Yes, sir.

XQ. 154. You have seen the copy of the letter which is attached to the Bill of Complaint, and there is no doubt that that is a correct copy?

A. Yes, sir; I have the original with me.

XQ. 155. Did you before bringing this suit make a demand upon The Chemical Foundation in accordance with the instructions contained in the President's letter to you?

A. I followed the instructions of the President.

XQ. 156. You did?

A. Through the—

XQ. 157. Well, you did. You made the demand, did you not?

A. I made the demand, yes.

XQ. 158. And The Chemical Foundation declined to comply with it?

A. Yes, sir.

XQ. 159. Do you remember when you made that demand?

A. One minute, I will give you the exact date.

XQ. 160. Well, it was July 8, 1922, and if my date is wrong you may correct me later.

A. All right.

Mr. Kresel: He won't stop to do that now.

Mr. Galloway: July 8th is right.

Mr. Kresel: July 8, 1922.

XQ. 161. You verified this Complaint on the blank day of September, 1922—I have it in my Bill. It was filed September 8, 1922, and, subject to correction, Colonel Miller, please assume that.

A. Yes, sir.

XQ. 162. Now reading to you from the letter of the President to you, the President says, after describing what the transaction had been:

> "On the face of such an action it became so apparent to me that an inquiry should be made."—

will you follow me, please?

A. Yes, I am (examining book).

XQ. 163. (continuing) —"that I asked for a report by the Department of Justice on the sale of this enemy property to The Chemical Foundation. It appears that the sale was made at so nearly a nominal sum that there is reason to believe that this Government has not faithfully observed the trust which was implied in the seizure of this property. The circumstances relating to the entire transaction are of such a character that full investigation becomes a public duty." Prior to your making the demand on The Chemical Foundation what investigation did you make regarding this transaction? When I say "you" I mean in your official capacity, of course.

A. I can not say, Mr. Kresel, that The Chemical Foundation was the subject of any particular investigation by me personally or by my office.

XQ. 164. That answers my question. Who did make an investigation, to your knowledge?

A. I can not answer that, outside of my own department.

XQ. 165. Then you do not know?

A. I do not know, Mr. Kresel, that—I do not believe that The Chemical Foundation Trust was the subject of any particular investigation by my office.

XQ. 166. Then you do not know that anybody made an investigation of this transaction between the Alien Property Custodian and The Chemical Foundation; is that your answer?

A. That is, not to my knowledge; but that would not mean that it had not occurred.

XQ. 167. That is all I am asking—to your knowledge. Do you know a man named C. C. Bennett?

A. No, I don't.

XQ. 168. Have you ever met Gaston B. Means?

A. I have met him occasionally, yes.

XQ. 169. He was brought to your office along about the time when this suit was brought, was he not?

A. No, sir.

XQ. 170. Or was it prior thereto?

A. I can give you—

XQ. 171. No.

A. I want to give you the date now that I knew him first.

XQ. 172. Yes, please.

A. In October, 1921, I think I first saw this man.

XQ. 173. October, 1921?

A. Yes.

XQ. 174. That was after you had become Alien Property Custodian?

A. Yes, sir.

XQ. 175. He was brought to your office?

A. He came there as an agent from the Department of Justice for some information which I—

XQ. 176. And was or was not that information in connection with The Chemical Foundation?

A. I must answer it this way: It was either The Chemical Foundation or the Bosch Magneto.

XQ. 177. Well, do you not know it was with reference to both?

A. When I swear to something, I want to be specific.

XQ. 178. Of course you do, Colonel.

A. But this man has talked to me in his official capacity as an agent of the Department of Justice about both those matters and I do not know which one came first. It was the first time I had met him.

XQ. 179. But he has in his official capacity as a representative of the Department of Justice talked to you at one time or another before the bringing of this suit with reference to the Alien Property Custodian and The Chemical Foundation?

A. And may I say there —

XQ. 180. Just say yes or no and then we will see whether you may say something more.

A. Yes.

XQ. 181. Before you received the President's letter on the first of July had you been consulted about it?

A. I had not been directly consulted.

XQ. 182. That is all. You did not know that the President was about to issue any such communication?

A. Do you mean on the 1st of July?

XQ. 183. Before the receipt of the letter?

A. Well, no, I did not know that the letter would arrive that day.

XQ. 184. Then you missed my point? Whether you knew that it would arrive that day or no, my question is did you know that the President was about to send you a communication of that sort?

A. No, I did not.

XQ. 185. Were you consulted about bringing this suit prior to the time that you were asked to verify the Bill of Complaint?

A. I was consulted about the advisability of taking some action, but not within the few days previous to July 1, 1922.

XQ. 106. I think you misunderstand me, Colonel. This suit was not instituted until the 8th of September, 1923.

A. Oh, I see.

XQ. 187. My question is whether prior to the date when you verified this Bill of Complaint you had been consulted about the bringing of this suit?

A. Well, my office, Mr. Kresel?

XQ. 188. No, I mean you.

A. Me personally?

XQ. 189. Yes.

A. Yes, I had been called to the Attorney General's office, I remember, for one conference after the demand had been refused by The Chemical Foundation.

XQ. 190. That is, after July 8th?

A. Yes, sir.

XQ. 191. And can you give me the date when you were called to the Attorney General's office?

A. It must have been some time between July 8th, and say, the middle of August. I can not give you the date. I know if I had my—

XQ. 192. Between July 8th and the middle of August?

A. I could give it if I had my memorandum.

XQ. 193. That is near enough. Of 1922?

A. Yes, sir.

XQ. 194. I am not going to ask you for any conversations; I am simply going to ask you to whom you talked there.

A. In conference, you mean?

XQ. 195. Yes.

A. The Attorney General of the United States, Colonel Henry W. Anderson, Special Assistant, Mr. Galloway, W. W. Wilson, and I don't want to miss any others, but there may have been some there.

XQ. 196. Mr. Wilson, whom you have just mentioned, is your present general counsel?

A. Yes, sir.

XQ. 197. That is, the general counsel of the Alien Property Custodian's office?

A. Yes, sir.

XQ. 198. At the time when this conference was had, did you know a suit was going to be brought against The Chemical Foundation?

A. Well, I had reason to know, Mr. Kresel—

XQ. 199. Well, did you or did you not?

A. Well, my natural assumption is after the President's letter that an action would be brought upon the refusal of the demand.

XQ. 200. Colonel, I do not want to fence with you about it.

A. If it will save time, I will say yes, then.

XQ. 200-a. That is all right, then. And did you know at that time—that is, at the time of this conference in the Attorney General's office that you would be asked to verify this Complaint?

A. Well, I presume that I would have something to do with it.

XQ. 201. I do not want you to presume.

A. No, I did not know I would have to sign it.

XQ. 201a. Is it not a fact, Colonel Miller, that not until the day when the bill was presented to you for signature, did you know that you would be asked to verify it?

A. I will answer in the affirmative.

XQ. 202. I knew you would. That is why I asked you. Now, when you verified this bill, of course you did not read it?

A. I read it. Yes, I read it, naturally.

XQ. 203. Of course, you would. You would not sign and swear to this sort of document without reading it. You remember the form of the verification, do you not?

A. Yes.

XQ. 204. You swear here that you have "read the foregoing Bill of Complaint and that the matters and things therein stated of which the defendant has knowledge are true and that the matters and things therein stated upon information and belief he believes to be true."

A. But may I say there, as you know, the Department of Justice is the counsel for my office.

XQ. 205. Oh, yes, I know that.

A. And you know the system in preparing suits or answers to suits.

XQ. 206. I do not know and I think my knowledge of it is entirely immaterial. When you read the Bill, it was already printed the way it now appears, was it not?

A. Yes, I saw the copy in the printer's dummy.

XQ. 207. Did you suggest or make any corrections therein before verifying it?

A. No.

XQ. 208. Have you a copy of this Bill before you? If not I will let you have one.

A. The Judge has given me one.

XQ. 209. I direct your attention to page 15 of the Bill, the fifteenth paragraph. You say as follows:

> "In the administration of said 'Trading with the Enemy Act' as amended by the Act approved March 28, 1918, aforesaid, it was determined by the Alien Property Custodian and others charged with the administration thereof under his direction and by the Attorney General of the United States, that said 'Trading with the Enemy Act,' as amended, did not authorize the seizure and sequestration or sale or other disposition of enemy-owned patents, copyrights, trade-marks, labels, and similar rights or applications therefor, or contracts with respect thereto, mentioned in the Ninth Paragraph hereof."

In the first place, I direct your attention to the fact that you are making that allegation not upon information and belief, but upon knowledge. You notice that, do you not?

A. Yes.

XQ. 210. Will you please tell me how you knew that the Alien Property Custodian and others charged with the administration of his office had held the view, as you say, and had determined that the Trading with the Enemy Act did not authorize the seizure of patents?

A. Well, I recall the debates leading up to the so-called patent amendment which was not put into the alien property act, I think, until down in October or November, 1918.

XQ. 211. What debates; where?

A. Either debates in Congress or hearings before Congressional committees. I generally understood—

XQ. 212. Wait a minute. Let us get through with one thing at a time.

A. Good.

XQ. 213. What committees were there any debates before upon this question?

A. I do not know the specific names of the committees.

XQ. 214. Which Congress was it that you heard debates in with reference to this question?

A. I was not able to hear debates in that Congress. I was in France then.

XQ. 215. Then I want to know—I will repeat my original question—I want to know what knowledge you had that the Alien Property Custodian and others charged with the administration of the act had determined that under the act as it stood, with the amendment of March 28, 1918, the seizure of patents was not authorized?

A. Well, I knew, Mr. Kresel, that the so-called patent amendment had not been put into the alien property act until the Fall of 1918, which would enable patents and trade-marks to be sold the same as other alien property was sold.

XQ. 216. Colonel, I quite understand that, but you are missing my question.

A. I do not want to.

XQ. 217. Of course, you don't. I did not intimate that you do. I want to repeat the question. What fact was it that you had, which enabled you to state positively, and not upon information and belief, that the Alien Property Custodian and others charged with the administration of this act had determined that the act did not permit the seizure of patents?

A. Only my general information with regard to legislation.

XQ. 218. That is, all you knew about it was that it was not until the Fall of 1918 that a specific amendment authorizing the seizure of the patents was passed, is that it?

A. Yes; and I of course had access to my records, where they were hearings that my predecessors had taken part in. I can not specifically say, Mr. Kresel, when and how I learned it; but I knew that an amendment was necessary to permit the sale of patents.

XQ. 219. What records did you see before you verified this Bill?

A. I am unable to answer specifically what records.

XQ. 220. Were there any records that you saw from which you learned that the Alien Property Custodian had so determined? And if so, what are the records?

A. I am unable at this time to answer that in detail such as you request.

XQ. 221. You say that the Alien Property Custodian and others charged with the administration of the act had so determined. Who were the others?

A. I presume his—

XQ. 222. Not what you presume, Colonel. Please let us not presume.

A. Well, the others were undoubtedly his Bureau chiefs under him.

XQ. 223. Who were they?

A. I do not know the exact persons.

XQ. 224. Did you know when you verified the Bill?

A. I did not know the names of the personnel, no.

XQ. 225. I direct your attention to Paragraph 16th of the Bill, on Page 17. Before that allegation the Bill sets forth that Mr. Bradley, representing the Alien Property Custodian, had appeared before a Congressional Committee and had given certain testimony. You are familiar with that?

A. Yes.

XQ. 226. In the sixteenth paragraph you say this:

> "Acting upon the faith of the representations aforesaid and solely for the purposes aforesaid, Congress did, by an Act entitled 'An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and prior fiscal years on account of war expenses and for other purposes,' approved November fourth, 1918, amend sub-section (c) of section 7," and so on.

How did you know so that you could swear upon knowledge, that acting upon the faith of the representations made by Mr. Bradley and solely upon that Congress passed that amendment?

A. Well, Congressional committees undoubtedly—Congressional committees follow the recommendations of the Division or Bureau Chief or his subordinates involved when legislation is before them affecting those offices.

XQ. 227. Is that all you want to say about that?

A. Yes. I am giving it to you as I understand it.

XQ. 228. Well, do you think or did you know that every Congressman that voted for that amendment did so relying solely upon what Mr. Bradley had said to the committee?

A. No, I did not know that.

XQ. 229. When this was presented to you, you could not have failed to observe that statement. Did you ask any question about that to satisfy yourself whether that was true?

A. No, not that I recollect.

XQ. 230. I direct your attention to page nineteen of the Bill, Paragraph Eighteenth:

> "Complainant is informed and believes"

Now, you see here you are stating this upon information and belief.

> "and therefore avers that for several years prior to the declarations of war aforesaid various persons, firms, and corporations engaged in the production, manufacture, and sale of dyes, and the ingredients thereof, and of kindred or similar chemical materials and products, had been engaged in the formation and development of plans for the complete monopolization and control of the dyestuffs and organic chemical industry in the United States."

First, I want you to tell me who were the persons, firms and corporations that had thus been engaged in the formation and development of plans for the monopolization of the dyestuffs industry?

A. I can not give all the names that have been brought to my attention. Therefore, I do not care to name any of them.

XQ. 231. Did you know that you verified in this Bill the names of the various persons, firms and corporations engaged in that monopoly?

A. I can't say, Mr. Kresel, that I could recite them. I know that—

XQ. 232. Did you know who they were?

A. Well, answering generally, no.

XQ. 233. Of course, if you had known, you would have insisted upon putting in the names, would you not?

A. I do not know whether I would or not, Mr. Kresel.

XQ. 234. You realize that that would have been the proper thing to do, don't you?

A. Well, in—

XQ. 234. (Continued) And that is the reason why you hesitate to mention even any names?

A. Any advice as to how this Bill should be drawn had better be given to the Department of Justice. They drew it.

XQ. 235. Who to your knowledge had a complete monopolization and control of the dyestuffs and organic chemical industry in the United States, as you allege here?

Mr. Anderson: I beg your pardon. I know counsel does not wish to misstate the allegations; but he does not state on his knowledge; he states on information and belief.

Mr. Kresel: I withdraw the question.

XQ. 236. What information did you have as to the persons who had a complete monopolization and control of the dyestuffs and organic chemical industry?

A. The only information that I had personally—

XQ. 237. Not what you have now, what you had when you verified the Bill.

A. No, had then.

XQ. 237. (Continued) Yes.

A.—had come from my interest and association personally with those who were interested in a dye embargo.

XQ. 238. That does not give me the answer. Who were they?

A. I said, Mr. Kresel, I could not commence to name all these corporations. Therefore, I do not—will not single one out or two out to talk about them.

XQ. 239. And you said you did not know at the time. You want to stand by that answer, don't you?

A. That I did not know any of their names?

XQ. 240. Yes.

A. Oh, I certainly knew the names of some of the chemical corporations.

XQ. 241. I am not asking you what you know about them.

A. Well, I knew them. I could not have been associated in a personal capacity, as I was at Washington without knowing.

XQ. 242. Colonel, I did not ask you that. You are missing my question. I ask you whether, when you verified this Bill, you knew the names of the persons, firms and corporations who were engaged in the production, manufacture and sale of dyes and who had been engaged in the formation and development of plans for the monopolization of that industry?

A. No, I did not know them in their entirety.

XQ. 243. I will have to ask you then, Colonel, though you seem to hesitate to give them, to tell me such names as you did know?

A. Well, I will tell you, Mr. Kresel, I would prefer not to name any individual corporations. If I have not satisfied you with my answers—it is not because I care to evade anything.

XQ. 244. I know, Colonel, and please do not think that I am intimating in the slightest degree that you are evading anything.

A. You know—

XQ. 245. I know that.

A. You know very well that I know a good many sides of this question.

XQ. 246. No, I do not.

A. I thought I—

XQ. 247. I plead complete ignorance.

A. Well then, we do not know each other as well as I thought we did.

XQ. 248. But that is neither here nor there. My question is this: Did you or did you not, when you verified this Bill of Complaint, know who were the various persons, firms and corporations that had been engaged in monopolizing the dyestuffs industry of the country?

A. Now, how is this? Not specifically.

XQ. 249. My question stands as I put it.

A. Well then, let it go in as "No."

XQ. 250. "No," that is an answer. Now I direct your attention to page 23 of the Bill, Paragraph Twenty-Third. You say as follows:

> "Complainant is informed and believes and therefore avers that in pursuance of said plan, scheme, and conspiracy the persons, firms, corporations, and associations aforesaid, parties thereto, about or soon after June, 1918, through their duly authorized representatives, and especially through one Morris R. Poucher, representing and acting for said conspirators," etc.

You have named Morris R. Poucher. I want to know who the other duly authorized representatives are that you speak of in that paragraph?

A. I can not give them to you, Mr. Kresel.

XQ. 251. Did you know who they were at the time when you signed and verified this Bill?

A. No, sir.

XQ. 252. I direct your attention to Paragraph Twenty-Fourth of your Bill, page 25: You say, first sentence at the top of page 25:

> "Said parties thereupon arranged with the Alien Property Custodian immediately following the enactment of said amendment approved November 4, 1918, of the 'Trading with the Enemy Act' that a patent attorney who was then engaged by and represented the E. I. duPont de Nemours & Co. and another patent attorney who was then engaged by and represented the National Aniline and Chemical Company, together with the necessary assistants who were employed by the said two corporations." and so on.

Now I want to know who were the parties that thereupon arranged with the Alien Property Custodian, as you say there, to do the things that you say?

A. I do not know who they were.

XQ. 253. Did you know at the time when you verified this Bill?

A. I knew from the advice given to me by the Department of Justice officials who prepared this Bill, that they had discovered evidence in the files which would substantiate them in putting this in the Bill.

Mr. Kresel: I ask that that answer be stricken out, your Honor, as not responsive.

The Court: Motion granted.

XQ. 254. Did you know who were the parties that made this arrangement that you specify here in the Bill?

A. No, sir.

XQ. 255. Did you know at the time when you verified the Bill?

A. Same answer.

XQ. 256. "No, sir," all right. I direct your attention to page 27 of the Bill. In the Twenty-Fifth paragraph thereof you say as follows:

> "Further carrying out and in pursuance of said scheme or conspiracy, the persons, firms, corporations, and associations aforesaid, acting through their common representative or representatives as aforesaid, procured and induced the said Francis P. Garvan,"

And so on, to do certain things. Now, you have already testified that you did not know who the persons, firms, corporations and associations were. I now ask you to say whether when you signed and verified this Bill, you knew who the common representative or representatives were that you speak of there?

A. No, sir.

XQ. 257. Now I turn to page 29 of the Bill, twenty-eighth paragraph, where you say:

> "In the further carrying out of said scheme or conspiracy, the parties aforesaid engaged in the organization of said defendant corporation for the purposes aforesaid and in order to prevent and avoid any competitive bidding for said patents and other rights when sold, undertook to induce, and did in fact induce substantially all of the persons, firms, and corporations engaged in said dyestuffs and chemical industry who might become bidders for said patents, copyrights,"

and so on, to do certain things. I want to know who were all of the persons, firms and corporations, substantially all as you say, who were in the dyestuffs and chemical industry.

A. I can not name them.

XQ. 258. Did you know at the time when you verified the Bill?

A. Not in detail, no.

XQ. 259. Did you know any of them?

A. I can not give their names Mr. Kresel.

XQ. 260. Please turn to page 39 of the Bill, paragraph Thirty-Four. I want you to follow me closely on this, if you will:

> "Complainant is informed, believes, and therefore avers that said orders of said Frank L. Polk—" you know what orders are being spoken of there?

A. Yes.

> XQ. 261. "—were in fact prepared by or at the instance of the said defendant, The Chemical Foundation, Incorporated, and at the instance and procurement of the persons, firms, and corporations in control of said dyestuffs and chemical industry, in pursuance of the scheme and con-

> spiracy as hereinbefore set forth; that necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of said patents and other rights mentioned in said orders at private sale were not stated or disclosed to said Frank L. Polk, but were withheld from him and suppressed."

What facts with regard to the seizure and proposed and pretended sale and disposition of this property did you know when you verified this Bill had not been stated or disclosed to Frank L. Polk or had been withheld from him and suppressed?

A. The evidence as collected by the Department of Justice officials and brought to me in the Bill was the only information that I had.

XQ. 262. Colonel, that does not answer my question, if you will permit me to say so. I want to know what facts you knew of and had been informed of which had been suppressed and withheld from Mr. Polk.

> THE COURT: I understood the witness in his answer to say that the only information he had on that matter was what was disclosed by the Bill and the exhibits which were presented to him for execution. Does that not answer your question?
>
> XQ. 263. Was that your answer?
>
> A. Yes, that is just as I said it.
>
> XQ. 264. You go on and say:

> "that other facts in connection therewith, and
> mission, charged with issuing licenses under the
> especially the attitude of the Federal Trade Com-
> enemy-owned patents and other rights aforesaid,
> with respect thereto, were misstated and misrepresented to said Frank L. Polk."

What facts did you know, when you verified this Bill, had been misstated and misrepresented to Mr. Polk?

A. The same answer that I gave to the previous question.

XQ. 264. Colonel, that does not satisfy me on this point. You are making a serious charge here. You are making a charge that somebody, whom you have not named yet, had made a deliberate misrepresentation and had deliberately misstated facts to Mr. Polk. Surely, before you verified this Bill, you must have asked what there was upon which to adduce such a statement. Now please tell me what it was?

A. I can not give you anything on that point in answer to your question. But you must know—and I do not know whether you will strike it out of the answer or not,—the way—

XQ. 265. Pardon me a minute.

Mr. Kresel: I move to have stricken out from the answer the statement beginning with the words "but you must know." He answers that he can not give the information. That satisfies me.

A. And does the previous answer stay in there, that I desire to give the same answer to the previous question?

XQ. 266. Oh, yes; you have already given it.

A. All right.

XQ. 267. You say, "that his signature," speaking of Mr. Polk,

> "to said order and the issuance thereof by him were procured as aforesaid through such suppression and misrepresentation of the facts, which, if the same had been known by said Frank L. Polk, would have prevented his signing and issuing said orders."

Did you ever talk to Mr. Frank L. Polk upon this subject?

A. Not about this subject.

XQ. 268. Did you, when you signed and verified this Bill, know that if he had known certain facts, that you now can not tell me what they were, he would not have signed this order?

A. I was led to believe so by my counsel, the agents of the Department of Justice, who had interviewed Mr. Polk.

XQ. 269. And now that your recollection is refreshed, what is it that you were told by your counsel, the Department of Justice, had been misrepresented to Mr. Polk?

A. My recollection is not refreshed. The Department of Justice, as I have said all along through my answers, were my counsel and my agent in these matters; and they interviewed Mr. Polk and they brought this testimony, they brought in facts which they put in this Bill, which I signed.

XQ. 270. Well, what was it that they told you they had learned from Mr. Polk indicating that things had been misrepresented to him?

A. Specifically I can not answer that, Mr. Kresel.

XQ. 271. I wish you to turn now to paragraph Thirty-fifth of the Bill wherein you say at page 40 that you were informed and believe, and therefore aver that the Executive Order (this is the Executive Order which was signed by the President) "was prepared by or at the instance or procurement" of the defendant, The Chemical Foundation, Incorporated, and "at the instance or procurement of said persons, firms, and corporations in control of said dyestuffs and chemical industry and parties to said scheme or conspiracy hereinbefore set forth; that the facts hereinbefore set forth and other facts necessary and essential in relation to said seizure and proposed and pretended sale of said patents, copyrights, and other rights, and rights arising out of or incident thereto, (and I skip the next sentence because it has been amended) were not disclosed to the President at the time of or before the signing of said Executive Order and that the same was signed and issued upon an entire misunderstanding or mistake of facts."

Now, surely, when you were signing this Bill, you realized the importance of that allegation did you not?

A. I can not say that I did above any others.

XQ. 272. Didn't you know when you were verifying this Bill that you were alleging that the President of the United States had made an Executive Order and that he did not know the facts upon which he was acting?

A. If you want to read that into the language, it is your privilege.

XQ. 273. Well, isn't that the language? Don't you so read it?

A. I have no comment to make on that.

XQ. 274. With that language before you, you surely realize the importance of it; and now I ask you to state what you knew, what facts there were that had not been disclosed to the President at the time of the signing of this order?

A. No facts other than what my agents, the Department of Justice, had brought into this bill or to this case.

XQ. 275. But what were they?

A. I can not discuss them, Mr. Kresel, because I am not familiar with them at this time.

XQ. 274. Did you know them when you signed the Bill?

A. Only in a general way, as I have indicated to you, when I signed the Bill.

XQ. 275. The fact is, Colonel, that this Bill was presented to you by the Department of Justice, you were asked to sign it; you relied upon the Department of Justice as your counsel who told you it was all right; and you signed it; isn't that so?

A. That is what I have said all along substantially; and, acting upon the original letter of the President, who is my chief.

XQ. 276. You make a charge in this Bill of conspiracy and monopoly. Do you want to add anything to what you have already testified which in your belief, knowledge or imagination even will go to substantiate the charge of conspiracy or monopoly?

A. I have no other evidence to offer than what the Department of Justice offers.

XQ. 277. Who was it that presented this Bill to you from the Department of Justice?

A. Either Colonel Henry W. Anderson or Herman J. Galloway.

XQ. 278. You testified before a Committee of Congress called the Winslow Committee, do you remember?

A. Yes, sir.

XQ. 279. That was in 1922?

A. Well, it ran over.

XQ. 280. When was it?

A. In December, 1922 and January, 1923.

MR. ANDERSON: If your Honor please, I do not wish to interrupt the cross-examination of this witness, but I only want to say that when taking him outside of the cross-examination, counsel makes him his own witness. I have no objection on any other grounds.

XQ. 281. Colonel, I understand you want to get away early this morning?

A. Yes, sir.

XQ. 282. I want to be as obliging as I can. If it is important for you to catch your train, I will stop now, though I am not through with you and I doubt whether I can get through with you in less than a half hour. I will do anything the Court and counsel desire me to do about it.

A. Unfortunately, Mr. Kresel, it is absolutely mandatory for me to catch a train in thirty-five minutes. I am very loath to leave at this present moment, but I suggest, if you care to, that you go ahead with me until I really have to leave.

XQ. 283. I will do anything that you want?

A. Thank you.

XQ. 284. Will you indicate to me when you desire to leave and I will stop instantly?

A. Thank you for your courtesy.

XQ. 285. Before this Committee, the Committee on Interstate and Foreign Commerce of the House of Representatives, Sixty-seventh Congress, Fourth Session on H. R. 13,496, supplemental to the Trading with the Enemy Act, you appeared as a witness on the 21st day of December, 1922, according to this record?

XQ. 285. (Continued) At page 32, speaking of the capacity in which you consider yourself to be as Alien Property Custodian, you said:

> "I merely am a stakeholder, and last June, previous to July 2, 1922, as trustee for the enemy, I brought a great number of suits," etc.

The point I wanted to direct your attention to is that you testify that you were trustee for the enemy; that is correct, is it not?

A. No.

> Mr. Anderson: Just a minute now. If your Honor please, I think I will note an objection to that question on the ground that it asks for the construction of the act. Otherwise I do not object to it, but I think the question as to what the wit-

ness may have thought is immaterial. It is merely a question of what his position was.

The Court: I am inclined to think I will not take time to hear discussion now.

Mr. Anderson: No, I did not mean to enter into any.

The Court: We will not discuss it at this time, whether the objection is well taken or not, but at some later stage.

The Witness: I would like to answer the question if I am not prevented from so doing.

XQ. 286. No, sir; you have answered the question I have asked you, whether you so testified, and you said you did, did you not?

A. You want no elaboration?

XQ. 287. No, but you did so testify?

A. Can't a witness have some—

The Court: No, Colonel, you are consuming time. Your counsel may bring it out on re-direct if necessary.

The Witnss: Because I am the author of that Act.

XQ. 288. Pardon me?

A. I am proud of the fact that I am the author of that Act. That is, I had a good deal to do with drawing it up.

XQ. 289. I do not know what act you are referring to, but please do not let us go into that.

A. All right. The one on the third page there, that you just referred to.

XQ. 290. As long as you insist on that I will let you do it. You are speaking now of the Winslow Bill?

A. Yes, sir.

XQ. 291. You mean the bill that was passed by Congress authorizing the Alien Property Custodian to return to the Germans all property that you as Alien Property Custodian held up to the sum of $10,000?

A. Yes, sir.

Mr. Anderson: I do not admit that construction of the Winslow Bill. I think while you can identify the bill or the witness may say if he wishes that he was the author of it, the meaning of the bill should not be put upon the record by counsel. I therefore object to that question.

The Witness: Could I, then, say this to Mr. Kresel—

XQ. 292. No, we will get along, Colonel, if you will be the witness and let me be the lawyer. Whatever the construction of the act is, and I am not asking you to construe it, that is the act you say you were the author of?

A. Well, I was stating it a little strongly I recommend it, and for very good reasons, having an interest in the American claims against the Germans. I want that to go on the record, because if you read the testimony you will see what I said in there. I am unwilling to have it go in just briefly on the one or two points you want to bring out.

XQ. 293. Colonel, you say that is the bill you recommended. We will take it that way.

A. Yes.

XQ. 294. And as long as you have insisted upon having that in the record, I am sure you will say, because you so testified before the committee, that that bill was an administration measure, will you not?

Mr. Anderson: What is that?

XQ. 395. Wasn't it?

Mr. Anderson: If your Honor please, I do not think that is a proper question here and I do not think it is one we should go into.

Mr. Kresel: I am not going into it, but your

Honor sees that he insisted on having it in the record.

Mr. Anderson: An Act of Congress is simply an Act of Congress; it is not an administration act or anything else.

The Court: Colonel, do I recall correctly that part of your Bill in which you allege that Congress passed an act upon representations made to it solely for that purpose by Mr. Bradley?

Mr. Anderson: Yes, sir.

The Court: How can you reconcile your present objection with that allegation?

Mr. Anderson: In this way—that if counsel wish to have this witness say that he recommended the thing or that he was the only witness who appeared, I have not the slightest objection; but what was an administration measure is a conclusion, and the administration consists of the entire Executive part of the Government, and therefore I have never averred and would not aver that the thing was an administration measure.

The Court: And therefore that calls for a conclusion of fact?

Mr. Anderson: It calls for a conclusion, and in addition to that calls for the action of the entire Executive Department. Any specific act of a specific person is a fact.

The Court: There can be such a thing, I take it, as an administrative measure, can there not, Colonel Anderson?

Mr. Anderson: I am frank to confess, your Honor, that I do not know that I could conceive of that description in America. It would be in England, because there it is the act of Parliament. But here the only person who can speak for an administration, whatever you may call that, is the President, perhaps in his official communications to Congress; and therefore he, not being a member of Congress, could not state that. A bill is introduced by a Senator or Congressman and passed as an act of Congress. There might be some definite interpretation of that in England, but not in this country.

Mr. Kresel: This witness's time is short, your Honor, and all I am asking him is this:

XQ. 296. Did you not testify before this committee when you were urging the passing of this bill which you say you were recommending, that it was not only you that was urging it but that it was an administration.

A. Yes, sir.

XQ. 297. Surely you are not ashamed of that, are you?

A. I am certainly not ashamed of it.

XQ. 298. Then I will come back to my original question. And at page 33 of your testimony before this committee you said, did you not: "Why, as trustee for the aliens, I want, of course, to see all their rights preserved"?

A. I conceived that to be my duty, yes.

XQ. 299. That is all right, I am not quarreling with your duty, I just want to get on the record what you said. And at page 34 you said this: "I have already indicated to you my personal view as to the situation that might be existing in connection with the Government suit against the Chemical Foundation, but as I have said I am a trustee for these people and the guardian of their property." "These people" were the Germans?

A. Austrians and Hungarians, whose property was still in my possession. I wish you would read that portion which relates to the American claims, if you have time to do it.

XQ. 300. I do not know what portion you refer to, but I shall not object to Colonel Anderson reading in anything he wishes of what you said, because I realize absolutely you are truthful about it.

A. I think the Bill is a life saver for the American Claims situation.

XQ. 301. Yes, I quite understand that that is your belief. At page 74 before this committee you testified as follows: "Just at that point, Mr. Chairman, it might be interesting for me to say to the committee that as the common law trustee for the enemy interests in all this property I have, since I took over the office, contemplated bringing a friendly action in the courts, as trustee for these people, to determine whether the compensation of $100,000 and other considerations paid for these patents, was really a sufficient sum of money, but due to the whole patent situation I have not done so. To my mind it would be found that the compensation paid at the time was inadequate."

Mr. Anderson: Would you mind saying to what patents that refers?

Mr. Kresel: Yes, I am coming to that.

XQ. 301. (Continued) There you were referring to the fifty-seven hundred odd patents that the Alien Property Custodian seized and conveyed to the War and Navy Departments, or as to which he gave a free license to the War and Navy Departments and released the Government from all claims for damages by reason of the infringement of those patents during the war upon the payment of $100,000 by the United States Government to the Alien Property Custodian?

Mr. Anderson: If your Honor please, I am constrained to object to that question as an effort to state the contents, meaning and intent of documents which are not in evidence in this case, and as to which the documents themselves are the best evidence. Any facts in connection with that matter which are deemed pertinent by the Court I should not object to, but I must respectfully urge an objection to the testimony as to documents, of that very far-reaching character, of which I personally or as counsel have no knowledge. I do not think he should undertake to state the legal effect, the number of patents, or what was done about them, without producing the record.

THE WITNESS: You do not want me to answer that?

MR. ANDERSON: No, not yet.

MR. KRESEL: No, because the Court has not ruled yet. If your Honor please, I am not asking the witness for the contents, I am simply asking him to identify the transaction.

THE COURT: I understand that you are not attempting to put a construction on the documents but merely use the language that you did to indicate the transaction referred to and identify it.

MR. KRESEL: Yes, sir, all I ask him is to identify it.

THE COURT: As I construe the question to mean that and that only, I will overrule the objection and let you discuss it at a later time.

MR. ANDERSON: And permit me to note an exception at this time.

THE COURT: Yes.

A. Those are my words, and it is bearing out my policy to keep this fund as large as possible as a guarantee against the final settlement of American claims against Germany. That was one of my actuating reasons.

Mr. Kresel: I ask that all the answer be stricken out except that portion of it wherein the witness says that was his language.

The Court: Strike out all of the answer after the words, "Those are my words."

XQ. 302. Colonel, all I am asking is whether what you were referring to there by that language is this patent transaction between the Alien Property Custodian and the War and Navy Departments?

A. Yes, sir.

XQ. 303. It had nothing to do with the Chemical Foundation patents?

A. No, sir.

Mr. Anderson: I would like to get the record straight on that, because at some time this might become a question. I understand that counsel does not rely upon the statement upon the record or any answer of the witness in this matter as any evidence of the transaction between the War Department and the Alien Property Custodian, the assignment of the patents or the number of patents, or any matter of that kind. In other words, if that is relied upon as evidence, I respectfully ask that the best evidence be produced.

Mr. Kresel: The record, your Honor, will speak for itself. Whatever its effect is, the Court will give it that effect.

Mr. Anderson: Perhaps I misunderstood the ruling.

The Court: I understand your position to be, Colonel Anderson, that if the purpose of the inquiry was other than to identify the subject matter of his statement, you object to it?

Mr. Anderson: Very much, sir.

The Court: I do not understand that it is offered to prove the fact, but only as identifying the subject matter of his statement before the committee.

Mr. Anderson: I say any evidence of the transfer of patents or the consideration therefor, or any release of claims against the War Department or otherwise, any other matter relating to that which was in writing, we have to ask for the best evidence.

Mr. Kresel: Certainly. I will produce it in due time.

Mr. Anderson: Very well.

Mr. Kresel: I will produce it.

XQ. 304. At page 15 of this record before the Winslow Committee you put into the record a statement which I shall show you, of the transfer of patents by the Alien Property Custodian to the United States, licenses issued on patents by the Custodian to the United States, re-transfers, etc., and now I will show it to you and ask you whether that is the statement, and whether that is correct (handing witness book)?

A. That is correct.

XQ. 305. Please read the first item there, if you will.

Mr. Anderson: Will you let me see that before he answers?

Mr. Kresel: Yes, I will let Colonel Anderson see it first (handing counsel book).

Mr. Anderson: As I have never seen those documents, though I do not wish to interrupt the examination at this point, I will object to the introduction of that evidence, which is merely an abstract of what was done by writing. I make that objection at this time so as to reserve the point and later on examination of the documents if I find that that is correct and that it does not require the production of the long documents, I will withdraw my objection.

Mr. Kresel: We can use it subject to correction. If this abstract which Colonel Miller put in evidence proves to be incorrect, of course we will correct the matter then.

Mr. Anderson: Or incomplete.

Mr. Kresel: Or incomplete, certainly.

Mr. Anderson: Therefore I object on that ground, with that understanding.

Mr. Kresel: The witness states that he prefers to go now, your Honor, and I am quite willing to suspend at this time.

The Court: Are both sides now through with the witness?

Mr. Kresel: I am not through with him, your Honor.

The Court: You want him to return?

Mr. Kresel: I do, sir.

Mr. Anderson: I would not have put Colonel Miller on the stand except that we thought last night that both of us could get through with him. It may be that the Government will rest its case before he gets back and his further evidence is introduced, and therefore I would like to have the examination of Colonel Miller continued at this point and put into the record immediately following this. I do not know whether that could be done, but I do not want to have it appear in the defendant's case.

The Court: It may go in at this point.

Mr. Kresel: Will you be back Thursday, Colonel?

The Witness: Yes, or on Friday—or Saturday, if you are sitting.

July 11, 1923.

Thomas W. Miller resumes the witness stand.

Mr. Kresel: Let the record show that the witness is being recalled for cross-examination which was interrupted by the witness's departure at a time when he was under examination.

Cross-Examination (Continued).

By Mr. Kresel:

XQ. 306. Colonel Miller, the Treaty of Peace with Germany, about which you testified before the Winslow Committee—I am going to call it the Winslow Committee just as an abbreviation. It was the Committee on Interstate and Foreign Commerce of the House of Representatives—was made in July, 1921, was it not?

A. No, sir. My appearance, that I assume you refer to, was in June, 1921, before the House Committee on Foreign Affairs in connection with the then pending Knox-Porter Peace Resolution.

XQ. 307. No, I was not referring to that. I was referring to your appearance before the Winslow Committee.

A. The first appearance before the Winslow Committee was in December, 1922, and January, 1923.

XQ. 308. I am glad to have the dates, but what I was trying to get was the date of the Peace Treaty. That was July, 1921, was it not?

A. Yes, sir; July 2, 1921.

XQ. 309. Since that time have you as Alien Property Custodian sold any property?

A. Yes, sir.

XQ. 310. Are you now making sales of property?

A. Yes, sir.

XQ. 311. Speaking of this German Treaty, you testified before the Winslow Committee as follows:

A. Pardon me, what page, please?

XQ. 312. Page 17, toward the bottom of the page:

> "Mr. Miller. My personal opinion is that the Government does not at this time favor the immediate return of all of it."

That referred to enemy property in your possession, did it not?

A. Yes, sir.

XQ. 313. "Because of the very provisions that your Congress put in the Knox-Porter Peace Resolution to which I have referred." That is what I have termed the Treaty of July 2, 1921, is that right?

A. Yes, sir.

XQ. 314. "That contains the last official instructions that any of us have had from Congress and Congress makes the laws, namely, that this shall be retained by the Government until such time as the former enemy government shall respectively have made suitable provision for the satisfaction of all claims against these Governments. That is the last instruction we have in any law on the subject." You so testified?

A. Yes, sir.

XQ. 315. And that was true?

A. Yes, sir.

XQ. 316. In other words, you as Alien Property Custodian regarded it as the last instruction of Congress contained in that peace resolution that the enemy property in your possession should be retained by the Government until such time as the former enemy governments shall respectively have made suitable provision for the satisfaction of all claims against those Governments?

A. That is the way I so understood the language in the peace resolution.

XQ. 317. And have you so governed your conduct as Alien Property Custodian as to be in compliance with that edict of Congress? In other words, let me put it concretely: Have you retained all enemy property in your possession as directed by Congress until Germany and Austria should make provisions for the satisfaction of claims against them?

A. Unless there was a provision of law which required me to return a piece of property for which a claim was made.

XQ. 318. With that exception you have retained all such property?

A. I have retained all of the property that could not be returned under the then existing law or the amendments to the law passed since the date of this hearing.

XQ. 319. But you do say that, notwithstanding the treaty as contained in the Knox-Porter Peace Resolution, you have been selling enemy property?

A. Yes, sir, because—

XQ. 320. "Yes, sir," is an answer.

A. All right.

XQ. 321. You testified before this same committee that you are trustee for the German owners of the property that was taken over by the Alien Property Custodian, did you not?

A. Yes, in substance that was it, Mr. Kresel.

XQ. 322. Not only in substance, but in language did you not so testify?

A. Any language I used in there I stand by; yes, sir.

XQ. 323. Very well, let me direct your attention to your language.

A. What page, please?

XQ. 324. Please turn first to page 29, to about the middle of the page. You said as follows: "The Alien Property Custodian today in all these industrial plants and corporations that he is operating stands in the shoes of a stockholder. He has seized and is holding that stock as a common law trustee or guardian." You so testified, did you not?

A. Yes, sir.

XQ. 325. Now turn to page 32 of the same record, to about the middle of the page: "I merely am a stockholder, and last June, previous to July 2, 1922, as trustee for the enemy I brought a great number of suits," etc. You so testified?

A. Yes, sir.

XQ. 326. Now, turning to page 33 of the same record, about the middle of the page, again you say "Why, as a Trustee for the aliens, I want of course to see all their rights preserved." You so testified, did you not?

A. Yes, sir.

XQ. 327. And then turn to your testimony before the sub-committee of the Committee on the Judiciary, You testified there, did you not, on the same Bill, the Winslow Bill?

A. In the Senate.

XQ. 328. Yes.

A. Yes, sir.

XQ. 329. At page 63 of that record you testified as follows, at the bottom of the page, the testimony given January 11, speaking of the Alien Property Custodian, "He also may administer this property as a common law trustee." Senator Cummings puts this question to you:

"A Trustee for whom?

"Mr. Miller. For the former enemy-owners." You so testified, did you not?

A. Yes, sir, if it is there.

XQ. 330. And then again at page 64 of this same record, Senator Cummings again puts the question to you:

"A trustee for the former enemy-owners."

"Mr. Miller. Yes, sir."

You so testified did you not?

A. Yes, sir.

XQ. 331. And when you verified this Bill of Complaint in the action of the United States against the Chemical Foundation, you were then a trustee for the enemy owners of this property, were you not?

A. I was a trustee, Mr. Kresel, as I construe it, under Section 12 of the Trading with the Enemy Act, which uses that very term that you have been referring to.

XQ. 332. Colonel, just listen to my question. When you signed and verified the Bill of Complaint in this action, you were then Trustee for the alien enemy owners of property in your possession, were you not?

> Mr. Anderson: One moment please. If your Honor please, I do not want to object to the examination, but I recognize that counsel can ask the witness what he understood, perhaps, of his position; but he testified about his position and it may have a bearing; but I respectfully suggest that the question of what was the position of the Alien Property Custodian under the law, is a question of law. What the witness may have understood, may or may not be evidence in that connection, and whether it is or not I am going to object to his saying, but whatever he understood his position—that was a position fixed by Statute and that alone can be determined by the Court, not what he thought.
>
> Mr. Kresel: There is no doubt about the principle that Colonel Anderson is invoking.
>
> Mr. Anderson: Then the question is improper.

Mr. Kresel: Not at all. The question is not at all improper. On the contrary, the question is entirely proper.

XQ. 333. Colonel Miller, you understand that I am asking you to state whether on the day when you verified this bill of complaint you considered yourself as trustee for the enemy owners of this property? Did you or did you not?

The Court: The question being modified accordingly?

Mr. Kresel: Yes, sir.

A. If you want me to limit my answer, Mr. Kresel, to just a mere yes or no, I think it is due me that I have some opportunity to go at length into how I construed my position.

XQ. 334. Colonel, you will have every opportunity upon the re-direct examination, I am sure, to make your explanation. I should like you, if you can, to answer the question yes or no.

Mr. Anderson: I wish to direct the Court's attention to the fact that while counsel can ask for a yes or no answer, the witness has a right to explain what he means by "yes" or "no," if it is necessary to make his answer complete, I think, even on cross-examination. I submit that for the decision of the Court.

Mr. Kresel: I do not think that the answer requires any explanation. He either did or did not consider himself to be a trustee for the enemy. I am perfectly willing to have him say one or the other.

The Court: If either an affirmative or negative answer can not be given unqualifiedly, the witness may state the qualification to such affirmative or negative answer; not his reasons and not his reasoning, but the modification or qualification of the answer that he may give.

XQ. 335. You understand, Colonel, the Court's ruling?

A. Yes, I so considered it under the provisions of Section 12 of the Trading with the Enemy Act.

XQ. 336. You verified the Bill of Complaint in this case, and as one of the grounds of complaint you set forth in the bill of complaint that the consideration paid by the Chemical Foundation for these patents was inadequate, did you not?

A. Yes, sir.

XQ. 337. So that you as trustee for the enemy owners of property are seeking to recover these patents, are you not?

A. Seeking to recover them for the custody of the Government.

XQ. 338. You are seeking to recover them, to have them turned back to you as Alien Property Custodian, are you not?

A. If the Government is successful that will be the result, sir.

XQ. 339. And that is what you are seeking in this action, is it not?

A. Yes, sir.

XQ. 340. And if recovered, you will hold them as trustee for the enemy owners, will you not?

Mr. Anderson: I will have to note the further objection that how he will hold them is absolutely a question of law. The witness holds them under the Alien Property Act in his official capacity, I say again that while I do not think it is evidence, I am not going to object to his having the witness testify as to what he thinks his duties are under the Alien Property Act, although I can not see that that has any relation to this subject; but when it comes to asking him a direct question of how he will hold them, or what his duties are under the Alien Property Act, then I think that is purely a question of law involving the construction of the Act, which alone the Court can determine.

THE COURT: Anything to say, Mr. Kresel?

MR. KRESEL: I will modify the question to see if I can meet the objection. I will withdraw the question.

XQ. 341. If the Government is successful in this action and the patents here in question are turned back to you as Alien Property Custodian, you believe that you will be holding them as trustee for the alien enemies, do you not?

A. I will be holding them as Alien Property Custodian under the provision of the law and the treaty which states that this property shall be held until such time as Congress may determine the disposition thereof.

XQ. 342. And your construction is that you will hold them as trustee for the enemy owners, is it not? You have so testified.

A. Partially, Mr. Kresel.

XQ. 343. Why partially, in what way partially?

A. Because, sir, this property, the remaining property, is held under the provision of the Peace Treaty for the settlement of American claims; and I consider the Alien Property Custodian as also holding this property as a guarantee of claims against Germany when they are adjudicated by the Mixed Claims Tribunal.

XQ. 344. You will hold it then as a guarantee that the Germans will pay the claims and if paid, then the property goes back to the Germans, does it not?

A. If in the future the German claims can be satisfied without confiscating German property, yes. If this administration is in power, it will go back.

XQ. 345. That is what I thought. So that if the Government is successful in this suit and the patents are returned to you as Alien Property Custodian and the Germans pay the claims which are made against them, the patents will go back to the Germans?

A. If they have not expired; if the life of the patent has not expired.

XQ. 346. That is true, is it not?

A. It will be treated in the same category as any other alien property, that is in our office now.

XQ. 347. And they will go back to the Germans, will they not?

A. I cannot predict what action Congress is going to take, sir, in the future.

XQ. 348. You have just said, have you not, that you are holding this property only as a guarantee that the German claims will be paid. Now I say to you, if the German claims are paid, will they not go back to the Germans?

Mr. Anderson: If your Honor please, we have gotten the views of the witness without objection. The terms under which this property is held are fixed by Act of Congress and by the Treaties and the Act of Congress expressly provides that the property shall be disposed of as Congress may direct.

Therefore, while I did not want to object to this evidence, except my general objection which applies to all of it, and I did not want to interrupt although I think the evidence is illegal in any event, and I have no objection except my general objection that it is immaterial, irrelevant and incompetent; yet I think that to press a question of law when it is fixed by Act of Congress, and asking a witness on the stand to undertake to construe an Act of Congress, is not legal and therefore I have to object to any further examination along that line.

Mr. Kresel: On the contrary, sir, I am not asking him to construe; I am asking his view as to what he considers his official duties demand.

The Court: I think the objection is well taken, Mr. Kresel, on two grounds, first that the objection as stated is valid and also because the witness has answered as I understand it, the identical questions only two or three questions back. If there is a distinct difference between this question and the one he answered about two questions back—

Mr. Kresel: If your Honor will permit the Stenographer to read those two or three questions:

The Court: Very well.

Mr. Kresel: Your Honor's recollection is probably better than mine on that, and if it is a fact I shall not press the question any further.

(XQ. 343 and XQ. 344, with the answers, read as recorded above.)

The Court: The last is the part.

Mr. Kresel: I am glad that your Honor directed my attention to that. I withdraw the last question.

XQ. 349. Speaking of yourself, in your official capacity, at page 21 of your testimony before this Committee, you testified under cross-examination by Congressman Hawes, at the bottom of page 21, as follows:

"Mr. Miller. As I told Mr. Rayburn a while ago, Mr. Hawes, that is a determination of policy that is absolutely up to Congress and the President or the State Department. I am the administrative officer and custodian. Personally I have not hesitated to say here today that the sooner we are divorced from this alien-property business and it is cleaned up and out of the way the better it will be. Nobody will be better satisfied than I, but it will take longer than the time I can spare to do it.

"Mr. Hawes. Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible?

"Mr. Miller. Yes, sir."

Was that your testimony?

A. Yes, bearing in mind the American claim situation which I have dealt with in my testimony, in my answers to your questions. And may I interject there, this was the result of some parliamentary fencing before a Congressional Committee, and I was not sworn. I am endeavoring to give my testimony today bearing in mind I am under oath.

XQ. 350. You mean this statement I read to you, at the bottom of page 21, would have been different had you been under oath?

A. I would have qualified it, Mr. Kresel, as I told you today, bearing in mind the American claims situation.

XQ. 351. Let me put the question to you as it was put to you by Mr. Hawes: Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible? Will you answer that?

A. I think it should be returned as quickly as possible, when the American claims situation is adjudicated by the Mixed Claims Tribunal.

XQ. 352. At page 12 of this record, speaking of the way in which the property was being held as a guarantee, you testified as follows:

"And I want to reiterate again that when we say guarantee we do not mean that we are to eventually confiscate a dollar of this property to pay claims."

You so testified?

A. Unless it was necessary to take the proceeds of this property to adjudicate the claims, if Germany was unable to pay the bill.

XQ. 353. When you say in this passage that I have just read to you "that when we say guarantee we do not mean," to whom did you refer by the plural personal pronoun "we"?

A. I am trying to find this in here, Mr. Kresel.

XQ. 354. I will point it out to you. (Indicating).

A. Oh, yes. "We" referred, editorially as it were, to the United States.

XQ. 355. And there is no question about it, Colonel, that this Winslow Bill that you were urging the passage of at the time you were giving this testimony, was as you termed it here, an administration measure.

> Mr. Anderson: One moment. If your Honor please, when that question was asked before I felt constrained to object. I do not understand that there is anything in the United States known as an administrative measure in the technical sense. The Executive Department of the Government, which is usually spoken of as the Administration, has no part in legislation, except the power of veto in the President, and therefore the question of Bills in Congress is purely a question for Congress. Therefore, I am constrained to object, that under our system of Government there is no such thing and can be no such thing as an Administrative Bill.
>
> Mr. Kresel: I will withdraw the question.

XQ. 356. I direct your attention to your testimony at page 18 of this record and read to you from the bottom of the page as follows: "Mr. Huddleston" —He was one of the representatives, was he not?

A. Yes, sir.

XQ. 356. (continuing) "Mr. Miller, I understood you to say that you thought this matter should be dealt with acording to a consistent policy of our Government. That is correct, isn't it?

"Mr. Miller: Yes, sir, Generally speaking.

"Mr. Huddleston: Then I assume that this Bill represents, as far as it goes, the present policy of our Government?

"Mr. Miller: I should say it represents the desire of the present administration, surrounded as they are by the provisions in the peace resolu- Did you give that testimony?

A. That is my language, and I could not express it better at this moment.

XQ. 357. It is true, is it not?

A. Yes, sir.

XQ. 358. That is true?

A. Yes.

XQ. 359. Now, I return to my preceding question, when you said at page 12, these words: "We say guarantee. We do not mean that we are to eventually confiscate a dollar of his property." To whom were you referring when you said "we"?

A. With whom? I should say I can not qualify it any better than I did a moment ago by saying we—the United States. Perhaps I was assuming too much to say that.

XQ. 360. Very well, all right. So you said, speaking for yourself as Alien Property Custodian at least —

A. Yes, sir.

XQ. 361. That it was not intended even though the claims were unsatisfied, to confiscate any of this property?

A. Oh, no, you can not read that—

XQ. 362. Do I misconstrue that?

A. You can not read that into my language, Mr. Kresel, in fairness to me.

XQ. 363. I do not want to read it in fairness or unfairness to you; but is that what you meant by that statement, or is it not?

A. No, sir, I did want to see American claims paid before the remaining property of my office was returned.

XQ. 364. I see. I understand you.

A. And I so stated it time and again.

XQ. 365. Upon the books of the Alien Property Custodian, how are the patents carried, I mean at what value?

Mr. Anderson: What patents, would you mind saying?

Mr. Kresel: All patents, any patents.

A. The audit that was made by Lybrand, Ross and Montgomery.

XQ. 366. Now, Colonel, I did not ask about the audit, but I want you to answer my question, please.

A. As I recall it, Mr. Kresel—

Mr. Kresel: That is all I ask for.

The Witness: One dollar.

The Court: Each or all?

The Witness: Each one, sir.

Mr. Kresel: Each patent.

XQ. 366a. Now, the Winslow Bill had become a law, had it not?

A. Yes, sir.

XQ. 367. Subsequent to your giving this testimony from which I have just read?

A. Yes, sir.

XQ. 368. Now, I do not want now to stop to put in a copy thereof, but listen to me clearly and see whether I do not substantially state the terms thereof. The provisions of the Bill are that out of every property belonging or taken over from an alien enemy, that you as Alien Property Custodian hold, whether it amounts to less than $10,000, or to more than $10,000, an amount up to $10,000 should be returned; is that not right?

A. Generally, yes, sir.

XQ. 369. Under that law, you have returned German patents, have you not?

A. No, sir.

XQ. 370. None at all?

A. I specifically directed that when any claim was filed covering the return of a patent, that it be referred to my patent section and taken up with me personally. There has to my knowledge, Mr. Kresel, been no application for the return of a patent so far.

XQ. 371. Do you say then that since the passage of the Winslow Bill, no patents had been returned by the Alien Property Custodian?

A. I will have to refer, Mr. Kresel, to my records, to swear to that, but they should not have been returned under the $10,000 return principle.

XQ. 372. Did you not return approximately 150 patents to Germans—now, I am not going to confine you to any period either subsequent to or prior to the enactment of the Winslow Bill?

A. Well, now, I do not know, sir, but at the danger of meeting with an objection from you, I would like to say this, and if it is not what you want in the testimony, you can strike it out. In considering the Winslow Bill the question came up as to the patent assigned or sold to The Chemical Foundation and the War and Navy Departments. I personally was in favor of having a provision in the law that would exempt them from any of the provisions of the $10,000 return bill.

A section was so drawn and came in from the Navy Department and the War Department. I considered that all patents not heretofore sold and assigned to those various agencies, the War and Navy Departments, or The Chemical Foundation, were practically useless or they would have been applied for before for non-exclusive or exclusive license or purchase; and the patent section in the Winslow Bill was intentionally drawn so as not to prevent the divorcing from the books of my office of those so-called useless patents that had not already been sold or assigned to The Chemical Foundation or the War and Navy Departments.

Now, sir, as to whether my patent section and my law department has divorced itself of any of those patents, I will have to refer to the records of my office to ascertain the facts.

XQ. 373. At page 74 of this record, you testified as follows:

> "Mr. Miller: Just at that point, Mr. Chairman, it might be interesting for me to say to the Committee that as the common law trustee for the enemy interests in all this property I have, since I took over the office, contemplated bringing a friendly action in the Courts, as trustee for these people,"—

"These people" means the enemies?

A. Yes, sir.

XQ. 373. (continuing) "to determine whether the compensation of 100,000 and other considerations paid for these patents, was really a sufficient sum of money, but due to the whole patent situation I have not done so. To my mind it would be found that the compensation paid at the time was inadequate, but we must bear in mind that at that time we were at war and were seizing everything we had within our power to make war with, and I am considering this proposition on the assumption we are trying to clear up this matter on a peace time basis."

You so testified?

A. That is my language, sir.

XQ. 374. And that is true?

A. You mean what I say there is true?

XQ. 375. That was true, was it not?

A. Well, I believed it; yes, sir; or I would not have stated it. May I—

XQ. 376. Now, just preceding that statement made by you, you heard the statement made by Mr. Neagle. Who was Mr. Neagle?

A. He is the Solicitor of the Navy Department.

XQ. 377. And he was testifying before this same Committee with reference to the 5700 patents that were licensed by the Alien Property Custodian to the Navy and War Departments, was he not?

A. And in support of the same patent amendment that I referred to at some length in the previous answer.

XQ. 378. Mr. Neagle said as follows in your hearing:

> "I can probably give you a partial answer to that question. The negotiations on the part of the Navy Department—"

Those were the negotiations with reference to the 5700 patents that were licensed, were they not?

A. Yes, sir.

XQ. 378. (continued) "—were carried on by Commander Norton, who has since died, and I do not know that any record was made of it. So that it is very likely that so far as the Navy Department is concerned, it is not practicable to get that information." You heard him give that testimony?

A. Yes, sir.

XQ. 379. This license for 5,700 patents, Colonel Miller, is already in evidence, so I am not going to burden the record with a recital of all of its terms. But you know, do you not, that in substance that instrument licensed the Government to use certain 5,700 patents therein described and released the Government from all claims for damages for having infringed those patents during the war and that the Government paid the Alien Property Custodian as a consideration one hundred thousand dollars. That is your recollection?

A. I will take your statement as a fact, Mr. Kresel.

XQ. 380. Very well; thank you. Now, you were considering then as Alien Property Custodian to bring a suit to test the validity of that transaction because, as you have testified there, you thought the consideration of $100,000 was inadequate; is that right?

A. I don't want to answer you with just a plain "yes." You can strike this out if it does not suit you: Yes, partially. I am desirous of seeing the funds in the hands of the Alien Property Custodian as large as possible as a guarantee against the settlement of these claims, whether those funds are derived from other governmental agencies or not.

XQ. 381. In other words, one of the reasons that is actuating you in contemplating this suit against the Government is, as I understand you, to get into your possession so that you as Alien Property Custodian have it to meet these German claims, whether that money comes from the United States Treasury or no; is that it?

A. That is one of the controlling features, and you may strike this out if you do not like it—

XQ. 382. No, no, just answer my question.

A. Well, I must illustrate, sir.

XQ. 383. I will let you illustrate in a minute. Won't you please answer my question. That is one of the reasons?

A. Yes, sir.

XQ. 384. Now then, go ahead and illustrate it any way you want?

A. As, for instance, I am in a number of cases endeavoring to save very heavy assessments by the Internal Revenue Bureau of the Treasury Department against the trusts in my office, because I stand in the shoes of the enemy owners—stockholders, if you want to call them that— and I feel it is my duty to protect those trusts.

XQ. 385. Colonel, you testified about this license covering 5700 patents before this Committee; do you remember?

A. Yes, sir.

XQ. 386. And you will recall that you inserted in that record a statement with reference to this particular license and with reference to other assignments and sales of patents made by the Alien Property Custodian to the Government. Do you remember that?

A. Yes, sir.

XQ. 387. You will find it at the bottom of page 15 in that record. Now, I assume that in the discharge of your duties as trustee for the enemy owners you are considering bringing an action against the Government, not only to test the validity of the transaction with reference to the 5700 licensed patents, but also with reference to all other transfers of patents made by the Alien Property Custodian to the Government, are you not?

A. I can not say that I am, Mr. Kresel.

XQ. 388. You can not say?

A. No.

XQ. 389. That is an answer.

A. I meant—I am not evading anything—I do not think so.

XQ. 390. I do not charge you with evasion at all. Have you not considered in the discharge of your duties as trustee for the alien enemy owners whether the consideration paid by the Government for the other assignments of patents was or was not adequate?

A. I presume, Mr. Kresel, if the matter that you are referring to—the 5700 patents for $100,000—is ever taken up, that they will all be followed up, but—

XQ. 391. All of them will be tested?

A. But without prejudicing any other government department. The matter is merely resting. Nothing has been done on it since the date of my testimony.

XQ. 392. Well, there is no secret about this feature of it, is there, Colonel, that you are resting because you are waiting to see the outcome of this suit?

A. I will have to refer you—

XQ. 393. Isn't that so? I am asking you as Alien Property Custodian, you who have the duty, as you say?

A. Well, if the Government should win this suit, it would of course give us a precedent to go by.

XQ. 394. Certainly; that is exactly what I thought.

A. (continuing) Covering this and all other sales.

XQ. 395. Yes, sir. By the way, as long as we are on that proposition, do you happen to be familiar with an opinion written by a man named Brown, a lawyer in Washington, with reference to the validity or invalidity of transfers by the Alien Property Custodian?

A. That is John Wilson Brown, third?

XQ. 396. Yes.

A. I do not take what he writes seriously, and I have not read it.

XQ. 397. Has it been brought to your attention?

A. If it had, I would not read it.

XQ. 398. Let me ask you this, and I shall not dwell on it, Colonel, except for this question: Do you not know that John Wilson Brown, third, wrote an opinion for his German clients wherein he pointed out that the only way to attack these transfers of patents and other property made by the Alien Property Custodian was upon the question of the inadequacy of the consideration?

A. I will take your statement as a fact; but please do not link me up as an ally of Mr. Brown in any way.

XQ. 399. No, indeed; I would not make any such intimation. Now, when you were considering suing the United States Government to make it pay an adequate consideration for this license covering 5700 patents, did you take the trouble to examine that license and to see what patents it covered?

A. I have read that, Mr. Kresel,—

XQ. 400. All right.

A. And—

XQ. 401. That is all I wanted to know, if you have read it. And is it the fact that that license covers patents for mobile guns, sights for guns, cartridges for ordnance, gun carriages, explosive projectiles, percussion fuses for shells, field guns, trigger mechanisms, automatic firing devices, and similar military apparatus?

A. I am familiar with that situation, because—

XQ. 402. And is that the fact, that that license does cover patents embracing those subjects?

A. Yes, and I do not countenance the stealing of some of those patents from the War Department since the war started. I am familiar with that situation.

XQ. 403. I do not know what you are referring to; but the only interest I have in that is, do you charge us with stealing them?

A. Oh, certainly not. I am referring to a situation that developed in connection with the discussion on the patent treaty with Germany last year.

XQ. 404. I know nothing about that, and I do not want to go into it.

A. I thought you did.

XQ. 405. No, I do not. And is it a fact, Colonel, that these 5700 licenses given by the Alien Property Custodian on German patents, which you intend to challenge the validity of, covers patents on artificial eyes and artificial legs, surgical devices for setting fractured legs, inhalers, devices for lifting sick people in bed and moving them, manufacture of iodine preparations, cardiac trusses and other surgical instruments?

A. I will take that as your statement.

XQ. 406. No, I want your statement. Is it not the fact that that license does cover patents which embrace those subjects?

A. I must examine it again; but I will take your statement that that license covers those particular articles you read.

XQ. 407. So we have it, Colonel, that you, as trustee for the German former owners of these patents, intend to sue the United States Government to recover from the Government moneys for using during the war processes covering munitions and surgical instruments that were used by us during the war, because you consider $100,000 an inadequate consideration, and that you are waiting only for the bringing of that suit to see whether the Government wins this suit or no?

Mr. Anderson: If your Honor please, I object to that question on the ground that it does not state correctly the witness's testimony. The witness was first read a statement by him from the evidence before the Committee, in which he said he had considered that question of whether a suit of that kind should be brought, and he said nothing had been done on it since he had testified. He has not said that he intended to bring any such suit at the present time, nor has he said that he was awaiting the result of this suit. He said that he supposed this suit would be a precedent. If we are going to summarize the witness's testimony, it ought to be summarized correctly.

Mr. Kresel: I submit, your Honor, that I have truthfully stated this witness's testimony, and unless your Honor can see that I have not, I prefer to stand by the question as I have put it.

The Court: If you have misquoted or misinterpreted his testimony, the witness may point that out in his answer to the question.

(XQ. 407 repeated as above recorded.)

A. That is a double question and the answer is necessarily divisible. I must say, Mr. Kresel, you do not intentionally do so, but you ignore my continued statements that in addition to being a trustee for the enemy I have considered my office as a trustee with regard to the American claim situation. I need not elaborate on that. Secondly, the language used by me before the Winslow Committee is not necessarily going to be the policy of the Department of Justice or higher authority. If any such action is brought, of course, it must await the decision in this case, and if it is brought, it is brought, as far as I am concerned, if I am in office, for the purpose of clearing our records, and if an inadequate sum has been paid, to have the fund added to which is used as a guarantee of American claims against Germany.

XQ. 408. You were present before this Winslow Committee and heard the testimony of Mr. Neagle to the effect that the damages that would be claimed against the Government for the use of these patents covered by the license for 5700 of them would run up into the hundreds of millions of dollars, did you not?

A. If Mr. Neagle said that, yes, sir, but I had no such figure in mind.

XQ. 409. I read to you from page 76 of Mr. Neagle's testimony:

> "Mr. Neagle. For the use by the Government of their patents. I should like to give you an illustration with reference to that. In the case of radio patents"—

You remember those were conveyed by the Alien Property Custodian to the Government, do you not?

A. Yes, sir.

XQ. 409. (continued)

> "In the case of radio patents that were used by the Government, the various inventors, and there were quite a large number of them, put in claims against the Government for millions and millions of dollars. I am ashamed to say what I remember it to be, but I think it was $300,000,000."

You remember that testimony?

A. It is in there, yes, sir.

XQ. 410. And do you not remember the testimony given by Colonel Hull, representing the War Department, before this very Committee before which you were testifying on the Winslow Bill; and I read from page 59. You know Colonel Hull, do you not?

A. I certainly do.

XQ. 411. I read from page 59 of this record the following testimony:

"Mr. Graham." He was one of the Congressmen, was he not?

A. Yes.

> XQ. 412. "Mr. Graham. If I ask you any question you do not care to answer, you decline to do so. I do not want, of course,"—do you follow me?

A. Yes, sir.

XQ. 412. (continuing) "—to expose any military secrets, but in making high explosives, such as were used during the war, you used German patents, did you not?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: Was there any high explosive that we used during the war in which you did not use a German patent?

"COLONEL HULL: I do not know, sir.

"MR. GRAHAM: Take picric acid, for instance; that uses a German patent, does it not?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: And the various high explosives that were used in shells probably used substances in which aliens had patent rights.

"COLONEL HULL: The explosives industry and the dye industry are pretty nearly synonymous terms.

"MR. GRAHAM: Absolutely; they come back to the same thing. Now, you take the process that was used at Muscle Shoals and that is used today, and in those processes, both the Haber process and the cyanamid process, you use alien patent rights, don't you?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: You can not get along without them, so far as your present knowledge is concerned, can you?

"COLONEL HULL: Well, we had to use them.

"MR. GRAHAM: And you are using them and used them all through the line of explosives and in connection with everything we made war with, did you not?

"COLONEL HULL: We had to.

"MR. GRAHAM: Suppose you could not have used them, what kind of shape would we have been in?

"COLONEL HULL: The question carries its own answer.

"MR. GRAHAM: So it was a matter of national preservation that we used those things, was it not?

"COLONEL HULL: Certainly.

"MR. GRAHAM: Now, then, the patents were granted originally as an act of grace by this Government, were they not?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: A patent right is a different proposition from the ownership of a horse or cow or $5 in the bank, is it not?

"COLONEL HULL: I think so, and so expressed myself this morning.

"MR. GRAHAM: Can not the same power that originally granted those patent rights take them away?

"COLONEL HULL: Or limit them; yes, sir.

"MR. GRAHAM: And there is not any question in anybody's mind that understands the situation today but what we ought to, is there?

"COLONEL HULL: That is the question I was submitting."

MR. ANDERSON: One minute, Mr. Kresel. If your Honor please, I wish to object to the reading of that testimony into the record, in the manner in which it has been done, if it is read in to ask the witness whether he heard it. I can not see the relevancy of any of this testimony; I can not see that it has anything to do with the case.

MR. KRESEL: Let me put my question. I have not put a question yet.

MR. ANDERSON: Yes, but you read the evidence on the record.

MR. KRESEL: Yes.

MR. ANDERSON: Go ahead and put the question.

MR. KRESEL: Now let me put the question.

MR. ANDERSON: Very well.

XQ. 412. (continued) It is the patents as to which Colonel Hull was testifying, as I have read to you, covered by this license given by the Alien Property Custodian to the Government, namely, the license for 5700 patents, as to which you say you were contemplating suing to set aside the transaction because the amount was inadequate; was that it?

Mr. Anderson: Just one minute. I wish to note an objection to this evidence which I have not up to the present time felt it necessary to make.

The Court: I did not quite hear you Colonel.

Mr. Anderson: Up to the present time I had not thought it necessary to make it. My throat is very bad, may it please your Honor. Therefore, I did not want to make it, because I thought it unnecessary. It is entirely immaterial to this inquiry what this witness may have desired to do or thought it best to do with respect to 5700 patents assigned to the Government of the United States by the Alien Property Custodian. They are not in evidence in this litigation.

Of course, there was no direct examination upon it, and this is, in effect, direct and making the witness his own. Therefore, all of this evidence is entirly foreign to any inquiry here. I suppose the policy of the Government of the United States with respect to its litigation is fixed by the President and the Attorney General, I suppose the policy of the Government with respect to its general welfare and National Defense is fixed by Congress, and therefore it is not a matter taken up in the way it is being taken up here.

Coming now to the specific testimony, the testimony of Colonel Hull, he appears, according to the statement of counsel as the representative of the War Department. Whoever Colonel Hull may be, he does not represent the Government of the United States in the sense of fixing its policy. Whatever his opinion on questions of law, which are the questions here involved, as to the rights to and the use of these patents, it is certainly not a matter of testimony.

If this witness heard this statement made, how can that affect the situation in the slightest, how can it affect the issues in this case in the slightest? Suppose this witness's view of the situation was right or was wrong, how can it affect the legal rights of the parties here in the slightest?

Suppose the witness had desired to bring a suit against the Government to recover more money for those patents which were assigned; suppose he had been right or wrong; how can that affect the interests of the Government of the United States here? Therefore, I respectfully object to all this testimony, and should have, perhaps, objected earlier, but I did not want to do it, but I specifically object to this question in that it undertakes to inject into the record, in addition to the general objection stated, injecting into the record the opinions of Colonel Hull given before a Congressional Committee, not under oath, Colonel Hull belonging to a Department of the Government to which the witness does not belong, and it not appearing here that Colonel Hull's expressions or views had the slightest bearing on the action of the Government of the United States and therefore it is pure hearsay.

The Court: Just a moment. Before you begin, Mr. Kresel, from now on, objections with respect to the admissibility of testimony, and the arguments thereon, will be restricted to three minutes on each side; so you are now placed under that rule. You may have three minutes.

Mr. Kresel: To begin with, your Honor the testimony that I have read of Colonel Hull, is not testimony of opinion at all. Colonel Anderson misunderstands the testimony that I have read, or did not follow it closely enough, because if he does follow it closely he will see that Colonel Hull was testifying as to what the War Department was doing during the war, and was not giving any conclusion or any opinion.

Now as to its materiality. We must never get away from the fact that this complaint is based primarily upon a charge of conspiracy, omitting the question of monopoly altogether; and Colonel Anderson has reserved unto himself the right at any time, and upon the final arguments, to charge fraud and conspiracy against anybody, not only against those whom he has expressly named in his Bill, so that we must anticipate that the officers of the Government who are responsible for this transaction that is here being attacked, will be eventually charged with fraud in the transaction. Now, I ask in all fairness, whether those officers are not entitled to show to the Court that in their dealing with their own Government, they dealt and acted upon exactly the same principles that they acted upon in the transaction here involved; and when we have here a responsible official of the present Government, who before a Congressional Committee has stated, and states now, that he intends to attack the validity of one of those transactions, upon the ground that the consideration was inadequate, is it not proper for us to show the circumstances under which that transaction was made, so as to show the connection between that act of the officials that are responsible for the transaction here, attacked in the light of the other transactions? That is all, your Honor.

Mr. Anderson: I only want to say, sir, that Colonel Hull's testimony on that subject, if they wish it, the way to get it into evidence, is to call Colonel Hull, so that I may raise proper objections and cross-examine him.

MR. KRESEL: No. I have read that only to show the witness, and ask him whether or not that is the thing that he is talking about.

THE COURT: Will you read me the question, please.

(The question was repeated as follows: XQ. 412 (Continued) It is the patents as to which Colonel Hull was testifying, as I have read to you covered by this license given by the Alien Property Custodian to the Government, namely, the license for 5700 patents as to which you say you were contemplating suing to set aside the transaction if such amount was inadequate, was that it?)

MR. ANDERSON: Preceding that was the reading from the record. That is what I object to.

THE COURT: I understand. I do not see the relevancy of that, Mr. Kresel. I have not ruled on the question of relevancy in any instance; consequently, I shall not rule on that now, and it may be taken under the General Rule. My impression is that the question would not attempt to disclose facts which are relevant. If the testimony of Colonel Hull has any bearing upon the issues in this case, I take it that the relevancy would be to the issue of fraud and conspiracy raised by this Bill of Complaint. If it has that bearing, it seems to me it would be as to whether this witness was familiar with those facts as testified to by Colonel Hull, or had heard that testimony prior to the time be charged and swore to it, as verified by the Bill of Complaint—that might be relevant, but as the question now stands, I fail to see the relevancy.

MR. KRESEL: But, your Honor, I understood that the witness had said that he had heard the testimony, or I should not have proceeded with it. I will ask the witness—

XQ. 413. Having heard this testimony read now, Colonel Miller, is it not the fact that you were present and heard that testimony given by Colonel Hull?

A. Yes, sir.

THE COURT: It might have been that I have failed to make my thought clear. I may be wrong. I assume that this question will be a preliminary question—

MR. KRESEL: That is all, your Honor. I have done that in order to identify the thing that I am asking him about.

MR. ANDERSON: I wish to call your Honor's attention to the fact that this testimony was given four months after the Bill in this case was filed.

THE COURT: Is that true, Mr. Kresel?

MR. KRESEL: That is true, your Honor. It was given in January, 1923.

MR. ANDERSON: The Bill of Complaint was filed in September, 1922.

THE COURT: Then, is it relevant to the charge of conspiracy here, because it is continued to be pressed?

MR. KRESEL: Why, of course, your Honor, not only to be pressed but justified here in Court.

THE COURT: You may take the answer.

MR. KRESEL: Would you like to have the question re-read, or will you answer it?

THE WITNESS: No. Wait a minute—

A. (to XQ. 413) Yes, sir.

XQ. 414. Now, Colonel, I want to take up with you the two assignments to the Chemical Foundation that you signed. Those were drawn in your office, were they not?

A. Why certainly; any order that I sign is drawn in my office.

XQ. 415. Well, those were drawn in your office, were they not?

A. Yes, sir.

XQ. 416. And they were drawn by your employees?

A. Yes, sir.

XQ. 417. And they were drawn after conference with you?

A. Yes, sir. You—

XQ. 418. Do you want to add something?

A. I would prefer, if I may, to discuss the two assignments separately.

XQ. 419. I am going to take them up separately. When you signed each of those assignments, you knew that you were signing instruments conveying certain property to the Chemical Foundation, did you not?

A. Yes, sir.

XQ. 420. When you verified the bill in this action you knew of your own knowledge, did you not, the reasons that had actuated you in making each of those two assignments?

A. Do you want me to give those reasons?

XQ. 421. No, I am simply asking you whether you knew of your own knowledge when you signed this bill of complaint what reasons had actuated you in making those two assignments?

A. Yes; and I hope I may be permitted to state the reasons.

XQ. 422. In your bill, you allege on information and belief that the assignments were prepared by or at the instance and procurement of the defendant. Did you not know when you signed this bill whether these assignments had been prepared by or at the instance and procurement of the defendant?

A. Mr. Kresel, I can not elaborate in any answer I may give in the future any more than I have already told you about the circumstances surrounding my signing of that bill.

XQ. 423. When you verified the bill, did you not ow of your own knowledge what the facts were in matter of the making of these two assignments?

A. I knew, Mr. Kresel—

XQ. 424. Didn't you?

A. —that the Norma—

XQ. 425. Well, didn't you know the facts? I am ning to the facts. Didn't you know them? You ln't have to have somebody tell you what they were, l you?

A. Why, yes; any Government official that runs an ice the size of mine has to rely on his subordinates.

XQ. 426. You misunderstand my question. When u signed this bill of complaint didn't you know of ur own knowledge, without anybody telling you, all the facts surrounding the making of those two as- gnments when you made them?

A. I thought I did, sir, yes.

XQ. 427. Now, you say in this bill of complaint, information and belief, that you executed the as- gnments without knowledge of the facts herein set rth and other necessary and essential facts; is that ue?

A. At the time I signed them I thought it was rfectly all right to sign them.

XQ. 428. You do not get my question. In the bill complaint you say, on information and belief that u executed the assignments—I am talking now about e assignments and not the bill—without knowledge the facts herein set forth and other necessary and sential facts; is that true?

A. I can not give you any more of a qualified an- ver than I have, Mr. Kresel.

XQ. 429. That is an answer. What are the facts at you were ignorant of when you executed these o assignments?

A. I wish you would discuss these assignments parately, because there are different circumstances.

XQ. 430. Take them separately. I am very glad

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to do that. Take each of them separately. Take the first one. What are the facts that you were ignorant of when you signed that assignment?

A. It is very difficult to answer a negative question. May I answer it in a positive way?

XQ. 431. I beg your pardon, Colonel. I am not asking you a negative question.

A. You asked me what facts I was ignorant of. I can tell you what facts—

XQ. 432. Listen to me, please. You say in the bill of complaint that at the time you signed these assignments you did not know the facts; do you not?

A. That is in the bill, sir; yes.

XQ. 433. Now I am asking you to tell me what facts there were that you now say you did not know?

A. Well,—

The Court: You mean what facts were within his knowledge at the time he signed the bill and verified the bill, or now?

Mr. Kresel: Now.

The Court: That he did not know at the time he executed the assignment?

Mr. Kresel: Exactly.

XQ. 434. What facts are there that you know now or when you signed the bill of complaint that you did not know when you signed the assignment? Now, have I made it plain?

A. As your question, Mr. Kresel, concerns two different questions by me, I must discuss in my answer the two assignments separately.

XQ. 435. I wish you would.

A. I would not have signed the second assignment of November 1, 1921, had I known all of the information brought to me by my counsel, by the Department of Justice, at the time the Chemical Foundation suit came up. I would sign the first transaction of

April 27, 1921, over again and I have got no apologies for it and I criticize no one for bringing it to me.

XQ. 436. Now, then, Colonel, I am thankful to you for letting me disregard now the first assignment. We are going to assume now that the first assignment is all right, is it? You have no complaint to make?

A. I can not qualify what I have said any more than in my previous answer.

XQ. 437. I am sorry, but I shall have to press you, Colonel. In your complaint you say that the first assignment was unlawful and void. Do you now say that it was right and proper? You are the witness. I can not answer for you.

A. No, I do not permit that construction, Mr. Kresel, to be placed on my remarks.

XQ. 438. But you have just said that there is nothing wrong about it and if you had to do it over again, you would do it?

A. All right.

XQ. 439. Therefore, listen to my question. You say therefore, that as to that first assignment, you have no criticism to make of it?

A. I have no apologies to make for it.

XQ. 440. I did not ask you anything about apologies. Please listen to my question.

A. I am endeavoring to answer it.

The Court: Just a minute. Will you put another question, Mr. Kresel?

XQ. 441. As to the first assignment, therefore, the one of April, 1921, do you now say that it was a proper and valid assignment and that you have no criticism to make of it?

Mr. Anderson: I object if your Honor please. The witness may say what he thinks and what he thought of the assignment. He can not say that it is a proper and valid assignment, because the question of its validity is a question of law pure and simple.

Mr. Kresel: But he is the complainant, your Honor.

Mr. Anderson: No, he is not. He is merely an officer of the Government who swore to the bill. The complainant here is the United States Government.

Mr. Kresel: He represents it in this suit.

Mr. Anderson: Not at all. He merely verified the bill as an accountant might have verified a bill. He does not represent the Government in this suit. The Department of Justice represents the Government in this suit by direction of the President of the United States.

Mr. Kresel: That is a novel proposition, your Honor, that the person who verifies the bill is not at all responsible for it.

Mr. Anderson: I did not say that. A person who verifies a bill can be asked as to knowledge of its contents, if that is of any desire, but I mean to say that the person who verifies the bill does not necessarily represent the complainant, especially where the complainant is the Government of the United States, because many of these bills are sworn to by various subordinate persons, by accountants who know the facts.

Mr. Kresel: What may be done in other matters I am not concerned with. We are here now in court, brought in here upon a bill that is signed by this officer of the Government and he is not an accountant or a clerk. He is an officer of the Government. Is it contended here that this gentleman can not speak for the Government as to this particular action?

Mr. Anderson: I mean to say, this bill is signed by the District Attorney of the District of Delaware and the Attorney General of the United States: By the United States, by the District Attorney, and by the Attorney General. It is verified by this witness who is supposed to have known more about the facts than other officers. The District Attorney and the Attorney General are the only two officers of the Government who are authorized to sign this bill under the law.

Mr. Kresel: Now, your Honor, is it not proper that the defendant should be apprised whether Colonel Miller can speak for the Government or no? I have got to leave that to your Honor's decision.

Mr. Anderson: I will answer that.

Mr. Kresel: Pardon me a minute.

Mr. Anderson: I thought you asked me a question.

Mr. Kresel: Don't get excited.

Mr. Anderson: I am not getting excited.

Mr. Kresel: Is not the defendant entitled to be now apprised whether the Government still contends that this assignment that the witness has just spoken of, of April, 1921, is or is not a valid assignment? Do they still contend that it is invalid?

Mr. Anderson: The Government of the United States contends that that assignment is invalid as represented by the Attorney General of the United States by direction of the President of the United States and will contend to the conclusion of this case that that assignment was absolutely invalid as a matter of law.

The Court: Will you refer to the paragraph in the bill to which you called the witness's attention a moment ago; that is, the allegation?

Mr. Kresel: Yes, your Honor.

XQ. 442. Colonel Miller, in the 39th paragraph of the bill of complaint, at page 53, I find the following allegation:

> "The said Francis P. Garvan resigned as Alien Property Custodian on the 12th day of March, 1921, and was succeeded in said office on said date by Thomas W. Miller, who thereafter, as Alien Property Custodian, executed and delivered to the defendant, The Chemical Foundation, Incorporated, two additional instruments of alleged sale, transfer, and assignment, as follows:
>
> "1. An instrument of alleged sale, assignment and transfer from Thomas W. Miller, Alien Property Custodian, to defendant, The Chemical Foundation Incorporated, dated the 27th day of April, 1921, purporting to sell, transfer, and assign to said defendant the patents and other rights mentioned and listed in Schedules A and B therewith, a true copy of said instrument, together with the accompanying schedule, is hereto annexed as Exhibit J and prayed to be read as a part hereof."

Now, please skip the next paragraph and I direct your attention to the succeeding paragraph on page 54, which reads as follows:

> "Complainant is informed, believes, and therefore avers that said instruments of alleged sale, assignment, and transfer were prepared by or at the instance and procurement of said defendant, The Chemical Foundation, Incorporated; that said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had

> the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration, and especially said instrument of November 5, 1921, was made, executed and delivered without any consideration whatever; that said alleged sales, transfers, and assignments were otherwise irregular and contrary to law, and were and are in all respects null, void, and of no effect in law or equity."

Colonel Miller, you will notice that the last paragraph which I read to you, wherein it is alleged that certain assignments were null and void and of no effect in law or equity, covered the Assignment of April 27, 1921.

XQ. 443. That is the assignment with reference to which you have testified a little while ago and now say, as I understand you, that you have no criticism to make of it; that if you had to do it again, you would do it again and that no facts with respect thereto were withheld or suppressed from you. Now, am I right about that?

A. I would have sold the patents to the Norma Company through the Chemical Foundation, if I had to do it over again, bearing in mind the date and conditions existing between the Chemical Foundation and myself at that time. Now, if that is not what you want, please ask me another question, because I want to be understood on these two assignments.

XQ. 444. No, I do not think I will ask you another question. I will repeat my former question then as to the second assignment of November, 1921. I want to know what were the facts with reference to that, that you were ignorant of at the time that you signed that assignment of November, 1921?

A. Mr. Kresel, these paragraphs that you have been reading from pages 53, 54 and 55 concern two transactions by me as Custodian. I understand they that Americans might use the processes without any question as to their right to do so; is that it?

A. I have answered your question more fully than I can by any other answer.

XQ. 449. Is that the statement that you want to make?

A. In substance that is what I want to convey to you and the Court.

XQ. 450. Colonel, I have listened to your explanation and have not interrupted, but I must say that you have not answered my question, and I repeat it: What were the facts which, if you had known them in November, 1921, would have induced you not to sign that instrument?

> The Court: Do you mean what were the facts that had come to his attention prior to the signing of the bill?
>
> Mr. Kresel: Prior to the signing of the bill, certainly, because I am drawing his attention to that.
>
> The Court: Will you repeat that question, Mr. Kresel?

XQ. 451. What were the facts which came to your knowledge before you verified the bill of complaint herein which, if you had known in November, 1921, you would not have signed this assignment of November, 1921? Do you understand my question?

A. Yes, sir. Why, the bringing of this suit, which was brought at the direction of the President, upset what we might term the friendly relations existing between my office and the Chemical Foundation. And I certainly would not have executed the November 5, 1921, assignment had I known that the Chemical Foundation sale was going—

XQ. 452. The Chemical Foundation what?

A. (Continuing) That the Chemical Foundation sale was going to be questioned by the Department of Justice.

XQ. 453. Have you answered as fully as you want to?

A. I am answering you as fully as I know how. If there are any further facts you want to bring out—

XQ. 454. I do not want to interrupt you, but is that all you want to say in answer to that question?

A. Unless further questions develop the need of a further answer.

XQ. 455. You say in this paragraph that I have read to you that facts were withheld from you with intent and purpose to secure the execution by you of the aforesaid instrument. What facts were withheld and suppressed from you?

A. I cannot enumerate any facts at this time, Mr. Kresel.

XQ. 456. Can you enumerate anything in addition to what you have already enumerated?

A. Were this not on the witness stand I presume I could converse with you at length on this, but I cannot quite see that I can answer any more questions along your general line any more fully than I have.

XQ. 457. I beg your pardon, Colonel Miller; I want to be perfectly respectful to you. I am not asking you for anything general. My question is very specific. You say in your Bill that facts were withheld and suppressed from you. Can you not state what facts were withheld or suppressed from you?

A. I can not state any more facts in answer to your questions than I already have.

XQ. 458. Now, Colonel, you said upon your direct examination that you had never read the Executive order signed by Mr. Polk, and dated the 26th of February, 1919; do you remember that?

A. I remember your question and my answers.

XQ. 459. Not my questions; I beg your pardon. Those were Colonel Anderson's.

A. Did I say that I had never read them?

XQ. 460. That you had not read them at the time you had made these assignments.

A. I have not, no, sir.

XQ. 461. By what authority did you think you were making this assignment?

A. I was naturally making it under the authority of the grant of the Custodian by—

XQ. 462. That very Executive order?

A. By that very Executive order, yes.

XQ. 463. In other words, you were signing an instrument wherein you were reciting that by virtue of an Executive order, identifying it by the name of the person who signed it and the date thereof, you were making this assignment, and yet you say that you had not read it.

A. No, I could not read an Executive order, Mr. Kresel, covering every transaction involving fifty thousand trusts in that office of mine. I have no apologies to make for that. I was operating with the Chemical Foundation, as I have described to you several times, in accordance with the routine arrangement I found in force when I came into the office.

XQ. 464. Did you know the provisions of that Executive order under the authority of which you were signing this instrument, whether you had in fact read it or no?

A. These two assignments—pardon me—I could have sold or licensed the patents and trade-marks in these two assignments under the Executive order of the President permitting the Alien Property Custodian to sell property of the value of ten thousand dollars and under.

XQ. 465. Now, Colonel, I did not ask you that. My question was very specific, and that is: Did you know the provisions of Mr. Polk's order of February 26th, 1919, when you made these assignments, whether you had read that order or no?

A. Well, I certainly was familiar with them in a general way, but I could not know them specifically, because I have testified I have not read the order.

XQ. 466. You knew, did you not, that that was an Executive order signed by Mr. Polk, authorizing the transfer of German patents from the Alien Property Custodian to the Chemical Foundation?

A. I must confess, Mr. Kresel, as far as my recollection serves me, I did not know that the original order in the Chemical Foundation had been signed by Mr. Polk and not by President Woodrow Wilson, until the question of the validity of this sale arose.

XQ. 467. Whether you knew who had actually signed the order, did you not know that there had been an Executive order authorizing the sale of these patents to the Chemical Foundation and that it was under that very order that you were undertaking to make this conveyance?

A. I knew that there had been an order.

XQ. 468. I am going to show you this order of Mr. Polk's dated February 26th, 1919, and I am going to ask you to point out to the Court anything in that order which, if you had read it, would have induced you to decline to make either of those two assignments. (Hands paper).

A. At the time I executed the two assignments, no. At this time, for the reasons that I have explained in my previous answers, yes.

XQ. 468-a. I must confess I do not understand your answer.

A. All right, sir.

XQ. 469. Perhaps you did not understand my question. Shall I repeat it to you?

A. No; I will endeavor to give you the kind of an answer that you want then.

XQ. 470. I beg your pardon, it is not the kind of an answer I want; I want an answer to my question.

A. It is evidently unsatisfactory. On April 27th, or November 5th, 1921, had I read the Polk assignment referred to, I would have executed those two assignments.

XQ. 471. You would or would not?

A. I would. By reason of the developments since that date, terminating in the bringing of this suit—

XQ. 472. Pardon me a minute; you have answered my question.

A. All right; that suits me, then.

XQ. 473. You also testified on your direct that you had not read the charter of the Chemical Foundation at the time when you made these two assignments. Do you remember that?

A. I do.

XQ. 474. Now I am going to show you the charter of the Chemical Foundation and I am going to ask you to point out what there is in that charter which, if you had read it and had known at the time when you made the assignments, would have induced you to decline to make it?

A. I can only give you—

XQ. 475. Wait a minute; let me show you the charter.

A. I thought I would save time.

XQ. 476. Very well. Are you now familiar with it?

A. No, I will go through the form of looking at it.

XQ. 477. Are you now familiar with it?

A. Let me have it, please.

XQ. 478. You would like it; very well. I show you the charter, which is Exhibit B to the Bill, beginning at page 90 thereof. (Handing paper).

A. Had I been familiar in detail with the charter of the Chemical Foundation at the time I executed the assignments of April 27th and November 5th, 1921, at that time I would have executed the assignments.

XQ. 479. Colonel, on or about the 31st day of March, 1921, you had a talk with Mr. Garvan in your office in Washington, did you not?

A. Yes, sir.

XQ. 480. Was that the only talk that you had with Mr. Garvan at about that time with reference to the Chemical Foundation?

A. That was my first conversation with him of any character. Between then and July 2nd, 1921, Mr. Garvan and I met frequently. We did not discuss Chemical Foundation each time. We may have. But we had occasion to meet quite often.

XQ. 481. Particularly at the time of the conversation of the 31st of March, 1921, did not Mr. Garvan quite fully tell you about the Chemical Foundation and its purposes?

A. He couldn't have gone into exhaustive detail because we only had about thirty minutes; but we discussed the general chemical business in the United States as relating to these German patents, and I made no secret of the fact that I was naturally interested in an industry—an American industry—and I had a very pleasant and satisfactory conversation with him.

XQ. 482. From that talk, Colonel Miller, did you not learn that it was the purpose of the Chemical Foundation to issue non-exclusive licenses upon the patents held by them?

A. I don't know whether it was on that day that I learned that fact, but I was, of course, familiar with the fact on or about that time.

XQ. 483. Were you not familiar with the fact and did you not know at or about that time that the Chemical Foundation had given to the Government of the United States, or was about to give to it, a free license covering all the patents that had been transferred to it?

A. That developed undoubtedly in our discussion as to the future relations between the Foundation and the Government.

XQ. 484. Did you not learn at that time, Colonel Miller, that the organization of the Chemical Foundation was such that the stockholders were confined to a return of 6 per cent on their investment?

A. These are the same questions that you asked me before, and I answered I presume so, because that is the only way I can answer them today.

XQ. 485. I am sorry if I am repeating. It is so long since I examined you before.

A. I know you asked me those questions.

XQ. 486. Very well, then, I shall not repeat them. The fact is that Mr. Garvan asked you to become interested in the Chemical Foundation, did he not?

A. Yes, sir.

XQ. 487. And the fact is that he told you that he wanted to get out, and wanted you to take his place, did he not?

A. As I recall it, he wanted me to go in as Vice-President, and I presume if I qualified properly, he wanted to get rid of the responsibility of being President.

XQ. 488. And he told you, did he not, at that time, whether in so many words, or in substance, that the reason he wanted you to become interested was because he felt that the Chemical Foundation could succeed only if it had the support of the Government, and that you were a part of the Government?

A. Generally speaking I am familiar with that phase of the discussion, but as to whether it was on that day or not, I do not know.

Mr. Kresel: That is all.

The Court: Any re-direct, Colonel Anderson?

Mr. Anderson: Yes, sir. I think it will be short.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 489. Colonel Miller, did you read over the Bill in this case, before you verified it?

A. Yes, sir, I read it over.

RDQ. 490. With whom did you read it over?

A. I read it over by myself, and undoubtedly there were present Mr. W. W. Wilson, my general counsel, who has been associated with your Department in the framing of the Bill.

RDQ. 491. You say Judge Wilson your general counsel had been associated with the Department of Justice in framing this Bill?

A. Yes, sir.

RDQ. 492. Was that by your direction?

A. Yes, sir.

RDQ. 493. Did you discuss this Bill with the Attorney General before it was completed, personally?

A. I was present in a conference with the Department of Justice when the Attorney General, yourself, W. W. Wilson, and others, sometime between July 8, 1922, and the date the Bill was filed.

RDQ. 494. Did you prior to making the demand upon the Chemical Foundation for the restoration of these patents in accordance with the instructions of the President go over the facts of the situation with your general counsel?

A. In accordance with the instructions of the President, I directed my general counsel and his staff to co-operate with your Department in carrying out the orders of the President.

RDQ. 495. As I recall, the concluding paragraph in the letter of the President, directs you to act in the matter under the advice of the Attorney General; is that true?

A. Yes, sir.

RDQ. 496. Did you so act?

A. I endeavored to.

RDQ. 497. Did you read a proof of the Bill before it was finally completed, with your general counsel, Judge Wilson?

A. I had in my possession a proof of the Bill which I read. I can not at this time testify as to who was present with me when I read it.

RDQ. 498. At the time of the assignment of April 27, 1921, you had been in office, I think you said, about two months, had you not?

A. Yes, sir.

RDQ. 499. Had you had an opportunity to study at that time, the relations between the Chemical Foundation and the Alien Property Custodian's office?

A. Only in the general way that I have stated from the stand today.

RDQ. 500. Yes. You were asked on cross-examination, when you were formerly here, whether you had read the report of Mr. Palmer. Had you at that time read Chapter II on the Chemical situation?

A. No, sir.

RDQ. 501. You had not. Have you read Chapter II of Mr. Palmer's report?

A. I am certain I have not, Colonel Anderson. I have had to refer to that report naturally, but I can not swear that I have read the language that you refer to.

RDQ. 502. Had you had submitted to you before July 8, 1921, any data dealing with the relations between the Chemical Foundation and the Alien Property Custodian's office, on the sale and assignments of the patents here in controversy?

A. Only as would grow out of my conversation with Mr. Garvan, that has been commented upon heretofore.

RDQ. 503. I am speaking now of July, 1921?

A. Yes. Well, that is when I was in office.

RDQ. 504. Oh, I meant to say July, 1922, at the time of the bringing of this suit. In other words, the President directed a letter to you, as the record shows, of July 1, 1922, and you made a demand on the Chemical Foundation on July 8, 1922. Did you in the intervening time have the data submitted to you, or make any investigation of the records in relation to the transactions here in controversy?

A. I was in receipt of a memorandum from my Bureau of Law in accordance with my directions that they prepare to follow out the President's directions to me.

RDQ. 505. Did that memorandum review the records to you on the subject?

A. Briefly, yes, sir.

RDQ. 506. On your cross-examination the other day, you were asked something about a call on you by a Mr. Means. Can you now state about the time of that call, and what it was about; have you refreshed your memory on that subject?

A. I am glad you asked me that question, because when it was asked me the other day, I anticipated no such question, and was naturally very hazy with regard to that matter. I have since checked my records, and find that this man called on me on May 18, 1921. You will recall that I previously gave it as the fall of 1921, and that he did not ask me for anything in connection with the Chemical Foundation, but I did confer with him on the Bosch Magneto matter in accordance with my understanding that he was a representative, and a duly accredited one of the Department of Justice.

RDQ. 507. Did he so represent to you.

A. He did.

RDQ. 507-a. Have you ever had any conference with Mr. Means with regard to The Chemical Foundation or the institution or prosecution of the present suit?

A. No, sir. I would like to qualify that a little more if I may.

RDQ. 508. All right, sir. Go ahead.

A. Being the head of the Department, that is concerned directly with this matter, I would certainly know if Means had had anything to do with regard to the Government side of this case, and he has not.

RDQ. 509. After the demand made by you upon the Chemical Foundation for the return of these patents, in July, 1922, was refused by the Chemical Foundation, did you then further take the matter up with your general counsel, Judge Wilson?

A. I directed him and his staff to co-operate with your department in carrying out the orders of the President, namely, that the suit be instituted with the advice and direction of the Department of Justice.

RDQ. 510. Did you verify this bill under advice of your general counsel Judge Wilson after reading it over?

A. Yes, and in addition the advice of yourself as the counsel for the Government.

RDQ. 511. Colonel Miller, there are one or two other matters in regard to your testimony before the Committee that I wanted to ask you about. I wanted to ask you if you ever refused to execute any assignment or any reassignment from the Chemical Foundation to you or instruments between the Alien Property Custodian and the Chemical Foundation?

A. I did.

RDQ. 512. You have just handed me a paper with certain correspondence attached which bears date the 11th day of April, 1922. It is signed by Francis P. Garvan and there is a blank for the signature of the Alien Property Custodian, and it is headed "Release by The Chemical Foundation, Inc., to the Alien Property Custodian, of all its right, title and interest in and to certain patents and trademarks." Were you asked to sign that instrument?

A. Yes, sir.

RDQ. 513. Did you decline to sign it?

A. Upon the advice of my general counsel I held it in abeyance.

Mr. Anderson: Mr. Kresel, I would like to put that in evidence, and I think the whole correspondence should fairly go in if any.

Mr. Kresel: May I examine it?

Mr. Anderson: You may, and I will go ahead at the present time with the examination of the witness and offer that after counsel has a chance to look at it.

RDQ. 514. Colonel Miller, I will ask you to state under what circumstances you gave the testimony which has been referred to a number of times by counsel in examination, before the Winslow Committee—what was then up?

A. The question arose as to the advisability of the Alien Property Custodian further administering or retaining in his possession the smaller trusts in the office. Ninety-three per cent—

Mr. Kresel: I do not like to interrupt and I have not up to the present; but that is not responsive to the question. The question is what was up before the committee. It was some bill, was it not?

Mr. Anderson: I think I have a right to ask the witness the circumstances under which he gave this testimony. I will make it as short as possible.

The Court: Your objection is that the answer is not responsive?

Mr. Kresel: Not responsive. He was asked what was up before the committee and he is going into a long history.

Mr. Anderson: I think it was responsive, sir. I asked him for the circumstances. I want to have the circumstances in order that the evidence might be interpreted in the light of those circumstances.

The Court: Then go ahead.

The Witness: I will endeavor to be brief, but I can not—

The Court: Go ahead with your answer.

A. (continued). 93 per cent of the trusts in the office were of a value of $10,000 and under, and of an average value of $784. They were being uneconomically administered and at more expense to the Government than their continued retention would warrant.

Mr. Kresel: It seems to me, your Honor, that is going too far.

Mr. Anderson: I think it is, and if you do not object to my leading I can shorten it.

Mr. Kresel: I have not ever objected to a question by you as leading, Colonel, and I shall not.

The Court: Is it your thought that that was responsive?

Mr. Anderson: No, sir, and I am perfectly willing to have it stricken out. I think the fact that there were a number of small trusts in the office is responsive, but the uneconomical part I do not care anything about.

The Court: Would you like it all to stay in?

Mr. Anderson: I would like it all to stay in simply because it is easier to do that than to strike out parts.

The Court: Very well.

RDQ. 515. I will ask you, Colonel, as I understand the committee had up the question of returning to the alien from whom this property had been taken or the then successor of such person the amounts of $10,000, whether that was not in effect the Winslow Bill—whether it was not the effect of it?

A. That was one of the main general principles.

RDQ. 516. And the effect of that would be to get rid of a large proportion of these small trusts; is that correct?

A. Yes, sir.

RDQ. 517. Your evidence has been read in a number of instances with respect to the question of your trust relationship. Was it in that connection that you used the language which has been referred to in your testimony?

A. Section 12 of the Alien Property—

Mr. Kresel: May not that question be answered directly, your Honor?

The Court: Do you want the answer to that question, Colonel Anderson?

Mr. Anderson: Yes, sir.

The Court: Then it may be read.

(RDQ. 517. Repeated as above recorded.)

The Witness: What language, Colonel Anderson?

RDQ. 518. The language as to your being a trustee.

A. I was endeavoring to carry out my duty under the law, Section 12 of which specifically uses the words "common law trustee."

Mr. Anderson: I would ask leave to introduce in evidence certain portions of Colonel Miller's testimony in order to complete as far as it can be done without introducing all of it, his statements on the various points that have been read. I would like to have until tomorrow morning to specify the parts, to the end that I may shorten it, as I have never had a chance to read this testimony on account of the pressure of other duties. If I had to put it in now I would probly put in more than I would tomorrow morning, because I can check it up and make his statements complete overnight.

Mr. Kresel: I have no objection to Colonel Anderson reserving the right to make his offer tomorrow. I do not say that I shall not object to any such offer, but I have no objection to his reserving the right to do it.

Mr. Anderson: With that understanding it is quite satisfactory. I shall try to shorten it and will renew the offer in the morning.

If your Honor please, Mr. Kresel wants to finish reading that correspondence. I will pick out this evidence and offer it in the morning. I do not think there will be half a dozen questions brought out by that, and but a few minutes will be taken in the morning. I think it will save time rather than to go over these papers now.

The Court: I have been just awaiting your convenience. The Court is adjourned until tomorrow morning at 8:30.

(Whereupon, at 3:40 o'clock Standard time, adjournment was taken until tomorrow, July 12, 1923, at 8:30 o'clock Standard Time.)

TWENTY-FIFTH DAY.

Wilmington, Delaware,
July 12th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

THOMAS W. MILLER, resumed the witness stand.

MR. ANDERSON: May it please the Court, there are one or two verbal corrections which the witness desires to make in his testimony of yesterday. At page 2173, in the answer at the bottom of the page, the witness said, "Seeking to recover them in the custody of the Government." He meant for the custody of the Government. The word "in" should be "for."

At page 2174, Question 343, there is clearly a typographical error, where the witness said in reply to a question "I consider the Alien Property Custodian as also holding thus"—which should obviously be "this property as a guarantee against claims against Germany." It should be "as a guarantee of claims against Germany." The word "against" is used there twice. He asks to correct that.

At page 2177, Question 351, the word "adjudicated" is used. I will ask the witness a question on that because I do not wish to substitute a word.

RE-DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

RDQ. 519. Colonel Miller, referring to that evidence at page 2177 of yesterday, XQ. 351, you were asked by counsel: "Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible? Will you answer that?

A. I think it should be returned as quickly as possible, when the American claims situation is adjudicated by the Mixed Claims Tribunal."

You said you wished to explain what you meant by the word "adjudicated."

A. I meant in my answer to that question, when the claims were paid.

> MR. ANDERSON: At page 2182, second line from the top of the page, the word "by" should be "or," so that it will read, "The War and Navy Departments or The Chemical Foundation."
>
> THE WITNESS: There is one other correction at page 2207.
>
> MR. ANEDRSON: Oh, yes. Next to the last line "because I thought the Norma Company of America ought to have the right to produce those particular patents" should be "ought to have the right to use those particular patents."

RDQ. 520. Colonel Miller, at various points in your evidence, you used the expression "these claims." I refer especially to page 2184, your reply to questions 380 and 381. Could you be a little more definite as to what you mean by "these claims?" The statement is ambiguous as it stands.

A. I mean by that language the claims of American citizens against Germany, Austria, or Hungary, for the loss of life and property at sea or damage to their property when held by those Governments during the war.

Mr. Anderson: On yesterday, if your Honor please, I stated that I would ask leave, in order to make complete Colonel Miller's statements before the Winslow Committee, without waiving my objection to that evidence, to put in additional statements related to the statements introduced. I have determined that I will only ask to insert in the record the statement on pages 4, 5 and 6 of this hearing before the Committee on Interstate and Foreign Commerce on which counsel examined Colonel Miller, yesterday. A part of that statement was read.

Mr. Kresel: Pages 4, 5 and 6?

Mr. Anderson: Beginning at the middle of page 4 and down to the end of page 6. I will ask that that entire statement be put in as an exhibit.

Mr. Kresel: What is the purpose of that offer?

Mr. Anderson: Simply to complete the statement of which you read a part on yesterday, so it will read as one consistent whole, and to show the circumstances under which the other statements were made.

Mr. Kresel: You are not offering it as proof of the facts, contained therein, are you?

Mr. Anderson: Yes, I think it would go as proof of the facts contained therein, with the same effect as the statements introduced on yesterday would be proof of the facts.

Mr. Kresel: Of course, you recognize, Colonel, that there is a difference between admissions made by the witness on cross-examination and your right to introduce as direct testimony and proof of facts a statement of this witness in this way. I object to that as not the proper way to do it. Moreover, if your Honor please, if this portion of the witness's testimony or statement before this Committee is to go in evidence, I shall ask leave to have inserted for the same purpose as the counsel is now offering that portion of the testimony, the entire testimony of this witness before this Committee.

Mr. Anderson: In reply to the first part of counsel's statement, I would say that I understood that when Mr. Choate's and Mr. Garvan's statements were put in, it was done in the method which I have indicated. If I was mistaken in that, —I am not sure as to the record; I have not looked at it—I would offer it to show the circumstances under which Colonel Miller made these statements. If counsel desire, I would be very glad to ask the witness if he made those statements, reading the three pages indicated, or ask him if he has read them, and if they are true. Probably that would be better. As to the remainder of the statement, I would have to make the objection that I make to all this evidence. I am offering this additional testimony without waiving this objection that this hearing took place long subsequent to the filing of this Bill, and that it is entirely immaterial and irrelevant in this case and not proper evidence; but as part of it has gone in subject to the final ruling of the Court, I would put this in to abide the result of that ruling.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 630." *(See Exhibits, Vol. III, page 1507.)*

Mr. Anderson: If your Honor will permit me, I will ask the witness this question:

RDQ. 521. Yesterday counsel on cross-examination asked you as to your testimony before the Committee on Interstate and Foreign Commerce on H. R. 13,496, taken in December, 1922, and January, 1923. Without waiving my objection to that evidence, I would like to ask you if you have read your statements at the beginning of that testimony, beginning on page 4 of the Hearing and going down to the bottom of page 6 of the Hearing?

A. I have read it, sir, yes.

RDQ. 522. Are the statements made by you on pages 4, 5 and 6, which I will not reread to you, correct to the best of your knowledge, information and belief?

> Mr. Kresel: Just a minute, Colonel Miller. To that we object, your Honor, on the ground it is not competent for counsel upon re-direct to prove by his own witness any facts by way of showing that in another proceeding made a certain statement.
>
> In that connection I desire to call attention to the fact that when Mr. Choate and Mr. Garvan were under examination and I sought to introduce a portion of their statements before various committees, in explanation of or in addition to such portions as Colonel Anderson had read upon their cross-examination, Colonel Anderson took the position that such testimony or statement was inadmissible under any circumstances, but that certainly it was not proof of the facts therein stated, and I think in answer to a question by the Court I stated that the evidence or the statement was not being offered as proof of the facts.
>
> I understand Colonel Anderson now to be offering this portion of the witness's statement before the committee as proof of the facts.
>
> That is not a consistent position for counsel

to take and, whether consistent or inconsistent, the objection that I make is that that is not the way to prove facts, namely, by showing that at some other place the witness had made certain statements. Moreover, your Honor has not indicated whether I will be permitted, as I desire to be permitted, to insert the balance of this witness's testimony, given upon the same subject and at the same time. I think if this portion goes in, whether it be proof of the facts or no, the balance should go in under the same conditions.

The Court: I will have to pass upon that last matter when you make the application.

Mr. Kresel: Very well.

The Court: The statement is not now offered as proof of facts, as I understand the situation; it is offered, and I said admitted. The question now is as to whether the statements therein made are true, which is testimony independent of the facts there given, and it can be brought out by a series of questions rather than by the single question, if objection is made on that point.

Mr. Anderson: I do not know whether there is an answer to the question.

(RDQ. 522 repeated by the Stenographer.)

Mr. Anderson: I will leave out all after the word "correct."

A. They are.

Mr. Anderson: That is all. May it please the Court, on yesterday, I asked the witness as to this matter which I then handed to Mr. Kresel, if your Honor will recall, before I offer it in evidence. I wish to connect that.

Mr. Kresel: Page 2219 of the record.

RDQ. 523. On yesterday, you testified that you had declined to sign a certain paper, which I then identified. It is a re-assignment by The Chemical

Foundation, and is described in re-direct question 512, and you answered you declined to sign it upon the advice of general counsel and it was held in abeyance. Is this the paper which I now show you, to which you referred at that time? (Handing paper.)

A. Yes, sir.

Mr. Anderson: If your Honor please, I would ask leave, counsel having examined these papers, to introduce the papers to which the witness refers in evidence as Plaintiff's Exhibit No. 631. In order to make the record complete, I would ask leave to introduce in connection therewith, the correspondence bearing thereon, to be read as Plaintiff's Exhibit No. 631-a to 631-n, if the Clerk can identify the letter.

Mr. Kresel: Before these documents are marked, we raise the objection that they are immaterial and irrelevant and are not competent evidence. Perhaps the Court ought to be informed as to these documents, and if you will permit me I will state their purpose, because I have examined them. The instrument in question is an instrument whereby The Chemical Foundation undertook to return to the Alien Property Custodian two certain patents. The instrument was executed by The Chemical Foundation and sent to Colonel Miller, as Alien Property Custodian, and he did not sign it. The correspondence which is offered as a part of the exhibit, is correspondence relating to this proposed re-assignment. Now, I do not see how either the correspondence or the un-executed instrument are material upon the issues here. It is not what this witness did not do as Alien Property Custodian, that is material; it is what he did do.

Mr. Anderson: I just wish to state, if your Honor please, that on cross-examination, the witness was examined at very decided length as to acts which no doubt it will be contended were confirmatory of the acts mentioned here. This instrument is dated 11th day of April, 1922, and in the body of it undertakes to re-convey to the Alien Property Custodian two patents and then goes on to say "said instrument of confirmation and ratification bearing date March 1, 1921," which is a general confirmation by Mr. Garvan of all former conveyances, "shall so far as relates to said instrument of assignment of April 10, 1919, be construed to confirm said instrument of assignment of April 10, 1919, as thus amended," and so on. Now, the Alien Property Custodian refused some time before the bringing of this suit to sign that instrument presented to him by The Chemical Foundation by its President, purporting to confirm the instruments preceding, and on the cross-examination, I think that is a fair paper to put in with all the accompanying correspondence, for what it definitely means.

The Court: Was the assignment of November, 1921, a general confirmatory assignment?

Mr. Anderson: March, 1921.

Mr. Kresel: No. The Court is right as to November, 1921, signed by Colonel Miller, we so construe it, your Honor. I should be very glad if your Honor would look at it now, and your Honor will recall the witness's testimony yesterday.

The Court: I recall the witness's testimony yesterday, and that was the impression I had of the interpretation and construction of the November, 1921, assignment. I want to see whether my recollection is correct. I think the objection is well taken. The paper may be marked under the general rule.

Paper received in evidence and marked "Plaintiff's Exhibit No. 631." *(See Exhibits, Vol. III, page 1514.)*

Correspondence received in evidence and marked "Plaintiff's Exhibit No. 631-a to 631-n," inclusive. *(See Exhibits, Vol. III, pages 1517-1530.)*

RDQ. 524. On yesterday, Colonel Miller, you stated that under the same circumstances as the sale of the so-called Norma Company of America in April, 1921, and under the same facts, you would have executed that assignment to the Norma Company. I refer to your evidence especially on page 2205. I would be very glad if you would state the circumstances as far as they are within your knowledge that led up to the execution of the assignment?

Mr. Kresel: Colonel, I object to that question because it does not correctly state the evidence of the witness to begin with. He did not state that this was a sale to the Norma Company or an assignment to the Norma Company. It was an assignment to The Chemical Foundation. Nor did he say that under the same circumstances, he would make a sale to the Norma Company. There is no sale to the Norma Company involved.

Mr. Anderson: If that is your objection, Mr. Kresel, I withdraw the question and I will turn to the evidence.

RDQ. 525. At page 2205 of your testimony on yesterday, this question was asked you:

> "That is the assignment with reference to which you have testified a little while ago and now say, as I understand you, that you have no criticism to make of it; that if you had to do it again, you would do it again and that no facts with respect thereto were withheld or suppressed from you. Now, am I right about that? A. I would have sold the patents to the Norma Company

through The Chemical Foundation, if I had to do it over again, bearing in mind the date and conditions existing between The Chemical Foundation and myself at that time. Now, if that is not what you want, please ask me another question, because I want to be understood on those two assignments."

Would you please state the conditions existing at that time to which you refer; and if you have any correspondence on the subject, I will be glad to have you produce it.

Mr. Kresel: We object to the question, your Honor, unless it be shown that the conditions that the witness is about to disclose were conditions that were known to The Chemical Foundation. In other words, you can not impair the validity or the force of an instrument which conveys property rights to one of the parties by showing that there was some undisclosed reason in the mind of the vendor or the person that makes the conveyance. I do not know what evidence is sought to be disclosed here, but I must be careful and must make my objection in due time; and so we object upon the ground that it is immaterial and irrelevant as to what conditions were in the mind of this witness, unless such objections had been disclosed and were known to The Chemical Foundation at the time this conveyance was made.

The Court: And are first shown by the witness, before answering the question, to have been within the knowledge of the defendant?

Mr. Kresel: Yes, your Honor.

The Court: I think the objection is well taken. The answer may be received under our general rule.

RDQ. 526. Will you state the conditions?

Mr. Anderson: I think his answer will probably disclose that the facts were known to The Chemical Foundation.

A. The date was April, 1921. The conditions were as follows: I found that the routine of the office existing at that time provided that all licensing, assignment or sale of patents would be through the channel of The Chemical Foundation and at that time The Chemical Foundation, its officers and my office and myself were proceeding under that procedure of routine. As I said yesterday, there had been no interruption of what I will term the friendly relations existing between The Chemical Foundation and my office and myself at that date, April, 1921. I think those facts were known to The Chemical Foundation, their officers and employees.

RDQ. 527. Then state the circumstances surrounding the assignment of these patents covered by the instrument of April 27th; what is within your knowledge of the subject or came to you officially?

A. A request was made by Mr. Nones, of the Norma Company, for the purchase or license of these patents.

Mr. Kresel: Pardon me, Colonel, if I interrupt you here.

We object, your Honor, to any further statement, especially as to statements made by third parties to this witness in the absence of the defendant, upon the ground that such statements are not binding upon the defendant and can not affect the validity of this instrument. Moreover, your Honor, we object upon the ground that this line of testimony is immaterial and irrelevant for this reason: As we understand the Bill of Complaint, it is not sought to set aside this particular assignment upon any ground other than that the assignment was made without a knowledge of the facts, and because certain facts were suppressed from the witness, although the facts so suppressed are not disclosed in the Complaint, nor did the witness indicate them yesterday upon his examination. Now, that is the ground upon which the assignment is being attacked. If so, we are confined to an inquiry as to those grounds. The witness is now proceeding to state what conversations he had with third parties which led him to make this assignment.

THE COURT: There is no allegation that it was made by reason of the friendly relations between Colonel Miller and the officers of The Chemical Foundation?

MR. KRESEL: No, your Honor, not at all.

MR. ANDERSON: There is a statement in the Bill, I think, if your Honor please, that the assignment was otherwise illegal and void. That is, of course, a conclusion of law.

MR. KRESEL: It is a mere legal conclusion.

MR. ANDERSON: Counsel for the Government will, of course, insist that this assignment was unauthorized for reasons of law appearing from the face of the Bill. The witness having been cross-examined as to the circumstances here involved, I think he is entitled to show those circumstances, and I understand——

THE COURT: Do I understand, Colonel Anderson, that you are offering evidence in support of an allegation in your Bill, which allegation is a conclusion of law?

MR. ANDERSON: No, sir, I am offering evidence explaining the transaction as to which the witness was asked on yesterday.

THE COURT: What is the specific allegation to which the testimony now sought is directed?

MR. ANDERSON: The specific allegation to which this testimony is directed is that the facts were not understood by this witness and that they were not in fact known to him at the time he executed this assignment, because the facts, as he understood them, were not the true facts.

The Court: I should like to ask you to turn to the Bill and point out the allegation to which this testimony relates.

Mr. Anderson: I shall be very glad to do that, sir.

Mr. Kresel: Colonel, you will find the relevant portions at pages 54 and 55 of your Bill.

Mr. Anderson: Thank you.

> "Complainant is informed, believes, and therefore avers that said instruments of alleged sale, assignment, and transfer were prepared by or at the instance and procurement of said defendant, The Chemical Foundation, Incorporated; that said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration, and especially said instrument of November 5, 1921, was made, executed, and delivered without any consideration whatever; that said alleged sales, transfers, and assignments were otherwise irregular and contrary to law, and were and are in all respects null, void, and of no effect in law or equity."

Then there is another later allegation.

The Court: That does not answer my question. I did not ask you for your general allegations. I asked you for your specific allegation to which this testimony is directed, if you care to answer.

Mr. Anderson: That is the allegation covering the thirty-ninth paragraph following the detailed description, and then the general allegation in the Bill as to the invalidity of all these assignments follows in a subsequent paragraph, but it probably does not enlarge that excepting in very general language.

The Court: Then, as I understand you, you do not care to answer the question which I asked you?

Mr. Anderson: I have answered to the best of my ability, if your Honor please. If your Honor will make it more specific, I shall do my best. That is the allegation which I read.

The Court: The objection is well taken; but you may take the answer under the general rule.

A. An offer was made to me as Alien Property Custodian for the purchase or licensing of the eleven patents referred to in this assignment of April 27, 1921. The Norma Company of America, through its proper officers, desired these eleven patents to complete the purchase of the property which they had bought from my predecessor. They proved to my satisfaction that they should have had these patents when they bought the Norma Company originally, and my entire official interest in the whole transaction was merely the carrying out of my official desires, namely, that the Norma Company should be in possession or use of these eleven patents, which, by the way, deal with ball-bearings, and it was for that purpose that I directed that a paper which afterwards turned out to be this assignment of April 27, 1921, be drawn up by the proper official in my office carrying out the terms of the sale or the licensing of these patents to the Norma Company.

RDQ. 528. Who had charge of this matter in your office?

A. The chief of my Corporation Management Division, Mr. Paul Smith, is the officer to whom I gave these directions.

MR. KRESEL: Before you put another question, Colonel, in order to preserve our record I now move to strike out the answer to the last question on the ground it is immaterial, irrelevant and not binding.

THE COURT: I think the motion is well made, and if we were trying the case under the strict rules of evidence the motion would have to be granted. Under the general rule which we have adopted for this case, the motion will be denied.

MR. ANDERSON: Subject to your Honor's ruling, of course, I wish to offer in evidence some correspondence relative to the matters to which the witness just testified.

RDQ. 529. The correspondence which I now hold in my hand, and which you handed me, is the correspondence relative to the matters to which you have just testified?

A. Yes, sir, it is.

MR. ANDERSON: I now ask leave to offer in evidence the following correspondence upon this subject. Letter dated December 4, 1918, A. Mitchell Palmer to Henry B. McCormick, Esquire, 305 North Front Street, Harrisburg, Virginia.

MR. KRESEL: We object to the introduction of this letter, your Honor, upon the grounds that I urge to the testimony of the witness given in answers to the last few questions. Further, I object upon the ground that there is nothing in this letter to indicate that it refers to the transaction that the witness is testifying about, and I direct attention to the fact that this letter is dated December 4, 1918, antedating by two and a half years the advent of Colonel Miller as Alien Property Custodian. The evidence does not show that he knows anything about either the circumstances that gave rise to the writing of the letter or what it refers to.

RDQ. 530. Colonel Miller, was this letter taken from your official files in the office of the Alien Property Custodian, upon that subject (handing witness)?

A. Yes, sir; that is the photostat of a letter from my official files.

RDQ. 531. Was the endorsement "Norma Company of America" on it when it came into your possession?

A. Yes, sir; that is just as it came out of the files, as I found them in the office.

RDQ. 532. It came from the file on the subject of the Norma Company of America, did it?

A. Yes, sir.

Mr. Kresel: I contend, sir, that that is no proof. Simply because the instrument is entitled "Norma Company of America" is no proof that it has anything to do with this transaction.

By The Court:

Q. 533. When have you seen it, Colonel, do you recall?

A. Your Honor, I would have seen that letter in examining the file of the Norma Company in April, 1921; also in going over papers that would be transmitted to the Department of Justice in connection with the bringing of this action.

Q. 534. Have you any distinct and specific recollection of having seen it on either of those two occasions; and, if so, on which?

A. No, sir.

The Court: Do you press your offer?

Mr. Anderson: Yes, sir.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 632." *(See Exhibits, Vol. III, page 1531.)*

MR. ANDERSON: I next offer in evidence a letter on the letter-head of Emery, Varney, Blair & Hoguet, signed by Mr. Varney, addressed to Lucien H. Boggs, Esq., dated March 15, 1920, as Plaintiff's Exhibit No. 633. Counsel has asked me to let him read the whole file before I offer any more. I shall be glad to do so with your Honor's permission.

MR. KRESEL: Now go ahead.

MR. ANDERSON: I understand you do not object to the authenticity of this?

MR. KRESEL: No. I have never raised that objection.

THE COURT: Its purpose is the same?

MR. ANDERSON: The same as the other correspondence in relation to the assignment of April——

THE COURT: That goes to show what?

MR. ANDERSON: I will read it, your Honor.

THE COURT: I do not mean the facts, but I mean it is directed toward what point?

MR. ANDERSON: It is directed to show the circumstances under which the assignment of April 27, 1921, which covered eleven patents on ball bearing appliances, which was assigned to The Chemical Foundation, and under which the Norma Company of America took a license, and it shows the accompanying circumstances as to that assignment.

THE COURT: Does your Bill seek to set aside that assignment?

MR. ANDERSON: Yes, sir.

The Court: And this correspondence is offered to show what?

Mr. Anderson: To show that the facts and circumstances under which that assignment was made, that the witness was acting upon a mistaken conception of the facts when he made that assignment, as shown by the assignment and the accompanying correspondence.

Mr. Kresel: But that is not the allegation.

Mr. Anderson: It will show all the circumstances surrounding the assignment which has been questioned.

The Court: I am not concerned with all the circumstances surrounding the assignment. I am concerned only with such facts and circumstances as will tend to support your allegation showing that the assignment was made under fraud, accident, mistake or conspiracy, and I do not understand that there are any other equitable grounds for setting aside, other than fraud, accident, mistake or conspiracy. Does this evidence now offered tend to show fraud, accident or mistake?

Mr. Anderson: In my opinion, it tends to show a mistake, and a mistake of facts, upon which the Polk order was predicated.

The Court: And the mistake of fact was what? Was it a mutual mistake of material facts, or a mistake of fact on the part of the assignee, or on the part of the assignor, and if so, how was the mistake of fact on the part of the assignor induced?

Mr. Anderson: The mistake of fact on which the officer acted, I think I can briefly state as follows: That the request had been made for an assignment to the Norma Company of America of these patents, on the idea that they were included in a prior sale as he has testified to. He turned it over to his subordinates to prepare the necessary papers, believing them to be true. The Polk order, if valid——

THE COURT: Now, Colonel Anderson, I am not asking you a single thing about power. Power is entirely a different thing, and if there is any question as to the power of these people to make these assignments, that is one thing; but when I am asking for evidence with respect to fraud, accident or mistake, it is not an answer to tell me that there was a lack of power.

MR. ANDERSON: No, I am merely telling you that the Polk order undertook to authorize the assignment of property which related to the purposes and objects of The Chemical Foundation. Now, our contention is, as to this specific fact, that the witness at that time was not familiar with the Polk order, and that he was mistaken as to this being related——

THE COURT: Let us stop there. Is it your contention that the fact that the witness had failed to familiarize himself with the Polk order is sufficient ground in and of itself or in connection with other facts to enable the Government to ask the ground of fraud, accident, or mistake?
that this assignment of April 19th be set aside on

MR. ANDERSON: That is only one of a number or series of facts which I was trying to recite; and that therefore, the assignment of this matter to The Chemical Foundation, which was prepared by the Corporation Department and brought to the witness, was an assignment of matter which was made by an entire mistake of the character of stuff that could be assigned by the Alien Property Custodian to The Chemical Foundation and that it was made under a misunderstanding of the relations of The Chemical Foundation to that office. That is as accurately as I can state it. If I introduce evidence that does not sustain the point, then of course, it will not have any value.

THE COURT: Have you alleged in the bill, as one of the equitable grounds for setting aside this assignment, any mistake on the part of Colonel Miller, any mistake of facts?

MR. ANDERSON: I have alleged a want of knowledge of the facts, which is a mistake of facts or misunderstanding of the facts.

MR. KRESEL: On the contrary, your Honor, may I read from page 54 of the bill:

> "That said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth"——

That is, in the bill set forth; and there is nothing in this bill about any mistake about this particular assignment.

> "——and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration."

The charge here is not mistake. The charge is that facts were withheld from this witness.

MR. ANDERSON: That is not the whole charge. The first part of the charge relates expressly to a mistake of facts or a misunderstanding of facts.

MR. KRESEL: It says that he acted on the matter without knowledge of the facts herein. That is not a mistake of fact. And that he acted without knowledge. How are we to be injured thereby, because he did not know what he was doing? How are we responsible for that? It is not charged that we misrepresented to him or that we withheld facts from him.

Mr. Anderson: I have undertaken to state to your Honor as accurately as I could the theory on which I think this evidence is material.

The Court: I understand that and I think it has no bearing, that it is not binding in any way upon the defendant, and that it not only constitutes no ground for setting aside the assignment, but the evidence offered is no justification in any way. It may be put on the record under our general rule.

Letter dated March 15, 1920, last referred to, received in evidence and marked "Plaintiff's Exhibit No. 633." *(See Exhibits, Vol. III, page 1532.)*

Mr. Kresel: It is understood, is it, that all this correspondence which is now being offered is subject to the objection I raised to the first letter?

Mr. Anderson: Certainly.

I offer in evidence letter of April 26, 1921, addressed to Colonel Miller by W. M. Nones, President of the Norma Company, to be identified and read in evidence as Plaintiff's Exhibit 634.

Received in evidence and marked "Plaintiff's Exhibit No. 634." *(See Exhibits, Vol. III, page 1533.)*

Mr. Anderson: I offer in evidence letter dated March 23, 1920, addressed to Messrs. Emery, Varney, Blair & Hoguet, attention of L. E. Varney, signed Lucien H. Boggs, General Counsel, to be identified and read in evidence as Plaintiff's Exhibit 635.

Received in evidence and marked "Plaintiff's

Exhibit No. 635." *(See Exhibits, Vol. III, page 1535.)*

Mr. Anderson: I offer in evidence a letter dated February 17, 1921, signed by Messrs. Emery, Varney, Blair & Hoguet, this being a copy. I suppose it will be admitted that it was signed by them. The signature is not on it.

Mr. Kresel: Yes.

Mr. Anderson: Dated February 17, 1921, addressed to Mr. Paul Smith.

By **Mr. Anderson**:

RDQ. 535. I believe you said Mr. Paul Smith was Chief of the Corporation Division of the Alien Property Custodian?

A. Yes, sir.

Received in evidence and marked "Plaintiff's Exhibit No. 636." *(See Exhibits, Vol. III, page 1536.)*

Mr. Anderson: I offer in evidence letter addressed to the Alien Property Custodian, signed Kalish & Kalish, dated January 24, 1921, with respect to the patents in question.

Received in evidence and marked "Plaintiff's Exhibit No. 637." *(See Exhibits, Vol. III, page 1540.)*

RDQ. 536. Now, Colonel Miller, you have presented to me a memorandum dated the 4th of April, 1921. Do you recall a conference on about April 14, 1921, at your office, in regard to this matter?

A. Yes, sir.

RDQ. 537. Can you recall who was present at that conference or any of those persons present?

A. Mr. William M. Nones of the Norma Company of America, Mr. Paul Smith, and myself.

RDQ. 538. Can you say whether this is a memorandum presented to you at that time by Mr. Nones on this subject?

A. Yes, sir.

Mr. Anderson: I offer in evidence the memorandum which the witness has just identified, dated the 8th of April, 1921, to be identified and read in evidence as Plaintiff's Exhibit 638.

Mr. Kresel: In addition to the other objections that we have urged against the correspondence which has just been put in, we object upon the additional ground to this memorandum as a statement by a third party, namely, this man Nones, not at all official; it is not an expression of even an opinion by the Alien Property Custodian or any official act of his department, and is not binding upon the defendant.

The Court: I do not know of any rule of evidence under which it may be admitted, save under our general rule.

Received in evidence and marked "Plaintiff's Exhibit No. 638." *(See Exhibits, Vol. III, page 1541.)*

RDQ. 539. Colonel Miller, do you recall how the price named in this instrument of $550 for eleven patents was arrived at?

A. As near as I can recollect the general price of $50 per patent was the basis of the offer.

RDQ. 540. What do you mean by "general price?"

A. As I recall it, that was the average price agreed upon in the transaction. We were to accept fifty dollars a patent, which made a total of $550.

Mr. Anderson: I think that is all, if your Honor please, that I wish to ask the witness.

Re-Cross-Examination.

By Mr. Kresel:

RXQ. 541. Colonel Miller, as I understand your statement with reference to this Norma transaction, it is this: that you wanted the Norma Company to have these patents and that you were using The Chemical Foundation simply as a conduit through which these patents might be transferred or a license given thereunder to the Norma Company; isn't that right?

A. Yes, and in accordance with the routine in my office at the time.

RXQ. 542. The Chemical Foundation did not ask you to transfer these to it, did they?

A. No, the initial request came through the Norma Company.

RXQ. 543. And before you signed this assignment you familiarized yourself with such facts as were available to you in this correspondence which has just been put in, the memorandum which Mr. Nones presented to you and the conferences that you had with him?

A. Oh, yes, I was familiar with the transaction.

RXQ. 544. You knew, did you not, that unless you had an Executive order authorizing you to dispose of these patents, you could not convey them either to The Chemical Foundation or to anybody else without putting them up at public auction?

A. The Executive order, Mr. Kresel——

RXQ. 545. Didn't you know that?

A. (continuing). ——is an Executive order providing that the Custodian can sell property of the value of $10,000 and under without a specific Executive order from the President.

RXQ. 546. Then in making this assignment you were acting under the Executive order made by the President authorizing the Custodian to sell any property at private sale if valued at less than $10,000?

A. Yes, sir.

RXQ. 547. I direct your attention to the assignment signed by you, page 480 of the Bill of Complaint, and ask you to read therefrom so much thereof as refers to the authority under which you were acting.

A. Well, according to that as I read it now, Mr. Kresel, it appears that the Norma Company transaction was made under the so-called Polk order. I am just glancing over it hastily. Is that what you want to bring out?

RXQ. 548. Yes, that is exactly what I want to bring out.

A. And I have just said, as far as my recollection serves me, that my selling of these patents to the Norma Company was in my mind under that Executive order of the President which permits the Alien Property Custodian to sell property of the value of $10,000 and under without additional Executive orders, and it appears from these pages which you have asked me to look at that the assignment which I signed was under the Polk order.

RXQ. 549. But, Colonel Miller, we can not know what was in your mind.

A. I am telling you now frankly.

RXQ. 550. Pardon me a minute. Do not let us talk together, or at the same time.

A. Pardon me.

RXQ. 551. Wait for my question. I say we can not tell what was in your mind; but the instrument that you signed shows, does it not, that you were making this assignment pursuant to the order signed by Mr. Polk, February 26, 1919?

A. There is no denial of that fact.

RXQ. 552. Isn't that right?

A. It is right there.

RXQ. 553. Surely at that time you knew what the Polk order provided, did you not?

A. I did not, sir. Mr. Kresel, I have endeavored to tell you and the Court in answer to all questions, as I said yesterday, that the detail of this original Executive order, the selling or assigning of these patents originally to The Chemical Foundation, the fact that it had been signed by Frank L. Polk and not by President Woodrow Wilson, did not come to my attention as far as I recollect, until after this sale was questioned.

RXQ. 554. But, Colonel, I am not speaking about the name of the person who signed it, and I am not drawing that distinction now. Do you mean to say that you signed this instrument basing it upon the authority of that Executive order without knowing what it provided; is that what you want to say?

A. Mr. Kresel, if you want to read that construction into my testimony——

THE COURT: That will require a yes or no answer, Colonel Miller. If you want to explain it afterwards, you may, but it calls for yes or no.

THE WITNESS: May I have it stated again, your Honor?

(RXQ. 554 read as recorded above.)

A. Yes, but I would like to qualify my answer.

RXQ. 555. Now go ahead and qualify it.

A. I have endeavored to show that in the operation of my office it was necessary for me to act on a number of matters which I could not scrutinize personally and with great care, and, as I stated a moment ago in answer to Mr. Kresel's question, I was honestly of the opinion that the original sale of these patents to the Norma Company was executed under the authority of an Executive order other than the so-called Polk order.

RXQ. 556. Is that all you want to say about it? Because I want to give you every opportunity to say anything you like.

A. Unless you have further questions, sir.

RXQ. 557. When you made this assignment you did know that there was an Executive order authorizing the Alien Property Custodian to sell at private sale property valued at less than $10,000, did you not?

A. Yes, sir.

RXQ. 558. Had you read that Executive order?

A. That was in the——

RXQ. 559. Had you read it?

A. That was in the manual, the printed manual of the Alien Property Custodian's office.

RXQ. 560. Had you read it?

A. Why, certainly.

RXQ. 561. Do you mean that the order of Mr. Polk was not in the printed manual?

A. If it is, sir, I have not seen it there.

Mr. Kresel: It is in evidence as one of the plaintiff's exhibits.

RXQ. 562. Is this the book that you referred to? (Handing it to the witness.)

A. Yes, that is the one.

RXQ. 563. I direct your attention to the fact that the Polk order appears here in full at pages 92 and 93 of this book. (Handing it to the witness.) Do you see it?

A. Yes, I see it.

Mr. Kresel: What I was showing to the witness was Plaintiff's Exhibit No. 1—the book marked Plaintiff's Exhibit No. 1.

Mr. Galloway: I think Plaintiff's Exhibit No. 1 is only one order in that, Mr. Kresel.

Mr. Kresel: I mean the book in which Plaintiff's Exhibit No. 1 is contained.

RXQ. 564. Colonel, knowing that you had the authority as Alien Property Custodian to sell property at private sale if valued at less than $10,000, why did you not transfer these patents direct to the Norma Company under that authority?

A. I have said a number of times, Mr. Kresel, that I followed the routine procedure existent in my office at the time which, in connection with the sale and licensing of patents, trademarks, copyrights, etc., was the use of The Chemical Foundation as the channel thereof.

RXQ. 565. You knew, did you not, that you had no authority to transfer to The Chemical Foundation anything that did not pertain to the purposes of that corporation?

A. If you ask me specifically at this date whether I knew that or not, I can not answer you. I, of course, know it now and have known it for some time past.

RXQ. 566. When you signed this instrument in April, 1919, did you not know that your authority to make transfers to The Chemical Foundation was circumscribed by that consideration?

A. I told you that I have no recollection of having read the so-called Polk Executive order.

RXQ. 567. But you did read this clause before you made the assignment, did you not, which I read from the assignment:

> "Whereas, I have determined that the Letters Patent of the United States and the applications for Letters Patent of the United States enumerated in Schedules A and B, hereto attached and made a part hereof, relate to the objects and purposes of the said The Chemical Foundation (Inc.) as expressed and defined in its charter?"

You certainly saw that, did you not?

A. I will not swear to that; and I will say further, if you will permit me, that my confidence in the man who brought it to me was sufficient to cause me to sign that assignment——

RXQ. 568. Without reading it?

A. Yes, sir. I have done that often, as many a public official is required to do in the execution of his duties. That is a well-known fact.

RXQ. 569. I am not concerned with that, Colonel. Do you now say you signed this instrument without reading it?

A. I am unable to answer your question specifically under oath.

RXQ. 570. Then I will put it in a different form. Did you read this instrument before you signed it?

A. I can not recall that I read it in its entirety.

RXQ. 571. In the clause that I have just read to you it is said that you as Alien Property Custodian determined that the patents in question related to the objects and purposes of The Chemical Foundation as expressed in its charter. Had you read its charter?

A. You know full well, Mr. Kresel, that public officials execute papers on the recommendations of their subordinates time and time again, and that was the way this was executed.

RXQ. 572. Having made that statement, will you answer my question? Had you read its charter at that time?

A. I testified a number of times heretofore no.

RXQ. 573. This assignment was made subsequent to your talk with Mr. Garvan, was it not?

A. Yes, sir.

RXQ. 574. From your talk with Mr. Garvan did you understand that ball bearings referred to the purposes and objects of The Chemical Foundation?

A. I don't think that detail ever came out in my conversation with Mr. Garvan.

RXQ. 575. These patents you knew when you made the assignment did cover a process of making ball bearings?

A. Yes, sir.

RXQ. 576. But one thing is certain, Colonel, isn't it—that before you signed the instrument you read the correspondence which Colonel Anderson put in in connection with this matter?

A. I certainly went over the file which included that correspondence.

RXQ. 577. In one of these letters put in by Colonel Anderson, namely Plaintiff's Exhibit No. 634, which is a letter from Mr. Nones to yourself as Alien Property Custodian, dated April 26, 1921, a letter from you to him of the 23rd of April is referred to. Can you produce a copy of that letter?

A. Yes, sir; but not this morning. I will have to get it from my files.

RXQ. 578. I wish you would send it to Colonel Anderson.

A. May I make a note of that, then?

RXQ. 579. Yes, April 23rd, 1921, from yourself to Mr. Nones.

A. All right, sir, I will send that up.

RXQ. 580. You noticed, did you not, in this correspondence that some suggestion was made as to how much these patents should be sold for?

A. There must be. I have not read that recently, Mr. Kresel. If you want to examine me on that I would like the privilege of looking at it for a moment.

RXQ. 581. I will show it to you in a minute, but I am trying to test your recollection at present. Was there not some discussion between Mr. Nones and yourself with reference to how much should be paid for these patents?

A. Oh, undoubtedly so.

RXQ. 582. Mr. Nones made no payment to you for these patents, did he?

A. No. Not under the terms of the assignment.

RXQ. 583. Nor his company?

A. No.

RXQ. 584. The $550 which is recited as a consideration was paid to you by The Chemical Foundation?

A. Yes, sir.

RXQ. 585. But in your discussion with Mr. Nones, you do recall, do you not, the question of how much should be paid therefor was discussed?

A. It was undoubtedly discussed, Mr. Kresel.

RXQ. 586. Do you remember what was suggested as a consideration to be paid?

A. I can not unless I refer to the records.

RXQ. 587. Look at one of the letters put in by Colonel Anderson, Plaintiff's Exhibit No. 633, which is a letter from Mr. Varney to Mr. Boggs, in which, you see, Mr. Varney says:

> "Mr. Hoguet and I advised that in every such case, the purchaser be permitted to acquire, for a small sum, a naked license—a license which amounts simply to a waiver of suit thereunder—so that he will be immune from prosecution in the future under such patent or patents. As we left the matter, I understand that you were agreeable to this course and that you would take up the matter at once with the Custodian and fix the consideration for such a license. In my opinion, this should be paid as a lump sum and I think ten dollars per patent would be fair, reasonable and proper under all of the circumstances."

You were familiar with that at the time you made this assignment, were you not?

A. I can not testify today, Mr. Kresel, that that paragraph you have just read was paramount in my mind or had impressed itself upon me.

RXQ. 588. Well, did you have an appraisal made of the value of these patents?

A. No, sir, not that I can recall.

RXQ. 589. Did you have anybody advise you as to the relative value of each of these eleven patents?

A. I can not recall that I did.

RXQ. 590. You sold them at $50 apiece.

A. I presume, Mr. Kresel——

RXQ. 591. Did you not?

A. I presume, Mr. Kresel, that the amount of $50 apiece was probably derived from the general average upon the original sale of 4,500 patents to the Foundation, I presume so.

RXQ. 592. In other words, you, as Alien Property Custodian, if I understand you correctly, were making this transfer pursuant to the original arrangement that had been made for the transfer of all the other patents; is that what you want to say?

A. And in accordance with the routine procedure that I found in my office at that time.

RXQ. 593. And at the same price?

A. General average, yes.

RXQ. 594. Regardless of what the value was, insofar as you knew anything about it?

A. I was controlled, as I have told you, by the routine procedure I found in my office existing at that time between my office and The Chemical Foundation.

RXQ. 595. Now, when did you finally determine as Alien Property Custodian, that you were no longer controlled by the routine procedure?

A. The exact date, sir, I can not recall, but one moment——

RXQ. 596. Give it to me approximately as near as you can?

A. You know full well—I will answer it this way: With the possibility of a question in this sale, naturally, I was careful in my transactions, as is evidenced by the assignment put up to me in May, 1922, which was discussed here yesterday, and which I did not execute, upon the advice of my counsel.

RXQ. 597. So we have it that it was not until May, 1922, that you finally determined, as Alien Property Custodian, that you had to exercise independent judgment and discretion and that you were no longer bound by the routine that you found in your office regarding transactions between the Alien Property Custodian and The Chemical Foundation?

A. It was evidently around that time.

RXQ. 598. Now let me ask you, Colonel: Around that time, too, the question was being broached as to attacking the sale to The Chemical Foundation, was it not?

A. It had been broached, as you know, in debates in Congress, in the newspapers, and from other quasi-public sources.

RXQ. 599. And you know, Colonel, that that is not what I am referring to. I say, about May, 1922, the Government, you as Alien Property Custodian, the Department of Justice, was bestirring itself to start this suit?

A. No, sir; I can not testify today that in that particular month or any particular day in that month of 1922 I had received any official or unofficial communication, written or verbal, on the bringing of this suit.

RXQ. 600. But was it not at or about the time when this suit was about to be broached that your dealings with The Chemical Foundation, as you have outlined them, changed?

A. I——

RXQ. 601. Now, frankly, isn't that so?

A. I may say this: In the spring——

RXQ. 602. Now, isn't that so?

A. Well, I have no objection to answering in the affirmative, if that will help you.

RXQ. 603. Then won't you please answer?

A. Yes.

RXQ. 604. And it was because of the impending action to set aside the sale to The Chemical Foundation, namely, this suit, that you declined to sign this reassignment of the two patents from The Chemical Foundation, was it not?

A. I can not elaborate any more than I have in my previous——

RXQ. 605. I am trying to fix the time, simply. It was about that time?

A. You can not fix by my testimony today any specific date in the year 1922. I will have to refer to my memory and my records.

RXQ. 606. All right. Now, the instrument that you declined to sign was an instrument reassigning to the Alien Property Custodian two certain patents, was it not?

A. That is true.

RXQ. 607. In other words, The Chemical Foundation was offering to give back to you for no consideration whatsoever two certain patents, isn't that right?

A. Yes, sir.

RXQ. 608. And you declined to accept it, is that right?

A. Yes, sir.

RXQ. 609. At whose request was it that The Chemical Foundation was tendering the return of these two patents? Was it not at your request?

A. Mr. Kresel, I have not examined that file, and to answer it properly I will have to examine it.

Mr. Kresel: Mr. Clerk, let me have the correspondence that went into that, please?

The Witness: I wish you would. That will answer the question.

RXQ. 610. I direct your attention to the first of this series of correspondence. It is addressed to The Chemical Foundation from your office, dated November 19, 1921, and reads as follows:

> "On examination of our records I find that patents Nos. 912,352 and 1,108,307 were assigned to The Chemical Foundation on April 10, 1919. They were also licensed to the Government on April 3, 1920, and they were sold along with other assets of the C. P. Goetz American Optical Company and assigned by the Custodian to Merton E. Grush, the purchaser of that company, under an assignment dated June 8, 1920.
>
> "Will you kindly take this matter up with Mr. Garvan and ask him for me if he will care to quitclaim these patents to Merton E. Grush?"

Does that refresh your recollection?

A. I will stand on anything that is in those records, Mr. Kresel.

RXQ. 611. Very well. Then do you not see that your office was asking The Chemical Foundation to quitclaim these two patents?

A. I won't deny that fact.

RXQ. 612. And your office having made that request of The Chemical Foundation, and The Chemical Foundation agreeing to it, sending you a form of assignment, you declined to accept it because this suit was about to be brought; is that it?

A. Because of what I have termed the change in the friendly relations existing between my office and the Foundation.

RXQ. 613. That is very good.

A. (No answer.)

Mr. Anderson: I would like to call Mr. Dold now for cross-examination.

The Court: Do you withdraw the application that you put in the remainder of the testimony?

Mr. Kresel: No, your Honor. I was about to make it.

The Court: Are you through with Colonel Miller on both sides?

Mr. Kresel: I am through with my questions; yes, sir.

Mr. Anderson: I am.

(Witness excused.)

Mr. Kresel: I now offer the balance of the testimony of Colonel Miller given before the Committee on Interstate and Foreign Commerce of the House of Representatives, which begins at the top of page 7 of this volume entitled, "Hearings before the Committee on Interstate and Foreign Commerce of the House of Representatives on H. R. 13496," extending therefrom to Page 43 of this volume, and again, beginning at Page 74 of the same volume. There are only two answers on that page. Also at Page 83 of this volume, and Page 84. Also at Page 144 of this volume and 145. Also at Page 255 of this volume, extending to Page 258, and Pages 272 and 273.

THE COURT: Has it been testified that Colonel Miller so testified at that time? Is there any evidence that Colonel Miller gave that testimony before the Committee?

MR. KRESEL: Under our general stipulation, your Honor, it has been agreed between us that the fact that witnesses did so testify in these various proceedings is conceded. Am I correct, Colonel Anderson?

MR. ANDERSON: Without calling witnesses to prove that they did so testify?

MR. KRESEL: Yes.

MR. ANDERSON: I did not undertake to recall the exact language of the stipulation, but I think if Colonel Miller were called to the stand, he would say that that was a true transcript of his statement at that time. He was not under oath. That was a statement.

MR. KRESEL: Colonel, is that not our stipulation?

MR. ANDERSON: I do not recall the exact language and therefore I do not want to undertake to verbally state what the stipulation was. But I will not raise the question and will waive the necessity for calling Colonel Miller and having him say that he so testified before this committee, as to the statements contained in the record referring to him and attributable to Colonel Miller. There are many other statements by other persons in that transcript which I think are subject to objection.

Mr. Kresel: I am not offering the statements of anybody else. You understand that. I am offering only the statement of Colonel Miller.

The Court: What is the purpose, Mr. Kresel, of this offer?

Mr. Kresel: The purpose, your Honor, is so that your Honor will have before you not a partial disclosure of the testimony of this gentleman upon the one subject—and it is only one subject that he was discussing before this committee. Colonel Anderson has put in two pages of a statement made by Colonel Miller in his official capacity, which extends over the various pages that I have mentioned.

Such a partial disclosure is inadequate for your Honor to know and impossible for your Honor to judge the value of what Colonel Anderson has put in, without having before you the entire testimony.

Mr. Anderson: I am constrained, with your Honor's permission, to object to the introduction of this evidence, waiving the formalities which I have indicated, first, because this testimony was first opened up on cross-examination and was therefore subject to all the objections which we are reserving, I understand, to all questions in this testimony.

Having thus been opened up on cross-examination, I felt that the statement made by the witness leading up to the details, and questions would explain the circumstances under which he gave the testimony, and I offered it in that connection, under the rule we have been heretofore proceeding under, as I understand it.

I do not think that that opens the situation up to further introduction of testimony by counsel. The only purpose of the introduction of testimony by counsel could have been either for the purpose of impeachment or possibly an admission. I do not know whether an admission by an officer of the Government could be used against the Government, unless it was clearly within the scope of his authority.

Now for the purpose of impeachment, he must read the evidence to the witness, and ask direct questions on it, and give the witness an opportunity to explain. Therefore it would not come in under that ground, and it is not offered under that ground, so far as making the witness's statements complete, and he has not taken from the evidence what he desired to take from the evidence, that he can then put in all the evidence, and for the purpose of making the evidence complete. Therefore I do not think the objection is valid.

The Court: I do not recall whose testimony it was, but a more or less similar question came up. I do not know whether it was on the plaintiff's witness or the defendant's witness, where a statement was offered by Mr. Kresel, and you in the first place called for the remainder of the testimony and you then suggested that you consider it over night, and in the morning you offered only certain portions. Can you recall that incident?

Mr. Anderson: Yes. That was Mr. Choate's evidence, and in the morning, I only offered evidence which in my view might have been offered originally, and I limited it to statements connected with that.

The Court: I think those were the circumstances.

Mr. Anderson: And if it was some particular paragraph of which he read part of it here, I would object to the whole paragraph, and I do object to the entire evidence, and especially pertaining to many matters which are entirely outside and irrelevant.

THE COURT: I do not think at the moment of a principle that would support this application as admissible evidence.

MR. KRESEL: Your Honor understands that I am not offering it as proof of the facts, as I understand, Colonel Anderson has limited his offer of the three pages in the same way.

THE COURT: No. Colonel Anderson proved by direct evidence that the acts therein stated were true, when that question was asked of Colonel Miller.

MR. KRESEL: I have forgotten that. I am not offering this as proof of the facts. I am offering it simply for whatever light it will throw upon so much of the record as Colonel Anderson has put in.

THE COURT: Purely for the purpose of interpretation, so to speak.

MR. KRESEL: Exactly.

THE COURT: It may be put in.

Received in evidence and marked "Defendant's Exhibit No. 167." *(See Exhibits, Vol. V, page 2885.)*

MR. ANDERSON: Perhaps I should say, in order that there may be no doubt, that if counsel offers the evidence of Colonel Miller, even for a limited purpose, we shall claim at the proper time, should we be so advised, the right to use that evidence, as introduced by counsel for any purpose that it can be used. What would be our legal rights in that situation I will not now undertake to say. There are so many questions here that I do not like to express an opinion on them, but I want to give notice to counsel to that effect when he introduces his evidence.

Mr. Kresel: We do not acquiesce in that. Our offer is limited to the purpose that I have indicated.

June 27, 1923.

Plaintiff next offers in evidence a letter from Ramsay Hoguet to Honorable A. Mitchell Palmer, Alien Property Custodian, dated February 4, 1919, and ask that the same be read in evidence as Plaintiff's Exhibit No. 448.

Mr. Kresel: May I see it, please?

(Mr. Galloway hands paper to Mr. Kresel.)

Received in evidence and marked "Plaintiff's Exhibit No. 448." (*See Exhibits, Vol. II, page 855.*)

Mr. Galloway: If your Honor please, this letter reads in part as follows:

Mr. Kresel: Will you follow the Court's suggestion and let me have those and I will hand them back to you just as fast as possible?

(Mr. Galloway hands papers to Mr. Kresel.)

Mr. Kresel: May I suggest that it is not necessary to read these letters, is it? The Court can not keep them in mind now.

Mr. Galloway: I think there are certain portions that we wish to bring to the attention of the Court as we go along that have not been previously brought out, and we shall omit as much as we possibly can.

The Court: You may do that if you wish, and the objections, with the consent of Mr. Kresel, may be reserved until the papers are all in. I will make my ruling after they are all in and not as we go along. That will save time and also the record. They may be marked as they are offered.

Mr. Galloway: I will not read this letter, your Honor, but will summarize it. It states that the Chemical Manufacturers' Association had approved the plan of the Dyes Institute for the acquisition of the German-owned patents in the chemical industry and were enthusiastic about it, and that appropriate resolutions had been passed, and that "The Committee advises us (Mr. Hoguet) that they expect to have the entire plan prepared and the certificate of incorporation of the new company drafted within a few days, and that in the meantime we are proceeding with all expedition to determine the title. My plan is to have the corporation formed and the principal patents conveyed to it within two or three weeks. I trust that we will be able to do it."

Plaintiff next offers in evidence a letter from Mr. F. E. Barrows to Mr. W. T. Gordon, dated March 4, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 449.

Received in evidence and marked "Plaintiff's Exhibit No. 449." (*See Exhibits, Vol. II, page 856.*)

Mr. Galloway: This letter, if your Honor please, merely states that it seems to Mr. Barrows that the investigation was made under such high pressure, that they should be congratulated on consummating it with such success.

Plaintiff next offers in evidence a letter from Mr. Gordon to Mr. Barrows, dated March 6, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 450.

Received in evidence and marked "Plaintiff's Exhibit No. 450." (Same as Plaintiff's Exhibit No. 74. *See Exhibits, Vol I, page 257.*)

Mr. Galloway: I will go ahead and summarize this and then hand it to counsel, to save time.

This letter, among other things, refers to the number of patents which they had been listing for seizure and sale, and that Mr. Hoguet had asked

Mr. Gordon how sure he was of having 100 per cent of the enemy-owned patents relating to chemistry and its allied industries, and that Mr. Hoguet had told Mr. Gordon that the Federal Trade list was followed as a basis for ordering these patents, and that other searches had been conducted, and that he felt sure.

Plaintiff next offers in evidence a letter dated March 10, 1919, from Mr. F. E. Barrows to Mr. W. T. Gordon, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 451.

Received in evidence and marked "Plaintiff's Exhibit No. 451." (Same as Plaintiff's Exhibit No. 76. *See Exhibits, Vol. I, page 258.*)

Mr. Galloway: This letter, among other things, refers to the question of how sure they were of getting the 100 per cent. of the enemy-owned patents on chemistry and allied industries, and states that "I would say that we had probably included from 90 to 95 per cent. of them," and that the additional five per cent. would be developed upon a further checking up; and he further states that he thinks the checking up should await the execution of the present assignment. That is the substance of that letter to which I wish to call your Honor's attention.

Plaintiff next offers in evidence a letter from Mr. Will T. Gordon to Mr. Ramsay Hoguet, dated March 11, 1919, along the same line as that just read or summarized.

Received in evidence and marked "Plaintiff's Exhibit No. 452." (*See Exhibits, Vol. II, page 858.*)

Mr. Galloway: Plaintiff offers in evidence a memorandum of a conference held January 13, 1919; present A. M. Palmer, Mr. Caton, Mr. Horne, Mr. Whitaker, Mr. Keohan, Mr. Whitemore, Mr. Gordon, and Mr. Ferry. I ask that the same be read in evidence as Plaintiff's Exhibit No. 453.

Received in evidence and marked "Plaintiff's Exhibit No. 453." (*See Exhibits, Vol. II, page 859.*)

Mr. Galloway: This is only about a page, and is rather important, and I shall ask your Honor's indulgence while I read it. This is January 13, 1913, after the Executive order of December 3rd that you have heard about.

The Court: Yes.

(Mr. Galloway reads Plaintiff's Exhibit No. 453).

Mr. Galloway: Plaintiff next offers in evidence a letter from Mr. Ramsay Hoguet to Mansfield Ferry, dated January 17, 1919, acknowledging a receipt of a copy of the memorandum just previously read; and asks that the same may be read in evidence as Plaintiff's Exhibit No. 454.

Received in evidence and marked Plaintiff's Exhibit No. 454." (*See Exhibits, Vol. II, page 860.*)

Mr. Galloway: Plaintiff offers in evidence a letter dated February 4, 1919, from Ramsay Hoguet to Mansfield Ferry, referring to the conference on January 27th on dyes with the Alien Property Custodian. Among other things, he says:

"The proposition appears to be progressing very well, and we have today enlisted the support of another important body of chemical manufacturers."

Received in evidence and marked "Plaintiff's Exhibit No. 455." (*See Exhibits, Vol. II, page 861.*)

Mr. Galloway: Plaintiff now offers in evidence a letter dated March 24, 1919, from John Lotka, attorney for Ferdinand Max Eugen Blass, to the Alien Property Custodian. I might state, for the information of your Honor, that this is another instance where property was sold to the Foundation after notice had been given of the claim of an American, or one not an enemy within the terms of the Trading with the Enemy Act, to be more specific, for such property; and ask that the same be read in evidence as Plaintiff's Exhibit No. 456."

Received in evidence and marked "Plaintiff's Exhibit No. 456." (*See Exhibits, Vol. II, page 862.*)

Mr. Kresel: Mr. Galloway, will your Honor permit me? I am trying to shorten this, if it is possible. Does this whole line of cross-examination that you have given me relate to this particular transaction?

Mr. Galloway: No, there are some two or three others.

Mr. Kresel: Would it not be possible for you to offer in bulk all of the correspondence relating to this transaction?

Mr. Galloway: I would be very glad to offer them in bulk. I do not know whether they can be offered in bulk, however, because there are many letters and I think they should be identified in some way. However, I do not care to read from them at all.

The Court: If they are put in together, it is not important whether they are under one number or a sequence of numbers; but it would be of service if, in examining the record, I find the exhibits with respect to any particular matter in sequence.

Mr. Kresel: I should say that, yes.

Mr. Galloway: Plaintiff offers in evidence 28 letters, constituting a series of correspondence concerning the seizure of patents owned by one Ferdinand Max Eugen Blass by the Alien Property Custodian, and its subsequent sale to the Chemical Foundation, and the correspondence to and from Mr. Blass and his attorneys with reference to claiming such patent and attempting to get its return to him.

The Court: Now, then, can you without reading all those exhibits tell me the substance thereof? I want to save you reading them if I can.

Mr. Galloway: I shall be very glad to do so. I think I can do it in a general way. The substance of this correspondence is that after the seizure of the patent, but before its sale, Mr. Blass or his attorney wrote to the Custodian and claimed to be the owner thereof, claiming that he was not an enemy as defined by the Trading with the Enemy Act.

He received replies from the Custodian stating that the matter was being given consideration. The patent was then sold to The Chemical Foundation, Incorporated. He engaged in further correspondence with the Alien Property Custodian and was referred to The Chemical Foundation. The Chemical Foundation made various inquiries of him and at the last expressed, in a general way, the conclusion that his claim was proper; however, demanding the release from him of all claims against The Foundation or the Custodian. There was some difficulty and differences over these releases; but so far as this correspondence shows the releases were never executed and the patent has never been returned.

The Court: You state that as a fact but the correspondence does not show that.

Mr. Galloway: The correspondence does show that.

Mr. Kresel: Will your Honor permit me. I did not have an opportunity to examine the whole correspondence. I am surprised that the Government should not put in the whole correspondence, which would show that the patents were reassigned to Mr. Blass. A further correction I desire to make is as to the statement of Mr. Galloway that prior to the sale notice of this man's claim was given to the Custodian.

The first letter which is now being offered in this connection is dated March 25, 1919. The sale to The Foundation was made about the 26th day of February, 1919, although the actual assignment was not executed until the 10th day of April, 1919.

Mr. Galloway: A lot of these patents were not even seized on the 26th of February.

Mr. Kresel: Pardon me, a minute, Mr. Galloway. That is going to be argued between you and me. I simply did not want your statement to go unchallenged on that subject.

I want to make a correction in the statement I have made. Mr. Garvan tells me the fact is they have not yet been returned. These patents have not yet been returned for the reasons which will be explained. I do not need to go into that.

The Court: The name of this person was what?

Mr. Galloway: Ferdinand Max Eugen Blass.

The Court: The patents cover what generally? I am trying to get the facts in my mind.

Mr. Galloway: I can not say off-hand. I do not recall. Do you recall what those patents referred to, Mr. Kresel?

The Court: It doesn't matter. I will try to recall it as the Blass incident.

Mr. Kresel: I think it is also proper to state that the correspondence shows the reasons for the seizure, namely, that the only record which the Alien Property Custodian could get as to the ownership of the patents was that contained in the records of the Patent Office, which showed that the person who owned them was a resident of Germany.

Mr. Galloway: In answer to that, I will state, your Honor, if we are going to engage in this discussion—

The Court: You need not do that.

Mr. Galloway: Another letter dated March 24th, which was before the sale, as we contend,—

Mr. Kresel: Before the assignment.

Mr. Galloway: Before the sale or assignment, as we shall contend, in which it states that Mr. Blass came to this country before August 1, 1914, and has resided in this country since he came here before August 1, 1914, to the present day.

Mr. Blass also writes that he has obtained his first naturalization papers from the United States District Court of New Jersey, under date of December 13, 1918, number 2811. "In view of these circumstances, it seems to me, the seizure of Mr. Blass's applications for patents (giving the number) may have been due to the erroneous impression caused by the statement of his old German residence in his application papers that he was actually residing in Germany."

The Court: It was the seizure of property of non-resident aliens, was it?

Mr. Kresel: No, your Honor, the complaint is that this was the seizure of the property of an alien but a resident in this country.

The Court: I mean, the Trading with the Enemy Act only authorized the seizure of property of non-resident aliens.

Mr. Kresel: Certainly. Mr. Galloway, is it your desire to mark them as one exhibit or as separate exhibits?

Mr. Galloway: Either way, so that they are on the record. It might be done as one exhibit.

Mr. Kresel: That would not be saving time. I think you better have a separate number for each one.

Letter dated March 24, 1919, signed by John Lotka, attorney for Ferdinand Max Eugen Blass, to Alien Property Custodian; received in evidence and marked "Plaintiff's Exhibit No. 456." (*See Exhibits, Vol. II, page 862.*)

Letter dated March 24, 1919, signed by John Lotka, attorney for Ferdinand Max Eugen Blass, to Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 457." (*See Exhibits, Vol. II, page 863.*)

Letter dated April 16th, 1919, signed by F. M. Eugen Blass, to The Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 458." (*See Exhibits, Vol. II, page 864.*)

Letter dated April 22, 1919, from Division of Patents, to John Lotka, received in evidence and marked "Plaintiff's Exhibit No. 459." (*See Exhibits, Vol. II, page 865.*)

Letter dated April 24, 1919, signed Ramsay Hoguet, to Mr. R. C. Goldstein, received in evidence and marked "Plaintiff's Exhibit No. 460." (*See Exhibits, Vol. II, page 866.*)

Letter dated May 3, 1919, signed by Robert C. Goldstein, Chief of Division, Division of Patents, received in evidence and marked "Plaintiff's Exhibit No. 461." (*See Exhibits, Vol. II, page 867.*)

Letter dated May 9th, 1919, signed by Eugen Blass, to The Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 462." (*See Exhibits, Vol. II, page 867.*)

Letter dated June 2, 1919, signed by Ramsay Hoguet, to Mr. Robert C. Goldstein, Division of

Patents, received in evidence and marked "Plaintiff's Exhibit No. 463." (*See Exhibits, Vol. II, page 868.*)

Letter dated June 18, 1919, signed by Robert C. Goldstein, Chief of Division, to Mr. F. M. Eugen Blass, received in evidence and marked "Plaintiff's Exhibit No. 464." (*See Exhibits, Vol. II, page 869.*)

Letter dated September 11, 1919, signed by H. E. Ahern, Director, Bureau of Trust, to Ramsay Houget, received in evidence and marked "Plaintiff's Exhibit No. 465." (*See Exhibits, Vol. II, page 870.*)

Letter dated September 13, 1919, signed by Ramsay Hoguet, to Mr. H. D. Ahern, Bureau of Trusts, Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 466." (*See Exhibits, Vol. II, page 871.*)

Letter dated October 29, 1920, signed by Ramsay Hoguet to Mr. Harry Caton, received in evidence and marked "Plaintiff's Exhibit No. 467." (*See Exhibits, Vol. II, page 873.*)

Copy of letter dated November 3, 1919, from F. M. Eugen Blass, "To the President," received in evidence and marked "Plaintiff's Exhibit No. 468." (*See Exhibits, Vol. II, page 874.*)

Copy of affidavit dated November 3, 1919, signed by F. M. Eugen Blass, received in evidence and marked "Plaintiff's Exhibit No. 469." (*See Exhibits, Vol. II, page 875.*)

Letter dated November 11, 1920, signed by Bureau of Trusts by Chas. B. Calvert, to F. M. Eugen Blass, received in evidence and marked "Plaintiff's Exhibit No. 470." (*See Exhibits, Vol. II, page 878.*)

Letter dated November 11, 1919, signed by Ramsay Hoguet to Mr. H. E. Ahern, received in evidence and marked "Plaintiff's Exhibit No. 471." (*See Exhibits, Vol. II, page 880.*)

Letter dated November 13, 1919, from H. E. Ahern to F. M. Eugen Blass, received in evidence and marked "Plaintiff's Exhibit No. 472." (*See Exhibits, Vol. II, page 881.*)

Letter dated November 15, 1919, signed by Ramsay Hoguet, to Mr. H. E. Ahern, received in evidence and marked "Plaintiff's Exhibit No. 473." (*See Exhibits, Vol. II, page 882.*)

Letter dated November 22, 1920, signed by F. M. Eugen Blass to Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 474." (*See Exhibits, Vol. II, page 882.*)

Letter dated January 3, 1921, signed by Charles A. Dunham, on letterhead of Duell, Warfield & Duell, to Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 475." (*See Exhibits, Vol. II, page 884.*)

Letter dated January 5, 1921, addressed to Chemical Foundation, Inc., attention, Dr. L. Van Doren, received in evidence and marked "Plaintiff's Exhibit No. 476." (*See Exhibits, Vol. II, page 886.*)

Letter dated January 5, 1921, from "J. P. R. Z." Division of Records, to Duell, Warfield & Duell, received in evidence and marked "Plaintiff's Exhibit No. 477." (*See Exhibits, Vol. II, page 887.*)

Letter dated March 13, 1921, signed by F. M. Eugen Blass, to Thomas W. Miller, Esq., Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 478." (*See Exhibits, Vol. II, page 887.*)

Letter dated March 17th, 1921, signed by Charles B. Calvert, Bureau of Trusts, to Mr. F. Eugen Blass, received in evidence and marked

"Plaintiff's Exhibit No. 479." (*See Exhibits, Vol. II, page 890.*)

Letter dated March 18, 1921, signed by F. M. Eugen Blass, to Thomas W. Miller, Esq., Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 480." (*See Exhibits, Vol. II, page 892.*)

Memorandum dated March 23, 1921, "To: Colonel Miller, From: Mr. Caton," received in evidence and marked "Plaintiff's Exhibit No. 481." (*See Exhibits, Vol. II, page 893.*)

Letter dated March 27, 1921, signed by F. M. Eugen Blass, to Thomas W. Miller, Esq., Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 482." (*See Exhibits, Vol. II, page 895.*)

Letter dated April 7, 1921, signed by Charles B. Calvert, Bureau of Trusts, to The Chemical Foundation, Inc., received in evidence and marked "Plaintiff's Exhibit No. 483." (*See Exhibits, Vol. II, page 897.*)

Mr. Galloway: Plaintiff next offers in evidence a letter dated July 28, 1920, from Verplanck & Prince to the Alien Property Custodian and asks that the same may be read in evidence as "Plaintiff's Exhibit No. 484."

Received in evidence and marked "Plaintiff's Exhibit No. 484." (*See Exhibits, Vol. II, page 898.*)

Mr. Galloway: This letter, if your Honor please, states in substance that the American Kitchen Products Company had reported to the Alien Property Custodian concerning a certain contract that it has with a German citizen, which contract provides for the payment of royalties under a process for the manufacture of bouillon cubes invented by a German and that his client wanted to know if the Custodian contemplated selling the rights of the enemy in this contract.

Plaintiff next offers in evidence a letter dated July 30, 1920, to Verplanck & Prince from the Division of Patents, R. C. Goldstein, Chief of Division, which acknowledges the receipt of their letter, and we ask that the same may be read in evidence as Plaintiff's Exhibit No. 485.

Received in evidence and marked "Plaintiff's Exhibit No. 485." (*See Exhibits, Vol. II, page 899.*)

MR. GALLOWAY: This letter acknowledges the receipt of the previous exhibit and advises that all the right, title and interest in this contract has been transferred to The Chemical Foundation, and in the future they should pay all such royalties to them.

MR. KRESEL: Does that conclude the correspondence on that subject?

MR. GALLOWAY: Yes.

MR. KRESEL: May I inquire what it is that the Government is criticising in that connection?

MR. GALLOWAY: Among other purposes, this correspondence shows that the Alien Property Custodian could have found purchasers other than The Chemical Foundation for this property; and it shall also be our contention that it is rather hard to conceive how royalties accruing under a contract are necessary to advance the chemical industry in the United States. Those are only two of the purposes. There may be others, your Honor.

MR. KRESEL: There is no question of the seizure or anything of that sort, is there?

MR. GALLOWAY: We do not question the seizure.

THE COURT: May I make this inquiry there, Mr. Galloway. If the seizure is not questioned, and a power of sale existed, then the question whether the property so seized should be sold to one person or another is subject to judicial review. I am trying to get the ultimate issue there. Can you help me on that?

Mr. Galloway: If your Honor please, the statement which you have made, of course, assumes a great many things which we do not admit in the case. It assumes, first, the existence of a power. Then the question arises, what kind of power, if it existed.

The Court: Power of seizure. I thought I assumed the power to seize only. Did I make another assumption?

Mr. Galloway: I think you assumed more. My recollection is you assumed also the power of sale and then asked whether the judiciary could inquire into whether or not a sale could be made to one person or another. As I say, at the very threshold of that question are the questions of power, and if there was any power, what kind of power.

Mr. Kresel: You mean the power to sell. That is what you are questioning. I think it would clarify the issue as to that if we did have this discussion here.

The Court: If Mr. Galloway does not mind.

Mr. Galloway: I would rather not get into a discussion of that, because I think it takes us right back over the things that we have discussed already.

The Court: It seemed to me that it presented just a shade different question there and I was trying to see what the ultimate issue as to that was. But, Mr. Galloway, you prefer not to go into that at this time.

Mr. Galloway: I would rather not, your Honor.

Mr. Kresel: All right, your Honor.

Mr. Galloway: Plaintiff next offers in evidence a letter dated January 16, 1919, from Mr. Hoguet to Mr. Palmer in which he summarizes his letter of January 15, 1919; the letter of January 15th having previously been offered and admitted in evidence here.

The Court: I recall it.

Mr. Galloway: We shall ask that the enclosure, which is a letter of January 15th, be not duplicated in the record.

Letter dated January 16, 1919, received in evidence and marked "Plaintiff's Exhibit No. 486." (*See Exhibits, Vol. II, page 900.*)

Mr. Galloway: Plaintiff next offers in evidence a list of re-assignments by The Chemical Foundation to various assignors as stated in such list, covering——

Mr. Kresel: Has that been agreed upon?

Mr. Galloway: Mr. Boggs gave it to me as the document which you people were willing to agree upon. If I am incorrect, I would like to know it.

Mr. Kresel: I do not know what Mr. Boggs did, but I should like to see it. Were you going to offer that now?

Mr. Galloway: I was going to offer that in evidence.

Mr. Kresel: Will you go ahead with something else while I look at this?

Mr. Galloway: I will offer that later, yes. However, I wish to state that many of the minutes which I am going to offer now refer to assignments made in the list of assignments which

I have just presented to counsel for the defendant and shall offer at another time.

The Court: Those deal with assignments of what character?

Mr. Galloway: These are assignments, if your Honor please, by The Chemical Foundation to various assignees, as set forth in the list which I have just handed to counsel for the defendant, and which list purports to state the reasons for cal Foundation also show the reasons for the as- such assignment; and the minutes of The Chemi- signment; and I think I am quite fair, in summarizing, in saying that those reasons in every instance show that it was because of the claim of prior ownership by an American or by a person who was not an enemy.

Mr. Kresel: Let me understand. I am very glad that I stopped you with reference to this proposed stipulation. You do not desire to be bound by all of this stipulation; is that your point?

Mr. Galloway: Well, I do not know that there is any discrepancy between the two.

Mr. Kresel: You state that this stipulation does not give the correct reason for the assignment.

Mr. Galloway: I do not understand that I so stated. If I did, I wish to be corrected.

Mr. Kresel: That was my understanding of it. I understood you to say that the stipulation gives reasons for the assignment which are different from those stated in the minutes.

Mr. Galloway: I beg your pardon. I did not make such a statement. If I did, I want to be corrected.

Mr. Kresel: You do agree then that this stipulation is correct and you want to offer it; is that so?

Mr. Galloway: That is what we did. We offer it.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 487." (*See Exhibits, Vol. II, page 907.*)

Mr. Galloway: If your Honor please, we have offered some of the minutes of The Chemical Foundation, Incorporated, previously with respect to certain subjects that we were attempting to develop at that time; and because of that situation, I have made an abstract or summary of the way in which we would like to offer the remainder of such minutes as we desire to offer in evidence. I shall therefore read it and ask that it be taken on the record; and offer the other minutes as I come to them in this memorandum.

Plaintiff has heretofore introduced certain of the minutes of The Chemical Foundation, Incorporated, which have been identified with various exhibit numbers and now desires to introduce additional minutes of The Chemical Foundation, Inc., and in order to simplify the record requests that in making up and printing the record all the minutes introduced may be printed together in their order by dates, and where they have been separately introduced in order to prevent confusion in the record, referred to the page where the exhibit will be found in the minutes of the whole. For the purpose of simplification, the following notes are made upon the record and additional minutes introduced:

The entire minutes of April 4, 1919, have already been introduced as Exhibit No. 58. Attached to and made a part of these minutes are three papers, one headed "The Chemical Foundation, Inc.," another headed "Subscription," and another headed "The Formation of The Chemical Foundation, Inc." In the offer of these minutes, which appears on the record at page 694, these three papers were not specifically mentioned, but they were intended to be included in the offer of the minutes of which they are a part. It is therefore requested that they be now offered and read in evidence as Plaintiff's Exhibits 58A, 58B and 58C. *(See Exhibits, Vol. I, pages 191, 197 and 199, respectively.)*

Mr. Kresel: Your Honor please, I think I neglected to place my objection on the record to that batch of letters that went in. Your Honor said that we should withhold that until they are all offered together and I simply neglected to do it. May it be understood that I have an objection to the introduction of those.

The Court: I understand that when Mr. Galloway is through offering exhibits, you may make such objections as you desire, whether your objections run to all the exhibits or not, or you may make specific objections to any exhibit or group of exhibits.

Mr. Kresel: I thank your Honor. These additions to the minutes of April 4th that have been just offered we object to as immaterial and irrelevant.

The Court: But you have no objection to the order in which they are offered?

Mr. Kresel: Certainly not. I think it is a very good idea.

Mr. Galloway: In offering these minutes, your Honor, we should be very glad to suggest to counsel for the defendant that copies may be substituted for the originals, if you so desire.

Mr. Kresel: Very well. We will be glad to do that.

Mr. Galloway: Plaintiff now offers in evidence the minutes of the meeting of the Board of Directors of The Chemical Foundation, Inc., held in New York City on Wednesday, May 14, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 488.

Received in evidence and marked "Plaintiff's Exhibit No. 488." (*See Exhibits, Vol. II, page 922.*)

Mr. Kresel: May I inquire of Mr. Galloway what there is in those minutes that he considers as material in the present offer?

Mr. Galloway: If you want me to take up the time to do it with each of them, I shall be glad to do so.

Mr. Kresel: I am trying to see if it is not possible for you to offer only a portion of the minutes. I may concede what you want to prove by it. There are ways of shortening this instead of putting in the entire minutes.

The Court: Could you indicate briefly and generally the evidential value, from your standpoint, of the exhibits now offered?

Mr. Galloway: I can point out one particular portion, especially:

"Resolved, That the President, or the Vice-President in the absence of the President, be and they are hereby authorized, without further action of the Board of Directors, to execute, in the name and on behalf of the Corporation, license agreements in proper cases in said form; and the Secretary be and he hereby is authorized and directed to attach the corporate seal and attest the same by his signature, to any license agreements executed by the President or Vice-President as aforesaid."

That is one portion that we think is material. Here is another portion in which the Treasurer was authorized to accept an assignment of a patent for transforming-nozzle for fifty dollars from the Alien Property Custodian. Here is another portion of the minutes where the Treasurer was authorized to accept on behalf of the Corporation an assignment from the Custodian for the trade-mark "Duron," and another trade-mark "C. W. H. H.," and all the rights under certain agreements between certain corporations and to pay the Alien Property Custodian the sum of fifty dollars for it.

Mr. Kresel: All of which we are perfectly willing to concede.

Mr. Galloway: And another one in which the Treasurer was authorized to accept on behalf of the corporation an assignment from the Custodian of fourteen patents relating to gyroscopic devices and to pay the Custodian the sum of $500. At this same meeting a proposed form of license agreement was adopted.

Mr. Kresel: Which is already in evidence, is it not?

Mr. Galloway: Not so marked here.

Mr. Kresel: Well, you did put in two license forms.

Mr. Galloway: Yes, but you used two different license forms, and among others was an agency contract such as you executed with the Pacific Flush Tank people.

Mr. Kresel: Mr. Galloway, if you want to put in the license forms annexed to those minutes, I have no objection to that.

Mr. Galloway: I shall be very glad to do so.

Mr. Kresel: What I am trying to do is to keep the whole minutes from going in.

The Court: Suppose you consider that this afternoon after adjournment and see if the minutes can not be abbreviated by stipulation.

Mr. Galloway: If your Honor please, we have some 15 or 16 items here of such minutes that we are going to ask leave to introduce.

Mr. Kresel: You mean sixteen separate meetings?

Mr. Galloway: Sixteen separate meetings.

Mr. Kresel: Then I make the suggestion that Mr. Galloway now make one offer, reading from this memorandum, we will make our objection and take your Honor's ruling. If your Honor should admit the minutes, the Clerk can mark them and then Mr. Galloway and our side will try to get together to see if we can not eliminate some of it.

Mr. Galloway: That was the thing I suggested some few days ago and you began at once to ask me what parts were material and what parts you wanted to exclude and I had to exclude the balance sheet.

Mr. Kresel: I certainly do; and I would like to know now. But I am trying to shorten it as much as possible, if that is agreeable to you.

Mr. Galloway: We shall be very glad to do that.

The Court: You make your offer now of such portions as you desire and they will be admitted subject to objection. Then if, by conferences outside of Court, counsel can agree upon some method of shortening the exhibits, or possibly eliminating them entirely and substituting a stipulation, that would be preferable.

Mr. Galloway: Plaintiff also offers in evidence the minutes of the meeting of the Board of Directors of The Chemical Foundation held at New York, June 28, 1919, to be identified and read as Plaintiff's Exhibit 489.

Received in evidence and marked "Plaintiff's Exhibit No. 489." (*See Exhibits, Vol. II, page 931.*)

Plaintiff also offers in evidence the minutes of the meeting of the Board of Directors of The Chemical Foundation held on July 6, 1920, and asks that the same may be identified and read in evidence as Plaintiff's Exhibit 490.

Received in evidence and marked "Plaintiff's Exhibit No. 490." (*See Exhibits, Vol. II, page 932.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of a meeting of the Board of Directors of The Chemical Foundation held on October 4, 1920, together with a printed paper attached thereto entitled "Agency agreement," to be identified and read in evidence as Plaintiff's Exhibits 491 and 491-A.

Received in evidence and marked "Plaintiff's Exhibits Nos. 491 and 491-A," respectively. (*See Exhibits, Vol. II, pages 935, 942.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of a special meeting of the Board of Directors of The Chemical Foundation held December 18, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 492.

Received in evidence and marked "Plaintiff's Exhibit No. 492." (*See Exhibits, Vol. II, page 947.*)

Mr. Galloway: We next offer in evidence the minutes of the annual meeting of stockholders of The Chemical Foundation, held on the 4th day of April, 1921, excluding therefrom proxies, waiver of notice, and including only the minutes of the meeting, and ask that the same may be identified as Plaintiff's Exhibit No. 493.

Received in evidence and marked "Plaintiff's Exhibit No. 493." (*See Exhibits, Vol. II, page 949.*)

Mr. Galloway: We next offer in evidence minutes of the meeting of the Board of Directors of The Chemical Foundation, Inc., held on June 21, 1921, and ask that the same may be read in evidence as Plaintiff's Exhibit 494.

Received in evidence and marked "Plaintiff's Exhibit No. 494." (*See Exhibits, Vol. II, page 951.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the meeting of the Board of Directors of The Chemical Foundation held on July 22, 1921, and asks that the same may be read in evidence as Plaintiff's Exhibit 495; and with such exhibit we offer a statement attached to said minutes showing "Licensed products," "patent agreement in production" and "royalty rate," consisting of seven typewritten pages, and ask that the same may be identified and read in evidence as Plaintiff's Exhibit 495-A.

Received in evidence and marked "Plaintiff's Exhibits Nos. 495 and 495-A," respectively. (*See Exhibits, Vol. II, pages 952, 956.*)

Mr. Galloway: We next offer in evidence the minutes of the meeting of the Directors of The Chemical Foundation held in New York on November 2, 1921, and ask that the same may be read in evidence as Plaintiff's Exhibit 496.

Received in evidence and marked "Plaintiff's Exhibit No. 496." (*See Exhibits, Vol. II, page 961.*)

Mr. Galloway: We next offer in evidence the minutes of the stockholders' meeting of The Chemical Foundation held on February 6, 1922, and ask that the same may be read in evidence as

Plaintiff's Exhibit 497. We desire, however, to exclude from such exhibit the balance sheet, the proxies, the list of stockholders and the affidavit of the Secretary of service of notice, the form of notice, the oath of inspectors and report of inspectors of election.

Received in evidence and marked "Plaintiff's Exhibit No. 497." (*See Exhibits, Vol. II, page 963.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the meeting of the Directors of The Chemical Foundation held June 22, 1922, and asks that the same may be read in evidence as Plaintiff's Exhibit 498.

Received in evidence and marked "Plaintiff's Exhibit No. 498." (*See Exhibits, Vol. II, page 966.*)

Mr. Galloway: With Exhibit No. 498, Plaintiff offers in evidence the following documents attached to said minutes:

Letter dated June 19, 1922, to The Chemical Foundation, Inc., signed by Thomas F. Conroy, and asks that this may be read as Plaintiff's Exhibit 498-A.

Paper entitled "Assignment of Subscriptions," dated June 15, 1922, signed by Francis P. Garvan, to be identified as Plaintiff's Exhibit 498-B.

Letter dated July 31, 1921, addressed to The Chemical Foundation, signed by Douglas I. McKay, and ask that the same may be read in evidence as Plaintiff's Exhibit 498-C.

Letter dated June 19, 1922, to The Chemical Foundation, Inc., signed by James E. Morgan, and asks that the same may be read in evidence as Exhibit 498-D.

Paper entitled "Assignment of Subscriptions," dated June 15, 1922, signed by George J. Corbett, to be identified as Plaintiff's Exhibit No. 498-E.

Letter dated June 28, 1922, to Mr. Thomas F. Conroy, signed by The Chemical Foundation, Inc., to be identified and read in evidence as Plaintiff's Exhibit 498-F.

Letter dated June 28, 1922, to Douglas I. McKay, signed by The Chemical Foundation, Inc., to be identified as Plaintiff's Exhibit 498-G.

Letter dated June 28, 1922, to James E. Morgan, signed The Chemical Foundation, Inc., to be identified as Plaintiff's Exhibit 498-H.

Received in evidence and marked Plaintiff's Exhibits 498-A, 498-B, 498-C, 498-D, 498-E, 498-F, 498-G, and 498-H," respectively. (*See Exhibits, Vol. II, pages 976 to 982, inclusive.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the meeting of the Board of Directors of The Chemical Foundation, Inc., held on November 22, 1922, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 499.

Received in evidence and marked "Plaintiff's Exhibit No. 499." (*See Exhibits, Vol. II, page 983.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the Advisory Committee of The Chemical Foundation, held on December 17, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 500. We shall be glad to follow the same plan with regard to eliminating certain portions that we agreed upon, if you desire that, Mr. Kresel.

Received in evidence and marked "Plaintiff's Exhibit No. 500." (*See Exhibits, Vol. II, page 985.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the Advisory Committee of the Chemical Foundation held February 18, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 501.

Received in evidence and marked "Plaintiff's Exhibit No. 501." (*See Exhibits, Vol. II, page 991.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of a meeting of the Advisory Committee of The Chemical Foundation, Inc., held March 17, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 502.

Received in evidence and marked "Plaintiff's Exhibit No. 502." (*See Exhibits, Vol. II, page 994.*)

Plaintiff next offers in evidence the minutes of the meeting of the Advisory Committee of The Chemical Foundation, Inc., held April 21, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 503.

Received in evidence and marked "Plaintiff's Exhibit No. 503." (*See Exhibits, Vol. II, page 997.*)

Mr. Galloway: Plaintiff next offers in evidence copy of the minutes of the meeting of the Advisory Committee held on July 21, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 504.

Received in evidence and marked "Plaintiff's Exhibit No. 504." (*See Exhibits, Vol. II, page 999.*)

Mr. Galloway: Plaintiff next offers in evidence copy of a letter from H. E. Bateman, Secretary of the Advisory Committee of The Chemical Foundation, to Colonel Douglas I. McKay, dated August 19, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit 505.

Received in evidence and marked "Plaintiff's Exhibit No. 505." (*See Exhibits, Vol. II, page 1000.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the meeting of the Advisory Committee of The Chemical Foundation of September 22, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 506.

Received in evidence and marked "Plaintiff's Exhibit No. 506." (*See Exhibits, Vol. II, page 1002.*)

(Recess until one o'clock, Standard time.)

AFTER RECESS

Mr. Galloway: I am going to read very little of these. The minutes are rather long.

The Court: You be controlled by your own judgment.

Mr. Galloway: I do not want to take any more time than I feel is essential.

Plaintiff offers in evidence the minutes of the meeting of the Executive Committee of the American Dyestuffs Manufacturers' Association of April 10th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 507.

Received in evidence and marked "Plaintiff's Exhibit No. 507." (*See Exhibits, Vol. II, page 1004.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of Executive Committee of the American Dyestuffs Manufacturers' Association of May 22nd, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 508.

Received in evidence and marked "Plaintiff's Exhibit No. 508." (*See Exhibits, Vol. II, page 1005.*)

Mr. Galloway: Plaintiff next offers in evidence minutes of the meeting of Executive Committee of the American Dyestuffs Manufacturers' Association of September 3, 1918, and asks that same may be read in evidence as Plaintiff's Exhibit No. 509.

Received in evidence and marked "Plaintiff's Exhibit No. 509." (*See Exhibits, Vol. II, page 1007.*)

Mr. Galloway: Plaintiff next offers in evidence copy of the minutes of meeting of Board of Governors of the American Dyestuffs Manufacturers' Association, held September 16, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 510.

Received in evidence and marked "Plaintiff's Exhibit No. 510." (*See Exhibits, Vol. II, page 1008.*)

Mr. Galloway: The plaintiff next offers in evidence minutes of meeting of members of the Chemical Alliance, Incorporated, the American Dyes Institute and the American Dyestuffs Manufacturers' Association, held at the Hotel Biltmore, September 26, 1918, and asks that the same may be read as Plaintiff's Exhibit No. 511.

Received in evidence and marked "Plaintiff's Exhibit No. 511." (*See Exhibits, Vol. II, page 1009.*)

Mr. Galloway: I just wish to call the Court's attention to some of the purposes of the meeting. Among others, it says: (Reading from exhibit).

Plaintiff next offers in evidence the minutes of the meeting of the Executive Committee of the American Dyestuffs Manufacturers' Association of November 12, 1918, the same to be read in evidence as Plaintiff's Exhibit No. 512.

Received in evidence and marked "Plaintiff's

Exhibit No. 512." (*See Exhibits, Vol. II, page 1028.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the Annual Meeting of the American Dyestuffs Manufacturers' Association, held December 6, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 513.

Received in evidence and marked "Plaintiff's Exhibit No. 513." (*See Exhibits, Vol. II, page 1030.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the meeting of the Executive Committee of the Dyes Institute of May 7, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 514.

Received in evidence and marked "Plaintiff's Exhibit No. 514." (*See Exhibits, Vol. II, page 1052.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the meeting of the Executive Committee of the American Dyes Institute of June 5, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 515.

Received in evidence and marked "Plaintiff's Exhibit No. 515." (*See Exhibits, Vol. II, page 1055.*)

Mr. Galloway: I might state to your Honor that many of these minutes that we are introducing now bear upon the question of the inauguration and operation of an open price association by the American Dyes Institute.

The Court: Will you have anything to say about that?

Mr. Kresel: I will, your Honor, but it was my understanding that I was to wait——

The Court: I did not know we were getting into that and shall be glad to hear you now if you have anything to say about that.

Mr. Kresel: Yes, your Honor. Before I take up that point, will your Honor permit me to address myself first to the minutes of the several meetings of the Executive Committee of the American Dyestuffs Manufacturers' Association which Mr. Galloway has just finished offering. It seems to me, your Honor, that even under the most liberal rule that the Court could adopt in permitting testimony on the part of the Government, these minutes ought not to be permitted in.

To begin with, the first of these series of minutes is dated April 10, 1918. It is of the Executive Committee of the American Dyestuffs Manufacturers' Association, which is not an organization that is mentioned as one of the conspirators in the Bill. Taking as an example the minutes of that first meeting, I direct your Honor's attention to the fact that it consists of seven paragraphs: The first paragraph deals with taking a lease of offices; the second deals with an authorization to the Secretary to furnish the office with necessary furniture; the third deals with fixing the Secretary's salary; the fourth deals with a motion that the Secretary be appointed Assistant Treasurer with power to sign checks; the fifth deals with an instruction to the Secretary to issue a bulletin from time to time setting forth the activities of the association.

The next paragraph deals with an instruction to the Secretary to put the Association in touch with all branches of the Government in order to co-operate in the fullest extent in all matters of mutual interest.

The seventh and the last paragraph says that it was decided to commence the active work of the Association by creating the following Committees: and then there is a blank. I notice that someone has bracketed the sixth paragraph, which deals with the instruction to the Secretary to put the Association in touch with all branches of the Government in order to co-operate to the fullest extent in all matters of mutual interest. I assume that that bracket indicates that the Government feels that that part of the minutes is perhaps immaterial. If I am incorrect in that, Mr. Galloway may correct me.

Now then, your Honor, to burden up this record with the minutes of this meeting, a meeting of April 10th, 1918, before there was any suggestion made by anybody that these patents were to be transferred to anybody, before it is claimed even in the Bill that any conspiracy was thought of; to put on the record that this Association which was starting out on its career had instructed its Secretary to put the Association in close touch with all branches of the Government in order to co-operate with the Government—laudable a purpose as that may be—is absolutely immaterial in this case. I ask in all fairness that the Government state in what respect it claims these minutes are material and relevant here. I think the defendant is entitled to know.

Now, if your Honor will take the minutes of the next meeting of the 22nd of May——

The Court: They are in a lesser or greater degree subject to the same criticism?

Mr. Kresel: Exactly, sir.

The Court: Without specializing, I should be very glad to hear Mr. Galloway.

Mr. Anderson: If your Honor, please, Mr. Galloway has asked me to reply.

The Bill in this case alleges that prior to June and for some time prior thereto, there had been proceedings or steps taken to bring about a control of the dyestuffs industry through certain corporations, mergers and associations; that about June, 1918, about that time, this object was to a large extent accomplished and thereafter there developed in pursuance of the plan—or call it a "conspiracy"—a definite program to bring about the control of this industry in the United States, contrary to the Statutes of the United States, and that this acquisition of the patents was one of the elements in that situation, one of the steps in that procedure.

Whether our position on the law is sound or unsound, I take it that there can be no reason for debate that we are entitled, at least, to put in the case on the theory that we have argued it and to argue the case before the Court when we come to it.

As to the express minutes themselves, I am quite ready to agree with counsel for the defendant that much of the material which he read is immaterial in this case, and I am quite ready to stipulate it out and limit the record to what we deem material. The only reason it has not been done is, if I am correctly informed—there is so much of this stuff that I might be mistaken—that this data was not available. Certainly, I never saw it until it was produced here.

Since we have been here, we have been taxed to the utmost to try to eliminate what we could. Your Honor may not think we have eliminated much, but the amount of stuff that has been eliminated nearly fills a room over in the hotel. I personally have stayed up until one and two o'clock every night since I have been here to try and eliminate everything I could in this case.

At one time I thought I could abbreviate by taking extracts from these minutes, and I so stated to the Court. On going through the minutes we found that the extracting of them for what we deemed material and important would be practically re-writing them except for a few formal matters.

We would be only too glad to stipulate out of the record or cut out of the record, in any way it can be arranged, any of these matters that are not material. But I simply have not had the time and my associates have not had time to make up the abbreviations or omissions that would be necessary in this case; and therefore, if we offer the minutes, we have to offer them as a whole.

I do not wish to burden the record, but the minutes which we are now going to offer of the American Dyes Institute and the American Dyes Manufacturers' Association show that they merged soon after their organization into one institution. It bears on one of the main questions involved in this case; probably the most important evidence we put into this case.

I shall contend before the Court, that counsel may have my views—which he suggests he is entitled to, which I agree to, and the Court also—that they are conclusive evidence of a conspiracy to restrain interstate and foreign commerce in an effort at least to bring about a monopoly; and they demonstrate that the purchase of these patents and the method of bringing about the purchase of these patents, and the other conditions surrounding it, was a step in that transaction. And if that is true, then the transaction was illegal in its inception, in its purpose and everything else.

Under these circumstances, I will have to ask your Honor, unless your Honor wants to pass upon these minutes in detail—I will not ask it; I simply suggest—that the minutes are offered for that reason, among others, as supplementing and necessary to the culmination of the evidence already introduced on that subject.

It should have been offered earlier. It was interrupted by the fact that I tried personally to go over this matter to see if I could not find some way to shorten it. I have held them to the last with that object in view, but I can not do it. Therefore, we would like to offer these minutes in evidence with the statement that I wish to make on the record, that we will be only too glad to stipulate to cut out of the record any parts thereof that are formal or which we can agree do not relate to the issues in this case.

THE COURT: This is the American Dyes what?

MR. ANDERSON: American Dyestuffs Manufacturers Association was merged with the American Dyes Institute. I think they had memberships in common, but they were merged very soon after. Here I think are all the minutes of the American Dyestuffs Manufacturers Association. There are only three meetings.

THE COURT: Is the American Dyes Institute a living association still?

MR. ANDERSON: I am not sure that it is a living association today, but it was a very vital and living association when this transaction took place and during the entire proceedings under investigation in this case; and it was the organization to which reference was made in the report of the Alien Property Custodian and others, as being the manufacturers, and they underwrote all the stock of the Chemical Foundation. At that time, if I remember correctly, the American Dyestuffs Manufacturers Association had been merged with this company and came into the membership in that way. So it has a direct bearing upon the

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essential proof of conspiracy in this case and we think will be a most essential part of it.

The Court: My difficulty there, Colonel Anderson, when Mr. Galloway called the nature of the minutes to my attention, was how any unlawful practices, if they be unlawful, can be material, pertinent or relevant here if the organization of The Chemical Foundation and its practices, the practices of the defendant, are not illegal. I have been having difficulty right along and I am not clear at all on whether The Chemical Foundation can be construed as a monopoly, and unless you show that its practices are illegal and in violation of some Act of Congress, how can the practices of some other association or organization which might have been illegal be pertinent to the issues here? Probably I have rather indicated than stated—

Mr. Anderson: I think I have your Honor's difficulty. If your Honor please, it would be most remarkable if the Court in the trial of this case, with the enormous amount of documentary evidence put in, only part of which has been read, could get, as much as we have tried to give the Court that evidence in an orderly fashion, any definite and complete idea of the case. That would be our duty on argument, to prepare very full briefs on the facts of this case so your Honor will not have to read all of this record, and we will undertake to do that.

But answering your Honor's suggestion, let us suppose, to take your Honor's suggestion, but only for that purpose, that the practices of The Chemical Foundation were entirely all right. Let us suppose that the American Dyestuffs Manufacturers Association and the American Dyes Institute and the large corporations whose merger we have offered to show, gradually in pursuit of a purpose gathered from the acts and records, which is the only way it can be gathered, conceived and undertook to carry out a purpose by which they would control an essential industry of the United States engaged in interstate commerce, control and be able to obstruct and undertake to obstruct the development of the foreign commerce of the United States, undertake to monopolize that industry. They do not have to succeed. If they undertake to monopolize, the Sherman Act and the Clayton Act would make it illegal *ab initio* as to the Government of the United States. It does not matter; you can eliminate, for the purpose of immediate discussion, that question from this case.

The Court: Do you mind if I ask you a question there?

Mr. Anderson: Not at all, sir.

The Court: Suppose John Doe had bought the patent at public sale, would the purchase by him have been illegal?

Mr. Anderson: If John Doe had purchased it, upon that mere statement of facts, not any more than that, I might concede, assuming the power, let us say, that the sale to John Doe might be valid.

The Court: Not for the purpose of indicating any position, but of merely trying to find a position,—

Mr. Anderson: I understand, sir. Your Honor will understand my difficulty, too?

The Court: Yes. But would not John Doe have not only been guilty of trying to monopolize, but if some of the theories advanced here by the other side are correct, that the German patents had this country by the throat and he had acquired them all, he would not only have been trying to obtain a monopoly, but he would have succeeded, would he not, in monopolizing the control of the importation of dyes?

Mr. Anderson: Quite possibly. Quite possibly he might have succeeded in trying to monopolize the control of the importation of dyes. But then he would have acquired and been doing what he was authorized by an Act of Congress to do, and that which is authorized by law is not illegal.

Every patentee *per se* is a monopolist as to the thing controlled by the patent; that is all it is; and he does not have to even exercise it. It is a valuable right if he does not exercise it, under our law. Whether the law is right or wrong, I do not discuss. But if half a dozen or a dozen people or a combination of people interested in that industry go to work and undertake to acquire all of the patents relating to the chemical and dyestuffs industry (they are operating now as separate and independent institutions) for the avowed purpose—Now, one man can not be guilty of conspiracy to do an unlawful act; he can do an unlawful act, but he can not be guilty of conspiracy; but when a number of people operating separately go to work for the avowed purpose of acquiring the control of an industry (whether we prove that or not is a question of argument), and to that end are restraining the foreign commerce of the United States, and that particular act is shown by a series of transactions, resolutions, motions, and so forth, and the actions of those parties be for the purpose of acquiring such control with an intent to monopolize and to restrain the foreign and interstate commerce of the United States, then the thing becomes illegal in its inception and every person that comes into it later and helps to carry out that purpose becomes *ipso facto* a member of this illegal combination.

The Court: May I ask two questions there?

Mr. Anderson: Yes, sir.

The Court: My difficulty is great on this point.

Mr. Anderson: I concede it is a difficult point, sir.

The Court: It seems to me that whatever their purpose was—not their primary purpose, but the purpose that this group of persons may have had in their minds in the beginning—becomes immaterial unless that purpose, even though unlawful, were carried out. Unless you can first establish (not now; I mean in this case at any time) that the Chemical Foundation does carry out the unlawful purposes to which you refer, then it seems to me those unlawful purposes, if they were unlawful, must be dropped by the wayside and we must forget them. That is one difficulty I have in mind.

The other difficulty presented by your argument is this: that although one person might have acquired all the patents by purchase, yet, if I understand the necessary and inevitable consequences of your proposition, it is that the more numerous the persons who became interested in The Chemical Foundation, the more heinous (probably that is not the exact term) was the act. Now, if a company had purchased them, it might not have been a conspiracy. It might have been the highest bidder at a public sale. I take it that such acquisition would not have been in violation of the monopoly statutes. Or do you hold that it would be?

Mr. Anderson: It would depend on so many circumstances, if your Honor please. Your Honor has asked a question that presents opportunity for argument, and at the proper time I shall argue it very fully, because one of the most interesting questions in the law is just the subject we are on today. Therefore I have not undertaken to discuss it as much as I could.

The Court: Let us close our discussion. But I will hear you, Mr. Kresel, if you wish.

Mr. Anderson: Therefore I would prefer to argue it later, if I could.

The Court: But do you not think, notwithstanding your position which you took in your opening, that this is not a case under the Sherman Act?

Mr. Anderson: No, I do not think so.

The Court: Very well.

Mr. Anderson: May I answer your Honor's question?

The Court: Yes.

Mr. Anderson: I think it is quite important to get this clear. I think it will be of great help in a later stage if I state my position now. It will just take me a minute or two. When I mentioned the relief under the Sherman Act, I meant that the relief accorded by the Sherman Act to the Government of the United States was not involved. The Sherman Act was involved; but it is a different result, an illegal result, flowing from the declaration of the statute itself, and not the specific relief granted by the statute. That is what I meant, and when I do not undertake to answer your Honor's question, which I would be only too glad to do if your Honor desires it, do not understand that I agree with your Honor's view.

The Court: Not at all; and the purpose of my questions is as you have indicated, namely, that I follow you much more intelligently if I know where you are trying to go than if I guess at the path you are trying to take.

Mr. Anderson: I believe in about five minutes I could answer your Honor's question.

The Court: I think I understand your position.

Mr. Anderson: I could answer it; but I do not want to take up undue time, and I am afraid I would, because I am really disposed to argue fully.

Mr. Kresel: I did not fully understand your Honor's inquiry as to whether I desired to say anything with reference to the next series of minutes that Mr. Galloway was about to offer, namely, something having to do with an open-price association. We can not see how any evidence of an open-price association, even assuming that the activities of that association were contrary to the law, which we do not concede,—we do not see how that is in any way material to the issues here. I can not hope to express it any more clearly than your Honor expressed it in your colloquy with counsel which has just been closed.

Assuming that the American Dyes Institute did have an open-price association, assuming for the purposes of the argument, and for that only, that that was illegal, how can anything that the Chemical Foundation has done be in any way affected thereby. If the activities of The Chemical Foundation are not open to attack as illegal, if their administration of this property is lawful, how can it be material that some other organization had an unlawful combination among its own members?

Upon that ground, your Honor, we object to it is so apt. Let us assume, Colonel Anderson, that all that you say about the American Dyes Institute is right; that it was a monopoly of the worst kind; and then let us assume that if stockholders went out and organized a district school to teach poor children, and used their money for that purpose, and that then the school went down and taught poor children; would you say that the organization of that school was illegal?

Mr. Anderson: I would not, because many legal acts may be done in the accomplishment of an illegal purpose such as creating a monopoly. They are steps in or leading to the ultimate purpose, and they may be part of the proceeding having for its ultimate object the creation of a monopoly.

The Court: If I understand Mr. Kresel, do we not have to come down in the last analysis of this: Is The Chemical Foundation a monopolistic organization in violation of any statute of the United States?

Mr. Anderson: No, sir, we come down to this proposition: whether at the time that this sale was made the procurement of this contract of sale, the making of this contract of sale, was a part of a purpose to monopolize or to restrain the commerce of the United States. If it was, it was *ab initio* void when it was made, because as to that it would be unlawful; and I do not care whether the illegal objects were ever consummated or not.

I recognize that that is an application of the Sherman Act that is unusual; but, of course, your Honor is going to concede me the right to argue it, and I think I can establish it.

The Court: I am, but the weather has been hot.

Mr. Anderson: It has been awful.

The Court: And this case presents a numerous number of elements; it presents numerous elements with which I have been hitherto unfamiliar. But I believe it would help me in the ultimate decision of this case if you would have patience with me just a minute longer.

Mr. Anderson: It is your Honor's patience, not mine.

The Court: I am not stating an ultimate decision now, but I just can not see the end of your contention at the present time, and I want to, if possible. I will put it this way for the purposes of this discussion. Surely you can not give The Chemical Foundation or those interested in it or in the formation of The Chemical Foundation credit for or charge them with a purpose different from that which they accomplished, can you? I am merely feeling my way. And then if that purpose accomplished, weighed and tested by the acts and facts in immediate connection therewith, is not of itself a monopoly, how can we read into it any monopolistic tendencies or desires or purposes, if such there were? Do I indicate my thought?

Mr. Anderson: Your Honor has indicated your trouble and I am going to try and answer very briefly.

The Court: I would be obliged if you would.

Mr. Anderson: In the first place, I will answer your Honor's suggestion that we can not charge The Chemical Foundation with a purpose other than that which they accomplished. To the contrary, if I may say so, a man is presumed to intend the natural and probable consequences of his act.

If a man or a corporation starts out to do an illegal thing, and during the progress of his illegal acts, does something which is prejudicial to another man and violates the rights of another man; and later on, after he has violated the rights of the other man by this act, which is one of the steps in his illegal purpose, he finds that he can not accomplish his illegal purpose, that there is some obstacle in the way, that it is too dangerous or something of that sort, and therefore abandons his illegal purpose—I am not saying that applies to this case; I am simply using an illustration—

THE COURT: I understand.

MR. ANDERSON:—abandons the illegal purpose; does his abandonment of his illegal purpose deny to the person whom he has injured the redress which would arise from this injury done in an effort to accomplish the illegal purpose, where the intent existed and can be evidenced by proceedings leading up to the wrong thus done? Certainly not.

The legal rights of people can not be interfered with in that way. He will be presumed, as against the person he has injured, to have intended, as to that person, the natural and probable consequences of the act by which the injury to that person was accomplished; and the fact that he may have subsequently abandoned that purpose or have changed his view, or for any other reason did not accomplish what he started out to do, could not affect the rights of the person injured during the progress of the proceeding. That is the first answer. Therefore, I answer your Honor's question in the negative.

THE COURT: Won't you make the application to this case?

MR. ANDERSON: I will. I am coming to that right now. I answer that in the negative and now I will come to the conclusion.

Let us assume for the sake of this argument, as my friend Mr. Kresel has done, that the American Dyes Institute and its associated or constituent organizations were engaged in an effort to monopolize the business of the United States. Let us assume that in the effort to monopolize the business of the United States, in which they were interested, they proposed not only to combine their own interests and to have an open-price association, which is one of the elements of restraint and strongly indicative of it, but that they also proposed to reach out and get control of the patent rights held by the Government of the United States, which the Government was under no obligation whatever to sell—purely voluntary, and they could have held them indefinitely—

THE COURT: Executive discretion?

MR. ANDERSON: I will put it this way: The discretion of the Alien Property Custodian.

THE COURT: I mean of the Executive Department of the Government.

MR. ANDERSON: When your Honor says "Executive," it embraces the President. I do not think he had anything to do with it at the time of sale.

If in the carrying on of that proceeding, they who were the beneficiaries of and engaged in this unlawful purpose, which we will assume for the present was unlawful, went to work and procured this sale to be made under conditions indicated in this case of great haste and participated in the bringing about of the sale and of the steps necessary in the sale; and it should appear as a logical conclusion from all the facts and circumstances—

and nothing is more intangible; thousands of facts may be considered and collated that that was achieved in that way—that they organized The Chemical Foundation as an agency to that end and put into it a clause which on its face was absolutely void as to trusteeship, as an inducement to the officers of the Government and a part of the representation; and let us further assume that when they got these patents into the hands of The Chemical Foundation, that they undertook, using The Chemical Foundation to that end, and its supposed and eleemosynary purpose, to secure a dye embargo in the United States and legislation to that end which would have brought about this condition,—that they undertook to secure control of all importations into the United States, and let us suppose even then that they failed, and this is where it differs from an ordinary Sherman law case, which I want to emphasize, if all that were going on, and we instituted an anti-trust case and it was proved that it was all over and they were not doing anything further, you might prosecute them, assuming that they had been guilty of criminal acts, which I do not suggest in this case, for their past wrongs, but there would be no grounds for relief by an injunction because there would be nothing to enjoin, if they had abandoned it. There would be where the Sherman law would not be applicable.

But in this case we have got this novel question which I am going to argue very earnestly to your Honor when I come to it, because it is absolutely new under the Sherman law, I say quite frankly, but I think it is sustained by inference from the authorities; and that is this: That whereas an individual can not defend against a contract which he makes which is contrary to the

Sherman law on the ground that the contract is unlawful, because it has been held he is a party to the unlawful act and his remedy is otherwise than on the contract if he has any, and whereas there may not be at this time any ground for the injunctive relief provided for in the section of the Sherman Act, and dissolution, yet if the making of this contract which is here under consideration was in pursuance of a purpose which was prohibited by the Sherman Act and if it was a contract which had for its purpose, along with other purpose and as a part of the general purpose, the monopolizing of the business or the restraint of the interstate or foreign commerce of the United States, then by express terms of the Sherman Act it is declared to be unlawful and therefore could not be made by the President or anybody else.

I was very much struck by a question your Honor asked Mr. Polk, when Mr. Polk, to my utter surprise, I confess, said he would have signed this Order if he had known it would create a monopoly in the United States. And your Honor asked him why. He said because it had been taken care of by the anti-trust and Clayton Act, and I think if Mr. Polk, with his ability, had time to consider—

Mr. Kresel: That was not his entire answer; it was a portion of it.

Mr. Anderson: No, I do not mean to say it was his entire answer. Your Honor will see the record and I am not undertaking to state the whole record. If Mr. Polk had taken time to consider he would have known that when he answered that question he declared to this Court that he was ready to do, if he was not doing, an act forbidden by the Statutes of the United States, and therefore unlawful for anybody, including the

President of the United States himself, because he is bound by the law.

If your Honor please, so far as I know that direct question has never been raised under the Sherman Act. I thought they had all been raised, but there is always something new in the law. It is one of the most interesting questions in this case. Coming back to the immediate issue, that is very essential to the immediate issue in this case, and I anticipate great pleasure in arguing that question before your Honor fully at the hearing in this case, but I want the evidence complete when I do argue it.

The Court: I had no intention of varying my general rule.

Mr. Anderson: I understand that, sir.

The Court: And I hope you will not only argue that question and debate it fully at the time of the final hearing, but that you will elaborate that in your brief.

Mr. Anderson: I understand that, sir.

The Court: So that even I fully comprehend it. I do not mean it is abstruse.

Mr. Anderson: I understand that. Your Honor is entitled to have a question of that kind fully briefed and fully argued, because it is one of the most interesting and difficult questions that I know of, of all the Sherman Act questions. No one knows what the Sherman or Clayton Acts mean, but it presents to me the most interesting question of this case. I do not hesitate to say so as a lawyer.

The Court: Mr. Kresel.

Mr. Kresel: I do not think, sir,—

The Court: I am not inviting it, only giving you the opportunity.

Mr. Kresel: Thank you, sir, I do not think there is anything more I desire to say.

The Court: With respect to the minutes I hope I will pass the matter of their length in this way: I hope counsel will find an opportunity to strike out from the exhibits all such portions as are clearly not material, and that that will be done as promptly as possible.

Mr. Anderson: Your Honor, we will undertake to agree with counsel as to the part to go out and substitute abbreviated abstracts in place of them.

The Court: Then as to the remainder, the other acts or the acts of the American Dye Manufacturers' Association or the American Dyes Institute, which you believe material, you may put in under our general rule.

Mr. Anderson: And I have asked Mr. Galloway only to read a few of the paragraphs so your Honor may have their connection with the issue.

Mr. Galloway: Plaintiff next offers in evidence the minutes of the Executive Committee of the American Dyes Institute, held November 6, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 516.

Received in evidence and marked "Plaintiff's Exhibit No. 516." (*See Exhibits, Vol. II, page 1057.*)

Mr. Galloway: Plaintiff next offers in evidence the copy of the minutes of meeting of the Executive Committee of the American Dyes Institute, held November 9th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 517.

Received in evidence and marked "Plaintiff's Exhibit No. 517." (*See Exhibits, Vol. II, page 1060.*)

Mr. Galloway: It appears that the constitution of the American Dyes Institute has already been offered in evidence as Plaintiff's Exhibit No. 15, as indicated on the record at page 524. The record is not clear as to whether that includes also the by-laws and I should like to have the order made that the by-laws be admitted with the constitution.

The Court: Let it be admitted as Exhibit 15-A.

Mr. Galloway: That is what I was going to suggest, that the by-laws of the American Dyes Institute be so marked.

Received in evidence and marked "Plaintiff's Exhibit No. 15-A." (*See Exhibits, Vol. I, page 65.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of a meeting of the American Dyes Institute on April 10th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 518.

Received in evidence and marked "Plaintiff's Exhibit No. 518." (*See Exhibits, Vol. II, page 1065.*)

Mr. Galloway: I just want to read one passage to show you the nature of this. There are a great many passages which are hard to pick out and read to the Court in any reasonably short time. (Reads portion of Plaintiff's Exhibit No. 15-A.)

Plaintiff next offers in evidence minutes of meeting of American Dyes Institute, held May 7th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 519.

Received in evidence and marked "Plaintiff's Exhibit No. 519." (*See Exhibits, Vol. II, page 1071.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of a meeting of the American Dyes Institute of June 5th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 520.

Received in evidence and marked "Plaintiff's Exhibit No. 520." (*See Exhibits, Vol. II, page 1078.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of a meeting of the American Dyes Institute of July 10th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 521.

Received in evidence and marked "Plaintiff's Exhibit No. 521." (*See Exhibits, Vol. II, page 1089.*)

Mr. Galloway: I will just read another excerpt here to give your Honor an idea. (Reads from exhibit.) I read another resolution, only a few lines. (Reads from exhibit.)

Plaintiff next offers in evidence the minutes of meeting of the American Dyes Institute of August 7th, 1918, and asks that same may be read in evidence as Plaintiff's Exhibit No. 522.

Received in evidence and marked "Plaintiff's Exhibit No. 522." (*See Exhibits, Vol. II, page 1096.*)

(Mr. Galloway reads from Exhibit No. 522.)

The Court: Who was it asked that the prices be recorded with the Secretary?

Mr. Galloway: The members of the American Dyes Institute.

Mr. Hershkopf: Not of the Institute. That is not so. The open-price section.

Mr. Galloway: Which is part of the Institute.

Mr. Hershkopf: A very small part.

Mr. Galloway: It shows the members present if you want them.

The Court: No.

Mr. Galloway: E. I. du Pont, de Nemours & Co., Heller & Merz Co., John Campbell Co., Grasselli Chemical Co. are some of them.

Plaintiff next offers in evidence minutes of meeting of September 4th, 1918, and asks that same may be read in evidence as Plaintiff's Exhibit No. 523.

Received in evidence and marked "Plaintiff's Exhibit No. 523." (*See Exhibits, Vol. II, page 1104.*)

Mr. Galloway: Plaintiff next offers in evidence minutes of meeting of the American Dyes Institute of November 6th, 1918, and asks that same may be read in evidence as Plaintiff's Exhibit No. 524.

Received in evidence and marked "Plaintiff's Exhibit No. 524." (*See Exhibits, Vol. II, page 1109.*)

Mr. Galloway: It is suggested here that the minutes of the meeting of December 9th, 1918, of the American Dyes Institute, has previously been offered in evidence as Plaintiff's Exhibit No. 53, but that it might be contended from the record at pages 1038 to 1040 that the purpose of that offer was limited to showing the amalgamation, and I just wanted to make it clear that there was no such limitation.

The Court: As I stated before, it is offered for any purpose that the exhibit may serve in the case.

Mr. Galloway: Plaintiff next offers in evidence the minutes of a joint meeting of the Executive Committee of the American Dyestuffs Manufacturers' Association and the American Dyes Institute on January 7th, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 525.

Received in evidence and marked "Plaintiff's Exhibit No. 525." (*See Exhibits, Vol. II, page 1117.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of meeting of the American Dyes Institute of January 16, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 526.

Received in evidence and marked "Plaintiff's Exhibit No. 526." (*See Exhibits, Vol. II, page 1121.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the American Dyes Institute of January 22nd, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 527.

Received in evidence and marked "Plaintiff's Exhibit No. 527." (Same as Plaintiff's Exhibit No. 26. *See Exhibits, Vol. I, page 81.*)

Mr. Galloway: The minutes of February 7th have already been introduced, it is my understanding, but there is a notation here that the minutes of the Executive Committee meeting of February 7th are in the exhibit box in Mr. Kresel's office. They have already been offered, it is my understanding.

Mr. Kresel: It is the first time I ever knew I had an exhibit box, but I think that is right.

Mr. Galloway: But those have already been offered, I am quite sure of that. Plaintiff next offers in evidence minutes of meeting of the American Dyes Institute of February 7th, 1919. The other was the Executive Committee. I ask that the same may be read in evidence as Plaintiff's Exhibit No. 528.

Received in evidence and marked "Plaintiff's Exhibit No. 528." (*See Exhibits, Vol. II, page 1127.*)

Mr. Galloway: This includes an Executive Committee meeting, if your Honor please, but as there are some differences in what the minutes of those meetings are, I shall not ask to exclude them.

After the report of the Executive Committee, which your Honor will recall, was the report where they reported upon their meeting of January 27th. It says (reading).

The Court: How would it be, if I might suggest it, Mr. Galloway, that you put in now the minutes that you want to put in and then read them to me after you have eliminated the portions that you find unimportant. I am inclined to think we can save time that way.

Mr. Galloway: That would be quite satisfactory, your Honor.

Plaintiff next offers in evidence minutes of a meeting of the Executive Committee of the American Dyes Institute of February 17, 1919. If your Honor please, there are only a few portions that I have to read and I think I can call them to your attention rather hurriedly.

The Court: If you have them marked.

Mr. Galloway: Yes, I have them marked here. The long ones, I think, are practically passed, that I had to wade through. I ask that the minutes of February 17th be read in evidence as Plaintiff's Exhibit 529. (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 529." (*See Exhibits, Vol. II, page 1137.*)

Mr. Galloway: Plaintiff next offers in evidence minutes of the Executive Committee of the American Dyes Institute of February 28, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 530 (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 530." (*See Exhibits, Vol. II, page 1138.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the meeting of the American Dyes Institute of March 7, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 531.

Received in evidence and marked "Plaintiff's Exhibit No. 531." (*See Exhibits, Vol. II, page 1139.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the Executive Committee of the American Dyes Institute held March 14, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 532. This shows present (reading) and that the chief matter under discussion was the Chemical Foundation, Inc. (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 532." (*See Exhibits, Vol. II, page 1148.*)

Mr. Galloway: Plaintiff next offers in evidence a copy of the minutes of the meeting of the Executive Committee of the American Dyes Institute on March 21, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 533. This shows present the members of the Executive Committee which I have previously stated and (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 533." (*See Exhibits, Vol. II, page 1149.*)

Mr. Galloway: Plaintiff next offers in evidence the minutes of the meeting of the Executive Committee of the American Dyes Institute of March 28, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 534.

Received in evidence and marked "Plaintiff's Exhibit No. 534." (*See Exhibits, Vol. II, page 1151.*)

Mr. Galloway: I am getting to some of the long ones. I think I shall summarize them together and read them at that time.

Plaintiff next offers in evidence the minutes of the meeting of the American Dyes Institute of April 4, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 535.

Received in evidence and marked "Plaintiff's Exhibit No. 535." (*See Exhibits, Vol. II, page 1157.*)

Mr. Mahaffy: If the Court please, it would save time, if I may suggest to Mr. Galloway, that he simply give the name of the committee, the date and that he follow the same formula throughout; the stenographer can take the formula and the Clerk give it a number later. I think it would save probably half the time.

The Court: I shall assume it is a regular meeting unless you say Executive.

Mr. Galloway: I will be very glad to do so without waiving any of the formalities, of course, that might be required for a formal offer.

The Court: I shall consider the offer as made in full and you may abbreviate as much as you like.

Mr. Galloway: Minutes of the Executive Committee, April 11, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 536." (*See Exhibits, Vol. II, page 1164.*)

Mr. Galloway: I would like to suggest, your Honor, in order that you may understand some things that are coming later on, that this goes into the question of the participation of the American Dyes Institute and the other organizations in the control of importation licenses as required by the War Trade Board.

The Court: What is the date of that?

Mr. Galloway: April 11, 1919. It shows part of the plan to control, as we contend, the dye interests or industry in the United States.

The Court: That was the day after the assignment had been executed.

Mr. Galloway: After the first assignment. Executive Committee Minutes of April 18, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 537." (*See Exhibits, Vol. II, page 1173.*)

Mr. Galloway: Executive Committee Minutes of April 25, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 538." (*See Exhibits, Vol. II, page 1182.*)

Mr. Galloway: Executive Committee Minutes of April 30, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 539." (*See Exhibits, Vol. II, page 1191.*)

Mr. Galloway: Regular meeting of the Institute of May 2, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 540." (*See Exhibits, Vol. II, page 1192.*)

Mr. Galloway: Executive Committee meeting of May 9, 1919.

Received in evidence and marked "Plaintiff's

Exhibit No. 541." (*See Exhibits, Vol. II, page 1201.*)

Mr. Galloway: Executive Committee meeting of May 23, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 542." (*See Exhibits, Vol. II, page 1208.*)

Mr. Galloway: Executive Committee meeting, May 29, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 543." (*See Exhibits, Vol. II, page 1212.*)

Mr. Galloway: Executive Committee meeting, June 6, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 544." (*See Exhibits, Vol. II, page 1220.*)

Mr. Galloway: Regular meeting, June 6, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 545." (*See Exhibits, Vol. II, page 1227.*)

Mr. Galloway: Executive Committee meeting of June 27, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 546." (*See Exhibits, Vol. II, page 1234.*)

Mr. Galloway: We would like to have Exhibit 546 include copy of a report or letter which is attached thereto of June 25 to the members of the American Dyes Institute to be identified as Exhibit 546-A.

Received in evidence and marked "Plaintiff's Exhibit No. 546-A." (*See Exhibits, Vol. II, page 1236.*)

Mr. Galloway: Regular meeting, July 10, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 547." (*See Exhibits, Vol. II, page 1243.*)

Mr. Galloway: Meeting of subcommittee of the Executive Committee in charge of proposed dye legislation in Washington. That was the Legislation Committee or Lobby Committee.

Received in evidence and marked "Plaintiff's Exhibit No. 548." (*See Exhibits, Vol. II, page 1250.*)

Mr. Galloway: Executive Committee, August 4, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 549." (*See Exhibits, Vol. II, page 1254.*)

Mr. Galloway: Executive Committee, August 7, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 550." (*See Exhibits, Vol. II, page 1256.*)

Mr. Galloway: Regular meeting of the Institute, August 7, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 551." (*See Exhibits, Vol. II, page 1261.*)

Mr. Galloway: Executive Committee, September 5, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 552." (*See Exhibits, Vol. II, page 1263.*)

Mr. Galloway: Regular meeting of the Institute, November 7, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 553." (*See Exhibits, Vol. II, page 1270.*)

Mr. Galloway: Special meeting of the Executive Committee, November 19, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 554." (*See Exhibits, Vol. II, page 1274.*)

Mr. Galloway: Special meeting of the Executive Committee, November 22, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 555." (*See Exhibits, Vol. II, page 1279.*)

Mr. Kresel: Mr. Galloway, may I inquire whether the book from which you have been offering these minutes is the original minute book?

Mr. Galloway: That is my understanding.

Mr. Kresel: Are there minutes in the book which you have not offered?

Mr. Galloway: Yes, quite a number.

Mr. Kresel: Are you through?

Mr. Galloway: I am not through with all of this. I am through with that book.

Mr. Kresel: Your Honor please, in addition to the other objections that we have urged to the admission of the books of the American Dyes Institute, we specifically object to the minutes of any meetings subsequent to April 10, 1919, upon the ground that, assuming there had been a conspiracy, the purpose and object of which was to obtain these patents for The Chemical Foundation, that conspiracy was completed and effectuated by the 10th day of April, 1919, if not by the 26th day of February, 1919, when the sale was made.

Unless the Government can show that the activities of The Chemical Foundation were controlled by the American Dyes Institute subsequent to the organization of The Chemical Foundation, anything that the American Dyes Institute did at its meetings is in no way material or relevant, nor binding upon The Chemical Foundation. I call that to your Honor's specific attention because I am quite certain that the Government will agree with me that the activities of The Chemical Foundation were in the hands of its Board of Directors, who were elected by the voting trustees, and that the membership of the American Dyes Institute had no control of the stock of The Chemical Foundation, although they owned it, under the plan that was followed.

Mr. Galloway: Plaintiff further offers in evidence a copy of the minutes of the Executive Committee of the American Dyes Institute, January 3, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 556." (*See Exhibits, Vol. II, page 1282.*)

Mr. Galloway: Executive Committee, January 9, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 557." (*See Exhibits, Vol. II, page 1284.*)

Mr. Galloway: Executive Committee, April 8, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 558." (*See Exhibits, Vol. II, page 1288.*)

Mr. Galloway: Executive Committee, May 7, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 559." (*See Exhibits, Vol. II, page 1292.*)

Mr. Galloway: Regular meeting, May 7, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 560." (*See Exhibits, Vol. II, page 1297.*)

Mr. Galloway: Executive Committee, May 17, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 561." (*See Exhibits, Vol. II, page 1300.*)

Mr. Galloway: Regular meeting, June 11, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 562." (*See Exhibits, Vol. II, page 1304.*)

Mr. Galloway: Regular meeting, July 15, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 563." (*See Exhibits, Vol. II, page 1310.*)

Mr. Galloway: Meeting of the Board of Governors, September 29 and 30, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 564." (*See Exhibits, Vol. II, page 1326.*)

Mr. Galloway: Executive Committee, October 7, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 565." (*See Exhibits, Vol. II, page 1332.*)

Mr. Galloway: Executive Committee, October 29, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 566." (*See Exhibits, Vol. II, page 1336.*)

Mr. Galloway: Regular meeting, October 29, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 567." (*See Exhibits, Vol. II, page 1339.*)

Mr. Galloway: Executive Committee, October 29, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 568." (*See Exhibits, Vol. II, page 1351.*)

Mr. Kresel: Mr. Galloway, may I suggest that you now state to the Court the character of the records that you are about to offer, because I desire to raise my objection at this time.

Mr. Galloway: I shall be very glad to.

If your Honor please, we next offer correspondence and other documents and papers dealing with the activities of the American Dyes Institute and The Chemical Foundation, in connection with the War Trade Board and its regulation and control over importation of dyes into the United States.

The Court: During what period?

Mr. Galloway: My recollection is that this begins in March, 1919.

Mr. Kresel: At all events, it is subsequent to the organization of The Chemical Foundation?

Mr. Galloway: Yes.

Mr. Kresel: We take the point, your Honor, that it is immaterial and irrelevant. Should your Honor, however, allow the evidence to go in, we desire to reserve the right to put in the balance of this series. The Government knows well that this is not the complete file of this correspondence; and so we give notice now that we shall take advantage, if your Honor will permit us, of the privilege of putting in the balance of that record.

Mr. Anderson: I state on behalf of the Government that we quite concede that that is fair, and will not object other than to make specific objection as to any particular papers. The general principles laid down by Mr. Kresel are I think entirely sound, and he can, of course, put in such portions as he thinks are pertinent.

The Court: Owing to the unusual character of this suit, as disclosed by the record, in connection therewith I shall apply the general rule to any documents which the Government may offer, however immaterial I may feel at the moment they may be.

Mr. Anderson: I think I ought to state, in view of the objection, that these matters relate to the same general subject which we have discussed earlier and show the continued effort to accomplish the results which we claim have the legal effect indicated, and whether they have that bearing will involve quite an extended argument.

Mr. Galloway: If your Honor will pardon me just a moment; I had these arranged in chronological order, but in going over them I find they have been disarranged.

The Court: They may be offered en bloc, and you may arrange them afterwards.

Mr. Kresel: I will suggest, if Mr. Galloway will adopt the suggestion, that he might say, "I now offer the following correspondence: Letter from so-and-so, dated so-and-so," and then go right on, and let the Clerk subsequently mark them.

The Court: And giving an exhibit number to the paper so offered.

Mr. Kresel: Yes.

Mr. Anderson: I think that is very wise. Just list them.

The Court: Of course, I should be glad to have these documents in as soon as possible.

Mr. Anderson: I am also very anxious, sir, to do that; and I think I can state to your Honor that we can get these in and close our case probably this afternoon.

The Court: Then we shall continue the session today until that shall have been accomplished.

Mr. Galloway: I did not get exactly the idea of how these were to go in.

The Court: You have so many papers in your hand of the character just indicated by you or your colleague.

Mr. Galloway: That is right.

The Court: There are how many?

Mr. Galloway: Thirty-five, if your Honor please.

The Court: They are admitted under the same conditions as the preceding documents and will take serial numbers beginning with 569 and ending with 603.

Memorandum of arguments presented by J. H. Choate, Jr., at hearing on March 10, 1919, before War Trade Board, received in evidence and marked "Plaintiff's Exhibit No. 569." (*See Exhibits, Vol. II, page 1352.*)

Carbon copy of letter dated March 11, 1919, from W. F. Keohan, for the Alien Property Custodian, to Mr. Lawrence Bennett, Sec., War Trade Board, received in evidence and marked "Plaintiff's Exhibit No. 570." (*See Exhibits, Vol. II, page 1355.*)

Inter-office memorandum of War Trade Board dated March 26, 1919, to Mr. Gay, Mr. Bennett, Mr. Perrett, Mr. deLaittre, received in evidence and marked "Plaintiff's Exhibit No. 571." (*See Exhibits, Vol. II, page 1356.*)

Paraphrase of a cablegram from the American Ambassador at Paris, France, dated March 19, 1919, received in evidence and marked "Plaintiff's Exhibit No. 572." (*See Exhibits, Vol. II, page 1357.*)

Copy of telegram dated March 31, 1919, from

Paris, signed "Sharp" to Secretary of State, Washington, D. C., received in evidence and marked "Plaintiff's Exhibit No. 573." (*See Exhibits, Vol. II, page 1357.*)

Photostat copy of same telegram received in evidence and marked "Plaintiff's Exhibit No. 574." (Same as Plaintiff's Exhibit No. 573. *See Exhibits, Vol. II, page 1357.*)

Telegram dated April 1, 1919, signed B. S. Cutler to Mr. T. F. Miller, Secretary, National Aniline & Chemical Company, received in evidence and marked "Plaintiff's Exhibit No. 575." (*See Exhibits, Vol. II, page 1359.*)

Telegram dated April 1, 1919, signed B. S. Cutler, to Mr. Morris R. Poucher, E. I. duPont de Nemours Company, received in evidence and marked "Plaintiff's Exhibit No. 576." (*See Exhibits, Vol. II, page 1359.*)

Letter dated April 3, 1919, signed William C. Redfield, Secretary, to Dr. William T. Miller, received in evidence and marked "Plaintiff's Exhibit No. 577." (*See Exhibits, Vol. II, page 1360.*)

Letter dated April 3, 1919, signed William G. Redfield, Secretary, to Mr. Joseph H. Choate, received in evidence and marked "Plaintiff's Exhibit No. 578." (*See Exhibits, Vol. II, page 1361.*)

Letter dated April 5, 1919, signed J. H. Choate, Jr., to Hon. B. S. Cutler, received in evidence and marked "Plaintiff's Exhibit No. 579." (*See Exhibits, Vol. II, page 1362.*)

Letter dated April 7, 1919, from B. S. Cutler, to Mr. August Merz, received in evidence and marked "Plaintiff's Exhibit No. 580." (*See Exhibits, Vol. II, page 1364.*)

Carbon copy of letter dated April 8, 1919, from B. S. Cutler, to Mr. Francis P. Garvan, received in evidence and marked "Plaintiff's Exhibit No. 581." (*See Exhibits, Vol. II, page 1365.*)

Letter dated April 9, 1919, signed Francis P. Garvan, to Burwell S. Cutler, received in evidence and marked "Plaintiff's Exhibit No. 582." (*See Exhibits, Vol. II, page 1368.*)

Letter dated April 9, 1919, from F. P. Garvan, to The Honorable, The Secretary of State, received in evidence and marked "Plaintiff's Exhibit No. 583." (*See Exhibits, Vol. II, page 1370.*)

Copy of telegram dated Washington, April 10, 1919, from J. H. Choate, Jr., to Dr. Charles H. Herty, received in evidence and marked "Plaintiff's Exhibit No. 584." (*See Exhibits, Vol. II, page 1372.*)

Telegram signed "Garvan" dated April 8, 1919, received in evidence and marked "Plaintiff's Exhibit No. 585." (*See Exhibits, Vol. II, page 1372.*)

Letter dated April 11, 1919, to War Trade Board.

Cablegram dated April 11, 1919, by War Trade Board, Paris, France, to American Embassy, Paris, France, received in evidence and marked "Plaintiff's Exhibit No. 586." (*See Exhibits, Vol. II, page 1374.*)

Memorandum dated April 12, 1919, to Mr. Wooley, Mr. Gay, Mr. Warrington, and others, signed "D. M. M., Assistant Secretary," received in evidence and marked "Plaintiff's Exhibit No. 587." (*See Exhibits, Vol. II, page 1378.*)

Paraphrase of a cablegram from the American Ambassador at Paris, France, dated April 15, 1919, signed "Wallace," received in evidence and marked "Plaintiff's Exhibit No. 588." (*See Exhibits, Vol. II, page 1379.*)

Cablegram dated April 26, 1919, to "Ammission," Paris, for Bradley W. Palmer from F. P. Garvan, received in evidence and marked "Plaintiff's Exhibit No. 589." (*See Exhibits, Vol. II, page 1380.*)

Cablegram dated April 26, 1919, to "Ammission," Paris, for Bradley W. Palmer from F. P. Garvan, received in evidence and marked "Plaintiff's Exhibit No. 590." (Same as Plaintiff's Exhibit No. 589. *See Exhibits, Vol. II, page 1380.*)

Memorandum dated May 5, 1919, to Mr. Bennett, Mr. DeLaittre, and Mr. Gay, from "D. M. M.," Assistant Secretary, received in evidence and marked "Plaintiff's Exhibit No. 591." (*See Exhibits, Vol. II, page 1384.*)

Letter dated May, 1919, from "Wallace" to Secretary of State, Washington, D. C., received in evidence and marked "Plaintiff's Exhibit No. 592." (*See Exhibits, Vol. II, page 1386.*)

Extract from proceedings of May 8, 1919, of War Trade Board, received in evidence and marked "Plaintiff's Exhibit No. 593." (*See Exhibits, Vol. II, page 1387.*)

Cablegram from War Trade Board to American Embassy, Paris, France, dated May 9, 1919, received in evidence and marked "Plaintiff's Exhibit No. 594." (*See Exhibits, Vol. II, page 1393.*)

Cablegram dated May 13, 1919, from War Trade Board to American Embassy, Paris, France, received in evidence and marked "Plaintiff's Exhibit No. 595." (*See Exhibits, Vol. II, page 1395.*)

Letter dated June 26th, 1919, from War Trade Board, Charles H. Herty, Secretary, re applications for import license, received in evidence and marked "Plaintiff's Exhibit No. 596." (*See Exhibits, Vol. II, page 1396.*)

Letter from Charles H. Herty, Secretary War

Trade Board, dated June 26th, 1919, re "The question of imports of Dyestuffs from Germany through the Reparation Commission," received in evidence and marked "Plaintiff's Exhibit No. 597." (*See Exhibits, Vol. II, page 1400.*)

Memorandum dated July 22, 1919, headed "The Present Practice of the War Trade Board Section with respect to the Handling of Applications for the Importation of Dyestuffs," received in evidence and marked "Plaintiff's Exhibit No. 598." (*See Exhibits, Vol. II, page 1404.*)

Letter dated September 29, 1919, to A. M. Patterson, President Textile Alliance, Inc., from Department of State, by Phillips, received in evidence and marked "Plaintiff's Exhibit No. 599." (*See Exhibits, Vol. II, page 1405.*)

Letter dated October 9, 1919, from State Department, by William Phillips, Assistant Secretary, to the Textile Alliance, Inc., received in evidence and marked "Plaintiff's Exhibit No. 600." (*See Exhibits, Vol. II, page 1408.*)

Letter dated October 11, 1919, from Robert Lansing to The Chemical Foundation, Incorporated, received in evidence and marked "Plaintiff's Exhibit No. 601." (*See Exhibits, Vol. II, page 1409.*)

Letter dated March 11, 1919, from The American Dyes Institute, Executive Committee, to War Trade Board, received in evidence and marked "Plaintiff's Exhibit No. 602." (*See Exhibits, Vol. II, page 1414.*)

Certified copy of letter dated November 8, 1919, from Robert Lansing to The Honorable Philander C. Knox, United States Senate, received in evidence and marked "Plaintiff's Exhibit No. 603." (*See Exhibits, Vol. II, page 1418.*)

Mr. Galloway: I have a letter which I did not find before, which I wish to go into the record. It is a letter from Mr. Francis P. Garvan, Alien Property Custodian, to B. S. Cutler, Esq., dated March 22, 1919. I ask that the same may be read in evidence as Plaintiff's Exhibit No. 604.

Received in evidence and marked "Plaintiff's Exhibit No. 604." (*See Exhibits, Vol. II, page 1426.*)

Mr. Galloway: Plaintiff next offers in evidence a certified copy of the articles of incorporation of the Allied Chemical & Dye Company, and asks that the same may be received in evidence and marked Plaintiff's Exhibit No. 605.

Received in evidence and marked "Plaintiff's Exhibit No. 605." (*See Exhibits, Vol. II, page 1427.*)

Mr. Galloway: Mr. Kresel, do you recall that when the witness, Dr. Holdermann, was on the stand, it was requested that he should furnish a list?

Mr. Kresel: Yes.

Mr. Galloway: I gave a copy of that list to you.

Mr. Kresel: You did.

Mr. Galloway: I want now to produce the original list, so that the record may be complete.

The Court: I recall the testimony. Have you the list there?

Mr. Galloway: I have the list, your Honor.

Mr. Kresel: I had intended, your Honor, to move that the testimony of this witness be stricken upon certain grounds which I shall urge; but inasmuch as the only point that counsel has now brought forward is the question of this list, I want to specifically object to introduction of the list in its present form, upon the ground that the witness exceeded the privilege given to him by the Court to furnish a list.

The Court: What is on the list now offered?

Mr. Kresel: On the list as presented the witness has undertaken to give certain information regarding these patents.

The Court: Of what character?

Mr. Kresel: For instance, he has marked each pattern with a symbol. One symbol, "O" for instance, means "product," and "X" means "process;" a "-" means "products sold in the United States of America 1913;" a "*", according to him means "very valuable in use in Germany."

All of that is contrary to what was called for.

The Court: It is my recollection of the testimony that he was to list them as product and process. Is that not what he was to do?

Mr. Galloway: That was all.

Mr. Anderson: Of course, that matter ought not to go in if that is the fact. I have not examined the list. The list ought to conform strictly to the evidence.

The Court: The exhibit, when modified to correspond with the terms laid down at the time Dr. Holdermann was on the stand, will be admitted and may receive the next consecutive number; but it will not be admitted so long as it contains anything that was not described at the time that Dr. Holdermann was on the stand.

Mr. Galloway: If your Honor please, I think the list as now compiled does show the information which the witness was requested to give; but it shows information, in addition to that, which he was not requested to give. If we may have permission to correct the list to show——

The Court: I do not care whether that paper is corrected or whether another paper is put in, so long as it contains only information which was called for while he was on the stand.

Received in evidence to be marked "Plaintiff's Exhibit No. 606." (*See Exhibits, Vol. II, page 1438.*)

Mr. Kresel: Now, as to the admissibility of the witness's testimony, because I understand that is now before your Honor, as I understood it, when the testimony was taken it was agreed that your Honor was practically sitting as a Master at the time, and that the testimony would have to be offered in the regular way. I understand now that the Government is now offering that testimony; is that right, Colonel?

Mr. Anderson: No, that was taken subject to your motion to strike out.

The Court: No, Mr. Kresel; that was taken out of order but indicated in the regular proceedings in the case otherwise.

Mr. Kresel: Your Honor will recall that we moved at the conclusion of the taking of that testimony that it be stricken.

The Court: Yes.

Mr. Kresel: And we ask the privilege of submitting a memorandum in support of the motion. I rather understood that your Honor would desire to hear argument thereon. We consider the matter of some importance. We have prepared a memorandum. I shall follow your Honor's wishes in the matter, and either postpone the argument or have it now.

The Court: I would prefer, if you will sacrifice no rights by so doing, to postpone that until after the Government's case is in.

Mr. Kresel: Very well, your Honor.

Mr. Hershkopf: Then, your Honor, may we have it noted that the objections which have since been raised to testimony, so far as applicable to Mr. Holdermann's testimony, be considered as applicable to it?

The Court: I am assuming all testimony taken is subject to any objection that counsel may raise at any time during the taking of the testimony or at the time of final argument in this case, because under the general rule that we have followed I do not see how we could well do otherwise.

Mr. Galloway: If your Honor please, there are a few things here to check up that I wish to run over and call to the attention of the Court.

Exhibit 6, which was a letter of January 24, 1918, from Mr. Hoguet to Mr. Lee Bradley, had with it a memorandum. Mr. Boggs has called my attention to the fact that that memorandum was attached to a letter of January 30th from Mr. Hoguet to Mr. Palmer, which I think is correct, and while I do not have it here, I wish to offer it in evidence now, with permission to supply the document later. It is at our hotel, and Mr. Boggs has copies of it which we have exchanged under the stipulation.

Mr. Kresel: All right.

Mr. Galloway: I wish to offer that, with permission to supply the letter of January 30th later, and to have the exhibit which is now attached to Exhibit No. 6, attached to Exhibit No. 607.

Received in evidence and marked "Plaintiff's Exhibit No. 607." (Same as Plaintiff's Exhibit No. 7. *See Exhibits, Vol. I, page 45.*)

If your Honor please, the plaintiff would also like to have a stipulation of record to the effect that either party in this trial, or any re-trial, or on any appeal, may have the right to refer to and read from the Armistice agreements, with the same force as though the same were in evidence. Is that agreeable, Mr. Kresel?

Mr. Kresel: You speak of them in the plural. You mean the agreement with Germany and with Austria, both?

Mr. Galloway: Of November 3, 1918, and November 11, 1918.

Mr. Kresel: I assume that there are official publications of those.

Mr. Galloway: I am sure there are official publications and I think we have them.

Mr. Kresel: I see no objection to that.

The Court: So understood; that they may be hereafter referred to as if embodied in this record.

Mr. Kresel: Does that include the supplements thereto? Because I am told that there are quite a large number of supplements to those Armistice agreements.

Mr. Galloway: Why, I should think that that would give to either party the right to include either the Armistice agreement itself or any supplements.

Mr. Anderson: So understood, Mr. Kresel.

Mr. Galloway: There is another thing that I would like to call to the attention of the Court before we rest our case: In checking over the record during the short vacation which we had we found many instances where there were perhaps some formal omissions, such as the Court failing to say "Admitted," or the record failing to show that the Court so stated; and I should like to cure that at this time without reference to the specific instances.

The Court: I will cure it now by stating that all documents heretofore offered by the Government as exhibits in this case are admitted as parts of the record in this case, whether it was so stated at the time of the offer or not.

Mr. Galloway: Yes. If your Honor please, certain portions of the report of Mr. Palmer as Alien Property Custodian, of February 15, 1919, have heretofore been offered in evidence. We should like to offer in evidence Chapter 1 of that report. However, it is our belief that in making such offer matters which have already been offered are portions of Chapter 1, so we would like to have Chapter 1 and the Chemical chapter in its entirety offered in evidence at this time, with the privilege of excluding, to avoid duplication, any portions thereof which may otherwise have heretofore appeared in the record.

Mr. Kresel: I made the suggestion heretofore when the Chemical section of the report was introduced that the whole report ought to go in, but the Government did not deem it advisable. Now you offer both Part 1 and the Chemical section?

Mr. Galloway: That is it.

Mr. Kresel: That is the Chemical section is already in. Let me understand what Part 1 is.

(A discussion here ensued, which at the request of Mr. Anderson and Mr. Kresel was not

Mr. Kresel: I do not think it is advisable with respect to this particular exhibit that it be not in the record as a whole. If the Government does not feel that it desires to offer it but desires only to offer Part 1 and the Chemical section, I can not dictate to the Government, but I will say now that upon our case I shall ask the Court to admit the whole document.

The Court: Then may I make a suggestion?

Mr. Galloway: Yes, sir.

The Court: If you will withdraw your application, let Mr. Kresel offer it now.

Mr. Anderson: I will with great pleasure.

Mr. Kresel: I will be very glad to do it. I now offer, if your Honor please, the report of A. Mitchell Palmer as Alien Property Custodian, which was transmitted by him to the President of the United States with a letter of transmittal dated February 22, 1919. I notice that this is apparently a copy that the Clerk has used. The letter is in evidence, so I will ask that he mark the whole thing as the exhibit.

Received in evidence and marked "Defendant's Exhibit No. 30." (*See Exhibits, Vol. IV, page 2098.*)

Mr. Kresel: With reference to this exhibit which I have just offered, I do not want to lose the benefit of the fact that the Government offered as its exhibit the chemical section of this report. Your Honor understands?

The Court: Yes.

Mr. Kresel: I do not want by offering the whole report to be understood as waiving any rights which may be given to me by the fact that the Government has offered as its evidence the Chemical section of that report.

The Court: I understood that.

Mr. Kresel: That is perfectly understood, is it not?

Mr. Anderson: Oh, yes, that is understood. I do not take it that either side waives any of its rights and that whatever evidence it has put in will be relied upon.

The Court: I assume the same provision will be made with respect to Section 1. Perhaps you can arrive at an agreement on that.

Mr. Kresel: Yes.

The Court: Because their offer was withdrawn only because you were going to make the offer of the whole.

Mr. Kresel: But they only withdraw the offer as to Part 1, they did not withdraw The Chemical section.

The Court: Yes.

Mr. Galloway: We next offer in evidence a letter from C. C. Bennett to M. R. Poucher, dated April 7, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 608." (*See Exhibits, Vol. II, page 1444.*)

Mr. Anderson: It is a photostat of a copy, not actually signed but initialed C. C. B., and it is identified in one of the minutes of a meeting.

Mr. Kresel: I am going to assume that that was a letter written by Mr. Bennett. It is a personal letter, your Honor, in which the gentleman offers his resignation as Secretary of the American Dyes Institute and undertakes to give his opinions as to the relationship between that organization and The Chemical Foundation. It seems to us that that sort of communication ought not to be binding upon The Chemical Foundation. If the Government desires the benefit of Mr. Bennett's testimony as to that matter, then he should be produced here so that we may have the privilege of cross-examining him.

Mr. Anderson: The Government does not wish to call Mr. Bennett. The letter in question was referred to in one of the minutes introduced and should have accompanied those minutes, but we have not handed a copy to counsel, and Mr. Galloway delayed until he could look it over.

The Court: But as I understand Mr. Kresel's objection, he says The Chemical Foundation is not estopped from denying those things, nor the other evidence of the facts therein stated.

Mr. Anderson: No, sir. It would be a question of argument that would be its weight and effect.

Mr. Kresel: No, it is a little more than that. We are not here before a jury, so neither you nor I could be prejudiced by discussing the contents of a letter.

Mr. Anderson: Not at all.

Mr. Kresel: The letter is the resignation of Mr. Bennett, and then he goes on to say what he thinks were the relations between the two concerns.

The Court: Then you contend that is not evidence of the facts.

Mr. Kresel: That is not evidence of the facts.

The Court: Do you contend the contrary, Colonel Anderson?

Mr. Anderson: It might not be conclusive evidence of the facts, but it would be evidence of the construction of that relation of these parties and their transactions, by the Secretary of the Dyes Institute, which is one of the parties.

The Court: I think I would be ready to rule on that now, Colonel Anderson.

Mr. Anderson: I think, if your Honor please, that I would not care to argue the question of its admissibility as evidence unless I took the minutes and argued with them. The minutes show that letter was presented by Mr. Poucher, then a member of the Dyes Institute. Whether that particular statement would be of any evidential value against The Chemical Foundation I would be perfectly willing to argue at this time except that I want to avoid argument, if I can.

Mr. Kresel: You see, there can be no other purpose in offering this letter except to seek to bind us by the statements therein contained. If Colonel Anderson wishes, that Mr. Bennett resigned on a certain day I am perfectly willing to concede. That is a fact.

The Court: I am not interested, so far as I am concerned, Mr. Kresel, because I am going to let him put this in the record if he wishes to—but so far as I am concerned I am not interested in the views of anybody as to the relationship. If Mr. Bennett has anything to say about the relation I will be glad to hear him. But his views in writing about it I am not concerned with.

Mr. Anderson: I think frankness compels me to say there is a good deal of force in Mr. Kresel's objection, but I am not prepared to concede it at reported.)
this time, in so far as that particular sentence is concerned. I would like to reserve that question for argument later in connection with the whole record, when I might insist they do have some weight. But I do not want to go into the argument of it unless I can not help it.

There were one or two other matters. Colonel Miller left the stand without completing his testimony, and I understand it is agreed that he may be recalled after the Government has closed its case with the same effect as though it had not closed its case. That is agreed.

The Court: For further cross-examination.

Mr. Anderson: For further cross-examination.

The Court: And further re-direct.

Mr. Anderson: Further re-direct; yes, sir.

The Court: In that re-direct you will be restricted to re-direct.

Mr. Anderson: Yes. There is one embarrassment in that connection. There are certain matters perhaps as to which Colonel Miller was advised by his general counsel, Judge Wilson, and counsel would not be willing to have him testify to on counsel's advice. I would have to call Judge Wilson as to those, but I can not do it until Colonel Miller's evidence is finished. Limited to that, would you object if it became necessary—and I do not think it will—to complete the evidence on that subject—it will only take a few minutes.

THE COURT: I do not understand, Colonel Anderson.

MR. ANDERSON: There were certain papers that Colonel Miller could not personally testify to except on advice of his counsel, and if the evidence was objected to I would have to call Judge Wilson, his general counsel.

MR. KRESEL: There was no testimony adduced on Colonel Miller's direct, which would make it necessary, as you are now advised, to call Judge Wilson?

MR. ANDERSON: No, it was on the cross-examination, with regard to his connection with the Bill and things of that kind, which were handled entirely by Judge Wilson, and I could not very well call Judge Wilson until Colonel Miller had finished.

MR. KRESEL: If your Honor please, you have seen how we have been conducting this case. If my cross-examination of Colonel Miller has brought out anything, Colonel Anderson, which would make it necessary in your opinion to call Judge Wilson, I do not think I shall raise any very serious objection.

MR. ANDERSON: I do not think it will be necessary, but there are some questions raised there with respect to which I might have to put Judge Wilson on in fairness to the case.

The Court: Then as I understand, in order to put Judge Wilson on the stand as a witness after you have formally closed, the defendant contends that all you have to do is to call him and they will make no objection to his being called after you have closed rather than before.

Mr. Anderson: Yes, sir.

Mr. Kresel: That is right.

Mr. Anderson: And I will not do that unless it is necessary.

The Court: I wanted to make that specific.

Mr. Anderson: Also as part of the plaintiff's case, as we conceive it, there should have been introduced certain evidence in regard to licenses issued by The Chemical Foundation. I was assured by Mr. Kresel that he would produce that evidence by the President of The Chemical Foundation when he is put on the stand. The licenses are in the vault in New York and they did not want to bring them over here any earlier than they could help. Therefore, with that understanding between Mr. Kresel and myself, we determined not to have them brought over here and put in before. They would not be in condensed shape and could be put in in a short time. That was the understanding.

Mr. Kresel: Yes. Let us get it concretely, Colonel Anderson. The understanding is that we on our case will introduce a statement showing what licenses The Chemical Foundation had issued from its very inception down to December 31, 1922, together with the amounts that have been received and the names of the licensees. Is that what you mean?

Mr. Anderson: The numbers of the patents under which the licenses were issued, also.

Mr. Kresel: Yes, in order to identify the licenses.

Mr. Anderson: Yes.

Mr. Kresel: We will do that.

Mr. Anderson: And you will have the licenses here so I can examine them?

Mr. Kresel: Yes, the licenses will be in Court.

Mr. Anderson: With that understanding, then, I won't burden the record twice with that evidence.

In connection with the forty-sixth paragraph of the Bill there was certain additional evidence I felt I would have to offer. I wished to avoid offering it if I could, and after a talk with counsel, counsel and I have agreed that if after further conference and investigation I reach the conclusion that that evidence or any part of it should be offered, he is perfectly willing to have it offered during the presentation of his case with the same effect as if produced on the affirmative case.

Mr. Kresel: If your Honor will permit that I am willing to make that stipulation.

Mr. Anderson: There are certain reasons why we wish to follow this course. My associate reminds me, Mr. Kresel, that of course the statement of the licenses will show the royalty rate in each case.

Mr. Kresel: Oh, yes.

Mr. Anderson: And all the essential data. If your Honor please, the Government has so far as we know, in the confusion of this enormous mass of material, introduced evidence on every paragraph of the Bill with the exception of those just indicated for the reasons stated, and therefore the Government——

The Court: Before you formally close, I am not sure whether I have brought to your attention that you are at liberty, if any evidence was in the early days of this trial or at any time ruled out by me, to put it in. I want you to understand that there is no evidence which you desire to offer, whether it be written or oral, which I have any purpose of preventing you from putting on the record. You have understood that?

MR. ANDERSON: I understood that, and we did reoffer one document. I do not recall that anything else was omitted.

THE COURT: As I said a few minutes ago, owing to the peculiar character of this case and the incidents which are disclosed of record in connection with it, I feel that the Government should have full liberty to put of record everything which the Government is advised is material or relevant to the issues of the case; and before you close, if any paper or oral testimony has been rejected by me, I want to give you this opportunity to put it of record.

MR. ANDERSON: Your Honor is very kind and has been most considerate of us, and I hope we have not exceeded the limitations of good judgment in presenting the very voluminous record which we have presented, and which I am frank to say is very much fuller than we would have presented but for the rule your Honor has been following; and indicating that that rule would not be applied in rebuttal has made it necessary for us to anticipate the defense. Therefore it has been fuller than if we were proceeding strictly along the lines of evidence. I have no doubt that when I come to examine the record I will find that I have left out something, out of the enormous mass of stuff, relevant to this case. If that is the case, I have done the best I could to present a full record, and therefore the Government closes its case.

The Court: Mr. Kresel, you had a motion with respect to Dr. Holdermann's testimony. If convenient to you, I would like to hear that now.

Mr. Kresel: I doubt whether your Honor has more than a general recollection of Dr. Holdermann's testimony, but the substance of it can be stated in a very few words, and with your Honor's permission I shall state it.

Dr. Holdermann stated that he had been in the employ of the Badische Company in Germany for a number of years, mostly in an administrative capacity, although he was a chemist by profession. He stated that prior to March, 1922, he had never been in the United States. He stated that he had had charge in Germany for the Badische Company of the making of applications for patents. He then described in a general way the three classes of patents that had been owned by the Badische Company and which were subsequently seized by the Alien Property Custodian. He divided them into the following classes: There were fifty-eight patents that covered the nitrogen process, there were several patents, though very few as I recall them, which covered the tanning process, and then there were a large number, and as I recall it he did not give the number, covering dyes and dye manufacturing.

Dr. Holdermann was not asked and did not give any testimony as to the value of the dye patents. He did say that his concern in 1913 had made a certain profit out of its dye business. But he valued the nitrogen patents at seventeen millions of dollars, and I think he gave the value of the tanning patents as $300,000. I may be wrong as to that figure, but I shall look it up in a minute.

Upon cross-examination I asked Dr. Holdermann to state what he meant by the term "fair market value," which was the term used by Colonel Anderson in putting to the Doctor the question that elicited the answer as to the value of these patents. The question was: "Just what do you mean by the market value of a patent; do you mean that there is a place somewhere where you can go and buy patents? A. You know yourself that there is no such place. Q. Then what do you mean by a market value of patents? I want your meaning of it so we can see what your testimony is worth? A. I think the market value of the patent is the value which the patent had for the inventor or the owner of the patent and for which he probably would have been willing to sell it. Q. That is what you mean by your testimony when you gave the market value of these patents, was it? A. Yes, I think that is a possibility."

It is clear, therefore, that this witness's testimony was based upon conditions which I am going to assume now, prevailing in Germany prior to the European War, and was not based upon conditions in the United States in 1919, as to which he was absolutely ignorant.

What those patents were worth to the Germans is absolutely immaterial in this case. It may well be assumed that to the Germans operating as they had been operating these patents were of immense value, but that is not the question that your Honor has to decide in this case.

Moreover, if the Germans had been in a position to have bid upon and bought these patents from the Alien Property Custodian, it might well be that even based upon the German conditions the evidence might be of some materiality. But the law forbade the sale of these patents to Germans. How, then, can it be material in this case to find out what a person would have been willing to sell them for or buy them, if I assume that that was the evidence, if that person could not in fact have bought them under the law?

Dr. Holdermann did not have these patents before him here. They were not then introduced in evidence. But he undertook to say that the United States patents were like the German patents, covering the same process. It is perfectly apparent, and the doctor so testified, that under the German laws no one could obtain a product patent, while here we issue not only process, but also product patents. Many of these patents as to which the doctor undertook to testify are product patents.

So that your Honor will see that he was basing his estimate upon what he thought were patents such as he was familiar with in Germany, namely, process patents. While that consideration might be used by the doctor if called to his attention, to enhance the value in his opinion of the American patents, it is perfectly clear that what he was talking about is not only German conditions but German patents, and not the United States patents.

I have in this short argument sought to point out to your Honor the outstanding features of this witness's testimony, his manner on the witness stand, his evident interest in the outcome of the litigation. Your Honor will recall his testimony as to his trip here and the purposes of it, and I think he said that his company, the Badische Company, were then bringing suits to recover the license fees under Section 10f, and that they claimed these patents belonged to them.

Indeed, that had to be the claim or they could not maintain the action.

But quite aside from his interest, we say that the testimony is worthless in so far as the issues here are concerned. Value evidence in this case is of great materiality. I think your Honor had the clearest conception of what was involved in this case of all of us when at the very outset you pointed out that there was really one question between us; that the Government claimed all we could show was value testimony and we claimed that all the Government could show was whether your Honor could consider the non-justiciable question that we claim is involved here.

So that it is important, very important in the presentation of the defendant's case that we at the very threshold of the case challenged the materiality and the force and the validity of any testimony upon value unless it is based upon such conditions and shows such knowledge by the witness as to make it a fair basis upon which the Court could act at all.

May I in this connection draw your Honor's attention to the fact that although these very patents which Dr. Holdermann valued at seventeen millions of dollars were available to the American industry since October 17, 1917, when the Trading with the Enemy Act was passed, and although it is in evidence that the Federal Trade Commission as early as March, 1918, issued a license to the Semet-Solvay Company covering these patents, down to the first day of July, 1922, not a dollar in royalties had been paid on these patents and the Semet-Solvay Company was the only one that had thought it worth while even to take out a license under these patents. I think we are entitled to have your Honor consider that point upon the question that I now present as to whether this testimony should be allowed to remain in the record.

We claim that it is incompetent, that the witness was not qualified to give the testimony, that he clearly showed that he did not have the basis upon which he could form an estimate and that therefore the evidence is incompetent.

I have prepared a written memorandum, your Honor, upon those points which I shall with your Honor's permission hand up, giving a copy to the other side.

The Court: I should be very glad to consider it, but in view of the general rule which we have applied to all oral and written testimony offered by the Government, I shall deny the motion. But I think that I indicated my temporary views while the testimony was being taken. Those views were merely temporary. They are subject to change in the ultimate decision of this case, but I have seen yet no reason to change the views then expressed. That is as far as I can go at this time.

Mr. Anderson: Of course, I do not understand your Honor's statement as being in any way an expression of a ruling or opinion; and before your Honor expresses what might be called a view or opinion on that subject, I should like very much, of course, to be heard on that evidence. That is reserved. I do not want to argue with you this afternoon. I have not even the evidence here. I shall also ask leave, before your Honor considers this matter, to file a brief or memorandum in reply. But if it is quite agreeable to the Court, I should be very glad to include that in our briefs in the final argument of this case, because there is no use in filing several briefs.

The Court: I am not passing on it definitely.

Mr. Anderson: Before your Honor passes on it definitely, I want to be heard.

The Court: I will hear you before I do that.

I think the record shows that what I said a moment ago was probably this, that I denied the motion because of our general rule. I indicated at the time the testimony was taken the impression that I had with respect to it. I have not changed those temporary views, but I do not say that I may not change them in the ultimate consideration.

Mr. Anderson: That is all I ask; an open mind until I can argue, sir.

The Court: You will have full opportunity to overcome the impression that I indicated at the time the testimony was offered.

Mr. Anderson: That is all I ask.

The Court: I am merely indicating that the laboring oar is yours, but you are not denied an opportunity to be heard.

Mr. Anderson: I am perfectly willing to take the laboring oar.

The Court: Is there anything further that counsel on either side desire to say?

Mr. Kresel: Not at the present time, your Honor. I assume that your Honor will now take a recess.

The Court: As I understand you, counsel prefer not to sit at all on the fourth day of July.

Mr. Kresel: That would be my preference, although as to Friday, your Honor, I should like, if your Honor is willing to sit all day instead of half a day.

Mr. Anderson: That makes no difference to me.

Mr. Kresel: As to next week, we should like to sit Monday and Tuesday, Thursday and Friday; Wednesday being a holiday.

The Court: I have sometimes since fixed

Monday, the 9th day of July, as a day of argument, in a patent case which has been heard.

MR. KRESEL: That is a week from next Monday?

THE COURT: Yes. So that when we adjourn on Friday of next week, as far as this case is concerned, it will be until the following Tuesday instead of Monday.

(Whereupon, at 3.40 o'clock, Standard Time, an adjournment was taken until Thursday, June 28th, 1923, at 8.30 o'clock A. M., Standard Time.)

Wilmington, Delaware,
8th May, 1923, at 10 O'clock A. M.

Before:
HON. HUGH M. MORRIS, *U. S. District Judge.*

Appearances:
HARRY M. DAUGHERTY, Esq., Attorney General,
By
Henry W. Anderson, Esq.,
Herman J. Galloway, Esq.,
William W. Wilson., Esq.,
William M. Offley, Esq.,

James H. Hughes, Jr., Esq.,
of Counsel for Plaintiff.

GUTHRIE, JEROME, RAND & KRESEL,
By
William D. Guthrie, Esq.,
Isidor J. Kresel, Esq.,
Bernard Hershkopf, Esq.,

Lucien H. Boggs, Esq.,
William G. Mahaffy, Esq.,
F. P. Warfield, Esq.,
of Counsel for Defendants.

Mr. Hughes: If the Court please, we are here for the hearing of Mr. Holdermann, one of the witnesses for the Government, I believe, in the case of the United States against the Chemical Foundation.

Mr. Galloway: If the Court please, in accordance with the arrangement which was made on last Friday, when counsel for the Government, as well as counsel for the defendant were present, the United States produced a witness here, Karl Holdermann, of Ludwigshafen, Germany. This we understand is in accordance with the plan which the Court then made of advancing the trial and arranging for the adjournment after the examination of this witness; and it is also our understanding that no opening statements are to be made at this time, but are to be deferred until June 4th, when the trial itself begins.

This witness, of course, is producd out of the order in which we ordinarily would proceed, and we ask to proceed at this time.

The Court: You may proceed according to that plan, Mr. Galloway, and you may take your testimony substantially as if before an examiner; and the defendant may reserve its exceptions and protect its rights in the same manner as if before an examiner, and after I have gotten to understand the case, I will pass upon those applications, but not now; that is, it will be impossible for me, without an opening statement, and without a preliminary study of the case, to make satisfactory rulings, either to one side or the other or to myself.

Mr. Galloway: I understand then, your Honor, that the objections should be interposed at this time, but the Court will reserve its rulings, until after it has become more familiar with the case.

The Court: Correct, unless there is some objection.

Mr. Kresel: That is, all objections, both as to form, materiality, and irrelevancy.

The Court: No, there is no reason why a matter of form cannot be ruled on now as well as later, but matters of substance will have to go over until the case is really opened, and the testimony of this witness may be taken up some time during the regular trial of the case and the objections then ruled upon, probably before the Government closes, so that it may have an opportunity of putting in other evidence in case some matter of substance be stricken out.

Mr. Kresel: Very good.

Mr. Anderson: I shall call Dr. Karl Holdermann.

KARL HOLDERMANN.

Karl Holdermann was called as a witness on behalf of the Government, and having been duly sworn, testified as follows:

The Witness: Your Honor, I am not very well acquainted with the English language and perhaps it will be necessary for me to ask you to repeat the questions.

The Court: If you have any doubt at any time about what the meaning of the question is, you may make such inquiry as will make it clear to you.

Direct Examination.

By Mr. Anderson:

Q. 1. Your name is Karl Holdermann, is it?

A. Yes.

Q. 2. Where do you reside?

A. I am residing in Ludwigshafen on the Rhine.

Q. 3. Ludwigshafen on the Rhine?

A. Ludwigshafen on the Rhine.

Q. 4. That is in the territory of Germany, is it not?

A. Yes.

Q. 5. You are a citizen of Germany, are you not?

A. Yes, I am.

Q. 6. How old are you?

A. I am forty.

Q. 7. What is your business or profession?

A. Chemist is my profession.

Q. 8. Have you any degrees, college degrees, or other degrees as a chemist?

A. Yes, I am a diplomated engineer and Doctor of Engineering, both of the Technical High School, that is a sort of University of Carlsrusch in the Grand Duchy of Baden, or what was the Grand Duchy of Baden before the Revolution.

> Mr. Anderson: If your Honor please, I will state that if the Reporter does not clearly understand Dr. Holdermann's utterances, I hope he will stop him, because of his difficulty with the language.

Q. 9. In what year did you graduate or receive your doctor's degree as engineer and chemist from the school you mentioned?

A. It was in 1904.

Q. 10. 1904?

A. Yes, 1904.

Q. 11. What is your present position, and with what institution or company?

A. I am a member of the firm of the Badische Aniline & Soda Fabrik. I entered the factory in 1906, when I left the university; after I was graduated there I was two years assistant with various professors, organic and physical and chemical, and from there I went immediately to the Badische Aniline & Soda Fabrik in the spring of 1906, and I was there continuously up till now, and in 1920, I became assistant manager of this firm.

Q. 12. What is the general character of the business of this company which I will call for convenience the Badische Company?

A. We were generally manufacturing dye stuffs of most various kinds, and mineral acids and some salts, and in the recent times, a few years ago, we had started to manufacture ammonia in the synthetic way, you know, by the so-called Haber-Bosch process.

Q. 13. You say that you became assistant man-

A. Yes.

ager of this concern in 1920?

Q. 14. Before that time you had been employed as an employee of the concern, had you not?

A. As a chemist.

Q. 15. As a chemist of the concern, Dr. Holdermann, in your position with the Badische Company, prior to and since 1920, have you had anything to do with its patent department, or the handling or dealing with its patents?

A. Yes, I was with the patent department nearly all the time. I was in the Badische Aniline & Soda Fabrik already in 1906.

Q. 16. Does this company own or control any considerable number of patents?

A. Yes, we have quite a number of patents. We are taking out more than one hundred patents in Germany every year, and the more important of them are also applied for in the foreign countries. We have hundreds of patents in the foreign countries.

Q. 17. You take out those patents in Germany, and then in foreign countries; does that include the United States?

A. Yes. First in Germany, then in the foreign countries.

Q. 18. In connection with the patent department, do your duties require you to familiarize yourself with the character of these patents, their use and values and other incidents in connection with them?

A. Yes.

Q. 19. Do you know how many such patents the Badische Company owned in the United States in 1917?

A. There were about between 450 and 500 patents which were owned by the firm at the beginning of the war.

Q. 20. This is the case of the United States against The Chemical Foundation, Inc., involving questions as to the seizure and transfer of certain formerly German owned patents to The Chemical Foundation. Have you examined the list of patents accompanying the bill of complaint in this case, to ascertain if it includes patents of the Badische Company?

A. Yes, it includes all our patents.

Q. 21. It does?

A. Yes, that we had at the time.

Q. 22. All the patents that you had in the United States?

A. All the patents we had in this country.

Q. 23. Does it include any applications for patents then pending, which have since been granted?

A. Yes, all the applications which were then pending, and most of them have matured into patents since then.

Q. 24. When I say pending, I mean 1917, when the United States and Germany went into the war?

A. Yes.

Q. 25. Did it also include any trade marks or applications for trade marks by the Badische Company?

A. This list of The Chemical Foundation?

Q. 26. I mean the seizure and conveyance to The Chemical Foundation, which is described in this bill of complaint?

A. All the trade marks.

Q. 27. Will you please state whether or not you have familiarized yourself with the situation sufficiently to say how many of the patents, applications for patents, trade marks and applications for trade marks which were then owned or claimed by the Badische Company, were seized by the United States and transferred to The Chemical Foundation?

A. Everything, all of them have been seized.

Q. 28. About how many?

A. About how many? About between 450 and 500 patents, and some few dozen of trade marks.

Q. 29. Can you give me any classification of the patents so seized by the United States and transferred to The Chemical Foundation as to their character; have you any means of classifying them in classes?

A. Yes, of course in rough lines, these patents cover nearly every field of chemistry, but most of them are for dye stuffs, wool dye stuffs, and vat dye stuffs, pigments and everything, and auxiliaries for dyeing processes, that is one group, and the other group for fixed nitrogen and the most important of them are those for the Haber-Bosch process and auxiliary processes therefor, and there is another field for synthetic tanning materials. That is a new art.

Q. 30. Have you a complete list of the patents of the Badische Company and applications for patents and trade marks, etc., which were so transferred?

A. Yes, we have.

Q. 31. Seized by the United States for The Chemical Foundation?

A. Yes.

Q. 32. Can you file that list as part of your deposition; have you it so made out separately that you can file it?

A. Yes.

Q. 33. Will you produce it?

A. It agrees with that which has been filed by The Chemical Foundation, and which is contained in the bill of complaint of the United States Government. I do not think there is any difference, no essential difference.

Q. 34. No essential difference?

A. No.

Q. 35. Then the patents as described in the exhibit with the bill of the United States Government, are the patents to which you refer, the patents and applications for patents to which you refer, to the Badische Company?

A. I think with a few exceptions.

Q. 36. That is substantially correct, is that true?

A. Yes, substantially correct.

Q. 37. Described as Badische patents in that exhibit?

A. Yes.

Mr. Anderson: Have you got that exhibit here?

The Witness: To be stated correctly, there are a few patents among them which have been taken out by our firm for the electric light process of fixing nitrogen. These patents have been transferred to the Norak Hydro Elektrisk Kdaelstof Aktienselskab.

Mr. Kresel: I am sorry I did not get that. Will you please repeat that?

The Witness: Norak Hydro Elektrisk Kdaelstof Aktienselskab.

Mr. Warfield: Do you intend to prove title by this witness to anything?

Mr. Anderson: No, I have to identify the patents, because his evidence would only come after proof of title. Therefore, I have to identify them.

Mr. Warfield: So long as it is understood that this is not offered to prove title.

Mr. Anderson: Of course, if your Honor please, we will introduce the evidence in its order showing the seizure by the Government and the transfer to the Alien Property Custodian. I do not assume that they will question the title of the Government. If they do, they will question their own; but I have to identify these patents at this time, in order that I may ask as to what the patents are and what value.

The Court: Are you going to rely at all upon the evidence of this witness with respect to title?

Mr. Anderson: Not with respect to title, unless it might be some evidence of this witness would be pertinent to title; but I am not introducing it for that purpose, because we are going to show seizure by the Government of the United States, that is the only title we are interested in, and we are not undertaking to recover the patents for the Badische Company. Therefore, the title is not involved.

Q. 38. Turning to the printed bill of complaint——

Mr. Kresel: May I interrupt you for a moment? The witness was telling us of some of the patents that had been transferred to this Norwegian company. He said some of them, and I would like to have him identify, if he will, at this time, which were so transferred.

Mr. Anderson: Certainly.

Mr. Kresel: If it is not interfering with your line of examination.

Mr. Anderson: As soon as I get identification of the whole, I will ask him to identify, by eliminating those that were transferred.

Q. 39. Turning to the bill of complaint in this case, the printed bill, and exhibit thereto, I find on page 133 to 140, the following patents and applications were demanded under report No. 33,051, trust No. 734 of the Badische Aniline & Soda Fabrik Co. Is that the list of patents to which you refer?

A. Yes, these are the applications and patents of our firm that have been seized; yes, that is the list.

Q. 40. Now, Dr. Holdermann, you spoke a moment ago of some of those patents having been transferred to a Swedish company. Can you take the list and state just which patents, by number, were so transferred?

A. They have not been seized because they did not belong to our firm, but to a firm of a neutral country. It was a Norwegian company, and a few others. Here are three, 1,095,425——

Q. 41. 1,095,425?

Mr. Kresel: On what page of this bill of complaint do you find that, please?

Mr. Anderson: Page 138.

The Witness: 1,095,425, that is on page 138.

Mr. Kresel: And what is the number again?

The Witness: 1,095,425, 1,095,426, 1,095,427, those three.

By Mr. Kresel:

Q. 42. Have you got that, the number is 1,095,425, 1,095,426 and 1,095,427, is that right, Doctor?

A. Yes, that is it. I think that is all.

Mr. Kresel: Just those three?

A. Here is another one, No. 884,919. Is it in the list? No, that is not in. No. 884,920; no—they are not in. I think that is all. That is all. I cannot find any others but these three.

By Mr. Anderson:

Q. 43. Doctor, you spoke of several classes of patents included in the list so seized; among others, the Haber-Bosch patents as you described them?

A. Yes.

Q. 44. Will you state briefly what is the general character of those patents; that is, what they are intended to cover and what they did cover?

A. These patents for the Haber-Bosch process are a process for fixed nitrogen. Nitrogen, which you know, is about four-fifths of the air, and nitrogen is valueless when in this form. It must be chemically combined in some form or other- and then it is converted into a very valuable fertilizer, and the demand for fertilizers has increased every year and it has heavily increased every year.

Many attempts have been made to combine the nitrogen of the air to form fixed nitrogen, as it is called, and this Haber process is one of these processes which is for such a fixation of nitrogen; and I can say that the process has proved the most efficient of all the processes which have hitherto been invented. It is the only one that has come to stay, and it is based on the fact that the nitrogen is combined with hydrogen. It is the gas which is contained in illuminating gas, and by the influence on certain solid masses, so-called contact masses, and thereby ammonia is formed, which is a gas which is dissolved in acids, sulphuric acid or hydrochloric acid, and is traded as ammonium sulphate, ammonium chloride, and so on, and forms a very valuable fertilizer.

Q. 45. How many of those patents covering what are known as the Haber-Bosch process were included among the patents which you have identified as having been seized, which you claim to be the property of the Badische Company?

A. Taking all the patents that belong here too, not only those which have been registered by Professor Haber, but those for machinery, for apparatus, and for the conversion of gaseous ammonia into the salts I have spoken of just now, and for converting ammonia into nitrate, another form of fixed nitrogen, and for preparing the hydrogen which is necessary for its preparation in the whole class of patents which belong thereto, there are about 58.

Q. 46. 58 patents?

A. 58.

Q. 47. Are all these patents in commercial use at the present time?

A. Not all of these.

Mr. Kresel: In Germany, did you say?

Mr. Anderson: I will come to that.

Mr. Kresel: At the present time?

Mr. Anderson: I will say 1917?

Mr. Warfield: Do you mean patents?

A. (Continued.) For more than ten years.

Mr. Anderson: If you gentlemen will wait a little while, I will bring out what you want. If I do not, you can bring it out on cross-examination.

Q. 48. Were those patents in use in Germany, commercial use in Germany in 1917?

A. Yes, they were in use in 1911 and 1912.

Q. 49. Are they in commercial use in Germany today?

A. Yes.

Q. 50. Do you know whether they had been used in America in 1917?

A. I do not know. Some hints are given somewhere in the periodicals that American firms made experiments along the same lines.

Q. 51. Doctor, do you know how much ammonia, or whatever the product is, that is produced from these patents, is now being produced in Germany annually under these patents?

A. The amount of ammonia, ammonia salts, that is being manufactured now in Germany corresponds about to 300,000 metric tons.

Q. 52. Each year.

A. 1,000 kilograms each.

Q. 53. Each year?

A. Each year, yes. Apart from strikes and so on, the capacity of the plant is about 300,000 tons or more.

Q. 54. Are you informed as to the commercial value of patents of this character?

A. Yes, I am informed.

Q. 55. In your position as assistant manager and formerly chemist, still chemist of the Badische Company, have you had to deal with the question of the commercial value of patents?

A. Yes, in our patent department we did not only deal with applying for patents and following them through, but also with acquiring inventions and granting licenses and everything which belongs to the utilization of patents; and we are often discussing the value of patents.

Q. 56. What was the fair commercial value of these so-called Haber-Bosch patents, the 58 you mentioned, in the year 1917-1918?

Mr. Kresel: Just one minute, please, Doctor. Your Honor will entertain an objection to this question at this time, because of course, that goes to the entire substance of this man's testimony. We object to that on the ground that this witness has not been qualified to give testimony as to the value of the patents.

The Court: I will hear you, Mr. Anderson.

Mr. Anderson: He has stated that for ten years he has been in the patent department of the

Badische Company; that he has been the assistant manager since 1920; that he has charge of the matters relating to the licensing and dealing with these patents and their production and knows their commercial value; has had to deal with the question of their commercial value. The question of the value of his testimony or the weight of his testimony is all a question for argument before the Court; but that undoubtedly, I should say, qualifies him to express an intelligent opinion as to their commercial value. If they wish to test that opinion, the basis of it, break it down, I suppose they are at entire liberty to do so. But he may express an opinion as to the fair commercial value of these patents as a man informed on that subject.

Mr. Kresel: If your Honor will permit me, this witness has so far testified that he has no knowledge of these Haber patents having been used in America. Certainly, what the value of these patents was in Germany in 1917 is not going to help us in this case. The question here is going to be as to the value of the patents here in the United States, in 1917—in 1919 rather, when they were sold. This witness has not shown any familiarity with the situation in the United States with the position of the art, with the use of these patents here in the Unted States. On the contrary, he has said that he simply heard in some periodical that some attempt had been made to use a similar process. He has not stated even that the Haber process was used here.

We therefore contend that the witness is not qualified to give any opinion as to the commercial value of the patents in the United States, and we contend that the value thereof in Germany, under conditions which do not prevail here, and to people who have peculiar means of making use thereof, is not a test by which we can arrive at a conclusion as to whether a price paid here was or was not adequate.

THE COURT: It seems to me, Mr. Anderson, that the question lacks a proper foundation at the present time, for two reasons. I make this statement, not on a thorough consideration of the issues involved by the pleadings in this case, but from a general impression that I gather from the issues in this case, from the various matters that have come up pertaining to it. But upon that slight knowledge, my impression is this: That you are asking for an abstract value of the patents; that you are asking for an abstract value with regard to the patents in Germany; that you are asking for an abstract value with regard to the patents in Germany in 1917.

My thought is, on the information that I now have, that the only value that will be of interest or vital in this suit is the value in America, the value in America at the time of the sale, whenever it occurred; 1919, Mr. Kresel?

MR. KRESEL: 1919, sir.

THE COURT: That value in America in 1919 of these patents would not be an abstract value, but would be the fair market value of these patents.

For those reasons, I am under the impression, Mr. Anderson, that the answer as given would not be relevant, material or helpful in the final determination of the case. If you want to lay further foundation, you may. If not, I shall overrule the objection and allow you to take the testimony; overruling the objection solely on the theory that I am not wholly informed, but allowing the testimony to go in so that you may press your objection at a later stage of this case, Mr. Kresel.

Mr. Anderson: I rather concur in your Honor's view. You were probably reversing the order. I was going to ask the questions to bring it up to 1919 in America; but probably in the view that your Honor takes, I should have laid that foundation further.

The Court: You withdraw the question, Mr. Anderson?

Mr. Anderson: I withdraw the question for the present.

Q. 57. Dr. Holdermann, under these patents so-called Haber patents, would it have been practicable for a competent chemist to have manufactured the products which you have described as being produced thereunder, in the United States, by use of the patents?

A. Of course, it must have been.

Q. 58. All these patents disclose the full process, the methods of manufacture, both chemical and physical in connection therewith?

A. Each of the patents discloses fully and frankly the invention for which it is; which it claims. There are, of course, in the manufacture of ammonia some steps which are of public dominion, and they are not disclosed in the patent; some steps in the manufacture of ammonia belonging to the old art, in the prior art, and that is not disclosed in the patent, of course. The patents relate to new inventions simply.

Q. 59. In other words, the patents covered the methods of the new invention of producing the elements out of which the ammonia was produced by well-known processes when you had those elements; is that true?

A. Yes.

Q. 60. With those patents, then the products which you have mentioned, ammonia and the other products described, and the sulphates, could have been produced in each case without any difficulty by competent chemists; is that true?

A. Yes.

Q. 61. Are you familiar with the extent of the use of those products in the United States?

A. I already mentioned that they had been used to a certain extent.

Q. 62. I mean ammonia and the other products?

A. (Continuing.) By an American firm, but Mr. Kresel was wrong in assuming that this was the only knowledge of mine of the state of the art in America.

The Court: I did not quite hear. Were you trying to get the witness to answer as to the use now or prior?

Mr. Anderson: I said 1919.

The Court: Will you repeat the question?

(Question repeated by the stenographer.)

A. It relates to the state of the art before 1919.

Q. 63. Now, are such products as ammonia, as produced under these patents, in common use in the United States for commercial and fertilizer purposes?

A. Now?

Q. 64. Yes, and were they in 1917 and 1919?

Mr. Kresel: I do not quite understand the question. Are you asking him whether products produced under the Haber patents were in use?

Mr. Anderson: No, I am asking him whether ammonia, such as may be produced under the Haber patents, is an article of general commerce in the United States, used for commercial and fertilizer purposes, if he knows of it, and was it so used in 1917 and 1919. Your Honor will understand, I am not putting this evidence in the regular order; I will prove that by other witnesses.

The Court: Yes, I understand you are embarrassed by that.

Mr. Anderson: I will prove all that by other witnesses. I am trying to do the best I can.

The Court: At the same time, Mr. Anderson, I shall have difficulty with getting the value out of this and probably the other side will, unless they know, unless they are informed by you, from time to time as you go along, of just what point you are directing this testimony to.

Mr. Anderson: I will be very glad to do that.

The Court: I think that is your difficulty, Mr. Kresel.

Mr. Kresel: Entirely so.

A. Yes, they are being used to a very large extent.

Q. 65. And were they in 1919 and 1917?

A. Yes, and long before.

Mr. Anderson: Without putting this on the record, I will, of course, at the proper time, by American witnesses, prove the commercial uses and values of all the products produced of this character. I only want to lay a foundation for him to express an opinion as to that.

Q. 66. Now, Doctor Holdermann, taking into consideration the character of these products, their commercial use or capacity for commercial use in the United States, which you have mentioned in the year 1919, and your knowledge of the subject, as derived from your handling of these patents for your company, will you say what was or what would have been the fair commercial value of the so-called Haber patents in the year 1919, at which time the alleged sale in this case took place?

Mr. Kresel: Just a minute, Doctor, please. If your Honor please, we do not yet consider that the proper foundation has been laid for this witness to express an opinion as to the commercial value of these patents; but, understanding your

Honor's ruling heretofore made, that you will take the testimony subject to our right to move to cross it out later, of course, I cannot urge anything further.

THE COURT: Did you want to address yourself in reply to Mr. Kresel, Mr. Anderson?

MR. ANDERSON: I did not, further than to state that of course at the proper time we will prove more clearly the extent and character of this use. My purpose now is only to show that the witness has a knowledge of the commercial use of these products, and that his position as a patent expert in charge of the office of his company in Germany dealing with these patents, and their commercial uses in both Germany and here, enables him to speak with reasonable accuracy as to their commercial value. I might say that I will follow that up by asking the direct question what his company would have paid for these patents at that time.

MR. KRESEL: Yes, but Colonel Anderson, it seems to us that the value of these patents should be determined in relation to our situation here in the United States and not in relation to the ability of the Germans to make use thereof. Now, it seems to me that no foundation has been laid as to the conditions here in the United States in April, 1919, when this sale was made, as to the ability of our manufacturers to make use of these patents.

This witness has not yet stated that anybody used these Haber patents here. At least I have not so understood him to say.

THE WITNESS: Yes, I said so.

MR. KRESEL: I have understood him to say that he has known of some one firm here attempting to manufacture nitrogen or get nitrogen out of the air, but I have not understood him to say that that was done under this Haber patent. Colonel Anderson, if that is the fact, if I may suggest, I wish you would develop that end of it; but until it is made to appear what the conditions were in the United States as to our ability to use these patents or as to the results of any attempts to use them theretofore, it seems to me that this witness has not anything upon which to base an opinion as to the value of these patents to anybody in the United States.

At the proper time we shall show your Honor of course that the Germans have greater facilities to make use of these patents than people in the United States have.

Moreover, may I also point out, if your Honor please, that there is at least in my mind some confusion as to which patents the witness is now testifying about, whether it is the German Haber patents or whether it is the Haber patents that were filed here in the United States. I think, Colonel, if you make inquiry, you will find that these patents were not similar. At all events, I am only pointing that out as indicating that there is some confusion.

The Court: Shall we clear that up first, Mr. Anderson?

Mr. Anderson: I will, if your Honor please; and I would like to say further, as this is going on the record apparently, and I do not want to leave it without answering, the value of these patents arises from two sources, at least, to say nothing about others. One is the right to manufacture the goods under the patent and the second is the right to control the sale of the goods under the patent. Therefore there might never have been a product manufactured in the United States; it might never have been licensed in the United

States. But the ownership of the patent in the United States, if the market for the product was large, would be enormously valuable, either to manufacture or to control the importation. Therefore, the market being here and the patent presenting a condition under which the stuff can be manufactured or its importation or sale controlled, which is the same thing, because you can license the control, the value arises from those sources. Now Mr. Kresel is addressing himself to the weight of the testimony and not to its admissibility. It may be that unless we develop additional facts showing the application of this testimony to conditions in the United States in 1919, that the weight of the testimony may be or may not be affected. That will be a question of argument before your Honor when you come to consider the testimony. But it is admissible for what it is worth, the man having shown a knowledge of these conditions. I will clear up the question I asked the witness. I do not always understand his answer very clearly. I asked the witness this question, whether or not under these patents as filed in the United States—I have not said anything about the German patents—any person in the United States could manufacture these articles which he described as being produced under these patents; and he said that any competent chemist could do so.

Now therefore that being the case, it is not material whether the German patent or the other patent maybe identical in terms, provided the product could be produced under the patent as filed in the United States by a competent chemist. Then comes the question whether there is a commercial market or whether that market can be controlled through the use of this patent.

The Court: I believe I understand you, Mr. Anderson.

Mr. Kresel: Your Honor, would you pardon me a minute?

The Court: Yes, I will hear each side.

Mr. Kresel: Colonel Anderson has spoken of the right to control the sale of imported articles made under this patent. It has not yet been made to appear that this was a product patent. On the contrary we think it is only a process patent; so that importations of the article would not come under the patent here.

Mr. Anderson: I understood him to testify that it covered both product and process.

Mr. Kresel: No, the witness was not asked and did not testify to anything like that.

Mr. Anderson: I certainly understood him so to say in describing the patent.

The Court: I did not get his answer. Apart from that, is there this difficulty? It probably does not apply now, but the arguments of counsel would seem to bring this question to my mind, particularly your statement that you propose to follow it up by ascertaining from this witness what his company would be willing to pay therefor. You understand that I am practically in complete ignorance of the situation, so I will ask you to bear with me and help me on it if you will just a moment.

Could his company—I am asking now purely as a matter of law—have been a competitive bidder in the sale of these patents in 1919?

Mr. Anderson: I do not think so, sir.

The Court: Then does that present a question as to whether his answer to that inquiry could be of any value here?

Mr. Anderson: I do not think it does. If the company could have been a competitive bidder, it would have gladly paid this price. Therefore, it regarded the commercial value as that amount. That is one of the evidences. It may not be conclusive evidence. It may have been barred by certain conditions then existing by the war—I do not recall how far—because there were a lot of licenses issued and things of that sort.

The Court: I am wondering this, Mr. Anderson, if you will help me just a bit there.

Mr. Anderson: Yes, sir.

The Court: As I understood you a moment ago, you are going to develop eventually the market value, a market value.

Mr. Anderson: Yes, sir.

The Court: As I understood you.

Mr. Anderson: So far as I can do it, sir.

The Court: So far as you can. Now, if the German bidders were barred by operation of the law upon bidding in that market, then might not what the German corporations might be willing to pay or might be willing to have paid for those patents, mislead us rather than guide us in a determination of the market value? Because, if what the Germans would have been willing to pay, if they could have been bidders, would have produced a higher price, it seems to me at the moment that possibly having them tell us what they would have been willing to pay, could they have been a bidder, rather confuses than clarifies.

Mr. Anderson: If your Honor please, I will undertake to answer your Honor's question. This is of course dealing with a subject that I confess entire igorance of, that is patents. I do not know anything about patents in chemistry. Here, the elements of value, however, are well understood. They are derived from various sources, all of which must be considered. What one person is willing to pay is evidence of value. What one person might be willing to pay would be evidence of value. Another is, what are the commercial advantages that can be derived from the use of the patent? That is an element of value. That arises from two sources: experience, and the estimate of experts as to what use can be made and what the value of that use is.

In the last analysis, evidence of value of a thing of this kind is largely a matter of the judgment of the experts, in which they may differ unquestionably. Therefore the various elements may be developed.

Now I want this witness to state what in his judgment the patents here, sold in the United States, taken in connection with the market of the United States, their capacity for production and their capacity for control,—what in his judgment, as a man dealing constantly with this subject, and familiar with these patents and their capacities, would be worth, would have been worth in 1919. I do not care to whom they are worth it. If there was any person in the world who would have given that price, we have that value.

The Court: Any person in the world who could have been a bidder.

Mr. Anderson: I do not think it is necessarily confined to a bidder, if it was a bona fide desire to get them at that price. He might have bid through some one else. If he is willing to give that price, that is evidence it may be worth that price. It may not be conclusive evidence, but it is evidence.

The Court: You understand I am going to take your testimony.

Mr. Anderson: Yes, I think we have argued more the value of the testimony than its admissibility.

THE COURT: I am not sure, and the reason I am asking you these questions——

MR. ANDERSON: I am very glad to have you do it, if your Honor please.

THE COURT: (continuing) is for my personal benefit, my official benefit, but mainly so that if this objection is pressed eventually, and I should decide to rule against you on any of these grounds I should be sorry if I had not presented these grounds to you now, so that you can meet them at this time rather than after the witness is gone.

MR. ANDERSON: I think your Honor is under a great handicap in not having the case presented in a proper way, and I hope you will not hesitate to ask me any questions. I find myself handicapped in examining this witness, because I will prove these things by somebody else.

THE COURT: But the difficulty there is that even if you had proved this very evidence by as many witnesses as you could put on the stand, the testimony of those witnesses would not in itself enable this witness to answer your present question. That is, the testimony of the other witnesses might be valuable, but they would not establish any value of the right of this witness to answer that question. I have my doubts about his being in a position at the present time, from the testimony given by this witness, to answer this question. I think I have indicated the grounds of those doubts and you may take the answer.

MR. KRESEL: Your Honor will pardon me just a minute? May I make the suggestion that Colonel Anderson develop from this witness as to whether he was present in the United States during 1917, 1918, and 1919.

THE COURT: You may, if you desire.

Mr. Kresel: I do not want to interrupt Colonel Anderson's examination of this witness.

The Court: You may if you desire, Mr. Kresel, prior to that answer being taken, cross-examine him as to that particular point.

Mr. Kresel: If you will permit me. May I, Colonel?

Mr. Anderson: You may, yes, sir.

By Mr. Kresel:

Q. 67. Dr. Holdermann, in 1917 were you in the United States?

A. No, there was a war between Germany and the United States. But that is not the only way of getting information.

Q. 68. Won't you just please answer my question?

A. Yes.

Q. 69. In 1918 were you in the United States?

A. No.

Q. 70. Or in 1919?

A. No.

Q. 71. When did you first come to the United States subsequent to 1919?

A. Last year, 1922.

Q. 72. Prior to 1922, had you ever been in the United States?

A. No.

Mr. Kresel: That is all I desire to ask him at this time.

By Mr. Anderson:

Q. 73. Dr. Holdermann, I understood you to describe the character of these patents, what they covered. I would ask you whether they covered, the 58 patents, production of products and processes of production? Explain that, please, to the Court, just what they did cover, if you can do so. I do not mean to go into technical details. I just want you to say what they covered in a general way.

A. These patents covered certain improvements, first, for the starting material, hydrogen and nitrogen, and for the art of combining these two, to form ammonia; conditions which are necessary to effect this combination; then means for separating the ammonia from the mixture which is formed, transforming the ammonia into tradeable form, in which it can be sold or treated, into salts.

Mr. Kresel: May I interrupt you, Doctor. Will you permit me, Colonel Anderson?

Mr. Anderson: Yes.

By Mr. Kresel:

Q. 74. What we want to find out, Doctor, is this. Do you claim that under those Haber patents no one could manufacture ammonia unless he had a license from you?

A. Yes, of course.

Q. 75. Is that your claim under the patent?

A. Every patent creates a monopoly and nobody can manufacture under these patents unless they get a license. Otherwise, he infringes the patent.

Q. 76. You did not understand. We understand your claim to be, that no one could manufacture ammonia by the Haber practice without getting a license. But my question is, do you contend that no one in the United States was permitted to make ammonia or sell it here unless he got a license from your company, no matter how it was made? You do not claim that, do you?

A. I do not think there is another commercial way of making ammonia synthetically. No process has been known so far.

The Court: Will you repeat the question and see if he can answer it directly.

(Q. 76. repeated.)

A. No, we do not claim that. Ammonia can be prepared by coke-ovens. It has been manufactured that way for a hundred years. Of course, that depends on the production of coke.

THE COURT: Then is it clear that none of these patents were product patents; that they were all process patents?

MR. ANDERSON: No, sir; it is not clear. This particular patent did not cover the sale of ammonia. I will ask this question.

By MR. ANDERSON:

Q. 77. Was there any other commercial method of making synthetic fixed nitrogen and ammonia in quantities at the time these patents were sold in 1919, so far as your knowledge goes?

A. No.

MR. KRESEL: Where?

MR. ANDERSON: Any where.

Q. 78. Was there in America, so far as your knowledge goes?

A. Not in America, and not in other countries.

MR. KRESEL: That does not answer the question, I submit. That does not make it a product patent by any means.

THE COURT: If the product could not be manufactured save by this process, if there was no other known process——

MR. ANDERSON: If you could not use the process, you could not make it. All that enters into value. It is argumentative as to what it is. But that is all I want.

Q. 79. Dr. Holdermann (subject, of course, to objection), I wish you would state from the knowledge which you have already indicated, what, in your judgment was the fair value of these 58 so-called Haber patents?

Mr. Kresel: The fair market value?

Q. 79. (continuing)—The fair market value, yes, of these 58 so-called Haber patents in America, that were issued in America in the year 1919, when they were seized and transferred to The Chemical Foundation?

Mr. Kresel: If your Honor please, we object to that question upon the ground that this witness has not been qualified to give testimony as to the market value of these patents in the United States.

The Court: I think I understand your grounds; unless you care to discuss it further on either side.

Mr. Kresel: No, your Honor.

The Court: Because I have indicated the doubts I have about the admissibility of this testimony on the foundation that has been laid by this witness. I have indicated that so as to establish a better foundation, if that is available, from this witness. I will overrule the objection solely on the ground that all objections going to substance are to be overruled and disposed of at a subsequent stage of this case.

Mr. Anderson: I am going to ask a good many questions that will probably come under the same line.

The Court: I understand.

Mr. Anderson: Of course, we will discuss that at the proper time.

The Court: If you prefer, Colonel Anderson, that I make inquiries as you go along and express doubts, I will be very glad to do so.

Mr. Anderson: I will be very much obliged to your Honor if you would, because we are proceeding in such a way here, that it is almost impossible for me to keep in mind what are the issues.

The Court: Then there will be no objection to discussing any question of substance on either side.

Mr. Anderson: Certainly not. I would be very much obliged if you would.

Q. 80. You can answer that question now, subject to the objection?

A. After careful consideration of all the circumstances that I could get, not from personal presence here in the United States, but from all sources, periodicals, and all other sources, I think a very conservative estimation of the market value of these United States patents for the Haber ammonia processes, and no others, is about seventeen millions of dollars, for these fifty-eight.

Q. 81. Are you speaking now as of the year 1919?

A. 1919, at the date of transfer.

Q. 82. Do you have to deal with the purchase of patents by your firm?

A. Yes, that is all in the charge of our patent department, purchase and selling, licenses, and everything which is connected with patents.

Q. 83. If your firm had not had any interest in or owned these patents in the United States in the year 1919, would you have been willing to pay that price for them?

A. I think I would have paid this.

Q. 84. You are speaking now entirely of the United States patents, are you?

A. Of course, nothing else.

Q. 85. You spoke of the synthetic tanning materials. Approximately how many of the patents of your company which were seized by the United States, covered synthetic tanning materials?

A. There are not so very many for synthetic tanning materials, but they are very important. I think they will be about ten patents for this field, ten to fifteen.

Q. 86. Were those patents in commercial use in 1919?

Mr. Kresel: Where?

Mr. Anderson: In Germany.

A. They have been to a certain extent, but to a very small extent. They have been developed just before the war. Then the war broke out and the connections with your country have been interrupted and patents could not be developed. It was just in the beginning.

Q. 87. Were these patents as filed and granted in the United States, substantially the same as the patents covering the same processes or products granted in Germany?

A. Yes, practically the same.

Mr. Kresel: How can this witness say? It does not appear that this witness has any knowledge upon the subject. I do not think we should take his conclusions.

Mr. Anderson: But he is the man who handled them.

Mr. Kresel: He is the man in Germany who knew about the German patents; but whether the United States patents filed here—it does not appear even when they were filed—were the same as the German patents, has not yet been made to appear.

Mr. Anderson: If he does not know, he can say so. If he does know, he can say so.

The Court: My difficulty is this, whether the best evidence of that is not the copy of the German patents themselves.

Mr. Kresel: Both patents.

Mr. Anderson: I think it is very probable, if we were proving title, that would be true; but if he handled, if he secured both, he can say if they are substantially the same.

The Court: Are you not asking him for a conclusion, not a fact?

Mr. Anderson: No, sir; if I may submit to your Honor. It seems to me that this witness has testified that he handled the procuring of these patents in foreign countries as well as in his own country. Now, if he handled the procuring of those patents, he can say whether they were substantially the same in the United States as in Germany. I can, at the proper time, if necessary, produce all these patents or extracts from them. I do not assume anybody would want them. But if he handled both, he can testify they are substantially the same. As to what they contain, as to what the patents contained in terms, it is quite probable that the patent itself would be the best evidence, but that they are similar in terms, and similar in character and cover certain rights, I think his testimony would be entirely admissible because he handled them. He said that clearly before, and I am going to have him say that over again.

Mr. Kresel: Of course, your Honor knows vastly more about patents than I hope to know; but your Honor certainly knows—that much I learned from my brother Warfield last night—that the value of a patent may very largely depend upon the claim contained in the patent and the claim in the American patent may be vastly different from the claim in the German patent.

How does it help us to have this witness conclude, without documents before him, that the two patents were substantially alike? It does not lead us anywhere. Wherein is the difference, if they are only substantially alike? Where is the difference? How is the Court going to judge whether that difference is material, upon the question of value? I think your Honor has well indicated that if this is material at all, the two patents ought to be presented.

Mr. Anderson: I think, sir, that we are discussing—if I may submit, your Honor,—we have been discussing all the morning the value of evidence as distinguished from evidence, the admissibility of evidence.

The Court: We will take a recess today, Colonel Anderson, at about twenty-five minutes after ten by that clock, by reason of a noon-day luncheon engagement I have, and then we will begin again approximately at 2 o'clock.

Mr. Anderson: Yes, sir.

The Court: We cannot tell just exactly when that luncheon comes.

Mr. Anderson: I would like to go back and find out what was the question which I asked the witness. I believe I was arguing the question before your Honor when we stopped.

The Court: Yes.

Mr. Anderson: What I want to say is this—I want to add to what I did say—that while I do not have to say because it has been perfectly obvious that I know nothing of the chemical side of patents, and do not intend to, yet the fact is that this witness is an expert in handling patents, and was the man who represented this company who acquired these patents in Germany and in the United States. He has testified to that, and will testify so again. Now, what the value of his evidence will be when we get through with producing chemical evidence of this stuff in the United

States, will be a question of argument; but for what it is worth, it is admissible, as one of the many factors that will be presented here tending to show or not to show, the value of these patents at the time they were sold by the United States to The Chemical Foundation. I do not want at this time to argue any question of the weight or importance of this evidence.

The Court: No.

Mr. Anderson: Only that it is admissible on the record. I am perfectly willing, and it will save the time of the Court, and save the time of Counsel, to have your Honor reserve your ruling on any of these questions. I think I am entitled to have the witness answer the questions.

The Court: I will rule on questions of substance, but the only reason I am making inquiry is so that if you have overlooked something, you may show it in your testimony.

Mr. Anderson: I cannot recall this witness. He will be in Germany. Your Honor is quite right. You want to get at the facts, and the Government wants to get at the facts, whatever they are.

The Court: On that ground, the objection will be overruled. My thought is that in the absence of those patents, the other side had no opportunity to show that this witness may be mistaken in his conclusions; but upon the grounds under which the testimony of this witness—under the arrangement by which the testimony of this witness is taken, the objection is overruled.

A Voice: Do you want that question, Colonel Anderson?

Colonel Anderson: Yes.

A Voice: "Q. Were those patents as filed and granted in the United States, substantially the same as the patents covering the same processes or products granted in Germany?"

Mr. Kresel: Pardon me a minute. I do not understand this arrangement of stenographers. I had understood that the stenographers at this table, were the stenographers appointed by the Court to report this proceeding.

The Court: Is not the stenographer who read the question, one of your gentlemen, Mr. Smart?

The Official Stenographer: No.

Mr. Anderson: Then I will ask Mr. Smart.

The question was repeated by the stenographer as follows:

"Q. Were these patents as filed and granted in the United States substantially the same as the patents covering the same processes or products granted in Germany?"

The Court: I have not any objection, Mr. Anderson. You may have as many men taking down the testimony as you like. They have no standing in this Court, and the testimony and the notes so taken will be only for your personal use and will not constitute the record.

Mr. Anderson: That is understood. The record will be made by the stenographer your Honor has appointed under the conditions which we have already discussed.

Q. 88. Now, will you answer that question?

A. Yes. Perhaps I may answer at length, so that it can be understood.

Q. 89. Go ahead and answer any way as you please.

Mr. Kresel: Not as broad as that.

Mr. Anderson: If he goes off the track, you can stop it.

A. So far as it will help the case; I can tell you when an invention is made in our factories, the invention goes to the Patent Office, and the inventors come to our patent department, and there discuss the inventions, and I and my assistants are drafting the specification for the German applications, and I was personally in all of these German applications for these tanning substances, and after a while, we were filing the applications abroad, and I took the German texts, and I make up the foreign texts in pretty nearly the same language. There are only changes which are required by the difference in the patent laws, and apart from these strictly technical differences, there is no change in the material part of the application, and I have drafted a good part of these tanning, or nearly all of these American patents for tanning, and I cannot find that there is a substance which is claimed the process, on the technical part of it, which is quite the same as that in Germany. Is that sufficient? I think that is clear.

Q. 90. Could a competent chemist or manufacturer check the patent, as filed in the United States, or granted by the United States and manufacture the product which is manufactured under the same patent in Germany?

Mr. Kresel: One minute again, if your Honor please. That is calling for this witness's conclusion, and it is merely speculative. It all depends upon the ability of the chemist.

The Court: Is not the test really whether the patents make such disclosure as to enable one skilled in the art to produce the result?

Mr. Kresel: Exactly, that depends upon the patents and upon the state of the art here.

The Witness: No, upon the chemist.

Mr. Kresel: In other words, how does it aid the Court to have this witness say that assuming a competent chemist at a certain state of the art—could use this patent to advantage?

THE COURT: He does not say to advantage in this question. He says to make such disclosure, there is nothing omitted, as I understand.

MR. ANDERSON: That is correct.

MR. KRESEL: The question was, as I recall it, whether a competent chemist could, by using the process as described in the patent, produce the product.

THE COURT: He is merely asking whether the patent is complete, as I understand it, because there is something omitted if there is one step omitted, that keeps the disclosure from being such a disclosure——

MR. KRESEL: As would make it useful.

THE COURT: (continuing)—to enable a person skilled in the art to reproduce the result intended by the patent, then, of course the patent is wholly valueless. Now, this question is, as I understand the purpose, directed to that point; is that correct?

MR. ANDERSON: It is correct, to that point, to show it that the entire process, or whatever it is in the patent, is a disclosed patent in the United States, to the end that it can be commercially used in the United States, and the patent transferred. I do not imagine that these gentlemen, since they bought these patents, will attack their validity. If they do, we will discuss that question when we come to it.

MR. WARFIELD: We should not try to prove it in this way, by various conclusions, and mostly leading questions, and an incompetent witness.

THE COURT: Is there anything further in the discussion? The objection is overruled on the ground indicated.

Q. 88. Go ahead—go ahead and answer the question as to whether it was a full disclosure of the process, so a person in the United States could manufacture under that patent, the same process, the same materials manufactured in Germany?

A. I can only repeat all what I said in relation to the ammonia processes, that our patents are full and frank disclosure of the invention, as is required by the patent law. A patent which does not fulfill this condition is void, and we have no interest in applying for void patents.

Q. 89. Now, Doctor, are you familiar with the extent of the commercial use of these so-called tanning patents in Germany?

A. Yes, we have had a very wide use, and are now being in use to a large extent.

THE COURT: We will take a recess now, Colonel Anderson, to 2 o'clock, which will be 1 o'clock by that clock.

AFTER RECESS.

KARL HOLDERMANN resumes the stand.

Q. 90. Dr. Holdermann, at the time of adjournment, we were engaged in questions as to the so-called tanning patents included among the Badische patents seized by the Government and sold to The Chemical Foundation. I do not recall whether I asked you the number of patents included in that classification which you made, and I would be glad if you would state the number and if you can do so, put the numbers thereof on the record, identify them from the exhibit with the bill which we referred to this morning?

A. There are some thirteen patents for the tanning art, artificial tanning.

Q. 91. Can you give the numbers. I asked him, Mr. Kresel, to make out a list of the numbers and save calling them off as it is very difficult for the stenographer, and I will hand him this list.

Mr. Kresel: Yes.

Q. 92. Have you checked over the so-called Badische patents included in the list in the bill, and identified the numbers included in your list, included as tanning patents; have you checked them over?

A. I have checked them over.

Q. 93. Will you hand to the stenographer a list showing the serial numbers of those patents to which you now refer. Just hand him this list.

A. (Witness handing list as follows):

1,421,722,
1,414,045,
1,336,759,
1,289,280,
1,281,494,
1,278,229,
1,254,364,
1,237,405,—$5000 in 1913.
1,216,612,
1,203,069,
1,191,480,
1,107,107,
1,089,797,

The Court: Any objection, Mr. Kresel?

Mr. Kresel: None at all.

Q. 94. You include that as part of your answer, as identification of the patents; you can just put that on the record?

A. Yes.

Mr. Anderson: There is no objection.

Q. 95. Are these so-called tanning patents, patents covering product, as well as process?

A. Yes, as well for new products as processes in manufacturing them, as for processes for application from the tanning of the products.

Q. 96. How many of these patents were in actual use, commercial use, for manufacture, prior to 1907, do you recall?

MR. KRESEL: Where?

MR. ANDERSON: In Germany.

MR. KRESEL: In Germany?

MR. ANDERSON: Yes.

A. Prior to 1917, I think we used about—we produced about two new products.

Q. 97. Two new products?

A. Two new products, and now there are three or four products which are made.

Q. 98. In 1919, how many were in use in Germany?

A. I think three, three.

MR. KRESEL: The question is—how many patents were in use?

THE WITNESS: That is another question.

Q. 98. How many of those three patents, these patents you have listed?

A. Thirteen products.

Q. 99. Three products manufactured under these tanning patents?

A. Yes, and of course, the use of these products was covered by other patents, so that more than three patents may have been involved.

Q. 100. Yes.

A. Than those for the production, and those for the use as tanning product.

Q. 101. The products that you refer to as manufactured under this patent, were all manufactured under the thirteen patents that you mention?

A. Yes, all of them.

Q. 102. They cover the whole situation as to these three products?

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A. Yes.

Q. 103. Were any of these products exported to the United States prior to the time that we went into war?

A. Yes, some of these products were imported before the war, but the export did not amount to much, because the whole field was just in the stage of development, I think the field of invention originated in 1911, or about so, and of course, before the war, it could not be fully developed.

Q. 104. Did your company export any of this product to the United States in 1913, before the World War began?

A. Yes.

Mr. Kresel: Will you identify the product for us, what is the name of it?

Q. 105. State the name of the product?

A. I do not know under which name it is traded here, but the trade name in Germany is Neradol D.

Q. 106. Did your company sell that product in the United States?

A. Yes, we imported it.

Q. 107. How much did you realize and profit from the sale of the product under that patent, or that particular product in the United States in the year 1913?

A. The net profits?

Q. 108. Yes?

A. In the importation of this product into the United States?

Q. 109. Yes.

A. It amounted to 21,478 marks, that is, about five thousand dollars.

Q. 110. When you refer to Marks, you refer to gold marks?

A. Yes, gold marks in 1913.

Q. 111. Was that one of the more valuable products that has been developed under these products?

A. It is a valuable product. As to these properties, on the products we have brought into the sale afterwards, they are much cheaper, and they are sold in much bigger quantities than the first product, owing to the lower price. The properties of this product are excellent.

Q. 112. Dr. Holdermann, assuming for the present that the patents granted or filed in the United States covering these tanning products are for all practical purposes and commercial purposes the same as those filed in Germany, and taking the facts which you have indicated and testified to, as a basis, what would you say was a fair commercial value of those thirteen patents in 1913, to your company?

Mr. Kresel: One minute, please. I object to the question as to form of inquiry. We object to it on the ground that the value in 1913 is immaterial.

Mr. Anderson: Did I say 1913. I meant to say 1919.

Mr. Kresel: We object to the question further upon the ground that the witness has not been sufficiently qualified to express an opinion upon that question. It is assumed in the question that the basis has been established. As far as I can see, the only basis testified to by the witness was that in 1913, they exported a product, which he has described, from which his company made a profit of five thousand dollars.

Mr. Anderson: To the United States.

Mr. Kresel: To the United States. Now, I claim that is not a sufficient basis upon which the witness can be permitted to give an estimate of the value of the patents in 1919 and the value in the United States under the conditions which he has not described. It seems to me it is purely speculative.

The Court: I will hear Mr. Anderson.

Mr. Anderson: Just a word. I had assumed the condition of the patents to be substantially the same, without further proof. I must assume that as a hypothetical question. I will assume, if desired, that the market exists in the United States, but I think the testimony is sufficient for that. If it is an essential fact and is not subsequently proved, of course, the question goes out. Whatever may be the value of this testimony upon the facts as stated is a question for discussion later, but it seems to me that this is one of the facts going to show, an essential fact going to show the value of these patents, tending to show their value; and if it does, why then, of course, we will introduce a great deal of evidence on this subject to fit up with this evidence. But at the present time, in anticipation, we can only take what this witness knows.

The Court: As I understand Mr. Kresel's objection is that the basis is so remote that the answer would be without any value and consequently inadmissible.

Mr. Kresel: If I may suggest, your Honor; if the Colonel desires simply the fact, the one fact that this witness can testify to, namely this $5,000 profit that they made in 1913, he now has that; and if he desires to use that as a partial basis for a question as to value to some other witness, he can use it. But as your Honor has expressed it much better than I have, the basis is so remote that any estimate that this witness may place upon the value of these patents would be absolutely valueless.

Mr. Anderson: Is that not a question of the value of the evidence rather than its admissibility?

THE COURT: My impression is it is not, Mr. Anderson. It does not furnish us sufficient facts as a basis to enable us to place any value, any official value upon any conclusion that this witness could draw. However, I will overrule the objection on the understanding that we have, that all objections are to be overruled and finally passed upon at a later stage of the case, after we have more fully understood the merits.

MR. ANDERSON: I think, if I may suggest, to get along, while I want Mr. Kresel's objection for the benefit of giving me notice of the objection, if he will just make the objection, stating briefly his grounds, I do not desire to argue it if your Honor is not going to pass upon it now. There is no use of my arguing upon it at this time.

THE COURT: Then, in order to expedite the matter, shall we just have the objections formally stated and then, if that suggests anything to you, you may amend your question or proceed as you deem proper.

MR. ANDERSON: Certainly.

THE COURT: And there will be a formal ruling upon each objection?

MR. ANDERSON: Yes, sir.

Q. 113. Will you answer now the question. What is your estimate of the fair value of these thirteen Tanning patents, the fair market value of these thirteen Tanning patents as of 1919 in the United States? A. Considering that this is only for one product?

MR. KRESEL: Doctor, just answer the question. You have been arguing enough.

Q. 114. Let me put the question again. You have testified that there were three products made under these patents?

A. Yes.

Q. 115. One of them was imported in 1913 before the war?

A. Yes, sir, where we made the $5,000.

Q. 116. That there were two other products developed under the patents that were valuable prior to 1919. Now I will ask you one other question. Are those products products of general commercial use in connection with tanning?

A. Yes.

Q. 117. And for the purposes for which this kind of stuff is used?

A. Yes.

Mr. Kresel: May we know what the products are?

Q. 118. All right, you can state the products, What were the products that were so developed under these patents?

A. The trade names, or what is your intention?

Mr. Kresel: I cannot hear you.

The Witness: What is your question? What shall I state?

Q. 119. He wants to know what the products are, the trade names?

A. Neradol Ende and Ordoval, G. & G. G., two brands, not much different. These are the products.

By Mr. Kresel:

Q. 120. Yes, but what are they? Those are just names. What are they, shoe leather or silks?

A. These are chemical condensation products; sulphonic acids, so to say, and products which are covered by these patents.

By **Mr. Anderson:**

Q. 121. Are they synthetic tanning solutions?

A. Synthetic tanning materials; yes.

Q. 122. Taking the experience that your company had before the war interrupted this export, and your knowledge of the character of these patents, state to the best of your information and belief their fair market value in 1919 at the time they were seized by the Government and transferred to The Chemical Foundation?

Mr. Kresel: I must object to the question as to its form. This witness cannot testify as to his information and belief, if he is testifying as an expert.

Mr. Anderson: I said "to the best of his knowledge."

Mr. Kresel: You said to the best of his information and belief.

Mr. Anderson: I substitute "knowledge" for "information."

The Court: You are asking him now as an expert?

Mr. Anderson: I am, as to what he thinks these patents were commercially worth.

Mr. Kresel: We raise the same question that we did before, and I assume the disposition is as before.

The Court: There will be a formal ruling, overruling the objection.

A. After my knowledge, the market value of these patents at the time of transfer was as a minimum $300,000. I doubt if my company would have sold it for that price.

Mr. Kresel: I move that the latter part of the answer be stricken out. He has given his estimate as to the value.

ucts which have been imported by our firm into the United States. Does that answer your question?

Q. 128. Yes. But the exportation by your firm into the United States stopped with the beginning of the war in 1917, did it not?

A. Or before, yes.

Q. 129. I did not catch the number. How many did you say?

A. 65.

Q. 130. Are you exporting any of that product into the United States today, do you recall?

A. Yes, we are.

Q. 131. Could you say whether there was any increase in the use of these products during the period in which you were exporting into the United States prior to the war, from the time the patents were taken out? Those that were in use?

A. That is a general rule, that the use of a dyestuff or of a patented product grows or is subject to an increase during the life of the patent.

Mr. Kresel: That is simply a general rule, your Honor, and I think that ought to go out.

The Court: Any objection, Mr. Anderson?

Mr. Anderson: No.

The Court: That may be stricken out. Will you repeat the question, Mr. Stenographer, and let him answer the question?

A. Yes, there was an increase.

Q. 132. As the assistant manager, the chemist in charge of the patent department of your company, have you had occasion to know or to ascertain the commercial value of these various patents which were developed by your company during the period under discussion now, prior to the war?

A. Yes, I had an ample opportunity to get this information. I am often conferring with the heads of the several departments and also, reports are laid before me, and I got special information about the sales in the United States of the products that we have patented there.

Q. 133. I think you testified this morning that you had charge of applications for patents in the United States?

A. Yes, I have.

Q. 134. I would like for you to say, for what it is worth, what you regard as the fair market value of the patents which relate to dye stuffs and dye processes which you have described, in 1919; patents which were seized belonging to your company and sold to The Chemical Foundation?

Mr. Kresel: Is this question only as to the 65 patents?

Mr. Anderson: No, it is as to all of the dye process patents.

(Further colloquy off the record.)

Mr. Kresel: I am simply trying to get my own understanding straight here. This witness testified first that there were three Haber patents; then that there were thirteen tanning dye patents. Do I understand that you are now asking him as to the value of all of the other patents?

Mr. Anderson: Of the patents other than the 58 Haber patents. He has testified to 58 Haber-Bosch patents and to 13 Tanning patents.

Mr. Kresel: And this present question is as to all the other patents?

Mr. Anderson: As to all the other patents, that is dye stuffs and industry. I covered it that way, because there is no use of going into it in detail.

Mr. Kresel: As long as we understand it. Now, if your Honor please, I object to the question upon the ground that the witness has not testified to anything which can form a sufficient or proper basis upon which he can give testimony as to the market value of these patents. I have taken note of just what he has said about it. He said that they are both product and process patents. He said that as to 65 of them, the products under those, had been imported into the United States. He said that during the time of the importations, there was an increase in the amount imported. And lastly, he said that he conferred with heads of departments and had reports before him.

I say, your Honor, that that is not a sufficient basis upon which anyone should be permitted to undertake to give testimony as to the value of these patents; and, according to this witness, if there were 450, if you take out 58 and 13, you have almost 400 patents, without the slightest specification of what patents he is referring to, which are valuable and which are more valuable, or which are less valuable. Upon this mere skeleton that he has given, for him to undertake to place a value, it seems to me, would be absolutely worthless to the Court to form any opinion.

Mr. Anderson: I will just withdraw the question then. I will just take that much longer. I was trying to cut the examination short, but I will go back.

Q. 135. Will you make a list of the patents by issue numbers from the exhibit in the bill, a list of those patents which were in use and under which exportations to the United States were made prior to the war?

A. I can furnish such a list.

Q. 136. How long would it take you to do it now?

A. Half an hour, quarter of an hour, in between.

Mr. Kresel: I trust that Colonel Anderson is not misunderstanding me.

The Court: I think he is. Will you state your objection again?

Mr. Anderson: He said we have not identified the patents. We are attempting to now.

Mr. Kresel: Not at all. That is the reason I asked you to state whether you meant all the other patents. That sufficiently identifies them, in a group.

The Court: I think you misunderstood Mr. Kresel entirely.

Mr. Kresel: That sufficiently identifies the group. But my point is that this witness is about to give the value of this large group of patents without undertaking to say now, as to patent 1,000,002, I think it is worth so much; 1,000,003 is not worth as much as that, and for this reason; he has not given any figures at all. He has not even said what their profits were in Germany on these importations under the 65 patents. We have nothing upon which a person can base any opinion.

Mr. Anderson: You can test that knowledge, if you wish, on cross-examination.

The Court: Mr. Kresel's objection is that his appraisement would not be a real appraisement of the value of these patents, because an appraisement must be in detail to be of any value at all.

Mr. Anderson: If your Honor please, it will appear later in this case that The Chemical Foundation bought these patents for a lump sum of $250,000 and did not appraise any of them. Now they ask us to appraise them.

Q. 137. I will ask you to state, if you can state, what your profits were for the year 1913 from the patents that you said you exported to the United States under.

Mr. Kresel: That I object to upon the ground that it is immaterial and irrelevant as to what the profits were in 1913. These patents were sold in 1919. Besides, the profits cannot be from a patent. The profits are from manufacturing articles and selling them.

Mr. Anderson: I think, if your Honor please, that if you manufacture an article and sell it in the United States, and it is covered by a patent process, that the net profits which you derive from the manufacture of that article, is one of the evidences of value in that patent, because you could not manufacture otherwise.

The Court: I do not understand that.

Mr. Anderson: After deducting all the cost of manufacture.

The Court: There are so many elements. Is it not the Westinghouse case, Mr. Warfield, which goes into that?

Mr. Warfield: Yes. If that were an accounting, it would be different, but unfortunately for counsel here, it is very different.

The Court: I do not understand, Colonel Anderson, that you can get the profits in that way. I may be mistaken, but that is my opinion.

Mr. Anderson: I would like for the evidence to go on the record, subject to objection, if your Honor please, and then we will take up the question.

The Court: Objection overruled then under our working arrangement.

Mr. Anderson: I do not want to argue on this question all this afternoon. It may take us a week. You will hear us later.

Q. 138. Go ahead and tell us what your profits were from these particular patents which you exported in 1913, your net profits, after deducting all expenses?

A. To make it clear, I wish to state that this answer simply concerns the United States patents.

Q. 139. Yes.

A. Mr. Kresel just now asked for the value in Germany. I do not think it is of any value. This morning he complains that we are confusing the value in Germany and in the United States, but I think the only issue here is the United States patents' value.

Mr. Kresel: I am glad to see that the witness is now trying the case instead of being just a witness, but I do not think that is called for.

The Court: Any objection?

Mr. Anderson: Not the slightest, it may be stricken out.

The Court: Strike it out. Will you read the question?

Q. 140. What we want is what were your profits, if you can state, what they were from manufacture of articles exported in the United States under these particular patents during the year 1913?

A. Those profits?

Q. 141. Yes.

A. They amounted to 1,367,668 marks, gold marks, then.

Q. 142. That was for the year 1913?

A. It was the profits in 1913, from exports into the United States.

Mr. Anderson: This is all objected to, of course, I understand.

Q. 143. You say the profits in the United States?

A. In the United States.

Q. 144. Did your company manufacture and sell direct to the United States?

A. No, that was a misapprehension, it is profits which our company earned in Germany, from exports into the United States.

Q. 145. That is, net profits, after deducting all expenses of every kind?

A. All expenses and manufacturing costs.

Q. 146. In the particular patents which you have described, that is those other than the synthetic tanning and the nitrogen processes?

A. Yes, the sixty-five patents.

Q. 147. Are there any more than sixty-five patents of that lot, in use at the present time?

A. Yes, there are.

Mr. Kresel: In the United States or in Germany?

Mr. Anderson: In Germany.

The Witness: No, in the United States.

Q. 148. Well, you can take it the United States. Do you know of your own knowledge in the United States?

A. I think it is better to confine it to the United States. (Laughter.)

Q. 149. All right, but what I want to get at is, if you do not know the thing in the United States, you cannot testify to it. I will prove that from some other source. Now, what I want to get at is the number of those patents in use today, if you know it, do you know in the United States?

A. I know the number of the United States patents which are now being in use in Germany, and the products of which may come over here, or are coming over here.

Q. 150. How many?

Mr. Kresel: That was not the question.

Q. 151. That was the question as far as I could make out, because I told him he could not testify otherwise than in the United States.

Mr. Kresel: I understood the question to be whether he knew how many patents are being used in the United States. If the Colonel wants to re-cast his question, there will be no objection.

Q. 152. No. How many of those patents which were taken out in the United States are now being used for the manufacture of products which might be shipped to the United States from Germany? This witness cannot testify as to what is being done in the United States.

The Court: Won't you read that question. Have the question re-read to you, and see whether it expresses your thought.

(Question repeated by the stenographer as recorded.)

Mr. Kresel: Do I understand the question is what United States patents are being used in Germany?

Mr. Anderson: No. Here is the situation. Certainly not. You cannot use United States patents in Germany, I assume everybody knows that. Here is what I want to get at, Doctor——

Mr. Kresel: I assumed that.

Mr. Anderson: These patents are taken out first in Germany, and then in the United States?

The Witness: Yes, sir.

Q. 153. Now, you have described all your German patents you have taken out in the United States, a certain number covering dye stuffs and dye processes. You are now engaged in the manufacture of products under those patents in Germany, which could be shipped to the United States?

A. Yes.

Q. 154. How many of those patents are you commercially using at the present time?

A. It is eight additional.

Q. 155. How many in total?

A. It is sixty-five before, it is 211 dye stuff patents and related patents which are now being used.

Q. 156. 65 and 88—you are mistaken?

A. No, it is 153.

Q. 157. 153?

A. Yes.

Q. 158. Your 211 patents included your tanning and nitrogen patents which we are not considering?

A. Nitrogen patents; yes.

Q. 159. Now, I wish to go back to the nitrogen patents for a moment and ask you a question, and I know that it will be objected to, but that does not matter: Assuming that the patents taken out in the United States are substantially the same in terms as the patents taken out in Germany, what would be a fair royalty basis, in your opinion, for the right to use this patent in the United States, in the manufacture of nitrogen products?

Mr. Kresel: Does this refer to the 58 patents?

Mr. Anderson: The nitrogen patents.

A. The 58 patents.

Q. 160. I mean, what would be a fair royalty basis?

Mr. Kresel: We object to that, if your Honor please, upon the ground that that is immaterial; that the question of what is a fair royalty is not an issue in this case.

Mr. Anderson: It is one of the elements, and I am going to follow that up with other questions, and I want to lay the basis for another question.

Mr. Warfield: Based on a legal impossibility.

Mr. Kresel: I assume that counsel is going to ask additional questions, but that is hardly an answer to the objection.

Mr. Anderson: I do not desire to argue.

The Court: Objection is overruled on the same ground.

A. I think a fair royalty, a very moderate royalty, is about one cent a pound on fixed nitrogen.

Q. 161. A cent a pound on fixed nitrogen?

A. Yes, manufactured under those 58 patents, or part of them.

Q. 162. Yes. Do you refer now to the Haber-Bosch patents?

A. Yes.

Q. 163. Assuming that the patents are the same, in terms substantially as in Germany, and the consumption of nitrogen in the United States in 1919, exclusive of production from coke ovens, was 100,000 tons, and that the average life of these patents were ten years——

Mr. Kresel: Is there a question?

Mr. Anderson: No——

Q. 163. (continued.) ——what would you then say would be the royalty value of those patents?

Mr. Kresel: That calls, if your Honor please, assuming that it is material and relevant, it calls simply for a mathematical calculation, which, of course, the Court would be still able to make.

Mr. Anderson: I only want to get the question on the record. I could not make it, so I would like to have it.

Mr. Kresel: I am afraid that this witness is not better qualified to make that calculation than anybody. It is not a subject of expert testimony. We object to it upon that ground.

The Court: Objection sustained.

Mr. Anderson: I do not think there is anything else that I will ask——

Q. 164. Then, I will ask this question: Assuming that the patents are substantially the same, and that the consumption of nitrogen in the United States in 1919, for chemical purposes, exclusive of the production from coke ovens, was 100,000 tons, and the average life of the patent was ten years, what would be the value of the patents?

Mr. Kresel: I object to that on the ground that this witness has already given the value of these patents at seventeen million dollars. It is not the intention of the Government now to change that?

Mr. Anderson: Not at all. If your Honor please, the evidence was objected to because we have not laid proper foundation. We cannot lay a proper foundation at this stage of this case, by proving these assumed facts, because this witness cannot testify as to the consumption of nitrogen in the United States, except from records. We have to prove that later by the evidence. Now, I would like to have his judgment, as an expert on that subject, based upon these assumptions, of course, if these assumptions are not testified to later and not proved, the evidence goes out.

The Court: The difficulty, I understand from Mr. Kresel, in ruling on Mr. Kresel's objections, is this, and if I properly understand the questions which you now ask, were in the assumption that you must make, that they will not furnish proper foundation for the testimony of this witness. If I understand this objection, it is that this man, having no familiarity, and not being in America, and not being familiar with American markets for these patents, and being only distantly familiar with the sale of a certain amount of material in America, is not qualified as an expert to place values, American values, upon the patents which were sold. Does that indicate your idea?

Mr. Kresel: Yes, your Honor has summarized it excellently. I could not have expressed it as well.

The Court: Then, if that is true, then the assumption of fact will not supply the basis, the objection going to the incapacity of the witness to testify with respect to the matters asked on. The objection therefore is overruled on the same basis.

Mr. Anderson: I do not care to say anything. I was going to reply on that subject, but I will not reply.

Q. 165. Will you answer that question on the basis of that 100,000 tons of nitrogen produced a year, what would be the value of these patents?

A. On the basis of 100,000 tons, it would be about twenty millions of tons—of dollars—twenty millions of dollars, of course.

By Mr. Kresel:

Q. 166. Twenty million tons or dollars?

A. Dollars, well, it is counted in dollars.

By Mr. Anderson:

Q. 167. Based on one hundred thousand tons, outside of coke production. Now, Dr. Holdermann, you testified that you had charge of procuring these patents in the United States. Can you state what is the cost to your company of securing the patents in the United States?

Mr. Kresel: We object to that upon the ground that that is immaterial and irrelevant.

This really cannot show the value of the patents as to what it cost to get them.

MR. ANDERSON: There is an allegation in the bill in this case, if your Honor please, which is to the effect that the price paid for these patents was less than the actual cost fees of getting them. I do not care to go into an argument as to the relevancy of that, because you cannot develop it until you develop this entire case; but at the present time I would like for this witness to testify to that. If it is not relevant, it can be stricken out at the proper time. I do not want to argue at all.

A. You mean the legal fees that are paid for taking out the patents?

MR. ANDERSON: The legal fees; what he has paid, the attorneys fees, and everything else, what every patent cost you, for the United States. If it is immaterial, it can be stricken out, but unless it is necessary, I do not want to go into a lengthy argument on this question unless I have to.

MR. KRESEL: Does this refer to every one of the five hundred patents?

MR. ANDERSON: Every one of the five hundred patents.

MR. KRESEL: I have taken particular objection. I assume your Honor will dispose of it in the same way as the others.

THE COURT: Objection overruled.

A. The legal fees are $35 for every patent, and foreigners have to employ a patent attorney, and he will charge $50 a patent, and there may be additional costs for appeal and interference cases in more difficult matters.

Q. 168. The minimum charge to your company itself for every patent was $85, then?

A. Yes, legal fees included.

Q. 169. And extra charges they have for special service?

A. Yes, sir.

Mr. Anderson: That is all.

Cross-Examination.

By Mr. Kresel:

XQ. 170. Now, Dr. Holdermann, if you will give me your attention, I would like to ask you a few questions?

A. Yes, sir.

The Court: Suspend just for a moment.

(After a short recess.)

XQ. 171. Doctor, did you give us your age this morning?

A. Yes.

XQ. 172. How old are you—I have forgotten.

A. Forty.

XQ. 173. And you did say that you graduated in 1904, I think, was it not?

A. Yes.

(No Q. 174.)

XQ. 175. And then you joined the staff of the Badische Company in 1906?

A. Yes, that is it.

XQ. 176. Now, has your work been of a technical nature or has it been administrative mostly—you understand what I say?

A. Yes, more administrating.

XQ. 177. More administrative?

A. Yes.

XQ. 178. That is, you are by profession a chemist, but since you have been with the Badische Company you have been one of the executives of the company?

A. Yes.

XQ. 179. What title do you hold with the company; what is your title?

A. First, I was a chemist, and then I became an assistant manager, as a prokurist in Germany.

XQ. 180. A prokurist. Now, what is a prokurist, you say; an assistant manager, what particular power as a prokurist have you?

A. He has the power of signing the company, together with another assistant manager or a director.

XQ. 181. That is, you are authorized in conjunction with another official of the company to sign the company's name to contracts and documents?

A. Yes.

XQ. 182. And you have had that power ever since you became assistant manager?

A. Yes, that is inherent to that——

XQ. 183. To that office?

A. To that office, that is the title.

XQ. 184. And how long have you been assistant manager?

A. Since the fall of 1920.

XQ. 185. The fall of 1920. Now, prior to 1920, did you have any office in the company, or were you just an employee?

A. I was just an employee in the patent department.

XQ. 186. In what department?

A. In the patent department.

XQ. 187. Well, have you been in the patent department ever since 1906?

A. Yes, with a few exceptions in the war, where I had occupation in the ammonia laboratory, practically.

XQ. 188. When was that, during the war, did you say?

A. During the war I did experimental work.

XQ. 189. You did not serve in the army?

A. No.

XQ. 190. Were you under military rule at all while you were doing this experimental work?

A. Of a sort, yes.

XQ. 191. A sort of military rule?

A. Yes.

XQ. 192. Indeed, many men while not actually with the armies in the field, were working for the Fatherland in ways which you were working?

A. Yes, that is it.

XQ. 193. And as a result of that service, did you get any rank?

A. No.

XQ. 194. Any army rank?

A. No.

XQ. 195. None at all?

A. No.

XQ. 196. Now, how long a time did you do this military or war work, during the entire period of the war?

A. Yes.

XQ. 197. What experiments that you were carrying out, were they carried out in the factories of the Badische Company?

A. Yes.

XQ. 198. In—what is the name—Ludwigshafen?

A. Ludwigshafen and Oppau, which is near Ludwigshafen.

XQ. 199. Ludwigshafen and Oppau are only two of the factories of your company; there is another one at Mersenberg, is not there?

A. There is a third one.

XQ. 200. Yes?

A. Mersenberg.

XQ. 201. Are those the only three?

A. Yes.

XQ. 202. Now, the Oppau factory was built prior to the war, or during the war?

A. No, it was built prior to the war.

XQ. 203. How long?

A. It was started about 1911 or 1912.

XQ. 204. 1911?

A. Or 1912; I am not sure about.

XQ. 205. Well, during the war, was it enlarged?

A. It was enlarged.

XQ. 206. Considerably enlarged?

A. Yes.

XQ. 207. For the purpose of doing war work?

A. Yes.

XQ. 208. And this Mersenberg plant, was that built during the war?

A. Yes, it was started in 1916—in the fall of 1916.

XQ. 209. And was it completed before the war ended?

A. Yes, in a very short time.

XQ. 210. And that likewise was devoted to war work?

A. War and fertilizers for the agriculture.

XQ. 211. Well then, that was war work to an extent, was it not?

A. Yes, in a broad sense.

XQ. 212. It was all done under supervision?

A. Yes.

XQ. 213. To help along the armies in the field?

A. Yes.

XQ. 214. Now, I do not mean to pry into your private affairs, any more than is absolutely necessary, but I would like to know what arrangement for compensation you have, as a procurateur of the Badische Company?

A. I get a monthly salary, and an additional sum at the end of the year, but it does not depend on any production or so; it is simply at the discretion of the managing directorate.

XQ. 215. Yes. That is, you get a stipulated sum, and in addition to that, you get a bonus, so to speak?

A. Yes.

XQ. 216. Now, the first time that you came here was in 1922?

A. Yes.

XQ. 217. That was your first trip to the United States?

A. Yes.

XQ. 218. And what month in 1922, did you come here?

A. It was June of 1922.

XQ. 219. And have you been here ever since?

A. No. I left after a few weeks.

XQ. 220. You stayed here a few weeks and went back to Germany?

A. Yes.

XQ. 221. And when did you return?

A. In the middle of April, this year.

XQ. 222. And you have been here since then?

A. Since that date.

XQ. 223. And you are about to depart again for Germany?

A. Yes.

XQ. 224. Now, when you came here in June, 1922, did you come here on the business of your company, the Badische Company?

A. Yes.

XQ. 225. Were there others that came with you?

A. Yes.

XQ. 226. Was there a Dr. Oppenheim that came with you?

A. Yes, but he was not a member of our firm.

XQ. 227. I am coming to that. And who else came with you?

A. A lawyer called Wagner.

XQ. 228. And who else?

A. What?

XQ. 229. Did you say there was somebody else?

A. I said Mr. Oppenheim.

XQ. 230. That is, there were three of you?

Mr. Anderson: I do not want to object to this witness because we want the facts to come out, whatever they are; but I cannot see the relevancy of all of this inquiry.

Mr. Kresel: I am perfectly willing to state for the record, and for the information of counsel, that we deem this to be relevant. We desire to show the interest of this witness. We desire to show his connection with this litigation. It is our understanding of the rule that a person who undertakes to qualify as an expert, must be without interest in the outcome of the litigation. We propose to show that this witness has an interest, and that these questions are directed toward developing that fact.

Mr. Anderson: But the question of who should have come over here with him, if you want to investigate his attitude—but we are not engaged in the general trial of the question of who is interested in this litigation. The Government of the United States is the only party now, and this gentleman is an officer of the Badische Company, and it is stated here that the Badische Company claims those patents, or was the owner; to those facts I have no objection in the world, and if they can show that he had any personal interest, I have no objection, but this inquiry generally into who came over here, to the United

States, certainly cannot have anything to do with this litigation.

The Court: I did not see the relevancy myself at the time, Mr. Kresel. Do you care to state that definitely?

Mr. Kresel: Yes, your Honor. I have the information that I have solicited. I was going on to another point.

Mr. Anderson: I make a motion to strike out all the evidence as to who came over here, excepting the witness himself.

Mr. Kresel: No. I am perfectly willing to state the connection between the witness and the other two men. Our information is that they were a committee who were designated — they were a committee who were designated by those German dye interests to come here and seek to obtain possession of these patents, that they are——

The Witness: That is wrong.

Mr. Kresel: Mr. Witness, if you will just deal with this, I think we will get along very well. Do not address the Court without direction. Of course, I have made the disclosure now. I do not know how the witness is going to handle the proposition, but I have no objection to the statement. I think your Honor will see that that is relevant——

The Court: The objection will be overruled on the same basis as before.

XQ. 231. Now you and these other two men represented not only the Badische Company, but some other chemical companies in Germany, did not they?

Mr. Anderson: I object on the ground that anybody that this witness represented—I have no objection in the world to getting the interests of this witness in this instance, but I do object to his asking whether they represent any other company.

The Court: I am wondering this, Colonel Anderson, and I am stating this so that you can have an opportunity of helping me, that whether the interest of this man may not be two-fold; whether he might not have a personal interest in the Badische Company, and he might not be one of a number of delegates representing, for instance, the dye interests of Germany. Now then, if I correctly understand Mr. Kresel, this witness has already disclosed, even in his direct testimony, his direct interest in the Badische Company; but as I understand Mr. Kresel further, there has not been as yet a full disclosure what interest that was delegated to him by the German interests; is that so?

Mr. Kresel: That is correct. That is entirely so.

Mr. Anderson: You mean a year ago. He is here now in that capacity.

The Court: No. That is what I presume. I am not ruling on anything you understand, but I presume that the questions which are being asked by Mr. Kresel are to be followed up, and as a means of getting at the full interest of this man in this litigation at any time. Am I correct, Mr. Kresel?

Mr. Kresel: Yes, your Honor.

Mr. Anderson: I will just note an objection.

The Court: I will make merely a formal ruling instead of an absolute ruling. The objection is overruled on the same basis as understood at the beginning of this testimony.

XQ. 232. Doctor, you heard Colonel Anderson state just now that you were here now in your capacity as representing the Badische Company, whose interests in these patents you represent?

A. Yes.

XQ. 233. You know, don't you, that your company has brought a suit based upon these very patents, and that that suit is pending in this Court, and that in that suit, your company is the plaintiff, and The Chemical Foundation is the defendant?

A. Yes. It does not have relation whatever to the Government suit. It is quite another thing.

XQ. 234. Now, you see you have not answered my question; you are not working with me. I am asking you whether——

A. I answered yes.

XQ. 235. Well now, if you will just say yes and stop, we will get along. Now, which one of these three men was the lawyer, Oppenheim?

A. Oppenheim was a lawyer and Wagner was a lawyer.

XQ. 236. Which company did Wagner belong to?

A. The Badische Company.

XQ. 237. And which did Oppenheim belong to?

A. The Achefa a/c Aniline Fabriken, Berlin.

XQ. 238. And whatever your purpose was, and I am coming to that in a minute, three of you came here for the same purpose, did not you?

A. Yes.

XQ. 239. All right. Now, when you came here, you were in New York, were you not?

A. Yes, I was in New York.

XQ. 240. And did you have a meeting with any lawyers?

A. Yes, I did.

XQ. 241. Yes, and will you state the name of the lawyers?

A. I do not see any objection. It was in all the newspapers. It was the firm of Gordon, Battle & Vandiver.

Mr. Anderson: I would like to ask again what possible bearing this may have between this suit, and the Government of the United States and The Chemical Foundation. It is not a matter concerning this suit in the slightest whether this gentleman employed lawyers or did anything else to conduct suits for the Badische Company. If it is a question of disclosing an interest, that interest is disclosed, and I did not say what Mr. Kresel says—I say I do not think I did—but in any event there has not been any question as to this gentleman being was an officer of the Badische Company. Now he was put on the stand purely to testify on the question of value. If these gentlemen want to make him their own witness, they can do it at their own risk, but it is purely immaterial to any possible interest in this case.

Mr. Kresel: What I am trying to develop, your Honor, has a direct bearing and direct connection between the mission of these gentlemen and the other two mentioned when they came here last year to the United States, and the present suit which your Honor has before you.

The Court: Have you finished?

Mr. Kresel: Yes, your Honor.

Mr. Anderson: There is no such connection. It is the first I ever heard of this man coming to the United States last year, and I drew this bill. There is no connection, but suppose he did, the sole question here is whether this is a valid transfer of these patents or not. It does not make any difference who brought the suit. The Government of the United States brought the suit under the direction of the President of the United States. The bill shows that.

The Court: Does not that jump one point with respect to this man's interest?

Now, unless the cross-examination now being developed is intended to show the full measure of the witness's interest in this litigation, I do not see its relevancy myself. Now then, if, however, this cross-examination is tending to link this witness's interest in this case up, we will say, to his interest in some other case, then, would it not have a material bearing upon the weight to be given this witness's testimony, even though the connection between this suit and other suits is wholly unknown to you, because we are not developing here, as I understand the trend of the cross-examination, whether this suit was properly or improperly brought; but if I understand it, Mr. Kresel is trying to develop the full measure of this witness's interests, and the steps that he has taken looking to this interest, in order that his testimony in this suit may be properly weighed. I may be wholly wrong.

Mr. Kresel: No, your Honor is entirely right and I thought I had made it plain when I answered the Colonel's last objection.

Mr. Anderson: I would say that even developing that, could have, in my humble judgment, to overcome the objection, nothing to do with the situation. His interest in the subject matter of this suit would have a bearing. In any event, I do not want to argue the question. I will merely make the objection and submit it.

The Court: The same formal ruling then, Colonel.

Mr. Anderson: Yes; I understand all the rulings are formal.

By Mr. Kresel:

XQ. 242. Doctor, I ask you whether you were not aware of the bringing of a suit by your company against The Chemical Foundation Company, and also the DuPont Company, and the United States Treasurer, which is based upon the very patents as to which you testified today?

A. We have not brought any suit against The Chemical Foundation.

XQ. 243. Did you bring a suit against the Du-Pont Company and Frank White as Treasurer of the United States, in this Court right here?

A. Yes, we did.

XQ. 244. And you signed the complaint in that suit, didn't you?

A. Yes.

XQ. 245. And in that suit, you on behalf of your company are asserting rights to these very patents about which you testified today, are you not?

A. These suits are concerning license fees under these patents.

XQ. 246. Under these very patents?

A. Under these very patents.

XQ. 247. And down in New York, you on behalf of your company brought another suit against The National Aniline & Chemical Company and Frank White as Treasurer of the United States in which suit also you are asserting rights under these very patents about which you testified today; is that not so?

A. Yes, we brought a number of such suits to recover license fees under our patents.

By The Court:

Q. 248. Can you answer the question yes or no?

A. Yes.

By Mr. Kresel:

XQ. 249. Of these very patents?

A. Yes.

XQ. 250. And in those suits you claimed to be the owner of these very patents, didn't you?

A. Yes.

XQ. 251. I mean, your company?

A. Yes.

XQ. 252. And as you sit there, you claim now, do you not, that your company is the owner of these very patents, do you not?

A. Yes.

XQ. 253. And there is no doubt about it, and I do not mean to criticise you at all, that you are doing everything that you can legitimately do to get those patents back for your company, are you not?

A. Yes.

XQ. 254. Now to return to our visit to New York. You stated that you and Mr. Oppenheimer and Mr. Wagner——

A. Mr. Oppenheim, please.

XQ. 254. (continued) that you and Mr. Oppenheim and Mr. Wagner had an interview in the office of O'Gorman, Battle & Vardiver, is that right?

A. Yes.

XQ. 255. At that meeting—I am not asking you to tell me what was said—was the question concerning these very patents discussed?

A. Yes.

XQ. 256. And after that meeting, didn't you and your two associates go to Washington and have an interview with someone in the Department of Justice?

A. No, I was not there.

XQ. 257. You were not there personally?

A. No.

> Mr. Anderson: I object to that, if your Honor please. If he was not there, he cannot testify to what took place.
>
> Mr. Kresel: Just let me finish the question.
>
> The Court: And do not answer until Colonel Anderson has an opportunity to make his objection.

XQ. 258. Don't you know that your associates, Mr. Oppenheim and Mr. Wagner did, subsequent to that meeting in Mr. Vandiver's office, go to the Department of Justice in Washington and there had an interview with someone; don't you know that?

A. I don't know how it concerns the value of the patents here.

The Court: Colonel, shall you or shall I explain to this witness what his function is while on the stand?

Mr. Anderson: I think your Honor should do it.

The Court: I think it will come with better grace from you.

Mr. Anderson: I state to Dr. Holdermann that his sole province is to answer the question that is asked by counsel. If you can answer yes or no, answer yes or no. If you cannot answer yes or no, then make as short an answer as you can, that is fair and accurate, to the question. If the question is in any way illegal, I might say that is my duty.

The Court: Outside of a pure question of personal privilege which he is not likely to be led into.

Mr. Anderson: Of course, your Honor will understand that the witness is entirely unfamiliar with the procedure of the Courts in the United States and I tried to explain that to him last night.

The Court: Upon that assumption, I asked you to say that to him rather than myself, because he might take that from me as a criticism.

Mr. Anderson: I explained to him last night our procedure, but of course it is very difficult for him.

I want to note an objection as to what took place in Washington, all questions subsequent to the statement where he said he did not go to Washington.

The Court: I think there is no answer to that question. Will you repeat the question?

The Witness: Just a moment. Unless Colonel Anderson objects, I have to answer?

The Court: You have to answer.

XQ. 259. Now Doctor, don't you know that after that interview in New York in Mr. Vandiver's office, your associates, Mr. Oppenheim and Mr. Wagner, did go to Washington and had an interview with a representative of the Department of Justice?

A. At least one of them.

Mr. Anderson: One moment. The witness has already testified that he did not go to Washington and did not know. Therefore he cannot know, except from hearsay, what took place and I therefore move to strike it out, or rather I object to the question and any answer thereto.

Mr. Kresel: Upon cross-examination, your Honor, I am entitled, if I want, to even this man's hearsay. As Colonel Anderson has pointed out, that may not bind him, the hearsay may not, and yet it may be very important to us in our case.

Mr. Anderson: In the first place, I wish to reply to Mr. Kresel that this is not cross-examination. There was nothing in the world that related to it in the original examination. It is a pure inquiry of his own, and therefore not cross-examination in the true sense of the word.

Mr. Kresel: It seems to me, your Honor, that the Government ought not to try to stop us to develop fully this man's interest in the litigation.

Mr. Anderson: If your Honor please, we have no objection. I want to state now, and I am going to state again when the trial is resumed, the

Government wants all the facts in connection with this matter brought out. But they want it brought out by witnesses who know something about it and not mere hearsay.

THE COURT: You may renew the motion at a subsequent period, if you want. Your motion was to strike out?

MR. ANDERSON: Yes, sir.

THE COURT: It is denied, the same as the objections are overruled.

MR. ANDERSON: Yes, subject to raising it again.

XQ. 260. You knew before this one of the three of this commission went to Washington, that he was going to Washington; you agreed with him on that, did you not?

A. I knew, but I did not agree. He did not ask me for my agreement.

XQ. 261. You knew he was going?

A. Yes.

XQ. 262. And you knew that he was going to the Department of Justice with reference to these very patents as to which you testified today?

A. No, I did not know.

XQ. 263. Well, he went there with reference to patents, did he not?

A. I do not know.

MR. ANDERSON: To each of these questions I would like to note an objection, if the Court please.

XQ. 264. You three gentlemen, you have already told us, came here in connection with the patents that were seized by the Alien Property Custodian, did you not?

A. Yes, chiefly for that.

XQ. 265. And do you say now, Doctor, that you really do not know that this one of the three gentlemen had an interview with the Department of Justice about the patents that were sold by the Alien Property Custodian?

A. No, I do not know. They may have discussed other things. They may have discussed the German claims in general.

XQ. 266. Well, they may have, of course. I do not want to speculate with you. But your main purpose in coming here was with reference to these patents that were seized by the Alien Property Custodian, was it not?

A. Yes, that was.

XQ. 267. And was it not shortly after the visit of this one of your commission to the Department of Justice that this suit which we are now trying was instituted?

Mr. Anderson: If your Honor please, he cannot testify that he knew about anything when he was not in Washington himself. The question of when this suit was instituted is a matter of record in this suit.

Mr. Kresel: I am not asking for the exact date. Your Honor sees the relation between the questions.

Mr. Anderson: We want to have a showdown right now. If these gentlemen want to impugn the motives of the Government in this case, let them say so.

The Court: I think you are acting entirely on inference.

Mr. Kresel: Will your Honor permit me to answer the question, because I think it calls for an answer from me?

The Court: I should be very glad to have you do so.

Mr. Kresel: We do not impugn the motives of the Government. We impugn the motives of the people whom this gentleman represents. We want to show what his interest in this litigation is. We make no reflection upon you gentlemen who represent the Government or the Department of Justice in this matter. I think that answers the question.

THE COURT: That was my understanding of Mr. Kresel's attitude.

MR. ANDERSON: Of course, with that statement, I wish to object to anything in connection with what took place in Washington on the ground that this witness was not there, as he testified he did not go there and knew nothing about it.

THE COURT: Colonel, I was wondering this, if you will be good enough to help me one step further—you have been very patient with me—as to whether this witness' knowledge of steps which were taken with respect to these matters, whatever that step may have been, that is, as to whether when his colleague went to Washington, this man did not know that he went to Washington for a definite purpose or any specific purpose with respect to the patents in suit—all of the steps which have been taken actively by the witness or are with his knowledge and consent taken by other persons, seem to me of moment. Whatever my ultimate view may be, it seems to me at the moment to have some bearing on the interest of the witness and bears, on cross-examination, on the weight which should be given to his testimony.

MR. ANDERSON: While I understand at this time the question which your Honor has suggested, I differ from your Honor's view. However, I do not want to argue it, because I merely want to reserve the point, and at a later time this whole question will come up.

THE COURT: I am indulging in what will be too long a discussion until we get to understand where we each are; and after a while we will begin to make formal rulings. But until we find out where we are severally, I thought possibly there was some advantage in discussing the matter, even if it takes some more time.

Mr. Anderson: I wish to say, if your Honor please, I do not want to object to any question that does not seem to me to require objection.

Mr. Kresel: I will be through on this line in a very few questions.

The Court: The same formal ruling.

XQ. 268. Will you answer, please?

A. I am a witness from what results from the newspapers and from the records. I am not a witness to that.

By The Court:

Q. 269. If you know, you must answer. If you do not know, say so.

A. I don't remember exactly when the suit was brought. Can you tell me the date when the suit was brought?

By Mr. Kresel:

XQ. 270. Yes, I will be glad to tell you. Listen, Doctor. This bill, this suit, was filed on the 8th of September, 1922. You know, of course, that before the suit was brought, the President wrote a letter with reference to this matter to the Alien Property Custodian. You know that, do you not?

A. Yes, I know that.

XQ. 271. Was not that letter from the President to the Alien Property Custodian written after your confrere had an interview with the Department of Justice? You know that?

A. It was after or before. It was about that date.

XQ. 272. Well, I will take your answer. Now, the Badische Aniline & Soda Fabrik—that is the full name of your company, is it not?

A. Yes.

XQ. 273. And it manufactures dyes, intermediates, pharmaceuticals?

A. No pharmaceuticals.

XQ. 274. No pharmaceuticals?

A. No pharmaceuticals.

XQ. 275. What else does it do besides manufacturing dyes and intermediates for dyes?

A. Acids, sulphuric acid, chrome alum and ammonia; nitrates; fertilizers.

XQ. 276. And it does a very large business, does it not?

A. Yes.

XQ. 277. Its capital is how many million marks?

A. It is now 880,000,000.

XQ. 278. 880,000,000 gold marks?

A. No; paper marks.

XQ. 279. That is unfortunate. In 1919, what was its capitalization?

A. I cannot tell that from memory. It may have been 90,000,000 of marks.

XQ. 280. Was it not 430,000,000?

A. I think that was after 1919, when it was increased.

XQ. 281. To 430,000,000?

A. No, I am quite sure about it. This was two years ago when it was 430.

XQ. 282. Two years ago?

A. Two years ago, yes.

XQ. 283. 1921, then?

A. 1921, yes; about so.

XQ. 284. And it employs a great many employees, does it not?

A. Yes.

XQ. 285. Just to give the Court an idea of the extent of your works, it employs some 30,000 laborers, does it not?

A. Yes.

XQ. 286. About how many chemists does it employ?

A. About 300 graduate chemists.

XQ. 287. And how many engineers are there employed?

A. About 200.

XQ. 288. And then in addition there is the administrative force; that is about 2,500?

A. About so, yes.

XQ. 289. And your concern has been in business since 1865, has it not?

A. Yes.

XQ. 290. Yours is not the only large chemical concern in Germany, is it?

A. No.

XQ. 291. What is the next largest to yours?

A. Farbenfabriken, vorm. Friedr. Bayer & Company and Farbwerke vorm. Meister Lucius & Bruning in Hoechst am Main.

XQ. 292. In order that we may not get involved in long German names, we will call one the "Bayer Company" and the other the "Hoechst Company"?

A. Yes.

> Mr. Anderson: I do not like to object, your Honor. I do not think it has any possible bearing upon this suit. But I do object because it certainly has no bearing upon the original examination, and on the further ground that it is utterly immaterial as to how many companies there are in Germany and what their business is. If we were going into an investigation of the entire dye stuffs and chemical industry of Germany, then this might be relevant evidence. Otherwise it cer-

tainly is not, and there is nothing in the pleadings in this case to call for any such examination as this, that I know of. That is why I object.

Mr. Kresel: As far as this question being in the pleadings is concerned, Colonel Anderson could not have overlooked our defense wherein we plead just that, namely, the hold which the German chemical industry had upon the United States market. But further than that, the basis upon which I am introducing this evidence directly bears upon the witness' direct testimony, namely, as to the value of these patents, the value of these patents, as he testified this morning, to his own company. Now, that value can be judged only in the light of the situation in Germany, the chemical situation in Germany, what it was, how many were in the field, what they controlled. Your Honor can well see that the value of a patent to a well organized, tremendously rich organization is one thing, and the value of a patent in the United States, where there is no chemical industry to speak of, is an entirely different thing; and I want to develop the situation in Germany as to which this witness has testified on his direct.

The Court: Objection overruled, under our working arrangement.

XQ. 293. Now, then, the Bayer Company and the Hoechst Company, without going into much detail, are about as large concerns as your company, are they not, and are engaged in the same line of business?

A. Yes.

XQ. 294. Those three companies were in a cartel, were they not, prior to 1904?

A. No, that is wrong.

XQ. 295. When did they go into a cartel?

A. During the war, about 1916.

XQ. 296. The capital of each of these other two, namely, the Bayer and the Hoechst, was about equal to that of the Badische Company?

A. Yes.

MR. ANDERSON: I do not want to interrupt counsel. Therefore I would like to note on the record that this entire examination is subject to the objection which I have already made, if I may do so without interrupting to object to each question.

MR. KRESEL: That is all right.

MR. ANDERSON: And the same ruling and exception in each case; and also, I want to give notice on the record that counsel takes the witness as his own witness on this examination.

MR. KRESEL: As to that, of course, the Court will rule at the proper time.

MR. ANDERSON: Yes, but I have to give proper notice.

MR. KRESEL: That is all right. The notice is duly received. Perhaps that is for the Court to say.

THE COURT: The suggestion of Colonel Anderson is satisfactory to counsel?

MR. KRESEL: Yes, your Honor, so far as not interrupting the questions.

XQ. 297. Prior to 1916 there was a cartel in which there were the Badische Company, the Bayer, and a concern called the Berlin, were there not?

A. Yes.

XQ. 298. The full name of the Berlin concern was what? What was the full name of that?

A. I am not concerned with that business. I only know it from hearsay. I think it was Interessen Gemeinschaft.

XQ. 299. You are now giving me the name of the cartel. I am trying to get you to give me the name of the Berlin concern. Was not the name of it the Actien Gesellschaft fur Anilin Fabrikation?

A. Of Berlin.

XQ. 300. The name of the cartel was the Interessen Gemeinschaft?

A. Yes.

XQ. 301. Translated into Good United States, that means what?

A. Community of interests.

XQ. 302. Community of interests is perfect English. Now, that cartel lasted, you say, until 1916, is that right?

A. Yes, sir.

XQ. 303. Side by side of that, there was another cartel, was there not, in which there were the Hoechst, Griesheim, Cacella and Kalle?

A. I don't think you are right.

XQ. 304. We will omit Griesheim?

A. I don't know whether it is correctly designated as a cartel. As I told you, I am not a witness for that. I am not such an organizer for the firms.

XQ. 305. I know, but Doctor you know I am asking you about things right in your home surroundings. You could not have been connected with the Badische Company for so many years without knowing that there was a cartel. You have already told us that.

A. Yes.

XQ. 306. But don't you know about the other cartel?

A. From hearsay; nothing else.

XQ. 307. Well, of course, that is your best knowledge, your best information?

A. This morning you rejected this hearsay as knowledge.

XQ. 308. In 1916 those two cartels came together and formed the present Interessen Gemeinschaft, did they not?

A. Without admitting that there were two cartels. I do not know whether it is a correct expression.

XQ. 309. Well, if that is not correct, this is correct certainly that the cartel of which the Badische was a member took in the others; that is right, is it not?

A. No, that is not right. They did not take in the others. They all combined on the same line.

XQ. 310. All right, they all combined. I will take that. So that today there is a combination of the following chemical concerns in Germany, namely——

A. Firms.

XQ. 311. Namely, the Badische Company, Bayer & Company, The Berlin, Hoechst, Casella, Weiler-ter-Meer, Kalle & Company, and the Chemische Fabrik Griesheim?

A. Yes.

> Mr. Anderson: In addition to my objection already made, I wish to object to that evidence on the ground that if there is any such existing organization, the written agreement between the companies is the best evidence and must be produced. I know nothing about it, and therefore I cannot examine him.
>
> The Court: I think this is proper on cross-examination.
>
> Mr. Anderson: We contend this is not cross-examination. We contend he has made this man his own witness. I do not want to argue, but just to make the point.
>
> The Court: Objection overruled.

XQ. 312. And that has been the situation since 1916?

A. Yes.

XQ. 313. One more question on that, Doctor. In 1920, was there not a resolution passed at a general meeting of all the firms in this cartel, whereby the life of the arrangement was extended until 1999?

A. I do not know.

Mr. Anderson: I call for the production of the resolution. I object, your Honor.

Mr. Kresel: The answer is already in and the witness says that he does not know. May I go on to the next question then?

The Court: I shall assume, Mr. Kresel, that the answer was interposed rather quickly and before Mr. Anderson had an opportunity to make his objection.

Mr. Kresel: Then let us strike it out.

The Court: I assume that his objection stands as a motion to strike out. Have you anything to say?

Mr. Kresel: I will consent, your Honor, that the answer be stricken out.

Mr. Anderson: The whole thing should go out.

The Court: You withdraw the question?

Mr. Kresel: I withdraw the question.

XQ. 314. For how long a time, as far as you know, is this combination which you have described, to last?

Mr. Anderson: I object on the ground that the resolution, if any exists, or the written document, is the best evidence; and it is not cross-examination.

Mr. Kresel: I think if this witness knows, he is competent to testify to it.

The Court: Let me see whether there is still a divergence between the views of counsel. Is it your position, Mr. Kresel, that you have made this witness your witness or that you have him under cross-examination?

Mr. Kresel: I consider, your Honor, that I have so far proceeded in a strictly proper cross-examination.

The Court: I wanted your view. The objection, then, is overruled.

A. I am not an expert for the organization of our firms, as I told you. I cannot answer it properly. I am not an expert for that.

XQ. 315. Well, answer it the best way you can.

A. I am not sure. I cannot answer what I am not sure of.

XQ. 316. It is not, Doctor, that you do not want to give us the information, is it?

A. No, I am not sure about it.

XQ. 317. Will you not tell us; this is a combination of the largest chemical concerns in Germany, is it not?

A. A combination or an understanding or how you will call it.

XQ. 318. Well, we will call it an understanding. I will use your language.

A. You will call it so, but I don't know whether it is correct. I will not stick to the word.

XQ. 319. What is that?

A. You will call it a combination. I don't know whether it is correct. It is an understanding.

XQ. 320. Well, I am using your language, Doctor. You called it a combination. Do you want to change that?

A. No; community of interests.

XQ. 321. Subsequently you said it was a combination. Do you want to change that?

A. I don't want to stick to the word. I am not so very familiar with the language, as I told you.

XQ. 322. Very well. We will take your present language, then, an "understanding." Is that what you call it?

A. Yes.

XQ. 323. Now we will stick to that, won't we?

A. Yes.

XQ. 324. Now, how long, as far as you know, is that understanding to last?

> **Mr. Anderson**: Same objection, and I understand that an exception is noted in each case.
>
> **The Court**: The objections are reserved and no exception is needed, but in order to preserve all rights, we will assume that an exception is entered on each ruling.

A. As I told you, I have no ground for abstaining from an answer. I am not sure about it. It is all published in the newspapers, so I can't tell.

XQ. 325. It is published, you say?

A. It is published. It must be somewhere, and I do not know anything what is not published about this matter.

XQ. 326. Now, Doctor, I have here a book which is entitled "Handbuch der Deutschen Atkien Gesellschaft." You know that publication?

A. Yes, I know it.

XQ. 327. It is a reliable publication, is it not?

A. I do not know whether any word of it is reliable, but generally it is a good book. I am not responsible for the contents.

XQ. 328. What is that?

A. I am not responsible for the contents of it.

XQ. 329. Of course not. You did not write it. But it is a book that you use for general reference in Germany?

A. Yes, for superficial reference.

XQ. 330. Now, do you not know, and I direct your attention to the page in this book which refers to the Badische Company, beginning at page 1806——

> **Mr. Kresel**: May I approach the witness?
>
> **The Court**: Is there objection to it?
>
> **Mr. Anderson**: Certainly.

The Court: Before doing that, let us see if that is not a step beyond cross-examination, assuming that all other questions have been in cross-examination. If your cross-examination has been for the purpose of laying a ground for showing the interest of this man in this suit, then does the length, the precise length of this community of interest to which you now refer, if unknown to this man, form any groundwork or basis by which you may further interrogate him with respect to his interest or which would show his interest in any event? If he finds out now, after his examination is given, "Here is a more inuring interest than I realized," it would not affect his testimony.

Mr. Kresel: I am not questioning him on this line as to his interest. I have passed that. These questions are directed to the question of value. I am trying to develop that in Germany there was a combination, a trust, of all of the large chemical concerns; and your Honor can see that the value of patents to such a combination is entirely different from that of the value of the same patents to the American consumer or the American public.

The Court: Then I wonder, Mr. Kresel, if this would not be as far as you would need to go, assuming that your questions are otherwise proper, as to whether the duration of that joint venture is long or short. Whether it terminates in 1999 or 1989 would be immaterial for the purposes of this suit.

Mr. Kresel: All right, your Honor. I think your Honor is quite correct. Let me put another question to the Doctor.

XQ. 331. Doctor, that community of interest or agreement still exists, does it not?

A. Still exists; yes.

XQ. 332. And existed in 1919?

A. Yes.

Mr. Kresel: I will abandon any further attempt to get the correct time.

XQ. 333. Now, Doctor, under this arrangement, all of these companies pooled their profits, did they not?

A. I am not an expert for this, I told you.

XQ. 334. I am not asking you as an expert. I am asking you as to what you know about it and I want you, Doctor, to give us the information. Now, you know. You are an officer of this company, and you know, don't you, that all of these concerns in the arrangement or the community of interest pool their profits, and that then they are divided according to agreed percentages?

Mr. Anderson: One moment, if your Honor please. I want to object. I cannot conceive on what possible theory, with all deference to counsel, the question of whether the Badische Company has pooled its profits with some other company can have anything to do with the patents owned by the Badische Company or with the interest of this witness as an officer of the Badische Company in the patents of the Badische Company.

The Court: As I understand, Mr. Kresel has passed the interest stage of this witness and he has gone to the basis on which he gave his testimony with respect to values. I do not see myself, Mr. Kresel, how that will help me in determining as to whether he laid a proper foundation for this evidence with respect to values or not.

Mr. Kresel: Your Honor will recall the witness undertook to give testimony as to profits, as to profits which his company realized on 65 certain patents, and as to profits, I think, with reference to some of the tanning patents.

It seems to me that this is directly in line with that direct testimony. I want to show that the profits that he speaks of are profits which do not accrue directly to his company, but that they are pooled with the profits of other companies, and that then the profits are distributed among all of the companies, according to agreed percentage. It seems to me that is proper cross-examination.

THE COURT: Tending to what ultimate result, Mr. Kresel? I miss it, I am frank to say. I miss the relevancy. It may be very patent, but I do not see it.

MR. KRESEL: Tending to this, your Honor; that if the profits which the Badische Company makes on exports of products manufactured under these patents do not belong to it directly, but may be used for the purposes of making up losses of some other concerns in the combine, it cannot be made the proper basis for determining the value of the patents to this one company. It may be a proper basis for determining the value of the patents to the combination and that is the reason I want to develop the combination.

Of course, as we shall contend in this case, the value of these patents to the German combination was very large. It does not follow that they were at all large to an American who starts in from the groundwork to work up his factory. I want to show the power of this combination. I want to show what it can do with patents; I want to show what it did with the patents. I think that is well in line with the direct examination.

MR. ANDERSON: If your Honor will permit me, Mr. Kresel in his last sentence has stated a reason for his examination. I do not mean to say he has not been frank before. But their theory, as set up in the answer in this case, which we moved to strike out, is that because the German interests used these patents for the purpose of producing large profits to Germany, that, therefore, the transaction and sale was justified. That is a very crude statement of the position, but that is in substance it.

We moved to strike that out because it is utterly immaterial and we regard it as utterly immaterial to this examination. If the Badische Company made a profit, it may have given all the profits to some other company. It was not a matter of any concern as affecting the value of these patents, what it did with these profits. That is not the question. It is a question of what you can realize on the patents. Therefore, it seems to me that this is entirely aside from the line of original examination. Unfortunately, before we argue that proposition before your Honor, we are taking evidence. It is very embarrassing. I really do not know that we are not losing more than we gain.

Mr. Kresel: But Colonel, don't you see that the fact that a combination of interests can make a certain profit does not indicate that a concern standing alone would make that profit?

The Court: But does not your question go beyond that? I can follow you, without passing on it. I can see your point of view up to that point; but my difficulty is that your question is directed to something beyond that. You have shown your community of interest which goes as a basis for the valuation or the interest of this witness.

Mr. Kresel: I think as to that it applies to both. But certainly it applies as to the value.

The Court: Will you read me the last question, Mr. Stenographer?

(Question repeated.)

The Court: They pooled their interests. You have it there. Now, then, whether they are divided according to agreed percentages, for purposes of this cross-examination, seems to be immaterial.

Mr. Kresel: Let me take your Honor's suggestion. I will strike out of my question the latter portion of it which speaks of dividing the profits according to agreed percentages.

Now, then, may I have the question read?

(Question repeated as follows): "XQ. 334. I am not asking you as an expert. I am asking you as to what you know about it, and I want you, Doctor, to give us the information. Now, you know. You are an officer of this company, and you know, don't you, that all of these concerns in the arrangement or the community of interest pool their profits?"

Mr. Anderson: May I just say, in addition to what I have already said, that it cannot apply to interest, because that is the point we have been following, and he says he is still following, for the reason that these profits are owned by the Badische Company and therefore the interest of the witness is the primary interest of the owner; and the fact that somebody else may be in a pooling interest with the Badische Company, however indirect an interest in the earnings, does not increase his interest in the Badische Company in any way.

The Court: I understand your point, but as I understand Mr. Kresel, he is asking now for information to get a basis for the witness' valuation of these patents. That is, the witness has placed a valuation on them in the light of the German situation, as I understand it. Now, then, whether that will be proper when we come to weigh it on the scales of justice, I do not know. The objection is overruled in the usual way.

Mr. Anderson: All objections are overruled in the usual way, unless otherwise stated, I understand.

XQ. 334. (Continued). Will you answer the question.

A. I know what concerns my department, that is, the patent department. I know the patents, the profits that are obtained under the Badische patents for the goods that we sell and manufacture. But I am not sure about what is ultimately made out of these profits. I told you what profits we have made, but what is done with the profits, that is not my business.

XQ. 335. You say that as an officer of this company you do not know whether its profits are pooled with the profits of the other concerns in this community of interest; is that your testimony?

A. No. You must understand in so big a concern the business is divided up, and one man cannot know everything.

XQ. 336. Is that your testimony, that you do not know?

A. Yes; that is my testimony.

XQ. 337. Well, do you know that the concerns in this cartel interchange patents?

A. Yes, I know that they do not interchange patents.

XQ. 338. You know they do not interchange patents?

A. No.

XQ. 339. And have never done it?

A. No. Patents are reserved to each firm.

XQ. 340. Pardon me.

A. The patents are reserved to the firm which produces them.

XQ. 341. Well, what is this community of interest then?

Mr. Anderson: I renew my request, if this is going to be a definition of community of interest, that we ought to have the documents. This was not in the original examination.

Mr. Kresel: It does not appear there are any documents.

The Court: I think that goes to value. I will overrule the objection formally.

XQ. 342. You have told us there is a cartel or a community of interest?

A. Yes.

XQ. 343. Interessen Gemeinschaft?

A. Yes.

XQ. 344. You say that you do not know whether they pool profits?

A. Yes.

XQ. 345. You say they do not interchange patents?

A. Yes.

XQ. 346. What is the community of interest?

A. I am not quite sure about this, whether it chiefly consists in certain exchange of experience, the arranging of selling conditions by avoiding underselling and unfair competition between our firm. I don't want to say "unfair", but unsound competition.

XQ. 347. You mean they arrange how much each should sell in a certain territory; is that what you mean?

A. No. I think it is more related to the prices.

XQ. 348. That is, they agree upon what prices they should sell at?

A. Yes, or the minimum prices.

XQ. 349. And that refers to exports as well as domestic?

A. I think so. As I told you, I am not concerned with that business.

XQ. 350. You say you did not interchange patents. Do they issue licenses one to the other?

A. In certain cases, yes. Not general. In such cases where it is in the interest of the community. That is the community of interest.

XQ. 351. During the war, Doctor, these chemical concerns in Germany worked mostly on war work, did they not?

A. I do not know whether it was mostly.

XQ. 352. Very largely?

A. Largely, yes; of course.

XQ. 353. They made poison gas, for instance?

A. Some of them, yes.

XQ. 354. Did not your company make poison gas?

A. Which company?

XQ. 355. Your company.

A. No.

Mr. Anderson: What can this add to the situation? We are not at war.

Mr. Kresel: I will answer that. We plead in our answer and our separate defense, that one of the considerations moving to the Government for the conveyance of these patents was that the Foundation gave to the Government a perpetual license to use all of them free of charge.

The Court: I missed that entirely, Mr. Kresel. It may be my fault, but won't you say it again?

Mr. Kresel: I say, we claim in our separate defense that one of the considerations moving to the Government——

The Court: This Government?

Mr. Kresel: Yes, your Honor—for the conveyance of these patents was a perpetual license given to the Government, the Navy and the War Departments, to use free of charge during the entire life of the patents any of them for war purposes, the making of explosives.

The Court: Is this question then directed to value?

Mr. Kresel: Yes, your Honor.

The Court: As showing what?

Mr. Kresel: As showing the value of these patents for the purpose of making explosives, war purposes.

The Court: And the ultimate showing being that the value placed by this witness upon those patents is from the German standpoint and not from the standpoint of the sale made by the Alien Custodian in this case?

Mr. Kresel: Yes, your Honor; and not only that. I want to follow that up later with showing that in the manufacture of the products that he spoke of, there were others that he did not mention, namely, products used for war purposes.

The Witness: Your Honor will permit me a remark?

The Court: No. Mr. Anderson, I have his contention. Do you want to be heard?

Mr. Anderson: I think it would probably be better if I state my position at greater length there. In the first place, in reply to Mr. Kresel's suggestion that this relates to his affirmative defense, he is making the witness his own witness, of course.

The Court: I do not understand it that way. I will be very glad to hear you on that, Colonel Anderson.

Mr. Anderson: If your Honor will permit me, the claim as now stated—I won't take the time to go to the answer—is that one of the considerations to the Government of the United States for the sale of these patents to the Chemical Foundation for $250,000 was the benefit accruing to the United States by having the right to use these patents for war purposes; that is, without paying license fees —for strictly war purposes.

In the first place, I do not concede that such right is reserved in this case. That will involve an argument on the assignments and I am not going into that now. But as a matter of law, since the Government of the United States had seized these patents and had a perfect right under the law to confiscate them, and held them in its possession by Act of Congress, what possible consideration could it be to the Government of the United States, if it wanted to take them from the enemy at a nominal price, to turn them over to some corporation which might allow it to exercise the rights which the United States under the law could exercise without consulting the corporation. Therefore, there could be no such consideration running to the United States, because the United States got nothing by turning the patents over to somebody else, assuming that it reserved to itself the right which it had under the law absolutely without turning them over and before it turned them over.

The Court: In order to help me there, Colonel, would it follow or not that if the United States is selling something, but is not selling it all, the part sold may be of less value than if it had sold all. We are assuming that the title was in the United States, that the whole title to the patents was in the United States the day before the sale. If I understand Mr. Kresel, it is that the

United States did not sell to this purchaser the entire interest, but it held back and reserved a certain right that would not go with the title, but which was reserved; and which right, I assume Mr. Kresel intends to contend, was one of the valuable rights under the patent.

Mr. Anderson: Yes, your Honor, but this transaction took place after the war and the sole question of value here involved is the commercial value of these patents. I asked only for the earnings derived from importations into the United States at a time when the war was not in progress; and therefore it was purely commercial importation. Therefore, the question of whether these patents could be used by the German Government or might be used for any purpose in time of war or could be used by the United States Government in time of extraordinary emergency such as war, cannot have any bearing upon the commercial value of these patents for commercial purposes. My question was in every instance this morning limited to the commercial fair market value for commercial purposes.

I did that for the reason, among other things, first, that it had nothing to do with Government use; and second, I did not want to get into an argument in advance on a question which goes to one of the main legal propositions in this case. I wanted to get by this deposition, if I could, without doing it. At the proper time I will raise the question.

The Court: Then your contention, Colonel Anderson, is that the evidence which you adduced from this witness was only the commercial value and not the full value of the patent?

Mr. Anderson: Yes, related to the commercial value, strictly on the commercial value. Now, whether there was any value in the patent for some other purpose than its commercial value, I have not inquired and do not propose to inquire, because the commercial value in my judgment is sufficient to meet the point that I have to make; and I do not think the United States Goverment has any concern with that question when we come to it.

I do not care to go into the question now except not to leave the question unanswered.

I would like, with your Honor's permission, to make this additional statement for the witness. I told him he must answer the questions of counsel, of course. I should have said, which I assume the witness of course would know, that if he did not know of his own knowledge, he had a right, if he did not know actually, to say he did not know because in some instances, after saying he did not know, he has undertaken to state certain matters as to agreements, etc., as to which he cannot testify.

The Court: Of course, that ought to be modified, Colonel, just a bit. I have got to assume at this point that this is cross-examination. Of course, one of the very difficulties of counsel in cross-examining a witness sometimes is the answer "I do not know"; and in cross-examining, counsel has a right, by any number of questions he desires, to show that he does know.

Mr. Anderson: Undoubtedly so. What I meant was that if he absolutely did not know, he was under no compulsion of trying to answer something he did not know about. I thought probably the witness, being unfamiliar with our procedure might do that. I know Mr. Kresel would not want him to do that, but it seemed to me, he might.

THE COURT: Do you want a formal ruling at this point or do you want to say anything in reply, Mr. Kresel?

MR. KRESEL: I simply want to point out, your Honor, that quite aside from any consideration remaining with the Government, I am entitled to inquire on this line for this reason also; that the witness this morning undertook to describe certain products which were manufactured under these patents. He said nothing about any products that were manufactured for military purposes.

I think I have a right to develop all of the products that were being manufactured under these patents in Germany and to show, if I can, that the witness' judgment as to the value of the patents is based not only upon the products that he mentioned this morning, but upon all the other products.

THE COURT: The objection is overruled.

By MR. KRESEL:

XQ. 356. During the war, the chemical concerns who were in this community of interest manufactured, to a very large extent, explosives for the Government, did they not?

A. Yes.

XQ. 357. Indeed, the Haber patents that you testified about this morning were the patents under which the German chemical factories were enabled to extract the nitrogen from the air to combine it with hydrogen and produce ammonia, which is an essential in the making of explosives, is it not?

A. Yes, it is.

XQ. 358. But for the fact that the chemical concerns in Germany were enabled by this Haber process to supply the German Government with the essentials for the making of explosives and poison gases, the

German Government could not have continued with the war, because the Chilean Nitrates, from which explosives had theretofore been made had been cut off; is that right?

A. Ammonia patents have nothing to do with poison gases.

XQ. 359. Well, I will take your answer as to that, but I am not confining my question simply as to poison gases?

A. But you mentioned them.

XQ. 360. Also as to explosives, is it not the fact?

A. I think so.

XQ. 361. That before the processes under the Haber patents were perfected, explosives were made from Chilean nitrates which were imported from Chile?

A. Before the patents were perfected?

XQ. 362. Yes, before you could get this atmospheric nitrogen by the Haber patent?

A. Yes.

XQ. 363. And of course, very shortly after the war started, the British blockade cut off the importations from Chile?

A. Yes, sir.

XQ. 364. The value, therefore, of the Haber patents to the German cartel included the value of being able to supply the Government with the essentials for explosives, did it not?

A. No, that is entirely wrong.

XQ. 365. You spoke of about 450 to 500 patents that had been seized here, belonging to your company?

A. Yes.

XQ. 366. Did your company at any time since taking out any of those patents and up to the time that they were seized, manufacture under any of them in the United States?

A. I think not.

XQ. 367. So that these patents stood here and were taken out by your company, not with the purpose of manufacturing under them in the United States, but for the purpose of making it impossible for any Americans to produce either the article which was covered by a product patent or use the process, if it was simply a process?

A. No, that is not the purpose.

XQ. 368. What was the purpose in taking out these patents, if during all these years, your company did not turn a wheel in making anything under them in the United States?

A. The purpose was to secure us the right of importing dye stuffs and stopping German firms from maufacturing products and importing them; and on the second hand, Swiss firms and British firms from manufacturing them and importing them; and only slightly may it have been to stop American manufacturers from manufacturing them. But I do not think this was the idea, because there were no American manufacturers that we had to fear.

XQ. 369. You are quite right. There were none. Now, Doctor, the product patents gave you the right to prevent any other manufacturers from importing into the United States the article covered by such a patent, did it not?

A. That is it.

XQ. 370. In other words, with these patents taken from the United States Government, you sought to have a monopoly here with reference to such articles as were covered by the product patents, not only a monopoly against Americans but also against any other nationals from any other Government that might desire to import?

A. That is the real nature of a patent, yes.

XQ. 371. Again, Doctor, these chemical concerns in Germany——

A. Firms. You mean firms.

XQ. 372. Well, we use the term interchangeably. Still I will use the name "firms".

A. We use the term, simply for illustration—we use the term "concern" for a trust.

XQ. 373. Oh, I do not mean that. I mean firms. These firms that were in the community of interest, in the development of many chemical products, were able at very short notice to turn their plants into producing explosives and poison gas, were they not?

Mr. Anderson: If your Honor please, I object to that. We are not fighting the war.

The Court: No, we are not, Colonel. I will hear you as to the relevancy, Mr. Kresel. I do not see it at the moment.

Mr. Kresel: If your Honor please, that is in line with the other questions that we have had upon the additional production of articles, going to the value of the patents, which the witness did not mention this morning.

The Court: This is still addressed to value?

Mr. Kresel: Yes, sir.

The Court: The contention being that in the value that he placed upon these patents, he was looking at it from the German standpoint.

Mr. Kresel: Yes, your Honor.

Mr. Anderson: May I suggest, if your Honor please, the question of value this morning related to the United States patents exclusively; that is, to the value of the right of importation which they controlled and manufacture. The testimony as to the amount of income related exclusively to the income derived from products imported into the United States.

Mr. Kresel: Under the German patents.

Mr. Anderson: Suppose they have in Germany an enormous value. Suppose they can convert their goods into war products. What has that got to do with the value of the United States patents that does not help him.

Mr. Kresel: You miss my point, Colonel. It is my fault. I did not make myself clear. What I am trying to say is, your Honor, that by reason of the peculiar facilities of these large German chemical concerns that have been in the field for generations, the value of these patents, because of the number of products that they can make under them is something upon which a value of the same patents in the United States cannot be based.

The Court: Colonel Anderson's answer to that is that he did not attempt to base it on that, but that the only use theretofore of those patents in the United States was of German patents sold in the United States from which a commercial profit of so many dollars was derived at a certain time; and that the valuation of this witness having been predicated upon that premise or that fact, that necessarily, in reaching that conclusion, he excluded the basis which you are now attempting to show. That, as I understand is the difference between you. You, as I understand, were suggesting that you have a right to inquire as to all these facts and let the Court draw its own conclusion as to whether it was possible, from his standpoint, to base a valuation, his valuation, on precisely what he said, without taking into consideration other things.

Mr. Kresel: In other words, I am not concluded by this witness' statement.

The Court: Not at all, but is that your view?

Mr. Kresel: Exactly. Your Honor has that

The Court: Is there anything you want to

perfectly in mind.

put on the record, Mr. Anderson, before the ruling?

MR.. ANDERSON: I just wish to make this statement for the record, that the direct examination of this witness on values was confined to the value of patents issued by the Government of the United States, seized and sold to the Chemical Foundation in the United States and that the sole inquiry was directed to the value of those patents in the United States to the owner in Germany.

THE COURT: To the German owners.

MR. ANDERSON: Yes, to the German owners. True, the various elements are under the control of those owners, the control of importation, the control of manufacture, which the patent law gives to a patentee; and therefore, what use can be made of those patents in Germany, what use may have been made of them in Germany, and what the German manufacturer can do with his plant, not only including the owner of this but all other German manufacturers, is entirely outside of the direct examination or of any appropriate or proper cross-examination thereon, as relating to elements that were in any way involved in the inquiry on direct examination.

THE COURT: The issue is very clear. A formal ruling is made overruling the objection.

MR. ANDERSON: I understand all this examination is to be subject to objection and the usual ruling.

MR. KRESEL: That is my understanding, your Honor.

XQ. 374. Will you answer the question.

A. None of the plants for these patented products here could be converted into a plant for poison gas. They do not relate to poison gas and do not relate to ammunition.

XQ. 375. And you mean that the plant which manufactures dye stuffs was not, in point of fact, during the war, used for the making of essentials that went in as ingredients of explosives?

A. No plants for these patented dye stuffs. Perhaps a plant for some intermediate which is very old and can be made everywhere, but not the plants for the patented products. That is what I mean.

XQ. 376. But the dye stuffs are made from intermediates, are they not?

A. The patents are not for the intermediates.

XQ. 377. But dye stuffs are made from intermediates?

A. Yes, of course.

XQ. 378. You mean that among the 450 patents that you testified about this morning, there are no patents covering intermediates; do you really say that?

A. Maybe some of the others, but none of them are related to ammunition or explosives. I am not quite sure about this.

XQ. 379. I did not ask you about patents covering explosives. Do you mean to say that none of your patents cover intermediates?

A. Yes, they do, some of them.

XQ. 380. What I had in mind specifically, for instance, just to illustrate the point that I am asking you about in making a dye called "sulphur black"——

A. That is not patented.

XQ. 381. Won't you let me finish my question?

A. Pardon me.

XQ. 382. In making a dye called "sulphur black" —that is a black dye, is it not?

A. Yes, I know.

XQ. 383. A slight variation in the final state of that manufacture would turn the product into picric acid, would it not?

A. Yes.

XQ. 384. And picric acid is one of the essentials used in the manufacture of explosives, is it not? It is an explosive, in fact?

A. It is, but it is not much used. It is not used to a large extent, I do not think.

By Mr. Kresel:

XQ. 385. All right, I will take T. N. T. One intermediate which is produced in the maufacture of coal tar dyes is a substance called paramonatoluol?

A. Yes.

XQ. 386. And from that T. N. T. is made, is it not?

A. It may be.

XQ. 387. It can be made?

A. In a similar way, yes.

XQ. 388. But it can be made?

A. But, permit me to say, it has nothing to do with these patents.

XQ. 389. It has to do with intermediates?

A. Nothing with these patents.

XQ. 390. It has to do with intermediates?

A. The patents are all intermediates.

XQ. 391. However, for some intermediates, you have just said so?

A. Yes, but not for these.

XQ. 392. Let me go on please, do not argue with me. Now, in Germany, the Government assists the dye works, does it not?

A. No, that is entirely wrong.

XQ. 393. Has it ever?

A. No, never. That is propaganda. I saw it in your defense, but it is quite untrue.

XQ. 394. Did it during the war?

A. No.

XQ. 395. You mean——

A. The dye stuff industry has not been backed by the Government.

XQ. 396. Now, listen to me. Let me put my questions clearly to you, and then you can answer. Do you say that during the war none of these chemical concerns who were working for the Government were financially assisted by the Government?

A. Yes, they were, but not the dye industry.

XQ. 397. Well, did not you tell us that some of these chemical concerns that were engaged in the manufacture of dyes in peace times were converted into war-producing material during the war, did not you tell me that?

A. They took up additional work for war.

XQ. 398. Additional war work?

A. And were converted.

XQ. 399. Now, at the outbreak of the war, Doctor, how much of the world's supply of dyes did Germany supply?

A. I am not sure about that.

MR. ANDERSON: Is this—can this have any bearing upon the direct examination of this witness?

MR. KRESEL: May I answer that, your Honor?

THE COURT: Yes.

MR. KRESEL: Yes. My point is that the amount of dyes which were supplied by this combination in Germany indicates the strength of that combination. It indicates the monopoly that it had of producing and supplying dye stuffs, and it indicates what the value of such a monopoly of these patents would be.

MR. ANDERSON: If your Honor please——

MR. KRESEL: It is actually the same point that we have been arguing.

MR. ANDERSON: If your Honor please, suppose the dye industry in the United States is a Trust—I mean in Germany it is a Trust—suppose the dye industry in Germany have enormous power. Suppose it is combined to get that power. If one of the members of that organization, or whatever you call it, I do not know whatever it is, or any other member has secured patents from the Patent Office of the United States in accord with the laws of the United States, and we are inquiring into the distribution of those patents and their value, what can the power of that industry in Germany, or its organization, or conduct of its business have to do with the value of the patents in the United States, located in the United States, and which can not have any bearing upon that power?

Mr. Kresel: May I make one further observation, your Honor?

The Court: Yes.

Mr. Kresel: If, as we claim, there was this combination, which had this tremendous power, would not that affect the value of the patents to an American here, who would buy them, and try to start up in business?

Mr. Anderson: Allow me for a moment——

The Court: I was wondering, what Mr. Kresel was leading to in this situation. If the Germans prior to the war had a world-monopoly on dyes—whether the value to them on these patents which would not only tend to preserve intact that monopoly, but which, so far as I am now advised, would have kept the monopoly absolutely intact—whether the value of these patents in such a world-wide monopoly would not be far in excess of their value to any other person, because the minute a competitor got into the field, whether the mere keeping out of a competitor in a field as large as the United States, would not such a world-monopoly—would that not give to these patents a value far in excess of what it would have been to A, B or C. That is the thing that I have been wondering about, as to whether he was not coming to sooner or later.

Mr. Kresel: That is what I have been directing this examination to.

Mr. Anderson: If your Honor please——

The Court: I cannot decide that now, Colonel, and if that element is in it, anything tending to show the German monopoly, which so far as I now see it in the cross-examination, is equivalent to world-monopoly—anything tending to show that monopoly — would on that theory, if that theory is plausible—I do not know whether it is or not now—would it not be relevant to the valuation placed upon the patents by this man. I assume it would, at least, I would not be prepared now to negative it.

Mr. Anderson: If your Honor will permit me to put this on the record in view of your Honor's statement, that I do submit that for a Court or any one else to undertake to draw a distinction between the value of patents for commercial purposes which give an exclusive right of manufacture, owing to importation to an individual or corporation of fifty million dollars as distinguished from a combination or corporation of two hundred million dollars, or two billion dollars is drawing a bow a little fine on the matter of distinctions, and seems to me so remote that it would be going into the realm of speculation, as to values, far beyond anything the Courts have ever gone into. I merely put that on the record, as, of course, I will not ask your Honor to consider questions which involve a serious question at this time, and I renew my motion.

THE COURT: Is there such a question, will such a question ultimately be involved in this case?

MR. KRESEL: It will certainly be, your Honor, and it is raised by our separate defense.

THE COURT: I have no authority——

MR. KRESEL: Your Honor has not had time to study it.

THE COURT: I have not read particularly the bill, nor have I seen your answer at all, I am sorry to say. Objection overruled on the same basis.

THE WITNESS: What was the question.

XQ. 400. The question, Doctor, is for you to tell us what percentage of the world's supply of dye stuffs was supplied by Germany, prior to the war, just before the outbreak of the war?

A. I am not quite sure about the statistics, but I am quite sure about the fact that the dye stuffs which have been manufactured under these 470 patents also represented only a very small percentage of the world's supply of dye stuffs.

XQ. 401. But, Doctor, did not you say—I do not want to be offensive, but you are dodging the question and not answering it—I am not confining you to these patents, I am speaking broadly; but is it not a fact that Germany had a practical monopoly of manufacturing and producing dye stuffs all over the world?

A. No, that is no fact. I told you before that there are large manufacturers in Switzerland, and in England, and this Society for chemical industry, in Berlin and Elbenstein, and Brussells, and Holliday in England, and a lot of other firms.

XQ. 402. You seem to be much better informed of outside of Germany than in; but let me put that question to you: Is it not a fact that at the outbreak of the war, Germany produced nine-tenths of the dye stuffs that were consumed in the whole world?

A. I am not certain about percentage.

XQ. 403. Whether you are certain or not, give us your best estimate; you have been giving us estimates on it; give us an estimate of that?

A. I can not give any estimate.

XQ. 404. You won't undertake to do that?

A. No, I can not. I wish I could, but I can not.

XQ. 405. And don't you know, Doctor, that when the war broke out, and the United States could not get the German dyes, that the textile industry of the United States was absolutely paralyzed?

A. I have also heard that in the United States, that there was no dye stuff industry at all, but that is no evidence that Germany had a monopoly. There was a monopoly in England and Switzerland.

XQ. 406. Surely, so far as the United States was concerned, Germany had a monopoly of dye stuffs before the war, had not they?

A. No.

XQ. 407. Have you answered it?

A. There was export from Great Britain and Switzerland, and that export was cut off because those countries needed their home production.

XQ. 408. Did you tell me that your patents covered—your product patents did not permit importations from England, Switzerland and France?

A. But I told you that was only a small percentage of patented dye stuffs, and you reversed the question and asked for all the dye stuffs, that is the difference.

XQ. 409. And that is your idea?

Mr. Anderson: I object to some of this argument between counsel and witness. It is not cross-examination.

Mr. Kresel: I am through with that.

Mr. Anderson: Let the witness answer the question.

XQ. 410. Now, you undertook to give us the fair market value of patents, did not you?

A. Yes.

XQ. 411. Just what do you mean by the market value of a patent; do you mean that there is a place somewhere, where you can go and buy patents; is there an exchange where you can buy patents?

A. You know yourself that there is no such place.

XQ. 412. Then, what do you mean by a market value of patents; I want your meaning of it, so that we can see what your testimony is worth?

A. I think the market value of the patent is the value which the patent had for the inventor or the owner of the patents, and for which he probably would have been willing to sell them.

XQ. 413. Well, of course, if that is the witness's understanding, and that is what you understood by—that is what you mean by your testimony when you gave the market value of these patents, was it?

A. Yes, I think that is a possibility.

XQ. 414. All right. I am quite content with your answer. Now, the value of the patent depends upon the person that owns it, being able to prevent others from using it, does it not?

A. No. The person is quite immaterial. The value of the patent is defined by the value of the product which is manufactured by it. The owner is of no importance whatever.

XQ. 415. Apparently you did not understand the question. I say the value of a patent lies in the fact that the person that holds the patent can prevent anybody that he pleases from manufacturing an article covered by that; is not that right?

A. No, that is negative, positively stating it. It is the profits which he makes out by virtue of the patent.

XQ. 416. Of course he makes the profits because nobody else can manufacture without his permission?

A. Of course.

XQ. 417. We agree on that, don't we?

A. The patent gives the right of preventing others.

XQ. 418. Let me see if you will go along with me this far—a patent is valuable to a person who possesses it because he can either let somebody manufacture under it or refuse to let anybody manufacture under it; is not that right?

A. On the one hand, yes.

XQ. 419. Yes, take your concern, for instance, before these patents were seized, when you owned them—

> THE COURT: Pardon me, may I make this inquiry, Mr. Kresel; is not that the matter of law; and cannot we——

> MR. KRESEL: It is just a preliminary question, your Honor, to the question that follows:

XQ. 420. Would it make any difference in your opinion, as to the value of a patent, the fact that the person who owns it was compelled to give licenses to use that patent to anybody and everybody that applied.

A. Yes, of course, that raises——

XQ. 421. You have answered my question, "yes". Of course, that is all I want.

> MR. ANDERSON: That is subject to objections your Honor understands.

> THE COURT: Yes.

XQ. 422. When you gave us this morning——

> MR. ANDERSON: I wish to state on the record in addition, the fact does not appear in this case, that any person was compelled to give licenses, or that the owners at the time of the sale of these

patents, whoever they were, were required to give licenses; and therefore the question is entirely outside of the facts as disclosed in this case.

XQ. 423. When you assumed to give us this morning your estimated value of these patents, did you assume that there was a clear title to all those patents?

A. Of course, yes.

XQ. 424. And did you assume that when they were sold, they were not subject to any outstanding licenses?

A. It depends on the number of licenses; when there are only very few, they may not alter much the value of the patent.

XQ. 425. But you are not answering my question, if you will pardon me for saying so. I am asking you directly whether when you gave to the Court this morning your opinion as to the value of the patents, that opinion was based upon the assumption that no licenses affecting the patents were outstanding, just yes or no?

A. Yes.

XQ. 426. Now, Doctor, I understood you to say this morning, that you had repeatedly bought patents, so that you are familiar with methods of buying and selling patents; am I correct in that?

A. Yes.

XQ. 427. Well, ordinarily, when you buy a patent from an inventor, you get from him all the information that he possesses as to the manner of operating under the patent, don't you?

A. Yes, ordinarily.

XQ. 428. Certain; and you get from him the result of his experience in operating, commercially operating under the patent, don't you?

A. Not commercially, mostly only——

XQ. 429. Strike out "commercially"—experience in operating under the patent, don't you?

A. Not "operating", that goes too far.

XQ. 430. Experience in producing under the patent?

A. Experience—but "using" goes too far, it tends to a commercial extent.

XQ. 431. I will let you use your own language, experience in doing what with the patent?

A. Simply to show its practicability.

XQ. 432. All right, and ordinarily, when you buy a patent, you obtain from the inventor or the manufacturer for whom you buy information as to the kind of plant that is necessary in order to work the patent, don't you?

A. No.

XQ. 433. You mean you buy a patent, and then invent your own plant?

A. The plant in those cases is very simple and can be shortly erected by our engineers. What we need is a sample, a sample how to carry it out.

XQ. 434. Yes. But if it is a patent that had already been commercially worked, of course the plant would have been there when you buy the patent, you buy whatever experience as to the plant, likewise, don't you?

A. I do not think that we agree over that——

XQ. 435. Whether you agree with it or no, that would not ordinarily accompany the sale of the patent, is it not so?

A. I did not get that.

XQ. 436. I say, ordinarily, if a manufacturer has operated under a patent, has built a plant for instance, and he sells that patent, the purchaser would get any information that the vendor has as to the kind of plant that is necessary?

A. That is very seldom, very rare cases.

XQ. 437. That is rare, is it not?

By THE COURT:

Q. 438. If the purchaser needs it, or that the inventor will furnish that disclosure, which do you mean?

A. Simply an example how to carry it out in the laboratory, that is sufficient for us.

By MR. KRESEL:

XQ. 439. Now, you said this morning, two or three times, that your patents were so drawn that an incompetent chemist can operate them?

A. Yes.

XQ. 440. Of course, you know, don't you, that before 1919, there was practically no chemical industry in this country?

A. Yes.

XQ. 441. And of course that America was not as rich in skilled chemists, as Germany was?

A. Of course.

XQ. 442. And do you really say, Doctor, that these patents that you have been testifying about, are so drawn that any patent chemist can take them and work them commercially?

A. In this country?

XQ. 443. In this country?

A. Yes, that does not require technical skill, but simply the scientific skill, and such chemists were in your country. I do not mean that it requires extraordinary skill also, but simply it requires more than a student has, of course, we know.

XQ. 444. You take your Haber-Bosch patents, for instance. You took out those patents not only in the United States but in other countries?

A. Yes, nearly everywhere.

XQ. 445. Belgium, for instance?

A. Belgium too.

XQ. 446. In France?

A. Yes.

XQ. 447. And I assume that your patents and theirs were equally as full in disclosure as those that you took out here in the United States?

A. Yes.

XQ. 448. And I think you will go along with me to this extent, won't you; you will say that France had at least as good chemists as we did in America?

A. Of course, yes, she has.

XQ. 449. And well, don't you know that notwithstanding that France had your patents, as we had your patents here, that the French Government is paying two and a half million francs to the German Chemical Cartel, for information as to how to manufacture under these Haber-Bosch patents?

A. They are not paying two and a half million francs. They are paying fifty-nine million francs, but not for the information—for the patents and for the information.

XQ. 450. For what?

A. For the patents, and for the information.

XQ. 451. But they had your patents; they had seized them, did not they?

A. They gave them back.

XQ. 452. Well, they had them before?

A. They had them before.

XQ. 453. And if the patents disclosed the process, they did not have to pay anything for any information, did they?

A. They did not pay for the information. They paid for the patents and for the information.

XQ. 454. But that is what you said—patents and information?

A. Yes, sir.

XQ. 455. Now, there were patents here on Salvarsan, were there not, you know that?

A. I know, but I am not acquainted with the Salvarsan business. It is not our firm.

XQ. 456. Now, to establish a chemical industry in a country like America, which did not have any, would require a large amount of capital, would it not?

A. Yes, I see it has been found, that capital.

XQ. 457. Would it require a large amount of capital?

A. Not so extraordinary large.

XQ. 458. And do you think, Doctor, that you are frank in making these answers?

A. Yes.

XQ. 459. And it would require, would it not, the building of a plant?

A. Of course.

XQ. 460. A large amount of plant?

A. It depends on the amount of dye stuff which is to be produced.

XQ. 461. If it was to take the place of the German dye stuffs that were being imported before the war, there would have to be quite a large commercial industry, carried on here, would not there?

A. I do not know. I do not think the amount of dye stuffs imported was extraordinarily immense.

XQ. 462. Now, your dye patents covered what are known as vat dyes, did not they?

A. Yes.

XQ. 463. Were there other sorts of dyes that could be used in the place of vat dyes?

A. Yes.

XQ. 464. Was there a form of dye called the Algo dye?

A. Yes, but it did not belong to our firm——

XQ. 465. I am asking you now as an expert, do you see?

A. Yes.

XQ. 466. You are a chemist, an expert?

A. It was simply to avoid confusion, if you wish to hear this, because we are concerned here with partnership credits.

THE COURT: Mr. Kresel, do you care——

MR. KRESEL: I will be through, if your Honor will indulge me, I shall finish with this witness in about half an hour.

THE COURT: I was going to inquire as to whether you care to finish now, or take a recess until say half past seven; if you are going to finish in half an hour, you can finish now if you prefer.

MR. KRESEL: I shall finish in half an hour. How about you, Colonel?

MR. ANDERSON: I think that if Mr. Kresel finishes in half an hour, I certainly will not take over half an hour for any re-direct and we will get through.

THE COURT: I shall take a recess at the end of an hour in any event.

MR. ANDERSON: If you will reserve me half an hour to finish the re-direct, I think we shall finish.

THE COURT: You may proceed.

XQ. 467. Now Doctor, I wish you would tell us what patents you bought in 1919, giving the name of the person from whom you bought them, and describing the patents?

A. I did not get it, pardon me.

(Question repeated.) I cannot tell whether we bought any in 1919—I cannot tell.

XQ. 468. I ask you the same question as to the year 1918?

A. I cannot tell it, any year.

XQ. 469. Is your answer the same as to 1918, as 1919?

A. Yes.

XQ. 470. I ask you the same question as to 1917. is your answer the same as in reply to my question with reference to 1919?

A. Yes.

XQ. 471. Now, you assigned this morning, as the value of the 58 so-called Haber patents—you said that it was seventeen million dollars?

A. Yes.

XQ. 472. Did you arrive at that figure by assigning a separte value to each of the fifty-eight?

A. No. They can not be separated as a whole.

XQ. 473. "No" was the answer?

A. No—yes.

XQ. 474. Well, will you enlighten us as to how you came to the conclusion that it was seventeen million dollars?

A. Yes, I can. I arrived at this figure in that way, first, Germany is now producing three hundred thousand tons of fixed nitrogen by the Haber-Bosch process. The conditions in Germany and in the United States of America, as to the consumption of nitrogen fertilizers were about the same before the war. I always refer to the time before the war, because the conditions are so directly different since then.

XQ. 475. I did not get that last?

A. The conditions are different. For that purpose I refer to the time before the war—excuse me.

XQ. 476. Then you are talking about 1913?

A. 1913.

XQ. 477. Go ahead.

A. The conditions are not much far different now as I understand from your magazines, and official reports. The United States is about producing one hundred thousand tons of nitrogen in coke ovens and has a big demand for salt petre, which amounts to about the same quantity, one hundred thousand tons of nitrogen, and those were the conditions in Germany, about so, and we constructed in Germany, the Oppau plant which is now producing one hundred thousand tons of nitrogen, and the Mersenburg plant, which is producing two hundred thousand tons; and the production of these two plants, is gladly taken up by the agriculture and I suppose—not I suppose—I am sure that the United States would be ready at any time to take up a supply of as little as seventy-five thousand tons of fixed nitrogen yearly, and this, at the rate of one cent royalty per pound of nitrogen, and the average term of ten years for the outstanding life of the patents gives seventeen millions of dollars, and another basis is the contract you have mentioned that we have had to make with the French Government and this provides for the establishment of a plant for thirty-six thousand tons, and I understand the thirty-six thousand tons is a rather small figure; and if my concern assumes that seventy-five thousand tons would be likely to be consumed in the United States, which has a much bigger area than France has, that is a very moderate basis.

XQ. 478. Is that all?

A. That is it.

XQ. 479. Do I understand then, that you assume that if the United States—or if somebody in the United States could not produce nitrates under these Haber patents——

A. Or ammonia.

XQ. 479 (continuing)—and if the demands of the country were such as to absorb a supply of three hundred thousand tons a year——

A. No, not so much.

XQ. 479 (continuing)—that then the profits that would be realized from that, would be such as to make patents worth seventeen million dollars?

A. Yes, but it is a misunderstanding. I did not suppose that the demand must be increased to three hundred thousand tons, this ammonia production may substitute a part of the imports from Chili. It may substitute the whole production of the United States and create a national industry.

XQ. 480. You realize, don't you, Doctor, that you are asked to give the value of these patents to the American industry, not to Germany?

A. Of course, yes.

XQ. 481. And that is your testimony, is it?

A. Yes.

XQ. 482. Well, have you in all your reading of magazines and official documents which you mention informed yourself as to the actual result of the working in the United States under the Haber patents since 1919; without theorizing now, do you know what the actual results were?

A. Yes, I know thereabouts.

XQ. 483. Will you tell the Court what you have learned as to the actual results?

A. I have learned that a plant in Syracuse is producing three thousand tons a year, but I have also learned that the Nitrogen Committee which was instituted in 1916, recommended that the United States Government should build a plant for a capacity of about thirty thousand tons, an initial plant.

XQ. 484. Then, your information is that the progress of the art here, in so far as working under the Haber patents since 1919, is that a plant in Syracuse has been built which produces three thousand tons a year?

A. Yes, sir.

XQ. 485. Now, you say that you can not separate these fifty-eight patents and assign a value to each of them. What is there extraordinary about that that makes it impossible to do that?

A. They belong together. They cover the various steps of the process which follow after the other, one for the nitrogen and one for the combining of ammonia, and the third for the separating of the ammonia, and all for the same subject.

XQ. 486. In other words, you mean that ammonia can not be producel under these Haber patents without using all fifty-eight of them?

A. No, I do not mean that, not all the fifty-eight must be used.

XQ. 487. Well, which ones may be used?

A. I can not state it from memory. It depends on the local conditions, other circumstances. Some must be used, at any rate.

XQ. 488. Have you familiarized yourself with the purposes to which the production of this Syracuse plant have been used?

A. For which the products are used?

XQ. 489. Yes.

A. No, I do not know.

XQ. 490. Don't you know it is being used only for refrigeration and not for fertilizer?

A. I do not know, but it may be right. The products of the Oppau Mill are also used for other purposes, also for refrigerators.

XQ. 491. You make fertilizer in Germany, don't you?

A. Yes, and liquid ammonia for refrigeration and other purposes.

XQ. 492. And Germany now produces three hundred thousand metric tons a year?

A. Of nitrogen, yes, including nitrogen.

XQ. 493. By those Haber patents?

A. Yes.

XQ. 494. Now, what was it that increased the value of these Haber patents in your mind, from the seventeen million dollar figure this morning to twenty million dollars this afternoon?

A. That was—it was supposed the consumption or production of the United States would be one hundred thousand instead of seventy-five thousand, that is the difference, a rather small difference.

XQ. 495. And of course, if you assume that the consumption would be five hundred thousand tons, the value would thereby be increased?

A. I would not assume that. That is too much, perhaps. I wish to give a minimum and a moderate estimation, which can surely be fulfilled.

XQ. 496. Yes, but the result is that only three thousand tons a year have been produced?

A. That is no evidence.

XQ. 497. Now, the value of the process under the Haber patents, would depend somewhat upon whether or not Chilian Nitrates could be bought in the market at a cheap rate, would it not?

A. It never can be bought as cheap as synthetic ammonia.

XQ. 498. And yet you know that Chilian nitrates are being very largely used in the United States at this time?

A. Yes, I know they have also been very largely used in Germany before the war, and, nevertheless, synthetic ammonia has superseded it, or shut it off.

XQ. 499. Well, from such investigation as you have made, would you say that the United States is continuing to use more expensive Chilian nitrates instead of ammonia produced under the Haber patents, because they can not produce it?

A. No, I do not think that. They can. Perhaps there was not proper management, or other circumstances. I think it ought not to have been impossible to institute——

XQ. 500. Of course, there is no difficulty in Germany in getting the proper management. You have not found any difficulty?

A. No.

XQ. 501. You have found no difficulty in Germany in installing the proper plant?

A. No.

XQ. 502. You have found no difficulty in Germany in getting the skilled scientific men to work these patents?

A. No, we had no difficulty.

XQ. 503. You found no difficulty in getting all the information that is necessary in order to know how to work these patents?

A. We need not get it. We have it. This is ourselves.

XQ. 504. Now, you were telling us about three tanning products that were made under the tanning patents. Would you mind indicating under which patents those were made?

A. I can.

XQ. 505. You mean, of course, by these product patents, don't you?

A. I don't know whether they are product patents. One is a product patent, 12367405.

XQ. 506. That is a product patent?

A. That is a product patent, 1237405 and 1336759. That is a product patent, and there are patents for tanning, 1216612, 1281494 and 1289280. I think there is one important patent still missing. That is 191480 for tanning.

XQ. 507. You have spoken of Oppau, the factory there manufactures nitrogen?

A. Oppau has not to do with tanning.

XQ. 508. No, I am speaking of nitrogen?

A. Nitrogen, yes, fixed nitrogen.

XQ. 509. And under these Haber patents?

A. Yes.

XQ. 510. Is that a very dangerous process?

A. No, it is not dangerous at all.

XQ. 511. There was a very serious explosion at that plant, was not there—killed a great many people were not there recently?

A. Yes. There were five hundred killed, but that has nothing to do with the manufacture of ammonia. It was a kind of nitrate which was produced, and it exploded.

XQ. 512. Well now, do you mean to testify that all of your patents, all your dye patents, are both product and process patents?

A. Yes, each single of them, no, not each single some——

XQ. 513. You testified that way this afternoon?

A. That was a misunderstanding, not each single of them, but as a whole.

XQ. 514. Some are product patents, and some process?

A. And some are product and process as well.

XQ. 515. You said this morning that your patents in the United States were substantially like the patents that you had in Germany, did not you?

A. Except for the differences which are——

XQ. 516. Required by law?

A. There is a difference in the laws, yes.

XQ. 517. That is right. Don't you know that there is no such thing as a product patent in Germany?

A. Of course, I know. That is one of these technical differences.

XQ. 518. Well then, none of your German patents was a product patent?

A. Yes, it is, in a certain sense. The German patent law provides that the product is patented by a process claimed for in manufacture, according to the process claimed. The immediate process of the product claimed, is protected with a particular claim.

XQ. 519. Now, you will see, Doctor, that you are not answering my question. This product patent is a patent which makes it possible for the owner of the patent to prevent anybody from making any article like the one covered by the patent, by whatever method it is made, is not that right?

A. Yes, that is right.

XQ. 520. Now, in that sense, do you mean that in Germany, you could get any such patent?

A. Not technically, but perhaps practically. It is very seldom that another way for making the same product is discovered——

XQ. 521. But if a man does find a different method of making the thing, you can not prevent him from making it?

A. When it is quite a different way—no.

XQ. 522. But not a product patent of the United States—if you get a product patent, to make a certain kind of dye, then, no matter by whatever other method anybody else may make that kind of dye, you can prevent him from doing that?

A. Yes, sir.

MR. ANDERSON: Is not that a question of law?

XQ. 523. You have been here you say since the middle of April?

A. Yes, sir.

XQ. 524. Who is paying your expenses?

A. My company, the Badische Aniline, to make it quite clear.

XQ. 525. I did not get that?

A. The Badische Aniline, to make it quite clear, the Badische Aniline & Soda Fabrik.

MR. KRESEL: The Badische Company. Now then, your Honor, I have a motion to direct to the Court with reference to this witness's testimony, and I will make it now, or I will wait until Colonel Anderson is through, with his re-direct.

THE COURT: It is your pleasure.

MR. KRESEL: I think perhaps it would be better to let Colonel Anderson finish his re-direct.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 526. Doctor, you were asked by Mr. Kresel about the arrangement between your company and the French Government for the use of these nitrogen patents, for a plant which you say had a capacity of thirty-six thousand tons a year?

A. Metric tons.

RDQ. 527. I beg your pardon; metric tons; when was that arrangement made, what year?

A. It was made in November, 1919, but it got the consent of the French Chamber, just now, in December.

RDQ. 528. What return or compensation or value does that yield for the use of these patents in France?

A. As a whole, I stated fifty-nine million French francs.

RDQ. 529. Fifty-nine million French francs?

A. Five million as cash payment, and fifty-four million as royalties for the production.

RDQ. 530. And that covered a plant with a production of only thirty-six thousand metric tons; is that true?

A. Yes, full capacity.

RDQ. 531. Mr. Kresel in one of his questions said that you, in estimating the value in the United States, estimated the value of the profits on the production of nitrogen, at a plant such as you indicated. I understood you to make your value based upon a royalty of one cent per pound?

A. Yes, that is so, one pound of fixed nitrogen.

RDQ. 532. And you only estimated the value of seventeen million dollars arrived at in the method you described, based upon a royalty, for a license?

A. Yes.

RDQ. 533. Which was a charge of one cent per pound for the use of these patents and processes?

A. Yes, under the royalty.

RDQ. 534. You did not take into consideration at all the profits which might be realized by the manufacturer under that royalty?

A. No, that is not for the whole profit. It is only for a royalty, supposing that a license would have been given to an American firm, and an American firm would have made a larger part of the profits, and only gave us a part, one cent a pound as royalty.

RDQ. 535. You were asked as to the ability of the chemist in the United States to manufacture fixed nitrogen under these patents, as filed in the United States. There are chemists of high capacity in the United States, are there not?

A. Certainly, yes.

RDQ. 536. Is there any practical or technical or scientific difficulty about the manufacture of fixed nitrogen in accordance with the Haber process, from the patent granted by the Patent Office in Washington for the fifty-eight you mentioned?

A. Of course it requires some technical skill, but there is no extraordinary difficulty.

RDQ. 537. You were asked something about the war production in Germany, and the conversion of plants into war products for the manufacture of war products. Did you consider in giving your testimony, as to the value of the various patents as to which you testified this morning in the United States, that is, United States patents—did you consider in any way the war production in Germany, or the use of these patents during the war, as an element entering into the value of patents in the United States?

A. Dye stuff patents for the dye stuff, have nothing to do with war, as I have already stated.

RDQ. 538. Yes.

A. And as to the nitrogen patents, I have said it is counted on a basis of seventy-five thousand tons of fertilizer, that is a very moderate figure, and would not be sufficient for a war production.

RDQ. 539. But the war production in Germany, or the use of these plants for war purposes, have nothing to do with your answer, according to the value of the United States patents, either on direct or cross-examination?

A. Nothing at all.

RDQ. 540. Was it considered in any way in arriving at the figures which you have given to the Court?

A. No, in no way.

RDQ. 541. Have you read the assignments in this case of the patents as to which you have testified, from the Government to The Chemical Foundation?

A. Yes, I read them.

RDQ. 542. It appears by reference to those assignments, that these rights are assigned by the Government of the United States of the patents or rights to The Chemical Foundation, without any reservation or qualification whatsoever?

A. Pardon me, what page?

RDQ. 543. I am reading page 416 of the original bill of complaint, from Exhibit No. H-1, which covers the greater part of each patent. The assignment is made by the Alien Property Custodian to The Chemical Foundation,——

> "without any reservation or qualification whatsoever, whether by reason of anything contained in the Charter or By-Laws of the said The Chemical Foundation, Inc., or otherwise, and subject only to the provision of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or friendly nations as set forth in the requirements or demands for certain of the said Letters Patent of the United States, applications

> for letters patent, trade marks and registration thereof, copyrights and rights, interests and benefits under agreements."

I will now ask this in a hypothetical way, because it will come in after. If it should appear that the agreements referred to in that assignment are merely a release to the United States of any claim on account of past infringement, and is a reservation of the rights and interests of citizens of the United States and friendly nations, in and to those patents, if those rights and interests should be established, would the terms of that assignment to The Chemical Foundation as to patents in which the citizens of the United States or friendly nations had no interest or developed no interest, affect in any way the value of the patents as you have estimated it in your judgment? That is a very difficult question, but I want to get it, because I have got to prove all these things later on.

THE COURT: I do not understand it myself. It is my fault, not yours, but I will hear you first, Mr. Kresel.

MR. KRESEL: We object to it on the ground that it calls from this witness for the construction of a legal document. He is not qualified to give any such construction, and if he were, it is not the subject of expert testimony. We object to it upon the ground that it is immaterial and irrelevant. The document speaks for itself, and if certain facts should later be developed, as Mr. Anderson intimates they will be, the Court can attend to that question without any opinion from this witness.

THE COURT: May I hazard a guess as to what the question is——

MR. ANDERSON: That probably requires very great hazard.

The Court: Is that a limitation upon the title or right transferred to The Chemical Foundation, and are you asking this witness in substance, whether such a reservation makes any difference in his opinion?

Mr. Anderson: That is the substance of it.

The Court: That is what I thought.

Mr. Anderson: In other words, if your Honor please, the witness was asked on cross-examination whether the extension of licenses and experience in producing would affect his judgment on the value of these patents.

The Court: The concluding part of your question is what?

Mr. Anderson: The concluding part of my question is—I do not want to repeat this, and I will ask it not be put on the record. I will try and explain it. The concluding part of my question is this: That eliminating any patents in which the citizens of the United States or citizens of a friendly country might have an interest, which interest is reserved, you see,—and I propose to prove later as to this, to which this provision would apply, eliminating that condition, would an assignment of all the right, title and interest in this patent, without reservation or qualification whatsoever, whether by reason of anything in the By-Laws of The Chemical Foundation or not—would such an assignment impose—would that assignment of that before you affect his value, as that he gave this morning? It does not involve a question of law or fact.

The Court: Does it not come down to this—if you establish as a fact that that reservation was not a reservation in fact, and he may have the complete title, we do not need any testimony from him to say——

Mr. Anderson: Possibly. I think probably your Honor's position on that is correct, and I think it is correct in the second place, the question would be so hypothetical that it would be of very little value, and that we will have to prove by these facts anyhow. I wanted to get this witness' judgment free from that embarrassment, so I find it will be difficult to do it. I won't take up the time. I want to get through. It is not material.

RDQ. 544. Doctor, you were asked if you assigned a value of each of the fifty-eight nitrogen patents, so-called, or Haver patents, and as I understood, you could not, because they must be taken together. I want to ask if you can identify the product patents, and the process patents in the remaining processes other than the dye processes and products?

A. Yes, they can be identified.

RDQ. 545. How long would it take you to make up a list including the product patents and the process patents, separating the two, indicating the separation?

A. There are five hundred patents.

RDQ. 546. Yes.

A. It would take a few hours.

Mr. Anderson: Mr. Kresel, would it be possible, to save time, for the witness to make that list which I would like to have, and I think you would like to have a separation of the product patents, as he identifies them—do not put this on the record.

The Court: I suggest the stenographer take it, and it can be stricken out.

Mr. Anderson: Would you object to this witness having this in New York, taking a record, and submitting a copy of it, and we can

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submit it to all parties, and I think we could save time?

Mr. Kresel: I have no objection.

RDQ. 547. Then, I will ask you, Doctor, to please make up, tomorrow, if possible, and furnish under the oath administered to you as a witness, as you are now, making a list, a list first of the nitrogen patents to which you have referred, or Haber patents second, a list of the tanning patents?

A. Yes.

RDQ. 548. A list of the tanning patents, and then, third, a list of the patents relating to the dye and different processes which you have classified, although not included in the other two classes, and have two copies of that made, and shall we stipulate it, or file it with the stenographer.

Mr. Kresel: He has to divide them into product and processes.

RDQ. 549. And then divide it, each class, into product and process patents, as far as you can do it?

A. Yes.

RDQ. 550. And furnish a file copy?

Mr. Kresel: Send them to you, and you can send us a copy.

RDQ. 551. Or send them to me. Send three copies to me, one of which I will file with your answer, with the stenographer, and one I will furnish to Mr. Kresel, and one to the Court. Will that be satisfactory? I think that will save a lot of time.

The Court: Then those go on the record as given to the stenographer?

List produced at trial and offered and admitted in evidence as "Plaintiff's Exhibit No. 606." *(See Exhibits, Vol. II, page 1438.)*

Mr. Anderson: Yes. If your Honor please, I think that is all.

Mr. Kresel: Now, if your Honor will hear me.

The Court: No further questions?

Mr. Kresel: No further questions at all.

We now move that the testimony of this witness given by him upon the direct as to the value of these patents be stricken from the record in its entirety upon the following grounds: first, upon the grounds that were urged in the course of his examination, namely, that he was not qualified upon the basis of facts that he assumes, to make an estimate, and that the testimony was, therefore, immaterial and irrelevant.

More particularly, we now move to strike it out upon the ground that it is apparent from his testimony that he has a direct interest in the outcome of this litigation and is therefore disqualified to give testimony as an expert. Furthermore upon the ground that, according to his testimony, he was testifying, not as to the fair market value of these patents, but as to what his company or a company similarly situated would be willing to sell the patents for, which is far from being a basis for forming an opinion as to the market value of these patents.

We further move to strike out his testimony upon the ground that the testimony is based, according to the witness' statement, upon the situation as it existed in 1913, six years before this sale was made here in the United States, and that it is based upon the condition as it existed in Germany, and not in the United States; that the witness has stated that he did not have information as to the conditions in 1919 in the United States and has testified that he was not in the United States at any time prior to 1922.

Upon all those grounds, we move that his testimony as to the value of these patents be stricken from the record.

The Court: That concludes your statement?

Mr. Kresel: Yes.

The Court: May I ask this, Mr. Kresel: was the valuation of $17,000,000 the witness' value for all the patents in suit or only the value for a particular group?

Mr. Kresel: Only for the 58 Haber patents; and he subsequently changed that valuation to $20,000,000.

The Court: I recall distinctly his answer to your questions in cross-examination with respect to how he ascertained or how he arrived at the value of $17,000,000 and $20,000,000 for this particular group. I do not recall his testimony, if there was any, in cross-examination as to how he arrived at the value of patents other than the group which he appraised at $17,000,000.

Mr. Kresel: I did not, upon cross-examination, ask him specifically about any other patents. But I did ask him to tell us what he meant or understood by "fair market value."

The Court: As to all patents?

Mr. Kresel: As to all patents.

Mr. Anderson: I did not understand his answer to be what you stated, Mr. Kresel. I could not hear it.

Mr. Kresel: He distinctly stated that what he meant was that that was the value which his company would have been willing to pay for these patents or his company would have been willing to sell them for.

The Witness: No, not this. That is a misapprehension. I stated——

Mr. Kresel: No, Mr. Witness, please; you are through.

The Court: Will you take a seat?

Mr. Anderson: I can recall him.

The Court: Unless you want to recall him, will you take a seat behind your counsel.

Mr. Anderson: If he made the statement that his market value was solely what they would sell, what they were willing to sell for, which I did not hear—I was over here and could not hear and came over here for that reason—then I would like to have him recalled on that question, because I did not know it, I am frank to say.

The Court: You may recall him.

Mr. Kresel: If there is any doubt as to what the witness said on this subject, you can refer to the record.

Mr. Anderson: I do not want to go over the record. I will just recall him.

The Court: Do not make your questions leading under these circumstances.

Mr. Anderson: No, I will not.

Karl Holdermann, recalled for further examination, having been previously duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 552. On cross-examination it appears in the record that you stated, in speaking of market value that you understood market value to be what the owner would sell for, or words to that effect. Will you please state whether there were any elements in arriving at the value of these patents other than the value at which you thought the owner could afford to sell?

Mr. Anderson: Is that leading?

Mr. Kresel: I submit, your Honor, that that ought not to be the question.

Mr. Anderson: I did not want to lead. I did not even want to indicate what the answer was.

Mr. Kresel: Of course, you did not. But that does not meet the testimony that he has already given. His testimony was distinctly this. I asked him what he meant by market value, and he said that he meant by "market value" what the owner of a patent would be willing to sell it for.

The Witness: That is wrong.

Mr. Anderson: One minute. Don't you interrupt.

The Court: Don't you say a word until you are asked a question. You are not in this discussion.

The Witness: Excuse me.

Mr. Kresel: I think that the question which is now propounded to the witness is not calculated to meet that testimony because the question is whether there was anything else in the witness's mind. Do I get the question right, Colonel?

Mr. Anderson: As constituting market value, yes; what were the elements that he considered in taking market value. You undertook to define as I understand, market value. That is a question of law. It is not a question of the witness' opinion.

The Court: If the witness put his appraisement upon one theory, which is an erroneous theory——

Mr. Anderson: The valuation or market value goes out, and you would only consider his testimony on other facts to reach a conclusion. I want to ask him then if he considered any other elements, or what elements he considered.

THE COURT: I think your question should not be put, Colonel Anderson, in the form it is now in. It should be more general, and if you want to ask him generally again, so far as I am concerned, in the absence of objection by Mr. Kresel, who may or may not make an objection, I should be very glad to take it.

Q. 553. I will ask you, then, this question: this morning I asked you to tell me what, in your opinion, was the fair market value of these patents. I will ask you now to state to the Court how you arrived at the fair market value of those patents?

MR. KRESEL: I doubt, your Honor, whether even that is the question. We have already upon cross-examination and upon direct——

THE COURT: I am wondering whether the mistake is not in recalling this witness, because he did testify in chief and he testified very fully and clearly on cross-examination what elements he considered in arriving at this valuation.

MR. ANDERSON: I think so. I will let him stand aside, because his opinion may be one thing or another. As long as he has given those elements in arriving at his conclusion, his opinion of market value may be one thing or another, but the elements are the thing that controls.

THE COURT: And the record discloses those elements?

MR. ANDERSON: The record discloses those elements very fully; and, therefore, in order not to delay your Honor, I do not want to go over the same ground. He has given the various elements.

(Witness excused.)

MR. KRESEL: Your Honor understands, I hope, striking a sentence or more out of the bill which is largely a legal conclusion. That is a matter of form.

In addition to the motion to dismiss the bill for want of equity, there is a motion to strike out the charges of conspiracy in the bill.

Those motions, if your Honor please, of course, all go practically to the foundations of this case and certainly they go very largely to the character and scope of the testimony. It would be an enormous waste, and, of course, improvident for us to have to summon a large number of witnesses, or for the defendant to summon a large number of witnesses here to deal with questions which your Honor may conclude to strike out.

Therefore, we moved the Court recently, or rather gave notice of a motion, that we would ask the Court to hear argument on the motions, to call them up and dispose of them a week or ten days possibly in advance of the trial, and in that way so clear the ground as to enable us to summon our witnesses with reference to the disposition of the matter finally and limit the evidence in accordance with your Honor's rulings; and we now renew the motions.

Mr. Guthrie: It seems to us that these motions ought to be disposed of when the case is opened fully to the Court. It would simply double the labor of the Court and counsel. The answer has been filed now for seven months. The trial will go on in a little over three weeks, and it seems to us that these motions, which it has been candidly stated go to the very fundamentals of the suit, ought to be disposed of after the case is fully opened by both sides in all its aspects.

We are confident that it will be imposing upon your Honor, as it will be imposing upon counsel, double labor, to come here and interrupt the preparation of this very important case to argue these motions, when we are profoundly convinced that your Honor would not dispose of them until you had considered the whole case.

The Court: Your thought, then, Mr. Guthrie, is that at the beginning of the suit, on June 4, after the case is started, that these motions will come on for argument and they need not be followed by a ruling but by the taking of the testimony, and these motions decided and the case decided on its merits, if it reaches that, at the same time; so that all the questions can go up to the Court of Appeals or the Supreme Court, or wherever it may go, with the whole record before it.

Mr. Guthrie: I think that will be the ultimate result even if we argued the case a week before and divided it up. I think the suggestion involves great duplication of labor and unnecessary labor. Practically everything contained, in our judgment, in our affirmative defenses would have to be gone into in answer to the plaintiff's case.

They charge conspiracy. They charge, by implication, a fraud. It is absolutely necessary to show the situation which made the action of the President of the United States in the public interest. They allege that there was a suppression of facts from the President and from the President's representative, the Assistant Secretary of State. So that, in our judgment, it would be simply duplicating the labor of the Court, as it certainly would be duplicating the labor of counsel.

We are entitled, I think, to urge upon your Honor's consideration that our answer was filed seven months ago, and that this motion should have been made promptly and not delayed until the eve of the trial.

I think as to the witnesses, the same witnesses will have to be called in any event, so far as we are concerned, if you strike out the part of our affirmative defense regarding the condition of the United States and the facts bearing upon the judgment of the President in authorizing and directing this sale.

As to our defense that it would be inequitable because there cannot be now a complete decision. So far as we are concerned, all the witnesses would have to be called even if this defense should be stricken out.

We are convinced that the same is true of the plaintiff's case unless the bill is going to be fundamentally amended and all charges of fraud, or suppression, of conspiracy, restraint of trade, and conspiracy to deceive the President of the United States are to be eliminated from the bill and the case rest on the simple, naked charge that the patents were sold for less than what the Government conceives to have been their market value.

I therefore submit that the ends of justice and the convenience of Court and counsel would be served by following the course suggested by your Honor; and after there has been a full opening on both sides, if counsel then want to press their motion to strike out any part of their answer, that can be argued; and also your Honor might want us to argue then the motion to dismiss the bill for want of equity. But in this important case it is highly probable that if these motions were argued, you would reserve decision and call upon the parties for their proofs.

THE COURT: I shall not defer the taking of proofs whatever happens, Mr. Guthrie. That is, whether we hear the arguments before or after, the evidence will go on on June 4th. That is, the suit will begin for the taking of testimony, too, with or without the decision on those motions, immediately on the closing of the arguments, without awaiting a decision; unless a decision is so patent that there is no possibility of error by a decision from the Bench.

MR. KRESEL: That is our understanding.

THE COURT: Because the case has been set for hearing. As to that, I am clear that the taking of the testimony in this case of witnesses must not be deferred.

MR. ANDERSON: I understood that to be the case, sir. But of course, a motion to dismiss a bill for want of equity is a demurrer, and you cannot in ordinary practice go into a hearing on the merits of long weeks of taking evidence, with a demurrer pending undisposed of. It must be disposed of, I think, one way or the other; and while, by agreement, we could go ahead and take the testimony and hear the whole case, we think that these motions and also the motion to strike out, which is practically a motion to limit the evidence in this case—and that is very important because it comes up right at the beginning—should be ruled on. Your Honor will have to rule on it one way or another. Why not rule on it in advance?

I quite agree with distinguished counsel for the defendant that wherever you can consolidate the action and argument, to save time, it should always be done. I should very much prefer it myself, but it seems to me these questions have got to be disposed of preliminarily.

The reason we have not made this motion before is that counsel himself has been out of the country during practically the entire spring, and illness in the family of one of the other counsel has made it imposible to take any proceeding in the last four months without inconveniencing counsel; and therefore we have waited until counsel could be heard. The case was continued on their motion so that the matter of this discussion could come up. I think these motions should be disposed of, but whatever your Honor rules, of course, will be satisfactory.

THE COURT: My difficulty is this, Colonel Anderson. I agree with you that if there are any motions the decisions of which would limit the evidence, would narrow the issues, of course, it would be well and wise and practicable to have those disposed of beforehand. But it seems to me that we have gotten so near to the trial of the case that, I will assume, I might err in a decision, and suppose I decided to strike it out or not to strike it out, it might prejudice the whole case. Suppose I should strike out some of the affirmative defense and then the case should be heard on the narrowed issues and should go to the Court of Appeals, and the Court of Appeals said there was error in striking out that defense, it would have to come back for re-trial for the taking of that testimony. Suppose I should reach a conclusion that the demurrer is sound.

MR. ANDERSON: I would want your Honor to sustain it at once and we could go right up.

THE COURT: So that I will not set the motions for argument until the fourth day of June. I will hear you that day.

MR. ANDERSON: If your Honor please, I want to make it quite clear that a number of times we wanted to make these motions, but we could not do it in the absence of counsel.

The Court: We will hear you on the 4th of June, and we will do the best we can with the motions at that time. If we can decide them offhand, possibly we will.

Mr. Anderson: The only one that is important is the demurer. I hope your Honor will sustain it, if you think it is good.

The Court: Now, then, with respect to Mr. Kresel's motion, may I get you both to help me on this point? How can the testimony with respect to value of patents, when sold to Americans or to American organizations be ascertained by a witness who tells me what the value of these patents would be to a German organization which cannot buy?

If you assume that testimony to be based on a royalty basis, that is one thing. But we are not working on a royalty basis. I am having difficulty in seeing how it is practical to apply this testimony to this situation. I am not asking for argument. I am only asking for you both to help me on that because it seems to me that we are trying to find out about something in this spot, and I am told that a certain condition exists over here, and there is no way to link them up as far as I can see. That is my very serious difficulty, and I will ask you to help me as much as you can on that, because it seems to me that it is not pertinent to the issue here.

Mr. Anderson: I will, at the proper time, attempt to give you argument on that. I understand your Honor's position as you have indicated it during the trial; and unless I can convince your Honor that the evidence when taken on the record, so that we can examine it, is properly connected with this subject, or sufficiently connected with it to make it at least admissible, why, of course, I assume that your Honor will strike it out, we will take an exception and the question will be disposed of. I am not going to make an elaborate argument on it.

The Court: No. I only called it to your attention here so that in the memorandum that you file on this motion, you will not overlook that particular phase of it.

Mr. Anderson: That particular question. I understand, sir. Your Honor indicated it this morning.

The Court: June 4, at what time shall we say?

Mr. Hershkopf: You said 10 o'clock. Do you mean Eastern Standard time or daylight saving?

Mr. Mahaffy: I think the order fixes 9 o'clock, Eastern Standard time.

The Court: Very well, 9 o'clock, Eastern Standard time.

(Whereupon an adjournment was taken until Monday, June 4, 1923, at 9 o'clock, Eastern Standard time.)

DEFENDANT'S PROOFS.

Wilmington, Delaware,
June 28th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:
Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Kresel: If your Honor please, before I call a witness I think it is proper that I should state to your Honor the reasons which have impelled us not to move, your Honor, for a dismissal of this bill of complaint.

To begin with, there is doubt as to whether the Court could entertain such a motion without the defendant resting. Were this the ordinary case, I should have no hesitancy to rest the defendant's rights upon the showing that the plaintiff in this case has made. Without meaning in any way to disparage the efforts of counsel that have represented the Government in this suit, I say in my opinion as a lawyer the Government has utterly failed to sustain its contentions in any respect whatsoever. And so, if this were the ordinary case, whether it were a case before a jury or before a Court, I should not hesitate to submit it upon the record as it stands.

But we conceive this to be an extraordinary case. The defendant in this case is in possession of property which in its opinion is property that is being held in a trust relation. This defendant, from our point of view, is a quasi-public agency and corporation; and when such a defendant is attacked and its motives are called into question, its duty is perfectly plain, and that is, whether the attack is well founded or ill founded, to leave no opportunity go by without making a complete disclosure and a complete defense. And it is that reason that has impelled us to make it certain that before this case is submitted to your Honor, these gentlemen, whose actions here have been called into question, should have the opportunity to take the witness stand here and under oath tell your Honor what they have done and why they have done it.

On the other hand, your Honor, I trust that I have made it perfectly plain that by going into a defense the defendant does not waive the fundamental principle which it has contended for, namely, that the question here involved is a non-justiciable question, that the Court can not and will not seek to substitute its judgment for the judgment of the Executive Department of the Government in a matter which was committed to its discretion by an act of Congress.

With that explanation, your Honor, I call Mr. A. Mitchell Palmer as our first witness.

Mr. Anderson: Will your Honor permit me, in view of the somewhat unusual statement of counsel on the record, to say just a word in reply from our point of view. I recognize the right of counsel to make a motion, to make any motion as to which he is advised in the interest of his client to make. I recognize his entire right not to make any motion, if he sees fit. And I recognize that counsel's opinion may be of value, and I do not doubt that he holds the opinion, frankly. Notwithstanding that, in view of the unusual expression by counsel of his opinion as to what has been accomplished in this case, I do not think it would be fair to the Government to have that statement without the statement on the part of the Government that while we recognize and it is hardly necessary to say that when counsel enter upon a defense of a case, they do not waive any of their positions in the law, but rather seek to sustain their positions, and while I recognize also the weight of the consideration upon counsel of a desire for a full exposition of any facts in connection with the case, and the Government at the outset of this case declared its desire to the same end—indeed I think the Government has gone beyond the usual practice in putting in evidence, in stepping over the usual strict limitations confining itself to evidence that might be helpful to itself, to the end that the full facts may go in. But with all that, since counsel has expressed his opinion, I think it is fair to say that the Government feels and will argue in this case that it has established every claim that it made in this case and introduced evidence under every paragraph except one as to which reservation was made yesterday; and, in the second place, that upon the law of this case the Government is entitled to a decree.

If counsel want to test that question at this stage we are glad to do it; if not, we are very glad to have the defense go in fully, and prefer it, to the end that all sides may be fully heard. But I have always taken the position in this case that it is a question of law and this case might properly be disposed of upon the bill and answer but for its peculiar character requiring, as we view it, an exposition of the facts.

A. MITCHELL PALMER.

A. **Mitchell Palmer**, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By **Mr. Kresel**:

Q. 1. Your name is A. Mitchell Palmer?

A. That is right.

Q. 2. And your residence is where?

A. Stroudsburg, Pennsylvania.

Q. 3. You are by profession a lawyer?

A. A lawyer.

Q. 4. Did you hold the office of Alien Property Custodian?

A. I did.

Q. 5. Do you remember when you were appointed to that office?

A. I was appointed late in October. I think my commission was dated October 22, 1917.

Q. 6. And prior to your appointment of Alien Property Custodian, had you held any other public office?

A. Yes, I had.

Q. 7. Will you state what office you did hold?

A. I had been a member of Congress from 1909 to 1915 and was, at the time of my appointment as Alien Property Custodian, Chairman of the Pennsylvania District Board under the Selective Service Act.

Q. 8. How long did you remain in the office of Alien Property Custodian?

A. From October 22, 1917, to March 4th, or possibly March 5, 1919.

Q. 9. Were you then appointed to a public office?

A. On March 5th, I qualified as Attorney General of the United States.

Q. 10. And for how long a period did you continue as Attorney General of the United States?

A. Until March 4, 1921.

Q. 11. The office of Alien Property Custodian was created by an Act of Congress?

A. It was provided for in the Trading with the Enemy Act, so-called.

Q. 12. Prior to the enactment of that legislation, was there any such office as Alien Property Custodian?

A. There never had been such an office in the history of the world.

Mr. Anderson: I do not know that that is material, but the distinguished witness is an able lawyer and I will ask him to confine his answer to responses to the question. It is a rather broad answer to say there never was such an office in the history of the world. The true evidence of that would be the Statutes, and so forth. I am not going to object to getting the preliminary examination in, but at this time I think it would be well to suggest that the questions be limited to direct answers to the question.

Mr. Kresel: You think I should put in the Statutes of the world.

Mr. Anderson: No, sir, I am not interested in anything outside of this Statute.

Mr. Kresel: I have no objection to striking out the remark.

The Court: There is no motion to that effect.

A. The answer is no.

Q. 13. At all events, when you took office in October, 1917, did you organize this office?

A. Yes.

Q. 14. Will you, in a general way, please state how you organized it; what bureaus you established; how you sought to administer this office?

Mr. Kresel: That is simply preliminary, Colonel.

Mr. Anderson: I am not going to object at present, unless it goes too far.

A. We built an organization, so far as we could foresee, of a kind that would provide for all the various duties of the Alien Property Custodian under the Trading with the Enemy Act, conceiving that the Alien Property Custodian could not possibly perform all the duties that were laid upon him by the act, in person, but that he had to build an institution for that purpose.

The Act provided, for instance, that after investigation the President might determine that property was enemy-owned and by demand take it over, and that power was delegated to the Alien Property Custodian.

Mr. Anderson: If your Honor please, I am very reluctant to interrupt a witness; but I think that possibly it would be better if counsel should direct his questions to specific points. Statements such as the witness is making and explanations such as he is making necessarily involve statements of law, statements of powers, things of that kind, which are not proper subjects for testimony; and I think, if I may suggest, that it will save me the necessity of objecting, as I am not going to be particularly technical, and will also facilitate matters if it could be possible to ask for the specific facts which counsel desire.

Mr. Kresel: I shall do that as far as it is possible; but in these preliminary matters it is not possible to ask specific questions. I shall no doubt direct the witness's attention specifically to points as we go along. I think, Colonel, you will find that there is nothing that he will say that will be detrimental to your interests in this respect.

Q. 14. (continuing). Will you proceed, Mr. Palmer?

A. So we divided the organization into several bureaus, putting at the head of each a chief of the bureau, and the bureau in every case expanded as the business of the office grew. They were, first, a Bureau of Administration, which was really a chief clerk's office having to do with the personnel and operation of the Alien Property Custodian's office as a department of the Government; a Bureau of Investigation, charged with the duty of passing upon all reports on enemy property which were received, and is a preliminary way for the custodian's attention deciding as to whether it was enemy property, and also charged with the duty of investigating all questions of alleged enemy ownership of property in order to determine the facts. Of that bureau I made Mr. Francis P. Garvan, of New York, the chief.

MR. ANDERSON: May I ask if there was any written order creating this bureau?

MR. KRESEL: I am going to inquire.

MR. ANDERSON: If so, I think it should be produced.

Q. 15. Was there a written appointment?

A. I do not think so.

MR. ANDERSON: I mean the written orders creating this organization, because the written orders would be the best evidence of what was the organization.

MR. KRESEL: Not necessarily, Colonel. It is not the sort of a thing I need prove by documentary evidence when I have the man who had the power and did the act.

MR. ANDERSON: If he gave orders, the orders are the best evidence.

A. (continued). I doubt very much if there was any written order. You understand, when I started this work I had no precedent to go by. The City of Washington was crowded with war workers. I was shoved off into a little back room behind a tailor shop, with nothing to begin work with except a lead pencil and a colored messenger at the door, and I had to work fast and build rapidly, and we did a great many things by oral orders which in normal times we possibly would do in the usual, careful and routine method of Government departments.

Q. 16. You have spoken of the Administration Department and the Bureau of Investigation. What other departments did you build up?

A. Then we created a bureau for the purpose of managing all the properties which came into our possession pursuant to our demands, and we called that, after some discussion, the Bureau of Trusts, and of that I made Ralph Stone, who was then president of the Detroit Trust Company, of Detroit, Michigan, the chief.

We had also a Bureau of Audits, charged with the duty of directing all the auditing of the office and all the auditing of enemy concerns and enemy properties which we took over, of which I made Haskins & Sells, certified public accountants, the chief, who acted through Mr. Homer A. Dunn, a member of their firm. I think possibly at the very beginning that work was done by Ross Brothers, Lybrand and Montgomery. Mr. Dunn soon succeeded them.

We had also a Bureau of Law, which, as its name implies, was composed of attorneys whose duty it was to advise all the other bureaus with respect to their legal rights, powers and duties. Of that bureau, after a little while, Mr. Lee C. Bradley, of Birmingham, Alabama, became chief.

We had also a Bureau of Sales, created after the so-called Sales Amendment of March, 1918, of which Joseph S. Guffy, of Pittsburgh, formerly general manager of the Philadelphia Company, was the chief.

That was the skeleton of the organization. The way the business flowed through the office was about in that order. Under the Act all persons having enemy property in their possession or owing money to an enemy person were required to make written reports to the Alien Property Custodian.

My first act almost was to give public notice that these reports must be filed within a certain period. I think I named thirty days. I extended that time from time to time until as I recall it the last day for filing reports under the law was December 20th.

Q. 17. 1917?

A. 1917. After our forms had gone out and our notices had been given wide publicity, the reports came in in a perfect torrent until I had received before Christmas something like 35,000 separate reports. Those reports were all examined by the Bureau of Investigation, whose people worked for weeks, day and night, in three shifts, twenty-four hours a day, to get through them; and it was only after they had passed them and sorted out the duplicates and that sort of thing, that the demands for the property were issued.

Q. 18. May I stop you there a minute, Mr. Palmer. You spoke of reports and now you have spoken of demands. Did you adopt forms on which such reports were being made?

A. Yes.

Q. 19. And as to demands, did you adopt forms of demands?

A. Yes.

Q. 20. You had to adopt those yourself? I mean, you had no precedents, or anything of that sort?

A. We had to prepare and adopt them, both.

Q. 21. Did you want to say anything further when I interrupted you?

A. I was going on to describe, if I understood your question properly, how the business flowed through the office; that is all.

Q. 22. Yes, please go right on.

A. After these reports were gone over by the Bureau of Investigation, if it was determined by my subordinates that it was enemy property, demands for the property were prepared for my signature. I signed the demands and they were served; and when the property came in, it was taken charge of by that division in the so-called Bureau of Trusts which had to do with that particular kind of property.

There were a large number of divisions in that bureau. They continued to manage it and to operate it, to see that depositaries were appointed for the funds and income received and properly credited and deposited in the Treasury of the United States, under the advice of the Bureau of Law, which had a man assigned to each one of these divisions as its special counsel, and acting constantly in conjunction with the Bureau of Audits, who were directed to make any examinations of these properties that the divisions in the Trust Bureau saw fit to require.

Q. 23. In addition to the Bureau of Investigation in your own office, which was under the immediate direction of Mr. Garvan, did you avail yourself of other information from governmental agencies as to the enemy property?

A. Yes.

Q. 24. Prior to the amendment of the Trading with the Enemy Act that was passed in March, 1918, had you as Alien Property Custodian received information with reference to the extent of German property in the United States?

A. Yes.

Q. 25. I wish you would state as briefly as you can what information came to you in your official capacity with reference to the extent and character of German holdings in the United States?

Mr. Anderson: May it please the Court, I understand of course that all this evidence is taken subject to the general objection. I have not made it yet, I overlooked it for the time. Therefore, I wish now to put upon the record the fact that the plaintiff objects to all evidence of this witness heretofore taken, and, to the end that the objection may be made in form, moves to strike out the same as immaterial and irrelevant to the issues in this case, and for the further reasons stated in my opening statement to the Court, which I will not repeat in view of the method under which we are proceeding, and in the various discussions before the Court which have taken place as appear on this record.

For convenience I will ask that counsel agree and the Court consent that this objection may be taken as applying to every question and every answer and, if the same be admitted by the Court, that an exception be awarded the plaintiff thereon, saving the necessity for its constant renewal. Is that satisfactory, Mr. Kresel?

Mr. Kresel: Yes, sir.

Mr. Anderson: Then with that understanding I will avoid objections as far as possible during the examination of the witness unless some specific reason comes up.

As to the particular question, I feel constrained to object on the ground that it is too indefinite and calls for information of such voluminous character if answered in accordance with its terms, that it would be equivalent to a complete history of the work of the Alien Property Custodian, which I assume cannot be relevant to this issue.

I will have to ask that counsel make his questions specific as to the information which he desires, to the end that I may make such objections thereto as may be necessary. I cannot object to a question of this kind specifically, for the reason that some of the information as to which the witness is asked might be relevant to this case and some might not.

In the next place I wish to specifically object upon the ground already indicated in the argument, that any evidence in this case as to the activities of the Germans prior to our entrance into the war—which, as I have already pointed out, have been tried and settled in a higher forum, and as to which I can join in condemnation equal to that of counsel for the defendant—cannot be material to this case. That has been argued and I am not going to do more than state it.

I do not know whether I have made my objections very clear, but I hope they are clear enough for your Honor to understand the position of the plaintiff, to the end that we may avoid repetition. But as to this specific question I must object on account of its generality and indefiniteness, and must respectfully ask that counsel put his questions specifically to the end that there may be specific answers, that I may be able to object to the question and also prevent evidence going in which would be not responsive to a proper question.

Mr. Kresel: I shall endeavor, if your Honor please, in my examination of this witness, in so far as possible to put specific questions to elicit specific answers. These matters that I am now inquiring about are preliminary matters having to do with the organization and the operation of the office of Alien Property Custodian in the early days.

THE COURT: The purpose being to give a setting for the specific acts here in question?

MR. KRESEL: Exactly; and, as your Honor will notice from the question, I am tending toward the time when the March 28, 1918, amendment to the Trading with the Enemy Act was before Congress. We all realize the importance of that particular amendment.

I do not agree with Colonel Anderson that the operation of the Alien Property Custodian's office is immaterial in this case. On the contrary, I think it is of great materiality, and while it is not my purpose to burden this record with a complete history of the operation of that office, did I think it was necessary for the protection of the interests of this defendant to place before the Court a complete history of the operation of that office, I should have no hesitation to argue before your Honor that we would be entitled to do that.

My present question is directed to showing by this witness what information he had before him in his official capacity as to the extent and character of the German property in the United States. I shall follow that by inquiring as to what he had done in managing that property between the time that he took office and the time that the March amendment was presented to Congress; because it is my purpose to show that whereas one policy was being pursued by the Government under the Act as it was originally enacted, namely, that of having the Alien Property Custodian simply conserve the property, the amendment of March, 1918, made a complete change in the policy of the Government for the treatment of this property.

Mr. Anderson: May I reply very briefly, sir. The question that counsel has asked for calls for a complete statement of the information of the witness prior to March 28, 1918.

Mr. Kresel: A statement as to the kind and character of property?

Mr. Anderson: Yes. The witness has said that prior to the thirty-first day of December, I think, some 35,000 different properties or trusts were reported to him. If the question were answered in accordance with the terms of it, it would be necessary for him to tell about the entire 35,000. There is one trust involved here. I could not object to the question specifically or to have the answer of the witness go out as not responsive to the question for the reason that the witness could, with great ability, and I do not doubt with great interest to us all, as a matter of historical knowledge, speak from now until adjournment time this afternon, in response to that question, and never go outside of the limits of the question.

Of course, while I recognize that this witness, being a distinguished lawyer, will not even avail himself of such a large opening to make a speech of that kind or go outside of what he concedes to be relevant to the question, yet, in the defense of the interests which I represent here, I must ask for a more specific opportunity to limit this evidence and I therefore object to the question very earnestly.

In the next place, the policy of Congress in this matter is, I presume, to be taken from the Acts of Congress. What the witness may have known about the German property can have no bearing upon the situation, as I see it, or what his knowledge may have been on the subject, because, while he had been a leading member of that body, he had, of course, resigned when he became Alien Property Custodian.

For all those considerations, I think it is very essential, or I would not make this objection, that we be given the opportunity which was given the other side. If your Honor will recall, your Honor held me quite strictly—and I do not say that with the slightest suggestion of criticism—in the examination of witnesses for the plaintiff here to specific questions, many of them being objected to on account of being too general. I recognized that the technical objection was good in many cases and required the witnesses to confine themselves very strictly in their responses. Now, I must respectfully ask that the same rule—as I know your Honor will—be applied to this evidence, no matter who the witness is or what the conditions are.

Mr. Kresel: I am certainly not asking the Court to apply any different rule.

Mr. Anderson: I did not mean that you were. I simply say that that rule was followed.

Mr. Kresel: I do not think it was necessary to call attention to that. I press my question. I think I am entitled to have it answered in the form I have put it.

The Court: May I be told what the question is?

(Q. 25 repeated as recorded above.)

Mr. Kresel: I have limited it, as your Honor will see, simply to the character and the extent of the holdings.

The Court: Now, then, as to its materiality. With respect to a few questions asked by the Governor, I have expressed my views. At times, I did not. At no time did I rule upon the materiality or relevancy or pertinency of the testimony. All questions and all facts that the Government desired to put in, it was invited to put in, prior to its formal close.

I have no desire or purpose or intent to apply a different rule in any particular to the testimony offered by the defendant than to that offered by the Government.

So far as the specific question is concerned, if my view of it is correct, namely, that its purpose is merely to furnish a background or setting from which the acts here specifically in question may be more intelligently understood, I take it that the question is not objectionable. But if the purpose of the question is to call forth from this witness a prolonged, detailed statement of facts which will do more than furnish a setting for the transaction herein complained of, I take it that it is objectionable and I think it proper, therefore, that counsel for the defendant should at this time so modify or amend the question now put to this witness as to indicate the scope, as well as the character of the information now called for.

Q. 26. Mr. Palmer, I wish you would state what information you had as Alien Property Custodian as a result of the operations of your office between October, 1917, and March, 1918, with reference to the amount of property German-owned in the United States?

Mr. Anderson: Same objection, sir; and in addition, I think he is asking this witness for information derived from the operations of his office, which is an extremely general source of information and might call for the most indefinite hearsay, newspaper clippings and everything else, because he stated he kept them; and I ought to be able to test, at least, whether it is his own knowledge or coming from newspapers and things of that kind.

THE COURT: I want to add to what I said with respect to the previous question that I take it, Colonel Anderson, you do not deny that where the terms of a Statute of Congress, as well as a contract, are open to different interpretations or constructions, that interpretation or construction may be aided by the surrounding circumstances and facts, namely, the situation which it was intended to remedy or relieve.

MR. ANDERSON: I do not deny, if your Honor please, the general principle of law which your Honor has stated. Of course, it is well recognized. But I do state that in this case, as to this particular statute, it has no application because the language of the statute is perfectly clear. I want to say, however, that your Honor may not misunderstand me, that while I object to it as immaterial and irrelevant, I recognize under your Honor's ruling in this case that that would probably be overruled, provided the question was properly limited and specifically expressed.

THE COURT: I thought I probably had not made clear the reason for stating that I was willing to hear the facts which constituted the background or setting, which probably did not indicate my true meaning. The question is what?

(Q. 26 repeated as above recorded.)

MR. ANDERSON: I would like to add one further objection, if your Honor would allow me: that all this information is already in the record in the form of an official report from this witness.

THE COURT: Is that report in as a disclosure and statement of facts; or is it in merely as a report?

MR. ANDERSON: I understood counsel to introduce it as an official report of the Government. What its value is as evidence, I am frank to say I do not know.

Mr. Kresel: May I answer that question, your Honor?

The Court: Yes.

Mr. Kresel: If the report which Colonel Anderson refers to is the chemical section of the report of Mr. Palmer to the President in February, 1919, then I direct attention to the fact that that portion of the report was introduced by the Government as its evidence, and I quite agree with Colonel Anderson that that report is in evidence, speaks for itself, and is proof of the facts therein contained, and that the Government is bound thereby beyond any question. But that is no reason why I cannot have this witness answer the particular question that is now pending.

Mr. Anderson: The counsel introduced the entire report, if your Honor will remember, and also the chemical section was included as an exhibit in the answer in this case by the stipulation that was introduced by both sides.

The Court: Are you willing, then, to concede now, in order that there may be no question about it in the future, that the report introduced as Defendant's Exhibit No. 30, being report of Mr. Palmer, as Alien Property Custodian, to the President, and by him submitted to Congress, shall be taken as evidence of all facts therein stated? Is that agreed upon by counsel?

Mr. Kresel: I did not know whether the question was directed to me or to Colonel Anderson.

The Court: The question is directed to each of you.

Mr. Kresel: Of course, in so far as we put in that report we put it in as proof of the facts therein contained, and certainly the Government must take that position with reference to the section of the report that it introduced.

The Court: What I am trying to get is whether it is conceded on both sides that not the chemical section only of the report, but the entire report may be looked at by the Court in considering this case as evidence of the truth of the facts therein stated, or must it be viewed merely as a statement of the situation contained in the report and submitted to Congress, and as not evidence of the truth of those statements?

Mr. Kresel: May I say to your Honor, I have already answered the question directly as far as the defendant is concerned. May I state further, with all due deference to your Honor, that the question is not open for decision by counsel. The authorities are to the effect not only that official reports are proof of the facts therein contained, subject, of course, to be disproved by the opposing side, but where, as in this case, the Government itself places in evidence the whole or a portion of an official report, the Government is bound thereby, not only to the extent that it shows that a report was made containing certain statements of fact, but is bound by it as proof of the facts as though they had called a witness who had under oath testified to those facts. There is no question about—I say there is no question; my reading of the authorities has convinced me that that is a question that is beyond any doubt.

The Court: I thought possibly counsel might be able to agree upon this, so that that question could be behind us for all time.

Mr. Kresel: So far as we are concerned, we answer your Honor's question in the affirmative immediately, namely, that we feel that the proof of the report is proof of the facts and the truth thereof. We have not yet heard from counsel for the Government.

The Court: Do you question that statement?

Mr. Anderson: That it is proof of the facts and the truth thereof?

The Court: Yes.

Mr. Anderson: I am perfectly willing to have those reports considered to be proof of the facts to the same extent as if testified to by a witness. I am not objecting to that, but the legal effect of it I do not concede as counsel has stated.

The Court: Then, if we cannot agree to that, may we have the question?

(Q. 26 was repeated as follows):

"Q. 26. Mr. Palmer, I wish you would state what information you had as Alien Property Custodian as a result of the operations of your office between October, 1917, and March, 1918, with reference to the amount of German-owned property in the United States?"

Mr. Anderson: I have one point, your Honor, which I do not think I made clear. Assuming that what your Honor has said would apply in this case, that the prior facts and circumstances would be considered as a construction of this act, which I, of course, do not concede, what Mr. Palmer may have known is a matter of not the slightest consequence so far as that is concerned (I do not mean that is any suggestion that Mr. Palmer's knowledge was not important in connection with this whole matter); but as to what Congress did, the only thing that Congress could be affected by would be matters that were actually within its knowledge officially, and it is rather difficult to prove what those facts are, I should imagine; but the question calls for the knowledge of this witness, and as he was not a member of Congress, I cannot see that it would have any relation to it.

The Court: As now advised, I do not see the pertinency of this question. I do not see that it is subject to any other objection than that of irrelevancy. So the answer to it may be taken under the general rule, if counsel so desire.

Q. 26. (Continued.) Will you answer, please?

A. The reports which I have mentioned and which were filed during that period, all of which were voluntary reports, made under the law, disclosed enemy-owned property in this country aggregating more than five hundred million dollars in value, according to the appraisals which we had made, property located in practically every—well, you asked only as to the amount.

In addition to that, there was a large body of enemy-owned property whose ownership was at that time undisclosed, but as to whose enemy ownership we had knowledge from various official sources.

We had at our command all of the Secret Service and Intelligence Agencies of the Government in every department, who were under instructions to send to us all information which came to them relative to enemy-owned property in the United States, including the War Trade Intelligence, the War Department Intelligence, the Naval Intelligence, the Bureau of Investigation of the Department of Justice, the Treasury Secret Service; and we had, in addition to that, reports in writing constantly from the Secret Service and Intelligence Bureaus of all the allied countries, who were constantly sending to us through their diplomatic representatives and otherwise, all the information they had relative to the ownership of German property in this country.

In addition to that, we had at our command all of the wireless messages which had been transmitted across the sea between Germany and the United States for a very considerable time immediately preceding the war, running into tens of thousands of messages, concerning which I employed a large force of persons to decode and translate and pick out of the messages those which referred to transfers of German property made in this country by their owners in Germany for the purpose of avoiding the consequences of a state of belligerency between the two countries. Based upon that information at that time, not disclosed by reports from the persons having the property in charge, but from these various agencies, there were in addition to the five hundred millions of property possibly a couple of hundred millions more, most of which we afterwards got.

Q. 27. We will come to that. We have now spoken of the extent of the German holdings here in amount. Will you please very briefly indicate the industries in which you found such German holdings?

Mr. Anderson: Same objection.

A. The German investment in this country was in a wide variety of industries and in a wide variety of commercial and financial operations, extending into practically every State in the Union, in Porto Rico, the Virgin Islands, Panama, Hawaii, Alaska and the Philippines.

They had large interests in textile manufacturing, chiefly in New Jersey. They had large interests in metal concerns in New England and Philadelphia. They were raising rice and tobacco and sugar in the South and in Hawaii and in the Philippines. They had large interests in some railroads in this country. They were in the cement business, in the banking business, in the manufacture of ship valves, of machinery of various kinds, especially the so-called inside transportation machinery; they were in chemicals, dyestuffs and pharmaceuticals.

They made—oh, pretty nearly everything. I used to say "from candy to lead pencils." I think the first concern we took was a lead pencil factory.

Q. 28. You took over as Alien Property Custodian such concerns as you determined to be German-owned. Did you operate them if they were going businesses? I am speaking now only of the period prior to March, 1918, you understand.

A. Yes. If the German interest in the American business was stock in an American corporation owning the business, I demanded and took over the stock. If that stock was a controlling interest in the company, I ousted the Board of Directors and elected directors representing the new stockholder, namely, the A. P. C. If it was a minority interest only in the company, I demanded and always received representation on the Board of Directors proportionate to the ownership of the A. P. C. in the stock. In that way, through my stockholders whom I was appointing,' I operated all these American businesses enemy-owned.

Q. 29. And, speaking generally, prior to March, 1918, were the operations of such concerns profitable?

A. They were highly profitable.

Q. 30. Was there any special reason therefor?

Mr. Anderson: If your Honor please, I object.

Mr. Kresel: I withdraw that.

Q. 31. Did you, prior to March, 1918, as Alien Property Custodian sell any enemy-owned property?

A. It seems to me I sold a little, some commodities; that might be to prevent waste. I am not certain when that was, but we made some early sales of commodities.

Q. 32. In other words, under the act as originally enacted, you, as Alien Property Custodian, made sales of enemy-owned property in your possession only when necessary to prevent waste?

Mr. Anderson: If your Honor please, I object.

The Court: I think the objection is well taken, to the form of the question.

Mr. Kresel: There was no answer to it, your Honor, so I will reframe the question.

Q. 33. Did you make any sales of enemy-owned property prior to the amendment of March, 1918, except in cases where it was necessary to prevent waste?

Mr. Anderson: I object also to that.

The Court: I think the question is still open to the same objection.

Q. 34. Prior to the amendment of the act in March, 1918, did you sell any enemy-owned property in your possession that was not perishable?

A. No.

Mr. Anderson: I object to that, on the ground that the question whether it was perishable is a conclusion. The law is perfectly clear in this case, and one man may think a thing is perishable and another may not.

The Court: Who, in your judgment, Colonel Anderson, was to determine that? Was that a justiciable question that had to be determined by the courts before it could be acted on by the Alien Property Custodian?

Mr. Anderson: I think that this witness can state, and subject to my general objections I do not object to his stating, what property he sold, which is a matter of record, and therefore, the best evidence is the record evidence. I think he can state or it can be shown here what property was sold and the character of that property and then the question of the construction of the law, which, of course, the witness is getting at, can be taken up by the Court. But if we are going into the sales of property, he can only show the fact that he sold certain property and the character of that property; and the best evidence of that is the record of the sales, and I object to any other evidence. If we are going into that question, let us get it right.

Mr. Kresel: I think, your Honor, the question was answered before Colonel Anderson made his objection. I may be mistaken. Of course, if it was, it may be stricken out for the purpose of your Honor considering it.

The Court: The question now is what?

(Q. 34 repeated as above recorded.)

The Court: I think the objection to that is well taken. You may take the answer under the general rule, if you want to.

Mr. Kresel: Will you answer the question, please?

A. No, I did not.

Q. 35. There was an amendment to the Trading with the Enemy Act pending before Congress in March, 1918. Did you in your official capacity have anything to do with proposing that amendment?

A. I prepared it, and under the direction of the President, submitted it to the Congress.

Mr. Anderson: If your Honor please, what the witness did in his official capacity I will have to object to, and I move to strike out the reference to the direction of the President upon the ground that it is not responsive to the question. He was asked whether he had anything to do with the passage of that amendment in his official capacity. The only people who could pass that amendment was Congress; and if he had anything to do with it, assuming that the evidence is admissible at all, which, of course, we do not admit, then he can state what he did. But he cannot go back into directions of other peole and what they communicated to him.

Mr. Kresel: Colonel Anderson forgets the form of the question. I did not ask this witness what he had to do with the passing of the amendment. I asked him whether he had anything to do with proposing the amendment.

Mr. Anderson: He can state what he did, but the question of who directed him or how he was directed is not within the question.

Mr. Kresel: I consent to strike out the words "Under the direction of the President." I will bring that out by specific question .

The Court: Is the question as now amended objected to, Colonel Anderson?

Mr. Anderson: Only the general objection, sir.

The Court: You may proceed, Mr. Kresel.

Q. 36. Prior to your proposing this amendment, did you have a conference about it with the President of the United States?

A. I did.

Mr. Anderson: That is objected to.

The Court: Your general objection?

Mr. Anderson: Yes, the general objection and I think the question is subject to further objection that if there were any written communications on this subject, they must be produced. But I do not know that the question quite called for that.

Mr. Kresel: The question has been answered, your Honor.

Q. 37. Please state your best recollection of the conference that you had with the President of the United States with reference to this proposed amendment to the Trading with the Enemy Act, giving the date as near as you can of the conference. Do not answer until Colonel Anderson has an opportunity to object.

MR. ANDERSON: If your Honor please, in addition to my objection as to its immateriality and irrelevancy and the further objection as to matters relating to the Act of Congress, which we claim is perfectly clear, I want to add the further objection that the Constitution of the United States provides the manner by which the President may communicate to Congress his wishes.

Unless such communication was made to Congress, it is of no materiality in this case, even assuming that it would be in that event, because what this witness may have known and what the President may have said to him or he may have said to the President, I take it, is a matter of no importance—assuming that that question can be gone into at all in this connection.

In the third place, if there was any communication of the wishes of the President to Congress, it must be addressed to Congress in a constitutional manner to have any effect upon Congress or to have the force of a communication by the President. If, therefore, it is intended to connect up the President with the passage of this Act, I respectfully suggest that the only means by which that can be done would be by producing the message or communication from the President to Congress.

I think that is of very great importance as a precedent. If we are going to inquire into the relations between Congress and the President, other than those official relations expressed in the message, I think we are going into a very broad field and a very dangerous field.

Your Honor may suggest and perhaps counsel may suggest that the Government has in this case entered upon the inquiry as to the communications to the President, but they have only been as to the statement of facts upon which the President predicated the exercise of his discretion, and not beyond that.

As to the communications between the President and Congress, I think that they can only be inquired into, if at all, to the extent of official communications; and whatever the President may have said to this gentleman or whatever he may have said to the President is certainly immaterial here and I conceive that it has no possible bearing upon the case and I do not think it would be a proper subject of inquiry.

Mr. Kresel: Colonel Anderson entirely misconceives the purpose for which I am seeking to elicit this testimony. I am not seeking to elicit the fact that the President sent any message to Congress by Mr. Palmer. It is not the law that such messages must be in a certain way, even if I were trying to prove that. But that is immaterial.

What I am trying to show is that this officer who, according to the Trading with the Enemy Act, must at all times be acting under the direction and control of the President, reported the results of his investigations and what the administration of his office up to that time had taught him to the President, who was responsible for the administration of this Act, and discussed with him the necessity of having the Act amended.

What Congress did I shall show in a minute, but I am not seeking this information upon the theory that the President was, by means of Mr. Palmer, sending any message to Congress. I claim I have a right to show what information was conveyed to the President and what instructions were given by the President to Mr. Palmer.

The Court: The charge of the bill of complaint in this case and the position of the plaintiff in this case is that the President of the United States was misinformed, mislead, and in effect deceived with respect to the facts. It seems to me that under such allegations and charges the inquiry of the defendant, with respect to facts within the President's knowledge, should not be restricted to the particular facts but that it should be open to the defendant to show, if it so desires, the full nature and scope of the information with respect to the alien property that was within the knowledge of the President of the United States at any time prior to the execution by him of the orders of December 3d and subsequent orders.

I think the objection to this question is not well taken and you may take the answer.

Mr. Anderson: Your Honor will allow an exception, of course.

The Court: An exception to all adverse rulings throughout the case will be understood to be reserved by either party.

Mr. Kresel: Mr. Palmer, will you proceed.

A. The date of the conference I cannot give exactly, but it was early in the month of March, 1918, immediately after the President had directly submitted to a committee of the Senate a proposed amendment to the Trading with the Enemy Act.

Mr. Anderson: If your Honor please, that is certainly not responsive to the question.

Mr. Kresel: He is just fixing the time.

The Court: I understand that he is fixing the time and not attempting to prove the facts. It is simply an attempt on the part of the witness to fix the precise time, and has no other purpose, so that it may be checked up by subsequent evidence in this case.

Mr. Kresel: That is the entire purpose.

Mr. Anderson: Then I take it that counsel concedes that the submitting of any amendments by the President is not evidence of the facts stated therein, but merely for the purpose of connecting up this interview.

Mr. Kresel: What is that?

Mr. Anderson: The statement by the witness that the President submitted to the Senate some paper or some recommendation, which, of course, was in writing, is not to be taken as evidence of that fact, because if he is going to testify what he submitted to the Senate in the way of an amendment, I want to see it.

Mr. Kresel: Colonel Anderson, I will say now that this mention by Mr. Palmer of the fact that the President had submitted to Congress something is not to be binding on you. It was mentioned simply to fix the time of this conference. Is that satisfactory?

The Court: You may complete your answer, Mr. Palmer.

A. (continuing) And I told the President that I had observed that he had sent down a proposed amendment to the Trading with the Enemy Act giving him the power——

Mr. Anderson: That is in writing, is it not?

Mr. Kresel: This is the conversation he is telling now. Hasn't he a right to tell the conversation?

The Court: I understand the nature of your objection, Colonel Anderson. I will let you state it at length after Mr. Palmer has finished. I think it is not well taken. I think Mr. Palmer is relating conversation with the President and not attempting to give primary evidence of written documents.

A. (continuing) ——to take over the Hamburg-American Line and North German Lloyd Line docks and terminals at New York and that it seemed to me that it was the proper time, in connection with that amendment, to have the Congress carry in the same appropriation bill, as that amendment was being proposed to the appropriation bill as a rider, another amendment which would give to the Alien Property Custodian the full and unrestricted power of sale of enemy property.

He called my attention to the fact that I had issued, immediately after becoming Alien Property Custodian, a public statement which I had submitted to him and which he had criticized and corrected; the statement finally going out in the form entirely approved by him, which statement had been to the effect——

MR. ANDERSON: As to that statement, I would like to have it produced.

MR. KRESEL: May this witness finish his answer, then Colonel Anderson make any suggestion?

MR. ANDERSON: But I must interrupt for the purpose of making an objection.

THE COURT: You are now identifying the statement to which he called your attention in this conversation?

THE WITNESS: I am detailing my conversation with the President, in which we recalled to each other what that statement was at the beginning.

THE COURT: Then you may proceed.

A. (continued) ——that the Alien Property Custodian was a mere conservator of these enemy properties, that the properties were being taken over by the Government, and would be managed and operated by the Alien Property Custodian solely or chiefly because of the fact that their owners were under a disability growing out of the war conditions to provide for their own property, and giving assurance to the country that the property of Germans resident in the United States would not be touched, and that sales or transfers were not contemplated.

I told him that we were both agreed at the time that that statement was issued that that was not only what the act meant, but that is what our policy ought to be and would be, and that it had been my policy up to that time. And he then wanted to know what has caused me to desire a change in that policy or suggest a change in that policy. I told him that we had found out a great many things about German property since I had been in office, that no one had ever known or suspected before. I told him that, speaking in a broad and general way, the German property in the country naturally fell into two classes, in the one class was the private investment of the individual German subject in this country, who was led to invest his savings, generally in small amounts, in mortgages or other property in the United States, because he was satisfied that the opportunity for profitable returns upon his investment here was great, without any other thought than simply making a safe investment; that those investments constituted the majority in number of German holdings here but only a very small minority or a very small portion of the total amount; that the second and larger class, and far more important class of German investment in this country, my investigations had shown me to consist of investments made in more or less large amounts in commercial and industrial concerns in the United States, very frequently key industries of great importance, by interests in Germany of the same kind that we generally understood at that time to be behind the war, the so-called junker class, and in many cases, my information was financed and actively supported and aided by the great German financial institutions; that many of these concerns were closely affiliated with all the powers that be in Germany, members of the royal family itself having made investments over here of a peculiar and interesting nature which I described to him, and that we had become convinced, I told him, that all this investment was in a sense hostile to American interests as a part of the deliberate plan of Germany to conquer the world by trade—it was an invasion of American commercial and industrial fields purely for the German benefit.

I told him that in addition to that I had found many of these industrial concerns, in fact most of them, were manned by Germans, frequently not naturalized citizens, sometimes naturalized; that we had run into cases where managers of these plants had been naturalized under written instructions from the Germany owners, in order to be more effective in their work; that many of them were even then what I called spy centers, filled with German propagandists and all of them would be sedition centers if they were allowed to continue in their present way.

I cited some instances. For instance, the German-American Lumber Company I recall as one example, a concern worth several million dollars, located in Florida on Pensacola Bay, in which a member of the royal house of Germany was a chief stockholder. He had never seen the property, he had never taken anything out of it, he had continued to increase his investment until his concern owned every advantageous place on the finest harbor in the Gulf of Mexico, the nearest harbor on American soil to the Panama Canal. When we took that plant, instead of finding its files filled with interesting and important data with reference to the lumber business, as we expected, we found it was a mere storage place for Pan-German literature, a distribution center for propaganda in this country.

I called his attention to the fact that we had discovered other properties which were being similarly used, going into some detail. He asked me why I thought that even that was sufficient justification for changing our program and selling these properties instead of simply continuing to conserve them. I told him that my observation had been that practically all of these great properties that I was managing were profitable, most of them were profitable due entirely to war conditions, they were engaged in the manufacture of articles necessary for the war or whose price had been largely enhanced by the war conditions, and that it seemed to me, as I hoped it would seem to him and to the Congress, an absolutely unmoral proposition that the Government of the United States should at its own expense be carefully operating these great properties and making tremendous money, which would presumably be returned to their stockholders eventually, out of the very war for which the stockholders and their other friends in Germany were responsible.

It offended my sense of decency and justice, and I said I thought we would be doing all we would have to do if at the end of the war we made an accounting for the value of the properties as the Germans left them and as we took them over, rather than for the enhanced and tremendously increased values growing out of our management of the war and out of the war itself.

For instance, over in New Jersey the great textile mills were engaged in making millions and millions of dollars worth of army cloth, and practically all of them were making their money out of the war. Not only that, I told him, was I convinced was a good reason why we should convert these properties into money, but it seemed to me that the time had come when we had sensed the German program in its desire to conquer the world, that what it was most anxious to do was to capture all the markets of the world and strengthen its foothold everywhere, and especially was that true of America, where it hoped to increase its commercial and industrial hold, that we could, it seemed to me, strike no more effective blow as a war measure than to do that which would give notice to Germany and to the powerful financial and industrial industries behind the Kaiser in the war, that no matter how many armies they might defeat, or how many French cities they might destroy, or how many countries in Europe they might overrun, one thing was gone, and their war had been lost on the American battle front, that they had separated from themselves forever all of these tremendously valuable properties in the United States which were, in their mind, the gateway, the entrance to a great expansion of German control of industry and commerce in the United States.

I told him from what I had been able to learn that was a matter of vital concern to Germany, what we were going to do with respect to these properties was being very seriously considered over there, and that the time had come right then in my judgment to strike a highly effective blow in the war. I called his attention to the fact that it was a time when every nation in the world was getting together every weapon it could lay its hands on to swat the Germans with, if I may use that term. It was the darkest hour of the war.

I referred to the fact of the conditions on the war front, with which, of course, he was entirely familiar, and we discussed them. It was about the time that General Haig had said that Great Britain was fighting with its back to the wall. I told him of the recent statement that Mr. Baker had made to me and to others.

Q. 38. Secretary Baker?

A. The Secretary of War—who, on returning from the front, told a party of twenty men at the house of

Mr. Hugh Wallace, who were gathered there for the purpose of listening to him, the very day he got back, that it was the general opinion of leaders of the allied forces in Europe, and it was his opinion that Paris was about to fall, and that the Channel ports would be turned. Although that was serious, he said he thought it was not fatal; but to the rest of us men of the Administration gathered there it sounded fatal. At any rate, it brought gloom to every countenance and distressed every heart.

That was the time when it was generally believed that things were at their very lowest. I asked the President to let me go down to the Congress and ask the Congress to hit the Germans where it would hurt, to strike a blow from which they knew they could never recover, and let them know right now, as an act of war, that we proposed to Americanize this property which they had.

He said he had come to the conclusion that that was the correct view to take of the situation; that his idea in asking for this amendment with reference to the Hamburg-American Line docks and the North German Lloyd Line terminals was that it would put into the Treasury a certain amount of money representing their value, put the title to the properties in the United States, so that when the United States finally got to the Peace Conference, it could be said that the matter of the sale was a closed incident, the money was in the Treasury, and they would negotiate with reference to the disposition of that, but they would not even consider the question of ever returning the docks and the terminals. He wanted to be in that position.

And with the understanding between us that the policy was to be changed in respect to these industrial and commercial and important properties in the United States, and that the private investment of the individual German subject was to be left intact, so that if we wanted to, it might be returned in kind, I submitted to him the amendment which I proposed to the act. He acquiesced in it. He asked me to go down and submit it to the Congress and urge its passage.

Q. 39. Did you submit the amendment?

A. I did.

Mr. Anderson: One minute, please. If your Honor please, I want to move to strike out this very interesting statement of the witness for the reasons already stated; for the further reason that much of it relates to matters in no way referring to this act, such as the Hamburg-American terminals, conversations with other persons and the President of the United States, statements of other persons which are purely hearsay and not evidence; but I will make objection to the end that I may reserve the point for future consideration, and that is, that in view of the fact that the President of the United States, and, as I take it, an ex-President of the United States, cannot be summoned into this court to testify, either under law or propriety, that a conversation with him is not evidence.

The Court: Colonel Anderson, I have been puzzled by this throughout. Will you help me? Then, is it possible to charge a President of the United States with ignorance, and by that charge convict him of it without an opportunity for denial?

Mr. Anderson: No, sir.

The Court: Then, how would it be denied?

Mr. Anderson: It would be denied in this way: that you could not in any proceeding, in my judgment, since you cannot call the President of the United States into a court, and, in my judgment, you could not call an ex-President to testify as to any matter that occurred while he was President——

THE COURT: I think there is no doubt about that, Colonel Anderson.

MR. ANDERSON: If you could do it, you would not do it.

THE COURT: That does not call for an opinion. I think it cannot be done.

MR. ANDERSON: And, therefore, the only thing that could be produced in the event that the condition became such that it was necessary to show that the President was not informed, or was misled, would be written evidence of that fact, and the conclusions would have to be drawn from that written evidence or documents, and, of course, all the surrounding conditions.

I would suggest, and, therefore, present for the consideration of the Court that conversations with the President of the United States are not, in any event, admissible. And I will say in that connection that but for the fact that we took the position that Mr. Polk was acting in a purely personal capacity and entirely outside of any authority of the President of the United States, as a matter of law, I should not have called Mr. Polk into court. I hope I have made myself clear.

THE COURT: Entirely clear.

MR. ANDERSON: And I may be unsound on it. I recognize that since the Burr case, so far as I know, the question has never arisen, and it is such a delicate question that I discuss it with great hesitancy; but I feel it my duty to raise the question.

MR. KRESEL: The question has arisen as to the power of the Court to summon the President into court. That is settled law.

MR. ANDERSON: No, I do not mean that. I

mean the question of matters concerning the President.

MR. KRESEL: And that question likewise has been discussed by the cases.

MR. ANDERSON: I do not recall it for the moment.

MR. KRESEL: The cases have uniformly held, as Mr. Guthrie in his argument pointed out to the Court, that the courts would decline to entertain jurisdiction of matters which the Executive had determined upon, which were, in his discretion, in the exercise of his authority.

MR. ANDERSON: That raises our entire argument, if your Honor please.

THE COURT: My difficulty with that, Colonel Anderson, is that it seems to me that a person who is subjected to a charge before a court, in any event should not be charged without the opportunity of a defence. It seems to me that the inevitable conclusion to be drawn from your contention and logic is that the only thing necessary to do to convict a President of the United States of acting without justification, without warrant, in ignorance, and by guess, is an allegation in a bill to that effect.

There is still doubt in my mind as to the power of the Judicial Department of the United States to review any act that is within the presidential discretion, assuming power to exist. I believe, notwithstanding my opinion, that a President or ex-President of the United States may not be summoned into a court to defend his acts, that when charged with an improper act, whether by the United States or not, there is no avenue or no character of evidence that has evidential value that may not be used under such circumstances to show that he did not so act. The motion to strike is denied.

(At this point a short recess was taken by direction of the Court.)

Mr. Anderson: Will your Honor permit me. Your Honor made one statement which, I think, was inadvertent in the language used, but which might place myself and the plaintiff in a position which I have tried to avoid in this case, and that is, you said the President was charged with certain acts. I do not think the bill in this case, or any language which I have used in court, is capable of an interpretation that any charge has been made against the President of the United States in any way. It certainly has not been so intended. But the President, of course, is human, and in the manifold duties of his office, or any other officer, including this Court, might be misled as to the facts; and if such were the case, it might affect the legal effect of his action, just as this Court might be misled as to facts and would be subject to review or re-hearing before the Court. It is only in that sense that the President's name is used at all, and great care has been used not to even suggest that the President even knew of the matters which we claim affect this case.

The Court: I thank you very much for correcting any misstatement or any inference that might be a wrongful interpretation of the plaintiff's position in this case. But I was under the impression, Colonel Anderson, that the bill did charge——

Mr. Kresel: May I read it, your Honor?

The Court: I should be glad to have you.

Mr. Kresel: I read from the thirty-fifth paragraph of the bill:

"That the facts hereinbefore set forth and other facts necessary and essential in relation to said seizure and proposed and pretended sale of said patents, copyrights and other rights, and rights arising out of or incident thereto, sought to be confirmed and validated or authorized by said Executive order, were not disclosed to the President at the time of or before the signing of said Executive order and that the same was signed and issued upon an entire misunderstanding or mistake of facts which, if the same had been truly stated and known to the President, would have prevented his signing or issuing the said order; that said Executive order was not authorized by law, and that the same was and is for the reasons aforesaid and for other reasons, without force and effect to authorize, confirm, or validate the pretended sale or disposition of said patents, copyrights and other rights and rights arising out of or relating thereto, sought to be confirmed, validated and authorized by said Executive order."

THE COURT: Thank you very much, Mr. Kresel. It does charge a misunderstanding. I understand you fully, Colonel Anderson. I think the record fully and amply discloses that you charge no improper motives on the part of Mr. Palmer or any other Government officials, but that the bill does charge a misunderstanding.

I will, however, state an impression that I am gathering, and I will get you to answer it at a later time and not now, because I want to proceed with this testimony. I have not read Mr. Palmer's report at all. I have not had it in my hands. I know its contents only by what has been read to me and stated to me at the bar. But I am wondering, if it makes a full disclosure of the state and condition of the alien property, particularly of the facts with relation to the chemical industry—and I have understood from such reading that it does—how there is actual fraud involved—I must use the legal term, because I have got to use it sooner or later and I might as well use it now—and if there is actual fraud involved, whether the grossest fraud, if fraud existed, is not upon the governmental officials who acted with knowledge rather than upon the representatives of the several companies that were engaged in the manufacture or sale of dyes and chemicals? For, in the one case, that is, the Government officials, it seems to me that probably they acted with full knowledge, and in so acting, they acted in breach of trust, while the representatives of the dye and chemical industry only attempted to have them so act.

I am afraid I have stated that rather crudely and in such a way as to indicate that I have an opinion with respect thereto, while, as a matter of fact, I have only tried to indicate that my impression now is that if the Government succeeds in establishing fraud in this case and a full disclosure of the facts before the Government officials acted, the inevitable conclusion of the Government's contention would be that the grossest fraud would be on the governmental officials rather than on the persons engaged in the industry.

I will hear you at any time after this morning that you desire to be heard on that.

Mr. Anderson: I will be glad to reply to your Honor's suggestion whenever it suits your Honor, but I do not care to do it now. I think I get your Honor's idea, and when I take it up, if I do not develop it, your Honor will make it clear.

THE WITNESS: I would like to explain that while, as I said, I had the interview with the President before the amendment was submitted, he and I discussed the matter upon other occasions up to the very time the bill was signed which carried the amendment into law, and what I have here said as to the conversation between us may not all have happened the first time. That is what I wanted to say.

Q. 40. When this amendment which we talk of here, Mr. Palmer, in the case as the March, 1918, amendment, was before the committees of Congress, did you appear and testify before the Senate Committee that had charge of the bill-

A. I did.

Q. 41. That was the sub-committee of the Committee on Appropriations of the United States Senate?

A. Yes, sir.

MR. KRESEL: Without stopping, your Honor please, to read any portion thereof, I offer in evidence the official report of the testimony of Mr. Palmer before that committee, which was delivered by him on March 7, 1918.

THE COURT: The same committee before which Mr. Bradley's statement was made?

MR. KRESEL: No, your Honor; Mr. Bradley's statement was with reference to an entirely different amendment. That was the amendment of November, 1918.

THE COURT: Yes, and this is of March.

MR. KRESEL: March, 1918.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 31." (*See Exhibits, Vol. IV, page 2228.*)

Q. 42. Mr. Palmer, when the amendment was originally presented to Congress do you recall whether it contained what now appears therein namely, the provision with reference to sales at public auction, the provision with reference to the exception which says that the sales were to be at public auction unless the President, in the public interest, stating his reasons therefor, should otherwise direct? Do I make myself plain as to that?

MR. ANDERSON: I object in addition to the general grounds stated that if there was any such amendment presented to Congress it was in writing, and that is the best evidence of what it contains. I would like to see it.

THE COURT: Does not your inquiry call for the bill as presented rather than the recollection of the witness with respect thereto?

MR. KRESEL: Your Honor, I do not happen to have before me the bill as presented; and, of course, this witness has not a copy, he is no longer in possession of the record. I will put in a copy of the bill as originally presented, and with that promise is there any objection to my proceeding?

MR. ANDERSON: Not at all, it being understood it is merely leading up to that.

MR. KRESEL: Yes.

THE COURT: All right, you may answer the question, then.

A. No, it was not in the original amendment.

MR. KRESEL: I now offer in evidence a resume of extracts from the proceedings before Congress, showing the history of the amendment, how it was originally proposed, how it was amended on the floor of the Senate, and how it was subsequently amended in conference between committees of the Senate and the House.

THE COURT: Taken from what, Mr. Kresel?

Mr. Kresel: Taken from the Congressional Record.

Mr. Anderson: In addition to the objection made, I will have to call for the production of the original record; because there must have been a good deal of discussion on that subject, and I do not think a resume of that discussion would be fair to the plaintiff here if this evidence is going to be considered at all. We must know what Congress considered.

The Court: Are these extracts copies or restatements?

Mr. Kresel: No, sir; they are copies from the records.

The Court: Then is Colonel Anderson's objection to the fact that those extracts are taken from the Congressional Record, or is the objection that those extracts are not all of them matters pertaining to the same matter?

Mr. Kresel: I understand the objection to be that it is not all pertaining to the matter. The same rule applies to Colonel Anderson as applied to me. He may put in anything else he pleases.

Mr. Anderson: Very good. Has counsel the record here?

Mr. Kresel: We will produce it, yes. We have not the record here in court; we have been using copies.

Mr. Anderson: If counsel can produce the record, as we have not it here, to the end that we may use it in cross-examination or to the end that we may put in other parts of it at the appropriate time on rebuttal——

Mr. Kresel: Certainly.

Mr. Anderson: I will not raise the question of primary and secondary proof, because we are proceeding under an agreement.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 32." *(See Exhibits, Vol. IV, page 2263.)*

Mr. Kresel: I will direct your Honor's attention to but two paragraphs of this in the Congressional Record of the Sixty-fifth Congress, bound volume, page 3328, under date of March 11, 1918. It appears that while this bill was before the Senate, on the floor of the Senate, Senator Frelinghuysen offered the following amendment, which was adopted by the Senate, namely, to add to the bill as it was then before the Senate the following sentence: "And provided, further, That any property, other than that sold to the United States, sold under this act shall be sold at public auction to citizens of the United States only and to the highest bidder."

I also read from bound volume page 3942 of the Congressional Record an extract showing that after the disagreement between the House and Senate, the bill having been itemized to referred to conference, the Conference Report made to the Senate, which was Senate Document 204, shows that this phrase was added to the bill in conference, namely, "unless the President, stating the reasons therefor, in the public interest shall otherwise determine."

The Court: Where was that added?

Mr. Kresel: In conference.

The Court: In conference?

Mr. Kresel: Yes, your Honor. On the same day, that is March 23, 1918, when the Conference Report was presented there was debate on the bill in the Senate, and Senator Gallinger directed his remarks with reference to these amendments, and he said:

"Did I understand the reading of the conference report correctly, that, notwithstanding the provision is for public sale, the President may order the property sold otherwise? If so, I should like to know why that provision is modified to that extent?"

And Mr. Underwood, who had the bill in charge, made this reply: "I was coming to that. The only modification in that respect is that it does not leave everything to the Alien Property Custodian. The proposed change is 'when the President shall "determine,"' not 'prescribe.' As I understand, when we provide that the President shall 'prescribe,' he may make rules and regulations, but the change here is that 'when the President shall determine,' which will require the personal act of the President. That change has been made because there may be conditions arise in the disposition of this property where it would be impossible to sell it at public auction without it possibly going into the hands or control of alien enemies or persons who are unfriendly. The committee of conference thought that was wise and that it was within the line of the original bill as it passed the Senate, because when the alien property act originally passed the Senate there was no limitation whatever. Now, this merely gives the right to the Alien Property Custodian in an exceptional case to appeal to the President to allow a certain portion of such property to be sold not by public auction but by negotiation. Then the President must indicate in writing why he has done so. I think the situation is thoroughly guarded from the standpoint of the Senator from New Hampshire."

The same volume of the Congressional Record shows that the Conference Report was not voted on on that day, and that on March 23, 1918, the Conference Report No. 405 was made in the House, and that there was debate in the House on the matter March 26, 1918, and that the Conference Report was finally adopted on March 26, 1918.

Mr. Anderson: May I state in regard to Exhibit No. 32 that I do not object to the paper as introduced, but I would like to have it understood that the parts underscored are not to be printed in italics.

Mr. Kresel: No, of course, not.

Mr. Anderson: Because I have known that to be done, and it has caused a great deal of confusion. I once had to make up an entire record over on that account.

The Court: It will be so understood.

Mr. Kresel: I now offer in evidence the following Executive orders issued by the President, dealing with the carrying out of the Trading with the Enemy Act.

Mr. Anderson: Are they in that book?

Mr. Kresel: Yes.

Mr. Anderson: We agreed that either side could use it.

Mr. Kresel: No; not these particular Executive orders. What we agreed was that the Executive orders with reference to sales could be used; but I now propose to put in specific Executive orders issued by the President with reference to the administration of the act. Some of them I think you did put in, but these you did not.

Mr. Anderson: There is no objection to any of them. The only question was whether we had agreed according to the record.

The Court: My recollection corresponds with yours, Colonel Anderson, that anything in that booklet might be read by either party at any time.

Mr. Anderson: And if it will save time, we agree to it now.

Mr. Kresel: May I, then, simply indicate on the record that I desire specifically to have in evidence the following Executive orders, to wit: The Executive order of February 26, 1918; the Executive order of April 2, 1918; the Executive order of July 15, 1918; the Executive order of July 16, 1918; all of which are printed in this booklet which contains Plaintiff's Exihbit No. 1, and is entitled "Trading with the Enemy Act."

Mr. Anderson: Now we agree, sir, that they may be used upon the trial, re-trial or argument of this case on appeal; with the same effect as if they were in evidence, without being printed in the record.

The Court: And subject to all the objections.

Mr. Anderson: And in accordance with the same stipulation that we made before covering this subject.

Q. 43. With reference to the Executive order of July 15, 1918, Mr. Palmer, did you write to the President this letter, dated July 11th, of which I show you a copy?

A. I did.

Mr. Kresel: I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 33." *(See Exhibits, Vol. IV, page 2272.)*

Q. 44. With reference to the Executive order that was made by the President under date of July 16, 1918, did you write a letter to the President under date of July 11th, a copy of which I now show you?

A. I did.

Mr. Kresel: I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 34." *(See Exhibits, Vol. IV, page 2272.)*

Mr. Kresel: I desire to read this, your honor. (Reading.)

Q. 45. Mr. Palmer, with reference to the gentlemen who constituted the Advisory Sales Committee, statement has been made here by me that they were appointed by the President. Will you state what the fact is about that?

Mr. Anderson: Same objection.

A. There were no appointments in writing, but the President asked me to convey to them his requests that they should serve the Alien Property Custodian in that capacity.

Q. 46. And did you convey that?

A. I did.

Q. 47. And did the gentlemen accept the appointment?

A. They all accepted.

Mr. Kresel: I also desire to offer in evidence a statement by Senator Underwood on the floor of the Senate, made March 11, 1918, at a time when this March, 1918, amendment was before the Senate, the statement being found at page 3593 of the unbound Congressional Record under date of March 11, 1918.

Mr. Anderson: That is, of course, subject to all objections.

The Court: I understand nothing is being offered on either side that is not subject to objection and exception.

Mr. Kresel: I enclose the portion that I refer to within blue pencil marks.

Received in evidence and marked "Defendant's Exhibit No. 35." *(See Exhibits, Vol. IV, page 2273.)*

Q. 48. Subsequent to the passage of the March, 1918, amendment and these Executive orders issued by the President and the organization of your sales force, did you sell a large amount of German-owned property?

A. I did.

Q. 49. In connection with your program of selling, was the question of German-owned patents brought to your attention?

A. It was.

Q. 50. How? I mean in what connection your attention was first directed to that feature of the administration of alien property?

A. One of the first properties that my sales organization had ready to sell—and it was a considerable chore to get these properties in shape to be sold—was the Bosch Magneto Company, and my attention was immediately called to the fact, when we began to consider advertising that property for sale, that a very important part of its assets was the right to do business under certain patents, which, however, did not belong to the Bosch Magneto Company, but the title to which seemed to be in the name of Robert Bosch, of Stuttgart, Germany, the same person who held the title to nearly all of the stock of the Bosch Magneto Company, who had been permitting the Bosch Magneto Company, an American corporation, to use his patents. We saw immediately that if we expected to get a purchaser for the Bosch Magneto stock we would have to find some way to dispose of the patents at the same time to the same purchaser.

Q. 51. While that particular piece of property brought the patent question pointedly before you, were there other enemy properties under your care in which the patent situation was similar to that in the Bosch Magneto case?

A. There were quite a large number of such properties, and we learned of it very early in our consideration of the sales program.

Q. 52. Could you, as nearly as possible, tell us approximately the date when this matter was brought to your attention with reference to foreign patents being tied up with property in your care as Alien Property Custodian?

A. Well, I would say, early in the summer of 1918.

Q. 53. Up to that time, Mr. Palmer, had you sold any German-owned patents?

A. No.

Q. 54. Using as an example the Bosch Magneto Company, when the question of sale arose, was the question of whether the patents would pass with the property raised by anybody?

Mr. Anderson: Mr. Kresel, couldn't you make it not quite so suggestive?

Mr. Kresel: I do not like the use of the word "suggestive."

Mr. Anderson: I could use the word "leading" but the suggestion of the use of the word "leading" with this witness is not appropriate.

Mr. Kresel: I was certainly not attempting to lead the witness. I was trying to make my questions as general as I could.

The Court: I think I have expressed my view on several occasions in this case about leading questions. In the case of certain witnesses, I think leading questions are not harmful. Will you reframe your question, Mr. Kresel, or do you insist upon it as it is?

Mr. Kresel: I will reframe it if Colonel Anderson thinks it is not quite right.

Q. 55. What I am inquiring about, Mr. Palmer, is how this question of foreign-owned patents was brought to your attention? In other words, was it brought to your attention by your organization or by outsiders, or by both?

A. Well, I would say by both. I know that persons who were considering the purchase of these enemy properties—and there were many persons all over the country examining into all the properties that our sales organization was having in hand—raised the question as to how we were going to handle it.

Q. 56. That is what I tried to bring out. Did you then proceed to seize German patents?

A. No; I did not. Proceed to seize? Well, no, I didn't.

Q. 57. Was there any question of your right to seize such patents involved?

> Mr. Anderson: Do you mean was such a question raised, or was there a question of law?
>
> Mr. Kresel: Was there such a question raised?
>
> Mr. Anderson: I have respect for the witness' opinion. If it is a fact, I do not object; but if it is a question of law, I do.

A. There was a very strong difference of opinion as to whether patents were property under the Trading with the Enemy Act and might be demanded and taken over by the Alien Property Custodian. I was of one opinion, and other authorities, and controlling authorities, were of another.

Q. 58. It is alleged here by the Government that your opinion was that you had no right to seize enemy patents. Is that a fact?

A. On the contrary, I believed from the beginning that under the Trading with the Enemy Act I had the right to demand and take and receive enemy-owned patents. That was my opinion, and I urged it very strongly.

Q. 59. In that connection did you have patent counsel in your office?

A. Yes.

Q. 60. Who was he?

A. Mr. Ramsay Hoguet, of New York, was the Chief Patent Counsel.

Q. 61. Did you take his advice upon this question as to whether the Alien Property Custodian had the right to seize enemy patents?

A. I did.

Q. 62. And did you get an opinion from him in writing?

A. I did.

Mr. Kresel: I offer in evidence this opinion from Mr. Hoguet.

Mr. Anderson: In addition to the general objection of immateriality and irrelevancy, I make the specific objection that the orders already introduced show that the Alien Property Custodian acted under the advice of the Attorney General of the United States, and that his opinion is the only opinion that could be a guide to the Alien Property Custodian in matters of his authority, and therefore it matters not what opinions he may have gotten from other counsel as to matters of this kind. The Attorney General's opinion was the only one controlling.

Mr. Kresel: I am bringing that out only in answer to the allegation in the bill that the Alien Property Custodian entertained the opposite opinion; that is all. Of course, I shall show in a minute that the Alien Property Custodian, because of the difference of opinion, submitted the matter to the Attorney General and, of course, followed his advice.

Mr. Anderson: Then how could this opinion have any relevancy?

The Court: My difficulty is twofold: First, as to whether the several opinions that Mr. Palmer got are relevant, when he has told us what his opinion was; and second, if he did get other opinions, whether that fact is all that may be inquired of and not the reasons upon which the conclusions of Mr. Hoguet were based.

Mr. Kresel: May I suggest, as to your Honor's first difficulty, I think I can resolve that by pointing to the bill, which says that not only the Alien Property Custodian, but also others charged with the administration thereof, held this contrary opinion.

The Court: Objection overruled. Admitted.

Received in evidence and marked "Defendant's Exhibit No. 36." *(See Exhibits, Vol. IV, page 2275.)*

Q. 63. I also show you a copy of another communication from Mr. Hoguet, addressed to Lee C. Bradley. Was he your general counsel?

A. General counsel.

Q. 64. And ask you whether that is another opinion rendered by Mr. Hoguet upon this question under date of September 25, 1918?

A. Yes. That was more in the nature of a brief to be presented to the Department of Justice, stating the position of the Alien Property Custodian's office, and arguing for it.

Q. 65. Which one do you mean, this last one?

A. This last one.

The Court: Same objection, I assume, Colonel Anderson?

Mr. Anderson: Yes, same objection, and some in addition.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 37." *(See Exhibits, Vol. IV, page 2285.)*

Q. 66. On the 10th of August, 1918, did you write this letter to the Attorney General of the United States, submitting this question that we are now discussing to him for an opinion (handing paper)?

A. Yes, sir.

MR. KRESEL: I offer that in evidence.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 38." *(See Exhibits, Vol. IV, page 2300.)*

Q. 67. The opinion of the Attorney General was that you had no right to seize patents, was it?

MR. ANDERSON: Can we not get that opinion?

MR. KRESEL: I do not need it. You allege in your bill that that was the opinion of the Attorney General. I am not going to encumber the record with unnecessary documents.

THE COURT: You object to his quoting the allegations of your bill?

MR. ANDERSON: I do not, sir; I will stand by the allegations of the bill; but, with the greatest deference to the witness, I am not so sure I would want his testimony on it.

THE COURT: If his answer is not satisfactory, you may have a right to challenge it. So you may take the answer.

Q. 68. Will you answer it?

(Q. 67 repeated as above recorded.)

A. It was.

Q. 69. Do you remember, Mr. Palmer, that in the fall of 1918 there was pending before Congress an amendment to the Trading with the Enemy Act covering patents, trade marks, copyrights, which subsequently became a law and is known as the November 4, 1918 amendment?

A. I do.

Mr. Anderson: One moment. If the Court please, in addition to the usual objection, the question asked him if he remembered that there was an amendment pending before Congress to the Trading with the Enemy Act. Up to that point, if he remembers it, I presume he could testify; but it goes on to say what the substance of the amendment was and what the law subsequently passed was. As to both, I respectfully suggest that the only evidence that is proper is not in the form of question of counsel, but is the act itself.

The Court: I assume that the question is merely to direct the witness's attention to a specific amendment and not to place a construction upon it.

Mr. Kresel: Simply to identify the amendment.

The Court: You may take the answer.

Mr. Kresel: He has already answered.

Q. 70. Did you personally, or did your office, that of Alien Property Custodian, have anything to do with proposing that amendment?

A. It was drafted in my office and was presented to a committee of the Congress at my direction by Mr. Lee Bradley, I think, who was general counsel.

Q. 71. General counsel for your office?

A. General counsel for the Alien Property Custodian.

Q. 72. Do you know whether, before the amendment was proposed that was finally passed, known as the November 4, 1918, amendment, you or your office had urged a similar amendment which had failed of passage?

A. I had personally urged the passage of such an amendment before the committee.

Q. 73. And will you state the month when that was pending before Congress?

A. I think it was before the Committee on Interstate and Foreign Commerce of the House early in June, 1918, I think June 4th, in support of a long amendment which we had prepared and which we were urging that committee to put on to the Trading with the Enemy Act.

Q. 74. After the amendment passed through Congress (I am now speaking of the amendment that is known here as the November 4, 1918 amendment), and while the amendment was before the President for his approval, did you write to the President a letter, of which this is a copy (handing paper)?

A. I did.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: Isn't that already in?

Mr. Kresel: I have never seen it. And I might say, gentlemen, if I offer any instrument which it is your recollection is already in, please call my attention to it.

Mr. Anderson: We will do so.

Mr. Kresel: I read two paragraphs, if your Honor will permit me, of this letter. It is dated October 31, 1918. (Reads from exhibit.)

My attention is called to the fact that this letter is already in evidence as Plaintiff's Exhibit 10. With the Court's permission, therefore, I would like to recall this letter.

The Court: It will be withdrawn.

Mr. Kresel: So that Defendant's Exhibit No. 39 is withdrawn. And it may appear that I was reading from Plaintiff's Exhibit No. 10.

Q. 75. Prior to the approval of this November 4th amendment by the President, did you have any conferences with the Federal Trade Commission or any member of that body as to the effect of this proposed new law with reference to the administration of enemy patents as between the Federal Trade Commission on the one hand and the Alien Property Custodian on the other?

A. Prior to the amendment being passed?

Q. 76. Yes.

A. Yes, I think I did.

Q. 77. Who representing the Federal Trade Commission conferred with you about it?

A. Chiefly Governor Fort, who I think was then chairman, I am not certain, and Mr. Victor Murdock. They changed their chairman every year, and I cannot remember now who was chairman, but members of the Commission.

Q. 78. Will you state the views urged by Governor Fort on behalf of his Commission, with reference to the powers of that Commission over enemy patents and the views that you expressed to Governor Fort with reference to the same subject?

> Mr. Anderson: If your Honor please, I think it appears in evidence that there is certain correspondence between Mr. Palmer and Governor Fort. But Governor Fort is dead, and I do not think that conferences or conversations between Governor Fort and the witness are evidence in any event, because he was not subject to the jurisdiction of the Federal Trade Commission, and whatever conferences they might have had about the duties and scope of the Federal Trade Commission were not matters he had to deal with, but were fixed by law. In the next place, what Governor Fort may have said as to the scope, the powers and duties of the Federal Trade Commission is not evidence, and especially are these conversa-

tions objectionable in a legal sense in view of the fact that Governor Fort is dead. Therefore, I do not think the conversation should be given.

Mr. Kresel: Will your your Honor permit me a word?

The Court: Yes, except as to the last, on which I do not care for a discussion. Governor Fort is not a party to this suit, and consequently I think your last objection is not well taken. So you need not discuss that one, but if you care to say anything on the other you may.

Mr. Kresel: Very well, your Honor. As to the other, your Honor will recall that it is alleged in the bill that one of the things that was misrepresented to Mr. Polk was the attitude of the Federal Trade Commission upon this subject. May I read from the 34th paragraph of the bill. After alleging certain things, it says:

"That other facts in connection therewith, and especially the attitude of the Federal Trade Commission, charged with issuing licenses under the enemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk;"

The Court: Now then, you are going to show by subsequent questions what was their position?

Mr. Kresel: Certainly.

The Court: I was under the impression at the conclusion of Colonel Anderson's objection that it was well taken. In view of the allegations of the bill, I will have to overrule the objection and permit the answer to be taken.

If it is just as convenient to counsel, we will take our usual recess now until 1 o'clock and sit a quarter of an hour longer this afternoon.

(Recess until 1 o'clock, Standard Time.)

AFTER RECESS.

MR. KRESEL: If your Honor please, this morning I promised to produce for Colonel Anderson the Congressional Record showing the amendment of March 28th as it was originally proposed. I now produce the Congressional Record and direct attention to page 3263 thereof, under date of March 9, 1918, from which it appears that Senator Martin offered this amendment and that the amendment as offered had no provision with reference to sales having to be made by auction, nor the proviso "unless the President in the public interest otherwise directs."

The history of these two amendments has already been discussed in this morning's testimony. If Colonel Anderson desires me to introduce the bill as it was originally put into Congress, I am perfectly willing to do it now.

MR. ANDERSON: I do not want you to do that. All I want is for the facts to appear, and I think counsel has accurately stated the substance of the amendment as presented, so far as appropriate.

MR. KRESEL: Your Honor, I have a suggestion to make with reference to these Executive orders. Your Honor will recall that I desired this morning to put in four of those orders: the one of February 26, 1918, the one of the 2nd of April, 1918, the one of July 15th, and the one of July 16, 1918.

I think it would be better to give each of those a separate exhibit number, so that when the record comes to be printed, only those need be printed, the understanding, of course, being that counsel may refer to any others that are in that book; but it will obviate the necessity of printing the whole book. I see no purpose in having that done. The Government pursued that same course when they offered particular Executive orders.

THE COURT: The suggestion is adopted.

MR. ANDERSON: That suggestion is entirely agreeable to us, with the understanding of course that in view of the change of status, we will have a chance to go over the book and indicate at some time during the trial what amendments we desire to go into the record.

MR. KRESEL: There will be no objection.

THE COURT: You may have that opportunity.

Executive Order Dated February 26th received in evidence and marked "Defendant's Exhibit No. 32-A." (Same as Plaintiff's Exhibit No. 690. *See Exhibits, Vol. III, page 1778.)*

Executive Order dated April 2nd received in evidence and marked "Defendant's Exhibit No. 32-B." (Same as Plaintiff's Exhibit No. 691. *See Exhibits, Vol. III, page 1788.)*

Executive Order dated July 15th received in evidence and marked "Defendant's Exhibit No. 32-C." *(See Exhibits, Vol. IV, page 2270.)*

Executive Order dated July 16th received in evidence and marked "Defendant's Exhibit No. 32-D." (Same as Plaintiff's Exhibit No. 5. *See Exhibits, Vol. I, page 29.)*

By MR. KRESEL:

Q. 79. Mr. Palmer, I shall repeat to you the question which remains unanswered: Will you state the views urged by Governor Fort on behalf of his Commission, with reference to the powers of that Commission over enemy patents and the views that you expressed to Governor Fort with reference to the same subject.

A. Before the amendment of November 4, 1918, Governor Fort took the position that patents were not property and the Alien Property Custodian could not demand and take them over. After the Attorney General had decided that patents were not property and could not be taken by us, we prepared the amendment and then discussed the administration of the new law with Governor Fort and other members of the Federal Trade Commission.

Q. 80. Will you give the other names so that the Government may know with whom?

A. Well, I remember particularly Governor Fort and Mr. Murdock. I think possibly on one or two occasions another member of the Commission sat in, but I would not like to say who it was, because I had many subsequent conferences with the Commission. I may get them confused. I know that Fort and Murdock were both present at practically all of those conferences. Their position was that the method of administering enemy patents under Section 10 was right, and that it should be interfered with just as little as possible by our administration of the amended law.

They insisted that they should have the right to continue to issue licenses for enemy-owned patents. They even insisted at one time that they should have the right to issue licenses on patents owned by American corporations in which the enemy held a majority or controlling interest, which of course I very vigorously opposed because those corporations were under my control and were American citizens; and I insisted that they had no right to issue such licenses.

When we came to working out our plans they opposed every suggestion I made looking to a seizure and sale of the patents chiefly because they expressed the fear that it would result in a continuance of the patent monopoly in American hands and the people would be no better off than they had been theretofore under the patent monopoly in German hands. They insisted that under Section 10 they could issue non-exclusive licenses and build up competitive industries, and especially Mr. Murdock had very strong views on the whole question of patent monopoly, and he welcomed the opportunity which this act seemed to give him and the Commission to break up the patent monopolies by the issuance of non-exclusive and competitive licenses.

I would say in a word that their view was that the Federal Trade Commission should be continued with such power that the amendment would have been practically of no effect, whereas my position was that the amendment was the law and we had to carry it out, and their powers should be subordinate to it.

Q. 81. Did you, on the first of November, 1918, receive from Governor Fort a letter enclosing a proposed Executive order—that is, proposed by Governor Fort—with reference to the administration of alien patents under this new amendment of November 4, 1918, that was then before the President for his approval?

A. I did.

Q. 82. And is what you have in your hand a copy of such letter and proposed Executive order?

A. It is.

Mr. Kresel: I now offer in evidence Governor Fort's letter with the enclosure.

The Court: Admitted, subject to the general and specific objections heretofore indicated by the Government with respect to other evidence and documents.

Received in evidence and marked "Defendant's Exhibit No. 39" and "Defendant's Exhibit No. 39-A." *(See Exhibits, Vol. IV, pages 2302 and 2305.)*

Mr. Anderson: Mr. Kresel, do you know where the original of that enclosure is?

Mr. Kresel: No, I do not. The letter, if your Honor please, is not very long, and I think I had better read it to your Honor. This is dated

November 1, 1918. (Reads Defendant's Exhibit No. 39.)

Mr. Kresel: In order that the reading may be intelligible, I will read paragraph 1 of this proposed Executive Order.

The Court: May I make this inquiry: This proposed Executive order was the one suggested by Mr. Murdock or who?

Mr. Kresel: Governor Fort.

The Court: Governor Fort, after the passage of the second amendment of November 4, 1918?

Mr. Kresel: Of November 4, 1918. And I shall show—I may anticipate; this will serve to clarify the situation—I shall show by Mr. Palmer that after this Executive order was proposed, the matter was presented by both gentlemen to the President, and that the Executive order of December 3, 1918, was the result. But I think your Honor should have the views of both.

The Court: Yes; that helps me to understand what you are reading.

Mr. Kresel: Paragraph 1 of this proposed order reads as follows (reading). I now proceed with the reading of the letter (reading). Now I will read simply the proviso which the Governor refers to . It is this (reading). I think that is all that I need read with reference to that.

Q. 83. Before I leave the subject of your conferences with Governor Fort, I want to ask you specifically whether in those conferences you and Governor Fort discussed the situation in which the American industries were placed by reason of these alien enemy patents?

A. Yes, we did.

Q. 84. And upon the desirability of relieving the American industry from those incumbrances, I understand there was no difference of opinion between you and Governor Fort?

A. None whatever.

Mr. Anderson: Not quite so leading, Mr. Kresel, please.

Q. 85. Did Governor Fort mention to you a report made to him by Mr. Edward S. Rogers?

A. Well, he said that he had reports from some of his experts in the Commission relative particularly to the effect upon the American industry of the German patents on dyes and kindred things; but whether he mentioned Rogers's name to me, I do not remember. I afterwards learned of the Rogers' report, but I cannot say that he told me it was Rogers who made it.

Mr. Kresel: Colonel Anderson, I want to offer this report to Governor Fort by Edward S. Rogers, who was with the Federal Trade Commission at the time when the report was made. If there is any question about Mr. Rogers' position, I promise to prove that he was with the Federal Trade Commission and assisted them in the patent situation.

Mr. Anderson: I never heard of him.

Mr. Kresel: That is the report. I want to offer it.

Mr. Anderson: If your Honor please, there is no disposition on the part of the Government to object to any copies of papers, because we are working on that basis. But I have never seen this paper and I do not think it can be admitted in this case unless it can be proved to have been submitted to Governor Fort and to have been the basis of some action on his part, and also to have affected the issues in this case. I do not see how it can. I do not know where it came from. It is not even signed. It does not appear to be addressed to anybody. It appears to be a memorandum for

Governor Fort and that is all. I do not know whether he ever saw it. I do not think we could admit that paper as evidence of the facts contained therein in this case.

I am perfectly willing to admit, if any reasonable evidence can be produced, that the report was submitted, but I do not think we could fail to object to the admission of it as proof of the facts contained therein, as the record stands.

Mr. Kresel: I have already stated that if the Government declines to stipulate that Mr. Rogers was in the employ of the Federal Trade Commission at this time—that is dated January 16, 1918—I shall prove it.

Mr. Anderson: I do not question the fact, but I would like to satisfy ourselves. I do not question counsel's statement. I assume he has spoken from hearsay too. I would not object on the ground of its not being primary evidence, or that that does not prove that this gentleman was in the employ of the Federal Trade Commission. I am willing to let it go on the record in any way that that can be established, but my objection goes to other phases of the matter which I have indicated.

Mr. Kresel: I am going to address myself to the other phases that you have indicated.

It being established that this man was in the employ of the Federal Trade Commission, here then we have a report made by him to the Chairman of the Commission, Governor Fort, and we claim, and we agree with the Government, that any report, any official report, is admissible here, as the Government contended with reference to another Federal Trade Commission report as proof of the fact.

For instance, your Honor will recall that Colonel Anderson read here from a report of the

Federal Trade Commission a portion as to the amount of money that it cost the Federal Trade Commission to administer these licenses for a particular year; and I was very careful to inquire of Colonel Anderson at that time whether he was claiming that that was admissible evidence as proof of the facts therein contained, upon the ground that the statement was contained in an official report, and he took the position broadly and said that was exactly what he was contending.

Now I have here the report made by an official of the Federal Trade Commission to that Commission.

The Court: As I understand Colonel Anderson's objection, he questions that, and says in effect that you have not shown that, the report was ever made, in fact, by Rogers to the Federal Trade Commission. That is my understanding of his objection. If I am in error, he will correct me.

Mr. Anderson: Your Honor has substantially stated my position.

Mr. Kresel: Very well then. I now say that I shall prove that this report was made by Mr. Rogers to Governor Fort of the Federal Trade Commission, and that Mr. Edward S. Rogers was at that time an official of the Federal Trade Commission. Now, have I met the requirements? If I do not prove it, of course it goes out.

The Court: But is there this further point in Colonel Anderson's statement, namely, that the connection of the Federal Trade Commission is not here relevant or material, and only such facts as came to the knowledge of the Alien Property Custodian, Mr. Polk, the President, or Mr. Garvan are here material.

Mr. Anderson: There is one other suggestion in order that counsel may address himself to it.

I think that an official report, made under the law to Congress, such as a Federal Trade Commission report is *prima facie* proof of the facts contained therein, subject of course to being modified or disproved. But this is merely a communication by a gentleman, whom I have never heard of, and I do not question at all that he is the man to whom Mr. Kresel refers, and I am not going to require any technical proof on the subject if we can agree on the facts. But this is a letter addressed by him to one of the members of the Federal Trade Commission and is not in the true sense an official report within the meaning of the law, as I take it. I do not know where it came from. I do not know anything about it.

Therefore, I think that there would have to be very definite proof, and I doubt then if it would be proof of the facts contained therein, unless the gentleman were called here, Mr. Rogers, who I assume is alive, and put on the stand so that his knowledge might be tested.

THE COURT: I do not understand you, Colonel Anderson, because it seems to me that is a repudiation of your concession a moment ago. I assume, of course, that it is not.

MR. ANDERSON: No, sir, not so intended.

THE COURT: That is, if this is an official report, I rather understood you a moment ago to say that then it proves itself, or rather it is proof of the facts therein stated, and I understand you now to be questioning that.

MR. ANDERSON: No, sir, I have tried to make myself clear and I am sure I am not very clear. The question of this man being an employee of the Federal Trade Commission at that time—in whatever capacity—I think we can get by with a mutual concession. If it is proved that this report was made to Governor Fort and actually reached him, etc., that I will facilitate in every possible way I can. But we come then at last to the question if this was an official report as required by law, by either an officer or an official of the Government in the discharge of his duties, though how far that doctrine will go I am not prepared to say, it might be contended that it proved the facts therein contained in a prima facie manner. Glancing at the first few lines of the report it is a discussion of conditions in a certain industry in the United States.

Mr. Kresel: And at the end of it there are certain suggestions as to what should be done.

Mr. Anderson: I do not know that this gentleman had any knowledge from which he could write of things of that kind, or that came within the duties of his office in any way, and therefore within the nature of an official report or clearly within the scope of an official body, as required by law. Therefore I think if those facts are going to be proved as facts, as to the condition of the industry in the United States, of the dye industry, I should be able to examine into the sources of this gentleman's information and his qualification to speak on that subject. I might write a letter from hearsay on the conditions of an industry, the steel industry, and it would mean nothing.

The Court: If this is an official report, it either is or is not primary evidence of the facts therein contained.

Mr. Anderson: I think this particular kind of report is probably not primary evidence of the facts, because of the peculiar circumstances I have outlined. I do not know as I have made myself very clear, but I hope I have.

The Court: Yes, I understand. What do you undertake to prove?

Mr. Kresel: I shall prove, your Honor, that this gentleman was in the employ of the Federal Trade Commission, had charge of what was known in the Federal Trade Commission as the Enemy Trade Division, and he had charge of issuing these licenses. This is a report made by him in his official capacity to the chairman of the Commission, in which he reviewed certain facts and ended up by making certain recommendations to the Commission.

The Court: Are you going to trace the information therein contained not only to Governor Fort but to Mr. Palmer and to the President, or to any of them?

Mr. Kresel: I have already asked Mr. Palmer——

The Court: Yes, but he has not stated that the information he got was the information therein laid down, has he?

Mr. Kresel: He has stated that the name of the writer of the report was not mentioned to him, or at least he does not recall it.

The Court: I do not gather that from his testimony.

Q. 86. Mr. Palmer, in the course of your discussions with Governor Fort, did you discuss with him the general question of the effect of the German patents upon American industry?

A. I did.

Q. 87. Did Governor Fort indicate to you that his office, that is, the Federal Trade Commission, had been making any investigations upon the subject?

Mr. Anderson: If your Honor please, I know your Honor's ruling on that subject, but I do think the questions in this case, if they are of any importance at all here, should follow the rules of evidence and ask what was said or what was done about a certain matter. I do not think counsel ought to put (I do not want to put it in an unpleasant way)—to put the question in such a way that it puts on the record facts that he desires to be there with a yes or no answer. While I recognize your Honor is rather liberal on that point, in the particular cases I do feel that we ought to follow the rules of evidence.

The Court: It seems to me that the prohibition against leading questions was laid down to obtain certain results; and that the nature of this suit is such that it challenges the existence of the power exercised by the Alien Property Custodian, by Mr. Polk, and by the President, challenges the knowledge of each of those persons with respect to the facts as to which they acted, and that it also challenges the sufficiency of the reasons for their actions. It seems to me that the reports, the contents of which came to the knowledge of those persons, or any of them, are available and admissible in evidence to show the information on which they acted. On your undertaking heretofore made and in your understanding of this testimony that the contents of this report were communicated to Mr. Palmer, it is admitted subject to the general and specific objections of counsel for the Government.

Mr. Kresel: Very well, your Honor.

Received in evidence and marked "Defendant's Exhibit No. 40." *(See Exhibits, Vol. IV, page 2306.)*

Mr. Kresel: I shall not stop to read that now, your Honor. It is rather lengthy.

Mr. Anderson: What is the date of it, please, Mr. Kresel?

Mr. Kresel: January 16, 1918.

Q. 88. Referring now to Governor Fort's letter to you of November 1, 1918, with which he enclosed a proposed executive order, I read the last paragraph of his letter, wherein he says: "Of course, I do not know the views of the President on this matter, and would therefore prefer if you apply for the order in my absence that you should show this letter to him, but if larger power than this is asked, the Commission would like to be heard." Having that in mind, I ask you whether you sent to the President any proposed executive order in this connection?

A. I either sent it or took it.

Q. 89. Did you have a conference with the President about such Executive order?

A. I did.

Q. 90. Was Governor Fort present at the conference?

A. He was present at the conference?

Q. 91. And at that conference did you state your views about the matter, and did Governor Fort state his views about the matter?

A. Yes.

Q. 92. I now show you Executive order made by President Wilson and dated December 3, 1918, and ask you to state whether after that conference at which you and Governor Fort were present the President made that Executive order upon this subject?

A. He did.

Q. 93. Please look at that Executive order and state whether it is in the form that you proposed it, or whether the President made any changes therein?

A. It is as I prepared it, with the exception, I think, that in Paragraph V in the draft submitted to the President, the name of the person in whom the power and authority of the President were to be vested was blank. One other change was made by the

President, and that was the addition of the last sentence.

Q. 93. (Continued.) In the order?

A. (Continued.) Which is: "Nothing in this order shall nullify or impair any license heretofore granted by the Federal Trade Commission pursuant to the provisions of Section 10 of an Act of Congress entitled 'An Act to define, regulate and punish trade with the enemy, and for other purposes, approved October 6, 1917.'" Those words were added by the President to my draft.

Q. 94. You spoke of the insertion of the name of someone. The insertion is the name of Frank L. Polk?

A. Yes.

MR. KRESEL: In order that your Honor might understand, this is the same order that appointed Mr. Polk.

THE COURT: I understand that. Order of December 3, 1918.

MR. KRESEL: Yes, your Honor.

Q. 95. Did you get a letter from President Wilson dated November 27, 1918?

MR. KRESEL: I have a copy here. Will you produce the original?

(Original letter produced by counsel for defendant, and handed to witness by Mr. Kresel.)

A. Yes, sir.

Q. 96. I notice in that letter there is this sentence.

MR. KRESEL: I will offer the whole letter, Colonel, to make it intelligible.

MR. ANDERSON: May I look it over?

MR. KRESEL: Look at the copy (handing paper).

Q. 96. (Continued). I read this sentence: "Dear Palmer: I dare say you are right and I was wrong about the method of completing the sales you have already undertaken, and I will sign the proclamation I returned to you the other day if you will return it to me. Your plan of the disposition of enemy property in the United States meets with my approval in principle, and I dare say will meet with it in detail when I have a chance to compare it with the proposals that will be made on the other side. I am going to take the document over with me as a basis for discussion." Now, with that letter before you I would like you to state what you said to the President at the conference that he refers to in this letter, and what was the plan for the disposition of enemy property that he says met with his approval in principle and would probably meet with his approval in detail.

Mr. Anderson: May I ask if the plan was ever submitted in writing?

Mr. Kresel: We have no copy.

The Witness: I think it was with the letter.

Mr. Kresel: We have no copy. We have been unable to obtain a copy. Of course, we have not access to these papers.

The Court: Have you given the Government notice to produce?

Mr. Kresel: We have not been giving each other notice to produce, your Honor.

Mr. Anderson: I never heard of this particular correspondence.

Mr. Kresel: We undertook to agree in advance that we might submit copies, and so on. We have obviated all that. But I am going to inquire whether that was one of the documents that we asked for and that was stipulated by the Government. No, Mr. Boggs says that it was not. We have no copy, your Honor; it it not available to us. If counsel desires that I withhold further questioning on this point until he can produce the only copy that is available, which is in their possession, why, I am perfectly willing to do that.

You can get it from the files of the White House or the files of the Alien Property Custodian. We can not.

Mr. Anderson: I will state, if your Honor please, that we do not know whether we can get it or not. This letter is an official letter, and we have never seen or heard of it.

The Court: You are the Government of the United States.

Mr. Anderson: I know; but if your Honor please, we did not have charge of these files and we find lots of papers coming in here that we have never heard of before. This paper was never produced by us. We do not know anything about it. We will undertake to produce it if it is in the records of the United States; but I cannot say that it is in the records of the United States, the files of the Alien Property Custodian. We have searched them and we have no record of any such paper and never heard of any such paper.

Mr. Kresel: You do not know what the paper was. You can not tell.

Mr. Anderson: We made a search of the files to find out if there was such a paper.

The Court: If there is objection, the objection is sustained.

Mr. Anderson: We will make a further effort.

The Court: Until you have an opportunity to say whether you can furnish the paper.

Q. 97. Without, then, Mr. Palmer, discussing the contents of the plan that you submitted to the President, I would like you to state if you will in the conversation that you had with the President which gave rise to the writing of this letter, and particularly I would like you to state what it is that the President is referring to in the first sentence wherein he says, "I dare say you are right and I was wrong about the method of completing the sales," and that he would sign a proclamation. Will you please just address yourself to that?

A. I sent to the President a draft of the proclamation which I wanted him to issue, declaring a large number of persons there named to be enemy persons.

Q. 98. Will you stop there a minute, please?

A. Certainly.

MR. KRESEL: If your Honor please, your Honor will recall that under the Trading with the Enemy Act, an enemy was defined in certain ways, and in addition thereto the President by proclamation could designate even a German resident here as an enemy. I simply wanted to call your Honor's attention to that because that is what Mr. Palmer is now referring to. Your Honor will find it in Section 2, I think, of the Act.

Q. 99. Will you go on, Mr. Palmer.

A. Such other persons or classes of persons as the President might by proclamation declare to be enemies. We were in the habit before we sold one of these enemy properties, to make assurance doubly sure, that the stocks which we were selling belonged to enemy persons, to have the President proclaim that those particular persons were of the enemy class. So that in addition to the original determination of their enemy character we had this proclamation. I sent to the President a proclamation covering some three hundred enemy persons, and he replied to me returning the proclamation, showing that he questioned whether we should proceed with the sales program——

MR. ANDERSON: Pardon me, Mr. Palmer. Have you got that letter, Mr. Kresel?

Q. 100. Was that in the form of a letter?

A. That was in the form of a letter.

Q. 101. Have you the letter?

A. I have the letter.

Q. 102. Will you find the letter here, please, November 29, 1918, is the date of the proclamation.

A. I would like to say a word, if I might be permitted, to you, in answer to the intimation that these official letters of the President of the United States were taken from the record.

MR. ANDERSON: I did not mean to make any unpleasant intimation.

MR. KRESEL: The intimation has been made.

MR. ANDERSON: I am entirely agreeable that Mr. Palmer make any statement on the subject that he wishes.

A. (Continuing.) The letter is in my possession. It is a very common practice in the departments at Washington to put letters from the President in a separate file and to put either photostatic copies or actual copies in the regular file. These letters appear in this file on that account. They are all letters from the President of the United States. Photostatic or other copies of every letter are in the official files at Washington. This is the letter.

MR. KRESEL: I offer in evidence the letter which Mr. Palmer has produced, from the President to Mr. Palmer, dated November 22, 1918. I ask your Honor to permit us to substitute copies of these letters so that the originals may be retained by Mr. Palmer.

Considered marked "Defendant's Exhibit No. 41," copy to be produced later. *(See Exhibits, Vol. IV, page 2310.)*

MR. KRESEL: I now read the letter. (Reading).

Q. 103. After you had received this letter, you received the letter from the President of November 27, 1918; is that right?

A. Yes, sir.

Mr. Kresel: I now offer in evidence that letter and I have a copy thereof which I ask be marked instead of the original.

The Court: Is it satisfactory that the copy should go in instead?

Mr. Anderson: Entirely so.

Received in evidence and marked "Defendant's Exhibit No. 42." *(See Exhibits, Vol. IV, page 2311.)*

Q. 104. In this letter of November 27, 1918, the President says to you: "I dare say you are right and I was wrong about the method of completing the sales you have already undertaken and I will sign the proclamation I returned to you."

Did you then send back to the President the proposed proclamation?

A. I did.

Q. 105. And did he sign it?

A. He did.

Q. 106. I now show you a proclamation printed in this Trading with the Enemy booklet, beginning at page 121, and asking you to state whether that is the proclamation at the bottom of the page?

A. That is the proclamation.

Mr. Kresel: I offer in evidence the proclamation which commences at page 121 of this book. It is dated November 29, 1918.

Received in evidence and marked "Defendant's Exhibit No. 43." (Same as Plaintiff's Exhibit No. 729-F. *(See Exhibits, Vol. III, page 1940.)*

The Court: Is that the proclamation or draft of the proclamation which you were inquiring about a moment ago, Colonel Anderson?

Mr. Kresel: No, your Honor; it is not. The other was a different document which the Government is going to try to get for us.

Q. 107. Mr. Palmer, you know Mr. Joseph H. Choate, Jr.?

A. Yes, sir.

Q. 108. Was he in your office when you were Alien Property Custodian?

A. Yes, sir.

Q. 109. What did he have particular charge of?

A. He was in the Bureau of Investigation, in particular charge of the investigation into the chemical industry and the German chemical interests in the United States.

Q. 110. Did he perform his duties under your direction or under the immediate direction of some one else?

A. I would say under the immediate direction of Mr. Francis P. Garvan, the head of the Bureau of Investigation.

Q. 111. And were you kept informed of what he was doing?

A. I was.

> MR. ANDERSON: If your Honor please, that is a clear conclusion. It might cover the entire situation of reports here. If counsel wants to know what was reported, and how, and the facts about it, all right. If a man is kept informed of what Mr. Choate is doing, he only knows from information he receives. That question would cover every possible thing that Mr. Choate did while he was connected with the office. I think that is too general.
>
> THE COURT: Do you press the question, Mr. Kresel?
>
> MR. KRESEL: No, your Honor. Strike it out.

Q. 112. Are you familiar with the report made by you to the President in the month of February, 1919?

A. I am.

Q. 113. Do you know whether Mr. Choate co-operated in framing any part of that report?

A. Mr. Choate prepared the draft of the chapter on chemistry for inclusion in the report, at my request, and submitted it to me.

Q. 114. Can you state how long, before the report was actually sent by you to the President, you had before you Mr. Choate's report on the chemical situation either in its final form or in draft form?

A. You mean by his report the draft of the chapter on chemistry or chemicals?

Q. 115. Yes.

A. My recollection is that it was in my hands for a couple of weeks at least before it was transmitted to the White House.

Q. 116. Do you remember when you sent the report to the President?

A. On the 27th of February, 1919.

THE COURT: This has reference to your Exhibit 30?

MR. KRESEL: That refers to Defendant's Exhibit 30.

Q. 117. Before this report Defendant's Exhibit No. 30 was sent to the President, did you formulate any general policy in your office with regard to patents?

A. I did.

Q. 118. I show you this memorandum dated January 13, 1919. Does that embody the policy with reference to patents, that was to be pursued by your office? (Handing witness paper).

A. With a slight modification that was made when my attention was called by Mr. Hoguet to another part of my arrangement with the Federal Trade Commission, this is the policy that was then publicly announced.

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Q. 119. Will you state what the additional matter was?

A. That it would be the policy of the office to demand and take over enemy-owned patents which the Government might require for its own use.

Q. 120. That was additional to the policy outlined in that memorandum that I showed you?

A. Yes, sir. In this statement I divided the patents into three classes. There really should have been four, and there were. It was modified in writing I think.

Mr. Anderson: It was modified in writing?

The Witness: Mr. Kresel has it.

Mr. Kresel: Yes, I will produce the writing. My recollection, gentlemen, is that this was put in by you. Am I wrong about that?

Mr. Anderson: I think it is very probable.

Mr. Kresel: I find that it was not, so I will now offer this in evidence.

Received in evidence and marked "Defendant's Exhibit No. 44." *(See Exhibits, Vol. IV, page 2312.)*

Mr. Kresel: It is dated January 13, 1919, "Memorandum of conference in regard to patent situation. Present: Mr. A. M. Palmer, Mr. Caton, Mr. Horne, Mr. Whitaker, Mr. Keohan, Mr. Whitmore, Mr. Gordon, Mr. Ferry."

Q. 121. Were all those gentlemen whose names I have called officials in your office?

A. I do not place Mr. Whitmore. I remember all the others as officials in the office.

(Mr. Kresel then read further from Defendant's Exhibit No. 44.)

Mr. Kresel: I have not read all of it, but I have read all that I care to.

Q. 122. I notice that Mr. Hoguet was not present at that conference. Did you direct that a copy of that memorandum be sent to Mr. Hoguet?

A. I did.

Q. 123. And was it sent to him?

A. It was.

Q. 124. Then did Mr. Hoguet call your attention to this omission that you speak of?

A. Yes.

Q. 125. Is this a copy of the letter that you received from Mr. Hoguet upon the subject, the letter being dated January 16, 1919? (Handing witness).

A. Yes, sir.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: It is so long that I will not try to read it. I will just let it go in without reading it.

The Court: It is admitted.

Mr. Kresel: Is there any objection to it?

Mr. Anderson: No, except the general objection. I won't offer any objection. It is a photostat copy?

Mr. Kresel: Yes. Perhaps you will withdraw all objection because my attention is called to the fact that that is already in as Plaintiff's Exhibit No. 49.

Mr. Anderson: If that is the case, then I will withdraw the objection.

The Court: The exhibit is withdrawn?

Mr. Kresel: Yes, sir. I now read from Plaintiff's Exhibit No. 49 just one paragraph.

The Court: I think it should be made clearly to appear that Colonel Anderson had not fully examined the exhibit at the time that he made his objection.

Mr. Kresel: Yes, certainly.

The Court: And that he was just making the general objection so as to cover all contingencies. That I think should be of record.

Mr. Anderson: I thank your Honor.

Mr. Kresel: I am reading the second paragraph. (Reads from Plaintiff's Exhibit No. 49).

Q. 126. You spoke this morning of discussing with President Wilson in your conferences preceding the March, 1918, amendment the subject of another amendment then pending before Congress, bearing upon the acquisition by the Government of the German steamship docks. I think you spoke of the Hamburg-American line docks and the North German Lloyd docks?

A. Yes, sir.

Q. 127. Did you have any further conversation with the President upon the subject of those docks; and if so will you state the time and what the conference was?

A. I had such a conference a few days before the President left for Paris, the first time, he came to my office, the office of the Alien Property Custodian and asked me——

Q. 128. I want to fix the date. He left in December, 1918, I think.

A. My recollection is he left on December 4th.

Mr. Anderson: That is right, sir.

Q. 129. December 4, 1918?

A. Yes, sir. It was a few days, not more than a week before that. He said that he wanted me to hurry up the business of making a final transfer of the title of the Hamburg-American line and North German Lloyd line terminals at New York, in order that he might pay over the money to me for those properties, and have it an absolutely closed incident before he arrived at the Peace Conference, and he stated the reasons which led him to that desire.

Q. 130. And what were those?

A. They were that he desired to be in a position t the Peace Conference to refuse to enter into any egotiations whatever for the return of the terminals ut to say that that matter was closed, that the charac-er of the enemy interests had been changed from ter-inals into cash in the Treasury of the United States.

The Court: May I stop you there for a moment, Mr. Palmer?

The Witness: Certainly.

The Court: I am wondering, Mr. Kresel—I realize the position in which you are placed by the allegations of this bill—but I am wondering now whether your inquiry does not go into such relations and such disclosures by the President to an official in the Executive Department that should not be inquired of unless absolutely necessary for your protection.

Mr. Palmer is answering your question, as is proper, but it seems to me the duty falls upon me, under the peculiar character of this case, to make this inquiry at this time; because, surely, the evidence now called for by you, and the reasons of the President of the United States for his action in international relations, seem to me a matter that a court should not require to be disclosed, and if disclosed, the Court is without power to review. Consequently I make this inquiry at this time.

Mr. Kresel: Upon your Honor's slightest intimation, I shall desist from further inquiry into the subject. May I say, however, that not only is this matter relevant with reference to the allegations in the bill, but particularly upon the proposition that the transaction that the witness is now describing was put through pursuant to an amendment to the Trading with the Enemy Act passed at the same time and by the same Congress as this amendment of March, 1918, that we are dealing with. In other words, I present, or I was going to present—because as I say to your Honor, I shall immediately desist——

THE COURT: I am making an inquiry and not a ruling so far, Mr. Kresel.

MR. KRESEL: In other words, the President proposed an amendment covering these docks. Mr. Palmer, as Alien Property Custodian, with the consent of the President, proposed the other amendment with reference to generally selling enemy property. Both amendments were before Congress at the same time and were passed at the same time and were amendments of the same Section, of the same Act at the same time.

What I was going to show was the transaction that the President had with the Alien Property Custodian with reference to those docks under that amendment in order to show what interpretation should be placed not only upon the amendment that they were acting under with reference to the docks, but the concurrent amendment under which the properties here involved were sold.

But as I said to your Honor when I started, I shall ask no further questions about it.

THE COURT: Do not misunderstand me. I am making so far merely an inquiry. I should be glad to hear Colonel Anderson.

MR. ANDERSON: If your Honor please, I did not object to the evidence, because I am trying not to object; but I think that the evidence is objectionable from two standpoints, since your Honor has asked me. First, the standpoint which your Honor has suggested, which seems to me to have very strong weight; and the further standpoint that upon the statement of counsel this is clearly foreign and irrelevant matter.

THE COURT: Just at the moment I will ask you to confine yourself to the other ground.

MR. ANDERSON: I was going to say, when your Honor asked the question, as to the first ground, I recognize the difficulty that confronts the Court and counsel in drawing the line of discrimination in this matter, and I have no desire in the world to undertake to limit the evidence, if it can be avoided; but I do not think that questions of international relationships should be brought into this case.

I think, representing the Government, in the humble way that I do here, it is probably my duty to object to that, and even the President's desire to hasten the transaction involved in these properties is a matter that might (I do not know) be a subject of some international embarrassment; and certainly his reasons for doing so (I do not know what they were) might be also a very serious difficulty. Now, if it is appropriate on direct examination, it must be equally appropriate for full searching on cross examination, and therefore it would place the Government in a rather embarrassing position, and one which I say in advance I would resolve against the cross-examination.

THE COURT: Now then, my difficulty is increased by this fact, namely, that this is a suit instituted by the Government of the United States, and by the further fact that owing to the characteristics of this suit and the incidents connected with it, we have adopted a broad rule allowing all oral and documentary evidence which in the opinion of counsel upon either side is pertinent or relevant to be admitted and placed of record in the case.

re-direct I only asked him as to specific data that was presented to him. I did not ask him as to his reasons for doing anything, even though I took the position that he was acting as an individual and not as an officer.

If I have made myself clear, I hope I have answered your Honor's question, that I think that the case does not call into question here any matter of political wisdom or policy, either domestic or international; and my view of the right of the Court to inquire into presidential discretion, I wish to state again, is limited to the question of an inquiry into the power to do the act, in the first place; second, into whether the method of performing the act conformed to the requirements of the act under which the Executive officer was acting, whether the President or anyone else; and third, where he is required to act upon a state of facts, whether those facts were available or before him to an extent that presented a question of discretion.

I think it has been reviewed a great many times and I do not want to go into the authorities. The Courts have drawn that nice distinction, with due reference to the Executive Department and I think very clearly. I hope I have stated it accurately. I am trying to state what I understand to be the decisions of the Supreme Court of the United States and I do not wish this case to be in any wise enlarged beyond the construction of those decisions, as I recognize the extreme delicacy of this matter. The other objection I will not discuss.

THE COURT: I wanted this argument on the assumption that it is pertinent. The other question is an independent one which we have not given much attention to.

Mr. Anderson: I hope I have made myself clear, your Honor.

The Court: Have you anything to say, Mr. Kresel?

Mr. Kresel: I think, your Honor, that the situation that has arisen is but another proof in support of your Honor's statement as I recall it, during Mr. Polk's examination, of the wisdom of the rule laid down by the Courts, that the Courts will not inquire into the reasons actuating the exercise of a discretionary act by the Executive, where such discretion was committed to him by Congress.

I shall prosecute this inquiry no further. I shall immediately go to another subject.

Mr. Anderson: Of course, I understand that the answer, so far as it went, is taken subject to the objections which I have indicated.

The Court: I assume that all testimony taken upon the part of the plaintiff was subject to any objection that the defendant might at any time raise thereto and that all testimony taken on behalf of the defendant is subject to such objections as may be taken at any time before final decree with respect thereto.

Q. 131. Mr. Palmer, among the properties in your charge as Alien Property Custodian, did you have any property of the Bayer Company?

A. We had the capital stock of the Bayer Company owned by enemy persons transferred to the Alien Property Custodian, and as stockholder operated the Bayer Company.

Q. 132. What was the business of that company?

A. They were distributors, possibly makers, of some pharmaceuticals, particularly the medicinal preparation called aspirin.

Q. 133. Was the corporation operating under patents?

A. Yes.

Q. 134. Did you have those patents? I mean had you seized those patents?

A. We took those patents.

Q. 135. As German property?

A. As enemy property.

Q. 136. And do you recall in whose names those patents were or some of them?

A. My recollection is they were in the name of the German owners of the stock of the Bayer Company.

Q. 137. But they were not in the name of the Bayer Company here whose stock you seized?

A. No.

Q. 138. Did you sell the Bayer Company?

A. I sold the Bayer Company.

Q. 139. Do you remember what month it was, and what year?

A. I think in December, 1918.

Q. 140. Did you sell the stock that you had seized?

A. I did.

Q. 141. Did you sell at the same time the patents that you had seized?

A. Yes.

Q. 142. That is, the patents that were being used in the Bayer Company's business?

A. That is right.

Q. 143. Up to that time, that is up to the time of the sale of the Bayer Company, had you seized any patents that were not attached, so to speak, to a going business which you had or in which you had stock?

A. No, I think not.

Q. 144. Do you recall to whom the Bayer Company and the patents were sold?

A. The Sterling Products Company of West Virginia, was the purchaser as I recall it.

Q. 145. And it brought a considerable sum of money?

A. Considerable.

Q. 146. Can you tell us about how much?

A. Something more than five million dollars.

Q. 147. At that time did you know that there were other German patents here in the United States?

A. Yes, we knew that.

Q. 148. Had you caused an investigation to be made by Mr. Choate with reference to such German patents?

A. Mr. Choate had been making at my request an investigation into the entire chemical situation as affected by the German ownership of patents, American patents or otherwise, in this country.

Q. 149. The sale of the Bayer plant to the Sterling Products Company carried with it not only the stock of the Bayer Company but also the patents?

A. There were sold at the same time something like 1200 patents.

THE COURT: Do you mean the capital stock or the tangible assets?

MR. KRESEL: No, the capital stock of the corporation.

THE WITNESS: Yes, that is what we sold.

Q. 150. And 1200 patents, as I understand, you had seized as the property of some Germans?

A. In the management and operation of the Bayer Company's business, through a Board of Directors appointed by me representing the enemy-owned stock which had been assigned to me, as Alien Property Custodian, we discovered that they were using patents the title to which was in enemy persons and not in the Bayer Company. When we got that property ready for sale or approached the time that we desired to sell it, in order that all assets might go to the purchaser, we demanded and took over all those patents and sold them along with the stock of the company at public sale to the highest bidder.

Q. 151. Was there a subsidiary of the Bayer Company?

A. Yes.

Q. 152. Do you recall the name of that?

A. There was a company which we treated as in the Bayer nest called the Synthetic Patents Company, which owned some patents.

Q. 153. Some of those 1200 patents?

A. That is my recollection.

Q. 154. And who owned the stock of the Synthetic Patents Company?

A. The Bayer Company.

Q. 155. Then is it a fact that when you sold the stock of the Bayer Company, that carried with it the stock that you owned of the Synthetic Patents Company?

> Mr. Anderson: I think that is a question of law. He has stated the relationship, and I have not called for the evidence of it that is usually required. I think it is a question of law what the sale carried with it. Whether the stock was owned by the corporation and what would be the effect of the sale is purely outside the scope of an examination of the witness here.
>
> The Court: Can there be any doubt it is a legal conclusion if the witness disclosed that the stock of this subsidiary company was in fact all owned by the Bayer Company?
>
> Mr. Kresel: There is no doubt that it is a legal conclusion, but I was not aware that there could be any doubt as to what the conclusion is.
>
> Mr. Anderson: Then why ask the question?
>
> The Court: I think the objection is well taken.

Q. 156. Subsequent to the sale of the Bayer

Company did you in any way change the policy that you had outlined with respect to the seizure of the patents?

A. Well, the Bayer Company sale opened my eyes to one phase of the situation that I had not before fully realized.

Mr. Anderson: I think I would like to ask for a direct answer to that question.

The Witness: Of course, I am trying to.

Mr. Anderson: You are leading up to it, but just for legal reasons.

The Court: Will you have a yes or no answer to that, Mr. Kresel?

Q. 157. Will you answer that yes or no, please.

A. Yes.

Q. 158. Will you state just what change you made and what led to the change?

Mr. Anderson: And what time, please.

Mr. Kresel: Yes, please state the time.

A. Well, immediately after the Bayer sale I realized in the first place that it was a very dangerous thing to sell a large batch of patents——

Mr. Anderson: If your Honor please, may I interrupt one minute. I have no objection except the general objections which I have stated, to the witness's stating whether there was a change of policy and when that change took place, but if there is any written evidence of it I ask that they produce the evidence. I do not think the reasons underlying it are evidence now. If I examine him on cross-examination I might test his reason, but I do not think that counsel could follow the reasons which may have actuated this witness to change a policy. The essential fact is whether he changed it or not, and that is all to be said about it

Mr. Kresel: I want to be heard on that, your

Honor. The charges made here are that the change of policy was brought about by conspiracy. Your Honor will recall the charge in the bill that, whereas Mr. Bradley appearing before the Congressional Committee urging the adoption of this 4th of November amendment, is alleged to have stated that the only purpose was in order to enable the Custodian to sell patents which went with a going business, that then they draw the conclusion that that was the sole reason why Congress passed the legislation and they then go on and say that the conspirators got together and got the Custodian to practically misuse the November 4, 1918 amendment in order to enable the conspirators to carry out their conspiracy. I have a right to show by this witness what in fact it was that changed his policy, and I do not have to wait upon the chance that counsel on the other side will bring it out by cross-examination.

THE COURT: I think for the reasons stated by you, Mr. Kresel, and also for other reasons, this testimony is admissible. You may take the answer.

MR. ANDERSON: Exception.

THE WITNESS: What is the question?

(The question was repeated as follows.)

Q. 159. Will you state just what change you made and what led to the change, and please state the time?

A. Immediately after the Bayer sale, when I realized that a large number of chemical patents had gone in one sale to a single purchaser, with all that all might imply by way of monopoly of the product, etc., and that the Bayer Company was practically the only one of these German chemical companies which had a going business in this country, where we could have an actual sale either of the stock or of its assets and place them in American hands, I saw that if I adhered to the policy of only taking over and selling such patents as were directly affiliated with or connected with some going concerns which I was proposing to sell I would miss the accomplishment of the purpose we had in mind of Americanizing the industry. Therefore, I would have to do just what I announced on January 13th as my policy, that we would seize or take over and sell enemy-owned patents where they were important to an industry in America in which the Alien Property Custodian had any concern or interest, and from that time on our policy was of that sort.

Q. 160. When you came to the conclusion of the policy that you have outlined what steps did you take, what instructions did you give, to carry out that policy?

A. The first consideration of it was in a conference immediately after the Bayer sale, with Mr. Garvan, chief of the Bureau of Investigation, who felt as I did on the subject. We were agreed that some course, neither of us then knew what, had to be pursued which would result in taking these other patents not associated with any going business, in the dye and chemical line, from the German owners and Americanizing them.

Mr. Anderson: Could you state the time and place of that?

Mr. Kresel: I am coming to that.

A. (Continued.) Immediately after the Bayer sale in my office in Washington, when Mr. Garvan came down from New York, where his offices were, we had the first conference on the subject.

We were both impressed by the fact that the Bayer sale demonstrated that if that policy was going to be continued, we were at the end of our rope as far as making an American industry out of the chemical industry was concerned and I asked Mr. Garvan to give consideration to the matter, to have Mr. Choate and Mr. Hoguet work upon it, and to bring back to me, when they were ready, some feasible plan by which we could accomplish the purpose that we had in mind, of putting these patents in a way where they might be used for the general public benefit in the building up of a competitive chemical industry in this country, to the end that the Government might be protected and safeguarded in the future, in peace and in war, by a great chemical industry, with all the possibilities of weapons of defense coming out of it as by-products and all that. That, Mr. Garvan went to work at.

Q. 161. May I stop you there. I wonder if you would enlarge somewhat or be a little more specific as to your meaning of the statement that if you pursued the policy that was pursued in the Bayer sale, you would be at the end of your rope. I do not quite get the meaning of that?

A. Well, my information was that practically speaking—I may not be absolutely accurate about it—but practically speaking the Bayer Company was the only chemical property that we would be likely to have for sale, the only one where there was a going business in this country. The other German chemical companies had agencies over here, but they were mere selling agencies as a rule. There was not anything for us to take and seize and sell to the public at public sale.

Therefore, if we did not take the patents which these other concerns in Germany owned, we would not have any means of putting into American hands the control of the chemical industry, outside of that, which the Bayer had, which at that time was in German hands.

Of course, by that time I knew what Mr. Choate had found out, not only from himself, but also from Mr. Garvan himself. Choate and I saw each other frequently and he told me what he was learning. Garvan made it a practice to come to Washington every week and spend a day, and frequently a large part of the night, telling me what had been accomplished in the investigation of enemy ownership in various properties and particularly, this difficult and interesting and important problem of the chemical patents. So that by the time the Bayer Company came around to be sold and was sold, I knew, as Mr. Garvan knew, what the situation was.

Q. 162. How long had Mr. Choate been working on this investigation?

A. Nearly a year at that time, since February 1st.

Q. 163. 1918?

A. Since February 1, 1918.

Q. 164. Now then, in your conferences with Mr. Garvan, Mr. Choate and Mr. Hoguet, as to working out some plan of accomplishing the purpose that you had in mind as to the disposition of these German patents, did you take into consideration the advisability of learning what the chemical industry in the United States, such as it was, desired in the matter?

A. Yes.

Mr. Anderson: I just want to note an objection, if your Honor please, to this examination, as being very leading. I think it would very much relieve the necessity for my objection if counsel would ask this gentleman, whose knowledge and ability is beyond question, to say what he did do rather than to state what he did and ask him to say yes or no.

Mr. Kresel: I have to lead up to it.

The Court: I think the leading questions are not detrimental. They save time. But I am going to sustain the objection and ask Mr. Kresel to sacrifice the time and present this testimony in a non-leading form.

Q. 165. Mr. Palmer, you are familiar with the charges in this bill of complaint? You have read it?

A. I have read it.

Q. 166. Substantially, the allegations in the bill are that beginning about June, 1918, certain named corporations and individuals, trade associations and others not named, entered into conspiracy to induce you as Alien Property Custodian to seize those German patents; and further, the conspiracy was to organize a corporation and to induce you as Alien Property Custodian to sell these patents to that corporation, which it is alleged the conspirators were to control, and thereby the conspirators were to perpetuate a monopoly of the chemical industry which it is alleged they had already obtained. I am going to ask you whether, prior to the organization of The Chemical Foundation, which it is in evidence was incorporated on the nineteenth day of February, 1919, you ever met any of the representatives of the American Dyes Institute, the Textile Alliance——

Mr. Anderson: Mr. Kresel, the name of the Textile Alliance has been stricken out of the bill.

Q. 166. (Continuing.) Or the Manufacturing Chemists' Association, and whether any of them or any of their representatives spoke to you or made any representations to you with reference to these German patents?

A. I never met any of the gentlemen connected with those institutions so far as I know; and none of them ever said a word to me about these German chemical patents or any other patents.

Q. 167. Some of the other corporations that are mentioned are the National Aniline & Chemical Company, the General Chemical Company, the Solvay Process Company, the Semet-Solvay Company, the Barrett Company, E. I. duPont de Nemours & Company. As far as you know, did any representatives of any of these companies approach you or make any representations to you with reference to these German patents?

A. None whatever.

Q. 168. Mr. Morris R. Poucher is particularly named in the bill of complaint as the representative of these interests and it is alleged in the twenty-third paragraph of the complaint "that these firms, corporations and associations, through their representatives aforesaid, and especially through said Morris R. Poucher, urged upon said Alien Property Custodian and his assistants" and so on, "the pretended necessity for the protection of American industry of securing control or ownership of said enemy-owned patents, and urged upon them their pretended duty in the public interest to seize, sell, or dispose of the same." Up to the time of the organization of The Chemical Foundation, had you ever met Mr. Poucher?

A. I never had met Mr. Poucher.

Q. 169. Have you met him since?

A. I have met him since.

Q. 170. When was the first time you ever met him?

A. Oh, long after I ceased to be Alien Property Custodian I met him for the first time.

Q. 171. But were you aware, as Alien Property Custodian, that your associates, Mr. Garvan, Mr. Choate, and Mr. Hoguet, were in touch with representatives of the chemical industry and discussing with them this question of the disposition of these German patents?

A. I was aware of it.

Q. 172. Did you instruct them to do that?

THE COURT: Colonel Anderson has intimated that he has an objection to your leading questions. This one is leading.

Mr. Kresel: I shall not argue about that. I do not think it is leading.

The Court: Maybe I am wrong. Colonel Anderson, do you object?

Mr. Anderson: I think so, sir. I hope the Court will understand——

The Court: We will not discuss it. We will assume that it is leading.

Q. 173. Had you any talk with Mr. Garvan, Mr. Choate and Mr. Hoguet, or any of them, about the chemical industry in relation to these patents?

A. I had had talks with all of them, had told them what my purpose was in a very broad and general way, and left to them the working out of the details of a plan by which that broad purpose could be carried out. They were perfectly familiar with my plan, and they kept me familiar with their working out of the details.

Q. 174. Please state when it was that Mr. Garvan, Mr. Choate and Mr. Hoguet reported to you what progress they were making in this matter. I mean the first time that anything definite was reported to you?

A. I would say that their report to me of their plans taking some definite shape began to come late in January.

Q. 175. Of what year?

A. Of 1919, or some time in January of 1919.

Q. 176. Do you remember anything about a meeting held in your Washington office at which representatives of the chemical industry were present?

A. I remember about the meeting being held.

Q. 177. Do you know how that meeting came to be held?

A. Yes, I do.

Q. 178. Will you state how the meeting came to be held?

A. By that time, Mr. Garvan and Mr. Hoguet and

Mr. Choate, either one or all of them, had advised me that they had been in touch with representatives of the chemical industry, and that together they had discussed this problem from the viewpoint of my plan that I had announced to them.

Q. 179. May I interrupt you there. Did they say to you whether they had approached the industry or whether representatives of the industry had approached Mr. Choate, Mr. Garvan and Mr. Hoguet?

MR. ANDERSON: If the Court please, I am constrained to object to that question. Mr. Garvan, Mr. Hoguet and Mr. Choate are available to testify in this case, and I do not think that the information and conversations between them about this matter, when they are available, should be given by the distinguished witness now on the stand; but if there are any written reports, I am perfectly willing that those reports should go in, subject to our general objection. But I do not think that these conversations are evidence.

MR. KRESEL: I do not understand the point of view of Colonel Anderson with reference to written documents. I do not understand the sanctity of a written document. A witness may state what was told him, whether subsequently there was a report made of it or no. As to whether conversations are admitted between Mr. Palmer and the other gentlemen, which I think is the real point of the objection, the Government has undertaken to put in here a vast amount of documentary proof of what statements were made by Mr. Hoguet to Mr. Palmer, and what Mr. Choate said to Mr. Hoguet. Why, the records are full of that. It seems to us that we are entitled to show what information Mr. Palmer had from those associated with him, upon which he took the action which I shall show he did take.

The Court: It seems to me that the evidence is clearly admissible and that the allegations of the bill charge that a certain Government official (I think it was Mr. Palmer) was deceived. Now, whether he was deceived is a question that makes it necessary to know what representations were made to him by Mr. Choate, Mr. Hoguet and Mr. Garvan. An independent inquiry is, I take it, whether they did or did not approach the representatives of the manufacturers or sales organizations of the dye and chemical industry in this country; but another and a separate and an independent inquiry is as to the representations those persons made to the Alien Property Custodian. I think the objection should be overruled and the answer should be taken.

A. You understand, I laid out a plan in a broad way of what we desired to accomplish, and I sent these gentlemen, who were my representatives, out to work out the details and bring me back a perfected plan for my consideration. I instructed them to do what was necessary to work up that kind of a plan.

When I first learned of the interest of the representatives of the industry in the plan, it was my understanding that that was in response to my instructions to my representatives to consult with the industry and with everybody that might be interested, to aid them in building up such a plan; and they went to the representatives of the industry for the purpose of seeking assistance and ideas and suggestions as to the practical working out of a plan to accomplish the purpose which I had in mind and had announced to them. I think you originally asked me how these gentlemen came to attend the meeting.

Q. 180. Yes, I am coming back to that.

A. All right.

Q. 181. You speak of the general plan that you had laid out, giving instructions to Mr. Garvan, Mr. Choate and Mr. Hoguet to work it out in detail. I am going to ask you to state what the general plan was that you laid out to them?

Mr. Anderson: I think I asked if that was not presented in writing, awhile ago, and he testified that that was his policy and plan of the 13th of January, a memorandum.

Mr. Kresel: No, that was not the plan at all.

Mr. Anderson: Modified by letter from Mr. Hoguet?

Mr. Kresel: No.

Q. 181 (continued). Mr. Palmer, will you answer the question?

A. The information that I had received had impressed me with the importance of several things in relation to this chemical patent business, all of which were factors in the working out of the problem. The tremendous development of the chemical science and industry for war purposes, as the war had demonstrated, made the chief and largest impression upon my mind. The absolute necessity, as demonstrated by Germany, of having a war industry in this country—I mean having a chemical industry in this country, if we were going to be adequately prepared for the kind of wars the last war showed the next war to be, led me to declare that we must work out some plan by which this German grip upon the chemical industry, so far as it applied to America, must be transferred to a new American industry under such conditions as would safeguard the Government in the use of every product of the chemical industry which it might require for its own safety and protection in the future; that it ought to be built up and developed in such a way that the Government could constantly have the benefit of it.

That was the one broad phase of the plan that I laid down to these gentlemen. The other was, and it was not my own entirely, but largely the result of the Federal Trade Commission's views and of what I knew to be the general policy of the administration, that in the building up of that industry a plan had to be worked out by which it should be a competitive industry and no monopoly should result from it.

Now, those were the two big ideas. It was all nebulous in my mind. It was very general and very broad. The purpose was plain. We wanted to build up an American industry in order that the Government and the people should benefit from it. We wanted to do it in a way that would make that absolutely certain forever and in a way that would not result in monopoly. Now, with that broad and general plan these men went out and tried to work out the plan.

Q. 182. I am coming back to that meeting about which I questioned you. I asked you whether you could state how the meeting came to be held. In other words, who called it, if you know?

A. Yes. Well, I asked either Mr. Choate or Mr. Garvan, who told me that these gentlemen had been discussing the matter together and with them and that they had ideas upon the subject which they would like to have me hear and discuss with them.

In response to that statement or report, I asked Mr. Garvan or Mr. Choate, I do not know which, to say that I would be glad to see them, and ask them to come down to Washington in a body so that we could make it as brief as possible, and let them all state their views to me. A day was fixed and they accepted the invitation, a large number of them, several, and came. Unfortunately, when they got there I was ill at home and unable to leave the house; so that I asked a report of everything that was said at the meeting be made and submitted to me, and a stenographic report was made and given to me the next day.

Q. 183. I show you Plaintiff's Exhibit No. 28, which is a report of this conference. I do not ask you to read it through, but just glance at it and state whether that is what was submitted to you as a report of what took place at this meeting?

A. Yes.

Q. 184. And did you read it?

A. I did.

Q. 185. I notice that according to the minutes of this meeting there were present representing the Alien Property Custodian, besides Mr. Choate and Mr. Hoguet, Mansfield Ferry. What was his position?

A. He was then general counsel for the Alien Property Custodian.

Q. 186. And F. J. Horne; what was his position?

A. He was then director of one of the bureaus.

Q. 187. And Mr. W. T. Gordon?

A. I think Gordon was the chief of the Patent Division. I am not sure. I can't remember what position he held. He was a part of the organization somewhere.

Q. 188. After you read the report of the proceedings of this meeting, did the suggestions made therein meet with your approval?

A. You mean the suggested plan for the formation of a corporation?

Q. 188 (continued). Yes.

A. Yes. I had discussion about it before I announced any approval of it.

Q. 189. With whom?

A. With Mr. Garvan and Mr. Choate.

Q. 190. And then did you give them any further instructions?

A. Yes, I told them to go ahead and work out the plan along that line.

Q. 191. Do you remember receiving this letter from the American Dyes Institute dated February 7, 1919, which is now Plaintiff's Exhibit No. 30?

A. I remember that letter. I have seen it.

Q. 192. Do you remember receiving with that letter a report of the Executive Committee of the American Dyes Institute, which is marked Plaintiff's Exhibit No. 29?

A. Yes, sir.

Q. 193. And subsequently there was a letter written by the American Dyes Institute which substituted another report for this one. Do you recall that?

A. I recall that; but I think from the original letter the wrong report had been sent.

Q. 194. All those communications were brought to your attention, were they?

A. They were.

Q. 195. And you saw from those what the plan was as to the organization of a corporation to take over these patents?

A. Yes, sir.

Q. 196. And did that meet with your approval?

A. It did.

Q. 197. How soon after the enactment of the amendment of November 4, 1918, did you begin to seize German patents; I mean, demand and seize German patents?

A. Immediately.

Q. 198. And when you discussed with Mr. Hoguet and Mr. Choate and Mr. Garvan your plan and instructed them to consider how it could be effected, were you at that time seizing German patents?

A. We had at that time seized a large number.

Q. 199. Colonel Anderson calls my attention to the fact that I am in error in speaking of conferences between yourself, Mr. Choate, Mr. Garvan and Mr. Hoguet. His recollection seems to be that you did not represent Mr. Hoguet in those conferences. Am I wrong about that?

A. Oh, yes, I did. I certainly intended to.

Q. 200. That was my understanding about it?

A. I will not say that the conferences consisted of the four of us.

Q. 201. At all times?

A. At all times. I was in the habit of holding conferences with every one of them. We had them at all hours of the day and at all places. Frequently I would see Mr. Hoguet by himself, frequently Mr. Choate, frequently Mr. Garvan, and sometimes all of them.

Q. 202. Will you state how soon after the sale of the Bayer plant, which as I recollect your testimony, you said occurred in December, 1918, you had the first of these conferences with your associates at which you discussed the necessity of making the disposition that you have outlined and discussed this plan?

A. The very first one was immediately after the sale and was with Mr. Garvan. Whether it was the next day or two days after, I do not remember; but the thing was the freshest thing in our minds at the time.

Q. 203. But the proposition began to be discussed immediately after the Bayer sale?

A. Immediately.

Q. 204. As plans were being perfected for The Chemical Foundation were you kept informed thereof?

Mr. Anderson: I do not think he can answer that. I think he can say what information was conveyed to him, and when, but how does he know that he was kept informed of all information.

Mr. Kresel: I did not ask him whether he was advised of all the information.

The Court: I think the question is objectionable.

Mr. Kresel: I will withdraw it.

Q. 205. Did you have any information submitted to you about the organization of The Chemical Foundation before its incorporation?

A. Yes.

Q. 206. Will you state what information in that respect was submitted to you, by whom and when?

A. Well, Mr. Garvan reporting for the three of them as to what had been done was telling me every time I saw him about what progress had been made in the organization or the proposed organization of the institution which we had planned. He told me when they had settled upon the name and what the name was to be. He told me when they came to a final agreement as to how much the capital stock would be, and these agreements were all tentative, subject to my approval, as he explained to them, and that is the reason he was reporting them to me. He advised me of the plan for the number of directors to be had. He advised me when it was suggested to him that he should be president of the company, saying that he was disinclined to accept it because he was tired of this job and wanted to get out, and I very earnestly and strongly urged him to accept it.

I think it was entirely upon my insistence that he did so. I was advised by them that the preparation of the charter itself was in the hands of Judge Ingraham, who was on our Advisory Sales Committee and had been Judge of the Appellate Division, I think, of the Supreme Court of New York, and of Judge Gray of Delaware, and they submitted to me several drafts, a couple of drafts, I do not know how many, of the proposed charter for my suggestion or criticism, approval or disapproval. I think I may say that I watched every detail with all the care that I could and we realized or thought we realized we were doing a big thing, and we wanted to do it with care and think of everything we possibly could think of to safeguard the interests of the country and make certain the carrying out of our purpose. So we counseled together constantly. I think these gentlemen told me everything they were doing and we exchanged our minds on the subject.

Mr. Anderson: I move to strike that out.

The Witness: Well, I know they did.

Mr. Anderson: He could not know that they told him everything; it is a physical and mental impossibility.

Mr. Kresel: If counsel for the Government desires to have that answer stricken out I will consent to it.

The Court: Just what portion?

Mr. Kresel: That portion wherein he said "these gentlemen told me everything."

The Court: Yes.

Q. 207. Did you know it was a part of the plan that Mr. Choate should be the general counsel of the new company?

A. I certainly did.

Q. 208. Did you know that it was the plan that Mr. Hoguet was to be the patent counsel of the new company?

A. I did.

Q. 209. Did you know that it was the plan to have a voting trust covering the common stock of the company?

A. I did.

Q. 210. Did you know that it was the plan that the common stock was to be the voting stock of the company?

A. Yes, I knew that.

Q. 211. Did you know that it was the plan to have this voting trust extend—well, I won't lead you. How long to your knowledge was it the plan to have the voting trust extend?

A. Well, our plan was to make it extend long enough to cover the life of the longest lived patent that we took over and sold to The Chemical Foundation, which was seventeen years.

THE COURT: We have reached a point now where we probably could suspend.

I have to take up some other matters. There is one question I want to ask. I am not suggesting its materiality, and I do not know whether it may be material or not, but it has been referred to several times. That is the importance of the chemical industry in America to a possible further war as essential for the protection of America. I do not want to unnecessarily go through the question whether I may take judicial notice of that at the time I am writing the opinion, and if either side deems it material, I hope they will show the reasons for that, rather than let me spend a half a day or so examining the authorities.

MR. KRESEL: May I state to the Court that it is our purpose to put in proof upon that point.

THE COURT: I do not want to have to be troubled with the question of whether I should take any judicial notice of that, if it becomes material. I do not know whether it is material or not.

MR. KRESEL: One more thing, if your Honor please; I am informed that Defendant's Exhibit 32-D is already in evidence as Plaintiff's Exhibit No. 5. Therefore, I ask leave to withdraw Defendant's Exhibit 32-D.

THE COURT: Let it be withdrawn.

MR. ANDERSON: What is 32-D, may I ask?

MR. KRESEL: It is one of the Executive orders.

(Whereupon, at 3.30 o'clock Standard Time, an adjournment was taken until Friday, June 29, 1923, at 8.30 o'clock a. m., Eastern Standard Time.)

EIGHTEENTH DAY.

Wilmington, Delaware, June 29, 1923, at 8.30 o'clock a. m. Standard Time

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. KRESEL: If your Honor please, the last exhibit that I put in yesterday was Defendant's Exhibit 44. My attention is called to the fact that that document is already in as Plaintiff's Exhibit No. 453. I therefore desire to withdraw Defendant's Exhibit 44.

THE COURT: Let it be withdrawn.

A. MITCHELL PALMER, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. KRESEL:

Q. 212. Mr. Palmer, I asked you yesterday about the relationship between the Synthetic Patents Company and the Bayer Company. Do you remember?

A. Yes.

Q. 213. With reference to the disposition of the Bayer patents you stated, as I recall it, that the Synthetic Patents Company was a subsidiary of the Bayer Company. Do you desire to make any correction in that?

A. I had first stated that the patents were largely owned by the same persons who were the owners of the stock of the Bayer Company, and you then asked me if there was not a subsidiary company, and I said yes. Strictly speaking, the Synthetic Patents Company was not a subsidiary of the Bayer Company. It was, I might say, an affiliated company. It was a corporation formed for the purpose of holding and exploiting patents and it owned most of the patents which the Bayer Company used. The stock of the Synthetic Patents Company was not owned by the Bayer Company, but by the German interests who owned the patents and the stock of the Bayer Company.

Q. 214. And did you seize the stock of the Synthetic Patents Company?

A. Well, I took it over. In the early days we did not seize. We demanded and received. We got to seizing later on.

Q. 215. And when you made the sale of the Bayer property, did you at the same time and as a part of that transaction sell the stock of the Synthetic Patents Company?

A. Yes, at the same time, in the same sale, to the same purchaser.

Q. 216. I now, Mr. Palmer, desire to question you with reference to the order made by Mr. Polk, dated February 26, 1919, which has already been put in evidence, authorizing the sale of these chemical patents to The Chemical Foundation. I should like you to state what conferences, if any, you had with Mr. Polk, with reference to the making of that order, giving the time, if you will, and who was present?

A. I first went to see Mr. Polk on the morning of February 26th at his office in the State Department and found that he was engaged, I think, at the White House. I waited for him for a time. He did not return and I could not wait any longer; so I went back to my office and wrote him a letter enclosing the Executive order, a draft of the Executive order, and enclosing also part of my report which was then ready for transmittal to the President.

Q. 217. What part was that, may I interrupt you?

A. What is that?

Q. 218. What part was that that you enclosed?

A. That portion of the report which had to do with chemicals, Chapter 2, I think it is, in the report; and I marked with pencil marks on the report the portion that I particularly desired him to read. Later in the day I got in touch with him and saw him and we had a conference at his office in the State Department.

Q. 219. Before you proceed to state the conference, I show you Plaintiff's Exhibit No. 90 and ask you whether that is a copy of the letter you say you wrote to Mr. Polk, with which you say you sent him the proposed Executive order and the portion of your report?

A. It is.

Q. 220. Will you proceed, please?

A. At this conference I repeated to him what I had said in the letter; and in addition to that went very fully into the chemical situation, describing to him at least all the high points in the report which we were making, which showed the facts and the history of the German control of the chemical industry, sketched its importance to the country and to the Government, and outlined to him in detail the plan that I had devised of selling these chemical patents to The Chemical Foundation; describing what The Chemical Foundation was, what our understanding with it was and the cash price which was to be received for the transfer of the patents to the Foundation and the other considerations which had moved me in making the sale.

I remember that our talk was longer than I expected it to be, because to my surprise and satisfaction, Mr. Polk was intensely interested in the thing and had a great deal of knowledge about it himself which he seemed to have acquired from other sources and we discussed it at length. He signed the order.

Q. 221. In this letter Plaintiff's Exhibit No. 90 I find this concluding paragraph: "I would go to the President about it, but you know the situation at the White House and I see no reason why you should not make the order." Will you state what you were referring to there, as to the situation at the White House?

A. Well, the President had just gotten back to the White House I think the evening before. We all knew he was going to stay only until the 4th of March, and everybody around him was trying to save him as much as possible. He did not have time to do the hundredth part of the things he was being called upon to do and we who were the heads of various departments in the city were all endeavoring to save him everything possible. It was only that which led me to say to Polk, who knew exactly as I did and who was trying to do what I was trying to do, save the President everything possible, that he should sign the order.

Q. 222. Your report to Congress, which is Defendant's Exhibit 30, was made as of the close of business February 15, 1919. Do you recall that?

A. As of.

Q. 223. Yes.

A. Yes, sir; as of the 15th of February.

Q. 224. The letter of transmittal to the President is dated February 22, 1919. You testified yesterday that notwithstanding the date of the letter, the report was not actually sent to the President until the 27th of February, 1919?

A. Yes, sir.

Q. 225. In your report, speaking of the transfer of these patents to The Chemical Foundation, you say: "By Executive order obtained under the provisions of the Act, I have sold to this company for the sum of $250,000 approximately 4500 patents," etc. You say, "I have sold." At the time when you sent this report to the President, that is on February 27, had the transaction actually been made by you?

A. Yes.

Q. 226. The Executive order had been signed the day before?

A. Signed on the 26th.

MR. ANDERSON: I object, if your Honor please. The only evidence of sale by the Alien Property Custodian must be the written evidence. It is all a matter of writing. And therefore I wish to note, in addition to our general objection, the objection that this matter is a matter of writing, the contract between the parties is in writing, the transaction of sale is in writing, and cannot be varied by parol evidence.

MR. KRESEL: I think, sir, that this is as good a time as any to have an understanding about that. Quite true that the instrument of assignment was dated the tenth day of April, 1919; but it is our contention, and the evidence now is, that the sale, the actual sale, was made and agreed upon before the twenty-seventh day of February, 1919. I do not understand what Colonel Anderson means by his contention that a sale by the Alien Property Custodian must be in writing. An agreement to sell may be oral or may be in writing. The actual instrument whereby the transfer is made was in writing here, but that does not fix the date when the transaction was made. We contend that the transaction was made and completed by the twenty-seventh day of February, 1919, and while Mr. Palmer was still Alien Property Custodian. That is our contention.

MR. ANDERSON: In order to make the record complete, I wish to move to strike out all the evidence of the witness as to the alleged sale and the date thereof, on the ground that the record in regard to this subject is in writing, whether required to be or not, the instrument of conveyance is in writing, and that speaks for itself and cannot be modified either as to date or otherwise by parol testimony or by the evidence of this witness. I mean, to add to that that the record of the sale is the assignment, and the date of the transaction and consummation thereof is the deed, and stated in the deed.

THE COURT: Is it your contention, Colonel Anderson, that Mr. Kresel cannot show the time when the agreement to make the sale was consummated; that is, as a separate matter or matter separate and apart from the consummation of the sale?

MR. ANDERSON: It is my contention, sir, that this whole matter is a matter of record; so far as of any force at all, binding upon both parties to the transaction; and that that record is conclusive and cannot be varied.

THE COURT: I am afraid I did not make my question clear, because what I had in mind was whether or not it is your contention that the defendant may not show when the agreement to make the sale and the details of the sale to be made were completed.

MR. ANDERSON: That is my contention in the face of this record, substantially. But the defendant has not undertaken to show that. He has just said it was prior to a certain date, and that date is prior to the date stated in the record evidence of the transaction itself; and I submit that that evidence in the first place, is too indefinite to mean anything, and in the second place, that it is wholly incompetent and illegal.

The Court: Is not the best evidence, Mr. Kresel, of the actual sale and the consummation of the sale, the assignment, or do you contend that the sale was a matter that consisted of the agreements which were entered into and binding, and that the assignment is the mere execution, or has merely the effect of an execution?

Mr. Kresel: Your Honor has stated my contention exactly. Our contention is that the agreement to sell, and the agreement as to all conditions of the sale were made before February 27, 1919.

The Court: Then I understand your contention. But is not Colonel Anderson's objection, even under that contention of yours, valid to the extent that you are asking the witness when the sale was consummated, which probably would be open to different interpretations? That is, if you use the word "sale" and the witness used the word "sale," without making clear as a fact that to which you are both referring by the use of the word "sale," the record is open, it seems to me, to the express objection of Colonel Anderson and also to such further objections as the objection stated may necessarily imply. I do not mean to say that the use of the word "sale" would be prohibited. I do not know that it would, if you have made clear what you mean by the word "sale."

Mr. Anderson: Let me make myself clear, because this will probably become an issue and we might as well settle it here. What constitutes a sale is a matter of law to be concluded from facts. Certain transactions may be a sale and certain transactions may not be a sale.

It must appear who the parties were and that their minds meet in a contract. It must appear that all of the legal essentials exist, and where it is a written transaction, by deed— and in this case I take it the law would require a written transaction or conveyance by the Alien Property Custodian—the deed is the only evidence of what took place so far as the actual transaction is concerned.

We shall most earnestly object to going into any prior negotiations as to the sale, but if the Court should even allow the prior negotiations, objection to which is covered by our former statement, then they must state only the facts of what took place and when they took place, to the end that it may appear whether or not there was such a transaction as this Court would hold to be a contract or a meeting of the minds and how far that contract would be legal.

The Court: I think you have stated it, Colonel Anderson, in a much clearer and better way than the Court tried to express it in the statement to Mr. Kresel a moment ago.

Mr. Anderson: I did not know whether I made that clear to the Court; and I wanted to be sure.

The Court: Now then, after these facts are assumed, if the word "sale" should perchance be used, it will be understood, I take it, to mean that aggregation of facts rather than a conclusion of law which must be drawn by the Court.

Mr. Anderson: Will your Honor rule on the motion to strike out?

The Court: That motion is denied on the undertaking by Mr. Kresel that he intends to supplement that by the facts which you have referred to in your last statement and also on the understanding that the word "sale" as used by him meant only that and is not a conclusion of law. That was my understanding of your undertaking, Mr. Kresel.

MR. KRESEL: Yes, your Honor, quite right. I will come back to this point in a little while. I am not going to follow it up at this time.

MR. ANDERSON: I suppose your Honor will give me an exception.

THE COURT: An exception goes to all adverse rulings.

MR. ANDERSON: I move to strike the last answer out, about the signing of the Executive order, as not the best evidence.

MR. KRESEL: The motion is to strike out because he cannot give the date when it was signed?

MR. ANDERSON: I mean to say that the order speaks for itself as to the date of signing.

THE COURT: What is the date of the order?

MR. KRESEL: The 26th of February.

MR. ANDERSON: I think it is the 26th. I am making this objection, if your Honor please—and I do not want to be captious, but in reading over this evidence yesterday it seemed to me that I probably was—well, not as careful as I should have been, and I certainly do not want to yield any rights here. But I do not want to be captious, I am trying not to be.

THE COURT: I did not know you were open to that criticism.

MR. ANDERSON: I am glad that your Honor does not think so, but I felt so; because I think, not in criticism at all, that a very large proportion of the evidence was elicited in answer to questions so indefinite and general as to be clearly objectionable on that ground according to my view, submitting of course to your Honor's better judgment and knowledge, and also that the answers were not responsive but were argumentative rather than direct responses to questions of fact. I do not wish to be unreasonable, and do not wish to be unpleasant in this trial, especially with this witness on the stand, but I do wish to ask that in the conduct of these examinations we conform to the rules of evidence to the end that I may make objection and take exceptions in the proper way. So far as this particular matter is concerned and its materiality, if the answer is that it was signed on the 26th I do not care so much about it and I will withdraw the motion as to that, but I made the objection for the purpose of raising the leading question.

Q. 227. Mr. Palmer, I think you testified that you became Attorney General on the 4th of March—or 5th of March, you said?

A. On the 5th of March.

Q. 228. 1919?

A. 1919.

Q. 229. Shortly before that time did you see President Wilson?

A. Yes.

Q. 230. When was it you saw him?

A. Do you mean when I saw him last before that time?

Q. 231. Yes, please.

A. The evening of the 3d was the last time I saw him.

Q. 232. The evening of the 3rd of March, 1919?

A. Yes, sir.

Q. 233. At that time did you discuss with him the sale of these patents to the Chemical Foundation?

A. Yes.

Q. 234. I wish you would state now fully as nearly as you can, the conversation between the President and yourself upon that subject?

Mr. Anderson: For the sake of the record I wish to renew my objection as to this conversation, and base it with your Honor's permission upon the reasons stated yesterday so that I will not prolong the statement by a repetition.

THE COURT: The purpose, as I understand it, being to have the witness state particularly the information imparted by him to the President?

MR. KRESEL: Exactly.

THE COURT: And such statements of the President as will indicate what knowledge the President had of the matters here in controversy?

MR. KRESEL: Exactly, sir. It is to meet the allegation that the President, when he made the subsequent order, was acting in ignorance of all the facts.

THE COURT: I will take the answer.

MR. ANDERSON: Your Honor will understand that the objection includes the general objection of immateriality and irrelevancy.

THE COURT: I understand the objection to all testimony taken by either side includes all objections that are indicated by the opening statements of counsel and any specific objections made by counsel prior to the objection to the immediate question; and exceptions go without so stating, in each instance, to all adverse rulings. You may answer, Mr. Palmer.

A. Late in the afternoon of March 3, 1919, I called at the White House and saw the President, and spent about an hour with him. I explained that in view of my appointment as Attorney General I would place my resignation as Alien Property Custodian in his hands, and suggested that the business of the office required that somebody be immediately appointed to succeed me. He asked me if I had any recommendation to make as to my successor. I told him that I unhesitatingly and very strongly recommend that he appoint Mr. Francis P. Garvan. I then explained to him who Mr. Garvan was, what his duties had been in the Alien Property Custodian's office, and the large extent and great value of his service in that office. I explained to him that I recommended him particularly, because, as I conceived it, the greatest and most important piece of work that we had on hand was the final actual consummation of the Amerizanization of the German chemical patents, and Garvan was more familiar with this situation than anybody in the country, had agreed to become President of the Chemical Foundation which was the instrument that we had created for the purpose of diverting these German chemical patents into general public use for the public benefit in this country, and I considered that so important a piece of constructive work on the part of my department that I was sure that if he agreed with me Garvan was the man to complete it.

I explained to him again what the chemical situation was, talked to him at length about the Chemical Foundation and what its purposes were, what we had in mind, the great work it could do in being the means of building up a great chemical industry for the advantage of the Government and the people.

> Mr. Anderson: Just one minute, Mr. Palmer, if you please. If your Honor please I shall now interrupt the witness, to move to strike out the statements of the conversation with the President, on the ground in addition to those already stated that it is stating merely conclusions, and if a conversation took place and is to be recited, he must recite as nearly as possible what was said and what was stated. Everything is stated as as a conclusion, a view, an argument, and if the conversation is to be allowed the actual facts stated to the President and what the President actually said or the substance of what the Presi-

dent said should be given, and not the conclusion of the witness or the effect of it.

Mr. Kresel: I must say, your Honor, that I do not think that the witness's answer up to the present is subject to any such criticism, and I am sure that Mr. Palmer is giving his best recollection of what was said between him and the President.

Mr. Anderson: I am not denying that. I am not denying that at all, but I mean to say that it is merely the effect of his conversation and not what was said or the facts stated. There has not been a single fact stated. Permit me to illustrate, if your Honor please. How in the world can I meet any evidence of this kind, assuming that I was going to try to meet it.

Suppose it was a conversation with the witness that I could give; the witness stated that he stated to the President the situation with respect to the chemical industry in the United States; that he stated to the President the plans that they had for the chemical industry in the United States, and so on. I might go on and recite his statements. Now, those are perfect conclusions as to what he stated, the effect of conclusions as to what he stated in his own mind, and not facts upon which an examination could take place or evidence could be adduced to meet a fact.

Mr. Kresel: But, Colonel Anderson, you did not wait until the witness had finished his answer.

Mr. Anderson: But I objected to that part.

Mr. Kresel: Pardon me a minute. For all that appears, he may have gone on to say exactly what he did tell the President about the Chemical Foundation, exactly what he did tell him about the chemical industry. Now let him finish the answer.

If by that time he has not stated fact, then I can see some force in the point that you are raising.

Mr. Anderson: A statement of facts is the only thing that can be stated at all. Up to this time it has been a statement of conclusions. Therefore, I thought it better and more courteous to object to the evidence at this time to the end that my objection might be known before the witness went on to make a long statement of that kind. I do not think the character of evidence that the witness is giving, with due respect to the witness, is evidence at all.

Mr. Kresel: Not at all. I do not agree with that. Suppose that all the witness had said to the President was, "I think this is important." Have I not a right to show that that is what he said to him?

Mr. Anderson: If he said that, yes.

The Court: There may be some instances in the statement of the witness thus far in reply to the questions that are open to the objection of Colonel Anderson. I think it unnecessary for me to attempt to separate those from the others at the present time. It seems to me that the objection, Colonel Anderson, offered by you goes to the evidential value of the testimony, and I believe that we cannot finally weigh that evidential value until all the facts with respect to the answer of this witness have been had to the inquiry. You are not deprived by this ruling of the right to urge, at any time you see fit, the immateriality and lack of evidential value of any statements made by the witness.

Mr. Anderson: I understand, sir. Without prolonged discussion, may I suggest to the Court this: that if I were trying to meet this evidence, and it must be tested by that if it is admissible at all, would there be any possibility of my being able to meet as a fact the statement of the witness that he explained the chemical industry to the President of the United States?

Mr. Kresel: May I answer that, your Honor? Certainly, you could ask the witness, did Mr. Palmer on such and such a day explain to him the importance of the chemical industry.

The Court: It seems to me, Colonel Anderson, the question is admissible.

Q. 234 (continued). Will you proceed, Mr. Palmer?

A. I was simply trying to abbreviate——

Q. 234 (continued). Please do not abbreviate.

A. It will take me an hour to tell everything that took place in an hour's conversation.

The Court: You may take such time as may be found necessary.

Q. 234 (continued). Go on, Mr. Palmer.

A. I told him that at my instance the Chemical Foundation had been formed, and that it had been incorporated, and that the purpose of the Chemical Foundation, according to its charter and according to the agreement which we had with those who were organizing it——

Mr. Anderson: I object to any evidence of agreement outside of the charter. The purposes of the corporation are fixed in the charter.

The Court: Colonel Anderson, this witness is not attempting to state as a fact what was in the charter; but he is stating what he told the President. If that is untrue, you will have an opportunity to meet it. You may proceed, Mr. Palmer.

(Answer to Q. 234 repeated as above recorded.)

A. (continued). ——was to issue non-exclusive licenses for these patents which were conveyed to the Foundation upon fair and reasonable terms to all persons or firms or corporations in the United States who desired to use the same, with the intention of building up a competitive chemical industry in the country.

That in addition to that it would do such other things as it might be able to in promoting and encouraging the building up of a general chemical industry in the country by educational means and otherwise. I did not have the charter before me and did not undertake to quote it exactly, stating only its broad purposes.

That the Government would be given a free license to use any or all of those German patents as might be necessary for Government purposes and that many of them, we believed, were of a kind which were highly important to the Government, in that the processes or products covered by them had been used by the Government during the war and would probably be used again by the Government both in peace and in preparation for another war or in another war, and that that, we felt, was a very large and important consideration, that the Government should have this free service.

I explained to him further that it was not a money-making proposition in any sense and that nobody was going to be permitted to make any money out of it; that we had, after much effort, succeeded in getting persons who were in the chemical lines of business in the country, a large number of them, to subscribe for the stock of the Chemical Foundation, with the understanding, which was to be amply secured, that in no event should their investment ever return them more than 6 per cent. per annum; that all earnings of the Chemical Foundation growing out of royalties on patents in excess of 6 per cent. per annum to the stockholders should be and must be used in general research work and other work which in the judgment of its Board of Directors might be necessary to encourage and promote the building of a chemical industry in the United States.

I told him that in order to secure these purposes and to make certain that all of our plans were carried out not only in the letter but in the spirit in which they were conceived, I had made it a condition that the organization as it started should be named by myself, that its personnel should be of those who had been particularly and intimately associated with the work of investigating the German hold upon the chemical industry in America and those who by reason of that had collaborated with me most closely in building this organization and working out its plan and purpose.

I explained to him that that was the reason I thought Mr. Garvan ought to be president of the company and that I had directed that he should be elected. I told him that I had insisted with those who put up the money that, contrary to the usual plan, they should not name the directors or the officers, but I would do so and I would see that they were continued, by insisting that all future stock should be trusteed.

In order to make certain that that trust would be faithfully carried out and that our purposes would be executed by the voting trustees so far as they could, in the control of the corporation through the stock, I suggested as the voting trustees the five persons whom the President himself had appointed, most of whom he personally knew and who had served me as members of the Advisory Sales Committee during our sales program; and that that had all been agreed to and that Mr. Polk had signed the Executive order and the sale to the Chemical Foundation was an absolute, accomplished and finished fact.

Mr. Anderson: I object to the last statement, sir.

Mr. Kresel: That is what he said he stated to the President. You can't strike that out.

The Court: Do I understand, Mr. Palmer, that all you are stating now is what you stated to the President?

The Witness: Yes.

The Court: What the witness is stating is not the conclusion that the sale was an accomplished fact, but he is stating that he so stated to the President. His whole testimony is merely of what transpired at this meeting with the President. Motion denied. You may proceed.

A. (Continuing.) And that my purpose in urging Mr. Garvan's appointment as Alien Property Custodian was quite largely in view of the fact that he had undertaken to be the president of this corporation and I knew he could be absolutely trusted to carry out its plans and purposes to the letter and in their full spirit. I would not have felt so safe in putting this plan over if I had not been able to pick out from my organization men of that kind who could and would operate it not only as we wanted it to be run but with a patriotic desire to serve their country.

I told him that Mr. Choate would also be associated with the company. I am not certain that I at that time told him the names of the directors. I do not know.

I had with me the commission in blank as Alien Property Custodian, and after this statement the President took the commission and with his own hand wrote the name of Francis P. Garvan in the blank which I had left for the name of the appointee, and I took the commission and handed it to Mr. Garvan that evening.

Q. 234 (continuing). Mr. Palmer——

A. (continuing). Now, if I am to tell all about this conversation, you will have to let me go on.

Q. 235. We will come to that in a minute.

The Court: I understood the witness to say that he had not completed the conversation with the President.

Mr. Kresel: I did not so understand. I thought he was speaking of the conversation with Mr. Garvan.

The Witness: Oh, no.

Q. 236. I wish you would continue the conversation with the President, because I was going to direct your attention to some portions of it.

A. From that talk we drifted into a more general discussion of the disposition of enemy property and I told him the amount of property which we had sold up to that time, in a general way. I cannot give now the details of what I told him as to the names of the properties and the amounts, but I remember that I made a report to him in a sketchy manner of our selling program and how it had been carried out and told him that I thought, with the program then on the way, when it was completed, that we would have rooted out of American industry and commerce the more obnoxious German interests and would have transferred them to American hands in line with our purpose in carrying out the act, and that I hoped the Peace Conference would make certain that that course of procedure with respect to the treatment of enemy property would be sustained and protected in the Treaty, and so forth. We had a discussion about the Treaty.

The President then said he thought it would be wise to have somebody representing the Alien Property Custodian at his side at the Peace Conference, somebody who was familiar with everything that we had done and the reasons for it and who was familiar also with the plan which I had outlined to him for the purpose of providing for and advising with Congress as to the future disposition of this enemy property.

He asked me if I had such a man who was available and who could be of service over there. I told him I had. He asked me who it was. I suggested Mr. Bradley W. Palmer. Mr. Palmer is no relation of mine. He is a Boston lawyer with the firm of Story, Thorndike, Palmer & Dodge, one of the leaders of the Boston Bar, who had been working in the Alien Property Custodian's office at a dollar a year, having charge of some of the more difficult problems which we had to handle, who was entirely familiar with the whole work of the Alien Property Custodian; and I recommended to the President that he be chosen. The President said that he would be glad if I would ask him to come to Paris at once. I saw Palmer that evening and in forty-eight hours he was aboard ship, Paris bound, and stayed there until the Treaty was signed.

We had some discussion also about the importance of the chemical industry in war and I told him of the developments which had come to my attention during the war, especially in Germany, where the dye plants——

Mr. Anderson: Just one moment, Mr. Palmer. If this evidence is intended purely as a statement of what the witness said to the President, under your Honor's ruling, I recognize that it goes in. If it is intended as evidential of any facts as to the chemical industry in the war, I wish to oject.

The Court: I assume it is not offered for that. The purpose of this, as I understand it, is to meet the allegation of your bill that the President was ignorant of what he was doing. What did you state your contention was, Colonel Anderson?

Mr. Anderson: I stated if it was merely evidence that the witness said these things to the President, whatever he said, then under your Honor's ruling, subject to my objection, I of course do not wish to interrupt him. If it is intended to be used as evidence of the facts which he stated, then I do object and wish to be heard.

The Court: As I understand it, what the witness is now detailing is offered merely and solely as a conversation between the President and the witness and is not offered as proof of the facts so stated.

Mr. Kresel: That is the purpose, your Honor. Of course, some of the things that he told the President, he knew of his own knowledge, and as to that, those were facts.

The Court: No, I do not so understand this statement of the witness.

Mr. Kresel: This coming statement?

The Court: No. that any statement the witness may have disclosed to the President is evidence of anything more than a mere disclosure. If you want to get from this witness whether the statements made by him were true or otherwise, you will have to get that on independent questions and not now.

Mr. Kresel: All right, your Honor.

The Court: Is that your contention, Colonel Anderson?

Mr. Anderson: With that limitation, of course, I will not interrupt to renew the objection, because it is limited to merely what he said to the President. Whether they were existing facts or not is a question to be determined later.

The Court: Correct.

Mr. Kresel: Will you proceed, Mr. Palmer.

Mr. Anderson: I am compelled to call the attention of the Court to the fact that the knowledge that had come to his attention, and the importance of the German industry in war, is hardly a statement of a fact. It is a statement that he had a lot of information, but what it is does not appear on this record.

The Witness: I was going on to say what it was.

Q. 237. Will you go on, Mr. Palmer.

A. —which information was to the effect that the great dye factories along the Rhine, which during the war had been combined into one great institution under state guidance, if not control, had been converted during the war into practically munition plants; the by-products of the industry being of great value and importance in the manufacture of high explosives and noxious gases which the Germans had employed to a great extent in the war.

I expressed the opinion to him that we could never hope to equal that sort of performance, if we ever had to, unless we had a chemical industry of our own in this country; that my information had been that the Germans had a practical monopoly of it not only in Germany but in the world and certainly in America and that the way to break that monopoly was to carry out the plan that I had worked out.

In explanation of the manner in which they had been able to control the American monopoly, I explained to him that all of these patents which we had seized had been taken out by the Germans not for the purpose of promoting the development of the chemical industry but for impeding it and that as a general proposition they were used to keep down and destroy the industry in this country, rather than to build it up, in order that the German products might come here and control the market; that that was an additional fact which, in the history of these patents, had led me to have little compunction about taking them from the Germans and selling them to American interests. He was very familiar with the progress of the development of chemistry in the war.

The Court: Just a moment.

Q. 238. Did he state that?

The Court: Let us strike that out. Colonel Anderson indicated that he had an objection to that last sentence.

The Witness: I am sorry.

The Court: I think the objection to that sentence is well taken. Will you strike it out. That is the statement that he was very familiar.

The Witness: Do I understand it is improper for me to say what the President said?

The Court: Probably unconsciously, Mr. Palmer, you stated that the President was very familiar——

The Witness: I meant to say he said he was familiar. Whether it was true or not I do not know.

He said he was familiar with the progress of chemistry on the other side, in the development of munitions particularly, and as I recall it, he told me he had publicly talked about it. But my recollection is not very definite about it. I think that about covers it, sir.

Q. 239. Did you in this conference with the President mention the number of patents approximately that were sold to The Chemical Foundation.

Mr. Anderson: I object to the question as leading.

Mr. Kresel: After the witness has exhausted his recollection, I have a right to ask him that.

The Court: Objection overruled.

A. I certainly did. I knew about what the amount was, and I told him all about it.

Q. 240. What did you state to him upon that subject?

A. That there were all told perhaps more than four thousand of these patents.

Q. 241. And did you mention to him the cash price that was to be paid by The Chemical Foundation?

A. Yes, I said that, I think.

Q. 242. I do not recall your saying; but will you say it now?

> THE COURT: He did cover that in his statement. You may get him to repeat it, if you desire.
>
> MR. KRESEL: I do not recall it.

Q. 242. (Continued) You did tell the President that?

A. I told him the amount of the capital stock of The Chemical Foundation and $250,000 of it was to be used for the purpose of paying a cash consideration for these patents.

Q. 243. Did you mention to the President at that time your report?

A. I do not know. I cannot recall. It was then in his hands or had been transmitted by him to Congress.

Q. 244. In connection with that part of the conference referring to Mr. Bradley W. Palmer, I show you copy of a cablegram from Mr. Palmer in Paris, and ask you whether that cablegram was brought to your attention at or about the time of its receipt?

A. Although this was after I left the Alien Property Custodian's office, it was brought to my attention, as were all the messages from Mr. Bradley W. Palmer at the Peace Conference. They were all shown to me.

> MR. ANDERSON: I ask to strike out the last part of it and make the answer responsive to the question, for two reasons——
>
> MR. KRESEL: You do not have to assign any reasons. I will consent rather than have your reasons. I now offer in evidence this cablegram from Mr. Palmer.
>
> THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 44." (*See Exhibits, Vol. IV, page 2312.*)

Mr. Anderson: Have you the original of that?

Mr. Kresel: I haven't it here. I suppose it is available. Would you like to see the original?

Mr. Anderson: No, I will not object to the introduction of the copy but I would like to see the original.

Mr. Kresel: I will see if I can obtain it.

Mr. Anderson: You understand I am not objecting to the introduction of this.

Mr. Kresel: I understand.

Mr. Anderson: But I would like to see the original.

Mr. Kresel: Your Honor, this is a cable dated Paris, April 23, 1919, and reads as follows: (Reads Exhibit.)

Q. 245. I now show you a copy of a cablegram sent by Mr. Garvan to Mr. Bradley W. Palmer in Paris, and ask you whether that is the answer to the cablegram just read, and whether it was brought to your attention at the time of its despatch? (Handing witness.)

A. It was, and that is the answer.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: Have you the original of which that is a copy?

Mr. Kresel: I suppose that is available.

Mr. Anderson: I would like to see it.

Mr. Kresel: Colonel Anderson, my information is from the gentlemen who know that all these cables, or the original and copy of these two I am just introducing are in the State Department files; and you will recall, of course, that you put in here a portion of this very correspondence. I think I should like to have all the rest of it produced from the State Department files. I just happen to have these two, there may be others I would like to use. May this be marked now.

Received in evidence and marked "Defendant's Exhibit No. 45." (*See Exhibits, Vol. IV, page 2313.*)

Mr. Anderson: If you will specify, Mr. Kresel, exactly what you want I shall make every effort to get it from the State Department if it is in its files. I cannot bring the whole State Department files of the Peace Conference correspondence.

Mr. Kresel: No.

Mr. Anderson: You have had access to them.

Mr. Kresel: No, we have not had access to them.

Mr. Anderson: I do not know how we can get those, because I have never seen them.

Mr. Kresel: I should like to have produced, if you will, all other cablegrams from Mr. Bradley W. Palmer during his stay there in Paris at the Peace Conference.

Now I will read the answer, your Honor. It is dated April 24, 1919, addressed "Ammission." That is American Mission, I take it. It is addressed to Paris, for Bradley W. Palmer, from Garvan, and in that connection I may say that Defendant's Exhibit No. 44 also has the words above "From Ammission." (Reads Defendant's Exhibit No. 45.)

Q. 246. Do you remember, Mr. Palmer, how soon after this conference with the President on the evening of March 3, 1919, the President left the country to go abroad again?

A. I think he left Washington on the evening of March 4th and left New York on the morning of March 5th.

Q. 247. Do you know Admiral Grayson.

A. Very well.

Q. 248. Did you speak to Admiral Grayson before the President again left the country to go abroad, which you say was about March 4, 1919, with reference to your report, Defendant's Exhibit No. 30? Just say yes or no.

A. Yes.

Q. 249. Did you give Admiral Grayson a copy of your report?

A. I gave him two copies, as I recall it.

Q. 250. What did you ask him to do with reference to those copies?

Mr. Kresel: Do you object to that?

Mr. Anderson: I do. It is subject to the same objection I have made to all these conversations.

Mr. Kresel: I mean do you object to it because it is hearsay; is that the point?

Mr. Anderson: I do.

Mr. Kresel: Very well, I won't press the question. Does your Honor understand that there is objection to this?

The Court: Yes. I did not grasp the nature of the objection.

Mr. Kresel: Will Colonel Anderson state it then?

Mr. Anderson: In addition to the general objection which I have already stated, I object to all of these conversations, and I do not care to repeat all that unless necessary. This is a specific conversation with an Admiral of the Navy, whose position, of course, we all know perfectly well; but it is utterly immaterial to this situation, and a conversation between Mr. Palmer and

Admiral Grayson is purely hearsay, and therefore I object to it in any event.

Mr. Kresel: Is there objection to my stating——

The Court: I know your purpose; you have stated it to me before. But the hearsay is what?

Mr. Anderson: Of course, what he stated to Admiral Grayson probably is not hearsay but if he is going to ask for what Admiral Grayson said to him — if under your Honor's ruling this evidence is admissible I suppose he could state what he said to Admiral Grayson, but if you are going to follow up——

The Court: No, I am not sure it is, unless you are going to prove by Admiral Grayson a fact the nature of which was heretofore indicated in the several statements. Have you proposed to do that?

Mr. Kresel: I do, your Honor. I think, sir, I can clear it up by a letter which I am about to introduce.

The Court: Very well.

Q. 251. Did you receive a letter from Admiral Grayson, of which this is a copy? (Handing paper.)

A. I received a letter from him.

Q. 252. I would rather show you the original. Is that the letter you received? (Handing paper.)

A. Yes, this is the paper.

Q. 253. Do you know whether Admiral Grayson accompanied the President abroad on this trip?

A. He did.

Mr. Kresel: I offer this letter in evidence.

Mr. Anderson: I object, if your Honor please. What Admiral Grayson wrote to Mr. Palmer is not evidence of what Admiral Grayson said to the President. Admiral Grayson is available, subject to the subpœna of this Court, and if they want to introduce any evidence from him, they will have to call him and subject him to cross-examination.

The Court: Are you offering this letter for the purpose of showing that Admiral Grayson carried out the request made by him to Mr. Palmer? As I understand it, you have stated heretofore that Mr. Palmer made a certain request of a person who accompanied the President, and I suppose he is now identified as Admiral Grayson.

Mr. Kresel: Yes, your Honor.

The Court: Then is not Colonel Anderson's objection well taken?

Mr. Kresel: No, I do not think so. I think that we have a right to show that Mr. Palmer, through anybody (I do not care who the agent was), brought to the President's attention certain facts or certain documents (in this case it is a document), and my sole purpose in introducing this letter is to show that it was delivered to the President.

The Court: But there is my difficulty. You are not offering sworn evidence of the fact that it was so delivered and you are only offering the signed statement of the Admiral that it was so delivered: I assume; I know nothing about the contents of the letter. That, as I understand the rule on evidence, does not have evidential value. I am reasonably clear on that. I think the objection is well taken. If you have any doubt about it, you may put the letter in under our general rule.

Mr. Kresel: I have adopted in this case, your Honor will have noticed, the rule not to take advantage of your Honor's very generous offer to let either side put in anything although the Court does not think it is material. I will not do that. I may later call Admiral Grayson; I may not.

Q. 254. Mr. Palmer, bearing upon the salvarsan patents, do you remember an interview that you had with Dr. Stieglitz?

A. Yes.

Q. 255. Do you know who Dr. Stieglitz is?

A. I have known him to be a very eminent man in the chemical profession, if you mall call that a profession. I do not know whether he is a teacher or an active man. I really do not know. I have heard of him.

Q. 256. Did he come to you with a letter of introduction from Governor Fort of the Federal Trade Commission?

A. I think he did come that way.

Q. 257. And is that a copy of the letter (handing paper)?

A. He came to see me on March 4th, that day. I assume that is the letter he brought. It is a letter addressed to me. I do not recall it.

Mr. Kresel: I offer the letter in evidence. Any objection to that?

Mr. Anderson: No.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 46." (*See Exhibits, Vol. IV, page 2313.*)

Q. 258. Will you state briefly the conversation that you had with Dr. Stieglitz upon this subject of salvarsan?

Mr. Anderson: I object, if your Honor please. I do not see what materiality there is in a conversation between Dr. Stieglitz and Mr. Palmer after he had resigned as Alien Property Custodian on the 4th of March, when he said he tendered his resignation.

The Court: I will hear Mr. Kresel, because I do not understand the purpose, Colonel Anderson, and then I will hear you further.

Mr. Kresel: We offer this evidence to show what information was conveyed to Mr. Palmer upon this particular subject. Now, while it is true that the information was conveyed to him on the 4th of March, which I think was a day after he had resigned as Alien Property Custodian, it is nevertheless material, in my view, under the allegations under the Bill of Complaint charging conspiracy on the part of the dye interests to induce the transaction which is being here attacked. When Mr. Palmer resigned on the 3d of March, 1919, as Alien Property Custodian, he did not sever his connection as an official of the Government. He became the law officer of the government. The plaintiff has introduced here numerous exhibits connecting Mr. Palmer with this transaction long subsequent to the third of March, 1919.

The Court: For instance, what exhibits? I do not now recall.

Mr. Kresel: Let me see if I can recall some of them. As I recall it, in the Flush Tank transaction there is a letter addressed to Mr. Palmer subsequent to the 4th of March, 1919. I wonder if I could get the number of that exhibit. That is only one. I think in this series of correspondence —what is the name of that patent?

The Court: I recall those early documents. they were received on March 26th as having been received on March 25th, according to your contention.

Mr. Kresel: Yes.

The Court: But I was unaware heretofore of their being sent to the witness.

Mr. Kresel: There is no doubt that some were sent to the witness. Moreover, as I recall it—of course, there have been so many documents here, your Honor, that it is difficult to remember them all——

Mr. Galloway: Was that letter introduced in evidence, Mr. Kresel?

Mr. Kresel: Which one?

Mr. Galloway: The one in March to Mr. Palmer, after he became Attorney General.

Mr. Kresel: I think it was. I am trying to locate it now.

Mr. Galloway: I do not think it was.

The Court: I do not know; but the letters that I recall were two. Mr. Kresel called attention to the fact that they were stamped as having been received March 25th. I understand what you have in mind.

Mr. Kresel: May I also say this, your Honor: We shall show that when the Alien Property Custodian, Mr. Palmer's successor, gave to the Government a free license on some of the patents (I think that was in February, 1920), but which was subsequently cancelled by the big licenses, as appears from the terms of it, that was delivered to the Attorney General of the United States as the law officer of the Government and representing the Government. We will show that.

In other words, Mr. Palmer's connection with this transaction did not really cease on the third of March. In his official capacity as Attorney General of the United States he still had connection with this transaction, and in view of the broad charge in the complaint that he was induced by this conspiracy to do what he did do in connection with this transaction, I think we have a right to show all the information that was available to him, If it is not too remote.

Your Honor will see this is the very next day after he resigned, and as I recall Mr. Palmer's testimony, he did not actually leave the Alien Property Custodian's office until the fifth of March.

THE WITNESS: I continued to be Alien Property Custodian until I qualified as Attorney General on the fifth of March.

THE COURT: And this communication was when?

MR. KRESEL: Fourth of March.

THE COURT: I will hear you, Colonel Anderson.

MR. ANDERSON: I thought it would be the quickest way to dispose of this matter to simply say Mr. Palmer terminated his connection with this matter officially. That he continued to occupy the position of Attorney General, no one questions, but there is not a suggestion in this bill that anything Mr. Palmer did as Attorney General is in question here.

But supposing he had continued until 1920 or 1921 to be Alien Property Custodian, why is a conversation between Dr. Stieglitz, of Chicago, and Mr. Palmer admissible in this case, if Dr. Stieglitz is available to testify to any facts he knows, if he told to Mr. Palmer any facts relating to this matter?

Therefore, if they want to prove any facts in connection with the matter within the knowledge of Dr. Stieglitz, and I assume he would not have told Mr. Palmer anything that was not within his knowledge, the person to call is Dr. Stieglitz to prove what he knew at that time. But certainly a conversation between Mr. Palmer and Dr. Stieglitz is not the best evidence of the facts in this case.

The Court: The only difficulty that I have now that the time has gone to the fifth day of March, Colonel Anderson, is this: The judicial department functions only on sworn statements or agreed statements of fact. My information is that it is the only one of the three departments that does so function, or whose duty it is to so function. Now, whether this was a misrepresentation or a correct representation and a truthful representation to the witness, I am wondering whether he would not have a right to disclose the information which came to him upon which he acted, without having the burden put upon him of staying his hand until after he had had each representation supported in such a manner as to enable it to be received in a Court of Law.

Mr. Anderson: If your Honor please, I am not arguing now that Mr. Palmer, as Alien Property Custodian, or as Attorney General, would have to have the information presented to him under oath or as a Court. I am not arguing that. I am reserving very earnestly my objections to these various conversations for the reasons which I have undertaken to outline and others which appear of record; but I do object to an attempt to prove a fact in Court by what Dr. Stieglitz told Mr. Palmer.

The Court: There is no need debating that, because I concede that you are right on that, and I assume that there is no dispute about that; is there?

Mr. Kresel: None at all. I am simply trying to show what information this witness had.

The Court: Whether it was correct or incorrect?

Mr. Kresel: That is a matter which if we do not show by other evidence the Government can argue is not proof of the fact stated in the information.

Mr. Anderson: I do not want to put the Government in the position that it must go through this record and argue as to each of these statements that they are not proof of the fact, if there is any claim that they are proof of the fact. That is the reason I am raising this objection.

The Court: Let me ask this question: as I indicated yesterday, and I have been considering it at all odd moments since, as to whether the inevitable conclusion to be drawn from your allegations, although in a very courteous way you declined to charge the Governmental officials who were instrumental in the consummation of this transaction with fraud, and very graciously said that while they might possibly be guilty of legal fraud, you did not desire even to use that term in connection with them and you hoped you would not be required to prove actual fraud, or something to that effect (you were stating it much more graciously than I can) yet the tendency and the necessities of the case under the allegations of the bill seem to me to drive the plaintiff inevitably to this conclusion, particularly in view of the testimony in this case up to this point: That if this witness, knowing the facts which he has stated that he does know or did know, was the moving spirit in the consummation of this transaction, and in so doing became a party to the conspiracy, is there any escape from the conclusion that he was the most guilty participant in the transaction, those greatest interested in the dye and chemical industry not excluded? And if that conclusion of mine be in any degree sound, is it proper to deprive this witness, although not a party defendant, of the opportunity of disclosing in full measure the information upon which he acted?

Mr. Anderson: Your Honor has asked a question which I have to consider a little, because I want to answer it, with the witness on the stand, with the greatest frankness that I can. My respect for this witness and the consideration due him as a former high official of the Government of the United States and a distinguished citizen is such that I want to avoid saying anything which by any implication could be taken to have a different construction from that feeling.

I have always taken the view that actual fraud is a matter which must be drawn from the entire record, be argued before the Court upon the entire record, and should be very carefully avoided in the presentation of a case, where only the facts should be proved and let the Court draw its conclusion. Because fraud, of course, is a conclusion from facts proven, and not a fact.

Therefore, if it were necessary or if in the study of this case it should be deemed necessary to do what the Government of the United States may conceive it to be its duty to do, I should not hesitate to argue for any conclusion which might be drawn from the evidence, however reluctant I might be to do so. Because, of course, the witness himself would be one of the first to disclaim any idea that any citizen of the United States is above the law, as he said, the administration of the law was in his charge. Therefore, if it is consistent with a frank answer to your Honor's question I prefer not to argue the question as to what this record will disclose or may disclose at the present time without a very careful study of the record, and I certainly would not contend for actual fraud unless I felt the record clearly sustained it.

The Court: But I do not mean your personal——

Mr. Anderson: I understand. I am speaking officially; I have no personal status.

The Court: I understand. But must I not now, so far as the admission of evidence is concerned——

Mr. Anderson: I understand, and I was going to answer that.

The Court: (continuing) ——or any question with respect to evidence, have in mind your position? Not whether you have succeeded in establishing a case, but your contention; because whether you have established a case or not, or made out a case, is a matter for final determination.

Mr. Anderson: I understand, sir; entirely so.

The Court: But I am confronted with your contention, that contention which I stated a moment ago, though you have not put it so and it seems to me you have put the premises a little differently, must be borne in mind in reaching the conclusion. If that is true, I see no escape from it.

Mr. Anderson: Let me go ahead. Would your Honor permit me?

The Court: I should be glad to hear you.

Mr. Anderson: Because this is a matter on which I would like to make my position clear if I can in an offhand way. It is my view that the distinguished gentleman who is now on the witness stand entirely misconceived the meaning of this law and his duties thereunder.

The Court: I missed your last statement.

Mr. Anderson: His duties thereunder. I say that with great respect for his views. But I think so; and that the Government was probably acting upon a wrong theory of this statute. If that is true, it is perfectly proper for us to bring it to the attention of the courts.

Let us assume that the Alien Property Custodian at that time was wrongfully advised as to his legal duties. I quite agree with Mr. Palmer that if the office which he occupied at that time authorized him to discharge the duties which he outlined here and on the theory which he has outlined, then it was the most remarkable office in the existence of the world; I agree with his statement of yesterday, there is nothing to equal it in the history of the world, certainly since the Roman Empire. But I do not think so.

Let us assume now that he honestly entertained that view, which I do not question, and that the people who were interested in securing these patents — notwithstanding his statement of his participation in this matter; turning to other evidence in this case their purpose and aim are of record, contemporaneous record—took advantage of that view and of a natural enthusiasm to render what he conceived to be a wise public service to secure these patents under conditions which would be a violation of the rights of the United States. Then in such event the element of actual fraud, even though he assumed responsibility and even though he participated in this matter at the time in the manner in which he has described, might be entirely absent because of the want of fraudulent intent. It might be due to a mistake of law, a mistake of fact, or any other consideration, but which would not relieve the situation in any way. But I have proceeded on that theory. It must be obvious to the Court now that a great deal of the original record in this case was not available to the Government at all, and I assume the most favorable theory for the officers of the Government. Will your Honor permit me to finish my sentence?

The Court: Yes.

Mr. Anderson: I want your Honor to try this case and to admit evidence in this case on the theory that when we come to examine this record the Government is going to take any position which it conceives to be proper, observing every possible respect for those who have discharged the duties of high office, to take any position which it conceives to be proper to maintain and establish the rights of the people of the United States as it conceives them.

Mr. Kresel: I do not understand, your Honor, that we can try a case on that basis.

Mr. Anderson: Then we stand on the allegations of the bill.

Mr. Kresel: We must know whether this plaintiff has set forth its claims in this bill of complaint.

Mr. Anderson: Well, we have.

Mr. Kresel: We cannot be proceeding, trying a case in the dark, with the reservation on the part of the Government that it may take any position it pleases afterwards. That seems to me an extraordinary statement.

Mr. Anderson: Let me explain my statement, if counsel will allow me to interrupt him. It may save him argument. What I mean, so that the Court and counsel may understand, is any position that it sees proper on the evidence and the pleadings in this case. They are the limit.

The Court: That is the reason I asked you to answer the question which I did.

Mr. Anderson: Yes.

The Court: Because while, as it seems to me, you had a personal desire not to inject into this case any elements of fraud that could be voided, it seemed to me that probably you were letting your personal inclinations control your legal judgment when you said that fraud would not be attributed to the Governmental officials. It seemed to me that what you subsequently did in your legal capacity negatived that personal expression, and consequently as I understand your last statement you hold yourself in readiness to charge all persons who participated in this transaction with actual fraud if you deem it in your legal capacity necessary or proper to do so at the conclusion of this case. Consequently, the defendant must be prepared to meet and must prepare itself by evidence, documentary or given from this witness stand, such charges. But before you proceed may I ask, Colonel Anderson, one further question.

Mr. Anderson: May I first answer that question?

The Court: Yes.

Mr. Anderson: Your Honor does not quite recall my statement. Your Honor asked, Do you charge fraud in this case? I said, legal fraud, yes, actual fraud, I hope not. That is the way I expressed it.

The Court: I think so.

Mr. Anderson: That is the way the record reads. I have stated in this case any number of times that while I wanted to avoid the unpleasant incidents of a trial, as your Honor has indicated, we are presenting this case on the pleadings and we stand upon every position that can be properly taken under those pleadings. I stated that before we closed our case. And upon any proven conclusion which we can argue for upon the pleadings and the evidence in this case we shall feel at liberty at the conclusion of this case to argue for it. I say that, as your Honor has said, as counsel and in presenting the case and in the argument of the case I am going to take that position with the greatest consideration that I can, not inconsistent with my duties.

The Court: Now then, the other question.

Mr. Anderson: I beg your Honor's pardon.

The Court: As I understood you, at the concluding part of your previous statement, you said that many of the exhibits in this case, many of the documents, were not open to you. I did not understand you.

Mr. Anderson: Your Honor has seen a number of papers or correspondence produced that are produced not from the records of the Government at all. For instance, as I stated to your Honor the other day, the original letter from Mr. Palmer to Mr. Polk, a copy of the letter, was not in our possession.

The Court: Do you mind telling me again what you said, because I did not get that fully, and after that I may want to ask you another question about it.

Mr. Anderson: I will. I intended to say this: First, I called the attention of Mr. Palmer yesterday to the fact that those important letters of the President, the originals, were in his possession. I am not imputing any improper motives. We have never seen them before. We have never been able to find them and I am going to show that they are not in the office of the Alien Property Custodian, if I have to, if it is material.

There is proof here that a number of papers were packed up and sent away from the Alien Property Custodian's office. I have tried to avoid that unpleasant situation here and that is what I referred to when I said that I reserved the question under Section 46 of the bill. Counsel and I have agreed that possibly we will not have to go into that question. If I have to, I will do it.

If the evidence was coming at all, I preferred it to come from their side and not from us. A number of these papers were discovered and returned to the Government two weeks before this trial started. Among them was a number of copies of letters to the President, a copy of the letter of Mr. Palmer to Mr. Polk, and other papers of great importance in this case. It was discovered by counsel among their papers and promptly returned to us.

Those things were not in our possession at the time. They are developing here. We had to draw this bill upon the facts as we had them. We are in a position to show here that many of the records, original records of the Alien Property Custodian, are not there; and when I say that, unless I have very definite evidence that it is in the possession of these gentlemen, I want to be most careful in making any suggestion of that kind, or certainly to asperse their motives in the matter.

I have made that statement for the reason that I think it is due the Government I should make it. I made it, I think, at the outset. I made it the other day when the letter to Mr. Polk was produced. I said that neither the original nor a carbon copy of that letter had ever been seen by us until two weeks before this trial.

The Government has been in a position where it had to draw its case upon the facts before it; and the delay in investigation here—I mean the delay in bringing this suit—of several months, we state in the bill, was induced by our inability to get hold of the records. Colonel Miller testified the other day that there were no copies of these assignments, these fundamental papers on which this case is based, in the Alien Property Custodian's office when he went there.

I am not here to try that kind of a question, but I am saying those things in view of the claim here that the Government is guilty of laches, which as a matter of law does not amount to anything, because the Government cannot be guilty of laches. It is stated in the bill as a reason why this thing has been delayed.

I have not mentioned that because I imagined that when Mr. Garvan went on the stand, in view of the statement in the bill, he would probably explain that and I would rather the situation should come from him and not from me. My statement on the record, of course, is merely in response to your Honor's question.

The Court: I did not understand what you meant by the statement. I did not understand it and consequently did not know what you meant by it.

Mr. Anderson: Have I made myself clear?

The Court: Entirely so. I did not understand the legal conclusion that you wanted me to draw from it. Mr. Kresel, I will be glad to hear from you.

Mr. Kresel: I think your Honor, that I cannot let this colloquy between the Court and Colonel Anderson go by without stating the defendant's position in the matter, and it is this: that the Government at all times had in its possession every document that has been produced in this case, including the copy of the letter that Colonel Anderson says was written by Mr. Palmer to Mr. Polk and which he says was not at the time of the drawing of the bill available to him.

Mr. Anderson: Well, now——

Mr. Kresel: I do not mean to say that Colonel Anderson is telling something that is not a fact, to his knowledge.

Mr. Anderson: I want to hear Mr. Kresel and then I will reply.

The Court: I will hear you at the end of Mr. Kresel's statement.

Mr. Kresel: For example, your Honor Colonel Anderson says that the Government did not know of these letters from the President to Mr. Palmer, some of which Mr. Palmer produced here yesterday. Copies of those letters were on file at the White House. The fact that Mr. Palmer had the originals did not deprive the Government of knowledge of those letters.

He says that there were no copies of the assignments to us in the files of the Alien Property Custodian. Assuming that it be true, the fact is nevertheless true that the originals were on file and on record in the Patent Office. He says that he has proof in this case that two boxes of papers were taken away from the Alien Property Custodian's office and sent to the Chemical Foundation. He has not stated to your Honor that it appears from the letter which he calls the proof that the two boxes contained copies of demands and copies of assignments of the very patents that are included here; muniments of title to which this defendant was entitled.

That no secret of the fact was made that they were shipped to the Chemical Foundation is shown by the fact that the Government has been able to produce the letter written by Mr. Goldstein, of the Alien Property Custodian's office, to Mr. Hoguet advising him that the shipment was being made.

There have been hints here and there that documents were taken away improperly. We resent that. They have made the statement in their Bill of Complaint that documents were sent to the Chemical Foundation. We had assumed that when they put in the letter of Mr. Goldstein with reference to those two boxes, that that was their their proof, and we were willing to meet it.

Now, if they have got any other proof on the subject, let them produce it. But this business of stating here that the Government did not know the facts is unfounded. These attacks upon the Chemical Foundation and the chemical industry here have been the subject of five investigations before Congressional committees. Surely, the Government knew everything about those. Why, this Chemical Foundation has been investigated, as I say, five times from top to bottom and the Government knew and was chargeable with knowledge of everything that has been brought out here today or ever since we started this trial.

Not a new thing has been developed. And for the Government to come in here now and plead at the breaking of their case that they did not know the facts when they drew their bill of complaint is disingenuous, to say the least. They knew everything and we resent any imputation that anybody connected with this case took away any documents that he was not entitled to. You may answer.

Mr. Anderson: All right, sir.

I am not going to indulge in epithets, if your Honor please. But since this question has been raised, much to my regret, possibly through an inadvertent statement of mine, I am going to state the facts and, if necessary, I am going to prove the facts.

Mr. Kresel: Now, I object to any statement of facts upon a subject of this sort. If there is any proof, let it be produced.

The Court: Colonel Anderson, you have stated your point. Mr. Kresel has stated his. Is there anything further to discuss?

Mr. Anderson: There is, sir, because there have been statements made here that, I take it, I am disingenuous, which is one of the few suggestions I have ever had of that kind—I think probably the first I ever have had in court; and, therefore, I shall claim the privilege of replying to that statement.

The Court: I am going to give you that privilege, Colonel Anderson; but I hope that you will not, under the plea of personal privilege, which shall not be denied you, go further afield than if you replied to that statement tomorrow morning instead of this morning.

Mr. Anderson: I am not. Your Honor rather implies that I am irritated by it. I would be out of court, but I am not in court. I am here officially and therefore I will not be any more irritated at the bar than I would if I were on the bench. So you are not going to find me overstepping the limits of what I conceive to be propriety because of any irritation.

The Court: But isn't it this, Colonel Anderson? I have led to this by what I have deemed and what I now consider necessary in order to determine the admissibility of a letter. You have both gone a little far afield.

Mr. Anderson: Possibly.

The Court: Now, then, I do not see that there is anything that calls for a reply. You will have the opportunity, if you want it. It seems to me that we are discussing here the admissibility of statements made to the witness on the fourth day of March, 1919. The consideration of that question brought up other questions as incidental thereto. It seems to me that is the question that is before me and that other questions are immaterial. I do not see that there is any particular reason for claiming personal privilege, but I am going to let you be the judge of that and not myself.

MR. KRESEL: I made no reflection upon Colonel Anderson personally. I do not see whether the question of privilege comes in.

THE COURT: What is that?

MR. KRESEL: I say, I have made no reflection upon Colonel Anderson personally whatsoever and did not intend to.

THE COURT: That was my understanding, Mr. Kresel.

MR. ANDERSON: I think the charge that the Government had been disingenuous and the flat denial of my statement that the Government did not have these papers available, according to my view, would, outside of the court room be regarded as a very serious reflection; but in the court room I am going to treat it in an official way. Therefore, I am simply going to say, if your Honor please, that the Government did not have these papers available.

THE COURT: Now, you made that before, Colonel Anderson.

MR. ANDERSON: I know.

THE COURT: I know, but that was made surely in support of your case. The defendant denies it. If that becomes an issue in this case, let us not debate it.

MR. ANDERSON: In the second place——

THE COURT: There has come an issue of fact, not of veracity between counsel. If in my judgment your integrity or veracity were challenged, I should be very glad to hear you.

Mr. Anderson: Then I understand your Honor does not wish to hear the subject discussed any further and I withdraw——

The Court: I think you have indicated on each side a difference of view with respect to certain facts in your professional capacity.

Mr. Anderson: There has been a recital of facts by counsel on the other side which he claims supports his view. I have not recited the facts in connection with those matters. He makes specific statements of that kind. I will either reply to them or not, as your Honor desires. Unless I can reply to them fully, I do not want to reply to them at all.

The Court: Colonel Anderson, I am hearing you at length because I realize you are taking an entirely different viewpoint with respect to the matter. It seems to me you have each stated your view of the facts fully and frankly and you differ. There is no challenge of either side of improper motives.

Mr. Anderson: I do not think I have stated the facts fully in reply to those statements made by counsel, but this is your Honor's court, and I never argue with a Court. If your Honor does not feel that it is desirable or necessary that I should make any further statement on the subject, I am perfectly willing to take my seat and drop the matter there.

The Court: One mistake you made there. This is not my court. This is a court of the United States for the District of Delaware, of which I am a mere incident. While sitting on this bench, I am functioning, not in any personal capacity whatsoever, but purely in an official capacity.

Mr. Anderson: I am addressing your Honor in your official capacity. As an official, you are the presiding Judge of this court, and what you say goes in it as far as I am concerned, and I am not going to argue.

The Court: Colonel Anderson, it seems to me that you are entitled to do this: If you disagree with counsel as to the statement of facts, as to your view of the facts, you are entitled to say so of record. You have expressed your view and Mr. Kresel has expressed his. Now then, if you want to reaffirm that the statement made by you can be established by the facts, that is all right; but we are getting into a matter that is purely collateral, and, it seems to me, foreign to the issue.

Mr. Anderson: If that is your Honor's judgment, I waive any personal claim whatever. I never make a personal claim in court.

The Court: I thank you.

I think the objection to the letter offered in evidence is not well taken. It is now admitted.

Mr. Kresel: There was no offer of a letter, your Honor. It was as to a conversation.

The Court: Yes. The witness was asked to detail the conversation had between him and Dr. Stieglitz on the fourth day of March, 1919. Will you proceed, please, Mr. Palmer.

A. I had a very brief conversation with him. He started to talk about salvarsan and its tremendous importance and the importance of the patents. I explained to him that that was my busy day; I was cleaning up my desk to get out; I was leaving, and I really could not talk to him at length. I asked him if he woud not commit to writing his views and what he desired to present to me; and he said he would.

By Mr. Kresel:

Q. 259. And did you subsequently receive from him a letter upon the subject?

A. I did.

Q. 260. Just look at that and state whether that is a copy of the letter?

A. This is a letter I received from him.

(At this point a short recess was taken by direction of the Court.)

Mr. Kresel: I would like to mark this, please.

The Court: Is the letter offered?

Mr. Kresel: That was offered. Colonel Anderson was examining it when we took the recess.

The Court: What is its date?

Mr. Kresel: Dated March 14, 1919.

The Court: Admitted.

Letter received in evidence and marked "Defendant's Exhibit No. 47", memorandum annexed "Defendant's Exhibit No. 47-A." (*See Exhibits, Vol. IV, pages 2314 and 2316.*)

Mr. Anderson: Would your Honor permit me, in addition to the general objection, to renew my objection to that letter on the ground that it was addressed to the witness after he had retired from the office of Alien Property Custodian and addressed to him as Attorney General of the United States and not as Alien Property Custodian. It has statements of fact in there, and is introduced for the purpose of stating the fact which the writer should be called to make, and not be proved by a letter from a person we know nothing about, to an officer who had nothing to do with this transaction; and therefore we think it is entirely incompetent and inadmissible for these reasons, in addition to the reasons we have urged in the objections reserved to this testimony.

The Court: It has been admitted not as proof of the facts therein contained, but as statements made to the witness prior to the execution of the assignment.

Q. 261. Upon receipt of this letter did you send it to Mr. Garvan, who was then Alien Property Custodian?

A. I referred it to the Alien Property Custodian, yes, sir.

MR. KRESEL: I want to read two paragraphs of this communication: (Reads from exhibit.)

MR. ANDERSON: If your Honor will permit me, in view of what has been read, I renew my motion to strike out this letter and the testimony in relation thereto, including the conversations with Mr. Palmer, for the reasons already stated; and directing attention especially to the letter, it will be observed from reading it that it is, I presume, read to have your Honor know that this gentleman, who was Chairman of the National Research Council and recommended certain things, and the papers attached, are his reasons for making the recommendation. Therefore, I respectfully suggest again that the only competent evidence of his reasons, if it were competent at all, would be the testimony of this witness.

I conceive that it would be impossible to separate the facts from the facts that were communicated to the witness, even if that were material, and if the letter were read before a jury, which of course is a test of evidence, it would be most prejudicial, if it had any relevancy whatever, which I do not think it has to the case, to introduce the views of this witness, his recommendations, etc., and have them read in that way without an opportunity for cross-examination or for testing his knowledge. I present that very earnestly, because I feel that that class of evidence is wrong. I am not going to insist upon it further than that.

The Court: I admit it not as proof of the facts, but as representations made to this witness and referred by him to the then Alien Property Custodian prior to the date of the assignment to the defendant in this case. I doubt myself whether such evidence will eventually be found material in any way, even though those facts were true, to the decision of the issues in this case.

Q. 262. Mr. Palmer, do you recall a conference with representatives of the War Department about the disposition of these chemical patents?

A. I do.

Q. 263. There is in evidence here a memorandum made by you of that conference, and I mention it only to fix the date. Do you recall the date of the conference?

A. January 12th, I think.

Q. 264. February 12th is the memorandum.

A. February 12th.

Q. 265. Now, will you state what that conference was, as briefly as possible?

The Court: Same objection, I assume, Colonel Anderson.

Mr. Anderson: Yes, sir. In addition to the usual objection, I should suggest, if we are going to have this evidence at all, that we ought to have the date, time, place, persons present and what they said, and not what the conference was.

Q. 265. (Continued). You understand that to be my question, Mr. Palmer?

A. Yes, sir.

Mr. Anderson: And who said it, and what was exactly said.

Mr. Kresel: I understand that there is objection to his stating what was said?

The Court: There is the general objection to stating what was said; but that is overruled. The suggestion that the witness give the time, place and persons present is I think a good one.

Mr. Kresel: May I ask whether the Government objects to the giving of this conversation, in view of the fact that the Government has introduced what purports to be a memorandum of that conversation made by these army officers?

Mr. Anderson: Then the contemporaneous memorandum is the best evidence of what took place.

Mr. Kresel: In other words, we are bound, are we, by a memorandum made?

Mr. Anderson: I thought it was a memorandum made by Mr. Palmer.

Mr. Kresel: Even so, and I do not know whether it was introduced, but even if it were, hasn't he the right to give the conversation? In other words, what I am questioning is whether the Government is raising objection to giving this conversation in view of the record.

The Court: I understand Colonel Anderson stands by the objection that he made. You may proceed Mr. Palmer.

A to Q. 265. (Continued). On the 12th of February, 1919, three Army officers in uniform called at my office, the office of the Alien Property Custodian, 16th and P Streets, Washington. They were named Holcombe, Swenarton, or Swinnerton, or something of that sort. I do not remember their rank. They were officers in uniform; and a third officer whose name I have forgotten. I am not sure that I knew at the time.

As I recall it, Holcombe—Major Holcombe, I think—was the spokesman for the party, and he said they came from the War Department to discuss with me the matter of the patents on dyes and chemicals; that there were many of them in which the War Department was interested; and he handed me a letter, I think it was signed by himself, which contained what he desired to present. I read the letter.

Q. 266. I will ask you to stop there a moment. I show you this letter, Plaintiff's Exhibit No. 87 (handing witness). Will you state whether that is the letter that they presented?

A. Yes, that is the letter.

Q. 267. Now will you proceed?

A. After reading the letter and listening to his statement, which was along the same lines, I explained to him that his proposal that I should sell to the War Department, or should seize all the German patents and sell them all to the War Department at wholesale, was quite impossible, I could not consider such a thing for a moment, that it would mean an entire abdication of all my power and authority in the premises and was contrary to my arrangement with the Federal Trade Commission, which arrangement I explained to him as I have heretofore explained it on the stand. He then asked if an arrangement would be made by which the Government could be given free license to use such patents as the Government might need for its own use from any purchaser of these patents to whom we might sell them, and I told him that that was considered as a part of our policy, and that I would suggest that he see Mr. Hoguet as to the working out of that part of it. Immediately after the conversation I made a written memorandum of it and left it in the files.

Q. 268. Mr. Palmer, I read from this letter, Plaintiff's Exhibit No. 87, which Major Holcombe presented to you, the following:

> "It is belived that whatever action can be taken with respect to any patents of the classes referred to should be taken with respect to all enemy-owned patents. The amount of labor involved in investigating and determining what patents the Government will require protection

> against is much more than would be involved in drafting blanket terms of sale for all enemy-owned patents, whether relating to war materials or not, for the purpose of ensuring adequate protection to the United States therefrom."

Did Major Holcombe and his associates who were there state that their desire was that you should execute a blanket form of sale to the War Department for all enemy-owned patents?

A. They wanted me to seize all the patents in this country owned by Germans and sell them all in one blanket assignment to the War Department.

Q. 269. At that conference did these gentlemen discuss with you specifically the nitrate patents?

A. I do not recall that they did.

Q. 270. Now I show you Plaintiff's Exhibit No. 88, and ask you whether that is the memorandum that you say you made of the conference on the same day that you had the conference (handing witness)?

A. That is a copy of it.

Q. 271. Yes, of course.

A. Signed by my initials.

Q. 272. Did you fix the price of $250,000 as the money consideration for the sale of these patents to the Chemical Foundation? Do not answer yet, please.

> THE COURT: The question is leading, Mr. Kresel, and the Government objects to leading questions.

> MR. KRESEL: I am sorry, sir.

Q. 273. Please state what conversations you had, and with whom, with reference to the money consideration and the other conditions of the sale of the patents to The Chemical Foundation?

A. My conversations with reference to the consideration were with Mr. Hoguet, Mr. Choate and Mr. Garvan, who were representing me in negotiations and conferences with the persons who were to organize the Chemical Foundation and supply the capital.

Q. 274. Will you state as briefly as is possible under the circumstances what you said upon the subject, and if you gave any reasons therefor you will state those?

A. I told them that I felt that if the other conditions which we were imposing were complied with, satisfactorily arranged for and secured, they would constitute a very large consideration for the transfer, and that there should, however, be a fair money consideration in addition thereto. Who first suggested as the money consideration the sum of $250,000, in those conferences that I had with them I am not certain, but I know that I approved it and finally fixed it as the cash consideration for the transfer.

Mr. Anderson: Would you mind having him state the date of this.

Mr. Kresel: I will.

Q. 275. Will you as near as you recall state the date when that was determined on by you?

A. Well, that was during February.

Mr. Anderson: Can he be more specific?

The Witness: Of 1919.

Mr. Anderson: Can he be more specific?

Q. 276. Can you fix it more specifically?

A. I cannot very well fix it more specifically than that, I had so many conferences with them about the details of this matter. It was before February 22d, I know that, because on February 22d, I closed up the report and signed the letter of transmittal to the President, and by that time I had fixed the price. So that it was some time between early February and the twenty-second.

Q. 277. You said if the other conditions were complied with and secured. You have not yet stated what the conditions were.

A. What I meant by that was that a corporation should be organized which would be willing to accept these patents either subject to a reservation that the

Government should have the free license to use them for its own use during the life of the patents, or by agreement make a subsequent conveyance to the Government for the same purpose, each of which would have the same effect.

Mr. Anderson: I move to strike out "each of which would have the same effect," sir.

Mr. Kresel: I consent to have the words "each of which would have the same effect" stricken out.

The Court: It may be stricken out.

Q. 278. Proceed, Mr. Palmer.

A. And the understanding that we had would be properly arranged and secured, to make certain that the corporation would issue non-exclusive licenses on equal terms and upon fair and reasonable royalties to all applicants for the use of these patents, and generally have the corporation so framed, by its charter rights, duties and responsibilities, and its organization, as would ensure to our satisfaction the purpose which we had in mind of using it as a mere conduit through which these patents should flow for general public use in building up a great chemical industry in the country, to the end that the people might have the benefit from the development of pharmaceuticals and medicines and the Government might have the security which would come from its ability to control the development of the science in the manufacture of munitions, the preparations for war, etc. Those things were done as I planned them to be done, the details satisfactorily worked out, and I considered $250,000 additional in cash as the fair and reasonable price, and I accepted it as so fixed.

Mr. Anderson: I object to the last statement about his opinion as to the value.

The Court: I think it has value apart from that, or may have value apart from that. I deny the motion.

Q. 279. Had you finished, Mr. Palmer.

A. Yes, sir.

Mr. Anderson: The witness is finished, so I now ask your Honor to strike out so much of the answer to this question as relates to any matters which are not shown in the agreement of transfer of these patents to have been the considerations named for the conveyance thereof. In other words, what Mr. Palmer, Mr. Hoguet and Mr. Choate may have agreed upon, in whatever capacity they may have been acting, is concluded by the subsequent deed to this property, and a consideration not named in that deed or indicated in that deed is not the subject of evidence, as outside of the written instrument causing the conveyance.

The Court: My understanding was that the witness was asked first about the cash consideration and then the other conditions that he required in connection with the transfer, the primary purpose being, as I understood the questions, to ascertain the grounds upon which this witness in his official capacity determined that $250,000 was an adequate cash consideration for these patents.

Mr. Kresel: Your Honor is entirely correct; and I had not concluded that branch, I was going on to another question on the same subject.

The Court: I am not passing on the weight of the testimony, nor am I receiving the evidence to change any of the conditions under which the patents were transferred or to indicate there were any other conditions. For such other purposes as it may be used, the evidence will be permitted to remain, and the motion denied, with an exception noted.

Q. 280. Mr. Palmer, in fixing the cash consideration at $250,000, did you have in mind and did you convey to these gentlemen with whom you were conferring about it the reasons for considering, as you have testified, that $250,000 in cash and these other considerations constituted a fair and reasonable price for the patents? If so, will you please state those reasons.

Mr. Anderson: The question is objected to, first, because it indicates clearly, I think, the answer; in the second place, what the witness had in mind is certainly not a matter for consideration here. To make my objection clear, though not to argue, I respectfully suggest that the matter was concluded by the Alien Property Custodian who was the successor to this gentleman.

The Court: That is your contention.

Mr. Anderson: I used the expression "concluded." The conveyance was made, there can be no question about that. We will stick to the record. The conveyance was made in writing. The conveyance was made officially by an acknowledged instrument. If these gentlemen had in mind getting ten million dollars for these patents, if they had discussed getting ten million dollars for these patents, and if they had agreed upon selling them for ten million dollars, it would not be evidence in this case, when they sold them for $250,000 and the instrument states the consideration. I may add, sir, that the question as now framed does not state his answer to the preceding question.

The Court: I think this question is improper in form and I shall sustain your objection on that ground; but inasmuch as you make a second objection, I do not see in view of your statements, how I can assume that the motives of the officers who participated in this transaction will not be attacked in the final hearing on this case or the appeal. Consequently, I shall take the answer and permit the testimony called for in substance by this question to be received if the question is put in proper form.

Mr. Kresel: Your Honor thinks the question is objectionable in form?

The Court: Objectionable in form.

Mr. Kresel: I will try to reframe it.

Q. 281. Please state, Mr. Palmer, all the considerations that moved you to fix the price at $250,000 in cash upon the conditions that you have named, and state whether you conveyed these reasons or motives to Mr. Garvan or Mr. Choate in these conferences you have been telling about?

A. Well, all the reasons that actuated me in fixing those prices, to answer the last part of your question first, were conveyed by me to these gentlemen, Hoguet, Choate and Garvan, in the conferences which we had on the subject. There were many reasons which led me to that conclusion, most of them based upon information which I believed to be correct and which I had gathered from sources in which I had confidence. Some of them, of course, not many, because I was no chemist nor patent man, based upon my own knowledge. In the first place, without regard for the character of the purchaser and the conditions under which the purchaser was to operate these patents, passing that by for the moment, it was obvious that the value of the patents under the peculiar circumstances was not to be fixed as patents are ordinarily valued.

They had been seized by me from their owners, who were hostile, of course, to us, and very bitterly opposed to that act, as I knew. Not only, therefore, would the purchaser get none of the benefit whatever of the knowledge of the inventor and the original patentee, which in the usual sale of patents is always provided for to be given to the assignee, but the purchaser would have the active, I knew, hostility and opposition of the inventor and patentee. Not only could he not get any knowledge of how to work the patent from the Alien Property Custodian, who was selling it, but he could not get in touch with the original owner and patentee, because he lived 4,000 miles away across the sea.

So that there was grave doubt as to whether the patents could be utilized successfully in this country. My information was that if they were to be utilized with any degree of success, it would only be after a tremendous amount of research and study by experts, experiments and other work, which would entail a large amount of time and effort and great expense. So that the value of the patents, therefore, was reduced, or I felt that that had to be very seriously taken into consideration before fixing any value.

In addition to that, under the Trading with the Enemy Act, ever since the beginning of the war the Federal Trade Commission had been issuing licenses to use these patents. There had been built up in the country something of a chemical industry, forced by the necessity of the war situation to grow to some extent, and this industry was watching these patents, and they had taken out some licenses from the Federal Trade Commission, and the sale that I was to make had to be subject to the rights of all licensees: As a considerable time had gone by since the beginning of the war, I did not doubt that the most valuable of the patents had probably been taken up in that manner.

Q. 281. (continued) You mean by licenses?

A. By licenses from the Federal Trade Commission, and that they were being used in the country. Whether those licenses would be surrendered to the Federal Trade Commission and new licenses taken out from the person who purchased from me or not, I had no means of knowing. I did not anticipate that they would be taken out from the new purchaser, so that the purchaser was bound to take these properties subject to, from what my information then looked like, the use of them by others in the industry to a very considerable extent.

I may say that another reason which impelled me, and which I discussed with these gentlemen at that time was this, a matter to which I had as Alien Property Custodian given public expression before that time: these patents were taken out by the enemy persons originally in open, and to my mind flagrant violation of the spirit of our laws. The Germans had violated our hospitality, if I may call it such. They were, after all, mere privileges granted by the Government under an Act of Congress——

> MR. ANDERSON: If your Honor please, I do not want to interrupt this witness; but the laws of the United States are matters of record. The acts of persons who take out patents under the laws of the United States are matters of record. If these patents did not conform to the law, then there was no reason for seizing them, because they were invalid anyhow, and the Alien Property Custodian in seizing them accepted them as legal documents, as a purchaser would. If they did not conform to the law, they gave nobody any rights, alien or anybody else. If they did conform to the law, then whatever rights the patentee got the Alien Property Custodian got subject to any existing licenses.
>
> Now, it is obviously impossible for this witness to know the motives and purposes of people in Germany. He may be able to say, if he knows, whether anybody was actually using the patents in this country, that is, provided he can say so in a manner provided by the law with respect to proof of the use of patents. But for the witness to undertake to go into an argument of the fact

that the Germans had certain motives and somebody else had some motives, and that they had violated the spirit of a law is not evidence. There is but one thing that violates a law, and that is, a violation of the law, and therefore that involves a question of conclusion at which it is sometimes very difficult for a Court to arrive, and certainly is not a matter for the testimony of a witness. I therefore move to strike out all that part of the answer for the reasons stated, in addition to the objections already made to this testimony.

THE COURT: The motion is denied. The witness is giving his reasons for acting as he did. As I understand your statements, you hold yourself in readiness to take the position at the final argument of this case that the bill of complaint is an indictment against Mr. Palmer and others of like position. I think, therefore, Mr. Palmer is entitled to show the reasons which moved him to act in this matter. Whether those reasons were legally sufficient is another question.

MR. ANDERSON: May I suggest, then, sir: the bill of complaint, of course, I am not going to undertake to construe, and that is the limit of our rights in this case, no matter what I say here either one way or the other. In the second place, as I understand it, even in the case of a man charged with fraud, he cannot testify as to his motives; he can only testify as to facts. Well, there is no charge of fraud in that bill against Mr. Palmer. Therefore he can testify as to facts within his knowledge, but I respectfully submit to your Honor that even in a direct charge of fraud no man can get on the stand and testify as to what his motives were and his reasons.

THE COURT: I think, Colonel Anderson, you are probably right. I am not passing upon the materiality or the weight of this, any more than I pass upon the materiality of the evidence of Mr. Metz, and particularly much of the documentary evidence that was introduced by you. I am leaving you to show its value, or the defendant to show its lack of value, at the final hearing. This testimony is of the character that it will be admissible under our general rule, and I do not now express any opinion or indicate any opinion by permitting it to be taken under our general rule.

Mr. Anderson: Your Honor, I would like to state then that I will ask leave on the rebuttal to go into this whole question. Your Honor has indicated it is his purpose to limit the rebuttal, and in that event I shall have to give notice now that I will ask leave at that time to go into the whole question.

In addition to that, I take it that this evidence in any event can be received only as evidence of purpose, motive and intent, and not of the facts stated. For instance, certainly this witness cannot testify as to the motives in the minds of the Germans in taking out patents in the United States.

The Court: No.

Mr. Anderson: And it is either taken as evidence of intent and motive on his part or it is not evidence at all, because it cannot be evidence of fact.

The Court: You may proceed, Mr. Palmer.

A. (continuing) I was stating what was one of the facts which led me to fix this price.

The Court: I rather gathered that you were stating one of the reasons that led you to fix that price, from facts as you understood them and not facts as you now represent them actually to be.

A. (continuing) I think I said what my information was and I was acting upon that information.

My information was that these chemical patents had not been worked in this country and I had a fund of information which led me to be satisfied that it was a fact that they were held by the Germans for the purpose of making it possible for them to import their products into this country and make it impossible for an American industry to develop and grow up into any size.

I believed that since that was plainly contrary to the purpose of our patent laws, as indicated by the Constitutional provision that patents might be issued to promote the sciences and the useful arts, and it having been a privilege granted by the Government which had been thus abused, in any accounting that the Government might make thereafter, or after the war, for such property taken, it could not under those circumstances be expected to any more than compensate the patentees for the cost of taking out the patents, at the outside, and this cost, of course, was comparatively small, a matter of $50.00 apiece or something in that neighborhood; and, the patents having on the average run half their time, on any such basis as that, $250,000 in itself would have been a large consideration.

Then there was, of course, the very important element, that in making the sale, I was not warranting the title. I was giving simply a sort of a quit claim.

Mr. Anderson: I wish to move to strike that out, if you Honor please, on the ground that the instrument of sale is in writing and the legal construction thereof is a question for the Court and not for the witness.

The Court: Have you anything to say, Mr. Kresel?

Mr. Kresel: No, your Honor, I do not think I need answer that.

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The Court: Motion denied.

A. (Continuing.) And the purchaser was bound to face serious question and possibly extensive litigation before he could profitably operate under them, as there was always the possibility that the ownership of some of the patents might have passed out of German hands lawfully before I seized them. I might have taken patents that did not belong to the Germans, either inadvertently or because I did not have the facts before me. And there might be a recovery of a very considerable number of such patents. Patents might, for instance, have been sold to neutrals, when there was under the law a perfect right for the enemy to sell these patents to neutrals. And I might find that while I was purporting to convey a very large number of patents, I was not in fact conveying them.

In addition to that, there was of course the consideration that as these patents never had been operated in America, had never been worked here, when they began to work them they might find themselves opposed by others who claimed that they were infringing American patents. In other words, none of these patents had been judicially determined as to their metes and bounds, if I may use such an expression.

Those, in a general way, were the general considerations that led me to believe and announce that this was a fair price and that it was all that ought to be charged.

Of course, in addition to that, obviously, was the fact that the terms of the sale imposed conditions which very seriously affected the money value of the patents and consequently very seriously affected the question of money consideration.

The value of a patent, as everybody knows, is based on the fact that it gives to the patentee a monopoly. We were selling these patents in such a way that that feature of it was to be destroyed. Nobody was to get the exclusive right to manufacture or produce or sell under these patents. I made that a *sine qua non* at all times from the beginning to the end of the consideration of this question; and of course, it was fatal to the idea of a large money price.

Further than that, it was a part of the plan, for the purposes which I have outlined here on the stand and which I shall not repeat, and which we believed not only sufficient and proper, but highly important: it was a part of that arrangement that this institution which was to buy these patents should not make any money and we saw to it that the thing was secured in such a way that they would never make any money out of the patents; I mean, that the stockholders, the individuals who put up the money were restricted to six per cent. on their investment.

That, of course, had its effect, must have had its effect on the value of the patents to the purchaser. I had to consider not only the value of the patents generally and the value to the seller; but in view of the fact that I had, for the reasons that I have stated, created a purchaser for the purpose of making the purchase, I had to consider the value to the purchaser.

So that, considered from all these angles and from all these points of view, I believed then and I believe now that $250,000 was a fair, adequate price and consideration.

The Court: We will now take the usual recess.

(Recess until 1.00 o'clock P. M., Standard Time.)

After Recess.

Mr. Anderson: May it please the Court, on yesterday counsel introduced in evidence a paper signed by Edward S. Rogers and stated that Mr. Rogers was a representative or employee of the

Federal Trade Commission. I was not informed on the question and reserved the question on that point. I have since made inquiry and it appears from the best information I can get, that Mr. Rogers was, at the time of that paper, officially connected with the Federal Trade Commission as counsel, perhaps, and that one or more of the licenses issued by the Federal Trade Commission and put in evidence in this case was attested by Mr. Rogers as acting counsel in charge.

I refer especially to the license dated January 17, 1918, Plaintiff's Exhibit No. 228. From those facts I assume that Mr. Rogers occupied that position and am willing to admit that fact unless it be shown to the contrary during this case, and I do not think it will. Without waiving my objection to the evidence, I admit that specific fact.

By Mr. Kresel:

Q. 282. Mr. Palmer, the order of February 26, 1919, executed by Mr. Polk, with reference to the sale of these patents to The Chemical Foundation, authorized the sale at private sale. I wish you would state the reasons which actuated you in recommending to Mr. Polk that these be sold at private sale instead of at public auction.

The Court: I understand this is subject to all the objections that you made to similar testimony this morning, Colonel Anderson.

Mr. Anderson: Yes, sir. General and specific objections.

The Court: It will be taken under the general rule.

A. The sale of the Bayer Company, carrying with it 1200 or more chemical patents to a single purchaser, taught me the danger of selling these chemical pat-an ordinary public auction to the highest Those patents had belonged to the Bayer ny of Germany, one of the six great concerns luring the war had been combined into a single I feared that they covered, without knowing what they did cover, a wide range of chemical es and products.

knew that they would ramify generally into istry and I saw that if the rest of the patents, l patents, were sold in the same manner to a urchaser, a monopoly would obviously be cre-this country having the same effects as far as ernment and the people were concerned as the monopolistic control of the industry in this had had in the past. The purchasers of the Company having already put $5,000,000 into operty and being the owner of that many were in a much better position than anybody ecome a purchaser, and there would be great that they would be the purchaser and there ien come under a single hand, under a single all these patents, with the same powers per-o them as the Germans had held.

refore, I early concluded that whatever sale e would have to be made subject to conditions ould protect us against repetition of what ened and which would, as I have explained, e opportunity of the Government to have the f the developing chemical industry.

I determined upon the conditions. Having t, I readily saw that at public sale it would be le to get anybody to accept these patents o those conditions, conditions that would re-m to give equal rights to all in the way of conditions that would require them to give to rnment a very valuable portion of what they were proposing to buy, and conditions that would make it certain that no monopoly should be created.

When the conditions shaped themselves in our minds, conditions under which we desired to sell, I saw that it would be impossible to hold a public sale and hope to get any purchaser, and therefore created The Chemical Foundation for the purpose of becoming the purchaser, in order to make sure that those conditions would be carried out. In addition to all that, of course, there was at all times the very striking possibility that if we sold at public sale and were compelled to sell to the highest bidder the patents might ultimately go back directly or indirectly into the hands of the same people from whom we had taken them.

While I know the law provided that no such person could become a purchaser, there was no way by which we could guard against that happening. After the war was over, the chances were that it would slip back into the same old groove. We knew in that connection the purpose and intent of many Germans who had property in this country taken from them and sold at public sale to re-acquire them in some kind of fashion when the war should be over. We knew that was in their minds with this tremendously important war key industry. I could not have prevented that thing happening if I had had an open public auction selling to the highest bidder. Therefore, I determined upon a private sale to this purchaser which we had created for the purpose of becoming the purchaser, which is the only concern that I knew about that was willing to accept them on the conditions that we had imposed.

The Court: If I understand you, Mr. Kresel, the witness is merely giving the reasons which impelled him in his official capacity to recommend an Act as he did, in connection with this matter.

Mr. Kresel: That is it, your Honor.

The Court: You are not relying on such statements of the witness to establish any fact other than that fact, I take it.

Mr. Kresel: That is right, your Honor.

The Court: Now, then, are you going to make inquiry now as to how he knew what was in the minds of the Germans?

Mr. Kresel: I am going to ask him that now.

The Court: Very well.

Q. 283. You spoke of knowing that it was in the minds of the Germans to re-acquire, if they could, the property that you had seized. Will you state what information you had on that point?

A. The information I had was gained chiefly from the correspondence between the German owners of American properties and their agents and other people in this country, which had been going on by wireless——

Mr. Anderson: You have not stated what time.

Mr. Kresel: He is coming to that.

A. (continuing) ——which had been going on by wireless just before we got into the war and after, in fact, we got into the war, but principally before, at a time when the Germans realized that we were going to get in. We had numberless cases in which instructions were given by the German owners to their friends in America or to their agents and representatives here that title to the property should be transferred to them until after the war.

Q. 284. Can you give some examples?

A. Yes, I can give some examples.

Q. 285. Will you, please?

A. I remember one interesting and well-known case was the case of the Hamburg-American Lines terminal at St. Thomas, in the Virgin Islands, where, acting under instructions from the Hamburg-American Line in Germany, the title to the property was con-material. The line of where it is and where it is not material is not easy to draw, and, therefore, of course, the latitude and discretion of your Honor must be followed; and unless that were clearly a mistake, it would not be reviewable.

The reasons which actuate a person, as distinguished from the facts upon which he acted, I take it, are never evidence after the fact, whether he be charged with fraud or mistake. The facts, the knowledge that he possessed may be material. But, assuming the facts to have been correctly represented, it then becomes a question of power and whether or not he followed the procedure required by law. What may have been his reasons, acting within his legal rights and in the manner prescribed by law, and with knowledge of the actual facts or a correct understanding of the actual facts, I have contended throughout and in accordance with your Honor's view, were not reviewable. But if this is considered on the ground of conspiracy or fraud, it matters not what may have been his reasons or his motives, they must be inferred from his acts and cannot be proved by direct testimony.

THE COURT: I do not think there is any difference in our views with respect to that, with one possible exception. I use the word "information" and not "reasons." I realize that the witness did incorporate in part of his answer this morning some reasons and I wondered at the time just where the line was there, whether he was not stating his reasons rather than information. But I decided to let that go in under the general rule. But it seems to me reasons become of some moment here, because I understand the statute to be that the reasons of the President must be stated in the order——

Mr. Anderson: And only those.

The Court: Authorizing the private sale. Won't you help me with respect to that for a moment?

Mr. Anderson: Yes, sir.

The Court: I have forgotten what you said with respect to those reasons and your attitude with respect to them—that is, what in your view the Court's attitude with respect to those reasons must be, whether they may be demurred to in effect as insufficient, whether the accuracy in fact of those reasons can be here challenged by you, or just exactly what your position was with respect to that matter.

Mr. Anderson: I will try to make my position clear, with your Honor's permission. The act provides that the President, stating his reasons therefor, in the public interest must determine this. No other reasons other than those stated by the President can be considered, because the act has required that he state his reason. It is an unusual act—very unusual. In the other acts where he was required to determine certain things, as in taking over the railroads or the telegraph lines, power had merely been given him to determine in the public interest, and you could not get behind that because you did not know what was in his mind.

But here he must state his reasons therefor in the public interest. I think the authorities, such as the Chinese Exclusion Acts, requiring the exercise of discretion founded upon certain facts, allowed the review of the reasons; after giving all reasonable presumption in favor of the validity of the act of an executive officer the Court, if he has clearly misunderstood or was wrongfully advised to use the English idea, as to those facts, will review them to the end that the law may prevail. To that extent your Honor can go into it.

The Court: That is, review them as to their correctness.

Mr. Anderson: As to their sufficiency for the predication, and whether in that case those reasons were within the contemplation of the law.

The Court: From your standpoint can we go into the accuracy of the statement of the reasons?

Mr. Anderson: No, sir; the accuracy of the statement of the reasons is conclusive, I should say, on all parties. He states, "These are my reasons"—1, 2, 3. Those are the only reasons to be considered.

To use an extreme illustration, suppose the President or the officer exercising this power should say that he finds it is a warm day, and something else, and that such and such conditions, which are entirely irrelevant, would justify this in the public interest. In my judgment the Court could review that, because that would be clearly not a sufficient predicate for his action.

The Court: In brief, you say the reasons may be demurred to?

Mr. Anderson: The reasons—instead of being against the pleader, in favor of the pleader. Your Honor understands that position, of course.

The Court: I cannot go back of the fact.

Mr. Anderson: You cannot go back of the wisdom of his action if the reasons are sufficient. I want to make it very clear, because I do not want to limit the scope of this proceedings at all, and in this hurried debate at the bar it might be so construed. You can look at his power, first to perform the act, second the method of performance of the act, that it followed the law; third, you can look into the facts upon which his act is predicated, because mistake of fact is always a ground——

The Court: Then you can go behind the reasons stated?

Mr. Anderson: The facts on which his reason is predicated—that is, the facts known to him at that time. Do I make myself clear? Let me use an illustration. For instance, suppose I come to this Court—and nothing is more familiar to us than the rule of the exercise of judicial discretion. Assuming jurisdiction, and assuming the Court to have known the facts, the exercise of judicial discretion may be reviewed only as to its correctness.

The Court: I understand.

Mr. Anderson: In the same way exactly an officer of the Government, who is an agent of the people, the people speaking through the law have declared can only do a certain thing in a certain manner. You inquire into that. If it says he must exercise discretion. You can inquire into the fact whether he was misinformed as to the fact, because that is like a mistake of fact which this Court could set aside or correct by its decree, just as a fraud on the Court would set aside a decree. The Court would not be responsible, it would be somebody else would be responsible; the Court would never be presumed to be responsible for a thing of that kind.

The same with an Executive officer. When you come to the last stage of the proceeding you inquire into the actual fact upon which he acted. You inquire second, into whether the reasons which he states in the public interest are such as will sustain his action.

I am frank to say to your Honor that in inquiring into that every reasonable presumption will be in favor of the reasons which are assigned, but if they would be clearly insufficient and without the scope of the act, and due to an error entirely of the meaning of the act, the Court would set them aside.

THE COURT: Of the same effect as if no Statute had been passed. That is, if the Statute did not give him the power to do it, it could no more allow the Trading with the Enemy Act to support the act.

MR. ANDERSON: And if he stated reasons which are obviously not sufficient to sustain his action.

THE COURT: I understand that.

MR. ANDERSON: But the inquiry into his reasons must be limited to the reasons which he gave in the order.

THE COURT: I understand that, but there is another point which you have probably stated with all clearness, and yet I have not got it.

MR. ANDERSON: Possibly I am not very clear today.

THE COURT: I have been wondering just where that leads to. As I understand you, there is no question but that the power can be inquired into, and you both agree to that.

MR. ANDERSON: Yes, sir, both as to the power to do the act and the method of doing it.

THE COURT: I do not know whether you differ or not as to whether judicial inquiry may be had into the reasons stated by the President.

MR. ANDERSON: I think we disagree as to that.

THE COURT: I assume you disagree as to that. I can understand you there. I do not know what my conclusions will be, but I understand you. I am not sure, however, that I understand your other contention, and I am not sure that I understand exactly what it is, but if I do it is something of this nature—that you can not only inquire into the sufficiency of the stated reasons, assuming them to accurately represent the facts embodied in the reasons, but you may also go behind the stated reasons to inquire into the accuracy in fact.

Mr. Anderson: Yes.

The Court: And also to determine whether there were other facts which were in existence, but absent from the mind of the President, which if they had been known to him, would in the judicial opinion have led to a different conclusion. Have I stated it clearly?

Mr Anderson: Your Honor has stated, I would say—I do not like to use the expression—with reasonable accuracy what I am trying to express. It is very difficult, because the line of distinction there is extremely fine and I would really have to have the authorities before me for analysis, which I haven't got. But your Honor has stated in general the thought that is in my mind.

On the other hand, assuming those conditions to have been met, as to the wisdom of the action, the exercise of the discretion, of course we all agree. But in addition to that, what I am objecting to here is that the distinguished witness upon the stand cannot give his reasons for his action and cannot give his motives for his action, because if a man could give his reasons and motives when a question of this kind arose, you never could prove the contrary. You must assume that from the facts stated.

Mr. Kresel: I desire to be heard on that, your Honor.

Mr. Anderson: I did not intend to go into an argument.

The Court: I will hear you, but it seemed to me this. I realize in one or two instances statements have been injected into the case which might be considered as pure reasoning apart from facts. But my difficulty with most of this testimony is as to whether the information which came to the knowledge of the Executive officer and the information that Executive officer must have—I assume they cannot have all facts judicially determined before they make a decision——

Mr. Anderson: Certainly not.

The Court: It seemed to me that the information was proper evidence to be received under the general rule without an immediate determination of whether or not it is material.

Mr. Anderson: Your Honor will allow me to say that when I am making these objections, of course, I am not making them captiously—I need not say that—but I recognize your Honor's position and when I state them over, it is not intended to re-argue but merely to keep the record straight that we may have these questions open for consideration when we come to argue.

The Court: You understand the unusual nature of this case makes me proceed at a great expense of time.

Mr. Anderson: I quite understand.

The Court: I will hear you, Mr. Kresel.

Mr. Kresel: We contend, your Honor, that not only may this officer state the information that he had upon which he acted, as your Honor has very well pointed out that the Executive officers must act upon information and not wait for judicial construction or determination of the facts, but we also say that it is admissible upon the ground that there is a conspiracy charged here.

It is charged that these officers did not act upon their own volition; that they were imposed upon; that they were carrying out the purposes and desires and the conspiracy of others. Therefore I contend that this officer can give what reasons he had that actuated him to do what he did, so as to show that they were his own reasons; that he was acting upon reasons that appealed to him and not because somebody else tried to get him to do the thing. Have I made myself plain, your Honor?

The Court: Yes. You may take such evidence you believe to be relevant or material, and such evidence will be taken under our general rule, and I will pass upon any necessary question with respect to it eventually.

Mr. Anderson: Under that statement I will avoid objecting unless I think that I should point out additional objections.

Mr. Kresel: I do not think there was any unanswered question, so I will proceed to the next question.

Q. 286. In the order signed by Mr. Polk, of the 26th of February, 1919, one of the reasons in the public interest assigned by Mr. Polk for making of the order reads as follows:

"Sixth: Unnecessary expense, delay and inconvenience may be avoided by a private sale." I wish you would state what the facts were with reference to the expense, delay and inconvenience that would have been entailed in a public sale as distinguished from a private sale.

A. We never made a public sale of any of the enemy properties under our published regulations without having the properties appraised by an independent appraisal company and without having a critical audit by certified public accountants of the books and accounts which were pertinent and which might be important for bidders to know about. Of course, to have made an appraisal of these patents would have required a large amount of time and a great expenditure of money. The sales which we made were made after advertisement in accordance with the statute, and we construed it to mean the distribution of a prospectus which we carefully prepared and in which we inserted all the data with respect to the property that was possibly obtainable from every source, and the advertisement for a long period in all of the prominent newspapers throughout the entire country. And this would have entailed delay and great expense about a property of this sort.

Q. 287. Did you have funds available for that purpose?

A. We had no funds available except such as we might get out of the purchase price. We would pay the expenses of the sale, including appraisal and auctioneer and advertising and that sort of thing out of the purchase price; but without any assurance that we could sell at public sale or get anybody to bid anything for it, we would have been stuck. The expenses that we would have incurred there would have been no way of paying whatever. We had no appropriation for it.

Q. 288. In cases of the sale of a going property that was in your charge, how did you pay the expenses there in the first instances?

A. Expenses of the sale?

Q. 288. (Continuing). Yes, advertising and so on.

A. We paid them out of the purchase price.

Q. 289. Did you in the first instance pay them out of the property? For example, take the Bayer sale. You had control of the property; it was a going concern; it had money in its treasury; did it not?

A. Yes.

Q. 290. In a case of that sort did you use the funds of the property itself to pay these expenses as they were incurred?

Mr. Anderson: I will have to object to this examination as leading, sir.

The Court: The question is leading in form.

Q. 291. Mr. Palmer, did you have your general appropriation for the payment of expenses in the sale of property?

A. No, no appropriation at all.

Mr. Kresel: I think that is all.

Mr. Anderson: You can stand aside, Mr. Palmer.

Mr. Kresel: No questions?

Mr. Anderson: No.

The Witness: Does that mean I am excused?

Mr. Kresel: Is the witness excused?

Mr. Anderson: As far as I am concerned.

(Witness excused.)

Mr. Kresel: I will call Mr. Garvan.

FRANCIS P. GARVAN.

Francis P. Garvan, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Did you give your name?

A. Francis P. Garvan.

Q. 2. And your residence?

A. 903 Park Avenue, New York City.

Q. 3. Your occupation?

A. Lawyer.

Q. 4. How long have you been admitted to the Bar?

A. Since 1899.

Q. 5. Have you held any public office?

A. Yes, I was Assistant District Attorney of the County of New York.

Q. 6. From what year to what year?

A. First a Deputy and then an Assistant; I do not know the division; I think from the 1st of January, 1900, to the 1st of January, 1911. That is to the best of my recollection.

Q. 7. Have you held any other public office?

A. I was Alien Property Custodian.

Q. 8. From what date to what date?

A. From March 4, 1919, to March 10th, 11th or 12th, 1921; I am not sure of the exact date.

Q. 9. Prior to your becoming Alien Property Custodian, had you been associated in the work of that office?

A. I had.

Q. 10. In what capacity?

A. As manager of the Bureau of Investigation.

Q. 11. And during what period?

A. From about November, 1917, up to March 4, 1919.

Q. 12. Are you the President of the Chemical Foundation, which is the defendant here?

A. I am.

Q. 13. How long have you held that office?

A. Since the incorporation of the Chemical Foundation.

Q. 14. Do you remember the date of that?

A. It was incorporated February 19, 1919. I think there were the regular incorporators of the Trust Company here in Delaware. How long they held office, for two or three days until the first meeting, I am not positive as to those dates. When I say the first President, there may have been one of those incorporators who were the employees of the Trust Company here, who were the original people.

Q. 15. Since you have been president of The Chemical Foundation have you received any salary?

A. I have not.

Q. 16. Or any compensation whatsoever?

A. None whatsoever.

MR. ANDERSON: I object to that, if your Honor please. Compensation is a conclusion. If he did not receive any salary, that is a fact. "Compensation" is a very indefinite term. There are many compensations other than money.

THE COURT: That is very broad, is it not?

MR. ANDERSON: It is.

THE COURT: That is the reason, possibly, that Mr. Kresel wanted it.

MR. ANDERSON: It is a conclusion. He can say whether he received any specific thing, but the question of compensation or compensating benefits or compensating results is a conclusion to be drawn from facts and not a question as to which the witness can testify and give his conclusions.

MR. KRESEL: I submit, your Honor, that the question is perfectly proper. It does not call for this witness's conclusion.

THE COURT: Whether the term compensation is used or not, he can say whether he has received anything.

MR. ANDERSON: He can say whether he received any money; he can say whether he received any salary or he can say whether he received any other material or direct benefit, specifying, and he can give the facts; but whether that is compensation or what are the conditions that are compensation is one of the most intangible things and calls for a conclusion.

The Court: I think it is open to possibly another construction, Colonel Anderson. If I were asking the question, I should probably use some other term, but it may be that the term used is better than the one I would use. In order that there may be no doubt about it, I will sustain the objection and allow the question to be reframed.

Q. 17. Have you received from the Chemical Foundation any money consideration whatsoever, whether a salary or in any other way?

A. I have not.

Q. 18. Have they paid your expenses as president?

A. They have not.

Q. 19. Have you paid them yourself?

A. I have.

Q. 20. When you used the facilities of the office of The Chemical Foundation, such as to use the telephone for your private affairs, did they pay that?

A. They have not.

Q. 21. Did you pay it?

A. I did.

Q. 22. Have you ever had any stock in The Chemical Foundation?

A. I have not.

Q. 23. Have you ever had any stock in this corporation, directly or indirectly, whether it was registered in your name or in somebody else's name?

A. I have not.

Q. 24. It appears from the minutes of The Chemical Foundation that upon its organization the three representatives whose names were used as incorporators here made subscriptions to, I think, fifteen shares of stock of the company and that when they resigned in favor of the directors of the company, one of those subscriptions was assigned to you in your name for, I think, thirteen shares of stock. Did you ever exercise that subscription?

A. I think you are wrong. I think it was not a subscription, but a right to subscribe.

Q. 25. Well, right to subscribe then. Did you ever exercise that right?

A. No.

Q. 26. In fact, did you know that that right to subscribe had been assigned to you?

Mr. Anderson: One moment, Mr. Garvan.

In the examination of this witness, if your Honor please, I would respectfully ask counsel to avoid leading. I do not want to object.

The Court: The objection is sustained.

Mr. Kresel: Would your Honor like to have the question re-read? I do not believe it is leading. I asked him whether he asked anybody for the right of the assignment. I do not know of any other way that I can bring out the fact.

The Court: Won't you repeat it, Mr. Stenographer.

(Q. 26 repeated as above recorded.)

The Court: So far as leading questions are concerned, try to frame the question so that it will not indicate whether the answer expected is yes or no. The form usually has been, "Did you or did you not."

Mr. Kresel: Very well, your Honor. I thank you for the suggestion.

Q. 27. Mr. Garvan, did you or did you not know that that right to subscribe had been assigned in your name?

A. Not until years afterwards.

Q. 28. And when did you discover it?

A. Some time, I think, about a year ago.

Q. 29. Did you ever exercise that right?

A. I did not.

Q. 30. Did you ever have any interest in the business of any of the chemical concerns or pharmaceutical concerns that have been and are the stockholders of The Chemical Foundation?

A. I did not.

Q. 31. Have you now any such interest?

A. I have not.

Q. 32. Were you in any way, either directly or indirectly interested in any subscription to any stock of The Chemical Foundation made in the name of anybody?

A. I was not.

Q. 33. As director of the Bureau of Investigation in the Alien Property Custodian's office where did you make your office principally?

A. At first in Washington; later in New York.

Q. 34. For how long a period did you make your office in Washington, approximately?

A. I think it was about the first six months while the reports were coming in in the largest volume.

Q. 35. And thereafter your principal office was in the City of New York?

A. City of New York.

Q. 36. Please state whether you had in the Bureau of Investigation any other persons who were assisting in that work?

A. Quite a large number.

Q. 37. Could you approximately state the number?

A. They varied so that I do not believe I could. I suppose about eight or nine lawyers and—it would be impossible for me to state that.

Q. 38. Did you in the course of your management of this bureau assign particular lines of work to particular people?

A. I did.

Q. 39. Were you personally active in the investigating work?

A. I was.

Q. 40. I shall try to inquire of you particularly with reference to what, if any, investigation was made by you or under your supervision of German holdings in chemical interests in this country; you understand?

A. Yes, sir.

Q. 41. Did you undertake such an investigation?

A. I did.

Q. 42. And did you take part therein personally?

A. I did.

Q. 43. Who assisted you therein?

A. Mr. Joseph H. Choate, Jr.

Q. 44. Will you please state when Mr. Choate first became connected with the Alien Property Custodian's office?

A. I could not exactly, Mr. Kresel.

Q. 45. Approximately?

A. I should say the early part of 1918.

Q. 46. Was Mr. Choate a volunteer, or was he paid for his services?

A. A volunteer.

Q. 47. What part of the work in the Alien Property Custodian's office did Mr. Choate have charge of?

A. The chemical investigations.

Q. 48. And to your knowledge did Mr. Choate devote all of his time while he was in the Bureau of which you were the head, to that work?

A. He did.

The Court: Your questions are taking a leading form again, Mr. Kresel.

Mr. Kresel: I will try to correct that, your Honor.

Q. 49. I wish you would state what information you had derived by you as a result of the investigation into German interests in the chemical industry in the

United States on or about the nineteenth day of February, 1919? I mentioned that date as the date when The Chemical Foundation was incorporated.

Mr. Anderson: In addition to the general objections reserved to all this evidence, I wish to object to the question as too general and indefinite and one that calls for an answer of such a general and indefinite character that counsel for the plaintiff is not in a position to properly object thereto. Therefore, I think the question should be specific and directed to specific matter.

The Court: May I have that question?

(Q. 49 repeated as above recorded.)

Mr. Anderson: Of course, the specific objection is in addition to the general objection of immateriality and irrelevancy, and so forth, which is reserved to all of this.

The Court: The general rule would cover that, of course.

Mr. Kresel: If your Honor desires me to state——

The Court: No, I do not, unless you have a desire to do it. My difficulty is this, Colonel Anderson: It goes back to those charges in the Bill again of lack of information. He is asked to say what information he has. The question does allow the witness to cover a broader or narrower field, depending upon the information and knowledge that he has, and so I do not see how I can exclude it in view of the allegation of the Bill. Do you?

Mr. Anderson: I would not venture to suggest to distinguish counsel for the defendant, if your Honor please, the method of asking his questions. I will, however, be glad to answer your Honor's question. Your Honor will recall that when we began this investigation, during the testimony of Mr. Metz and Colonel Miller, I was compelled to withdraw a number of questions by which I could readily have shortened the investigation, because of their generality and indefiniteness. I recognized his objection was good, and I think in this particular case of the witness now on the stand, who is not only himself a lawyer, but is president of the defendant corporation and was Alien Property Custodian (I do not use the word in any unpleasant sense), to release the witness to make a general speech or statement on the question of the conditions in the United States prior to the war would, if properly followed up, perhaps, with cross-examination, keep us here a week because there is no limit to the wrongs which we feel we suffered from the Germans or the German activities in this country from 1914 to 1916, and therefore, I think if there are any specific facts desired on that subject, the question should be framed in such a way and the foundation laid in such a way, how the information was derived, and so forth, as to enable me to test that evidence without having to go into the history of the war. Therefore, aside from my other objections, I think the question is clearly objectionable on that ground.

Mr. Kresel: I quite recognize, your Honor, and I recall very clearly that Colonel Anderson did have to reframe general questions that he put to Mr. Metz, but the cases are not at all similar. Mr. Metz was not charged with anything in this case by the Bill of Complaint of the plaintiff. His motives are not here in question, except as they were developed upon cross-examination. It is not charged that he was induced by conspirators to take an official action which it is now claimed was unlawful and I do not desire only certain specific facts that this gentleman had before him when he took his official action, but I want him to state to the Court all information that he had which is material here, so that the Court may determine whether his motives were or were not proper. We are entitled to it under the terms and the allegations of this Bill. They can not, on one hand, charge us with having violated the law—though fraud in fact is denied, they still claim it is at least fraud in law—they cannot make that charge against us and then stop us from showing upon what information we were acting. That is our position.

The Court: We will now take a ten-minute recess. At its conclusion, Colonel Anderson, I shall appreciate it very much if you will cite to me the objections to the questions put to Colonel Metz and to Colonel Miller which were overruled by the Court, which will establish a precedent for the ruling in this case.

(A short recess was then taken by direction of the Court.)

Mr. Anderson: In the few moments during recess I have only been able to look at a very small portion of the direct testimony of Mr. Metz and did not at all refer to the re-direct, where the controversy was greatest. At page 1753 of the record the question is asked: "Q. 55. I will ask you to take these licenses which you have identified, both the original issue and the subsequent issue, and state what you did under those licenses of the Federal Trade Commission and each of them?

"Mr. Kresel: I have to object to such an indefinite question."

There was some discussion, and then I said:

"I will ask him a specific question, if your Honor please, but if I should ask him a specific question, from my experience, I am afraid counsel will object. I therefore ask him to state what he did."

Mr. Kresel on the next page, 1754——

The Court: You are going now ahead of the ruling.

Mr. Anderson: I have not yet come to the ruling. Mr. Kresel on the next page says:

"Of course, Colonel, if that is the purpose, I have no objection. I do not want to hamper you by keeping you down to any particular frame of question, but I simply wanted to be sure that we were not giving Mr. Metz the entire field; that is all."

That is exactly my objection here.

"**Mr. Anderson**: No, all I wanted Mr. Metz to do was to say what he did under these licenses."

Then I further stated: "Whether he operated under them has been suggested is a conclusion. So I asked him what he did." Mr. Kresel says: "I have no objection to putting the question in that form." The Court says: "You say you have no objection. Does that go to substance as well as form?"

Mr. Kresel: So that disposed of that. There was no ruling of the Court on that.

Mr. Anderson: No ruling by the Court on it, but I had to reframe it twice.

The Court: Does the record sustain that conclusion, sir?

Mr. Anderson: I think so, sir. I stated the question twice.

The Court: Very well.

Mr. Anderson: Then the statement which I read, by Mr. Kresel, was that his purpose was to prevent giving Mr. Metz the whole field, which is exactly what is in my mind now, and I reframed it then in order to limit it.

On page 1767:

"Q. 126. When you got those products in the United States, what did you do with them?

"A. Sold them to the——

"Mr. Kresel: One minute, please. I have no objections—he sold them."

Then the witness went on to say, "Sold them in the regular course of business to the Government; sold to the Government, to hospitals and to physicians."

At page 1768, on the same subject of sales, the witness was asked, did it extend throughout the United States, and his answer was "Throughout the United States and I exported to Germany within the last month or two 160,000 ampules.

"Mr. Kresel: I ask that that part be stricken out.

"The Court: Let the answer be stricken out and the question repeated."

The Court: You do not contend that that ruling has anything to do with the form of the question?

Mr. Anderson: I do contend that the ruling was an express limitation to a specific question and a specific answer, which is all I ask for here. I am not making the objection in this case to the specific form of the question. My objection is to the opening up of an unlimited discussion on the subject.

The Court: Won't you read me then once more, please, what you have just read about the question found on page 1767, because if I understood you correctly, Colonel Anderson, the ruling there was that when the witness had answered the question, he must stop.

Mr. Anderson: Yes, sir. May I suggest this to your Honor. If you put the question in an indefinite form so that the witness can make any statement under it that he chooses, you cannot stop him because anything he may say is responsive to the question.

The Court: That may be sound reasoning or not, that I will not pass on. What I wanted to get and what I wanted to get you to get—and I will take another recess if you desire it and at such length as you desire and await your notifying me that you are ready, to find a ruling in connection with the testimony of Colonel Miller or Colonel Metz which will serve as a precedent and warrant a ruling in your favor on the question now before the Court. That is the thing that I want to get.

Mr. Anderson: Yes, sir. I want to come to that. Mr. Metz's testimony is hundreds of pages long and I have been able to go through very few.

The Court: I will wait for you when we will take an adjournment.

Mr. Anderson: If your Honor will permit me, I only wish to point out a few of these questions. I do not want to point them all out.

At page 2114, in Colonel Miller's testimony:

"Had you any personal knowledge of the character of the corporation known as The Chemical Foundation, Incorporated?

"Mr. Kresel: Pardon me a minute. I object to that question as being indefinite. I do not know what is meant by 'the character of the Chemical Foundation.'

"THE COURT: I think your objection is well taken.

"MR. ANDERSON: I will withdraw the question. I was trying to shorten it."

Next question:

"Will you state all the facts within your own knowledge as to your execution of that order for the assignment of the patents mentioned therein, which are commonly called the Norma Company of America?

"MR. KRESEL: I am sorry, Colonel Anderson. But I must object to the indefinite character of that question. This is direct examination.

"THE COURT: I think the objection is well taken."

Then I said, "Colonel Miller has got to leave on a train at 10:50 and I am trying to shorten it. Of course, if there is an objection, I withdraw the question."

Your Honor had already ruled and the withdrawal was unnecessary. At page 2120;

"Q. 33. As to the one of the fifth day of November, 1921, which is in evidence, which undertakes to confirm certain sales theretofore made of patents, trademarks, etc.; do you know how this matter first came to your attention?

"A. It came in the usual routine way.

"MR. KRESEL: Please answer just yes or no.

"A. Why, I know, yes.

"Q. 34. Please state how it came to you and by whom it was brought to your attention?

"MR. KRESEL: I do not object to the question in so far as it asks by whom it was brought to his attention. I do object to the question as to how it came to his attention, as being too indefinite.

"THE WITNESS: Can I tell the individual?

"THE COURT: Just a minute, Colonel.

"Will you divide your question then, Colonel Anderson, or do you press it as it stands?"

Then I said, "It will probably simplify it if I divide it, so as to save time."

Then I go on and divide the question into two questions and ask the specific questions. Down lower on page 2121:

"Do you recall what, if anything, was stated to you at the time you signed or authorized this order?

"A. I directed it——

"Mr. Kresel: Pardon me a moment. Do you mean authorized or signed?"

I withdrew the word "authorized" and asked the following question:

"At the time you signed this order or when it was brought to you?

"A. This order came to me——

"Mr. Kresel: Please answer yes or no.

"A. State that question again, please."

The question was repeated and the answer was, "Yes, I recall it."

"Can you please state what was said to you on the subject by Mr. Zimmerman?

"Mr. Kresel: I object to the question upon the ground that the defendant cannot be bound by any conversations," and so forth.

On page 2122:

"Please answer the question, Colonel Miller?

"A. I had given instructions to have these records brought up to date, it really being a routine arrangement, in order to clear the titles and to enable American users of these trademarks to obtain them from The Chemical Foundation properly.

"Mr. Kresel: Just a minute, please. I did not interrupt Colonel Miller because I felt that perhaps he would get on to the conversation. He had been asked about a conversation. The answer up to the present has not stated a word about the conversation.

"The Court: Let the answer be stricken out and the question repeated.

"Q. 40. What were the representations made to you as to the situation that brought about this order?

"MR. KRESEL: I object to the question in that form.

"THE COURT: The objection is sustained. Let the prior question be repeated, unless it is withdrawn, Colonel Anderson."

I submit, if your Honor please, just running through those questions, that the statement which I made, that we were held to a very strict direct examination—as to which I am not complaining in the slightest; do not understand that I am complaining and I only refer to it to state what I understood to be the rule under which this examination was proceeding—is a fair statement. I objected during Mr. Palmer's examination on the same ground; and as we are evidently in for a long examination of this witness, he being president of the defendant corporation, I felt and now feel and submit to the Court for its ruling, to which I, of course, will immediately bow, that this witness should not be asked general questions which would open up a whole field of inquiry and discussion and allow him—and I do not mean to suggest that the witness will abuse that privilege—to make a general speech — I am not using it in any offensive form—on the subject of the relations of the Germans and the United States.

Of course, we claim that all this is immaterial and I think for that reason this question is clearly an objectionable question. I have pointed out such cases as your Honor referred to. If I am mistaken as to your Honor's ruling, then I am perfectly willing to accept any ruling that your Honor may make.

But even if your Honor thinks that in the exercise of your discretion this should be allowed, I merely make the point on the record and let it go ahead, of course, without further discussion. But at this time I want to make that observation.

The Court: In the first place, I think the rulings cited by you are not precedents for the ruling now asked by you. Nevertheless, I am going to sustain your contention in this respect, although I have grave doubts indeed as to its being well founded or well taken. You may take such action in view of the ruling as you desire, Mr. Kresel.

Mr. Kresel: If your Honor please, may I ask the Court's indulgence to adjourn a little earlier today?

The Court: At this time?

Mr. Kresel: If that is not putting your Honor to any trouble. I want to take the three o'clock train. I live far away from home and always go home on Fridays. Is there any objection?

Mr. Anderson: Entirely agreeable to me, sir? Any arrangement convenient to Mr. Kresel is convenient to me.

The Court: This case is suspended until 8:30 Monday morning. We will have no session on the Fourth of July, nor on Saturday, nor on the following Monday, July 9th. There is a patent case set for argument on that day.

(Whereupon at 2:30 o'clock P. M. Standard time, an adjournment was taken until Monday, July 2, 1923, at 8:30 o'clock A. M., Standard time.)

NINETEENTH DAY.

Wilmington, Delaware, July 2nd, 1923, at 8:30 o'clock a. m. Standard Time.

Before:

Hon. Hugh M. Morris, U. S. District Judge.

Trial Resumed Before the Court.

Francis P. Garvan resumed the stand.

Direct Examination (Continued).

By Mr. Kresel:

Q. 50. Mr. Garvan, did or did not the Bureau of Investigation of which you were the director, conduct an inquiry into the nature and extent of enemy-holdings in the organic chemical industry of the United States and the relation thereto of United States patents issued to Germans?

A. It did.

Q. 51. Will you briefly indicate how that investigation was conducted and the sources of information that came to you?

A. In the first place, we went through the Bayer Company, which was the largest of the agencies here, in respect to the property which it had on this side of the water. We searched through their files and records and their correspondence with Germany and correspondence with the other representatives of the German industries here. We went through all of the Big Six representatives in the same way.

We went through all that the Military Intelligence, the Naval Intelligence, the Department of Justice, the Secret Service, the War Trade Board, and several other agencies of the Government who were working on confidential information at that time, had.

We searched the literature of the subject which was very extensive, both in England and France and here, particularly in England, where Lord Moulton had published several articles, and who was the biggest patent lawyer in England, and was also in control of the production of munitions on behalf of England throughout the war and was knighted for that. He was a great source of our information.

We received information from the British Intelligence and from the French Intelligence; from British Who's Who, which was a publication of enormous extent, which gave the history of every one connected with international trade in Germany.

We had access to the cablegrams which passed between here and abroad, both through the diplomatic corps, both through Bernstorff and his home office, and through the agents here of the Cartel. Those cables were seized by the Navy when they took over the Sayville plant.

We talked with every one whom we could hope to have any knowledge on the subject. Agents here, the German agents, were submitted to examination and their clerks and employees, leading physicians, leading chemists, professors in colleges who had studied in Germany.

That in general shows the scope of the investigation.

Q. 52. About when did you begin this inquiry?

A. Almost immediately upon being appointed; at least by the Ist of January or February of 1918, because I think one of the first companies we investigated of any kind was the Bayer Company. One other source of information which I forgot was the propaganda centers. The propaganda societies of the Germans were taken possession of by the Government and their libraries of propaganda were taken over by us and gone through and all the correspondence in connection with those.

MR. ANDERSON: I assume that it is unnecessary for me to renew the general objections. They are considered as being made, if your Honor please?

THE COURT: I understand that all objections other than objections of form are made to this and every question asked by the defense, not only of this witness but of all other witnesses, in the same way that the defendant's objections were understood to lie to each and every question asked by you.

MR. KRESEL: Yes, your Honor.

Q. 53. Mr. Garvan, have you prepared a list of books and papers that were used in that investigation?

A. A partial list.

Q. 54. Have you it before you?

A. Yes.

Q. 55. I am going to let you refresh your recollection.

A. This, of course, does not include all.

Q. 56. I understand. Just state the first source of information that you went to?

A. By date, one of the earliest sources of information was a book translated and made part of a Senate document, a book translated on the resolution of Senator Aldrich. It was called "The Great German Banks and their Concentration in Connection with the Economic Development of Germany." That was a Senate document of the Sixty-First Congress and was translated from the German in order to be printed as a Senate document.

MR. KRESEL: Of course, I do not want to burden the record with an immense book like this, but I should like to have it appear on the record, that this book called "The German Great Banks and their Concentration—National Monetary Commission," which is document 593 of the Sixty-first Congress, Second Session, may be referred to by either side upon the argument.

The Court: Is it so understood, Colonel Anderson?

Mr. Anderson: It is a large order, if your Honor please. I have never seen the book, but I——

Mr. Kresel: That is the reason I am not asking that it be marked in evidence.

Mr. Anderson: I am just thinking what I am letting into the record. Subject to the general objections I shall agree that either side may refer to that as a public document. I am not going to object to it particularly.

The Court: In this or in the Appellate Court they may refer to it?

Mr. Anderson: Yes.

Mr. Kresel: Thank you. I read one paragraph from page 724 of this book:

"It is self-evident that this development has not reached its final goal."

The author is discussing the development of the chemical industry in Germany.

"There is even now an agreement between the Badische Anilin-und Sodafabrik and the Hochst Dye Works by which they act in common in fixing the selling price of artificial indigo manufactured by both. It is quite likely that the Hochst-Cassella-Kalle and Co. combination and the other triple alliance (Badische Anilin Fabrik, Bayer, and the Aktiengesellschaft fur Anilin Fabrikation) will gradually get together in one way or another and at some more or less distant future time form a consolidation of all aniline dye works or some looser union."

May this be marked, then, simply for identification. I think that would be a better way.

The Court: I was just wondering whether it would not keep our record in better form if it were made an exhibit as you have made each of the other documents that you have attempted to mark for use, because eventually one side or the other has put it in——

Mr. Kresel: Yes.

The Court: And eventually that could be put of record and marked as an exhibit in the case, with the understanding that it should not be re-printed with the record.

Mr. Kresel: That is agreeable. Is that agreeable to you, Colonel?

Mr. Anderson: Subject to the general and specific objections heretofore made to this evidence, which we regard as entirely outside the case, I would have no objection to having that marked as an exhibit, and we will stipulate at this time that it shall not be printed in the record, and that either party may use it as argument, as agreed.

The Court: I wondered whether that was your real purpose with reference to Defendant's Exhibit No. 30, which was Mr. Palmer's report.

Mr. Anderson: I think Defendant's Exhibit 30 contains so much information that both sides have referred to, although quite an extensive task it would be better to print—unless there is some index or something of that kind which might be left out.

Mr. Kresel: Of course I agree to that. The chemical section has got to be printed, and I think you wanted the first section printed.

Mr. Anderson: The first section printed, yes.

Mr. Kresel: There are some sections that perhaps you and I may agree upon later.

Mr. Anderson: It may be that we can strike out formal parts or things of that sort. We will do that with great pleasure if we can.

Book received in evidence and marked "Defendant's Exhibit No. 48." (*Not printed.*)

Q. 57. Mr. Garvan, will you mention the next document which you had before you in this investigation?

A. "Germany's Commercial Grip on the World—Her Business Methods Explained," by Henri Hauser, who was a French economist, which was originally published in the French in 1915, afterwards translated and published in England, and copies of which I have brought over here and circulated here.

Mr. Kresel: I offer this book in evidence, and am willing to stipulate as to that the same as we stipulated about the preceding exhibit.

Mr. Anderson: If your Honor please, as to that book, if it is offered in evidence purely and solely for the purpose of showing that Mr. Garvan had this book available as a source of information, for what it might have been worth to him, then I would make only the general objections which we are carrying upon the record such as we make to that type of evidence.

But if it is offered in evidence as proof of the facts contained therein, or of any fact contained therein as an existing fact, then I would be constrained to object, because it is not in the same position as the other book, which is an official publication of the United States, but is merely a publication by a French author of whose knowledge and information I know nothing, and of course it is not evidence in this case.

With that understanding, I want to make a specific objection to the admission of the book or any part thereof as evidence in this case.

Mr. Kresel: I think Colonel Anderson's distinction is well taken, and while I recognize that a book of this sort has not the same probative force as the official report which went in in the preceding exhibit, I do not quite agree that its only value is to show that Mr. Garvan had that before him.

As your Honor well stated on Friday, Executive officers, administrative officers, must act upon information that is before them, without waiting for judicial determination as to facts or law. And I think that this piece of evidence, as well as others that I am about to offer, is entitled to more than the value of showing that it was information that Mr. Garvan had before him. It is not only information that he had before him, but information that he acted upon, information that he was entitled to act upon.

With that statement, I am offering that in evidence and am willing to stipulate as to that the same as I did as to the preceding exhibit, namely, that while it is marked in evidence, it may be referred to by both sides but need not be printed in full.

The Court: Mr. Kresel, may I ask now whether it is your purpose at some time to ask what the facts were, as proved by someone who knew the facts apart from sources of information of that character, about the German dye and chemical situation in this country.

Mr. Kresel: Your Honor, we already have in evidence the chemical section of Mr. Palmer's report, which states the facts, and which, being an official report, your Honor will see is probative of the facts; but we are not going to stop there.

We shall produce evidence to show what the present status of the industry is since the war.

The Court: I was thinking of the status at the time of the seizure rather than now. I am wondering whether in the category referred to by the witness there were included encyclopedias, dictionaries and things of that sort.

Mr. Kresel: The basis upon which we offer this, your Honor, is that here was a publication which was available to the Government upon a subject that the Government was investigating. It contained certain information. That information together with other information was what the Government in this instance acted upon. We are trying to show what that information was.

The Court: That is a question of some moment. There has been no similar question in my experience and I doubt whether the question is not entirely new. Consequently, Colonel Anderson, the only thing that I can do is to admit it subject to such objections as you have made and determine eventually the value it has, if any, if it becomes necessary to consider this book at all.

Mr. Anderson: Your Honor please, I recognize your Honor's position and difficulties and in order to make my position clear, in view of the suggestion of counsel as to a stipulation, I will just state it specifically that your Honor may rule. We object to the introduction or other use of the book in question as evidence in this case or in connection with this case upon the following grounds:

(1) Upon the general and specific grounds which have already been set forth in the record in the opening statements and discussion of counsel which are reserved as to all questions, by agreement.

The Court: On both sides.

Mr. Anderson: On both sides.

(2) On the specific ground that this evidence is entirely immaterial for reasons which are obvious and may not be applicable to much other evidence objected to on that ground.

(3) On the ground that it is not an official document of the Government of the United States and is not competent or admissible as evidence in any case in the courts of the United States as proof of any facts contained therein.

To make that clear, the full extent to which the witness could go would be to say that among other sources of information he had certain books and publications. There was available to the witness the entire chemical library of Congress and we could not put all that in evidence. Therefore, I object to this evidence, even for the purpose for which it is offered, as showing or tending to show that there was any information contained in this book available to the witness when he was discharging the duties to which he refers, for the reason that it does not appear and cannot be made to appear, except by direct testimony, that the information contained in that book is information at all. I have never seen the book, but proof must be submitted that those are facts, and facts are the sole basis of action.

Therefore, I want to make my objections to this book as specific as possible; and without repeating them as to other similar books, I will refer to these objections as covering the ground of my objection to those books.

The Court: Your last statement, I assume, would really come under the hearsay rule.

Mr. Anderson: Yes, of course. I did not explain in detail because it is perfectly obvious what it refers to.

The Court: It is admitted subject to the plaintiff's objection.

Mr. Anderson: I might add that if the book is admitted in evidence, I am willing to stipulate with counsel that it shall not be printed in the record and that either side may refer to it as if printed, but without waiving any objections to its admissibility.

Received in evidence and marked "Defendant's Exhibit No. 49." (*Not printed.*)

Q. 58. Mr. Garvan, will you give me the next piece of literature that you had before you?

A. "Science and the Nation," a series of essays by the Professors of Cambridge University, England, with an introduction by Lord Moulton.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: Same objection, if your Honor please, general and specific, as made to the preceding exhibit.

The Court: I understand that all documents of the character of the preceding one are all admitted subject to the same objection.

Received in evidence and marked "Defendant's Exhibit No. 50." (*Not printed.*)

Q. 59. And the next one?

A. "Report on Dyestuffs for American Textile and other Industries," by Thomas H. Norton, Commercial Agent of the Department of Commerce.

Mr. Kresel: We offer that in evidence. It is an official report and we offer it not only as a basis of information but as proof of the facts therein contained.

The Court: Admitted under the same conditions as Exhibit 48.

Received in evidence and marked "Defendant's Exhibit No. 51." (*Not printed.*)

Mr. Kresel: I call attention in connection with this exhibit to the fact that it appears therefrom that it is a report which was made pursuant to a resolution of the Senate under date of January 26, 1915.

Mr. Anderson: Your Honor will understand, of course, that even as to that report, a report of that particular character, we reserve the question as to whether it is proof of the facts contained in it, because we have not had a chance to examine it and we do not know anything about the report. It may be that when we come to argue, we will admit that it is proof of facts, but we will reserve the question.

The Court: All questions are reserved for argument.

Mr. Anderson: I want to reserve it. I do not want to waive that question.

Mr. Kresel: I do not think, your Honor, that the Government is in any position in this case to question the rule that this report and other similar official reports are proof of the facts therein contained.

Again I remind your Honor and counsel that that was the position taken by Colonel Anderson here with reference to a report of the Federal Trade Commission, from which he read a portion; and I was careful at that time to inquire whether that was being offered upon the theory that such an official report was proof of the facts. Colonel Anderson stated that it was, and that is the law. There is no question about that. Therefore, I say that it is not a question of reserving anything. It is in.

Mr. Anderson: Possibly that is true, but I want to reserve the right to argue as to certain specific reports to the contrary. I do not admit they all come in the same class.

Q. 60. Mr. Garvan, what is the next one?

A. "Preliminary Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, of the Alien Property Custodian's staff, which was introduced in the hearings of the House, at pages 658 to 678.

Mr. Anderson: May I ask if you have that report?

Mr. Kresel: Yes, it is printed right here.

Mr. Anderson: I mean the original, because if you have the original, I would like to see it.

Mr. Kresel: I do not know where the original is. It is probably in the A. P. C.'s office.

Mr. Anderson: We cannot find it.

Mr. Kresel: But it is one of the exhibits that is printed in the minutes of the hearing before the Committee on Ways and Means, and in accordance with our stipulation we have a right to use the secondary evidence.

I therefore offer in evidence the "Preliminary Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, which is printed at pages 658 to 678 of this Hearing before the Committee on Ways and Means on H. R. 2706.

If it is agreable to your Honor and Colonel Anderson, we will mark this and I may have the right to substitute a typewritten copy of that. I will have a copy drawn up.

The Court: Mr. Kresel, do you offer that as proof of the facts, as you did exhibits 48 and 51, or do you offer it as you did the French document?

Mr. Kresel: I offer that as proof of the facts, your Honor. It is an official report.

Mr. Anderson: I not only make the objections heretofore made, but reserve the objection that this particular report is not proof of the facts and cannot be so received.

Mr. Kresel: When we come to argue the case before your Honor, we may argue that also.

Mr. Anderson: May I state my position so that Mr. Kresel may understand it. That is a report, as I understand it, by a public accountant, just a report to his employer, say Mr. Garvan——

Mr. Kresel: No, not Mr. Garvan.

Mr. Anderson: Well, whoever it was.

Mr. Kresel: The Alien Property Custodian.

Mr. Anderson: The Alien Property Custodian; same thing. That public accountant is available to testify, presumably, and certainly he can be called, and while it might show, assuming it to be evidence at all in this case, that Mr. Garvan had that report before him or available at that time, whatever that report contained, I respectfully contend that it is not proof of any fact contained therein, because better evidence is available in the person of the man himself who drew the report. The only point I waive as to that report is the production of the original signed copy.

Mr. Kresel: I do not need to argue that at the present time.

The Court: Admitted, subject to the objections.

Received in evidence and marked "Defendant's Exhibit No. 52." (*See Exhibits, Vol. IV, page 2323.*)

Mr. Kresel: I also offer in evidence the "Supplementary and Final Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, which is printed in the same volume of proceedings before the Committee on Ways and Means at page 678 and 679.

Mr. Anderson: The same objections, if your Honor pleases.

The Court: Admitted subject to the objections.

Received in evidence and marked "Defendant's Exhibit No. 53." (*See Exhibits, Vol. IV, page 2379.*)

Q. 61. Mr. Garvan, will you give me the next document?

A. "Report on Kuttroff, Pickhardt & Company, Incorporated," by Lee J. Wolfe, of the Alien Property Custodian's staff, House Hearings 2706, pages 679 to 692. Kuttroff, Pickhardt & Company were the agents of the Badische Company,

Q. 62. In the United States?

A. Yes.

Mr. Kresel: I offer in evidence the report on Kuttroff, Pickhardt & Company, Inc., dated January 11, 1919, made by Mr. Wolfe of the A. P. C. staff.

Mr. Anderson: Same objection, of course, as made to the preceding exhibit.

The Court: Admitted, subject to the objection.

Received in evidence and marked "Defendant's Exhibit No. 54." (*See Exhibits, Vol. IV, page 2382.*)

Mr. Anderson: I would like to ask Mr. Garvan if he has a copy or original of that complete report, or any of these complete reports, for the reason that I would like to check the question of whether they are complete in their publication. Have you any of those reports? I do not want to interrupt examination.

Mr. Kresel: We have not. At least, I do not know of any.

The Witness: Not that I know of. Wolfe can give you a copy.

Mr. Kresel: If there is any question about it, Colonel Anderson, I will communicate with Mr. Wolfe and see if he has copies in his office, and if he has, we will produce them.

Mr. Anderson: I would very much like to have them, because I do not know anything about them.

The Court: You may discuss that with counsel.

Mr. Anderson: Yes, sir.

The Witness: Wolfe must have his original working papers, any way. They always keep them.

Q. 63. Now, what is the next one, Mr. Garvan?

A. Letter of Hauser, who was head of the Hoechst concern in Germany, to Mr. Metz's firm in America, who were their agents here, dated September 20th, 1909, House Resolution 8078, page 513.

Mr. Kresel: I offer in evidence a letter from the Hoechst Company signed by Hauser, which is printed at page 513 of the Hearings before the Committee on Finance of the United States Senate on H. R. 8078.

Mr. Anderson: Same objection, sir.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 55." (*See Exhibits, Vol. IV, page 2418.*)

Mr. Anderson: Of course, I might add that a letter from Dr. Hauser to Mr. Metz certainly could not have any relation to the Government of the United States.

I understand your Honor's ruling and I merely want to show that on the record.

Q. 64. Mr. Garvan, Nos. 9, 10 and 11 are in, so you need not mention those, they are already in evidence. What is your next one?

A. Letter of the Badische Company of Germany to Kuttroff, Pickhardt, dated September 3, 1913, House Resolution 8078, Page 514.

MR. KRESEL: I offer in evidence a letter from the Farbwerke-Hoechst Company, dated September 3, 1913, printed at pages 514 and 515 of the hearing before the Committee on Finance of the United States Senate.

THE COURT: Admitted.

MR. ANDERSON: Pages 514 to 515?

MR. KRESEL: Yes.

THE WITNESS: It is there printed by "Hoescht." I think there is a mistake there.

MR. KRESEL: Yes. I have it here at page 514 (indicating to counsel).

Received in evidence and marked "Defendant's Exhibit No. 56." (*See Exhibits, Vol. IV, page 2421.*)

Q. 65. What is the next one, Mr. Garvan?

A. Letter to Hauser to Metz, dated July 31, 1913.

Q. 66. That is already in; and so is 14 and 15. What is the next one?

A. Letter Hoechst to Metz, dated June 8, 1914.

MR. KRESEL: I offer in evidence letter from the Hoechst Company to Metz, printed at page 516 of this volume, "Hearings before the Committee on Finance."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 57." (*See Exhibits, Vol. IV, page 2423.*)

Mr. Anderson: Without repeating the specific objection——

The Court: The same objection to all o them, Colonel Anderson, will be considered a made by you.

Mr. Anderson: Yes, sir.

Q. 67. What is the next one?

A. Letter from the Badische Company to Kuttroff, Pickhardt, dated June 13, 1914, page 515.

Mr. Kresel: I offer in evidence letter from the Badische Company to Kuttroff, Pickhardt & Co., dated June 13, 1914, printed at page 515 o the Hearings before the Committee on Finance.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 58." (See *Exhibits, Vol. IV, pag 2424.*)

Q. 68. What is the next one?

A. Two telegrams from the Badische to Kuttroff Pickhardt, one dealing with the tariff and the othe with order not to sell, Senate Hearings, page 253. I think that is Senate Resolution 77. I think that is the Shortridge hearing. That is in the Shortridge hearing.

Q. 69. Page 253?

A. Yes, sir, 253 and 256. They appear at pag 76 of the Shortridge testimony.

Mr. Kresel: It is page 253. I offer in evidence the two telegrams from the Badische Company to Adolph Kuttroff, both of them being printed at page 253 of the Hearings before subcommittee of the Committee on Judiciary. I ask that each of them be marked separately.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibits 59 and 60." (*See Exhibits, Vol. IV page 2426.*)

Q. 70. What is the next one, Mr. Garvan?

A. Albert's letter of introduction to H. A. Metz.

MR. ANDERSON: I would like to see that letter.

MR. KRESEL: I have it here. It is page 494 of the Senate Hearings.

MR. ANDERSON: If your Honor please, I object to the introduction of that letter on the same ground that I urged on the cross-examination of Mr. Metz. It is a letter appearing to be addressed to "My dear Benefactors and Friends" and signed "Albert". Immediately following it in the Hearings before the Senate appears the following:

"Senator Watson. Do you know whether or not that letter was ever brought to the attention of Mr. Metz?" Mr. Garvan was being examined here. "Mr. Garvan: He carried it with him. Mr. Metz. Just want to say that I never saw such a letter, and if I carried it the contents were not known to me personally. I carried dozens of letters.

"Mr. Garvan. This letter was a letter which Mr. Metz carried with him. He probably never read it.

"Mr. Metz. I never saw a letter like that. Senator Watson. Did it not state that Mr. Metz would appear with a letter of introduction? Mr. Garvan. There were a half dozen letters"——

THE COURT: That is the same letter, Colonel Anderson——

MR. ANDERSON: The same letter that your Honor struck out on the cross-examination.

THE COURT: Yes.

MR. ANDERSON: I object to the letter, it being purely a personal letter between Dr. Albert, or whoever was the signer—it is just "Albert"—and his friends and benefactors, whoever they were. I do not know anything about it. Certainly it cannot be evidence in this case.

MR. KRESEL: But this is a different situation entirely. Of course, with Colonel Metz it was not admissible, because I did not show and could not show he had knowledge of it. Now it is admissible upon the ground that that was a piece of information before Mr. Garvan—an entirely different situation.

THE COURT: As I understand, Colonel Anderson, that letter is not now offered in any sense as an impeachment of the witness Colonel Metz, but is offered for the same purposes as the other documents offered this morning, and the same ruling will be made.

Received in evidence and marked "Defendant's Exhibit No. 61." (*See Exhibits, Vol. IV, page 2426.*)

Q. 71. What is the next one?

A. Letter of Metz to Secretary of State Bryan.

Q. 72. That is already in evidence.

A. Telegram Ambassador Bernstorff to the German Foreign Office.

MR. KRESEL: I offer in evidence telegram signed Bernstorff, dated March 13, 1915, printed at page 491 of the Hearings of the Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 62." (*See Exhibits, Vol. IV, page 2427.*)

Q. 73. What is the next one, Mr. Garvan?

A. Telegram Charles Suchard to Millington Behren, Nine Berlin, April 17, 1915, House Hearings page 256 and Senate Hearings page 491.

MR. KRESEL: I offer in evidence the telegram signed Charles Suchard, dated April 17, 1915, printed at page 491 of the Hearings before the Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 63." (*See Exhibits, Vol. IV, page 2428.*)

Q. 74. What is the next one?

A. Letter of Dr. Albert to Hossenfelder, dated April 19, 1915, House Resolution, page 492.

MR. KRESEL: I offer in evidence a letter from Dr. Albert to Mr. Hossenfelder, dated April 19, 1915, printed at page 492 of the Hearings before the Senate Committee on Finance.

THE WITNESS: Hossenfelder was the German Consul General.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 64." (*See Exhibits, Vol. IV, page 2428.*)

Q. 75. What is the next one?

A. The next one is an editorial in the New York World, April 28, 1915, House Resolution 8078, Senate Hearings page 492.

Q. 76. While you are on that, what is the next document, so as to connect that up?

A. Letter of Boy-Ed to Albert — Naval Attache Boy-Ed of the German Embassy.

Q. 77. Does that refer to this editorial of which you have just spoken?

A. Yes, sir. Well, there is another one.

MR. ANDERSON: If your Honor please, I do not object to this evidence because I do not suppose any court in Christendom would pay the slightest attention to it, and therefore we are only burdening the record. Certainly it is a novel experience so far as my limited practice of the law goes to put into evidence correspondence of this kind, editorials from newspapers, libraries on subjects upon which I suppose there are 20,000 books, and if they can put in evidence three or four or a hundred, we can put in an equal number on the other side. It would make the administration of justice impossible if this thing goes on.

Mr. Kresel: I did not comment on the things that Colonel Anderson put in, as to which I might have made even more pointed remarks. But we are not here to discuss that. It is for your Honor to say whether this is admissible or no. I doubt whether Colonel Anderson ought to state that no court in Christendom would pay any attention to evidence which your Honor has already been admitting.

Mr. Anderson: It was admitted without a ruling.

Mr. Kresel: It has not been admitted without a ruling. We offer this evidence, if your Honor please, not only believing that it is admissible but that it is material and relevant; that when the motives of these officials are attacked and they are charged with having been duped by conspirators, we have a right to show what information they had upon which they acted, whether that information was contained in editorials or books or records or examinations or letter or what not. They cannot stop us from showing that. That is the justification that we are entitled to show in this Court.

The Court: And then as a consequence of that the burden would be on the Government to show that the information upon which they acted was erroneous?

Mr. Kresel: No, your Honor, I do not claim that. I claim that it would then be for the Court to say, if there is no proof to the contrary offered by the Government, whether that was such information, assuming now that the general question that we have been urging, that the Court cannot inquire at all——

The Court: I understand.

Mr. Kresel: Assuming that that has passed by, then the Court may say whether that information and all the other proof in the case makes out such a case as justified the action by these officials.

The Court: Assume for a moment, if you will, please, that there did exist a power; that is, that the Trading with the Enemy Act conferred a power upon persons, we will say, in the Executive Department, to make a bona fide sale, either in public or, under the authority of the President, a private sale. Then from your point of view would such a sale if made be invalid if brought about by a conspiracy such as has been alleged in the bill of complaint?

Mr. Kresel: I think, your Honor, I should need another element before I could answer the question.

The Court: You may qualify it as you like.

Mr. Kresel: If there was a conspiracy as to which the officials acting knew nothing at all, then I do not think that the sale, if they had the power to make it, could be invalidated by reason of the fact that somebody else had entered into a conspiracy.

But if the facts were such as to justify a Court in holding that the officials either knew or had reason to believe or were put upon inquiry as to facts which would indicate a conspiracy, I think then they would not be acting in such a way as to be able to sustain that sale. It is the same question that your Honor had up with us in argument as to the seizure here.

The Court: The same underlying principles.

Mr. Kresel: The same underlying principles. You see, your Honor, in some respects they do not charge in the bill direct fraud against Mr. Palmer and Mr. Garvan and Mr. Polk and the President. There are allegations that are very broad. For instance, as to the Chemical Foundation, it is alleged that it was being used as a tool of the conspirators. The Chemical Foundation, it is our contention, was the creature of the Alien Property Custodian. It comes pretty near making a charge that the Alien Property Custodian was being used in that way.

The Court: That is, that he either did it knowingly or was duped into doing it.

Mr. Kresel: Exactly.

The Court: So that he might be called either one of two things.

Mr. Kresel: Of course, your Honor must by this time have seen how indefinite in particulars the bill is as to conspiracy and as to who was in it and as to how it was effected; and just because of its indefiniteness we are somewhat groping in the dark here. There is the charge, and Colonel Anderson has very frankly stated that he reserves the right upon the argument to claim, actual fraud against everybody. And if that is, it seems to us that we should not be confined to a narrow sphere in showing what information we had before us and what actuated us in doing this.

The Court: I do not know the contents of the editorial.

Mr. Kresel: I brought that to your Honor's attention upon my opening. Your Honor has perhaps forgotten about it. It is not a comment on this situation. It simply calls attention to the fact that it is reported that somebody was about to establish dye factories over in Jersey and then Albert is asked about that and he comes back with the information that there is nothing in it.

The Court: That is just a link in the chain of events?

Mr. Kresel: That is all, your Honor. I was not trying to prove here an editorial comment on something.

The Court: I will admit it subject to such objection as was heretofore made or may hereafter be taken to it.

Mr. Kresel: Since the question has been raised, I want to read to your Honor this editorial. It is only half a dozen lines.

The Witness: There are two letters that go with it, Mr. Kresel. You only offered one.

Mr. Kresel: I will offer both of them in just a minute. The editorial is headed "Helping Us Out". (Reading.)

I read the letter dated April 28th, 1915 from K. Boy-Ed.

Q. 78. Who was K. Boy-Ed?

A. Naval Attache of the German Legation, German Embassy.

Q. 79. Here in the United States?

A. Yes.

Mr. Kresel: To His Honor Privy Counsellor Albert, 45 Broadway, (reading).

On the same day Albert answers K. Boy-Ed as follows: (Reading.)

The Court: I recall all those letters, so that you need not repeat them.

Mr. Kresel: I now offer therefore, the editorial, the letter from Boy-Ed to Albert and the letter from Albert to Boy-Ed.

Mr. Anderson: If your Honor please, I made up my mind not to interrupt this examination this morning, but to the end that my position on the record may be perfectly clear when I get up to the argument of this case, I want to renew at this point the objection to all this evidence, especially the last three exhibits just offered by counsel and not formally admitted.

In the first place, they are not only hearsay, but they are hearsay of hearsay. They say, it is reported by somebody that somebody else has reported to somebody else that something is going to be done.

In the next place, they are not evidence against the Government of the United States, even if they were direct testimony and offered in the most formal, legal way.

In the third place, they would not be evidence in this case because the Government of the United States has not only repudiated all these transactions by sending the man who wrote the letter home for doing those very things, which is a matter of which the Court will take judicial notice; but the Government has been so outraged by these very things, that it went into a great war and fought the war to success, because of the very wrongs done by these people.

Now, to come up here and undertake to introduce evidence of the wrongs which we have undertaken to right in war, and spent the blood and treasure of this country in repudiating and overthrowing, as evidence against the United States, is an unheard of proceeding. I do not mean to comment on Mr. Kresel's remarks. I quite realize that is not my function; nor upon the rulings of the Court.

I understand, the way this matter is proceeding, that your Honor is not at all ruling; but I submit that even under the broad rules which have been laid down, there are some limits to the introduction of documents here. So far as this case is concerned, all this stuff cannot affect this case in one way or another; but there are limits to which we can go in the introduction of evidence of this character; and certainly that limit has been reached when the evidence is not only, as I have said, hearsay, but hearsay founded upon hearsay plus hearsay, and in addition to that, is evidence which the plaintiff in this case has repudiated at the cost of a great war.

Mr. Kresel: Will your Honor hear me on that?

The Court: It is your privilege, sir, if you desire to take the time.

Mr. Kresel: I do not desire to take the time.

The Court: Your remarks raise two questions in my mind, Colonel Anderson, if you will be good enough to help me out without discussion.

Mr. Anderson: Yes, I will.

The Court: The first is in regard to the act of repudiation, of which I can take judicial notice and which I happen to recall. Instead of detracting from the value of this evidence, my immediate reaction is that it makes what might have seemed unimportant possibly of some moment. The second is, assuming that you have a charge of conspiracy here, which, as I understand you, you do not deny, what is the method of meeting it by the persons of the Executive Department, if it cannot be met by showing the various acts and facts, as well as information, which came to the attention of the Executive Department.

Mr. Anderson: As to the first inquiry which your Honor makes, I think that any reply that I spiracy to get control of this property, and assuming that we have proved that, that the Alien Property Custodian might have been active in the sale, with the best of motives, and not a party to the conspiracy, why, there is nothing more familiar in the law than setting aside a sale of this sort, because it was developed as a secret combination of bidders to prevent someone else from bidding. The Custodian in making the sale might have acted in the best of faith. I did not mean to get into an argument. I was merely undertaking to answer your Honor's question. It is possible that this matter has not anything to do with it. I do not know that it is material. Possibly we are taking up unnecessary time, because I do not think that it can have any bearing.

THE COURT: I understand your contentions with respect to that point, Colonel Anderson. You may proceed, Mr. Kresel.

Letter from Albert to Hossenfelder, of April 19, 1915, received in evidence and marked "Defendant's Exhibit No. 64." (*See Exhibits, Vol. IV, page 2428.*)

Letter from Boy-Ed to Albert of April 28, 1915, received in evidence and marked "Defendant's Exhibit No. 65." (*See Exhibits, Vol. IV, page 2429.*)

Editorial from New York World received in evidence and marked "Defendant's Exhibit No. 65-A." (*See Exhibits, Vol. IV, page 2430.*)

Letter from Albert to Boy-Ed of April 28, 1915, received in evidence and marked "Defendant's Exhibit No. 65-B." (*See Exhibits, Vol. IV, page 2431.*)

Q. 80. Will you proceed, Mr. Garvan, to mention the next document?

A. The next one is letter to Joseph P. Tumulty, private secretary to the President of the United States, April, 1915.

Q. 81. That is already in evidence.

A. The next one is a letter of Herman A. Metz to Mr. Rose, who was the Foreign Trade Adviser of the State Department, April 6, 1915, Senate resolution 271.

MR. KRESEL: I offer in evidence a letter from Mr. Metz to Robert F. Rose, Foreign Trade Adviser, Department of State, dated April 8, 1915, printed at page 271 of the Hearings before the Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 66." (*See Exhibits, Vol. IV, page page 2431.*)

Q. 82. What is the next one?

A. The next one is a letter of Herman A. Metz to Secretary Redfield, who was the Secretary of the Interior.

Q. 82 (continued) Secretary of Commerce.

A. Secretary of Commerce, April 9, 1915.

MR. KRESEL: I offer in evidence a letter from Mr. Metz to Secretary Redfield, April 9, 1915, printed at page 272 of this same Hearing before the Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 67." (*See Exhibits, Vol. IV, page 2434.*)

Q. 83. The next one?

A. The next one is Mr. Metz's pamphlet of April 22, 1915.

Q. 84. That is in, and the next two are in, Mr. Garvan.

MR. KRESEL: You do not mind, Colonel, if I straighten that out? My information is that they are all in down through 36.

Q. 85. Will you give me No. 37?

A. 37 is an article I took from the desk of Mr. Hugo Schweitzer, after his death.

Q. 86. Who was Hugo Schweitzer?

A. Hugo Schweitzer was the former president of the Bayer Company in this country, the American Bayer Company. That is the American corporation which was the agency of the German corporation.

MR. ANDERSON: That refers to an article. Would you get the witness to describe it, please?

THE WITNESS: Called "Chemists' War."

MR. KRESEL: It is printed at page 226 of that volume you have before you, Colonel. I offer that in evidence.

MR. ANDERSON: I would like to have made as clear as possible, sir, that this evidence is not being introduced for the purpose of proof of any facts contained therein, but is just merely for information, that these particular papers were before this witness, as I understand there is a limit to this evidence. I do not know that it does appear clearly on the record, I would like that to apply to all this evidence, and, of course, I am not making my objections to each question under that understanding.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: I have already, your Honor, indicated my position.

THE COURT: That the admission of the Government reports and the offer that you are now making are limited to——

MR. KRESEL: Showing what information the witness had before him.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 68." (*See Exhibits, Vol. IV, page 2438.*)

Q. 87. The next one?

A. "The New Chemical Warfare," an article by Julius Stieglitz, in the Yale Review.

Mr. Kresel: I offer that article in evidence, beginning at page 493 of the Yale Review of April, 1918.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 69." (*See Exhibits, Vol. IV, page 2457.*)

Q. 88. The next one, Mr. Garvan?

A. "German Militarism and its Influence upon the Industries," another article by Hugo Schweitzer, which was taken from his effects after his death.

Mr. Kresel: I offer in evidence the article just described by Mr. Garvan, which is printed in the Hearings before the Sub-Committee on the Judiciary, beginning at page 241 thereof.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 70." (*See Exhibits, Vol. IV, page 2477.*)

Q. 89. The next one?

A. "The President's Protest to Great Britain and its Justification by the Perils to our Trade and Industries," a third article by Hugo Schweitzer, which was taken from his effects after his death.

Mr. Kresel: I offer in evidence the article just described by the witness, which is printed in the Hearings before the Sub-Committee of the Committee on the Judiciary, beginning at page 233 thereof.

The Court: Admitted.

Received in evidence and marked "Defend-

ant's Exhibit No. 71." (*See Exhibits, Vol. IV, pag 2491.*)

Q. 90. The next one?

A. Consul-General Hossenfelder's Report t Bethmann-Hollweg, March 3, 1916, House Hearing page 495, Senate Hearings, page 261.

Mr. Kresel: I offer in evidence the repor described by the witness, which is printed at pag 261 of the Hearings before the Sub-Committe on the Judiciary.

The Court: Admitted.

Received in evidence and marked "Defenc ant's Exhibit No. 72." (*See Exhibits, Vol. IV, pag 2514.*)

Q. 91. The next one?

A. Albert's report to the German Governmen on the dyestuffs situation, April 26, 1916.

Mr. Kresel: I offer in evidence the repor just described by the witness, which is printed i the Hearings before the Sub-Committee on th Judiciary, beginning at page 259.

The Court: As evidence of the facts therei stated, or as information that was before thi witness?

Mr. Kresel: As information before this wit ness.

The Court: Admitted.

Received in evidence and marked "Defenc ant's Exhibit No. 73." (*See Exhibits, Vol. IV, pag 2525.*)

Q. 92. The next?

A. Letter to Foreign Secretary Zimmerman, c Germany, by Ambassador Bernstoff, May 21, 1916.

Mr. Kresel: I offer in evidence the letter jus described from Zimmerman to Bernstoff, date May 21, 1916, printed at page 265 of the Hearing before Sub-Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 74." (*See Exhibits, Vol. IV, page 2529.*)

Q. 93. Next?

A. Bernstoff's explanatory report in answer thereto.

MR. KRESEL: I offer in evidence the report of Bernstoff to the German Foreign Office, dated June 21, 1916, printed at page 265 of that same volume.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 75." (*See Exhibits, Vol. IV, page 2530.*)

Q. 94. Next?

A. Letter of Kuttroff to Dr. Albert, September 20, 1916, Senate Hearings, page 225.

MR. KRESEL: I offer in evidence a letter from Mr. Kuttroff to Mr. Albert printed at page 225 of the Hearing before the Sub-Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 76." (*See Exhibits, Vol. IV, page 2534.*)

Q. 95. The next one?

A. Dr. Schweitzer's report to Bernstorff, January 26, 1917, page 526.

MR. KRESEL: I offer in evidence report of Dr. Schweitzer to Mr. Bernstoff, which is printed at page 526 of the Hearings before Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 77." (*See Exhibits, Vol. IV, page 2534.*)

Q. 96. The next one?

A. I think 49 and 50 are in, aren't they?

Q. 97. Yes.

A. Letter of Dr. Stieglitz to Mr. Palmer, and Dr. Stieglitz's report on Salvarsan enclosed.

Q. 98. That is in. What is the next one?

A. The next one is the report of the Allied Commission on German dye factories by Lord Moulton.

MR. KRESEL: I offer in evidence the report just described by the witness, which is printed at page 286 of the Hearings before the Sub-Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 78." (*See Exhibits, Vol. IV, page 2543.*)

MR. KRESEL: I offer in evidence a report by Mr. C. H. Burr on German business in the United States, which is printed at page 476 of the Hearings before the Sub-Committee on the Judiciary.

THE COURT: That has been identified by him or are you offering it apart from the identification?

MR. KRESEL: That has been identified by him, your Honor.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 79." (*See Exhibits, Vol. IV, page 2544.*)

Q. 99. Mr. Garvan, I wish you would state briefly what, if any, information you had on April 10, 1919, concerning the relations, if any, of Germany to the organic chemical industry of the United States prior to the outbreak of the war in 1914?

MR. ANDERSON: I note the same objection that I noted on Friday, your Honor, to the generality and indefiniteness of this question.

The Court: Is this the same question?

Mr. Kresel: No, your Honor, it is a different question. I have made it as nearly not leading as it could possibly be done. Would your Honor desire to have it read?

The Court: Yes.

(Q. 99 repeated as above recorded.)

Mr. Anderson: In order to make the record clear, sir, I will make the objection specifically to that question: First, on the ground that it is too general and indefinite, and therefore is objectionable as to form. Second, because the witness has testified that his connection with this matter began in November, 1917, and, therefore, his knowledge on the subject is necessarily hearsay and not facts. Third, the general and specific objections which I have already urged and which I understand your Honor does not wish repeated as to all this testimony.

The Court: Apart from the general objection, I think the objections of the Government are not well taken. I think this is much more limited than the question of Friday. You may take the answer.

A. The information that I had was to the effect that prior to 1914 Germany had five or six agencies here, which represented the five or six companies commonly called the Big Six, which had control of the chemical industry of Germany. My information was that those six companies had been combined into a coalition or agreement, three each in two combines, and that together they controlled practically the entire organic chemical industry of Germany; that the agencies here had no independent existence of their own, but were the merest agents and servants of the German industry; that the German industry had monopoly of the American organic chemical industry, particularly as to dyes; that there were here nothing but three or four assembling plants who were dependent entirely upon the intermediates which they, in turn, got from the six German companies in Germany.

My information was that this industry in Germany had been built up carefully and slowly since about 1856, when it was founded upon the discovery of William N. Perkins, of the Color Mauve. He was an Englishman working in a German's laboratory in London, named Hoffman, and the English were not sympathetic to his development, and he took the English Perkins discovery back to Germany, and there Germany began to develop it.

My information showed that whereas in America we had absolutely no understanding of the relation of organic chemistry to industry or to national defense, or to the progress in medicine, that each and every one of the Germans with whom I came in contact had an absolutely complete understanding that it was the life blood of modern industry and that it was the foundation of modern war, and that it was the hope of future medical development; that they were brought up to regard that as the special province and the special asset of Germany; that each boy and girl in Germany was compelled from the time they were twelve years old until the time they were eighteen——

THE COURT: It seems to me this is rather far afield, Mr. Kresel. Do you not think so?

MR. KRESEL: Well, I want to be entirely frank with your Honor. I do not think that it is. I think that to judge what these people did your Honor must know what they had in mind, your Honor must know what they had before them. Your Honor must realize what they were trying to accomplish. What he is now doing is contrasting the situation in Germany with that in the United States, what he learned. He is showing how Germany regarded the organic chemical industry and the education connected with it and how we neglected it here. It naturally leads up to the reasons which actuated them in disposing of this property in the way that they did. I will ask Mr. Garvan to be as brief on this historical feature as possible.

The Court: If there is doubt about its materiality it may be taken, because that is the question that we have reserved; although at the moment it seemed to me he had probably gone farther afield than would be of service.

The Witness: All I meant to say was——

Mr. Anderson: May I make one brief statement to your Honor. I do not know that I have made it clear to the Court that in this case it seems to me obvious under the statute that the only reasons actuating these people in this sale are the reasons stated in writing by the President, or by the person issuing the order upon which the sale was made. The only evidence which can have any bearing here is evidence in connection with those particular matters, and whether that is admissible or has any bearing, I am not now undertaking to argue.

The Congress has declared that in the case of a private sale the reasons therefor in the public interest must be stated in writing. If they had stated no reasons in writing the order would be void ab initio. The sole question is, What were the reasons stated in writing in the order? I do not think I have heretofore made that clear to the Court—at least it is suggested by one of my associates that I have not. That is all I have to say.

The Court: It seems to me that you did not confine your position to that, Colonel Anderson.

You said it was within the judicial province to test the sufficiency of the reasons stated, but it seemed to me that you took a further step and said not only was it within the province of the judiciary to determine the sufficiency of the reasons stated, but also as to whether those reasons were justified by the facts underlying their statement. If that is your position, then I do not see where the limit is to the inquiry into the underlying facts, do you?

MR. ANDERSON: It depends on what you would call reasons for underlying facts.

THE COURT: No, not what I call it.

MR. ANDERSON: When I say you, of course I mean what one would call it in disposing of the question. I did not mean it to be personal to your Honor. I confined my inquiry to a large degree in this case, if I did not entirely, though the case is so confused that I cannot say I did now, to the reasons stated in the order——

THE COURT: Would you care to limit them at this time, to abandon at this time your prior contentions of your right and purpose to go behind the reasons stated in the Presidential orders and Mr. Polk's orders?

MR. ANDERSON: No, not to that extent I do not. But I do say this: that beyond that question the sole inquiry, as I can now think of it, would be what facts were represented as a basis for those reasons and not what this witness knew or what he may have known. But if the reason assigned is founded upon a mistake of fact or a misconstruction of the law, I think it would be a subject of inquiry. All this is something that this gentleman heard from somebody else about conditions existing prior to 1914, and I am a little puzzled to know its connection. But I did not intend to get into that argument, if your Honor please. I merely wanted to make clear my view on that point which I was told by one of my associates I did not make clear.

The Court: I think you did make it quite clear. Then I cannot ignore or forget, in respect to this testimony, the allegation of conspiracy which seems to me, possibly, to prevent my being able to say at this time that it is clearly and wholly irrelevant.

You may proceed, Mr. Garvan.

A. (continuing) My information was that the system of education in schools and colleges and universities had been aided and fostered by the Government as an aid and feeding to this organic chemical industry; for instance, of the graduates of the universities, any one who desired was permitted to go to the dye factories and spend two years in research at the dye factories' expense.

The Government, the University, the schools and the High Schools and the factories all worked with a single unity of purpose and more or less with a single unity of Governmental control, with the intent and object of attaining what they had practically attained at the beginning of 1914, that is, a world monopoly in the organic chemical field; and that they had done this deliberately and with an intention, as shown by Senator Aldrich's book that he introduced in 1910, of eventually combining into one cartel with a singleness of purpose; and that as soon as that monopoly of the organic chemical industry had been attained, to use that monopoly to the aid of its other industries which are dependent upon dyes and pharmaceuticals, such as the textile and leather industry, and so forth.

This was shown further by the fact that all the dye salesmen practically were all educated with that singleness of purpose. They were sent to the Government in Berlin and instructed in reporting on conditions in foreign countries. They were then sent to the dye factory and drilled, and they came here as salesmen. We found the trunks of thirty of them in the basement of the Bayer Company filled with their reports back to the German Government on trade conditions in each trade and industry here. They were the men who taught the industries how to apply the dyes either to the leather or to the cloth. That made the element of saleability on the leather or the cloth, and therefore they had the full run of, say, a carpet factory. They would report back every invention of machinery, the design, style, cost and so forth and so on; every detail that a German manufacturer attempting to rival or compete with an American manufacturer of carpets wanted was reported to Berlin by the dye salesmen. That information was usually card indexed--I have forgotten the name of it—so that they could go to that card index, ascertain the report of the dye salesman and get a report, for instance, on how the people of Wilmington like their carpets, the design and the cost here, and so forth and so on. So that he was able to sit there in Berlin and compete with each section of the world under the most favorable circumstances and with a full knowledge and with full information of what the report showed.

Mr. Anderson: If he is going to testify to the contents of reports, I ask that they be produced. We have to have some opportunity to see the sources of this gentleman's information.

Mr. Kresel: You mean that you ask——

Mr. Anderson: I ask you to produce the contents of all reports as to which he testifies. If we are going into this matter, we will get into it. I object to any evidence as to reports or written documents that are not produced in court.

The Witness: Your office is full of them.

Mr. Kresel: Wait a minute. Whatever reports this gentleman had in his official capacity are not now in his possession. They are in the possession of the Government, and it is not up to us to produce them.

The Court: Do you want to make any demand now for their production?

Mr. Kresel: If counsel presses the objection or suggestion that we have got to produce these reports, I now ask that the Government produce them.

Mr. Anderson: If your Honor please, if this evidence has any materiality whatever, there must be some opportunity to test it. This gentleman has testified as to reports to the German Government found at the Bayer Company, and reports to other people, I do not know who they were. If it has any materiality at all, to test the evidence, we must have the report. He cannot testify to the contents of reports without producing them. Therefore, I will ask that he do not give evidence as to the contents of written documents unless the documents are here to be examined.

Mr. Kresel: Colonel, you say that you must have. I say that you have. You have them in your possession.

Mr. Anderson: I am informed, Mr. Kresel, that we have no such reports as those described by the witness.

Mr. Kresel: I am sorry that you cannot locate them. We are not chargeable with that.

I think, your Honor, that perhaps this is as good a time as any to settle this question of the necessity of producing written documents. My understanding of the rule is that upon collateral matters, the best evidence rule does not apply.

The Court: Do you disagree with that, Colonel Anderson?

Mr. Anderson: That is the general rule, but there are so many exceptions to it. I think in this case this witness cannot testify to the contents of documents without producing them.

Mr. Kresel: Then this is one of the exceptions, if you are going to call it an exception? I rather regard it as a general rule.

The Court: Colonel Anderson, may I make this inquiry? It is unquestioned that a contract or statute which is in doubt may be placed back in its original setting to ascertain its intent, meaning and purpose, is it not?

Mr. Anderson: Yes, sir.

The Court: That is the general rule.

Mr. Anderson: The general rule, I admit, sir.

The Court: Do counsel in this case disagree as to the meaning, interpretation, aim and purpose of the amendments to the Trading with the Enemy Act of 1918, as I understand you?

Mr. Anderson: I do not think we disagree, sir. I do not think we disagree as to the amendment of March. We might as to the construction of the clause as to the President and private sale. But the act gave general power to the Alien Property Custodian to sell. I do not think anybody questions that.

The Court: As I understood you, I rather got the impression that the interpretation of that act was the basic question in this case.

Mr. Kresel: That was my understanding throughout. I have understood Colonel Anderson to argue and to contend that under that amendment of the act the Alien Property Custodian still remained a trustee, with the absolute duties of a trustee to sell for no less than the property was actually worth.

He contends that notwithstanding the provision that the President, in the public interest, might otherwise direct, all that means is that the President can direct that it be a private sale and not a public sale, but that it still had to be, as he called it, a fair sale and that a fair sale meant full value and that a fair sale meant that there could not be, as he claims, what he terms here a combination of bidders.

He denies that that amendment gave any broader powers than had theretofore been had except that it amended the act so as to provide the method of disposition.

I understood him to decline to give any force to the sentence in that act giving to the Custodian the same power over the property as if he were the absolute owner. Of course, it must follow that if he is but a trustee, he cannot do anything with the property but if he sells it, to sell it for every cent that it is worth. That certainly is not consistent with the provision that he may do with it as an absolute owner may do with it.

THE COURT: The purpose of my inquiry was this. Under the interpretation of that act, unless its meaning is clear and fully disclosed by the language used in the act, must we not inquire as to the full conditions surrounding its passage and the evil that it was intended to remedy, or not? Or, is that too broad a field?

In other words, must we not remember, in the interpretation of that act, that it was a war act, that it was intended to cure evils which had been demonstrated to exist during the war, or not? Or, must we interpret the act as if it were passed yesterday instead of in 1918?

Mr. Anderson: I think we have to interpret the act at the time it was passed. If there be any doubt as to the meaning of the act—and in view of the fact that the distinguished counsel for the defendant seems to take issue with me on its interpretation on every point, there seems to be some doubt—if there be any doubt as to its meaning, then, of course, the Court may, to a very limited extent, and with great caution, look to the immediate surrounding facts and circumstances. But if the conditions of education in Germany prior to 1914 and going back to 1902 will aid the Court in arriving at that interpretation, I will not object to that.

The Court: I have indicated my doubt about that, but in view of the issues, particularly of conspiracy, and the construction of this act, I doubt if I am able to say at this time with absolute certainty that it is fully without weight.

Now, then, we have departed from the primary objection, namely, the production of these documents. But before going into that, I want to ask this. Can I get you to help me, if you will, Colonel Anderson?

Mr. Anderson: I will with great pleasure, if your Honor please.

The Court: Assuming that it is true, notwithstanding the broad powers conferred upon the officers in the Executive Department or on the President to make a sale and to make a private sale, that, as I understood you to say, they were still not authorized to make sales so as to create a monopoly—that is, even a public sale—the public sale would have been invalid if such sale resulted in a monopoly; is that your contention?

Mr. Anderson: Undoubtedly, sir. Speaking in a broad way, that is true.

The Court: Now, then, do I understand you to say—I do not believe I have asked you this question—that the sale in question resulted in a monopoly or produced a monopoly?

Mr. Anderson: Perhaps it would be more accurate to say that the object and purpose was to create a monopoly and control over foreign and interstate commerce. In other words, restraint of trade, using that term in its broad sense, of foreign and interstate commerce is an essential step in a monopoly. There can be no monopoly without restraint of trade, but there may be restraint of trade without a monopoly.

The Court: I have missed what you said.

Mr. Anderson: I say that restraint of trade—and by that I mean foreign and interstate commerce in the Federal sense—is an essential element in a monopoly.

The Court: Is that not a necessary incident of process and product patents?

Mr. Anderson: Necessarily, it is incident, but you cannot combine them all under one control without seeking to accomplish thereby a purpose which is forbidden by the laws of the United States.

Any individual can go to the Patent Office and get any number of patents in pursuance of the law. But if those individuals, say a dozen individuals, holding patents controlling a certain industry, combine those patents for their common use, and thus create a restraint upon production, or combine those patents into a holding company for their common use, for the purpos of restraining foreign or interstate commerce c creating a monopoly, which is the next step b yond, then their act in that regard is illegal unde the Sherman Act.

The Court: Won't you help me just a ste further, Colonel Anderson? If these patents wer taken out of the hands of Germany, and if ther were enough to go around to every inhabitant c the United States, if there were distributed one t each inhabitant of the United States, under tl powers conferred by those patents, if they wer valid, they would have a restraining influence ar effect upon importations and consequently upc foreign commerce, and would have made a monoj oly as complete as were the patents with respe to foreign commerce; is that not so?

Mr. Anderson: Yes, sir. Possibly that woul be true if they were distributed; yes sir.

The Court: There can not be any doubt abo it, Colonel.

Mr. Anderson: That is right. Each man wl owned a patent would have been able to put a ta on importation as to his patent.

The Court: As to his patent. Consequent the extent of the restraint upon importations wou have been precisely what it would have been if yo had bought them all.

Mr. Anderson: That would depend upon wh importation license each individual would impos It might or might not be.

The Court: Now then, Colonel, we are d parting from the sale into actions later on.

Mr. Anderson: That is exactly what the She man Act contemplates. I may own a patent ar put an importation license on one element of trad These were both product and process patent your Honor will recall. I may put an importation license on one element of trade—I have the right to do it under the patent law. I may own a group of patents and put an import license upon the importation from England, Germany, Switzerland, Italy, and so on, on the products covered by the group of patents. But that is a right given to me by the laws of the United States.

But, if I and a dozen other people have each a group of patents which control a certain part of a certain commercial product in the United Seates, and we get together and say, "Here, we will control all these importations and impose at the port such restrictions as will practically make importation impossible from any foreign country—and we also have the process patents and will manufacture in the United States," then by that combination for the purpose of restraining interstate and foreign commerce, and for the purpose of creating a monopoly in the United States, they would be guilty of a wrong of which each individual, limiting himself to his particular act, would not have been guilty. That is the ordinary interpretation of the Sherman Act.

THE COURT: Does your evidence offered in this case show that the defendant here has been guilty of such acts?

MR. ANDERSON: Of course, I am not undertaking to review it and the Government does not expect me to, but the evidence in this case shows that whereas on the manufacture in the United States under the process patents they imposed royalties of from two to three to five per cent. on all importations they imposed a royalty of ten per cent., whether from England, Germany, Italy or anywhere else, and that, among other royalties, they imposed ten per cent. upon the reparation dyes owned by the Government of the United States and brought into this country from Germany for the purpose of maintaining its industries amounting to $215,000, according to the present testimony; and this defendant is the only one that collected a cent of profit, so far as this record discloses, or that I know of, upon reparation dyes.

Therefore, if they combined and made a contract of sale for the purpose of putting into the hands of this agency, which was nothing in the world but an agency of the dye manufacturers of the United States, and the evidence here discloses it all these patents for the purpose of preventing importations into the United States, and the other facts and circumstances show that purpose conclusively or establish it to the satisfaction of the Court, then this contract of sale was a part of a scheme which is forbidden by the laws of the United States and absolutely void *ab initio* under the Sherman Act. That is my position.

THE COURT: Then that discloses more fully your purpose in introducing the minutes of the Dyes Institute?

MR. ANDERSON: Yes, sir. We are going to contend that the minutes of the Dyes Institute, when your Honor comes to read them, are the most important evidence in this case, because they show what was going on from the time this was conceived until it ended.

THE COURT: Assuming that the defendant was a separate instrumentality and agency created at the request of the Executive Department of the Government, that it was established on lines and plans that were deemed as far as possible to prevent a monopoly, and yet that agency or instrumentality, or defendant here, did after it was created do certain acts which were forbidden by the

Sherman Act, is the redress the setting aside of the sale, or is it direct action under the Sherman Act?

Mr. Anderson: Your Honor has assumed a premise and I submit that the premise is not complete. Although it may not be a material difference, I cannot answer a question predicated upon the idea that this thing was conceived by an officer of the Government of the United States. I think the contemporaneous documentary evidence is abformerly given by these very witnesses is conclussive to the contrary, as showing that this thing was built up and developed in all its phases on the suggestion of the dye industry of the United States.

If the officers of the United States, mistaking their legal duties and obligations, entered into an arrangement with the dye industry, a contract or arrangement for the consolidation of these patents in the hands of an agency composed of all the manufacturers in this business, for the combine of those manufacturers into a group, organizing this hand to hold all these patents, not only the control of the manufacture to the extent that the patents controlled it, but to control the importation—I say that from the very inception the thing was illegal and that this contract of sale was illegal from the very time it was conceived and on the day it was executed, no matter who authorized it, because nobody could do a bigger thing than an Act of Congress might do. That is my position.

Mr. Kresel: I wish, your Honor, that Colonel Anderson had directly answered your Honor's inquiry. I should have been interested to hear it.

Mr. Anderson: I want to say something on that point.

Mr. Kresel: Your Honor's inquiry was

whether it was his contention that the act of the officers here resulted in creating a monopoly. Colonel Anderson has not answered that question. And while we are on this proposition, your Honor, I had it in mind at the first opportunity to point out that Colonel Anderson has been arguing right along that the very fact that Congress permitted the taking out of patents, it was the intent of Congress to give the holder of the patent the monopoly.

Colonel Anderson loses sight of the fact that the latest pronouncement from Congress upon the subject with reference to German or enemy-owned patents was to destroy that monopoly, since by the very Trading with the Enemy Act Congress gave to the Federal Trade Commission the power to issue non-exclusive licenses to any American citizen on those patents.

In other words, Congress by its act destroyed the monopoly that had theretofore been given to the Germans. So that if we are to judge the situation as it appeared to these officers when they put this transaction through, the fiat of Congress at that time was that the monopoly that had been given to the Germans should be taken away from them, and it is going to be our contention that it was with that purpose this corporation was organized, upon the very lines indicated by Congress in the Trading with the Enemy Act, which, at the very basis, was the issue of non-exclusive licenses on these patents so that nobody would have a monopoly.

I say I would have been interested in hearing what answer Colonel Anderson would make to your Honor's direct question. Because I cannot conceive that he would argue that The Chemical

Foundation maintained any monopoly. The Chemical Foundation is not in the manufacturing business, it has never manufactured anything. It has never turned a wheel. It is simply a holder of these patents, and deals with them, as we shall show, as it has been outlined in our certificate of incorporation.

Indeed, your Honor will find when this case closes that so far from there being a monopoly here, there is the keenest competition in this country, not only in the matter of dyes but in the matter of pharmaceuticals, in the matter of anything that pertains to the organic chemical industry in the United States.

I can well understand why Colonel Anderson did not feel that he desired to answer the direct question.

Mr. Anderson: I would like to respond to this.

Mr. Kresel: What brought about this very interesting discussion was the question whether we were compelled to produce writings as to which this witness is testifying.

The Court: Yes, but I was more interested in the underlying question of the relevancy of these facts, which seems so far afield, and I could only form an impression about the relevancy if I could have it——

Mr. Kresel: Crystallized.

The Court: Crystallize—crystallize it and get a comprehensive idea of the issues, as I have been trying to do from day to day.

Mr. Kresel: Yes.

The Court: And, Colonel Anderson, I do not understand now whether it is your contention that The Chemical Foundation is a monopoly, or by its creation, in taking over the German patents, a monopoly was created, and if it is your thought that thereby a monopoly was created, I have been trying to determine for myself as we go along, tentatively, what sort of an organization, what sort of disposition, or in what manner the Government of the United States now says the German patents should have been disposed of so as to avoid a monopoly. In answering that question, if you will—and I should appreciate it if you would answer it—tell me whether if you bought one patent and I bought another, we each would not have had a monopoly, and a complete monopoly with respect to the matters embodied in or covered by such patent. If so, what is the thought of the Government now with respect as to what should have been the disposition of these patents?

I do not ask that to inquire into the Government's purposes or plans, but in order that I may weigh that plan, and by so doing determine whether or not a monopoly is created or was created by the sale of the Alien Property Custodian.

Mr. Anderson: I will answer your Honor's question to the best of my ability. As your Honor's inquiry involves the suggestion of distinguished counsel for the defendant that I have not replied directly, I will say that in my view of the evidence in this case it shows that the purpose of the organization of The Chemical Foundation, certainly in so far as those who financed it and brought about its organization are concerned, was to control and monopolize the dye industry of the United States, both in production and distribution, first through the control of the process patents to the extent that they did control them, and, second, through the control of importations from foreign countries; that therefore the object and moving purpose in this entire transaction was to restrain the foreign and interstate commerce, to control manufacture and distribution as a step in the monopolization of the dye stuffs and chemical industry of the United States.

Now, I think I have answered your Honor's question in a perfectly plain way. Control of those elements is a process or step in the monopolization; and the monopolization may never be accomplished, yet every step in the scheme to accomplish that result is expressly forbidden by the laws of the United States.

THE COURT: Even the seizure of the patents?

MR. ANDERSON: I am coming to the patents. If the seizure of these patents was conceived and carried out for the purpose of creating that result, as your Honor has suggested that thought, I will say it may be that primarily if it could have been a sale to a proper person, as against the United States, it may have affected the seizure; but there is no person who can contest the right of the United States to seize these patents under the Alien Property Act, because the German cannot sue the United States to recover them, he being the original owner, nor can he, under the terms of the Treaties of Peace question the acts of the United States in that regard. Therefore, the act of the United States in making the seizure, even though it may have been infected, if I may use the word, by this purpose, and if it had been the act of a private person, might have been void *ad initio,* but cannot be assailed as to the United States, because nobody can sell it. It is just like a case where the United States commits a tort, nobody can sue the United States. It may be wrong as to a private person, but not as to the United States, because you have no redress. It may be a wrong, but there is no remedy.

Therefore, there is nobody here questioning the title of the United States, and there is nobody here can question the title of the United States; because the defendant claims through that title, and there is nobody outside, even if your Honor could consider that, who could question the title of the United States.

So the question of the validity of the seizure, even if done for a wrongful purpose, and assuming it might have been so done, which I am not claiming here and not discussing—because it is not before the Court and cannot be before the Court, the question of the validity of this seizure as a matter of law—it may be interesting as showing a development of facts dealing with the ultimate conspiracy and only interesting in that aspect, but if proved here to be absolutely invalid the Court could not enter a decree based on that between these two parties.

If I have made that clear I will come to your Honor's second question. Before I do that and as an incident to it, I wish to refer to the suggestion of counsel as to the Federal Trade license. Congress authorized the President and he in turn with authority of the act vested in the Federal Trade Commission the power to issue licenses under enemy patents during the war, either exclusive or non-exclusive in the discretion of that Commission. So far as I know they issued non-exclusive licenses. That was during the period of the war, but they issued them and issued them for the life of the patent. Probably they had that right, but, as so often stated, that right had been subject to the review of the Court at the end of the war by suit within one year, by the owner, for revision, for cancellation of the license, or for such re-adjustment thereof as the Court might determine to be just and equitable. Therefore, the right of the owner was absolutely preserved as against the United States, the purpose, and the entire legitimate purpose, being to make these patent rights available during the period of the war, if it were deemed desirable by the Federal Trade Commission to issue licenses. But the whole matter was left in the hands of the Courts of the United States, which have never yet failed to respond to their duty in that regard, to do justice to the enemy at the end of the war.

They had to charge reasonable royalties, and those royalties went into the Treasury of the United States, held as a fund, to be paid ultimately to the owner, whoever that owner might be determined to be. If that royalty was not reasonable it was revised by a Court of Equity, and there at last the owner, although he was the enemy whom we have heard so much about, might come into the courts of this country and have his rights protected when peace was once more restored.

But what is the situation here? Entirely different. I will not go over that. But now I come to your Honor's question as to an individual patent. If I have not made myself clear I want to make it clear that I agree with one thing that Mr. Palmer said while he was on the stand, and possibly with a good many others, but the one is that the whole value of the patent is in the monopoly right. That is all it is. You take that away and there is nothing left—except if you grant non-exclusive licenses to anybody and reserve title to the patent, you still have the right to collect the royalties that people will be willing to pay, and therefore, it does not necessarily follow, though it may and I think does follow in these cases, that it is largely destructive of the value of the patent, if the patent be of such character that non-exclusive licenses will increase the production, and even at the low rate which would thus be obtained, give quantity production in the place of small production, and thus make a small royalty greater than the profit on a small production—in that case it might be that the value of the patent to the owner would still be very great. But those are questions of fact in each particular case.

As to the monopoly situation, we will assume I own a patent and, as your Honor suggested, you buy a patent. We will assume that it was a patent on an essential dye product, that is, an importation product. I would have the right, if it were a product patent, to levy royalty at the port on all importations of that patent. If it were a process patent, I would have a right to charge a royalty for the manufacture in the United States, and, assuming it to be broad enough, nobody could either manufacture or import except by paying me a reasonable royalty. As a matter of fact, I might even make it an unreasonable royalty, because Congress gives such patentees large rights in the interests of the developing of industry. You do not have to use the patent; there is no obligation to use it, if you do not want to. The benefit to the public is that there is full use after seventeen years, and Congress has determined that seventeen years is a reasonable time, so we cannot inquire behind that.

But there I have the right to control a certain product. That principle might be carried possibly to the point that if I got patents individually, was so brilliant that I could invent and devise every known element in a certain large and valuable part of the business of this country, I might grow enormously wealthy, just like Henry Ford has done by inventing the one ignition system such as he has controlled, and so might others who have not allowed anybody else to use their patents. But that is the law. However, if I own forty-five hundred and another owns forty-five hundred, or a thousand of us own together groups of patents which combined make up forty-five hundred and control, as alleged in this report of Mr. Palmer, practically control and hold by the throat the dye and chemical industry of the United States through those patents, and as five hundred or a thousand of us own them we say, "Here, there is no use of one of us trying to levy one toll on one of these products and another levy another toll, which will drive the royalty down, the thing for us to do is to have a uniform royalty among us all and a uniform price in the country, and also inside, in its manufacture, and therefore we will combine all these into a corporation which we will call a corporation greatly beneficial to American industry."

I know of no place where terms of patriotism and public spirit are more extravagantly used than in these minutes of these great corporations, always as a reason for actual and improved public service. Possibly it may be true. But we combine them all and we control the importation of those essential products into the United States, we fix a uniform royalty, we eliminate competition, we cannot cut under each other, one cannot bring it in at 5 per cent. and the other charge ten, and thus produce competition which reduces the royalty charge, but all fix the rate at 10 per cent., and if that does not cut it all out we charge fifteen—as Richelieu says, it is like glass, the sun shines through it, the purpose is too obvious to discuss, and it becomes a restraint upon foreign commerce from its very inception and, actuated by that purpose, it is therefore illegal.

The Court: Isn't that the purpose of Congress in the Trading with the Enemy Act requiring the Americanization of the chemical and dye industry?

Mr. Anderson: I am perfectly willing to concede that Congress did not require but authorized There is not a requirement in this act for the sale of a piece of property. These patents could be held by the United States until Congress acted. They were in its hands and were not ready to substitute some other agency in the place of our Government to fix our policies and exercise its functions. They had these patents, they had complete control of them. They have reserved control of them in the act. Why did Congress have to get rid of them?

The Court: I beg your pardon?

Mr. Anderson: Why was it necessary to get rid of them? I do not mean to ask your Honor a question, but that is merely argumentative.

The Court: No, you have disclosed your thought. But unless it was the purpose or thought of Congress that some of them, or all of them should be disposed, why authorize either a public or private sale?

Mr. Anderson: We are getting now to the act and I will answer your Honor's question very briefly. It was urged in Congress, in the very parts of the record introduced here by counsel, and as to which others will be introduced by us since they have started it, and your Honor will find when you come to read it, that originally until this act went to conference it did not have any provision for private sale, it was purely public sale until it went to conference——

Mr. Kresel: It did not have any provision at all.

Mr. Anderson: Originally did not have any provision except to prevent waste. Then when the amendment asked by Mr. Palmer for the purpose of Americanization of American industry, whatever that may mean, and I think I understand what it means, it was simply to sell this property as your Honor would foreclose a mortgage on a railroad, and turn it over to another purchaser who could develop it free from the restraint of Courts and substitute in its place its value. The record shows that. That is a perfectly legitimate thing.

The Court: Do you mean in the construction of a statute a Court should be restricted by what Mr. Palmer said?

Mr. Anderson: No, sir; I do not. I think it was absolutely illegal testimony on the subject, and I objected to it on that ground. But I am arguing now from my construction. I said I agreed with his view on that one point there.

The Court: I thought you were giving me that as an answer to my inquiry.

Mr. Anderson: No, sir.

The Court: If Congress intended that the patent should be seized and not sold, why insert in the Trading with the Enemy Act authority to sell at public or private sale, or either?

Mr. Anderson: Now, sir, I will answer your question. It was represented to Congress, and appears in this record, that when the Act of March 28, 1918, was passed there was no more talk about patents than if there was no such thing. I would ask that your Honor keep in mind that the question of patents never arose until after the war was over in the real sense. This whole thing was after the war was over. All this very eloquent discussion by the distinguished gentleman who was on the stand, in March, 1918, about the Germans marching to the channel ports, was just one year before this took place, and at the time this transaction under review by this Court took place the Germans had surrendered and we were in control, the enemy on the run.

THE COURT: But won't you answer the question——

MR. ANDERSON: I am coming to the question. It was represented to Congress and stated by Mr. Underwood on the floor, which statement has been read here, and I will introduce another one to the same effect, that the Conference Committee put on this provision, that the President might direct a private sale for the reason that conditions might arise in which it would be advisable to make a private sale, where the expense would be too great for a public sale, where there was some particular circumstance so that you could make a sale for better terms in a private sale than you could in a public sale, and that since the amendment putting it in conference, and which was being earnestly fought, required the President personally to state his reasons for the private as distinguished from a public sale in writing, that it would be an adequate protection to the owners of this property. That was it in substance.

Your Honor will find we have introduced, and we will further introduce since the change of agreement on the record, Executive orders in which the President has ordered the sale of a few cases of tobacco or some bales of cotton, things of that kind, stating specific reasons why a private sale would be better than a public sale, and Mr. Palmer urged in one of his letters to the President that it was very desirable, and it is in the record here, to have the power at least to make a private sale in some instances, because in qualifying directors in these various 30,000 corporations that he had, he would transfer a few shares of stock to the directors and sell it to them, and he could not sell it at public sale. Those are the reasons for the provisions in the act.

The Court: I am not concerned with the provisions for the private sale at this moment, because as I understand you, Colonel Anderson, you say that if this Chemical Foundation had been chartered under the exact terms and conditions under which it was chartered, and these patents had been put up singly by the Alien Property Custodian and bid in by The Chemical Foundation, there would be no difference in the nature of the monopoly thereby created, and therefore no difference in the voidability——

Mr. Anderson: On that particular point, as to the anti-trust law, it may be that the purchase of any number of patents might have had that effect, but I do not mean to say that that would be analogous to the facts disclosed by this case in any sense. In that event the act provided that the Alien Property Custodian, with the approval of the President, could reject any sales, and if he saw a condition being brought about which he thought was dangerous to the welfare of the country, or in violation to its laws, he could have rejected the sale, just as he could have done in the Bayer case.

The Court: Then Congress did give to the President and the Alien Property Custodian the right to exercise some judgment for the protection, in the public interest and welfare of the country.

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Mr. Anderson: The next clause of the act after the one we have had under discussion says that the President may, stating his reasons therefor in the public interest, in writing, authorize the Alien Property Custodian to reject a sale and resell. Why? Because the purchaser may not be a satisfactory person, or because the price may not be satisfactory. There are any number of orders in which the President did authorize the rejection of a bid and a re-sale. Therefore, there was abundant protection against monopolistic condition, and the sale individually of these patents could have been adequately protected there, aside from the fact that the purchase individually from the Alien Property Custodian would have meant the absence of that combination, which is a largely essential element in the restraints of trade forbidden by the Sherman Act.

The Court: Then as I understand you, Colonel Anderson—I do not want to prolong this discussion, but want to get back to the testimony——

Mr. Anderson: I am only too glad to answer your Honor's question the best I can.

The Court: Yes. But if I understand your answer to my inquiry as to what in your judgment would have been a better plan or a plan that would have prevented the monopoly, your answer is the non-sale of the patents. Am I right?

Mr. Anderson: That is my primary answer, and my secondary answer is that if the Alien Property Custodian wanted to sell these patents, to have put them up at public auction in the manner that the law prescribed primarily and contemplated, at the proper proceedings to ascertain their value, and then, if they were bid in all by one person or in such a way as in his judgment was prejudicial to the public interest, he could remedy that condition by having the bid rejected in the manner prescribed by the act, in whole or in part. He had absolute control over the bid, as much as your Honor has in the sale of a piece of real estate by a commissioner, which is nothing but an offer and not a sale until your Honor confirms it.

THE COURT: Then you would have him substitute his judgment in a private sale for the judgment of the President?

MR. ANDERSON: No, sir; if the President wanted a private sale and decided to authorize it, stating adequate reasons in writing, with knowledge of the facts, and conformed otherwise to the terms of the act, then that was a question for him to decide within the limitations of the act; and when he decided it, he must make a private sale and not destroy the property and give it away. He had nothing to do with the sale, he only had the power to authorize the Alien Property Custodian to sell, that is all. The President had no control whatever over the sale, except to do two things; one was to enter an order authorizing a private sale, by the Alien Property Custodian and not by himself, for he had nothing to do with it, and second, if the Alien Property Custodian presented to him facts to show that the bid ought to be rejected, authorize him to reject the bid and sell it again. But the sale is the act of the Alien Property Custodian in every instance; the President has nothing to do with that.

Congress vested in the Alien Property Custodian direct the power of sale, not the President, and not through the President. The President's powers and duties are very limited under that section of the act—very.

If I have answered your Honor's question to the best of my ability, I want to thank you for your patience, for I have probably been longer than necessary. But what plan might have been followed is not for me to say. All I am arguing is that this plan was not the right one and was not a legal plan.

THE COURT: If I could use that as a check in determining whether the present conditions under which the patents were sold was a violation of the act——

MR. ANDERSON: Of course it is a side-light, I recognize that, and that is the reason I tried to answer your Honor as well as I could.

THE COURT: I am prepared to rule on the question.

MR. KRESEL: I have nothing further to say.

THE COURT: You may continue your answer, Mr. Garvan.

MR. KRESEL: Just to remind you, Mr. Garvan, my recollection is that you were testifying—well, I have not any recollection just exactly what you were testifying about.

THE COURT: He was testifying about the information——

A. (Continuing.) Yes, the activities of the German agents here as part of the espionage system of the German Empire. The point I had not got to is that from my information there were many evidences that this combination in Germany into the one cartel which was in progress as shown by the book of the Senate of 1910, was intended to and aimed, after it obtained a monopoly of the dye industry, to use that monopoly to assist each other competing industry of Germany with the manufacturers of the world, by refraining from giving the latest dyes, and so forth, to the carpet manufacturers of this country, they would be in a position to offer advantages to the manufacturers of Germany.

Q. 100. May I stop you there a minute? You spoke of espionage? Did you have before you at this time any examples of such espionage, and if so, will you now mention them?

A. Yes, we had many. The principal one was the head of the chemical agents in this country.

Q. 101. Who was that?

A. The late Dr. Schweitzer, Dr. Hugo Schweitzer, who was an American citizen, and we found in his papers directions from the German Empire that he become an American citizen for their purposes here. We found that he had his number from the German Secret Service. I have forgotten it—nine hundred and something odd thousand. For the three years from 1914 to 1917 we found many evidences of his intense activity.

Q. 102. For example?

A. For instance, he was the first man to meet Dr. Albert when he came to this country, and he was the last man to bid him good-bye, and Dr. Albert left about two million dollars of the propaganda fund of the German Embassy in Schweitzer's hands to continue the disposition of. Dr. Schweitzer was the head of the German Publication Society for the purpose of putting out the literature of Germany. Dr. Schweitzer, at the request of the German Government, attempted to corner the phenol of this country. Phenol is carbolic acid, and it turns either to the right or left into aspirin or into picric acid, which is the base of the explosives.

Q. 103. Stop there a minute, please. Upon that last transaction, did you have any writing before you?

A. I did.

Q. 104. What was it?

A. I had the praise of Dr. Albert for the great accomplishment for the Fatherland which Dr. Schweitzer had accomplished in this country.

Q. 105. Now please look at page 511 of the Finance Committee report, and state whether or no that is an extract from the letter that you speak of?

A. It is.

Mr. Anderson: Where is the entire letter, do you know?

Mr. Kresel: There again, Colonel, that letter is in the Alien Property Custodian's office, or in the Department of Justice. We do not know. We did not take these records, but they were introduced before this Congressional Committee.

Mr. Anderson: By whom, Mr. Kresel? By whom were they introduced?

Mr. Kresel: It was introduced by Mr. Garvan when he was being examined, at page 511 of this hearing. Do you find it?

Mr. Anderson: Yes.

Mr. Kresel: I now offer in evidence this extract from Dr. Albert's letter, at page 511.

Mr. Anderson: I object to it upon the grounds stated already, and upon the further ground that it is only part of the letter, and the whole letter should be produced or all rejected.

Mr. Kresel: We state, your Honor, that we have not the possession of that letter. It is an official document in the possession of the Government.

Mr. Anderson: To which I respectfully reply that the record as stated now shows that it was introduced by Mr. Garvan before this committee and must have been in his possession.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 80." (*See Exhibits, Vol. IV, page 2573.*)

MR. KRESEL: I read the extract, as follows. This is from Dr. Albert. (Reads letter.)

Q. 106. Now, Mr. Garvan, please proceed, but very briefly, if you have anything further to say as to the information you have with reference to espionage?

A. Dr. Schweitzer was the head of the group that purchased the Evening Mail as an organ of the German Government, and there were many, many activities.

By MR. ANDERSON:

Q. 107. Do you know that of your own knowledge, Mr. Garvan?

A. Yes, certainly, it is in the evidence in the case of Rumeley—the prosecution of Rumeley by the Department of Justice. All you have to do is look at the record of the trial, the testimony there.

By MR. KRESEL:

Q. 108. That is all right, if you are answering the Colonel's question. Now, will you proceed?

A. There was Dr. Scheele, another chemist.

MR. ANDERSON: I want to make this suggestion. If he is testifying as to the record in another lawsuit, I call for the production of that record.

MR. KRESEL: I thought I would like a ruling from your Honor on this. Our contention is that upon matters of this nature the best evidence rule does not apply. It is only where the question is directed directly to the issue involved in the case.

THE COURT: I ruled on that on the prior objection.

MR. KRESEL: I am sorry. I still understand Colonel Anderson to argue the contrary.

THE COURT: He is stating his objections; but I have ruled on it and made the same ruling here.

Q. 109. Will you proceed, Mr. Garvan, but be brief about it.

A. The activity of the other chemists in connection with the dye interests here. Dr. Scheele, of Bogota, New Jersey, was arrested as the manufacturer of the bombs which were attempted to be attached to our ships in the harbor of New York.

Dr. Strauss, the head of the—the name has escaped me now—under the guise of a chemical company in New Jersey, ran the German-Jewish propaganda, the propaganda among the German-Jewish people of this country.

There were many of those activities that were all rehearsed, or most of them, before the Overman Committee in the Senate of the United States.

Q. 110. What, if anything, did your investigation disclose as to whether or no the Germans had taken out United States patents covering dyes, chemicals and pharmaceuticals?

A. It showed that they had; that they maintained a very extensive organization, not only to patent their own inventions in Germany, but to observe the progress of science anywhere in the world and, if possible, anticipate that discovery of science by the taking out of what we call anticipatory patents.

Q. 111. What did your investigation disclose as to whether or no the Germans worked their United States patents in the United States?

A. They did not.

> Mr. Anderson: Now, one moment, I object. If the question is as to what the investigation disclosed, I presume this evidence is intended to be a statement of fact, and if that is the case, the question of whether the Germans worked their patents in the United States cannot be proved by this witness. If it is intended to prove information that he had derived from sources that he has indi-

cated, why, your Honor has already ruled on it and covered my objection. If this is intended to prove what was a fact at that time, then it must be proved by people who know the facts.

Mr. Kresel: It is intended to prove, sir, primarily, what information this witness had before him. It may also be valuable upon the question of proving the fact, because, as I am going to proceed with this witness, I shall show that his information as to whether or no they worked these patents came from official sources, reports made by the Tariff Commission, for instance, to the Government, which is prima facie proof of the facts. But I have got to go step by step. Has the question been answered?

The Court: If it is a source of information, the evidence cannot be rejected. Whether you may use it for any other purpose would depend on whether you can show that you are entitled to use it for any other purpose. You may proceed.

Mr. Kresel: Very well; I will undertake that. Has the question been answered?

(Q. 111 and answer thereto repeated as above recorded.)

Q. 112. Did you or did you not convey to Mr. Palmer, as Alien Property Custodian, the results of the investigation that your bureau had been making?

A. I did.

Mr. Anderson: One moment. I move to strike out that answer until I have had a chance to object.

Mr. Kresel: Yes, I consent to strike it out.

Mr. Anderson: I object on the ground that if they want to show what they conveyed to Mr. Palmer, he must say what facts he reported and would have avoided this long answer. But if Colonel Anderson insists, then I have got to go on.

Mr. Anderson: If your Honor please, if this evidence has any materiality whatever, which I cannot see, but which I recognize others may see, then it is of sufficient importance to investigate it. If it has no materiality, if we are just going to deal with conclusions and have argument from gentlemen on the witness stand, then it is a waste of time. Therefore, I submit that we must either take the evidence legally or not take it at all. The case ought not to proceed that way. I frankly say, in answer to your Honor's question as to what was known by the Government of the United States, I cannot say, because it is too large an institution.

So far as I am concerned, I have regarded all this as utterly immaterial in this case, and have not wasted my time studying it. I do not know a thing about it. I assume the Germans did all they could to protect their interests and develop their position, just as the English and the Swiss and the Americans did; and that is all I know about it.

The Court: It seems to me, Colonel Anderson, that the people making the sale of these patents had to do it either with intelligence or mechanically, if they were sold, and the Trading with the Enemy Act authorized their sale. If this was a purely mechanical proposition and the Alien Property Custodian in making the sale, or the President in authorizing a private sale, did not intend to use any judgment or wisdom or consider the welfare of America, not only the immediate welfare, but the future and military welfare and possible independence of America, that is another thing.

If they were entitled to consider (and I am not saying that they were. I understand that your contention is that no such power was authorized by Congress when it passed the Trading with the Enemy Act or the amendments thereto), inasmuch as we have admitted all evidence under the general rule, it seems to me this evidence will have to go in. I do not mean the conclusion of what he stated to Mr. Palmer, because he will have to state the facts; but I cannot see how I can now say that the matters which were necessary to be considered for the preservation or protection of America (not any specific American industry, possibly, but the American Government) with respect to the German chemical and dye patents and industry, might not be material.

I do not want to get into a discussion of all those questions. I will make a specific ruling that this witness, in stating what he told Mr. Palmer, his superior, will have to make a statement of fact and not a conclusion of fact.

Q. 114. Mr. Garvan, you have heard the Court's ruling. Will you now state what facts you told Mr. Palmer with reference to the investigation made by you and your department of the German relation to the chemical industry of the United States? I will put it that way. And please do it as briefly as possible.

A. I told him that the German Big Six had a monopoly of the organic chemical industry of the world.

Mr. Anderson: I object and move to strike out the answer.

Mr. Kresel: Your Honor, I do not think that is a conclusion.

The Court: That is not in the ruling. I am not concerned here as to whether he detailed his own conclusions to Mr. Palmer; but the thing that this witness has now been asked to state, and which I have ruled that he can state, is what he told Mr. Palmer. If those were conclusions, then he may show in summing up that they are unimportant; but it is the same ruling that I made with respect to Mr. Palmer and what he told the President.

Q. 115. Will you proceed?

A. I told him that through that monopoly the progress in German business had been made which placed her in the economic position that she had in the world before the war; that her economic structure was based on the strengthening and developing of all her industries by that organic chemical industry.

I told him that her bringing the war was based upon that organic chemical industry; that it was not until the fall of 1913, when her dye plants had perfected their Haber process plants and made them independent of the Chilean nitrates, so that England's blockade would not be feared, that she began to seriously prepare for the final steps before the declaration of war; that she could not have carried on the war for but a few months had it not been for the developments of the German dye factories; that the poison gas of the war had been prepared and worked out in the German dye factories; that the greatest proportion of her ammunitions during the war, with which she fought the war, had been made along the Rhine and the Ruhr in the organic chemical industries of Germany; that it was the power with which she was waging the war; and that the next war would begin where this war left off, and would be to an even greater extent a chemical war than the past war had been.

I told him that we had for forty years neglected the organic chemical industry in this country, both in our schools and in our colleges, and that public opinion had no realization of the great and overwhelming relation of this question to our life.

I told him of the history of salvarsan and what the suffering had been in this country because of our dependence upon Germany for that drug, and the same as to luminon, which was the only known alleviative for epilepsy that we had. I told him that our doctors were insisting that we be freed from the domination of another country; that I had interviewed many of them in the Government service, and the men who had had to do with our troops, and so forth, and so on, and they had described to me conditions which they insisted should never exist again. I talked to him again and again.

Mr. Anderson: Will you state about what time?

Mr. Kresel: I am coming to that.

Mr. Anderson: Before you ask the next question, in order to get the record absolutely straight, I move to strike out each statement in the foregoing answer and each sentence thereof as pure hearsay and being otherwise incompetent, for the reasons which have been stated already in the objections to the question and which will not be repeated. I understand your Honor's ruling. I merely want to note an exception.

The Court: Motion denied.

Q. 116. Will you state, Mr. Garvan, please, the earliest date that you can recall, when you discussed with Mr. Palmer these German patents covering the dye and pharmaceutical industry?

A. My recollection would be that it was about January, 1918. In the investigation of the Bayer Company we found that all their patents were not held by the Bayer Company, but that they were in another separate company, the Synthetic Patents Company; and that was our first introduction, as I remember it, to the general discussion of the patents held by the Germans in the organic chemical industry particularly and the dye industry.

Q. 117. Do you remember the date of the sale of the Bayer plant?

A. Yes, sir.

Q. 118. Do you remember what date it was?

A. Yes, sir; December 12, 1918.

Q. 119. What happened that day with reference to that sale?

A. On that afternoon I was in New York in my office at Forty-second street; that is, in the A. P. C. office at Forty-second street. The name of the purchaser was telephoned to me from Rensselaer, where the sale took place at the plant of the Bayer Company. I took out the corporation directory to look up who the Sterling Products Company were, as they had never disclosed themselves as a possible bidder before the sale. We knew nothing of them.

Q. 120. Was the Sterling Products Company the successful bidder?

A. The successful bidder. I looked them up and found that the Board of Directors were all German names.

Q. 121. You need not mention the names unless counsel insists.

A. As a matter of fact, in justice to them, I should say that they were the finest type of Americans down on the border line of West Virginia and Ohio for over a hundred years. But their names were German. They were unknown to me. That started a discussion between Mr. Choate and myself and others at the possibility of having sold that chemical plant to people who might turn it back to the Germans or people who might then go on and buy the properties of the other five agencies who had no real estate, no assets at all except some Liberty bonds, which would not be sold, and furniture and so forth of sales agents.

Q. 122. You spoke of agencies. What agencies are you now referring to?

A. The Kalle, the Badische, the Cassella and the Berlin, the Big Six.

Q. 123. The United States agencies?

A. Their United States agencies here. That was the inception of the idea of The Chemical Foundation that afternoon, the shock that it gave us when we saw that we had sold that company to a bunch of stockholders whose directors all had German names. It was an alarm which was unjustified, but it started us to look into the general situation.

Q. 124. Well, did you discuss the matter with Mr. Palmer?

A. I did, immediately. I went to Washington either the same or the next day.

Q. 125. Please state briefly what discussion there was between yourself and Mr. Palmer with reference to the Bayer sale and the relation of that to the outstanding German-owned United States patents to the organic chemical industry?

Mr. Anderson: Please have him state the time, place, and persons present.

Q. 125 (continuing). Yes, give the time, the place, and the persons who were present?

A. My recollection is that it was within forty-eight hours after the Bayer sale, on December 13th, 14th or 15th, possibly, after the sale.

Q. 126. 1918?

A. 1918.

By The Court:

Q. 127. Where, and who was present?

A. In Washington, and, as far as I recall, there was no one present but ourselves.

By Mr. Kresel:

Q. 128. Please give us the conversation?

A. I told him of my experience of the afternoon and the line of thought which it had developed in me. I told him of the fact that the Badische agency had changed hands, that is, that they had formed a New York corporation to take over the office furniture; that they had liquidated the old Badische Company, so that when we came to sell the Badische Company there would be nothing there to sell except the cash in the treasury, Liberty bonds, and the patents.

I told him that the same thing was true as to the Berlin; to a lesser extent, I think, of the Kalle. I think they had a few goods on hand. But none of them had any plants. I said that heretofore we had looked up the patent situation with the idea that it would be cleaned up by selling the Big Six agencies over here, but it was perfectly apparent that the situation had changed now and that the purchaser of the Bayer Company, having paid $5,000,000 for that property, which was a great real estate property, a great growing factory with its great product aspirin, was in a position where, for a very moderate expenditure of money, he could come along and buy the patents which were put up on the five or six German agencies that were coming on for sale, which he would have, together with the 1200 patents which had gone with the Bayer Company, without any assurance on our part that there would ever be any development, that they would not be transferred to the Germans after the war, and that possibly all our work, as far as the creation of a chemical industry and assurance of it in this country was concerned, might be in danger. But there certainly would be that danger if we ran the risk of having the one purchaser of the Bayer Company, where there were real assets, in a position to come right along at our sales and buy up the patents as they were sold, with the remaining agencies and become the sole owner of Germany's hold on America with no power of the Government to control the use of it by that purchase.

He said to me that he had been thinking the same thing or along similar lines. He told me to go and see Mr. Choate, who was our expert on those things, and told me to consult Hoguet, who was a patent man; that neither Choate nor I knew anything about patent law; and to go and see what we could do to formulate some plan; that we must avoid a monopoly.

Q. 129. Is that what he said?

A. Yes, that we must avoid the monopoly; that the President had insisted that in the sale of this property we should be careful to not tend toward intensifying even any apparent monopoly that there existed in the country or to create any monopoly. That was the policy of the office.

He said that we must make sure that any big company in the dye business did not get a chance to crush out the growth of a general and broad industry by getting possession of the patents which might control the development.

He told us to go off and work out something and come back and report.

Q. 130. Did you then consult with others about the situation?

A. I did.

Q. 131. With whom did you consult?

A. I consulted with Mr. Choate. I consulted with Mr. Hoguet. I sent for Dr. Herty who was at that time the editor of the Mechanical & Chemical Engineering Magazine. I consulted with many in the industry. I consulted with Dr. Matheson who had been the Cassella agent for some thirty odd years but at that time had become an American manufacturer and was, I think, one of the largest if not the principal owner in the National Aniline. I consulted with Mr. Poucher who was the representative of the duPont Company. I consulted with Mr. Merz of Heller & Merz. I consulted with Mr. Jeffcott of the Calco Chemical Company. I consulted with Mr. Wigglesworth of the General Chemical Company. I consulted with every one—I think Dr. Bogart of Columbia—I am not sure as to whether I did on this specific point—but every one I could think of that could give us any light on the subject.

Q. 132. Please state whether, after these conferences with the representatives whom you have mentioned, you had further talks with Mr. Palmer upon this subject?

A. I did. I went back to him and told him that we talked over some kind of a trustee corporation. First we discussed the Government buying the patents, but that did not seem to us to promise any progress, that is, to make these dyes under these patents; that they only represented some five per cent of the dye production and to make them meant millions of dollars of research and large investments of capital; and that the industry said that they would absolutely refuse to invest their millions in research or development with the patents in a condition where, if there came a wave of sympathy after the war, they could be given back to Germany, and they be left with their investment and their plant and the control of them back in German hands.

I told him that the industry said that they already had licenses from the Federal Trade Commission; that both of the biggest companies had taken out almost a blanket license for these vat dyes, which are the only ones that are of moment in the patents, and that they were loathe to go ahead with any scheme as they felt themselves protected by that license. Both the duPonts and the National Aniline had licenses from the Federal Trade Commission.

I told Mr. Palmer also that Mr. Matheson told me that he had been a bidder for the Bayer Company and that he had his experts value the patents.

> Mr. Anderson: I object to this, if your Honor please. If they are going to try to prove this as a fact, I want to object to it because it is going into valuation of property and I do not think hearsay evidence is admissible on that subject.
>
> Mr. Kresel: Why not, Colonel?
>
> Mr. Anderson: Of course, I am taking the position that none of this evidence is admissible on that ground, that is, hearsay. But when you go into the question of value, which is a question on which there apparently seems to be some difference, it does seem that if Mr. Matheson had any knowledge of value, he could be called. Before determining the value of the Bayer patents, you would have to have some idea of what they were; and what Mr. Matheson may have told Mr. Garvan and Mr. Matheson's relations with the property are not known, and what Mr. Garvan told Mr. Palmer is certainly no evidence of value.
>
> Mr. Kresel: But, your Honor, when you come to consider the question of value, we have a right to say what information Mr. Garvan and Mr. Palmer had upon that; and if Mr. Matheson

went to Mr. Palmer and said, "Mr. Palmer, these patents are worth a million dollars", that is material to the issues here. We do not have to call Mr. Palmer or Mr. Matheson. And, if Mr. Matheson said, "They are not worth a cent," we have a right to show that.

If you want to call Mr. Matheson to show that he did not say that, you are at liberty to do it. All we are showing is what information we had. We are entitled to do that.

Mr. Anderson: I have noted my objection.

The Court: The same ruling as I made in the case of Mr. Palmer that the information which he gave to the President was admissible. I will likewise admit any information that was given to Mr. Palmer with respect to the patents.

This brings us to the recess hour. We will take a recess until one o'clock standard time.

(Recess until one o'clock Standard time.)

After Recess.

Q. 133. At the time we took the recess, Mr. Garvan, you were telling of a conference with Mr. Palmer, and you had reached the point where you were telling him about Mr. Matheson and what he had said with reference to the value of the patents. Now, have I given you sufficient connection with the other?

A. Yes.

Q. 134. Will you proceed now?

A. Mr. Matheson told me about the license that they had taken out from the Federal Trade Commission, and then I talked with him about the Cassella patents, which he knew about.

The Court: Just a minute. The witness is now saying he talked with Mr. Matheson. Your inquiry was as to what he told Mr. Palmer?

Mr. Kresel: Exactly.

A. (Continued.) I told Mr. Palmer as to what Mr. Matheson had said. He said that he had been a bidder, or his concern had been a bidder for the Bayer Company, where 1200 patents had been sold with the plant. He had had his chemical experts value those patents before he bid, and they had valued those patents at $10,000. He did not see why they should pay a large sum for the remaining patents; that there was nobody who knew how to work them; that they would have to spend millions of dollars in research to rediscover how to work them, and the most they would give them would be freedom to develop without interference after the war by the Germans, but if I could induce all the industry to go into the thing, why, they would go along as a patriotic duty and put up whatever was their share, whatever they all decided between them was their share of the underwriting.

Q. 135. Have you stated substantially all your conversation with Mr. Palmer on this occasion?

A. I told him also that I had talked with all the different representatives of the industry.

Mr. Anderson: Just state when that appeared, will you?

A. (Continuing.) I should think that that probably was somewhere along after the middle of January.

Q. 136. What year?

A. Of 1919. I told him that I thought the industry would go along with his ideas, and he then stated to me the conditions that we would have to exact from any corporation that was to be formed to take them over.

Q. 137. What did he say about that?

A. He said that there would have to be non-exclusive licenses open to everybody, either at present in the chemical business or who might go into it in the future; that it must be absolutely iron-clad against any possibility of combination or monopoly on anybody's part.

He said that a free license would have to be given to the Government, both releasing them for past infringement, and to allow them to either manufacture themselves in case of war, or for use in peace, or have manufactured for their own use.

He stated that it must be a non-profit-making institution; it must be so organized that no individual got any profit out of it, except what they earned by developing the industry and selling the products which the patent would allow them to sell.

He said the stock would have to be trusteed and would have to be trusteed in the name of the sales committee who had been with him throughout the war and who fully understood the necessity of guarding against the return of these properties to the Germans.

Q. 138. After this talk, did you again have conferences with the representatives of the industry?

A. I did.

Q. 139. Can you place the date? How soon after this talk with Mr. Palmer?

A. That was after they had been down and talked to Mr. Palmer. It was some time in February, the early part.

> MR. ANDERSON: Now that the subject has been changed may I interrupt just a moment. I know your Honor's ruling. I merely want to move to strike out the evidence of this witness as to any statements by Mr. Matheson as to value, and also to strike out the alleged conversation between himself and Mr. Palmer, and Mr. Palmer's conditions.
>
> As to the first part of the motion, it is, I

think, covered by my objections already made. As to the second part, these negotiations, whatever they are, have been merged into agreements which are in writing and which speak for themselves. This motion is based upon these grounds, as well as the general and specific objections heretofore taken. I understand the situation. I merely want to make the record clear.

The Court: I understand that the allegations might conceivably make a conspiracy. I do not say that they do, or will, but it is possible to conceive that they might. For that reason the objection is overruled and the evidence will be received.

Mr. Anderson: It was not so intended, sir. I will say that.

The Court: I mean, Colonel Anderson, the reasons leading up to this transaction; not your reasons.

Mr. Anderson: Oh, I misunderstood your Honor.

Q. 140. Will you state now what conference you had with the representatives of the industry early in 1919, as you say?

A. At one of the next meetings——

Mr. Anderson: Mr. Kresel, when you say "representatives of the industry", will you have him say who was present, when and where, and who spoke?

Q. 140. (Continuing.) Please state as near as you can recall who was present and where the conference took place and when?

A. It was sometime along the middle of February. We had a very large meeting at my office.

Q. 141. Where?

A. At 42nd Street, New York.

Q. 142. Please state as near as you can recall who was present?

A. It would be impossible for me to state them all.

Q. 143. State as many as you recall?

A. As to who was present, I have only my recollection. I have a recollection of Mr. Poucher and Judge Laffey, two or three representatives of the National Aniline—which ones they were I would not be able to state because I saw a great many of each company. I think Mr. Jeffcott of the Calco Chemical Company was there, some representatives of the Newport Chemical Company, some representatives I think of Sherwin-Williams; I think Mr. Merz; I think Mr. Wigglesworth; I think Mr. Henry Howard, secretary of the General Chemical Company. There was quite a large group of them at that meeting. Mr. Choate was there, I think. I am positive Mr. Choate was and I think Mr. Hoguet was. I am not positive.

Q. 144. You say that this meeting took place in your office on 42nd Street?

A. Yes; the Alien Property Custodian's New York office.

Q. 145. Will you now state briefly but substantially what took place?

A. I told them the terms that Mr. Palmer had laid down.

Q. 146. Please state just what you said to them?

A. I told them that there must be non-exclusive licenses and that the stock must be trusteed for the life of the longest patent in the hands of the Sales Committee; that it must be a non-profit making proposition; that they must give the Government a free license. In the discussion they proposed that the license fee be so adjusted that when the preferred and common stock was paid back there be no license fee. I said, "No," that Mr. Palmer exacted that they always pay a license fee but that when the stock was paid back, the balance would be devoted to the general development of chemical education and the general development of chemistry in the war. They had one or two other proposals. What they were I am not sure. And we discussed the price.

Q. 147. What was said about that?

A. They discussed the elements that went in to make it uncertain what their value was in view of the conditions that were being imposed.

Q. 148. What was said about that and by whom if you can state?

A. They said that of course any one of them individually would not buy patents under any such condition as that; but if the Government made this proposal to them and urged them to do it, as a spirit of the war was still on, they would carry on for as much as their proportion called for, as they all agreed each should do; but that individually, of course, with that form of a conveyance, it offered no business attraction to any one of them individually, and they agreed that they would give $250,000 and supply $250,000 of working capital.

Q. 149. Could you state who it was that made the statements on behalf of the conferees?

A. No, I could not. It was a general discussion by everybody.

Q. 150. Do you remember any particular persons making any statement?

A. No.

MR. ANDERSON: Has he fixed the date?

MR. KRESEL: Yes, about the middle of February, 1919, as I recall it.

THE WITNESS: About the middle of February.

Q. 151. What did you say or what did Mr. Choate say about the price, or anything else?

A. Well, Mr. Choate after the discussion went on agreed that that would be a fair and reasonable price.

Q. 152. Did he say that?

A. He did.

Q. 153. What did you say?

A. Well, I agreed that it would, too. It was apparently the most we could get, too.

Q. 154. Then did you after that conference have another talk with Mr. Palmer?

A. I did.

Q. 155. What did you say to him then and how long after this conference about the middle of February?

A. Within a day or two.

Q. 156. Where was it that you saw Mr. Palmer on that occasion?

A. In Washington.

Q. 157. Please state what you said to him about this subject?

A. I told him we had had a conference, there had been many of the manufacturers there, both from the Dyes Institute and from the manufacturing chemists, which were the chemical concerns outside, and that they had accepted his terms, his conditions, and that they had made the proposal of the price of $250,000, and Mr. Choate, Mr. Hoguet and myself thought it was a fair price, and he said, all right, he would accept it.

Q. 158. After that conference did you have another talk with the representatives of the industry?

A. Yes, I reported back to them.

Q. 159. What did you say to them?

A. I told them that Mr. Palmer had accepted their offer.

Q. 160. Can you fix about the date when you conveyed that information?

A. No, it was within a few days of that time.

Q. 161. Do you remember when the charter of The Chemical Foundation was filed?

A. Filed, I think, February 19th, if I am not mistaken.

Q. 162. What year?

A. 1919.

Q. 163. You spoke of these gentlemen who were present at the conference saying they would underwrite the amount of money necessary. Was there an underwriting necessary?

A. Mr. Palmer stated to me that he wanted the stock as widely distributed as possible, and in our conversation we decided that nobody could hold more than two shares of common stock, and our aim was that they would hold eight shares of preferred stock, that is $1,000, and that it would be divided into 500 concerns holding it. So that in my talks with them they agreed that they would attempt to distribute the stock as widely as possible in conformity to that expressed idea of Mr. Palmer, but that they would get together the industry and would underwrite the $500,000.

Q. 164. Do you know what steps were taken to distribute the stock as widely as possible?

A. Yes.

Q. 165. What was done?

A. We circularized the 3,000 firms throughout the United States in whom we thought it would excite any interest.

Q. 166. Will you stop there a minute. Have you a list of the firms which were asked to become stockholders?

A. I have.

Mr. Kresel: Colonel, I have this list here. I do not want to burden the record with a list of 3,000 names and addresses, but it is available to you if you desire to examine it. I will mark it for identification, if you like, or I will put it in the record, if you like, just as you say.

Mr. Anderson: I would like to know when this circularization took place.

Mr. Kresel: Yes, I will inquire.

Q. 167. Mr. Garvan, will you state how soon after the organization of The Chemical Foundation the industry was circularized to endeavor to distribute the stock as widely as possible?

A. From recollection I would say early in March after we got started. But the circular itself bears the date. I could find out from our own records.

Q. 168. Look at this (handing witness paper). Is it a copy of the circular that went to each?

A. Yes, that is right. Then it must have been much later. According to that, it is July.

Mr. Kresel: This I will offer in evidence—a copy of the circular.

The Witness: There was a prospectus went with that.

Q. 169. Yes, but that is already in evidence, however.

A. Yes.

Mr. Kresel: I would like to have this marked.

Received in evidence and marked "Defendant's Exhibit No. 81." (*See Exhibits, Vol. IV, page 2575.*)

Mr. Kresel: Colonel Anderson agrees with me that it is not necessary to put this long list of names and addresses into the record, but I think I shall have it marked for identification.

(Marked for identification "Defendant's Exhibit H.")

Mr. Anderson: I assume it is not necessary for me to state that all this preliminary negotiation which the witness has described is not only subject to the general objection, but the specific objection which I stated heretofore.

The Court: Or subject to all applicable objections, general and specific, heretofore made.

Q. 170. Mr. Garvan, have you had prepared a list of the stockholders of The Chemical Foundation showing the businesses that they are in?

A. I have.

Q. 171. As of what date is this?

A. Down to the present date. I do not think there has been any change, hardly, since the beginning.

Q. 172. Will you produce that?

A. I do. (Handing counsel.)

Mr. Kresel: I will offer this in evidence.

Mr. Anderson: It does not state the number of shares preferred and common.

Mr. Kresel: You have that in your list which is already in evidence. Isn't that right, Mr. Galloway?

Mr. Galloway: Yes, I have that.

Mr. Kresel: May this be marked in evidence?

Received in evidence and marked "Defendant's Exhibit No. 82." (*See Exhibits, Vol. IV, page 2576.*)

Q. 173. Mr. Garvan, do you know whether or not the stockholders of The Chemical Foundation are members of the Dyes Institute?

A. Some are and some are not.

Mr. Anderson: The stockholders of what date, Mr. Kresel, please? Would you make it a little more specific?

Mr. Kresel: I will try to, Colonel.

Q. 174. Mr. Garvan, this Exhibit 82, as I understand your testimony, is a list of the present stockholders?

A. Yes.

Q. 175. Has there been any material change in the stockholders or the amount they hold since the organization of the company down to date?

Mr. Anderson: I must object to the form. If there is any change it can be pointed out.

Q. 176. To your knowledge, has there been any change in the stock holdings of the various stockholders?

A. I think there was a change right after we were organized, before the distribution took place, but since July, 1919, I would say there was no material change. I will verify it and give you every change by tomorrow morning, after looking at the books. But as a result of this circularization we spread our holdings among 158 and diminished the larger holdings by so much as we were able to sell to the others, but nobody ever had any more than two shares of stock, common stock, there never was any deviation from that rule.

Q. 177. Do you know how many of the concerns underwrote that?

A. I do not remember, no.

Q. 178. The exhibit is in and that will show?

A. If it is material, I can get it for you by tomorrow morning.

Q. 179. It is in. What was the total amount of capital that was actually paid in by the stockholders?

A. $428,900.

Q. 180. In other words, no more than that has ever been paid in?

A. No, sir.

Q. 181. Can you state whether all of the preferred stock has been issued or all of the common stock?

A. All of the preferred, but only as much of the common as double the number of stockholders.

Q. 182. In other words, there has been $400,000 of preferred stock issued?

A. $400,000 preferred.

Q. 183. And only $28,900 of common?

A. Yes, among 156 stockholders. So some must have only one share of common.

Q. 184. In whose name is the common stock on record in your company?

Mr. Kresel: We will produce the books if you like, Colonel; but I do not believe there is any dispute about that.

A. The names of the five trustees.

Mr. Anderson: Name them, please.

Q. 185. Will you give the names, please?

A. At the present time, Cleveland H. Dodge, Judge Ingraham——

Q. 186. George L. Ingraham?

A. George L. Ingraham; Benjamin Griswold, of Baltimore; Otto H. Bannard, of New York City; and Bradley W. Palmer, of Boston, Mass., of Story, Palmer, Thorndike & Dodge.

Q. 187. You state "at present." Had there been any change in the voting trustees?

A. Mr. Ralph Stone, of the Detroit Trust Company, was originally a trustee, but he could not make the trip from Detroit to New York, and so asked to be relieved.

Q. 188. And Mr. Bradley W. Palmer took his place?

A. Yes.

Mr. Anderson: Could you state the date of the change?

Q. 189. Can you give us that, Mr. Garvan?

A. I cannot. I will in the morning.

Mr. Anderson: If you have got the record here, let him give it to us now.

A. (Continued.) About a year ago; a year and a half ago. I would say it was a year ago last January. That would be my recollection.

Q. 190. Mr. Garvan, there has been read into the record here an extract from the minutes of the Advisory Sales Committee of the Alien Property Custodian, from a meeting held by that committee on the 14th of February, 1919, which is to the effect (I am not quoting the exact words) that you appeared before the committee and explained the plan for the disposition of the German patents, and that the plan was approved in principle. I think that is the substance of the statement in the minutes. Do you recall appearing before the committee?

A. I do.

Q. 191. Do you recall who was present there? I mean, what members of the committee?

A. Mr. Ingraham—Judge Ingraham, Mr. Bannard, Mr. Dodge, and Mr. Griswold, as I recollect it. I do not think Mr. Stone came on for that meeting.

Mr. Kresel: Yes, that is right, according to the minutes, Colonel.

Q. 192. And you were present?

A. Yes.

Q. 193. Who else? Do you remember anybody else being present?

A. The first part of the hearing, whether he stayed through or not, Mr. Palmer himself was present. He had another case on there on the calendar that day.

Mr. Kresel: I desire to read in, if your Honor please, from these minutes from which the Government has already put in a portion, the following:

"Minutes of meeting of Advisory Committee on Sales, held at the New York office of the Alien Property Custodian, 110 West 42nd Street, New York City, on Friday, February 14, 1919, at ten o'clock A. M.

"Present: Messrs. Otto T. Bannard, George L. Ingraham, Cleveland H. Dodge, Benjamin H. Griswold, Jr.; Ralph Stone, excused.

"By invitation: Honorable A. Mitchel Palmer, Alien Property Custodian; Messrs. F. P. Garvan, Director Bureau of Investigations; Ralph J. Baker, Assistant General Counsel; Joseph F. Guffy, Director Bureau of Sales; F. X. Anglin, Assistant Director Bureau of Sales; H. D. Green, Assistant Chief Division of Insular Possessions; George P. Wagner, Secretary to the Committee."

Q. 194. Now please state, Mr. Garvan, what, if any, statement you made to the committee at this meeting with reference to the disposition of the German-owned patents?

A. I made a general statement of the whole situation.

Q. 195. State as briefly as you can——

A. I would have to go right over the same ground again.

Mr. Kresel: Perhaps there will be no objection to my asking specific questions about it.

Q. 196. Did you tell the committee of your conferences with Mr. Palmer and with the representatives of the industry with a view of selling these patents?

A. I did.

Q. 197. Did you tell the committee what plan Mr. Palmer had proposed and which you and Mr. Choate and Mr. Hoguet had perfected?

A. I did.

Q. 198. What did you say to the committee upon that particular subject? I mean, what the plan was?

A. I told them that Mr. Palmer wanted to trustee these patents so that there would be no danger of their ever going back to Germany; that there would be no danger of the substitution of an American monopoly for the German monopoly; that everybody would get a fair deal, little fellows and big fellows alike; that the license fees would be equal on any product to one and all, whether they had put up money or not; and that we wanted them to become trustees to insure those terms of Mr. Palmer being carried out beyond peradventure of doubt. I knew that they had had two years of war work and most of them were old men, but asked them to accept that additional burden of becoming trustees of that institution.

Q. 199. By the way, may I stop you there to inquire whether any of these gentlemen ever received a penny for their services?

A. Certainly not.

Q. 200. Either from The Chemical Foundation for acting in this capacity or from the Government acting on the Advisory Sales Committee?

A. Absolutely no, either by way of expense account or any possible way under the sun. They were men of very mature years whose lives had already been rounded out, and had no interest whatsoever in anything connected with these German properties. Judge Ingraham was the leader of our Bar for thirty years and the arbiter of the ethics of New York lawyers and judges for the last twenty years.

Q. 201. While I am on this point, I omitted to ask you on Friday whether in your capacity as director of the Bureau of Investigation of the Alien Property Custodian you received any compensation?

A. A dollar a year.

Q. 202. I am sorry to have interrupted you. Will you proceed now to state more fully what you told the Advisory Sales Committee as to the plan and whether you told them about the price and whether you told them the condition?

A. Of course, it is impossible for me to say with what detail I went into the story at that time.

Q. 203. I understand.

A. I know at that time I told them that I was to be one of the directors; that I had consented to go that far; and that was in urging upon them to take up those additional burdens. I told them of the conditions that necessitated it. Of course, they had sat there for two years and heard the Bayer case and all these other cases and it was not necessary to tell them a whole lot.

Q. 204. What did you tell them about the conditions that Mr. Palmer insisted upon that would surround the sale?

A. I thought I told you that.

Q. 205. You did not, fully.

A. I told them we would have to give the Government a free license; that we would have to give everybody else a license; that it could not be a money-making proposition for anybody; that six per cent. on their money was the most that anybody could get who put money into it and that its future depended entirely upon the progress which American industry might make, upon the amount of money that they were willing to put into their plants and into their research to develop it. I undoubtedly told them about salvarsan. I did to most everybody. I told the story of salvarsan to them. What other details I went into I do not know at this time.

I do remember that they asked at that time that Judge Ingraham, who was the only lawyer among them, take charge of looking after the trust agreement under which they were to serve and see to it that it lived up to the desires of Mr. Palmer and that it was just to the Government and to all concerned.

Q. 206. You mean the voting trust agreement?

A. The voting trust agreement.

Q. 207. And do you know whether Judge Ingraham did take or examine into (I will put it that way) the form of the voting trust agreement that was finally adopted?

A. Judge Ingraham in connection with Gray, of Delaware, as I understand it. I know I had nothing to do with it.

Q. 208. Who were the directors of The Chemical Foundation when it was first organized?

A. Three young men in the Delaware Trust Company. I don't remember their names.

Q. 209. And after they had resigned, who succeeded them?

A. Myself, Mr. Corbett and Mr. McKay, Colonel Douglas I. McKay.

Q. 210. Who was Colonel McKay?

A. Douglas I. McKay was a member of the general staff of the United States Army during the war and had retired and returned. He was a civil engineer, as I understand it with J. G. White & Company. He had been a man of means and a man of considerable position.

Q. 211. Has there been any change in the directorate?

A. Mr. McKay served without pay during the entire time he was there. Mr. Corbett was the Secretary and Treasurer. He at that time was Vice President of the Central Trust Company and for about a year and a half, up to the time that the work became so much that he had to resign his position from the Central Trust Company he received no pay. And, of course, I received no pay.

Q. 212. Has there been any change in the Board of Directors?

A. Yes, sir.

Q. 213. What change?

A. Mr. McKay resigned and we elected Mr. Polk, but then thought better of it; thought that he would not be willing to serve; and we then elected a young lawyer who worked for us who was there on the job all the time, a young man named Haaren. Otherwise there has been no change. He was made secretary, Mr. Corbett remaining as treasurer.

When Mr. Corbett resigned from the Central

Trust Company, he served at a salary, I think, of either $10,000 or $15,000 a year for a certain time and since then, for a year and a half, I think, has again given his services for nothing.

Mr. Kresel: If you would like the exact dates of that, Colonel, I will furnish them.

Q. 214. I want to make sure that I have all the changes in the officers. There has been no change of the office of president?

A. No, sir.

Q. 215. You have been president right along?

A. Yes, sir.

Q. 216. Mr. Corbett has been Treasurer right along, is that right?

A. Yes. I missed one change there. We elected Mr. Miller a director at one time.

Q. 217. You mean Mr. Thomas W. Miller?

A. Yes, I think he succeeded Mr. McKay. Yes, he succeeded Mr. McKay.

Q. 218. And did he serve?

A. He did not.

Q. 219. Among the officers, Mr. Corbett was secretary and treasurer and then resigned as secretary and was succeeded by Mr. Terry, did you say.

A. Haaren.

Q. 220. And are those the officers now?

A. Yes.

Q. 221. You president, Mr. Corbett treasurer and Mr. Haaren secretary?

A. Yes.

Q. 222. Is there a vice-president?

A. I do not know. I wouldn't want to swear to that unless I looked it up. Mr. Corbett may be. I do not know.

Q. 223. To your knowledge, has any of the directors of this company, either past or present, had any interest in any dye concern?

A. No, sir.

Q. 224. Or pharmaceutical concern?

A. No, sir.

Q. 225. Did any director, either past or present, have any stock in The Chemical Foundation?

A. No, sir.

Q. 226. I ask you the same question with regard to the officers of the corporation. Has any of them, to your knowledge, been interested financially or otherwise in any dye concern or pharmaceutical concern or chemical concern, or have any stock in The Chemical Foundation?

A. No.

MR. ANDERSON: So far as the dye concerns are concerned, I would not object. But so far as stock ownership in The Chemical Foundation is concerned, the records or minutes are here and that is a conclusion which we do not admit. Therefore, I object to the witness testifying to his conclusions as to stock ownership in The Chemical Foundation. I do not regard the question of ownership in dye concerns as material and, therefore, I will not call for any formal evidence on that subject. But, as to The Chemical Foundation, I think the best evidence are the records of the company of the stock ownership and the Court may decide in the light of those records what is the relation of the officers to that company. Therefore, I move to strike out his testimony with reference to The Chemical Foundation.

MR. KRESEL: Your Honor may recall the same question came up on Friday afternoon when I asked Mr. Garvan as to his own stockholdings. Now, while we are at it, I think we are entitled to know whether it is the claim of the Government that any officer of this company or any director ever did hold stock in this company.

Mr. Anderson: I do not think I am compelled to make plain my position on the record. What is offered is not the best evidence, and I call for the best evidence.

Mr. Kresel: Very well. If the Government declines to make its position plain, I will go on.

The Court: Are the records in evidence?

Mr. Kresel: The stock certificate book, I do not believe, is in evidence. I will put that in in the morning, your Honor.

Mr. Anderson: I think possibly we could get by this difficulty. All I want is not to be precluded on this evidence by the statement of a conclusion by a witness, and I will state what I understand the record to show. If it is agreed that that is what it shows, why, I am willing to stand on that for argument.

As I recall, the record shows that when the company was organized the three formal incorporators subscribed for thirteen shares of stock.

Mr. Kresel: Fifteen.

Mr. Anderson: Fifteen shares of the stock. One of them thirteen, and each of the other two, one.

Mr. Kresel: Exactly.

Mr. Anderson: That when they resigned from their formal positions, they assigned to Mr. Garvan the right to the thirteen shares subscription, to Mr. Corbett the right to one share subscription, and to Mr. McKay the right to one share subscription, and that right continued on the records without any change until late in 1922, when it was formally released by these gentlemen by a record release to The Chemical Foundation. Isn't that so?

Mr. Kresel: What you mean is that the minutes show that they released.

Mr. Anderson: They filed a formal paper releasing any right to that subscription. As I recall, those are substantially the facts, and if the witnes wants to testify to these facts, or if counsel wishes to agree to those facts, then I will waive any claim to have the stock books produced and the formal proof on that subject.

Mr. Kresel: There is no necessity either for the witness to admit that or for counsel to concede that. That is the record that you have put in here, and, of course, it speaks for itself.

Mr. Anderson: That is all. My only objection was to the witness testifying to the conclusion that he was never a stockholder.

Mr. Kresel: Now that Colonel Anderson has reviewed to your Honor the state of the record, I will repeat my question as to whether the Government claims upon that record that either Mr. Garvan or Mr. Corbett or Mr. McKay were stockholders of the company.

Mr. Anderson: My answer is the Government reserves the right to make any claim upon that record they can do in law.

The Court: One of the difficulties that I am having, Colonel Anderson, and I am not stating this in the way of criticism at all, is in finding your major premise for any of your propositions. I am finding it difficult to draw any conclusions from a minor premise alone. It seems to me that you are leaving me, during the taking of the testimony, wholly without a major premise for any syllogism, and reserving the right to lay down any major premise that you please at the time of the final argument. Am I right about that, Colonel Anderson?

Mr. Anderson: I do not think so, sir. I think

I have been somewhat laboriously, and certainly very extensively, frank in stating to your Honor my positions on the law, my understanding of the facts, and my conclusions as to what they show.

THE COURT: Then let us take this immediate one. Do you care to state what your major premise is on that conclusion? You agree as to facts as disclosed by the record. If it is conceded that they are useless or that they do not establish that the witness was a stockholder, then we can, I assume, go on without paying any more attention to that. If, on the other hand, you are going to state that that brings it within the principle that they are stockholders, then we have another minor issue in the case.

MR. ANDERSON: The only question there is whether any other evidence can be introduced. If they can, why, counsel is quite at liberty to introduce it. We have concluded our evidence on the subject.

THE COURT: I know; but you are leaving me without a major premise. So we will have to go on on that basis.

MR. ANDERSON: I will state this: that the Government will contend in that situation that the position taken by counsel here that they had no stock interest in this company of any kind is not sound; that the right to subscribe for stock and receive stock is a valuable right, and that it was an interest. I have put in the evidence its obvious application, and if my position is sound or unsound, it is for counsel to meet the evidence. If they can prove any different facts from those on the record, they are at perfect liberty to do so.

THE COURT: That is true, Colonel Anderson. No doubt about that. But if the Government can state what use it proposes to make or use it can make, if any, out of a particular bit of evidence, it seems to me it probably narrows and shortens the issues.

Mr. Anderson: I am only too glad to answer your Honor's question in that regard. I have already stated the evidence could have but one relationship, and that is, to show who were stockholders of the company, or who had a right to beholders of the company. Now, who were stockcome stockholders of the company, is a question affecting the relations of these gentlemen to the transaction. What that is and whether it has any legal effect is for your Honor to decide on final argument.

Mr. Kresel: It is all right, your Honor; I will produce tomorrow the stock certificate book, and I will ask your Honor to let me put it in for the purpose of showing who the stockholders were.

Mr. Anderson: If the counsel will produce the stock certificate book and it does not appear these gentlemen were ever registered owners of stock, I am perfectly willing to admit whatever the facts are, without putting the books in evidence.

Mr. Kresel: Do you mean to say, Colonel Anderson, that you do not now know what our stock certificate book shows?

Mr. Anderson: I personally do not.

Mr. Kresel: With your accountants having been over our books for a period of six weeks?

Mr. Anderson: Mr. Kresel——

Mr. Kresel: You have been misinformed, Colonel.

Mr. Anderson: I did not say that these gentlemen were registered stockholders, your Honor. I said if he would let me see the books or it appeared they were not registered stockholders, I would not require him to burden the record with the formal evidence, but would admit whatever the facts were. Now, I have not had a chance to examine those books personally. I do not know what the facts are, and the facts in this case are too voluminous for me to undertake to be familiar with them all.

Mr. Kresel: All right, Colonel, I will produce the book in the morning. May I proceed your Honor?

The Court: Yes.

Q. 227. Mr. Garvan, it is in evidence here that you executed the first or so-called big assignment of these patents to The Chemical Foundation, which is dated April 10, 1919. That instrument is Exhibit H-1 annexed to the bill. From that instrument I read the following language from page 415 of the bill:

> "All of the rights, interests, and benefits under the agreements enumerated in Schedule C hereto annexed:
>
> "All as more specifically described and set forth in the requirements or demands relating to said letters patent of the United States, applications for letters patent of the United States, trademarks and registrations thereof, copyrights and rights, interests and benefits under agreements issued by said A. Mitchell Palmer, as Alien Property Custodian, or by me as Alien Property Custodian without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws of the said The Chemical Foundation (Inc.), or otherwise, and subject only to the provisions of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or of friendly nations", etc.

I direct your particular attention to the clause which says this conveyance is made without any reservation or qualification whatsoever, "Whether by reason of anything contained in the charter or by-laws of the said The Chemical Foundation (Inc.), or otherwise''. Before I put the question to you I direct your attention to the fact that in an assignment which is Exhibit H-6 annexed to the bill of complaint likewise signed by you, dated June 21, 1919, there is similar language. I read from page 435 of the bill, your Honor, the language as follows: ''without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws of the said The Chemical Foundation (Inc.), or otherwise.''

Also in Exhibit H-19, which is another assignment executed by you on the 19th of February, 1921, I find this language: ''and to the full extent to which I am or may become entitled to the same, including all claims and demands for profits and damages recoverable'', etc.

Will you please state the reason for the language that I have read, namely, that these conveyances are made without any reservation whatsoever, whether by reason of anything contained in the charter or by-laws of The Chemical Foundation or otherwise?

Mr. Anderson: If your Honor please, we of course object to that question, first as an effort to construe a written agreement, second, as an effort to vary a written agreement and to show by parol what the meaning is and the reason for the execution of the written agreement, all of which is merged in the agreement.

Mr. Kresel: I disclaim any desire either to vary the instrument or to construe the instrument. I am simply inquiring for the reason——

The Court: I had assumed before you finished your question you were going to ask for the particular circumstances under which those agreements were executed. Unless your question calls for those circumstances, although your use of the word ''reason''——

Mr. Kresel: Will your Honor permit me to withdraw the question. I will recast it and perhaps avoid the objection.

Q. 228. Mr. Garvan, I have directed your attention to these three assignments. I now ask you to state, if you will, the circumstances under which these assignments were executed, with particular reference to the language I have read?

Mr. Anderson: I make the same objection to the circumstances and the negotiations leading up to these agreements. There is not the slightest doubt about what it says or what it means. It is nothing more than coming in the back door to construe the agreement. Therefore, I object to the question and any answer thereto, or any other question relating to these agreements or to the facts and circumstances preceding these agreements, with reference to the matters covered thereby, upon the ground that the agreements speak for themselves and it is not competent for the witness to testify or to undertake to testify or construe or explain the same.

Mr. Kresel: Will your Honor hear me a minute. In view of the charge of conspiracy here, in view of the charge that these officials were duped into making these assignments, in view of the emphasis that has been laid by counsel for the Government upon this particular language both in his opening statement and when he put them in as exhibits, we claim the right that this official has to explain why that language was used and the circumstances that gave rise to its use. I repeat what I said this morning, your Honor. If this man's motives are imputed, if it is charged that he had ulterior designs in this matter, as it is charged, and we can not wink at it, he has a right to explain.

THE COURT: The same question arose with respect to reasons given by Mr. Palmer and I——

MR. ANDERSON: If your Honor please, here is an agreement executed by this witness, a deed. I confess that my knowledge of the law and practise is limited, but this is the first suggestion I have ever heard in court that a man can make a deed and then come in and say why he used certain language in the deed. I never heard such a thing suggested before; and while the charge of conspiracy opens up the evidence to some extent, it does not abolish all the rules of evidence as to what a witness can testify about a written instrument. I do not want to argue it; it seems useless for me to argue it, and I make my objection, and therefore your Honor will rule as you deem best.

THE COURT: What is the question that you have put?

(Q. 228. repeated as recorded above.)

THE COURT: The answer may be taken.

MR. ANDERSON: I note an exception if your Honor please.

A. The assignments were drawn by our patent counsel, Mr. Hoguet. Mr. Hoguet informed me that it was necessary from the patent lawyer's standpoint that there be absolutely no reservations upon the transfer of patents if we were to be able to meet the German after the war or to meet any infringer; and he said that this in no way relieved the obligations, our obligations under the charter, but that the conveyance to the Foundation should be unrestricted and unlimited if we expected to be able to bring infringement suits, and so forth, and that nothing should remain in the German or in the A. P. C. I knowing nothing of patent law——

Q. 229. What is that last statement?

A. I knowing nothing of patent law or what constituted a valid transfer of a patent, agreed to it.

Mr. Anderson: Now that the answer has been made I move to strike it out for the reasons already stated, and for the further reason that Mr. Hoguet's expression of the meaning of a written instrument is certainly not evidence here.

The Court: I deny the motion, although I do not now see any pertinency the statement embodied in the last answer has with respect to the issues in this case. It will remain in under the general rule.

Mr. Anderson: I note an exception.

Q. 230. Mr. Garvan, since the conveyance of these patents to The Chemical Foundation, made by the Alien Property Custodian, has the Chemical Foundation issued any licenses?

A. It has.

Q. 231. Have you prepared a list of all such licenses issued?

A. I have. Under my direction. I have not prepared it. It was prepared under my authority.

Q. 232. I show you this document (handing witness paper). Is that the list of all the licenses that have been issued by The Chemical Foundation from its inception to December 31, 1922?

A. It is.

Mr. Kresel: I offer this in evidence. I think the Government has already seen this.

Mr. Anderson: One moment. If your Honor please, I do not object to the introduction of this statement, as I understand it is made up from the original licenses, reserving the right, as was agreed by counsel, to check the same and call attention to any errors therein.

Mr. Kresel: Certainly.

Mr. Anderson: In the absence of such knowledge, I will assume that this statement is correct and I will not require the production of the original licenses in court.

Mr. Kresel: The licenses have just arrived now and you may have access to them, Colonel, at your leisure.

Same received in evidence and marked "Defendant's Exhibit No. 83." (*See Exhibits, Vol. IV, page 2583.*)

Mr. Kresel: This exhibit, your Honor, I shall take only a moment to explain to you. The information contained thereon is the following: The number of the license is given, the name of the person to whom the license was issued, the product that is covers, the royalty rate, the date when the license was issued, the number of the patent which it covers, the expiration date of the patent, the amount of royalty received, the amount of license fee received and the total amount received. That runs down to December 31, 1922, showing that during that period 379 licenses had been issued and that the total amount collected by The Chemical Foundation on those licenses was $305,106.77.

Mr. Anderson: May I ask a question? It was suggested this morning that they insert after the name of the licensee the form on which the license was issued. As I understand, there are three forms.

Mr. Kresel: Two I know of.

Mr. Anderson: Two for patents and one for trademarks.

Mr. Kresel: Oh, two for patents.

Mr. Anderson: The two for patents have been put in evidence and can be identified by the exhibit number, and the trademark form can be put in, and then if they would put on the exhibit, I would like it to be understood that they would be on the exhibit at the appropriate place the form on which that license is issued, in order that we may identify the license.

Mr. Kresel: I will be very glad to do that.

Mr. Anderson: With that understanding I will not object to this in its present form.

Mr. Kresel: Then I will now offer, pursuant to that understanding, a form of trademark license.

Received in evidence and marked "Defendant's Exhibit No. 84." (*See Exhibits, Vol. IV, page 2619.*)

Q. 233. Without putting in evidence, Mr. Garvan, all of the licenses that have been issued, I am going to ask you, with Colonel Anderson's permission, whether it is a fact that The Chemical Foundation has never issued an exclusive license?

A. It is.

Q. 234. All licenses have been non-exclusive licenses?

A. Certainly.

Q. 235. Has The Chemical Foundation ever declined to issue a license to anybody?

A. Twice.

Q. 236. When?

A. Twice.

Q. 237. Will you state the circumstances of each case?

A. One was a young man who wanted a license on salvarsan.

Q. 238. Do you remember his name?

A. I do not. We will get it. We told him that we did not think he was equipped, salvarsan being a dangerous drug, but if he would go to the United States Health Department and satisfy himself that he had the training and ability to make it and get a certificate from them we would issue a license. He studied a year and a half or some time like that, got the certificate, and came back and got the license.

Q. 239. That is one case.

A. That is one case.

Q. 240. What is the other one?

A. The other is a case where some people issued stock on something and stated in their prospectus before they ever came near us that they had licenses from The Chemical Foundation. Investigation showed that it was a fly-by-night stock-jobbing game, that they had no factory, and no intention of manufacturing. It was a stock-selling scheme and we declined to issue the license.

Q. 241. With those two exceptions have you issued licenses to all American citizens that wanted them?

A. We have.

Q. 242. Have you made any distinction in the royalties that you charged upon the same kind of license as between different licensees?

A. We have not.

Mr. Anderson: One moment. I think that is going a little bit far. The statement speaks for itself as to licenses and royalties charged, and I do not think the witness ought to interpret his licenses. You may let the evidence go in to that extent.

Mr. Kresel: There can be no harm, Colonel. I am not going to pursue the subject. Of course, we could dig that out of a long exhibit I put in, but I am sure there is no harm in his making the statement.

The Court: Is the objection withdrawn?

Mr. Anderson: I think that statement ought to be stricken out. I think that is a question of argument from the statement itself.

The Court: Does your statement show the terms under which the licenses were issued?

Mr. Kresel: Yes, your Honor.

The Court: You may show what from your point of view that statement does show with respect to this matter and I shall sustain the objection because it is documentary and the objection is made on that. Any time you desire, I will be very glad to hear your statement.

Mr. Kresel: I will not stop to do that now.

Q. 243. Has The Chemical Foundation given to the United States Government a license covering all of the patents that were ever conveyed to it?

Mr. Anderson: Of course, I object to that question. The license can be produced.

The Court: The license has been offered, has it not?

Mr. Kresel: No, your Honor. I am just about to put it in. I will re-cast the question.

Q. 244. Has The Chemical Foundation given to the United States Government a license?

A. It has.

Q. 245. I show you this instrument and ask you to state whether that is the first license that was given by The Chemical Foundation to the United States Government?

A. It was.

Q. 246. Please give me the date?

A. February 26, 1921.

Mr. Kresel: If your Honor please, the original is in the possession of the Government, but by stipulation between Mr. Galloway and ourselves we are permitted to use a copy.

Mr. Galloway: Subject to correction.

Mr. Kresel: Subject to correction, certainly. I should have much preferred to have the original in court, but I understand they cannot locate it. May this be marked?

Mr. Anderson: Before that is offered, if your

Honor please, I wish to note an objection to the introduction of that document, not on the ground that it is a copy—that we are agreed upon—but because there is no evidence here that any officer of the Government of the United States authorized to accept such a paper has accepted it; and, therefore, it is not a license or contract between The Chemical Foundation, whatever it may be, and the Government of the United States unless it is accepted by some officer or entered into by some officer who is authorized to discharge the function of accepting that license.

Mr. Kresel: Will your Honor permit me for the moment to withdraw that because I have made an error. That was not the first one and I want to put them in in their chronological order.

The Witness: Then I want to withdraw my answer.

Mr. Kresel: Yes. May the answer to the last question be stricken out.

Q. 247. Mr. Garvan, I show this instrument and ask you whether that is a copy of a release given by the Alien Property Custodian to the United States Government on the tenth day of April, 1919?

Mr. Anderson: I shall object to that question and any answer thereto on the ground that while the witness can identify a certain instrument as executed by the Alien Property Custodian and prove delivery to the United States Government, he cannot prove that it is a release and it is not delivered to the United States Government until proof is made that it was accepted by an officer of the Government authorized to accept it in accordance with its terms. I have not read the paper. I do not know what it is. But that must be proved.

Mr. Kresel: One step at a time, please.

Mr. Anderson: Very good, sir. I object to that question and answer because the question embodies several statements, that it was a release given to the United States Government, which implies the character of the paper and the act of delivery, all of which must be proved.

The Court: I think the objection is well taken, so far as the question embodies the term "release." I will dispose of that first and if you have anything to say I will hear you on the other.

Mr. Kresel: No, your Honor. I understand that the objection is sustained?

The Court: The objection to that question is sustained.

Q. 248. Look at this instrument that I now show you and state whether it is a copy of an instrument that you signed as Alien Property Custodian on the 10th of April, 1919?

A. It is. I have looked at it.

Q. 249. I show you a copy of a letter dated April 15, 1919, and ask you whether you wrote that letter to Honorable A. Mitchell Palmer, Attorney General?

A. I did. That is my signature.

Q. 250. Is the instrument that I first showed you as having been signed by you on the 10th of April, 1919, a copy of the instrument that was enclosed with that letter?

A. Yes.

Mr. Kresel: I now offer in evidence the letter and the copy of the instrument; and as to those, I state that counsel for the Government say that they cannot locate the original. I understand you had it and then lost it again, or something like that.

Mr. Galloway: I have seen it. I do not know where it is now. I have seen it, but I do not say I have lost it.

Mr. Kresel: May the letter be marked as Exhibit No. 85 and the instrument No. 85-A?

Mr. Anderson: I object to the introduction of that letter and instrument, not on the formal grounds of copies, but on the ground that it does not appear that the Honorable A. Mitchell Palmer, Attorney General of the United States, was authorized to accept any license from the Alien Property Custodian to the United States or to accept the document introduced in evidence, and there is nothing in his position as Attorney General, so far as I know, that authorizes any such act.

Mr. Kresel: I do not understand that it is incumbent on us to prove the authority of the official to accept. But if it were, we say that the Attorney General of the United States has authority on behalf of the United States Government to accept documents for it. He has as much authority under the Executive Acts as the Secretary of War or the Secretary of Navy may have and under these circumstances we say that this evidence is admissible. It is the delivery of an instrument pursuant to what we claim to be a contract made here. It is an instrument that is referred to in the exhibit which the Government has put in, namely, the original assignment of April 10, 1919, and your Honor will recall, as I read from page 416 of the bill, the conveyance is subject only to the provisions of a certain release to the United States of America bearing even date therewith. That is the release that I am now offering.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibits Nos. 85 and 85-A." (*See Exhibits, Vol. IV, pages 2623 and 2624.*)

Mr. Kresel: I desire to read two paragraphs of this, with your Honor's permission. (Reading.)

Now, the Schedules A, B and C which are referred to in that instrument are not annexed, and we are privileged to annex them hereafter.

Mr. Anderson: There is no objection to that, of course. Now, I wish to add to my former objection, and in order to make it in proper form, to move to strike out this document and letter for the reasons already stated in my objection to the introduction thereof; for the further reason that it appears, according to the testimony of Mr. Palmer, that he negotiated the sale of this property and its release on the other side. He could not act on both sides and, therefore, could not affect the rights of the United States, acting by the Attorney General; and, in the third place, for the reason that there is no provision of the Alien Property Act or the laws of the United States which confers upon the Alien Property Custodian the power to execute any such release, whether to the United States or anybody else, or to convey or undertake to convey, or to release, or undertake to release, any such rights as therein provided.

Mr. Kresel: Does your Honor desire to hear me on that proposition?

Mr. Anderson: I should have added, without adequate consideration, which is embraced in my general statement as to the character of the paper.

The Court: I am somewhat hazy with respect to this particular transaction. I was under the impression that the release had been signed by The Chemical Foundation.

Mr. Kresel: No, your Honor. I withdrew that.

The Court: That is the license that you withdrew.

Mr. Kresel: Yes.

The Court: But this pertains to the accumulated royalties or license fees, as I understand it, does it not?

Mr. Kresel: The one that has just come in?

The Court: Yes.

Mr. Kresel: No, sir, that is a release.

The Court: Of what?

Mr. Kresel: From the Alien Property Custodian to the United States of all damages that might have run against the Government for using these copyrights and trademarks prior thereto.

The Court: It has nothing to do with the accumulated license fees?

Mr. Kresel: No, your Honor, not at all. That is only one of the instruments. I have several that I am going to put in.

The Court: I wanted to place this one, and I do not for the moment.

Mr. Kresel: Your Honor will see this is the same date that the first assignment to The Chemical Foundation was made, and the assignment is made expressly subject to this release.

The Court: We have to have that paper to see what The Chemical Foundation got. If valid, The Chemical Foundation acquired the rights in the patents and trademarks without right to relief against the United States for anything that it has done. That is your contention?

Mr. Kresel: Yes, sir.

The Court: The contention of the Government, I assume, is that that release is invalid for one or more reasons, and consequently, The Chemical Foundation is now in a position, if this transaction is not set aside, to maintain an action against the United States, although there is no authority for its suing the United States, as I understand it.

Mr. Anderson: I do not say that The Chemical Foundation would be in a position to do it, because The Chemical Foundation may have estopped itself to bring an action against the United States; but the release in itself is an act entirely outside of the authority of an officer of the Government who undertook to execute it, and does not constitute evidence of any kind.

The Court: Did you put in evidence the assignment which was made subject to that?

Mr. Anderson: Yes, sir, that is all in evidence.

The Court: Would not that offer in itself make that release admissible for whatever it is worth?

Mr. Anderson: I do not know, if your Honor please; but I feel I ought to object to that as nothing but a blank piece of paper.

The Court: Yes, I understand it.

Mr. Anderson: Of course, I do not ask your Honor to decide it now. I am just making the objection and your Honor may let it go in under the objection, as far as I am concerned.

The Court: But the reason for not deciding it is possibly that you are going to introduce the next one. However, we will leave that open.

Mr. Anderson: I merely want to preserve the record.

The Court: I was trying to find out where we were. I understand you now.

Q. 251. Now, Mr. Garvan, I return to this instrument of February 26, 1921. Please examine it again and state whether The Chemical Foundation gave that instrument to the United States Government?

Mr. Anderson: I wish you would frame your question, whether The Chemical Foundation executed that instrument.

Q. 251. (Continued.) Whether The Chemical Foundation executed that instrument.

Mr. Kresel: I will accept the suggestion.

A. This is not the original.

Q. 252. This is a copy?

A. I am sure of it. I am sure of the girl that signed the certificate.

Mr. Kresel: I ask that this be marked for identification.

(Marked "Defendant's Exhibit K" for identification.)

Q. 253. I show you a photostat copy of an original instrument signed by The Chemical Foundation, Incorporated, by Francis P. Garvan as president, and ask you to state whether that was signed by you as president of The Chemical Foundation?

A. It was. It is my signature.

Mr. Kresel: I offer this instrument in evidence and I direct counsel's attention to the fact that on the face of it it bears an acceptance on behalf of the Government, by Theodore Roosevelt, Jr., acting Secretary of the Navy.

Mr. Anderson: I assume that is the signature of Mr. Roosevelt. I do not know it myself. But even then, I object to the admission of this instrument on the ground that it does not appear that Colonel Roosevelt had any authority whatever from the Government of the United States to accept this instrument, whatever it is, or to deal with the subject matter involved. I recognize that that is a question that would require a great deal of argument, and I merely make the objection to preserve the record.

Mr. Kresel: I do not believe, your Honor,

that it would require a great deal of argument at all. Our position is that it is not incumbent upon us to prove the authority. Moreover, if it were the signature of this gentleman who holds this office, it is *prima facie* proof of his authority. He is an officer of the Government and if he had not the authority, they can prove that he had not.

I offer this instrument in evidence.

Mr. Anderson: If your Honor please, of course, that is in addition to all my general objections that it is immaterial and irrelevant.

The Court: I understand. But I do not know what this is.

Mr. Kresel: Of course. I could not state it in my question. Your Honor will realize that. The question would have been objected to. This, your Honor, is a license and release from The Chemical Foundation to the United States Government covering all of the patents that were ever conveyed to The Chemical Foundation.

The Court: A release of what?

Mr. Kresel: A release of all claims for infringement by the Government.

The Court: It is another release?

Mr. Kresel: It is another release.

The Court: In the same language?

Mr. Kresel: If your Honor will let me read the one that is now going in evidence, you will see that the one that I have had marked for identification was set aside by the larger one that is now going in evidence. That is the reason I have not pressed putting it in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 86." (*See Exhibits, Vol. IV, page 2629.*)

Mr. Kresel: If your Honor will indulge me for a few minutes while I read a few paragraphs of this instrument. (Reading.)

There are attached to the instrument various schedules. They are quite numerous and of course I shall not read them.

Gentlemen, may I have a stipulation that this instrument has been or is now being recorded by the Government of the United States in the Patent Office?

Mr. Anderson: If you state the date, and it is a fact. Do you know, Mr. Galloway?

Mr. Galloway: My information is that it has been filed.

Mr. Kresel: Your information is that it has been recorded.

Mr. Galloway: That is the information which we received.

Mr. Anderson: In the second place, I do not know who put it there and by what authority it was put there. We are making inquiry and we will try to find out the facts. We have got a man down there now trying to get the facts, but I do not know anything about them and have not enough facts to agree upon it.

Q. 254. Mr. Garvan, while you were Alien Property Custodian did you execute an instrument of which I show you a copy, which has been produced from the office of the Alien Property Custodian by the Government?

A. Is this the fifty-seven hundred patent license?

Q. 255. That is my understanding.

A. Yes, I executed this.

Mr. Kresel: I offer in evidence, if your Honor please, instrument executed by the Alien Property Custodian on December 20, 1920, together with the schedules thereto attached. With your

Honor's permission, we will substitute a copy instead of the original.

The Court: This is which one?

Mr. Kresel: If I may state, this is a license and release from the Alien Property Custodian to the Government of the United States as represented by the Scretary of the Navy covering 5,700 German patents; the license and release being made by the Alien Property Custodian to the Navy Department for a consideration, as I shall show, of $100,000. This was made on the 20th of December, 1920, by Mr. Garvan as Alien Property Custodian. The original instrument, I understand, is in the possession of the Government. What is here being produced is the copy which is on file in the office of the Alien Property Custodian. Is that right?

Mr. Anderson: I think so.

The Court: Is there objection?

Mr. Anderson: If your Honor please, from a hurried examination of this document which while produced by the Government I confess not to have before seen, I merely want in addition to my general objection on the ground of immateriality and irrelevancy and so on, to note the additional objection that it does not appear that the Alien Property Custodian had any authority to execute any such document or that the Secretary of the Navy had any authority to accept any such document or to make any such contract with respect to the same.

The Court: It is not an assignment, but a license?

Mr. Kresel: A license and release, your Honor.

The Court: Where is the title to those patents now?

Mr. Kresel: I assume that the title remains in the Alien Property Custodian.

The Court: Can the Alien Property Custodian, as agent of the United State, license these patents to the United States?

Mr. Kresel: There is no question about that, your Honor. Under the Act he has the right to deal with the property as if he were the absolute owner. He, therefore, has a right to license.

The Court: I can understand how he can do that without passing upon the construction of the act. I can understand how that might possibly happen with any person except the United States. It is admitted.

Mr. Kresel: I shall be very glad to give your Honor my views, but I think nothing is going to be gained by it at this time.

Received in evidence and marked "Defendant's Exhibit No. 87." (*See Exhibits, Vol. IV, page 2635.*)

Q. 256. Before you executed this instrument which I have just put in evidence, some of which I shall read in a little while, did you receive a letter from Mr. Franklin D. Roosevelt, Acting Secretary of the Navy, of which I show you a copy?

A. I did.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: Objected to on the same grounds as the preceding documents.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 88." (*See Exhibits, Vol. IV, page 2652.*)

Mr. Kresel: I shall first read the letter. It is dated at the Navy Department in Washington, March 16, 1920. (Reading.) Now I read from Defendant's Exhibit No. 87. It is dated December 20, 1920. After reciting the appointment of Mr. Palmer as Alien Property Custodian and Mr. Garvan as his successor, and reciting the seizure of a large number of patents, the instrument proceeds as follows (reading).

Mr. Kresel: That is all I desire to read of that.

The Court: That is the release executed by the Alien Property Custodian to the United States?

Mr. Kresel: To the United States. You see, your Honor, you now have before you two instruments, one covering a release and license to the Government, covering all of the patents conveyed to The Chemical Foundation.

The Court: And accepted by the Secretary of the Navy.

Mr. Kresel: By the acting Secretary of the Navy. Then you have this license and release.

The Court: For 5,700 patents?

Mr. Kresel: For 5,700 additional patents, German patents held by the Alien Property Custodian.

The Court: For $100,000?

Mr. Kresel: For $100,000,

The Court: What is the nature of those patents, Mr. Kresel?

Mr. Kresel: Oh, your Honor, I am going to put in several classifications of those. Briefly speaking, let me tell your Honor. They were the most important patents, covering patents on munitions, gun carriages——

The Court: You call them munition patents, then, just for convenience.

Mr. Kresel: Mostly munition patents; but then there were also surgical patents, chemical patents. They were of all sorts. There is a printed list of those contained in the report of the Alien Property Custodian made to Congress in 1922, and when I come to the examination of a witness, I am going to bring out some of that and your Honor will learn about it.

Q. 257. Mr. Garvan, I show you this folder, and ask you to examine it. It is produced by the Government from the files of the Alien Property Custodian.

Mr. Kresel: Is that right, Mr. Galloway?

Mr. Galloway: Yes, that is right. That is only an abstract, however.

Q. 257. (Continued.) I wish you would examine hat.

Mr. Kresel: May I lead him in this question? I think it will save time.

Mr. Anderson: I would like to know what it is about before I agree to that. If it is immaterial I do not care anything about it.

Mr. Kresel: Listen to my question then and you will get it.

Q. 258. I ask you to state whether that is an instrument showing that the Alien Property Custodian on the sixth day of February, 1919, assigned to the United States Government, as represented by the Secretary of the Navy, a number of patents, a list of which is attached hereto, for a consideration of $1,190.

Mr. Kresel: I will show it to Colonel Anderson. Perhaps we could agree, Mr. Galloway, without putting a question to the witness. If you will permit me I will dictate the stipulation and you may see if it is correct. May I do that, your Honor?

The Court: Yes.

Mr. Kresel: It is stipulated and agreed that on the sixth day of February, 1919, A. Mitchell Palmer, as Alien Property Custodian, conveyed to the United States of America——

Mr. Anderson: You are wrong, just stop right there. I am not going to agree that anything was executed and assigned. You can say that he executed a certain instrument.

Mr. Kresel: Executed an assignment.

Mr. Anderson: No. If there is going to be any legal effect I will not agree upon it. I do not mind agreeing to the fact, but not to the legal effect. If your Honor please, I do not want to appear unaccommodating.

Mr. Kresel: No, I am not charging you with that.

Mr. Anderson: Our view is that these papers are not only immaterial because two wrongs cannot make a right, but, in the second place, they have not anything to do with this case. If they are going to be proved, it is important that the facts should be shown, just what the instrument was.

Mr. Kresel: The question is what the instrument was. We asked you to produce it and you have not. You have it and we have not.

Mr. Anderson: I think I ought to state to your Honor that your Honor may not misunderstand, we have sent men to Washington nearly every day to get papers counsel has asked for. Whenever he asked for them we sent immediately to Washington. I just had a telephone message from the State Department saying they would not let their records go out of their Department except in charge of one of their officers. I can subpoena them and let that officer come up here with the papers wanted by Mr. Kresel and he will be here tomorrow. I cannot produce all of the records of that office when Mr. Kresel calls for them.

Mr. Kresel: What I have here, your Honor, is an abstract.

The Court: Do you want to put that into the evidence?

Mr. Kresel: I want to get from the witness the facts instead of putting this in evidence. I thought we could agree on it, but apparently we cannot.

Q. 259. I wish you would take this, Mr. Garvan, and state whether or no on or about the sixth day of February, 1919, an assignment of the patents mentioned in Schedule A, which is here, was made by the Alien Property Custodian to the United States of America, represented by the Secretary of the Navy.

Mr. Anderson: If your Honor please, I have to object because I cannot conceive that the question as asked, whether an assignment was made, is other than a legal conclusion to be drawn only from the written instrument, and I will do my best to help get the written instrument. It is not in the Alien Property Custodian's records, and we will try to get it if we can, but if this matter is important at all, which I do not think it is, it is quite important, and, therefore, it is important that it should be proved in the proper way. Therefore, I have to object to this.

Mr. Kresel: If your Honor please, we have asked the other side to produce these instruments for us. They have had considerable time and yesterday they produced what I have now in court. Now, pardon me a minute, Colonel, I do not mean to pick any quarrel with you at all. I withdraw that for the present and I am going to request the Government again to be good enough to make a search and try to produce these documents for me before the case closes. If they do not produce them, I shall ask your Honor to permit me to re-offer this.

The Court: This case will go on until all the documents as well as all the evidence desired by either side is put upon the record.

Mr. Anderson: Will your Honor permit me to explain. This document, I assume, is recorded in the Patent Office, and these gentlemen have just as much access to it as we have.

The Court: That statement is not in criticism of you, Colonel Anderson. It means if we have to wait for documents, we will have to wait for them. I realize there are numerous documents and it takes time to get them. All I have been attempting to indicate is that we will go on until the documents that you desire from the defendant are produced for you and that the documents that the defendant desires from the plaintiff are produced by you. There is no criticism expressed or implied.

Mr. Kresel: Not at all; I am not criticizing.

Mr. Anderson: I would like to have it understood, however, that all of these documents are just as available to counsel as they are to us. They are not in the office of the Alien Property Custodian; a careful search has been made.

The Court: You are the Government of the United States, you are not Alien Property Custodian.

Mr. Anderson: But the Patent Office is an office of public record, and they are available to the defendant as well as they are to us. We do not have to make copies of public records for him.

Mr. Kresel: If that is the position of Colonel Anderson, I am glad to understand it. If it is that he will not go to the trouble of having a copy obtained from the Patent Office, very well, I shall take that matter up and get it. Colonel Anderson, you are relieved from that.

Mr. Anderson: That is the main point. If I can find it in the records of the Government I will produce it here, and that search is now going on. But if we do not find it in the records of the Government, I do not think it is up to the Government to go to the Patent Office and have a copy made.

The Court: That is a matter that I have not been asked to get into so far.

Q. 260. Mr. Garvan, have you had prepared and and do you now produce the statement giving the names of firms and corporations who have taken licenses from The Chemical Foundation since its inception, showing the business that those licensees are in?

A. I have.

Mr. Kresel: I offer this in evidence.

Mr. Anderson: I do not know what it relates to, sir, so I will just let it go in under the general objection. I do not know what it means.

Received in evidence and marked "Defendant's Exhibit No. 89." (*See Exhibits, Vol. IV, page 2653.*)

Mr. Kresel: This instrument, your Honor, shows that 103 firms and corporations have taken out licenses from The Chemical Foundation. Your Honor will recall that I gave you the number of licenses taken out, something over 300, but those were taken out by 103 firms and corporations, and the business of each of those is given in this exhibit. They run from pharmaceuticals to therapeutic apparatus, aluminum alloys, vegetable oils, flux, tanning materials, etc.

Mr. Anderson: Mr. Kresel, may I ask if that is the list of licenses that you put out, and whether all the licenses are now outstanding?

Mr. Kresel: Do you mean the first exhibit, the big one?

Mr. Anderson: Does it include the Federal Trade Commission licenses?

Mr. Kresel: Oh, no.

Mr. Anderson: Or contracts?

Mr. Kresel: Oh, No.

Mr. Anderson: It is just licenses actually issued by The Chemical Foundation?

Mr. Kresel: Yes. Is there anything else?

Mr. Anderson: No. I merely wanted to get that straight for my own information.

Q. 261. Mr. Garvan, have you had prepared a list showing the number of licenses each year and the number of patents involved?

A. Yes. (Handing counsel.)

Mr. Kresel: I offer that in evidence.

The Court: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 90." (*See Exhibits, Vol. IV, page 2658.*)

Q. 262. Mr. Garvan, how many patents altogether were assigned by the Alien Property Custodian to The Chemical Foundation?

A. 4,919.

Mr. Anderson: May I ask if that is just patents, or trade marks?

Mr. Kresel: That is patents and applications which matured into patents.

Mr. Anderson: But not trademarks?

Mr. Kresel: No, that does not include trademarks.

Q. 263. At the time of the assignment of these patents to the Foundation, was it subsequently found that any had in fact expired before the assignment?

A. Yes, just 54.

Q. 264. And did it also transpire that there had been duplications in the assignments?

A. Yes, sir, 20.

Q. 265. Up to December 31, 1922, had any of the patents so assigned to The Chemical Foundation expired?

A. Yes, sir.

Q. 266. How many?

A. 858.

Mr. Anderson: Have you not got a list of those expired patents that you put in?

Mr. Kresel: No.

Q. 267. In addition to the 858 that had expired, had The Chemical Foundation reassigned any of the patents that it had received, either to the Alien Property Custodian or to others?

A. Yes, sir, 45.

Q. 268. So at the end of 1922 how many patents remained in the possession of The Chemical Foundation out of the total of 4,919 that had been assigned to it originally?

A. 4,016.

Q. 269. I am going to ask you to state how many patents were licensed by The Chemical Foundation from the inception of its existence to the end of 1922?

A. United States manufacturers, 440.

Q. 270. In other words, of all the 4,919 patents that had been assigned to The Chemical Foundation, licenses covering only 440 were ever issued?

A. Down to December 31, 1922.

Q. 271. Except the licenses to the United States Government that you have in mind?

A. Yes, sir.

Q. 272. Up to December 31, 1922, how many licenses were cancelled or expired of those that had already been issued?

A. 116.

Q. 273. So that on December 31, 1922, how many patents remained out under license?

A. 324; and there were four patents included in licenses out for signature.

Q. 274. Of the 4,919 patents that were assigned to The Chemical Foundation, how many ever produced any income to The Chemical Foundation?

A. 491.

Q. 275. Of the 491 patents that produced any income, how many, if any, expired by December 31, 1922?

A. 46, which produced $115,417.79.

Q. 276. And can you give the percentage of that amount of $115,417.79 to the total income that The Chemical Foundation received from all patents?

A. 17½ per cent.

Q. 277. On December 31, 1922, of the 4,016 patents that still remained unexpired, how many were producing any income?

A. 445, or about 11 per cent.

Q. 278. Then during the three years and nine months, which is the period between April, 1919, and December 31, 1922, is it the fact that 89 per cent. of the patents assigned to you earned nothing?

A. That is the fact.

THE COURT: Do you mean by that, by way of materials imported or licensed?

MR. KRESEL: In every way, your Honor, both ways.

Q. 279. Mr. Garvan, what were the total earnings of The Chemical Foundation for the period of three years and nine months from April, 1919, to December 31, 1922, upon all patents?

A. 661,706.28.

Q. 280. Have you had calculated the gross return per patent; using 4,919 patents as the number that had been assigned to The Chemical Foundation, what does that show as the gross return per patent for the period of three years and nine months?

A. $134.52.

Q. 281. And per year?

A. $35.87.

Q. 282. Per patent?

A. Per patent.

Q. 283. Please look at this paper and state whether that is a correct statement of the income and expenses of The Chemical Foundation from its inception to December 31, 1922?

A. It is.

Mr. Kresel: I offer this in evidence.

The Court: Admitted

Received in evidence and marked "Defendant's Exhibit No. 91." (*See Exhibits, Vol. IV, page 2659.*)

Mr. Kresel: The statement shows that between April 10, 1919 and December 31, 1922, the total income from royalties and licenses, contracts acquired, trademarks, contributions received, interest and discount received, was a total of $699,925.83; that the total expenses for the period were $507,361.27, not including, however, any educational expense as to which we shall introduce evidence in a little while.

Deducting those expenses from the total income leave a net income before charging educational expense of $192,564.56. The educational expense during the period amounted to $340,245.76. That created a deficit as of December 31, 1922, of $147,681.20. In other words, according to our figures of the capital that had been paid in, the corporation had lost $147,681.20.

THE COURT: Does your statement show how the total of $507,000 was made up?

MR. KRESEL: Yes, your Honor. May I hand you a copy? (Handing paper.)

MR. ANDERSON: Mr. Kresel, you have reference there to Schedule 1 and Exhibit B. Are you going to introduce those?

MR. KRESEL: Yes, I am going to.

MR. ANDERSON: Because I would like to have the details.

MR. KRESEL: Certainly. You shall have it. I will put it in now.

I now offer in evidence Exhibit B referred to in this statement.

THE COURT: That is the educational expense item?

MR. KRESEL: That is the educational expense item.

THE COURT: Admitted

Received in evidence and marked "Defendant's Exhibit No. 91-A." (*See Exhibits, Vol. IV, page 2660.*)

Q. 284. Have you another copy, Mr. Garvan?

A. No, I have not another copy, apparently.

MR. KRESEL: This exhibit, your Honor, shows a statement of educational expense from April 18, 1919, to December 31, 1922. May I read a few items? Copies of "Creative Chemistry, $60,032.73. Postage and Express Charges, $12,904.01. Distributing letters in connection with "Creative Chemistry," $17,184. Copies of the "Future Independence and Progress of American Medicine in the Age of Chemistry, $28,573. Copies of an exhibit prepared under the auspices of the National Research Council, $9,802. "Aims and Purposes of The Chemical Foundation, Inc.," $11,694.

Copies of testimony of the Army and Navy, $2,300. Copies of "What the Chemist Has Done and May Do for Them in War and Peace, $2,700.

Before I put a question to the witness, I read from the third page of this Exhibit B, Colonel:

> "Industrial Survey and Research Service Enlisting Aid of American Women in Chemical Research and making Chemical Survey of U. S., 9,139. Wilder D. Bancroft, work in connection with writing a book on the theory of dyeing, and a contribution to continue the publishing of the Journal of Physical Chemistry, $5,500. National Research Council, Development of Chemical Information useful to the industries of National Defense and Chemical Medicine, Standardization of Biological Stains and Chemical Exhibits," $11,000. And so I could go on.

THE COURT: Are the figures for the gross income different from those shown by the plaintiff?

MR. KRESEL: No, your Honor.

THE COURT: They are the same?

MR. KRESEL: Exactly the same. The total of this Exhibit B of educational expense is $340,245.76.

Q. 285. Mr. Garvan, I wish you would, in a very few words, state to the Court the extent of the expenditures made by the Foundation in what you call, or what appears upon your books as educational work. Would you like this to refresh your recollection (handing paper)?

A. Yes. In the first place, we became obligated for $10,000 on which we have paid, up to December 31, 1922, $7,500 for the National Research Council.

Q. 286. Tell us, please, what the National Research Council is?

A. The National Research Council is a continuation of the National Warfare Council. It is a Government-controlled institution in Washington for the encouragement of research throughout the country. It is endowed by a gift from the Carnegie Foundation of some $5,000,000. It encourages research in any branch.

It is an outgrowth of the war. We promised them $10,000, and gave them $7,500 on it for the development of a survey of the chemical equipment and chemical capacity of the country, and in men, universities, schools, laboratories, and so forth, for the use of the Army and Navy, for the use in case of war, for the use of the Government in case of need, for the use of industries, for the use of the country in general, and that survey was taken of the country, and the results of it are in the National Research Council, available to the different Government departments, and anybody in the country who wants to find out anything about the personnel or equipment or capacity along any line of American chemistry.

American Chemists' Society. We became obligated for $25,000; paid them, up to December 31, 1922, $5,000 on that. During the years 1921 and 1922, during the slump in all industry, the American Chemists' Society felt they were unable to keep up their circulation of scientific literature, and it being in our development period, the Foundation contributed to them in order to prevent the lowering of the standard of the distribution. They distribute what are called abstracts of the progress of chemical science throughout the world, and that was given to them in order that the standard might be kept up.

The National Research Council were given $1,000 to help complete the work in connection with the compilation and publication of chemical and physical constants. That is a work that has been going on under the supervision or co-operation of the Government, and chemical and physical constants are the working mathematics of chemists, and it was for the purpose of finishing that publication, to be made available to the whole country, that that was done.

The chemical survey was instituted and has not been completed, but will be resumed when we have funds, of surveying the country to find out in each district what researches needed chemical development, as to metals or agriculture or soil. It was done by states.

Q. 287. Who had charge of that?

A. Miss Obemauer. Through the departments down in Washington. It was a gathering together of all the Government information in the different departments, to be placed before the authorities of each state or group of states, with an endeavor to show them what the chemist could do for them if he was given a chance.

The National Research Council, we were obligated for $2,000, and gave $1,000 for the standardization of biological stains.

Q. 288. Will you explain that?

A. Before the war we were entirely dependent on Germany for biological stains, and that caused tremendous distress in this country. Diphtheria and pneumonia, all those diseases are now detected by means of biological stains. You take a smear of the throat and they cannot detect it, they cannot decide on the germ without having a piece of dye to put on the slide, which brings it out, so that the biologist can detect it. And they are used in botany, by all the botanists, by the bacteriologists, by the pathologists, by all our hospitals and all our research and educational institutions. We are entirely dependent on Germany for them, for the Griebler stains. That was the name in Germany.

We organized a committee on which was Dr. Kahn, who was the United States agricultural chemist in Northern New York, at the station there, and he got the different societies together, the Bacteriological Society, the Botany Societies, and so forth. They each appointed representatives and they, as a committee working with the industry, have developed these things until American stains are superior to anything that ever came out of Germany. It is a small business. It is only $60,000 worth of business. But every hospital and medical place in the country is absolutely dependent upon it. And we financed the standardization and the expenses of this committee, representing the scientists, to work with the industry to produce these stains, which is now accomplished.

Wilder D. Bancroft was the head Professor of Cornell and was, during the war, the Chief of the Chemical Warfare Service of the Government, and we contributed $3,000 to keep alive the Journal of Physical Chemistry, and became obligated for $50,000. more, $10,000 for the next five years. We formed an alliance with the London and English Chemical Societies, and in order to free English-speaking people from dependence upon German chemical literature, both nations have combined to bring out this magazine, which will offer the opportunity to English and American chemists to produce their discoveries without producing them in Germany; and the Foundation, on behalf of America, has promised to contribute $10,000 a year for five years to bring about that combination and develop that magazine to its fullest extent.

Three thousand five hundred and forty-four dollars and eighty-two cents; we co-operated with The Chemical Warfare Service through Mr. H. S. Kimberly in creating the exhibit——

Q. 289. Who is The Chemical Warfare Service?

A. It is the United States Government Chemical Warfare Service.

Q. 290. A branch of the Army?

A. A branch of the Army. We did this also through the National Research Council. This was for the getting up of an exhibit of the relation between the development of the chemical industries and our national defense. It was a physical exhibit which was exhibited before both branches of Congress and is now in the Smithsonian Institute in Washington.

Also for the expenses of taking moving pictures of the tests upon the different battleships of the new arm of aeroplane and chemical warfare. The United States Government allowed two vessels to be bombarded through the Air Service and the Chemical Warfare Service, and they had no money and we contributed the money to make the films of those two demonstrations to show that the day of the battleship was over and that the air and chemistry were the menaces of the next war.

Then there is $5,364.31 which is also part of that same expense, and they should have been combined, in this exhibit, and worked through the Chemical Warfare Service and Chemical Research Council.

Q. 291. Will you state something about the literature that The Chemical Foundation distributed?

A. Dr. Slosson was the editor of The Independent, and while there he had published articles which were taken up by the Century Company and published in their scientific series. His book was called "Creative Chemistry." We had nothing whatever to do with the publication of the book, and never saw the book until it was on the shelves of the book-stores. The book, if you have it there, is written in popular language to show the dependence of a country upon its chemical development, both in peace and in war, and written for the person who has had no opportunity to study chemistry, or no one to explain its importance to him.

We found that the basis of the German chemical success was its educated public opinion, which found expression in its support of the development of the industry through schools, through the universities, through the research institutions, through government protection and aid and through the sustenance of the different industries. We started out to instill such an understanding in this country.

We circulated 73,867 copies of this "Creative Chemistry," sending them to the agricultural agents, Chambers of Commerce, Congressmen, 16,000 to consumers and business men, 1,365 to educators and to Government employees, Kiwanis Clubs, libraries and librarians, newspaper editors, paint and oil manufacturers, Scout Masters of the country working in conjunction with the Boy Scouts under their Executive Council. We sent those to the Boy Scout Masters with directions to the Scout Masters to gather their boys together and read this book to them.

Mr. Kresel: I commend that to your Honor as one of the finest works that has ever been written, in language that a layman can understand.

The Court: Do you want to give this book a number for identification?

Mr. Kresel: I think, your Honor, that would be a good idea.

(Marked "Defendant's Exhibit L" for Identification.)

A. (Continuing.) That was sent to all the schools and colleges and all the professors, not only the chemical professors, but other professors as well, because we found that the development of classical education in this country had been entirely neglectful of a pandemic understanding of the sciences. So we sent them to the Trustees of the Universities and to all of the professors and members of the faculties and then to the students.

It is now the textbook in many of the colleges and schools. For instance, the State of Ohio requires it in every public school in the State and the publication of the book led Mr. Scripps of Scripps,-McCrea & Company to endow Mr. Slosson of the National Research Council with a gift of $500,000, the income of which is to be devoted to the spread of scientific literature in popular language throughout the country.

Q. 292. Will you proceed to the next step?

A. The next most important one is "The Future Independence and Progress of American Medicine in the Age of Chemistry."

We went to the American Chemical Society and asked them if their Committe on the relation of chemistry to medicine would work with us. They appointed a sub-committee consisting of Professor Stieglitz of Chicago, Reid Hunt of Harvard, Theat Johnson of Yale, F. R. Eldred of Eli Lilly & Company, Professor John J. Abel of Johns Hopkins, Professor Alsberg, the President of the Food Research Institute, Stanford University, then chief chemist of the Bureau of Agriculture, Raymond F. Bacon, Director of the Mellon Institute for Industrial Research at Pittsburgh, Mr. F. O. Taylor and Dr. Herty.

These gentlemen spent a year and a half reducing to popular expression the true relation and hope of medicine worked out in connection with chemistry for the future and we then sent out 620,000 copies of this report to the physicians and surgeons asking for the consideration of the report by physicians and surgeons, by mothers and fathers, by educators, hospital directors and trustees and by others whose hearts are interested in the welfare of the future generation of American children. This was sent to every doctor in the country; it was sent to all the libraries, to all the clergymen, to 620,000 leading persons and if I may say so has worked a revolution in the study of medicine in this country.

MR. KRESEL: May I have that marked in the same way for identification?

(Marked "Defendant's Exhibit M" for Identification, 7/2/23.)

THE COURT: Is it the purpose to go through each of those?

MR. KRESEL: No, your Honor, there are only two or three.

A. (Continuing.) The next is "The Riddle of the Rhine." As, "Creative Chemistry" was intended to show to the country the necessity for the development of chemistry in reference to our industries and as the report of those famous scientists was supposed to demonstrate to the country its necessity of developing organic chemistry as a basis for the future development of medicine; so we took the best book known on the effect of gas warfare on the future of National Defense and chemistry. This book was written by Victor LeFevre who was a member of the English General staff and was really written under the supervision and direction of the British General staff with an introduction by Brig. General Henry Wilson who you remember was shot in the streets of London.

It was translated into French. I should have a copy of that. The introduction there was written by Marshal Foch and circulated through France. It is called "The Riddle of the Rhine" and gives the history of the use of chemical warfare and an explanation of it, written upon the theory that the peace resolution and such pacifist stuff as that will never tend to end war; that a truthful understanding of the facts of what the next war will be is a better basis and a better hope for peace than idle swashbuckling gestures.

Q. 293. Mr. Garvan, without going into any further details of books——

A. I think the rest almost show themselves what they were.

The Court: Do you want this last book marked?

Mr. Kresel: Yes, your Honor.

(Book entitled "Riddle of the Rhine" marked "Defendant's Exhibit N for Identification, 7/2/23.")

Q. 294. Mr. Garvan, I wish you would return to the statement of income and expenses that we were discussing, which is Defendant's Exhibit No. 91.

A. Yes, sir.

Q. 295. The total of expenses not including the educational expense were $507,361.27, according to this Exhibit No. 91?

A. Yes, sir.

Q. 296. That, however, covers all your expenses not only on patents but also on trademarks, contracts, and so forth?

A. Yes, sir.

Q. 297. By the way, before you get away from it, did The Chemical Foundation ever realize anything on copyrights?

A. Not a dollar.

Q. 298. How much has The Chemical Foundation realized on the trademarks that were conveyed to it by the Alien Property Custodian?

A. Eleven thousand dollars.

Q. 299. Exactly? You will find it on that exhibit that you have before you. How much is the amount?

A. Eleven thousand one hundred and ninety-six dollars and seventy-six cents.

Q. 300. The proportionate amount of the total expenses not including educational work that is applicable to patents, was how much?

A. Two hundred and eighty-five thousand four hundred and thirty-four dollars and eight cents.

A. $285,434.08.

Q. 301. What period does that cover?

A. Up to December 31, 1922, from April 10th, 1919.

Q. 302. If you divide the gross expense of $285,-438.08 over the 4919 patents, what would be the gross expense per patent for the period?

A. Seventy-eight dollars and thirty-six cents for the period; $20.90 per year.

Q. 303. You have already told us that the gross income per patent per year, was $35.87; is that right?

A. Yes, sir.

Q. 304. If you will deduct the gross expense per patent per year which you say is $20.90, that leaves you a net return per patent per year of how much?

A. Fourteen dollars and ninety-seven cents.

Q. 305. That does not, however, include the educational expense?

A. It does not.

Q. 306. The educational expense of $340,245.76, added to the proportionate general expense on patents of $385,438.08 gives you a gross expense of how much?

A. Seven hundred and twenty-five thousand six hundred and eighty-three dollars and eighty-four cents.

Q. 307. And divided over 4,919 patents, that would give you for the period a gross expense on each patent of how much?

A. One hundred and forty-seven dollars and fifty-two cents for the period and $39.34 for the year.

Q. 308. And the gross income per patent per year was $35.87. Now, if you deduct the gross income from the gross expense, it leaves you a deficit per patent per year of how much?

A. Three dollars and forty-seven cents is the deficit.

Q. 309. And your books do show that your deficit has run up into——

A. One hundred and forty-seven thousand six hundred and eighty-one dollars and twenty cents.

Q. 310. In compiling your figures have you made any allowance for the amortization of the patents?

A. We have not.

Q. 311. Have you allowed any interest on the investment?

A. We have not. We have never paid any interest on our capital.

Q. 312. Have you paid any dividends on your stock?

A. No, not a cent.

Q. 313. Either common or preferred?

A. No, sir.

Q. 314. Can you state how much is the total income which The Chemical Foundation has received upon licenses covering the so-called nitrogen patents?

A. Yes, sir.

Q. 315. Please state it.

A. Total up to date, up to December 31, 1922, on all nitrogen and allied patents, numbering 131, and including all those formerly owned by the Badische Company, was $2,600.

The Court: Those are the Haber patents?

The Witness: The Haber patents.

Mr. Kresel: Yes, sir, $2,600. I now offer in evidence a statement showing the cost to The Chemical Foundation of all patents and other properties acquired by it from the Alien Property Custodian, which shows the total of $271,850. This shows the date when paid and what it was paid for.

The Court: A summary?

Mr. Kresel: A summary, yes.

The Court: It is admitted.

Mr. Kresel: I ask that it be marked.

Received in evidence and marked "Defendant's Exhibit No. 92." (*See Exhibits, Vol. IV, page 2666.*)

Mr. Kresel: I now offer in evidence a summary statement of income and other receipts and disposition thereof, from April 10, 1919, to December 31, 1922.

Q. 316. Mr. Garvan, I had omitted to ask you whether that last exhibit was correct. I show you Defendant's Exhibit 92. Was that made up from your books and is that a correct statement?

A. It is.

Q. 317. I now show you this summary statement of the income and other receipts from the beginning to December 31, 1922. Is that a correct statement from your books?

A. It is.

Mr. Kresel: I will ask that they be marked.

Received in evidence and marked "Defendant's Exhibit No. 93." (*See Exhibits, Vol. IV, page 2667.*)

Mr. Kresel: From this exhibit, your Honor, it appears that the total income, total receipts of The Chemical Foundation, up to December 31, 1922, from all sources, including the proceeds from the sale of its capital stock, was $1,128,825.-83. Then the statement shows the disposition thereof, namely, payment to the Alien Property

Custodian $271,850, expenses chargeable to the conduct of the company's affairs, not including educational work, $507,361.27, educational work, $340,245.76, making a total of $1,119,457.03 expended. That leaves liquid net assets $9,368.80 as of December 31, 1922.

I now offer in evidence a summary showing the yearly expiration of income producing patents and amounts earned thereon, with percentage for each year, to the total number of income producing patents, and total amounts earned.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 94." (*See Exhibits, Vol. IV, page 2668.*)

MR. KRESEL: I now offer in evidence a statement showing the earnings on the 874 trademarks acquired from the Alien Property Custodian, from April 10, 1919, to December 31, 1922. That is both a summary and a detailed statement.

MR. ANDERSON: If your Honor please, on the question of this statement here, the summary showing the expiration of income producing patents and the amounts earned thereon, just introduced as Defendant's Exhibit No. 94, I have not had a chance to look at it, so I move to strike it out on the ground that it is no evidence of any conditions in the future, that the only and the best evidence of the dates of expiration of patents is the record of the date of the patent itself.

MR. KRESEL: Which is in evidence by your own exhibit.

MR. ANDERSON: It is in evidence. This summary does not mean a single thing as to the future. I do not know what is to be argued from it.

MR. KRESEL: I do not think, Colonel, you quite understand the exhibit. Please let me explain it.

Mr. Anderson: I certainly do not understand it. If it has anything to do with this case I do not know it.

Mr. Kresel: Then you cannot really argue about it. Let me explain it. This exhibit takes up the 491 patents on which licenses were outstanding, shows how many of those patents will expire each year, and how the income thereon will thereby be reduced. That is what it shows.

Mr. Anderson: Then there is another objection still. That is a pure estimate.

Mr. Kresel: Now you have your objection.

Mr. Anderson: Yes, I thought it was for the past. Of course I notice that ran up to 1937, and it is an estimate pure and simple how the income will be reduced; because *non constat* they might have greatly increased income from those patents, or the income from the patents, on account of decreased use of the stuff produced under them or the introduction of some other substitute, might be greatly reduced in the meantime, so that they would be of no value two years from now. What can it prove?

The Court: All of which goes to show the very difficult task of attempting to place any value upon patents.

Mr. Anderson: Undoubtedly, and we have had that difficult task before us. But this is not evidence.

The Court: This goes to make up evidence with respect to the future based upon the facts in the past.

Mr. Kresel: Based upon what we know of it now.

The Court: Based upon actual facts.

Mr. Kresel: Exactly.

The Court: I will receive it, Colonel Anderson.

Mr. Anderson: In other words, here we start out with the statement that for the years 1919 to 1922 inclusive there was 9.67 per cent of the patents terminated and $115,470.77 in those years was the revenue derived from these patents that have terminated. Of course, the number of patents that would terminate during the years given is well known, because that is a matter of calculation merely from the dates of the patents. Then we calculate the revenue to be lost by those patents. We have had the past, present, and now we have the future of every known human activity to deal with in this evidence. Here is something that is a pure guess. If the Court is going to decide this case on evidence of that kind we might just as well not put in any evidence.

The Court: It seems to me that is the best evidence of value that we have had, Colonel.

Mr. Anderson: Then I say it is pretty weak evidence of value all along the line, if your Honor please. If that is the ground on which we are going to decide value in the case, we need not put in any evidence, let us guess at it.

The Court: No, I do not think it is a guess. If we cannot determine the future yield of a patent from what it has done in the past I do not see how you can reach any conclusion as to its value, and it seems to me the very best possible evidence and the evidence I had rather been expecting would be shown by you, and which you did show so far as the Trade Commission was concerned, is what they had yielded. This is only a summary and I could work out for myself, taking the date that the patent had expired, how much would be the expected yield, taking the life of those patents, and how much it would diminish if there was no change in the situation. It seems to me you have done the same thing generally, except that you have not carried it to the same conclusion with respect to the Trade Commission patents. These patents will yield so much money if nothing happens to vary its income during its life.

Mr. Anderson: The patents that have been licensed will yield so much money provided the present ratio is continued and there is no increase or decrease in the amount of production under those patents. When they expire, of course, assuming the same ratio of production is maintained at that time as today, there will be an added loss of revenue.

The Court: With one provision, namely, that there is no change in the situation, this shows the future income.

Mr. Anderson: Of course I do not want to argue the question, I just want to note my objection.

The Court: It goes to the weight of the testimony in any event.

Mr. Anderson: Very well, sir.

The Court: And it seems to me it has some merit as a compilation by counsel or the witness.

Mr. Anderson: It may help us in arguing the case, but that is all it can do.

The Court: Do you want to go on, Mr. Kresel?

Mr. Kresel: There is a question left unanswered. I will do anything your Honor desires.

The Court: I have been hoping that you

TRANSCRIPT

OF

RECORD

Wilmington, Delaware,
July 3rd, 1923, at 8:30 o'clock a. m.
Standard Time.

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efore:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Francis P. Garvan, resumed the stand.

Direct Examination (Continued).

y Mr. Kresel:

Mr. Kresel: Your Honor please, yesterday Colonel Anderson made the suggestion that on Defendant's Exhibit 83, which your Honor will recall was a statement of what licenses have been issued, there be added a column showing the form of license that was used in each case. I have had that done, Colonel Anderson; I have had a new column put in showing the form of license that was used in each case. We should like to substitute another copy for the Defendant's Exhibit 83 now in the case, this other copy having the necessary detail. Therefore I would like to have this copy I have here now marked in place of the other.

The Court: Let the substitution be made, without objection.

The same was so marked, Defendant's Exhibit No. 83. (*See Exhibits, Vol. IV, page 2583.*)

Mr. Kresel: Your Honor will recall that yesterday a question arose in connection with Mr. Garvan's testimony that he was not a stockholder of the Chemical Foundation. I have produced

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here the original voting trust certificate books and the voting trust certificate books for the preferred and common stock, also the transfer sheets, and I have submitted those to Colonel Anderson. I state that these records show that neither Mr. Garvan, nor Mr. Corbett nor Mr. McKay at any time held any of the stock or any voting trust certificate representing any stock in this Chemical Foundation. I understand Colonel Anderson is satisfied as to that.

Mr. Anderson: I have examined these books this morning and do not find that Mr. Garvan or Mr. Corbett or Colonel McKay were ever registered owners of any of the common or preferred stock or voting trust certificates of the Chemical Foundation, as stated by counsel. I tried to make it clear yesterday that my point merely went to the question of the subscription right and I did not want that foreclosed.

The Court: Is Mr. McKay still a director?

Mr. Kresel: He is no longer a director.

The Court: There is no contention that his successor had any of the stock?

Mr. Anderson: No, I do not think there is any question about that. He did not have any of the common stock.

Mr. Kresel: The Court's inquiry is as to whether there is any claim that Colonel McKay's successor as director had any stock holdings. I understand there is no such claim.

Mr. Anderson: I do not make any such claim.

The Court: What was his name?

The Witness: Haaren.

Mr. Kresel: If your Honor please, I am going to ask the privilege of having Defendant's Exhibits L, M and N for Identification, marked in evidence, with the understanding that they are not to be printed, but that each side may refer to those in the same way that we marked two or three that were introduced yesterday. Is there any objection, Colonel?

Mr. Anderson: No.

The Court: The same as 49 and 50, 48 and 51 being Government exhibits. Let them be so marked.

Defendant's Exhibit L for Identification received in evidence and marked "Defendant's Exhibit No. 96." (*Not printed.*)

Defendant's Exhibit M for Identification received in evidence and marked "Defendant's Exhibit No. 97." (*Not printed.*)

Defendant's Exhibit N for Identification received in evidence and marked "Defendant's Exhibit No. 98." (*Not printed.*)

Mr. Kresel: And in this same connection I am going to ask your Honor to indulge me a little further.

Q. 318. Mr. Garvan, I show you a pamphlet entitled "An exhibit prepared under the auspices of the National Research Council with the co-operation of the Chemical War Service of the United States Army", and ask you whether The Chemical Foundation distributed that pamphlet? And if so, please state the extent of the distribution.

A. They published and distributed to the extent——

Q. 319. Published at its own expense?

A. At the Foundation's expense.

Q. 320. Yes?

A.—to the extent of 580,240 copies, that going to soldiers and colleges and Chambers of Commerce, much the same list as Scout Masters—much the same list. That was a chemical exhibit to show the relation between the organic chemical industry and our national defense, which exhibit is now in the Smithsonian Institute that I referred to yesterday.

Mr. Anderson: Now just ask him to stick to the question, because the contents of that exhibit I do not know anything about, and I would rather have it stricken out.

Mr. Kresel: I am going to introduce it anyhow. I doubt if it does any harm. But if Colonel Anderson insists, I will consent that that part be stricken out.

I offer that exhibit in evidence.

Mr. Anderson: I note an objection to the introduction of this paper on the grounds of the general objection and on the further ground that it is not evidence of any facts as against the plaintiff here. I do not know the contents of the paper, but a paper issued under the circumstances stated certainly would not be evidence against the plaintiff. I am perfectly willing, subject to my objections already taken, to have the paper identified as one of the papers distributed by the Chemical Foundation, but I do not think it is evidence in this case.

The Court: As I understand it, that is all it amounts to. I do not understand that the contents are introduced for the purpose of supporting any facts, but merely as indicating the character of the work being done by this organization.

Mr. Kresel: Quite right, your Honor.

Mr. Anderson: To make it clear, I did not make the objection because I thought it was understood as to the books, etc., formerly introduced.

Received in evidence and marked "Defendant's Exhibit No. 99." (*Not printed.*)

Q. 321. Mr. Garvan, please state with reference to this pamphlet that I now show you, entitled "Department of the Interior, Bureau of Education" as to whether the Chemical Foundation had anything to do with the publication or distribution of that?

A. It was gotten out by the Department of Education and we had to do with the extent of the circulation. I would have to look up those figures to see just how we cooperated. We either paid for the printing or the clerical work or something of that kind. That was distributed to every teacher in the United States, in High Schools, and I think the list was something like 75,000 of the teachers of the country. It has to do with what chemistry should be taught in High Schools.

Mr. Kresel: The pamphlet is entitled, "Department of the Interior, Bureau of Education, Bulletin 1920, No. 26, reorganization of science in secondary schools. A report of the Commission on the reorganization of secondary education, appointed by the National Educational Association" and appears to have been printed at the Government printing office. I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 100." (*Not printed.*)

Q. 322. This is the last one, Mr. Garvan. Please state with reference to this pamphlet entitled, "The Dyes Question," what connection if any the Chemical Foundation had with its publication or distribution, or both?

A. This is a reprint of an article by James Morton, Chairman of Scottish Dyes, Ltd. It shows——

Q. 323. Do not state what it shows. Simply state what the Foundation did with reference to it.

A. We reprinted it and distributed it to all the newspapers and editors of the country.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: The same objections and limitations apply to all these papers, I understand.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 101." (*Not printed.*)

Q. 324. Mr. Garvan, with reference to Defendant's Exhibit No. 87, which is the big license to the Government covering the 5700 patents, I omitted to ask you yesterday—at least I think I omitted to ask—what consideration the Government paid the Alien Property Custodian for that license and release.

A. $100,000.

Q. 325. Mr. Garvan, did you have prepared and do you now produce a statement showing the earnings on the 874 trademarks acquired from the Alien Property Custodian by the Chemical Foundation covering the entire period from April 10, 1919 to December 31, 1922?

A. I did.

Q. 326. And is this the statement (handing paper to witness)?

A. It is.

Mr. Kresel: Colonel, this is a summary and a detail sheet attached to it. I offer that in evidence.

The Court: With the same force and effect as if testified to in detail by the witness?

Mr. Kresel: Yes, your Honor.

The Court: So admitted.

Received in evidence and marked "Defendant's Exhibit No. 102." *(See Exhibits, Vol. IV, page 2671.)*

Q. 327. Using that exhibit, Mr. Garvan, please state the total earnings by the Chemical Foundation from these trademarks for the period beginning April 10, 1919 and ending December 31, 1922.

A. $11,196.76.

Q. 328. And the average annual gross income thereon was what?

A. $2,985.80.

Q. 329. For each trademark what was the average annual gross income?

A. Three dollars and forty-two cents.

Q. 330. Have you had calculated the proportion of the expenses of the company applicable to the trademarks?

A. I have.

Q. 331. What proportion to each trademark?

A. Twenty dollars and eighty-eight cents.

Q. 332. Per year?

A. Per year.

Q. 333. Have you added thereto the interest on the investment, proportionately?

A. At six per cent., $4.12.

Q. 334. How much?

A. Four dollars and twelve cents.

Q. 335. Have you had calculated the amortization thereon?

A. I have.

Q. 336. How much does that amount to?

A. Three dollars and seventy-four cents.

Q. 337. If you add the proportion of expense, the interest on the investment and the amortization, that gives you a total outlay of how much?

A. Twenty-eight dollars seventy-four cents.

Q. 338. Per year?

A. Per year.

Q. 339. Per trademark?

A. Per trademark.

Q. 340. And the gross income per year per trademark is how much?

A. Three dollars forty-two cents.

Q. 341. What is the difference?

A. What difference do you mean?

Q. 342. The difference between the gross expense and the gross income per trademark per year?

A. Twenty-five dollars thirty-two cents is the deficit.

Q. 343. That is a loss of that amount?

A. Yes.

Q. 344. Have you had prepared a statement of income received by The Chemical Foundation on the salvarsan and neosalvarsan patents?

A. I have.

Q. 345. Please state first how many licenses the Chemical Foundation has issued covering those patents, giving the names of the licensees.

A. Five.

Q. 346. Will you give the names?

A. Abbott Laboratories, Incorporated, who succeeded to the Schamberg license in Philadelphia; E. R. Squibb & Sons, Malinckredt Chemical Company; Powers Weightman Rosengarten & Company; Empire State Chemical Company. Then there was an infringer from whom we collected $150.

(No Q. 347)

(No Q. 348)

Q. 349. Who was that?

A. E. J. Lukenback.

Q. 350. Please state the total amount that was collected by The Chemical Foundation between April 10, 1919 and December 31, 1922, on these salvarsan and neosalvarsan patents, on licenses issued by The Foundation.

A. Do you mean to include the Dermatological after it came to us?

Q. 351. Yes.

A. $37,503.14.

Q. 352. That is the total collected by The Chemical Foundation?

A. Yes, sir.

Q. 353. In that amount is there any amount included that was paid under a license that was made by the Federal Trade Commission?

A. Oh, no. No, it is paid by a licensee of The Federal Trade Commission.

Q. 354. That is what I mean.

A. But after he had surrendered his license to The Federal Trade Commission and taken out a license from us.

Q. 355. Who was that?

A. That was the Dermatological of Philadelphia, the successor of whom is the Abbott Laboratories of Chicago.

Q. 356. Dermatological Research Laboratories?

A. Yes.

Q. 357. I wish you would sub-divide, if you will, the total amount collected, which you say was $37,503.14, as between the amount paid by the Dermatological Research Laboratories, which had been a licensee of The Federal Trade Commission, and those licenses that were originally issued by The Chemical Foundation.

A. The Dermatological people, who formerly held the license from The Federal Trade Commission have paid us $31,466.60.

Q. 358. $31,466.60?

A. Yes sir, or 83-9/10 per cent. of our entire collections on arsphenamine and neoarsphenamine.

Q. 359. And when you say arsphenamine and neoarsphenamine, you are talking about the same patents that I have described as the salvarsan and neosalvarsan patents?

A. Yes, arsphenamine is the American name.

Q. 360. The total amount collected by The Chemical Foundation on licenses issued direct by it was how much?

A. I have.

Q. 375. And is this the statement? (Handing paper.)

A. It is.

Mr. Kresel: I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 105." *(See Exhibits, Vol. IV, page 2676.)*

Q. 376. As I understood your testimony yesterday, it was to the effect that your income on patents was of two sources?

A. Yes, sir.

Q. 377. Income on manufactures and income on imports?

A. Yes, sir.

Q. 378. Have you divided the total income on patents, which you testified yesterday was $661,706.28, into those two classes?

A. I have.

Q. 379. Will you state how much was collected by The Chemical Foundation under its licenses covering manufactured products?

A. Two hundred ninety-six thousand two hundred thirteen dollars forty-one cents.

Q. 380. And what period does that cover?

A. That covers from April 10, 1919 to December 31, 1922.

Q. 381. How much was collected by The Chemical Foundation during that same period on imports?

A. Three hundred sixty-five thousand four hundred ninety-two dollars eighty-seven cents.

Q. 382. And that gives you a total of how much?

A. Six hundred sixty-one thousand seven hundred six dollars twenty-eight cents.

Q. 383. Now please add thereto, if you will, the amount collected on contracts?

A. Two thousand four hundred forty-two dollars six cents.

Q. 384. And the amount collected on trademarks?

A. Eleven thousand one hundred ninety-six dollars seventy-six cents.

Q. 385. Please state whether those three items constitute the total income received by The Chemical Foundation during this period on all the properties assigned to it by The Alien Property Custodian.

A. Yes, sir.

Q. 386. What is the grand total?

A. Six hundred seventy-five thousand three hundred forty-five dollars ten cents.

Q. 387. Will you state whether you have had calculated the annual return?

A. Annual gross return?

Q. 387 (continued). Annual gross return on those 6,475 properties?

A. I have.

Q. 388. And how much annually does it amount to?

A. $181,436.04.

Q. 389. Have you had that dividend so as to determine what the annual gross return was on each property?

A. I have.

Q. 390. And how much does that show?

A. $28.02.

Q. 391. Have you had calculated the amount of the expense applicable to each property acquired from The Alien Property Custodian?

A. I have.

Q. 392. And what does that show per year?

A. $20.88.

Q. 393. And have you added thereto interest on your investment at 6 per cent?

A. We have.

Q. 394. And what does that amount to per property?

A. $4.12.

Q. 395. Each year?

A. Each year.

Q. 396. And have you allowed for amortization of these properties per year?

A. We have.

Q. 397. And how much does that amount to per property?

A. $3.74.

Q. 398. What is the total of the expense, interest on investment and amortization of properties per year, per property?

A. $28.74.

Q. 399. And what does that show comparing it with the gross income per property?

A. It shows a net loss of 72 cents per property, per year.

Q. 400. Have you had prepared, Mr. Garvan, a statement showing the division of earnings from patents as between product and process patents?

A. We have.

Q. 401. Covering what period?

A. April 10, 1919 to December 31, 1922.

Q. 402. And have you had prepared a summary and a detail schedule for each patent?

A. We have.

MR. KRESEL: We offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 106." (*See Exhibits, Vol. IV, page 2677.*)

Q. 403. Have you had prepared and do you now produce a statement of earnings from royalties and license fees by individual patents, showing what each patent earned?

A. We have.

Q. 404. Covering what period?

A. April 10, 1919 to December 31, 1922.

MR. KRESEL: I offer that in evidence.

Received in evidence and marked "Defendant's Exhibit No. 107." (*See Exhibits, Vol. IV, page 2689.*)

Q. 405. Have you had prepared a statement showing the income received by the Chemical Foundation on the tanning patents which had been assigned by the Alien Property Custodian to the Chemical Foundation?

A. We have.

Q. 406. Were you present in court when Dr. Holdermann testified with reference to these tanning patents?

A. I was.

Q. 407. Have you had the statement that we are now discussing so prepared as to cover all of the tanning patents that Dr. Holdermann testified about?

A. We have.

Q. 408. And have you included in the statement any other tanning patents?

A. First, all that he testified about; second, our other tanning patents; then the total; each group totalled and then the two groups totalled.

MR. KRESEL: We offer this in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 108." (*See Exhibits, Vol. IV, page 2699.*)

Q. 409. Will you please state what was the total amount of income received by the Chemical Foundation, for the period from April 10, 1919 to December 31, 1922, upon the tanning patents testified to by Dr. Holdermann?

A. $9546.82.

Q. 410. And that included how many of these tanning patents?

A. Thirteen.

Q. 411. Has the Chemical Foundation received any income on other tanning patents?

A. It has.

Q. 412. On how many additional ones?

A. Three.

Q. 413. And what is the total amount received on those three for the period mentioned?

A. $1,876.47.

Q. 414. What is the total amount of income received by the Chemical Foundation during the period stated on all the tanning patents?

A. $11,423.29.

Q. 415. Can you state from this last exhibit the date when the first of those tanning patents was issued?

A. Yes, sir.

Q. 416. What is the date?

A. The 9th day of September, 1919.

Q. 417. I think you are in error about that. The date when it was issued—the patent and not the license.

A. I beg your pardon, I thought you said the license.

Q. 418. No, I mean the date of the patent.

A. The 10th day of March, 1914.

Mr. Kresel: Perhaps your Honor would like to know the reason I asked that question, and I think it is well your Honor should know. Your Honor will recall that Dr. Holdermann undertook to testify to the value of these patents as if the patents were in existence in 1913, and it is as of that date that he gave the German income on these patents. I am reminded that he also testified that in that year 1913 the Germans received $5,000 as income from imports under these patents, when in point of fact the patents had not even been issued.

Mr. Anderson: Had application been filed?

Mr. Kresel: Yes, the application had been filed, but they do not receive income on a patent that is not in existence, even though an application is filed, do they?

Q. 419. Have you prepared a statement, Mr. Garvan, showing a comparison of the values of the domestic and imported dyes covered by the patents owned by the Chemical Foundation, as against domestic and imported dyes used in the United States that were not so covered?

A. I have.

Q. 420. For what years have you had that done?

A. 1919, 1920, 1921. The figures of the Tariff Commission are not out for 1922.

Q. 421. The figures as to dyes covered by your patents of course you took from your records?

A. Yes, sir.

Q. 422. The figures as to the country's use you took from the Tariff Commission reports?

A. Yes, sir. The figures for ourselves include 1922.

Q. 423. I understand. Is this the statement that you have had prepared upon the subject (handing witness)?

A. Yes, sir.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: If your Honor please, I have not objected to these statements because, of course, I can test the witness's knowledge of them and then make such motion as the situation may require, instead of objecting at this time. But I do object to a statement not only made up from the witness's books, but from various documents and records not produced here and which we know nothing about.

Mr. Kresel: We have the Tariff Commission reports.

Mr. Anderson: (continuing) And which we have had no chance to examine; because we have never seen these statements, never saw them until they were offered in evidence, and had no opportunity to check them. These statements come from a witness who I do not think could qualify to speak on that subject of his own knowledge. Therefore I will have to object to the introduction of this statement, and if it be introduced of course I shall reserve the right to test his knowledge to the fullest extent.

The Court: Do you propose to offer the records from which this statement or tabulation is prepared?

Mr. Kresel: I am just about to offer the Tariff Commission reports. I did not think it would be necessary to do it at this time, but I quite recognize Colonel Anderson desires me to do it. I shall now offer in evidence the report of the United States Tariff Commission for the year 1920. The pamphlet is entitled "Tariff Information Series No. 23 Census of Dyes and Coal-Tar Chemicals 1920."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 109." (*Not printed.*)

Mr. Anderson: I have not seen that report. Do you think it is necessary to print that entire report?

Mr. Kresel: I doubt it very much. I think we can agree upon what portions should be printed; of course, with the understanding that each side may refer to any other portion.

The Court: When you have some leisure after this trial ends, if you can agree upon a tabulation of the facts that you want, taken from those records, if the Government sees fit to agree —I do not know whether it will and I do not suggest that it will or should agree. But the Government and the defendant might agree that the tabulation is correct and then these can in effect be withdrawn.

Mr. Kresel: Yes. I offer in evidence the report of the United States Tariff Commission for the year 1921. It is entitled "Tariff Information, Series 26, Census of Dyes and other Synthetic Organic Chemicals for 1921."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 110." (*Not printed.*)

Mr. Kresel: I offer in evidence a report of the United States Tariff Commission for the year 1919 entitled "Tariff Information, Series 1922, Census of Dyes and Coal Tar Chemicals for the year 1919."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 111." (*Not printed.*)

Mr. Anderson: If the Court please I am perfectly willing to agree with counsel now, assuming that there are available copies of that report, that none of those reports be printed in the record of this case, but, being official publications of the Government, either side may refer to them in argument and use such portions thereof as they may desire in their briefs without printing them in the record; because I have no doubt they are available, and if that is the case, it would be quite a useless expense on either side to print all that statistical data, nine-tenths of which has no application to this case.

Mr. Kresel: We are both trying to arrive at exactly the same result and we will cooperate with the Government in any way that will be necessary.

The Court: It may be all right to do that for one or two exhibits. As far as I am concerned, I am not particularly interested. As far as the Appellate Courts are concerned, it might be well to consider whether it is practical to leave out very many from the record.

Mr. Anderson: I do not think it could be done to any extent, but as to these official reports of the Tariff Commission which have just been introduced, I have no doubt a number of copies are available and could be furnished to the Appellate Court if desired. By agreement of counsel, they could be eliminated from the printed record, this being always in this Court for verification of the correctness of the copy used. That would save an enormous expense.

The Court: I think it is well to leave out as much as you can, but I do not want to be a party to an understanding——

Mr. Anderson: I merely make that suggestion to counsel at this time, because he might overlook it after the trial.

Mr. Kresel: I offer in evidence a report of the United States Tariff Commission entitled

"Report on Dyes and Related Coal Tar Chemicals, 1918, printed for use of the Committee on Ways and Means of the House of Representatives."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 112." (*Not printed.*)

Mr. Kresel: I offer in evidence a report of the United States Tariff Commission entitled "Tariff Information, Series No. 15, Costs of Production in the Dye Industry, 1918 and 1919, details of costs for a selected list of dyes and intermediates."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 113." (*Not printed.*)

Mr. Kresel: I offer in evidence a report of The United States Tariff Commission, entitled "Tariff Information, Series No. 11, Census of Dyes and Coal Tar Chemicals, 1918."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 114." (*Not printed.*)

Mr. Kresel: I offer in evidence a report of the United States Tariff Commission for 1917 which is entitled, "Tariff Information, Series No. 6, Census of Dyes and Coal Tar Chemicals, 1917."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 115." (*Not printed.*)

Mr. Kresel: I offer in evidence a publication of the Department of Commerce, Bureau of Foreign and Domestic Commerce, entitled "Special Agent, Series No. 121, on Artificial Dye Stuffs used in the United States, quantity and value of foreign imports and of domestic production during the fiscal year 1913-1914."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 116." (*Not printed.*)

Q. 424. Mr. Garvan, we will return to the question last asked you, the statement that you say you had prepared with reference to the comparison of dyes covered by your patents and the total dyes used in the United States. Is this the statement that you speak of?

A. It is.

By THE COURT:

Q. 425. Was that prepared by this witness?

A. Under my direction, yes.

Q. 426. Did you check it up?

A. I did not add it up.

THE COURT: I was wondering whether that statement should not better come from the person who did the work rather than from this witness. It could be embodied in your brief as a tabulation, but I do not see how it can be given any strength by the fact that this witness asked to have it done, when he did not do it. Do you? I have no objection——

MR. KRESEL: No, your Honor; I do not want it put in if your Honor is not going to give it the weight that I want your Honor to give it.

THE COURT: I shall be glad to have a tabulation of course. It would be convenient and useful, but I understood one of Colonel Anderson's objections to this was that it was not prepared by this witness.

MR. KRESEL: I was trying to avoid the necessity of calling another witness, but I quite recognize that Colonel Anderson has a right to insist that I call the man who made the actual tabulation; and I shall do it. I withdraw the question.

The Court: Am I correct, Colonel Anderson?

Mr. Anderson: You are correct. In order that Mr. Kresel may understand my point at this time, I might say that when we were trying to put in evidence on this subject, we furnished statements in advance to counsel. I am not saying that he is not acting well within his rights. I am not implying any criticism because these are very difficult things to prepare. When we introduced our statements, they were checked, but even then we had to produce original records.

If I knew the actual facts were as set forth in this statement, I would just as soon agree to them on the record as to have the statement proved by the witness. I am practical in these things. But these are very voluminous statements and cover an enormous range of territory. We have never seen them until they were handed to us in Court. I will facilitate the introduction of the evidence in every way I can, but I must protect the question of its accuracy.

The Court: So far as I am concerned, it is immaterial whether that appears as an exhibit in the exhibit books or whether it appears in an appendix to your brief, showing your understanding of what the Tariff Commission reports purport to show; and then if there is a difference between you, you can each do the same thing. It is immaterial to me whether it is in the exhibit book or in the appendix to the brief. It would have the same value either way unless put in by the person who actually made it.

Mr. Anderson: Mr. Kresel, suppose you let

Mr. Garvan put it in and it will be understood that it will be subject to our checking. If I find it is correct, I will not move to strike out that particular statement, reserving the right as to the others. In other words, I want the facts to appear.

Mr. Kresel: I am very much obliged. Colonel Anderson states I may put it in by Mr. Garvan subject to correction, which of course is all right.

Mr. Anderson: That applies to the particular statement that you are now referring to.

Mr. Kresel: Yes. I therefore offer this statement in evidence subject to correction.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 117." (*See Exhibits, Vol. V, page 2703.*)

Mr. Anderson: I just want to note on the record as to Defendant's Exhibit No. 117, in connection with the statement made by counsel as to its going in subject to checking, I also reserve the right to object to the notes of the compiler on this statement purporting to be explanatory thereof.

Mr. Kresel: That is perfectly all right.

By **Mr. Kresel:**

Q. 425. Mr. Garvan, looking at Defendant's Exhibit No. 117 that has just been introduced, will you state the total amount of sales of domestic dyes, according to the Tariff Commission reports, you understand, in 1919?

A. $67,598,855.

Q. 426. And in 1920?

A. $95,613,749.

Q. 427. And in 1921?

A. $39,283,956.

Q. 428. The total is what?

A. $202,496,560.

Q. 429. Looking at the figures covered by the patents of The Chemical Foundation, what was the income from domestic manufactured dyes in 1919?

A. $9,478.91.

Q. 430. Have you the total of such income for the years 1919 to 1922, inclusive?

A. Yes, sir.

Q. 431. And what is that?

A. $270,279.69.

Mr. Anderson: If your Honor please, as to so much of this statement as is a compilation from those records, I am perfectly willing, subject to verification, to have the compilation go in for convenience of reference to the records that have been introduced.

As to so much of this statement as contains matter taken from the books of the Chemical Foundation, or as to the income of the Chemical Foundation, and the annotations of calculations and applications of percentages, and so forth, thereto, I reserve all rights, and I think I will be compelled to make a motion to strike out that part of it.

I am a little embarrassed, because I have not time to study these statements, and I do not want to embarrass counsel beyond the necessities of the situation.

Mr. Kresel: Colonel, I would not ask you to do anything which would foreclose your rights.

Mr. Anderson: Yes.

Mr. Kresel: I am perfectly willing that you shall reserve the right at any time before the end of the trial to move or strike this out, after examination.

Mr. Anderson: And of course, if that goes out, the examination of the witness on the record will also apply to the same thing.

Mr. Kresel: If there is any question in connection with what the Court grants your motion to strike out, then of course the testimony goes out.

Mr. Anderson: With that understanding I will let the matter stand as it is, preserving all rights in that regard.

The Court: Do I understand that these other statements are made up from the books of the Chemical Foundation?

Mr. Kresel: Those that have already gone in, your Honor, or this last one?

The Court: The one to which Colonel Anderson just referred.

Mr. Kresel: Made up from both sources, the books of the Chemical Foundation and the Tariff Commission reports.

The Court: But Colonel Anderson does not object to the Tariff Commission reports. His last objection was directed to the tabulation from the books of the defendant, as I understood it.

Mr. Kresel: No, I think your Honor misunderstood Colonel Anderson. Your Honor will be better able to understand his objection if you have this before you (handing paper).

Your Honor will see the first two columns there show the amounts of sales of domestic producers as per the Tariff Commission reports and the income of the Chemical Foundation on domestic products. We had then put on the following calculation: "Based on average royalty of four per cent. the approximate value is $6,000,000"—it is really six million odd—"or 3.33 per cent. of the total domestic sales." It is that portion which I understand Colonel Anderson is challenging. He says he has not had time to examine——

The Court: That is a mathematical calculation.

Mr. Kresel: Yes, which I can make in my brief as well as I can have it made here.

Mr. Anderson: No, I do not think Mr. Kresel understood me. I want to get it clear, I do not want any mistake. At the proper time on cross-examination it is my purpose to test the knowledge of this witness as to all statements which he has put in here, and when that time comes I will make such appropriate motion as I feel is necessary, striving not to be over-technical.

As to the Chemical Foundation income, that is a statement from the books of the Chemical Foundation, I have not tested the knowledge of this witness on that subject at all. As to the compilation from the official records of the Government, that is a mere matter of mathematics, and we can check it. If it is right I have no objection to its going in in this form; if it is wrong we can call attention it—following each of the statements taken from the Government reports for 1919, 1920 and 1921, which are compilations of official figures, official figures and argumentative statements, if I might so call them, taken from the records presumably of the Chemical Foundation. I did not wish my statement on the record that subject to verification this compilation might go in, and subject to first testing his knowledge, to apply, for the reason that I want to reserve if I am so advised the right to strike out all this evidence as to the statistics of the Chemical Foundation unless it be shown to have a proper foundation. Do I make myself clear now?

The Court: Do you mean by proper foundation that this witness has no personal——

Mr. Anderson: Yes, sir; I want to know who did make these statements, where they came from, their source and everything else when I come to examine this witness. Therefore I do not want to waive any rights in that regard. But as to these official compilations, if they are right I am perfectly willing to stipulate them on the record.

Mr. Kresel: I simply desire at this time to direct the Court's attention to the fact and to remind Colonel Anderson that there is a stipulation between the parties with reference to the use of the books of the Chemical Foundation. I think it was read into the record by Mr. Galloway at the opening of the trial. That is to the effect that either side may put in computations from the books of the Chemical Foundation without being required to produce those books; the Chemical Foundation, however, agreeing to produce any books at any time that the Government may desire to have produced.

Mr. Anderson: I do not understand the stipulation to go to that extent, Mr. Kresel, and I think it is well to get it.

Mr. Kresel: I will find the stipulation.

Mr. Anderson: Certainly I never intended to stipulate anything of that kind.

Mr. Kresel: I say now that if Colonel Anderson desires our books produced here they will be here just as soon as the train can bring them. Haven't you the original stipulation, Mr. Galloway?

Mr. Galloway: I have it, but I have not it here.

Mr. Kresel: I do not know whether this that I have here is a true copy or not.

Mr. Galloway: I think you will find that the only reference to the books of account of the Chemical Foundation is back here on the schedule (indicating).

Mr. Kresel: No.

Mr. Galloway: That is the only reference I recall.

Mr. Kresel: Your Honor will grant me just a minute until I find what I have reference to.

I read from page 878 of the record. This is a part of the stipulation which was read in by Mr. Galloway, headed "Books of Accounts":

> "It is further stipulated and agreed that the defendant need not produce its books of account upon the trial unless the plaintiff specifically requests the production of some particular book or books; that either side may use transcripts or extracts from said books subject to the right of either party to call attention to and have corrected any errors in such transcript, extract or compilation at any time during the trial and that in connection with the testimony of any witness as to compilations based on entries in said books, it shall not be necessary as a basis for such testimony to put said books in evidence."

I thought my recollection was correct.

Mr. Anderson: I agree to that, but I do not think that removes the necessity for putting a witness on the stand to say that he himself made these statements and as an accountant is capable of testifying to them.

Mr. Kresel: Let me understand that. Do I understand Colonel Anderson now to claim that these compilations that we have spent half a day putting in are not competent because the accountant who made them is not put on? If so, counsel should have called attention to that before we spent half a day thereon. Of course, Mr. Garvan did not make them personally.

Mr. Anderson: One minute now. If your

Honor please, as he says counsel should have called attention to that, I will say that I am following the exact procedure he has followed in putting in the other evidence. I put in various statements which had been checked by the accountants of the other side, by Mr. Storck.

The original records were not here, and counsel, on cross-examination of Mr. Storck, tested whether he personally had made up every one of those figures. He said they were made up by him or made up under his direction and he then called for the production of the original documents.

Mr. Kresel: I beg your pardon——

Mr. Anderson: And we had to send to Washington and bring them and introduce the original records of the Federal Trade Commisson and the licenses.

Mr. Kresel: Colonel Anderson, please—you do me an injustice, and I will not——

The Court: I will give you all the time you want, Mr. Kresel.

Mr. Anderson: When this witness was on the stand, I was perfectly willing to have this witness put in these statements to the end that he might say what he had to say about them, subject to my general objections to the evidence. I assumed that counsel would call then the man who made up the statements, and that is the reason this morning it occurred to me that I had probably better say so to test the knowledge of this witness as to the basis of these statements. Then in the event that counsel could cure that defect by producing the persons who actually made up the statements, the evidence of this witness as to the statements might be in the record, instead of recalling him and putting another witness on.

I thought it was serving the convenience and not inconvenience of this case. That is the reason I let the evidence go on in, although it has seemed to me that the witness had not been properly qualified. I did not want to have to break this evidence up by putting one witness on and then another witness, which embarrassment I suffered myself in the introduction of my evidence owing to such objections.

Mr. Kresel: The only objection that I have to Colonel Anderson's statement is an objection to that portion of it wherein he says that I insisted upon the production of original records. Your Honor will recall that I specifically stated more than once that I waived all questions of form.

Colonel Anderson produced the original records because I showed that the compilations that were made by Mr. Storck were valueless because he had not seen and had not put in the necessary detail into his compilations. It was not because I demanded the production of the original records at all, and you will read the record in this case from beginning to end and you will find that I made no such demand.

Now, I say that if any objection is to be taken as to the competency of putting in these compilations by Mr. Garvan, I think it might have been raised at the outset. However, I quite concede that Colonel Anderson has the right to insist on that, and if he does, I shall call the accountant who made them, so as to testify as to them. I have one more compilation and then I am through with that branch of it.

The Court: It seems to me, Mr. Kresel, that while you differ as to what transpired when Colonel Anderson was putting in his case, your recollection with respect to calling for the books corresponds with my recollection, that he showed that Mr. Storck did not have from the books sufficient information to make up the statement which was made. But it seems to me that you are right, Colonel Anderson, in this particular: that you would be unable to ascertain from this witness that which Mr. Kresel ascertained from Mr. Storck; that is, if Mr. Kresel offers to prove the compilation by somebody who did not make it, then it is impossible to gather any information. So that I think in that particular Colonel Anderson's objection is well taken.

Mr. Kresel: I concede, your Honor, that it is entirely within his rights.

The Court: He is entitled to ascertain from the witness, as you did from his witness, as to whether this gives a correct tabulation or not, and that he can not ascertain from this witness on the statements now made. So that I think the objection is well taken.

Mr. Kresel: I want to say that the accountant who made this up is in town and I shall call him, so that Colonel Anderson may have the opportunity to examine him. May I proceed?

The Court: Yes.

Q. 432. Mr. Garvan, did you have prepared a comparison acording to the weight of dyes, domestic and imported, as between those covered by patents owned by The Chemical Foundation and the entire amount of dyes consumed in the United States according to the report of the Tariff Commission?

A. I did.

Mr. Kresel: Subject, your Honor, to the same reservation that Colonel Anderson made to the preceding exhibit, No. 117, we offer in evidence this statement.

Mr. Anderson: I have not had a chance to study it. I will let it go in subject to my reservation.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 118." (*See Exhibits, Vol. V, page 2704.*)

Mr. Kresel: I offer in evidence a copy of a letter from the Bureau of Trusts of the Alien Property Custodian signed by Charles B. Calvert, dated November 11, 1920, addressed to F. M. Eugen Blass.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 119." (*See Exhibits, Vol. V, page 2705.*)

Mr. Kresel: Your Honor will recall that there was a long line of correspondence put in by the Government with reference to a patent claimed by a man named Blass; that it was claimed we had not re-assigned to him. This letter is one of the series.

The Court: That patent covered what?

Mr. Kresel: I do not recall what it covered.

The Court: Was that the New Jersey incident?

Mr. Kresel: I do not think that was, and I do not recall what it covered; but that is the patent, you will recall.

The Court: If this is further correspondence in connection with the same matter, it is pertinent.

Mr. Kresel: Yes. I am not going to stop to read it now.

The Court: Very well.

Q. 433. Mr. Garvan, has the Chemical Foundation had occasion to bring any infringement suits against persons infringing the patents owned by The Foundation?

A. Yes.

Q. 434. How many of those suits have been instituted?

A. There were some on the trademarks. I am not sure how far they went. I am not positive as to the actual filing. They were settled either just before filing or just after. I am not positive whether the lawyers filed——

Mr. Anderson: I am afraid I will have to object to that record, sir, as to the question of a number of suits. While I think, of course, that the best evidence of any suit would be the record, I would not object, except for my general objections, to the number of suits, if he knows. But as to what the suits were about, whether they were infringement suits, or things of that kind, I do not think with my present knowledge I could let the evidence go in.

Mr. Kresel: I think the witness has a right to say whether they were infringement suits, and how many. That he has a right to do without producing the written record. I do not propose to go into a trial of those law suits. I am only trying to show what The Foundation had to do with it, and how much money it has spent thereon.

The Court: Your purpose being to show the reasons for the infringement suits?

Mr. Kresel: No, your Honor. I simply want to show how many infringement suits there were, and what it cost The Foundation to defend them, because your Honor will recall that one of the purposes and one of the duties set forth in the charter of the corporation is to defend these patents. Now I want to show that The Chemical Foundation did observe that injunction placed upon it by its charter. I am not even going to ask the names of the persons against whom the suits were brought. I am not interested in that. If the Government desires to go into that on cross-examination, of course, the information is available.

The Court: I have not passed finally upon the question; but you may take your answer.

Q. 435. Just say how many of those suits.

A. One.

Q. 436. And how much has it cost?

A. Between twelve and fourteen thousand dollars.

Q. 437. It was testified yesterday that only 491 of the entire number of patents had ever brought in any income, had ever been licensed. What efforts, if any, did The Chemical Foundation make to get people to take out licenses on these patents?

Mr. Anderson: I object to that question, in the first place, as too indefinite and general; and in the second place, because it calls for a conclusion as to the efforts to get these people to take out patents. I think the counsel can prove what is within the knowledge of this witness, if it be subject to our general and other specific objections. What was the effect or purpose of any specific acts of The Chemical Foundation, I do not think is evidence.

Mr. Kresel: I will withdraw the question.

Q. 438. What acts did the Chemical Foundation do, what steps did it take, to have people get licenses on these patents?

A. It sent out agents to all the industries to explain and interest concerns in the patents. It made analyses of the patents and issued booklets or books on the patents, and sent them to the various members of the industry who might be interested in the development of the patents.

Q. 439. Stop there, please. I show you first a booklet entitled "Temporary List of Patents and Copyrights transferred to The Chemical Foundation, Incorporated." Will you state whether that was compiled by The Chemical Foundation?

A. It was.

Q. 440. Will you state whether that was circulated?

A. It was.

Q. 441. Can you state the extent of the circulation?

A. I cannot.

Q. 442. In connection with that, I show you another publication entitled "Vat Dye Patents owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 443. Here is another pamphlet entitled, "Patents transferred to the Chemical Foundation, New York City, June, 1921." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 444. I show you another publication entitled "Drug and Medicinal Patents owned by the Chemical Foundation, Inc." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 445. I show you another pamphlet entitled, "Electro-Chemical and Electro-Metallurgical Patents owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 446. I show you another pamphlet entitled, "Paper Patents Owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 447. Were these all of the pamphlets, circulars and letters that were circulated by the Chemical Foundation in this connection?

A. Probably all the books and pamphlets, but it is not all the letters.

Mr. Kresel: Have you copies of these, Colonel Anderson?

Mr. Anderson: No, we have not.

Mr. Kresel: Of course, these are now available, but we will try to get you copies. We had always understood that there were copies in your possession.

Mr. Anderson: We have tried to find them. We have been told there were, tried to find them, but have not been able to.

Mr. Kresel: I am going to offer in evidence each of these publications.

Publication entitled "Temporary list of Patents" received in evidence and marked "Defendant's Exhibit No. 120." (*Not printed.*)

Publication entitled "Patents Transferred to the Chemical Foundation, Inc., June, 1921," received in evidence and marked "Defendant's Exhibit No. 121." (*Not printed.*)

Booklet entitled, "Vat Dye Patents" received in evidence and marked "Defendant's Exhibit No. 122." (*Not printed.*)

Booklet marked, "Drug and Medicinal Patents" received in evidence and marked "Defendant's Exhibit No. 123." (*Not printed.*)

Book entitled "Electro-Chemical and Electro-Metallurgical Patents" received in evidence and marked "Defendant's Exhibit No. 124." (*Not printed.*)

Book entitled "Paper Patents" received in evidence and marked "Defendant's Exhibit No. 125." (*Not printed.*)

Mr. Anderson: Mr. Kresel, you have no objection to withdrawing those from the Clerk, have you?

Mr. Kresel: Not at all, if the Court will permit it; I have no objection.

Mr. Anderson: You will try to get us copies, because we need them?

Mr. Kresel: Yes.

The Court: Is that all of that group?

Mr. Kresel: Yes.

The Court: They are all admitted.

Q. 448. Mr. Garvan, I show you a copy of a letter addressed to Honorable Thomas W. Miller, dated May 23, 1922, and ask you whether that is a copy of a letter that you wrote to him as president of the Chemical Foundation?

A. It is.

Mr. Kresel: I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 126." (*See Exhibits, Vol. V, page 2707.*)

Mr. Kresel: This letter, your Honor, is dated May 23, 1922, and is addressed to Honorable Thomas W. Miller, Alien Property Custodian (reading).

Q. 449. Is this a copy of the reply that you had from Colonel Miller?

A. A photostat copy, yes.

Mr. Krsel: I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 127." (*See Exhibits, Vol. V, page 2708.*)

Mr. Kresel: This letter, your Honor, is dated

May 25, 1922, addressed to the Chemical Foundation and signed by Colonel Miller as Alien Property Custodian (reading).

I offer in evidence Article 167 of the Regulations of the Treasury Department with reference to the valuation of patents. I assume, your Honor, that you would take judicial cognizance of the Regulations of the Department; however, it is a short paragraph and I thought it better to specifically offer it.

Mr. Anderson: Are those the Income Tax Regulations?

Mr. Kresel: Those are the Regulations on Income Tax.

Mr. Anderson: Taken from the official publication?

Mr. Kresel: Taken from the publication of the—well, this is Income and other Federal taxes as affected by patents, trade-marks, copyrights and good will.

Mr. Anderson: I do not know that that is correct. That is a textbook.

Mr. Kresel: Is there any objection to my putting it in subject to correction?

Mr. Anderson: If your Honor please, if we are going to put in those regulations, which I do not think have any bearing whatever on this case because they relate to income tax, and the question of what values are to be considered in this case is a matter for this Court and not for the Treasury Department—I object to it on those grounds, and of course on the special grounds reserved to all this evidence. But if we are going to introduce the regulations of the Tax Department on any issue in this case, then I would want the official regulations, to the end that we may have them complete. I do not know whether the text writer has undertaken to support his position by the extract or not.

Mr. Kresel: Very well, I have asked Mr. Mahaffy to see if he can get it from the library, the original, and for the moment I will put it aside. You are not willing to let me put it in subject to correction?

Mr. Anderson: I do not want to take the burden of correction, Mr. Kresel. I think the whole regulation dealing with the subject should go in.

Q. 450. Mr. Garvan, what was the average life of the patents that were transferred to the Chemical Foundation on the date of the transfer?

Mr. Anderson: I will just make my general objection.

A. Eight and a quarter years.

Q. 451. Prior to the receipt by the Chemical Foundation of the letter of demand signed by Colonel Miller as Alien Property Custodian, which has been put in evidence here, demanding the return by the Chemical Foundation of all the properties that had been transferred to it by the Alien Property Custodian, had any demand of any kind for the return of those patents been made upon the Chemical Foundation?

A. It had not.

Q. 452. Prior to July 1, 1922, which is the date of the President's letter to Colonel Miller, had you appeared before any committees of Congress and had you been questioned before any committees of Congress concerning the transfer of these patents to the Chemical Foundation?

A. I had.

Q. 453. Before how many such committees of Congress had you appeared and testified upon the subject, giving the dates when?

A. In about—I think the first one is about June, 1919, before the House Ways and Means Committee on the pending Tariff Bill. Later, I think in July, before the Senate Finance Committee upon the hearings on the same Bill. In February, 1922, as I recollect it, before a sub-committee of the Senate Judiciary Committee, the so-called Shortridge Committee, because it was presided over by Senator Shortridge of California.

THE COURT: What was the matter upon which such hearings were had?

Q. 454. Will you please state as to each?

A. The first two were upon the pending provisions of the Tariff Bill asking for an embargo, a selective embargo, upon the importation of dyes and organic chemicals. The third was a sub-committee of the Judiciary Committee, acting under a Senate Resolution introduced by either Senator Moses or Senator King, I am not sure, to investigate an alleged dye monopoly and the relations of the Chemical Foundation.

THE COURT: Are you going to show at some time in this case what the outcome of those several investigations was?

MR. KRESEL: I am going to now, if your Honor will permit me. I think with your Honor's permission I will read a portion of the resolution under which that committee was acting, which will of course show the purpose of the proceedings.

MR. ANDERSON: If you are going into the question of the Shortridge Committee at all I should like the entire resolution to go into evidence; and the best evidence of what took place before the Shortridge Committee is its record.

MR. KRESEL: I have no objection to having the entire resolution go in, but I am going to read what I think is necessary to answer the Court's inquiry, and I think I will read the resolution without reading the preamble:

"RESOLVED, That the Committee on the Judiciary, or any subcommittee thereof, is hereby authorized and instructed to investigate the charge that the dye industry is controlled by a combination of corporations which is in fact a monopoly and has employed agents, attorneys, and lobbyists to influence Congress in behalf of special legislation in the interest of such monopoly; to investigate the activities and methods of importers of dyes from Germany, and their agents, attorneys, and lobbyists to influence Congress in behalf of special legislation; and to investigate the dye and chemical industries of the United States, and the supply and distribution methods, within the United States and elsewhere, of the German dye and chemical industries, with a view to recommending proper legislation; and report its findings to the Senate, together with such recommendations as it may deem appropriate.

"RESOLVED FURTHER, That the Committee is authorized to subpoena witnesses," etc.

Q. 455. Mr. Garvan, according to the volume of proceedings before this committee, it commenced operations on February 20, 1922?

A. That is right.

Q. 456. And you appeared before that Committee, did you?

A. Yes.

Q. 457. And were questioned about the Chemical Foundation?

A. Yes, sir.

Q. 458. And these patents that were sold to the Foundation?

A. Yes, sir.

Q. 459. Do you know whether this Committee made a report to the Senate making any findings as to its investigation?

A. I do.

Q. 460. What is the fact about that?

A. It did not make any report.

Mr. Anderson: What is that?

The Witness: It did not make a report.

Mr. Anderson: It did not make a report?

Mr. Kresel: It made no report at all.

Mr. Anderson: I move to strike out any of the evidence of the witness on this subject, and to preserve the record and state my position I think the following is the sound position on that point: The Resolution of Congress or the Senate is an official document of which the Court will take judicial notice in any event, and therefore it is not material whether it is put in evidence or not. But as to any matter with relation to the action of the Committee, in the first place it is not competent for this witness to testify with respect thereto; in the second place, it is not evidence before this Court. If the Court desires to examine the record of that Committee it will find it proceeded as a sub-committee without counsel, making its own investigation, and therefore if it has any bearing on this situation at all it would be for the purpose of giving to this Court the benefit of its conclusions, if it had reached any, or the benefit of the failure to reach the conclusions on an issue now tried before this Court. Therefore it would not be competent evidence and it would not be competent to put into evidence and utterly immaterial and irrelevant to the trial here, because this Court must determine these issues for itself upon the pleadings in this case.

I think that it is proper that I should make that reservation to that question, although I conceive, of course, that for certain purposes recognized by all lawyers in the Courts, the evidence before the Committee can be used.

Mr. Kresel: Is there a question pending? I thought it had been answered.

The Court: I suppose it is rather a motion to strike out the answer of this witness.

Mr. Anderson: I think I did make the motion, sir.

The Court: Do you desire to be heard on the motion?

Mr. Kresel: No, your Honor; I think it is a perfectly proper inquiry. If there had been a report made, of course the report would have to be produced. But the question that I put to the witness was whether he knew that any report had been made or no. He said that he did not know and I asked him whether any report was made and he said no. There is no better evidence than that. Even assuming that there had been a collateral matter of this sort, we would not be bound by the rule as to the best evidence.

The Court: You press your motion, I assume, because the negative answer of the witness is prejudicial. It seems to me that ends the matter. Had it been in the affirmative, it would have ended the matter so far as this witness is concerned, because then there would have been evidence of the nature of that report which it seems to me possibly would be relevant or advisory or persuasive, in the same way that an opinion of a Court elsewhere would be helpful, or the action of either of the other departments of the Government with respect to a particular matter, although not at all controlling; no more than the decision of a Court in another Circuit would be controlling in the District of Delaware. We take into consideration the views of other Courts on a particular matter.

But, there is no such report here, so I do not see that it is material whether the answer remains or goes out.

Mr. Anderson: Will your Honor permit me to make the suggestion, as this matter may come up subsequently and we might as well dispose of it?

I submit, with deference, that there is a very wide difference between the decision of a Court, where counsel appear on both sides and argue questions of law and fact and the Court reaches a conclusion, even though it be not binding upon another Court of another jurisdiction, and a hearing before a sub-committee of the Senate, where there are no counsel present, where the proceeding is conductd in the informal way so commonly known, with arguments and hearsay and everything else that can be thrown into a record of that kind. It not only is not evidence of any fact, but their finding would not have any effect whatever upon any Court under such circumstances, not even as persuasive authority. It could not be used in any Court—a hearing conducted in that way.

An adjudication of a Court upon a matter before it on the pleadings is *res adjudicata* as to the parties. A hearing before the sub-committee does not affect anybody's rights. Anybody concerned can go right on and litigate their rights contrary to the conclusions of that committee without being affected in the slightest by its conclusions.

The Court: No doubt about it.

Mr. Anderson: It is merely a matter of information for Congress for the purpose of fixing a general policy but has no effect whatever in a Court of justice and we respectfully submit it cannot be considered by a Court of justice as having any bearing on its conclusions. Therefore, it is irrelevant and immaterial and it is improper to bring before a Court, since it cannot be intended to have any other effect than to affect the judgment of the Court; and it should not, I respectfully submit, have the slightest effect upon the judgment of the Court.

Mr. Kresel: I am about to introduce reports of the Committees on the other two investigations and I shall be glad at that time, when I offer those, to argue the question as to whether they are material.

So far as this present question is concerned, there was no report, so there is nothing really to be said about it.

The Court: It is a moot question now and I shall therefore grant the motion of the plaintiff to strike out the answer.

Q. 461. Mr. Garvan, as to the proceeding before the Committee on Finance of the United States Senate, what was pending before that Committee?

A. The Tariff Bill.

Mr. Anderson: The best evidence of what was pending before the Committee is the record itself, is it not? It was not only tariff but embargo, as I understand it.

Mr. Kresel: I offer in evidence the proposed Act which the Committee had before it, known as H. R. 8078, 66th Congress, First Session, which is printed at pages 3 to 6 in the volume entitled "Hearings Before the Committee on Finance of the United States Senate."

The Court: What was the time?

Mr. Kresel: The hearings before the Committee were in December, 1919, and January, 1920. The exact dates were December 8th, 9th, 10 and 11th.

The Court: That gives me all I want.

Mr. Anderson: That is subject to the general and specific objections and the special objections which I have just indicated to evidence of this character.

The Court: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 128." (*See Exhibits, Vol. V, page 2709.*)

Mr. Kresel: I now offer in evidence the report from the Committee on Ways and Means of the House of Representatives made by Congressman Longworth upon this Bill, an official publication.

Mr. Anderson: Subject to the same objection.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 129." (*See Exhibits, Vol. V, page 2717.*)

Mr. Kresel: I am going to ask your Honor's indulgence while I read a portion of this report. (Reading).

Mr. Anderson: May I ask counsel if that report is offered as evidence of the facts therein contained?

Mr. Kresel: Yes, sir. It is offered as evidence of the contents therein contained.

Mr. Anderson: Then I wish to add the further objection to the general and specific objections already made, that a report of a Committee or sub-committee of Congress is not evidence in the Courts of any facts contained in that report. Even the statement of a Court in a judicial proceeding is not evidence of the facts contained therein unless the printed record upon which the Court was acting is produced and introduced in evidence.

The Committee of Congress, for whom I have the greatest respect, of course, and of whom I wish to speak with the greatest deference, are quasi-political bodies and they are largely influenced by considerations which cannot come into a courtroom at all; and therefore, what may be the views of a majority report of a Committee dealing with an economic question, what it may believe to be the facts in its arguments, is certainly not a proper subject for consideration by the Court and is not evidence of the facts stated in the report.

I therefore want to make a motion to strike out that report. I might add that it differs from the reports made by requirement of law by officials of the Government to either the President or Congress.

Mr. Kresel: There is no such distinction as Colonel Anderson has just intimated. At the proper time, when your Honor comes to consider this question for a final ruling, I shall be glad to call to your Honor's attention the authorities upon the subject. For the time being it is simply necessary for me to say to your Honor that there is no distinction drawn by the authorities as to the efficacy of a report made by a Committee of Congress or Congress itself and a report made by a Bureau or Department of the Government, either pursuant to a request of the Congress or pursuant to a general statute requiring the making of annual reports.

Your Honor will recall that Colonel Anderson offered a portion of a Federal Trade Comimssion report and read therefrom, and stated at the time that he was contending that whatever was contained in an official report such as he was reading from was proof of the facts therein contained. If there is any question about what Colonel Anderson said, I have the record here and I will read it.

Mr. Anderson: I admit that you have stated correctly what I said.

Mr. Kresel: Very well. Now then, here is a report from a committee of Congress that had charge of this Bill, that made an investigation of the subject that was under discussion and about to be treated in legislation, and having made such an investigation, they make a report to Congress and state what their conclusions were and what the conclusions were based on. We say that that is evidence of the facts, by which the Government is bound, bound in any suit, bound in this suit, and we are offering this not only to show that such a report was made, but offering to show that those were the facts that were found by Congress and that they were facts.

We have heard here in argument and in opening statement of the sanctity and inviolability of acts of Congress. The Government can not, on the one hand, claim that Congress is supreme and that even by the act of March, 1918, it did not give to the President power to dispose of this property, and on the other hand claim that the action of Congress upon cognate matters is not to be considered by the Court. I do not think that that is a consistent position for the Government to take. We offer this as proof of the facts contained in the report.

Mr. Anderson: Just a word in reply, sir. In the first place, this is not an act of Congress. If it were, it would not have to be offered in evidence.

Mr. Kresel: Pardon me; may I add another statement?

Mr. Anderson: Yes.

Mr. Kresel: We offer it also, if your Honor please, as proof of the fact and our contention that when the Alien Property Custodian and the President did with this property was not an arbitrary disposition thereof, as is charged, and to show what Congress by this legislation, affecting the same industry, did for the protection of the industry. It goes directly to bear out the defense that we urge, that not only had the President the power under the Act to dispose of the property in the way he did, but that the purpose of the disposition of the property was in consonance with the Act of Congress, and upon that ground we say it is material and relevant.

Mr. Anderson: *Ex post facto* laws are not favored in any event, and are forbidden in many instances; but it would be a most remarkable situation if the acts of the Alien Property Custodian in selling this property in March or April, 1919, could be affected by a report of a Committee of Congress made in December, 1919, the act of sale having taken place under an act passed in March, 1918, or nearly two years prior thereto, and the act itself having taken place at least six or eight months prior to the consideration of this matter by the House of Representatives at all. So that on the last point it seems to me that counsel are taking a position which is a little far-fetched.

As to the introduction of this evidence and the other matters, to come up, we might just as well state our positions fully. In addition to what I have said, which I shall not repeat, the position of the Government has been that an official report, made as required by law or to a superior officer, which I have outlined in full, is evidence of facts prima facie. But the committees of Congress do not come within that scope.

In the second place, an act of Congress is, of course, to be considered by the courts for whatever bearing it may have, because that does not have to be introduced in evidence. That is the law of the land. But a report of a committee occupies a different position for so many reasons that I would be trespassing upon your Honor's time and somewhat reflecting upon the knowledge of the Court even to undertake to detail these reasons.

Now, in this particular case, as the record discloses, and I presume counsel will show, the Committee on Ways and Means, or a majority thereof (I do not remember which) made a report, part of which has been read to the Court. The House of Representatives, as I now recall, and I am subject to correction if I do not state it accurately, did pass a bill, with what amendments I do not recall, with what modifications from the report I do not recall; but as I understand, it was a bill, a part of the Tariff Act, which imposed an embargo or licensing system as to dyes for a limited period.

That went over to the Senate and the Senate refused to pass that bill, and therefore it never became a law; but to the contrary, the Congress of the United States, as represented in the Senate and the House of Representatives, expressly declared that they did not favor the policy outlined in that bill, and did not accept, so far as their action has been given any force, these statements or reasons upon which that action was predicated in the House as a basis for their action.

In those circumstances to ask a Court of Justice to accept as proof of facts the statements of a chairman of a committee, however distinguished, in advocacy of a proposition for which he may be quite enthusiastic, would be, it seems to me, going a little far in the administration of justice.

If the facts are relevant here, they can be proved by primary evidence, and the Court certainly cannot try this case upon the views expressed by Mr. Longworth or anyone else, or his committee, either as to the facts or the reasons. If it could, it would certainly greatly simplify the introduction of evidence in litigation which might be affected by such proceedings in Congress, but would certainly greatly confuse the results to be arrived at. And that is particularly true unless it be shown that those views and facts were adopted by the Congress and moulded into law, in which event the facts presented by the committee are no longer material or relevant, but merely the action of Congress as speaking for the views of Congress in their final form.

Whether this report was ever considered, whether it was ever adopted, whether it ever even bcame a part of the Bill of the House of Representatives, is a question that does not appear. For that reason, your Honor, I submit that all this matter is clearly incompetent, immaterial and irrelevant and should not be put into this record.

Mr. Kresel: Colonel Anderson is misinformed as to the final action upon this report and the bill to which it relates. My information is, and if necessary we will introduce the legislation, that the bill to which the report related was passed by the House, that the bill went to the Senate and never came to a vote in the Senate. That is the situation about it.

As to the effect of the final result as to whether the legislation was or was not passed, it seems to me that is absolutely immaterial, because if it be true that a report made by a department is proof of the facts, it does not always follow that the report is adopted or that the recommendations therein contained are acted upon. By what method of reasoning is it claimed that simply because the report of this committee was not approved, assuming that it was not, and I say that it was, that therefore it cannot be admitted with the same effect as a report of an underling in some official capacity in an administrative department, as to which the Government admits it is proof of the facts therein contained?

I propose, after this report, to show your Honor the report of the Senate Committee that had this bill in charge, upon the same subject, and I think we have a right to show.

MR. ANDERSON: You admit that that is all hearsay, Mr. Kresel?

MR. KRESEL: Not at all, and the question of hearsay does not enter into it.

THE COURT: It will be received as indicating the action of the sub-committee of the House of Representatives upon a hearing had. As to whether it has any value as evidence is a matter that we have been reserving with respect to all matters and will be reserved here; I can well see how there might be a difference between counsel as to the relevancy of the dye and chemical situation and condition in America, both with respect to dyes as such and with respect to the military effect and value of the by-products; but I fail to see how there can be any difference or where there should be a dispute with respect to a fact which ought to be as well-known to the Government as to anybody else.

I do not pretend to say at this stage of the case what those facts are or were, but I do say that this case should not have to be drawn out day after day and week after week for the purpose of ascertaining what should be a matter that could be agreed upon by counsel *in toto* or specific differences pointed out, not with a view of counsel saying that such testimony is or is not relevant, but if found relevant eventually under our general rule, that this case may not needlessly be prolonged for determining facts which undoubtedly the Government has been in possession of for a great many years.

The motion to strike is denied. You may proceed.

Mr. Kresel: I now offer in evidence the report made by Senator Watson, from the Committee on Finance, on the Bill described as H. R. 8078, this report being made to the Senate of the United States February 13, 1920.

Mr. Anderson: That is subject to the same objections, if your Honor please.

The Court: Yes.

Received in evidence and marked "Defendant's Exhibit No. 130." (*See Exhibits, Vol. V, page 2726.*)

Mr. Kresel: I read from the report.

The Court: Is this on the same Bill

Mr. Kresel: The same Bill, your Honor.

The Court: Report of the Senate Committee?

Mr. Kresel: Report of the Senate Committee, made by Senator Watson as Chairman of this Committee. (Reads from exhibit.) I skip a portion of this giving a lot of figures relating to production. (Continues reading.)

Your Honor, I have not read the full report. I do not think it is necessary for me to read more than I have.

Mr. Anderson: If your Honor please, in order to make the record clear, I simply wish to make a motion to strike out this report in so far as it is introduced as evidence or proof of the facts stated therein. In that connection, your Honor made a statement which I probably did not quite catch the import of; that is, that counsel should agree on certain facts in this case of which the Government obviously had knowledge.

I do not assume, of course, that the Court intended any criticism of counsel for the Government in that regard, but in the first place, your Honor will recall that we made a motion to strike out that portion of the answer upon which this evidence was based and asked for an argument of that motion in advance of the trial. The defendant made a motion to dismiss this Bill and did not set the motion down for hearing on account of the absence of counsel in Europe and illness in the family of one other counsel. We could not set it down for a hearing until the time we moved to set it down, some three or four weeks in advance of the trial, and asked that it be set down in advance of the trial so that the questions of law might be resolved in this case and that we might have some guide in putting in this evidence.

Four-fifths of the evidence that has been produced here as matter of record to my view is as immaterial as a work on astronomy in this case, and therefore the Government is simply objecting. But there is no way we can agree with counsel, because we had no possible idea of the limits to which this case was going to go. I do not say that in any sense meaning that aftersight is better than foresight, but as I urged on the Court at that time, and as the record will show, and urge now, this case is purely a question of law, it can be decided upon the allegations of the Bill as admitted by the Answer on several of its most material questions, which we think are conclusive. We are taking this evidence as best we know how and presenting it as best we know how under such rules as the Court has laid down.

I am quite frank to say in that regard we have had under the rule which has been followed, to which I have no objection whatever, to go further than under ordinary conditions we would go. But I assumed the Court desired all the facts presented to the end that this matter be decided once and for all.

If there was suggested in your Honor's statement any criticism of counsel for the Government, I wish to make the statement that in my humble judgment at the time and from which I have never changed in any regard, the argument of the preliminary motions in this case would have cut this trial to about one week. It was objected to by counsel of the other side and the Court overruled our motion to set those matters down for hearing.

Mr. Kresel: Will your Honor hear me?

The Court: Yes, but I desire to state now that there was no application for a preliminary hearing of any of these motions until after the case had been set for trial on the merits; and in order that there should not be a delay in the trial of this case, the preliminary questions raised by the motion then brought forward were deferred so that if this case was to be tried, it would be tried now and not later.

I will hear you, Mr. Kresel.

Mr. Kresel: I was going to speak on the same point, your Honor. This Bill was filed in September, 1922. Our Answer was promptly filed in October 1922. If the Government desired to argue a motion to strike our Answer or any portion thereof, they had six months before this trial commenced within which to do it. I say six months even before we took the first testimony of Dr. Holdermann; and it was not until two or three weeks before the trial actually commenced that the Government gave notice of this motion to strike any portion of our Answer. That is as to the first point.

I understand your Honor's statement with reference to counsel agreeing to apply particularly to the question of the control that the Germans had of the dye industry of the United States before the war. That is a matter that is well known. That is a matter that the Government might well have agreed with us upon and not have put up to the proof, so that we have had to spend days and days to do it. And even now, when I offer a report of a Committee of Congress that finds those facts, they object to it when they know well that it is the fact and always has been the fact, recognized by the Government in publications; the Tariff Commission says it; Congress has said it; and yet we have counsel for the Government here trying to keep out the truth about it.

Mr. Anderson: Now, if your Honor please, as to the somewhat remarkable statement of counsel, I did not want to get into a controversy with counsel in this case and I have tried to avoid it and I am going to avoid it as far as I can. But counsel has criticized our conduct of this case a number of times. I have not criticized the conduct of counsel. I do not believe that that is within our province. Each side must conduct the case under the regulations prescribed by the Court as it sees fit. I have not said a word in criticism of counsel at any time in the conduct of this case and I do not desire counsel to criticize our conduct of this case.

So far as this Court is concerned, the Court has a right to tell us how it thinks the case should be conducted and to guide us and direct us in its conduct, within the rules of practice prescribed by law. But so far as counsel are concerned, I do not recognize their right to criticize the conduct of this case by the Government, nor am I going, with all deference to your Honor and to the extent that your Honor requires, to submit to their criticism of our conduct of the case. I am tired of that kind of thing.

In the second place, there has never been a suggestion of an agreed state of facts in this case. There has never been any request that we agree upon a state of facts in this case. We ourselves suggested a stipulation and went as far as we could go in the stipulation, but it was not signed until after we got to Wilmington to try this case.

In so far as the facts are concerned, I have no objection to the proof of facts in this case and have stated upon the record time and again, if it was demonstrated to be a fact, I will admit it to save the trouble of proving it. But when it is undertaken to be proved by what I consider to be illegal evidence and arguments, it is not only my right but my duty to object and to put my objections upon the record; and with the consent of this Court and the leave of this Court, I propose to continue to object where I think the evidence is illegal.

As far as a stipulation or agreement of facts as to the control of the dye industry by the Germans in this country prior to the war, the evidence has been cumulative upon cumulative here as to matters going back to 1858. We have objected to that evidence but we have not controverted a particle of it and we do not propose to.

As far as that is concerned, I stated in my opening statement, and I repeat now, that the conduct by the Germans prior to this war has absolutely nothing to do with this case, in my view; but of course, if counsel want to put in that evidence under the leave of the Court, subject to my objection as to its materiality, relevancy, and the other objections stated, then it can go on in. But counsel must conduct his case his way, and I will not complain, and I will undertake with the aid of my associates and the leave of this Court to conduct the Government's case as I think it ought to be conducted.

THE COURT: There is no objection to your doing that and making such objections as you see fit and proper. It did seem to me and still seems to me that the status of the chemical and dye industry in this country at the time of the passage of the Trading with the Enemy Act and the amendments thereto would be a fact that would be clearly within the knowledge of the Government.

My purpose is not now to indicate that such matters are material or relevant in any way. I do not know whether they are or not. I will determine that in the final determination of the cause, if necessary. But it did seem to me that unless those facts were actually in dispute, an agreement could have been reached. I can understand counsel not being willing to agree where the clients are other than the Government of the United States itself and the defendant, that have not the interest in public welfare or the experience in litigation that this defendant has. I fail to see, unless the facts are in dispute, the reason for taking day after day in producing them. I do not know that that is criticism. If it is, it is. If it isn't, it isn't. You may proceed.

By Mr. Kresel:

Q. 462. Mr. Garvan, what day was it that you say you resigned as Alien Property Custodian?

A. March 11th or 12th.

Q. 463. What year?

A. Nineteen hundred and twenty-one.

Q. 464. Subsequent to that date, did you have any conference with Colonel Thomas W. Miller, your successor in that office?

A. I did.

Q. 465. Can you fix about the time?

A. I should say within two weeks or three weeks after I got out. Just about that time I went to Charleston for a few days' rest and then when I came back, I saw him.

Q. 466. And where did you talk to Colonel Miller?

A. In his office.

Q. 467. In Washington?

A. Yes.

Q. 468. Who was present?

A. I have no recollection of anyone being present but himself and myself.

Q. 469. Will you please state the conversation?

A. I called and told him that my children were in school in Washington and I therefore could not leave Washington until the schools were out; and that I would have a good deal of time and I would be perfectly willing and glad to place any experience that I had had in the office at his disposal during the time that I was in Washington.

I then spoke of The Chemical Foundation. I told him that it was a Government-created institution, that I was tired and did not think it was fair that I should be asked, being out, to go on with the thing.

Q. 470. To go on with what?

A. To go on with carrying on The Chemical Foundation; that its main usefulness was in conjunction with all departments of the Government and in assisting all the other necessities for the protection of the organic chemical industry.

I told him that there would be legislation in Congress, work to do with the Army and Navy, with the Bureau of Education, with the Department of the Interior and the Bureau of Standards, and that it was only if the whole power of the Government was brought together to bear upon the question of education in the colleges and the schools and in the industries, etc., that anything could be accomplished.

I explained to him that it was not as a dye industry that we were interested in it. It was only because the dye industry was the post-graduate school of organic chemistry. I told him that there was no politics in it, that both Republicans and Democrats throughout the war had worked shoulder to shoulder. I told him that the Republican Ways and Means Committee had favorably reported on protecting the industry and had passed a temporary embargo and that the Finance Committee of the Senate and Mr. Longworth of the House and Senator Knox of the Senate had been our stalwart friends and that the only people who seemed to be against the industry were people whose motives would not bear the full light of day.

I asked him to become a director and asked him if, after six or eight months, when he had studied the subject, he would not then take over the burden from me and continue it as I had continued it while I was Alien Property Custodian.

I gave him all our literature and then I saw him again in New York at the Bar Association.

Q. 471. What did Colonel Miller say?

A. Colonel Miller agreed to become a director.

My impression is that he agreed to become president. I am not positive as to that. But he agreed to become a director and said he would study and look into the matter and let me know later as to how it developed. That was left to await developments and his getting more facts about it.

Q. 472. Was he actually elected a director?

A. He was.

Q. 473. Subsequently did you have another conversation with him with respect to this subject?

A. I did.

Q. 474. Will you state the time when, who was present and what was said?

A. Well, that was at the Bar Association.

Q. 475. In New York City you mean?

A. Yes. Mr. Corbett was present also at that conversation and that was along the same lines. I do not know whether that was before he was a director or not, but I know we had gathered together all our literature and we gave him everything. The conversation was along the same general lines. I cannot tell whether that was before he was a director or afterwards.

Q. 476. What literature was it that you say you gave him?

A. Our prospectus, that yellow book which we published.

Q. 477. Is this the book, a copy of that?

A. Yes, that is the book.

Mr. Kresel: Please mark this for identification.

Marked "Defendant's Exhibit O for Identification 7/3/23."

Q. 478. What else do you recall that you gave him?

A. I could not tell what else; whatever we had gotten out prior to that date. I could not tell you.

Q. 479. You cannot identify any more than that now?

A. No.

Q. 480. When was it that Colonel Miller informed you that he could not serve?

A. I could not tell.

Q. 481. How long after this talk?

A. I could not tell you how long after it was. I know we put his name on the door and it was some time after.

Q. 482. What door?

A. On the door of The Chemical Foundation. I think he notified us by letter.

Q. 483. About what?

A. About his resignation, that he could not serve. I may be mistaken.

Q. 484. I want to ask you, Mr. Garvan, whether any of the patents that were assigned by the Alien Property Custodian to the Chemical Foundation were so assigned at the request of any department of the Government?

A. Yes, sir.

Q. 485. Will you please now state what patents assigned by the Alien Property Custodian to the Chemical Foundation were assigned at the request of any department of the Government, stating what department, what official of the department, describing the patents, what consideration was paid, and all about it?

Mr. Anderson: Is it in writing?

Mr. Kresel: Yes, I have some writing I will put in.

Mr. Anderson: I would like to have it. If you are going into the assignments and the request for them, I think the writing is the best evidence of what took place.

Mr. Kresel: I will call attention to it. The assignments are already in evidence.

The Court: Do you mean what patents were assigned to the defendant at the request of various departments?

Mr. Kresel: That is right.

The Court: Are those requests in writing?

Mr. Kresel: No; there is some correspondence, but very little, which I will put in. The requests were not in writing.

Q. 486. Mr. Garvan, I direct your attention first, in connection with this question that I have put to you, to the assignment attached to the Bill of Complaint and marked Exhibit H-3, which you will find at page 423 of the Bill. (Handing witness book.)

Mr. Kresel: That has been put in evidence, and it is Plaintiff's Exhibit No. 118.

Q. 486. (Continued.) Please state how that assignment to the Chemical Foundation came to be made.

A. That was made at the request of the Navy. Those gyroscopes are for use on battleships and all ships, particularly for their compasses, and Captain Norton or Commander Norton, I am not sure of his rank at that time, came to me and asked to have those assigned to the Foundation and had the Foundation then issue them a license.

Q. 487. How many of those patents are there?

A. Some fourteen, I think. Yes, fourteen.

Q. 488. How much did the Chemical Foundation pay to the Alien Property Custodian for that assignment?

A. $500.

Q. 489. Did the Chemical Foundation take this assignment and thereafter issue a license to the Government?

A. It did.

The Court: Your license, I suppose, is in evidence.

Mr. Kresel: The license is in evidence, your Honor. That is the big license of November——

The Court: Oh, the license was subsequent to this assignment, I see.

Mr. Kresel: Subsequent to this assignment, of course.

Q. 490. While we are on that, Mr. Garvan, will you state whether the Government paid anything to the Chemical Foundation for this license?

A. It did not.

Q. 491. Now I direct your attention to an assignment which is marked Exhibit H-13 attached to the Bill of Complaint, at page 447, being Plaintiff's Exhibit No. 128, and ask you to state the circumstances as to those 160 patents that are covered by that assignment.

Mr. Anderson: I wish to note an objection, first that the question is too general and indefinite, second that the circumstances under which the assignments were made cannot affect the rights of the parties under the assignment, which is in writing and speaks for itself and merges all the conditions precedent in it.

The Court: The question of good faith is involved, I take it, and I will admit the circumstances under which it was made.

Mr. Anderson: Then I would ask, if your Honor please, reserving my objection, that the witness state specifically who had these negotiations with them, when, what was his position, what was said, and not the general circumstances.

The Court: Including the time, place, persons present, the names of the persons making the request, and their official connection with the Government. The objection with respect to the generality of the question I will need to have the question read in order to determine. (Q. 491 read as recorded.)

If the witness goes afield, you may stop him. You may take the answer.

A. A short time prior to the fifteenth day of May, 1920, the Navy requested me to assign——

Mr. Anderson: I object, sir.

A. (Continued.) ——or, Captain Norton representing the Navy. Captain Norton was the man who always represented the Navy with us in these assignments, and he came to me and asked me to assign those to the Chemical Foundation.

By Mr. Anderson:

Q. 492. What was Captain Norton?

A. He was a Commander. I think he had charge of the Patent Division of the Navy. At any rate, he represented the Navy in its dealings on patents with the Alien Property Custodian.

Q. 493. He is dead now, is he not?

A. I was so informed.

Mr. Kresel: Well, we did not kill him, you know.

Mr. Anderson: I did not suggest that you did.

Mr. Kresel: I do not see the reason for making such a remark.

Mr. Anderson: I asked if he was dead as bearing upon the admissibility of his evidence. I did not suggest you killed him.

The Court: You may proceed.

By Mr. Kresel:

Q. 494. Go on, Mr. Garvan?

A. Those 160 were then assigned as contained in the assignment.

Q. 495. How much did the Chemical Foundation pay the Government for that assignment?

Mr. Anderson: I object to this preliminary evidence now on the ground that the agent who conducted the transaction is dead.

The Court: I think the objection is not well taken. Have you any authority to support that objection, Colonel Anderson?

Mr. Anderson: No, sir.

The Court: The objection is overruled and the answer will be taken.

Q. 495. (Continued.) Will you give the answer?

A. $5,000.

Q. 496. And did the Foundation thereafter give to the Navy Department of the Government a free license on these patents?

Mr. Anderson: I object on the ground that the question of what is in a license is a question of the construction of a written instrument, and that the only evidence of that is the instrument itself.

Mr. Kresel: And it is in evidence.

Mr. Anderson: I object to the construction of it.

The Court: The objection is sustained.

Mr. Kresel: The instrument will speak for itself, your Honor.

Q. 497. How much, if anything, has the Chemical Foundation received as income on these 160 patents which you have testified were taken over at the request of the Navy Department and for which the Foundation paid the Government $5,000?

A. $100.

Q. 498. I direct your attention to assignment which is marked Exhibit H-19, Plaintiff's Exhibit No. 134, page 467 of the Bill, and ask you to state whether you had any talk with Commander Norton of the Navy Department with reference to that assignment?

A. Yes, sir, to the best of my recollection.

Q. 499. And what was the conversation, giving as near as you can recall, the date when?

A. Some time shortly prior to the nineteenth day of February, 1921, when he again came to me and told me that they had discovered further patents that they would like to have transferred to the Foundation, so that the Government could get a license from them.

Q. 500. And how much did the Chemical Foundation pay the Government for that assignment?

Mr. Anderson: I do not suppose that you mean to ask how much you paid the Government; how much you paid the Alien Property Custodian, I presume.

Q. 500. (Continued.) All right; paid the Alien Property Custodian.

Mr. Kresel: I will accept that correction.

A. $5,000.

Q. 501. And how much, if anything, has the Chemical Foundation collected as income on any of the patents covered by this assignment of February 19, 1921?

A. One license fee of $100.

Mr. Kresel: I now offer in evidence Article 167 of the Income Tax Regulations, and this time I produce the official print entitled "Treasury Department, United States Internal Revenue, Regulations 62, 1922 Edition, relating to the Income Tax and War Profits and Excess Profits, Taxes," and so on. I ask to read in Article 167, which appears at page 77 of this publication. I read as follows. It is entitled "Depreciation of patent or copyright."

"In computing a depreciation allowance in the case of a patent or copyright, the capital sum to be replaced is the cost (not already deducted as current expense) of the patent or copyright or its fair market value as of March 1, 1913, if acquired prior thereto. The allowance should be computed by an apportionment of the cost of the patent or copyright or of its fair market value as of March 1, 1913, over the life of the patent or copyright since its grant or since its acquisition by the taxpayer or since March 1, 1913, as the case may be. If the patent or copyright was acquired from the Government, its cost consists of the various Government fees, cost of drawings, experimental models, attorneys' fees, etc., actually paid."

Mr. Anderson: I have not seen that paper before being read, and I wish to make a formal motion to strike out on the ground that it is in no way binding upon this Court and is not evidence in this Court. The question of arriving at the value of patents in this case is a question solely for this Court.

The Court: It may be taken under our general rule.

Mr. Kresel: I offer in evidence a letter from the Alien Property Custodian, January 14, 1921, directed to the Navy Department, attention of Commander A. L. Norton.

Received in evidence and marked "Defendant's Exhibit No. 131." (*See Exhibits, Vol. V, page 2734.*)

Mr. Kresel: I offer in evidence a letter from the Navy Department, signed by Charles B. McVay, Jr., Rear-Admiral, United States Navy, to the Chemical Foundation, dated January 19, 1921.

Received in evidence and marked "Defendant's Exhibit No. 132." (*See Exhibits, Vol. V, page 2735.*)

Mr. Krésel: I offer in evidence a letter dated January 20, 1921, from the Chemical Foundation to Rear Admiral Charles B. McVay, Jr., of the Navy Department.

Received in evidence and marked "Defend-

ant's Exhibit No. 133." (*See Exhibits, Vol. V, page 2736.*)

The Court: Is that all of that group?

Mr. Kresel: All of this group.

The Court: They are admitted.

Mr. Kresel: I shall not stop to read these three letters, your Honor. They all refer to one of these assignments that Mr. Garvan has testified about, to wit, the 160 patents, and the Navy requests that the Chemical Foundation grant a license, and the Chemical Foundation says it would do so.

I now offer in evidence with reference to the gyroscope patents, those fourteen that the witness has testified followed, a letter from Josephus Daniels, Secretary of the Navy, to the Chemical Foundation, dated December 4, 1919.

Received in evidence and marked "Defendant's Exhibit No. 134." (*See Exhibits, Vol. V, page 2736.*)

Mr. Kresel: I desire to read that letter. It is short, your Honor. (Reads letter.)

I now offer in evidence the answer to this letter by the Chemical Foundation, dated December 8, 1919.

Received in evidence and marked "Defendant's Exhibit No. 135." (*See Exhibits, Vol. V, page 2737.*)

Mr. Kresel: I now offer in evidence the following additional correspondence with reference to the same subject, to wit.: Letter from Charles B. McVay, Jr., Bureau of Ordnance, Chief of that Bureau, of the Navy Department, to the Chemical Foundation, dated July 2nd, 1920; letter from the Chemical Foundation to the Navy Department, dated July 9, 1920; letter from Charles B. McVay, Jr., Rear Admiral of the United States

Navy, to The Chemical Foundation, dated July 15th, 1920; and letter from The Chemical Foundation to the Navy Department, dated July 19th, 1920.

The Court: Each is admitted.

Received in evidence and marked respectively, "Defendant's Exhibits Nos. 136, 137, 138 and 139." (*See Exhibits, Vol. V, pages 2738, 2740, 2741, 2742.*)

Mr. Kresel: I desire to read, if your Honor please, certain portions of testimony by Mr. Garvan before the Committees of Congress in connection with certain portions that have been read in by Colonel Anderson.

Mr. Anderson: To which I wish to note an objection, if the Court please, on the ground that the admission of statements formerly made by a witness who is an officer of or represents a corporation, or himself is a party, are admissible without calling the witness, as admissions against his position in this case. Not necessarily admissions against interest when made, but admissions against his position in this case, as taken under the pleadings.

I do not know of any rule of law or evidence, though my knowledge is limited, that permits the reading into the record of evidence of a party, of an officer of a corporation which is a party or representative of a party, made on a former occasion, as testimony in this case. The witness is on the witness stand and he can testify to anything he pleases—that is anything he knows.

The Court: Mr. Kresel, what is the purpose of it?

Mr. Kresel: The purpose is, your Honor, to show that the disconnected portion of testimony read in by Colonel Anderson, made by Mr. Garvan—and I say that without criticism of the

Colonel—even going to the extent of reading a portion of a paragraph and not the entire paragraph, is not a full and a fair reflection of the statement of the witness. I am offering this under the familiar rule that where one party to a proceeding offers in evidence a portion of an instrument or a portion of a proceeding, the other party has the right to offer the balance of it. I do not propose to read Mr. Garvan's whole testimony, I propose to read only such portions as are relevant to the matter that was read in by Colonel Anderson.

THE COURT: If your purpose is to use the testimony given by this witness before the Congressional Committee as primary evidence in this case, there is no doubt in my mind at the moment but what Colonel Anderson's objection is well taken. The purpose of my inquiry was to ascertain whether that was your purpose or whether it was your purpose to negative the effect of a partial reading of that testimony; that is, whether it is your contention the paragraphs, portions or sentences which you now intend to read are in negation or modification of that which was read by the Government.

MR. KRESEL: The latter is my purpose, your Honor.

THE COURT: Objection overruled.

We will take a recess until 1 o'clock Standard Time.

AFTER RECESS.

MR. KRESEL: I read from page 244 of the Hearings before the Committee on Ways and Means; Question by Mr. Moore:

"MR. MOORE: Having put these things in the record, I thought you probably would care to make a statement, because you are familiar with what has been said and done. If you care to make a statement, I will not interrupt you

"MR. GARVAN: I thought Mr. Choate had covered our purpose very well; but I can, in addition, just state this:

"The foundation of the Chemical Foundation was an effort to form an organization to represent as nearly as posible at that time the public interests. Judge Ingraham, of New York, and Judge Gray, of Delaware, had charge of drawing our charter and our trust agreement, and our certificate of incorporation. We have endeavored to make it as nearly a public institution as our laws allow, and at the same time have it an official organization. We wanted to sell these patents to the Government, and if there had been any method by which we could make them a working force, and still have them owned and controlled by the Government, it would have relieved us from a great deal of responsibility, and if there is at this time, any suggestion for modification or amendment of our plan which will insure in the minds of the committee a more definite and certain fulfillment of the intention and purpose of our organization, I am certain that the Chemical Foundation and all its stockholders and all who are interested in it, would be glad to conform to the wishes of the committee, because, in so far as we have the public recognition and public support, and Government recognition and Government support, we become more efficient and become more able to cary out the intentions which are in our hearts and minds."

Question by Mr. Kitchin. It will be conceded that was Congressman Kitchin?

MR. ANDERSON: Yes.

Mr. Kresel: (Reading.)

"Mr. Kitchin: Suppose that the Government would think it wise to take over the Chemical Foundation and operate it; would your officers be willing to turn it over to the Government?

"Mr. Garvan: Provided anyone could draw a bill which promised in the opinion of this committee efficiency in carrying out the purposes of the organization, we will be very glad to do so. For a month or six weeks, Mr. Palmer and myself and Mr. Bradley Palmer and others sought in every way possible to find some way by which we could turn the idea over to the Government and make it efficient in the use and protection of the patents.

"Mr. Green:" ——

Mr. Kresel: That is another Congressman.

Mr. Anderson: Yes.

Mr. Kresel: "Mr. Green: What do you mean by 'efficiency' in that connection?

"Mr. Garvan: I will explain that. The employees of the Agricultural Department, for instance, invent a number of processes every year. By the rules of the Department of Agriculture they are compelled to dedicate them to the public. The result is throwing them into the waste basket because an invention when it is first patented has not been developed to the point of commercial manufacture. Nobody is going to do that if it is owned by the Government."

I read from page 360 of the same proceedings:

"Mr. Garvan: I will agree to do this: If there is question about it I will agree to have the charter amended, and in the terms and under the suggestion which you may dictate, in any way which you think will safeguard that. We must, of course, do two or three things; we must consider cases of the patents like salvarsan, and we must consider cases where one has invested, say, on the

> strength of his patents, two or three million dollars, and some man applies whose character shows his application to be nothing but an attempt to blackmail a man to buy him out, but if you can draw any proposition which will safeguard your contention, I promise you that within forty-eight hours the charter will be amended to contain your proposition. I would not have it thought for one moment that there is any intention on the part of those trustees or those officers ever to put themselves in a position where they could be seeking or attempting to use any arbitrary power. I can do no more."

Q. 502. Mr. Garvan, I direct your attention to a statement read in by Colonel Anderson at pages 272 and 273 of these hearings before the Ways and Means Committee. You were being asked there about the Executive order which had been signed by Mr. Polk, the one of February 26, 1919, and the question asked by Mr. Moore was:

> "Do you know who drafted that Executive order signed by Frank L. Polk?
>
> "MR. GARVAN: I can give you my best belief, based upon the course of business in the office, that it was drafted by Mr. Mitchell Palmer after consultation with Mr. Bradley Palmer and, undoubtedly, after consultation with Mr. Hoguet, who was the principal adviser on patents."

Then after two or three more questions and answers, you said this:

> "Of the Chemical Foundation, Inc., yes. And, furthermore, I think you will find that order received the consulting advice of every big patent lawyer in the country representing these big manufacturers."

I want to ask you what you meant by that statement as to the order having received the consulting advice of every big patent lawyer in the country representing these big manufacturers.

Mr. Anderson: I object.

The Court: I do not understand. Is it ambiguous—the statement?

Mr. Kresel: The statement is not only ambiguous, your Honor, ambiguous as to who the big patent lawyers were, but who the big manufacturers were that they represented, what time it was when they gave their advice. As to all of those I would like to have Mr. Garvan state what the fact was and what he was talking about here when he gave that answer. I think he has a right to explain that.

The Court: You may ask him if you desire the time and circumstances under which it was done. But what he meant by that statement I do not think is——

Mr. Kresel: I will reframe the question, your Honor.

Q. 503. I will ask you, Mr. Garvan, to state the names of the patent lawyers that you mentioned here, where you say "every big patent lawyer in the country," and the circumstances under which that order received, as you say, the consulting advice of such lawyers?

Mr. Anderson: To the first part of the question I have no objection, except the general objection. As to the second part, I object on the ground that of course the statement speaks for itself, that counsel cannot read the testimony into the record and then have him explain it by cross-examining his own witness.

Mr. Kresel: I am not reading it. You read it in. I am reading something that you read in.

Mr. Anderson: All right. If that is true, I had overlooked that fact, that I read it in.

MR. KRESEL: Yes, you did.

THE COURT: You may take the answer.

A. Pennie, Davis & Marvin, Mr. Townsend, of whatever it is, Byrnes, Townsend and Brickenstein, some name like that, and Mr. Rogers of Chicago passed upon that when they advised the people who took out licenses, their clients, that the title based on this order was good.

Q. 504. Was this advice that you speak of as having been given by these patent lawyers with reference to the order given prior to the making of the order by Mr. Polk or thereafter, if you can state?

A. No, I know nothing of their having given any advice before. I gave there on the other page the people I thought had been consulted about the drawing of the order. What I meant was that these men had subsequently passed upon our title, which was based on the order, and on their advice these people had taken out licenses and gone ahead to manufacture.

MR. ANDERSON: I object to and move to strike out the last part of the answer as to what he meant.

THE COURT: Motion granted.

MR. KRESEL: Is it granted, your Honor?

THE COURT: The motion is granted. The answer was not responsive and he was volunteering some information which was really the information asked for by your original question. It is not responsive and may be stricken out.

MR. KRESEL: That part of the answer which was to the effect that the advice by these lawyers was given after the order was made—may that stand?

THE COURT: Yes. The motion did not go to that, I understand, Colonel Anderson, but to the last part.

MR. ANDERSON: I did not understand.

Mr. Kresel: My question is whether that part of Mr. Garvan's answer which is to the effect that the advice by these lawyers was given after the Executive order had been drawn could stand. The Court says he did not understand you directed your motion to that part of the question.

Mr. Anderson: I did not direct that particular motion to that part of the question, but it is subject to my general objection.

Mr. Kresel: Yes, I understand it is subject to your objection, but you are not moving to strike that out?

Mr. Anderson: Not on the grounds stated in that motion, no.

The Court: The portion of the answer with respect to which the motion is granted begins with the words "what I meant."

Q. 505. In what connection, Mr. Garvan, was the advice given by these patent lawyers representing the manufacturers that you mention in this answer that I read to you from the record?

A. In connection with their clients' taking out licenses based on our title.

Q. 506. I read to you, Mr. Garvan, one answer that was read in by Colonel Anderson at page 394 of the Hearings before the Committee on the judiciary. Speaking of licenses, you say:

> "Our rates vary on different patents, of course; some licenses are only for one-half of one per cent. royalty or one per cent. royalty, but all are based on the idea of encouraging manufacturing. For instance, as I pointed out, our nitrate patents included a process of making nitrate from the air, which was another reason for getting those patents out of Government ownership. The possibility of developing Muscle Shoals is within those patents. The Muscle Shoals project could not go ahead without our nitrate pat-

ents. If those patents had been given back to Germany after the war, Muscle Shoals would be on your hands to a very great extent, for one of the large elements of value in those patents is the making of nitrates from the air, the so-called Haber process. Those were the patents the completion of which made the European war possible."

That was your statement. Now, do you know how many Government plants there are at Muscle Shoals?

A. I know there are at least two.

Q. 507. And do you know how they are designated?

A. Plant No. 1 and Plant No. 2.

Q. 508. As to which of the plants were you giving these answers that I have just read to you?

A. Plant No. 1.

Mr. Anderson: Just a minute. I object. There is no reference to any particular plant; it is the Muscle Shoals project; and it is nothing but explaining or undertaking to explain an answer in evidence.

Mr. Kresel: I would say that the witness has a right to state, quite irrespective of his statement, even which of the plants he was referring to when he was giving this testimony. The statement is ambiguous as to that.

The Court: I do not see that the witness can change by his testimony the fact with regard to the Muscle Shoals plants. If the facts are that there was one which came under that process, or if there were two which came under that process, it seems to me that is a fact which is more or less discussed and made a part of the statement. I do not know that he can now explain the statement, because that is a past event. His statement is made. If the facts are that there is only one Muscle Shoals plant which was operated in a way so that it required the Haber process, I do not see why that fact cannot be shown; but I do not see that the modification at this time of that statement is proper.

Mr. Kresel: I am not seeking to have it modified. I will ask the fact, your Honor.

The Court: Question withdrawn?

Mr. Kresel: Yes, I will withdraw the question, though it has been answered. I assume that both the question and answer, then, will go out.

(Q. 508 and answer repeated as above recorded.)

The Court: That question, I think, is objectionable, and I think the objection to it is to be sustained and the answer stricken out.

Q. 509. Do you know, Mr. Garvan, whether one or both or either of these plants at Muscle Shoals was constructed for production of nitrates by what is known as the Haber process?

Mr. Anderson: Does he know of his own knowledge?

A. No.

Mr. Kresel: The answer is "No."

Mr. Anderson: Then it is all right. I did not think he knew.

Mr. Kresel: I now offer in evidence a report prepared by the Nitrate Division, Ordnance Office, War Department, assisted by the Fixed Nitrogen Research Laboratory, Department of Agriculture, entitled "Report on the Fixation and Utilization of Nitrogen."

Mr. Anderson: We will note an objection to that. I have not had a chance to examine it, but I note the objection, of course, that as to proof of facts stated therein it is not a report required by law, or any high officer.

THE COURT: By whom was the report made, Mr. Kresel?

MR. KRESEL: This report was made by the Nitrate Division, Ordnance Office, War Department, assisted by the Fixed Nitrogen Research Laboratory of the Department of Agriculture. It is accompanied by a letter of transmittal dated March 29, 1922, from C. C. Williams, Major General, Chief of Ordnance to the Secretary of War. There is attached thereto a certificate reading as follows: (Reading.)

In the letter of transmittal by Major General Williams to the Secretary of War, the following statement is made (reading).

THE COURT: The objection is overruled. The document is admitted.

Received in evidence and marked "Defendant's Exhibit No. 140." (*Not printed.*)

MR. KRESEL: I will read from this report two or three paragraphs, your Honor. It is under the heading, "Nitrogen Fixation Activities of the United States Government," page 8 of this report (reading).

That is all, Mr. Garvan.

MR. ANDERSON: If your Honor please, I have not been able to look at the large number of statements of figures introduced here today and therefore I am compelled to ask leave to reserve cross-examination on those statements until I can look at them, because I have not seen them. They were not furnished until they were presented in Court. I understand counsel does not object. On the other part of the evidence, I will ask the witness a few questions.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 509-a. Mr. Garvan, is that your signature to this letter?

A. Yes, sir.

MR. ANDERSON: I offer in evidence photostatic copy of the oath of office of Francis P. Garvan which the witness has just identified, as an attorney in the office of the Alien Property Custodian, showing the date of entrance on duty as November 12, 1917, and ask that it be identified as Plaintiff's Exhibit No. 609. Counsel agree that we put them in now instead of waiting for the rebuttal.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 609." (*See Exhibits, Vol. II, page 1446.*)

XQ. 510. Is this your signature, Mr. Garvan?

A. Yes.

MR. ANDERSON: I offer in evidence the oath of office of Francis P. Garvan as Alien Property Custodian just identified by the witness, sworn and subscribed to on the fourth day of March 1919, showing the date of entrance upon duty as March 4, 1919.

XQ. 511. You did enter upon and begin the discharge of your duties on that day, did you not?

A. I did.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 610." (*See Exhibits, Vol. II, page 1447.*)

XQ. 512. You continued to serve in the position of Alien Property Custodian for which you thus qualified from the 4th of March, 1919, until what date? I think you stated it, but I want to get it right.

A. I think it was the 12th of March.

XQ. 513. The 12th of March, 1921?

A. 1921, somewhere along in there. It was a few days after the 4th.

Mr. Anderson: I offer in evidence minute of the Noon Conference of May 16, 1918, at which there were present: The Alien Property Custodian, Messrs. Horne, Bradley, Dunn, Garvan, Dreher and Ferry. I ask that the same be read in evidence as Plaintiff's Exhibit No. 611.

Received in evidence and marked "Plaintiff's Exhibit No. 611." (*See Exhibits, Vol. II, page 1448.*)

The Court: That is of what organization?

Mr. Anderson: The Alien Property Custodian. I am going to identify it just as soon as it is handed to me after marking.

XQ. 514. You knew who the gentlemen named there as being present were, do you not?

A. I am not quite sure.

XQ. 515. Messrs. Horne——

A. Yes, sir.

XQ. 516. Bradley?

A. Yes, sir.

XQ. 517. Dunn?

A. Yes, sir.

XQ. 518. Garvan—that is yourself?

A. Yes, sir.

XQ. 519. Dreher and Ferry?

A. Yes, sir.

XQ. 520. They were all officers in the office of the Alien Property Custodian, were they not?

A. Yes, sir.

XQ. 521. This is dated May 16, 1918, and the Alien Property Custodian at that time was Mr. A. Mitchell Palmer?

A. Yes, sir.

XQ. 522. To the best of your knowledge and information that conference was held as shown by these minutes (handing witness)?

A. I had not seen it (examines paper). Yes, sir.

XQ. 523. Mr. Garvan, you were nominated for the position of Assistant Attorney General of the United States also, were you not?

A. Yes, sir.

Mr. Anderson: The minute I need not take the time to read. It merely shows Mr. Garvan's appointment as head of the New York office of the Alien Property Custodian in charge of the Bureau of Investigation.

XQ. 524. At what date were you nominated for that position, do you recall?

A. I do not remember.

XQ. 525. About what date?

A. I beg your pardon?

XQ. 526. About what date?

A. I think it was about the time that Mr. Palmer's house was blown up. Now, that was I think the summer of 1919.

XQ. 527. The summer of 1919 or about that time?

A. Yes.

XQ. 528. In fact your nomination was confirmed by the Senate was it not?

A. Yes, sir.

XQ. 529. I do not believe you ever took the oath of office as Assistant Attorney General, did you?

A. No, sir. I worked on three or four special matters.

XQ. 530. You had an office in the Department of Justice, however?

A. Yes, sir.

XQ. 531. Were you really in charge of the Criminal Division?

A. No, in charge of the Bolshevism and the Packers decree and two or three other things of that kind.

XQ. 532. From about the summer of 1919 on to

March, 1920 you were connected with the Department of Justice, although you never took the oath of office as Assistant?

A. I did volunteer work there, yes. I did not get any salary. I could not serve under both.

XQ. 533. I am very glad you stated that, because I know it is a fact that you did not. Mr. Garvan, when did you agree to become President of the Chemical Foundation?

A. To the best of my recollection from anything that I can inform myself from, it was some time after February 16th. You put in a letter from Mr. Hoguet saying on February 16th they induced me to become a director.

MR. KRESEL: What year was this, please?

THE WITNESS: 1919.

XQ. 534. It was in 1919?

A. Yes, sir.

XQ. 535. I read to you from your testimony before the sub-committee of the Committee on the Judiciary in the United States Senate, in the hearings on the Senate Resolution 77 which has been referred to. You know what I mean, do you not?

A. Yes.

XQ. 536. You were asked by the Chairman—who I believe was Senator Shortridge, was it not?

A. Yes, sir.

XQ. 536. (continued) At page 392:

> "THE CHAIRMAN. In order to fix it in the record, when did you become Alien Property Custodian?
>
> "MR. GARVAN. March 4, 1919.
>
> "THE CHAIRMAN. When was the sale made to the Chemical Foundation?
>
> "MR. GARVAN. The order directing the sale was made February 26, 1919 and the sale was actually consummated April 10, 1919.

> "The Chairman. And you became the President of the Chemical Foundation when?
>
> "Mr. Garvan. I was the President from the beginning. The date of the recordation of our certificate is the 19th of February, 1919. So that I was President of the Chemical Foundation at a time when I was a dollar-a-year man in the employ of the Government, but when I had no expectation of doing anything but step out and go back and devote myself to my private practice and thus build up, if possible, the chemical industry in this country."

You did testify to that, did you not?

A. Oh, yes, certainly.

XQ. 537. Does it correctly state the facts?

A. Well, it depends upon whether—I became President but I was not formally elected by the incorporators until March 8th. I had consented to become President of the corporation to be formed.

XQ. 538. It had been understood really throughout the transaction that you were to be President, had it not, Mr. Garvan?

A. Not until quite late in the transaction; it was not even suggested at first.

XQ. 539. How late, would you say, in the transaction? You say here from the first.

A. The only thing that I can recollect—that I can place it by is that it must have been after the 16th of February, because on that date Mr. Hoguet wrote to Mr. Palmer, "We have induced Mr. Garvan to become a director", and therefore at that time it had not been suggested that I become President.

XQ. 540. As a matter of fact, you know it was agreed around that time that you should be President of The Chemical Foundation?

A. Yes.

Mr. Kresel: Around what time?

Mr. Anderson: Around the 15th of February.

A. Somewhere around that time. I would not be able to place the date.

XQ. 541. Now, Mr. Garvan, you continued, as I understood you to say, as President of The Chemical Foundation from the time of your original election down to the present time?

A. Yes, sir.

XQ. 542. This morning some evidence was introduced as to a certain Bill pending in Congress before the Ways and Means Committee of the House, and afterwards before the Senate, for a dye embargo, among other things?

A. Yes, sir.

XQ. 543. You took quite an active part as President of the Chemical Foundation in undertaking to secure a dye embargo, did you not?

A. Very active.

XQ. 544. You did?

A. Very active.

XQ. 545. You and the officers of The Chemical Foundation earnestly urged the adoption of a dye embargo?

A. We did.

XQ. 546. You were at that time Alien Property Custodian?

A. Yes, sir.

XQ. 547. You were at that time discharging duties in connection with the Attorney General's office such as you have described?

A. Yes, sir.

XQ.548. And had been confirmed by the Senate as Assistant Attorney General, but had not qualified for the position?

A. Yes, sir.

XQ. 549. Mr. Garvan, have you ever been in Germany?

A. Yes, sir.

XQ. 550. When?

A. I was there—now let me see—I think I have made two trips through Germany. In 1908 or 1909, along there.

XQ. 551. And those trips were about that same time?

A. One summer following another summer.

XQ. 552. You were over there as a——

A. Tourist.

XQ. 552. (continued)—tourist?

A. Pure and simple.

XQ. 553. Approximately how long were you in Germany?

A. Well, I suppose a month each time; possibly less.

XQ. 554. Then the information which you testified yesterday as being in your possession as to the educational system in Germany and the economic system of Germany and the organization of industry in Germany was all derived from other sources than any personal knowledge on your part, was it not?

A. Oh, yes.

XQ. 555. You spoke of the fact that the dye industry in Germany maintains schools for the education of the people in the conduct of that business. Do you not know as a fact that the United States Steel Corporation does the same thing in the United States?

A. I do not, no.

XQ. 556. You do not know that?

A. No.

XQ. 557. Do you not know as a fact that a great many industrial concerns in the United States, like Westinghouse and General Electric do maintain schools for the education of youths in their particular branches of business?

A. I do not know.

XQ. 558. You also spoke on yesterday of the fact that Germany had a large fund for propaganda in the United States. In connection with your investigations, did you not find that England and France also had a large fund for propaganda in the United States?

A. I did not.

XQ. 559. You did not find that?

A. I did not.

XQ. 560. You know, as a matter of fact, that the United States had quite a large propaganda fund during the war, do you not?

A. You mean selling Liberty bonds?

XQ. 561. No, no, I mean for the maintenance of propaganda, publicity?

THE COURT: You mean in America?

MR. ANDERSON: Or in foreign countries as well.

A. I had no knowledge of any such thing. It never came within my labors.

XQ. 562. Never came within your knowledge?

A. No.

XQ. 563. I would like you to define a little more definitely for me, if you can, just what your duties were as Chief of the Bureau of Investigation through which position you got the information you described.

A. Yes. For the first two or three months it was what I would call absolutely clerical work. It was receiving this tremendous number of reports on property that poured in, arranging a system for the verification of the oaths and arranging a system of dividing them so that those that looked suspicious and those that fitted in with information that might come in, might be further investigated as well as those who reported no property and who we had reason to believe might have property; in other words, to sift those that were apparently all right from those that should require more investigation, and so forth. That was the first thing that was done, to try and see what was to be done.

Then we wrote letters to everybody that we could think of in the country who might have any knowledge of German property; banks, trust companies, tax assessors, county agents, mortgage companies, everybody that touched money or property who might have any record of German ownership. That was our next step.

Then, of course, patriotic citizens sent in an enormous amount of information, and then we began to gather it from the seven or eight other information bureaus of the Government, Military Intelligence, Naval Intelligence, War Trade Board Intelligence, Secret Service of the State Department, Secret Service of the Treasury Department, the Department of Justice, and these National Defense organizations, everywhere that we could get information. Then we began to send out the individual men to the individual places to examine the individual suspected ones, and so forth. Then we found that most of this material was in New York City; so we established a New York office to be nearer the source.

XQ. 564. In your New York office, did you have charge of the examination of such concerns as the Kuttroff, Pickhardt & Company, the Cassella Color Company and the H. A. Metz Company and the Farbwerke-Hoechst Company that are referred to in Mr. Palmer's report?

A. Yes, sir.

XQ. 565. You had charge of that?

A. With the assistance of Mr. Choate.

XQ. 566. You were in charge of that work?

A. I was in charge.

XQ. 567. You were in constant charge of that work I assume?

A. Yes. Mr. Choate had the next room to me. There was just a door in between.

XQ. 568. I want to ask you about some of these concerns to clear up certain points, some of which you have mentioned like the Bayer Company. We will take the Bayer Company first. Do you recall when the investigation of the Bayer Company was made? You said it was on the 12th of December, 1918, if I recall?

A. My recollection is that that was quite early, that that was one of the first. I think that was the first one we appointed the directors in. I am not sure about that.

XQ. 569. The actual auction took place on the 12th of December, 1918, did it not?

A. Yes, sir.

XQ. 570. What was the proceeding after the auction, do you know? I mean, how long before the property was transferred. What did you do then?

A. The proceeding then would be for the price and purchaser to go before the Sales Committee which consisted of the five men who are now Trustees of the Foundation; and the Washington office would help clear the title and the lawyers for the purchasers would go down there and look over their necessary muniments of title; and then upon the approval of the Advisory Committee on Sales as to price and as to purchaser, the deed would be put through. Does that answer the question?

XQ. 571. That is pretty good. Now, do you know when the actual transfer of the property of the Bayer Company took place?

A. No, that I do not know. I could find out I suppose.

XQ. 572. After the sale, these various proceedings which you indicate usually took some little time, did they not?

A. Sometimes some time and sometimes not, more or less.

XQ. 573. In property the size of the Bayer Company, it would naturally take some weeks?

A. Well, there are just as nasty questions that come up with small companies as with large companies.

XQ. 574. If I were to show you the record that the old directors of the Alien Property Custodian did not resign until late in January, what would you say?

A. I would say that was pretty quick.

XQ. 575. You would say that was pretty quick for turning it over?

A. Yes, sir.

XQ. 576. Do you not know that as a matter of fact the terms of sale gave only thirty days to approve the sale to the purchaser?

A. I remember it now that you remind me.

XQ. 577. So that they had thirty days from the 12th of January to decide whether they would approve the purchase at all?

A. From the 12th of December.

XQ. 578. From the 12th of December to the 12th of January?

A. Yes.

XQ. 579. Thirty days?

A. Yes, and we could get an adjournment of that date.

XQ. 580. Then the turning over the property?

A. I think that had to be the turning over.

XQ. 581. They had thirty days in which to reject bids?

A. That is right. We had to decide if we were going to reject.

XQ. 582. Within thirty days?

A. Yes.

XQ. 583. Mr. Garvan, you are familiar with the provisions of the Trading with the Enemy Act that gave to the Alien Property Custodian the power to reject any bid upon the Executive order of the President, stating the reasons therefor in writing and to re-sell the property?

A. Yes, sir.

XQ. 584. Did you as chief of the Bureau of Investigation ever suggest the rejection of the bid for the Bayer property?

A. For the Bayer property?

XQ. 585. Yes.

A. No.

XQ. 586. You testified on direct examination that you were greatly alarmed or concerned by the fact that one company——

A. (interposing). You misunderstood me. I was only alarmed at the fact that the directors bore German names. The moment I knew the personality of the men who bore German names, that they had been American citizens for a hundred years as far as that company was concerned——

XQ. 587. That is not quite the point I was getting at. But you were greatly alarmed at the prospect of one company controlling as many as 1200 patents?

A. No, that was not the thing that alarmed us. They were entitled to control those because they went with that plant.

XQ. 588. Well, I haven't your testimony in the record before me. I have not been able to go through it.

A. I was alarmed at the prospect or possibility of men with German tendencies going on and buying up them all. Of course, if we had known that they had been actual Germans, they never would have gotten that property.

XQ. 589. If there had been any reason for any uneasiness on your part as to the interests of the country being protected, would you not have recommended to the President a rejection of the bid and a re-sale

A. Oh, certainly.

XQ. 590. And that could be done in any property?

A. That was only my first flash at the fact of their being German names.

XQ. 591. That could be done in any property?

A. Oh, yes.

XQ. 592. And that was sometimes done, was it not?

A. Oh, quite frequently.

XQ. 593. As a matter of fact, you knew at the time this sale was made or before it was actually consummated, that the purchaser, the Sterling Products Corporation, had an arrangement and understanding at the time of the sale with the Grasselli Chemical Company?

A. Yes, sir.

XQ. 594. That the Grasselli would buy its patents and part of its property?

A. One to take the dye side of the business with all its appurtenances, building, patents, etc., and the other to take the drug side with all its appurtenances.

XQ. 595. The drug side being chiefly aspirin?

A. Yes, sir.

XQ. 596. That was practically all they made, as far as you know

A. I do not know if it was all they made. I know that the chief product was aspirin.

XQ. 597. The dye side of that plant was sold to the Grasselli Chemical Company?

A. Grasselli Chemical Company.

XQ. 598. Do you know what they gave for it?

A. I do not know.

XQ. 599. Did they not have to disclose the arrangement between them to the Alien Property Custodian?

A. I don't think they did. They were two splendid American concerns. What their business was was between themselves.

XQ. 600. Was the Sterling Products Company an old company?

A. Yes.

XQ. 601. Had they been in business long?

A. Yes, they made syrup of figs for fifty years.

XQ. 602. The Grasselli Company took over about 500 of those patents, did they not?

A. I don't know how many they took over.

XQ. 603. Dye patents?

A. I don't know.

XQ. 604. Any how they were to take the dye pattents?

A. They were to take the dye side of that business.

XQ. 605. And the price paid for that property was about $5,250,000, something like that, was it not?

A. It was.

XQ. 606. Mr. Garvan, did not Mr. Wigglesworth of the National Aniline Company go up and make an inspection of this property and report to you on it or state to you the result of his inspection?

A. I don't think Mr. Wigglesworth did. I think Mr. Matheson of his company was the only one I saw.

XQ. 607. Matheson was the only one you saw?

A. That I remember.

XQ. 608. Did Mr. Matheson ever tell you what he thought the physical property was worth, that is, the manufacturing plant?

A. He did not, because he was a prospective bidder. He did not tell me. He told me how much the patents were worth.

XQ. 609. Yes, you testified to that. Now, the

Farbwerke-Hoechst Company was what has been talked of here as one of the Metz Companies?

A. Yes.

XQ. 610. That was a New York Corporation?

A. Yes, sir.

XQ. 611. You had a very exhaustive audit and examination made of that property, did you not?

A. Very.

XQ. 612. Who paid for it, Mr. Garvan?

A. Mr. Metz.

XQ. 613. As a matter of fact, the Alien Property Custodian did not have any appropriation for the purpose of making these audits and investigations in advance of the seizure of properties, did he?

A. No, he did not.

XQ. 614. You always made their owner pay that?

A. Yes, I think we did.

XQ. 615 You charged that up to him and made him pay?

A. Well, if his books were straight, it did not cost much.

XQ. 616. I know, but in the case of Mr. Metz it cost $40,000?

A. Yes, that was because of the condition of his books, disguising the relations with Germany.

> Mr. Anderson: I do not want to move to strike out the witness's answer, your Honor. I said "It cost $40,000"? And he said "Yes." Now he goes on to explain. I know the witness does not want to embarrass me, and therefore I just want to ask him not to do that.
>
> The Court: Let the non-responsive part of his answer be stricken out.

XQ. 617. That examination showed the earnings and profits of the Farbwerke-Hoechst Company for a period of five years, did it not?

A. I assume that to be true.

XQ. 618. It was a very exhaustive examination made by Wolfe & Company, was it not?

A. Very.

XQ. 619. That report was made to you, was it not?

A. Yes, sir.

XQ. 620. Did you familiarize yourself with the report?

A. I did at the time.

XQ. 621. According to the report of Mr. Palmer, which is in evidence, as is also this portion of it, filed as an exhibit with the answer I think it shows that the earnings of that business were very large.

Mr. Kresel: Which business?

Mr. Anderson: Of the Farbwerke-Hoechst or Metz Company.

Mr. Kresel: I doubt whether there is anything in the report about that.

Mr. Anderson: I think it shows that. I can not remember all of them.

XQ. 621. (Continued.) Anyhow whatever the earnings were, they were shown by that report, were they not?

A. Undoubtedly. He made up a whole new set of books and set of everything.

XQ. 622. Take the Badische Company. Who represented that in New York—in America?

A. Kuttroff, Pickardt & Company. You do not mean the lawyers?

XQ. 623. No, the agents.

A. Kuttroff, Pickardt & Company.

XQ. 624. They had been for a number of years the representatives of the Badische Compony, had they not?

A. They had.

XQ. 625. You had a very exhaustive examination made of their records and ther accounts?

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A. Very.

XQ. 626. They did not have any plant in the United States, did they?

A. No, an assembling and mixing plant; down on Broadway, a warehouse.

XQ. 627. Just a warehouse?

A. Yes.

XQ. 628. They were merely distributing agents in the United States, and importers?

A. Yes, sir.

XQ. 629. That is all?

A. Yes, sir.

XQ. 630. They exported to a large extent dyestuffs, did they not?

A. Yes, sir, mainly, I think.

XQ. 631. Mr. Palmer in his report states that the company had been selling for the German house for years high grade indanthrene dyes which it received from the German house at fixed prices and he did not include the sums described as royalties. Their business was largely in that class of dyes as I understand it, like indanthrene dyes?

A. I think a general business.

XQ. 632. They handled all the Badische business in this country?

A. Yes, they had a full line.

XQ. 633. They were very large importers of dyestuffs?

A. Oh yes.

XQ. 634. Do you know whether they were largely patented dyes, or can you say?

A. Not a great proportion of them were patented, probably. The indigo is the largest, and then sulphur colors, and they were not patented.

XQ. 635. They were at that time, were they not?

A. No.

XQ. 636. The indigo had expired?

A. I think the indigo had expired, but I would not be certain of that.

XQ. 637. Had the indanthrene patents expired?

A. No.

XQ. 638. They were still in existence?

A. They were, I think. I know they were.

XQ. 639. As a matter of fact, they were assigned to the Chemical Foundation?

A. Yes.

XQ. 640. And you have licensed them today?

A. Yes.

XQ. 641. Did not the reports in that instance show there were very large earnings which in fact had been charged up, whether rightly or wrongly, to royalties?

A. I would have to refer to that report.

XQ. 642. I refresh your memory by reading from Mr. Palmer's report: "During the years 1915 and 1916 the sum of $701,944.34 was credited on the books of the German house and subsequently remitted under the head of indanthrene royalties." As far as you know that was true, was it not?

A. I do not think it was true. I think it was the means of getting the profits of this concern back——

XQ. 643. Well, I mean it was credited.

Mr. Kresel: The witness had not finished his answer.

XQ. 644. All right, but you do think it was true, as a way of getting the money back to Germany?

A. Yes, sir.

XQ. 645. But the statement that it was credited to indanthrene royalties on the books is a correct statement in Mr. Palmer's report, is it not?

A. If it is in Mr. Palmer's report, it is correct.

XQ. 646. You believe everything that is stated in that report as true, don't you?

A. I think everything is correctly stated.

XQ. 647. "In like manner, in 1914, the sum of $477,100 was credited and remitted ostensibly as a return of advances made years before by the German house for expenses of the New York concern." Do you recall that element

A. I remember that those charges were made there on the books, sending all the earnings of the New York house back to Germany, and were urged by us as a demonstration that this was a part of the Home Office and not an independent American concern.

XQ. 648. I am not questioning that that was the fact at all. All I am trying to get at is that these figures did show on the books, as you had them investigated, as part of the profits of the business?

A. In one place on the books. Whether the rest of the books contradicted it or not I do not know. The whole of the statement of Kuttroff, Pickardt & Company is published in full in one of those hearings.

XQ. 649. The report also shows there were very large profits on importations in the Deutschland?

A. The submarine, yes.

XQ. 650. All of that report was made to you, was it not?

A. Yes, sir.

XQ. 651. And by you transmitted to Mr. Palmer?

A. Yes, sir.

XQ. 652. The report on the Cassella Color Company was also made to you, was it?

A. Yes, sir.

XQ. 653. The report in the Roessler & Hasslacher Company and subsidiaries?

A. Made to Mr. Choate.

XQ. 654. I mean you were the Chief of that division?

A. Yes. I mean I did not pay the close personal attention to that one that I did the other three. But I did go over it, of course.

Mr. Kresel: May I say that I am told the Roessler and Hasslacher concern is not a dye concern?

XQ. 655. I know it is not a dye concern, but it is one of the concerns mentioned in Mr. Palmer's report here, that is what I am getting at.

A. Yes.

XQ. 656. Do you know what became of their patents?

A. Why, I think—no, I do not.

XQ. 657. The Hasslacher concern had plants in this country, did it not?

A. Yes.

XQ. 658. And you do not know what became of their patents?

A. No, I do not.

XQ. 659. Merck & Company. There was a report made on Merck & Company to you?

A. Yes, sir.

XQ. 660. Was the property of Merck & Company ever sold, do you know?

A. I think it was.

XQ. 661. Do you know what became of the patents?

A. I do not think they had many patents. I don't know.

XQ. 662. The Kalle Color & Chemical Company—I supose that is it, though I do not know how to pronounce these names——

A. Yes, that is right.

XQ. 663. Do you recall that one?

A. Yes, sir.

XQ. 664. According to the figures which I have before me, which I will ask you if you recall, this company paid royalties amounting to $16,750 a year for three and a half years, aggregating $58,625, for the use of certain German patents. Do you recall that?

Mr. Kresel: Paid to whom, Colonel?

Mr. Anderson: Paid to the German owners of these patents.

A. No, I do not recall that. Before the war, you mean?

XQ. 665. Yes.

A. No, I do not.

XQ. 666. You do not recall it?

A. No, sir.

XQ. 667. And that they showed earnings of something like 200 per cent. in 1915 and 1916 on a $300,000 capital; do you recall that?

A. On imports?

XQ. 668. No, on their business.

A. They were solely imports.

XQ. 669. No, they had property in this country?

A. I do not know.

XQ. 670. Do you know what became of those patents?

A. The Kalle patents? I think they were with us. I am not positive.

XQ. 671. You think they were assigned to you?

A. I think so.

XQ. 672. To sum the matter up, as I understand it, you as Chief of the Bureau of Investigation, where you felt there was doubt as to the ownership of a property or the stock therein or an interest therein, would have a careful investigation made of that property?

A. I would have to have more than doubt. I would have to have something to go on when I went into a man's place.

XQ. 673. Then you would have an audit made to show the status of his books, his reports, and the conditions of his business. Is that true?

A. Not always. Sometimes I would go over the books myself—sometimes I would go through them myself.

XQ. 674. But you would satisfy yourself as to the situation?

A. Certainly.

XQ. 675. And where you thought there was any German interest, or before you seized a property, you would make a careful audit and investigation, isn't that true?

A. Where they denied German ownership, as they did in this case.

XQ. 676. Speaking not only of that particular period, but later as Alien Property Custodian, when you handled the whole matter, in the event that property was seized, before you sold it, a complete audit for five years was made, was it not?

A. It was in some cases generally, before we sold it.

XQ. 677. Yes?

A. Oh, yes, a complete audit was made.

XQ. 678. A complete audit for five years was made?

A. Yes, sir.

XQ. 679. And then you also had an appraisal of the property made?

A. Yes, sir.

XQ. 680. And then you got out a prospectus showing the results of the audit for five years, and the values of the appraisals, would you not?

A. Yes, sir; that is, we would have an appraisal of physical property.

XQ. 681. Did you not have an appraisal of the whole property?

A. We could not appraise intangibles. We would have one of those appraisal companies go through a factory or anything of that kind.

XQ. 682. Would you not appraise good-will as one of the items of the business?

A. I do not think we ever appraised good-will.

XQ. 683. Would you not appraise the going concern value?

A. The what?

XQ. 684. The going concern value?

A. I do not think we did. I am not sure. I think it was a physical appraisal.

XQ. 685. You think it was just a physical appraisal?

A. I think so, with the balance sheet showing the profits.

XQ. 686. What was the reason for showing the profits for five years if you do not want to show the going concern value?

A. Then the purchaser could make up his own mind as to the good-will.

XQ. 687. You haven't any of those appraisals with you, have you?

A. I have got them with me. I haven't got them all. Oh, no—the appraisals.

Mr. Kresel: We have got the prospectus.

A. (continued) The prospectuses we have.

Mr. Kresel: Here is one, Colonel. (Handing paper.)

XQ. 688. Now take the Cassella Color Company. You seized the patents in that case, did you not, or rather, the Alien Property Custodian seized them?

A. Yes, sir.

XQ. 689. What became of them?

A. They were sold to us.

XQ. 690. They were sold to you?

A. Yes, sir.

XQ. 691. Did you have a full report made on that company before their patents were seized?

A. The company was gone.

XQ. 692. It was?

A. Yes there was nothing left but the signs.

XQ. 693. But you seized the patents?

A. Yes, sir.

XQ. 694. And sold them to The Chemical Foundation?

A. Yes, sir.

XQ. 695. At page 100 of the Answer, from Mr. Palmer's report, I read the following, speaking of the enactment of the amendment of November 4th to the Trading with the Enemy Act:

> "Until the enactment of this amendment it had not been possible to take over German patents. These patents, as had been already indicated formed a collossal obstacle to the development of the American dyestuff industry."

Mr. Garvan, do you agree to that statement that they formed a colossal obstacle in the development of the dyestuffs industry?

A. Certainly.

XQ. 696. What proportion of the dye business in the United States did those patents cover?

A. Between four and five per cent.

XQ. 697. Was it an essential portion of the business?

A. The essential portion.

XQ. 698. It was the essential portion of the business?

A. Yes, sir, if you mean the complete dye industry.

XQ. 699. It furnished the key to the business, did it?

A. Well, if you are not able to furnish the whole line, you won't very shortly be allowed to furnish any.

XQ. 700. Now hold on. I know you do not want to argue with me.

XQ. 717. Obtaining the licenses.

A. No.

XQ. 718. None whatever?

A. No.

XQ. 719. Mr. Garvan, I read into the record the other day from the Hearings before the Finance Committee of the Senate on Bill H. R. 8078, pamphlet entitled "Dyestuffs," with which you are familiar, I know.

A. Yes.

XQ. 720. At page 520 after reciting the sale of the Bayer Company and the incidents connected with that sale, you said, speaking of prospective purchasers or possible purchasers of these patents if they were sold:

> "They could go ahead and buy these other patents for very little and have a monopoly for sure, and then they could just sit back and collect a royalty from the Germans after the war. They did not have to manufacture anything; they did not have to go into business."

That would apply only to the product patents, would it not? In other words, royalties at the port can only be collected on product patents; isn't that true?

A. They could be collected on process patents if we could prove the process; but you can not prove the process.

XQ. 721. Then you go on to say:

> "So I conceived the idea of forming the Chemical Foundation and putting all these patents into a quasipublic corporation, which would develop them and give them to chemical companies throughout the country. The way the salvarsan had worked out encouraged us. Mr. Metz was in fear of a monopoly here, he was not afraid of I. G. in Germany. The best answer is the Chemical Foundation. We have licensed six people

to make salvarsan. Mr. Metz is the most successful one. We have given it to Squibbs, and three, I think, altogether."

Now I am a little curious to know who did conceive the idea of The Chemical Foundation. Were you right in that statement or not?

A. I think as it exists now, as to the form of the company, I think I am to blame.

XQ. 722. You claim to be the parent?

A. I do not claim. Mr. Palmer told me to go ahead and set up a scheme which would accomplish what he wanted to accomplish, and between Mr. Choate and myself we worked it out. He says I am to blame.

Mr. Kresel: I did not get that last. He says what?

The Witness: He says I am the one that originally thought of it.

XQ. 723. Who says that?

A. Mr. Choate. But between us it was worked out under Mr. Palmer's direction.

XQ. 724. You, then, are the person who conceived the Chemical Foundation, the defendant here, as we have it?

A. Well, I have explained it. You can——

XQ. 725. I want the answer.

A. The way it happened was that Mr. Palmer told us to get up some plan——

XQ. 726. Hold on; would you mind just answering

A. You can answer it the way—you can say "the scheme of The Chemical Foundation." I invented the name "Chemical Foundation." Mr. Palmer directed Mr. Choate and me to work on the idea.

XQ. 727. Put it this way, then: "So I conceived the idea of forming the Chemical Foundation." Did you conceive it or did somebody else conceive it?

A. Well, I have told you the way it was. I will admit I conceived it, if you will allow the circumstances under which it happened.

XQ. 728. All right. Mr. Garvan, about what time did this idea develop in your mind?

A. You will have to tell me, Colonel, what you mean by "this idea."

XQ. 729. I mean when did it become a definite idea in your mind?

A. The first conversation about it was one or two days after the Bayer sale, between myself and Mr. Palmer. From that time it was an evolution until the time it took its final, present form.

XQ. 730. Your first conversation, you say, was between you and Mr. Palmer. Whom else did you talk to about it?

A. Mr. Choate, Mr. Hoguet, each and every one in the industry that I met from day to day.

XQ. 731. Can you not name some of them?

A. Yes, Mr. Poucher; I know Mr. Wigglesworth, Mr. Merz, Mr. Jeffcott.

XQ. 732. Who was Mr. Jeffcott?

A. Jeffcott was the Calco.

XQ. 733. Calco Chemical Company?

A. Yes. Merz of Heller & Merz.

XQ. 734. What were Mr. Poucher's connections at that time?

A. Poucher was with the duPont Company.

XQ. 735. Yes?

A. Mr. Matheson.

XQ. 736. Whom was he representing?

A. I think we talked it over with Metz. Metz was in and out all the time. Any one of them that was around in New York or that was available. Mr. Cashman of the Grasselli. I do not know who else. Mr. Howard, I think, of the Merrimac, was quite active.

XQ. 737. When did these conversations with the gentlemen you mention, that you speak of as the industry, begin, and about when did they take place? I know you can not state the exact date, but as near as you can locate it?

A. I would assume not many of them took place before Christmas. That was December 12th, and I went down to Washington shortly after that, and by the time I got back was probably the 20th. So I assume it was not much before Christmas.

XQ. 738. Then that was during January?

A. I would say yes.

XQ. 739. These conversations were going on in regard to the organization of a company to take over all German dye and chemical patents; is that the idea?

A. Yes.

XQ. 740. That was the general idea, to take them all over?

A. Yes.

XQ. 741. Were you present at the conference in Washington on the 27th of January, 1919?

A. I was not.

XQ. 742. Did you read the minutes of that conference?

A. I have.

XQ. 743. Did you read them at that time?

A. I assume so. I have no recollection.

XQ. 744. You were really working on the matter, so you assume you read the minutes; is that right?

A. I assume so.

XQ. 745. Now I am going to get you to identify for me the persons present at that conference as having been down there. Mr. Mansfield Ferry; just say who he was?

A. He was a lawyer connected with the Alien Property Custodian.

XQ. 746. He was general counsel of the Alien Property Custodian, was he not?

A. Whether he was at that time or a little later, I do not know.

XQ. 747. Mr. F. J. Horne?

A. He was Director of the Bureau of Trusts.

By Mr. Kresel:

XQ. 748. Of the Alien Property Custodian?

A. Of the Alien Property Custodian.

By Mr. Anderson:

XQ. 749. Mr. W. T. Gordon?

A. He was the young man in the Patent Division; seen here.

XQ. 750. He was a lawyer?

A. Yes, sir.

XQ. 751. Mr. Joseph H. Choate, Jr.?

A. Mr. Joseph H. Choate, Jr., was the gentleman in the Bureau of Investigation who had charge of the investigation of chemical matters.

XQ. 752. He was associated with your office?

A. Associated with our office.

XQ. 753. Ramsay Hoguet?

A. Ramsay Hoguet was the patent counsel of the Alien Property Custodian's office.

XQ. 754. On the minutes of that meeting, which I hold before me, is the heading: "Committee of American Dyes Institute."

A. Yes.

XQ. 755. Mr. M. R. Poucher. He was the representative of the duPont Company, you said, was he not?

A. One of the representatives of the duPont Company.

XQ. 756. Mr. Henry Wigglesworth. Who was he?

A. One of the representatives of the General Chemical Company.

XQ. 757. The General Chemical Company is a subsidiary of the National Aniline, is it not?

A. No, it is a subsidiary of the Allied.

XQ. 757. (Continued.) Allied Chemical Company?

A. An associate company with the General Chemical.

XQ. 758. August Merz?

A. Heller & Merz.

XQ. 759. They are chemical people?

A. Yes, sir; dye people.

XQ. 760. Dye people, yes. R. C. Jeffcott?

A. Calco Chemical Company.

XQ. 761. B. C Hesse?

A. B. C. Hesse is of the General Chemical Company; chemist.

XQ. 762. F. E. Barrows?

A. F. E. Barrows was a patent lawyer with one of those companies.

XQ. 763. It appears in evidence that he was a patent lawyer of the National Aniline; is that right?

A. That is right.

XQ. 764. C. Protto?

A. He is the technical man for the duPont Production.

XQ. 765. And Judge Laffey?

A. Judge Laffey is the counsel of the duPonts.

XQ. 766. There has been introduced in evidence here a letter from Mr. Hoguet, I think, to Mr. Palmer (I can not put my hand on it), referring to the charter of the Chemical Foundation in course of preparation, which I think was dated the 3d of February, 1919. Do you know anything about the preparation of that charter?

A. No. You mean whether I worked on the charter?

XQ. 767. No; I mean do you know anything about it?

A. I know something in general.

XQ. 768. I mean of your own knowledge, Mr. Garvan, speaking as a witness now.

A. No.

XQ. 769. When you stated this morning that Judge Gray and Judge Ingraham had something to do with it, you were speaking from hearsay?

A. No; I knew Judge Ingraham had something to do with it.

XQ. 770. How did you know that?

A. Because I was in daily touch with him in the New York office.

XQ. 771. So you do know that Judge Ingraham had something to do with the preparation of the charter?

A. But I did not know that he had so much to do with the charter as with the trust agreement.

XQ. 772. The trust agreement was prepared much later, was it not?

A. Not much later.

XQ. 773. Mr. Garvan, do you not know as a matter of fact that that charter was drawn by Mr. Prindle, counsel of the duPont Company?

A. I do not.

XQ. 774. You do not know that?

A. No.

XQ. 775. Had you had any conferences with anybody about the seizure of German patents prior to the sale of the Bayer Company?

A. Yes.

XQ. 776. State with whom?

A. Mr. Choate.

XQ. 777. Anybody else?

A. Not that I remember now. I know I did constantly discuss it with chemical men and with the dye men.

XQ. 778. You did constantly discuss it with the dye men?

A. Yes.

XQ. 779. In one of these books in evidence, to which I will refer if counsel desires, but I can not remember it, either you or Mr. Choate testified and Mr. Palmer states in his report that when the matter was suggested, it was enthusiastically received by the dye industry.

MR. KRESEL: What was suggested?

MR. ANDERSON: The matter of seizing and selling these patents, the plan. Well, I better get the information.

MR. KRESEL: I think you better read what you refer to. I do not recall that statement.

MR. ANDERSON: It will take a little time to find it; there are so many of these papers.

MR. KRESEL: I think I can locate what you have in mind. I think this is what you have reference to, Colonel, page 101. You better read the whole paragraph.

XQ. 779 (Continued.) I will read the whole paragraph as counsel suggests, from the answer, page 101, report of Mr. Palmer:

> "The idea was accordingly conceived that if the German chemical patents could be placed in the hands of any American institution strong enough to protect them, a real obstacle might be opposed to German importation after the war, and at the same time the American industry might be freed from the prohibition enforced by the patents against the manufacture of the most valuable dyestuffs. Accordingly, these considerations were laid before various associations of chemical manufacturers, notably the Dye Institute and the American Manufacturing Chemists' Association. The suggestion was met with an instantaneous and enthusiastic approval, and as a result a corporation has been organized to be known as The Chemical Foundation (Inc.)," and so forth.

That is in accordance with your understanding of the situation, is it?

A. It was always enthusiastically received by the associations, because the little men did not have to pay anything and the patents were there waiting for them.

Mr. Anderson: I will ask to strike that out.

The Court: Let the answer be stricken out and the question repeated.

The Witness: In general, that is true.

XQ. 779. (Continued.) That is your understanding?

A. Yes.

XQ. 780. You said you had discussions constantly prior to the sale of the Bayer Company, with various representatives of the industry, about seizing these German patents. Could you name some of those?

A. No, I could not, because I cannot remember specific discussions. All I can remember is that Mr. Choate was constantly discussing the importance of these patents to our work for developing a general organic industry.

XQ. 781. You speak of your work for developing a general organic industry.

A. Yes.

XQ. 782. Would you define more definitely what you mean by that?

A. Why, we very early realized that organic chemistry in general depends for its progress upon having a complete dye industry, because that is the graduating school for organic chemists. They learn more organic chemistry in a dye factory in one year than they would learn in any other business in their natural lives, because it is so much more used.

After seeing the power and the position that these Germans held over us here, we were enthusiastic for freeing this country from that dependence which it had been suffering under. No one could help being, to read the literature and the correspondence and go through daily what we were going through in our experience with them.

XQ. 783. And the thing that you were working for was the development of an organic chemical industry in this country?

A. No, that was only the means to the end. The end was to free this country from the yoke of the Germans.

XQ. 784. First you wanted to free the country from the yoke of the Germans, and then what followed that as your next step?

A. Then freedom for all of us and safety for our people and the development of medicine under a civilized people.

XQ. 785. And you wanted to develop the organic chemistry in the hands of the civilized people?

A. I did.

XQ. 786. And your idea of the way to do that—I want to get your outlook on the situation——

A. Certainly.

XQ. 786. (Continuing.)—was to seize these German patents and turn them over to such a corporation as the Chemical Foundation, Inc.; is that the idea?

A. To seize these German patents and to put them in such a position that every American would get a chance to develop them free from the power of constraint or restraint by Germany.

XQ. 787. And that was the subject matter and aim and object of your conferences with the dyestuffs people in January and preceding that, the time you have spoken of, your various talks and so forth?

A. Absolutely.

XQ. 788. That was your object?

A. Absolutely.

XQ. 789. And that was your object in conceiving and directing, in co-operation with Mr. Palmer, of course, the organization of the Chemical Foundation, Inc.?

A. Yes, sir.

XQ. 790. And that was your object in seizing and selling these patents to the Chemical Foundation, Inc.?

A. Yes, sir.

XQ. 791. Now, Mr. Garvan, I read you from your testimony awhile since, and I will not repeat it unless you desire it—if you do, I will—the statement that the sale of these patents was consummated on the 10th day of April, 1919. Was that statement correct?

A. The sale was completed before I went in there. If you call the signing of the assignment the consummation, it is. But I regarded the contract as made before I became Alien Property Custodian.

XQ. 792. Mr. Garvan, you are a lawyer, are you not?

A. Yes.

XQ. 793. Don't you know that the Government of the United States can not, and no officer of the United States can, make a verbal contract binding upon the Government?

A. No, I do not know that.

XQ. 794. You did not know that?

A. No.

XQ. 795. Who made the contract for the sale of these patents?

A. A. Mitchell Palmer.

XQ. 796. Who represented the Chemical Foundation in the negotiation?

A. The committee of the Dyes Institute and the other chemical companies that were then in New York.

XQ. 797. Name them, please.

A. I would say Mr. Merz, Mr. Poucher, Mr. Jeffcott, Mr. Wigglesworth—I don't know—and whoever they represented.

XQ. 798. You have identified these gentlemen, as to who they represented. They are the same gentlemen that you identified just now as representing certain dyestuff companies?

A. No, no, no. They were the committee acting for the American chemical industry and——

XQ. 799. A committee of what organization?

Mr. Kresel: You both talk at the same time. Won't you please let him finish, Colonel?

Mr. Anderson: I will with the greatest pleasure if he will do me the equal favor of just stopping when he has responded to my question. I know he wants to.

XQ. 800. I am not being unpleasant about it, Mr. Garvan; I am trying to be as pleasant as I can. They were a committee of what organization?

A. Of both the manufacturing chemists' organization and of the Dyes Institute and of any other chemical industries that wished to join with them.

XQ. 801. I believe you testified this morning that you had a conference with these gentlemen in your office in New York, did you not?

A. Well, there were fifteen or twenty at that conference. Those I can not remember.

XQ. 802. You can not remember all of them?

A. No.

XQ. 803. And you said at that conference they made a proposition to buy all these patents at $250,000?

A. There was general discussion about Mr. Palmer's proposition. I do not say they. I did not say they made the proposition.

XQ. 804. I beg your pardon.

A. If they made the proposition, it was a counter-proposition to ours. We were the ones who called them there and put the proposition to them.

XQ. 805. Will you watch my question and just answer it?

A. Certainly.

XQ. 806. Because I do not want to move to strike out. You testified this morning that you had this conference with these gentlemen?

A. Which conference are you talking about?

XQ. 807. I am speaking of a conference at Forty-second Street, New York.

A. Yes.

XQ. 808. And that they made a proposition of $250,000, and you went down to Mr. Palmer and communicated it to him, and that he said it was satisfactory, and you went back and advised them that it was satisfactory?

A. That is true.

XQ. 809. Was that right?

A. Yes.

XQ. 810. Who were the "they" that made that proposition?

A. All this whole group.

XQ. 811. Who specifically spoke for them in making the proposition?

A. I can not tell you that.

XQ. 812. Whom did you represent in that deal?

A. I represented the Alien Property Custodian.

XQ. 813. That was before the organization of the Chemical Foundation, was it?

A. I think so. I think it was.

XQ. 814. Was it prior to the fifteenth day of February, 1919?

A. It was about that time. I would not be able to say.

XQ. 815. Have you any minutes of that meeting?

A. No.

XQ. 816. Or any letters or memoranda on the subject?

A. No.

XQ. 817. Nothing at all?

A. No.

XQ. 818. Mr. Garvan, you have testified in this matter and been asked about the organization of the Chemical Foundation and the sale of these patents no less than four or five times, I think you said, have you not?

A. Three times.

XQ. 819. Three times?

A. I think that is all.

XQ. 820. You have been very closely questioned about the whole transaction, have you not?

A. Yes, sir.

XQ. 821. Can you now or can you before the close of this case go through your testimony and point to any place where you have ever mentioned that there was any such conference, any such proposition made or any such transaction as you have indicated in your evidence this morning?

A. My testimony is there.

XQ. 822. Well, are you willing to admit that there is no reference to any such thing?

A. No, I am not any such thing.

XQ. 823. Then will you look up and see if you can find any such reference, and let me have it?

A. I certainly will.

XQ. 824. Then you regarded this sale as completely consummated prior to the 16th day of February, 1919?

A. If you will tell me what you mean by "consummated."

XQ. 825. I am asking you. You have used the expression.

A. The facts are there. The bargain was made and closed before I became Alien Property Custodian.

XQ. 826. How many patents did you sell?

A. Whatever there were; whatever the search would reveal in the Patent Office, relating to the upbuilding of an organic chemical industry.

XQ. 827. No matter what there were?

A. No matter what there were.

XQ. 828. At that time the search had just been begun, really, had it not?

A. I did not have charge of the search. I could not tell you just how far it had progressed.

XQ. 829. You did not know how far it had progressed?

A. No.

XQ. 830. You had no idea how many patents would be involved in the sale?

A. Well, we had a general idea.

XQ. 831. How did you get the general idea if you had not made a search?

A. I think from the list of the Federal Trade Commission.

XQ. 832. You had a list of the Federal Trade Commission?

A. Yes, I think so.

XQ. 833. But you used whatever there was?

A. Whatever there was.

XQ. 834. And whatever the search might develop?

A. Yes.

XQ. 835. As relating to the chemical and dyestuffs industry of the United States, you sold in a lump sum, for the sum of $250,000 at that time?

A. Yes.

XQ. 836. And you agreed to do it at a private sale?

A. Yes, sir.

XQ. 837. And that was agreed to at this conference in New York?

A. Yes, sir.

XQ. 838. How did you arrive at the price of $250,000?

A. By discussion of all the elements involved.

XQ. 839. Tell us some of them.

A. Well, in the first place there was the fact that none of these patents carried any know-how with them, that unless——

XQ. 840. Let us take up that one. That is the first one.

A. Wait a minute.

XQ. 841. No, hold on, I want you to tell one at a time, and then you can take the next one.

A. Can I not finish the answer?

THE COURT: Has he finished the answer to your question?

MR. ANDERSON: No. I will withdraw the question and put it this way:

XQ. 842. Tell us one of the considerations that was discussed?

A. The fact that the patents were worthless unless some business concerns put up the money to build a plant and make the research to find out how to work them.

XQ. 843. I see.

A. That of themselves they would not help you —but very little.

XQ. 844. Who suggested that idea?

A. I think we all recognized that idea—our own reading and studying and experience.

XQ. 845. You are not a patent expert, are you?

A. No.

XQ. 846. Mr. Choate had never been a patent expert before he studied this subject?

A. No.

XQ. 847. Can't you suggest who raised the question of their being in that situation—the patents?

A. I think we all raised that.

XQ. 848. You all raised it?

A. Yes, everybody knew that.

XQ. 849. Well, that is one thing that you all agreed on?

A. Yes.

XQ. 850. How about those licenses by the Federal Trade Commission?

A. None of them had been worked, except that they had been re-discovered.

XQ. 851. As a matter of fact, were they not then yielding royalties?

A. Yes, but there had been hundreds and hundreds of thousands of dollars spent on finding out how to work them. Look up how much the Government spent on salvarsan, take how much the Schambergs spent, take Metz going to Europe for four months and getting the know-how and could not do it when he came back.

XQ. 852. Yet the fact was there were 128 of those patents, of the most important of them, or more important of them, licensed, and then producing revenue under the Federal Trade Commission licenses, and being used in the United States; is that not true?

A. I do not know how many were being used or how many were being licensed.

XQ. 853. Did you take any trouble to find out how many were being licensed?

A. I knew there were a number of them licensed, and I know nine out of ten of those licenses were not——

XQ. 854. You knew a number of them were licensed?

A. Yes.

XQ. 855. Then just stop there. Did you take the trouble to find out what was the revenue being yielded by those licenses under the Federal Trade Commission?

A. No, I did not.

XQ. 856. You did not?

A. No, I did not.

XQ. 857. You did not refer to it. Was it not true also that some considerable number of those patents were then being employed in industry in the United States under contracts which had been seized by the Alien Property Custodian and were then in his possession?

A. I think there were some of those.

XQ. 858. Did you take the trouble to find out what these contracts were yielding in the way of payments, licenses or revenues?

A. I did not. I was not in charge of the Alien Property Custodian's office in Washington.

XQ. 859. I know, but did you take the trouble to find out?

A. No.

XQ. 860. So much for the know-how. Tell us what was the next consideration you discussed; just take one.

A. The next one was that we had to give non-exclusive licenses to everybody, whether he was a stockholder or not in the corporation.

XQ. 861. You had to give non-exclusive licenses?

A. To everybody. That is, every American citizen.

XQ. 862. You had to give non-exclusive licenses to every American citizen?

A. Yes, sir.

XQ. 863. I will ask you was this point discussed, that under non-exclusive licenses at a reasonable royalty the license income from the patents might be increased instead of decreased; was that considered?

A. No, sir.

XQ. 864. That was not considered at all?

A. No, sir.

XQ. 865. Nobody made that suggestion?

A. No, sir. It would have been talked down if they had, certainly. There was a very limited consumption of dyes in the country. Now, just as quick as you make non-exclusive licenses you divide up a limited market. You are talking about an unlimited market where you can increase the consumption, but you can only increase the consumption in America practically in proportion as the population increases.

XQ. 866. Has not America a very considerable export trade?

A. Since Germany got free she had none until the occupation of the Ruhr. Germany cut it off like that (gesturing).

XQ. 867. Do you mean to say America had no export textile trade at the time?

A. I thought you meant dye and chemical trade.

XQ. 868. Does not dye go into the textile business?

A. Oh, yes.

XQ. 869. And therefore the export trade would be considered as well as the domestic trade as affecting the market for dyes in America, would it not?

A. No, not the export of textiles.

XQ. 870. It would not be at all?

A. No. Our export of textiles is very small.

XQ. 871. Do you know what our export of textiles is in value per annum?

A. No, but I do not believe it is very large.

XQ. 872. But you did not consider that element at all, did you?

A. No, no.

XQ. 873. What is the next element you considered in arriving at the value of these patents?

A. That nobody who was going to put their money in could get more than six per cent. on it.

XQ. 874. I understood that the main purpose here was the development of American industry?

A. It was.

XQ. 875. For patriotic purposes?

A. It was.

XQ. 876. And the people who underwrote this scheme were all interested in that industry, were they not?

A. No, sir. Who underwrote it? Yes, sir.

XQ. 877. That is what I thought.

A. I beg your pardon. I thought you meant stockholders.

XQ. 878. They all underwrote it and they were interested in the development of the industry and that was the purpose you all had in view, was it not?

A. Yes, sir.

XQ. 879. So that they would not invest their money in the development of their own industry on a a six per cent. basis; you thought that was a very serious handicap to this business?

A. Why, certainly; nobody goes into business on that basis.

XQ. 880. What was the next consideration that influenced you in fixing the value?

A. Well, that you had to give a license to the Government.

XQ. 881. Did you have to give a license to the Government?

A. We did.

XQ. 882. Absolutely obligated to give a license to the Government?

A. Absolutely obligated to give a license to the Government.

XQ. 883. And you agreed to this price?

A. There were other elements, I think.

XQ. 884. Well, take up the next one. Let us take the next one.

A. They had to trustee their stock for seventeen years.

XQ. 885. All their stock?

A. Yes.

XQ. 886. Or only their common stock?

A. Well, common stock.

XQ. 887. Now, is there any other consideration that entered into fixing this price?

A. Those are the main ones.

XQ. 888. Those are all that you can now recall?

A. Yes.

XQ. 889. And the Chemical Foundation was incorporated in accordance with the agreement thus made, was it?

A. Yes, sir.

XQ. 890. And you embodied the agreement that you made in the charter of the Chemical Foundation to the end that it would be a contract binding on the company and on everybody, was that the idea?

A. Yes, sir.

XQ. 891. And the price that you fixed, or that you and Mr. Palmer fixed for these patents, was founded upon the ideas and the purposes and the provisions which were then embodied in this charter; is that not true?

MR. KRESEL: Colonel, please don't say that he fixed it.

A. I don't know whether all those things are specifically embodied in the charter. The charter speaks for itself. I can not right now carry in my mind everything that is in the charter.

XQ. 892. Very good. I will let it speak for itself. That charter was in course of preparation by Mr. Hoguet; don't you know that?

A. No, I think Mr. Choate had more to do with that charter than anybody.

XQ. 893. Mr. Choate?

A. I think so.

XQ. 894. Mr. Garvan, do you not recall that Mr.

Choate testified before one of the committees in your presence that he had nothing to do with it?

A. No, I don't remember that. I don't think he testified to that.

XQ. 895. I will not stop to get it now, because I do not think it is material. After you had these negotiations that you have described to sell all these patents and you reported to Mr. Palmer and reported back to them that it was agreeable to everybody, what was your next connection with this matter?

A. I do not understand what you mean.

XQ. 896. I mean, what did you do next about it after that conference about the 15th of February that you state was held and when you say there was an agreement made; what did you do then?

A. I do not know what I did then.

XQ. 897. You do not remember what you did then? Well, you remember that you were elected a director of the corporation on the third day of March, 1919, do you not?

A. Yes, I think so.

XQ. 898. That was the day before you became Alien Property Custodian?

A. Yes, the incorporators met here that day.

XQ. 899. You do remember that the corporation was incorporated on the 19th day of February, 1919?

A. Yes, sir.

XQ. 900. You do remember that you became Alien Property Custodian on the 4th. You have testified to that?

A. Yes.

XQ. 901. And that on the 8th you became president of the Chemical Foundation by a formal election, did you not?

A. I knew we were elected directors on the 8th and I guess they did have a meeting on the same day and elected the officers. I think so.

XQ. 902. And you do remember that on the 8th——

A. I meant that we qualified as directors. We were elected on the 3d.

XQ. 903. You do remember that at the same time Mr. Choate was appointed general counsel of this company, do you not?

A. Well, it was at that meeting or very shortly after. I don't know.

XQ. 904. If the minutes show at that meeting, that is correct?

A. Whatever it is.

XQ. 905. And that Mr. Hoguet was appointed patent counsel for the Chemical Foundation?

A. Yes, sir.

XQ. 906. That Mr. Corbett became the secretary at that time?

A. Secretary and treasurer, I think.

XQ. 907. Mr. Corbett had been vice-president of the Central Union Trust Company?

A. Was then.

XQ. 908. And Colonel Douglas I. McKay became the vice-president of the Chemical Foundation?

A. Yes, sir.

XQ. 909. And you do remember that on the 10th day of April you conveyed the patents described in the first and large assignment here and other rights to the Chemical Foundation and at that time you were president, were you not?

A. Yes, sir.

THE COURT: Do counsel want to go on for another hour, or do you want to stop now?

MR. ANDERSON: If your Honor please, if it is agreeable to counsel, I would like to stop because I have been suffering intensely with a headache all day.

Mr. Kresel: I have no objection, your Honor. I am quite willing.

The Court: We will renew the proceedings in this case on Thursday morning at 8.30 Standard time.

(Whereupon, at 3.00 o'clock P. M., an adjournment was taken until Thursday, July 5, 1923, at 8.30 o'clock A. M. Eastern Standard time.)

TWENTY-FIRST DAY.

Wilmington, Delaware,
July 5, 1923, at 8.30 o'clock A. M.
Standard Time.

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Francis P. Garvan resumed the stand.

Cross-Examination (Continued).

By Mr. Anderson:

XQ. 910. Mr. Garvan, at the time of adjournment on Tuesday, I had been asking you as to the circumstances surrounding the original sale of patents and the organization of The Chemical Foundation. There are one or two questions that I would like to ask this morning as to another phase which I had practically covered. You recall that I asked you as to the investigations and reports on the properties of the Badische Company, the Farbwerke-Hoechst Company, Cassella Color Company, and various other companies which I named and are mentioned in the part of Mr. Palmer's report filed as an exhibit with the answer in this case?

A. Yes, sir.

XQ. 911. I do not recall whether you testified or not as to whether all these properties were seized by the Alien Property Custodian prior to his report in February, 1919. Do you recall

A. Badische, Hoechst?

XQ. 912. Cassella?

A. Cassella.

XQ. 913. Kalle Color Company?

A. It would be my impression that they were.

XQ. 914. They were all seized. As I understood, none of these companies had any property or plant in the United States with the exception of the Bayer and possibly the Roessler-Hasslacher Company.

A. Oh, the Roessler-Hasslacher Company had big plants.

XQ. 915. I mean, the Bayer Company and the Roessler-Hasslacher Company had plants; the others were merely selling agencies?

A. Selling agencies.

XQ. 916. And distributing agencies for the German manufacturers?

A. Of course, Mr. Metz had some other companies in which he was interested.

XQ. 917. Yes; but the Farbwerke-Hoechst was merely making salvarsan?

A. There were four or five of those companies, Colonel. That company, I think, was making salvarsan.

XQ. 918. Yes; I want to get that straight.

A. I think that is so. I am not sure whether it was being made under that name or the Metz Laboratories. I am not positive.

XQ. 919. Subject to the possible modification as to Mr. Metz's plants, as to which I think he testified, with the exception of Bayer and Roessler-Hasslacher, those institutions were merely agencies, either individuals, partnerships, or domestic corporations, acting as agencies for the German firms in the selling of their products; is that true?

A. Yes.

XQ. 920. The Kuttroff-Pickhardt Company was the agent of the Badische Company, was it not?

A. Yes, sir.

XQ. 921. And they were large importers of dyestuffs, were they not?

A. Very large, yes.

XQ. 922. And also of medicinal and pharmaceutical properties, were they not?

A. I am not sure how far the Badische Company went into the medicinals. Not very far, I don't think. They may have, but I don't think so. The Bayer was the principal medicinal concern.

XQ. 923. But they were not manufacturers in any sense in this country?

A. No, sir.

XQ. 924. On Tuesday, I also asked you in regard to the method of making up reports, appraisals, advertisements and sales of these properties seized by the Alien Property Custodian and you referred to the prospectus of the Bayer Company as an illustration of the method of sale. Can you identify that as one of the prospectuses of the Bayer Company?

A. Yes.

XQ. 925. And that, with such changes as were necessary to suit the individual case, was the usual method of selling these German properties?

A. Yes, sir.

Mr. Anderson: I would like to offer in evidence a paper which the witness has identified, being a prospectus for the sale of the stock of the

Bayer Company, Inc., and the Synthetic Patents Company, omitting from the document the photographs contained in the center thereof, to be identified as Plaintiff's Exhibit 612.

MR. KRESEL: No objection to that.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 612." (*See Exhibits, Vol. III, page 1449.*)

XQ. 926. Mr. Garvan, you stated that you personally appeared before the Advisory Sales Committee, as the record shows here, on the 14th of February, 1919, and presented to them the matter of the proposed sale of the German patents and trademarks through the organization of the Chemical Foundation, as described in this record?

A. Yes, sir.

XQ. 927. I would like you to state as clearly as you can just what you said to the Advisory Sales Committee?

A. Of course, it is very difficult for me. I will give you the substance of it. I have no record of what I said.

XQ. 928. As far as you can?

A. My recollection is that I told them—just preliminary to that, Colonel, I probably did not tell them so much about the Bayer. They were already familiar with it. The Bayer had passed through their hands, don't you see; had been sold and passed upon by them. The same may have been true of other companies, so I can not tell to what extent I went into the past history.

But I did explain our situation in the country in reference to organic chemistry and I did explain to them that the taking over of these patents was essential to insure freedom of that industry, which had been created by the war, of developing it to the extent where it would be able to protect itself in case of war.

XQ. 929. Would you mind me interrupting you? What do you mean by taking over?

A. I did not mean to say in case of war. I will strike that out.

XQ. 930. Do you mind my interrupting you to ask what you mean by "taking over"?

A. Of selling these patents, getting them into American hands, taking them from the Germans and putting them into American possession.

XQ. 931. All right, proceed.

A. I explained to them what it meant to our industries, what it meant to our National Defense and what it meant to our progress in medicine, and I stated to them that we had gone to the industry and asked the industry if they would get all elements together and become the purchaser of these patents under the terms and conditions which Mr. Palmer felt it necessary to lay down for the protection of the country; that I had done so and that they were willing to work along with us. I told them that we had discussed price with them, and I am not positive whether we had definitely come to our agreement as to the price, but that $250,000 seemed to be the price which was the nearest we could get at, what they were worth sold under those conditions and what the industry in view of the fact that they would have to put up more capital and defend them would be willing to raise.

I said the whole thing was dependent upon their willingness to become trustees, that the responsibility would be with them, there would have to be a nonprofit making thing and a thing of which they would assume the responsibility. That is as near as I can remember. You must remember I was in daily conference with this committee.

XQ. 932. What committee?

A. The Advisory Sales Committee, Judge Ingraham and Mr. Bannard and Mr. Dodge, but more Judge Ingraham than Mr. Bannard, were in constant communication. They gave up practically their whole time, particularly Mr. Bannard, to that war work. So that whether all the conversation was in the committee or afterwards, I do not know that they recommended that Judge Ingraham be asked to take care of the Trust Agreement and the responsibilities which they were to assume, and from that time on with us, they have of course been working.

XQ. 933. Then you had discussed the price of $250,000 prior to your meeting with the representatives of the industry on the 15th or 16th which you described on Tuesday?

A. Oh, yes, the price was discussed at all times.

XQ. 934. Can you remember when the price was first discussed?

A. No, I can not.

XQ. 935. Do you recall the minutes of the Executive Committee of the Dyes Institute, held on the 7th of February?

A. I read them before this trial started, but I have not read them since.

XQ. 936. Do you recall that in that report it was stated that Mr. Hoguet had suggested the price of $250,000?

A. I don't remember that, no. I would want to refresh my recollection on that.

XQ. 936a. Mr. Garvan, could you say who first suggested a price for these patents?

A. No, I could not.

XQ. 937. Could you say when the price was first suggested?

A. No, I could not say that.

XQ. 938. But the $250,000 figure was discussed prior to the 14th of February?

A. Yes, I am quite sure.

XQ. 939. You told us the conditions which were discussed as surrounding this sale at your conference with the members of the industry on about the 15th or 16th, at your office in New York, but you did not tell us how the price of $250,000 was arrived at. Could you tell me that?

A. That was arrived at out of the general negotiations.

XQ. 940. I know; but there must have been some way that $250,000 was fixed as distinguished from $100,000 or $500,000. Now, could you tell me how you fixed the sum of $250,000?

A. I think that that was the largest sum that we could get and the least we would accept, like all negotiations as to price.

XQ. 941. What were the elements that entered into it?

A. The elements that entered into it were, first, that the biggest companies already had a license from the Federal Trade Commission on the patents which they had found that they needed up to that time. The patents had been on the shelf for a year and a quarter, and both the bigger companies and some of the smaller companies had taken out licenses on all the patents that they knew about, that they felt they were going to use at that time. That was one of them.

XQ. 942. Who stated that fact?

A. Both the National and the duPonts stated that, that they had these licenses. That is only one, if you want me to finish my answer.

XQ. 943. Yes, all right.

A. Then, of course, there was the fact that with these patents there came no knowledge of how to work them. They had already been, or at least some of them had been long enough in the dye business to know——

XQ. 944. What they knew is not material. It is what they said.

A. Well, they said what they knew.

XQ. 945. All right.

A. That they had already been spending enormous amounts to discover how to make these vat dyes and these colors for which they had a license from the Federal Trade Commission and had been able to get nowhere so far.

XQ. 946. They had spent very large sums?

A. Very large sums of money.

Mr. Kresel: Wait a minute.

XQ. 947. When you said "they," whom did you mean?

Mr. Kresel: Pardon me, Colonel. Had you finished your answer, Mr. Garvan?

The Witness: Yes.

A. The Newport, Sherwin-Williams, Calco, du-Ponts, National Aniline.

XQ. 948. They had spent large sums in developing the dye business?

A. Well, in research, attempting to develop, yes, sir.

XQ. 949. At that time the dye business was quite large in the United States, was it not, 1919?

A. It was large in bulk, but it had not reached the point of development——

XQ. 950. Now, Mr. Garvan, one minute.

A. I haven't answered yet.

XQ. 951. I know you do not want to go beyond the question. You said the dye business in the United States was quite large.

A. Oh, yes, sir.

XQ. 952. That is all.

A. But I have not answered your prior question as to all the elements that went into that.

XQ. 953. I thought you said you had.

A. No, sir.

XQ. 954. Then go ahead.

A. Then the element, as I have said before, the element of the non-exclusive character of the licenses. The dye business of the country in 1913 had only been $10,000,000 in imports; probably sold in this country for $25,000,000. With the increase of prices in the war and the increased consumption by our soldiers of the uniform colors, the solid colors, it perhaps had grown to $60,000,000. But the most you could figure on as the normal gross dye business in the country was forty millions of dollars; and that if you granted non-exclusive licenses and it reached the point where two or three could make these dyes, why, the profit in it would be very small.

If it was an exclusive license and they would have control of all that America used of that patented product yes, you could discuss a price, but——

XQ. 955. Then the profit in it would be very large?

A. It would be large as long as they were able to—whatever they could force out of the people, don't you see?

Then there was the feature of the license to the Government, and then there was the feature that these patented dyes were in direct competition with the Swiss vat dyes. They were in direct competition with the algol colors that we had sold under the Bayer; and that none of the business would be of any value unless Congress looked favorably upon legislation to protect us from imports. England was developing a big dye industry protected by her own Government and the money put in by her Government, and unless we had a tariff in the future, Switzerland or England or the Bayer Company were three possible rivals of the production under the vat colors. So that all those things were gone into by the hour.

XQ. 956. But prior to that time that you had gone into it by the hour, you had discussed the price of $250,000?

A. Well, simultaneously, at our meetings.

XQ. 957. I thought prior to the 14th you discussed——

A. Oh, yes, but we discussed also all these other things, Mr. Choate and I, for a year probably.

XQ. 958. For a year?

A. For a year, since the early part of 1918. Mr. Choate fully realized the relation of the patents to the industry.

XQ. 959. I see.

A. And had been trying to induce me to get Mr. Palmer to do something about it.

XQ. 960. So that, did you consider at all the cost to the persons who took out these patents of the patents?

A. How do you mean, the cost?

XQ. 961. I mean the cost of getting the patents.

A. You mean their research or their cost under the Revenue Act?

XQ. 962. Their research or other cost of getting out the patents; did you consider that?

A. You mean their revenue cost, or how much it cost—yes, we did. We considered that in line with the fact of how they had obtained the passage of the——

XQ. 963. I asked you the simple question: did you consider that question?

A. Certainly.

XQ. 964. Did you ascertain what the cost was of getting these patents out from the Patent Office?

A. We knew generally about what a patent cost, $30 or $40.

XQ. 965. Did you not know that at the conference on the 27th with the Alien Property Custodian's representatives in Washington, Mr. Barrows of the National Aniline had stated that the average cost was about $100?

A. No. I probably did at the time. I mean, I do not recall it now.

XQ. 966. And you estimated the cost at about thirty or forty dollars?

A. No, that is the filing fee.

XQ. 967. Did you not know that the filing fees and expenses in the Patent Office itself were around thirty-five dollars?

A. That is what I said. That is what I thought was about the cost. I only know that from the merest hearsay.

XQ. 968. Was that not discussed at this conference?

A. I assume it was. Mr. Hoguet was the man who was familiar with those details. That was my impression, that it was thirty-five dollars. I must have gotten it from Mr. Hoguet or from somebody who knew.

XQ. 969. Did you not know as a matter of fact that usually there were attorney's fees, printing expenses and other expenses in addition to fees in connection with getting these patents out?

A. Oh, yes.

XQ. 970. You did know that?

A. Oh, yes.

XQ. 971. I believe you put in some figures here which showed that the cost of these patents, trademarks, and so forth, which you called "properties," which you took over, was an average of about——

A. I think it was $40 or $41.35.

XQ. 972. You subsequently sold a number of other patents and you fixed in your assignments a regular price of $50 each, did you not?

A. In the assignments?

XQ. 973. In the subsequent assignments.

A. Yes, sir. Not all of them were fixed that way, Colonel.

XQ. 974. I am talking about the sales to the Foundation.

A. Yes. I do not think all of them were. Some of them will bear that rate. Those that were sold at the request of the Navy, I think some of them bear less.

XQ. 975. How did you arrive at the price of $50 each for the subsequent patents that were sold?

A. That was arrived at by averaging in our head generally what we had paid for the first ones. As a matter of fact, we should not have given any consideration for those subsequent ones because the original price was supposed to have included all of the patents that were essential for the purposes of the creation of the Foundation.

XQ. 976. And you did seize and sell all the dye and chemical patents enemy-owned so far as you could discover them up to the time of your retirement from office?

A. Yes, sir.

XQ. 977. I believe you stated on your direct testimony that you had testified three times before Committees of Congress?

A. Yes, sir.

XQ. 978. You testified once before the House Committee?

A. The House Ways and Means Committee.

XQ. 979. Considering the tariff bill for import duties and dye embargo?

A. Yes, sir.

XQ. 980. You testified once before the Senate Committee considering substantially the same legislation?

A. Yes, sir.

XQ. 981. In 1919, did you not?

A. Yes, sir.

XQ. 982. You testified again before the sub-committee of the Judiciary investigating the alleged dye monopoly n 1922?

A. Yes, sir.

XQ. 983. In all of those hearings you were very closely questioned as to this transaction, were you not?

A. I think so. I think that is a fair statement.

XQ. 984. You were also questioned in those hearings as to the negotiations and the method of arriving at the price, were you not?

A. No, I was not.

XQ. 985. Did they not ask you a good many times about that?

A. They asked me in general to state how the Foundation was formed.

XQ. 986. Did they not ask you how you arrived at the price?

A. I am not sure as to that. I think Mr. Choate was the one who testified mainly about the formation of the Foundation

XQ. 987. I asked you on Tuesday if you would go over your evidence at those hearings and point out to me any place where you have ever mentioned the conference between yourself and the Dyestuffs representatives, as to which you have testified as having taken place on or about February 15th or 16th, 1919. Have you been able to find any such evidence?

A. I don't think that was quite your question. As I remembered it—I did not have the testimony away with me over the 4th of July—I understood your question was whether I testified about this transaction having taken place before I went out as Alien Property Custodian.

XQ. 988. Before you went in as Alien Property Custodian?

A. That is what I mean, yes. I find that I did so state.

XQ. 989. Where?

A. I find that Mr. Choate so stated.

XQ. 990. I am not asking you about Mr. Choate's evidence, I am asking about yours.

A. In the first place, I so stated——

XQ. 991. Will you state where you gave that testimony?

A. I can not look it up now; I will look it up during the day and point it out to you.

XQ. 992. I would very much like to see it. But you can not point now to any place where you testified with reference to the conference that you mentioned as having taken place about February 15th or 16th, 1919?

A. That I would have to look up. If I was asked, I certainly did. I do not know that I was asked.

XQ. 993. In your testimony before the sub-committee of the Committee on the Judiciary, on Senate Resolution No. 77, you gave the following evidence, which was taken under oath——

Mr. Kresel: What page was this?

Mr. Anderson: At page 392.

XQ. 993. (Continued.) "In order to fix it in the record, when did you become Alien Property Custodian?

> "Mr. Garvan. March 4, 1919.
>
> "The Chairman. When was the sale made to the Chemical Foundation?
>
> "Mr. Garvan. The order directing the sale was made February 26, 1919, and the sale was actually consummated April 10, 1919.

"The Chairman. And you became the President of the Chemical Foundation when?

"Mr. Garvan. I was the President from the beginning. The date of the recordation of our certificate is the 19th of February, 1919. So that I was President of the Chemical Foundation at a time when I was a dollar-a-year man in the employ of the Government, but when I had no expectation of doing anything but step out and go back and devote myself to my private practice and thus build up, if possible, the chemical industry in this country.

"The Chairman. You may go on with your statement.

"Mr. Garvan. The question of the compensation to be paid for those patents to the Chemical Foundation was, of course, the arbitrary fixing of a sum or sums. We had to take into consideration the fact that the patents were valueless as they stood, with the single possible exception of one or two, and even those were valueless unless capital should be invested in them. Furthermore, we must understand that the condition was made that they were sold to the Chemical Foundation only in trust; that is, that they must license each and every American manufacturer who cared to use a license for any of them, and that no exclusive license should be granted. In other words, we have to grant 10 licenses on each patent if there are 10 applicants, which, of course, is a simple proposition. If you were to put that proposition in a patent and then put that patent up and offer it for sale you could not get five cents for it."

You testified under oath to that effect, did you not?

A. Yes, sir.

XQ. 994. You stated on Tuesday on direct, I think, that a proposition and counter-proposition were made at this conference—that Mr. Palmer made a proposition and the industry made you a counter-proposition. What was Mr. Palmer's proposition and what was the counter-proposition?

A. Mr. Palmer's proposition was that the—I stated it so many times—it stated that the patents should be sold under the condition that everybody should get a license, a non-exclusive license, with equal rights; that a license should be given to the Government; that the stock should be trusteed for the longest life of the patent, and so forth and so on.

Their first counter-proposition, as I remember it now, was that some one of their people or someone whom they should name should be the trustee and that when the license fees had repaid the purchase price, their licenses then should be free. Those are the two or three last things that I remember were discussed between us.

XQ. 995. There was no proposition or counter-proposition as to price?

A. Well, no, the price was a development of the conversation between us from the beginning. I do not know when the price was settled.

XQ. 996. You also took over a number of pending applications for patents, did you not?

A. Yes, sir.

XQ. 997. Do you remember how many?

A. No, I do not. I can look it up and tell you.

Mr. Kresel: That is all in evidence, Colonel.

Mr. Anderson: It is already in evidence.

XQ. 998. Have you since perfected those applications into patents?

A. Some have been perfected, some abandoned, and some still pending.

XQ. 999. Do the statments put in show the number which have been perfected into patents?

Mr. Kresel: Yes.

A. I am certain it does. If it does not we will put it in. We had it here. They are included in the total number quoted by me in my testimony—those which have been perfected.

XQ. 1000. Mr. Garvan, was it your view that the Alien Property Custodian, representing the Government, had the right to seize these patents and turn them over to the industry of the United States at approximately the Patent Office fees for obtaining the patents?

A. I beg your pardon. I did not understand.

(XQ. 1000 repeated as above recorded.)

A. If the President so determined.

XQ. 1001. That was your view?

A. Certainly. I always felt he had a right to seize long before the amendment of 1918.

XQ. 1002. On your direct testimony your counsel read from the Hearings on Bill H. R. 2706, page 360, certain parts of your testimony. Further down on the same page I find this question asked by Mr. Green of the Committee:

> "And you consider it entirely ethical that having obtained information through their connection with the Alien Property Custodian's office that they shall then sell to an institution controlled by themselves?
>
> "Mr. Garvan. Why, Mr. Green, it was by virtue of our connection with the Alien Property Custodian's office that we saw it as our public duty not to let this thing revert to where it was, and everything we have done since has been because of what all of us saw was threatening America and because we saw the situation which had been hanging over America before the war, and it was in our endeavor to use that information for the benefit of the American people that we assumed the burden of carrying on this fight."

You did so testify, did you not?

A. I did.

XQ. 1003. You did testify to that?

A. Yes.

XQ. 1004. In the hearing before the Senate Committee on Finance, on H. R. 8078, page 521, the record discloses the following testimony:

> "SENATOR CALDER. How many patents did they take over?
>
> "MR. GARVAN. Four thousand.
>
> "SENATOR CALDER. The Alien Property Custodian sold them these patents?
>
> "MR. GARVAN. It was by private sale by the President.
>
> "SENATOR CALDER. For how much money?
>
> "MR. GARVAN: Two hundred fifty thousand dollars.
>
> "SENATOR CALDER. Will these patents be of any great value some day?
>
> "MR GARVAN. They may or may not. They would be to any person who was going to try to make money out of them. For instance, anybody who owned these patents and wanted to make money out of them would not be urging you to pass this licensing bill. He would be sitting back asking for as large an amount of German goods to come in as possible, because then he could collect the highest kind of royalty from their coming in. It is a great loss of royalty to the Chemical Foundation to urge the licensing system, but that is not the reason for the Foundation. It is to assist, encourage, and promote American industry. Take salvarsan, and that is the most valuable one——
>
> "SENATOR CALDER (interposing). The most valuable patent?
>
> "MR. GARVAN. Yes, sir. That patent in the hands of a private individual who wanted to confine the manufacture to one man and maintain the price of $3.50, would be worth any amount of money, because 10,000,000 syphilitics would want it. We gave it free to the New York State Board of Health, to Massachusetts State Board of Health, and will give it free to any State Board of Health which will equip itself to manufacture

it safely. The Foundation will never get anything from them. We want, by experimentation, to help cure disease. Of course, that patent is not worth anything; I mean, as far as income is concerned, because we want it to help the public and not to make money out of it.

Take the Badische patent on vat dyes; that is susceptible of income, but there is no income possible until somebody in America successfully manufactures the dyes—except upon importation, like this one here. It was suggested that 10 per cent. was put upon it—Mr. Metz suggested as a license fee on that, coming in. That was fixed when the allocation right was given to the German agents here. It has been the policy of the executive committee of the Foundation to charge to any manufacturer whatever was needed to encourage him, 2 per cent., 3 per cent., or 5 per cent., just whatever was necessary to encourage him to manufacture. But when a German agent wanted to import it we thought it proper to impose the 10 per cent. royalty."

You so testified, did you not?

A. I did.

XQ. 1005. As I understand, you do impose at this time a 10 per cent. royalty on importations?

A. Yes, sir.

XQ. 1006. That covers any importations to which these patents apply, either from Germany, France, England, or any other country, does it not?

A. None come from any other country.

XQ. 1007. Do they not import from Switzerland?

A. No, they have got their own patents.

XQ. 1008. Now, Mr. Garvan, I asked you a direct question if that does not cover any importations from those countries?

A. No.

XQ. 1009. Do you mean to say that you allow free importation if anybody wanted to import from

Switzerland the same products as are covered by the Badische dye patents?

A. There are no dyes under our patents.

XQ. 1010. Mr. Garvan, will you answer my question?

A. I do not get it, Colonel.

XQ. 1011. My question is this: do you not under the patents which you own charge a 10 per cent. import license on all dyes imported into the United States covered by those patents?

A. Yes, sir.

XQ. 1012. And do you not charge or undertake to charge 10 per cent. on any dyes, wherever they may come from, covered by those patents?

A. If they should come from any country covered by our patents, yes, sir.

XQ. 1013. Now, you say that the Chemical Foundation is not undertaking to make income; it is not an income-making concern; isn't that your testimony?

A. No, I do not think that is a correct statement of the testimony.

XQ. 1014. I will read your testimony:

> "For instance, anybody who owned these patents and wanted to make money out of them would not be urging you to pass this licensing bill."

As I understand, the Chemical Foundation is not in that category?

A. They are not trying to make the most money they can out of them. Of course we must make some money.

XQ. 1015. You also say that you charged two or three or five per cent., just what is necessary to encourage him to manufacture; is that the case?

A. Yes, sir.

XQ. 1016. Your purpose is the encouragement of manufacture, is it?

A. Yes.

XQ. 1017. And the development of the American industry?

A. Yes, sir.

XQ. 1018. You are not a money-making corporation?

A. Not primarily.

XQ. 1019. And you grant licenses free to State boards of health for the use of products like salvarsan whenever they need it?

A. We offered to, to those two boards of health, but that is a little over-statement of mine. They maintained their Federal Trade Commission license and felt it safer to keep that than to take ours. We offered it to them free.

XQ. 1020. And you make the statement:

> "And will give it free to any State board of health which will equip itself to manufacture it safely."

Is that true?

A. That is true.

XQ. 1021. You make the further statement that the Foundation will never get anything from them; is that true?

A. From the State Board of Health; yes, sir.

XQ. 1022. You make the further statement:

> "Of course, that patent (speaking of salvarsan) is not worth anything—I mean as far as income is concerned—because we want it to help the public and not make money out of it."

Is that true?

A. That is true. It was true at that time. At that time we had not received, I don't think, a nickel on salvarsan.

XQ. 1023. You make the statement in reply to the question as to whether they are of great value that they would be to any person who was going to try to make money out of them; is that true?

A. In the sense that I stated it there in that connection, certainly.

XQ. 1024. At page 288 of the testimony before the sub-committee on the Judiciary, Senate Resolution No. 77, at the bottom of the page, you testify as follows:

> "THE CHAIRMAN: Very well. You may proceed.
>
> "MR. GARVAN: That is the company of which Dr. Schweitzer was the president. We then saw that the balance of the patents which were owned by the other five companies of the German Cartel stood naked without any tangible property back of them, and that their purchase at public auction was a dangerous thing, because this company that had been bought was in the best position to buy them, because they had a factory to work them; that some speculator in the patents might come in and get them and hold them just to get the royalties on them from either Germany or whichever was the economic value. You see what I mean. Perhaps I do not make myself very clear. If an individual purchaser came in he would just buy the patents; there would be no obligation on him to work them or to develop them, or to start any business. He might say to himself, 'Oh, well, I will wait until after the war and see how much I can get from the Germans for the reestablishment of them,' or he could give an exclusive license to one person to manufacture one drug or one dye, and that was inconsistent with our developing an industry here which would free us from the conditions which I have outlined. Do I make that clear?"

You so testified, did you not?

A. Yes, sir.

XQ. 1025. Did you not know at that time and at the time that the sale was made that if you sold these patents or any of them to a speculator or a company which would have the power to create a monoply of them, that you had the power, with the approval of the President, to reject the bid and re-sell?

A. I did not get that question.

Mr. Anderson: Read the question, please. I want a direct answer.

(XQ. 1025 repeated as above recorded.)

A. Certainly.

XQ. 1026. As a matter of fact, was it not proposed in the beginning of these negotiations by the representatives of the dyestuffs industry that the patents should be sold in groups to the end that those directly interested in those groups might buy them?

A. It might have been. I don't remember.

XQ. 1027. Did you undertake to ascertain, before making the sale, whether there were any persons in the United States engaged in manufacture who would desire to buy these patents or specific group of these patents?

A. I don't remember.

XQ. 1028. Did you not in fact know at that time that there were persons engaged in the manufacture of products covered by certain of these patents who would gladly have bought the patents applying to their specific business at a price far in excess of $250,000?

A. I did not.

XQ. 1029. You did not know that?

A. I did not. There might be one possible exception, of whether I knew Mr. Metz would buy the salvarsan patent. That would be the only one.

XQ. 1030. You knew he would buy the salvarsan patent?

A. I certainly did; if he could get our approval.

XQ. 1031. And the same thing applies to novocain and neosalvarsan?

A. We always considered salvarsan and neosalvarsan together. Novocain I did not consider. I do not remember it being discussed. That had a very short time to run.

XQ. 1032. At that time was it not a fact that the duPont Company had expended very large sums of money in the development of the dye business and was in fact manufacturing and selling very large amounts of dyes?

A. Yes, sir.

XQ. 1033. Some of which were manufactured under Federal Trade Commission licenses?

A. I think that is a fact.

XQ. 1034. At that time was it not a fact that the National Aniline Company, calling it by the short name —you know what I mean?

A. I do, surely.

XQ. 1035. Had also expended large sums of money in the development of the dye business in the United States and was in fact manufacturing and selling large quantities of dyes, some of which were under the Federal Trade Commission licenses?

A. I think their development had reached very little of the patented things. The rest of the question is true. They were a very large manufacturer of dyes.

XQ. 1036. Was it not a fact that the Newport Chemical Company at that time had developed a large business in this country?

A. I think that is true.

XQ. 1037. And they were manufacturers of indanthrene dyes, were they not?

A. I don't think they had accomplished it at that time. I don't think anybody had.

XQ. 1038. They held Federal Trade Commission licenses, did they not?

A. I think so. I would have to refresh my memory.

XQ. 1039. You did not inquire into these matters?

A. Oh, certainly I did. Mr. Mathewson—I detailed my conversation with him. He was the National.

XQ. 1040. That was the extent of your inquiry?

MR. ANDERSON: Read the question, please. I talked it over with the duPonts and I talked it over with the Newport.

XQ. 1041. Let me ask you this: did you at the time you made this sale know how many Federal Trade Commission licenses were outstanding?

A. Individual numbers, no. I knew that——

XQ. 1042. That is all, Mr. Garvan. I just asked you if you knew how many were outstanding.

A. Excuse me. I beg your pardon.

XQ. 1043. At page 394 of the Hearings before the sub-committee on the Judiciary of the Senate, Senate Resolution 77, at the bottom of the page, you testify as follows:

> "THE CHAIRMAN: Is it your present deliberate opinion that the price fixed was, under all the circumstances and in view of all the facts and conditions, a fair and reasonable one?
>
> MR. GARVAN. Oh, yes; it is. I certainly think so, at least. I mean under these conditions you could not have gotten anybody, except people trying to build up the industry to take that proposition."

Did you so testify?

A. I did.

XQ. 1044. Would you mind stating to me exactly what facts and conditions you referred to?

A. I will endeavor to do it once more. The conditions were that everyone in America who wished to go into the business of making dyes or chemicals or any products covered by these patents would be permitted to at the same royalty at which any of the stockholders or any other person in the country was permitted to take out a license; in other words, that the licenses would be non-exclusive; that they would be at a fair and reasonable royalty; that they did not contain any information or sufficient information to enable anybody to go into the business without a large expenditure on research and a large expenditure on extensive plant; that the future of the industry was dependent upon the whim of Congress; that unless Congress protected us from the flood of German goods after the war, the patents would have been worthless; that we had to give a license to the Government; that there could not be anything but 6 per cent. made on the stock; that the rest of it had to be spent in the development of general chemical education; that no stockholder would have any control over his common stock; that the entire management of the company was to be in the hands of these five splendid men who had no connection with the industry and whose sole purpose it was to accomplish the purposes of the Government at that time. Those, generally, were the conditions.

XQ. 1045. Those were the conditions that you represented to the prospective purchaser would be imposed?

A. Certainly.

XQ. 1046. And those were the conditions which made it impossible in your opinion, as you state here, to get anybody except the people interested in building up the industry to take up the proposition?

A. Certainly.

XQ. 1047. And Mr. Garvan, was it not true that at that time the Dyes Institute membership represented 90 per cent. of the production of dyes in this country?

A. I do not know. It has been so stated.

XQ. 1048. You knew of the American Dyes Institute at that time?

A. Oh, yes.

XQ. 1049. You were dealing with a committee of the Dyes Institute, were you not?

A. Yes, but that committee was not to represent the Dyes Institute alone. It represented the entire chemical industry or anybody who in the future wanted to get into it.

XQ. 1050. They could not represent people in the future very well, could they?

A. Oh, yes; they could.

XQ. 1051. I see. Then not only the Dyes Institute people but the entire chemical industy was represented by that Committee?

A. Yes, certainly; and the Manufacturing Chemists' Association was distinctly and separately consulted and Mr. Choate and Mr. Hoguet appeared before them and their members subscribed to the stock.

XQ. 1052. I asked you if they were represented?

A. Yes.

XQ. 1053. Was the Manufacturing Chemists' Association represented at that conference that you speak of?

A. Certainly.

XQ. 1054. It was?

A. Yes.

XQ. 1055. And the Dyes Institute Committee was at that conference?

A. Yes. I don't know——

XQ. 1056. Hold on.

A. Excuse me.

XQ. 1057. So far as you know, both the Dyestuffs industry and the chemical industry were represented in that conference?

A. Oh, yes.

XQ. 1058. In dealing with these patents?

A. Oh, yes.

XQ. 1059. At page 292 of the Hearing before the Senate sub-Committee on the Judiciary, you were speaking of the salvarsan patent and you testified as follows:

> "THE CHAIRMAN. Who owns this patent?
>
> "MR. GARVAN. The Chemical Foundation. That is the patent on which the allegations are mainly based as to the great value of the patents sold to the Chemical Foundation. This patent is a valuable patent, but what faced us in reference to this patent was, if we sold this patent and one person could buy it, we were not in much better position, or there was no guarantee that we were in any better position than we were before the war, because the purchaser need not have made it. He might have sat back and said, I cannot make it, and therefore we must go back and import it from Germany; and he could have asked his own royalty from the German concern and he could have licensed one of those factories, and there would have been a monoply. In other words, you see the whole principle on which the thing was founded was to prevent a monoply, either American or German."

You so testified?

A. Certainly.

XQ. 1060. Now I will ask you, were there not at that time four concerns engaged in the manufacture of salvarsan in the United States?

A. There were.

XQ. 1061. And they were engaged in the manufacture of salvarsan under Federal Trade Commission licenses?

A. They were.

XQ. 1062. And they were making all the salvarsan that the United States needed at that time, were they not?

A. They were.

XQ. 1063. And you knew at that time that the Federal Trade Commission licenses were granted for the life of the patent, did you not?

A. I think that was within the future consideration of the Court.

XQ. 1064. And you knew at that time that under the Act, Section 10 of the Act, if any person had expended money in the development of his business under a Federal Trade Commission license, the Courts of the United States had a right to confirm that license at a reasonable royalty for the life of the patent, did you not?

A. I did.

XQ. 1065. And when I speak of "at that time," I mean both at the time of the sale and the time of your testimony; you understand that?

A. I think so. I think at the time of my testimony one of the licensees had seen the danger of the Federal Trade Commission license and had surrendered it and taken out ours.

XQ. 1066. But at the time of the sale the conditions that you speak of strictly applied?

A. Yes, sir.

XQ. 1067. Mr. Garvan, at page 417 of your testimony before the sub-committee of the Committee on the Judiciary of the United States Senate, Resolution 77, after statement by you as follows:

> "So that the $250,000 was an arbitrary price."

You were asked by the Chairman:

> "How was that reached? You explained that a moment ago, but give that to us again.
>
> "MR GARVAN. It was reached by consultation between everybody. There were two branches of it. There were 5700 patents that the Army and Navy had infringed, or might have infringed, etc., in war stuff—guns and airplanes, etc., and so on. On those we gave a general license to the Government, with the discharge of all possible infringements or claims for infringement, for $100,000. Again an arbitrary sum. If it should be decided in negotiations that those were worth more to the United States Government than

the $100,000, why, then the outcome of negotiations will be—or Congress has it within its power to grant more to Germany. But we do not feel that Germany, having brought on the war and compelled our Government to spend the money that we did spend in the war, that our developments should be left at the question of individual owners of patents. And therefore we closed that book as far as the situation of the Navy and the War Department was concerned by giving them a general license.

"Then we gave the Government a general license on all those that the Chemical Foundation took over, including a license for all time to have manufactured for its use or to sell its surplus products, etc., and so on.

"Under our charter the stock was $400,000 preferred and $100,00 common. The preferred is six per cent. cumulative and the common is limited to six per cent. So that no one who ever put a dollar into the Foundation can ever get back anything more than that dollar and six per cent. interest. All over and above that, if the happy day ever comes, will be spent for the benefit of chemical education in America. And we have begun to spend it before we got over that."

You testified to all that?

A. I did.

XQ. 1068. Did you or did you not regard the release to the Government from infringement and the licensing to the Government, as you state, for $100,000, of 5700 patents, as conclusive on that matter?

A. I do not get what you mean there.

Mr. Kresel: Conclusive on what matter, Colonel?

Mr. Anderson: Conclusive on that transaction; that is, conclusive against the owners of the patent.

The Witness: I do not quite see what you mean. I am trying to.

The Court: I do not understand the question, Colonel Anderson. Will you not restate it?

Mr. Anderson: I will reframe it.

XQ. 1069. Did you regard the license to the Government for these patents and the release from infringement under these patents as you have there described, as conclusive so far as the owner of the patent was concerned, and cut off all his rights in that regard?

A. Do I get you: did I regard that the $100,000 which our Government paid for those 5700 patents——

XQ. 1070. Not for the patents, but for the license.

A.—for the license under the 5700 patents which they had used during our war with Germany, did I regard that as conclusive?

XQ. 1071. Yes.

A. I certainly did.

XQ. 1072. Then you further regarded the granting of that license for the life of the patent as conclusive?

A. I certainly—which license?

XQ. 1073. The license granted to the Government of the United States to use the 5700 patents.

A. I certainly never expected our country would ever pay Germany any more than that.

XQ. 1074. Then your statement as to the outcome of negotiations and the power of Congress to grant more to Germany was merely a statement as to the power of Congress and not an expression of your view as to any obligation on Congress?

A. I never anticipated or felt that Congress had any obligation to give Germany anything more.

XQ. 1075. The present stockholders of the Chemical Foundation embrace or represent substantially the entire dyestuffs and chemical industry in this country, do they not?

A. And textile people and steel people, 151 of the leading firms of the chemical industry and industries which are affiliated and allied with it. It does not represent all, by any means, in the stockholders.

XQ. 1076. You spoke a moment ago of the sum of $250,000 as being the lowest price that the Alien Property Custodian would accept. How did you arrive at that conclusion, or was there any statement to that effect by Mr. Palmer or by yourself?

A. Mr. Palmer said to get the largest price we could consistent with the purposes we were aiming to accomplish.

XQ. 1077. Did you discuss the basis by which you arrived at $250,000 with Mr. Palmer?

A. I discussed all these things I have recited, several times.

XQ. 1078. I am speaking not of the conditions surrounding the sale, but of the actual amounts fixed. That is what I am talking about.

A. I do not get you at all on that, Colonel.

XQ. 1079. If you are going to fix a price for something, assuming now all the conditions you have described, you would either fix $100,000 or $150,000, or some amount under those conditions. Now, did you and Mr. Palmer discuss the amount?

A. Mr. Palmer definitely—finally made the decision as to price. I gave him all the information which I had from conversations with the industry, and what other sources he had—Mr. Hoguet; he had his own bureaus; and whatever other sources he had that were open to him.

XQ. 1080. Well, he fixed the conditions as to price?

A. He was the Alien Property Custodian; I was not.

XQ. 1081. Did you ever discuss with the representatives of the industry to whom you have referred any other price than $250,000? Was that ever mentioned?

A. Oh, I assume so. I do not know.

XQ. 1082. You do not remember discussing any other price?

A. We did not just take $250,000 out of the air and discuss it. I think we asked them how much they could raise and how much they were willing to give and we discussed how much capital they would have to have to maintain this battle.

XQ. 1083. Can you remember any other sum than $250,000 being mentioned as a price?

A. It is very difficult for me to swear to anything like that. My impression is we started with 500 and then we had to concede them that they had to keep 250 for capital.

XQ. 1084. When did you start with the five hundred?

A. What?

XQ. 1085. When did you start with the five hundred?

A. I do not say that I did. I do not remember, I can not tell you.

XQ. 1086. Was it prior to the 27th of January, 1919?

A. That I can not tell you. I can not even say that we did do that.

XQ. 1087. You can not say that you did do that?

A. No. That would be my impression.

XQ. 1088. Can you say now whether any other sum than $250,000 was ever discussed between you and the industry?

A. If you ask me to say whether any other exact figure was discussed, I can not, no.

XQ. 1089. Mr. Garvan, on Tuesday I inadvertently made a statement that Mr. Choate had testified before one of the committees that he had nothing to do with the preparation of this charter. Upon re-examining his testimony I found he was referring to the order signed by Mr. Polk.

A. Yes, sir.

Mr. Anderson: I want to correct that on the record.

XQ. 1090. Mr. Garvan, you said you thought you had read the minutes of the meeting of the Dyes Institute, the Executive Committee of the Dyes Institute, on February 7, 1919?

Mr. Kresel: No.

A. I did in preparation for this trial, but I mean not recently.

XQ. 1091. It appears in those minutes that a draft of the charter was presented and read to the meeting by Mr. Gregg? Do you know who Mr. Gregg is?

A. Gregg?

XQ. 1092. Yes.

A. Do not the minutes show? I do not know.

XQ. 1093. I do not think they show.

A. I will find out for you.

Mr. Kresel: That is a new name to me, Colonel. I do not recall it.

XQ. 1094. It is G-r-e-g-g.

A. I do not know. I do not know who he is. I can find out.

XQ. 1095. The statement in the minutes is as follows——

Mr. Kresel: Pardon me. These are the minutes of the Dyes Institute you are reading from?

Mr. Anderson: The Executive Committee of the Dyes Institute, of February 17, 1919.

Mr. Kresel: Are those in evidence?

Mr. Anderson: They are in evidence.

A. I beg your pardon. I thought you were asking me if I had read the minutes of the Washington conference.

XQ. 1096. No, I am talking about something else.

A. Then I beg your pardon. I do not believe I have read those minutes.

XQ. 1097. The minutes show the chief matter under discussion was the formation of the Chemical Foundation, Incorporated. Mr. Poucher briefly outlined the facts concerning the stock subscriptions, etc. Mr. Gregg read the draft of the certificate of incorporation. What I wanted to ask you was whether you knew who Mr. Gregg was?

A. I do not, no.

XQ. 1098. At the time that you had the negotiations and made the first assignment, you knew, of course, that the entire capital stock of the Chemical Foundation was underwritten by members of the Dyes Institute?

A. Yes, sir. The Dyes Institute and the Manufacturing Chemists. It was not all underwritten by one.

XQ. 1099. Do you know whether any of it was underwritten by the Manufacturing Chemists?

A. Yes. The General Chemical was not a member of the Dyes Institute.

XQ. 1100. It is now a part of the Allied Chemical, is it not?

A. If you can give me the list I will tell you which is which.

XQ. 1101. It is not important; apparently they are working together.

A. Lots of Mr. Metz's concerns were there, too.

XQ. 1102. You stated at page 2810 of your testimony on direct:

> "Q. 199 (By Mr. Kresel). By the way, may I stop you there to inquire whether any of these gentlemen ever received a penny for their services?
>
> A. Certainly not."

A. That is to whom?

XQ. 1103. To whom were you referring at that time?

A. I can not tell you unless you let me see the record.

XQ. 1104. Well, it is a little indefinite and I thought you could tell me.

A. No.

Mr. Kresel: Just a minute and I will give it to you, Mr. Garvan. (Hands witness paper.)

The Witness: Oh, the trustees.

XQ. 1105. The trustees?

A. Yes.

Mr. Kresel: What trustees?

The Witness: That is Mr. Bannard, Mr. Dodge, Mr. Ingraham, Mr. Griswold and Mr. Stone.

XQ. 1106. At page 2812 you also testified that Colonel McKay served without pay during the entire time he was there.

A. That is true.

XQ. 1107. Colonel McKay was elected early in March, 1919?

A. I think so. I think he was, at the same time we were.

XQ. 1108. I read you from the report of the Alien Property Custodian, submitted as Document 181, Sixty-Seventh Congress, and printed by the Senate, which report was made under Resolution of January 5, 1922, at page 44.

Mr. Kresel: You mean Colonel Miller's report?

Mr. Anderson: Yes, that is the official report.

XQ. 1108. (Continued) Under the heading "American Transatlantic Company." The directors get a fee per meeting of $50. There appears the name of Douglas I. McKay, 30 Church Street, New York, elected March 28, 1919, total fees received $2,800. You were on March 28, 1919, the Alien Property Custodian, were you not?

A. Yes, sir.

XQ. 1109. The Alien Property Custodian was then in charge of the American Transatlantic Company, was he not?

A. Yes, sir.

XQ. 1110. And I believe Mr. Palmer testified that the Alien Property Custodian, as he said, appointed or nominated the directors to represent him on these Boards, did he not?

A. Do you mean to insinuate that Mr. McKay was getting money for the Foundation indirectly in that way?

XQ. 1111. No, I am not insinuating anything, Mr. Garvan.

A. Those were services he rendered to that company, for which the company paid him their regular fee.

XQ. 1112. You said these gentlemen had no interest.

A. He had none.

XQ. 1113. You said that?

A. He had none.

MR. ANDERSON: It is entirely legitimate for me to show their interests and the source of their interests in this connection.

MR. KRESEL: I did not object, your Honor but inasmuch as the question has arisen, is it the claim of the Government that because Colonel McKay was paid a fee as a director in some other company, that showed his interest, and that showed Mr. Garvan told an untruth when he said Mr. McKay had no interest in the Chemical Foundation? That can be the only purpose of it.

MR. ANDERSON: No, it is merely this. I will say nothing more than the facts themselves disclose. I desire to reflect upon no one, but since it has been urged here in the testimony time after time that these gentlemen connected with the Chemical Foundation were serving purely for patriotic purposes, that they had no interest and received no compensation for their connection, I think it is entirely legitimate for the Government to show just what compensations they did receive in connection with this service.

MR. KRESEL: What service?

MR. ANDERSON: Any service connected with the Alien Property Custodian. Mr. Garvan was Alien Property Custodian, as Mr. Garvan was president of the Chemical Foundation. Mr. Garvan was Acting Assistant Attorney General of the United States. It is too well recognized to be subject to discussion or open to debate that interest is a very intangible thing. Where a man acts in various capacities at the same time, the association and connection, and the compensation accorded to the various gentlemen concerned from one source represents an obligation to serve in other connections.

To make it perfectly clear, I think it is a duty, though an unpleasant duty and though I hate to go into it, in view of the evidence which has been presented, to show that not only Colonel McKay but the other gentlemen who were officers of the Chemical Foundation were immediately following their selection for those positions elected to various positions on directorships of various corporations from which they received very considerable compensation. I do not want to reflect upon their character in so doing, or upon Mr. Garvan's, but I think it entirely appropriate, though unpleasant, to show whatever interest they had in that connection and whatever benefits they derived from their transactions with the Chemical Foundation or the Alien Property Custodian's office, not only as showing an interest, but as showing how these things were interwoven with each other as affecting the character and validity of this transaction. It is for that purpose that I offer this evidence.

Mr. Kresel: If your Honor please, you must have noticed that I have not raised a single objection during the entire cross-examination of Mr. Garvan. I have purposely refrained from raising objections because I never want the Government to be in the position of saying they did not have absolute freedom to ask Mr. Garvan any question that they wished. Therefore I shall not object to this. When we come to argue this case before your Honor I shall take occasion to comment upon the testimony that is now brought out.

I do think, however, that inasmuch as the point is being made, the least that the Government can do is to bring out the dates when these gentlemen were appointed to these lucrative positions, so that at least your Honor may be able to say whether, as intimated by Colonel Anderson, the appointments to these directorships followed their services to the Chemical Foundation.

Mr. Anderson: It is my purpose to show, and I state it in this instance—that Colonel McKay was elected as a director of the American Transatlantic Company on the 28th of March, 1919. I carefully read that. The record shows that he was elected a director and vice-president of the Chemical Foundation on the 8th of March, 1919. The record shows, therefore, that at the time this sale took place Colonel McKay was an officer of the Alien Property Custodian, or rather a representative of the Alien Property Custodian, as well as a representative of the Chemical Foundation, and that relationship, as applying to the various parties to this transaction, we regard as one of the essential elements of this case.

Mr. Kresel: I also assume that Colonel Anderson will show what services were performed by these gentlemen for which they got directors' fees.

Mr. Anderson: I will show what positions they occupied. I can not show the services. I am not undertaking to say whether the fees were excessive or not excessive; I am not discussing that question. I am not engaged in discussing the question of the amounts of the fees. I am not undertaking to attack anybody here; I am merely stating the facts which I think establish an essential relationship, in order that this case may be properly adjudicated. Whether I am mistaken or not is a question for argument, when that time arrives. I invite the fullest comment by counsel in the argument.

Mr. Kresel: It makes very little difference, Colonel Anderson, whether you say you are attempting to attack or no. The fact is you are attacking. You are here insinuating that Colonel McKay sold himself to the Chemical Foundation because he was paid $50 a meeting for attending as a director in another corporation. That is what you are insinuating. And you are also insinuating that Mr. Garvan lied when he said that Colonel McKay had no interest and did not get anything from the Chemical Foundation. You can say that you are not insinuating. You are welcome to it all; I shall not object; you go right ahead.

Mr. Anderson: I have not insinuated anything, and I am merely bringing out the facts. Whatever the facts show is a matter that I am not in any way undertaking to discuss now. I am not indicating Mr. Garvan was guilty of a falsehood when he stated this, because I read his testimony as to the Chemical Foundation and then introduced the evidence.

The Court: Let me ask one or two questions to find out just where we are, because I find it a little difficult to follow the several contentions at all times, you differ on so many points. In fact you differ on all, not only with respect to the facts, their relevancy and materiality, but you differ in a basic way and in detail. Consequently it is very difficult at times for me to apply the various facts that are brought out and it is difficult to follow the issues. There are days when they seem quite clear; there are days when I think I have not the contention of counsel at all and that I must be all wrong.

I do not mean to invite discussion, but only want a clarification, in other words, of the issues leading up to this. If I understand you, Colonel Anderson—and most of my inquiries are directed to you because you have the laboring oar and are the person seeking to pass from one point to another, seeking to get a decree nullifying this sale, and using the sword, and hence, of course, the shield—the main problems occurring to my mind are those as to whether you have made out a complete case. If I understand you, the Government's position is that the amount received for the patents sold was grossly unjust and inadequate, and if the question is justiciable that would give a ground for setting the sale aside. I assume that is one of your primary contentions, is it not?

Mr. Anderson: Yes, sir. Your Honor has not quite stated it, primarily. The first contention is that, owing to the relationships of the parties the sale or alleged sale, regardless of consideration, was void *ab initio*.

The Court: There is a difficulty. I can understand that is a legal question, and one that could be raised and properly could be raised ordinarily and, I presume, proper to be raised here. But I have some difficulty on that point and I wondered if I had misunderstood you. If the purchase price was adequate, then I just wondered whether I had misunderstood you or had understood you, that the United States was pressing to set aside the sale although the purchase price was adequate.

Mr. Anderson: I was undertaking to state my legal position, as your Honor asked me for my legal premise. First, as a matter of law the sale was void on account of the relationships of the parties and their interests on both sides; second, the purchase price, leaving out the question of the relationship of the parties, was wholly and grossly inadequate, and therefore the Government of the United States—though its policy in that regard is something I have not anything to do with, since it has been directed by people above me—deems it its duty to set aside this sale, providing the Court so adjudicates, and recover these patents, and put them into the custody of the United States, to be held by the United States and disposed of as Congress may direct, in that event to be sold for an adequate consideration.

The Court: If I understood you, the plaintiff desires that this sale be set aside on any grounds which may be available, without regard to whether the price received was adequate or inadequate.

Mr. Anderson: Undoubtedly. The reasons behind the institution of this suit do not concern me, but the plaintiff is here asking the decree on any legal ground upon which it can get that decree; because, as stated by the Supreme Court in the Beebe case, it deems itself charged with the duties and obligations which, whether it be right or wrong, it deems to have been violated. Second, because this property is of a value very far in excess of the value paid, and therefore it is entitled to that for the purposes contemplated by the treaties. That is the first.

So that involves two questions—the relationships of the parties, their interest in the subject matter in their various relationships, and the second question of whether the consideration was adequate. May I just make this suggestion, to make it clearer to your Honor? There are any number of suits in the United States which have been sustained by the Supreme Court of the United States, among them United States v. Beebe, which is the leading case, in which the Government has brought suit to cancel a patent fraudulently obtained, to the public lands, although it had granted and patented the lands to another patentee, and in the event of the success of the suit the lands would go to the second patentee. It has been sustained by the Supreme Court upon the ground that the Government is trustee of all the people and owes a public duty with respect to public lands, and if that duty be violated it is its duty to maintain a suit, even if it receives no material benefit from the suit. But this is a question going to jurisdiction only, and does not concern me as long as the Court has jurisdiction.

THE COURT: Nor me either.

MR. ANDERSON: But, in the second place, the Government not only contends that its duties and its position as trustee for this property have been violated and therefore it must assert its rights and obligations as trustee, but it claims that the property was disposed of for a grossly inadequate consideration, and therefore the Government, as the primary party in interest, or the people, have a very large interest here, of a material character.

THE COURT: I do not suppose you can help me much so far as the viewpoint of the price is concerned; but is there anything in the Trading with the Enemy Act—I have not re-read it—requiring the Americanization of the chemical industry or the sale of the patents to Americans?

MR. ANDERSON: There is nothing in the world requiring the Americanization of the chemical industry. There is the use of no such language. But if the sale takes place, then the terms of that act do require (I can turn to them if your Honor desires) that it shall be sold to certain persons that are qualified to buy, and that is, to American citizens. Perhaps it is as well to get that clear. Section 12 is the section providing for the sale.

Section 12 provides that the sale shall be a public sale, and so forth, "provided that any property sold under this act, except when sold to the United States, shall be sold only to American citizens."

THE COURT: That is what I had reference to.

MR. ANDERSON: "At public sale to the highest bidder unless the President in the public interest otherwise directs." Now, it may be that that is not in this case. It may be that the President might have been able to authorize the sale to a neutral or one of the allies of the United States. I do not know. That is not involved in this case, and I have not considered it.

THE COURT: No, that is not involved. Have you read this book that was put in evidence, entitled "The Riddle of the Rhine"?

Mr. Anderson: No, sir.

The Court: There is a paragraph here which interests me, because it seems to me it is important to the consideration of the purchase price. It is by the author of the book in the preface:

> "Further, my association with the dye industry, since commencing this book, leaves me with a deep conviction of the critical importance for disarmament, of a world redistribution of organic chemical production. It is inevitable that such a step should benefit the growing organic chemical industries of countries other than Germany, but this issue need not be shirked. The importance of the matter is so vital that it eclipses all reproach that the disarmament argument for the maintenance of the dye industry is used on selfish grounds. Such reproach cannot, in fairness, be heard unless it destroys the case which we have established. We are faced with the following alternatives. Safety demands strong organic chemical industries or cumbersome and burdensome chemical warfare establishments. The stability of future peace depends upon the former, and the extent to which we must establish, or can abandon, the latter depends entirely on the activity and success of those whose special duty it is to organize against war."

That is either right or wrong.

Mr. Anderson: That is an opinion. I do not know who the gentleman is that wrote that book.

The Court: It advances a theory; I do not think of it as a fact. Now, whether in the sale of these patents that theory had a place or had a right to have a place in the minds of those selling, is it your contention that the stability of future peace and the protection of American welfare had no place in the terms or the conditions under which the patents were sold by the Alien Property Custodian?

Mr. Anderson: Yes, sir. I will answer your question directly, first. I want to refer to that. I do not want to interrupt your Honor.

That gentleman's opinion may be valuable or not, but I concur that the development of the chemical and dyestuffs industry in the United States—my personal opinion, now—is a very desirable thing, and I would do any legitimate thing to that end if I were in Congress.

But upon what possible theory—and this is answering your Honor's question—it can be contended, or even suggested, that the Alien Property Custodian can have the power or the right to consider a question of that kind and put his judgment in the place of Congress is beyond my conception. Now I have answered your Honor's question. I do contend that it has absolutely nothing to do with it, and if he considered it, he was engaged in an illegal thing.

The Court: Then the Government's position is that it denies that those authorized to make the sale of alien property during the war could take into consideration the future welfare, commercial or military, of the United States?

Mr. Anderson: They could take it into consideration in selecting the purchaser, they could take it into consideration in refusing to accept a bid, in the personnel; but when it came to selling property, they were handling a trust fund, the highest trust known to the law, that of property in charge of a government, of an alien, and it was their duty to handle it in accordance with the laws of trusts and leave the policy on the question to be fixed by Congress. Their duties were fixed by the terms of the Trading with the Enemy Act and they could not go outside of it or consider anything outside of it.

The Court: No doubt about that.

Mr. Anderson: That being the case, what have they got to do with fixing the policy of the United States? I do not mean to ask your Honor that question.

The Court: That is going just a little farther than I had in mind. I assume both sides contend that there is no power vested in the Alien Property Custodian or in any other Government officials, with respect to these patents, save that vested by the Trading with the Enemy Act. I assume that is agreed on both sides. That is probably about the only place you agree.

Now, in determining whether the value is the price received, assuming for the purposes of this discussion, that it is subject to judicial review, or in determining whether the value was shockingly inadequate, it seems to me at the moment that it depends in large measure upon whether the future or the military welfare of the United States could be considered at all in the terms and conditions of sale of those patents, because it seems to me that has a direct bearing on whether the sale was adequate or inadequate.

Mr. Anderson: I quite agree with your Honor.

The Court: I can readily see that, viewed from the German standpoint, the price of these patents was shockingly inadequate.

Mr. Anderson: The German standpoint hasn't anything to do with it.

The Court: You put on Dr. Holdermann, however, who was a witness, and who was a German,——

Mr. Anderson: Yes.

The Court: And I say I can readily see that, viewed from his standoint, the price was shockingly inadequate. But my difficulty is in viewing it from an American standpoint. If the sole power given was to obtain the highest dollar for those patents, without considering the welfare of America, military or commercial, I concede that is one thing; and if there was no power given by this Act for the Alien Property Custodian or the President to consider at all, although a war was then going on,——

Mr. Anderson: May I suggest the war was over, sir.

Mr. Kresel: It was not over.

Mr. Anderson: Not technically; but the President had announced it was over.

Mr. Kresel: On the contrary, there was no assurance but that the war might be renewed the next day.

Mr. Anderson: All right, I did not intend to start a discussion about that.

The Court: Well, the war was not over; and if so, there was no certainty that a new war might not begin at any time between us and some other people; and if I understand the theory of this book, which I did not read wholly, but I glanced through it yesterday in large part, it advances some theories which it seems to me make very clear the great and immediate importance of manufacturing plants—I want to get away from the words chemical or dye industry, because they are open to a double meaning in this case—make very clear the necessity for the development of the chemical sciences for the future preservation and protection of America. Now, if that can be considered at all in the selling price or selling conditions, because price is an instrument of conditions, then I can understand that we pretty nearly do not need any testimony.

Mr. Anderson: Your Honor has reached exactly the view that I reached in this case. In the first place, with reference to that book, if your Honor please, I shall very earnestly contend, as I contended when these books were introduced, that they do not prove any facts at all.

The Court: I agree with you absolutely.

Mr. Anderson: Now, then, if they do not establish any facts, what they contain in there is nothing except the fact that the Chemical Foundation sent them out. That is all they show.

The Court: They contain——

Mr. Anderson: They either show facts or not facts.

The Court: As to the Alien Property Custodian's report, you admit the facts stated in there to be facts.

Mr. Anderson: In the Alien Property Custodian's report, yes, sir. I will stand on that.

The Court: And as I understand it, many of the theories here start from the Alien Property Custodian's report as a premise.

Mr. Anderson: Whatever is in the Alien Property Custodian's report, I am perfectly willing to argue this case on. I am not going outside of that.

The Court: The strongest facts I found in this book were taken from the Alien Property Custodian's report.

Mr. Anderson: That is exactly what I want. Your Honor has got exactly to the meat in this case. Counsel and I have run on parallel lines in introducing evidence to prove something which I think we could probably have sat down at a table and agreed on, as your Honor stated the other day.

The meat of this case, as I have undertaken to make clear a number of times, is in the principles of law to be applied to it. In my judgment, this case can be decided on the bill and answer, the admissions of the answer. I stated before the trial that that could be done and I so stated during the trial. But we have gone to trial and we have put in all the evidence we had in our possession—it is not all, because there are tons of it—that we thought would throw any light on this situation.

It is my opinion that a very large proportion of the evidence on both sides, your Honor will reach the conclusion, has no material bearing on the decision of the essential and controlling points in this case. But we can not anticipate that. We have to prove every kind of a theory.

Counsel and I differ absolutely on this point. I take the position—and I might as well make it clear. They know it and I want to make it clear to the Court—that while the Alien Property Custodian had the power of sale, it was his duty to sell so as to get the fair value of the property. Not the last dollar, perhaps; because no trustee is required to get the last dollar. He has to use reasonable judgment and discretion to get the fair value of the property. He could not be in the position of buyer and seller at the same time nor could the relation of the parties be so involved that there would not be a clear-cut arms-length dealing. He could not impose conditions upon the property before it was sold, which, though they may have been in the public interest——

The Court: And even though the future independence of America may have depended on it?

Mr. Anderson: Absolutely. That is in the hands of Congress and not the Alien Property Custodian.

The Court: Unless Congress delegated that power to the Alien Property Custodian.

Mr. Anderson: Then you get back to another question. I will put it this way. If the contention as to the construction of this Act and the powers of the Alien Property Custodian, contended for by the distinguished counsel for the defendant, are sound and will be sustained by the Court, then the Alien Property Custodian has taken over all the functions of the Government including the general staff, Congress, and everybody else, and has not only determined the policy and the future welfare of the United States but has taken control of the preparation for future wars; and if there is anything of that kind in the Alien Property Act, I can not find it, or any suggestion of it. So we differ fundamentally on that.

The Court: I will hear you, Mr. Kresel, in a minute.

Mr. Kresel: I only want a few words.

The Court: If I understand the issues between you, the basic issue between you is here that the defendant contends that in the performance of the duties of the offices created under the Trading with the Enemy Act, and the exercise of the powers of the President and the Alien Property Custodian under that act, they had a right to take into consideration the future military welfare of the United States of America in the sale of the patents.

The position of the Government of the United States now is that in such a sale all the Alien Property Custodian had to do was to hold the patents or sell them for their full value.

Mr. Anderson: Fair value.

The Court: From what standpoint? To whom? Because I can not conceive that there could be an American purchaser of those patents who would pay or could pay an amount equal to the value that they had for their German owners prior to the war. Can you?

Mr. Anderson: I doubt if an American would have paid that. In so far as they controlled imports, they would be enormously valuable. But in so far as manufacture is concerned, they had less value perhaps to the American manufacturer than to the German manufacturers, because the Germans had the plants.

The Court: If these were sold just to control imports and that is established, that would be a fact of interest.

Mr. Anderson: If your Honor please, my position is perfectly simple. If these gentlemen could have sold these patents as they sold them, they could have sold the whole business for one dollar, although they might have been worth two hundred million dollars.

The Court: To whom?

Mr. Anderson: To anybody in America.

The Court: If used wholly without regard to, or sold under conditions which would have given a patent monopoly.

Mr. Anderson: That is right; although we are not discussing the monopoly phase now.

The Court: But you have to consider the monopoly phase in connection with value.

Mr. Anderson: I will. But my contention is this: If the contention of counsel is sound, that they had a right to take into consideration the commercial welfare of the United States—and I will say that in the order of Mr. Polk stating the reasons in the public interest, there is no reference to that—if they had a right to take into consideration the commercial welfare of the United States or the industry so-called affected by these patents, then they could consider it to its full extent. That would mean that they could confiscate these patents and turn them over to the industry, because it would benefit America. My contention is that they had to make a fair sale of these patents and that they had no power of confiscation. That is where we differ.

THE COURT: If I understand the contention of the defendant, it is that the commercial welfare of the country, with respect to the chemical and dye industry, is inevitably connected with the military welfare of the country and that the commercial welfare is an underlying factor and the greatest possible protection from a military standpoint. That is their contention.

MR. ANDERSON: I did not know that the Alien Property Custodian was conducting either. But that may be. It may be I was wrong.

THE COURT: I think I see more clearly than possibly heretofore where you differ. I will hear you, Mr. Kresel.

MR. KRESEL: I have only a few words, your Honor. I am groping as much as your Honor is groping to see just what the contention of the Government is and I now understand it to be this: That it was the duty of the President and the Alien Property Custodian to sell this property at a fair price; and while the Government does not define the word "fair," I understand it to mean the full price. And, that the Government, that is, the President and the Alien Property Custodian, in making such sale had no right to consider the military safety of the country.

That leads to this conclusion: that if the President could get only ten dollars for them and protect the country from a military standpoint, he had to decline that because somebody stood ready to pay one hundred dollars for them and the military dependence of the country again be on Germany. I understand that to be the Government's contention.

Mr. Anderson: As usual, Mr. Kresel misunderstands my contention.

The Court: Won't you re-state it, because I got that impression, Colonel Anderson.

Mr. Kresel: You see, even the Court misunderstood you.

Mr. Anderson: I am a little surprised at the Court's misunderstanding. I am not at all surprised at Mr. Kresel's misunderstanding, because counsel on one side usually view the language of counsel on the other side in the light of their own views.

The Court: Mr. Kresel gives an extreme illustration of it, but I do not see how you can avoid that conclusion.

Mr. Anderson: I thought I had stated it a good many times, but I may not have been clear. I will try to state it this way:

The Government's contention is that the President had nothing to do with the sale of this property or the price obtained. That is at the outset. We differ entirely. We contend that the power of sale was vested in the Alien Property Custodian and not in the President; that the only power of the President in connection with it was that of modifying, by his personal acts, in his judgment, for reasons stated in writing, and those reasons only, which must be stated, such as the method of sale and the other matters which are set forth in the Act. That is the sole power of the President.

If, for any reason, the sale being made, the conclusion was reached that the bid should not be accepted,—and when I say "sale being made," I mean the offer being made, before confirmation—then the President had the further power, by stating his reasons in the public interest in writing, to set aside that sale. But there he stops. Then the Alien Property Custodian had the power to re-sell or not to re-sell as he saw fit.

There is no obligation in this Act to sell this property at all. It was in the control of the Government of the United States. The Government had a right to use it any way they saw fit and settle that at the Peace Conference and never pay a cent for it if it wanted to. It had the right, by Act of Congress, to confiscate it. It would have been violating a practice of 200 years to have done it.

Since there was no obligation to sell, the public welfare and safety of the United States was not involved. It was not in any risk, because the Government of the United States had these things in its hands and it is just as capable of dealing with the public welfare of the United States as a private business corporation. At least, it must be conclusively presumed to be so by a Court. Then, why sell? That is the first point.

But if the Alien Property Custodian did undertake to sell, as to which there was no obligation whatever, and did undertake to remove this stuff from the control of the Government itself, and put it in the hands of a private owner, however good his motives and however broad the purposes of the private owner, then he must consider his trust and get the fair value for the property.

If he undertook to sell, reached the conclusion that it was wise to sell and undertook to sell, then it must be a sale and not a gift.

If he felt that the acceptance of the offer of the purchaser or the character of the purchaser or the conditions surrounding the proposed purchase were such as to endanger the welfare of the United States, he still had a position which by analogy may be called *locus penitentiae;* to go back and have the offer rejected and still keep the property in the hands of the United States.

But I do not know anything in the law of the United States or in the history of the United States that justifies or authorizes the officers of the Government to turn over to a private concern the property in the possession of the United States in consideration of the undertaking by that concern to promote the welfare of the United States. That is vested in Congress by the Constitution.

That is my position and that is not what Mr. Kresel stated, by a lot.

THE COURT: It seems to me you differ from him on one particular; and that is that you substitute the Alien Property Custodian for the President. What is the other point?

MR. ANDERSON: The other is simply this: that I contend there was no obligation to sell at all; but if he did sell, he had to make a fair sale. You could not consider the turning over of this property in the possession of the United States in the public interest, because the protection of the public interest could not be a consideration, because the protection of the public interest is primarily vested in the United States already and can not be a consideration for a sale by the United States.

If I have something, how can it be a consideration to me that somebody else will undertake to give me that benefit? I have got it already. The United States Government has complete power to protect the interests of the United States, commercial and military.

THE COURT: No, it has not, Colonel Anderson. Unless it is elaborated in the Alien Property Custodian's report, which I have not read—I have heard you and Mr. Kresel read portions of it and portions of it are quoted in the book which I did read—one of the theories there advanced is that in order that there may be full military protection, the chemical science must be developed through the commercial agencies so that there will be potential arsenals in time for a future war. If that theory is sound, and if I recall it, that is one of the theories of the Alien Property Custodian's report, then does that inject a new phase into the situation?

MR. ANDERSON: I would like to answer your Honor's question on that. I would like very much to do it because you have gotten me to one of the points that interest me in this case.

If that theory is sound—and for the purpose of this discussion I am willing to concede that it is sound, although obviously the Government of the United States can build up its own armament plants—Congress could put an embargo at the ports and prevent the importation of a single thing in competition with American manufacture. It could subsidize these plants in that interest. It could confiscate these patents and turn them over, every last one, to American industry and to anybody that wanted to use them. It could repeal every right under these patents, by virtue of the power of confiscation and settle it at the Peace table.

But to say that an officer of the Government of the United States because of the interests of the United States can ruthlessly confiscate property is to make exactly the same argument that the Germans made at Belgium, the argument of necessity. And if the United States fought this war for that, then we would like to know it.

The Court: Do you contend that the amount that was received for these patents fixed absolutely the amount which the Executive and legislative departments of the United States may pay Germany at the Peace table or reparations conference?

Mr. Anderson: I suppose they could give Germany, as they did Spain for the Philippines, most anything they pleased. But it fixes the obligation of the United States.

The Court: Regardless of the fact that the United States has acquired a substantial interest in those patents?

Mr. Anderson: Undoubtedly. If it is a valid transaction, then Germany can not challenge one particle of it. Nor can it anyhow. This is a question between the United States and its own officers and agents and its citizens. Germany has nothing to do with this thing, because it has agreed that it will not challenge it.

The Court: We have gotten somewhat away from the question except that the discussion has disclosed that the Government takes the position that it desires these patents set aside on any legal ground which the Bill of Complaint may support.

Mr. Kresel: Whether the price is adequate or inadequate?

Mr. Anderson: Absolutely.

The Court: Whether the price is inadequate, or on any ground where there may be found to be some technical flaw. Consequently, your objection is overruled.

Mr. Kresel: I raise no objection. I want the record to be clear that I raise no objection.

The Court: What was the question?

Mr. Kresel: I think the question was answered.

Mr. Anderson: Before this discussion I had just introduced or read from the report of the Alien Property Custodian, submitted under Resolution of the Senate, January 25, 1922, showing that on March 28, 1919, Colonel McKay was elected a director of the American Trans-Atlantic Company and that the fees he received as such aggregated twenty-eight hundred dollars.

The Witness: Over what period of time, Colonel?

XQ. 1114. Until the date of this report——

A. Part of it he received under Colonel Miller as Alien Property Custodian. Is that right?

XQ. 1115. That is right. So far as this report shows, the date of service began on the 28th of March, 1919, and the date of termination is blank.

A. The date of the report is what?

Mr. Anderson: It can be assumed to be up to that date.

I next read from page 141 of the same report, under the heading "Botany Worsted Mills", which contains the following statement:

> "Board of directors (fee $5,000 per year and expenses):
>
> "Douglas I. McKay, 30 Church Street, New York, elected Mar. 27, 1919. Resigned Mar. 29, 1921," serving for two years.

I next read from the same report, page 227, under the head of "Foreign Transport and Mercantile Corporation":

> "Board of directors (fee per meeting $50):
>
> "Douglas I. McKay, 30 Church Street, New York City, elected member of the board March

28th, 1919; resigned October 11th, 1921; total fees received $2,950."

I next read from page 543 of the same report under the heading of "Stoehr & Sons (Inc.)":

> "Board of directors (no fee from Mar. 20, 1918, to Sept. 27, 1921; from Sept. 28, 1921, $20 per meeting)."

THE WITNESS: That is under Mr. Miller, though.

MR. ANDERSON: Yes, I know. I am reading the whole thing. I want to do it all.

"Douglas I. McKay, 30 Church Street, New York City, elected President at $750 per year on September 27, 1921." His fees appear to have been $187.50 and for extra services $250. The total of those amounts is $16,187.50.

XQ. 1116. Mr. Garvan, so far as you know, the election of Mr. McKay as stated in the report in March, 1919, to these several corporations is as stated, is it not? You know he was elected a director?

A. I would assume so.

XQ. 1117. You believed that to be true?

A. Certainly.

XQ. 1118. You stated, I believe, that Mr. George Corbett was Vice President of the Central Union Trust Company at the time that he was elected Secretary and Treasurer of this company?

A. I think I was wrong. I think he was Assistant Secretary, later Vice President. I am not exactly sure of the date.

XQ. 1119. And the Central Union Trust Company was one of the depositories of the Alien Property Custodian, was it not?

A. Practically all the banks and trust companies of the country were:

XQ. 1120. No. Answer the question.

A. Yes.

XQ. 1121. He is now your law partner, is he not?

A. He is.

XQ. 1122. When did he become a member of your firm?

A. I could not tell you the date. I think about a year and a half ago.

XQ. 1123. I think you stated yesterday that he continued as Vice President of the Central Union Trust Company after his election as Secretary and Treasurer and director of the Chemical Foundation for about a year?

A. Yes, I think so.

XQ. 1124. You stated that he did not receive any compensation from the Chemical Foundation during that period as I recall it?

A. Yes, until he resigned and had to give his whole time to the Foundation.

Mr. Anderson: I now read from the report of the Alien Property Custodian submitted to the Senate in response to Senate Resolution of January 25, 1922, referred to the Committee on Printing on April 10th, 1922, at page 94, under the heading of "Beer, Sondheimer & Co., Inc.," a corporation having $1,250,000, all of which was enemy-owned. It appears on page 94 that the fee per meeting for members of the Board of Directors was $100. In that list of officers appears the following:

"George J. Corbett, Comptroller, at $15,000 per annum." The date of his election is apparently up higher.

The Witness: He was elected long before this.

XQ. 1125. November 18, 1919, was it not?

A. Oh, no. I think it was long before. 1918 it was.

XQ. 1126. In 1918 he was elected Comptroller at a salary of $15,000 per annum?

A. He was elected at Mr. Palmer's request. That is how I became acquainted with him.

XQ. 1127. He was then a Comptroller of this company at the time of the organization of the Chemical Foundation and the sale of these patents in April?

A. That is how I became acquainted with him.

Mr. Anderson: The same report at the same page, shows that his total fees or compensation as Comptroller of that company amounted to $25,564.50.

The Witness: That is for how long a period?

Mr. Anderson: It does not appear.

The Witness: That was fixed by the Board of Directors of that company, was it not?

Mr. Anderson: The report does not show.

At page 423 of the same report, under the heading of "National Zinc Co.," whose authorized stock was $400,000 and the enemy-held stock was $5000, appears the folowing entry:

"George J. Corbett, Treasurer ($1,500 per annum, paid by Company)——$2,830.46."

At page 44 of the same report, under the heading of "American Transatlantic Company":

"Board of directors (fee per meeting, $50.)"

It appears that George J. Corbett was elected a director on December 21st, 1920, and resigned on May 10th, 1921; fees $200.

At page 218 of the same report, under the heading of "Farbwerke-Hoechst Co.:"

"Board of Directors (fees per meeting, $20.):

"George J. Corbett, Central Union Trust Co., New York, elected Director March 11, 1919."

Date of resignation not stated. Fees $60.

At page 227 of the same report, under the heading of "Foreign Transport and Mercantile Corporation," it appears that the directors' fee per meeting was $50; that George J. Corbett was elected a director December 21st, 1920, and resigned April 26, 1921; fees $250.

The total of the amounts so stated was $28,904.96.

XQ. 1128. Can you turn to your books and show what was the compensation received by Mr. Corbett from the Chemical Foundation and the date on which his compensation began and the date on which his compensation terminated?

A. I cannot put it in now. I will put a slip in.

Mr. Kresel: We will get that for you, Colonel.

XQ. 1129. In order to get the statement complete, from your accounts as you presented them here yesterday, I have caused to be made up a summary or total and it appears that his compensation as an officer of the Chemical Foundation began about July 1921, and ended when he resigned as Vice President, which was about what date, do you recall?

A. I cannot recall.

XQ. 1130. And that the total compensation he received as an officer of the Chemical Foundation was $23,125?

A. Yes, sir.

XQ. 1131. I state that on the record subject to your correction.

A. He must have served about a year and three months under salary, because he served at the rate of $15,000 a year. For the first two years, he got nothing.

XQ. 1132. Then he got $15,000 a year?

A. Then, when he devoted his entire time to it and resigned his $18,000 position with the trust company

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to do it, he got $15,000 a year for a year and a quarter. When he first came he got nothing and he has given his evenings and time since for nothing.

Mr. Anderson: It apears that his compensation was from October 1st, 1920, to some date in 1922 and that it was $23,125, or a total from the Alien Property Custodian's office and the Chemical Foundation of $55,029.96.

XQ. 1133. When Mr. Corbett resigned, you elected Mr. Haaren or the Board elected Mr. Haaren Secretary-Treasurer in his place?

A. Not the Treasurer. Mr. Corbett is still treasurer. Mr. Haaren was elected secretary.

XQ. 1134. Mr. Haaren received a compensation of $5000 a year?

A. Either four or five. Mr. Corbett is still treasurer; does all that work for nothing.

XQ. 1135. Mr. Bannard was chairman of the board of the New York Trust Company, was he not?

A. He was.

XQ. 1136. I read from page 640 of the report of the Alien Property Custodian, 1922, to which I have already referred, the following:

> "From January 11, 1919, when the New York Trust Co. was appointed liquidator, the enemy insurance companies handled to July, 1919, approximately $10,000,000 in securities and $4,000,000 in cash were on deposit to the credit of the 23 enemy insurance companies. For these services during the first six months of 1919, the New York Trust Co. was allowed $30,000 by the then Alien Property Custodian, although correspondence on file in this office indicates that they originally asked for $7,500 per month. The records of this office show that up to March, 1921, the New York Trust Co. have been paid a grand total of $42,070.87 for services as liquidator for the 23 enemy insurance companies and in addition a further sum of $58,670.87 was paid them for services as depositary.

During the two and one-half years as liquidator of the enemy insurance companies, the New York Trust Co. had on daily deposit for the 23 enemy insurance companies an average of $1,465,455 in cash and securities of a value of approximately $20,000,000."

A. Colonel, won't you show what every other trust company in New York had before you argue that Mr. Bannard is corrupt in that?

Mr. Anderson: I am not going to argue that Mr. Bannard is corrupt, and I do not propose to be put in the position of arguing that anybody was corrupt; but I do insist, since the statement has been made that these gentlemen had no interest, that it is perfectly legitimate for me to show their interest.

The Witness: You think because the trust company had——

The Court: Do not argue with Colonel Anderson.

Mr. Anderson: I am not charging anybody with corruption. I am merely showing that they had an interest. It may have been an entirely legitimate interest. I do not deny that they might have been working in a legitimate manner, so far as their interest was concerned; but I do want to show their interest for what it is worth.

XQ. 1137. The New York Trust Company was one of the chief depositaries of the Alien Property Custodian, was it not?

A. One of the depositaries. I think the others were all bigger than the New York.

XQ. 1138. I next read from page 157 of the report of the Alien Property Custodian, the bill of Judge George L. Ingraham to the Alien Property Custodian, dated January 12, 1921, which, in view of the circumstances, I shall read in full, that it may show the amount of service rendered:

"Matter of Stoehr v. A. Mitchell Palmer, as Alien Property Custodian and individually, Francis P. Garvan, as Alien Property Custodian and individually, James N. Wallace *et al.* To professional services in the above-entitled cause since the commencement thereof on Dec. 2, 1918, to date, including among other services the following: Examination of the first bill of complaint, the bill of complaint in action No. 2, the action which superseded action No. 1, the supplemental bill and the demand annexed thereto; conferences with the Alien Property Custodian and his associates; conferences regarding the cause generally; conferences with Mr. Larue Brown, Assistant Attorney General, with Col. Francis G. Caffey and Mr. Earl Barnes, of the office of the District Attorney for the Southern District of New York, regarding the motion for an injunction; attendance before Judge Knox and argument of motion in opposition to plaintiff's motion for a preliminary injunction; services in connection with the order of the court entered thereon; stipulating on behalf of the Alien Property Custodian that there would be no sale pending the disposition of the suit, no injunction being entered by the court; services in connection with the plaintiff's motion to file supplemental bill; services in preparation of answer of A. Mitchell Palmer as Alien Property Custodian and Francis P. Garvan as Alien Property Custodian; conferences with Mr. Lee Bradley as counsel for A. Mitchell Palmer, as Alien Property Custodian and Francis P. Garvan as Alien Property Custodian; many conferences with Mr. John Quinn and his associates as solicitor and counsel for the defendant Stoehr & Sons (Inc.) and its directors and the defendant Botany Worsted Mills and its directors; examination of authorities in connection with the merits of the case; many conferences in regard to the setting of the case for trial; repeated appearances in court with other counsel in efforts to have the case set for early trial; conferences extending over many days with Mr. Lee Bradley, Mr. Quinn and his associates, counsel for all the other defendants, United States Attorney Caffey and Mr. Barnes, of Mr. Caffey's office, on the facts and the law, as part of the preparation of the trial of the case; attendance at and participation in the trial of the case and services thereon covering most of two weeks; preparation of brief on behalf of Alien Property Custodian and reply brief; consultations regarding opposition to motion for a stay; attendance in court and argument on behalf of the Alien Property Custodian in opposition to motion for a stay; and services in connection with the furnishing of a bond pending the appeal. Conferences in regard to the the advancement of the cause by the Supreme Court; conferences with Mr. Quinn and his associates regarding the filing of the transcript in the Supreme Court; conferences with Mr. Quinn and his associates regarding the brief and the facts to be presented in the Supreme Court; preparation of the brief on behalf of the Alien Property Custodian in the Supreme Court; examination of the brief for counsel for the appellant in the Supreme Court; reexamination of the law and the authorities in the light of the facts developed on the trial, and preparation for the brief in the Supreme Court; conferences with Solicitor General Frierson in Washington preceding the argument; attendance in Washington on the argument and final submission of the case in the Supreme Court; the work on the brief, examination of the law and facts necessary therefor, conferences with Mr. Quinn and his associates, attendance in Washington, occupying the larger part of a month of counsel's time; and for all other services in the above cause down to and including the argument and final submission of the case in the Supreme Court, in full to date $30,000.00

Disbursements:

1920.		
June 17.	Paid Sidney C. Ormsby Co. for stenographic minutes of the trial, as per detailed receipted voucher annexed, including a daily copy of the minutes of the trial and one-third of the cost of the Court's copy in accordance with the practice	190.40
Nov. 8.	Paid Sidney C. Ormsby Co. for transcript of the arguments of counsel, 1,027 folios at the customary rate, as per receipted voucher of Sidney C. Ormsby Co., hereto annexed	308.10
	Stenographic work and petty disbursements to date	333.23
	Total	30,831.73"

Mr. Anderson: And I wish at this point to state again on the record that I am not attacking the motives or propriety of the actions of these gentlemen in any way, but I am merely showing interest in response to the question raised by counsel.

XQ. 1138. (Continued.) Now, Mr. Joseph H. Choate was general counsel of the Chemical Foundation on the eighth day of March, 1919, was he not?

A. Yes, sir.

XQ. 1139. I see in the accounts which you submitted in evidence on Tuesday an item of $11,574.84 of organization expenses. Do you know of what that item was made up?

A. No. I will get it for you and put it in in detail.

XQ. 1140. Will you get your counsel to show it to you now and put it in at this point?

(Paper produced by counsel for the defendant.)

XQ. 1141. Will you kindly file in evidence a statement showing in detail the items making up this item of organization expenses?

A. Certainly.

Mr. Kresel: We have it here, your Honor, and we have no objection to its going in.

The Witness: Do not tear it out.

Mr. Kresel: No, I will not tear it out.

The Witness: That is the only copy we have left.

Mr. Kresel: Of course, your people, Colonel Anderson, have had it right along.

Mr. Anderson: I know; but I just want an answer to the question.

The Court: Why not give it to the stenographer and have him copy it into the record right at this point?

XQ. 1142. You have presented in detail the statement which you have referred to, and I will therefore ask the stenographer to copy it on the record as your reply to this question. Is that satisfactory to you?

A. Certainly.

(The statement presented by the witness is as follows):

"EXHIBIT A.—SCHEDULE 6."

Sheet No. 1.

ORGANIZATION EXPENSE.

Date.	Name.	Detail.	Amount.	Total
1919.				
Mar. 20.	Secretary of State	State Tax	$50.00	
		Indexing	2.00	
		Certifying Cert. of Inc.	4.50	
				$56.50
	Recorder of Deeds	Recording Cert. of Inc.	5.50	
		Notary Fees	.50	
		Revenue Stamps	.30	
		Messenger to Dover, Del.	4.30	
		Telephone & Telegraph	.70	
		Stock Ledger, Stock Transfer Book	7.00	
		Corporate Seal	3.00	
		Minute Book	10.00	
				31.30
Apr. 5.	Brown, Green Co.	8 Books of Preferred & Common Stock Certificates		271.00
Dec. 31.	Joseph H. Choate, Jr.	Legal Services		10000.00
1920.				
Apr. 29.	Brown, Green Co.	Printing 1000 Trust Certificates		168.00
June 15.	Central Union Trust Co.	Imprinting 1 line on 250 Stock Certificates	5.00	
		Federal Tax Stamps on 840 shares preferred stock at 5¢ each	42.00	
		292 shares common stock at 5¢ each	14.60	
				61.60
June 25.	Geo. M. Fisher, State Treas.	Annual Franchise Tax for 1919		43.19
July 7.	Evarts, Choate, Sherman & Leon	Application fee for authority to Corp. to do business in State of New York		11.00
15.	Kalamazoo Loose Leaf Binder Co.	2 Full Latigo Current binders with R. M. lettered four lines gold and indexes		55.8

Date.	Name.	Detail.	Amount.	Total.
23.	Evarts, Choate, Sherman & Leon	Balance of application fee to do business in New York State—Total Fee $52.00		41.00
Aug. 11.	Central Union Trust Co.	Federal Tax Stamps on 2371 Shares Preferred stock at 5¢ each		118.55
26.	Comptroller of State of New York	Capital Stock Foreign License Fee		536.13
		Carried Forward ..		11394.07
		Brought Forward ..		$11394.07
Oct. 22.	Albert Hepp & Co.	1—200 Page Cash Book..	$3.00	
		250—Triplicate Sets Transfer Sheets—Voting Trust Certificates Common Stock—#1 to 250 and Preferred Stock #1-250	60.00	
		100 Sheets Carbon Paper	4.00	
		4 Permanent Binders for Transfer sheets of which 2—Common—2 Preferred	22.00	
		2 Temporary Binders for Transfer sheets of which 2—Common—2 Preferred	8.00	
		1000 Ledger Sheets each Voting Trust Certificates for Common and Preferred Stock	45.25	
				142.25
Dec. 21.	Lloyd Van Doren	R. R. tickets to Wash., D. C.		38.52
				$11574.84

as to which you testified on Tuesday, Mr. Keohan was appointed a special agent of the Department of Justice, was he not?

A. I don't think so. I would not be clear as to that.

XQ. 1156. How long did he continue as the publicity agent——

A. He helped do the publicity work in relation to the Bolshevik fight that the Department of Justice carried on. Now, I am not sure how his compensation was.

XQ. 1157. Did he continue as publicity agent of the Alien Property Custodian?

A. I would have to look that up, Colonel. I would not be able to tell you.

XQ. 1158. By reference to the minutes of the Chemical Foundation for October 2, 1921, it appears that at that meeting Colonel McKay resigned as vice-president, Mr. Corbett's salary was fixed at $15,000, and Mr. Keohan was appointed as a representative of the Foundation in Washington, the statement contained in the minutes being: "Mr. Keohan has represented the Chemical Foundation at Washington for the past year and a half and has done valuable work for the Chemical Foundation in the past." Is that a correct statement of the situation, so far as you know?

A. Well, his business when he came to the Foundation was in relation to our relations with the different departments. We were working with the Agricultural——

XQ. 1159. I mean he had been representing the Chemical Foundation for a year and a half when he was elected to the head of the Washington office.

A. I can get the date. I do not remember whether it was a year or a year and five months, but that is approximately correct.

XQ. 1160. He was then appointed head of the Washington office or Washington representative of the

Chemical Foundation at a salary of six thousand a year, as stated in these minutes?

A. Yes, sir.

XQ. 1161. Does that accord with your recollection?

A. Yes. He was the liaison officer between the Foundation and the Government.

XQ. 1162. He is still manager of the Washington office, is he not?

A. Yes, sir. We have no office; he has desk room in an office there.

XQ. 1163. He is the representative of the Chemical Foundation in Washington?

A. No, he is not the representative. He represents the Foundation in particular work.

XQ. 1164. What is the particular work

A. He has no authority to represent them. In working with the Chemical Warfare Service, National Research Council, Department of Education, Tariff Commission, Department of Commerce—in fact every department of the Government except the Department of Justice.

XQ. 1165. Have you a statement in your accounts that you have presented here, showing the expenses and detail of the Washington office?

A. Certainly.

XQ. 1166. Would you present it?

A. I can get it for you just as rapidly as it can be separated out.

XQ. 1167. I just want that report; I do not call for the original book.

> Mr. Kresel: We produce three reports, and the fourth one is now in the possession of the stenographer, who has just taken it out to make a copy of what was put in.

XQ. 1168. Can you by reference to those reports show me the details of the expenses of the Washington office?

A. It will take some time. Those reports are made up for different periods, the first is for a year and a half, I think, the next for six months, and then the next six months up to January first. But I can make you up a detailed account in an hour.

XQ. 1169. I would like very much to have that made up, if you can do it, showing the details.

A. Certainly.

Mr. Kresel: We will do it.

Mr. Anderson: I will take it up later in connection with the accounts.

XQ. 1170. Who is Mr. W. W. Buffum?

A. He was an accountant in the Alien Property Custodian's office.

XQ. 1171. Do you remember the period of his service?

A. I do not.

XQ. 1172. Did he serve as long as you were there?

A. I think so.

XQ. 1173. He was there during the entire period you were Alien Property Custodian?

A. I think he was there before I was there.

XQ. 1174. Before you were there?

A. I think so.

XQ. 1175. And served after you left?

A. Yes, sir.

XQ. 1176. Is he now connected with the Chemical Foundation?

A. He is.

XQ. 1177. When did that connection begin?

A. That I could not tell you. I can get the exact date.

XQ. 1178. Could you give me the date that he resigned from the Alien Property Custodian's office and the date that he became connected with the Chemical Foundation?

A. I will get it, certainly.

Mr. Kresel: We will give you the date now. Mr. Buffum is right here.

Mr. Buffum: July 15, 1921.

Mr. Anderson: And he became connected with the Foundation when?

The Witness: I should say the next day.

XQ. 1179. Who is Mr. J. R. Zimmerman, who was in the office of the Alien Property Custodian?

A. I think he was—

XQ. 1180. Head of the Bureau of Trusts?

A. Head of the Bureau of Filing.

XQ. 1181. Was he not afterwards head of the Bureau of Trusts under you?

A. No.

XQ. 1182. Are you sure of that?

A. Positive.

XQ. 1183. He was in charge of files, then; is that it?

A. The files, yes.

XQ. 1184. Do you know when he resigned?

A. No.

XQ. 1185. Is he now connected with the Chemical Foundation?

A. He is working for us during the preparation of this case.

XQ. 1186. Will you tell us the date when he became connected with the Chemical Foundation and the date of his resignation from the Alien Property Custodian's office?

A. Yes, I think it was three or four months ago when we began to prepare for this case.

Mr. Kresel: Colonel, I understand all that information is in Colonel Miller's report.

Mr. Anderson: Could you give it to me—because this report is not indexed.

Mr. Kresel: We would be very glad, Colonel, to stipulate all of this matter.

Mr. Anderson: I know you would.

Mr. Kresel: If you would only ask us to do it.

Mr. Anderson: Until after the evidence the other day I had not expected to put it in, but after going over the evidence the other day the testimony there would seem to me to require this information.

Mr. Kresel: We will give you that information in a minute.

XQ. 1187. It is stated here that Mr. Zimmerman resigned from the Alien Property Custodian's office June 1st, 1922.

A. Yes.

XQ. 1188. Is it about that time he became connected with the Chemical Foundation?

A. No.

XQ. 1189. When was it?

A. Months later. I think he went into business in Philadelphia. It was when we began to prepare for this case. It is only a few months.

XQ. 1190. When you began to prepare for this case he became an employee of your company?

A. (None).

XQ. 1191. What was the connection of Mr. L. H. Boggs with the Alien Property Custodian?

A. Boggs was a lawyer.

XQ. 1192. Was he not general counsel?

A. I think toward the end Mr. Boggs was head of the Law—yes, I know he was.

XQ. 1193. General counsel for you as Alien Property Custodian?

A. Yes, sir.

XQ. 1194. He is now one of the counsel in this case, is he not?

A. Yes, sir.

XQ. 1195. He has been counsel for the Chemical Foundation in Washington since what date?

A. I think about July first of last year.

XQ. 1196. Was he not general counsel in 1921?

A. I do not think so.

Mr. Kresel: Colonel, we will get you that. Mr. Boggs is right here. Mr. Boggs, Colonel Anderson wants to know when you became counsel for the Chemical Foundation?

Mr. Boggs: October, 1921.

Mr. Kresel: October, 1921.

Mr. Anderson: I accept that. Thank you very much, Mr. Boggs.

XQ. 1197. With what firm is Mr. S. M. Stellwagen connected?

A. Palmer, Davis & Scott.

XQ. 1198. Is that Mr. A. Mitchell Palmer?

A. Yes.

XQ. 1199. Mr. Stellwagen was once an attorney in the office of the Alien Property Custodian, was he not?

A. He was. He was the expert on legislation.

XQ. 1200. On legislation?

A. Yes.

XQ. 1201. Do you know about what time he left the office of the Alien Property Custodian?

A. No.

XQ. 1202. Do you know what time he became connected with the law firm of Mr. A. Mitchell Palmer?

A. I would assume about March 4, 1921.

XQ. 1203. Certainly very soon after the retirement of Mr. Palmer from the office of Attorney General?

A. I think Mr. Palmer began to practice almost immediately.

XQ. 1204. Mr. Stellwagen is one of your counsel in this case, is he not?

A. Yes, sir.

XQ. 1205. The firm of Palmer, Davis & Scott has represented the Alien Property Custodian in Washington since 1921, have they not?

A. Represented the Alien Property Custodian?

XQ. 1206. I mean the Chemical Foundation.

A. In certain matters.

XQ. 1207. They have been the attorneys for the Chemical Foundation, in certain matters?

A. Certainly. Mr. Stellwagen has, and I assume that carried the name of the firm. He has done the work.

XQ. 1208. He has done the work?

A. Yes.

XQ. 1209. As a matter of fact, they represented the Chemical Foundation in connection with the license to the Navy Department of these patents which you spoke of?

A. He worked with the Navy in the drawing of it. That is, as to the technical details, getting the license numbers, the numbers of the patents and all those things correct.

XQ. 1210. Who is Mr. F. E. Haynes?

A. Mr. F. E. Haynes is a young lawyer.

XQ. 1211. Was he once attorney for the Alien Property Custodian?

A. I am not sure whether he was admitted to the Bar while he was there. He was admitted to the Bar while he was there, I understand.

XQ. 1212. He was in the office of the Alien Property Custodian?

A. Yes.

XQ. 1213. While you were Alien Property Custodian?

A. Yes, sir.

XQ. 1214. He was then connected with the Department of Justice, was he not?

A. He was what?

XQ. 1215. He was for a while connected with the Department of Justice?

A. Yes, sir.

XQ. 1216. That is while you were discharging certain duties in connection with the Department

A. Yes, sir.

XQ. 1217. And he is now one of the attorneys in this case, is he not?

A. No. He is an attorney in my office.

XQ. 1218. He is an attorney in your office?

A. Yes, sir.

XQ. 1219. But he is engaged actively in this case?

A. No, sir. He is in my employ—my personal employ.

XQ. 1220. But he is one of the attorneys in the room in this case and helped in the preparation of this case; is that so?

A. Oh, yes.

XQ. 1221. On Monday Mr. Kresel introduced a report which was made by a man named Edward S. Rogers.

Mr. Anderson: Am I right about that?

Mr. Kresel: Rogers is the name. I do not recall the initials.

XQ. 1221. (Continued) Claimed to be connected with the Federal Trade Commission, which on the facts before us we admitted he was, at the time—connected with the Federal Trade Commission. Was not Mr. Rogers subsequently employed by the Chemical Foundation, about January, 1922?

A. I am not sure that there was not some one trade-mark matter. I will look that up and find out.

XQ. 1222. You think as far as you can remember he was?

A. I think he charged us only his disbursements, that is all, in some matter that he attended to.

The Court: We will take a recess now until one o'clock Eastern Standard Time.

(Recess until 1.00 o'clock P. M. Eastern Standard Time.)

After Recess.

XQ. 1223. Mr. Garvan, defendant put in evidence on Tuesday a report by Mr. Norton, formerly agent of the Department of Commerce? You recall that, do you not?

A. Yes, sir.

XQ. 1224. In the question on Tuesday, either I in my question or you in your answer, inadvertently referred to him as an agent of the Department of Justice. There was no such person who was an agent of the Department of Justice?

A. No, sir.

XQ. 1225. Do you know where Mr. Norton is now?

A. No, I do not.

XQ. 1226. Do you not know he is employed by the duPonts?

A. I understand he is not and has not been for some years.

XQ. 1227. There was also some evidence put in here as to Captain Dix, of the War Department, in connection with negotiations as to the nitrogen patents. Do you know where Captain Dix is now?

A. I do not.

XQ. 1228. There was also a good deal of evidence of Major A. M. Holcomb, of the War Department. Do you know where Major Holcomb is?

A. I do not.

XQ. 1229. Have you been able to get up a statement from your books of the amounts of fees paid Messrs. Emery, Varney, Blair & Hoguet by the Chemical Foundation?

A. No, I have not.

XQ. 1230. The Alien Property Custodian approved the various payments to counsel and others representing these matters, did he not, during the period of the Alien Property Custodian's office?

A. They were first fixed by the Boards of Directors and then approved by us.

XQ. 1231. Approved by the Alien Property Custodian?

A. Yes, sir.

XQ. 1232. Or, where the service was rendered to the Alien Property Custodian direct, they were of course approved by him?

A. Certainly.

XQ. 1233. You spoke of Mr. Bradley Palmer's connection with this matter. Do you know when he became connected with the A. P. C.'s office?

A. Very shortly after it was organized.

XQ. 1234. My records show March 26th, 1918. That would be about the time, would it not?

A. Yes.

XQ. 1235. And they further show that he was connected with the office as an attorney; is that in accordance with your recollection?

A. Yes, sir, general adviser.

XQ. 1236. Mr. Bradley Palmer was actively associated with you and Mr. A. Mitchell Palmer in connection with the plans for the organization of the Chemical Foundation and the sale of these patents, was he not?

A. I do not know how much part he played in it. I was in New York and he was in Washington. I assume we advised with Mr. Palmer on every important thing.

XQ. 1237. In your evidence before the Committee on Ways and Means, to which reference has frequently been made, at page 244 you say:

"For a month or six weeks Mr. Palmer and myself and Mr. Bradley Palmer and others sought in every way possible to find some way by which we could turn the idea over to the Government and make it efficient in the use and protection of the patents."

Was that true?

A. Undoubtedly.

XQ. 1238. In the same book, at page 272, you testified as follows:

"Mr. Moore: Do you know who drafted that Executive order signed by Frank L. Polk?

"Mr. Garvan: I can give you my best belief, based upon the course of business in the office, that it was drafted by Mr. Mitchell Palmer after consultation with Mr. Bradley Palmer, and, undoubtedly, after consultation with Mr. Hoguet, who was the principal adviser on patents.

"Mr. Moore: Mr. Ramsay Hoguet?

"Mr. Garvan: Yes.

"Mr. Moore: Who is associated with Mr. Choate as counsel of the Chemical Foundation, Inc., of which you are President?

"Mr. Garvan: He is not associated with Mr. Choate, but he is our patent counsel.

"Mr. Moore: And Mr. Ramsay Hoguet, with whom Mr. Palmer probably conferred, as you say, over the drafting of this Executive order by Frank L. Polk, was named as associate counsel with Mr. Joseph H. Choate, Jr.?

"Mr. Garvan: Yes.

"Mr. Moore: Of the Chemical Foundation, Inc., of which you are President?

"Mr. Garvan: Of the Chemical Foundation, Inc., yes. And, furthermore, I think you will find that order received the consulting advice of every big patent lawyer in the country representing these big manufacturers."

Then further on, there was another question:

"Do you still say you do not know who prepared that Executive order signed by Frank L. Polk?

"Mr. Garvan: I have given you my best impression, that it was Mr. Mitchell Palmer, Mr. Bradley Palmer, and Mr. Hoguet."

Is that your testimony?

A. Yes, sir.

XQ. 1239. Do you know who paid the expense of Mr. Bradley Palmer to Paris?

A. Probably the State Department.

XQ. 1240. You do not know?

A. I do not know. He was appointed at the request of the President or appointed by the President.

XQ. 1241. Hold on. I just asked you whether you knew.

A. No.

XQ. 1242. You don't know anything about the request of the President; you did not see the President?

A. I know that the President appointed him.

XQ. 1243. Did you see the President yourself?

A. Did I see the President—what?

XQ. 1244. At that time?

A. No.

XQ. 1245. Anything that you know on that is what people told you?

A. No, I know it from my communications with him while at the Peace Conference, under the official seal of the State Department, through the State Department.

XQ. 1246. With whom?

A. Bradley Palmer.

XQ. 1247. You communicated with Bradley Palmer?

A. Certainly. All communications at the Peace Conference were made through the State Department.

XQ. 1248. No matter who it was?

A. No matter who it was, it had to go through the State Department. If I wanted to cable to the Peace Conference, I had to send my cablegram to the State Department, have it vised there and forwarded to Paris and then the Paris Peace Conference would send the cable here and the part of it that was for my attention would be de-coded by the State Department and sent to me.

XQ. 1249. You also sent some cables to Dr. Herty over there, did you not?

A. Yes, sir.

XQ. 1250. Who paid his expenses?

A. The Chemical Foundation, at the request of the State Department and the Peace Mission.

XQ. 1251. Mr. Garvan, I asked you who paid his expenses; I did not ask you at whose request or how.

THE COURT: Do you want the latter part of the answer stricken out?

MR. ANDERSON: Yes, sir.

THE COURT: Let it be stricken out.

XQ. 1252. Can you state now when he became a member of the voting trust of the Chemical Foundation?

A. Who—Mr. Bradley Palmer?

XQ. 1253. Yes.

A. I had that date yesterday.

XQ. 1254. The minutes of the Chemical Foundation show——

A. Wait a minute.

MR. KRESEL: April 4th, 1921, Colonel.

THE WITNESS: April 4th, 1921.

MR. ANDERSON: April 4th, 1919, according to our records.

THE WITNESS: No, you are wrong.

MR. KRESEL: It is 1921.

XQ. 1255. Mr. Garvan, do you recall whether you communicated with Mr. Bradley Palmer a request to get a provision in the Peace Treaty expressly ratifying the sale of these patents?

A. No, I do not think I did.

XQ. 1256. You do not recall whether you did or not?

A. No, my communication with him was to get a ratification at the Peace Conference of all our acts, and I do not think it mentioned the Foundation at all.

XQ. 1257. Would you mind just answering this question: do you recall whether you communicated with him requesting him to get a ratification of the particular sale of these patents?

A. The best of my recollection is I did not. I have all my cables. I will look it up.

XQ. 1258. After your appointment as Alien Property Custodian on the 4th of March you continued to seize these chemical and dyestuff patents and transfer them to the Chemical Foundation on the various dates named in the assignments in the record in this case, did you not?

A. Yes, sir.

XQ. 1259. At that time you were familiar with the provisions of the Trading with the Enemy Act, Section 12, as to the holding and disposition of property by the Alien Property Custodian?

A. I was generally familiar with the Act; yes, sir.

XQ. 1260. Were you at that time familar with the provisions of the report of Mr. A. Mitchell Palmer, dated February 22, 1919, with respect to the manner of holding property by the Alien Property Custodian?

A. Yes, sir.

XQ. 1261. At the time you made the several conveyances here involved, were you familiar with the bylaws of the Chemical Foundation which gave to the survivors of the Voting Trustees the power to fill vacancies and created in them a self-perpetuating body for seventeen years?

A. Yes, sir.

XQ. 1262. As a lawyer you were then and you are now familiar with the duties, obligations and limitations of trustees?

A. Of what trustees?

XQ. 1263. Of any kind of trustees.

A. There are so many different kinds I won't swear I am familiar with all of them.

XQ. 1264. On April 10th, 1919, at the time the principal conveyance was made, and at the time of the subsequent conveyances shown by the record, were you familiar with the provisions of Section 1783 of the Revised Statutes of the United States, which provides as follows:

> "No officer or agent of any banking or other commercial corporation, and no member of any mercantile or trading firm or person directly or indirectly interested in the pecuniary profits of contracts of such corporation or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation or firm, and every such officer, agent or member or person so interested who so acts, shall be imprisoned for not more than three years and fined not more than two thousand dollars."

A. No, I do not think I was. I never heard of it until this minute.

XQ. 1265. Never heard of it until this minute?

A. No.

XQ. 1266. On April 10th, 1919, were you familiar with the plan of sales organization and the rules and regulations of the Alien Property Custodian's office, promulgated by the Alien Property Custodian on June 6th, 1918?

A. Yes, sir.

XQ. 1267. You were, then, familiar with the following provision contained in the order entitled "Plan of Sales Organization and Rules and Regulations," dated Washington, June 6, 1918, as contained in the report of A. Mitchell Palmer, Alien Property Custodian, at page 206:

> "It is necessary that every precaution should be taken to enable properties to be sold fairly and for a proper price, without any possibility of favoritism or undue advantage in favor of any particular purchaser."

You were familiar with that, were you?

A. Certainly.

XQ. 1268. You were also familiar with the provision in those Regulations, Page 209, Section 2, which reads as follows: "Under no circumstances will any person in the employ of or connected with the organization of the Alien Property Custodian be permitted to bid for or purchase any property, or be interested directly or indirectly in any such purchase, or in any corporation or syndicate interested therein. This provision also applies to local representatives and local attorneys in the sales of properties in respect of which they have represented or acted for the Alien Property Custodian."

A. Yes, I was familiar with that.

XQ. 1268a. Do you not know as a matter of fact that on May 2d, 1919, the Advisory Sales Committee refused to approve the sale of the Hackfeldt property at Honolulu, on the ground that one person interested in the purchase had formerly been connected with the Alien Property Custodian's organization?

A. No, that is all gone from my mind at this time.

XQ. 1269. You are familiar with the Bosch Magneto sale, are you not?

A. Very.

XQ. 1270. Do you not know that after the property was bid in by the purchaser, the Liberty Securities Corporation was required to retire fom the syndicate because Mr. Bowers, the vice-president of that company, had been an officer of the Bosch Magneto Company appointed by the Alien Property Custodian?

A. I think it was before the bid was made he retired.

XQ. 1271. He was not allowed to participate in the sale, isn't that true?

A. No; he had a money interest in it.

XQ. 1272. Did you not at the time these conveyances were made know that all contracts made by the Government of the United States during the war contained an express provision, as required by law, prohibiting any officer of the United States, or member of Congress, or agent of the United States, from having any interest in said contract or the provisions thereof or the benefits thereof?

A. I did not know that was a specific statute, but I assumed it was the law, naturally.

XQ. 1273. Did you not know that at the time this sale was made and subsequently the laws of the United States prohibited any person from aiding any contractor in making out his bid, advising any contractor, or in any way being interested with any contractor or the person contracting with the Government of the United States, in the transaction of business between the Government and such contractor?

A. I did not know the statute. I assumed it was the law. I knew it was ethics.

XQ. 1274. Were you not at that time familiar with the provisions of Section 6 of the Trading with the Enemy Act, providing as follows:

> "That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report

> shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof."

You were familiar with that provision, were you not?

A. Yes.

XQ. 1275. Did you ever submit to the President of the United States or to Congress any report during the term of your office as Alien Property Custodian, which you have testified covered a period of more than two years from March 4, 1919, to March 12, 1921?

A. No.

XQ. 1276. Did you ever make any report to the President or Congress showing a list of persons appointed or employed by the Alien Property Custodian during your term of office, with the salary and compensation of each, and a statement of the kinds of property taken into custody and the disposition made thereof, as provided by Section 6 of said Act?

A. In great part I did. I prepared that whole thing for the Committee on Appropriations.

XQ. 1277. What committee on appropriations?

A. The House Committee on Appropriations.

XQ. 1278. When?

A. Before the date of my testimony there. They were awaiting legislation, and we made the report to Congress showing everything up to Mr. Palmer's time, and it was not considered policy to put the Government to any expense until Congress was ready to take it up, with continuous repetition of printing, and so forth, of what had already been done and what would eventually have to be done properly at the time that Congress was ready to legislate. It was all there, and I said there, we notified every Congressman and Senator that they could get any information in five minutes from our books; they were up-to-date.

XQ. 1279. Did you ever make to the President or to Congress any report giving a list of the patents, trade-marks, copyrights and other property assigned to the Chemical Foundation, or showing the sale thereof or the disposition thereof, or any report showing the seizure thereof, in any way?

A. No.

XQ. 1280. You are, of course, familiar with the provisions of Section 1780 of the Statutes of the United States, providing that "Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any act of Congress, within the time prescribed by law or by regulations, shall be fined," and so forth, are you not?

A. It was the President's duty to report, not mine.

XQ. 1281. You are familiar with the fact that the President delegated or vested in the Alien Property Custodian certain duties under this Act, are you not?

A. Yes. If he would have wanted me to report, he would have notified me.

XQ. 1282. Including the seizure of property and the execution of the provisions of Section 12?

A. Yes. The report had to be made to him. If he wanted it, he could have gotten it in five minutes.

XQ. 1283. You have testified that you were familiar with the fact that the Federal Trade Commission issued from time to time and was issuing licenses to American manufacturers to manufacture, vend and use products and processes provided by patents and also trade-marks owned by alien enemies, is that true?

A. Yes.

XQ. 1284. You were aware that payments under such licenses were made to the Alien Property Custodian under the terms of said Act and in fact were collected by you as Alien Property Custodian during your term of office; were you not?

A. Yes, sir.

XQ. 1285. You were aware that the Alien Property Custodian had seized a number of contracts in favor of alien enemies made with American citizens by alien enemies providing for the payment of royalties or other compensation for the use of patents in the United States, owned by such alien enemies, were you not?

A. Yes.

XQ. 1286. You were aware that you as Alien Property Custodian were collecting compensations or royalties provided for by said contracts and payable thereunder from time to time during your term of office, were you not?

A. I was.

XQ. 1287. You were of course aware that under Section 10 of the Trading with the Enemy Act, the maximum royalty allowed to be charged under such license by the Federal Trade Commission was 5 per cent.?

A. I did not know that.

XQ. 1288. And further, that United States Courts were given jurisdiction within one year, upon suit of the owner of the patent, to fix a reasonable license fee and to confirm said license for the life of the patent where expenditures had been made in the development of the processes or in connection with the use thereof; you knew that?

A. Yes, sir.

XQ. 1289. You of course knew at the time of these various assignments that in the event no expenditures had been made under such licenses, and the same should be for any reason terminated at the end of the war, though granted for the life of the patent, and the same had been seized by the Alien Property Custodian, that the title to such patent with the right to use the same was vested in the Alien Property Custodian subject to such final disposition as Congress might direct under the Trading with the Enemy Act; were you not?

A. I do not know. I would like to have you read that again.

XQ. 1290. I will read it over to you. You were of course aware that in the event no expenditures had been made under such licenses of the Federal Trade Commission and the same should be for any reason terminated at the end of the war, though granted for the life of the patent, and the patent had been seized by the Alien Property Custodian, that the title to such patent, with the right to use the same, was vested in the Alien Property Custodian subject to such final disposition as Congress might direct, under the Trading with the Enemy Act?

A. Yes, sir. I mean, provided it had not been sold by the Alien Property Custodian.

XQ. 1291. Yes. Did you not while Alien Property Custodian and as President of the Chemical Foundation, subsequent to the assignment of these patents to the Chemical Foundation, urge the licensees of the Federal Trade Commission to surrender their licenses and take out licenses under the Chemical Foundation?

A. Yes, sir.

XQ. 1292. Did you not have your patent counsel, Mr. Hoguet, appear before the Federal Trade Commission on behalf of the Chemical Foundation and urge that Commission to accept such surrender?

A. Yes, sir.

XQ. 1293. You were aware, were you not, that the Attorney General of the United States was by law the legal adviser of the Alien Property Custodian?

A. Yes, sir.

XQ. 1294. Did you ever obtain from the Attorney General of the United States an opinion as to the right of the Alien Property Custodian to sell property at private sale or as to the legality of the several sales and assignments made by you to the Chemical Foundation?

A. No, sir.

XQ. 1295. Did you ever obtain from the Attorney General of the United States an opinion as to the right of the Alien Property Custodian to sell alien property seized by him at less than its fair value?

A. I don't think I did.

XQ. 1296. I just asked you if you obtained such an opinion?

A. I don't think so.

XQ. 1297. Did you not know that the trade-marks sought to be conveyed by you under the assignments in evidence in this case, with which you are familiar, were trade-marks upon products manufactured by German concerns in Germany?

A. I would have to examine to find out whether that was universally true. I would say it was generally true.

XQ. 1298. Did you not know that the business with which the said trade-marks were associated was in fact conducted in Germany and the products sold under such trade-marks were produced in Germany?

A. In general, I should say that was true.

XQ. 1299. Did you not know that you had not seized and could not seize or convey a business with which said trade-marks were associated or the plants in which the products under said trade-marks were in fact manufactured, since they were outside the territorial limits of the United States?

A. That is a big legal question on which there are two sides. You mean that the trade-mark won't go with anything except a going business?

XQ. 1300. Yes. I believe you testified Tuesday that you did not make any inquiry as to the amount of accrued license fees or the monthly or annual income under licenses issued by the Federal Trade Commission?

A. I did not.

XQ. 1301. And the same applies to income on contracts held by the Alien Property Custodian?

A. Yes.

XQ. 1302. Did you make any inquiry as to the reasonableness of the Federal Trade Commission license fees provided in the various licenses issued by that Commission?

A. No.

XQ. 1303. I again read from page 360 of your evidence on H. R. 2706, already referred to, in which you replied to a question by Mr. Green, as follows:

> "Why, Mr. Green, it was by virtue of our connection with the Alien Property Custodian's office that we saw it as our public duty not to let this thing revert to where it was, and everything we have done since has been because of what all of us saw was threatening America and because we saw the situation which had been hanging over America before the war, and it was in our endeavor to use that information for the benefit of the American people that we assumed the burden of carrying on this fight."

I think you said that was your tesitmony?

A. It was.

XQ. 1304. Now, Mr. Garvan, do you mean to tell me that your purpose in making the assignment of April 10, 1919, and the assignments thereafter made by you were with a view of promoting and developing American industry by making these patents available to American industry on the best terms possible?

A. That was only a means to the end, to our aim.

XQ. 1305. That was a means to an end?

A. To our aim.

XQ. 1306. What was your real aim?

A. Our real aim was to make this country safe to win this war. Without the building up of this industry, the war was lost and is lost today. And furthermore, to lay a foundation for the future development of American medicine. And only upon the basis of a developed organic chemical industry can either of those two things be accomplished and if it is not accomplished, the Germans have still won the war. France finds it out today. England has found it out and America found it out.

XQ. 1307. I don't mind about America, but as to England and France, you were not undertaking to develop their industry, too, were you?

A. No, they are taking care of themselves.

XQ. 1308. I thought so.

A. They are doing the same thing over there.

Mr. Anderson: That I move to strike out. He cannot know what they are doing in England and France.

The Court: Motion granted.

XQ. 1309. Were you on April 10, 1919, and on the dates of your subsequent conveyances to the Chemical Foundation familiar with the provisions of Section 3, sub-section B, of the charter of the Chemical Foundation, which is as follows:

> "In furtherance of the above objects and purposes the Corporation may grant non-exclusive licenses only, to make, use, and sell the inventions covered by any patents owned or controlled by it to the United States of America, upon such terms as the Board of Directors may determine, and also upon reasonable and equal terms and without advantage, as between licensees, to the following: (1) Natural persons, citizens of the United States; (2) Copartnerships, all the members of which are citizens of the United States; and (3) Corporations organized under the laws of the United States or of any state, territory, or dependency of the United States, of which not less than three-fourths of the capital stock and the beneficial in-

> terest therein is owned by stockholders who are citizens of the United States and who were not, prior to the 'end of the war,' as used in the 'Trading with the Enemy Act,' enemies or allies of enemies, as defined by said Act, and the amendments thereto.
>
> "The Board of Directors may refuse to issue any license or may revoke any license granted by the Corporation and may prescribe the terms and conditions of said licenses."

A. Yes, sir.

XQ. 1310. You were familiar with that?

A. Certainly.

XQ. 1311. And you were familiar with all the other provisions of the charter, I assume?

A. I think so.

XQ. 1312. I will read to you your evidence before the Committee on Ways and Means referred to here as the Hearing on H. R. 2706, page 245, in which the following takes place:

> "Mr. Green. I asked the gentleman what he meant by efficiency in this connection. Instead of answering that directly he was drifting off into some other matter.
>
> "Mr. Garvan. I was illustrating. There is no efficiency in a Government-owned patent which is open to everyone, because no one will spend the money to develop an invention under such circumstances and fit up plants for the purpose of manufacture when a neighbor can put up another plant next door to him the next day. If these patents had been thrown open to the public we would have been in the same position and had no protection against a German project——
>
> "Mr. Green (Interposing). Let me show you how utterly irrelevant that is. You are proposing by this Chemical Foundation to permit non-exclusive licenses to be issued. That is, one man can put up a factory, and another man can get a license and may put up another factory, and by that same

argument the Chemical Foundation would not know what the situation was.

"Mr. Garvan. To the capacity of the industry, you will find in the charter."

Mr. Garvan, as you are familiar with the charter, can you point out any provision in it that limits your duty to license to the capacity of the industry?

A. No, not in that language?

XQ. 1313. Not in that language?

A. It does in spirit and does in intent and purpose.

XQ. 1314. And you have so acted under it?

A. No one but a German has ever complained of that proposition.

XQ. 1315. You have so acted under it, have you?

A. Absolutely.

XQ. 1316. Who determines the capacity of the industry?

A. We have never had to determine the capacity of the industry, because we have not reached it yet.

XQ. 1317. You say you acted under it in that spirit. I will ask you again to answer my question. Assuming you had to exercise that judgment, who determined the capacity of the industry, in your understanding?

A. I will explain it to you. We called together all the stockholders of the industry and asked them what should be our general rule on that and it was decided some two or three years ago that no license would ever be refused.

XQ. 1318. Is there a matter of any record on that?

A. Yes, sir. That is a matter of record in one of the first meetings, on the minutes of the Foundation, of the Advisory Committee. You will find it there.

XQ. 1319. Now, suppose an application came up——

A. (Interposing) So that this idea of limiting—at first, for instance, we were afraid—the thing that made us use that word was the salvarsan patent, because Dr. Stieglitz and others thought that the Department of Drugs could not take care of more manufacturers of salvarsan than they were taking care of then; that they could not provide the funds to examine and so forth.

XQ. 1320. Now, I will ask you this——

A. There was that reservation that was necessary to keep for special circumstances because of our ignorance of what the development of the industry would demand.

XQ. 1321. I see. I will ask you again the question which I asked you before. When you came to the question of the capacity of the industry, who would determine it in your understanding?

A. I don't know, because we never got there.

XQ. 1322. You stated in Congress you had a limitation to the capacity of the industry?

A. That was in our minds at that time.

XQ. 1323. You understood that was within the meaning of your charter?

A. That was in our minds at that time.

XQ. 1324. At page 294 of the same testimony before the Committee on Ways and Means you stated in answer to a question by Mr. Crisp:

> "Mr. Crisp: If these patents were sold to any individual they would have a monopoly.
>
> "Mr. Garvan: Absolutely, so far as the patents go."

A. What page is that?

XQ. 1324. (Continued) Page 294.

> "Mr. Copley: Can not those trustees equally as well create a monopoly by licensing?
>
> "Mr. Garvan: Our charter provides that we

must give a license to every American who applies for the charter, up to the capacity of the industry. All the stock, of course, is held by the manufacturers themselves and the consumers. Now, if the trustees attempted to do anything to depart from the terms of their trust, the Courts would step in right away on behalf of the stockholders to prevent it."

Is that your testimony?

A. Yes, sir.

XQ. 1325. Have you not refused licenses in several instances?

A. No, sir.

XQ. 1326. Did you not testify here on Tuesday they had refused licenses in two instances?

A. I testified to one instance alone; one where we deferred a license.

XQ. 1327. Who determined the question as to the refusal of that license?

A. As to the refusal of the license—which one?

XQ. 1328. That one that you did refuse?

A. I think it was the Board of Directors.

XQ. 1329. The Board of Directors determined that?

A. I am not sure what formality—whether there was ever a necessity of formally refusing it.

XQ. 1330. You said you had never given an exclusive license?

A. No, sir.

XQ. 1331. Did you not give an exclusive agency to the Pacific Flush Tank Company?

A. That is not an exclusive license. That is an agency to go out and solicit business for us. A license in every city of the country, there is nothing exclusive about that.

XQ. 1332. And they have the exclusive right to license have they not?

A. No, you will find it provided that they had to come back and get the licenses issued by us; but they have a right to go out and drum up business for us.

XQ. 1333. Then it is an exclusive agency, whatever it is?

A. Yes, it is an exclusive agency to go out and push that one patent, to get as many licensees as possible.

XQ. 1334. At page 359 of your testimony before the House Committee on Ways and Means, you were testifying as to the licenses and you make this statement in reply to a question of Mr. Green:

> "That charter in reference to license was approved—drawn, practically drawn, but approved—by every dye manufacturer in the country. Now, if they thought that their ability to get license was to be limited, they never made a suggestion of it. They had their lawyers, Mr. Kalish—they had at least 15 or 20 of their lawyers who went over the charter and the license provision was drawn in accordance with their wishes. The Dye Institute, which is an open institution now, composed of every dye manufacturer in the country who cares to join, and with an open invitation to every manufacturer who manufactures a pound of dye in the country to join, the license is as the industry requested it, and that language is their language, so that they are not alarmed by it."

Is that your testimony?

A. Yes, sir.

XQ. 1335. In your testimony before the Committee on Finance of the United States Senate, on H. R. 8078, at page 550, you testified as follows; question by Mr. Demming:

> "MR. DEMMING: With regard to the Chemical Foundation and the patents which the Chemical Foundation owns, isn't it the privilege of the Chemical Foundation to decline or to allow the

privilege to ayone whom they may select to make products under any patent?

"Mr. Garvan: No; I do not believe it would be considered by any court. We would have to show some reason for doing it, for not issuing it to some American. We never shut out anybody or refuse a license. A German can not come over here and take out a license from the Chemical Foundation. Those patents are for the purpose of educating American chemists, and the Germans cannot send their chemists over here and evade our plan or rules, but any American who wants to develop the industry in America can take out any license he wants.

"Mr. Demming: Then it is the policy of the Chemical Foundation to apply the same principles for the stocks of the Chemical Foundation for the privilege of the right to manufacture under any patent which they hold if they will grant him a license.

"Mr. Garvan: That is our policy.

"Mr. Demming: No matter who he is?

"Mr. Garvan. 'No matter who he is' is pretty broad.

"Mr. Demming: Then you do retain the privilege or the right to exercise a choice?

"Mr. Garvan: Suppose a man wanted a thing for the purpose of blackmail, or for a wrongful purpose, or for the purpose of forcing fake stock upon the people and to advertise he had valuable patents?

"Mr. Demming: You are judges of that.

"Mr. Garvan: First, under the constitution, the stockholders themselves who own the business and the trade, make their recommendations to us, and we follow their recommendations.

"Senator Curtis: In short, it is the purpose to grant the request of any reliable applicant?

"Mr. Garvan: Certainly. First, the application goes—for instance, for dye patents, to the dye trade for recommendation as to the man. For instance, as to the Badische patents, dye patents, we have already granted five or six licenses; and anyone can come in and get a license who will help on with this general cause."

Is that your testimony?

A. Yes, sir. Does it appear who Mr. Demming was?

XQ. 1336. He was a member of Congress, I think.

A. No, no, no; he was an employee of Mr. Metz.

XQ. 1337. Very good. I have no objection to that appearing on the record. But you did so testify, did you not?

A. Yes, sir.

XQ. 1338. You spoke there of referring it to the stockholders. Do you refer in that connection to the Advisory Committee?

A. That is what I referred to. We referred that general question to them and they passed on it and said it was better to have a regulation leaving no restrictions on granting a license.

XQ. 1339. There is included in this record, as Exhibit F with the Bill of Complaint, and as being introduced in evidence as an exhibit, a paper entitled "Constitution and By-laws, Chemical Foundation, Advisory Committee." Is that the committee to which you refer?

A. Yes, sir.

XQ. 1340. Is that the constitution which you referred to in your evidence, where you said, "under our constitution"?

A. I suppose so; I do not know exactly.

XQ. 1341. You have no other constitution have you?

A. No, no.

XQ. 1342. This Advisory Committee consists, as appears from the constitution, of the President and the Vice President of the Chemical Foundation, a representative of the American Dyes Institute and a representative of the Manufacturing Chemists' Association of the United States, to be respectively chosen by each association, the chairman of the Section Committee, and not to exceed five committeemen at large, to be chosen by the Chemical Foundation. Is that the organization of it now?

A. Yes, sir.

XQ. 1343. Can you tell me who that Advisory Committee is today, and who they represent?

A. Well, I can get it for you.

XQ. 1344. I would like very much to know the names of the members of the Advisory Committee and what institutions they represent.

A. I can name some of them for you.

XQ. 1345. Name what you can of them. Will you put in an answer to this question giving a complete list of the Advisory Committee, showing the organizations which they represent, commercial organizations?

A. Yes, sir.

Mr. Kresel: That appears from the minutes of that committee, which are in, Colonel. But we will give it just the same.

Mr. Anderson: It does appear from the minutes.

Mr. Kresel: Yes, the minutes are in. You put all of them in.

Mr. Anderson: I will get the witness to identify some of these gentlemen who appear to have attended these meetings.

Mr. Kresel: What date is this?

Mr. Anderson: The meeting of October 18th, 1922.

XQ. 1346. At that meeting there were present Francis P. Garvan, Mr. James T. Pardee, of Section 1. What section was that?

A. I do not know which section he came under. He is of the Dow Chemical Company, but they have several different lines. They are heavy chemical people, dye people and drug people. I do not know which section he was in.

XQ. 1347. Dr. W. J. Schieffelin?

A. That is the Schieffelin Drug Company.

XQ. 1348. That is drugs?

A. Yes.

XQ. 1349. Mr. George P. Adamson?

A. I do not remember which company he is in.

XQ. 1350. That is Section 3. Mr. E. A. Colby, Section 5. Do you know him?

A. No. I mean I cannot identify his company.

XQ. 1351. Mr. Henry Howard?

A. Mr. Howard is Secretary of the Manufacturing Chemists' Association. He was with the Merrimac Chemical Company at that time, now with the Grasselli.

XQ. 1352. At the meeting on October 26, 1921, there were present Mr. Henry Wigglesworth—whom did he represent?

A. General Chemical Company, heavy chemicals.

XQ. 1353. Who was Mr. S. S. Norton?

A. Of the Permutit Company, a resuscitation company, which has that machine for resuscitating people overcome.

XQ. 1354. At the meeting of April 20th, 1921, I find present Mr. Pardee, Mr. Schieffelin, Mr. Wigglesworth, Mr. Norton and Mr. Howard, whom you have identified, and Mr. J. Merritt Matthews, representing the American Dyes Institute. Was that Dr. Matthews?

A. Yes, that is Dr. Matthews. He is the editor of a color journal, a dye journal.

XQ. 1355. I find at another meeting on November 18, 1920, the additional name of Dr. W. T. Cashman.

He represented the Grasselli Chemical Company, did he not?

A. The Grasselli Chemical Company.

Mr. Kresel: Colonel, do you still want us to furnish a list to date? We will do it, if you say so.

Mr. Anderson: You might give me the list, and if it adds any names I will put it in; if it does not, I will not.

Mr. Kresel: All right.

Mr. Anderson: Because the committee as provided by the constitution is much larger than that and I want to see if it was ever filled.

XQ. 1356. I note in the provisions of the charter which I read you a while since there is contained the statement that the board of directors may fix the terms of all licenses and may cancel licenses. Have you ever cancelled any licenses?

A. Not except on request, I do not think.

XQ. 1357. Are you sure about that?

A. Before swearing positively I would like to make an examination. I have no recollection of a license that we have cancelled except at the peoples' request. But I would like to see Mr. Buffum there, who might tell me. Mr. Buffum informs me we have not.

XQ. 1358. All of your licenses issued by you to domestic manufacturers or dealers contain a provision to the effect that the licensee is not permitted to import under that license, do they not?

A. I think so.

XQ. 1359. You think so?

A. I think so.

XQ. 1360. Of course, the license form is in evidence. I will show it to you if you wish.

A. That is so, to my recollection.

XQ. 1361. Your license fee on all importations I think you said was 10 per cent?

A. Yes, sir.

XQ. 1362. I mean a royalty.

A. A royalty. We have no license fee.

XQ. 1363. Your royalty on all importations is 10 per cent.?

A. Yes, sir.

XQ. 1364. But you do have a license fee for issuing the license of $100?

A. Not on importations. On domestic manufacture.

XQ. 1365. Is not that 10 per cent. based upon the American price, which includes 60 per cent. import duty now imposed on dyestuffs?

A. Yes, sir.

XQ. 1366. It is?

A. Yes, sir.

XQ. 1367. Then the 10 per cent. which you levy is on the gross American selling price?

A. Yes, sir.

XQ. 1368. Do you know of any provision in your charter limiting the power of the Board of Directors to prescribe such import license royalty as they may see fit?

A. No, sir.

XQ. 1369. Mr. Garvan, much has been said here about the so-called Haber nitrogen patents. At the time that these patents were transferred by you to the Chemical Foundation did you know the production of synthetic ammonia in Germany under those patents? I mean the amount of production of synthetic ammonia per annum.

A. No. I knew it was large during the war.

XQ. 1370. Did you know the amount of synthetic ammonia consumed in the United States at that time?

I am not speaking of the present, but did you know it at that time?

A. I knew at that time, in the spring of 1919, that there was an enormous surplus here.

XQ. 1371. No, I asked you if you knew the annual consumption of synthetic ammonia here.

A. No, I beg your pardon, I did not. I probably did at that time, but I do not know now.

XQ. 1372. And you cannot now recall whether you knew at that time?

A. I cannot definitely recall.

XQ. 1373. You made no investigation of the subject yourself?

A. Oh, it was discussed all the time.

XQ. 1374. But I mean you made no personal investigation of the subject of synthetic ammonia in the United States, did you?

A. I do not know what you mean by an investigation. All of our war literature was full of it and all of our departments were full of it, and we knew it was why Germany had been allowed to keep on with the war and all that.

XQ. 1375. I ask you if you had made any personal investigation. We need not go into that.

A. Oh, I could not. I am not a chemist.

XQ. 1376. Your counsel showed the other day from a card of the Federal Trade Commission that that card showed no income under the license issued under the Haber patent to the Semet-Solvay Company, that I recall.

A. No, it showed some income there.

XQ. 1377. No, I am speaking now of the Federal Trade Commission license.

A. Oh, no.

XQ. 1378. The Chemical Foundation did in fact license the use of the Haber patents after it took them over, did it not?

A. Yes, sir.

XQ. 1379. To the General Chemical or to the Atmospheric Nitrogen Company?

A. Semet-Solvay. I think that that read to the Semet-Solvay.

XQ. 1380. The Semet-Solvay?

A. Yes.

XQ. 1381. The General Chemical and the Semet-Solvay are now constituents of the Allied Chemical, anyway.

A. I think the license read to the Semet-Solvay. But it is in evidence, that license. I won't be certain.

XQ. 1382. Do you or do you not know that the business of producing synthetic ammonia at Syracuse, which has been referred to here, is carried on in the name of the Atmospheric Nitrogen Company—or is it?

A. I would not be able to swear to that here. I know it is a subsidiary or part of the Allied Chemical Company.

XQ. 1383. Mr. Garvan, could you produce a copy of that particular license?

A. Certainly. I think it is in evidence.

XQ. 1384. I do not think any of the licenses have gone in, just the forms; but I would like to see that particular license.

A. We have it here.

Mr. Kresel: We will show it to you.

XQ. 1385. How many licenses have you issued to persons or corporations not stockholders of the Chemical Foundation, do you know?

A. I think it is about half and half.

Mr. Kresel: What do you mean by that? That does not mean anything.

The Witness: Out of the four hundred odd I think half of them are to non-stockholders.

XQ. 1386. Any of the statements you put in show the licenses issued to stockholders?

A. We have it here.

XQ. 1387. We can check that then, from the record, can we not?

A. We had it here the other day. We can get it over night.

XQ. 1388. If it appears from the record already put in where we can get it I do not want to bother you and have to put it in again.

A. It is either in or can be checked.

> Mr. Anderson: If we can figure it out from the record I will not have the witness put it in again.

> Mr. Kresel: Here is the license that you asked for, Colonel. (Handing counsel.)

> The Witness: That includes more than the Badische. There are more than those relating to the Badische patents; all we had was put into that.

XQ. 1389. At page 296 of your evidence before the Ways and Means Committee already referred to, you were asked by Mr. Longworth:

> "That is what I wanted to get at now. Of the 4500 patents at least the ones that are of real value here, practically, relate to the vat dyes?
>
> "Mr. Garvan. The vat dyes.
>
> "Mr. Longworth. And which are not made in this country?
>
> "Mr. Garvan. Not made in this country.
>
> "Mr. Longworth. And are of great value to the American manufacturers?
>
> "Mr. Garvan. Tremendous; that is the first aim.
>
> "Mr. Longworth. Almost a necessity for certain kinds of cloth, are they not?
>
> "Mr. Garvan. They certainly are."

That is your testimony, is it not?

A. Yes, sir.

XQ. 1390. You said yes?

A. Yes, sir.

XQ. 1391. Mr. Garvan, are not the indanthrene dyes among the most valuable?

A. Yes, sir.

XQ. 1392. Of the present patented dyes. Is it not true that all of the licenses issued by you for indanthrene dyes are held by the Newport Chemical Company and the duPont Chemical Company, or both?

A. No, sir. I do not think so. I think other companies hold them.

XQ. 1393. Are you sure about that?

A. I can verify it.

XQ. 1394. The record that you put in the other day, that large exhibit, from my study of it shows they were the holders of the patents on indanthrene dyes.

Mr. Kresel: Holders of the patents?

Mr. Anderson: I mean of the licenses.

A. I think there are other licensees on specific dyes. You see, the National has the Federal Trade Commission license on those dyes. They have never surrendered those.

XQ. 1395. Who is that?

A. The National Aniline.

XQ. 1396. They had the Federal Trade Commission license?

A. Yes.

XQ. 1397. But the only licenses you have issued so far as your statement shows are to the Newport Chemical Company and the duPont Chemical Company on indanthrene dyes?

A. I think there are other licenses there.

XQ. 1398. You would be guided by your statement, would you not? Whatever that statement shows you would say was right?

A. Yes. I will look it up.

XQ. 1399. You put in that statement, and that statement is correct, is it not—that large statement showing the patents and the revenues?

A. Oh, yes. But sometimes you cannot tell by the name of a dye whether it is an indanthrene or not. I would have to look that over. Those two companies have made the most progress in making vat dyes, I want to be frank about that. They are the two that are farthest ahead in that matter.

XQ. 1400. Do you know anything about the selling price of indanthrene dyes and colors in 1914 and the present selling price?

A. No, the Tariff Commission could tell you that; I could not.

XQ. 1401. You cannot testify as to that at all?

A. Oh, I could look it up and get it from the royalty paid to us on the selling price, and then I can get it from—I can get it for you if you want it.

XQ. 1402. I would like it very much if either you or some other witness, one of your accountants or witnesses as your counsel may find most convenient—it matters not which to me—would give me from your records, if it can be done, the selling price on these indanthrene colors in 1914 and at the present time.

A. We have not the records of 1914.

Mr. Kresel: Colonel, if you will be good enough to give us a list of just what colors you are interested in, we will try to get you the information.

The Witness: That would come from the Tariff Commission.

Mr. Kresel: We will get it in some way.

Mr. Anderson: Here is a statement which I have had made up showing the patent number, the color covered by it, and the sales for the fiscal year, the selling price for 1914, the present selling price, and the present manufacturers, domestic manufacturers, and the date of the expiration of the patent. If you will check that and find out whether it is right, I will put that information in as evidence, so as to save us both trouble.

Mr. Kresel: We will do that. Colonel, as long as you are resting now from a question, I want to hand you a list of the licensees of the Chemical Foundation who are stockholders and a list of the licensees who are not stockholders (handing counsel).

The Court: Do you want those marked?

Mr. Anderson: All right, sir, but I want a chance to study that list and I cannot stop now.

XQ. 1403. You have only one license outstanding under the Haber process patents?

A. Prior to January 1st, 1923.

XQ. 1404. Mr. Garvan, you have put in evidence here a paper which purports to be a release to the United States of all claims for infringement on all enemy-owned patents seized by the Alien Property Custodian, which you said you delivered to Mr. A. Mitchell Palmer as Attorney General. Can you hand me that paper? You recall that release, do you not? There is no use waiting for it. There was no consideration named in that instrument at all for the release, was there?

A. Do you want me to weaken the Government's title to that release?

XQ. 1405. No, I am not doing that.

A. I would rather not testify against the Government on that.

XQ. 1406. Mr. Garvan, I am not asking you to testify against the Government.

Mr. Kresel: The instrument speaks for itself to begin with.

A. The instrument speaks for itself.

XQ. 1407. All right. Did you, then, investigate to ascertain how many patents had been infringed by the United States during the war?

A. I listened to the Army and Navy on the subject.

XQ. 1408. Did they tell you how many?

A. They told me it would amount to probably hundreds of millions of dollars, if they had to pay it.

XQ. 1409. Do you know whether or not the Peace Treaty provided protection to the United States in that regard?

A. That was later. That had not been drawn at that time.

XQ. 1410. It had not been drawn at that time?

A. No.

XQ. 1411. May I ask what was your idea of your authority to execute a release to the United States of all claims for infringements of patents; where did that authority come from? I just want your idea, the idea on which you acted?

A. Why, I don't like to testify to what I have done, which may be used against the Government in hundreds of millions of dollars of suits. I don't think I ought to be called upon to do it. I have not the paper before me. I would want to study up that transaction before I testified.

> THE COURT: The Government of the United States is now asking for that information, so I will have to ask you to answer, Mr. Garvan.
>
> THE WITNESS: Then repeat the question.

XQ. 1412. I ask what was your idea of your authority to execute such a release?

A. I cannot remember at this time.

XQ. 1413. You also put in evidence here a license and release purporting to cover approximately 5700 patents and other rights, which you executed and delivered to the United States in consideration of $100,000. I think you delivered it to the Navy Department?

A. Yes, sir.

XQ. 1414. Did you make any investigation of the subject before you executed that instrument?

A. I had numerous conferences with the Army and the Navy.

XQ. 1415. And your answer as to authority in that instance is the same as to the preceding question, is it?

A. No, I do not think so. I considered that the consideration there was the fair value under the circumstances.

XQ. 1416. That release took the place of the former one, did it not?

A. No, no, no, you have got that wrong, Colonel. The 5700 were on gun carriages and ammunition and surgical instruments and everything. The release was on what we were selling to the Chemical Foundation; it was on the chemical patents.

XQ. 1417. The chemical patents alone?

A. The 5700 were on the actual implements used in waging war.

XQ. 1418. Mr. Garvan, as to the license you have put in here, executed by the Chemical Foundation to the Navy Department——

A. You mean the big license, what we call the big license?

XQ. 1419. Yes. Do you not know that the negotiations in that regard began as early as January, 1920?

A. I would not be at all surprised.

XQ. 1420. While I am waiting for the correspondence, I call your attention to your evidence on Tuesday to the effect that you seized the gyroscope patents at the suggestion of Commander Norton. Do you not know that months after these patents had been seized by you the Secretary of the Navy asked you to advise him how he could get an assignment of these patents to the Navy Department?

A. No, I don't know that.

XQ. 1421. Or four of them at least?

A. No, I don't know that.

Mr. Anderson: In order to complete the record on this subject for whatever value it may have, I would like to ask leave to introduce additional correspondence in addition to what counsel introduced on Tuesday. Have you any objection to its going in at this point?

Mr. Kresel: No; as to the order of the matter I do not object at all. I would just like to see what it is you are offering.

Mr. Anderson: Here it is (handing papers). While you are looking it over I will go ahead with other questions, and when you finish looking it over, I will offer it.

XQ. 1422. Mr. Garvan, a gyroscope is an instrument used in the navigation of ships, is it not?

A. Yes, sir.

XQ. 1423. Can you state what relation such an instrument has to the objects and purposes of the Chemical Foundation as expressed and defined in its charter?

A. Only to help the Government.

XQ. 1424. To help the Government?

A. Yes.

XQ. 1425. Is there any such provision in the charter?

A. No. That is its purpose. The Navy asked us to take them over for their purposes, and we took them over—paid our money.

XQ. 1426. Then you cannot state that they have any relation to the objects and purposes of the Chemical Foundation as expressed in the charter?

A. I cannot tell you. I cannot tell a gyroscope from the back of a house. They told us it was necessary for the navigation of our Navy and our ships; that it was some balancing apparatus which—I don't know—helped their compasses, or something.

XQ. 1427. You do not really know anything about it.

A. (To XQ. 1426 continued.) ——that they were owned by the Germans, and they wanted to be saved from the Germans having control of our ships.

Mr. Anderson: I offer in evidence a letter to the Chief of the Bureau of Ordnance of the Navy, signed by P. A. Blair, dated January 23, 1920, subject: "Alien Enemy Patents."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 614." (*See Exhibits, Vol. III, page 1483.*)

Mr. Anderson: I offer in evidence copy of a letter dated February 11, 1920, addressed to Alien Property Custodian, signed by Josephus Daniels.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibt No. 615." (*See Exhibits, Vol. III, page 1487.*)

Mr. Anderson: I offer in evidence letter dated July 28, 1920, by Charles B. McVay, Jr., Rear Admiral of the United States Navy, addressed to Alien Property Custodian, subject : "Ownership of Patents."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 616." (*See Exhibits, Vol. III, page 1490.*)

Mr. Anderson: I offer in evidence a memorandum of the Chief of the Bureau of Ordnance, dated July 18, 1920, signed G. B. Wright, subject "Patents held by Alien Property Custodian, acquisition thereof."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 617." (*See Exhibits, Vol. III, page 1491.*)

Mr. Anderson: I offer in evidence copy of letter dated January 14, 1921, addressed to the

Navy Department, attention of Commander A. L. Norton, signed J. R. Zimmerman, Division of Records of the Alien Property Custodian.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 618." (*See Exhibits, Vol. III, page 1492.*)

Mr. Anderson: I offer in evidence letter dated January 17, 1921, addressed to Commander A. L. Norton, General Inspector of Ordnance, signed Chemical Foundation, by Lloyd VanDoren.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 619." (*See Exhibits, Vol. III, page 1493.*)

Mr. Anderson: I offer in evidence memorandum dated January 19, 1921, "To: All Desks," signed "Charles B. McVay, Jr.," Chief of Bureau, subject, Purchase of license under patents from the Alien Property Custodian.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 620." (*See Exhibits, Vol. III, page 1494.*)

Mr. Anderson: I offer in evidence copy of a letter dated January 19, 1921, signed Charles B. McVay, Jr., Rear Admiral of United States Navy, to the Chemical Foundation, Inc., attention of Mr. VanDoren.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 621." (*See Exhibits, Vol. III, page 1495.*)

Mr. Anderson: I offer in evidence copy of a letter dated January 20, 1921, to Rear Admiral Charles B. McVay, Jr., signed by Chemical Foundation, Inc., by Lloyd VanDoren.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 622." (*See Exhibits, Vol. III, page 1496.*)

Mr. Anderson: I offer in evidence memorandum dated 17th of February, 1921, to Bureau of Medicine and Surgery, signed Charles B. McVay, Jr., Chief of Bureau.

Received in evidence and marked "Plaintiff's Exhibit No. 623." (*See Exhibits, Vol. III, page 1496.*)

Mr. Anderson: With the first endorsement, dated February 25, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-A." (*See Exhibits, Vol. III, page 1498.*)

Mr. Anderson: And second endorsement dated March 9, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-B." (*See Exhibits, Vol. III, page 1499.*)

Mr. Anderson: And the third endorsement dated March 11, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-C." (*See Exhibits, Vol. III, page 1500.*)

The Court: Admitted.

Mr. Anderson: I offer in evidence letter dated March 28, 1921, from the Chemical Foundation by Lloyd Van Doren addressed to Mr. Charles B. McVay, Jr., Rear Admiral, United States Navy, as Plaintiff's Exhibit 624.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibt No. 624." (*See Exhibits, Vol. III, page 1501.*)

Mr. Anderson: I offer in evidence letter dated July 19, 1921, from the Chemical Foundation, Inc., by Lloyd Van Doren, to Commander A. L. Norton, as Plaintiff's Exhibit 625.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 625." (*See Exhibits, Vol. 111, page 1502.*)

MR. ANDERSON: I offer in evidence letter dated December 15, 1921, to the Chief, Bureau of Ordnance, signed "Palmer, Davis & Scott," as Plaintiff's Exhibit No. 626.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 626." (*See Exhibits, Vol. 111, page 1504.*)

XQ. 1428. The firm of Palmer, Davis & Scott was the law firm of A. Mitchell Palmer, was it not?

A. Yes, sir.

MR. ANDERSON: I offer in evidence a letter signed by Charles B. McVay and A. L. Norton to Palmer, Davis & Scott, dated January 19, 1922, subject: Acceptance by Department of License from the Chemical Foundation, Inc., covering letters patent owned by it.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 627." (*See Exhibits, Vol. III, page 1505.*)

MR. ANDERSON: I offer in evidence letter dated January 21, 1922, addressed to Honorable Charles B. McVay, Rear Admiral, U. S. Navy, signed "Palmer, Davis & Scott," as Plaintiff's Exhibit 628.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 628." (*See Exhibits, Vol. III, page 1506.*)

MR. ANDERSON: I offer in evidence letter dated June 3, 1922, to Rear Admiral Charles B. McVay, Jr., signed "Palmer, Davis & Scott," as Plaintiff's Exhibit No. 629.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 629." (*See Exhibits, Vol. III, page 1506.*)

XQ. 1429. Mr. Garvan, I now read to you from your evidence before the Ways and Means Committee on H. R. 2706, page 342, as follows:

> By Mr. Kitchin: "Mr. Garvan, I ask you this, owing to the insinuations of the questions heretofore asked you. Why was it that men interested in this chemical foundation desired your connection with it as President and Director, and why was it that you were induced to accept it?
>
> "Mr. Garvan. Because for the last eighteen months, or ever since the war began, I have been engaged in uncovering these German corporations which were camouflaged under alleged American ownership, and this forced me to spend my entire time on the study of German business forces in this country.
>
> "Mr. Kitchin. You are in a position to know more about it than anybody else?
>
> "Mr. Garvan. I know all about it. I have had all the Albert stuff, and all that other thing has been passing through my hands, and they felt that it would be essential that I was there, so that if anything was attempted to be put over on the American industry I would be able to have the knowledge at my hand of their past so as to connect it with their present or future activities. It was only to allow the American industry to utilize the information which the war had collected in my hands."

Is that your testimony?

A. Yes, sir.

XQ. 1430. Mr. Garvan, your counsel put in evidence a few days ago, in the cross-examination of Mr. Metz, an original letter of Dr. Albert?

A. No, an original letter of Mr. Metz.

XQ. 1431. That Mr. Metz addressed to Dr. Albert. Where did you get that letter?

A. I don't know. I assume that I had it in New

York at the time that we were trying the Metz case. I suppose that is where it came from.

XQ. 1432. Have you any other of the Albert correspondence at this time?

A. I don't know.

XQ. 1433. If so, I would like to ask you to produce it.

A. If I have anything. I will look through anything that I have. I have nothing of any originals.

XQ. 1434. Have you copies of the Albert correspondence in your possession?

A. Oh, I have got a good many copies.

Mr. Kresel: You mean all correspondence signed by Mr. Albert?

XQ. 1435. As a matter of fact, the Albert papers were seized in New York, were they not?

A. No, not altogether. I never seized the Albert papers.

XQ. 1436. You did not?

A. No, no.

XQ. 1437. How did they come into your possession?

A. Why, they came into my possession through the Secret Service. People brought me copies of it. Most of it was published in the *New York World*. They seized part of the papers off Dr. Albert.

XQ. 1438. I mean, how did the originals come into your possession, the originals you produced the other day?

A. I could not tell you whether the Secret Service gave me that or whether it was gotten—no, it would not be Metz's files—or whether it was produced at the time of the trial and was a useless paper apparently that was not used at that time. I could not tell you.

Mr. Kresel: Colonel, I am sorry, but I do not remember what letter you are referring to.

The Witness: Enclosing the newspaper clipping.

Mr. Kresel: Oh, I see. I remember it now. I had forgotten it.

XQ. 1439. How did you get hold of the papers of Dr. Schweitzer introduced in evidence?

A. Those papers of Dr. Schweitzer I took from his house after he was dead.

XQ. 1440. What was your position at that time?

A. Head of the Bureau of Investigation, New York.

XQ. 1441. Dr. Schweitzer was an American citizen, was he not?

A. On the surface.

XQ. 1442. Well, he was an American citizen?

A. He would not have been if he had been alive. We found his directions from the German Government to become an American citizen, to camouflage his action.

XQ. 1443. I did not ask you what you found. I asked you whether he was an American citizen or not?

A. Yes. Are you complaining of my taking Dr. Schweitzer's papers?

XQ. 1444. No, I only want to know the facts.

A. (No answer.)

XQ. 1445. There was used in the evidence here either an original or copy—I did not see it—of the testimony of Mr. Metz on a hearing before one of the officers of the Alien Property Custodian?

A. Oh, that is a copy.

XQ. 1446. Have you that?

A. That is one of five or six copies that have been around everywhere.

Mr. Kresel: I have it right here. There it is (handing papers to Mr. Anderson).

XQ. 1447. Your counsel has handed me a paper entitled "Office of the Alien Property Custodian, 110 West 42nd Street, New York City, in the matter of the General Drug Company, before Joseph H. Choate, Esq., Examiner, September 23, 1918." Do you know where that document came from?

A. I don't.

XQ. 1448. You don't?

A. It might have come from me. It might have come from Choate. It might have come from Kresel. I don't know where it came from. We made lots of copies.

XQ. 1449. Another document with the same title headed "Statement of Herman A. Metz." Do you know where that came from?

A. No.

XQ. 1450. Another document with the same title headed "Deposition of Herman A. Metz," dated September 26, 1918. Do you know where that came from?

A. No.

MR. KRESEL: Will you have those either put in evidence or marked for identification, Colonel?

MR. ANDERSON: Yes, they can be marked for identification. I do not want them in evidence. You read from them.

MR. KRESEL: They are not signed documents. You will admit that. They are not originals.

THE COURT: What is the pleasure of counsel with respect to that? Do they want it in evidence?

MR. ANDERSON: I am through with them. They may be put in or not, as far as counsel may desire. I only wanted to know what the fact was.

THE COURT: The Clerk will then return them to Colonel Anderson.

XQ. 1451. Mr. Garvan, under the order issued by Mr. Polk of February 26th and the subsequent order of April 5th, the Alien Property Custodian is authorized to sell to the Chemical Foundation, upon such terms and conditions as the Alien Property Custodian or his authorized agent may deem proper, all letters patent, trade-marks and rights under letters patent and trade-marks, including all profits and damages recoverable at law or in equity for the past infringement thereof, which the Alien Property Custodian may seize or may have seized under the provisions of said Trading with the Enemy Act and amendments thereto now or hereafter enacted, and which he from time to time shall determine to relate to the objects and purposes of said Chemical Foundation, Inc., expressed and defined in its charter.

Among the patents so assigned to the Chemical Foundation, I find the following, and I will ask you in what respect they relate to the objects and purposes of the Chemical Foundation as expressed and defined in its charter: First, under Patent No. 13,085, dated March 8, 1915, cigar mouthpieces?

A. Those are abandoned. Those were never issued.

XQ. 1452. That is not the question I asked you. I asked you what was the relation, how they related to the purposes and objects of the Chemical Foundation as described in its charter.

A. I could not tell you. It may have been a cigar mouthpiece for a man smoking a cigar with a gas mask, I don't know.

XQ. 1453. I won't take the time to call the numbers and dates of the patents because they can be identified in Exhibit G, but I will only call out the subject and ask you how it relates to the purposes and objects of the Chemical Foundation. Methods of making mouthpiece oval cigarettes?

A. I don't know.

XQ. 1454. Flexible metal hose?

A. I don't know.

XQ. 1455. Boarding machines?

A. I don't know.

XQ. 1456. Optical reversing system?

A. That certainly refers.

XQ. 1457. In what respect?

A. They are all chemical, optical lenses, and also, it is the highest development of the chemical art.

XQ. 1458. An optical lens is a part of the chemical art, is it?

A. Why, certainly.

XQ. 1459. Photographic projections?

A. Certainly.

XQ. 1460. You think they refer?

A. Surely.

XQ. 1461. Galilean telescope lens system?

A. Certainly that would be the same.

XQ. 1462. Acromatic spectacle glass?

A. Yes.

XQ. 1463. Magnifying glass?

A. Yes, sir.

XQ. 1464. Would you say that that referred to it?

A. Oh, yes. That is the highest development of the chemical art, the manufacture of those high-grade glasses.

XQ. 1465. Telescopes?

A. Surely.

XQ. 1466. You would say that related to the chemical business?

A. Surely.

XQ. 1467. Calculating machines?

A. I don't know what they are for calculating. They may have been for measuring chemicals. I don't know.

XQ. 1468. You don't know what they relate to?

A. No.

XQ. 1469. Optical instruments and certain specified scientific appliances?

A. Certainly.

XQ. 1470. Dental drilling machines. Would they refer to the chemical business?

A. I don't know, sir.

XQ. 1471. Field glasses?

A. Yes, sir; certainly.

XQ. 1472. Calculating and adding machines?

A. It might.

XQ. 1473. They might?

A. Might.

XQ. 1474. You cannot say that they do?

A. No, I cannot.

XQ. 1475. Surveying, photographic and optical apparatus. Does surveying apparatus relate to the chemical industry?

A. If it was glass.

XQ. 1476. Compass for ships and the like. Does a compass relate to the chemical industry?

A. I don't know.

XQ. 1477. Again, compasses for ships?

A. There may have been some chemical part of it. I don't know.

MR. KRESEL: Those were taken over on account of the Navy's request?

MR. ANDERSON: No, sir.

XQ. 1478. Gyroscopic compass?

A. Those are all the Navy.

XQ. 1479. Taken over on the 28th of March, 1919, and assigned in April, 1919?

A. Assigned when?

XQ. 1480. April, 1919. Gyroscopic compasses?

A. I don't know. I could not tell you.

XQ. 1481. Suspension and rotating apparatus and magnetic compasses?

A. I could not tell you.

XQ. 1482. Artificial horizon; method of gyroscopic control?

A. Is that part of the Navy's gyroscopic apparatus?

XQ. 1483. I don't know. Does that relate to the purposes and objects of the Chemical Foundation?

A. I think so.

XQ. 1484. You would say it related to the purposes and objects. In what respect? A gyroscopic control you would say was used on Navy ships, would you not?

A. The Navy reported to me that they thought it would be expeditious for the Chemical Foundation to take it over; and I did so. That is up to the Navy.

XQ. 1485. Do you know whether that was in the list in G-3 or not?

A. Whether that was what?

XQ. 1486. Do you know whether that was included in the list of assignment G-3 or not?

A. I do not know what assignment G-3 is.

Mr. Kresel: What is G-3?

Mr. Anderson: That is the schedule with the assignment that you had up in June or July, 1919.

XQ. 1487. Balloon envelope material?

A. Yes, that certainly is.

XQ. 1488. That is certainly chemical business, is it?

A. Probably covered with dope which was all chemical to make it water-tight and fire-tight and all that.

XQ. 1489. Apparatus for cutting plate glass?

A. I don't know. They may have had plate glass used in chemical manufacture; I do not know.

XQ. 1490. Ice cutting machine?

A. I don't know. That is probably for ships of the Navy. I don't know.

XQ. 1491. Process and apparatus for construction of slabs of artificial stone?

A. Surely, that would be chemical.

XQ. 1492. That would?

A. Certainly. It would be a chemical process.

XQ. 1493. Press for making briquettes and the like?

A. Surely, that is all chemical.

XQ. 1494. That is a piece of machinery, isn't it?

A. What?

XQ. 1495. Press for making briquettes?

A. I suppose part of a process for making briquettes.

XQ. 1496. Prop for mines?

A. I don't know. I assume that was the Government's.

XQ. 1497. You assume?

A. Yes, I don't know.

XQ. 1498. Making fish sausage?

A. I don't know. I should think it would be chemical.

MR. KRESEL: Probably a fertilizer.

XQ. 1499. Apparatus for moistening and warming rooms or apartments?

A. I don't know. I suppose that is for the apartments of ships.

XQ. 1500. Why do you suppose that is for apartments of ships, Mr. Garvan?

A. Because I don't think we would be looking for it as a chemical patent. You can't tell from that description. You can't tell a thing from that description.

XQ. 1501. How about a centrifugal machine?

A. You can't tell.

XQ. 1502. What?

A. It may be a centrifugal machine for stirring vat colors, to make the vat colors. You can't tell. I can't tell.

XQ. 1503. That is part of the machinery of a plant, is it?

A. Undoubtedly, it would be. Mr. Holdermann testified as to lots of apparatus and machinery. I can't tell from what you read off. I would have to get the patent and then I would have to get an expert.

XQ. 1504. I see. What did you have before you when you executed that assignment?

Mr. Kresel: Which assignment?

Mr. Anderson: The assignment of April 10th, in which most of these things I have read were embraced.

A. Gyroscopes, all those things, were not in there. I had a list of the patents made up by the people under me.

XQ. 1505. But this is taken from a schedule in the exhibit introduced in evidence here and that is a copy of the schedule that accompanied that list?

A. I don't know whether it is or not. I don't know anything about it.

XQ. 1506. Did you ever examine any of these patents personally?

A. Oh, yes.

XQ. 1507. How many of them?

A. Oh, I can't tell. As they were applied for and it became a matter of the business of the Foundation, I would look at them.

XQ. 1508. That was after they were assigned?

A. Then we would keep a chemist there.

XQ. 1509. I am talking now of the time that the assignment was made.

A. Did I personally pass on the chemical application of these things? Of course not. In the first place, I am not a patent lawyer. In the second place, I am not a chemist.

XQ. 1510. You signed these assignments with these large lists attached as they were brought to you, did you not?

A. Certainly, after consultation with the men of my force.

XQ. 1511. I will call attention to one or two more and shorten it: Construction of frozen walls for shafts of mines. What would be the connection of that?

A. That would undoubtedly be an ammonia proposition, a frozen proposition. That would be a chemical proposition.

XQ. 1512. A self-propelled airship?

A. I think that would be purely chemical.

XQ. 1513. An airship is purely chemical business?

A. Self-propelled——

XQ. 1514. An airship is purley chemical business?

A. Probably propelled by some chemical.

XQ. 1515. A patent for a self-propelled airship you would regard as part of the business of the Chemical Foundation?

A. Why, a most essential part. If they had a self-propelled airship, where would we be in our safety?

XQ. 1516. Screw propellers?

A. What about them?

XQ. 1517. Would you say that those related to the Chemical Foundation?

A. It would depend upon what they were used in connection with. If they were used in connection with a self-propelled airship propelled by some chemical, I certainly think so. I don't know.

XQ. 1518. Propelling and steering apparatus for baloons?

A. Surely.

XQ. 1519. Armoured aerial machine?

A. Surely.

XQ. 1520. A toy airship?

A. I do not suppose that means an airship for a child to play with. I suppose it means one of these airships that the Government has been working on so many years and spending so much money on that will go by themselves.

XQ. 1521. Safety anchors for airships and the like?

A. There probably is something chemical about them.

XQ. 1522. Mr. Garvan, do you know anything about them at all?

A. No, but I trust my own Government; I trust the people that picked them out, and I do not criticize them at the behest of foreigners.

XQ. 1523. I see. I will ask you this question before I take up the next point: How did you determine that these matters related to the purposes and objects of the Chemical Foundation? What procedure did you follow?

A. I relied upon the advice of my assistants and consulted with the chemists and people in the industry, and so forth, and so on, who were patent lawyers, who examined the patents.

XQ. 1524. It appears in the evidence here that copies of the patents were consulted by Messrs. Barrows and Squair, and then that the papers for seizure and examination of title was made by Mr. Gordon. Are those the gentlemen to whom you refer as having relied upon?

A. No, sir, not altogether.

XQ. 1525. Whom else did you rely upon?

A. Mr. Hoguet.

XQ. 1526. Relied upon Mr. Hoguet. Mr. Hoguet went over the patents. The testimony is that he eliminated what he wanted to eliminate. I think that is Mr. Gordon's testimony.

XQ. 1527. I am asking you now what you did?

A. They got the list, in the first place, from the

Federal Trade Commission, who had had I do not know what amount of work done to pick out the chemical patents.

XQ. 1528. But you do not know——

A. They were in consultation with everybody who was fighting the war. The Army was in there——

XQ. 1529. Hold on; one minute; I am not asking you what they did.

A. Oh, I did not.

XQ. 1530. I am asking you what you did.

A. I can not determine what a patent covers, nor am I a chemist.

XQ. 1531. Whom did you rely upon; name the specific persons in reaching that determination?

A. Mr. Hoguet and Mr. Gordon and the Navy and the Army, and the other things where they definitely came to me.

XQ. 1532. I call your attention to Defendant's Exhibit No. 91, entitled "Statement of Income and Expenses of the Chemical Foundation."

A. Exhibit 91, yes, sir.

XQ. 1533. Did you make that statement?

A. It was made under my direction.

XQ. 1534. Did you yourself check it with your books of account?

A. No, sir.

XQ. 1535. Are you an accountant?

A. Yes, sir.

XQ. 1536. Did you check it with the original records?

A. I beg your pardon?

XQ. 1537. Did you check it with any original records?

A. With the original records of the Foundation?

(No. Q.'s 1538-1557, inc.)

XQ. 1558. Yes.

A. No, sir.

XQ. 1559. Your testimony on that statement was based entirely upon what was told you by your accountants, was it not?

A. Practically. I have been over each of those items in the management from time to time. That don't mean I can swear that they are correct to the penny, or anything of that kind. They were made up under my direction from our books.

XQ. 1560. Mr. Garvan, do you know anything about that statement except what was told you by your accountants?

A. I know in general that it would be correct, but I cannot know that it is definitely accurate.

XQ. 1561. You can not know that it is definitely accurate?

A. Mr. Buffum could testify to that.

XQ. 1562. I now refer you to statement Defendant's Exhibit 91-A.

A. Yes, sir.

XQ. 1563. Do you make the same statement as to that as you made to Defendant's Exhibit No. 91?

A. No, I have a good deal more acquaintance with that. I know most of the number of copies and what they cost; but at the same time I am not equipped to swear that that is a definite and accurate statement.

XQ. 1564. You are not equipped to swear to that?

A. No.

Mr. Kresel: Colonel, that was brought out on his direct, you will recall, and I said that I had the gentleman who made them up in Court and would call him.

Mr. Anderson: The evidence has gone in, however, and I have got to develop that, and then I am going to make a motion, Mr. Kresel. It is just to develop that.

Mr. Kresel: In other words, you do not need to waste time on it.

XQ. 1565. I will ask you if you are prepared to make the same general statement as to each of these statements.

A. Certainly. They were prepared under my direction. I went over them after they were prepared, and in some instances checked up the calculations which would appear upon the face of them; but as to their bookkeeping accuracy, of course, I cannot testify.

XQ. 1566. As a matter of fact, these statements are taken from a report of your expert accountants, are they not?

A. No, they are taken from our books.

XQ. 1567. I mean, these particular statements are part of a report of your expert accountants in that large manuscript form we had here, are they not?

A. Not all of them. You did not have all those calculations.

> Mr. Anderson: If your Honor please, I do not want to take up time to cross-examine Mr. Garvan as to these statements and matters appearing therein in view of his statement, because naturally he would have to answer that he did not know as to the accuracy of those various statements, and it would be a waste of time, in my judgment. Therefore, I shall make a motion to strike out each and all of these exhibits and all of the evidence of the witness relating thereto, unless counsel for the defendant produces a witness who can testify to their accuracy from the records, in which event I have no objection to their remaining in the record to be properly supported by other evidence, and then reserving the right to cross-examine as to them.
>
> Mr. Kresel: I have already stated, and I re-

peat again, that I shall call the accountant who made them up.

THE COURT: This was all gone over at the time the papers were put in evidence during the examination-in-chief, and notice then given of such motion if the defendant failed to call the accountant. Defendant now says that it will call the accountant.

MR. ANDERSON: I do not want to insist upon the motion at this time. I merely want to make it to make my record right, to the end that the situation may stand, and I do not want it stricken out if it is going to be supported.

THE COURT: Very well.

XQ. 1568. Mr. Garvan, you stated I believe, you had only had one infringement suit on the part of the Chemical Foundation?

A. One that came to court. We have had lots of them that were infringers.

XQ. 1569. Your accounts will show, when the accountant goes on the stand, all of those facts, will they not?

A. Surely.

XQ. 1570. And what they settled for, and everything?

A. Everything, yes, sir.

XQ. 1571. If that is the case, I will not bother to ask you about it. What arrangement have you for checking up the business of the licensees, and what check have you made upon their business to see if they report their earnings under the licenses, or whether they are infringing the patents covered by the licenses?

A. They allow our accountants to go over their books each quarter. We have full access to all their books.

XQ. 1572. And your accountants do that checking, do they?

A. Yes, sir. They render the account at the end of the quarter. For instance, at the end of this quarter, which ends July 1st, they have until August 1st to account, and then we are permitted after August 1st, after they have rendered their account, to go to their books and check up the accuracy of it, if we have any doubt about it. We have no trouble with that.

XQ. 1573. Did not some of the licensees refuse to pay for licenses to the Chemical Foundation, licensees of the Federal Trade Commission?

Mr. Kresel: When?

Mr. Anderson: After the transfer of these patents.

A. I do not think so.

XQ. 1574. You do not recall whether they did or not?

A. It may have taken some education—I do not remember any trouble. We had some trouble at the beginning of this suit, but only for a little while. I might. You may refresh my recollection on that.

XQ. 1575. Your accountants do not undertake to check the processes of manufacture, of course?

A. Oh, we could not do that, no.

XQ. 1576. You have never undertaken to check that at all, have you?

A. Oh, it would be impossible for us to do that. Most of them have processes, have them sealed, you know; you couldn't.

XQ. 1577. In your answer, clause XLII, paragraph (i), you say:

> "That the principal means whereby said German cartel, trust, or monopoly and the German Government accomplished their said control, domination and oppression, and the principal barrier which stood in the way of the development of an independent and self-sufficient organic chemical industry in the United States, consisted of the

> United States patents and patent rights then owned and possessed by German nationals."

Is that true?

A. Certainly.

XQ. 1578. You swore to that answer, did you not?

A. Yes, sir; I think so.

XQ. 1579. Again, in clause LII, pages 40-41 of your Answer, you say:

> "In order effectively to carry out the intent and terms of said sale and the objects of its charter, the defendant at great expense catalogued and circulated among manufacturers and others who might be interested therein, lists of the patents and other rights so sold to it by the Alien Property Custodian as aforesaid, together with information concerning their availability and usefulness. In cases of inventions which it seemed especially important to have rapidly and thoroughly developed, from the standpoint of the industry, public welfare, or common defense, it caused special study and research to be conducted in order to determine the availability thereof and caused its findings to be made known to the industry, and urged American concerns to manufacture under such patents. As a result thereof, to this date licenses under 422 of the patents so sold, assigned and transferred to it have been issued, non-exclusively, to a large number of American manufacturers, who have operated and continue to operate thereunder, and who, in the course of said operations, have expended millions of dollars in research and experimentation and the erection of necessary plants for the exploitation of the patents so licensed to them. Many of the chemical products which are now abundantly manufactured in the United States under such licenses were not heretofore produced in the United States, or were produced only in quantities wholly insufficient for domestic consumption and the needs of the common defense. Largely as a result of the licensing and other activities of the defendant, American

> manufacturers are now able to provide for approximately ninety per cent. of the needs of the people of the United States for colors and dyes, as to which, prior to said war and the sale, assignment and transfer of said patents to the defendant, the American people were entirely dependent upon importations from Germany. Many of the products now abundantly produced under said licenses are chemicals which during the late war demonstrated their importance as basic elements of explosives and of modern defensive or offensive warfare, and others are of great value as therapeutic agents, and the ability to produce such chemicals abundantly and quickly is essential to the common defense and general safety of the United States and its people."

Is that true?

A. Yes, sir.

XQ. 1580. You were asked as to the clauses in the original assignment and subsequent assignments, to the effect that the assignments were absolute without reservation on account of anything in the charter or by-laws of the Chemical Foundation or otherwise; but your attention was not drawn to your general assignment, or attempted confirmatory assignment, dated the first day of March, 1921, which is in the record as Exhibit I of the bill of complaint, and has been introduced in evidence. I note that this clause is not in this assignment.

A. No, sir.

XQ. 1581. Do you not know that it was stricken out on the express objection of the then general counsel of the Alien Property Custodian, Mr. Boggs?

A. Yes, Mr. Boggs said he thought the fears of the patent lawyers were unfounded.

Mr. Anderson: I move to strike that out, if your Honor please. What Mr. Boggs said is a matter of record.

The Court: Motion granted.

THE WITNESS: I beg your pardon.

XQ. 1582. It was stricken out on the express objection of Mr. Boggs?

A. My own lawyer, Mr. Boggs.

(No Q.'s 1583-92, inc.)

XQ. 1593. He was your counsel as Alien Property Custodian at that time?

A. Yes, sir. It was put in on the advice of my counsel in the first place, and taken out at the advice of later counsel.

MR. ANDERSON: I think that is all I want to ask the witness.

MR. KRESEL: I have only two or three questions, your Honor, if I may finish with the witness.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 1594. Mr. Garvan, something was said, I think, in your cross-examination about the bills that were pending before Congress in the matter of protecting this chemical industry. I think you said that there was a dye embargo.

A. Called a selective dye embargo.

RDQ. 1595. I would like to ask you for how long a period that remained?

A. It took different forms in the wording of the bill; but the idea of selective embargo remained until September 10th, 1922, the date that the present tariff bill went into effect.

RDQ. 1596. You were asked this morning whether the Chemical Foundation——

MR. ANDERSON: Mr. Kresel, I did not hear what you just asked the witness. Would you mind repeating it to me off the record?

(Statement by Mr. Kresel off the record.)

Mr. Kresel: Suppose you explain it, Mr. Garvan.

The Witness: After the war was over the President abolished the War Trade Board, preserving the Chemical Section, and transferred it to the Secretary of State's office in order to protect this industry, and the Secretary of State's office, under the President's directions at that time, allowed in what dyes and chemicals we did not make. Then Congress continued appropriations for that work and then passed a three months' temporary selective embargo of this kind while they were dickering about a permanent bill——

Mr. Kresel: Permanent tariff?

The Witness: —and then at the end of that three months the joint resolution was again extended until the passage and going into effect of the big tariff bill.

Mr. Anderson: The contents of those things are all acts of Congress, are they not?

Mr. Kresel: Yes.

The Witness: Well, of course, they were acts of the President. The President did it under the war power of continuing the War Trade Board and sending it over under the Secretary of State to enforce until such time as Congress put it into the—I think it is called the Emergency Tariff Bill, the first one.

RDQ. 1596. (Continued.) You were asked this morning as to whether the Chemical Foundation charged an import royalty on the importation from countries other than Germany of chemicals and dyes manufactured under the patents conveyed by the Alien Property Custodian to the Chemical Foundation?

A. Yes, sir.

RDQ. 1597. My question is whether, in point of fact, any such chemicals or dyes have been imported from any other country; either England or Switzerland, I think were the two that were mentioned. In other words, does England or Switzerland manufacture any of those dyes under these patents?

A. No, sir. The only possible modification of that might be that some of the reparations dyes which Italy got, for instance, they have re-sold into this country; but none of the goods manufactured in countries other than Germany have come in here which come under our patents.

RDQ. 1598. You were asked this morning whether you did not know at the time of the sale of these patents to the Chemical Foundation that several manufacturers were operating under Federal Trade Commission licenses and actually making salvarsan, and you stated that you did know that. Do you recall that?

A. Yes, sir.

RDQ. 1599. Did you know at that time that by reason of the imposition of a five per cent. royalty under the Federal Trade Commission license any manufacturer operating under such a license, should the Germans be permitted to import here, would have a differential of twice the amount of the royalty that he was paid?

Mr. Anderson: If your Honor please, I object to that question as purely leading, and not only that, but it is an argument that counsel can make from the record. The record is all here, the Federal Trade Commission licenses. It is a leading question so framed that the witness can answer yes to a long argument, to confirm an argument on the record. I object to it.

Mr. Kresel: I admit that it is leading, your Honor, and I think I have a right on re-direct to lead him on questions that were brought out on cross-examination. However, I did not intend to make it leading, because the witness does not need to be led on this matter.

The Court: Read the first few words of the question.

(First few words of question repeated as above recorded.)

The Court: Is it a matter of argument?

Mr. Anderson: No, sir.

The Court: Then it is a question of fact.

Mr. Anderson: "Did you know at that time"——

The Court: Yes.

Mr. Anderson: But if he says "yes," then all the balance of it is argument.

The Court: You said two things; first, it is leading. On that ground your objection is well taken. Second, you stated it was a matter of argument.

Mr. Anderson: What I mean is it is a matter of argument from the existing records.

The Court: But it is not a matter of argument as to whether this witness knows it.

Mr. Anderson: I meant the subject matter of the question was a matter of argument.

Mr. Kresel: Do you press the objection that the question is leading?

Mr. Anderson: Yes.

Mr. Kresel: All right.

RDQ. 1600. Did you or did you not know at that time of the effect of the imposition of this royalty fee with respect to the ability of the American manufacturer to compete with the German importer?

A. I certainly did.

RDQ. 1601. And what did you know about it?

A. I knew that the German importer would have a tremendous advantage, of course.

RDQ. 1602. You were questioned this morning about fees paid to lawyers, especially a fee paid to Judge Ingraham. Who fixed that fee originally?

A. I think I did. I think he rendered his bill to me and I think I approved of it.

RDQ. 1603. What was the case?

A. I am not sure whether that went before the Board of Directors first or not.

RDQ. 1604. The board of directors of what company?

A. The Botany Worsted Company.

RDQ. 1605. What was the nature of the action in which this bill for services was rendered?

A. That was a bill which involved the whole question of the title of the Alien Property Custodian to a nine million dollar corporation.

RDQ. 1606. Was the case tried and appealed and did it go to the United States Supreme Court?

A. It went to the United States Supreme Court and Judge Ingraham there argued it, arguing it also in the Court of Appeals, as I remember. I know he did. I was present in the Supreme Court.

Mr. Kresel: That is all. Colonel, here is this list of the Advisory Committee. It appears in the minutes, so we do not need to supply it.

(Witness excused.)

JOSEPH H. CHOATE, Jr.

Joseph H. Choate, Jr., called as a witness in behalf of the defendant, being duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Please give your full name and address?

A. Joseph H. Choate, Jr. My business address is 60 Wall Street, New York City.

Q. 2. And you are by profession a lawyer?

A. Yes.

Q. 3. How long have you been admitted to the Bar?

A. Since 1902.

Q. 4. Were you at any time connected with the Alien Property Custodian's office?

A. I was, unofficially.

Q. 5. Beginning when?

A. Beginning in the early part of 1918. I can not place the exact date; but I think it was somewhere between the end of February and the middle of March.

Q. 6. And for how long a period did you continue to be associated with that office?

A. Until the spring of 1919, again at an indefinite date, because I gradually wound up my work there and began to take up my ordinary law practice again.

Q. 7. You say "unofficially" you were connected. Were you under a salary?

A. No.

Q. 8. Did you receive any compensation for your work?

A. None whatever.

Q. 9. How did you come to be connected with the office? Were you asked to?

A. I was asked by Mr. Garvan to undertake the work of the Bureau of Investigation as far as it concerned the chemical industry in the United States.

Q. 10. What was the nature of the work that you performed during this period that you were connected with the Custodian's office?

A. The object of the work was to discover as far as possible all German ownership in American chemical enterprises and the nature of the work was the carrying out of every form of investigation which suggested itself and was possible looking toward that end.

Q. 11. Will you briefly describe the nature of the investigation, just what you did, briefly?

A. When I came there, the Bureau of Investigation had already been going for several months and there was already a considerable mass of information in the office. My first task was to acquaint myself with that information.

For example, I found that three of the representatives of the "Big Six," the Kalle Company, the Berlin Company and the Bayer Company, had all been taken over, and the papers relating to them were in the office. There was also a considerable mass of other material which could be studied and which gave leads in various directions.

These papers suggested various informants who could give further information on general subjects and also suggested literature from which information could be derived; and I proceeded to read that literature and consult those informants.

As leads were gradually developed suggesting the existence of German ownership in various American companies, I would communicate with those companies and ask them to send a representative to the office with his books. Those requests were almost always complied with; and an examination of the representative and of the books would reveal further information which, spreading like a wave, suggested in turn new leads and new possibilities from which information could be derived.

Q. 12. And were you engaged in the work exclusively during the whole period that you were with the Alien Property Custodian?

A. In nothing else from the time I went in until certainly the first of March, 1919.

Q. 13. Did you embody the result of your investigations in a report?

A. I did.

Q. 14. Is that report of yours contained in Defendant's Exhibit No. 30?

A. I think that is the number.

Q. 15. You are familiar with Mr. Palmer's report?

A. Yes. The chemical chapter of that report is substantially the report I made to Mr. Palmer for the purpose; and it includes not only the results of my investigations, but also the results of the investigations by the Bureau of Investigation before I had a part in it.

Q. 16. And is the report a true and correct report of the results of your investigations?

A. It is. It was as accurate as I could make it. I have not given you by any means the full sources of information which we had, if you want a fuller statement of them.

Q. 17. I quite understand, but I think it is sufficient; and if the Government desires any further information, of course, you will give it. It has been testified here that you took part in certain conferences preceding the sale of the patents by the Alien Property Custodian to the Chemical Foundation. You have been in court and heard the testimony?

A. I have.

Q. 18. Did you take part in such conferences?

A. I did.

Q. 19. At such conferences do you recall whether the question of the price to be paid for these patents was discussed?

Mr. Anderson: Mr. Kresel, would you make it specific as to date, time, and so forth?

Mr. Kresel: Yes, I will withdraw the question.

Mr. Anderson: Without having us go all over it again. It will save us time.

Q. 20. Were you or were you not present at any conferences at which the question of the amount to be paid for these patents was discussed?

A. I should say I was present at several such conferences.

Q. 21. Will you be good enough to give us your best recollection of the first conference when the question was discussed, giving the date?

A. I could not possibly give the date.

Q. 22. Approximately?

A. I should say it must have been between the 27th of January, when the conference was held in the Washington office of the Alien Property Custodian, and the 4th of February, when the meeting of the Manufacturing Chemists' Association was held to consider the plan.

Q. 23. Before I ask you about those conferences, did you or did you not appear at a meeting of the Manufacturing Chemists' Association with reference to the disposition of these patents?

A. I did.

Q. 24. Can you give the date when you so appeared?

A. I could not, from my own unaided recollection. But I believe that the minutes of the association show that it was on February 4th, 1919.

Mr. Kresel: Are these minutes in?

Mr. Anderson: Yes, sir.

A. (Continuing.) I have a definite recollection that it was about that time, but I could not give it precisely.

Mr. Anderson: I think the date is correct, but it will be verified by the minutes.

Mr. Kresel: Very well then.

Q. 25. Directing your attention particularly to the question of price, please state whether or not you expressed any opinion at any of these conferences as to whether the price of $250,000 was or was not a fair and reasonable consideration for the patents?

A. I undoubtedly did.

Q. 26. Will you state what you said upon the subject?

A. I expressed the opinion that the price of $250,000 was a fair and reasonable price under the circumstances.

Q. 27. Now I ask you to state what were the circumstances and what were the considerations that weighed with you in stating that in your opinion $250,000 was a fair and reasonable price for these patents?

A. Those considerations were of two general classes. The first class related to the precise conditions of the sale which was being undertaken. Those, of course, included the fact that the sale was to be made subject to an obligation to issue non-exclusive licenses and on reasonable, equal terms to all qualified American manufacturers; and the obligation to license the Government under all the patents; and a limitation of the profits, of the use of the profits, I may say, so that all over six per cent. on all the stock of the proposed corporation should be used for the advancement of science. Those three considerations went to this particular sale.

But there were a number of other considerations relating to the value of these patents that made me feel the value of them, outside of the question of this sale altogether, was very low—the fair value was very low. In the first place, my understanding was, and it had been confirmed from some experiences I have had in my own professional work, that all chemical patents were particularly open to two defects or two difficulties, one was the exceeding difficulty of making a description which would hold water when the patent came to be tested, the other was the extreme ease with which chemical patents are superseded, the rapidity of the advance of chemical science, and the frequency with which a valuable chemical disovery is improved upon so that it ceases to be of any value whatever.

Those considerations applied both to product patents and to process patents. Then in the next place I realized very strongly that these were group patents which had not been used in the United States, I think with the exception of some of the pharmaceuticals, and even those pharmaceuticals I think were chiefly among the Bayer patents which had been sold to the Grasselli Company. I knew of none which had actually been used in this country.

My understanding was that the value of a patent depends absolutely upon the place where it is to be used. You may have a patent of enormous value in one place which is utterly worthless in another. For example, the arc patents for nitrogen fixation were of vast value in Norway where cheap water power was available, were of no value whatever in Spain, and were probably of no value in this country. Where none of the patents had been used, I knew that every purchaser would be confronted with the certainty that he would have to guess as to the adaptability of the patent to our conditions, whether we had the facilities, the power supply, the labor habits, the manufacturing habits, and above all the supply of technical skill to work it.

The next great consideration and the last of these factors I have just named was that all these chemical patents relating to the organic chemical industry dealt with one of the most difficult commercial undertakings that I knew anything about. They required a kind of manufacturing skill which my investigation led me to believe was not present at all in the United States, and I found that such members of the industry as I consulted with held the same view. They required for successful exploitation a supply of highly trained chemists, not only laboratory chemists but manufacturing chemists and trained laborers and foremen, who simply were not to be had here. It was my view that the value of these patents depended entirely upon the possibility of making money out of them, but you could not make money out of them unless you could manufacture cheaply, and that you could not manufacture cheaply unless you knew the job. That emphasizes the importance of the fact that these patents did not carry with them what has been described as the know-how.

On that I want to elaborate a little. In the ordinary case where anyone is buying a patent—and supposing now he is not buying it merely to get rid of a nuisance—he buys with the patent the experience of the previous owner, who is usually the inventor.

> MR. ANDERSON: One minute, Mr. Choate. If your Honor please, I do not wish to interrupt this gentleman, but I do not think Mr. Choate has qualified as an expert, and I do not think he would claim to be an expert on patents. He is obviously speaking from hearsay and, in the next place, he is arguing this case from the witness stand. I do not think the question called for any such extended reply as this, and if I thought so I certainly would have objected.
>
> These matters are matters of technical knowledge, and if we are going to have them testified to I think we should bring somebody here who has the technical knowledge, that we may get the foundation of the information on the subject. I do not want to interrupt Mr. Choate because his statement is a very interesting one to me; but I do think this is outside the testimony in the case.

THE COURT: I do not want to hear you, Mr. Kresel. I think not. As I understand your allegation of the bill, Mr. Choate is one of those persons charged with conspiracy.

Mr. Anderson: Yes.

The Court: He is now asked for his reasons and the facts upon which he based or reached the conclusion that $250,000 was a fair value, and he has told why he has thought it was the fair value under the circumstances and conditions imposed upon the purchaser. He is now proceeding to tell why he reached the conclusion it was a fair value apart from those conditions. You may proceed, Mr. Choate. Objection overruled.

A. (continued) Not only that, but he usually takes care to insert in the contract a provision entitling him to the free possession of improvements, since such improvements frequently destroy the entire value of the invention purchased.

Now, in this case the purchaser will be buying not merely the bare patent, without such assistance from the inventor, but he will be buying the extreme hostility of the inventor; that is, the extreme hostility of the mind most likely to produce the next invention, the next step in the art, which might render the patent purchased utterly valueless.

This again led to another consideration which to my mind led us to value the patents adversely. That is the certainty of litigation. No man could possibly buy these patents without being entirely certain that after the war he would meet a litigation to test the title to the patents which he purchased. I do not say that for a moment it entered into my mind that he would meet the particular sort of litigation which has arisen in this case, but I felt sure that the Germans would some day bring a suit.

Referring again to the reasons why I considered the absence of the know-how of such vital importance, my understanding of the manufacturing which had to be carried out under these patents was this—and I think it is a matter of considerable consequence: The manufacture of organic chemicals is entirely different from ordinary mechanical manufacture. When a man makes plow-shares or chairs or any other manufacture requiring merely mechanical processes, he knows to a certainty that barring a small proportion of spoiled parts he will get 100 per cent. of his raw material in the form of finished goods. The manufacture of organic chemicals, particularly dyes, is something quite different. It consists in a series of consecutive processes in each of which a chemical reaction destroys all of the preceding raw materials, the materials which were raw materials for the preceding steps, and substitutes a new lot. Each of those processes is controllable by skill, the skill of those who have the knowledge of such manufacture. So that the yield of each step may run anywhere from 10 to 100 per cent. of the theoretical.

My understanding was that it was frequently the case in the manufacture of dyes that 9 to 12 of such consecutive processes had to take place and that unless you had a high degree of technical training among your workmen and your foremen, as well as your chemists, you might and probably would lose 90 per cent. in each step, so that by the time you had got 10 per cent. of 10 per cent. of 10 per cent. of 10 per cent., carrying it through nine steps, you would have almost nothing left; that this technical training did not exist in this country, did exist in great quantity in Germany, would have to be built up here by slow and gradual steps, and that until it was built up there was no possibility of effective competition with Germany and, for that matter, with Switzerland, where such skill also existed.

In addition to this my attention was directed to the fact that patents on chemical products or processes are frequently valueless unless effectively grouped, that any one of these patents, any one patent covering a given process or a given product, unless protected by what might be called flank patents covering the obvious and less obvious probabilities of invention on the same line, would become absolutely worthless. We had no means with which to make the extremely exhaustive and expensive survey which would have been necessary of this vast mass of patents to determine whether they contain such groups, groups which would furnish adequate defense or the means of adequate defense.

In addition to all this, considering the patents from the point of view of something which might be sold at public auction or public sale, I had in mind the fact that the Alien Property Custodian was determined not to sell to anyone who could possibly become by the purchase a monopolist to any extent, and that this cut out from among the possible purchasers most of the strong chemical manufacturers in the country who would have been most interested in the possible purchase. He was also determined not to sell to a speculator, and while I knew it was almost impossible to detect a speculator, it also made it extremely probable that some possible bidders would be excluded.

I think that covers most of the grounds that I had in mind at that time. There was one more—or two more, really. One may be illustrated best by the case of Haber process patents. That was the fact that the entire value of these patents to any purchaser depended on the legislation of the United States; the very enactment of the Trading with the Enemy Act had in a sense cut out the monoply value of these patents and set up a bunch of possible competitors for any purchaser. In the case of all the process patents the termination of the war would let loose the whole of the German competition upon the purchaser of the patent.

In the case even of the product patents the purchaser would have to face the results of German research, which were totally unknown, during the war. So that unless strong protection of some sort by way of tariff, selective embargo or otherwise were enacted, I felt that no purchaser would feel he was getting much of any value in any one of these patents.

In the case of the vat dye patents there was the further fact that one whole group of such patents had already been sold to one purchaser, the Grasselli Chemical Company. I should say each of the Big Six in Germany developed its own line of those dye patents, each in a sense capable of filling the whole field of the work required from those dyes. It so happened that the indanthrene dyes of the Badische Company had become the most important. They were the first on the market, and as long as all the six German companies were in one combination it did not matter to them which was pushed with the greatest success in our markets. They were perfectly content, I assume, to have the chief value of the industry concentrated in the indanthrene colors of the Badische Company. But six separate sets of those vat dyes existed, each covered by a set of patents taken out by each of the six companies. My understanding was that the so-called algol vat colors of the Bayer Company could be developed to do all the work of the Badische dyes, the indanthrene dyes. These algol dyes had become separated from the mass and were in the hands of a strong company. They afterward went to the Chemical Foundation. Accordingly, I assumed those patents were less valuable to any purchaser by reason of the fact he had to compete not only with the possibilities of import from Germany and Switzerland, but also with manufacture under the algol patents by the Grasselli Company. I think that covers the ground.

Q. 28. You stated that you did appear before the

Manufacturing Chemists Association. Will you state whether or no you also were in communication with the American Dyes Institute?

A. Yes.

Q. 29. You know Mr. Hoguet?

A. I do.

Q. 30. Did or did not Mr. Hoguet participate in these conferences?

A. At the meeting of the Manufacturing Chemists Association on February 4th and at the meeting of the American Dyes Institute on February 7th Mr. Hoguet was present in each case and both he and I spoke explaining the plan for the Chemical Foundation. That was in 1919.

Q. 31. Do you know whether the suggestion for the sale of these patents, which was subsequently made to the Chemical Foundation, was first made by you and Mr. Hoguet, representing the Alien Property Custodian, or by representatives of the industry?

A. Do you mean for the specific sale, or for any sale?

Q. 32. For any sale.

A. I think it was made by the Alien Property Custodian representatives. I never heard a suggestion of it from outside until after it had been very completely discussed inside the office.

Q. 33. Mr. Choate, have you any interest in any chemical concerns?

A. I think not.

Q. 34. Did you at the time of this sale?

A. I did not. Wait a moment, I may have had a part ownership in some stock of the American Agricultural Chemical Company. That is purely a fertilizer concern which has nothing whatever to do with chemistry proper or organic chemistry in particular.

Q. 35. Did that concern have anything to do with the Chemical Foundation?

A. Nothing whatever.

Mr. Kresel: Colonel Anderson, you may examine Mr. Choate. And I say now I shall raise no objection to your examining him on cross on any subject, even though I did not cover it in my direct.

Mr. Anderson: I do not think this would take me more than half an hour. I have my notes over at the office. I did not expect to reach Mr. Choate today for cross-examination. I will send for them.

The Court: Can we meet an hour earlier in the morning? Would that be agreeable to counsel?

Mr. Kresel: Anything that is agreeable to your Honor and to Colonel Anderson. Of course, I am very anxious to get along.

Mr. Anderson: So am I, as anxious as I can be to get through. But I have not been well for a week and have been working under great difficulty.

The Court: Then the desire of the Government is that the session be adjourned until tomorrow morning at 8:30?

Mr. Anderson: I would like it so, because it will take me about fifteen minutes to get my notes over here, and I do not think it will take very long in the morning to cross-examine.

The Court: We will adjourn now until 8:30 o'clock Standard time.

(Whereupon, at 3:45 P. M. Eastern Standard Time, adjournment was taken until tomorrow, July 6, 1923, at 8:30 o'clock A. M. Eastern Standar Time.)

TWENTY-SECOND DAY.

Wilmington, Delaware, July 6, 1923, at 8.30 o'clock A. M. Standard time.

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Joseph H. Choate, Jr., resumed the stand.

The Witness: If your Honor please, I note in reading the minutes two mistakes, one of which I am conscious was the use of a wrong word by me. The other, I think, is the stenographer's error. I would like to correct them if I may.

The Court: You may.

3151, the third line of the second paragraph at the middle of the page, where I say, "One may be illustrated best by the case of salvarsan." I meant to say there "by the case of the Haber process patents," as will appear by the rest of the passage. I was speaking of the fact that the value of these particular patents was adversely affected by the possibility of foreign competition, particularly German competition; and what I had in mind was the fact that the Haber process patents, being process patents, the purchaser would be exposed to the full brunt of the competition of the German Haber Air Nitrogen Works, as well as the German coke oven and by-product gas plant production of ammonia.

The other error is on page 3152, the eighth line from the bottom, where I am represented as

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saying, "They afterward went to the Chemical Foundation," referring to the algol vat dye patents purchased by the Grasselli Company. Of course, what I said was that they did not pass to the Chemical Foundation.

Mr. Anderson: If your Honor please, my attention has been called to my answers to the inquiries of the Court on yesterday at pages 3047, and following; that one of my answers was possibly capable of a misconstruction. There was some interruption, and I changed the line of thought.

I wish to make it clear this morning that what I was intending to say at the time, to follow up what I did say, without going back over the discussion was this: Your Honor asked in effect whether the interests of the United States, commercial or possibly military (I may not state your Honor's language) could be considered as a consideration for this conveyance or as a part of the consideration of this conveyance. I was answering that question and there was another question asked and I diverted my thought to something else.

I wish to say that in my view and I shall contend here that the Alien Property Custodian had no right to consider the commercial or military interests of the United States, which was purely a question for Congress, and to the extent that that was treated as a consideration and reduced the price below the fair value of the property, it was confiscation and therefore illegal.

Mr. Kresel: Will your Honor pardon me, because I want to understand Colonel Anderson's position also. I wonder whether Colonel Anderson is drawing a distinction between the Alien Property Custodian and the President. Of course, our contention is and will be that this sale was a sale authorized by the President and whatever was done was done under the directions of the President. Is it Colonel Anderson's position that the President had no right to consider the safety of the nation in making this sale? I wonder if Colonel Anderson would be willing to answer that question.

Mr. Anderson: I am perfectly willing to answer it except that I do not want to get into an argument this morning, but merely wanted to finish up my statement of yesterday. I think I have developed the position of the plaintiff day by day here in elaborate arguments. The defendant has not developed its position in similar arguments. I might ask questions of counsel the same way, but I wish to say this in reply, as long as the Court has inquired on the subject.

In the first place, the Government contends that this transaction was not authorized by the President. That gets to the root of that inquiry. In the second place, the Government contends that the President of the United States has no more power to confiscate property than the Alien Property Custodian or any other officer and that the Constitution of the United States as to citizens of the United States is clear on that subject; and as to alien property, the law is well settled, that it can only be done, if at all, by Congress.

I may add to that, to make my position perfectly clear, that the question of what is the welfare of the United States, commercial or military, and what is necessary for the defense of the United States, is by the Constitution expressly vested in the Congress of the United States and that question is not one to be considered by an officer of the Executive Department like the Alien

Property Custodian; nor is it a question that can be considered by the courts.

THE COURT: Your last statement brings to mind a matter that I have had under consideration and that I have been trying to puzzle out in this case. I was just wondering why this suit was instituted at all in the name of the United States instead of the Alien Property Custodian if the title to these patents was in the Alien Property Custodian.

MR. ANDERSON: I will be very glad to answer that question, sir. The matter was carefully considered. Under the decisions of the Supreme Court of the United States and the line of cases illustrated perhaps by the United States v. Beebe, the Supreme Court has held that wherever a suit involved a public obligation or duty of the United States, whether it had a direct financial interest or not, or wherever it involved the interests of the United States, it was the duty of the United States to institute and maintain the suit; or at least that it had the authority to do so.

The view of the Government was that the Alien Property Custodian was only the hand of the United States to hold this property and therefore the United States was really charged with the obligations arising under this act and that it was its duty, it involved its public duty, its public obligations and its interests in a material way as representing the people of the United States, and it was the proper party to sue. That question was very carefully considered and that conclusion was reached after a most careful consideration of the authorities and the authorities, in our view fully sustained that conclusion. It is a very natural question because at first impulse, the same question arose in our minds.

THE COURT: In discussing the 5700 patents in which the Navy was given some interest I remember I remarked it seemed to me that was a transfer to itself. Then when you denied that I wondered how that was to be reconciled with the fact that this plaintiff is the United States. It was just a puzzle in my mind.

MR. ANDERSON: I did not intend to deny that it was a transfer to itself in the sense that your Honor is now discussing it.

THE COURT: No, I did not mean to lead you into that, Colonel Anderson. I have asked you numerous questions, because the plaintiff is seeking to change the status, you are seeking to set aside the sale. Until your pathway is marked out clearly and I get the bridge completed and understand your theories, it seems to me the burden is yours of marking out that pathway.

I shall have one or two questions to ask Mr. Kresel. For instance, some time when he has an opportunity of telling me I shall be very glad to have him tell me just how the chemical industry in the United States will be jeopardized by granting the prayer of your bill, assuming that you have made or will make out a title or a right in this case. I do not want that gone into now, and you understand fully that that question, no more than the preceding questions, indicates no conclusion in this case.

MR. ANDERSON: I quite understand, sir.

THE COURT: I desire to state that I have arrived at no conclusion on this case, because the fundamental question at the very threshold of this case is a construction of that statute and I have not re-read that statute and do not propose to reach a conclusion on that statute until after the argument may be had, on the 9th of October.

Mr. Anderson: Your Honor will quite understand that whatever I have said did not apply to anything of that kind. I want to answer as far as I can, but for the past week I have not been at all well, and to answer offhand at the bar is sometimes difficult when your mind is on something else.

The Court: Yes, and when your mind is directed to one point rather than to a two-fold point. It seems to me the case is unique, and it has seemed to me if I am to thoroughly understand this case I must be helped during the time it is put in.

Mr. Anderson: I appreciate that and am always glad to answer the questions.

The Court: I appreciate the patience you have displayed in view of the many questions that have been asked you.

Mr. Anderson: I may say we quite agree the case is unique, and I may add that the Government regards it as a matter affecting its national and international rights and duties, and one of the most important litigations instituted for some time. It is my duty to help the Court in arriving at a sound conclusion.

The Court: I do not think any criticism can be laid to you for failure to do that.

Cross-Examination.

By Mr. Anderson:

XQ. 36. Mr. Choate you have never been connected in any way with the dye and chemical business, prior to your association with the Alien Property Custodian's office?

A. No.

XQ. 37. You are not a patent lawyer in the sense that that title is usually used in the profession, are you?

A. No.

XQ. 38. You had never been connected with the manufacture of dyestuffs or chemicals in any way?

A. No.

XQ. 39. Mr. Choate, I am going to ask you certain questions about your testimony and I hope you will understand that there is not implied any criticism of you whatever.

A. Certainly.

XQ. 40. I know you will understand that, but I want to state that for the benefit of everyone else, that I have not the slightest disposition to do it. You appeared before the Ways and Means Committee of the House of Representatives in the hearing which has been referred to here as the Hearing on H. R. 2706, did you not?

A. Yes.

XQ. 41. In that hearing the record states that you appeared as counsel for the Chemical Foundation and American Dyes Institute?

A. I did.

XQ. 42. At page 88 of that record I read you an answer to a question by the Chairman.

A. May I have a copy of it?

XQ. 43. If you wish to have that record before you.

> "The Chairman: Give the name of the company you represent to the stenographer.
>
> "Mr. Choate: I appear here as counsel for the Chemical Foundation, into which I shall go in a moment, and also I have been asked to represent the American Dyes Institute, which is an association of all the dye makers, or substantially all the important dye makers in the country, because they have exactly the same point of view presented by

> the Chemical Foundation today and are therefore properly represented by the same counsel. I came into this case, gentlemen, through my service in the office of the Alien Property Custodian, as has been pointed out by Judge Covington."

That is your testimony, isn't it?

A. It was.

XQ. 44. And that was a fact at that time?

A. Yes.

XQ. 46. I believe you have been the general counsel of the Chemical Foundation since it was organized in 1919?

A. Since the day which appears by the minutes on which I was designated in that capacity.

XQ. 47. You also appeared in the hearings before the sub-committee of the Committee on the Judiciary of the United States Senate on what is known as Senate Resolution 77, I believe, and testified at that hearing?

A. Yes.

XQ. 48. Will you turn to page 528 of that hearing?

A. Yes.

XQ. 49. (Reading):

> "The Chairman: Yes; you may proceed.
>
> "Mr. Choate: Of course, Mr. Chairman, I have been familiar with almost all of the activities of the Chemical Foundation from the beginning, because I had a part in its organization and also in the action of the Alien Property Custodian with reference to it. That matter has been so fully covered by Mr. Garvan that I assume, except possibly in the way of cross-examination, you will not wish to ask me any questions in regard to it. Everything has been stated accurately by Mr. Garvan and the others, and documents relative to the subject have been produced. I shall not, therefore, go into that except in answer to questions.

> "In regard to the activities of the American Dyes Institute, I also conceive that the entire ground has been covered, with the exception of the references made by Senator King to the trip to Paris which I undertook for the American Dyes Institute in the autumn of 1920. I do not know that Senator King made any definite statements in regard to that trip, but I felt that what he said makes it appropriate that that trip should be explained.
>
> "THE CHAIRMAN: You went as the representative of what company or association?
>
> "MR. CHOATE: Of the American Dyes Institute. I had been counsel for the American Dyes Institute since the spring of 1919; retained by them to present to the Congress and the appropriate committees the case for special protection for the American dye industry, and in that capacity I had a part in all of the legislative activities; and I shall be very glad, of course, to answer any questions which may occur to you as to any of those activities. I think, however, they have been sufficiently explained to date."

That is your testimony, is it not?

A. It was.

XQ. 50. And that is a fair statement of the facts as stated there, is it not?

A. I think so.

XQ. 51. It was in September, 1920, that you went to Paris as a representative of the American Dyes Institute, was it not?

A. I think the end of September of that year. Wait a moment. I think it was in October of that year that I went to Paris.

XQ. 52. Yes, about that time. Can you recall about when you first became counsel of the American Dyes Institute?

A. A short time before the hearing before the Ways and Means Committee in 1919. That would make it either in April or May of that year; April, I

XQ. 57. On page 108, you were asked a question by Mr. Moore, about the middle of the page:

> "Mr. Moore: These patents were the private property of our alien enemies?
>
> "Mr. Choate: Surely.
>
> "Mr. Moore: They did not belong to the German Government except as it might be that the Kaiser personally had some interest in the patents; and being private property or corporate property as the case might be. What return can we make at the close of hostilities, in the peace settlement, for the property we have just taken and appropriated to ourselves or appropriated for the purposes of the Chemical Foundation, Inc.?
>
> "Mr. Choate: Gentlemen, that is for you gentlemen of Congress to say. We have nothing to say about it. It is a matter of legislative policy to say what form of justice shall be meted out to the Germans.
>
> "Mr. Moore: But you have just stated that the idea originated with the Alien Property Custodian, who desired an amendment to the law in order that he might cover this very point for the purpose of seizure and sale.
>
> "Mr. Choate: In order that patents might be placed on precisely the same footing as other personal property.
>
> "Mr. Moore: He is in position to make an accounting now, as Congress expected?
>
> "Mr. Choate: Yes; because the law requires that he shall make an accounting."

That is your testimony, is it not?

A. That was.

XQ. 58. And so far as you know, the facts stated there are the facts, are they not?

A. They represented my beliefs then and now.

XQ. 59. And further down at the bottom of the same page, I would read to you as follows. You were speaking of the Chemical Foundation.

"Mr. Moore: It is an American corporation effected under the auspices of a Government official, the Alien Property Custodian, and presided over by the present Alien Property Custodian, who has been placed in possession of these German rights, subject to such legislation as we may have enacted, which they propose to turn to their own use. That is the reason I bring the question up and I think it is very pertinent.

"Mr. Choate: The patents have been sold precisely as necklaces, horses, and pictures, stocks, and bonds belonging to the Germans in this country have been sold.

"Mr. Moore: But they were not perishable like horses and cattle.

"Mr. Choate: Some were extremely perishable; some had about expired.

"Mr. Moore: So far as stocks and bonds seized and sold is concerned you certainly have the proceeds somewhere.

"Mr. Choate: We have the proceeds of the patents.

"Mr. Moore: And you are to account to Congress in due course of time.

"Mr. Choate: The proceeds of the patents are in the hands of the Alien Property Custodian for the patents sold.

"Mr. Moore: What was paid for those patents?

"Mr. Choate: $250,000.

"Mr. Moore: By an arrangement with the Alien Property Custodian, they were sold to the Chemical Foundation, Inc.?

"Mr. Choate: Yes.

"Mr. Moore: He suggested this law in order to take them over?

"Mr. Choate: Precisely.

"Mr. Moore: May I ask how the terms were fixed?

"Mr. Choate: Those terms were fixed by guess-work in the same manner as an individual would value patents by guess-work."

That is your testimony in this hearing?

A. It was.

XQ. 60. If you will turn to page 110 of the same book, I will read your statement without going into the question, unless you desire it. In reply to a question by Mr. Moore you made the following statement:

> "To resume; something had to be done with those patents. The only thing the Alien Property Custodian had the power to do, without further help from Congress, was to sell them. Now the universal practice of the Alien Property Custodian's office was to Americanize the seized companies as far as he could by selling their securities, when found in German hands, to first rate competent American purchasers."

Was that your testimony?

A. Yes. When you say, "was that your testimony", perhaps it conveys the idea that it was the whole of my testimony on that subject. I so testified.

XQ. 61. I will put it that way. Did you so testify?

A. Yes, sir.

XQ. 62. I think probably your suggestion is a good one, because I have not read your entire testimony.

A. (No answer.)

XQ. 63. At page 506 of the same book, Mr. Choate, where the testimony related to the question of the character of the Chemical Foundation, Incorporated, I wish to read just two questions and answers at the middle of the page.

Question by Mr. Moore:

> "The Chemical Foundation (Inc.) was still a private corporation and is now?
>
> "Mr. Choate: It is still a private corporation technically, but as nearly public as could be organized.
>
> "Mr. Moore: And we have gone into it suf-

ficiently to show that the only relationship it has with the Government is that Government officials are connected with it?

"Mr. Choate: That is all."

You so testified, did you not?

A. I did.

XQ. 64. You stated I think that that hearing, and it may appear of record, was in June and July of 1919?

A. That is right.

XQ. 65. Will you now get the book entitled "Dyestuffs Hearing, before the Committee on Finance of the United States, on H. R. 8078" frequently referred to in this case? I will ask you to refer to page 116, beginning about the middle of the page.

Question by Senator Watson:

> "You did not limit it to German patents. You said all other chemical patents, and I wondered whether you included all those hereafter taken out.
>
> "Mr. Choate: Oh, no. The idea was suggested to a gathering of as many of the representative men in the industries as we could get together, and they went out and organized their corporation, the Chemical Foundation. Then there came up the question of how we were going to sell to it. The Alien Property Custodian, Mr. Palmer, and Mr. Garvan, were insistent that the sale should be by public auction. That was the ordinary way of disposing of German property, and it was the natural way, the generally desirable way.
>
> "We found the representatives of the industries unanimously opposed to that course for reasons stated by them which finally convinced me and convinced Mr. Garvan and convinced Mr. Palmer; and those reasons were these: Having interested in the Chemical Foundation substantially all the principal manufacturers whose business was affected by these patents, it included nearly

all the possible manufacturers who might have been found at a public sale at auction as proper purchasers for the patents. Outside this group a legitimate purchaser, therefore, could hardly be found. But even if that had not been the case, had the patents been put up at auction, either the same thing would have happened as happened in the case of the Bayer patents, and they would have been bought in in one block or in a half dozen blocks or 40 blocks by manufacturers, and thus closed to the rest of the American industry, or else—and this we feared still more—they would have been bought in by speculators, who would have bought them for their nuisance value, out of which a speculator might well have made a handsome figure. It would have been impossible to detect and reject a speculator as purchaser, because he could easily have hidden under a perfectly respectable dummy or nominee.

"Accordingly, it was determined that it would be impossible and unsafe to put those patents up for public sale, and it was agreed that the matter should be presented to the President of the United States, with a request for an Executive order authorizing the private sale to the Chemical Foundation; and that was the course which was followed. The price of $250,000 that was fixed for the patents was, as you may well suppose, a guess. No human being could put a value on that block of patents; none of them had been used in this country, a very large proportion of them had not been used anywhere else. They were held for their nuisance value only, and no man could say what that nuisance value was. No one was disposed, I think, to lean backward in the way of overvaluing the nuisance value of a patent owned by an enemy, a nuisance value which reacted against an industry which we believed to be so important.

"Therefore, the figure of $250,000 was arrived at as the best obtainable guess on the part of anybody and the transaction was put through on that basis."

Was that your testimony?

A. I so testified.

XQ. 66. Mr. Choate, are you not mistaken there in saying that none of these patents were being used in this country, and is it not a fact that a number of them had been licensed by the Federal Trade Commission and were then being used under those licenses and in a number of cases there were contracts outstanding for the use of those patents which had been seized by the Alien Property Custodian?

A. I think there were exceptions. I think you are right. Federal Trade Commission licenses do not by any means represent the actual use in the country, because a great majority of these Federal Trade Commission licenses at that time represented hopes rather than existing practices. But in the case of salvarsan and the patents covered by the pre-war contracts, there had been some use made in the country.

Q. 67. I only wanted to make that perfectly accurate to conform with the record.

A. (No answer.)

Q. 68. I think you testified elsewhere and I will try to find the testimony if you desire, but it is merely to get the facts, that there had been invested by American manufacturers very large sums of money at that time in the development of the dye industry largely during the war under some of these patents and Federal Trade Commission licenses?

A. My opinion was that in research carried out in the endeavor to produce under the vat dye patents there had been very large sums expended by at least two manufacturers.

XQ. 69. And at that time the production of dyes in the United States was quite large, was it not?

A. Of dyes generally, yes.

XQ. 70. That is what I mean.

A. Not of the patented dyes.

XQ. 71. The record put in here of the Federal

Trade Commission income shows that considerable sums had been paid on account of the royalty of five per cent. on the production under those patents which were licensed. You are familiar with that evidence, are you not?

A. I have heard the evidence that has gone in here, but I do not recall evidence of any payments indicating receipts by anybody on patented dyes before the date of the conveyance.

XQ. 72. That, of course, would be a question of examining the evidence. I am not very sure on that question at all.

A. Certainly it would surprise me if I found now that anyone had made any money out of any patented dye before the first conveyance to the Chemical Foundation. I think the money was confined to pharmaceuticals.

XQ. 73. You spoke of arriving at the price of $250,000. Did you ever hear any other sum than $250,000 suggested?

A. Yes.

XQ. 74. What was it?

A. A figure of $500,000 was discussed with someone at some time before the final fixing of the price. Do you want my recollection in that regard?

XQ. 75. That replies to my question. If there is any other fact in connection with it that you feel should be given to make your answer complete, I have no objection whatever.

A. I recall a discussion with someone, I rather think it was Mr. Wigglesworth, who suggested that the sum of $500,000 had been suggested as the price, and he then informed me that that price was quite impossible, that the industry never could or would raise that price together with the necessary funds which would be required to protect the patents; and I think I received the same information from several other persons whose names I can not now recall.

XQ. 76. You still have the book H.R. 2706 before you, have you not?

A. I have.

XQ. 77. At the bottom of page 117, in speaking of these German patents taken over by the Chemical Foundation, you were asked this question:

> "Mr. Green: These companies, by virtue of their operation, whether in connection with these patents or not, and although while holding these patents have made immense profits in this country?"
>
> He is referring to the German companies.
>
> "Mr. Choate: Large profits, I should say.
>
> "Mr. Green: And profits that both you and Mr. Garvan were aware of?
>
> "Mr. Choate: Yes."

You so testified, did you not?

A. I did.

XQ. 78. Have you before you the hearings on the Tariff Act of 1921, H.R. 7456?

A. I have.

XQ. 79. Will you turn to page 518, please? Question by Senator Smoot:

> "Senator Smoot: If I asked you, as my attorney, and you were not the attorney of the Chemical Foundation, whether I would be safe in buying all of the patents held by the foundation for $250,000 today, what would you tell me?
>
> "Mr. Choate: I should tell you, in the first place, that the Chemical Foundation was incapable of selling the patents under its charter.
>
> "Senator Smoot: As an attorney of the Chemical Foundation, do you think that $250,000 was all that those patents were worth?
>
> "Mr. Choate: I think it was not all they would have been worth to a private purchaser, unlimited

in the use of them. A private purchaser unlimited in the use of these patents could have made very large sums by holding up the industry with them. Their nuisance value was very large.

"SENATOR SMOOT: There are patents there, outside of the nuisance value, that are worth a great deal more than $250,000.

"MR. CHOATE: To a private purchaser, undoubtedly, outside of the nuisance value; but you forget that the Chemical Foundation, both by the terms of its charter and by the terms of the Foundation, is absolutely limited in the use of these patents, so that it can not profit beyond the necessary sum to pay a six per cent. dividend on its very small stock; so that all the rest of the money that is received has got to be used for the advancement of science; and, furthermore, it is so limited that it can not use the patents in the way in which an individual would, by the issue of exclusive licenses. It can only issue nonexclusive licenses, which must be issued on equal and reasonable terms to all American citizens, partnerships, and corporations.

"SENATOR MOSES: These licensees have profited, have they not?

"MR. CHOATE: I hope they have."

You so testified, did you not?

A. I so stated, yes.

XQ. 80. That hearing took place in 1921, in August, did it not?

A. It did.

XQ. 81. And I believe, Mr. Choate, you represented the Chemical Foundation at that hearing?

A. No.

XQ. 82. Was it the American Dyes Institute?

A. American Dyes Institute only.

XQ. 83. Now I will ask you to turn to the book containing the hearings before the Ways and Means Committee on H.R. 2706, page 122. I read the following from your evidence. Question by Mr. Kitchin, who

I think it appears here was a member of the committee and a member of Congress.

> "I just wanted it to appear on the record. Now, your company, after the purchase by this chemical company of these 1200 patents, was organized, and then the other patents were put on sale at public auction?
>
> "Mr. Choate: They were not sold by public sale by the Custodian, because it would have been impossible to do that for a variety of reasons. All the possible available bidders who could have bid in good faith for these patents as real manufacturers were already in the enterprise, because they were members of the American Dyes Institute. The only other kind of bidder there could have been would be a hold-up artist who would buy the patents either for the benefit of his own pocket or who would buy them to hold them up from use. It required an Executive order from the President to effect that transfer.
>
> "Mr. Kitchin: I simply desire to get the facts on the record. Now, were these patents offered separately or were they en bloc?
>
> "Mr. Choate: Were they what?
>
> "Mr. Kitchin: Offered separately, or were all the patents covering dyestuffs offered en bloc?
>
> "Mr. Choate: They were sold in one transaction to the Chemical Foundation.
>
> "Mr. Kitchin: What was the actual amount of cash that was paid for them?
>
> "Mr. Choate: $250,000.
>
> "Mr. Kitchin: You stated it before, but I want to get it in this connection. Now, did your patents cover any other part of the chemical products except dyestuffs?
>
> "Mr. Choate: Yes, sir; all chemical products we could lay our hands on, but it is only in the dyestuffs that the patents are of great importance —dye and pharmaceutical goods—because it is only there that the patent is especially important. They covered salvarsan and other products and all the rest that we could get our hands on.

> "Mr. Kitchin: Did any of the manufacturers of this country have the advantage of these patents, or were they allowed to make without protest on the part of the Government or anyone dyestuffs under these patents during the war?
>
> "Mr. Choate: No, sir; but there was a provision in the 'Trading with the Enemy Act' that enabled them to get a license from the Federal Trade Commission, but under that provision they were required to pay a 5 per cent. royalty to be held by the Alien Property Custodian for the benefit of the German competitor after the war, and also to buy a lawsuit, because the act provided that there should be a determination by a court of how much more than 5 per cent. they should pay.
>
> "Mr. Moore: Would the United States have suffered in the war if we had continued to hold those patents in the hands of the Alien Property Custodian until the close of the war?
>
> "Mr. Choate: In this war, I doubt it.
>
> "Mr. Moore: They were of no avail to us during the war?
>
> "Mr. Choate: I think not
>
> "Mr. Moore: And of course the Germans could not use them here?
>
> "Mr. Choate: It is a very difficult question, but I suppose that the patents on the dyestuffs products themselves would have little bearing on the war. It is their bearing on the dyestuff industry that gives them a colossal importance. We might have held all the property and given it back to the Germans."

Did you so testify?

A. I did.

XQ. 84. I will now ask you to turn to the Hearings on the Tariff Act of 1921, H. R. 7456, page 519, question by Senator Moses:

> "Senator Moses: Was there ever any intimation that a license would be refused?
>
> "Mr. Choate: At the outset the policy of the Foundation was not fully determined. It was real-

ized that it would be very unfortunate for the industry if a large number of licenses should be simultaneously issued covering the production of some product not previously made in this country, inasmuch as the issue of such a large number of licenses would discourage any of the licensees from actually putting money into the business and going to work; but it was very soon determined by a vote of the stockholders' advisory committee, consisting of all the stockholders, that the policy was unwise and improper and that there must be no limit to the number of licenses under any patent."

Did you so testify?

A. Yes.

XQ. 85. I believe you stated on yesterday that you wrote that chapter 2 of Mr. Palmer's report?

A. I did, substantially, as it was afterward transmitted to the President.

XQ. 86. And as it appears in Defendant's Exhibit 30 here?

A. Yes.

Mr. Anderson: I have no further questions, if your Honor please.

The Court: Any re-direct, Mr. Kresel?

Mr. Kresel: No, your Honor. In view of the many extracts from Mr. Choate's testimony before all these committees that have been read by Colonel Anderson, I now desire to offer Mr. Choate's entire testimony before these committee's. It manifestly gives an imperfect picture of this witnesses's testimony before these committees, to take out a paragraph here and a sentence there. So I now offer as part of this witness's examination the testimony given by him before the Committee on Ways and Means of the House of Representatives. I shall indicate the pages. It commences at page 87 of this report, and runs to—I will supply the pages in a minute, your Honor, as I understand Colonel Anderson has an objection to offer at this point.

Mr. Anderson: If your Honor please, of course I object. I venture to say that in the whole range of the law no instance can be found in which a witness can be put on the stand and his testimony on a former occasion be offered by the party who put him on the stand.

I have tried to fairly question Mr. Choate on his testimony and have read a good deal from his testimony that was not pertinent to the questions I desired to ask, to the end that his statement might be as full on the point as I could make it. But to put in his entire testimony at a hearing before the Committee, as to some of which he was under oath and as to some of which he was not—not that I mean to imply that would make the slightest difference in his statement—and to put those statements in without cross-examination before the Committee, I think a matter that needs no argument. Therefore I make the objection without further argument on the subject.

Mr. Kresel: If we were to enforce the strict rules on the subject, your Honor I think will bear me out in the statement that the only purpose for which a witness' testimony in another proceeding or statement in another proceeding may be used against him on cross-examination, is for the purpose of contradiction, for the purpose of affecting his credibility, for the purpose of showing that upon another proceeding he made a statement contrary to what he states at the time he is being examined.

If I had wanted to enforce any strict rule here, there is much of what Colonel Anderson has read in from Mr. Choate's statement and testimony that is in no wise contradictory of what he has stated here and would therefore have been inadmissible. But I did not raise the objection; I did not propose to raise any objection. It is quite evident that the portions read by Colonel Anderson do give a distorted and an imperfect picture of what Mr. Choate stated upon the subject, and I think that there ought to be no objection raised by the Government to having appear before the Court what Mr. Choate stated fully upon the subject.

Your Honor will recall when Colonel Anderson read in passages from Mr. Choate's statements upon his case, we objected thereto, and I stated then that I should avail myself of the right, upon my case, to read in other portions of Mr. Choate's statement and testimony before these commitees, which portions had a connection to the matter read in by Colonel Anderson. I am prepared to read such portions. I have made notes of the pages wherein they appear. But I thought that in view of the very large number of passages that Colonel Anderson read this morning from this witness's testimony and statement, it would serve the Court's purpose better if the Court had before it this witness's entire statement. I think it is only fair that it should go in and I offer it.

Mr. Anderson: I think it has no relation to the issues in this case, your Honor. I have read from those portions which I thought related directly to Mr. Choate's testimony of yesterday, and so far as I recall every one of them did relate to his testimony of yesterday. I put in other portions of the testimony in the case on direct under the rule of admissions, and your Honor permitted Mr. Kresel to read in other portions of

Mr. Garvan's statement on the same principle—over our objections, of course.

If Mr. Kresel wants to examine Mr. Choate on any of the questions which I read to him or any extracts which I read to him, supplement them by his examination, that comes within the rules of evidence. Otherwise, of course, I will object. But certainly I most earnestly object to putting in this testimony en bloc. I will not say that the whole business relates to foreign matters, but a large part of it relates to foreign matters, and my examination related strictly to the issues in this case and to the points testified by Mr. Choate on direct.

Mr. Kresel: I do not think there will be any difference between Colonel Anderson and myself on the point that Mr. Choate's entire testimony before these committees had reference to the transfer of these patents to the Chemical Foundation and to the importance of the dye industry to the country. Those are the issues in this case, and I do not see where there is any ground for saying that what Mr. Choate stated or testified before these Committees or any part thereof, has no reference to this case. That was the matter that was being investigated by those committees.

Mr. Anderson: I do not concede that the question of the importance of the dye industry to the United States has anything to do with this case.

Mr. Kresel: Whether you concede it or no.

Mr. Anderson: It is utterly immaterial, we contend, and cannot be considered by this court.

Mr. Kresel: It is an issue raised by our Answer.

The Court: Are you through on both sides?

Mr. Kresel: Yes, your Honor, I am through.

The Court: What is the purpose of your offer, Mr. Kresel?

Mr. Kresel: The purpose of my offer, your Honor, is to show that the portions of this witness's testimony read in are distorted—I do not mean that in any offensive way to Colonel Anderson at all—fragments of this witness's whole statement and testimony which, if left without the other portions of his testimony, would be misleading and not helpful to the Court:

The Court: The purpose of my question, Mr. Kresel, was to find whether your offer of the evidence of Mr. Choate taken before these several committees is based upon the ground that such testimony shall be here received as if given by Mr. Choate on the witness stand, or whether your purpose in offering it is to have the portions of that testimony admitted fully reflect the views as expressed by Mr. Choate before those several committees, so that his statements there made and views there expressed will be reflected by the full testimony rather than be misunderstood, perhaps, by a portion of the testimony.

Mr. Kresel: Your Honor, the latter is my purpose.

The Court: That is said, Colonel Anderson, without knowing anything about the full testimony of Mr. Choate except what has appeared before and what has been read; because I have not had any of those copies in my hand. Whether the attitude of Mr. Choate at that time is fully and completely, fairly and properly reflected by the portions you read I cannot now determine.

Mr. Anderson: May I make this suggestion. Under your Honor's rules heretofore made in this case, which I simply reserve on——

The Court: Yes.

Mr. Anderson: I would recognize that Mr. Kresel has the right, and probably had the right any how—I mean as a matter of general law—to read other portions of Mr. Choate's testimony and ask Mr. Choate if he did not so testify, to the end that he might make his views complete if he thought they were not complete in the portion read. Mr. Choate, now being on the stand, there is a different question presented, not one of merely reading it into the evidence. The original objection I made was on the ground of admissions. He can ask Mr. Choate if he so testified this or so testified that, specifically, but I earnestly submit that he has not the right to put in the entire testimony without giving me a chance to raise the question whether it is hearsay, whether it is—

The Court: That would be true, Colonel Anderson, if he was offering it as primary evidence; but as I understand him, he is not so offering it, and if he were so offering it I should let it go in under the general rule, though I have no hesitation in saying so far as I am concerned it would be useless. The purpose of the portions which you read was necessarily that of reducing the weight or nullifying the value of the testimony given in chief. If you have read portions which will best serve the plaintiff's purpose in that particular, and if the defendant contends those portions cannot be read separate and apart from the whole testimony, then it seems to me there is no difference between you, because you say that Mr. Kresel may read certain other portions and ask him if he so testified. Mr. Kresel says those other portions embrace all the rest of his testimony.

Mr. Anderson: If your Honor please, I think I have the right to call your attention to the fact that Mr. Kresel has inadvertently made a mistake. A very large portion of this testimony relates to the dye embargo, tariff rates, a trip to Europe, things of that kind which have nothing whatever to do with the issues in this case as I see them. Of course, I recognize that as to some of them counsel may take a different view. I am objecting to this testimony on the general and specific grounds reserved to all of it, which goes to the materiality and relevancy, but I cannot point out the immateriality and irrelevancy of it unless it is read.

However, I object to the form and the method of putting this evidence in. The only possible way the former testimony can be used except for the purpose of impeaching a witness on cross-examination or as an admission, as I now recall, is to ask the witness if he did not so testify, in redirect. The position of counsel who puts the witness on the stand is that he must get his case from the witness on the stand, and no matter what he has testified to before he must get it from the stand in any case.

The Court: There is no doubt about that.

Mr. Anderson: Therefore, he can ask Mr. Choate, in view of the fact that I have asked him as to his former testimony, if he did not also testify to the following effect. I think that would be fair, and my view of the rules of evidence is that they are rules of fairness and common sense. True, some of them are so mixed up by exceptions that it is like spelling in the English language, you cannot tell just which it should be.

Reserving our general objections on the subject, I do object to dumping into this record hundreds of pages wholesale, as to which I cannot carry in my mind what it is and I do not know what it is. I have not time to examine it while this witness is on the stand. It may relate to matters I have not seen, because of the thousands of pages in this matter I have not been able to read all and I could not if I would. I am discussing chiefly now, outside of our general objections, a question of the method of putting Mr. Choate's former statements in the record. If the counsel wants to ask Mr. Choate if he so testified, in order to get his testimony accurate, and read it to him, as long as it is relevant to my cross-examination and the issue here I would not on that ground object to it.

THE COURT: Does it not come down to this which is stated by Wigmore on page 199 of the pocket code:

"Where the purpose is to impeach a witness by prior statements of his in writing," it does not happen to deal at this page with prior testimony—"the rule for production applies subject to the following qualifications: (a) The writing need not be shown or read to him before asking him as to its contents. (b) But the tenor and circumstances of the supposed statement must be sufficiently specified to him orally in a question, pursuant to Rule 108 (ante §579). (c) If he admits, in replying to such question, that he did make the statement asked about, the writing need not be produced by the impeaching party, unless the trial Court deems it fair to do so."

MR. ANDERSON: I went to the extent of showing him the evidence every time before I asked him the question. I think that is a fair thing to do, because no man can carry all that matter in his mind.

THE COURT: But I think "produce" does not mean merely exhibit it to the witness, does it?

MR. ANDERSON: The rule says that you need not show it to him in advance. I went to the extent of showing their evidence to both Mr. Garvan and Mr. Choate every time in advance.

THE COURT: I appreciate that. But my interpretation was not the same as yours. I thought Mr. Wigmore meant by production that the writing itself need not be placed in evidence.

MR. KRESEL: May I say, your Honor that what Colonel Anderson is mentioning is just what I am trying to avoid. I am trying to avoid standing up and reading to this witness long passages from his testimony which will take an hour or two, and simply asking him, "Did you so testify?" That is a thing I am trying to avoid.

As for Colonel Anderson not knowing the record, I say now that of course, if your Honor will permit me to put in the statements made by Mr. Choate, he has an absolute right, and I recognize it, to examine Mr. Choate upon any of those statements. It is not going to serve anybody's purpose if I take up these records and stand up for an hour and ask the witness, "You said so and so. Did you say so?"

MR. ANDERSON: If your Honor please, that is exactly the point. I am perfectly willing to save time, but I am not willing to save time by a suspension of the rules of law and evidence. If Counsel want to put in any additional statements of this witness, I must, with an earnest desire to close this case, ask that it be done in a regular and formal and proper way to the end that I may know the testimony he is putting in and relying upon. Hundreds of pages of evidence put in here without having counsel point out what he is relying on or its pertinency to this case, would not be fair to the plaintiff.

THE COURT: The only purpose for which it can be offered is not as primary evidence of the statements therein contained. but to qualify, in so far as it will do so, the impeaching effect of the portions which you have referred to.

Mr. Anderson: May I say that I regard this as very important and a matter of great consequence in this case. In the first place, may I suggest to your Honor that when you get up in a Court above or even in this Court with a record of this size, it is perfectly impossible to distinguish between evidence which is put in as proof and evidence which is put in for some other purpose than proof. I know of no practice that is more destructive.

We of course are trying the case before a Court, but we consider it as being tried before a jury. Nothing can be more destructive of the rights of litigants than to put in evidence for a limited purpose of this kind and let it all be read. You can not get it out of your mind. The human mind is so constituted that it believes what it sees. When we see a thing in print, we believe it is so. You usually believe what the newspapers say. I do not mean to reflect upon the newspapers in that regard, but we do know that the effect of what we see in a newspaper is much stronger than if somebody told us so.

In my view, the full limit to which counsel can go in this case in connection with the statements read is to read the connection in which those statements are made; and therefore I must earnestly urge that this offer be rejected.

The Court: Colonel Anderson, are you not placing me in this position. although I am not complaining, that there is scarcely a document that was put in by you that was not with equal earnestness opposed by the defendant? In order that this case may be tried this time for the last time, that the issues here raised may be determined by the Appellate Court or by the Supreme Court on the record here presented, there was no rule of evidence barring the putting in by you of any record, writing or document that you believe you could make use of in a determination of the issues in this case, Are we not both estopped by that?

Mr. Anderson: I will answer your question in the negative, sir. There are any number of documents that Mr. Kresel might desire to put in here as to which I think your Honor's ruling might apply. There might be a limit. I do not know whether you could put in a discussion of Einstein's astronomical theory here. I think the Court would impose some limit.

But here is a matter of form in the putting in of evidence. Your Honor has ruled a number of times on the form or presentation of evidence. For instance, suppose when Mr. Metz was on the stand, after he was cross-examined, without showing him the evidence, I had gotten up here and offered these three books in which he testified to these thousands of pages of stuff. I assume that your Honor would rule, of course that the witness while on the witness stand must have his attention called to his former testimony. You can bring out any of his former evidence that has relation to the questions asked him, but you can not admit into this record the evidence given in hearings before committees, even to show that he made a more complete statement, without pointing out that it relates to something asked on cross-examination.

While your Honor has opened the door wide, there are certain rules under which the evidence must be put in, even if the doors are wide open. I object to the method by which counsel proposes to put this evidence in.

The Court: I will sustain your objection to that and you may take such time as you need, Mr. Kresel.

The Witness: If your Honor please may I make a suggeston? Is there not a stipulation that the witnesses will be deemed to have testified as set forth in those volumes?

Mr. Anderson: The stipulation, as I recall it, is to this effect: that any of these documents containing this evidence may be used without formal proof that the evidence was so taken. In other words, ordinarily, we would have to call the stenographer to prove that the witnesses so testified at such a time. We waived the formality of that proof, just as we waived formality in the proof of a letter. But it was not to be put in evidence as if it were testimony given on a former occasion, as proof of facts contained therein.

Mr. Kresel: That was my understanding, as Colonel Anderson states. I do not believe it was intended to bind either party to a situation where the other might put in testimony without any further proof.

Mr. Anderson: If we had, we would not have called these witnesses at all.

The Court: All I am restricting you now to, Mr. Kresel, is to proving such portions as you deem relevant for the purpose of negativing or modifying the impeaching effect, if any, upon the testimony of this witness as the result of the portions of the testimony of Mr. Choate before the Committee, read by Mr. Anderson.

Re-Direct Examination.

By Mr. Kresel:

RDQ. 87. Mr. Choate, will you now take up this volume containing the minutes of the hearing of the

Committee of Ways and Means and turn to page 88 thereof?

A. Yes, sir.

Mr. Kresel: Colonel Anderson read a portion of the second paragraph on that page ending with the words "Judge Covington." I desire to offer in evidence now the balance of that paragraph together with the statement following that paragraph on page 88, page 89 and page 90, to the end of the first paragraph on that page.

The Court: Now then, in order that I may understand, is there any question that the witness so testified, or do you want to ask him a specific question?

RDQ. 88. Did you so testify as is reported there?

A. I did.

The Court: Is it your purpose that the stenographer shall take those books and copy them at large?

Mr. Kresel: No, your Honor; I simply want the record to give the pages and I will identify them sufficiently so that there will be no difficulty.

The Court: Then are you offering that as a separate exhibit to be numbered? If so, the Clerk had better give it a number. It must either be copied at length by the stenographer or be given a number by the clerk. The clerk suggests that all the portions which you indicate may be given one exhibit number.

Mr. Kresel: All the portions in one book be given one number?

The Court: Yes.

Mr. Kresel: I think that is a very good suggestion.

RDQ. 89. Now, Mr. Choate, please turn to page 92, beginning with the question by Mr. Moore which reads as follows: "Mr. Moore. In papers left in New

York, Washington and elsewhere?" down to and including the paragraph on page 94 which reads as follows: "Mr. Choate, They are not able to do any more importing than they could possibly help, because of its effect upon foreign exchange and the value of the pound and franc."

> **Mr. Anderson**: Now, if your Honor please, I wish to note an additional objection, in order to preserve the record. First, I move to strike out the matter introduced from pages 88 to 90, for the reason that it has no relation whatever to the subject covered by the portion which I introduced. To make my point clear, I was merely showing Mr. Choate's connection. In the next question he goes on to discuss the conditions of the dye industry in the United States, and there certainly can be no relation between those two things.
>
> Second, I object on the ground that a very large proportion of his statement is obviously hearsay. He quotes various people with whom he has talked, and therefore he could not testify to that on the stand and it can not be read in evidence. For those reasons, I move to strike out that portion introduced on pages 88 to 90 inclusive.
>
> Now, on pages 92 to 94 inclusive, the matter read has absolutely no relation to the subject matter which I introduced on the part of Mr. Choate, but is entirely new matter and original matter presented by counsel himself, and not explanatory of or connected in any way with the evidence which I introduced.
>
> I recognize the difficulty of ruling on evidence this way; but I have to preserve the record. I therefore object to each question and each answer so read and move to strike the same out.
>
> **The Court**: If your objection is well taken,

then the evidence so admitted is wholly without value. That is as far as I can go.

Mr. Anderson: I understand. I merely want to preserve the record and note the objection and exception.

The Court: Because any testimony given by Mr. Choate before the committees, for other purposes than that of refreshing his recollection, or possibly some other purposes which I do not now think of, must be given from this witness stand and not put in indirectly that way. It is only for the purpose of having the portions of the testimony given before the committee in this way properly reflected here that it is admitted at all.

Mr. Kresel: May I proceed, your Honor?

The Court: Yes.

RDQ. 90. On page 95 of this book, Mr. Choate, I direct your attention, without reading it to you, to the statement made by you beginning with the paragraph reading as follows: "The Chairman: Now, Mr. Choate, if you will proceed." And going from there to the bottom of page 97 of this volume. Did you make the statement therein contained before the committee at that time?

Mr. Anderson: Same objection and motion.

A. I did.

RDQ. 91. I now turn to page 108 and page 109, from which Colonel Anderson read portions, and I direct your attention to page 109 beginning with the paragraph as follows: "Mr. Moore. It is stated in this very interesting publication of the Chemical Foundation (Inc.), which is evidently intended for this committee, that 4,500 of these patents which applied to chemistry Mr. Palmer has sold for the benefit of American industries to a quasi-trustee corporation, called the Chemical Foundation." From that point on to the end of the first paragraph on page 111, which ends with the sentence "Where could we find them?" Did you so testify as reported at the pages to which I have called your attention?

> **Mr. Anderson**: I make the same objection as that made to the preceding question, and to all this evidence, as already stated, the objection applying to so much thereof as was not read by me on the cross-examination, because it includes a part of what I read, or to so much thereof as is not directly related to the subjects discussed in the portion which I read on cross-examination.

A. I did.

RDQ. 92. I also direct your attention to the statement at page 111, bottom of the page, beginning with a statement reading as follows: "Mr. Choate. At all events, there was a board I think we all respected and who had the confidence of the community and certainly knew the Germans and their works." Going from that point to the last but one paragraph at the bottom of page 112, which reads as follows: "Mr. Choate. Under our charter we can not license any corporation three-quarters of whose stock is not held by American citizens. I think that is a very wise provision. We do not want ever again to get in a position of having our industries controlled by foreign corporations." Did you make the statement as appears at the pages that I have just indicated?

> **Mr. Anderson**: Same objections as stated above, which will be considered as made in each case without being repeated, and subject to the limitations therein stated.

A. I did.

> **Mr. Kresel**: I am sorry to take all this time, your Honor, but I can not avoid it.

> **The Court**: Are you through with that volume?

Mr. Kresel: I am through with this one volume.

The Court: Then let it be marked as an exhibit.

Mr. Kresel: In other words, the passages that I have indicated will receive one number.

The Court: Yes.

Received in evidence and marked "Defendant's Exhibit 141," being passages indicated from volume entitled "Hearings before the Committee on Ways and Means on H. R. 2706." (*See Exhibits, Vol. V, page 2743.*)

RDQ. 93. I read from page 92 of the hearings before the Committee on Finance on H. R. 8078. Will you please turn to that, Mr. Choate? Question by Senator Watson:

> "Senator Watson. And who is president of the Chemical Foundation?
>
> "Mr. Wigglesworth. Mr. Garvan was, I understand, president.
>
> "Senator Watson. And who is Mr. Garvan?
>
> "Mr. Wigglesworth. The Alien Property Custodian.
>
> "Senator Watson. So that he is the Alien Property Custodian and at the same time he is president of the Chemical Foundation.
>
> "Mr. Choate. But he is not the Alien Property Custodian who sold the patents.
>
> "Senator Watson. I understand that.
>
> "Mr. Choate. His predecessor sold the patents."

Did you give that testimony?

Mr. Anderson: That is the testimony of Mr. Wigglesworth, if your Honor please. There is no testimony there by Mr. Choate; not a word.

Mr. Kresel: Mr. Choate made the statement.

Mr. Anderson: But the preceding statement, questions by Senator Watson and replies by Mr.

Wigglesworth. Certainly we can not read Mr. Wigglesworth's evidence in this case.

MR. KRESEL: I did not ask him about Mr. Wigglesworth. I asked him if he so testified. I read the Wigglesworth portion because otherwise it would not be understood at all; simply for introductory purposes.

MR. ANDERSON: Let us get that clear. Mr. Wigglesworth was on the stand; Mr. Choate sitting by as counsel for either the Chemical Foundation or the Dyes Institute, I think he testified there, put the statement in the form of a question to Mr. Wigglesworth or to Senator Watson, and then makes a statement himself in Mr. Wigglesworth's testimony.

THE COURT: Where did you begin reading, Mr. Kresel?

MR. KRESEL: I began reading with the question by Senator Watson reading as follows: "And who is president of the Chemical Foundation?" Mr. Wigglesworth answers: "Mr. Garvan was, I understand, President." "Senator Watson. And who is Mr. Garvan?" "Mr. Wigglesworth. The Alien Property Custodian."

MR. ANDERSON: How can that go into the record?

MR. KRESEL: Simply as introductory to the statement made by Mr. Choate.

MR. ANDERSON: I object to Mr. Wigglesworth's testimony going into the recod, sir, without calling Mr. Wigglesworth.

MR. KRESEL: All right, I will omit those two answers by Mr. Wiggesworth. I read the question by Senator Watson:

> "Senator Watson. So that he is the Alien Property Custodian and at the same time he is president of the Chemical Foundation."

I assume you will concede that Senator Watson was talking there about Mr. Garvan?

Mr. Anderson: I will.

Mr. Kresel: All right.

"Mr. Choate. But he is not the Alien Property Custodian who sold the patents?

"Senator Watson. I understand that.

"Mr. Choate. His predecessor sold the patents.

"Senator Watson. But he is the Alien Property Custodian at this time?"

Those are the three or four paragraphs that I am now asking the witness as to whether he made the statement on those occasions as read.

The Court: The statements there credited to him?

Mr. Kresel: To him.

Mr. Anderson: In addition to the objections already raised, I object on the ground that the record discloses that Mr. Wigglesworth was under examination. The record discloses that Mr. Choate was there as Counsel for the American Dyes Institute.

The Court: May I ask: Is this the case where Mr. Choate was stating facts and not testifying to facts?

Mr. Anderson: This is the case where he asked Senator Watson——

The Court: No; I gathered the impression from your remarks and some statements that have gone before in the trial of this case that before one of these committees Mr. Choate was not on the stand but did make certain statements to the committee not under oath. I was wondering whether this was the one or not.

The Witness: Did your Honor ask me to answer that?

The Court: Yes.

The Witness: If your Honor please, none of the testimony in any of these hearings except that before the committee referred to here as hearings before the sub-committee of the Committee on the Judiciary of the United States Senate, in 1922, were under oath. The testimony before the Congressional committees is not, as a rule, taken under oath. So that all my statements made to the Senate Finance Committee and the House Ways and Means Committee were on a par. None of them were under oath, and in many cases questions were asked of me casually in the midst of the examination of other witnesses, and were then answered.

Mr. Anderson: Then I object on the further ground that the witness is undertaking to testify as to when the patents were sold and by whom, when that is a question of law to be drawn from the facts and not testified; and on the further ground that it has no relation to the cross-examination.

The Court: My views have been stated. I will not repeat them. It will be admitted under our general rule.

RDQ. 94. I direct your attention, Mr. Choate, to page 94 of this volume of hearings before the Committee on Finance on H. R. 8078, beginning with the paragraph which reads as follows: "In the first place, the dye industry makes a greater number of different products, I suppose, than any other industry in the world." That is as much of that paragraph as I shall read, to and including the end of the first paragraph on page 102 thereof; and I ask you whether you made the statements that are set forth on the pages that I have indicated.

Mr. Anderson: If your Honor please, this statement is simply a re-statement of some of the things contained in the Palmer report about the conditions in the dye industry prior to the war, about which I did not ask the witness a single question. It is not explanatory of them. It contains no limitations upon them. It has no connection with anything that I have asked him about. It contains in it an article by Mr. Burr from the quarterly review of July, 1919 on the German business in the United States, and the last two pages of it are a statement by Mr. John P. Wood, or a considerable part thereof, of the American Association of Woolen and Worsted Manufacturers.

If that can go into the record under the idea of explaining or enlarging or completing what I read, when it has no more connection with it than the history of the Peloponnesian War, is going pretty far, and I want to object very earnestly on all the grounds stated and those now stated to putting that into the record.

THE COURT: Mr. Kresel, what in your view is the relation of the matter now offered to that read from Mr. Choate's statements by Colonel Anderson on cross-examination?

MR. KRESEL: Your Honor will recall that a number of the statements read from Mr. Choate's testimony and statements by Colonel Anderson, referred to the question of price. You remember he read the statement about the price being a guess, and so on.

THE COURT: Yes, I recall that.

MR. KRESEL: Now on the pages that I have indicated, Mr. Choate sets forth a statement of the different colors that were manufactured. He sets forth the nature of the various dyes and gives an account of the difficulty in producing them.

The Court: The purpose being to show that the use of the word "guess" was not in its ordinary significance, but as indicating that——

Mr. Kresel: There was no direct way of arriving at the value.

The Court: —that an estimate of value of patents can not be as accurate as one on tangible property; is that the purpose?

Mr. Kresel: Yes, your Honor: And then may I further point out that in these extracts that I am now offering Mr. Choate is showing the large extent of the business of the Badische Company and the Bayer Company in Germany, which, of course, has a direct bearing upon the question of value, inasmuch as Mr. Choate pointed out that any industry which would be built up here would have to be in direct competition with the German industry abroad.

The Court: You have indicated you differ.

Mr. Anderson: I differ entirely, sir; but I also want to call attention, in addition, to page 101, which is included, where the following appears:

"Mr. Wood. Mr. Chairman, in order that it may come in at the appropriate place in the record, may I make a statement about this condition of affairs that I think will be very important to the committee as bearing directly on this subject you are considering?

"Mr. Choate. If it will not take too long.

"Mr. Wood. It will only be momentary.

"Mr. Choate. All right.

"Senator Watson. Please state your name?

"Mr. Wood. John P. Wood, of Philadelphia; woolen manufacturer. I represent this committee of the American Association of Woolen and Worsted Manufacturers. For some 30 years" and so forth. Mr. Wood goes on to make a statement.

Mr. Kresel: If your Honor please, it is so set forth in the statement here that it was not easily distinguishable that Mr. Wood interrupted here; but it is only one paragraph and I am perfectly willing to have it cut out.

Mr. Anderson: Then he goes on to say that what Mr. Choate said is true; so we are backing it up with somebody else's statement.

Mr. Kresel: Mr. Choate resumes his statement.

The Court: We are not going to discuss it. I am going to admit it under the general rule for the purposes as indicated at the beginning of the re-direct examination of Mr. Choate.

Mr. Kresel: The portion beginning with the second paragraph on page 101, reading: "Mr. Wood. Mr. Chairman, in order that it may come in at the appropriate place in the record," etc., down to the paragraph on that page ending with the words "as it did the foreign business" are not to be considered as a portion of what I have offered.

The Court: All the objections stated with respect to this and preceding statements of Mr. Choate before the committees are noted here and the questions are taken under the general rule.

The Witness: Have I answered the question?

RDQ. 95. I am asking you Mr. Choate, whether you made the statement as appears on those pages?

A. I did.

RDQ. 96. I now direct your attention to page 113 of this record, beginning with the paragraph which was read in by Colonel Anderson, reading as follows:

> "We came to the conclusion that the patents could not have been held idle like that for any purpose, except to prevent, on the one hand, American manufacture and, on the other, imports from possible competitors abroad."

And going from there to page 117, ending with the paragraph the last sentence of which reads as follows:

> "And the charter provides that except for a six per cent. return on the preferred stock—which is to be retired as fast as it can be—and a dividend limited to six per cent. on the common stock if earned, the entire funds produced by the Chemical Foundation must be used for purposes of the advancement of science and industry in the United States."

And I ask you whether you testified as is reported on those pages?

Mr. Anderson: Objected to for the reasons already stated, except so much thereof as was read on cross-examination, which includes a part of what I read.

The Court: The same ruling.

RDQ. 96. (continued) You may answer.

A. I did.

RDQ. 97. I direct your attention to page 124 of this record. Colonel Anderson read in beginning with the first question on that page down to and including the second question and answer thereof. I now ask whether you gave this testimony and I read the immediately succeeding question and answer, succeeding that which Colonel Anderson read in, to wit:

By Senator Watson:

> "Do you contend it is necessary that your institution should survive in order to perpetuate the dye industry in this country?
>
> "Mr. Choate. I do not. But I do imagine it is a very valuable institution, for this reason, among others. If it is desirable that the vat dyes shall be manufactured in this country, for instance —I mean the whole group of patented dyes—the Chemical Foundation can render some assistance in that line, because by demanding the payment of royalty on foreign goods, or if necessary seeking to enjoin their sale, it can to some extent af-

ford protection. That will eventually be possible after the patents are adjudicated, if they are any good. But unless the patents are protected, are fought, litigated and enforced they are absolutely worthless to anybody. The owner has got to protect them, and for that purpose must have and spend money."

Did you make that statement?

A. I did.

THE COURT: This is all subject to your objection and exception, Colonel Anderson.

Extracts from Hearings before the Committee on Finance of the United State Senate received in evidence and marked "Defendant's Exhibit No. 142." (*See Exhibits, Vol. V, page 2764.*)

RDQ. 98. Colonel Anderson read to you from page 528 of the hearings before the sub-committee on the Judiciary, with reference to your trip to Paris as representative of the American Dyes Institute. Was that the capacity in which you went?

A. It was.

RDQ. 99. You say, "The information which the legislative committee had received was included in a report made by Mr. Edward S. Chapin, the Paris representative of the Textile Alliance, to the Advisory Committee of the Department of State. This report was printed and bears date September 29, 1920, and I offer this copy of the printed copy of the report for the consideration of the Committee."

"The Chairman. It will be received and marked as an exhibit."

Then the next sentence reads as follows:

"The report referred to was marked 'Choate Exhibit No. 2, not copied'."

Have you a copy of that report available?

A. I haven't it here. I think I probably have it in the office. If not, I can doubtless secure a copy for you.

Mr. Kresel: At this time, if your Honor please, I offer in evidence a copy of that report. I haven't it here. I should like to reserve the privilege of producing it as soon as I can get it.

The Court: The report is what?

Mr. Kresel: It was a report made by Mr. Chapin, the Paris representative of the Textile Alliance to the Advisory Committee of the Department of State.

RDQ. 100. It was with reference to these reparation dyes, was it?

A. Yes.

Mr. Kresel: As to which Mr. Choate made this trip to Paris about which he was questioned by Colonel Anderson.

The Court: How is that relevant, Mr. Kresel? I do not follow you.

Mr. Kresel: If Mr. Choate's trip to Paris on this matter is at all relevant, then the report embracing the results of the trip is material.

The Witness: Mr. Kresel, I think you are mistaken in your understanding of this situation.

RDQ. 101. If I am, I wish you would correct me.

A. The Chapin report was a report to the Advisory Committee of the State Department, which stated the conditions that existed in regard to the treatment by the Reparation Commission of the dye question. That report was what alarmed the Dyes Institute in regard to the situation and led them to ask me to go.

Mr. Kresel: Now, there you are. Apparently Colonel Anderson puts some importance on the fact that Mr. Choate made this trip to Paris for the American Dyes Institute. I want to have before the Court the situation that called forth the request that Mr. Choate make this trip. If one is material, the other certainly is material.

Mr. Anderson: Under the ruling of the Court, under which we are now proceeding, I can see the relevancy, although I do not concede it and I raise my objection to it, of the paragraph read, from the standpoint of Mr. Kresel. I would be perfectly willing to admit that Mr. Choate went——

Mr. Kresel: You read it in, Colonel.

Mr. Anderson: I am talking of the paragraph you read. Went over to Paris as representative of the American Dyes Institute in connection with the reparation dyes. But now the question is on the offering of a report by Mr. Chapin of the Textile Alliance on the conditions in Paris and the paper is not even here. I would waive that if it had any standing as evidence and reserve the right to examine it later when presented and offer additional evidence. If we are going into a history of the operation of the Textile Alliance in Paris, we will go into it fully, but Mr. Chapin's report as a representative of the Textile Alliance is certainly not evidence.

The Court: Was Mr. Chapin a representative of the Textile Alliance?

Mr. Kresel: Paris representative of the Textile Alliance and the report was made to the Advisory Committee of the Department of State.

The Court: I do not see that Mr. Choate's trip to Paris has any relevancy and it seems to me this has even less.

Mr. Anderson: I might say that my reason for introducing this statement was—and there is no mystery about it—to show the connection between these two corporations and the activities of those corporations. I regarded it as one of the various incidents in that connection, without implying the slightest suggestion or criticism of Mr. Choate as a lawyer or personally. These various things I pointed out show that connection. What its legal effect is will be a question for argument afterwards.

I am not raising any question that Mr. Choate did not have a perfect right to go to Paris, that he was performing service in going to Paris and that he had a right to serve the Dyes Institute as counsel. I am not raising any question like that. Nor am I raising any question in connection with his trip to Paris. There is a whole lot more about his trip to Paris, telegrams and correspondence that I did not put in. I expressly did not go into his trip to Paris. How he can put in a report by Mr. Chapin of the Textile Alliance is beyond my comprehension.

Mr. Kresel: Your Honor has already indicated your view as to the materiality of Mr. Choate's trip; and of course, if that is your Honor's view, I do not think I shall insist upon putting in the report.

The Court: You understand, Mr. Kresel, that is my immediate reaction. If Colonel Anderson can at the argument or at any time prior to decision establish that that is a link of importance in showing the conspiracy, it will be given that value regardless of any statement just made by me. I understand you do not press your offer of Mr. Chapin's report.

Mr. Kresel: I do not, your Honor.

If your Honor please, I am going to ask the Court to let me mark for identification the statements made by Mr. Choate beginning with the paragraph on page 528 of this book containing the Hearings before the Committee on the Judiciary of the Senate which reads, "In September, 1919, the Legislative Committee of the American Dyes Institute communicated with me and stated that they were alarmed by reports" and so on, to and including the paragraph on page 548:

By the Chairman:

"It is only fair to add that the statements made by Senator King were upon information."

The matter just offered for identification contains the statements made by Mr. Choate and the entire line of correspondence with reference to this Paris trip. It may well be that before the close of this case I may renew my offer to have that portion of Mr. Choate's statement and the correspondence that accompanies it put in evidence. All I want to ask the witness now is whether he made the statements on the pages indicated and whether the correspondence which is there printed is correct.

The Witness: I did make the statements and the copies are to the best of my knowledge and belief correct and complete.

Let it be so marked.

Marked Defendant's Exhibit P for Identification, 7/6/23.

Mr. Anderson: Since I do not know whether counsel is going to introduce it in evidence, of course, I reserve all rights as to that.

The Court: You may make the objection at the time it is offered.

Mr. Kresel: That is all.

RE-CROSS-EXAMINATION.

Mr. Anderson: There is one statement I could not find when I was reading from the testimony, which has been brought to my attention by counsel's reading of the page, that I would like to ask Mr. Choate about and put in evidence.

I will read a portion of the statement from the Hearings before the Finance Committee on H. R. 8078, beginning at the bottom of page 122.

Question by Senator Watson:

> "Are you one of these gentlemen?
>
> "Mr. Choate. I am not a director, but I am of counsel, and I think nothing has yet been done, and nothing will be done that is not concurred in by me."

By Mr. Anderson:

RXQ. 102. You were referring there to the Chemical Foundation, I think it will be conceded?

A. Yes.

Mr. Anderson (Reading):

> "Senator Watson. I am not questioning anybody's motives, but looking at it as an outsider, if you thought somebody was coming in to manufacture a particular kind of dye would produce an excess of that particular product in the country, you would shut him out?
>
> "Mr. Choate. I, personally, would not, and I think the decision of the Foundation will be that under no circumstances will any license be refused except when the applicant turns out not to be really un-American, or when he is not qualified to make the product in question.
>
> "Senator Watson. I understood you to say a while ago that if there should be an excess of any one particular product there might be power used to prevent that by your Chemical Foundation.
>
> "Mr. Choate. What I said was that under the charter of the Foundation the directors would have the power to refuse a license to additional applicants under those conditions. We have placed that question before the assembled stockholders who represent 140 leading concerns in the dye industry and in the textile and other industries, and I understand the almost unanimous opinion of

those industries to be that the issuance of licenses ought never to be limited in that manner.

"Senator Watson. No; but the power remains.

"Mr. Choate. The power remains; we could do all sorts of things if we were rascals.

"Senator Watson. That is not the question. Has the Chemical Foundation as such assumed any authority over imports; that is to say, if imports are to come into the country, have they taken any steps to get control of those imports coming into the country in any way?

"Mr. Choate. No; we can not. None of these patents that cover the dyes have been adjudicated, and until a patent has been adjudicated you can not get an injunction.

"Senator Watson. Has any effort been made on the part of anybody connected with the Chemical Foundation to enter into any sort of arrangement so that they can control imports or so that imports come into the hands of men who control on this side?

"Mr. Choate. No, sir. Royalties will be charged against the importer precisely as they will be charged against an American manufacturer in order to provide funds for the purpose for which the Foundation was organized, which are public and altruistic, purely and simply."

My purpose in introducing that was for the earlier part of it, but in order to make the statement complete I have read it all. I think that it all refers to that subject.

The Court: Do you want to ask the witness about that?

RXQ. 103. Is that your testimony given at the hearings of this committee held December, 1919 and January, 1920?

A. I gave the testimony which you have read.

Mr. Kresel: In that same connection I offer in evidence the following, which appears at page

122. I begin at the top of the page; but in order to make it intelligible I will have to read the question and answer at the bottom of page 121:

"Senator Watson. But it makes impossible, does it not, the entrance of a new man into the dye business without getting a license from that company?

"Mr. Choate. By no means.

"Senator Watson. On account of the fellows who are in and having the license shutting him out?

"Mr. Choate. Certainly not. The only things patented it has which affect the dye industry are the vat-dye patents.

"Senator Watson. Are these patents all vat-dye patents?

"Mr. Choate. Oh, no. But the only patents that have any material effect on the dye industry are the vat dye patents.

"Senator Watson. Do you say this corporation reserves to itself the right to acquire patents in the future; that is, patents taken out in this country?

"Mr. Choate. It could do it; but it is not the intention of anybody to do it, except to stimulate chemical invention; to offer some kind of a reward to employees in the public institutions who make inventions and who can not benefit thereby, and, on the other hand, by rendering those inventions useful by backing up the inventor.

"Senator Watson. What do you mean by 'backing up the inventor?'

"Mr. Choate. By buying his invention from him, developing it, and protecting it.

"Senator Watson. By buying the patent, and then nobody would be able to manufacture under the terms of that patent except somebody that gets a license from the Chemical Foundation?

"Mr. Choate. Yes. But anybody, practically speaking, can get a license.

Senator Watson. That depends on the will of the trustees, does it not?

"Mr. Choate. I think not.

"Senator Sutherland. Do you grant several patents (licenses) to one party?"

I think that it should read "licenses" under several patents. May the correction be made?

THE WITNESS: I think he probably meant licenses under several patents.

MR. ANDERSON: I think that is probably what he meant.

MR. KRESEL: Then I am going to insert "licenses under" so it will read, "Do you grant licenses under several patents to one party?"

MR. ANDERSON: I am willing to agree that that is probably what he meant.

MR. KRESEL: All right, then, I will strike out the correction. (Continuing reading)

"Mr. Choate. Yes. We have granted several licenses under one of the product patents.

"Senator Curtis. No one can get an exclusive license from you?

"Mr. Choate. He can not.

"Senator Nugent. And no monopoly can be built up?

"Mr. Choate. No monoply could be built up, unless the Foundation was managed by criminals. If they ever get us out and get criminals in it might happen.

"Senator Nugent. And if a man desires to go into the dye manufacturing business all that is required of him is to procure a license?

"Mr. Choate. Whether he is an outsider or an insider he gets a license just the same. We have practically put up now to the stockholders of the Foundation the question of whether it will ever be advisable to limit the number of licenses, in case we find the number has become so great that the market for any patented product is in danger of being completely flooded. In certain cases that question might arise, also, in cases like arsphenamine, where the product is dangerous if made under bad conditions. Their deliberate decision seems to be that no limitation is preferable and that everybody must receive a license."

Did you so testify?

THE WITNESS: I did.

MR. ANDERSON: In order to make the record clear, I will ask if it is understood that my objections to the reading in of the testimony of Mr. Choate, as already indicated by the defendant, apply to the exhibit as well as to the answer of the witness. I wanted to make that very clear.

THE COURT: Yes. Have you had a number assigned to your last extract?

MR. KRESEL: To what I have just read, your Honor?

THE COURT: Yes.

MR. KRESEL: I do not think it is necessary. I have read it into the record.

THE COURT: But you read from three books.

MR. KRESEL: Yes, the third one was only for identification, and that was so marked.

THE COURT: And the remaining portions of it that you are interested in were read in?

MR. KRESEL: Yes, sir. Is that all for Mr. Choate?

MR. ANDERSON: Yes, that is all.

THE WITNESS: One second. There is one passage here which I think was incomplete. (Indicates to Mr. Kresel.)

MR. KRESEL: I did overlook that, your Honor. Colonel Anderson read in from page 518 of the Hearings before the Committee on Finance, Tariff Act of 1921. I desire to read in three or four questions preceding the portion that Colonel Anderson read in. It is the first question on page 518 of this book:

"Senator McLean. Is this Mr. Garvan related to the Garvan that was subsequently Alien Property Custodian?

"Mr. Choate. It is the same Mr. Garvan. I shall ask leave of the committee hereafter to state the circumstances under which he became president of the Chemical Foundation.

"Senator LaFollette. How long after this transaction—I refer, now, to the purchase of these patents from the Alien Property Custodian in whose office he was then established and a part of your organization—how long after that did he become Alien Property Custodian?

"Mr. Choate. March 4, 1919, when Mr. Palmer was appointed Attorney General.

"Senator LaFollette. How long was that, if you please? Do you have the other date in your mind?

"Mr. Choate. Approximately seven weeks."

THE COURT: Do you want to make an inquiry of the witness about that?

MR. KRESEL: Did you so testify, Mr. Choate?

THE WITNESS: I did so testify. I may say there is an obvious error there, that the period seven weeks is more than actually elapsed. The period was four or five weeks.

THE COURT: All of the objections heretofore made are considered as made to this evidence.

MR. ANDERSON: Yes. I did not make them, but I considered they would be applied to this evidence and the answer thereto.

THE WITNESS: Am I excused now? I believe I am still under subpoena of the Government.

MR. ANDERSON: So far as I am concerned you might have been excused some time ago. I thought you had understood you were released some time ago.

THE COURT: Are you through with Mr. Choate —both sides?

MR. KRESEL: Yes, your Honor.

THE COURT: Then you are discharged from the subpoena.

(Witness excused.)

Mr. Kresel: Your Honor will recall that upon the examination of Mr. Garvan I sought to offer in evidence proof of certain sales of patents made by the Alien Property Custodian to the Government, and the objection was made that we did not have the assignments here. I have since obtained certified copies of the assignments or bills of sale of these patents to the Government, and I now offer an instrument of assignment from the Alien Property Custodian to United States of America, represented by the Secretary of the Navy, dated the 6th day of February, 1919, recorded in the Patent Office on the 10th day of April, 1919, and after it is marked I will state to your Honor briefly what the instrument is.

The Court: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 143." (*See Exhibits, Vol. V, page 2786.*)

Mr. Kresel: By that instrument, your Honor, the Alien Property Custodian conveyed to the United States Government as represented by the Secretary of the Navy, seventy-two patents and twelve agreements relating to patents, all embracing what are known as the wireless patents, covering the wireless stations that were taken over by the Government—all those seventy-two patents and twelve agreements for $500.

Mr. Anderson: Of course, this evidence is being taken subject to the general objections.

The Court: This is an assignment or license?

Mr. Kresel: This is an assignment.

The Court: Of the patents?

Mr. Kresel: Yes, sir.

The Court: By private sale?

Mr. Kresel: By the Alien Property Custodian. You see, your Honor, under the act sales to the Government did not have to be even under Executive order, they could be made direct. Your Honor will recall the statute says sales except to the United States shall be made at public auction, or, if the President directs, at private sale. So these sales, your Honor, were just made without anything further being done—of course, not at public auction and even without an Executive order. May I read the conveyance part?

Mr. Anderson: To get the record straight, I note the general and specific objections already made to this evidence, and point out that aside from the question of authority, which is a question of law, this matter does not relate in any way to the Chemical Foundation or the sale to the Chemical Foundation, and has no connection therewith.

Mr. Kresel: I will read this briefly. (Reads from Exhibit 143 of Defendant.)

The list which is attached, your Honor, contains, as I have stated, a list of seventy-two patents and a large number of these contracts which cover the patents.

The Court: Won't you tell me what the purpose of the offer is? I am afraid I am missing it.

Mr. Kresel: Your Honor, the purpose of the offer is to show that at practically the same time that the sale which is here being attacked by the Government as having been made for an inadequate consideration was consummated, the Government was taking over from the Alien Property Custodian properties which are described in this instrument at the valuation that is there described. It is in line, your Honor, with the testimony of Mr. Palmer and Mr. Garvan that these transfers made to the Chemical Foundation were made under the direction of the President pursuant to a public policy, pursuant to the purposes which the President had in mind, thereby to place these patents in a position where, instead of being a hindrance to the Government, they would be a help to the Government. It is in line with our argument, as we shall contend when we come to argue this case, that the question of consideration, the money consideration here, is of minor importance.

Mr. Anderson: May I just say a word in reply to that, to enlarge my objection?

The Court: Yes, but I would like to ask Mr. Kresel one further question.

Mr. Kresel: Certainly.

The Court: Then you may have an opportunity to reply to all that is said, Colonel Anderson. How do I know but what five hundred dollars was the full value of all those patents? I mean was the full commercial value for that assignment.

Mr. Kresel: Well, of course up to the present there is no evidence as to that.

Mr. Anderson: I simply want to say that, of course, it is conceded that this has nothing to do with the Chemical Foundation. It took place on February 6th when the President was in Paris. Let us suppose that the Alien Property Custodian and the officer of the Navy with whom he dealt in this matter did undertake to establish a policy, to take over alien property for a nominal consideration, for the Government of the United States. Let us suppose that they did do it, the Alien Property Custodian with the best of motive made the conveyance seeking to serve the interests of the country, that the Navy officer who took the conveyance believed he was serving the interests of the country. We have yet to be referred to any act or any authority of the Alien Property Custodian to confiscate property for the benefit of the United States.

I doubt if any act in the history of the United States appealed more to the people, perhaps, than the taking of Arlington. Is there an instance of a single public service corporation case that goes to the United States Supreme Court, when it can not be demonstrated in the opinion of the public officers who fix a rate below a fair return upon property, that such rate is in the public interest? Has anybody ever questioned in the Courts of the United States the fact that it matters not how great the public interest is or how vital the public interest is, the United States has never adopted the principle that necessity knows no law. I hope it never will. If it does, then the spirit of the invasion of Belgium won this war.

Let us suppose that the United States needed these wireless patents or chemical patents, or any others, that its industry needed them for development. What argument is that that necessity justifies confiscation? That is all it is. And the courts of this country have never listened to that argument for a minute, except in a few isolated cases in the Civil War, which stand upon a peculiar footing of rebellion.

The title of the Government of the United States to these patents and rights, so far as the Germans are concerned, can not be questioned. That question has been settled in a treaty which was dictated by the sword. But as between the officers of the United States, its citizens and its Government, I am standing here in the humble capacity representing the Government of the United

States to say that this Government is too great to claim that its necessities, whatever they may be in war or in peace, permit the violation of the fundamental laws of this country and the principles of justice as between itself and those who have sought its protection and relied upon its protection.

And I quote the President of the United States on that question in every speech he made from the very day we broke relations with Germany down to the day he returned from Paris and was taken ill later. If the Constitution of the United States puts in Congress by express terms the power to legislate for the public welfare and the national defense, even the power of Congress is subject to the limitations of the Constitution, and, as the Supreme Court has so often said, while it may have the technical power to confiscate alien property seized on land, it has always stood against the exercise of that power which for two hundred years no civilized nation has dared to exercise in the face of public opinion, and which this Supreme Court declared in Brown against the United States and in Ware against Hilton was not recognized by international law as a custom today, and that this country adopted international law in its most approved and advanced form.

The idea of standing in a court of the United States and citing as an authority for the sale of property without consideration, in view of the decisions of the courts of this country and of the Supreme Court of the United States, the fact that the officers of the Government themselves took property without consideration. If they did such a thing, it was an absolutely invalid act, so far as their acts were concerned. Whether as between this Government and the Germans the German can raise it is not material to this issue. But as to anybody that could raise it, if they could, I hope the courts of this country will never be closed to their rights to come into them, and I know they never will be, to question an act of that kind, which has not the slightest element of justice and has for its foundation every principle that Germany asserted in its effort to overthrow the civilization of the world.

If this corporation is going to take that position in the courts, I am ready to challenge it in the name of the United States; for this Government, although it may be powerful, is not above the law and I hope will never be above morality. I object to the introduction of this document.

Mr. Kresel: I have listened very attentively, your Honor, to Colonel Anderson's very impassioned remarks, but I must confess that, interesting as they were, they do not touch the question that your Honor now immediately has before you. The question is as to the propriety of introducing these documents. We urge that they are admissible not only upon the ground that I have already assigned, but also upon the ground that the transaction your Honor has before you is being attacked as the result of a conspiracy. The motives of the officers of the Government responsible for the transaction have been attacked. The consideration is claimed to have been shockingly inadequate.

It certainly is material to show that at the same time the same officials, dealing with similar property, conveyed this property—I do not care to whom, whether it is to the United States Government or anybody else—at prices which the

Government claims are shockingly inadequate and as to which transactions it is not stated that their motives were in any way subject to attack nor any conspiracy charged in connection therewith.

It seems to us that upon that ground alone that evidence is admissible. When we come to argue this case we shall be prepared to meet Colonel Anderson upon the broad principles that are involved, of whether this was or was not confiscation, and, if it was confiscation, whether the power lay in the officers who exercised it to confiscate it. This is not the time to argue that, and your Honor can not decide this question of evidence upon that consideration.

We already have in evidence the conveyance by the Alien Property Custodian or the license by the Alien Property Custodian to the Government on 5700 of these German patents, and a release of the Government from all damages for infringement during the war, all for a consideration of $100,000. That is already in evidence. This is only in line with that other evidence—transactions occurring at or about the time when this transaction that is here being attacked was made, and by the same officials.

What position does the Government take with reference to these transactions? Does it take the position that these were unauthorized, that the Government now has not the title to these properties? Does it take the position that the Government can come in now and set aside these sales? Is it claimed that the license given to the Government on 5700 patents, which cover some of the most valuable inventions with reference to munitions, is invalid and that the Government has not that license now? Or that the Government has not been released of the hundreds of millions of dollars of damages that the Germans might have claimed for infringement of these very patents during the war? Can they blow hot and cold here; can they say on the one hand that the conveyance to us is invalid because not an adequate consideration has been paid, and yet that the conveyance to the Goverment is valid although not an adequate consideration has been paid? Somewhere, somehow, the Government has got to take a position in this case.

Your Honor has been endeavoring to get the Government to define its position as we have been going on. I confess that I am unable to learn what its position is on most important matters. But they will have to define their position sometime or other, and I shall wait with a great deal of interest to find out what position the Government is going to take with reference to the transactions between the Alien Property Custodian and the Government itself with respect to these German patents.

Mr. Anderson: I can answer that.

Mr. Kresel: But I say now that these documents that I am now offering are admissible upon the grounds that I have urged, quite irrespective of what position the Government may take as to the validity of the transactions that they represent. If Colonel Anderson is ready to answer my inquiry, I shall be very glad to have him do so now.

Mr. Anderson: My answer to that can be put in one sentence, that the whole business has got nothing whatever to do with this case. We are trying a lawsuit and not investigating the Government of the United States. The issues of this lawsuit are as to whether this was a valid transaction or not and when we get to the question of licenses and patents issued by the United States, we will deal with that question. Counsel has asked me a number of questions here and I have tried to answer them. I would like to ask counsel a question. Does he take the position that a sale of this property at a nominal consideration is or is not confiscation? Does he take the position under the Act of Congress that the Alien Property Custodian had a right to confiscate?

Mr. Kresel: I was very clear in defining our position in my opening——

Mr. Anderson: So was I.

Mr. Kresel: And I will repeat it.

I say, under the act as it stood at the time that this transaction was made, the Alien Property Custodian, acting under the direction of the President, could have sold this property for a consideration whether it was adequate or inadequate.

I further say that the sale made to this Chemical Foundation was for an adequate consideration, as the Court will be asked to find when the evidence is in. I trust that that answers your question.

Mr. Anderson: I understand counsel therefore to take the position that if he could sell it for an inadequate consideration, he had the power of confiscation. That necessarily follows, because inadequate consideration is necessarily confiscation.

The Court: What do you mean by "confiscation," Colonel Anderson? My problem is this. You have used the term "confiscation" and I am not criticizing it. I am only trying to find out just where we are. Yet in the same argument you have told me that Germany has nothing to do with this because that has all been settled by a treaty. And if I understand you, you are suggesting an impropriety in certain acts because in pressing that attitude we are saying, or it is being said, that the United States is not keeping the faith, that it is acting in violation of international law, that the United States is doing precisely what it accused Germany of dong when it marched into Belgium, ignoring the treaty. Those several positions it may be possible to reconcile without difficulty. My lack of familiarity with this case, notwithstanding I have listened to it with much interest and during a month, has prevented my being able to reconcile those several contentions. I wonder if it would trouble you too much to help me.

Mr. Anderson: Not at all. I am perfectly willing to do all I can to help out. But, as Mr. Kresel said, your Honor can not carry in mind my opening statement. I thought at that time I had made clear my contentions, but I am perfectly willing to repeat them.

In the first place, you asked me what I mean by confiscation. Confiscation is the taking of property by the Government for public use, or private use if it had the power to so apply it, without compensation to the owner or without fair compensation to the owner.

The Court: Compensation to the owner is a matter with which this court is not concerned.

Mr. Anderson: Let us see if this court is not concerned. The Government of the United States seized this property and held it in its custody and stated in the act of seizure that it should be held in the interest of the United States, I think are the words used, or such other person as Congress might thereafter designate. That is the effect of it in any event. Therefore, the primary interest in this property, when it was seized and passed into the hands of this Custodian, was in the United States, with the power in Congress either to perfect that into a complete interest or to return the property to its owners subject to such conditions as Congress might impose, if any, or none at all.

Therefore, the primary interest was in the people of the United States after the seizure. But what that interest was, the extent of that interest, or whether there should ever be a common interest in esse or present as distinguished from contingent, to use another expression, was dependent upon such action as Congress might in the future take. That was the status of this property when it was seized.

The interest of the United States, including whatever title it had or right to perfect title, was sought to be transferred to a private owner in the United States for, we will assume, a nominal consideration or at a guess. That was trust property. It was in the hands of the Custodian who was a trustee, whether you call him a trustee or not; because wherever a man holds property outstanding in the name of another, he is a fiduciary.

When the Alien Property Custodian—and I insist again that the President has nothing to do with that phase of it—undertook to divest the contingent interest of the United States and to divest the contingent interest of the owner, which was an actual beneficial interest, in that he had a property interest involved, the title to which had merely been seized and was held subject to whether Congress would in the future return it to him; and all that interest, that property right, divided as I say in this intangible way between the United States and the original owner, was sought to be conveyed to a private owner, or sought to be conveyed to the United States, either—it does not make any difference in principle here; in the other aspects of the case it does—what was the effect?

The United States had seized this property for custody for the reasons stated in the law, recognized as one of the legitimate things to do in time of war. It never intended to deprive the owner of his property. We will assume that for the sake of argument now. That is an open question here. But by this act of sale at an inadequate consideration or nominal consideration, or if you could do as counsel suggests for no consideration except the general public interest, there was perfected an act of confiscation of the property as against the original owner.

The Government of the United States was charged with the duty and an obligation in that regard, a sacred duty and trust; and therefore it has a right to come into court, although the Germans may not have the right because the United States may stand between them and this transaction so that they can not get by—the United States has a right and a duty to come into court and say, Congress has never determined to confiscate this property and therefore, when you undertook to convey and divest any contingent right of the owner to its return and not return its value in the place of it, in money; or when you undertook to convey it and divest the interest of the people of the United States, and this property is now subject to be held as security for the payment of the debts by Germany, you have in effect completed an act of confiscation which you were not authorized to do by any law.

Therefore, your act is void and the United States, whether it has a financial interest or not, or whether the enemy can enforce its rights against that act of confiscation or not, as a Government and trustee for all the people and charged not only with its beneficial interests but its honor and its welfare, has the duty to come into court and set aside the unauthorized act of its officers, take this property back into the custody of the United States, and let Congress do what it reserved the power to do and alone has the power to do under the Constitution, to determine what should be the final disposition thereof.

Is that clear, sir? If not, I shall be glad to answer your Honor further.

Mr. Kresel: I do not think it is clear at all, your Honor.

The Court: Have you finished, Colonel Anderson?

Mr. Anderson: I am finished unless your Honor desires to ask me any further questions.

Mr. Kresel: The Government certainly can not confiscate its own property, can it? We can start with that proposition. It is not charged that the Government has confiscated this property, if the Government owned it.

Now, in so far as the Germans' interest is concerned, that is settled by the Treaty. The Government so claims. It can not be confiscation under that treaty. Every act that the Government took in the seizure of this property, if not in its disposition, is claimed by the Government to have been ratified by the treaty. Therefore, it can not be confiscation of the Germans' interest, assuming even that they had an interest after the seizure; although the courts have held, interpreting this very act, the Trading with the Enemy Act, that the full title, legal and beneficial, passed to the Alien Property Custodian the minute he filed his demand. But assuming that the alien had an equitable right, that has been taken care of by the treaty. How then can it be said that there is any confiscation?

Therefore, I say that Colonel Anderson's argument does not clearly answer the question that your Honor has put.

MR. ANDERSON: It may not satisfy counsel. But if it does not satisfy your Honor, I will try to put it more clearly. The courts have not held that the full title, beneficial and legal, passed, because the courts have held without exception that when the Alien Property Custodian seized this property, he held it as trustee. The full legal and beneficial interest can not be vested in a trustee. In this case, he was a trustee with a *cestui qui* trust unnamed to be determined by Congress when it finally determined its policy as to this property and its return; and therefore the beneficial interest was outstanding continually; the legal title being held in trust for the final beneficiary named by Congress.

MR. KRESEL: I direct your Honor's attention to the decision of Judge Augustus Hand in the case of Junkers against the Chemical Foundation, which as I read the decision expressly holds what I say, that the German has no interest and can not be heard to question the disposition of the property by the Alien Property Custodian; and if he had a beneficial interest, as Colonel Anderson says, the courts of the United States would not grant him relief.

THE COURT: Could the United States have

seized and kept these patents, had there been no sale? And if the United States Government had that power, would the exercise of that power have been confiscation?

MR. ANDERSON: Absolutely, sir.

THE COURT: It would?

MR. ANDERSON: If the United States had seized and kept these patents, which an act of Congress alone could have given it the right to do, it would have been an absolute confiscation of private property if seized on land.

THE COURT: Then the ultimate conclusion from that is that the question of the ownership of these patents and any other property has been settled as between Germany and the United States by the treaty?

MR. ANDERSON: I think the right of Germany to intervene, to come in here and contest that right, has been waived in the treaty. But that does not affect a right as between the United States and its officers and citizens.

THE COURT: That brings me to another question which I have had difficulty with and your last statement gives me even more difficulty; and that is how is the keeping of the faith of the United States internationally involved in this question?

MR. ANDERSON: I will answer that right now.

If this transaction is valid and Congress determines to return all of this property to the Germans, which it must do, unless it is going to confiscate, some time or other, but subject to such conditions as it wants to impose, what can it return? Let us follow it through.

If this transaction is valid—and a sale for one dollar would have been just as valid——

MR. KRESEL: Will your Honor permit me to answer that question?

Mr. Anderson: I am leaving out the question of consideration, whether it is valid or invalid. On the theory that they had a right to sell it for any price they saw fit, they could sell it for one dollar as well as $250,000 and in my view that is no more consideration than one dollar.

Congress had not determined whether it would return this property or not. Let us suppose Congress determined to return this property, and in the Winslow Bill it did determine to return all under $10,000 in value. What would it return? $40 a patent, less the cost of seizure charged up against it, when those patents are said to control an important branch of the industry of the United States and some of them are proved to have been of enormous value and were then earning an income which would have obtained more than the entire purchase price? Now, what can it return? That amount of money? That can not even be allocated. A patent that was not worth a cent and would expire within a year gets exactly the same as a patent worth a million dollars. Then if Congress perfects the contingent right of the Germans which was left open in the Trading with the Enemy Act into an absolute right to this property, when his property was seized he had something worth a million dollars and when it was returned he had something worth $40—and if that is not confiscation, then we have to wipe out all of the decisions of the Supreme Court of the United States.

The Court: Let me ask you this, Colonel Anderson, because you are dealing with a question that causes me much trouble. It has been charged here that the Haber patents did not make such disclosures as would enable the art or those skilled in the art in the United States to operate them and that it would require a period of development and experiment in order to enable American chemists to use those patents or the processes therein described on a commercial scale.

Let us assume for a moment that that allegation or charge is true. Let us assume for a moment that Dr. Holdermann's testimony from the German's standpoint was true, that those patents were worth to the Germans $17,000,000. And let us assume, in the face of the non-disclosure of the Haber patents and even in the face of scientific knowledge and skill on the part of American chemists, if you will, if such be the fact, that they lack commercial value to an American purchaser; and yet that Congress had vested the Alien Property Custodian with power to sell these patents at public sale to an American purchaser; and let us assume, for the purpose of this inquiry, that the full value of those Haber patents to an American, whoever he was, however rich or well financed he may have been, was the sum of $1000, and that such a sale were made; was or was not such a sale confiscation from the international point of view?

MR. ANDERSON: Your Honor is assuming so many predicates that I find it a little difficult to answer your question. It would depend upon a very great many conditions. For instance, your Honor has limited your inquiry to what it would be worth to an American purchaser. Of course, I do not agree to any of the premises that you laid down.

THE COURT: Don't you agree to this, that Congress did give an unlimited power to sell for full and fair value to an American purchaser? I thought you indicated that the full and fair value under those statutory provisions was to be ascertained from the American purchaser's standpoint and not from the German owner's standpoint. Am I right or wrong?

Mr. Anderson: I do not know that your Honor is right on that proposition. I will concede that at the time the sale took place, a German could not be a purchaser, because we had no treaty with Germany; and he was excluded. I do not know whether that sale was limited to American citizens, if the President so determined. That is entirely another question.

The Court: I do not follow you there.

Mr. Anderson: It says that it must be at public auction, except when sold to the United States. I would like to get the exact language of the act.

Mr. Kresel: To the highest bidder, at the place of sale, to an American citizen. Those are the four elements.

Mr. Anderson: (Reading.) "That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine."

There is not a word said about private sale there, but we have been going on the theory that presumably he could authorize a private sale. If he could authorize a private sale, he could authorize it to be sold to other than American citizens except perhaps there may be limitations in the law. I have not looked at it. He could not have sold it to Germans, although he had a very broad power to license.

Mr. Kresel: But the Court has assumed a public sale.

Mr Anderson: He could have authorized a sale to an English or French purchaser, let us assume.

The Court: I will be glad to hear you, Mr. Kresel, on that.

Mr. Anderson: Your Honor asked me if I would not concede that predicate and I said no.

Mr. Kresel: The Court's question was, assuming it was a public sale.

Mr. Anderson: I think the Court and I can probably agree on the question. I am trying to do it.

In the second place, the record discloses here that the United States by virtue of the act of the President himself was authorized to purchase these patents for $10,000 and to expend $350,000 in their development, and the testimony is that the development of one of the plants was dependent upon the acquisition or use of these patents.

Therefore I can not reach any conclusion predicated upon such conditions as your Honor has described. I will only answer your Honor's question generally and it is the best I can do at this time, because I can not analyze a long question like that and reach a conclusion by which I would like to be even temporarily bound. I will say this, that any sale of the Haber patents or any other patents which did not bring a fair value——

The Court: Ascertained from what standpoint?

Mr. Anderson: Ascertained from all the surrounding facts and circumstances at that time, like other value is ascertained, and that means thousands of surrounding facts and circumstances to be considered. What is the fair value is a conclusion which the Court has got to reach, or a jury, or Commissioners, from all the testimony they can get.

THE COURT: Is it your contention that that fair value is the same whether ascertained from the German standpoint or American standpoint?

MR. ANDERSON: I think that the position of this industry in Germany is one of the important facts to be borne in mind in connection with this fair value; yes, sir. And I further take the position that the mere fact that a German could not bid at this time, since there was no obligation to sell these patents, does not necessarily exclude what a German would have been willing to give if he could bid, because we were negotiating the treaty at that time.

THE COURT: Then if there was a wide gap between the German value, and the American value, the statute, notwithstanding it authorized a sale, by the same token denied the right which it expressly gave.

MR. ANDERSON: No, sir.

THE COURT: Is that not an inevitable conclusion?

MR. ANDERSON: No, sir; it is not. I say that the German value and the value in Germany and the condition of the industry under these patents in Germany are essential facts to be considered in arriving at what was the fair value of those patents. Other facts will also be considered.

When I come to argue this case, I expect—I hope to be able to if I can live through it—to collate and present to your Honor the facts on which I think the value should be predicated. Your Honor may consider some others. I do not know. But your Honor is practically sitting in the position of a commissioner in condemnation. You have got to find out what was the fair value. You may make a mistake as those commissioners do and the courts may make a mistake.

But the test of this sale is fair value and whenever you get below what the courts ascertain to be fair value, just as in a rate case very often mistakes are made, then it is confiscation.

THE COURT: I do not want to press you, but I miss your conclusion, Colonel Anderson, and in this connection I am going to make an inquiry of you, if you do not mind.

MR. ANDERSON: Not at all.

THE COURT: Because it is a difficult problem to me, though probably to you it may seem very clear. There are numerous complications. If I understand you, the United States could seize these patents and hold them and either give them back to Germany, or it need not.

MR. ANDERSON: It could by confiscating them, yes, sir; provided Congress authorized it.

THE COURT: But could it not seize them and hold them and adjust the price that Germany should be allowed for them at the reparations table?

MR. ANDERSON: I should think it might have done that, and if it gave a fair price, it was not confiscation; but if it did not give a fair price, it would have been to that extent confiscation, the exercise of a power instead of a right.

THE COURT: What I am trying to get at is this: I am not trying to mislead; I am trying to present the situation fully before I ask my question, and if there is any doubt about what I am trying to get at, I would be very glad to have you tell me. But it seems to me if the United States were to keep the patents, then the question as to what compensation should be paid to the German owners would be a question for determination at the reparations table.

Mr. Anderson: Not at all, sir. When we negotiated the Treaty of Peace, the Trading with the Enemy Act was in force, and it was presumed by the negotiators, I think, that Congress would exercise its power under that act. Now, the treaty provided that this property might be held as security for the compliance by Germany with certain conditions, obviously indicating that it never intended to confiscate the property and never thought of confiscating the property. It assumed that Congress had the power at any time to waive that provision, and has waived it, as to all property under $10,000, and returned it.

That being true, suppose Congress passed an act that they return all German property; and suppose they had sold this property or had sold a piece of land for ten per cent. of its value, and found the title gone and only ten per cent. in its treasury; and Congress ordered all the property returned; would not the original owner of that property, who, by the final act of Congress, had always been entitled to receive the property and whose right was confirmed. He has turned over $100,000 worth of property. Congress says: "I am going to hold this property, and I reserve the right to determine to whom it goes at the end of the war." He says, "That is all right. I cannot help that. You have got title to it." Congress says, "Now, I am going to give it back to you or I am not going to give it back to you. I have got that power."

Then the war goes on and is over, and peace is made. In the meantime Congress, in the exercise of its discretion, says, "I am not going to hold all this property here. Here are manufacturing plants that are useful and ought to be freely operated. Instead of holding that property in the custody of the law in kind, I will sell that property; I will authorize my agents to sell that property, and substitute the proceeds for the property,"—exactly like a foreclosure sale, nothing more or less, or a sheriff's sale; that is all.

Now, where are we? The property has gone from the owner and its proceeds are substituted. Now suppose the agent of Congress, instead of selling this $100,000 worth of property, clearly worth $100,000, sells it for $5000, and puts $5000 in the treasury, and Congress comes along after the war is over and says, "We are going to return all this property to the owners. We only intended to keep it to prevent its being used improperly during the war. We are going to return it," so any owner can come in and get his property; and this man who turned over $100,000 worth of property comes in and finds that he has got a right to receive $5000 worth of property, $95,000 worth of property having been confiscated, of course, there is no other answer to it.

Now, he may have no redress; but the Government of the United States would be in a nice fix if it did not have redress through the courts, because there is where the law of the United States is enforced, and the law never gave the Alien Property Custodian any power to confiscate.

There is your case as clearly as I can see it, and there is where confiscation comes in. It was all inchoate to a certain extent. There were certain undefined conditions surrounding this property until Congress acted; but Congress had the duty, not only to the people of the United States, but to the international honor of the United States to keep this property where it could return that property in kind, or its full value if it elected to return at all; and nobody has a right to decide that question but Congress.

THE COURT: But the Trading with the Enemy Act did give to the Alien Property Custodian the power of sale, did it not?

MR. ANDERSON: Yes, sir, and the law gives to your Honor the power to sell a railroad in your hands; but you cannot give it away.

THE COURT: Where are we?

MR. KRESEL: I was offering a document, your Honor, when this argument took place.

I now offer in evidence certified copy of an instrument dated the 6th day of February, 1919, which is a conveyance by the Alien Property Custodian to the United States of America, represented by the Secretary of the Navy, of thirty-four patents, for a consideration of $1190.

MR. ANDERSON: Objected to on the grounds previously stated.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 144." *(See Exhibits, Vol. V, page 2797.)*

MR. KRESEL: I now offer in evidence an instrument of assignment from the United States Government by F. D. Roosevelt, Acting Secretary of the Navy, dated the eleventh day of November, 1919, re-conveying to the Alien Property Custodian three of the patents that had theretofore been conveyed by the last Exhibit No. 144, for a consideration of $105.

THE COURT: Admitted, subject to the same objections stated by Colonel Anderson.

Received in evidence and marked "Defendant's Exhibit 145." *(Se Exhibits, Vol. V, page 2801.)*

Mr. Kresel: I now offer in evidence a license and conveyance dated the third day of April, 1920, from the Alien Property Custodian to the United States of America, whereby, for a consideration of $2000, the Alien Property Custodian gives a license to the United States of America on the 72 patents enumerated in the instrument, and also conveys to the Government all rights for damages for infringement of 84 additional patents therein included, and conveys to the United States two patent contracts therein especially enumerated. I want to state that the schedule which is attached to this instrument shows that the patents covered gun sights, periscopes, lenses, and so on, used by the War Department.

Mr. Anderson: I make the same objections.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 146." *(See Exhibits, Vol. V, page 2803.)*

Mr. Kresel: In connection with the license issued by the Chemical Foundation to the Government under date of November 17, 1921, your Honor will recall that a preceding license, the one dated February 26th, 1921, is therein mentioned and thereby cancelled. In order that the record may be complete, I now offer in evidence that instrument of February 26th, 1921, which is now marked "Defendant's Exhibit K for Identification."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 147." *(See Exhibits, Vol. V, page 2811.)*

The Court: We will now take the usual recess.

(Recess until 1 o'clock P. M. Standard time.)

AFTER RECESS.

MR. KRESEL: Before I call a witness, your Honor, I have two more exhibits I would like to offer at this time. Your Honor will recall that Colonel Anderson asked Mr. Garvan yesterday whether there were any licensees of the Chemical Foundation that were not stockholders.

THE COURT: Yes.

MR. KRESEL: I offer in evidence a list of licensees of the Chemical Foundation who are not stockholders thereof. Colonel Anderson, you have examined that.

MR. ANDERSON: Yes, I have seen it. I have not examined it, but I have seen it.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 148." *(See Exhibits, Vol. V, page 2837.)*

MR. KRESEL: I also offer a list of those licensees who are stockholders, just to make it complete.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 149." *(See Exhibits, Vol. V, page 2841.)*

MR. KRESEL: Colonel Anderson, I want to put in this letter from Admiral Grayson. Your Honor will recall that upon the examination of Mr. Palmer I desired to put in evidence a letter received by Mr. Palmer from Admiral Grayson, but upon objection that was not permitted. I understand that Colonel Anderson is now willing to concede that if Admiral Cary T. Grayson were called as a witness here, he would testify that upon the trip to Europe made by President Wilson, on which trip Admiral Grayson accompanied the President, leaving New York, March 4, 1919, Admiral Grayson had with him a copy of the report which is now Defendant's Exhibit 30, which is Mr. Palmer's report, which had been given to him by Mr. Palmer; and that he would testify further with reference to that report as follows: That he read the report; that the President did not get an opportunity to read it on the *George Washington*, as he was sick part of the time going over and was confronted with such an accumulation of correspondence and official documents that it was impossible for him to examine the report, but that Admiral Grayson read the report and told the President in detail about the contents, and that the President agreed that it was a wonderful accomplishment.

I have paraphrased the statement contained in Admiral Grayson's letter which Colonel Anderson has, and I now ask to introduce the copy of the letter from Admiral Grayson to Mr. Palmer upon this subject.

Mr. Anderson: In order to save the necessity for calling Admiral Grayson, and in convenience to him, the Government does not object to the introduction of the letter with the same force and effect as if Admiral Grayson testified to its contents, but subject to the general and specific objections which would apply to Admiral Grayson's letter if he testified to the contents. It agreees also that the reference to the report, as contained in the second paragraph, first line, of the letter is the report of Honorable A. Mitchell Palmer as Custodian, introduced in evidence as Defendant's Exhibit No. 30.

The Court: Admitted under those circumstances.

Received in evidence and marked "Defendant's Exhibit No. 150." *(See Exhibits, Vol. V, page 2843.)*

The Court: Does your agreement go so far as to indicate to whom this letter is addressed?

Mr. Kresel: Yes, the letter is addressed to Mr. Palmer.

Mr. Anderson: Of course, the letter speaks for itself, and the agreement is that he would testify to the contents of that letter.

The Court: That he sent the letter and the facts therein stated are as stated there.

Mr. Anderson: That he would testify to the facts therein stated; but subject to the general and specific objections.

Mr. Kresel: I just read this one paragraph:

"Unfortunately, the President did not get an opportunity to read it on the *George Washington*, as he was sick part of the time coming over, and he was confronted with such an accumulation of correspondence and official documents that it was impossible for him to examine your report. However, I told him in detail about the contents, and he agreed that it was a wonderful accomplishment."

The Court: And the date of the letter is what?

Mr. Kresel: April 17, 1919, dated in Paris.

Now, Dr. Volwiler, will you take the stand, please?

ERNEST H. VOLWILER.

Ernest H. Wolwiler, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Will you please state your full name and your residence and your profession?

A. Ernest H. Volwiler, chemist, of Chicago, Illinois.

Q. 2. By whom are you now employed?

A. The Abbott Laboratories of Chicago.

Q. 3. Have you received any degrees from any universities?

A. I have. I received a degree of Bachelor of Arts at Miami University which is in Ohio and a degree of Doctor of Philosophy from the University of Illinois.

Q. 4. Since your graduation from the university and before you became employed by the Abbott Laboratories, what did you do?

A. For a period of about three or four months I was instructor in Miami University in chemistry and during the period from 1914 to 1917 I was instructor in organic chemistry at the University of Illinois.

Q. 5. How long have you been with the Abbott Laboratories?

A. Something over five years.

Q. 6. What is the business of the Abbott Laboratories?

A. The manufacture of pharmaceuticals and intermediates for the production of pharmaceuticals.

Q. 7. Has it a large business in that field?

A. It is one of the largest in the country and it is very near the top in the manufacture of synthetic organic medicinals.

Q. 8. Will you please, in a few words, define to us what is meant by synthetic medicinals?

A. I will do that by differentiating between those and the other classes of medicinal products. On the one hand we have naturally occurring products like the alkaloids, morphine and so on, cocaine, and on the other hand we have the synthetic products which are made from materials the same or similar to those used in the manufacture of dyes. In that class there are products such as the arsphenamines, procain, which is the same as novocain; barbital and cinchophen, and so forth.

Q. 9. When you speak of the arsphenamines, what does that class include?

A. That includes the products to which the Germans gave the name salvarsans, namely, salvarsan, neosalvarsan, silversalvarsan, and sodiumsalvarsan, and the new one that has recently come into use in this country know as sulfarsphenamine.

Q. 10. How extensive is the manufacturing end of the Abbott Laboratories?

A. Do you mean in personnel?

Q. 11. If you will, please, in personnel and departments and places where they manufacture.

A. The main manufacturing plant is at Chicago. Altogether in the Abbott Laboratories there are about twenty-five departments. Of course, that includes other departments besides the strictly manufacturing departments. There is some manufacturing done at Toronto, Canada, where we have a branch. There are branches all over this country in the larger cities as well as in other foreign countries.

Q. 12. Can you tell approximately how many distinctive products in the pharmaceutical line the Abbott Laboratories manufacture?

A. About 1300.

Q. 13. How long has that business been established?

A. About thirty years.

Q. 14. What is your position in the Abbott Laboratories?

A. Chief chemist.

Q. 15. How long have you been chief chemist?

A. About two years.

Q. 16. And prior to that, what was your position?

A. When I first went with the Abbott Laboratories, I was in the plant as operating chemist and later as research chemist and then as chief chemist.

Q. 17. Do the Abbott Laboratories maintain any research departments?

A. Yes.

Q. 18. How many and where are they located?

A. We have one in Chicago and one in Philadelphia in connection with the Dermatological Research Laboratories which were purchased by the Abbott Laboratories in 1922.

Q. 19. Have you, Doctor, ever examined the German patent covering salvarsan?

A. I have.

Q. 20. Which is United States Patent No. 986,148?

A. I have.

Q. 21. Have you also examined the United States patent covering neosalvarsan which in its reissue number is 13,848?

A. I have.

Q. 22. Have you also examined the United States patent covering novocain, which is known by the number 812,554?

A. I have.

Q. 23. Will you state when you examined these patents and, if more than once, state the number of times that you did?

A. Of course, those patents are on file in our offices and naturally in working with these products, since we are manufacturers of them, we have very frequent opportunity and must frequently refer to them in order to compare the methods in use. But in addition to that we have several times examined the list of drug and medicinal patents which were sent to us by the Chemical Foundation, with a view to seeing whether we could use any of the patents listed there.

Q. 24. How often have you made such an examination?

A. Three times in three years.

Q. 25. That is the examination of the lists sent out by the Chemical Foundation?

A. Of the entire list, which is included in this booklet entitled "Drug and Medicinal Patents owned by the Chemical Foundation," and which includes upwards of 250 to 300 distinct patents.

Mr. Kresel: That list, your Honor, is already in evidence, so I will not again refer to it.

The Court: You do not recall the exhibit number, I suppose?

Mr. Kresel: I am sorry that I do not recall it.

Mr. Galloway: I will get it for you in a minute. It is No. 123.

The Court: Is that an exhibit of the defendant or plaintiff?

Mr. Galloway: It is Defendant's Exhibit 123.

Mr. Kresel: And is this the original (taking same)?

Mr. Galloway: Yes, that is the original.

Q. 26. Doctor, I first will take up with you the novocain patent. Will you state whether or no the Abbott Laboratories pursued any research in the United States in the manufacture of novocain?

A. They did, not only in their own laboratories but in conjunction with the University of Illinois. There were a number of men working on the preparation of novocain under the direction of Professor Adams.

Mr. Anderson: I wish you would ask him to confine his answers to what he actually knows of his own knowledge.

Mr. Kresel: Yes.

Q. 27. I think you have stated that novocain is also known by the name of procain?

A. Yes.

Q. 28. It is the same product?

A. Yes.

Q. 29. Do you know how many men in the Abbott Laboratories or from the Abbott Laboratories, and how many men from the staff of the University of Illinois, were engaged in that research work?

A. It varied from time to time. Of course, the investigation was a somewhat prolonged one; but it varied from three to six men—three to six research chemists that were investigating it.

Q. 30. You have mentioned Professor Adams. What is his full name?

A. Professor Roger Adams.

Q. 31. And where is he professor?

A. At the University of Illinois.

Q. 32. And what is he professor of?

A. Professor of organic chemistry.

Q. 33. Will you state when this research work was being pursued?

A. It was begun sometime in 1916 and was continued until late in 1918.

Q. 34. Did you take part in that work?

A. I did.

Q. 35. In the course of that work did you and the others who were associated with you in that undertake to manufacture novocain according to the specifications set forth in this novocain patent No. 812,554?

A. Certainly.

Q. 36. Will you state in your own way what you found (when I say "you" I mean you and the others who were co-operating with you) in that respect?

A. In the first place, we realized that any method——

Mr. Anderson: One minute. In addition to my general objection, if your Honor please, I want to object to this evidence. The witness can state what he did, but I do not think he can state that he undertook to manufacture under that patent. That is a conclusion. He can state what he undertook to do, what he did; but as to whether he undertook to manufacture under that patent is his construction of the patent, and therefore I object to that evidence.

Mr. Kresel: He is a chemist and he can state.

Mr. Anderson: It does not matter; he can not construe a written instrument.

Mr. Kresel: I am not asking him to construe the instrument. He can state what he did in seeking to carry out the steps outlined in the patent. That is my question.

Mr. Anderson: The preceding question was, "Did you undertake to manufacture under that patent?" and he said he did. Now, I object to that question and move to strike it out.

Mr. Kresel: No. Even if that had been the question, it would have been in line with the question that you put to Mr. Metz; but have the question read and you will see that that was not the question. Please read it, Mr. Stenographer.

(Q. 36 repeated as above recorded.)

Mr. Anderson: I move to strike that out.

Mr. Kresel: Read the last question.

(Q. 36 repeated as above recorded.)

Mr. Anderson: I object to that question on the ground he can testify to what he did, and what he got, and so forth, and the results; but he can not testify what other people did.

The Court: Unless he knows.

Mr. Kresel: He can testify what he knows they did; what he observed that they did.

THE COURT: Yes, what he knows. Now, whether he undertook to manufacture under that patent I should think would be a fact, Colonel Anderson.

MR. ANDERSON: From his viewpoint, yes, sir; but he did not state from his viewpoint. He stated he undertook to manufacture under that patent, he and others engaged in this work.

THE COURT: Now, then, you can either of you ask him what he did when he undertook to manufacture under that patent.

MR. KRESEL: I will put the question now, sir.

Q. 37. Will you please state what you did and what those that were co-operating with you did, to your knowledge, in following out the specifications that were in this patent that I have mentioned, and state what results were accomplished?

MR. ANDERSON: I object on the ground that the question of whether he was following out the specifications when he states what he did is a question for the court.

THE COURT: I thought your question was going to be what he did when he undertook to manufacture under this patent.

MR. KRESEL: I understood that that was objected to by counsel.

THE COURT: No, the bare question was objected to. Now, if he does not say what he did when he undertook to manufacture under this patent, then we will be confronted with a possible conclusion; but what Colonel Anderson wanted to know, as I understand it, was what he did, the acts and facts in connection with his undertaking to manufacture under the patent.

Q. 38. Will you state, Doctor, what you did and what those that worked with you did in undertaking to manufacture under this patent?

A. At the first, and that work was done at the University of Illinois——

Mr. Anderson: May I ask, were you there?

The Witness: Yes, I was there. You see, that work was started in 1916, and I did not leave there until 1918.

A. (Continued.) We tried to follow out the method which was given in the patent.

Mr. Anderson: I object.

The Court: Are you going to follow that by a statement showing the detail, the things that you did?

The Witness: Yes.

The Court: Then the objection will be overruled.

A. (Continued.) That method involves the use of ethylene-chlorohydron as an intermediate. We found in the first place that we had to produce our own ethylene-chlorohydron because it had not been a manufactured product in this country to any extent previously, and later what was manufactured was being employed for the production of products such as mustard gas. So it was not a readily available product. In the second place, even when we prepared the product ourselves and used it, we did not get in the first place a satisfactory yield and in the second place the product was not pure and involved considerable purification to get it to a state where it would be satisfactory for use.

Q. 39. I wish you would enlarge somewhat or define for us what you mean by satisfactory yield.

The Court: Of what? I do not know whether he means the product called for by the patent.

Q. 39. (Continued.) And yield of what? You understand the question?

A. Yes, I understand the omission that I made. By a satisfactory yield I mean a satisfactory yield of novocain or procain. That is what I referred to—

yield of the final product desired. We must take into consideration the price at which the product is selling, or the state of the demand for it, and the cost of producing the product. For instance, if a product was selling at $100 a pound, you might be able to produce the product with a 10 per cent. theoretical yield and still be able to sell it at a profit. On the other hand, if the product were worth only $5 a pound, it might be necessary to get a higher theoretical yield in order to be able to sell it, and of course at that time when the product was scarce it was necessary to produce it—I should say when the product was so badly needed it was necessary to produce it in as good yields as possible.

Q. 40. You say that you found you could not get a satisfactory yield. Will you please state in what respect the yield of novocain by the yield in this process, assuming that you had the intermediate, was unsatisfactory? I mean was it in weight, or cost or what?

A. Well, in the first place in quantity, and that involved cost because the less you obtain in quantity the more it is going to cost per pound, because the more intermediates you have to use in order to prepare it.

Q. 41. With reference to the imperfections in the purity of the product that you spoke of, in what way was it impure?

A. There are definite standards to which a compound like procain must conform. It has a definite melting point, it has a definite solubility in various solvents. There are probably a dozen or two tests to which a product of this kind must conform. Those chemical tests indicate the presence or absence of impurities. In the second place, toxicity is involved; since novocain or procain is injected it is a dangerous product to use unless it is of relatively low toxicity.

Q. 42. You say it is injected. Please state what this product is used for, how and where in the human body it is usually injected?

A. It is used in the carrying out of operations as a local anaesthetic and it has come into world-wide use for that purpose, being used probably more than any other local anaesthetic for the production of local anaesthesia. It is used in dental work, it is used for minor operations such as the amputation of a finger or in cases of the removal of tonsils, etc., and is also used for major anaesthesia, major operations such as removing a limb or removing an appendix, things such as that.

Q. 42. You don't mind if I ask you for these definitions, because we do not understand them. What do you mean by toxicity?

A. Toxicity means the poisonous character of the drug.

Q. 43. Is there a way known to chemists of determining the toxicity or non-toxicity of a drug?

A. Yes, it is known to chemists although it is not ordinarily the chemist who carries out the work. That is a pharmacological problem and involves the injection of the drug into smaller animals, concerning which the toxic dose of the pure product is known.

Q. 44. Did or did not the Abbott Laboratories manufacture novocain following out the steps for its production described in this patent?

> Mr. Anderson: I object. He can state what he did. Following out the steps of a patent is a clear conclusion and involves the construction of a written instrument.
>
> Mr. Kresel: If it be a conclusion, it is only a conclusion of fact and this witness is an expert called for that purpose. That is the only way that the Court can be given the information.
>
> The Court: The element missing, as I under-

stand it, to qualify this man as an expert for that purpose is that you have not shown his familiarity, as I recall the testimony, with patents at all or with the terminology of this patent, for instance. I do not know that he has seen patents. He has proved himself qualified as an expert in chemistry, in organic chemistry. Now then, you ask him as to whether he has followed out the provisions and requirements of this patent. As I see it, there is something missing to enable him to answer that question.

Mr. Kresel: I will see if I can qualify him.

Q. 45. Dr. Volwiler, have you had occasion in the course of your professional work to examine other patents than these three that you have described dealing with drugs and organic chemicals?

A. Yes.

Q. 46. Can you approximately state how many such patents you have examined and studied?

A. Up to the present, you mean?

Q. 47. Yes.

A. Probably several hundreds.

Q. 48. And have you examined and studied any other patent, for example, for the manufacture of similar products like novocain?

A. I have.

Mr. Anderson: I object to the question on two grounds: First, leading; and second, he is asked to determine what similar products are.

The Court: The second ground I did not get.

Mr. Anderson: The second ground is that he determines what are similar products.

The Court: I think the objection is well taken, but if it is asked to meet the suggestion I made a moment ago, I think it is unnecessary. The objection is sustained.

Q. 49. I repeat the question, Doctor, and it is, whether the Abbott Laboratories manufactured and produced and sold novocain under this novocain patent, the number of which I have given you.

Mr. Anderson: I object on the ground that manufacturing or producing under a patent is a conclusion; and also, what is novocain is a conclusion.

Mr. Kresel: What is novocain is a conclusion?

Mr. Anderson: Yes, sir.

Mr. Kresel: My attention is directed to the fact, your Honor, that questions similar in form were asked by Colonel Anderson of Mr. Metz and also of Dr. Holdermann, and I doubt whether I objected.

Mr. Anderson: On the contrary, the objections were sustained and I had to reframe the question a dozen times.

Mr. Kresel: Your Honor will recall that that is the very question your Honor had up with Colonel Anderson when you adjourned court and asked him to point out in the evidence the questions that had been so ruled out and had to be reframed. Your Honor recalls the result of that.

Mr. Anderson: That was another thing entirely.

The Court: It is just a question of time and this is only the 6th day of July. The objection will be sustained. You may inquire into the facts in detail.

Q. 50. Have you a copy of the patent on novocain?

A. I do not have a copy.

Q. 51. I show you Plaintiff's Exhibit 227 and direct your attention to the last sheet of that exhibit and

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ask you to state whether those are the specifications of the novocain patent?

A. It is.

Q. 52. And are those the specifications that you had before you when you were pursuing this research work that you described into the manufacture of novocain?

A. They are.

Q. 53. Please read the first step in those specifications. Read it out loud.

A. The first paragraph which discloses the invention is:

> "I have found that the alkamin esters of para-aminobenzoic acid may be obtained by reducing the alkamin esters of para-nitrobenzoic acid. The compounds thus obtained hitherto unknown, are valuable for medicinal purposes as local anesthetics."

Q. 54. Is that the first paragraph? Have you finished the first paragraph?

A. The first paragraph reads:

> "Be it known that I, Alfred Einhorn (etc.) have invented certain new and useful improvements in the preparation of alkamin esters of para-aminobenzoic acid, of which the following is a specification.

Q. 55. Now then, please read the first paragraph of the specifications.

A. Do you mean the one I have just read?

Q. 56. Was that the first one?

A. That is a general description and then it goes on and gives a specific description.

Q. 57. Give me the first step or first paragraph of the specific description.

A. "To prepare the said new esters of alkamins, the process may be carried out, for instance, as follows: Ten parts, by weight, of para-nitrobenzoyldiethylaminoethanol, which, for instance, may be obtained by heating for one day to 100° to 120° centigrade para-nitrobenzoylchloroethanol (obtained by heating ethylene chlorhydrin with para-nitrobenzoylchlorid) with ten parts, by weight, of diethylamin being an oil readily soluble in ether and solidifying in the cold, are allowed to digest at a moderate temperature with thirteen parts, by weight, of tin and twenty-five parts, by weight, of concentrated hydrochloric acid.

Q. 58. Now, stop there, please. Did you in this research do as directed in the paragraph that you have just read?

The Court: Assuming that the same objection is made to this question as heretofore, it is objectionable on two grounds. First, it is leading and second you are asking him whether he did that, which is a conclusion of facts instead of asking him the steps which he took. The implied objection is sustained. In order that you may understand the ruling which I am making with respect to this, we are now into a patent suit pure and simple and you are being required by me to take such evidence as you would be required to take if a plaintiff or defendant in an infringment suit in a patent case. If it is your purpose to put in evidence with respect to these 4700 patents, we will go through it.

Mr. Kresel: With respect to what?

The Court: If it is your purpose to show with respect to all these patents, for instance, that they were workable or unworkable, under the specifications you will have to do it in that way. If we have to try 4800 infringement suits we will have to try them.

Mr. Kresel: Very well your Honor.

Q. 59. Doctor, you may refresh your recollection with the specifications of this novocain patent that you have before you and I now wish you would state specifically the steps you took in undertaking to manufacture novocain according to those specifications.

A. I think the simplest way to state that will be merely by reference to what I have already read, which we followed out in detail, using the temperatures, the amounts and if necessary, wherever it stated in a case of this sort pressures, that are given in the patent.

Q. 60. I think, Doctor, I am going to ask you, if you will, instead of saying that you followed out, to state what you did. Do you understand me? Just state what you did.

A. We treated para-nitrobenzoylchloroethanol, which we prepared as stated here, by treating paranitrobenzoylchlorid with ethylene chlorhydrin, and then treating the resultant product with diethylamin at the temperature of 100 to 120 degrees.

Q. 61. Fahrenheit or centigrade?

A. Centigrade. Then the resultant product was reduced by the use of tin and hydrochloric acid, and that gives procain or novocain in the crude form.

Q. 62. What, if any, other step did you take in undertaking to manufacture this product according to these specifications?

A. The next step is the purification of the crude product which is obtained and which is here stated in the patent specification to be accomplished by recrystallization from alcohol, and that was the step that we took.

Q. 63. Were there any additional steps taken by you in accordance with the specifications there set forth?

A. No, that is the only information, briefly stated, which the patent specification divulges.

Q. 64. Having followed out the steps that you have just described, what result did you obtain?

A. We obtained a low yield of an impure product.

Q. 65. Of what?

A. Of procain—novocain.

Q. 66. I will ask you whether the Abbott Laboratories continued to manufacture novocain according to these specifications that you have described.

A. They did not.

MR. ANDERSON: One minute; I object on the ground that the question of how they manufacture novocain—they can show how they did it, but whether they undertook to manufacture in accordance with those specifications is purely a conclusion.

THE COURT: Do you propose to show the changes in the process?

MR. KRESEL: I do, sir.

THE COURT: Objection overruled.

Q. 67. Please now state what, if any, other, different method the Abbott Laboratories pursued in the production of novocain.

A. Professors Adams and Kamm, of the University of Illinois, with the assistance of a number of students—graduate students, including myself, worked out a method which was patented later, omitting the use of ethylenechlorohydrin, the objections to which I have already stated, and substituting therefor the use of ethylenebromid, which involved an altogether new method for the production of procain.

Q. 68. Will you state when this new method was perfected?

A. Probably some time late in 1917.

Q. 69. You have stated that it was patented. Do you remember when?

A. I do not remember the exact date.

Q. 70. Have you a copy of the patent?

A. I do not think so. That is the only patent on the list that I have not with me.

Q. 71. Do you know the number of it?

A. It is in that letter.

Q. 72. See if you can refresh your recollection from that as to the number of it. (Handing witness book.)

A. Yes. It is patent No. 1,260,289, taken out March 26, 1918.

Q. 73. Have or have not the Abbott Laboratories been manufacturing or selling procain made as you have described under the Adams and Kamm process?

A. May I ask you to read that question? I did not get the first few words of that.

(Q. 73. repeated as above recorded.)

A. They have.

Q. 74. Do you know, Doctor, approximately how much money was spent by the Abbott Laboratory in this research work that was described?

A. I have the figures here somewhere.

Mr. Anderson: Unless the witness can testify to the facts—I want to cross-examine him on the figures and unless he has the sources of the information I shall have to object to it.

The Witness: This information was taken from the books of the Abbott Laboratories.

Mr. Anderson: By you?

The Witness: By request of the Cost Department, yes, by personal request.

Mr. Anderson: I will want to go into that on cross-examination, if he is going into what they have been manufacturing and selling, I want to go into it very fully and we may as well get the information now as well as any other time.

Mr. Kresel: That is all right. Will you give the figure, Doctor?

Mr. Anderson: I object to his giving any figure, on his own statement that it was not taken by him from the books, but by the request of somebody else. If he is going to testify about the business and earnings of the Abbott Laboratory, I am going into the whole thing, and we better get the fundamental evidence right now.

Mr. Kresel: Let us first deal with this one question. Do I understand the objection is made because he did not go to the books himself and take it off?

Mr. Anderson: He has not the information here. He does not appear to be an accountant and the books were not kept by him. He does not appear to know the facts. If this information goes on the record I will want to cross-examine him. If he does not know what information is on the record I have not any chance of cross-examining. I may as well give notice now that I object to that evidence unless it is properly proved. The foundation has not been laid.

Q. 75. Do you know, Doctor, how much was spent in research, apart from the information you say was given to you by the accounting or cost department?

A. I could make a pretty good estimate, because I know the salaries of the men involved, I know the approximate rate of overhead charges, I know the cost of equipment used in it. So that although my estimate would be rough without reference to the figures, yet I could come within a few thousand dollars of it, I think.

Mr. Kresel: May I take that evidence, your Honor?

Mr. Anderson: I would object to that. You do not know of your own knowledge the cost of machinery, do you?

The Witness: Yes, I do. I personally purchased some.

Mr. Anderson: You personally caused to be purchased some of the machinery?

The Witness: Yes.

Mr. Anderson: Have you kept the accounts of the company at all?

The Witness: No.

The Court: What was that you asked?

Mr. Anderson: Whether he kept the accounts of the company. He has talked about overhead and things like that, and yet it is perfectly obvious that he can not testify about this.

The Court: You may ask him for such figures as he knows of his own knowledge. He may not use the memoranda here, because you have not shown that he knows that to be correct. It is not a suitable memorandum to be introduced in evidence over objection; it is not shown to be such a memorandum as may be used to refresh the recollection of a witness. The specific objection is sustained.

Q. 76. Doctor, will you state the cost of such elements as entered into the research work in which you participated, which you know of your own knowledge?

A. I can not separate the individual items very well at present, because I have not each individual item here before me. However, I did figure those out before I came here and added them up and put them in a lump sum.

Mr. Anderson: From what source did you figure them out, from the books?

The Witness: I knew the salaries.

Mr Anderson: You took the books?

The Witness: Yes.

Mr. Anderson: You did not keep the books, did you?

The Witness: No, I never keep the books.

Q. 77. You say you knew the salaries?

A. I knew the salaries.

Q. 78. Did you say you knew the cost of the machinery?

A. I knew the cost of the machinery. I purchased some of it myself.

Q. 79. What other elements entered into the cost that you knew about?

A. The overhead. That was, however, the most indefinite part as far as my personal knowledge is concerned, and that was what I got by reference to the books of the Abbott Laboratories.

Q. 80. Omit the overhead. What other elements besides the cost of machinery and the salaries entered into the total of the cost of research?

A. The cost of the materials which were usually wasted during the preliminary work.

Q. 81. Did you know of your own knowledge the cost of those materials?

A. Yes.

Q. 82. Was there any other element?

A. None that I can think of now.

Q. 83. Omitting, therefore, the item of overhead, will you please tell us the cost of the research work that was pursued as you have described?

A. About $35,000.

Q. 84. You have stated that the Abbott Laboratories manufactured and sold under this Adams and Kamm process novocain or procain. I want to ask you whether they were selling that product in 1919.

A. Yes.

Q. 85. Did you fix the date when they started selling it?

A. It was early in 1918, but I can not give the exact date.

Q. 86. In the months of February, March and April, 1919, were there any other manufacturers in the United States manufacturing novocain or procain?

A. There were.

cal matters but not on the value of patents. Therefore, I believe the objection is well taken.

THE COURT: My question has not yet been answered, Colonel Anderson, and that is whether there is any person who is an expert on their value.

MR. ANDERSON: Yes, F. N. Waterman of New York, whom I have known, is an expert, and others of the same class, who I would say were experts on the value of patents in the market and their sale, because they have done nothing else all their lives but sell and value patents. There are certain patent lawyers in the United States making transfers of patents, selling and dealing in patents, who are experts to speak on their value, knowing the character of the patent and having the technical knowledge necessary in connection with it. But a chemist is not a person, in my judgment—with all the ability that I admit Dr. Volwiler to possess—who can speak on that subject. It takes a commercial knowledge and a knowledge of business, aside from a technical knowledge of chemistry.

MR. KRESEL: As to the gentleman whose name has been mentioned—Mr. Waterman—I do not think that I have a personal acquaintance with him, but I know him by reputation and I understand him to be an expert on patents, but not an expert as to the value of patents.

THE COURT: It was with respect to value that my inquiry was addressed. Without basing it on any principle, or with respect to the value of patents, I should think that this witness's estimate or appraisement of a patent under those circumstances would be of value. I will take the answer.

A. Under the circumstances and conditions which you have enumerated, I should say that the patent would be of purely nominal or speculative value. It would be almost impossible to give a real value in dollars and cents to such a patent.

Q. 89. Doctor, based upon your general knowledge of drugs and their manufacture, your knowledge of the patent on novocain which you have before you and of which I gave you the number, the experience in attempting to produce under it that you have described, the lack of intermediates necessary for the manufacture of the product according to the specifications in the patent, the fact that the patent had only four years to run, the fact that the Abbott Laboratories were then producing the product novocain by a new method not described in or covered by the patent, the fact that three Federal Trade Commission licenses were outstanding under which others were manufacturing the product—what in your opinion was the patent worth to a purchaser who, by the terms of the sale to him, would be obligated to give to the United States a free license to manufacture said product or have it manufactured for his own use, who would be obligated to issue non-exclusive licenses under said patent to any qualified American citizen, would be obligated to defend the patents, and never to have any more than six per cent. return on his investbent?

Mr. Anderson: I object to the question for the reasons stated. I object for the further reason that the value under those conditions is immaterial in this case; for the further reason that the question does not correctly state the conditions disclosed by the evidence; for the further reason that the evidence does not disclose that the process employed by the Abbott Laboratories is a new process.

The Court: Is what?

Mr. Anderson: Is a new process or a different process.

The Witness: It would have to be a new process or it could not be patented in this country.

Mr. Anderson: There are plenty of patents in the United States which are issued and yet are infringements of existing patents.

The Court: But, Colonel Anderson, the issuance of a patent is prima facie evidence of its validity, is it not?

Mr. Anderson: I think so, sir.

The Court: So would not that objection fall? If you mean that that patent has not been introduced in evidence here, I think that should be stated; because if you want a certified copy of the patent put in here before this question is answered, I think your objection is probably well taken. But I did not understand it was based on that ground.

Mr. Anderson: I did not base it on that, because as a matter of fact, if you please, I thought the patent had been produced. There have been so many produced here that I thought it had been produced, but I had overlooked that fact and now I recall the patent has not been produced. As I want to examine the witness, I shall further object on the ground that the patent has not been produced, and I move also to strike out the preceding question and the answer to it on the same ground.

The Court: That objection was not made at that time, and I shall not strike out the preceding question on that ground.

Mr. Anderson: I think, if your Honor please, I can move at any time while the witness is upon the stand to strike out any question and answer, that I am not precluded by the fact that the question has been answered. Of course, if the case is closed, I am then too late. But at any time while it is open, while the witness is on the stand, I can make a specific motion to strike out the question and answer. Also I move to strike out the question just asked on the ground that the patent has not been produced which he claims to constitute a patent of nominal value, in addition to the grounds stated.

Mr. Kresel: Colonel Anderson, if I promise to produce a certified copy of that patent and put it in here before you cross-examine, will that satisfy you?

Mr. Anderson: On that point, yes, sir.

Mr. Kresel: May the question then be answered, upon my promise that I will produce a certified copy of the patent prior to cross-examination of this witness by counsel?

The Court: Yes.

Mr. Kresel: Will you answer, please?

Mr. Anderson: Your Honor, to make it perfectly clear, you will understand I am making the objection in addition to the reasons stated, on the ground that this does not state the measure of value in this case.

The Court: That is under your contention. I understand that.

Mr. Anderson: Yes, sir.

The Court: I have allowed you to put in all evidence that you thought was material in support of any view the plaintiff had in the case, and of course I have got to allow the defendant to do the same thing.

Q. 90. Will you answer the question, please, Doctor?

A. The patent would be worthless. I would consider it a liability rather than an asset, and it was so considered by our company.

Mr. Anderson: What was considered by his company is not responsive to the question and, in the next place, what his company considered is a matter to be proved by some one else, I think.

Mr. Kresel: Your Honor will recall that Mr. Metz was permitted to testify what he would have given for these patents.

Mr. Anderson: Undoubtedly, but Mr. Metz was the company. Mr. Metz was the man that paid the money.

Mr. Kresel: This witness is just as able to state what his company would have been willing to do.

Mr. Anderson: I do not think so. He is not even an official of the company. He is merely a chemist. And in saying that, I do not wish to reflect upon this witness in any way.

The Court: I am not concerned with what his company would have done. I am concerned with what this witness's viewpoint is. The portion of the answer objected to by Colonel Anderson is stricken out.

Mr. Kresel: That is the portion which said what?

The Court: "And my company so considered it" I think were the words.

Q. 91. Dr. Volwiler, is there such a product, such a drug, as is called butyn?

A. Butyn, yes.

Q. 92. How is that spelled?

A. B-u-t-y-n.

Q. 93. What is the nature of that drug?

A. It is a local anesthetic that is used in a similar manner to novocain or procain.

Q. 94. Is there another product and drug known as apothesine?

A. There is.

Q. 95. What is the nature of that drug?

A. It is also a product used for the same purposes as procain.

Q. 96. Who manufactured and sold it?

A. Parke, Davis & Company of Detroit.

Q. 97. And was it on the market and being sold in February, March and April, 1919?

A. It was.

Q. 98. You stated that the Abbott Laboratories bought the Dermatological Laboratory. When was that done?

A. November, 1922.

Q. 99. What is the business of the Dermatological Laboratory?

A. The main line of business is the manufacture of arsphenamines, that is, salvarsans.

Q. 100. And to your knowledge, for how long a period prior to November, 1922, had the Dermatological Laboratory been in that business?

A. Since about 1915; some time in 1915.

Q. 101. In February, March and April, 1919, were there other manufacturers of salvarsan and neo-salvarsan in the United States; I mean other than the Dermatological Laboratory?

A. There were.

Q. 102. Will you name them?

A. H. A. Metz Laboratories; Takamine—I think that is laboratories—Takamine, anyway;—and Company Laboratories; and the Diarsenol Company.

Q. 103. Where was the Diarsenol Company located?

A. Buffalo.

Q. 104. And Takamine?

A. Somewhere in New Jersey, I think.

Q. 105. And Metz?

A. Brooklyn.

Q. 106. And the Dermatological?

A. Philadelphia.

Q. 107. Did the Abbott Laboratories manufacture salvarsan or neosalvarsan during 1918 and 1919?

A. They did not.

Q. 108. Are you familiar with the specifications contained in what we call here in the case the salvarsan patent No. 986,148?

A. I am.

Q. 109. And with the specifications in the neosalvarsan patent which, by its reissue number, is known as 13,848?

A. I am.

Q. 110. Do you know whether the Dermatological Institute was producing salvarsan according to the specifications of those two patents?

> Mr. Anderson: I object. It does not appear, in the first place, that he was connected with the Dermatological Institute; and in the second place, it calls for a conclusion as to whether they were producing in accordance with the specifications of those patents.
>
> The Court: The question is whether he knows. He either does or does not know.
>
> Mr. Anderson: Of course, if he says that he knows or does not know——
>
> Mr. Kresel: That is the question.
>
> The Court: That is where he stops with this question.
>
> Mr. Kresel: That is all I am asking him.

A. I do.

Q. 111. Will you state whether, to your knowledge, the Dermatological Institute was or was not producing salvarsan or neosalvarsan according to the specifications contained in those patents?

A. Of course not.

> Mr. Anderson: I object.
>
> Mr. Kresel: I consent that the answer be

stricken out so that the Colonel may raise his objection.

Mr. Anderson: If your Honor please, it appears that this gentleman was for the years 1916 to 1918 engaged in the University of Illinois——

The Court: You may cross-examine him now as to how he knows, before he answers, if you want to.

Cross-Examination.

By Mr. Anderson:

XQ. 112. Where were you engaged in 1916 and 1918?

A. In the University of Illinois.

XQ. 113. Your entire time was there?

A. Yes, sir.

XQ. 114. As Professor of chemistry?

A. As instructor of chemistry.

XQ. 115. As instructor of chemistry?

A. Yes, sir.

XQ. 116. Where were you engaged in the year 1919?

A. With the Abbott Laboratories.

XQ. 117. When did you go to the Abbott Laboratories?

A. In the spring of 1918.

XQ. 118. And from that time on to the present you were engaged with the Abbott Laboratories?

A. I was.

XQ. 119. The Abbott Laboratories, I think you said, are located in Chicago?

A. Yes, sir.

XQ. 120. In 1918 and 1919, you were engaged there at all times in the business of that company, were you?

A. I was.

Mr. Anderson: Now I wish to object to the question. It has been testified here that the Dermatological Laboratories are located in Philadelphia.

XQ. 121. Have you ever worked in the Dermatological Laboratories yourself?

A. I have not.

MR. ANDERSON: And that the Dermatological Laboratories were not producing salvarsan and that is the only question involved. Furthermore, that the question calls for a conclusion.

MR. KRESEL: May I ask the witness a few questions?

MR. ANDERSON: All right, sir.

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 122. You have stated, Doctor, that you knew whether the Dermatological Laboratories manufactured salvarsan and neosalvarsan under the specifications of those patents?

A. I did.

Q. 123. Will you state how you knew that? I do not ask you to state the fact, you understand, whether they did or not; simply to give us the information.

THE COURT: On what do you base your previous answer that you did know whatever you said you knew?

A. I have gone over the records. Previous to the purchase, I had a good idea, a general idea of the method followed, by contact with the men who were doing the work there. After the purchase, I went over the records. The methods were submitted to me and placed in my possession and are in my files. I have spent periods of time on a number of occasions at Philadelphia going over their plant and their methods and talking to Drs. Schamberg, Kolner and Raiziss, who are the men who did the work.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 124. Did you make up any of these records yourself that were submitted to you?

A. No. They were made up for me by these three men.

MR. ANDERSON: All of that is pure hearsay, of course.

MR. KRESEL: Not at all, your Honor. An expert is always permitted to give his opinion not only upon his personal knowledge but upon information, upon literature that he reads, upon records that he reads. This witness has stated that on several occasions he personally went to the Philadelphia laboratory and was in touch with the men. I do not know whether he said he observed. I do not want to put it in his mouth.

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 125. Did you observe the manufacture?

A. I did.

MR. ANDERSON: Your Honor please, the witness has said that he based his knowledge upon records none of which he made up. I could go there tomorrow and make up a record in any way I saw fit. The stuff may have been made in accordance with the record or not made in accordance with the record. The record may have been made up after the stuff was made up or sold. All that the witness knows is what somebody else wrote, or said. He said he talked to these gentlemen as to what they were doing. They are available, I suppose. They knew what they were doing. They can come here and tell. What they told him and the conclusions he drew are not evidence.

As to observing it, in the first place, he did not say when he was there or how long he was there or what he observed. He might have observed the essential process or not. Therefore I submit that he cannot testify to what the Dermatological Institute was doing when he was not there and was not engaged in that service but was engaged in the service in Chicago.

Mr. Kresel: May I ask the witness another question?

Direct Examination.

By Mr. Kresel:

Q. 126. Doctor, please state, if you will, when you went personally to the Dermatological Institute laboratories and state if you will just what you observed.

A. My first visit there was from about the 1st of January on for a period covering about a week.

Q. 127. What year?

A. Of 1923. All my time during the day was spent at the Dermatological Research Laboratories and at that time I was almost continually watching the operation of the plant from beginning to end. My second visit was for several days within the last month and on that occasion some of the additional points which had arisen in my mind that I did not have perfectly clear were cleared up at that time.

Q. 128. From such a study of the records as you speak of that you made, can you or can you not state whether the process followed by the Dermatological Institute that you have observed in the production of salvarsan and neosalvarsan is the process described in those records?

Mr. Anderson: I object on the ground, of course, that it is pure hearsay. It does not necessarily follow that they followed the process outlined in their records. And in the third place, the witness is asked to state a conclusion as to whether the process is in conformity with the terms of a patent, which calls for not only his conclusion but as to the construction of the patent, all of which can only be shown by the person who does the work or is familiar with the actual steps taken under the patent.

The Court: Let me see, Colonel Anderson. What is your evidence of value in this case? I was trying to recall it. And what do you contend that that evidence shows?

Mr. Anderson: If your Honor please, if I undertook to state all the evidence of value in this case, it would take quite a long time. The evidence of value here, and in my judgment the most valuable evidence of value, and in fact the only evidence of value that really has anything to do with it and that is conclusive at all—other evidence as to value may be helpful—but the evidence that is to my mind, not necessarily to your Honor's mind, the strongest is what these patents were earning——

The Court: Earning when?

Mr. Anderson: What they were earning at the time and are earning today. They are both elements. What they are earning today is not necessarily conclusive, but that is one of the elements; because in the hands of the Chemical Foundation what they are earning is not at all conclusive under the circumstances because they have conditions which in my judgment would destroy the value to some extent. The opinon of witnesses who are familiar with values of property of that kind from actual experience and any other circumstances which go to show the use, the extent of the use, the nature of the product, the market for the product, the profits of the business, the amount of production; any of those elements combined will make a basis on which the Court or any other body must arrive at a fair value, when they are combined.

The Court: If you want to make further objection, all right, but my inquiry did not ask for further argument.

Mr. Anderson: Your Honor asked me what the elements of value were. I would say that if we get to the question of value, which I hope we never will because in my judgment it has not much to do with this case—if we do get to the question of the value of these patents, it is a thing that is going to require the most exhaustive and careful analysis of this record of anything in it; and every fact in it will be considered.

The Court: Then your answer to my inquiry as to what your evidence of value consists of, is every fact embodied in the record.

Mr. Anderson: That shows the use, extent of use, possible use of the product of any of those conditions.

The Court: Upon how many of these patents does your testimony place a value?

Mr. Anderson: Oh, I think the evidence in the case places a value on all those that have been licensed and a special value on the salvarsan, neosalvarsan and novocain patents and the nitrogen patents and the dye patents and upon the group of dye patents. We have the admissions of these people that they were of great value. We do not have to prove actual value. We are not selling these things. If we prove that they reasonably can be assumed to have a value greater than that paid for them, the sale should be set aside.

The Court: That is just the evidence I would like to have you point out to me.

Mr. Anderson: If your Honor please, I want to respond to your Honor's request in every way that I can, but unless you desire it, I do not want to review this record, because in the first place my mind has not been on that subject and it would be a very laborious task on my part to point out to you what I think this record shows on value. I do not think I could really do it because I would have to go into phases of it that will require a most careful study and analysis of the actual value.

It is, if we come to the argument of that question, and I suppose we will, far and away the most difficult question to consider in this case and will require a most careful analysis of the evidence in my judgment.

I have indicated generally the character of what I regard as evidence of value. I have had a great deal to do with condemnation of railroad property in my life and this is the most difficult problem I know of in arriving at the value of property. I know of nothing to equal it.

The Court: According to the best information I have, arriving at the value of railroads is a child's problem compared to an expert's problem with respect to a patent.

Mr. Anderson: I quite agree with you, sir; and this problem is one of extreme difficulty.

The Court: But I was wondering whether you have any value or have shown any value as to some of the patents. You did place an estimate of value on the salvarsan and neosalvarsan and novocain patents; but I do not recall that you showed that they were worked even now in this country. Did you?

Mr. Anderson: I only undertook to estimate their value by, as I recall, one witness—I do not recall the evidence—as to his opinion of their present value in this country or their value at the time of their sale in this country, subject to the conditions of sale and surrounding circumstances. But I may state to your Honor quite frankly now, as I have been trying to do in this case, that in my judgment the evidence of the officers of this corporation which has been read in here, and taken on the witness stand, is conclusive, that the value of this property was far in excess of the price taken, its fair value, and taking that to be true, it is immaterial whether it is ten million dollars more or a hundred thousand dollars more.

The Court: I will assume this, and I haven't any idea whether it is true or not: I have sat in one German patent case only, so far as I know, and that one patent had an element omitted which made that patent absolutely valueless, and it was so held by the Court of Appeals of this Circuit. Now, I know nothing about any other. I am not drawing any inferences from that fact, but I am going to use it as an illustration to ask a question:

Suppose that Mr. Choate did make a statement before a committee or sub-committee of the House of Representatives or of the Senate, in which he said that those patents had a substantial value if sold under monopolistic conditions. I do not know whether there has been any such statement of fact or not. Then suppose this witness should be able to state that what was true with respect to the patent that I referred to in the Court of Appeals was true of the patents with respect to salvarsan or neosalvarsan (I have no notion whether he will or not) would not that testimony be relevant?

Mr. Anderson: It might be relevant if it were properly proved. I could not answer your Honor's question right off, because it is a very nice question. I am objecting to this evidence on the ground that the question in form is illegal and that the witness is not competent to testify, because it appears on the face of the record he was not there. I am not raising the question of what evidence is competent here, and I am frank to say to you that my knowledge of the patent law, as I have said so often here, is so limited that I would not undertake to state to your Honor what is competent. I am going to put into this case all the facts I can bearing upon the question of value, in addition to the admissions of the parties, and then I will argue the value of that testimony when I come to it.

The Court: And Mr. Kresel may do likewise?

Mr. Anderson: He may if he can put it in by legal evidence; but if your Honor will recall, I was required here to reframe question after question, and a good many were stricken out, because I asked questions which called for a conclusion. This question calls for a conclusion. The question was raised and some of the evidence was stricken out. I did not renew the question, because it did not appear that the matter was within the knowledge of the witness. Now, if this evidence were absolutely legal evidence, if there were no ground for objection to it in the world, this question to this witness would be an illegal quesion under any rule of evidence, in my judgment.

Mr. Kresel: Will your Honor permit me to recall that the testimony with reference to the value of the particular patents that this witness is testifying about came from Mr. Metz. Mr. Metz testified that he was not a chemist. Mr. Metz did not follow out the processes of the patent.

Mr. Metz did not testify even that he had ever read the salvarsan patent. Mr. Metz was not compelled to read to your Honor here the specifications of that patent. Mr. Metz did not say that he knew anything about the way to make salvarsan, but said that he sent his brother abroad to find out; and yet there wasn't any objection on the part of the defendant, nor any ruling by your Honor, which prevented Mr. Metz from giving his testimony as to what, in his opinion, the patent was worth.

Mr. Anderson: My view was that Mr. Metz was a competent witness to express an opinion. I do not think that this witness can express an opinion as to what the Abbott Laboratories were doing when he was in Chicago under a patent, when that opinion is purely a matter of conclusion. However, I do not wish to argue the question at any length. I have stated my objections.

Mr. Kresel: May I have the question read, your Honor?

The Court: Yes.

(Q. 128 repeated as above recorded.)

A. I can.

Q. 129. Will you state?

Mr. Anderson: Same objection.

The Court: Overruled.

A. It is not the process.

Q. 130. Have the Abbott Laboratories since purchasing the plant of the Dermatological Institute been manufacturing salvarsan and neosalvarsan?

A. At Philadelphia, not at Chicago.

The Court: "Yes" or "No" is your answer to that question.

The Witness: Yes.

Q. 131. Where?

A. At Philadelphia.

Q. 132. Do you know whether the manufacturing of salvarsan and neosalvarsan by the Abbott Laboratories is in accordance with the specifications of the salvarsan and neosalvarsan patents that you have described?

Mr. Anderson: Same objection as above.

The Court: Overruled.

Q. 132. (Continued.) Just say yes or no whether you know.

A. Yes.

Q. 133. Will you state now whether the Abbott Laboratories is making salvarsan and neosalvarsan according to the specifications in those patents or no?

Mr. Anderson: Same objection as above.

The Court: This is an expert. Objection overruled.

The Witness: Will you read that question?

(Q. 133 repeated as above recorded.)

A. No.

Q. 134. Do you know whether it is possible to make salvarsan according to the specifications contained in those two patents?

Mr. Anderson: I object on the grounds stated, and on the further ground that the witness may testify as to what he can do, but he cannot testify as to what it is possible for any one else to do.

The Court: Do you mean to contend that he is not a man skilled in the art?

Mr. Anderson: I mean to say that it does not appear that he has ever made an ounce of salvarsan in his life, or that he has ever followed a line of a single one of these patents, or that he has ever undertaken to carry out the process of one of these patents, and therefore he cannot state what it is possible for somebody else to do in engaging in that business.

The Court: Objection overruled.

Mr. Anderson: Exception in each case.

A. No.

Mr. Kresel: Will you read the question and answer?

(Q. 134 and answer repeated as follows: "Do you know whether it is possible to make salvarsan according to the specifications contained in those two patents? A. No.")

The Witness: I should have said I do know.

Q. 135. And is it possible or can the product be produced with the information that is contained in the patent?

Mr. Anderson: Same objection.

The Court: Objection overruled.

A. No.

Q. 136. Doctor, based upon your general knowledge of drugs and their manufacture, your knowledge of the salvarsan and neosalvarsan patents which you state you have studied and examined, your experience in manufacturing the product, the lack of information as to how to manufacture it under the patent, the fact that four manufacturers were then supplying the product to the country under Federal Trade Commission licenses, that an American citizen then claimed to have a pre-war exclusive license from the German owners of the patent to manufacture the product in the United States, which I wish you would assume, during the life of the patent, the fact that a citizen of the United States then claimed to have a pre-war agreement with the German owners of the patents for the transfer of the patents to said American citizen, what, in your opinion, was the fair value of these two patents the salvarsan and neosalvarsan in the United States in February, March and April, 1919?

Mr. Anderson: Objection for the same reasons as stated to the preceding hypothetical question, and for the further reason that it appears of record that this witness has never undertaken to manufacture under those patents and never followed their processes, and it does not include all the elements contained in the record on this subject.

THE COURT: You may take the answer.

A. It would be exceedingly speculative or nominal.

By THE COURT:

Q. 137. What do you mean by that? You gave that answer to the novocain patent, and I do not know what it means.

A. I mean by that that in the first place it is a very hard matter to fix a value of dollars and cents. In the second place, I am speaking from my information in connection with an industrial and manufacturing concern. By "speculative" I mean that it is questionable whether a fairly conservative industrial concern would care to own the patents with all those conditions attached—or to pay a price for them with all those conditions attached. They would just as apt to be a liability as an asset.

By MR. KRESEL:

Q. 138. Doctor, based upon your general knowledge of drugs and their manufacture, your knowledge of the salvarsan and neosalvarsan patents, your experience in manufacturing the product, the lack of information as to how to manufacture under the patent, the fact that four manufacturers were then supplying the product to the country under Federal Trade Commission licenses, the fact that an American citizen then claimed to have a pre-war exclusive license from the German owners of the patent to manufacture the product in the United States during the life of the patents, the fact that the citizen of the United States then claimed to have a pre-war agreement with the German owners of the patents for the transfer thereof to said American citizen, what, in your opinion, was the patent worth to a purchaser who, by the terms of the sale to him, would be obligated to give to the United States a free license to manufacture said product or have it manufactured for its own use, would be obligated to issue non-exclusive licenses under said patents to any qualified American citizen, would be obligated to defend the patents and never to have any more than six per cent. return on his investment?

Mr. Anderson: Objection for the same reasons as stated to the previous hypothetical questions, and each of them, and especially to the question next preceding.

The Court: You may take the answer.

A. I would consider it more a liability than an asset.

Q. 139. Would you say it was worth anything?

A. No, it would be worthless.

Q. 140. I show you this copy of a patent, and ask you now to state whether that is a copy of the Adams and Kamm patent that you testified about a little while ago?

A. It is.

Mr. Kresel: I now offer it in evidence.

The Court: Does that come under your stipulation?

Mr. Anderson: Yes, I have no objection to the copy.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibits No. 151." *(See Patent Exhibit Book)*

Q. 141. In addition to the novocain, salvarsan and neosalvarsan, did you examine a patent for the production of a drug called cinchophen?

A. I did.

Q. 142. What is that drug used for?

A. For gout and rheumatism.

Q. 143. And was that one of the patents that is described in this booklet isued by the Chemical Foundation that you have pointed out here?

A. It is.

MR. KRESEL: Just for the record I will give the number of the patent. It is No. 1,075,171.

Q. 143. Did you examine that patent and the specifications attached thereto?

A. I did.

Q. 144. Did the Abbott Laboratories undertake to produce the product following the specifications of that patent?

A. It did.

MR. ANDERSON: One moment; objection on the ground that that is a clear conclusion.

THE COURT: This is an expert.

MR. ANDERSON: Do I understand your Honor rules (I am just asking the question; I did not so understand) that an expert can testify without taking the patent and saying what he did to manufacture following the patent? I would like to know, because that will affect my——

THE COURT: You may cross-examine him as to those facts, if you want to. You may do it now.

MR. ANDERSON: No, sir. What I mean is this: I am making these objections on the ground that it is a conclusion that a man followed a certain process under a certain patent, without producing the patent——

MR. KRESEL: The patent is in evidence, your Honor.

MR. ANDERSON: ——without following the specifications named in the patent. I do not want to argue against your Honor's ruling; but I want to get clear in my mind whether that was the ruling, because it will affect the evidence that I am going to produce in rebuttal.

The Court: What was your remark, Mr. Kresel?

Mr. Kresel: I was saying, sir, that the patent was in evidence. Colonel Anderson was calling attention to the fact that the witness had not the patent before him. Now, I was saying that it was in evidence.

Q. 145. At all events, you have studied it?

A. I have.

Q. 146. Did you personally undertake to make this stuff according to the patent?

A. I did.

Q. 147. Did you undertake to follow and did you follow the steps that were described in the patent?

A. I did.

Mr. Anderson: One moment; I object on the ground that that is a clear conclusion, a construction of the patent.

The Court: Do you mean to say that the specification of the patent is not clear, then, to a person skilled in the art? because that is the only thing that I can derive from that objection; and if that is true, the defendant need not go any further, because if a person skilled in the pharmaceutical and chemical art, as this man is, cannot say as a fact that he followed the specifications of the patent, if the specifications of the patent are so abstruse that it is impossible for a man to say whether he followed them or not, then it seems to me you are putting me in the position of saying, in the alternative, that the patent is not sufficiently clear to enable one skilled in the art to determine what it means.

Mr. Anderson: No; I am objecting, following what I understood to be your Honor's ruling. That is the reason I asked what was the ruling. I am not an authority on this subject, if I am on any subject—I do not know that I am—but I do know this, that if, as I understood your Honor's ruling, the question was objected to, the conclusion could not be stated even by an expert, for he must say what he did under the patent and let the Court decide whether the patent means that and whether that applies. Then that would be the evidence in the case. But if the witness can get on the stand without producing the patent at all, without looking at it, and say he followed the process in a certain patent, why, then you would never have to use a patent at all, because he could say, "I read the patent; it is number so-and-so; and I followed the process."

The Court: I do not understand you. Have I made a ruling to that effect, Colonel Anderson?

Mr. Anderson: In the case of Mr. Parmele was the instance I referred to. Mr. Parmele said that he had followed one of these processes, whatever the name of it was, and that he had owned the patent, and so on, and we had to send Mr. Parmele back to get the patent and then go back on the stand and say that he had it.

Mr. Kresel: On the contrary, you are mistaken about it. I permitted Mr. Parmele to testify without the production of the patent.

The Court: Just a minute on both sides. Will you turn to the record?

Mr. Anderson: I cannot, your Honor; it will take me an hour.

The Court: We will adjourn the Court until 8.30 Tuesday morning.

(Whereupon, at 3.00 o'clock P. M. Standard time, an adjournment was taken until Tuesday, July 10, 1923, at 8.30 o'clock A. M. Standard Time.)

TWENTY-THIRD DAY.

Wilmington, Delaware,
July 10, 1923, at 8.30 o'clock a. m.
Standard Time

Before:

Hon. Hugh M. Morris, U. S. District Judge.

Counsel present as before noted.

Trial Resumed Before the Court.

The Court: Did either of you find your contentions supported, or is there a disagreement between you? Have you conferred as to what the record does disclose?

Mr. Anderson: I have not seen Mr. Kresel, your Honor, until just a minute ago. At the time of adjournment last Friday, as your Honor will recall, I had asked if I understood correctly the ruling of the Court, suggested that I wanted to get the ruling clear in order that I might not possibly be objecting against the ruling of the Court. Your Honor asked me to call attention to some ruling along that line. I thought there was such a ruling in the Parmele testimony.

I have not been through it; I was called to Washington on another matter and have not had a chance to read the testimony at all myself; but the ruling which I had in mind at the time—whether it covers the point I really cannot say—was on page 1539. I had asked Mr. Parmele:

"Were you operating your business under that patent from 1911 down to the spring of 1919?

"A. I was.

"Mr. Kresel: One minute. To that we object upon the ground that it calls for the witness's conclusion as to whether he was using this patent or was not using this patent, and further upon the ground that it is immaterial and irrelevant.

"Mr. Anderson: Very good.

"Q. 15. I will ask you this question: Did you use these patents in your business from the time of its assignment to you down to June 1919?

"Mr. Kresel: I raise the same objection as I raised to the preceding question.

"Mr. Anderson: I do not want to argue, sir.

"The Court: I think the objection is well taken. You may take the answer of record."

I said, "Just answer the question." And he answered:

"From May 11th, 1911, down to the present time and up to now."

Then the same question practically about the trade-mark, and practically the same objections. Then we come to page 1562. After he had stated that he had been in this business for thirty years and had manufactured this product since 1911, I asked:

"Q. 64. What in your opinion would have been the fair value of this patent and the accompanying trademark at the time that they were attempted to be seized and assigned to the Chemical Foundation?

"Mr. Kresel: We object to that upon the ground that the witness has not been qualified as an expert to give any testimony upon value; that no proper foundation has been laid for the admissibility of such testimony;" and so forth.

I hope your Honor will understand that in referring to the former rulings, my knowledge being very limited on this subject, I desired to get clearly what the position of the Court was.

The Court: I understand perfectly.

Mr. Anderson: Whatever the position of the Court is in this case, I am going to try not to work against it—reserving, of course, my position on the record.

The Court: It is very difficult for me to remember all the rulings made in the case. I desire the rulings to be consistent, but can only make them so on specific objections.

Mr. Anderson: This was the thought I had in my mind. I had gotten the idea that your Honor's position was and that the law was—I assumed they were the same for this purpose—that in proof of the use of a patent all that the testimony could be would be the actual steps taken under the patent, taken in connection with the language of the patent, and the Court, applying those, would reach a conclusion as to whether it was within the patent or not within the patent. I wanted to get it clear in my mind, no doubt because of my ignorance of the subject. I was trying to get that ruling clear.

The Court: I will hear Mr. Kresel before I make a statement.

Mr. Kresel: I had rather understood your Honor that the point was whether we could go on and examine Dr. Volwiler without putting the patent in evidence. I come to that conclusion from the last statement made by Colonel Anderson at page 3288. When your Honor asked Colonel Anderson whether you had made a ruling to the effect that Colonel Anderson was contending for, Colonel Anderson said: "In the case of Mr. Parmele was the instance I referred to. Mr. Parmele said that he had followed one of these processes, whatever the name of it was, and that he had owned the patent, and so on, and we had to send Mr. Parmele back to get the patent and then go back on the stand and say that he had it."

It is at that point that I disagree with Colonel Anderson. My recollection was that when Mr. Parmele went on the witness stand he did not have his patent with him, nor any of the agreements that referred to the patent, and I had a recollection that I withdrew any objection to his testimony upon that ground, and that Colonel Anderson went ahead and examined him upon the theory that the papers were in court, and several days thereafter they were produced.

That was my recollection and I have since looked at the record and my recollection is borne out in that respect. It seemed to me that that was the only question that was up on Friday as we were adjourning. I did not understand that Colonel Anderson was contending that there had been some ruling by your Honor that the expert is confined to a statement of the steps that he has taken and that then it is for the Court to say whether those steps were pursuant to the specifications in the patent.

Not only did I not understand your Honor so to rule, but I should want to argue against such a ruling. It seems to me that a patent speaks to the man versed in the art and that the Court cannot be asked to determine the meaning of the specifications and to interpret the acts taken by the man versed in the art and then come to the conclusion whether the steps taken conform to the specifications. I think that is a matter purely of expert knowledge and that the man versed in the art should be permitted to state to the Court that what he did was in accordance with the specifications. I do not know whether that question is directly up for ruling at the present time.

THE COURT: You may present a new question. I am not very well satisfied with one or two rulings made on Friday—I have not the record before me and therefore cannot indicate them—but if you will cover the ground again, I will then make a definite ruling.

MR. ANDERSON: We were all very tired.

THE COURT: We need not be bound by any rulings that were made on Friday afternoon. I do not recall specifically what they were. We will start afresh with respect to those rulings.

MR. ANDERSON: May it please the Court, I would like to present to the Court Mr. H. E. Knight, head of the Patent Department of the Department of Justice. I asked Mr. Knight to come up because I felt your Honor was really handicapped by my ignorance of the Patent Law and while this matter is up, I thought it would be advisable to confer with Mr. Knight.

THE COURT: Very glad to have you Mr. Knight.

ERNEST H. VOLWILER, resumed the witness stand.

DIRECT EXAMINATION (Continued).

By MR. KRESEL:

Q. 148. Dr. Volwiler, when we adjourned on Friday, I was questioning you about your experience with the patent covering cinchophen. Have you that patent before you?

A. I have only a copy of it.

Q. 149. Well, that will do. Will you produce it?

A. (Witness produces a copy of patent.)

MR. KRESEL: We have a printed copy somewhere, but subject to correction, we will use that.

I offer this patent in evidence so that the witness may testify about it.

THE COURT: Let it be marked.

Received in evidence and marked "Defendant's Exhibit No. 152." (*See Patent Exhibit Book.*)

Q. 150. Doctor, I wish you would now take this patent; and I will ask you to state whether the Abbott Laboratories have ever attempted to manufacture cinchophen?

A. They have.

Q. 151. Will you state how cinchophen is made, and particularly with reference to the intermediate that is used?

A. The intermediates which are used as described in this patent are benzaldehyde, anilin and pyruvic acid.

Q. 152. In 1919, February, March and April of that year, were those intermediates available here in the United States?

A. Pyruvic acid to the best of my knowledge was not.

Q. 153. Now, the specifications are the specifications as to the manufacture of this drug cinchophen contained in that patent that is now in evidence?

A. They are.

Q. 154. Now, without my reading to you those specifications, or reading them aloud, although I will do that if Colonel Anderson insists, I am going to ask you what steps you took in attempting to manufacture cinchophen under that patent.

A. 93 parts by weight of anilin are slowly added while stirring to 106 parts by weight of benzaldehyde while at a temperature of about 40-50 centigrade. After standing for several hours a mass solidifies from which part of the water can be poured off. The remainder of the water can be removed by heating, preferably *in vacuo*. 90 parts by weight of this product of condensation (benzylidin anilin) is dissolved in strong alcohol, the solution is then heated to boiling and 44 parts by weight of pyroracemic acid (or an alcoholic solution of it) are gradually added to the boiling solution. Preferably the mixture of reaction is further heated for some time and the product of condensation is purified in the known manner.

(2) 106 parts by weight of benzaldehyde and 93 parts by weight of anilin are simultaneously dissolved in alcohol, the solution being boiled for about two hours. To the boiling solution 88 parts by weight of pyroracemic acid (or an alcoholic solution of it) are gradually added, the subsequent procedure being as in Example 1."

These two alternative methods were followed out as I have read.

Q. 155. And what was the result of the product that you obtained?

A. Cinchophen.

Q. 156. And in what form did you get it?

A. It was obtained in a very impure form for this reason——

Mr. Anderson: I think you had better let him answer the question and not argue it.

Q. 157. I will ask you to state what caused the impurity of the product that you have mentioned.

A. As to the cause of it, I cannot say. It seems to be inherent in the method employed. When this method was used, the product was impure, containing some tarry products.

Q. 158. Tarry products?

A. Yes.

Q. 159. Now, having obtained this product which you have described, did you or did you not take any further steps in order to get the pure product?

A. We did.

Q. 160. Please state what was done.

A. We tried every chemical method that we could think of to purify it. We dissolved the anilin and we re-precipitated with acid, we crystallized, and we extracted. We used every method that we could think of to get the product pure.

Q. 161. Well, did you finally find a way of getting the result?

A. We did, but it gave very——

Mr. Anderson: Please answer the question.

Q. 162. Was the way that you found to get the product in its pure form a way that was described in the specifications of the patent?

Mr. Anderson: I think I will object to that, sir. I think he can testify as to the way he undertook to get the pure form; what he did.

The Court: I think, if that question is proper, it is not so at this stage and the objection is now well taken. I am stating that because there may be different circumstances.

Q. 163. I will ask you this, Doctor: Is the method that you followed to purify the product described in the patent?

Mr. Anderson: I object again, sir. He can state what method he followed to purify the product.

Mr. Kresel: There we have the question up squarely, your Honor; I mean the question that I brought to your Honor's attention this morning.

The Court: Yes. I do not know that the magnitude of the questions involved, or rather, the number of the patents involved, changes the nature of evidence. Consequently, if this were presented in an infringement suit, my impression is that this question would not now be admissible, at least, before he testified what he did, because there is then no evidence of primary facts or of evidential facts from which that conclusion may be drawn. Now, it seems to me that the record should disclose the facts, and then, whether or not the witness is permitted to give a conclusion from the facts so testified or disclosed of record is more or less an immaterial point; that is, it cannot do any harm; it may help.

Even then that may be extending the scope of expert testimony, which is only for the purpose of defining terms in the art and matters similar to that. But I think the objection is now well taken that you should first ask what steps he took or what process he followed in order to get this result. Whether the question will then be admissible is another matter. I am inclined to think that I would admit it then, resolving the doubt in favor of putting the testimony of record. I do not think this question can now be supported by the principles of evidence.

Now, you may put your answer of record under our general rule, precisely as Colonel Anderson did with Mr. Parmele's answers.

Mr. Kresel: No, I simply wanted to direct your Honor's attention to the fact that the witness has already said that after following out the two methods described in the patent and after getting this tarry substance he took other steps. So that really the question now is simply a sort of summation of what he has already said, and therefore I do not think it is very material. If your Honor feels it ought not to be asked now I will not go into it.

The Court: Well, I think it should not.

Q. 164. Dr. Volwiler, can you state how long the Abbott Laboratories spent in developing this method of making cinchophen?

A. I can, approximately.

Q. 165. Will you state?

A. About a year and a half to two years.

Q. 166. And can you state approximately the cost involved in the research and plant, if any plant was necessary for the purpose?

Mr. Anderson: I object.

The Court: Your answer to that is yes or no.

Mr. Anderson: He may say whether he can state; but I object to that line of testimony, of course.

Q. 166. Can you state? Just say yes or no, please.

A. Yes.

Q. 167. I will ask you to state how much was spent by the Abbott Laboratories in special plant or research or both, in developing this method that you have described of making cinchophen.

Mr. Anderson: If your Honor please, we object on the ground, first, that it does not appear when this thing was done and does not appear that this gentleman was in any way connected with the Abbott Laboratories when they did it. It does not appear that he is an accountant, does not appear that he made the expenditures, does not appear that he has any primary knowledge of any of the facts upon which the claim of cost is predicated or that he is capable of testifying on that subject.

I make the objection also for the further reason, reserving the point, that as I understand objection was made to similar testimony of other witnesses which I myself was undertaking to introduce. If the objection to that testimony should be sustained finally, then I would want this to go out also. Therefore, I reserve the point on that question until the Court is ready to rule on the admissibility of that evidence.

The Court: I am not sure that I have clearly in mind the specific point to which you are now referring.

Mr. Anderson: The point is that I asked one of the witnesses what he had expended in the development of this process. It was objected to. Your Honor has not ruled on any of these questions, and I want to reserve those questions. Of course, if I had your Honor's ruling I would know whether to object or not.

The Court: If I have in mind the point to which you refer, it seems to me it presents a different question.

Mr. Kresel: May I recall to your Honor what the point is. Mr. Parmele was asked to state how much he had spent in advertising his trade-mark.

The Court: Yes. I think I have it in mind. I think that presents a slightly different question.

Mr. Anderson: I simply want to reserve that point. I think that evidence, when properly proved, is admissible; but if any goes out I want all to go out.

The Court: You want the evidence of both sides to stand or fall together?

Mr. Anderson: That is it. That is the reason I make the objection.

Mr. Kresel: Of course, I will show the date when——

The Court: I assume you are going to follow this up with the date; are you?

Mr. Kresel: Certainly.

The Court: I think the other objections are not well taken, because he says he does know. I will ask the witness now to tell actually what he does know. Just state, Dr. Volwiler, actually what you do know, not hearsay or other information but from your own knowledge. You may take the answer, Mr. Kresel.

A. The research cost a little over $17,000 and the equipment something over $10,000.

Q. 169. Will you state what period was covered in the research?

A. That began early in 1918 and extended into 1919.

Q. 170. During that period were you or were you not employed by the Abbott Laboratories?

A. I was not during the first few months of the research, but I was through the greater part of it.

Q. 171. Did you or did you not have part in the research work?

A. I did.

Mr. Kresel: I think I have asked him all the questions on that.

Q. 172. Is there such a product as neocinchophen?

A. There is.

Q. 173. Have you the patent or a copy of the patent covering that product?

The Court: Is that one of the defendant's patents?

Mr. Kresel: Yes, all of these I am asking about, your Honor, are the defendant's patents.

A. I have (handing counsel).

Mr. Kresel: I offer that in evidence.

The Court: Mr. Kresel, is it your purpose to inquire before you ask about this the nature of the impurities—I do not mean the nature, precisely, because he said they were tar impurities; but I do not know whether that is a detriment or affects the product in utility or in value.

Mr. Kresel: I will ask the question. I thank your Honor for the suggestion.

Q. 174. Dr. Volwiler, of course we are not chemists and we do not know about these things. You say that the product that was produced in following out the steps described in the patent was a tarry substance. First I want to inquire whether that was the only trouble with it, if I may so term it, and, if not, will you state all of the imperfections, and then will you state in what respect those imperfections interfered with making this a salable product? Do you understand?

A. Yes. If the cinchophen had been obtained by this method in theoretical quantity there would have been no tar, because the tar indicated the reaction had gone in a direction that would give something that was not wanted, some impurity, which was the tarry product, and the more of this tarry product that was obtained, of course, the less cinchophen was obtained and the higher the expense of producing it. The tarry product, moreover, when present in cinchophen, raises the toxicity or poisonous character of the product and of course makes it difficult to handle. No manufacturer would handle cinchophen with the tarry product in it; it would spoil the product. But we did test the tarry product to find out how much damage it would do if a small amount were in there, and we found it to be considerable more toxic than cinchophen itself.

By THE COURT:

Q. 175. What is cinchophen used for?

A. Gout and rheumatism.

Q. 176. And neocinchophen?

A. For the same purposes.

THE COURT: We will assume that all my questions and those of Mr. Kresel are objected to.

MR. KRESEL: This patent that I am now offering is patent No. 1,045,759, issued November 29, 1912, to Albrecht Thiele of Berlin.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 153." (*See Patent Exhibit Book.*)

By Mr. Kresel:

Q. 177. Now, Doctor, the specifications in this patent which I shall read to you are as follows:

> "This invention relates to the manufacture of the ethyl ester of 6-methyl-2-phenylquinolin-4-carboxylic acid which is useful in the treatment of gout and articular rheumatism. . . . It crystallizes in white needles and melts at about 76 degrees centigrade by slowly heating and dissoluble in alcohol, ether and benzine and forms salts with acids.
>
> "The new product may be obtained by esterification of the 6-methyl-2-phenylquinolin-4-carboxylic acid, for instance, in the following way:
>
> "Dry hydrochloric acid gas is passed for some hours through an ethylalcoholic solution of 6methyl-2-phenylquinolin-4-carboxylic acid saturated in the cold with hydrochloric acid. The solution is precipitated with water, extracted with ether, and the residuum of the ethereal solution re-crystallized from alcohol."

Q. 178. Did you or did you not take the steps that I have just read?

A. We did.

Q. 179. Will you state what resultant product there was after you had followed out the specifications as I read it to you?

A. We obtained neocinchophen.

Q. 180. In what form did you obtain that product?

A. It was not in a pure form.

Q. 181. In what way was it impure?

A. It contained other products which were not neocinchophen.

Q. 182. What were those other products?

A. We do not know.

Q. 183. Did you test the product and find the impurities that you have spoken of?

A. Certainly.

Q. 184. Could the product in the form that it was produced, following out the specification that I have read, be used for the purposes for which neocinchophen is used in medicine?

Mr. Anderson: I object to that.

Mr. Kresel: I withdraw it.

Q. 185. You have already described the effect of the impurity of cinchophen. I would like you to describe in the same way the effect of the impurities in neocinchophen that you say you found.

A. Chemically, it causes the product not to conform with the standards which have been laid down for neocinchophen; so that it would not be a salable product with the impurities in it.

Q. 186. When you speak of standards that have been established, what are you referring to?

A. In the first place, certain products are accepted under certain specifications by the United States Pharmacopœia. Other newer products are passed upon by the Council on Pharmacy and Chemistry of the American Medical Association and each product of each manufacturer which comes under their list must conform to their specifications.

Q. 187. And did this product that you have described as having obtained after following out the specifications in this neocinchophen patent, as I have read to you, conform or did it not conform to that standard?

Mr. Anderson: I object, if your Honor please, If there are specifications required by the American Medical Association, or any other body which has passed upon this matter, they are specifications in writing, of course, and therefore the specifications must be produced. The witness can testify what he got and produce the specifications, and it is for the Court to determine and we must have an opportunity to investigate as to whether or not it complies with those specifications. He cannot state his conclusion upon it.

Mr. Kresel: On the contrary, your Honor, we are not obliged, upon a collateral matter of this nature, to produce the writing. Such writing is open to counsel for the Government as well as counsel for the defendant. This witness, as an expert, is entitled to state whether or no the product that he obtained conformed to the standard. The standard is not something that we can vary or that the Government can vary. It is a matter, I should think, of which even the Court would take judicial cognizance, a matter that we do not have to put in any writing about.

The Court: Is it your purpose to show wherein it varied and how it varied?

Mr. Kresel: I am going to follow that up.

The Court: Then that will give to the Government the facts necessary for a complete cross-examination. I overrule the objection.

Mr. Kresel: Will you read the question, please?

(Q. 187 repeated as above described.)

A. It did not.

Q. 188. In what respect did it differ from the standard?

A. The melting point was low; the solubility was not right. Those are the only two things that I remember now.

Q. 189. Doctor, when did the Abbott Laboratories undertake to manufacture neocinchophen as you have described?

A. We began research early in 1922.

Q. 190. And how long did your research continue?

A. Five or six months.

Q. 191. Did you finally produce a product neocinchophen which could be sold?

A. We did.

Q. 192. In what respect if any, did the method that you followed in producing an acceptable product, differ from the method described in the patent, as I read it to you?

Mr. Anderson: The same objection, and for the reason stated in a similar question preceding.

The Court: I do not believe that it is the precise question.

Mr. Anderson: Then I will state my objection, if your Honor please.

The Court: My thought is this: You have indicated your objection, but is this the same question; namely, he is asking now in what respect?

Mr. Kresel: I am asking him for the steps, the differences. I am asking for the facts.

The Court: That is different. This does not call for the conclusion as the other did.

Mr. Anderson: I do not recall the question. The discussion has put the question entirely out of my mind. I cannot recall it. Can the question be read?

(Question repeated). If the witness is going to say what he did to purify the product, or whatever he was trying to accomplish, the steps that he took in detail, in response to that question, if that question calls for that, then, I do not think the form would be objectionable, subject to our general objection, but if he is not going to state those details, but merely going to state his general conclusions as to the difference in his method and somebody else's method, then I think the question is objectionable.

The Court: I rather thought that this question called for the facts, that is, stating in addition to the steps which he says he took in producing this impure neocinchophen, or whatever it is, he took an additional step, or he took one step else, or whatever it was, and it seems to me he can do that by comparison without necessarily stating in detail each step, because you are referring to something in which the steps may be made certain. I overrule the objection.

Q. 193. Will you answer?

A. In the method given in the patent, it gives no description how to prepare the intermediate which is esterified to go in the neocinchophen. In the first place, we had to work out a satisfactory method for preparing that intermediate.

Q. 194. And what was the intermediate?

A. That is 6-methyl-2-phenylquinolin-4-carboxylic acid. In the second place, the method of esterification was not satisfactory, as I so stated, because it involved the use of gaseous hydrochlorid acid, for one thing. It was long drawn out, and it did not give a satisfactory yield. That step we had to change; but if your Honor please, I should prefer not to state what step was substituted for that, because that is one of our commercial secrets.

Mr. Kresel: Still, if the Government insists, I am going to ask the witness to state the step.

Mr. Anderson: The Government is going to come very near insisting.

Mr. Kresel: The Government is going to come very near insisting—very well then.

The Court: Just a minute, Mr. Kresel. Why are we concerned in this suit by asking as to what steps or by what process a certain product is obtained? Are we not limited to the inquiry as to whether or not these steps, as laid down in the patent, or disclosed in the patent, will produce a commercial, pharmaceutical product? Are we not going afield in making the inquiry as to what steps were taken in producing a product, what they call cinchophen?

Mr. Kresel: In my view your Honor, all that it is relevant here is to show, if the defendant can show, that the method outlined in the patent is not a workable method.

The Court: It seems to me that is all we are concerned with.

Mr. Kresel: That is all I proposed to offer.

Mr. Anderson: That may be all that the defendant is concerned with, but the plaintiff has a good deal more concern in the matter. The object of this evidence is obvious, to try to show that that is not a workable patent. Now, this gentleman testified that he has produced this stuff, whatever the name of it is, and he has produced it in a commercial product and sold it in the market, that he has used this patent, but he has had to try other additional methods. Now, that is practically an infringement suit, that is what it is. In other words, if we show that that method that he used is nearly a slightly different or equivalent method of arriving at a product which is covered by that patent, or if we show that this patent is simply a slight improvement or a slight change——

The Court: If you can show that.

Mr. Anderson: That is exactly the point—on this patent; then we have got a right to contend and will contend that all he is doing here, is taking this patent, which is owned by a corporation of which he is a stockholder and which has never taken any trouble to enforce its rights against him, and never will, and proceeded to make this product, and prevent the payment of royalty, by simply modifying the process slightly, and then claiming that it is not under the process, and it goes to two things: One is that the process that he is varying is the same process, and therefore we have got to know what his process is. We cannot take his opinion as to whether it is the same process or not. We want to know exactly what he is doing all the way through; and in the second place it goes to the value of these patents, both of which are very material.

The Court: As to the first point, Colonel Anderson, if the processes of the patent, when carried out, will not produce a satisfactory result, then there is one of three things. There is either no invention in that patent, there is an insufficient disclosure, or a deceptive disclosure. An invalid patent cannot be infringed. Now then, the testimony so far will show invalidity, I take it. Unless you upset invalidity, or nullify invalidity, then you cannot get infringement, can you? I do not see how the answer to this inquiry will be material, unless you assure me that you are going to establish affirmatively invalidity; or is it your contention that this inquiry would establish an invalidity?

Mr. Anderson: My first contention would be that the inquiry itself will establish validity, but in the second place we are going to show validity; and in the third place, we want to know what this gentleman did, when he claims that he made this product, so that we can show that it does not affect the validity, as a matter of law.

Mr. Kresel: I do not believe, your Honor,

that the validity can be affected one way or the other by what this gentleman did to produce a product.

Mr. Anderson: That is a matter of law and can be argued either way.

Mr. Kresel: You can either show that he is not the proper kind of a chemist to carry out the steps set forth in the patent and that somebody else carrying out the steps did get the result, or else you have got to take what he says on the subject.

Mr. Andesrson: I certainly will not take what he says on the subject.

Mr. Kresel: I do not believe that it is proper, for the benefit of gentlemen that are close to the prosecution here, that the processes of rivals should be disclosed. However, we are entirely subject to your Honor's ruling in the matter. From our point of view, it is immaterial just what additional or other steps this witness took to produce the product. If it is true that following out the steps of the patent an impure product is produced, that is sufficient. I therefore do not propose to ask him any further questions upon that subject. If counsel on the other side desire to raise it on cross-examination, I think your Honor will then rule.

The Court: The witness may answer.

The Witness: Your Honor, I do not think the question of validity or infringement enters into this question at all. It is a product patent; so that no matter what new process we use, we would have to pay royalty under the patent anyhow.

Mr. Kresel: So that question, it seems to me, is disposed of.

Mr. Anderson: I have great respect for the witness's opinion both as a chemist and as a lawyer, but I want to conduct this case on my own theory.

THE COURT: I thought the witness was going to speak with respect to the steps taken. The question is not now before me if it is withdrawn.

Q. 195. Now, Doctor, on this neocinchophen how long did you say your research took?

A. About six months.

Q. 196. Can you state the cost thereof? Just say yes or no, please.

MR. ANDERSON: Same objection, sir, as to the preceding questions on this subject.

A. Yes.

Q. 197. Do you know what it was?

A. I do.

Q. 198. Did you take part in the work?

A. I did.

Q. 199. Will you state how much it cost the Abbott Laboratories to prosecute that research work?

A. For research $10,128.

Q. 200. I have one more that I want to inquire about, Doctor, and that is a substance called acriflavine. Have you a copy of the patent covering that?

A. I have.

Q. 201. Will you produce it?

A. (Witness hands paper.)

MR. KRESEL: The witness produces a patent No. 1,005,176, dated October 10, 1911. I shall offer it in evidence. Do you want to see it, Colonel Anderson?

MR. ANDERSON: Have it marked and I will look at it afterwards.

Received in evidence and marked "Defendant's Exhibit No. 154." *(See Patent Exhibit Book.)*

Q. 202. While the Clerk is marking that; is there another product called proflavine, or is it the same product as acriflavine?

A. It is not the same, but it is a kind of a switch from the process for making acriflavine, where you go off to one side one step and get proflavine. It is a related product.

Q. 203. What is acriflavine used for?

A. It is used as a general antiseptic.

Q. 204. And proflavine?

A. For the same purpose.

Q. 205. Is there a separate patent covering proflavine?

A. No, there is not.

Q. 206. This patent covers both acriflavine and proflavine?

A. I doubt whether proflavine is really a patentable product.

Q. 207. At all events, this is the only patent covering this drug, whether it is in the form of acriflavine or proflavine?

A. Yes, it is.

Q. 208. Are you familiar with the specifications in that patent?

A. I am.

Q. 209. Have you personally followed them out?

A. I have.

Q. 210. When?

A. I think it was—I know it was in the spring of 1920 when we started.

Q. 211. How long did your research last?

A. Over a year.

Q. 212. And how many men were engaged in it besides yourself, if any?

Mr. Anderson: Will you wait just one minute?

Mr. Kresel: Certainly.

Mr. Anderson: I wish to reserve the question by noting an objection to the evidence of these experiments in patents transferred to the Chemical Foundation in 1919, which took place in 1920, 1921, 1922 and 1923, on the ground that those facts were not known to the Chemical Foundation at the time of this purchase and could not affect the value in any way. I merely want to reserve the question. I can see that there are arguments on both sides. I merely want to note it to the end that a motion to the proper effect may be made at the proper time if I so decide.

(Q. 212 repeated as above recorded.)

A. One in research continuously, and at various times, several others.

Q. 213. Do you know the cost to the Abbott Laboratories of this research work?

A. I do.

Q. 214. Will you state what it was?

Mr. Anderson: Objected to on the same grounds as above.

The Court: The same ruling.

A. Research, $12,162; equipment, $2000.

Q. 215. Please state what result you obtained upon following out the specifications in the patent now in evidence.

Mr. Anderson: I object on the ground that he must state what he did.

I think that is based upon the statement that he took the several steps called for in the patent. It seems to me that if you have any doubt as to whether he took those steps, that would be proper cross-examination. I am only giving my impression.

Mr. Anderson: I will just note the objection. If it is not well taken, I will not press it anyhow.

Q. 215. (continued). Will you state?

A. We never obtained any.

Q. 215a. Any what?

A. Acriflavine or proflavine.

Q. 216. In the matter of taking out licenses under patents by the Abbott Laboratories, what if anything have you to do with that?

A. It is up to my department to investigate the methods covered by the patent, the products obtained therefrom, the yields obtained, the cost of producing them, and to make recommendations as to whether that patent would be a desirable thing for our company to operate under.

Q. 217. Do or do not the same considerations apply with reference to purchasing patents?

A. They do.

Q. 218. You stated on Friday that on three different occasions you had examined the list of drug and pharmaceutical patents that had been sent out by the Chemical Foundation. Will you state whether your company took out any licenses from the Chemical Foundation following your examination of the list.?

Mr. Anderson: I object, if your Honor please. The question of what licenses were taken out by the Abbott Laboratories is a matter of record here, and the evidence on that subject, as to what they took out.

Mr. Kresel: I did not ask him what they took out, but whether they took out any.

Mr. Anderson: I beg your pardon. There is evidence here that they did take out licenses—written evidence put in by the defendant that they took out licenses.

Mr. Kresel: The written evidence being in, is it still objectionable for me to ask this witness?

Mr. Anderson: Whether they took out licenses?

Mr. Kresel: Yes.

Mr. Anderson: I think so. I think you have got to prove what licenses passed between the Chemical Foundation and the Abbott Laboratories by written evidence, by the licenses themselves.

The Court: Is this an ultimate question or a preliminary question?

Mr. Kresel: It is a preliminary question.

The Court: I can see its usefulness as a preliminary question. I will overrule the objection.

A. May I have the question again, please?

(Question repeated.)

A. They did following the first examination, I know.

Q. 219. Do you know how many?

A. Two, I know.

Q. 220. And on what patents?

A. Acriflavine and neocinchophen.

Q. 221. Did you subsequently make any other examination of this list of patents held by the Chemical Foundation to determine whether you would take other licenses?

A. We did.

Q. 222. And did you take any other licenses?

A. We did not.

Mr. Kresel: That is all. You may examine, Colonel. But pardon me a minute. Doctor, you told me this morning you wanted to make some correction in your testimony of Friday. May the witness do so now, your Honor?

The Court: Yes.

The Witness: In the evidence that I gave Friday on page 3280, in answer to the question concerning salvarsan, "And is it possible or can the product be produced with the information that is contained in the patents" my answer was "No." I should have answered that more accurately, probably, if I had said from the commercial standpoint, considering yield obtained and quality, satisfactory quality, no. Undoubtedly some small quantities of material would have been obtained. My intention was not to say that none could be obtained, but that from a commercial standpoint it would not have been satisfactory in yield or quality.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 223. Doctor, what plants have the Abbott Laboratories? And where?

A. A plant in Chicago, a plant in Philadelphia, and some manufacturing is done at Toronto, Canada.

XQ. 224. Have they any abroad?

A. No.

XQ. 225. Do they import any of their products?

A. Naturally occurring products, yes.

XQ. 226. Do they export any of their products?

A. Yes.

XQ. 227. They sell throughout the United States?

A. Yes.

XQ. 228. And ship to various points and to practically all the cities in the United States, do they not?

A. Yes.

XQ. 229. What you have said in regard to the extent of their trade and business applies to salvarsan and novocaine and other products made under licenses from the Chemical Foundation or the Federal Trade Commission, does it not?

A. It does.

XQ. 230. How old are you, Doctor?

A. Thirty.

XQ. 231. When did you graduate in chemistry?

A. I got a Bachelor's degree in 1914.

XQ. 232. At what place?

A. Miami University.

XQ. 233. Miami University in Ohio?

A. Yes.

XQ. 234. Will you tell me again just what you did from 1914 on, giving the years and the place?

A. In the Fall of 1914 I went to the University of Illinois as graduate student in chemistry and candidate for the Master's degree. I stopped there in connection with my work during the following year and during the two following years and during each intervening summer. I would like to make a statement. The University of Illinois carries out the preparation of organic chemicals which are not available in this country and in that work there are always from ten to twenty men employed who make the preparations and they are sold throughout the country not only to universities but to all manufacturing concerns. I worked at that one summer and the two following summers I had charge of the work; I was in immediate charge of the work. In 1918, I received the degree of Ph. D.

XQ. 235. You were an instructor then in the University of Illinois during the latter part of your service?

A. Not the last year. The last year I was on a fellowship and did no teaching.

XQ. 236. Then you were a student there really in the work which you have indicated up to 1918; what time in 1918?

A. Up to the fall of 1917. My last school year there started in the fall of 1917 and lasted until the spring of 1918.

XQ. 237. Now then, when you left the University of Illinois, you went to the Abbott Laboratories?

A. I did.

XQ. 238. At what time did you enter that service?

A. May 27, 1918.

XQ. 239. What was your position?

A. Operating chemist in the factory.

XQ. 240. State just what you did as operating chemist, will you?

A. At that time the Abbott Laboratories had just undertaken or were just considering the manufacture of a number of these synthetic medicinals and since they came together largely, there was a great deal of work connected with that, not only on the research side but in developing them in the plant and bringing them up to the scale of manufacture in commercial quantities. My work was to carry that through to a commercial scale and to see that they were actually developed on a satisfactory commercial basis.

XQ. 241. How many men were engaged in that work in the Abbott Laboratories?

A. In the plant at that time we had about thirty men, 25 to 30 men.

XQ. 242. You were one of thirty men engaged in that operating work in the Chemical Department, were you?

A. Yes.

XQ. 243. How long did you occupy that position?

A. About a year.

XQ. 244. Then what was your next position in the Abbott Laboratories?

A. Research chemist.

XQ. 245. What was your particular work in that connection?

A. My work was to help iron out difficulties which were given to us by the plant. Of course, a number of these products that we were manufacturing at that time or trying to manufacture were by no means satisfactorily worked out and there were research problems as well as plant problems hanging over and most of our problems at that time were concerned with those difficulties. Then in addition to that we took up new products or original research on new products that had not been worked on before.

XQ. 246. That is true of all business, is it not, that it requires constant technical development and research for manufacture in satisfactory form, is it not?

A. I am acquainted with only the chemical business.

XQ. 247. It is true of the chemical business, however, in all plants?

A. Yes.

XQ. 248. How long did you stay in that position as research chemist?

A. About two years.

XQ. 249. That brought you down to 1921?

A. That is right.

XQ. 250. How many research chemists did the Abbott Laboratories have?

A. It varied at different times. About five.

XQ. 251. So you were one of five chemists engaged in what you call ironing out the difficulties in the development of these various products into commercial fitness; is that true?

A. Yes.

XQ. 252. The questions were referred to you, as I understand it, by the Laboratories, you and your associates? Where a little difficulty would arise, they would have you make the research necessary to remedy or overcome that difficulty; is that true?

A. Yes, sir.

XQ. 253. In 1921, what did you become?

A. Chief Chemist.

XQ. 254. As chief chemist, what did you do?

A. I directed the research of the other men. New problems that need solving as well as the problems that come in relation to difficulties in the plant are referred to me and I give them to the men and supervise their work. Once in awhile, if I happen to have a litle spare time, I do some laboratory work myself.

XQ. 255. Up to 1921, your work was purely laboratory work?

A. Not purely, no; although almost entirely.

XQ. 256. Almost entirely laboratory work?

A. Yes.

XQ. 257. Since you have become chief chemist, you direct the laboratory efforts and the chemical efforts of the other chemists employed in the positions that you indicated you formerly occupied?

A. That is true.

XQ. 258. How many men are employed in the laboratories at Chicago, do you know? I mean in the whole business.

A. Do you want me to include men and women in that?

XQ. 259. Yes, I use the term "men" in the generic sense.

A. About 300.

XQ. 260. Your dealing, as I understand it, is with about thirty-five of that 300, is it not? You said about thirty of these young chemists and about five of the research chemists?

A. Well, as far as the actual chemical work is concerned, that is true. But, of course, my dealing with my superiors and associates in other departments is in addition to that.

XQ. 261. Has the Abbott Laboratories a sales department?

A. Yes, sir.

XQ. 262. Has it what we call a commercial department, that deals with its commercial business?

A. Yes, sir.

XQ. 263. Could you state generally into what departments the business is divided?

A. The sales department, advertising department, commercial department, veterinary department, biological department, accounting department, credit department, various manufacturing departments, pharmacological department. Those are some of the departments.

XQ. 264. And have they a pathological department for tests in addition to that?

A. Yes.

XQ. 265. Outside of your dealing with your superiors, getting instructions, and with your executive officers and so forth, your work at present is in charge of the chemical department?

A. Yes.

XQ. 266. Strictly research chemical department?

A. Yes, and correlating its efforts with those of other departments.

XQ. 267. Now Doctor, you have told me fairly your experience as a chemist, have you not?

A. I have.

XQ. 268. Had you ever been in business before you became a chemist, or have you ever been in business since you became a chemist except in the manner you have indicated?

A. I have held other chemical positions, but I have never been in business for myself.

XQ. 269. You are strictly a scientific and not a commercial man, as I take it?

A. That is right.

XQ. 270. You stated you had been in other business. Have you ever been in the industrial business at all? I mean industrial as distinguished from the scientific or technical chemical business?

A. No.

XQ. 271. You spoke of novocain as a drug being largely used throughout the world as a local anesthetic?

A. Yes.

XQ. 272. Its use has increased very rapidly, has it not

A. I do not think it has in the last few years, although I have no——

XQ. 273. You have no knowledge on that subject?

A. No.

XQ. 274. It did increase very rapidly up to the last few years, did it not?

A. I think so.

XQ. 275. When was it first put on the market, do you know?

A. About 1906. It was patented and was put on the market in Germany about the same time and I understand it was brought into this country soon afterwards.

XQ. 276. It was very largely used in this country prior to the war, was it not?

A. I do not know.

XQ. 277. Well, you know when you became a chemist it was in very extensive use, was it not?

A. I could not speak of the extent of its use. I had heard of it, but I do not know about the extent of its use.

XQ. 278. But it had been on the market both in Germany and in this country substantially since 1906?

A. That is right.

XQ. 279. I will ask you to take Patent No. 812,-554, which has been spoken of here as the novocain patent and say if you follow the process indicated in that patent what you produce?

A. We produce novocain.

XQ. 280. It is novocain?

A. Yes.

XQ. 281. And I think you testified on Friday that procain and novocain were the same things, only different trade names of the same product?

A. That is correct.

XQ. 282. Then if you follow the process indicated in that patent, you would also produce procaine?

A. Yes, sir.

XQ. 283. Now I will ask you to take the patent which has been spoken of here as the Adams Patent No. 1,260,289, Plaintiff's Exhibit No. 151, and tell me if you follow the process therein outlined what you produce?

A. Produce an intermediate which can be used to produce procaine.

XQ. 284. What is the intermediate?

A. It is a gamma-bromæthyl—I will have to refer to this (referring to patent). It is a beta-bromœthyl ester of para nitrobenzoic acid.

XQ. 285. Then you do not pretend to produce either novocain or procaine under this patent?

A. No.

XQ. 286. Is not the patent No. 812,554, a product patent?

A. Yes, sir.

XQ. 287. Then as I understand it, Doctor, the patent which we call the Adams patent for convenience —you understand what I mean, of course?

A. Yes.

XQ. 287 (continuing). Is merely a patent for producing a certain intermediate which you subsequently use in the production of novocain or procaine under the other patent?

A. That is true.

XQ. 288. Now, I will ask you to take these two patents, and begin at the beginning and take each process, taking the so-called novocain patent or German patent first, and follow that process down, taking the first step and the second step, and tell me where the intermediate covered by the Adams patent comes in?

A. Yes. Colonel Anderson may I refer to the lines in these to simplify my references?

XQ. 289. Refer to it in any way that will simplify and help you in giving an answer to the question. What I want are the facts.

A. In line 36——

XQ. 290. First take up the first step, what I want you to do is to tell me——

Mr. Kresel: He is doing it I think.

The Court: Go ahead.

XQ. 291. Go ahead and I will correct if it is necessary.

A. I should say, first, that everything before line 36 in the German patent, is supplemented according to the Adams and Kamm method, by their patented method, and instead of using paranitrobenzoylchloroethanol, which is mentioned in the German patent, we used the paranitrobenzoic acid which is described in the Adams and Kamm patent, and the following steps then involved diethylamin, as given in the German patent and reduction.

XQ. 292. Now, Doctor, I have no doubt you have made it perfectly clear to a scientist, but not being one, I want to get it a little more definitely, so that an ordinary man can understand it if possible. You start out to make this stuff, that combination of two chemicals or three chemicals as the case may be, don't you?

A. Yes.

XQ. 293. When you first start in your laboratory making it, what are those chemicals?

A. You mean in the German patent?

XQ. 294. I mean in the German patent—I am going to make novocain with you.

A. Ethylene-chlorhydrin, and para-nitrobenzoylchlorid.

XQ. 295. Those are the two you start with?

A. Yes.

XQ. 296. Now, those are both mentioned in the German patent, are they not?

A. Yes.

XQ. 297. And you have not gotten to the use of your other intermediate you spoke of yet in the Adams patent?

A. No.

XQ. 298. Can you tell me what you get in the way of a resultant through putting those two together?

THE COURT: The German patent.

XQ. 299. Now, we are dealing with two German patents and chemicals, or whatever they are that you start with. What have you gotten now when you put those two together, and what is your reaction?

A. From those two you obtain para-nitrobenzoylchloroethanol.

XQ. 300. We have not come to the intermediate covered in the Adams patent yet? Now what is the next step, have you got that thing?

A. Diethylamin.

XQ. 301. Is that mentioned in the German patent?

A. Yes.

XQ. 302. The next step. You have not gotten that reaction from the first two chemicals; you had another mentioned in the German patent?

A. Yes.

XQ. 303. What did you get then?

A. You get the nitro base of procaine, that is, you are one step away from procaine.

XQ. 304. What is the next step?

A. The next step is the reduction.

XQ. 305. First, take the German patent and tell me what you use under that in the next step, adding it to what you produce, that is, having a nitro base, what would be the next thing you would add in the German patent?

A. The reduction is carried out with tin and hydrochloric acid.

X. 306. In the German patent?

A. Yes.

XQ. 307. Now, in the method you say you followed in the Adams patent, what did you do next?

A. We did not get that. They did not get that far in the Adams and Kamm patent, because it hitches onto the method given in the German patent, a little before that step.

XQ. 308. All right. What I have been trying to find out is how it hitches on and where. Will you go back and begin at the beginning, and hitch it on at the right place, and tell me what it substitutes for?

A. I mentioned before that in the German patent, by the combination of two chemicals, we get para-nitrobenzoylchloroethanol.

XQ. 309. That is the first combination you get

A. Yes. The Adams and Kamm patent is intended to replace that substance right there. That is where the essential difference comes in. Instead of that compound, the Adams and Kamm patent makes it of betabromoethelester and para-nitrobenzoylchlorid acid, and from there on, the process can be followed out as given in the German method, if so desired.

XQ. 310. And you get novocain?

A. That is satisfactory. Or by some modified method and it leads to novocain.

XQ. 311. In both instances you lead to novocain or procaine, as the case may be?

A. Yes.

XQ. 312. That being the same product?

A. Yes, sir.

Mr. Anderson: Is the novocaine patent introduced in evidence?

Mr. Galloway: It is my understanding.

The Clerk: I have not been able to find it yet. I have been looking for it.

Mr. Kresel: There is some doubt about that, Colonel, as to whether it is or not in evidence.

Mr. Anderson: I will go on now with the understanding that if it is not in, it will be introduced either by you or by myself.

Mr. Kresel: That is all right. Suppose you put it in now, and then if we find that it is a duplication, we will have it withdrawn. I think it is mine. Put that in as my exhibit, please.

Received in evidence and marked "Defendant's Exhibit No. 155," Patent No. 812554, dated February 13, 1906. (*See Patent Exhibit Book.*)

XQ. 313. Now, as I understand, Doctor, the original of what we call the German Patent or the novocaine patent, did not purport to cover any formula for the manufacture of what is it—ethylene-chlorhydrin—it did not purport to cover that, did it?

A. No.

XQ. 314. It simply assumed the taking of that as a known product?

A. Yes, sir.

XQ. 315. Now that particular chemical, whatever it is, was well known in the profession, was it not?

A. Yes.

XQ. 316. You spoke of the fact that as an intermediate, it was difficult to get in 1917 and 1918, I think because it was also used in making poison gas?

A. Yes, sir.

XQ. 317. There was trouble in getting it in 1919, was there not?

A. Probably not.

XQ. 318. And it had been known to the chemical profession in the United States certainly since 1906, when they began to make novocaine, had it not?

A. Yes.

XQ. 319. I want to ask you this question, and I am going to try to illustrate it, because not being a chemist, my questions may be very difficult for you. If you took a cookbook and went in the kitchen, and never made a certain food, and you make it strictly in accordance with the cookbook, do you always get a good food?

A. I do not suppose so.

XQ. 320. Well, now is it not true in chemistry, and am I right, that in all of the making of chemical products, a certain amount of experience and testing is necessary, even if you have the formula complete before you?

A. It is; and I would like to clarify that by saying that it depends, of course, upon the complexity of the compound you are making how many difficulties might arise. Each case is made very different from another case.

XQ. 321. In other words, in a very complex combination of chemicals, the chemist is himself often surprised at the reaction that he gets, is he not?

A. Yes.

XQ. 322. A slight variation in the molecular make-up of that chemical might vary the product, might it not?

A. Yes.

XQ. 323. And is it not true that one chemist may have the misfortune to get a poor result in a test, and another chemist making apparently the same test, with apparently the same products, gets a different result, a slightly different result? Is not that true in chemical laboratory work?

A. You are assuming now, Colonel, that they have directions before them, the same directions?

XQ. 324. I am assuming that they are working on the same formula and they are taking as nearly as they can get it, the same products, and yet they very often get varying reactions, do they not, in chemistry?

A. They do if the details are not sufficiently and clearly enough pointed out.

XQ. 325. I see; and I understand that is what you meant this morning when you modified your answer and said that it would be impossible for anybody to make salvarsan, for instance, on the salvarsan patent. You do not mean to say what is possible for chemists generally, do you? You do not claim omniscience in chemistry, do you?

A. No, I do not.

XQ. 326. I thought not. Even a young man does not claim that.

Mr. Kresel: He has not answered your question.

The Court: The question is still left. Of course he is not omniscient, but skilled in the art.

Mr. Kresel: Of course he said he was not omniscient.

XQ. 327. I do not mean to reflect on you in any way.

The Court: The question arising in my mind, Colonel Anderson, is simply this: If I understand at all about patents, a patent is supposed to speak not as to his omniscience, but merely to those skilled in the art; so it seems to me the inquiry that would help me would be, what the patents speak to those skilled in the art. I am only saying that so that you will not be taken by surprise if I should base a conclusion on that later; so that you may inquire as to that if you want to.

XQ. 328. You said that you got novocain in your experiments under what we are speaking of here as the German method?

A. Yes, sir.

XQ. 329. That in your experimentation it was, I believe you said, not of satisfactory purity, or impure. What steps did you take to purify it?

A. As I mentioned in the case of one of those other compounds, cinchophen, a little while ago, we tried every method that we could think of as available to us as chemical methods. We tried extraction. We tried recrystallization. We varied the methods used in the next-to-the-last step and in the last step, in order to try to avoid getting those impurities in. We probably tried dozens and dozens of different methods.

XQ. 330. And you got a pure product, did you not?

A. Yes, finally.

XQ. 331. You did get a pure product. Now, how did you get it?

A. You mean by following out the German method?

XQ. 332. Yes, after you followed out the German method and you said you got an impure product, what did you then do to get a pure product?

A. Extracting and recrystallizing again and again.

XQ. 333. And you got it purified?

A. Yes.

Mr. Kresel: Which product is this you are talking about?

Mr. Anderson: I am still talking about novocain.

XQ. 334. When you used subsequently the intermediate covered by the Adams patents, you got novocain, did you not?

A. Yes, sir.

XQ. 335. The same stuff that you got after you purified the original, was it not?

A. Yes, sir.

XQ. 336. And you got a somewhat improved yield by using this different intermediate?

A. Yes, sir.

XQ. 337. I believe you said that this was a product patent and it covered the product obtained by both chemical processes?

A. Yes, sir.

XQ. 338. You spoke of toxicity, which I understand to be, in simple language, a poisonous quality?

A. Yes, sir.

XQ. 339. Or poisonous element in the product. How did you remove the toxicity from the product which you obtained under the German patent?

A. By repeated crystallizations.

XQ. 340. In the method which you follow, using the intermediate covered by the Adams patent, at the stage which you have described, how did you avoid toxicity in that instance; what method did you employ?

A. The fact that that intermediate was used in itself caused the avoidance of the production of most of that toxic material. In the second place, of course, we purified the final product.

XQ. 341. You purified the product in both instances, did you not?

A. Yes. Of course, the final product has to be purified.

XQ. 342. Yes, has to be purified and refined. You manufactured in your experiments with this patent which I understood you to say you made in 1916 and 1918 in the University of Illinois—you manufactured there your own intermediate ethylene chlorhydrin?

A. Yes.

XQ. 343. You made your own ethylene chlorhydrin when you were making these experiments?

A. Yes.

XQ. 344. You did not get it on the market?

A. No. Well, we may have purchased some. We may have been able to pick up a pound here and there.

XQ. 345. Yes, but you had to manufacture that intermediate, which was specified in the German patent to be used in the process there outlined?

A. Yes, sir.

XQ. 346. And you did not manufacture that under the German patent, did you?

A. No, that is not covered by the patent.

XQ. 347. You do not know of your own knowledge how the original patentee of this patent made his ethylene chlorhydrin, do you?

A. No.

XQ. 348. You do not know at what stages of purity he used it in the making of novocain, do you?

A. No.

XQ. 349. Doctor, when was this intermediate which you speak of as being made under the so-called Adams patent put on the market, in the medical world of the United States?

A. Some time in 1918.

XQ. 350. About what time?

A. I think it was in the spring of 1918. There may have been very small quantities produced, a little, before that, but we had worked on the various methods so long that no considerable quantity was on the market until 1918.

XQ. 351. Do you know of any other manufacturer of novocain that used that product during 1918 or 1919?

A. I do not, no, but——

XQ. 352. You do not know of anyone else?

A. We were under the impression at the time that at least one other manufacturer was using the same method; but I do not know it.

XQ. 353. You do not know it?

A. No.

XQ. 354. So far as you know, then, the other manufacturers producing novocain, the number of which you have referred to on the former testimony I think as three, perhaps under Federal Trade Commission licenses, were producing novocain strictly in accordance with the German patent or process, so far as you know?

A. Not necessarily. That does not follow, Colonel Anderson.

XQ. 355. Probably you did not get my question. So far as you know they were so engaged?

A. So far as I know, yes.

XQ. 356. Doctor, you had no connection whatever with the accounting department of the Abbott Laboratories, did you?

A. No.

XQ. 357. I do not suppose you ever kept books in your life; have you?

A. I never have.

XQ. 358. Who purchased the supplies of the Abbott Laboratories?

A. Mr. Drack of the purchasing department.

XQ. 359. There was a purchasing department, was there?

A. Yes.

XQ. 360. He purchased not only the supplies used in manufacture and experiments, but also the mechanical supplies and equipment, did he not?

A. Yes, most of it. Some of the mechanical supplies were purchased directly and not through him.

XQ. 361. Can you state what of your knowledge was purchased directly?

A. Well, I could name the particular pieces of apparatus, but they would not mean anything as given here unless I could have them before me to identify them.

Mr. Kresel: Well, go on and mention them.

The Witness: Now, we——

XQ. 362. When you say "we" I wish you would use the personal pronoun "I" instead.

A. Yes.

XQ. 363. Because I want to know what you did, not what "we" did.

A. I purchased a drier and a still that were used in the manufacture of procaine, novocain.

XQ. 364. You did?

A. And I co-operated in buying other pieces of apparatus—kettles, autoclaves, stills, driers, centrifuges, and so on, which were used in such manufacture.

XQ. 365. The word "co-operated" is rather broad. Will you tell me just what you did?

A. We have a plant manager, of course, and it was my duty as chemist to help him in developing these processes on a commercial scale. We would discuss what was needed and go over each product and each process used in the various products, and decide what was needed, then order the apparatus.

XQ. 366. Through the purchasing agent?

A. Not always, no. Sometimes direct.

XQ. 367. What I am trying to get at is what you actually bought personally, contracted for personally, and what you purchased through the regular organization of the Abbott Laboratories.

A. I never purchased anything personally.

XQ. 368. You never did?

A. Whatever I recommended either went to the purchasing agent or to the superintendent, and was then transmitted to the manufacturer.

XQ. 369. And the superintendent or purchasing agent then gave an order to the manufacturer, the manufacturer sent the supplies, and they were installed; is that the idea?

A. Yes, sir.

XQ. 370. And then the bill would come in to the purchasing agent, go to the accounting department and to the treasurer for payment; is that it?

A. That is correct.

XQ. 371. You had nothing to do with those accounts that came in?

A. No, sir.

XQ. 372. Knew nothing of the bills or anything of that sort?

A. Not of the bills directly, only insofar as the prices were quoted to me or to the plant manager when we were together by the representatives of the manufacturers, so that I knew what was going to be charged for this apparatus before we ever placed the order.

XQ. 373. Doctor, who is in charge of the books of the Abbott Laboratories at Chicago?

A. Mr. Stiles.

XQ. 374. What is his full name?

A. James F. Stiles.

XQ. 375. What is his position?

A. He is head of the cost department.

XQ. 376. All accounts are kept under him, are they?

A. Well, he co-operates with the accounting department of which Mr. Wolff is the head.

XQ. 377. What is his full name?

A. I do not know his initials.

XQ. 378. Is he the auditor or chief accountant, or what is his position?

A. He is the chief accountant.

XQ. 379. Mr. Wolff?

A. Yes, sir.

XQ. 380. How do you spell his name?

A. He spells it Wo-l-f-f.

XQ. 381. Who has charge of the records of the chemical processes followed? I suppose you keep those records, do you not?

A. Yes.

XQ. 382. Who has charge of those?

A. Do you mean after they get out in the plant, in the actual commercial work?

XQ. 383. Yes, who has charge of those records when they are kept there in the file or among the records of the Abbott Laboratories?

A. I have a file of my own; the superintendent keeps a complete file and the manufacturing department keeps a complete file.

XQ. 384. If I went there to see that person, who would be the one I would have to see to get them and who would have charge of them?

A. I think my department is the only department that has a complete file.

XQ. 385. Of the processes of manufacture, the chemical processes and the results of your experimentation?

A. Yes.

XQ. 386. And all of those matters are matters of record in your office, are they not?

A. Yes, sir.

XQ. 387. You testified on your direct as to the costs of research work. Will you state the elements of cost upon which those figures were made up?

A. I was asked at the time not to include overhead.

XQ. 388. You did not include overhead?

A. So that I was figuring on the cost of materials, the pay of the men involved, and any apparatus that might have been used.

XQ. 389. In 1918 and 1919 you were one of the chemists at the works, were you not?

A. Yes, sir.

XQ. 390. Did you know anything about the cost at that time of the work of research going on in the laboratories?

A. I did.

XQ. 391. How did you know that?

A. Because those men were really working under my direction, although I was not chief chemist at the time. Most of that work, by the way, was actually carried out in the plant laboratory. The Abbott Laboratories at that time did not have much of a research department, as a distinct department or an entity in itself.

XQ. 392. I was speaking of the time you were working as one of those research chemists.

A. That included the workmen. They were not all chemists by any means.

XQ. 393. Doctor, did you keep up with the compensation paid to all those men?

A. I did.

XQ. 394. Did you keep up with the cost; did you know the cost of materials?

A. I did.

XQ. 395. How did you know the cost of materials?

A. One way was that the plant manager became sick, he had the influenza at that time, and I was put in charge while he was ill.

XQ. 396. That material was all purchased by the purchasing agent, was it not?

A. Yes, sir.

XQ. 397. And the accounts, as you stated, were kept by the accounting department?

A. Yes, sir.

XQ. 398. And the accounts of overhead were kept by the accounting department?

A. Yes, sir.

XQ. 399. You as one of the junior chemists among thirty in the chemical department, that is in the factory or the work department, knew of the cost and can speak of the cost entering into every item of this business—you think you can?

A. You mentioned overhead there.

XQ. 400. No, I mean the others. You can state the amount of cost, the amount this company spent during 1918 in research work?

A. I knew at that time what the chemicals cost, I knew what the pay of the men was, the workmen, and I knew what the pay of the chemists was, yes.

XQ. 401. Doctor, did you not when you came down here to testify go to the accountant and get a statement of it?

A. I did on the apparatus, the total apparatus.

XQ. 402. Did you not ask him to give you a statement of the amount expended in research of novocain?

A. Yes, but that included overhead.

XQ. 403. And you got the figures from the accountant of the accounting department, and you spoke the other day from those figures, did you not?

A. I did. However, the figure——

XQ. 404. Then will you tell the Court——

Mr. Kresel: Let him finish.

A. (Continuing.) The figures that I had here included the overhead and, as I stated the other day, I could not use those figures because they included the overhead, and therefore I could only make a rough estimate as to what the salaries and cost of materials would be.

XQ. 405. And you now undertake to state from memory and from your position as chemist in the work department of this laboratory, that you can tell the amount the Abbott Laboratories expended in research in 1918, in the development of novocain?

A. Roughly, yes.

XQ. 406. Roughly?

A. That is what I stated my estimate was.

XQ. 407. You think you can remember that, and you are one of thirty working in the shop?

A. Yes, sir.

XQ. 408. In the next place, when you were in the laboratory working as one of the five research chemists, and you were no longer in the shop, you still know how much the shop cost was of these investigations of your own knowledge?

A. By my conversation with the men in charge.

XQ. 409. Oh, by your conversation; what they told you?

A. Yes.

XQ. 410. Then your knowledge on that subject of the cost of research there was based on what they told you, was it?

A. Largely, yes. Sometimes I would see a record, but, of course, I could not see every record.

XQ. 411. But even the records that you saw, you did not make them up, did you?

A. No, that is up to the Cost Accounting Department.

XQ. 412. And your knowledge on that subject is derived from what they told you and from records that you saw?

A. Yes, sir.

XQ. 413. And as a matter of fact, doctor, did you not go to the Accounting Department to get that information before you came here?

A. Yes, sir.

XQ. 414. And you have never seen the books from which it was taken, have you?

A. Yes, sir.

XQ. 415. You have seen them?

A. Yes, sir.

XQ. 416. You have seen them there in the office?

A. Yes, sir.

XQ. 417. Have you ever checked them yourself?

A. No, sir.

XQ. 418. You have never entered a figure on them, have you?

A. No, I do not know enough about books to do so.

Mr. Anderson: I thought so.

Mr. Kresel: All of which was made perfectly plain on the direct, your Honor.

Mr. Anderson: I do not think so.

Now I shall call for the production of the books of the Abbott Laboratories; and I move to strike out all the testimony of this witness as to the cost of research work in the Abbott Laboratories until those books are produced.

The Court: That motion is a conditional one.

Mr. Anderson: Then I move it absolutely now, and remove the condition, and then call for the production of the books, because I want to know what they did spend.

The Court: I did not understand your last few words, Colonel Anderson.

Mr. Anderson: I beg your Honor's pardon. I was turning away from your Honor just then. I move to strike out the evidence of this witness as to the cost of research or other work in the Abbott Laboratories, for the reason that he is not competent to testify with respect to the same.

The Court: Does that include all his estimates of values?

Mr. Anderson: It includes his testimony as to the several items and the cost of research work to the Abbott Laboratories with respect to novocain.

The Court: My difficulty, Colonel Anderson, is this: The witness has disclosed that he has certain knowledge with respect to certain items, and that could not go out. Now, what I was trying to get at was whether you are attempting to separate the several items, and whether your application goes to certain specific items or to all of them?

Mr. Anderson: No, sir. My application is this: The witness did not segregate items in his testimony. He stated a gross sum in the cost of research work. It is perfectly obvious that he cannot testify as to a gross sum in the cost of research work, and therefore his evidence would be stricken out as a whole. If they wish to have him testify as to any specific items as to which it may appear that he has knowledge, why, then the question will arise when they undertake to introduce that evidence; but the evidence on the gross sum must go out, I submit. When I say "must," I mean, of course, I submit.

The Court: Have you anything to say, Mr. Kresel?

Mr. Kresel: Yes, your Honor, I have a good deal to say. To begin with, the cross-examination has touched only the item of research expense on novocaine. As to that the witness has testified that he had personal knowledge of what was spent for all items except overhead, and has stated that in giving the sum that he gave last Friday he excluded overhead. Therefore, as to the subject which counsel has inquired about on cross-examination, that is not subject to a motion to strike out because it is based upon the witness's personal knowledge. If counsel will develop on cross-examination that there is an imperfection in the witness's testimony as to the other items of research under the other patents, why, we will meet that situation when it arises.

The Court: In testifying a moment ago that he had no personal knowledge of certain items, was that overhead that he was talking about then?

Mr. Kresel: That was my understanding, and it was the overhead on novocaine.

The Court: I was laboring under the apprehension that it covered something else than novocaine. What was your understanding?

Mr. Kresel: Let the record be read. I may be wrong. Let Colonel Anderson state his understanding.

Mr. Anderson: I was speaking at the moment of novocaine, of his statement as to the cost of experimentation on novocaine. The witness testifies that the expenditures of the organization are made through the Purchasing Agent; that he discussed in connection with a few items, the question of machinery, what was the list price, whether they paid the list price or not, I do not know, and he does not apparently know.

The Court: He has not given the list price in his testimony at all, as I recall. But may I ask this, Colonel Anderson, because my impression is either right or wrong: He testified a moment ago that he had no knowledge with respect to certain costs and expenses save what he gathered from hearsay. What were the items which he was then referring to?

Mr. Anderson: The cost of shop work after he went into the laboratory. He was about a year and a half in the shop itself.

The Court: Was that embraced in overhead?

Mr. Anderson: No, sir; that is ordinary work in the shop, and shops service; daily work of chemists and laborers.

The Court: Was that item included in the approximate estimate that you gave on direct examination?

The Witness: Yes, sir, it was.

Mr. Kresel: Novocaine estimate; is that your Honor's question?

The Court: Yes. So that that, Mr. Kresel, does not apply to overhead. Your statement was based on a wrong premise, as I understand it. The witness says that what he referred to was not embraced in overhead, but was in one of the items the expense of which he gave in his direct examination. Does that change your views?

Mr. Kresel: May I ask the witness a question, because I haven't it clear in my own mind?

The Court: Yes.

By Mr. Kresel:

XQ. 419. Doctor, on Friday, you gave as an estimate of the cost of the experimental work or the research work on novocaine, I think you said about $35,000?

A. Yes.

XQ. 420. What did you include in that?

A. I included in that my estimate of everything up to the time that the manufacturing process was running smoothly; not only the actual research in the laboratory, but making a lot in the plant and perhaps losing 90 per cent. of it, and then making another lot and getting a better yield, and so on, until it was what we considered a satisfactory process.

XQ. 421. Did you or did you not in that item include overhead?

A. No. I did my best to eliminate all reference to overhead.

XQ. 422. As to the items that you did include in that $35,000, did you or did you not of your own personal knowledge know that those expenditures were made? And when I say of your own personal knowledge, I do not mean what somebody else told you.

A. No, I can not say that I did of my own personal knowledge because there were a considerable number of——

XQ. 423. That is sufficient. You do not need to go on to the because. Now, how much of that $35,000 did you personally know had been spent? Give us your best estimate.

A. My best estimate would be a very rough one, Mr. Kresel, because I tried to check up those figures before I came here, and did not know that I would be asked to segregate them. So that it is a lump sum. The greater part would certainly be involved in research.

XQ. 424. Let us take the question of salaries of the men. Do you know of your own personal knowledge what was paid in salaries?

A. I do.

XQ. 425. What is your best estimate of the amount that was spent on salaries?

THE COURT: Mr. Kresel, is that not more redirect?

MR. KRESEL: I am perfectly willing to stop now.

THE COURT: What have you to say as to the motion now pending?

MR. KRESEL: I do not think that the evidence has been shown to be grounded purely on hearsay and that, therefore, the motion should be denied. If counsel will develop what I am trying to develop now as to how much of this——

THE COURT: Is there not this question: We have a lump sum made up of a number of items. Now then, as soon as it is established that one item of uncertain amount is involved, does it not in effect destroy any evidential value that the lump sum may have?

MR. KRESEL: No. I am sorry that I have to differ with your Honor. It does not entirely destroy the evidential value of it. It may impair it, and that is what I was trying to develop by my examination now, and I shall reserve that for my re-direct; but I think that the motion is premature.

THE COURT: It does not destroy all of it; that is, there were some parts of the $35,000 as to which he says he knew of his own knowledge; but as it now stands, I do not know whether those parts as to which he knows of his own knowledge aggregate so much as one hundred or a thousand dollars.

MR. KRESEL: Quite right, and it seems to me that when both sides rest with this witness is the time when your Honor can intelligently pass upon the motion.

THE COURT: Then we will let it stay under the general rule, Colonel Anderson. I have indicated my views. We will take our morning recess at this point.

(A short recess was then taken by direction of the Court.)

XQ. 426. Doctor, I believe you said there were 35 men employed in the shop chemical work of the Abbott Laboratories while you were there?

A. I do not believe I said that, Colonel. I think I said from 25 to 30.

XQ. 427. How many different products were then under experimental investigation in this shop work approximately? I know you cannot remember the exact number.

A. Procaine, cinchophen, barbital—those were the three main ones at that time. Those were the three that were really giving us difficulty. The rest had been worked out pretty well before that.

XQ. 428. Pretty well before that, but are you not constantly taking up new products?

A. Yes, sir.

XQ. 429. With 25 or 30 men are you not constantly engaged in developing new processes in the Abbott Laboratories?

A. Yes, sir.

XQ. 430. And it is the same with regard to your research work; any matter in connection with the many products made by the Abbott Laboratories which arises, which gives as you call it, a rough place in its production is sent to the Research Department to be smoothed over, is it not?

A. Yes, sir.

XQ. 431. How many different products did you say the Laboratories made?

A. 1300. Of course, that includes every combination of products . Those are the pharmaceutical products that are sold.

XQ. 432. That are commercial?

A. That does not mean that we make that many products in the manufacturing plant.

XQ. 433. Those are the commercial products dealt in and sold?

A. Yes.

XQ. 434. If any question arises or any difficulty arises in connection with the production of any of those products or the testing of it, is it not sent in to the laboratory for such chemical action as may be required by your research chemists?

A. It is in the case of chemical products. Of course, we manufacture also biologic products with which the chemists have nothing to do.

XQ. 435. About how many chemical products do you manufacture?

A. I should estimate about in the neighborhood of fifty important ones. By that, I do not mean the combinations as they are sold, but I mean the actual chemical products which are manufactured in the plant, which are distinct products.

XQ. 436. Any of those matters coming to the office, I mean into the chemical department, are handled by your five research chemists, are they not?

A. Yes, sir.

XQ. 437. And if they go into the shop department for experimentation or development, they are handled by your twenty-five or thirty chemists, are they not?

A. Yes, sir.

XQ. 438. Now, Doctor, if you knew the salaries of each of these men, how would you apportion the salaries of these men among the various products which are investigated or under research?

A. Of course, some of the men spend all their time on a product. That is particularly true of the workmen. Then there may be one or two or three, as the case may be, chemists assigned to that job who for a certain period will spend all their time on that alone. Then the rest of the time, of course, would have to be apportioned according to the estimated period that the man put on it. For instance, a plant manager might——

XQ. 439. That is overhead, is it not?

A. It depends on how you class it.

XQ. 440. Suppose something were to come in and a man was working on one thing and it was necessary to get some test or chemical work done on another at once; would you hesitate to call him and put him on the other one, the urgent one?

A. Yes, if it is a research problem.

XQ. 441. You would put him right on it, would you not?

A. Yes.

XQ. 442. Now, Doctor, can you say of your own knowledge how the work and time and compensation of these chemists was apportioned by the Abbott Laboratories among the various branches of research being carried on, to each different product, I am not asking you what you have been told or from the books, but do you know of your own knowledge? Have you divided up that cost among those various products?

A. No, not necessarily the way it stands on the books.

XQ. 443. I thought you hadn't. That is a matter of accounting, is it not?

A. I would like to make a qualifying statement and that is what I know is about the time that each chemist or a certain number of workmen spent upon a certain process; and if they spent their entire time on it, I know that all that would be charged to that particular product.

XQ. 444. You do know that, How do you know that? How do you know it would be charged to that partcular product?

A. I know that is the system carried out by our company.

XQ. 445. In other words, that would be what you gained from the accounts, would it not, as to their method of charging?

A. I never entered it, so I could not say I put a figure down for procaine myself when I did the work.

XQ. 446. And even as to the amount of time spent if you were in the research laboratory and these chemists were working in the shop, you would have to estimate that would you not? You would not know what they were actually doing. You would have to estimate it, would you not?

A. Yes.

XQ. 447. In other words, if you were busy in the research laboratory, you could not act as timekeeper in the shop, could you?

A. That is true.

XQ. 448. Do you know the amount of product which was produced by the Abbott Laboratories? I am now speaking of novocain. And do you know the amount that was actuallly disposed of during this period of experimentation?

A. No, I do not.

XQ. 449. Is it not true that in all chemical or other factories of that nature, during the period of experimentation, a good deal of material may be produced which is of commercial value?

A. That is true.

XQ. 450. You do not know how much was produced of novocain during this year or more that you said it was in its experimental stage do you?

A. No, I do not.

XQ. 451. You would not know?

A. No.

XQ. 452. Now then, you do not know of your own knowledge what it was sold for, do you?

A. I do not remember.

XQ. 453. And you do not know of your own knowledge what was done with the proceeds of this product sold, assuming it to have been sold, do you?

A. Not to my knowledge, no.

XQ. 454. I believe you testified that so far as you knew there was no lack of intermediates in this country in 1919?

A. For what?

XQ. 455. For novocain. I am speaking of novocain.

A. So far as I know, yes. I do not know about it because we were not operating under that patent.

XQ. 456. You do not know whether there was or was not?

A. No.

XQ. 457. Your testimony as to lack of intermedi ates related to 1917 and 1918, during the period of investigation, did it?

A. Yes; 1916 to 1918, I should say.

XQ. 458. 1916 to 1918?

A. Yes, sir.

XQ. 459. I will ask you to look at that bottle and state if that is a package of novocain or procaine put up by the Abbott Laboratories.

A. It is.

XQ. 460. You are familiar with that type of package, are you?

A. I am.

XQ. 461. I read the label on the bottle as follows: "One ounce procaine." Will you read that so that the stenographer can record it?

A. Para - aminobenzoyldiethylaminoethanolhydrochlorid.

XQ. 462. Go ahead and read the balance of it.

A. List No. 1173, made under license No. 9 from the Federal Trade Commission, under United States letters patent No. 812,554.

XQ. 463. That is signed "The Abbott Laboratories, Chicago" on that label?

A. Yes, sir.

XQ. 464. And that is the label that you are putting on procain or novocain, the same stuff that you are now selling?

A. Yes, sir.

XQ. 465. And you are putting the label on that which you are manufacturing under the Federal Trade Commission license, under letters patent No. 812,554; that goes on all procain or novocain manufactured by the Abbott Laboratories, does it not?

A. Not any more, I think.

XQ. 466. When was this made?

A. I do not know.

XQ. 467. When did you stop putting that on?

A. I do not know. The reason I say that is that the patent has run out now.

XQ. 468. But you did as long as the patent lasted?

A. So far as I know. I do not know that I paid much attention to the label.

XQ. 469. You mean patent No. 812,554?

A. Yes.

XQ. 470. The patent ran out in 1923, did it not?

A. Yes, in February, 1923.

XQ. 471. Up to that time this was the label you used, as far as you know; I mean that the Abbott Laboratories used as far as you know, on procaine or novocaine manufactured and sold by them?

A. So far as I know.

XQ. 472. Now, Doctor, in regard to this novocain or procaine product, you were asked by counsel a couple of hypothetical questions, long questions, do you recall?

A. Yes.

XQ. 473. And among the conditions assumed by that question, it was stated that the owner of the patent or purchaser of the patent would be obligated to three things: (1) To give a free license to the United States to manufacture this product or have it manufactured for its own use; (2) would be obligated to issue non-exclusive licenses under said patent to any qualified American citizen; and (3) would be obligated to defend the patent and never have any more than six per cent return on its investment. You took into consideration those three elements when you answered that question, did you not?

A. I tried to.

XQ. 474. You took into consideration each of these three elements when you answered it, did you not?

A. Yes.

XQ. 475. Assuming the absence of the element of

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obligation to give a free license to the United States, to manufacture or have manufactured for its use, this product, and the absence of the obligation to give free licenses—I mean to give licenses to any qualified American manufacturer or American citizen, would that affect your ansyer in any way?

A. The only one that is left then is that there were three Federal Trade licenses oustanding.

XQ. 476. That is part of that. Please suppose I read the entire question to you—I do not want to take up your time, Doctor, based upon your general knowledge of the drugs and their manufacture, and your knowledge of the patents on novocain, which you have before you, and about which I gave you the number, the experience in attempting to produce under it that you have described; the lack of intermediates necessary for the manufacture of the product according to the specifications in the patent; the fact that the patent had only four years to run; the fact that the Abbott Laboratories were then producing the product, novocain, by a new method, not described in or covered by the patent, the fact that there were three Federal Trade Commission licenses outstanding, under which others were manufacturing the product, what in your opinion was the patent worth to a purchaser who by the terms of the sale to him would have been under obligation to give to the United States free licenses to manufacture said product, or to have it manufactured for its own use, which would be obligated to issue non-exclusive licenses under said patent to any qualified American citizen and would be obligated to defend the patents, and never to have any more than 6 per cent. return on his investment. Now, I have eliminated the assumed obligation to give a free license to the United States, and the assumed obligation to give licenses to any qualified manufacturer and left him with three Federal Trade licenses in the circumstances——

A. And the obligation to defend the patent——

Mr. Anderson: I am coming to that in a minute.

Mr. Kresel: Are you leaving out everything else?

Mr. Anderson: I am leaving everything else in but those two points. I am eliminating for the purpose of this question—just wipe out the assumed obligation to give to the United States a free license, and assume the obligation to license any manufacturer, and leave it with your right to the patent only subject to the three licenses stated, and the other conditions mentioned in the question, would that modify your answer?

The Witness: It might to a slight extent.

XQ. 477. It might to a slight extent. Now then, I will take the next one: Assume that the purchaser of the patent had the right to issue licenses under the patent, or not issue, that in his judgment was to his best interest, and assume that he had a right to fix the terms of the license, or to cancel the same in his discretion, would that modify your answer, leaving the other conditions as they stand?

A. It probably would to some extent.

XQ. 478. It probably would. Now, I will ask the next point: Assume at the time that the purchaser purchased these patents, this novocain patent, rather, there were three outstanding Federal Trade Commission licenses, and the purchaser would have the right, after peace was signed within one year, to go into Court, and have a fair license fee established for the remainder of the life of the patent, or if no money had been spent in the development of the business, to have the licenses cancelled, would that modify your answer, leaving the other conditions in the question?

A. That is now leaving everything out except that?

XQ. 479. That is, his right to go into Court, and have those licenses either cancelled, if nothing had been spent under them, but if anything had been spent under them, establish a fair and reasonable license fee by a Court?

A. Yes, it probably would. Each of these factors undoubtedly has a bearing, and each of them would have to be taken into consideration in placing a value to be given to the patent.

XQ. 480. Now, I will ask you another question, when the question was predicated and put to you there, you said the patent would be a liability instead of an asset; if the owner of the patent or the purchaser had the right to fix terms and conditions of the licenses and to cancel the licenses at will, then that would not be a liability would it?

A. You mean had to give a license, leaving everything else in—I want to understand the question.

XQ. 481. I am taking this question: Assuming all the facts stated in that question, except this, that there was no absolute obligation on the purchaser to give licenses, and further that if he did give licenses, he had a right to fix their terms and conditions, and to terminate them at will, then what would be your answer to that question?

A. It might still be a liability.

XQ. 482. In what respect?

A. Depending on the other factors.

XQ. 483. All right; what factor creates a liability; will you take the question in the record and point out to me the factor that creates a liability on the owner of that patent?

A. What page is that on?

XQ. 484. Page 3263 of the record.

A. In the first palce, the fact that we found it difficult to produce the novocain under the patented method.

XQ. 485. All right. I will stop there. Was there any obligation on you to produce novocain?

A. There was to a certain extent, at first.

XQ. 486. In what respect?

A. As the Government was very insistent and very anxious to have us produce it.

XQ. 487. Now, was there any obligation on your part to produce it, if you could not produce it in a satisfactory manner, as you state there?

A. Oh, no.

XQ. 488. All right. Then there is no liability on that, is there; there can not be a liability without an obligation, can there?

A. There could to this extent: Our experience had been gained at a certain cost, and that experience itself constituted a liability. We had spent money on it.

XQ. 489. If you had bought this patent in 1919, would the purchase of the patent have increased your liability, or if it had been transferred to you without any additional payment?

Mr. Kresel: Without any additional payment for what?

Mr. Anderson: For all the patent.

Mr. Kresel: In other words, you are assuming a gift was made of it.

Mr. Anderson: I will put the question this way, to meet Mr. Kresel's view——

XQ. 490. Let us assume that in April 1919, you bought this patent for $41.72, would the patent have created any liability on you?

A. It would have had a liability of $41.72.

XQ. 491. That is all is it not?

A. At least that.

XQ. 492. That is all you had already spent, this money you speak of, in experimentation?

A. Yes.

XQ. 493. It would not create that liability would it?

A. That is right.

XQ. 494. Then let us take the next one and point out what the liability was which the patent created, or the ownership of the patent would have created

A. I consider the fact that the patent had only four years to run might constitute a liability for this reason—may I explain?

XQ. 495. Certainly.

A. After the end of four years, a considerable number of other manufacturers might have come in, who, if I owned the patent and were manufacturing under it, might wipe out my business, and wipe out all the profits that I had made thereunder. You see my point?

XQ. 496. I see, in holding on. Let me ask you a question. You did not have to manufacture under the patent, if you owned it, did you?

A. No.

XQ. 497. Well then, there is no liability to create the profits or to have them wiped out, was there?

A. No, I presume not.

XQ. 498. Then your argument all drops through does it not; there is no liability on the patent as the result of the ownership of the patent?

A. Not on the patent.

XQ. 499. That is all you are talking about now. If you chose to manufacture and lose money, the patent was not responsible for it. Now, let us go ahead and find the next liability in it.

A. We would be obligated to defend the patents.

XQ. 500. Well, you did not have to defend them unless you licensed them or used them, did you?

Mr. Kresel: What has that got to do with defending them?

A. I do not know. That is a point of law.

XQ. 501. Suppose you just owned it and did not use it yourself, and did not license it, there would not be anything to defend?

A. Might you not have to defend your ownership?

XQ. 502. Defend your ownership, yes, but suppose you were not using it or licensing it, what did you have to do with the ownership? You could let the man take it away from you, if you wanted to, and lose your $41.72?

A. There again it would constitute a liability.

XQ. 503. That would be, then, the limit of the liability to defend in your view—would be $41.72, whatever it cost?

A. Of course, you might want to hand it back.

XQ. 504. But there would be no liability by virtue of the ownership of the patent unless you chose to defend it or to license it?

A. So far as I know.

XQ. 505. Let us take the next basis of liability.

A. That is all there is to it.

XQ. 506. Now, that is all that you meant when you said it would be a liability, is it?

A. Yes, sir.

XQ. 507. Now I will ask you a question assuming certain facts. I believe you stated that you continued to manufacture under the Federal Trade Commission license until this patent expired; did you not?

A. I believe that is true.

XQ. 508. At the Abbott Laboratories. I believe that you stated the novocain or procaine made by the use of the intermediate, substitute intermediate covered by the Adams patent, was novocain or procaine as described in the German patent—it is the same article?

A. That is true.

XQ. 509. And you stated that was a product patent, and therefore whatever was manufactured by either process was subject to that patent?

A. That is true.

XQ. 510. If I state to you that this patent was to be sold early in 1919, and the royalties earned under three Federal Trade Commission licenses in the year 1918 were $16,532.98, that the patent had four years to run or four and a half years to run, on a drug which was in universal use, as you said, throughout the world, like novocain, would you think that the patent, with the right to receive these royalties under these licenses and your right to license it to anybody else as you saw fit, would be of value?

Mr. Kresel: So far, your Honor, I have not made a single objection to any questions put to this witness. But the assumption of facts now in the present question is not borne out by the evidence, and therefore I must object to it. If counsel will say that, notwithstanding it is not in evidence, he wants this witness to assume those facts, I shall withdraw my objection, because I do not want to interpose any objection to the examination of this witness.

Mr. Anderson: If counsel will indicate what fact included in that question is not in the evidence——

Mr. Kresel: I will indicate it to you.

Mr. Anderson: I will be glad to say that it is either in or I will have it in.

Mr. Kresel: In the first place, there is no evidence that any $16,000 was collected; in the second place, there is no evidence that the purchaser is entitled to the $16,000. The Government itself is denying the right of the purchaser to that $16,000, if it had been earned, in these various suits that have been instituted. The German is claiming it, the Chemical Foundation is claiming it, and the Government says it is claiming it.

Mr. Anderson: If your Honor please, we have put in statements here, and these figures are taken from the statements and the evidence, as I am informed—I did not make them up—of the amount of earnings during the period of these licenses under the Federal Trade Commission and the amount of the earnings after the transfer under these licenses. The figures for the year 1918 are novocain under the three licenses which the witness has described, amounted to $16,532.98, which is in evidence.

Leaving out the question for the present as to who was entitled to the accrued royalties under the terms of this sale, up to the date of sale, and taking those as continuing licenses, which has been the basis of the hypothetical question here, I ask this witness to assume that the purchaser of the patent would be entitled to the royalties from the date of the purchase only, and I left out the royalties prior to the date of the purchase because that is a question that has not been determined in this case and is debatable. I asked him also to assume that he was entitled to whatever royalties were paid subsequent to the date of the purchase and for the last year under those various licenses, without any more licenses, these three licenses had earned $16,532.98. I asked him assuming those facts would he not consider the right to those accrued royalties, whether they were $16,000 or $18,000, $20,000 or $15,000, a value in that patent?

The Court: I am not sure that I understand you—your last statement whether he would not consider the right to accrued royalties.

this case is—and the claim of the Chemical Foundation upon the record in this case, which they are estopped to deny, is they were entitled to receive those royalties from the date of transfer——

The Court: Then by your claiming them you are estopped to assert that they were entitled to them. So you are both estopped.

Mr. Anderson: Then I will take their position, take the sale on the basis of their position, and ask what was the value, and I will argue the law questions when we come to them. I am perfectly willing to base my assumption on that and take my chances.

Mr. Kresel: May I suggest that the question be put now with all the assumptions, so that the witness may know what he is being asked?

Mr. Anderson: With your Honor's permission I will put this hypothetical question as I think the evidence discloses it.

The Court: There is nothing to debate. Do you understand the question which you are now asked to answer, Doctor?

The Witness: I would like to have it read again in order to get it clear in my mind.

The Court: Then let us have the question read.

(XQ. 510 repeated as recorded above.)

Mr. Anderson: The question is subject to one objection. I intended to say the right to receive any royalties under these licenses from the date of transfer.

The Court: Then won't you reframe that question?

Mr. Anderson: Yes, I will.

The Court: Because I do not see how it can be answered at all as it now stands.

Mr. Anderson: I will be very glad to reframe it, sir.

XQ. 511. Doctor, assuming for your answer to this question that the novocain patent was to be sold in the spring of 1919; assuming the use of the drug as to which you have testified and which I will not repeat; assuming at that time that there were outstanding three licenses issued by the Federal Trade Commission on the basis of a five per cent. royalty on gross sales, which by their terms were non-exclusive and ran for the life of the patent, subject to review by the court within one year after the signing of peace; assume also that the royalties which were earned and accrued under these licenses for the year 1918, accrued under these three licenses for the year 1918, that being the last year before the sale, amounted to $16,532.98; that the purchaser at the sale would get the right to receive any license fees or royalties accruing from the date of his purchase to the termination of the life of the patent under the Federal Trade Commission license, also the right to use the patent himself in the manufacture of this product or to license any other users that he saw fit in the United States who were American citizens—assuming those facts in connection with the novocain patent, would you regard that patent as of value?

Mr. Kresel: Do you include the other conditions in the question, or do you want him to omit those?

Mr. Anderson: I want him just to assume those facts.

A. Assuming those facts, and taking into consideration the doubtful things about that, for instance whether the court would uphold the royalty paid to the Federal Trade Commission, and also taking into consideration that there are no liabilities attached, that is, the purchaser would be under no compulsion to do anything outside of what you have stated, of any sort, I should say they would be of some value.

XQ. 512. Now I will assume this fact: In addition to the facts stated in the preceding question, I want you to assume that those Federal Trade Commission licenses would continue for the life of the patent, and I want you to assume that the Court would not interfere with the licenses in any way, but allow them to stand as they were for the life of the patent, and assume the earnings under those three licenses for the last year I have stated, would you not then regard that patent as of very considerable value?

Mr. Kresel: It seems to me, your Honor, that that is a very violent assumption.

The Court: I do not see how that will help me, because if I were the purchaser of those patents in February, 1919, or April, 1919, the war not having been legally ended, would I not be taking my chances as to what the courts would do, and must we not look at their value from the standpoint of a purchaser then and not from the standpoint of a purchaser at the present time?

Mr. Anderson: I am really testing this witness to see how he arrives at his values.

The Court: But your hypothetical questions, even for that purpose, I know to my sorrow must be based upon evidence.

Mr. Anderson: Yes. Well, I am putting it on an assumed state of evidence.

The Court: But you can not.

Mr. Anderson: All right, sir, I am perfectly willing to withdraw the question rather than have a discussion about its validity. But I want to answer your Honor's question.

The acts of the Federal Trade Commission are presumed to be valid and to be just and reasonable until they are set aside. The act of the

Federal Trade Commission in fixing a license fee of five per cent., which was the license fee provided by Act of Congress, with the right of the Federal Trade Commission to make it less, is certainly presumed to be valid until it is set aside by the Court on very clear evidence.

The Court: But how much financial assurance is there there that you would not have to litigate and that it would not be determined against you? It may be all right to indulge in a presumption of law of greater or lesser strength, first, that the Act of Congress in fixing five per cent. fixed that as an average or a fair and mean royalty and not a maximum royalty, and second, that presumption is strengthened by the fact that the Federal Trade Commission had no election in the matter—did it, under the Statute?

Mr. Anderson: Yes, sir, it could fix the royalty at less if it saw fit; but it fixed that royalty at five per cent., and the Statute provided that if they had expended money in the development of the process, then the Court must fix the fair and just royalty for the remainder of the patent; in other words, if they had to spend any money at all, they could cancel the patent.

The Court: There is no evidence that the Chemical Foundation had spent any?

Mr. Anderson: There is no evidence that the Chemical Foundation had spent any, but the evidence is that the Chemical Foundation was not a licensee. There is evidence that every licensee has spent money, and he would be entitled to continue his license on the basis stated.

The Court: If you want to state your hypothetical question based on those assumptions, I will rule on that; but there is no doubt in my mind but that your hypothetical question as stated is not a proper one.

Mr. Anderson: I will just withdraw it, because I am getting a little tired of it, and I do not need this gentleman to help me argue that when patents are bringing in $16,000 a year, they are worth money. If that is not conclusive, then I do not need his assistance.

The Court: That is for you to determine, Colonel.

Mr. Anderson: Yes; I will leave it right there.

Mr. Kresel: The question is withdrawn, then?

Mr. Anderson: That last question is withdrawn. The preceding one stands.

XQ. 513. I handed you just now that bottle giving the label. Can you say whether that novocain or procaine was made by the process employing the Adams patent, or made by the German process?

A. That was made by the Adams method.

XQ. 513. (continued) Adams patent?

A. Yes, sir.

XQ. 514. And you regarded the use of the Adams patent as being under the Federal Trade Commission License No. 9, of course?

A. Yes, because it is a product patent.

XQ. 515. Now I will ask you this: Do you think that fact, assuming it to be true, that Adams and Kamm had developed a process of manufacturing novocain or procaine, which you say was preferable to that stated in the German patent, but yet the product was covered by the German patent, would give to the German patent a value during the remainder of its life?

A. If you could get a hold of the Adams and Kamm patent and operate under it, certainly.

XQ. 516. It would give that value?

A. Yes.

XQ. 517. As a matter of fact, the Abbott Laboratories did get hold of it when?

A. Nineteen eighteen, I presume; some time in 1918.

XQ. 518. They had it in 1918 and you testified were using it in 1918 for the production of novocain?

A. Yes.

XQ. 519. And they held a Federal Trade Commission license?

A. Yes.

XQ. 520. Do you not think that increased the value of the patent, that they had a process which you say was better?

The Court: Colonel Anderson, do you press that question? It seems to me it is leading. I am not saying that in criticism of you in putting it, but I am only stating the impression that I gathered from it. Suppose I bought the novocain patent. Do you mean to indicate that the patent to which you referred would inure to my benefit?

Mr. Anderson: No, sir; but if one of my licensees had developed a process by which he said he could make it cheaper and better than the process named in my product patent, and he admitted that whatever he made of it was covered by my product patent, and he had to pay a royalty to me for making it, I rather think that he would have increased the value of my patent very materially by doing it.

The Court: That is, if your patent were a basic patent——

Mr. Anderson: Yes, sir.

The Court (Continuing):—and assuming that it was of the value of X dollars prior to this improvement, but the improvement increased the demand, that would inure in part to the basic patent and that would necessarily increase the value of the basic patent?

Mr. Anderson: I should say so, because otherwise the telephone patent would not have been any good. It was the improvements that made it worth anything; yet it made Alexander Graham Bell one of the wealthiest men in the United States.

The Court: I recognize your contention. He may answer the question.

Mr. Anderson: I will ask to strike out the last question and frame the question anew.

XQ. 521. You have testified that about 1918 this Adams-Kamm patent or process or modification was developed and that the use of this intermediate covered by the Adams-Kamm patent improved the process and resulted in a larger yield and a better product of novocain under the German patent.

Mr. Kresel: Not under the German patent. He did not say that.

Mr. Anderson: One minute, if your Honor please, he expressly stated that he manufactured under that patent until the patent expired and put it on the bottle.

Mr. Kresel: Don't get excited about it. He did not say any such thing.

Mr. Anderson: Hold on.

Mr. Kresel: I will hold on. I will wait until you are through.

Mr. Anderson: I do not want to have a question of veracity here between counsel, but I say that he testified and took this label and read it, and said that that was used until the patent had expired.

Mr. Kresel: He did; but that is far from saying that he testified that he manufactured under that patent; and you know perfectly well that he said he put it on there only because it is a product patent, and no matter by what method of manufacturing it, he has to use that.

Mr. Anderson: All right. We won't have any argument. It is too fruitless. Will you read the question down to where I have gone please? (XQ. 521 repeated)

XQ. 521. (continuing)—resulted in a larger yield and a better product than the novocain or procaine covered by the German product patent. Do you or do you not think that the development of the Adams-Kamm process, as you call it, or intermediate, the ownership thereof by a licensee under this patent and the use thereof by a licensee increases the value of the product patent?

A. I do not, for this reason: It might decrease it because if the licensee who was operating under the Adam-Kamm patent should for any reason agree to make over his rights under that patent to a foreign concern, that foreign concern might increase the competition so that the product, novocain, manufactured in this country under the original German method, might be worth less. That is, the patent itself would be worth less.

XQ. 522. Would not the product patent give to the owner in America the right to prevent the importation and sale of this stuff from foreign countries without paying a royalty?

A. I do not know.

XQ. 523. Now then, I will ask you this: Assuming that the owner of the so-called Kamm patent for the intermediate did assign it to a foreign producer, what right would it give to the foreign producer to manufacture outside of the United States, since this patent only applied to the United States?

A. You mean the Adams and Kamm patent?

XQ. 524. Yes.

A. It did not only apply to the United States.

XQ. 525. Can the United States grant a patent right outside of the United States?

A. No, but that method was patented outside of the United States.

> Mr. Anderson: One minute. If you are going to prove any patents outside of the United States, let us get them. I move to strike it out.
>
> Mr. Kresel: I think that was responsive to the question.
>
> Mr. Anderson: It was not. It calls for a yes or no answer.
>
> The Court: Let it be stricken out.
>
> Mr. Kresel: I suppose the word "no" remains?
>
> Mr. Anderson: Certainly.

XQ. 526. If it appeared in evidence here that the owner of this German product patent had the right to charge a 10 per cent. or other royalty upon any of the novocain or procaine covered thereby which was imported into the United States, instead of five per cent. royalty on the manufacture in the United States, then your answer as to the assumed assignment to somebody else would fall, would it not?

A. You are assuming there that none is smuggled in.

XQ. 527. I have to assume that, because I assume the country enforces its laws.

A. I would answer that, Colonel, by saying that it depends upon how much cheaper the product could be manufactured under the Adams and Kamm patent than under the other method because a manufacturer under the Adams and Kamm method—I do not say that he can but he might be able to pay 10 per cent. royalty better than the other fellow can pay five per cent.

XQ. 528. Suppose you had a right to charge 25 per cent. royalty? Suppose you had a right to put up any royalty you wanted to at the port?

A. If it was imported it would put that much in the pocket of the man who gets the royalty.

Mr. Anderson: Well, we worked until we got it.

XQ. 529. Well, Doctor, when did the Abbott Laboratories purchase the Dermatological Institute?

A. November 1922, I think.

XQ. 530. What was your connection with that purchase, if anything?

A. I was asked in the first place what I thought of the product that they were putting out.

XQ. 531. What did you say?

A. I said I thought it was a fine product.

XQ. 532. You thought it was fine stuff?

A. Yes.

Mr. Kresel: Wait a moment. He had not finished.

XQ. 533. All right; what else did you have to do with it?

A. I was consulted as to whether it would be wise to purchase their plant and process or to purchase some other one that was available to us and there were a number of questions along that line. Whenever they related to the technical side, they were taken up with me.

XQ. 534. You never went to Philadelphia at that time?

A. No, sir.

XQ. 535. Do you know how much plant they had at Philadelphia?

A. I do.

XQ. 536. What was the size of the plant, do you know approximately?

A. They employed about 125 people and they had a good sized plant; a four-story building, I think.

XQ. 537. Do you know what the Abbott Laboratories paid for the Dermatological Institute?

A. I do not.

XQ. 538. You do not know what they paid?

A. No.

XQ. 539. You never went to Philadelphia until 1923, did you?

A. I did not, to see the plant.

XQ. 540. That is what I mean, you never saw this plant until then?

A. No, sir.

XQ. 541. In what business was the Dermatological Institute engaged when this purchase or sale took place; what were they manufacturing?

A. They were manufacturing arsphenamines mainly, although they were manufacturing a number of other products.

XQ. 542. What other products?

A. Mercurophen and chrysarobin were two of them.

XQ. 543. But chiefly the arsphenamines, which is another name for salvarsan, is that not true?

A. Yes.

XQ. 544. And neosalvarsan and associated drugs?

A. Yes.

XQ. 545. Do you know whether the Dermatological Institute kept records of their experiments and processes in the laboratory at Philadelphia in the development of their product called salvarsan?

A. Yes.

XQ. 546. They did?

A. Yes.

XQ. 547. Do you know who is in charge of those records today?

A. Yes.

XQ. 548. Will you please state his full name?

A. Dr. George W. Raiziss.

XQ. 549. He is in Philadelphia, is he?

A. Yes, sir.

XQ. 550. And do you know whether they kept accounts of the cost of their manufacture of this drug arsphenamine?

A. I do not, but I doubt whether they did in the early stages because they were operating as a more or less semi-public concern, a research organization, and not as a commercial organization.

XQ. 551. What do you mean by the earlier stages?

A. I mean from about 1912 on.

XQ. 552. Doctor, how do you know that?

A. I have been reading an article by Dr. Raiziss and by Dr. Schamberg which I have here.

XQ. 553. Well, hold on. You got it from that article?

A. Not entirely, no.

XQ. 554. Where were you in 1912 to 1915?

A. In Ohio.

XQ. 555. And you have absolutely no personal knowledge on the question of the Dermatological Institute, have you, during that period?

A. No.

XQ. 556. You have absolutely no knowledge of what was going on at the Dermatological Institute in 1916?

A. No, sir.

XQ. 557. You were then at Illinois?

A. I have no personal knowledge.

XQ. 558. You have no personal knowledge of what was going on at the Dermatological Institute in 1917, have you?

A. No, sir.

XQ. 559. You have no personal knowledge of what was going on there in 1918, have you?

A. No, sir.

XQ. 560. You have no personal knowledge of what was going on there in 1919, have you?

A. No, sir.

XQ. 561. You have no personal knowledge of what was going on there in 1920, have you?

A. No, sir.

XQ. 562. Or in 1921 or 1922?

A. No, sir.

The Court: It is time for us to suspend now and take our noon recess, but may I ask you or Mr. Knight this question purely for information and not as suggestive of anything except that I want to know what the patent law is on this and I always need help on that.

Mr. Anderson: I refer to Mr. Knight on that, sir.

The Court: The question was brought to my mind by the label on the bottle. It said it was manufactured under one process but it was covered by the patent and there is certain testimony indicating that the patent is not workable; that is, that the process is impure. What is your view, Mr. Knight, about such a patent? I do not mean to have full argument, but I just want you to indicate to me what your view is about a patent of that kind.

Mr. Knight: I can give my view of it, of course. A patent must teach the public how to carry out the object of the patent. If it fails in that to at least some degree, it fails entirely. If, therefore, one has an improved product, let us say, and he fails to teach the public how that product can be made, to some extent, not necessarily in the best form, not necessarily in a commercial form, but to make it in a form which will carry out the purpose of that product, then I should say his patent fails.

Those considerations, of course, have had many illustrations that show the limitation of applying them. We are all accustomed to hear of cases in which the defendant has shown that he has tried and tried in vain to make a thing, and as one Court has said, "it is easy not to make a thing. The difficulty is always in making it." The plaintiff always puts some one on to show not only that it can be done but that it is the easiest thing in the world to make.

Outside of that question of readiness of following the process, which is open to construction by many experts and many minds who are variously acquainted with equivalents and things known to those skilled in the art—a most elusive term in itself—we have the question of relative perfection of the operation that they do carry out, which is always difficult of application. A thing may be a success to maintain a patent and yet be an entire failure commercially, as of course your Honor knows. We have had many cases in which those carrying out the patent, the patentee himself indeed, have produced something which in the light of subsequent developments appears as a mere joke. What we did with the automobile twenty years ago does not seem possible for any one to have considered. What Bell did with his first patent, was a mere magnetic development of the current, enabling him with Sir William Thompson's assistance, to telephone to the length of the hall, in 1876, but that was nothing as a commercial instrument. It was a toy; but he had the principle there of impressing upon the current undulations, corresponding to the vibrations produced in the air by the human voice.

Having that principle successfully produced, even in its experimental form, it was held sufficient, and did prove sufficient to hold the entire telephone system, which subsequently has been improved by Blake and many others. This development, this change, from a mere un-commercial experiment into a vast many hundred of millions dollar value, all enured in that sense, to the benefit of that slight experiment of Bell.

So we have had these cases, in which, in chemical lines, the product has been produced in quite an imperfect condition, and it needs subsequent purification but it has been produced, and it has shown the way. So far success has been attained. And those later developers who have improved that product and made it better, and shown how it could be made cheaper, and substituted some well-known equivalent as an intermediate, or whatnot, they have been held to come under, providing the original thing could be isolated, and it can be said that that is the thing. It is not a matter of commercial success; it is not a matter of absolute success of any kind; but if the Court can determine, as I understand, the matter, that the world had been given this product by these experiments, and by this disclosure in the patent, then the original patentee is entitled to claim that product, however produced by other processes.

The Court: Is that true without regard to the degree of purity of the product?

Mr. Knight: I would say that was subject to considerable limitations if your Honor please.

The Court: That would be a question of fact.

Mr. Knight: Absolutely, yes.

The Court: I understand.

Mr. Kresel: May I just make one observation? Assuming that it is a drug, where the toxicity is of the utmost importance, is not that of value? That is a very important element, I would say.

The Court: I assume that would necessarily be true for obvious reasons. We will take a recess until 1:10 p. m.

AFTER RECESS.

MR. KRESEL: If your Honor please, if your Honor will permit, we would like to substitute for Defendant's Exhibit 87 a photostat copy thereof, because it is a record from the Alien Property Custodian's office which they desire to have returned.

THE COURT: Let it be substituted.

XQ. 563. Dr. Volwiler, do you know the amount of novocain or procaine, whichever you may call it, produced by the Abbott Laboratories in the year 1919?

A. I do not.

XQ. 564. Or in any subsequent year?

A. I do not.

XQ. 565. Do you happen to know the amount produced in the United States?

A. I can not recall it now. I did see a report on that, but I can not from my own knowledge now recall it.

XQ. 566. Do you know the gross revenues of the Abbott Laboratories from novocain or procaine in any year?

A. No, I do not.

XQ. 567. Of course, you would not know the net revenues either?

A. (No answer.)

XQ. 568. You spoke this morning of the process of purification of the novocain which you and your associates produced originally in your experimental work at the University of Illinois, was it not?

A. Yes, sir.

XQ. 569. You did go through the process of purification and produce novocain of the kind now sold, did you not?

A. We don't know, because at that time it was not tested for toxicity. We got some and it did not seem to be satisfactory in appearance and yield and so we did not go as far as testing it out for toxicity.

XQ. 570. In following that process of purification of which you spoke you said that you re-crystallized and reduced it in the method you described. Without going through it, you followed only such methods as were well known to those skilled in the art, that is, chemists, in the United States, did you not?

A. I do not recall all the methods we did use. We used every method that we could find in the literature and any that occurred to us.

XQ. 571. But they were the methods recognized in the chemical science for purification of things of that kind, I mean the general method, was it not?

A. Oh, yes, we tried those things.

XQ. 572. In other words, to make it clear, you followed the process as defined in the patent which you have described, and I need not go over it in detail, down to the result which you described, as you did not feel it was a pure product, and then you followed in purification, methods in common use and known to the science of chemistry for the purpose of purifying that product to a condition where it was useful for the medical science, that is, generally it?

A. Yes, sir.

XQ. 573. Now just before adjournment, I had asked you of your knowledge of the work of the Dermatological Laboratories of Philadelphia in the making of salvarsan and neosalvarsan and their kindred products, that is, that you described in your direct testimony like silver-salvarsan and things of that kind. On your direct testimony, as I recall, you stated that they did not follow at the Dermatological Laboratories the process outlined in the salvarsan and neosalvarsan patents, the numbers of which appear in evidence here. Will you please state in what respect, out of your own knowledge, not from hearsay, they varied the process as defined in the patent?

A. In the first place the intermediates that are used in making our arsphenamines are difficult to make, and the method that they follow there was different from that given in the patent, and in the second place the purification at various stages——

XQ. 574. Would you let me have the patents?

A. The neosalvarsan and salvarsan. (Handing papers.)

XQ. 575. Now, Doctor, did you ever make any salvarsan yourself or neosalvarsan?

A. Not the final product. I only ran some of the intermediates.

XQ. 576. Do you mean by running some of the intermediates that you made yourself some of the intermediates used in the process of the making of salvarsan or neosalvarsan?

A. I do.

XQ. 577. You did not undertake to combine the intermediates through chemical processes to produce the final result?

A. No.

XQ. 578. You have never made any yourself?

A. No.

XQ. 579. I understood you to say that you had never been at the Dermatological Laboratories until January, 1923?

A. That is true.

XQ. 580. Therefore I take it you would say that you had no personal knowledge of what was done at those laboratories prior to 1923, of course?

A. I did, from the literature which had appeared——

XQ. 581. I mean your personal knowledge?

A. No, not by personal contact.

XQ. 582. Will you please take this patent No.

986,148, which you hand me as the patent to Paul Ehrlich covering what is commonly called salvarsan and state whether it covers a process or product?

A. It is a product patent and also covers the processes.

XQ. 583. It is both process and product then, is it?

A. Yes.

XQ. 584. I will ask you to take that patent, if you desire it, and state just what was the process provided by the patent and the particulars in which the process used by the Dermatological Institute varied from the patent and where, following it as you did in the novocain patent this morning.

A. The thing that I remember about the first part of the process is that arsanilic acid, which is the first step in the manufacture of the arsphenamines is not described as to method of preparation here. To obtain arsanilic acid in the pure form and in a good yield is a difficult thing. As a matter of fact, in the production of arsanilic acid, if it is run according to the way it is ordinarily given in the literature, you may get only three per cent. of the theoretical amount of material that you should get.

By Mr. Kresel:

Q. 585. You mean it is not described in the patent how to make it?

A. No, it is not described in the patent how to make it.

By Mr. Anderson:

XQ. 586. Arsanilic acid, which you mention, is one of the intermediates used for combination in the process of making this stuff?

A. Yes. It is practically the first intermediate that is used. Of course, it is built up from anilin but it is the first important intermediate that we use.

XQ. 587. Arsanilic acid is not a patented product, is it, in any sense?

A. No.

XQ. 588. It is a product the manufacture or making of which is well known to those skilled in the art, is it not?

A. Not in this country.

XQ. 589. Well, do they make any arsanilic acid in the United States now?

A. Yes, they do.

XQ. 590. Did they not do it in 1919?

A. Surely, they made it. They used it in making the arsphenamines.

XQ. 591. Did they in making it in 1918?

A. Yes.

XQ. 591a. And it was a product which was not covered by any patent but was produced by a combination of certain chemicals known to those skilled in the science of chemistry, was it not?

A. The chemicals were known, yes.

XQ. 592. And it was merely a matter of combining those chemicals to produce arsanilic acid?

A. In the right way, yes.

XQ. 593. Yes, that is right? The arsanilic acid could be produced, could it not, by a chemist?

A. Yes.

XQ. 594. Take the patents, and beginning with arsanilic acid and whatever else is used, state the first combination of chemicals in the making of salvarsan.

Mr. Kresel: The other question is not completely answered, is it?

Mr. Anderson: Yes.

Mr. Kresel: You started in by asking him to point out in what respects the method followed by the Dermatological was different from the patent.

He gave one. All I want to know is whether that is all there is.

XQ. 595. We have taken a lot of intermediate questions and answers, so I will vary the question by asking you to take the first one. I said "As we did this morning." You did not understand me, so we will take the first one, the first combination in making salvarsan, and we will get rid of that, then take the second one. We will go down the line until we get salvarsan, so you may know what I am driving at.

A. All right. Aniline is the first product to start with, aniline and arsenic acid.

XQ. 596. Aniline is something that is known to the art, is it?

A. Yes, that was obtainable on the market.

XQ. 597. You took aniline and arsanilic acid——

A. Arsenic acid.

XQ. 598. Yes. Arsenic acid—and what did you get?

A. Arsanilic acid.

XQ. 599. You got arsanilic acid as the result of the combination of those two?

A. Yes.

XQ. 600. With arsanilic acid produced in your process, what was the next step in the making of salvarsan?

A. The next step is the production of the first intermediate they start with here, para-oxyphenylarsinate.

XQ. 601. Was that the intermediate you desired to combine with the arsanilic acid that you produced?

A. No, you start with the arsanilic acid then and go on, and by further chemical reactions you get para-oxyphenylarsinate.

XQ. 602. What do you combine with arsanilic acid in order to get that second thing you mentioned there?

A. Nitrous acid.

XQ. 603. What is nitrous acid?

A. Nitrous acid is not purchasable on the market. You would buy sodium nitrite and treat it with an acid and you get nitrous acid right in your reaction mixture. You do not have to make it and isolate it. You make it right there and use it up as you make it.

XQ. 604. That is a matter of common knowledge among chemists and others learned in the art, how to make that stuff?

A. It is a common reaction that is used, yes.

XQ. 605. So you buy those elements that you speak of as making up nitrous acid and you combine those with your arsanilic acid, which is your first reaction on your process, and out of the combination of those two what do you get?

A. You get paraoxyphenolarsenic acid.

XQ. 606. Now that is your second stopping point, as it were. Now you take this para-other things that you mentioned, and what do you combine with that in your next step in the making of this stuff?

A. You nitrate it with nitric acid and sulphuric acid.

XQ. 607. Now, nitric acid and sulphuric acid are products of common use in the chemical field, are they not?

A. Yes.

XQ. 608. And can be obtained anywhere?

A. Yes.

XQ. 609. And your second reaction, para-whatever the name was, combined with nitric acid and sulphuric acid produces what?

A. The nitro derivative of this compound which I last mentioned, paraoxynitrophenolarsenic acid.

XQ. 610. That is a nitro derivative?

A. That is a nitro derivative.

XQ. 611. Now you have gotten to the fourth step in the making of this stuff. Let us take the next step. What are you bringing into this combination next?

Mr. Kresel: Colonel, may I interrupt you a minute? Is he telling you now how to make it under the German patent or how the Dermatological made it?

Mr. Anderson: I asked him to follow that German patent and tell me how to make it under the German patent.

The Court: That is what the German patent calls for?

The Witness: Yes.

Mr. Anderson: He has got the German patent in his hand and he is following it.

The Witness: Although due to some of these questions and the fact that we started out from the beginning, I had to put in some extra information that is not given in the patent, in order to get the starting point of the patent.

XQ. 612. All right; what is the extra information that you have put in that is not in the patent?

A. The production of arsanilic acid, and from that the production of paraoxyphenolarsenate.

XQ. 613. Now you have described what you put in. What does the patent say?

A. The patent just starts out with paraoxyphenolarsenate. You have to get that some way or other to run this patent through. No matter how you get it, if you get it, why then you can start in and start operating under this patent.

XQ. 614. In other words, you go into your laboratory and you make this arsanilic acid, which is not a patented process at all, but is a chemical process known to those skilled in the art; then you combine it with certain other well-known chemical materials—

A. Reagents.

XQ. 614. (Continued.)—like acids, that you described there, and you get the para-whatever it is as a result of that beginning. Now, up to that point there is nothing patented at all, is there?

A. No, not as far as I know.

XQ. 615. That is an open chemical process. Now then, after you get to that point, you follow by putting in nitric acid and other things. Read from that language, will you please?

A. "The procedure for preparing the new compounds may, for instance, be as follows:" (Reading from line 33 to 41 of the patent.)

XQ. 616. Now stop there one minute. That is what you mean by putting in nitric and sulphuric acid with the other combinations?

A. Yes.

XQ. 617. You were following that patent?

A. Yes.

XQ. 618. Now then, when you got those together, what did you get?

A. You did not get any product that you have isolated that you can handle in solution there, though in suspension you have a nitric.

XQ. 619. Go ahead. The next step after that, what did you do?

A. "While continuing the stirring—" (Reading from patent, line 42 to line 59.)

Mr. Kresel: I hope the record will show that the witness is just reading from the patent.

XQ. 620. Yes, it is understood. I will ask him to read.

A. (Reading from the patent from line 59 to line 80.)

Mr. Kresel: Colonel Anderson, can not we save this reading; what is the use of reading all that?

XQ. 621. I want to get the process. Have you finished reading?

A. Well, it describes what the——

Mr. Anderson: I am perfectly willing for the witness to say that he read the process set forth in the German patent.

The Court: Where is that from?

The Witness: That is lines 34 to 80.

Mr. Anderson: Instead of copying that, the record can show the witness read from line 34 to line 80.

XQ. 622. Now, what did you get as the result?

A. We got a powder, which in many instances——

Mr. Kresel: You mean what is claimed to be gotten by the patent?

Mr. Anderson: No, I am asking him now—he testified that he knew about making this stuff, and I want to ask him what he got as the result.

The Court: As I understood you a minute ago, you were asking him for the process of the patent.

Mr. Anderson: Yes.

The Court: Are you asking him for what he got when he followed the process of the patent?

Mr. Anderson: What he got when he followed the process of the patent.

XQ. 623. Did you do it yourself?

A. No. That is just what I want to state. I never got as far as this, that is dihydrochlorid.

XQ. 624. How far did you go, Doctor?

A. I went through the arsanilic step, and then I omitted several steps, and made some of the intermediates. Further on we used other products in there, in addition to the products here stated.

XQ. 625. But you really have never made salvarsan yourself?

A. No.

Mr. Kresel: He said that two or three times.

Mr. Anderson: Hold on, Mr. Kresel. I am trying to get it perfectly straight here—I may be very stupid.

The Court: Go ahead.

XQ. 626. Now, do you know of your own knowledge, not from hearsay, in what respect, if at all, the Dermatological Laboratories varied the process defined in that patent which you have just read?

A. I do in certain respects, but I can not point them all out, because in the first place I have not their directions here, and it may be a long process, and I can not remember all those things; and in the second place, because if I did not have the apparatus here before me, and say that this part is required for this purpose, I could not explain it.

XQ. 627. Now, Doctor, have you ever tried to make salvarsan yourself under the Dermatological Laboratory method, assuming that that varies from this in any respect?

A. No, I have not, although I have made some of the intermediates.

XQ. 628. You have made some of the intermediates?

A. Yes, sir.

XQ. 628a. Now, what do the Dermatological Laboratories sell, or what do they get as a product, when they make this stuff up, according to what you say to be the varied process?

A. They get the product which purports to be described in this patent.

XQ. 629. They get neoarsphenamine?

A. Neoarsphenamine, depending on what they want. There are two different patents.

XQ. 630. Now, it is the product described in the product part of that patent?

A. Yes, sir.

XQ. 631. It is the same thing?

A. Yes.

XQ. 632. Neoarsphenamine and salvarsan are the same thing?

A. Neoarsphenamine and arsphenamine are not as definitely known as far as their chemical characteristics are concerned, as most organic compounds. Most organic compounds have a definite melting point and a definite solubility and arsphenamine on the other hand does not necessarily have a definite solubility. Take different brands, you can not say that either one is not arsphenamine, and yet one will dissolve in the course of half an hour if you do not shake it, and the other one may dissolve in fifteen seconds. There is no melting point that you can get on it. As mentioned in this patent, there is no melting point. Practically the only criteria that you can go by is whether the reactions that you carried out are supposed to lead to that result, and that is pretty definite; and what effect the product will have, whether it is efficient as an anti-syphilitic, whether it has a certain low toxicity and so on; so that the point I want to bring out is that it is not as definite as most organic compounds.

XQ. 633. But it is sufficiently definite for you to say that it is the product substantially that is covered by that patent?

A. Yes.

XQ. 634. And it is so recognized by the Dermatological Laboratories of which you have spoken, is that true?

A. I have never heard anything to the contrary.

XQ. 635. In order to shorten the examination, without going through the details, neoarsphenamine is simply a modification of the arsphenamine and corresponds to neosalvarsan in the German nomenclature, does it not?

A. Yes.

XQ. 636. Just as arsphenamine corresponds to salvarsan?

A. That is correct.

XQ. 637. In the making of neoarsphenamine, could you, abbreviating your answer as much as you can, take the patent and tell me in what respect, so far as your own knowledge goes—if you have no knowledge say so—the process you claim is being used by the Dermatological Laboratories varies from that patent, telling me first the patent and the exact point on which it varies?

A. I can not do that either without referring to the directions which they follow and without reference to the apparatus employed.

XQ. 638. But the neoarsphenamine which they produce is the product covered by this patent, reissue No. 13,848, is it not?

A. It is generally assumed to be. There again there is a question as with arsphenamine.

XQ. 639. There has never been any question raised that it is substantially the same product and intended to be the same product?

A. No. It has been shown that the Germans at that time did not have a thorough appreciation of what neoarsphenamine is. They thought it was one thing whereas actually it is a mixture of at least three things in most cases. That is the product that is ordinarily sold on the market. But in our ordinary conversation when we speak of neoarsphenamine or arsphenamine, we assume that we are referring to the same thing as what they call salvarsan and neosalvarsan.

XQ. 640. What you have said in regard to this manufacture by the Dermatological Institute, as I understand, is purely what you gather from their records and from conversation with those who have been there?

A. And from my personal observation.

XQ. 641. That was in 1923, however. I am talking about the manufacture prior to 1923?

A. Yes.

XQ. 642. I hand you here a package in a wooden case and would ask you to read the label on it, if you please.

A. Arsenobenzol arsphenamine. Shall I read the chemical name given there too?

XQ. 643. You can omit the chemical name and read the balance of it.

A. "Prepared under regulations issued by the Federal Trade Commission and conforms with tests approved by the United States Public Health Service. This package contains six-tenths of a gram of arsphenamine. Lot No. License No. Dermatological Research Laboratories."

XQ. 644. Philadelphia, Pennsylvania?

A. Yes.

XQ. 645. I take from that package the paper wrapped around the contents entitled "Dermatological Research Laboratories, Philadelphia Polyclinic, 1818 Lombard Street, Philadelphia, U. S. A." and would ask you to read the title to the first paragraph.

A. "Arsenobenzol. The arsenobenzol prepared by us is identical in all its essential properties with the German product marketed under the name of salvarsan. Extensive biological tests demonstrate that our product is uniformly of low toxicity. No preparation sent out which has not been successfully administered intravenously to rabbits and rats in seven to eight times the maximum dose per man proportionate of course to body weight."

XQ. 646. That, so far as you know, is a correct statement, is it not?

A. It is.

XQ. 647. I hand you another package on which is the name of the Dermatological Research Laboratories, entitled "Neoarsphenamine," and will ask you to read the label to that, if you please.

A. Neoarsenobenzol or neoarsphenamine.

MR. KRESEL: Why not put it in, instead of having him read it?

MR. ANDERSON: But I do not want the bottles to go in evidence.

MR. KRESEL: But the stenographer can copy that on the record without having him read it.

MR. ANDERSON: I know, but it is very short.

A. (Continued.) This package contains 0.9 grams of neoarsphenamine (a compound prepared from arsphenamine by means of formaldehyde-sulphoxylate) prepared under regulations issued by the Federal Trade Commission, and conforms with the regulations and tests prescribed by the United States Public Health Service. Then there is the license and lot number.

XQ. 648. I take from the package which you have just identified a paper wrapped around the contents, which I now show you, entitled "Dermatological Research Laboratories," with the address, etc., headed "Neoarsphenamine"—the first line thereof—"is identical in all essential respects with the compound originally prepared by Professor Ehrlich under the name of neoarsphenamine." Is that not a true statement, so far as you know?

A. It is.

Q. 649. And the preparation to which reference is made there, having been made by Professor Ehrlich, is the preparation covered by that German patent which I have just mentioned to you covering neosalvarsan?

A. That is true.

XQ. 650. Is it not a fact that the Abbott Laboratories themselves now put out neosalvarsan?

A. It is.

XQ. 651. I hand you a package entitled "neosalvarsan" and ask if that is the package put up by the Abbott Laboratories?

A. It is.

XQ. 652. I read the label as follows: "This package contains 0.9 grams of neosalvarsan, a compound prepared from arsphenamine by means of formaldehyd-sulphoxylate, and conforms with the regulations and tests prescribed by the United States Public Health Service. License No. 257. Lot No. 5434." Do you know what that license number is, what it refers to—what license?

A. No, I do not.

XQ. 653. I take from this package which you have just identified a printed paper wrapped around the contents, entitled "neoarsphenamine" and the first paragraph reads as follows: "Neoarsphenamine is identical in all essential respects with the compound originally prepared by Professor Ehrlich." It then goes on to describe the manufacture of this neoarsphenamine. So far as you know that is correct, is it not?

A. It is.

XQ. 654. And the compound there referred to is the compound prepared by Professor Ehrlich under this German patent I have just described for neosalvarsan, is it not?

A. In all essential respects, as there stated.

XQ. 655. The neosalvarsan patent to which I have referred you is a product patent also, is it not?

A. Yes.

XQ. 656. I hand you also a package marked arsphenamine, with the name of the Abbott Laboratories printed thereon, and ask if that is the package put up by the Abbott Laboratories.

A. I doubt it. There is no name "Abbott Laboratories" on this. This is the Dermatological Research Institute, which was the name before the Abbott Laboratories took it over.

XQ. 657. Isn't the name Dermatological Institute there

A. No.

XQ. 658. I take from that package the paper wrapped around the contents, the first line of which reads as follows: "Arsenobenzol prepared by us is identical in all essential respects with the product prepared by Professor Ehrlich. The United States Government has adopted the name arsphenamine as the official designation of this compound." That is the same as salvarsan, as you said, and so far as you know that statement is true?

A. Yes.

XQ. 659. It is true, is it not?

A. Yes.

XQ. 660. As I read it from that advertisement?

A. Yes.

XQ. 661. Dr. Volwiler, in your direct testimony at page 3272 you were asked this question: "Q. 128. From such a study of the records as you speak of that you made, can you or can you not state whether the process followed by the Dermatological Institute that you have observed in the production of salvarsan and neosalvarsan is the process described in those records?" And you answered after some discussion, "It is not the process."

I would ask you again if you can tell me in what respects those processes differ?

A. I can not, not without reference to the records and the plant.

XQ. 662. And your knowledge on the subject is derived entirely from those records so far as the period prior to 1923 is concerned?

A. Yes. Not entirely; also from my observation.

XQ. 663. Well, you were never there prior to 1923?

A. Oh, I beg your pardon; I didn't get your qualifying clause. Yes, prior to that time, that is true.

XQ. 664. And you have those records available?

A. I have, yes.

XQ. 665. Can you produce them?

A. I can,——

XQ. 666. I would be glad if you would and return here with them.

A. I haven't them in the city, no.

XQ. 667. I would be glad if you could get them. They are in Philadelphia, aren't they?

A. Undoubtedly.

XQ. 668. I am very anxious to have you refresh your memory from that source, although I do not waive my objections to testimony of this kind, and point out wherein that difference lies, and if it is necessary for you to get your records for that purpose I will ask you to do it, since you have said it is a different process.

A. (No answer.)

XQ. 669. In answer to one question on your direct examination you said that the value of the patent upon the facts assumed in that question would be speculative and nominal, and in reply to a question as to what you meant, you said that by "speculative" you meant that a conservative or industrial concern would hesitate to purchase, or words to that effect. Doctor, have you ever purchased any patents; I mean yourself?

A. Only in connection with the company. I have given advice as to whether a patent should be purchased or not.

XQ. 670. Have you ever yourself negotiated the purchase of a patent?

A. I have.

XQ. 671. What patent?

A. I should modify that; I do not know whether this method was patented or not, but I negotiated for the purchase of a method for the production of acriflavine, concerning which I gave evidence this morning. That would come under the German patent.

XQ. 672. What was paid for it, do you know?

A. I do not remember.

XQ. 673. You negotiated the purchase and do not know what you paid?

A. Yes; it covered not only a flat price but a royalty depending upon the amount of material produced for a certain period.

XQ. 674. What was the flat price; do you remember that?

A. I think it was $200 or $250.

XQ. 675. What was the royalty rate?

A. I do not remember that.

XQ. 676. Did you in fact personally negotiate that contract?

A. I gave advice concerning it. I did not sign the contract, no.

XQ. 677. To whom did you give advice?

A. To the president of the company.

XQ. 678. What other patents have you ever purchased or advised as to the purchase of, specifically?

A. That is the only one that I recall.

XQ. 679. Doctor, you were asked a hypothetical question as to the value of the salvarsan and neosalvarsan patents, and you stated that they would not, under the conditions named in that question, be worth anything, or they would be worthless, did you not?

A. Yes, sir.

XQ. 680. No; I was reading from the question and not the answer. You replied that you would consider it more a liability than an asset.

Now, I will ask you to take that question, 138 on page 3281 of the record and read it, and tell me wherein the liability rests.

A. (Referring to record.) One place, "that an American citizen then claimed to have a pre-war exclusive license from the German owners of the patent to manufacture the product in the United States during the life of the patents, the fact that the citizen of the United States then claimed to have a pre-war agreement with the German owners of the patents for the transfer thereof to said American citizen."

XQ. 681. You would regard that as imposing a liability upon you, would you?

A. I do, because it might lead to a lawsuit.

XQ. 682. What would be your lawsuit in the event that you did not use the patent and did not license it or undertook to use it in any way?

A. I do not know.

XQ. 683. There would be no liability, would there?

A. I do not know.

XQ. 684. What other element of liability is there in that patent?

A. "Would be obligated to defend the patents."

XQ. 685. Suppose you did not want to defend them and did not license them and did not use them, would that impose any liability upon you?

A. Not so far as I know. I answered this question on the assumption that——

XQ. 686. —the obligation to defend would exist?

A. Would exist, yes.

XQ. 687. Now, if it appeared that you had the right to license that patent and fix the terms of the license, including the right to demand of the licensee to reimburse you for any costs of defending the patent, would that change your answer?

Mr. Kresel: Pardon me a minute. Where is there any such evidence as that?

Mr. Anderson: I am assuming a state of facts, if your Honor please. I have assumed it; I have not stated it as evidence.

The Court: Based on the record?

Mr. Anderson: Yes, sir.

Mr. Kresel: Is there anything in the record which shows that the licensees would have to reimburse anybody for a lawsuit?

Mr. Anderson: Not at all. I do not say that they would have to. I said, "If you had a right to license a patent and fix the terms of the license, require such conditions with the licensees as you saw fit, including among those conditions the right to require a licensee to reimburse you for any expense in defense of the patent." The charter of this company provides that the Board of Directors may grant licenses and fix the terms of such licenses and may terminate or cancel such licenses, in effect the language is; I do not remember the exact words. Now, if they had the power to license and have the power to grant a license and to fix its terms, they could protect themselves as to any obligation to defend to as full an extent as they saw fit. Therefore I am assuming that. I am not arguing that at this time. I am assuming that premise.

The Court: Is there objection?

Mr. Kresel: No, your Honor, I shall not object. Do you leave the other considerations in?

Mr. Anderson: I am leaving in for the present all other considerations. I am trying to find out what was the basis of his statement that this patent would create a liability instead of an asset. I was assuming that the owner or purchaser would have a right to grant licenses or not as he saw fit, and that if he granted a license he had a right to fix the terms of the license and include in that any protection against any costs he might incur in defending the patent; and I then asked whether there would be any liability in that patent referred to.

Mr. Kresel: Colonel, what I do not understand is whether you want him to assume all the other facts in the question or not.

Mr. Anderson: I have asked him to assume all the other facts in the question, yes, sir. I am now getting the liability question fixed.

A. Will you permit me to refresh my memory by referring to this again?

XQ. 687. (Continued.) I would be very glad if you would.

A. There are so many clauses in this that I can not keep them all in mind. What page was that on?

Mr. Kresel: 3281.

A. (Continued.) I think it would still be valueless.

XQ. 687. (Continued.) No; I am talking about liabilities now. Would there be any liability on it?

A. Yes, because of the fact that an American citizen claimed to have a pre-war exclusive license from the German owners of the patent to manufacture the product in the United States during the life of the patents, the fact that the citizen of the United States then claimed to have a pre-war agreement with the German owners of the patents for the transfer thereof to said American citizen.

XQ. 688. We have been over that, have we not?

A. Yes.

XQ. 689. You will stand on your answers that we have already had, will you not?

A. Yes.

XQ. 690. Let us take up the last clause there that you take up about the obligation to defend the patent. I have asked you if the license were given in the manner which I have indicated, would that liability exist?

A. You assume all these other conditions.

XQ. 691. I have already dealt with these questions. Now I am directing my question to the other conditions.

A. My answer is as I have given it.

XQ. 692. I will ask you to assume that at the time this sale took place or was to take place in the early spring of 1919 there were outstanding, as stated in the hypothetical question which you answered, four licenses to American manufacturers to make salvarsan and neosalvarsan or arsphenamine and neoarsphenamine, which licenses were issued by the Federal Trade Commission—under the German patents which we have been discussing; and that such licenses were to continue by their terms until the end of the life of the patents and I think it appears here in evidence that the patent on salvarsan would expire in 1928 and the patent on neosalvarsan in 1930; that during the year 1918 there accrued under these four licenses of the Federal Trade Commission royalties aggregating $73,512.18; and assume that the purchaser of the patent would be entitled to receive any royalties accruing under those licenses after the date of his purchase and would have the right to license those patents to other persons or to use them himself, all the Federal Trade Commission licenses being non-exclusive. Would you not then say that these patents had a very considerable value?

Mr. Kresel: If your Honor please, I must object to the question upon these grounds. The question assumes facts that are not in evidence. Indeed, it assumes facts which are contrary to the evidence.

For example, it assumes that the licenses issued by the Federal Trade Commission were to continue during the life of the patent. That assumption is made in the face of the statute which leaves it to a court to say whether or no the licenses are to continue. The question does not include, as it should, the statement that notwithstanding the fact that the licenses issued by the Federal Trade Commission may run during the life of the patent, the licensee had a perfect right to surrender it at any time; that therefore, any person taking that element into consideration cannot assume that because during 1918 a certain amount of money had been realized as license fees that that amount of money would continue to be realized for the remainder of the period.

Furthermore, it assumes a fact which is contrary to the evidence, namely, that the purchaser was to be entitled to receive the royalties under the Federal Trade Commission licenses subsequent to the date of the purchase, that assumption being made in the face of the record which is to the effect that not only has the purchaser of the patents not received that money but that that money is now in litigation, being claimed by two other parties.

Furthermore, there is no proof that any such sum as seventy-three thousand and some odd dollars—I do not recall the exact amount stated by Colonel Anderson—had been earned on these patents during the year 1918.

Furthermore, the question assumes that the amount paid under the Federal Trade Commission license is a royalty when the statute says it is only a guarantee fund and not at all a royalty, an amount which the court may reduce or increase as the court may determine.

The question likewise assumes the validity of the patent which is a question that is always open under the statute, open to the licensee. The statute says that the licensee may make any and all defenses which would be available were no license granted. In other words, the licensee under this statute can go into court and not only question the reasonableness of the five per cent. that was imposed, but interpose a defense of invalidity of the patent.

Upon all these grounds, your Honor, we object to the question.

Mr. Anderson: As to the first ground, that the Federal Trade Commission license is assumed to continue for the life of the patent, since it is granted by its terms for the life of the patent, as the license shows, in the absence of any evidence of conditions which would terminate it, it must be presumed to continue for the life of the patent.

As to the right of the person to terminate, I assume that that always exists under a license because a license is a mere right to use; and if a person does not want to use, he does not have to.

In the second place, the presumption will be that if the business was such that it yielded a revenue in 1919, with the enlarged continuing use of this product, a proportionate or approximately similar revenue would be yielded in 1919, 1920, and so on.

These are matters that are capable of being attacked but they are assumptions which, in the absence of other evidence, will be taken not as conclusive but as worthy of being taken into consideration.

Third, that they are not entitled to the royalties subsequent to the purchase: As we have shown here, the Chemical Foundation has instituted suits for these royalties in the various courts.

The Court: With respect to that, Colonel Anderson, is there not a difference between the right to have the royalties subsequent to the purchase—a difference between a challenged and an unchallenged right? Does that not make all the difference in the world?

Mr. Anderson: Undoubtedly there is a difference, but that right at that time, so far as I know, was not challenged. It was subsequently challenged. They always have had to litigate about title to property and conditions surrounding the property. It is one of the contingencies of property ownership. But at that time, as far as I know, the right to receive these license fees from the date of the purchase was not challenged at the time the sale took place.

The Court: Then there is no evidence upon which business men could predicate a possibility to a sufficient extent to have it reflected in the purchase price.

Mr. Anderson: I cannot say that that can be shown because the question of whether the Chemical Foundation was entitled to receive royalties from that date is now a question for the courts and I do not care to express an opinion on the subject. But they undoubtedly did take these patents over and did claim the royalties and in many instances went down to get people to terminate their licenses with the Federal Trade Commission and renew licenses with the Chemical Foundation and subsequently take out similar licenses with the Chemical Foundation. They bought whatever right they bought. They bought the right to those royalties from that date as they thought they were and they are asserting a claim to that effect.

Fourth, that there is no proof of the $73,000: On that question I differ from counsel for the reason that the figures are made up from the evidence in this case and proof has been produced of the amount of royalties that accrued in the year 1918, in detail.

As to the Federal Trade Commission license fees being only a guarantee fund, the Federal Trade Commission license was based on a five per cent. royalty; and in the absence of any evidence that it was unreasonable or unjust will be presumed, having been fixed by the Federal Trade Commission, to be a reasonable and proper license fee and no evidence has been introduced to the contrary.

Therefore the presumption of the purchaser was—and he had a right to make that presumption—that that license fee would be the license fee he would be entitled to receive during the life of the patent. If it was modified, as the Court would have a right to do under the statute, that was one of the contingencies that he would probably take into consideration and it might slightly modify the amount that he would give as between a possible contingency, though not a probable one, and an absolute right.

Sixth, that it admits the validity of the patent. The issue of the patent itself is presumption of its validity. I do not claim to be a patent lawyear, but I think the evidence produced here—if there is any doubt about it—is sufficient to have established it.

In any event, at the time that it was transferred, and we are talking about that time, the presumption of validity existed in favor of the patent which had been issued.

Therefore, as I see it, if your Honor please, the question fairly states the various elements which would enter into the mind of a purchaser at that time, for the consideration of the witness.

The Court: I would like to ask two questions.

Mr. Anderson: Certainly, your Honor.

The Court: Those two questions are these: Is there any relation between the sale of land at a tax sale, and the sale of these patents under these circumstances? I do not mean similarity between the tax sale of real estate and the sales of real estate bringing the same value as real estate sold in the ordinary course of business.

Mr. Anderson: Sometimes they do and sometimes they do not, sir. I do not know about tax sales up in this part of the country but I have known tax sales down in my part of the country to bring very, very considerable values. A purchaser before he purchases the land looks into the question of title and things of that sort. If there is a possibility of a tax sale being set aside in any year, that may affect the value of the land, it depends on the statute and the character of the land, and various other contingencies.

The Court: Is there not that similarity here? So far as I know about tax sales—although I do not know what they are bringing now, it sold under the Tax Acts, I did know something about it when the Acts were first passed and carried into effect, that the price was more or less nominal, but that was owing to the novelty of the procedure in obtaining title under the Acts. It seems to me that your question and assumptions will not elicit an answer that is helpful.

Mr. Kresel: Will your Honor permit me to point out one thing further that I should have stated?

The Court: Yes.

Mr. Kresel: Colonel Anderson has made the statement that at the time of this sale, in 1919, nobody was questioning the right of the purchaser to receive the royalties subsequent to the date of the purchase, but as to the exclusive license to manufacture in the United States claimed by Metz, your Honor will recall he stated that Metz made no secret of that claim; that he pronounced it in the halls of Congress; that the purchaser at that time knew that he had to take these patents subject to the claim of Metz that he had the exclusive license, the pre-war exclusive license to manufacture in the United States.

The Court: For the life of the patent.

Mr. Kresel: For the life of the patent, as he has stated here.

The Court: Is that embodied in the question?

Mr. Kresel: It is not.

Mr. Anderson: There is nothing embodied in the question that I have asked. It is in the question that Mr. Kresel asked, but I do not remember the evidence as Mr. Kresel states it, and therefore I omitted it expressly, because I do not think it has got anything in the world to do with this case.

Mr. Kresel: Wait a minute. Do you challenge the correctness of it?

The Court: One minute. I fail to follow your two statements. You made two statements, Colonel Anderson, and the first was that you did not recollect the testimony.

Mr. Anderson: I do not remember it as Mr.

Kresel states it. I understand that Mr. Metz said that he claimed a license under this patent by verbal arrangement with some man in Europe—the salvarsan patent I think, but just what the arrangement was did not appear very definite.

Mr. Kresel: I can lay my hand on it in a minute.

Mr. Anderson: And in the next place, so far as that fact being known to the purchasers of these patents at the time that they made the purchase, I do not recall Mr. Metz so testifying. I would not undertake to state what he did testify to, but I have not answered your Honor's suggestion about a tax sale. I doubt if I have made as clear as I should have done to the Court, the view of the Government here, which is that this whole transaction differs fundamentally from a tax sale, in that a tax sale is required by law to be made; while in this case there was no obligation on the holder of this property to sell, until the conditions of sale were made favorable, by either the determination of the surrounding facts, or the determination of the title, or any other conditions; and that one of the highest and most important conditions imposed upon a person holding trust property, is that he must not sell unless and until the conditions of the property are such that they will bring a most favorable price. Therefore, if the argument made here is that this sale was made under conditions which tended to destroy or depreciate the value of the property, then that argument leads to the inevitable conclusion that it was an invalid sale.

The Court: I understand your contentions.

Mr. Anderson: I merely wanted to add that, because I did not want to leave an unfinished reply.

The Court: I do not see how you can escape from the conclusion that the Act itself in authorizing the sale, will assume a public sale under specified conditions, where the Government is taking the patents, the owner being unwilling to have them seized, and where the owner was excluded as a competitor in the purchase, and where the purchase, if I recall it, was restricted to Americans. Now, that in itself did not create a condition that the Alien Property Custodian had anything to do with.

Mr. Anderson: Possibly, but there is not present any one of the conditions that I have mentioned. In other words, I am perfectly willing to assume that these patents could only be bought by some one of the one hundred and ten million of the community of American citizens; that they could only be sold when the owner was excluded from the purchase, and the other conditions which the Act prescribes expressly; but taking those, then that did not relieve the person who is making the sale, from putting the property in the best condition for sale that it could be, with those conditions attached to it by Congress.

The Court: I think the objection is well taken. You may take the answer under the general rule.

Mr. Anderson: I will ask that the answer be taken, and then I will frame the question again, sir.

Mr. Kresel: Would your Honor like me to point out the part in Mr. Metz's testimony?

Mr. Anderson: Please repeat the question.

(Question repeated.)

A. I would say that perhaps their value would be enhanced, but I could not say that they would have very considerable value.

(No Q. 693.)

XQ. 694. Now, I will take the question as asked by Mr. Kresel, and I will add to it the assumptions stated in the question as asked by me, and ask you to say what then would be your answer?

Mr. Kresel: Wait a minute. I would suggest that you read him the entire question. I myself would not be able to carry it.

The Court: Can you answer it?

The Witness: I understand to what Colonel Anderson is referring.

XQ. 695. I will ask you this question, then: Doctor, based upon your general knowledge of drugs and their manufacture, your knowledge of the salvarsan and the neosalvarsan patents, your experience in the manufacture of these products, the lack of information as to how to manufacture under the patents; the fact that four manufacturers were then supplying the product to the consumers; the fact that there was a pre-war exclusive license from the German owners of the patents, for the manufacture of the products in the United States, during the life of the patent; the fact that a citizen of the United States then claimed to have a pre-war agreement with the German owners of the patent, for the transfer thereof to American citizens; the fact that the owner would be obligated to give the United States a free license to manufacture said product, or to have it manufactured for its own use, and would be obligated to issue non-exclusive licenses under said patents to any qualified American citizens, and who would be obligated to defend the patent, and never have any more than six per cent. return on his investment—that is Mr. Kresel's question. Without admitting that the facts there stated are contained in this record, or that they correctly state the evidence, I want you to add the further assumption to his assumptions, that these patents at that time were accruing royalties under the four Federal Trade Commission licenses, which in 1918 aggregated $73,512.18, and that the purchaser of the patents under the conditions named would have the right to receive all subsequent royalties after the date of his purchase, which might accrue under the Federal Trade Commission license during the life of the patent, state then whether you think they would have a value?

A. I think they would have a very doubtful value, because the buyer would very likely just be buying a lawsuit.

XQ. 696. Doctor, do you know that the Abbott Laboratories took out a license No. 299 from the Chemical Foundation on September 26, 1921, to manufacture novocain?

A. I do not know.

XQ. 697. You do not know?

A. No.

XQ. 698. Do you not know, as you have been testifying to these matters, that as a matter of fact the Abbott Laboratories held licenses under Patent No. 812,534 from the Federal Trade Commission, on a basis of five per cent. of gross sales? You do know that, do you not?

A. I understood so, yes.

XQ. 699. And that on September 26, 1921, they took out Foundation License No. 299 under the same patent, which was fixed at the rate of five per cent. on net sales; is that not true?

A. So far as I know it is, but I have not followed that particularly.

XQ. 700. If you have been keeping up with the Dermatological Institute affairs I will ask you whether you do not know that they operated from November 26, 1917, under Federal Trade Commission Licenses 1, 1a, 1b, and 1c, on the basis of a royalty of five per cent. of gross sales?

A. That was my understanding.

XQ. 701. That these licenses covered salvarsan and neosalvarsan. You so understood?

A. Yes.

XQ. 702. That in April, 1921, they took out Chemical Foundation License 189, June 1, 1921, Chemical Foundation License 256, June 1, 1921, Chemical Foundation License 257, and on the same date Chemical Foundation License 258, in lieu of the licenses that have been stated, and that on the Foundation licenses they paid five per cent. on net sales instead of five per cent. on gross sales. Did you know that?

A. I knew that the licenses were transferred to the Chemical Foundation, but I did not clearly know on what basis they were paid.

Mr. Kresel: Colonel, our exhibit shows that, does it not—shows the facts? Whatever the exhibit shows is the fact.

Mr. Anderson: One minute, Mr. Kresel. Whatever your exhibit shows may be a fact, but I am testing the knowledge of this witness who has been testifying about the business of these companies, not only his own department but all other departments.

Mr. Kresel: All right.

Mr. Anderson: I want to see how far he can go outside of it, and what he knows.

Mr. Kresel: All right.

The Court: Outside of the matters to which he has testified?

Mr. Anderson: In other words, outside of his department. In his direct examination he covered every branch of this business, knew it all, and I want to know how much he knows about it.

The Court: That is not cross-examination. You can take it under the general rule if you want it.

Mr. Kresel: Your Honor will remember how strictly I was held in questioning this witness. He was asked to construe documents and to give his opinions on questions of law, and I have not objected.

The Court: The question asked is not cross-examination. The answer may be taken under the general rule if you so desire.

Mr. Anderson: The answer has been given, if your Honor please, but my purpose in the cross-examination was to test the extent of his knowledge on the subject, and as long as he has testified representing these companies I want to know how far his knowledge goes; because he did testify to the business, the conduct of the business, and the books of the Dermatological. However, the answer has been taken and I will not argue the question.

I will now take the patent on cinchophen and neocinchophen. Has the witness those patents there?

Mr. Kresel: They are in evidence.

XQ. 703. I wish you would point out the one which is cinchophen; will you?

A. This is cinchophen and this is neocinchophen (handing counsel).

XQ. 704. I think you said that you personally attempted to manufacture this product called cinchophen under this patent; did you?

A. I did.

XQ. 705. Where, at the University of Illinois or at Chicago?

A. At the Abbott Laboratories in Chicago.

XQ. 706. In what year?

A. Beginning 1918, early in 1918, and I may have done a little work at the University of Illinois but it did not amount to anything, we did not get anywhere.

XQ. 707. When did you finally make the stuff?

A. We were producing some right along.

XQ. 708. You were producing some right along under this patent?

A. But we had so many difficulties with it that the amounts produced were small, and the price was high. We were losing money on it.

XQ. 709. You were losing money on it, but you did produce cinchophen?

A. Oh, yes.

XQ. 710. And you produced a product described in this patent No. 1,075,171, did you not?

A. Yes, sir.

XQ. 711. That was cinchophen?

A. Yes, sir.

XQ. 712. You followed the process outlined in that patent, did you not?

A. No, not as it stands.

XQ. 713. Will you take the patent and tell me exactly where you vary? I am not going to ask you to go over the patent to say first what you did, but tell me what in particular, chemically, you did?

A. In the first place, we had to work out a method of making pyropyruvic acid or pyroracemic acid, which is not on the American market, or was not at that time.

XQ. 714. It is now, is it not?

A. Not to my knowledge. That is, not in commercial quantity.

XQ. 715. That was an intermediate, was it not?

A. Yes.

XQ. 716. That was not a patented article?

A. No.

XQ. 717. In other words, any chemist trained in the art, learned in the art of chemistry, could have made that from the products of which it is known to be made?

A. He could have made it in small quantities.

XQ. 718. All right, you first had to make that. The patent does not pretend to cover the making of that product, does it?

A. No. It says here that to the alcoholic solution of benzylidin anilin is gradually added pyroracemic acid to the boiling solution, the alcohol solution being kept boiling. We found that temperature had a lot to do with it there, and if it was added to the boiling solution, as here stated, the amount of tarry products greatly exceeded the amount of cinchophen that we obtained.

Mr. Kresel: Your Honor, may I have that answer repeated?

The Court: Yes.

The Witness: Would your Honor want me to repeat it or have the stenographer read it, whichever you prefer?

The Court: I would rather have you repeat it.

The Witness: The patent calls for this method: To an alcoholic solution of benzylidin anilin is gradually added pyroracemic acid to the boiling solution, the alcoholic solution being kept boiling. My statement was that if that process was carried out the amount of tarry material obtained exceeds the amount of good cinchophen obtained, it does not give a good product, it gives more by-product than it does good product.

XQ. 719. In what respect did you vary the method from the method described in that patent on that point?

A. Your Honor, I would like to ask you a question there, if I may. There are various things here in these patents which involve the results of years of research of our company and by pointing out specific instances, as would be involved in this case, it would tell exactly the essential things that we are carrying out differently, that have made the processes profitable for us, and as far as the information is concerned I shall be glad to give it to your Honor personally. But as far as having it appear in an open courtroom and appear in the record, I do not think it is fair to the company. I am not the one to lay down the policies of the company, but I think it is giving away the most valuable information the company has.

Mr. Anderson: My view is this, sir—that this company is shown on the record here to be one of the original subscribers to the Chemical Foundation, one of the original underwriters, a stockholder. The witness comes here to testify on its behalf, presumably as a stockholder. May I ask the witness if he is under subpoena, if he has been summoned here?

The Witness: No.

Mr. Anderson: He came here by direction of the officers of his company. Did you not?

The Witness: Yes.

Mr. Anderson: They send an officer here to testify, to attack the very patents under which they hold licenses; and therefore if he goes on the stand and undertakes to testify the process they used is different from the process of the patent here, while the Government does not wish to embarrass anyone if it can help it, we are entitled to know what those differences are.

Mr. Kresel: If your Honor please, I should be the last one to oppose giving the Government any information that is available in this case. But I do not think the Government should insist or is entitled to insist upon this witness divulging for the benefit of their rivals such information as they have obtained after a great deal of research and at large expense. Your Honor is the only one who can be aided by that information, in your decision of the case, and the witness has stated that he is perfectly willing that your Honor shall have the information.

Of course, I must admit that Colonel Anderson speaks for the Government and not I, but I can not see where the Government's interests in this case demand that that information be spread upon the record to become public property. I am informed by my colleague that that question in a similar form has come up, as to trade secrets, in the case of the DuPont Powder Company against Masland in 244 U. S. Supreme Court Reports, at page 100. Your Honor no doubt is familiar with that.

The Court: It came up in this Circuit, but I am not familiar with the limitations of that decision. If I was, they have escaped my memory. Is there someone here who can tell me?

Mr. Kresel: I think Mr. Mahaffy is familiar with that.

Mr. Mahaffy: I do not recall. I recall the fact that it was heard before Judge Dickinson in a suit that went to the Court of Appeals, and then to the Supreme Court.

The Court: I recall the nature of the suit. The Court of Appeals reversed the court immediately below.

Mr. Hershkopf: I think I can tell your Honor what the situation there was. The DuPont Company was suing to restrain Masland, a former employee in its employ, from making a disclosure of trade secrets and from using them after he left their employ. He contended that what he knew was not a trade secret at all, but in the nature of public information, and he purposed to propound to experts who were going to testify the very matter which was the subject of the prayer for injunction. It was against that the appeal ran. The Court held that that need not be done in any manner so as to pass it to the public, that the questions could be submitted to the court confidentially, that the experts could testify, without reference to this matter, what they did know and what they did not know, that then his Honor could compare the answers with what the experts testified and tell whether it was or was not matter of general knowledge.

Mr. Kresel: It is at page 100 of the book your Honor has had brought in.

Mr. Anderson: It would be a most remarkable situation, I submit, if your Honor please, if a witness could voluntarily come into court, practically representing the defendant because one of the owners, and attack a process under which the plaintiff claimed, then could be relieved of the obligation to tell the details in which it differed, to the end that the court might determine whether it was an infringement or a valid change and came within the patent or not. As to your Honor's knowledge of the situation, of course, for the purposes of this particular hearing your Honor's knowledge is all that is desired, but necessarily that would not go any further than the court, and this case may, of course, go a good deal further than this court and all these questions may become material in the upper court.

The Court: Have you examined the case to which reference has just been made?

Mr. Anderson: No, sir, I have not. I have not examined the subject at all. I am just proceeding on reason and what seems to me common sense.

The Court: It seems to me that the administration of justice is a matter in which every citizen of the United States is interested; in which every lawyer ought to be if anything, more deeply interested than the citizen.

MR. ANDERSON: I quite agree, sir.

THE COURT: It seems to me that a person ought to come willingly and without hesitation to the witness stand knowing that he is going to be treated in a proper manner and that his telling the truth is not going to be penalized. It seems to me that if on a matter which here is of relatively slight moment (if I recall the value placed on this patent, it was rather slight), in order that he may tell whether this patent is workable or not (that is the limit of the information with which we are concerned here), he is required to disclose, not his secrets, but the secrets of his employers, secrets upon which the business of this company is mainly built, as he tells us—it seems to me that the administration of justice could be very readily brought into serious disrepute, where, instead of aiding this administration of justice, those engaged in business would desire to escape testimony in every conceivable and possible way. I am not now going to compel this witness to answer.

MR. KRESEL: May I point out to your Honor now that this case before me is as Mr. Hershkopf stated. The defendant in that case, preparatory to trial engaged experts, and to those experts—mind you, they were his experts—and to those experts he was about to disclose the very information which the action sought to keep secret, and the plaintiff went into Court and obtained a preliminary injunction against the defendant disclosing that information to his own experts. From that injunction there was this appeal to the United States Supreme Court.

The Supreme Court held that during the taking of proofs the defendant might properly be enjoined from disclosing the processes to experts or other witnesses, the restraint not extending to his own counsel, and that the trial judge in his discretion might reveal them to such persons at such times and under such precautions as he might deem necessary in the progress of the case.

That is exactly what we are asking the Court to do.

Mr. Hershkopf: Except that our case does not go as far as this. There that was the only issue. This is a collateral matter. The witness has testified that the process as followed out results in a tarry substance, so impure that it is not fit for use as a drug. He is not called upon to instruct his competitors on how to make that impurity a valuable drug. That is the question that Colonel Anderson is now asking.

Mr. Kresel: Would you like to see this case? (Hands citation to Mr. Anderson.)

The Court: I will do one of two things: You may examine this witness as fully as you like on cross-examination with respect to whether or not that patent is workable, whether it makes a disclosure which will enable the production of the product. You may go as far as you like under the General Rule without asking him to disclose the trade secrets, which I do not think this question demands.

You may go one step further if you like. You may recall this witness tomorrow morning. I shall not ask him to make his disclosures now; but you may recall this witness tomorrow morning, if you desire, and have him disclose to you, to Mr. Kresel and myself in Chambers, to be there recorded by this witness in longhand himself, that testimony showing precisely the secrets, that testimony to be sealed and to be transmitted to the Court of Appeals under the seal of this Court and not to be opened or referred to in briefs or otherwise, but if it is desired to be referred to, to be privately referred to, and not to be disclosed by you to any of your colleagues, or by Mr. Kresel to any of his colleagues.

You may have your choice; but I am not going to ask a man on this very remote collateral issue to disclose secrets which he tells me would be possibly highly detrimental to the business of his employers.

Mr. Anderson: Then I will proceed with the examination under your Honor's ruling, reserving of course, an exception thereto, and if, after consideration of the matter with my associates, especially Mr. Knight, my expert adviser on this matter, we should reach the conclusion that we desire to suggest any other course to your Honor, why, we will suggest it, or follow such course your Honor may determine, of course; but in the meantime I will go ahead with other branches.

The Court: But you understand that the method I am suggesting, or that was suggested to me and which I have indicated that I would follow, does not prevent you from obtaining the information which you ask. I am not limiting your examination. I have no objection to your taking an exception; but it seems to me that the exception indicated is one that lies to the ruling of the Court which prevents a public disclosure of the business of this concern. I do not understand that.

Mr. Anderson: No, sir, it was not so intended. I had no idea that the question would arise and therefore I have not had a chance to talk to anybody and I am in deep water on this subject. My view of the matter is simply this: that when a witness comes into Court——

THE COURT: I understand you agree with what I said?

MR. ANDERSON: My exception was not directed to your Honor's refusal to make public in open Court, or anything of that kind. I think under the circumstances of this case the plaintiff is entitled to an answer to this question and the right to cross-examine fully on that question in the record in this case. I do not mean to say that your Honor's alternative suggestion will not meet the situation at this time, but I merely want to reserve that question.

THE COURT: It will be in the record, but not in the public record. That is now finally determined.

MR. ANDERSON: That is all right; I merely want to reserve the question.

THE COURT: So that if this witness, before giving the information, wants to communicate with his employers, I do not mean to say that anything they say will relieve him; but he may have until tomorrow morning to give it. I will not compel the answer this afternoon; (to witness) but if Colonel Anderson asks you those questions, we will go into Chambers and I will let you set out your answers in longhand in your own handwriting. There will be no copies made of it. That will be delivered to me. Nobody will be present except Colonel Anderson and Mr. Kresel, you and myself. As soon as that is written out, that may be sealed in my presence and the seal of the Court put on it, so that it will not be opened by anybody except by me or by some Appellate Court. You may advise your employers that you may be called upon to give that information, and if you are called upon, you will have to give it regardless of what your employers say.

The Witness: Your Honor, I think that is perfectly fair. I should like to ask one more question with respect to that.

The Court: You may.

The Witness: The same thing that came up here holds even more forcibly in the case of the arsphenamines, because there we have something that is even more important to us and concerning which in my evidence I have disclosed a number of cases where it is not satisfactory and I have indicated to some extent how we got around that. For instance, in making arsanilic acid and then going around to the next step. But to go into detail and state that would not only be a breach of confidence on my part, with which my company has entrusted me, but it would also involve certain points which can only be brought out in connection with the apparatus employed, the actual operation, which would not be indicated by the directions given.

The Court: That question is not before us; and if it is brought up, you may be called upon to go through the same process. But that will be with the distinct understanding that it is not to be revealed by Colonel Aderson or by Mr. Kresel or by myself save in the transmission of the sealed evidence to the Court of Appeals.

The Witness: I thank you.

By Mr. Anderson:

XQ. 720. Now, Dr. Volwiler, are there any variations in the process which you followed in making this cinchophen, other than what you have indicated as being a secret matter which you did not wish to disclose, that is of common knowledge to the profession or trade?

A. At the end of this reaction which we have just been discussing, you get cinchopen in impure form; and the next question is the isolation and the purification which again involves steps which we have worked out ourselves and which have never been published.

XQ. 721. Without stating what those steps are, do they involve any matters which would not be known to any person skilled in the art of chemistry?

A. Yes, sir. It took a number of us a long time to find out how to do it. As a matter of fact, the last improvement came about only after we had been making cinchophen for two or three years.

XQ. 722. And selling it?

A. Yes, sir.

XQ. 723. Now, to go back, is there any reason why two or three other persons making the same kind of experimental or research work could not accomplish the same purification results? Do you know of any?

A. No reason that I know of.

XQ. 724. To go back, this cinchophen patent is a product patent, is it not?

A. Cinchophen is not. Cinchophen is a process patent. Neocinchophen is a product patent.

XQ. 725. In your original and experimental work you did produce under that patent, by that process, cinchophen in small quantities which had to be purified and was purified so as to get the actual article, did you not?

A. Yes; it was not quite pure even then, Colonel.

XQ. 726. You did sell that product, did you?

A. Yes.

XQ. 727. Made under that patent?

A. Yes.

XQ. 728. And subsequently by methods some of which you have disclosed?

A. May I add something to my previous statement?

XQ. 729. Yes.

A. It was not manufactured according to this patent just as it stands. We had to add extra information to this in order to sell any at all. We have not made any cinchophen under this patent just as it stands.

XQ. 730. Where did you stop when you followed the process of the patent? Where did you begin to add to it? I am not asking you what you added to it.

By The Court:

Q. 731. May I ask you a question, whether the information that you added was information known to those skilled in the art or whether it was information that had to be developed?

A. It was information that had to be developed because it involved the combination of members rather than the employment of methods.

Q. 732. What I wanted to know was whether the information that you added to that of the disclosure of the patents was such as anyone skilled in the art would know or whether it required information by experiment and discovery.

A. I can state that better by saying that it involved original research.

By Mr. Anderson:

XQ. 733. Let me ask you if you have ever made cinchophen without following in part the process named in that patent?

A. Yes, sir.

XQ. 734. Have you ever made it by entirely abandoning the process named in that patent?

A. Yes, sir.

XQ. 735. And you can not without disclosing your trade secrets tell the variation?

A. I am willing to tell that.

XQ. 736. All right, tell me exactly what you did do when you made cinchophen then.

A. Cinchophen can be prepared by a reaction of isatin with acetophenone and that will give the same product.

XQ. 737. That will give the same product as the product which is said to be produced under that patent, will it?

A. Yes, sir.

XQ. 738. I will ask you to look at this package which I hand you. Is that made by the Abbott Laboratories?

A. Yes, sir.

XQ. 739. Is that cinchophen?

A. It is, if the original contents are in the tube.

XQ. 740. You do not mean to suggest that the original contents are not in the tube, do you?

A. Well, it is not a sealed package, that is all.

XQ. 741. That is the kind of a package you put cinchophen up in, is it not?

A. That is one of the packages, yes.

XQ. 742. That is an Abbott Laboratory label, is it not?

A. Yes.

XQ. 743. Will you read it?

A. "20 tablets cinchophen. Phenyl cinchoninic acid (U. S. P.) grains 7-½ (0.5 gm.) List No. 1253.

> "Action: Cinchophen increases the excretion of uric acid. Analgesic and anti-anthritic. Dosage, one to two tablets, three or four times daily, with one-half to a glass full of water. Made under license 15 from the Federal Trade Commission, under United States letters patent No. 1,075,171, Abbott Laboratories, Chicago, Illinois."

XQ. 744. The German patent to which you have referred is what number?

A. 1,075,171.

XQ. 745. And do you know that the Federal Trade Commission license is a license issued under that patent, or don't you know about that?

A. I think so.

XQ. 746. Federal Trade Commission license 15 issued to the Abbott Laboratories?

A. Yes.

XQ. 747. And this is the label under which you sold this stuff to the public, is it not?

A. Yes, sir.

XQ. 748. Where is your patent for neocinchophen; is this it?

A. No, that is not it.

XQ. 749. Here it is, I think. Is this not the one?

A. Yes, that short one.

XQ. 750. That is Patent No. 1,045,759, is it not?

A. Yes, sir.

XQ. 751. Is that a product patent?

A. Yes, sir.

XQ. 752. What is the process followed in making that stuff as described in the patent?

A. The process described is very brief. It involves making the ethyl ester of 6-methyl-2-phenyl quinoline-4-carboxylic acid.

XQ. 753. What was the variation from that patent? Just take the patent, as we have done in the other cases and tell me in what respect you varied from that patent in making this product.

A. You want me to go into it in detail?

XQ. 754. It is a very brief process, is it not?

A. Yes.

XQ. 755. Take the first step under that.

A. I should like to——

XQ. 755. (Continuing.) If this involves your giving any trade secrets, I am examining you subject to the ruling of the Court on that subject and there is no use of opening that question up. You may just say so and I will stop.

A. I did not want to state that in so many words. I want to take a middle ground. I am willing to state the steps that are not desirable and satisfactory in here.

By Mr. Kresel:

Q. 756. You mean under the patent?

A. Under the patent, yes; and point those out if that will meet your desire, Colonel.

By Mr. Anderson:

XQ. 757. Can you not state what you substituted in place of it?

A. I should prefer not to.

XQ. 758. Then if you can not state what you substituted in place of it, I can not ask you what is desirable because that question follows immediately. There is no use of stating a half truth, you know. I want the whole thing.

A. (No answer.)

XQ. 759. I will ask you to look at this package (handing to witness). Is that made by the Abbott Laboratory?

A. It is.

XQ. 760. Is that neocinchophen?

A. Neocinchophen, yes.

XQ. 761. As put up by the Abbott Laboratories?

A. It is.

XQ. 762. Now, Dr. Volwiler, whatever variations in process you followed and which you say you can not disclose without giving certain trade secrets, is it or is it not the fact that when you got through you got neocinchophen?

A. Yes.

XQ. 763. It is neocinchophen?

A. We are making neocinchophen. That is what you mean?

XQ. 764. Yes.

A. That is right.

XQ. 765. I read from this package that you have identified as a package of the Abbott Laboratories, the label as follows:

> "100 neocinchophen. Grains, 5 (0.3 gm.) List No. 1338."

I have omitted the chemical name under the trade name. "Doses, 2 or 3 tablets three or four times daily with one-half to a glassful of water. Licensed by the Chemical Foundation, Incorporated, under the following United States Letters Patent, No. 1,075,171, October 7, 1913, the Abbott Laboratories, Chicago, U. S. A."

I will ask you what is the number and date of the patent to which you have referred, the German patent? Have you got it there?

A. I do not think I have it, Colonel.

XQ. 766. Will you look at it and state the date and number?

A. November 26, 1912. The number is 1,045,759.

XQ. 767. Then where is the patent under which you were manufacturing this stuff?

A. That is evidently an error. That is the cinchophen patent number instead of the neocinchophen.

XQ. 768. It is?

A. Yes, sir.

XQ. 769. You are in fact manufacturing and selling this neocinchophen under a license issued by the Chemical Foundation under that patent that you hold in your hand, are you not?

A. Yes, this one.

XQ. 770. And that is number what?

A. No. 1,045,759. The other is an error.

XQ. 771. This statement on the label that it is patented under Patent No. 1,075,171 is an error?

A. Yes, that is correct.

XQ. 772. And I understand, Doctor, that you can not tell me the steps that you pursued in the manufacture of this neocinchophen without disclosing trade secrets which you do not feel at liberty to give?

A. Yes, sir.

XQ. 773. You spoke of the cost of research in perfecting the manufacture of cinchophen and neocinchophen this morning. In order to shorten your examiation, are you willing that your answers in regard to the sources of your knowledge and your knowledge of the cost of this research as applied to the work on novocain shall apply to the sources of information and your knowledge on the subject with respect to these two patents?

A. That is cinchophen and neocinchophen?

XQ. 774. Yes.

A. Yes, with this provision, Colonel, that on some of these products I was in the plant until the work was complete, until they were satisfactorily produced. On others, I was in the research laboratory before the final commercial improvements had been finished.

XQ. 775. Can you tell which products?

Mr. Kresel: Colonel Anderson, may I make a statement here?

Mr. Anderson: Yes.

Mr. Kresel: On the question with reference to the amount spent on research, I will say now that I shall call another witness in the Abbott Laboratories who I hope will have more personal knowledge on the subject. So that you need not spend any more time in asking him further about that.

Mr. Anderson: All that I want is that it be understood—and I am willing for his explanation to go in with one additional question—that his testimony on this subject this morning is subject to the same sources of information, want of knowledge and so forth which I indicated with regard to novocain, with the addition which the witness has made.

XQ. 776. If you can, tell me what particular products you refer to when you say that you were in the laboratory, the plant, when the research was completed?

A. On cinchophen the work was not complete when I went out. On procaine the work was almost complete. Those are the ones that you asked about.

XQ. 777. And the same applies to neocinchophen, I suppose?

A. On neocinchophen the work was not started until after I had left the plant and we carried out the research in the laboratories and then when necessary, sent a man to the plant, one of my men to the plant, to see it through.

XQ. 778. One of your men?

A. Yes.

Mr. Anderson: May it please the Court, it is impossible for me to examine this witness as to the process under this patent——

Mr. Kresel: Which patent?

Mr. Anderson: Under the patent for either cinchophen or neocinchophen, in accordance with my notes here, and the questions I want to ask him run directly against your Honor's rulings. I am not going to do that. I do not know that it is necessary for me to make formal offer to examine on that subject. I do not want to do that. I just merely want to state on the record that I desire to question this witness as to the actual processes used in the manufacture of cinchophen and neocinchophen and as to the exact variations from or improvement on the process described in the patent. But under his answers already made, that they involve necessarily the disclosure of certain matters which would be prejudicial to his business, under your Honor's ruling on that subject, I will not pursue that inquiry by asking the questions and having them ruled out; and I do not think it is necessary that I should do so.

THE COURT: No, and you may take that up in chambers.

MR. ANDERSON: I will discuss that with Mr. Knight, tonight, and after going over the evidence, I will tell very much better whether it is sufficiently material to go to that trouble. I do not want to go to any trouble we can avoid in this case.

THE COURT: I only want to make this record clear, that I am not denying to you the opportunity of taking from this witness any information on that. There is no limit placed upon you, since the beginning of this case, on any question. No testimony has been excluded, and none will be excluded, so far as I can now prophesy; but I shall keep control of the manner of the disclosure of that testimony, so as not to do unnecessary injury to a witness, or to a business, or to the employers of a witness. You may have full opportunity any morning or tomorrow, or any such day as you desire, so long as this witness is present, to go into that as fully as you like, under the conditions I stated a few moments ago. I would permit you to go into it now, except to me it seems fair—I am not putting it on any legal principle—I am justifying it on the point of view that it seems fair before recalling this witness to discuss it, that he should have an opportunity of stating to his employers that he may have to disclose it, and will have to disclose it if you insist, but the disclosure will be made under the conditions which I have stated, with this possible exception, and you have not any objection, that I will have it taken down stenographically and reported by a local stenographer, who will give me but one copy, and will also return to me the shorthand notes which will be kept.

THE WITNESS: I would have no objection to that, your Honor, and furthermore, I will not have an opportunity to get in touch with my company by tomorrow morning to get their viewpoint on it that you have so kindly given me an opportunity to do; but I am sure that they, under the conditions that you have outlined, will have no objection.

THE COURT: The only reason that I am giving you that opportunity is so that they may know it before it happens rather than afterwards. It seems to me a fair proposition to you and to them to enable you to indicate that fact and ascertain their views.

THE WITNESS: I shall do so and I know they will be perfectly satisfied.

THE COURT: Then you will proceed with this witness tomorrow.

MR. ANDERSON: There are some questions that I want to ask on this additional patent No. 1,005,176, a very few questions, which was the last patent he was examined on, but before passing from the one on which I was examining, I want to state the position and I want your Honor to understand I am not contesting the fairness of your Honor's position on that.

The Court: I understand.

XQ. 779. Now, under patent No. 1,005,176, have you got that patent here——

Mr. Kresel: That is in evidence.

A. I think you have the patent, Colonel, that I originally had.

XQ. 780. Now, this acriflavine patent No. 1,005,176 patented October 10, 1911, that is the one that you said you advised your company to purchase, is it not?

Mr. Hershkopf: No.

A. No, not this. A different method for making this.

XQ. 781. You purchased another method for making that?

A. Yes.

XQ. 782. Now, what does that patent call for you to do; what does it say you must do there to make that stuff?

A. It is a long process. Do you want me to read it all through?

XQ. 783. No. But I am afraid I will have to go through that process with you.

A. Yes, I will be glad to go through this with you if you wish.

XQ. 784. When did you do any work on that personally?

A. When?

XQ. 785. Yes.

A. In the spring of 1920.

XQ. 786. Spring of 1920?

A. Yes.

XQ. 787. Is that a product or process patent?

A. This is a product patent.

XQ. 788. It is a product patent?

A. Yes.

XQ. 789. And you are making that stuff now and selling it?

A. Yes, sir.

XQ. 790. And selling it under license under that patent, are you not?

A. Yes, sir.

XQ. 791. Who issues that license, do you recall, the Federal Trade Commission or the Chemical Foundation?

A. I can tell you in a moment.

XQ. 792. Please tell me.

A. The Chemical Foundation, our license No. 109.

XQ. 793. Issued under that patent?

A. Yes, sir.

XQ. 794. What date?

A. I do not know when the license was issued.

Mr. Kresel: The date is in evidence, Colonel, in our long statement. Every license is shown there and the date of it.

Mr. Anderson: Have you got that?

Mr. Kresel: Would you like me to get that?

Mr. Anderson: I would like to know the date of that patent. I would like to have it appear of record.

Mr. Kresel: License No. 109 to the Abbott Laboratories on acriflavine and proflavine, which was issued April 27, 1920. I read that, if your Honor please, from Defendant's Exhibit No. 83.

XQ. 795. It appears from Defendant's Exhibit No. 83, that you have paid in royalties under this license, which is five per cent. on the net selling price, $840.77. Do you know whether that is true or not?

A. I do not.

Mr. Kresel: You can take that for granted. It is our exhibit and we are bound by it.

Mr. Anderson: I just wanted to know what he knew about it.

XQ. 796. Now, you say that you bought from somebody else another process to make this?

A. Yes.

XQ. 797. Other than the one described in this patent?

A. Yes.

XQ. 798. Now, can you without disclosing your trade secrets, tell me the exact details in which the one bears to the other? It is no use going through it.

A. I am quite willing to, but I don't think it will do any good, Colonel, because the other process was not any good either. We had to reject it also.

XQ. 799. You did, after you bought it. Well, you told me you gave something that you called some $250, that is the one you are talking about, is it not?

A. Yes.

XQ. 800. And then so much royalty on it; as long as you used it?

A. No, a small royalty for two or three years, I have forgotten which.

XQ. 801. Now, you are manufacturing this stuff now and selling it, that is true, is it not?

A. Yes, sir.

XQ. 802. Now, can you, without disclosing your trade secrets, which under the ruling of the Court I am not going to ask you about, take this patent and follow it down in detail, as you did the novocain patent, and tell me exactly where the differences come in, between your present process and this patent?

A. Our present process is almost entirely different from this.

Mr. Kressel: You mean by this, the patent?

The Witness: This patent, yes.

XQ. 803. That of course is not an answer that I can accept. If you can tell me in detail wherein it differs exactly; but I want to go through it step by step and find out just exactly what the difference is, and then I will decide, or the Court decide, whether it is entirely different. If it involves a trade secret, it is no use starting in.

A. It does, and I should be glad to reveal it to you tomorrow, if you so desire it, under the conditions stated.

Mr. Anderson: It is no use starting that then, because we shall only get half way and then stop. Now, if your Honor please, I would like very much to have an opportunity to confer with Mr. Knight and my advisers tonight on this question, and decide how far we are going to go into these questions in the morning, and submit to your Honor what we desire to do, in accordance with your Honor's suggestion.

Mr. Kresel: Other than that, you are through with the witness?

Mr. Anderson: Other than that, for the present, I think I am through with the witness, but I have not been able to follow through on these last few patents, and I want to decide how far I may deal with the question, conforming to your Honor's suggestion.

Mr. Kresel: Inasmuch as the witness will have to return here tomorrow morning, anything I may have, may I reserve on re-direct until tomorrow?

The Court: Yes. Have you another witness that you can call?

Mr. Kresel: Yes. I have another witness I can call immediately.

The Court: (To the witness.) That is all for the moment.

(Witness excused.)

Mr. Kresel: If your Honor please, I am informed by the clerk that the salvarsan and neosalvarsan patents which we thought had gone in evidence under Mr. Metz's examination, are not, in fact, in evidence.

THE CLERK: There are copies annexed to one of the Federal Trade licenses.

MR. KRESEL: Under the circumstances I want to offer this now. You have copies of them. We handed them to you.

THE COURT: Mr. Kresel, are the licenses, the Federal Trade Commission licenses, to be spread at large upon the record?

MR. KRESEL: I trust not, your Honor. That would make an impossible record; and I have been discussing with Colonel Anderson some method whereby we can agree to cut out and just have one as an example, for instance one printed.

THE COURT: As they are exhibits to the licenses, it is unnecessary to duplicate them when they are each admitted, and of course need not be duplicated in the record.

MR. KRESEL: Now I offer in evidence the salvarsan patent, which will be marked "Defendant's Exhibit No. 156."

Received in evidence and marked "Defendant's Exhibit No. 156," being patent No. 986,148. *(See Patent Exhibit Book.)*

MR. KRESEL: And the neosalvarsan patent, which will be No. 157.

Received in evidence and marked "Defendant's Exhibit No. 157," re-issue No. 13,848. *(See Patent Exhibit Book.)*

[Note: Bruce W. Gold was here sworn as a witness for Defendant. His testimony appears later in record.]

COURT: Adjourn Court until tomorrow at 8:30.

(Wherefore, at 3.40 o'clock P. M. Standard Time, an adjournment was taken until Wednesday, July 11, 1923, at 8:30 o'clock Standard Time.)

TWENTY-FOURTH DAY.

Wilmington, Delaware, July 11, 1923,
at 8.30 o'clock A. M. Standard Time.

Before:
Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Ernest H. Volwiler resumed the witness stand.

Mr. Anderson: May it please the Court, just before the adjournment yesterday, while the witness Dr. Volwiler was on the stand, certain questions arose as to his testimony with respect to the disclosure of certain matters which he said he did not wish to disclose. The matter was adjourned over until this morning under the circumstances which your Honor is familiar with. After conference with my associates I have prepared a brief statement which I wish to put on the record for the Government, and which I ask leave to read to the Court, in order that I may get it accurate.

The Court: You may proceed.

Mr. Anderson: During the trial yesterday, while counsel for the Government was cross-examining Dr. Volwiler, a witness for the defendant representing the Abbott Laboratories, X. Q. 719, page 3409 of the record, was asked as follows:

> "In what respect did you vary the method from the method described in that patent on that point?"

The witness in effect asked leave of the Court not to be required to answer the question on the ground it would call for a disclosure of certain secrets in the business of the Abbott Laboratories. The Court, after some discussion with counsel, sustained the request of the witness and declined to require the witness to answer.

In the further discussion of the matter the Court indicated that it would not require the answer to any question in open Court as to the patents and processes with respect to which the witness had testified on direct where such answer would require a disclosure of trade secrets, but if counsel for the Government so desired, would have the witness testify before the Court in chambers, with only Mr. Anderson for the Government and Mr. Kresel representing the defendant present with the Court and the witness, and there show precisely the secrets which the witness desired not to disclose, the testimony thus taken in chambers to be transmitted to the Court of Appeals under seal of this Court and not to be used or referred to, in briefs or otherwise, but, if it was desired to be privately referred to, to be privately referred to and not disclosed by either counsel so present, to any of their colleagues.

It was further stated by the Court, record page 3415, that the evidence by the witness so taken should be delivered to the Court and no copies made thereof, and as soon as it was written out, sealed in the presence of the Court, the seal of the Court put on it, so that it could not be opened by anybody except by the Court or some Appellate Court, and that it should be taken with the distinct understanding that it was not to be revealed by either counsel for the Government or counsel for the defendant who may be present, or by the Court, save in the transmission of the sealed evidence to the Court of Appeals.

At that time, counsel for the Government asked that they be granted time to consider the suggestion and make reply thereto this morning, which was granted.

Subsequent to this ruling, counsel for the Government undertook to cross-examine the witness as to two other patents, as to which he had testified on direct as to the processes employed in making the products mentioned therein, and in his reply, he stated in effect that the details disclosed by this process would also disclose trade secrets, and a similar ruling thereon was made. Counsel for the Government thereupon reserved his further cross-examination of the witness on these points, until the rulings and suggestions of the Court could be considered. For further details we refer to the record.

Counsel for the Government have now given careful consideration to the questions involved and to the rulings and suggestions of the Court with respect thereto, and ask leave to submit the following statement to the Court:

1. The counsel for the Government are very desirous of complying with any suggestion of the Court insofar as they possibly can do so, without prejudice to the case of the Government, as they may see it, and do not wish to bring into the record any matter which might be embarrassing to any person whomsoever, or prejudicial to the interest of any witness or any other person, if it can be avoided without prejudice to the case of the Government.

2. The Government feels that it would be seriously prejudicial to its rights and interests in this litigation to accept the suggestion of the Court with respect to taking of this testimony,

and submits the following reasons therefor, in addition to those stated in the argument on yesterday, which are now relied upon.

(a) The record shows that the Abbott Laboratories were underwriters of and are now stockholders of the defendant, Chemical Foundation, and as such are interested in the ownership of the patents in question and are licensees, both from the Federal Commision and The Chemical Foundation under these patents. The witness testified that he was directed by the officers of the Abbott Laboratories to come here to testify in behalf of the defendant without any subpœna from this Court.

(b) On direct examination, the witness was given the greatest latitude in testifying for the purpose of undertaking to show that the patents in question were defective or of little value for the reasons disclosed in that testimony, and especially for the reasons that the processes therein set forth did not, under his work and employment thereof, produce any successful results.

(c) In order to test the correctness of this testimony and to show if it can be shown that the alleged variation in process employed or the use of other intermediate, as testified by him was immaterial or merely the use of equivalents or slight improvements in the processes and possible infringement of those processes, it is necessary that the Government should be able to have the witness state exactly what were the processes employed and the difference, if any, between such processes and those described in the patents.

(d) The matters referred to and the processes so employed are of the most abstruse and technical character, requiring a high degree of technical knowledge of organic chemistry, its terms and methods, that counsel for the Government are not familiar with these matters, but must have in conducting this case and in preparing a rebuttal on these questions, the advice and assistance of competent chemical and other experts.

(e) The disclosure of the technical details indicated above, solely to this Court and to one of the counsel representing the plaintiff and one representing the defendant, as indicated by the Court on yesterday, under the strict seal of confidence, and under the terms and conditions indicated by the Court, would be of little service to the plaintiff, and it would bar the plaintiff from the benefit of technical advice thereon of a legal or other chemical character.

(f) The disclosure under these conditions would also place counsel for the plaintiff in a difficult position, since these alleged processes claimed to have been employed by the witness should be learned from other sources, or should be known to the officers of the Government, the Government might be embarrassed in bringing in testimony in rebuttal thereon, by the claim that they had been received from the witness under the seal of confidence, and if the same rule were applied as to other testimony which might be introduced in the case under similar conditions, it might greatly embarrass counsel and seriously prejudice the Government in the conduct of this case, both in this court and in any court to which the same might be taken.

(g) That the ruling of the Court, if sustained, would permit the witness or any witness similarly situated to testify as fully as he might desire in his own interests and on direct, and then avoid all cross-examination by claiming the protection of the privilege of trade secrets.

(h) The Government feels that the witness, as representing the Abbott Laboratories, having by their direction volunteered to testify and thus attacked the patents in question in the manner described in the testimony and heretofore by this statement, the Government is entitled as a matter of right to thoroughly search the knowledge of the witness and investigate the process which he claims to have employed, in every detail, without limitation or restriction, and must respectfully ask that this right be accorded to the Government in this case.

I need hardly add that counsel are not wanting in any wise in appreciation of the embarrassment of a situation of this character and of the difficult and delicate questions involved. We have tried to see our way clear to meet the views of the Court and the suggestions of the Court, and after a most careful consideration of the whole matter, we feel that it is one of such serious import to the Government that the Government could not recognize or accept, without objection and without properly reserving its position on the record, the ruling laid down by the Court.

I need hardly say also that whatever the ruling of the Court may be, the Government, in the conduct of this case, will endeavor to conform as closely to it as possible, preserving on the record its position to the end that it may have it properly reviewed. I have made the statement in writing to the end that our position might be clearly set forth.

Mr. Kresel: I have but two observations to make, if your Honor please, with reference to this extraordinary statement that has just been read into the record. In the first place, I think it was entirely uncalled for, for counsel for the Government to seek to place their own interpretation upon the Court's rulings and to place in the form of a statement their interpretation of the meaning of the record and of the extent to which your Honor indicated you would confine the publication of the testimony upon this point. And I want to say now that the defendant does not feel itself bound by any construction which has been placed by Colonel Anderson upon the meaning and the extent and suggestions and rulings made by the Court in this connection.

Why it was necessary to prepare a statement and read it into the record, with reference to a question of the admissability of evidence which arises in every case day in and day out, is a matter that perhaps counsel desire to explain. We stand upon the ruling of the Court. It is a ruling that is sustained by the decisions of the United States Supreme Court.

The Government, whatever its motive, whether it is the motive assigned in the prepared statement or no, will not be permitted without our objection to pry into the secret methods of this witness' employers, for the purpose of permitting their rivals to learn those secrets and for the purpose of enabling perhaps the Germans to learn how to do the things not according to the patents which they have taken out.

We have an absolute right, under your Honor's rulings, sustained as I say by decisions of the Supreme Court not to have that matter spread upon the record; and we decline even in the face of the prepared statement to change our position in the matter, and we now ask your Honor to carry out the suggestion that your Honor made yesterday afternoon.

THE COURT: That was not a suggestion, Mr. Kresel. It was a ruling.

MR. KRESEL: Then the ruling speaks for itself, your Honor, and requires no construction from counsel on either side. If the Government does not desire to cross-examine this witness any further, it is its privilege not to do it, whatever its motives may be. If counsel for the Government is through with the witness, I have a few questions on re-direct that I desire to ask.

MR. ANDERSON: I am not through. I stated yesterday that I desired to continue.

MR. KRESEL: Very well; go ahead.

THE COURT: Before you proceed,——

MR. ANDERSON: Will your Honor permit me to reply to the statement just made?

THE COURT: Go ahead.

MR. ANDERSON: First, I wish to say that counsel for the Government are not called upon to explain to counsel for defendant their reasons for making the statement to the Court and putting it in writing, to the end that it might be accurate. If the Court desires an explanation, we should be only too glad to make it; but we are not responsible to counsel for defendant for our manner of conducting this case.

In the second place, we have undertaken to state our understanding of the question before us as accurately as we could. The record speaks for itself, and we so stated. But the details will appear from the record.

I do not think that the suggestion that the

Government is trying to get this information for the benefit of rivals or others is worthy of notice. The Government of the United States, so far as I know, does not indulge in that kind of practice; but it has a right to determine and it is the duty of its counsel to determine what it regards as material or essential to the protection of its interests in the courts.

I recognize the entire power and duty of the Court to rule on those questions and I shall submit with every possible deference to those rulings in all respects, reserving, however, and stating to the Court for the information of the Court my reasons for such reservation, such exceptions as it may be my duty to take under those circumstances under the instructions of my superiors.

The Court: I do not know that it is necessary for me to say anything under these unusual circumstances; but I think I should say, lest there possibly be a misunderstanding and in order that the Government may fully understand, that the ruling of this Court yesterday by which and upon which its stands today, and will continue to stand, was given with such latitude that the Government, in my conception of the ruling, would not be embarrassed in the trial of the case in this Court nor embarrassed in the trial of the case in any Appellate Court.

The reason for the ruling of this Court was that persons should feel free to come into a court of justice and be justly done by. The latitude of the ruling was broad enough, in my conception of it, to enable the Government and all parties in interest in this cause to have placed upon the record—not upon a public record, which might result in financial loss or financial destruction to the employers of the witness, but to have spread fully upon the record which is available to this Court and available to any Appellate Court—all facts, not only all facts which may be material in the judgment of the Court, but all facts which, in the views of the counsel for the Government might have even the remotest bearing or relevancy to the issues in this cause. The record would be open to the counsel for the Government at any time. They would not be permitted to take a copy, not because of any thought that the Government's officials would disclose it, but there is always the danger in the circulation of copies of a record that it may be opened inadvertently to the eyes of persons who would make use of it detrimental to the interest, financial or otherwise, of the witness.

There was no indication in the ruling, so far as I am aware, that such copy would not be opened in the presence of the Court at such time or times as might be found necessary or convenient to the parties on either side. There was no suggestion prior to the ruling of yesterday, or after the ruling or prior to the statements spread upon the record this morning, that there would be any need or necessity or convenience in having such record open to the inspection of counsel more familiar with patent law than the chief counsel for the Government in the case here. There would have been no objection, and there is none now, to opening such a statement to Mr. Knight, for instance, or to some other persons skilled in the patent law in whom this Court would have the faith that it has in Mr. Knight.

The Government has seen fit in its statement to draw an inference contrary to that, and stands upon it, and I simply desire to say that there is no desire on the part of this Court to open the trade secrets of this or any other witness unnecessarily to competitors. The ruling of yesterday stands.

Any further questions upon either side to the witness?

Mr. Knight: May I make a short statement?

The Court: I will be glad to hear you, Mr. Knight.

Mr. Knight: I thank the Court for its confidence reposed in me, which, I assure your Honor, I shall try to deserve. The ruling of the Court, repeated, makes clearer to us than it was before the possibility of taking advantage of the disclosures. I would like to indicate to the Court, however, that a patent lawyer, although he knows an awful lot, does not know everything. I am willing to admit that. A technical matter of this kind really requires interpretation to the patent lawyer by an expert chemist, one skilled in the particular methods concerned, and, providing I were permitted, under your Honor's ruling, to examine this matter, I would be considerably handicapped in understanding these chemical terms, with which I do not profess to be proficient.

I would suggest that if your Honor, under the due seal of counsel, would permit the Government to employ a Government chemist to cooperate with counsel in the examination, and, as I say, with the due seal of confidence upon them, and if we may understand from your Honor's present explanation of the ruling that the Government will not be handicapped in any way in producing evidence which it has or can obtain outside bearing on this subject, by reason of

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the seal of secrecy that has been put upon this particular disclosure, the Government's attorneys would feel considerably at ease in going into this thing, which considerably simplifies the Court's attitude toward the forcible disclosure of the secrets of manufacturers.

I may say as to that I am in full sympathy with that attitude and have always tried to recognize it so far as it is at all possible. But at the same time the first consideration in the disclosure of the truth is that that is the paramount consideration, and private considerations must not stand in the way of it.

I feel your Honor gives us full protection in the matter in a way, as I have indicated, which would enable us to go into this thing. We have no desire to hamper the prosecution of the matter in the way you suggest or rule, but we feel we must not put ourselves in danger of being handed an empty platter.

The Court: Are there any further questions of this witness by either side? I think there is nothing to add, Mr. Knight. I have tried to make my position clearer, and there is no question before me now. Whether this would need any reply testimony is a new question that could be determined when and if it should arise. You may proceed with the re-direct or further cross.

Mr. Knight: Do I understand, your Honor, we may raise that question again?

The Court: I think this is a closed matter now, Mr. Knight. I have indicated fully my views, that the ruling of the Court would not deprive the Government of full opportunity to make whatever use it saw fit of the testimony. There was nothing further than that indicated yesterday, and the suggestions which have come this morning do not come at all as applications to the Court to extend the rule, but come in the form in which they do come—a bit unusual, but I fail to see that there is anything in the situation which jeopardizes in any way the interests of the Government in the prosecution of this suit here or on appeal.

I have no custody or control and exercise no power over the record when it goes to the Court of Appeals or to the Supreme Court. The only power that I have here and the only power that I am attempting to exercise is to protect and deal justly with both the Government and the witness. I have indicated that the Government has full power and full right to make such use of the testimony as is necessary, preventing at all times any public disclosure of the trade secrets of this witness. You may proceed with the further cross-examination.

Mr. Anderson: If the Government is at liberty to make full use of the testimony so long as it does not disclose it outside, so that it may confer with its technical experts on that testimony and meet it in rebuttal, then I shall be very glad to go into chambers and take this evidence, because that meets our argument completely on that question.

The Court: I think I have indicated as fully as I can, Colonel Anderson, what I decide. It is wholly immaterial, of course, to me, whether you go into chambers and take the testimony or not. I am not concerned with that. This is absolutely and entirely settled—that I am not going to require this witness, or any other witness unnecessarily to disclose its trade secrets to the public. You may proceed with such cross-examination as you desire.

Mr. Anderson: I do not want to insist, your Honor, but if I can confer with the Government chemist as to this evidence without violating the seal of confidence, then I can proceed with the investigation of this question in chambers, and will ask leave to do so. If I cannot confer with the Government chemist, then I would be helpless because I would not know how to deal with it. That is the question that has been troubling us in this matter. If I could confer with Mr. Knight and the Government chemist, I would be just as well off as I would be in the courtroom, except that it would be under confidence.

Mr. Knight: All we desired was an interpretation of your Honor's ruling on that particular point.

The Court: Have you a Government chemist here?

Mr. Anderson: Yes, sir. The Government chemist is here now, from the Government Public Health Service, brought down here on this very matter. If I receive this evidence in confidence, I cannot talk to anybody, and in addition, my position would be a very delicate one. Therefore, I want to advise with him exactly how far I can go without disclosing the confidence, without breaking the confidence.

The Court: Do you vouch deliberately and in open court for the chemist that you would take with you and give me your personal assurance that there would be no violation of the confidence on his part? I do not know him. I do not know his name. I would not know him if I saw him.

Mr. Anderson: I never met him until the day before yesterday. He is an officer of the Government of the United States, and I can only give you that.

Mr. Knight: I will vouch for him. I have known Dr. Gibbs, of the Health Service for years He stands very high among chemists and stands very high in the Government service. I will vouch for him.

The Court: Do you see any objection to that from your standpoint, Dr. Volwiler?

The Witness: My only objection is this, your Honor, that although I have perfect confidence personally in each of these three men through whom it would go, it would mean revealing these things to at least three persons; and it seemed to me that without reflecting in any way upon anyone's honor, yet there is running a certain danger in some way by reason of some one's having that knowledge, not intentionally revealing it, but revealing some portion of it, without intending to do so.

These things have come to us through years of time and money spent, and I have been here testifying under oath that the methods which were employed were not the methods as given in the patent. I have given, to the best of my knowledge, what the results were that we got under the German patents, and that we had to modify them essentially. And to state just exactly the points at which the variation occurred and exactly what the variation was, it seems to me, furthers——

The Court: I have to determine that.

Mr. Kresel: Will your Honor permit me to confer with Dr. Volwiler. If you will give me two minutes, perhaps we can meet the situation.

The Court: Certainly.

(A short recess was then taken by direction of the Court.)

Mr. Kresel: If your Honor please, it took but a minute for me to make plain to Dr. Volwiler that private interests must sometimes give way to necessity, and Dr. Volwiler is quite willing, under your Honor's instructions, to proceed with the testimony in the presence of the chemist employed by the United States. Surely, if your Honor has the assurance of Mr. Knight, who knows this gentleman, that he is a gentleman that may be trusted, we have got to place confidence in somebody, and Dr. Volwiler is willing to place it in this way. So, under the circumstances, we can take the testimony.

The Court: Is the chemist here?

Mr. Anderson: Yes, your Honor—Dr. Gibbs.

The Court: Have you any objection to being present at the taking of the testimony concerning the secret processes employed in the factory of this witness, under an assurance that you will not disclose them directly or indirectly or otherwise, or discuss them with any person or persons whatsoever, or make any use of them directly or indirectly, save in connection with this suit in conference with Mr. Knight and Colonel Anderson?

Dr. Gibbs: Do I understand your Honor that that would bind me forever, as long as I live?

The Court: Forever, sir.

Dr. Gibbs: I will consult with my counsel.

The Court: All right.

Mr. Knight: If your Honor please, Dr. Gibbs would like to make a statement. Some difficulties occurred to him that did not occur to him.

The Court: Yes.

Dr. Gibbs: It occurred to me, your Honor, that if a thing was made which has been made in this secret record, they are things that I ought to know. There may be things that are known to other chemists that are unrelated to it that I might find by reading later on. It is possible there may be things that would be put into this record that would be discovered, perhaps by men working in my laboratories; and I would feel that I would be put under a cloud by having these things come up in any way which would appeal to me as limiting my chemical usefulness. Colleagues of mine might make these discoveries, and then I would feel that some one might consider I had overlooked something.

The Court: I understand. My ruling goes this far, and to a similar extent that the Supreme Court has gone in the Weeks case and other cases in connection with unlawful search and seizure, and that is that an invention discovered on unlawful search and seizure may not be used in the trial of the immediate case; nor may the person making such unlawful search and seizure, and obtaining evidence thereby, use the information thus obtained to secure a further clue, and prosecute on the additional clue; so that in the view of the circumstances, I decline to permit Dr. Gibbs to join in any such conference. You may proceed taking the testimony on the part of the Government as you may be advised.

Mr. Anderson: I take it, if your Honor please, that it will not be necessary for me to go through the form of asking this witness detailed questions on each of these patents, and to have the objection overruled or sustained, if we can understand that the position here taken applies to all of that testimony. In other words, I asked a number of questions yesterday afternoon. Of course, the formal procedure would be for me now to examine the witness and merely to ask the question, and the objection would be made and objection sustained and exception taken. I do not want to take up the time to go through that detail if it can be avoided.

THE COURT: In the first place, that is not the procedure, as I understand it. In the second place, I would not permit it, and in the third place, the record is already clear, so that you may proceed.

MR. ANDERSON: Then I wish before concluding with this witness, to make certain motions to strike out his testimony, and I would like to submit those and then, under your Honor's rulings, I will not examine him further.

The first is, I move the Court to strike out question 128, propounded to the witness, Ernest H. Volwiler, on direct examination, and the answer thereto, and question 29 to the witness on direct examination and answer thereto, appearing on pages 3272 and 3278 of the record, upon the grounds stated in objecting to the said questions, and upon the following:

A. That the question calls for the conclusion of the witness.

B. That it is not shown that the witness was properly qualified to answer said questions.

C. It appears affirmatively from the testimony of said witness, and particularly from his cross-examination, that the witness had no personal knowledge as to the process used at the plant of the Dermatological Institute in the production of salvarsan and neosalvarsan, and that his answer to these questions was hearsay.

D. That the witness testified affirmatively on cross-examination, that he never himself carried out or attempted to carry out, the process for the production of salvarsan and neosalvarsan given in the two patents offered in evidence and covering said products, but had only made or attempted to make some of the intermediates used in said process.

E. That the witness testified on cross-examination that he was unable to state just what the processes were which were used by the Dermatological Institute in the production of salvarsan and neosalvarsan, and which he claimed were different from the process outlined or specified in the patents offered in evidence and covering said products.

That is the first motion. The second motion I desire to submit is to strike out Q. 132 to the witness, Ernest H. Volwiler, on direct examination and the answer thereto, and Q. 133 to said witness on direct examination, and answer thereto appearing at page 3279 of the record, on the ground stated upon the record in objections to said questions, and in addition thereto as follows:

A. That the question calls for the conclusion of the witness.

B. It is not shown that the witness was properly qualified to answer said questions.

C. It appears affirmatively from the testimony of said witness and particularly from his cross-examination that the witness had no personal knowledge as to the process used at the plant of the Dermatological Institute in the pro-until proven otherwise in a direct attack thereon; that the evidence in this suit shows that the defendant herein claims title to said patent and has issued several licenses thereupon and is estopped to deny the validity thereof; that the evidence in this suit shows that the Abbott Laboratories, which the witness represents, is operated under license issued under said letters patent and is marking goods stated to be manufactured thereunder and is therefore estopped to deny the validity of said patent.

Exactly the same motion as to the patent on neosalvarsan or neoarsphenamine.

The same motion as to the novocain patent, or procaine; cinchophen, neocinchophen, acriflavine and proflavine, each, excepting that portion of the motion which states that the witness has testified that his testimony was not based upon facts within his personal knowledge; that said testimony is based upon hearsay; and that said testimony is based upon records of the Dermatological Research Laboratories, which the witness did not keep and which were not kept under his direction and in which books he did not make the entries relied upon and which said entries were not made under his direction. That portion of the motion applies only to the salvarsan and neosalvarsan patents. The motion with those lines stricken out is asked to be applied to each of the other patents named.

The plaintiff now moves to strike out all the testimony of the witness, Ernest H. Volwiler, concerning the cost to the Abbott Laboratories, or the amount of money expended by said Abbott Laboratories in research in perfecting the processes for the manufacture of novocain or procaine, and each question and answer of said witness relating thereto for the reasons stated in objections to said questions and each of them, and for the following further reasons: That said testimony is irrelevant and immaterial to any of the issues in this suit; that said testimony shows that the answers are made on facts not within the knowledge of the witness; that the amounts so stated by the witness in answer to questions propounded to him, included items not within the personal knowledge of the witness; that the amounts so stated by the witness in answer to questions propounded to him included items which are not segregated or separated in the total amount so stated, which items are based upon hearsay; that the amounts so stated by the witness in answer to questions propounded to him included items which are not separated or segregated in the total amount so stated by him which are based upon the books of the Abbott Laboratories, which books the witness has stated were not kept by him or under his direction, and which he has not examined and in which no entries were made by him or under his direction.

I would ask that the same motion apply to the testimony of the witness as to salvarsan or arsphenamine; neosalvarsan or neoarsphenamine; cinchophen and neocinchophen; acriflavine and proflavine.

I further move the Court to strike out all the testimony of the witness Ernest H. Volwiler, concerning the value of the patents as to which he has testified, including the so-called salvarsan patent, neosalvarsan patent, novocain or procaine, cinchophen, neocinchophen, acriflavine and proflavine, and to strike out each question and answer relating thereto, for the reasons stated in the objections to said questions and for the further reasons, to wit, that the evidence shows that the witness is not properly qualified to give an opinion as to the value of these patents or any of them.

The Court: The motions are severally denied. You may proceed with the re-direct, Mr. Kresel.

RE-DIRECT EXAMINATION.

By **Mr. Kresel**:

RDQ. 804. Dr. Volwiler, upon your cross-examination, counsel put an illustration to you with reference to your testimony that you could not produce these products under the patents. He said to you, you will recall, that it was like someone trying to prepare a meal according to recipes in a cook book. You recall that?

A. I do.

RDQ. 805. And he pointed out that some cooks could prepare according to the recipe a pretty good meal and others could not. Now, with these patents that you have been discussing, did you have the information or, the technical term used by you chemists, the know-how, the practical knowledge of how to perform the operations under the patents?

A. I did not.

Mr. Knight: May I ask Mr. Kresel what particular patent he is referring to?

Mr. Kresel: I am speaking of all of them, all those that he discussed.

RDQ. 806. You understand my question to cover that?

A. My answer was with that assumption in mind.

RDQ. 807. Colonel Anderson also asked you whether it was a fact that you did not know how the

Germans prepared the intermediates used. Do you recall that?

A. I do.

RDQ. 808. In your testimony you pointed out that there was no description in the patents of how to make the intermediates and that you had to find out?

A. That is true.

RDQ. 809. With reference to novocain, you testified that by following out the method described in the patent you got a tarry product, a toxic product, which, however, was called novocain. You recall that?

A. Yes, sir.

RDQ. 810. But that by following the method described in the patent of Adams and Kamm, you got the product which you are now selling under the name of novocain. You recall that?

A. That is true.

RDQ. 811. Now, I wish you would state what difference in the product there was between what you obtained by following the method described in the patent, the German patent, and the method that is described in the Adams and Kamm patent, especially referring, if you will, to the yield and to the purity of the product. Have I made my question plain to you?

A. I think so.

RDQ. 812. Will you answer it, please?

A. The procaine process as described in the German patent is a rather long one, and the over-all yield—and by over-all yield I mean on the basis of the starting materials—the yield obtained of the final product, that is procaine, was not much above 10 per cent. of the theoretical, and in certain cases, that is, in certain experiments, it would run considerably below 10 per cent.; whereas, when we used the Adams and Kamm method as patented, the over-all yield ran in the neighborhood of 50 per cent. of the theoretical, the product that we obtained was of a higher state of purity, was easier purified, and the final purified product was of low toxicity.

RDQ. 813. Which product was?

A. Procaine.

RDQ. 814. Manufactured under which patent?

A. Under the Adams and Kamm patent.

RDQ. 815. Was it possible for the Adams Laboratory to commercially manufacture novocain under the German patent, obtaining a 10 per cent. or less than 10 per cent. theoretical yield?

A. We did not consider it possible, because we were trying to produce procaine at a reasonable price.

RDQ. 816. You were asked yesterday the question whether or no, so far as you knew, other manufacturers who were making novocain were making it under the German patent, and you said that, as far as you knew, it was so. Have you any knowledge on the subject at all?

A. I have not. I have never been in any of such plants.

RDQ. 817. So that if I put the question the other way, that, so far as you know, the other manufacturers of novocain were not using the German patent, what is your answer to that?

A. So far as I know, they were not.

RDQ. 818. It was pointed out to you on cross-examination that on the labels on the various phials that were shown here, of novocain, cinchophen, neocinchophen and the other products that you described, salvarsan and neosalvarsan, that are put out by the Abbott Laboratories, there is a statement that the products are manufactured under license covering a certain patent, giving the number of the patent which corresponds with the German patent here in evidence. You recall that?

A. Yes, sir.

RDQ. 819. Your testimony is that the products were manufactured by methods other than those described in those patents, is it not?

A. That is true.

RDQ. 820. Will you state why the statement on the label is to the effect that the product was being put out under license covering the German patent?

Mr. Knight: It seems to me, your Honor, that goes beyond the function of this witness, to explain these statements on these labels.

The Court: You asked him, did you not, with respect to the label?

Mr. Knight: Yes, we identify the product as the product of their factory, and the label was read.

The Court: Is it your contention, Mr. Knight, that he is estopped from showing the reason for the statement on the label?

Mr. Knight: I submit that this witness may not know the reason for the label.

Mr. Kresel: Of course, if he does not know Mr. Knight, he will say so.

RDQ. 821. Do you know the reason?

A. I do.

Mr. Knight: Perhaps if we know his reasons we may find some——

The Witness: Were you asking me a question, Mr. Kresel?

Mr. Kresel: Yes. Will you please state it?

The Court: Is the objection pressed or is it withdrawn?

Mr. Knight: I would like to hold it in abeyance until we find out his reasons.

The Court: All right, you may inquire about his reasons, and then make such objection or motion as you may be advised.

RDQ. 822. Will you please state it?

A. May I have the question read again?

(RDQ. 820 read as recorded above.)

A. Most of these patents are product patents, so that no matter what method we used, our method is covered by the German patent taken out in the United States. There is one exception, and that is cinchophen, which is a process patent. The reason that we are continuing our operation under license on cinchophen is that if we cancelled our license it might lead to a lawsuit and involve more expense than the payment of the royalty involved, and might, furthermore, necessitate the divulging of the method or portions of the method which we are employing at present in making cinchophen.

Mr. Knight: Does that complete your reasons?

The Witness: So far as I can think now, yes.

Mr. Knight: I withdraw the objection.

RDQ. 823. Dr. Volwiler, you testified that following the German patent for acriflavine and proflavine you could not make it at all. Do you remember that?

A. That is true.

RDQ. 824. Will you please state why?

A. There is one step left out in the process——

Mr. Anderson: Your Honor will recall that I did not cross-examine on acriflavine or proflavine because he stated it was a trade secret.

The Court: You were given the opportunity to cross-examine if you desired, and you waived it. You may proceed, Mr. Kresel.

Mr. Knight: I would like to submit that this is hardly re-direct, then.

The Court: No, it would be as in re-call. But if the objection is on that ground, that that is not strictly re-direct but should be anew, that will be sustained. I did not understand that that was the objection. That was your objection?

Mr. Anderson: I did not cross-examine on that, and, of course, that meant there could not be any re-direct upon it.

The Court: The objection having been raised that this is not strictly re-direct, I will sustain the objection.

Mr. Kresel: Will not your Honor, in your discretion, permit me to ask this question?

The Court: No; because if you want that question you may ask it under the recall of this witness.

Mr. Kresel: Then may it be considered that I have recalled him for that purpose?

The Court: Yes.

Mr. Kresel: Will you continue the answer to the question, please?

A. (continued). The German patent taken out in the United States for the production of acriflavine and proflavine is absolutely unworkable because there is one essential step completely left out. By following the method as given in the patent it is impossible to get any compound of the nature of acriflavine, because acriflavine and proflavine are acridine compounds, and the acridine nucleus or series cannot be obtained by the method. The step that is left out is an oxidation of one compound, one intermediate given in the patented method, by ferric chloride. A few years—I do not know whether it is a few years, but some time after the patent was taken out—essentially the same method was published in the German literature, in some chemical journal, with this extra step put in, and that enabled the acriflavine to be produced by the patented method, provided that extra step was put in. The method was not yet satisfactory, even with the step put in on account of the low yield. But so far as I know, no patent has ever been taken out in this country by the Germans with that omitted step included in the process.

Mr. Kresel: That is all.

The Witness: If you wish, for the sake of completeness of the record, I, by reference to the patent on file, can point out the exact line where the step is omitted.

Mr. Knight: That was going to be my sole question on re-cross.

Mr. Kresel: Yes. I will take the patent, which is Defendant's Exhibit No. 154.

RDQ. 825. Is this it (handing witness)?

A. It is.

RDQ. 826. Will you point that out, Doctor, please?

A. In the patent No. 1,500,176, which is Defendant's Exhibit 154, at line 96, the statement is made: "On cooling, diaminoacridin separates completely in the form of tin double salt as shining brownish crystals." That statement is not correct, because that is where the step is left out. In order to obtain diaminoacridin the intermediate obtained in the previous sentence must be oxidized and by no process except oxidation can diaminoacridin be obtained.

Re-Cross-Examination.

By Mr. Knight:

RXQ. 827. Is this previous oxidation the matter which you say was published in the publication in Germany later than this patent?

A. Yes, sir. I did not get the last part of your question.

RXQ. 828. Is this previous oxidation which you refer to the matter which you say was published in the German publication?

A. Yes, sir.

RXQ. 829. Later than the date of this patent?

A. Yes, sir. I do not remember the exact date.

RXQ. 830. And do I understand you to say that was a matter not known until the publication, by the chemists in this country?

A. Yes, sir, to the best of my knowledge it was not known, because I know that not only my company or our company, but also other chemists throughout the country have tried to follow this patented method, and their uniform result has been absolute failure. And then, upon more careful examination and consideration, and in view of this later article which came out, it has been understood what was omitted to make the patent workable.

RXQ. 831. How much later was this article? Do you mean later than the grant of the patent, later than the German patent, or later than the application for this patent?

A. I don't remember. It was later than this patent was available, I think.

RXQ. 832. Can you give us any data whereby we can find this German article?

A. Yes, sir. It was an article by Benda in Berichte der Deutschen Chemischen Gesellschaft, and it appeared some time between 1911 or 1912 and 1915. That is the well-known German chemical journal, so I think there will be no difficulty in locating it.

RXQ. 833. I show you a package purporting to contain, by its label, acriflavine, and bearing the imprint of the Abbott Laboratories, Chicago, U. S. A.

Do you recognize that as the product of the Abbott Laboratories (handing witness)?

A. I do.

XQ. 834. And you will notice that this label, after giving the title of the drug and the chemical name, says, "Licensed by the Chemical Foundation, Inc., under U. S. Letters Patent No. 1,005,176," that is correct, is it not?

A. So far as I know, yes.

XQ. 835. And that is the form of label which was used by the Abbott Laboratories on the products of this character?

A. That is true.

Mr. Knight: That is all, your Honor.

Mr. Kresel: That is all, Doctor.

(Witness excused.)

Mr. Kresel: With your Honor's permission and Colonel Anderson's consent, I should like to interrupt the examination of the accountant, which examination would naturally proceed now, to call some witnesses who are from out of town. Before even calling them, I have to call a witness who is a resident here, but who will be but a very short time. I will call Mr. Thompson.

HENRY B. THOMPSON.

Henry B. Thompson, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Your full name, please?

A. Henry B. Thompson.

Q. 2. And your residence?

A. Greenville, Delaware.

Q. 3. And your business?

A. I am the president of the United States Finishing Company, which is a Connecticut corporation engaged in the printing and dyeing and bleaching of cotton goods. We have five plants, two in Connecticut, three in Rhode Island, with an annual output of about 300,000,000 yards a year.

Q. 4. Mr. Thompson, during the war were you a member of any committee in connection with the importation of dyes?

A. I was chairman of the so-called Dyes Committee, advisor to the War Trade Board.

Q. 5. How many members were there of that committee?

A. Seven.

Q. 6. Could you name them, please?

A. There were three representing the textile interests; Mr. Cheney, representing the silk industry; Mr. Hobbs, the woolen industry; and myself, the cotton. There were three members representing the manufacturers of dyes; Mr. Poucher, Mr. Merz, and Mr. Watkins, and Dr.——

Q. 7. Pardon me a minute. Mr. Poucher was of what company?

A. The duPont Company.

Q. 8. And Mr. Merz?

A. Heller & Merz.

Q. 9. And who was the third?

A. And Mr. Watkins, representing the National Aniline; and Dr. Herty, representing the chemical associations.

Q. 10. What is Dr. Herty's first name, do you know?

A. Charles, I believe.

Q. 11. So there was this committee of seven. And who appointed this committee?

A. The War Trade Board.

Q. 12. Did you gentlemen take an oath of office?

A. Yes; we were sworn in, took an oath of office and were virtually officers of the Government during our incumbency.

Q. 13. Have you any connection with any trade organization of the Cotton Finishers?

A. I was president up till the 1st of January for some six or seven years of the National Association of Finishers of Cotton Fabrics, which is an association made up of some sixty firms or corporations and represents very largely the entire industry.

Q. 14. Have you taken any part in the way of testimony before Congressional Committees upon questions affecting your industry and the dye industry?

A. I have testified three different times before the Committee on Ways and Means, the Hill Bill Hearings and twice before the Senate Finance Committee.

Q. 15. In connection with your appearance before the Committee that had in charge what is known as the Hill Bill, do you recall having a conference with the President upon the matter?

A. I do.

Q. 16. Could you fix the date of that conference?

A. It was either the 15th or 16th of January, 1916.

Q. 17. And where did you have the conference with the President?

A. At his office in the White House.

Q. 18. And this was President Wilson?

A. President Wilson; yes, sir.

Q. 19. Could you state, as near as you can recall, the conversation that you had with the President upon this subject of the dye industry?

A. Being in Washington for the hearing, it occurred to me that I would like, if possible, to secure the President's interest in the matter of the Tariff legislation in regard to the Hill Bill; and in order to get a hearing, I called on Mr. McAdoo, Secretary of the

Treasury, and I explained to him the conditions that obtained at that time due to the scarcity of dyes; that the supply of German dyes was virtually exhausted and that the dyes that were being made by American manufacturers were inadequate for our wants, and that we felt we must do something to encourage a greater output on the part of the American manufacturers; and that there was another matter, which I believe had been called to my attention by Dr. Herty, which I believed was of the utmost importance, the relation between the manufacturing of dye stuff and the manufacturing of munitions.

Mr. McAdoo immediately said he thought that that was a very important point and that without question I should communicate that information to the President. I asked him how I would get in touch with the President, and he said, "I think the information that you have given me is sufficiently important to warrant my going over with you and seeing that you see the President at his earliest convenience."

Q. 20. May I interrupt you there a minute? Did you have a personal acquaintance with the President at that time?

A. Yes.

Q. 21. You may proceed.

A. Mr. McAdoo took me, went over with me, to the White House, and told Mr. Tumulty that he would like me to see the President as soon as possible; that I had a matter that he thought was important and would interest the President.

After some half hour waiting, I was taken in to see President Wilson. He asked me what brought me to Washington. I told him, "The seemingly impossible task of attempting to convert a democratic Congress to the protective theory."

I then explained to him at length just what I had said to Mr. McAdoo, the necessity of starting an

American industry in dyestuffs to relieve the famine and the necessity of some legislation to protect that industry from the German competition at the close of the war.

I also explained at length to him the relationship that existed between the manufacture of dyestuffs and high explosives and I particularly referred to the fact that the Badische Company which had been probably one of the largest importers of dyestuffs into America was at that time possibly one of the largest sources of supply to Germans in their chemical warfare service.

Q. 22. Would you be a little more specific as to what you told the President with reference to the relation of the dye industry to the question of munitions?

A. Well, it was substantially what I stated. I was not conversant with exact details, but I did explain to him that a dye factory or a dye manufacturing plant could be turned immediately, the same personnel, the same management, could be turned into a factory for the manufacture of high explosives and that such an industry would be available for the use of this country in case of war.

Q. 23. Have you stated substantially the conversation?

A. Yes; the conversation probably took some 15 minutes. I think that I covered the points in the brief statement that I have made. Of course, particular emphasis was on the two points; the necessity for the establishment of the industry for the benefit of the American consumer of dyes and as a war measure in the manufacture of munitions.

Q. 24. And what did the President say?

A. The President listened to me and the one statement that he made that I remember was: "A protective policy is rather opposed to the present policies of our party." But he gave me his entire attention and when I got through I left him.

Q. 25. Is your company a user of dyes?

A. Yes, sir.

Q. 26. To a large extent?

A. Yes, sir.

Q. 27. Could you tell us approximately how many thousands of pounds of dyes you use annually?

A. I could not tell you in pounds. I should suppose in dollars we would use between six and eight hundred thousand dollars worth of aniline dyes.

Q. 28. Before the outbreak of the European war, did your company use dyes?

A. Yes, sir.

Q. 29. And where did your supply come from then?

A. We purchased from the German importers representing the five German manufacturers.

Q. 30. Did you get any dye supply from American manufacturers at that time?

A. No, sir, as far as I know—I think that is correct. There was one American manufacturer in a small way, Schoellkopf, but I do not think that we purchased from them.

Q. 31. Now, since 1914, from what sources has your company been buying its supply of dyes?

A. Well, from 1914 to 1917, we were largely dependent on the stocks that we carried over from our purchases from the German houses. In 1917, we began to purchase in a small way from some of the American manufacturers, who were starting up the industry in this country.

Q. 32. Can you give us, or could you mention the names of some of the most important dyes that you use in your industry, I mean your particular business?

A. Yes, sir, I have a list here that covers what would be known as the principal dyes that would be used in cotton printing and dyeing, covering some 16 colors, with the prices that we paid for those colors during the years 1919, 1920, 1921 and 1922 and 1923; and I have a list of the manufacturers from whom we were buying these colors.

Mr. Kresel: I am going to show a copy of this list to counsel.

Q. 33. Would you state, please, from how many concerns your firm now buys dyes?

A. We are buying today from sixteen.

Q. 34. American or foreigners?

A. American.

Q. 35. American concerns. Now, as to——

A. There is one firm included in that, H. A. Metz & Company, who are also agents for the German goods, but they are also manufacturers of American goods.

Q. 36. I see. H. A. Metz & Company is one of the sixteen that you have mentioned?

A. Yes, No. 10 on the list.

Q. 37. Now, with reference to the various dyes which you have enumerated on this list that you have before you, have you given there the number of manufacturers from whom you have bought each of these dyes?

A. Virtually, if I understand your question. I do not mean to say that we could buy all of those dyes from the entire sixteen names that I have given there; but as it is today, we can get from probably one of three or four out of this list, each one of the colors that I have named on the list.

Q. 38. That is what I was trying to bring out; that is, all these colors that you have on the list, you can buy from at least three or four different concerns?

A. Yes, sir.

Q. 39. Now, as to prices, you have shown on this list the prices that you were paying for these various colors beginning with 1919. Take as an example the first of these dyes. You describe it as what?

A. Auramine, concentrated.

Q. 40. What were you paying for it in 1919?

A. $3.20 a pound.

Q. 40a. And what are you paying for it now?

A. $2.45 a pound, a reduction of twenty-three per cent.

Q. 41. Is it a fact, without my going into all the figures of this statement, that in the case of each of these dyes or colors that you have listed here that you have been using in your business, the price of each has gone down since 1919?

A. Without any exception.

Q. 42. And you have here given us the percentages of the decrease in the price?

A. Yes, sir.

Mr. Kresel: Now, Colonel Anderson, I am going to offer that in evidence.

The Court: Why not let it be spread upon the record at this point, the same as if testified to in detail by the witness?

Mr. Kresel: I think that is a very good suggestion, your Honor. It is not very long.

The Court: Hand it to the stenographer and save it being marked as an exhibit.

Mr. Kresel: Please do that.

The paper is as follows:

Colors	1919	1920	1921	1922	1923	Percentage Decrease 1919-1923	No. of Mfgrs.
Auramine, Conc. Basic	3.20	3.40	2.50	2.50	2.45	23%	3
Methylene Blue Basic	2.70	2.85	1.70	1.20	1.20	[illegible]	4
Methylene Blue, Zinc Free Basic	3.00	3.00	2.25	1.75	1.75	42%	4

Safranine Basic Colors	1919	1920	1921	1922	1923	Percentage Decrease 1919-1923	No. of Mfgrs.
Bismarck Brown Basic	.90	.90	.75	.67	.55	39%	6
Direct Brown	1.50	1.50	1.25	1.00	.90	40%	3
Direct Black	1.90	1.90	1.90	.85	.69	64%	3
Direct Blue	.68	.68	.50	.40	.38	44%	4
Direct Sky Blue	5.00	3.75	2.72	2.50	2.50	50%	4
Victoria Blue Basic	5.10	5.05	3.00	2.00	1.95	61%	3
Benzopurpurine, Direct 4 B Conc.	1.80	1.80	1.00	.90	.85	53%	2
Direct Green	2.10	1.95	1.25	1.25	1.00	52%	3
Malachite Green Basic	3.00	2.70	1.65	1.05	1.25	59%	2
Safranine Basic	4.25	3.55	2.50	2.00	1.60	62%	3
Taztrasine Acid	1.50	1.50	1.45	.80	.75	50%	3
Methyl Violet Basic	2.35	3.10	1.26	1.15	1.15	51%	4
Chrysophonic Direct	7.25	6.50	3.75	2.40	2.40	67%	3

List of Principal Manufacturers From Whom we are Buying Goods:

1. Atlantic Dyestuff Company
2. Calco Chemical Company
3. John Campbell & Company
4. Giba Company, Inc.
5. E. I. DuPont de Nemours & Co.
6. Geigy Company, Inc.
7. Grasselli Chemical Company
8. Heller & Merz Company, Inc.
9. Harietta Refining Company.
10. H. A. Metz & Co. Inc.
11. National Aniline & Chemical Co.
12. Newport Chemical Works
13. Sandez Chemical Works
14. Butterworth, Judson Corp.
15. A. Franken, Color Works
16. Pharma-Chemical Corporation

Q. 43. Mr. Thompson, in your business, in the purchasing of dyes, have you found that you had offerings of dyes from various American concerns?

A. Have we had offerings?

Q. 44. Yes.

A. Yes, we have had offerings from all the firms that I have named.

Q. 45. Have you observed that there was any indication that there was any understanding or combination among these manufacturers of dyes as to prices supplied?

Mr. Anderson: I object. The gentleman can testify, of course, as to who he buys from and the prices, and any fact in connection therewith.

Mr. Kresel: If there is objection, I recognize the validity of it, and I will withdraw the question. You may cross-examine.

Cross-Examination.

By Mr. Anderson:

XQ. 46. Mr. Thompson, have you the prices of these same dyes included in the list which you handed the stenographer for the years 1913 and 1914?

A. I have the same records, those that this was taken from, in our office, yes, sir.

XQ. 47. You have not the data with you?

A. I have not got it with me.

XQ. 48. Would you be kind enough to have prepared a statement of the prices to you of the same dyes, that you paid in 1913, making up the list in exactly the same order as is stated here, and send it down after you return home?

A. Yes, sir, in so far as I can, I presume I can give you the same colors, because they are the leading colors in use.

XQ. 49. And you will send that information to Mr. Kresel, who will turn it over to me, if you please?

A. Yes, sir.

Mr. Anderson: That is agreeable; and I would like to be understood now that that statement will be put in evidence when it is received.

Mr. Kresel: There is no objection.

XQ. 50. You stated that you were appointed chairman of a committee to advise the Department of Commerce on the importation of dyes?

Mr. Kresel: Not the Department of Commerce—the War Trade Board.

A. The War Trade Board.

XQ. 51. Do you know who nominated that committee to the War Trade Board?

A. Who nominated it?

XQ. 51. (Continued.) Yes.

A. I do not know; no sir.

XQ. 52. Did you know that it was nominated by Mr. Choate and Dr. Miller?

A. Did I know that?

XQ. 52. (Continued.) Yes.

A. No, I never heard that before, sir.

XQ. 53. You know Dr. Miller, do you not?

A. Dr. Miller?

XQ. 54. Of the National Aniline, I think.

A. No, sir.

XQ. 55. Do not know him?

A. I may have met him, but I do not know him by name.

XQ. 56. Mr. Thompson, you have given lists here of the various houses from which you purchased dyes and the number of manufacturers from which you purchased the dyes. That is what I understand to be the last column; is that right?

A. Yes, sir.

XQ. 57. Do you know whether each of the houses from which you purchased the particular dyes listed under heading of "colors" are manufacturers of those particular dyes, or are they dealers in them, or do they buy them. Do you understand what I mean?

A. I should suppose, looking at this list, they were all manufacturers.

XQ. 58. You do not know of your own knowledge?

A. Well, I should be inclined to say that they were all manufacturers of these dyes.

XQ. 59. But I asked you if you knew whether, for instance, you purchased methylene blue basic from four persons; you headed them as manufacturers?

A. Yes.

XQ. 60. Do you know whether those four persons in fact manufacture methylene blue, or do they buy it from other manufacturers?

A. No, these are bona fide manufacturers, if that is your question, as I understand it.

XQ. 60. (Continued.) Yes.

A. They are not dealers, any of the names that I have given you.

XQ. 61. Where are the works of the Atlantic Dyestuffs Company located?

A. I do not know, sir.

XQ. 62. They are not in Connecticut, are they?

A. I could not tell you. I do not know.

XQ. 63. Where are the works of the Calco Chemical Company located?

A. They are at Bound Brook, New Jersey.

XQ. 64. Where are the works of John Campbell & Company located?

A. I could not tell you.

XQ. 65. Where are the works of the Ciba Company, Inc., located?

A. I do not know.

XQ. 66. Where are the works of the E. I. duPont de Nemours & Co. located?

A. They are located at——

XQ. 67. At Wilmington, Delaware?

A. Deep Water Point.

XQ. 68. Where are the works of the Geigy Company located?

A. I think that is a New Jersey corporation.

XQ. 69. Where are the Grasselli Chemical Company Works located?

A. I am under the impression that is Jersey City. I am not positive.

XQ. 70. Where are the works of Heller & Merz Company, Inc. located?

A. They are in New Jersey, near Elizabeth, I think.

XQ. 71. Where are the Marietta Refinishing Works located?

A. I do not know.

XQ. 72. Where are the H. A. Metz Company, Inc. located?

A. I think their works are in New Jersey.

XQ. 73. The National Aniline & Chemical Company?

A. They have several plants. There is one in Buffalo. There is one here at Marcus Hook.

XQ. 74. What state?

A. Delaware.

Mr. Kresel: Pennsylvania.

A. (Continued.) It may be Pennsylvania. It is right on the border line.

XQ. 75. The Newport Chemical Works are in Chicago, are they not?

A. No, they are in Passaic, I think, New Jersey.

XQ. 76. Sandoz Chemical Works?

A. I could not tell you.

XQ. 77. Butterworth-Judson Corporation?

A. That is a New Jersey corporation.

XQ. 78. A. Franklin Color Works?

A. I do not know them; that is, I do not know where their works are located.

XQ. 79. You do not know the other two?

A. No, sir.

XQ. 80. You said your plants were located where, Mr. Thompson?

A. We have one plant in Norwich, Connecticut, another in Sterling, Connecticut, a third plant at Pawtucket, Rhode Island, and two in Providence, Rhode Island.

XQ. 81. And these dyestuffs that you purchased from these various companies are shipped from their plants to your various plants as ordered, I suppose?

A. They go, as far as I know, direct from the manufacturer to the plants. Our New York office is simply an office for clerical help.

Mr. Anderson: That is all.

(Witness excused.)

FRANKLIN W. HOBBS.

Franklin W. Hobbs, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Mr. Hobbs, where do you reside?

A. Boston, Massachusetts.

Q. 2. And what is your business, please?

A. I am the president of the Arlington Mills. We are manufacturers of fabrics for men's and women's wear—worsted goods.

Q. 3. I should like you to give somewhat the extent of your business, if you will. For instance, how many yards of woolen clothes does your concern put out per week?

A. We manufacture about 380,000 to 400,000 yards of worsted fabrics a week. We use about 75,000,000 pounds of wool per year, and employ 7800 people. Our weekly payroll is about $180,000.

Q. 4. Where is your plant located?

A. The chief plant is at Lawrence, Massachusetts, and we have a small branch, weaving, dyeing and finishing only, at North Adams, Massachusetts.

Q. 5. Do you know Mr. Thompson, who preceded you on the witness stand?

A. Very well.

Q. 6. Were you a member of this Advisory Dyes Committee of the War Trade Board?

A. I was.

Q. 7. I did not ask Mr. Thompson as to the duties of that committee. May I inquire that of you?

A. We received instructions from the War Trade Board by letter and also by conference, and it was the general policy that we were asked—it was an advisory capacity to the War Trade Board with reference to the requirements of this country for foreign dyes, particularly German dyes, and as to the advisability or otherwise of the admission of those dyes to take care of the requirements as they arose in this country for the different consumers of dyes.

Q. 8. When was this committee appointed?

A. We were appointed the 8th of May, 1919 is my recollection, and were sworn in shortly after that, but it was effective under date of May 18, 1919.

Q. 9. Please look at this paper and state whether you find there a copy of the resolution of the War Trade Board organizing this committee?

A. I do.

Mr. Kresel: I should like to read into the record, Colonel Anderson, a copy of this resolution.

Mr. Anderson: I have no objection.

Mr. Kresel: I read as follows.

Mr. Anderson: Mr. Kresel, would you mind stating just from what source that is taken?

Mr. Kresel: I read from a letter of Mr. Dix-on of the Department of State to Mr. Hobbs, dated December 12, 1921, giving these extracts from the minutes.

Mr. Anderson: I just want to know the source, so I can verify it.

Mr. Kresel: I read as follows:

"It appears from the records of the War Trade Board that the following resolution was adopted on the 8th day of May, 1919:

" 'Whereas, the Associated Governments have determined that Germany shall be permitted to export dyes and dyestuffs to the countries of said governments, subject, however, to such municipal limitations as may be prescribed by the respective governments of the countries aforesaid; and

" 'Whereas, in view of the action of the Associated Governments hereinabove recited, it is necessary that the War Trade Board formulate rules and regulations which shall govern and control the importation into the United States of dyes and dyestuffs produced or manufactured in Germany; and

" 'Whereas, the War Trade Board desire in formulating such rules and regulations to avail themselves of the advice and assistance of competent representatives of the industries in the United States which are engaged in the manufacture and use of dyes and dyestuffs;

" '*Resolved*, that the War Trade Board do hereby establish an Advisory Committee on Dyes of the War Trade Board, whose function shall be to consider and study the dye situation in the United States and to make the War Trade Board recommendations with respect to the rules and regulations which should govern the importation into this country of dyes and dyestuffs produced or manufactured in Germany and particularly with respect to the character of these dyes and dyestuffs whose importation will accrue to the benefit of the United States;

"'*Further Resolved*, that the War Trade Board do hereby appoint the following gentlemen as members of the above-mentioned Advisory Committee on Dyes of the War Trade Board: Franklin W. Hobbs, Boston, Massachusetts,'"

And then the other six that were mentioned by Mr. Thompson.

Q. 10. Mr. Hobbs, please state to what extent your firm was a user of dyes?

A. We use from $350,000 to $600,000 or $700,000 a year—of strictly the color, that is; all the chemicals and things are in addition to that; but of dyes, straight color dyes, about that amount.

Q. 11. Before the outbreak of the European War from what sources did you buy your colors or dyes?

A. Almost entirely from the German importer. We bought small amounts from Shoellkopf at Buffalo, and possibly one other; but approximately 95 per cent, I should say, was from representatives of the German dye manufacturers.

Q. 12. Since 1914 have you been able to obtain dyes in the American market?

A. We have.

Q. 13. Have you prepared a statement showing the principal dyes used in your business and the dates when and the names of the firms from whom you were able to purchase those dyes?

A. I have.

Mr. Kresel: Colonel, here is a copy (handing paper). I am sorry it is the only copy I have.

Q. 14. Will you first give us the names of the principal dyes used in your business?

A. A very great percentage of our business is the serge business, and the four chief colors that we use, one a small amount of, are: Chrome blue, which is Schultz No. 181; Sulphon Acid Blue R, which is Schultz No. 188; Sulphon Cyanine 5 R, which is

Schultz No. 257; and the Diazine Black H. Extra, Schultz No. 333; and the Naphtylamine Black 10 B, Schultz No. 217. Of the latter we do not use so much. The first four are the chief dyes we use.

Q. 15. Will you please state when those dyes became available to you from American manufacturers, giving the names of the manufacturers and the date when?

A. In the list that you have there, the first dyes there are those used during the war. Do you wish me to refer to those?

Q. 16. Yes. What do you mean, used during the war, for what purpose?

A. In the early part, before we were in the war, we first obtained a blue called gallocynanine from W. Beckers located in Brooklyn in 1915. Then in 1917 the American Aniline Products Company made some. In 1918, Metz offered that color and then in 1918, in June, Marden, Orth & Hastings also offered it.

At that time we were running, of course, on civil business, and making the blue. Then in 1917 we turned over almost the entire plant to the manufacture of uniform cloths for the army and there then became available from Beckers alizarine yellow 2 G., Schultz No. 48, which was used in making O. D. uniforms and shirting cloths for the army. Soon after that, the U. S. Color & Chemical Company and some from the Bayer Company, Farbwerke-Hoechst, the Badische Company, John Compbell; and the American Aniline Products Company came a little later.

Then we used with that a chrome brown, which Beckers first produced in 1917 and the National Aniline in 1918 and then later on the Calco Company and DuPont and several others came in. But up to the end of 1918, those were the dyes that we were running 80 per cent. of our production on for the Government.

Then to get down to the present day, our regular civilian business, in July, 1918, this chrome blue or black we first had offered us by the National Aniline; then in March, 1919, the Grasselli Company; in December, 1919, DuPont; in March, 1920, the Standard Color Company; October, 1920, Sandoz Chemical Works; in July, 1921, the Calco Chemical Company; in the same month, July, 1921, the U. S. Color Company; September, 1921, H. A. Metz; in July, 1922, the Ciba Company; March, 1923, the Newport Chemical Company; and March, 1923, John Campbell & Company.

Q. 17. In other words, those that you have just mentioned were offering this chrome blue or black?

A. Yes, and are still offering it.

Then the sulphon acid blue R was first offered by the National Aniline in December, 1917; January, 1921, Campbell; February, 1921, Grasselli; July, 1921, the U. S. Color Co.; November, 1923, DuPont.

Then the sulphon cyanine 5 R; in December, 1917, the National Aniline; June, 1921, DuPont; November, 1921, U. S. Color Company; June, 1923, John Campbell.

Naphtylamine black: July, 1916, National Aniline; February, 1918, the Bayer Company; 1919, Aniline Dyes & Chemical; 1919, DuPont; May, 1919, H. A. Metz; and in July, 1920, The Standard Color Company. That has also been offered us and is made now by The Chemical Company of America, A. Klipstein, Bachmeier & Company, Read Halliday & Company, American Aniline Products Company, Atlantic Dyestuff Corporation, Newport Chemical Works, Grasselli Chemical Company, Jennings & Company, John Campbell, and the Ciba Company.

Those represent, I suppose, 80 per cent. or more of our entire dye consumption; those colors.

Q. 18. Have you prepared statements showing the names of the firms from whom each of the colors that you use in your business may be obtained and have been obtained by you?

A. I have. That list I read gives it also.

Q. 19. I mean this statement. These are your chrome blue or black, the blue group, the sulphon cyanine group, the diazine black H. group, the brown, and the diazo black?

A. That is right. It is practically the same information.

Mr. Kresel: I am going to offer, if your Honor please, as one exhibit the six statements just identified by the witness. I am afraid they are a little too long to spread upon the record.

The Court: The witness has testified to their accuracy?

Mr. Kresel: Yes, your Honor, in substance.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 158." (*See Exhibits, Vol. V, page 2845.*)

Q. 20. Mr. Hobbs, as to the prices at which you have been buying these dyes and chemicals since the outbreak of the war, have you figures there as to that?

A. I have, for a few of the dyes.

Q. 21. Will you take, for instance, as an example the chrome blue-black. I understood you to say that that is a dye that you used most of?

A. That is right.

Q. 22. Will you state what you were paying for that color or dye in 1919?

A. $1.65 a pound.

Q. 23. And what are you paying for it now?

A. 52 to 65 cents. We had offers from nine companies about a month ago for that dye running from 52 to 67 cents.

Q. 24. From nine separate concerns?

A. From nine separate concerns, all American manufacturers.

Q. 25. The next color, in the volume that you consume of that, I understood you to say was sulphon acid blue?

A. That is right.

Q. 26. Give us the figures on that?

A. 1919 we were quoted by the National $2.15.

Q. 27. A pound?

A. A pound. Today we are offered that and are buying it at 70 cents per pound.

Q. 28. From how many different concerns can you buy that?

A. Oh, I think there are eight or ten; quite a large number.

Q. 29. Let me see the statement you have prepared as to prices?

A. (Hands counsel papers.)

Mr. Kresel: I am going to offer this statement.

Q. 30. That gives the dates, the names of the firms, and the quotation, listed under each of these colors. Is that right, Mr. Hobbs?

A. That is right.

Q. 31. And is that correct?

A. That is correct. Those are taken from our office records.

Mr. Anderson: Are you going to offer just the two?

Mr. Kresel: I am going to offer the two principal dyes that he has.

Q. 32. Have you prepared any figures on the other dyes, similar to these?

A. I have one on the sulphon cyanine 5 R A and the diazo black. They run there from 1919, $2.25, to 70 cents today, and on the diazo black from $2.25 to 65 cents, the quotation today.

Q. 33. All these quotations that you speak of are quotations quoted by American manufacturers and prices that you paid to American manufacturers?

A. They are, absolutely.

Mr. Kresel: I offer in evidence the statement with reference to sulphon cyanine 5 R A.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 160." (*See Exhibits, Vol. V, page 2850.*)

Mr. Kresel: Sulphon acid blue.

Received in evidence and marked "Defendant's Exhibit No. 161." (*See Exhibits, Vol. V, page 2851.*)

Mr. Kresel: Chrome blue black.

Received in evidence and marked "Defendant's Exhibit No. 162." (*See Exhibits, Vol. V, page 2852.*)

Mr. Kresel: Diazo black.

The Court: They are admitted.

Received in evidence and marked "Defendant's Exhibit No. 163." (*See Exhibits, Vol. V, page 2853.*)

Mr. Anderson: I understand, of course, if your Honor please, that all this evidence is being taken to these general objections and the rule applied. My reason for suggesting it at this time is that it occurs to me unless it appears that some of these colors are made under patents transferred to The Chemical Foundation, I do not see that they are material to this case and, while I understand that objection is reserved, I felt it probably best to suggest to counsel that I would raise that point.

Mr. Kresel: Of course, I have no objection to your reserving your objection, Colonel; but I must take issue with you upon the proposition that only if these colors are covered by The Chemical

Foundation patents is the testimony relevant. It is relevant upon your charge of monopoly and conspiracy, likewise. That is all from Mr. Hobbs.

I offer in evidence the first statement produced by the witness and identified by him, consisting of four sheets.

Received in evidence and marked "Defendant's Exhibit No. 159." (*See Exhibits, Vol. V, page 2848.*)

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 34. Mr. Hobbs, do you know whether any of the colors referred to in the list just filed as Exhibit No. 159, as used by you, are patented dyes?

A. I do not.

XQ. 35. You do not know?

A. No, sir.

XQ. 36. What is the meaning of "Schultz No. 181" and the Schultz numbers?

A. It is a regular standard list published by the Government at the time of the war, where all dyes were given a certain standard, as the Schultz Standard, with an identification number.

XQ. 37. Mr. Hobbs, have you data from which you could tell me the prices of the same dyes or colors in 1913 and 1914, the prices of which you have listed for 1919 and years subsequent thereto in the statements which you have filed?

A. I think I can get that all right from our records.

XQ. 38. You can get it from your records?

A. Yes, sir.

XQ. 39. The same ones?

A. Practically the same colors.

XQ. 40. They were practically all imported at that time?

A. Almost entirely, yes.

XQ. 41. Would you be kind enough upon your return to make out a statement corresponding exactly, or as nearly as can be——

A. I will do so.

XQ. 42. And if there is any variation explain the same?

A. I will do so.

XQ. 43. Showing the prices of these same colors for 1913 and 1914, as to which you have listed here the prices for 1919 and subsequent years, and send down to Mr. Kresel two copies, that he may give me one.

A. I will do that.

> Mr. Anderson: I would now like to reserve the right to introduce that statement in evidence in connection with the statements here introduced, when it is received.

XQ. 44. Mr. Hobbs, are these dye colors received in packages, are they in barrels, or how are they shipped to you?

A. Mostly in barrels; some in packages. Small quantities in packages.

XQ. 45. Do those packages bear any labels showing whether they are made under patents or under licenses, or things of that kind?

A. I cannot answer that.

XQ. 46. Would you be kind enough to look that matter up on your return and, if they do, send me copies of those labels?

A. I will.

XQ. 47. Showing just how they are made? You spoke of being a member of the committee appointed by the War Trade Board to advise as to the importation of dyes immediately after the war. Were they what were commonly called reparation dyes that were imported at that time?

A. All dyes.

XQ. 48. You had to cover all dyes?

A. For reparation or any other purpose.

XQ. 49. You were advised that was the importation of reparation dyes?

A. All dyes.

XQ. 50. And the reparation dyes were imported through the Textile Alliance, were they not?

A. Under our recommendation, yes.

XQ. 51. Yes, and your limitations?

A. It was on the recommendation of our committee the Textile Alliance was engaged to do it.

XQ. 52. Who selected the Textile Alliance as the importing agent; the War Trade Board, do you recall?

A. The War Trade Board.

XQ. 53. They afterward acted with the State Department?

A. Well, we were transferred, my recollection is, along the latter part of June—the War Trade Board went out of existence and our committee was transferred to the State Department and then it was in the fall, I should say September, 1919——

XQ. 54. You were speaking of June, 1919?

A. I was speaking of June, 1919. May, 1919, this Dye Advisory Committee was appointed by the War Trade Board. Then, my recollection is, before the first of July, of that same year, the committee was transferred to the State Department and then it was in the 1919, September or October, I think it was, the Textile Alliance began to act as the importing agent.

XQ. 55. You advised as to the distribution of the dyes and the needs of this country, did you?

A. The issuance of licenses.

XQ. 56. In order to abbreviate it. I find that you testified—I believe before the Shortridge Committee?

A. I did.

XQ. 57. The so-called Shortridge Committee, on Resolution 77. And in stating what you did there you made this statement at page 906. Would you care to see it? I will read it to you aloud and ask you if that was correct:

> "Acting under these general instructions we very shortly afterwards laid down a general plan on which these imports were to be handled. We recognized the necessity as to some colors for importations, and, in general, wherever there was a reasonable quantity in this country, made by American dye manufacturers, at a reasonable price and of proper quality, no licenses should be issued; but where these qualifications did not exist, that licenses should be issued.
>
> "At first we passed personally, I mean as a committee, on every application that came in to us. But after time went on that matter became a routine detail under the general policy laid down, and those matters were passed upon by the force of the War Trade Board, and afterwards the State Department, and now the Treasury Department. But that general policy has been carried out."

That is your understanding of the situation?

A. That is as I recollect my statement, yes.

Mr. Mahaffy: What page were you reading from?

Mr. Anderson: Page 906, I think it was, Mr. Mahaffy.

The Witness: That is before the Shortridge Committee.

Mr. Anderson: Yes, it is very short testimony.

XQ. 58. You will get me the information that I requested?

A. The prices of 1913 and 1914 and whether or not the patent labels are on any of the packages, yes.

XQ. 59. Yes, and indicating whether they are manufactured under license or patents?

A. I will do so.

(Witness excused.)

(A short recess was taken at this point by direction of the Court.)

FRANK D. CHENEY.

Frank D. Cheney, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Where do you reside, Mr. Cheney?

A. South Manchester, Connecticut.

Q. 2. What is your business?

A. I am the manager of the dyeing and finishing departments of the silk manufacturing establishment of Cheney Brothers, who manufacture decorative goods, upholsteries, dress-goods, velvets, plushes, cravats, socks, yarns and other miscellaneous items which need not be mentioned.

Q. 3. All silk products are they?

A. Not entirely silk.

Q. 4. Principally silk?

A. Principally silk. There are a few products which contain no silk; there are some products which contain either warp or filling of cotton or wool or linen, but there is also silk in them.

Q. 5. Please tell us something as to the extent of your business in volume, or turn over?

A. Well, we manufactured about 3,900,000 yards of broad goods; that is, dress goods, upholsteries and decorative goods, during the past year; about 4,600,000 yards of velvets; cravats, 166,000 dozen; a small amount of ribbons, 28,000 yards; and unfortunately I cannot give you the pounds of yarns, but quite considerable.

Q. 6. Where are your plants located?

A. There is only one plant, which is located in South Manchester, Connecticut.

Q. 7. About how many people do you employ?

A. The highest number of people we have employed is about 4,900. We are now employing about 4,200.

Q. 8. In your business do you use dyes?

A. To a very large extent.

Q. 9. On an average, how much of dyes do you use per year?

A. It would average over 100,000—I have not the exact average for five years, but it would be better than 110,000 to 112,000 pounds per year. I can give it to you by years.

Q. 10. Before we get to that, prior to the outbreak of the European war in 1914, from what sources did you get your dyes?

A. Practically entirely from Germany. There were a very few, two or three dyes, which were made in this country, and I believe they were not completely made, they were made from imported intermediates.

Q. 11. Can you state from statements that you have prepared and have with you, before I introduce those statements, the relative percentage of dyes from German sources that you used in 1913, and the percentage of American-made dyes?

A. In 1913 we used 116,765 pounds of German dyes, which was 91.9 per cent. of our total, and 10,270 pounds of American dyes, which was 8.1 per cent. of our total. I see that on this copy the period is in the wrong place.

Q. 12. Yes, I have changed that, and in the copy I will introduce that change has been made. Contrast that, if you will, with 1922, and tell us how much of your total dyes you had from German sources and how much from American sources?

A. In 1922 the situation is almost exactly reversed. We purchased 12,000, or we consumed 12,020 pounds of German dyes, which was 10.4 per cent. of our entire production——

Q. 13. Entire consumption?

A. Entire consumption—and 97,650 pounds of American dyes, which was 84.2 per cent. of our consumption.

Q. 14. I will return to this subject in a minute, but now I should like to inquire as to the situation that you found upon the outbreak of the war, as to the supply of dyes for your business. What was the situation?

A. The situation was extremely difficult and harrassing to the manager of any plant consuming dyes. We were dependent upon the stocks which existed in this country and such small amounts as were imported after the outbreak of the war. The situation was taken advantage of by people who were anxious to make quick profit, speculation was very feverish, prices mounted.

Q. 15. Tell us something about the prices. Can you give us any example?

A. Well before the war, before 1914, our average price was 67 cents per pound.

Q. 16. Of dye?

A. Per pound of dye. About a year and a half later our average price was in the neighborhood of seven dollars per pound. There is the famous case of Rhodamine B Extra Concentrated, which we purchased before the war for 92 cents. In fact, we purchased as low as 63 cents, a special importation of our own, and the price of that dye before it began to go down again went as high as $80 per pound. The package which we imported at 63 cents cost us seventeen hundred odd dollars. We could have sold it at one time for forty-five thousand odd dollars. That is the exceptional case. Other dyes mounted very high, but not so high as that particular one.

Q. 17. Mr. Cheney, have you prepared a statement showing your total consumption of dyes for the five years beginning 1918, and the distribution of that total consumption as to the sources from which it was obtained?

A. I have.

Q. 18. Will you produce that statement?

A. Would you like me to read it?

Q. 19. No, I am going to offer that in evidence.

A. (Witness hands counsel.)

MR. KRESEL: Perhaps, your Honor—this is not very long—that may go in as part of this witness's testimony. To summarize it, your Honor, this gives the period 1918 to 1922. It shows that the consumption of dyes by this gentleman's business ran from 109,000 pounds in 1921 to as high as 139,000 pounds in 1919, and, as he has already pointed out, in 1913, 91.9 per cent. of the entire consumption came from German sources and only 8.1 per cent. came from American sources, while in 1922 10.4 per cent. of his total consumption came from German sources and 84.2 per cent. came from American sources. That is to go in as part of the witness's testimony.

The same is spread upon the record as follows:

REPORT OF CONSUMPTION OF DYESTUFFS FOR THE YEAR 1922.

Total Consumption

Period of one year from Jan. 1918 to Jan. 1919	113,623 lbs.
" " " " " " 1919 " " 1920	139,938 lbs.
" " " " " " 1920 " " 1921	118,646 lbs.
" " " " " " 1921 " " 1922	109,930 lbs.
" " " " " " 1922 " " 1923	115,970 lbs.

Distribution of Consumption

Year	German		Swiss		English		American	
	Lbs.	%	Lbs.	%	Lbs.	%	Lbs.	%
1913	116,765	91.9					10,270	8.1
1919	25,241	18.0	5,240	3.8	298	0.2	109,159	78.0
1920	7,423	6.25	6,322	5.3	180	0.15	104,721	88.3
1921	13,354	12.2	6,183	5.6	918	0.8	89,475	81.4
1922	12,020	10.4	6,146	5.3	154	0.1	97,650	84.2

Q. 20. Mr. Cheney, have you also prepared a statement of the purchases of dye stuffs made for your business for 1913, and then from 1916 on to the end of 1922?

A. I have.

Q. 21. Showing the average cost of dyes per pound?

A. Yes.

Q. 22. And then have you analyzed those costs, distributing the dyes as to the origin thereof, German, Swiss, English and American?

A. I have.

Q. 23. Now, to take a bird's eye view of this statement in 1913, what was the average cost per pound?

A. 67 cents per pound.

Q. 24. What was it in 1916?

A. $4.45.

Q. 25. What was it in 1922?

A. $1.47.

Q. 26. So it has gone down from $4.45 in 1916 to $1.47 in 1922?

A. Yes.

Q. 27. Now, looking at the dye stuffs of German origin, what was the average cost per pound in 1919?

A. Dyes of German origin?

Q. 28. Dyes of German origin?

A. $3.93 per pound.

Q. 29. And what was it in 1922?

A. $4.20 per pound.

Q. 30. Now, looking at the American dyestuffs, of American origin, the average cost in 1919 was how much?

A. $2.17 per pound.

Q. 31. What was it in 1922?

A. $1.09 per pound.

Mr. Kresel: I now offer in evidence, as part of this witness's testimony, this statement.

The Court: It will be spread on record as if testified to in detail by the witness.

Mr. Kresel: Yes, your Honor. The statement is as follows:

REPORT OF PURCHASE OF DYESTUFFS FOR THE YEAR 1922.

Average Cost.

	1913	1916	1918	1919	1920	1921	1922
Dollars per lb.	0.67	4.45	2.61	2.43	2.31	2.06	1.47

Analysis of Cost.

1. Dyestuffs of German Origin

Year	1919	1920	1921	1922
Amt. purchased—lbs.	341⅝	8,934½	15,417	9,716
Total Cost	1,342.88	37,555.64	81,052.57	40,789.97
Average cost per pound	3.93	4.20	5.26	4.20

2. Dyestuffs of Swiss Origin

Year	1919	1920	1921	1922
Amt. purchased—lbs.	5,824½	7,111	6,175	5,593
Total Cost	44,302.48	41,629.14	23,571.64	19,292.17
Average Cost	7.61	5.85	5.26	3.45

3. Dyestuffs of English Origin

Year	1919	1920	1921	1922
Amt. purchased—lbs.	398	770	768	154
Total Cost	882.20	1,640.50	1,909.67	306.47
Average Cost	2.22	2.13	2.49	1.99

4. Dyestuffs of American Origin

Year	1919	1920	1921	1922
Amt. purchased—lbs.	114,493⅝	115,117½	78,976	99,128
Total Cost	248,026.79	223,529.81	102,118.38	108,16.14
Average Cost	2.17	1.94	1.29	1.09

5. Grand Total

Year	1919	1920	1921	1922
Amt. purchased—lbs.	121,047¾	131,993	101,336	114,591
Total Cost	294,554.35	304,359.02	208,652.26	168,557.69
Average Cost	2.43	2.31	2.06	1.47

Q. 34. Have you also a statement of the names of the American firms from whom you are now purchasing dyes?

A. I have.

Mr. Kresel: Your Honor, may that likewise go in as part of the witness's testimony? You have that, have you not, Colonel?

Mr. Anderson: What is that?

Mr. Kresel: It is the last sheet.

The Court: When the witness has testified as to its correctness.

Q. 35. This is a correct statement, is it not?

A. Yes.

Mr. Kresel: I will read that in, your Honor. There are a few names. They are the Du Pont, Newport, Mich., Grasselli, National Aniline, Calco Chemical, Peerless Color Co. (formerly Sterling), Atlantic Dyestuff (Portsmouth, N. H.), Chemical Co. of America (N. J.), Garfield Aniline Works (Garfield, N. J.), Essex Chemical.

The Witness: I would say that these are the concerns from which we are purchasing regularly. There might be others that we might occasionally buy an odd lot from, but these are our regular ones.

Q. 36. Are there other manufacturers of dyes who submit quotations to you?

A. Yes.

Q. 36a. You may not buy from them, but they try to sell?

A. Yes.

Q. 37. Were you a member of this Advisory Dyes Committee of the War Trade Board?

A. I was.

Q. 38. Representing the silk interests?

A. Yes.

Q. 39. I meant to ask you—you appeared before one of these Congressional Committees, did not you, and testified there?

A. I appeared before both the Ways and Means Committee and the Senate Finance Committee.

Q. 40. I notice in your testimony before the Ways and Means Committee, a statement made by you on March 20, 1919, that your concern, in conjunction with a number of other representative textile industries addressed a cablegram to President Wilson at Paris with reference to the dye industry; did you?

A. We did.

Q. 41. And is the copy of the telegram there set forth as a part of your testimony, a copy of the telegram, and is that correct?

A. Yes, it is.

Mr. Kresel: May I read that in the record, your Honor, instead of offering it?

The Court: Yes.

Mr. Kresel: Follow me, please, Mr. Cheney. The telegram reads as follows:

> "The undersigned, representing various branches of the textile industry, respectfully submit that in their opinion an independent and self-sustaining American Dye manufacturing industry is a national necessity, but such a dye industry cannot be established unless competition from German factories, including those in occupied territory, be cut off for a period of years; that no tariff will furnish protection against the enormous resources and unscrupulous methods of the German trust, fighting to regain its foreign markets; and that only a licensing plan like the Brit-

ish, excluding all foreign dyes reasonably obtainable in the United Seates, will save the new American industry. We respectfully urge that immediate steps be taken to procure, both in the Peace Treaty and in legislation, the measures necessary to establish such a plan. We advocate this not merely because a domestic dye industry is essential to the independence of the American Textile industry and manufacture generally, but chiefly because we believe that only through an established dye industry can the nation secure the progress in chemical education in the application of chemistry for the arts and the above, and in curative medicine, which are indispensable to the national welfare."

Q. 42. You signed such a cablegram to President Wilson?

A. We did.

Q. 43. And it was sent to him?

A. Yes.

Q. 44. And that is correct?

A. Yes.

MR. ANDERSON: What page is that?

MR. KRESEL: Page 47.

THE COURT: What is the date of the telegram?

MR. KRESEL: March 20, 1919. Now, your Honor, at this time, I desire to offer in evidence an extract from President Wilson's message to Congress, delivered on May 20, 1919.

MR. ANDERSON: Why not put the whole thing in evidence?

MR. KRESEL: I will do that, but I will only read this portion. It follows within two months of this cablegram. I will put the whole message in. It is not very long, but I will read only the portion that has reference to the dye industry. The President says this:

"Nevertheless, there are parts of our tariff system which need prompt attention. The experiences of the war have made it plain that in some cases too great reliance on foreign supply is dangerous, and that in determining certain parts of our tariff policy domestic considerations must be borne in mind which are political as well as economic. Among the industries to which special consideration should be given is that of the manufacture of dyestuffs and related chemicals. Our complete dependence upon German supplies before the war made the interruption of trade a cause of exceptional economic disturbance. The close relation between the manufacturer of dyestuffs, on the one hand, and of explosives and poisonous gas on the other, moreover, has given the industry an exceptional significance and value. Although the United States will gladly and unhesitatingly join in the program of international disarmament, it will, nevertheless, be a policy of obvious prudence to make certain of the successful maintenance of many strong and well-equipped chemical plants. The German chemical industry, with which we will be brought into competition, was and may well be again, a thoroughly-knit monopoly capable of exercising a competition of peculiarly insidious and dangerous kind." Please mark that.

Received in evidence and marked "Defendant's Exhibit No. 164." (*See Exhibits, Vol. V, page 2854.*)

Mr. Kresel: I offer in evidence, also, the President's message to Congress of December 2, 1919, without re-reading the portion that I have just read. I direct your Honor's attention to the fact that the President again calls the attention of Congress to this subject of dye industry, and quotes in this message of December 2, 1919, the paragraph that I have just read from his message of May, 1919.

Received in evidence and marked "Defendant's Exhibit No. 165." (*See Exhibits, Vol. V, page 2866.*)

Mr. Anderson: I understand, if your Honor please, that the Court takes judicial notice of the messages of the President, and I shall not object to the introduction of these messages into evidence in this case, for convenience, asking at this time that I may reserve the right to introduce other messages of the President as may seem appropriate. I have taken the view that they would be referred to, and judicial notice taken, and I would like to put all in.

Mr. Kresel: That is all of this witness.

Cross-Examination.

By Mr. Anderson:

XQ. 45. Mr. Cheney, the Committee on Ways and Means and the Finance Committee, before which you testified, were considering a bill providing for a licensing system or an embargo in the alternative mentioned in your telegram to the President, were they not?

A. There was such a system under consideration at one time. I cannot state offhand whether it was at the time of my telegram or not.

XQ. 46. I mean at the time that you appeared before those committees?

A. Oh, yes, at the time I appeared before the committees.

Q. 47. You put that telegram in. The Committee had under consideration a bill for a licensing system or a dye embargo?

A. Yes.

XQ. 48. The bill has been read in here. I merely want to connect it up.

A. That is correct.

XQ. 49. You appeared both before the House and Senate Committees on that measure, and testified?

A. Yes.

XQ. 50. Can you say whether that dye embargo bill or licensing system was ever passed by the Senate? Do you know?

A. I don't positively know. I believe not.

XQ. 51. Before the Senate Committee on Finance you testified——

Mr. Kresel: Do you know, Colonel, that there were three bills that dealt with the subject? Which one are you now inquiring about?

Mr. Anderson: The bills that were before the Senate and House Committees providing for an embargo or licensing system. They were never voted upon by the Senate.

Mr. Kresel: My understanding, your Honor, is this. You want to keep it straight on the record, do you not?

Mr. Anderson: I do, and I want, before we close this case, with the consent of the Court, to definitely ascertain from the record exactly what was done, and by agreement put it in the record.

Mr. Kresel: I will co-operate with you. But, subject to correction, may I make this statement? My understanding of it is this: That first, by joint resolution of Congress, an embargo was established. I think it was for a period of three months. Secondly, what is known as the Temporary Tariff Bill was passed, and as a portion of that Temporary Tariff Bill the period of the embargo was extended for another period of either three or six months. Subsequently, by resolution, there was a third extension which carried it to the time when the final Tariff Bill was enacted. In that Tariff Bill there was no embargo provided for, but there was a very high tariff put on.

That is my understanding of the situation, all of which is subject to correction, and we will put in the record.

Mr. Anderson: I will not discuss it, as we are going to put in the actual record of facts. My understanding is not entirely in accord with yours in detail; but I do not think it is at sufficient variance at this time to make it a subject of discussion, and we will put in the actual facts agreed upon.

Mr. Kresel: Very well; we will do that.

XQ. 52. In your testimony before the Senate Finance Committee on H. R. 8078, which has been so described here a number of times,——

Mr. Kresel: Which is that—the Shortridge or the Senate?

Mr. Anderson: Page 485.

Mr. Kresel: That is the Senate Committee.

Mr. Anderson: If you have a copy, will you give it to the witness?

The Witness: I have a copy.

XQ. 53. You had formerly testified before that committee at an early stage in the hearing, I believe?

A. Before the Finance Committee?

XQ. 54. Yes; at page 147 of the same book.

A. Page 147; yes.

XQ. 55. You had filed a written statement and had made an oral statement before the committee, and then you came back before the committee, and your statement appears on page 485. In that statement, at page 485, you made the following statement—I do not think it is testimony:

> "In order to correct an unintentional injustice which I did yesterday to the War Trade Board, in not stating their policy with sufficient clearness, I desire to read this statement:
>
> When the application of a consumer for the

importation of a color is refused on the grounds of ample domestic production, he is advised that his application has been refused for that reason. Should the consumer request the War Trade Board Section to advise him of the source of such supply the War Trade Board Section refers him to the American Dye Institute. The War Trade Board itself has not undertaken to notify the consumer of the name of all producers. Accordingly, an unnamed manufacturer would have been furnished an opportunity to make just criticism on the part of a governmental agency. It was felt that this responsibility should be assumed by the only organization of manufacturers, namely, the American Dyes Institute, which represents practically all of the manufacturers. The American Dyes Institute agreed to furnish the names of all manufacturers of a particular dye in such a case to the consumer and in this connection agreed to give the names, not only of its own members but of all other manufacturers who might not be members. The American Dyes Institute agreed to do this only upon condition that in letter refusing the application the consumer should be referred to the American Dyes Institute only when after receipt of the letter of refusal he applies to the War Trade Board Section for information."

You read that statement to the committee, did you not?

A. I did.

XQ. 56. Was that a statement prepared by you, Mr. Cheney, or by whom?

A. Prepared by me, as I recollect it.

XQ. 57. Did that state correctly the procedure followed on advice of your Advisory Committee with respect to the importation of dyes?

A. I believe so.

XQ. 58. You spoke of buying in 1913, 10,270 pounds of American dyes. Who manufactured dyes in the United States in 1913?

A. The National Aniline, which was then, if my recollection is correct, Schoellkopf, Harford & Hanna, manufactured direct black. I think the bulk of that 10,000 pounds was direct black. I believe that one or two others manufactured acid orange, the cheapest dye, which then sold at eleven cents per pound and which it did not pay for the Germans to transport on account of its low price.

XQ. 59. In the statement which has been filed by counsel, prepared by you, in the second sheet of the three statements referred to, you have given the prices of various dyes for the years 1913 to 1922 and the amounts purchased, in pounds, from various countries. What is the source of your information on that subject, Mr. Cheney?

A. It is taken from our records.

XQ. 60. These, then, are only your purchases; these are not the total purchases of the country; they are only your purchases?

A. No, this is Cheney Brothers' purchase.

XQ. 61. That is a matter of your purchases?

A. Yes.

XQ. 62. And the prices paid by you for those various dyes?

A. Yes.

XQ. 63. Taking up, first, the German dyestuffs purchased in 1919 to 1922, what generally were the types of dyes which you purchased from Germany?

A. In 1919 I think we purchased—you see, it was only 341 pounds. It was probably one package or two packages of some vat dye. I assume it was of vat dye. I could not give you that information exactly. I can get it for you, if you wish it.

XQ. 64. Go ahead to 1920?

A. 1920, vat dyes, a few basic dyes and direct dyes.

XQ. 65. My ignorance on the subject is very great. Would you mind telling me, are those the special colors not made in the United States altogether?

A. Yes.

XQ. 66. They are, as a rule, newly developed and high priced colors, are they not?

A. Some of them were not high priced.

XQ. 67. They have not been developed in this country?

A. No.

XQ. 68. And could you name some of the dyes in 1920, 1921 and 1922, aggregating as high as 15,000 pounds in 1922, some specialties that you brought in from Germany?

A. I can give it to you for 1922, I haven't the other years.

XQ. 69. Would they be, do you think, approximately the same colors in 1921?

A. There would be a little variation one way or another, but they would be the same groups.

XQ. 70. No material variation?

A. No, but they would be the same groups.

XQ. 71. Suppose you give me the type of dyes imported from Germany in 1922, if you have that information, with the prices?

A. With prices?

XQ. 71. (Continued.) Yes.

A. I haven't that here. I can get that for you.

XQ. 72. Give me the character, and we will call for the prices later?

A. There were five acid dyes: Cyanole Extra, Acid Blue 00; Brilliant Acid Blue V; Silk Blue BT5B00 Rose Induline 2B.

We can now procure three of those dyes in this country, so that we are today only in need of two acid German-made dyes, Cyanole Extra and Silk Blue BT5B00.

XQ. 73. Are those dyes of a special character and high priced, speaking generally?

A. They have special qualities. They are higher than the average price.

XQ. 74. They are higher than the average price?

A. Yes.

XQ. 75. And generally, blues are low-priced dyes, are they not?

A. What?

XQ. 76. Blue colors are low-priced dyes and in common use, are they not?

A. I should think it depended on the kind of blue.

XQ. 77. Then the price which you have given in 1922 and 1921 on imported dyes includes the duty, does it not?

A. Yes.

XQ. 78. That is the American selling price plus cost of transportation and duty?

A. Yes.

XQ. 79. Are any of those dyes, so far as you know, sold under or covered by the German patents owned by The Chemical Foundation?

A. I do not know.

XQ. 80. The duty now imposed on dyes imported of this type is 60 per cent on the American price, is it not, the American valuation; or do you not know?

A. I do not know.

XQ. 81. You do not know what the duty was or the valuation on which it was based in 1919 or 1913, do you?

A. I can not give you that from memory, no.

XQ. 82. Take up the dyestuffs of Swiss origin. I see you are quite an importer of dyestuffs from Switzerland. What are the types of dyes that you import from Switzerland?

A. Well, the same kind of dyes as we imported formerly from Germany, the more refined, higher types.

XQ. 83. The dyestuffs of English origin; would you say the same as to those, although the amount is small?

A. The amounts are small there. That consisted principally of a few vat dyes, I believe.

XQ. 84. Take the dyestuffs of American origin. They now include all of the dyes made by American manufacturers and used in your business, including the cheaper form of dyes, do they not?

A. Yes, and the expensive forms as well.

XQ. 85. Is not the great bulk of the dyes used in your business of a cheaper price of dyes?

A. No, they are not.

XQ. 86. I believe you have given a list of the dyes used in your business; have you not?

A. I have not. I can furnish it if you wish it.

XQ. 87. I should like very much to have it, Mr. Cheney, if it would not trouble you too much.

A. None.

XQ. 88. In that connection could you tell me whether any of these dyes shipped to you by various American manufacturers bore any labels showing whether they are made under patents or patented processes or under license?

A. I cannot tell you.

XQ. 89. Would you look that up and if any such labels exist would you kindly send me samples of each?

A. I will.

XQ. 90. There is another question I would like to ask you, and that is what were the 1913 prices on the colors which you state you imported from Germany in 1919 and the three succeeding years. Could you state the 1913 prices on those colors? You have stated the average 1913 price per pound for all dyes, but I would like to have the comparison, if I could, on the colors which you used. You see what I mean.

A. It would take quite a little research to dig it up.

XQ. 91. I do not want to put you to any unnecessary trouble, and if it is too much trouble I will not ask it. A statement was filed by Mr. Thompson, and I think possibly Mr. Hobbs, for 1919 and subsequent years by colors. I asked them to give it to me for 1913 and 1914 by colors.

A. We used 132 colors in 1913. That is ten years ago. I would be very glad to see if we could get it for you. I cannot even tell you offhand whether those records are still in existence.

XQ. 92. I will ask you this: If you can give it to me very readily, on especially the colors now imported from Germany, those that were imported in 1921 and any of the other principal colors—if you can give me that information without much trouble, I will be greatly obliged if you will send it to me. If it should occasion you any trouble, I will not ask it.

A. The list of colors now imported from Germany, with 1913 prices?

XQ. 93. That is right; imported from Germany in 1921, with 1913 prices. In the second place, if you could take some of your chief colors used by you, even though bought in America, and give me the 1913-1914 prices, it would be sufficient. I do not ask you to go into a long detail and I do not ask you to go into any great deal of trouble. Just give me what information you can conveniently make up along that line.

A. The chief colors?

XQ. 94. That is, what I would call a fair average representation, high priced colors and low priced colors. You see what I mean?

A. With both 1913 and 1922 prices?

XQ. 95. 1913 and 1922 prices, yes. I would ask you also to take your statement, Sheet No. 2, and take the average cost per pound. How did you arrive at the average cost per pound; did you take the total number of pounds of all dyes used in that classification or did you take the colors coming in and average them?

A. We took the total consumption. I say consumption; I see that that particular page is headed "Purchases." We averaged the total purchases.

XQ. 96. You took the total purchases and the cost of the total purchases and divided the cost by the number of pounds?

A. That is my understanding. That can very easily be verified, because that same memorandum gives you the total pounds and the total dollars and the average.

XQ. 97. On the third page of your memorandum you give a list of the houses you are now purchasing from. You have been purchasing from those houses for several years as they produced the colors you needed, have you not?

A. Yes.

XQ. 98. Where is your plant located?

A. South Manchester, Connecticut.

XQ. 99. You purchased from the duPont plant at Wilmington, Delaware, did you not?

A. Yes.

XQ. 100. And they shipped to your plant in Connecticut?

A. Yes.

XQ. 101. I note you say here "Newport" and afterward in parenthesis "Michigan". Is that the Michigan plant of the Newport Chemical Company?

A. Yes.

XQ. 102. You purchased from that plant and they shipped to you at your plant in Connecticut direct?

A. Yes.

XQ. 103. The Grasselli plant, I believe it was testified, was in New Jersey.

Mr. Kresel: He did not testify to that.

Mr. Anderson: I believe it was testified that it was in New Jersey.

A. I think that the Grasselli plant is at Rensselaer on the Hudson.

XQ. 104. That is in New York?

A. In New York. I am not positive as to that.

XQ. 105. That is not in Connecticut, in any event, is it?

A. No.

XQ. 106. And they ship from their plant outside of Connecticut, to you at your Connecticut plant, do they?

A. Yes.

XQ. 107. The National Aniline plant from which you buy is where?

A. In Buffalo.

XQ. 108. The same applies in that case, they ship direct to your plant, do they?

A. They have a distributing house in New York.

XQ. 109. But they either ship from New York or from Buffalo?

A. And they have a distributing house in Hartford, quite near our plant. We might get shipments from either one of the two distributing houses or from the factory.

XQ. 110. A considerable portion of your stuff comes from the factory or the New York distributing house, does it not? You do receive from both of those?

A. We receive from all three sources.

XQ. 111. Where do you get your stuff from the Calco Chemical Company; where is it shipped from?

Mr. Kresel: Colonel Anderson, if it is proposed by these questions to show that this is interstate commerce, there will be no dispute on our part.

Mr. Anderson: Your disputing it does not relieve me of the necessity of proving it. I do not want to go into any unnecessary proof of it. Will you admit that the licensees of the Chemical Foundation are engaged in interstate commerce in the manufacture of dyestuffs and pharmaceuticals?

Mr. Kresel: This is not one of the licensees.

Mr. Anderson: You say that would cover the necessity of taking all this testimony. As a matter of fact, every one of them are shipping across state lines.

Mr. Kresel: It certainly is true that a great many of them are engaged in interstate commerce. I do not want to say that all of them are, because I really do not know. But that there are a great many of them engaged in interstate commerce there is no question, and we will concede it.

Mr. Anderson: As to the materials covered by the licenses issued by The Chemical Foundation?

Mr. Kresel: You mean that they are engaged in interstate commerce in connection with that part of their business?

Mr. Anderson: In the business covered by The Chemical Foundation licenses.

Mr. Kresel: Yes, that is a fact. We admit that.

Mr. Anderson: If you admit that, that will save the necessity of putting in any further proof on that.

Mr. Kresel: I think that is a fact, yes.

Mr. Anderson: I do not think I wish to ask Mr. Cheney any further questions.

You will give me the information I ask, Mr. Cheney?

THE WITNESS: Yes, sir.

MR. ANDERSON: And I would like to reserve the right to use it on its arrival.

MR. KRESEL: I will not call Mr. Imbrie. That is the last of this line of witnesses.

(Witnes excused.)

ANDREW C. IMBRIE.

ANDREW C. IMBRIE was called as a witness in behalf of the defendant, and being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Mr. Imbrie, will you state your residence and your occupation?

A. I live in New York City and I am the treasurer of the United States Finishing Company, whose office is at 320 Broadway, New York.

Q. 2. Is that the company of which Mr. Thompson is president?

A. Yes.

Q. 3. A witness who preceded you on the witness stand?

A. Yes.

Q. 4. I want to inquire, Mr. Imbrie, about only one fact from you, and that is, whether in 1916 you had a conversation with President Wilson upon this same subject that Mr. Thompson testified about this morning?

A. Yes.

Q. 5. I will come to the conversation. I just want to identify the time, place and subject. When did you have this conversation?

A. On March 8, 1916.

Q. 6. Were you personally acquainted with the President?

A. I had known the President since I was a student at Princeton and I was in his courses.

Q. 7. In the course of that conversation did you deliver to the President a memorandum as to the subject of the conversation that you had with him?

A. Yes.

Q. 8. I show you this memorandum and ask you whether that is a correct copy of the memorandum that you left with the President?

A. Yes.

Q. 9. Did you also leave with him a letter of which I show you a copy?

A. Yes.

Q. 10. I notice that that letter is dated March 6, 1916. Will you explain the difference in date?

A. I prepared this memorandum before going to Washington to meet the President. I had made an appointment with him to see him on the 8th of March. This memorandum was prepared after I had a talk with Mr. Thompson, covering his own interview with the President. We felt that it was important that the points that Mr. Thompson had mentioned should be emphasized, and we wanted to be very sure that the President not only had those views emphasized, but that the substantial features of the matter were set forth in a memorandum that we could leave with him. So before leaving for Washington I wrote a letter to the President which I intended to leave with him and did leave with him, accompanying the memorandum, when I saw him two days later, on the eighth, I think.

Q. 11. The date of the letter is the date when you left New York?

A. Yes, and two days later I left the letter with him personally.

Q. 12. With the memorandum and the letter did you also leave with the President a copy of the letter of which I now show you a copy, signed H. L. Scott, Secretary of War ad interim?

A. Yes.

Q. 13. Before introducing these documents, I am going to ask you to state your best recollection of the conversation that you had with the President, stating what you said and what he said.

A. Do you wish me to read the memorandum that I left with him?

Q. 14. No. If you desire to use that to refresh your recollection, you may do so; but you may not read it.

A. Well, I stated to the President the necessity of the dyestuff business to the textile and other manufacturers in the country. I emphasized the fact that at that time and prior to the war probably 90 per cent. of all of the dyes that were used in this country were imported from Germany; but that since early in 1915 we had received no color from Germany. We understood that their factories were manufacturing explosives and not colors. At any rate, they were not coming in, and that practically we were faced with a color famine. I said that there were a number of German dyes in the hands of speculators in this country that were being offered at exorbitant prices as long as they lasted, and that something would have to be done in a systematic way to encourage the establishment of a dyestuff industry in this country; so that we would never again be subjected to the difficulties that were then prevailing.

At that time the bill known as the Hill Bill was under consideration in Congress, and we felt that as consumers of dyes we could give our support to that bill, even though it increased the duties on dyes, and presumably would increase for a time the cost of dyes to us; because we felt that the establishment of an American industry here was of more importance to us than any temporary increase in prices.

I gave him some figures as to the amount of dyes that were imported prior to the war from Germany. It was something like forty or fifty million pounds and they had a value of approximately twelve or thirteen million dollars. I stated that if the Hill Bill was enacted it would probably increase the rates of duty something like 40 per cent. over the existing rates, but that those would probably not add more than five million dollars to the cost of dyes to the consumer.

I pointed out the fact that the yearly value of textiles and other materials in which dyes were used, such as wool, silk, cotton and leather, amounted to nearly two billion dollars. I stated that approximately 85 per cent. of these textiles were dyed and that that represented a business of more than a billion dollars a year. I felt that the amount added to the cost of the dyes by the imposition of the duty provided in the Hill Bill would be very small in proportion to the value of the merchandise affected.

I stated finally that in addition to the help given to the users of dyes in textiles, the establishment of a dyestuff industry in this country, being so closely related to the manufacture of munitions, would be an additional security for the country, in view of the fact that a plant equipped to make dyes could be almost over night adapted to the manufacture of munitions and explosives.

The President said that he was familiar with the situation and appreciated the importance of it not only to the textile industry, but to the country at large. He said that in seeking a remedy for the situation, he was not merely interested in helping the dyestuff industry, but he would like to see a remedy applied that would be fundamental and help all industries. He was rather inclined to an anti-dumping provision rather than to a mere reliance upon a tariff.

I remember calling his attention to the fact that the tariff law which was then in existence attached penalties to under-valuation of goods that were entered at the Custom House and really was in effect an anti-dumping law. The President agreed that that was in a large measure true, but he regarded the present law as not sufficiently far-reaching to accomplish the purposes of a thorough-going anti-dumping law.

I remember asking the President to consider the testimony of Professor Charles Herty, who was then president of the American Chemical Society, at the hearing before the Committee on Ways and Means. That was testimony which I think every one who heard of it felt was a logical presentation of the situation and its remedy.

Q. 15. What was the proceeding at which Professor Herty testified?

A. That was the hearing on the Hill Bill.

Q. 16. Before the House Ways and Means Committee?

A. As I recall it, yes. The President said that it was planned, as I remember it, that the Government would establish plants for making high explosives and I remember calling his attention to the letter which you showed me that had been written by General Scott, who was then Acting Secretary of War, in which he pointed out the fact—it was a letter to Mr. Hill, who had the Hill Bill in charge——

Q. 17. Representative Hill?

A. Yes. The letter that I have a copy of here, which was written February 16, 1916, and which was addressed to the Honorable E. J. Hill, of the House of Representatives.

Q. 18. I shall read it later. You say you called the President's attention to that?

A. I called his special attention to that letter as touching upon the relationship between the dyestuffs and the explosives industry.

Q. 19. And you say you left a copy of it with the President?

A. I left a copy of that letter with the President. It was taken from the Congressional Record of February 23, 1916.

Q. 20. Have you stated substantially to your best recollection your conversation with the President?

A. Yes.

Mr. Kresel: I now offer in evidence the letter signed by Andrew C. Imbrie, dated March 6, 1916, addressed to the President, together with the memorandum mentioned by the witness as having been left by him with the President, and the letter from General Scott which he also left with the President. I suggest that the letter to the President bear the number 166, the memorandum 166-a and General Scott's letter 166-b.

The Court: Admitted.

Received in evidence and marked respectively, "Defendant's Exhibits Nos. 166, 166-A and 166-B." (*See Exhibits, Vol. V, pages 2882, 2884.*)

Mr. Kresel: I read the letter addressed to the President, which is as follows: (Reading)

The memorandum is as follows: (Reading)

Q. 21. Mr. Imbrie, I am going to stop reading at this point to inquire what the fact was as to the prices of dyes at this time. You speak here of prices being ten to fifty times their normal value. What is the fact about it and can you give us any examples?

A. I can remember one instance where a color that was important for us that was known as Rhodamine 6 G concentrated——

Q. 22. When you say "for us," what do you mean?

A. I mean for the United States Finishing Company. I am speaking now of my own company. This color was imported from Germany before the war and cost us, if I remember correctly, approximately $1.75 a pound. Within a year or two after the war broke out, before any dyes were made in this country at all, the only source of supply of this color was from either the remnants of the stocks in the hands of the German agents or from speculators. I remember one instance of offering $100 a pound for 100 pounds of that dye and not being able to get it. That is $10,000 for a key of dyestuff that I could have bought for $175 before the war. That is an extreme illustration.

Q. 23. I was going to say that is an extreme illustration. Now, in general, how about the prices of German dyes during the year or two following the outbreak of the war?

A. Oh, the prices were three or four or five times as much as normal prices and sometimes a good deal more than that.

Q. 24. Could they be obtained from American manufacturers?

A. No.

Mr. Kresel: I will continue reading. (Reading from Defendant's Exhibit No. 166-a.)

Now, may I read this letter and then I will be through. This is the letter signed by H. L. Scott, Secretary of War ad interim, taken from the Congressional Record of February 23, 1916, and reads as follows: (Reading)

Does your Honor desire to take a recess now?

The Court: Yes, the usual recess.

(Recess until 1 o'clock P. M.)

AFTER RECESS.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 25. Mr. Imbrie, I believe you said you were an officer of the United States Finishing Company—was that the name?

A. I am treasurer of the United States Finishing Company.

XQ. 26. Is that the same company that Mr. Thompson is President of?

A. Yes, sir.

XQ. 27. Was that company a member of the American Dyes Institute?

A. No.

XQ. 28. You spoke of your going to Washington to see the President; that was subsequent to Mr. Thompson's interview with the President, was it not?

A. About six or eight weeks after.

XQ. 29. Yes. You spoke of "we felt that the position should be emphasized." To whom did you refer as "we"?

A. Mr. Thompson and I had a talk after his return from Washington, and I was referring to Mr. Thompson and myself when I said "we".

XQ. 30. In the memorandum which you said you handed the President, there occurs the following language:

> "The concensus of opinion of those best qualified to know is that the Hill Bill 702, if enacted will enable us to develop an adequate dyestuffs industry of our own."

When you spoke of "the concensus of opinion of those best qualified to know," to whom did you refer then?

A. Well, you will recognize that I am testifying now after an interval of seven or eight years from the time I made this memorandum.

XQ. 31. Yes, I recognize that, Mr. Imbrie, and there is no desire in the world to embarrass you. I am merely trying to get the facts. I am not trying to tie you up or to embarrass you in any way.

A. The whole question of a dyestuff industry being established would have been a matter of considerable importance to us as large users of dyes. We had discussed the matter with other people in the same industry as ourselves, and the matter had been very thoroughly thrashed out at a number of conferences among users of dyes, and what I said there about the opinion of people qualified to know, was presumably based on those discussions.

XQ. 32. Men engaged or connected with the business generally. Now, the Hill Bill was passed, was it not, and became a law?

A. I think so. There have been so many tariff bills down there and so many modifications, I am not certain.

XQ. 33. That is my understanding, that it was passed.

A. I think that it was.

XQ. 34. At a later point in this statement, in the next to the last paragraph, you say:

> "The testimony given at the hearing before the Ways and Means Committee of January 14 and 15, 1916, made it clear that American capital would be instantly available to meet this situation if prompt action was taken by Congress."

Without asking you to go through that testimony, could you state approximately what you meant by "American capital being made available"?

A. Only that it appeared to me from the evidence of that hearing that there were people who would go into the dyestuff business in a large way if they could be assured of protection. I cannot say anything more specific than that at this late date.

XQ. 35. And, as far as you know, they regarded the Hill Bill as a protection which would enable them to build up the dyestuff industry in the United States?

A. Yes.

XQ. 36. You estimated that the increase in price to the consumer of the proposed duty to be imposed by the Hill Bill would be comparatively small. What did you say it was this morning?

A. I stated here that the increase in duty would probably mean about $5,000,000, and when spread over the total yardage of textiles to which dyes were applied, that it would not make more than one-tenth of 1 per cent. per yard on all of these fabrics on the average.

XQ. 37. You spoke this morning of Rhodamine G. Is that a pink dye?

A. Rhodamine 6 G concentrated is the dye that I referred to.

XQ. 38. It is one of the leading pink dyes, is it not?

A. Yes.

XQ. 39. It is a very prominent dyestuff?

A. Yes.

XQ. 40. Is that now made in this country, do you know?

A. Not that particular shade. A similar dye is made, but not the particular designation that I referred to.

XQ. 41. And that is still imported, is it?

A. Yes.

XQ. 42. Do you know whether it is covered by any patent now owned by The Chemical Foundation?

A. I do not know.

XQ. 43. And you said that the President indicated to you that his idea was that Congress should deal with this dye situation by something analogous to anti-dumping legislation?

A. That was an expression of his opinion as to how the situation could be met. As I recall it, he did not necessarily state that that was an irrevocable decision as to how it could be met; but I know he expressed his opinion in favor of an anti-dumping law.

XQ. 44. An anti-dumping law to be passed by Congress?

A. Yes, sir.

XQ. 45. And was the Hill Bill generally of that type or did it merely raise the tariff?

A. In a general way, I would say that it increased the rates of duty approximately 40 per cent. on dyestuffs.

MR. ANDERSON: That is all, Mr. Kresel.

MR. KRESEL: That is all, Mr. Imbrie. Thank you.

(Witness excused.)

MR. KRESEL: Is it your desire now, Colonel Anderson, that Colonel Miller be called?

MR. ANDERSON: At your disposal.

BRUCE W. DOLD.

BRUCE W. DOLD was called as a witness on behalf of the defendant, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Mr. Dold, please give your full name, residence and occupation?

A. Bruce W. Dold, residence, Montclair, New Jersey. Occupation, public accountant.

Q. 2. By whom are you employed?

A. Pasley & Conroy, certified public accountants, New York City.

Q. 3. How long have you been employed by Pasley & Conroy?

A. By Pasley & Conroy, since the first of this year only. Prior to that time, Mr. Pasley and Mr. Conroy were both members of the firm of Fedde & Pasley, and I have been with them for three years.

Q. 4. Have you made an examination of the books and records of The Chemical Foundation from April 10, 1919, to December 31, 1922?

A. I have.

Q. 5. I show you the following numbered Defendant's Exhibits: Nos. 91, 91-A, 92, 93, 94, 102, 106, 107 and 108, and ask you to state whether you prepared these documents?

A. I prepared those documents with the assistance of some other men from our office, who were under my direct supervision.

Q. 6. And from what sources did you prepare those?

A. From the books and records of The Chemical Foundation.

Q. 7. I shall not repeat their numbers, but are these exhibits correct transcripts or compilations made by you and by those under your supervision, from the books and records of The Chemical Foundation?

A. They are.

Mr. Kresel: That is all.

The Court: Will there be any cross or do you want to defer determining that now?

Mr. Anderson: Yes, there will be very considerable cross-examination.

The Court: Adjourn court until 8.30.

(Whereupon, at 3:40 o'clock p. m., standard time, an adjournment was taken until Wednesday, July 11, 1923, at 8:30 o'clock, standard time.)

Bruce W. Dold was recalled as a witness on behalf of the defendant.

Direct Examination (Continued).

By **Mr. Kresel**:

Q. 8. Mr. Dold, when you were last on the witness stand, I showed you a number of defendant's exhibits. I omitted to show you Defendant's Exhibits Nos. 103, 104, 105 and 83. I now show you these exhibits, and ask you whether you prepared them?

A. I did.

Q. 9. And from what did you prepare them?

A. From the books and records of The Chemical Foundation.

Q. 10. Are they correct?

A. They are.

Cross-Examination.

By **Mr. Anderson**:

XQ. 11. Mr. Dold, you have testified as to certain exhibits or statements of figures introduced by the defendant. Did you make up those statements yourself?

A. With the assistance of three or four men from our office, who were under my direct supervision.

XQ. 12. From what source were these statements prepared?

A. From the books and records of The Chemical Foundation.

XQ. 13. Did you check the statements yourself against the books and records of The Chemical Foundation?

A. I did.

XQ. 14. Against what books and records of The Chemical Foundation did you check those statements?

A. The books of original entry.

XQ. 15. What is that book?

A. Well, those included the cash book, the register, the royalty ledgers, the journals.

XQ. 16. Did you check the vouchers on which those entries were based?

A. Yes, sir.

XQ. 17. When were those statements made up?

A. I think subsequent to April of this year.

XQ. 18. Subsequent to April of 1923?

A. Yes.

XQ. 19. Were they made in May?

A. Well, from that time, right up to the present, those statements have been prepared.

XQ. 20. And are they part of a report upon an audit of the accounts of The Chemical Foundation?

A. They are a special report—no. They are part of them. Part of them are not included in that special report.

XQ. 21. They are not included?

A. There are some that are not.

XQ. 22. There are some of them included in that special report?

A. Yes.

XQ. 23. These figures are made from your annual or semi-annual audits, are they not?

A. They agree with our semi-annual audits, but they were not entirely made from those audits. They were made from the books and the records. The work was done in The Chemical Foundation office.

XQ. 24. Were they made in parts from those audits?

A. To the extent that they agreed with those audits, and in certain cases, we used that report as a basis.

XQ. 25. In certain cases, you used your former audits or reports as a basis?

A. That is true.

XQ. 26. And did not follow the figures back on making up these figures to the original books?

A. Not in all cases.

XQ. 27. Mr. Dold, you have identified and the defendant has filed, as Defendant's Exhibit No. 91, a statement entitled: "A Statement of Income and Expenses from the beginning of operation to December, 1922, of The Chemical Foundation". You recall that statement?

A. I do.

XQ. 28. That is so?

A. Yes.

XQ. 29. That statement shows the gross income of The Chemical Foundation for the period stated at $699,925.83. Have you got it before you, because I shall want to ask you about it?

A. That is Exhibit Number what?

XQ. 30. Exhibit No. 91 and 91-A accompanies it.

A. Yes, sir.

XQ. 31. Can you give me that income under the several heads named in the title "Income" by years from April 10, 1919, down to and including December 31, 1922?

(No XQ. 32.)

A. I cannot.

XQ. 33. I believe I asked you last Saturday if you could make up that statement, did I not? Have you the data from which this statement was prepared of gross income for three and three-quarter years?

A. We have the books and records of The Chemical Foundation.

XQ. 34. Have you not your own reports from year to year on that subject?

A. We have our first report up to June 1, 1921, which bulks that income from April 10th to that date, and from that report it would be impossible for me to segregate that income.

XQ. 35. Mr. Dold, it is possible to segregate that income by years from the books of The Chemical Foundation, is it not?

A. It is.

Mr. Anderson: If your Honor will permit me, Mr. Kresel, I do not want to call for the production of your books here, or to inconvenience the defendant in any way, but I would like to have that information. As I stated to you last Saturday, I feel it is necessary for me to have that information, in order to produce the rebuttal in this case that I desire. I will agree to any reasonable and convenient plan for securing it.

Mr. Kresel: It is quite true, your Honor, that Colonel Anderson, one day last week, I do not remember what day, requested that we furnish that information.

The Court: What specific information?

Mr. Kresel: They desire this total of income, the $661,000-odd, divided by years in detail. This covers three years and nine months. I am informed by our accountant that it would take a force of men two or three weeks and that it would cost a thousand dollars to get that information. The Government has been on our books for a period of six weeks; all this information was available to them; I am informed that their accountants made a complete report to the Government; and there can be no difference as to the total amount, because the Government's own expert on the witness stand testified that that was according to the books, the total amount of our income. So that it cannot be for the purpose of disclosing that this amount is wrong.

If the Government desires to have the detail, they are perfectly entitled to it. Our books are open to them. They can send their accountants there now and get it; but we do not propose to have this trial delayed for weeks and we do not propose to pay the expense of a thousand dollars to get that information, unless the Court directs us to do it.

Mr. Anderson: If your Honor please, I have probably been under a misapprehension. I was under the impression, in which I was possibly mistaken, derived from others, that there was a general understanding that the defendant would not have to produce its books, and the stipulation so provides as it would cause it great inconvenience; and therefore we agreed not to have the books produced, but that they might be produced here at any time on our call.

It becomes necessary in the rebuttal, which we will ask leave at the proper time to put in on these figures, to ask to have the earnings or income of this company from various sources—there are only five sources—by years. I am not asking for large detail, but taking the figure which has been given here as the total income, to say how much was earned in 1919, how much in 1920, how much in 1921, and how much in 1922, from the various sources stated.

Mr. Kresel: Colonel, I misunderstood you, then. I understood you to desire us to give the earnings on each patent for each year.

Mr. Anderson: No, I did not.

Mr. Kresel: That is what the statement you gave me calls for.

Mr. Anderson: I am speaking now of this statement, Exhibit No. 91. It is gross income. Now, what I wanted to get was the income by years.

Mr. Kresel: That we can obtain for you readily; very glad to do it; but look, Colonel, here is your request in writing. You want the earnings from royalties and license fees by individual patents from April 10, 1919, to December 31, 1922, detailed by years.

Mr. Anderson: That refers, Mr. Kresel, to Exhibit No. 107. I am now examining on Exhibit No. 91-a. When I get to 107, I will deal with it, and my reasons will have their bearing or not, as the case may be; but I am now discussing Exhibit No. 91-a.

Mr. Kresel: With that understanding, Colonel, we shall be very glad to get you that information. I understand it will take only an hour or two. I am sorry there was that misunderstanding.

XQ. 36. I will ask you, therefore, if you will kindly prepare and give me a statement showing the income from the various sources named in your statement, Exhibit 91-A, by years, and then a summary of the total; and let me have that as soon as you can after getting off the stand.

A. (No answer.)

XQ. 37. Now I will ask you to take the first item in Expenses of Office and General Salaries. Have you an analysis of that item?

A. I have.

XQ. 38. Can you give me that analysis?

A. It is not typed.

XQ. 39. First, I would like to have——

Mr. Kresel: Let us have what is not typed. Let us get one thing at a time.

Mr. Anderson: Let me make myself clear.

XQ. 39. (Continued.) I would like to have the statement of expenses divided by years, instead of the total for the three years and nine months, as I have indicated with respect to income, and then I could analyze the various items very much more simply; but I must show an analysis of that expense.

> **The Court**: We will now take our intermediate recess.
>
> (A short recess was thereupon taken by direction of the Court.)

XQ. 40. Mr. Dold, I asked you for a statement of income by years, which you said you would make up; and then I have asked for a similar division of your Exhibit 91, showing expenses under the various heads by years. I now have in my hand a statement which has been prepared, giving the income and expenses under the headings of your statement No. 1, by years. Will you look at that——

> **Mr. Kresel**: Colonel, it is not necessary to take any time on it. Let the record show that the statement that you now produce was prepared by the Government accountant from our report. I will consent that it go in, subject to correction.
>
> **Mr. Anderson**: I then offer in evidence the statement to which I have just referred and counsel has consented shall be introduced subject to correction, showing the income and expenses under the headings given in Defendant's Exhibit 91 by years.
>
> **The Court**: Admitted.
>
> Received in evidence and marked "Plaintiff's Exhibit No. 639." (*See Exhibits, Vol. III, page 1547.*)

XQ. 41. Your statement of income, as there given, does not include any royalties or license fees which have been collected under licenses of the Federal Trade Commission at all?

A. No, sir.

XQ. 42. This is purely the income of the Chemical Foundation under its licenses?

A. Yes, sir.

XQ. 43. Now I will ask you to take the first item of expense, office and general salaries.

Mr. Kresel: Colonel, it is not claimed by the Government, is it, that The Chemical Foundation received anything under licenses issued by the Federal Trade Commission?

Mr. Anderson: Mr. Kresel, I was not sure whether in some instances payments had been made to you since July 1, 1921, or not. I merely wanted to make that clear.

Mr. Kresel: In other words, Colonel, I do not want and I am sure you do not want to have any misapprehension about it. I do not want it even by inference to appear that our claim that our total income was $661,706.28 is challenged by the Government.

Mr. Anderson: Oh, no. All I want to show is that that did not include royalties under the Federal Trade Commission Licenses, as to which you are now asserting claims, whether successfully or not. We agree on that.

Mr. Kresel: I will concede that.

Mr. Anderson: All right. That is all I want to show.

XQ. 44. Take up the first item of expense, office and general salaries. Could you give me an analysis of that by years?

A. I can in this respect, Colonel—that it includes salaries that are not included in there. In other words, salaries charged to educational literature, all salaries paid by The Chemical Foundation by years.

XQ. 45. Could you limit the educational feature, because I want to take that up as an entirely separate matter?

A. I can.

XQ. 46. Give me an analysis by years of the amounts going to make up that which you have charged here to office and general salaries.

A. I can, but I have not got it prepared at this moment.

XQ. 47. Could you prepare that and let me have it after checking with our accountants, so we can put that in?

A. Yes, sir.

XQ. 48. Very well. I will then have to ask you about it. If you can include there the persons to whom the salaries were paid it will save me a good deal of examination.

> Mr. Kresel: May I interrupt again, Colonel, because I think it will facilitate this. Isn't that information already in your previous report, so that you can tear it out of the report and hand it to us?
>
> The Witness: It is, but it is not by years. There was some stipulation that we would arbitrarily take those salaries and divide them on an arbitrary basis for those three years.
>
> Mr. Kresel: Let us see what you have.
>
> The Witness: I have it actually by years here.
>
> Mr. Kresel: I do not want to have this hang over too long.
>
> Mr. Anderson: No, I am very anxious myself to get through with it.
>
> Mr. Kresel: Here is a statement by years showing the salaries of the office, general office, technical department, giving the names of everybody and the amounts are stated.

XQ. 49. I am going to ask for the same information as to educational, so you can divide the two. Take that up with Mr. Storck and Mr. Page and work it out together, and it would save me a good deal of examination on the detail. Take the item legal expenses, $74,915.35. Can you give me an analysis of that item by years, showing the amounts paid and to whom paid?

A. I can do it, but it will take a little time to prepare it.

XQ. 50. Will you prepare that also with the aid of our accountants and agree on it from your records?

A. Yes, sir.

XQ. 51. I would be glad if you would, and I will not press the question now, but will have to come back to it. The literature and pamphlets—you have divided that into two items, educational and general. How do you arrive at that division, Mr. Dold?

A. Well, that division is more or less determined by the officers of The Chemical Foundation. They state what is for educational and what is the general literature. Now, I don't think it is an accounting proposition there, Colonel Anderson.

XQ. 52. In other words, you take that division as made upon the books of The Chemical Foundation?

A. Yes; because we cannot go through every pamphlet of literature that those people put out and determine whether it is educational. We would not be in a position to do so, I do not think.

XQ. 53. Mr. Dold, have you that divided by years, into the two different items, educational and general?

A. I have not, other than the way it is put into our four reports. That first period up to June 30, 1921, is detailed by individual items and individual expenditures, but it is not divided by years.

XQ. 54. With respect to educational literature, you have filed an Exhibit 91-a consisting of three pages and making up the sum total of $340,245.76, but not divided into years. That is the analysis of the items shown on your Exhibit No. 91?

A. Yes.

XQ. 55. Of that particular figure, is it?

A. Yes, it is.

XQ. 56. But you have not the information shown by years?

A. No, sir.

XQ. 57. Have you any similar analysis of your statement on general literature?

A. Well, those two are bulked in the $345,000 there. We have not any other statement.

XQ. 58. You have no analysis of the total $39,197.98?

A. No, sir.

XQ. 59. Mr. Dold, would it be possible to analyze that from your reports and give me a statement on that similar to your analysis on educational literature?

A. Yes, sir. It will take time, as I said before.

XQ. 60. I am afraid I have to ask you to do it, because I want to see what that "general" is. I am sorry about it.

> **Mr. Kresel**: You need not be sorry; we will do everything to assist you. But you have your own accountants, they are at your command. Why can't they do it, and not put the burden upon us?
>
> **Mr. Anderson**: I would be glad to do it, but the books are in your charge.
>
> **Mr. Kresel**: No, the books are open to you for that matter; but you have our reports covering the whole period, in which everything is set forth in detail. All you are asking us to do is to segregate it into years. Your accountants can do that as well as ours.
>
> **Mr. Anderson**: I could examine the witness if

I had it in detail, but cannot without it, Mr. Kresel.

Mr. Kresel: We will do anything you want us to do within reason.

Mr. Anderson: I will ask you, Mr. Dold, for an analysis of the item salaries, $54,295.20, contained in the so-called educational literature for the year 1923, on page 3 of your Exhibit 91-a. I would like to have an analysis of that.

The Court: Just a minute. It seems to me there are many things that are lacking for what you consider a complete cross-examination of this witness. Can we not expedite matters by having this witness withdrawn now from the stand, and let your accountants or the defendant's accountants—I do not care which unless I am called upon to determine the matter, and when called upon I will determine it by what I think ought to be done—prepare these things and then have the witness come back for cross-examination.

Mr. Anderson: I would like to say that I gave a memorandum Saturday that counsel apparently misunderstood. I would be very glad to follow your Honor's suggestion.

Mr. Kresel: There is no objection at all to that. We will co-operate with the Government in every way.

Mr. Anderson: Then suppose we withdraw the witness. It seems to me that it will save a lot of time.

The Court: There are a great many of these matters and he would have to go over it a good many times, perhaps. Have you another witness available?

Mr. Kresel: Yes, I have.

(Witness withdrawn temporarily.)

TWENTY-SEVENTH DAY.

Wilmington, Delaware, July 14, at 8:30 o'clock a. m., Standard Time.

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Anderson: If the Court please, on the redirect examination of Colonel Miller certain correspondence was put in the record, and in the file there was a letter addressed to Colonel Miller in reply to his letter of April 23, 1921, which last-named letter appears to have been addressed by him to Walter M. Nones. Mr. Kresel asked at the time where that letter was. I did not have it in the file; but I have obtained a copy and I would like to put it into the record this morning to complete the file and to be marked Plaintiff's Exhibit No. 634-A, of course, subject to the same objections that were made to the correspondence at the time.

The Court: So admitted.

Received in evidence and marked "Plaintiff's Exhibibit No. 634-A." (*See Exhibits, Vol. III, page 1534.*)

Bruce W. Dold resumed the stand.

Cross-Examination (Continued).

By Mr. Anderson:

XQ. 61. Mr. Dold, I note that in your statement, Defendant's Exhibit No. 91, you state the income of

The Chemical Foundation from April 10, 1919, to December 31, 1922, from licenses, and so forth, to be $661,706.28, is that right?

A. Yes.

XQ. 62. You have not included in that item revenues derived from trade marks, have you?

A. No, sir.

XQ. 63. Nor have you included in that item the revenues derived from the contracts taken over from the Alien Property Custodian, have you?

A. No, sir.

XQ. 64. Those were what would be the revenues from licenses under patents, plus the licenses under trade marks and under contracts?

A. Do you want me to give you that figure, Colonel?

XQ. 65. If you can give it to me in a figure in a moment.

A. $675,345.10.

XQ. 66. So the total income of The Chemical Foundation under licenses issued by The Chemical Foundation itself from April 10, 1919, to December 31, 1922, would be—what figure did you name?

A. I gave you a figure of $675,345.10.

XQ. 67. Is that correct?

A. Not for licenses. Those pre-war contracts are not licensed by The Chemical Foundation; that is, they are not included in their 379 licenses.

XQ. 68. I understand; but I am getting the elements of the revenues?

A. Yes, but you asked for licenses, Colonel Anderson.

XQ. 69. In order to make up your figure of $699,925.83, which you state as the total revenue, which appears on Defendant's Exhibit No. 91, what do you add to the figure you have just given me?

A. I add royalties and license fees from patents acquired from others; that is, that were not acquired from the Alien Property Custodian, of $2,166.28. I add contributions received of $11,500, and interest and discounts received, $10,914.45.

XQ. 70. That makes up the total figure of the income of The Chemical Foundation for the period stated?

A. It does.

XQ. 71. I asked you when you were on the stand last if you could give me the details of the item of $205,466.68, for office and general salaries by years. Have you been able to prepare such a statement?

A. In conjunction with your accountants, we have prepared such a statement.

XQ. 72. Will you identify this as the statement made up in accordance with that request?

A. It is.

XQ. 73. That is made up from the books and records of The Chemical Foundation, is it?

A. Not directly. Made from my reports.

XQ. 74. And that report, you explained, had been checked against the original books of The Chemical Foundation?

A. That is right.

XQ. 75. And this statement of detail is correct, Mr. Dold, to the best of your knowledge and belief, is it?

A. It is.

Mr. Anderson: I would like to introduce that statement, sir.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 642." (*See Exhibits, Vol. III, page 1553.*)

Mr. Anderson: In that connection I introduced on Thursday, I think, a manuscript exhibit as Plaintiff's Exhibit 639, showing the statement of income and expenses by yearly periods from the beginning of operations to December 31, 1922. That has now been typewritten and I should like to withdraw the paper introduced and substitute a typewritten copy. It makes a better record.

The Court: Let the substitution be made.

XQ. 76. Mr. Dold, on your Exhibit No. 91-A, there was an item of $54,295.20, of which I asked you to supply me the details under the head of "Educational Literature, Salaries and Wages". Will you examine this statement. I understand it was made up by you in connection with our accountants from your original reports. Will you say that that is a correct statement of the detail of that item?

A. It is a correct statement.

Mr. Anderson: I would offer in evidence the statement identified by the witness as Plaintiff's Exhibit 643.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 643." (*See Exhibits, Vol. III, page 1555.*)

XQ. 77. I requested you to give me, if you could, an analysis of the item of legal expenses as shown on your Exhibit 91 amounting to $74,915.35. Have you prepared such a list in co-operation with our accountants?

A. I have.

XQ. 78. Is this the statement?

A. That is.

XQ. 79. Is that a correct analysis of the item appearing on the exhibit to which I referred?

A. Subject to the notation made on the bottom of the page, Colonel.

XQ. 80. The note to which you refer indicates that the yearly total cannot be made to agree with the amounts. I suppose that is merely a matter of

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the keeping of the details of the account. The total is correct and the yearly total is as nearly correct as you can make it?

A. From our reports. Our reports give the date of the invoice and not the date when the actual services were performed. So, in order to get when it was taken on the books, we would have to go back to the books to get it. The total amount is in agreement.

XQ. 81. And you have put it in the years in which the bills were rendered for the service, rather than the actual year for which the service was rendered, which you cannot get without going back to the original document?

A. That is right.

Mr. Anderson: We offer that statement identified by the witness, in evidence, as Plaintiff's Exhibit No. 644.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 644." (*See Exhibits, Vol. III, page 1557.*)

XQ. 82. I also asked you to prepare for me an analysis of the item of general literature account, from the beginning of operations, down to December 31, 1922, by years. That item on your exhibit already filed, No. 91, was $39,197.98. Have you prepared such a statement.

A. I have.

XQ. 83. I show you a statement; is that the one prepared?

A. It is.

XQ. 84. Is that a correct analysis of that item?

A. Yes.

Mr. Anderson: I offer in evidence the analysis identified by the witness as Plaintiff's Exhibit No. 645.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 645." (*See Exhibits, Vol. III, page 1558.*)

XQ. 85. Now, Mr. Dold, may I ask how you arrive at the division of expenses between literature and pamphlets general, and literature and pamphlets educational?

A. Well, I think I told you the other day, Colonel; but so far as we determining what is educational and what is general literature, it would be almost impossible for an accountant to determine that. He would have to read the book, and then I do not know whether he would be an authority after he had read the book, to tell whether it was educational or general literature, so that is made entirely by the officers of The Chemical Foundation.

XQ. 86. Now, take "Publication Purposes of The Chemical Foundation". I notice you have divided that one-half to general literature and the other half to education.

A. That is true.

XQ. 87. Was that division made by the officers of The Chemical Foundation?

A. It was, and I think their purposes, if I may so state, was that some of that literature was sent to schools, and some of it was sent out for the mere purpose of showing that The Chemical Foundation was in existence. It was an advertising feature and would go into educational literature.

XQ. 88. But do you know who made that division, half and half between those two?

A. I cannot state.

XQ. 89. Take the item, mailing, postage, envelopes, cartage, express, etc. Those items appear all to have been divided between the two on the basis of one-half to each.

A. Those are the mailing expenses in connection with the article "The Purpose of the Chemical Foundation".

XQ. 90. You took that from the books of The Chemical Foundation as they had made them up?

A. Yes, sir. Probably there was some inquiry at the time as to why it was done, but I do not recall now.

XQ. 91. You had nothing to do with the distribution yourself?

A. No, we do not make any distributions on the books of The Chemical Foundation.

XQ. 92. These statements are made up from the books as they are, and the distributions are made before the entries are made on the books under the direction of the officers of The Chemical Foundation?

A. That is true.

XQ. 93. You have nothing to do with that yourself?

A. Until we come to check them. If there are any corrections we make them at that time.

XQ. 94. You did not make any corrections in any of those items?

A. Not that I recall.

XQ. 95. I see here an item, American Dyes Institute, Printing, Postage, etc.

Mr. Kresel: What are you reading from?

Mr. Anderson: I am reading from an analysis I have here of the items in your general literature account, taken from the report of the expert accountants.

Mr. Kresel: That is Exhibit 645.

Mr. Anderson: Yes, sir.

XQ. 95. (Continued.) American Dyes Institute, Printing, Postage, etc., $2,738.17, is charged to Chemical Foundation General Literature account. Do you know anything about that item?

A. I do not at this moment; no, sir.

XQ. 96. You cannot tell why it was charged to the Chemical Foundation?

A. Well, I suppose the charge was passed or it would not be in there—and probably approved. But why it was charged and what it was for I cannot say at this time.

XQ. 97. I note another item in that account, Printing Hearing before Committee on Finance, $2,640.59. Can you tell me anything about that item?

A. Nothing more than that it was a printing bill which was properly approved.

XQ. 98. And you found it on the books of The Chemical Foundation?

A. It is on the books of The Chemical Foundation.

XQ. 99. I find here an item of $944.79, referred to as Imhoff Tank Booklets, including Postage. Do you know anything about it?

A. What was the amount, again, Colonel?

XQ. 100. $944.79.

A. My recollection is that was a booklet that was printed, sent to all the different municipalities in the country, engineers, etc., setting forth the patents covering those Imhoff tanks and explaining what they were.

XQ. 101. I notice another item, Garvan's Testimony before Sub-Committee, Senate, $6,807.32. Do you know what that was?

A. That was the printing of Garvan's testimony before the sub-committee of the Senate.

XQ. 102. Do you know whether any part of that was charged to educational literature also?

A. I do not know at this time.

XQ. 103. In order to aid you, I refer you to your Exhibit 91-A, Sheet 2, an item, Copies of Statement of F. P. Garvan before Sub-Committee of Senate Finance Committee on the Longworth Bill, $2,863. Do you know whether that is the same matter?

A. I would not like to state at this time, Colonel. I don't. But it reads about the same, so I presume that it is.

XQ. 104. Then if it is the same the cost was divided as follows: $6,807.32 to the General Literature and $2,863 to Educational Literature. Would that be the fact?

A. That would be right.

XQ. 105. The total cost then would be $9,670.32. Passing from that for the moment, I would like to ask you if you have made up a statement of the details by years of the item, Patent Sundry Expenses, appearing on your Exhibit 91-A, as $62,562.08?

A. We have.

XQ. 106. Is the statement which I hand you a correct statement of the detail of that item (handing witness)?

A. Subject to the notation on the bottom of the page. The same as the legal expenses.

XQ. 107. I notice in that item of Patent Sundry Expenses a charge of $23,447.84 to the firm of Emery, Varney, Blair and Hoguet, and I notice on your detail of legal expenses filed a few minutes since an item to the same firm of $17,651.98. Have you any information as to how the charges between Patent Sundry Expenses and Legal Expenses generally were divided?

A. Yes; that is determined from the invoice itself as rendered by Emery, Varney and Hoguet, as to what their services covered.

XQ. 108. Where the service was a general service to the company, it was charged to legal expenses, and where it was related to some specific patent matter it was charged to Patent Sundry Expenses, is that true?

A. Yes.

XQ. 109. The total of those amounts aggregates $41,099.82. Can you state whether that is a total of payments made to that firm or to the members of that firm during the period covered by these statements?

A. It is not.

XQ. 110. How much more?

A. There isn't any more. There was practically $25,000 of that that has not been paid yet.

XQ. 111. It is an obligation as yet, is it?

A. It is an obligation, so far as the books are concerned; that is the status of the account.

XQ. 112. Mr. Dold, I find under the head of Patent Sundry Expenses an item of $18,162.86. Can you tell me, without putting in the detail of that at the present time, generally what those miscellaneous expenses were, or illustrate them by some character of expense?

A. It would be necessary for me to go back to my reports, my four reports; I can give you generally what they are. I would not like to state that off-hand, because I really do not know.

Mr. Kresel: Have you got your reports there?

The Witness: I have my four reports.

Mr. Kresel: Then go ahead and illustrate.

XQ. 112. (Continued.) If you can look at your reports, I would like to have the illustration.

A. This is our report up to June 30, 1921: Postage, telegrams, notary fees and expenses of various parties from Washington to New York, typewriting, chemists, some salaries.

XQ. 113. Any recording fees there?

A. I believe those are listed separately.

XQ. 114. Yes, I see that.

A. Copies of patents. There are other miscellaneous items appearing here.

Mr. Anderson: I would like to offer in evidence statement showing the sundry patent expenses by years which the witness has identified, as Plaintiff's Exhibit No. 646.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 646." (*See Exhibits, Vol. III, page 1559.*)

XQ. 115. Can you state, Mr. Dold, whether those miscellaneous expenses aggregating the sum which I have named include any of the expenses for the acquisition of these patents?

A. They do not. I do not just get your question there.

XQ. 116. I mean in connection with the acquisition of the patents by The Chemical Foundation, recording the transfers, or any of the expenses incident to the purchase of the property?

A. No, I think not.

XQ. 117. I note that the item of organization expenses, for which I asked you to give me an analysis the other day, and which was filed, amounting to $11,574.84, the entire amount is charged into the year 1921?

A. That is right; charged up until that time, Colonel.

XQ. 118. The entire amount is in the heading of 1921, in the analysis which we filed this morning by years?

A. I will tell you how that occurred. Up to June 30, 1921 that was carried as a balance sheet item, deferred expense. Late in 1921 they transferred that from a balance sheet item to a profit and loss item; and of course it would appear in the profit and loss section at the time we made the transfer.

XQ. 119. Mr. Dold, is that not the character of expense which should be amortized over the life of the patents?

A. Well, it could be determined such, yes.

Mr. Anderson: I do not think that I filed this analysis of organization expenses. Was that filed with Mr. Garvan's testimony, do you recall?

Mr. Kresel: I do not recall it.

Mr. Anderson: I would ask leave to file now the analysis of the organization expenses, the item to which I have just referred, as Plaintiff's Exhibit 647. If it should be found that it has already been filed in Mr. Garvan's evidence, then I would ask that it be not duplicated in the record.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 647." (*See Exhibits, Vol. III, page 1560.*)

Mr. Kresel: Colonel, I do not quite understand. You have asked the witness whether this organization expense does not all appear in 1921. This exhibit you have just put in shows the items in 1919 and 1920. I think there is going to be some confusion in the record unless you make it plain. It certainly is not plain to me.

XQ. 120. I asked you that for that reason. In the statement of analysis of expenses by years, which we filed this morning, the entire item of organization expenses aggregating $11,574.84, statement of which I have just filed, appears as being charged upon the books during the year 1921?

A. That is right.

XQ. 121. And you have explained that that was carried in a balance sheet item, although some of those expenses were incurred prior to 1921, and it was all taken into the 1921 accounts in the manner which you explained in your former testimony; is that true?

A. Yes. May I explain further on that, Colonel?

XQ. 122. Yes. I would be very glad to have you do it.

Chemical Foundation have covered by that item of rent?

A. I think there is only the one rent charged in that item, Colonel, and that is made out from New York.

XQ. 132. I mean, how many office rooms are there at the 81 Fulton Street office, do you know?

A. I should say about fourteen rooms.

XQ. 133. And that item for the years 1920, 1921 and 1922 was $27,500 a year?

A. To the best of my knowledge. There may be other rents in there, but I do not think so.

XQ. 134. That did not include the rental of any Washington office, did it? For the moment I will skip a number of the intervening items and come to those which I understand you have analyzed. The first is the Washington office expense, aggregating $23,389.26, all of which is charged in the years 1921 and 1922, as I notice. Have you analyzed that?

A. Yes, sir.

XQ. 135. Is the statement which I hand you a statement of analysis of that?

A. Yes.

XQ. 136. That is correct from the books of the company, is it?

A. It is correct from our reports.

XQ. 137. You believe your reports to be a correct statement of the books?

A. Yes.

XQ. 138. I note a charge of $9,750 to Mr. W. F. Keohan. Is he the manager of the Washington office, do you know?

A. He is the representative, as I understand it, of The Chemical Foundation in Washington.

XQ. 139. I note an item of rent of the Washington office of $1,415. Do you know whether that is for one office in Washington or for more than one office?

A. One office, I believe.

XQ. 140. You do not know how many rooms are used there, do you?

A. I do not.

XQ. 141. I note an item of travelling expenses of Mr. Keohan, aggregating $2,113.03 for two years. Have you the details of those travelling expenses?

A. I have in my reports.

XQ. 142. Could you produce them, please?

A. Do you want me to read this? I have got to go through the four reports.

XQ. 143. I do not want to take up the time to read it. Would it be possible to make it into a statement? If you gave us the reports, could we do it?

A. You have the reports.

XQ. 144. We have three of them. We have not got the others. I do not want to take up the time to make it up now, nor do I want to take the time to read those sheets into the record; but I do want the details of those expenses.

Mr. Kresel: Colonel, how do you mean make it up? He has got it there. He can take it out of the report and give it to you if you like.

Mr. Anderson: For the two years?

Mr. Kresel: Well, whatever the period is.

Mr. Anderson: It only covered a period of two years, 1921 and 1922. If you can take it out of your report and give it to me I would like to have it.

The Court: Do you want to take your report apart?

The Witness: That is up to Mr. Buffum, your Honor, and he says he would not care to do it.

Mr. Kresel: Suppose we assume it to be marked in evidence and we will have copies made and supplied.

Mr. Anderson: That is all right; or we will have copies made. It is only a detail of getting the thing in, in the most convenient way.

Mr. Kresel: Let him point out what the pages are.

The Court: How much of it is there, roughly?

The Witness: I will have to go through all four reports.

Mr. Anderson: There are only two of them.

The Witness: I imagine it appears on one page.

The Court: Then why not hand it to the stenographer and have him write it right into the record.

Mr. Anderson: There is quite a good deal of detail, your Honor.

The Witness: There is quite a bit of detail.

Mr. Kresel: I think, your Honor, perhaps it would be better to have a copy made and put it in.

Mr. Anderson: Then I will now offer in evidence the sheets from the reports of the accountant of The Chemical Foundation, covering the period 1921 and 1922, showing the details of expenses of the Washington office, and I will hand that in as one exhibit later.

The Witness: You mean appertaining to travelling expenses?

Mr. Anderson: No, the detail of the Washington office as a whole.

The Witness: That will take more than four sheets, I can tell you that.

The Court: That is not the same matter that you inquired about.

Mr. Anderson: I was trying to shorten it, and if I could put that in I was not going over the details of it.

Mr. Kresel: You have had a copy of our report, you have had it for months; the information is available to you and has been available to you. Why can't your accountant make that up from our report?

Mr. Anderson: I am perfectly willing to do it—perfectly willing.

Mr. Kresel: Let him make that up and show it to our accountant, and if it is all right, there is no objection to its going in.

Mr. Anderson: The only thing is that we have not been able to find the report for one period of six months.

Mr. Kresel: We will give it to you.

Mr. Anderson: I have sent to Washington and have a man looking for it. Let me have that and we will have the statement made up and submit it to you.

Mr. Kresel: We will lend it to you with great pleasure. It is the only other copy we have.

Mr. Anderson: Very good. Then it is probably better to leave that as it stands, and I will introduce as one exhibit the detail of the expenses of the Washington office.

Mr. Kresel: Very well, just give us an opportunity to examine it before you put it in.

Mr. Anderson: I offer in evidence now, first, before the details, a statement which the witness identified as an analysis by years of expenses of the Washington office, as Plaintiff's Exhibit No. 649.

Received in evidence and marked "Plaintiff's Exhibit No. 649." (*See Exhibits, Vol. III, page 1562.*)

Mr. Anderson: I offer in evidence, to accompany that, a statement consisting of a number of pages showing the details of the expenses of the Washington office, as shown on this Exhibit No.

649, and ask that that be admitted as 649-A to the end that they may be read together.

THE COURT: To be supplied?

MR. ANDERSON: To be supplied.

THE COURT: It is admitted.

Received in evidence, considered marked "Plaintiff's Exhibit No. 649-A." (To be furnished.) (*See Exhibits, Vol. III, page 1563.*)

MR. ANDERSON: We will furnish that.

XQ. 145. I asked you if you could give me an analysis by years of the item Miscellaneous Expenses, amounting to $12,448.79. Have you been able to make up such a statement with our accountants?

A. Yes, sir.

XQ. 146. Is this the statement, Mr. Dold (handing witness)?

A. That is right.

XQ. 147. That is correct, from your reports on the books of The Chemical Foundation, is it?

A. It is.

MR. ANDERSON: I offer in evidence the statement identified by the witness, analysis of Miscellaneous Expenses, from beginning of operation to December 31, 1922, as "Plaintiff's Exhibit No. 650."

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 650." (*See Exhibits, Vol. III, page 1581.*)

XQ. 148. Mr. Dold, I see an item of expense in your Exhibit 91, carried over the years 1919, 1920 and 1921, aggregating $3,427.45, under the head of Office Alterations. Are alterations of the New York office?

A. Yes, sir.

XQ. 149. By referring to your Exhibit No. 91 and reading in connection therewith Plaintiff's Exhibit 639, which you have introduced this morning, it appears that for the year 1920 the company made a net profit, after charging up all expenses shown by those exhibits for that year, of $49,396.85, not including educational expenses; is that right?

A. That is right.

XQ. 150. Take the year 1921. Taking Exhibit 91 in connection with Plaintiff's Exhibit 639, it appears that after charging up all expenses indicated on that exhibit other than educational expense, the company made a net profit of $76,403.82, is that right?

A. That is right.

XQ. 151. Take your Defendant's Exhibit 91 read in connection with Plaintiff's Exhibit 639 introduced this morning for the year 1922, it appears that after charging up all expenses indicated thereon with the exception of educational expense the company made a net profit of $128,828.68; is that correct?

A. That is right. Of course, we have the year 1919 there.

Mr. Kresel: He does not want that. That is a loss.

Mr. Anderson: I am perfectly willing to put it in. It only shows increasing earnings right straight along, year by year. It shows on the exhibit. But I want to show the years that they operated for full years. That is all.

XQ. 152. For the year 1919, since that question has been raised, the gross earnings of the company were $28,787.98, were they not?

A. That is right.

XQ. 153. For the year 1920 the gross earnings were $167,492.73, were they not?

A. That is right.

XQ. 154. For the year 1921 they were $233,369.24, were they not?

A. That is right.

XQ. 155. And for the year 1922 they were $270,-275.88, were they not?

A. That is right.

XQ. 156. You have already filed an analysis of the educational expense as Defendant's Exhibit 91-A, I think, from your books. That is in evidence I think.

Mr. Kresel: Yes, that is in evidence.

XQ. 157. When you were last on the stand I asked you if you would give me a statement of the educational expense by years. Have you been able to do that?

A. Not from our records down here. I would have to go back to the books to get that; the original vouchers. Postage, expressage and distributing charges on our reports do not show as to what literature it was chargeable to in all cases, so I would have to go back to the books in order to get that.

XQ. 158. Turning to Defendant's Exhibit 83, showing statement of income from licenses, April 10, 1919, to December 31, 1922, I believe you stated you prepared that statement, did you not?

A. That is right.

XQ. 159. That does not of course include any income from Federal Trade Commission licenses?

A. No, sir.

XQ. 160. It does not include any income from import royalties?

A. No, sir.

XQ. 161. It does not include the income from contracts assigned to The Chemical Foundation by the Alien Property Custodian?

A. No, sir.

XQ. 162. It only includes, therefore, the income strictly from licenses issued by The Chemical Foundation for manufacture and sale in the United States?

A. That is right.

XQ. 163. And in order to arrive at the complete earnings, it would be necessary to add to that the import royalties and revenues derived from contracts?

A. That is right.

XQ. 164. And the item of any accrued royalties in the hands of the Federal Trade Commission would then still be for consideration?

A. That is not up to me. I do not know about that.

XQ. 165. Now, Mr. Dold, can you tell me how you arrive at the earnings per patent?

A. As to the imported products, as shown on our schedule 107, I believe it is, the actual patent was determined in that case. In other words, if the import be imported under a certain patent, that patent got the credit for that income, in respect to the manufacture of the product; wherever it was more than one patent under any license, that income was apportioned to each of the patents equally, as they appear under that license. In other words, if there were five patents, each patent received one-fifth of that total income coming in under that license.

XQ. 166. Mr. Dold, could you tell under which patent the income was on?

A. I cannot, that is, from the licensed products, you mean?

XQ. 167. Yes, I am speaking now of your statement 83?

A. As pertaining to manufactured product?

XQ. 168. Yes.

A. Imports, yes, but the manufactured products that were licensed in this country—no.

XQ. 169. Then your distribution of earnings per patent, was purely arbitrary, was it not?

A. Right for manufactured product.

By **Mr. Kresel**:

Q. 170. That is where there was more than one patent?

A. Where there was more than one patent, I explained that before.

Mr. Anderson: That should be on re-direct, I think.

Mr. Kresel: But you took advantage of that answer.

Mr. Anderson: I do not know what the answer was.

Mr. Kresel: Then why did you interrupt?

Mr. Anderson: I object to counsel speaking to the witness on the stand as to amending his answer. If he wants to ask the witness a question and interrupt the examination, in order to bring it out fully, I would not object at all, if he said to me—may I supplement that other question here to make it complete; but I cannot examine two witnesses at once. I think that the proper way to do that, is to ask to interrupt the cross-examination to the end that the answer may be complete and not suggest to the witness an addition to his answer.

The Court: Do you want a ruling?

Mr. Anderson: No, sir. I do not. I am merely replying to counsel's protest.

By Mr. Anderson:

XQ. 170-a. Now, Mr. Dold, suppose there were five patents under a license, and one expired in 1920; another one in 1921, another one in 1922, and so on each year—or vary the dates as you see fit—how would you then apportion the earnings between those patents?

A. That statement was apportioned on that same basis. If the patent expired, it received its proportion of the income just the same.

XQ. 171. If it expired in 1923, would you continue to charge up income to that patent, or credit income to that patent; let us suppose that out of five, two expired in 1920 and 1921. Then in 1922, would you continue to credit income to that patent, or would you increase the proportionate amount of the other three patents?

A. No, you continued to charge as on that statement, but I have prepared since that time a statement showing what adjustments were made where a patent had expired, if we stopped giving that patent income from the date of its expiration—I have prepared a statement which will show what that adjustment will make in respect to expired patents.

XQ. 172. Now we will take the Atmospheric Nitrogen Company license No. 146. Under that there are apparently some fifty patents.

A. Oh, more than that.

XQ. 173. Whatever the number is; it is immaterial whether it is fifty or seventy-five. Let us suppose that those patents expired at varying dates from one to fifteen years after the license was issued. In making up the statement 83, how would you apportion the income?

Mr. Kresel: I object to that as a hypothetical question.

The Court: Do you want the answer? You may have it if you want it.

A. In making up statement 83 there is no distribution among patents of the income. It is stated under the license and not under the patent.

XQ. 174. Let us take up the statement No. 107 in the same connection, and there you have apportioned the income to each patent, have you not?

A. That is right.

XQ. 175. For the period from April 10, 1919 to December 31, 1922. Now, as I understand from your testimony, that is a purely arbitrary apportionment of the patents, is it not?

A. Yes, sir.

XQ. 176. And the same applies to expenses, does it not, as apply to patents?

A. We have made no distribution of the expenses.

XQ. 177. I thought that you had made up a statement which was put in here the other day, showing the income per patent and the expenses per patent and the resultant revenue or loss per patent.

A. Oh, the average expense per patent, yes.

XQ. 178. The average expense per patent?

A. Yes.

XQ. 179. And you averaged the expenses of the company over the number of patents, regardless of whether they were earning or not earning?

A. That is right.

XQ. 180. And you also averaged them over the number of patents that were actually earning, did you not?

A. That is right.

XQ. 181. And in that way by merely averaging up on those patents you undertook to show what a patent was earning, is that right?

A. That is right.

XQ. 182. And in your statement Defendant's Exhibit No. 107, you also defined these patents as dye and chemical and optics and various other definitions which appear on the statement. Did you make those definitions?

A. I did not. That was done with the aid of a chemist of The Chemical Foundation, Dr. Joyce.

XQ. 183. You can not testify as to the correctness of that designation in the patents, can you?

A. No, sir.

XQ. 184. And do not undertake to do so?

A. No, sir.

XQ. 185. In your Exhibit No. 90 I notice you show the number of licenses issued by years. In the year 1922 you issued apparently forty-one licenses, is that right?

A. I do not have that exhibit before me.

XQ. 186. That is Defendant's Exhibit No. 90?

A. I do not have that.

Mr. Kresel: Here it is; use the original.

XQ. 187. In the year 1922 you issued forty-one licenses, did you not?

A. Yes.

XQ. 188. And they covered fifty-one patents, did they not?

A. That is right.

XQ. 189. Of which eleven had already been licensed, is that right?

A. Eleven were originally licensed.

XQ. 190. Eleven originally licensed?

A. Yes.

XQ. 191. What were your expenses, other than educational, for the year 1922?

A. My copy is very faint here, Colonel. $141,437.20 for 1922.

XQ. 192. In the year 1921 you issued 161 licenses. What were your expenses that year?

A. $156,965.42, exclusive of education.

XQ. 193. I am excluding education. In the year 1920 you issued 131 licenses. What were your expenses that year?

A. $118,095.88.

XQ. 194. In the year 1919 you issued 46 licenses. What were your expenses that year?

A. $90,852.77.

XQ. 195. You introduced as Exhibit No. 92 a statement showing the alleged cost of patents, trademarks and other properties.

Mr. Kresel: Showing the cost, not the alleged cost.

XQ. 195. (Continued.) Mr. Dold, you have not that statement analyzed, showing the cost of each group assigned, have you?

A. Yes, sir.

XQ. 196. And the average cost of each group assigned?

A. Not the average; no, sir.

XQ. 197. Then it is unnecessary to ask you, because you can not analyze it on the stand. Taking your Exhibit 102, how did you arrive at the expense per trademark and the earnings per trademark shown by those exhibits; in the same way that you did as to patents?

A. Exactly.

XQ. 198. You took the earnings and averaged them as you stated as to patents?

A. Over 6,475 properties.

XQ. 199. Mr. Dold, taking up now the earnings from contracts assigned to The Chemical Foundation by the Alien Property Custodian, in which you show earnings or collections under those contracts aggregating $2,442.06, have you ever examined the record to see which, if any, of these patents have been licensed by The Chemical Foundation?

A. I have not.

XQ. 200. Do you know whether or not licenses have been issued under the same patents that contracts were held under before the assignment from the Alien Property Custodian?

A. I do not.

XQ. 201. Then you cannot testify on that. Mr. Dold, in your statement Exhibit No. 117 you purport to give the value of dyes domestic and imported controlled by Foundation, owned by The Chemical Foundation, Inc., for the years 1919, 1920, 1921 and 1922, as compared with the Tariff Commission reports of total sales domestic and imported. Did you make up that statement?

A. I did not make up that statement and I do not believe I testified that I made up that statement. That is not my statement.

XQ. 202. Do you know who did make it up?

A. Well, I imagine someone in the office of The Chemical Foundation. As to who it was I could not tell you.

XQ. 203. You cannot testify about it at all, then, can you?

A. No, sir; because I had nothing whatever to do with it.

XQ. 204. Mr. Garvan said he did not. Who did, then, do you know?

Mr. Kresel: Mr. Buffum did. I will be very glad to call Mr. Buffum on that if you desire, Colonel.

Mr. Anderson: I, of course, have moved to strike that out, because Mr. Garvan said he did not make it up, and I presumed you would put on a witness who did make it, so that he could be submitted for cross-examination.

Mr. Kresel: I would be very glad to do that.

Mr. Anderson: Then with that understanding, and, further, that you lend us that six months report over the week-end so we can work on it, I do not think I have any other questions at the present time to ask this witness.

Mr. Kresel: That is all, Mr. Dold. I will call Mr. Buffum now and get through with that right away.

(Witness excused.)

WILLIAM W. BUFFUM.

William W. Buffum, was called as a witness, on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Mr. Buffum, have you given your name and address?

A. My address is Bloomfield, New Jersey.

Q. 2. And what is your occupation?

A. Auditor.

Q. 3. By whom are you employed?

A. Chemical Foundation.

Q. 4. How long have you been employed by them?

A. Two years.

Q. 5. Please look at Defendant's Exhibit's 117 and 118 and state whether or no you prepared those?

A. I did.

Q. 6. Will you state from what you prepared them?

A. Tariff Commission reports and the books of The Chemical Foundation.

Q. 7. And do those two statements correctly show the figures of comparison between imports by amounts and by weight, as compared between such as came in under licenses of The Chemical Foundation and such as came in that were not covered by such licenses?

A. They do.

Mr. Kresel: Now, Colonel, you may examine the witness.

Cross-Examination.

By Mr. Anderson:

XQ. 8. Mr. Buffum, you were accountant for the Alien Property Custodian, were you not?

A. I was.

XQ. 9. For what period?

A. From December, 1917 to July 15, 1921.

XQ. 10. Then you went from there to The Chemical Foundation?

A. I did.

XQ. 11. And have since been employed by The Chemical Foundation?

A. I have.

XQ. 12. What was your position with the Alien Property Custodian?

A. Chief accountant.

XQ. 13. In the statement Defendant's Exhibit No. 117 to which you have already referred, I understand that you took the figures under the title of "Tariff Commission Report" from the official figures of the Tariff Commission?

A. Correct.

XQ. 14. You checked those figures personally, did you?

A. Yes, sir.

XQ. 15. This statement, of course, does not include any royalties on products produced under the licenses of the Federal Trade Commission?

A. Absolutely not.

XQ. 16. This represents purely The Chemical Foundation licenses?

A. Yes, sir.

XQ. 17. How did you arrive at the production under the licenses issued by The Chemical Foundation?

A. I do not show production.

XQ. 18. Well, how did you arrive at the value of the production under licenses issued by The Chemical Foundation?

A. By taking the amount of royalty paid under those licenses and the amount of royalty was averaged as four per cent.; that is, taking all the licenses ranging from five per cent. down, getting an average royalty rate, which is four per cent., and multiplying the royalty by 25, to get the value of the dye.

XQ. 19. So you did not undertake to arrive at the production under those licenses or the value of the production under those licenses or of patents covered thereby, from original sources at all, did you?

A. No, they are not available.

XQ. 20. Are not many of those licenses based on the net sales instead of gross sales?

A. Practically all.

XQ. 21. Then, in that event, the amount, or rather the value of the production under Chemical Foundation licenses, would not compare with the value taken from the Tariff Commission, would it; how do you make those comparisons?

A. I will explain, that gross sales and net sales under The Chemical Foundation licenses are almost identical as to accounting. There are only certain deductions allowed from the actual selling price.

XQ. 22. Who fixes those deductions?

A. I do, in the accounting. The policy is fixed by the board of directors of course.

XQ. 23. Who arrives at the amount of the sales under licenses by The Chemical Foundation?

A. The company that is licensed.

XQ. 24. It reports its sales to The Chemical Foundation; is it reported in the form of net sales, or gross sales?

A. The licenses are issued for net sales, and reported that way. Those for gross sales are reported that way. However, there is practically no difference in the method of accounting between gross and net, for the reason that the deductions are limited.

XQ. 25. Can you tell me what deductions are allowed from gross sales in arriving at net sales on which royalties are paid?

A. In either case the actual amount of money received by the manufacturer for his product is determined by either net or gross sales, regardless as to how the license reads.

XQ. 26. When you say the actual amount of money, are the expenses deducted before you arrive at the amount of money which the manufacturer receives?

A. No, sir. The actual check that he receives from the consumer is what we base our royalty on, and there are no deductions allowed from that, unless it should be freight or carrying charges, but that must be deducted from the consumer's bill, or we do not allow it.

XQ. 27. I see. Now, Mr. Buffum, you have stated as a second item on this, the income from domestic production by years under licenses issued by The Chemical Foundation; is that true?

A. That is correct.

XQ. 28. Now, how do you arrive at the production by years, under licenses issued by The Chemical Foundation?

A. By taking the royalties from the books.

XQ. 29. Taking the royalties from the books; so that in the end, the basis of your figures here are the books of the several manufacturers or licensees, are they not?

A. The reports of the several licensees to us, as to the amounts that are on their books. I have not personally examined all of the books of all the licensees, I have some of them, but not all.

XQ. 30. Have you ever examined the books of the licensees or undertaken to ascertain from such examination whether they included all manufacturers or sales by them under these patents covered by the licenses or not?

A. I have some, and we are gradually doing the rest as far as possible.

XQ. 31. How do you determine whether a product is produced under the patent or not?

A. I do not get that, Colonel.

XQ. 32. Well, suppose a licensee has half a dozen different patents, for either chemical or dyestuffs of various kinds, how do you determine whether that product is produced under the patent or not, or whether it is by a modified process, or whether it is the process described in the patent?

A. We do not determine. The licensee admits. There is nothing to determine.

XQ. 33. I see. You accept his statement as to the production under the several patents?

A. Sure, so long as he pays his royalty.

XQ. 34. You do not undertake to ascertain for yourself, or for The Chemical Foundation rather, whether he is reporting the amount of his production under the patents covered by his license, or whether it is an accurate report or not?

A. Only by his own books as we get to them to audit them, that is all.

XQ. 35. And when you audit them, you check his books or reports, his accounts, against the reports rendered to you as an auditor?

A. No. We make an audit of the particular products covered by the license, and then come back and compare them.

XQ. 36. How do you find out what products are covered by the licenses?

A. We know before we go, what products are covered by the license. The license specifies what the products are.

XQ. 37. Suppose it is a process patent?

A. It covers the products, nevertheless. It is a process for the product.

XQ. 38. And you determine whether it is made under that process or not?

A. I do not determine that. They admit it.

XQ. 39. In order to admit it, don't they have to determine what they make under the patents and what they do not?

A. They do, before they take a license, if I understand you correctly.

Mr. Anderson: I do not think you do. However, I think I understand what you mean. It is sufficiently clear.

XQ. 40. Now, taking The Chemical Foundation, Inc. income from imports by years, how did you arrive at those figures?

A. From the books of The Chemical Foundation, the royalties paid.

XQ. 41. From the books?

A. Yes.

XQ. 42. Only from those books?

A. That is all.

XQ. 43. Upon what basis were those books made up?

A. The royalties received.

XQ. 44. And the royalties received or paid to The Chemical Foundation were based upon the reports of importers?

A. Yes, in most instances. I might say that we audit the books of importers more frequently than we do of manufacturers.

XQ. 45. Have you personally audited all the books of the importers who were importing under licenses of The Chemical Foundation?

A. Not personally, no.

XQ. 46. How many of the manufacturers and vendors, dealers in, material covered by licenses of The Chemical Foundation have you personally audited, Mr. Buffum?

A. I should say 25 or 30 up to date.

XQ. 47. Twenty-five or thirty out of the total number shown by the statement?

A. And I have supervised the auditing of some others.

XQ. 48. What do you mean by supervised it?

A. Sending our men there, supervising their work, checking it after it has been done.

XQ. 49. You have not been there yourself?

A. Not in some instances. In a great many I have.

XQ. 50. You are not a manufacturer yourself?

A. No, sir.

XQ. 51. Never had any experience in manufacture of either dyes or chemicals?

A. No, sir.

XQ. 52. Do you know if The Chemical Foundation has had any one check the processes of manufacture of the various licensees to ascertain if they are manufacturing under the licenses?

A. It has been done in one or two instances, I believe, where there was a question on it.

XQ. 53. Would you mind stating those instances and who did the checking?

A. There was one instance, I believe of the Dahl Chemical Company, and a chemist of ours did the checking.

XQ. 54. Who was the chemist?

A. Mr. Linz.

XQ. 55. Do you recall any other instance?

A. Not where the actual process was checked, no.

XQ. 56. Further down in this statement you make up a statement of the value of sales of domestic and imported products under The Chemical Foundation patents for four years; domestic $6,756,992, imported, $3,652,928.70, or a total of $10,409,922.70. You arrived at these figures in the same manner you have described as to the figures of domestic production and importation above?

A. Colonel, they are simply a summary of the two figures above.

XQ. 57. I mean, they are based on the same method of arriving at the figures?

A. Oh, yes.

XQ. 58. And then you averaged the license rate under all licenses whether on gross or net sales, and arrived at an average rate and applied that on the products reported to you as having been manufactured or imported, as the case may be, by the licensee of The Chemical Foundation; am I right?

A. That is correct on manufactured products. The import royalty is accurate. That is not averaged.

XQ. 59. On your statement 118, your first item is the amount of domestic production of dyes for the years 1919, 1920 and 1921. That is a summary from the official report of the Tariff Commission, is it?

A. Same report, yes, sir.

XQ. 60. Your next item is produced under Chemical Foundation patents from 2/10/19 to 12/31/22. Should that not be 4/10/19?

A. It should be. It is a typographical error.

XQ. 61. We will assume it is 4/10/19. That is from the date of the large assignment to The Chemical Foundation to December 31, 1922, is what you mean there?

A. That is correct.

XQ. 62. That there was produced under patents licensed by The Chemical Foundation 3,273,405 pounds of dyes?

A. That is right.

XQ. 63. How did you arrive at that figure?

A. From the royalty reports submitted by the manufacturers.

XQ. 64. They submit the amount of production of dyes under those licenses?

A. They do.

XQ. 65. And you based your figures upon their reports?

A. Yes.

XQ. 66. Do those reports show the number of pounds of production in each case?

A. Practically in every instance, and where they did not I obtained it.

XQ. 67. You obtained it by writing to the manufacturer?

A. I did.

XQ. 68. You never personally checked their books to see the amount of production under the particular patents, did you?

A. In the case where I audited their books I did.

XQ. 69. You merely audited their account books?

A. Well, yes.

XQ. 70. You did not undertake to follow it through the factory to see whether that is an actual production or constitutes the entire production under those patents or not?

A. I did not.

XQ. 71. So far as you know no one ever has?

A. So far as I know.

XQ. 72. Further down you have the importation of dyes under Chemical Foundation patents, and there is the same error in your figures; it ought to be 4/10 and not 2/10.

A. That is right.

XQ. 73. They amount to 1,346,634 pounds. How did you arrive at that?

A. The same way, from the importers' reports to us.

XQ. 74. The importers' reports to you?

A. Which are checked more frequently.

XQ. 75. You did not undertake to arrive at the amount of importation under any particular patent at all, did you?

A. Absolutely did.

XQ. 76. Wasn't it just an aggregate?

A. No, absolutely did, under each patent that we owned.

XQ. 77. How did you get at that importation under each patent?

A. The importer keeps his books that way, by patents, for the imported products.

XQ. 78. Suppose a product imported involves the use of several patents in its manufacture, how does he apportion it?

A. Well, it does not on imported products. There is only one patent. It has to be a product patent or you do not collect.

XQ. 79. You do not collect?

A. No.

XQ. 80. You have never made any check to see whether there is any infringer on any of these patents, have you?

A. A number, yes, I have.

XQ. 81. Where?

A. I have not decided the infringement, but I have made many checks to determine whether or not there was enough evidence to give to experts to find out.

XQ. 82. And you would decide what the evidence was?

A. Yes.

XQ. 83. Whose works have you checked for that purpose?

A. The only works that we ever got as far as that was the Dahl Chemical Company; but usually you do not have to go that far, you can usually settle it by conference.

XQ. 84. How many infringements have you had or settled, do you know?

A. I do not know whether that license report that you have will show or not, but in most instances it results in a license and they pay up for past infringement. There are a great many of our licenses that came that way.

XQ. 85. You spoke of checking up infringement. You meant that if you found a man who was infringing you would get after him. Have you ever checked your licensees to determine whether they were reporting fully or not?

A. I am doing that gradually, right along.

XQ. 86. You check the accounts, do you?

A. I do.

(Witness excused.)

Mr. Kresel: I will call Dr. Parsons.

JULIUS STIEGLITZ.

Julius Stieglitz, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Professor Stieglitz, I wish you would give to the stenographer your full name and your residence?

A. Julius Stieglitz; residence, Chicago.

Q. 2. How old are you, if I may inquire?

A. I was born in 1867.

Q. 3. Born in the United States?

A. Yes.

Q. 4. Where were you educated?

A. My university education I had in Germany.

Q. 5. What university there?

A. I took the Ph. D. at the University of Berlin in 1889.

Q. 6. And what have been your activities since your graduation from the university?

A. I returned to this country at the end of '89, spent one year at research at Clark University, two years then with Parke, Davis & Company, a pharmaceutical house, and chemical laboratory, and then since 1892 I have been at the University of Chicago.

Q. 7. So since 1892 you have been with the University of Chicago.

A. I have been.

Q. 8. In what capacity have you been with the University?

A. Well, I rose from the rank of assistant; now I am chairman of the department and have been since 1915, and my most important work was along the lines of graduate instruction in organic chemistry.

Q. 9. And you now hold the title of professor?

A. Professor, yes.

Q. 10. Of organic chemistry?

A. No, it is Professor of Chemistry, but my chief activity is in organic chemistry, lecturing and training, research men, candidates for the Ph. D. degree.

Q. 11. For how many years have you been lecturing to the post graduate men that take your course there in organic chemistry?

A. I began in 1892.

Q. 12. And you have been steadily at that since?

A. I think there never was a year when I did not give graduate lectures in organic chemistry.

Q. 13. Are you a member of any organizations, chemical organizations?

A. I am a member of the American Chemical Society and was president in 1917, the first war year, and a member of Honorary Scientific Societies by election; the National Academy of Sciences, American

Academy of Arts and Science, and the American Philosophical Society.

Q. 14. There is a book here marked for identification called "Slosson's Creative Chemistry." I notice that the introduction to that book is written by Julius Stieglitz. Are you the gentleman who is responsible for that?

A. I am.

Q. 15. There is also in evidence an article by Julius Stieglitz in the Yale Review on the chemical organization. Was that written by you?

A. That was written by me.

Q. 16. Professor, during our late war did you have any official positions under the Government; and, if so, please state them?

A. I had a semi-official position as chairman of the Committee on Synthetic Drugs of the National Research Council, which was the scientific adviser of the Government; I had a semi-official position as adviser on the granting of licenses for synthetic drugs and alien patents to the Federal Trade Commission; and then I had an official appointment as expert adviser to the U. S. Public Health Service in the matter of arsenicals.

The Court: Of what?

The Witness: Arsenicals—salvarsan and similar drugs.

Q. 17. Did you also have any connection with the Chemical Warfare Service?

A. Since 1920 I had an appointment from General Fries as consultant for the Chemical Warfare Service, dated December, 1920.

Q. 18. The Committee on Synthetic Drugs of the National Research Council, of which you say you were the chairman; in a very few words, Professor, will you indicate the work that that council did?

A. The duties of the chairman were primarily these: First, to see that the American public received as quickly as possible supplies of all important synthetic drugs, which were cut off from us by the lack of importation from Europe. In the second place, the chairman had to look around to see which manufacturers could be induced or encouraged to take up the manufacture of these drugs. And in the third place, we tried to give them scientific advice how to utilize the patents, which often was a matter of greatest difficulty.

Q. 19. What patents do you refer to?

A. Patents on synthetic drugs, and the licenses of the Federal Trade Commission. And then further they came to me for help in the matter of securing material supplies. For instance, one house for the production of procaine had to have a large supply of bromine, and could not secure it commercially, and we did our best to help them out. We had appeals in regard to supplies of hydrosulphite, important for the manufacture of arsphenamine or salvarsan.

Q. 20. You speak, Professor, of synthetic drugs. Would you mind defining that term?

A. Synthetic drugs are medicaments which are prepared artificially and not found in nature.

Q. 21. In other words, you speak of those as synthetic drugs because they are put together from certain elements?

A. They are put together, yes.

Q. 22. And you differentiate those from drugs that are found in nature?

A. Yes.

Q. 23. As adviser to the Federal Trade Commission on the issuance of licenses for the manufacture of synthetic drugs, what were your duties?

A. The Federal Trade Commission took my advice as to what firms should receive licenses. For instance, in the matter of the manufacture of arsphenamine, or procaine, barbital and similar drugs; and they also sought my advice in regard to the refusal of licenses. We had one particular case that I have in mind where a Canadian firm asked to come in for the manufacture of arsphenamine, and my advice was that we had enough licenses, and to decline the request, and it was declined.

Q. 24. In order that the record may be clear, when you speak of arsphenamine, do you refer to the same drug which is otherwise known as salvarsan?

A. Exactly.

Q. 25. You say that you also held the position of special expert to the United States Public Health Service. First I would like to inquire whether the United States Public Health Service is what its name imports? Is it an official organization?

A. It is.

Q. 26. Under any particular department?

A. Under the Secretary of the Treasury.

Q. 27. Under the Treasury Department?

A. Under the Treasury Department.

Q. 28. As special expert to the United States Public Health Service, what service did you perform during the war?

A. Well, I was called in when the army reported a rather serious situation and asked the help of the Public Health Service in regard to the quality of some of the arsphenamines supplied to the army for use with soldiers. Just how serious the situation was, I would not like to state for the record, because——

Q. 29. I am not asking you to, Doctor?

A. (Continuing.)—But I will give it to counsel and your Honor, if you desire it. It is a matter that is in the official records.

Q. 30. I am not inquiring now as to that.

A. The Public Health Service felt that it did not have any chemist with sufficient expert knowledge of organic chemistry to advise it in this field and wrote to me asking for suggestions and I gave the names of Dr. Noyes of the University of Illinois and myself; and they asked me to serve.

Q. 31. And for how long a period did you serve in that capacity with the United States Public Health Service?

A. I am still special expert to the United States Public Health Service.

Q. 32. In your connection as consultant for the Chemical Warfare Service since December, 1920, will you please indicate briefly what your duties have been there?

A. I paid one visit to the Edgewood Arsenal, went with other experts through their various plants, discussed their plans and needs, subjected myself to, I think it was a suffocating gas, to get familiar with it and have received frequent reports from the Edgewood Arsenal in regard to their activities, with requests for suggestions.

Q. 33. Will you state in a general way, without in any way revealing any information that you do not think ought to be revealed, just what sort of work it is that is being carried on by the Chemical Warfare Service? What are they trying to do?

A. I suppose they are trying to prepare to defend this country, defensively and offensively, in the next war. That is as far as I ought to answer.

Q. 34. But why is it spoken of as the Chemical Warfare Service? That is the point that I really have in mind.

A. It involves a study of organic chemical compounds, explosives, tear gases, poison gases, and a great variety of other chemicals pretty well known to the public.

Q. 35. So much for that. Now, Professor, you know that this suit is a suit brought by the United

States Government against The Chemical Foundation?

A. Yes.

Q. 36. Have you any financial interest in The Chemical Foundation, either directly or indirectly?

A. The Chemical Foundation owes me an amount on the debt incurred in preparing with a number of gentlemen, this book which is a report on the future progress of American medicine with the aid of chemistry.

Q. 37. Other than that, have you any financial interest?

A. None whatsoever.

Q. 38. Professor, I do not know whether you have ever read the complaint here, but it is charged that certain chemical concerns in the country maintain a monopoly and entered into a conspiracy to bring about the transfer of these patents. I should like to inquire whether you have any financial interest in any chemical concerns?

A. I received about two months ago, from the executors of my father's estate, six shares of Allied Chemical preferred stock. That is the limit of my interest—not bought by myself, and I have never bought any.

Mr. Anderson: We will admit that he is not influenced in the slightest by that fact.

Mr. Kresel: You will admit that?

Mr. Anderson: Yes.

Q. 39. Now, Professor, I take it that you have been a close student of organic chemistry in its relation to the general public welfare. I wish you would state, if you will, in what respects the upbuilding of a strong organic chemical industry in the United States is important to the nation?

A. I believe that the importance rests on three fundamental considerations: One is the problem of military national defense. The second is the question of public health, and the third is the problem of industrial safety and prosperity.

Q. 40. I should like first to take up with you the public health feature of the importance of an organic chemical industry. Can you illustrate, very briefly, how a basic chemical element for instance, may be the source of a peaceful use in time of peace, and at the same time be an essential for explosives in time of war.

Mr. Anderson: Just one minute, if your Honor please. Of course I understand that this is all subject to our general objection; and while I think this question is entirely too broad, and is purely argumentative, if that is subject to the rule that we are proceeding under, of objection and exception, I do not think I will interrupt the witness.

The Court: Your objection and exception goes to all questions in the record that you want them to go to at the time of the argument. Won't you repeat that question, because I am not just sure that I can connect it with the main issue, and I am not sure I have fully in mind how it connects with that issue, and I might want some help on it now. (Question repeated as recorded.)

That question seems to me to present a twofold aspect, or rather a conflicting aspect. Perhaps it is my lack of information. Did you listen to it at that time, Mr. Kresel?

Mr. Kresel: I did, and perhaps I will reframe it.

The Court: Very well then. Before it is answered, I will ask you what I have in my mind if I may.

Mr. Kresel: Yes, sir.

Q. 41. I wish you would state, Professor, in what respect organic chemistry is important to the public health? I will put it in that way, illustrating if you will.

The Court: My difficulty here, Mr. Kresel, is that if the President or the Alien Property Custodian—and I am a bit confused at this stage of the case by some testimony that has recently gone in, just what the contentions of the respective parties are with respect to the powers of the Alien Property Custodian and with respect to the President, but assuming that either of them had the power to take into consideration in the private sale of patents the public health, whether that would not be a question for the Alien Property Custodian or the President, whoever it may be to determine? I do not see the conclusion of that thought, because what I am trying to ascertain at the moment is whether or not I can officially determine if such an element might be considered, unless I am officially told something about it. That is the dilemma I am in at the moment; so you may proceed under all the objections which the plaintiff may eventually show.

Mr. Kresel: Will you proceed, Professor, please?

A. I understand that the object of your inquiry is to bring out why the public health is of great moment to the national policy as national defense. That I believe is the question.

The Court: I do not think that is your question.

Mr. Kresel: In its relation to the public defense your Honor.

Mr. Anderson: May I ask that the last question be read? I think the Doctor is confused in proceeding with the last question. (Question repeated as recorded.)

A. (Continued.) Now I understand; I thank you, Colonel. Our bodies are chemical laboratories in which a great number of fundamentally important chemical reactions are going on continuously. From the moment of our conception until death, we have chemical changes primarily of an organic character.

Now, when these chemical reactions take place normally, we are well. When there is any abnormality, then we are sick. This abnormality can be of two fundamentally different types. Either our own organs do not work correctly, either in respiration or in the absorption of food or in the elimination; one of the chemical processes can go wrong. Then we are sick. Or there is another fundamental type. We can suffer from the invasion of germs, as Pasteur showed us, and these germs bring about a fundamental change in the chemical reactions of the body.

Now organic chemistry comes in to correct both evils. I doubt whether I have the time to answer the whole question: I think it would be sufficient for the purpose of this inquiry to illustrate the second, as it stands closer to the problems at issue; and there we have the well-known fact that germ diseases can be in certain important cases controlled by organic chemicals.

The first important illustration is that malaria can be cured by the means of the nitro-drug quinine, an organic chemical. This suggested, of course, that we look for other medicaments, artificial, for the cure of other germ diseases, and the first great triumph of that was the discovery of salvarsan, or 606, or arsphenamine, as they call it, by Ehrlich and his collaborators in the cure of syphillis.

The reason I bring this illustration is that in discovering this remedy the very name "606" shows that he worked through over 600 different products, all organic, until he got a satisfactory one, and he carried out this enormous amount of organic research work with the aid of the dye factories in Germany. In fact, is a matter of record, that when the product was ready for clinical use, it was manufactured by a dye factory, the Farbwerke-Hoechst, of Germany. The reason for this is that both in its composition, excepting that it has arsenic in place of the non-harmful element nitrogen, and in the method of preparation, it is very closely related to dyes and other organic products.

If you have time, I would like to give you a still more recent instance, because it is pertinent. The success of 606, of course, stimulated an enormous amount of research work, especially by pupils of Ehrlich, and the most recent discovery, showing what this means for the public health, is this: We have pus diseases due to invasions of streptococcus and staphylococcus, and when the pus gets into our insides, it is terrifically dangerous.

One of the most dangerous forms is what we call the late cases of appendicitis, that is, cases that are operated on too late, in which the appendix is ruptured, and we get a peritonitis, a general infection of the peritoneum. Now they have found a dye of the acridine series, known as rivanol, which inhibits the growth of staphylococcus and streptococcus without any injury whatsoever to the tissues of the body. That is, of course, the safeguarding feature we must keep in mind.

To summarize the meaning of this discovery, let me give the results of a German surgeon, Katzenstein, in 1920, I believe it was. He had five late cases of peritonitis. All died. In 1921 he had rivanol at his command. He had nine late cases. After operation and surgical cleaning-up, he injected a solution of rivanol, and all nine cases survived, although one was at the point of dying when he came in. From a hundred per cent. fatality to a hundred per cent. saving of life through a dye.

Q. 43. Professor, leaving out the question of public health, will you state in what respect organic chemistry is related to warfare?

A. Our explosives are primarily organic. All the modern explosives are. The old gunpowder contained an inorganic element, saltpeter and sulphur, which are inorganic; but all modern explosives are purely organic. All tear gases, all poison gases, are organic in character, and the process of changing a fundamental organic substance, like aniline or carbolic acid, into an explosive or a tear gas or a poison gas, is fundamentally a choice of the organic chemist.

I could, if the Court so desired, take a little aniline, and in the course of ten minutes show how it is converted into a stink gas or into a medicament or into a dye; not, of course, the best of stink gases, nor the best of medicament, nor the best of dyes, but to illustrate that one and the same fundamental material at the option of the organic chemist can be turned to the uses of warfare or of public health or of the industry.

THE COURT: If you are going to ask him to make a demonstration, let us defer that until after the noon recess.

MR. KRESEL: No, I was not going to ask him to make any illustration.

THE WITNESS: I am not prepared, your Honor, to make it.

Q. 44. I am going to ask you, professor, to state, if you will, the relation of the dye industry to organic chemistry and public health, explosives, commerce?

A. The relation, I think, is very transparent. It is evident that in times of peace the large scale use of organic materials for warfare purposes must be held in abeyance. For medical purposes we require comparatively very small quantities of materials. The bulk use is in the manufacture of dyes and related organic chemicals, and with this bulk manufacture goes the vitally important consideration that the public appliances would be prepared in times of peace for industrial purposes.

Q. 45. And in times of war?

A. In times of war it would be at the option of the public administration to have these appliances, these men, these materials, turned to whatsoever purpose seemed most important for the welfare of the Government, either war or public health or industry, and the late war brought that out so precisely that we can give it practically as a mathematical demonstration.

Q. 46. Is there any connection between the machinery and equipment of a dye factory and the machinery and equipment of a factory to turn out explosives and munitions of war?

A. I understand that the same appliances can be used with at least very rapid changes for either purpose.

By **Mr. Anderson**:

Q. 47. That is not within your knowledge; you never had any experience with that, did you, Doctor?

A. I have never gone through an explosives laboratory excepting the experimental plant at Edgewood.

Mr. Kresel: I will prove that by another witness, Colonel.

Mr. Anderson: I am glad to get any information from you, and I know you would not say what you did not believe to be true.

Mr. Kresel: It is understood that that is not from his personal knowledge.

By Mr. Kresel:

Q. 48. Professor, I do not believe I asked you when you became the Chairman of the Committee on Synthetic Drugs of the National Research Council. What year was it?

A. I think that was in 1917, the first year of the war.

Q. 49. And while I am back on the question of qualifications, I want to ask you whether you have any official connection with the Institute of Medicine?

A. I was president of the Institute of Medicine of Chicago about 1919 or 1920. I have not looked up the date.

Q. 50. And with the pharmacy?

A. I have been a member of the Council on Pharmacy and Chemistry of the American Medical Association for close to twenty years.

Q. 51. In your position as Chairman of the Committee on Synthetic Drugs, did you acquire knowledge as to the supply of synthetic drugs just prior to our entrance into the war in 1917?

A. I acquired knowledge primarily as to shortages. Needs were brought to my attention. I was not interested in what had occurred previously.

Q. 52. Will you please state what the situation was with reference to such a shortage of synthetic drugs?

A. The shortage was very acute in regard to a number of vitally important drugs. One of the lessons of the war was that we had on the market here in this country far more drugs than we actually needed. Many were introduced merely to sell them. But we did find that there were a number which were acutely needed, and there was a shortage of those.

One of the most prominent was salvarsan or arsphenamine. Another was procaine introduced as novocain, which is used in surgery for what we call local anæsthesia, on account of the lack of which physicians spoke of "Bulgarian" operations in the hospitals; that is, without an anæsthetic; and it was important to have a supply prepared for the evident needs, on a large scale of our army.

Another important drug needed was veronal or barbital, a hypnotic, producing sleep, which had to be prepared under Federal Trade Commission license in order to meet the needs in this country.

Still another drug, which we really never got until a year and a half or two years after the war, was the drug luminal, a specific to prevent seizures of epilepsy. I had the most pathetic letters from physicians and leading specialists, from hospitals, from patients, from parents, begging for luminal. We could not get it.

Q. 53. Professor, before the outbreak of the war, where did our country get its supplies of these drugs that you have mentioned?

A. By importation from Germany. I doubt whether any was made in this country. Possibly some barbital or veronal by the Bayer people in Albany.

Q. 54. I am going to ask you, professor, to state the nature and the extent of the disease syphillis?

A. Syphillis is due to an infection by a protozoan, I believe they call it, of the spirochetes tribe. We found in the war that the spread of syphillis was appalling. Perhaps ten million people in the United States in some form or other had syphillitic trouble.

Q. 55. Is it infectious?

A. It is infectious through contact.

Q. 56. When the need of arsphenamine or salvarsan was made so evident, did you undertake any research, and if so, where and when, to discover the process of making salvarsan or arsphenamine?

A. Let me give you the exact facts, Mr. Kresel.

Q. 57. Please.

A. The need became evident in 1917, and as adviser to the Federal Trade Commission, I advised them to grant licenses to a number of applicants.

Q. 58. Pardon me. In order to make it entirely clear, licenses on what?

A. Licenses for the manufacture of arsphenamine or salvarsan under the patents of Ehrlich and his collaborators.

Q. 59. The German patents?

A. The German patents; and the advice to the Federal Trade Commision was to grant licenses to the Dermatological Research Laboratories in Philadelphia; to the Metz Laboratories in Brooklyn, and to the Diarsonol Company of Canada, with the restriction that they were as quickly as possible to establish a plant in Buffalo, which they did. Later, licenses were issued, on our recommendation to the Public Health Service, to the State of Massachusetts and to the State of New York. Under those licenses arsphenamine was manufactured from 1917 on, particularly by the Dermatological Research Laboratory in Philadelphia, which had worked up the process, and were able to turn out a pure product; but the situation changed in May, 1918, when the War Department complained, as I stated before, of very serious trouble in using the remedy particularly of one licensee in the Army, and calling in the U. S. Public Health Service, and I in turn was called in to help them; and at a conference here in Washington, we outlined what seemed to us the best plan of procedure to meet the natural situation. That was about June 7 or June 8, 1918.

Mr. Kresel: Now, please stop there, and I will come back to that point. Does your Honor desire to suspend?

The Court: We will take a recess.

AFTER RECESS.

Q. 60. Professor, when recess was taken I was asking you whether, when the shortage of these essential drugs that you mentioned became evident, you undertook experimentation for the production of such drugs or any of them in this country?

A. I did, Mr. Counsel. My first work was on the production of luminol, and then later, after becoming connected with the Public Health Service, and the production of salvarsan or arsphenamine, we also did work on a drug called salophen.

Q. 61. When did this research commence, and how long did it continue?

A. On luminol, as far as I remember, it started in 1917, and we published our results in 1918—I have the publication with me if the date is important—giving the results of our work free to anyone who would undertake to make it. On salvarsan or arsphenamine we began work in June, 1918, after the question had become one of paramount importance to the War Department.

Q. 62. And how long did that continue?

A. I should think we were active there at least two years, though we did work along similar lines until the end of June this year.

Q. 63. And where was this research work being done?

A. At the University of Chicago, in my laboratory.

Q. 64. Professor Stieglitz, have you before you a copy of the German Patent No. 986,148, which we call here the salvarsan patent?

A. I have.

Q. 65. Are you familiar with the specifications in that patent describing the method to be pursued in order to produce the product called salvarsan or arsphenamine?

A. I am.

Q. 66. As adviser to the Federal Trade Commission and as expert on arsphenamine to the United States Public Health Service, did you have occasion to visit any of the plants of any of the manufacturers here in the Untied States who were producing or attempting to produce arsphenamine?

A. I visited all of them and more than once.

Q. 67. Will you please mention the names of those that you visited, the places where, and, if you can, the times when?

A. I visited the Dermatological Research Laboratories in Philadelphia at least three or four times. The exact dates I could not give now; but the time was in the summer of 1918, and again in 1919. I made official inspections for the United States Public Health Service. If it were important, I could get the exact dates.

I repeatedly visited the Metz Laboratories, located in Brooklyn, and visited the laboratory of the Diarsonol Company, in Buffalo, at least twice, and the laboratory of the Takamine Company, in Buffalo, that started later in the little town in Jersey, I think it is called Chrystal, but I would not be sure of that, at least twice; the laboratory of the Public Health Service or the equivalent, of the State of Massachusetts, in Boston, and the laboratory of the State Board of Health in Albany. Then, later, I visited the laboratory of Squibb & Sons, in New Brunswick, New Jersey. They had started work and planned to take a license, and I visited the laboratory finally of Mallinckrott, in St. Louis, Missouri.

Q. 68. In the course of these visits did you observe the method pursued by these various manufacturers in producing or attempting to produce salvarsan?

A. I did.

Q. 69. Do you feel, professor, that having obtained the information as representative of the Public Health Service, or of the Federal Trade Commission, that you would be justified or consider it proper to divulge here the exact methods pursued by each of those manufacturers?

A. I would not feel justified. I have kept my information confidential, excepting for the Public Health Service. In relation to one manufacturer as against another, I have always felt free to speak about the results of our own research at the University of Chicago.

Q. 70. And as to that, of course, you feel free to discuss it now?

A. Yes.

Q. 71. Then, under the circumstances, professor, I am going to ask you this question: Without stating the exact procedure that you observed, that was followed by each of these manufacturers in producing or attempting to produce arsphenamine, will you state whether or no any of them produced or attempted to produce arsphenamine such as could be safely administered to a patient by following out the steps described in patent No. 986,148, which you have before you?

> Mr. Anderson: If your Honor please, I will ask permission to note an objection to this question on the ground that this gentleman has stated that the information which he derived on this subject, as to the methods employed by these manufacturers, was derived as a public official and as a representative of the Federal Trade Commission. Under the law I recognize that he cannot give the information—certainly, as a representative of the Federal Trade Commission—because

the statute is clear on that subject. Therefore, I do not think that any testimony should be given on that subject.

I recognize that Dr. Stieglitz has made experiments himself. He has stated he is willing to say what he did at his own laboratories. Outside of our general objections I do not know that I have any objection to that testimony. But in this particular matter I suggest and submit for your Honor's consideration that it is not proper to ask him anything with respect to the methods employed by these laboratories which he inspected as a public official and as to which he cannot speak, both because it would not be appropriate for him to say anything on that subject, I think, and certainly it would not if he cannot state the facts, in which case we cannot go into the details of the information which he derived.

Mr. Kresel: Your Honor, perhaps before I answer that, would you desire to hear the question again, as I tried to anticipate that objection?

The Court: I recall the question. My immediate impression is this, Mr. Kresel, that whether or no the several plants or laboratories that he has mentioned were making it according to the patent is at the moment, it seems to me, immaterial. I am basing that on the assumption that you are going to ask him what he did at his own laboratory, and I am basing it on the assumption—I am not suggesting any question to you, understand, but I am only indicating what occurs to me at the moment—as to whether, from the experiments at his laboratory, it can be made. If he says it cannot, that would be affirmative evidence. I think the objection is well taken for the reasons stated by Colonel Anderson and for one or two others which occur to me. If you want to present the same question after you have gone through his own efforts at his own laboratory, you may renew it.

Mr. Kresel: Very well.

Q. 72. Professor Stieglitz, from your research and experimentation such as you have described, conducted beginning in 1918 for a period of about two years, I think you said, can you state whether it is possible to make salvarsan such as can be safely administered to a patient by following out the steps described in Patent No. 986,148, which you have before you?

A. I should answer no; not without additional information, which is not revealed in the patent.

Q. 73. I now repeat the question that I asked a little while ago, and it is this: Without asking you to disclose the exact method of production followed by any of the manufacturers whose plants you visited, will you state whether or no any of them manufactured or attempted to manufacture salvarsan following the specifications in the patent that you have before you?

Mr. Anderson: If your Honor please, I wish to renew my objection for the reasons stated and venture to suggest that the inhibition upon Dr. Stieglitz in the circumstances stated, in his official relationship, against saying what was not done, is just as great as against saying what was done.

The Court: I will hear you, Mr. Kresel.

Mr. Kresel: No, your Honor. If your Honor is entirely convinced, I do not want to take the time.

The Court: I am convinced, for two reasons: First, that his answer embraces by necessary implication an inevitable conclusion; the second is that the objection as stated by Colonel Anderson, I think, is well taken.

Mr. Kresel: Very well.

Q. 74. Professor Stieglitz, are there any other drugs on the market used for the same purpose that salvarsan or arsphenamine is used?

A. There is a drug called sulpharsphenamine on the market and neoarsphenamine. They also use another drug which we call cacotylates, and they are beginning to use Bismuth preparations which have been tried out in France, and are being put on the market in this country.

There is another preparation still in the experimental stage, but proving very successful, known as trypsarsamid, discovered by chemists of the Rockefeller Institute, and there is a preparation with a long chemical name, para-oxymeta-aminophenylarsenic acid. Three of these are said to be superior to arsphenamine and on account of their better penetrating power. But they are still at that point, in a stage of investigation. But they promise extraordinarily well.

Mr. Anderson: Would your Honor permit me to note in addition to the general objections, the further objection to this testimony, and to note a motion to strike out the answer on the ground that what may be now in process of development—

The Court: As not having been anticipated.

Mr. Anderson: No, sir. We cannot anticipate all the conditions that may arise in any art, and I do not see how that is relevant.

The Court: But in estimating the value of a patent that is unworked in America, would not a purchaser be entitled to anticipate improvements and developments in the art, and would he not be entitled to discount the immediate value accordingly?

Mr. Anderson: That would be the general condition surrounding all patents, and that would be one of the matters that would be like a purchase of anything else; it might become obsolete, or it might not, say a railroad, or anything else. You have to take into consideration always the nature of the art.

The Court: It seems to me the nature of the art and the development of the art, and the probabilities of the further development of the art, and the extent to which the value is discounted, if any, may be justified by the subsequent developments of the art. I overrule the objection and you may take the answer.

Q. 75. Dr. Stieglitz, I show you this paper, and ask you to state whether that is an official announcement from the United States Public Health Service, dealing with some of these new preparations which you have just described?

A. It is. It is marked, may I add, for the knowledge of counsel, for release upon receipt, so it is not a confidential document.

Mr. Kresel: It is short, your Honor, and with your Honor's permission I shall read it into the record. It is headed:

"Health—Issued by the

United States Public Health Service.

(For release upon receipt)

Penetrative Powers of Arsenicals

The probable reason why the chances for the complete cure of a generalized syphillitic infection are poor, says the U. S. Public Health Service, is because the usual remedies (arsphenamine, neoarsphenamine, and silver arsphenamine) all lack the power necessary to enable them to penetrate the infected tissues in sufficient amounts to destroy the last remaining parasites. Other arsenicals, sulpharsphenamine, trypsarsamid, and 3-amino-4-oxyphenol arsenic acid, have superior penetrative powers and their use as remedies is suggested.

"The report was made by Carl Voegtlin, M. I. Smith, Helen Dyer, and I. W. Thompson, all of the U. S. Public Health Service, after prolonged experimentation, both chemical and bacteriological, on rabbits. While the authors admit that results so obtained cannot be transferred, without reservation, to the treatment of human syphilis, they nevertheless advance several reasons that cause them to believe that a clinical trial of the more penetrative preparations named is strongly indicated.

"In conclusion they express, as Ehrlich did, their belief that no matter what arsenical may be used better results will be obtained from single large doses a week apart than from smaller doses given at shorter intervals."

MR. ANDERSON: Have you any date of that, Mr. Kresel?

MR. KRESEL: I have not, but I will ask Professor Stieglitz.

Q. 76. Professor, when was this sent out?

A. I received that about two weeks ago; maybe ten days ago.

MR. ANDERSON: Without at this time wishing to argue, in addition to my general objections, I would like to note an objection to that evidence as purely hearsay. It is, as I understand, a newspaper publication.

THE WITNESS: It is not. It is an official report from the United States Public Health Service.

Mr. Kresel: I thought the witness had made it perfectly plain.

The Witness: I beg your pardon, Colonel Anderson. I should have made it clear. May I add for the information of counsel——

Mr. Anderson: This is headed "Health News, issued by United States Public Health Service, for release upon receipt." Is that one of these news publications sent out for publication in the public press?

The Witness: It came to me in an official envelope of the United States Public Health Service. That is all the information I have.

Mr. Anderson: I will reserve the point, sir, for further discussion.

The Witness: May I add a further statement, your Honor, for the benefit of counsel? There is an article by Professor Lovenhart, of the University of Wisconsin, on trypsarsarlin, and clinical results obtained with it, in the Journal of the American Medical Association published within the last six months or two months; I have not the exact date.

Q. 77. Dealing with this subject?

A. Dealing with trypsarsamid; one of these remedies.

Q. 78. Professor Stieglitz, you know Herman A. Metz?

A. I do.

Q. 79. Mr. Metz, while a witness here, was questioned under cross-examination as to the making of an agreement between him and the Dermatological Research Laboratories, dated June 8, 1918, which agreement is now in evidence. He stated in substance that that agreement was made by him upon your insistance. In order to have it entirely accurate, I will read to you his testimony upon the subject.

I read, Colonel Anderson, from page 1908 of the record:

> "XQ. 867. By this agreement you asked Dr. Schamberg to improve your product?
>
> "A. Dr. Stieglitz asked him and I signed it at his request. There you are; that is the statement.
>
> "XQ. 868. Did you ask Dr. Schamberg to help you improve your product?
>
> "A. Dr. Stieglitz asked him and I agreed to let him and signed that agreement."

And again at page 2063, Mr. Metz, questioned about that agreement, gave testimony as follows:

> "RDQ. 1555. Then, according to your testimony, nothing was ever done under that agreement?
>
> "A. Nothing, sir.
>
> "RDQ. 1556. Why not, Mr. Metz?
>
> "A. Didn't need their assistance; didn't demand it; didn't desire it, and didn't ever use it."

In the first place, do you know the agreement that is referred to?

A. I do.

Q. 80. Please state what you had to do with the making of that agreement and what conversation you had with Mr. Metz concerning his product, and with Dr. Schamberg, if you had any conversations with him in the presence of Mr. Metz with reference to the making of this agreement.

> Mr. Anderson: If your Honor please, there are two objections I should like to note to the question. The first is that Dr. Stieglitz has testified that his dealing with this situation was in an

official capacity as a representative of the two branches of the Government of the United States, of which he did not wish to speak, and I think that this matter would come within that limitation or prohibition.

In the second place, without examination of the record, I cannot say now whether this objection is well taken, and I wish to reserve it. If my recollection serves me right, and it is very indefinite on this subject, in the matter referred to counsel took the witness entirely out of the direct examination and, therefore, would not be allowed to make him his own witness and then to contradict him. I reserve that point for examination of the record. If I find I am not correct, of course, that objection will go by. The first, I think, without further examination is sound, and if it were gone into it might cause me a good deal of embarrassment in my effort to cross-examine.

THE COURT: My belief is that the second objection is not well taken; that the testimony referred to by Mr. Kresel was elicited on cross-examination proper and not on any testimony given as a result of questions outside the scope of cross-examination. I think that the answer to the present question would not necessarily go within the limitation or prohibition imposed upon Dr. Stieglitz by the duties of his office.

THE WITNESS: Your Honor, this means that it was as a servant of the Public Health Service that I agreed to testify. This contract was drawn up as a servant of the U. S. Public Health Service.

THE COURT: I see no reason why you should be prohibited from so testifying, Dr. Stieglitz. You are not revealing any secrets, so far as I can see, and I think you are at full liberty to give the facts in answer to this question. Let us have the question read, however, before you answer it.

(Q. 80. Repeated as above recorded.)

THE COURT: Conversation concerning Mr. Metz's product? The question is twofold. I did not realize that when ruling on the objection. Will you restate it and make the question a single one?

MR. KRESEL: I will withdraw the question.

Q. 81. Please state what you had to do with the making of this agreement and in that connection you may state what conversation you had with Mr. Metz about that agreement?

MR. ANDERSON: May I be permitted to note the same objection?

THE COURT: The same objection as to this testimony.

MR. ANDERSON: And may I ask the witness if he was not at that time representing the Federal Trade Commission in the capacity testified this morning?

THE WITNESS: No, this was primarily a Public Health Service issue.

MR. ANDERSON: You were at that time, however, representing——

THE WITNESS: I was adviser, yes, but the whole problem came up through the Public Health Service.

MR. KNIGHT: I understand that the same prohibition will be borne in mind by the witness with regard to the divulgation of any——

THE WITNESS: I will do my best.

THE COURT: I did not hear you, Mr. Knight.

MR. KNIGHT: I assume the witness will bear in mind the same prohibition about the divulging of these matters that the general instruction of the Court relates to.

The Court: Oh, yes.

The Witness: I will do my best.

The Court: Have you the statute before you?

Mr. Anderson: The Federal Trade Commission Statute?

The Court: Yes.

Mr. Anderson: I have not, sir. I had it the other day when Mrs. Wilson testified, and I will try to get it. I had it in my notes, your Honor, but I have so many notes I cannot recall it. I had a copy of the statute the other day.

The Court: It is not the Trading with the Enemy Act?

Mr. Anderson: No, sir; it is the Federal Trade Commission Statute that prohibits the divulging of any information gotten—similar to the Tariff Commission Statute.

The Court: I do not want to require the witness to divulge anything within the meaning of the prohibition of that statute.

Mr. Kresel: I think your Honor can depend upon Professor Steiglitz to lean backwards, the other way, and not divulge anything that comes within that prohibition. I have been over this question with him and certainly under your Honor's warning and instruction he will not do it.

Mr. Anderson: To the end that my position may be understood, might I merely suggest that since Professor Steiglitz then represented the Federal Trade Commission in these license matters and represented the Public Health Service, that therefore every man dealing with the Government was compelled to give him all his information, it would be impossible for him to separate the information that a man would give him in discussion, what he would say to him in one capacity from that in the other capacity.

It was in that view, and not in the slightest questioning the discretion of Dr. Stieglitz, in his large experience—because I know he would be careful to avoid it—that it seemed to me any of that information or conversation would be forbidden by the intent and the general interpretation of the law. It was not intended to question his discretion or purpose in any way.

THE COURT: I would like to have the question stated again.

(Q. 81 repeated as recorded above.)

THE COURT: Now, pardon me just a moment. The question is still twofold. I do not know the Federal Trade Commission Statute or prohibition to which reference has been made, I am not familiar with it and cannot get familiar with it at the moment apparently.

MR. KRESEL: Suppose, sir, I limit it simply to a statement by him of his connection with the making of this agreement ,and omit any conversations.

THE COURT: Yes.

Q. 82. Do you understand, Professor, the limitation?

A. I think I do. My clear recollection of the case is this: When the War Department called upon the Public Health Service for help in securing a safer product for treatment of soldiers of the army I was called to Washington by the Director of the Hygienic Laboratory, Dr. McCoy, in the Public Health Service, and I am quite sure my expenses to Washington were paid by the Public Health Service. We had a conference in the office of the Director, where Mr. Metz was present, and, as I recall it, Mr. Schamberg, myself and the Director, and maybe one or two other men of the Director's staff, where we threshed out the whole situation frankly——

Q. 83. You will not say what was said?

A. No. (Continuing.) Man to man.

The Court: May I make a suggestion? The United States is the plaintiff here. Does that statute put a prohibition upon the Attorney General?

Mr. Kresel: I think the Government can waive it if they want to.

The Court: No, I do not know that the Government could. But we have not the usual party—plaintiff in this case, Mr. Kresel. The United States has put in the testimony of Mr. Metz. My inquiry now is whether the prohibition of this statute prevents the disclosure of the full facts to the Attorney General of the United States—that is, not a public disclosure, but for the Attorney General's representatives. I am not going to indulge in any assumptions except this one. Colonel Anderson has very generously said that he wants all facts and only the facts to be revealed. I assume that statement still holds. Now, if the Federal Trade Commission Act does not prohibit the disclosures of Dr. Stieglitz to the Attorney General of the United States, I will make the suggestion, which you may follow or not, that you permit Dr. Stieglitz to disclose to the Attorney General of the United States, unless it is prohibited by the Act, by the Attorney General, I mean the Attorney General's representative, Colonel Anderson, and then let him take such steps, if any, as he may deem proper after such disclosure.

Mr. Kresel: I will gladly follow your Honor's suggestion, and if your Honor will grant us a recess of five minutes I think that will be all that will be necessary. Dr. Stieglitz will, I am sure, frankly disclose to Colonel Anderson what this conference was about, and then I understand Colonel Anderson is not bound to do anything about it, but may then decide whether he wants to maintain that position.

Mr. Anderson: Before the recess is taken I wish to say that the Court is quite right in assuming that the Government wishes all the facts having a bearing upon the decision in this case and which are pertinent to be brought out in this case; but of course I do not recall for the minute the terms of the statute, and I should be compelled to object to the disclosure of any information which would here be in any way a violation of the law.

The Court: I am not suggesting any violation of the law, Colonel Anderson.

Mr. Anderson: I would be compelled to object to it and call attention to the fact. I merely call your Honor's attention to the law, and that is the reason I am objecting.

Mr. Kresel: Not at all. It is not suggested——

The Court: Just a moment, Mr. Kresel.

Mr. Anderson: I may say that I had gone so far as to ask for certain information of the Tariff Commission, and one of the Commissioners came up to see me personally. He is himself a lawyer. He called my attention to the statute and cautioned me not to ask, either in or out of court, for any information that would be in violation of that statute. He asked me, if any representatives of the Commission were put on, to be very careful to bring to the Court's attention the provision of that Statute as construed by the Commission.

Therefore, I am charged with the duty of bringing these questions to your Honor's attention and make a note of the objection.

The Court: I have no objection to your bringing that to my attention. I think that is your duty as a temporary officer of this court. Have you objection to carrying out the suggestion? It is your full liberty to adopt it or reject it as you deem proper.

Mr. Anderson: I have no objection whatever, sir, if I can find the statute. I will look for it, and if it seems to me that I am justified in asking Dr. Stieglitz to disclose the information to me, if I am not infringing in any way upon the duties of these departments of the Government, I will do whatever I can consistently do to get the facts brought out here, within those limitations.

The Court: I do not mean to have these facts brought out at all. But I assume this, that if you are at liberty under the statute to hear what Dr. Stieglitz said, and if that has any bearing upon the testimony of Mr. Metz, in your opinion, I assume you will act. If it does not, I assume you won't.

Mr. Anderson: My knowledge of the facts at the present time is Mr. Metz's testimony. I know absolutely nothing outside of that.

The Court: I have not any objection to your saying that you do not want to be put in that position; if you do not want to be put in the position that my suggestion will put you in, you are at perfect liberty to say so.

Mr. Anderson: I would not hesitate a moment, sir. I would like to get the statute and look at it and see what my rights and duties are, and as far as I can, I want to comply with those rights and duties to the full extent.

My associate brings to my attention Chapter 311, Revised Statutes, 38 Statutes at Large, page 724, which is the act creating the Federal Trade Commission, defining its powers. The closing clause of Section 10 of that act is as follows. I think there are other provisions dealing with it also:

"Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a Court"—your Honor has power to direct him—"shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $5000 or by imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the Court."

I think under that section—if there is any other section, I do not recall at the moment—your Honor would have the power.

The Court: Dr. Stieglitz, I make the following order: That you forthwith, in the presence of Mr. Kresel, the attorney for the defendant in this suit, make to Colonel Anderson, a representative of the United States of America and counsel for it in this suit, a full and free disclosure of the facts pertaining to the Metz transaction about which inquiry has been made; that you do that privately in the presence only of Mr. Kresel and of Mr. Anderson, the counsel for the United States; and whether such disclosure shall not be made public by either of them or by you will be subsequently subject to the further order of this Court. You may use my chambers if you desire.

Mr. Anderson: May I have the benefit of Mr. Knight also?

The Court: I did not get just Mr. Knight's official capacity.

Mr. Anderson: Special Assistant to the Attorney General of the United States and head of the Patent Department of the Department of Justice, regularly employed.

The Court: You may include Mr. Knight as a third party. Do you want your patent expert, Mr. Kresel?

Mr. Kresel: Not at all, your Honor. It is not at all necessary.

The Court: You may use the corner room of my chambers for consultation, if you desire, or the corner room down here, which will probably be better.

(A short recess was then taken by direction of the Court.)

Mr. Kresel: Will your Honor permit the stenographer to read the last question? (Question repeated as recorded.)

Q. 84. Dr. Stieglitz, I ask you now to state what transpired at this conference at the Hygienic Laboratory in Washington, at which you say Dr. McCoy, you, Mr. Metz and Dr. Schamberg and perhaps two others were present?

Mr. Kresel: Now, I think, your Honor, that the witness is entitled at this point to an instruction from the Court, as to whether or no he may answer that question.

The Court: Under and pursuant to the provisions of the Federal Trade Commission Act empowering me so to do, I now order and direct you, Dr. Stieglitz, to answer the question now propounded to you, and make such disclosures as may be necessary or proper in making such answer.

A. At the conference at the Hygienic Laboratory in Washington, the serious trouble reported by the Army was discussed. It was made to appear that Mr. Metz was preparing arsphenamine on an industrial basis; that is, in large quantities, while the Dermatological Laboratory had been producing on an enlarged laboratory scale, and not on an industrial scale. I advised that the solution of the problem must be sought, so as to assure to the country as large and immediate a supply of pure arsphenamine as was possible, and that therefore the capacity of Mr. Metz's laboratory should be used, together with the experience and knowledge of the Dermatological Research Laboratories. I suggested also, in order to carry out this plan, the making of the tentative agreement of June 8, 1918, which is in the record, between Mr. Metz and the Dermatological Laboratories, which I signed as a witness; and I would like to explain here, that as far as my memory goes, that transaction occurred in Philadelphia, in Dr. Schamberg's office, but I could not be positive about that.

On or about the day following the making of the agreement, Dr. Schamberg objected and expressed his preference not to carry out the agreement, as it would mean giving away trade secrets, and for other reasons. So the agreement was never, in fact, carried out, but Mr. Metz secured the advice of competent scientific men, such as Dr. Meyers, and Dr. Lake, of the U. S. Public Health Service, as well as my own advice and assistance, and thus he solved his problem.

Q. 85. Dr. Stieglitz, I show you several letters and copies of letters and ask you to state whether you received the letters signed "H. A. Metz" and whether you sent to Mr. Metz the originals of the carbon copies that are included in that batch?

The Witness: Your Honor, these were sent to me in my official capacity.

The Court: Have you seen the letters, Colonel Anderson?

Mr. Anderson: No, sir. I want to see them before I make any statement about them. It may be that we have no objection.

Mr. Kresel: I have not offered them at all. I just want the witness to identify them; then I shall show them to counsel.

A. I do identify them.

Mr. Kresel: If your Honor please——

The Court: Before you ask anything further, I want to make this general order. I make the order which I made a moment or two ago with respect to a particular question, a general order to apply to all questions asked by you or by counsel for the plaintiff. That will be applied to all questions unless modified at the time that the question is asked.

Mr. Anderson: Your Honor will permit me to just note an objection to these questions, of course, yielding to your Honor's order without the slightest hesitation, because I am a little embarrassed to know just what my duty is in the premises, and therefore I merely want to reserve the question so that I may not be in any sense criticised by my superiors for not making an objection on the record.

I recognize your Honor's power under the statute to order it. I am not questioning not only your power but the wisdom or the propriety in any sense. I merely want to note an objection to the end that the Government's position may be reserved for what it is worth.

THE COURT: I think that is proper, and that reminds me that it is probably wise that I should also state on the record my reasons for making the order; and that is that the witness has testified that he is an officer of the United States, and that in performing these duties he performed them in the service of the United States. The knowledge which was thus gained by him was open therefore to the United States. The United States is a party plaintiff in this suit. The United States has put on a witness, and so far as I can judge of the questions that you have asked, Mr. Kresel, and so far as I can anticipate the purpose of this examination, it is to impeach or to lessen the weight to be judicially given to the testimony of that witness heretofore produced by the United States.

It is solely because the United States is a party, under these particular and peculiar circumstances that I make the order that I now do. I would not consider the order in this case a precedent for a like order in a suit between private parties. It would be only a precedent in like cases in like circumstances.

MR. KRESEL: I offer in evidence a letter dated June 11, 1918, from Herman A. Metz to Dr. Julius Stieglitz.

THE COURT: And the purpose is what, Mr. Kresel?

MR. KRESEL: The purpose, your Honor, is to contradict and disprove testimony given by Mr. Metz. I think I might as well state it now so that your Honor will have it clearly in mind.

Your Honor will recall that one of the points that I sought to bring out from Mr. Metz was that notwithstanding he had sent his brother abroad, who had spent there four months in the factory of the Farbewerke-Hoechst Company trying to find out how to make arsphenamine, it took Metz a year and a half thereafter before he could produce the product. He denied that.

I showed him the agreement of June 8, 1918, wherein he was buying the services of Dr. Schamberg so as to tell him (Metz) how to make arsphenamine. He denied that and said that he never wanted that agreement, that his product was all right and that he did not need any assistance. And by the way, the latter testimony was brought out upon the re-direct of Mr. Metz and not upon the cross.

This testimony, this correspondence that I am now offering, and which I shall read to your Honor, if you will permit me, goes expressly to show the contrary of what Mr. Metz testified.

THE COURT: Let the instruments or the writings be marked.

Received in evidence and marked "Defendant's Exhibit No. 168." (*See Exhibits, Vol. V, page 2997.*)

MR. ANDERSON: Without interrupting the examination, your Honor, will you allow me to reserve the objections on all this evidence, making an addition to the general objections we are proceeding under the specific objections I have already made applying to this evidence, and permit me just to reserve that, because I confess I am facing a new situation and one as to which I do not know what my superiors in the Department of Justice would expect me to do. I therefore want to reserve all rights, without in any way undertaking to go against your Honor's rulings or undertaking to limit the facts, whatever they may be.

Mr. Kresel: I will offer these first, your Honor, and then I will read them consecutively.

I offer in evidence a letter from Mr. Metz to Dr. Stieglitz of June 21, 1918, together with the enclosure. May the letter be marked Exhibit 169 and the enclosure 169-A.

Received in evidence and marked, respectively, "Defendant's Exhibits Nos. 169 and 169-A." (*See Exhibits, Vol. pages 2999, 3000.*)

Mr. Kresel: I offer in evidence letter from Mr. Metz to Dr. Stieglitz, dated June 24, 1918, which will be Exhibit 170.

Received in evidence and marked "Defendant's Exhibit No. 170." (*See Exhibits, Vol. V, page 3002.*)

Mr. Kresel: I offer in evidence letter from Mr. Metz to Dr. Stieglitz, dated August 20, 1918, which will be Exhibit 171.

Received in evidence and marked "Defendant's Exhibit No. 171." (*See Exhibits, Vol. V, page 3003.*)

Mr. Kresel: I offer in evidence copy of a letter from Dr. Stieglitz to Mr. Metz, dated August 22, 1918.

Received in evidence and marked "Defendant's Exhibit No. 172." (*See Exhibits, Vol. V, page 3004.*)

Mr. Kresel: I offer copy of a letter from Dr. Stieglitz to Mr. Metz, dated January 3, 1919, as Exhibit 173.

Received in evidence and marked "Defendant's Exhibit No. 173." (*See Exhibits, Vol. V, page 3005.*)

Mr. Kresel: And, last, I offer a letter from Mr. Metz to Dr. Stieglitz, dated January 7, 1919, which will be Exhibit 174.

Received in evidence and marked "Defendant's Exhibit No. 174." (*See Exhibits, Vol. V, page 3006.*)

The Court: May I ask, the brother of Mr. Metz went abroad in the spring of 1916, as I recall it?

Mr. Kresel: The spring of 1916.

The Court: January to May, as I recall.

Mr. Kresel: No, your Honor, January to April.

The Court: Was it January to April?

Mr. Kresel: Yes, sir. The letter of June 11, 1918, reads as follows (Reads letter.)

Q. 86. Was Dr. Raizies of the Dermatological Laboratory?

A. He is their chemist.

Mr. Kresel: The letter of June 21, 1918, reads as follows (Reads letter.)

Here is the report from his brother. It is dated June 20, 1918, and addressed to Mr. Herman A. Metz. (Reads same.)

The Court: His brother was abroad in 1916?

Mr. Kresel: In 1916, sir. This report was June 20, 1918.

Q. 87. Who was Dr. McCoy?

A. He is Director of the Hygienic Laboratory.

Q. 88. United States Public Health Service?

A. Of the United States Public Health Service.

Mr. Kresel: On June 24th Mr. Metz writes to Professor Stieglitz as follows. (Reads letter.)

On the 20th of August, 1918, he writes to Dr. Stieglitz. (Reads letter.)

On January 3, 1919, Dr. Stieglitz writes to Mr. Metz as follows. (Reads letter.)

Q. 89. Takamine was one of the manufacturers of salvarsan?

A. It was.

Mr. Kresel: The answer to this last letter, from Mr. Metz, is as follows. (Reads letter.)

The Court: I am asking that those exhibits be kept in the safe by the clerk to avoid any danger of their being lost. There is no reflection on anyone, but I want them kept so there is no possibility of their being disturbed.

Q. 90. Professor Stieglitz, I am now going to repeat to you the question upon which the Court ruled some while ago. It is this: Without disclosing the exact steps or processes pursued by the manufacturers of arsphenamine whose plants you say you visited, I ask you to state whether your observation of their processes showed that any of them produced arsphenamine such as could be safely administered to a patient by following the steps described in Patent No. 986,148.

The Court: Do you want to make the same objection?

Mr. Anderson: Would your Honor permit me to note my objection, first, on the ground that it calls for a conclusion of the witness, and is therefore, I submit, not competent testimony; and in the second place, on the grounds which I stated at some length when this question was asked and to which I ask leave to refer without repeating them at this time, and that they be considered as made to this question.

The Court: The question as to whether it is a conclusion gives me some little concern. I have some doubts as to whether that objection may not be well taken; but let the answer be taken under our General Rule.

The Witness: I should answer?

THE COURT: The general order is that you answer all the questions, unless you are told not to answer a specific question.

MR. ANDERSON: And of course, an exception is noted in each case.

THE COURT: Yes, an exception noted in each case.

A. I would answer: Not without additional information not disclosed in the patent.

THE COURT: I want to add something to the general direction I gave to the clerk a moment ago. Those exhibits which were just put in may be as freely used by counsel for the parties as any other exhibit; but when they are in his custody, instead of being left open, they are to be kept in the safe. They are, however, freely open to counsel for the parties, and may be retained in their possession as long as counsel desire.

MR. ANDERSON: They will be printed in the record, as I understand it.

THE COURT: Yes. What I meant was, that special care should be used by the clerk with respect to those, but not so far as counsel is concerned.

Q. 91. I show you, Professor, letter dated March 14, 1919, signed Julius Stieglitz, professor of chemistry, and a memorandum accompanying the same, the letter being marked Defendant's Exhibit No. 47 and the memorandum 47-A; and I ask you to please state whether those are photostatic copies of the letter and memorandum that you sent to Mr. Palmer as Alien Property Custodian?

MR. ANDERSON: Our objection went to the fact, aside from the immateriality and irrelevancy, that at the time those letters were written Mr. Palmer was not Alien Property Custodian, because Mr. Garvan qualified on the fourth day of March. The authenticity of the papers is admitted under the stipulation.

Mr. Kresel: That is all right; I will withdraw the question.

A. This is addressed to the Attorney General, A. Mitchell Palmer, March 14th.

Q. 92. Did you on the 4th of March, 1919, have a conference with Mr. Palmer?

A. I did.

Q. 93. And was it subsequent to that conference and in connection therewith that you wrote that letter?

A. It was.

Mr. Kresel: That is all, Doctor.

Mr. Anderson: I would like to have the same objection apply to this testimony as to the testimony of Mr. Palmer on that question.

The Court: I assume that any objection you have heretofore stated to any testimony may be used by you in argument showing the invalidity or impropriety of the testimony.

Mr. Anderson: The time of adjournment is passed, and I suppose your Honor would rather we take up the cross-examination in the morning.

The Court: You have closed with Dr. Stieglitz, Mr. Kresel?

Mr. Kresel: I have closed. I had hoped that the Colonel would be able to finish with the witness because he is anxious to get back to Chicago.

Mr. Anderson: We have gone twenty minutes beyond the adjournment hour, and while I would like to accommodate the witness, I am really very tired.

I do not think it will take long in the morning, Doctor.

The Court: We will adjourn until 8.30 o'clock tomorrow, Standard time.

(Whereupon, at 3.20 o'clock, Standard Time, an adjournment was taken until Friday, July 13, 1923, at 8.30 o'clock, Standard Time.)

End

TRANSCRIPT

OF

RECORD

TWENTY-SIXTH DAY.

Wilmington, Delaware, July 13, 1923,
at 8.30 o'clock A. M. Standard Time.

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Kresel: May it please your Honor, if you will permit me, I should like to interrupt the examination of Professor Stieglitz to call a representative of the Tariff Commission, who is here, and who is very anxious to get back to his duties. It will take only a few minutes. Any objection, Colonel?

Mr. Anderson: Not at all.

Julius Stieglitz, resumed the witness stand.

Direct Examination (Continued).

By Mr. Kresel:

Q. 94. Professor Stieglitz, I omitted to ask you yesterday whether you had ever testified as an expert?

A. I have never before testified as an expert.

Q. 95. This is your first experience on the stand as an expert witness?

A. I have always declined to be consultant for commercial cases, and have only appeared in the public interest.

Q. 96. You spoke yesterday, Professor, of being able to demonstrate to the Court in a very brief space of time that you can take this essential element anilin and turn it either into a dye or into a war gas. How

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long would it take you to really show that to the Court?

A. I think about ten minutes. As I stated, the war gas is not one of the best. It is pungent enough, and if inhaled, we will all be sick of it. I prepared a little this morning and still feel it. The medicament is not one of the best, but it is a popular headache remedy. The dye is not one of the best. It is not very stable, though I have some on my finger here. But they have the advantage of being able to be produced speedily. So that if a demonstration is wanted, I could carry it out.

Mr. Kresel: I do not want to impose upon the Court.

The Court: I should be very glad to see a demonstration. You have no objection, Colonel Anderson, have you?

Mr. Anderson: No, I am perfectly willing to admit all that the demonstration will show on the record, but I will be very glad to see it as a diversion from the strain of the trial.

(Witness makes demonstration at this point.)

The Witness: Your Honor, that is what we call anilin, one of the common basic materials in the dye industry, for the preparation of explosives, stink gases or tear gases, and it can be used for the preparation of medicaments. I will first convert it into a stink gas.

Q. 97. Would you mind saying what you are doing with it, as you are doing it?

A. I am adding to this what we call alcoholic potash solution and a little chloroform. If you want to inhale a little of it, just blow it toward you. Do not put it close to the nose, because it is rather powerful. Take hold of it up here because it is too hot. May I pass it to you, Judge?

The Court: Yes.

The Witness: Just blow a little toward you. Colonel Anderson, would you take a little?

Mr. Anderson: No, thank you. I have been through it. I don't want to try it any more. I know what it is.

The Witness: I think it had better be taken out of the room now.

Mr. Knight: It does not seem bad enough to win a war.

The Witness: It is a stink gas, and I say, with time, we can make worse, Mr. Knight. These are chosen on account of the speed of illustration.

The second experiment will show how we can use the same material for the preparation of a medicament, acetanilid.

By Mr. Kresel:

Q. 98. Used for what purpose?

A. It is a popular headache remedy; not one I would recommend, but extensively used.

I will mix it with some acetylchloride, as we call it. The reaction is a rather violent one. You see, it is taking place already, by the gases. The solution is hot and the acetanilid is in solution. You can see the solid, though, on the sides of the vessel here, and when that cools we will have the crystallized acetanilid. (Exhibiting test tube and contents.)

Now, the third experiment I would make is the use of the aniline to produce a dye—not one that would make a man wealthy, but one that is quickly produced. I will take a single drop of it, and will add to it a solution of chloride of iron. Here is a dye. (Exhibiting test tube and contents.)

I think that is sufficient.

Cross-Examination.

By Mr. Anderson:

XQ. 99. Dr. Stieglitz, you became a member of an Advisory Committee of The Chemical Foundation in 1919, did you not, on pharmaceuticals and licensing?

A. I did. When The Chemical Foundation took over the patents, I asked at that time the Alien Property Custodian, Mr. Palmer, to keep up the protection of the quality and price of arsphenamine that had been granted to it by the Federal Trade Commission, and asked him to recommend to Mr. Garvan that this protection be still continued in the care of the United States Public Health Service, and as a result The Chemical Foundation asked us to act as an Advisory Committee—Dr. McCoy, Mr. Edward S. Rogers, of the Federal Trade Commission, and myself.

XQ. 100. I hand you copy of a letter dated May 3, 1919, from yourself to Mr. Garvan. You recall that letter, do you not?

A. Yes.

XQ. 101. And a letter dated May 9, 1919, from Mr. Garvan to you in reply?

A. Yes.

> Mr. Anderson: Mr. Kresel, the second letter has not Mr. Garvan's signature. You will not object to that, will you?
>
> Mr. Kresel: Probably not; let me see it.

XQ. 102. While counsel are examining these letters; who was Mr. Edward S. Rogers? You say he was a representative of the Federal Trade Commission?

A. He was one of the lawyers of the Federal Trade Commission.

XQ. 103. And Dr. McCoy, I think you testified, was the head of the United States Public Health Service?

A. No, he is director. He is not the head of the Public Health Service; he is Director of the Hygienic Laboratories of the U. S. Public Health Service.

XQ. 104. Is that committee still continuing?

A. It has not been active, I imagine, since 1919.

XQ. 105. Since 1919?

A. It only acted for about a year, as I understand.

XQ. 106. About a year?

A. Yes.

XQ. 107. I note from these letters, to which you can refer if you wish to refresh your memory, that the committee was to advise as to the granting of licenses covering the manufacture of pharmaceuticals. That was your understanding, was it not?

A. Yes.

XQ. 108. And in this letter of May 3d you did recommend the licensing of Mallinckrodt?

A. Mallinckrodt and Squibs, I believe.

XQ. 109. Of St. Louis?

A. Yes.

MR. ANDERSON: I would ask leave to introduce in evidence the letter that has been identified by the witness, dated May 3, 1919, addressed to Francis P. Garvan and signed by Dr. Stieglitz, to be read as Plaintiff's Exhibit No. 640.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 640." (*See Exhibits, Vol. III, page 1549.*)

MR. ANDERSON: I ask leave to introduce in evidence the letter of May 9, 1919, addressed to Dr. Stieglitz and signed by Mr. Garvan.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 641." (*See Exhibits, Vol. III, page 1551.*)

XQ. 110. Doctor, have you had any other connection with The Chemical Foundation since its organization?

A. I was one of a group of nine, I believe, scientific men who prepared for the Foundation the pamphlet called The Future Independence and Progress of American Medicine in the Age of Chemistry. I have other copies in Chicago. I would not like to give this up.

Mr. Kresel: There is a copy here marked for identification, so that can be used.

The Witness: The men are named on the first page.

Mr. Kresel: We put that in. That was put in by me under Mr. Garvan's examination.

XQ. 111. That was prepared by you and the other gentlemen named for The Chemcial Foundation?

A. For The Chemical Foundation.

XQ. 112. It was published by The Chemical Foundation and distributed by them?

A. It was.

XQ. 113. I do not wish to ask any personal questions, but is that the book you spoke of yesterday and stated that they still owe you for?

A. Yes.

The Court: I did not hear that question.

Mr. Anderson: He mentioned it in connection with the question of his financial interest in The Chemical Foundation.

The Witness: May I make a statement, Colonel?

XQ. 114. I have no objection to your making a statement now on that subject.

A. A conference was held in New York at which Mr. Garvan said that it was exceedingly important to educate the public in regard to the connection between chemistry and medicine, and it was stated at the time by myself and others that the scientific men would be glad to contribute their services without compensation. But Mr. Garvan insisted that it would take quite a little time, he wanted a thorough piece of work, and he thought it was only fair that the men doing that work should receive compensation.

XQ. 115. I am very glad to get that statement. You said you wrote the preface to the book called "Creative Chemistry," which has been introduced here as one of the books distributed by The Chemical Foundation.

A. It was published as an article by The Independent, I think, under a title something like Chemistry and the Life of the Nation. I wrote that.

XQ. 116. You wrote it?

A. I wrote that.

XQ. 117. I believe that you said, Doctor, that you had no present connection with The Chemical Foundation other than you have indicated?

A. Not that I am aware of.

XQ. 118. Do you practice your profession as a consulting chemist? I did not quite understand what you said.

A. I have persistently for thirty years declined to be a consulting chemist.

XQ. 119. I did not get that clear.

A. I only serve in the public service.

XQ. 120. Your work is that of a professor of chemistry and laboratory work then, altogether, is it not?

A. Yes, especially research training and research work, and carrying out of my own research work.

XQ. 121. I understand. You do not deal with the industrial phases of the subject at all, except to the extent necessary to instruct your people, and to carry that forward; is that true?

A. Only to the extent that the fundamentals of industry are theoretical sciences.

XQ. 122. I understand. Now, Doctor, you spoke yesterday of research work in the development of these various medical pharmaceutical products. Is it not a fact that in chemistry, a certain amount of actual and practical experience in the production of any product or the application of any process, is necessary to develop it?

A. It is to this extent, Colonel—one of the most famous organic chemists in the history of the subject was my old instructor, Hofmann, a German, and he said the first time you do something, you get a poor result; the second time it will be better, and the third time you should be sure. That is correct now.

XQ. 123. And very often in these very complicated chemical reactions, it takes quite a good deal of experimentation to develop a satisfactory product, does it not?

A. If the instructions are definite, we should at the third trial get perfect results in synthetic chemistry.

XQ. 124. That brings up another question, I suppose, the human factor in chemistry is as variable as it is in other lines of business, is it not-

A. Certainly.

XQ. 125. One chemist will get results where another chemist will not, working along the same lines; is that not true?

A. I am referring to the average good chemist, not to the exceptionally good or exceptionally poor chemist.

XQ. 126. I understand; but even the same chemist, using what he thinks to be the same ingredients or intermediates, very often gets different reactions, does he not?

A. Well, he might the first time, but if he has any keen flair and turn for chemistry, he would do better the second time, and should solve his problem every third time, for known reactions for which the instructions are given.

XQ. 127. Are not the reactions also largely affected by the intermediates used, or ingredients?

A. Certainly.

XQ. 128. In other words, a slight variation in the ingredient or intermediate, such as you used in your very interesting experiment a few moments ago, might very much affect the technical result, would it not?

A. Quite right, but may I add that it is part of the chemist's duty to identify and make sure of his material.

XQ. 129. Yes. Now, taking the subject of development of these processes; is it not a fact, Doctor, that you are constantly improving and developing the quality and clinical value of medical products of that kind by experimentation?

A. I would not say that. You are referring to not new products, but standard products.

XQ. 130. I am referring to products such as salvarsan, novocain, luminal, things of that kind?

A. Yes.

XQ. 131. That you are constantly improving the standard and clinical value of these products, are you not?

A. I think that is a question of each individual. For instance, novocain or procaino can be prepared pure. We have made no progress in preparing it purer than pure.

XQ. 132. You spoke of Dr. Hofmann, your old instructor. He was one of the greatest chemists of his time, was he not?

A. He is one of the founders of modern organic chemistry.

XQ. 133. Doctor, you appeared before the Senate Committee on Finance in a hearing on what we have defined as House Bill 8078. You recall that?

A. I did. I recall that.

XQ. 134. At page 54 of that hearing, I read from your statement the following, which will save me the trouble of a number of questions, perhaps:

> "Now, I want to make two points, to draw two lessons from our experience with synthetic drugs. The first is this: It is only a question of time until we can succeed in solving all the intricate problems connected with any compound whatsoever, whether it is a drug or a dye. Probably it would take only two years with any individual dye, which would be my estimate, to produce it in quantity so that we could even export it. The difficulty with the manufacture of dyes is that there are not half a dozen dyes, as there are essential drugs, but a large number. They cannot take hold of them all at the same time; they must solve one problem after another. But, taking up one problem after the other, I think it is probably a matter of only two, or perhaps three, years on an average before production on a commercial scale can be successful."

That is a pretty accurate and complete statement of the problem, is it not?

A. That would be my judgment of the matter.

XQ. 135 You spoke on yesterday of your experience in making luminal, I think, in 1917, did you not?

A. I did. I have my report, Colonel, if I may take it. I can give you the exact date. The work was done with a Dr. Mary Rising, and the report was published in January, 1920, in the Journal of the American Chemical Society.

XQ. 136. Before asking you about luminal, in connection with my inquiry as to the process of development, if I might call it, of commercial or industrial production, I would like to read you one other statement which you made at page 57 in regard to rhodamine B, one of the famous dyes, as you stated.

There, you were quoted as saying, in reply to a question by Senator Curtis, "You do not think there is any doubt about that," referring to the power of the United States to make it or the ability of the United States to make it:

"I have not the least doubt about the result, because we have already been successful with other dyes and with drugs. It is only a question of time when, instead of getting a yield, say, of one-tenth of 1 per cent., we will get a yield of 90 per cent. That makes a difference of 900 fold, you see. If you get a yield of one-tenth of 1 per cent. instead of 90 per cent. the cost of the commodity is 900 times as great. We are continually improving the yields."

That is true in your chemical development?

A. That is essentially the history of commercial development.

XQ. 137. With respect to luminal, returning to that subject, you make this statement, which I read you merely because it abbreviates asking a lot of questions, at page 57. "That was the one drug which we were not prepared to make"——

Mr. Kresel: Just a minute, Colonel, won't you read so as to connect it up, the two preceding paragraphs beginning "I could give you one other instance if you have the time"? There is where he starts talking about luminal.

Mr. Anderson: Yes, I have no objection to reading it. I only want to get Dr. Stieglitz's statement; I do not want Senator Watson's views, or those of anybody else; but I am perfectly willing to read it.

XQ. 137. (Continued.) You spoke of luminal, and Senator Watson asked: "Is that a successful specific, Doctor?" And you said, "Yes."

A. Specific for epilepsy.

XQ. 138. Yes, you spoke of luminal as a remedy for epilepsy.

A. To prevent seizures in epilepsy.

XQ. 139. Yes, to prevent seizures in epilepsy, you testified to that on yesterday. And Senator Watson asked, "Is that a successful specific, Doctor?" And you said: "Yes. The pathetic letters on file in my office in connection with luminal are even more heartrending, perhaps, than those in connection with the other drugs.

That was the one drug which we were not prepared to make at the end of 1917. So we took it up at the University of Chicago, tried the process described in the patent, and got just enough to look at it; not enough to send to a single patient for treatment for epilepsy. So my assistant, Miss Rising, set about modifying the method, and we very quickly developed a method—within six or seven weeks—which gave yields in excellent quantity, avoiding everything that was expensive and difficult, and we put the process at the disposal of any manufacturer who wanted to use it. Luminal is now made in this country."

That is correct, is it not?

A. When was this?

XQ. 140. This was in 1919-1920. That is a correct statement, is it not?

A. I would like to state that luminal, while it was made in this country, was not put on the market, as far as I know, until a little later. You see, the commercial development lags behind the laboratory development. I was very much disappointed; but as far as I recollect, Colonel, it may have been a little later than 1920.

XQ. 141. Luminal was, in fact, a patented drug, was it not?

A. Luminal was a product patent, and claimed, during the war, to be the property of the American concern.

XQ. 142. Yes.

A. And for that reason——

XQ. 143. That is all, Doctor. I do not want to go into the history of it. I only wanted to ask you if it was a patented drug; that is all.

A. Yes.

XQ. 144. As I understand, in the production of luminal in your original laboratory experiment following the processes of the patent, it did not give you a satisfactory yield?

A. Yes.

XQ. 145. You got luminal, but you did not get enough to make it a satisfactory or commercial yield?

A. Exactly. May I add a word in explanation, Colonel? And that is, in the latter technical development of luminal, which was undertaken by Merck, they tried method after method, and finally——

XQ. 146. One minute, Doctor. I know you have said you have never been on the stand before as an expert. If we go into the methods of other companies, it immediately opens up a field that I do not care to open up; and therefore, while I do not mean that I would not like to have your explanation, such an explanation opens up matters that we probably would not be permitted to go into, and so I would rather not have you go beyond the question if you can do it

A. I merely wanted to say they adopted this method.

XQ. 147. Yes, that is all right. As long as you can fairly answer the question without going into matters that might open up a new field of examination, I would prefer to have you do so.

Now, coming to the question of salvarsan, I also read from your statement before the Committee, to which I have already referred, at the Hearing on H. R. 8078, page 51. I read the following from your opening statement:

> "Even before we started in the war importations were prevented, and the demand was so

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enormous that for a time absolutely fancy prices were paid for the drug."

You were speaking of salvarsan.

> "As soon as it was seen that there would be such a shortage some of the research chemists of the country started preparing arsphenamine, and the results at first, following the patent specifications, were so poor that some of these men thought of appearing in court to have the patents annulled, stating that the product could not be prepared according to the patent specifications. That was wrong; one can prepare arsphenamine according to patent specifications, but just about enough to look at, not enough to use. It is altogether a question of yield."

Is that a correct statement of the experience at that time?

A. It is also a question of toxicity, Colonel, a question of toxicity; its poisonous character.

XQ. 148. Did you, in fact, prepare any salvarsan under the patent yourself?

A. I had two assistants, Colonel, and I would like to explain just what we did, because it is a vital question.

We entered into this work in May, 1918, on demand of the Public Health Service to meet a serious war emergency in which very serious results had been obtained in the use of a product supplied to the Army; so that we had advance information that the product produced was liable to be exceedingly poisonous. We knew that this company had not only the patent specifications, but specific instructions from the manufacturing house in Europe, and for that reason I and my assistants——

XQ. 149. One moment, Doctor.

Mr. Anderson: If the Court please, I want to get the facts, and I do not wish to be arbitrary in limiting Dr. Stieglitz to specific answers to questions; but, of course, this is very far removed from my question and is going into a subject which I do not think, as I now see it, I would probably be allowed to go into on your Honor's rulings. I know Dr. Stieglitz does not understand these technical questions. I am constrained, therefore, to ask that the answer be stricken out and that Dr. Stieglitz be directed to make a specific reply. I will try to be fair in my examination, in order that he may give the essential facts of his experience.

The Witness: Your Honor, before you rule, may I explain we followed the patent specifications with improvements.

Mr. Kresel: Will your Honor hear me just a minute?

The Court: Yes.

Mr. Kresel: I do not understand what ruling of your Honor it is to which Colonel Anderson refers, which would prevent him from going into this subject. I do not understand that there is any such ruling.

Mr. Anderson: In any event, I shall not go into that discussion now of your Honor's rulings. With your Honor's permission, I will merely move, with all possible deference to Dr. Stieglitz, because we are dealing with technical questions, that the answer be stricken out, and the question reread and that he answer the question.

Mr. Kresel: Your Honor, we object to striking it out, because it was an answer given with the consent of Colonel Anderson.

Mr. Anderson: Not at all.

Mr. Kresel: The witness said, "May I explain?" and Colonel Anderson did not say that he might not explain, and then he went on.

Mr. Anderson: I could not very well tell whether he was going to answer directly in explanation.

The Court: If, Mr. Kresel, in re-direct you desire to put any questions, I will rule on them then; but under the rules of evidence, as I understand them, I think Colonel Anderson's deference to the witness should not place him in an embarrassing position; so I am going to grant the motion. Will you restate the question?

XQ. 149. The question I asked, Doctor, was if you had personally prepared any salvarsan or undertaken to prepare salvarsan or produce it under the process named in the patent?

The Court: And not the reasons for it, Colonel Anderson.

Mr. Anderson: Just whether you have or have not.

The Court: Does that embrace the two assistants to whom he testified? That is, if they were under his immediate supervision or not. I think Dr. Stieglitz is entitled to know that.

Mr. Anderson: I will first ask him to answer, and if he says he did not do it personally but had two of his assistants do it under his supervision, then I might follow that further.

A. Not personally.

XQ. 150. In the statement which I read from your testimony before the Committee you refer to arsphenamine. Is not arsphenamine the American name for salvarsan, and are they not the same drug?

A. It is the official name adopted by the Federal Trade Commission for salvarsan. They are the same drugs.

XQ. 151. Yes; it means the same thing. Doctor, I believe you say you were adviser to the Federal Trade Commission in the issuing of licenses to manufacturers of drugs and pharmaceuticals during the war under alien patents?

A. Yes.

XQ. 152. I think you testified that you did, in fact, advise the issuing of four or five licenses; is that so? You need not name them, because they are already in the record.

A. In the early days I think I can remember three. There were later more.

XQ. 153. Two more?

A. Two more.

XQ. 154. Yes, sir; that is my recollection. Do you know whether or not all of those licenses are still manufacturing salvarsan or arsphenamine?

A. As far as I am aware the Takamine Company, which got a license later, withdrew from the field, but I am not certain of the fact.

XQ. 155. But the others, other than the Takamine, are, in fact, manufacturing now?

A. As far as I know, Colonel.

XQ. 156. And they were, in fact, manufacturing late in 1918 and 1919, were they not—say January, 1919, for convenience?

A. Yes.

XQ. 157. They were?

A. They were.

XQ. 158. Do you know whether those manufacturers operating under Federal Trade Commission licenses issued on your advice are selling their product in the United States under label stating that it is so manufactured?

A. At present I could not tell, Colonel. I have had nothing brought to my attention, I imagine, for two years. The manufacturing is organized now, and they do not need my help in regard to arsphenamine.

XQ. 159. In 1919, however, when you were

XQ. 165. Cannot be purified?

A. It is pure or it is not.

XQ. 166. I see. You continued, however, to have the production of salvarsan or arsphenamine go on during the years 1918, 1919, under the licenses issued by the Federal Trade Commission, under patent No. 986,148; is that true?

A. That is true.

The Court: I am not just sure that I understand that question and answer. I am not suggesting anything further than that fact——

Mr. Anderson: Does your Honor wish to say something more?

The Court: No, because I think you understand what I mean without my making any further suggestions. If you do not, I will be very glad to go into it.

XQ. 167. Doctor, yesterday you were asked about making salvarsan under this process defined in that Patent No. 986,148, and you said that that required additional information, as I recall your answer.

A. The question included the statement that it should be sufficiently non-toxic to be used on human beings.

XQ. 168. Now, you said, with the aid of two of your assistants, under your direction, you made this product in your laboratory; is that true?

A. That is true.

XQ. 169. I would ask you, Doctor, if you would take the patent process and tell us exactly how far the patent process was followed and what additional thing was done or information developed in it; in other words, to the extent of the variation or addition, if you can define it. You understand my question, do you not?

A. I do.

XQ. 170. Following the process down?

A. In the procedure of preparing sodium para-oxyphenylarsinate, we were a little more careful than the patent specifies, and worked at lower temperatures, a little lower temperatures.

XQ. 171. At little lower temperatures?

A. And then the critical question came——

XQ. 172. Would you mind me interrupting you there?

A. Yes.

XQ. 173. What temperature is provided in the patent, and what temperature did you use?

A. It says in the patent the temperature should not rise over zero degrees, and finally it is allowed to rise to about ten degrees. Well, we started, as far as I recollect, and I can find that in a minute, at eight below zero the internal temperature was never below minus eight my report shows.

MR. KNIGHT: You are speaking of centigrade, Professor?

THE WITNESS: Centigrade always. That was, I should consider not a very important modification, Colonel, a modification for safety, and then the critical question comes on which this whole thing hinges. The patent is absolutely silent in regard to the fact that we must start with pure nitro-oxyphenylarsinic acid. That is where the trouble originated, at that point, and I am quite scientifically certain in connection with these toxic preparations which led to the most serious results, results which are known to counsel. There we had to introduce what I consider essential improvements, and that is the preparation at this stage of a pure re-purified product.

It is the common experience that in manufacturing we need not stop to make perfectly pure products. We can purify the final product, and, when an exceptional case occurs, as in this instance, a case, too, where, if that is done, the injection into the veins can lead to death, then in my scientific judgment, not as a patent chemist, but just as a chemist, and as a man, I think the patent should specify that the greatest precaution should be taken to get the pure product at this stage.

XQ. 174. Would you read to me exactly what the provision of the patent is with respect to that particular intermediate?

A. It tells you how to prepare it. I will go on from this point, line 47:

> "The nitrooxyphenylarsinic acid which crystallizes slowly from the solution may be filtered off. It forms a yellowish-white crystalline powder. This nitro-oxyphenylarsinic acid is pretty readily soluble in hot water, but difficulty soluble in cold water, readily soluble in alcohol, acetone or glacial acetic acid. Its alkaline salts, which are readily soluble in water, are of a high-yellow color; it decomposes when heated."

Then it goes on to describe how that should be used, and there is not a syllable warning the man who wants to make arsphenamine for use on the human being that he has got to purify his product at this stage and start with pure material; because later on there is no chance for purification. When we try to purify the final product, it grows worse; and I have figures on that, Colonel, on everything I state here.

XQ. 175. I am not questioning your statement. We have the distinction that you draw, first that you used a little lower temperature than that prescribed in the patent; is that right?

A. That is correct, and to purify the product.

XQ. 176. Second, you use a pure, what is the name of the drug?

witness that he is not restricted, that he may tell the facts.

The Court: Yes, with this exception. The order made yesterday was general and applied to cross-examination as well as direct examination, with this exception. If the Government should happen to want—I do not know whether it will or not—testimony from this witness on the record with respect to the secret trade processes of any of the manufacturers making the product, the Government may examine him in chambers, taking with it any Government official that it likes, without restriction, for the reason that the information that Dr. Stieglitz has is in part Government information, and so far as I know, may be disclosed to such Government officials as the Attorney General.

Mr. Kresel: I think that is quite clear.

The Court: So that that may be gone into, if you desire. I am not suggesting that you do or do not, but in the event it comes to trade secrets, I deem it my duty to protect trade secrets, so far as I can do so, without detriment to the Government's case or the defendant's case.

Mr. Kresel: The present question, however, does not touch trade secrets. As I understand, the witness desires to give certain information showing the effect of an application of salvarsan produced according to the patent, and salvarsan produced with the modifications and corrections that the Professor has mentioned. I understand that he thinks he has not a right to do that and therefore suggests that we go into chambers where he can divulge that information. Now I say, your Honor, that the witness should be made to understand that he may give the facts as to that.

Mr. Anderson: May I be heard on that, sir?

The Court: Yes.

Mr. Anderson: If your Honor please, I have carefully this morning, and for a purpose, limited my examination of Dr. Stieglitz to his personal knowledge gained in his laboratory. I limited it even to his knowledge as a laboratory chemist.

He stated that he had two assistants in his laboratory. In view of his statement yesterday that he was perfectly willing to give his actual laboratory experience, after a little consideration I determined to go into his experience in the laboratory. And I think Dr. Stieglitz understood that I limited my question absolutely to his laboratory experience. If your Honor will permit me just to go on, to answer counsel.

The Court: I will.

Mr. Anderson: I am not at this stage asking Dr. Stieglitz anything that was done by any manufacturer of salvarsan in the United States or any man engaged in trade in the United States.

The Witness: Colonel, you do not understand that I did research work in Chicago on the processes, my own research work on the processes used by these people.

Mr. Anderson: I do not understand that, and I do not wish to ask that question. Because I understood yesterday Dr. Stieglitz said he did certain work in the manufacture of salvarsan, and it was on that information of his work, not in any way connected with these laboratories, as I understood it, that I was asking the information. If it is connected with these laboratories, as I understand my instructions I am not going to ask about it, as official information, and in the second place I am presently going to bring this second question up, to the end that I may understand exactly what I can go to; but I am not inquiring into anything you did for the laboratories or the manufacturers of salvarsan.

The Court: But if I understand the situation, Colonel Anderson—well, I do not recall at the moment what your precise question was, and probably I better get that before I make any statement.

(XQ. 179 and the answer read as recorded above.)

The Court: I am not sure that I have the question clear yet. Can you state it, Colonel Anderson? Do you happen to recall it?

Mr. Kresel: The stenographer can read it.

(XQ. 175 to XQ. 179, with the answers, read as recorded.)

Mr. Anderson: If your Honor please, my position is perfectly clear. I was asking Dr. Stieglitz about his personal experience. If I misunderstood Dr. Stieglitz yesterday I would like permission to turn to the record and show his answer on which I was proceeding into this inquiry.

The Court: I am going to let you go ahead as you desire, Colonel Anderson, but there are two questions I am going to ask unless they are asked on one side or the other, and those are the two questions I indicated awhile ago. I have no objection to asking them now or when you are through. I will ask them now so you can cross-examine with respect to them, if you wish, but I feel it is my duty to have it brought out here whether or not those persons skilled in the art in America would understand from this patent that only the intermediate pure to the extent described by Dr. Stieglitz would be understood as being called for by the patent, by any person skilled in the art in this country; and, second, the difference in effect of the product of the patent when using a pure intermediate and one that is not pure.

Mr. Kresel: That is, the difference on a patient.

The Court: The difference on the patient, yes. You can consider those questions asked by me now and have them answered, or you may proceed with your cross-examination.

Mr. Anderson: Of course, to the second question I would have no objection. To the first question, if it were asked by counsel, I would feel constrained to object.

The Court: I assume, Colonel Anderson, that you will not hesitate to object.

Mr. Anderson: Subject to that condition.

The Court: I hope you will not hesitate to object to questions I ask; but it seems to me they are the vital points with respect to the salvarsan patent and I do not want to miss the opportunity of having this witness give me his views with respect to those two matters.

Mr. Anderson: Will your Honor now just consider those questions asked and permit Dr. Stieglitz to answer your Honor's questions subject to objection?

The Court: Yes, now or when you are through.

Mr. Anderson: Now would be a good time. I have no objection to having it done now.

The Court: You stated if they were asked by counsel you would have an objection. Will you state your objection?

Mr. Anderson: On the first question, sir, I think that Dr. Stieglitz can state what he used in reply to question by counsel, he can state what the patent says and what he did, but as to whether the patent is capable of construction requiring a certain use or not a certain use, a certain process or not a certain process, is purely a question for judicial determination in the light of those two facts, and I do not think that the question which your Honor suggests, if put by counsel, would be a legal question. Therefore I feel constrained to object.

THE COURT: If it goes to a question of construction and if that is involved, of course I would not be bound by the answer, and would have to determine that from a legal standpoint rather than from the standpoint of a person skilled in the art. You may reserve that objection. But we can cure the defect, if there is one, later if we take it; we cannot cure it if we fail to take it.

MR. ANDERSON: Subject to that objection, may I ask the stenographer to read to Dr. Stieglitz your two questions in their order, or you put them, if your Honor would prefer, of course, to the end that they may be answered now, because this is an appropriate place.

THE COURT: Do you understand the two things that I had in mind, Dr. Stieglitz?

THE WITNESS: I do, yes, sir.

THE COURT: Would you be good enough to tell us, then, at this point what the answers are to those two inquiries?

THE WITNESS: An expert chemist trying to use this patented process would find the essential lacking matter in the course of time.. How long it would take is shown by the fact that in 1918 in practice this essential fact was overlooked in material sent out to the public by——

MR. ANDERSON: One moment. If your Honor please, I feel constrained to ask that the answer be limited to a fair reply to your Honor's question. I know Dr. Stieglitz does not mean it, but I assume he does not understand these technical rules.

Mr. Kresel: I am not waiving the right to have the evidence, but for the present I will consent that Dr. Stieglitz do not state by whom it was done.

The Court: Counsel, if I understand, make this suggestion, Dr. Stieglitz, that in answering those questions they prefer that you do not give me facts, but give me such information as you would have as an expert solely in replying to those questions. Can you do that?

The Witness: Your Honor, there are experts and experts. I in my twenty-five years of experience saw the difficulty after trial and study, but the fact is, the experience is that—I beg your pardon. I really would like to speak freely in camera before your Honor and to counsel.

The Court: By shaking my head, I did not mean that. I was just thinking you are not the person meant by patent law as one skilled in the art; it is an entirely different type of person, Doctor. So if you will give me your experience and the time it required you to discover that, that may be a guide to the other matter.

The Witness: It took me and my assistants about five months, your Honor, to prepare a product which passed 100 per cent. perfect.

By The Court:

Q. 180. What is the difference in effect upon the patient in the use of a product prepared by the use of a pure intermediate?

A. As a matter of fact, it can range all the way from a curative agent to death.

By Mr. Anderson:

XQ. 181. Doctor, in the questions which I am now going to ask you I wish you would distinguish very clearly between any work which you did in your laboratory for development of processes to be used by the various producers and work which you did in your laboratory of independent or experimental character for the development of the process yourself. Is there such a distinction between your work?

A. I think it was all done with the effort to help them.

XQ. 182. Yes; but was it done in testing out their processes, or was it done on your individual and independent initiative?

A. It was done on my initiative, so I would be prepared to advise them as an expert.

XQ. 183. But what you have been telling me did not come within your knowledge as a result of your acting for them or in an effort to develop their processes, but it was your independent process with a view to advising them; am I right about that? Do I make myself clear?

A. If you care to, you may have my answer stricken from the record; I only want to help you.

XQ. 184. I know you do.

A. But what I did was to use only my own acids and to secure from the manufacturers their acids, and go on to the product.

XQ. 185. Can you distinguish between the two?

A. Yes, my records distinguish between them.

XQ. 186. I mean, could you answer questions here which related only to your acids and did not involve theirs in any way?

A. Yes, I could do that.

XQ. 187. Because I want to reserve that question to take up in a different way. I do not want to go into anything that affected any of the licensees of the Federal Trade Commission, or which would disclose any of their business or their trade secrets; but I want to confine my inquiry absolutely to your own independent laboratory experience; and if you cannot answer with that limitation, then just say so and I will not press the question.

With that understanding I would ask you what was the test in 1918 prescribed by the United States Public Health Service for salvarsan?

A. In 1918, I believe it started with 50 milligrams injected into a white rat; 50 milligrams per kilo of white rat. That is the test.

XQ. 188. What was the percentage of perfection required; if you can state it that way; I do not know whether you can.

A. I really could not recall. I believe out of five white rats they allowed one or two to die, but I could not recall that.

XQ. 189. In that event, if out of five white rats two died, it would be what you might call 60 per cent. perfect, would it not?

A. The allowance, Colonel, was made in order to take into account the resistance of a white rat to toxicity.

XQ. 190. Of course, that applies to all animal life.

A. But I am not a zoologist or a bacteriologist. That was done in the Public Health Service.

XQ. 191. You stated in reply to a question of his Honor that it took you five months to produce a product 100 per cent. perfect. What I want to know is how long it took you to produce a product which would then pass the test of the United States Public Health Service?

A. Colonel, my record shows that after five months we sent out a lot to the Hygienic Laboratory for testing and they put the test as high as 120, which is, I believe, the test today, which means safety for human beings; when five rats were injected, the mortality was zero.

XQ. 192. Nil?

A. Nil.

XQ. 193. Now, at that time, the United States Public Health Service had a standard below which this stuff was not allowed to be used, had it not; it did have such a standard?

A. It did.

XQ. 194. That standard did not require 100 per cent. perfection, did it, at that time?

A. It required, as far as I can judge, that the thing should be safe for human beings.

XQ. 195. Yes.

A. But it did allow a certain percentage of loss in the white rats.

XQ. 196. Of course, I do not imagine that the Public Health Service would allow the use of a medicine which was not safe for human beings. What I am trying to get at is what was the standard, the percentage standard which they put as their standard; I understood you to say it was either one or two out of five, and you do not recall?

A. I could not answer with any definite knowledge, Colonel.

XQ. 197. All right. Now, Doctor Stieglitz, have you pointed out the distinctions between the process as employed by you in making stuff 100 per cent. perfect and the process defined in the patent to its conclusion?

A. I have not.

XQ. 198. Would you kindly do so.

A. I have merely emphasized the importance of purification at the point where the final preparation of arsphenamine takes place.

XQ. 199. Yes. Now, would you go ahead and state what, if any, other elements entered into the process which you personally employed, not the manufacturers, we are not dealing with them, as distinct from that in the patent?

A. I would like to summarize first the net result in a few words, which I am sure you would appreciate, and that was we found it necessary to exclude air in the drying of what we call the base, and we found it necessary to exclude moisture. Let me say we found it highly desirable to exclude moisture in the preparation of the so-called hydrochloride from the free base. That will summarize what we found we had to do, which is not emphasized or stated in this basic patent. Do you want the details, Colonel?

XQ. 200. No. I think as far as my knowledge of the subject goes, which is a limited knowledge, that is all I want.

The Court: Do you object to his stating the reasons for that, because I do not know whether that is purely a mechanical reason, concerning the impurity of the product, or whether it is a matter of practice, and if it is necessary to exclude that.

XQ. 201. You heard his Honor's statement. Would you answer his Honor's suggestion.

A. One great source of toxicity of arsphenamine is that the free base is sensitive to oxidation, and the product of oxidation is exceedingly poisonous. We have got to prevent its formation.

The Court: And that is the reason for excluding air?

The Witness: And that is the reason for excluding air. And the second question asked by your Honor in regard to the reason for reducing the amount of moisture is that we found in the presence of water, we would get a kind of colloidal, sticky material which did not dissolve readily and might on injection cause the results introduced by solid particles.

XQ. 202. Now, the danger of oxidation of a product of that character was a matter known to those skilled in the art, was it not?

A. It was a matter that should have been known.

XQ. 203. To all skilled in the art?

A. Yes.

XQ. 204. And also the importance of the elimination of moisture was a matter that should have been known to those skilled in the art, was it not?

A. I am not sure of that, Colonel, I think not.

XQ. 205. You found that then by actual experiment to be a desirable thing?

A. A desirable thing.

XQ. 206. Now, Doctor, you have now, as I understand, pointed out what, from your experience and your assistants of course working with you, in an independent inquiry of your own, the distinctions which you deemed necessary in the production of this product to the high degree of perfection which you have indicated, as between your process of development and that contained in the basic patent to which you refer; is that true?

A. I have given the basis for my answer, Colonel Anderson.

XQ. 207. That is the same thing in effect?

A. That is the same thing.

THE COURT: There is one other fact that I should like to know, Colonel Anderson, whenever you find it convenient, and that is this: Whether Dr. Stieglitz is familiar with the product that was imported prior to the American time of manufacture, and what its effect was upon the patient. It may indicate something to a witness of technical skill between the German and American product, or it may indicate something else, and I should like to know it.

XQ. 208. You heard his Honor's question?

A. I had occasion to examine the product. None was sent to this country, I believe, that had not been tested. I am free, of course, to disclose the facts concerning the process abroad, am I not, your Honor?

THE COURT: My question did not call for that. I am just trying to find out the effect on human beings of the German product imported into this country prior to the war.

THE WITNESS: It certainly was a fine curative agent. It was a great discovery, of the greatest benefit to humanity.

By THE COURT:

Q. 209. I am speaking particularly with regard to the degree of toxicity?

A. The product was a safe one to use.

By MR. KNIGHT:

Q. 209-a. Would you describe it as 100 per cent. in that sense?

A. No, I think that our present American product is better and cheaper than the European product of that time. I have every reason to believe that the European product was not made at that time by this process.

MR. ANDERSON: Hold on——

THE WITNESS: You can strike it out, Colonel Anderson.

MR. ANDERSON: I move to strike that out. Hold on, Doctor.

THE COURT: You may strike it out. I assume you would not want that on cross-examination.

MR. ANDERSON: No, I would not want it on cross-examination, and it is necessarily hearsay. There are two reasons for the objection offered to it.

THE COURT: We will strike it out now.

THE WITNESS: Sorry, Colonel.

THE COURT: You can go on now.

By Mr. Anderson:

XQ. 210. Now, Doctor, I will ask you a question which I will ask you to answer as briefly as you can. Take the patent referred to, No. 986,148, and state the process set forth in the patent in detail, what is done under that patent and what you did; and also state the exact process employed by each of the licenses of the Federal Trade Commission and its variation from the process defined in the patent, without disclosing information which came to you officially as the representative of the Federal Trade Commission and Public Health Service which you indicated yesterday. Can you do that without disclosing official information?

A. I could not answer the second part of the question.

XQ. 211. Of course the second part would be necessarily the part referred to?

A. Yes. I could not.

XQ. 212. You could not do that without disclosing official information coming to you as representative of the Federal Trade Commission in the capacity which you indicated yesterday, and the Public Health Service?

The Court: With respect to which he is at least under the order made yesterday in response to Colonel Anderson; but if he is going to deal with trade secrets or trade processes——

Mr. Anderson: I will ask another question on that, your Honor, so as to bring that question out, and I wish to state in response to your Honor's statement that as I understand my instructions from the Department they are——

The Court: Colonel Anderson, I am not concerned with your instructions. We are trying this case here, and I am looking to you as the United States of America and nobody else.

Mr. Anderson: I merely want to make that statement so that your Honor will understand that I will not go into cross-examination of the witness on any points that call for the disclosure of official information in the manner stated—put it that way.

XQ. 213. I will ask you this question: Can you take the patents and vary the process down and give me information as to the process employed in each of the plants you inspected, or by the producers with whom you talked, and point out the difference between the process as set forth in the patent and the process as used by each of said manufacturers in detail, without disclosing the trade secrets of those trade processes?

A. It involves disclosure.

XQ. 214. Of their trade secrets?

A. Yes.

Mr. Anderson: Then under your Honor's ruling, I shall not ask any question on that subject, because I do not wish in any way to transgress that ruling.

Mr. Kresel: I understand, however, your Honor's ruling to be, that counsel, if he so desires, may have that information in chambers in the presence of your Honor and in the presence of counsel for the defendant.

The Court: In the presence of counsel for the defendants and such persons as Colonel Anderson in his unlimited discretion may see fit to take with him, and, of course, in your presence, as representing the defendants.

Mr. Kresel: Yes, sir.

Mr. Anderson: But subject to the limitation of confidence which your Honor imposed yesterday.

Mr. Kresel: Not yesterday.

The Court: I do not understand, Colonel Anderson, I do not know what you mean.

Mr. Anderson: Subject to the limitation of confidence and non-disclosure which your Honor imposed.

The Court: So far as this is concerned.

Mr. Anderson: I understand. I only want to get it straight.

The Court: The evidence within the knowledge of this witness is Government knowledge. Of the use the Government shall make of it, apart from the trial of this case, is the Government's concern and not mine. So far as this case is concerned, it will be printed, but it will not go into the general public record, but into a supplemental record which would be open only to counsel. If you wanted to meet that by rebuttal testimony, I take it that you could do that without disclosing the trade secrets or trade processes in open court. If not, we could take that in chambers. In other words, that secret is a Government secret, and so far as this Court is concerned, I would give you full opportunity to use it to full advantage in this case without any unnecessary public disclosure; but there will be no restriction upon any person, or subsequent action of Colonel Anderson or his colleagues or experts, than the Executive Department of the Government which is to place thereon, because I should place none, say in the prosecution of this case.

Mr. Anderson: It is about time for your Honor's morning short recess. I would like to talk to Mr. Knight. May your Honor indulge me. I ask this question—does that apply only to this witness? Probably that is not a fair question because you will deal with the others as they come up.

THE COURT: You mean whether that applies to a person who is not in the position of some of the Government officers. Do you mean whether that applies to Dr. Volwiler?

MR. ANDERSON: I mean whether it applies to a witness whom your Honor did not regard as having secrets in charge of the Government.

THE COURT: Let us consider that. Let us take Dr. Volwiler as an instance. You mean a person like that?

MR. ANDERSON: Yes.

THE COURT: No, because I think there is this difference, Colonel Anderson, in the case, although I may be wrong. Here is information which is open to the Government, well, we will say to the Attorney General and to any person that he may want to have it made known to. You stand for him. How widely he makes that public in any way or at any time other than in this case is no concern of mine. So far as this case is concerned, I will keep it as secret as possible from everybody save the Government representative and Mr. Kresel as could possibly be done in a practical way.

Now, then, so far as Dr. Volwiler is concerned, taking him merely as an instance of a class, that information is not within the knowledge of the Government, so far as I know. Consequently, the restraint with respect to secrecy that I would impose upon Mr. Kresel in the examination of Dr. Stieglitz would be imposed on both sides in the case of a person coming within the class of Dr. Volwiler.

There is no limitation upon you in the use of this information in any way whatsoever, except that it must be kept as secret as possible in this case and the injunction with respect to secrecy with respect to this testimony would be imposed only on Mr. Kresel and not on you at all.

MR. KNIGHT: May we have a few minutes to confer, your Honor?

THE COURT: Yes. But you understand, Colonel Anderson, that in no case would you be deprived of a right to rebuttal taken in chambers or here, as the necessities of the case might require. We will take a short recess.

(A short recess was taken at this point by direction of the Court.)

MR. ANDERSON: May it please the Court, I find myself in quite an embarrassing position. I wish to state the conclusions which I reached hurriedly during the short recess with the advice of my associates. We may be wrong, but as at present advised my view of the law is that the information obtained by the Federal Trade Commission representatives and possibly by the Public Health Service is information that cannot be disclosed to either officers or employees of the Government without an order of the Court.

The Federal Trade Commission, in our view, would have the right to refuse to disclose information to the Attorney General himself without an order of the Court. The privilege attached to that information is not a privilege of the Government, but is a privilege given to those who disclose that confidential information to the agencies of the Government, and are so required to do by law to the end that the Government may function and thus to promote the free administration of Government agencies.

Therefore, our view is that the Government not only has no right to this information, speaking of other than the one agency defined by Congress, unless exigencies of justice required that they go into court and ask for it, and the court granted the request, from which there would be a review, but that it not being a privilege of the Government, an officer of the Government cannot waive the privilege, and, therefore, that an officer of the Government, or a person like myself representing the Government temporarily in a legal capacity, would not have the right to ask that that information be disclosed which might in its ultimate result prove not only prejudical to those persons who are required to report to the Government, but in addition thereto might prove prejudical to the agency of the Government created by act of Congress.

Perhaps I am stating my views crudely, and I hope your Honor will understand that I am stating them on impulse, almost; rather by intuition than by thought. That being the case, I should not feel justified in asking for the disclosure of the information in question of an official character without at least definite instructions from my superiors. I feel that it may be of very far-reaching consequence in the administration of several branches of the Government of a most important character, involving questions which I have never had a chance to consider or to take the instructions of my superiors upon, except in the most general way.

Therefore, I feel it is my duty, and in that my associates concur, to resolve any doubts which I may have, in the exigencies of this case, in favor of the general public interest of those agencies, for the present at least, until I can give the matter further consideration and also receive definite instructions.

I hope your Honor will understand the conditions under which I have to reach that conclusion. It may be a wrong conclusion. I am going to give it very serious consideration, and if it is a wrong conclusion and if it seems to me that we can take this evidence in a way which will not be prejudical to those agencies, both of which have cautioned me directly on the subject, or if I can get instructions from my superiors, I will undertake to do whatever is desired. In doing that, I desire to express my appreciation of your Honor's courtesy in broadening the situation along the lines which you have indicated.

The Court: It is not courtesy, Colonel Anderson. Counsel have a certain opportunity to consider matters involved in a case which come up. A judge has no such opportunity.

Mr. Anderson: I understand that.

The Court: He must reach an immediate decision. I appreciate full well the line of reasoning which brings you to that result. But I do not want to be left by your remarks in the position of being less careful of the Government's interest than counsel. It is of the utmost importance that the interest to which you directed your remarks be protected and conserved. It is likewise of great importance, though possibly not so great, that the interests of individuals and the secrets of individuals, which these are, should be guarded.

Possibly the scope of my ruling was not fully made clear. It is this: Under the order made yesterday this witness is directed to answer any questions which may be put to him by counsel on either side of this case. If those questions call for a disclosure of facts which he got in his governmental capacity, then we would take those in chambers under such protected measures as would prevent any further public disclosure in connection with their taking than was absolutely necessary.

Now, I say that guard of secrecy does not apply to you in such case, or to such associates that you want to bring in. Why? Because you are in the Government service, and I assume that it would not take a judicial order to prevent you or those invited by you from making any improper use of that matter.

If this were knowledge or if the information which Professor Stieglitz has came to him purely in his capacity as a scientist, then I would feel it my duty, notwithstanding my full confidence that you would not make a disclosure, to put that requirement upon you, as I do upon Mr. Kresel, with respect to the facts that may be disclosed by him in that situation. I have not any lack of confidence in him, but I deem it my duty to do it. Whether you would make any use of them outside this case would be a matter that rests with you, and in taking them we would take them under such protective measures as would prevent any greater disclosure than is necessary in the administration of justice.

Mr. Anderson: I think I understand your Honor's position, and I can quite appreciate the situation. Therefore, I am not going to pursue that inquiry further at this time, I am going to take up another line of inquiry. It may be I will ask Dr. Stieglitz to stay over until this afternoon, until I have a little further time for consideration at luncheon and possibly communicate with those to whom I report.

XQ. 215. Dr. Stieglitz, on yesterday, counsel for the defendant produced and handed to you for identification certain letters between yourself and Mr. H. A. Metz, beginning with June 21, 1918, and ending with

January 7, 1919. You recall those letters, do you not?

A. I do.

XQ. 216. I note on the originals of those letters a number of paragraphs bracketed and underscored in pencil. Did you underscore those?

A. I did that.

XQ. 217. When did you first give those letters to The Chemical Foundation or its counsel?

THE COURT: You need not answer that, unless you want to.

MR. ANDERSON: None of these questions you need answer, unless you desire, Dr. Stieglitz.

THE COURT: I do not know about any other but this question. He has the personal privilege.

MR. ANDERSON: I intended saying so, but I overlooked it. I am much obliged to your Honor for calling it to my attention.

XQ. 218. Are you willing to say when you first delivered those to counsel or to The Chemical Foundation?

A. I do not know whether I should or not. I must get counsel on that.

MR. KRESEL: I have no objection.

THE COURT: That is not counsel's privilege. It is the witness's own privilege as to whether he wants to say when he delivered them. You may confer with counsel if you want to.

XQ. 219. Would you desire to confer with counsel?

A. I only want to know, Colonel Anderson, whether in my lack of understanding of legal methods, my answer might lead me into legal trouble.

XQ. 220. Well, I would not want to get you into any legal trouble. I want to get the facts, but I would resolve all doubts on that subject—I hope you won't think I want to embarrass you. I do not. I feel it necessary to ask you these questions, if you are willing to answer them.

The Court: The question asked by you of Colonel Anderson I can answer in the affirmative, that that is the basis upon which I suggest to you that you need not answer.

The Witness: This is a warning to me?

The Court: The question indicates my reason for making the suggestion to you. You can waive it.

Mr. Anderson: The Court has very kindly stated to you, Dr. Stieglitz, much better than I could, and I would be very glad to state to you that it is a question that I would not want you to answer if you fear it would get you into any legal complications. I merely wanted to ask a question.

Mr. Kresel: I do not think it is necessary to make the suggestions to Dr. Stieglitz.

Mr. Anderson: He asked me a question and I tried to answer it.

Mr. Kresel: I think Dr. Stieglitz is at perfect liberty to answer the question. If he asked my advice about it, that would be my advice.

The Witness: I handed those letters to counsel Wednesday of this week.

XQ. 221. Had you ever before that showed them to The Chemical Foundation?

The Court: What is the relevancy of that question, Colonel Anderson?

Mr. Anderson: Its relevancy is this, sir: If Dr. Stieglitz has by conference, or by handing this correspondence to counsel for the defendant, disclosed or published, in a sense, to that limited degree, the information which is here involved, why, it might change the whole position of the Government as to the taking of this testimony, and therefore, it is a foundation for us to ask for a ruling of the Court, which we cannot ask without knowing those facts.

The Court: I do not understand you.

Mr. Anderson: In other words, it is no longer privilege that Dr. Stieglitz is disclosing.

Mr. Kresel: Who claims it is privilege? You were the one that claimed the privilege.

The Court: I have said that all bars put up by the Federal Trade Commission statute which I am at liberty to let down in the interests of justice have been let down, and that you are at liberty to ask Dr. Stieglitz any questions which you desire pertaining to those matters; and it is no longer a question of privilege except such privilege as I deem, in the performance of my duty, to be really necessary to prevent the secret trade processes of the several manufacturers who conferred with Dr. Stieglitz from becoming public property. I do not exactly understand the last question.

Mr. Anderson: Let me suggest the thought that was in my mind, and possibly your Honor will see.

The Court: Yes.

Mr. Anderson: The position of the Government, and I wish to take advice on the subject, might be entirely different if this information as to these processes of these manufacturers were known to the defendant here, to its counsel and its officers. That might present an entirely different question from a question of the matter being known solely to the distinguished witness now upon the stand, and therefore I wish to know just what was the status of this information, to the end that the Government may either follow such course under your Honor's present rulings as it may think its duty to follow, or ask for some modification thereon with a knowledge of these facts. Certainly my position as to this information might be very materially changed if it were known to the defendant and the persons connected with the defendant, in the sense that it was public information. That is the thought in my mind, and I desire to give facts about that, if I can do so without undue embarrassment to the witness.

The Witness: Colonel, may I say——

Mr. Kresel: It is not a question of embarrassment at all.

The Court: Dr. Stieglitz wants to make a remark. Will you wait for him?

Mr. Kresel: Yes, your Honor.

The Witness: I received information, Colonel Anderson, that Mr. Metz had used my name and expressed my wishes. I had no information about that, and in order to be in a position to support my interpretation, those letters were secured by me from my own files and I consulted with counsel in regard to their content. So far as I know, only the counsel has seen it; no one else of The Chemical Foundation.

The Court: I will hear you, Mr. Kresel.

Mr. Kresel: I must confess, your Honor, that I do not see how the Government's position in this matter can be affected by the question as to whether we know or do not know the facts. The Government must decide the question for itself. They either want this information that the witness had, and, as your Honor has ruled, the Government may have it, or they do not want it. Up to the present time they say they do not want it. Now, what can be the materiality as to when or to whom these letters were shown? The witness has already answered the question; but what is the use of going on with it.

Mr. Anderson: I have nothing to add, sir. I have stated my position.

Mr. Kresel: Is there a question pending?

The Court: There is an unusual situation confronting me, Colonel Anderson.

Mr. Anderson: I recognize it and do not want to embarrass you on it.

The Court: And we might as well face it now. The Government of the United States is the party plaintiff here, and you have in a very broadminded way said that the Government of the United States wants a full disclosure of the facts. The Government of the United States, I assume, would not want to put before me for use in determining the issues of this case, backed by its guarantee, testimony which could be impeached, if not flatly contradicted, by other evidence which was available to the Government of the United States or some of its agencies, and keep such other evidence away from you. I assume that of necessity must be your position, Colonel Anderson.

Mr. Anderson: I should think your Honor would assume that to be my position. I would not think that any court in which I have ever appeared would question it, and I do not think this court would.

The Court: What prompted my question was the fact that I had stated so many assumptions on which I thought there would be no difference between us, and I found that we did differ. Consequently, Colonel Anderson, the situation seems to me to be this: there are none of these questions that you have asked that would have any effect, at least on my mind, so far as affecting the weight to be given the testimony of this witness. However, I will let you ask him, for such effect as may be given to that testimony. I do not think I need go further. Unless that is the purpose, I fail to see the purpose, Colonel Anderson.

Mr. Anderson: I have undertaken to state to your Honor the general thought that is in my mind in asking these questions.

The Court: Yes, but that is not in issue. If you want to ask Dr. Stieglitz any questions privately, I will make my order heretofore entered in this case extend to any questions that you may ask him as fully as if he had been brought here as your witness, reserving to him the right to refuse to answer in any case in which he deems it proper to do so; so that you may have full opportunity to determine from him privately as to whether you want to go on. The only relevancy that I can see that this question would have would be that which I have mentioned, and you may take it for that purpose, if you want to, reserving to the witness the right to withhold his answer.

(XQ. 221 repeated as above recorded.)

A. No.

XQ. 222. I thought you did answer that, did you not, Doctor?

A. My last answer was that I showed them Wednesday, was it not?

By The Court:

Q. 223. Then you gave an answer just now to the question that was read. You said your answer to that was "no"?

A. The question was, before Wednesday had I shown them to The Chemical Foundation.

By Mr. Anderson:

XQ. 224. Of course, that includes its officers and agents? Of course, The Chemical Foundation acts through its officers and agents?

A. On Wednesday I showed the letters to Mr. Kresel in connection with the use of my name in the testimony of Mr. Metz.

By Mr. Kresel:

XQ. 225. The question is, whether you ever before showed them to anybody else connected with The Chemical Foundation?

A. And the answer is "no".

Mr. Anderson: I was just thinking, your Honor, whether I want to ask him any more questions.

The Court: I do not want to hurry you at this point, Colonel Anderson. You may take such time as you may deem necessary.

By Mr. Anderson:

XQ. 226. I shall ask you one other question, which you need not answer unless you wish to, and please do not answer until his Honor has had a chance to rule on it: Have you at any time in your discussion with the officers of The Chemical Foundation, or its agents, disclosed to them the processes employed by the several manufacturers of salvarsan under Federal Trade Commission licenses in the manufacture of that drug?

The Court: You need not answer that unless you so desire, Dr. Stieglitz. The statements made by me with respect to the preceding question will be considered as having been made to this question. May I ask you this: Are there any other agencies of the United States which may have information with respect to the matters involved in this suit, disclosing evidence one way or another?

Mr. Anderson: Not that I know of, sir: The only information that I had, for instance, in this suit was the records of the Federal Trade Commission brought here under subpœna of the Court, and it was explained that they were brought under subpœna of the Court by subpœna *duces tecum*, which the statute provides for. I have never myself talked with any officer of the United States about this matter whose office is under limitation. And so, as I do not know what any member of the Department of Justice has done, we requested the other day from the State Department certain correspondence which was requested by counsel on the other side, but which I think had been examined by the Department of Justice previous to that—some of it—and the Secretary wrote a personal letter to the Attorney General, declining for public reasons to permit the production of certain of the correspondence, and sending us the remainder. So far as I can now recall, with the exception of the examination of the records of the Departments of War and Navy, which are not under the ban of secrecy, and to which both sides have had access, as I understand, that is the extent of the information of the Government.

The Court: No; but I am laboring under much difficulty, Colonel Anderson, and I am asking this only for my personal guidance.

Mr. Anderson: I would be glad to answer any questions I can, sir.

The Court: You did produce testimony that the salvarsan patent was worth $1,000,000, did you not?

Mr. Anderson: I think I produced that evidence, but that was entirely outside of the records of the Government. I did not produce any Government officer to testify on salvarsan, and I produced no evidence of the Federal Trade Commission or the Tariff Commission bearing upon either.

MR. KRESEL: May I suggest that Dr. McCoy, who is at the head of the Department of the United States Public Health Service, who knows everything that this witness knows upon this subject, is at the command of the Government, and is now in the Government employ; nobody is keeping this thing from the Government except the Government itself. Dr. Stieglitz is perfectly willing to testify if the Government desires the information.

THE COURT: It is a highly unusual situation, and I am not going into it any further now. If I have to, I will. You need not answer unless you want to.

MR. KRESEL: I have no objection to the Doctor answering it.

THE COURT: It is not from your standpoint. It is from the standpoint of personal privilege.

THE WITNESS: I must confess I am confused.

XQ. 227. I beg your pardon.

A. I must confess I am confused as to right and wrong. I came here to help what I considered the fundamental need of the nation.

XQ. 228. Doctor, I do not ask you now to decide that question if you do not want to. I am perfectly willing for the question to stand until after lunch and then let you decide whether you wish to answer it at that time.

THE COURT: I am not trying to supplant my judgment for yours, Colonel Anderson, but I am surprised. I have nothing further to say. You can put another question.

MR. ANDERSON: I have no further questions, I think, sir. I think that concludes my examination of the witness. I am perfectly willing for the witness to wait until later and decide whether he desires to answer that question or not. It may be that after consultation with my associates I may decide to withdraw it, but for the present, suppose we drop it there, and just let the question stand unanswered.

Mr. Kresel: Were you going to say something?

Mr. Anderson: It may be that I will withdraw the question later if I can meet the situation in some other way.

Mr. Kresel: All right. Is that all you want from this witness?

Mr. Anderson: I think that is all I will ask the witness for the present. Mr. Knight, do you think of anything?

Re-Direct Examination.

By Mr. Kresel:

RDQ. 229. Professor Stieglitz, I have two questions that I want to ask you, and in answering this question please bear in mind I am not asking you for the name of the manufacturer. Do you know of any manufacturer whose plant you visited who was making arsphenamine, who, for a long period of time tried to make arsphenamine and did not succeed because he did not start with the pure ingredient that you have described?

Mr. Anderson: One moment. I object to that question both because of the fact that it calls for additional information of the witness, and for the further fact that it is not re-direct, and for the further fact that it calls for the reason, and therefore necessarily opens up the investigation of the process.

Mr. Kresel: Which I am perfectly willing to open up.

Mr. Anderson: One——

The Court: Suppose that information would disclose and demonstrate the complete invalidity of this patent. I assume that you cannot say to me that it may not disclose such result. I am speaking now with respect to your objection based upon the Statute. Are you not then putting me or some one else in the position that the Government of the United States is asking the Court to say that certain persons were in a conspiracy, for their financial gain, to deprive the United States of certain assets, but notwithstanding the Statute of the United States authorizes a Court to remove the bar of secrecy where it is necessary to do so, and notwithstanding the charges pressed against these individuals, the United States is asking that information within the possession of certain of its agencies be withheld, although such information, if disclosed, might be sufficient to discharge them from the charge made against them in the bill of complaint. There is the difficulty as I see it.

Mr. Anderson: I will venture to answer your Honor's question in several replies that occur to me offhand. The first is that it does not appear, and I do not think can be made to appear, that the information now sought to be elicited from this witness was known to The Chemical Foundation or to the persons who dealt with that matter at that time. Therefore, it could not affect that.

The Court: Colonel Anderson, my question——

Mr. Anderson: I am now coming to your question, sir.

The Court: Yes.

Mr. Anderson: Second, the fact that one of these manufacturers may have had difficulty in the manufacture of the process because he did not use one of these intermediates that was pure, assuming that to be a fact, could not in the slightest bit invalidate the patent, as I see it.

The Court: You are going to answer my question, are you not?

Mr. Anderson: I am trying to answer it. But that was the first part of your question.

The Court: No, Colonel Anderson, it did not deal with relevancy. I dealt solely with your objection based upon the Federal Trade Commission Act.

Mr. Anderson: Let me say as I understand my instructions, they are to object to the disclosure of any information of a confidential character, either from the Federal Trade Commission or Tariff Commission. I know your Honor is not interested in my instructions, but I have to do the best I can.

The Court: But, Colonel Anderson, you leave me in this position. I may as well be frank about it, because I am going to deal with it now or hereafter, or both. I have no objection to your telling me your instructions. I do not care how the facts fall or where they fall. I am sitting in a neutral position; that is where I propose to sit and will continue to sit. But I must take into consideration in this case whether the United States had available to it at the time it filed this bill of complaint and has at the time of the trial of this case evidence which, if produced, would tend to disprove the allegations and charges made in this bill of complaint and whether it attempted to prevent the disclosure of those facts in this case, although they were in the possession of an agency of the United States, and might disprove the charges made against the defendant in this bill of complaint.

The situation is very unusual, Colonel Anderson, and I do not want you to put yourself in that position without being conscious of my immediate reaction to that position.

Mr. Anderson: I certainly do not wish to put myself in any position your Honor could in any sense criticize. I have tried to avoid that in a great many delicate situations in this case.

The Court: That is for you to determine, Colonel Anderson. You need not explain it; I am not asking for an explanation.

Mr. Knight: May I suggest something to your Honor?

The Court: I am glad to hear you, Mr. Knight, because your mind is fresher on it than mine.

Mr. Knight: I do not pretend to know much about this branch of the subject, being a mere patent lawyer. But the Government is hampered by the law as well as others, and the question is whether this is the right way to get these facts into the record. Make the assumption that your Honor has made, that it is evidence to prove the invalidity of these patents and that that can be proved. Is it proper under the state of the law to prove it by this witness?

The Court: I have no difficulty about that, Mr. Knight. Mr. Anderson made his objection on several grounds, one of which was the bar of the Federal Trade Commission statute. I had not dealt with the others because I think we can dispose of those without any great difficulty. But, as you see, one of his objections was this Federal Trade Commission act, which does to my mind present the difficulties which I have at this time disclosed fully to Colonel Anderson rather than reserving them and spread them at large in my opinion if I have to.

Mr. Knight: My point is right on that, your Honor. Whatever be your Honor's authority, and it seems to me plenary under the act, the Government nevertheless must not, it seems to me, under the terms of the act, considering the various laws which are enacted for the purpose of encouraging the Government in the accumulation of evidence, and of the giving of information, and of the assistance of various non-Government agencies, considering the things which have tended to accumulate in the Government, the immense amount of secret information and knowledge all of us who are associated with the Government come across from time to time, and considering the reluctance on the part of various private citizens and companies in giving up this information to the Government, even for that purpose, and considering how much that hampers the Government's progress, it would be considerably more interfered with if it were felt that the Government itself co-operated in the disclosure of these things.

So that I think the Government is under considerably more necessity for diffidence, reticence and perhaps I might even say obstruction to the disclosure by its officers and employees of this sort of thing than would be the case with private companies. So that even in a case like this, where it might concern the disclosure by a Government witness who is under peculiar governmental restriction, it seems to me, he cannot be released by the Attorney General or anyone else, but only by your Honor.

The Court: Which has been done.

Mr. Knight: Which has been done. But it

does not, it seems to me, release the Executive from the necessity for his not joining in that application of releasing. Now, this information can be obtained, it seems to me, with all respect, from other sources than from this witness.

THE COURT: That brings up another matter. But the specific objection of Colonel Anderson, to which we have been directing our attention, seemed to me made it necessary for me, in fairness, to bring out at the same time some of the difficulties that I am having. The reason that I directed a conference between counsel for the parties and the witness yesterday was in the hope that some of these questions which are now being presented might be avoided, from a practical standpoint. That is patent. I did not say so because I did not want to make the suggestion, as I thought it was most patent. But here is this difficulty and I am suggesting it for no other reason than to find a way out. That is all.

If the United States has in its possession information of one sort, for instance, that produced by Mr. Metz from the witness stand here, and it has documentary evidence in its possession and available to it flatly contradicting such testimony, and it elects to proceed on the oral testimony and not only refuses to take into consideration in the preparation of its bill and the filing of its bill and the prosecution of its case, the documentary evidence in conflict therewith, but when the time comes for the production of such testimony raises the objection that the Federal Trade Commission statute prohibits it, notwithstanding the fact that the bars have been by a special order of the Court let down, it mystifies me. I will hear you, Mr. Kresel.

MR. KRESEL: I am sorry, your Honor, to take up any time at all. But your Honor has seen the difficulty that the defendant is under. We are charged with conspiracy. The Government has access to information to disprove that charge. The Government does not bring the information into court; and when the defendant finds the information, the Government comes here and pleads that a statute prevents the disclosure of the information; and then, when your Honor relieves them by your order of any obstacle that there might be in that statute—and I say there is none without even an order of the Court—they still try to keep closed the source of information and insist upon asking your Honor to convict these people of conspiracy. Yet they come into this court and say that they want all the facts to come out. Consistency! I do not believe they know the definition of the word.

We are entitled to that information, and if your Honor will permit it, we propose to have it. And if the Government does not want it, if they do not want to ask for it, we will ask for it. The question that is now pending is directed to that proposition.

I am asking this gentleman, without mentioning any name, to state whether he knows of his own knowledge that a manufacturer tried for two years to manufacture this product and could not because he did not know what Professor Stieglitz found out in his investigation: that you had to start with a perfectly pure intermediate or you made a poison instead of a medicine. I am entitled to that information.

Moreover, I propose to go on and ask this witness to state, your Honor having said that he may, the information that he had. I am going to ask him who the man was whose product it was that poisoned our soldiers. I want this Court and the public to know that the Government of the United States is standing behind Herman A. Metz and shielding him in not wanting it disclosed that it was his salvarsan that killed our soldiers. And at the proper time, I shall inquire what the motive of the Government is in taking that position.

I think the time has come, your Honor, when we must understand what the Government is here for. When I opened this case, I said that there was an invisible plaintiff here; and the actions of the Government yesterday and today have proved it beyond a doubt if anything has ever been proved in a court of law.

Colonel Anderson is a gentleman and I admire him. But the time has come, your Honor, when simply saying that "I want all the facts to come out," if contradicted by the act, must be recognized. We must call a spade a spade in court or out of court and the time has come when there must be an understanding here.

For six weeks we have been battling here. For what? For the Germans! They put a German expert on, imported from Germany, and then they put Metz on—imported from where? The same source! The man that fought the German battle from the beginning to the end before we went into the war and while we were in the war. It is upon his testimony that they ask your Honor to convict these men. But they are not going to keep me from showing the facts. Now, press my question.

Mr. Anderson: Will your Honor permit me to reply to this statement?

The Court: Yes.

Mr. Anderson: In so far as the question is concerned, the Government made the objection it has made and which I felt was required by law to make. I may be mistaken. I make a great many mistakes. I do not think I could add anything to what I have already tried to say as to my reasons for that.

But as to the other part of the remarks of counsel, since our remarks are being made a part of the record, I do not think I could, in justice to the Government which I represent or myself, allow them to pass without just a very brief reply.

The Government of the United States, as I understand it, brought this suit to assert the rights of the people of the United States and to discharge its public duty under the Constitution and laws of the United States.

As I have frequently said, the Germans have nothing to do with it so far as I know or so far as I am concerned, and have had nothing to do with it.

I should hate to feel that the Government of the United States could be used for any purpose to serve the people of another country except to the extent that its duty under international comity requires. I shall not discuss that question. There are certain questions which are not debatable, either in courts or out of courts.

Since Mr. Metz's name has been mentioned, I wish to say that I never saw Mr. Metz until two days before he testified—never knew him, never spoke to him. He was supposed to have important information, or valuable information as to the value of these patents, and he was called solely on that ground. The remainder of the examination, and the remainder of the subjects gone into, were purely on cross-examination.

In any legitimate way that a witness called by the Government could be impeached certainly I should be the last, representing the Government of the United States, or anyone else, to question every legitimate piece of evidence to that end, because that is what the courts are for, to get at the facts, and the weight of the testimony is affected by anything that conflicts with either the witness or the weight. So far as Dr. Holdermann being called is concerned, I should regret ever to learn that the courts of the United States had reached the point that it would not be proper and legitimate to call as a witness in those courts a citizen of any country with which we were at peace, giving to his evidence such weight and consideration as the character of the witness and the extent of his interests and other considerations, his nationality, if you please, and everything else, which might bear upon it, might be entitled to.

As to Mr. Metz, as a witness, he is a citizen of the United States. He was born in the United States; has been in public as well as private service. Is a successful business man. Was in the uniform of the United States during the war, and, I presume, discharged his duty. If by proper evidence the value of his testimony can be in any way affected or impeached, it is entirely legitimate to do so. I would not have called Mr. Metz as a witness if I had not believed that his testimony would be that which could be relied upon; and while on cross-examination, which was certainly conducted with great rigor, there were at times, confusions in his testimony, as to immaterial points on which he was not called; so far as I can now recall it, I do not think it has been seriously affected, but that would be a question purely for the Court and not for me.

The Court: You do not think the letters yesterday affect it?

Mr. Anderson: I do not, sir. I do not think they are inconsistent with his statement, as I recall it. If I come to examine his evidence, I might find there are slight inconsistencies in these letters, confusions of statements in his evidence, but if I find there was a direct conflict, I would admit that his evidence in so far as contradicted by his letters, was certainly not a basis for the consideration of the Court. I have not examined his evidence in connection with the letters.

The Court: I am going to ask you after the noon recess, and I will not stop to discuss it now. I will take a recess and I will finish that after you have finished your point.

Mr. Anderson: Now there has been something said about the "invisible plaintiff" and the position of the Government. The position of the Government in this case was stated fully in my opening statement. I adhere to every word that I spoke, so far as I can now recall it in that opening statement. I would not be here representing the Government, which is a mere temporary service on my part—did I not believe, and in fact, did I not know, that the Government was undertaking to enforce rights which it seriously believed to be the rights of the people of the United States; and in so far as there is an "invisible plaintiff"—the only one that has been mentioned was Mr. Metz—I do not think that Mr. Metz knew this suit was going to be brought before it was brought, certainly so far as I know, he did not, because it was not known, except among very few people; and as to anyone else, if there is anyone else that knew anything about it, except the duly accredited officers of the United States, I have never been so informed, and do not so believe. Therefore, the position of the Government is, I think, perfectly clear upon the record. As to its motives and purposes, and I do not think I could discuss them since this proceeding is taken by direction of the Chief Executive of the nation.

I can discuss my own motives and purposes, but I do not think that is necessary.

Now, in so far as the objection taken to the particular evidence is concerned, I may be mistaken as to my duties in the matter—I often am; but I have acted in a condition of some embarrassment and some confusion, I will confess, for the last two days. I have been greatly confused by this conflict of laws and demands upon me, that I should protect certain confidential relationships of these institutions. I have been brought into a condition of some mental confusion, I will confess it; and I do not think anybody could pass through the last two days without being in a position of confusion. Others may be more fortunate. But I am trying to discharge my duty here in a manner in keeping with what I conceive to be the character of my client—and that is the Government of the United States. I have represented it in other capacities and I have always regarded it as the highest possible service that I can render. I shall continue to render that service in that spirit.

THE COURT: Let me add: My difficulty still remains and I hope that you and your colleagues will consider with respect to it, and I think I need not repeat it, and I hope that you will confer during the noon recess. If there is any difficulty in understanding the matter to which I am now directing your attention, I shall be very glad to discuss it with you: but I prefer to discuss it in chambers with both sides present, rather than to go further into it here, because it is a matter with which I am officially confronted. It is a matter which lies at the threshold of the charge of conspiracy in this case. It may lie at the threshold of all questions in this case, because if the evidence—without indicating in the slightest degree what the evidence will warrant, because I shall attempt to reach no conclusion about it until it is all in—and I am going to permit the taking of the testimony of this witness on all facts that he knows, howsoever, and to get them officially or unofficially, and they will be given from this stand, except such as would be injurious to persons engaged in business, if publicly disclosed, and I shall ask that that be privately disclosed, because I can do that without doing any injustice to the United States, in asking for private disclosure, rather than public disclosure; but in the event that testimony should be elicited and explained from this witness stand, and the testimony should be sufficient to establish—whether it will or not I do not know and I am not now concerned—but should it be sufficient to establish what was established in the Rohm et al v. Martin Dennis case, 263, Fed., decided in the Court of Appeals in this circuit, in which there was insufficient disclosure so as to make the patent worthless—if that should be established as to the salvarsan patent and other patents, then there is not only no question of conspiracy left, but there is then no question, as I now see it, of power, unless it be the technical question of whether the omission of the words "as Assistant Secretary of State of the United States," after the words, "Frank L. Polk" in the Order of December 3d, prevented or made the execution of the power—not the power, but its execution—invalid. There is where it seems to me that we are at a critical point in this case from several aspects. If you desire a longer recess than usual, you may have one.

Mr. Anderson: The usual time is an hour and a half.

The Court: An hour and a quarter, and I will make it an hour and a half if desired.

Mr. Anderson: I think the usual recess will be all that I should desire, sir.

The Court: At 1:15, standard time.

After Recess.

Mr. Anderson: May it please the Court, counsel for the Government, having had an opportunity to confer during the recess, desire to state that they feel that having brought to the attention of the Court the statutes in question in discussion this morning and made the formal objections by leave of the Court in the matter of testimony as to official knowledge, they have discharged their full duty in the premises, and they are prepared to take any testimony that the witness may desire to give and which the Court thinks should be given under the ruling of the Court as made, in any matter that the Court may direct and to the full extent that the Court may direct.

The Court: Then, in order that there may be no misunderstanding on my part, on the part of the witness, or on the part of the defendant, as to the Government's position, the general rule applied to all questions heretofore asked in this case, namely, that any objection indicated in the opening argument or any specific objection advanced during the trial, may be understood to apply to any question heretofore asked, will not prevail as to the further examination of this witness, and no objection will be understood to be taken to any of his testimony save such objections as may be made at the time the question is asked.

Mr. Anderson: I may add that the Government in making objections to his testimony having, as I stated, discharged its duty in the premises as it sees it, will not make any objections on the ground of the disclosure of official information, under the ruling of the Court. If there be any other objections——

The Court: They will be whatever they are.

Mr. Anderson: Yes.

The Court: I think the objections to the question now pending are not well taken. You may repeat the question and take the answer.

The Witness: Your Honor, I was asked a question by Colonel Anderson, the answer to which has been delayed. I would be glad to answer that now if it were read to me.

The Court: Do you know what the question was?

The Witness: It was in reference, I think, to imparting information. I do not know the exact extent to which that question referred, and Colonel Anderson was not sure whether he did not want to withdraw it, I believe.

Mr. Anderson: If you feel that you can answer the question, Professor Stieglitz, I would like to have it answered. I have not considered it during lunch, I have been considering other matters. If you feel you can answer it I would like to have it answered.

The Court: What is the question?

Mr. Kresel: I have the question. It is here at page 3668.

The Court: Will you read it, please, Mr. Kresel.

Mr. Kresel: "XQ. 226. I shall ask you one other question, which you need not answer unless you wish to, and please do not answer until his Honor has had a chance to rule on it: Have you at any time in your discussion with the officers of The Chemical Foundation, or its agents, disclosed to them the processes employed by the several manufacturers of salvarsan under Federal Trade Commission licenses in the manufacture of that drug"?

The Witness: I am ready to answer that no.

Mr. Kresel: Now may my last question be repeated.

(RDQ. 229 repeated as recorded above.)

A. Your Honor, I would much prefer to answer that in chambers, and all the subsequent questions which reveal information received. Personally I would prefer it. I see no public benefit that would result from a public discussion, as long as it comes before the Court and in the record of the evidence is sealed.

The Court: I would like to have that question read once more.

(RDQ. 229 again repeated as recorded.)

Mr. Anderson: I would like to note an objection to that question, sir, on the ground it calls for a conclusion of the witness as to the method and processes used, and the effect thereof, rather than the statement of the witness of the actual facts; that it is a matter on which the conclusion is to be drawn by the Court.

The Court: I think, Professor Stieglitz, that the answer to that question is yes or no, and from my viewpoint, which I will have to let control, I do not believe that that need be taken in chambers. You need not explain. If an explanation is called for we will take some action pertaining to that, but if you can answer that question yes or no, you may do so here.

THE WITNESS: Will you read it again?

(RDQ. 229 again repeated as recorded.)

THE WITNESS: You see, Judge, the difficulty is that he succeeded sometimes and sometimes not; it was a matter of the formula.

THE COURT: Then the extent to which he did succeed or failed to succeed, as I understand the question, was due or not due to the specific cause mentioned in the question.

THE WITNESS: I can answer that.

MR. KRESEL: Then do so, please.

THE WITNESS: I can answer that in my judgment in large part that was the source of the difficulty.

MR. ANDERSON: I did not get that, Professor.

THE WITNESS: In my judgment, in large part that was the source of his difficulties.

RDQ. 230. Professor, in answering one of Colonel Anderson's questions, you stated it is very important in producing a pure arsphenamine to start with a pure intermediate, the name of which you have given and which I shall not repeat, and then you were going on to give the facts, to illustrate your statement that it was of the utmost importance. I would like you now to state the facts which came to your knowledge and which show, as you say, the great importance in producing a pure arsphenamine, such as can be injected into the veins of a human being to be sure to start with a pure intermediate.

A. Your Honor, I have the records with me. I would much prefer to discuss this in camera.

THE COURT: I can appreciate your statements, Dr. Stieglitz, but the only ruling that I have made applies to the disclosure of trade secrets. It is of importance that trade secrets be not disclosed any more publicly than can be avoided, so that my ruling does not apply on that, and while I can appreciate your personal opinion, I will ask you, if you will, to answer the question.

A. But I believe trade secrets are involved, your Honor.

The Court: Not in this question?

The Witness: To get a close statement of fact, trade secrets would be involved.

The Court: Read the question.

(Question repeated.)

Mr. Kresel: I can see, your Honor, where that would be almost unavoidable. I am afraid it will lead to comparison of one procedure as against the other.

The Court: Is there objection on the part of the Government to the testimony being taken under the conditions as laid down this morning?

Mr. Anderson: The Government does not object to any testimony any longer: subject to the form of objections which may be made on the grounds stated this morning and as the Court may direct.

The Court: Have you any other questions that you want to ask Dr. Stieglitz that will not involve——

Mr. Kresel: No, your Honor. The succeeding questions will be upon the same subject. Then I wanted to read to your Honor the two letters that Colonel Anderson put in evidence upon his cross-examination, which have not been read. That was going to be the extent of my questions.

The Court: You may do it now.

Mr. Kresel: The first letter, your Honor, is dated May 3, 1919, from Professor Stieglitz to Mr. Garvan (reading letter).

I read Mr. Garvan's reply thereto, dated May 9th. (Reading.)

The Court: The conditions under which the testimony will be taken in chambers are these: I shall ask Mr. Smart, who has been appointed the official stenographer in this case, to take the testimony in person, having it transcribed under the most secretive conditions practicable to him. Mr. Kresel, as representing the defendant, will, of course, attend, and Colonel Anderson may bring with him such persons as he desires without limiting the number or in any other way. The Clerk will necessarily attend. The testimony so taken will be available for as private use as possible for any purposes of this Court. The use of it in the usual briefs will not be permitted unless such permission be subsequently granted. It can be discussed orally or a supplemental brief may be prepared in such manner as counsel for the defendant desire.

The Government is at liberty, because it is Government information, to print it in its public briefs or otherwise. There is no restriction whatever in any way on the Government imposed by this Court. I reserve the right with respect to the testimony so taken or with respect to any other testimony subsequently taken in chambers to make as full reference to it in an opinion as I may feel that justice will require.

Is there any objection to those conditions on the part of anybody? If not, we will now retire to chambers and take the testimony.

(At this point, further testimony was given by the witness, in private, in the Judge's chambers.)

The Court: I want the record at this point to show two things. Are you through with Dr. Stieglitz, both sides?

Mr. Kresel: Yes, sir; I am through.

The Court: Are you through with Dr. Stieglitz?

Mr. Anderson: We are through with Dr. Stieglitz; yes, sir.

The Court: Then the Government may obtain as many copies of the testimony of Dr. Stieglitz taken in chambers as it desires. Mr. Kresel may have a copy upon request; or, if neither side wants any copies, the official copy will be open to counsel on either side at any time that it is desired by either party. Unless notified to the contrary, one copy only will be produced by Mr. Smart.

Mr. Anderson: In order to observe the greatest possible care in complying with your Honor's rulings, I will only ask for one copy for the Government, to the end that I may have one for reference, and I will keep that in my own possession as far as it is possible for one to do who has not a safe. I would ask, therefore, that the stenographer give me one copy. If I need another I will apply to the Court.

The Court: And you, Mr. Kresel?

Mr. Kresel: Your Honor said I might have one copy. That is all I want.

The Court: Then, Mr. Mahaffy, you will notify Mr. Smart that three copies are all that are needed.

Mr. Kresel: Your Honor, there is a witness still under cross-examination, the accountant, but Colonel Anderson is not quite ready to go on with him. We have ten minutes before the adjournment, and I will call another witness or your Honor may adjourn, just as you like. I have a witness ready whom I can call immediately.

The Court: I shall leave the matter with you, Mr. Kresel.

Mr. Kresel: Inasmuch as there is only ten minutes and Colonel Anderson is anxious to have the adjournment promptly, I think it would be just as well to take the adjournment now.

Mr. Anderson: The witness retired from the stand yesterday to make up certain statements. I understand they have been prepared with our accountants, but on account of the pressure of other duties I have not had a chance to either speak to the accountants or to see the statements.

Mr. Kresel: You will be ready in the morning?

Mr. Anderson: I expect in the morning to be ready to go on with that witness.

The Court: Can counsel on both sides indicate the date of probable termination of this case?

Mr. Kresel: Your Honor, as far as our case is concerned, I think that we shall be through Tuesday afternoon. That is my best judgment. It may be another half day, but it certainly will not be later than Wednesday.

Mr. Anderson: In that event, if your Honor please, of course, I cannot know just what is going to be introduced and therefore cannot indicate the extent of the rebuttal, but I think there is every probability that the Government will conclude any rebuttal that it will put on during next week. I cannot see any reason why it should go beyond that, and we may shorten it more than that.

The Court: What progress are you making with respect to the elimination of certain portions of the exhibits?

Mr. Anderson: I have asked two of my associates to take charge of that, with full authority to act in the matter of the reduction of the record. Mr. Kresel, I understand, has made a similar assignment, and I understand they have agreed on the elimination of a great deal of the very large exhibits introduced, where one exhibit was substantially the same as another, and are making substantial progress in getting the record into shape.

THE COURT: Was anything to be done with the record proper prior to the printing?

MR. ANDERSON: It was understood, sir, that the opening statements of counsel would be revised. I have not been able to revise but about fifteen pages. I propose to try to take it up on Sunday if more pressing duties do not prevent.

THE COURT: When that is done, there will be nothing to prevent the printer from going ahead?

MR. ANDERSON: There are a good many errors, I think, slight errors in the evidence, on which we could agree; but I am going to leave that entirely with my associates who are making up the record. As to the statements which I myself have made on the record, where they are more than merely brief statements, I am going to undertake to see that they accurately express what I intended to say, and if there are material changes, I will submit them to counsel on the other side or to the Court.

DEXTER NORTH.

DEXTER NORTH, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Mr. North, where do you reside?

A. Washington, D. C.

Q. 2. Are you an employee of the United States Tariff Commission?

A. I am.

Q. 3. What is your position there?

A. Special expert.

Q. 4. Have you with you a copy of the 1922 report about to be issued by the Tariff Commission?

A. On dyes and other organic chemicals?

Q. 5. On dyes and other organic chemicals.

A. I have.

Q. 6. Will you produce it, please?

A. I would like to make a statement concerning it, if I may.

Q. 7. Yes, I am going to ask you to do so, but before you make a statement, I am going to ask you this, Mr. North: Has this report been sent to the public printer for printing?

A. It has.

Q. 8. How long will it be before it will be finally printed?

A. Probably not later than August 1st.

Q. 9. Now you may make whatever statement you desire.

A. I wish to say that this report is not official, for the reason that it is subject to revision and subject to the correction of possible errors in the figures, and that I am requested by Commissioner Costigan, of the Tariff Commission, not to submit it unless I am ordered to do so by the Court.

> MR. ANDERSON: If your Honor please, I would like to make a statement in that connection.
>
> MR. KRESEL: Will you wait until I get through with a question or two, and then you may make such statement as you desire.

Q. 10. Has a summary of this report been made public?

A. Yes.

Q. 11. And released to the public press?

A. Yes, sir.

Q. 12. When?

A. July 9th.

Q. 13. The 9th of this month?

A. Yes.

THE COURT: By whom and by what authority?

Q. 14. Will you answer the question please?

A. By the authority of the Tariff Commission as a press release.

By MR. ANDERSON:

Q. 15. Was that a newspaper article, or was it a newspaper summary sent out?

A. To all the newspapers.

By MR. KRESEL:

Q. 16. It was a summary prepared by your Commission?

A. It was.

Q. 17. Sent to the newspapers?

A. Yes.

MR. ANDERSON: If your Honor please, I requested Mr. North to come, or rather telephoned the Department of Justice with the request that they would request the Tariff Commission to send up their representative with a copy of this report, and certain reports which had been introduced of which I did not have copies formerly, desiring the data in connection with the examinations which were then in progress. Mr. North came up and he brought me the printed official reports, but stated that the Tariff Commission under the law was not at liberty to disclose information which they had, even to officers of the Government, and that he had been requested by the Tariff Commission to request me not to put him on the stand if it could be avoided, and if I did put him on the stand they desired to call my attention to the Statute on that subject, so, of course, I bring it to your Honor's attention. I said that of course I would conform to their wishes, but I did not ask Mr. North for any information, nor did I know that he had a copy of the report in his possession, and I have never seen it myself. The commission was disturbed, since their ability to get information on which they have to act is dependent upon their observation of secrecy in these matters, so that Commissioner Costigan came up to see me personally the night before last, he being an attorney, and I told him that my position was that in no circumstances would I ask the officials of the Government to disclose any information, which was by Statute or practice required to be kept confidential, and that I would, if the matter arose, bring to your Honor's attention this Statute, and at his request would object to the introduction of any evidence, though I knew it would not be necessary for me to object, if it was covered by Statute or their practice, after stating the facts to the Court. He expressed his satisfaction on this, and then the question of this report came up, and he said that Mr. North had brought up the report because the Department was a little indefinite what information was desired, with instructions to state to me these facts. I told him I did not know that, and he said he would ask me, in the event the question came up of introducing this report, to ask the Court not to permit it to be introduced, because it had been sent, or a summary had been given out to the press, of certain facts, and the official report was not yet submitted to the President; that it had been sent to the public printer for printing, and was subject to checking and revision; and therefore he did not wish the report in its present draft form to be made a public document, or to be published until they had carefully checked it over to see that it conformed with the requirements of the law on the subject, and also was accurate.

I therefore desire to make that statement to the Court, and to further state that what I stated yesterday or the day before, that the Government is perfectly willing if it would be any convenience to counsel or information to the Court, to agree at the Bar, on the record that this report when published, when it becomes an official document, may be used by either side in the trial of this case, or on an appeal in any court, or in the retrial to the same extent and with the same effect as if it had been formally introduced in evidence, and that I am told by the Tariff Commission that we can obtain as many as 100 copies if we want it, or more for use in this proceeding.

The Court: Have you anything to say, Mr. Kresel?

Mr. Kresel: Yes, your Honor. As to the intimation that there is anything illegal in the placing of this report in evidence, I am wondering whether I quite understand Colonel Anderson. Is he not referring to information upon which the report is based that is supposed to be confidential?

The report itself, when made public, is a public document which anybody may use. I do not understand that the Tariff Commission takes the position that there is anything in the law which prohibits the putting in evidence of one of their reports.

Mr. Anderson: Not at all.

Mr. Kresel: Then that is clear. I was wondering why it was necessary to call into question the Statute, because that is not involved here. We are not asking the Tariff Commission to tell us where they got the information from. The source of the information, I understand, is confidential under the Statute.

As to the report, I am very glad to have the stipulation suggested by Colonel Anderson. Our only difficulty is that we may not be able to obtain a copy of the report to place it in evidence here before this case is concluded—I hope we shall be through before the 1st of August.

So that I should like to have this carbon copy put in evidence with the understanding that if the final print as it comes out in any way differs from this carbon copy, the corrections may be made to conform this carbon copy to the final report as issued. That is my desire. Of course, we are entirely subject to your Honor's ruling in the matter. If your Honor feels that we ought not to mark this in evidence, I ask that it be marked for identification. I want to be able to compare the copy which is now produced with the final print so as to be able to see what changes, if any, have been made.

My offer, therefore, is to put this carbon copy of the report in evidence with the understanding that if any changes are made in the final print, they may be noted on this copy.

MR. ANDERSON: I feel constrained to object to the offer of counsel for several reasons: First, until this report is printed and submitted to the President, it is not an official report, and therefore is merely a record of the Tariff Commission that is subject to revision. Therefore, I do not think it is evidence or proof of the facts therein stated. I have never seen it. It is the first time

I have ever seen the cover and I know nothing about it.

Mr. Kresel: I have not looked at it, either.

Mr. Anderson: Second, because I have been requested by the Tariff Commissioner, speaking for the Commission, on their behalf, to object to the introduction of this document, that this document is not in its final form, has not been finally checked and has not been submitted to the President to whom the report, I think, is required to be made.

For those two reasons, aside from the general objections which apply to all of this evidence, I am compelled to make the objection which I make.

I wish to add in that connection that the fact that the report is not introduced in evidence at this time, will in my view be entirely cured with the stipulation that it shall be considered and used as if in evidence. I will go further and let counsel now introduce a copy of the Tariff Commission's report for the period for which it is made, with an agreement on the record that it shall be treated as introduced in evidence and that the exhibit shall be supplied when the official report is finally printed. Either that, or we may agree now that it shall have all the effect of being introduced at the present time.

The Court: I am not sure that I understand your last suggestion, Colonel Anderson. If I understand it, it is that the Tariff Commission report, when made, shall be marked in evidence with the next consecutive number as an exhibit; but if I understand that suggestion, it does not enable the defendant to make use of that in the trial of this case and to offer further testimony in accordance with it. It seems to me that your first suggestion, that the copy now presented is as yet a document that has not become an official document, is well taken. I do not see any reason why that is not practically an answer to accepting this in evidence; but have you anything to say to marking it for identification? I do not know that the matter of marking for identification is under my control. I never had that question raised before. Do you think of any reason why that should not be done?

Mr. Anderson: I am, like your Honor, moving in an unknown territory. I also have never heard the question suggested before. I can think only of this reason: that the paper which is here presented, the compilation, which is, I understand, a preliminary draft of it, is subject to revision by the Tariff Commission. Whether they will revise the figuring on it, I do not know. There is no indication to me that they will. But it is subject to revision by the Tariff Commission until it is finally presented to the President.

Therefore, I do not think that their documents, compilations and drafts of reports are matters for use and identification outside of the Office, in any event. I think that this paper occupies the position of any other paper in process of completion in the office of the Tariff Commission. They might change it tomorrow morning, or they might not. I am not suggesting that they are going to change it.

The Court: I appreciate those difficulties; but in so far as my experience, theoretical and practical, has gone, as I understand those objections, they go only to the admissibility.

Mr. Anderson: I started to object before the document was presented, of course. I do not think that counsel have a legal right to call a member of the Tariff Commission, or its representative, and call for any of the documents in their office except such as are in final shape for publication, or are actually published. When I say "published," I mean delivered to the President, or used for that purpose. In other words, I do not think that without the consent of the Tariff Commission any data in their office can be presented, even for identification, and I do not think it is subject to examination.

The Court: I am assuming it is not subject to examination and is not now admissible.

Mr. Anderson: Then may I suggest that it would seem to follow, if it is not subject to examination, that the paper cannot be identified, because it could not be identified except for the purpose of examination merely.

The Court: The only trouble is that the objections which go to the admissibility of the paper are not objections to its being marked for identification. I think we can solve that in a moment, though, without harm to anybody. But, may I make this inquiry, Colonel. A summary has been given out by the Tariff Commission. Do you see any objection to that summary being presented at this time, and, though I do not know whether it is desired to put it in or not, do you see any objection to that summary going in, to be supplanted by the original later?

Mr. Kresel: I was going to offer the summary any way, your Honor. That certainly is admissible—and admissible in evidence.

Mr. Anderson: I have not seen the summary itself.

Mr. Kresel: I have it here.

Mr. Anderson: If it is an official summary by the Tariff Commission and they have given it out for publication, I shall not object. I am objecting, really, because of their request—except for the fact that this is not a public document.

The Court: Then that will be admitted subject to your general objections. But it seems to me, Mr. Kresel, that you may have this document marked for identification, but retained in the custody of the witness.

Mr. Kresel: Certainly, your Honor; I was not going to retain it.

The Court: You have no objection to that?

Mr. Kresel: I have not looked at it, as your Honor will see.

The Court: You have no objection to that?

Mr. Anderson: I have not, sir.

Mr. Kresel: I will ask that this be marked with our next number, for identification.

Marked "Defendant's Exhibit Q," for identification.

Q. 18. Mr. North, I show you this paper and ask you to state whether that is the summary for the report 1922, made by the Tariff Commission, on dyes and chemicals, and whether that was released by the Tariff Commission July 9th (handing witness)?

A. It was.

Mr. Kresel: I offer that in evidence.

The Court: That is the document to which I referred a moment ago when I said it was admitted?

Mr. Kresel: Yes, sir.

Received in evidence and marked "Defendant's Exhibit No. 175." (*See Exhibits, Vol. V, page 3007.*)

The Court: You will retain the contents of this folder so that in case they are subsequently called for we will get the same papers.

The Witness: Yes, sir

Mr. Kresel: That is all, Mr. North. I thank you very much.

The Court: Any questions, Colonel Anderson?

Mr. Anderson: No, sir.

(Witness excused.)

Mr. Kresel: I think, your Honor, I will take a minute or two to read some portions from this. (Reads from Defendant's Exhibit No. 175.)

Mr. Kresel: Now, Professor Stieglitz will you resume the stand?

Mr. Anderson: One moment, if your Honor please. I would like to have it a little clearer about this report, so that there may be no question in the future; and I wish to say in order to avoid any misapprehension, that as to the ground of our objection, of course I think your Honor understands, it is not that the Government is not as much gratified as anybody can be as to the showing of the dye industry in America; but it is our position that this is not an issue, or relevant in this case, that we are trying. I want to make clear that our objection is that it has no material bearing and no relevancy to the case here because that was not involved in the transaction under review. Of course the Government is as much gratified as anybody in these reports, and I would like to see them better.

The Court: I understand your position. That is all I need say.

Mr. Anderson: Yes, but since I objected to the introduction of this document, I do not want to be put in a position of misapprehension on the part of anyone, that there is no objection to those figures. I wish to say with regard to the Tariff Commission report, is it agreed that the report when finally published may be used in this court on trial, or re-trial, or in any Appellate Court at any time with the same effect as if introduced in evidence today?

Mr. Kresel: More than that, Colonel, I understood the Court's suggestion, which I am very glad to follow, and I now offer the Tariff Commission report for 1922, and ask that an exhibit number be assigned thereto, the actual document to be supplied as soon as it comes from the printer.

The Court: But not to be printed among your exhibits.

Mr. Kresel: No, your Honor. We are endeavoring to cut out a great deal.

Mr. Anderson: I have no objection whatever to the limitation that it is not to be printed, and I will ask the Tariff Commission to supply us with 100 copies of that report.

The Court: And it may be marked as a separate volume of the record.

Mr. Anderson: Certainly; and the Commission promised me that they would supply us with 100 copies, and I will communicate at once with them to increase the number if necessary to that end.

Received in evidence and marked "Defendant's Exhibit No. 176." (*Not printed.*)

The Court: We will adjourn court until tomorrow morning at 8.30.

(Whereupon at 2.50 P. M. adjournment was taken to Saturday, July 14, 1923, at 8.30 o'clock A. M. standard time.)

CHARLES L. PARSONS.

CHARLES L. PARSONS, was called as a witness on behalf of the defendant, and being first duly sworn testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Will you please give your full name and address?

A. Charles L. Parsons, Washington, D. C.

Q. 2. And what is your profession?

A. Chemist.

Q. 3. Now, Doctor, I shall have to ask you to tell us something about your education and experience.

A. I was graduated from Cornell University in 1888. I was Chemist at the New Hampshire Experiment Station from 1889 to 1893. Professor of Inorganic Chemistry and head of the Chemical Department, New Hampshire College, 1893 to 1911. Chief Chemist of the Bureau of Mines, 1911 to 1919.

Q. 4. Just stop there a minute, please. Bureau of Mines of what?

A. Of the Interior Department.

Q. 5. Of the United States?

A. Of the United States. I was given an honorary degree in 1911 by the University of Maine as Doctor of Science; Doctor of Chemistry by the University of Pittsburgh in 1915.

That is the extent of my educational experience.

Q. 6. Are you a member of any of the Chemical societies?

A. I am a member of the American Chemical Society. I am a member of the Institute of Chemical Engineers; of the Societe Chimique de France; the Societe Chimie et Industrie; Society of Chemical Industry of England; Fellow of the American Chemical Society.

Q. 7. Are you a member of the American Association for the Advancement of Science?

A. I am a Fellow of the American Society for the Advancement of Science and secretary of the American Chemical Society since 1907; Vice-President for America of the International Union of Pure and Applied Chemistry, 1920, 1921 and 1922. I was Chief Chemical Engineer for the War Department for special nitrogen investigations in Europe in 1916, being transferred from the Interior Department to the War Department for that purpose. I was a member of the Nitrate Supply Committee in 1917.

Q. 8. Was that a Government Committee?

A. A Government Committee. I was consultant to the Inter-departmental Board on its trip through the south in the early part of 1917 to investigate sites for nitrogen plants.

I was a member of the Nitrogen Commission of the War Department during the war; was a member of the Advisory Board on Gas Warfare; and I was in full charge of the construction and operation of Chemical Plant No. 4 at Saltville, Virginia, where there were 350 officers and men reporting to me direct. I was Chairman of the Board on Zirconium steel and light armor; and following the war I was a consulting chemist.

Q. 9. Just before you get to that, I want to take you only up to the war for the present. I would like a little more explanation, if you will, Doctor, about these various Governmental bodies that you were connected with. To begin with you say that you were chemist of the Department of Mines.

A. Bureau of Mines, Department of Interior.

Q. 10. Chief Chemist?

A. Chief Chemist.

Q. 11. And for how many years were you Chief Chemist there?

A. From 1911 until November, 1919. During the first two or three years the word "chief" was modified by "mineral" in one case and afterwards the word "mineral" was taken out and I was made "Chief Chemist."

Q. 12. In other words, the designation was changed?

A. The designation was changed.

Q. 13. When was it that you were transferred from the Bureau of Mines to the War Department?

A. I think it was in the late summer of 1916, or possibly the early fall. It was August or September of 1916.

Q. 14. When was it that you went abroad for the War Department?

A. I left in the latter part of September, about the middle of September, 1916.

Q. 15. I shall not inquire now just what the purpose of your trip was. All I want now is for you to tell me how long you were gone on that mission?

A. I returned the day before Christmas. On the 24th of December, 1916, I landed in New York City.

Q. 16. Upon your return, did you become a member of any Government Committee or Commission?

A. I was made a member of the Nitrate Supply Committee when it was formed in March, I think, following my return.

Q. 17. Can you state who the members were of the Nitrate Supply Committee? Perhaps you would like this to refresh your recollection.

A. I can give you most of them from memory, but I will have it complete, if I may use this. (Taking paper.)

Brigadier General William Crozier, Chief of Ordnance, U. S. Army; Rear Admiral Robert Earle, Chief of the Bureau of Ordnance of the Navy Department; Brigadier General William M. Black, Chief of Engineers, U. S. Army; F. W. Brown, Bureau of Soils, Department of Agriculture; Dr. Leo H. Vaekland of Yonkers, N. Y.; Dr. Gano Dunn, 43 Exchange Place, New York; Dr. Charles H. Herty, of New York; Dr. William F. Hilbrand, Chief Chemist of the Bureau of Standards, Department of Commerce; Dr. Arthur A. Noyes, Institute of Technology, Boston, Massachusetts; Dr. W. R. Whitney, of Schenectady, New York; and myself.

Q. 18. Subsequent to your becoming a member of this Nitrate Committee, what other Government Committees or Commissions did you become a member of?

A. I was a member of the Nitrate Commission and I was Chairman of the Board of Zironium Steel. I was a member of the Advisory Board on Gas Warfare.

Q. 19. Let us take up the first one. You say you were a member of the Nitrate Committee?

A. Nitrate Committee, afterwards Nitrate Commission, which was a Committee of the War Department.

Q. 20. Would you state who were the members of that Committee, please?

A. Dr. Arthur A. Noyes, Leland E. Summers, W. R. Whitney, Gano Dunn, Admiral Earle, and I think General Wheeler of the War Department, Chief of Ordnance, was present although I do not think he was officially a member, and myself. Colonel Joyes, I believe, of the Nitrate Division also was a member of the Committee. He was a representative of the Army.

Q. 21. As to the Advisory Board on Gas Warfare, who were the members of that beside yourself?

A. Dr. Ira Ramsey, of Johns Hopkins; Dr. Theodore Richards, Harvard University; Dr. William Hoskins, of Chicago; Dr. William H. Nichols, of New York, who was Chairman; and myself. That is all I remember.

Q. 22. Do you know with what concern Dr. William H. Nichols was connected?

A. Dr. William H. Nichols was Chairman of the Board of the General Chemical Company. He was, at that time, however, in the Government service, serving in an advisory capacity and spending his time in Washington; a dollar a year man.

Q. 23. Now, Doctor, I first want to have you tell us what you did on your trip abroad for the War Department. Before answering the question, I am not going to ask you to state anything that you did for the Government that you did not subsequently report and which report is a public document. Do you understand me? I desire you to confine yourself entirely to whatever you did for the Government which is in the form of your report, which I am about to introduce?

A. I visited England, France, Italy, Norway and Sweden, with special reference to the processes for nitrogen fixation, attempting to get at the same time all the information I could in those countries from engineers whom I might come in contact with and whom I went to see in Norway and Sweden regarding the German Haber process.

Q. 24. I am going to stop there, Doctor, to take up with you this question of nitrogen fixation, because we do not understand it the way you do?

A. Yes.

Q. 25. In the first place, please state in what activities in our national life nitrogen is important?

A. Why, nitrogen is not only important, but essential to agriculture. It is essential in our industries, and it is required for all explosives.

Q. 26. Now, when you say "in our agriculture," in what way is nitrogen essential in agriculture?

A. As a fertilizing material.

Q. 27. And in explosives?

A. All explosives contain nitrogen, and that nitrogen has to be in combined form before it can be introduced into the explosive. The fact is the quality of the explosive depends solely on the nitrogen it contains and the way it is confined and the amount of gases given off by its decomposition.

Q. 28. And in what avenues of commerce is nitrogen essential or important?

A. I do not quite understand your question.

Q. 29. How is nitrogen used in commerce?

A. It is used in many of our industries. It is used—

Q. 30. For example?

A. As a refrigerating material, to produce cold in storage, and in our cold storage warehouses, and in the production of artificial ice. It is used in the production of sodium carbonate which is used in the production of glass.

Q. 31. That is sufficient.

A. It is used in the dye production; in fact, there are very few chemical manufacturers that do not have to use nitrogen compounds in some form.

Q. 32. Now, Doctor, I wish you would tell us what the sources of nitrogen are; where is that element obtained?

A. Nitrogen for fertilization is obtained to a considerable extent from animal and vegetable materials, and refuse, such as cottonseed meal, tankage, and manure, and various other forms which you probably do not care to go into in detail. It is obtained in large quantities from a deposit in Chili, known as Chilian saltpeter which is a sodium nitrate. It was until the early part of this century the chief source of our inorganic nitrogen. It is obtained in large quantities also from the gas which is produced in the by-product coke ovens, the ammonia being washed out of that gas. That is a very large source of nitrogen, and it is obtained by bringing the nitrogen of the air——

Q. 33. I am not asking you how it is obtained. It is obtained out of what?

A. Out of the air.

Q. 34. Out of the air. We will come to the processes in a little while. Is nitrogen naturally found in the soil?

A. To a limited extent, in combination, yes.

Q. 35. And is that element essential to the growth of plants?

A. Absolutely.

Q. 36. Now, the Chilian saltpeter, is that found as an element?

A. That is found as sodium nitrate in combination.

Q. 37. It is a deposit in Chili?

A. It is a deposit in Chili.

Q. 38. Which is mined or dug?

A. Which is dug, and dissolved in water, and the water evaporated and the sodium nitrate so produced is brought into commerce for agricultural purposes, and is a basis for the production of nitric acid.

Q. 39. Now, you spoke of the by-product coke ovens. I wish you would make that a little plainer, please. Tell us what a by-product coke oven is; tell us what is being done when this gas is produced, and how that is made into nitrogen or ammonia?

A. Well, a few years ago, all of the coke required for metallurgical operations was made in bee hive ovens, that is very much the same as charcoal is produced. The coal used was a bituminous coal which was heated, and the gas which came therefrom was burned, and all of the material which came off in that gas, went to waste. Later, as science and manufacture developed by-product coke ovens were introduced. In these ovens the coke is heated in special brick-lined furnaces from the outside, so that gas is given off. That gas is collected and carries with it a number of very important products, such as toluol and benzol, which are important commercial products, ammonia and some other compounds. The ammonia with which we are immediately interested, as it is a nitrogen compound, is washed out by water. That is then usually neutralized by sulphuric acid and goes into commerce in the form of ammonium sulphate for fertilizer purposes. It need not necessarily go through that form. It can be obtained as ammonia water, aqua ammonia, direct.

Q. 40. Nitrogen, then, as it comes to us in commerce, is in the form of ammonia usually?

A. It depends on where it comes from. If it comes from Chili it is in the form of a nitrate. If it comes from these other materials, it is usually in the form of ammonia or some of its compounds.

Q. 41. And then it will be either ammonia sulphate or ammonium nitrate, depending upon what acid it is combined with?

A. Correct; but there is practically no ammonium nitrate used except in explosives.

(At this point a five-minute recess was taken by direction of the Court.)

Q. 42. Dr. Parsons, you have stated that one of the sources of nitrogen is the air. What is the combination in which nitrogen appears in the air?

A. It is not in combination. It is there as free nitrogen, and as such is unavailable either to plants or for explosives. It is unavailable to any use until it is brought into combination.

Q. 43. And in what proportion does nitrogen occur in the air in proportion to other elements?

A. Approximately four-fifths.

Q. 44. That is, four-fifths of the air is nitrogen?

A. Yes.

Q. 45. You have spoken of fixation of nitrogen. Will you please define that term?

A. It is the bringing of that free nitrogen of the air into combination, so that it may be useful to man.

Q. 46. How many processes of fixation of nitrogen are there known?

A. There are four essential classes of commercial fixation.

Q. 47. Will you mention them?

A. The arc process, the cyanamid process, the various processes which are generically spoken of under the term of "Haber Process," and the cyanide process.

Q. 48. In what other way is this generic denomination of the Haber process called?

A. The synthetic ammonia or the direct ammonia process.

Q. 49. That is what I thought. I should like for a very few minutes, Doctor, to have you describe to the Court these various processes, and first please take the arc process.

A. The arc process has been installed and has been commercially successful only in Norway. It is there installed in very large plants using something over 200,000 horse power.

The air is carried through an immense electric arc and at that high temperature a small portion of the nitrogen of the air combines with the oxygen of the air to form oxides of nitrogen. Those are cooled as quickly as possible, are then during the cooling combined with more oxygen from the same air that went through the arc, and this oxide of nitrogen is washed out with water in immense towers, to form nitric acid. That nitric acid then has to be concentrated if it is to be used for explosives or neutralized with lime to form lime nitrate, which goes very largely into agriculture, or neutralized with ammonia, as it was very largely during the war, to form ammonia nitrate, which was used in explosives and was a very prominent part of the bursting explosives, known as ammetol, which was composed of some 80 per cent of the nitrate, and used to a great extent in the war.

Q. 50. Please describe the cyanamid process?

A. The cyanamid process was the next in order to the arc process in its establishment and commercial development. In the cyanimid process limestone is first treated to form quick lime. That lime is then mixed with coke or with anthracite coal in an immense electric furnace, is heated to a high temperature, and under those conditions the calcium of the lime and the carbon of the coke combine together to form calcium carbide.

That calcium carbide is then ground to a powder, but in specially constructed furnaces, a portion heated to a yellow heat, and nitrogen from the air, which has been separated by some form of liquid air plant, is run into this furnace. Under those conditions the nitrogen of the air combines with the calcium carbide to form calcium cyanamid, so that the nitrogen is then brought into combination.

That calcium cyanamid in that form is generally spoken of as lime nitrogen. It is available to a certain extent in mixed fertilizers, but if it is to be used by itself for fertilizer purposes it must be first treated, usually by an oiling process, so that it can be spread upon the soil. The lime nitrogen may be put into large boilers or autoclaves, mixed with lime and a little soda, and under the effect of high pressure steam another reaction takes place so that ammonia comes off as ammonia gas. That ammonia gas brings the nitrogen into the form that it is usually desired. If the ammonia must be used for explosives another reaction takes place. It is mixed with air, about ten per cent of ammonia to about 90 per cent of air is passed over heated platinum gauze and you obtain a gas containing about 10 per cent of oxide of nitrogen, which is nearly ten times as strong as that which comes from the arc process, and again the nitric oxide is combined with the oxide of the air to a higher state of oxidation, are dissolved in water to form nitric acid, giving you a stronger nitric acid than you can hope to obtain by the arc process, and that nitric acid after concentration is available for explosive production or for any purpose for which nitric acid is used.

Q. 51. Now please describe the cyanide process?

A. The cyanide process is commercially the least important of any of these processes, and when it comes to a question of explosives or of fertilizers it has not yet been brought into real commercial use. But it is a nitrogen fixation process and sodium cyanide is made thereby. In the cyanide process a mixture of coke, usually petroleum coke, and sodium carbonate, soda, with a certain proportion of finely ground iron, are mixed together, heated to approximately 1,000 degrees Centigrade and nitrogen from the air, first having been separated by the liquid air method of which I have already spoken, is passed over or through this material and under those conditions combines with the sodium of the sodium carbonate and the carbon of the coal to form sodium cyanide.

Q. 52. Now please describe the direct synthetic ammonia process?

A. The direct synthetic ammonia process consists simply in bringing pure nitrogen and pure hydrogen together at approximately a red heat in the presence of a catalytic material which will enable them to combine. They then combine directly to form ammonia.

Q. 53. Is there any pressure required?

A. Under high pressure, yes.

Q. 54. Let us see if I got it. The direct synthetic ammonia process is the combination of hydrogen and nitrogen, both of them pure, under pressure at red heat and in the presence of a catalyst?

A. Right.

Q. 55. Please define a catalyst?

A. A catalyst is a material which speeds up a chemical reaction or enables it to take place to a greater extent than it would if a catalyst was not present. The catalyst itself usually does not take part in the reaction and is the same material when the reaction is through as it was at first. We have many instances of that in chemical industries.

Q. 56. Is there more than one direct synthetic ammonia process?

A. Yes.

Q. 57. Please tell us what they are?

A. Well, there are three of real importance judged from their commercial development. The Haber process *per se* has developed in Germany, which is causing nitrogen to combine there in very large quantities, and was the basis upon which Germany was able to continue the war. In Germany there are two large Haber plants, one at Oppau and one at Merseburg. The first fixes approximately 100,000 tons of nitrogen per year and the second about 200,000 tons, which is far more than is produced in any other part of the world.

The Germans operate under pressure of 200 atmospheres and have developed one of the largest and most complicated engineering chemical developments or engineering developments of any kind that has been developed in the world. They started in in 1913 with the production of some six or seven thousand tons of nitrogen, and as they were unable to get explosive materials during the war they developed so that in 1918 they were producing approximately the quantities which I have given, and they are still producing for fertilizer purposes. They work in very large steel barns.

Q. 58. Just before you go to the next process will you state what is meant by an atmosphere?

A. A pressure of 15 pounds to the square inch. I will do my best to avoid these terms to which I am so accustomed.

Q. 58-a. That is all right. I want you to use the terms, but I am going to ask you to explain them to us. You say that the Germans' direct synthetic ammonia process is operated under 200 atmospheres.

A. Approximately 3,000 pounds to the square inch.

The next in order of development was the General Chemical Company's process which so far as the basic reaction is concerned is the same as the Haber, and has often been referred to as a modified Haber process on account of that fact, simply because it uses the same basic chemical reaction, the direct combination of nitrogen and hydrogen.

The General Chemical Company's process was installed or attempted to be installed during the war in nitrate plant No. 1 at Muscle Shoals. It works under 100 atmospheres pressure. That is slightly below 1500 pounds per square inch. That is now operating in a considerable sized plant at Syracuse, run by the Atmospheric Nitrogen Corporation, and has run very successfully from the day the plant began operating, which was in August, 1921.

Q. 59. And you say that that works under atmospheres below one hundred.

A. Works under atmospheres below one hundred. They had a very special catalyst of their own.

Q. 60. I am coming to the catalyst in a little while. Now, what is the third?

A. The third is the Claude process, which is being developed quite rapidly in France, and which has most excellent prospects for the future. The Claude process began to be known about late in 1918 or early in 1919, I think I got my first details of it in 1919, although Claude had been working on it in France for some time before.

The Claude process has some very unique features. It works under higher pressure than any of the others. He was supposed to work normally under one thousand atmospheres pressure, as plants actually work under nine hundred atmospheres pressure, which is four and a half times the pressure used by Haber, and of course, something over nine times the pressure used by the General Chemical Company's process—The Atmospheric Nitrogen Corporation.

Q. 61. Will you stop there a minute. I now desire to read from Defendant's Exhibit No. 140. I read from Page 55 of that exhibit, which is a Report on the Fixation and Utilization of Nitrogen, prepared by the Nitrate Division, Ordnance Office, War Department, assisted by the Fixed Nitrogen Research Laboratory, Department of Agriculture.

> Mr. Kresel: Before reading the particular portion that I desire to read in connection with this witness's testimony, I think it might be well that your Honor should have before you an extract from the introduction of this report. I shall read one paragraph. It is entitled, "Introduction—Purpose."

> "This report has been prepared in order to correlate and make available under one cover such information on the fixation and utilization of nitrogen, collected by the Nitrate Division since its organization in July, 1917, as may aid in the further development of that art in the United States. It is based to a very considerable extent on reports, papers, and articles prepared by the officers and civilians associated from time to time with the activities of the Nitrate Division, as well as on the published technical and economic papers of several others. In order that it may be of further help to those who desire to make a more detailed study of any of the several phases of this subject, a bibliography of many of the papers pertaining thereto that have appeared in the last few years has been prepared and is included."

Q. 61. (continued) Then under the heading of "Utilization of Nitrogen" and under a sub-heading reading "For Military Explosives," this report states:

> "Almost without exception all military explosives are nitrogen compounds. Owing to the slight affinity between nitrogen and the other elements with which it enters into combination, many of its compounds are unstable and can be decomposed with the almost instantaneous evolution of heat and gas."

I now read from page 55 of that Exhibit 140 the following:

> "The various modifications of the synthetic process which are being developed outside of Germany have certain distinguishing characteristics. The direct synthetic plants in Germany use 200 atmospheres pressure, the American plant 100 atmospheres, and the Claude process in France 600 to 1,000 atmospheres. The Italian and French plants use electrolytic hydrogen; the German and American use producer gas or water gas as a source of hydrogen."

That is what you were referring to in your testimony?

A. Yes, except that I stated that Claude used nine hundred atmospheres. I visited the Claude plant and went through it, so I know the actual operation. There is no secret about it.

Q. 62. I will read in this connection from this Exhibit No. 140, page 97:

> "There are today in general four definite developments of the Haber process for the direct synthesis of ammonia: The original German (Haber), the American (General Chemical Co.), the French (Claude), and the Italian (Casale). The conditions necessary in all of these processes to bring about an appreciable combination of hydrogen with nitrogen, even in the presence of the best reaction promoters or catalysts so far developed, involve pressures of over 100 atmospheres, and temperatures of 450 degrees C. to 600 degrees C. The concentration of ammonia thus obtained in the nitrogen-hydrogen mixture, according to present industrial practice, is of the order of 5 to 10 per cent. The four developments are fundamentally similar, differing essentially in the operating pressures (100 to 1,000 atmospheres) used for synthesis and in the methods for removal of ammonia from the gases (liquefaction by cooling and absorption). There are in all of the processes the mechanical difficulties attendant to operation under combined high temperatures and high gas pressures, and there is the need of an active, rugged, cheap catalyst which will operate at as low temperatures as possible. There are two principal methods used to produce the raw gases for the process, the Bosch water gas and the water electrolysis.
>
> "The German process developed by Haber uses a pressure of about 200 atmospheres, and the catalysis temperature is about 500 degrees C. The synthesis takes place in a circulating system from which the ammonia is removed by water absorp-

tion. The units employed in the German commercial installation are of large capacity, each catalyst bomb synthesizing about 15 tons of ammonia per day.

"The American process was developed by the General Chemical Co. and involves pressures of approximately 100 atmospheres. The low pressure utilized in this process was made possible by the activity of the catalyst developed by the General Chemical Co. The greater the activity of a catalyst, however, the greater is its sensitiveness to poisons in the gases. It is therefore necessary that great precaution be taken in the purification of the gases. The synthesis takes place, in this process also, in a circulating system from which the removal of ammonia is accomplished by refrigeration and liquefaction at extremely low temperature (—40 degrees C.), the low temperature being necessary in view of the small concentration of ammonia obtained at the comparatively low pressure of 100 atmospheres. Commercial units have been built with rated capacities of 5 to 10 tons of ammonia per day each."

Now, Doctor Parsons, you have spoken of the essential combination of hydrogen and nitrogen in each of these three processes; that is right, is it not?

A. Correct.

Q. 63. Are you familiar with the so-called Haber patents, the United States Haber patents?

A. I am.

Q. 64. Is this essential step, or rather, is this step which is common to all the three processes, namely, the combination of hydrogen and nitrogen covered by any patent?

A. It is not.

Q. 65. Then, as far as we have proceeded, the process developed by the General Chemical Company differs from the German Haber processes covered by these United States patents that are involved here in two respects: The General Chemical Company process works under lower pressures, namely, one hundred or less atmospheres, and the General Chemical Company has developed a special catalyst; is that right?

A. Those are the two chief differences, yes.

Q. 66. The Claude process, which you say is the one developed in France, as I understand your testimony, differs from the German Haber process chiefly, in that it uses a much higher pressure, namely, between six hundred and nine hundred atmospheres, as against two hundred used by the Germans?

A. That is one of its great differences. It has other important differences.

Q. 67. For the present, we will confine ourselves to that. I want you to come back, if you will, to your trip abroad in 1916. Please tell us what countries you visited, what plants you observed with whom you talked, not stating what was said to you?

A. May I preface that by a statement of some activities that I had just before that?

Q. 68. If you will, please.

A. Previous to leaving for New York I had been for several months in consultation with General Crozier of the War Department; and in connection therewith the War Department had requested the Interior Department to undertake certain investigations regarding the oxidation of ammonia to nitric acid. An arrangement was made between the Bureau of Mines and the Semet-Solvay Company, whereby extensive experiments were carried out at Syracuse, under the joint direction of L. C. Jones, the Chief Chemist of that Company, and myself. Those were the first—no, it was not the first. I was going to say they were the first installation where an attempt was made to oxidize ammonia. The American Cyanamide Company had already an installation under way, but it was a private installation. That was the first public attempt to oxidize ammonia, as it was extremely important to do that. We had considerable amounts of ammonia available from our coke ovens. Those plans were drawn and operations were started before I left for Europe and were continued while I was away; and from them, processes for ammonia oxidation were developed, which are in use in plant No. 1 at Muscle Shoals and are commercially used in the country today in the oxidation of ammonia.

Q. 69. Will you permit me to put a question there? You say that this work which you have just described at Syracuse was done under the direction of Mr. Jones, representing the Semet-Solvay Company, and yourself. You were representing in that, whom?

A. The Bureau of Mines. We were acting both of us jointly at the request of the War Department.

Q. 70. Please tell us what is meant by oxidation of ammonia?

A. It is the conversion of the nitrogen in the ammonia to the nitrate form so that it is available for explosives.

Q. 71. Now then, I return to my original question about your trip.

A. I landed first in England and spent some little time there in consultation with the chemists of the Munitions Department on their nitrogen fixation experiments.

Q. 72. You mean the British Munitions Department?

A. The British, yes. They had established a laboratory and had obtained special experts to study these same questions and were working at that time in University and College laboratories. They had made some very interesting developments and those developments were continued. The laboratories were enlarged. By the time the war was over, they had proposed that the British Government attempt to operate the direct ammonia process.

Q. 73. Will you stop there, please. You say that they were experimenting. Were they experimenting with the question of the fixation of nitrogen?

A. The fixation of nitrogen by direct composition of nitrogen and hydrogen.

Q. 74. Now, will you let me put another question?

> Mr. Knight: I do not want to be captious, but it seems to me that if this Professor will confine his answers to the question and not go over what happened after he left there to these various plants, it might shorten the examination

Q. 75. Dr. Parsons, is it the fact that the Germans had taken out patents covering their German Haber process in England?

A. Yes.

Q. 76. And in France?

A. Yes.

Q. 77. Will you proceed now, Doctor?

A. From there I went to France and was given every facility by the French Government to study all of their plants and developments. I spent most of my time while in France in the powder factory at Angouleme studying the oxidation of ammonia. They had cyanamide plants also operating in France and they had established at Roulone, in Southern France, in the Pyrenees Mountains, a small arc plant where they hoped to make nitric acid direct. That plant was just in process of installation and was not producing to any extent while I was there. It was being built, but I saw a great deal about the methods of construction.

> Mr. Anderson: Will your Honor permit me to inquire? We are proceeding this morning un-

der the General Rule, are we not, without taking objections to any evidence?

THE COURT: If you have specific objections, it will probably enable me to understand and apply the testimony to let me know what objection you have in mind to this testimony besides irrelevancy.

MR. ANDERSON: There are a number of questions which I do not think are material. I do not want to object to them. It just occurs to me that the question that he was asked whether patents had been taken out in England is objectionable. If the statement is of any value whatever, he would have to produce the patents to show that they conformed to the same rules we have in America. I do not know the relevancy of it. I do not want to object and require the best evidence of whether they have taken out patents in England, unless it has something to do with the case. If we are going to prove patents in England or patents in any other country, they ought to produce the patents. If they have any value at all, we should know what the status is. Therefore, I will object, and if necessary make a motion to strike that question and answer out simply because I do not see its relevancy in the first place, and in the second place it is not evidence. Therefore, if they undertake to confine the evidence reasonably to the rules of evidence, I will not object.

MR. KRESEL: Do I understand that a motion is now being made to strike that out?

MR. ANDERSON: To strike out any statement as to English patents or having taken out patents in England, because we haven't got them. If I knew the facts, I would be willing to admit them. I do not want to be put in the position of permitting illegal evidence to go in, which it might later be argued possibly is material and may have a bearing on the case, which I can not conceive of at the moment. I do not like to be left in that position on the record.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: I have this to say, your Honor, that my sole question was whether the Germans had taken out patents in England and France. The answer was in the affirmative.

MR. ANDERSON: Covering the Haber process.

MR. KRESEL: We had the same question up with Dr. Holdermann, who, your Honor will recall, testified as to the taking out of patents in Germany, where he undertook to say and was permitted to say that the United States Haber patents were similar to the German Haber patents. Now, I think that the rule contended for there by the Goverment is equally applicable here. As to the materiality thereof, I shall develop that in a little while. That is not my present purpose. All I wanted to show was that there were patents taken out in those countries.

MR. ANDERSON: I understand that a motion has been made to strike out the evidence of Dr. Holdermann on that subject, if it applies to that point. I do not recall particularly. It may have been brought out on cross-examination. I do not recall that record way back there. But if it was subject to objection, and if the objection was good, that is all right. Whether it was or not would depend upon the circumstances. If it was subject to a motion to strike out, which motion I do not care to take up now, that would be a question for future argument. All I wish at this time is to reserve the point on that so that I may not be injured by a record which may become material.

Mr. Kresel: That is all right.

The Court: I did not quite understand your position before. I do now. You are making clear at this point your objection should you decide to press it later.

Mr. Anderson: If the Court does not desire to rule upon it, I just ask you to reserve the point. I only specified it because your Honor suggested it. That is the reason why I asked whether your Honor was proceeding under the general rule.

The Court: I did not have in mind just what you had in your mind. That was all.

Q. 78. Will you proceed, Doctor, please?

A. In France, as in England, I got in touch with every engineer and chemist whom I could hear of or could learn from the Governments had any information on the nitrogen situation or nitrogen processes.

From France I went to Italy and went through the explosive factories at Cerni, and after some little wait, I obtained permission to visit the cyanamid factories at Perni, which was one of the largest and most interesting cyanide plants in the world. Also in Italy I was in consultation with the Italian engineers and chemists on these matters, getting all the information I could on the subject.

From Italy I came back through France picking up some loose ends; went again to England, and in England I was permitted to visit and see the erection and part operation, because it was only just at that time beginning to operate, of the ammonia oxidation plant which was at Dagenham Docks, just outside of London.

From England I went to Norway. I was in consultation there with the Norwegian engineers and chemists; visited the large plants at Notodden and at Rjukan, which were being operated by the arc process, where they were making ammonia nitrate to the extent of something like 240,000 tons of ammonia nitrate a year, which material was going almost wholly to the Allies for the production of ammotol.

From Norway I went to Sweden and visited the cyanamid plant, which was made by a somewhat different process, at Lunga-Werke. Came back to Stockholm and was in consultation with the Karlsons there, who were the special Swedish experts along those lines.

Went from there to Goettenburg in Sweden, where I went into the details of processes, cyanide processes, that were being developed there; and from there back through Norway and home, through France and in Italy, and back to France again.

I was in the company most of the time of Mr. Eysten Berg.

Q. 79. Who was he?

A. He is a Norwegian who has had and had had at that time many years of experience in nitrogen fixation.

Q. 80. What was his official connection with your mission?

A. He was engaged also by the War Department for this investigation to accompany me and assist me in the matter. I had the benefit of his advice throughout that time, and was very largely assisted by his letters of introduction, when I went to Norway and Sweden.

Q. 81. Through all your travels and investigations which you have just described, you have not mentioned seeing or hearing of a single plant that was using the direct synthetic ammonia process.

A. There was none.

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Q. 82. Did you get into Germany?

A. I did not.

Q. 83. Of course, that was during the war?

A. It was before we went into the war.

Q. 84. Yes. But it was in 1916 that you are talking about?

A. In 1916.

Q. 85. Have you made a report to the War Department upon the results of your investigation?

A. I have.

Q. 86. Look at this document and state whether that contains your report?

A. It does.

Q. 87. Is there more than one report that you made upon the subject?

A. Two.

Q. 88. And are they both contained therein?

A. They are.

Mr. Kresel: Colonel, have you ever seen this, and may I offer it?

Mr. Anderson: Yes.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 177." (*See Exhibits, Vol. V, page 3017.*)

Q. 89. Dr. Parsons, when did you sever your connection with the War Department?

A. Shortly after my return, about the first of January, 1917—my official connection.

Q. 90. When did you cease to act on all these committees in connection with the War Department which you have described?

A. Throughout the war.

Q. 91. Since the close of the war what have been your activities in the matter of nitrogen and the fixation of nitrogen?

A. In the early part of 1920 I was approached by the Atmospheric Nitrogen Corporation to act for them in a consulting capacity and consented to do so, beginning my connection with them in April, 1920. I continued in a consulting capacity with the Atmospheric Nitrogen Corporation until about the middle of August, 1921.

Q. 92. Please stop there a minute, if it will not interrupt your thought. What is the Atmospheric Nitrogen Corporation?

A. The Atmospheric Nitrogen Corporation is a corporation that was formed between the General Chemical Company and the Solvay Companies at Syracuse to exploit and put into commercial operation the General Chemical Company's process, which had been first tried out in Nitrate Plant No. 1 at Muscle Shoals.

Q. 93. And is that the plant that you speak of that was put up at Syracuse and is producing?

A. Yes.

Q. 94. So you were in a consulting capacity for this company beginning in April, 1920, did you say?

A. Yes.

Q. 95. To August, 1921?

A. Correct.

Q. 96. Now go ahead.

A. I also went abroad in the summer of 1919, again in the summer of 1920, and again in the summer of 1922, and was in England, in Belgium, France, Italy, Switzerland and Germany, and on each trip was again in consultation with many of these engineers and chemists with whom I had become acquainted earlier, and have tried to keep myself throughout the time entirely in touch with the nitrogen situation as it has developed in Europe.

I also appeared before a number of Congressional investigating committees on the Muscle Shoals proposals of Henry Ford, on the War Expenditures, on the so-called Nitrogen Corporation, the establishment of which was proposed by the Government, going into all of those on invitation of the committees on account of my previous experience.

I have made one or two reports for compensation to other companies on the nitrogen situation, but have not acted for any one in such a consulting capacity on any question of construction or operation as I did with the Atmospheric Nitrogen Corporation.

Q. 97. Upon these trips after the war you say that you went to Germany among other places. Did you get into their fixed nitrogen plants at Oppau or Merseburg?

A. I did not.

Q. 98. Did you try to?

A. I did.

Q. 99. Pardon me?

A. I say, it was put up directly to the directors of the company and they declined to allow me to enter the plant.

Q. 100. Was there any reason assigned?

A. Yes.

Mr. Anderson: I did not catch that.

Mr. Kresel: I asked if there was any reason assigned.

Q. 101. Just say yes or no.

Mr. Anderson: I do not think that would be evidence. He was not doing that officially.

Q. 102. Just say yes or no.

A. Yes.

The Court: The question has already been answered. Is there a motion to strike out?

Mr. Anderson: I will not object to his stating they had a reason. I presume it was a matter of courtesy. But if we are going into the reason, then I would object.

Q. 103. Now I am going to put the question to you so that the Government can object to it. What reason was assigned to you for not allowing you to see the plants?

Mr. Anderson: I do object to that, sir, simply because I have not the source of information for going into that question. It is purely hearsay and the gentleman was not over there as an official of the Government of the United States. I have no way of checking the situation at all, and, therefore, I do object to that question. I think it is outside of the scope of the examination.

The Court: What is the purpose, Mr. Kresel? Then we can tell whether it may or may not be relevant.

Mr. Kresel: Yes, your Honor, I am perfectly willing to say. The purpose is to show that the Germans declined to let any one see their process. It is material upon our contention that these patents without the know-how were valueless.

The Court: Is it your contention that the Haber patents assigned by the Alien Property Custodian to the defendant here were without substantial value by reason of the lack of complete disclosure?

Mr. Kresel: Certainly. Not only that, but that he did not know how to operate them, as I shall show by this witness and others.

Mr. Anderson: If your Honor please, I do not want to argue; but suppose all that Mr. Kresel said were true, which, of course, we do not know, the question of the representative of a company engaged in the same business going into an industrial plant in another country involves many questions of delicate industrial management and organization which we can not inquire into. I imagine if we or a competitor of the General Electric Company sent somebody up to see their process at Syracuse, they would be entirely free to deny them a right to go into the plant, if they wanted to, and, therefore, the question is not what the Germans were doing in 1921 or 1922, when this gentleman was in Germany, but the sole question is as to the Haber patents agent in America and matters relating to those patents. The Germans may or may not have been doing one thing or another in 1922——

THE COURT: I can not even guess as to what the answer may be. I can see that some answers given may be without weight. I can see how possibly some other answer might have some weight. I should think the chances would be in favor of its being without weight, but that I can not tell until the answer is given. I think the answer should be taken.

MR. ANDERSON: I note an exception, sir.

A. Director Schmidt who had consulted with the directors the day previous stated that he considered my experience and knowledge such that if I went into the plant I would carry away information which they did not wish carried away, and, therefore, they must decline to let me enter.

THE COURT: Do you wish to make a motion with respect to that answer?

MR. ANDERSON: No, sir; because I could not imagine that that amounted to anything in any Court.

THE COURT: You may proceed, Mr. Kresel.

Q. 104. Have you before you what are known as the United States Haber patents?

A. I have not them here, no, but I presume they are in the room. I will get them. (Leaves stand and returns.)

Q. 105. Have you them before you?

A. I have.

Q. 106. How many are there?

A. Some fifty.

Q. 107. Can you divide them into groups, as to the different steps that they cover?

A. I think so.

Q. 108. Just tell me what groups they naturally fall into and then we will do the dividing.

A. There are a number of patents for catalysts, special catalysts. There are a few patents for the oxidation of ammonia. There are a number of patents for the production and purification of hydrogen. There are patents for the separation of ammonia after it is reduced, and then there are the main process patents having to do with the combination of nitrogen and hydrogen to form ammonia. There are numerous apparatus patents which they use in these processes.

Q. 109. I am not going to ask to you stop now and take the time of the Court to segregate those. I wish you would be prepared to do that Monday morning. In other words, in order that you might understand, I would like you to separate them into bunches, so that you can produce them and say these cover the catalyst and these cover the oxidation. Do you understand me?

A. Yes, sir.

Q. 110. In February, March and April, 1919, was there any direct synthetic ammonia plant, no matter what its particular method of production, anywhere outside of Germany?

A. When did you say?

Q. 111. February, March and April, 1919.

A. Yes.

Q. 112. Which one?

A. Plant No. 1.

Q. 113. Where?

A. At Muscle Shoals.

Q. 114. That is the Government plant?

A. The Government plant.

Q. 115. To which I shall come. Other than that there was none?

A. Except small experimental plants.

Q. 116. I know, but I was talking of production plants. Inasmuch as you have mentioned the experimental plant, where was there any experimental plant?

A. They were experimenting in England, they were experimenting in Italy, and they were experimenting most successfully in France.

Q. 117. Under the Claude process?

A. Under the Claude process. They were also experimenting in this country. There was some small experimental work going on at Niagara Falls by the Nitrogen Products Company, and I presume in other companies, but I do not know of it.

Q. 118. I read from your report, Defendant's Exhibit No. 177, the following statement: "The Haber process is not at present in use outside of Germany on account of the lack of detailed information regarding plant construction and operation, and also owing to the very large royalty demanded by the Badische Company for its use by other concerns." That was true?

A. Correct.

Q. 119. I read from page 7 of Defendant's Exhibit No. 140 the following, speaking of the direct synthetic ammonia process: "The engineering difficulties in safely handling these gases at high temperatures and pressures are very considerable, and in its present state of development a much more skilled personnel is required to operate this process than either the arc or the cyanamide process. The synthetic ammonia process has been developed almost entirely in Germany, and during the latter stages of the war was the most important source of her nitrogen supply: It was not until the present year, 1921, when at Syracuse, New York, the first plant of any size outside of Germany using this process, came into regular production. Though the Government had built a synthetic plant at Sheffield, Alabama''——

Is that the same thing that you speak of as No. 1 at Muscle Shoals?

A. It is.

Q. 119. (continued) I will read that sentence again, sir: ''Though the Government had built a synthetic plant at Sheffield, Alabama, during the war, it had not come into regular operation before the end of hostilities, when it was shut down. Experimental plants with only a very small production have been operated in France and Italy, and a commercial plant is now under construction in England. But the German plants up to this time have supplied all of the nitrogen fixed by this process and their capacity is so great that in a normal year they furnish more than half of the world's supply of fixed air nitrogen. The plant at Syracuse, New York, has only about one one-hundredth of their capacity and can supply less than two per cent of the total inorganic nitrogen requirements of the United States.''

Doctor, at Muscle Shoals—and in order that we may not confuse the record, at Sheffield, Alabama, because I notice that this Exhibit 140 speaks of Sheffield, Alabama, as the place——

A. Sheffield, Alabama, is at Muscle Shoals.

the question of the value of these patents. I think your Honor will find that Dr. Holdermann is a little sanguine.

THE COURT: Is this a convenient point for stopping?

MR. KRESEL: Yes, your Honor.

THE COURT: We will adjourn until Monday morning at 8:30 o'clock Standard Time.

(Whereupon, at 12 o'clock Noon, an adjournment was taken until Monday, July 16, 1923, at 8:30 o'clock, A. M., Standard Time.)

TWENTY-EIGHTH DAY

Wilmington, Delaware,
July 16, 1923, at 8:30 o'clock A. M.,
Standard Time.

Before:
HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. ANDERSON: On Friday, if your Honor please, I asked leave to withdraw Plaintiff's Exhibit No. 631 for the purpose of having it photostated, it being an original record, and to substitute a photostat copy. I understand the photostat copy has been delivered to the Clerk, and I would like leave to withdraw this exhibit.

THE COURT: Leave granted.

Colonel Anderson, reflecting, since the adjournment on Saturday, upon some of the occurrences of the past week, I have become, Colonel Anderson, convinced that my ruling with respect to the testimony of Dr. Volwiler, touching the trade secrets of his company, was basically misunderstood by you. This was due undoubtedly to my failure to express clearly the principles upon which the ruling was made. Realizing that in the prosecution of this suit you are the representative of the Attorney General not only, but, so to speak, the Ambassador of the President of the United States as well, it is my purpose that in this trial you shall have not only all rights to which you may be entitled, but also every courtesy to which you and your principals are entitled that may not place the rights of others in jeopardy. To this end, and if it be your desire, I am willing not only to re-open the matter, but to permit you to have a copy of the testimony taken in chambers and to make such use thereof as you in your capacity as representative of the Attorney General and of the President of the United States believe that you are entitled to and should make.

That does not call for an answer at the present time if you do not desire to make any.

MR. ANDERSON: I wish to express my appreciation of your Honor's statement, and that matter will be considered by my associates and myself, and I will respond later.

THE COURT: That is not a suggestion.

MR. ANDERSON: I understand that.

THE COURT: I do not mean that it should have any tendency in any way to change your position if you believe that your position now is the right one.

MR. ANDERSON: I quite appreciate that, and I merely want to thank your Honor for your courtesy in making the statement.

Charles L. Parsons, resumes the stand.

Direct Examination (Continued).

By Mr. Kresel:

Q. 125. Dr. Parsons, last Saturday I asked you to be good enough to segregate the patents into groups so that we may understand the situation a little better than we do now. Have you done that?

A. I have.

Q. 126. And have you prepared a statement or statements listing the patents in groups?

A. The statement is here.

Mr. Kresel: I will give you, Colonel Anderson, a copy of these (handing counsel statements).

XQ. 127. The first group is what?

A. The first group consists of fourteen patents on the manufacture and purification of hydrogen. I think I should add, Mr. Kresel, that in dividing these into groups it is not always possible to make the distinction absolutely sharp, as some of the patents cover more than one.

Q. 128. They over-lap.

A. We have done the best that we could.

Q. 129. You list the patents by numbers, do you?

A. List the patents by numbers.

Mr. Kresel: Your Honor, instead of putting these in evidence, may they be taken as a part of the witness's answer in the record? I think that would be more convenient for every one concerned.

Mr. Anderson: It is perfeciy agreeable to the Government.

Mr. Kresel: I will simply hand this to the stenographer to be copied in.

The first list presented by the witness covering group 1 is made a part of the witness's testimony and reads as follows:

DIVISION OF THE HABER PATENTS IN THE LIST PRESENTED BY DR. HOLDERMANN

GROUP 1—MANUFACTURE AND PURIFICATION OF HYDROGEN

(14 Patents)

1,196,101
1,102,716
1,113,096
1,113,097
1,115,776
1,126,371
1,128,804
1,133,087
1,157,669
1,200,805
1,207,968
1,286,650
1,301,151
1,330,772

Q. 130. That is Group No. 1. What is the Second Group?

A. Group of seventeen patents on the catalyst for ammonia synthesis, as follows:

GROUP 2—CATALYSTS FOR AMMONIA SYNTHESIS

971,501
999,025
1,053,951
1,053,952
1,068,966
1,068,967
1,068,968
1,068,969
1,083,585
1,094,194
1,118,628

1,128,843
1,148,570
1,149,510
1,152,930
1,158,167
1,225,755

Q. 131. That is the Second Group?

A. Yes.

Q. 132. What is the Third Group?

A. Group of six patents on processes for the synthesis of ammonia, as follows:

GROUP 3—PROCESSES FOR SYNTHESIS OF AMMONIA

1,006,206
1,202,995
1,216,059
1,243,382
1,244,580
1,386,760

Q. 133. What is the Fourth Group?

A. Group of four patents on the engineering features of process for synthesis of ammonia, as follows:

GROUP 4—PATENTS ON ENGINEERING FEATURES OF PROCESS FOR SYNTHESIS OF AMMONIA

1,075,085
1,077,034
1,086,130
1,188,530

Q. 134. What is the Fifth Group?

A. Group of six patents on the Oxidation of Ammonia as follows:

GROUP 5—PATENTS ON OXIDATION OF AMMONIA

1,094,182
1,207,706
1,207,707

1,207,708
1,211,394
1,379,387

Q. 135. What is the Sixth Group?

A. Group of eleven patents on Fertilizer and other methods of utilizing Ammonia, as follows:

GROUP 6—PATENTS ON FERTILIZER AND OTHER METHODS OF UTILIZING AMMONIA

1,063,007
1,091,234
1,106,919
1,133,086
1,173,550
1,200,806
1,211,393
1,261,900
1,274,503
1,292,019
1,369,383
1,344,673

Q. 136. Now, Doctor, have you the patents before you?

A. I have.

Q. 137. Will you produce them?

A. There is one exception, of the patent on Urea which is simply a form of fertilization, which is missing.

Q. 138. You have no copy thereof?

A. I have no copy of it with me. I have read it and am acquainted with it, but it is Patent No. 1,344,673, otherwise it is complete. It has very little bearing on the Haber situation, as I understand it.

MR. ANDERSON: What group does that belong in, please?

The Witness: The last group, six, I think it is.

Mr. Kresel: Now, your Honor, these patents, there are 58 of them. They are quite voluminous, and I have been trying to find some way of having them before the Court without the necessity of printing them all. Your Honor will see that it would make a tremendous record. I wonder whether, inasmuch as they are public documents, it would not be sufficient if I offer each and all of them in evidence and have them marked, so that they will be available to the Court, with the understanding that they need not be printed *in extenso* in the record, each side, of course, being entitled to refer to any part that they desire.

Mr. Anderson: I would suggest, with your Honor's permission, that counsel offer them in evidence, and if the Government can, after an examination of them a little more in detail, shorten the record by stipulating them in, or by any other method of including them in the record on appeal, and thus abbreviate the record, we would be very glad to do it. We would like to have, however, further time before we reach a definite statement.

Mr. Knight: May I suggest to your Honor that the usual course in these patent cases is to get up a patent book, in which all of the patents are bound, as separate exhibits, you might say, if it is convenient, because then they can be arranged in order of proof, and can be readily referred to. These copies can be obtained very easily from the Patent Office, and it is an easy way to do it.

The Court: Admitted.

Mr. Mahaffy: If the Court please, the Supreme Court of the United States, in one case, held that that did not come within the statute, and it would have to be done by consent. I recall a number of years ago, that that was attempted to be done without the consent of the parties, and this Court declined to do it. It may be done on consent.

THE COURT: The only ruling I make now is that they may be admitted, and the other suggestion may be deferred.

MR. KRESEL: And each will have a separate exhibit number. I now offer the following patents——

THE COURT: Are all the patents enumerated by the witness in his testimony?

MR. KRESEL: Yes, by the witness. Will you mark them at your convenience? Here is a list of them.

GROUP 1. MANUFACTURE AND PURIFICATION OF HYDROGEN.

Patent No. 1,196,101, dated August 29, 1916, was admitted in evidence and marked "Defendant's Exhibit No. 179." (*See Patent Exhibit Book.*)

Patent No. 1,102,716, dated July 7, 1914, was admitted in evidence and marked "Defendant's Exhibit No. 180." (*See Patent Exhibit Book.*)

Patent No. 1,113,096, dated October 6, 1914, was admitted in evidence and marked "Defendant's Exhibit No. 181." (*See Patent Exhibit Book.*)

Patent No. 1,113,097, dated October 6, 1914, was admitted in evidence and marked "Defendant's Exhibit No. 182." (*See Patent Exhibt Book.*)

Patent No. 1,115,776, dated November 3, 1914, was admitted in evidence and marked "Defendant's Exhibit No. 183." (*See Patent Exhibit Book.*)

Patent No. 1,126,371, dated January 26, 1915, was admitted in evidence and marked "Defendant's Exhibt No. 184." (*See Patent Exhibit Book.*)

Patent No. 1,128,804, dated February 16, 1915, was admitted in evidence and marked "Defendant's Exhibit No. 185." (*See Patent Exhibit Book.*)

Patent No. 1,133,087, dated March 23, 1915, was admitted in evidence and marked "Defendant's Exhibit No. 186." (*See Patent Exhibit Book.*)

Patent No. 1,157,669, dated March 26, 1915, was admitted in evidence and marked "Defendant's Exhibit No. 187." (*See Patent Exhibit Book.*)

Patent No. 1,200,805, dated October 10, 1916, was admitted in evidence and marked "Defendant's Exhibit No. 188." (*See Patent Exhibit Book.*)

Patent No. 1,207,968, dated December 2, 1916, was admitted in evidence and marked "Defendant's Exhibit No. 189." (*See Patent Exhibit Book.*)

Patent No. 1,286,650, dated December 3, 1918, was admitted in evidence and marked "Defendant's Exhibit No. 190." (*See Patent Exhibit Book.*)

Patent No. 1,301,151, dated April 22, 1919, was admitted in evidence and marked "Defendant's Exhibit No. 191." (*See Patent Exhibit Book.*)

Patent No. 1,330,772, dated February 10, 1920, was admitted in evidence and marked "Defendant's Exhibit No. 192." (*See Patent Exhibit Book.*)

GROUP 2—CATALYSTS FOR AMMONIA SYNTHESIS.

Patent No. 971,501, dated September 27, 1910, was admitted in evidence and marked "Defendant's Exhibit No. 193." (*See Patent Exhibit Book.*)

Patent No. 999,025, dated July 25, 1911, was admitted in evidence and marked "Defendant's Exhibit No. 194." (*See Patent Exhibit Book.*)

Patent No. 1,053,951, dated February 18, 1913, was admitted in evidence and marked "Defendant's Exhibit No. 195." (*See Patent Exhibit Book.*)

Patent No. 1,053,952, dated February 18, 1913, was admitted in evidence and marked "Defendant's Exhibit No. 196." (*See Patent Exhibit Book.*)

Patent No. 1,068,966, dated July 29, 1913, was admitted in evidence and marked "Defendant's Exhibit No. 197." (*See Patent Exhibit Book.*)

Patent No. 1,068,967, dated July 29, 1913, was admitted in evidence and marked "Defendant's Exhibit No. 198." (*See Patent Exhibit Book.*)

Patent No. 1,068,968, dated July 29, 1913, was admitted in evidence and marked "Defendant's Exhibit No. 199." (*See Patent Exhibit Book.*)

Patent No. 1,068,969, dated July 29, 1913, was admitted in evidence and marked "Defendant's Exhibit No. 200." (*See Patent Exhibit Book.*)

Patent No. 1,083,585, dated January 6, 1914, was admitted in evidence and marked "Defendant's Exhibit No. 201." (*See Patent Exhibit Book.*)

Patent No. 1,094,194, dated April 21, 1914, was admitted in evidence and marked "Defendant's Exhibit No. 202." (*See Patent Exhibit Book.*)

Patent No. 1,118,628, dated November 24, 1914, was admitted in evidence and marked "Defendant's Exhibit No. 203." (*See Patent Exhibit Book.*)

Patent No. 1,128,843, dated February 16, 1915, was admitted in evidence and marked "Defendant's Exhibit No. 204." (*See Patent Exhibit Book.*)

Patent No. 1,148,570, dated August 3, 1915, was admitted in evidence and marked "Defendant's Exhibit No. 205." (*See Patent Exhibit Book.*)

Patent No. 1,149,510, dated August 10, 1915, was admitted in evidence and marked "Defendant's Exhibit No. 206." (*See Patent Exhibit Book.*)

Patent No. 1,152,930, dated September 7, 1915, was admitted in evidence and marked "Defendant's Exhibit No. 207." (*See Patent Exhibit Book.*)

Patent No. 1,158,167, dated October 26, 1915, was admitted in evidence and marked "Defendant's Exhibit No. 208." (*See Patent Exhibit Book.*)

Patent No. 1,225,755, dated May 15, 1917, was admitted in evidence and marked "Defendant's Exhibit No. 209." (*See Patent Exhibit Book.*)

GROUP 3. PROCESSES FOR SYNTHESIS OF AMMONIA.

Patent No. 1,006,206, dated October 17, 1911, was admitted in evidence and marked "Defendant's Exhibit No. 210." (*See Patent Exhibit Book.*)

Patent No. 1,202,995, dated October 31, 1916, was admitted in evidence and marked "Defendant's Exhibit No. 211." (*See Patent Exhibit Book.*)

Patent No. 1,216,059, dated February 13, 1917, was admitted in evidence and marked "Defendant's Exhibit No. 212." (*See Patent Exhibit Book.*)

Patent No. 1,243,382, dated October 16, 1917, was admitted in evidence and marked "Defendant's Exhibit No. 213." (*See Patent Exhibit Book.*)

Patent No. 1,244,580, dated October 30, 1917, was admitted in evidence and marked "Defendan'ts Exhibit No. 214." (*See Patent Exhibit Book.*)

Patent No. 1,386,760, dated August 9, 1921, was admitted in evidence and marked "Defendant's Exhibit No. 215." (*See Patent Exhibit Book.*)

GROUP 4. PATENTS ON ENGINEERING FEATURES OF PROCESS FOR SYNTHESIS OF AMMONIA.

Patent No. 1,075,085, dated October 7, 1913, was admitted in evidence and marked "Defendant's Exhibit No. 216." (*See Patent Exhibit Book.*)

Patent No. 1,077,034, dated October 28, 1913, was admitted in evidence and marked "Defend-

ant's Exhibit No. 217." (*See Patent Exhibit Book.*)

Patent No. 1,086,130, dated February 3, 1914, was admitted in evidence and marked "Defendant's Exhibit No. 218." (*See Patent Exhibit Book.*)

Patent No. 1,188,530, dated June 27, 1916, was admitted in evidence and marked "Defendant's Exhibit No. 219." (*See Patent Exhibit Book.*)

GROUP 5. PATENTS ON OXIDATION OF AMMONIA.

Patent No. 1,094,182, dated April 21, 1914, was admitted in evidence and marked "Defendant's Exhibit No. 220." (*See Patent Exhibit Book.*)

Patent No. 1,207,706, dated December 12, 1916, was admitted in evidence and marked "Defendant's Exhibit No. 221." (*See Patent Exhibit Book.*)

Patent No. 1,207,707, dated December 12, 1916, was admitted in evidence and marked "Defendant's Exhibit No. 222." (*See Patent Exhibit Book.*)

Patent No. 1,207,708, dated December 12, 1916, was admitted in evidence and marked "Defendant's Exhibit No. 223." (*See Patent Exhibit Book.*)

Patent No. 1,211,394, dated January 9, 1917, was admitted in evidence and marked "Defendant's Exhibit No. 224." (*See Patent Exhibit Book.*)

Patent No. 1,379,387, dated May 24, 1921, was admitted in evidence and marked "Defendant's Exhibit No. 225." (*See Patent Exhibit Book.*)

GROUP 6. PATENTS ON FERTILIZING AND OTHER METHODS OF UTILIZING AMMONIA.

Patent No. 1,063,007, dated May 27, 1913, was admitted in evidence and marked "Defendant's Exhibit No. 226." (*See Patent Exhibit Book.*)

Patent No. 1,091,234, dated March 24, 1914, was admitted in evidence and marked "Defendant's Exhibit No. 227." (*See Patent Exhibit Book.*)

Patent No. 1,106,919, dated August 11, 1914, was admitted in evidence and marked "Defendant's Exhibit No. 228." (*See Patent Exhibit Book.*)

Patent No. 1,133,086, dated March 23, 1915, was admitted in evidence and marked "Defendant's Exhibit No. 229." (*See Patent Exhibit Book.*)

Patent No. 1,173,550, dated February 29, 1916, was admitted in evidence and marked "Defendant's Exhibit No. 230." (*See Patent Exhibit Book.*)

Patent No. 1,200,806, dated October 10, 1916, was admitted in evidence and marked "Defendant's Exhibit No. 231." (*See Patent Exhibit Book.*)

Patent No. 1,211,393, dated January 9, 1917, was admitted in evidence and marked "Defendant's Exhibit No. 232." (*See Patent Exhibit Book.*)

Patent No. 1,261,900, dated April 9, 1918, was admitted in evidence and marked "Defendant's Exhibit No. 233." (*See Patent Exhibit Book.*)

Patent No. 1,274,503, dated August 6, 1918, was admitted in evidence and marked "Defend-

ant's Exhibit No. 234." (*See Patent Exhibit Book.*)

Patent No. 1,292,019, dated January 21, 1919, was admitted in evidence and marked "Defendant's Exhibit No. 235." (*See Patent Exhibit Book.*)

Patent No. 1,369,383, dated February 22, 1921, was admitted in evidence and marked "Defendant's Exhibit No. 236." (*See Patent Exhibit Book.*)

Patent No. 1,344,673, dated June 29, 1920, was admitted in evidence and marked "Defendant's Exhibit No. 237." (*See Patent Exhibit Book.*)

Mr. Kresel: I read from Page 271 of Defendant's Exhibit 140. Speaking of Plant No. 1 at Muscle Shoals at Sheffield, Alabama, this report states:

"The total gross cost of construction was $12,887,841.31. Of this amount $1,597,978.26 was for the permanent village, $503,369.43 for lands, and $198,223.26 for land improvements, roads, walks, etc. Expenses incident to operation were $710,476.12."

With reference to the result of the attempt to operate Plant No. 1, which your Honor will recall is the Sheffield plant, I read from Defendant's Exhibit 140 the following extracts: First, from page 202:

> "Owing to the Government ownership of United States Nitrate Plant No. 1, at Sheffield, Ala., designed to operate in accordance with a modified Haber process, the laboratory has devoted a very considerable amount of energy to an investigation of this process."

I might stop here to say that the laboratory is this Fixed Nitrogen Research Laboratory that is being operated by the Government.

> "The Sheffield plant was not a success, and this was partly due to insufficient technical information in connection with the various physical-chemical steps which go to make up the process."

I now read from page 8 of this same report and this is under the heading "Nitrogen Fixation Activities of United States Government":

> "In 1915 the Chief of Ordnance in his annual report called attention to the absolute dependence of this country on Chile for an adequate wartime nitrogen supply. In 1916, as a result of this recommendation and the support received from the agriculturists who appreciated the value of an increased nitrogen supply for fertilizers, Congress appropriated $20,000,000 for the development by the Government of nitrogen fixation. After extended investigations by a committee of scientists and engineers, who recommended the use of the direct synthetic ammonia process developed by the General Chemical Company, the Ordnance Department in 1917, at Sheffield, Ala., started the construction of a plant to use this process, with an annual capacity of 8,000 tons of nitrogen.
>
> "The requirements for nitrogen, however, kept increasing as the war continued; there was danger that submarines might cut off, or seriously interfere with the Chilean nitrate supply; and the ships in the nitrate fleet were urgently needed to carry supplies overseas. As a result it was decided that additional nitrogen fixation capacity was needed. In view of the emergency it was considered best not to depend on the direct synthetic process, which, though a success in

> Germany, had never been used anywhere else, but to use the cyanamide process, which had been successfully operating in Canada for some six years. Late in 1917, therefore, at Muscle Shoals, Ala., using the processes of the American Cyanamide Co., construction was started on a plant with an annual capacity of 40,000 tons of nitrogen. Continually increasing requirements called for additional capacity and in 1918 plants each of half the size of the Muscle Shoals plant and almost identical with it were started at Cincinnati and Toledo, Ohio, and at the time of the armistice the necessity of still additional fixation plants was being very carefully considered."

I skip a paragraph there because it refers to some other process.

> "None of these plants had come into full production before the cessation of hostilities, when they were shut down. Trial operation had shown that the Sheffield plant needed further extensive modification of equipment and process before it could be depended upon to operate regularly; the Muscle Shoals plant had operated to the extent completed very successfully; the plant at Saltville had operated with some success from a technical point of view; the other cyanamide plants were each only about a third complete, and the Navy Department plant had just been started. In all some $107,000,000 had been spent during the war by the Government in connection with its nitrogen fixation program."

Mr. Knight: That Navy Department plant that was referred to is the one referred to in the paragrpah that you omitted.

Mr. Kresel: Yes, I might read that paragraph.

> "A plant using the cyanide process, the products of which were to be used in chemical warfare——"

Your Honor will recall that is the third process; not cyanamide—cyanide.

The Court: Yes, I recall that.

Mr. Kresel: (Reading):

> "was also contructed at Saltville, Va., under the direction of the Bureau of Mines of the Interior Department. The Navy Department had also started late in 1918 the construction of a direct synthetic-ammonia plant at Indianhead, Md., which was to have the same capacity as the plant at Sheffield, Ala.
>
> "In order that the synthetic-ammonia process used in the Sheffield plant might be developed to a workable basis, the War Department undertook research on several phases of the process as well as engineering re-design of much of the equipment. Recent developments, however, by private industry apparently make unnecessary any further Government activities in connection with this process other than laboratory research, and justify the United States in depending entirely on private industry for the future industrial development of this process."

I read from page 10 of this exhibit under the heading of "Present Status of Nitrogen Fixation —In the United States."

> "In this country there are the two commercial fixation plants, the synthetic-ammonia plant of the Atmospheric Nitrogen Corporation at Syracuse, N. Y., with an annual capacity of 3,000 tons of nitrogen, and the arc-process plant of the American Nitrogen Products Co., near Tacoma, Wash., with an annual capacity of some 300 tons of nitrogen. There are also the two Government fixation

> plants, now idle and in indefinite stand-by, the tried-out cyanamide plant at Muscle Shoals, Ala., with an annual capacity of 40,000 tons of nitrogen, and the synthetic-ammonia plant at Sheffield, Ala., which, with extensive modification of equipment, should have an annual capacity of 8,000 tons of nitrogen. There is thus an operating capacity of 3,300 tons and an idle capacity of an additional 48,000 tons. On the other hand, the present annual normal demand for inorganic nitrogen in this country over and above the 110,000 tons which can be furnished from the coking of coal is about 105,000 tons.''

And on the same page under the heading of ''Future of Nitrogen Fixation,'' I read the following:

> ''The nitrogen-fixation industry had such a forced growth during the war that its expansion in the immediate future will probably not be very great. Not only was this source of supply tremendously increased, but there was a considerable increase in the number of by-product coke ovens in many of the countries, including our own. With all this increased supply available, there has been a falling off in demand, due to the general world-wide economic conditions.
>
> ''The result has been a marked depression in the nitrogen industry, and many fixation plants have been unable to stand the competition of the by-product coke ovens and of Chile and have been compelled to close down. But experience has shown that the world demand for nitrogen has doubled every 10 years, and it will be only a few years until the demand catches up to the supply.
>
> ''While the fixation industry is almost marking time, so far as expansion is concerned, it is far from marking time in research and development work. Existing processes

> and all their promising variants as well as entirely new processes are being carefully studied and tried out on small scale in an effort to get the process that can produce at lowest cost. This is taking place in all of the industrial countries of the world, and the United States is no exception."

Now, one more extract, your Honor, from page 30 of this Exhibit 140. Under the heading of "Government plants," the report proceeds as follows:

> "During the war United States Nitrate Plant No. 1, at Sheffield, Ala., using the General Chemical Company's direct synthetic ammonia process, and United States Nitrate Plant No. 2, at Muscle Shoals, Ala., using the cyanamide process, were practically completed.
>
> "Experimental operation was started at plant No. 1, but regular production was not secured, and considerable modification of the equipment and process would be necessary before regular production could be secured from this plant.
>
> "Plant No. 2 was tested and showed conclusively that it could produce fixed nitrogen at its rated capacity—approximately 40,000 tons per year—at reasonable cost. Altogether, No. 2 plant produced about 600 tons of nitrogen in 1918 and about 700 tons of nitrogen in 1919."

Under the heading of "Future production from fixation plants," the report says as follows (page 31):

> "If the Government plant at Muscle Shoals should be leased or sold, and be operated for the fixation of nitrogen, the domestic production of nitrogen in this country would be increased by 40,000 tons of nitrogen, equal

to a little over 40 per cent of the present nitrogen capacity of the by-product coke ovens and gas works. In order, however, for the Muscle Shoals plant to operate profitably, it is necessary not only that comparatively cheap water power be available, but also that the rental or purchase price paid for the plant be considerably less than would be determined by the present cost of reproduction. In other words, though the operation of this particular plant would be profitable under the preceding conditions, it is very unlikely that any additional cyanamide plants will be constructed in this country in the next few years unless there is a considerable change in conditions.

"It is probable that the two commercial nitrogen fixation plants already operating in this country, which supply the relatively high-priced markets for sodium nitrite and anhydrous ammonia, will continue to operate. It is entirely possible that the plant at Syracuse may be extended to supply a considerable part of the entire consumption of anhydrous ammonia in this country. Beyond that point, however, where the product of this plant would have to compete directly with the lower-priced sulphate of ammonia or nitrate of soda for fertilizer use, expansion is more doubtful. The direct synthetic ammonia process, it is true, has been able to compete successfully in Germany with Chilean nitrate, but a large part of the cost of the German plants must have been amortized during the war, and the rate of exchange has made the price of the Chilean nitrate in Germany abnormally high."

At page 271 of this report, referring to Plant No. 1, the report states as follows:

"All construction and operation activities were definitely discontinued in January, 1919. Unit No. 1, of 15,000 pounds of anhy-

> drous ammonia per day capacity, was the only unit entirely completed and upon which operation was attempted."

THE COURT: That is speaking of the Sheffield Plant?

MR. KRESEL: Sheffield Plant No. 1. It had three units. Unit No. 1 was completed and upon that operation was attempted. (Reading.)

> "Unit No. 2, a duplicate of No. 1, and Unit No. 3, of twice the capacity of Unit No. 1, were partially completed. Continuous operation was never realized and only a small amount of ammonia produced. Many of the difficulties of operation were overcome by changes in the process or the development of special apparatus, but others were such as to actually obstruct successful operation and to be beyond ready correction. These, however, it is believed, have been corrected in the redesign of the plant now practically completed by the Nitrate Division."

I think I should ask your Honor to bear in mind that this report was written in 1922 speaking of conditions in 1921. So when they speak of redesign of the plant they are speaking of redesign which was practically completed in 1921. (Continuing reading.)

> "Although this plant was fundamentally a trial plant for the General Chemical Co.'s 'synthetic ammonia process,' to be financed from funds made available by the 'nitrate supply' section of the national defense act, the extension of the concentration project and the addition of the plant for the production of ammonium nitrate made the plant one of national defense. The financing of the construction cost of this plant, therefore, was from 'national security and defense' and 'armament of fortifications,' funds with but $53,369.43 of 'nitrate supply' funds."

Two more extracts, your Honor, and then I will be through reading. I read from page 273 of this same exhibit, speaking of the catalyst:

> "Facilities were necessary for producing the catalysts required for the conversion of the carbon monoxide to carbon dioxide and for the conversion of the hydrogen-nitrogen mixture to ammonia, and also for sodamide used in gas purification. A proposal of the General Chemical Co. that they erect a plant at one of their works and prepare this material at cost was accepted September 8, 1917. Little difficulty was encountered in making the catalyst for the carbon monoxide conversion and the sodamide, but great difficulty was experienced in making catalyst for ammonia synthesis. Much concern was felt over this fact, inasmuch as this material is vital to the success of the process, and the Nitrate Division, in July, 1918, established, through the assistance of the Department of Agriculture, an experimental station at Arlington, Va., for the study of the production of this catalyst. The best scientific talent available was called in, but due to the lack of time satisfactory results were not obtained. The problem was later turned over to the Fixed Nitrogen Research Laboratory established at the American University, the work of which is discussed elsewhere in this publication."

At page 274 I read the following extract, speaking of the redesign of this plant that the Government had in contemplation:

> "It was planned that the entire program should be completed by July 1, 1923. Construction was to be started by the summer of 1921 and completed early in 1922, leaving about one year for trial operation and development. The cost estimate for this program, including the modification of Unit No. 1, using the Haber-Bosch process, and the in-

> stallation of an electrolytic hydrogen generating plant for trial of the Haber electrolytic process, was"——

I shall not read the individual items, but the total is $1,023,117.

> "In view, however, of the construction and erection of a synthetic ammonia plant at Syracuse, N. Y., by the Atmospheric Nitrogen Corporation, it was deemed inadvisable for the Government to continue experimental work at Sheffield, and the Chief of the Nitrate Division recommended to the Chief of Ordnance on March 24, 1921, that the reconstruction of United States Nitrate Plant No. 1 be deferred and the plant be retained in the most economical stand-by condition. This recommendation was concurred in by the Chief of Ordnance and was approved by the President on April 30, 1921. Accordingly, the first three items only of the original program of redesign have been carried out.
>
> "In connection with this redesign, outside engineering advice was sought whenever possible and wherever available. The general considerations in the redesign were: changes found by experience in the operation of the Sheffield plant to be absolutely necessary before operation could be attempted; changes indicated by general engineering practice to be fundamentally necessary before successful operation could be hoped for; basic changes in the process, especially the substitution of electrolytic production of hydrogen for the present method and apparatus installed."

Mr. Anderson: May it please the Court, in order to avoid interrupting the examination by any objection, I would like at this time to make the position of the Government clear by a combined motion to strike out any objections to testimony of a certain character, and ask, if it can be done, that it be applied to each and every question applicable thereto—that is, which comes within the class named—in addition to the general objections to this evidence.

We object and move to strike out the testimony just read and all similar testimony in the case, and to strike out each and every question and answer in the evidence heretofore taken, and object to each and every question and answer in the evidence heretofore taken which tends to impeach or affect the complete validity of the patents involved in this controversy, and their usefulness in all respects for the purposes for which they are intended.

As grounds for that motion, applying——

THE COURT: You may put your grounds of record, but I think I understand you, Colonel.

MR. ANDERSON: Yes, I thought I would just state them without arguing.

As to the evidence just read, it was two years subsequent to the sale, and therefore could not have affected the question. And that would apply to all evidence of reports of transactions subsequent to the date of the sale. That is one. Second, that the defendant is estopped to raise any question of the validity or full usefulness of these patents first by the fact that it purchased the same of the Government of the United States and took title thereto, second by the fact that it has by its charter obligated itself to defend and protect that title according to its own construction of the charter on this record, third by the fact that it has licensed these patents and claims to have licensed them for the Government of the United States, and to various producers and users of the product in question, and therefore can not question the validity thereof or the extent of use thereof. But the defendant is estopped by the acts of its own officers. That is throughout this record, and at various times they have asserted the validity, use and complete value of these patents.

We rely upon all of those points and generally upon the law of estoppel as applied to the record in this case. I do not know that it would be necessary to raise that question by objection, but under the method we are proceeding in this case it has seemed to me proper and perhaps an appropriate act that we should present that question to the Court at this time, to the end that no question may be raised as to our frankness in stating it during the proceeding. I should have added one other matter, if your Honor please, and that is when I spoke of acts *in pais* perhaps I should have specified that as to a large number of these patents suits have been instituted by the defendant in the United States Courts, including this Court, against the Treasurer of the United States, among others, in which they have asserted as a necessary basis for the maintenance of the suit the validity and full compliance with the law as to all these patents. There is the further position which my associate reminds me of, which is a conclusion of law from those facts—that they can not attack them collaterally, and this is a collateral attack.

Those are the chief grounds, but I reserve the right on the matter of estoppel to object at any time on any grounds I deem proper, on the record.

Mr. Kresel: I do not think, sir, I want to argue the question at this time.

The Court: May I ask you this without inviting an argument; that is, whether you acquiesce in the position taken by the Government with respect to the validity of the patents or whether your views are in conflict with those expressed by Colonel Anderson?

MR. KRESEL: To begin with, your Honor, we have made no attack upon the validity of these patents that we are now discussing. Secondly, the suits that have been instituted, to which counsel refers, are suits to recover royalties earned under licenses issued by the Federal Trade Commission and not by this defendant. The question of the validity of the patents there is not in issue by us.

As long as I am speaking on the subject I must say that it is rather a novel proposition that a purchaser, even if we were contesting the validity of the patents, may not contest the validity of a patent because he bought from the United States Government. But, as I say to your Honor, what we are proceeding to show is the value of these patents and the basis upon which these witnesses whom we are calling are going to give their opinions as to the value of the patents, and in that value and upon the question of that value the various elements which I have read from the official report and brought out by the witness enter.

Q. 139. Dr. Parsons, in one of these extracts the term "anhydrous ammonia" was used. Will you please define that to us?

A. It is the pure gas, or the pure gas liquefied, generally the latter, containing no water. The word "anhydrous" means without water. Most ammonia that comes into commerce is simply the gas dissolved in water to the extent of about 25 to 26½ per cent. That ammonia gas under pressure alone at ordinary temperatures or aided by increased temperature can be itself obtained and utilized in the form of a liquid and is so utilized to a large extent in commerce.

Q. 140. Dr. Parsons, in February, March and April of 1919, was it possible for any one in the United States skilled in the art to manufacture ammonia by simply following the processes described in these patents that have been this morning put in evidence?

Mr. Anderson: I have to note an objection to that, sir, because it calls for a conclusion.

The Court: I am wondering how we will get at that fact, Colonel Anderson, if not by that question. I assume it calls for a negative answer; and just at the moment I do not happen to think of any way in which it could be done. I therefore overrule the objection.

A. It was not; nor in any other country except Germany.

Q. 141. I read from your report made to the War Department, Defendant's Exhibit No. 176, the following statement at page 10: "The technical control of the Haber process"—and when you speak of the Haber process at that point, what process are you referring to?

A. The German Haber process.

Q. 142. "The Technical control of the Haber process is of such great importance and requires so high a degree of training and skill that it is reported that if the Badische people were to lose their present technical staff of experts familiar with the process, many months would be required to train another staff capable of applying them."

I read the following extract under the caption, "Disadvantages of the German Haber process," where you say this:

> "(1) Inability to procure technical details, use of methods and a trained technical force without the assistance of the Badische Company, except as the result of many months and probably years of experimentation. This is largely owing

> to the difficult engineering problems involved in the use of pressures as high as 150 atmospheres and temperatures of 500 degrees to 600 degrees Centigrade."

You made these statements?

A. I did.

Q. 143. To the War Department?

A. Yes.

Q. 144. And they are true?

A. They were true then and are today.

Q. 145. In the months of February, March and April, 1919, as I understood your testimony, the only plant in the United States using a synthetic ammonia process was Plant No. 1 at Sheffield, Ala., which was not producing?

A. That is correct. I would like to modify that. Any commercial plant. There were one or two small experimental plants making perhaps a few pounds a day.

Q. 146. You told us that on Saturday?

A. I should say laboratory installations rather than a plant. It was simply done in the laboratory.

Q. 147. Do you know, Dr. Parsons, whether in February, March and April, 1919, anybody in the United States had succeeded in making the German catalyst?

A. They had not, to the best of my knowledge and belief.

By MR. ANDERSON:

Q. 148. The question was, did you know?

A. They had not.

MR. ANDERSON: That still does not answer the question, if your Honor please. The question is does he know. He says to the best of his knowledge and belief. Does he know what everybody in the United States has been doing in making a catalyst?

THE COURT: Let us have the question again.

(Q. 147 repeated as recorded above.)

A. I think I better adhere to my original answer.

THE COURT: I think probably you did not understand Colonel Anderson's objection.

MR. KRESEL: May I withdraw the question and reframe it, sir?

THE COURT: And strike out the answer?

MR. KRESEL: If there has been an answer, of course, the answer may go out.

THE COURT: I do not think you will be able to escape putting the question. Whether you want to withdraw it or not, is for you to determine. But I imagine you would have to put it again before you can ask another question. You may exercise your option.

THE COURT: The objection, Dr. Parsons, is this, that before you may state what the result of your knowledge is, whether that knowledge is affirmative or negative, you must state whether you have such knowledge and then you may state what the result of that knowledge is. The question is whether you know certain information. The answer is yes or no, or yes or no modified. Won't you repeat the question again, please, Mr. Stenographer?

(Q. 147 repeated as recorded above.)

A. I shall have to answer that no, with modifications, if I may add them.

THE COURT: You may.

A. (continued). I had made every effort to find out throughout the United States and throughout Europe as to whether or not it was possible or whether any individual had the slightest knowledge of how to make the German catalyst. I found none or any indication that that knowledge existed outside of Germany.

By Mr. Kresel:

Q. 149. Dr. Parsons, on your visit abroad, did you endeavor to find out anything about the German catalyst?

A. I made every possible effort to find it out. The nearest I came to it was from a German engineer whom I met in Guttenberg, and there in connection with his advice I secured a small piece of reduced iron with a statement of the process which was used to produce it, which they claimed had been used as a Haber catalyst. I brought that iron with me to America, but it afterwards turned out that it probably had no connection with the Haber process whatsoever.

Q. 150. Do you know of efforts made in other countries other than the United States, and outside of Germany, for the working of these Haber patents?

A. I know of many.

Q. 151. In what countries?

A. In England, in France, and in Italy.

Q. 152. Do you know whether in France they have been able to produce under the Haber patents?

Mr. Anderson: I shall object on the ground that it is pure hearsay. We can not go into the French situation without calling witnesses from France.

Mr. Kresel: I think, sir, I will be able to support that with documentary proof, if your Honor will permit the witness to answer.

The Court: But documentary proof would be open to the same objection that is now made if this objection is valid, would it not?

Mr. Kresel: I assume so, your Honor. I do not see any escape from that.

The Court: I am confronted with the same difficulty as with the prior objection. I do not know just how the negative, if it be a negative, can be established save in this way, unless we call——

Mr. Anderson: May I suggest, if your Honor please, that even if there is no other way to establish a negative, to establish it by hearsay and from purely hearsay information would not be justified; because it might be desirable for the plaintiff to establish the affirmative, and how could the plaintiff establish an affirmative of something existing in France as to which this gentleman had been told? If there is any direct information of anybody who has experimented in France or any legal evidence of conditions existing anywhere, of course, subject to the general objections which we have already indicated, the evidence would go in. But I do not understand that hearsay evidence, what some people told him, may be received. Take the last answer in regard to the German scientist he met at Guttenberg. Who was he? He doesn't know. He told him something that somebody else told him, that somebody else told him, about a piece of iron; and then he found out it wasn't so at all.

The Court: I think you misunderstood the answer, Colonel Anderson. But I do not see how the answer to this question, if presented through the leading French scientists, would be any less hearsay, save with respect to his own experiments, than would be the answer of this witness. He has shown an effort to find out in France the facts with respect to which he is now testifying. The only difference that I can see in the question would be as to whether he was able to discover it in France, rather than whether France had developed it. But for practical purposes, it is the same thing, because his answer would be limited.

Mr. Kresel: May I call your Honor's attention to the fact that in Dr. Holdermann's testimony he testified about the efforts of the French to develop the Haber process. Your Honor will recall he testified that the French had paid to the Badische German Company a large amount of money for information as to how to operate under the patents, although the patents were available to them. I propose now to introduce the contract between the Badische Company and the French Government, whereby the French Government paid the Badische Company millions of francs for the knowledge of how to operate under these Haber patents.

Mr. Anderson: If your Honor please, your Honor will recall undoubtedly, because it was interesting in developing the examination of Dr. Holdermann, that while I confined the direct examination to value, counsel went into all collateral questions and I gave notice on the record, in accordance with the practice in some Courts—I do not know whether it is here—that he was thereby making the witness his own witness. Not a word was said on direct about any French contract. I never asked about it. It was brought out by counsel by question of his own from that witness.

I do not know how far the rule would be applied, but when counsel introduces evidence of the witness either on direct examination of his own witness or on cross-examination outside of the direct, it seems to me that it is a remarkable procedure for him to then come in and ask leave to contradict that evidence.

Mr. Kresel: I am not contradicting it. I am putting evidence in to support that testimony.

The Court: I have reflected a great deal upon the cross-examination of Dr. Holdermann. I had an opportunity to do that before the trial began.

And each time that I consider it, I am more thoroughly convinced that the cross-examination was not only thorough and complete, but also proper; that the moment that Dr. Holdermann testified to the value of these patents, he was subject to all cross-examination which would tend to show a lesser value. Apart from the question of credibility, the cross-examination as I still see it did not go beyond the bounds of proper cross-examination; and for the reasons indicated a moment ago, I overrule the objection to the question now put.

Mr. Anderson: Your Honor will permit an exception, of course.

A. They have not, according to the information I obtained from the French engineers and scientists, obtained from them direct, in person.

Mr. Kresel: I now offer in evidence the Official Report——

The Court: Lest there be a misunderstanding, I understand that answer and its value is this: The same as if he put it in these words, and no other effect—I was unable to discover in my investigations in France any use that the French had been able to make of them.

That is the legal interpretation I put upon it.

Q. 153. And is that the substance of what you meant to convey by the last answer?

A. Certainly.

Mr. Kresel: I now offer in evidence the Official Report and proceedings of the Chamber of Deputies, of the Twelfth Legislature of the Republic of France, the Extra Session 1922, which is a supplement to the Report of the First Meeting of December 6, 1922, consisting of a report made in the name of the Finance Commission in charge of examining the law in regard to approving and making an agreement on the manufacture of Synthetic Ammonia, between the Republic of France, and the Badische Anilin und Soda-Fabrik of Germany. The original, your Honor, is, of course, in French, but I have had a translation made of so much of the proceedings as refer to this particular contract, and have had the contract translated, and it is here contained. I offer both the original and the translation. The copy starts there (indicating).

Mr. Anderson: How is it verified?

Mr. Kresel: Verified by the print of the Chamber of Deputies of France.

The Court: They are both admitted, and if there is a difference in the translation, it may be corrected, unless the difference is so great as to require the putting in evidence of the plaintiff's own translation, and if that is desired, either method may be adopted by the plaintiff.

The contract was received in evidence and marked "Defendant's Exhibit No. 238." (*French text not printed.*)

The translation was received in evidence and marked "Defendant's Exhibit No. 238-A." (*See Exhibits, Vol. V, page 3072.*)

Mr. Kresel: Now while you are marking the exhibits, I desire to read the following extracts from the contract.

Mr. Anderson: One minute, if the Court please, without at this time arguing on any ruling, I want to reserve on the record my objection to the introduction of this document, on the ground that it is not properly verified or proven for introduction in a Court of the United States. I do not think the Government should determine at this time, whether I shall insist upon that objection, because I have never read the document, but I think it is my duty to reserve the point.

The Court: But is not the nature of that objection such that unless passed on and determined now, that the defendant may be taken by surprise?

Mr. Anderson: Certainly, unless I did within a reasonable time, while the trial was in progress, insist upon the objection. I think your Honor's suggestion is entirely appropriate; but I have not had a chance to examine the document, and I would not like to suspend the proceedings.

The Court: Then, your objection falls at the conclusion of the session.

Mr. Anderson: Then unless I have notified counsel and the Court that I shall insist upon this objection before the evidence is closed, so as to give counsel an opportunity to remedy it, then, of course, the objection will be deemed to be abandoned. I merely want to reserve the right, so that I may examine the document.

Mr. Kresel: That is agreeable. This your Honor, I read——

The Court: Won't you tell me again, Mr. Kresel, what this particular document is, before you begin to read it?

Mr. Kresel: Yes, your Honor, certainly, I shall be glad to. This is a contract between the Republic of France——

The Court: Referred to by Dr. Holdermann?

Mr. Kresel: Yes, your Honor.

The Court: All right.

Mr. Kresel: But before I read extracts from the contract, I read the following from the Report of Deputy Mr. Charles Leboucq. It is entitled:

"The Agreement of November 11, 1919.

"Now that we know the reciprocal merits

of several processes for the manufacture of Ammonia, we will be able to examine the advantages of the agreement passed on November 11, 1919, between the State of France and the Badische Anilin.

"About June, 1919, immediately after signing the treaty with Germany, having learned that the latter had been able to continue the war thanks to the Haber process and thanks to the possibility of producing Synthetic Ammonia, we have negotiated for the purchase of this process for France. I had requested and have obtained an option. My honorable successor, Mr. Andre Lefevre, has taken up this option and I congratulate him on it.

"In these terms, Mr. Laucheur recalled to the Chamber, during the course of the first meeting on July 3, 1920, under what circumstances the Ministry of Industrial Reconstruction has been led to consider the production of the Badische. Article 297 of the Treaty of Versailles reserves for the Allied Powers, the right to sequester and liquidate all the property, rights and interests belonging to the Germans. The Badische had taken out several patents in France to protect its processes; the State of France then had the right to liquidate these patents and processes.

"England and the United States, who during the war had attempted in vain to develop the processes other than the German process, have hastened since the Armistice, to get possession of the Haber patents and cede them to private companies.

"France was not content to get possession of them. Estimating that the very delicate and special technique developed at Oppau and Mersebourg could not be acquired by the French engineers, France attempted to treat with the Badische to obtain its technical cooperation for the purpose of exploiting the Haber patents.

"The contract passed on November 11, 1919, bears on behalf of the Germans, the signature of Mr. Bosch, Director of the plant, who participated in the negotiations at the Treaty of Versailles, and on behalf of the French, the signature of Mr. Patart.

"Article 13 provides that France 'can within a period of three months from the date of the contract, renounce the rights and obligations resulting therefrom. After this period of time has expired, the contract will be carried out in full.' The period of refusal expired, therefore, on February 11, 1920. On the 22nd of June following, the question of the legality of approving the agreement was filed. In the interval a prorogation had been obtained until April 1, 1920."

This is the text of the contract:

"CONTRACT BETWEEN THE STATE OF FRANCE AND THE BADISCHE ANILIN AND SODA FABRIK, A. G.

"The Transfer of a Process for the Manufacture of Synthetic Ammonia.

"Between the Ministry of Industrial Reconstruction, acting in the name of and in behalf of the State of France and designated in the following as 'the State of France,' and represented by Mr. Patart, Director of Powder, party of the first part, and the Badische Anilin and Soda Fabrik Aktiengesellschaft, joint stock company of Germany with a capital of Ninety Million Marks (90,000,000 M.), which is located at Ludwigshafen on the Rhein, designated in the following by the four initials, B. A. S. F., represented by Messrs. Professor Bosch, President of the Council of Administration, and Allbrecht, Attorney for the Company, duly appointed in conformance with the German law; it has been declared and agreed as follows:

"DECLARATION

"The B. A. S. F. possesses for the production of Synthetic Ammonia, certain processes used in the plants at Oppau and Mersebourg. In order to protect these processes, the B. A. S. F. has taken out certain patents in France. The State of France, desiring to apply and exploit in France the above-mentioned patents and processes, has judged it to be to their advantage to obtain the voluntary co-operation of the B. A. S. F., to this end, in matters regarding the application of the above patents and processes, such as the technique, the technical secrets necessary or useful in the manufacture or exploitation, and the use of recent improvements and investigations without in any way impairing the rights which the French State obtained on patents and processes examined under the Treaty of Peace signed June 22, 1919, and without making the State of France in any way abandon all or any part of these rights.

"In consequence, the State of France and the B. A. S. F. has agreed as follows:

"ARTICLE I

"The B. A. S. F. agrees in a general way to provide the French State, under the forms and conditions which will be stipulated hereinafter in the present contract, all the explanations and detailed information necessary or useful for operating all the processes used in the plants at Oppau and Mersebourg, for the production of Synthetic Ammonia and for the transformation of this product into Ammonia Sulphate and Nitrates of Ammonia, as well as all the details for the installations necessary to their production, the results obtained and the improvements under investigation." * * * *

It is quite lengthy, your Honor, and by skipping some of it, it does not mean that I do not desire to read it, but I do not want to take the time, so I shall read only certain portions.

I read now from Article III:

> "The present contract implies the total and exclusive ceding to the State of France, of all the French patents taken out in France and bearing on the manufacture of the products enumerated in Article I. The ceding will be legalized at the request of the French State and at its expense, and will comprise the exclusive license for using the above patents.
>
> "The two contracting parties agree to let each other have the benefit of any improvements which they make during the duration of the contract for the above processes.
>
> "In particular, the B. A. S. F. will give to the French State, the French Colonies and the countries under the protectorate of France, exclusive license for all additional patents or improvements which they are able to take out in the future relating to the processes mentioned in the first article.
>
> "But, the B. A. S. F. alone will retain ownership of the patents for articles other than those which are made the object of the present contract; she will not take up, however, any question on the validity of these patents or on their duration.
>
> "ARTICLE IV
>
> "The B. A. S. F. will give over to the French State as quickly as they will be needed, the plans in general and in detail, for a plant capable of fixing in the form of Ammonia solution, 100 tons of Nitrogen per day of twenty-four hours, as well as all the necessary information concerning the construction, operation and maintenance. In addition it will place at the disposal of the State of France, all the installation and organization

pertaining directly or indirectly to the manufacture of the products enumerated in Article I, or anything which is indispensable to the preparation of the raw materials or intermediate products used in obtaining them. This information will comprise especially, process books and detailed lists of pieces of apparatus; plans of foundations, the system of piping, means of communication, all installation and apparatus for control, measurement and safety, necessary or useful for the perfect operation of the complete plant.

"The B. A. S. F. will inform the State of France in every particular concerning detailed measurements, precautions to be taken to avoid accidents, to obtain the best yields and the best quality, and it will also give information on the most advantageous method of operation.

"From the time that the present contract takes effect under the conditions specified in Article 13, the French State must proceed, either directly or indirectly (through individuals or companies), with the construction of a plant capable of producing as indicated above.

"Article V

"The B. A. S. F. will make known in a precise and detailed way, the results to be expected at each stage of the operation, including the thermal, chemical and mechanical yields of each operation and of each machine and piece of apparatus and of every operation which is concerned in the manufacture. It guarantees positively, the results obtained in its own plants under continuous operation, such as are set forth in the figures contained in Supplement No. 13, and it is expressly stipulated that the present contract is passed on the basis of this guarantee.

"The B. A. S. F. also guarantees the authenticity of a detailed and complete diagram for the installations to be made; this diagram constitutes Supplement No. 2, included in the present contract.

"ARTICLE VI

"The State of France agrees expressly, not to divulge the processes which are the object of this contract. It will bind all the employees to the strictest secrecy by obtaining the signature of these employees, including all delegates and representatives who have any knowledge of the process as a whole or in part, and who before being employed, will be obliged, under penalty of the law, to keep secret all the manufacturing processes of which they have any knowledge, and in case of dismissal, will be obliged not to give their co-operation, either directly or indirectly, to any similar industry carried on in France or abroad for the length of time determined upon.

"This condition will remain in force during the duration of the present contract and fifteen years after its expiration.

"ARTICLE VII

"The B. A. S. F. agrees to give to the State of France, in every possible way, its advice and its aid in the setting up of all construction and installation for a plant capable of fixing 100 tons of Nitrogen per day, under the conditions specified in the above article, as well as aid in the control of the construction and putting into operation. To this end it will send the necessary personnel to supervise construction and operation during construction, until the production and yields indicated in the present contract and supplements have been attained during a period of fifteen consecutive days. The State of France will reimburse the B. A. S. F. for the traveling and living expenses of the above-mentioned personnel while in France, but the salaries of this personnel will remain in charge of the B. A. S. F., since it may be considered that they are included in the sum paid to the B. A. S. F. in remuneration for its co-operation.

"ARTICLE VIII

"Until the previously announced results have been attained in continuous operation, the employees or agents of the State of France will have free access at all times to the plants of the B. A. S. F. where the processes of the present agreement are carried on; all facilities will be given to these employees or agents to learn in the plants of the B. A. S. F. all details for operating the above processes, for operating the apparatus and for applying the methods of analysis, control, measuring and safety.

"The same will hold throughout the duration of the contract whenever certain improvements are made on the process, or in case of necessity, by agreement between the contracting parties.

"ARTICLE IX

"The B. A. S. F. will furnish directly without profit to itself, all machines and all apparatus which it will be advantageous to keep secret in the interest of both parties, or all such apparatus as can not conveniently be constructed by any other place than the shops or sources of supply of the B. A. S. F. In both cases the B. A. S. F. will bill the French State for the apparatus specified above, either at the cost price or purchase price. It is agreed that the cost price will be established by adding to the cost of materials and labor an additional charge of 10% for general expenses and amortization, and it is agreed that the purchase price will be determined by adding to the sum actually paid to the Supply

House, an additional charge of 5% to cover expenses of administration. In case the B. A. S. F. is not able to furnish the apparatus in question, it will indicate the source of supply to the State of France and will act as intermediary, if so desired, in order that the purchase will be concluded under the best conditions.

"It is agreed that for the apparatus which the State of France will order for the French plants, either for the first installation planned or in case of further enlargement, it will oblige its constructors not to divulge any of the secrets of construction which the B. A. S. F. has given them and not to deliver this apparatus except to the State of France, unless by agreement with the B. A. S. F.

"The B. A. S. F. will guarantee good quality and will give assurance for perfect operation of all the apparatus which it will supply or the construction of which it has controlled or which has been bought in accordance with its diagrams and specifications. It will bear no responsibility for those which do not satisfy these last conditions.

"ARTICLE X

"In remuneration for the voluntary cooperation furnished by the B. A. S. F., under the conditions specified in the present contract, for putting into operation its processes, the B. A. S. F. will receive from the State of France:

"1. A fixed sum of Five Million Francs (5,000,000 Fr.), payable as follows:

"Two Million Five Hundred Thousand Francs (2,500,000 Fr.) as soon as the present agreement becomes effective, in accordance with the stipulations of Article 13, and——

"Two Million Five Hundred Thousand Francs (2,500,000 Fr.) when the plant or plants installed in France are producing in

> continuous operation per day of twenty-four hours for a period of two weeks, a minimum of twenty tons of Nitrogen in the form of Ammonia solution.
>
> "2. A royalty per kilo of Nitrogen contained in Ammonia solution produced in the high pressure plant, this royalty being fixed at twelve centimes (12 c.) if the average price for the unit of Nitrogen (a kilo) contained in Chilean Nitrate of Soda delivered c. i. f. at a French Port, remains equal to or above six francs during the period under consideration (one-half year); it will be lowered to ten centimes (10 c.) if the average price of the unit of Nitrogen is between six francs and three francs or will become eight centimes if this average price is between three francs and two francs, and five centimes, if the average price is below two francs. This royalty will be due from the time that the first plant is put into operation and from that moment on when the production of thirty tons of Nitrogen in the form of Ammonia, per day of twenty-four hours, will have been attained. The annual royalty will not be less than 500,000 francs, whatever the production, even if it is nothing; this minimum will be increased to One Million francs, from the time that a production of sixty tons per day of twenty-four hours has been attained. This royalty will cease to be paid upon expiration of the fifteenth year, counting from the day when the production of thirty tons will have been obtained."

As I say your Honor, the thing is quite lengthy, and I think I have read the essential portions.

Mr. Anderson: May I ask, Mr. Kresel, if the matter included at the end of it is also introduced? It was not clear to me. Of course, I have not seen the original. I only want to know for my information, because there was a lot of stuff included at the end, apparently discussion, beginning page 14. I have not seen the original. I do not know what relation that has to the contents.

Mr. Kresel: Why, that is the balance of the report.

Mr. Anderson: I merely ask for information. I have made my objections and they apply to all of it.

Mr. Kresel: I desire to include that.

Mr. Anderson: All right.

Q. 154. Dr. Parsons, do you know Colonel Joyes?

A. I do.

Q. 155. Tell us what Colonel Joyes's connection with fixation of nitrogen during the war was?

A. Colonel Joyes was an officer of the Ordnance Department who was put in charge of Division T, known as the Nitrate Division of the Ordnance Department, shortly after the signing of a contract, or the making of arrangements with the General Chemical Company, I think in June, 1917; and he stayed in control of the work of the Ordnance Department for the construction and operation of nitrogen fixation plants until the war was over.

Q. 156. When you speak of the arrangement with the General Chemical Company what arrangement are you referring to?

A. The plant at Sheffield, Alabama.

Mr. Kresel: I now offer in evidence a report by Colonel J. W. Joyes, Ordnance Department, United States Army, found at page 107 of the book on the Hearings before the Committee on Military Affairs of the House of Representatives on H. R. 10,329.

Mr. Anderson: I have no objection.

The Court: Admitted.

Received in evidence and marked "Defend-

ant's Exhibit No. 239." (*See Exhibits, Vol. V, page 3225.*)

Mr. Anderson: Mr. Kresel, what was the date of that hearing, please?

Mr. Kresel: April 19, 1920.

Mr. Anderson: What is the date of the report?

Mr. Kresel: The report is not dated.

May I direct your Honor's attention to another paragraph in this French agreement, with reference to secrecy. It says:

> "This condition will remain in force during the duration of the present contract and fifteen years after its expiration."

I now desire to read from the report of Colonel Joyes. The two opening paragraphs are as follows:

> "This statement is intended briefly to present some of the information obtained and opinions formed by me during an official visit to Europe in the summer of 1919, especially bearing upon the plant development and costs of production of the cyanamid process and of the Haber synthetic ammonia process."

Q. 157. Dr. Parsons, do you know when Colonel Joyes made this trip?

A. My recollection is that it was in the spring of 1919. He went with Colonel White and other officers, Major Tour, Colonel Wagner, and Colonel Lamb, to Europe to study the situation, and visited the plant at Oppau.

Mr. Kresel: (Reading):

> "This visit to Europe was made as Chairman and member of the United States fixed nitrogen commission appointed by the United States fixed nitrogen administrator with the

approval of the Secretary of War, to ascertain the state of the art of nitrogen fixation in Europe, and especially in the occupied German territory. The commission spent about two months abroad visiting several cyanamid and ammonia oxidizing plants in France and Germany and the noted Haber plant of the Badische Co. at Oppau for the synthetic manufacture of ammonia. The large arc plant in Norway was also visited and many well-informed persons were interviewed.

"In the need for nitrogen for the war Germany was pressed hardest, because all importation of Chile saltpeter was stopped by the blockade, and munitions could not be made without a substitute material from which nitric acid could be produced.

"The German Government nitrogen administrator required the gas works and coke works to deliver all possible by-product ammonia, but no great increase could thus be made.

"The Government further increased ammonia production by requiring increases of existing cyanamid plants and construction of new ones, the Government assisting by large loans, etc., and even building out of public funds two large cyanamid plants.

"The Haber synthetic ammonia plant which the Badische Co. had started to build at Oppau in 1912 had brought into successful operation just before the war its first installment, some 7,000 tons per year. Later this plant was increased to 100,000 tons per year; and another plant for 200,000 tons per year was built at Merseberg, some three-quarters of its capacity having been developed when the Armistice was signed.

"France undertook the establishment of plants to produce by fixation at home nitrogen substitutes for Chile nitrate sufficient in amount for all her home munitions manufacture.

> "The process selected as the backbone of this program was the cyanamid process, and the plans contemplated adding to the pre-war capacity (which was about 8,000 tons of nitrogen per annum), an aggregate annual production of over 50,000 tons of contained nitrogen, giving in all some 60,000 tons of nitrogen—to be available a small part before 1918, part in 1918, and all by May, 1919."

The report then goes on to indicate what other countries did, which I shall not read now.

> "In Germany and in France the need was so great that some of the plants were placed where conditions were so unfavorable that it was never expected that they could live after the war, but as far as possible they were placed and built with a view to future use in production for the needs of agriculture and the arts.
>
> "The Haber process is a new process, and large scale use brought many troubles, which under the war pressure the large and efficient staff of the B. A. S. F. succeeded in overcoming, so that the process is now a continuously operating and fairly efficient plant to which the German company has linked up many auxiliary processes for adapting its ammonia to fertilizer uses. But our inspection indicated to us that up to the close of operation of the Oppau plant there had been constant modification and improvement of apparatus. Only a single ammonia converter at Oppau had all the latest improvements that we saw. It seemed clear to us that the Oppau plant showed need of still further improvement for entirely satisfactory operation.
>
> "At a good many points quite careful regulation of pressures, quantities, temperatures and composition of the gas mixture, and a great number of gauges, meters, indicators, thermometers, etc., were provided to show the need for control by manipulation of a cor-

> respondingly large number of valves, switches, and the like.
>
> "It is said that fewer operatives are required than would be indicated by these controls, but making every allowance therefor, our commission was convinced that the labor and supervision forces must be quite large. In the estimates which have come from a number of sources the expense of this item was not exorbitant, because of the very low salaries and wages paid in Germany up to 1914, and it is upon such low rates, now no longer existent even in Germany, that the production of ammonia at quite low figures had been asserted.
>
> "Repairs and upkeep must be expensive.
>
> "It has been said that ammonia was made in this plant when it first started operation (1914-15) for about 4 cents per pound, exclusive of interest and with a small item of depreciation only, but it must be remembered that at that time lignite for fuel was available at about $2 per ton and coke at about $4; that common labor received about 75 cents to $1 per day, and skilled labor between $1.40 and $1.50. These conditions have gone, and are not expected to return.
>
> "It was our firm conviction that under present conditions the production cost must be fully two and a half times as much."

Then Colonel Joyes proceeds to state as follows—and I direct your Honor's particular attention to this:

> "If we assume this same plant" (that is, the German plant) "set down in perfect condition in a favorable location in the United States, the costs of production under present price conditions would be, in my opinion, based upon our careful studies, as follows."

And then he gives a list of items and comes to the conclusion that the aggregate cost per pound of ammonia would be between 16.5 cents and 12.9 cents.

Further on, Colonel Joyes, still speaking of what it cost to operate by the German-Haber process, says this:

> "We have no basis for absolute comparison in the United States, since the Government's plant, experimentally built to use a similar but only partly developed process, promptly developed troubles, and the close of the war coming just at that time prevented the expenditure of the money necessary to overcome those troubles and make the plant operate. If the war had continued that would undoubtedly have been done, and the plant would have been made to make ammonia. But the experience showed conclusivly that there would have had to be much development at much expense before the new American process could have equalled or nearly equalled the German or Haber process, which had had already eight years or so of intensive study in commercial, if small-scale, apparatus, and several years of large-scale operation.
>
> "There is nothing to indicate that the Haber or similar process in its present state of development can, under present business conditions in America, produce ammonia for as low a price as 10 cents per pound, exclusive of interest."

And we shall show your Honor what the prices are by the other processes.

> "As I have already stated the matter of nitrogen supply was, during the war, energetically fostered by the German Government, and specific control over all matters in that connection was exercised by an imperial commissioner or commissary for nitrogen control under the War Department, who was given authority to issue regulations for the produc-

> tion and use of nitrogen products and for all traffic therein. In several publications the establishment of this control is mentioned in terms of high praise, and Walter Rathenau, in general charge of raw materials supplies, was given great praise for having initiated it.
>
> "In order to know the conditions affecting production by the several groups there were associated with this Government administrator,"

Certain people whose names I shall not mention.

> "This designation"—that is, the designation of Stickstoff Syndakat G. m. b. H. or nitrogen syndicate; that is the way the consolidation was known.
>
> "This designation is a commercial one and the organization is along commercial lines, but it is reliably stated that the establishment of this syndicate was largely due to governmental influence. This will be more easily understood if it be realized that the German Government had given financial assistance to many of the new plants and plant increases which the war had necessitated, and that it had also built, out of public funds, two of the largest cyanamid plants in Germany.
>
> "In order to safeguard other interests than those of the producer and to insure economy in distribution, there has at the instigation of the Government finance ministry been organized a joint body consisting of representatives of producers and consumers known as the nitrogen commission. That commission will consist of 23 members; the nitrogen syndicate just mentioned, the Government, and representatives of the agriculturalists of Germany will have 5 members each, and fertilizer manufacturers, fertilizer dealers, the Bureau of Industry, and the

> Bureau of Agriculture, and three of the associate States, will have one member each.
>
> "This information, which comes from most reliable sources and is not to be disputed, shows that beyond question anyone outside of Germany producing or desiring to purchase nitrogenous fertilizers or similar compounds will have to deal with a single organization, essentially a branch of the German Government, which will have an absolute monopolistic control of all such products produced in Germany or whatever surplus there may be for export."

In this same connection I would like to read a statement made by Colonel Joyes.

Mr. Anderson: Mr. Kresel, would you mind saying whether the report you have just read is an official report of the War Department or was it a statement submitted to a committee of Congress? I have not the report.

Mr. Kresel: I will read exactly what it says.

Mr. Anderson: I have not the report before me and I want to know the exact status.

Mr. Kresel: The report is headed, "Statement of Col. J. W. Joyes, Ordnance Department, United States Army," signed "J. W. Joyes, Colonel, Ordnance Department, United States Army." Turning to page 92 of this booklet, in which the statement or report is contained, I read the following. This was a proceeding, your Honor, before the Committee on Military Affairs of the House of Representatives:

> "Mr. McKenzie: Now, is that all, gentlemen?"

Mr. McKenzie was one of the Congressmen.

> "Mr. Roberts: Mr. Chairman, we have a great deal of evidence to present here that we would like to present, and most of it is written."

And there (indicating) is Mr. Roberts sitting at the Government table.

> "Mr. McKenzie: You could put it right into the hearing.
>
> "Mr. Roberts: If you would allow us to take such parts from the Senate hearings as we presented to that committee, and send it here to this committee, we would do it that way, and we could end our hearing then.
>
> "Mr. McKenzie: We will be glad to give you that permission, Mr. Roberts. I have not had time to read the Senate hearings, but if you will include that in the House hearings I will get the benefit of it.
>
> "Mr. Roberts: I will do that."

Then "(Mr. Roberts submitted the following papers)," and what I have read, Colonel Joyes's statement or report, is one of those submitted.

Mr. Anderson: If your Honor please, to the end that there may be no confusion in the record and that the position of the Government may be perfectly understood and taken as a precedent, I wish to make the formal motion to strike out the report or the statement to which reference has been made, on these grounds. The first I wish to state specifically, that while this particular publication is not covered by our stipulation, I am not objecting to proof of its authenticity; I waive that question, as it appears in a public document. But while an official report of Colonel Joyes, if submitted to the Secretary of War, would certainly under the rule under which we are proceeding in this case be admissible and probably be evidence in any case of the facts stated therein —as your Honor knows we have proceeded on that theory—a statement by Colonel Joyes to a committee in lieu of oral testimony, or oral testimony before a committee by an officer of the army or any other subordinate officer of the Government, is not admissible in evidence.

Frankness compels me to say that I do not know that I have any objection beyond our general objections to Colonel Joyes's statement *per se,* but if we once start that, then we have the right also, on the same principle, to read in the testimony of witnesses or statements of witnesses not under oath made before the Committee, without calling those witnesses, which might lead to most far-reaching and prejudicial results.

Therefore, I feel constrained to make this motion to preserve the rights of the Government upon the grounds stated, and I think if Colonel Joyes's testimony is desired he should be called. I will add, however, that if this is all the information is going to be sought to be put in of this character, it might be that for convenience something could be agreed upon on that subject. I do not want to cause inconvenience or delay in the prosecution in the case; but I do feel it is my duty to make the formal motion to strike out, to preserve the rights of the Government in that regard, and to insist rather earnestly upon the principle upon which the motion is based.

Mr. Kresel: Just a few words, your Honor, as to the question of law raised. If your Honor is interested I have a memorandum here of authorities under which I have no doubt this is admissible. But I think that your Honor should know that the proceeding before this Committee of Congress to which the statement of Colonel Joyes was submitted was a proceeding upon the proposal to enact a law proposed by the War Department itself and that it was the Government, represented by the War Department, that offered to the Congressional Committee this statement of Colonel Joyes.

And is it possible that the Government can now come into this Court and say "No, we do not stand by what Colonel Joyes said," or "We are not bound by it," if they presented it to Congress themselves? It seems to me that Colonel Anderson does not want to take that position.

Mr. Anderson: If your Honor please, the Government of the United States is a rather large institution and how far outside the Courts the Government of the United States is bound by acts of its subordinate officers is a question which I think must turn upon the particular facts. I do very earnestly and very firmly take the position, with deference to the Court and to counsel, that statements before Congressional Committees by an officer of the Army, regardless of his rank, unless he occupies such a position that he does in fact speak for the Government in a matter of that kind, which might change his status, is not admissible here. Whether in that particular hearing the evidence was offered by a representative of the War Department or not, it is not evidence in a Court, and if the testimony is desired to be given in a Court the witness must be called and subjected to proper examination and cross-examination. To allow the reading of evidence of subordinate officers, or statements not under oath, given in informal proceedings before a Committee of Congress is probably the most informal proceeding in the world, and to read evidence given there, either for or against the Government, I will put it both ways, in a suit in which the Government was a party, affecting its property rights and those of the people of the United States, would be a most mischievous and dangerous principle.

Mr. Kresel: Your Honor, Colonel Anderson has not answered my question. He does not have to if he does not want to. I realize that. I am not now arguing a question of law. I intend to rely upon your Honor's rulings as to the admissibility of this as a question of law and in support of that, as I said, I have some authorities here. ing efficacy and value to the statement of Colonel But what I want to know is whether, aside from the question of law, the Government is now deny-Joyes which the Government itself submitted to a Committee of Congress. I think that is a very pertinent question; but Colonel Anderson does not have to answer it if he does not want to.

Mr. Anderson: I will answer it, although I am not called upon to. My duties in this Court are fixed by the law. I have no discretion on the subject. If a thing is illegal, my duty is to object to it in this Court if I think it is illegal. How that statement was presented, who presented it to the Committee—it was a hearing before the Committee itself and not a proceeding of a judicial character—is a question that does not concern me in the slightest. If it were legal evidence, I would let it go in. Of course, I mean by that, I would raise no question. If it is illegal evidence, I know of no policy, no obligation, no right in this Court, except that which is fixed by the law.

Mr. Kresel: Does your Honor desire to make any ruling?

The Court: Was this report written?

Mr. Kresel: Yes.

The Court: Does the record show it was taken from the files of the War Department?

Mr. Kresel: It is headed "Statement of Colonel J. W. Joyes, Ordnance Department, United States Army," and signed "J. W. Joyes, Colonel, Ordnance Department, U. S. Army."

The Court: Your stipulation merely covers authenticity, I take it?

Mr. Kresel: Yes, sir.

The Court: And does not cover relevancy.

Mr. Kresel: No, your Honor. It is expressly agreed that either side may object.

The Court: Will you give me the benefit of the authorities which you have there, **Mr. Kresel.**

Mr. Kresel: Yes, your Honor. This is a memorandum that we have written on the question of the admissibility of reports made by duly authorized agents of Executive Departments of the Government. A general statement of the law is contained in Wharton on Evidence, Section 638:

> "The official proclamations and other public documents issued by the Executive or Legislature are to be received as *prima facie* proof of the facts stated in them, when such facts are relevant, and of them when domestic judicial notice is taken."

That, your Honor will see, refers to official proclamations and public documents issued by the Executive or the Legislature.

The Court: This is a public document?

Mr. Kresel: This is a public document issued by the Legislature.

> "State papers, when published under the authorities of Congress, have a like effect. Thus, the diplomatic correspondence communicated by the President to Congress has been held in this sense evidence of the facts communicated. So the ordinances of foreign states promulgated by Congress are held proved by such promulgation.
>
> "The proclamation of a Governor of a State is *prima facie* evidence of the result of

the elections which it recites. The printed report of the State Comptroller to the Legislature"—see how far they have gone—"is *prima facie* evidence of the pertinent facts recited and so is the charter of a City as a general rule in respect of all domestic public conditions and acts. All statements as to the same, made or recited in any public Statute, or any documents sent by the Executive to the Legislature, or any Executive or Legislative documents authoritatively published will be judicially noticed, or if not, may be put in evidence if relevant."

May I read that last statement again, your Honor, because I think it sums up very well:

> "As a general rule .... all statements in any public statute or any documents sent by the Executive to the Legislature"—

this is a document sent by the Executive Department to the Legislature, because the War Department is only under the Executive; but even if it did not come in under that, it comes in under the following:

> "Any document contained in Executive or Legislative documents authoritatively published"—and this is certainly a Legislative document authoritatively published—"will be judicially noticed, or, if not, may be put in evidence if relevant."

Wigmore has this to say (Section 1670):

> "An inquisition or report, if made under due authority, stands upon no less favorable a footing than other official statements. As a statement made under official authority or duty, it is admissible under the general principle."

Now, is it contended that this statement made by this official Colonel Joyes was not made pursuant to duty?

Then I have several cases, your Honor; perhaps I might draw your Honor's attention to how far the cases have gone. For instance, in the case of Russell against the Brooklyn Daily Eagle in 168 Appellate Division, New York, it was charged that the defendant had published a libelous cartoon concerning the sale of a certain wheat preparation by the plaintiff. The defendant pleaded justification. To sustain its defense, the defendant offered in evidence a report of the United States Department of Agriculture. The Appellate Division held that these reports were admissible, and in discussing the question they say this:

> "Among the duties imposed and the powers conferred on the Department of Agriculture are the following: To acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word. To procure and preserve all information concerning agriculture which the commissioner of Agriculture can obtain by means of books and correspondence and by practical and scientific experiments, accurate records of which experiments shall be kept in his office; by the collection of statistics and by any other appropriate means within his power. The question is, are those records relevant evidence of the facts therein recorded upon the issue of justification."

Quoting the case of Evanston against Gunn in 99 U. S. 660, wherein the Court was considering the records of the Weather Bureau, the Court said:

> "They are, as we have seen, of a public character, kept for public purposes, and so immediately before the eyes of the community that inaccuracies, if they should exist, could hardly escape exposure. They come, there-

> fore, within the rule which admits in evidence official registers or records kept by persons in public office in which they are required, either by Statute or by the nature of their office, to write down particular transactions occurring in the course of their public duties or under their personal observation."

In Richards against Robin, in 178 Appellate Division, the State Superintendent of Banks brought an action to enforce a Statutory liability of stockholders of an insolvent bank. There, an inventory of assets and lists of the claims verified by the Superintendent of Banks were held to establish *prima facie* the insolvency of the bank. There was no statute there which made it a duty of the Superintendent of Banks to make any such inventory, but the Court said:

> "It is clear that the trial Court was right in holding that the inventory of assets and lists of claims were of the character of official public statements prepared and filed in fulfillment of a duty imposed by the law and open to the public."

Now, there was this officer of the War Department, who, according to the testimony, now went abroad as Chairman of a Committee to make an investigation for the Government. Congress had before it a proposed act dealing with the very subject. The Secretary of War personally appeared before this very committee and on this same day and testified upon the subject.

THE COURT: That is so shown by the official document.

MR. KRESEL: So shown by the record. The first witness was Secretary Baker, beginning at page 6 of this volume. The Government itself came in and presented these witnesses: Secretary

Baker, Mr. Roberts, Professor White who is sitting here, Colonel Joyes and Colonel Byrnes, I think, all bearing upon the proposed legislation. I might as well say to your Honor now what that proposed legislation was, because it has a bearing on the issue.

After the war, the Government had these two plants at Muscle Shoals, the cyanamid plant No. 2, and this plant No. 1; and the Government was confronted with the question as to what to do with them. The Government investigated and finally came to the conclusion that there was this solution to the problem and that was the solution that was proposed to Congress which was then investigated, namely:

That there should be organized under the laws of the United States a corporation; that the corporation was to be officered by officials of the War Department; that the corporation was to be free from taxation and was to take those two plants without paying a dollar for them; that twelve million dollars was to be appropriated for the purposes of the corporation so as to enable it to make the necessary changes in these two plants, so that they might try to operate them; and that the corporation was to sell this product to our farmers for fertilizer purposes.

The legislation did not pass, your Honor, because it was—well, I need not state the reasons. It did not pass. But it was a proposition put forth to Congress by the War Department and this statement that we are now offering was one of the documents presented to Congress upon which the Government asked Congress to act.

The Court: I will hear you, Colonel Anderson.

Mr. Anderson: I have only a word to say, sir.

I recognize, of course, and have contended throughout this case and first presented the issue to your Honor, that the official reports of officers and departments of the Government of the United States, made in the discharge of their official duty, under authority of law, could be introduced as *prima facie* evidence of the facts stated therein. That I concede, of course. But I do not understand the rule to go to the extent that statements, even not under oath, made before a Congressional Committee in an investigation can be introduced without calling the witness for examination.

THE COURT: Do you differ in this, that this was an official report?

MR. ANDERSON: I do dispute that. The report does not show that. Here is what happened, if your Honor please, from the report. These officers of the Army were called up there, I presume, at the request of a Committee—it does not matter whom—to give statements in the usual manner. A number of them were there. The Committee's time apparently was greatly occupied and it was suggested that they could put their statements in writing. Or, they had already put them in writing, probably before the Senate Committee and it was suggested that those statements could be introduced in lieu of their testimony; and such statements were presented to the Committee in lieu of their oral statements before the Committee.

THE COURT: Then your thought is that this statement of Colonel Joyes was a written statement made by him to the Senate Committee.

MR. ANDERSON: To the House Committee. Some of them came out of the Senate records, and to save time, they were taken out of the Senate record and put into this record. Then this record was published like all hearings before committees, by the public printer for the use of Congress. But that statement of Colonel Joyes occupies exactly the same legal position as an oral statement made by him before the Committee.

The Court: Do you differ from Colonel Anderson with respect to that, Mr. Kresel?

Mr. Kresel: In this respect only, your Honor, that the report or statement was not taken from the Senate report at all. It was a statement made directly to this Committee.

Mr. Anderson: That may be true.

Mr. Kresel: And for the purposes of the Committee.

Mr. Anderson: That may be true. Some of them were and some of them were not. I did not think that was material.

Mr. Kresel: In other words, your Honor, it was this way. Congress says to these officers of the War Department, "Go and prepare a statement and present it to us." Colonel Joyes did that and it is his statement I am now offering.

Mr. Anderson: In lieu of an oral statement. The Committee said, "Let us have your facts or whatever you want to say to the Committee in writing instead of taking up the time of the Committee, twenty men, to hear your oral statement, because we are very busy."

The Court: Now then, I have it. I have been confused about it until this moment. We have the fact then that this statement is a representation of facts by the Executive Department of the Government or rather the Executive, possibly, of the Government, at the time this was made. The date I do not recall.

Mr. Kresel: April, 1920.

The Court: On a similar issue. It is that, is it not?

Mr. Anderson: I have not so expressed it, if your Honor will permit me. Your Honor uses the expression of "the Government" in a very much broader sense than I do. I think when the Committee calls these individual gentlemen up there, there may be fifty men in the War Department who take views exactly opposite to those of Colonel Joyes. It was his individual statement. The Government of the United States, I take it, can only speak through certain recognized channels. The Committee can call anybody. It can call me or anybody else up there and ask, as they have done with Colonel Joyes in this case, what I think. I may give an opinion on what I am advised is a question of policy. But it is in no sense the Government speaking. It is their inquiry into the minds of persons who they think are informed as to certain facts. They may be correct or not.

Suppose some one were to go before a Committee, for instance, and state as a fact some scandalous matter about some high officer of the Government. Such things have happened. Surely, that would not be received, simply because he went there before a Committee, as even *prima facie* evidence of that fact.

The Court: In what capacity was Mr. Roberts acting at that time?

Mr. Anderson: Mr. Roberts was at that time, I think, acting——

Mr. Roberts: At that particular hearing?

The Court: I did not want to go into external evidence. I only wanted to know what the record showed.

Mr. Anderson: I do not know.

The Court: I have no objection to your shortening that information.

Mr. Kresel: He was Assistant Nitrogen Administrator of the War Department.

Mr. Roberts: May I correct that?

Mr. Kresel: Is there any disagreement about that? Because I do not want to make a statement that is not a fact.

May I direct your Honor's attention to the fact that Secretary Baker at this very hearing, when asked a question, says: "I can not say that any effort was made. Mr. Roberts knows more about that than I do." He brought Mr. Roberts there as his representative.

Mr. Anderson: He was a Special Assistant to Secretary Baker, so he tells me, or the Secretary at that time, advising on these nitrogen matters.

The Court: And he presented these statements?

Mr. Anderson: And at the suggestion of the Chairman of the Committee he presented these statements in writing. I did not wish to argue the question, your Honor, but I felt compelled to raise the question.

The Court: It is perfectly proper to raise the question.

Mr. Anderson: And of course, I make a motion to strike out, and reserve the point for your Honor's consideration.

The Court: That represents the attitude of the War Department and constitutes representations made by the War Department and whether or not the doctrine of estoppel would in any sense apply, it seems to me that it is evidence that is not without relevancy.

Mr. Kresel: I did not mean to interrupt your Honor, but I was looking for something and I was glad I was able to locate it in this mass of stuff. I had in mind that Secretary Baker himself referred to these experts for the Committee to rely on them, and I find it on Page 26 of this book: "Secretary Baker: If the Committee desires to hear the experts, they are here and will take up the matter with you."

THE COURT: Admitted.

MR. ANDERSON: I note an exception.

THE COURT: The usual morning recess.

(Thereupon a short recess was taken by direction of the Court).

MR. KRESEL: Now, your Honor, this statement of Colonel Joyes, as I stated to your Honor, was submitted at the hearing of April 19, 1920, before the House Committee on Military affairs.

I now want to read a statement made by Colonel Joyes before the Senate Committee on the very next day, namely, April 20, 1920, upon the same legislation.

THE COURT: And produced under like circumstances?

MR. KRESEL: Let me state to your Honor exactly. The report shows as follows: I do not know, gentlemen, whether you have a copy of this.

MR. GALLOWAY: Yes, we have it. What page is it?

MR. KRESEL: Page 325: Committee on Agriculture and Forestry, April 20, 1920.

> "The committee met at 10:30 o'clock A. M., Senator Asle J. Gronna presiding.
>
> "Present: Senators Gronna (chairman), Smith of South Carolina, Randell and Kendrick.
>
> "Present also: Hon. Newton D. Baker, Secretary of War.
>
> "THE CHAIRMAN: The committee will come to order, and we will take up for consideration Senate Bill 3390, a bill providing for

> the production of atmospheric nitrogen. Col. Burns, whom do you wish to have heard first?"

Of course, there is no dispute but that Colonel Burns was a Colonel of the War Department?

Mr. Anderson: I shall assume so; Colonel of the Army of the United States.

Mr. Kresel: Of the Army, yes. Now, Colonel Burns makes this statement:

> "Col. Burns: Mr. Chairman, one of the points raised by Mr. Washburn, and practically the chief point, was the negotiations that took place between the American Cyanamid Co., and the Ordnance Department; and if I have the correct impression, it was his statement that his first offer to the War Department was on a basis of practically no profit to the American Cyanamid Co., and that throughout his war work it was not his desire to make any unreasonable profit. Now, in order that you may get a proper picture of those negotiations, Col. Joyes is going to make a statement, as he was at all times intimately connected with the negotiations that took place.
>
> "The Chairman: You want Col. Joyes to be heard first then, Col. Burns?
>
> "Col. Burns: Yes, sir.
>
> "The Chairman: Very well."

The Court: The Secretary of War being present?

Mr. Kresel: The Secretary of War being present. In other words, it is quite apparent, your Honor, that Colonel Burns was in charge of this legislation for the War Department.

The Court: I will assume that like objections are made to this as were made to the preceding question, and the same ruling, and same exception.

Mr. Kresel: I read from page 323 the following statement of Col. Joyes.

The Court: This is in a public document, as I understand it.

Mr. Kresel: This is in a public document entitled, "Production of Atmospheric Nitrogen—Hearing before the Committee on Agriculture and Forestry, United States Senate—Sixty-Sixth Congress, Second Session, on S. 3390," and I might as well here read the title of the bill:

> "A Bill to provide further for the national defense; to establish a self-sustaining Federal agency for the manufacture, production, and development of the products of atmospheric nitrogen for military, experimental, and other purposes; to provide research laboratories and experimental plants for the development of fixed-nitrogen production; and for other purposes."
>
> "Printed for the use of the Committee on Agriculture and Forestry. Washington Government Printing Office, 1920."

I read from page 328 the following statement, made by Colonel Joyes:

> "With that preamble as to early history, we may jump, I think, right up to the time when the United States came into the war. The national defense act had been passed the year before—merely eight months before—and several committees had been appointed by the President and the Secretary of War to advise as to how to act in that particular matter of the provision of fixed-nitrogen for war needs, and the first committee had made a recommendation which looked rather to the ultimate future. It provided that we should improve the river at Muscle Shoals and get

the power work started, which would take, they figured, something like four years, I think. It also contemplated an arrangement that concerns be invited to bid upon the power and come down there to use it for fixation purposes. That was the recommendation of the committee; there were other things, but essentially that was it.

"Just about the time that the committee reported, in January, 1917, some information came out about the progress that had been made in the new synthetic ammonia process of the General Chemical Company. That was working in the laboratory of the General Chemical Co., on a scale which was very small. It was an improvised apparatus for experimental work only, and yet it was larger than the glass and rubber apparatus that the chemist generally makes his preliminary experiments with. But that apparatus had been tried by the General Chemical Co., sufficiently to justify them in drawing plans and placing orders for apparatus for buildings for a plant in the neighborhood of New York, to cost somewhere in the neighborhood of $1,000,000.

"Certain people represented to the Chief of Ordnance and to the Secretary of War that this process looked so promising that we had better go into it or at least we had better have it thoroughly considered. So a new committee was named, taking a great proportion of the old committee and adding more of it to reconsider that.

"They thought that process was worth developing, and they recommended that it be developed, and that was finally approved in July, 1917, about four or five months after the United States entered the war.

"It was recognized that that was no step of any consequence in the production of what we needed for the war, but it was a step which might lead to very large progress in the production for the needs of the war and it was

> considered by these gentlemen who formed that committee as being well worthy of trial. At the same time, whatever progress it did make would be highly desirable; and it was a step toward an achievement corresponding to what the Germans had made in the celebrated Haber process, of which we knew very little. The Haber process was kept distinctly secret and its patents were very strong, very broad, but they pretty effectually avoided such particularization as would enable anybody to make use of them."

MR. ANDERSON: One moment, sir.

MR. KRESEL: I have not finished reading, Colonel Anderson.

MR. ANDERSON: I want to note an objection to that specific statement. If the witness were in court he would not be permitted to testify in that language; and therefore, to read it as *prima facie* evidence of his opinion of these patents, without his having the patents before him or any opportunity at all to test his knowledge, is of course admitting under formal statement evidence which could not be adduced in court in that form.

MR. KRESEL: May I finish reading one more paragraph, and then if your Honor desires to hear anything further about it, I shall be glad to state my views.

THE COURT: I shall not ask you to do anything further. It seems to me that this is in a little different position from what you suggest, Colonel Anderson,—I may be wrong—for it seems to me that this is a representation made by an Executive Department, to wit, the War Department, with respect to these patents, and consequently is indicative or expressive of the position heretofore taken by the Government of the United States, or the Executive Department thereof, with respect to these patents. I think that is slightly different.

Mr. Kresel: May I state further, your Honor, that Col. Joyes is still with the Army, subject to the orders of the Executive and War Departments, is available to the Government if they desire to get his testimony, stationed at Governor's Island, New York, at this very minute. I have one more paragraph to read, and then perhaps, Colonel Anderson, you may want to state your objection to the whole thing.

Mr. Anderson: I merely interrupted for the purpose of directing attention to that particular thing.

Mr. Kresel: Yes; you have done that.

> "At that stage of the matter the Ordnance Department set up the Nitrate Division, putting me in charge of it, to carry out that program of developing that process and at the same time giving us permission to inquire into a number of other processes so that we might have our eyes open to anything that was developing and be ready to take advantage of anything."

Mr Anderson: Are you through now?

Mr. Kresel: Yes.

Mr. Anderson: I want to get, if your Honor would permit me to do so, a little more clearly the ruling of the Court, because I do not want to make objections against the ruling, it once being made. The last ruling that the statement by Col. Joyes was a representation by the Executive Department which estopped the Government or might operate to estop it——

The Court: I have refrained from saying that it is an estoppel. I have not undertaken to define just the legal principle upon which it operates.

The memorandum of Mr. Kresel stated three grounds. Under the first one Mr. Kresel said it is not; and it seemed to me that possibly it would come in on either of the other two.

Mr. Kresel: Certainly under the third, your Honor.

The Court: But it seemed to me that possibly the intermediate one was slightly stronger. However, I think it is not without evidential value; so without going over what we did before——

Mr. Anderson: I just want to get the point clear.

The Court: I realize the difficulties and complexities of estoppel with respect to the Government of the United States.

Q. 158. Dr. Parsons, on last Saturday in giving us the sources of nitrogen you mentioned the coke ovens and the Chile nitrates; you will recall?

A. Yes.

Q. 159. Did you during the year 1919 and prior thereto and since, keep yourself informed of the selling price of ammonia in the United States market?

A. Yes.

Q. 160. What was the average price at which ammonia was sold in the American market, say, in the Spring of 1919, and say for a year prior thereto and for a year following that?

A. Approximately ten cents a pound for the NH-3.

Q. 161. What is NH-3?

A. Ammonia contained in the aqua which is usually sold.

Q. 162. At page 4 of your report to the War Department I read this statement. I wonder, Doctor, if you could locate it for me (handing paper to witness). I am looking for the statement that you made with reference to the cost of coke oven production of ammonia. Will you please see if you can locate that?

A. (Witness looks through paper.)

Mr. Kresel: While Dr. Parsons is trying to find that, I read from page 130 of Defendant's Exhibit 140, the following statement, beginning at the bottom of page 129:

"It will be seen from the above estimates that the cost per pound of ammonia"— Before I read that I desire to direct the Court's attention to a table at page 128 of this report, Defendant's Exhibit 140, which is a statement headed "Summarized costs per ton of ammonia," by the General Chemical Company's process used in Nitrate Plant No. 1.

The result arrived at by this official report is this—that the cost per pound if water gas hydrogen is used is 11.1 cents, while if electrolytic hydrogen is used it is 10.7 cents per pound. Please, your Honor, bear that in mind in connection with Colonel Joyes's figures, which were between 16½ and 12.9 cents per pound by the German Haber patent or process.

I also direct your Honor's attention to page 95 of this official report, Defendant's Exhibit 140, from which it is made to appear that the cost of ammonia per pound produced by the cyanamide process was 10.6 cents per pound. That appears at page 95 of this book. I read from page 129, beginning at the bottom of the page, as follows. (Reads from exhibit.)

Mr. Anderson: May it please the court, I notice that these extracts being read are being taken down in the record. For several weeks we were engaged in reading a number of extracts which were not taken down in the record. If all of these extracts from reports which are in evidence are reproduced on the record, this record, which has already grown out of all reasonable proportions, will reach a stage which will practically defeat the aims of a trial. All this is in evidence and of course can be used in argument.

Therefore, while I have no objections to a brief statement being read to keep the connection, to summarize and bring it together in argument form, to put these long extracts from these various reports upon the transcript of the record, which reports are in evidence, is entirely varying the practice which was established earlier in the case and will lead to a most enormous expansion of this record, and I would have to submit to the Court whether that can be done. It is in evidence already, and certainly duplication of the evidence is not in accordance with the rule.

Mr. Kresel: I have no choice in the matter, your Honor. I did not know whether they were taken down or not. However, from this point on we will understand they will not be incorporated.

Mr. Anderson: The stenographers have been taking them this morning. I was informed it was done at your request. I did not want to object to a few of them, but the entire record this morning is practically taken up with these extracts.

The Court: I did not know anything about that and did not know they were being taken. I thought we indicated earlier in the trial that it was useless to duplicate the reading, and if you had spread upon the minutes what Mr. Galloway read in the trial it would be much longer than it is.

Mr. Anderson: Of course.

The Court: That is unnecessary and I think should not be done; because you can print in your brief such matters or such portions of these exhibits as you desire, and then that is at your own expense and not increasing the cost on the losing party, whoever that may eventually be.

Mr. Kresel: Any direction your Honor desires to make will stand.

The Court: Sufficient reference may be made by the stenographer as will identify the portion that is read.

Mr. Anderson: Certainly, sir; and where there is just a little extract from a paper to connect the argument I have no objection to having it in.

The Court: Let the stenographers use their own discretion on that. I cannot supervise it.

Mr. Kresel: With respect to the second statement of Colonel Joyes, which I read from the Senate report, that was not offered in evidence. If the stenographer is not to put it in as I read it, I desire to put it in evidence.

The Court: No, I am not going back over the record.

Mr. Kresel: I see. It is only as to the future.

The Court: The record is being made up as fast as the trial proceeds and we cannot have the record rewritten for that purpose.

Q. 163. The part of your report that I was looking for, Dr. Parsons, is at page 16 of this defendant's Exhibit No. 177. You say there:

> "The cost of ammonia has at the present time no relation to its selling price. The actual cost of collecting, absorbing, and purifying ammonia from the gases developed by the destructive distillation of bituminous coal—in other words, the cost of ammonia considered as a by-product is less than by any other process."

Is that the fact?

A. Correct.

Q. 164. Was that true in 1919?

A. Yes.

Q. 165. "The selling price of by-product ammonia is entirely a question of competition with other nitrogenous products and has been fixed in the past almost wholly by the market price of sodium nitrate with which it enters into competition." Now, is sodium nitrate what we laymen understand as Chili nitrate?

A. Correct.

Q. 166. And by-product ammonia, is that what you were describing as the ammonia derived from coking of coal?

A. Yes.

Q. 166-a. I continue reading from the report:

"Even should ammonia be placed on the market by the Haber process, at a price as low as four cents per pound"—what Haber process were you talking of there?

Mr. Anderson: I object, if your Honor please. He is reading from a report. The report speaks for itself.

Mr. Kresel: Has not this witness the right to say what he was talking about in view of the fact that he has already said that Haber was a generic term which was used with three different kinds of modifications?

The Court: Do you press your objection, Colonel Anderson?

Mr. Anderson: Yes, sir.

The Court: Finish reading, and then you can go back to that question.

Q. 167. I will re-read the sentence: "Even should ammonia be placed on the market by the Haber process at a price as low as four cents per pound, by-product ammonia will still be sold in competition therewith at a profit to the producer." Now, first I ask you, Doctor, which Haber process you were talking about there, as producing as low as four cents per pound?

THE COURT: I think the objection to that question is well taken. It seems to me that it might be open to a construction that all Haber processes were open, and I want to see whether there is any ambiguity.

Q. 168. I will read it again, your Honor:

> "Even should ammonia be placed on the market by the Haber process, at a price as low as four cents per pound, by-product ammonia will still be sold in competition therewith at a profit to the producer."

I will pass that, your Honor.

THE COURT: I will be prepared to rule on it in just a moment. You can pass it if you will. Is it your desire to pass it or press it?

MR. KRESEL: No, your Honor. I rather understood that your Honor felt the objection was well taken.

THE COURT: I was re-considering it, and I am not just sure whether it is or not. I was thinking of the witness's testimony, if I may think aloud just for a moment. I was thinking of the witness's testimony this morning that there were four of those processes, as I recall them.

MR. KRESEL: It was on Saturday he described them all and said the Haber was a generic term for all of them, and then this morning he segregated the patents, that is the patents applying to the German Haber process.

THE COURT: As to whether the method sought to be used by you in your question is the proper method for removing ambiguities when the witness is on the stand, or whether the question should be an independent question rather than one directed to his report——

Mr. Kresel: May I withdraw the question, your Honor, and I will see if I can get it in a way that is not objectionable.

Q. 169. I direct your attention to page 11 of your report, the second paragraph of that page, you say there—"Trustworthy information regarding the cost of production of ammonia by the Haber process indicates that pure anhydrous ammonia can be produced in liquid condition for a cost slightly less than four cents per pound." Now, where—you did not say here in this paragraph as to where it could be produced at four cents per pound; and I am asking you now to state in connection with that statement.

Mr. Anderson: I ask to read the entire paragraph if your Honor please. I object to the question.

> "The Haber process is not at present in use outside of Germany on account of the lack of detailed information regarding plant construction and operation and also owing to the very large royalty demanded by the Badishe Co. for its use by other concerns. It is, however, more than probable that the Badische Co. will itself install and develop the process outside of Germany when the war is ended."

Then comes the sentence referred to:

> "Trustworthy information regarding the costs of production of ammonia by the Haber process indicates that pure anhydrous ammonia can be produced in liquid condition for a cost slightly less than four cents per pound. It is improbable that any arrangement could be made for the United States Government to use the Haber process pending the conclusion of the European war. It is probable that when the war is ended the

Haber process will be installed or will be available for installation in the United States. It is the cheapest process for the production of synthetic ammonia. It is independent of cheap power—the power being a small fraction of its cost. If desirable, it could be readily installed in moderate sized units in connection with ammonia oxidizing plants at any munitious plant."

There can be no question of ambiguity, as to what can be meant by that sentence taken as a whole.

Mr. Kresel: Now, I say this with regard to ambiguity: if Colonel Anderson thinks it is not ambiguous, if he will say the passage means that the four cents produced ammonia in Germany under the German Haber process, I am perfectly willing to stand on that, but I won't leave Colonel Anderson a chance of saying hereafter that this witness's report was that in the United States, under any process, call it Haber or anything you want, you can produce ammonia at four cents a pound. Now, I am entitled to have the record show exactly what is meant thereby.

The Court: Is there a difference between you, Colonel Anderson?

Mr. Anderson: Yes, sir. I stand on the language of that paragraph.

Mr. Kresel: You do?

Mr. Anderson: And I am going to stand on it in argument, and if an effort is made to have it enlarged or explained, I shall respectfully object to such a question and let the record stand as it is.

The Court: Suppose we have that answer then, and determine that afterwards.

Mr. Kresel: Yes, sir.

The Court: I am trying to keep clear two things, as to whether this is independent testimony you are asking him or whether it is the interpretation of the document. As I understand the question that has been independent testimony which could be used possibly in connection with that, but you are asking him a question independently of this document which had been introduced in evidence.

Mr. Kresel: Independent of this. I was only directing his attention to what was contained in the report; and your Honor will recall, if you will pardon me, that this report was rendered early in 1917, the witness having made the trip abroad in 1916.

The Court: I was under the impression it was independent testimony. All right. You may answer.

Mr. Kresel: Will you answer?

A. That was information given me by the Norwegian engineers, which was the best I could get as to the price of production of ammonia in Germany by the Haber process at that time.

Mr. Anderson: I object on the further ground that it is purely hearsay.

The Court: I think the answer is not responsive to the question and I am going to ask that it be stricken out and the question repeated, because I think the witness did not understand it any more than I did when I mentioned it.

Mr. Kresel: Will you repeat the question?

(Q. 169. Repeated as recorded.)

The Witness: In Germany.

Mr. Kresel: That is the answer.

Mr. Anderson: Now, the answer of the witness preceding, says that he never has been in Germany during the war, and had not down to that time, and he derived his information from hearsay. Therefore I move to strike it out as obvious hearsay.

THE COURT: Colonel Anderson, I think either you misunderstand the situation, or I do, let us see which it is. He says in his report that it was four cents a pound.

MR. ANDERSON: Yes, sir, but he tries to explain his report by saying why he was told that—I beg your pardon, your Honor. I did not intend to interrupt you.

THE COURT: I know you did not, but I do not understand it as hearsay, if you are going to stand on his report. I do not see how his last answer is objectionable as hearsay, do you?

MR. ANDERSON: I am speaking of a written document, as *prima facie* evidence of facts, submitted to the War Department. Now this gentleman is trying, as I understand it, to entirely vary the natural meaning of that document by undertaking to introduce some information that he got from Norwegian engineers as to value in Germany.

THE COURT: That was struck out.

MR. ANDERSON : I know, but he stated the source of his information.

THE COURT: Do you want to restore it? I thought I was ruling in your favor.

MR. ANDERSON: The record I suppose will show he made that answer. I moved to strike it out, and your Honor called for it to be stricken out, that is the way the record is made up in these other cases. Therefore I say that the record now shows his statement in open Court, and shows that his sources were hearsay, and his answer can not stand.

THE COURT: In this instance I think I am right.

MR. ANDERSON: I will assume that your Honor is always right for the purpose of this Court room. I am reserving merely the rights upon the record.

THE COURT: You were inquiring as to who was right in this particular instance. You may proceed, Mr. Kresel.

Q. 170. Now, I read one more sentence from page 16 of your report, where you speak of the cost of ammonia. Speaking of the by-product ammonia you say:

> "Its cost price is largely a matter of bookkeeping. Its selling price will in the future as in the past depend upon the competition of other sources of combined nitrogen. The Haber process can produce and is producing ammonia synthetically cheaper than any other synthetic process now industrially applied."

I ask you now where, at the time you made this report, the Haber process was producing ammonia synthetically cheaper than any other synthetic process?

MR. ANDERSON: The same objection.

THE COURT: Same ruling, same exception.

A. In Germany.

Q. 171. Now, Dr. Parsons, based upon your experience and your knowledge of the development of the art of fixing nitrogen, your knowledge of the U. S. Haber patents, which you described this morning, and which are now in evidence, the fact that the General Chemical Company had developed in the United States a new direct synthetic ammonia process under United States Letters Patent, the fact that the Claude direct synthetic ammonia process had been developed in France, the lack of information as to how the processes covered by the U. S. Haber patents could be carried out in the United States, the fact that there were other methods of fixing nitrogen, such as the arc, the cyanamid and the cyanide processes, the fact that the cost of producing ammonia by the German Haber process in the United States would have been higher than the cost of production by the cyanamid process, the fact that the cyanamid was well known and had for a number of years been commercially successful, the fact that the production by the direct synthetic ammonia process would necessarily come into competition in the United States with the production of the cyanamid process and the production from by-product coke ovens and with Chilean nitrates, taking into consideration the lack of skilled personnel to operate under the Haber patents in the United States, even if the information as to how the processes described therein could be successfully carried out, were available, the fact that outside of Germany there was no plant anywhere in the world producing ammonia by the direct synthetic ammonia process, and that the only plant that had been built in the United States, to wit, plant No. 1 at Sheffield, Alabama, and the synthetic ammonia process developed by the General Chemical Company was not a success; what in your opinion was the value of the Haber patents in the United States in the months of February, March and April, 1919?

MR. ANDERSON: I note an objection to the question, because it does not correctly state, or fully state the evidence, and further it does not appear that this gentleman has had an experience which enables him to give a commercial value to patents.

THE COURT: I think the second objection is not well taken. The second ground of your objection is not well-founded, but if you care to point out the specific differences in your opinion——

Mr. Anderson: If your Honor please, that would be a rather difficult thing for me to do. I would have to study the hypothetical question, I can not carry it in my mind, but a number of things occurred to me as being incomplete, and it is impossible to accurately carry that question in my mind and undertake to point out the difference in the evidence.

The Court: Then we will take the answer to the question, and if during the recess you care to consider it and tell us after the noon recess, the specific differences, there will be an opportunity to correct it. Meanwhile, you may answer.

A. No value whatever for manufacturing purposes.

Mr. Kresel: You can cross-examine.

Mr. Anderson: Does your Honor wish me to proceed with the cross-examination at this time? I think once it is started, it is easier to keep at it than after a break of say ten minutes.

The Court: Suit your own convenience.

Mr. Anderson: I prefer to start after the recess.

Mr. Kresel: Before your Honor takes a recess, there was one patent in this list of Haber patents that was not available this morning, your Honor will recall. I now desire to offer it. That is to go in Group——

The Clerk: Defendant's Exhibit No. 237.

Mr. Kresel: Yes. You accepted the exhibit at the time.

The Clerk: That is the one that was given a number.

The Court: We will take a recess.

Mr. Anderson: If it is just the same would you mind taking an hour and a half and if necessary sit a quarter of an hour later.

THE COURT: We will recess till 1 o'clock.

AFTER RECESS.

MR. ANDERSON: May it please the Court, I have just received since I came into the courtroom, from the stenographer, the copy of the hypothetical question and answer. I have not been able to read it, so I will have to defer it a little longer.

THE COURT: Take it up in the morning, then.

MR. ANDERSON: I wish to say, further, to your Honor upon consideration of your Honor's very courteous statement of this morning, we have reached the conclusion that we should like to have the witness Doctor Volwiler recalled, and with the right of cross-examination under the conditions which your Honor has suggested.

THE COURT: I would like to speak with counsel. (Discussion of Court and counsel.)

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 172. Dr. Parsons, when did you first become connected with the Government of the United States, and in what capacity?

A. It was, if I remember correctly, in August of 1911, as Chief Mineral Chemist of the Bureau of Mines.

XQ. 173. That is, connected with the Interior Department, was it not?

A. The Interior Department.

XQ. 174. Prior to that time what had been your business? Possibly I may duplicate some questions,

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because I have not been able to read your testimony of Saturday.

A. I have been Professor of Chemistry and Head of the Chemical Department in the Durham College, at Durham, New Hampshire.

XQ. 175. How long had you been at the Durham, New Hampshire, College?

A. After graduating at Cornell in 1888 I went almost immediately as assistant chemist of the Agricultural Experiment Station which was at that time located at Hanover, New Hampshire. The college at that time was connected with Dartmouth. In 1893, I think it was, it was removed to Durham, and we built our own chemical department and chemical laboratories, and I had charge of them, was put in charge of the department, and remained in charge of the department, which grew quite rapidly until 1911. The New Hampshire College is now the University of New Hampshire. I left there to go with the Bureau of Mines in the summer of 1911; I think it was August and it may have been late July.

XQ. 176. Up to the time you went with the Bureau of Mines you had no industrial or manufacturing experience at all?

A. I had been consulted more or less with reference to industrial processes and have been on certain court cases.

XQ. 177. Will you be a little more specific; by whom were you consulted and when?

A. You are going so far back, Colonel, that I am afraid it would be difficult for me to give you anything accurate about that at the present time without looking it up. I was on numerous cases; those I remember chiefly were for the solicitor at Manchester. In those days they were having a great many cases as to whether lager beer was an intoxicating liquor or not, and I came in on quite a number of those, I remember, during one summer. I acted also in some of the Maine ports on similar matters.

XQ. 178. In other words, you testified as an expert as to whether beer was an intoxicating liquor or not, is that the idea?

A. Yes.

XQ. 179. Can you give me any other industrial experience that you had?

A. Before I went to the Bureau of Mines?

XQ. 180. Yes, before you went to the Bureau of Mines.

A. I consulted for a manufacturer of leather.

XQ. 181. About what year was that?

A. Anywhere from 1905 to 1910. I was at different times, as is usually the case with professors that are head of departments, asked to undertake certain small propositions. I built no plants until after I was with the Bureau of Mines.

XQ. 182. Your experience up to the time you were with the Bureau of Mines then was as a witness in chemistry in these cases which you speak of in Court?

A. No extensive industrial experience.

XQ. 183. Well, doctor, I would like you to be a little more specific. Extensive industrial experience means nothing to me. I want to know just what you did.

A. This firm in Dover, for example, had some proposition with reference to the cement that it had to have in connection with its leather belting. I remember I worked for two or three months for them to solve that proposition and did solve it and made the necessary——

XQ. 184 (interposing). Let us see exactly what you did. You say you worked two or three months. What did you do in that work?

A. I developed a cement for them which answered their purpose, waterproof cement for leather belting.

XQ. 185. That was a chemical process?

A. Chemical process.

XQ. 186. Can you name any other industrial experience and state exactly what you did, if you please?

A. I worked for a firm in Boston.

XQ. 187. About what time?

A. Well, as I have it in mind, it was somewhere in 1909 and 1910, on the question of mining and production of Fuller's earth, used in cotton seed oil refining and petroleum refining mainly with an idea of developing certain deposits in the South, and I developed a patent at that time for treating Fuller's earth which was not issued until some years later, I do not remember just when, for treating Fuller's earth so that it could be recovered and used over again.

XQ. 188. That was a purely chemical service, was it, the working out of the chemical process of the use of Fuller's earth?

A. Yes.

XQ. 189. Purely that. During all the time of which you speak, you were acting as professor and instructor at New Hampshire College?

A. Acting as what?

XQ. 190. Instructor or professor, I do not know which?

A. From 1893 on I was professor of chemistry, and from about 1894 I was in full charge of the Chemical Department until the time I left, with several people under me.

XQ. 191. State any other industrial experience that you had, stating about the time, just what you did, and for whom?

A. I developed or worked out a method—I am not quite sure that you would call this exactly industrial—for the analysis of milk so that farmers—that is when

I was at the experiment station—could at home determine the composition of milk which went to the creameries, and installed that in a number of New Hampshire creameries.

XQ. 192. You worked that out in the laboratories, did you not?

A. I worked that out in the laboratory.

XQ. 193. Did you work out the other process in connection with the cement in your laboratory?

A. Yes. I also was at other works to a certain extent, but it was chiefly a laboratory proposition.

XQ. 194. In the matter of the Fuller's earth, you worked at that in your laboratory, did you not?

A. Yes, with plant observation.

XQ. 195. Where was the plant?

A. Well, I went through these Fuller's earth plants at Allentown, Florida; Atapolgus, Georgia; at Dry Branch near Macon, Georgia; and some of the processes which I have developed have been installed in the plant since.

XQ. 196. You went through them before or after you worked out the process?

A. Why, in connection with it. I cannot say whether it was before or after.

XQ. 197. Can you think of any other industrial experience that you had prior to 1911 than that you have named, stating just about what you did, and where, and when, and for whom.

A. That is all I can recall at the moment.

XQ. 198. Then you went with the Bureau of Mines of the United States. Can you state briefly what was the character of your duties at the Bureau of Mines? First, what was your position officially, and what was the character of your duties?

A. I was chief mineral chemist and I was chief of the Division of Mineral Technology from the early days through. Just when my commission as chief of the Division of Technology came, I would have to refer to the records; but it was early while I was in the Bureau of Mines.

XQ. 199. What were your official duties in that position?

A. To handle anything that the Bureau of Mines had to do with the technology and development of processes having to do with the non-metallic minerals, eliminating iron and steel, gold and the precious metals. I think all of the others came under my direction.

XQ. 200. Was your work performed in the laboratory or office in Washington? Did you go out in the field? Or what was it?

A. It was in the laboratory; it was in the works; it was in the field; all three. I had many people under me.

XQ. 201. You left the Bureau of Mines when, Doctor?

A. I resigned—I left on the 1st of April, 1920-1919.

XQ. 202. 1919. Then where did you go?

A. What did I say—1st of April?

XQ. 203. First of April, 1919.

A. That is incorrect. It was on the first of November, 1919.

XQ. 204. You left the Bureau of Mines on the 1st of November, 1919?

A. The 1st of November, 1919.

XQ. 205. Then you were still employed by the Government in the Bureau of Mines when you went to Europe in 1916?

A. I was, certainly, yes, except I was transferred to the War Department, as stated, for that purpose.

XQ. 206. Were you formally transferred or were you merely ordered by the Secretary of the Interior to discharge this service for the War Department?

A. I was formally transferred.

XQ. 207. And you went over to Europe for the specific purpose of investigating the question of the fixation of nitrogen, using that expression in the way it has been used here?

A. I did.

XQ. 208. Were you accompanied by anyone else?

A. I was not accompanied by anyone; but I met Mr. Eiston Berg in France, and he went through France and Italy with me.

XQ. 209. Was he retained by the Government of the United States to assist you?

A. He was.

XQ. 210. I understood you to say that you were given very free access to the information and plants of the governments and others in England, France, Italy, and Norway; am I right about that?

A. Sweden.

XQ. 211. And Sweden. Is that correct?

A. Correct.

XQ. 212. Was that access and information made available to you through the action of our Embassies, or how?

A. Why, part of it was, and most of it I simply got by personal contact and request myself. In a few instances, especially with reference to the Italian plant, the Embassy made the request for me.

XQ. 213. You were travelling as the head of the Chemical Department of the Bureau of Mines, or as the representative of the War Department—which?

A. The representative of the War Department.

XQ. 214. And you represented yourself to these gentlemen to be the official representative of the War Department; is that true?

A. And of the Interior Department.

XQ. 215. And of the Interior Department, too?

A. I had letters from Secretary Lane also recommending me to them. Both of them were used.

XQ. 216. How long were you in Europe, Doctor?

A. From approximately the 1st of October, when I landed—I can not give you the exact date. I returned and was in New York Harbor the day before Christmas, 1916.

XQ. 217. And then you prepared and submitted the two reports which have been introduced in evidence here by the defendant, is that right?

A. Yes.

XQ. 218. What duties did you then take up in connection with the Government? My understanding is, of course, that you continued your official connection with the Bureau of Mines?

A. Yes.

XQ. 218 (continued). But I mean, did you continue to work with the War Department or with the Bureau of Mines?

A. I was officially, shortly after my return, again transferred to the Interior Department.

XQ. 219. And did you then have anything more to do with this question of nitrogen fixation which we have had under consideration?

A. I had a great deal to do with it. I was in close touch with it, receiving practically all the reports on my desk that the Government received, until I left the department.

XQ. 220. In 1919?

A. In 1919.

XQ. 221. When you speak of receiving all the reports which the Government received, do you mean the reports from the Government officers, or do you mean reports from foreign governments, or from whom?

A. Why, I mean most of these people who went abroad to investigate the subject and most of the reports that came from abroad with reference to this question were given to me in a consulting way by General Crozier, General Wheeler, and with Colonel Joyes and others who had touch with the situation. I was a member of the Nitrate Commission of the War Department.

XQ. 222. You continued that official connection with the War Department?

A. Oh, I had official connection with the War Department.

XQ. 223. Throughout that period?

A. I had full charge and built the plant at Saltville.

XQ. 224. Did you have anything to do with the building of Plant No. 1 at Sheffield?

A. In a way, yes; but not so closely as I did with reference to the other plant.

XQ. 225. Would you mind explaining a little more what you mean by "in a way;" just what you did?

A. Yes, during the early days when the engineering was started by Division T, and when Col. Joyes was in charge——

XQ. 226. One minute, Doctor. I do not want to interrupt you; but if you will observe my question, I asked you to state what you did. I know it is very difficult sometimes; but it will save me the trouble of moving to strike out answers, if you will try to confine them as narrowly as you can to my questions.

Mr. Kresel: He has answered it. Just read the question.

Mr. Anderson: He was going into a statement of what Colonel Joyes was doing.

Mr. Kresel: No, indeed; he was only fixing the time. Just read the question.

(XQ. 225 repeated as above recorded.)

Mr. Anderson: He used the expression "in a way," and I wanted to know what he meant by that.

XQ. 241. How long did you occupy that position with the Atmospheric Nitrogen Company, or the General Chemical Company, or the Semet-Solvay Company, or whichever it was?

A. Until the plant started active operation in August, 1921.

XQ. 242. You then discontinued your connection with the Atmospheric Nitrogen Company, did you?

A. Yes.

XQ. 243. What has been your position since that time, if any, in connection with this fixation of nitrogen, or your connection with that work?

A. No official connection. I made, as I stated in my previous testimony, one or two written reports as to what I thought of the nitrogen situation—one or two companies who were considering as to whether they would go into it or not; but they were simply the ordinary reports which were of a general survey character.

XQ. 244. What is your present position in connection with the American Chemical Company?

A. I am Secretary of the American Chemical Society.

XQ. 245. Will you tell me just what that organization is, Doctor, a little more specifically?

A. The American Chemical Society is an organization of some 14,500 chemists of America who have joined together for the development of chemistry and the advancement of the chemical industry. It is quite comparable with the Society of Mechanical Engineers and the Society of Civil Engineers.

XQ. 246. If you will pardon me, I did not ask you about the Society of the Mechanical Engineers and the others, but only about this American Chemical Society.

A. I was trying to explain to you what the society is, as near as I am able to do so.

XQ. 247. But in order to get that explanation I would have to examine you about those others.

A. I suppose so.

XQ. 248. You say the membership of this Society is about 14,000 of the chemists of the United States; is that true?

A. Yes, sir.

XQ. 249. Where is your office as Secretary of that association?

A. In the Mills Building, at Washington.

XQ. 250. How long have you been Secretary of that Society?

A. Since 1907.

XQ. 251. Have you any connection now with the Government of the United States?

A. Yes.

XQ. 252. In what capacity?

A. I have been carried on the books of the Bureau of Mines as a consulting chemist to be consulted at the rate of ten dollars a day when wanted, since I left there.

XQ. 253. Have you been consulted?

A. I think I put in five days' work for them while I was abroad once, to find out something about the method of using oxygen and liquid air.

XQ. 254. I asked you whether you had been consulted, and that answer requires yes or no.

A. Yes.

XQ. 255. I understood you to say that as far as you can now recall you put in five days; is that correct?

A. Correct.

XQ. 256. You said you went abroad again during the year 1920 or 1921, did you not?

A. I was abroad in the summer of 1919, I was abroad in the summer of 1920, and I was abroad in the summer of 1922.

XQ. 257. In the summer of 1919 you were still in the Government service?

A. I was. Just a moment, I may have those dates wrong. Yes, that is correct.

XQ. 258. Were you sent abroad by the Government then?

A. I was not.

XQ. 259. You went in a purely personal capacity?

A. I did.

XQ. 260. How long were you abroad at that time, Doctor?

A. My memory is that I was abroad about six weeks. I went on a leave of absence at my own expense.

XQ. 261. In 1920 you were abroad again. At that time you were the consulting chemist of the Atmospheric Nitrogen Company?

A. Correct.

XQ. 262. Did you go abroad as their representative?

A. I did not.

XQ. 263. Did you then undertake to investigate the fixation of nitrogen situation abroad?

A. I did.

XQ. 264. Did you confer with the same people that you conferred with when you were over there in 1916?

A. Many of them.

XQ. 265. Did you have ready access to their records and plants?

A. The only plant that I went into, or the only record I saw, as such, was the Claude plant some forty miles out of Paris.

XQ. 266. That was the French plant, was it?

A. Yes.

XQ. 267. You went abroad again in 1922?

A. Yes.

XQ. 268. Was that in connection with Government service in any way?

A. It was not.

XQ. 269. I believe you in a former answer said something about reporting to the Government on something abroad? On what trip was that that you made the report to the Government?

A. The only report that I ever made to the Government from abroad was the 1916 report.

XQ. 270. You are still the Secretary of the American Chemical Society?

A. I would like to modify that last statement so as to be absolutely accurate. That five days' work that I spoke to you about with reference to the use of oxygen in explosives was done while I was abroad at that time.

XQ. 271. Which year?

A. 1920, I think. I was simply asked as a mining engineer of the Bureau of Mines to find out what I could about that for them, in Germany. Yes, it was in 1920. And the fee that I put in, the five dollars, was simply to cover my railroad and hotel expenses to get to the place to find out.

XQ. 272. Doctor, your only two official positions, then, that have any bearing upon these matters at the present time, are that you are President of the American Chemical Society and you are technically on the list or the roll of the Interior Department in the consulting capacity which you have mentioned; is that true?

A. Those are the only two official positions that I have which I can see have any bearing at all on anything here.

XQ. 273. You said you had something to do with the construction of Nitrate Plant No. 1. Are you familiar with the contract between the General Chemical Company and the United States for the construction of that plant dated the 30th day of September, 1917?

A. Reasonably so.

XQ. 274. On Friday counsel for the defendant read into evidence a proposition from the General Chemical Company dated June 5th, 1917, addressed to the president and signed by W. H. Nichols, Chairman of the Board, and had you identify that? You recall that, do you not?

A. I do.

XQ. 275. I would ask you to look at the paper immediately following that in the report of the proceedings before the Committee on Expenditures in the War Department, Volume 3, page 2710, the paper introduced by counsel for the defendant being at page 2709, and I will ask you if that is, so far as you can tell, a true copy of the contract between that company and the United States.

Mr. Kresel: What page is that?

Mr. Anderson: I do not think it is necessary, because this is agreed upon by stipulation, I think, is it not?

A. I have reason to believe so. I never compared it.

Mr. Anderson: Under the stipulation, if your Honor please, the authenticity of these documents is admitted. I would therefore ask leave in order to complete the record on this point, to introduce in evidence a contract between the General Chemical Company and the United States of America, dated the 30th day of September, 1917, found at pages 2710 to 2712 of Volume 3 of the Hearings before the Committee on Expenditures of the War Department, as Plaintiff's Exhibit No. 651.

Mr. Kresel: There is no objection to that of course; but, Colonel, you do not mean to say that is the agreement between the General Chemical Company and the Government for the erection of the plant?

Mr. Anderson: No.

Mr. Kresel: That is only a contract with reference to the Government taking over some contracts that the General Chemical Company had made for supplies, the total amounting to about $21,000.

Mr. Anderson: That is true, sir, and there was a subsequent contract made, as I understand it, between the Chemical Construction Company of Charlotte, North Carolina, and the Government of the United States for the specific construction of the plant.

Mr. Kresel: I know nothing about that.

Mr. Anderson: Which I will be glad to introduce in evidence.

Mr. Kresel: If you have that contract I have no objection to having it go in.

Mr. Anderson: But this immediately follows the preceding paper and I would like to put this in now.

The Court: It will be marked.

Received in evidence and marked "Plaintiff's Exhibit No. 651." (*See Exhibits, Vol. III, page 1582.*)

Mr. Anderson: I offer in evidence contract dated the 30th day of January, 1918, entitled, "Contract No. T14 made by the Chief of Ordnance with the Chemical Construction Company of Charlotte, North Carolina, for nitric acid recovery plant"—sub-heading, "For Construction of United States Nitric Plant No. 1," which contract will be found at pages 2619 to 2627 of the document entitled, "Hearings before the Committee on War Expenditures, September 3rd, 1920," to be identified and read into evidence as Plaintiff's Exhibit No. 652.

Mr. Kresel: You know, Colonel Anderson, that this is a contract for the construction of a very small portion of the plant only. That is not the main contract.

Mr. Anderson: If your Honor please, counsel introduced in evidence this morning evidence of the cost of the plant. I do not controvert that in the slightest because that is a matter of record at a dozen places. That there were additions undoubtedly to the plant from time to time I do not question, but I introduce this contract to show the conditions under which the work was undertaken and the limitations imposed by the contract upon the respective parties. Those terms, so far as I know, were not varied during the term of the contract.

Mr. Kresel: Colonel Anderson, I am very sure you want to give the Court the benefit of everything that there is.

Mr. Anderson: I do not think it is necessary to state that.

Mr. Kresel: This is a contract for only one portion of the plant, and it is the smallest portion. The contract for the big construction was with the J. G. White Company and not this company at all.

Mr. Anderson: If counsel will put his hand on the contract to which he refers, I will introduce it as a Plaintiff's Exhibit.

Mr. Kresel: I simply did not want you to be under any misapprehension.

Mr. Anderson: In order that your Honor may understand—I do not want to read this because it takes a lot of time—your Honor will find in these contracts substantially the same provision for secrecy as to processes and persons going into the plants and the rights of parties and the preservation of secrecy that I suppose is found in every contract for the construction and operation of a plant embodying the use of patents and processes; and I am introducing this to show that the General Chemical Company itself, although it assumed the full responsibility for the construction of that plant, imposed upon the Government of the United States and its officers an obligation to maintain secrecy, which was an entirely proper and appropriate obligation.

In addition to that I want to be able, should I deem it necessary, to use the terms of that contract to point out just the obligations and rights of the respective parties. I am perfectly willing to put in any contract or all contracts in evidence that tend to show that.

Mr. Kresel: As I say to your Honor, I have no objection to this contract going in evidence. I think Colonel Anderson is in error. This contract has nothing to do with secrets at all. You will not find anything there about people not going into the plant. It has nothing to do with any patents. This was a contract for the construction of only one portion of the plant which is called the nitric acid recovery plant, which is the least important of the whole works. I think, Colonel, you will look in vain there for any provision about secrecy or patents.

Mr. Anderson: If they haven't got it there, we will put in another one.

The Court: But if this is not the contract you had in mind, would it not be well to withdraw your offer, or are you sure that this is the one you did want to put in?

Mr. Anderson: This is one of the contracts I want to put in. I have a note of it here. If there are others, I will put them in. I think the two I put in sufficiently support my statement. If I find there are others, I will ask leave to put them in in rebuttal.

Mr. Kresel: If you are satisfied, all right.

Mr. Anderson: I am merely now putting it in so that the Court will have the whole thing, so far as I can get it.

The Court: If you are offering this for the purpose mentioned and counsel on the other side, who I assume is familiar with it, says there is nothing in that contract with respect to those matters, I did not suppose that you wanted to put it in.

Mr. Anderson: Your Honor probably has observed that counsel on the other side, with all deference to him, and I do not always agree in this case.

The Court: I thought you did agree as to the literal contents of a document but not as to the meaning.

Contract referred to received in evidence and marked "Plaintiff's Exhibit No. 652." (*See Exhibits, Vol. III, page 1589.*)

The Witness: Your Honor, I made a statement a moment ago that might possibly not be considered complete and I am extremely anxious that everything I say shall be complete. Counsel asked me as to whether I had any other official connection. About two weeks ago, I accepted a retainer from the Nitrogen Products Company of Providence with reference to some work that they have to do on a cyanide method that has no connection with this case at all, so far as I myself can see, but I do not wish to make any misstatements.

XQ. 276. What was the name of the company?

A. Nitrogen Products Company of Providence, Rhode Island, on their cyanide Buecher patents.

XQ. 277. Now, Dr. Parsons, turning to your report of April 30, 1917, at page 17 thereof, I would call your attention to the language in the last two paragraphs of the first section of that report, in which you say:

> "At the time my preliminary report was written, I felt even more confidently than I was willing to express that the Haber process or the cyanide process would be shortly available for the use of this country and would largely if not entirely displace the arc and cyanamid processes which requires large electrical development and a correspondingly large expenditure. Development has been rapid during the last two months. A synthetic ammonia process and a cyanide process have now reached a state of development where I am prepared to recommend definite action to the Government."

I have read your statement correctly, have I not?

A. You have.

XQ. 278. At a later stage in that report, you have set forth the estimates of the cost of operation at page 19, and on page 18 you have discussed the details entering into expenses and overhead. You are familiar with that, are you not?

A. Yes.

XQ. 279. This morning I think you made the statement that your references earlier in the report to the cost of producing ammonia by the synthetic process of four cents had reference to Germany?

A. Not earlier in the report, but in my previous report.

XQ. 280. Did you not when you wrote this final report have in your possession an estimate of the cost of producing synthetic ammonia in the United States?

A. Yes, when I had the second report; not the first.

XQ. 281. And is it not a fact that that estimate arrived at a cost of producing synthetic ammonia in the United States of approximately four cents a pound?

A. I think that is correct. I would have to go to the report to be certain, but my memory is that that is essentially true.

XQ. 282. Now then, whatever may have been your reference in this first report to the cost of four cents, at the time you made the second report you had in your possession an actual estimate showing the cost of producing synthetic ammonia by the Haber process, a slightly modified process as you spoke of it this morning, in America, of four cents a pound, did you not?

A. By the General Chemical Company's process, an entirely different process.

XQ. 283. All right, we will see about that entirely different process. But you did have an estimate?

A. I did.

XQ. 284. And you told the Government of the United States officially that the cost of producing synthetic ammonia in the United States by, we will say, the modified process of the General Chemical Company would be four cents a pound, did you not?

A. You have my exact figures on page 19.

XQ. 285. Haven't I stated them substantially correct?

A. No, it is nearly five cents for the operating costs alone. It is $97 a ton for the operating costs alone; $300 a ton for nitrogen fixed for investment. My own estimate was considerably over four cents a pound at that time.

XQ. 286. Did you not have in your possession at that time, and base your report upon, that letter (handing paper to witness)?

A. This is addressed to me, isn't it?

XQ. 287. It certainly is.

A. This was one of the most confidential communications that was given to the Government during the war. I have never quoted it to anyone; and I think——

XQ. 288. Now, Doctor, one minute.

Mr. Kresel: I think he should be permitted to finish his answer.

XQ. 289. I want an answer to the question. Did you not in fact base your statement in that report of cost on that letter and didn't you have it in your possession when you wrote that report? I want an answer yes or no.

Mr. Kresel: Wait a minute, please, do not get excited.

Mr. Anderson: I do not get excited.

Mr. Kresel: I object to counsel interrupting the witness in the middle of an answer. If the answer is not responsive, he has his remedy to move to strike it out. I insist that the witness be permitted to finish his answer. Now, will your Honor permit the reading of so much of it as has already been given? (Answer to XQ. 286 repeated by the Stenographer as recorded.)

Mr. Anderson: Now, I move to strike that out, because it is not responsive to the question, and ask for an answer to my question; and in reply to counsel I will say that I have a right to stop a witness when he begins to argue the case from the witness's stand, and I demand an answer to my question.

Mr. Kresel: I must say, your Honor, that I do not see that the witness has undertaken to argue with counsel.

Mr. Anderson: Possibly counsel does not, but I have to do the examination as best I can, even if it contravenes his views on the subject.

The Court: The motion to strike out is granted. The question may be repeated.

XQ. 290. Did not you have in your possession at that time, and base your report upon that letter?

A. I had it in my possession and I largely based my report upon it?

Mr. Anderson: Then I will ask leave to introduce in evidence a letter upon the letter-head of the General Chemical Company, dated April 30, 1917, addressed to Dr. Chas. L. Parsons, signed "General Chemical Company, Frederick W. de Jahn," and that I wish to read.

Mr. Kresel: Inasmuch as some question of confidence has been raised with reference to this letter, your Honor, this is the first time that I have ever heard of this letter, and I would like permission if counsel on the other side will not let the witness state the facts, I would like permission now to ask the witness a question with reference to this letter.

The Court: You may.

Mr. Kresel: So that I may govern myself with reference to it.

By Mr. Kresel:

Q. 291. Dr. Parsons, you started to say something about how this letter came to you, and what you did with it. Will you please make the statement?

A. In connection with my report, I had gone to the General Chemical Company to get data which I referred to in the early portion of this report, which he asked me to write. I had it intimated to me a few weeks before, that they were carrying on experimentation, and they would let me have it, and they were getting results which they considered most excellent. I was in conference with him two or three times, trying to persuade him to let me have the data for the Government to use. They finally consented to give me that data and to give me the costs, on my definite promise that it would be kept strictly confidential and provided for the Government's use, and I was to transmit it to the War Department.

Mr. Kresel: Now, your Honor, of course I have no understanding here to represent the General Chemical Company, and can not plead its confidence in the matter; but the facts are before your Honor, and it is for your Honor to say, whether under those circumstances, the information having been obtained by a Government official under the strict promise of secrecy, whether it is necessary to spread that upon the records of this Court.

Mr. Anderson: If your Honor please, the information is dated April 30, 1917. It is almost identical with the information given in the published report by this witness; and in the published report of this witness, he refers to the activities of the General Chemical Company in the development of this process and the estimated cost of the production of this material, and there is not the slightest indication upon the letter or anything on the correspondence, that I have ever seen, or in the use of the data given in that report, that is in any sense confidential.

Mr. Kresel: Your Honor will see by the report that it does not quote any information as coming from the General Chemical Company. It is an estimate made by the witness for the benefit of the War Department. I do not think——

THE COURT: So far as I can see, the burden of the disclosure is upon the plaintiff. It is produced here from its files, if it was given under a pledge of secrecy, and the Government still offers it——

MR. KRESEL: That is up to the Government.

THE COURT: That is up to the Government.

MR. ANDERSON: And the Government assumes that obligation.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 653." (*See Exhibits, Vol. III, page 1610.*)

XQ. 292. Now, this letter states as follows: (Reading from Plaintiff's Exhibit No. 653.)

MR. KRESEL: I do not think that is necessary to go into the record.

XQ. 293. You do know, as a matter of fact, that within a few months after April, 1917, the Government of the United States entered into contracts for the construction of Nitrate Plant No. 1 at Sheffield; is that not true?

A. Yes.

XQ. 294. And for the construction thereof on the General Chemical Company's modification of the Haber process; is that not true?

A. On the General Chemical Company's process, yes.

XQ. 295. To what extent had the General Chemical Company developed any plant in the United States for the use of that process?

A. They had at Laurel Hill, Long Island, a small laboratory plant which could produce a few pounds of ammonia a day. They had, further, at that time drawn plans which are mentioned in the various reports you have before you, for a plant which they themselves intended to erect to operate commercially by this process, and they had placed orders for material, apparatus for that plant, to something over a million dollars, I do not know exactly what it is, which material and contracts were turned over to the Government at the time the contract for building Plant No. 1 was signed or shortly afterward.

XQ. 296. Is it not a fact that the record to which you have referred and the contracts to which you refer state that the General Chemical Company did not contemplate construction of plant on account of war conditions and the cost of the construction, until the war was over?

A. I am not sure. They may have.

XQ. 297. And that is the full extent to which the General Chemical Company had developed any process such as you have stated, is it?

A. Yes.

XQ. 298. And on that basis of experiment and information I believe you said that the Government, acting under a board of which you were a member and on which you were active in the manner you have described, undertook the construction of a plant for the use of the synthetic ammonia process which cost over thirteen million dollars before they got through with it; is that true?

A. No.

XQ. 299. Well, what did it cost before they got through with it—twelve million?

A. That portion of the plant cost approximately seven million.

XQ. 300. I believe, Dr. Parsons, as you said, you testified and some of your evidence was referred to in the hearing before the Committee on Expenditures of the War Department held in 1920; is that true?

A. I did.

XQ. 301. At page 2598 of the report of these hearings I wish to read you your statement, and I will follow with others. If you wish a copy of the book, that you may verify them, I shall be glad to have you take one. The first is by Mr. Graham. Mr. Graham was chairman of that committee, was he not?

A. He was.

MR. ANDERSON: Would your Honor like a copy of the book?

THE COURT: No, perhaps the witness wants one.

THE WITNESS: No, I think I can tell from his reading of it.

MR. KRESEL: The copy I have is the only one in our possession, and I think I better keep it.

XQ. 302. (Reading)

"MR. GRAHAM: What were your conclusions, from your inspection of the plants in Europe, Dr Parsons? Can you tell us in a general way, about the processes you examined and what the various points were, so that we will have an idea in a rudimentary form of the situation as you saw it?

"DR. PARSONS: It would take quite a little while to go into the details of the report, though possibly I can summarize it: I viewed the cyanamid process, as it was used in Italy, Norway, and Sweden, having seen it in this country before I left. I went to the arc process plants in Norway, and to a small arc process plant that had been constructed in the southern part of France in the Pyrenees Mountains, near the border of Spain. I got such information as I could in regard to the Haber process, which was being used in Germany, and having come back to this country I also saw the synthetic ammonia process, which was in some respects similar to the Haber process, which had been partially developed here by the General Chemical Co. The general result of my report was that hydro-electric power was not essential for the fixation of nitrogen, and that the process which would undoubtedly be the process of the future was the process for the production of ammonia by the direct combination of nitrogen and hydrogen, which in Germany is known as the Haber process, and in this country has been known as the General Chemical Co.'s process, they working at low temperature and using a different catalyst.

"Since that time we have much further information, and I am of the same opinion today, and it has been justified, I think, by the development in Germany. The Haber process in Germany, starting at the beginning of the war with an output of some 7,500 tons of ammonia—Germany would never have gone to war if she had not had the Haber process—so developed that in 1918 they produced in two plants something like 250,000 tons of ammonia. The process was producing twice as much as any other process in Germany, and about as much as all of the others put together, although the others had been developed at the same time to a considerable extent. The actual reported output that has come to us at the German plants—I have been over there again this last year—is 25,000 tons of combined nitrogen by the Haber process, which is equivalent to about 255,000 tons of ammonia, or 1,000,000 tons of ammonium sulphate. That was their output in 1918 from two plants, one at Oppau and the other at Merseburg."

Did you so testify, Doctor?

A. I did.

XQ. 303. At pages 2600 and 2601 of the same report. I read the following:

"Mr. Graham: Perhaps that is very true, Doctor, now tell us in a general way about this Haber process; what is it?

"Dr. Parsons: The Haber process is a process by which nitrogen and hydrogen are made to combine directly to form ammonia in the presence of a special catalyst, which is certainly well-known now by everybody to be a modified form of iron especially produced in porous form. Under a pressure of about 200 atmospheres, and a temperature of about 550 degrees centigrade these two elements combine together to form ammonia, which is the basic material which we need for fertilizer purposes, and from which nitric acid can be made for war purposes.

"MR. GRAHAM: Do you understand the method of making containers that hold this material under these pressures?

"DR. PARSONS: Not perfectly; no. But I have not any doubt whatever that Haber plants will be operating in the United States within a comparatively short period of time. More information is being obtained daily with reference to it, and I have no doubt that complete information will be in hand shortly. I have no doubt also that there will be improvements in the process right straight along, as there will be in all processes. I think that a plant could be built in a comparatively short time and enlarged as rapidly as any other commercial plant of that kind could be and that it will operate successfully in this country."

Further down, after some intermediate questions Mr. Graham asked:

"MR. GRAHAM: Do you know anything about how expensive the operation of those German plants were?

"DR. PARSONS: Nothing absolutely definite. We understand that the plant on which Lieut. McConnell reported—at Merseburg, probably cost about 19,000,000 Marks, and he thought it could be reproduced in this country for about $25,000,000 to $50,000,000. That made 90,000 tons of combined nitrogen in the form of ammonia per year.

"MR. GRAHAM: Is it operated by hydroelectric power or coal?

"DR. PARSONS: Coal. The Haber process requires very little power. In my opinion, the processes that are going to be used mostly in the future will require very little power. There are very extensive reports made out on those in England that are in printed form.

"MR. GRAHAM: Where are they?

"DR. PARSONS: I have one at home, and Col. Joyes has one of them. There are but two in this country, so far as I know.

"MR. GRAHAM: Does it require much heat? Of course, you spoke of 550 degrees centigrade.

"DR. PARSONS: Not a very great consumption of heat, no; nor a great consumption of coal. It requires high pressure. It requires very pure gases. The greatest difficulty in the whole situation is to produce pure hydrogen; that is to purify the ordinary hydrogen after it is made so that it can be used in the process. The hydrogen is a large part of the cost—that and the installation cost.

"MR. GRAHAM: The operation cost is small?

"DR. PARSONS: The operation cost is comparatively small.

"MR. GRAHAM: How does it compare with the operation cost in the cyanamid process?

"DR. PARSONS: Personally, I have no doubt whatever,—of course, people will differ from me, especially people who are interested—that ammonia can be made cheaper by the Haber process than by any other process; and the reports from abroad—for example, the English reports—bear that out. Their estimated costs are quite a little lower.

"MR. GRAHAM: Do you know, Dr. Parsons, of your own knowledge whether there are plans under way for the production of ammonia in this country by that process?"

Further down you were asked by Mr. Graham with respect to the English report:

"MR. GRAHAM: You say Col. Joyes has one of those?

"DR. PARSONS: I have one and I think Col. Joyes has one. (To Col. Joyes.) You have that thick report of the M. I. D. in England, giving all the costs of the various processes?

"Col. Joyes: Yes, sir."

You so testified before that committee, did you not, as I have read your testimony?

A. As far as you have read it, it is correct.

XQ. 304. Dr. Parsons, you have referred twice in the testimony which I read to a report of the English Committee, and I find at page 3766 of this same volume of Hearings before the Graham Committee, the report of the Minister of Munitions, Munition Invention Department, which is "M. I. D.," of course, final report of the Nitrogen Products Committee. Is that the report to which you referred?

A. Yes.

Mr. Anderson: I offer in evidence the report of the English Committee to which the witness has referred and which he has identified, as found in the volume of Hearings before the so-called Graham Committee, to which I have already referred, at pages 3766 to 3771, inclusive, to be read as Plaintiff's Exhibit No. 654.

Mr. Kresel: I have no objection, your Honor.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 654." (*See Exhibits, Vol. III, page 1612.*)

XQ. 305. I again read to you from the same volume, which I will not describe, on page 2613, question by Mr. Graham.

Mr. Anderson: For the information of the Court, and to connect up, I will say they were discussing the two plants at Muscle Shoals, and the witness was first asked if he would recommend the perpetual maintenance of plant No. 1, and he said he would prefer not to answer, because of the differences of opinion. Then Mr. Graham asked:

> "Mr. Graham: I do not care how many do not agree with you, so far as I am concerned. We will give them an opportunity to express their opinions.
>
> "Dr. Parsons: I, personally, do not believe that the cyanamid process will be able to compete at all with other processes a few years hence."

You so testified, did you not?

A. I did and I believe so today.

XQ. 306. Then further down on the same page Mr. Graham asked in connection with the two processes:

> "Mr. Graham: What about the number of people that are required to operate the two processes, in comparison?
>
> "Dr. Parsons: The labor in the Haber process is supposed to be considerably less.
>
> "The difficulties of the Haber process have been the difficulties which come from high pressures and temperatures and the mechanical difficulty of making machines which will stand these pressures, also the purification of the gases is expensive.
>
> "There have been some new developments in Germany, which we have not known more than about five months—were only found out since the war closed—which are going to very greatly cheapen the Haber process over the estimates which we have previously made. Some large companies abroad and in this country are seriously considering going into the manufacture—not only 'considering,' but arranging to go into the Haber process on a large scale.
>
> "Mr. Graham: I assume that the Haber processes are all patented?
>
> "Dr. Parsons: They are patented; yes. But we have the patents under The Chemical Foundation; they have all been taken over and are all available to American manufacturers."

You so testified, did you not?

A. I did.

Mr. Anderson: To the end that it may not be suggested I have not given his answers fairly, I will read a little further, because I notice that at the bottom of the page the discussion is continued.

XQ. 307. I read as follows:

"Mr. Graham: You mean that under the Alien Property Custodian they have been sold here?

"Dr. Parsons: No; they are available to any American corporation that is really an American corporation that wants them.

"Mr. Graham: Will that be true after the treaty of peace is signed?

"Dr. Parsons: Absolutely. According to the charter of The Chemical Foundation, any company that is sound financially and is truly American can get the use of those patents under the same rates and conditions as any other. They will be available for use and are now available for use. Furthermore, we have a large part of the information in regard to the operation of the plant, and I do not anticipate the slightest difficulty; in fact, I think I might state here that I hope to be more or less connected with this myself, and, therefore, you must consider that I would be in favor of the Haber process at the present time, being somewhat partisan. But I have always been in favor of it.

"Mr. Graham: Where are you now, Doctor?

"Dr. Parsons: I am secretary of the American Chemical Society, and I am doing consulting work. My address is 1709 G Street, Washington, D. C.

"Mr. Jefferis: (Of the Committee) You feel, then, Doctor, that if the Government undertook to operate these plants down there in competition with the plants constructed on the Haber process, the Government would not necessarily run you out of business?

"DR. PARSONS: Would not run the Haber process out?

"MR. JEFFERIS: Yes.

"DR. PARSONS: No; I do not think they would run the Haber process out at all. Not at least if they sell at cost. If they count out the $60,000,000 capital, have nothing to pay on it, and do not have to pay dividends on any of the investment, why, I think even then you can not run them out. I do not think the people interested in the Haber process are worrying about it a bit, any more than they are in Germany."

You so testified, did you not?

A. I did.

XQ. 308. Doctor, I think you stated this morning that you also testified before a Committee on Military Affairs of the House of Representatives, which had under consideration the matter of disposition of the Muscle Shoals properties, including the proposition of Mr. Ford. Do you recall that?

A. Yes, I have testified on it. You will find about a half a dozen more. I have testified every time it has been before Congress, with the exception of the time it was before the Senate Committee, which was the only committee that did not themselves request me to come before them and testify on this matter.

XQ. 309. We will see if we can find them all before we get through.

A. I will turn them over to you. I have them here. You will find my testimony consistent throughout.

XQ. 310. You will leave that for me to discuss, won't you?

A. (No answer.)

XQ. 311. If you will turn to page 1116 of your statement before the House Committee on Military Affairs, to which I will refer as the volume on Muscle

Shoals Propositions, I find the following attributed to you. I am now reading from the opening part of your statement:

> "There is one thing that I ought to mention. I have been, I think, before every committee that has had this matter up for consideration. I was, after I left the Bureau of Mines in the latter part of 1919, connected in a consulting chemical capacity with the Atmospheric Nitrogen Corporation, whose plant is now operating at Syracuse; I remained with them in a consulting capacity until August 15, 1921, when their plant was in full, successful operation, and my connection with them ceased with the understanding that I was entirely free thereafter, and I am before you as a free lance, without anyone influencing my testimony.
>
> "The Chairman: That plant at Syracuse is the one that has been referred to as the fixation plant No. 1, which is different from the plants operated by the cyanamid process?
>
> "Dr. Parsons: You are correct.
>
> "The Chairman: What is the name of that process officially?
>
> "Dr. Parsons: It is generally spoken of as the General Chemical Co.'s process, or, if you wish to go back to a more general term, it is a modification of the Haber process. There are three modifications of the Haber process, which differ slightly, and which I will explain.
>
> "The Haber process was first developed in Germany. When the war began they were making 7,000 tons of fixed nitrogen per year by the Haber process there. Their patents called for operation under pressure from 100 atmospheres to 300 atmospheres, or to put it in pounds, from 1,500 pounds per square inch to 4,500 pounds per square inch—very high pressures.
>
> "The process consists in the direct combination of nitrogen and hydrogen to form ammonia, and the greatest difficulty in the process today is to procure the hydrogen and to procure it cheap. Modifications of that process have been devised,

but information could not be obtained in 1917 from Germany which would enable us to put in the German process *per se*.

"The General Chemical Co., in order to be free from the German patents, devised a process which worked at a pressure of 1,500 pounds per square inch. In France Claude has devised a process which works at pressures greater than 300 atmospheres, in fact, he works at pressures of 900 atmospheres, which would be nine times 1,500 pounds per square inch—a very, very high pressure. He is working on a comparatively small scale, but successfully, in France. Otherwise those processes are much alike, and they are often spoken of in the general term as the Haber process. It is really the synthetic ammonia process, of which there are three modifications used in the world today. They are replacing the other processes, and, so far as we can now see, within a few years this will be used for nitrogen fixation.

"THE CHAIRMAN: Did you do anything at Muscle Shoals with regard to nitrate plant No. 2?

"DR. PARSONS: With reference to nitrate plant No. 2, I was called into the first conference in General Crozier's office, and the details in that conference are set forth in the records of Mr. Graham's committee. I differed from nearly everyone else there that night as to the advisability of installing plant No. 2 at all. I went back the next day and wrote a letter to General Crozier giving my full opinion and reasons therefor and mailed it to him, and after that I had nothing to do with plant No. 2.

"THE CHAIRMAN: What was your objection to that plant?"

The Plant No. 2, Doctor, was the cyanamid plant, was it not?

A. The cyanamid plant.

XQ. 312. (Reading):

"DR. PARSONS: My objection to that plant was that it was a process that was becoming obsolescent. I did not feel at that time we had reached a stage where the installation of the plant was necessary for war purposes. I believed we could procure our immediate needs from the ammonia produced by the destructive distillation of coal, of which we are making something like 100,000 tons every year, and at that time, if I remember correctly, about 70,000 tons, and I thought that ammonia could be diverted temporarily without injury to the other industries of the country and could be oxidized and made into the nitric acid that we might need for any short period of emergency. So I favored installing at first the process of the General Chemical Co., a modification of the Haber process, and installing it as a small unit so we could determine how it would operate and the necessary details for its operation. I will have more to say about that later."

That is your testimony, is it not?

A. Correct, and corroborated.

XQ. 313. On page 1121, the Chairman asked:

"The Chairman: Have you any opinion about the cyanamid process yourself?

"Dr. Parsons: I have been through a number of plants; all there are in this country and several in Europe. I made a very careful study of the process and its operation.

"The Chairman: Do you think that it is likely to be superseded by new inventions or new processes?

"Dr. Parsons: I think it is practically already superseded by the Haber process and its modifications, and on that I can give you some very definite data. The cyanamid plant in Canada is practically shut down. It is producing no cyanamid, or very little cyanamid, for fertilizer. The cyanamid plants in Italy are closed. The cyanamid plants in France are closed. The cyanamid plants in Dalmatia and Silesia are

> closed. The cyanamid plants in Norway and Sweden are closed. The large cyanamid plant at Odda, Norway, which I had the pleasure of visiting in 1916, and which is fully equal to the Muscle Shoals plant in quality, and one of the best constructive plants I ever investigated. It is not quite one-half the size of the Muscle Shoals plant, is now closed, and has been sold at auction within the last month for $10,000, or rather 50,000 kronen."

You so testified, did you not?

A. I did.

Mr. Kresel: Will you tell me the page that was on?

Mr. Anderson: That was at page 1121, sir.

XQ. 314. At page 1124, they were discussing the cyanamid plants and some statement was referred to. Mr. Stahl of the Committee asked you who made that statement and you replied "Mr. Worthington." Now, if I may pause a minute, Mr. Worthington is the President of the American Cyanamid Company, is he not?

A. No, sir.

XQ. 315. What is his position?

A. I do not know. I do not think he has any.

XQ. 316. What was his position at that time?

A. He never admitted any position. He was apparently a lobbyist for somebody in Alabama trying to get this Bill through Congress or trying to assist in the passage of the Bill. I do not know that he has ever admitted any position to anybody except that he wanted to get it through. He definitely stated he had no connection with the American Cyanamid Company.

XQ. 317. And then you answered:

> "Mr. Worthington: That is, the paper says he did. I do not know. They make their hydrogen at Syracuse by exactly the same process or essen-

tially the same process that they make it in Germany, from coal by the action of carbon on water and steam and that is why the big steam plant was put in at Plant No. 1. Plant No. 1 at Muscle Shoals was put in as an experimental plant on a small scale in order to get the necessary information to increase it in size. It was started on the basis of 22,000 tons of ammonium nitrate per year. However, only one unit of approximately one-third or a little more of that plant was constructed. It was just one-fifth the size of the other plant contemplated. However, only one of the units was put in in order to get information to build the rest of the plant. They only had a very short time after that unit was completed to get data on operations. They found difficulties exactly as the Germans found when they first ran their Haber plants on the other side in the early history of that process. There were great difficulties owing to the high pressures used and the difficulties of preparing the catalyst on a large scale. They could prepare it easily in the laboratory on a small scale. Then the armistice came and the plant was closed down.

"The Ordnance Department tried to make arrangements with the General Chemical Company to go ahead and operate plant No. 1, but they could not come to an agreement largely because the General Chemical Company wanted to get away from any question of Government relationship. Their engineers had claimed that it was the Government engineers that kept it from running right in the first place and the Government engineers claimed that it was their engineers that kept it from running right in the first place and there was no complete agreement between them. Accordingly, the General Chemical Company changed its plans and started to build a new plant by essentially the same process, changing a number of mechanical details for which they had obtained the data in the operation at Muscle Shoals, changing their catalyst and some other details of the plant. Then they built a plant almost immediately at Syracuse, New York, to run by the General Chemical Company's process, running under 100 atmospheres as at Muscle Shoals. That plant was completed in very short order. That plant operated perfectly from the start. So far as I know, it has not closed down a day since it started. It was built on a 10-ton basis and it has been producing over 12 tons a day for several months.

"So that instead of Plant No. 1 being a failure, in my opinion, plant No. 1 has thoroughly justified itself. I have not the slightest doubt that the fixed nitrogen which is to be made in the future in America is going to be made by a synthetic ammonia process, whether it is at Muscle Shoals or wherever it may be, simply for the reason that there is no other process in the world that for a minute can compete with it commercially.

"In Germany the Haber process is operating at full capacity, turning out 300,000 tons of nitrogen per year, about 90,000 tons of which is at Oppau, and the other 210,000 at Merseburg.

"At Oppau there was a terrible explosion, probably the largest that ever occurred, a few months ago. That explosion had absolutely nothing to do with the Haber process. It was an explosion of ammonium nitrate mixed with ammonium sulphate. They had 4,500 tons of that material stored in one building. You have stored at Muscle Shoals today 3,400,000 pounds, or something over 1,500 tons of ammonium nitrate, which would explode itself if it were subjected to the same conditions. That amount of ammonium nitrate which is in storage at Muscle Shoals has been on the market offered for sale within three months, and the highest bid they could get, so far as I have been able to find out, was about three and three-quarter cents a pound and the average was somewhere around three and one-quarter cents, which is a very low price."

Then omitting a paragraph about the explosion, which is not material, I wish to read further:

"The Haber plant over there is again working. This plant at Oppau, which was supposed to be wiped off the face of the earth, is now, within a few monts after this explosion, producing nitrogen again to capacity, and Germany is turning out something like 2,000,000 tons of ammonium sulphate, or its equivalent, made from air nitrogen, and using most of it in Germany for concentrated fertilization. So that I think there is no question whatsoever as to the future of the Haber process. and I believe, and believe very strongly, that the one possibility of making fertilizer with any degree of cheapness is through the development of plant No. 1 at Muscle Shoals, and that you can never hope to do anything with plant No. 2, and that anybody that runs it will lose money very rapidly."

Was that your testimony?

A. It was; and is.

XQ. 318. Good. Again at page 1129 of the same volume, you were asked by Mr. Miller of the Committee as follows:

"Mr. Miller: You are very much against the cyanamid process, Doctor?

"Doctor Parsons: No; I am not against it.

"Mr. Miller: As compared with the Haber process?

"Doctor Parsons: I think there is absolutely no question but what the Haber process is the process of the future. I have not anything against the cyanamid process except, in my opinion, it is practically obsolescent.

"Mr. Miller: The plant at Syracuse of which you speak is on the Haber process?

"Doctor Parsons: A modification of the Haber process.

"Mr. Miller: Built by the same company, I believe, the General Chemical Company?

"Doctor Parsons: Built by the same company that was in contractual relations with the Government for plant No. 1; yes.

"Mr. Miller: Plant No. 1 is a failure, you say?

"Doctor Parsons: I do not say so; no, sir; I do not consider it a failure at all. I consider it the first trial of a process which has become unusually successful and that they gained the information from it which they hoped to gain from it when they started in.

"Mr. Miller: It was built as a trial plant, then?

"Doctor Parsons: Yes, sir."

Then some further discussion that is not material, and then:

"Mr. Miller: Doctor, there was certainly an impelling force in Congress to enact this legislation when the world was ablaze with war and a great many people of that day and hour believed that ultimately America would get into it. It was cerainly felt that that was an impelling reason with the prospects we had before us. That is the way I view it.

"Doctor Parsons: That plant was built after very careful consideration by the best talent they could get in America to meet the purposes of the national defense act. We were not then in the war. I am wrong; that was determined upon in May of 1917. In the spring of 1917, we were in the war, but there was not any expectation that we would be cut off from Chilean saltpeter or that there would be any such demand for that material. It was in the latter part of that year that the urgency came on, and then they built plant No. 2 as a war emergency, because they knew they had all the data to make it a success from the start. The other plant was built as a semi-commercial trial plant and there is a successful commercial plant in Syracuse today.

"Mr. Miller: You mean the plant in Syracuse was built as a semi-commercial trial plant, or the one at Muscle Shoals?

"Doctor Parsons: The one at Muscle Shoals, which is only about one-third completed; that is, to its full capacity.

"Mr. Miller: It strikes me as rather peculiar and as a rather bad proposition, when we were at war or on the threshold of a war, for anybody to advise the Government of a process for the fixation of nitrogen that they did not know would be a success.

> "DOCTOR PARSONS: We knew at that time that that process, or basically the same process, was a very great success in Germany and we thought that it would work more successfully on the start-off than it did, but it was built on a small scale to be sure of that, and with the idea of getting the data and then rapidly increasing it.
>
> "MR. MILLER: Were there any plants then in existence and running to capacity in Norway and Sweden that were using the Haber process?
>
> "DOCTOR PARSONS: No, sir; there was none except in Germany, and we could not get into Germany and get the data. We had to simply take the data which the General Chemical Co. had."

You so testified, did you not?

A. I did, but I think it will have to be explained before you will understand it.

By MR. KRESEL:

Q. 319. You so testified?

A. I so testified.

By MR. ANDERSON:

XQ. 320. I will leave that for your re-direct examination. I am now merely asking you to identify your testimony.

A. I did.

XQ. 321. In connection with your preceding testimony that the Ordnance Department tried to make arrangements with the General Chemical Company to go ahead and operate plant No. 1, but could not come to an agreement, I hand you a memorandum which is signed by the General Chemical Company on that subject and ask if you have ever seen it?

A. I have never seen it, according to my knowledge.

MR. ANDERSON: In order to complete the record, I shall offer that paper in evidence as coming from the files of the War Department of the United States, sir, an official document.

The Witness: What is the date of that?

Mr. Kresel: April 23, 1919.

The Witness: I think I was on my way to Europe at that time, or I would have received it.

Mr. Kresel: I have not had a chance to look at this, your Honor. Offhand, I should say that a proposed contract between the General Chemical Company and the United States of America, which the United States of America declined to sign is immaterial.

The Court: Suppose I get Colonel Anderson to tell me its purpose.

Mr. Anderson: This morning this gentleman testified on the subject of the relations between the Government and the General Chemical Company. He has testified throughout in a number of instances on that matter.

Mr. Kresel: I do not recall that he has testified anything about the relations between the two parties. Will you tell me what he said?

Mr. Anderson: I will say that he stated in his testimony on Friday or on Saturday that the Government had entered into a contract with the General Chemical Company——

Mr. Kresel: Which I read in evidence.

Mr. Anderson: To use the General Chemical Company's process.

Mr. Kresel: Which I read in evidence.

Mr. Anderson: And that the General Chemical process was the one used at Muscle Shoals.

Mr. Kresel: He did not say that. I read that out of the official report.

Mr. Anderson: If you read it out of the official report you put it in evidence.

Mr. Kresel: Certainly I did.

Mr. Anderson: And, further, that the plant No. 1 was in one place claimed to be a failure, and in another place there was evidence somewhat to the same effect. Now I want to put in evidence for the purpose of showing the complete record on plant No. 1 and the relations between the Government and the Chemical Company—I can reserve it for rebuttal if you wish, it is quite agreeable to me—the proposal of the General Chemical Company to take over plant No. 1 at Muscle Shoals, and what the terms of that proposal were, in April, 1919, exactly at the time this transaction took place.

Mr. Kresel: If that is all Colonel Anderson desires to state, it seems to me that statement entirely disposes of his offer; because what the General Chemical Company wanted to do, to which the Government did not agree, is certainly no agreement between the parties, even if such an agreement were binding upon us. Apparently this is simply a proposition made by the General Chemical Company, out of which nothing came—made after the agreement by which we obtained the patents. There is no evidence that we knew anything about it.

Mr. Anderson: I am perfectly willing to concede it would properly come in rebuttal.

Mr. Kresel: Even so, I am not objecting to it because it is offered at this time. Do not misunderstand me.

Mr. Anderson: Then I think it is clearly admissible as evidence on those matters.

Mr. Kresel: I am afraid you and I can not agree on it, then.

Mr. Anderson: I am afraid not.

Mr. Kresel: Certainly an unaccepted offer is no proof of value; is it?

The Court: I am not sure, Colonel Anderson, that I have your thoughts very clearly in mind, but we will admit it under the General Rule.

Mr. Anderson: I think, your Honor, that would be the shortest way because there might be a lot of discussion on it. I therefore offer in evidence draft of contract dated April (blank), 1919, signed by the General Chemical Company, by W. H. Nichols, President, and the Secretary, with the seal of the Chemical Company attached, but not signed by the United States of America. I ask that it be read as Plaintiff's Exhibit No. 655.

Received in evidence and marked "Plaintiff's Exhibit No. 655." (*See Exhibits, Vol. III, page 1625.*)

Mr. Kresel: As long as the Government insists on putting that instrument into the record, I think it is proper and fair that the Government should produce the correspondence between it and the Chemical Company showing the Government's side of this and why the Government declined to enter into this agreement.

Mr. Anderson: I will be very glad to produce the entire correspondence. All the correspondence that I have on the subject is a letter from General Nichols addressed to Mr. Arthur S. Glasgow—it should be Arthur G. Glasgow—United States Fixed Nitrogen Administrator, dated April 23, 1919, which I shall be very glad to offer with the contract, and I will be very glad, if counsel desires it, to produce any correspondence dealing with this contract or proposal that we can find in the files of the War Department.

Mr. Kresel: Apparently you were able to

find one letter. There are other letters, are there not?

Mr. Anderson: I can not answer that.

Mr. Kresel: Because this one letter that you now produce is a letter from the General Chemical Company.

Mr. Anderson: I can not answer the question.

Mr. Kresel: There must be letters from the Government to the General Chemical Company. Now, let us have those.

Mr. Anderson: Your Honor, I have done all I can do when I say I will produce any correspondence bearing on this subject. I can not say there is any because I have not seen it; and when I say I will produce it, I will produce it. There is no use discussing that matter further.

The Court: What is there for me to rule on?

Mr. Anderson: Not a thing that I know of, sir.

Mr. Hershkopf: We have an objection to this on the ground that it is *res inter alios acta*, represents an offer not accepted, and is therefore irrelevant.

Mr. Kresel: That objection has been made.

Mr. Anderson: I will ask leave to attach, as the correspondence has been called for, as part of the same exhibit, the letter of General Nichols transmitting this paper.

Mr. Kresel: We object to it, not only upon the grounds we have already urged but on the ground it is a self-serving declaration and, standing alone, ought not to be admitted any way.

Mr. Anderson: It is the letter of General Nichols himself.

Mr. Kresel: I know, but if the correspondence is to go in the entire correspondence should go in.

The Court: You are going to produce the remainder, if there is any. Why not keep this until it is all together, so it will not be separated.

Mr. Anderson: Merely that it is a letter transmitting this paper to the War Department, sir. It is a letter of transmittal that is all.

The Court: Admitted.

Mr. Anderson: And I will produce any other papers I can find on the subject.

Received in evidence and marked "Plaintiff's Exhibit No. 655-A." (*See Exhibits, Vol. III, page 1632.*)

The Court: You understand that I am expressing no opinion about the admissibility of this.

Mr. Anderson: I quite understand, sir; it is admitted under the general rule.

XQ. 322. I go on to page 1132 of the same hearings before the Committee on Military Affairs, on Muscle Shoals, Doctor, in which there was discussion of the price of ammonia and ammonia gas, where Mr. Parker, of the Committee, asked some questions:

> "Mr. Parker: And is this product manufactured there cheap enough to sell on the market for that purpose?"

Mr. Kresel: What is "there?"

Mr. Anderson: "There," I take it, is referring to the plant down in Alabama. I would have to go back very far to connect that, because of the discussion of both plants, and what I am getting at I do not think makes that material.

Mr. Kresel: You see, my paging is different; therefore, I can not follow you. I am sorry.

XQ. 322. (continued)

"Doctor Parsons: But it first has to be liquefied.

"Mr. Parker: And is this product manufactured there cheap enough to sell on the market for that purpose?

"Doctor Parsons: No, sir; because it has to go into competition, with other ammonia which is on the market much more cheaply than it can be produced at that plant.

"Mr. Parker: Why is the other much cheaper?

"Doctor Parsons: Simply because at the present time the supply is in excess of the demand, I presume.

"Mr. Parker: When the demand is reasonable for this product, can they make it as cheap as it can be made by other processes?

"Doctor Parsons: They can not. They can make it much cheaper by the Haber process than they can by the cyanamid process, no matter what the demand may be.

"Mr. Parker: You had something to do with putting in plant No. 1, did you not?

"Doctor Parsons: I did not.

"Mr. Parker: I misunderstood you.

"Doctor Parsons: I had something to do with the board that advised its being put in. It was put in by Government engineers.

"Mr. Parker: You afterwards did work with the Syracuse company?

"Doctor Parsons: Afterwards I was consulting chemist with the Syracuse company until last August, when their plant began operating.

"Mr. Parker: Do you know why the process failed at plant No. 1.

"Doctor Parsons: I do not consider that the process failed at No. 1, but why it did not operate successfully in the first place was due to a number of causes. The first and most important was that the catalyst which at that time they expected to use could not be made on a large scale successfully, as they were able to make it on a small scale in the laboratory.

> "Mr. Parker: Can they do it now?
>
> "Doctor Parsons: They do it now, but they use another catalyst.
>
> "Mr. Parker: Is that a secret catalyst?
>
> "Doctor Parsons: It is.
>
> "Mr. McKenzie: Pardon me, Mr. Parker, will you permit Doctor Parsons to explain that term?
>
> "Mr. Parker: Catalyst?"

Yes, you have already explained the catalyst, so I will omit that part, if there is no objection. Then going on discussing it further, after you have explained what a catalyst is:

> "Mr. Parker: They make such a pure sulphuric acid that they could carry around in an iron receptacle.
>
> "Doctor Parsons: Yes; and another thing, if there happens to be any arsenic in that sulphuric acid, the platinum will not work. It poisons the platinum the same as it would poison a human being.
>
> "Mr. Parker: The Agricultural Department people said they had a first rate catalyst now.
>
> "Doctor Parsons: Yes; they have an excellent catalyst, the best in the world.
>
> "Mr. Parker: But you said the catalyst was a secret.
>
> "Dr. Parsons: The catalyst which the General Chemical Co. uses is a secret.
>
> "Mr. Parker: And is the one that the Agricultural people use just as good?
>
> "Doctor Parsons: In my opinion it is better.
>
> "Mr. Parker: Then there is no difficulty about the catalyst in carrying on this manufacture by the Haber process.
>
> "Doctor Parsons: That is quite correct.
>
> "Mr. Parker: Now, what other difficulties besides the catalyst which they had there were there about that process? I heard something about leakages, etc.
>
> "Doctor Parsons: That was the second great

difficulty. Of course, it was one of the first experiences that the mechanical engineers of this country had had with pressures of 1,500 pounds per square inch in large units, and there were certain leakages and certain bulges in the apparatus which they had difficulty to fix. They have overcome that absolutely at the present time, and since those early days also the Chemical Foundation has taken over the German patents.

"Mr. Parker: Who overcame those leakages? Do you mean that the Ordnance people down at Muscle Shoals have overcome those leakages?

"Doctor Parsons: A number of those leakages were overcome and were being overcome before the plant closed; but they have been more especially overcome in the redesigned plant at Syracuse.

"Mr. Parker: Would you then advise, and would it be necessary, to redesign plant No. 1 to make it worthy?

"Doctor Parsons: Yes, sir; I think it would."

Then you go into the cost. (Continuing reading.)

"Mr. Parker (interposing). Were all those things separate?

"Doctor Parsons: All those things are separate entities, but the steam plant is essential to the Haber process if you are going to use the method which is used at Syracuse.

"Mr. Parker: You have to have a steam plant and then what do you get to mix with it—do you get hydrogen in the same way; what is the process, by the way?

"Doctor Parsons: In the Haber process as operated in Germany and as operated at Syracuse and as was contemplated in the operation of plant No. 1 at Muscle Shoals, the hydrogen is obtained by the action of steam on red-hot coal or coke. It is impossible for me to explain this without using chemical terms, although I will try to do it."

Mr. Kresel: You have not asked him whether he so testified.

XQ. 322. (Continued) You did so testify, did you not?

A. I did.

XQ. 322-a. On page 1134 of the same volume, after you had explained the monoxide and the results in the production of hydrogen, and the taking out of carbon dioxide by washing it under 30 atmospheres pressure, etc., Mr. Parker asked:

> "Mr. Parker: Is there any expensive chemical required to take it out?
>
> "Doctor Parsons: You have to use some caustic soda to get out the last part of it.
>
> "Mr. Parker: All this is a pretty cheap process of making hydrogen, is it not?
>
> "Doctor Parsons: It is about as cheap as any process used extensively to make hydrogen in the world to-day. I think there are possibilities of other cheaper processes. In fact, the basic feature of the Haber process lies in getting cheap hydrogen. I understand in plant No. 1, so far as the cost of operation is concerned, 20 per cent of the cost was in the production of hydrogen and 50 per cent in its purification.
>
> "Mr. Parker: That can be done cheaper than that, can it not?
>
> "Doctor Parsons: It is being done cheaper than that now by the improvements that have been made.
>
> "Mr. Parker: Are the plans in connection with plant No. 1, for production and purification, all right?
>
> "Doctor Parsons: They will have to be changed.
>
> "Mr. Parker: Which part?
>
> "Doctor Parsons: The whole of it.
>
> "Mr. Parker: The whole machinery?
>
> "Doctor Parsons: Not the whole machinery, but there will have to be very extensive changes made in plant No. 1.
>
> "Mr. Parker: What will that cost?

"DOCTOR PARSONS: That comes in the cost I have given you."

MR. KRESEL: You did not read his costs, you omitted all that.

MR. ANDERSON: I will state without reading it, that the estimate given by the witness was that the plant could be put into operating form to produce 30 tons a day at a cost from $1,500,000 to $2,000,000.

XQ. 322a. (Continued) "Mr. Parker. Having gotten your hydrogen, what is next?

"DOCTOR PARSONS: They run the nitrogen in from the air at the same time that they make the original water gas. They get the nitrogen in that way. But in my opinion, it is not the best way of working. The proper way to work it, in my opinion, is to get the nitrogen from the Claude or Linde liquor-air plants."

It should be "liquid air," but it is "liquor-air" here.

"MR. PARKER: I thought the liquid air was a very expensive proposition.

"DOCTOR PARSONS: Nitrogen by the Claude process would be produced for about 10 cents per thousand cubic feet, which makes it a very small proportion of the total cost.

"MR. PARKER: Is it expensive to make the two unite?

"DOCTOR PARSONS: Not particularly.

"MR. PARKER: Is that where the catalyst comes in?

"DOCTOR PARSONS: That is where the special catalyst comes in.

"MR. PARKER: Of course, you were employed by the Syracuse company, and you can not tell what their catalyst was?

"DOCTOR PARSONS: I do not know; they kept it secret from me.

"MR. PARKER: Then how do you know that the other is better?

"DOCTOR PARSONS: I have seen the results of the comparative tests made in the nitrogen fixation laboratory.

"MR. PARKER: That is only a laboratory experiment?

"DOCTOR PARSONS: No. They have there a pretty big plant themselves.

"MR. PARKER: You are sure that the catalyst that they have developed in the Agricultural Department laboratory is the best in the world, and they say they think it is.

"DOCTOR PARSONS: That is my opinion also.

"MR. PARKER: That gives you the ammonia?

"DOCTOR PARSONS: That gives the ammonia; yes, sir.

"MR. PARKER: What is next in the Haber process?

"DOCTOR PARSONS: That completes the Haber process."

THE COURT: Is that about all of that, Colonel Anderson?

MR. ANDERSON: No, sir, there is a good deal more. I am sorry to have to burden your Honor with this, but in view of the testimony on the direct, I feel that I must.

THE COURT: That is all right. I was just wondering whether over night you could not mark it and have it all identified by the witness over night, agree that he so testified, and let it go in.

MR. ANDERSON: Before closing the evidence on that point, I would like to ask a question.

XQ. 323. I would like to ask you if you so testified as I read from page 1134?

A. I did.

MR. ANDERSON: I will endeavor to see what I can do on that, sir. It is taken from the record here and there.

THE COURT: That is only a suggestion because it is pretty difficult for me to carry all facts disclosed in reading, and I assume you will put in your briefs those portions which you think are in conflict with the direct examination. I rather assume that will be more helpful to me than this. In one case I had a brief which amounted to a good many hundred pages—that is, probably ten or fifteen hundred. Then there was a summary of that brief which was probably fifty pages in length.

It seems rather absurd when you speak of it that way, but I found it highly practical, because there were cross references and then if I lost my way in the vastness of the larger briefs, I could get straightened out immediately by turning to the smaller briefs; then when I wanted to elaborate it I could go back to the larger briefs. I do not know how it seems from counsel's standpoint, but from my standpoint it was very helpful.

Mr. Anderson: I think the indication of your Honor's thought about that is excellent. We have already been discussing the question how we could possibly summarize this evidence in such a manner that your Honor could examine it within a reasonable time, and we will use, and will ask the liberty together with counsel on the other side of consulting your Honor's experience in any suggestions along that line.

The Court: For a large mass of testimony I have found that the most workable and practical way that has come under my observation.

Mr. Anderson: I will suspend with this, if it is your Honor's wish.

The Court: I am not sure that I am getting very much from that reading and I think we might save time by doing as suggested.

Mr. Kresel: Your Honor, may I direct your attention to the fact that this case is well into the sixth week. Of course, counsel on both sides are doing everything possible, I realize, to cut it short. I have been looking through my list of witnesses and I find that I still have eight witnesses to call.

I would suggest, if it is not imposing too great a burden upon your Honor, that the hours of our session here be lengthened so that we may get away a little sooner. I know your Honor has always said that you would do and you have done whatever counsel requested in the matter. I realize it is a strain on everybody, but I think it would be better in the long run if we lengthened our session a little so as to try and get through this week.

Your Honor will recall you asked me one day last week how soon I thought we would be through.

I said I thought we would be through with our case by Tuesday, or Wednesday at the latest. As I see it now, the cross-examination is going to be somewhat extensive, judged from the cross-examination of this witness. I could not possibly get through by Tuesday, nor by Wednesday if we are going on at this rate. So I am making the suggestion with all deference to your Honor and to Colonel Anderson that we meet a little earlier, if possible, and sit later, so that we can get through this week.

Mr. Anderson: Does your Honor wish any expression from me on this subject?

The Court: No. Before Mr. Kresel made his remarks I was going to and was in the act of asking him what he had to say about the time this case would end, and I wondered whether the time had been underestimated. Really, since the adjournment on Saturday I have been thinking if this case runs over this week of the advisability of letting a Master or Commissioner or Examiner take all testimony after this week, because there are certain other cases that do demand my attention.

Mr. Kresel: I know your Honor has been very patient with us, and very good about it; but I think if we sit an hour longer a day there is a chance that we may get through this week.

The Court: I am perfectly willing to convene Court at any time in the morning that you suggest —half an hour earlier or an hour earlier.

Mr. Kresel: I think half an hour earlier, your Honor, and if you sit half an hour later it will give us an additional hour a day.

Mr. Anderson: If your Honor please, I would very seriously object to being in Court a half an hour earlier in the morning. Your Honor will understand that this phase of the case that is now being presented to the Court was not directly indicated in the Answer. Therefore, it could not be anticipated in quite the form it has taken. Therefore, I must have a certain amount of time to meet it.

The Court: Your objection to the earlier session is answered immediately. We will not sit earlier.

Mr. Anderson: I am willing to sit later in the afternoon, although the strain on me in preparing for cross-examination, not knowing what the witness is going to testify to, is a great deal heavier, and I have been working in the night ever since I have been here. I simply could not get here earlier in the morning without great inconvenience.

The Court: We will not ask you to, then, but if this case continues after this week I may refer it to somebody to take the testimony. There are certain cases which must be disposed of, and I find it is impossible—I have tried it—to do effective work on them in the time allowed.

Mr. Anderson: I think it is due to your Honor to say that this case will not be finished this week now.

Mr. Kresel: You say there is no possibility?

Mr. Anderson: No, sir; I do not think counsel for the defense will finish this week. He has eight more witnesses bearing on these questions, and certainly there will be a considerable amount of rebuttal upon the branch of the case upon which we are now engaged.

The Court: Then can you proceed with other matters into which you were going, and save time over night by getting together all the portions of the witnesses's testimony that you want to ques- him about.

Mr. Anderson: I will do my best, your Honor, sir.

The Court: All right.

Mr. Kresel: I did not understand we were going to adjourn now.

Mr. Anderson: Oh, did I misunderstand?

The Court: I thought you said you were going ahead with other matters. Did I misunderstand you?

Mr. Anderson: I did misunderstand, your Honor; I thought your Honor was going to adjourn.

The Court: Is it convenient for you to continue your examination now in such manner as you see fit? It seemed to me we could save time if you could get this former testimony together during the night and ask him about it.

Mr. Anderson: I think then, sir, my plan of cross-examination is entirely outlined on presenting this evidence and then basing further cross-examination on that. It is now a quarter past three. If your Honor adjourns this afternoon, with your Honor's understanding that we sit an hour later from this time on during the week, I would prefer to stop now and finish with the examination tomorrow.

The Court: And Saturday?

Mr. Kresel: Yes, your Honor, if you are willing we will sit all day Saturday.

The Court: All right, a full day Saturday, and our regular sessions will begin at 8.30 Standard Time, to 11:45 Standard Time, and from 1 to 4 Standard.

I will adjourn Court.

(Whereupon at 3:20 o'clock P. M. Standard Time, adjournment was taken until Tuesday, July 17th, 1923, at 8:30 o'clock A. M. Standard Time.)

TWENTY-NINTH DAY.

Wilmington, Delaware,
July 17th, 1923, at 8:30 o'clock, A. M.
Standard Time.

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

The Court: May I make this observation: The case has already continued many days beyond its allotted time. So far no restrictions have been placed by the Court upon counsel; but the case must now be expedited and brought to a close. The afternoon session today will be from one to four-thirty o'clock, Standard Time. If substantial progress be not made during the day, evening sessions will be held.

So far as Dr. Volwiler's cross-examination is concerned, that will be in chambers in any event, and I will take that in the evening. You may arrange with counsel on the other side as to when that will be convenient; but that will be taken in the evening so as not to interrupt the day session.

Charles L. Parsons resumed the stand.

Mr. Anderson: May it please the Court, on yesterday morning, your Honor will recall that I made a combined motion to strike out an objection, and asked that it be applied to all questions and answers preceding and subsequently, relating to the question of validity of these patents. There was no ruling on the motion and objection, and of course, no exception noted on the record. But as I understand we are proceeding, it is merely to give notice to the Court of those points which will be raised finally, and therefore it is not necessary to renew them or ask for a ruling.

The Court: I have no objection to stating that I fail to see the validity of the objection raised, so far as the Chemical Foundation being an assignee is concerned I fail to see the validity of the objection so far as the United States, being a licensee is concerned; nor do I see anything to prevent the Chemical Foundation from setting up all difficulties that may arise in connection with the patent which would reduce their monetary value, particularly if at all short of complete invalidity. I speak of the act of assignment from the Government to the defendant because I can not see that that would estop the defendant from asserting invalidity any more than it would if you had, for instance, reports from the Government, and would be entitled to assert under certain conditions that they were comparatively worthless. You deny, as I understand your contention, that the Government has taken a license from The Chemical Foundation. So I assume that so long as you stand in that position you would not be in a position to assert the estoppel. However, you may consider that no definite ruling has been made, and we will proceed upon the General Rule, stating your objections as we go along.

Mr. Anderson: With the right to raise the objections; that is what I wanted to make clear. There was one other formal point that I wanted to make clear. In examining the record last night, I found there were over thirty pages of matter which was read from exhibits in evidence, and which is, of course, a duplication of the record.

I would like to ask, even if the Court feels it can not direct that to be stricken from the record, that instructions be given that on the printing of the record that need not be printed, under the Equity Rule prohibiting duplication.

The Court: If you will point that out; but I can not ask the Clerk to do that.

Mr. Anderson: I would be very glad to point it out, sir.

The Court: And let me say here, Colonel Anderson, that that is not criticism on the part of the Stenographers, or any of them, in taking that down, because I would find great difficulty, as they do, in knowing just exactly when to begin to write and when to stop writing as a result of the way matters are being put in; and that is not criticism of counsel.

MR. ANDERSON: I am not criticizing. I am merely trying to avoid duplication in this record. I would be glad to point it out either now or later. I do not want to take up the time just now.

THE COURT: Not now.

MR. ANDERSON: In order to shorten the examination, in accordance with the discussion of yesterday, I have made up a list of references to former hearings, as to which I wish to ask the witness by pages, indicating the beginning and ending of the question. I thought I had a copy; but I must have left it. I would be very glad to hand it to counsel and check those beginnings and endings, and ask Dr. Parsons if he so testified in each of those cases, and avoid the reading of them; just have the stenographer copy them into the record.

MR. KRESEL: You can take it for granted, Colonel, that Dr. Parsons will say, of course, that the testimony as reported, was given by him. Now, our stipulation goes to that effect, even without his saying it; so there is no necessity of spending time on that.

MR. ANDERSON: Then, we agree that these extracts may go into the record as questions, with the understanding that Dr. Parsons' answer would be that he so testified. That will save the time of going over it entirely, and I will hand this to the stenographer, and if he needs any assistance he will let me know, and we will get him to put it in the record accordingly.

THE COURT: You are satisfied with that arrangement, Dr. Parsons?

THE WITNESS: Yes, sir.

Mr. Anderson: I would ask that the Court need not here direct to have this copied in, and I will hand the stenographer this memorandum which I will explain to him later with the co-operation of counsel. That is the memorandum of Dr. Parsons's questions.

MEMORANDUM OF DR. PARSONS' TESTIMONY BEFORE THE COMMITTEES NAMED BELOW TO BE READ INTO THE RECORD.

1. Muscle Shoals Hearing. P. 1135.

"**Mr. Parker:** That process does not need much power, but needs a great deal of steam and coal, does it not?

"**Doctor Parsons:** That is correct; the Haber process requires only one-tenth of the power of the cyanamid process, and about one-fiftieth of the power of the arc process used in Norway. The Norwegians could profitably turn their plants into plants to use the Haber process, and I think they would use it if it were not for the complications in connection with the German patents.

"**Mr. Parker:** If you were to use Plant No. 1 for the manufacture of fertilizer I suppose you would take the ammonia and pass it through sulphuric acid to make the sulphate?

"**Doctor Parsons:** That would be the normal procedure at the present time.

"**Mr. Parker:** And the cheapest way to get sulphate of ammonia; but personally I am inclined to believe that we are going to develop other methods, and I should not be at all surprised if this double sulphate and nitrate of ammonia, which is credited with having exploded in Germany, is what will ultimately be used.

"**Mr. Parker:** You would use that, although they had that tremendous explosion at the plant in Germany.

"**Dr. Parsons:** I do not think the explosion was due to the composition of the material; I think it was due to some other cause.

"**Mr. Parker**: I beg your pardon by asking you so many scientific questions, but I thought that was the only way to get the information, both for myself and other members of the committee.

"**Dr. Parsons**: I am very glad indeed to have your help. I think it will interest you to know something of the action of the catalyst in the oxidation of ammonia. If you take a mixture of ammonia and air and blow it through a layer of platinum gauze which is heated to a red heat, your ammonia and oxygen will combine entirely differently from any other combination which they can be made to make under other conditions. If you put iron gauze there or copper gauze or silver gauze the action does not take place, but if you use the platinum, you can blow it through almost as fast as you can blow it, and practically all of the ammonia will be converted into nitric oxide, which absorbed in water makes nitric acid. We do not know what does it, but we do know that that is the action that takes place. There are many incidents of the kind in connection with chemical products."

Page 1136:

"**Mr. Parker**: The platinum is used to a certain extent for a catalyst, and it is so hard to get at present that I wanted to ask whether this catalyst which is used by the Department of Agriculture, depended upon platinum for its composition?

"**Dr. Parsons**: It does not.

"**Mr. Parker**: Does it depend upon any rare metals that are hard to get?

"**Dr. Parsons**: I think it does not depend on rare metals only. It is generally known that most of the catalysts, the German catalyst, and I think the General Chemical Co.'s catalyst, and this one at the nitrogen fixation laboratory, are largely iron, and it does——

"**Mr. Parker** (interposing): Does it waste very fast?

"**Dr. Parsons**: No; this is a very substantial catalyst that they have here.

"**Mr. Parker**: Then as a general conclusion you think, with the aid of the Department of Agriculture, the No. 1 plant, with an expenditure of a million and a half dollars, can be turned into a productive plant for ammonia at reasonable rates.

"Dr. Parsons: I think it can; yes."

Page 1136:

"Mr. Quin: I would like to refresh your memory on that. I was here at that time; I have been on this committee ever since 1913, and in 1916 we got a bill through providing for the establishment of nitrate plants, and Mr. Washburn's testimony had a good deal to do with it. The cyanamid process was the one that they thought was going to be adopted. Congress declared war at the President's suggestion on the 6th day of April, 1917, and as I understood it, and the Congress understood it, we were in danger of not having sufficient nitrogen from the Chilean source. We did not know whether we would be cut off from that or not, and you claim now that an emergency did not exist. Well, these gentlemen went abroad and built Plant No. 1, but it was constructed in such a way that it did not succeed. That is true, is it not?

"Dr. Parsons: Its first trial was not thoroughly successful.

"Mr. Quin: They testified before this committee that that plant was a failure.

"Dr. Parsons: I disagree with them. At its first trial it did not function any more than the Haber plant functioned in Germany in its first trial, and they had to go over it and try it out two or three times and rebuild it before it finally operated fully and successfully.

"Mr. Quin: They abandoned, did they not?

"Dr. Parsons: No; it was carried on and made a perfect success at Syracuse.

"Mr. Quin: You mean a different plant was erected. There was a difference between the plant at Syracuse and the No. 1 Plant at Muscle Shoals?

"Dr. Parsons: The process is essentially the same, but they have changed the mechanical construction, and they have changed the catalyst, as I have already testified.

"**Mr. Quin**: Why did they not change that and make the process at Muscle Shoals a success?

"**Dr. Parsons**: Because they had no time before the Armistice. They found that the mechanical construction at Muscle Shoals was not right and that the catalyst which they used was inefficient and could not be made in large quantities."

Page 1137:

"**Mr. Quin**: Some gentlemen testified that by making certain changes in the process that caused the thing to be a failure there. Some of these experts testified that way.

"**Dr. Parsons**: That by making changes in the General Chemical Co.'s process it ceased to be a failure?

"**Mr. Quin**: They spoke about the fact that they changed some of the processes in the construction of this plant at Muscle Shoals.

"**Dr. Parsons**: My understanding is that the plant was built down there the best that they were able to build it after consultation between the General Chemical Co.'s engineers and the engineers of the Government, and that the Government engineers insisted on certain changes in the plant construction which the General Chemical Co.'s engineers did not thoroughly agree to; and as a result, anyway, both of them felt that the other was more or less to blame for the failure of its early operation. But as a result of the experiences which they gained there a new factory has been built which is functioning completely, and functioned well from the first day it turned over its wheels.

"**Mr. Quin**: Then the one they constructed with Government funds at Muscle Shoals did not turn out the stuff, and the one they erected for themselves did turn it out, and you say they produced several more tons per day than they anticipated?

"**Dr. Parsons**: The one they erected at

Muscle Shoals did not do it, but if they had gone on and made the necessary changes and installed the apparatus which they now have installed at Syracuse it would have functioned; that has been proven by the actual fact that the Syracuse plant is functioning perfectly at the present time."

Page 1137:

"Mr. Quin: They have testified before this committee that there are new processes now which are liable to knock out both of these processes and produce the nitrogenous products at about one-half of what they are costing now, do you know about that?

"Dr. Parsons: I think I know all the processes for nitrogen fixation which are at all economical and which are being used in the world, and I do not know to what you refer.

"Mr. Quin: They did not tell us what they are.

"Dr. Parsons: They are referring unquestionably to the improvements in the Haber process, because they are the only ones actually doing it today.

"Mr. Quin: Did you read the report of the British Nitrogen Products Commission, appointed for the purpose of looking into the fixation of nitrogen?

"Dr. Parsons: I did, and I read it with care.

"Mr. Quin: In that report, of 1920, that commission, consisting of eminent scientists, doctors of chemistry and kindred subjects, stated several things, and wound up by saying that 'the commission recommends that this cyanamid process should be established in Great Britain without delay either by private enterprise, supported, if necessary, by the government, or as a public work.' What do you say about that record of the British commission?

"Dr. Parsons: I say that the report of the British commission was made during wartime. I was in consultation with the most of the members of that committee frequently during the war. I saw them on the other side, and I saw Dr. Harker on this side. I know most of the important men on the commission personally, and some of them intimately.

"Mr. Quin: That was in 1920?

"Dr. Parsons: That is when it was issued, not when it was made. They believed in England that they should put in both processes, so that they would know the operation of each. They also in that report made a recommendation not only for the Haber process, but they spoke in much higher terms for the Haber process than the cyanamid process, and the Haber process is being put in in England today, and the cyanamid process has been completely abandoned and will never be put in England or in any other country, in my opinion."

Page 1140:

"Mr. Fisher: Are you not aware of the fact that the Secretary of War, through the Chief of Engineers, communicated with every concern in the United States which he thought was interested in the development of Muscle Shoals?

"Dr. Parsons: As I read it, he asked them what they thought should be done with it, and whether they had any suggestions to make, and one or two of them did make suggestions. It has never been formulated as to what you had to sell, and nobody knows today what you had to sell down there, and the minute it is known what you have to sell I think you will get offers for it. I think if Plant No. 1 was put up for sale, with a certain amount of power to go with it, I could myself obtain associates and make a nitrogen industry down there along modern lines, the same as they are doing in Germany, the same as they have started to do in Norway, the same as they are doing in England, and just as they are planning to do in France, and in Italy, and as they have started to do at Syracuse, which will fix nitrogen and make nitrogen fertilizer much cheaper than you will ever get it by any possible use of the cyanamid process. I think it can be done successfully."

Page 1143:

"Mr. Wright: Is it not a fact that they do not ever agree—and I am not saying anything to their discredit—but on a proposition like this, for instance, you say that the cyanamid process is obsolete, and that the Haber process is the correct process; while a man, who is just as eminent as you, would follow you on the stand and he would swear that the Haber process was impracticable and the cyanamid process was the only one that was feasible.

"Dr. Parsons: I would like to find one in America that will say that at the present time—who is still sane.

"Mr. Wright: I do not think you will ever get two of them that will agree.

"Mr. Miller: I see in the British Nitrate Commission's report that they speak very highly of the arc process or the electric process. That makes nitric acid, does it?

"Dr. Parsons: Yes; that is one of the basic reasons why it is not used in this country; and also it is very wasteful of power. It uses five times as much power as the cyanamid process, and it uses approximately 50 times as much power as the Haber process. If it was not for the Haber patents—and I think, I have a basis for this statement (it can not be used in Norway, although it can be used in the United States)—I think the arc process in Norway would be changed into the Haber process in a year, because they could use their water power and make their hydrogen electrolytically, and they could turn out five times the amount of nitrogen, in ammonium salts instead of nitrates, that they can today, and do it cheaper."

2. Hearing on Sundry Civil Appropriation Bill, 1922. Testimony of Dr. Parsons. Page 190. Haber Process.

"Dr. Parsons: Yes, sir. I now come to the Haber process. In the Haber process pure nitrogen and pure hydrogen, two gases, are brought together under pressure and increased temperature in the presence of a material which is known as catalyst—such a material which by its presence hastens the reaction of nitrogen and hydrogen combining directly to form ammonia. This is the same gas which you get from cyanamide, and of which I have spoken. The Haber process is not as simple as the few words which I have used would indicate. There are many problems connected with the production of pure hydrogen, but the problems are being steadily solved. They have been commercially solved in Germany. The Haber process there, where they know the most about it, has made a wonderful success. They have a plant there with a capacity of 300,000 tons of combined nitrogen per year, equivalent to some 1,200,000 tons of ammonium sulphate. There is one plant of about 90,000 tons erected at Oppau, near Ludwigshafen, on the Rhine, which was the first plant built. Afterwards, they built another plant a little more than twice the size of the plant at Oppau, which is at Merseberg, near Halle, in Germany, some 200 miles from the other, and away from the scene of war activities. These plants have been working so successfully that the German Government within the last two or three months authorized the exportation of 85,000 tons of ammonium sulphate from those plants, although it was claimed that they wanted to keep all their nitrogen in Germany in order to increase their food production.

"The production of pure and combined nitrogen gas required for the Haber process is a very simple matter, simply taking it out of the air. There is no difficulty about it whatever; in fact, it can be made very simply in connection with making the hydrogen, and two-thirds of it is so made without any additional cost at the plants in Germany, the rest of it being made by liquid-air machines. A plant working under heavy pressures, as in Germany, where they use 200 atmospheric pressures, requires very great mechanical skill. This process, however, increased from a capacity of 6,000 or 8,000 tons of nitrogen in 1914, to about 300,000 tons at the close of the war. They have an output in Germany in excess of all the rest of the processes put together. The Claude process in France, peculiar as it may seem, works under 1,000 atmospheric pressure, 10 times the pressure of the Haber process, but by that very fact they have overcome many difficulties and the mechanical difficulties have been solved. It takes very little metal compared to the Haber process, because the gases occupy so much less space, and therefore since the machines have very much smaller diameter, their capacity to resist pressure is greatly increased.

"THE CHAIRMAN: Why is it that the Haber process which was installed at Sheffield is not a success, if it is based on the true principle for producing nitrogen?

"DR. PARSONS: That is a very hard question to answer, Mr. Chairman. There is a certain amount of controversy which I doubt will ever be settled. It was put in as an experimental plant advisedly and was adopted with that understanding originally by the Board that had charge of the matter. Being built for the first time, they had to go through the same kind of experiences that they had to go through in Germany. It was five or six years before they had any success at all in Germany. I have not the slightest doubt whatever that with the modifications that Dr. Tolman and others are now working on, in research lines, that the plant will ultimately operate. I expect to see it operate and to operate very much more successfully than the other, Plant No. 2. This plant requires little power. The Haber process differs from the others in that the power is not a basic consideration. It requires larger quantities of steam. As hydrogen is all made from steam—very large quantities of steam are required. That is why they have so large a steam plant in connection with this plant at Muscle Shoals, Plant No. 1, not the big power plant, but the plant in connection with Plant No. 1 which is over at Sheffield; that is chiefly to make the steam which is necessary. The Haber process requires about 0.2 to

0.3 of a horse power per ton of nitrogen per year. The cyanamid process requires about 2.5 to 2.7 horsepower per ton of nitrogen per year, and the arc process requires about 10.5 horsepower per ton of nitrogen per year.

"The Chairman: Stating that in dollars per ton, what does it mean?

"Dr. Parsons: On the power basis?

"The Chairman: Yes, sir.

"Dr. Parsons: It would mean that the power required for the arc process is about five times that required for the cyanamid process and nearly 30 times that required by the Haber process. Of course that might vary somewhat.

"There is one other statement which I started to make, which I failed to finish, in reference to cyanamid. I want to tell you why the cyanamid process has been continued in Germany and some of these other countries since the war, along with the Haber process, although in much less quantity. The continuation is due to the fact that the cyanamid process requires only about one-half of the coal that the Haber process requires. The cyanamid process requires from 3 to 3.5 tons of coal and the Haber process from 5.5 to 6.5 tons of coal per ton of nitrogen fixed—I am giving you approximations—nearly twice as much. In Europe during the last few years coal has been the rarest material they have and they could afford to run the cyanamid process alongside of the Haber process on account of the great cost of coal. Now that the price of coal is coming down conditions are changing. According to information that I have, the cyanamide process this year will probably supply only about 1.6 of the nitrogen which was produced by it last year in Germany.

"The Chairman: If I recall correctly the statement of the Secretary of War, when he appeared before the sundry civil subcommittee, it was to the effect that the Haber process plant at Sheffield was not an exact duplicate of the plant constructed in Germany, but there were some modifications?

"Dr. Parsons: It not only is not a duplicate, but it has, except in general principles, very few similarities. It is run at less than one-half of the pressure, and they used a different catalyst, which is the basis of the process. They had many things to work out.

"The Chairman: Have we in this country a suitable catalyst for use in the Haber process?

"Dr. Parsons: I think there is no question that we have in this country as good a catalyst as they have in Germany. I think Mr. Tolman believes he has a better one, and I presume he may have, at least I hope so.

"The Chairman: Just where are the economies in the production of nitrogen by the Haber process that are not found in the cyanamid process?

"Dr. Parsons: Well, there is a great difference in power. There is a great difference in labor, and there is a very great difference in the cost of materials, so that it is very difficult to compare them, because they are so entirely different; and it is a question that it is difficult to answer in detail. It is thoroughly well understood on the other side, as I think can be shown by the reports of their commissions and the way the other countries are going into it, that there is no question whatever that the Haber process is considered the process of the future. I do not think anybody denies it except the people who are interested in cyanamid plants.

"The Chairman: Does it take more labor to produce a ton of nitrogen by the cyanamid process than by the Haber process? You have already said it takes more power.

"Dr. Parsons: And more laborers in the plant.

"The Chairman: How about the construction of the plant itself?

"Dr. Parsons: Of course, I mean that portion of the plant which has to do with the production of the ammonia. At the plant in Germany there were large numbers of laborers, but that plant made not only ammonia and ammonium sulphate, but made many other things at the same time.

"THE CHAIRMAN: You have stated that you were associated with the Secretaries of War, Commerce and Agriculture?

"DR. PARSONS: I stated that I accompanied them, but did not say I was associated with them.

"THE CHAIRMAN: I mean, you were in consultation with them?

"DR. PARSONS: Oh, yes.

"THE CHAIRMAN: You were at that time the chief chemist of the Bureau of Mines?

"DR. PARSONS: Yes, sir."

Page 196, "Royalties."

"THE CHAIRMAN: But the plant itself can not be used except to manufacture cyanamid by the cyanamid process, and that process is a patented process.

"DR. PARSONS: Yes, sir.

"THE CHAIRMAN: The patents being owned by the American Cyanamid Co.

"DR. PARSONS: The American patents being owned by the American Cyanamid Co.; yes.

"MR. MAGEE: What about the Haber process? Are there patents in connection with that process?

"DR. PARSONS: The American patents of the Haber process belong to The Chemical Foundation in New York City and are available to anyone in this country on equal terms with anyone else.

"MR. MAGEE: What I mean is this: As far as the patents are concerned, what would be the difference in cost?

"DR. PARSONS: So far as the Haber process is concerned, the cost for the patents is nominal, because that has already been passed on. They have sold their rights to the Haber process to this American Nitrogen Corporation, and any other American corporation can obtain those patent rights at exactly the same figure.

"MR. BYRNS: By buying them.

"DR. PARSONS: By paying the royalty; that is, they have the non-exclusive right to use such of the Haber patents as they need, if any, but must pay a royalty, although the royalty, as I understand, is really nominal.

"Mr. Byrns: Do you know that personally?

"Dr. Parsons: Yes.

"Mr. Magee: I would like to know the difference in the royalty cost under the cyanamid process and under the Haber process.

"Dr. Parsons: Well, I do not know what the figures are.

"Mr. Magee: Well, approximately.

"Dr. Parsons: I have no idea whatever. I was simply told that the intent of The Chemical Foundation was to put those patents at the use of all American manufacturers at a rate which would be a reasonable one.

Mr. Magee: So that the cost would be nominal?

"Dr. Parsons: Yes, sir.

"Mr. Magee: Maj. Burns, you gave some figures yesterday. What were your figures as to the cyanamid process?

"Maj. Burns: They are royalties which, in accordance with our contract, we would have to pay to the American Cyanamid Co. until the first of June, 1931.

"Mr. Magee: Was that so much a ton?

"Maj. Burns: Yes.

"Mr. Magee: What were the figures?

"Maj. Burns: For calcium cyanamid, $6.25 per ton; for ammonium nitrate, $11.56 per ton; and for ammonium sulphate, $6.77 per ton.

"Mr. Magee: I understand from Dr. Parsons's statement that if fertilizer is manufactured under the Haber process those royalties would be nominal.

"Dr. Parsons: I think I can give you some fiures which will essentially answer your question.

"Mr. Magee: Please put them in the record.

"Dr. Parsons: The Atmospheric Nitrogen Corporation expects to have to depend on the Haber patents but very little, if at all, but it will work under the patents of the General Chemical Co., which, in contracts with the Government, established a royalty of almost exactly one-sixth of the royalty for the cyanamid process.

MR. BYRNS: Major, the contract to which you have referred extends until when?

"MAJ. BURNS: Those royalties would have to be paid to the 1st of June, 1921.

"MR. BYRNS: What after that?

"MAJ. BURNS: After that they are subject to arbitration.

"MR. MAGEE: And nobody knows what might be determined at that time?

"MAJ. BURNS: No; no one knows.

"MR. MAGEE: It might be a greater figure?

"MAJ. BURNS: Yes, it might be continued at a greater rate, or a lesser rate; we believe it will be at a lesser rate.

"MR. MAGEE: But you can not tell?

"MAJ. BURNS: No, sir. On the other hand, these royalties cease at the expiration of the patents, which expiration will take place early in 1931.

"THE CHAIRMAN: Not all of them.

"MAJ. BURNS: I think practically all expire as of 1931.

"MR. BYRNS: It is not likely that in the arbitration any price would be placed upon royalties that expire when the company ceases to have any right to sell that royalty.

"MAJ. BURNS: No; in my judgment, no one is going to pay for something he does not have to pay for.

"MR. BYRNS: In other words, they cannot sell it and will not sell it.

"MAJ. BURNS: No.

"THE CHAIRMAN: I have heard of the War Department doing that very foolish thing.

"MAJ. BURNS: I do not understand myself how the War Department helped to win the war with all the criticism that is heaped on it.

"MR. BYRNS: If the war had continued, I do not know where we would have been or what we would have come to, if the statements made here are true with reference to the cyanamid process."

Page 199:

"Mr. Byrns: If the Haber process to which you have referred is so much more superior to this cyanamid process, as you state, how would the operation of this plant interfere with private capital or any other interests in the installation of plants for the purpose of producing nitrogen by the Haber process?

"Dr. Parsons: I am glad you asked that question, because it is a very pertinent question. No private industry in this country, so far as I am aware, has the slightest fear of the operation of the cyanamid plant at Muscle Shoals and its production.

"Mr. Byrns: If you could see some telegrams that I am getting, you would think that some of them do fear it.

"Dr. Parsons: They would have no fear of the cyanamid plant if its product is to be sold at or above the actual cost, without a Government subsidy. They do have, however, a very great fear as to what may be developed from the other plant. If your corporation is to be given the authority that is contained in the proposed bill (and the dam is supposedly being built chiefly for the nitrogen plant) to do almost anything under the sun, they will have reason to fear it. Under that bill, the corporation can go into any form of nitrogen manufacture whatsoever without limitation and without reference to whether or not it has to do with fertilizers. It can go into the manufacture of dyestuffs, and it can go into the manufacture of anything that contains nitrogen or in any production that is pertinent thereto. For example, it could go into the manufacture of soda, which is used to such an extent in the manufacture of soap. Those two processes are now very closely allied. They have at Muscle Shoals the nucleus of an essential Haber industry; it is to be given Government funds; it has in Washington a very well regulated research laboratory run by some of the best brains of the country, and a laboratory which is being run absolutely secretly so that the corporations of the country and others can not get the information they are developing. It is the only Government laboratory that I have any knowledge of that is run secretly with a view to a Government manufacturing corporation and where anything and everything that is developed is to be owned, controlled and operated by this corporation; a corporation which is to have more rights than the Standard Oil Co. ever attempted to assume even in the old days. It has the right to do anything."

Page 223:

"MR. BYRNS: Were you not one of the advisers of the Board and the most prominent advocate of the Haber process?

"DR. PARSONS: Well, I do not know that I was the most prominent, by any means.

"MR. BYRNS: I will put it in another way.

"DR. PARSONS: But I had many others who backed me in that final conclusion. And so far as the situation at Muscle Shoals is concerned, I am glad we did not have to depend on its output.

"MR. BYRNS: But you were one of the most persistent advocates of the Haber process?

"DR. PARSONS: And I am still.

"MR. BYRNS: And mechanical difficulties did occur there?

"DR. PARSONS: Yes, sir.

"MR. BYRNS: And it was not a success? They are conducting experiments yet, as I have understood from the previous hearing?

"DR. PARSONS: Yes, sir.

"MR. BYRNS: For the purpose of seeing whether they can not smooth out these difficulties and make it a success?

"DR. PARSONS: Yes, sir.

"MR. BYRNS: How many such plants are there in the United States, if any?

"DR. PARSONS: The only other plant that is going up—which has some similarities, but which is distinctly different and which is undoubtedly gaining information from the mistakes of the other plant—is this plant at Syracuse, which may be enlarged to a very large plant, if the first installation proves successful.

"Mr. Byrns: How long have experiments and efforts been under way to successfully develop that process in this country?

"Dr. Parsons: On a commercial or laboratory scale?

"Mr. Byrns: I mean on a commercial scale.

"Dr. Parsons: The only output is that at the Muscle Shoals Plant, No. 1; the other plant has not yet begun to operate.

"Mr. Byrns: How long in a laboratory sense have those experiments been going on?

"Dr. Parsons: I do not know when they were begun, but certainly since the early part of 1916.

"Mr. Byrns: Certainly for the last four or five years?

"Dr. Parsons: Yes, sir.

"Mr. Byrns: And it has not yet reached that stage where a man can absolutely and emphatically say that it can be successfully applied in this country?

"Dr. Parsons: The Haber process?

"Mr. Byrns: Yes.

"Dr. Parsons: Oh, yes.

"Mr. Byrns: Well, it was not successful in the plant you recommended and that was put up on your recommendation.

"Dr. Parsons: We have not only the information gained from the work done in that plant, but we have information from Germany. At the present time there is in America, I am informed, full plans of the Merseburg plant, which is the latest plant built in Germany, and the patents are available for the use of anybody. Furthermore, the Claude process, which is along the same lines chemically, has been installed in France, and it looks very promising. There is no question but that if you give commercial interests half a chance America is going to have the biggest nitrogen industry in the world.

"Mr. Byrns: What do you mean by 'half a chance?'

"Dr. Parsons: Give them a chance so they do not have to compete against a plant which does not have any interest to pay or taxes to pay, Federal, State, or local, and which has the Government Treasury to call on whenever it gets short.

"Mr. Byrns: You understand that those who have appeared either here or elsewhere in advocacy of the manufacture of nitrates at Muscle Shoals propose to do it with the use of secondary power and through the cyanamid process?

"Dr. Parsons: Yes.

"Mr. Byrns: If that process is here and if the Haber process is going to be the process of the future, and if all commercial companies are withdrawing from the manufacture of cyanamid, it is difficult for me to understand just what any private concern like that with which you are connected, or any other concern which is interested in the Haber process, has to fear from a plant of that nature?

"Dr. Parsons: I thought I explained that pretty clearly, and my understanding is simply this: That they do not fear the cyanamid process nor any of the things which you have mentioned, but they fear a corporation without interest, without taxes, with the United States Treasury to draw upon, and with the privilege of unfair competition which you allow to no other corporation in the United States, having the right to go into any form of nitrogen production and carrying on the business in such a way as to prevent other companies from going into it. That if they did go into it with that competition, no company in this country could for one minute stand on its feet. The very threat of that will retard, if not entirely destroy, the development of the nitrogen industry in this country, and will at the same time destroy the war reserve which you and all of us wish to see developed in America.

"Mr. Byrns: You understand, do you not, that if that company is being formed—and as I have stated heretofore, it will require favorable action by the House to form it—it is being formed for the purpose of operating Plant No. 2, with a limited amount of capital stock, and as I understood you a while ago, it would be impossible to turn Plant No. 2, constructed as it is, into a plant which would make nitrogen under the so-called Haber process.

"Dr. Parsons: But Plant No. 1 can be enlarged and anything can be done with it under that corporation and under that authorization, and with that money there is no limitation on that proposition at all.

"Mr. Byrns: Then, as I understand the point of your objection, the real underlying point of your objection here is the fear that that corporation may develop Plant No. 1 for the use of the Haber process and thereby furnish fertilizer to the farmers at a cost at which it will not be furnished them by private industries, such as the Atmospheric Nitrogen Co., and others? I think that is a very fair inference to draw from your statement, which you have made several times with reference to the Government doing business without taxes, etc.

"Dr. Parsons: I fully believe that the cheapest fertilizer will ultimately come to the farmers through the development of this industry in this country, as it will be developed, rather than through any such proposal as is made down there. I believe that the cheapest fertilizer will come through the synthetic or so-called Haber process. I have no doubt of that whatsoever. I have abso money to think for a moment of operating it.

"Mr. Byrns: We appear here, as I have stated heretofore, and we are here for the purpose of considering an appropriation to complete the dam, and that, as I understand you, has absolutely no relation to Plant No. 1.

"Dr. Parsons: You are quite right.

"Mr. Byrns: Because Plant No. 1, which is a plant for the Haber process, if operated success- believe it is a tremendous waste of Government fully—and that, as I understand you, is a matter of some doubt.

"Dr. Parsons: I have not much doubt about it, although there is some doubt; there is doubt about everything in this world.

"Mr. Byrns: Certainly, and that is the point as large as all the cyanamid plants of Germany lutely no fear of the cyanamid plant, but I do I was trying to make, and there is, to any reasonable man, at least, some element of doubt as to the final results of the Haber process.

"Dr. Parsons: No; not of the Haber process.

"Mr. Byrns: Well, there may not be any to you, doctor, as an experienced chemist.

"Dr. Parsons: The Haber process is a big success today; it has a capacity of 300,000 tons in Germany and is operating on a large scale.

"Mr. Byrns: In Germany?

"Dr. Parsons: Those plants are three times put together. It is operating very successfully there, and will certainly operate successfully in this country, if you give private capital an opportunity to go into the business.

"Mr. Byrns: Why was it that the plant at Sheffield was not a success?

"Dr. Parsons: I have tried to explain that it had to go through the incubation period, exactly the same as in Germany, and I have not any great doubt that Plant No. 1 is going to be a success. But if it is a success I do not favor the Government managing it and going in to produce fertilizers below the cost at which anybody else can produce them and give them to the farmer."

Page 239:

"Mr. Byrns: I want to read you this statement of the Secretary of War, who appeared very recently before this Committee. This statement is rather contradictory of the information which has come to you. In speaking of the mechanical difficulties that had to be overcome in this Plant No. 1 at Sheffield, Ala., he says this:

> "A highly obscure stage or step in the process is the catalyzation of ammonia from nitrogen gas; that requires the intervention

> of a chemical agency known as the catalyzer, and we did not have a catalyzer which wore well, and the consequence is that in that process in its present stage of development we have need of further experimentation, and invention, perhaps, with regard to the discovery of better catalyzing agent and better control of the pressures. The plant can not be said to have failed, but it is not a distinguished success, and the scientific men who have been engaged on it and are still engaged on it believe that already the necessary discoveries have been made to overcome those difficulties, and that the plant will undoubtedly be available for the establishment of the process which in Germany supplied her with nitrates during the war."

"That, of course, is in confirmation of your position with reference to the availability of this process for the manufacture of nitrates; but at the same time, it shows that scientific men who are employed by the Government are still engaged in perfecting the catalyzer.

"Dr. Parsons: I have not any doubt whatever, Mr. Byrns, that scientific men, not only in the Government service, but at all these other plants, will be engaged for the next fifty years in perfecting a catalyst. I doubt if a perfect catalyst is ever discovered, and it is simply a question of getting nearer and nearer to a catalyst which is theoretically perfect. I believe that they think out at that plant that they have now the best catalyst in America. I am not prepared to say that they have, because there are no means of making a comparison; but that is also indicated in the latter part of Secretary Baker's remarks from which you have just read."

Page 242:

"The Chairman: What is the situation, doctor, so far as a construction program is concerned in the world for the manufacture of fixed nitrogen, are there any cyanamid plants being erected in any place?

"Dr. Parsons: To my best knowledge there is none.

"The Chairman: Any Haber process plants?

"Dr. Parsons: Yes, sir; several.

"The Chairman: In what countries?

"Dr. Parsons: In England they are building a plant at the present time with a capacity of 100 tons of nitrogen a day, which is to be trebled in size. That means 400 tons of ammonium sulphate a day or 1,200 tons of ammonium sulphate when it has reached its final capacity, or, if you wish to put it in another form, that is 90,000 tons of fixed nitrogen a year, which is equivalent to 360,000 tons of ammonium sulphate, which is a very large plant, considerably larger than the plant at Muscle Shoals—a little over twice the size of the Muscle Shoals plant.

"The Chairman: Is that the same as the process in Germany?

"Dr. Parsons: I do not wish to say that it is identical with the one in Germany.

"The Chairman: On the same general principles?

"Dr. Parsons: It is what you call the Haber process.

"The Chairman: How about other countries?

"Dr. Parsons: Japan has purchased the Haber rights and also the General Chemical Co.'s rights. Whether they have started construction, I cannot say, but Japan is prepared to build Haber plants. America has this plant which is going up at Syracuse and there is a small experimental plant at Providence. Italy is considering now the introduction of plants and their expectation is for plants with the Haber process. At Terni there is already operating a small Haber type plant.

"Mr. Magee: Where is that?

"Dr. Parsons: About 50 or 60 miles out from Rome, in the mountains. In France the Haber patents have been purchased from Germany by a syndicate which is preparing to erect Haber plants which, I understand, will be very much the same as the plants in Germany. Unless this Claude process develops more rapidly than expected—and the Claude process is a modification of the Haber—Haber process plants will be erected in France. The whole future development is along the synthetic ammonia line of attack."

Mr. Anderson: In connection with the evidence read into the record on yesterday, to complete it, I would ask leave to read two sentences from the Hearing on Senate Bill 3390, page 26, the following statement from General Williams, who appears here as Chief of Ordnance.

Mr. Kresel: What is that?

Mr. Anderson: Just a statement of General Williams, the Chief of Ordnance.

Mr. Kresel: Page 26?

Mr. Anderson: Page 26, on that Senate Hearing, the following statement——

Mr. Kresel: Wait a minute, Colonel; who did you say referred to this?

Mr. Anderson: I referred to General C. C. Williams, Chief of Ordnance, who was referred to a number of times yesterday in the testimony, and who testified in a number of these hearings, and at this hearing appeared with Secretary Baker.

Mr. Kresel: That is all right, Colonel, if you want to read anything from General Williams, or Colonel Williams, whoever it was, with the understanding that I shall have the right to read any other portion of his testimony and of any other witness's testimony produced by the War Department.

Mr. Anderson: I think on yesterday, your Honor so ruled.

Mr. Kresel: That is all right.

The Court: I ruled it as against the Government.

Mr. Anderson: Yes, sir.

The Court: I did not rule it in favor of the Government.

Mr. Anderson: No, sir.

The Court: You have a different position, a different legal position.

Mr. Anderson: I will offer to read into the record the following statement of General Williams, in respect to the matter of the Plant No. 1.

The Court: Can we abbreviate that by pointing to the record?

Mr. Anderson: It is only one sentence.

Mr. Kresel: What page is this?

Mr. Anderson: Page 26:

> "**General Williams**: It was a failure in this new process where the nitrogen and the hydrogen are welded together to form ammonia. It was a modification of the Haber process and worked at the lower temperature and at a higher pressure, but it was not correctly designed, and while we fixed some nitrogen, the output was so small that we could not consider it a success. That can be fully developed by witnesses who will go into all of the details."

Mr. Kresel: Will you put upon the record the fact that what you have just read refers to Plant No. 1 at Muscle Shoals?

Mr. Anderson: Yes, I did. Plant No. 1 at Muscle Shoals.

I turn to page 29 of the same report, and this is all I have to read—a statement by Secretary Baker:

> "**Secretary Baker**: The only process which has disappointed us at all was the

> Haber process, at Plant No. 1, where we undertook to modify what we knew to be the German practice. They used very high pressures and low temperatures. We undertook to use lower temperatures with less pressure.
>
> "SENATOR KNOX: Then the failure came because you did not follow the German process?
>
> "SECRETARY BAKER: In that case I think that was so."

MR. MAHAFFY: If your Honor please, does Colonel Anderson want this upon the record? He has not so designated.

MR. ANDERSON: That was taken down in connection and as part of the testimony produced yesterday, and I want to make it complete.

THE COURT: But whether the stenographer shall spread it at large on the minutes is the question.

MR. ANDERSON: Yes, sir. I am not going to introduce the book just to get one sentence.

Yesterday, your Honor asked me to point out more specifically my objections to the hypothetical question asked, and I think probably this is an appropriate time to do so. Aside from the general objections applicable to all evidence, the objections in detail are as follows:

First, the evidence does not disclose that the witness had any experience in the art of fixing nitrogen in 1919, the date referred to; second, as to clause 3 of the question it does not appear that the General Chemical Company had developed any new process, the evidence shows that it was essentially and basically the same process. No patents of the General Chemical Company have been introduced in evidence. The question states a conclusion, that there was a new direct method, which is only to be derived from an interpretation of the facts, by the Court, and is not a statement of fact.

As to Clause 4 there is no evidence that the Claude process has been developed at this time or that any plant for the use of the same has been constructed. The question omits essential evidence of the defendant that the French Government has adopted the Haber process and contracted for the use thereof.

As to Clause 5 of the question there is no evidence of any lack of information as to the Haber process in the United States. The witness only stated in his opinion that it was impossible to manufacture, and his whole experience was advisory, as to what he claimed was a different process.

As to Clause 7 there is no evidence that the cost under the Haber process was greater than cyanamid, but the evidence of the witness in his official report given in 1917 is directly to the contrary. This report is the only evidence of cost which was in existence at the time stated in the question.

As to Clause 9 of the question it fails to include the essential evidence that the sources of supply named were not adequate to meet the demand in the United States during the life of the patent, and further evidence of the witness that the cyanamid was not competitive of the Haber process.

As to Clause 10 the question fails to take into consideration the evidence of skilled personnel of the General Chemical Company claimed to be in existence by the witness, the experiments of that company since 1916, or the evidence that they immediately thereafter constructed and operated a successful plant, showing the existence of skilled personnel, as a result of their experiments and the experiments at Nitrate Plant No. 1.

As to Clause 11, the statement in the question is in direct conflict with the evidence of this witness, who states that Plant No. 1 was not a failure, but accomplished the purposes of its construction as an experimental plant and resulted in development of the process and solved the problem, and further states that it was constructed on a modified system and not strictly in accord with the Haber system and patents.

Further objection is made on the general ground that the question omits other material evidence in the record, including other material evidence of this witness, essential to a correct statement of the evidence upon which a hypothetical question can be predicated.

Mr. Kresel: Is it necessary that we argue this now, your Honor?

The Court: No. Do you desire to amend your question?

Mr. Kresel: No, your Honor; I do not.

Cross-Examination (Continued).

By Mr. Anderson:

XQ. 324. Dr. Parsons, turning to your report introduced in evidence as Defendant's Exhibit No. 177, I find on page 11 you state the advantages of the Haber system to be: (1) Cheap ammonia; (2) Ammonia in water free liquid condition, ready for immediate oxidation without purification; (3) availability of raw material, air, water and coal; (4) possibility of erecting comparatively small plants wherever needed; and (5) easy availability of product for transportation and for fertilizers. Those elements still exist, do they not?

A. They do not.

XQ. 325. Well, you so reported to the Government, did you not?

A. I so reported. Essentially, as to 1, 2, 3 and 5, I should not change the statement today. The possibility of erecting comparatively small plants I was mistaken about, referring to the Haber process per se.

XQ. 326. Assuming the validity of the Haber-Bosch patents, which you classified and introduced in evidence yesterday, those patents are of a broad scope, are they not?

A. Yes.

XQ. 327. It was a pioneer process, was it not?

A. Yes.

XQ. 328. The scope of these pioneer patents which I will call them for the sake of convenience, was broad enough to include many subsequent improvements, was it not?

A. It included everything they could think of, whether they were applicable or not.

XQ. 329. Is that not usual in patents of this kind?

A. To a certain extent, yes.

XQ. 330. You knew at the time that you testified on yesterday, I think, that the Atmospheric Nitrogen Company, which you have described, had taken out a license from The Chemical Foundation under the Haber patents which you introduced, did you not?

A. I do not think I so testified.

XQ. 331. I say, you knew it at the time you testified?

A. I have been so informed. I knew nothing about it.

XQ. 332. I read from your testimony on yesterday a statement that they had taken out licenses under the Haber patents?

A. I think they had. I was so told.

XQ. 333. Assuming these to be valid pioneer patents and as broad as you described, they afforded very material protection to any manufacturer in the United States, did they not?

Mr. Kresel: Protection for what?

Mr. Anderson: Protection as a manufacturer against claims for infringement or any other claims.

A. Yes.

XQ. 334. They would?

A. Assuming it.

XQ. 335. Yes, assuming they are valid. You knew as a matter of fact, did you not, when you testified on yesterday, that the Atmospheric Nitrogen Company was paying or had paid a royalty of $2,500 to begin with to The Chemical Foundation for the use of these patents, did you not?

A. I have no recollection of so testifying.

XQ. 336. But you did know it?

A. I did not know that they had paid a royalty of $2,500. I knew quite recently that they had taken out a license, but I did not know what the amount of that license was. I know nothing about its details.

XQ. 337. You know nothing about the details of the license?

A. No.

XQ. 338. In giving your answer to the question on yesterday, the hypothetical question, did you consider the statements contained in your report to the Government as to the cost of nitrogen?

A. I did.

XQ. 339. I mean the cost of nitrogen by the Haber process?

A. Yes, in Germany.

XQ. 340. Did you consider your statements given in the last report of April 30th, 1917, as to the cost in the United States based upon the letter which I showed you on yesterday?

A. By the General Chemical Company's process.

XQ. 341. Whatever the process was?

A. The General Chemical Company's process.

XQ. 342. Did you consider the statement contained in that letter and the report of April 30th, 1917, which you stated was based thereon?

A. Yes.

XQ. 343. Did you consider at that time your statement which I read to you yesterday in your testimony before one of the Committees, that the method of making pure hydrogen followed in the Haber German process and the so-called General Chemical Company process was basically the same?

A. Basically the same in reaction, yes, but not necessarily the same in process or patent.

XQ. 344. Did you consider the statement?

A. I considered it, yes, rather especially, because it is a rather important point.

XQ. 345. Did you consider in that connection your own evidence given on yesterday and the day before as to the efficiency of the present German catalyst?

A. I am not quite sure to what evidence you refer, Colonel. The present German catalyst is not nearly as efficient as the one that has been developed in America.

XQ. 346. Have you ever seen the present German catalyst?

A. No, I do not think I have, with any certainty. I have had material handed to me which was claimed to be a German catalyst and samples were brought back that were taken from the Oppau plant and were analyzed by the officers who were over there.

XQ. 347. Do you know that?

A. I was so told personally by the people who brought it.

XQ. 348. But you never have been in a German plant, have you?

A. I have not.

XQ. 349. And the only German catalyst that you ever got on the other side was a piece of iron that turned out afterwards had nothing to do with it?

A. I do not know whether it did or not, yet.

XQ. 350. You do not?

A. No. I think it is quite possible——

XQ. 351. I believe in the evidence that I read you on yesterday you stated that the Haber process was entirely successful in operation in Germany now?

A. Yes.

XQ. 352. In reply to the hypothetical question asked you on yesterday, you said that the patents in your opinion had no value whatever for manufacturing purposes. What do you mean by "manufacturing purposes"?

A. I mean that the patents had no value to any one in America who wanted to manufacture ammonia by the synthetic ammonia process; that there were much better methods of procedure which did not come under the patents, and that frequently in my use of the word "Haber" I have used it in a generic—

XQ. 353. I have asked you what you meant by "manufacturing purposes." I did not ask you to explain your former testimony.

THE COURT: Have you finished your answer?

THE WITNESS: I have not.

THE COURT: Do not refer to your previous evidence or attempt to explain it in this answer. You may otherwise complete your answer.

A. (continuing) I meant by that that there was nobody in America who knew how to operate the Haber patents; that the know-how was absolutely lacking so far as we were concerned, and that the Haber patents had been very largely superseded.

XQ. 354. Now, let us see. Have you ever yourself manufactured synthetic ammonia?

A. Yes.

XQ. 355. Where?

A. At Saltville, Virginia.

XQ. 356. From the Haber process?

A. No.

XQ. 357. From the General Chemical Company process?

A. No.

XQ. 358. Therefore you have never manufactured synthetic ammonia on the Haber process or the so-called modified Chemical Company process?

A. Not personally manufactured it, but I have been in an advisory capacity to most—

XQ. 358. (Continuing) I did not ask you——

Mr. Kresel: Let him finish his answer.

Mr. Anderson: If your Honor please, I am perfectly willing for the witness to finish, if he will answer my question and stop.

The Court: I think that was responsive.

A. (continuing)—of the operations that have been undertaken in America.

Mr. Anderson: I asked him if he had personally manufactured it. I did not ask him about his advisory capacity, because that takes me right back to the whole examination that was had on yesterday, to explain what his advisory capacity means and what it was. We went over that yesterday.

The Court: Strike it out.

Mr. Kresel: You mean, your honor strikes out that portion beginning with the word "but"?

The Court: Yes.

XQ. 359. According to your view, the Haber process would afford no protection and no value to a manufacturer in the United States.

THE COURT: You have been over that Colonel Anderson. I am going to ask you not to repeat.

MR. ANDERSON: All right, your Honor. I withdraw the question.

THE COURT: You put that identical question once before this morning.

XQ. 360. Now I will ask you as to the patents which you introduced on yesterday. After putting in the six classes which you described or classified, you were asked the question whether, in February and March, of 1918, it was possible for anyone in the United States skilled in the art to manufacture ammonia by simply following the processes described in the patents which were put in evidence, and you said it was not known in any other country except Germany. I assume, Dr. Parsons, you will admit that you are not familiar with what can be done in other countries; are you?

A. I think I am fairly, yes; as much as anyone could expect to be.

XQ. 361. Do you know of your own knowledge what England is doing today?

A. I do.

XQ. 362. Of your own knowledge?

A. Of my own knowledge.

XQ. 363. Have you been over there in the last year?

A. I was over there in 1922, and I have been in close contact with the experts that are handling the new plant just going up at Billingham, in England, and I know pretty intimately what they are doing there.

XQ. 364. Do you know of your own knowledge what France is doing under the contract which was made yesterday? Yes or no, please.

THE COURT: Just a minute.

Mr. Kresel: You mean "introduced yesterday"?

The Court: Won't you have that question read?

Mr. Anderson: "Made," I see.

XQ. 365. The contract that was introduced on yesterday.

A. Yes.

XQ. 366. Do you know of your own knowledge what France is doing under that contract; yes or no?

A. I have letters informing me as to what is going on, and direct reports from experts.

XQ. 367. I will ask you: Have you personally ever tried to manufacture synthetic ammonia under the fifty-eight patents which you introduced on yesterday?

Mr. Kresel: This question was asked less than ten minutes ago and answered.

The Court: I think this is slightly different, Mr. Kresel.

Mr. Kresel: Very well; I shall not press it.

Mr. Anderson: No, sir; dealing with an entirely different situation.

The Court: Will you read the question?

(XQ. 367 repeated as above recorded.)

A. I have not.

XQ. 368. I believe you stated on yesterday that so far as your knowledge went, the General Chemical Company was now making synthetic ammonia under their modified process, as you call it?

A. Yes.

XQ. 369. I will ask you, first, to take your Group No. 1, containing fourteen patents for the manufacture and purification of hydrogen, which you introduced on yesterday, and point out in detail the method of manufacture and purification of hydrogen as provided

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by those patents, and the deficiencies therein which in your view make it impossible to manufacture and produce hydrogen under those patents?

Mr. Kresel: I do not think, your Honor, that we should be asked to spend the time here in having this witness read from a lot of patents. The patents speak for themselves and can be read by the Court as well as by this witness. Therefore, I object to the question as immaterial and irrelevant, and as useless and as a waste of time.

Mr. Anderson: If your honor please, counsel took an entire day to examine this witness on direct and asked a very general question here to which I objected on the ground that it called for a conclusion which was not based upon a proper foundation, and undertook in that way to attack, if not the validity, as he said he was not attacking the validity, at least the usefulness of these patents. I am just as reluctant as anybody in the world to go into this subject. I am objecting to all this evidence as immaterial and irrelevant.

The Court: You mean on the ground that it does attack the validity of the patents?

Mr. Anderson: That would be the ground of estoppel. I object to it on the grounds stated in my motion and objection of yesterday, which I will not repeat; but it is immaterial and irrelevant in this case because the defendant itself is on the record admitting that these patents are of great value, and therefore, it cannot come on the record now and try to attack their value. It is utterly immaterial what these experts may think. This defendant is bound by this record, as it stands today, admitting these patents to be of very great value at the time they were bought. Therefore, we are brought here to try a series of infringement suits, in which we have been engaged now for a week, and there is promise of our being engaged in them a good deal longer. If the Government has got to meet that case, if your Honor please, I will have to meet it. Nobody hates it more than I do. It is not my fault, and I do not want to take up the time here; but I have a duty to perform, and I do not think I can abate that duty one jot or tittle and discharge my obligations to the Government.

Mr. Kresel: I thought, your Honor, we had agreed upon one thing, if upon no other, in this case, and that is that the question of the value of these patents was something that the defendant had a right to put in testimony about. I think on the very first day your Honor summarized our opposing contentions, and your Honor remarked that in so far as the Government's position was concerned, it recognized that the defendant had a right, and indeed it claimed that the defendant had the duty and the burden of showing the value of these patents. Does the Government now take the position that we have no right to put in evidence as to the value? The trouble is, your Honor that the position of the Government is shifted from time to time so quickly that we can hardly keep step with it.

Mr. Anderson: Counsel devoted a good deal of attention to the charge that the Government is shifting and is commenting upon it constantly. I think if counsel will go back over this record, he will find the Government's position has not changed an iota from the first day, and will not change from that which is stated in the Bill. I have stated in this record at least a half a dozen times that in my view as counsel (my personal view has nothing to do with it) the question of value in this case is absolutely immaterial. I have stated that. I have stated it for the reason that the present relationships of these parties, of buyer and seller, make this thing absolutely invalid and should be challenged by the Government if they had paid a hundred million dollars.

THE COURT: Let us test that, Colonel Anderson, because either you are wrong or I am laboring under a misapprehension. Do you not set forth inadequacy of value in your Bill?

MR. ANDERSON: I do, sir.

THE COURT: Do you not also set forth the other ground which you state?

MR. ANDERSON: I do. I do not think I am confined to one of them.

THE COURT: You stand on both of them?

MR. ANDERSON: I do. I stand on half a dozen here.

THE COURT: But my difficulty is this, Colonel Anderson—how you can contend, when you have set forth inadequacy of price as one of the grounds for setting this aside, that it is immaterial because you have set forth another ground.

MR. ANDERSON: For this reason: I contend that you will never reach it, and therefore, that the first proposition settles this case; but I do not think, as your honor does,—

THE COURT: We can settle this in just a moment. Do you now desire to amend your Bill, striking out all allegations with respect to inadequacy of price?

MR. ANDERSON: I do not, sir. I stand on every line of that Bill with the exception of the allegations that have been stricken out.

The Court: Then let me ask you another question: Do you still insist that the testimony with respect to the inadequacy of price is irrelevant and immaterial in this case?

Mr. Anderson: I said, in my view as counsel, this case will be settled by a legal principle before it reaches the question of inadequacy of price.

Mr. Kresel: But you are not answering the question.

Mr. Anderson: If your Honor please, I think I can answer your Honor's question without the assistance of counsel.

The Court: Go ahead.

Mr. Anderson: And I still think that that legal principle will control. But I have got to present evidence which will support any legal principle set up in that Bill. The Courts do not always agree with me and I must therefore present a case which will meet any legal view that can properly be raised with respect to this transaction; and therefore, I went into the question of value, although I stated my position clearly at that time. I went into the question of value to some extent. I also stated, I think, that the burden, if the question of value arose, was on the other side; and now that the question of value is raised,—

The Court: You raise it, Colonel Anderson.

Mr. Anderson: All right, sir, I am perfectly willing to raise it, and I do raise it. I will have to argue that question to your Honor when we get to final argument, and whatever your Honor's view is, why, of course, it may not be mine. What I am contending for now is that since counsel have asked the question as to whether or not these patents can be used in the United States, I am entitled to go into those patents and ask this witness to explain the details thereof and to explain the systems and variations therefrom. If we are going to try an infringement suit, we ought to do it.

THE COURT: We will only take just a moment longer; but let us see if we can expedite this case just a little bit.

MR. ANDERSON: Yes, sir, I will do my best, sir.

THE COURT: And I am sure I will have your assistance.

MR. ANDERSON: You certainly will, sir.

THE COURT: Is it disputed on the part of the Government that at the time of this sale there was exceedingly grave doubt of—let us call it the workability of these Haber patents, in the United States?

MR. ANDERSON: Is that disputed?

THE COURT: Yes.

MR. ANDERSON: Absolutely, yes, sir. There was no doubt, in our view, as to the workability of these patents, and one of the chief and moving causes for this whole transaction was to get control of these patents. There is no question about that.

THE COURT: Let me ask you one other question: Is it your contention that these patents have brought in any revenue to the Trade Commission or to the Chemical Foundation or that there has been any practical development under these patents in the United States until now?

MR. ANDERSON: Your Honor's question is a double one. I will answer the first half, first. The amount of revenue brought in—the matter is pretty clearly proved—is $2600 under these patents; but the owners of the patents practically are the licensees, and they are claiming to use a slightly modified process and are successfully operating under that process, which we believe to be an absolute infringement of the Haber patents; and nobody is going to inquire about it, because nobody is interested in inquiring. Therefore, of course, they reduce the value by reducing the revenue. That is simple.

Mr. Kresel: Is there any proof of that, your Honor?

Mr. Anderson: Well, we are not through with this case yet.

Mr. Kresel: Very well.

The Court: I agree with you, Colonel Anderson, clearly in this particular—that I did not believe we are going to reach this testimony that is now called for in deciding this case, but in carrying out our general rule I am going to let you take it.

Mr. Anderson: Yes, sir. I hate to take it, if the Court please; it is a most laborious task.

The Court: We will have to have evening sessions. There is no escape from that.

Mr. Kresel: May we have the question read now?

The Court: Yes, and the answer.

(XQ. 369 read as recorded above.)

Mr. Kresel: I will ask the Clerk to hand the patents to the witness. (Clerk complies.)

The Witness: We will be here a month, Colonel.

The Court: I beg your pardon?

The Witness: I say we may be here a month.

The Court: Take such time as you need.

A. With reference to Patent No. 1,196,101, it is apparently a simple—

XQ. 379. That is the first one, is it not?

A. It is, as handed to me here. This is a simple patent for treating gases in iron apparatus with a solution of cuprous chlorid containing such proportion of ammonia that the iron of the apparatus remains unattacked. I am not prepared to say, as would be the case with many of these other patents, that any one can not pass ammonia gas under these conditions through cuprous chlorid, but this patent, in this procedure, is not essential to the Haber Process, is in my opinion not used at all in Germany or in any other part of the world and would be of no value whatsoever in any plant in this country or in any other country.

XQ. 380. I will ask that the question be reread. Do you understand the question, Doctor?

A. I am supposed to try to tell, as I understand it, why these patents have no value and are not available for synthetic production of ammonia, and are not necessary, or by certain detail are inoperable so that they are not required for use in this country.

XQ. 381. I did not ask that question. I have not used the word "value." I asked you to point out scientifically and chemically why hydrogen gas could not be made under those hydrogen gas patents, and that is all. I did not ask you whether it could be made in Germany; I asked you the simple question why it could not be made in the United Sates and whether it could be made under those patents.

MR. ANDERSON: I move to strike out the preceding answer and to have it re-read, and ask that the witness answer it directly.

MR. KRESEL: It seems to me the answer was responsive.

The Court: It need not be stricken out. I will deny the motion.

What have counsel to say as to the appointment of a Master to take testimony with respect to the infringement of the Haber patents? Only four weeks were asked for the trial of this case and it is now in the seventh week, and if we are going into the trial of the infringement of the Haber patents, which is not a question, as I see it, of the duty of the Alien Property Custodian or Mr. Polk or the President of the United States to try these patent infringement cases before they acted with respect to the sale of these patents, it will have to be referred. It seems to me that a Court in the trial of this case can only determine this matter, not from a trial of the validity of these patents or of their theoretical ability to work, but on the theory that the issues under the circumstances of this case and even under the Bill are different. I shall not preclude the Government from insisting this is an infringement suit, particularly with respect to the Haber patents; but I am going to refer that to a Master as a separate and independent matter involved in this case if it is pressed. You may press it or not, Colonel, as you wish.

Mr. Anderson: I am not the slightest bit interesed in it, sir, except with respect to the answer of the witness on cross-examination, and I would like to call your Honor's attention to the record of yesterday, if your Honor will permit me, so you will understand why I am asking the question.

The Court: I am not criticizing you, Colonel Anderson, but I am saying I have not imposed any restrictions on counsel in this case, I have considered counsel's convenience only. I have reached the point now, since this case has run more than its necessity of purifying the hydrogen that was made by the process and that worked with very great difficulty.

There is another method which has been developed for the production of pure hydrogen on a large scale which is probably the cheapest of all for American conditions, and that is separating hydrogen from coal gas by fractionating the gases therein in the liquid condition, a method which gives very great weight to the Claude process and patents, and is the one that I have for some time had in mind in case a synthetic ammonia process was established in this country on a large scale. Both of those are entirely independent.

XQ. 384. I have only asked you what was the method followed in the United States. We will stop right there. And in addition, I have allowed a good deal of latitude on that feature.

Mr. Kresel: I thought you said there was a third one.

Mr. Anderson: No, he said there were two.

Mr. Kresel: No, he changed that.

The Witness: I corrected that. There are three.

Mr. Anderson: I am perfectly willing to have the methods employed in the United States, but I do not ask for a comparison.

A. I must have misunderstood your question, Colonel, because the Claude method is not now employed in the United States.

XQ. 385. I have asked you about the United States. Let us stop right there.

A. But it can be employed in the United States any time that it is wanted or needed. The second method that is now employed in the United States I am not quite certain about. I know its general reactions are essentially the same, basically the same, as those employed in Plant No. 1 at Sheffield. Just how it has been modified I do not know because I have not seen that portion of the plant; but I do know in general the reactions, if you wish to have them.

XQ. 386. The only one, then, that you know of in producing pure hydrogen in the United States and now employed in the United States is the electrolytic method that you have described?

A. The only one that I have actually personally seen operating, except that I did see the operation in Plant No. 1 at Muscle Shoals, which does not differ very greatly from the process that is now operated in Syracuse, as I understand it.

XQ. 387. But do you know what the process in Syracuse is?

A. I do not know the details of it. I know the basic reactions which are used.

XQ. 388. And that is substantially the same as that employed at Muscle Shoals?

A. So I understand. They made certain changes and modifications in order to get the gas of a proper purity, which they did not succeed entirely in doing at Sheffield.

XQ. 389. Is there any serious chemical difficulty in producing hydrogen of a pure character?

A. Not electrolytically. These are very great difficulties in obtaining it by the method which was employed at Plant No. 1 at Muscle Shoals.

XQ. 390. There was difficulty there?

A. They were considerably overcome by the operations which were carried on there as a part of the development of the plant.

XQ. 391. I believe you testified that the plant at Syracuse was operating perfectly from the day its wheels started to turn.

A. Yes.

XQ. 392. And they are producing pure hydrogen by substantially the process at Muscle Shoals, with slight modifications, as you are informed?

A. They are not producing pure hydrogen. I know of no way of getting really pure hydrogen except electrolytically. They are producing hydrogen which is pure enough to make ammonia, but not nearly as pure as they would like to have it.

XQ. 393. But by the electrolytic process you produce a pure hydrogen?

A. An extremely pure hydrogen. I would be glad to go into the details as far as I know them.

XQ. 394. I do not want them further. Can you point out, without referring to the patents—of your own knowledge, now, and without speaking from hearsay—the difference between the Haber process and the so-called chemical process used at Syracuse? I only want your own knowledge, Doctor; I do not want hearsay.

A. Do you mean that I have been to and worked the Haber process in the German plants and also been in the Chemical Company's plant and worked it? or have such informaion as—

XQ. 395. I mean the difference between the two.

Mr. Kresel: Do not interrupt him. What is the rest of your answer?

A. I am not trying to bring in any information, I am simply trying to understand what you mean by my own knowledge. I have never worked in a Haber plant, have never personally made synthetic ammonia in any plant, so of my own knowledge, so far as my own fingers are concerned, I can say no.

XQ. 395a. Do you know the process employed by the General Chemical Company at Syracuse today? or the Atmospheric Nitrogen Company?

A. In general, but not in detail. I have never been in their plant.

XQ. 396. Do you know the constitution or methods of making the catalysts used by the General Chemical Company?

A. I do not. That was carefully concealed to two people.

The Court: Do you mean disclosed to two people only?

The Witness: I mean that it was developed by one man and another man was allowed to know about it, and those two so far as I understand are the only people in the General Chemical Company who have any knowledge of how that catalyst is prepared or made.

XQ. 397. Doctor, have you ever read all of these Haber-Bosch patents, 58 of them, that have been introduced in evidence?

A. I have read every one of them, Colonel.

XQ. 398. When did you read them?

A. I read most of them within the last two weeks, shortly after your representative came to see me in Washington and wanted me to testify to their value.

Mr. Anderson: I move that the last part be stricken out. I asked him when he read them and he deliberately injects into it another statement.

The Court: It may be stricken out.

XQ. 399. When did you read the others?

A. There are no others. Just fifty-nine.

XQ. 400. You said you read most of them in the last two weeks. When did you read the others?

A. Oh, I have read some of the more important ones as they came out.

XQ. 401. All of them came out prior to 1917, did they not?

A. No. One of the most important ones came out in 1923.

XQ. 402. Then it was seized as an application and perfected by the Chemical Foundation; is that true?

A. That is right.

XQ. 403. Are there any others have come out since 1917?

A. I think so; quite a number of them. They were all open to the officers of the Government, however, during the war, for use.

XQ. 404. Did your answer in response to the question as to the possibility of use apply to all the patents in each of the groups, the six groups you defined?

A. Do you mean that I intended to say that there was no patent in the 59 that we might not have operated, whether valuable or not, in case we had desired to do so? I should have answered you no, because I think possibly there are some of them could be utilized if there was any reason to do it.

XQ. 405. The making of nitrogen is a perfectly simple process, is it not?

A. It is not a question of making nitrogen, it is simply a question of separating the gases which are present in the air.

XQ. 406. That is done through the liquid-air process?

A. Done through the liquid-air process, and is available to any one—done by a number of processes successfully.

XQ. 407. Have you ever undertaken to make a catalyst for the fixation of nitrogen yourself?

A. Not personally, no.

XQ. 408. Have you the patents of the General Chemical Company, to which you have referred?

Mr. Kresel: I have them right here.

Mr. Anderson: Are you going to offer them?

Mr. Kresel: I will be very glad to offer them now.

With your Honor's permission, at Colonel Anderson's suggestion, I now offer in evidence five United States letters patent, issued to various people there, which are known as the General Chemical Company patents. I shall not stop to describe them, but ask that each of them be given a separate exhibit number. There is a sixth of which I have not as yet been able to obtain a copy; and I ask leave now, as soon as I get the copy, to introduce it. It is No. 1,143,363.

The Court: To be supplied.

Mr. Kresel: If your Honor will permit, I ask that the Clerk assign an exhibit number thereto and I shall supply it.

The Court: Admitted.

Patent No. 1,141,947, received in evidence and marked "Defendant's Exhibit No. 240." (*See Patent Exhibit Book*.)

Patent No. 1,141,948, received in evidence and marked "Defendant's Exhibit No. 241." (*See Patent Exhibit Book*.)

Patent No. 1,151,537, received in evidence and marked "Defendant's Exhibit No. 242." (*See Patent Exhibit Book*.)

Patent No. 1,159,364, received in evidence and marked "Defendant's Exhibit No. 243." (*See Patent Exhibit Book*.)

Patent No. 1,159,365, received in evidence and marked "Defendant's Exhibit No. 244." (*See Patent Exhibit Book*.)

Patent No. 1,143,363, received in evidence and considered marked "Defendant's Exhibit No. 245." (*See Patent Exhibit Book.*)

Mr. Anderson: I want to ask one question which may come within the scope of your Honor's ruling, but in asking it, I do not mean to be violating the rule.

XQ. 409. I will ask you to take the patents which have just been introduced, generally styled the General Chemical Company patents, defendant's Exhibits 240 to 245 inclusive, to describe in detail the processes provided therein and distinguish the same from corresponding patents of the Haber-Bosch process, 58 of which were introduced by you on yesterday.

Mr. Kresel: May I make the suggestion, your Honor that that is a matter that any one can read. Both patents are in the same language and your Honor is as able to see the differences by reading them as Dr. Parsons.

Mr. Anderson: To which I reply, that they involve technical knowledge and terms which, since the witness has undertaken to testify that they are distinct, I am entitled to, but of course subject to the limitation of taking the evidence which your Honor has prescribed. I am entitled to have the witness show, so far as his knowledge goes and his opinion goes, the points where they differ; but I recognize that it may come within your Honor's ruling.

The Court: If you want this witness to state generally something that he may state in five or ten minutes, the difference beween the two processes, he may do so, but if you mean to elicit what your question calls for, a difference in detail, then the Master may take that answer.

Mr. Anderson: May I confer with Mr. Knight for a moment, sir?

The Court: Yes.

Mr. Anderson: (After consulting) I would ask the witness to give a short answer, if he can.

THE COURT: Won't you repeat the question and strike out the words "in detail?" What you want now are the essential differences.

MR. ANDERSON: Yes, and if that requires additional detailed information of the patents we will take it in the other way.

XQ. 410. Can you at this time, having the group of so-called Haber-Bosch patents, 58 of which you introduced, and the so-called General Chemical Co.'s patents, which have just been introduced, before you, state briefly the essential differences in process?

A. I never read the General Chemical Company patents, but if you wish me to refer to the patents, I shall have to read them first. I was acting simply on questions of process with them and any questions on their patents they referred to their own patent experts, and they have some of the best in America, and they reported that there was no conflict between the process which they were developing—

MR. ANDERSON: I move to strike that part out from the record.

THE COURT: Strike it out.

XQ. 411. I asked you if you could state the essential differences in process between the Haber-Bosch patents and the General Chemical Co. patents. You say you have never read the General Chemical Co. patents?

A. That is correct.

MR. ANDERSON: I ask that that be his answer and that all else be stricken from the record.

THE COURT: Motion granted.

XQ. 412. The next question is this, whether you can state what is the essential difference between the processes and methods described in the Haber-Bosch patents, 58 of which you have introduced, and the process employed by the General Chemical Company at Syracuse?

A. The basic difference is—

XQ. 413. First I will ask you whether you can state that difference?

A. I can.

XQ. 414. Then I will ask you to state the difference between the two, as you understand it?

A. The basic difference is that the General Chemical Company operates below 100 atmospheres pressure.

XQ. 415. Would you stop right there? That is the basic difference?

A. That is one of the basic differences.

XQ. 416. Do you know that of your own knowledge?

A. Do you mean if I have measured the gauges, etc.?

XQ. 417. Yes.

A. I have not.

XQ. 418. You do not know what the pressure is that they are operating under today?

A. I think I do, yes, as well as one honorable man can tell another.

XQ. 419. I am now asking you, Doctor, what you knew. The other honorable man I will ask when he comes. You do not know?

A. I have not operated the General Chemical Company's process or any other synthetic process anywhere.

XQ. 420. And you have never been in the General Chemical plant at Syracuse?

A. I have not.

XQ. 421. Then you can not answer the question, can you? I mean of your own knowledge?

A. Not on your basis, no.

Mr. Anderson: If your Honor please, reserving the right later, if we determine after conference that we desire it, to take the detailed evidence on the question of these patents which have been introduced this morning and such other evidence as may be necessary on that line of examination before a Master, if your Honor should so direct, I will not ask the witness any further questions.

Mr. Kresel: I think, sir, that we are entitled to know now whether the Government desires to proceed further before a Master with this witness, because that will have an effect upon any re-direct examination that we may desire to make.

The Court: Then we will suspend and give you an opportunity to confer, Colonel Anderson.

Mr. Anderson: If your Honor please, I think the right of re-direct examination before the Master would be the same as here, and I think we are entitled to a reasonable time in developing the evidence to see whether it is necssary for us to go to the trouble and expense of involving in this record a detailed examination of this question by this witness before a Master if your Honor is going to refer it to a Master, we could not take it now anyway. I suppose we could go on and conclude the case before the Court. I do not want to put the parties to the expense of taking up the time and doing the labor of a detailed examination of this evidence unless on careful reading of the testimony given, it seems to be an absolute necessity.

I do not see that anybody can be prejudiced if the matter is left open for re-direct just as fully before a Master as on cross-examination here. I have not made the slightest suggestion that it should be closed on either side. How can anybody be prejudiced by that condition?

Mr. Kresel: I can not see it that way. I am very sorry. I want any re-direct that I have of this witness to be had before the Court. Of course, if the redirect is to be based upon any testimony taken before a Master, I want to be advised about that before I proceed with my re-direct. If counsel desires some time to consider that question, I suggest that it ought to be sufficient time for counsel to determine that question after the noon recess. I shall ask your Honor to let Dr. Parsons wait over and when the Government makes up its mind as to what it wants to do, I shall then determine whether I want to ask any re-direct or no. I have another witness whom I can call. It will not delay anybody.

Mr. Anderson: I respectfully suggest, if your Honor please, if you Honor is going to refer this matter to a Master, counsel have the same right to re-direct before the Master as we would cross-examination and that will relate solely to the matters which your Honor will refer to the Master by your decree. We have not touched on any of these matters except in this general way and I can not see how anybody can be prejudiced by our having time to consider this record, as to whether that laborious task shall be gone into in the first place. Nor can I see why the re-direct could not be finished as far as the cross has gone.

The Court: I think you are right that far, Colonel Anderson, that the re-direct, so far as the cross-examination has gone, is a matter that should be gone into now. The re-direct on such questions as you may ask before the Master, if any, should be before the Master. So I will hear such questions in re-direct testimony as you have now, Mr. Kresel. But the time for determining whether there is to be any other cross-examination of this witness is now and not at an indefinite future and "now" may be extended until one o'clock Standard time. At that time I shall be glad to have your answer as to whether you want to cross-examine this witness further.

MR. ANDERSON: Very well, sir.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 422. Dr. Parsons, upon your cross-examination, Colonel Anderson asked you what your experience had been prior to your entry into the public service in 1911. You were not asked to state what your experiences were subsequent to that time. Will you state them, please?

MR. ANDERSON: I wish to note an objection. If I did not ask about it subsequent to that time, counsel did ask about it subsequent to that time in qualifying the witness. Therefore, there is no re-direct on that point.

THE COURT: Did you not go fully into that, Mr. Kresel?

MR. KRESEL: No, your Honor. The question on cross was directed to his experience with reference to industrial ventures, your Honor will recall.

THE COURT: It is that, you are asking him?

MR. KRESEL: That, entirely.

THE COURT: I did not understand the question.

MR. ANDERSON: I limited it to 1911. How can he re-open on direct examination when I limited it to 1911?

THE COURT: The experience prior to 1911, stopping there, is of no value.

Mr. Anderson: It may not have, but there is where it is limited.

Mr. Kresel: I withdraw the question.

The Court: If you inquire only as to the time when he had no experience and do not inquire as to the time when he had, it would be of no value.

Mr. Anderson: He was examined on direct, sir, on that.

Mr. Kresel: I withdraw the question.

RDQ. 423. Dr. Parsons, Colonel Anderson read to you a number of passages from records of testimony that you gave before various committees. You stated at one point that you thought the Haber process was the process of the future. Do you remember that?

A. Yes.

RDQ. 424. In saying that, did you refer to any particular synthetic ammonia process?

Mr. Anderson: I object on the ground that the witness can not explain his testimony.

Mr. Kresel: Can not explain it upon re-direct?

Mr. Anderson: No, sir.

The Court: Objection overruled. You may take the answer.

A. May I have the question again.

(RDQ. 424 repeated as recorded above.)

A. No, I referred to the Haber process generically, taking in all of its modifications; that is, the direct combination of nitrogen and hydrogen; that that procedure would be used in the preparation of fixed nitrogen.

RDQ. 425. When, therefore, you testified as read yesterday that the synthetic ammonia process can produce cheaper than any other process and that the Haber plants will be operating soon in the United

States, to which synthetic ammonia process were you referring?

The Court: Same objection; same ruling; and exception.

A. That testimony was testimony which I gave in the early part of 1919, if I remember correctly. That was at the time I was being consulted, asked to come in among the consultants of the General Chemical Company; and I had their plant and process at Syracuse in mind.

RDQ. 426. And was that the one you were referring to?

A. That is the one I was referring to, as the context will very plainly show.

RDQ. 427. Testimony was read to you and also, your attention was directed to your report made to the War Department with reference to costs as between the different processes. All those costs, according to your testimony, in that report, were estimated costs only?

A. Certainly.

RDQ. 428. You had not before you any figures as to actual costs, had you?

A. I had not. They were unobtainable anywhere. I should like to modify that, as that was a broad question. With reference to the cyanamid process, I did have actual figures of the plants in Europe.

RDQ. 429. But I mean the synthetic process?

A. No.

Mr. Anderson: Each of these questions, of course, is subject to the same objection.

The Court: Same objection and ruling.

RDQ. 430. You recall the letter that Colonel Anderson put in from the General Chemical Company to you?

A. I do.

RDQ. 431. Were the figures given there actual costs or estimated costs?

Mr. Anderson: I object. The letter speaks for itself. He can not say what the writer was giving. If they say "estimated," or whatever it is, the letter speaks for itself. He can not explain the letter.

The Court: What does the letter disclose?

Mr. Kresel: I withdraw the question.

"We herewith submit the figures asked for by Mr. Noyes (I am reading from Plaintiff's Exhibit 653). The cost of plant for producing 60,000 pounds of NH3 in 24 hours, built under normal conditions, we estimate to be $2,400,000. Of this $2,400,000, it is estimated that the H-N mixture plant will cost $1,600,000, and the ammonia plant proper $800,000. When this plant is operating under normal conditions, the manufacturing cost of H-N mixture and conversion and liquefication costs of the NH3 will be as follows," giving the figures.

Mr. Anderson: That is all right, if you want to argue it.

Mr. Kresel: I am not arguing it.

RDQ. 432. When you testified yesterday that you based your estimate of four cents a pound as contained in your report to the War Department, was it upon the estimate contained in that letter?

A. So far as the General Chemical Company process was concerned, yes.

RDQ. 433. Colonel Anderson read to you yesterday from page 2601 of volume 3 of Hearings before sub-committee on expenditures of the War Department, where you remember he directed your attention to a report made by a British Commission. You remember that? At page 2601 you said, "I have one of those reports and I think Colonel Joyes has one."

A. I know what you refer to, yes.

RDQ. 434. That was a report that gave an estimate of costs, was it not?

A. Yes.

RDQ. 435. Colonel Anderson did not read the following question to you, which immediately follows the one he did read, and I will read it to you now:

> "Dr. Parsons: I have made calculations and estimates myself which have been in the hands of other people, but I should prefer that you would use those published estimates which I think are essentially correct, although on the pre-war basis, but being on a pre-war basis for all processes, they are comparable although they should be increased if you are going to use them at the present time."

Did you give that testimony?

A. I did.

RDQ. 436. And was that true?

A. Correct.

RDQ. 437. And then the very next question put to you by Mr. Graham, referring to your report to the War Department.

> "In your first report after your trip to Europe, did you advise in favor of the Haber process?
>
> "Dr. Parsons: I did, yes.
>
> "Mr. Graham: At that time, was it possible for us to begin manufacture by that process in this country?
>
> "Dr. Parsons: No, sir.

And then you went on in the same paragraph:

> "I should modify perhaps what I said. I was told to report not on a war program, as it afterwards developed. My report was based on an estimated need of the War Department of 180,000 tons of nitric acid per year, which is definitely stated in my report. That is a very small amount as compared with that which they thought after-

wards they would require. They could easily have obtained that amount from material which they had in this country by oxidizing ammonia."

I want to stop there. Were there methods known in this country for oxidizing ammonia quite apart from any Haber patents?

A. There were.

RDQ. 438. In 1919?

A. Yes.

RDQ. 439. And at the time you made your report in 1917?

A. Yes.

RDQ. 440. I continue reading from this paragraph.

THE COURT: Have you much more?

MR. KRESEL: No, your Honor, I will just finish this paragraph.

RDQ. 440. (continuing):

"MR. GRAHAM: Was plant No. 1 at Sheffield a modification of the Haber process?

"DR. PARSONS: Yes, it was the General Chemical Company's process, which uses the same chemical reactions, but uses lower temperatures and which does not come under the Haber patents?"

Did you so testify?

A. I did.

MR. ANDERSON: Of course, this is being taken subject to the same objection.

THE COURT: It is all subject to objection, but I am not just sure that I understand the objection that you have in mind.

MR. ANDERSON: He is reading a matter now to this witness that he testified before, and asking him if he so testified—his own witness. He can ask his own witness about things; but I do not think he can read from testimony given at a former time and say, "Did you so testify?"

THE COURT: We have been over that.

MR. ANDERSON: That is what I meant.

THE COURT: Yes, I did not understand you. I think that objection is not well taken because this is offered as a connected portion of testimony already in.

MR. KRESEL: I have one more question to read from the hearings before the Sub-Committee of the House Committee on Appropriations of 1922, from which the witness was questioned.

RDQ. 441. I read the following question and answer at page 191:

"THE CHAIRMAN: If I recall correctly the statement of the Secretary of War when he appeared before the Sundry Civil Sub-Committee, it was to the effect that the Haber process plant at Sheffield was not an exact duplicate of the plant constructed in Germany, but there were some modifications.

"DOCTOR PARSONS: It not only is not a duplicate, but it has, except in general principles, very few similarities. It is run at less than one-half the pressure and they use a different catalyst which is the basis of the process. They do many things to work it."

Did you so testify?

A. I did.

MR. KRESEL: That is all.

MR. ANDERSON: Subject to the reservations stated, you may stand aside.

MR. KRESEL: That is all, Doctor Parsons.

(Witness excused.)

Charles L. Parsons resumes the stand.

Mr. Kresel: I understand it is up to the Government to say now whether they want to go ahead with this witness, or whether they want to go before a Master.

Mr. Anderson: Your Honor stated this morning that the determination as to these patents would only be taken before a Master, and that you would give us till 1 o'clock to consider whether we would go before a Master, as I understood it. My associates and myself have decided that in the present state of the record we do not not care to follow that before a Master.

The Court: Then you have no further questions?

Mr. Anderson: No, sir. I covered as far as I could the questions I thought I could cover before the Court under that ruling.

The Court: (To Witness) That is all.

The Witness: Your Honor, before leaving the chair, however, I do not feel that the whole truth regarding my testimony has been put before you, and I took oath that I would tell the truth, the whole truth, and nothing but the truth, and I should like to add this statement. (Showing paper.)

The Court: Will you submit it to counsel?

Mr. Kresel: What is it? Let me see it. (Witness hands paper to Mr. Kresel.)

Mr. Anderson: I am compelled, sir, to object to the addition of this testimony, which is nothing but an effort to explain the evidence.

The Court: I do not know what the statement is, of course.

By Mr. Kresel:

RDQ. 442. Doctor Parsons, do you desire to add anything to your testimony?

A. I do.

RDQ. 443. Please go ahead.

Mr. Anderson: I object, sir. If a specific question were asked, I could make an objection; but I do object to a witness being put on after full examination, direct, cross, and re-direct, and to his then being asked what he wishes to say. That will open the door to a speech.

The Court: What have you to suggest when a witness says that he feels he has not told the whole truth and that he wants to do so?

Mr. Anderson: It is for counsel who put the witness on the stand to ask him specific questions; but I do not think that opens the door for the witness to make any kind of statement on the record he sees fit.

The Court: No, it does not; but whether that statement must not be determined after he makes it rather than before is the question now confronting me.

Mr. Anderson: Yes, sir, and if there are any specific questions asked, to the end that I may reserve any rights I may have, if I am so advised, and in addition have the right of cross-examination, should that occasion arise—of course, that is in the discretion of the Court.

The Court: Yes, you would have that right. Then Mr. Kresel,—

Mr. Kresel: I can frame a question, your Honor, I think, that would be unobjectionable.

The Court: I was going to make this suggestion. You have heard the witness's statement and the witness has handed to you and to counsel for the plaintiff a paper containing that statement.

I ask you to propound to the witness such questions as will tend to elicit the facts therein stated.

Mr. Kresel: Yes, your Honor.

The Court: Rather than a general question. So that Colonel Anderson may have an opportunity to object to those questions if he so desires.

RDQ. 442. Dr. Parsons, in the statements made by you before the Congressional committees, from which extracts were read to you, I have noticed that you used the words "Haber Process" indiscriminately when you talked about the German Haber Process, when you talked about the General Chemical Haber Process, when you talked about the Claude Haber Process or the Claude synthetic process. Even I get confused about "Haber." I want you now to state to the Court what the fact is as to the use by you of the words "Haber Process?"

Mr. Anderson: If your Honor please, I have to make an objection, because of the fact that the use of "the Haber Process" by the witness at various times is taken in connection with the context and must be construed by the Court in the light of that context. To allow him now to undertake to change all his testimony by defining the "Haber Process" in a different way than the context indicates, would in my judgment not be proper. I do not think the question correctly states the evidence on that subject, and I think it would be very difficult to do it.

Mr. Kresel: I am not asking the witness to change any testimony.

The Witness: I have no desire to change any testimony.

Mr. Kresel: Will you answer the question?

The Court: Just a moment. Read the question to me. (RDQ. 179 read as recorded above.)

I think Colonel Anderson's objection is well taken to the question as put. I think, however, it will be proper to elicit from this witness the fact that was elicited from Professor White, namely, as to whether or not the words "Haber Process" are sometimes used generically as well as specifically.

Mr. Kresel: Yes. I thank your Honor.

The Court: If that be the fact. I do not know whether it is a fact or not except as it has been testified here.

Mr. Kresel: Before I put that question please permit me to put this one:

RDQ. 443. Doctor Parsons, I read to you from page 1109 of the Hearings before the Committee on Military Affairs of the House of Representatives, which is a portion of your statement made before that Committee in March, 1922, and which was read to you in part yesterday by Colonel Anderson. I read only two sentences. Speaking of the General Chemical Company, you said:

> "The General Chemical Company, in order to be free from the German patents, devised a process which worked at a pressure of 1500 pounds per square inch. In France Claude had devised a process which works at pressures greater than 300 atmospheres. He is working on a comparatively small scale, but successfully, in France. Otherwise those processes are much alike and they are often spoken of in the general term as the Haber process."

Do you remember making that statement?

A. I do.

RDQ. 444. Is that what you want to say here now?

A. That is essentially what I want to say.

Mr. Kresel: That is all.

The Court: Any re-cross examination?

Mr. Anderson: No, sir.

(Witness excused)

ALFRED H. WHITE.

Alfred H. White, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. What is your residence?

A. Ann Arbor, Michigan.

Q. 2. And your profession?

A. Chemical Engineer; Professor of Chemical Engineering at the University of Michigan.

Q. 3. How long have you been professor in Ann Arbor?

A. I started teaching at the University twenty-five years ago and have been promoted successively from instructor to—I have been Professor about ten years.

Q. 4. During the late war were you connected with the War Department?

A. I was on leave of absence from the University for two years and entered the Army, being called to active service as Captain on June 4, 1917, and remaining in active service until July 1, 1919.

Q. 5. And what positions did you hold during the war?

A. I was assigned at once to the office of the Chief of Ordnance in Washington, and after a very few weeks of preliminary duty was assigned to the Nitrogen-fixation work, and on the organization of the Nitrate Division was definitely assigned to it and remained there throughout the balance of the period till July 1, 1919.

Q. 6. When was the Nitrate Division organized?

A. The Nitrate Division was organized in late June or early July of 1917.

Q. 7. And was that a branch of the War Department?

A. It was.

Q. 8. Will you give the names of the officers who were members of that Division?

A. The Chief of the Division was Colonel J. W. Joyes, of the regular Army.

Q. 9. May I stop you there a minute? You were in Court yesterday morning?

A. Yes, sir.

Q. 10. And did you hear me introduce a statement or report made by Colonel Joyes?

A. Yes, sir.

Q. 11. Is that the same gentleman that you are now speaking about?

A. The same gentleman, yes, sir.

Q. 12. Very well. Will you proceed?

A. The Division grew to fairly large proportions. We had, I think, well over 100 officers.

Q. 13. I shall not ask you to stop to give the names of all; but Colonel Joyes was in command, was he?

A. Until he was relieved to go to Europe in, perhaps, May of 1919.

Q. 14. What was your particular position in that Division?

A. I was the first officer to report to that Division as the technical assistant to Colonel Joyes, and as the Division grew I was assigned as Chief of the Research Technical Section, which had charge of all investigations of processes of nitrogen-fixation, which advised upon the processes to be used in new plants, and which in general followed the processes as operated in the plants.

In addition to that, I had executive duties from time to time as ranking in the Division next to Colonel Joyes, and acting for him when he was away, and when

Colonel Joyes was relieved to go to Europe I was formally named Associate Chief of the Division.

I may add that I entered as Captain of the Ordnance Department in 1919, became Lieutenant-Colonel in January of 1918, and retained that rank until discharged.

Q. 15. Professor, in your academic work at the University is the subject of fixation of nitrogen one of the subjects on which you lecture?

A. Yes, sir. I have treated that among other subjects—oh, probably for fifteen years.

Q. 16. And I assume that you have studied the problem and the literature connected with it?

A. Yes, sir; I have always tried to keep in touch with that.

Q. 17. Professor, I shall not stop to ask you to describe the different methods of fixation of nitrogen, except the direct synthetic ammonia process, and if you will, I will ask you to describe that as briefly as possible.

A. I have had occasion to describe these processes before various Congressional committees, and to put it in rather brief form and if permitted, I would like to rather follow what I have followed on previous occasions.

The synthetic ammonia process was first devised by the Germans, with Professor Haber as the leading spirit, about 1909, and it was worked out on a commercial scale first in 1913.

The process is relatively simple in theory, but it is extraordinarily difficult from the engineering standpoint; so that it has been said, and I think rightly, to be the most difficult chemical engineering operation ever carried through to success. The process may be outlined as follows:

It is necessary to make a mixture of nitrogen and hydrogen, and these gases must be pure, or at least freed from certain impurities which frequently occur, and which are so poisonous that even hundredths of one per cent are very detrimental.

When these gases have been purified, they are heated, compressed to high pressure, and brought into combination by a mysterious catalyst which at best can only convert a rather small fraction of the total gases to ammonia.

Then this ammonia, so formed, must be removed and recovered. There are two common sources of hydrogen—the electrolytic, and the hydrogen which is formed in steam. Either of these processes may be used.

In the German process they started with steam, converted that into water-gas, by a well-known commercial reaction, took this water-gas, treated it with a large excess of steam and a lower temperature in a catalyst, and converted a good deal of that carbon monoxide to carbon dioxide and hydrogen. Passed it through an elaborate purifying train, still under pressure, and obtained the pure gases.

The difficulty in the synthesis of ammonia comes to a considerable degree from the difficulty with which nitrogen and hydrogen are made to combine. They do it only under pressure, and at the higher temperature, and it can only be carried out commercially with the aid of one of these catalysts which are kept so secret. But the whole train of procedure is extremely complicated. It is like a watch in one way. It is almost as delicate as a watch, and if there is an interruption at any one stage in the process, the whole work stops.

It is a dangerous operation because we are dealing with combustible gases at red heat and at high pressure, and if there is a leak, there is certain to be a fire, with high-pressure gases flaming out. It is a process which attacked the inventive resources of the Germans, backed by Government supervision, backed by Government aid, for the period of four years, from 1909 to 1913, before they achieved what they thought was commercial success; and I think it is more than a coincidence that Germany did not inaugurate the World War until about a year after they announced the successful development of this process.

Q. 18. Professor, when you appeared before the Committee on Agriculture and Forestry of the United States Senate, were you still in the war service?

A. I had resigned my commission, but was still employed by the War Department as consulting engineer, with occasional service.

Q. 19. At whose request did you appear and testify before this Committee?

A. I appeared at the request of the Chief of Ordnance.

Q. 20. Before the Committee you introduced as a portion of your statement or testimony four tables with reference to the world's production of fixed inorganic nitrogen, production of atmospheric fixed nitrogen, arrangement thereof by countries, showing the position of the United States in that list, and the domestic sources of inorganic fixed nitrogen. Are those tables correct?

A. Yes, sir, as of that date.

Q. 21. Of course, as of those dates. In one of the tables, Table IV, for instance, you arrange the production of atmospheric nitrogen according to the processes used, the Arc process, the Cyanamid process and the Haber process.

A. Yes, sir.

> Mr. Kresel: I am going to ask your Honor to permit me to introduce those statements. They are not very long. There are just a few figures in each; and instead of marking those in the book, I will ask to have them copied as a portion of the witness's testimony.

Mr. Anderson: No objection, sir, except my general objection to statements of that kind on yesterday, which I reserve.

Mr. Kresel: I will indicate them to the Stenographer as being Table I on page 41 of this volume of Hearing before the Committee on Agriculture and Forestry on S. 3390; Table II on page 41; Table III on page 43; and Table IV on page 43.

TABLE I—WORLD'S PRODUCTION OF FIXED INORGANIC NITROGEN

(Expressed in metric tons of nitrogen)

	1909	1913	1917	1920
Chilean nitrate	300,000	390,000	392,000	500,000
By-product ammonia	212,000	343,000	364,000	410,000
Atmospheric nitrogen:				
Cyanamid process	2,500	60,000	200,000	325,000
Arc and miscellaneous process	3,000	18,000	30,000	32,500
Haber process	.....	7,000	110,000	308,000
Total	517,500	818,000	1,096,000	1,575,000

TABLE II—WORLD'S PRODUCTION OF ATMOSPHERIC FIXED NITROGEN

(In metric tons of nitrogen)

Process	1909	1913	1917	1920*
Arc and miscellaneous	3,000	18,000	30,000	33,600
Cyanamid	2,500	60,000	200,000	325,000
Haber	.....	7,000	110,000	308,000
Total	5,500	85,000	340,000	666,600

*Estimated maximum possible production.

Details of the world's present installations and their present maximum capacity are given in Table III.

TABLE III

Country	Number of plants	Process	Estimated maximum capacity metric tons nitrogen
Germany	2	Haber	300,000
United States	1	do	8,000
Total	3		308,000
Germany	7	Cyanamid	120,000
Austria	2	do	22,000
France	9	do	58,000
Norway and Sweden	3	do	28,000
Italy	5	do	18,000
Switzerland	3	do	7,000
Canada	1	do	12,000
Japan	4	do	20,000
United States	1	do	40,000
Total	35		325,000
France	2	Arc and Miscellaneous	1,300
Norway and Sweden	2	do	30,000
Italy	2	do	1,200
Canada	1	do	800
United States	1	do	300
Total	8		33,600

TABLE IV—DOMESTIC SOURCES OF INORGANIC FIXED NITROGEN (MAXIMUM) IN 1920

(Expressed in metric tons of nitrogen)

Country	Population from atlas	By-products from coal	—Atmospheric Nitrogen—			Total	Tons nitrogen per million population
			Arc	Cyanamid	Haber		
Germany	65,000,000	150,000	......	300,000	300,000	570,000	8,760
Norway and Sweden	8,000,000	......	30,000	28,000	......	58,000	7,250
Great Britain	45,000,000	100,000	......	......	......	100,000	2,240
Canada	7,200,000	3,000	800	12,000	......	15,800	2,200
France	40,000,000	15,000	1,300	58,000	......	74,300	1,850
Switzerland	3,800,000	......	......	7,000	......	7,000	1,840
United States	103,500,000	105,000	300	40,000	8,000	153,300	1,480
Austria	51,000,000	10,000	......	22,000	......	32,000	630
Italy	35,000,000	3,000	1,200	18,000	......	22,200	630
Other countries	....	27,000	......	20,000	......	47,000	...
Total	....	413,000	33,600	325,000	308,000	1,079,600	.....

Q. 22. Besides the synthetic ammonia process, there was the cyanamid process?

A. Yes, sir.

Q. 23. Before our entry into the war was the cyanamid process one that had been known to work successfully?

A. Yes, it was much better known, much better developed than the synthetic ammonia process.

Q. 24. During the war did you have occasion to observe the operation of the General Chemical Company's process for synthetic nitrogen?

A. Yes, sir, the order to construct Nitrate Plant No. 1 was a definite order given to our Division and we proceeded to execute it. One of the early steps was to visit the experimental plant of the General Chemical Company at Laurel Hill, Long Island, New York, and see just what studies they had made and what attainment they had reached in the development of their process. This was done, I think, in August of 1917.

Q. 25. Who else accompanied you, if anyone?

A. Colonel Joyes and myself were the only two who went on that occasion.

Q. 26. By the way, may I inquire whether Colonel Joyes is still alive?

A. Colonel Joyes is still in the Regular Army service, yes, sir.

Q. 27. And do you know where he is stationed?

A. I think he is stationed at Governor's Island.

Q. 28. New York?

A. New York, yes.

Q. 29. You may proceed.

A. I was convinced that the process would be an extremely difficult one to transfer to a plant scale.

Q. 30. You mean after observing the experimental station?

A. After observing the experimental station—because of its complexity, and with the consent of the General Chemical Company we arranged to recruit a staff of younger men, chemists and chemical engineers, who should be stationed at the Laurel Hill Experimental Station and be trained in the operation of that process.

Q. 31. You mean younger men connected with the Army?

A. Younger officers, yes, sir. They were all commissioned as officers, assigned to the Laurel Hill plant, for the study of the process, and to be trained and to act as superintendents in the operation of the plant. That came under my general direction, and I received regular reports from that group of officers.

Q. 32. Do you remember when the building of Plant No. 1 at Sheffield, Alabama, was started?

A. I think it was about September of 1917.

Q. 33. And do you remember about when an attempt was made to produce?

A. The initial operation of that plant started in July of 1918, starting with the producer-gas plant, and I think that it was not till September of 1918 that it really had been worked through to the final synthetic stage and started to produce ammonia.

Q. 34. Did it?

A. It produced small amounts.

Q. 35. How much?

A. Well, it was in operation about five months after that time, and my recollection is that it produced in the five months about what it was scheduled to produce—from the first unit only; the first unit only was in operation—in that five months produced what it was scheduled to produce in about three days.

Q. 36. And when was it finally shut down, do you remember?

A. In January of 1919.

Q. 37. After your visit to the Laurel Hill Station, Long Island, when you say you became convinced that there would be difficulty in transferring it into a large process, what was done with reference to additional plants for the production of nitrogen?

A. It was, I think, in September, 1917, that our Division was advised by the Explosives Division of the Ordnance Department that there was call for a much larger amount of fixed nitrogen than Plant No. 1 could supply, even if Plant No. 1 could operate.

Q. 38. And then what was the next step?

A. I was convinced in my own mind that we could not rely upon the process used in Plant 1 as being one that could be developed during the probable length of the war, and would be a certain reliance. Therefore, I recommended that the Government proceed to erect a plant by the cyanamid process.

Q. 39. And was that recommendation followed?

A. Yes. There were a good many conferences, of course, but it was followed.

Q. 40. And was there a plant built?

A. That resulted in the construction of United States Nitrate Plant No. 2 at Muscle Shoals.

Q. 41. Was that plant successful?

A. That plant was very successful—well-designed.

Q. 42. During the war did the Government undertake to build other plants for the fixation of nitrogen, besides No. 2?

A. Yes, sir. In about December, 1919, I think, they advised us that we should provide another source of fixed nitrogen equal in capacity to the Muscle Shoals plant, and again I recommended the cyanamid process, and again that was adopted. On account of difficulties in providing the large electrical power units, there was considerable delay in the location of the next plant, and it was finally split and half was put at Toledo, Ohio, and part at Cincinnati, Ohio.

Q. 43. But both of them under the cyanamid process?

A. Both of them under the cyanamid process.

Q. 44. In February, March, and April, 1919, was there any plant in the United States that was operating and producing ammonia by the synthetic process?

A. Not that I know of.

Q. 45. Are you familiar with the so-called Haber patents that were introduced in evidence here yesterday?

A. Yes, sir.

Q. 46. You have read them?

A. Yes, sir.

Q. 47. You have studied them?

A. Yes, sir.

Q. 48. During the war in the performance of your duties did you have occasion to refer to them and to study them?

A. Yes, sir; some of them, anyway, because feeling as I did, that the process of the General Chemical Company was not well enough developed to be a certain reliance, I felt it necessary to supplement the knowledge of the General Chemical Company's staff with any information we could get from other sources. The patents of the Germans were, of course, open to us. We had also access to the confidential files of the Patent Office with regard to applications pending; and while I cannot say that I ever studied all of those patents at that time, we certainly tried to get all information we could out of them.

Q. 49. These German Haber patents do undertake to describe the process for the production of ammonia synthetically, do they not?

A. Yes, my only hesitation in saying "Yes" unqualifiedly is that they only describe certain portions—each one only describes a certain portion of the process, and the things which are of common scientific knowledge are, of course, not covered by patents.

Q. 50. Professor, if these patents, these pieces of paper, were available to the Government, as you say, during the war, and to others, why is it that the German method of producing ammonia synthetically, which in so far as has been shown was successful in Germany, was not adopted here?

A. We lacked what we usually call the know-how of the process, and we lacked the engineering details.

Q. 51. Won't you please, with the Court's permission, enlarge somewhat on that? Just what do you mean by saying that you lacked the know-how, and what was the engineering information that you lacked?

A. Of course, a patent is not really an invention. It is merely the title to an invention. And although a patent makes considerable disclosure, it does not tell the whole story.

If I may illustrate by something else of more general knowledge to us all: Let us assume that the gasoline automobile was developed in Germany secretly; that in this country no one had ever seen an automobile; that the only information which we knew of the automobile came from a series of patents, which I may enumerate as something of this sort:

A carburetor; a device for mixing gasoline and air in explosive proportions, illustrated by a line drawing; an engine, consisting of a number of internal combustion cylinders connected to a single crankshaft, again illustrated by a simple line drawing; a system of gears for changing the rate of speed of the engine shaft to the main driving shaft, again with a simple sketch; a clutch, and so forth.

Now, all our information is contained in those patents; and now, in an emergency we are asked to produce on rather short notice a modern automobile. That gives some idea to my mind of the difference between a system of patents and the complete knowledge required to convert those patents into a working operation.

Q. 52. You spoke of lack of engineering knowledge. What was that?

A. These processes for the direct synthesis of ammonia are all alike, in that they use temperatures which are either a dull red heat or nearly a red heat, and use pressures which are high, that is, I do not think any of them work under ten times the pressure of an ordinary steam boiler, and some of them work at pressures of over a hundred times that of an ordinary steam boiler.

When making equipment to handle these gases, it is necessary to use very great care to prevent leaks and we find that many metals deteriorate under the action of these gases and corrode or become brittle and break. The volume of gases is really very large, and the plant is a tremendously complicated thing.

Q. 53. When you speak of the volume of gas; could you illustrate it?

A. If we are to make one ton of ammonia, we have to start with—

Q. 54. You mean by the synthetic process; that is what you are now talking about?

A. By the synthetic process, yes—by this direct synthetic process—we must start with about 100,000 cubic feet of nitrogen and hydrogen.

Now, perhaps that does not mean so much to the audience, but if I can assume that this room is twenty feet high and thirty feet wide and forty feet long, I have a cubic capacity of about 24,000 feet, and it would mean that to make one ton of ammonia by this process it would be necessary to have four such rooms filled with gas. This gas would have to be compressed to a pressure of certainly over 1,000 pounds, to the square inch, and it would have to be purified in part while under that pressure; it would have to be heated to dull redness, and passed through several different chambers under this temperature and pressure; and after coming out of this system, even with a pretty good catalyst, it would not carry much over five per cent ammonia, and that would mean that something like ten per cent of the total gas had been converted.

In order to recover this ammonia, it is necessary to cool this gas and remove the ammonia by chilling or by scrubbing with water, and then it is necessary to take the balance of the gas, in the plants of the German operators, anyway, and bring it round again, heat it up to redness again, and although they add more gas each time in effect, in order to get that ton of ammonia you would have to circulate this gas ten times through the system in order to get the one ton of ammonia, heating it up to a red heat each time and then by the German process cooling down to a temperature—well, of about 30 degrees below zero Fahrenheit each time.

Q. 55. Professor, I am going to ask you if you will describe the machinery that is used in this process.

THE COURT: Before doing that, we will take the five-minute intermission.

(Whereupon a short recess was taken by direction of the Court.)

(Q. 55 repeated as above recorded.)

A. The process of manufacture of synthetic ammonia, as described, as used in the German plant, started with water-gas by a process which is well known and standard and easily obtained.

The first stage of the process of purification was at first not under pressure, but called for treatment of this gas with really a very large amount of steam, which added materially to the expense and difficulty, and the gases passed over a special catalyst, which is not so difficult or mysterious, and at carefully controlled temperatures, and to prevent the temperature from dropping it was either necessary to use heat-regenerators or to introduce some air for combustion into this process, or to do both, and the temperature had to be carefully controlled, and these cylinders were probably five or six feet—four feet in diameter, and twelve or fourteen feet high, each of them, and a single unit would have perhaps seven or eight of those in series, gases passing through them all.

In this process the gases coming out of this purification process would have a good deal of carbon dioxide, which now must be removed, and to do that the gases were compressed to a pressure of about 1400 pounds and cooled, and then passed through a tower which in the German plant, according to my recollection, according to the descriptions furnished by the German plants, was perhaps about forty feet high, and the water dissolved out a good deal of this carbon dioxide, and when it came out it was a sort of soda-water physically, and the gases were then not pure enough; and then they were passed through a solution of caustic soda which worked at a temperature of, I think, about 250 degrees Centigrade.

It was not under pressure and it was a strong solution, and any leak in the apparatus under that pressure would not only shoot combustible gas out, but also very caustic liquid; and that would take out most of the carbon monoxide and all of the carbon dioxide.

Then the gas, according to the German process, would be cooled and would be passed through what we usually call copper scrubbers, where there was a copper solution circulated, and that had to be cold, and these were again large vessels of about the size we have discussed, and the gases still under pressure, and it may have been raised during this period from 1400 pounds to 3,000 pounds.

Then the gases still were—well, they ought to have been pretty nearly purified enough by this time; but depending on the catalyst used, it might have been necessary to dry them, absolutely, completely; and under those circumstances they would pass through another train of equipment, still under pressure, to dry the gases.

Then they would be heated, and in order to economize heat they were passed through heat-interchangers, and since these vessels were running at a red heat, and steel is made weak and embrittled by these gases, and so explosions are liable to result, these vessels had to be made especially strong.

Then the gases coming out were passed through a refrigerating system—I am speaking still of the German plants—and in this refrigerating system, the ammonia was liquefied, and most of it was separated in the liquid form, and then the gases were passed back through a circulating pump back into the pure gases before they entered the regenerator; and so the system went round and round.

Q. 56. Was there more than one catalyst used in the process?

A. There were two distinct types of catalyst. In the purification of hydrogen there is one type of catalyst, and in the synthesis of ammonia there is a distinctly different type of catalyst.

Q. 57. Were there among these German patents, patents covering catalysts?

A. Yes, sir.

Q. 58. Will you tell us something about the description in the patents with reference to catalysts?

A. There are a number of different patents referring to catalysts and there are a large variety of things claimed as acting as catalysts. In the ammonia synthesis there are, I think, something like fifty different chemical elements specified as acting in one way or another catalytically.

Q. 59. Professor White, during the early part of 1919 and for a year prior thereto, and since that time, have you kept yourself informed of the market price for ammonia in the United States?

A. Yes, sir, to a reasonable degree.

Q. 60. And could you give us the average per pound at which ammonia was selling in the United States?

A. During what period?

Q. 61. 1919 and, say, today?

A. There was a very inflated period right there at the close of the war, but when the drop came after the war ammonia fell to about ten cents a pound and has run along somewhere near there since.

Q. 62. What is sulphate of ammonia?

A. Sulphate of ammonia is a salt made by combining ammonia with sulphuric acid, and is the material which is very largely used in fertilizer.

Q. 63. What has been the average price of sulphate of ammonia within the past four or five years?

A. Let us see. It is running now about $75 a ton and—oh, $65 to $75.

Q. 64. And per pound it would be about what?

A. That is three to three and a quarter cents.

Q. 65. Per pound?

A. Per pound; yes, sir.

Q. 66. Have you had occasion to see the summarized costs per ton of ammonia, of a one hundred atmosphere plant, as shown at page 128 of Defendant's Exhibit 140, the result being that the cost per pound from water gas hydrogen by the synthetic process would be eleven cents or a little over, per pound?

A. Yes, sir.

Q. 67. And from the electrolytic hydrogen it would be 10.7 cents per pound?

A. Yes.

Q. 68. I call your attention to this calculation or summary of costs. The second item there is investment per annual ton of $500. Do you find there any allowance made for working capital or starting-up expense?

Mr. Anderson: May I ask, if your Honor please, the purpose of counsel?

Mr. Kresel: Yes.

Mr. Anderson: Is it to attack their own statement that they introduce in evidence?

Mr. Kresel: No, certainly not. I would not undertake to attack this official document.

The Court: What is the specific objection, Colonel Anderson—or what is the particular purpose, first, Mr. Kresel?

Mr. Kresel: Your Honor, the calculation made by the Government resulting in this eleven cents a pound does not take into consideration any allowance for capital or starting-up expense. The question that I am putting to this witness is going to be based on that additional allowance, and I am simply calling attention to the fact.

The Court: And you are going to ask him in a question hereafter to be put, to predicate his opinion upon—

Mr. Kresel: An additional element in addition to what is contained in the report. I am not contradicting the report in the slightest.

Mr. Anderson: In the second place, I state the report speaks for itself; if it does not contain working capital, it does not contain working capital; if it does, it does. Again, it is not a report prepared by the Government, but is a report prepared by Mr. Norton.

MR. KRESEL: By whom?

MR. ANDERSON: Mr. Norton, I think, isn't it?

MR. KRESEL: Not at all. This is the report made by the Nitrate Division, Ordnance Office, War Department, assisted by the Fixed Nitrogen Research Laboratory, Department of Agriculture.

THE COURT: I think the question is an ultimate question, and probably might not be valid, but inasmuch as it is merely inducement to a subsequent question I think it may be put and the answer taken.

A. If I remember the question, the answer is no working capital is included in that estimate.

Q. 69. Professor, this $500 investment in the summarized costs, given in this volume, is per annual ton. I am going to ask you to assume that a plant to produce 10,000 tons of ammonia was being considered. Then we would start with an investment of $5,000,000 according to these figures.

A. That is right.

Q. 70. In putting up such a plant what would be the requirement for working capital and starting up expenses, approximately?

A. I should put it at about another million; about 20 per cent of the other.

Q. 71. What would be a minimum of fair return on an investment in this sort of a project; I mean by percentage?

A. I don't believe that any commercial manufacturer would go into any operation that he could not get at least ten per cent on. Most of them would want fifteen, on account of the commercial uncertainties.

Q. 72. Let us take ten per cent, then. On an investment, then, of $6,000,000 there would be a ten per cent profit, or $600,000?

A. $600,000; yes sir.

Q. 73. And assuming a plant which produced 10,000 tons of ammonia, that would be how much per ton?

A. That is $60 per ton of ammonia, or three cents per pound.

Q. 74. So that if you assume someone going into the manufacture of synthetic ammonia by the process described here, upon the figures given by the Government in this publication, eleven cents per pound, if you add thereto a profit of ten per cent for the investment—which is not included here at all, no profit being included—it would bring the cost per pound of ammonia produced to what?

A. 14.1 cents by the water gas process and 13.7 by the electrolytic process.

Q. 75. Professor, I wish you would listen to this question attentively. Basing your answer to this question upon your experience and your knowledge of the development of the art of fixing nitrogen, your knowledge of the U. S. Haber patents which have been put in evidence; the fact that the General Chemical Co. had developed in the United States a new direct synthetic ammonia process under United States letters patent now in evidence; the fact that the Claude direct synthetic ammonia process had been or was being developed in France; the lack of information or the know-how that you have described, showing how the processes covered by the United States Haber patents could be carried out in the United States; the fact that there were other methods of fixing nitrogen such as the arc, the cyanamid and the cyanide processes; the fact that the cost of producing ammonia by the German Haber process in the United States, according to the statement of Colonel Joyes, would have been approximately 16 1-2 cents per pound in the United States and higher than the cost of production by the cyanamid process; the fact that the cost of producing ammonia by the General Chemical process was according to the report of the Ordnance Department and the Fixed Nitrogen Research Laboratory, at least eleven cents without making any allowance for capital and starting-up expenses, and with no allowance for any profit at all; the fact that the cyanamid method or process was well known and had for a number of years been commercially successful; the fact that the production by the direct synthetic ammonia process would necessarily come into competition in the United States with the production of the cyanamid process and the production from by-product coke ovens and with Chilean nitrates; taking into consideration the lack of skilled personnel to operate under the Haber patents in the United States even if the information as to how the processes described therein could be successfully carried out had been available; the fact that outside of Germany there was no plant anywhere in the world producing ammonia by the direct synthetic ammonia process described in the German patents, and that the only plant that had been built in the United States, to wit., Plant No. 1, at Sheffield, Alabama, using the synthetic ammonia process developed by the General Chemical Company, was not a success—what in your opinion was the value of the Haber patents in the United States in the months of February, March and April, 1919?

Mr. Anderson: The same objection as to the former question.

The Court: You may state your specific objections later in the day.

Mr. Anderson: Yes, sir. I make the same objections to that question that I specified to the question this morning.

The Court: The same specific objection.

Mr. Anderson: The same specific objection, in addition to the general objections we are reserving to all this evidence. There was one further point which occurred to me when hearing the question read which has gone from my mind. Anyhow, I will make those same specific objections.

The Court: If it occurs to you again you may state it. The question will be answered.

A. They would have what is sometimes called a nuisance value, a guarantee against legal proceedings for infringement under these patents. They might be called a legal lightning rod.

Q. 76. A legal what?

A. A legal lightning rod. But their actual value to a manufacturer contemplating going into the synthetic ammonia business would be nominal and certainly very small.

Q. 77. Would you care to say, with reference to the business man who was contemplating putting millions of dollars into this business, what that nominal value would be?

A. No, I do not believe so. I would have to know just what process he was planning to operate under before giving him any advice.

Mr. Kresel: You may examine.

The Court: May I ask two questions before you cross-examine.

Mr. Anderson: Yes, sir.

The Court: Do I understand the cyanamid process is not involved in the 58 Haber patents here in issue?

Mr. Kresel: Not at all, sir.

The Court: Do I understand you that Plant No. 1 at Sheffield, Alabama was a synthetic process within or without the 58 Haber patents?

Mr. Kresel: Without the Haber patents. It was under the General Chemical process.

The Court: And do I understand it is your contention that that plant was a success or a failure?

Mr. Kresel: A failure, according to the official statement.

The Court: Is it your contention that the process involved in the Plant No. 1 at Sheffield, Alabama was a better process—I do not use the word "improved" process, but a better process—than the German process, the German-Haber process.

Mr. Kresel: Well, insofar as I know anything about it, your Honor, I do not understand that the Haber process was sufficiently well understood here for anybody to be able to say which was better.

Mr. Anderson: Your Honor's questions were directed to counsel for the defendant and not to me?

The Court: Yes. I understand your contentions, but I did not understand Mr. Kresel's.

Cross-Examination.

By Mr. Anderson:

XQ. 78. Colonel White, would you define a little more definitely what you mean by nuisance value?

A. I can not attempt to give any legal definition because I am not a lawyer, but my own understanding of that is, as used by engineers and manufacturers that it is a value which adheres to them because they are relieved of some sort of nuisance. If you can avoid some sort of a nuisance through a certain form of payment or acquirement of a right, you say that has a nuisance value.

The Court: You mean insurance against annoyance?

The Witness: Insurance against annoyance, yes, sir, that is better.

XQ. 79. Is it not a fact that a great many patents are purchased by manufacturers in the practice of business that in fact are never used at all?

A. I think so.

XQ. 80. And is it not a fact that they frequently pay very large sums for patents that are in the nature of basic or pioneer patents, to the end that they may use the improvements thereon freely?

A. I believe that is true, too.

XQ. 81. I think you said in your most interesting statement on direct examination that Haber and Bosch, whose patents have been put in evidence here, were the pioneers in this great development of the synthetic process of making ammonia?

A. They are the pioneers in the commercial development, undoubtedly.

XQ. 82. If I recall correctly, Professor White, at some time in your former testimony, to which I will not refer unless necessary, you stated that their achievements in this regard constituted one of the great monuments to their ingenuity and skill?

A. That is right.

XQ. 83. And you so regard it still, do you not?

A. I do still.

XQ. 84. You spoke of the know-how. The idea that I got from your description was that even in the case of your illustration of the automobile, where you had the basic idea set forth in the paper, or the direction to you, it was necessary to have certain experience in the actual application of the idea to get a commercial result. Is that it?

Mr. Kresel: Not experience. Information.

Mr. Anderson: Well, now, Mr. Kresel—

Mr. Kresel: But, if your Honor please, I do not think that is quite proper.

Mr. Anderson: If your Honor please, I think I can examine this witness without the aid of counsel.

Mr. Kresel: You can examine without my aid, but you can not examine him and state a fact which the witness did not say. I do not mean that you purposely did that.

Mr. Anderson: This is a very able gentleman, and I think if I misstate it he will correct me.

The Court: I will have the question read. Is there an objection pressed here—or is there nothing before me?

Mr. Kresel: Your Honor, I object to the question upon the ground that it does not state correctly—and I do not mean any reflection upon Colonel Anderson—the testimony of the witness.

The Court: Is the question pressed?

Mr. Anderson: I will withdraw the question and put it another way.

XQ. 85. Professor White, you did not define the expression "know-how" quite as clearly to me as is necessary for me to get definitely your limitations. Do I understand by that you mean where you had a direction to do a certain thing, a written direction, a certain amount of experience in the application of that direction would be necessary in order to accomplish a manufacturing result in a complicated manufacturing or engineering problem?

A. No, I do not mean that altogether. A certain amount of experience may be necessary, but there is also involved the inference that an element is lacking in the original directions.

XQ. 86. If you had a complete direction, complete as an idea, as a laboratory idea, involving the complicated mechanical and engineering problems which you have indicated in this process, would you not have to have men of experience in dealing with those problems, to work it commercially?

A. Yes, sir.

XQ. 87. Is it not true that in these chemical and especially complicated organic chemical processes which are patented, the patents are usually gotten out on laboratory experience?

A. I think so.

XQ. 88. And so far as you know the patents, both German and American, which have been put in here, are based on laboratory experience, are they not?

A. Apparently.

XQ. 89. The original patents, in any event, are based on that?

A. The earlier patents, you mean.

XQ. 90. The earlier patents. And is it not your experience as a chemical engineer that the application of information thus developed in laboratory experience, to a larger industrial or commercial problem frequently involves a good many difficulties and modifications from the laboratory results?

A. Usually does.

XQ. 91. It usually does, yes. And the more complicated the chemical and engineering problems involved the greater the proportion of variation from actual laboratory test necessary to make it a commercial proposition on a large scale; is that not true?

A. That is usually correct, yes.

XQ. 92. In your description of the mechanical processes through which these gases were passed, or mechanical and chemical combined, in order to produce ammonia, I understood you were describing the processes in the German plant?

A. Yes, sir.

XQ. 93. I think you stated that throughout; and on the German Haber-Bosch process, so-called.

A. Yes, sir.

XQ. 94. You have not actually been in any of those plants, have you, Professor?

A. German plants?

XQ. 95. Yes.

A. No, sir.

XQ. 96. Your description was based on the study of these patents and their processes, was it?

A. Not so much on the study of the patents as upon articles which have appeared in the engineering press and things which are now matters of public knowledge.

XQ. 97. Colonel, you practice your profession as a consulting chemical engineer, do you not?

A. Yes, sir.

XQ. 98. Would you mind me asking if you are connected with any of the companies interested in The Chemical Foundation in that capacity? I do not mean to reflect upon your evidence in the slightest in saying that.

A. Not that I know of. Do you mean who have taken licenses under The Chemical Foundation?

XQ. 99. Well, that would be a rather general statement.

A. It would.

XQ. 100. I did not want to ask you to call off the names of your clients, any more than I would ask a lawyer; but you act in a consulting capacity to a number of chemical and dye plants, do you not?

A. Not of any dye plants, but chemical plants.

XQ. 101. The large chemical manufacturers of the country?

A. Yes.

XQ. 102. I think that is all I want to ask you about that. I do not want to ask you to disclose them.

The Court: But that will not help.

Mr. Kresel: With that suggestion, your Honor, I do not think it is proper to leave it there. I am going to inquire who they are.

The Court: Unless some of those plants are licensees or have become stockholders of the defendant company. That is one thing. But if he leaves it where it is—

Mr. Anderson: I recognize it.

XQ. 103. Will you please state them, if you do not mind.

A. Just what is your question?

XQ. 104. The companies with which you have been connected or have been with in the last two years——

A. Dealing with nitrogen fixation?

XQ. 104A. No, on any chemical subject.

A. The Air Reduction Company of New York, the Nitrogen Corporation of Providence, Rhode Island, the New York & Pennsylvania Company of New York, the Trust Con. Laboratories of Detroit, the By-Products Chemical Company—I am not sure whether that is a corporation or not—of Wisconsin. That is all at present.

Mr. Kresel: None of whom, your Honor, is either a stockholder or a licensee of our company.

Mr. Anderson: That will be a question for argument.

Mr. Kresel: How can there be argument on that?

The Court: They either are or are not.

Mr. Anderson: They either are or are not, but I am not going to stop to look at the list of stockholders and underwriters now.

Mr. Kresel: But to make the suggestion to this witness—I am not attacking your credibility, but tell me whom you are working for——

THE COURT: Do you happen to identify these as stockholders or licensees?

MR. ANDERSON: I have not the slightest idea who the stockholders are and I could not possibly carry it in my mind. There is a list in the record.

THE COURT: Unless you point them out to me hereafter, I shall assume they are not.

MR. ANDERSON: Of course, I cannot imagine, your Honor, that you would take the slightest notice of it unless I brought out some connection between the two. If the record enables me to do it, I will; and if it does not, I won't.

XQ. 105. Colonel White, could you undertake to point out the essential differences, if any, between the so-called Haber-Bosch process of producing synthetic ammonia, covered by the 58 patents in evidence and the so-called General Chemical Process now claimed to be in use by that company? I mean, can you do that?

THE COURT: That calls for a yes or no answer, with modifications, if necessary.

A. Yes, in a general way.

XQ. 106. You can in a general way?

A. Yes.

XQ. 107. Then I will ask you: Do you know just what process is being applied by the General Chemical Company at the present time at Syracuse?

A. No, I have no knowledge of anything since the war; since July of 1919.

XQ. 108. So that your distinction between the two processes would have to be applied, I take it, to the processes used at Nitrate Plant No. L and the Haber-Bosch process?

A. Yes, sir.

XQ. 109. Now I would be interested to have your line of distinction drawn between the two processes; the essential chemical and engineering differences?

A. Before I answer that question, Colonel Anderson, I would like to state the conditions under which I learned of the General Chemical Company process and ask the Court how far I may use such knowledge.

XQ. 110. You do not have to do that because if you learned it confidentially, I am not going to ask you to do it.

A. My knowledge of the processes of the General Chemical Company was acquired in confidence as an officer of the army.

Mr. Anderson: Then I withdraw any question of that kind under those circumstances.

Mr. Kresel: You are perfectly willing to give the information?

The Witness: I am perfectly willing to give the information, if I am released from the pledge of secrecy.

Mr. Kresel: The Government can release you.

Mr. Anderson: I do not think the Government can relieve him if he acquired it from the General Chemical Company.

The Court: That is for the Government itself to determine.

Mr. Anderson: If he acquired it from the General Chemical Company?

Mr. Kresel: Not from the Chemical Company; he did not say that.

The Court: I will hear Colonel Anderson, and then I will hear you, Mr. Kresel.

Mr. Anderson: Yes, I would greatly like to complete my statement. It is my view, sir, that if he as an officer of the Government acquired information from the General Chemical Company under the seal of confidence of his official position, that the Government itself is bound to observe that confidence unless it is released by somebody very much higher than myself. Therefore, I withdraw the question.

Mr. Kresel: Now then—consistency! They produce here the General Chemical Company's letter, which was given to Dr. Parsons, as a report of the War Department, in the strictest of confidence. That is one thing. When this gentleman says that he has the information which he gained, not from the General Chemical Company, but from Plant No. 1, as an officer of the army, because they know it is going to hurt them, they do not want it and they plead that it was obtained from the General Chemical Company, when the witness has not said any such thing.

The Court: There is no question before me.

Mr. Anderson: If your Honor please, I desire to make just a statement in reply, with your Honor's permission. In the first place, the letter to Dr. Parsons was not marked "Confidential." It was not a confidential communication, but was taken from the general files of the War Department. The substance and the results of the letter and the details in the letter are in an official report introduced by the defendant itself.

In the second place, if I am inconsistent, I am sorry. I recognize I am one of the lowest of the servants of the people in the United States, including counsel himself as a citizen, and shall be sorry to incur his disapproval, but I shall try to stand it in serving the other 110,000,000.

XQ. 111. Now, Doctor, I would like to ask you one other question. As I understand, doctor, Nitrate Plant No. 1 did in fact produce synthetic ammonia?

A. Yes, sir.

XQ. 112. It did not produce enough, in the view of yourself and other experts of the Government, to make it a commercially successful proposition as then operated or designed, is that true?

A. That is correct.

XQ. 113. I think it appears somewhere in the testimony here that it altogether produced something around 7,500 tons during the period of operation. Do you recall what the amount was?

A. Pounds, I guess; not tons.

XQ. 114. Well, it may have been, doctor. Whatever you say, I accept.

A. I think in five months that plant produced about what it ought to have produced in three days, which would have given it 45,000 pounds or 20 tons—22½ tons.

XQ. 115. And that is about what it did produce, about 45,000 pounds?

A. I think that is it.

XQ. 116. What was the price of synthetic ammonia in March and April, 1919; do you recall?

A. Synthetic ammonia?

XQ. 117. Yes.

A. In this country?

XQ. 118. Yes.

A. There wasn't any.

XQ. 119. What was the price of ammonia? I used the word "synthetic" inadvertently.

A. The ammonia that is ordinarily quoted is the ammonia that is used in the form of sulphate or second grade aqua, and I think that had dropped to nearly 10 cents at that time. I would have to look it up to be sure of the dates.

XQ. 120. You know as a matter of fact that there is a plant being operated on the direct synthetic ammonia process, whatever it is, at Syracuse today?

A. That is the report from all sources; yes, sir.

XQ. 121. Do you know, doctor, how much that plant is producing daily?

A. I am told that that is producing as high as 17 tons a day.

XQ. 122. How much would that be a year, could you tell me?

A. Well, if it operates 300 days a year, that is 5,100 tons. It may run 6,000 or so.

XQ. 123. Was not the cyanamide process also a German invention?

A. Yes, sir; the cyanamide process was first developed in Germany.

XQ. 124. You were examined by counsel on the matter of a statement contained on page 128 of Exhibit 140 introduced by counsel.

A. Yes, I have it here.

XQ. 125. May I call your attention to the last five items of the statement before the grand total and have you read what those items are?

A. It starts, Interest, Depreciation, Amortization, Taxes, etc. Subheadings under those: Buildings, Cells, and Equipment.

XQ. 126. There is also an item of contingencies 10% of the above total, is there not?

A. Yes, sir.

XQ. 127. Doctor, do you know whether those items in there contain the item of working capital and interest?

A. No, I do not think they do. Excuse me, until I look back to the preceding page. What is your question? Do they include working capital?

XQ. 128. Do you know whether the ten per cent contingencies of the item of Interest, Amortization, etc., included the item of working capital?

A. No, sir. In any ordinary engineering job, we figure up the costs as well as we can; and the standard practice is to add 10 per cent for contingencies, meaning sundry things we overlook. That is not working capital.

By THE COURT:

Q. 129. Emergencies?

A. Yes, sir.

Q. 130. A margin of safety?

A. A margin of safety; yes.

By MR. ANDERSON:

XQ. 131. When you included a ten per cent return on the investment, did you not mean to include by that the normal profit of the business?

A. Yes; that is the normal profit of the business.

XQ. 132. Colonel White, do you recall a conference of the patent section, purchase branch of the Purchase, Storage and Traffic Division of the War Department at Washington, held at Mr. Dorr's office in the early part of the spring of 1919?

A. I was at Mr. Dorr's office several times, but I do not know what you refer to.

XQ. 133. I will give you this memorandum, ask you to look at it, and ask if you recall the conference to which that memorandum relates, as you are shown by that memorandum to have been one of those present (handing paper to witness).

A. I see that I am named as one of those present. I never saw this memorandum.

MR. KRESEL: What is the question, please?

MR. ANDERSON: I asked if he could identify the conference, with the memorandum to refresh his recollection, and if he was present.

A. (continuing). I can testify that I was present at at least one conference where the question of the control of patents of The Chemical Foundation was discussed.

XQ. 134. But you can not now say that the memorandum is a correct statement of what took place?

A. Do you want me to study it carefully? I may be able to testify to parts of it.

XQ. 135. Well, I will not want you to identify part unless you could identify all. If it is not a reasonably correct and accurate statement of what took place, I will not ask you about it in the first place?

A. I can not remember enough to know whether it is or not.

Mr. Kresel: May that be marked for identification?

Mr. Anderson: No, sir. I have not used it at all.

Mr. Kresel: Of course you have used it for this witness and we are entitled to look at it.

The Court: You are not entitled to examine a paper marked for identification, but you are entitled to have it marked for identification so that if produced again you may know it is the paper about which the witness testified.

Mr. Kresel: Our rule in New York is a little different; but of course, your Honor's rule is what counts here. May the paper be marked for identification.

The Court: With regard to any paper marked for identification, although I have noticed counsel have not been observing the rule, and I have not had occasion to mention it before—but any paper that is identified by the witness may be marked for identification by the opposite party at the request of the party, and the person who introduces it may put the paper back in his pocket if he wants to and make no further reference to it, but the paper may now be marked for identification.

Mr. Anderson: Whatever your Honor rules here I will only be too glad to comply with. The witness did not identify the paper, because he had never seen it before.

The Court: He testified about that paper, so that he may——

Mr. Anderson: It is immaterial to me, because I do not want the paper to get out of my possession. It is the only copy I have.

Mr. Kresel: Does the Government decline to show us the paper?

Mr. Anderson: I do at the present time. Will you mark that for identification, Mr. Clerk?

Marked for identification "Plaintiff's Exhibit A 17/7/23 for Identification."

XQ. 136. Colonel, did you deliver an address before the Chicago Meeting of the American Institute of Chemical Engineers, on January 16, 1919?

A. Yes, sir.

XQ. 136-a. At that time you appeared as Lieutenant-Colonel of the Ordnance Department of the United States Army?

A. Yes, sir.

XQ. 137. Have you a copy of that address?

A. I am sorry I have not; not with me.

XQ. 138. Would you send me a copy?

A. I will send you a copy, certainly.

XQ. 139. I will ask you to identify this, which is taken from the Library of Congress, and borrowed for the purpose. Will you identify that as your address and send me a copy?

A. Yes, that is the one, and I will send you a copy of it, Colonel.

XQ. 139-a. Published in the Journal of Industrial and Engineering Chemistry for March, 1919?

A. Yes.

Mr. Anderson: May I now introduce that in evidence, with leave to substitute the copy from Colonel White when received?

Mr. Kresel: Upon what theory is any such thing being offered? Is it to contradict this witness?

Mr. Anderson: It is not offered for the purpose of contradicting this witness, but for the purpose of further explanation of the principles, some of which the witness has outlined, and the processes.

Mr. Kresel: I object to that your Honor. The only purpose for which any prior statement by a witness may be introduced, except if he introduces it himself, is for the purpose of contradiction. You can not make evidence here by what he said somewhere else. You yourself have invoked that rule against me.

The Court: Do you challenge the correctness of that, Colonel Anderson?

Mr. Anderson: Not as a general principle, but for a little further cross-examination.

The Witness: May I add this, Colonel Anderson, that the reprints I think are probably those from the Official Journal of the American Institute of Chemical Engineers, and not from that source. I presume that will be all right.

The Court: As I understand, the request is withdrawn now, is it not?

Mr. Anderson: It is withdrawn unless I can introduce it, so I will have to read such portions as I may to the witness and ask him if that is such portion of his address.

The Court: Very well.

XQ. 139-b. At page 236 of the Journal of Industrial and Engineering Chemistry, Volume II, No. 3, for March, 1919, you made this statement in that address, which I will ask you if it is correct:

"The direct synthesis of ammonia from nitrogen and hydrogen was first developed from the theoretical and practical side in Germany, and the name most frequently associated with that is that of Haber. The combination of nitrogen and hydrogen according to the reaction,

$$3H_2 + N_2 \rightleftarrows 2NH_3$$

is favored by high pressure and relatively low temperature. Some of the equilibrium values are given in the following table."

Then I will give this to the stenographer and ask him to copy in the table. You remember it, do you not?

A. Yes, sir.

(The table is as follows):

"Per cent. NH_3 in Equilibrium
at pressures (in Atmospheres) of

Temp. °C.	1	30	100	200
300	2.18	31.8	52.1	62.8
500	0.129	3.62	10.4	17.6
700	0.0223	0.66	2.14	4.11

XQ. 140. (Reading).

"The rate of reaction between the gases is altogether too slow to be commercial unless accelerated by a catalyst. Our knowledge of catalysts is still very vague, and catalysts are discovered only by tedious experiments, largely empiric in their nature. Furthermore, they are extraordinarily susceptible to poisons.

"While therefore the reaction between nitrogen and hydrogen is extremely simple to write, it is extremely difficult to carry out economically. The successful solution of the problem involves many problems, but they may be divided under the following groups:

"(1) Preparation of pure nitrogen.
"(2) Preparation of pure hydrogen.
"(3) Preparation of catalyst.
"(4) Constructional plant.

"PREPARATION OF PURE NITROGEN.

"It is unfortunate that the term 'fixation of nitrogen' fixes attention so strongly on nitrogen that the lay mind gains the impression that one of the chief difficulties to be overcome is the preparation of the nitrogen. The arc processes start with air, but all the other processes require, or at least work distinctly better if supplied by nitrogen substantially dry and free from oxygen, carbon-dioxide, and carbon monoxide. Argon, helium and other rare gases of the atmosphere interfere only as they dilute the nitrogen slightly. The supply of pure nitrogen is important, but fortunately the liquid-air processes are so cheap and reliable, that the problem may be considered as solved. The nitrogen column as delivered to the United States nitrate plants has an hourly capacity of 20,000 cu. ft. of dry nitrogen, with less than 0.1 per cent oxygen for an expenditure of 180 horsepower hours. Power is by far the most expensive item, for air is free, only a small amount of caustic is needed for the purification of the entering air, and the labor charge is small. The operation is so reliable and the cost so small, that efforts to recover waste nitrogen from industrial sources are hardly worth while where really large installation is being considered.

"PREPARATION OF PURE HYDROGEN.

"Pure hydrogen is needed only for the direct synthetic ammonia process. It forms 17.6 per cent of the theoretical gas mixture by weight, but 75 per cent by volume. Hydrogen is formed as a by-product of the electrolytic manufacture of chlorine, but the expense of collecting it and purifying it is considerable. Hydrogen and oxygen are obtained by electrolysis of caustic solutions, but it is difficult to find a location where both gases can be used to advantage. It is also made by the action of steam on red-hot iron and by the water-gas reaction wherein steam reacting with coke produces approximately equal volumes of carbon monoxide and hydrogen. By further reaction with steam in the presence of a catalyst, as shown by the following equation"——

Mr. Kresel: May I interrupt here if you please? Counsel has now been reading almost ten minutes. No question has been put so far, and what has been read is in no wise contradictory to what this witness has testified; and while Colonel Anderson reads very well, I do not think that we are profiting very much by his standing there and reading.

Mr. Anderson: I think that the statements made here clear up very materially and avoid the necessity of my going through a cross-examination of Colonel White's very interesting statement this morning, and unless the Court rules that I can not read them and ask him at the proper time if that is a correct statement of the situation and of a matter referred to and used at that time, then I shall ask leave to read them. I am perfectly willing to put those papers in evidence, as they are a most complete discussion of this matter, and there are other phases of it to which I have got to refer. I would very much prefer to put them in evidence and stop right there. It certainly can not hurt anybody. They are consistent with what he said this morning, and only elaborate those points and some other questions about which I would have to examine him to get the information.

Mr. Kresel: Your Honor, that is just as I anticipated. Counsel can not point to a single line or a single word in that statement which is contradictory of what this witness has testified. Now, I do understand that I was correct in my argument, that the only purpose for which it can be introduced is to contradict it. I think Colonel

Anderson should point out now the portions that are contradictory, and then, of course, those will go in; but for us to sit here while Colonel Anderson reads long extracts from this speech, which he says are consistent with what the witness has said, seems to me is a waste of time.

Mr. Anderson: We spent the entire morning listening to extracts read yesterday from a speech in the record by counsel's own witness, and I repeat what I have said——

The Court: There is no need to repeat it.

Mr. Anderson: This statement is in connection with his own statements read this morning and clarifies certain points I want to clarify.

The Court: Then, if the strict rules were to be applied, it would be necessary for you to frame your questions independently of the article so far as matters which you do not offer in contradiction of Professor White's testimony is concerned. If you have embodied in the article statements which you contend are contradictory to his testimony given by Professor White, then they may be introduced apart from the other portions of the article. I will permit you to do that at the beginning of the afternoon session, at one o'clock, Standard Time.

After Recess.

XQ. 141. Colonel White, you stated this morning that you delivered an address before the American Institute of Chemical Engineers on January 16, 1919, in which you discussed at length the various processes for the fixation of nitrogen, did you not?

A. Yes, sir.

XQ. 142. Did you discuss at that time fully the so-called Haber process?

A. Yes, sir; fairly fully.

XQ. 143. And the other processes which you mentioned in this morning?

A. Yes, sir.

XQ. 144. You discussed at some length also the importance of nitrogen, of fixed nitrogen and ammonia, in the commercial and the military aspects, also, did you not?

A. Yes, sir.

XQ. 145. You there discussed at length the methods then prevailing, of producing this ammonia through nitrogen fixation, as well as the cyanamid and other processes?

A. Yes, sir.

XQ. 146. That article was published at about that time, was it not?

A. Yes, sir.

XQ. 147. You published in February, 1920, in the Chemical and Metallurgical Engineering Journal an article dealing with the demand and supply of fixed inorganic nitrogen in the United States, did you not?

A. Yes, sir.

XQ. 148. In that article did you point out at that time the rapidly increasing uses for ammonia, and the increasing demands?

A. Yes, sir.

XQ. 149. Is it not a fact that the increased use of ammonia for commercial and agricultural purposes, and for explosives, doubles about every ten years? Isn't that about it?

A. The total demand doubles about every ten years for all purposes.

XQ. 150. Is it not a fact, that, carrying out that ratio of increase, the demand in the United States alone would exceed the entire maximum production of the Chilean nitrate supply in a comparatively short time?

A. I think so; yes, sir.

XQ. 151. And it would more than absorb the entire present production from by-product coke ovens?

A. In the United States; yes, sir.

XQ. 152. Is it not a fact that you then estimated if that ratio of increase continued, by 1930 the demands in this country alone would be at least 676,000 short tons?

A. Of nitrogen or ammonia?

XQ. 153. Of nitrogen; and which would make out 3,900,000 long tons of Chilean nitrates; be equal to that?

A. Yes, sir.

XQ. 154. That is a correct statement, is it not?

A. If you quoted the figures I have there, it is.

XQ. 155. Assuming a 7 per cent cumulative increase, making some allowance for a war period, the demand by 1930 would reach as high as 458,000 tons of inorganic nitrogen, equivalent to 2,600,000 tons of nitrate, which is about Chile's maximum production, is it not?

A. Yes, sir.

XQ. 156. The Chilean supply is gradually decreasing, is it not?

A. Yes. There is some difference of opinion on that, but it is decreasing.

XQ. 157. Did you not at that time urge the continued operation of both Government-owned plants?

A. Yes, sir.

XQ. 158. That included Plant No. 1 and Plant No. 2?

A. Yes, sir.

XQ. 159. Colonel, why, you spoke this morning of producing nitrogen or ammonia by the fixation process under present conditions?

A. Yes, sir.

XQ. 160. Did your testimony then relate to the conditions in 1919 or at the present time, do you recall?

A. 1919.

XQ. 161. Did you take into consideration the by-products from a plant of this kind?

A. Plant of which kind?

XQ. 162. Plant for the fixation of nitrogen?

A. Such as Plant No. 1 for instance, or on the Haber-Bosch process?

XQ. 163. Yes. Take the German Haber-Bosch process.

A. There were no by-products from Plant No. 1.

XQ. 164. There were no by-products?

A. No by-products. I do not know the value of the by-products as they may have been obtained in Germany.

XQ. 165. You do not?

A. No, sir.

XQ. 166. There are certain by-products that you spoke of this morning, such as fizz water. What is that?

A. Carbon dioxide.

XQ. 167. Can that be used in making other forms of ammonia?

A. Yes, sir. It is entirely possible to use that as a source of carbon dioxide in making soda ash by what is usually known as the ammonia soda or Solvay process.

XQ. 168. And that has a valuable use as fertilizer in different forms, and other commercial uses, has it not?

A. Soda ash, no.

XQ. 169. I mean the products in which soda ash can be used.

A. Soda ashes are very valuable commercial products if produced in large amounts.

XQ. 170. You did not consider those by-products at all or any by-products in discussing the question of cost of the production of ammonia?

A. No, sir.

XQ. 171. But only ammonia as the sole product of the plant?

A. Ammonia as the sole product of the plant.

MR. ANDERSON: That is all I wish to ask, sir.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 172. Professor White, you were asked this morning whether you could give the differences between the process used in Plant No. 1 under the patents of the General Chemical Company and the processes described in the United States Letters Patent known as the Haber patents.

A. Yes, sir.

RDQ. 173. You said that you could, but that you had obtained the information in secrecy or under pledge of secrecy?

A. Pledge of secrecy.

RDQ. 174. To whom did you make that pledge?

A. United States Government.

RDQ. 175. Did you obtain that information in any way in any confidence or under any pledge of secrecy from anybody other than the United States Government?

A. No, sir.

RDQ. 176. Several times this morning, whether you talked of the General Chemical Company's process or the Haber process, you have used the word "Haber." Is that word "Haber" when applied to the production of ammonia by the synthetic process used as a sort of generic term?

A. It is very commonly used in popular discussions generically to cover all of these direct synthetic processes.

RDQ. 177. And you have used it in some respects that way?

A. I have used it in that sense, and possibly before some of the Congressional committees and other semi-popular occasions.

RDQ. 178. You were asked upon cross-examination whether people do not buy patents and pay large sums of money therefor. I think you said that was the fact. Have you ever known of anybody buying a patent that did not get the know-how with it?

A. I do not believe so.

Mr. Kresel: That is all.

Mr. Anderson: You may stand aside, Colonel.

(Witness excused.)

Alfred H. White resumes the stand.

Re-Cross-Examination (Continued).

By Mr. Anderson:

RXQ. 179. Colonel White, do you recall having seen that letter? (handing witness).

A. Yes, sir.

RXQ. 180. And do you remember its substance?

A. I want to read this letter; I want to see what it says.

Mr. Kresel: Is that the original?

Mr. Anderson: No, it is a copy. We have not the original. It is a copy from the original in the Department.

The Witness: I am not sure whether I ever saw that or not. It seems a peculiar letter, in that it is directed to the Acting Chief of Ordnance of the U. S. Army, and refers to the Navy Department.

RXQ. 181. It is also entitled, "Attention, Col. J. W. Joyes in charge Nitrate Division," is it not?

A. Yes, sir. I do not believe I ever saw that.

Mr. Kresel: What do you want to do with this?

Mr. Anderson: I want to put that in just to show the position in which the Government is placed with respect to this information.

Mr. Kresel: I am perfectly willing that you should put that in. I think you ought to put the original in, but if you say that is a copy I will admit that.

The Court: It is admitted.

Mr. Anderson: I would ask leave to introduce in evidence letter dated April 19, 1918, to the Acting Chief of Ordnance, attention Col. J. W. Joyes, in charge of Nitrate Division, signed by the General Chemical Company, by the Vice President, to be read as Plaintiff's Exhibit No. 656. I only want to call attention to one paragraph of the letter. (Reads letter.)

The Court: Is the General Chemical process the Haber process under those patents?

Mr. Anderson: The General Chemical process is the one used at Muscle Shoals, sir.

The Court: Let me put it this way: Does the Government now contend that the General Chemical process is the process under the group of 58 or 59 patents or any of them?

Mr. Anderson: The Government contends that they are basically and in idea the same, but that there has been a modification of the process in its operations or in its use—an effort to modify the same at Muscle Shoals, and that that effort was the one responsible for the failure.

The Court: I wonder whether I can put it this way: Is it the Government's contention that the process of the General Chemical Company embodied in the Sheffield Plant or in Plant No. 1 is that an infringement in any manner, in any way, upon the Haber patents or any of them?

Mr. Anderson: The word "infringement," if your Honor please, is a little difficult to define technically. But we do contend that the basic idea in the two is the same and that the so-called Haber-Bosch process covers the essential features of those two institutions.

The Court: You see, "infringement" is the word that I have to use, because it is the technical and accurate word. If the process of the General Chemical Company is not an infringement of the Haber patents or any of them, then I am not concerned with the process of the General Chemical Company. I am not sure that I am concerned with the process of the General Chemical Company even if it be an infringement of the processes described in the Haber patents or some of them. But I am quite clear that I am not concerned with them if the process of the General Chemical Company is not an infringement, although it seems to me that it is of interest, possibly of importance, to know the position of the Government with respect thereto.

Mr. Knight: The only objection, if any, to the use of the word "infringement" is because it means without right. It implies a breach. No such contention has here been raised. I do not know whether that comes into this case. The Government's position, however, is that the invention of the patent was used there.

The Court: I am going right straight across. There is no way around in this problem. What I want to know is this. If the General Chemical Company has a right, so far as the United States is concerned, to use the Haber processes under the Haber patents or any of them, first, where did it get that right?

Mr. Knight: I did not hear the last part.

The Court: You said your difficulty in answering my question was with regard to the word infringement, that that implied a use without right. Undoubtedly that is so. But just at the moment I am at a loss to know why you put it that way, because I do not understand just where the Chemical Company got its right to use the processes of the Haber patent.

Mr. Knight: I am afraid I have to confess ignorance of the early part of the case. The point I wanted to make was that the Government's position so far as the process is concerned, is that it does use the invention of the Haber patents.

The Court: Then in view of the letter, is it not upon you to show how they used it rightfully?

Mr. Knight: If that is one of the issues in this case. I supposed the only question was whether that illustrated the value of these patents, not on the question of whether any breach of right was occurring.

The Court: I am at a little loss myself and my questions are only to find some solid footing.

Mr. Knight: I am feeling my way as your Honor leads me.

The Court: I am glad I have company. Let us try to find our way out. There is no better time to do it than now. Won't you read to me the last paragraph of the letter?

Mr. Anderson: I may state, for your Honor's information, that the last paragraph of that letter is a quotation from the tender of contract put in yesterday between the United States Government and the General Chemical Company.

The Court: No, Colonel Anderson. There is nothing behind my question that is not shown on the face, so far as I know. My inquiry is this. If the United States took over the processes of the General Chemical Company and used them in Plant No. 1 under acquiescence, for want of a better term, understanding or agreement and that the rights of the General Chemical Company in and to the processes there employed were absolute, so far as the United States is concerned, you can take that as one branch of the proposition. Now then, I had gathered from things that transpired here that your contention was in direct conflict with that, namely, that the process of the General Chemical Company was, if anything, not a different process from the Haber process, but was—possibly you could go so far as to say that it was an improvement of the Haber process or a development of the Haber process. But then, you are immediately saying that it is an infringement of the Haber process unless you point out to me how it rightfully obtained the privilege of using the process of the Haber patent.

Mr. Knight: Since your Honor asked me that Chemical Company was working under licenses both from the Federal Trade Commission and The Chemical Foundation.

Mr. Kresel: Oh, no.

Mr. Anderson: Will you permit me to state the facts, and if I state them incorrectly, I will stand corrected. I do not always know myself, because this case is too varied for me. Here is the situation:

The Haber-Bosch processes were being licensed by the Federal Trade Commission in 1918; these patents. A license was outstanding to the question I have been informed that the General

Semet-Solvay Company, which is now one of the constituents of the Allied Chemical & Dye Corporation, of which the General Chemical is now a constituent. What their relations were then does not appear of record.

Second, that some time—just when I can not recall without reference to certain papers—but I will assume for this statement prior to that date—there had been issued to a man named Ellis, I think, or someone else, four or five patents relating to this matter of synthetic ammonia production, direct synthetic process. The General Chemical Company had acquired or claimed those patents and they are recited in the very offer that is mentioned here, those four or five patents.

The tender of the General Chemical Company or offer was made and finally resulted in the contracts and agreements by which the Government took over the experimental plant and operations of the General Chemical Company and reimbursed them, took their material and began the construction under contracts with them and others of Nitrate Plant No. 1. It is in that tender that the language referred to in this letter and the subsequent contracts, if I recall them correctly, requires that their processes should be carefully kept secret.

Mr. Kresel: Now, that is not the fact, your Honor; and that section which is quoted in that letter has nothing to do with secrecy.

Mr. Anderson: I am stating it as I recall it. I am trying to state it as best I can.

The Court: I do not understand that there is any question of veracity; merely a question of difference of view with respect to the facts.

Mr. Kresel: The letter speaks for itself. It says nothing about secrecy. It says that its rights should be preserved to these patents; that is all.

Don't you see, your Honor, this letter is being introduced by Colonel Anderson as a reason why he does not insist on asking Professor White to answer his previous question. He says here that the Government is bound by this contract not to reveal the secrets. Now, I say that it does not have anything to do with secrets at all. The provision is this——

Mr. Anderson: I am sorry that counsel had to interrupt my statement.

The Court: Had you not finished?

Mr. Anderson: I was interrupted in the middle of a sentence.

Mr. Kresel: I will stop now.

Mr. Anderson: In those circumstances, I think, when you come to look at those contracts, your Honor will reach the conclusion which I have reached, though I may be in error, that they impose upon the Government very strict obligations of secrecy as to the use of these processes down at Muscle Shoals and Sheffield Plant No. 1; and that this letter taken in connection with those seems to me to impose that obligation.

This morning, when I asked Colonel White about the difference in the processes, he replied that before answering them he would like to ask the Court if he had to disclose the information. That left the matter in a state where I did not feel, not having been associated with it, that I was free to do this thing. That is all there is to it. If I am wrong, all right.

The Court: I am not particularly interested in that, Colonel Anderson. That is your secret, it is not mine. You are not bound to disclose it. If that letter constitutes sufficient justification, in your judgment, for your not insisting on the question, that is solely for your judgment and not for mine. It is your question. You are the one that can release him. I surely shall not, unless you do; and if you do, I will not have to.

The letter is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 656." (*See Exhibits, Vol. III, page 1634.*)

MR. KRESEL: That is all, professor.

MR. ANDERSON: One minute; I want to ask a question which I asked your Honor leave to ask.

THE COURT: Yes.

By MR. ANDERSON:

RXQ. 182. Between what limits of pressure would you, as an expert, say that the Haber process could be operated commercially?

A. You refer now to the generic Haber process or——

RXQ. 183. Yes, or you can define either, as you see fit.

A. The generic process has been operated at as high as 900 atmospheres, to my knowledge, and down —oh, you can get down to as low as you want to; but the commercial limit is probably around 70 or 80 atmospheres.

RXQ. 184. Do you know whether it has ever been industrially operated before 100 atmospheres?

A. Yes; but not lower than 90, so far as I know.

RXQ. 185. That is the lowest you know of its ever having been industrially operated?

A. Yes, sir.

MR. ANDERSON: That is all.

MR. KRESEL: That is all, Professor.

(Witness excused.)

HARRY A. CURTIS.

Harry A. Curtis, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Your full name is Harry A. Curtis?

A. Yes, sir.

Q. 2. And your residence?

A. Washington, D. C.

Q. 3. And what is your profession?

A. Chemical engineer.

Q. 4. Will you please, without my questioning you, tell the Court of your education, your professional career?

A. I was graduated from the Engineering School of the University of Colorado in 1908. Following that I taught chemistry and pursued research work at the University of Colorado until 1913. I then went to the University of Wisconsin and was granted the doctor's degree from the University of Wisconsin in the spring of 1914.

Q. 5. You mean the Ph.D.?

A. Yes, sir.

Q. 6. Had you received any other degrees prior thereto?

A. I had received the Master's degree from the University of Colorado in 1910. I returned to the University of Colorado, and——

Q. 7. In what year?

A. In the summer of 1914. And taught chemistry at the University of Colorado until the spring of 1917.

Q. 8. And then?

A. Then I went into military service with the National Guard of Colorado, First Colorado Cavalry. I was transferred to the Ordnance Department in September, 1917, and assigned to the Nitrate Division of Ordnance. After a few months in Washington, I went to Sheffield U. S. Nitrate Plant No. 1, and established, designed and constructed and operated there an experimental plant for the conversion of ammonia into nitric acid. I was there, with occasional absences, until January of 1919.

Then I returned to Washington and was assigned to the Arlington Experiment Station, where co-operative experiments were under way between the Nitrate Division and Bureau of Soils, Department of Agriculture. I remained there until May of 1919, and then went to the Fixed Nitrogen Research Laboratory.

I left the Fixed Nitrogen Research Laboratory in August of 1919 and went to Northwestern University, Evanston, Illinois, as Professor of Chemistry. I was there until February of 1920. I then resigned to become Chief Chemist for the International Coal Products Corporation, New York City.

In September of 1920 I became Superintendent of the Irvington plant of this Company, and in June of 1921 I became General Manager of the Clinchfield Coal Corporation, which is a subsidiary of the International Coal Products.

I remained there in South Pittston, Virginia, as General Manager, until last May, since which time I have been engaged on a nitrogen survey for the Department of Commerce.

Q. 9. Have you any connection with Yale University?

A. Effective July 1st, I was appointed Professor of Chemical Engineering at Yale.

Q. 10. Doctor Curtis, during your war service is it the fact that for a period of two years, the period that you have mentioned, 1917 to 1919, your services to the Government were in connection with the fixation of nitrogen?

A. Yes, sir.

Q. 11. Did you visit the Experimental Station of the General Chemical Company at Laurel Hill, Long Island?

A. In the spring of 1918 I was brought up from Sheffield and spent some six or eight weeks at this Experiment Station in operation of the experimental plant.

Q. 12. Are you familiar with the Haber patents, these 58 United States Haber patents?

A. Yes, sir.

Q. 13. You have read them, have you?

A. Yes, sir.

Q. 14. Studied them?

A. Yes, sir.

Q. 15. Was the process for making synthetic ammonia that you observed in the Experimental Station at Laurel Hill, Long Island, the process described by those Haber patents?

Mr. Anderson: I object to that as calling for a conclusion, sir.

The Court: That opens up the whole issue.

Mr. Kresel: Your Honor, let me withdraw the question for the moment. I think I can avoid that. The question is withdrawn.

Q. 16. You spoke of an experimental station at Arlington, Virginia, and I think you said the work there was under the joint co-operation of the Bureau of Soils and the Nitrate Division?

A. The Nitrate Division began operating in the summer of 1918. The work, however, had been initiated before that by the Bureau of Soils.

Q. 17. When did you go with that Experimental Station?

A. I went there late in January of 1919.

Q. 18. What was it that was being done at that station? What was the nature of the work that was being prosecuted?

A. Some chemists of the Nitrate Division, along with others of the Bureau of Soils, were attempting to prepare catalysts for the direct synthetic ammonia process and to test those catalysts in an apparatus which had been built there previously.

Q. 19. How many men were employed on that?

A. At the time I first went there, I should say there were thirty or forty.

Q. 20. What kind of men were they? Were they professional men or just common laborers, or what?

A. They were professional men; they were chemists in large part.

Q. 21. What was your position in the work?

A. I was director so far as the Nitrate Division was concerned.

Q. 22. How long did that experimental work on catalyzers continue at Arlington?

A. Until late in May, or possibly the first of June of that year.

Q. 23. Of 1919?

A. Yes, sir.

Q. 24. In that connection did you have before you those patents, the so-called Haber patent group, which referred to catalyzers?

A. Yes, sir.

Q. 25. I now show you Defendant's Exhibits 193 to 209, consisting of 17 patents covering catalysts. I do not want to spend the time to dissect those specifically; but I will ask you to state approximately how many different methods of producing a catalyst are set forth in those patents?

A. I can not give you the exact number; but——

Q. 26. Approximately.

A. It is very large. I should say there were probably fifty or sixty, or larger.

Q. 27. Did you and the men at Arlington there undertake to make catalysts according to the specifications described in those patents?

A. There are very few specifications described herein. So far as they are described, we undertook to make them under these patents.

Q. 28. When you say there are very few specifications, what is lacking in the patents?

A. In general, the situation is this: The patent states the chemical composition of the catalyst, but in all of these patents there is to be found very little regarding the physical conditions, or laboratory technique, which is necessary to have in order to prepare a catalyst with proper physical structure to be active.

Q. 29. Won't you enlarge a bit on that, because I do not quite understand that?

A. The catalyst with which we were principally concerned is that to be found in Patent No. 1,152,930. This patent specifies a large number, some twenty or thirty different elements, and we were, of course, obliged to start out with some one of these, since there are many.

We were somewhat guided in our choice by the fact that we knew at that time that the British had been experimenting along similar lines and it was reported to us that some success had been had with catalysts made up of iron and molybdenum. So we took under this particular patent, example 10, which is as follows:

> Mix together a solution of iron nitrate and ammonium molybdate, so that about equal parts by weight of iron and molybdenum are employed. Evaporate the mixture and heat it until the oxides are produced, and then reduce the mixture with

hydrogen free from contact poison. In this example ammonium vanadate or ammonium tungstate can be substituted for the ammonium molybdate.

It is well known technical information that in preparing catalysts, in order to get the physical structure you have to pay attention not only to the chemical composition, which may be given here, which is given in this case; but you have to pay attention to such matters as the concentration of the solutions, the acidity or alkalinity of the solutions, the temperature at which the solutions are mixed, and the rate at which they are mixed, the way in which they are mixed, and the way in which they are evaporated, and the temperatures to which the mixture after being prepared can be heated before it is reduced, and the temperature at which it is reduced, and the rate of reduction.

Various other things come in, but those things particularly come in, and all those things of which the chemical composition is given in this example, not a word is said about the laboratory technique which is necessary in order to prepare an active catalyst.

Q. 30. Well, up to August, 1919, when, as I understand it, you severed your connection with the Nitrate Division, or the Fixed Nitrogen Laboratory, had they been successful in developing a catalyst?

A. They had not developed a catalyst which could be called commercially successful.

Q. 31. About how much money was used monthly in this experimental work carried on at Arlington first, and then transferred to the Fixed Nitrogen Laboratory?

A. I have not the exact figures of Arlington, but it should run between $4,000 and $5,000 a month, and after we went to the Fixed Nitrogen Research Laboratory, I, as executive officer, had a budget of $25,000 a month to spend on this work.

Q. 32. And to your knowledge, over how long a period did the Fixed Nitrogen Laboratory continue this work on which $25,000 was being spent?

A. I do not know about the amount spent, but the Fixed Nitrogen Research Laboratory is still in full operation.

Q. 33. Yes, but I mean you went with it in February, 1919?

A. The Fixed Nitrogen Research Laboratory in May——

XQ. 34. May, 1919?

A. And at the time I left, in August, the budget of $25,000 a month was still in effect.

XQ. 35. Now, how many men were engaged in the work at the Fixed Nitrogen Laboratory?

A. I transferred to the Fixed Nitrogen Research Laboratory, probably half of the staff which I had at Arlington, and then the scientific directors of the Fixed Nitrogen Research Laboratory brought in a great many more, so that the personnel grew to possibly a hundred, within a few months.

Q. 36. And were they professional men?

A. They were professional men. They were probably amongst the most able chemists of the United States.

Q. 37. Is the catalyst an important feature or element in the synthetic process for the production of ammonia?

A. The catalyst is the heart of the process. There can be none prepared without a successful catalyst.

Q. 38. Now, while you were stationed at Sheffield, did you observe the operation, or attempt to operate Nitrate Plant No. 1?

A. Yes, sir.

Q. 39. Will you state from your knowledge, what were the difficulties in operating that plant?

A. I am willing to state them so far as they had been published in documents which are generally available——

Q. 40. Well, that is—pardon me, what were you going to say?

A. Otherwise I am under the same agreement as to secrecy as Professor White, with regard to the plant.

THE COURT: You may observe that secrecy, Mr. Kresel.

Q. 41. Yes. Now then, insofar as those difficulties had been published by the Government itself, please state, and do it as briefly as you can, but substantially?

A. One of the large difficulties which were encountered down there was the leaks in the pipe and joints and fittings and the apparatus in general, in working with those gases at such high pressures. That difficulty was not——

Q. 42. May I ask you what the pressure was that was being used there?

A. It varied from atmospheric pressure, a little above atmospheric pressure, at the beginning of the process, up to about 1,450 or 1,500 pounds per square inch at the end of the process.

Q. 43. Proceed.

A. Another great difficulty which was encountered was in the removal of the carbon monoxide by means of hot caustic solution. The principal difficulty there was in the matter of finding gaskets which would withstand the action of hot caustic under these very high pressures. There was also difficulty in all of the automatic control apparatus in the plant, or nearly all of it. Most of those controls had been developed for normal pressures, and to attempt to work them under the conditions in the plant was, in general, not successful so that in most cases hand control had to be substituted ultimately in place of automatic control. With regard to the matter of the scrubbers in general through the plant, it was found that the scrubbing was insufficient. In the matter of recovery of power from the water which had been used for scrubbing out the carbon-dioxide, it was found that the wheel was not properly designed, and that difficulty was not corrected during the time of the plant, although some improvements were made. One other very large difficulty was in the heating of the hydrogen nitrogen mixture before it went into the final catalyst. As the temperature there was high, and the gas under high pressure, the material, although built presumably strong, frequently failed with rather serious results, not fatal, but serious results in the plant. Another difficulty was found in the matter of refrigeration. The refrigeration which had been installed for Plant 1 was found to be entirely inadequate for the removal of the ammonia from the gas, and it was necessary to take all of the refrigeration from the second unit and from the third unit, which had not yet been put in operation, and put them in on the first unit. There were many others. I can go on as long as you please.

Q. 44. Well, I think that is sufficient for the present. Now, Doctor, I am going to put this question to you, and I am going to ask your opinion as to the value of these United States Haber patents——

THE COURT: All of them, or just the catalyst patent?

MR. KRESEL: No, all of them, your Honor.

Q. 44. (Continuing.) Basing your answer to this question upon your experience and your knowledge of the development of the art of fixing nitrogen, your knowledge of the United States Haber patents which have been put in evidence, the fact that the General Chemical Company had developed in the United States a new direct synthetic ammonia process under the

United States Letters Patent now in evidence, the fact that the Claude direct synthetic ammonia process had been or was being developed in France, the lack of information of the "know-how" that has been described showing how the processes covered by the United States Haber patents could be carried out in the United States, the fact that there were other methods of fixing nitrogen, such as the arc, the cyanamid and the cyanide processes, the fact that the cost of producing ammonia by the German Haber process in the United States, according to the statement of Colonel Joyes would have been approximately 16 1-2 cents per pound, and higher than the cost of production of the cyanamid process, the fact that the cost of producing ammonia by the General Chemical process was, according to the report of the Ordnance Department and the Fixed Nitrogen Research Laboratory, at least eleven cents, without making any allowance for capital and starting-up expenses, and with no allowance for any profit at all, the fact that the cyanamid process was well known and had for a number of years been commercially successful, the fact that the production by the direct synthetic ammonia process would necessarily come into competition in the United States with the production of the cyanamid process and the production from by-product coke ovens, and with Chilean nitrates, taking into consideration the lack of skilled personnel to operate under the Haber patents in the United States, even if the information as to how the processes described therein could be successfully carried out had been available, the fact that outside of Germany there was no plant anywhere in the world producing ammonia by the direct synthetic ammonia process described in the German patents, and that the only plant that had been built in the United States, to wit, Plant No. 1 at Sheffield, Alabama, using the synthetic ammonia process described by the General Chemical Company was not a success; what, in your opinion, was the value of the Haber patents in the United States in the months of February, March and April, 1919?

Mr. Anderson: Your Honor will note the same objection and for the reasons stated as to the other question.

The Court: I will take the answer.

A. I would attach no value whatever to them from the standpoint of manufacturing.

Q. 45. Speaking particularly with reference to these catalyst patents, what would you say about those, Doctor?

A. With reference to the catalyst patents, I would attach no value to them from the manufacturing standpoint, because of the facts that what is there really is merely a starting point for a large amount of research before the catalyst could be developed. You do not buy anything when you get the patent.

Q. 46. Doctor, in your opinion can the German process, the so-called Haber-Bosch German process covered by these patents, ever be operated here in the United States successfully, in your opinion?

Mr. Anderson: I object for the reasons stated to this same question at various stages of the record, sir.

Mr. Kresel: What is that?

Mr. Anderson: I object for the reasons stated at various stages of the record.

The Court: I am sorry, Colonel Anderson, but I do not happen to recall that question before, and the reasons have escaped my memory.

Mr. Anderson: In addition to the general objections, the possibility or impossibility of operating under these patents is a question of study

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of the processes. I have taken the position all along that he could take the patents and find the processes.

The Court: I see what you mean. I did not get your point before.

Mr. Kresel: I will put it this way. I think I can put a question that is not objectionable.

Q. 47. In your opinion, Doctor, would it be possible commercially to operate under these patents in the United States in competition with the other processes?

A. May I ask to what other processes you are referring?

Q. 48. I am referring to the General Chemical process, I am referring to the cyanamid process, I am referring to the Claude process.

A. With the exception of the General Chemical, they are not operating in this country.

Q. 49. The cyanamid?

A. No cyanamid in this country.

Q. 50. Operating in Canada?

A. In Canada; yes, sir.

Q. 51. Will you take that into consideration?

A. May I hear the question again?

(Q. 47. Read as above recorded.)

A. The question is a little difficult, because if we in this country were able to buy what France has bought, the know-how, from the Badische people, I would not be prepared to say that they could not operate, although I would rather doubt that they could in view of developments which have been made in the art, particularly the Claude process, in recent times.

Mr. Kresel: You may examine.

Mr. Anderson: You may stand aside, Doctor.

The Court: Any cross-examination?

Mr. Anderson: No, sir.

(Witness excused.)

JAMES F. STILES, Jr.

James F. Stiles, Jr., a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. What is your residence, Mr. Stiles?

A. Evanston, Illinois.

Q. 2. By whom are you employed?

A. The Abbott Laboratories.

Q. 3. What is your position with the Abbott Laboratories?

A. I am the chief accountant of the Abbott Laboratories.

Q. 4. How long have you been with them?

A. Since April, 1913.

Q. 5. How long have you been their chief accountant?

A. For over six years. I have been manager of the cost department, where all the plant records are kept, for at least that time.

Q. 6. Have you prepared a statement from the books and records of the Abbott Laboratories, showing the cost to the laboratories of research work prosecuted by the laboratories in the production of certain drugs?

A. On the research and experimental cost of those drugs, yes, sir, and chemicals.

Q. 7. Have you such a statement, with reference to the research and experimental cost on cinchophen?

A. I have.

Q. 8. Will you produce it?

A. (Witness hands counsel.)

Q. 9. Have you more than one copy there?

A. Yes, sir (handing counsel).

Mr. Kresel: I will give Colonel Anderson a copy. Colonel Anderson, I will ask the witness a few questions, and then I am going to offer the statement.

Q. 10. Were these figures taken by you from the books?

A. They were.

Q. 11. The books having been kept under your direction?

A. Yes, sir.

Q. 12. When did this work on cinchophen commence?

A. The first factory work order was issued in July, 1917. I was unable to secure from the records in my department the exact date of laboratory research.

Q. 13. You took the factory research and started it with that?

A. Yes, sir. Doctor Volwiler knows more of the detail as to the date of the laboratory research.

Q. 14. On this statement do you show the cost of the material that was used in these researches and experiments?

A. Yes, sir.

Q. 15. And the cost of labor?

A. I do.

Q. 16. And do you show what yield there was of the drug?

A. By factory work order.

Q. 17. And how it was disposed of?

A. Yes, sir.

Q. 18. And what you realized therefrom?

A. Yes, sir.

Q. 19. What do your records show as to the net cost of research and experiments on cinchophen?

A. $15,453.30.

Q. 20. And is all the information with reference thereto on this statement?

A. Yes, sir.

Mr. Kresel: I offer that.

The Court: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 246." (*See Exhibits, Vol. V, page 3228.*)

Q. 21. Have you a similar statement with reference to neocinchophen?

The Court: You mean made up under similar conditions?

Mr. Kresel: Made up under similar conditions.

A. I have.

Q. 22. What is the amount shown of expense there?

A. $6,912.48.

Mr. Kresel: I offer that.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 247." (*See Exhibits, Vol. V, page 3229.*)

Q. 23. Have you a similar statement as to procaine?

A. I have.

Q. 24. Made up in a similar way and from similar sources?

A. Yes, sir.

Q. 25. And what is the net amount for research and experiment there?

A. $30,302.77.

The Court: That is what drug?

The Witness: Procaine.

Mr. Kresel: Otherwise known as novocain.

The Court: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 248." (*See Exhibits, Vol. V, page 3240.*)

Q. 26. Have you a similar statement made up from similar sources and in the same way, covering acriflavine and proflavine?

A. Yes, sir.

Q. 27. And what does that show as the net cost of research and experiments on those two drugs?

A $12,138.56.

The Court: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 249." (*See Exhibits, Vol. V, page 3241.*)

Q. 28. On each of these statements do you show the dates when the research commenced and how long it lasted?

A. Well, in some cases, the research work and the factory experiment work is still proceeding, and I have noted that on the statements.

Q. 29. Wherever that is the case, that appears on the statements?

A. Yes, sir.

Mr. Kresel: That is all.

Cross-Examination.

By Mr. Anderson:

XQ. 30. Turning to the first statement on cinchophen, where did you get the figures as to the cost of material and the amount of material used in that actual experiment or research?

A. Well, Colonel, all of the material costs are drawn from our stores, any one of the stores in the plant, by the employees assigned to the production of that particular factory work order. These requests are then sent to the department of which I am in charge, where they are priced and extended at cost to us, delivered in our plant, which is the purchase price plus the delivery charges, if any.

XQ. 31. What do you mean by direct labor?

A. That amount of money which is paid to either laborers or junior chemists and reported on the in-and-out time-cards, that is the start-and-stop time-cards, or else on an O. K.'d time sheet furnished by the foreman daily. The total amount of these time records is extended and balanced with the amount of pay given to each man for each pay period.

XQ. 32. Who determines how much of a man's time, a man like a laborer for instance, in a day shall be apportioned to one piece of experimental work in a laboratory and how much to another?

A. Well, when he starts to work on a given factory works order he punches a time-card, and when his foreman takes him off that job he punches out on that time-card, in which case the man himself shows the time.

XQ. 33. Suppose there are half a dozen pieces of experimental or research work going on in the laboratory at once and there are laborers bringing in materials and moving things about and engaged in assisting these various researches; how would you divide that time between the several researches?

A. I have never come across a case in our plant where one man in our manufacturing department, that is one of these laborers, worked on more than one factory works order at a given time. We have had them in other departments but not in this department.

XQ. 34. Is this the manufacturing department you are talking about now?

A. It says there at the head, "The cost of factory and laboratory research work."

XQ. 35. Dr. Volwiler said that there were five chemists in the research work and about thirty in the laboratory?

A. Yes.

XQ. 36. How would you apportion the cost of these men working on various classes of work applicable to the Abbott Laboratories?

A. Do you mean in the laboratory department or in the factory?

XQ. 37. I am talking about the laboratory. That is the one I am interested in.

A. You will notice that there is a very small charge in the way of laboratory work, and I purposely attached a little memorandum to this report which, if you want me to, I will read.

XQ. 38. No, I would rather you answer the question direct.

A. Yes, sir.

XQ. 39. The Abbott Laboratories, we were told, make about 1,100 pharmaceutical products. Your research laboratories are engaged in researches applicable to practically all your manufactures which are still in a state of research development, are they not?

A. Yes, sir.

XQ. 40. Your work laboratory, where there were 25 to 30 chemists is also engaged in working out any question that arises in connection with the research, development or improvement of these various products, is it not?

A. Yes, sir.

XQ. 41. How do you apportion between cinchophen and neocinchophen and procaine and acriflavine and proflavine, on all of which research and experimentation was going on at the same time according to these records. How do you apportion the cost among the several experiments or research?

A. Well, all of the research work was not being done by the same man at the same time. In the case of our laboratory, the chemist reported the amount of time that he spent on the various researches and that amount which was reported to me as having been spent on a particular research is included in this report. Any amounts that have not been reported but apply to sort of general research work do not appear in this report.

XQ. 42. How do you get at department costs? What do you mean by it?

A. That is the indirect expense of the department That includes the department manager's salary, janitors if they have any, power, heat, light, depreciation, etc.

XQ. 43. Factory administration expense is practically overhead, is it not?

A. Yes, sir.

XQ. 44. What do you mean by the item "additional expense for packing, selling and shipping, including royalties paid." I ask particularly what you mean by royalties paid. The other items explain themselves.

A. Well, I have included here under the net amount the amount realized from the yields on these different formulas, the actual cash we received back, from which of course we had to pay a royalty to either the Alien Property Custodian or we have paid to the Chemical Foundation, based on the net sales of these products.

XQ. 45. When you said "Alien Property Custodian," you meant Federal Trade Commission?

A. No, we paid the royalty to the Alien Property Custodian.

XQ. 46. Under the license of the Federal Trade Commission?

Q. 3. And your profession?

A. Chemist.

Q. 4. And by whom are you employed?

A. E. I. duPont de Nemours & Company.

Q. 5. And where is their place of business?

A. Wilmington, Delaware.

Q. 6. Please tell us something about your education and your professional career, Doctor?

A. I attended Bucknell University at Lewisburg, Pennsylvania, from 1904 to 1908, and was graduated from there with the degree of Bachelor of Arts. From 1908 to 1913 I attended Harvard University and received the degree of Doctor of Philosophy. From 1913 to 1915 I worked exclusively on research work at the Kaiser-Wilhelm Institute for Chemie at Berlin. The Institute was located at Dahlem, a suburb.

Q. 7. And what course of study did you pursue there?

A. Organic research work.

Q. 8. If you will permit me to interrupt you, in your college course, did you specialize in chemistry?

A. I specialized in chemistry at Bucknell University and specialized on chemistry at Harvard University.

Q. 9. Now, will you proceed.

A. I was employed by the E. I. duPont de Nemours & Company in August of 1915 and was assigned to research work.

Q. 10. In what department?

A. Well, it was the organic department.

Q. 11. Organic chemistry department?

A. Yes.

Q. 12. Please proceed from there. That was in 1915, you say?

A. In 1915. In 1916——

Q. 13. Before you go to 1916, what was the character of work that you were doing in 1915 and state whether or no you were doing it yourself or in company with others?

A. I carried out work alone at first. Then after a few months, I think two or three chemists were assigned to me and during 1916 we were working on subjects outside of the field of dyestuffs.

Q. 14. Now, the next year?

A. In 1916 I was given charge of more men, and we began the investigation of some of the dyestuffs which would use intermediates, manufactured at that time by the company for explosive purposes.

Q. 15. Will you please stop there a minute? Up to this time in 1916, to your knowledge, had the duPont Company been making any dyes?

A. It had not.

Q. 16. Now please proceed.

A. During 1916, I believe that ten to twelve men were assigned to me to work on these dyes from intermediates which were available at that time. In December, 1916, I was a member of a group of engineers and chemists which visited the Levenstein plant at Blackley, near Manchester, for the purpose of investigating their methods for the manufacture of intermediates and dyes.

Q. 17. Will you please stop there. The Levenstein plant was located where?

A. At Blackley.

Q. 18. Where, what country?

A. England.

Q. 19. And you and these others were sent there by the duPont Company to do what?

A. To investigate their methods for the manufacture of intermediates and dyes.

Q. 20. And when you say intermediates, intermediates for what?

A. Intermediates for dyestuffs.

Q. 21. How long did you spend in this investigation in England?

A. We remained in England at the Blackley plant about six to seven weeks.

Q. 22. Upon your return to the United States what work did you take up?

A. Upon my return to the United States, I was assigned as an assistant to the manager of the organic division, which supervised all research work on intermediates and dyes.

Q. 23. What year was this that you returned from abroad?

A. In 1917.

Q. 24. Early in the year?

A. We arrived the end of February, 1917.

Q. 25. Now then, please proceed from there. You were assistant then to the general manager?

A. To the manager of the organic division. I was assistant to the manager of the organic division until May of 1918, at which time I was made the assistant manager of the Lodi Works, a small plant purchased by the company at Lodi, New Jersey.

Q. 26. And what was being manufactured at that plant?

A. At that plant, the manufacture of intermediates and dyestuffs was carried out.

Q. 27. From that point on, tell us what you did?

A. I remained at that plant as assistant manager until the first of 1919, at which time I was a member of a group of engineers and chemists which visited the Levenstein plant for the inspection of their processes for the manufacture of dyestuffs and intermediates.

Q. 28. Was this the second visit?

A. This was the second visit.

Q. 29. And this expedition that you speak of was sent by your company?

A. Was sent by the duPont Company.

Q. 30. To study the Levenstein methods?

A. To study the Levenstein methods.

Q. 31. When did you return to the United States?

A. We returned to the United States the latter part of 1918.

Q. 32. And then what was your position with the company?

A. I was then made manager of the organic division.

Q. 33. And how long did you remain in that position?

A. I was the manager of the organic division until the latter part of 1921.

Q. 34. And then what position did you assume?

A. I was then made director of the chemical section of the dyestuff department.

Q. 35. And is that the position that you now occupy?

A. That is the position I occupy at the present time.

Q. 36. So then, you have been with the duPont Company from the very beginning of its advent into the making of dyes and intermediates for dyes, have you?

A. Yes.

Q. 37. Could you, Dr. Bolton, very briefly, tell the Court of the general difficulties, if there were any, which your company and your chemical staff encountered in starting to make dyes and intermediates for dyes. Before we take up any particular patent or process, I would like you just in a few words to tell the Court what difficulties there were, if there were any?

A. The greatest difficulties which we had at that time were making intermediates and dyestuffs of the proper quality, and those difficulties go back to perhaps four reasons: the Research Department at that time consisted of the best chemists that we could get. They were some of the best products of our American universities and colleges, but we had a very great deal of difficulty in working out processes from the patent literature which would give the requisite quality of intermediates and dyestuffs when carried out on a large scale.

Our subsequent experience has shown that many of those processes that we used at that time were obsolete. They were published in the German patent literature, but a great many improvements had been made since the appearance of those early patents.

Another great difficulty that we had was in devising what we call control tests. The reaction is carried out in a piece of apparatus, and it is necessary for us to tell when that reaction was finished. It is not carried out according to an empirical formula of heating for a certain length of time and then discharging the contents of the pot. But we must make very definite chemical control tests which in some cases are simple methods and in other cases are most complicated methods. It was necessary for us to develop that information entirely because there was almost nothing in the literature which we could use.

Q. 38. Now, about plant.

A. Our plant organization consisted of chemists who had had some previous chemical manufacturing experience. We tried to get men who knew how to handle acids and alkalis and the general chemicals that are used in the plant. But none of those men had any previous experience in the manufacture of dyestuffs; so that we had the problem of teaching those men the proper methods of operating to get the requisite quality of dyes and intermediates.

The third cause of our difficulty, perhaps, was in the design of the equipment. Our chemical engineers had not had any previous experience in designing equipment for this particular industry, and it was necessary for our engineers to learn by making mistakes. So that to-day the machines which we are using in the manufacture of dyestuffs are a great improvement over the original designs and I might add that there is practically nothing in the literature in regard to the best type of machines to carry out certain chemical reactions.

Q. 39. And when you speak of the literature, Doctor, what do you include in that?

A. The literature is really the patent literature, because there is very little outside of that.

Q. 40. Outside of the patents themselves?

A. Outside of the patents themselves.

Q. 41. Now, Doctor, have you finished with that? A. I would like to mention one more difficulty, and that was the problem of training the American workman to carry out a procedure without the slightest deviation, because it is these very small details which make for the success of the process, particularly in the manufacture of the dyes.

Q. 42. I am going to ask you, Doctor, if you can, to classify the various classes of dyes that your company has been manufacturing. Do I make myself plain?

A. Yes.

Q. 43. Will you do that?

A. The largest class of products which we make to-day is known as azo colors. These products as a rule are soluble in water and are dyed from a salt or from a slightly acid bath on to cotton, silk or wool.

Q. 44. Now, that is one class.

A. That is one class.

Q. 45. You make Azo colors. What is the next class?

A. Another important class is sulphur colors. These sulphur colors are insoluble in water and to be applied to the fiber, which is usually cotton, they must be dissolved in sodium sulphide. They go into solution and the cotton has an affinity for the dye in this reduced state, and the dye is absorbed in the cotton and upon exposure to the air the dye is oxidized back to the original color.

Q. 46. So that because you use sulphuric acid, I assume, they are called sulphur colors?

A. They are called sulphur colors because these products are made by the action of sodium sulphide and sulphur upon certain intermediates, and must be applied to the fiber by first dissolving in sodium sulphide to reduce the product to a soluble form.

Q. 47. What other class of dyes do you produce?

A. We make vat dyes, represented by indigo, and by the indanthrene dyes. Our trade name is Ponsol.

Q. 48. I am coming to that. You are going just a little ahead of me. First, what do you mean by vat colors?

A. Vat colors are the class of dyes insoluble in water. They are converted into soluble forms by the action of a reducing agent, which is sodium hydrosulphite, and in the reduced form they are taken on to the fiber and re-oxidized back to the original color by exposure to the air.

Q. 49. Are those what are called the fast colors?

A. They are the fast colors.

Q. 50. "Fast colors" means that light will not destroy them, is that it, expressed in the layman's words?

A. They must have a fastness to light and to washing. We make two distinctions. We have products which are not very fast to washing, but possess good fastness to light. On the other hand, we have products very fast to light and not very fast to washing.

Q. 51. In this class of vat colors you include indigo? Did you speak of indigo?

A. Yes, indigo.

Q. 52. And the indanthrene dyes?

A. The indanthrene dyes.

Q. 53. You said something about you—I mean your company—calling the indanthrene dyes by some other name. What is that other name?

A. Our trade name for the indanthrene dyes is "Ponsol."

Q. 54. Speaking of indigo, first, is that a color that is very extensively used?

A. It is one of the largest colors manufactured at the present time.

Q. 55. Is that now covered by any patent?

A. The dye itself is not.

Q. 56. Do you know when the German patent on that expired?

A. It expired in 1917—I beg your pardon—1918.

Q. 57. Now, the indanthrene dyes; are there German patents covering the class called indanthrene dyes?

A. Yes.

Q. 58. When did your company undertake investigation of the methods of the manufacture of indanthrene dyes and intermediates therefor?

A. It began in July and August of 1917.

Q. 59. Was that when you started your research work?

A. Began the research work at that time.

Q. 60. Can you state to the Court on how many indanthrene dyes your company was prosecuting research during 1917 and 1918?

A. We were carrying out work on eleven indanthrene dyes in 1917 and 1918.

Q. 61. Take indanthrene-blue. Is that a color very extensively used?

A. Indanthrene-blue GCD is perhaps the largest used of the indanthrene class.

Q. 62. And when did your company undertake research work to manufacture that dye?

A. In 1917.

Q. 63. And how long did that research continue?

A. The research continued until we were in a position to manufacture, which was in the fall of 1919.

Q. 64. You have given me a note here on indanthrene-blue 3G.

A. Yes.

Q. 65. Is that a dye extensively used?

A. No, the 3G is used only in small quantities.

Q. 66. When did you start experimenting with that?

A. In May, 1922.

Q. 67. How many chemists were employed by the duPont Company in this research work on indanthrene colors?

A. In the period July, 1917, to January, 1918, the number of chemists was equivalent to five chemists spending their time entirely upon the problem; that is, we have had working more chemists on the problem, but the time was equivalent to five spending their time exclusively on this class of work.

Q. 68. And as you have continued to prosecute your research, what is the highest number of chemists whose whole time was employed in the research?

A. In the year 1919 we had fourteeen.

Q. 69. Take a dye described as indanthrene-golden orange. Did you undertake experimenting with that?

A. Yes, we began the experimental work on golden orange in 1918.

Q. 70. Did you succeed then in producing the color?

A. We have worked on golden orange since that time and we have not succeeded yet in manufacturing golden orange.

Q. 71. And you started when?

A. In 1918.

The Court: Suppose we take our mid-afternoon recess at this point. (Here a short recess was taken.)

Q. 72. Doctor Bolton, before I ask you with reference to any particular patent, I wish you would state to the Court the result of your general study of these German patents covering indanthrene dyes, as to whether or no they disclose the processes which, upon investigation, your company found were required to produce the colors; and after you have made the general statement, I shall then ask you as to each particular patent.

Mr. Anderson: One moment, Doctor, please. If your Honor please, I object to the question in that form. It may be evidence that is material and may be important, and it is therefore our view that the evidence should proceed strictly in accordance with recognized rules with respect to patents and patent processes, with which your Honor is much more familiar than I am; and therefore even at the expense of some little delay, I think it is very much better to proceed under the rule here, because we are going into a territory unknown.

The Court: I understand, Colonel Anderson, but I do not know whether this question applies to the "know-how" or whether it is directed to the inadequacy of the disclosure, to the extent of showing invalidity.

Mr. Kresel: Your Honor, I do not want to lead the witness, and that is the reason I have made my question as general as I can. I should prefer that your Honor would take the answer, because that will answer your Honor's question.

The Court: Now, what have you to say to Colonel Anderson's objection?

Mr. Kresel: I do not understand that there is any special rule of evidence applicable in patent cases that is not equally applicable in all cases.

The Court: I do not know that.

Mr. Kresel: And the question is directed to bringing out from the witness a statement of what he found upon investigation of all these patents, with reference to the disclosure made thereby. I then intend to follow that up by presenting special patents, particular patents, and then ask him to describe the steps that have to be taken with reference to those. Now, if your Honor does not feel that I ought to do that until I have shown the specific examples, and then put that question last, I will follow that course, of course; but I thought it would lead to clarity, and to a real understanding of this witness's testimony if we had that answered first.

The Court: I will let you state what you propose to show if you desire it.

Mr. Anderson: Yes, sir.

The Court: Do you desire to be heard further, Colonel Anderson?

Mr. Anderson: Only to this extent, sir, that it seems there are general rules in patent practice for us to be able then to take up the question, and I think it should be limited to specific patents, to the end that we may be able to understand the evidence as applied to that. I also wish at this time to renew the objection of yesterday as to all this evidence, for the reasons stated in the objection and motion.

The Court: Will you repeat that to me again?

Mr. Anderson: Yes, I understand the objection which I made yesterday morning to all this evidence was in the form of a motion to strike out what had gone before and an objection to what follows. Your Honor will recall that.

The Court: That is all right.

Mr. Anderson: In which I stated specifically my grounds, outlining the chief basis as that of estoppel to raise these questions.

The Court: Yes.

Mr. Anderson: I wish to renew that in addition to our general objections to this testimony, although it is not necessary, perhaps.

The Court: My inquiry was whether it was directed to the question of what he called the "know-how," or going to the extent of invalidity. I will accept your offer, Mr. Kresel, to make this inquiry last, instead of first.

Mr. Kresel: Very well. The question is withdrawn.

Q. 73. Doctor Bolton, please produce, if you will, the patent covering the indanthrene blue R S, so-called?

A. (Witness hands patents to counsel.)

Q. 74. You have handed me two patents. One is No. 724,789, dated April 7, 1903. The other is No.

682,523, dated September 10, 1901. In your attempt to produce this color called indanthrene blue R S, did you have occasion to study one or both of these patents?

A. We studied both of the patents.

Q. 75. As to the one dated September 10, 1901, that of course had expired before April, 1919, but this other one of April 7, 1903, was in force in April, 1919. Please state when you undertook to produce this color, indanthrene blue R S?

A. The experimental work was carried out in July and August of 1917.

Q. 76. You started in July, 1917. Please proceed to state what was disclosed by this patent No. 724,789, whether or no you found it of any assistance in producing this color; and if not, why not?

The Court: That is the one issued in 1903?

Mr. Kresel: In 1903, your Honor; the one that is in force.

A. By following the specifications of this patent, we obtained Indanthrene Blue R S, but in low yields and of not very good quality. The Indanthrene Blue R S is valuable because it is an intermediate for Indanthrene Blue G C D, which is the largest product of this series; but Indanthrene Blue R S is not used in very large quantities itself, but is sometimes converted into Indanthrene Blue R P, which is used as a pigment for paper. But the chief value is as an intermediate for Indanthrene Blue G C D. We found that the only way in which we could manufacture Indanthrene Blue R S of requisite quality and in good yields was by inventing a new process of manufacture.

stand just as it is?

The Court: Do you want that answer to a question.

Mr. Kresel: I am going to follow it up with

The Court: I did not mean that. I want to avoid as many difficulties from now on as we can, and I did not know whether that was opening the door to difficulties or not.

Mr. Kresel: I think I understand your Honor's inquiry. Let me tell your Honor what I thought you meant. I thought that you meant that that would lead us into an inquiry by the other side as to what the new method was.

The Court: Exactly.

Mr. Kresel: Is that what your Honor had in mind?

The Court: That is it precisely, and if we get into new processes and whether they are new, I think we get into the trade secrets and we get into one or two other incidental matters.

Mr. Kresel: I see the difficulty, your Honor. I will put it another way.

The Court: But does this answer stand? I am not suggesting at all that you change it; I am only wondering whether it does stand or not, so I may deal with the situation on the cross-examination.

Mr. Kresel: I will have the answer read.

(Answer to Q. 76 read as reported above.)

Mr. Kresel: I will strike out of the answer the sentence beginning with the words "We found."

Q. 77. Doctor Bolton, how low was the yield that you say was obtained by following the process outlined in the patent?

A. We obtained about 25 per cent of the theoretical yield.

Q. 78. Was it possible to commercially manufacture Indanthrene Blue R S on such a yield?

A. We attempted for a short time in a plant to use this process, but without success.

Mr. Anderson: One moment, if your Honor please.

The Court: Let the answer be stricken out and the question repeated. As many times as you can, if you will answer yes or no, and then modify your answer, rather than to give what would seem to you and to me ordinarily the proper way to get at it, it will save us some difficulties.

(Q. 78. Read as recorded above.)

A. No.

Q. 79. Do you understand the question; that is, the question whether it was possible?

A. I understood the question, and the answer to the question as read is no.

Mr. Kresel: I now offer in evidence this Patent No. 724,789, to be marked as Defendant's Exhibit No. 250.

Received in evidence and marked "Defendant's Exhibit No. 250." (*See Patent Exhibit Book.*)

Mr. Galloway: Are you sure those are not in evidence as part of the Federal Trade license?

Mr. Kresel: No, I do not know. I am glad you called my attention to it, and if it be found that these are duplicates, then we will withdraw one so as not to recopy.

Mr. Anderson: Suppose you put them all in and then we will stipulate out any duplicates in making up the record. We can not find them now, the others are hidden among the debris.

Q. 81. I notice in this patent No. 724,789 there is the specification as to A and B compounds. You take the patent and use that. Will you state what your experience was with an attempt to manufacture according to that specification. What is the B compound?

A. We found that the B compound, which can be separated from the A compound as described in the specification, consists only of impurities of very little tinctorial value and could never be used as a dye.

Q. 82. In order that I may understand it, does the A compound purport to be, according to the patent, one way of manufacturing a dye, and the B compound another way of manufacturing this dye?

A. They give directions for making the A or the B by modification of conditions, so that under certain conditions you can get almost exclusively A, and under other conditions almost exclusively B.

Q. 83. Are A and B different colors or different grades of this same color?

A. Well, A is a color, and B, according to our experience, the impurities.

Q. 84. So that when you undertake to manufacture the B compound, you get nothing but impurities?

A. Yes, a product of a low tinctorial value which consisted of impurities.

Q. 85. Could you use it at all commercially?

A. I do not believe you could.

Mr. Kresel: I find that that patent is in evidence, so I will not offer it again.

Q. 86. Doctor Bolton, please take the patent No. 1,063,173, covering beta-amido-anthraquinone.

The Court: Will you put these patents in and see where you are afterwards, instead of relying on the ones already in.

Mr. Kresel: Yes, I will.

A. I have that patent.

Q. 87. What does that patent purport to cover—what color?

A. This patent covers beta-amido-anthraquinone, which is the intermediate for Indanthrene Blue R S and also for Indanthrene Yellow G, Yellow G being the second in importance to the Blue in this series of dyestuffs.

Q. 88. So that this patent that you now have before you purports to cover the intermediate for the two most important Indanthrene dyes?

A. Yes.

THE COURT: Do those letters after the color mean anything—or are you coming to that afterwards?

MR. KRESEL: I was not, but I am glad your Honor asked that.

Q. 89. What do those letters mean?

A. Those letters mean different brands.

THE COURT: They are just brand marks?

THE WITNESS: Yes. The Indanthrene Blue R S is different than the Indanthrene Blue G C D.

THE COURT: Another way of identifying different colors?

THE WITNESS: Yes, another way of identifying different constitutions.

Q. 90. Did you undertake to manufacture beta-amido-anthraquinone by following the steps outlined in this Patent No. 1,063,173?

A. We did.

Q. 91. What was your result?

A. We found that by following the processes described in the specification of this patent we obtained yields of about 50 per cent of the theoretical and the quality of the product was too poor for use in the manufacture of either the Indanthrene Blue R S or the Indanthrene Yellow G.

Q. 92. Please refer specifically to Example 2 of that patent. What does that recommend as the substance to be used in making the beta?

A. That recommends the use of manganese dioxide as the oxidizing agent.

Q. 93. Did you undertake to carry out that process as described there?

A. We did.

Q. 94. And what was the result?

A. We obtained low yields, and a poor quality of product.

Q. 95. Such a poor quality, as you have described, that could not be used as an intermediate at all?

A. We had difficulty in removing the manganese from the finished material.

Q. 96. Is there another example there, Example 3, and what does that recommend to be used?

A. That recommends the use of sodium bichromate as the oxidizing agent.

Q. 97. Did you attempt to follow out that process?

A. We did.

Q. 98. Was the result any different than the first you have indicated?

A. No different.

Mr. Kresel: I now offer in evidence Patent No. 1,063,173.

Received and marked "Defendant's Exhibit No. 251." (*See Patent Exhibit Book.*)

Q. 99. In this same connection, Dr. Bolton, that is, in the attempt to manufacture this intermediate beta-amido-anthraquinone, did you study any other of these German patents?

A. Yes, we studied this other patent.

Q. 100. What is the number of that?

A. United States Patent No. 1,104,943.

Q. 101. Did you follow out the steps described in that patent?

A. We did.

Q. 102. And what result did you accomplish thereby? Or I will put it this way: Were the results that you have already described as those——

The Court: That is leading.

Mr. Kresel: I am sorry. Repeat the other question.

(Q. 102 repeated as follows):

Q. 102. And what result did you accomplish thereby?

A. We obtained a product which could not be sufficiently purified for use in the manufacture of the blue and the yellow.

Mr. Kresel: I offer that one in evidence.

Received in evidence and marked "Defendant's Exhibit No. 252." (*See Patent Exhibit Book.*)

Q. 103. Now have you before you, Doctor, United States Letters Patent No. 739,145, purporting to cover a process for manufacturing Indanthrene Yellow G?

A. I have.

Q. 104. What is the number?

A. 739,145.

Q. 105. Will you please state whether you followed out the processes or the steps which are described in that patent?

Mr. Anderson: I object on the ground that he should state the process which he followed.

The Court: I thought we had gone beyond that. However, I am going to let you take the answer.

Mr. Kresel: I will put it the other way.

Mr. Anderson: He has not put it the other way in these questions. He has put in the process which he followed, and then he stated the results.

The Court: Then the question is withdrawn, as I understand it?

Mr. Kresel: I withdraw the question.

Q. 106. In your attempt to make Indanthrene Yellow G, please state what process you followed?

A. We carried out experimental work on the processes described in the different examples there contained.

Q. 107. Different examples where?

A. Mentioned in the specification of the patent.

Q. 108. Of this particular patent?

A. Of this particular patent.

Q. 109. And what was the result?

A. And we obtained low yields of Indanthrene Yellow G, and found that the best method of manufacturing Indanthrene Yellow G was mentioned in a rather obscure sentence in this patent.

Q. 110. Will you read that sentence?

A. Instead of "using aluminum chlorid as a condensing agent I can use antimony pentachlorid in the presence of a suitable solvent, such as nitrobenzene, and obtain a yellow-coloring-matter of similar properties." That is just like that known to-day for manufacturing Indanthrene Yellow G.

The Court: Is that the one given there as the preferable method or not?

Q. 111. Just read that. Will you answer the Judge's question for us as it was put?

A. In the specification three examples had been described in considerable detail, and in the third example they mention the use of aluminium chlorid, at the end of that paragraph, the following sentence is found——

The Court: The one you read?

The Witness: Yes, the one I read.

Q. 112. Now, Doctor, still please keep that patent before you. I want to ask you whether you followed the specifications given in example No. 1.

A. We did.

Q. 113. And what result did you obtain?

A. We obtained a product of poor quality and low yield.

Q. 114. Could it be used commercially?

A. Yes, if they could not get anything else.

Q. 115. Now, take the sample No. 2. Did you follow that out?

A. We did.

Q. 116. What was the result there?

A. Substantially the same result as with example No. 1.

Q. 116-a. How about Example No. 3, which used beta-amido-anthraquinone with aluminium chlorid?

A. We obtained only about five per cent in that. The yield was very poor with the use of aluminium chlorid.

Q. 117. How long did it take you to find out that this sentence tucked away in the last paragraph as you have described was a good process?

A. I do not know the actual amount of time. It was, of course, found by the elimination of all these other possibilities. We did not attach any particular importance to this sentence at first.

Q. 118. No.

A. But after an experiment or two, we found that that did give a rather attractive result.

Q. 119. Now, the second part of that patent covers the production of indanthrene yellow mixed with the blue coloring matters, which is indanthrene blue RS, is it not?

A. Yes.

Q. 120. Now if you follow that, what sort of a product do you get?

Mr. Anderson: Is that the same patent?

Mr. Kresel: The same patent.

A. This product today is of, I do not believe, any commercial value.

Q. 121. Of none at all?

A. No.

Mr. Kresel: Now let me have the patent please and I will offer that one in evidence.

Received in evidence and marked "Defendant's Exhibit No. 253." (*See Patent Exhibit Book.*)

Mr. Kresel: I have just a few more examples, your Honor. I do not intend to go through 4,500 patents.

Q. 122. Dr. Bolton, please produce patents covering indanthrene golden orange. The numbers are 828,778 and 845,129, and 1,004,433?

A. I find that I have only two.

Q. 123. Let me have what you can produce; see if you can find Patent No. 1,004,433, Doctor?

Mr. Kresel: I offer in evidence Patent No. 876,810.

Received in evidence and marked "Defendant's Exhibit No. 254." (*See Patent Exhibit Book.*)

Mr. Anderson: No. 876,810, is that one of those you just called for?

Mr. Kresel: Yes.

Mr. Anderson: I have Nos. 828,878 and 845,129.

Mr. Kresel: Yes, but there is one I did not give you.

Mr. Anderson: What is the number of that, Mr. Kresel?

Mr. Kresel: No. 876,810, also Patent No. 856,810, which I did not give you before, Colonel Anderson.

Mr. Anderson: Indanthrene golden yellow.

Mr. Kresel: Indanthrene golden yellow, as I understand the witness.

Received in evidence and marked "Defendant's Exhibit No. 255." (*See Patent Exhibit Book.*)

Mr. Kresel: You can not find the other one?

The Witness: No.

Mr. Kresel: Never mind. We will supply that later.

Q. 124. Please take these two patents, Nos. 856,811 and 876,810, what do they cover or purport to cover?

A. Patent 876,810 covers the production of indanthrene golden orange 2 RT from the dye produced from 2.2^1-dimethyl-1.1^1-dianthraquinonyl. Indanthrene golden orange G is used itself and is converted into a redder shade known as indanthrene golden orange 2 RT.

Q. 125. Now, the other patent that I handed you, what is the number of that?

A. The other patent 856,811.

Q. 126. What does that purport to cover?

A. It covers indanthrene golden orange G.

Q. 127. And is there a third patent numbered 1,004,433, which likewise refers to all processes of making indanthrene golden orange?

A. Yes.

Q. 128. That is the one you have not with you?

A. No.

Q. 129. Very well. Now please state what steps you took under one, two or three of these patents in attempting to make golden orange G and what the result was?

A. (Stricken out).

Q. 130. Please state what result you obtained.

Mr. Anderson: Would you mind asking him if he followed them all, or if not, which ones?

Mr. Kresel: Strike out the last question.

Q. 131. Did you follow them all?

The Court: And if not, which ones?

Q. 131 (continued). And if not, which ones?

A. I am rather handicapped in not having these patents to refer to.

By **The Court**:

Q. 132. You mean the missing one?

A. Yes.

By **Mr. Kresel**:

Q. 133. Suppose I let that stand over, then, until we get the other patent, and take up another one, and we will return to it. Would you prefer that?

A. I would much prefer it.

Q. 134. I shall now ask you with reference to the patent covering hydron blues. Have you the patent or patents which purport to cover the manufacture of that dye?

A. I have.

Q. 135. How many are there?

A. There are two patents for Hydron Blue R and one for Hydron Blue G.

Q. 136. Please produce them?

A. (Witness hands patents).

Q. 137. Are patents Nos. 919,572 and 956,348 for Hydron Blue R?

A. Hydron Blue R, yes.

Q. 138. And what is the number of that one covering Hydron Blue G?

A. No. 966,092.

Q. 139. Taking first the two patents covering Hydron Blue R, did you follow out all the steps in these two patents in attempting to make that color?

A. We did.

Q. 140. And with reference to the patent covering Hydron Blue G, did you follow out the steps described there?

A. We did.

Q. 141. Please state what result you obtained?

Mr. Anderson: In which case, please?

Q. 141 (continued). In both cases; separating them, of course, as you go along.

A. We found that it was not possible to manufacture Hydron Blue R or Hydron Blue G of commercial quality by following the specifications of these patents. Moreover, the yields were too low to make the processes commercially possible.

Q. 142. I would like you to state a little more with reference to the last ground that you assign. What do you mean that it could not be done commercially?

A. Hydron Blues are competitors to Indigo and Sulphur Blues. Indigo at the present time is selling at 20 cents a pound, compared with the pre-war price of about 15½ cents a pound. Sulphur Blues, of the concentration which are marketed today, are about equivalent to pre-war prices as the result of a very keen competition in this line of products; so that Hydron Blues must be manufactured at a low price, and that means manufactured in high yields in order to compete with these products.

Q. 143. And did the results that you obtained by following out the steps outlined in these three patents, where they gave you any yield at all, give you any such yield as would make it possible to manufacture and sell in competition with Indigo and the other product that you have described?

A. It would not be possible for us to manufacture with the yields obtained by following the specifications of the patents.

Q. 144. How long did your company spend in experimenting under these patents, trying to make Hydron Blues?

A. The investigation began in the spring of 1918, and the experimental work is about completed at the present time.

Q. 145. You have not produced yet?

A. Not on a large scale.

Q. 146. What sort of men did you have on this work?

A. We had first-class chemists. They were good research chemists.

THE COURT: What I want to know is whether they were skilled in this particular art.

Q. 147. Men that were skilled in this particular art?

A. Who had had no previous experience with this type of color, but men who have had experience with the manufacture of Sulphur colors.

Q. 148. They had experience in manufacturing dyes?

A. They had experience in manufacturing dyes.

Q. 149. I think that is what the Court meant by "in this art." Did you confine this experimental work to the same men all the time, or did you put other men on it?

A. We have had three different sets of men on this problem to try to arrive at the results.

Q. 150. Doctor Bolton, I have not asked you for the result of all your experiments under all these patents. Did your company prosecute research work under others of these German patents than those to which I have specifically called your attention?

A. We have.

MR. ANDERSON: One moment, sir. Go ahead. I will wait for the next question.

THE COURT (to Witness): Do not answer the next question until Colonel Anderson has had time to object.

Q. 151. As to such as I have not called to your particular attention, are you prepared to give any information that you have with reference thereto as to the result of your investigations?

MR. ANDERSON: I have no objection to his answering that question specifically, "I am" or "I am not," as long as he does not go into his answer.

THE COURT: I miss that question.

Q. 151 (continued). Did you understand my question?

Mr. Anderson: Will you read that, please, Mr. Stenographer.

(Q. 151 repeated as above recorded.)

Mr. Anderson: That calls for yes or no.

Q. 151 (continued). Just say yes or no?

A. Yes.

Q. 152. Doctor Bolton, can you state how much it has cost the duPont Company to carry on the research and experimental work under these German patents in its attempt to manufacture dyes according to the specifications described in those patents? Just say yes or no.

Mr. Anderson: He can answer yes or no, I suppose.

Mr. Kresel: Of course he can.

Mr. Anderson: Yes, or no, I do not object to.

Mr. Kresel: There is no objection.

A. Yes.

Q. 153. Now, I ask you to state how much was so spent? Do not answer until Colonel Anderson has had a chance to object.

Mr. Anderson: I object to that, sir, because in the first place, the question is not specific as to time and dates, and in the second place, it does not appear that this gentleman is in charge of the accounts of the duPont Company, and therefore the foundation has not been laid.

The Court: You may cross-examine him on that.

Mr. Kresel: I was just going to suggest that counsel may ask the witness questions so as to see.

Mr. Anderson: I mean that the foundation has not been laid for the question; that is all I want to say, sir.

The Court: I think he may answer subject to your right to cross-examine. With reference to the first, I assume that you mean during the period beginning with 1917?

Mr. Kresel: 1917. He has stated that they started as I recall it, July, 1917; so the period is well-fixed.

The Court (to witness): That question means whether you know these amounts of your own knowledge, at first hand, or whether you are in such connection as to be able to state them of your own knowledge. It does not mean hearsay information.

A. I can only say that these accounts are made up monthly and given to me from our laboratory organization for supervision. As for the total amount, that figure was prepared by someone else; but I do know that it is about correct.

Q. 154. Well, let us see now (because I want to meet your Honor's views in the matter). You say that the expenditures are made in the laboratories?

A. The accounts are made up in the laboratories.

Q. 155. Which are under your supervision?

A. Under my supervision.

Q. 156. And they come to you monthly?

A. And they come to me monthly.

Q. 157. And then you know, of course, whether those are correct or not as they come to you?

A. Yes.

By The Court:

Q. 158. They are not sent to you for that purpose, as I understand?

A. Yes, to supervise the amount of money spent.

By Mr. Kresel:

Q. 159. What I understood you to say was that as to the total you have obtained that now from whom?

A. From one of our accountants.

Mr. Kresel: Now, Colonel, is there any objection?

By Mr. Anderson:

XQ. 160. I would like to ask when Dr. Bolton became the head of the Research Laboratory?

A. Since the last of 1921.

Mr. Anderson: Well, then, I do not think he can testify to expenses incurred from 1917 to 1921.

Mr. Kresel: I will follow that up.

By Mr. Kresel:

Q. 161. What did you have to do prior to 1920 with the expenses and development work?

A. They came to my attention from time to time, but I did not follow them closely.

Q. 162. Prior to 1920?

A. No.

By Mr. Anderson:

XQ. 163. Were you not in New Jersey prior to 1920?

A. I was there from May of 1918 to the first of 1919.

By Mr. Kresel:

Q. 164. Can you segregate the total amount so as to give us the amount for the period from the time that you became head of the research work? Have you the figures in such shape before you that you can segregate it?

A. No.

Mr. Anderson: If you will pass that question by, if you have something else to examine him on, it is quite possible that I can go with you and Dr. Bolton and reach a conclusion. I only want to be in a position so that I can find these facts out accurately from the person who testifies.

The Court: Will you give him the figures so that he can check them?

Mr. Kresel: Certainly.

Q. 165. Mr. Bolton, I shall ask you to give us separately the amount that it has cost in research work for the indanthrene dyes, the amount that it has cost for the sulphur colors, and the amount of research work and the cost thereof on indigo. But we will take those up with Colonel Anderson later.

Mr. Kresel: At this time I offer in evidence Patents Nos. 919,572, 956,348 and 966,092.

Patent No. 919,572 received in evidence and marked "Defendant's Exhibit No. 256." (*See Patent Exhibit Book.*)

Patent No. 956,348 received in evidence and marked "Defendant's Exhibit No. 257." (*See Patent Exhibit Book.*)

Patent No. 966,092 received in evidence and marked "Defendant's Exhibit No. 258." (*See Patent Exhibit Book.*)

Q. 166. Dr. Bolton, a copy of Patent No. 1,004,433 that you did not have before you before has just been handed to me; so I shall return and inquire of you with reference to indanthrene golden orange. I think I had already asked you whether you had followed through the process described in all three patents. I now ask you to state what results you obtained therefrom.

Mr. Anderson: Mr. Kresel, I think that was the question that he said confused him. You asked him whether he followed that process or what process he followed under those patents and he said without the third patent it confused him.

Mr. Kresel: Perhaps you are right.

Q. 167. I shall ask you to state which of the processes you followed through under those three patents, and if not all of them, state what result you obtained?

A. These patents cover only parts of the three processes that are known today for making golden orange G.

Q. 168. You mean that neither one of the patents standing alone nor all three taken together describe a complete method for manufacturing this product; is that what you mean?

A. No; they describe three different methods. The patent literature, when complete, has three different methods for making the indanthrene golden G. So far we have carried out an investigation only of United States Patents 876,810, 856,811, and the process described in 845,129, copy of which I do not have before me. The third process is described by Patent No. 1,004,433. We have not had an opportunity to do very much on this process and our work has been confined to the two different methods described in the other patents mentioned previously.

Q. 169. Setting aside, therefore, No. 1,004,433, state what results you obtained by following the methods described in the other two patents?

A. We have been able to obtain products equal to pre-war quality and perhaps at satisfactory cost, because we had not had any manufacturing experience with them yet, by following a modification of these specifications. But we do not know whether we have the right process.

Q. 170. Just what do you mean by that?

A. I mean that there is a possibility of not having selected the right process from our examination of these patents. There is nothing to indicate to us which process is the best unless we carry out work and very intensive research work on every method described in these patents. We have not been able to get yet to the investigation of this third process described in Patent No. 1,004,433.

Q. 171. How long have you been working on that?

A. We have been working on it since the spring of 1918, but we had not worked all the time. I mean, we go at this problem, work a short time, and then it has been given up and the problem reopened again.

Q. 172. Altogether, how much time have you spent on it?

A. I am not able to state accurately.

Q. 173. Approximately?

A. I think that we could consider three years of intensive work.

Q. 174. I want to ask you particularly with reference to this product as to what kind of plant would be required and about the cost thereof?

A. That is an important question and depends upon the process which is selected. We started out in the beginning, based on a certain experience, and concluded that a process involving a certain number of operations would be required to make this product.

When that information was turned over to our engineering department, we found that it would cost about $250,000 to build the plant. At that time it did not appear to be possible to earn the interest on such an investment and it was decided not to go ahead with this process. Later on, we worked out another process.

Q. 175. No, I won't go into that. I must confine myself and you, Dr. Bolton, to what was done under these patents. Let me ask you this: How many operations—I mean chemical operations—are required in manufacturing under the processes outlined in these patents?

A. In one process it will require about eight operations; in another process, if selected, it will require about four operations.

Q. 176. And when you say another process, do you refer to another process described in these patents?

A. Another process which would be covered by these patents.

Q. 177. Doctor, are there any other vat colors than the indanthrenes?

A. We have the hydron colors, which are vat colors.

Q. 178. Any others?

A. We have other classes of products derived from anthraquinone known as the algol colors, a complete series in itself. We have a class of products known as the hellendone colors, which are what we call indigoids, somewhat similar in constitution to indigo.

Q. 179. And all these that you have mentioned come under the general classification of vat colors?

A. They come under the general classification of vat dyes.

Q. 180. As to the algol colors, do you know who manufactures those in the United States?

A. They were manufactured in small quantities by a concern in Chicago, which has recently failed, in the last six months or so, and I believe they are reorganizing the concern. I think it was the American Vat Color Company, but I am not very familiar with it.

Q. 181. Are these algol colors covered by patents?

A. They are covered by patents.

Q. 182. Do you know who owns those patents?

A. The patents are owned by the Grasselli Chemical Company.

Q. 183. And are the algol colors, being of vat dyes, used for purposes similar to those for which the indanthrene colors are used?

A. They are.

Q. 184. In other words, are they in competition?

A. Certain colors are in competition.

Q. 185. By the way, are there any indanthrenes being imported now from Germany?

A. Yes.

Q. 186. Do you know whether the Germans designate vat colors of the algol class and the indanthrene class interchangeably?

A. The algol colors had been imported within the last year as algol dyes. The name algol now seems to be disappearing and certain products brought in formerly under the name of algol dyes have now been put in the indanthrene class.

Q. 186. In other words, they are so closely related that they are designated as indanthrenes?

Mr. Anderson: I object, if your Honor please.

The Court: The question is leading.

Mr. Anderson: The witness stated the facts. I think we can argue the case on the facts stated.

Mr. Kresel: Very well, I will leave it there.

Q. 187. Doctor, you started in your testimony this afternoon by saying that the first step taken by the duPont Company in the manufacture of dyes in 1915 was in the use of some by-product from explosives to manufacture an intermediate for dyes. Do you remember that?

A. They were intermediates used at that time in the manufacture of explosives.

Q. 188. I want to ask you to state to the Court whether or no it is possible for a dye factory in time of war to be converted into a factory for the production of munitions, and vice versa, whether it is possible after a factory has been used for the purpose of producing munitions, to convert it into one producing dyes?

Mr. Anderson: If the Court please, we have had a great deal of evidence on that subject from experts. Nobody has controverted the fact that dye factories can produce explosives, and explosives plants can be subsequently reconverted into dye factories; that the chemicals used in each are related to each other. It is just cumulative.

The Court: Your concession is that they are readily convertible?

Mr. Anderson: It is not a concession. I say that there is any amount of evidence which has been put in here on that subject, on which there has been no controvertial evidence. Why put in additional cumulative evidence here?

The Court: He has not reached the limit of his number of witnesses on that—unless you can now save further inquiry on that point, by saying that it will not be disputed.

Mr. Anderson: It will not be disputed?

The Court: Yes.

Mr. Anderson: If there is any phase of it that would come up in rebuttal and that might seem to me disputable or that should be disputed, I would not like to limit my right to dispute it, and rather than have myself limited in that regard, as to evidence the extent and character of which I can not now determine, I would rather listen to this gentleman repeat the statement told to us half a dozen times. But as long as we have not in this whole proceeding questioned either the iniquities of the Germans or the ability of the Dyestuffs people to manufacture explosives, it seems to me unnecessary to spend the time going through it. But I just want to raise the question.

The Court: But you have rebuttal, and whether that would be proper in rebuttal I am willing to determine now.

Mr. Anderson: No, sir; if I put on rebuttal I think I might raise that question in rebuttal. But I would rather raise it when I want to put that rebuttal on and not at this time.

The Court: I am afraid I misunderstand you, Colonel Anderson, because if I understand you the only time the defendant has an opportunity to build up a case on that point is now and not after your rebuttal.

Mr. Anderson: I withdraw my objection, sir, so far as that question is concerned—reserving my general objection to this evidence as utterly immaterial and irrelevant.

A. I would like to have the question repeated.

(Q. 188 repeated as recorded above.)

A. Yes, it is possible.

Q. 189. I would like you, Doctor, to state to the Court, using as examples such well-known chemicals as may readily occur to you, such as can be readily utilized for the manufacture of dyes and at the same time are basic elements in the manufacture of explosives. Do I convey my question to you?

A. Yes, sir.

Q. 190. Will you state them?

A. We are manufacturing at the present time intermediates like aniline, dimethylaniline, diphenylamine, dinitrophenol, etc., which are used in the manufacture of explosives, and these plants are kept running at the present time; the organization is kept intact as a result of their use in the manufacture of dyestuffs. An intermediate like aniline is one of the largest intermediates in the manufacture of dyestuffs. It is used for making dimethylaniline and diphenylamine. Dimethylaniline is converted readily by nitric acid into the high explosive known as tetryl. The diphenylamine made from aniline is a stabilizer for smokeless powder, and that intermediate is used today in the manufacture of dyes used for paper and silk. Dinitrophenol is an intermediate used for the manufacture of picric acid by treating with sodium sulphide. It is converted into sulphur black.

Q. 191. And is sulphur black a dye?

A. Sulphur black is a dye and is one of the largest manufactured today. There are a number of plants which are used in the manufacture of dye intermediates which could be used at once in the manufacture of certain high explosives. One of the common reactions in the manufacture of intermediates is known as nitration. We have nitration plants for quite a number of intermediates. In the event of war those plants could be converted at once into the manufacture of high explosives. The sulphur black that we are making today is being made in the plant used during the war for the manufacture of picric acid. But of far greater value than your physical investment is the organization of chemists and of chemical engineers who could be put at once on the manufacture of high explosives and poison gases in the event of war.

Mr. Anderson: Now I wish to make, in addition to my general objection, the specific motion to strike out on the ground that no one of the reasons given by the witness is assigned in the order authorizing the private sale in this case, and therefore it is entirely immaterial and irrelevant.

The Court: I would like to see that order. That is the order of December 3rd?

Mr. Kresel: No, it is February 26, 1919, your Honor.

The Court: It is page 111 of the Answer.

Mr. Kresel: The third reason assigned: "Public interest will be best served."

The Court: I have it. Objection is overruled.

Q. 192. Doctor Bolton, I now desire to repeat to you the question that I tried to put to you at the beginning of your testimony, and that is for you to state if you will, having now given specifically your experiences with specific numbered patents, I want you to state briefly, the experience that you and your company had in attempting to use the methods outlined in these German patents for the manufacture of dyes.

In other words, in what respect other than such as you have given with reference to specific patents did you find it difficult to utilize the German patents?

Mr. Anderson: I object, if your Honor please, on the ground that if there is any difficulty in the use of German patents involved in this suit, to which I suppose the inquiry is by inference limited, that the patents should be produced, and the facts should be given by following the process and stating the difficulties in carrying it out. In other words, if that question is answered, it forces us to the necessity, in order to protect the Government, to cross-examine this gentleman on every patent he has used of an alien character, and that goes right straight to the question we had this morning. Now, if there is any matter here material, it is all right to bring it out, but we certainly submit it should be brought out in such a way that we can meet it without being put to that handicap.

The Court: Read it. (Question repeated as recorded.)

Mr. Kresel: It is a little involved, your Honor, and I do not wish to put that as involved as that. I will reframe it, your Honor, because I want to be as specific as I can.

Q. 193. Doctor Bolton, in addition to the specific difficulties that you have stated with reference to the specific patents that have been called to your attention, did you or did you not undertake to manufacure under other German patents involved in this case, and if so, will you please point out whether or no you had any difficulty, and what those difficulties were. Do not answer that——

Mr. Anderson: I object to that question for the same reason as stated in the one preceding and for the additional reason that it probably involves four questions. It asks if it did or did not have difficulty in manufacturing under any other German patent. That would call for an answer yes or no; and if he made that answer, then we would have a right to call for the production of those patents.

THE COURT: I will sustain the objection and let you present the several questions separately so that I may rule on them.

Q. 194. Doctor Bolton, did you or did you not undertake to manufacture under other German patents than those to which I have drawn your specific attention?

THE COURT: Do not answer. Do you want to know whether he attempted to manufacture? That is the deliberate point. That is, whether he attempted——

MR. KRESEL: May I withdraw the question?

THE COURT: Yes, because that is not the question as I recall it which you have been putting.

Q. 195. Did you or did you not undertake to follow out the steps outlined in other patents than those that have been specifically drawn to your attention?

A. We did.

Q. 196. I am not going to ask you to state specifically what patents they were, or how many. I am going to ask you the general question as to whether or no you found any difficulty in getting results by following the specifications in such patents?

MR. ANDERSON: I object to that, if your Honor please. It calls for the reasons in general. If he wants to ask what was done under a written instrument like a patent, he must first produce the instrument and state what was done, and what were the results obtained from that, and how far it varied.

THE COURT: Generally speaking, true, but I am wondering, Colonel Anderson, if this witness should be prepared to say that they made an investigation specifically mentioning them, and that in each one, judging from his preceding answers, they found the yield insufficient or the quality poor, and specified accordingly, would we get any further by taking up each patent separately, and probably spending a day or two in going through them. Would you have any more information, and would the Government be any better off in the end?

Mr. Anderson: The Government would be protected to this extent: We have no possible knowledge of 4,800 patents. I do not even know how many the duPont Company has used—I assume a great many. Now, that being the case, the Government has no possible way of checking this gentleman's answer.

The Court: I think you are entitled to have him say whose patents are embraced in this answer and specify those patents.

Mr. Anderson: If he is asked as to particular patents, and asked whether he followed the process in that patent, and what information he got, I will not be over-technical in applying that to a general answer covering all other German patents.

The Court: I think you are absolutely right there, Colonel Anderson, and that his answer must be based on and give you the information as to which of the several patents he is talking about; and then if he can give an answer which is generally applicable to all those—I do not know whether he can or not—why would not we save time by having him do it, and that without any prejudice to the rights of the Government. So far as his specifying the patents which are concerned, there is no doubt in my mind but what you are right on that point, and right, generally speaking, on the other point, too.

Mr. Anderson: I recognize your Honor is trying to get a result by the most convenient way, and so am I. I do not want to be putting obstacles in here unnecessarily; but I think your Honor will appreciate that if this evidence is at all material to the issues in this case, it may be important—now whether it is or not I do not know—the interests here involved are so large, that it seems to me for the Government to take the risk of general answers and short cuts, the effect of which in argument it is almost impossible to anticipate, because you can not possibly analyze this record as you go on, and not be in a position to pin down or narrow down to the bare statement of fact every important question with regard to these patents, therefore I am greatly embarrassed here by the desire to do what your Honor wants to do, as tired as I am, and I know the Court is, too, but I have a duty——

The Court: I am wondering if we can not do this: Do you happen to know how many patents you are prepared to testify that you have used? (To the Witness.) I do not mean for you to give me the number; but is the number large or small?

The Witness: I do not hesitate to give you the number.

Mr. Anderson: I do not object to him giving the number at all.

The Court: Do you, Mr. Kresel?

Mr. Kresel: Not at all.

The Witness: We investigated all the patents owned by The Chemical Foundation. I am referring only to them. We have investigated forty-two, for which we have licenses at the present time.

The Court: And are you prepared to give the number of those licenses?

Mr. Kresel: I have a list of those.

The Court: You have made inquiry as to how many of them?

Mr. Kresel: I have made inquiry, I think, as to eight or ten of them.

The Court: If those instances are illustrative of what he found with respect to all, is that placing any burden on you, Colonel Anderson, or do you want the witness to go through each of those other thirty-four?

Mr. Anderson: I have not the slightest idea, sir, what his testimony would be. Those are very important patents, those dye patents, and at the present time I will talk the matter over tonight with people who know more about it than I do, after the time your Honor fixes for adjournment, and I will try to see if I can avoid taking the witness through this labyrinth, without prejudicing the Government.

The Court: Have you any objection to stating privately, Mr. Kresel, to Colonel Anderson, what you wish to arrive at?

Mr. Kresel: I have no objection, your Honor.

The Court: So that it may aid him in deciding tonight. Have you any other questions you want to put in the next five minutes or shall we adjourn now?

Mr. Kresel: I will stop now.

The Court: Then we will adjourn till 8.30 tomorrow morning.

(Whereupon, at 4.25 o'clock P. M., Standard Time, an adjournment was taken until Wednesday, July 18th, 1923, at 8.30 o'clock A. M., Standard Time.)

THIRTIETH DAY.

Wilmington, Delaware,
July 18, 1923, at 8.30 o'clock A. M.
Standard Time.

Before:
Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Elmer K. Bolton resumed the stand.

Mr. Kresel: If your Honor please, at the time of the adjournment yesterday afternoon, there was a question pending, and at your Honor's suggestion Colonel Anderson and I have consulted about that question, and I am here to state the agreement that we have arrived at.

Colonel, if I do not state it quite exactly, you will correct me.

Colonel Anderson is willing to withdraw all objections to this question except his general objection as to materiality and relevancy, with the understanding that he may have latitude in cross-examination, and I said, of course, it was perfectly proper that he should have it, because by permitting the question to be answered it saves time necessary to draw it out piecemeal on the direct.

The Court: I am very glad you have come to that agreement, because it was in my mind to make that suggestion if you had not. And in making the suggestion I do not mean to indicate that I do not deem this testimony to be of importance to Colonel Anderson, and Colonel Anderson will be given the widest latitude with respect to what the witness did under these patents. That does not mean, Colonel Anderson, that you will be in cross-examination, without further consideration, at least, given the latitude of ascertaining what you are not permitted to ascertain with respect to certain other matters.

Mr. Anderson: What Mr. Kresel stated I think is substantially what we understood, and I understand your Honor's position. I do not want to be put to the burden of a long cross-examination on a short direct; it would be simply taking up unnecessary time.

The Court: Otherwise it might take up double time.

Mr. Anderson: Yes, and that was our understanding. Therefore I said with that understanding, and in an effort to save time, if the witness would try to give fair answers—I know he would on that question—I would waive the necessity for going through it on direct. Of course, when I get to cross-examination, if I run up against your Honor's rulings, then the question will arise on those.

The Court: We cannot pass on that until I know what is in your mind about it, and you do know what is in mine.

Mr. Anderson: Yes, quite so; we understand that.

The Court: You may proceed.

By Mr. Kresel:

Q. 197. Dr. Bolton, I am going to read to you the question that remained unanswered, page 4064 of the record, which is this: "Q. 196. I am not going to ask you to state specifically what patents they were, or how many. I am going to ask you the general question as to whether or no you found any difficulty in getting results by following the specifications in such patents?" If you desire the preceding question and answer read, so as to connect it up, I will do that, but if you understand what is referred to there, will you please answer it?

A. In no instance did the patent give a workable process in commercial yield and pre-war quality. In every instance we had to make the following changes: First, to add ingredients not mentioned in the specification of the patent. We changed the temperature to get the re-action; we changed the quantities of the ingredients; we changed the concentration of the reaction to add additional steps to the operation.

Q. 198. Additional to what?

A. Additional to the process as described in the specifications of the patent.

> **The Court**: Mr. Kresel, I do not know whether the question involves trade secrets here in any way. If it does not, the latter part of that answer is all right. If they are involved the latter part of that answer throws the question open to cross-examination, not in public, but to cross-examination on that. I am only serving notice at this time that if that question is not involved, this answer passes; if it is involved, why, this answer opens up that question.
>
> **Mr. Kresel**: I have considered that, your Honor, because I had been over the matter with Dr. Bolton, naturally, and I do not think that it does involve the question of trade secrets.
>
> **The Court**: That is, trade secrets not involved in the dye patents.
>
> **Mr. Kresel**: Trade secrets are not involved in the answer to this last question.

The Court: Do you agree to that, Colonel Anderson?

Mr. Anderson: I cannot very well answer the question until I cross-examine further, sir.

The Court: Very well. I do not want unnecessarily to get into another complicated situation.

Mr. Kresel: I understand your Honor, and I am very anxious to avoid it myself, and so is the witness for that matter.

Q. 199. Now, Dr. Bolton, you called my attention to some corrections which you wanted to make. Will you take those up now.

A. If your Honor please, I would like to make some corrections.

The Court: Make such corrections as you find necessary.

The Witness: On page 4029, in answer to Q. 33. "And how long did you remain in that position?" "A. I was the manager of the organic division until the latter part of 1920." That should be 1921.

On page 4054, the date should be changed from 1920 to 1921. That is in answer to the question "XQ. 160. I would like to ask when Dr. Bolton became the head of the Research Laboratory? A. Since the last of 1920." It should be 1921.

Mr. Anderson: Doctor, may I call your attention to the fact that the next following the answer on page 4054. "Sincee the last of 1920." Then I said: "Well, then, I do not think he can testify to expenses incurred from 1917 to 1920." I would like to change that.

The Witness: Thank you, Colonel, that should be changed too. Throughout the testimony indanthrene gold and orange is referred to, but it should be "golden orange."

Mr. Anderson: We will consider that as understood, without making the detailed changes. I do not think it is material to this case, the exact name.

The Witness: On page 4048, in answer to Q. 124. "Please take these two patents, Nos. 856,-811 and 876,810, what do they cover or purport to cover? A. Patent 876,810 covers the production of 2.2′-dimethyl-1,1′-dianthraquinonyl, which is an intermediate for indanthrene gold and Orange G." The answer should be: "A. Patent 876,810 covers the production of indanthrene golden orange 2. R T from the dye produced from 2.2′-dimethyl-1,1′-dianthraquinonyl."

On page 4056, in answer to Q. 169. "Setting aside, therefore, No. 1,004,433, state what results you obtained by following the methods described in the other two patents? A. We have been able to obtain products equal to pre-war quality and perhaps at satisfactory cost, because we had not had any manufacturing experience with them yet, by following a modification of these specifications." I would like to add: "We have been able to obtain products by the aid of additional information equal to pre-war quality and perhaps at satisfactory cost, commensurate with the aid of additional information."

Q. 200. Is that all?

A. That is all.

Q. 201. Yesterday I omitted to put in patent No. 1,004,433. Have you that now?

A. Yes, I have one.

Mr. Kresel: I now offer in evidence Patent No. 1,004,433, about which the witness testified yesterday.

Received in evidence and marked "Defend-

ant's Exhibit No. 259." (*See Patent Exhibit Book.*)

Q. 202. Doctor Bolton, there were two other patents that you did not have with you, Nos. 828,778 and 845,129. Do you remember those?

A. Yes, sir.

Q. 203. With reference to indanthrene golden orange?

A. Yes, sir.

Mr. Kresel: I now offer in evidence patents Nos. 828,778 and 845,129.

Received in evidence and marked respectively "Plaintiff's Exhibits Nos. 260 and 261." (*See Patent Exhibit Book.*)

Q. 204. Doctor Bolton, I should like you to state the amount of money that has been spent by the duPont Company in research work and experiment work in the production of dyes from 1917, when you stated they started experimenting, down to May 25, 1923, to which date I understand your figures run.

Mr. Kresel: I might state here, your Honor, that pursuant to your Honor's suggestion, I submitted to Colonel Anderson yesterday these figures, and Colonel Anderson stated that he would let me know this morning as to his view of the matter, but we have not had any answer yet.

Mr. Anderson: If the Court please, I think the plaintiff will be compelled, under the issues in this case, to ask for the details of those figures. It is obvious that the gentleman now on the witness stand, from his testimony on yesterday, would not be able to give that information; and therefore it seems to me that it would save time and convenience also and be fairer to the plaintiffs to have the information produced by some one who can respond in cross-examination to the details. I regret to have to make that suggestion.

THE COURT: I think it is perfectly justifiable and I think well taken. The only question is as to whether this witness shall answer as to all and then testify as to that which he has specific knowledge of and be restricted in his answer to that.

MR. ANDERSON: I would very much prefer that he give the information of his own knowledge. I think it is necessary to avoid complications.

THE COURT: Will you restrict him to that, Mr. Kresel.

MR. KRESEL: I do not believe, your Honor, that he can at present segregate this total so as to cover the period of which he has personal knowledge. In view of the position of the Government, I shall not press the question at this time. I shall have to put on another witness for the purpose.

MR. ANDERSON: Mr. Kresel, while you were making these corrections in the record, there was one I noticed.

MR. KRESEL: I have not read the record. These corrections are suggested by Doctor Bolton.

MR. ANDERSON: There was one this morning that I caught at page 4037, the last line of the page. The statement in the record is, "In which I stated specifically my grounds outlining the chief basis as that of a stockholder to raise this question." What I said was, "that of estoppel."

MR. KRESEL: Of course.

MR. ANDERSON: I would like to have that word changed.

MR. KRESEL: That is all right.

THE COURT: Is the duPont Company a licensee of the General Chemical or solely of the Federal Trade Commission?

Mr. Anderson: I think your Honor means The Chemical Foundation, do you not?

The Court: I did.

Mr. Kresel: They started first as licensees of the Federal Trade Commission. Indeed, they took the first license that was ever issued by the Federal Trade Commission, and subsequently they have taken licenses from The Chemical Foundation.

The Court: Under additional patents?

Mr. Kresel: Additional patents.

The Court: They are still licensees of the Federal Trade Commission—or have those been surrendered?

Mr. Kresel: I have a note of that here, your Honor.

The Court: It does not matter if you have not it immediately available.

Mr. Kresel: I think I have.

Q. 205. I wonder, Doctor Bolton, if you can answer that question?

A. We have surrendered our licenses to the Federal Trade Commission and are licensees only of The Chemical Foundation.

Q. 206. Have you not a list of the patents which are covered by licenses, Doctor Bolton?

A. I have (handing it to counsel).

Q. 207. Is this a list, Doctor Bolton, of the licenses that the duPont Company now holds from The Chemical Foundation?

A. Yes.

Q. 208. In which the license number appears and the numbers of the patents that the licenses cover?

A. Yes.

Q. 209. And the products?

A. And the names of our products.

Q. 210. I notice you used the term "Ponsol." I think you stated that was the duPont designation for indanthrene?

A. For indanthrene.

Q. 211. So, wherever the word "Ponsol" appears here, it means indanthrene?

A. Yes.

Mr. Kresel: Mr. Anderson, you have had a copy of that. I offer in evidence, if your Honor please, this list, showing what licenses the duPont Company holds from The Chemical Foundation, the list showing the names of the patents and the products covered thereby.

Mr. Anderson: The plaintiff makes all reservations as to this list, in addition to its general reservations. As to the information contained therein, I assume that it is taken from the existing evidence in the record. If it is evidence outside of the record, of what is covered by the patent, I reserve objection to it until I can further examine it. I have not had a chance personally to examine it. In other words, I do not wish to be put in the position of taking that evidence as proof of what products are covered by these particular patents; that is a question that will have to be more clearly brought out than it is at the present time. I am perfectly willing to concede that if this witness testified specifically on the subject, or were permitted to testify in those general terms as to what products are covered by the patents, he would state that those are the products covered by the patents; but I would not waive my objection to that evidence on technical grounds, that is all I want to say.

Mr. Kresel: That is satisfactory, your Honor. Moreover, Colonel, I think that most of the patents that are listed here are already in evidence. If you should find that any are not in evidence we will supply them; you understand that.

Mr. Anderson: I understand that.

List received in evidence and marked "Defendant's Exhibit No. 262." (*See Exhibits, Vol. V, page 3242.*)

Q. 212. Dr. Bolton, basing your opinion upon your knowledge of dyes, manufacture thereof, upon your knowledge of the patents mentioned and described in this last exhibit which you have studied, based upon your experience in attempting to produce the products covered by these patents by following out the steps of the processes described in those patents, will you state what in your opinion was the value of these patents in the United States in February, March and April, 1919? Please do not answer until Colonel Anderson has made his objection.

Mr. Anderson: I wish to note objection to the question stated as to other hypothetical questions of that character, because I do not think it has yet been shown that this gentleman's knowledge of value of patents would probably make him an expert. On that question there might be a difference of opinion. As to the other points, I do not think that the question sufficiently embodies the evidence in this case, or that it accurately embodies the evidence in this case, and therefore I have to object to this question for the reasons stated.

The Court: You may take the answer.

A. In and of themselves the patents do not have any practical value without the know-how. They have a certain nuisance value which I do not know how to compute in dollars and cents. These patents would prevent the manufacture of the products which they cover, and consequently, unless these patents were out of the way, we would not be able to manufacture the products.

Q. 212. What do you mean that unless the patents were out of the way, you would not be able to manufacture the products? I do not quite get that.

Mr. Anderson: I want to just note an objection to that, sir. The gentleman has made a statement in explicit language, and I do not think counsel can cross-examine his own witness on a statement which is just as clear and explicit as I have heard in my life, both in the affirmative and negative statements.

Mr. Kresel: I am not cross-examining the witness. I think I am entitled to have an elucidation of the portion of the statement made by the witness.

The Court: You may take the answer.

The Witness: May I have the question?

(Q. 213 repeated as above recorded.)

A. I mean that most of these patents that we have under consideration are product patents.

Q. 214. And is it under those circumstances that the duPont Company has taken licenses from The Chemical Foundation?

Mr. Anderson: I object for two reasons: One is that it is a perfectly leading question; and the second is that the circumstances have been outlined here and the duPont Company are licensees.

The Court: The first ground of your objection, I think, is well taken; consequently, it is unnecessary for me to pass on the other.

Mr. Kresel: I will not press the question. You may examine.

Mr. Anderson: Before beginning the cross-examination of the witness, your Honor, I should like to renew the motion to strike out his entire testimony as to these patents, for the reasons stated in my motion to strike out, and objection to subsequent evidence of the same character, on yesterday. I understand your Honor's rulings. I merely want to put the motion on the record at this point.

THE COURT: That is, because if it has no value, it tends to show invalidity of the patents.

MR. ANDERSON: Yes, sir, and for the reasons stated, which I do not think I could recite at this time—I had a memorandum then which I have lost—that the defendant is estopped to put in this evidence on the various grounds stated at that time.

THE COURT: I think that that objection is not well taken, because counsel for the defendant says that this goes to value only and not to invalidity, and I think possibly that it is more true of the testimony of this witness than of the preceding witness.

MR. ANDERSON: Without waiving that objection, I will ask leave to ask the witness some questions.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 215. Doctor Bolton, when did you first take up the specific study of the dye question as distinguished from your general chemical knowledge and experience?

A. It was in the spring of 1916. That is as specifically as I can answer it.

XQ. 216. At that time, if I recall your evidence correctly, you stated that you began this work for the duPont Company?

A. Yes.

XQ. 217. I call it the duPont Company for short. You understand what I mean?

A. Yes.

XQ. 218. If I recall correctly that was a comparatively short time after the completion of your chemical education which you outlined on yesterday and need not repeat?

A. Yes.

XQ. 219. Up to that time you had had no experience as a practical or industrial chemist, had you?

A. No, I had not.

XQ. 220. Up to that time the duPont Company had not been engaged in the manufacture of either dyes or intermediates, had it?

A. They had engaged in the manufacture of a few intermediates required for the manufacture of explosives.

XQ. 221. Their work, so far as this particular branch of the industry was concerned, was confined to the manufacture of explosives?

A. That is true.

XQ. 222. And the extent of their manufacture or development of intermediates which might be used in dyes was confined exclusively to this purpose, for explosives or use of explosives?

A. Yes.

XQ. 223. You first undertook this work in a very small way as I understood it?

A. On a laboratory scale.

XQ. 224. I mean you were practically working alone. You had one or two assistants, did you?

A. That is true.

XQ. 225. It was really a preliminary study of the subject of dyestuffs, was it not?

A. It was.

XQ. 226. I understood you to say that that work was gradually enlarged under the direction of your company until you employed a number of additional chemists for further experimentation in the laboratory?

A. Yes.

XQ. 227. It was purely laboratory work at that time?

A. Purely laboratory work.

XQ. 228. When did the actual work of industrial manufacture of dyes begin on a commercial scale?

A. In the summer of 1917 we began production in rather substantial quantities of sulphur black, and in the early part of 1918 we began the production of indigo.

XQ. 229. At that time indigo was not a patented dye, was it?

A. It was not covered by any product patent.

XQ. 230. There were, however, certain patents with respect to intermediates of indigo?

A. There were quite a number. I do not recall offhand. But there were quite a number of patents covering different methods for the manufacture of phenyl-glycene, which is an intermediate for indigo.

XQ. 231. Are those patents still in existence?

A. Some of those patents are still in existence.

XQ. 232. Are you a licensee of The Chemical Foundation under any of these patents?

A. We are not.

XQ. 233. Do you make indigo now?

A. We make indigo now.

XQ. 234. Do you use that ingredient?

A. We use that ingredient.

XQ. 235. Is that a German patent?

A. Well, I do not quite understand.

XQ. 236. I mean the patent covering the ingredient?

A. That was a German patent.

XQ. 237. That is still in existence?

A. They were process patents owned by the Germans.

XQ. 238. Do you know whether the patent covering that process is owned by The Chemical Foundation?

A. It is.

XQ. 239. Can you give me its number?

A. One of the processes for producing phenylglycene is described in United States Patent No. 868,294, patented October 15, 1907.

XQ. 240. Are there any other patents that you know of covering intermediates in the manufacture of indigo?

A. There are other patents covering the processes for producing phenylglycene, this same intermediate. There are also patents for producing other intermediates from which indigo can be made.

XQ. 241. In order not to break the chain of the examination, I will drop that for the moment and return to it later and get you to give me the information. When you began your experience in the study of dyes in the laboratory in 1916 and down to 1917, when you began to make sulphur black, that being the first dye that the company had ever manufactured, how many chemists did you have assisting you?

A. I had at that time in this particular laboratory, I think, as high as twelve chemists at one time. Research work on intermediates was being carried out at another laboratory of the company.

XQ. 242. Where was that laboratory?

A. That laboratory was at Gibbstown.

XQ. 243. Was that laboratory under your direction?

A. It was not.

XQ. 244. Your research work, that of which you can testify from 1916 to 1917, or the first year of your work approximately, was with the aid of a varying number of chemists, which ran at one time as high as twelve?

A. I think so.

XQ. 245. About how many on the average did you have, Doctor, during that period?

A. I believe about nine.

XQ. 246. What particular product or intermediates were you studying at that time—sulphur black?

A. No, sir. We were studying the manufacture of products which could be produced from intermediates available at that time; and these intermediates, you will recall, were being used for the manufacture of explosives.

XQ. 247. Those were commercially available in this country?

A. They were commercially available.

XQ. 248. That, of course, being the period of the war and of blockade, and this country being at war from the beginning of 1917 practically, the number of intermediates available for dyestuffs, in view of the demand for explosives, was very limited, was it not?

A. Very limited.

XQ. 249. Not only the amount of intermediates, but the number in the market; I mean the different character of intermediates was very limited?

A. Very limited.

XQ. 250. Would you mind saying, Doctor, what were the intermediates available at that time?

Mr. Kresel: For what?

XQ. 250. (Continuing.) For the manufacture of dyestuffs. You have already testified that they were intermediates used also or interchangeably in the making of explosives. I want to get the type of intermediates and the number of them that were available at that time commercially?

A. Aniline.

XQ. 251. That is rather a fundamental intermediate?

A. A fundamental intermediate. Dimenthylaniline; diphenylamine; dinitrotoluol, dinitrophenol;

tetramethyldiaminodiphenylmethane, which is a by-product from our dimethylaniline manufacture. These were the intermediates that were available at that time. But the work which was carried out under my supervision was confined to the utilization of aniline, nitrobenzol, dimethylaniline and tetramethyldiaminodiphenylmethane.

XQ. 252. Into what well known dye products do these particular intermediates enter? If that means all of them, I do not want you to give a list of them, but I am just trying to approach the other subject.

A. Aniline and nitrobenzol enter in the manufacture of nigrosine and induline; dimethylanaline enters into the manufacture of malachite green, of methylene blue, of crystal violet and of methyl violet.

XQ. 253. Those are final colors—commercial colors?

A. Those are final colors.

MR. KRESEL: Has the witness finished with those?

MR. ANDERSON: I think he has.

XQ. 254. You can list them all, if you wish, in that general class.

A. They were products of that class. I was just trying to recall all that we were studying.

XQ. 255. When your company began to manufacture in 1917, it confined its operations in finished or commercial colors to sulphur black, did it?

A. Sulphur black.

XQ. 256. Did any of the intermediates which you have spoken of enter into the making of sulphur black?

A. Dinitrophenol enters into the manufacture of sulphur black.

XQ. 257. That is the only one?

A. That is the only one.

XQ. 258. In 1917, when the company began the actual production of this one color, how many chemists were you then employing in your research laboratory work?

A. In 1917?

XQ. 259. Yes.

A. I do not know the size of the organization at that time, because it is necessary to consider not only the chemists employed at the experimental station where I was located prior to the transfer to the Wilmington office, but also the chemists located at the Eastern Laboratory, engaged in studying methods for producing intermediates.

XQ. 260. Your company had had a good deal of experience in producing the intermediates used in explosives, had it not?

A. Only after the outbreak of the war.

XQ. 261. Well, that was in 1914, of course?

A. 1914, yes.

XQ. 261-a. Your company has been engaged for a great many years in the production on a very large scale of explosive materials and powders, has it not?

A. It has.

XQ. 262. Do not these intermediates enter into the making of those materials or products?

A. They do, the manufacture of high explosives.

XQ. 263. In 1917, for instance, when it began the making of dyes for the first time, the company had been engaged in producing these explosives in which aniline and the other intermediates which are common to both dyes and explosives, as you have described, entered, for the three years of the war which had then passed, on a very large scale, had it not?

A. I am unable to state just how much that experience was, because I was not familiar with the early activities in that line.

XQ. 264. Do you not know that prior to the war and the blockade conditions which resulted therefrom, the intermediates to which you have referred, were very largely produced in Germany?

A. That is true.

XQ. 265. Those then entering into explosives and dyestuffs in common?

MR. KRESEL: And imported from Germany.

XQ. 266. And imported from Germany—were they not?

A. With the possible exception of aniline which had been manufactured here a few years before the outbreak of the war—I do not know how long they had been manufactured, those particular intermediates.

XQ. 267. Aniline you say?

A. Aniline.

XQ. 268. That is one of the most important of all intermediates, is it not?

A. That is one of the most important.

XQ. 269. Many of the others are really products of aniline with other combinations?

A. Many intermediates are built up from aniline.

XQ. 270. Built up from aniline?

A. Yes.

XQ. 271. Now, do you know to what extent the duPont Company had been producing the intermediates of the class which you mentioned which I am now discussing which are then common to both explosives and dyestuffs prior to the war?

A. I do not believe they were producing any of these intermediates prior to 1914.

XQ. 272. Except aniline, you said they were?

A. No, aniline was not produced prior to 1914 by the duPont Company.

XQ. 273. But it was produced in this country and sold commercially?

A. Yes.

XQ. 274. From 1914 on and thereafter during the war, the production of these intermediates entering into both lines of business, was largely increased in the United States, was it not?

A. It was.

XQ. 275. And did not the duPont Company in the production of explosives, if you know, produce those intermediates on a constantly increasing scale from the beginning of the war and the interference by the blockade?

A. That is true.

XQ. 276. So that in 1917, the duPont Company had had three years of work in the development of the various intermediates entering into explosives, as distinguished from dyestuffs which were common to both in manufacture; is that true?

A. That is true.

XQ. 277. Now, Doctor, speaking of the chemists that assisted you in these preliminary experiments, were they American chemists?

A. They were American chemists.

XQ. 278. Were they young men?

A. Young graduates from universities and colleges.

XQ. 279. Yes. Without stating the actual salaries, were they expensive men as the scale of industrial life goes in America?

A. I cannot answer that question, because I do not know what compensation those men received.

XQ. 280. Would you have any general idea of the character of their comparative values in the commercial market, of those young men—to make my question clear, I mean there are certain chemists of very high standing, who naturally receive and command very high compensation; these young men in the beginning of their experimental work, like all young men, their compensations are comparatively small, are they not?

A. They are comparatively small.

XQ. 281. Now, do you know whether any of these young men that you had as your assistants had ever had any experience in production, either in the laboratory or in manufacture, of dyestuffs?

A. I do not believe any of them had previous experience before entering the employ of the duPont Company.

XQ. 282. Doctor, is it not a fact that in modern chemistry, as in all other scientific and professional lines, the tendency is toward severe specialization in practice?

A. Yes.

XQ. 283. Is it not a fact that in the very broad field of modern chemistry, any chemist, to produce actual results, must narrow his activities to a specific field; I mean in practical industrial life?

A. I do not know what you mean by "to produce actual results."

XQ. 284. Well, then, probably my question was indefinite. Is it not a fact that in Germany, for instance, the development of the science of chemistry has probably been carried further in its commercial and practical results than other countries, up to the beginning of the war?

A. Yes.

XQ. 285. That is true. Is it not a fact that in Germany the activities of chemists in the industrial field was narrowed to very specific work, and concentrated upon a very specific branch of the chemical knowledge?

A. That is true of certain parts of the chemical organization. I do not believe it was true of their research organization. The manufacturing men who manufactured sulphur colors and had charge of the sulphur color plants, carried out research work in that field.

XQ. 286. In the field of sulphur colors?

A. Although I do not think they were confined exclusively——

Mr. Kresel: Will you finish—exclusively of what?

A. (continuing)—to that line of work.

XQ. 287. Had you, prior to your investigations in the duPont Company, had any experience in the making of vat dyes?

A. I had not.

XQ. 288. Do you know whether any of your assistants had any experience in the production of vat dyes?

A. They had not.

XQ. 289. The company itself had no experience in the manufacture of vat dyes until that work was taken up; is that true?

A. That is true.

XQ. 290. When did they begin the manufacture of vat dyes, do you recall?

A. The manufacture of vat dyes began in the fall of 1919.

XQ. 291. After the war, were not German specialists in these lines of manufacture available for employment in America or by the duPont Company?

A. They were.

XQ. 292. Is it not a fact that the duPont Company did employ a number of German specialists?

A. That is true.

XQ. 293. And is doing so at the present time, is it not?

A. It is.

XQ. 294. Doctor, is it not a fact that the chemical discoveries are nearly all laboratory discoveries? Are they not made in laboratories?

A. They begin usually with laboratory discoveries.

XQ. 295. After a process is worked out or a product developed through chemical experimentation in laboratories, is it not a fact that it takes considerable additional experimentation and development to make it an industrial or commercial process or product?

A. It does.

XQ. 296. And the more complicated the character of the process, or the more difficult the production of the product from a chemical or engineering standpoint, the longer the period of practical experimentation to convert a successful laboratory experiment into a successful industrial product; is that not true?

A. That is usually the case.

XQ. 297. Do you know how long it took the Germans, after making their laboratory experiments, to develop a commercial indigo?

A. I do not.

XQ. 298. Do you know that in many of these more important dyes after the laboratory experiments had been successfully developed—the process or the product—that it took them sometimes five years to make it a commercial success in manufacturing?

A. I do not know of any——

XQ. 299. Yo do not know that of your own knowledge?

A. No.

XQ. 300. Do you happen to know how much the Badische Company expended in developing the indigo colors after they had succeeded in producing them in the laboratory and thus making them a commercial product?

A. I know the story that is usually told in the textbooks, but——

XQ. 301. But you have not any personal knowledge on that subject?

A. No.

XQ. 302. Is it not a fact in your experience as a chemist, that a successful laboratory experience or laboratory result, be it process or product, often requires considerable modification in detail and development before it can be made a commercial success in manufacturing on a large scale?

A. That is true.

XQ. 303. Have you not had in your own experience—I speak of you as your company—in the production of vat dyes, an entire destruction of your product as a commercial product through error in the use of some metal or material in your vats in which it was produced?

A. I do not know of any instance in the manufacture of vat dyes where the material was entirely destroyed as a result of improper selection of the material of construction.

XQ. 304. I will ask you this: Have you not had actual experience in finding your product in vat dyes made unsuitable for the commercial markets, through having it come in contact with or using in the tanks or utensils in which it was made metals which were destructive of those colors?

A. I do not know of any such experience in our vat dyes.

XQ. 305. Have you in any other dyes had that experience?

A. We have had the case of reduction of yields, as a result of exposure of certain metals.

XQ. 306. And that result was obtained in manufacturing after you had secured satisfactory results in the laboratory?

A. Of course, in our laboratory we carry out the process in glass, and it is another problem to carry out these processes in wood or iron or copper, or whatever the metal may be.

XQ. 307. And an error in the construction of your mechanical appliances, or in the use of a metal, will produce an entirely destructive chemical result in the product, so far as commerce is concerned, will it not?

A. That is true; but we, of course, always look into that point. We will test the——

XQ. 308. Have you not in fact——

Mr. Kresel: Wait a minute, please; he has not finished.

Mr. Anderson: All right; I thought he had answered fully; if you have not finished, Doctor, finish.

A. (To XQ. 307 continued.) We test the materials which we have in mind for the construction of the plant, to be sure that the reaction is not influenced by these particular materials, as part of the development of any process which we carry out in the laboratory.

XQ. 309. Have you not in a number of instances had to throw away machinery and appliances after you had installed them, because you found them not adaptable to the production of the particular dye that you wished to make?

A. I would not say, Colonel, that we have thrown away machinery. We have modified machinery.

XQ. 310. You have had to do that very considerably, have you not?

A. No, we have not thrown away, or reconstructed this machinery. I want to get this straight now. Are you referring to the manufacture? You still are talking along the line of manufacture?

XQ. 311. I am talking about the manufacture as distinguished from a laboratory?

A. Yes, but not confining it to any particular class?

XQ. 312. No, I am not confining it to any particular class. I am speaking generally. In order to make it quite clear, Doctor, I am trying to get some idea of what I, as a practical man, would assume to be the difficulties of converting a laboratory result obtained in glass, as you say, into a manufactured or commercial or industrial result where you had to do it on a larger scale. You have had some little experience in that line and I wanted to get from you your experience along those lines.

A. We have modified machinery—we have modernized machinery, as a result of our experience. I mean, our experience is building up every day, and we know how to carry out processes and know the better types of machine today more than we did a year ago, and I hope that we will know more a year from now than we know today.

XQ. 313. That is inevitable in the development of these complicated chemical and mechanical processes which have to be adapted to each other, is that not true?

A. That is true.

XQ. 313-a. In other words, the manufacture of dyes of the delicate colors involved, and the many processes involved, is an extremely complicated business, is it not?

A. It is a very complicated business.

XQ. 314. One of the most complicated of all known chemical and mechanical efforts, is it not?

A. As far as I know it is.

Mr. Kresel: We will stipulate that.

Mr. Anderson: Well, we have got so far without stipulation, so we will go ahead.

XQ. 315. That being the case, is it not a fact that the human factor, the innate quality of the employee, the experience and the knowledge of the machinery and engineering difficulties as well as chemical, are all essential factors in this production?

A. They have a certain effect.

XQ. 316. You said yesterday that one of the great difficulties you had was teaching the American workmen to follow strictly the process outlined to him; that is true, is it not?

A. That was true.

XQ. 317. You said yesterday that one of your great difficulties had been in the development of your mechanical appliances, as I understood it, and your machinery.

A. That is true.

XQ. 318. You said that one of your great difficulties had been in the control of your reactions in the chemical work?

A. In developing that information.

XQ. 319. All of those questions, including actual practical experience, are of enormous value in the result, are they not?

A. They are.

XQ. 320. I will ask you this additional question: Is it not a fact that many of these dye products require eight to ten distinct chemical steps or reactions before you get the result?

Mr. Kresel: Operations, we have called them.

Mr. Anderson: All right, we will call them operations.

A. Yes, that is true. From the raw material to the finished dye as many as eight and ten different operations are required.

XQ. 321. And is it not true that the introduction into any of those operations of an intermediate which was deficient in quality, or an error in technique, would destroy the result to a large extent?

A. The influence of quality is quite marked and it would necessitate at some time or other a purification to remove the impurities introduced. But an error in technique—I do not know just what you have in mind, but I assume that somebody has failed to add an ingredient or failed to carry out the reaction or operation as prescribed.

XQ. 322. That would be what I would call an error in technique.

A. Then it would show up in the next step, and that product must be purified or set to one side.

XQ. 323. And start again?

A. And start again.

XQ. 324. That is right. In other words, in chemistry, and especially in these complicated chemical processes by which these products are produced, the delicate colors, technique plays perhaps a larger part than in any other branch of industrial life, is that true—accuracy in technique?

A. Accuracy in technique after having established your procedure.

XQ. 325. Yes.

A. That is the secret of manufacturing these things successfully.

XQ. 326. When you take a patent founded upon a laboratory experience and undertake to convert that process into a large industrial operation or apply it to a large industrial operation or to produce the product therein through the various steps which you have outlined, whether in dyes or in any other business does it not require a very high degree of knowledge and in usual chemical experience a very considerable amount of experimentation and development?

A. Yes, it does require a considerable amount of experimentation and development to complete the chemical details of the process.

XQ. 327. To convert it into an industrial or commercial proposition?

A. Into an industrial or commercial proposition.

XQ. 328. Doctor, at the time that you were manufacturing these dyes, up to the period after the war when the markets were opened up again, you had to manufacture the intermediates also, did you not?

A. Yes.

XQ. 329. And you were faced with a new problem in chemical and industrial life in the production of these intermediates first and in the production of the final product last, were you not?

A. Yes.

XQ. 330. And you were faced, also, with an important mechanical and engineering problem, of producing the machinery for the commercial utilization of those intermediates, and the manufacture of those final products, were you not?

A. Yes.

XQ. 331. I believe you testified this morning that substantially all the patents under which you manufactured were product patents?

A. Substantially all the patents licensed from The Chemical Foundation are product patents.

XQ. 332. I think you spoke of one yesterday as being a process patent?

A. Yes. One is a process patent. I would like also to add that there are a number of patents for which we are licensed from The Chemical Foundation, which cover the application of products which we sell to the trade; and we have taken out those licenses for the protection of the consumers of these products.

For example, we manufacture a dye which is not covered by any patent, but the conversion of that dye into a lake is protected by patent. You perhaps may know that the Germans not only patented their processes and their products, but they attempted to obtain as far as possible the application of those particular products——

XQ. 333. Don't the Americans do the same thing?

Mr. Kresel: Please do not interrupt him. I think he should be permitted to finish.

Mr. Anderson: I am not going to interrupt the witness but I thought he was through. If I interrupt you before you are through, please, Doctor, just say "one moment" or something of that sort.

The Court: You may complete your answer.

A. (Continuing.) They tried to sew up the situation as tightly as possible.

XQ. 334. Very naturally.

A. Now we have taken out those licenses to extend to our consumers the privilege of making these products without the annoyance of having them apply for the patents. We of course do not know what happens to some of these products, how they use the intermediates which we sell to them.

XQ. 335. So that you undertake to protect first your manufacture of intermediates by licenses; second, your manufacture of the product; and third, the use by your customer of the intermediates which you manufacture, in making such product as he wants to use them in?

A. We have taken out licenses for those purposes.

XQ. 336. You spoke of some of these older patents being obsolete. Is it not a fact that the chemical industry in the production of dyes, as in other branches of that industry, is rather developing and undergoing constant improvement?

A. That is true.

XQ. 337. Is it not a fact that a number of the patents under which your company is licensed were taken out as late as 1913 or 1914, as you recall the dates?

A. Yes.

XQ. 338. Is it not a fact that even in some instances you hold licenses under patents issued since the war on application received by The Chemical Foundation?

A. Yes.

XQ. 339. You spoke of the difficulties with your plant organization. Could you be a little more specific and tell me what was the character of difficulty you meant there?

A. One of the main difficulties was the transfer of the information to the men who operated the plants, and that goes back to the kind of information which we transferred to the plant, and which the plants used in the manufacture of intermediates and dyes.

XQ. 340. In other words, you developed your processes to what you conceived to be a workable commercial basis in your laboratory and then you transferred them to the manufacturing plant?

A. To the manufacturing plant.

XQ. 341. And there, I take it, you found difficulty with the lack of knowledge or experience on the part of that organization?

A. In obtaining the results substantially the same as obtained on a laboratory scale.

XQ. 342. You would transfer to them this information and the difficulty was in applying it for want of knowledge and experience?

A. Well, the difficulty was of two kinds. It was difficulty in application and difficulty in the quality of the information, which——

XQ. 343. You tried to supply——

Mr. Kresel: Wait a minute, he has not finished.

Mr. Anderson: Doctor, will you tell me when you want to say something. You had stopped, had you not?

Mr. Kresel: He said "which".

Mr. Anderson: Then something else occurred to him afterwards that he wanted to say. I hope that counsel will refrain from interrupting. I have no desire to interrupt you, Doctor, and if you want to say anything else, you stop me and say it, without my having to be told from behind.

Mr. Kresel: Here is another thing we agree on. We won't interrupt the witness.

The Court: Finish your answer, Doctor, if you have not finished.

The Witness: I have finished.

Mr. Anderson: I thought so.

XQ. 344. Did you not have a good deal of difficulty with your organization in the use of the intermediates which they had been accustomed to using in explosives, in getting them to apply those intermediates in an effort to secure a different result in dyes?

A. I don't think so. Our aniline was of a good quality at that time. Our dimethylaniline was good. The diphenylamine was a purified product.

XQ. 345. I did not mean that, Doctor. You had men trained in the production of explosives, as you said. Now, did you not have a good deal of trouble in untraining them and turning them into dye manufacturers with that organization? We are now discussing plant organization?

A. It is an entirely different kind of experience.

XQ. 346. It is an entirely different kind of experience?

A. Yes.

XQ. 347. Is it not a fact, Doctor, that in the manufacture of the azo dyes which you said was one of the most important of these dyes, you had a great deal of trouble, owing to the material in the construction of your tanks or vats or vessels for holding these dyes?

A. We had some trouble, yes.

XQ. 348. Did you not in fact have to discard a very considerable amount of production of these dyes for that reason from time to time until you discovered the error?

A. No, there was principally a reduction in yields.

Mr. Anderson: I understand you are going to put on other witnesses on the cost of research, and so forth?

Mr. Kresel: Yes.

XQ. 349. Doctor, were not the Germans pioneers practically in the production of modern dyes?

A. Were not the Germans——

XQ. 350. Pioneers in the production of modern dyes?

A. Yes.

XQ. 351. Is it not a fact that these processes which you described on yesterday, as covered by these German patents were practically pioneer processes in this great industry?

Mr. Kresel: What do you call "pioneer processes"?

Mr. Anderson: In other words, "pioneer" has a perfectly definite meaning. It is a man that opens the way through an unknown territory in a forest to settle up a new land, if you want the definition, Doctor, but I do not think you need it.

Mr. Kresel: Thanks for the information.

Mr. Anderson: I thought probably——

XQ. 352. Go ahead.

A. I think that we can consider that they are. We have not any reason to think otherwise.

XQ. 353. Yes. I would like, if you can, for you to take the various patents or dyes which you defined yesterday and in your statement this morning, and give the appropriate Schulz number, could you; not necessarily on the stand; I am perfectly willing to have this done off the stand, to save time?

A. I intended to do that for you last evening, Colonel Anderson, but it slipped my mind.

XQ. 354. You can do it any time today and put it as a statement on the exhibit as filed. That will be satisfactory?

A. Yes, sir.

XQ. 355. Could you explain briefly what is the function of the Schulz number; what does it mean in the business, for the benefit of the record?

A. Well, it refers to the early compilation by

Schulz and Julius of the dyestuffs known at that time, and the constitutions of the same.

XQ. 356. They are thoroughly understood in the trade and are standard trade numbers, are they?

A. Yes, every one knows what is meant by Schulz.

Mr. Kresel: No. Please do not be laboring under a misapprehension. I do not propose to be bound by anything that Schulz says. You can not use Schulz as evidence against us. In other words, his putting on the number I simply gave you notice is not going to bind us that what Schulz says under that number is the truth.

XQ. 357. Schulz is a recognized authority on the subject in the dye business, is he not?

Mr. Kresel: So is the German hand-book that I tried to use in the cross-examination of Dr. Holdermann, which you kept out.

Mr. Anderson: If your Honor please, I have not presented the Schulz book.

Mr. Kresel: I know, but I simply give you notice.

Mr. Anderson: I do not think it is the time to take up that question.

XQ. 358. Would you answer the question, Doctor?

A. May I have the question. (Question repeated as recorded.)

Mr. Kresel: Authority on what?

Mr. Anderson: On the subject of dyes of that character, and the information which Dr. Bolton has already testified the Schulz numbers imply or give.

The Witness: He is the only authority which gives an identification of dyestuffs; but Schulz was an university professor, and he has made many mistakes in his compilations.

XQ. 359. Yes. All of us do, don't we make mistakes?

A. He of course did not receive the information, I do not believe, from the industry, on some of the products.

XQ. 359a. You do not know the sources of his information, do you?

A. I do not know where he got it

XQ. 360. Yes, that is right. Now, Doctor, you spoke of the identification of the product. Dyes, as I understand, have certain trade names?

A. Yes.

XQ. 361. Did you not have a good deal of difficulty in identifying the patents which applied to the particular products, when you took up a certain dye, until you had made experimentation?

A. We have had considerable difficulty in correlating patent and dye.

XQ. 362. That is what I mean. Are you through? That answers my question if you are through.

A. Yes.

XQ. 363. Are you now prepared to say, Doctor, that the patents which you presented on yesterday cover all the patents seized by the Alien Property Custodian and assigned to The Chemical Foundation which are applicable to the particular dyes or intermediates, which you described or refer thereto in any way?

A. I think that they cover.

XQ. 364. Are you prepared to say that those are all of the patents owned by The Chemical Foundation that apply to those?

Mr. Kresel: Apply to what?

Mr. Anderson: The dyes or intermediates which he described yesterday, in which the company was engaged in manufacture.

Mr. Kresel: I do not understand that he described any particular intermediates or colors. He said: Here is a patent that says you can make X. I tried to make it and could not. That is all he said.

Mr. Anderson: If your Honor please this is a very intelligent witness and I think he can answer the question. I never saw a more accurate one in my life.

Mr. Kresel: The difficulty is that counsel for the defendant is not as intelligent, and unfortunately he has to understand the question.

Mr. Anderson: Earlier in the case I became offended at the personal remarks of counsel for the defendant in this case, and now I am only amused. I will go ahead with the examination with your Honor's permission.

The Court: Read the question. (Question repeated as recorded.) The objection is that I understand the question is not proper on cross-examination. I will hear you with respect to that, Colonel Anderson.

Mr. Anderson: That applies to the dyes and intermediates which you said the duPont Company manufactured.

Now, since he has produced a number of patents here as applying to the dyes and intermediates which he described, I think it is entirely proper on cross-examination, for me to ask him if he can say that those are all the patents used by The Chemical Foundation and assigned by the Alien Property Custodian which relate to or apply to those dyes and intermediates.

Mr. Kresel: It seems to me, your Honor, that the confusion comes in in speaking of a dye and intermediate without mentioning the name thereof. Now, if counsel desires to ask this witness whether the product described as being producable by a particular patent presented to the witness is, as far as he knows, the only patent which is extant for the production of that particular ingredient, why, that is all right; but there was not any testimony on the direct examination of this witness in general as to any dyes. He took each patent and said:—This patent says we can make hydron blue for instance which we tried to do and we could not. This question is not directed to anything brought out on the direct examination. It is not proper cross-examination. It can not bring out any information that is of any use.

Mr. Anderson: If your Honor please, counsel asked a direct question as to Dr. Bolton's experience in the manufacture of the dyes and intermediates called for by forty-two patents, a list of which he filed. I now ask Dr. Bolton whether he is prepared to say from his knowledge that those are all the patents assigned by the Alien Property Custodian to The Chemical Foundation, which relate to or have application to any of the dyes and intermediates so mentioned and described by him, and they are all set forth in that statement. If that is not within the limit of cross-examination, I do not know what is.

Mr. Kresel: Let me point out, your Honor, the inefficacy of this whole thing. Let us assume he has one patent for the production of hydron blue, and this witness says:—I could not make it under that patent. Suppose there is another patent for the making of hydron blue—just let us assume it—is that any evidence which has any probative value as to the value of the particular patent that we have here now. How is that material? Suppose there are twenty other patents for the manufacture of hydron blue.

The Court: I would be glad to hear you, but I have reached a conclusion in respect to that.

Mr. Anderson: That is all I have to say.

The Court: And that is I have grave doubts as to whether it is cross-examination, but I believe it is important testimony in this case. I will take the answer subject to the exception, Mr. Kresel.

(XQ. 364 repeated as follows: "Are you prepared to say that those are all of the patents owned by The Chemical Foundation that apply to the dyes and intermediates which you said the duPont Company manufactured?")

The Court: Is that the form in which you desire to have the question stand?

Mr. Anderson: Suppose that I put the question differently. I will put it this way?

XQ. 365. Doctor Bolton, are you prepared to testify of your knowledge that the patents which you have filed in your direct examination are all of the patents, among those assigned by the Alien Property Custodian to The Chemical Foundation, which have any application to the manufacture of the dyes and intermediates manufactured by the duPont Company and stated on your list filed this morning?

The Court: Do you understand the question?

The Witness: I understand the question.

A. They are not all the patents.

XQ. 366. Is it not often very difficult, in your experience, without testing out the various processes and each of the processes named in any patent, to tell to just what dye products or intermediates such process in fact applies?

A. Yes, it is very difficult. Sometimes you can make a selection of the intermediates which might be employed, but usually it is necessary to carry out in most cases experimental work to determine which process is the best.

XQ. 367. Is it not a fact that in making a finished dye product or color there is involved a combination of many processes and of various ingredients and intermediates, which are also used in other finished colors?

A. That is true,—ingredients that have a pretty wide application in the manufacture of other products.

XQ. 368. Now taking up the patents which you filed this morning, I will come first to our former discussion of indigo. You stated that there were patents on a number of intermediates used in the manufacture of indigo, and mentioned especially one patent No. 868,294. Are there any other patents that you know of now, which have not expired, applicable to or which purport to cover essential intermediates in the manufacture of indigo?

A. I know there are other patents covering different methods for the manufacture of phenylglycine, but offhand I am unable to state whether those patents have expired at the present time or not. I must refer to the patents.

XQ. 369. Would it be possible for you later to give the information as to the intermediates used or useful in the manufacture of indigo which are covered by or as to which there are patents still in existence, with a list of those patents, and their numbers?

A. Yes, sir.

Mr. Anderson: Would your Honor permit me a moment? I want to talk to Mr. Knight about certain matters.

(A short recess was here taken at the direction of the court.)

Mr. Anderson: If your Honor please, during the recess I have found by reference to the notes of the stenographer that I misunderstood a reference of counsel for the defendant a moment ago as applying to myself, when he intended it to apply to himself. I therefore wish to retract my reply, because in those circumstances my reply was not justified.

THE COURT: I wondered at the basis of it. Let it be withdrawn. You may proceed.

XQ. 370. Dr. Bolton, on yesterday you were asked in regard to your developments under patent No. 724,789, which contains specifiations for what you spoke of as "A" and "B" compounds. Do you recall the matter mentioned?

A. I recall the patent.

XQ. 371. In reply to the question, and speaking of the specifications of the patent, you said: "They give directions for making the A or B by modification of conditions, so that under certain conditions you can get almost exclusively A, and under other conditions almost exclusively B."

MR. KRESEL: Would you mind giving him the page of the testimony?

MR. ANDERSON: The page of the testimony is 4041, and I will also hand the witness the patent (handing patent to witness).

XQ. 371. (Continued.) I would like to ask you to state the exact conditions prescribed by the patent, if they are described, and then to state the exact modifications which you made and to which you referred. It is suggested to me that the answer probably refers to modifications of conditions prescribed by the patent itself rather than those that you made. If that is true, then I withdraw the question.

A. That is true.

XQ. 372. Or I will ask you to answer the question that way, and that will explain?

A. Yes, it means the modification of conditions described in the second example of this patent.

XQ. 373. That is, that the modifications are in the patent and not modifications that you made?

A. In the patent and not modifications that we have made.

XQ. 374. Taking your answer this morning to the general question in relation to these patents, I note you say at page 4070 of the record: "In no instance did the patent give a workable process in commercial yield and pre-war quality. In every instance we had to make the following changes. First, to add ingredients not mentioned in the specification of the patent. We changed the temperature to get the reaction; we changed the quantities of the ingredients; we changed the concentration of the reaction to add additional steps to the operation."

I will take up the first of those and ask you to take up the patent which you took up first on yesterday, covering indanthrene blue RS, I think, and state exactly what ingredients you added and under what process in the patent you experimented?

A. (Witness refers to Defendant's Exhibit 250).

XQ. 375. Now I would like to ask you, first, which of the processes you followed?

A. We tried in the laboratory on a small scale the three processes described in this patent—followed the three examples of the patent specification.

XQ. 376. The patent gives the general specifications and then gives three illustrations; is that what you mean? I haven't it before me?

A. Yes.

XQ. 377. Did you follow in detail the general specifications as illustrated by the three examples?

A. We carried out experiments using the conditions employed in these examples.

XQ. 378. The exact conditions?

A. As closely as we could follow them.

XQ. 379. Doctor, could you be a little more specific. Could you follow them exactly, or did you have to vary?

A. Yes, we could follow them exactly, in that we used the same conditions as given in the specifications of the patent.

XQ. 380. Did you manufacture your own ingredients or intermediates?

A. We manufactured beta-amido-anthraquinone.

XQ. 381. That is the product?

A. That is the chief intermediate for the manufacture of this dye.

XQ. 382. The patent covers that as a result, does it not? The process described in the patent being a method of producing that particular chemical?

A. Of producing indanthrene blue RS.

XQ. 383. This chemical which you have described there, as covered by that patent, is an intermediate of idanthrene blue RS?

A. Idanthrene blue R S can be considered as an intermediate for idanthrene blue G C D and is sold in very small quantities for itself.

XQ. 384. Now then, this process produces,—what did you call it?

A. Idanthrene blue R S.

XQ. 385. That process in that patent?

A. The process in this patent, No. 724,789.

XQ. 386. Following the process outlined in that patent, example No. 1, what did you get?

A. Example No. 1 gives the method for the production and separation of the products designated as A and B by fusing beta-amido-anthraquinone with caustic potash alone at a high temperature. We obtained low yields following this procedure.

XQ. 387. What temperature did you use?

A. The temperature is specified, 250 degrees Centigrade.

XQ. 388. You used that temperature, employed that temperature?

A. We used that temperature.

XQ. 389. How much did you vary that temperature in your final effort?

A. Well, in our first experiments I believe I can say that we confined ourselves as closely to this temperature as possible. I do not believe that we carried out a very thorough investigation of this particular procedure varying the temperature, the amount of caustic and other conditions, because the yields were too low to make the process appear promising.

XQ. 390. Promising, you mean, from a commercial standpoint?

A. From a commercial standpoint.

XQ. 391. There was no difficulty in producing the result, but the question was of making it commercially?

A. We obtained the product.

XQ. 392. Take the next example, No. 2. What does that call for?

A. No. 2 calls for the production of a melt from which A is the chief product obtained.

XQ. 393. Did you follow the exact process there referred to?

A. We followed the process as outlined in this patent; and as far as my recollection goes we carried out substantially the same process at one time on a work scale. The yields were too low to make the process a commercial possibility.

XQ. 394. In other words, you could not make a profit on it as a manufacturing process under those conditions; you got the result in the laboratory?

A. We obtained the dyes covered by the patent.

XQ. 395. Now No. 3.

A. No. 3: We paid some attention to this process, which called for the production of a melt from which B is the chief product obtained. Our experience showed that B was a product of a low tinctorial value which we did not believe could be used commercially.

XQ. 396. You paid very little attention to it; you only made a preliminary investigation?

A. Yes, the dyestuff itself seems to be destroyed under these conditions.

XQ. 397. And you never have undertaken to manufacture that product B?

A. No.

XQ. 398. You have only manufactured product A?

A. Only product A.

XQ. 399. I will ask you, Doctor, what additional ingredients, if any, you added in manufacturing product A on a commercial scale, and what change in detail of process you followed?

A. Your Honor, that means the divulging of confidential information which has been acquired after a very considerable period of intense research and investigation and the expenditure of money.

> THE COURT: What value, in your case, will that information have if you get it—from your standpoint, Colonel Anderson?
>
> MR. ANDERSON: I do not know what the information is, sir, but if it is a very slight variation or a variation of such character that one experienced in this business and different chemists operating under different ideas and technique in applying this process would arrive at that thing, then it affects this evidence. I cannot tell what is going to be its effect until I hear the answer to the question.
>
> In other words, the view I take here is simply that, having questioned the value of these processes, it becomes necessary for the Government, if this information or evidence is deemed material

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by the Court at final hearing, to be in a position to analyze the extent of that variation of process, if any.

The Court: Mr. Kresel has said that he had not disputed the validity of the patents. The witness has said that they are paying license fees under these patents. Consequently, they are not disputing, as I understand it, that they are operating under the patents. Hence, I fail to see the relevancy, materiality or evidential value of the precise thing which they are doing. It seems to me that the evidence which is of value consists of the statement of those facts which disclose the time and the expense necessary to develop the process to a commercial scale, whatever that commercial scale is, whether it is a wide or a narrow departure or any departure at all from the process disclosed in the patent. What is your view and contention with respect to that?

Mr. Anderson: My view would be, sir, that while that may have value as evidence—the weight of which I am probably not prepared just now to express definite views upon—if that is to be considered at all, it necessarily follows that we must have all the facts bearing upon the variation of process, if any—first, to the end that we may ascertain whether that variation was material as affecting in any way the value of the patents and, second, to the end that we may either produce evidence or argue before the Court, if it is a matter for argument, that whatever may have been the experience of the particular user of the patent, the variation was of such a character that one skilled in that particular branch of the art would not have been required, as the patentee was, to take any such steps. Offhand I would say generally that would be the thought that I have in mind.

THE COURT: In other words, that the manufacturers under these several patents might by that be indirectly charged with inability from a practical standpoint to do that which some theorist says after the event can readily be done. Would that be the idea?

MR. ANDERSON: I do not know that your Honor has correctly expressed or summarized my view; because I am not charging these gentlemen with any inefficiency. I am merely stating that I think the extent of their experience and the extent of their knowledge and the character of their effort are all facts going to affect this testimony, if it has any value whatever. My own view is that this testimony under the circumstances which your Honor indicated can have no value; but if it has any, then we must have the complete facts. That is the view on which I ask the question.

THE COURT: I disclaim before I make this statement that I am charging you with the situation which my assumption is going to indicate, and I will assume a theoretical case so as to completely disclaim it—disclaiming either expressly or by any necessary inference any reflection. But if your hypothesis and assumption are true, then is not all business in America in jeopardy, in that it may be charged, inasmuch as it conducts its business on secret processes, with a wrongful act in connection therewith. Using this case as an illustration, solely for that purpose, the only defense in such assumed case possible or that would be completely effective, let us assume, would be a disclosure of certain facts, that they have found that the patents under which they have attempted to work are not workable on a commercial scale and they have spent so much money in developing them. They either have to disclose that fact or their business is ruined by default. If they disclose that fact, then they are compelled to disclose other facts, namely, the secret processes that have been developed by them through years of study and at the expenditure of huge sums. Then their business is ruined by the disclosure of the processes to the trade. Where is the security for business under such conditions?

Mr. Anderson: In answer to your Honor's question, that my position too may not be misunderstood, I wish to disclaim any desire to embarrass any American industry in this suit or to jeopardize in the slightest degree its future prosperity. But answering now your Honor's direct question I would say that if we came into Court charging a business in American industry with the use of patents and that industry undertook to meet the charge by saying that they had varied the use of the patent, had not used it, had varied its use, or modified its process in such a way that even if they had used it the value of its use would be very limited in an accounting or otherwise, that burden would be upon them, upon proper cross-examination to show carefully and in detail the limits which they made as a defense; that they could not come into Court voluntarily and attack the value of a property which they were using because they had added value through their own improvement, and then say when brought face to face with the disclosure of the essential facts, to ascertain what they had done by way of adding value or correspondingly decreasing the value of the original improvement—meet it by saying we disclose state secrets. If there is any possible way that that can be avoided as a practical question—of course I shall have to do the best

I can, but my answer to your Honor's question, rather awkardly put I am afraid, is what I have stated.

The Court: Do you contend that the people you have charged with conspiracy are coming into Court voluntarily?

Mr. Anderson: I contend, what I understand to be the case, sir, that every witness who has appeared on the stand for the defendant here has appeared without process or summons. He has appeared by directions presumably, of his superior officers of the corporation. In some instances, these corporations are charged with conspiracy to acquire these patents, and the question of whether they appear voluntarily to attack, not the fact of acquisition, but the value, as a justification for acquisition, is a question which I cannot determine for them. I merely say when I say "voluntarily" I mean that they do not appear by virtue of any process of this court.

Mr. Kresel: May I say a word, your Honor?

The Court: You may.

Mr. Kresel: The position that the defendant finds itself in is this: It is brought into court upon a charge that it acquired from the Government property for a consideration which was so inadequate as to shock the conscience of a court of equity. By the same bill the entire chemical industry is charged with having been in a conspiracy to obtain that property from the Government upon such inadequate consideration.

The Government concedes, and that is its only concession, that our only defense, from its point of view, can be that this property was not acquired for an inadequate consideration. The defendant therefore starts out to get evidence to prove to the Court that the consideration paid was inadequate.

What does the Government do under those circumstances? It says to the defendant practically, and to these alleged conspirators: "As the price for proving to the Court that you are innocent, you must reveal the secret processes that you have worked out to make these products." In other words, they drag us into court upon a charge of conspiracy, upon a charge of defrauding the Government, and then seek to stop the very source of any information that we can get in order to defend ourselves.

And yet the Government desires to be understood as being in favor of developing a chemical industry in this country. How is it possible for the Government to reconcile its position in that respect? I tried in my direct examination yesterday, your Honor, to keep as far away as possible from putting any question to this witness which would make a basis for a claim that upon cross-examination the Government had a right to go into their secret processes.

Apparently I have failed. Apparently this witness has answered upon the direct a question which counsel claims gives him the right to extract from this witness their secret processes. I say it is not proper and it is not right. I should like to use stronger language, but I dare not. Certainly, if this witness is to be compelled to give the processes, at least your Honor will follow the procedure which your Honor outlined in connection with Dr. Volwiler.

But I trust that counsel will see the unfairness—I do not mean to reflect upon Colonel Anderson; I want to be as decent as possible, sir—but I trust that Colonel Anderson even can see the impropriety, the unfairness, of seeking to have this industry reveal in public, or even in private, the result of years of labor and expense. For the benefit of whom? Who can possibly benefit thereby? Certainly the Government can not, because if it is true that the Government stands for all the people, as Colonel Anderson has said here, it stands as well for this industry, and the Government ought to be protecting the industry rather than attacking it in this way.

MR. ANDERSON: If your Honor please, I am trying a lawsuit and not engaged in the exercise of the general functions and policies of the United States; but I think I may state that the Government is as anxious to protect and safeguard any branch of American industry as any citizen of the United States can be. I know that is my position. However, when I am here in this court, I am charged with a legal duty, and if this evidence is material then the full evidence is essential.

Now it is, I think, proper for me to say that I do not concede that the proof of value is a defense in this case, but in one aspect of the case it might be, an aspect which I do not think ought ever to arise. But since we have to go into it, in anticipation of the view that the courts may take, then it seems to me essential to the interests of the Government in this case, that there should be a full disclosure of the facts; and I do not wish that disclosure to go one iota further than seems to me to be necessary to safeguard the interests of the Government.

As the plaintiff in this suit, I have therefore made my position clear, as I undertook to do in the discussion of Dr. Volwiler's evidence, and, as unpleasant as it is to have to insist upon a position which seems to me to be a sound legal one, I think my purpose is clear.

The Court: Are you through on both sides?

Mr. Kresel: I have nothing further.

The Court: Then I desire to ask you this question, Mr. Kresel: Do you contend that the specific patent here under discussion, or any of the dye patents so-called, used by this witness in his employment with the duPont Company are invalid?

Mr. Kresel: We make no such claim your Honor.

The Court: What use or what value in this case has the testimony from your standpoint, given by the witness?

Mr. Kresel: The value of it is to show that the value paid by the defendant for these patents was an adequate consideration.

The Court: That is, the ultimate price?

Mr. Kresel: That there were elements in connection with these patents which affected their value—let me put it that way—their commercial value.

The Court: The prices which could be obtained for them——

Mr. Kresel: Commercially.

The Court: Commercially?

Mr. Kresel: Yes, sir.

The Court: I assume from the sales standpoint it is commercial value only that is involved?

Mr. Kresel: That is my understanding.

The Court: Colonel Anderson, I may be wrong, but I think I am right. In principle there is no doubt about it in my mind. If technically I have erred, or I am about to err you are not without remedy. There are appellate courts which may correct any errors which I may make. In the first place, I think this evidence if given, is irrelevant, immaterial and not pertinent to any issue in this case raised by the plaintiff or by the defendant. I failed to appreciate the irrelevancy and immateriality of such testimony when I made my statement with respect to the testimony of Dr. Volwiler the other day. I now decline to direct this witness to answer, and hold, for the first time in this case, that the testimony called for is irrelevant and immaterial and is not pertinent to the issues in this case; and I make the same ruling with respect to the testimony of Dr. Volwiler. Is your position with respect to the testimony introduced by him, the same as this?

Mr. Kresel: Exactly the same your Honor. I make no contention as to the validity of these patents.

The Court: I revoke the order with respect to Dr. Volwiler, and you have your exceptions. I decline to make public any answer or to place the trade secrets of any commercial enterprise, under the conditions here called for, either public or quasi-public property. You may elaborate your exception in any way that you desire, Colonel Anderson.

Mr. Anderson: In order to get the record clear, I submit to your Honor's ruling——

The Court: If for any reason in the statements made by you heretofore, which I think I understand, if they are not satisfactorily put on the record from your standpoint, you are at liberty to elaborate them now, of after the noon recess, as much as you like, so that you may be fully protected.

Mr. Anderson: I would like even more time as to the statements which precede, because there has been so much said, but in any event, at the secrets—you may say so. If they do not, you may answer. You will be the one to determine that.

XQ. 403. I will ask you this general question and divide it up, if desired: The date on which the duPont Company began to produce and sell in commercial quantities each of the dyes or intermediates which you said were produced under the 42 patents in the list which you have filed.

THE COURT: Unless the witness points out to me how that is a trade secret, I shall direct him to answer.

XQ. 403. (Continuing.) I would like to have the date on which you began to produce each of those in a commercial sense.

THE COURT: Can you give that offhand?

A. It is pretty difficult for me to give information like that offhand.

By THE COURT:

XQ. 404. Does the answer call for any disclosure of trade secrets in any way at all?

A. I do not think that the date on which we began the manufacture would be considered a trade secret.

MR. ANDERSON: Of course, that is only introductory to other questions.

THE COURT: You can have that. Will you produce that after the noon recess?

THE WITNESS: I think I can get it ready by that time.

MR. ANDERSON: I would like that information; the answer to be inserted at this point, as I understand.

XQ. 405. Will you please state the amount of pounds of each of the dyestuffs or intermediates which you state are covered by the several patents in the list which you filed, produced and sold by the duPont Company by years from the date on which they began to produce, as indicated in your answer to the preceding question, down to the 31st day of December, 1922.

Mr. Kresel: Now, whether the witness says that is a trade secret or no, and I am not inquiring about that now, I object to the question upon the ground that it is immaterial and irrelevant and can have no bearing upon the question of the value of these patents. If Colonel Anderson is willing to do it, I would like to have him point out in what way the value of these patents can be affected in view of the testimony of this witness, by showing how many pounds of a certain product the duPont Company sold each year.

Mr. Anderson: Each of the products on each of the patents?

Mr. Kresel: Yes.

Mr. Anderson: I think it is obvious, the amount of product produced under a patent is one of the best evidences of its value.

Mr. Kresel: But this witness has said they were not produced under the patents.

Mr. Anderson: I have to take the testimony of the witness for my argument.

The Court: We need not discuss that. The question then is directed not to the witness's testimony that it took time and money in order to convert the laboratory experiment into a commercial enterprise, as I understand you, but is an indication of the license fees properly receivable by The Chemical Foundation from one of its licensees; am I right?

Mr. Anderson: That is one of the indications, but it is also an indication of the value of the patents regardless of the license fees.

The Court: I am sorry; but I missed just the line of reasoning, Colonel Anderson, which you follow to reach that result.

Mr. Anderson: The line of reasoning, which I can state in a sentence, there, is that the amount and value of material produced under any patent is an evidence of the value of the patent; that is all.

The Court: You have put in evidence, if I recall, testimony with respect to the gross income of The Chemical Foundation. Is it your purpose by this to show that that does not truly set forth the facts?

Mr. Anderson: It might or might not disclose them. That would be one of the effects of this evidence. The second would be the amount manufactured under it. Whether it will confirm that, I cannot tell until I know the evidence, because I have never talked with this witness; but I do not regard that one kind of evidence of value excludes another kind of evidence of value. Value is a thing that you have got to draw from a thousand different sources. There are so many elements, and they are so intangible, that you have got to accumulate as many as you can around a fact, which is always in the nature of circumstantial evidence to establish a probative fact.

The Court: I do not see any reason for departing from the general rule with respect to that, without passing definitely upon its materialty.

XQ. 406. (Continued.) Can you give that information now, Doctor?

A. The disclosure of that information would give our competitors a very good idea of our capacity for production. That information is valuable commercial information which, of this class of products, is not even published in the report of the Tariff Commission. They consider it also as valuable commercial information which should not be divulged.

Mr. Kresel: May I say in that connection; if Colonel Anderson will permit me, that the information sought is information which the Tariff Commission does get from these concerns; gets it in a confidential manner; never publishes it; and the Tariff Commission has declined in this case to give the Government that information.

Mr. Anderson: It is forbidden by law to do it. I could not go there myself as Attorney-General of the United States and get it.

Mr. Kresel: That shows the confidential nature of it, your Honor.

The Court: So it is unless and until reversed. If it is information of that character, it comes within the former ruling. I did not appreciate the fact that it did, Colonel Anderson.

Mr. Anderson: I was afraid that it would, sir. Therefore I gave your Honor notice of it.

The Court: You had more information about it than I had.

Mr. Anderson: Yes. Now I will ask another question which I know comes within the ruling; but in order to get the record clear.

XQ. 407. Will you please give me a statement from your records, if you cannot remember, showing the value in dollars by years of the dyes and intermediates of each of the classes indicated on your statement filed this morning covering forty-two patents or licenses, from the date of the beginning of production on a commercial scale thereof by the duPont Company down to and including the 31st of December, 1922?

The Court: Before answering that, is there any reason, Mr. Kresel, (I am asking you not so much as counsel for the defendant, but because you probably can help me) why these disclosures, both as to this question and the preceding question, should not be made now in the year 1923 for the years up to April, 1919? It seemed to me that that possibly might be divided into two classes, that prior to the assignment of the patent and the four years past, and that a disclosure of this information with respect to that period might be made.

Mr. Kresel: Personally, your Honor, if I had the deciding of it, I see no reason why that should not be given. Will your Honor permit me to make inquiry of the witness who, of course, in the last analysis, is the one whose opinion should be weighed; and if counsel can go on to some other branch of the inquiry and permit us to come back after recess, I should be glad to inquire.

The Court: While I am protecting trade secrets, I do not intend to protect them any further than is necessary.

Mr. Kresel: Certainly.

Mr. Anderson: With that last question asked, I do not think I have any further questions on cross-examination.

Mr. Kresel: It is understood that we may have until the noon recess to determine the question that your Honor has asked me.

The Court: Yes, the two questions.

Mr. Anderson: The two questions as to poundage and value up to 1919.

The Court: Up to April 10, 1919, if you want to.

Mr. Anderson: April 1st would be just the same thing; easier to make up.

The Witness: Your Honor, may I call your attention to the fact that on the vat patents we did not begin production until the fall of 1919; so it would be very difficult to make that division. We have not produced any prior to that time.

The Court: You have the complete answer, then, now. Does that answer open up a further field for cross-examination?

XQ. 408. You said vat patents. Were there any others, Doctor, than vat patents covered on the list that you filed?

A. I was calling his Honor's attention to the vat patents where we could not. There are a few other cases where we perhaps can.

XQ. 408a. Like sulphur black and things of that kind?

A. Well, sulphur black is not covered by these patents.

Re-Direct Examination.

By Mr. Kresel:

RDQ. 409. Are there any patents on this list for which you hold licenses from The Chemical Foundation, which are patents for other than vat dyes? Will you just take the list and point out, giving the license number, because that is most convenient to handle, those which cover dyes that are not vat dyes?

A. License 331 covers an azo dye. License 177 covers a pigment. License 249 covers a sulphur dye. License 332 covers an intermediate, which is sold as a textile intermediate to the trade and they make the combination to form the color. License 334 covers a sulphur dye; 363, sulphur dye; 365, sulphur dye; 381, azo dye; 387, azo dye; 398, azo dye; 399, azo dye. All the others are vat dyes.

RDQ. 410. I understand your testimony to be that insofar as the manufacture of vat dyes is concerned, your company did not commence such manufacture until the fall of 1919, is that right?

A. That is correct.

Mr. Anderson: Would you mind if I asked something else that has occurred to me?

Mr. Kresel: Certainly; go ahead.

The Court: Do you want Mr. Kresel to finish his thought?

Mr. Anderson: Yes; and then I would like to ask one or two questions that occur to me.

RDQ. 411. But as to the others, the azo dyes and the sulphur dyes that you have just mentioned, there was production both prior to April, 1919 and thereafter?

A. I doubt, Mr. Kresel, whether there was any production at all on these products; but perhaps sulphogene Bordeaux was made before that time; my recollection is rather hazy.

RDQ. 412. Will you look that up between now and our reassembly this afternoon and let me have the information?

A. Yes, sir.

Mr. Kresel: All right, Colonel.

Mr. Anderson: Just a few questions.

Cross-Examination (Continued).

By Mr. Anderson:

XQ. 413. Doctor, can you say from your knowledge of this subject who were manufacturing dyes in the United States, and the intermediates thereof, prior to 1919?

A. The National Aniline & Chemical Company, which is now the Allied Dye & Chemical Company, was the largest manufacturer.

I believe the Newport Chemical Company, which was organized a few years before that time, were manufacturing a line of products. The Grasselli Chemical Company had taken over the Bayer plants, which had manufactured a line of products. The Klipstein Company was manufacturing the Consolidated Color & Chemical Company.

I think they represent some of the largest ones; but my recollection is that there were somewheres between 80 and 90, or perhaps a larger number, of manufacturers in the year 1919. In the year 1919 I believe that there must have been close to 100 manufacturers of dyes and dye intermediates.

XQ. 414. Which were the largest of those manufacturers? You spoke of the National Aniline.

A. The National Aniline & Chemical Company was the largest.

XQ. 415 Were any of the other constituents of the present Allied Dye & Chemical Company engaged in making intermediates at that time?

A. The Barrett Company had made intermediates.

XQ. 416. Any others that you think of?

A. The Semet-Solvay Company was manufacturing certain intermediates.

XQ. 417. And the Newport Company is located where?

A. At Carrollsville, in Wisconsin.

XQ. 418. Klipstein is located where?

A. Down in West Virginia.

XQ. 419. Klipstein had been manufacturing for some time, had he not?

Mr. Kresel: Manufacturing what?

Mr. Anderson: Dyes.

A. I believe they were among the first to manufacture sulphur black in this country.

XQ. 420. They had been manufacturing dyes and intermediates?

A. Yes, sir.

XQ. 421. Was there not a firm of Schoellkopf and somebody that manufactured?

A. The Schoellkopf Company — Schoellkopf, Harford & Hanna, I believe, is the full name of the firm which was taken into the National Aniline & Chemical Company.

XQ. 422. The companies you have named were the principal manufacturers of dyes and intermediates in 1918?

Mr. Kresel: 1919.

Mr. Anderson: Well, I said before 1918.

Mr. Kresel: No, you said 1919.

Mr. Anderson: I said before 1919 in my original question.

The Court: You are correct, but I did not understand the answer of the witness—whether he was confining his testimony to the time prior to January 1, 1919, or prior to January 1, 1920. I was going to ask that.

Mr. Anderson: I will ask this question, if your Honor will permit me:

XQ. 423. Would your answer apply to the first day of January, 1919?

A. It would.

Mr. Anderson: I think that is all, Mr. Kresel.

The Court: Was your last inquiry directed to the production of vat dyes or intermediates?

Mr. Anderson: I said dyes and intermediates as a whole. I am very much obliged to your Honor for suggesting that question, because I would like to get the information fully.

XQ. 424. Who were manufacturing vat dyes in 1918, or January 1, 1919?

A. There was a very small concern located near Newark, New Jersey, purported to have made vat dyes at that time; but I believe that the first substantial production of vat colors in this country was made by the duPont Company.

XQ. 425. Does that embrace vat intermediates also?

A. Vat intermediates also. It was my recollection about the same time or shortly afterwards the Newport Chemical Company came out with certain vat colors.

Mr. Kresel: Shortly after what time?

The Witness: Shortly after the marketing of the vat colors by the duPont Company.

Mr. Kresel: And the first time the duPont Company marketed any vat colors, I understood you to say, was in the fall of 1919.

The Witness: The actual date of marketing I do not know.

Mr. Kresel: Well, that is one of the things that Colonel Anderson has asked for.

The Witness: Yes.

Mr. Kresel: You will give us the exact dates.

XQ. 426. How about the Klipstein Company; did they not manufacture some of those?

A. I do not recall any vat dyes.

Mr. Kresel: We have Mr. Klipstein here and you will have an opportunity to inquire about that of him.

XQ. 427. Did not the Schoellkopf Company manufacture vat dyes?

A. They are not manufacturing any of the indanthrene series at the present time.

Q. 428. You do not know whether they did prior to the war or not?

A. I am quite sure they did not prior to the war.

XQ. 429. Prior to the first day of January, 1919?

A. Also prior to the first day of January, 1919.

Re-Direct Examination (Continued).

By Mr. Kresel:

RDQ. 430. Dr. Bolton, you testified on cross-examination there were certain patents covering methods for the manufacture of intermediates that enter into the manufacture of indigo. Do you recall that? You gave the number of one, you did not give the numbers of the others because you stated you did not have them available. You were asked whether the duPont Company had taken licenses under that patent or those other patents, and I understood you to say that they had not. Is that correct?

A. We have not.

RDQ. 431. In manufacturing your intermediate for the production of indigo, even when indigo was still under a patent, did you follow a method adopted by yourselves or did you follow any method covered by these patents?

Mr. Anderson: I will have to object to that, sir. If he is going to describe methods we will have to go into them. Of course, that is a pure conclusion, but if we go into it at all we will go into it fully.

The Court: I do not understand the purpose of the question either, Mr. Kresel.

Mr. Kresel: I am very glad to tell your Honor the purpose of it, and it depends on the purpose of the cross-examination. Your Honor will recall that earlier in this case Colonel Anderson made the claim that the amount of money realized by The Chemical Foundation under its licenses was not at all a true measure of the value of these patents, because, says he, the stockholders of this Chemical Foundation are being favored by The Chemical Foundation, that The Chemical Foundation is allowing them to use these patents without paying royalties. I anticipate that counsel for the Government in argument and in brief will base an argument upon this testimony in the cross-examination of this witness, namely, that there were patents covering these intermediates and that they did not pay any royalty—to substantiate that claim.

The Court: If you want it on the record

and it does not get us into the question which we passed a moment ago, you may take the answer, but unless there is evidence—I cannot found a decree on suspicion, it must be founded on evidence, as far as I am concerned. What I might consider evidence and what some other Court might consider evidence might agree or disagree. It seems to me your question possibly opens up the other question as to what process was followed and the protection of the trade secrets. I do not know whether that process is the same now as it was then. I think proper cross-examination under that question would require a full disclosure probably.

Mr. Kresel: Of course, I gather from what your Honor has said that, inasmuch as there is no evidence of what process they did follow and argument based on what I have anticipated would hardly be of any value, still——

The Court: You will have to take your own chances on that.

Mr. Kresel: I understand I have got to take that chance, and I am going to take it.

Mr. Anderson: By keeping quiet, your Honor will, of course, not understand that we acquiesce in any such position that the Government is estopped because, when the witness was on the stand and we had an opportunity to take the evidence I did not raise the issue. As to what we are going to get into before we get through with this case, I am going to say now that we are going to contend that the license fees returned to The Chemical Foundation are no true indication of the value of these patents, and that, in order to bring that question out it is absolutely essential to bring out the evidence which your Honor has ruled out. But we are not going to reopen that argument. Whether we can make that contention in view of the present state of the record will be a question, but I do not want to have the contention made that I am estopped when the evidence is closed from bringing that question up.

The Court: You will not be estopped. You may be estopped from successfully making that contention.

Do I understand this witness' testimony to be that license fees are being paid to The Chemical Foundation for all of these products of this company manufactured under these 42 patents?

Mr. Anderson: The witness so testified.

The Witness: I testified that we had taken out licenses to cover all of these patents. Some of these patents you can't work, about ten of them.

The Court: I did not want to open up your testimony again, because it might prolong it unnecessarily.

Mr. Kresel: I think this much, your Honor, the witness should be permitted to say, and I will put the question.

RDQ. 432. The mere fact that you have, say, 20 or 30 licenses—I have not counted them—covering 42 patents, does that mean that you are paying royalties under each license?

A. We are paying royalties on each license covering the products which we are manufacturing today. Of course, you understand that some of these things are not on a manufacturing scale at the present time.

RDQ. 433. You are not really manufacturing?

A. We are not really manufacturing some of the products.

Mr. Kresel: I think that explains it.

Mr. Anderson: I shall reserve the right to cross-examine on that point.

Mr. Kresel: All right. You may reserve it. I have no objection to your reserving it.

RDQ. 434. You were questioned about the experience of the chemists you employed. You testified yesterday that you got the best that the market would afford you, the best the universities would give you. You also said that you got some German chemists, is that right?

A. That is true.

RDQ. 435. And have these German chemists been working on the processes under these patents that you have testified about?

A. They are working on some of the products covered by the licenses.

RDQ. 436. And are working in the development of some of these indanthrene colors covered by the patents that you have testified about?

Mr. Anderson: I object, sir. I think that this gentleman can testify without being led right straight along.

The Court: The question is leading.

Mr. Kresel: On re-direct, may I not do that?

The Court: No, your questions may not be leading on re-direct.

RDQ. 437. Have or have not the German chemists been working under any of the patents about which you testified yesterday?

A. They have.

RDQ. 438. Can you specify which?

A. They have worked on products covered by the following licenses: No. 249.

RDQ. 439. You are reading from Defendant's Exhibit, 262?

A. Yes, sir.

RDQ. 440. Go on.

A. 249, covering patent 892,455.

RDQ. 441. What product does that cover?

A. That is sulphogene Yellow G G.

RDQ. 442. Is that a vat color?

A. That is a sulphur color. They are working on the product covered by license 314, which covers United States Patent 956,348. The name of the product is Hydron Blue R.

RDQ. 443. Is that a vat color?

A. That is a vat dye. They have worked on the product covered by license 332. Under this license there are about ten patents.

RDQ. 444. You need not stop to mention them because the exhibit will show what they are?

A. DuPont Naphthanil AS and BS.

RDQ. 445. What is the nature of that dye?

A. That is an intermediate which is sold to the textile trade for producing the color on fibre. They worked on the patent covered by license 334, containing patent 818,980. The products are known as sulphogene Bordeaux G B and 5 B.

RDQ. 446. And are those vat dyes?

A. Those are sulphur colors. They worked on license 364, containing patent 904,809. The product is sulphogene ochre G, a sulphur color. They are working on license 364, covering patent 966,092, covering Hydron Blue G.

RDQ. 447. Is that a vat or sulphur color?

A. That is a vat dye. They are working on license 365, covering patent 1,165,531, which product is known as sulphogene brown R.

They are working on license 366, covering patent 1,243,171. The product is known as Sulphanthrene Pink F F. They are working on license 368, covering patent 1,243,170. The product is known as Hydron orange and crimson. I do not know what else that patent covers.

RDQ. 448. Are those vat dyes?

A. They are vat dyes. They are working on license 381, covering patent 1,149,231. The products are known as Pontacyl Fast Light Yellow 2 G and 3 G.

RDQ. 449. Is that a vat dye?

A. Those are azo colors. They are working on the product covered by license 387. The patent number is 1,014,539. The product is Lithosol Bordeaux B. That is an azo color used in the lake industry.

RDQ. 450. What industry?

A. The lake industry.

RDQ. 451. I intended to ask you for a definition of that. You mentioned that on cross-examination, a lake in reference to color?

A. A lake is a color suspended on a substratum usually a combination of aluminum salt and barium salt. It is an insoluble product which is formed and used in the pigment or ink industries.

RDQ. 452. The lake is used mostly, insofar as color is concerned, in connection with the paint industry and the ink industry?

A. Yes.

RDQ. 452a. It is more a pigment than color, is it?

A. Yes; it is the color of an insoluble material.

RDQ. 453. I see. Will you proceed?

A. They are working on license 389, covering the following patents—856,811 and 876,810. The products are Pŏnsol Golden Orange and 2 R T.

RDQ. 454. What is the nature of this?

A. These are vat dyes.

RDQ. 455. Now, will you just give the number of the license, without stopping to give the number of the patent, because it appears on the exhibit anyway, and just indicate the product that they cover?

A. License 398, covers Lithosol Vermilion G, an azo color. License No. 399—we do not have any name for this product at the present time.

RDQ. 456. They are not producing yet?

A. No. We are making an examination of this license at the present time, and no name has been assigned to this product by ourselves in the department. That is the list.

Mr. Kresel: Does your Honor desire to adjourn now?

The Court: At your convenience.

Mr. Kresel: Your Honor, I can be through with the witness in a very few minutes.

RDQ. 457. Can you indicate for how long a period these German chemists have been working on license?

A. They have been working on these products, on some of the products, since 1921.

RDQ. 458. You spoke of having taken out licenses from The Chemical Foundation in order to protect your consumers for the purposes you have described. Now, did you also take out licenses to protect yourselves, I mean the duPont people, where the patent was a product patent, whether you manufactured by the patent process or no?

A. We took out licenses for all patents covering the products which were manufactured, regardless of the method of manufacture.

RDQ. 459. You spoke of the steps of manufacture under cross-examination. You said from laboratory to factory. Is there or is there not an intermediate step?

A. There is an intermediate step which we call semi-works manufacture, that is, manufacture in quantities of ten to perhaps as high as fifty pounds per batch, and that manufacture is carried out in miniature plants which are assembled for the purpose of getting all the chemical engineering information that is necessary for the process before it is tried on a large scale, and also for the purpose of training our chemists with the details of the operation.

RDQ. 460. In answer to one of Colonel Anderson's questions, you said substantially—I have not your testimony before me—but substantially there are other patents owned by The Chemical Foundation which have reference to the products covered by some of the patents about which you testified yesterday and this morning. Now, did I get substantially what your answer was?

A. Yes.

RDQ. 461. Now, please state how many such patents there are if you can, to what particular product they refer, and whether or no you took licenses thereunder, and if not, why not?—that is a little involved.

The Court: I think you had better answer that after the noon recess. Recess till 1 o'clock.

After Recess.

RDQ. 462. Dr. Bolton, since the recess I have obtained a copy of your testimony of this morning, and the question that I had been directing my last inquiry to before recess is this: I read from page 4105:

> "XQ. 365. Doctor Bolton, are you prepared to testify of your knowledge that the patents which you have filed in your direct examination are all of the patents, among those assigned by

the Alien Property Custodian to The Chemical Foundation, which have any application to the manufacture of the dyes and intermediates manufactured by the duPont Company and stated on your list filed this morning?"

That was a question by Colonel Anderson. Your answer to that was, "They are not all the patents."

If there are other patents, I would like you to state what they are, what product they cover, and whether or no the duPont Company took licenses thereunder; and, if not, why not?

A. We have taken licenses from The Chemical Foundation on all products which are covered by patents owned by The Chemical Foundation. We are not manufacturing today any products covered by these patents owned by The Chemical Foundation for which we do not have licenses.

Mr. Anderson: If your Honor please, I have to object to that question and move to strike out the answer on this ground: The question of what a patent covers calls for a conclusion. While I have not a doubt that the witness is convinced himself on that subject, and there is no suggestion that he is making any statement outside of what he is convinced of, in the last analysis that can only be arrived at by the method which I need not review but which is well understood. Therefore, I object to the question and I move to strike out the answer, as irrelevant and incompetent, if only for purely technical reasons.

The Court: Does that apply to the answer to your inquiry as well?

Mr. Anderson: I beg your pardon, sir.

The Court: Does that apply to the answer to your inquiry also?

Mr. Anderson: No. I think I have a right to put that inquiry and rest upon his opinion upon that subject. On cross-examination I asked him if there were any——

The Court: Won't you read me that inquiry by Colonel Anderson again?

Mr. Kresel: Yes, your Honor: (Reads XQ. 365, as recorded.)

Mr. Anderson: A patent may have application to a certain process or a certain method, and I admit that that is a conclusion, which may or may not cover that process or method, because there may be variations from it. In other words, the witness might answer both those questions with entire accuracy, and yet it would leave the record in a condition where at least an argument might be made which was contrary to the actual facts of the situation. The one is a very much broader statement than the other.

The Court: In view of the interpretation of the question and answer in cross-examination, I do not see that there is any basis for the question on re-direct. Unless the Government's contention is that there is an inference from the answer that the witness' company is using some of these patents for which it is not licensed, I see no relevancy or materiality that a denial would have. I assume that was the purpose of your inquiry.

Mr. Kresel: That was my assumption, your Honor.

The Court: I understood from Colonel Anderson now it is not.

Mr. Anderson: I did not so intend to interpret the answer, that there is no relevancy on that point. Surely, your Honor misunderstood me.

The Court: Then I misunderstood you. Won't you state it to me again, Colonel Anderson.

Mr. Anderson: The patent, as I understand it, may apply to a certain process.

The Court: What do you mean by "apply"? That is where I misunderstood you.

Mr. Anderson: It might apply to some phase of that process and not to the entire process. I made my inquiry just as broad as I could, if he knew of any patents belonging to The Chemical Foundation or which are claimed by The Chemical Foundation which had no application to the processes or products covered by this situation other than those in evidence, and he said there were others. The present question undertakes to have him say whether or not they covered the products or processes covered thereby. I think there is a distinction there. I used the word "application" in the broadest sense, since I did not want to limit it to patents which it actually covered, but which might have an application, and which upon a proper study and interpretation thereof would require licenses, although the witness might not think they did require licenses.

Mr. Kresel: I am perfectly willing, your Honor, to so amend the question as to use the same word "application."

The Court: The present question is withdrawn.

RDQ. 463. Now, I am asking you, Dr. Bolton, whether there are any patents which have any application to the manufacture of the dyes and intermediates manufactured by the duPont Company and stated on your list filed this morning, that are owned by The Chemical Foundation and that the duPont

Company was using, for which it had no license? Are there any such?

A. There are none, to the best of my knowledge.

RDQ. 464. I have a note that there was a question put to you this morning substantially as follows, as to whether the experience of chemists in the explosive industry is entirely different from that in the dyes industry. Substantially, that is my recollection of the question. Do you recall the question?

A. I recall it.

RDQ. 465. At page 4099, the question was this. I think I had better read the preceding question.

> "Did you not have a good deal of difficulty with your organization in the use of the intermediates which they had been accustomed to using in explosives, in getting them to apply these intermediates in an effort to secure a different result in dyes."

Your answer was, "I don't think so. Our aniline was of a good quality at that time. Our dimethylaniline was good. The diphenylamine was a purified product."

Then this question:

> "I did not mean that, Doctor. You had men trained in the production of explosives, as you said. Now, did you not have a good deal of trouble in untraining them and turning them into dye manufacturers with that organization? We are now discussing plant organization."

Your answer was: "It is an entirely different kind of experience."

Now, what is an entirely different kind of experience?

A. Most of the men who had had previous experience in the explosive industry had been trained in the manufacture of products like smokeless powder and the raw materials which are used in the manufacture of smokeless powder. Those products are entirely different from the products which we were attempting to manufacture in the dye industry. It was experience with products in another field of organic chemistry which did not bear directly upon the work which they were doing in the dye industry.

RDQ. 466. Save you been able to obtain the dates when you started manufacturing these vat dyes as requested by Colonel Anderson?

A. I have.

RDQ. 467. Will you give them, please?

A. The manufacture of Ponsol colors was started on a commercial scale by the duPont Company on the following dates:

Ponsol Blue G D, November, 1919;
Ponsol Blue R P, October, 1921;
Ponsol Blue 3 G, November, 1922;
Ponsol Blue R, October, 1919;
Ponsol Yellow G, November, 1919;
Ponsol Dark Blue B. R, August, 1919;
Ponsol Green B, September, 1919;
Ponsol Violet R, October, 1919;
Ponsol Violet R R, December, 1919;
Ponsol Black B, December, 1919;

Mr. Kresel: I think that is all.

Mr. Anderson: You may stand aside, Dr. Bolton.

(Witness excused.)

Mr. Kresel: If your Honor please, counsel on both sides have examined the transcript of the record of Professor Stieglitz's testimony in chambers. There are certain corrections that have to be made therein, and Mr. Knight and I have agreed upon those. They are noted on this copy of the transcript that I shall now hand to the Stenographer, with your Honor's instruction to make those corrections.

The Court: Let the corrections be made, and Mr. Clerk, will you give the official copy to Mr. Smart, so that he can make them.

Mr. Knight: I would suggest, your Honor, that he make new copies rather than correct these, because there are quite a number of changes, and we can turn in the others.

The Court: I will leave that with Mr. Smart.

ERNEST H. KLIPSTEIN.

Ernest H. Klipstein was called as a witness on behalf of the defendant, and having been duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Now, Mr. Klipstein, where do you live, please?

A. I live in Orange, New Jersey.

Q. 2. And what is your business?

A. Dyestuff and chemical manufacture.

Q. 3. And what is the name of your firm or corporation?

A. E. C. Klipstein & Sons Company.

Q. 4. Is that a corporation?

A. Yes.

Q. 5. Now, please state what your education and experience has been in the chemical line?

A. I studied chemistry for four years at Princeton, New Jersey.

Q. 6. Princeton University?

A. Princeton University, and a year at the University of Berlin, in Germany, and a year at Columbia University; and since 1915, until recently, I have been treasurer of E. C. Klipstein & Sons Company.

Q. 7. Has your Company made any experiments under any patents purporting to show methods of making synthetic tannings?

A. Yes. We started in 1918 to work under several patents licensed from The Chemical Foundation.

Q. 8. Licensed from The Chemical Foundation; now, have you copies of those patents that you took under license?

A. Yes, sir.

Q. 9. How many of them are there?

A. There are twelve, I believe.

Q. 10. Will you produce them and I will put them in evidence first.

A. Yes.

Q. 11. What did you say?

A. There are probaly three there that we have no licenses for.

Q. 12. Will you just segregate those that you have and those that you have not licenses for?

Mr. Kresel: Let me have that Exhibit No. 83, that big license sheet.

Q. 13. Now, have you got them separated?

A. Yes.

Q. 14. May I have them, please?

A. (Handing papers.)

Q. 15. You have handed me patent No. 1,336,759, Patent No. 1,237,405; 1,191,480; 1,216,612; 1,278-229; 1,232,620; 1,254,364; 1,133,108; 1,289,280; 1,281,494; 1,107,107—a total of eleven patents. You say that you had a license or licenses under those from The Chemical Foundation?

A. We have.

Mr. Kresel: I offer each of those, your Honor, as a separate exhibit.

Received in evidence and marked respectively "Defendant's Exhibits Nos. 263 to 273, inclusive." (*See Patent Exhibit Book.*)

Q. 16. Mr. Klipstein, in my previous question to you I spoke of synthetic tanning materials.

Are there natural tanning materials as distinguished from synthetic?

A. Yes, there are.

Q. 17. Are such natural tanning materials known by any particular names; what do you call them?

A. They are chiefly extracts of various woods, barks and nuts. Chestnut wood, for instance, makes an extract, and oak bark and quebracho.

Q. 18. What is the last?

A. Quebracho? That is the extract of a South American wood, which constitutes probably three-quarters of all the tanning material used.

Q. 19. When you are speaking and when I am asking you about tanning materials, you refer to tanning of what?

A. Tanning of raw hide.

Q. 20. In making leather?

A. That makes leather.

Q. 21. Prior to the outbreak of the European War was there any synthetic tanning material being used in the United States?

A. There was some used. It was being introduced.

Q. 22. Introduced from where?

A. From Germany.

Q. 23. Since your company took licenses such as you have described, from The Chemical Foundation, have you undertaken to produce any synthetic tanning materials by following the steps outlined in any of these patents?

A. Yes.

Mr. Anderson: I object on the ground that he may state what he did, but not the conclusion that he followed the steps in the patents. That is in addition to my general grounds.

Mr. Kresel: In addition to what?

Mr. Anderson: In addition to the general grounds.

Mr. Kresel: What are the general grounds?

Mr. Anderson: The general reservation to all this testimony, of immateriality, irrelevancy and incompetency, and for the further reason that you are estopped to raise these questions for the reasons stated yesterday. Those are the general grounds. I am applying those to all, but I make the specific objection in this case.

The Court: Is or is not that the same question which was propounded to the preceding witness? I thought it was the same.

Mr. Kresel: I have tried, your Honor, to make it as nearly the same as I could in language.

Mr. Anderson: Very much the same question, perhaps, as was put to the witness this morning.

The Court: But yesterday.

Mr. Anderson: The general questions put this morning were very much along that line, and I said I would waive——

The Court: No, you see there were inquiries with respect to eight patents yesterday, seven or eight, and your agreement only applied to a general question as to the meaning of thirty-four. This question is the identical question, as I recall it, that was put yesterday with respect to eight patents.

Mr. Anderson: Each patent was taken up, and the question was asked the witness, and he took the process and followed the process, but he did not detail the process into the record, and then say he did those particular things.

The Court: Now, what is the question?

(Q. 23 read as above recorded.)

Mr. Kresel: Just say yes or no.

The Court: I understand Colonel Anderson's objection and I am going to sustain it. It is the one that was not fully disclosed, but I think you understand it.

Q. 24. Mr. Klipstein, I show you patent No. 1,336,759, and ask you to state whether your company undertook to manufacture synthetic nahpthalene condensation tanning material described in that patent, and whether or no you followed out the directions outlined in that patent?

The Court: That last part comes within the previous ruling. I may permit you to ask that question as to some of the patents after you have put the question in a different way as to one of those things.

Mr. Kresel: I will strike out of the question all after the words "described in that patent."

Mr. Anderson: Then I understand the question merely calls for a yes or no answer, so I have no objection to its form.

Q. 25. Would you say yes or no?

A. Will you please read the question again.

(Q. 24 read as follows:)

Mr. Klipstein, I show you patent No. 1,336,759 and ask you to state whether your company undertook to manufacture synthetic naphthalene condensation tanning material described in that patent?

A. Yes, we did.

Q. 26. Please state whether, in making that attempt, you did or did not follow the steps described in that patent?

Mr. Anderson: I will have to ask in this case that he state what he did.

The Court: At least for this patent. We will see if we can shorten it after that.

Q. 27. Please state what you did in attempting to make this material?

A. We first, of course, worked the reaction in the laboratory and found the description of the process in the patent fairly satisfactory; but as soon as we left the laboratory we had an entirely different problem to work out, and it took us about almost a year to make the material in a satisfactory manner and commercially salable.

Q. 28. Did you have a plant where this product was manufactured?

A. Yes, we did.

Q. 29. How large a plant did you build?

A. We built a plant large enough to make about a thousand barrels a year; about 2000 barrels a year.

Q. 30. And in pounds, what would that be?

A. That would be about a million pounds.

Q. 31. You say that in the plant you had, I think, to use your words, a different problem. What was it? What was the problem in the plant? How was it distinguished from what you found in the laboratory?

A. We found that the laboratory process was a total failure when put in the plant; and instead of getting the product we desired, the mass was usually very tarry and black and impure and required a great deal of filtration and purification, which was expensive, before we could market it.

Q. 32. Do you remember when you commenced these experiments and when you started your plant up?

A. We started the plant in the summer of 1918.

Q. 33. At that time can you tell what the natural tanning material was selling at?

A. The natural material sold at about 5 cents a pound.

Q. 34. What did it cost you to produce the synthetic material in the way that you have described by following the steps outlined in that patent that you now have before you?

A. Well, it cost approximately 8 cents a pound at that time, which was during the war period.

Q. 35. What are the chemical elements that are used in making this synthetic tanning according to that patent that you have before you?

A. Sulphuric acid, naphthalene and formaldehyde.

Q. 36. When you followed the steps outlined in that patent, what did you find with reference to the combination of those three chemicals?

A. We found that before we could manufacture the material successfully, it was necessary to devise a method of combining the chemicals to prevent the tarring and burning.

Q. 37. Well, when you followed the steps outlined in the patent, what was the result with reference to the chemicals combining?

A. Why, occasionally the whole mass would become solid and worthless, causing quite a loss.

Q. 38. How long did you say you continued research to develop this material under the patents?

A. We worked at it about a year and three months before we made a suitable material.

Q. 39. Is there anything in the patent as to how the formaldehyde is to be introduced into the mixture of chemicals?

A. No; the patent merely states to add formaldehyde.

Q. 40. Add formaldehyde without telling you how to do it or when to do it or under what conditions to do it?

A. It says to add in small portions, stirring vigorously.

Q. 41. Did you stir vigorously?

A. I stirred vigorously.

Q. 42. And did you add in small portions as you were stirring vigorously?

A. Very small.

Q. 43. And was this worthless mass that you have described the result?

A. Most of the time it was.

Q. 44. I show you patent No. 1,237,405. Please state whether you undertook to make the product described under that patent, and what is the name of the product; tell us that?

A. The name of the product?

Q. 45. Yes.

A. Why, the German name was neradol, and we made considerable quantities under this patent.

Q. 46. The one that we have just been discussing, 1,336,759, as I understood it, was a naphthalene condensation process?

A. Yes.

Q. 47. In addition to that, how would you describe the process under the patent that you now have before you, namely, No. 1,237,405?

A. In that a phenolic base is used.

Q. 48. Phenolic condensation process; is that it?

A. Yes.

Q. 49. Is it a correct deduction from the fact that it is called phenolic, that the drug phenol is used?

A. Yes, or analogous drugs—cresol.

Q. 50. What are the chemicals that enter into the manufacture of the product under this patent that you now have before you?

A. Phenol or cresol, sulfuric acid and formaldehyde.

Q. 51. Please state whether or no in undertaking to manufacture under this patent you followed the steps therein outlined?

Mr. Anderson: I think I have to object and ask him to say what he did.

Mr. Kresel: Strike out the question.

Q. 52. What did you do in attempting to make the product described under that patent?

A. We at first worked it in the laboratory.

Mr. Anderson: What did you do in the laboratory? Say what you did.

A. (Continued.) Followed the description of the process mentioned in the patent.

By The Court:

Q. 53. What Colonel Anderson wanted you to do was to specify the steps that you took in following, as you state, the process of the patent?

A. We took four pounds of phenol, four pounds of concentrated sulfuric acid, and heated the mixture at about 100 degrees Centigrade for about six hours, and then, after cooling, we slowly added with vigorous stirring the 900—or required amount of 40 per cent. formaldehyde solution.

By Mr. Kresel:

Q. 54. Having done that, what was the result that you obtained?

A. The result was a very good product, soluble,, and could be used for tanning silks or raw hide.

Q. 55. Was that the laboratory method that you have now described or the final method?

A. That was our experience in the laboratory.

Q. 56. Did you then undertake to manufacture commercially?

A. Yes, we did.

Q. 57. What did you do in that respect?

A. We first start in small lots of about 100 pounds and get our experience from observing in that quantity, and it was at that point where we had to spend a great deal of time on research and development to devise a way to keep the mass from burning itself. It seems that as soon as a certain temperature is reached the whole mass develops an enormous amount of heat and solidifies. It was quite a trick to keep the mass cool and stirred properly to prevent that from happening.

Q. 58. With respect to this patent that you now have before you, are there any directions therein as to the time when and the method how to introduce the chemicals into the vessel wherein the product is being made?

Mr. Anderson: The patent speaks for itself. The interpretation of the patent is a question for the Court.

Mr. Kessel: I am not asking him to interpret; I am asking him to read what, if any, directions there are.

Mr. Anderson: I think we are all capable of reading that. It is a written instrument, and speaks for itself.

The Court: I understand the objection; but I think the answer may have some value. You may take the answer.

A. The patent states to run the formaldehyde in slowly and cool the mixture to avoid rise of temperature.

Q. 59. Did you do as directed there? Did you run the formaldehyde in slowly and—what is the other part of it?

A. And cool the mixture to avoid rise of temperature.

Q. 60. And did you cool the mixture?

> **Mr. Anderson**: I would like to object, sir, on two grounds: First, it is a leading question, and second, he can ask him what he did and let the witness say what he did, and not counsel.

> **The Court**: Directing the witness's attention to that particular operation, ask him what he did. The question as put is leading.

Q. 61. Did you or did you not run the formaldehyde in and cool it?

A. Yes, we did.

Q. 62. What result did you obtain?

A. Why, we obtained no practical results for two or three months.

Q. 63. Do not say that. I mean, what was the substance or mass or character of the stuff that you got?

A. Why, sometimes it was a very tarry, insoluble mass; sometimes it was a solid cake.

Q. 64. You spoke of the stuff burning. At what period of the process did you find that result?

A. At no given period. It would take place spontaneously without any warning.

Q. 65. Did you finally produce a tanning material described in patent No. 1,336,759, and a tanning material described in patent No. 1,237,405?

A. Yes, we did.

Q. 66. And did you produce a material that you could sell?

A. Yes, we did.

Q. 67. And did you sell it?

A. We sold a good deal of it.

Q. 68. Now, have you observed and do you know whether such material was used in the tanning of leather?

A. It was used.

Q. 69. And when used, what was the effect thereof upon the leather?

A. When used alone on rawhide, it produced a piece of leather which, however, was of no commercial value. It was generally used in connection with other tanning materials and then only in a very small way.

Q. 70. How have these synthetic tannings that you were able to produce, been used in tanning?

A. Why, we tried using them in every possible way. We tried to find a use for them.

Mr. Anderson: I would prefer for him to say what use he made of them.

Mr. Kresel: He is going on to do that.

Mr. Anderson: Not in every possible way, because I do not think he can speak on that subject. Let him say what he did do.

A. (Continuing.) We tried using it on all classes of leather, in almost all stages of the tanning processes.

Q. 71. And what success did you obtain?

A. Why, we obtained hardly any success of any kind.

The Court: Won't you get him to say?

Q. 72. Yes.

A. Most of our customers at first were very much interested in it, and we would get orders and quite large orders for testing purposes, and in 95 per cent. of the cases the material could not be found to have any merit warranting the paying of a fairly good price for it.

Q. 73. And did you get repeat orders, as called in the trade?

A. No. I do not believe we ever kept a customer.

Q. 74. Have you recently been able to sell any of the stuff?

A. No. We have sold none of this material since May.

Q. 75. Of this year?

A. Yes.

Q. 76. When you first started to make it, how much of the product did you send out, as you say, for testing purposes?

A. In the first year or so about a million pounds a year.

Q. 77. When did you start to finally put it out?

A. In the fall of 1918.

Q. 78. Now, what has been the amount of your sales this preceding year, for instance?

A. In 1922?

Q. 79. Yes.

A. About two hundred or three hundred barrels.

Q. 80. And that would be how many pounds?

A. That would be about one hundred thousand pounds.

Q. 81. Now, Mr. Klipstein, what was the cost to you of the research and experimental work under those tanning patents?

Mr. Anderson: I object on the ground that no proper foundation was laid.

Mr. Kresel: You may ask him if you desire now. I stop right now to inquire whether he knows, or I shall do it if you prefer that.

Q. 82. Mr. Klipstein, do you know how much your company has spent in research work and experimentation under these tanning patents?

A. We have spent about——

The Court: No.

Q. 83. The question is whether you know?

A. Yes, I do know.

Q. 84. Now, what has been your personal touch with the work?

A. I was very much interested in it personally, probably more than anyone else in our firm.

Q. 85. What did you do in that work?

A. I conducted a great deal of the chemical work and some of the manufacturing and some of the selling.

Q. 86. What was your position with the company during this time?

A. I was officially treasurer of the company, but had a lot to do with the chemical side of it and of the routine work.

Q. 87. As treasurer would the expenditures of the company come under your supervision?

A. Yes.

Q. 88. Now, I shall ask you to state how much your company spent in research and experiment on these tanning patents?

A. We spent between five and ten thousand dollars in research and experiment.

Q. 89. What did you spend on plant?

A. About twenty thousand dollars.

Q. 90. And in sales effort?

A. We spent about ten thousand dollars a year for three years.

Q. 91. Mr. Klipstein, we have been discussing only two of these eleven patents. Have you studied the remaining nine of these tanning patents?

A. I have.

Q. 92. And are you familiar with the processes that are outlined there?

A. I am.

Q. 93. Has your company undertaken to utilize those patents?

Mr. Anderson: I object, sir.

Mr. Kresel: Object to the word "utilize"?

Mr. Anderson: Yes.

Mr. Kresel: I withdraw the question.

Q. 94. Has your company undertaken to produce under those patents?

Mr. Anderson: I object on the obvious grounds.

The Court: Overruled.

A. No, they did not attempt to produce under these patents?

Q. 95. Why not?

A. A different reason for each patent. In some cases the materials were far too expensive, and in others the product was interesting mostly from a scientific standpoint. In others the machinery required to produce them would be far too expensive for such a cheap product.

Q. 96. Insofar as your examination and investigation of these eleven patents are concerned, did you select these two——

The Court: The question is leading.

Mr. Kresel: I will strike it out.

Q. 97. Why did you select the two, to wit., No. 1,336,759 and No. 1,237,405, out of the eleven patents?

A. Chiefly because the raw materials were available and fairly cheap.

Q. 98. Mr. Klipstein, does your company deal in the natural tanning?

A. Yes, they do.

Q. 99. How large a business does your company do in tanning materials, for instance?

A. It varies, but I should say it averages about between half and one million dollars a year.

Q. 100. Do you manufacture or sell any other kind of product than tanning materials?

A. Yes, we make dyes.

Q. 101. How large a business have you gentlemen down there, in total business per year?

A. I will have to correct myself. It is not this company that deals in the natural tanning materials; it is another company.

Q. 102. Which company is that?

A. A. Klipstein & Company.

Q. 103. Who is A. Klipstein -- any relation to you?

A. Why, he is the president of A. Klipstein & Company, and at this time my father, E. C. Klipstein, was the treasurer.

Q. 104. Of A. Klipstein?

A. Yes.

Q. 105. Counsel for the Government this morning mentioned Klipstein & Company as an old dye concern. Is that A. Klipstein & Company?

A. Yes.

Q. 106. Referring only now to your company, E. C. Klipstein & Sons Company, in addition to dealing in synthetic tanning materials—I understand you do deal in those?

A. Yes.

Q. 107. What other line of business do you follow?

A. We make dyes and intermediates.

Q. 108. Mr. Klipstein, basing your judgment upon your experience with these tanning patents, the results obtained therefrom, the market price of the natural tanning material and the cost of the synthetic tanning material as you have described it, what would you think about the value of these tanning patents?

Mr. Anderson: I object.

Q. 108. (Continuing.) What, in your opinion, are they worth?

Mr. Anderson: I object to that question on the ground that it does not appear that this witness is competent to express an opinion, and in the second place, that the question does not accurately state the evidence or the basis from which an opinion can be predicated.

The Court: Do you mean those assumptions to be based on the testimony as given by him?

Mr. Kresel: Yes, sir.

The Court: That is not embodied in the question, I think. If you so limit it, I shall permit the answer. It is general as to the value of the ingredients and intermediates for the tanning material.

Mr. Anderson: Exception.

A. Why, I would not think they were worth more than one or two hundred dollars.

Q. 109. Have you had occasion to examine the four additional tanning patents that are owned by The Chemical Foundation?

A. Yes.

Mr. Kresel: I offer in evidence four additional patents that I will describe as tanning patents, because it is already in evidence that there were fifteen of those, and I have only covered eleven. I want the whole line of them in. They are Nos. 1,203,069; 1,089,797; 1,421,722; and 1,414,045.

Received in evidence and marked respectively "Defendant's Exhibits Nos. 274 to 277," inclusive. (*See Patent Exhibit Book.*)

Q. 110. I had intended, Mr. Klipstein, when I asked you as to the reason for your not operating or licensing under any but the other two that you have described, to have included the entire fifteen. I shall, therefore, have to repeat my question as to these last four that I have just put in. Please state with reference to those four the reasons for your not operating or licensing those even?

A. Two of them were not issued until 1922, and the other two, I think, called for intermediates or materials which were not available.

THE COURT: Does his answer as to value apply to the fifteen or to the eleven?

Q. 111. Mr. Klipstein, the Court's question is whether your estimate of the value applies to the eleven patents that you had under license or to the fifteen.

A. It would apply to all except the 1922 patents, which are new to me, and I could not estimate their value.

MR. KRESEL: Patent No. 1,421,722 was issued July 4, 1922, and Patent No. 1,414,045 was issued April 25, 1922. Those are the only two.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 112. Mr. Klipstein, when did you graduate in chemistry?

A. I graduated in 1912 from Princeton University.

XQ. 113. Where did you then go?

A. I went to the University of Berlin.

XQ. 114. When did you get through there?

A. I left there after spending a year there.

XQ. 115. So you left there in 1914?

A. 1913.

XQ. 116. When you came back to America, what did you do then?

A. I then took a year at Columbia University.

XQ. 117. Did you take a degree there?

A. No, I did not. I took special courses in chemistry there.

XQ. 118. When did you get through that course?

A. In June, 1914.

XQ. 119. Where did you go then?

A. I then went to a large cotton mill in the south.

XQ. 120. Where?

A. The Riverside & Dan River Cotton Mills.

XQ. 121. How long did you stay there?

A. I stayed there about a year.

XQ. 122. What position?

A. As a chemist.

XQ. 123. Chemicals?

A. Yes.

XQ. 124. In what connection with chemicals?

A. In the dye house, testing material and dyes.

XQ. 125. Dye testing materials?

A. Testing dyes and chemicals.

XQ. 126. You were one of the chemists in the plant there for that purpose?

A. Yes.

XQ. 127. How many did they have?

A. Why, they had some dyers but no other chemists.

XQ. 128. You say you stayed there about how long?

A. A year.

XQ. 129. Then where did you go?

A. I then went with the firm of A. Klipstein & Company.

XQ. 130. A. Klipstein & Company? Where were they?

A. New York.

XQ. 131. In what capacity?

A. Also as a chemist.

XQ. 132. Where were you located?

A. In their New York laboratory.

XQ. 133. And where are the New York laboratories?

A. On Greenwich street, New York.

XQ. 134. How many chemists are employed there?

A. They had about ten there.

XQ. 135. Ten chemists employed in the laboratory?

A. Yes.

XQ. 136. You stayed in New York in the laboratories, did you?

A. Yes.

XQ. 137. How long?

A. Until about the end of 1915.

XQ. 138. What did you do in the laboratory?

A. The war had just broken out and I spent most of the time testing dyes and identifying dyes.

XQ. 139. Identifying dyes?

A. Yes.

XQ. 140. Explain what you mean by identifying dyes, will you?

A. Why, they had a very large store of dyes which had become old and some of the records had been lost and those had to be rechecked and their identity discovered, so they could be sold.

XQ. 141. You mean you had to analyze them chemically in order to discover their identity?

A. No, it was not necessary to analyze them very accurately. A dyeing usually would tell what the dyestuff was.

XQ. 142. You say you kept that up until late 1915?

A. As near as I can remember.

XQ. 143. Where did you go then?

A. I then remained at that office and took up the work of managing the new company of E. C. Klipstein Sons Company.

XQ. 144. Organizing the new company?

A. Yes.

XQ. 145. What did you do in connection with organizing the new company; I mean, was your work financial, clerical or what?

A. Why, it became largely financial.

XQ. 146. When did you finish organizing the new company?

A. What did you say?

XQ. 147. When did you finish organizing the new company; when did the new company start business?

A. April in 1916.

XQ. 148. Now, where was the plant of A. Klipstein & Company that you had been connected with, where was their manufacturing plant?

A. Why, they did not have a manufacturing plant.

XQ. 149. What were they, importers?

A. Yes.

XQ. 150. Purely importers?

A. Yes, importers and merchants.

XQ. 151. Importers and merchants, dealing in dyestuffs and chemicals, is that it?

A. That is right.

XQ. 152. You organized this new company in 1916?

A. Yes.

XQ. 153. What did they do?

A. They started the manufacture of sulphur black.

XQ. 154. Where? Where was the plant?

A. In Rahway, New Jersey.

XQ. 155. Where was your office?

A. My office was in New York.

XQ. 156. You were at the head office of the company in New York, the administrative office?

A. Yes.

XQ. 157. A plant was out at Rahway, New Jersey, but have they any other plant that you know?

A. Why, A. Klipstein & Company was connected with another plant at Edgewater, New Jersey, and I had quite a lot to do with the chemistry and production at that plant at the same time.

XQ. 158. What do you mean by "quite a lot to do." Where was the laboratory of your plant?

A. The laboratory was at Edgewater, New Jersey.

XQ. 159. Where was the laboratory of the E. C. Klipstein Company?

A. Why, they had theirs at Rahway, New Jersey.

XQ. 160. Well, now, yiu said your office was in New York?

A. Yes.

XQ. 161. Did you do any chemical work in New York?

A. Yes, quite a lot.

XQ. 162. Where? In what position?

A. Why, I did some research work, experimental chemical work.

XQ. 163. Where did you do it?

A. In the New York laboratory.

XQ. 164. The New York laboratory, the same place you are talking about at Greenwich?

A. Yes, sir.

XQ. 165. What was your position with the new company?

A. My position was treasurer.

XQ. 166. Treasurer. Did you handle the finances of the new company?

A. Yes.

XQ. 167. What was its capital stock?

Mr. Kresel: How is that material, your Honor. I object to that as immaterial and irrelevant.

Mr. Anderson: It is a matter of publicity. It may be immaterial and irrelevant, but I do not think so.

Mr. Kresel: I know, but neither my thought or your thought is going to govern this. I am putting it up to the Judge.

The Court: Upon that basis I will have to sustain the objection, or ask you to point out wherein it is relevant.

Mr. Anderson: This gentleman is engaged in various lines of business. I want to see what was the size of the business of which he was treasurer, and what time was devoted to these various elements of his business.

The Court: I do not think the time he spent in research work is determined by the amount of capital stock.

Mr. Anderson: By the size of the company. He is handling a certain amount of capital.

The Court: I do not think that is the way to get it, Colonel Anderson. It won't help me.

XQ. 168. What was the annual business of the E. C. Klipstein & Company in 1917, for instance, approximately?

A. About a million dollars.

XQ. 169. What was it in 1918?

A. About the same.

XQ. 170. You were still treasurer?

A. Yes.

XQ. 171. What was it in 1919?

A. It ran between eight hundred and a million nearly every year.

XQ. 172. Between eight hundred and a million?

A. Yes.

XQ. 173. You said half a million and a million a while ago?

A. I was speaking of the tanning material business of A. Klipstein & Company.

XQ. 174. Of A. Klipstein & Company?

A. Yes, sir.

XQ. 175. Which one is doing the tanning material business—A. Klipstein & Company?

A. Yes.

XQ. 176. Not E. C. Klipstein & Company?

A. E. C. were manufacturing.

XQ. 177. They were manufacturing what?

A. Synthetic tanning, and A. Klipstein & Company were selling it.

XQ. 178. And you were the treasurer of E. C. Klipstein & Company?

A. Yes, sir.

Mr. Kresel: A. Klipstein & Company were selling what, natural or synthetic?

The Witness: Both.

XQ. 179. Were there any other duties you had except as treasurer?

A. No particular duties, no.

XQ. 180. Where were these experiments that you spoke of, where the tanning material was made?

A. Some of them were made at the New York laboratory, some in the factory at Edgewater, and some at a leather chemist's laboratory in Newark.

XQ. 181. Who made them?

A. A man named John Yokum was connected with it, and I myself did some of the work; and then we had one other chemist working on these materials.

XQ. 182. How old was John Yokum?

A. He was about forty-five or fifty.

XQ. 183. What had been his experience before that?

Mr. Kresel: Colonel Anderson, I forgot to ask him his age. I would love to have it on the record. Will you ask him, please?

Mr. Anderson: Certainly. This gentleman's age?

Mr. Kresel: Yes, please.

Mr. Anderson: If he does not mind telling it, he can tell it now.

The Witness: Thirty-three.

XQ. 184. What was John Yokum's experience before he began to make this synthetic tanning material?

Mr. Kresel: Did you have Yokum's age?

Mr. Anderson: Forty-five. I think he said.

Mr. Kresel: That is very important, I am sure.

Mr. Anderson: Yes, I think so.

The Witness: Forty-five or fifty.

XQ. 185. What had he done before?

A. Why, he had been a leather chemist practically all his life.

XQ. 186. What was the experience of the other man that helped him?

A. He had been a chemist and he had also been employed in the analysis of tanning materials.

XQ. 187. How long had he been employed in the analysis of tanning materials?

A. I could not say. Probably five or six years.

XQ. 188. Do you know?

A. No, I don't.

XQ. 189. How long had he been connected with E. C. Klipstein & Company.

A. Why, not until we went into the manufacture of synthetic tanning materials.

XQ. 190. And that was in 1917?

A. 1917 to 1918.

XQ. 191. You had had no experience in the practical manufacture of synthetic tanning material until this work was begun, had you?

A. No, I had not.

XQ. 192. Had the E. C. Klipstein Company had any experience in the practical manufacture of synthetic tanning material? I am not speaking now of natural.

A. No, they had not.

XQ. 193. Did you have in your employ, so far as your own knowledge goes, any person who had ever engaged in the industrial manufacture of synthetic manufacturing materials?

A. No, we had not.

XQ. 194. So that you and your company took up this matter as an entirely new venture, did you not?

A. We did.

XQ. 195. And I understood you to say that in the year 1918 you sold about a million pounds of this tanning stuff?

A. Yes.

XQ. 196. This synthetic tanning material?

A. Yes.

XQ. 197. Manufactured under these patents?

A. Yes.

XQ. 198. Turning now to Patent No. 1,336,759, you testified that it was first tested out in a laboratory; is that right?

A. Yes, it was.

XQ. 199. At what laboratory?

A. At our own laboratory at Greenwich Street, and also at Newark.

XQ. 200. And you testified that you got a very good result in the laboratory from following the patent?

A. Yes.

XQ. 201. The material was satisfactory, was it, that you produced in the laboratory?

A. Yes.

XQ. 202. The yield was satisfactory in the laboratory in proportion to the amounts of ingredients employed?

A. Yes.

XQ. 203. And you followed strictly the methods of the patent, did you not?

A. Yes.

XQ. 204. You had to construct a new plant, however, when you started to make this stuff industrially, did you not?

A. Yes, we did.

XQ. 205. And there was not a man connected with it that ever had any experience in making this stuff industrially, was there?

A. No, but the——

XQ. 206. Now, that is all; you have said "No."

A. (No answer.)

XQ. 207. Who had charge of the manufacture industrially of this synthetic tanning material under the patent to which I have referred?

A. The assistant to Mr. Yokum, who was a chemist.

XQ. 208. He was a chemist that you said you did not know how long he had been employed in this work, did you?

A. No, I don't.

XQ. 209. Did you have any trouble with your machinery in making this stuff?

A. No.

XQ. 210. Worked all right, did it?

A. The machinery worked all right.

XQ. 211. But you did not get the results when you started to manufacture commercially that you had gotten in your laboratory, is that right?

A. No, we could not seem to get the reaction.

XQ. 212. Take that patent, and look at example 1. Isn't that a rather complicated chemical process?

A. No, it is an extremely simple one compared to some.

XQ. 213. It is an extremely simple process, is it?

A. Yes.

XQ. 214. And you did not have any trouble at all in the laboratory in working that process out, did you?

A. Very little.

XQ. 215. And getting a satisfactory result?

A. Yes.

XQ. 216. When you went to manufacture, you found your stuff heated, did you not?

A. We found it decomposed for some reason or other.

XQ. 217. Are not the chemicals involved in that operation chemicals which, when combined, do heat themselves a good deal?

A. Yes, they do.

XQ. 218. And it requires quite a technique to handle those chemicals without getting undue heat, does it not?

A. Well, not this patent. The other one does.

XQ. 219. How about this one?

A. This one heat has to be added to it.

XQ. 220. And in your manufacturing you did not get satisfactory results?

A. No, not at first.

XQ. 221. But you did finally develop a satisfactory product, did you, and sold large quantities of it?

Mr. Kresel: He did not say a satisfactory product; he said a satisfactory process.

XQ. 222. All right. You did finally get a satisfactory result, did you?

A. Yes, we did.

XQ. 223. And you then produced a product under this patent which you sold on the market in large quantities, did you not?

Mr. Kresel: I object to that. Just contrary to the witness's testimony. He did not say he got it under that patent.

Mr. Anderson: I am asking him a question, if your Honor please. I am not undertaking to recite his testimony. I am asking him a question.

Mr. Kresel: I beg your pardon; I thought you were repeating his testimony.

Mr. Anderson: No, sir, I was not repeating his testimony.

The Court: Objection withdrawn?

Mr. Kresel: Yes, certainly; it is up to the witness.

XQ. 224. I asked you the question if you did not produce large quantities of that stuff, whatever you call it, tanning material, covered by that patent, and sell it on the market?

A. We produced quantities, but not large in comparison to the tanning material consumption.

XQ. 225. What is the tanning material consumption in the United States?

A. Why, I have no idea of it exactly; but it is many thousand times greater than the amount of this material which we sold.

XQ. 226. Approximately what would you say in millions of pounds or tons? Approximately what is it?

A. Probably runs about 100,000,000 pounds a year.

XQ. 227. Is it not a fact, Mr. Klipstein, that the natural tanning material such as chestnut and others that you spoke of, are becoming quite scarce in the United States?

A. They are growing scarcer in each year.

XQ. 228. As a matter of fact, chestnut was formerly the chief source of that material, was it not?

A. No, I believe hemlock was.

XQ. 229. Chestnut was a large source, however, was it not?

A. It is now.

XQ. 230. The chestnut forests are disappearing, are they not?

A. I could not say whether they are or not.

XQ. 231. Which of the examples set forth in that patent did you personally try? I am speaking now of the same patent I mentioned above, Defendant's Exhibit No. 263.

A. I tried the first example.

XQ. 232. You did not try the other two?

A. It is so long ago I cannot remember whether I did or not.

XQ. 233. Did you personally supervise the manufacturing process or development under either?

A. Yes, I did.

XQ. 234. You mean you went down? Where was that done?

A. That was in Edgewater, New Jersey.

XQ. 235. Did you go down there and stay there while all this experimentation was going on?

A. Yes, I did.

XQ. 236. And you supervised this work yourself?

A. Yes.

XQ. 237. And though you had gotten good results in the laboratory, you could not get any results in the manufacturing?

A. Not at first.

XQ. 238. But you did get them afterwards?

A. Yes.

XQ. 239. Now I will ask you to take that patent and say exactly what you did in getting the results. You said you followed the patent accurately in the laboratory?

A. Yes.

XQ. 240. I will ask you to state exactly what variation you made in manufacture from the patent, stating what the patent calls for and what you did?

Mr. Kresel: If your Honor please, I think the witness is entitled to be told at this point, that he is under no obligation, under your Honor's ruling, to state any inventions that he made or any trade secrets that are his in connection with the development of this process. If your Honor will hear the question read, you will see the pertinency of my remark.

The Court: Will you read it, please.

(XQ. 240 repeated as above recorded.)

The Court: You mean, to make the synthetic tanning material successfully?

Mr. Anderson: Which he says he sold in large quantities in the market. In other words, if your Honor please, the testimony is that he made entirely successful work in the laboratory. Then he went to manufacture and he did not get satisfactory results. I want to know exactly what he did which was different from the patent process which he had followed in the laboratory, in order to get commercial results in the factory.

The Court: You are asking him for the methods that he devised which were different from those specified in the patent, to enable him to get a successful result in the works?

Mr. Anderson: I do not know whether they were different at all or not, sir. I want to know exactly what he did, in order that we may see whether there is any difference.

The Court: I do not care how he got his successful product, if he did. It is not relevant or material, nor am I going to have him disclose it if he claims the privilege of trade secrets. With that ruling, you may take such action on the record as you wish.

By The Court:

Q. 241. Do you object on the ground of trade secrets to disclosing the information called for by Colonel Anderson's question?

A. Yes, sir.

Mr. Anderson: Then your Honor sustains the objection to the question on the ground stated.

The Court: No, I do not sustain any objection. I advise the witness that he need not answer unless he wants to.

Mr. Anderson: (To witness) What do you want to do?

The Court: He said that he claims the privilege.

Mr. Anderson: I note an exception, if your Honor please.

The Court: Colonel Anderson, I wish you would tell me once more, so that I may make sure that I have your contention. I do not mean generally, Colonel Anderson——

Mr. Anderson: I am trying to answer specifically.

The Court: I did not put the question.

Mr. Anderson: I beg your pardon, I thought you had.

The Court: And that is—how the persons interested in these patents as licensees or otherwise can escape the dilemma of having their business destroyed if your contention be sound I thought I understood you this morning, but I am afraid I did not, because it continued over during the noon recess. It seemed to me I could not get it and I want to make sure I have it.

Mr. Anderson: I recognize that the situation is one of some embarrassment, but my position, as briefly as I can possibly state it, is this: That the defendant which we contend is nothing but the agent for holding these patents for the benefit of its stockholders, among them, this gentleman and his company, acquired the patents from the Government of the United States in a method which has already been disclosed. The Government claims that the transaction is invalid for reasons among others, if we reach that—that there was an inadequate consideration.

The Court: For the purposes of this inquiry, we will consider that the only allegation in the bill.

Mr. Anderson: Very good, sir, for that purpose only. Now, the question of consideration therefore becomes an immediate issue. We come in to show that these patents have been issued, that they are yielding large revenues or have yielded and are yielding large revenues. They have been licensed for use under a charter obligation, as claimed here, to defend and protect the users thereunder, and the benefits thereof. We come in and show that large amounts of stuff have been manufactured under those licenses, under those patents, and to a certain extent at least, license fees are being incurred. Very good. The defendant comes in and says: That is all true, but those patents are not as valuable as you think they are, because the processes are not as well developed therein or shown therein as they should have been, while we admit they are varied, they might have been better, and it requires a great deal of money to put them in operation, and we have to vary or develop those processes into manufacturing and commercial results; and in order to get commercial results, we had to materially vary and improve those processes. Therefore, if you were out to determine the actual value by an accounting suit, there would be an apportionment of value under that variation. That is the theory; and your interests, that is, the interests of the seller, is reduced by the extent of that variation. I take it that is the object.

I say very good. How much did you vary them? What did you do? I would like to see what you have done. They say:—Oh, no, I cannot stand examination on that, because I disclose trade secrets. I come into court voluntarily, I am not summoned to testify that they are not any good, but when you ask me what I did to make them good, I say—no, I do not have to say that, because that is disclosing trade secrets, and you cannot cross-examine. I say, if your Honor please, if that is the law, and your Honor so holds, and the Court sustains it, the Government of the United States bows to it with all deference; but in our view, it would be most mischievous and dangerous doctrine. Your Honor has my position as clear as I can state it.

THE COURT: No, you have not, Colonel Anderson, because, if I understand, you have not discussed my question at all. You have been interesting, but not instructive, because the specific question that I asked was this, Colonel Anderson: how these people, if they are the agents of The Chemical Foundation or The Chemical Foundation is their agent, can escape destruction as a result of a suit of this character, whether the belief of the Government is well founded or not. Because, if successful, that would be destructive of their business. If unsuccessful, if in the progress of the trial they are compelled to disclose trade secrets, which they testify they have spent years and thousands of dollars to develop, and those trade secrets if disclosed would go out not only to competitors in this country, but competitors abroad—that would be destructive of their business. So that the mere institution of a suit, whether well-founded or not, as I see it, would be destructive of the interests which the persons come in here to defend. There is my difficulty.

MR. ANDERSON: I think they should have considered that when they made the particular defense.

The Court: That is, the Government's position is——

Mr. Anderson: They opened the door.

The Court: They make a defense at their peril?

Mr. Anderson: No, sir. I think they can make a defense, but they cannot make a defense which involves an issue and put themselves into this position, where that defence involves the issue of the method of use of these patents, of taking advantage of that defense without its burdens. And while it may involve some little individual sacrifice, if they make the defense they must take along with the benefits of the defense its burdens.

The Court: Just how far can they go in making a defense without opening themselves to the danger of disclosing trade secrets? I have not been able to find a dividing line.

Mr. Anderson: I think that would require a very careful consideration of each individual case, sir; and I would not like to try to answer that. While I am quite glad to render any assistance to the Court that I can, I do not know that it is my problem. I think it is more the problem of the defense.

The Court: Well, I will not press it.

Mr. Anderson: I will render any assistance I can, but I have not considered just how far they can go.

The Court: Whether the process they employed is the same process or another process, whether it is the original patented process adapted to commercial conditions, or whether it is a modification of that process, but still considered as being within the patent, I think the materiality of the evidence ends with the disclosure that it is commercially unworkable without other information; and to get the additional information that was required, whatever was required, in each particular instance, what they eventually developed is immaterial.

You may show in rebuttal, if you like, that those patents are workable commercially without any expense of time. I am satisfied with the ruling.

Mr. Anderson: I am perfectly willing to proceed under it.

The Court: I just want to get your position to check up my own ruling on it. I have done that. Thank you very much, Colonel Anderson.

XQ. 242. Taking patent No. 1,237,405, which I understood you to be was a phenolic condensation, you stated on your direct examination that in your laboratory experiment in testing this formulæ you obtained a very fine product?

A. A satisfactory product.

XQ. 243. You stated a fine product?

Mr. Kresel: He did not say "fine product".

Mr. Anderson: All right. Let us get the evidence on that. If there is a question on that we will go to the evidence.

(Here a short recess was taken at the direction of the Court.)

XQ. 244. Mr. Klipstein, I find we were both wrong. Your answer was, "The result was very good, soluble, and could be used for tannning silks, and raw hides." I said it was "very fine" in my notes and you said "satisfactory," so we will compromise on "very good". You stated that when you went to manufacture that product you could not keep it from burning itself, was that correct—under Patent No. 1,237,405?

A. Is that the phenol?

XQ. 245. Yes, the phenol?

A. It produced a lot of tar from the heat of reaction or some destructive reaction.

XQ. 246. It had a heated reaction?

A. Yes.

XQ. 247. You subsequently did produce and sell that product in considerable quantities, did you not?

A. Yes.

XQ. 248. And you paid under the Federal Trade Commission license the license fees required by that license thereon, did you not?

A. Yes, we did.

XQ. 249. And the same applied to the stuff manufactured under the other patent which we discussed?

A. Yes.

XQ. 250. In fact, all the synthetic tanning material which you have manufactured was manufactured under these patents, was it not?

A. It was.

Mr. Kresel: Do you mean under these licenses?

XQ. 251. Licenses under these patents, to be more accurate, as counsel suggests.

A. Yes.

XQ. 252. And you paid license fees in accordance with the terms of the licenses on all of this material did you?

A. Yes, we did.

XQ. 253. And you are still doing so?

A. Yes.

XQ. 254. Where you are manufacturing or selling?

A. Yes.

XQ. 255. You stated that when you produced this material it was not satisfactory as a tanning material without combining it with other or natural tanning materials; is that true?

A. No, we never tried to use it by itself.

XQ. 256. You used it in combination with natural tanning materials?

A. Yes.

XQ. 257. What did you find lacking in the patent No. 1,237,405, that you supplied in making the stuff that you sold?

The Court: Doesn't that call for the same thing that we have discussed?

Mr. Anderson: I should think probably it would. Possibly, your Honor, it would call for that. Therefore, you are at liberty, Mr. Klipstein, under the Court's ruling to answer or not to answer that question, as you may desire.

The Witness: I prefer not to say.

The Court: That is on the ground of trade secrets, if that will disclose trade secrets, because that is the basis of my ruling.

The Witness: Yes.

Mr. Anderson: Yes, your Honor.

The Court: If answering that question will disclose information that is a trade secret with your company, then you need not answer it.

The Witness: Your question was——

XQ. 258. What did you find lacking in the patent that you supplied in your final manufacture, industrial manufacture—it calls for both a statement of what you found lacking and that which you supplied?

A. We had to do a little more than simply add the materials. We had to devise a special means of bringing about that reaction which was not described in the patent.

XQ. 259. Now, I will have to ask you what that means was, and subject to the same condition which the Court has stated?

Mr. Kresel: You understand you are not required to answer under the Court's ruling if to do so would reveal a trade secret.

A. I will not describe the process.

XQ. 260. You will not?

A. No.

XQ. 261. That what you did applied solely to the manufacturing under the patent in your laboratories?

A. Yes.

Mr. Anderson: I will, of course, note an exception to the ruling.

The Court: Yes, an exception may be noted.

XQ. 262. You began to sell this material about the fall of 1918?

A. Yes.

XQ. 263. You were then manufacturing under Trade Commission license?

A. Yes, sir.

XQ. 264. Have you ever surrendered your Trade Commission license and taken a license from The Chemical Foundation?

A. Yes, we did.

XQ. 265. Your company is a stockholder of The Chemical Foundation, is it not?

A. It is.

XQ. 266. You are not here under subpœna, are you; when I mean subpœna, summoned by the Court?

A. No, I am not.

XQ. 267. You are here by the instructions of your company, your superior officers?

A. I am the president, so I am appearing without instructions.

XQ. 268. What was the sales price of this stuff per pound that you sold in 1918 and said you sold over a million pounds that year?

A. Not that year, the first year of our operation we sold a million pounds.

XQ. 269. The first year of your operation—what year was that, from 1918 over to 1919?

A. Yes.

XQ. 270. You sold about a million pounds; what was the price per pound, do you recall?

A. It was about seven cents net.

XQ. 271. Could you state the amount of the profits of your company from these synthetic tanning materials, taking the whole operation?

A. The whole operation just about paid for our plant and our research work and development work.

XQ. 272. Development work including the operating expenses of the sales organization of $10,000 a year that you estimated?

A. Yes.

XQ. 273. So that your plant was paid for and all of your research and preliminary work paid for out of the profits of the operation; is that true?

A. Yes.

XQ. 274. Is your company engaged in the manufacture of dyes and intermediates now?

A. Yes, it is.

XQ. 275. Under license from the Federal Trade Commission or from The Chemical Foundation?

A. Not at the present moment.

XQ. 276. What do you mean by "the present moment"? Do you hold any licenses?

A. We hold licenses, but we are not operating under them.

XQ. 277. You are not operating under those licenses.

A. No.

XQ. 278. What are you manufacturing now?

A. We are manufacturing sulphur black, anthraquinone and anthraquinone intermediates and one or two other sulphur colors.

XQ. 279. Are any of these colors manufactured under processes provided in patents under which you hold licenses, do you know?

A. No, they are not.

XQ. 280. Licenses for how many patents have you? Do you know?

Mr. Kresel: Do you mean dye licenses?

XQ. 280. (Continuing.) Yes, dye patents. Do you recall?

A. Licenses or patents?

XQ. 281. I mean, how many patents have you licensed to you from The Chemical Foundation or the Federal Trade Commission; do you recall that?

A. We have the hydron blue patents. I think there are three of them. And we have chrome black patent.

XQ. 282. Have you ever operated or produced under those patents?

A. We made a few thousand pounds of each, but never got into a profitable business.

XQ. 263. Never got into a profitable basis?

A. No.

XQ. 264. And you have never, I believe you said, examined the later patents, the very recent patents, on tanning material?

A. No, I have not.

Mr. Anderson: I think that is all I want to ask.

Mr. Kresel: That is all, Mr. Klipstein.

(Witness excused.)

THEODORE W. SILL

Theodore W. Sill, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Please give your full name?

A. Theodore W. Sill.

Q. 2. And your residence?

A. Orange, New Jersey.

Q. 3. And your business?

A. Chemical manufacturing.

Q. 4. With what firm or corporation are you connected?

A. E. C. Klipstein & Sons Company.

Q. 5. Is that the same corporation with which the preceding witness is connected as president?

A. It is.

Q. 6. What is your position in the company?

A. I am treasurer of this company, as well as general superintendent of operations.

Q. 7. What has been your scientific education, Major?

A. I am a graduate of Princeton University in the Class of 1911. I have taken some courses at Pratt Institute; and otherwise my experience has been practical in twelve years of operations.

Q. 8. Operations of that nature?

A. In chemical manufacturing and executive direction of business—chemical business.

Q. 9. With what firm have you been connected before you became treasurer of this corporation?

A. The only firm with which I have ever been connected has been the Bulls Ferry Chemical Company, of which I was manager, and when E. C. Klipstein & Sons Company was formed, I diverted my attention to them.

Q. 10. What business was this other chemical company in that you have mentioned? What did it manufacture?

A. They manufactured sulfonated oils, textile leather, paper, chemicals, and we started to make dyestuffs in 1915.

Q. 11. During the war, Major Sill, what was your service?

A. I was put in charge of the manufacturing operations at Astoria, Long Island, where the absorbents used in the gas mask chemistries were made, namely, charcoal and soda-lime. It was my assignment to erect and operate these plants.

After they had been operating for about a year's time, I received orders to go overseas, where I went into training camp for combat service, and at the time of the completion of my service the Armistice came and there was no use for further active training, and so shortly I was given an appointment to the Inter-Allied Commission to inspect all the German chemical factories which had been occupied in active manufacturing during the war, these factories being in the occupied areas on the Rhine.

Q. 12. And did you, as representative of the United States Army, go into Germany with this Commission and inspect these plants?

A. I did, sir.

Q. 13. How long were you engaged in that?

A. For a period of about two months actively, and another month's time was occupied in writing reports and compiling them, a total of about three months' time.

XQ. 14. Tell us, please, as briefly as is possible under the circumstances, what plants you visited abroad?

A. We went into five of the principal German chemical factories: the Bayer Company at Leverkusen near Cologne; the Weiler ter Meer plant in Uedigen on the Rhine; Meister, Lucius & Bruning at Hoechst-am-Main; the Kalle Company at Biebrich, and the Badische Company at Ludwigshaven and Oppau and several small factories that were in the areas, which, however, do not amount to very much.

Q. 15. You spoke of having made a report. To whom did you make that report?

A. To my commanding officer, the Chief of the Chemical Warfare Service in the A. E. F.

Q. 16. What is the Chemical Warfare Service?

A. The Chemical Warfare Service is a development of this war. It started in a small way when we entered the war in 1917, as a part of the Sanitary Corps of the Medical Department, but as gas and chemical warfare developed so rapidly, it soon outgrew its initial start, so it had to be made into a department of its own, which was known as the Chemical Warfare Department, which exists today on an even larger scale.

Q. 17. Who was at the head of that Chemical Warfare Service?

A. I believe the first head of it was General Birmingham, if I am not mistaken, and then Major General Sybert, and then General Fries, who is now head of it also.

Q. 18. To which one of these officers did you make your report?

A. I made my report to the acting chief of the Chemical Warfare Service, Colonel Johnston, and during the time that we made this report General Fries had come back to the United States, according to my recollection.

Q. 19. Is the Chemical Warfare Service a part of the War Department of the United States?

A. It is my understanding that it is; that it is an active arm of the combat forces of the army.

Q. 20. Have you a copy of your report?

A. I have a crude copy of the report, not a complete copy; only a typewritten, mimeograph copy.

Q. 21. It is a copy of the report that you made?

A. Yes, sir.

Mr. Kresel: Colonel, is there any objection on your part to my introducing that?

Mr. Anderson: I have not seen it, Mr. Kresel.

I should like to look at it before I say. I do not think the Government would be in any wise bound by the statement. But if it were a matter of shortening the examination, I would like to see it.

Mr. Kresel: The question, Colonel, is not what is contained in the report, nor as to what the efficacy of it may be. That, of course, is argument for the Court. I am only asking whether you will release this officer from any obligation to keep such report secret. That is my real question.

Mr. Anderson: If your Honor please, my position on that is this: In so far as I as counsel here in this court have authority to do that, I would say that assuming I had examined the report and it looked to me to be a matter not of vital importance to the interests of the Government's military service, I should be very glad to do it. But I question my authority to assent to it, to release any officer of the United States from the obligation of secrecy that exists. I think that would have to come from the War Department, the head of the War Department or the State Department, or the Navy Department, as the case may be.

I can only speak for the United States in the very limited capacity in which I appear in this court, and I would rather err on the safe side than to undertake to exercise an authority which I do not think I have. I took that position yesterday and I take it today. I would be very glad to do anything I could to facilitate getting the information, but I do not think I could exercise that power.

Q. 22. Major Sill, could you give us the date when you made this report?

A. It was made about the middle of March to the first of April, 1919.

Q. 23. Were you the only representative of the United States Army that joined this Commission?

A. No, sir; I was not.

Q. 24. Who else was representing the Army in that committee?

A. Lieutenant-Colonel Norris and six members of the Ordnance Department. I cannot recall all of their names.

Q. 25. This report that you speak of, was that signed by you only or by the other officers?

A. It was signed by all of the officers.

Q. 26. And you say it was made either in March or April, 1919?

A. Yes, sir.

Q. 27. Was that the only report made by you gentlemen on this subject?

A. It was.

Mr. Kresel: Then, Colonel Anderson, without asking this witness to disclose his copy of the report, you now have sufficient identification thereof and I should like you to find out whether we can introduce that report and whether this officer will be relieved of any obligation not to divulge the contents thereof.

Mr. Anderson: Mr. Galloway, would you take that up with the Department of Justice and ask them to inquire of the Secretary of War if that report can be released?

Mr. Galloway: Yes.

Mr. Anderson: If the War Department consents I shall certainly not object.

Q. 28. I address you as Major Sill without having had you testify as to whether that is your military rank.

A. Yes, sir. I was a major during the time I was in the service. At the present time I am entirely out of the service.

Q. 29. I understand. Did you enter as a private?

A. No, sir. My first rank was captain.

Q. 30. And you rose to the rank of major?

A. Yes, sir.

Q. 31. We will depart from your military activities, Major, and inquire about some of these patents. Does the firm of E. C. Klipstein & Company hold a license on patents for the manufacture of hydron blues?

A. Yes, sir.

Q. 32. How many patents are covered by that license?

A. Three patents, I believe.

Q. 33. Will you give the numbers?

A. 919,572; 956,348; 966,092.

Q. 34. Have you the copies of those patents before you?

A. I have.

Q. 35. Will you produce them, please.

A. (Handing papers.)

Q. 36. Will you state about what time your corporation took this license and when, if ever, it undertook to manufacture hydron blue?

A. To the best of my recollection, we took out this license about June or July, 1921. We had previously to a considerable extent done some experimental work with the anticipation of being able to produce it, and in such case apply for the license to the proper authority. Our hopes were that we had made better progress, so we applied for the license while still maintaining our research work.

Q. 37. And how long did that research work continue?

A. On one of these products, it continued until about June, 1922.

Q. 38. Now, which one was that?

A. I cannot tell you without looking at the patent?

Q. 39. Just use that?

A. That is our number, 956,348, which is what is known as the Hydron Blue R.

Q. 40. Now, patent 966,092, covers what product?

A. That covers what is known as Hydron Blue G. The research on that was kept up.

Q. 41. Started when, please?

A. That started at the same time. That was kept up until February, 1923.

Q. 42. Now, I want to inquire about the third of these patents, 962,092?

A. You mentioned that. No. 919,572, that calls for a product somewhat analogous to the other two, but not of such commercial value.

Q. 43. What is the name of it?

A. It is a hydron blue which is a fusion product, and it has never the essential valuable properties of the other two. Consequently we have put practically no work on that development, because we knew that it was of secondary value.

Q. 44. So on this last one that you have mentioned, 919,572, you say you put very little work on. Have I the right number?

A. Yes, because of the fact—I meant to say in explanation there——

Q. 45. If you will?

A. 919,572 covers the preparation of an intermediate, indophenol, which was then utilized by fusion process, but the newer developments that covered this latter patent take that same indophenol and treat it in alcoholic sodium sulphide solution, which makes the more valuable acids of the hydron blue. This product here is more or less obsolete, you might say.

Q. 46. I see. So that turning to the other two patents, as I understand it, you started your research work sometime in 1921?

A. Yes, sir. We had done some as the opportunity arose, as far back as 1918, but not in a serious way as we did starting in the middle of 1921.

Q. 47. Now, take up, please, patent No. 956,348. What did you do in your research work and in your endeavor to produce the product therein described?

A. We followed as closely as possible the specifications given in this patent.

By Mr. Anderson:

Q. 48. What is the number of that patent?

A. 956,348—following the examples and directions given as closely as could be followed on a laboratory scale in an endeavor to work it out as an initial step.

By Mr. Kresel:

Q. 48a. And what result did you obtain?

A. Whereas we obtained some coloring matter with certain other powers, we could not get sufficient yield or sufficient power to produce a product which could be sold economically.

Q. 49. Did you, after completing in so far as you could, your laboratory research of this particular product that you are just talking about, undertake to manufacture on a larger scale?

A. We did, sir. We went to a semi-works scale, and then to a large commercial scale.

Q. 50. Did you eventually produce that product?

A. We did.

Q. 51. When first did you produce the product?

A. On a commercial scale, it was about the middle of May, 1922.

Q. 52. Please now take up patent No. 966,092; is that the product you have described as one covering the production of nitrophenol?

A. No, sir. That covers the production of Hydron Blue G.

Q. 53. Hydron Blue G?

A. Yes, sir.

Q. 54. The substance which I just mentioned is one of the chemicals used in the production, is that it?

A. If you mean nitrophenol, that is one of the intermediates used in the production of this product.

Q. 55. Now, what did you do in your endeavor to produce this product Hydron Blue G?

A. Similarly to what we have done in other cases, and as the usual procedure in the developing of a patent. We endeavored to follow as closely as possible the specifications given in this patent in laboratory experiments. The following examples are cited here and any reference available to guide us in the research work on that.

Q. 56. You have already given the length of time that it took you to make this research?

A. Yes, sir.

Q. 57. Now please state what results you accomplished?

A. We have never been able to satisfactorily produce a product by this patent.

Q. 58. Any product or a product of good quality or good yield?

A. A product of good commercial quality which could economically be sold in the market today.

Q. 59. That is up to today you have been unable to develop it, do I understand that to be your answer?

A. Yes, sir.

Q. 60. Please state what research facilities your company had in this research work that was prosecuted?

A. We have three laboratories: one in New York City in conjunction with the executive offices; one in Edgewater, which is a larger scale operation than the

New York City laboratory; and three laboratories in the plant in West Virginia, where we conduct this research work. We have had various chemists to work on this—American chemists, so far as they were available to obtain; foreign chemists, not only Swiss and English, but German. We have not had the good fortune to successfully work it out.

Q. 61. Do you know, Major, about how much money your company spent in the research work and experimental work under these three patents that you have just described?

A. I do, approximately.

Q. 62. Please state what your personal touch has been with the work and with the expenditure of the money? Do you get my question?

A. Yes, sir. From the start of this company, barring the time that I was in service and away from commercial manufacture, I have been very closely associated not only with the building of the plant, but with the operations. As a member of the board of directors of the company, it has been my province to have access to figures as well as all information regarding the development of various products and operations. Reports have come through my hands giving me this information and I have made frequent visits to the plants and have been in constant touch with the operators and research men; so that I have a very good knowledge of the conditions.

Q. 63. I shall now ask you to state approximately how much money your company spent in this research work.

Mr. Anderson: I object to that question.

The Court: What period does the testimony cover?

Q. 64. Please state, in answer to the Court's question, what period of research work you are about to testify as to the expenditure of?

A. From the period in July, 1921, until February, 1923.

The Court: Was the witness in the Army and away from the plant at any time during that period?

The Witness: No, sir.

The Court: You may answer.

A. We have expended approximately from $35,000 to $40,000.

Q. 65. Major Sill, from your knowledge of the chemical art, your experience—I think you said nine years' experience—in practical chemical work, in addition to your experience since you have been connected with this corporation, and your knowledge of the research work that you have described in attempting to manufacture according to the specification of these patents, and from the results obtained, could you give an opinion as to the value of these three patents?

Mr. Anderson: That calls for a yes or no answer.

A. Yes, I could.

Q. 66. Will you state what in your opinion their value was in February, March and April, 1919?

Mr. Anderson: Same objection as heretofore urged to these questions, without repeating, and the further objection that it does not appear that this witness is a qualified expert.

The Court: This is based on the testimony that he has given?

Mr. Kresel: Yes, sir.

Q. 67. You understand that?

A. I understand you want me to give the value of these patents in my opinion.

Q. 68. Yes, sir.

A. I should say that these three patents, their valuation, actual working value is comparatively slight. I would say that patent No. 919,572 would have a valuation of about $250. The other patents might each have a valuation, on account of the fact that so much work would have to be done in developing them, of $500 apiece.

Mr. Kresel: I offer in evidence patent No. 966,092.

Received in evidence and marked "Defendant's Exhibit No. 278." (*See Patent Exhibit Book.*)

Mr. Kresel: Patent No. 956,348.

Received in evidence and marked "Defendant's Exhibit No. 279." (*See Patent Exhibit Book.*)

Mr. Kresel: Also patent No. 966,092.

Received in evidence and marked "Defendant's Exhibit No. 280." (*See Patent Exhibit Book.*)

Q. 69. There is a question I want to ask you about some of those tanning patents. Major Sill have you had occasion to examine these two late patents of 1922, Defendant's Exhibits 276 and 277?

A. I have, yes, sir.

Q. 70. Have you considered—for your company, I mean—licensing the processes that are contained therein?

A. We have given consideration to that, yes, sir.

Q. 71. Will you state with reference thereto whether there are any intermediates there that were available at the time when these patents were granted?

A. Patent No. 1,421,722, dated July 4, 1922. This calls for the use of intermediates which, so far as I am aware, are not available in this country at the present time and would require considerable research work to develop them satisfactorily. Patent No. 1,414,045 would come under the same classification, the intermediates, are not readily available.

Q. 72. And you did not take any license thereunder?

A. We did not.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 73. What intermediates are there, called for by those patents, that are not in this country at the present time?

A. In those patents, you mean?

XQ. 74. Yes.

A. May I see them and I will give you the names of them.

XQ. 75. (Counsel hands papers to witness.)

A. I would say, so far as I am aware, para-homosaligenine is not available, neither is alphadinaphthylmethane, or dihydroxy-diphenylmethane, or dihydroxy-diphenyl-dimethylmethane, or para-cresoldialcohol, or dihydroxy-dimethyl-diphenyl-dimethylmethane. Those are the principal ones. The others are derivatives from those products in turn.

XQ. 76. Have you ever tried to buy any of them?

A. No, sir; I have not. These patents are recent and they only have been brought to our attention recently.

XQ. 77. Major, who told you they were not available in this country?

A. That is my judgment.

XQ. 78. And you formed that judgment without ever trying to buy them at all in this market?

A. I formed my judgment from my contact with the market and knowledge of manufacturing conditions as they exist today.

XQ. 79. Are those intermediates which you mention chemical products or reactions in the various processes named in these patents?

A. Most of those I named were the basic raw materials to start with.

XQ. 80. The basic raw materials?

A. Yes, sir.

XQ. 81. Are they recognized materials in the chemical markets of the world, do you know?

A. No, sir; they are rather rare. They are not readily commercially available articles.

XQ. 82. Not readily available in the markets of this country, but do you know the condition of the markets abroad on that subject?

A. To a certain extent I do.

XQ. 83. Are they available over there?

A. Not so far as I am aware.

XQ. 84. But they are recognized in the chemical world as chemical products or intermediates, are they?

A. Yes, they are existent, but they are not made commercially.

XQ. 85. You never tried to produce them under these patents, then?

A. We have not tried to.

XQ. 86. Do you know whether they are patented intermediates or covered by any patents?

A. I do not.

XQ. 87. Have you ever tried to make any one of the intermediates which you mentioned?

A. No, we have not. We don't consider it worth while to try.

XQ. 88. Gave it up without a try, did you?

A. I have never seen those patents until recently, on account of their being of recent issue.

XQ. 89. You never have seen the specifications for making those particular intermediates?

A. No, sir.

XQ. 90. Are you a chemist, Major, and, if so, where did you graduate in chemistry?

A. Yes, sir. From Princeton University.

XQ. 91. Have you any chemical degree?

A. I have a Bachelor of Science degree. There is no chemist's degree from Princeton University.

XQ. 92. Have you conducted personally the experiments under the various dye patents as to which you have testified?

A. I have not.

XQ. 93. The research was done by a chemist in the several laboratories which you have named, is that true?

A. Under the authority of the board of directors, of which I happened to be one.

XQ. 94. You have not personally conducted any of the experiments or chemical processes provided for in the three or four dye patents to which you have referred?

A. Not in any special dye patents; no, sir.

Mr. Kresel: Three?

Mr. Anderson: Three patents, yes.

XQ. 95. Hydron Blue G is quite an important dye, is it not?

A. It is a dye which shortly before the war started was beginning to secure prominence. It had never been developed on a very large scale. During the war imports were cut off, but it has properties of considerable interest and value.

XQ. 96. It has?

A. Consequently we were interested in taking it up.

XQ. 97. Hydron Blue R is also a dye of considerable importance in the commercial world, is it not?

A. Of considerable interest.

XQ. 98. What?

A. Of considerable interest; yes, sir.

XQ. 99. Before you began this series of efforts to manufacture these products, did you make laboratory experiments or cause them to be made, under the patents?

A. We did, sir.

XQ. 100. With what results? Did you get the

Hydron Blue R and the Hydron Blue G under the respective patents in your laboratory?

A. Not satisfactorily at first, only upon exhaustive——

XQ. 101. Not with satisfactory results?

Mr. Kresel: Wait a minute. He had not finished.

Mr. Anderson: I thought he had finished.

A. I say only after exhaustive research work on the Hydron Blue R. We have never been able to get the Hydron Blue G.

XQ. 102. You mean for manufacture or in the laboratory?

A. I refer to both.

XQ. 103. Did you go to work and spend twenty or twenty-five thousand dollars for your company in manufacturing efforts before you had made laboratory tests of these processes?

A. We spent that money in toto on this work, Colonel Anderson. Some of it was successful.

XQ. 104. Some of it?

A. Some of it. On the Hydron Blue R, we produced that product.

XQ. 105. You did?

A. We did.

XQ. 106. Did you first produce it in the laboratory?

A. We did.

XQ. 107. And you produced it under the process named in the patent?

A. No, sir.

XQ. 108. What variation from the patent did you take?

The Court: Do you understand the ruling of the Court with respect to that?

The Witness: Yes, sir.

The Court: You are at perfect liberty to disclose it if you wish, but you need not if it involves trade secrets. In that case you may withhold the information.

A. On the ground that it does represent a considerable amount of exhaustive and expensive work to develop it and produce it ourselves, on information which the patent did not give, I do not feel I should disclose it.

XQ. 109. Are you speaking of your laboratory work or your manufacturing work?

A. I am speaking of both.

XQ. 110. Major, you did not do the laboratory work at all, did you?

A. Personally, I did not; no, sir.

XQ. 111. Can you speak of your own knowledge of the results obtained in the laboratory effort or experiments?

A. Yes, sir.

XQ. 112. Did you produce in the laboratory Hydron Blue G?

A. We did not.

XQ. 113. R, I mean.

A. R, we did.

XQ. 114. Now I will ask you again to state in what respect the method employed by you in producing the Hydron Blue R varied from the process defined in the patent, and to that end I will ask you to take the patent and say what you did under the patent, and then say what you did in producing the satisfactory product.

A. The modification which we had to employ and the additions which we had to use I regard as trade secrets which I am not prepared to disclose.

Mr. Anderson: Your Honor will note, of course, an exception to his refusal to answer the question.

XQ. 115. I will ask you now to state just what you got as a result of your experiment under the patent, taking the patent, and stating the exact process followed and what was the result?

Mr. Kresel: Which patent?

Mr. Anderson: The patent on the Hydron Blue R which is No. 956,348.

XQ. 115. (Continued.) Now I will get you to take that patent, and state exactly what your laboratories did, of your own knowledge, under that patent (Handing patent).

A. Of my knowledge our laboratories took this patent endeavoring to work out the process as described here, namely, the proportions of 160 kilos of sodium sulphide crystals, and——

XQ. 116. I will not require you to read the patent.

A. That is specified under the example here.

XQ. 117. Which example?

A. There is only one example shown here.

XQ. 118 Were you present when that experiment took place?

A. I was present during part of the time, not during the whole time.

XQ. 119. In what year did you make the experiments?

A. We did some experimenting as far back as 1918. The intensive experiments were developed in the latter part of 1921 and the first part of 1922.

XQ. 120. And you were present only a part of the time when the experiment took place?

A. Yes, sir.

XQ. 121. Are you prepared to say of your knowledge that the chemist making the experiment followed each step through in accordance with the process as defined in that patent? I am speaking of your knowledge?

A. I believe that he did.

XQ. 122. I did not ask you, Major, what you believed. I asked you what you knew.

A. May I inquire, do you mean by that, do I know from a report or from my actual participation?

XQ. 123. No, I mean from your knowledge. The report is what somebody else says.

A. I did not observe him do it. I only know from report. I have no reason to believe that the report is dishonest.

XQ. 124. I do not either; but the question that I am raising is technical purely.

A. I did not see him do it.

XQ. 125. So you do not know of your own knowledge whether the chemist, outside of the information of which you have spoken, the chemist employed by the Bayer Company, actually followed that process or not, do you?

A. I only know as an ordinary member of the board of directors that the reports made to them by subordinate members of the firm are to be taken as accurate and honest. That is the only way I know.

XQ. 126. That is all the knowledge you have on the subject?

A. Yes, sir.

XQ. 127. So far as you recall, that experiment or research took place in the summer of 1921?

A. And the spring of 1922.

XQ. 128. When did you take out a license under this patent; do you recall?

A. I cannot recall the exact date.

XQ. 129. It was after that experimental work, was it not?

A. No, sir, it was before the intensive experimental work. It was after some of the preliminary work was done on that semi-serious scale.

XQ. 130. Taking patent No. 966,092, that covered Hydron Blue G, did it not?

A. I cannot tell you without seeing that sir, what the numbers are.

XQ. 131. All right. I will bring them around to you. I thought you remembered the numbers (hands patents).

A. No. 966,092 covers the Hydron Blue G, and No. 956,348 covers the Hydron Blue R.

XQ. 132. Both of them are product patents, are they not?

A. I think they are both product and process.

XQ. 133. Before I leave the Hydron Blue R, you have in fact manufactured and sold in the market a good deal of this Hydron Blue R dye, have you not?

A. Not a very large quantity, no, sir.

XQ. 134. But you have manufactured and sold a commercial product?

A. Yes, sir.

XQ. 135. And you paid royalties under the licenses on that product, did you?

A. We have; yes, sir.

XQ. 136. And those licenses were issued under the patent which you have named as applying to that product, is that true?

A. Yes, sir.

XQ. 137. Are you now engaged in the manufacture of that product?

A. We are not.

XQ. 138. How long since you stopped?

A. We stopped about October or November, 1922.

XQ. 139. In the case of the Hydron Blue G you stated, I believe, that you had never been able to produce a satisfactory product of a quality which could be economically produced commercially?

A. Yes, sir.

XQ. 140. That is about the substance of what you said?

A. Yes, sir.

XQ. 141. Did you produce any of the product at all?

A. Not satisfactory.

XQ. 142. Is your knowledge of the experimental work under the patent covering Hydron Blue G the same as under the other patent, without going through the details of it?

A. Yes, sir.

XQ. 143. Derived from the same sources?

A. Yes, sir.

XQ. 144. And limited to the same sources?

A. Yes, sir.

XQ. 145. You cannot testify of your own knowledge as to exactly what was done by the chemists under either patent?

A. If you mean by that only my personal observation and my own action in conducting tests, I cannot. But I can testify from reports given me, which I have no reason to doubt.

XQ. 146. Now I will ask you as to this second patent, Hydron Blue G, whether you varied the process named in the patent, or whether your company did in any respect; and if so, in what respect? I should say, perhaps, that you may not be misled, that the question substantially calls for an answer as to the process used by or experimented with by you, as to which his Honor suggested a moment ago to you, if it involved trade secrets, you need not answer. I do not want to elicit an answer from you contrary to the Court's ruling. It is for you to determine whether you wish to answer.

A. I do object to answering for the same reason.

MR. ANDERSON: I beg to note an exception.

XQ. 147. Major, in arriving at the value of these patents which you undertook to place on them, in your opinion, did you consider the fact that they were product patents and that any manufacturer of Hydron

Blue G in this country would be required to pay licenses thereon to The Chemical Foundation, if it were the owner thereof, or to the owner thereof?

A. I did, sir.

XQ. 148. Do you know the amount of Hydron Blue G that is sold in the United States in a year?

A. I am aware of the amount which was imported prior to the war and also of the market conditions at the present time.

XQ. 149. How much was imported prior to the war?

A. About $33,000 worth.

By Mr. Kresel:

Q. 150. You mean the whole time prior to the war?

A. The Tariff Report for the year 1914, it is my recollection, gives it as $33,000. I speak from memory.

By Mr. Anderson:

XQ. 151. That is taken from the Tariff Report?

A. Yes.

XQ. 152. If that is different, would you vary your answer accordingly?

A. Yes.

Mr. Kresel: What is that?

XQ. 153. If that report shows a different amount, you would vary the figure, if that is the source of your information, would you not?

A. Certainly.

XQ. 154. And in regard to Hydron Blue R, do you know the extent of the market for that dye?

Mr. Kresel: That is what he was talking of.

Mr. Anderson: No, he was speaking of G.

A. I was answering for both of them.

By Mr. Kresel:

Q. 155. Which was the first one—$33,000?

A. Pardon me. That represents the total of Hydron Blues imported.

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CARD 46

By Mr. Anderson:

XQ. 156. Both G and R?

A. Yes, sir.

XQ. 157. How much was sold of those dyes in 1919 in the United States?

A. I do not know; no, sir. I have an idea——

XQ. 158. That would also be in the Tariff Commission report, I assume, if you had that information coming from there?

A. Yes, sir.

XQ. 159. Major Sill, when you were speaking of the value were you speaking of the value at the present time of these patents?

A. I was speaking of the value at the time we took the license.

XQ. 160. At the time you took the license in 1921?

A. Yes, sir.

XQ. 161. At that time you had made no experiments at all, had you?

A. We had not on that particular product; those products, you might say.

XQ. 162. Did you take into consideration the experience you had had since then when you undertook to fix the price, prior to that experience?

A. I took into consideration both our prior and our later experience.

XQ. 163. You did?

A. Yes, sir.

XQ. 164. So that in arriving at a value in 1921, you took into consideration your experience in 1922 and 1923?

A. Yes, sir.

XQ. 165. In 1921, you took out licenses under those patents, did you not?

A. Sometime during 1921, yes, sir.

XQ. 166. And you entered upon a scale of expenditure in development which finally resulted in your spending how much money?

A. Thirty-five to forty thousand dollars.

XQ. 167. You spent thirty-five to forty thousand dollars to develop patents which in 1921 you would not have regarded worth over five hundred dollars?

A. So far as the patents themselves go, yes, sir.

XQ. 168. Those patents at that time?

A. Yes, sir.

XQ. 169. And you would not have thought that a patent which gave you the right to charge a royalty on all the products in the United States, and which has justified you in expending thirty-five to forty thousand dollars to develop the product, was worth over five hundred dollars, this right being given to you during the life of the patent?

A. Taking into consideration my knowledge of the existence of the fact that the patent is only a first step and required a considerable expense to develop it, I do not think the valuation was low.

XQ. 170. You do not think the valuation was low?

A. No, sir.

XQ. 171. And you do not think that the right of that holder of that patent to collect royalties at reasonable rates to be fixed by him upon the entire amounts of Hydron Blue G and Hydron Blue R imported in this country or produced in this country and sold in this country during the entire remaining life of these two patents was worth more than $500; is that your idea?

A. Taking into consideration the extraordinarily heavy expense necessary to develop them and the fact that after they are developed, owing to the initial cost of the basic raw materials from which they are made, the resulting product has such a high net cost that it cannot be sold in competition with the existing cheaper products as Indigo and some of the Sulphur Blues, I answer affirmatively that I think that value is sufficient.

XQ. 172. And the reason you quit manufacturing was that you could not compete with the cheaper products; is that the idea?

A. On the Hydron Blue R, but not on the Hydron Blue G, because we could not produce it by all the information that was available.

XQ. 173. Do you know whether any chemists that you had working on this matter had ever before had any experience in producing either Hydron Blue G or Hydron Blue R?

A. Yes, sir.

XQ. 174. Who?

A. One man came to us because of the fact that according to this report he had produced this product in Europe.

XQ. 175. When did he come to you?

A. The early part of December, 1921.

XQ. 176. Which of these products had he produced?

A. He had worked on both of them.

XQ. 177. Had he actually produced them?

A. I believe that he had produced them on a small scale, and that according to the information which was given us he had the "know how".

XQ. 178. He told you he had the "know how", did he?

A. Yes, sir.

XQ. 179. Did you find that he had the "know how?"

A. I found that by co-operation with our own men, we were able to produce Hydron Blue R, but never to produce Hydron Blue G.

XQ. 180. Had he ever produced Hydron Blue G for the commercial market before he came here?

A. No.

XQ. 181. And he was the only man that ever had any experience introducing either of them before your experimental work, was he not?

A. The men who had been working on it did not produce it, but those men were trained chemists along other lines, and it was naturally supposed they would be able to attack the situation, the type of research chemists that you would naturally put on.

Mr. Anderson: Read the question. The answer is not responsive. (Question repeated as recorded.)

XQ. 182. That is the Hydron Blue G and R, as you so understood it?

The Court: Is it your contention on either side, either side may answer this—that the only persons to whom the patent speaks are those who have had experience in manufacturing in a laboratory or on a commercial scale, those things covered by the patent. If so, I fail to see how there can ever be an invention, because an invention is supposed to be something new, and if to make something which is invented and patented it requires the employment of persons already skilled in its manufacture, it seems to me that produces a situation which I do not understand. Can you help me out on that, Colonel Anderson?

Mr. Anderson: I think so, sir. I think that experience, as Dr. Bolton has so well said this morning, is one of the factors in the "know how"; whether it is the controlling factor in the "know how" is another thing. We cannot take out any particular element in human experience, in the operation of a human mind and say that that is the controlling element; we must take them all together. A man skilled in the art must have certain qualities, and one is more skilled in the art than another. A man may be a most able lawyer on ejectment who would not know how to conduct a criminal case in court, and it would be thrown out on the first procedure.

The Court: May I make this inquiry, because we are talking on cross purposes, and I do not understand you, and you do not understand me.

By The Court:

Q. 183. What was the color that you were unable to produce?

A. Hydron Blue G.

Q. 184. Hydron——

A. Hydron Blue G.

Q. 185. Hydron Blue G?

A. Yes.

The Court: Now, at the time that patent was taken out in this country, at least the time the application was filed, I assume there had been no Hydron Blue G manufactured in this country. Now, then, where is a person who begins to manufacture under that patent to get his experience in manufacturing Hydron Blue G?

Mr. Anderson: He would have to get his experience by the experimental work as we derive all our experience, and it would mean a good many errors to get it through. There is not any question about that. It seems to me it is self-evident. But as we have gone into it so elaborately as to how long it would take to produce commercially those dyes, working with men without any experience in their production, which is somewhat different from other countries, I think it is one of the facts to be considered whether they had any experience in their production, and whether they had to learn themselves, as well as to learn the patents and when I say learn themselves, I mean find out, and whether they had to be taught it, as well as learn the patent in the process of that development. Those are factors to be considered the weight of which must be considered by the Court in the consideration of the facts.

THE COURT: Yes; but you have presented a sort of paradox to me which I do not yet see the solution of; but who were the men skilled in the art in America to whom this Hydron Blue G patent spoke under your contention?

MR. ANDERSON: I should say that there were very few men in America skilled in the art, and that was one of the reasons. There were some men perhaps in America who had had experience to whom a patent for Hydron Blue G would speak. There were very few men, I think, skilled in the art in this country at that time, in the true sense, skilled in the art. That is one of the disadvantages under which the country was laboring. There has not been any dispute about that.

THE COURT: I am not disputing that, but I was seeing just what your position is in respect to it. I am not sure whether I understand your position with respect to its effect upon value.

MR. ANDERSON: Probably, sir, and I am quite ready to state when this question is read over to me, it is rather narrower than I intended to make it and I should ask other questions. The question that I would have asked perhaps, following that, was whether these chemists which he said he had working on those experiments were men who actually produced other dyes, and if so, what dyes? All of that would have bearing upon the extent of the men's experience. I at least wanted to know. He said he had one man that had abroad actually produced Hydron Blue R, but did not claim to produce Hydron Blue G, as I understood it. I was getting at what was the scope of the knowledge of these men who were supposed to be making these experiments, that is all.

The Court: I think this answer is responsive and the motion to strike out is not granted.

Mr. Anderson: I will work it out this way, Major——

Mr. Kresel: You withdraw the question?

Mr. Anderson: Yes, I will withdraw that question to shorten the discussion.

XQ. 186. Did you have in your employ in December, 1921, at or when these experimental processes were going on, any other persons than the men whom you have named who had any experience as chemists in the industrial or commercial production of either of these dyes which you have mentioned, that is R and G?

A. Will you read the question?

(XQ. 186 repeated as recorded.)

A. We did, yes, sir.

XQ. 187. Who was it?

A. There was one other laboratory chemist, and we had three men, not primarily in R and G, but who had been producing allied products for a considerable time.

XQ. 188. You had one laboratory chemist who had produced what in the laboratory?

A. Hydron Blue R.

XQ. 189. Had produced any in your laboratory?

A. In Europe.

XQ. 190. Did he tell you that he did?

A. Yes, sir.

XQ. 191. Do you know whether he produced it under this patent?

A. He did not.

XQ. 192. Did he produce it under the German patent, the same material?

A. He produced it by a modification of this patent here, in conjunction with our own research work. It was a question of co-operation.

XQ. 193. You mean here?

A. Yes.

XQ. 194. And that is the modification which you say you cannot disclose?

A. Yes, sir.

XQ. 195. Now, I will ask you—you said you had three other men who had been engaged in producing allied dye materials—where?

A. In our plants.

XQ. 196. How long?

A. One of them over a period of six years, one of them who had been not in the manufacture but in the dye business for a period of twenty-five years.

XQ. 197. Had been in the dye business, but not manufacturing?

A. Yes, sir, and the other man had been about two years.

XQ. 198. And what dyes were you making during the period they were working for you, sulphur colors?

A. Sulphur colors and some azo colors.

XQ. 199. Some azo, but chiefly sulphur colors, were you not?

A. Yes, sir.

XQ. 200. Now, with those exceptions you did not have anybody in your employ at that time that knew anything about the production of R or G or processes of that character, I mean, as chemists I am speaking, of technical knowledge and commercial knowledge?

A. With those exceptions—I did not get the last part of your question.

XQ. 201. I suppose my question was involved. (Question repeated.)

A. Allied processes similar to these.

XQ. 202. What I meant was this: Have you now named to me the men of a technical or commercial

THIRTY-FIRST DAY.

Wilmington, Delaware, July 19, 1923, at 8.30 o'clock A. M. (Standard Time).

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Anderson: If your Honor please, I noted last night an error in one of my statements, where I am reported as using the word "material" when I did use the word "immaterial," in addressing the Court. They are, of course, directly in conflict, and I have spoken to Mr. Kresel and corrected the record at page 3680, and put in the word "not" so as to make the sentence read correctly.

Mr. Galloway: If your Honor please, in the preparation of the record for print we have discovered some duplications and other errors which we wish to correct, and we understand that they should be corrected of record so that the clerk would be authorized to follow the plan which we outline in that way.

I therefore would ask that the memorandum entitled "opinion accompanying Mr. Hoguet's letter in response to the inquiries contained in your communication of January 24, 1918," be detached from Plaintiff's Exhibit No. 6 and attached to Plaintiff's Exhibit No. 7.

The Court: Have you agreed upon these changes in the record?

Mr. Galloway: Our associates have been in conference with counsel for the defendant, and they have agreed, as I understand.

The Court: Have you a memorandum of the changes which you desire?

Mr. Galloway: I have not a memorandum except in pencil form, as we were informed that the clerk desired the order to be made in open court.

The Court: Then why not just give your pencil memorandum to the stenographer and let him embody that in the record, and then at the end of that he may insert "so ordered."

(The memorandum referred to by Mr. Galloway reads as follows:)

"Detach memorandum entitled 'Opinion accompanying Mr. Hoguet's letter in response to the inquiries contained in your communication of January 24, 1918,' from Plaintiff's Exhibit No. 6 and attach it to Plaintiff's Exhibit No. 7. (*See Exhibits, Vol. I, page 45.*)

"Connected with the minutes of September 5, 1919, of the Executive Committee of the American Dyes Institute, which is Plaintiff's Exhibit No. 552, are the minutes of the meeting of the Executive Committee of the American Dyes Institute of September 11, 1919. It is requested that such minutes of September 11, 1919, be designated as 'Plaintiff's Exhibit No. 552-A.' (*See Exhibits, Vol. II, page 1268.*)

"Connected with the minutes of the meeting of the American Dyes Institute of July 10, 1919, which is Plaintiff's Exhibit No. 547, are minutes of the meeting of the sub-committee of the Executive Committee of the American Dyes Institute of July 10, 1919. It is requested that the minutes of the meeting of the sub-committee should be designated as 'Plaintiff's Exhibit No. 547-A.' " (*See Exhibits, Vol. II, page 1249.*)

The Court: So ordered.

Mr. Galloway: I thought also that perhaps it might be well to have a general order that where a duplication of exhibits occurs, upon agreement by counsel of both the plaintiff and the defendant one of those exhibits be not printed.

THE COURT: Certified in writing to the clerk.

MR. GALLOWAY: We shall be glad to do that.

I also wish to offer at this time a stipulation by counsel for plaintiff as well as counsel for defendant, concerning the diminution of the report of A. Mitchell Palmer, as Alien Property Custodian; and request that the same be printed in the record. It is signed by counsel for both parties, and is to be filed.

THE COURT: Let it be filed and the record printed in accordance therewith.

(The stipulation referred to reads as follows):

"STIPULATION.

"WHEREAS, the plaintiff has heretofore offered and there have been filed in evidence portions of the official report of A. Mitchell Palmer, as Alien Property Custodian, as of February 15, 1919, as follows: (1) the portions which appear as Exhibit No. 2 to defendant's answer herein, received in evidence as Plaintiff's Exhibit No. 12: (2) the letter transmitting the report to the President (found on the page immediately following the title page of said report) received in evidence as Plaintiff's Exhibit No. 13; and

"WHEREAS, thereafter the plaintiff offered in evidence (3) Chapter I of said report which was not as such filed as an exhibit herein, and the defendant offered in evidence the whole of said report reserving, by leave of court, the benefit of the previous offers by plaintiff of the portions of said report hereinabove specified;

"*Now, Therefore,* for the purpose of simplifying and shortening the record it is hereby stipulated by and between the parties hereto through their respective counsel as follows:

"1. The three portions of said report heretofore offered by the plaintiff as hereinabove specified shall be printed in the order in which they appear in the printed book under Plaintiff's Exhibit No. 13, suitable cross reference being made thereto under Plaintiff's Exhibit No. 12.

"2. The following portions of said report shall be printed as Defendant's Exhibit No. 30 with a note that by stipulation of counsel the report is not printed in full, and with suitable cross reference to the portion thereof printed as Plaintiff's Exhibit 13.

"(a) All of Chapter IV.

"(b) That portion of Chapter VII, beginning near the top of page 126 with the caption 'Hamburg-American and North German Lloyd Dock' and extending to the end of said Chapter on page 127.

"(c) Portions of Chapter XII, as follows:

"Beginning with opening of Chapter, page 163, and including down to the bottom of page 167; omit to the caption 'Division of Patents,' page 181; include beginning with said caption and extending to the bottom of page 184; omit balance of Chapter.

"(d) That portion of Chapter XIII, beginning with the caption 'Selling Division' near the bottom of page 217, and including down to the caption 'Mail and Files Department,' near top of page 223.

"(e) That portion of Chapter XIV, beginning near top of page 239 with the words 'Other duties,' and including down to the bottom of page 242.

"3. None of the remainder of said report shall be printed in the record.

"Dated at Wilmington, Delaware,
this 14th day of July, 1923.

UNITED STATES OF AMERICA,
Plaintiff.
By (Sgd.) Herman J. Galloway,
Solicitor.

THE CHEMICAL FOUNDATION,
INCORPORATED,
By (Sgd.) Lucien H. Boggs,
Solicitor."

Mr. Galloway: There is one thing further. To the Federal Trade Commission licenses which were filed as plaintiff's exhibits in this case there were attached copies of United States patents which those licenses concerned. In some instances there was a notation to such license that the patent was not filed therewith because it was out of print at the time the license was executed. We have compiled those missing patents and ask that they be annexed to the respective Federal Trade Commission licenses in evidence to which they relate, so that they may be in the record.

I might say that we have agreed with the defendant upon a patent book which will avoid the printing of many of these patents, but both sides, I think, wish to have them all in the record.

The Court: What number do you want these to take? Do you want these made part of the exhibits of the Trade Commission licenses?

Mr. Galloway: I think that will not be necessary for the reason that the license refers to it, and we are not going to print any of the patents. We are going to put them in a patent book.

Mr. Anderson: There is one other matter that I would like to call attention to at this time. I do not know just the status of the record with regard to the testimony of Dr. Holdermann and without, at this time, opening up the question of its admissibility, it was taken before the Court in advance of the trial, the Court stating that it was sitting as a Master. I understood it was taken as a part of the evidence of the case and did not need to be introduced, as would be the case with a deposition. There is some question as to that.

The Court: I do not recall a reference made to its being taken as Master, but my understanding of it, and I so hold now, in order to make the record proper, is that it was taken as if he had been put on as your first witness after your opening.

Mr. Anderson: That was my understanding. I only wanted to make the record quite clear, so that there would be no question.

The Court: Are your amendments to your bill complete?

Mr. Anderson: Mr. Galloway tells me that all the orders have been entered.

The Court: You referred to Dr. Holdermann. There was some statement made by him which needed some alterations before it was filed. Has that been done?

Mr. Galloway: We have a statement here which he prepared and sent down here, and with the exception of two portions, I have agreed with Mr. Hershkopf——

The Court: It is not quite ready then. As soon as it is ready, let it be filed.

Mr. Kresel: I will now call Dr. Crossley.

MOSES L. CROSSLEY.

Moses L. Crossley was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Have you given your full name?

A. I have.

Q. 2. And your residence?

A. Bound Brook, New Jersey.

Q. 3. And your profession?

A. Chemist.

Q. 4. Will you state your education and your professional experience?

A. I was graduated from Brown University in the Class of 1909 with the degree of Bachelor of Philosophy. Received the Master of Science degree from the same University in 1910 and the Doctor of Philosophy degree from the same University in 1911. I was instructor in chemistry at Brown University from 1909 to 1911, during the time of my graduate study. I then was Associate Professor of Chemistry and Biology at William Jewell College, Liberty, Missouri, 1911 to 1913; Associate Professor of Organic Chemistry, Wesleyan University, Middletown, Connecticut, 1914, acting head of the Department of Chemistry, Wesleyan University——

Q. 5. Wait a minute, please. You may proceed.

A. Acting head of the Department of Chemistry in the same university, 1914 to 1918. During that time I was concurrently consulting chemist for the Barrett Company during the years 1916 to 1918. Since 1918 I have been Chief Chemist for the Calco Chemical Company, at Bound Brook, New Jersey. I have conducted considerable research on problems in organic and biological chemistry, the results of which have been published in several technical papers, and am also the author of several non-technical papers on educational problems.

Q. 6. What is the business of the Calco Chemical Company.

A. The manufacture of intermediates, dyes and pharmaceuticals.

Q. 7. Dr. Crossley, have you ever had occasion to undertake to produce cinchophen under the German patent covering that drug?

A. I have.

Q. 8. What is the number of that patent?

A. 1,075,171.

Q. 8-a. I show you Defendant's Exhibit No. 152. Is that the patent?

A. It is.

Q. 9. Please state when first you undertook the experiment for the production of cinchophen?

A. I personally started to work on this patent in 1918; but the company had worked on it from the early part of 1917.

Q. 10. Now, what did you do in undertaking to produce cinchophen?

A. We tried to follow exactly the description of the process as outlined in this patent.

Q. 11. You say you tried to do it; did you do it?

A. We actually did. Not only did I personally observe the individual steps of one man, but several men, over a period of at least one year, before we gave up the attempt.

Q. 12. What was the result of your efforts and those of your associates in following out the steps described in the patent?

A. The result was an impure mixture of cincophen and tar, chiefly tar.

Q. 13. Was the product such as could be used as a drug?

A. The product was not safe to be used as a drug and was not salable.

Q. 14. Did you undertake to produce neocinchophen?

A. We did.

Q. 15. What is the number of the German patent covering that drug?

A. 1,045,759.

Q. 16. I show you Defendant's Exhibit 153. Is that the patent (handing witness paper)?

A. It is.

Q. 17. Will you please state what you did in attempting to produce neocinchophen?

A. We followed the description of this patent in detail.

Q. 18. Will you state about when you started these experiments, how long they took, how many men were engaged therein?

A. The work on neocinchophen started in the latter part of 1918, and continued intensively as a research problem until the latter part of 1919. There were continuously at work from two to six men on the problem.

Mr. Anderson: Your Honor, I suppose it is understood that this evidence is subject to the same objections on my part as made to the other evidence of similar character, which I request be considered.

The Court: Yes, but won't you state them so there may be no doubt as to what those objecttions are now, Colonel Anderson?

Mr. Anderson: The general objections of immateriality, irrelevancy and incompetency, of course, apply to all this evidence.

The Court: Yes.

Mr. Anderson: In the second place, the evidence as to these patents which is here sought to be introduced is objected to upon the grounds which I stated in the combined motion to strike out and objection. I do not know that I can recall them all at this time, and I might get the record very quickly, but the grounds chiefly go to questions of estoppel.

The Court: Dealing with the validity or invalidity of the patents?

Mr. Anderson: Dealing with the validity or invalidity, but I think they are estopped just as much to introduce this evidence as other evidence. Your Honor recalls the grounds.

The Court: Yes. They are overruled, and we will take the evidence.

Q. 19. What was the result of the experiments that you have described following out the steps set forth in that patent?

A. The result was an impure neocinchophen, which was not suitable for human consumption.

Q. 20. Did you also undertake to produce procaine?

A. We did.

Q. 21. Otherwise called novocain. Please give me the number of that patent?

A. 812,554.

Q. 22. I now show you Defendant's Exhibit 155. Is that the procaine patent?

A. It is.

Q. 23. Please state what you did in endeavoring to produce procaine?

A. We followed the description in this patent in detail.

Q. 24. How long did you experiment?

A. The work on procaine extended over a period of four years.

Q. 25. How many men were employed therein?

A. There were from two to eight men, the greater part of the time an average of four men.

Q. 26. What were the qualifications of these men that were engaged in this experimental work on the procaine, cinchophen and neocinchophen that we have thus far discussed?

Mr. Anderson: I move to strike out the answer to the next question above and the one preceding that, on the ground it is not responsive to the question. He asked him what he did, and he said the work continued for four years. That is not responsive, and the sole matter that he can testify to is what he himself did.

Mr. Kresel: On the contrary, my question included just that. I asked him to state how long it took and how many were engaged.

Mr. Anderson: But the preceding question.

Mr. Kresel: Let us have it read.

(Q. 24 and Q. 25, with the answers thereto, read as recorded above.)

Mr. Anderson: The work may have been going on for four years and he may not have touched it. You asked him how long he had experimented.

Mr. Kresel: I see nothing wrong with that answer.

The Court: You may ask him now if you desire, Colonel Anderson, whether that was under his direct knowledge, so you can bring your question and that question together.

By Mr. Anderson:

Q. 27. Did you actually do this work yourself?

A. I did not actually do it with my hands. I planned the work, and I observed the work done by the men.

Q. 28. What year?

A. The work started in 1918 and continued through to 1922.

The Court: You may proceed, Mr. Kresel.

Mr. Kresel: Will you repeat the last question? I do not believe it has been answered.

(Q. 26 repeated as recorded above.)

A. All of them were men with at least a Doctor of Philosophy degree. Two of them were men recognized as authorities in organic chemistry in this country. Both of them a part of the time did the work in connection with a university.

Q. 29. Were they all professional men?

A. All professional men; yes.

Q. 30. What result did you obtain after this experimental work on procaine? I mean, what result did you obtain by following the specifications in the patent?

A. After two years of continuous work on different steps in the patent, we obtained only a mixture of impurities containing some procaine, which we could not utilize.

Q. 31. Dr. Crossley, can you state approximately the cost of the research work that you have described on procaine?

Mr. Anderson: I object on the ground that he has not been shown to be qualified to testify on that subject.

The Court: You may ask him the preliminary question first.

Mr. Kresel: That is all I have asked him, whether he can state. I did not ask him the amount.

Mr. Anderson: I thought the question went to the amount. I withdraw the objection to that question.

A. I can.

Q. 32. What knowledge have you as to the amount spent? I mean, what did you have to do with the spending of the money? How did it come under your supervision, if it did?

A. I am responsible for the initiation and conduct of research. I employed the research men. I order or have ordered, that is, issue the orders under which the research work is done; order the materials, pass on the bills; and got a statement at the end of each month of the cost of research on each problem.

Q. 33. Now, you may state, Dr. Crossley, the amount of cost of research work that you have described on procaine?

A. The cost approximately, within my knowledge, that is, of the research within my knowledge, which does not include additional for overhead, over which I have no control, was approximately between forty-five and fifty thousand dollars.

Q. 34. And what was the cost of the research work on neocinchophen?

A. Between twenty-five and thirty thousand dollars.

Q. 35. And what was the cost of the research work that you have described on cinchophen?

A. About sixty thousand dollars.

Q. 36. Dr. Crossley, were you in court yesterday when Dr. Bolton testified?

A. Yes.

Q. 37. Did your company ever succeed in producing procaine for sale?

A. No. May I qualify that statement?

Q. 38. Certainly.

A. Our company worked out a process after four years which was satisfactory as a laboratory process. It was never introduced in the plant for two reasons: First, because it was quite evident that there were at that time too many others manufacturing the same product, and as a business policy we decided not to go into it. The second reason was, we had developed a product which we believed better for many purposes as a local anæsthetic than procaine.

Q. 39. And what was the name of that product?

A. That product is registered under the trade name "salicaine."

Q. 40. Used as a local anæsthetic?

A. Used as a local anæsthetic.

Q. 41. As novocaine was used?

A. Yes.

Q. 42. And when did your company first produce that salicaine, if that is the name of it?

A. We first produced it in 1921, as a laboratory product.

Q. 43. Yesterday, counsel for the Government, in questioning Dr. Bolton—I may not quote his exact words — asked, substantially, whether the Germans were not the pioneers in the dyes industry or the dyes business. Doctor, I am interested to know if you can tell us who first discovered the aniline dyes?

A. Chemical history is quite clear on that point. The English and French were the pioneers, both in discovery and application of synthetic dyes. Sir William Henry Perkin discovered the first synthetic dye in 1856. That was mauve, sometimes called mauvine. The period of ten years thereafter is marked by very notable discoveries of English and French scientists of some of the products which are of prime importance today. I may mention only a few to illustrate my remark. Magenta was discovered in 1859 by a Frenchman, Verguin, and in 1860 a very marked improvement in that process was discovered by Nicholson, an Englishman. Then, in 1860, the first synthetic blue dye was discovered by Girard and DeLair, both Frenchman. Then aniline black, by Lightfoot, an Englishman, in 1862; and aniline black today is still one of our very staple products. Then the first green dye, aldehylo green, in 1862 by Chepin, and safranine by Duprey in 1865, and soluble indulines by Coupaier, a Frenchman, in 1862. It was not until after 1860, about 1860. when Hoffmann began his work, that Germans had contributed at all.

Q. 45. Hoffmann was a German chemist?

A. Hoffmann was a German chemist.

Q. 46. One of the most famous, was he not?

A. One of the most famous German chemists; and then, most all of these products that I have mentioned were put into operation in England and France as manufacturing products.

Q. 47. Before I go into another subject with you, Doctor, I would like you to state whether you have any knowledge as to the availability of dye plants for the manufacture of munitions and vice versa; and if you have, to please state an example of more than one?

The Court: Have you not covered that by six witnesses already?

Mr. Kresel: By how many—no, your Honor.

The Court: I will take the answer.

A. I have.

Mr. Kresel: I think this is the second witness I have asked that question.

Q. 48. And what is your knowledge as to that?

A. We built a plant, that is, the Calco Chemical Company built a plant during the war to make tetranitroanilin, one of the most powerful of the explosives. The plant is today in operation making intermediates, without any change having been made in it, and is ready to start at any moment to make the same explosive.

Q. 49. Intermediates for what?

A. Intermediates for dyes. I might add that the chief intermediate used in the manufacture of this explosive is also a very important intermediate in the manufacture of a number of dyes.

Q. 50. And what intermediate do you refer to?

A. I refer to dinitrobenzene.

Q. 51. Doctor, have you been experimenting with any of the German patents covering dyes?

A. I have.

Q. 52. I am going to ask you, without putting too many questions, if counsel will permit, to state what patents you have been experimenting with, for how long a period your experiments lasted, what you did, and what the result was that you obtained?

Mr. Anderson: My objecting or not objecting to that question will depend on the character of the answer, so that reserves the right on direct, to stop the witness at any time.

Mr. Kresel: You may stop him if you think I had better put the specific questions.

The Court: Do not let him go on and then move to strike it out.

Mr. Anderson: No. I will try to stop him if I see he is going where I do not think he has a right to.

Q. 53. All right. Proceed, Doctor.

A. Please read the question.

(Q. 52 repeated as recorded.)

A. Specifically patent No. 733,280.

Q. 54. Will you state the product that covers.

A. Covering an azo dye known in the trade as Lake Red C.

Q. 55. As you speak of those, will you please produce copies of the patents, if you have them?

A. This is patent No. 733,280 (handing).

Q. 56. Now go ahead.

A. And patent 1,063,173, dealing with the preparation of beta-aminoanthraquinone, used as an intermediate for the manufacture of vat dyes.

Q. 57. Yes.

A. Patents 682,523; 724,789; 739,145, dealing with preparation of indanthrene dyes.

Q. 58. Now, if you can, please state what you did with reference to each of these patents and the results you obtained?

A. I worked personally and with assistants in the universities I have mentioned, over a period extending from 1908 to 1918 on some of these patents, on all that I have mentioned that I have given you in that period. My purpose was primarily to get an idea of the——

Mr. Anderson: If your Honor please, we want to know exactly what he did.

Mr. Kresel: Strike out from the words, "My purpose."

A. (Continuing.) I followed the description in each of the patents in detail.

Q. 59. Now, taking up patent No. 733,280, covering the red azo dye, what result did you obtain?

A. I obtained a mixture of at least two dyes, which was not Lake Red C, as known in the trade.

Q. 60. Was the mixture of any commercial use?

A. The mixture was not of commercial use. Lake Red C is of commercial use, because of its brilliancy as a lithographic pigment, or as a pigment for lithographic ink. The product obtained by means of following the details of the patent is a brownish red pigment, which, in technical language "bleeds" in the oil, and is not satisfactory as an ink.

Q. 61. Now, take up patent No. 1,063,173 of the beta-amino-anthraquinone, what result did you obtain there?

A. I obtained, by following the patent describing explicitly a mixture of beta-amino-anthraquinone and impurities which was not suitable as a commercial product or for the manufacture of the dyes resulting therefrom.

Q. 62. Please look at this particular patent covering beta-amino-anthraquinone, and state whether there are any directions there with reference to oxidizing agents?

A. Yes, there are.

Q. 63. Well, did you follow out those steps?

A. Yes.

Q. 64. And what did you find with reference to the utility of those oxidizing agents?

A. I found that the product obtained with the oxidizing agents was more impure than the product obtained without them.

Q. 65. Will you proceed to state what result you obtained in following out the processes described in patent No. 682,523?

A. That is the patent on Indanthrene Blue RS. I obtained a mixture of products not suitable for the purpose for which Indanthrene Blue RS had been used.

Q. 66. Could those impurities be removed?

A. Not practically.

Q. 67. Was the product that you obtained a commercial product, salable?

A. It was not.

Q. 68. You also mentioned patent No. 724,769. Is that a patent covering the same product?

A. It is a patent which covers the same product.

Q. 69. Is it a later patent or a preceding patent?

A. It is a later patent. It was taken out, if I recall correctly, in 1903, while the other patent was taken out in 1901.

Q. 70. Was it taken out by the same inventor?

A. It was.

Q. 71. I would like you to take the two patents, and, having now described the results that you obtained under the first one, I am going to ask you to state whether the second one in language recognizes the inability to produce under the first one.

Mr. Anderson: That is a pure construction of the instrument, sir.

Mr. Kresel: I am going to ask him to read it.

Mr. Anderson: He can read the instrument to the Court.

Mr. Kresel: I do not want him to read the whole instrument.

Mr. Anderson: I object to his construction of the language of the instrument.

The Court: That is not the purpose. I will let you read it, Mr. Kresel, if you want to.

Mr. Kresel: All right; I will ask the witness to point it out to me because I am not as familiar with it as he is.

The Court: Is this in evidence?

Mr. Kresel: I have not yet put them in evidence, your Honor. I thought I would put them in together. If it be better, I will offer them now.

I offer first the patent No. 733,280, on the Red Azo dye.

Received in evidence and marked "Defendant's Exhibit No. 281." (*See Patent Exhibit Book.*)

Mr. Kresel: I next offer patent No. 1,063,173, covering beta-amino-anthraquinone.

Received in evidence and marked "Defendant's Exhibit No. 282." (*See Patent Exhibit Book.*)

Mr. Kresel: Now, I offer the two patents, to wit, No. 682,523 and No. 724,789, covering——

Q. 72. What was that dye you spoke of?

A. These two patents cover the same product.

Q. 73. Yes, but what is it?

A. Indanthrene Blue RS.

Received in evidence and marked, respectively, as follows: Patent No. 682,523, "Defendant's Exhibit No. 283"; Patent No. 724,789, "Defendant's Exhibit No. 284." (*See Patent Exhibit Book.*)

Q. 74. I am going to ask you to point that out to me again.

A. (Witness indicates on patent.)

Mr. Kresel: I read from patent No. 724,789 the following statement: "My invention relates to developments and improvements of the invention patented to me by Letters Patent No. 682,523, September 10, 1901. I have found that the coloring matter obtained as described in the specification of the said Letters Patent is not always of a homogeneous character, but may consist of or contain bodies which I will refer to as A and B, and these can be separated from one another by suitable means; and the final object of my present invention is the production of the two bodies A and B in a commercially-pure state and either in their reduced or in their unreduced form."

Q. 75. I would like you to state, Dr. Crossley, whether you experimented under the later patent as well as under the prior one?

A. I did.

Q. 76. And you have, I think, already told us the results obtained under the prior patent. What results did you obtain under the later patent, which is No. 724,789?

A. The results are an A product which can be purified, a B product as described there, which is not a dye.

Q. 77. Not a dye?

A. Yes. In the scientific sense of the word it is a mixture of very low tinctorial power.

Q. 78. Is either product that you were able to obtain under the later patent of commercial use?

A. Neither product is of commercial use as obtained by the description in the patent.

Q. 79. Did you undertake experiments under a patent covering Indanthrene Yellow?

A. I did. That is patent No. 739,145. The product is also known under the name of flavanthrene.

Q. 80. When did you experiment with that?

A. My work on that patent began about 1911, if I remember correctly.

Q. 81. And for how long a period did you work on it?

A. Between 1911 and 1914.

Q. 82. What did you do?

A. I followed the patent description in detail.

Q. 83. What result did you obtain?

A. For the most part obtained a mixture of products which was not of commercial importance.

Q. 84. Was the mixture that you obtained such as could be used commercially?

A. Only in one instance.

Q. 85. And what was that?

A. That was in following a chance remark in one of the last paragraphs of the patent, with respect to the use of a particular reagent which is mentioned casually as being suitable for substitution for the one required in the specification.

Q. 86. I wish you would point that out.

THE COURT: Is this the same patent with respect to which Dr. Bolton testified?

MR. KRESEL: I think so. I would like to find out if patent No. 739,145 is in evidence. I think it is.

A. That is on page 2 of the patent, in line 26.

Q. 87. Will you read it, please?

A. It says: "Instead of employing aluminum chlorid as condensing agent I can use antimony pentachlorid in the presence of a suitable solvent.

MR. KRESEL: There is some doubt, your Honor, whether the patent is already in, and I will offer it with the understanding if it is in, of course, it need not be printed twice. I therefore offer patent No. 739,145.

Received in evidence and marked "Defendant's Exhibit No. 285." (*See Patent Exhibit Book.*)

MR. KRESEL: Colonel, the witness is yours.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 88. Is the Calco Company manufacturing dyes?

A. Yes.

XQ. 89. How long has it been manufacturing dyes?

A. Since 1916.

XQ. 90. Is it producing the dye that you described under patent No. 739,145?

A. It is not.

XQ. 91. Not producing it at all?

A. It is not.

XQ. 92. Did you ever try to produce it at the Calco Company's plant?

A. I did not.

XQ. 93. Where did you try to produce it?

A. At Wesleyan University, at Middletown, Connecticut.

XQ. 94. You said that you worked on it between 1911 and 1915?

A. 1913, I think I said.

XQ. 95. 1913?

A. Yes.

XQ. 96. How much time did you actually devote to this particular work?

A. I wish to correct my statement there. I said at Wesleyan University, but I should have said William Jewell College.

XQ. 97. Where is that?

A. That is at Liberty, Missouri.

XQ. 98. How much time did you actually devote to the work under this patent?

A. I devoted all the time when I was not teaching, and I taught.

XQ. 99. You taught?

A. Yes.

XQ. 100. Did you carry on any other experimental work between 1911 and 1913?

A. I did not. I taught at William Jewell eight hours a week.

XQ. 101. Eight hours a week?

A. Eight lecture hours a week.

XQ. 102. And your other time was devoted to experimenting with this patent?

A. Yes.

XQ. 103. How many assistants did you have?

A. I had three, two graduate assistants and one under-graduate.

XQ. 104. You did produce under that patent by following the clause which you referred to and read to the Court, the product called for by the patent, and in commercial quality, did you?

A. I produced a product which could be sold as a commercial product after purification.

XQ. 105. You said that for the most part you obtained a mixture which was not of commercial importance, but that you did produce a commercial product following what you call a chance remark; is that a correct statement of your evidence?

A. That is right.

XQ. 106. During the period of your two years' experimentation did you follow in every instance the details of the formula set out in the patent?

A. I first followed every detail in the patent; yes, sir.

XQ. 107. In every instance of your experimentation?

A. Yes.

XQ. 108. Did you vary in any way from the patent?

A. I did not.

XQ. 109. In every instance you stuck exactly to the patent?

A. I did.

XQ. 110. How many illustrations or suggested formulæ are there in that patent?

Mr. Kresel: Would your Honor permit me about two minutes—will you stop for a few minutes? I won't be more than that.

The Court: Yes.

Mr. Kresel: Thank you.

(Counsel consults with associates.)

XQ. 111. How many times did you work through each of the examples illustrated in the patent?

A. I cannot state exactly, but very many times.

XQ. 112. I think I will ask you to take that patent and read over the first illustration and state exactly what you did in each step?

Mr. Kresel: Which patent is it?

Mr. Anderson: The patent No. 739,145. What is the date of it, by the way?

Mr. Kresel: The date is September 15, 1903 (handing witness patent).

Mr. Anderson: I do not think I will take up the time with that. It expired in 1920, anyhow.

Mr. Kresel: The question is withdrawn.

Mr. Anderson: Yes.

XQ. 113. You testified as to patent No. 682,523, did you not?

A. I think so.

XQ. 114. Read the date of it.

A. 1901, I think.

XQ. 115. What month?

A. September, 1901.

XQ. 116. It expired in 1918, in September, did it not?

A. The first patent taken out by Rene Bohn, of Mannheim, on indanthrene dyes.

Mr. Anderson: I move to strike out all evidence as to that patent. It was not assigned to The Chemical Foundation at all. It had expired before the assignment took place.

Mr. Kresel: I do not know whether it was actually assigned or no.

Mr. Anderson: Of course, it may have been assigned.

Mr. Kresel: Oh, there were at least 54 assigned that had expired, as we showed by Mr. Garvan's testimony.

Mr. Anderson: I am glad to get that information.

Mr. Kresel: You are glad to get it? You had it three weeks now.

The Court: The only value that would have, with respect to that patent, would be to identify the particular processes which this witness was using, so as to show whether he was a person skilled in the art covered by the allied patents.

Mr. Kresel: And, moreover, sir; it is connected with the second patent by the same inventor, as to both of which, you will recall, he testified.

XQ. 117. What is the date of the second patent dealing with that subject?

A. 1903.

XQ. 118. What month?

A. Dated in April, 1903.

XQ. 119. And expired in April, 1920, did it not?

A. (None).

XQ. 120. When did you make the experiments with those two patents?

A. My experiments really began much earlier. They began in 1908.

XQ. 121. Your experiments with these two patents began in 1908?

A. I cannot say they concerned only those two patents from 1908 on.

XQ. 122. I would like to know just when and where you did experiment with those two patents?

A. With those two patents I experimented both at William Jewell College and Wesleyan University between the years 1911 and 1918.

XQ. 123. Can you not locate the date more accurately than that, of these experiments?

A. I cannot say definitely that I experimented with one or the other of the two patents at any particular time, because I was a scientific investigator, with the purpose of finding data concerning the mechanism of reaction.

XQ. 124. We do not want any of the causes. I asked you whether you could locate more accurately the time of your experimentation with these patents—more accurately than from 1908 to 1913?

A. I told you on one patent I was confined entirely between 1911 and 1913.

XQ. 125. We have dropped that one. I am talking about these two.

A. May I see the patents?

XQ. 126. Yes (handing witness patents).

A. On the beta-amino-anthraquinone patent my work was between 1913 and 1915. On patent No. 724,789 my work was chiefly between 1914 and 1916.

XQ. 127. And you cannot locate it any more accurately than that?

A. I cannot.

XQ. 128. I will ask you to state how much time you devoted to the experimentation on each of these patents—actually the time. I am now speaking of the two patents dealing with the Blue RS, the Indanthrene

Blue RS, No. 682,523, which expired in 1918, and No. 724,789, which expired in April of 1920.

A. As a rough estimate I would say that I gave about ten to fifteen hours a week.

XQ. 129. As a rough estimate?

A. Yes, sir.

XQ. 130. And you canot locate the time in which you gave this work any more than between 1913 and 1915—or 1914 and 1916?

A. I cannot.

XQ. 131. Did you do any other scientific experimental work during this period of two years?

A. During the latter period I did. I worked on the intermediate from which later beta-amino-anthraquinone was made.

XQ. 131-a. Referring to patent No. 682,523 and patent No. 724,789, how many times did you follow through the details of the formulæ prescribed in those patents?

A. A great many times.

XQ. 132. Can you give me any idea what you mean by "a great many"?

A. In one particular case I would estimate that the number of experiments carried out during the period of two years was about one hundred.

XQ. 133. In which particular case is that?

A. That is in the first patent.

XQ. 134. That is in the old patent that expired in 1918?

A. Right.

XQ. 135. How many times did you go through the various formulæ prescribed in the second patent?

A. Roughly, I would estimate seventy-five times.

XQ. 136. Did you follow that formulæ in detail every time?

A. I followed it in detail until I found modifications necessary, perhaps.

XQ. 137. What modification did you find necessary? Now we are getting to the interesting part.

A. I do not feel that I can answer that question without jeopardizing information which is secret to other companies.

XQ. 138. What companies?

A. The companies that are making indanthrene dyes, which might discover the same information.

XQ. 139. Do you know whether those companies are following your experience?

A. I do not.

XQ. 140. Would you name some company that is following your experience and the results of your experiments?

A. There is no company that I know of following my experiments. My experiments are not published.

XQ. 141. Then I renew my question.

Mr. Kresel: Wait a minute; pardon me; had you finished your answer?

The Witness: I have not.

A. (Continued.) By giving that information I would undoubtedly, as a scientific man, be giving information that others working in the same field had discovered.

XQ. 142. And the patent has expired three years ago?

A. It has; but that information has not expired.

XQ. 143. You would be giving information of others by giving the modification that you made in the processes defined in this patent; is that it?

A. Undoubtedly. I can give one, because that is public knowledge. The first patent fails to state——

XQ. 144. No, I am asking about the second patent. The first patent expired before this transfer.

A. Well, the second patent——

THE COURT: Both of these patents are embraced in the assignment of December 10, 1918.

MR. ANDERSON: Yes, sir. That being the case, the patent had expired, and being named in there, would make it of no consideration in this case.

MR. KRESEL: But you claimed they were worth a million dollars apiece, did you not?

MR. ANDERSON: No, I did not say they were worth a million dollars apiece, these particular patents.

THE WITNESS: The remark I was about to make applies to the second patent as well.

XQ. 145. All right, let us have exactly the variation.

A. The conditions under which the fusion is made are conditions which produce, in adition to the blue dye and the impurity, alizarin, and alizarin decomposes at the temperature of this reaction to form a brown product which contaminates the reaction product and makes it very difficult to separate it.

XQ. 146. Then I will ask you to read the provision that you refer to from the example in which it is included, and state exactly what the patent calls for, and state exactly the variation that you made in detail.

A. The patent, in specification No. 2, which calls for production of a melt from which A is the chief product obtained, states——

XQ. 147. State the process.

A. "Heat a mixture of ten parts of beta-aminoanthraquinone, twenty to fifty parts of potassium hydrate and two parts of potassium nitrate to a temperature of two hundred degres centigrade. Raise the temperature gradually to two hundred and fifty degrees centigrade and maintain this temperature for half an hour. Pour the melt into water and boil up in the presence of air. The chief product of the reaction is A. Small quantities of B that may be formed can be separated in the manner described in Example 1."

The modification which I found necessary in this particular specification in order to get A in any satisfactory quantity was to increase the initial temperature from 200 to 230 degrees, at which point practically no alizarine is formed, and the brown by-product which is so difficult to separate is thereby eliminated. That was a very important point, and the second important point is that the amount of sodium nitrate——

By The Court:

Q. 148. Are you proceeding to give information which is public?

A. This information is public.

The Court: I will pass upon the other when I reach that point, if you press your objection.

A. (Continuing.) The second point is that the amount of nitrate mentioned in the specification is not sufficient for the complete oxidation, and I found it necessary to increase that amount.

XQ. 149. How much did you increase it?

A. I increased it from two to five parts.

XQ. 150. That is the only variation that you made in that process?

A. That is the only variation which I am at liberty to give; yes.

XQ. 151. Then I understand that you raised the temperature from 200 to 230 degrees?

A. Initial temperature.

XQ. 152. And that you used more nitric acid than that called for by the patent?

A. Potassium nitrate.

XQ. 153. In that example it is stated that by

The Court: Both of these patents are embraced in the assignment of December 10, 1918.

Mr. Anderson: Yes, sir. That being the case, the patent had expired, and being named in there, would make it of no consideration in this case.

Mr. Kresel: But you claimed they were worth a million dollars apiece, did you not?

Mr. Anderson: No, I did not say they were worth a million dollars apiece, these particular patents.

The Witness: The remark I was about to make applies to the second patent as well.

XQ. 145. All right, let us have exactly the variation.

A. The conditions under which the fusion is made are conditions which produce, in adition to the blue dye and the impurity, alizarin, and alizarin decomposes at the temperature of this reaction to form a brown product which contaminates the reaction product and makes it very difficult to separate it.

XQ. 146. Then I will ask you to read the provision that you refer to from the example in which it is included, and state exactly what the patent calls for, and state exactly the variation that you made in detail.

A. The patent, in specification No. 2, which calls for production of a melt from which A is the chief product obtained, states——

XQ. 147. State the process.

A. "Heat a mixture of ten parts of beta-aminoanthraquinone, twenty to fifty parts of potassium hydrate and two parts of potassium nitrate to a temperature of two hundred degres centigrade. Raise the temperature gradually to two hundred and fifty degrees centigrade and maintain this temperature for half an hour. Pour the melt into water and boil up in the presence of air. The chief product of the reaction is A. Small quantities of B that may be formed can be separated in the manner described in Example 1."

The modification which I found necessary in this particular specification in order to get A in any satisfactory quantity was to increase the initial temperature from 200 to 230 degrees, at which point practically no alizarine is formed, and the brown by-product which is so difficult to separate is thereby eliminated. That was a very important point, and the second important point is that the amount of sodium nitrate——

By The Court:

Q. 148. Are you proceeding to give information which is public?

A. This information is public.

The Court: I will pass upon the other when I reach that point, if you press your objection.

A. (Continuing.) The second point is that the amount of nitrate mentioned in the specification is not sufficient for the complete oxidation, and I found it necessary to increase that amount.

XQ. 149. How much did you increase it?

A. I increased it from two to five parts.

XQ. 150. That is the only variation that you made in that process?

A. That is the only variation which I am at liberty to give; yes.

XQ. 151. Then I understand that you raised the temperature from 200 to 230 degrees?

A. Initial temperature.

XQ. 152. And that you used more nitric acid than that called for by the patent?

A. Potassium nitrate.

XQ. 153. In that example it is stated that by following the terms of the example, you get small quantities of the product B named in the patent. Did you find that was true?

A. I did, but in addition to the small quantities——

XQ. 154. I asked you if you got the small quantities of B?

A. I got the small quantities of B.

XQ. 155. Did you undertake to separate those small quanties of B in the manner described in Example 1?

A. I did.

XQ. 156. Did you separate them?

A. I did not.

XQ. 157. Then your difficulty was that you did not get the separation provided in Example 1, and you raised the initial temperature from 200 to 230 degrees. Did you raise the subsequent temperature above 250 degrees?

A. I did not.

XQ. 158. So that as to temperature it was merely a question of starting at a little higher temperature and going up 20 degrees to 250, instead of starting at 200 and going up 50 degrees to 250?

A. A very important point.

XQ. 159. I mean, that is all the variation you made?

A. Yes.

The Court: Will you read me the provision of the patent with respect to that, Colonel Anderson?

Mr. Anderson: "Heat a mixture of ten parts of beta-amino-anthraquinone, 20 to 50 parts of potassium hydrate, and two parts of potassium nitrate to a temperature of 200 degrees centigrade. Raise the temperature gradually to 250 degrees centigrade and maintain this temperature for half an hour. Pour the melt into water and boil up in the presence of air."

THE COURT: That gives me all I want. Thank you very much.

MR. ANDERSON: To finish up, if you will allow: "The chief product of the reaction is A."

XQ. 160. That was a fact; the chief product was A, was it not?

A. Yes.

MR. ANDERSON: "Small quantities of B that may be formed can be separated in the manner described in Example 1."

XQ. 161. Did you try the other examples set forth in that patent?

A. I did.

XQ. 162. Did you modify those examples in any respect?

A. Only insofar as my experience with the first example dictated.

XQ. 163. Take the other examples and see what they called for and to what extent you modified them and in what respect, exactly.

A. Example 3 calls for the production of a melt from which B is the chief product obtained. In my previous example I had found that B was not of much value, but I wanted to test the patent for scientific accuracy. It calls for mixing ten parts of beta-aminoanthraquinone, fifty parts of potassium hydrate, and twenty-five parts of absolute ethyl alcohol.

> "Heat the mixture for about three hours at from 140 degrees to 150 degrees Centigrade. Pour the melt into water in the presence of air and filter off the dark-blue precipitate formed. The chief product is B. Small quantities of A that may be formed can be separated as explained in Example 1."

In view of the fact that alcohol under these conditions of the experiment has to be carried under pressure, and the example says absolutely nothing about it, I found it necessary to lower the initial tempature at which the reaction was carried from 140 degrees to 110 degrees and the final temperature at which I finished was 140 degrees instead of 150 degrees.

XQ. 164. Ten degrees less; that was all the variation you made, was it?

A. That was all the variation in that particular example.

XQ. 165. As a chemist, did you not know as a matter of common knowledge that alcohol under those conditions would have to be used under pressure?

A. I would have accepted it, yes.

XQ. 166. Is there any other example in this patent?

A. Not dealing with that.

XQ. 167. Those are all the variations that you made from the patent, as you have indicated, are they?

A. They are all I am at liberty to give.

XQ. 168. Then I want to get the others. I will ask you to take the patent and state exactly what other, if any, variations you made from the formula therein described?

> The Court: You need not answer, Doctor. I think that is immaterial. This witness has testified under oath that that patent does not produce a commercial result when its terms are followed. He has indicated some of the variations. He need not indicate the others, because the variations are irrelevant and immaterial to the issues of this case. He has told you the amount of time that he spent in perfecting a commercial product, starting with this patent. I am not concerned as to the extent of the variation of that process. I am

concerned as to the disclosures of this patent and the time and money necessary to be expended in perfecting the process.

What this man reached may not have been the result reached by any one else under the patent. I think it is irrelevant and immaterial; and whether it embodies a trade secret in the specific sense or not, it does embody the disclosure, obtained by a large expenditure of money, on the part of this witness, and the result of that labor is a personal asset which I shall not ask him to discard in this case, because in my view, it is irrelevant and immaterial to any issue, howsoever remote, involved in the trial of this case. You may have an exception.

Mr. Anderson: I will note an exception.

XQ. 169. What commercial experience had you had prior to 1918?

A. I was consulting Chemist for the Barrett Company from 1916 to 1918. Prior to that time I had done a considerable amount of consulting work in various branches of the industry. I had been a consultant for two or three soap manufacturing companies; also for the New England Enamel Company and several others.

XQ. 170. You had never operated any manufacturing plant yourself?

A. I had not.

XQ. 171. You had never been in the mercantile business or trade at all, had you?

A. I had not.

XQ. 172. Is the Calco Chemical Company now making the intermediate covered by patent 1,063,173; that is this patent (handing patent)?

A. It is not.

XQ. 173. Have you at any time ever engaged in the manufacture of that product on an industrial scale?

A. I have not.

XQ. 174. Is your knowledge thereof and your testimony thereon with relation entirely to your laboratory experiments?

A. It is.

XQ. 175. At what time did you say that those experiments took place under that particular patent?

A. 1913 to 1915.

XQ. 176. You were then at Jewell College, Missouri, you said?

A. 1913 to 1915, I was part of the time at William Jewell and part of the time at Wesleyan.

XQ. 177. I believe you said the Calco Company was not manufacturing novocain?

A. It is not.

XQ. 178. I believe you said that it worked out the process which produced novocain in a satisfactory quantity and character, but for business reasons it was never introduced into the plant; is that true?

A. That is correct.

XQ. 179. Do you know whether it holds a license for the manufacture of novocain?

A. It did, until the patent ran out. I am not certain which preceded. The license was cancelled.

XQ. 180. That ran out this year, did it not?

A. The license was cancelled.

XQ. 181. The patent ran out this year. When did it start to produce the drug which you described as a substitute in action?

A. On a laboratory scale, the production began late in 1921. It is still, of course, in what we call the pilot plant stage, that is, small producton of the product.

XQ. 182. Is it now a commercial product?

A. It is, for certain classes of work.

XQ. 183. State what you mean by "certain classes of work"?

A. It is particularly useful in cystiscopic work, that is, anaesthesia of the bladder and the organs connected therewith.

XQ. 184. How long has it been on the market commercially; I mean, how long has it been sold?

A. For about a year, some time during 1922. It was furnished to physicians in 1921, but not to any large degree. It was accepted by the Council on Pharmacy in 1921.

Mr. Anderson: I have to ask a question, sir, which I know goes against your ruling, but I will ask it.

The Court: Some questions can be asked there, Colonel Anderson, which I would let in. There are certain questions that I will not let in. You may ask them——

Mr. Anderson: And I will ask the witness not to answer until—I do not want to talk against your Honor's ruling.

XQ. 185. I will ask you to state first, whether the substance which you mentioned as a substitute, is covered by a patent?

A. It is not. The substance I have mentioned is not new. It is a well-known product——

Mr. Anderson: I only asked you, Doctor, if it was covered by a patent.

The Witness: It is not.

Mr. Anderson: That is all. May I strike out the balance?

The Court: Yes.

XQ. 186. Now, I would ask you to state specifically how this substitute remedy is made?

A. I cannot answer that.

The Court: That comes under the rule. It seems to me wholly unnecessary, but I am not going to substitute my dictum for yours. I am only going to make a ruling. It seems to me you can get what you want without coming in conflict with that ruling in this instance; but as to this I rule that he need not answer that question for the reasons indicated yesterday and today.

Mr. Anderson: I will note an exception, sir.

XQ. 187. Now, I will ask you to state whether you, in your experiments for the manufacture of procaine or novocain under Patent 812,554 followed in detail the specifications of the patents?

A. I did.

Mr. Anderson: Let me have those, will you please?

Mr. Kresel: It is not one of those photostats.

The Clerk: No. 155.

XQ. 188. There is only one other process outlined in that patent, is there not, one example?

A. Yes, sir.

XQ. 189. And you followed that in detail, did you?

A. Yes.

XQ. 190. Now you say you finally produced a satisfactory product?

A. We did.

XQ. 191. I will ask you to state exactly the variations from the specification in that patent that you followed when you produced a satisfactory product?

A. I cannot give that without giving secret information.

The Court: That is immaterial. The length of time that was required may be ascertained; you may go into that as fully as you like; the length of time before that was done; the number of chemists that were employed; the skill of those chemists; their training; the expenditure of money; the development or lack of development of apparatus necessary to carry into effect the process of the patent; but I see no value that the secret processes or the product ultimately developed, will have upon the issues in this case.

Mr. Anderson: Your Hnoor will allow me an exception, of course.

The Court: Yes.

Mr. Anderson: I will lay that point aside for a moment.

XQ. 192. Now, under the two patents covering cinchophen and neocinchophen——

The Court: May I add this, before you ask that question. I will make this other suggestion. You may put on any witnesses that you like, up to the number limited by the rule, which is six, to show that this commercial product may be obtained readily by following the process of the patent, and that will be affirmative testimony and also negative, and I shall be very glad to have them. Also I shall be very glad to have you demonstrate in court the making of any of these products in conformity with the process of the patents.

Mr. Anderson: I have inquired into that, sir. I am told that these are all complicated processes and require time not only for the mixing of the ingredients, but for the reactions, and for heating and cooling, which would take quite a considerable time, and therefore it is not possible.

The Court: Then, you may have this opportunity: We will asign to you a room in the building where your chemists, with the chemists selected by the defendant, as observers, may make the products of any of these patents, or all of them, and at the conclusion of their experiments, we will take the testimony of your chemists, and allow them to develop them.

Mr. Kresel: That is an excellent suggestion your Honor. I am very glad your Honor made it.

Mr. Anderson: The only available material as regards chemists, will be glad to make any experiments along those lines, but I venture to suggest, without at all arguing against your Honor's ruling, which I accept——

The Court: It is not a ruling.

Mr. Anderson: I think that does not relieve the question of the disabilities on cross-examination which this ruling imposes. I bow to the ruling with all deference, and say it is a question which deserves serious consideration, and I reserve the point on the record.

The Court: You may have your exception, but so far as the disclosure of the secrets in any instance called for by you, that is a matter of exception, and in disposing of that matter, I wanted merely to indicate that my ruling did not go so far as to deprive you of the opportunities mentioned at the time, including the right to demonstrate the workability—for the want of a better term—of any patent assigned to The Chemical Foundation, Inc. That is not an invitation for you to do it. I only wanted you to know that you have that opportunity if you want it.

XQ. 193. Before taking up the patents last mentioned, I would like to ask you as to the items of expense of the Calco Chemical Company in the investigations to which you have referred, of cinchophen, neoconchophen and novocain. At what time were those investigations made?

A. The investigation on cinchophen started early in 1917. The work on neocinchophen started in 1918, procaine started in 1918, and continued for four years thereafter.

XQ. 194. At what time did you become connected with the Calco Chemical Company?

A. July, 1918.

XQ. 195. Were these experiments or researches then in progress?

A. That on cinchophen only.

XQ. 196. What was your position with the Calco Chemical Company when you first went there?

A. I went there as chief chemist.

XQ. 197. You have continued to occupy that position up to the present time?

A. I have.

XQ. 198. And you know of your own knowledge the aggregate expenditures on these investigations over the period of four years?

A. I do.

XQ. 199. And you can now testify as to those figures?

A. I can.

XQ. 200. What were the expenditures in the year 1918?

A. I cannot tell you.

XQ. 201. Are you speaking of your own knowledge of these expenditures, or are you speaking from information derived from the accounts?

A. I am speaking from my own knowledge. The figures given are estimates of my knowledge of the figures that come within my responsibility.

XQ. 202. What are the figures that come within your responsibility?

A. The figures for chemists' time, material, and labor wherein that is involved.

XQ. 203. How much overhead is charged in the $45,000?

A. I do not know that figure.

Mr. Kresel: He has expressly said that he did not include overhead.

Mr. Anderson: I beg your pardon; he said he did not know the figure.

Mr. Kresel: What is that?

Mr. Anderson: I think this witness can answer these questions, sir, without assistance.

XQ. 204. I will ask you next how many pharmaceutical products the Calco Chemical Company turn out or produce?

A. We produce very few pharmaceutical products. I think about four.

XQ. 205. The larger part of your plant, then, is devoted to what?

A. The manufacture of intermediates.

XQ. 206. Of intermediates for the manufacture of dyes, is that it?

A. Yes.

XQ. 207. And you can check the laboratory expense without going back to the books, and divide it up over a period of four years between such laboratory research as applied to dyes and intermediates and such as applied to cinchophen and neocinchophen and procaine, and state what part of such expense was chargeable to the research for those three drugs; you can do that?

A. I can, because each particular problem is handled under a specific research number, and nothing but what is directly chargeable to that number goes against it.

XQ. 208. How do you know that?

A. Because by specific orders, the order number is assigned to the particular problem on which a particular man works, and he works on nothing else until that problem is through.

XQ. 209. When you say that nothing else is charged against them, do you know anything about the accounts of the company?

A. I am speaking of the charges for which I am responsible.

XQ. 210. When you get through with those sheets that you speak of, where do they go?

A. Those are records in my files.

XQ. 211. Who keeps the accounts? Have you an accounting department?

A. Oh, yes; our accounting department, of course, takes care of all accounts.

XQ. 212. You have not consulted your accounting department at all in arriving at these figures, have you, of cost?

A. The accounting department is not concerned with keeping accounts on specific research problems.

XQ. 213. I would like you to answer the question, please?

A. I have not consulted the accounting department.

XQ. 214. And you came over here to testify in this case; you are not under subpoena, are you?

A. I am not.

XQ. 215. You came here by direction of the Calco Chemical Company or its officers?

A. I came here voluntarily.

XQ. 216. I beg your pardon?

A. I came here voluntarily, yes.

XQ. 217. And you came over to testify on the question of these particular drugs, knowing that you were going to testify as to cost, and did not consult the accounting department at all to find out what it did cost, is that it?

A. I did not.

XQ. 218. You mean that you did not consult them, or that you did not come to testify about these questions?

A. I did not consult them.

XQ. 219. Did you or did you not come here by direction of the officers of your company?

A. I did not.

XQ. 220. Did you or did you not come here with their knowledge?

A. I came here with their knowledge.

XQ. 221. What intermediate dyes does the Calco Chemical Company manufacture?

A. What intermediates, did you ask?

XQ. 222. Yes.

A. We manufacture beta-naphthol, aniline, aniline salt, sulphanilic acid, dinitratebenzene, metaphenylenediamine, dimethylaniline. Those are all I recall just now.

XQ. 223. Are the patents which you put in evidence this morning relating to dyes the only alien patents owned by The Chemical Foundation under which your company operates or holds a license?

A. They are.

XQ. 224. They are the only ones?

A. I beg your pardon—our license includes other patents, but we have not used them.

XQ. 225. The license includes other patents, does it, than these?

A. Other patents on the same drugs. The license includes patents Nos. 1,045,759, 1,075,171, 1,086,681, 1,181,485 and 1,197,462; but the other patents we have not even examined.

XQ. 226. And they refer to what drug?

A. They refer to cinchophen.

XQ. 227. And neocinchophen?

A. Cinchophen and derivatives of cinchophen.

XQ. 228. That includes neocinchophen, does it?

A. One of these patents includes neochinchophen. It is one to which I have already referred.

XQ. 229. And are there any other patents which refer to the drug novocain that you know of?

A. None that I recall.

XQ. 230. Or procaine?

A. None that I recall at present, no.

XQ. 231. Are there any other patents included in your license with respect to dye intermediates or products?

A. None.

XQ. 232. Do you know whether there are any other patents relating to those dye intermediates or products held by The Chemical Foundation?

A. None.

XQ. 233. Have you ever investigated that?

A. Yes, we have.

XQ. 234. And you do not find any of those?

A. No.

XQ. 235. Did you get that information from the publication issued by The Chemical Foundation?

A. I did.

XQ. 236. Did you examine the patents themselves?

A. I did.

XQ. 237. You examined all the patents covered by that publication?

A. Yes; the products we make are chiefly staple products of long standing, none of which are covered by patents today.

XQ. 238. Most of them are not covered by patents?

A. Those that are new are products of our own discovery and are either covered by our own applications for patents or covered by our own secret information.

XQ. 239. You do manufacture, however, this intermediate covered by patent number 1,063,173, at the present time?

A. I do not know what that patent covers.

XQ. 240. That is that beta—whatever you called it?

A. Beta-amino-anthraquinone. No, we do not manufacture it.

XQ. 241. Have you ever manufactured it at all?

A. No, we have never manufactured it at all.

XQ. 242. I believe you said you did produce it, however?

A. We have never produced it.

XQ. 243. The Calco Chemical Company has never produced it?

A. I think I answered the question once before that I had only——

XQ. 244. I had overlooked it, Doctor, if you did.

A. I had only prepared it in the laboratory.

XQ. 245. There are so many things that I get mixed up over them.

A. Yes.

XQ. 246. Do you produce any of these dye intermediates as to which you have produced patents here?

A. We do not produce any intermediates under patents. We produce under the patents which have been admitted, cinchophen and neocinchophen, which are drugs.

XQ. 247. You do produce those?

A. Yes.

XQ. 248. And you sell those under the license?

A. And sell them under the licenses of The Chemical Foundation.

XQ. 249. That is cinchophen and neocinchophen?

A. That is cinchophen and neocinchophen.

XQ. 250. But as to the patents under which you hold licenses for the manufacture of dyes or intermediates, you are not paying any license fees or royalties?

A. We hold no licenses for patents on dyes and intermediates.

XQ. 251. Do you manufacture any substitutes for the intermediate covered by this patent No. 1,063,173?

A. We do not.

XQ. 252. Do you manufacture any substitutes for the intermediates covered by the other patents which you have described this morning?

A. We do not, except insofar as I have stated in the manufacture of salicaine, which is not in any way related chemically to procaine.

The Court: Colonel Anderson, there has been so much of this testimony that I have overlooked, that I forget some of it, I am sorry to say.

Did you have in the testimony in your examination-in-chief any evidence that the patents of The Chemical Foundation were being used without the payment of royalties therefor or license fees therefor? I do not recall that. I was wondering whether you did.

Mr. Anderson: There was evidence in chief from which I think that inference might be drawn. It is impossible for us to introduce direct evidence of that without going into the books of every manufacturer and investigating and bringing the evidence here—which I think we would not be allowed to do anyhow. I do not mean to say it would not be allowed by your Honor, I am not anticipating what your Honor would permit; but it would be an impossible task in any event, with 4800 patents, or 400 patents, for that matter, or 400 licenses. But I think there is evidence in the record from which that inference or argument may be drawn.

Mr. Kresel: Would you point out any of it, Colonel Anderson?

Mr. Anderson: I will do that when I come to argue the case, Mr. Kresel.

Mr. Kresel: That is all right, if that is the Government's attitude.

Mr. Anderson: Absolutely it is. I cannot undertake to argue the case in the midst of the evidence, nor undertake to go over the evidence now and point out what its natural inferences are.

Mr. Kresel: That is all right, sir.

Mr. Anderson: I have enough to do trying to get this evidence in.

Mr. Kresel: Are you through with the witness?

Mr. Anderson: I am.

The Court: Just one more question, Mr. Kresel, before you begin the redirect. You still stand on your charge of conspiracy, I suppose?

Mr. Anderson: Why, of course.

Mr. Kresel: What?

Mr. Anderson: If your Honor please, we stand on every charge in that bill from the first to the last page, and if there is anything that I have said in this case, indicated in this case or suggested in this case that can narrow a single charge in that bill except by formal amendments, I wish to withdraw it before the evidence is closed and say it was not so intended.

The Court: Even to the effect that the assignments executed by Col. Miller were executed under a concealment of facts, a misstatement of facts?

Mr. Anderson: On that question, if the evidence does not support it, when I come to examine it I shall not argue for its support, but I do not want to withdraw it in the midst of the trial.

The Court: It seemed to me, Colonel Anderson, that we might save much time. I am not criticising your position, but it seemed to me possibly much time might be saved if—you might misunderstand what I was going to say, so I won't say it.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 253. Doctor, I have just a few questions. Upon cross-examination you were asked about this substitute product for novocain and you were going to say it was not a new product, it was a well-known product, when you were stopped by counsel, and that much of your answer was stricken out. I would like you to state now first the name of the product, which I cannot repeat because I do not recall it, and then state whether it is a fact that that product was a well-known product to chemists and druggists, and for how long a time it had been on the market?

A. I will gladly state the fact. The chemical product itself is well known. It is chemically salicyl alcohol. Our trade name is salicaine. The pharmaceutical properties of the compound were discovered in this country, and that is public knowledge, by a university professor. That it was a local anesthetic was never known until his discovery.

RDQ. 254. And how long ago is that?

A. I cannot recall exactly. I think it was somewhere in 1920. Dr. Hirschfelder at the University of Minnesota, I think, or Wisconsin, perhaps; I am not certain.

RDQ. 255. Doctor, is it or is it not a well recognized fact in scientific literature, especially in chemical literature, with reference to patents taken out by Germans covering pharmaceuticals and dyes, that the specifications therein contained as a general rule are incomplete?

MR. ANDERSON: I have to object, if your Honor please.

THE COURT: I would like to have the question read.

(RDQ. 255 read as above recorded.)

Mr. Anderson: I object, of course. We have gone as far afield as we can go, not producing every patent here. He cannot go into the matter of these patents issued to German people.

The Court: I will hear you, Mr. Kresel.

Mr. Kresel: I thought that Colonel Anderson himself a little while ago recognized the impossibility of going into the 4800 patents here, and I thought that perhaps he would be willing to let this witness, who certainly is eminently qualified to make the statement, make that general statement and to back it up by scientific literature where the statement is made to that effect.

The Court: Are you asking for a fact? Just how is the evidence called for? I recall the language of your question, but I am trying to get a legal classification for admitting this evidence.

Mr. Kresel: Yes, your Honor. I think if we were to classify that, I should think it bears upon reputation, which of course your Honor will realize was an important factor that would necessarily be in the minds of any proposed purchasers of these patents. In other words, if it were a well recognized fact in the industry, among scientific men, that the German in taking out their patents frequently if not always did not disclose the necessary information to make it possible for any person skilled in the art to actually perform the operation, that would be a fact that would naturally weigh with any purchaser and would affect the value of these patents.

The Court: I wonder if you will help me just a little bit at this point, Mr. Kresel.

Mr. Kresel: I will certainly endeavor to.

The Court: Because I am having difficulty with the know-how, or its absence. The word used by you in this question, as I recall it, is whether or not the patents are not "incomplete."

Mr. Kresel: Perhaps that is an unfortunate use of a word, but I am glad to answer your Honor's question, however.

The Court: What word would you substitute?

Mr. Kresel: Let me see if I can reframe the question. I withdraw the preceding one.

RDQ. 256. Dr. Crossley, in the early part of 1919 was it or was it not a well-recognized fact among scientists and chemists especially, with reference to United States patents taken out by Germans covering processes for the manufacture of pharmaceuticals and dyes, that the practical knowledge of successfully performing the operations described in these patents was not as a rule disclosed in the patents?

Mr. Anderson: I object, if your Honor please. If we are going into that issue, it may be that the Government will have to bring in here, pile and accumulate instances where German patents are used. If we are going to go behind the Patent Office's judgment and try it out in a collateral proceeding, whether a patent issued by the Patent Office is a proper kind of patent or discloses the information necessary to make a good patent, things of that sort, then we will do that. If we are going into the question of the understanding of the literature, we will have to ask leave to introduce authorities dealing with this subject and we will be here for a couple of weeks if we are going into that. We have tried everything else in this case now except character.

The Court: That has nothing to do with character, Colonel Anderson. If I understand it, the question is as to the reputation of the German patents. Do I understand you, Mr. Kresel, that that goes to validity?

Mr. Kresel: I was going to say, when your Honor stopped me a moment ago, that I do not want to be misunderstood. I repeat here that the defendant does not challenge the validity of the patents. I am simply trying to show that there was an absence of knowledge among American chemists at the time when these patents were disposed of, to enable them to make profitable use thereof and that there was no such practical information disclosed by the patents themselves as to make it possible for such untrained chemists as we had here—because they were untrained and I go quite the length with Colonel Anderson on that—for such chemists as we had here to make use of these patents.

Our claim is that the Germans with their knowledge and their experience were able to produce the products which they tried to cover by these patents, but that their knowledge and their experience was not available to us here; and if it was not, then the value of these patents to the American industry cannot be measured by the value of them to the Germans.

The Court: May I ask you one question there?

Mr. Kresel: Certainly, sir.

The Court: I was troubled yesterday by some of the questions asked and I turned to Walker on Patents, and I find this at Section 115:

"The detailed description of the invention must be full enough, and clear enough, and concise enough, and exact enough, to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make and use the invention, if it is a machine or a manufacture, or to compound the invention, if it is a composition of matter, or to perform the invention, if it is a process, or to identify the invention, if it is a design. If the description falls below this standard, the patent, if granted, will be void. But this standard may be reached, in the case of a design, by a reference to the drawing or photograph annexed to the specification. In the statute by which this standard is established, the phrase 'any person skilled in the art or science' includes persons of ordinary and fair information and skill in the relevant art or science; and that phrase is not confined to the most eminent scientists, or to the most competent experts, in that science or art."

I have been trying to classify what you have meant and what the witnesses have meant by the word "know-how." Am I to understand by that phrase or term that you do not mean to infer or imply invalidity of the patent for want of a detailed description, but do you mean it to be understood that the art or science in this country to which most of these patents apply—we will call them chemical and dye and pharmaceutical patents—had not kept pace with the like art or science in Germany and that consequently, the disclosures in the patent, though sufficient probably to properly inform a person skilled in that modern art in Germany, were not sufficient to inform the chemists of this country?

Mr. Kresel: I think your Honor has summarized our position in that respect. With respect to the term "know-how", as to which your Honor says that you have some difficulty, I know of no one who could better answer the question as to that than the witness on the stand; and if your Honor will permit me, I should like to ask him to define what is meant in scientific terminology by "know-how" in relation to a patent. The same question, I think, was asked upon cross-examination of Dr. Bolton yesterday.

Mr. Anderson: It was brought out on direct.

Mr. Kresel: I think you asked him to define the term "know-how". However, if there is no objection, I should like to ask this witness the same question.

The Court: You withdraw the pending question for the time being?

Mr. Kresel: Yes, sir.

RDQ. 257. Dr. Crossley, will you be good enough to state what is meant by the term "know-how" as applied in relation to patents?

Mr. Anderson: I object to that question and answer, sir, for the reason that it is an ordinary commercial term in use and does not require defining by chemists. If it has any such requirement, it has been defined by at least three of the witnesses for the defense on their own request and therefore, if it is intended to get a different definition from that already given, they cannot contradict their own witnesses. For these reasons, in addition to our general objection as to materiality, relevancy and competency, I object to going into that subject.

Mr. Kresel: I do not recall a single witness of whom I asked the question which I am now putting to this witness. It is true that our witnesses have stated that the know-how was not available, but I have never prior to this time asked any one to define the term. Upon cross-examination yesterday Dr. Bolton was asked to define it.

The Court: My recollection is that it was asked also by you; I think by both of you. That is my recollection. But what I would like to know is whether there is such a term in general use by scientific men, men dealing with patents, or whether it is a term used commercially. I am not familiar with the term myself.

RDQ. 258. Dr. Crossley, I desire to paraphrase the Court's question and put it to you. Will you answer it?

Mr. Anderson: The same objection, sir.

The Court: Objection overruled.

A. The know-how in my judgment, is the detail——

The Court: This question was as to whether there is such a term in use.

RDQ. 259. Is there such a term as "know-how" in use among scientific men with reference to patents as distinguished from the general use thereof in commercial life?

A. Yes.

RDQ. 260. In its relation to patents, will you state what is meant by that term?

Mr. Anderson: Same objection as before.

The Court: Same ruling and exception.

A. It is the detailed and precise information necessary to obtain results. For example, a patent might state to add a certain ingredient to another and that the result would be a reaction of a certain type. That in itself is not sufficient to produce the result. It is necessary to know how that addition is to be made. For example, shall that addition be made on the surface or under the surface of the liquid? Shall it be distributed through the mass of the liquid or not and at what rate? Shall it be distributed through the surface? If it is a time-consuming reaction under a certain condition, what is that condition which determines the length of time that the reaction shall be carried out. All of those are absolute facts essential to the success of the reaction and are embodied in the term "know-how" and not provided in the patent.

By The Court:

Q. 261. Then that is a term that is in common usage among the scientists, particularly chemists, with respect to patents?

A. It is, sir.

By Mr. Kresel:

RDQ. 262. Dr. Crossley, when an inventor obtains a patent and then sells the patent, does he not give to the purchaser of that patent that very information that you have outlined?

Mr. Anderson: I object.

The Court: I think that objection is well taken.

Mr. Kresel: I shall now repeat the other question, your Honor. May it be repeated?

The Court: Yes.

(RDQ. 256 repeated as recorded above.)

The Court: Do you not mean, under the direction of American chemists? I make that suggestion, because it seems to me that I am trying here the value of the patents in a sale, under the Trading with the Enemy Act, which is required to be to an American. What it seems to me would help me is whether or not the reputation among the chemists of America was that the disclosure of the German patents was or was not sufficient to enable them, without additional information, to perform the processes and make the products of the patent. That is the information, it seems to me, that will be helpful to me and not the broader question.

Mr. Kresel: I will reframe the question.

The Court: I am not suggesting that you reframe it. You can do as you like about that.

The Witness: May I make a statement, your Honor?

The Court: No.

By Mr. Kresel:

RDQ. 263. Dr. Crossley, in the months of February, March and April, 1919, was it or was it not a well-known scientific fact among American scientists and chemists that in the German patents taken out in the United States by Germans, covering the manufacture of pharmaceuticals and dyes, that there was not sufficient information disclosed to American chemists at that time for the successful production of the products covered by those patents?

Mr. Anderson: I object for the reasons stated and for the further reason that it does not appear that this witness is competent to give an opinion on that.

The Court: Is there objection to the question?

Mr. Anderson: Oh yes, sir. I beg your Honor's pardon. I object to the question for the reasons stated and for the further reason that it does not appear that this witness is competent, if anybody is competent, to answer a question of that kind and of that scope. And I shall make the objection for the further reason that obviously, it is not on re-direct examination.

The Court: That objection is well taken, so far as I am now advised.

Mr. Anderson: The other grounds of objection which I have ventured to outline to your Honor, I will not repeat. I think it is a question outside of the scope of the trial of this cause and it does not appear that it entered into the consideration of these things at all at the time the sale took place. Whatever may be the opinion of this gentleman as to German patents, it does appear by affirmative evidence introduced in the report of Mr. Palmer that there were some 25,000 German patents, the greater part of them in use in the United States at that time. Therefore, it seems to me, with all deference to your Honor and counsel, that the question is an improper one. I therefore wish to object and to state my position on the record.

The Court: What is the testimony, according to your recollection of Mr. Palmer, that there were 25,000?

Mr. Anderson: I think Mr. Palmer's report states, and that appears in a number of places in this record, that there were something like 25,000 patents in use, German patents, at that time. It appears in this record that 5700 of them were licensed and under royalties to the United States, that in addition to that 4800 of them were assigned to The Chemical Foundation; that a number of them were then being used by people in the United States in the production of well-known drugs and chemicals and dyes. All of these facts are of record.

The Court: I think those facts enter into the value, also, Colonel Anderson; but you do not contend, as I understand you, that all those 4919 patents taken over by The Chemical Foundation had been used, do you?

Mr. Anderson: No, sir, that is not the suggestion.

The Court: I do not know anything about it yet, whether the German patents had acquired a reputation among the persons skilled in the various arts, particularly in chemical science, as being incomplete in detail as to prevent the American scientific men from readily making application or use of the patents. Now, it seems to me that if there was such a reputation or belief generally among the persons engaged in the chemical arts and sciences, that that would be an element which would be proper for me to take into consideration in determining whether the price paid for these patents was adequate or inadequate, would it not?

Mr. Anderson: May I suggest to your Honor that a patent is either a patent or it is not a patent, and the claim is made that there is no attack upon the validity of these patents, and therefore they are valid, and they must, under the law, disclose the essential facts for one skilled in the art to use the process. Therefore, I will differ to some extent with the suggestion contained in your question, to say that I do not think it is a proper question to be considered in this case, and I think it is so utterly indefinite that it would have no possible bearing upon the value of this property. If these were patents, they were patents, and some of them were being used at the time, and therefore I do not think that a consideration of this kind can have the slightest weight on their value, what the general reputation was concerning the Germans in getting out patents, so if we are going to fix a value on that basis, it is, of course, a question of the number of the witnesses one side or the other side will bring as to their reputation.

The Court: Is not that true of the nature of every issue tried on the civil side—that it depends upon the number of witnesses and their credibility and other things? Is not that the only way that justice is being administered on the civil side in America?

Mr. Anderson: I should think that was true when they testify to material facts; but if I were going to sell a house or a piece of property or a piece of land, I do not think the value of the land would be affected by whether I had a good reputation or a bad reputation.

THE COURT: Neither do I; but you are dealing here with German chemical patents—they were German patents, as it is now held. In cross-examination of Dr. Bolton yesterday, Colonel Anderson, you asked him this, as I recall it—whether it did not take the Germans themselves five years of experiments to develop on a commercial scale the products or processes for manufacturing the products which were covered by their patents which were manufactured on a laboratory scale?

MR. ANDERSON: Yes, sir.

THE COURT: Now then, the inference that I have drawn or thought proper to be drawn from the testimony, I do not know whether it is warranted or not, even if there has been no direct evidence pertaining to it, which has been that the Germans had developed the chemical arts and sciences more fully and completely than had the United States or the people in the United States, and were in advance of the people in similar arts in America. Is there, or is there not, evidence to support that; and is that a proper or improper inference to be drawn from the evidence in this case?

MR. ANDERSON: I think probably that would be a question of the point of view, but I think probably the inference might be drawn from this case that in the specialization in certain branches of industrial chemistry, the Germans had carried it very much farther than any others, on the same scale. There were men no doubt in the United States that had the capacity and even, I may say, possibly the experience, though I do not know, to have equalled any German chemists in the production of those particular chemicals or dyes; but the number of people, the personnel trained in actual practical industrial experience was very limited. I think that that involves the experience of the person chemically in the application of the chemical knowledge; the experience in the construction of machinery; the engineering problems of economy and efficiency in the administration of that particularly highly technical and specialized business.

Now, it is, of course, obvious to every one, and nobody has ever suggested anything to the contrary, that at the time of the war, the beginning at least, of the development of American industry in industrial life along those particular lines had been greatly retarded, we may say, or had not been pressed, the other problems in the great development of this continent interesting them more at that time. Their ability was probably equal but it was merely the application of that ability. Now, if we come to the time that those patents were sold, there were in fact 90 per cent of the dyes or a large part of them produced in the United States, according to Mr. Palmer's report. The development had gone very far. How far those people had been trained in that work is a question. Now, I doubt if they could have reached perhaps the state of actual practical, what I may call applied, knowledge. That takes a long time in any branch or profession to acquire. When I say "applied" I mean not only chemical, but mechanical knowledge necessary to the achievement of these results. That is my own personal impression of the situation as best I can state it to the Court.

The Court: You have helped me quite a lot, Colonel Anderson, and I appreciate it, but I think you have not gotten all the matters of value out of this question, and I think probably counsel can help me a little further. I take it that your statement that the Germans had developed certain of the specialities in chemistry more than the Americans applies particularly to the nitrogen fixation processes, the dye industry, and pharmaceuticals. Do I misunderstand you with respect to that?

Mr. Anderson: As to pharmaceuticals I have no very defined impression. As to the industrial, or what might be called the manufacturing, and that in its broad sense, the development of certain of these very modern methods of the synthetic production of matters here like the nitrates and ammonia, and perhaps some of the dyes, undoubtedly I think that the evidence would tend to lead one to the conclusion, although I have not made a study of it, that the Germans had developed their processes industrially to an extent not achieved in America. I think that is quite a natural inference to be drawn from the industrial processes.

The Court: Then would not this be an inevitable corrollary of that fact, that before the patents were taken out by the Germans in America, which we will assume were plainly intelligent and clear to the German chemists who had followed the developments of the chemical art in Germany, while they might be worked out by the American chemists in the application of their product, yet, inevitably, the American chemists would have to follow the precise pathway that the Germans did in that development, and it would require, consequently, both money and time in such development; would not that be the inevitable corollary?

Mr. Anderson: It might be and it might not be, sir; but it would be a most remote factor in dealing with the question of value. In my judgment it would not have the slightest effect upon the price which a seller of this property ought to obtain. That depends upon the particular case, whether it would or would not be.

The Court: Let me put this question, Colonel Anderson. Here is a patent to be produced by the use commercially of what may be called product X. You know full well that the Germans had developed that and are making it on a commercial scale, and it was to be put up for sale here in America, at public bid or public sale. Is it your thought that that patent would bring the same amount at such public sale as if that art had been fully developed in America?

Mr. Anderson: It would depend upon various circumstances. If your Honor will permit me, you have not stated all the circumstances that occur to me in the hypothetical question there which I would like to answer.

The Court: I will get you to answer mine, and you can then state yours, if you will; but would not that fact be a material fact in determining what would be received for the patents at a sale?

Mr. Anderson: It might or might not, depending upon the particular circumstances. For instance, if it were a product patent and if the product was of great value in America, and the product patent gave you a right to charge for importation, or to produce, as you might see fit, then I would think that the facts that you have indicated would be of very material consequence. You could import it as long as you needed it, and your patent would give you the control of the importation in the entire American market, and then if you wanted to manufacture and found that more desirable, you could do it; I am speaking from the standpoint of the purchaser now, not of the public interest—you could do it, or you could do both, and derive the revenue which the American market would possibly afford under that patent, and therefore the value of the patent would not be affected in the slightest by that difficulty in my judgment. In the second place, the question which was raised here, is a question of——

The Court: Let us leave that just for a moment, Colonel Anderson. Then, if I understand you, if you were a bidder at that public sale, and realized that you would have to pay $50,000 to be able to put the process of the patent on a workable basis, you would be willing to bid and pay just as much for it as if you knew that you could put it on a commercial basis without the expenditure of $50,000?

Mr. Anderson: I do not think it would affect the amount I would pay in the slightest, if you gave me the control of the American market of that product, and I could import it, I would make it on import duties while I was building my factory. I can take that thing and make more money out of it in that way than by manufacturing, and I could make the importer pay the price.

The Court: By reason of monopoly?

Mr. Anderson: Yes.

The Court: And the barrier of the port?

Mr. Anderson: Yes.

The Court: I think the answer to the question asked may be slightly helpful; I am not sure that it will or will not. I have some doubts about it, so I will let you take the answer.

Mr. Anderson: Your Honor will reserve me an exception.

The Witness: Read the question.

(Question repeated as recorded.)

A. It was.

RDQ. 264. Has there been in the scientific literature any discussion of that fact?

Mr. Anderson: I object, sir.

The Court: You may take the answer.

A. There has been. There was——

Mr. Anderson: The question is answered, I think.

RDQ. 265. Will you state in what literature there is found the discussion of that fact?

Mr. Anderson: I object, sir.

The Court: I will assume that your objection is taken to each of the questions on this line, and the objection will be overruled and the exception noted.

Now, Mr. Kresel, you are going back to a period prior to April 10, 1919?

Mr. Kresel: That was my question, your Honor.

RDQ. 265. (Continued.) You understand, Doctor?

A. Yes. Here is an editorial from the Journal of Industrial and Engineering Chemistry, March, 1918, dealing with that subject.

RDQ. 266. Is that a well-recognized publication and one which circulates among chemists in America, and did at that time?

A. That is a recognized journal for the publication of information in industrial chemistry in this country.

RDQ. 267. And was at that time?

A. And was at that time.

The Court: We will take our noon recess at 11.30, and no intermediate recess this morning.

Mr. Kresel: I just want to read this editorial into the record. There is no use of putting it in as an exhibit. (Hands paper to Colonel Anderson.)

Mr. Anderson: Of course, that is subject to objection. We object to the introduction of this editorial.

The Court: You may read it of record.

Mr. Kresel: Editorial from the Journal of Industrial and Engineering Chemistry, March, 1918. The article is headed, "A Patent Abuse." (Reading):

"The exigencies of the war period have led to feverish activities in many laboratories in attempts to carry out processes described in the literature and in patent specifications, chiefly in the field of organic chemistry. Within the past year we have frequently been apprised by chemists of the lack of success in the preparation of compounds by following directions, even by most careful attention to the minutest details, in the official records. Men who have experienced this difficulty stand so high that no question of lack of skill and technique can be involved, and we are forced to the conclusion that deliberate misrepresentation has been made, especially in the case of certain foreign patents. If this is true, it is extremely regrettable that the literature of chemistry is clogged with such deceit; in the case of patent specifications, it is reprehensible, in that a matter of perjury is involved. The demonstration of such falsity would immediately invalidate the patent, but this is a tedious process, necessitating a great amount of laboratory work and expense and loss of time in litigation."

That is all of it that I desire to read.

The Court: That will be admitted only as indicating the reputation and not as evidence of the truthfulness of the facts therein contained.

RDQ. 268. Have you another, and what is it from?

A. I have another. It is from the book on "Coal

Tar Dyes and Intermediates," by E. De Barry Barnett.

RDQ. 269. What is E. De Barry Barnett's profession?

A. He is an industrial chemist; also a professor of industrial chemistry.

RDQ. 270. Is he a man well recognized in your profession?

A. One of the authorities in England today.

MR. KRESEL: I read from this publication, which is a book entitled "Coal Tar Dyes and Intermediates," by E. DeBarry Barnett, B. Sc., Lond., A. I. C., Consulting Chemist to Bagley Mills & Co., Ltd., formerly Research Chemist to Levinstein, Ltd., and Works Manager to the Stockton-on-Tees Chemical Works, Ltd., published in New York by D. Van Nostrand Company, 25 Park Place, in 1919.

MR. ANDERSON: I wish to add to the grounds of objection that it is not competent to read from a published book in evidence, but only to call the witness who published the book and let him testify.

MR. KRESEL: That is a new doctrine I never heard of.

MR. ANDERSON: I have been ruled out of court on that a good many times, so I think that is the law on that.

THE COURT: There is no doubt that under certain circumstances it is, but not under these circumstances. You may proceed.

MR. KRESEL: "The number of patents taken out by the German firms for the manufacture of intermediate products and dyestuffs is very large, and in spite of the optimistic claims made in the specifications, only a few of them are workable as commercial propositions. It has long been the custom of these firms, when taking up a subject, to put down a barrage of patents in order to block access and at the same time to act as a kind of camouflage and disguise the processes actually in use. For the same reason the specifications are usually carefully drawn up so as to give as little information as is compatible with validity, and much skill is exhibited in this direction. Consequently the reader who finds a patent describing a patent in detail should not conclude that he has all the information necessary in order to manufacture. No doubt the description given will enable him to make the compound in question, but whether it will enable him to do so at a profit is quite another question."

Which goes to bear out what our people have said.

Mr. Knight: I offer the objection, if your Honor please, to make it appear that this was known before the date of purchase of these patents.

The Court: What is the date of that?

Mr. Kresel: In 1919.

The Court: What date in 1919?

RDQ. 271. Can you state?

A. I cannot state exactly. I think it was the early part of 1919.

Mr. Kresel: There is nothing on this photostat, your Honor, from which I can state the exact date in 1919.

The Court: You may make inquiry, and if it appears to have been circulated after April 10th, you may call my attention to that fact and move to strike it out.

RDQ. 272. Have you any other?

A. No.

The Court: I will ask you, Mr. Kresel, to inform me, if you will, as to what you find out about it.

Mr. Kresel: I will, your Honor. We will find out the exact date of publication. In this same connection, if your Honor will permit me, I would like to read the translation of a portion of Defendant's Exhibit No. 238, which your Honor will recall was the official report to the Chamber of Deputies in France with reference to the contract that was made with the Badische Company.

Mr. Anderson: If your Honor please, I object to reading from exhibits in evidence. It is in evidence and we are not now arguing this case.

The Court: I wish you had made that objection before, because you and Mr. Galloway read them.

Mr. Anderson: We have a right to read the exhibits into evidence, but when we introduce the exhibits we do not put them on the record, and I object to copying that matter on the record.

Mr. Kresel: Then never mind.

The Court: It is not going to be copied on the record.

Mr. Kresel: May I say in this connection, as long as the subject has come up, that our translation that we put in of this document, I find, is a translation of only a portion of it, and I desire the privilege of producing, before we close the case here, a translation of the balance of it.

The Court: You may. Of course, first submit it to Colonel Anderson.

Mr. Kresel: First submitting it to the other side, certainly. There is only one paragraph I desire to read.

The Court: Before you do that, will you tell me this, Mr. Kresel—as to whether that document was in circulation in this country prior to the sale of these patents?

Mr. Kresel: No, your Honor; this was not.

The Court: Then it would not have anything to do with the sales price, would it?

Mr. Kresel: I am not prepared to say that, your Honor.

The Court: Whatever the patents may be worth in fact, if they had a bad reputation at the time of sale, that might have reduced the value.

Mr. Kresel: This does not pertain to reputation; so I do not think it comes in in this connection. I will not insist upon it.

Mr. Anderson: May I inquire if the last paper put in, the book of publication, was limited to the subject your Honor stated?

Mr. Kresel: I have not put the book in.

Mr. Anderson: I mean the extract from the book.

Mr. Kresel: Whether it is limited to what?

Mr. Anderson: To the purpose of showing reputation, but not proof of facts.

Mr. Kresel: I understood your Honor's ruling to be that.

Mr. Anderson: My observation is when a thing is in evidence, it is in evidence. But at the same time, if we are going to limit it, I would like to limit it to the purpose of this particular thing and have the record show that.

The Court: I think it does already, Colonel Anderson. If not, the same observation that was made as to the editorial applies to the book.

Mr. Kresel: That is all, Dr. Crossley. Have you any further questions, Colonel Anderson?

Re-Cross-Examination.

By **Mr. Anderson**:

RXQ. 273. Dr. Crossley, do you know who wrote the editorial in question, of your own knowledge?

A. I do not.

RXQ. 274. Do you know whether Dr. Barnett has ever applied for or taken out patents in the United States on chemicals, dyestuffs or intermediates?

A. I do not recall at present.

RXQ. 275. You do not know?

A. I do not.

RXQ. 276. Do you know whether at the time that he wrote this book he had applications pending for patents before the Patent Office on dyestuffs, intermediates and pharmaceuticals?

A. I do not.

RXQ. 276-a. And you do not know on what date that book was published?

A. Exactly? No.

Mr. Kresel: That is all, Doctor.

(Witness excused.)

The Court: How many more witnesses have you, Mr. Kresel?

Mr. Kresel: This one now coming, and one more, sir. I shall certainly get through today, and I hope to get through rather early today.

JAMES BAYARD ELIASON.

James Bayard Eliason, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Where do you live, Mr. Eliason?

A. Wilmington, Delaware.

Q. 2. What is your occupation?

A. I am comptroller of E. I. duPont de Nemours Company.

Q. 3. What are your duties as comptroller?

A. The general supervision of the accounts of the company.

Q. 4. How long have you been in that position?

A. Since April 1, 1921.

Q. 5. Prior to that what was your position?

A. I was assistant comptroller.

Q. 6. And what were your duties as assistant comptroller?

A. Practically the same, subject to the comptroller's direction.

Q. 7. For how long a period had you occupied the position of assistant comptroller?

A. About three years.

Q. 8. Have you prepared and can you produce now a statement from the books and records of the duPont Company showing the amount that that company has spent in research and experimentation leading to the manufacture of dyestuffs?

A. I can, up until June 30, 1921.

Q. 9. Are the figures subsequent to that date available?

A. I do not have them at the present time.

Q. 10. You have not them at this time?

A. No.

Q. 11. Will you produce the statement up to June 30, 1921, then, and let me have two copies. I want to show one to Colonel Anderson.

A. (Witness hands counsel papers.)

Mr. Kresel: Colonel Anderson, I want to offer this statement, and then, of course, you may cross-examine the witness as far as you want to go (hands counsel paper). I want to do it because it will shorten the examination.

Q. 12. Is this a correct statement, Mr. Eliason?

A. I believe it so to be.

Q. 13. Taken from your books and records?

A. Yes.

Mr. Kresel: I offer it in evidence.

The Court: Do you want to cross-examine before it is marked, Colonel Anderson?

Mr. Anderson: No, sir; I think I will let it go in and reserve the right to cross-examine. Of course, it is not a detailed statement, but I suppose I can bring that out on cross-examination just as well.

Received in evidence and marked "Defendant's Exhibit No. 286." (*See Exhibits, Vol. V, page 3246.*)

Mr. Kresel: I shall simply give your Honor the total. This shows that the expense incurred for chemical research upon dyes and dye intermediates by the duPont Company to June 30, 1921, was $3,865,559.02. You may examine.

Cross-Examination.

By Mr. Anderson:

XQ. 14. What elements of expense are included in the statement which has just been filed, Mr. Eliason?

A. Salaries paid to chemists, materials used in chemical research work, repairs to equipment, telephone expense, and miscellaneous items such as would be incurred in work of that character.

XQ. 15. Have you included any overhead?

A. There is no overhead in these figures of the central chemical office in Wilmington. They do include the management and superintendence, salary and expense, at the laboratories themselves, where the experiments were conducted.

XQ. 16. How many products does the duPont Company make, of dyes, intermediates and chemical products?

A. I do not know.

XQ. 17. What proportion of those products is made under licenses of the Federal Trade Commission and The Chemical Foundation?

A. I do not know.

Mr. Kresel: All that, your Honor, has been asked of Dr. Bolton. I beg your Honor's pardon.

Mr. Anderson: On the contrary, I tried to get the information yesterday and could not.

Mr. Kresel: Well, I will not argue it.

XQ. 18. Do your records show what proportion is made under these particular licenses?

A. The records of the accounting department do not show that information.

XQ. 19. They will not show it?

A. No.

XQ. 20. Where are the records that would show that?

A. I do not know.

XQ. 21. What proportion of the overhead of your chemical laboratory, which you say is included here, is charged against the products under licenses of The Chemical Foundation or the Federal Trade Commission?

A. I do not know that.

The Court: Colonel Anderson, if it will help you, I was going to ask Mr. Kresel to produce that for you in some way, and you may reserve the cross-examination of this witness until after that is done, if you wish.

Mr. Anderson: It is perfectly obvious, your Honor, that I have got to move to strike this statement out unless that is produced.

The Court: I should not have interrupted you if I did not think your ground was a good one.

Mr. Kresel: May I understand just what Colonel Anderson wants?

The Court: Yes.

Mr. Anderson: I mean now that I will make a motion at this time to strike this statement out entirely, because it means nothing, it has no evidential value of any kind. I shall make a motion to strike that out at this time. I do not ask your Honor for a ruling on it now if your Honor will rule on it afterward. I do not want to be arbitrary about the matter in any sense; but of course, if we are going to prove the cost of experimentation, it must be experimentation on the particular patents in issue.

The Court: What I have in mind, Mr. Kresel is this: Colonel Anderson is entitled to be able to say that this item, taking that, should not have been included, that there is too much overhead for these experiments under these patents. All the overhead, for instance—I will assume a fact which probably does not exist, but which so far as I officially know may or may not exist—of a particular plant, where nine of the matters under investigation were covered by the license from The Chemical Foundation and ten others were under investigation at the same time, overhead was charged to the nine, for instance. I am not assuming that as a fact, but Colonel Anderson is justified in assuming anything until it has been shown by you.

Mr. Anderson: Yes.

Mr. Kresel: But, your Honor, the mere fact that the expense was incurred in experimenting with a process which, though covered by a patent owned by The Chemical Foundation, was not in fact thereafter used and no license thereon was taken, would not necessarily deprive us of the benefit of the information that in the development of those processes that cost was incurred.

The Court: But you see we do not know as the record now stands just what the facts are.

Mr. Kresel: Because I want to get clear just what your Honor says Colonel Anderson is to have. Assuming, for the purposes of the argument, that all investigation in which this entire cost was incurred was investigation of processes covered by these patents owned by The Chemical Foundation, then there is no necessity of subdividing it, there is no way of subdividing it.

The Court: Oh, no, that would depend upon circumstances. But what Colonel Anderson, I think, should have—his views may be different from mine— is the detail facts. How you get them I do not know, but he is entitled to them, as I view it.

Mr. Anderson: And I would search those very carefully, sir.

The Court: I beg your pardon?

Mr. Anderson: I would want to search those very carefully, and the information brought into court, to show exactly what the expenditures were in connection with the processes covered by each of these licenses.

The Court: You may confer with Mr. Kresel.

Mr. Kresel: Every carfare I suppose you want.

Mr. Anderson: I would want the detail.

Mr. Kresel: And every penpoint that is bought?

Mr. Anderson: I want the details.

Mr. Kresel: Yes.

Mr. Anderson: And I want to know what the cost is.

Mr. Kresel: We will supply as much as the Court says you shall have.

Mr. Andeson: I have had too much experience with corporations and their accounting systems.

Mr. Kresel: We do not run corporations the way you ran yours, perhaps.

Mr. Anderson: Possibly not. I do not think you did.

Mr. Kresel: Your Honor said we would take the recess at half-past twelve. I can put on another witness, or your Honor may take the recess now.

The Court: We will take the recess now.

After Recess.

Mr. Kresel: My understanding was, your Honor, that the witness was not to be cross-examined any further until the information had been supplied.

The Court: At the pleasure of Colonel Anderson.

Mr. Kresel: Is that your desire, Colonel?

Mr. Anderson: It seems to me it would be better not to start twice on the same thing. We would probably get right up against another obstacle.

THIRTY-SECOND DAY.

Wilmington, Delaware,
July 20, 1923, at 8.30 o'Clock A. M.,
Standard Time.

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Kresel: If your Honor please, pursuant to Colonel Anderson's request the witness, Eliason, who was on the witness stand yesterday, has prepared two statements showing the amounts spent by the duPont Company in research work and experimentation on products for which it subsequently took out licenses both from The Chemical Foundation and from the Federal Trade Commission. We have the two statements separately, the one for the Federal Trade Commission separated from that of The Chemical Foundation. Colonel Anderson now desires that we cut this up by years, and Mr. Eliason is going to undertake to do that. My understanding with Colonel Anderson is that when that is prepared, even though it be subsequent to the closing of the taking of evidence, the Government may, if it desires, put that in.

James Bayard Eliason, recalled as a witness on behalf of the defendant, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION.

By **MR. KRESEL**:

Q. 22. Mr. Eliason, have you prepared a statement showing the expenditures made for research work by the duPont Company on products subsequently licensed from the Federal Trade Commission for the period covering 1916 to January 1, 1923, arranged by licenses or license numbers taken from the Federal Trade Commission?

A. I have.

Q. 23. Is this the statement?

A. Yes, that is the statement.

Q. 24. From what was it prepared?

A. From the records of the duPont Company.

Q. 25. And is it correct?

A. It is.

Q. 26. Have you also prepared a statement of research expenditures on products licensed from The Chemical Foundation covering the period from 1916 to January 1, 1923, likewise arranged under license numbers?

A. I have.

Q. 27. And is this the second statement?

A. That is the statement.

Q. 28. And from what did you prepare that one?

A. From the records of the duPont Company.

Q. 29. And is it correct?

A. It is.

MR. KRESEL: I now offer in evidence the Federal Trade Commission statement, which will be No. 316.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 316." (*See Exhibits, Vol. V, page 3413.*)

MR. KRESEL: And the one relating to licenses from The Chemical Foundation.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 317." (*See Exhibits, Vol. V, page 3414.*)

Cross-Examination.

By Mr. Anderson:

XQ. 30. Mr. Eliason, could you state just how you kept your books to show the data under each license? You can do that in answer to that general question.

A. Our books were kept according to subjects under which experimental and research work was conducted at our several laboratories, and those subjects were all numbered as listed on the statement which I have just shown.

Mr. Kresel: Just give an example to illustrate.

The Witness: Under license No. 327, issued by The Chemical Foundation, the subject of anthracene. The first item there is J 15-33-3, anthracene being the name of the account. All expenditures made in the laboratory were charged to that account and reported by the laboratory to the accounting department. In the accounting department we collected the charges under that heading.

XQ. 31. During the period of experimentation or research was any of the material covered by a particular account produced?

A. I cannot state that of my own knowledge, Colonel.

XQ. 32. Do you know whether in such event the material so produced was sold in the market during the period of research?

A. Throughout the accounts there are credits indicating that material which was produced was credited at a value to the account to which the expenditure was charged.

The Court: Does that credit show on these statements?

Mr. Kresel: Will you answer the question the Court asks?

XQ. 33. The Court asked if those credits showed on these statements in detail?

A. Those credits do not show on these statements in detail.

The Court: But do show in the aggregate?

The Witness: The figure shown is net.

XQ. 34. The figure shown is net?

A. Yes.

Mr. Kresel: After deducting the credit?

The Witness: That is correct.

The Court: That is what I wanted to bring out.

XQ. 35. Can you tell me what you did charge to research?

Mr. Kresel: Do you mean the nature of the item?

Mr. Anderson: Yes.

A. Salaries paid to the chemists, material used in the research work, sundry expenses in connection with it, such as small equipment used in the laboratory, glassware and chemical-ware, any telephone charges or items of general expense.

XQ. 36. Taking salaries, if a chemist was working on a particular experiment or development of a particular process in the laboratory, how did you know what proportion of his time was devoted to that process and what proportion to other processes?

A. Each month a salary distribution was furnished by the management of the laboratory showing the proportion of each chemist's time chargeable to the different jobs on which he had worked during the month.

XQ. 37. And your books from which this statement is made were made up from those reports?

A. That is correct.

XQ. 38. You, of course, do not know yourself anything about those reports?

A. No, I could not testify to the accuracy of the original distribution.

XQ. 39. As to material, can you state how the material was charged to each of these particular items?

A. Yes, material purchased specifically for use in connection with a definite experiment was charged when purchased to the account in which the cost of that experiment was kept. If material was used from stock at the laboratory, such as stationery or small items, that was charged by monthly distribution, records being kept by the storekeeper who issued the material for the job.

XQ. 40. And the storekeeper kept his records and charged the supplies so sent out against these particular items?

A. Yes.

XQ. 41. You spoke of miscellaneous expenses, telephone and general expenses. That was necessarily an approximation, was it not, or an arbitrary distribution as between these various items?

A. An item of telephone expense would be considered as a general expense of the laboratory and pro-rated at the end of the month over all jobs to which it applied, unless it was something definite.

XQ. 42. Let us take the manager of the laboratory and general officers whose time was not devoted to any particular thing. How did you apportion that among these various items?

A. That was pro-rated on the basis of the direct salaries charged to the different jobs during the month.

XQ. 43. That was pro-rated on the basis of the respective direct charges; that is how you pro-rated the general charges?

A. That is correct.

XQ. 43a. Can you say what proportion of the charges were general charges and what proportion direct charges or specific?

A. I do not have the information at the present time.

XQ. 44. Could you approximate it?

Mr. Kresel: You mean the percentage or the amount, Colonel?

A. I could not.

XQ. 45. I mean the percentage. I am not asking you for the figures. I know you could not carry those in your head; but let us take, for instance, here is license No. 327.

The Court: Can he supply that, Colonel Anderson, on his further statement, or do you want to use it now as a basis for cross-examination?

Mr. Anderson: I only want to make the point clear and then it might be I might ask for it, sir, if he can give it now approximately.

XQ. 46. You take license 327. There were ten patents or subjects or products under that license. Now, they have each of them from eight to ten items of different charge under them; that is a different kind of stuff made in connection with that particular product apparently. Now, how could you apportion your general expenses so as to carry them into these various items of research which you have laid out here?

A. The general expenses, as I stated, were distributed to these several accounts, pro-rated on the basis that the salaries of the chemists working on each of the accounts were distributed from the records.

XQ. 47. Could you, in making up the additional data which I am going to request you to give, give me a statement of the proportion of these charges represented by general expense, and the proportion represented by direct charges, and I will say that if it would require a great deal of labor, I would not ask you to make it absolutely accurate; I mean I won't ask you to give any detail, and divide these items into direct and general charges, but if you will state in dividing this statement up into years at the bottom, approximately or as accurately as you can get, the percentage of that charge was so much of general expenses, and the percentage of direct charges to the particular work was so much, I will greatly appreciate it.

A. I will endeavor to do that.

XQ. 48. Now, can you give me the distribution of these charges by years; that is, for the year 1916, and then each successive year up to the date of January 1, 1923, showing the total as the result?

A. That can be taken from the records, yes.

XQ. 49. I would ask you to prepare a statement showing that distribution by years, and at the bottom of each of these headings like anthracene and anthraquinone, just add a figure "percentage of general expense; percentage of direct charge"; and I say if that would involve a great deal of detailed labor, if you can approximate it, so that you can say on the stand that it is accurate, that is all I will ask—reasonably accurate.

XQ. 50. Do you know whether these accounts were kept on this same basis from 1916 down to the present time, or have you had any changes in the methods of accounting?

A. They were kept on the same basis, I believe, from 1916 down until the present time, with this exception, that since January 1, 1923——

XQ. 51. I am not interested in that period. You only bring it down to 1923. If the accounts were kept in the same manner throughout the period of this statement, that is all I want?

A. Yes.

XQ. 52. I see you have put in here Federal Trade Commission license No. 19 and license No. 18-A. Are those the only two licenses that the duPont Company had from the Federal Trade Commission, do you know?

A. I understand that there were other licenses from the Federal Trade Commission that were subsequently re-issued by The Chemical Foundation.

XQ. 53. This statement then that you have filed under the heading of expenditures for research on products licensed from the Federal Trade Commission covers the expenditures made under those two licenses during the time that they were in effect and before they were exchanged into licenses from The Chemical Foundation?

A. Those two licenses, I understand, were not subsequently taken over from The Chemical Foundation.

XQ. 54. But where they were subsequently taken over or changed into licenses of The Chemical Foundation, you have included the entire expenditure during the Federal Trade Commission period and The Chemical Foundation period in the one statement; is that true?

A. That is right.

XQ. 55. Then I will ask you, in making up the new statement, if you can from your records, without too much difficulty, do so, to make it complete, indicate under each license when the period under the Federal Trade Commission license terminated and when the other license was taken out; would you do that?

A. I will endeavor to do that if I can get that information.

XQ. 56. I know your records would show it, and

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it would make it easier to study this statement. Of course, we could dig it out of the records. You have then the three points I want to cover with the statement: The distribution of these items by years, under each item the proportion of general to direct expense, and then to indicate the period of the change of license from the Federal Trade Commission to The Chemical Foundation?

A. Yes.

XQ. 57. You spoke of equipment, etc. Can you be a little more specific as to the equipment which you charged to experiment or research work as distinguished from general laboratory work?

A. I understand that the only equipment charged to general research work is the actual equipment used and consumed in that particular research account.

XQ. 58. Do you know whether the equipment of the laboratory which happens to be used in that research work when purchased is charged to research?

A. Will you repeat that question, please.

XQ. 59. Do you know whether the equipment actually used in the particular research covered by these statements which is the general equipment of the laboratory, is charged to research, this particular research account, or any part thereof?

A. I think it is not.

XQ. 60. You think it is not. Are you sure of that?

A. That is the best of my knowledge.

XQ. 61. To the best of your knowledge and belief?

A. Yes.

XQ. 62. I take it, Mr. Eliason, that your duty in the general office is as chief accountant?

A. Yes.

XQ. 63. Where is the laboratory in which these items are charged up?

A. The laboratories are located at Deep Water Point, New Jersey.

XQ. 64. That is, over across the river?

A. That is the big laboratory, in which the dye experiments are conducted. There is also a laboratory of the company above Wilmington, on the Brandywine, where research work is conducted.

XQ. 65. The particular research work that is covered by these statements is done at Deep Water, is it?

A. Entirely so, with one or two small exceptions, which are noted in these statements with the title "R" and "J" in front of the account number.

XQ. 66. Then these symbols on these statements, J-31-11-B, for instance, indicates the work has been done at the Deep Water laboratory?

A. Yes, known as the Jackson laboratory.

XQ. 67. That is where your plant is located?

A. Yes, sir.

XQ. 68. And the "R", for instance, "R-128-B", indicates that the research work charged up was done in the laboratory on the Brandywine in Delaware?

A. Yes.

By The Court:

Q. 69. What do you call that laboratory?

A. We call it the experimental station.

Q. 70. What does the "R" indicate?

A. It is merely a symbol.

The Court: There was one thing known as the Jackson and I was curious to see what the other one was.

Mr. Anderson: "R-128-B" was the symbol.

By Mr. Anderson:

XQ. 71. The actual operation of the laboratory and the details of administration and charges in the laboratory I take it, you are not familiar with?

A. No.

XQ. 72. Your accounts are made up from the reports sent in to the general accounting office from the laboratory?

A. That is correct.

XQ. 73. I notice here that you have under Federal Trade Commission license No. 19 a charge to indigo and derivatives—plant process. What do you mean by plant process, Mr. Eliason?

A. I cannot answer that question. I do not know.

Mr. Kresel: If you want to know that Dr. Bolton is here, who can answer.

Mr. Anderson: I may desire to ask that question.

XQ. 74. The same as to indigo and derivatives—synthetic, I assume? Well, I need not ask you that, because you probably could not answer it when you cannot answer the other. Then, under license No. 18-A, you have under the manufacture of sodium hydrosulphite four items. I suppose your answer would be the same as to that, that you are not in a position to answer it, and you only take the designation as sent in from the laboratory?

A. Yes.

Mr. Anderson: If you could possibly make up the statements which I requested by tomorrow without undue hardship, I would like very much to have it tomorrow if possible. I might want to ask some other questions when that statement comes in, but at present I have no further questions to ask Mr. Eliason. I suggest tomorrow because I am very hopeful that we may be able to close this case before the end of the week.

The Witness: It is going to be very difficult to get that information by tomorrow.

Mr. Anderson: It may have to go over until Monday because there are a few odds and ends that we may have to put in Monday, but I am going to work very hard to get the evidence through with as fast as I can.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 75. Mr. Eliason, there is only one point I want to make clear. In these statements that you have prepared has there been any charge made for plant?

A. Why, I would say no to that question. It is contrary to the policy, at least.

RDQ. 76. In other words, the duPont Company had to build a plant costing half a million dollars to manufacture these products that are included in these statements, did it?

A. No, our plant laboratory is carried as a capital asset.

XQ. 77. Is there any charge made in these statements for any portion of the Wilmington expense?

A. No.

RDQ. 78. Is there any charge in these statements made for this experimental work, called general accounts, or is it only specifically what was actually spent in the laboratory?

A. Only what was spent in the laboratory.

RDQ. 79. For instance, the salaries of the officers of the company, is there any portion thereof included in these statements?

A. No.

THE COURT: You mean the general officers?

MR. KRESEL: The general officers.

THE COURT: Such as president and——

RDQ. 80. I meant the executive officers, the president, treasurer, and so on. You so understood?

A. That is the way I understood the question.

RDQ. 81. That is the way I meant it to be. You will get us that information as soon as possible, will you, Mr. Eliason?

A. Yes.

Mr. Anderson: I would like to ask a few questions.

Re-Cross-Examination.

By Mr. Anderson:

RXQ. 82. In view of your statement that no part of plant is charged into these items, I will ask you again if you can explain the item "Plant Process".

A. No, I cannot.

RXQ. 83. You do not mean to undertake to testify as to the items back of the general reports that come to you from the laboratory, on which your books are made up, do you?

A. No.

Mr. Kresel: Is that all with this witness?

Mr. Anderson: That is all.

(Witness excused.)

Mr. Kresel: Now, Colonel, do you want to ask Dr. Bolton that question?

Mr. Anderson: I think it is a very desirable question to have explained. I have no doubt it can be.

Mr. Kresel: Very well. Dr. Bolton, will you resume the stand.

Elmer K. Bolton, recalled for further examination, having been previously duly sworn, testified as follows:

Mr. Kresel: You go right ahead. I will not ask him anything.

RE-CROSS-EXAMINATION.

By MR. ANDERSON:

RXQ. 468. Dr. Bolton, you have heard my questions to the witness who has just left the stand in regard to these items?

A. I have heard some of them.

RXQ. 469. Could you explain the meaning of the item, for instance, "Indigo and Derivatives, Plant Process, $67,387.96," under Federal Trade Commission License No. 19 Indigo? It is a little ambiguous.

A. When we are about to begin research work on any subject, whether it deals with the particular process used in the plant or the investigation of a modification of that process, an account is opened for that work, and it very often happens that the account titles are not strictly a description of the work which is carried out.

I do not recall offhand just what work was charged to this account. There are so many accounts that I do not try to keep that. But what I believe it is is the following: They evidently had some difficulty with the plant process. We send a research man into the plant and he will stay there for a time to investigate the process and to find out where the particular trouble is. He then comes back into the laboratory and carries out a series of experiments for the purpose of trying to clear up that difficulty. That is what I believe was meant by this particular account.

RXQ. 470. That is what I thought. In other words, when you engage in the manufacture of a certain product, as in all other business, you find difficulties arise from time to time due either to ingredients or machinery or some need of improvement in process or development, and then you send a man there that is an expert to investigate that subject from your laboratory. He brings the results back into the laboratory and undertakes to improve the condition items mean? You had better look at them perhaps. (Handing paper.)

A. You will notice that the first account number was R-128-B. Before the erection of our research laboratories at the dye works we were carrying out experimental work in two other laboratories. One was the laboratory located at Gibbstown, and the other this experimental station outside of Wilmington. This work on the manufacture of certain hydro-sulphite covered by this account, was carried out at the laboratory located at Gibbstown, and that includes a laboratory and a semi-works investigation of the method of making sodium-hydrosulphite. Now, the other item of any size is J-15-65-6, amounting to $13,797.71. This work carried out at the eastern laboratory located at Gibbstown was then duplicated at the Jackson laboratory, and we had a small semi-works plant there to check over once more the information which had been acquired in the earlier experimental work. As for the very small items, the other two items, I do not recall what they are.

Mr. Anderson: That is immaterial. I merely wanted an explanation of the character of charge to manufacture.

RXQ. 489. Who made the distribution of these charges in the laboratories to the various symbolized accounts here, do you know?

A. When a chemist begins a new investigation, he receives from our accounting department a charge number which you have designated on the side. All the materials which he orders during the course of his investigation are charged to that particular account. He goes to the storeroom and gives them a charge number and that is recorded there and that record is then sent to our accounting department located in the Jackson laboratory.

As for the time distribution, at the end of the month, he reports to his superior the amount of the time during the month which he spends against each product which is active at the time. That is an arbitrary division, but he tries to make it as accurate as possible. One account may receive 60 per cent. of his time; another may receive 40, if he is working on two subjects.

RXQ. 490. And then who distributes the general laboratory expense like manager, and other persons whose time is not devoted to any specific work, but who are general employes or officers?

A. That is done by our branch accounting department located in the Jackson laboratory, where all these accounts are kept.

RXQ. 491. Then they report their accounts over to the general office and they are carried to the general books, from which these statements are made up.

A. Yes.

Mr. Anderson: I do not think I have any further questions, sir.

Mr. Kresel: That is all, Doctor.

(Witness excused.)

MORRIS R. POUCHER.

Morris R. Poucher, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. What is your address, Mr. Poucher?

A. Wilmington, Delaware.

Q. 2. And what is your business?

A. I am a director of E. I. duPont de Nemours & Company.

Q. 3. How old are you, Mr. Poucher?

A. Sixty-four.

Q. 4. Where were you born?

A. Claverich, Columbia County, New York.

Q. 5. What has been your business experience?

A. Up to 1916—before that, the end of 1915, I was a vice-president of the Badische Company in New York.

Q. 6. And since then?

A. I have been in Wilmington, connected with the duPont Company.

Q. 7. When did you first become connected with the duPont Company?

A. September, 1916.

Q. 8. When did you sever your conection with the Badische Company?

A. It was along in 1915. I have forgotten the exact date.

Q. 9. How long were you with the Badische Company?

A. Around thirty years.

Q. 10. Was this Badische Company a corporation or a firm?

A. A New York corporation.

Q. 11. And what was its business?

A. They were importers of coal tar dyes, manufactured by the Badische Anilin and Soda Fabrik.

Q. 12. And where was the Badische Anilin and Soda Fabrik?

A. Ludwigshafen.

Q. 13. What country?

A. On the Rhine, Germany.

Q. 14. How long a period while you were with the Badische Company did that company have business relations with the Badische Anilin and Soda Fabrik?

A. The entire time.

Q. 15. For how many years was the business in New York conducted under the name of the Badische Company?

A. I think it was 1906 that that corporation was formed; either 1906 or 1907.

Q. 16. Under what name was the business in New York conducted prior to the incorporation of the Badische Company?

A. Under the name of Kutroff-Pickhardt & Company.

Q. 17. Was that a corporation or a firm?

A. That was a New Jersey corporation.

Q. 18. Prior to the organization of Kutroff-Pickhardt & Company, was there any other organization or firm or co-partnership preceding that?

A. There was a firm before that.

Q. 19. And what was its name?

A. William Pickhardt & Kuttroff Company, and on the death of William Pickhardt, it became Kuttroff, Pickhardt & Company.

Q. 20. Do I understand that under these three names that you have now given, the business in New York was conducted and that you were connected with it for how many years?

A. Nearly thirty.

Q. 21. You said, I think, that you were vice-president of the Badische Company?

A. Yes, sir.

Q. 22. What part of the business did you take care of?

A. The business was divided in parts; that is, the marketing of certain products; and my part was the introduction into commerce of certain inventions as they came along, including synthetic indigo and subsequently of the vat colors.

Q. 23. Those were products of the Badische Aniline & Soda Fabrik; both of those two were?

A. Yes.

Q. 24. I ask you whether the New York business during the entire time that you were connected with it, whether it was a firm or corporation, sold the products of people generally or confined itself to products of some particular corporation?

A. Exclusively the Badische.

Q. 25. Exclusively the products of the Badische Anilin & Soda Fabrik?

A. Yes, with these exceptions, possibly, of some products and some chemicals that might have been used in connection with the coal tar colors, but of minor importance. They did not amount to anything.

Q. 26. May it then be stated, Mr. Poucher, that the Badische Company of New York and its predecessors were the American representatives of the Badische Anilin & Soda Fabrik?

A. That is a correct statement of it.

Q. 28. Did this American business have any branches other than that in New York?

A. We had branch offices, branch selling offices in all the textile centers: Boston, Providence, Fall River, Philadelphia, Greensboro, North Carolina, Charlotte, Chicago, San Francisco, and, at one time, in Montreal.

Q. 28. Generally speaking, Mr. Poucher, what was the nature of the products produced by the Badische Anilin & Soda Fabrik, which your company marketed in America?

A. I should say the most important products were what is known generally in the textile industry as the fast colors.

Q. 29. Well, was it exclusively dyes?

A. Dyes, yes.

Q. 30. Were there any pharmaceuticals?

A. No pharmaceuticals, the Badische did not manufacture any.

Q. 31. Now, were there in the United States, prior to the outbreak of the European War, agencies of other German dye and pharmaceutical factories?

A. Yes.

Mr. Kresel: I trust your Honor does not think that I am going over old ground. I am just laying the groundwork for a question. I do not intend to go over any ground that has already been covered.

Q. 32. Now, will you state the names of the German concerns so represented in the United States, and the names of their agents here?

A. Metz represented Hoechst, the Bayer Company by their own house here, the Bayer Company. Berlin by the Berlin Company.

Q. 33. It had a concern here called the Berlin Company?

A. It had a concern here called the Berlin Company; and Badische was represented at the outbreak of the war by the corporation known as the Badische Company here. There were several other small ones, but those are the leading ones.

Q. 34. And generally speaking, Mr. Poucher——

A. I might also mention the Caselli Company, that was represented by the Casselli Company in New York, and formerly by William J. Matheson.

Q. 35. Generally speaking, Mr. Poucher, was it the fact that these agencies in the United States were selling agencies for their principals in Germany for their products?

A. For their products, yes.

Q. 36. During the thirty years that you were associated with the Badische Company and its predecessors, did you keep yourself informed of the supply of dyes by way of imports from abroad and by way of domestic manufacture?

A. Yes.

Q. 37. And are you familiar and were you familiar in 1919 with the development of the dye industry in the United States prior to the outbreak of the European War?

A. I think so.

Q. 38. Mr. Poucher, could you state what caused you to leave the Badische Company?

Mr. Anderson: If your Honor please——

Mr. Kresel: Is there any objection to that?

Mr. Anderson: Yes. I do not know what the answer may be, but I do not see how the question of how Mr. Poucher left the Badische Company is a matter which can affect the rights of the United States in this case in any way. I am a little in the dark. It may be material and it may not be material.

The Court: Will you tell us the purpose, Mr. Kresel.

Mr. Kresel: Your Honor, it is a matter personal to Mr. Poucher, and if Colonel Anderson does not want it brought out, I shall withdraw the question.

Mr. Anderson: I have no objection if it is a matter upon which Mr. Poucher feels that his position would be better explained. As a matter of personal courtesy to Mr. Poucher, I have not the slightest objection, but if it has any bearing on the case and is a matter of evidence—I do not know what it is.

Mr. Kresel: Never mind.

The Court: I understand, Mr. Kresel, the objection is withdrawn.

Mr. Kresel: I withdraw the question.

Mr. Anderson: I am very glad to withdraw the objection if it is a matter of courtesy to Mr. Poucher.

The Court: Did I say that I understood the objection was withdrawn? I meant to say that—

not that the question was withdrawn. I understood that was your position entirely.

Mr. Kresel: I am sorry, sir, I did not so understand it, and I am very glad Colonel Anderson has withdrawn the objection. I would like to have the question answered.

The Court: I was just wondering whether I had said question, when I should have said objection.

Mr. Kresel: No, your Honor said "objection," but I was thinking that your Honor meant "question".

Mr. Anderson: Yes, of course, reserving any right as to anything I think is immaterial to strike out that matter. But, as a matter of courtesy to Mr. Poucher, I am glad to have him answer the question.

Q. 39. Will you state, Mr. Poucher, the circumstances of your severing your connections with the Badische Company?

A. Well, it was one of those things that is more or less unpleasant, of course, in an old relation that had existed for many years, and it came about over the affair of the Lusitania. That drew the line, unfortunately, very sharply. Some were in sympathy, some were not. An old business that had existed for a great many years, with a number of people—that was the end of it.

Q. 40. I would like you to state, Mr. Poucher, somewhat in detail what you have done since you have been with the duPont Company, if you did anything, in the development of their dye business.

A. I came down here in September of 1916, and a study was made lasting from that period until July—the early part of July, 1917—a general study and survey of the industry. In the early part of July, 1917, an announcement was sent out to the effect that the duPont Company intended to enter this field, and the preparation for that, preparatory work, and so forth, was pushed very rapidly. Some of the plants, the early plants, came into commission in the early part of 1918. I was the director of sales and that business has been carried on from that time to this.

Q. 41. And where are the plants located?

A. Across the river, at Deep Water.

Q. 42. Here in Delaware?

A. State of New Jersey. Deep Water is in New Jersey, on the other side of the river.

Q. 43. Could you state approximately how many men are employed in that industry now by the duPont Company?

A. I cannot tell you the exact number as it stands now.

Q. 44. Approximately.

A. It is quite large.

Q. 45. During the war, Mr. Poucher, did you have any official position?

A. None outside of this industry, with the exception of the War Trade Board. I was on the Advisory Committee of the War Trade Board.

Q. 46. Any particular branch of industry that your Advisory Committee had charge of?

A. There were seven members of that Dye Advisory Committee to the War Trade Board, three textile manufacturers and three dye manufacturers, and one, Doctor Herty, who was at that time, I think, the president of the American Chemical Society.

Q. 47. You know Mr. Garvan?

A. I do.

Q. 48. When did you first meet him?

A. I think it was in—oh, the date of a letter. There is an exhibit here that would fix the date, I think.

Mr. Anderson: June, 1918.

The Witness: 1918.

Q. 49. You were introduced to Mr. Garvan by Mr. Patterson?

A. By Mr. Choate, I think, as I remember.

Q. 50. Mr. Choate?

A. I think so.

Q. 51. Who introduced you to Mr. Choate?

A. Mr. Patterson.

Q. 52. Had you known Mr. Patterson for some time before that?

A. Many years, yes.

Q. 53. Was he in the textile industry?

A. Yes, sir, he was a woolen manufacturer at Waterloo, New York.

Q. 56. The date of the letter is some time in June, 1918. From that time on did you have occasion to confer with Mr. Garvan or Mr. Choate, or both of them?

A. I saw both of them, of course, many times.

Q. 55. Where did you see them?

A. I think we met first at their New York office on Forty-second Street.

Q. 56. Whose New York office?

A. The Alien Property Custodian's New York office, Forty-second Street, off of Sixth Avenue, and then in Washington.

Q. 57. I am not going to ask you, Mr. Poucher, to detail the many conversations that you had with these gentlemen, but what was the subject that you and they were discussing?

A. I had been here in Wilmington two years, nearly two years, when I received a letter from Mr. Patterson. He asked me to meet Mr. Choate and also Mr. Garvan. My remembrance is that he gave me a letter of introduction to Mr. Garvan, as I recall it. I called at the office and I think he was engaged, or something of that sort, and I met Mr. Choate first. I was introduced to Mr. Garvan by Mr. Choate. Mr.

Choate made a number of inquiries, asked me a good many questions about the industry abroad.

Q. 58. What industry?

A. The dye and chemical industry abroad. I gave him all the information that he asked for and subsequently met Mr. Garvan and gave him all the information that he asked for.

Q. 59. Have you ever been a member of the American Dyes Institute?

A. I have; yes, sir.

Q. 60. When did you become a member of that?

A. From the very beginning.

Q. 51. When was it organized?

A. I can give you the date if you will allow me to refresh my memory. That was in April, 1918.

Q. 62. Did you hold an office in that organization?

A. I was on the executive committee, as I remember.

Q. 63. I will ask you, Mr. Poucher, whether you are familiar in a general way with the charges that are made in the complaint in this case?

A. I have read them.

Q. 64. Particularly with reference to the allegations therein made as to the American Dyes Institute; have you read those?

A. I have read them.

Q. 65. I wish you would in a general way state to the Court what the activities of the American Dyes Institute were during the war, more particularly with reference to the dyes industry. I wish you would do it as briefly as possible.

A. It is pretty well covered in the introduction, in the preamble that is given in the book of the Dyes Institute or the first records of the institute as to its object.

Q. 66. You mean the minute book?

A. The minute book. I think it is in the minutes of the first meeting, if I am not mistaken. The institute was organized for the purpose of bringing together all those who were interested in the development of the dye industry, a new industry in the United States, with a view to securing the co-operation of all manufacturers in certain problems which we were sure we were going to have ahead of us. As an industry, we were very young. Everybody else was. There were very few who had had any experience at all in the industry, but there were certain subjects that we were sure we were going to have ahead of us, certain problems. We were certain that we were going to have a legislative problem. It was only a question of time when we should have to have some sort of adequate protection for the industry in this country. We had a number of other questions that developed as the institute grew and we appointed from time to time various committees to take charge of that work.

One of the earliest subjects that came up, with which a number of the members were more or less familiar, was the subject of graft, which, as manufacturers, we were trying very hard to eliminate. We had a committee that made a very thorough study of the subject and aimed to obtain some sort of Federal legislation on the subject. That has since grown into a movement, entirely apart from this industry, and extending to other industries; and we have been very much in hopes that something very good would come of it.

We had another committee that studied the subject of cost accounting, and that was brought about along in the spring of 1919. There was no uniformity of system among the different manufacturers, and the question came up—if I am not mistaken, it was brought out by the Tariff Commission before the Ways and Means Committee at one of the hearings, in questioning the different systems of accounting. Now, that was taken up with the Tariff Commission, and we had a committee appointed that worked out a very good plan, and the committee finally made a report which was printed, and pretty widely circulated. The chairman of that committee was Mr. Gaines of the Calco Company.

Then a tariff committee was appointed that made a study of the industry itself, that is, the needs of the industry for a tariff. When that work was completed, there was another committee, the legislative committee, which took up the report of the tariff committee covering the needs of the industry, and carried it on from that point. I was the chairman of the legislative committee, and the full text of the proceedings, that is, of the activities of that committee, I testified to before the Shortridge Committee.

Q. 67. I was going to ask you about that.

A. I believe there is a full report of that in the Shortridge Committee, so I need not speak of that any further.

Q. 68. I meant to ask you about your testimony before the Shortridge Committee. Was that the only occasion on which you testified before any of the Congressional Committees that investigated The Chemical Foundation and the dyes industry?

A. Yes.

Q. 69. You may proceed; and when was that testimony given?

A. The Shortridge Committee?

Q. 70. Yes; just what year?

A. I can give you the date of that. That was March 10 and 11, 1922—my own testimony I am speaking of. The hearings, of course, covered a considerable length of time.

We had another committee on the subject of industrial alcohol. The manufaturers were concerned with the Internal Revenue Department, and there were a number of problems in conection with that, that had to be studied, which were for the mutual advantage of all members of the industry.

We had another committee on the subject of the standardization of chemical terms, that is the nomenclature and spelling and pronunciations of chemical terms, as is applied to the dyestuff industry, and that was a committee that gave a great deal of study to the subject, and I think they have made a very great contribution to the literature on the subject.

Q. 71. Now, I think, Mr. Poucher, you have sufficiently indicated——

A. There is one more I would like to speak of, if you do not mind, because it was a matter that turned out to be of a good deal of importance, and that is the subject of sanitation and safety, which was the working out or taking the experience of all the manufacturers in the matter of explosions and accidents and that sort of thing, and getting that information all together so that all the members of the industry might have the full particulars and all the details and information and help that might come from it.

Q. 72. In 1919, do you recall the American Dyes Institute being interested in the German patent situation

A. Yes, I do.

Q. 73. Were you officially connected in any way with the transaction resulting in the sale of the patents here in question to The Chemical Foundation?

A. We had a committee of the institute that was appointed for the purpose of studying the matter, and meeting with the Alien Property Custodian, and the first meeting of that committee was in Washington, as I recall it.

Q. 74. Were you a member of that committee?

A. I was; yes, sir.

Q. 75. Now, did you or did you not take part in any conferences with representatives of the Alien Property Custodian, with reference to the sale by him of these German patents, covering dyes and chemicals?

A. I did.

Q. 76. Mr. Poucher, the Government in its bill charges that beginning about June, 1918, certain chemical concerns in the United States whose names are given and others whose names are not given entered into a conspiracy to induce the Alien Property Custodian to seize the German patents here in question, and, further, to organize The Chemical Foundation and to induce the Alien Property Custodian to sell those patents so seized to The Chemical Foundation; and it is charged that the purpose was to perpetuate a monopoly of the dye industry which these conspirators had theretofore obtained. It is charged in the bill that you, Morris R. Poucher, are and were the representative of the duPont Company, one of the conspirators. Indeed, your name is the only one that is mentioned as a conspirator, other than the corporation's.

Now, I am going to ask you, first, generally, whether you have taken part in or been a part of any conspiracy in connection with the dye industry, the establishment thereof, the seizure of these patents, or the sale thereof?

Mr. Anderson: If your Honor please, I have no objection to the witness stating fully and at length, at any length counsel and the witness may desire, whatever he did in connection with these matters; whether it be relevant or irrelevant is immaterial.

However, I do not think the witness can testify whether he took part in a conspiracy, in that form, for the reason that that is a conclusion of law to be drawn from the facts. I have not the slightest objection to the fullest possible statement of the facts, and I shall not object to this evidence on any ground whatever, either now or at any other time; but I do object to the conclusion—it is a conclusion to be drawn by the Court from the facts.

MR. KRESEL: In other words, the Government reserves unto itself the right to charge a man with a conspiracy, using the legal term, and using the legal conclusion, without stating a single fact in support of that allegation, yet denies to that man the right in his own defense to say that he was not a conspirator.

MR. ANDERSON: I do not think that is a fair statement of the bill, sir. If it is, the Government stands by it. I want to repeat, I will not object to any evidence that Mr. Poucher wants to give as to any facts, statements or activities in the broadest terms. But the statement of the bill contains many facts, as we think, bearing upon this subject and states the usual language of the charge, the conclusion, which probably is not necessary but is usual in bills of this kind.

Now, that is pleading. The evidence is mere statements of facts. If those facts do not support the conclusion there stated, why, it is for the Court to determine. I want to make it as plain as I can make it on this record that I am not going to object either at this time or at any other time to Mr. Poucher making a full and complete statement of his connection with this matter.

THE COURT: My memory does not aid me in recalling the facts which are pleaded, and that is a matter which can be quickly ascertained. Will you do that, Mr. Kresel?

MR. KRESEL: Certainly, your Honor. The bill starts out in the twenty-third paragraph of the bill:

"Complainant is informed and believes and therefore avers that in pursuance of said plan, scheme, and conspiracy the persons, firms, corporations, and associations aforesaid, parties thereto, about or soon after June, 1918, through their duly authorized representatives, and especially through one Morris R. Poucher, representing and acting for said conspirators, approached said Alien Property Custodian and certain of his assistants, and especially Francis P. Garvan, who was then and for a long time prior thereto had been chief of the Bureau of Investigation and also director of the New York office of the Alien Property Custodian,"

I shall skip some verbiage there, your Honor, which is not material. It then describes Mr. Choate and his position, Mr. Hoguet and his position, and continues by alleging:

"and thereupon the said persons, firms, corporations, and associations, through their representatives aforesaid, and especially through said Morris R. Poucher, aforesaid, urged upon said Alien Property Custodian and his assistants, officers, and agents aforesaid, and others, the pretended necessity for the protection of American industry of securing control or ownership of said enemy-owned patents, copyrights, trademarks, labels . . . and urged upon them their pretended duty in the public interest to seize, sell, or dispose of the same; and after numerous conferences with said Alien Property Custodian, his assistants, officers, or agents aforesaid, said parties succeeded in inducing them to undertake the seizure of said patents," and later the sale thereof is alleged.

This allegation, wherein Mr. Poucher is so distinguished, is preceded by allegations in this bill of the formation of the alleged conspiracy by certain firms and corporations, and your Honor will find in the twentieth paragraph on page 20 that the names of the alleged conspirators are given as follows:

> "that by or before June, 1918, the aforesaid plans and purposes for the complete control and monopolization of said dyestuffs and chemical industry had developed to a point where the essential basic and intermediate ingredients in the manufacture of dyes and many of the essential chemicals used and necessary in connection therewith were controlled by a limited number of corporations, working in close alliance with each other, chief among these being the National Aniline & Chemical Company, which had been formed in 1917 through the consolidation of numerous corporations then engaged in the manufacture, sale, and distribution of dyestuffs and chemicals and the ingredients thereof, the General Chemical Company, the Solvay Process Company, the Semet-Solvay Company, the Barrett Company, and E. I. du Pont de Nemours & Co."

Chief among those. That is the reason why, your Honor, throughout this case I have emphasized the fact that the Government has charged a conspiracy against the whole chemical industry of the United States. They were not content with charging that the corporations whose names I have just read were in this conspiracy, but they say that those were only the chief culprits, that the entire chemical industry of the United States were banded together to defraud the Government of the United States, in order to perpetuate a monopoly that had been established.

I say that when the Government charges in such general language a conspiracy of such a broad nature and mentions one man by name and says that he was especially active in that conspiracy, it does not lie in the mouth of the Government to protest against that man being permitted to say, "No, I am not a conspirator," and to say it in so many words, and not by compelling him to answer specific questions as to what he said to one man and what he said to another.

Why, your Honor, the meanest thief in his defense is permitted to say that he did not steal, and many a man charged with making false representations, upon which he obtains goods worth ten dollars, is under the cases permitted to say, "No, I did not intend to make a false representation."

Now, Mr. Poucher can be asked the specific questions, and I propose to do it. I propose to take up each one of the paragraphs of this complaint and ask him whether he did or did not do the things that are alleged; but I want this man to have the opportunity to put upon the records of this court, where his children and his grandchildren can read it, that he was not a conspirator; and it does not lie in the mouth of the Government to deny him that right.

I press my question.

Mr. Anderson: I only want to say, sir, that the Government has no desire to deny Mr. Poucher any right whatever. I have stated my reasons. There are certain rules of evidence that stating a conclusion is not stating the facts. Now, pleading is one thing and evidence is another. If the matter is going to be put upon the ground upon which counsel has put it, I am perfectly willing to let Mr. Poucher state his conclusions. I have said that I was not going to object and I have not made any objection to evidence of this kind——

The Court: Objection withdrawn?

Mr. Anderson: I am perfectly willing to withdraw the objection.

The Court: I do not care whether you do or do not. I only want to know which you are doing.

Mr. Anderson: In view of the statement of counsel, while I think the objection, if insisted upon, would be well taken, I am going to withdraw it. Let him state conclusions or facts. It does not make the slightest difference to me. He can go through it any way he wants to.

The Court: You may take the answer.

By The Court:

Q. 77. Do you recall the question, Mr. Poucher?

A. I do.

By Mr. Kresel:

Q. 78. Will you answer.

A. The answer is no.

Q. 79. Did you or did you not conspire with the defendant or any other person to cause the seizure and sale of any enemy-owned patents for the purpose of furthering the purpose and intent of any one to monopolize any kind of trade or commerce?

A. No.

Q. 80. Did you or did you not intend to participate in any conspiracy or monopoly in any wise having to do with the dyes industry or any enemy-owned patents?

A. No.

Q. 81. So far as you made any representations to the Alien Property Custodian or any of his representatives, did you tell him or them anything that was not true?

A. I did not.

Q. 82. Did you ever talk to President Wilson upon this subject?

A. No, I never met him.

Q. 83. Did you ever talk to Mr. Polk upon this subject?

A. No, I never met Mr. Polk, until he came to Wilmington to testify in this case.

Q. 84. Did you ever make to them or either of them, directly or indirectly, any representations?

A. No.

Q. 85. Did you or did you not cause or procure any person to make any misrepresentations or to suppress any information from the Alien Property Custodian or any of his representatives?

A. No.

Q. 86. Did you have anything to do, directly or indirectly with maintaining or continuing any monopoly in the dye industry in the United States?

> MR. ANDERSON: Now, sir, I have to object. If it comes down to what Mr. Poucher did do, I have allowed a number of questions which in my judgment were clearly illegal, but there is a limit. I think there is a legal way of taking evidence and an illegal way. I am perfectly willing to stretch the limits so far as I can in a legal way. But when it comes down to evidence taken in an illegal way, I think it is my duty to object and ask that it be taken legally.
>
> MR. KRESEL: When the Government alleges that there is a monopoly, I have a right to call the man whom they charge with maintaining the monopoly to deny it; and a way of denying it is not by showing how many pounds one makes and how many another and what the total is and compare one with the other. The man who is charged with doing it has a right to categorically deny it and that is my purpose in putting the question to this man.
>
> THE COURT: What are the facts pleaded with respect to a monopoly?

Mr. Kresel: Let me read them to your Honor. I will be very glad of the opportunity. I read from the eighteenth paragraph of the bill on page 19:

"Complainant is informed and believes and therefore avers that for several years prior to the declarations of war aforesaid various persons, firms, and corporations (not naming them) engaged in the production, manufacture, and sale of dyes, and the ingredients thereof, and of kindred or similar chemical materials and products."

The Court: Those firms are named, I assume, elsewhere.

Mr. Kresel: No, your Honor. The naming of the firms in the twentieth paragraph is in connection with the limited number of corporations that controlled essential chemicals and dyes. There is no charge there that those are the persons who had monopolized.

The Court: I assume you are mistaken, Mr. Kresel. I say that with a great deal of hestitation. I will get you to point that out, Colonel Anderson—the place where the conspirators' names are set forth.

Mr. Anderson: I think in the twentieth paragraph the specific persons are named. This is the inducement leading up to the twentieth paragraph and it states there that about June or after June, 1918, these persons acting together had reached practically a monopolization of this industry and then in each paragraph thereafter, it is alleged that in pursuance of that arrangement or scheme entered into, they did this and they did that, the usual form of pleading in such case.

Mr. Kresel: I do not like to put questions to the opposing counsel, but inasmuch as the question has been raised, I should like to ask Colonel

Anderson if he will read from the bill the names of the persons that are the conspirators.

Mr. Anderson: "The persons named," and the persons whose names you read a moment ago "and others to the complainant unknown."

Mr. Hershkopf: There is no allegation that they are unknown.

Mr. Kresel: The twentieth paragraph does not state the conspirators. The twentieth paragraph is as follows: "Complainant is further informed, believes and therefore avers that by or before June, 1918, the aforesaid plans and purposes for the complete control and monopolization of said dyestuffs and chemical industry had developed to a point where the essential basic and intermediate ingredients in the manufacture of dyes and many of the essential chemicals used . . . " were controlled by certain corporations that you name and others; but where is the allegation that they are the conspirators whom you mean, if they are not found in the paragraph that I read? The eighteenth paragraph says, "various persons, firms, and corporations engaged in the production, manufacture," and so on.

Mr. Anderson: Very good. If it is not sufficiently in the pleading—let them come to it.

The Court: My difficulty is not that, Colonel Anderson, at this minute. My trouble is this: That if the charge is a blanket one, and I assume that you would show me that probably now, because I have been going to ask you just exactly what the facts constituting the charges of conspiracy as pleaded by you are, I am going to ask you to show me from the bill who the conspirators are, not for the purpose of testing your pleading, but for the purpose of determining how such charges may be met, because I assume that the

Government of the United States has in its possession facts warranting the allegations before they are made; and I assume that the United States will not make a blanket charge of conspiracy, a serious charge, without having facts to support it, and if it has those facts, I assume it would plead them with sufficient particularity to enable the defendant to meet them. So I will get you to point out those facts to me if you will be good enough, Colonel Anderson.

Mr. Anderson: Certainly. I will do that. I will be very glad to do it now.

The Court: A conspiracy is one of the most difficult things in the law to establish, and if established is one of the most difficult to disprove.

Mr. Anderson: I think so, sir.

The Court: The conspiracy to be established is that one charged in the bill of complaint, of course, and it is the only one which the defendant is called upon to meet. Now, unless there is a definite and specific charge set forth in the bill of complaint—I do not know whether there is or not, I assume there is, because the bill was filed by the Government of the United States——

Mr. Anderson: If there was not, I should think the place to raise that, your Honor, would be on the original motion, and if you desire me to argue the motion now, I am perfectly willing. I am objecting to the evidence on the ground that it does not relate to a conspiracy. I am objecting merely to the form.

The Court: But there are two things, it seems to me, that I have got to consider with respect to that, and as soon as I can determine those I am prepared to rule. The first of those things, if I were confronted with a proposition of what testimony I must give in defense, my basic inquiry would be first, what are the allegations with respect thereof in the bill of complaint? With respect to conspiracy, my recollection of the law is that it must be pleaded, not according to legal conclusions—I do not know of any pleading in Delaware which is a pleading of legal conclusions, but it must be a pleading of fact. My first inquiry, therefore, would be to ascertain what the facts pleaded are. My second inquiry would be what are the proven facts, establishing the allegations.

Mr. Anderson: I will be very glad to answer your question to the best of my ability. It will take me time, but I will do it with great pleasure.

The Court: Will you be kind enough, Colonel Anderson, to do it with respect to the bill of complaint, first pointing them out to me and stating them to me generally?

Mr. Anderson: I will, sir. I will take the bill immediately.

The Court: If you will just indicate the paragraphs to me, you need not read them particularly.

Mr. Anderson: I shall be very glad to do that. I think the charges begin on page 18, and they contain the statement, on page 19, that the importation was automatically stopped by the war, and on page 20 that the complainant is informed——

The Court: Are you speaking of paragraphs?

Mr. Anderson: I am speaking of paragraphs, sir, at the twentieth paragraph, where "Complainant is further informed and believes" . . . that a number of corporations, including chief among them the National Aniline & Chemical Company, the General Chemical Company, the Solvay Process Company, the Semet-Solvay Company, the Barrett Company, and the E. I. du Pont de Nemours & Company succeeded in substantially monopolizing this industry, and it further charges that this had been accomplished by means of agreements with those persons and others associated with them in like business made through certain trade associations, "among others the American Dyes Institute, the Chemical Manufacturers' Association of the United States, the Textile Alliance, Inc."—the Textile Alliance of the United States now stricken from the bill—"and their affiliated organizations, of which the persons, firms, and corporations engaged in the manufacture, sale, and distribution of dyes and chemicals" . . . , "Complainant is informed, believes, and therefore charges that through and by means of the methods, agreements, and organizations aforesaid, there was in June, 1918, and has since continued, an organized and united control and monopoly of the manufacture, sale, and distribution of dyes and the ingredients thereof, and of chemicals related thereto or used in connection therewith in the United States; and that said combination, monopoly, and control has since been further developed and perfected by and through the consolidation in 1920," of various companies into the Allied Chemical & Dye Corporation. It then goes on and takes up the question of the issue of these patents and the amendments to the act, and so forth, and that after the signing of the Armistice, in the twenty-third paragraph that: "Complainant is informed and believes and therefore avers that in pursuance of said plan, scheme, and conspiracy the persons, firms, corporations and associations aforesaid," entered into said plan and scheme of conspiracy, and that about or soon after June, 1918, these parties undertook to induce, and did finally induce the

Alien Property Custodian to seize these patents which have controlled this industry in the United States, and that said parties succeeded in inducing him to seize the patents, and the signing of the Armistice agreement made necessary the accomplishment of this purpose, and that prompt action should be taken, and said parties "thereupon arranged with the Alien Property Custodian immediately following the enactment of said amendment approved November 4, 1918, of the 'Trading with the Enemy Act'," to have the patent attorneys of the du Pont Company and the National Aniline & Chemical Company, and their necessary assistants employed by said corporations, and by the American Dyes Institute, stationed at the Patent Office at Washington, so that they should proceed to seize these patents, copyrights and trademarks on the list selected by the attorneys?

The Court: There is no evidence in support of that in the case, so far as I recall, is there? My recollection is that Mr. Gordon was your witness and he denied that. That is my recollection.

Mr. Anderson: Your recollection is entirely different from my own, sir, but I may be mistaken. My recollection is that Mr. Barrows and Mr. Squair representing these two companies, and the documentary evidence showed that at that time, and the correspondence also, was sent down to Washington and selected those patents out of the Patent Office, and turned over the copies to Mr. Gordon, who thereupon examined the title and drew up the demands and had them O.K.'d by Mr. Hoguet, and then they were signed by the Alien Property Custodian himself.

The Court: My recollection is that the only evidence is the Gordon evidence; is that correct?

Mr. Anderson: The documentary evidence,

the correspondence, is very elaborate on that subject, and the bills and the expenses and the payments and everything are in evidence.

Mr. Kresel: Your Honor's recollection is entirely correct. Mr. Gordon testified that all that these two lawyers did was to obtain for him copies from the Patent Office of a lot of patents.

The Court: Because of their knowledge of what the patents were?

Mr. Kresel: Of what they related to.

The Court: Yes.

Mr. Kresel: That then, he, representing the Alien Property Custodian, and his staff, searched the titles to the patents; that he and Mr. Hoguet and Mr. Palmer then determined which, if any, of those to seize; that they prepared the demands; and that the demands were O. K.'d by Mr. Hoguet and presented to Mr. Palmer for his signature. That is the evidence.

Mr. Anderson: Your Honor, I will not be so positive as to my statement as counsel is, because my capacities are so limited that I cannot carry a thousand pages of evidence in my head and state exactly what each person testified to. I will do that when I come to argue this case before the Court, if we ever reach that point. My understanding of the evidence is entirely different, both the documentary and the oral.

The Court: I do not have any recollection of any documentary evidence tending to establish that Messrs. Barrows and Squair were acting in any way other than as testified to by Mr. Gordon. I do not say there is no such evidence, because there are about a thousand exhibits, and a great many of them I have not heard read. But there is no question in my mind that the oral testimony of Mr. Gordon is that they were asked to select these patents because of their familiarity with patents of that type and their knowledge enabling them to select them, and that thereafter the seizing of those patents took place.

Mr. Anderson: The record shows, if your Honor please, that at the conference on the twenty-seventh day of January, 1919, Mr. Barrows was present at the office of the Alien Property Custodian; that prior to that time it had been suggested that the representatives of the National Aniline and duPont Company would aid in the selection of these patents for seizure, and they were seized. The correspondence shows that that arrangement was made; that Mr. Barrows and Mr. Squair went to Washington in accordance with that arrangement; shows the payments that were made to them in connection with the expenses, and the arrangement by the American Dyes Institute, and that they selected the patents upon which Mr. Gordon worked up his seizure.

The Court: Mr. Gordon did not testify to that effect, as I recall, Colonel Anderson.

Mr. Anderson: I would, of course, like to put the evidence of Mr. Gordon and the documentary evidence together, and I think I can demonstrate pretty conclusively that the evidence bears out my statement. But I do not know that we will get anywhere by a discussion of those two points.

Mr. Kresel: May I read it, sir?

The Court: I will hear you.

Mr. Kresel: There is no necessity of having the evidence taken into the record again, your Honor?

The Court: No.

Mr. Kresel: I read from page 1131 of the record, under cross-examination. (Reading.)

The Court: That is not what I mean. The answer that I recall is not one elicited by your cross-examination, but one given in the examination in chief.

Mr. Anderson: I wish to make clear that my objection to this evidence of the witness now on the stand goes absolutely and solely to the point that he is asked to state a conclusion and not state facts. If he is asked to state facts, I shall not object to the evidence, and have not objected to it, however broad it may be, I am not objecting, but I want the fullest latitude in that regard. My objection is to the form, and not to the substance, and it was made accordingly.

Mr. Kresel: I think, your Honor, Mr. Mahaffy has laid his hands on the question and answer that your Honor had in mind. It was on the direct at page 1059. It reads as follows:

(Reads Q. 50, page 1059, from direct examination of witness Gordon.)

The Court: That is the answer I had in mind.

Mr. Kresel: Now, if your Honor please, I must say that the question as to whether this bill does or does not name the conspirators has not yet been answered. I find it this way, your Honor:

In the eighteenth paragraph of the bill the allegation is: "That various persons, firms and corporations engaged in the production, manufacture and sale of dyes, and the ingredients thereof, had been engaged in the formation and development of plans for a monopoly." If we stop there, there is no charge of conspiracy there at all. It is a charge that certain unnamed persons had been engaged in a monopoly. Up to this point there has not been a suggestion of a conspiracy.

Now we turn to the next paragraph, the twentieth. That paragraph alleges that by June, 1918, the plans for the complete control and monopolization of this industry had developed to a point where the basic ingredients had been monopolized by a certain limited number of corporations, chief among them being the National Aniline and the others mentioned. So your Honor sees up to that point there is no charge of conspiracy. They are still talking about monopoly.

When we come to the next paragraph, the twenty-first paragraph, the allegation there is that a large proportion of the patents related to the dye industry. Nothing said there about either monopoly or conspiracy.

It is not until the following paragraph, the twenty-second, that we hear the first mention of a conspiracy, and it reads this way:

> "That with the object and purpose of securing such control of said enemy-owned patents, copyrights, trade-marks, labels and other similar rights and applications therefor, and for the purposes hereinbefore stated, said persons, firms, corporations and trade associations"—no names mentioned at all—"and others associated with them in said industry * * * conceived and entered into a scheme, combination and conspiracy."

The Court: To do what?

Mr. Kresel: "Prior to or about November, 1918, to induce and procure the seizure of said enemy-owned patents, copyrights, trade-marks, labels, etc., and the sale, transfer and assignment thereof by said Alien Property Custodian to themselves or to some corporation, agency or institution controlled by them."

If we stop there to try to determine who the conspirators are, all that is vouchsafed to us is the statement that they were "said persons, firms, corporations and trade associations." What is meant by that? Let us go back. Do they mean thereby the National Aniline and Chemical Company, and the Solvay process, and the Barrett and the duPont? Or do they mean the various persons, firms and corporations engaged in the production, manufacture and sale of dyes, which are mentioned in the eighteenth paragraph? Or do they mean both of them? That is the situation we have had to contend with—fighting atmosphere, fighting in the dark.

The Court: What was the paragraph to which you last called my attention, twenty-two?

Mr. Kresel: The last one, your Honor, is the twenty-second.

The Court: Will you tell me again what that is and what other charges of conspiracy are there in the bill?

Mr. Kresel: That is the only charge of a conspiracy. All subsequent charges are that pursuant to said conspiracy certain acts were done.

The Court: What is the conspiracy charged, as you understand it?

Mr. Kresel: As I understand it, it was a conspiracy to induce the seizure of the patents and to induce the sale and transfer thereof to the conspirators or to a corporation controlled by them. That is exactly as I stated it in my opening statement. Those, as I understand it, were the two purposes of the conspiracy. And Mr. Poucher is the gentleman who is named, and the only one that is named, as having been at the bottom of this alleged conspiracy representing this company. Now, if I am wrong, I welcome a correction from counsel.

Mr. Anderson: At the proper time I will undertake to correct it, when I come to argue the case. The only thing that is pending now is whether you can state a conclusion or whether you can state a fact.

The Court: That is the ultimate thing, Colonel Anderson. But that is not the basic thing.

Mr. Kresel: May the question be read, your Honor?

The Court: You may take the answer.

(Q. 86 repeated as follows: Did you have anything to do, directly or indirectly, with maintaining or continuing any monopoly in the dye industry in the United States?)

A. No.

Mr. Kresel: You may examine the witness; and you may examine him on any subject you want, whether I touched it on the direct or not.

Mr. Anderson: You can stand aside, Mr. Poucher.

The Witness: I beg your pardon.

Mr. Anderson: There may be one question.

Mr. Kresel: He said he does not want to examine you.

Mr. Anderson: Just a minute. There may be one question.

Cross-Examination.

By Mr. Anderson:

XQ. 87. Mr. Poucher, you spoke of having filed with the so-called Shortridge Committee a statement showing the activities of the Dyes Institute?

A. Yes, sir.

XQ. 88. Will you see if this is the statement to which you refer (handing papers to witness)?

A. That is it.

Mr. Anderson: We would like to offer in evidence the statement or schedule which the witness has identified, entitled "American Dyes Institute, Chronology from May 23, 1919, to December 31, 1921," introduced by Mr. Poucher as a part of his testimony before the so-called Shortridge Committee, to be found at pages 507-508,509-510 and 511 of the hearings before that Committee on Resolution 77. I will ask to have it marked, if it is admitted, and I will then furnish a copy later.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 657." (*See Exhibits, Vol. III, page 1635.*)

XQ. 89. I notice in your testimony before that committee you refer to Judge J. Harry Covington as counsel for the Dyes Institute. Was he one of the counsel that appeared for the Dyes Institute? I think it is in that testimony.

A. Yes.

XQ. 90. He appeared before the Federal Trade Commission, too, for them, did he not?

A. That I cannot answer. He appeared before the Ways and Means Committee.

XQ. 91. He is a lawyer in Washington, is he not?

A. He is a lawyer in Washington; yes, sir.

XQ. 92. Can you identify this letter and tell me who it is from, Mr. Poucher (handing witness paper)?

A. The signature does not seem to be here, but the initials I think I can identify as those of H. G. Stevenson.

XQ. 93. Who was H. G. Stevenson?

A. Manager of our New York office.

XQ. 94. When you say "our New York office," what do you refer to?

A. The duPont Company's New York office.

MR. KRESEL: Is there a question pending?

Mr. Anderson: Yes, I am waiting for him to identify those letters.

The Witness: I have done that. I answered your question, I think; did I not? You asked me who they were from and I said H. G. Stevenson.

XQ. 95. One is a letter from Mr. Stevenson addressed to Mr. Corwine. He was at that time Secretary of the American Dyes Institute, was he not?

A. I think so.

XQ. 96. The other is a letter from Mr. Stevenson addressed to you. It is unsigned; it is initialed at the bottom H. G. S.

A. Yes.

Mr. Anderson: I offer in evidence the letter dated August 18, 1919, to Mr. W. R. Corwine, signed by H. G. Stevenson, which has been identified by the witness, and a letter dated the same date, addressed to Mr. M. R. Poucher, and initialed H. G. S., which the witness says are the initials of H. G. Stevenson. I ask that the first be marked Plaintiff's Exhibit No. 658, and, inasmuch as the second was an enclosure sent with it, that that be marked Plaintiff's Exhibit No. 658-A.

Received in evidence and marked respectively "Plaintiff's Exhibits Nos. 658 and 658-A." (*See Exhibits, Vol. III, pages 1645, 1646.*)

XQ. 97. Can you identify this letter, Mr. Poucher (handing witness paper)?

A. It is marked with my initials, so I assume it is mine, of course.

XQ. 98. It is a copy of a letter written by you?

A. Addressed to Mr. Howard.

XQ. 99. It is a copy of a letter written by you, isn't it?

A. I presume so. It has my initials on it, but it has not my signature.

XQ. 100. It is only a copy. Would you mind, if you identify it, putting your name on it?

A. If you will allow me to look it up I will make a note of it. If you will give me time to read it over, or you can mark it now if you would rather do that.

XQ. 101. Yes, certainly; read it.

A. I will initial this now. Is that what you want?

XQ. 102. Just put at the bottom of it your name or initial so that it will appear in the record as signed by you.

A. (Witness complies.)

XQ. 103. You also identify this letter dated March 3, 1919, addressed to Mr. C. Cyril Bennett (handing witness paper)?

A. I do.

XQ. 104. And is signed by you?

A. As shown.

Mr. Kresel: These are subject to our objection as to materiality and relevancy, your Honor.

The Court: All exhibits are, from each side.

Mr. Anderson: I now offer in evidence a letter dated March 3, 1919, addressed to Mr. Henry Howard, signed by Mr. Poucher, which has been identified by him, and ask that it be marked Plaintiff's Exhibit No. 659.

The Court: Do you want to read it at this time?

Mr. Anderson: I did not, sir. I do not care to take the time, unless your Honor desires it.

The Court: Does it bear on the issue of conspiracy?

Mr. Anderson: Yes, sir; in my view it constitutes evidence connecting it up.

The Court: I should be glad to hear it, then, Colonel Anderson.

Mr. Anderson: It connects up other evidence and other documents we have put in.

The Court: Then I should be glad to hear it.

Received in evidence and marked "Plaintiff's Exhibit No. 659." (*See Exhibits, Vol. III, page 1649.*)

Mr. Anderson: The letter to which I have just referred, sir, is a letter addressed to Mr. Henry Howard and signed by Mr. Poucher. (Reads Exhibit.)

The next letter is dated March 3, 1919, addressed to Mr. Bennett, Secretary of the American Dyes Institute.

Mr. Kresel: From whom?

Mr. Anderson: From Mr. Poucher. I offer that in evidence and ask that it be marked Plaintiff's Exhibit No. 660.

Received in evidence and marked "Plaintiff's Exhibit No. 660" and read by Mr. Anderson to the Court. (*See Exhibits, Vol. III, page 1651.*)

XQ. 105. Who was Mr. Henry Howard and what was the association to which you refer in the letter I have just read, Mr. Poucher?

A. Mr. Howard was an officer in the Manufacturing Chemists Association. He himself was then connected with the Merrimac Manufacturing Company, of Boston, and is now with the Grasselli Company, of Cleveland.

Mr. Anderson: I have no further questions to ask Mr. Poucher.

The Witness: I am under subpœna of the Government, your Honor.

The Court: Are you through with Mr. Poucher on both sides?

Mr. Kresel: Yes, sir. The Government had subpœnaed him for the fourteenth day of June, and he has been under subpœna ever since for the Government.

Mr. Anderson: I did not know it. I am sorry and I apologize to you for it, Mr. Poucher.

He is released, as far as I am concerned, sir. I did not know he was under subpœna.

Mr. Kresel: The same with me.

The Court: You are discharged, Mr. Poucher.

(Witness excused.)

Mr. Kresel: At this time, your Honor, there are certain documents which I desire to put in evidence. First, I have received from Professor Stieglitz a request that I place before counsel for the Government and before your Honor certain corrections that he desires to make in his testimony. I have shown these four papers to Mr. Galloway, and I understand they are all right.

Mr. Anderson: I have not had a chance to read them.

Mr. Kresel: If you would prefer to examine it a little later, Colonel, I will pass on to something else.

Mr. Anderson: If you would, please. I intended to look at them during the luncheon, but did not reach them.

Mr. Kresel: And there is the letter that goes with them (handing counsel paper).

I offer in evidence a stipulation between the parties with reference to the so-called 10 (f) suits. Your Honor will recall that the Government put in the complaints in those suits brought by The Chemical Foundation. This stipulation is intended to cover the suits brought by the aliens for the same funds, and also by the Alien Property Custodian.

The Court: This is a stipulation?

Mr. Kresel: Yes, sir.

The Court: And it is intended to cover what?

Mr. Kresel: It is intended to show to the Court that, in addition to the suits for these monies brought by The Chemical Foundation, there are suits brought for the same monies by the alien enemies and by the Custodian. We have made a list of the various suits and have annexed hereto a sample of the complaint in each of the suits.

The Court: It may be filed.

Mr. Anderson: As the stipulation provides that counsel shall have the right to object to the evidence as immaterial and irrelevant, and since that is expressed to be at the time it is introduced, I should like at this time to note that objection.

The Court: It may be noted.

Received in evidence and marked "Defendant's Exhibit No. 287." (*See Exhibits, Vol. V, page 3247.*)

Mr. Galloway: If your Honor please, the plaintiff at this time wishes to offer a stipulation concerning the 62 Bills of Complaint which have been filed here, which agrees upon a diminution of the record in that respect. It is signed by counsel on both sides and follows in sequence the stipulation which has just been filed.

Received in evidence and marked "Plaintiff's Exhibit No. 661." (*See Exhibits, Vol. I, page 683.*)

Mr. Kresel: I now offer in evidence the minutes of the American Dyes Institute of January 8, 1919; your Honor will recall that the Government put in a great many of the minutes of this American Dyes Institute and, while we consider the whole thing immaterial, in view of the fact that some are in the explanation contained in these minutes is absolutely necessary.

Mr. Anderson: I have no objection, sir. I thought they were all in.

Received in evidence and marked "Defendant's Exhibit No. 288." (*See Exhibits, Vol. V, page 3296.*)

Mr. Kresel: We offer in evidence the minutes of the American Dyes Institute meeting held on April 4, 1919.

Received in evidence and marked "Defendant's Exhibit No. 289." (*See Exhibits, Vol. V, page 3300.*)

Mr. Kresel: We offer in evidence the minutes of a joint meeting of the Board of Gevernors and the Executive Committee of the American Dyes Institute, held April 8, 1920.

Received in evidence and marked "Defendant's Exhibit No. 290." (*See Exhibits, Vol. V, page 3308.*)

Mr. Kresel: We offer in evidence the minutes of a meeting of American Dyes Institute, held on April 12, 1920.

Received in evidence and marked "Defendant's Exhibit No. 291." (*See Exhibits, Vol. V, page 3313.*)

Mr. Kresel: I offer in evidence the amended constitution and by-laws of the American Dyes Institute. The Government put in the original set of the constitution and by-laws. These have since been very materially amended, and were so amended prior to 1919.

Mr. Anderson: Does it appear on their face when they were amended? Because otherwise I should object to them.

Mr. Kresel: No, there is nothing. I do not find any date thereon.

Mr. Anderson: Are those in the minutes? Do the minutes identify the amendments?

Mr. Kresel: Some of the amendments contained in these by-laws are referred to in the minutes.

Mr. Anderson: I would not object to the marking if it appears by the minutes that the amendments were made and what the amendments were; the minutes are introduced and they speak for themselves. But I have no way of identifying this copy, its correctness or when it was made, and I will have to ask that the original minutes be introduced and be properly identified.

Mr. Kresel: In the minutes of the meeting of January 8, 1919, which have just been marked as Defendant's Exhibit No. 288, there is found this statement:

"Amendments and changes in by-laws and constitution read and approved."

That is January, 1919. The minutes do not show what the amendments were.

Mr. Anderson: Then I could not accept the statement that these were adopted.

The Court: In order to make the book admissible, would it not be necessary to have a witness identify the by-laws therein referred to?

Mr. Kresel: Certainly, if counsel objects.

Mr. Anderson: I have never seen the book.

The Court: The objection, I think, is well taken, Colonel Anderson.

Mr. Kresel: If your Honor please, upon stipulation of counsel I now offer to read and shall not read, because it would take too long, the statement of Harry E. Danner, treasurer of the American Dyes Institute, made before the subcommittee of the Committee on the Judiciary of the United States Senate on Senate Resolution No. 77, which appears printed at pages 491 to 499 of the proceedings before that committee, with the exception, however, of one sentence which appears at page 497 of this record, which I have marked in parenthesis, that is to be omitted.

THE COURT: Is this book in evidence?

MR. KRESEL: No, your Honor.

THE COURT: The book can be given a specific number, which will apply only to the pages indicated.

MR. ANDERSON: I wish to state in regard to that, if your Honor please, in order to save bringing Mr. Danner back, I stipulate that he would testify as therein stated. I do not stipulate the evidence, of course. I merely stipulate that he would go on the stand and testify to that evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 292." (*See Exhibits, Vol. V, page 3327.*)

MR. KRESEL: I offer in evidence assignment by the Alien Property Custodian to the American Radio Company of three certain letters patent described in this assignment, the instrument being dated the twentieth day of November, 1919. I think your Honor might properly inquire as to the relevancy of that. It is this: They have to do with the wireless stations that were seized by the Government. There was a corporation called The American Radio Company, which controlled the patents for the Government; and at the request of the Government, the Alien Property Custodian conveyed these three patents to The American Radio Company. This is to fill out the series of assignments to the Government that I have hitherto put in.

Mr. Anderson: In addition to the general objection, I make the further objection to this document that it appears to be between the Alien Property Custodian and The American Radio Company, and I do not see that it has any bearing upon the issues.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 293." (*See Exhibits, Vol. V, page 3347.*)

Mr. Kresel: I offer in evidence an assignment signed by F. D. Roosevelt, Acting Secretary of the Navy reassigning to the Alien Property Custodian of three certain patents also relating to the wireless system. This is dated November 11, 1919.

Mr. Anderson: This document is subject to the general objection. I haven't any specific objection.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 294." (*See Exhibits, Vol. V, page 2801.*)

Mr. Kresel: I offer a memorandum taken from the files of the Alien Property Custodian in reference to the reassignment by the Navy Department to the Alien Property Custodian of the three patents, which reassignment is so marked Defendant's Exhibit 294.

Mr. Anderson: If your Honor please, I take it, of course, that the statement of counsel on the record as to these papers has no bearing. It is simply his description as he understands it. I do not agree with him on his interpretation of those papers, and I would not like that to be accepted.

THE COURT: I assume it was for the purpose of identifying it on the record.

MR. ANDERSON: As to this memorandum from the Alien Property Custodian's office, or said to be from the Alien Property Custodian's office, I do not recall having ever seen it or heard of it. It is not signed by anybody.

MR. KRESEL: That memorandum is a memorandum which came, Colonel Anderson, with these stiff gray folders which were brought in here from the Alien Property Custodian's office. Do you remember that, Mr. Galloway?

MR. GALLOWAY: No, I do not.

MR. KRESEL: I will withhold that until it is identified by Mr. Skinner.

I now desire to read to your Honor the testimony of Brigadier-General Amos A. Fries, which, by stipulation, is being read as if the witness had been sworn here. The stipulation is that if sworn, he would have given this testimony.

THE COURT: Exhibits of that character should come more properly in your testimony record than in your exhibit book, should they not?

MR. KRESEL: I think so, your Honor. Therefore, I am reading it. It is not very long.

THE COURT: It can be copied right in.

MR. KRESEL: I consider it important. This is found in the Hearings before the Committee on Finance, United States Senate, on the proposed Tariff Act of 1921, H. R. 7456, beginning at page 374.

Mr. Anderson: On behalf of the Government we have stipulated, in order to avoid calling General Fries, who desired to go West, that we would consent that this evidence might be read subject to any objections that might be made to his testimony if he so testified upon the witness-stand.

The Court: With the same force and effect as if the testimony had been given in court?

Mr. Anderson: As if it were given here; and that exceptions might be taken to adverse rulings.

Mr. Kresel: (Reading.)

"Gen. Fries: Mr. Chairman and other members of the Senate Finance Committee, I have here a chart that was drawn up about a year ago——

"Senator Watson. Give your name, please, and your experience in this matter.

"Gen. Fries. Amos A. Fries, Brigadier-General, chief of the Chemical Warfare Service.

"Senator Watson. When did you become chief of the Chemical Warfare Service?

Gen. Fries. I became chief of the Chemical Warfare Service in France on or about August 17, 1917, and continued as chief of the service in France throughout the war.

"Senator Watson. Chief of the Chemical Service in France throughout the entire war?

"Gen. Fries. Yes, sir; returning to the United States just before Christmas in 1918.

"Senator Watson. What have you been doing since?

"Gen. Fries. I have been on duty with the Chemical Warfare Service; partly in Washington and partly in command of Edgewood Arsenal, and, since March 1, 1920, chief of the Chemical Warfare Service of the United States Army.

"Senator Watson. When was the Chemical Warfare Service established in connection with the Army?

"Gen. Fries. It was established in France definitely on September 3, 1917. I was put in charge a couple of weeks before that.

"SENATOR WATSON. And before that there had been no such thing in connection with the American Army, had there?

"GEN. FRIES. There had not.

"As I started to say before, I have a chart here which was drawn up a year ago to show the relations between war gas and dyes, explosives, and pharmaceuticals or medicines. It was drawn up for an exhibit in New York City, but serves admirably the purpose of illustrating why the War Department is interested in the coal-tar industry.

"As you know, from coking coal or making illuminating gas you get coal tar, and you distill that and get these crudes of which we give only five here, there being five others.

"SENATOR DILLINGHAM. General, I suggest that your chart will not appear in the record.

"SENATOR WATSON. Name them, please.

"GEN. FRIES. Benzene, toluene, xylene, phenol, naphthalene, and five others. These are put on here because they show clearly what are essential, and the others were omitted because they would have complicated the chart.

"All of our war high explosives, most of our war gases, many of our most important medicines, and our photographic chemicals, all of which are essential in war, come either directly from these coal-tar crudes or in combination with other chemicals. For instance, tri-nitrotoluol, which is the only explosive now used in war by any nation, so far as they have a sufficient quantity of it. Before that it was all picric acid, or some compound of it, which comes from phenol by nitrating.

"We have shown here how these crudes are made into dyes. Toluene is made into dyes and made into high explosives, and the picric acid in the same way and into medicines also. We have shown only one group here, acetanilid; but there are a number of groups coming from benzene and aniline dyes, also from carbolic acid.

"We make chloropicrin directly from the bleach, itself made from chlorine, and picric acid, and it is one of the most important war gases that we have.

"Phosgene is another one of our most important war gases. The Germans learned how to make it and use it. They knew how to make it, because they used it directly in making dyes, and it is so used in this country now. We have sold a good deal of our surplus phosgene to dye makers.

"In that connection, the first phosgene that was made here was made in a chemical plant at Niagara Falls. They had about the only information outside of Frank Hemmingway, who was engaged in chemical production in New Jersey.

"SENATOR SMOOT. To whom do you refer when you say 'we'?

"GEN FRIES. The Chemical Warfare Service.

"SENATOR SMOOT. The Chemical Warfare Service got up this diagram?

"GEN. FRIES. Yes, sir.

"SENATOR SMOOT. From what Germany was already doing?

"GEN. FRIES. Well, from what Germany was doing and also what we had done, and to show, also, what we were going to have to do in the future if we keep prepared on this question.

"From the phosgene dyes were made such as yellows, violets, blues, and in that way, while it was not a coal-tar product, it entered right into the manufacture of dyes.

"We are interested in the medicine side of this question tremendously, and in photographic chemicals as well as the dyes; but the dyes are the most important in a commercial way. Hence, if that is kept up the others rather follow. In fact, the development of the medicinal parts of these coal-tar products followed the development of dyes, even in Germany. Before the war, according to the Tariff Commission's report of

1915, there were only seven concerns engaged in making dyes in this country. In the 1920 report, after six years of total embargo, there are shown 82.

"SENATOR CURTIS. Right there: The seven to which you refer were making a very limited number of dyes?

"GEN. FRIES. A very limited number; and they were using a great deal of intermediates, which are the next step after the crudes, and even crudes imported from Germany. We had a very small coal-tar industry, although we had millions of pounds going to waste in the old-fashioned coke ovens.

"When the war came on the United States could not get enough high explosives from toluene. It could not manufacture any war gases, scarcely, until it began to build its own plants. The Chemical Warfare Service started in with the hope of getting the chemical plants to make those war gases. Their plants were not large enough. They were already overburdened with war orders, and notwithstanding that they had been increasing some of their facilities for the two years that they had been working for the allies on some of those things, the Government had to build tremendous factories throughout the country. Even then, as I said before, some of our very first phosgene was made in chemical works at Niagara Falls, and another at Bound Brook, N. J., the Frank Hemmingway Co. The chloropicrin was manufactured in a concern at I wished to be sure not to fall into a second one. made some of our first mustard gas, but even in Stamford, Conn., while the Dow Chemical Works those cases the Government had to help build additional plants in those places. Those plants not being able to meet the needs, the Government started in and built some other plants, notably one at Edgewood Arsenal, which we now have in condition for use, at a cost of $35,000,000, and several others costing many, many millions more. At the same time, the Ordnance Department built tremendous plants.

"SENATOR WATSON. Where is that $35,000,000 plant?

"GEN. FRIES. Twenty miles beyond Baltimore, on the Pennsylvania Railroad.

"SENATOR WATSON. Is it still operating?

"GEN. FRIES. We are operating the research part of it, which is the only thing we can operate.

"SENATOR SMOOT. You cannot dispose of your products, and the Government does not want them today?

"GEN. FRIES. We could make a lot of products which we could dispose of, but it is not the Government's intention to engage in business. We could make chlorine and bleach and even phosgene for sale.

"SENATOR CALDER. Is it the War Department's desire to maintain and retain that plant?

"GEN. FRIES. It is, until such time as we have so completely developed the coal-tar industry that we can afford to abandon it. As a matter of fact, today we would have to depend on that plant for a large part of our war gases, because we have not the plants throughout the country and the trained personnel to do it. Even now, if we started those plants, we would have to call on the coal-tar industry and other chemical industries for probably three or four or five hundred chemists and chemical workers and chemical operators to put that plant into operation.

"SENATOR WATSON. How many expert chemists have you now in connection with the Chemical Warfare Service?

"GEN. FRIES. We have about 150 or 160, but they are almost entirely on research and development. We are doing those things which we cannot get any college or research institutions to do. There are certain researches and developments in connection with poisonous gases that the college and other institutions do not want to take up.

"SENATOR SMOOT. Do I understand that the Government made these researches and provided the data so that the necessary war materials could be manufactured in this country?

"GEN. FRIES. A considerable part of them. We sent a good deal of it over from France. We had very little information here. One of the most important duties I had as chief of the Chemical Warfare Service in France in the early days was to get this information and transmit it over by officers and men, which we did in many cases, or by letter, to the United States. They got much additional information on phosgene in addition to that which they got in the Oldbury Chemical Works and the Frank Hemmingway Chemical Works.

"SENATOR SMOOT. Did the information come here through the Government?

"GEN. FRIES. Not all of it. Part of our information on the manufacture of chloropicrin came from private parties; and as to the phosgene part of it, the very first that we got came from the Oldbury Chemical Works, at Niagara Falls. Mr. Lidbury, in particular, took an interest in it, and also Frank Hemmingway, at Bound Brook, N. J. The Government added to it just as soon as we could get the information, because it was not in existence in this country in sufficient amount to do the work.

"We were also short, in France, of personnel. We could not get trained chemists, enough for field use. We have a great deal of use for chemists right out in the field.

"One instance illustrates that clearly. In the fight in which the marines were engaged at Belleau Woods a report came back to corps headquarters that the Germans were using a new gas and they did not know just what to do. One of the ablest men I had, a chemist, was sent there and rushed into the thickest of the fight, clear through the area, and was able to report to them that it was no new gas; that it was the same gas they had been using, and that our gas masks were a protection against it.

"That information was of very great importance to that command and the whole division operating around there. We will need more men of that kind in a future war. We could not get enough of them in France.

"Senator Watson. How many poisonous gases did you send abroad during the war that were made in America?

"Gen. Fries. We sent out four or five. Of course, chlorine was sent abroad. It was used as a poisonous gas in cloud gas, but now it is not really considered a poisonous gas, being much less poisonous than many others. We sent abroad some mustard gas, a great deal of chloropicrin and a great deal of phosgene.

"Senator Watson. Had any of those been made in the United States before the war?

"Gen. Fries. Not at all. There was a little experimental work in the laboratories with phosgene.

"Senator La Follette. To what extent had it been made outside of this country before the war?

"Gen. Fries. Phosgene had been made to a considerable extent in Germany.

"Senator La Follette. How about the others that you named?

"Gen. Fries. I do not think chloropicrin had been made to any extent at all. Mustard gas had not.

"It is interesting in connection with the dye question to note that the Germans used one of the ingredients that they finally made mustard gas from in photographic chemical work, allied with the coal-tar products, and were able to make mustard gas rather quickly, after they decided to make it, by a method which had been known since 1886. We could not make it by that method, and never did, because we had not developed that part of our photographic or coal-tar industry. So we had to introduce an entirely new method developed chemically by Prof. William A. Pope, of England, and by the Usine du Rhone, a dye plant in France, where it was first worked up. It was later perfected by Levenstein, a dye manufacturer of England. The process that we are now using is practically the latter's.

"The result was that through our not having that information, which the Germans had in making these products for dyes and photographic chemicals, it was eleven and a half months after the Germans began using mustard gas before we could fire any back at them. It is probable that had we had this industry developed we would have saved several months and a good many lives.

"Senator Smoot. Germany is not making any of those gases at the present time, is she?

"Gen. Fries. Presumably not; unless, perhaps, she is making phosgene for dyes.

"Senator Smoot. That would be the only thing.

"Gen. Fries. And also chloropicrin is used to some extent directly in making dyes, and she can make some of that.

"Senator Smoot. But there is very little demand for it in the world today, is there not?

"Gen. Fries. Comparatively little.

"Senator Smoot. Of course, you will not make any until there is a demand?

"Gen. Fries. No, sir. But every one of these plants that are making dyes or medicines or photographic chemicals or perfumes or any of these other products that come from coal-tar can be turned, in a few weeks, into explosive plants. If we have not those plants, then we have got to build huge plants such as we built during the war; and in the next war we will not have time for it.

"Senator Watson. Germany, before the war, had made explosives.

"Gen. Fries. Extensively.

"Senator Watson. And they were all a product of the dye industry?

"Gen. Fries. Yes, sir.

"Senator Smoot. They made the same explosives that we made in this country, did they not?

"GEN. FRIES. We made more dynamite from nitroglycerine than anything else, and we made very little trinitrotoluol because we had not the by-product to make it from. We went so far during the war, in order to get this toluene, as to rob the illuminating gases of New York City, to a very great extent, to get enough toluene to make the trinitrotoluol. Before that most of the countries were using picric acid or some picric-acid compound. For instance, that was the explosive dunnite of the United States, the lyddite of England, the mellinite of France, and the shimose of the Japanese.

"We are interested because we believe that without a complete development of the coal-tar industry we cannot be nationally prepared in case we have to be, and we will not have time in the future to build a great plant such as the one at Edgewood. Even if we keep that up we are going to have to depend upon these industries for the trained personnel to operate with. We could operate now in forty-eight hours if we could get the trained men, but we have got to draw them from these other sources.

"We have felt that the embargo was a success during the war, in building up this industry from, say, 7 plants to 82, and that if it had done that during this time, the embargo, continued for some time, would eventually develop our industry to the point where we would be making practically all the dyes that Germany is making, and we would be utilizing all of the coal-tar products. In other words, before they do that they have got to change over many beehive coke ovens to those that will save the coal tar.

"SENATOR SMOOT. General, if the industry can be protected by a rate of duty, you have no love for the embargo, have you?

"GEN. FRIES. Not at all.

"SENATOR SMOOT. All you want, you say, is that the coal-tar products from which explosives and the necessities in the United States are made in case we get into another war have sufficient protection to enable the amount to be made that the Government would require?

"Gen. Fries. Yes, sir. But looking at it from the result before the war, when we had a duty on dyes and when we had made practically no progress, and looking at the progress we made under the six or seven years embargo due to the war, which was a total embargo, it would seem the part of wisdom, to me, to continue that embargo long enough to develop the other 40 per cent. of these coal-tar products and the other 500 or 600 dyes that are not made in this country.

"Senator Smoot. You know that the rate of duty was rather low on dyes; that is, the rate was put upon the dyes in the Underwood bill according to the request made by the dye manufacturers of the United States. At that time they had no idea or thought of making explosives for the Government of the United States. That came about on account of the war. But there is no question in my mind—there may be in the mind of others—that 90 per cent. of all of these can be protected by a rate of duty; and I am perfectly willing to give them a rate of duty, but am opposed to any embargo.

"Gen. Fries. So far as I have been able to investigate it and talk with those I thought well informed, I do not see how a duty, unless it were a hundred per cent. of the American cost, would keep them out.

"Senator Smoot. I would rather do that than have an embargo." * * *

"Senator Watson. And as they developed the dye on one side by adding a little of some chemical, or by taking away a little of some chemical, they could make an explosive, and over on the other side they could make a medicine?

"Gen. Fries. Yes, sir.

"Senator Watson. So that nearly all of these coal-tar medicines came from research work in the German industries.

"GEN. FRIES. Yes, sir; and mustard gas came into being in just that way, because Victor Meyer, in 1886, discovered mustard gas and worked with it until he found it produced these burns that were produced during the war, and he had to quit working with it. It was undoubtedly at the same period of time that the investigation I spoke of awhile ago, beginning in the seventies, that Germany discovered mustard gas and a number of other compounds as well as most of the gases employed toward the end of the war.

"THE CHAIRMAN. What were you quoting from, General?

"GEN. FRIES. I am quoting from the Report of the British Mission Appointed to Visit Enemy Chemical Factories in the Occupied Zone Engaged in the Production of Munitions of War.

"SENATOR SMOOT. General, you put the whole of it in.

"SENATOR WATSON. Yes; do not read it all, but put it in.

"THE CHAIRMAN. How long is it?

"SENATOR SMOOT. It would be best to have it all in."

THE COURT: When was that report or testimony given?

MR. KRESEL: This testimony, sir, was given August 3, 1921.

I offer in evidence a letter from Honorable John W. Weeks, Secretary of War, dated August 15, 1922, directed to the Chairman of the United States Senate Finance Committee, which is printed in the Congressional Record under date of August 17, 1922, at page 12,540. I may say, your Honor, that this is a letter from Secretary Weeks, with reference to the bill then pending before Congress with reference to the dye industry, in which the Secretary points out the importance of the industry as a national defense.

Mr. Anderson: I object on the ground first that it is immaterial and irrelevant; and on the second ground that it is a letter written in 1922, about the time, I think, this bill was filed——

Mr. Kresel: So much the better.

any bearing upon the transactions affected in the bill; and in the second place, being subsequent to the letter of the President upon which this bill is based, it is further immaterial and irrelevant.

The Court: I will hear you, Mr. Kresel.

Mr. Kresel: I will say, if your Honor please, first, that I desire to proceed, after offering this letter, to offer a letter from the President himself upon the same subject, and also a letter from Secretary Denby of the Navy; but quite aside from that, the fact that this letter is dated subsequent to the President's letter, in my humble judgment, it does not deprive this letter of probative value. As your Honor has several times stated, one of the questions that the Court has got to decide is whether the President, in the exercise of his duties and the discretion vested in him by Congress, had a right to take into consideration the disposition of this property, that it had a relation to the national safety.

Now, though it is true that that question was determined by the Executive in 1919, the relation of the dye industry to national safety has by no means been changed from that day to this. This is evidence that we offer, of men best fitted to know the importance of the dye industry in the matter of national defense. It is as true today as it was true early in 1919, when this transaction was put through. It certainly cannot be said that if I call General Pershing on the witness stand here today that the Government could be heard to say that his testimony as to the importance of the development of the dye industry in its relation to national defense is immaterial, because he is giving the testimony today and not in 1919; and I propose to offer a letter from General Pershing upon this very question, written by him to Congress, when Congress was determining whether or not to protect this dye industry, in order that it might be the basis of national defense.

Mr. Anderson: I am willing to concede that the views of General Pershing and the Secretary of War, and all other competent persons advising Congresss as to its policy and the exercise of its legislative discretion, may be very important. They are the natural sources of information for Congress. The sole question as I understand it, before this Court, is a question of law, upon the facts in this case, and whether it be a wise policy or an unwise policy, as I understand it, is not a question for the consideration of this Court. Therefore, what might be very pertinent to Congress has absolutely no relation here, but is improper for consideration here. Believing that to be true and as fundamental as the form of our Government itself, and as elementary as the alphabet, I object to the evidence, not because I question in the slightest that the dye industry is important commercially, and may, if the emergency should arise, like every other industry, become important as a part of the national defense and of the national military activity if that occasion should arise, as also the steel industry and all others, and I do not question its importance, nor does the Government stand here to question the importance of this industry from any standpoint, no matter what it is, either the dye or chemical or any other from the standpoint of military defense, or anything else, but it is very important that in a lawsuit to say that there are certain rules of evidence and law which control the action of the Court; and my contention is that this matter cannot be brought within those rules.

Mr. Kresel: In other words, the Government comes in to vindicate the rights of the Germans upon a claim that their property has been confiscated; and the Government says that it is not interested in this case with the proposition that that property was vital for the safety of this country and that it will estop us from proving that fact to the Court.

Mr. Anderson: No, sir. The Government does not come here to vindicate the rights of the Germans. It is not interested in the rights of the Germans except to the extent of its duties under International Law. It is profoundly interested in the duties and the obligations, legal and moral, of the United States, and therefore, conceiving those duties to require its action, those who are charged with the duty of deciding that question have decided it. Except as stated, they have no interest whatever in the Germans one way or the other, but they have a profound interest in the obligations, legal, moral and international of the United States.

In the second place, the Government of the United States has not in this proceeding and does not propose in this proceeding to undertake to prevent the defendant or any one else who is charged with that duty or has that right in this court from proving any fact in a legal manner which has any bearing upon the issues in this case. But it does propose, as a part of its duty, in not only protecting the rights committed to its care as it sees them, but in the administration of the law, to insist to the best of its ability, or at least to submit to this Court for its consideration—I would not use the word "insist"—that the issue be tried under the rules of law and evidence which control the operation of a law suit. That is the position of the Government.

THE COURT: I follow you, Colonel Anderson. My difficulty is this. I have doubts as to whether it is proper testimony to be taken into consideration by me in determining the issues of this case. It is a question for me to determine hereafter, as best I can, whether those issuing orders in 1918 and 1919 were or were not authorized to consider the military value of the chemical plants in authorizing the private sale of these properties for a specified sum. That is one of the difficulties. Do these communications from such officers as General Pershing and Secretary of War Weeks to the President of the United States come under your stipulation?

MR. ANDERSON: They do not come under the stipulation, but we will not raise the question of their authenticity.

THE COURT: As I understand you, Colonel Anderson, if the Government were to concede that military value was one of the questions that would have to be determined, you contend this is not proper evidence to be received in that determination, as I understand you. Am I right?

MR. ANDERSON: You are right in both; that the military value and the economic value, while matters of profound importance in a proper forum, were not to be considered by the Alien Property Custodian; and second that they are not evidence in any event.

The Court: There is no documentary evidence offered by you that was rejected. They were all admitted under the General Rule. Is that not true?

Mr. Anderson: I think that is probably true, sir.

Mr. Kresel: Why qualify it. Is it not all true?

Mr. Anderson: I think it is probably true, as far as I can recall. If you ask me for an absolute answer, I say to you that I do not know what is in this record. I cannot recall the details of several weeks.

Mr. Kresel: You can recall whether anything has been rejected.

Mr. Anderson: As far as I recall, it has not.

The Court: My recollection, Colonel Anderson, is quite clear that I permitted you to put in every document you offered, aggregating something over 600 exhibits, without considering whether they had any evidential value or not.

Mr. Anderson: I understand that, sir. I merely wanted to put on the record my special objections to this particular evidence.

Received in evidence and marked "Defendant's Exhibit No. 295." (*See Exhibits, Vol. V, page 3350.*)

(Defendant's Exhibit No. 295 read by Mr. Kresel.)

Mr. Anderson: In order to prevent the necessity for reading a lot of that record further, is it not a fact that that was the bill which Congress refused to pass, and that subsequently they did put a sixty per cent. duty on the American valuation?

Mr. Kresel: No. By the way, all of that is somewhat confused now, and I propose in a few minutes to put in a statement of just what the legislation was. I think I have it here now—just what legislation there was to protect this industry.

Mr. Anderson: Whose statement are you going to put in?

Mr. Kresel: I am going to put in a statement drawn from the records. If you do not agree with it you may correct it; or I will give it to you now and you may check it up.

Mr. Anderson: I think I would have to check it up before I could let it go into the record.

Mr. Kresel: I thought you would. All right, I will give it to you and you can check it.

Mr. Anderson: I will check it and see if that is a statement of the legislative procedure.

Mr. Kresel: I offer now a letter from President Harding to Hon. Nicholas Longworth, House of Representatives, dated August 10, 1921, printed in the Congressional Record of August 11th, 1921, at page 4899.

Mr. Anderson: The same objection.

Mr. Kresel: It is short, your Honor, and I will read it into the record:

"The White House

"Washington, August 10, 1921.

"Hon. Nicholas Longworth,
"House of Representatives, Washington, D. C.

"My dear Congressman Longworth:

"I have your note calling my attention to the fact that the bill extending the provisions of the emergency tariff act relating to the protection of the American dye and chemical industry is to be before the House on the morrow. I am aware that the Secretary of the Treasury has already called the attention of your committee to the extreme desirability of extending this protective provision.

"Surely we would be both unmindful and unjust if we failed in a suitable protection of this industry until the new and complete tariff revision act is made effective.

"Very sincerely,
(Signed) WARREN G. HARDING."

MR. ANDERSON: I will withdraw my objection to that letter.

MR. KRESEL: I now offer in evidence a letter from John J. Pershing, dated July 15th, 1921, printed in the Congressional Record the 16th of July, 1921, at page 4087. I shall read it into the record:

"GENERAL OF THE ARMIES,
"Washington, July 15, 1921.

"HON. NICHOLAS LONGWORTH,
"House of Representatives, Washington, D. C.

"Dear Mr. Longworth:

"With reference to the protection for the dye industry in this country, it can be stated that the coal tar products of which these are the most important at present in peace, are the basis of practically all of our high explosives and most of our war gases. Our shortage of chemical plants in general and dye plants in particular prior to the World War made it difficult for us to obtain a supply of high explosives and gases until we had been in the war for several months. From the above the importance of the chemical industry from a military standpoint will be readily seen.

"Sincerely yours,
JOHN J. PERSHING."

MR. KRESEL: There is one more, your Honor. I offer in evidence a letter from Hon. Edwin Denby, the Secretary of the Navy to Honorable Bois Penrose of the United States Senate, dated July 27th, 1921. This I understand is under our stipulation.

Received in evidence and marked "Defendant's Exhibit No. 296." (*See Exhibits, Vol. V, page 3352.*)

Mr. Kresel: I now offer in evidence the report of the Ways and Means Committee of the House of Representatives on bill H. R. 7456, dealing with the protection of the dye industry; this report having been made July 6, 1921. I want to say here that the portions of the report that I offer are those ending with the first paragraph on page 9. If counsel for the Government desire the whole report in, I have no objection.

Mr. Anderson: What does the balance relate to?

Mr. Kresel: The balance relates to different schedules of the Tariff Bill, which have no relation to this, and I do not want to encumber the record.

Mr. Anderson: I want, in addition to the general objections heretofore made, to note the objections that I have made to the introduction of reports of Congressional committees.

The Court: Is that what this is?

Mr. Anderson: That is what this is; a report of a Congressional Committee. Of what date, Mr. Kresel?

Mr. Kresel: 1921.

Mr. Anderson: 1921. And I do not think it is necessary to renew those objections in detail.

Mr. Kresel: Your Honor passed on that objection at the time I offered the report of Congressman Longworth on another bill.

Received in evidence and marked "Defendant's Exhibit No. 297." (*See Exhibits, Vol. V, page 3353.*)

Mr. Kresel: I offer in evidence copy of a letter signed jointly by The Chemical Foundation, Incorporated, and the Grasselli Chemical Company, directed to the State Department which bears reference to Plaintiff's Exhibit No. 601.

If counsel requires any explanation of this exhibit, I shall say this: There is evidence in the case with reference to royalties collected by The Chemical Foundation on the Reparation dyes. I think your Honor will recall that some point was made of that. This letter is an explanation of the arrangement that was made with the State Department resulting in those collections.

In substance it was this: These dyes were coming in here and the industry took the position that the dyes should not be thrown onto the market here in competition with production in the United States, unless the competition was reasonable and fair. Therefore, the State Department said that they would let these dyes go in provided they would be subject to the same duty or license fee as any other importations, so that they would stand on an equal footing with production in the United States. That was put in the form of a letter and that is the letter that I offer now.

Mr. Anderson: That letter is not addressed to anybody. I do not know anything about it. Where did it come from?

Mr. Kresel: That letter comes, Mr. Boggs, from the files of the State Department?

Mr. Boggs: It does.

Mr. Kresel: Comes from the files of the State Department?

Mr. Anderson: That is the first I have heard of it. If Mr. Boggs tells me it comes from the files of the State Department, I will waive proof as to its authenticity. But I do not know to whom it is addressed.

Mr. Boggs: Mr. Keohan tells me he got it from the War Trade Board Section.

Mr. Kresel: War Trade Board Section of the State Department.

Mr. Anderson: It may go in subject to verification——

Mr. Kresel: You may make inquiry as to that.

Mr. Anderson: And reserving all other objections.

Received in evidence and marked "Defendant's Exhibit No. 298." (*See Exhibits, Vol. V, page 3367.*)

Mr. Kresel: Mr. Galloway, we asked for the production of the report of Colonel Joyes made to the War Department. Is that now available?

Mr. Galloway: It is not available.

Mr. Kresel: May it be understood, your Honor, that when it is available, we may put it in. The Government is trying to get it for us.

The Court: Yes.

Mr. Kresel: I shall mark it on my list "reserved".

Now, we asked for some cablegrams from the State Department. Have those been produced?

Mr. Galloway: Yes, I have those at the hotel. I haven't them here. I have had them copied.

Mr. Kresel: Will your Honor permit me to hold that open. I will reserve that.

The Court: Yes.

Mr. Kresel: How about the report of Major Sill?

Mr. Galloway: That was only requested yesterday, and I have not got it.

Mr. Kresel: May I reserve that, your Honor?

Mr. Anderson: What was that?

The Court: Report of Inter-Allied Commission inspecting the gas plants of Germany?

Mr. Kresel: Yes, your Honor.

I have already stated, your Honor, that our translation of the French document was not complete, and I understand that I have the right to make a translation of the plans, submitted to the other side, and if correct, it will go in.

I offer in evidence Executive Order No. 3764, made by President Harding, and Signed December 11, 1922, covering private sale by the Alien Property Custodian of 989 shares of the common capital stock of the Busch-Sulzer Brothers Diesel Engine Company, and in that connection I offer in evidence the first paragraph on page 56 of the Annual Report of the Alien Property Custodian for the year 1922, which deals with this private sale.

I may say here, your Honor, that the only purpose for which I am offering this Executive Order is that of indicating the form and the specification of reasons actuating the executive in making the Executive Order, my purpose being to indicate that they are almost word for word the form that is being attacked here by counsel for the Government as insufficient.

Mr. Anderson: I shall not object, in view of the statement of counsel. I do not see that it has the slightest bearing; but in view of the fact that it is an order of the President of the United States, and the statement of counsel, I am not going to make any objection to it whether as to relevancy or anything else.

The Court: You mean it has evidential value?

Mr. Anderson: Not the slightest; I do not think it has a thing to do with it. But if counsel wants it to go in and can make any argument upon it whatever—I am not making the objection because I do not want to have another argument about the Government trying to suppress something.

Mr. Kresel: If we have gotten to that point I have done well today.

Mr. Anderson: Yes, I have gotten tired of it.

Received in evidence and marked "Defendant's Exhibit No. 299." (*See Exhibits, Vol. V, page 3368.*)

Mr. Kresel: Permit me to read the three reasons that are assigned here. (Reads from Defendant's Exhibit No. 299.)

Mr. Anderson: If your Honor please, I do object to putting on the record in this case an argument on this order. If they insist on arguing it, I shall object to its going in.

Mr. Kresel: Then I will not argue it.

I read from the first paragraph, page 56, of the Annual Report of the Alien Property Custodian, for the year 1920, as follows:

> "Sales other than real estate: (1) 990 shares of Busch-Sulzer Brothers Diesel Engine Company stock was sold to C. Drummond Jones of St. Louis, Missouri, on December 29th, 1922 at $40 per share, under authority given in Executive Order 5,990, dated December 11th, 1922, for which the sum of $39,600 was received."

Mr. Anderson: Subject to my general objection.

Mr. Kresel: The first statement of Professor Stieglitz that I am about to call to your Honor's attention refers to testimony in open Court. May I read it on the record, your Honor:

> "My delay in answering the question of Colonel Anderson as to the revealing of information as to processes to defendant's counsel was due to my uncertainty as to whether in law the letters al-

ready put in evidence would be considered as a revelation. Assured in regard to the legal question in my mind, I was prepared to answer 'No.' Having unconsciously fallen into one legal pitfall, I wish to be sure not to fall into a second one.

(Signed:) JULIUS STIEGLITZ.

Chicago, July 16th, 1923."

MR. ANDERSON: Of course, it is not evidence, but if he wants to put it on the record for any personal reason, I am not not going to object.

MR. KRESEL: This second one, your Honor, is with reference to testimony taken in chambers.

THE COURT: Is there agreement about it?

MR. KRESEL: There is agreement about it.

MR. ANDERSON: I have no objection to its going in, sir, if the witness desires it and feels it would be of any benefit to him. I do not see that it has any meaning one way or another.

THE COURT: Let it be embodied in the impounded testimony. That may be handed to Mr. Smart to be added to the testimony taken in chambers.

MR. ANDERSON: The record will show how it was added, that it was sent by Professor Stieglitz, and by agreement of counsel, at his request, was added to the testimony?

THE COURT: This report will show that.

MR. KRESEL: This one, that I am about to hand up to your Honor, is not agreed to by the other side.

THE COURT: The portion of the testimony of Dr. Stieglitz to which you just referred will be on a page marked "Testimony subsequently forwarded."

MR. ANDERSON: Would your Honor mind having it marked "Additional Statement of Dr. Stieglitz, admitted in the testimony on this date, by consent of counsel?"

The Court: All right.

Mr. Kresel: The memorandum I am about to hand up to your Honor, Colonel Anderson objects to. Before I hand it up to your Honor, I desire to state that this refers to the occasion when your Honor sent us out the first time, to agree upon an answer to a particular question. With that explanation, I will hand it up to your Honor.

Mr. Anderson: I wish to say, if the Court please, that the record shows the conditions under which we were sent out, the return, and the answer of the witness, which was read at that time, which I think is complete.

Mr. Kresel: But the record does not show that the answer which the witness read was an answer that was agreed upon between counsel. That is the point that is made by Dr. Stieglitz, and I think is very well taken.

Mr. Anderson: That is just the part that I do not want, because I did not agree to his answer. I agreed that he might make the answer. I did not object to his making the answer, subject to my general objection, and subject to all other conditions at the time.

The Court: I fail to understand just what is intended to be covered by this, Mr. Kresel.

Mr. Anderson: So do I, sir. Therefore, I object to it.

Mr. Kresel: May I have it, your Honor? I haven't it in mind.

The Court: I think probably you can tell me without disclosing the contents of the document.

Mr. Kresel: This refers, your Honor, to the fact that at that conference in the room outside, Professor Stieglitz freely disclosed to the Government counsel what was subsequently disclosed in chambers more at length; in other words, that when he was testifying in open Court here and before there was any mention made of the gentleman whose name was subsequently brought in, the Government knew the facts because Professor Stieglitz had divulged them to the Government the day before. That is the point that the witness is making here.

Mr. Anderson: To the contrary, we went out—I do not remember the day—under your Honor's order, to talk with Dr. Stieglitz who had the right, under your Honor's direction, either in open court or otherwise, to disclose any information that he had. Your Honor had power, under the express provisions of the Act, to require it.

Your Honor, therefore, in order to protect the information so far as might be deemed desirable, instead of ordering the witness to answer in open court directed us to go into conference with him and see if we could not agree upon a statement which would embody the information the question called for and which would not necessarily disclose the information which it seemed injudicious to disclose without going into chambers to take the evidence.

We went in there. What the question was I do not now recall, and I could not even recall the substance of the answer; but the witness told us certain facts which Mr. Kresel wrote down in the form of an answer, which the witness approved, and we said we had no objection under your Honor's order to that procedure, subject to our general objections. He came back and gave that answer, and that all appears of record. I objected to any further statements or explanations of what took place under those conditions. The record states what did take place—that we went out under orders of the Court, that we returned, and that the witness gave a certain answer to the question.

Mr. Kresel: I think your Honor better talk with us privately, because I do not think I have made myself plain.

The Court: Yes. Won't you come up to the Bench?

(Discussion of Court and counsel then ensued not reported.)

The Court: This statement may be embodied in the private record as a part of it:

Colonel Anderson or Mr. Knight, or both, may file a further statement if they desire. If it is questioned, then I shall embody as a part of the record the full statements made by counsel to me in chambers prior to the return of counsel and Dr. Stieglitz to the public Court room and giving the answer which had been prepared in conference with counsel.

Mr. Anderson: If your Honor please, I hope you will permit me to say that so far as that statement is concerned it is not in the form of evidence and it is not in conformity with my understanding, and if that statement is to go on the record, so far as that is part of the record in this case, I shall ask leave to cross-examine Dr. Stieglitz on it—simply because it is getting into a snarl that is going to embarrass us all before we get through.

The Court: I think I can save that, probably, by making my own statement of what transpired.

I do not see any particular good that it does anywhere and I think it can be covered in a way that would not do any harm. I will ask Mr. Smart to come into my chambers after adjournment today and will dictate a memorandum and hand that to counsel.

Mr. Kresel: If your Honor please, the Government concedes that the release and license from the Foundation to the United States Government, covering all of the patents conveyed to The Chemical Foundation by the Alien Property Custodian, was recorded by the Government in the Patent Office on January 15, 1923, in Liber Z 118, page 1, except Schedule E, which refers to copyrights.

Mr. Anderson: The Government does not concede it in the way it has been put in the statement made. I am perfectly willing to let those two letters go in to speak for themselves. The Government does not concede that it was recorded by the Government or its legal effect.

Mr. Kresel: I am not pleading the legal effect. What do you mean, the Government denies that the Government recorded it?

Mr. Anderson: I did not say it denied it, but I will not concede it. Whatever the effect is of that statement with reference to depositing that in the Patent Office, by a Rear Admiral of the Navy, is a question for argument. I am perfectly willing that the facts be put on the record, but I will deal with facts when I come to argue it and I will not make any concessions along that line. You can put both of those letters on if you want to and we will argue their legal effect when we get to it.

Mr. Kresel: May I read the letter, your Honor. There is no need of putting it in as an exhibit. It is headed "Navy Department, Bureau of Ordnance, Washington, D. C." It is dated January 11, 1923, and is addressed to Hon. Commissioner of Patents, U. S. Patent Office, Washington, D. C.:

"Subject: Release and License—Chemical Foundation Company, Incorporated.

Enclosures: (A) Release and License.

(Herewith) (B) Schedules A, B, C, D and E.

Sir:

There are herewith forwarded for recording in the assignment records of the Patent Office a Release and License from The Chemical Foundation Company, Incorporated, to the Government of the United States of America together with Schedules A, B, C, D and E.

The Release and License was returned by you when formerly presented in order that the patents specifically included could be incorporated and these patents are enumerated in the schedules above referred to.

"Inasmuch as this Release and License convey certain interests to the Government of the United States, it is believed that no recording fee is required. After recording it is requested that all of these papers be returned to this Bureau.

Very truly yours,
Chas. B. McVay, Jr.,
Rear Admiral, U. S. N.,
Chief of the Bureau of Ordnance."

It is conceded at least, is it, that that refers to the release which is now in evidence—or will you not even concede that?

Mr. Anderson: I will concede that it refers to a certain release and assignment, of what date I do not recall, that you introduced in evidence.

Mr. Kresel: November 17, 1921, Defendant's Exhibit No. 86. The letter that I have just read or a copy thereof is enclosed in a letter dated July 9, 1923, from the office of the Judge Advocate General of the Department of the Navy, directed to Mr. Galloway:

"HERMAN J. GALLOWAY, ESQ.,
Special Assistant to the Attorney General,
Hotel duPont, Wilmington, Del.,

"Sir:

"In compliance with your request there is enclosed a copy of letter dated January 11, 1923, from the Bureau of Ordnance of this Department to the Commissioner of Patents transmitting, for recordation in the assignment records of the Patent Office, a release and license from The Chemical Foundation Company, Inc., to the United States of America, together with Schedules A, B, C, D and E.

"This instrument was recorded in the Patent Office January 15, 1923, in Liber Z-118, page 1, except Schedule E, copyrights.

Very respectfully,
(Signed) J. L. LATIMER,
Judge Advocate General of the Navy."

You need not concede it. I now desire to put upon the record a statement with reference to the several proceedings before Congressional Committees in which the question of the sale of these patents by the Alien Property Custodian to The Chemical Foundation was investigated, and they are these:

The first one was before the House, Ways and Means Committee on H. R. 2706 and H. R. 6495, July 18th to 20th, and July 14th to 18th, 1919. Do you concede it?

MR. ANDERSON: I do not concede that the subject of the sale of these patents was investigated. I do concede that certain evidence was taken in relation thereto.

MR. KRESEL: Very well.

THE COURT: The record shows the document to which reference is made. That will be sufficient.

MR. KRESEL: The next proceeding wherein

the subject was investigated, if I may put it that way, was before the Committee on Finance of the United States Senate, Sixty-Sixth Congress, Second Session, on H. R. 8078, and those hearings were December 8th, 9th, 10th, 11th, 12th and 13th, 1919, and January 12th, 1920.

Mr. Anderson: Subject to my general objections I am willing to concede that certain statements were made at that hearing with regard to the transaction by certain persons.

Mr. Kresel: The next hearing wherein this subject was discussed if I may so say, was before the Committee on Finance of the United States Senate, on the proposed Tariff Act of 1921, H. R. 7456, those hearings being in the month of August, 1921.

Mr. Anderson: The same statement with respect to that.

Mr. Kresel: The last hearing was that before the sub-committee of the Committee on the Judiciary of the United States Senate, Sixty-seventh Congress, Second Session, pursuant to Senate Resolution 77, otherwise known as the Shortridge Committee, which was created as a Special Committee to investigate the expenditures made in behalf of various propaganda and in the maintenance of lobbies in Washington, and those hearings began in the month of February, 1922.

Mr. Anderson: The same statement as to that, sir.

Mr. Kresel: This last hearing is a hearing with reference to an alleged dye monopoly, and is so printed in the record.

If your Honor please, upon the examination of Mr. Garvan, there were two leaflets marked for identification that I omitted to offer in evidence. I desire to do so now. I offer in evidence

Defendant's Exhibit M for Identification and Defendant's Exhibit O for Identification.

Mr. Anderson: I object for the reason stated as to that character of testimony. It is pure propaganda, if your Honor please, and certainly has no place in this Court.

Mr. Kresel: Your Honor, they are attacking the purposes for which we made expenditures. How is it expected that the Court can pass upon that proposition if the Court has not before it the material that was distributed and for which the money was expended? If counsel will withdraw any such proposition I shall withdraw the exhibit. It is not my purpose to pile up exhibits here.

Mr. Anderson: To the contrary, I do not withdraw it, and the propaganda or expenses for propaganda have been proved. But I do object to putting into this record a lot of books and publications which were pure propaganda, every one of them. They have no evidential value. They prove by the books they spent $340,000 and they put in a list of the books they sent out covering it. To put all that in evidence in this case, to be used in evidence, is simply loading down this record with propaganda which is not in my judgment admissible under any known rule of evidence, and therefore I object to it most strenuously.

The list of the stuff distributed has been put in, and here is a pile of stuff. We might just as well introduce the Congressional Library into the case, if the Government, or I suppose the taxing power, can stand this kind of expense; but for that it would be practically, if this rule is applied, the denial of justice, because no private litigant of any reasonable means could stand any such procedure.

Mr. Kresel: But it is not a denial of justice to charge us with wasting money and not permit us to show the Court what we spent it for.

Mr. Anderson: The list went in.

Mr. Kresel: But the list does not tell the story.

The Court: I am afraid I will have to determine whether it is a denial of justice or not. It is admitted.

Mr. Kresel: If there is any way counsel or the Court can suggest whereby this can be before the Court without putting it actually into the record, I would welcome it.

The Court: I am going to leave that matter for your consideration, and I shall be very glad if you can find any way to do it.

Mr. Kresel: Then will counsel agree to this——

The Court: I will let you confer with Colonel Anderson privately.

Mr. Kresel: Very well.

The Court: Now?

Mr. Kresel: Now or hereafter.

The Court: You might ask him now, but probably you can save the time, both of you, by discussing it together rather than aloud.

Mr. Kresel: All right.

Mr. Anderson: I know what counsel wants to do. I am perfectly willing, if your Honor please, to take all this stuff that has been introduced here, and agree that counsel may use it, bring it and exhibit it in this court as stuff distributed by The Chemical Foundation; that they can take it up to the upper court and exhibit it to the upper court as stuff distributed by The Chemical Foundation. But I do object to its going into the record in evidence in this case. I have not the slightest desire to cut off The Chemical Foundation from showing any expenditure of a dollar or less or more.

Mr. Kresel: I think, your Honor, I will make one suggestion, if Colonel Anderson will agree to it, very well. If not, we will have to find some other way. I propose that each of these books be given an exhibit number and be considered as in evidence, but that none of them should be printed in the record, each side being at liberty to refer thereto and to hand up a copy thereof to this Court or to any appellate court before which this case may come.

Mr. Anderson: If counsel will state what the typewritten memorandums on the front represent and what they mean—I retain my objection to their being introduced in evidence, but if the Court rules that they can go into evidence, then I am perfectly willing right now to agree that they shall not be printed in the record, and that they may be handed up and referred to in any legitimate way that they can be, in this or any other Court. I understand in any event they could not be used as proof of the facts contained therein, but only as proof that they were distributed.

The Court: They are physical exhibits, really. Their contents are not assumed to be true or untrue. They are simply the copies of the matter which the defendant has been engaged in distributing.

Mr. Anderson: But the contents have no evidential value at all, except to prove that the Chemical Foundation has distributed them.

The Court: Has or has not been carrying out the purposes of its charter, as far as I can see.

Mr. Kresel: May I suggest that inasmuch as there is quite a list, that your Honor permit us——

Mr. Anderson: Will you state, Mr. Kresel, what those papers are, because I do not want to have to put somebody on the stand. There are typewritten papers on each one of them.

The Court: That is a summary of Mr. Garvan's testimony, I suppose, because I observed him using these documents when he was testifying.

Mr. Kresel: Yes, sir.

Mr. Anderson: With that understanding, Mr. Kresel, if the Court rules that they can go in—I understand the Court has so ruled, and I have no desire to discuss it—if they are admitted in evidence, reserving all of the objections to them, I am perfectly willing that they should not be printed in the record—I would earnestly object to their being printed in the record—and that counsel on either side may use them in any way that they could use them if they were printed in the record under the ruling of the Court, I do not care what way.

Mr. Kresel: That is quite agreeable.

Mr. Anderson: And with the express reservation that I understand that they are introduced for the limited purpose of showing only that they were distributed by The Chemical Foundation.

The Court: And the character of the books and booklets distributed by it.

Mr. Anderson: Of course, I assume that.

The Court: That is the real purpose.

Mr. Kresel: May I prepare a list thereof tonight and present it to counsel, so that they may pass upon its correctness, and I will put it on the record tomorrow? I do not want to stop now.

The Court: Yes.

Mr. Kresel: I now offer in evidence a statement showing a list of the original subscribers to the underwriting of the stock of The Chemical Foundation, Inc., as to those who were members of the Dyes Institute and to those who were not members of the Dyes Institute, the list being divided.

Mr. Anderson: I object on the ground that it is not evidence unless it is in the record. If it is in the record, then it is already in evidence.

Mr. Kresel: It is not in the record.

Mr. Anderson: And the exhibits introduced in this record and filed with the bill show who were the members of the Dyes Institute and also show who were the underwriters of The Chemical Foundation. Therefore, this is not admissible.

Mr. Kresel: No, Colonel Anderson, you are in error. The records introduced do show who were the stockholders; but the records introduced do not show who were the members of the American Dyes Institute, and that is the purpose of this exhibit.

The Court: The objection is that that exhibit must be proved.

Mr. Kresel: Very well; I am forced to call a witness on that point. Mr. Corwine can tell.

TRANSCRIPT

OF

RECORD

WILLIAM R. CORWINE.

William R. Corwine, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Mr. Corwine, will you give your place of residence?

A. City Club, 55 West 44th Street, New York City.

Q. 2. Have you had any connection with the American Dyes Institute?

A. I was its secretary from May 5th, I think was the date, 1919, until it dissolved, wound up recently, last year.

Q. 3. Do you know who the members of the American Dye Institute were in 1919 and 1920?

A. I do.

Q. 4. Please look at this statement (handing paper). Did you prepare that?

A. Yes, sir.

Q. 5. Is that a correct statement showing which of the firms therein listed were and which were not members of the Dyes Institute in 1919 and 1920?

A. It is correct.

Mr. Kresel: Do you want to cross-examine the witness?

Cross-Examination.

By Mr. Anderson:

XQ. 6. Can you state of your own knowledge, Mr. Corwine, that these persons named on that list were members of the Dyes Institute in February and March, 1919?

A. I can.

XQ. 7. You know that, do you?

A. I do.

XQ. 8. When did you become secretary?

A. In May, 1919.

XQ. 9. Did you have any connection with it before that?

A. Very intimate personal relations with many of them, yes, sir.

XQ. 10. I mean, did you have an official connection with the association?

A. No.

XQ. 11. And you had never been connected with the association officially up to that time, had you?

A. No, sir. The records were in my possession, though.

MR. ANDERSON: That is all.

RE-DIRECT-EXAMINATION.

By MR. KRESEL:

RDQ. 12. I wanted to ask you about this constitution and by-laws. Can you state when this constitution and by-laws, if ever, was adopted by the American Dyes Institute?

MR. ANDERSON: The best evidence of that is the minutes.

THE COURT: Not the exclusive evidence.

THE WITNESS: May I make a statement, your Honor?

THE COURT: Yes.

THE WITNESS: This was adopted prior to my connection with the institute, but is in the records which are part of the evidence in this case, as I understand it, and this was the working copy which I used in the office and under which I worked during the period that I was there, during the period that the institute itself was in existence.

RDQ. 13. Then your statement is that that was adopted before May, 1919?

A. Yes, sir.

RDQ. 14. And was the constitution and by-laws under which the organization operated?

A. Yes, sir.

RDQ. 15. From the time you went there?

A. Yes, sir.

RDQ. 16. And until it wound up?

A. Yes, sir.

Mr. Kresel: I offer in evidence a statement identified by the witness of the persons or firms who are members of the Dyes Institute and at the same time stockholders of The Chemical Foundation and those who are not such stockholders.

Mr. Anderson: I object.

The Court: Have you the books of the Institute, showing the membership?

Mr. Kresel: The minute books do not show who the members were, and those are the only books that are here in evidence.

Mr. Anderson: Mr. Kresel, the minutes are in evidence and the records of The Chemical Foundation showing who were the underwriters are in evidence.

Mr. Kresel: But the minutes of the Dyes Institute do not disclose who the members were.

The Court: Of the American Dyes Institute?

Mr. Kresel: Of the American Dyes Institute.

The Court: And your purpose is to show that of the underwriters of The Chemical Foundation, certain persons were and certain persons were not members of the American Dyes Institute?

Mr. Kresel: That is the purpose. Of course, you know who the stockholders were and who the underwriters were, because that is already in evidence.

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The Court: If there is better evidence than that just given from the stand, it seems to me that should be produced. That given from the stand shows that Mr. Corwine had an official knowledge, in connection with the American Dyes Institute, only from May and not prior thereto.

Mr. Anderson: May I interrupt your Honor? I do not want your Honor to feel that I am technically objecting. If Mr. Kresel will compile a complete list, giving us the verifying data, so that we can check it up, of the members of the Dyes Institute in March, or whenever the underwriting was, February or March, 1919, I think it was, showing the complete list of them, I am perfectly willing to let that list go in of members of the Dyes Institute if it is not in evidence. The list of the underwriters has gone in under stipulation filed with the bill, and the two together show exactly the status with respect to a number of members who underwrote it. If you will make up a complete list of the members of the Dyes Institute, and give us a record from which we can verify it or let us verify it from any reasonable information on the subject, I am perfectly willing to let it go in.

Mr. Kresel: The Government has had the books of the American Dyes Institute in its possession for months. They know more than I do about who the members of the American Dyes Institute were.

Mr. Anderson: But the books do not show it.

Mr. Kresel: If they do not show it, have I not a right to show it by a man who knows?

Mr. Anderson: I understood him to say the books did not show it. As far as I am concerned, We have not had the books of the Dye Institute. We have had the minute books here, so far as we know, and what they show, I cannot recall without going through them. If they will give me a list, I am perfectly willing to stipulate it in the record.

By Mr. Kresel:

RDQ. 17. What access did the Government have to all the books of the American Dyes Institute?

A. Free as possible.

RDQ. 18. Did they take them into their possession?

A. They did.

RDQ. 19. How long did they have them?

A. There were three or four different occasions in which the agents of the Department of Justice visited me and asked me to show them the books, and I did it each time. At one time they were three days, I think, looking over them, besides separate other periods.

RDQ. 20. And did you give them everything you had?

A. Everything, sir.

Re-Cross-Examination.

By Mr. Anderson:

RXQ. 21. And did they look at them at your place?

A. They did.

RXQ. 22. Have they ever been out of your custody?

A. And they also looked at them, Colonel Anderson, where they were stored, in the Newport Chemical Works at Passaic; and I went myself with them and so did Mr. Haynes.

RXQ. 23. And they were in your custody?

A. They were. That is, I was responsible for them.

RXQ. 24. They have been since?

A. Yes.

RXQ. 25. The books outside of the minute books have never been in the custody of the Government, have they?

A. They have been inspected by the Government, sir.

RXQ. 26. I did not ask you if they had been inspected. I asked you whether they had been in the custody of the Government?

A. I do not know what they took out of our files. They took away a lot of stuff.

RXQ. 27. I asked you whether the books and records had ever been in the custody of the Government, do you know, except the minute books which were turned over to us after we got here?

A. As to custody, I do not know. I know that they were inspected.

RXQ. 28. They were inspected. I am not questioning that.

A. (No answer.)

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 29. Is there any book which gives a list of the members of the Dyes Institute in February, March and April, 1919?

A. Yes, sir.

RDQ. 30. Where is that book?

A. There was a pamphlet prepared and issued by the American Dyes Institute which was referred to in the record, which has a correct list of members.

RDQ. 31. Have you a copy of that?

A. I haven't it in my possession. There is one here, a photostat copy of it.

RDQ. 32. You mean it is in evidence?

A. I do not think it is in evidence.

RDQ. 33. Is this list that you have prepared, prepared from that record?

A. Yes, sir.

RDQ. 34. Is it correct?

A. It is.

RE-CROSS-EXAMINATION.

By MR. ANDERSON:

RXQ. 35. Is it a complete list of the members of the American Dyes Institute?

A. Yes, sir.

RXQ. 36. All the members in 1919?

A. Yes, sir; showing those who subscribed and those who did not subscribe.

RXQ. 37. It is a complete list, according to the best of your knowledge and belief, of the membership in February and March, 1919?

A. Yes, sir.

MR. ANDERSON: Very good. If the list is complete, I am perfectly willing to let it go in. I have been ready all the time to do that.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 302." (*See Exhibits, Vol. V, page 3370.*)

MR. KRESEL: I offer the Constitution and By-Laws.

MR. ANDERSON: I object to the introduction of the Constitution and By-Laws because I do not think they have been properly proven.

THE COURT: The evidential value that it has is that it was used as the working set of by-laws during that period. There may be some question involved in connection with that.

Received in evidence and marked "Defendant's Exhibit No. 303." (*See Exhibits, Vol. V, page 3373.*)

MR. KRESEL: If your Honor please, I want to put in a stipulation upon which we are trying to agree with the Government with reference to the character of the schedule that was attached to the release from the Alien Property Custodian to the Government, dated April 10, 1919. Mr. Boggs tells me he has had the matter up with Mr. Galloway, and they think they can come to an agreement on that tonight. May I reserve that until tomorrow morning? The same time that the Alien Property Custodian conveyed to us the patents, your Honor, he executed an assignment of those to the Government.

Mr. Anderson: And delivered it to Mr. Palmer.

Mr. Kresel: And delivered it to Mr. Palmer, who was then Attorney General—right. The schedules to that release are not with the exhibit. The release itself is in as an exhibit.

The Court: A release for any claims of infringement?

Mr. Kresel: Yes.

Your Honor will recall that the Government put in a very great number of exhibits consisting of memoranda and letters between the officials of the War Department, The Chemical Foundation, and the Alien Property Custodian, all dealing with the Government's interests in these patents. Your Honor will recall the statement was made that the Government wanted these patents; that the War Department was anxious to get them and the Alien Property Custodian grabbed them and gave them to The Chemical Foundation. It was upon that theory that they put in a long line of documentary proof. In that same connection, I want to offer some they did not put in.

First, I offer a letter from Ramsay Hoguet to Captain Swenarton, Office of Chief of Ordnance, dated February 25, 1919. These are all under our stipulation, Mr. Galloway.

Mr. Anderson: We have not had copies of them, but you can go ahead.

Mr. Kresel: Yes, you have had copies of them.

Mr. Galloway: No, the last list we never received copies of.

Mr. Kresel: Will you please mark that.

Received in evidence and marked "Defendant's Exhibit No. 304." (*See Exhibits, Vol. V, page 3387.*)

The Court: Have you any more, Mr. Kresel?

Mr. Kresel: I have quite a number, your Honor. I do not propose to read more than two or three paragraphs out of this whole batch. If your Honor will indulge me ten minutes, I think I can finish; and I am very anxious to finish.

The Court: You may proceed.

Mr. Kresel: I offer in evidence a letter from Marston T. Bogart, Colonel, Chemical Warfare Service, United States Army, to Major A. C. Holcomb, with reference to the ownership of alien enemy patents.

Mr. Anderson: I am not objecting to these except the general objections which are reserved, sir. I would like to reserve the right to check them. I have not had copies. I am allowing the copies to go in without an opportunity to check them.

Received in evidence and marked "Defendant's Exhibit No. 305." (*See Exhibits, Vol. V, page 3389.*)

Mr. Kresel: I offer in evidence a letter from A. C. Holcombe, Major, Ordnance Department, United States Army, to the Chief of the Patent

Section of the Purchase Branch, Purchase, Storage & Traffic Division.

Received in evidence and marked "Defendant's Exhibit No. 306." (*See Exhibits, Vol. V, page 3392.*)

Mr. Kresel: I offer in evidence a memorandum for Colonel Hilton made by Major Holcomb, dated May 1, 1919. Before the clerk marks this exhibit, I desire to read one paragraph therefrom. (Reading.)

Received in evidence and marked "Defendant's Exhibit No. 307." (*See Exhibits, Vol. V, page 3393.*)

Mr. Anderson: I wish to reserve a special objection to that letter. It does not appear who Major Holcombe is. I have asked several times where he is. I had expected to get that information from another witness that you were going to call, Mr. Kresel, who for reasons which we have not gone into yet has not been called. I have no objection to it if we can agree as to who Mr. Holcombe is, where he is now, and what he is doing, and where he has been since May, 1919, or about that time.

Mr. Kresel: I do not care anything about where Mr. Holcombe is now. I do not know anything about him and I do not care anything about him. He was a Major of the United States Army and in his official capacity wrote that letter. The Government has put in letter after letter from Major Holcombe. Why this plea of ignorance about who Major Holcombe is? You put in communications from him.

Mr. Anderson: The only thing is, I have been waiting here for one of your witnesses to go on the stand that I might ask the question.

Mr. Kresel: Well, suppose you ask me the question. I may be able to answer it.

Mr. Anderson: That is exactly what I was going to suggest. I was going to take it up with you later. I would rather ask you out of court.

Mr. Kresel: Ask me right now. What is the secret about it?

Mr. Anderson: Has not Major Holcombe been connected with the firm of Emery, Varney, Blair & Hoguet since some time in May, 1919?

Mr. Kresel: I understand that he has been, though I do not know what time.

Mr. Anderson: As their Washington representative?

Mr. Kresel: I do not know whether he was the Washington representative; but if you say so, I will concede it. Now, is the whole secret out?

Mr. Anderson: Not all, but a part of it.

Mr. Kresel: I offer in evidence a letter from J. M. Wainwright, Acting Secretary of War, addressed to the Chairman of the Committee of patents of the United States Senate, dealing with the question of patents, dated August 19, 1921. I shall not stop to read these. They are entirely too long.

Received in evidence and marked "Defendant's Exhibit No. 308." (*See Exhibits, Vol. V, page 3395.*)

Mr. Kresel: I offer in evidence a letter from Charles E. Yetman, Patent Section, Purchase, Storage & Traffic, War Department, dated January 30, 1920, directed to Robert C. Goldstein, Chief Division of Patents, Alien Property Custodian.

Received in evidence and marked "Defendant's Exhibit No. 309." (*See Exhibits, Vol. V, page 3399.*)

Mr. Kresel: I offer in evidence a letter from

P. C. March, Acting Secretary of War, to the Secretary of the Navy, dated March 19, 1921.

May I read a paragraph from this? (Reading.)

Mr. Anderson: What is the date of that?

Mr. Kresel: March 19, 1921, from the War Department.

Received in evidence and marked "Defendant's Exhibit No. 310." (*See Exhibits, Vol. V, page 3400.*)

Mr. Kresel: I offer in evidence letter from Charles B. McVay, Jr., Rear Admiral, United States Navy, to Chemical Foundation, Inc., attention—Dr. Van Doren.

Received in evidence and marked "Defendant's Exhibit No. 311." (*See Exhibits, Vol. V, page 3401.*)

Mr. Kresel: I offer in evidence a letter from Charles B. McVay, to The Chemical Foundation, Inc., dated March 30, 1921.

Received in evidence and marked "Defendant's Exhibit No. 312." (*See Exhibits, Vol. V, page 3402.*)

Mr. Kresel: I offer in evidence an extract from the minutes of a special meeting of the Munitions Patents Board, held December 17, 1918, at which there were present, Mr. Thomas Ewing, Chairman; Major A. Holcombe, and Mr. Pickens Neagle, held in the State, War and Navy Building. I read the following extracts from the minutes (reading):

Received in evidence and marked "Defendant's Exhibit No. 313." (*See Exhibits, Vol. V, page 3403.*)

Mr. Kresel: I trust your Honor will bear in mind that that was December 17, 1918, and I now come to an extract from the minutes of the same

Property Custodian, and I desire a stipulation that Mr. Caton was the director of the Bureau of Trusts of the Alien Property Custodian in 1921. Is that correct, Mr. Galloway?

Mr. Galloway: He was. I cannot say whether he was at that date or not.

Mr. Kresel: This, your Honor, is a memorandum with reference to the dispute about the seizure of a patent from a man named Blass. Your Honor will recall the Government put in certain correspondence with reference thereto.

The Court: Yes.

Received in evidence and marked "Defendant's Exhibit No. 319." (*Same as Plaintiff's Exhibit No. 481. See Exhibits, Vol. II, page 893.*)

Mr. Kresel: We desire to offer in evidence the second prospectus of The Chemical Foundation, which is Exhibit 8 attached to the answer. Probably by inadvertence, counsel for the Government did not put this one in evidence. He did put in the first one, and I now offer the second one. It is Exhibit 8 to the answer.

Received in evidence and marked "Defendant's Exhibit No. 320." (Same as Exhibit 8 to Defendant's Answer. *See Record, Vol. I, page 583.*)

Mr. Kresel: I offer in evidence report of the British Mission appointed to visit enemy chemical factories in the occupied zone engaged in the production of munitions of war, of which commission there were six American representatives, which report is printed at page 210 of the hearings before the Committee on Ways and Means on H. R. 2706; and in this connection I direct attention to the fact that the Government has already put a portion of this report in evidence, which is contained in the speech of Mr. Garvan, put in evidence by the Government. I cannot recall the exhibit number, but it is attached to our answer, and the Government put it in as one of its own exhibits. A portion of that report being in, I now offer the balance of it.

Mr. Anderson: I object, if your Honor please, to that report. We put in so much as Mr. Garvan used in his speech; and he being president of The Chemical Foundation, his speech is legitimate evidence against The Chemical Foundation, and any citation he might make in that speech, he adopts. But that does not, in my judgment, justify the introduction of the entire report of the British Mission, and it is not evidence before a Court of the United States.

The Court: Without taking time to go into it now, I understand your objection, Colonel Anderson. Unless the defense establishes a right to use it at the time of argument, it will not be considered by me.

Received in evidence and marked "Defendant's Exhibit No. 321." (*See Exhibits, Vol. V, page 3437.*)

Mr. Kresel: I now desire to read two extracts from the testimony of Secretary of War Baker, given before the Committee on Military Affairs of the House of Representatives in its investigation of Atmospheric Nitrogen in the Operation of Muscle Shoals. That is the proceeding, your Honor, from which Colonel Anderson read a portion of General William's testimony.

Mr. Anderson: Is it the same proceeding?

Mr. Kresel: The same proceeding. Do you want to see General William's? It is right here.

Mr. Anderson: Under the general rule under which we are proceeding the paper can be read;

your Honor has ruled upon it a great many times —reserving our objection.

The Court: Yes.

Mr. Kresel: I read from page 8 one paragraph, then from the tenth page one paragraph, rather than put it in evidence.

The Court: This will be read into the minutes?

Mr. Kresel: Into the record.

The Court: Yes, rather than marked.

Mr. Kresel: Yes, sir.

Mr. Anderson: Subject to the objection.

The Court: Yes.

Mr. Kresel: Secretary Baker says as follows:

"Plant No. 1 was erected under the general guidance of the General Chemical Co. of the United States, which is one of the largest commercial chemical agencies in this country, really scientific in its processes, and which believed it had a modification of the Haber process, which would be available to us. The Haber process is distinctly a German process. It produces artificial nitrates by a combination of nitrogen—getting the nitrogen from air—under very high pressures at high temperatures. It was thought by the gentlemen of the company that they could modify that so as not to need such high pressure, which was one of the difficulties. Plant No. 1, as I remember, has cost something like $13,000,000. At the time of the armistice, while it was practically a completed plant, all of these difficulties had not been overcome. One was with the catalyzer, which was an unstable thing and needed further scientific research, and the other was the adjustment of some of the pressures, a mechanical difficulty. Both of those difficulties, it is thought, can be overcome by some further research, and is still, to that extent, in an experimental but a hopeful condition."

I read from page 10 the following questions and answers, the questions being put by Mr. Anthony, who was one of the Congressmen:

"Mr. Anthony. How far have the Muscle Shoals plants been brought into production?

"Secretary Baker. The No. 1 plant has made some runs, just to demonstrate the process, and the No. 2 plant has produced, all told, some 6,000 tons, if I recall, of cyanamid.

"Mr. Anthony. That is all nitrogen suitable for explosives?

"Secretary Baker. No; that is nitrogen suitable for fertilizer, but not in the best form—not in the form that the farmers are most accustomed to using it.

"Mr. Anthony. That is under the cyanamid process?

"Secretary Baker. Yes, sir.

"Mr. Anthony. Which you said is the most expensive?

"Secretary Baker. No, Mr. Anthony; quite the contrary. The arc process is the most expensive. The cyanamid process is the cheapest, and it is the only one that is already in commercial use on this continent.

"Mr. Anthony. Is that cheaper than the German process?

"Secretary Baker. The Haber process?

"Mr. Anthony. Yes, sir.

"Secretary Baker. It is the cheapest of any form of electric process that we now operate. It may be that the Germans make it cheaper than that. We do not know all the secrets."

From the same proceedings I desire to read one paragraph, a statement made by General Williams that is found on page 58, talking about the Muscle Shoals plants:

"General Williams. Our first thought was not to operate these plants as Government enterprises but to interest private capital and get them to continue the operation, and we tried for six months, in every way that we could, to interest the manufacturers in taking over this plant, but without success. Now, as I said before, our primary concern being the maintenance of a plant like this in operation for a war insurance, the only way that we saw to accomplish it was by recommending that the Government take this plant and operate it."

I also desire to read, from this same volume, a statement made by Mr. George J. Roberts, who, I understand had some connection with the War Department with reference to the fixation of nitrogen. This is found at page 95 of this volume, and I read one paragraph:

"The question naturally arises, Why does not private industry undertake the operation of these plants? I shall not attempt to give what is in the minds of those who are most interested in the production of nitrates in this country. All I can state is that months of time were expended attempting to get the fertilizer industry interested in taking over and operating the Government plants. The presidents of all the large fertilizer companies in the United States were seen and the matter fully discussed with them, and they were asked if they would undertake the operation of these plants if they were to pay no rental to the Government until they had received 9 per cent. of their working capital, and after that the profit should be divided between them and the Government. A part of the agreement was that the United States would complete the plants so as to provide storage and bagging facilities, a sulphate of ammonia plant and all the work outlined in Mr. Glasgow's letter of October 22. But they could not be brought to the point of making a formal offer. An effort was also made to get certain financiers in New York to undertake to form a company to operate these plants. Scant consideration was given to the scheme and no investigation undertaken. An appeal was likewise made to the coke oven interests, with the same result."

I now offer in evidence a report of Theodore W. Sill, Major, Chemical War Service, United States of America, entitled "American Officers and German Chemical Plants—the Dyestuff Plants and their War Activities," presented to the Committee on Ways and Means of the House of Representatives in its investigation of H. R. 2706, which is printed at page 173 of those proceedings.

THE COURT: Is that a report of the same gentleman who was here?

MR. KRESEL: I do not think that is the full report, your Honor. That is, I think, a partial report made by this same gentleman, showing just what he saw abroad. But I do not think it is the complete report. The Government is trying to get for us the complete report.

MR. ANDERSON: Subject to the same objection.

THE COURT: Yes.

Received in evidence and marked "Defendant's Exhibit No. 322." (*See Exhibits, Vol. V, page 3448.*)

MR. KRESEL: I shall not stop to read any portion thereof at this time, your Honor.

I offer in evidence a portion of the Annual Report of the Federal Trade Commission for the fiscal year ended June 30, 1918, that portion being headed, "Licenses under Enemy Patents, Trademarks and Copyrights," which commences at page 44 of this report and extends to the middle of page 49.

Received in evidence and marked "Defend-

ant's Exhibit No. 323." (*See Exhibits, Vol. V, page 3456.*)

Mr. Kresel: Colonel Anderson, you asked Dr. Bolton to prepare for you a list showing the dates when the duPont Company first produced these various dyes. Here is the list. Do you desire to put it in evidence? You remember, he gave you a partial list from memory; but that is the complete list.

Mr. Anderson: I might have to ask Dr. Bolton to go on the stand for just a minute.

Mr. Kresel: Certainly, there is no objection.

Elmer K. Bolton, recalled for further examination, having been previously duly sworn, testified as follows:

Mr. Kresel: You question him about it.

By Mr. Anderson:

RXQ. 492. I asked you, Dr. Bolton, when you were first on the stand, if you could give me a statement showing the date of beginning of commercial production of the various dyes which were manufactured by the duPont Company under the various licenses which have been discussed. Have you that statement?

A. That is the statement, Colonel.

RXQ. 493. This shows the date on which you began commercial production, is that it, or industrial production, if I may call it that?

A. Yes, sir. This is the time when we came through with the first cost sheets for these different dyes.

RXQ. 494. In manufacture?

A. In manufacture, yes.

RXQ. 495. As distinguished from laboratory?

A. As distinguished from laboratory.

Mr. Anderson: Then I would offer that in evidence, sir.

Received in evidence and marked "Plaintiff's Exhibit No. 662." (*See Exhibits, Vol. III, page 1652.*)

Mr. Kresel: You also asked Dr. Bolton to give you a statement of the Schultze numbers; do you remember?

Mr. Anderson: Yes.

Mr. Kresel: Here is a statement of that.

RXQ. 496. You identify this as a correct statement of the Schultze numbers as applied to various dyes manufactured by the duPont Company under these licenses, is that true?

A. Yes, sir. That is all the information in Schultze relative to the composition of the dyes which we are manufacturing.

Mr. Anderson: I offer that in evidence.

Received in evidence and marked "Plaintiff's Exhibit No. 663." (*See Exhibits, Vol. III, page 1653.*)

Mr. Kresel: I shall raise no objection, your Honor, except the objection that I made when this question was first brought up by counsel for the Government, and that is that any statement made by Schultze in his work is not evidence, and is not binding upon this defendant.

You also asked for the patents covering the manufacture of phenyglycene—something else, do you remember? There it is (handing paper).

RXQ. 497. You prepared, Doctor, this statement showing the patents covering intermediates of indigo about which I asked you?

A. Yes, sir.

RXQ. 498. These are the intermediates of indigo, so far as you know (handing paper)?

A. That covers phenylglyceneorthocarboxylic acid. There is another statement for phenylglycene.

RXQ. 499. You hand me now two statements, one entitled "Patents covering the manufacture of phenylglycene which can be used as an intermediate for indigo," and the other, "Patents covering the manufacture of phenylglycene——

A. ——orthocarboxylic acid.

RXQ. 499. (Continued.) Thank you—which can be used as an intermediate for indigo. Those two statements are correct as to the patents covering that subject?

A. Yes, sir.

Mr. Anderson: I will introduce those statements as exhibits.

Received in evidence and marked respectively "Plaintiff's Exhibits 664 and 664-A." (*See Exhibits, Vol. III, pages 1653, 1655.*)

RXQ. 500. Is the question of purity of ingredients in the manufacture of dyestuffs one of importance in making colors?

A. It is of paramount importance.

RXQ. 501. As an expert chemist in that matter, when a formula is presented for manufacturing a certain color, do you, as one skilled in the art, assume the necessity for pure materials and ingredients?

A. That is the first principle which is taught to the research man when he undertakes research in the university—that you must carry out the work with pure materials.

RXQ. 502. Purity is a fundamental and is assumed by all persons skilled in the art, is it, in the manufacture of such materials?

A. Yes, sir.

RXQ. 503. That applies to all chemical and organic processes for the production of chemicals for other uses?

A. That is a fundamental principle in the field of organic chemistry.

MR. ANDERSON: That is all.

(Witness excused.)

MR. KRESEL: I move now, your Honor, that Thomas W. Miller, as Alien Property Custodian, be made a party to this proceeding. We do this upon the ground that in order that the adjudication in this case may be a final adjudication, in our opinion the United States Government is not a proper party, although we do not move to strike its name from the bill. We do believe, however, that Thomas W. Miller, as Alien Property Custodian, is not only a proper but a necessary party, and so we move that his name be included as party plaintiff.

MR. ANDERSON: If your Honor desires to have that question argued, I would have to ask time, as I have had no notice of this motion whatever to prepare for the argument.

MR. KRESEL: I think that might well be argued at the final argument.

THE COURT: May I see if I understand this motion, Mr. Kresel?

You say that he is not only a proper party but a necessary party. Do you go so far as to state that your belief is that he is an indispensable party?

MR. KRESEL: I think so, your Honor.

THE COURT: I wonder if I can get what is in my mind just by one or two inquiries. Is it your thought that the United States cannot maintain this suit?

MR. KRESEL: That is our belief, sir. Our belief is that the title to this property is in the Alien Property Custodian.

THE COURT: It seems to me there is a conflict of contentions here, probably on your part, Colonel Anderson, in this way: With respect to the sale of these patents you have asserted, as I recall it, that the power of sale was in the Alien Property Custodian and not in the President, and that he had no power to authorize a private sale, and it seemed to me that the Government as plaintiff possibly conflicted with that in a way. I will not go into it now. I have not tried to think that problem through, as a matter of fact. It may be very patent one way or another. If I understand you, you made no objection to the Government's joining the Alien Property Custodian now and proceeding with two plaintiffs?

Mr. Kresel: Exactly, sir.

The Court: Do you agree whether you will then, if joined, make any objection to a misjoinder?

Mr. Kresel: No, we shall make no objection of that sort.

The Court: That is what I wanted to get clear.

Mr. Kresel: Certainly.

The Court: Then if it develops that the Alien Property Custodian is an indispensable party, or is, in fact, the only person who may maintain this suit, that is, if the United States cannot maintain this suit, the alternative would be a dismissal of the bill, would it not? So that what I wanted to get was whether you were going to make any application for judicial action by reason of misjoinder in the event that the Alien Property Custodian is joined as a party plaintiff.

Mr. Kresel: No, we did not contemplate that at all. We want an adjudication here that is going to be binding, whatever the adjudication may be, because we do not want to have an adjudication here with the Government, as the sole plaintiff and then have some Alien Property Custodian come along and say, "Well, I was not a party to that suit. I will bring a suit and start *de novo.*" We want to get through once for all.

Mr. Anderson: I take it that the Government either stands here as the proper plaintiff to bring this suit, which would be binding upon all its officers, because its officers are only agents of the Government; or it is not the proper plaintiff and the suit should be dismissed.

I think, in the first place, the motion is not a timely motion. It should have been made at the beginning of the proceeding and not at the end of it, because if Colonel Miller, as a party plaintiff, has any independent right different from that of the Government, he is entitled to try the case, and he has not been here to try the case. I have not represented him, except as I represent the entire Government organization in this proceeding.

The intangible thing called the Government of the United States is a corporate organization, and all of its agents, I suppose, to that extent are represented and to that extent are bound, but if the decision here is that the Alien Property Custodian is so independent of the Government of the United States that this proceeding would not be res adjudicata as to him, then the proceedings of the trial up to this time are void as to him. You can not adjudicate his rights after it is over.

The Court: I cannot compel a joinder of plaintiffs, I take it, at this time. The reason for asking Mr. Kresel the question was to see whether there was any advantage to be taken of that, if the joinder was made.

Mr. Kresel: Has not the Court the right to bring in a party at any stage of the proceeding?

The Court: I do not think I can bring in a party. I can dismiss the bill if an indispensable party is absent.

Mr. Anderson: Or you can dismiss the bill if it is brought by a party who is not interested in bringing the suit or in maintaining it.

The Court: Every suit must be maintained by a person entitled to maintain the suit.

Mr. Anderson: I am perfectly willing to argue those questions whenever counsel are ready, except that I would like time to get the authorities.

Mr. Kresel: That is quite all right. May we reserve that until the final argument?

The Court: It will be part of the final argument as to whether the United States is not a proper party.

Mr. Anderson: I submit my objection that it is not a timely motion and cannot be made at this stage of the proceeding, and I shall oppose the motion on all legal grounds. I am giving specific notice to counsel now so that he may prepare on that question, because I do not think that question can now be decided.

Mr. Kresel: I differ with counsel. My understanding with the rule is that the Court has the power to bring in a party at any stage of the proceeding, and it can make that party either a party plaintiff or a party defendant in order that the adjudication may be a final adjudication between the parties interested.

The Court: Or the alternative of dismissal.

Mr. Kresel: Or the alternative. That is not my motion.

Mr. Anderson: I quite agree on the principles stated that there are certain circumstances, where a party is necessary to the adjudication of the issues, that that party can be brought into the court in a proper proceeding, under proper conditions, by timely motion. All of those conditions must prevail. But I deny the power to bring parties in and to amend bills even after proceedings have gone very far. They might bring them in if their interests are not prejudiced, but if they were essential at the time of the litigation, their interests cannot be prejudiced by what has gone before they are brought in.

THE COURT: Without passing on it finally, it seems to me there are two things to be considered. I am not passing on it and you may press it on either side. First, the Alien Property Custodian, or Colonel Miller, verified the bill of complaint. That does not make him a formal party, of course. If he is only a proper party, it may be that judicial discretion extends to the requirement that he be made a party. It may be under the new rules that a greater latitude is given than would have existed in a Federal Court of Equity before that. But if the Government of the United States has no right to maintain this action, then——

MR. ANDERSON: Then bringing Colonel Miller in at this stage of the case would not help it.

THE COURT: It might, if he were willing to adopt the proceedings up to this point.

MR. ANDERSON: Then you could not bring him in by an order and require him to do it. He would have to do it of his own volition.

THE COURT: Then it would require a dismissal of the action.

MR. ANDERSON: Yes, sir, that is what it leads to.

MR. KRESEL: Of course, we are not finally arguing this motion.

THE COURT: Oh, no.

Mr. Kresel: And I understand the argument will be reserved until the final argument. But Mr. Mahaffy calls my attention to Rule 37 of the New Equity Rules wherein I find this language: "All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs, and any person may be made a defendant who is or claims an interest adverse to the plaintiff. Any person may at any time be made a party if his presence is necessary or proper to a complete determination of the cause."

That is pretty broad language. As I say, I am not finally arguing the proposition; but there is the language of the Equity Rule.

The Court: What was the old rule upon which that was founded?

Mr. Kresel: I think the old rule was not quite as broad.

The Court: That is a new rule?

Mr. Kresel: Yes. We will brief that subject to your Honor on both sides, I imagine.

Mr. Anderson: I merely want to say, in regard to that rule, sir, that of course, if the rule permits it, and the Court wants to make Colonel Miller party defendant here, it will not affect the issues very much, but we will object. We had narrowed the parties in this case present, for the purpose of narrowing the litigation as much as we could, but the Court cannot bring in a party plaintiff. He can dismiss the bill, but not make a party plaintiff.

The Court: The remaining part of that rule is that persons having a united interest must be joined on the motion of either side as plaintiffs or defendants, so when anyone refuses to join, he may for such reason be made a defendant.

Mr. Kresel: We will consider that a part of the final argument. I merely wanted to bring the matter to counsel and the Court's attention.

Now, your Honor, there are these matters that I cannot put in now, because the documents have not been produced, and I want on the record to have the reservation and the right to introduce them, when produced by the Government, to wit:

The Court: Those are in addition to those mentioned yesterday?

Mr. Kresel: I mentioned some yesterday; but inasmuch as I have put in some today, I should like to repeat that, so that there will be no question as to what I am reserving. I am reserving the right to put in, if so advised, the report of Colonel Joyes, made to the War Department; the papers from the State Department with reference to the Peace Conference, as to which some documents have already been introduced by the Government, and the report of Major Sill to the War Department——all three of those have been requested by us from the Government and the Government is endeavoring to obtain them for us.

Mr. Anderson: What was the State Department paper? That is a little indefinite.

Mr. Kresel: Mr. Galloway knows what we are asking for. We asked for the balance of the file, a portion of which was here introduced.

Mr. Galloway: You asked for the cables between Mr. Bradley Palmer and Mr. Garvan.

Mr. Kresel: That is true.

Mr. Galloway: I have this, but it is not separate; I have copies of that here.

Mr. Kresel: All right. Perhaps before the day is over, we shall be able to dispose of that. Furthermore, your Honor, I am reserving the right, with your Honor's permission to produce a translation of the balance of that French document. I think that will be ready tomorrow morning; and I want to reserve the right to put in a statement which we will agree upon with the other side, as to what legislation was either proposed or enacted with reference to the dye industry. Now, with those reservations, your Honor, the defendants rest.

Mr. Anderson: With respect to the last paper, while not objecting, I do not wish it to be understood that I have agreed on any statement as to that embargo. I have not examined the records. I will do what I can to reach that agreement, but I do not want to be bound by not saying that I have not agreed.

On the question of the State Department papers, we have produced, or ready to produce today, all the telegrams we can find which the State Department have been able to get for us. As to the report of Colonel Joyes, we shall object to its introduction in any event, although we asked the Department to see if the Secretary of War was willing to let us have it.

Mr. Kresel: When you produce it, we will take that up with the Court.

Mr. Anderson: We requested that, if the Secretary of War is willing to let us have it, and the same applies to the Sill's report.

Mr. Kresel: Very well.

Mr. Mahaffy: If the Court please, you will recall earlier in the trial, I called attention to the fact that in certain instances the record did not exhibit formally that your Honor had admitted certain documents in evidence as exhibits. Your Honor said that would be taken up later and a general order made to admit them. Since that time, I note on page——

The Court: I have expressly refrained from lengthening the record by saying "admitted" a number of times. Each document offered in evidence by either side, up to this point, and any document offered in evidence on the rebuttal, or sur-rebuttal, if they are not expressly rejected, are now admitted formally in evidence.

Mr. Mahaffy: That was my purpose, to avoid any difficulty in the future.

The Court: I generally make that statement at the conclusion of the case.

Mr. Mahaffy: The instance I have in mind is President Wilson's message, and it had not been formally marked, and the others were formally marked.

The Court: The exhibits referred to are in evidence, although nothing was said at the time they were offered.

Mr. Mahaffy: Thank you, your Honor.

The Court: Any rebuttal, Colonel Anderson?

Mr. Anderson: Has counsel closed?

The Court: Yes.

Mr. Anderson: I did not hear that. Would you withdraw that statement, because I want to make two statements before you close, if you do not object.

Mr. Kresel: Very well.

Mr. Anderson: I was engaged in conference and did not hear, and I was waiting for counsel to finish. The first is, that as I understand it, under the ruling of the Court, it is not necessary at this time to formally reserve or make any motions to strike out evidence, or reserve exceptions. If that is understood, it can be done by filing the objections that could be made at this time, at any time up to the argument.

The Court: That is correct.

Mr. Anderson: That is what I want to make clear, otherwise we may find ourselves in difficulty. At the time the Government rested on direct, there was a statement by me that we would like at that time, by the consent of counsel, to reserve the right to introduce evidence, with regard to certain papers; and I stated we would do that before the defendant closed his case, on reply. For that reason, I wish to say that I spoke to counsel on yesterday, and understood him to agree that if I desired to put in that evidence I could do it after he closed his case, with leave to him, if he desires, to reply, as agreeable to the Court.

Mr. Kresel: That is quite satisfactory.

The Court: Defendant rests?

Mr. Kresel: Defendant rests.

Mr. Anderson: Mr. Mahaffy, would you make a note that I want to glance over this report of the Federal Trade Commission, and see if there are any additional parts I want to introduce, and you will lend it to me for the time being.

Now, would it be agreeable to your Honor to take a fifteen-minute recess, in order that I may begin the evidence in the way I think I can get it through the quickest, after conference with Mr. Knight.

The Court: Recess for fifteen minutes.

PLAINTIFF'S REBUTTAL PROOFS.

MR. ANDERSON: I ask leave to call Mr. Galloway to the stand.

HERMAN J. GALLOWAY.

HERMAN J. GALLOWAY, a witness called in behalf of the plaintiff in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Your full name is Herman J. Galloway?

A. That is right.

Q. 2. You are special assistant to the Attorney General of the United States, a lawyer by profession?

A. I am.

Q. 3. Were you one of the attorneys of the Department of Justice who had charge of the preparation of the case now before the Court, United States of America against The Chemical Foundation, Incorporated?

A. I at least assisted.

Q. 4. Yes. Mr. Galloway, did you have, in the course of the preparation of that case, a search made of the Alien Property office and the Department of Justice for certain records, and especially any correspondence between Mr. Palmer, the former Alien Property Custodian, and Mr. Frank L. Polk?

A. I did.

Q. 5. Could you find any such correspondence bearing upon the order of February 26, 1919?

A. None was found.

Q. 6. Were any papers relating to that or other matters subsequently returned to you by the defendant in this case or its representative?

A. They were.

Q. 7. At what time.

A. May 21, 1923.

Q. 8. State the facts, please.

A. On that day Mr. Boggs, who is counsel for the defendant in this case, returned to me at my office——

Mr. Kresel: Not "returned," please. Gave.

A. (Continued.) Gave to me.

Mr. Kresel: That is better.

A. (Continued.) In my office in the Department of Justice an envelope containing certain papers. I think there were seventy-two papers in all, and I have a list here of what those papers were which I shall be glad to give you.

Q. 9. Can you recall just what statement Mr. Boggs made to you at that time with reference to that?

A. Mr. Boggs stated to me that these papers had just been found, that they were not—had not been in the custody of Mr. Garvan, but were found in the Washington office of The Chemical Foundation, and I think he said Mr. Keohan found them.

Q. 10. Among the papers so returned was there a copy of the letter from Mr. Palmer, former Alien Property Custodian, to Mr. Polk, the original of which was introduced in evidence through Mr. Polk?

A. There was.

Q. 11. You say you prepared a list of the papers returned to you at that time?

A. I have.

Q. 12. Or given to you at that time?

A. I have.

Q. 13. The papers which were given to you are in your possession, are they not?

A. The papers are intact except for some four or five which have been introduced in evidence here.

Q. 14. And you can identify those?

A. I have a list in pencil, rough notations.

Q. 15. Will you please state what papers were so delivered to you, giving in each case whether it was a copy or original; and if you have prepared a list, I would be very glad if you would file that as your answer or part of your answer, without going to the time or trouble of reading it, subject to check by counsel if they desire?

A. I shall do that.

Mr. Kresel: No objection.

Mr. Anderson: I ask to introduce that list on the record as a part of the answer of the witness.

The Court: Let it be copied by the Stenographer.

Mr. Anderson: With leave to counsel to check it.

(Answer to Q. 15 continued as follows:)

1. Copy of letter from Assistant Attorney General LaRue Brown to A. Mitchell Palmer, Alien Property Custodian, Esq., Nov. 2, 1918.
2. Copy of letter to Hon. Frank L. Polk, Acting Secretary of State, Feb. 26, 1919.
3. Copy of letter to President, July 11, 1918.
4. Original Office Memorandum to Mr. Garvan from Mr. Dunbar, Feb. 10, 1920.
5. Original Extract from Minutes of meeting of Executive Committee American Dyes Institute, Jan. 22, 1919; list of officers and members attached.
6. Original letter to Hon. A. Mitchell Palmer, Alien Property Custodian, from Ramsay Hoguet, Feb. 10, 1919, with resolution of Manufacturing Chemists' Association of Feb. 4, 1919, attached.

7. Original Memorandum from Alien Property Custodian to Mr. Goldstein, Dec. 27, 1918.
8. Copy of letter to President, July 11, 1918.
9. Original Letter to Hon. A. Mitchell Palmer, Alien Property Custodian, from Ramsay Hoguet, August 8, 1918, enclosing
10. Copy of letter from Hoguet to Hon. J. Harry Covington, August 8, 1918, and
11. Copy of letter from Hoguet to Hon. Federal Trade Commission, August 8, 1918.
12. Memorandum from Alien Property Custodian to Washington Committee on Sales, Feb. 22, 1919.
13. Copy of letter from A. Mitchell Palmer to President, Oct. 31, 1918.
14. Original letter to Hon. A. Mitchell Palmer from Joseph J. Hart, March 22, 1919.
15. Copy of letter to Hon. Breckinridge Long, Oct. 9, 1918.
16. Original Office Memorandum from Mr. Whitaker to Mr. Scott, Oct. 7, 1918.
17. Original letter to Hon. A. Mitchell Palmer, Alien Property Custodian, from Breckinridge Long, Sept. 30, 1918.
18. Copy of letter to Hon. J. W. Wadsworth, Jr., Nov. 1, 1918, with original Memo. from Senator Wadsworth to Alien Property Custodian.
19. Original letter to Hon. A. Mitchell Palmer, Alien Property Custodian, from John Franklin Fort, Nov. 1, 1918, enclosing proposed Executive Order.
20. Original Letter to Hon. A. Mitchell Palmer, Alien Property Custodian, from Ramsay Hoguet, Jan. 16, 1919.
21. Original letter to Hon. A. Mitchell Palmer, Alien Property Custodian, from Ramsay Hoguet, Jan. 15, 1919.

22. Report of Special Committee of the Executive Committee of the Dye Institute in the matter of the conference at Washington, D. C., with the Alien Property Custodian, to be enclosed in letter of Feb. 7, 1919, to Hon. A. Mitchell Palmer.
23. Original letter to Hon. A. Mitchell Palmer, Alien Property Custodian, from H. E. Danner, Feb. 8, 1919, with Report of Special Committee dated February 8, 1919, of American Dyes Institute, attached.
24. Original letter to Hon. A. Mitchell Palmer, Alien Property Custodian, from Ramsay Hoguet, Feb. 4, 1919.
25. Original Office Memorandum to Mr. Goldstein from Mr. Garvan, June 4, 1919.
26. Original Memorandum to Mr. Garvan from Mr. Goldstein, June 4, 1919.
27. Original letter to Hon. Francis P. Garvan from Newton D. Baker, Secretary of War, May 29, 1919.
28. Original letter to Hon. Francis P. Garvan from Franklin Roosevelt, Secretary of the Navy, May 27, 1919.
29. Copy of letter to Hon. Josephus Daniels, Secretary of Navy, Feb. 6, 1919.
30. Copy of letter to Hon. Thomas W. Gregory, Attorney General, August 13, 1918.
31. Copy of letter to Hon. Thomas W. Gregory, Attorney General, July 11, 1918.
32. Original letter to Hon. A. Mitchell Palmer, Alien Property Custodian, from H. B. Rust, June 29, 1918, enclosing copy of affidavit of Charles E. Underwood.
33. Original letter to Hon. A. Mitchell Palmer, Alien Property Custodian, from Joseph H. Choate, Jr., June 29, 1918.

34. Copy of letter to Hon. La Rue Brown, Assistant Attorney General, from A. Mitchell Palmer, June 21, 1918.
35. Original letter to the President from Robert W. Woolley, June 14, 1918, enclosing copy of letter to Hon. Newton D. Baker, Secretary of War, from Woolley and a statement of Mr. Edward M. McIlvain.
36. Copy of letter to Hon. Thomas W. Gregory, Attorney General, from A. Mitchell Palmer, June 14, 1918.
37. Copy of letter to Hon. Thomas W. Gregory, Attorney General, from A. Mitchell Palmer, April 10, 1918.
38. Copy of letter to Hon. John Lord O'Brien, Assistant Attorney General, April 23, 1918.
39. Copy of letter to Thomas Ewing, Esquire, April 17, 1919.
40. Original letter to Hon. Francis P. Garvan, Alien Property Custodian, from Ramsay Hoguet, April 21, 1919, enclosing
41. Copy of letter to Major A. M. Holcombe from Ramsay Hoguet, April 21, 1919, and
42. Original letter to Hon. F. P. Garvan, Alien Property Custodian, from Thomas Ewing, April 15, 1919, also
43. Memorandum from Capt. W. H. Swenarton to Major A. M. Holcombe, April 4, 1919, with attached memorandum of conversation with Dr. J. A. Harker.
44. Copy of memorandum from Munitions Patents Board (signed Pickens Neagle, Acting Chairman) to the Secretary of War, April 5, 1919.
45. Copy of letter to Ramsay Hoguet, April 23, 1919.
46. Original letter to Hon. Francis P. Garvan, Alien Property Custodian, from Ramsay Hoguet, July 1, 1919.

47. Original letter to Alien Property Custodian from W. M. Beard, May 8, 1919.
48. Copy of letter to Mr. W. M. Beard, May 10, 1919.
49. Original letter to Hon. Francis P. Garvan, Alien Property Custodian, from W. M. Beard, May 8, 1919.
50. Copy of letter to Mr. Ramsay Hoguet, April 10, 1919.
51. Copy of letter to Hon. Bernard M. Baruch, July 8, 1918.
52. Copy of letter to Major A. M. Holcombe, April 17, 1919.
53. Copy of letter to Ramsay Hoguet, April 17, 1919, enclosing.
54. Copy of memorandum from Munitions Patents Board to the Secretary of War, April 5, 1919.
55. Copy of letter to Ramsay Hoguet, April 17, 1919.
56. Copy of letter to Alien Property Custodian from Franklin D. Roosevelt, Acting Secretary of the Navy, July 22, 1919.
57. Copy of letter to the Secretary of the Navy from D. W. Taylor, Chief Constructor of the U. S. Navy.
58. Memorandum from the Custodian to Mr. Hoguet, Feb. 12, 1919.
59. Copy of letter to Hon. Francis P. Garvan, Alien Property Custodian, from Ramsay Hoguet, April 11, 1919.
60. Copy of letter to Alien Property Custodian from Chief, Inventions Section, War Department, C. H. Hilton, March 21, 1919.
61. Copy of letter to Hon. Thos. W. Gregory, Attorney General, August 10, 1918.

62. Memorandum from the Custodian to Mr. Bradley, Aug. 9, 1918, with copy of letter to Hon. Thomas W. Gregory, Attorney General, Aug. 9, 1918, attached.
63. Copy of letter to Hon. A. Mitchell Palmer, Attorney General, from Francis P. Garvan, April 15, 1919.
64. Photostat copy of newspaper clipping attached to envelope addressed to C. D. Wetmore, Esq.
65. Original Report of Conference in the office of A. M. Palmer, Alien Property Custodian, Tuesday, June 25, 1918.
66. Constitution, American Dyes Institute.
67. Original letter from American Dyes Institute to A. P. C., Feb. 7, 1919. (Ex. 30.)
68. Copy of letter from A. M. Palmer to President, Oct. 31, 1918.
69. Copy of letter from A. M. Palmer to F. L. Polk, Feb. 26, 1919.
70. Original letter from J. P. Tumulty to F. P. Garvan, Feb. 13, 1920.
71. Original memo. by Ramsay Hoguet to A. M. Palmer, Jan. 28, 1919.
72. Original copy of report of conference in office of Alien Property Custodian, Jan. 27, 1919.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 16. Mr. Galloway, as to the copy of the letter from Mr. Palmer, which you say was given to you by Mr. Boggs, do you know whether that was the copy that came from the Alien Property Custodian's office?

A. I cannot say.

XQ. 17. Do you know what became of the copy of the letter that was at the Alien Property Custodian's office?

A. I do not.

Mr. Kresel: That is all, Mr. Galloway.

(Witness excused.)

Mr. Anderson: I will call Dr. McCoy.

GEORGE W. McCOY.

George W. McCoy was called as a witness in behalf of the plaintiff, in rebuttal, and being first duly sworn, testified as follows:

Mr. Anderson: I would like to state, if your Honor please, that there is probably some of this evidence to be given by this witness which would come within the restriction imposed by the Court, in connection with the evidence given by Dr. Stieglitz; and, therefore, I have asked the witness when he reaches that point where he thinks he should give the information in chambers, to so state and I will ask your Honor to take that evidence in chambers.

Direct Examination.

By Mr. Anderson:

Q. 1. Please state your name and profession and place of residence.

A. George W. McCoy; profession, physician; place of residence, Washington, D. C.

Q. 2. Will you state, doctor, briefly, your education, training and professional experience as a physician?

A. My medical education was received at the University of Pennsylvania. My experience began with service as resident medical officer of the City Hospital of Newark, N. J. After eighteen months in that capacity, I was commissioned in the United States Public Health Service and served at St. Louis, Missouri; San Francisco, California; Manila, Philippine Islands; Mariveles, Philippine Islands; Iloilo, Philippine Islands; Fort Stanton, New Mexico; Washington, D. C.; San Francisco, California, a second time; and on this second occasion in San Francisco I was in charge of the United States Plague Laboratory. This was followed by four years in the Hawaiian Islands, as Director of the United States Leprosy Station, and since 1915 I have been on duty at Washington, as director of the Hygienic Laboratory.

Q. 3. Is that a Government laboratory?

A. It is.

Q. 4. How long altogether have you been in the Public Health Service discharging the duties which you have outlined, can you recall?

A. Just a trifle over twenty-three years.

Q. 5. Prior to your becoming the Director of the United States Hygienic Laboratories, what if any acquaintance had you had with the treatment of diseases treated by salvarsan and arsphenamine and its derivatives?

A. I had a small clinical experience in clinics at San Francisco and Honolulu.

Q. 6. What has been your general experience in connection with the drug named, which it appears here has two names, salvarsan and arsphenamine, or its derivatives, during your position as director of the Hygienic Laboratories?

A. Would you repeat that question, please?

Q. 7. To state it briefly, what has been your experience in connection with this drug or its use by the Public Health Service and its derivatives during your service as director of the Hygienic Laboratories?

Mr. Kresel: I should prefer, Colonel, if you asked the witness what he has done personally. His experience might include all sorts of information coming from other people.

Q. 8. I would like you, in answering your question, to confine your experience to your personal experience or your experience derived from your subordinates officially reporting to you in your official capacity.

Mr. Kresel: No, I shall object to any reports made to him by his subordinates. If those reports are in writing they must be produced.

Mr. Anderson: They are not necessarily in writing.

Mr. Kresel: That has been your contention throughout. If they are not in writing, I want to know who made the reports to him and under what circumstances and when. I think it will tend to clarify if you will ask him first what he knows himself.

The Court: In making your answer, you may first state that which you know from your own personal experience and not from the reports or the reading of medical treatises.

A. The answer to that would be, nothing.

Mr. Kresel: He knows nothing of his own experience.

Q. 9. As director of the Hygienic Laboratory, have you had charge of the inspection or report of drugs? Did you have charge of that work, and what are your duties there?

A. I have had that responsibility——

Mr. Kresel: The question is, what are your duties?

A. (continuing.) And the duties have been to supervise the work of a considerable number of assistants, to pass upon their reports and submit these reports either to my own immediate superiors or to the producers of the drugs in question.

Q. 10. What control does the United States exercise over the production, distribution and use of this product or its derivatives, and through what agencies?

A. The control is through the Public Health Service, which is a branch of the Treasury Department. The control consists of the inspection of the manufacturing plants, the issuing of a license to the plant, requiring that the plant shall submit specimens of the product, and usually, not always, the testing of the product submitted when the sample reaches the Hygienic Laboratory.

Q. 11. How are those tests made, in general?

A. The tests follow two lines: One chemically, the chief object being the determination of the arsenic content; and with that phase of it, I have no further acquaintance except that we do determine the arsenic content. The second is the testing for the poisonous property of the drug, its toxicity, in other words, which is inherent to the preparation submitted.

Q. 12. In general, how are those tests made? I am speaking now particularly of salvarsan and arsphenamine.

A. The toxicity tests?

Q. 13. Yes.

A. They are always, in our laboratory, made by the injection of rats with certain measured doses of the drug and the observing of the animals over a period of a specified number of days, and a determination as to whether or not the drug is too poisonous for use, judged by that test.

Q. 14. Are there any public regulations, published by the United States Government, prescribing these tests and the use of this drug?

A. There are.

Q. 15. Could you produce a copy?

A. Yes, sir. (Handing to counsel.)

By Mr. Kresel:

Q. 16. Is this the latest one, Doctor?

A. This is the one now in effect and the latest one.

Mr. Kresel: This is all right, if you will develop how long it has been in force.

By Mr. Anderson:

Q. 17. I notice that you have produced a publication of the Treasury Department, United States Public Health Service, Miscellaneous Publication No. 2, Regulations for Control of Arsphenamine, Neoarsphenamine and Sodium Arsphenamine in the District of Columbia and in Interstate Traffic, published at Washington in 1920. How long had those regulations been in force in 1920, Doctor?

A. I cannot answer that without reference to it.

Q. 18. I will be very glad if you would refer to it and state any facts about those regulations and the development thereof.

A. A Government regulation has force from the date of the approval by the final approving officer. In this case they are marked "Approved, June 21, 1920, D. F. Houston, Secretary of Treasury."

Q. 19. Were there any regulations preceding that?

Mr. Kresel: Pardon me a minute. Will you ask him whether they are now in force.

Mr. Anderson: I am coming to that; prior to the date of this publication and subsequent.

Q. 20. Were there any regulations preceding that; and if so, state generally what period was covered.

A. In a general way, for one year prior to these regulations, there were in force other regulations of the Public Health Service establishing slightly different standards.

Q. 21. Could you state the difference in standards?

A. The essential difference in standard is that the dose that the rats are required to survive is in terms of 100 milligrams per kilo of rat and immediately preceding that the regulations were 80 milligrams per kilo of rat.

Q. 22. How long was that in force?

A. I cannot say precisely now. In the neighborhood of a year; something of that sort. I did not have an opportunity to get all of these regulations.

Q. 23. Were there any preceding the 80 milligrams per kilo?

A. Prior to that the standard was 60, which lasted a few months, and prior to that the standard was 50, which lasted a few months. Those two earliest regulations, however, were those of the Federal Trade Commission, while they were proposed and recommended to the Federal Trade Commission by the Public Health Service, prepared in our own laboratory. At that time the Public Health Service did not have the legal control of these particular drugs and the control of the Government was exercised through the Federal Trade Commission.

Q. 24. During what years was that period?

A. If I may refer to the memorandum——

Q. 25. Yes, if it was made by you.

A. Yes, it was made by me. The first Federal Trade Commission regulations were dated November 22, 1917, and the second——

Mr. Kresel: The first regulations established what test?

A. (continuing.) That established a rat test and a chemical test, but at a lower grade, 50 milligrams per kilo. Under date of March 4, 1918, the Federal Trade Commission changed those regulations to the 60 milligrams per kilo; and those were in force some months or perhaps a year. I cannot remember just how long.

Q. 26. And then they raised it to 80 milligrams per kilo?

A. Then to 80.

Q. 27. And these regulations of June, 1920, raised it to 100 milligrams per kilo?

A. Yes.

Q. 28. And has there been any change in that particular standard since that time; and if so, what?

A. No.

Q. 29. That is still a regulation?

A. Yes, the standard in effect at the present time.

Q. 30. Were there any other material variations, if you recall, in the earlier published regulations of the Treasury Department than that which you have indicated as to the test per kilo?

Mr. Kresel: Colonel, I must object to that. I have allowed him to give the contents of a written instrument so far.

Mr. Anderson: I will try to get copies of these others. I was only able to get a copy of this one before leaving Washington. I would like to ask leave to introduce that in evidence, as Plaintiff's Exhibit No. 665.

Mr. Kresel: No objection.

The Court: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 665." (*See Exhibits, Vol. III, page 1657.*)

Q. 31. You have stated the control exercised by the United States Public Health Service over this drug and derivatives; how is that control exercised, after the test is made as you have indicated; what is done then?

A. Assuming our test has been satisfactory, the manufacturer is notified in writing that the drug may be released. If the test is unsatisfactory, he is notified that the drug has failed to pass.

Q. 32. Then what happens; I mean in either case?

A. If it is released, I suppose it is sold. That is the intention of the release, that it may be put into trade channels.

Q. 33. Is there any indication——

Mr. Anderson: What is that, Mr. Kresel?

Mr. Kresel: I was just saying, I wonder if you would let a witness of mine make that kind of statement.

Mr. Anderson: Of course I would let him make any kind of statement.

Q. 34. Is there any indication upon the label of such control, and how is it indicated; I have some of those things here. In order to answer the last question specifically, I will ask you to take these two samples, one of neosalvarsan, and indicate exactly, because we have already read that label to death.

Mr. Kresel: I do not object to his stating it without the samples.

A. Of course, the label contains the statement that the material has been tested according to requirements of the Public Health Service, and it also has on it a lot number, in this one case 640, and in this case 956.

Q. 35. What does that lot number indicate?

A. Well, it is required by the regulations that every batch the manufacturer produces shall be given a lot number for the purpose of identifying every dose that comes away from the plant.

Q. 36. And is it or is it not a fact that all of that batch so tested is sold under that lot number, every dose of it?

A. The regulations require that.

Q. 37. Doctor, can you state what domestic manufacturers of salvarsan and arsphenamine and their derivatives were licensed to manufacture those products in the United States?

Mr. Kresel: If your Honor please, I have not raised any objection to any question thus far, because I understood it was simply introductory of something which is really rebuttal. I think, sir, in this case of all cases counsel should be restricted to strict rebuttal, unless the purpose is to contradict somebody as to who the licensees were. It is not strict rebuttal.

If counsel will say that this question is for the purpose of showing that the testimony in the case as to licensees is wrong, I say that question is objectionable because it is not strict rebuttal. I am raising it, your Honor, because I want, if possible, to cut this short. I do not think that we ought to go over the same ground on rebuttal that has already been gone over on the direct and the cross.

Mr. Anderson: If your Honor please, I did not show who were licensees of salvarsan in the United States on direct. It was brought out. I am not sure whether there would be any added if this question were answered or not, because I have not the data before me; but I do not agree with counsel on the subject of the rules to be applied to this case, and I might just as well state our respective positions now.

While undoubtedly there are certain general principles which control rebuttal, I think it would be a most unusual and harsh doctrine and one most prejudical—I do not mean that in any sense of unpleasantness—to the interests of the plaintiff in this case if the rules were changed in the progress of the game.

I am going to put on very little evidence in rebuttal. It is not my purpose to go outside of the reasonable limits of rebuttal testimony. It is necessary, however, to lead up to that testimony and to establish certain collateral facts which make that testimony appropriate, and I think, instead of having the strictest rules applied, the Government is entitled to the same proportionate latitude in rebuttal that has been given elsewhere.

I do not mean to say that we can open up new problems or new questions. I do not mean to say that we can go into an unlimited field. But I do mean to say that since the rules have been so liberal throughout this case, a sudden drawing in of the rules would be especially injurious to the plaintiff. That is obvious, for the reason that in the original evidence we had to break our way with practically no guide as to the rules. I say that again. It is not in any way suggestive of criticism, but a recognition of the liberal attitude of the Court on this subject. Nevertheless, we had no idea where we were going to land in this case. We had to anticipate as far as we could any phase of the case that might arise.

Now, if we are limited absolutely in rebuttal with regard to the defense which we have to meet, we have never had an opportunity to meet that situation. We introduced on this subject only evidence of value, that is all, and all this discussion of the patents and the patent rights, of the method of production and control, of the number of licensees, of the positions of the licensees, every bit of that was brought out in the defendant's case.

Now we were limited greatly in re-direct, because re-direct must be limited rather strictly in these questions, and that was strictly enforced; of course, I mean objected to as not re-direct. Now, if we are precluded from bringing out the evidence and bringing it out rather fully, I submit that it would be prejudicial and would not achieve the aims of justice.

Mr. Kresel: I deny the imputation that anyone is seeking to change the rules of the game. Your Honor very early in this case gave notice to counsel that the liberal rules that your Honor was enforcing throughout the direct case of the plaintiff and that of the defendant would not be applied upon rebuttal. I remember distinctly that your Honor directed Colonel Anderson's attention to that, and your Honor stated, if I recall it correctly, that the rules of evidence would be strictly enforced upon rebuttal. It is that that I am asking. I deny that I am seeking the change of any rules of the game.

THE COURT: I take it that it is a question as to what the record will disclose, and that is long before the Government was through with its testimony in chief it was announced by the Court that the admission of all evidence offered, under which rule we were then proceeding for the reasons stated at the beginning of the trial of this case, would not apply to the testimony in rebuttal. You will probably recall, Colonel Anderson, that just before you closed I asked you whether there were any matters which you wanted to put in which had been ruled out, and if so you were free to put them in. My recollection is that again at that time, although I am not as positive of that as I am of the other, it was announced that the rule under which we were proceeding would not apply to rebuttal. The reason that it will not apply in rebuttal—and it will not and should not—is that that would enable the plaintiff to put in any rebuttal testimony which would be proper only in chief. You will recall, Colonel Anderson, that you said you had put in many papers and much evidence under the liberality of the rule because you had been advised that it would not apply to rebuttal.

However, the rebuttal, of course, is as wide as the evidence put in by the defendant. The liberal rule under which we have proceeded so far would be an unjust rule to apply to rebuttal, but the rebuttal rule under which we now operate enables you to meet any evidence that was put in by the defense, but it does not enable you to go beyond that.

What is the evidence to which the testimony now sought to be elicited is in reply?

Mr. Anderson: Really, the question and the immediate question was introductory, for the purpose of connection and of orderly statement, to the evidence which I proposed to introduce by this witness in reply to the evidence of Dr. Stieglitz.

Your Honor will bear me out, I think, that all the evidence attacking these patents or processes described therein was brought out by the defense. It was a matter not touched upon before; the validity of the patents was assumed.

The Court: I do not have any recollection of any evidence which this testimony or the answer to this question would meet. I think I recall pretty clearly the complete testimony of Dr. Stieglitz, but I do not recall this testimony.

Mr. Anderson: In response to your Honor's statement, I quite agree that the rule of liberality should not be applied to rebuttal to the extent that your Honor indicated—I mean that you thought would be wrong. In other words, the unlimited rule of evidence is practically a rule prevailing before a Master, applied to the case in chief and the defense, and would not apply to rebuttal as a matter of general practice; but the same proportionate liberality in my judgment should be allowed in rebuttal. That is all that I meant in my original statement; I do not wish to add to it in any way.

The Court: I do not recall any testimony introduced by the defendant to which this would be in reply. Objection sustained.

Mr. Anderson: I take an exception, sir.

Q. 38. Doctor, do you know whether prior to the control by the Public Health Service there were licenses issued for the manufacture of this article by the Federal Trade Commission? Do you know anything about that?

Mr. Anderson: That evidence is in, but I merely want to connect it up.

A. Yes, there were.

Q. 39. Has the Public Health Service under your direction undertaken to secure data on deaths or serious reactions from the use of salvarsan or arsphenamine and its derivatives from reports of its own officers and from other reliable sources, and have you as chief of the Public Health Service any data on that subject?

Mr. Kresel: One minute, please. I object to that on the ground, first, that it is leading; second, upon the ground it is not proper rebuttal.

Mr. Anderson: I think it would be a rather remarkable circumstance, sir, that counsel could come in here at the Bar and state that the American soldiers have been killed by the use of salvarsan and neosalvarsan, attack by name one manufacturer, bring in a lot of evidence on that subject, and then we be forbidden to come in and prove the facts as to that subject.

Mr. Kresel: I am not attempting to do that at all. On the contrary, I deny I am attempting to do it.

The Court: Colonel Anderson, are you attempting by this evidence to meet the statements of counsel or are you attempting to meet the evidence put in by the defendant?

Mr. Anderson: I am attempting to meet the statement of Dr. Stieglitz, and I am going to ask in a moment that we go into chambers and take the evidence, just as soon as I lead up to it.

Mr. Kresel: I have no objection to going into chambers.

Mr. Anderson: But I want to lead up to it by showing that he has data from the public records of the United States and in his office that will justify me in asking the Court to go into chambers to take that evidence.

Mr. Kresel: I am perfectly willing to go.

The Court: You have made no application to that effect now. What is the question?

Mr. Anderson: This question is whether he had collected data——

Mr. Kresel: I ask that it be read.

Mr. Anderson: All right, read the question.

(Q. 39 read as recorded above.)

Mr. Kresel: My objection to it, your Honor, was, first, that it was hearsay, calling for the contents of reports by other people; second, that it is not proper rebuttal. If it is the purpose of the Government to rebut the testimony given by Dr. Stieglitz, that testimony was perfectly definite; it spoke of certain people whose deaths occurred, and it identified who they were. I do not deny that counsel have a right to do it if they can show the contrary, but for us now upon rebuttal to have presented here to the Court the result, if there be such result, of a general investigation made by this department, and to go into reports made to this witness by his subordinates upon the general subject of toxicity of salvarsan, is not a matter that we should embark upon in rebuttal.

THE COURT: Will you read the question again?

(Q. 39 again read as recorded above.)

THE COURT: In so far as the objection pertains to form, it is sustained. That makes it unnecessary at this time to rule upon the second ground.

Q. 40. Can you state whether the Public Health Service under your direction has any data as to deaths or reactions from the use of salvarsan or arsphenamine and its preparations?

MR. KRESEL: I will not object to that. It is an introductory question.

A. We have such data.

MR. ANDERSON: I will now move the Court to go into chambers and take that data, since under the ruling of the Court when Dr. Stieglitz was on the stand I do not think it is information that can be taken in open court.

MR. KRESEL: I have no objection to that, your Honor.

THE COURT: We will retire to chambers.

(Court, counsel and witness then retire to the chambers of the Court.)

AFTER RECESS.

MR. ANDERSON: I understand that the two exhibits which were introduced, being published reports, will go into the regular exhibit book. (Plaintiff's Exhibits 666 and 668.)

THE COURT: Yes.

MR. ANDERSON: If your Honor please, I now desire to introduce in connection with this matter certain correspondence signed by Dr. Steiglitz and counsel has agreed to admit the authenticity without recalling Dr. Steiglitz for the purpose of proving authenticity.

Mr. Kresel: I have agreed to do that.

Mr. Anderson: Yes.

The first letter is a letter dated January 25, 1918, to Mr. H. A. Metz, signed Julius Steiglitz.

Mr. Kresel: It is immaterial, but I will not object to it. It takes more time to object than not to.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 669." (*See Exhibits, Vol. III, page 1721.*)

Mr. Anderson: The next is a letter dated February 19, 1918, from Dr. Steiglitz to Mr. Metz.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 670." (*See Exhibits, Vol. III, page 1722.*)

Mr. Anderson: I offer in evidence a letter dated February 25, 1918, from Dr. Steiglitz to Mr. Metz, as Plaintiff's Exhibit No. 671.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 671." (*See Exhibits, Vol. III, page 1723.*)

Mr. Anderson: I offer in evidence a letter, March 7, 1918, from Dr. Steiglitz to Mr. Metz.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 672." (*See Exhibits, Vol. III, page 1724.*)

Mr. Anderson: I offer a letter from William J. Gies, of Columbia University, to the Farbwerke Hoechst Company, dated April 30th, 1918, as Plaintiff's Exhibit No. 673.

Mr. Kresel: To which we object as hearsay.

THE COURT: Sustained, unless you show that it is not.

MR. ANDERSON: Of course I would have to call the witness to prove it, and as the objection is made on the ground of hearsay, I will have to eliminate it, of course.

I offer in evidence letter dated June 1st 1918, from Dr. Steiglitz to Mr. Metz, as Plaintiff's Exhibit No. 673.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 673." (*See Exhibits, Vol. III, page 1724.*)

MR. ANDERSON: I offer in evidence a letter dated August 15, 1918, from Dr. Steiglitz to Mr. Metz.

MR. KRESEL: No objection.

THE COURT: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 674." (*See Exhibits, Vol. III, page 1725.*)

MR. ANDERSON: I offer in evidence——

MR. KRESEL: Pardon me a minute, Colonel Anderson. If you are not going to read the last letter, I would like to read it.

MR. ANDERSON: Very good.

MR. KRESEL: May I have it, please?

MR. ANDERSON: Yes.

MR. KRESEL: This is dated August 15, 1918. (Reading Plaintiff's Exhibit No. 674.)

MR. ANDERSON: I offer in evidence letter of March 27, 1919 from Dr. Steiglitz to Mr. Metz.

MR. KRESEL: No objection, although it is not proper rebuttal.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 675." (*See Exhibits, Vol. III, page 1727.*)

Mr. Anderson: I offer in evidence letter dated April 10, 1919 from Dr. Steiglitz to Mr. Metz.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 676." (*See Exhibits, Vol. III, page 1729.*)

Mr. Anderson: I offer in evidence letter dated May 2, 1919 from Dr. Steiglitz to Mr. Metz.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 677." (*See Exhibits, Vol. III, page 1730.*)

The Court: Colonel Anderson, how would it be to have a night session tonight and a short session tomorrow?

Mr. Anderson: I think we might, if your Honor can stand it.

I offer in evidence a letter dated September 25, 1919 from Dr. Steiglitz to Mr. Metz.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 678." (*See Exhibits, Vol. III, page 1730.*)

By Mr. Anderson:

Q. 41. Dr. McCoy, are you a chemist or a physician?

A. Physician.

Q. 42. Have you ever had any experience in dealing with the working out of formulae under patents?

A. No.

Q. 43. You have not?

A. Never.

Q. 44. Do you know anything of your own knowledge about the German patents on salvarsan, novocain, cinchophen, any of those patents?

A. No.

Mr. Kresel: What do you mean, whether he knows anything?

Q. 44. (Continuing) Anything of the chemical formulae or the operations in carrying out those formulae?

A. Nothing from the chemical side.

Q. 45. Can you identify the signature on that letter, Doctor (handing paper)?

A. Yes.

Mr. Anderson: I offer in evidence original letter dated June 27, 1918, from Dr. McCoy, to Mr. Metz, which has just been identified by the witness.

Mr. Kresel: It is not proper rebuttal, but let it go in.

The Court: There is no objection?

Mr. Kresel: No objection.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 679." (*See Exhibits, Vol. III, page 1732.*)

Mr. Anderson: I have not the original letter, but there is just a paragraph that I would like to read into the record. The letter is dated May 7, 1918, addressed to the Farbwerke-Hoechst Company, New York City, and signed by G. W. McCoy, director. It is printed in this book and counsel have agreed.

The Court: Counsel makes no objection?

Mr. Kresel: No objection, your Honor.

The Court: Admitted.

Mr. Anderson: The letter reads as follows:

"Treasury Department,
United States Public Health Service.
Washington, May 7, 1918.

Farbwerke-Hoechst Co.,
New York City.

Dear Mr. Metz.

We have been interested in Dr. Lake's report of his visit to your laboratory. Apparently the only difference that seems likely to account for the differences in results of your testing and of our own lies in the fact that you starve your animals prior to inoculation. I think, all things considered, it would be better if you revise this practice and use animals kept under average or ordinary conditions as regards food. Our testing appears to check up very well with that of another commercial manufacturer, who has been using rats that have not been deprived of food for any considerable length of time. For the sake of uniformity I think it would be well if you brought the testing at your establishment in line with this.

With best regards, I remain,

Sincerely yours,
G. W. McCoy.
Director."

Q. 46. The animals you referred to, were the rats used in testing this drug, were they not?

A. I judge so.

Mr. Anderson: That is all.

Cross-Examination.

By Mr. Kresel:

XQ. 47. Dr. McCoy, though you are not a chemist, you know, do you not, that there were German patents covering salvarsan?

A. A matter of common understanding.

XQ. 48. Well, it came to your knowledge, in your official capacity?

A. Oh, yes.

XQ. 49. And you know, of course, that this suit is about those patents, do you not?

A. Just that.

XQ. 50. In the course of your official duties, you obtained knowledge as to the experience of American manufacturers trying to make arsphenamine according to the specifications of those German patents, did you not?

A. In a second-hand, indirect way, I did.

XQ. 51. I mean, whatever information you got, you got in your official capacity?

A. Yes.

XQ. 52. And you knew, did you not, that it took manufacturers at least 18 months before they could produce any arsphenamine?

A. That would not be a rule.

XQ. 53. I did not ask you whether it was a rule. You knew that that was the case?

A. In some instances.

XQ. 54. And you so testified before a Congressional Committee, did you not?

A. I testified that——

XQ. 55. Did you not so testify?

A. I testified that what I had to state was hearsay, and that hearsay——

XQ. 56. Now, just listen, Dr. McCoy. Did you not testify as follows——

> Mr. Anderson: You have got a right to have this book, if you want it, containing your testimony.
>
> Mr. Kresel: Yes, he can have the book, certainly.
>
> (Mr. Anderson hands book to witness.)

XQ. 56. (Continued.) Page 88, a little lower than the middle of the page, Dr. McCoy, speaking of the situation at the outbreak of the war, you said:

> "Doctor McCoy. Yes. Then the British blockade soon cut off our supplies and one or two American manufacturers proceeded to manufacture it even prior to the United States going into the War, and in each case it was a matter of at least a year of blundering along in an experimental way before they did succeed in producing it, and there was a period prior to taking over the patents by the Government when a little was being produced by American manufacturers and supplied to the American medical profession."

That is true?

A. That is true, yes.

XQ. 57. By the way, Dr. McCoy, before you took the witness stand and in your conferences with the Government you called their attention to your testimony before this Congressional Committee, did you not?

A. Yes.

XQ. 58. You know, do you not, from your official information that the price of arsphenamine today is very much lower than it was before the war?

A. Yes, sir.

XQ. 59. Is it not a fact that arsphenamine today is being sold to the Government at 13 cents an ampule?

A. That is right.

XQ. 60. And before the war Metz was selling it at $2.50 an ampule wholesale; is that not the fact?

A. That is my understanding.

XQ. 61. And there is keen competition in the United States in the production of arsphenamine, is there not?

A. Unquestionably.

XQ. 62. And you so testified before this Congressional Committee, did you not?

A. I suppose I did. I don't remember that.

XQ. 63. I ask you whether you gave this testimony before the Congressional Committee, talking about the German patents, at the top of page 91:

> "I have talked that matter with some of the most able chemists in the United States and they all say that the description in the patent is so sketchy and there is so much necessary that is omitted that a well-qualified chemist can not proceed and produce the material. He has to do a great deal of experimenting. I know one large well-equipped manufacturing house commanding the best chemical talent money can secure, that spent about eighteen months before they turned out the first commercial batch of salvarsan."

Did you so testify?

A. Yes.

XQ. 64. And that is true?

A. That is true.

XQ. 65. At page 90 of your testimony before this committee do you remember giving this testimony, questioned by Mr. Huddleston: "What was their difficulty in producing that product?" You were talking about salvarsan, were you not?

A. Yes, sir.

XQ. 66. And neosalvarsan?

A. Yes, sir.

XQ. 67. And your answer was:

> "The fact that they were not acquainted with the processes the Germans had used and the processes the French were using in preparing the material. It was an entirely new field.
>
> "Mr. Huddleston: Were not those processes described by the patents?
>
> "Dr. McCoy: The processes, as described by the patents, I am told—now, this is hearsay—are the very minimum required to secure the patent, and in no way adequate to enable even a competent chemist to reproduce the material.
>
> "Mr. Huddleston: So that the parties who

> are now producing a satisfactory quality of this product are not proceeding by the formula as filed in the Patent Office, but are proceeding as their experience has taught them, having figured out in some way how to produce this substance?
>
> "DR. McCOY: Yes, that is a fair statement."

You so testified?

A. Yes.

XQ. 68. And that was true?

A. Yes, to the best of my knowledge.

XQ. 69. Certainly. Two more questions, Dr. McCoy. Your tester—I mean the man that makes the tests of batches of arsphenamine sent to you by manufacturers—is a Dr. Lake. Right?

A. No.

XQ. 70. Was a Dr. Lake?

A. Was.

XQ. 71. Until how long ago?

A. He has been off and on the tester for five or six years.

XQ. 72. And he was testing for you in 1918?

A. Probably.

XQ. 73. And in 1919?

A. He was away from the plant at some period for a year or a year and a half, but I don't know just when he was away from our place.

XQ. 74. With the exception then of a year or a year and a half, he was the tester of your Hygienic Laboratory?

A. No. Even when he is there, he is not the only tester who does testing.

XQ. 75. How many others have you doing testing?

A. We have had two others doing it routinely; and in the emergencies, in the absence of these men, someone else would take it over.

XQ. 76. And what are Dr. Lake's relations to Mr. Herman A. Metz?

A. So far as I know, there are none now except an acquaintance.

XQ. 77. Well, have there been?

A. He was at one time an employee of the Metz Laboratory.

XQ. 78. And when?

A. Approximately covering 1919, perhaps running into 1918 and off into 1920. But I have not the dates.

XQ. 79. When did you last hear from Mr. Metz?

A. I am unable to say. We have correspondence with him nearly every week.

XQ. 80. Well, I mean with reference to his testimony here.

A. I have never heard from Mr. Metz with reference to his testimony here.

XQ. 81. Perhaps you do not get my question. Have you not heard from Mr. Metz say within ten days about his testimony here and about what you might be called upon to state, by telephone?

A. No.

XQ. 82. You have had no communication with him?

A. With Mr. Metz?

XQ. 83. Yes.

A. No.

XQ. 84. Or anybody in his behalf?

A. No, if you would except the attorneys—if they could be construed as speaking in his behalf, two attorneys from the Department of Justice.

XQ. 85. No, I do not lay that sin at their door. Now, let us see, Doctor McCoy. I know you are trying to tell us the truth, but your recollection may not be quite so good. You have seen these publications in the newspapers about Mr. Metz's testimony here about salvarsan?

A. Oh, they have been quoted to me but I have not seen them. I purposely avoided that.

XQ. 86. In connection with that, have you not had some communication with Mr. Metz, his agents or attorneys, about how his testimony might or might not be borne out by you and your records? Just think now.

A. No.

XQ. 87. Not at all?

A. No.

XQ. 88. Not within the past two or three weeks?

A. I have no recollection of anything of the sort. If you will give me the specific instance you have in mind, I will endeavor to identify it.

XQ. 89. Either by telephone or by letter?

A. No.

XQ. 90. None at all?

A. I recall none.

XQ. 91. Has nobody come to you, Dr. McCoy, to find out about what your records indicated as to the toxicity of Mr. Metz's product?

A. Well, no one save some newspaper men and some attorneys.

XQ. 92. I will omit the newspaper men, and if you mean the attorneys representing the Government here, I will omit them. Now, anybody else?

A. I can not recall any.

XQ. 93. Who were the attorneys that came to see you?

A. I do not know that he touched on this point, but Mr. Galloway came to see me. Am I right about that? And a Mr. Church. Am I right about that?

MR. ANDERSON: I think so. Mr. Church is assistant to Mr. Knight in the Department of Justice. I suppose that is the gentleman to whom you refer.

Mr. Kresel: There is no question about that.

XQ. 94. Did any other lawyer come to see you?

A. No.

XQ. 95. Do you remember that you were asked to be a member of a committee on arsphenamine for the Chemical Foundation?

A. I believe I was. I was a member of a committee for the Federal Trade Commission.

XQ. 96. And later became a member of the committee for the Chemical Foundation?

A. I think I inherited the relation with the Chemical Foundation.

XQ. 97. And Dr. Stieglitz was on that committee?

A. I believe so.

XQ. 98. And who was the third party?

A. I do not know.

XQ. 99. Is it not a fact that the Chemical Foundation submits to you, as the official head of the Hygienic Laboratory, every application for license that is made to it on arsphenamine?

A. So far as I know, they do, yes.

XQ. 100. And there is now pending before you an application which has been submitted to you by the Chemical Foundation in that respect?

A. I do not recall.

Mr. Kresel: That is all.

Re-Direct Examination.

By Mr. Anderson:

RDQ. 101. Dr. McCoy, you were called here by Mr. Knight, counsel for the Government in this case, were you not, to testify?

A. Yes.

RDQ. 102. And you asked that a subpoena be issued to bring you here, did you not?

A. No, I suggested that I would rather come with a subpoena than otherwise. So far as I know, none was issued.

RDQ. 103. You were asked to come without a subpoena on account of the delay required in issuing it?

A. I do not know that.

RDQ. 104. I will read to you the complete testimony on this subject, a part of which was read by counsel, from page 90 of the hearings on Alien Property before the Committee on Interstate and Foreign Commerce of the House of Representatives, on H. R. 13,496. That is what was commonly called the Winslow Committee?

A. That is my understanding.

RDQ. 105. You testified as follows:

> "MR. HUDDLESTON: Doctor, you spoke of these first American manufacturers of salvarsan as having proceeded 'blunderingly'—why was that?
>
> "DOCTOR MCCOY: Perhaps that was a poor word to use. They were embarking upon a field in which no American chemist had had previous experience.
>
> "MR. HUDDLESTON: What was their difficulty in producing this product?"

MR. KRESEL: This part has already been read, unless you want to read it again.

MR. ANDERSON: I will put it all in together. It is just half a paragraph.

MR. KRESEL: I just wanted to call your attention to that fact.

MR. ANDERSON: (Reading)

"DOCTOR MCCOY. The fact that they were not acquainted with the processes the Germans had used, and the processes the French were using in preparing the material. It was an entirely new field.

"Mr. Huddleston. Were not those processes described by the patents?

"Doctor McCoy. The processes, as described by the patents, I am told—now, this is heresay—are the very minimum required to secure the patent, and in no way adequate to enable even a competent chemist to reproduce the material.

"Mr. Huddleston: So that the parties who are now producing a satisfactory quality of this product are not proceeding by the formula as filed in the Patent Office, but are proceeding as their experience has taught them, having figured out in some way how to produce this substance?

"Doctor McCoy. Yes; that is a fair statement.

"Mr. Huddleston. If their activities should continue as at present, would that constitute a violation of this salvarsan patent?

"Doctor McCoy. It is my understanding, sir, that the German patents cover both the process which the American manufacturer may or may not use and also the final product, which is the same final product regardless of the process used.

"Mr. Huddleston: Of course, I am not a patent lawyer and my ideas on the subject are rather vague, but I have in mind that an idea cannot be patented, or protected by a patent, and I am wondering how a substance may be protected by a patent so that no one else can make the substance when its manufacture does not depend upon any prescribed formula. I do not suppose you can enlighten me on that because it would take a patent lawyer to do it.

"Doctor McCoy: No, sir."

Now, Dr. McCoy, were you speaking of your knowledge in that matter?

Mr. Kresel: What matter?

Mr. Anderson: In the testimony which I have read.

A. No. That was information that came to me from conversations with producers and chemists.

RDQ. 106. And you stated at the time that it was hearsay, did you not?

A. In part.

Mr. Kresel: He stated as to one section that it was hearsay, and you read it.

RDQ. 107. Did you ever try to manufacture any of this stuff under this patent yourself?

A. No.

Mr. Kresel: He has already testified he did not.

RDQ. 108. Have you ever studied the German patent on this subject yourself?

A. No, sir.

Mr. Anderson: That is all, doctor.

Mr. Kresel: That is all.

(Witness excused.)

Mr. Anderson: I believe you want Dr. McCoy to produce certain records, those records from his office at Washington.

Mr. Kresel: Colonel, as I said in chambers, if that means that you cannot finish on account of that before Monday, I will waive that, but if we are to be here Monday, I would like to have it.

Mr. Anderson: I think we can find out certainly in time for Dr. McCoy to know and get them here Monday, if we are detained that long. I will try not to, myself. So for the present, we will hold that in suspense.

Mr. Kresel: If you will.

Mr. Anderson: I will call Mr. Christiansen.

WALTER G. CHRISTIANSEN.

WALTER G. CHRISTIANSEN was called as a witness on behalf of the plaintiff, in rebuttal, and being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Please state your name and place of residence?

A. Walter G. Christiansen; residence, West Somerville, Massachusetts.

Q. 2. What is your profession?

A. I am a chemist.

Q. 3. Please state your education and experience as a chemist.

A. I graduated from Harvard in 1918 with the degree of Bachelor of Science. During my senior year I did some teaching in organic chemistry and later worked as control chemist in one of the duPont laboratories. Subsequent to that I was for one year——

MR. KRESEL: Give the year, please.

A. (Continuing.) ——from late in 1918 until 1919 in the Eastman Kodak Laboratories in Rochester, New York, as a research chemist. Since that time I have been at the Harvard Medical School doing research work on arsenicals.

Q. 4. On arsenicals?

A. Yes.

Q. 5. You are in the Laboratory of the Harvard Medical School?

A. I am.

Q. 6. As a chemist?

A. Yes.

Q. 7. Mr. Christiansen, in the laboratory of the Harvard Medical School have you ever had occasion to try to make arsphenamine or salvarsan?

A. Many times.

Q. 8. In what year?

A. My first experiment was in December, 1919.

Q. 9. How many experiments did you make in this regard?

A. I have made about 1200 experiments in all.

Q. 10. Are you familiar with the so-called German Salvarsan patent of Dr. Ehrlich?

A. Yes.

Q. 11. Pending the production of the exhibit, I will go ahead, if there is no objection. How did you come to make an effort to produce salvarsan?

Mr. Kresel: Just what is meant by that?

Mr. Anderson: I mean what occasioned his effort to produce salvarsan.

Mr. Kresel: I object to that as immaterial.

Mr. Anderson: If you object, I withdraw the question. It is merely to show that he was not making it——

Mr. Kresel: Very well.

Q. 12. Mr. Christiansen, please tell the Court whether in your first experiments with salvarsan, you undertook to follow the Ehrlich patent.

Mr. Kresel: One minute, please.

Mr. Anderson: All right, I will get the patent, that is the quickest way. I cannot ask him what he did under the patent unless I give it to him.

Q. 13. I hand you Defendant's Exhibit No. 156, Patent No. 986,148, patented March 7, 1911, and ask if you are familiar with that patent (handing witness)?

A. That is the patent which I followed.

Mr. Kresel: I ask that that answer be sricken out.

The Court: Strike out the answer.

Q. 14. I asked are you familiar with it.

A. I am.

Mr. Anderson: He says "I am." I asked the question over.

Q. 15. Now, I will ask you to take that patent and tell the Court exactly what you did and what was the result. You can read the patent if you want to.

Mr. Kresel: There is no necessity for reading it.

Mr. Anderson: He is not an experienced witness, and I told him because I thought he might think it was necessary for him to memorize it.

A. I followed the directions of this patent, using the quantities of materials stated and technique which I thought should be employed in this process and I obtained the reaction designated, and secured a product which conformed to all the standards of the public health service, and the toxicity was less than that specified by the Public Health Service.

Q. 16. I will ask you, did you test the product chemically?

A. I did.

Q. 17. What test did you follow?

Mr. Kresel: "What test did you make"—you mean?

Q. 17. (Continued.) What test did you make?

A. I analyzed it to determine the arsenic content and ran some qualitative tests to determine the chemical properties of the material.

Q. 18. Were those tests matters of common knowledge to those skilled in the art of chemistry?

A. They are.

Mr. Kresel: Wait a minute. I object to that and ask that it be stricken out. He should give what tests he made.

Mr. Anderson: He as a chemist is certainly capable of saying what is a matter of common knowledge to those skilled in the art of chemistry.

Mr. Kresel: On the contrary, witnesses called for the defense were, under objection by counsel, not permitted to state that.

Mr. Anderson: I never objected to a chemist's saying whether a thing was something that a man skilled in the art would know.

Mr. Kresel: If you reflect, I think you will agree that you made such objections.

The Court: Will you read the question?

(Q. 18 repeated as above recorded.)

The Court: I think that the question is too general and that the difficulty will continue so long as the question is general; but you can get your answer, I take it, by putting another question. I will sustain the objection.

Q. 19. I will ask you to state again just what the first process of chemical testing of this material was.

A. I analyzed it first to determine the arsenic content of the material.

Q. 20. Was that an ordinary laboratory test?

A. Yes.

Q. 21. I will ask you to take the next step which you took in testing it chemically.

A. In a pamphlet written by Dr.——

Mr. Kresel: I object to that. That is not answering the question.

Q. 22. All right; just tell me the next step you took.

The Court: In answering the questions, bear in mind the specific question, and give as direct an answer to it as you can without explanations, and if you need to modify your affirmative or negative answers, you may do that.

A. I determined the solubility of the material in water——

Mr. Kresel: I object to that. That gives the conculsion and not the step.

Q. 23. What was the chemical step that you took?

A. I added the material to water and obtained the characteristic yellow solution. To that I added caustic soda, which precipitates arsphenamine base and subsequently redissolves it to a characteristic yellow solution, from which the base can be precipitated by the addition of acetic acid. In another case, in which I dissolved the solid in water I added a reagent which is used in testing for amino groups and got a positive reaction, as I should, and confirmed that by adding a second reagent used for the same purpose.

Q. 24. Is it a fact or not that all of these tests were the chemical tests that you applied to ascertain the character and quality of the products?

Mr. Kresel: I object to that as leading. That is the whole subject.

Mr. Anderson: I withdraw the question.

Q. 25. You say you followed directly the details formally stated in that patent?

A. I did.

Q. 26. What did you get?

A. I got a yellow product which dissolved, which had all the characteristics of arsphenamine.

Q. 27. I will ask you whether you made the tests on animals of that product in your first experiment.

A. That material was tested on animals——

Mr. Kresel: Wait a minute, that is not the question. The question is whether you made the test of that particular material on animals.

The Witness: I did not.

Mr. Kresel: That is the answer.

Q. 28. Was it tested by your assistants in the laboratory on animals?

Mr. Kresel: I object to that unless the witness was there and saw it done.

The Witness: I was.

Mr. Kresel: That is an answer.

Q. 29. You were there?

A. Yes.

Q. 30. What was the result? I will ask you this: What test did you apply to the animal, and what animal did you use?

A. It was tested by intravenous injection into white rats.

Q. 31. On what scale or basis of tests?

A. It was injected on a basis of 120 milligrams per kilo and 130 milligrams per kilo.

Q. 32. What result did you get at 120 milligrams to the kilo?

Mr. Kresel: If he knows anything about it personally.

Q. 33. I am now assuming, as you said, that you were there and saw the tests made.

A. I was.

Mr. Kresel: But he does not say that he saw the result immediately, does he?

Q. 34. Did you see the results?

A. I did.

Q. 35. Did you follow through and watch the results?

A. I did.

Q. 36. What result did you get?

A. The majority of the animals injected with 120 milligrams per kilo survived.

Q. 37. When was this test made?

A. December, 1919.

Q. 38. Do you know of your own knowledge what was then the standard test of the Public Health Service of the United States?

Mr. Kresel: I object to that as immaterial.

The Court: Sustained.

Q. 37. Was that the first experiment you had made in this thing?

A. That was the first batch of arsphenamine I had made.

Mr. Kresel: I ask that that be stricken out as not responsive. The question was, was that the first experiment he had made.

The Witness: It was.

Q. 40. It was the first experiment you made, in making arsphenamine?

A. Yes.

Q. 41. I will ask you if you made any more experiments.

A. I did.

Q. 42. Speaking now of the formula under that patent?

A. I did.

Q. 43. What did you get?

Mr. Kresel: When, please?

Q. 44. When?

A. These experiments were made immediately after the first experiment.

Mr. Kresel: That does not give us the date.

The Witness: In December, 1919.

Q. 45. Did you make a series of experiments in this work?

A. I did.

Q. 46. How long did they continue?

A. They have continued for several years.

Q. 47. Did you undertake to vary the process in any respect after the first experiment?

Mr. Kresel: I object to that as leading. Your Honor will recall I was kept strictly to asking my experts: "What did you do, what result did you obtain?"

The Court: Yes, the objection is sustained.

Mr. Anderson: I can take 1200 experiments and ask him what he did every time, if you want me to.

Mr. Kresel: I do not care what you take; it is not any of my business, Colonel.

Q. 48. Take the next of the 1200 and tell me what you did the second time, if you recall it.

A. In the second experiment I tried to duplicate the first one to obtain a check result.

Q. 49. What result did you get?

A. The product was tolerated in a dose slightly lower than that of the first, but approximately—

Mr. Kresel: What was that, Doctor, I did not understand?

The Witness: The product was tolerated in doses slightly lower than that of the first sample.

Mr. Kresel: What do you mean by tolerated?

The Witness: The animals survived after they received an injection.

The Court: Shall we let him finish the answer?

Mr. Kresel: Yes, sir.

A. (Continued) When the product from the second experiment was tested on the animals they would not stand 120 milligrams per kilo, but did survive when treated with 100 milligrams per kilo.

Q. 50. What process did you follow in making the second experiment; state what you did, I mean.

A. In the second experiment I followed the patent, as in the first experiment.

Q. 51. And the result which you got was what you have stated?

A. Yes.

Q. 52. Did you make a third experiment?

A. I did.

The Court: What was the net result in mortality of white rats in the second experiment, or what percentage died in the second experiment, or survived?

The Witness: Except as a tolerated dose, that dose at which the majority of the animals survived, sixty per cent.

The Court: My inquiry was what percentage of the animals treated with the product of your second experiment survived?

The Witness: I do not remember exactly.

Q. 53. How about the third experiment, Mr. Christiansen?

Mr. Kresel: And please state when it was made.

A. This was made in the last part of December, 1919. I cannot remember definitely the result of the third experiment.

Q. 54. Did you continue to experiment under this patent?

A. I did.

Q. 55. You said you made 1200 separate tests under it?

A. I had.

Mr. Kresel: 1200 experiments, I understand, and not tests. Which was it?

Mr. Anderson: Or 1200 experiments.

The Witness: 1200 experiments.

Mr. Kresel: That is what I thought.

Q. 56. What did you get in each of these 1200 experiments?

A. I have obtained very variable results.

Mr. Kresel: I ask that that be stricken out.

The Court: Motion granted.

Q. 57. Did you in any of the experiments you have mentioned, when following the process outlined in the patent, which you have described, fail to get salvarsan or arsphenamine?

Mr. Kresel: I object to that as leading.

The Court: Sustained.

Q. 58. Can you state what product, chemical or pharmaceutical product, you secured in each of the experiments you have mentioned in which you followed the process stated in the patent, which you have described?

The Court: Your answer is yes or no, can you state?

A. Yes.

Q. 59. What product did you get?

A. I obtained arsphenamine.

Q. 60. Did you test chemically and with animals for purity in those cases?

Mr. Kresel: In every case; is that the question?

Mr. Anderson: Yes, in every case, and if not, in how many cases?

Mr. Kresel: As to each of the 1200.

A. No.

Q. 61. In how many cases did you test?

A. In at least 80 per cent. of the cases.

Q. 62. Can you state the results where you made tests?

Mr. Kresel: In each case, please.

A. I cannot remember all the results.

Q. 63. You cannot state the results in each case? Very well, I won't press the question.

The Court: Can he state the maximum and minimum result obtained?

Q. 64. You have heard the Court's suggestion. Can you state the maximum and minimum result of purity where you followed the formula in the patent? I am talking about that now.

A. I can.

Q. 65. All right, state it.

A. The maximum tolerated dose obtained was 130 milligrams per kilo and the lowest 80 milligrams per kilo.

Mr. Anderson: The witness is with you, gentlemen.

Cross-Examination.

By **Mr. Kresel**:

XQ. 66. If you do not mind I will call you Dr. Christiansen.

A. Very well.

XQ. 67. We are so used to calling chemists doctors here that I get confused. You graduated in 1918?

A. I did.

XQ. 68. And you took a degree of B. S.?

A. I did.

XQ. 69. Is that the only degree you hold?

A. Yes.

XQ. 70. And I assume that you were graduated in the summer of 1918?

A. In June.

XQ. 71. Then you went to work for what concern?

A. For the du Pont Company.

XQ. 72. How soon after your graduation did you go to the duPont Company?

A. Immediately.

XQ. 73. How long did you stay with the duPont Company?

A. I was with them until September 1, 1918.

XQ. 74. So that you were with them three months?

A. I was.

XQ. 75. A little less than that?

A. A little less than three months.

XQ. 76. And what work did you do while with the duPont Company—just the character of work?

A. It was control work on plant production.

XQ. 77. That is Greek to me. What does that mean?

A. That is the determination of the quality of products produced in the plant, in order to prove that the process was being properly carried out.

XQ. 78. Was that in the dye works or the explosive works, or which?

A. It was in the smokeless powder division.

XQ. 79. So for three months immediately following your graduation you were testing smokeless powder to see whether it was manufactured according to formula?

A. I was testing the diphenylamine used in the smokeless powder.

XQ. 80. The intermediate?

A. Yes.

XQ. 81. Then you left. Where did you go then?

A. I was in the research laboratory of the Eastman Kodak Company.

XQ. 82. Did you go there immediately on the 1st of September?

A. I did.

XQ. 83. And how long were you with the Eastman Kodak Company?

A. Exactly one year.

XQ. 84. You say you were in the research laboratory. What was the nature of your work there?

A. It was the development in the laboratory of processes for the manufacture of photographic developers and the transferring of these processes into the plant.

XQ. 85. The Eastman Kodak Company manufactures photographic supplies?

A. It does.

XQ. 86. And all your work there for that year was work connected with the manufacture and supply of photographic material?

A. It was.

XQ. 87. That brings us to September, 1919.

A. It does.

XQ. 88. And during the period between June, 1918, when you were graduated, and September, 1919, your time was occupied, and I assume entirely occupied, with your duties with the duPont Company and the Eastman Kodak Company?

A. Not wholly.

XQ. 89. You mean you worked at night?

A. Sometimes. During the latter part of the summer of 1919.

XQ. 90. The summer of 1919 you worked at night?

A. Yes.

XQ. 91. And what kind of work did you do then?

A. I was getting the literature together, preparing to do my work on arsphenamine.

XQ. 92. You were just collecting literature?

A. Yes.

XQ. 93. Then after leaving the Eastman Kodak Company you went back to Harvard?

A. To the Harvard Medical School.

XQ. 94. And where is that located?

A. In Boston.

XQ. 95. And you have been there ever since?

A. I have.

XQ. 96. That is a period of three years or so—a little over three years.

A. It will be four in September.

XQ. 97. What are you there—on the teaching staff?

A. I am an instructor in pharmacology.

XQ. 98. How long have you been an instructor in pharmacology, ever since you went back?

A. I have.

XQ. 99. September, 1919?

A. Yes.

XQ. 100. You lecture to classes in pharmacology?

A. I do not lecture. I hold that position without doing any teaching.

XQ. 101. You have done no teaching at all?

A. No.

XQ. 102. Have you done any writing?

A. Considerable.

XQ. 103. Writing on subjects that you investigate?

A. Yes.

XQ. 104. Under whose direction do you work?

A. Dr. Reed Hunt.

XQ. 105. And is he a chemist?

A. He is not.

XQ. 106. What is he, a physician?

A. He is.

XY. 107. In what department are you in Harvard University—or rather Harvard Medical School?

A. In the Department of Pharmacology.

XQ. 108. And who is the head of that?

A. Dr. Reed Hunt.

XQ. 109. Did you make the experiments that you have described here under Dr. Hunt's supervision?

A. He was there, but he gave no active supervision to the work.

XQ.110. I did not mean whether he took part therein, but what I mean is this: Did you prosecute this research upon your own inclination or was it a part of your duty?

A. It was part of my duty.

XQ. 111. And it is in that sense that I meant it, that what you were doing you were doing under Dr. Hunt's supervision and instructions, I assume.

A. He gives me no instructions as to what I shall do or how I shall do it.

XQ. 112. Do you not receive instructions as to the subject that you are to investigate?

A. Only that.

XQ. 113. Then I understand that beginning with September, 1919, under instructions from your superior, Dr. Hunt, you undertook an investigation or research work in arsphenamine?

A. Yes, sir.

XQ. 114. Now we have it, and you then prosecuted that work during the whole time since September 1, 1919?

A. A majority of the time.

XQ. 115. What other work have you been performing?

A. A research on allied arsenicals.

XQ. 116. What allied arsenicals do you mean?

A. Derivatives of arsphenamine and compounds which are not derived from arsphenamine but which are very closely related to it.

XQ. 117. All of them, however, having arsenic as a base?

A. Yes.

XQ. 118. About how much of your time have you been devoting to arsphenamines?

A. 85 per cent. of my time, anyway.

XQ. 119. That is 85 per cent. out of what you had left after doing your writing, as I understand, which is quite considerable?

A. 85 per cent. of my laboratory time.

XQ. 120. And of your entire time how much did you spend in your laboratory?

A. Well, I average about 70 hours a week in my laboratory.

XQ. 121. Dr. Christiansen, how did you come to be a witness in this case?

A. Mr. Wright came to see me at my laboratory in Boston.

XQ. 122. Mr. Wright, of the Department of Justice?

A. Yes.

XQ. 123. Had you known Mr. Wright before?

A. I had not.

XQ. 124. Had you had any relation with the Department of Justice before this?

A. I had not.

XQ. 125. Is Dr. Reed Hunt in the country?

A. He is not.

XQ. 126. Are there other chemists in the Department of Pharmacology of the Harvard Medical School?

A. My assistants.

XQ. 127. Next to Dr. Reed Hunt you are in charge?

A. Dr. Hale is in charge, but he is on his vacation.

XQ. 128. Is he a chemist?

A. He is not.

XQ. 129. I do not mean to be in any way reflecting upon you, Doctor, but I assume that you are being compensated for your work here?

A. I have obtained nothing for my work.

XQ. 130. You expect to?

A. I was told that my traveling expenses would be paid.

XQ. 131. Is that all?

A. And for my professional services.

XQ. 132. Has that sum been agreed upon?

A. It has not.

XQ. 133. The first experiment that you made on salvarsan—we call it salvarsan here; sometimes arsphenamine, usually salvarsan—was made by you in December, 1919, I understand?

A. It was.

XQ. 134. Prior thereto you had made no experiments with that drug?

A. I had not.

XQ. 135. And the result of your very first experiment was, as you have testified, that you obtained salvarsan which at 120 milligrams gave you a result of survival of a majority of the rats that were infected?

A. Yes.

XQ. 136. You know, do you not, Doctor, that a 120-milligram test is higher than the test required by the United States Health Service?

A. I do.

XQ. 137. Their test today is 100?

A. It is.

XQ. 138. So that your very first experiment gave you the product 20 degrees better than the United States Public Health Service even today requires?

A. It did.

XQ. 139. And you obtained that result, I understand you to say, by strictly following the steps described in this salvarsan patent that you have before you?

A. I did.

XQ. 140. Well, of course, you realized that that was a splendid result, did you not?

A. So I have been told.

XQ. 141. Well, didn't you know then?

A. I thought it was very good.

XQ. 142. Well, you knew enough about the subject to know that if you get a product testing 120 degrees, you got the very best product that anybody ever obtained?

A. Not the very best product anybody has ever obtained.

XQ. 143. Except yourself. You obtained later 130?

A. Not except myself either.

XQ. 144. You obtained later 130?

Mr. Knight: You do not mean 120 degrees, do you?

XQ. 145. 120 milligrams. You understand?

A. I understand.

XQ. 146. Having gotten that very good result, you were not satisfied with that?

A. No.

XQ. 147. And you proceeded to make another experiment?

A. I did.

XQ. 148. Immediately?

A. I did.

XQ. 149. And what was the result of that second experiment?

A. The result of the second experiment was a yellow powder having all the characteristics of arsphenamine and tolerated at 100 milligrams per kilo of rat.

XQ. 150. In other words it was not quite as good as the result that you obtained in your first experiment?

A. No.

XQ. 151. Well, that somewhat discourages you, did it not?

A. No, because I had expected that.

XQ. 152. It did not discourage you, very well. And the result of the second experiment you obtained, as I understand, by doing exactly the same things that you had done in your first experiment?

A. To the best of my knowledge.

XQ. 153. Well, the best that you could do?

A. Yes.

XQ. 154. Then not being satisfied with the result of the second experiment, you made a third one?

A. I did.

XQ. 155. Right away?

A. Well, within a day or two.

XQ. 156. And at that time, you again followed exactly the steps laid down in the patent?

A. I did.

XQ. 157. What result did you then obtain?

A. I said that I could not remember the exact results of my third experiment.

XQ. 158. Can you remember whether it was as good as your first?

A. I cannot.

XQ. 159. Cannot even remember that. Or as good as your second?

A. I cannot.

XQ. 160. At all events, it could not have been very satisfactory, because you proceeded to experiment, did you not?

A. I would have proceeded, anyway.

XQ. 161. Well, you did proceed?

A. I proceeded to experiment.

XQ. 162. And after that third one, you made 1197 more experiments, did you?

A. I did.

> Mr. Anderson: If your Honor please, the witness should be told that if Mr. Kresel interjects into his questions the argument that it could not have been satisfactory, while he must answer the questions yes or no, whether he experimented, he can explain, so that his answer will not be an implied admission it was not satisfactory.
>
> The Court: Did you understand that from my remarks a few moments ago or not? Anyway, whether you did then or not, when you give an affirmative or negative answer, you may modify it or explain it, if it needs modification.

XQ. 163. How much of a yield did you obtain in your first experiment? Do you know what I mean by "yield"?

A. You mean the weight of material I obtained, considering the amount I started with?

XQ. 164. Yes, that is right.

A. Oh, I obtained a very good yield, which I should think was approximately 90 per cent. of the theoretical yield.

XQ. 165. In other words, if you were advising some corporation that desired to go into the business of manufacturing arsphenamine upon the result obtained by you in your first experiment, you would have no hesitancy in advising that they could go on and manufacture commercially?

A. Yes.

XQ. 166. By weight, how much did you get on that first experiment?

A. Approximately half an ounce.

XQ. 167. And is that approximately the amount that you obtained in each of your 1200 experiments?

A. It is not.

XQ. 168. Did you in the others obtain less or more?

A. Subsequently I worked with smaller quantities, as a rule. I obtained less.

XQ. 169. What would you say would be the average of your yield in your subsequent experiments?

A. My percentage yield remained approximately the same.

XQ. 170. About 90 per cent.?

A. Yes.

XQ. 171. But the weight?

A. The weight averaged only 1½ grams.

XQ. 172. In your 1200 experiments, how much arsphenamine did you produce?

A. I produced approximately 1500 grams.

XQ. 173. What did you do with it?

A. Most of it has been used up in analytical work and pharmacological work, and the rest of it is in my laboratory.

XQ. 174. None of it ever sold?

A. No.

XQ. 175. Or used on human beings?

A. No.

XQ. 176. Of course, you keep records of your experiments?

A. I do.

XQ. 177. You have them with you?

A. I have.

XQ. 178. Will you produce them?

A. They are at the hotel.

Mr. Kresel: Your Honor, how long are we going to sit today, because I am willing to sit, as your Honor indicated this morning, until midnight.

The Court: We will not sit tonight unless by so doing we can get through tomorrow. If we cannot get through tomorrow, we will have our regular session tomorrow morning and then have no more activities until the following week.

XQ. 179. You will produce your records in the morning, will you?

A. I will.

XQ. 180. And are those the records of your 1200 experiments?

A. They are.

XQ. 181. You have a record as to the result of each experiment?

A. I have.

XQ. 182. Made by you personally?

A. Everything except the pharmacological testing was done by me.

XQ. 183. You mean the testing on the animals?

A. I do.

XQ. 184. That is, that testing was done by somebody else?

A. It was.

Mr. Anderson: He stated it was done in his presence.

XQ. 185. And the record was made by you at the time you performed the experiments?

A. It was.

XQ. 186. You will produce that in the morning, will you?

A. Yes.

XQ. 187. How long did it take you to make your first experiment?

A. From the time I secured my last intermediate, it took me three or four days.

XQ. 188. How long did it take you to produce or obtain your last intermediate?

A. Three months.

XQ. 189. That is, you made it yourself?

A. I did.

XQ. 190. And I assume you then made enough to carry you for your 1200 experiments?

A. I did not, at one time.

XQ. 191. You made the intermediate for each experiment separately?

A. I have not.

XQ. 192. Where did you get the intermediate for the subsequent 1199 experiments?

A. We made them all, but we did not make them separately.

XQ. 193. I do not think I quite understand you. You say the first time that you made an intermediate you made only enough for one experiment, is that right?

A. I did not say I made enough for only one experiment.

XQ. 194. I understood you that way.

A. I said I did not make enough for all my experiments.

XQ. 195. How many times did you have to make intermediates?

A. My assistant has made intermediates many times; I do not know how many.

XQ. 196. You did not make the intermediate except the first time?

A. Not every time. I have made several sets of intermediates.

XQ. 197. Doctor, is it not a fact that it takes about a week to synthetically produce arsphenamine?

A. Do you mean starting from the last intermediate?

XQ. 198. I mean starting from the point at which you have got to start to make arsphenamine.

A. From the very beginning, it takes us more than a week.

XQ. 199. How long?

A. It would take at least two weeks to obtain the finished arsphenamine.

XQ. 200. Have you ever had any experience with arsphenamine applied to human beings?

A. I have not.

XQ. 201. Prior to your return to Harvard University in September, 1919, had you had any experience in making salvarsan?

A. I had not.

XQ. 202. Doctor, I do not want to put you in any light in which you ought not to be, and therefore I want to ask a question again to see if I understand you: My understanding of your testimony is that the very first time that you made any experiment in synthetically producing salvarsan, you obtained salvarsan which was tested at 120 milligrams, and you obtained a 90 per cent. yield of the theoretical yield?

A. I did.

XQ. 203. And that you obtained that result simply by strictly following the steps or specifications prescribed in the patent that you now have before you?

A. I did.

XQ. 204. May I have it, please? (Witness hands patent.)

XQ. 205. Doctor, what is the first step prescribed in this patent?

Mr. Anderson: You have a right to have the patent before you if you wish.

Mr. Kresel: No, I am going to test his knowledge without the patent before him. He has made 1200 experiments, each time following this. Now I want to see what he knows about it.

Mr. Anderson: I submit, if your Honor please, that in an examination on any instrument of that kind the witness is entitled to have the patent before him. I do not know whether he can remember it or cannot remember it; but this is not a memory test; this is a question of knowledge.

The Court: If I understand it, Mr. Kresel, we are not concerned with the terms of the patent, save as we can get them by referring thereto. What I assume we might be interested in are the precise steps which he took in the first experiment, if you want that; but I think that he can refer to the patent.

Mr. Kresel: That is what I am asking him.

XQ. 206. What was the first step that you took in your first experiment? What did you first do?

Mr. Anderson: I respectfully suggest that he is entitled to have the patent before him to refresh his memory as to terms.

Mr. Kresel: If the witness states that he cannot answer without reading from the patent, then we will cross that bridge by letting him read from the patent.

By **The Court**:

Q. 206a. Do you want the patent to refresh your recollection?

A. Not immediately.

Mr. Kresel: I think that disposes of the objection for the present.

Mr. Anderson: I only wanted to tell him that. Go ahead.

By **Mr. Kresel**:

XQ. 207. What was the first step that you took?

A. I dissolved a definite amount—I cannot remember the figures—of the sodium salt of para-hydroxyphenylarsinic acid in concentrated suphuric acid and cooling and keeping the temperature below zero degrees, added a mixture of nitric and sulphuric acids slowly and with continuous stirring of the solution in sulphuric acid.

After all the nitric acid had been added, I allowed the temperature to rise to 10 degrees, and then poured the sulphuric acid solution into a large volume of water in order to precipitate the nitration product.

This was then allowed to stand in order that the nitrohydroxyphenylarsenic acid might separate from the solution. This was filtered and washed and dried. That gives the final intermediate necessary to make arsphenamine.

This nitrohydroxyphenylarsenic acid is dissolved in water, containing a definite amount of caustic soda which is sufficient to give——

XQ. 308. How much caustic soda?

A. I was just going to say, sufficient to give a disodium salt of this acid.

XQ. 309. Well, how much?

A. I cannot remember the figures.

XQ. 310. Go on.

A. And this solution is then added to a solution of sodium hydrosulphite magnesium chlorid in water and the combined solutions are digested at 50 degrees for a sufficient length of time to get complete reaction. During this process——

XQ. 311. What does that give you? After you digest it, what do you get?

A. During the digestion, arsphenamine base or diaminodihydrooxyarsenobenzene separates from the solution as a yellow powder, which the patent says is a microcrystalline. This arsphenamine base, as we call it, is removed from the reaction mixture and dried *in vacuo*. This product is then converted into dihydrochlorid. That is the process for making arsphenamine.

XQ. 312. And is the last the arsphenamine?

A. Arsphenamine is the dihydrochlorid of the product which separates from the digesting. The first product is arsphenamine base.

XQ. 313. Now, have you finished the process?

A. The patent, I think, gives some characteristics of arsphenamine and also refers to the production of some tetroamenohydrooxyarsenobenzenes and some diamenoarsenocresols; but those substances, although related to arsphenamine, have very little bearing upon the arsphenamine itself.

XQ. 314. Have you now described fully, as far as your recollection will serve you, the steps that you took in your first experiment that gave you the result you have described?

A. I have.

XQ. 315. The intermediate that you used, you say you did not have to make every time you made an experiment?

A. I did not have to make it every time.

XQ. 316. Is that readily available? I mean, could anybody go into a drug store, and if he knew the name of it, buy some of it?

A. He could not.

XQ. 317. Have you some available?

A. I have.

XQ. 318. At the present time?

A. I have.

XQ. 319. That you made yourself?

A. That my assistant has made.

XQ. 320. And how long would it take you, using that intermediate, to make arsphenamine?

A. It would take me three days.

XQ. 321. And I assume that was the length of time you consumed in each of your 1200 experiments, even assuming that you each time started with an already prepared intermediate?

A. In these 1200 experiments, there are numerous experiments recorded on the final product. I mean, I made 1200 experiments on arsphenamine and some of those experiments recorded processes to which I subjected the arsphenamine. I do not mean that I made arsphenamine 1200 times.

XQ. 322. That is what I thought. My understanding is—if I am wrong, you will correct me.

Mr. Anderson: Let him finish.

Mr. Kresel: Wait a minute. I will put my question.

Mr. Anderson: I object. He was in the midst of an answer and I insist he should be allowed to finish it. He was asked about it. He is entitled to finish his answer.

Mr. Kresel: The witness was not in the middle of an answer.

Mr. Anderson: Will the stenographer read where he stopped?

(Answer to XQ. 321 repeated as recorded above.)

Mr. Anderson: Had you finished your answer?

The Witness: I had not.

Mr. Anderson: I thought he was about to say something.

XQ. 323. What were you about to say?

A. I was about to say that in these 1200 experiments I have recorded as experiments the processes to which I subjected the final arsphenamine.

XQ. 324. My understanding of your testimony is that you made 1200 experiments and that as a result of each experiment you made arsphenamine? Is that correct?

A. The impression that I want——

XQ. 325. Is that correct, yes or no?

A. It is not.

XQ. 326. In what respect is it not correct? Or rather, I will put it this way: How many experiments did you perform as a result of which you obtained arsphenamine?

A. I cannot state what per cent. of these 1200 experiments we ran in order to prepare arsphenamine itself.

XQ. 327. I did not ask you for the percentage. I asked you for the number.

A. If I knew the percentage, I could state the number. I do not know the number.

XQ. 328. Then it is not a fact that you have made arsphenamine 1200 times?

A. I have not made 1200 separate batches of arsphenamine.

XQ. 329. You gave us a total of 1500 grams that you had produced. Was that not upon the basis of a production 1200 times?

A. It was an estimate of what I think my total production of arsphenamine has been.

XQ. 330. How could you give me an estimate if you do not know how many times you produced it?

A. Well, I know—I know the approximate amount I have made in the laboratory.

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XQ. 331. Well, how many times, can you say now; your best approximate information or knowledge or recollection as to how many times you have made arsphenamine?

A. Well, this will be approximate, but I should say there were 600 different productions of arsphenamine.

XQ. 332. We will take 600 then. At all events, your own records which you have here will show that exactly, will they not?

A. They will.

XQ. 333. In 1919, do you know whether the American market was getting all the arsphenamine that was required?

A. I have no knowledge of that.

XQ. 334. You did not undertake to make any commercial use of your ability to produce arsphenamine with such wonderful yields and results as you have described?

A. I could not.

XQ. 335. Had you done any reading on arsphenamine?

A. I had.

XQ. 336. What literature had you read?

A. I read a paper by Ehrlich and Bertheim in the *Berichter* of the German Chemical Society.

XQ. 337. Pardon me a minute. That is well known to you, but not to us. Where will we find that?

A. In any chemical laboratory.

XQ. 338. Which gives me no information. I mean, is it printed in any book or magazine that you can give me the name of?

A. I gave you the name of the book; the "Berichter of the German Chemical Society" is a bound series of books containing the reports of German chemists.

XQ. 339. And for what year was this publication that you speak of?

A. In the "Berichter" of 1912, I think.

XQ. 340. And you read an article by Ehrlich written in 1912?

A. I did.

XQ. 341. Of course, that was a publication that was open to anybody?

A. It was.

XQ. 342. Very well. Now, what other literature did you read?

A. Dr. Kober has published a paper in the *Journal of the American Chemical Society* on the production of arsphenamine.

XQ. 343. And what year was that?

A. I cannot state the year. It was in, I think, 1918.

XQ. 344. You know, do you not, that this Dr. Kober was of the Dermatological Laboratories?

A. I do not know that he was of the Dermatological Laboratories.

XQ. 345. What is his first name?

A. Philip, I think.

XQ. 346. Well, you do not know now where he hailed from; or do you?

A. The last I heard of Dr. Kober, he had a plant at Hastings-on-the-Hudson, New York.

XQ. 347. But at the time you read his paper in 1918?

A. I do not know where he sent that paper from.

XQ. 348. Do you know where he was doing his work?

A. I do not.

XQ. 349.What else did you read?

THE COURT: Will you fix the time for this reading?

XQ. 350. 1918, did you say, Doctor?

A. I think the papers were published in 1918.

XQ. 351. When did you read it, though?

A. I read it in the fall of 1919.

XQ. 352. Beginning with the 1st of September, 1919?

A. Yes.

XQ. 353. And this German article you likewise read beginning with September 1, 1919?

A. I did.

XQ. 354. Now, what else did you read?

A. I read numerous papers on the organic chemistry of arsenic not only related to arsphenamine——

XQ. 355. I am speaking now of arsphenamine, if you can give me that.

A. I read the bulletin which was written by Myers and Dumet from the Public Health Service.

XQ. 356. United States Public Health Service?

A. Yes.

XQ. 357. A bulletin written by someone in the Public Health Service, when?

A. I read that in the fall of 1919, also.

XQ. 358. After September 1st?

A. Yes.

XQ. 359. And that was published when?

A. I do not recollect the date at which that was published.

XQ. 360. What else?

A. Several papers have been published by some English workers and have appeared in the journals of the London Chemical Society, I think, in 1921.

XQ. 361. No, I mean in 1919. Before you made your first experiment, I was interested to know what you had read?

A. As far as I can remember, that is all the reading on arpshenamine that I had done.

XQ. 362. That is, you had read the German paper by Dr. Ehrlich; you had read the paper by Dr. Kober; and the bulletin of the United States Public Health Service?

A. I had.

XQ. 363. Doctor, is it true that arsphenamine cannot be purified if you start with an impure intermediate?

A. Arsphenamine—

XQ. 364. Just answer yes or no, please.

MR. ANDERSON: I think he is entitled to answer fully.

A. No, it cannot be purified because the chemical and physical properties of arsphenamine are such that the impurities which are present are very difficult to remove.

XQ. 365. Is it not necessary, therefore, in order to produce an arsphenamine which can be safely used upon human beings to start with a pure intermediate?

A. No. My experiments do not show that.

XQ. 366. That is, you have started with an impure intermediate and have obtained good arsphenamine?

A. I have.

XQ. 367. I suppose you did that purposely?

A. Intentionally.

XQ. 368. Doctor, do you know anybody interested in this case?

A. I do not.

XQ. 369. Have you had any relations with the United States Public Health Service?

A. Not prior to seeing Mr. Wright on Monday.

XQ. 370. Well, Mr. Wright is of the Department of Justice?

A. Yes.

XQ. 371. But I mean of the United States Health Service?

A. I have met Dr. McCoy since I have been here; that is all.

XQ. 372. You do not know Mr. Herman Metz?

A. I have met Mr. Metz, but I do not consider it knowing him.

XQ. 373. When did you meet him?

A. I met Mr. Metz very late in December of 1922.

XQ. 374. Where?

A. In New York.

XQ. 375. At his office?

A. At his laboratory in Brooklyn.

XQ. 375-a. In connection with salvarsan?

A. We talked of salvarsan.

XQ. 376. How did you come to go to see Mr. Metz?

A. I was in New York returning from Pittsburgh and had met Dr. Myers, of the Metz Laboratory, and while waiting for a train I went over to see them, unknown to them and unexpected by them, just as a personal visit.

XQ. 377. That is the first time that you met Mr. Metz?

A. The first time that I met Mr. Metz.

XQ. 378. And then you had been in correspondence with him?

A. I had never had any correspondence with Mr. Metz.

XQ. 379. Have you met him since?

A. I have not.

XQ. 380. Have you heard from him?

A. I have not.

XQ. 381. Do you know who gave your name as a witness who might testify in this case?

A. I do not.

Mr. Anderson: I will be very glad to tell you that, if you wish the information.

XQ. 382. Will you produce your records in the morning?

A. I will.

Mr. Kresel: That is all until then.

Mr. Anderson: If counsel is going to cross-examine further when the record is here, if your Honor pleases, I will ask leave to do it all at once —my redirect.

The Court: How many more witnesses have you, if you care to state, Col. Anderson?

Mr. Anderson: At the present time it is my opinion we will not put on the stand more than three and at the outside four additional witnesses, and they will be short; unless the cross-examination is long I think the evidence will be concluded tomorrow.

The Court: Do you think it is possible to close the evidence then?

Mr. Anderson: I would prefer not going on now. I would rather not sit at night. At the end of the day I am thoroughly fagged, and I think I will conclude this case tomorrow, but I would rather sit tomorrow night than tonight, if that is agreeable to counsel.

The Court: I do not believe that would be quite fair to all concerned. I am perfectly willing to do it.

Mr. Anderson: I can state to your Honor that so far as I am concerned the examination of these witnesses, I am very sure, will not consume more than two or three hours.

The Court: But here is a witness who, with neither side abusing their privileges, has taken two or three hours. I do not know exactly how long he has taken, but judging the time that he probably went on the stand, he has taken two hours and a half, and three of them would take seven and a half.

Mr. Anderson: It is my opinion that it is impossible to conclude this case before Monday, your Honor, because each side will have records to introduce.

THE COURT: If it would be any satisfaction to you, we would adjourn tomorrow noon until Tuesday instead of Monday. But there is one question I would like to ask. I dislike to break into the cross-examination or the examination in chief, but I want this information anyway.

I will ask whether you derived any information as to the making of salvarsan from any individual. You have been asked with respect to the patent and the literature that you have read, and I am curious to know whether Dr. Reed Hunt or other scientists of his standing gave you any information with respect to the making of salvarsan prior to your making the first experiment?

THE WITNESS: They did not.

MR. KRESEL: Or any manufacturer of salvarsan?

THE WITNESS: No manufacturer.

MR. KRESEL: And nobody else?

THE WITNESS: I have talked with nobody.

MR. ANDERSON: I would be very glad, if counsel is willing, to have the witness state how he came to make all these experiments. There is a good reason for it. I asked the question and he objected to it.

MR. KRESEL: I am not curious on that score. If I were, I would ask the question.

MR. ANDERSON: I asked the question, and he objected.

(Following is a list of documents referred to in Defendant's Exhibit No. 318, and offered in evidence by Mr. Kresel as Defendant's Exhibits, at page 4404 of the record:)

Printed sheet from Wall Street Journal,

March 10, 1921, entitled "Dyes and Defense" received in evidence and marked "Defendant's Exhibit No. 324." (*Not printed.*)

Pamphlet entitled "Statements of Henry B. Thompson and Albert M. Patterson" received in evidence and marked "Defendant's Exhibit No. 325." (*Not printed.*)

Pamphlet entitled "Statement of Mr. Francis P. Garvan, Alien Property Custodian," received in evidence and marked "Defendant's Exhibit No. 326." (*Not printed.*)

Reprint of editorial article by Dr. Frank Crane in the Globe and Commercial Advertiser, entitled "Books I have Met" received in evidence and marked "Defendant's Exhibit No. 327." (*Not printed.*)

Booklet entitled "Molecules and Man," by Robert E. Rose, Ph. D., received in evidence and marked "Defendant's Exhibit No. 328. (*Not printed.*")

Pamphlet entitled "The Chemical Industries of German Rhineland," received in evidence and marked "Defendant's Exhibit No. 329." (*Not printed.*)

Page from Literary Digest for December 18, 1920, article entitled "The Truth about American Dyes" received in evidence and marked "Defendant's Exhibit No. 330." (*Not printed.*)

Page from Manufacturers' Record, of January 13, 1921, article entitled "Has America no answer for This German Threat?" received in evidence and marked "Defendant's Exhibit No. 331." (*Not printed.*)

Printed article headed "Says Longworth Dye Bill Offers Best Solution" received in evidence and marked "Defendant's Exhibit No. 332." (*Not printed.*)

Printed article headed "Shall America Remain the only Important Country at the Mercy of the German Chemists?" received in evidence and marked "Defendant's Exhibit No. 333." (*Not printed.*)

Reprint of Article from Chemical and Metallurgical Engineering, January 5, 1921, entitled "Chemical Disarmament," by V. LeFebure, received in evidence and marked "Defendant's Exhibit No. 334." (*Not printed.*)

Record book containing report of Hearings before a Sub-Committee of the Committee on the Judiciary, United States Senate Sixty-sixth Congress, 3rd Session, January 19 to March 3, 1921, received in evidence and marked "Defendant's Exhibit No. 335." (*Not printed.*)

Volume containing report of Hearings before the Committee on Ways and Means, House of Representatives, on H. R. 2706 and H. R. 6495, June 18-20 and July 14-18, 1919, received in evidence and marked "Defendant's Exhibit No. 336." (*Not printed.*)

Reprint of Article from New York American, March 25, 1921, entitled "German Dyestuffs This Year Will Top Big Pre-War Output" received in evidence and marked "Defendant's Exhibit No. 337." (*Not printed.*)

Reprint of Article from the Rural New Yorker, February 12, 1921, entitled "Will the Chemist Compete with Farmers?" received in evidence and marked "Defendant's Exhibit No. 338." (*Not printed.*)

Reprint of Article from The Scranton Republican, March 25, 1921, headed "Dye Makers Must be Given Chance," received in evidence and marked "Defendant's Exhibit No. 339." (*Not printed.*)

Columbia University, received in evidence and marked "Defendant's Exhibit No. 357." (*Not printed.*)

Reprint of article from The New York Times, September 17, 1921, entitled "Coals to Newcastle" received in evidence and marked "Defendant's Exhibit No. 358." (*Not printed.*)

Copy of address of Senator Irvine L. Lenrott, on "The Relation of Our Chemical Industry to our National Defense," before the Chemical Exposition, New York City, September 28, 1921, received in evidence and marked "Defendant's Exhibit No. 359." (*Not printed.*)

Booklet entitled "Why Dyestuff Imports should be Licensed," by G. D. McDonald, received in evidence and marked "Defendant's Exhibit No. 360." (*Not printed.*)

Booklet entitled "Why The Coal Tar Industry Must Be Preserved and How to Accomplish It," by S. Isermann, received in evidence and marked "Defendant's Exhibit No. 361." (*Not printed.*)

Article entitled "German Cartel Seen As Factor in Dyes Ruling," appearing in Daily News Record of Wednesday, December 28, 1921, received in evidence and marked "Defendant's Exhibit No. 362." (*Not printed.*)

Booklet entitled, "How Germany, England, Italy, France and Japan have protected their organic chemical industries by special legislation," received in evidence and marked "Defendant's Exhibit No. 363." (*Not printed.*)

Atlantic Monthly Magazine, issue of June, 1922, received in evidence and marked "Defendant's Exhibit No. 364." (*Not printed.*)

Copy of the Yale Alumni Weekly of May 12, 1922, "Chemical Number," received in evidence and marked "Defendant's Exhibit No. 365." (*Not printed.*)

Pamphlet entitled, "The Chemical Question," by Francis P. Garvan, President of the Chemical Foundation, received in evidence and marked "Defendant's Exhibit No. 366." (*Not printed.*)

Book entitled "Testimony of Francis P. Garvan, President of the Chemical Foundation, Before the Sub-Committee of the Commitee on the Judiciary United States Senate, March 1, to March 7, 1922, Senate Resolution No. 77," received in evidence and marked "Defendant's Exhibit No. 367." (*Not printed.*)

THE COURT: We will adjourn now until 8.30 tomorrow morning.

(Whereupon, at 4.30 o'clock P. M., an adjournment was taken until Saturday, July 21, 1923, at 8.30 o'clock A. M. Standard Time.)

THIRTY-THIRD DAY.

Wilmington, Delaware,
July 21st, 1923, at 8.30 o'clock A. M.
Standard Time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. ANDERSON: Before beginning the proceeding this morning I would like to say to the Court that I have asked Dr. McCoy to return to Washington and get the original records which I think should be introduced in this case in view of the developments of the testimony. He tells me he cannot get them back here before Monday because it requires some photostating. For that reason it is impossible for us to close the case today, as I had earnestly hoped to do, and therefore I would like to ask the wishes of the Court.

THE COURT: It seems that we can close on Monday beyond all question; can we?

MR. ANDERSON: I could not say that, if your Honor please. It is impossible. I am going to shorten the evidence as much as possible and it ought to be closed in a day or two days. I will do my best. I had hoped yesterday morning I could close this week, but I feel it is very important, of course, to put in the original evidence and meet this situation fully; and, as your Honor knows, there are a great many issues we have got to meet that have been raised, which may prolong the examination. I am shortening and cutting out any witness I do not feel it is absolutely necessary for me to put on and doing all I can to close it.

THE COURT: I am starting with that assumption.

MR. ANDERSON: My own feelings would make me do that, if nothing else; because I am very tired.

MR. KRESEL: I must say, your Honor, that I am extremely disappointed to hear that counsel cannot close their case today. The statement was made yesterday afternoon that they could, that they had three but no more than four witnesses to put on. Now it is not even promised that it can be closed Monday. I think we are entitled to know as nearly as counsel can indicate it, how many witnesses there are to be called and how long it is probably going to take. If there is danger of this case not being finished by Monday, I am going to so far impose upon your Honor's good nature to ask you to sit Monday night so that we can finish it.

The Court: I will do that. I will do that because I appreciate the difficulty of being able to say at just what moment you are going to close.

Mr. Kresel: Oh, yes, I know that.

Mr. Anderson: I will be very glad to co-operate with the Court to the maximum of my ability, both in shortening the evidence and in other things; but I must, of course, do whatever I conceive to be my duty, and I know your Honor does not desire me to do otherwise.

The Court: I realize the difficulties.

Mr. Anderson: And there are a great many points that the Government ought to put in rebuttal on. I am going to limit it as far as I can posibly do it. There are four weeks of evidence that we have got to meet and it is hard to do that in a few days.

The Court: Suppose you proceed now, and unless we can get through today we will not go on during the afternoon—unless we find that it is necessary to go on during the afternoon to get through on Monday. I want to get through on Monday.

Mr. Anderson: I have stated, your Honor, what I am trying to do. If it would be possible for your Honor to say, I would like to know, because there is one and possibly more witnesses that I would have to bring here today if we go on this afternoon. I do not think it will be necessary unless there is some development this morning that I do not know about.

The Court: Then we will not go on this afternoon, but let us begin Monday morning at nine o'clock.

Mr. Anderson: Very good, sir. With the Sunday intervening I shall try to further shorten the evidence by examining the evidence which I have got to meet more carefully than I have heretofore done.

The Court: Let us begin Monday morning at nine o'clock, and we will sit in continuous session thereafter until we are done. There will be no adjournment, it will be a continuous session when we begin on Monday morning. Get all of your witnesses, both sides, and if there is any sur-rebuttal will you be prepared to go on Monday morning in continuous session. That will be eight o'clock standard time on Monday.

Walter G. Christiansen resumed the stand.

Mr. Kresel: I do not propose to proceed with the cross-examinaion of this witness until I have had an opportunity to examine his records. May I state to your Honor that at the adjournment yesterday afternoon I suggested to Mr. Galloway that if those records could be made available to me for examination last night, it would shorten our cross-examination.

The Court: But you have not seen them, Mr. Kresel?

Mr. Kresel: I have not seen them and have not had an opportunity to.

The Court: Then will you examine the witness so far as to ascertain whether he has them available for your inspection?

Cross-Examination (Continued).

By Mr. Kresel:

XQ. 383. Dr. Christiansen, have you with you now the records of your experiments that you testified about yesterday?

A. I have.

XQ. 384. Will you produce them, please?

A. They are in here (producing envelope containing papers). Be very careful of those, because that is original data.

XQ. 385. I shall certainly be very careful indeed.

A. And I might state that in any case of your going over those, I would like to be present with you.

XQ. 386. If I desire any explanation, I shall be very glad to avail myself of your offer.

A. Because that is all the data which I have of my four years' work and I want to see that it is not mixed up or confused in any way.

XQ. 387. I shall be personally responsible to you for returning these to you in the same condition that they are in, and every one of them; you need not fear for that. And if desired, if you feel that it would be safer for you, I shall be perfectly willing to have the clerk mark them, so that there may be no doubt as to how many there are. Would you prefer that?

A. I have got them all numbered.

XQ. 388. You have? Very well.

A. The only thing is, if the papers got mixed up, it would be an enormous proposition to——

XQ. 389. I will keep them in the same order.

(No answer.)

By The Court:

Q. 390. Are they so numbered that they can be restored to their present order if they should be dropped, for instance?

A. They could with considerable trouble.

Q. 391. But why not mark them so that there would be no difficulty about that?

By Mr. Kresel:

XQ. 392. They are marked consecutively, are they not? Up in the upper part of the page I see "1," "2," "3."

A. But not all the way through.

By **The Court**:

Q. 393. Why not do that now, Mr. Christiansen, with a pencil, and just number them consecutively from beginning to end, so that there will be no difficulty about it?

Mr. Kresel: That is all for the present.

Q. 393. (Continued.) And then you can pass them over to Mr. Kresel as you get them marked.

(Witness marks papers.)

Mr. Anderson: Of course, my re-direct awaits the completion of the cross-examination.

The Court: Oh, yes.

Mr. Anderson: I will call Dr. Freedman.

THIRTY-FOURTH DAY.

Wilmington, Delaware,
July 23, 1923, at 8 o'clock A. M.
Standard Time.

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Mr. Kresel: I am ready to proceed with the cross-examination of Dr. Christiansen.

Walter G. Christiansen resumed the stand.

Cross-Examination (Continued).

By **Mr. Kresel**:

XQ. 394. Dr. Christiansen, is it not true that until a test is made of the yellow powder that you obtained as a result of your experiments, you could not tell whether what you had obained was a poison or a cure?

A. Would you state what kind of a test you mean?

XQ. 395. I mean the test on the animals.

A. Was a poison or a cure?

XQ. 396. Yes.

A. One test could not settle that point. There are two points to be settled there.

XQ. 397. Well, more than one test, then, was necessary to determine that?

A. One test could determine to what degree that drug was poisonous. Every drug, no matter what it is, is poisonous to a certain degree, that is absolutely known, and one test would determine to what extent this yellow powder was poisonous. That is one test which could be made.

XQ. 398. What you mean is that it all depends upon the toxicity?

A. Every drug has toxicity and——

XQ. 399. No, I am speaking of this drug, if you will permit me.

A. This drug has a toxicity.

XQ. 400. The important feature in the drug, the thing that decides whether it can be safely injected into the veins of a human being is its toxicity?

A. It is.

XQ. 401. Now, may I have the salvarsan patent, Mr. Clerk? I have been examining your notes and I am going to hand you now your notes of your first experiment; those are the notes, are they not? (Handing papers to witness.)

A. They are.

XQ. 402. Now, as I understand your testimony, you started following the patent only at the point where you had already made your intermediate; is that right?

A. In this experiment?

XQ. 403. I am speaking of your first experiment?

A. Yes.

XQ. 403a. That is true, is it not?

A. Yes.

XQ. 404. I think you told us that it took you three months to prepare your intermediate.

A. Yes. I would like to explain that if I may.

XQ. 405. Well, all I am interested in, is the time; and those notes that you have handed me are not the notes of your work on the intermediate at all?

A. They are not.

XQ. 406. You have an entirely separate set of notes for that?

A. I have.

XQ. 407. Very well. So in the experiments as to which you testified last Friday and Saturday, namely, those 1200 experiments, you started with an intermediate already prepared?

A. In those of the 1200 experiments in which I prepared arsphenamine, you will recall I said some of those 1200 experiments were in preparation of derivatives and analogous compounds. In those in which I prepared arsphenamine, I started with the last intermediate, namely, nitrohydroxyarsonic acid.

XQ. 408. Exactly. Now then, I will hand you the patent, Defendant's Exhibit No. 156, and I wish you would point out to me the line in that patent where you started following it.

A. Line 57.

XQ. 409. Let me see it please. Line 57. In other words, you start with the figure "66 grams." Is that right?

A. I would start at that point.

XQ. 410. Now, that is all I have asked you so far. Starting at that point, the patent says as follows: "66 grams of nitrooxyphenylarsinic acid are dissolved in 1320 cubic centimeters of water. That is the first thing is it not?

A. Yes.

XQ. 412. Read me from your notes, how many grams of nitrooxyphenylarsinic acid you took.

A. I used 32.9 grams.

XQ. 413. Instead of 66?

A. Instead of 66.

XQ. 414. So that in that respect you did not follow the patent?

A. No. Let me explain——

XQ. 415. That is all I am asking you.

MR. ANDERSON: I think he is entitled to explain, sir. He is entitled to explain his answer, after he says no.

MR. KRESEL: Upon this subject I think I want only the categorical answers I am entitled to.

THE COURT: Does the patent give any latitude with respect to that?

MR. KRESEL: The patent says "66 grams of nitrooxyphenylarsinic acid are dissolved in 1320 cubic centimeters of water."

MR. ANDERSON: Now suppose he took one-half of that amount and one-half of that amount of water; is that not exactly the same thing?

THE COURT: I do not know.

MR. KRESEL: All I am pointing out, first, is wherein he deviated from the patent. I shall take up the proportions that he took. I will bring all that out.

THE COURT: I think, Colonel Anderson, as I now see it, that he either took the proportions or did not. His reasons for not taking them seem to me immaterial. You can bring that out on redirect if it is not brought out here. What was the weight that he used?

MR. KRESEL: 32.9 grams.

The Court: Very well.

XQ. 416. The patent then goes on to say that those 66 grams of nitro-oxyphenylarsinic acid are dissolved in 1320 cubic centimeters of water. Read me from your notes how many cubic centimeters of water you used.

A. I used 773 cubic centimeters of water.

XQ. 417. Instead of 1320. I want to stop there, Dr. Christiansen. Instead of 66 grams of nitro-oxyphenylarsinic acid you took 32.9 grams?

A. I did.

XQ. 418. That is less than half, is it not?

A. Yes.

XQ. 419. One-tenth of a gram less than half of the prescribed amount in the patent?

A. Yes.

XQ. 420. Right?

A. Yes.

XQ. 421. Did you intend to take half?

A. I cannot say now what I intended.

XQ. 422. Very well. You took 32.9?

A. I did.

XQ. 423. How much would be the proportion of water that you should have taken to the proportion that 32.9 grams bears to 66 grams?

A. Very little less than half of the total amount of water.

XQ. 424. A little less than half. Now, the patent says you should take 1320 cubic centimeters of water. You took 773?

A. I did.

XQ. 425. That is a great deal more than half, is it not?

A. That is about 100 cubic centimeters more.

XQ. 426. More than that. So you not only varied from the amount which the patent specifies, but if you started in by taking half the ingredients, you used 100 cubic centimeters at least more of water than you would have required on that basis?

A. I did.

XQ. 427. The patent proceeds to say that after taking 66 grams of this nitro-oxyphenylarsinic acid, dissolving it in 1320 cubic centimeters of water, there should also be added 225 cubic centimeters of caustic soda lye of twice the normal strength. Now, how much of caustic soda lye of twice the normal strength did you use, reading now from your notes?

A. I added 10 grams of solid caustic soda to the water.

XQ. 428. Ten grams of caustic soda equal how many cubic centimeters of caustic soda lye twice the normal strength?

A. If that ten grams of solid caustic soda would dissolve in approximately 100 cc.'s more water which I used, I would have a half of what he states should be added to normal caustic soda. In other words the 100 cc.'s of water were added on to the total amount of water and the weight of caustic soda which would be added was added in the solid form, which is exactly equivalent to what he says.

XQ. 429. Dr. Christiansen, I think you are in error. Let me follow it up. Is it not the fact that normal soda lye contains four grams of caustic soda in 100 cubic centimeters?

A. It is.

XQ. 430. Therefore, is it not the fact that twice the normal strength of soda lye contains eight grams in 100 cubic centimeters?

A. That is true.

XQ. 431. Therefore, one gram is contained in 12½ cubic centimeters, is it not?

A. It is.

XQ. 432. And if you used 10 grams, that is equivalent to 125 cubic centimeters, is it not?

A. It is.

XQ. 433. Very well. So we have it, then, that you used 125 cubic centimeters of caustic soda lye twice the normal strength?

A. I did not.

XQ. 434. You just told me——

A. May I explain that?

XQ. 435. No, you may not. Let us first see where we differ.

A. All right.

XQ. 436. I thought you just told me than ten grams of caustic soda do equal 125 cubic centimeters of caustic soda lye twice the normal strength.

A. Ten grams of pure caustic soda. Now, there is a difference here. I used caustic soda such as we buy, and get it in bottles, and that cannot be obtained as 100 per cent. caustic soda.

XQ. 437. Is there anything in your notes which says that it is not pure caustic soda?

A. I know——

XQ. 438. Never mind what you know.

A. All right, sir.

XQ. 439. I am asking you what your note shows.

A. My note does not show.

XQ. 440. Your note shows that you used ten grams of caustic soda. Now, assuming that caustic soda to be pure caustic soda, it would equal 125 cubic centimeters of caustic soda lye twice the normal strength?

A. If that were pure caustic soda.

XQ. 441. If you were using half of the ingredients, then, instead of the 225 cubic centimeters of caustic soda lye twice the normal strength required by the patent, you would have had to use 112½ cubic centimeters?

A. I would.

XQ. 442. In point of fact, if the soda lye was pure, you used 125 cubic centimeters?

A. If it were pure.

XQ. 443. Now, you say it was not pure?

A. It was not.

XQ. 444. And not being pure, its strength is less, is it?

A. It is.

XQ. 445. And how much less was it?

A. That is a variable quantity.

XQ. 446. So that as between 125 centimeters of caustic soda lye at 112½, you cannot really tell how much you had? It was in between those two figures because of the impurity of it, is that it?

A. I can tell fairly close.

XQ. 447. Well, how much did you have, less than 125 or more than 125?

A. The caustic soda——

XQ. 448. Just answer my question. Was it less than 125?

A. I had less than 125.

XQ. 449. How much less? How much did you have?

A. I had approximately 91 or 92 per cent. of 125 cubic centimeters.

XQ. 450. 91 per cent. of 125. Let us get that. That would give you 113¾?

A. Yes.

XQ. 451. So, instead of 112½ cubic centimeters required by the patent, assuming that you were using only half the quantities, you had 113¾?

A. That is, within my experimental error.

XQ. 452. I do not know what it is. That is the figure you had?

A. That is the figure.

XQ. 453. Now I proceed to follow the patent. The patent says that you should introduce all this into a solution of 855 grams of anhydrous sodium hydrosuphit. Read from your notes and tell me how much of anhydrous sodium hydrosulphit you used.

A. I used 492 grams of sodium hydrosulphit.

XQ. 454. And if you were using half quantities, you should have used 427½, should you not?

A. I should.

XQ. 455. The patent proceeds to say that this should be put not only into 85.5 grams of anhydrous sodium hydrosulphit but also into 171 grams of crystallized magnesium chloride; right?

A. It does.

XQ. 456. How much of crystallized magnesium chloride did you use according to your notes?

A. I used 86.5 grams of magnesium chloride hexahydrate. That means the hydrate contents, 6 molecules of water.

XQ. 458. If you were using half quantities, you should have used 85½ instead of 86½; is not that right?

A. What is the figure given in the patent?

XQ. 458. Half of 171.

A. Yes.

XQ. 459. Then the patent says that you should put all this stuff into 4275 cubic centimeters of water. Read me from your notes and tell me how much water you used.

A. I used 2110 cubic centimeters of water.

XQ. 460. Instead of 2137½, if you were using half the quantities, is that right?

A. Yes.

XQ. 461. So now I have taken you over the first six steps of this patent, and it is true, is it not, that in none of the six did you use the exact quantities specified in the patent, is that right?

A. Yes. Now, may I——

XQ. 462. No. And in none of the six steps did you use half of the quantities specified in the patent, is that right?

A. Not exactly half.

XQ. 463. I will proceed with the patent. The patent says that you should digest the solution at 50 degrees Centigrade, is that right?

A. It does.

XQ. 464. Tell me from your notes what you did in digesting it. At what temperature did you digest it?

A. I digested this material at 55 to 60 degrees.

XQ. 465. 55 to 60 instead of 50?

The Court: Is there any latitude in the patent?

Mr. Kresel: No latitude. Let me read it to your Honor. "On digesting the solution at 50 degrees centigrade." It does not say "about." It does not say "more or less."

XQ. 466. Your note says that you kept it at 55 to 60 degrees for how long?

A. Two hours and thirteen minutes.

XQ. 467. Show me anything in the patent which says as to how long it should be kept at that heat.

A. The patent——

XQ. 468. Is there anything there?

A. There is no time given in the patent.

XQ. 469. You kept it at 55 degrees for 20 minutes first, did you not, according to your notes?

A. I did not.

XQ. 470. Read me your note there.

A. Heat to 55 degrees Centigrade in 20 minutes.

XQ. 471. In 20 minutes? What do you mean by "in 20 minutes"? You wait for 20 minutes and then heat it?

A. No.

XQ. 472. What does that mean?

A. That the solutions were mixed at room temperature, which temperature I cannot state, and then were heated to 55 degrees, and the time occupied by that heating was 20 minutes.

XQ. 473. Is there anything in the patent which says how long you should heat this?

A. Just what do you mean?

XQ. 474. Don't you understand the question?

A. Do you mean——

The Court: I think the question bears one or two meanings, whether the patent says taking 20 minutes in bringing it from room temperature to 55 degrees, or two hours and fifteen minutes.

The Witness: That is what I want to know.

XQ. 475. Is there anything in the patent which says how long you should take in raising the temperature from room temperature to 55 degrees?

A. There is not.

XQ. 476. Is there anything in the patent which tells you how long to keep it at 55 degrees, or any temperature?

A. There is.

XQ. 477. Where? (Handing witness paper.)

A. It says to continue the digestion until a sample which is removed——

XQ. 478. Just read the portion of the patent that you referred to; and the line, if you will, please.

A. I am in error. It is——

XQ. 479. That is all. Never mind as long as you are in error; that is all I am interested in. But you did keep this heated up for two hours and thirteen minutes?

A. I did.

XQ. 480. And you kept the temperature at between 55 and 60 degrees Centigrade; is that right?

A. I did.

XQ. 481. Then the patent says that the mixture should be filtered?

A. It does.

XQ. 482. And you did filter it according to your notes?

A. I did.

XQ. 483. You say in your notes that after filtering it you washed it with water.

A. I did.

XQ. 484. Is there anything in the patent which says you should wash it with water? (Handing witness paper.) And point out the line.

A. There is not.

XQ. 485. The patent then says that you should dry the mixture, does it not?

A. It does.

XQ. 486. Your notes say that you dried it in a vacuum over caustic soda?

A. It does.

XQ. 487. Anything in the patent which says you should dry it in a vacuum or that you should dry it in a vacuum over caustic soda?

A. There is not.

XQ. 488. Your notes say that you dried it for 44 hours.

A. They do.

XQ. 489. Is there anything in the patent which tells you to dry it for 44 hours?

A. There is not.

XQ. 490. Dr. Christiansen, did you not realize when you were testifying here on Friday and on Saturday that you answered my questions and Colonel Anderson's questions—or rather I will put it the other way, Colonel Anderson's and my questions, and that you positively stated that you in your first experiment obtained arsphenamine following exactly the specifications in this patent and not varying one way or the other?

A. Yes. Now may I explain? I considered that these things which I have done are following the patent, and I can give reasons for these things which I have done.

XQ. 491. Never mind your reasons; you can bring them out later. But you now admit, do you not, that in no step outlined in your notes there did you follow the patent?

A. Not as you interpret the patent.

XQ. 492. Not as I interpret it, but as the patent reads; isn't that right?

A. Yes.

XQ. 493. When you get to this point that we have arrived at you have not arsphenamine, but a base for arsphenamine; isn't that right?

A. That is true.

XQ. 494. And the patent does not then proceed to tell what to do with that base in order to get arsphenamine, does it?

A. May I see the patent?

XQ. 495. There. (Handing witness patent.)

A. The patent says how this base may be converted into its dihydrochlorid.

XQ. 496. What does it say about it?

A. "Its dihydrochlorid, which may be precipitated from a methyl-alcoholic solution by ether, is a light yellow powder, readily soluble in water and methyl-alcohol, scarcely soluble in methyl alcohol, insoluble in ether or benzene; it decomposes when heated at about 190 degrees C."

XQ. 497. In other words, all that it tells us is that the dihydrochlorid of this base may be precipitated by using methyl-alcohol and ether?

A. It does.

XQ. 498. Did you undertake to use the base that you obtained and get therefrom the dihydrochlorid?

A. I did.

XQ. 499. Please read from your notes just what you did to get the dihydrochlorid.

A. "9.5 grams of base"——

XQ. 500. Stop there. Is there anything in the patent which says that you should take 9.5 grams of the base?

A. There is not.

XQ. 501. Go on.

A. "——was dissolved in 284 c.c.'s of methyl-alcohol, to which 50 c.c. of methyl-alcoholic hydrochlorid——"

XQ. 502. Was added?

A. "——was added."

XQ. 503. Is there anything in the patent which gives you those ingredients or the amount thereof?

A. There is not.

XQ. 504. Go ahead.

A. My notes say "the base dissolves nearly completely——"

XQ. 505. Well, that is simply descriptive. Go on.

The Court: It says what?

Mr. Kresel: The base dissolved nearly completely.

A. (Continuing.) "The yellow filtered solution is poured into 600 cubic centimeters of ether contained in an ice bath."

XQ. 506. Stop there, please. Is there anything in the patent that says you should do it in an ice bath?

A. There is not.

XQ. 507. Is there anything in the patent which tells you how many cubic centimeters of ether you should use?

A. There is not.

XQ. 508. Go on.

A. "At first a precipitate formed which later redissolved. 600 cubic centimeters——"

XQ. 509. That is merely descriptive.

A. All right, sir.

XQ. 510. Go on.

A. "600 cubic centimeters more of ether are added and a yellow precipitate is obtained."

XQ. 511. Is there anything in the patent which tells you to use 600 cubic centimeters of ether?

A. There is not.

XQ. 512. Go on.

A. "The yellow precipitate was filtered, washed with ether, and dried in vacuum over sulphuric acid. Thereby 7.7 grams of a yellow solid is obtained."

XQ. 513. Is there anything in the patent which tells you to filter it and to wash it and to dry in vacuum?

A. There is not.

XQ. 514. Dr. Christiansen, you testified on Friday that not only did you get arsphenamine by strictly following the outline in the patent and without deviating from it in the slightest degree, but you also testified that you got a 90 per cent. yield of the theoretical yield, did you not?

A. I did, and here is——

XQ. 515. Now wait. Did you mean that you got a 90 per cent. yield of arsphenamine?

A. I meant that I got a 90 per cent. yield of the steps described in the patent.

XQ. 516. Did you mean to tell the Court that you got a yield of 90 per cent. of arsphenamine or of something else?

A. I meant to tell the Court I got 90 per cent. yield of arsphenamine base.

XQ. 517. You did not say that, did you? You were being questioned about arsphenamine, not a base.

A. I was being questioned about the steps in the patent.

XQ. 518. Were you not being questioned about what yield of arsphenamine you obtained?

A. I said I understood I was being questioned about the patent.

XQ. 519. What yield of arsphenamine did you obtain?

A. My yield of arsphenamine base was eighty——

XQ. 520. I did not ask you about base; I meant the arsphenamine.

A. In converting the arsphenamine base into the hydrochlorid I got 67.6 per cent. yield.

XQ. 521. 67 per cent. yield, but that 67 per cent. yield was 67 per cent. of your base yield, was it not?

A. It was.

XQ. 522. And your base yield was only 90 per cent. of the theoretical yield?

A. My base yield was 90 per cent. of the theoretical yield.

XQ. 523. Therefore, if you take 67 per cent. of 90 per cent., it is about 60 per cent., is it not, two-thirds of 90, in round figures?

A. It is, slightly over; yes, sir.

XQ. 524. And so instead of getting a yield of arsphenamine, as you testified on Friday, you got only 60 per cent., did you not?

A. Including steps that are not in the patent.

THE COURT: I do not understand.

XQ. 525. But you said Friday you did nothing but what is in the patent, did you not?

A. In order to obtain a product which could be injected into animals, I had to convert the arsphenamine base.

XQ. 526. I do not care what you had to do, Doctor; I am considering your testimony, what you said Friday. Do you not recall that you testified—let me read it to you. I read from page 4480:

> "XQ. 163. How much of a yield did you obtain in your first experiment? Do you know what I mean by 'Yield'?

A. You mean the weight of material I obtained, considering the amount I started with?"

Do you remember giving that answer?

A. I do.

XQ. 527. Yes, that is right, and your answer was "Oh, I obtained a very good yield which I should think was approximately 90 per cent. of the theoretical yield." Do you remember giving that testimony?

A. Yes.

XQ. 528. And do you remember when I asked you very shortly thereafter how much arsphenamine you had produced altogether and you told me 1500 grams?

A. I approximated.

XQ. 529. Approximately 1500 grams. Did you think I was talking about a yield on a base; is that your testimony now?

A. When you asked me how much arsphenamine I had prepared, I understood you to mean the hydrochlorid.

XQ. 530. The arsphenamine?

A. The arsphenamine.

XQ. 531. All right; and when I asked you what yield you had obtained, did not you understand me to speak of yield of arsphenamine?

A. I understood you to speak of yield according to the directions of the patent of base.

XQ. 532. Now, Doctor, I am going to take up with you two more of your outlines, because you have testified only about your first three experiments, you remember?

A. Yes.

XQ. 533. Now, I show you the second experiment. Now, here is your second experiment (handing paper). Read it, please. I am going to give you two minutes to read it, so that you know it. Now, have you the patent before you?

A. I have.

The Court: Have you had time to make such examination of it as you desire?

The Witness: I have, sir.

XQ. 534. The patent says that you should start with 66 grams of nitro-oxyphenylarsinic acid. How many grams did you start with in your second experiment?

A. Twenty grams of nitro-hydroxyphenylarsinic acid.

XQ. 535. The patent says that you should dissolve it in 1320 cubic centimeters of water. How much water did you use?

A. I used 420 cubic centimeters of water.

XQ. 536. If you take the proportionate amount as between 20 grams of nitro-oxyphenylarsinic acid and 66 grams, how much water should you have used?

A. Slightly under one-third.

XQ. 537. To be exact, you should have used 399 cubic centimeters of water, is that right?

A. That is true.

XQ. 538. And you used 470 cubic centimeters of water, is that right?

A. Yes.

XQ. 539. Please answer my question. The patent says that you should add 225 cubic centimeters of caustic soda lye twice the normal strength. How much caustic soda did you add?

A. I added 6.01 grams of solid sodium hydroxide.

XQ. 540. And this equals 76 centimeters of soda lye, twice the normal strength, does it not?

A. If the caustic soda were pure.

XQ. 541. Was this impure?

A. This was the same type of caustic soda as in the first experiment.

XQ. 542. How many cubic centimeters of caustic soda lye twice the normal strength did this 6.01 grams of caustic soda equal?

A. Approximately 68 cubic centimeters.

Mr. Kresel: 68.2 to be exact.

XQ. 543. The patent says that you should introduce this into a solution of 855 grams of anhydrous sodium hydrosulphite?

A. It does.

XQ. 544. How much of that drug did you use?

A. I had 299 grams of commercial sodium hydrosulphite.

XQ. 545. 299 grams. Taking the proportion as between 20 and 66, you should have used 259 grams, should you not?

A. I should, if the——

XQ. 546. If the patent——

The Court: Just a minute, Mr. Kresel.

By The Court:

Q. 547. If what?

A. (Continuing.) If the hydrosulphite were of a definite purity.

By Mr. Kresel:

XQ. 548. What purity was it?

A. Commercial hydrosulphite is of a very variable purity, and I cannot say now what the purity of that hydrosulphite was in 1919.

XQ. 549. The patent says that you should use 171 grams of crystallized magnesium chloride. How much did you use?

A. I used 52½ grams of magnesium chloride hexahydrate.

XQ. 550. How much should you have used taking the proportion of 20 to 66?

A. Would you give me the total figure in the patent?

XQ. 551. 171.

A. Oh, I have it here. I should have used approximately 52 grams.

XQ. 552. And you used how much?

A. 52½.

XQ. 553. The patent says that you should pour all this into 4275 cubic centimeters of water?

A. It does.

XQ. 554. How much did you use?

A. I used 1310.

XQ. 555. Cubic centimeters of water?

A. Cubic centimeters of water.

XQ. 556. And in the proportion of 20 to 66, you should have used 1275 cubic centimeters, should you not?

A. I should.

XQ. 557. The patent says that you should digest the solution at 50 degrees Centigrade, does it not?

A. It does.

XQ. 558. What did you do?

A. I heated this solution during a period of 25 minutes, to 55 degrees.

XQ. 559. Instead of 50?

A. Instead of 50.

XQ. 560. And you kept at 55 to 60 degrees for how long?

A. One and three-quarter hours.

XQ. 561. As to which the patent is silent?

A. As to which it is silent.

XQ. 562. Then you filtered it off, did you not?

A. I did.

XQ. 563. And then you washed it with carbon dioxide solution, did you not?

A. With an aqueous solution of carbon dioxide.

XQ. 564. Aqueous solution of carbon dioxide. The patent does not say anything about washing it at all, does it?

A. It does not.

XQ. 565. Nor does it say you should wash it with an aqueous solution of carbon dioxide, does it?

A. It does not.

XQ. 566. In this respect your second experiment differs from your first, does it not?

A. In the use of——

XQ. 567. Doesn't it?

A. It does.

XQ. 568. In your first experiment, you washed it with water?

A. I did.

XQ. 569. Here you wash it with an aqueous solution of carbon dioxide?

A. I did.

XQ. 570. Then you say you dried it in a vacuum over caustic soda?

A. I did.

XQ. 571. As to which the patent is silent, except it says that it should be dried?

A. That is all.

XQ. 572. In your second experiment, you dried it for sixty hours?

A. I did.

XQ. 573. The patent is silent as to how long you should dry it?

A. It is.

XQ. 574. In your first experiment you dried it for forty-four hours?

A. I did.

XQ. 575. This again brings us to the base, does it not?

A. It does.

XQ. 576. Your second experiment shows that you reduced that base to the dihydro-chloride in an entirely different way from that which you followed in your first experiment, does it not?

A. Not as I understand my notes.

XQ. 577. Not as you understand your notes? Have you your first experiment notes there?

A. I have.

XQ. 578. Please follow me. In your first experiment you started in by taking 9½ grams of the base?

A. I did.

XQ. 579. How much did you take in your second experiment?

A. In my second experiment I divided my base into four portions.

XQ. 580. Of how much each?

A. In each part I used two grams of base.

XQ. 581. That is sufficient. Let us stop there. In the first experiment you dissolved it in 284 cubic centimeters of methyl alcohol non-acidic plus 50 cubic centimeters of methyl alcohol and hydrochloric acid, did you not?

A. Yes.

XQ. 582. What did you do in your second experiment?

A. I dissolved 2 grams of the base in 7 cubic centimeters of the methyl alcohol hydrochloric acid.

XQ. 583. Stop there, please. In other words, having taken a little less than a quarter of the quantity of base that you took in your first experiment, you used only 7 cubic centimeters of methyl alcohol against 284 that you used in your first experiment?

A. That is true.

XQ. 584. Which is about one-fortieth, is it not?

A. I beg your pardon. You stopped me too soon.

XQ. 585. Did I?

A. In addition to the 7 cubic centimeters of alcohol hydrochloric acid, I used 8 cubic centimeters of methyl alcohol itself, making a total of 15 cubic centimeters.

XQ. 586. But in your first experiment you used 50 cubic centimeters of methyl alcohol, did you not?

A. Yes.

XQ. 587. What I am pointing out to you is, that the proportion between the methyl alcohol you used in your first experiment and your second experiment vary as between one-fourth and one-fortieth approximately?

A. Yes. You asked me if I used the same method. I said I did. I did not say I used the same quantities.

XQ. 588. Oh, you misunderstood me.

A. You said—you asked me if I used the same method and I said I used the same method.

XQ. 589. But not the same quantities?

A. Not the same quantities. I did not say that.

XQ. 590. We will see how far you are right in your method.

THE COURT: I do not understand your fraction of one-fortieth, Mr. Kresel, because there are 9½ grams of base in the first experiment against 284. In the second he starts with only 2 grams of base and uses 7. So the first is almost five times the amount of base in the second experiment. So that I had assumed you would multiply the 7 cubic centimeters of methyl alcohol by 4¾.

MR. KRESEL: Or say 5.

THE COURT: That would be 35 as against 284, which could not be one-fortieth.

MR. KRESEL: I see your Honor's point.

THE COURT: It being more nearly one-ninth or one-tenth.

MR. KRESEL: Yes, it would be nearly one-tenth.

XQ. 591. Did you follow our figures there?

A. I think you are both in error, if I may say so. In the first experiment I used 9½ grams of base in 284 cubic centimeters of methyl alcohol and 50 cubic centimeters of methyl alcohol hydrochloric acid, making a total of 334 cubic centimeters of solution. In the second experiment I used 2 grams of base with 7 cubic centimeters of methyl alcohol hydrochloric acid and 8 cubic centimeters of methyl alcohol itself, making a total of 15 cubic centimeters. Therefore 334 and 15 are the volumes to be compared.

XQ. 592. In other words, you used about 20 times as much of the mixture in your second experiment as you did in your first?

A. Yes, but I had less solid.

XQ. 593. That is right. And the proportion in solids was as between 5 and 2?

A. Approximately 5 and 1.

XQ. 594. In your first experiment you say that you shook this mixture with superfilter?

A. I did.

XQ. 595. What did you do in your second experiment? Or did you do that in your second experiment?

A. I have no record of it.

XQ. 596. That is all I am talking about—your record. In your first experiment you said that you poured this solution into 600 cubic centimeters of ether containing 3 per cent. of ethyl alcohol, keeping it in an ice bath. Do you remember that?

A. Yes.

XQ. 597. What did you do in your second experiment?

A. In my second experiment, I poured this solution into 150 cubic centimeters of anaesthesia ether.

XQ. 598. It says "ether," does it not?

A. It says an anaesthesia ether.

XQ. 599. Is that the same ether that you speak of in your first experiment?

A. That is only adding 1 per cent. of ethyl alcohol instead of 3 per cent.

XQ. 600. Omit the amount of ethyl alcohol there was in it, but looking only at the quantity for the moment, you had 600 cubic centimeters in your first experiment as against 150 in your second experiment?

A. I did.

XQ. 601. And in the first experiment you had four times as much of the base as you have in your second experiment?

A. Yes.

XQ. 602. You kept the mixture in an ice bath in your second experiment?

A. I did.

XQ. 603. What did you do in your second experiment?

A. I kept it in an ice bath.

XQ. 604. Didn't you keep it at a temperature of from zero to 5 degrees?

A. That is the temperature which I obtained by using an ice bath.

XQ. 605. In other words, in an ice bath, you did not get zero?

A. If I had left it long enough——

XQ. 606. Did you get zero as you did in your first experiment?

A. Will you please ask me that question over again?

XQ. 607. Didn't you get your temperature down to zero in your second experiment?

A. I recall it was between zero and 5.

XQ. 508. In your first experiment you added 600 cubic centimeters of ether. What did you do in your second experiment?

A. You are referring to after I add the ethyl alcohol solution to the ether?

XQ. 609. Yes.

A. I did not need to add any more ether in this case.

XQ. 610. You did not add any more?

A. I didn't need to.

XQ. 611. Well, you didn't?

A. I didn't.

XQ. 612. In your first experiment you say nothing about stirring of the solution in order to produce a precipitate. In your second experiment you say that you stirred it in order to produce a precipitate and that you kept up the stirring for ten minutes. Do you find it?

A. In my second experiment I recall that I added a methyl alcohol solution during a period of five minutes and stirred the material ten minutes subsequently. In the first experiment I have the word "stirring" in my notes.

XQ. 613. How long did you stir it in the first experiment?

A. I did not record the time.

XQ. 614. In the first experiment you said that you dried it in vacuum over sulphuric acid?

A. I did.

XQ. 615. What did you do in your second experiment?

A. I have not recorded the process of drying—I beg your pardon; I dried this eighteen hours in vacuum over caustic soda.

XQ. 616. Eighteen hours?

A. Yes.

XQ. 617. That is the second experiment?

A. Yes.

XQ. 618. What yield did you get in your second experiment?

A. To what part of the process are you referring?

XQ. 619. I am referring to the arsphenamine.

A. I will have to calculate that for you. I obtained a 97.7 yield of arsphenamine base, using the process stipulated in the patent, and when I converted that into the hydrochloride, combining all four of these experiments in this division of my work, I obtained a 69.9 per cent. conversion of the base into the hydrochloride.

XQ. 620. In other words, taking it in round figures, 69.90; about 70, we will say?

A. Yes.

XQ. 621. 70 per cent. of what?

A. Of, to again use round figures, 98 per cent.

XQ. 622. Seventy per cent. of 98 is about 65 per cent.?

A. It would be a little bit more than that.

XQ. 623. How much more—66? To be exact, 68.6 per cent. was your yield of arsphenamine?

A. The yield of arsphenamine hydrochloride was 68.6 per cent.

XQ. 624. I notice that you said that you got your 97 per cent. by following the specifications in the patent. In view of your testimony this morning do you still persist in saying that your experiment followed exactly the outlines in the patent?

A. As I as a chemist interpreted them.

XQ. 625. The word "exact" and the word "outline" are not chemical terms. We are laymen here. Did you not understand, when Colonel Anderson asked you whether you followed specifically the outlines in the patent, that it meant just that and not what a chemist understands by that?

A. I gave my answer as a chemist; not as a layman.

XQ. 626. Then, Dr. Christiansen, it comes down to this, does it not: that as you sit there, you cannot swear that by strictly following the words of that patent anybody can make arsphenamine? Now just reflect on that.

Mr. Anderson: If your Honor please, that is not the test, and I object to that question. It is not a question of anybody making arsphenamine; it is a question of whether one skilled in the art can make arsphenamine.

The Court: I had assumed that the question meant that.

Mr. Anderson: I do not think he said so. He said "Anybody can make arsphenamine." I know I could not.

Mr. Kresel: Read me the question. I will modify it, your Honor. Strike out the question.

The Court: I think the question as now put includes those skilled in the art as well as any one else, and so it seems to me it is a broader question and a fairer question than it would be if more restricted. Will you not read it?

(XQ. 626 repeated as above recorded.)

The Court: I shall assume that "anybody" as there used means, if the answer is in the affirmative, that he is unable to swear that anyone, whether a skilled chemist or not, or one skilled in the art of chemistry, can make it.

Mr. Anderson: If your Honor please, "anybody" includes everybody.

The Court: Yes. And he can say in answer to this question whether anyone can do it; that is, I assume that he will lay to one side those who are not skilled, and then answer, if it is true, a person skilled in the art can, but others cannot. So that the question thus gives him more latitude.

Mr. Anderson: When thus interpreted it is possible the question is not subject to objection; but as I understood the question, it would mean whether anybody in the courtroom could make arsphenamine, and I know I could not.

The Court: The witness has now had the benefit of our discussion and he can say whether a layman, or a chemist, or an ordinary chemist, or a skilled chemist, can make it by strictly following the process or steps of the patent.

The Witness: Everybody could not do it; but a chemist with training who reads the patent and the literature to which I referred you on Friday, reflecting over the patent and carefully considering what steps he should do in his technique, could make arsphenamine according to the directions of the patent.

XQ. 627. Now, Dr. Christiansen, I do not want to quarrel with you.

A. I do not want to quarrel with you, either.

XQ. 628. I am asking you simply about the patent. I have nothing to do with the literature nor the technique. I am asking you simply this: Do you now say that any chemist can take this patent and nothing else, and strictly follow the words of that patent and get arsphenamine?

Mr. Anderson: I object again, if your Honor please. A chemist has a right to take all literature up to date of the issue or use of the patent, and read that literature, because that is matter on which chemists are supposed to be informed, and therefore a question which excludes from his consideration the literature on the subject, which he has defined he read, is not a question that is proper to be put to an expert on that subject.

The Court: But I have this difficulty, Colonel Anderson: I have no objection to the patent saying "Dry product at certain stages," if it does I have no objection to the patent simply saying to dry the product. Whether that is an intermediate or not, I do not recall, or whether it is the ultimate product of the patent; because I assume that to persons skilled in the art there may be half a dozen ways of drying it. That is all right.

But I do not understand that a person skilled in the art can follow the patent and yet change the proportions of the patent. I do not understand that a person skilled in the art can change the fixed temperature of the patent, and use 50 degrees centigrade at one step, and 55 to 60 degrees centigrade at another. I do not understand that that is skill in the art; but as I understand it now, that is a deviation from the patent, and I am going to let him explain those things as fully as he likes, either before or after your redirect.

Now then, unless he has in some of his 1200 experiments followed the process of the patent, which, until my views are corrected, I shall assume he has not, the question makes the inquiry based on the assumption that he has not followed the process of the patent in these steps with respect to which he has been examined, and asks him whether, in view of his departures from the patent, he is able to testify whether a safe product may be produced by following strictly the steps and processes of the patent. Do I make myself clear, Mr. Knight?

Mr. Knight: Yes, your Honor. I only desire to call your Honor's attention to this: There has been a good deal said about following the terms of the patent. As a matter of fact, what the patent says is, "The procedure for preparing the new compounds may, for instance, be as follows," and then specific data are given as to proportions and ingredients and steps to be taken—as an instance.

The Court: Yes.

Mr. Knight: I only want to call attention to that. I think that the language of this should call attention in these inquiries or in the consideration of the Court to the fact that we are considering the specific instance.

The Court: For instance, is there anything in there about—we will just take the simple one, which will be easier for me to understand—the temperature. Is there anything to indicate that the person employing the process of the patent may depart from 50 degrees centigrade, for instance? I would rather have the record show, and the witness understand what I am talking about.

Mr. Knight: I assume your Honor is referring to the language at page 1, line 67 of the patent, which says, "On digesting the solution at 50 degrees Centigrade, a light-yellow micro-crystalline precipitate separates, which consists of diaminodioxyarsenobenzene." That states a result which can be arrived at with 50 degrees Centigrade.

The Court: If I understand, there is no latitude given to the person employing the process to go to 40 to 45, or 55 to 60.

Mr. Knight: No, but no specification that he is to use that. It simply says what happens when he does use that.

The Court: I think the objection is not well taken.

Mr. Kresel: (To witness) Would you like to have the question read, Doctor?

The Witness: I would.

Mr. Kresel: Please read it.

(XQ. 628 repeated as above recorded.)

The Court: That question is broader than I thought from memory, Mr. Kresel. Those skilled in the art are entitled to start the experiment with such knowledge and information as a person with fair and ordinary skill in that art would have, and if a person with fair and ordinary skill in that art would be entitled to a review of the literature existing at the time of the issuance of the patent, then your question does not help me, unless it is predicated upon such assumption.

XQ. 629. Will you answer my question? Assume the statement made by the Court and then answer it.

A. I believe that a skilled chemist, upon reading this patent and employing the technique which he considers appropriate and which is not stipulated in the patent, can obtain arsphenamine.

XQ. 630. Your experience showed you that you did have to depart in many particulars from the specifications in the patent, did it not?

A. In my quantities there are slight deviations from the patent, and I used a different temperature from what the patent requires, for specific reasons.

XQ. 631. I do not care what the reasons are. I assume you were trying to make the very best arsphenamine that you could obtain; right?

A. That is not the reason for the deviation in temperature.

XQ. 632. What was the reason?

A. Because you can obtain arsphenamine whether you operate at less than 55 degrees or more than 60 degrees, but the rate at which you obtain arsphenamine is a function of the temperature at which their action is carried out.

Thus, at a lower temperature it will take you ever so much longer to obtain your product than it will at a higher temperature, and it was with the object of slightly increasing the speed of reaction that I picked out a temperature of 55 to 60 instead of operating at 50 degrees. It was not in order to obtain a better arsphenamine. It was in order to save time.

XQ. 633. In order to save time?

A. Yes.

XQ. 634. Now please remember that. You did not do it in order to get a better arsphenamine?

A That was not my object at that point, no.

XQ. 635. You did not do it in order to get a less toxic arsphenamine?

A. I did not.

XQ. 636. You did not do it in order to get a non-poisonous arsphenamine?

A. I think you say "nonpoisonous" ill-advisedly.

XQ. 637. Well, non-toxic.

A. And "non-toxic" either.

XQ. 638. Also ill-advisedly?

A. Yes.

XQ. 639. An arsphenamine with a low toxicity?

A. With a comparatively low——

XQ. 640. You did not do it for that purpose?

A. No.

XQ. 641. You have done some writing on this subject, have you not?

A. I have, sir.

XQ. 642. And you published an article on: The Synthesis and Toxicity of Arsphenamine?

A. That is not the whole title of that paper, sir.

XQ. 643. The title is, "The Relation between the Mode of Synthesis and Toxicity of Arsphenamine and Related Compounds."

A. That is right.

XQ. 644. That is reported in Volume 43 of the Proceedings of the American Chemical Society Journal at Page 2202. I want to read to you a portion from that article. You were talking about the toxicity, pointing out the great importance of that. You said as follows:

> "That the toxicity of arsphenamine should be closely bound up with the reduction of the nitro group is not surprising when one considers the many intermediates and by-products encountered in the reduction of the nitro compounds."

In order that we may understand it here, when you speak of the reduction of the nitro compounds, you mean the reduction of the intermediate?

A. Didn't I say the nitro group, sir?

XQ. 645. Let me read it to you again. That is the best way. "That the toxicity of arsphenamine should be closely bound up with the reduction of the nitro group is not surprising when one considers the many intermediates and by-products encountered in the reduction of the nitro compounds." You use it both ways.

A. Did I say "of the nitro compounds" or "of nitro compounds?"

XQ. 646. "Nitro compounds."

A. Yes.

XQ. 647. Then you go on and say: "When the quantities of reagents used in this reduction were varied, no alterations were found in the toxicity of the resulting arsphenamine, but as soon as variations were made in the conditions under which the reaction took place, marked variations in toxicity were obtained" You said that, did you not?

A. I said that, sir.

XQ. 648. Now let us stop and consider what that means.

A. May I explain what I was referring to in that paper before I proceed?

XQ. 649. Just a minute, let me see if I can get it from you by question and answer, because then we will understand it.

A. All right, sir.

XQ. 650. As I read it, that means that when you came to reduce your nitro compounds or your nitro group, whichever you speak of, you used certain chemicals to get the reduction, did you not?

A. That is true.

XQ. 651. And you say that it did not make really very much difference so far as the toxicity was concerned, as to whether you used a little more or a little less of those re-agents?

A. That is true.

XQ. 652. That is what you meant to say?

A. That is true.

XQ. 653. But you also said that the toxicity is affected when variations were made in the conditions under which the reaction takes place?

A. The conditions of the reduction of the nitro group.

XQ. 654. Yes.

A. The nitro group.

XQ. 655. Now, we will come to what you pointed out were the conditions I read again this: "but as soon as variations were made in the conditions under which the reaction took place, marked variations in toxicity were obtained. Ultimately it was determined that the important factors (bear this in mind, the important factors are) the degree to which high local concentrations of the nitro compound momentarily exist at the start of the reduction (2) the temperature at which the nitro group is reduced (3) the speed at which the solution, after the reduction of the nitro group is raised to 55 degrees." Therefore you wrote that the most important thing in getting a pure nontoxic product is the speed at which you do it, the temperature at which you do it, and the conditions under which you do it; and then you go on and say as follows: "The procedure best suited for the development of low toxicity is very vigorous mechanical stirring." Is there anything in the patent as to very vigorous mechanical stirring?

A. The patent does not stipulate anything about any conditions, any conditions.

XQ. 656. Now, listen. I want to read that again to you: "The procedure best suited for the development of low toxicity is very vigorous mechanical stirring, while a cold solution of the nitro compound is slowly added to a cold solution of magnesium chloride and sodium hydrosulphite, followed by rapid heating to 55 degrees." Is there anything of that sort in the patent?

A. I said the patent——

XQ. 657. Is there anything of that sort in the patent?

A. No.

XQ. 658. In other words, you say here over your signature that your experiments have shown that in order to get a non-toxic product or a product of low toxicity the most important thing is first to vigorously and mechanically stir the compound; second, that it must be a cold solution of the nitro compound; third, that it must be slowly added to a cold solution of magnesium chlorid and sodium hydro sulphid; fourth, that it must be followed by rapid heating and, fifth, that the heating must be to 55 degrees. Isn't that what you say?

A. That refers——

XQ. 659. Isn't that what you say?

A. In regard to the reduction of the nitro group.

XQ. 660. That is what I am talking about.

A. All right, yes.

XQ. 661. And you found that to be necessary after your experiments had been made?

A. I did.

XQ. 662. And you found that to be necessary in order to get a product of low toxicity; is that not right?

A. In order to obtain arsphenamine of a low toxicity, yes.

XQ. 663. That is what I am talking about. That is what you said here.

A. I just want to get it right.

XQ. 664. And you say none of those steps can you find described in the patent?

A. They are not described in the patent.

XQ. 665. And, not satisfied with that general statement, Dr. Christiansen, you have inserted in this article of yours a table?

A. I have.

XQ. 666. Showing that where you did what you say it was necessary to do—for instance, where you did rapidly stir and where you did slowly add, and where you did have it in a cold solution—you got an average of a tolerated dose of 118—look.

A. May I look, please?

XQ. 667. (Indicates to witness.) But where you did not rapidly stir, where you stirred slowly—do you see? (Indicating.)

A. Yes.

XQ. 668. And where you did not add slowly but added rapidly—you got a tolerated dose of only seventy-three.

A. That is true.

XQ. 669. There you are. You run between 73 and 118.

A. Yes.

XQ. 670. Now I want to ask you, Doctor, to take your papers and point out a single experiment wherein you exactly followed the outlines of the patent.

A. If you do not consider my first experiment as following the outline of the patent I cannot pick out any other.

XQ. 671. Doctor, when you write an article for your medical journal, you write in order to give the profession information that you have obtained?

A. I do.

XQ. 672. You do not write to tell them something they already know, do you?

A. I do not.

XQ. 673. Therefore, when you wrote this article from which I have quoted and pointed out these essential steps that are necessary in order to get a non-toxic product or a product of low toxicity, you regarded that you had discovered something that the profession had not known before, did you not?

A. I regarded that I had discovered the importance of the conditions of carrying out this reaction which the patent did not state.

XQ. 674. And which the profession up to that time as far as you knew did not know?

A. About which nothing had been published in the scientific literature.

XQ. 675. And you will notice, Doctor, that there are places in this patent where the inventor speaks of temperatures, where he considers that important; does he not?

A. He does not refer to the same temperatures to which I refer.

XQ. 676. But wait a minute. When the inventor considers that a reaction or a step is to be taken under this patent at a particular temperature he specifies it, does he not?

A. He specifies what he thinks is the best.

XQ. 677. Yes. Look, I point, for instance, to line 36 where he speaks of putting this sodium para-oxyphenylarsinate, dried at 80 degrees C.?

A. Yes.

XQ. 678. And where the patentee considers that the rapidity of stirring is important he specifies that. For instance, I read from line 38, where he says: "Into this mass a mixture of 39 ccm. of nitric acid (specific gravity 1.4) and 39 ccm. of concentrated sulphuric acid is poured by drops." You noticed that. But there is nothing in the patent which says that in order to get this product of a low toxicity you must stir it rapidly, you must do it at 55 degrees, it must start cold, it has got to be done slowly when you put the nitro compound into the other, is there?

A. There is not, and——

XQ. 679. That is all I want to know, that is all I want to know. Doctor, had these elements which you found by your experiments to be necessary been contained in that patent, is it not true that it would not have been possible for a man learned in the art to have made arsphenamine of low toxicity?

A. To have made arsphenamine of a low toxicity it would——

XQ. 680. That is all I am asking.

A. Yes.

XQ. 681. You started experimenting, you told us, in September, 1919?

A. Not on arsphenamine. On the intermediates.

XQ. 682. You started making your intermediates in September, 1919?

A. I did.

XQ. 683. You started experimenting with arsphenamine in December, 1919?

A. I did.

XQ. 684. When did you publish your first paper?

A. My first paper?

XQ. 685. On arsphenamine.

A. In the fall of 1920, I think. I cannot state exactly.

XQ. 686. The paper from which I have read to you, published June 21st, 1921.

A. I think that is the third paper which I published.

XQ. 687. The first one was in the fall of 1920?

A. As close as I can recollect.

XQ. 688. Now everything that you have told us about your experiments refers to laboratory experiments, does it not?

A. All my knowledge is of laboratory experiment.

XQ. 689. That is, you did not carry any of your work into factory production?

A. Not personally.

XQ. 690. Did you see the tests made on the animals?

A. I have seen all the tests made on the animals.

XQ. 691. Every one of them?

A. Every one of them.

XQ. 692. Having had time to reflect, Doctor, how many experiments do you now say you really made on arsphenamine? You told us first 1200. Then apparently we misunderstood you and you meant something else. Then you said it was about 600?

A. Yes.

XQ. 693. What do you say now?

A. I still consider that I have made approximately 1200 experiments on arsphenamine. By that I do not mean that I have prepared arsphenamine 1200 times. On Friday you pressed me for an approximation of how many batches of arsphenamine itself I had made, and reluctantly I gave you an approximation, which I said was about 600.

XQ. 694. You may correct it now if you desire.

A. Since then I have given it no consideration, because I have no way of finding out how many experiments I did during the four years except by going through my notes.

XQ. 695. Well, you can do that?

A. I could do that.

XQ. 696. You said on Friday that it did not make any difference whether you started with a pure intermediate or an impure one, did you not?

A. I said my experiments showed I could start with the impure nitro acid which I obtained in the laboratory equally well as though I started with the nitro acid which I purified.

XQ. 697. And whether you started with a pure nitro acid or an impure one, did you get the same result?

A. Starting with the crude nitro acid, which I obtained in the laboratory——

XQ. 698. Now do not change to crude, let us stick to the pure and impure, won't you, please?

A. Yes.

XQ. 699. That is all I am talking about.

A. Yes. In the laboratory I have used pure nitro acid which I obtained by re-crystallization——

XQ. 700. I am not asking you that. Now, please stick to the question. Listen to it. Did you obtain the same result when you used pure nitro acid as you did when you used impure nitro acid?

THE COURT: You mean generally, or with respect to toxicity?

MR. KRESEL: I was asking him generally.

A. In using a pure nitro acid, and what I had been considering my impure nitro acid in my laboratory, I obtained the same results.

XQ. 701. All right. In other words, you got a product with as low toxicity when you used an impure intermediate, as you did when you used a pure intermediate; is that your answer?

A. To the best of my recollection.

XQ. 702. And yet in your article here, in summing up your investigations, you say this, I read to you from your summary at page 2210, third paragraph: "For the consistent production of arsphenamine of the lowest toxicity, it is advisable to use pure 3-amino 4-hydroxyphenylarsinic acid as the starting material."

A. We are not talking about the amino compound, Mr. Kresel. We are talking about the nitro compound.

XQ. 703. Did I ask you about any particular compound on Friday? Did I not ask you whether you had to use a pure intermediate, and didn't you say it did not make any difference?

A. At that time we were talking about this intermediate, the nitrohydroxy acid.

XQ. 704. What do you say now, is it or is it not necessary to have a pure intermediate in order to get a low toxicity?

A. Will you specify which intermediate you refer to?

XQ. 705. Any intermediate.

A. I will state, as I stated in that paper, that to obtain consistently the best arsphenamine of the lowest toxicity, it is advisable to start with pure 3-amino 4-hydroxyphenylarsinic acid, in referring to the nitro compound in the list.

XQ. 706. Well, is not that the intermediate you start with, this 3-amino 4-hydroxyphenylarsinic acid?

A. It is not.

XQ. 707. What is the first intermediate?

A. The first intermediate used in preparing arsphenamine is 3-nitro 4-hydroxyphenylarsinic acid.

By The Court:

Q. 708. And that is referred to in what line of the patent?

A. That is line 57.

By Mr. Kresel:

XQ. 709. And where is the other one mentioned, the 3-amino 4-hydroxyphenylarsinic acid?

A. It is not mentioned in this patent.

XQ. 710. Then you are talking about something that is not in the patent at all?

A. In my paper——

XQ. 711. Now listen to me, Dr. Christiansen. I do not want any misunderstanding with you about it. I asked you on Friday whether you could start with an impure intermediate and get a good result, and you said you could. Now, do you still say so?

A. If you still refer to nitrohydroxy acid, I say so.

XQ. 712. In other words, you say that you can take an impure intermediate, which is the only one mentioned in this patent, and get a low toxic product?

A. An impure intermediate in the sense which I am using the word "impure," yes.

XQ. 713. Let us understand. What do you mean by "impure"?

A. All right. I am glad you gave me a chance to explain.

XQ. 714. I am very glad to give it to you.

A. In the first part of this patent, the directions for the nitration of sodium parahydroxyphenylarsinate are described in detail. When that process is carried out——

XQ. 715. Pardon me. What is described?

A. The nitration of sodium para hydroxyhphenylarsinate.

By The Court:

Q. 716. At what line?

A. Starting with line 35 and continuing to line 49.

By Mr. Kresel:

XQ. 717. Is that the preparation of the nitrooxyphenylarsinic acid which you say is mentioned in line 57?

A. Those are the directions for its preparation.

XQ. 718. Now, repeat that again, please, because I have lost the trend. You say there are directions for the preparation of this?

A. Yes, sir.

XQ. 719. Now, go on.

A. I am now describing what I mean by impure nitro acid.

XQ. 720. So I understand.

A. This compound is nitrated according to these directions and thereby we obtain nitrooxyphenylarsinic acid, as it is called in the patent, and that comes out from the reaction mixture in what is called by chemists the crude or impure form. In talking about material, the first result, the first material obtained from the reaction, is designated as "crude" in order to separate it from the purified material which is obtained by recrystallization of this first crude material. Have I explained that?

XQ. 721. You have gone as far, I suppose, as you want to go. Go ahead.

A. I want to be sure you understand me. Therefore, in speaking of impure nitrohydrooxy acid, I am referring to the material as it is obtained directly from the nitration; and in speaking of pure nitrohydroxy acid I am speaking of material obtained by re-crystallizing this first impure or crude product.

XQ. 722. I must confess I cannot follow you. But let me put this question to you. Whatever you mean by "impurity," do you say that starting with that impurity, you can purify the final product?

A. I did not state that. I say that you——

XQ. 723. That is all. Then you do say that if you start with an impure product, you cannot finally purify the final product?

A. The final product cannot be purified anyway, whether you start with pure or impure material.

XQ. 724. But if you start with a pure material, you do not have to purify the final product, do you?

A. No matter; if you start with pure material, your arsphenamine is not pure anyway.

XQ. 725. If you start with a pure material, the toxicity is low, is it not? You have said so.

A. I say if you start with pure amino compound, you obtain the lowest toxicity.

XQ. 726. That is an entirely different procedure, you tell me. The amino compound is not specified in the patent at all.

A. I know that.

XQ. 727. Then you are not talking about anything in the patent?

A. My paper does not have to be entirely about the patent.

XQ. 728. I understand that. Of course it does not. But insofar as the patent is concerned—and this is the last question I am going to put on this—you say that you can take an impure nitroxyphenylarsinic acid and get perfectly good arsphenamine out of it?

A. As I have——

XQ. 729. Yes or no, please.

A. I want to explain my "yes."

XQ. 730. Say yes or no, and then explain.

A. Yes.

XQ. 731. Now, do you want to explain?

A. I do.

XQ. 732. Go ahead.

A. As I have used the words "pure" and "impure" and explained them to you just a few minutes ago, it is possible to obtain arsphenamine which will pass the United States Public Health Service standards from the impure nitrohydroxy acid.

XQ. 733. Is it possible to obtain arsphenamine which will pass at 100 milligrams by using the impure nitroxyphenylarsinic acid?

A. As I have used the word "impure," it is.

By The Court:

Q. 734. Can you use the product of the steps specified in the patent and stop there and still get arsphenamine that will pass the 100-milligram test?

A. You were asking me if I take the nitrohydroxy acid obtained by this patent, without purifying it, if I can get arsphenamine.

Q. 734a. Yes.

A. Yes, you can.

By Mr. Kresel:

XQ. 735. Please examine your notes and make sure that I have returned to you all of them. (No answer.)

XQ. 736. I assume, and if I am incorrect, you may say so, that you can get the good arsphenamine, which will pass at 100 milligrams per kilo, even though you use the impure nitroxyphenylarsinic acid, provided you observe the essential steps in the reduction that you have outlined in your article which I read to you, is that it?

A. Would you kindly repeat what you said, please?

(XQ. 736 repeated as above recorded.)

A. Using impure nitrohydroxy acid in the sense in which I have described the use of that word——

The Court: That is not the question you were asked. Won't you repeat it, please?

(XQ. 736 again repeated as above recorded.)

The Court: I will ask you, Mr. Kresel, to reframe your question so that I may know whether you are inquiring with respect to the product which is the result of the steps in lines 18-47 of the patent or whether you mean the impure product which he has referred to as having been in a measure purified by the recrystallization. Your question is open to some uncertainty.

XQ. 737. Doctor, you have testified that it is possible to obtain arsphenamine which will pass the test at 100 milligrams per kilo by using an impure nitroxyphenylarsinic acid mentioned in line 57 of the patent, and my question is whether in order to get that result, with the use of such an impure nitroxyphenylarsinic acid, it is necessary to observe the steps with reference to the reduction of the nitro compound described in your article.

THE COURT: I do not understand your question, Mr. Kresel, which is unusual, I think, when you put them. But I have had this difficulty, Mr. Kresel. The witness has said that he can get an ultimate product of arsphenamine which would pass the test if he uses the first intermediate mentioned in the patent without purification. Now then, he has indicated that the impure intermediate to which he has generally been referring is a crude that has been in a measure purified but not reduced to absolute purity. I do not understand whether your question refers to the product which is produced solely by the steps of the patent or whether you are referring to the product that has been purified in some degree by recrystallization or not. I do not know to which intermediate you are referring.

MR. KRESEL: I am going to put it both ways. I will have it answered both ways. I withdraw the last question.

XQ. 738. Dr. Christiansen, if you start with the nitro-oxyphenylarsinic acid, that has not been purified at all, understand?

A. As obtained by these directions.

XQ. 739. As obtained by the directions contained in lines 34 to 47 in the patent——

THE COURT: 49 is it not?

XQ. 739. (Continuing). ——line 49 in the patent, is it possible to get arsphenamine which will pass the test at 100 milligrams per kilo without observing these steps in the reduction of the nitro product, namely, that it should be "subjected to very vigorous mechanical stirring, while the cold solution of the nitro compound is slowly added to a cold solution of magnesium chlorid and sodium hydrosulphite and then follow by rapid heating to 55 degrees."

A. Those conditions which I describe there should be varied to get a consistent production of arsphenamine which will pass the Public Health Service Standard.

THE COURT: Won't you repeat that question? I am interested in the answer to that question.

(Question repeated as recorded.)

XQ. 740. I think that can be answered yes or no. Say yes or no if you can.

A. It is not possible to obtain that product which will consistently pass the Public Health Standard test unless those conditions are followed.

XQ. 741. Can not you answer that categorically yes or no?

A. No.

XQ. 742. The answer is no, or the answer is that you cannot answer it?

A. May I ask to have the question repeated again.

(No XQ. 743.)

XQ. 744. Certainly.

THE COURT: You did not intend that as an answer to the main question or to the last question?

THE WITNESS: I intended to answer the main question, sir.

XQ. 745. Do you still want it re-read so that you can change your answer?

A. I would like to have it re-read.

(Question repeated as recorded.)

THE WITNESS: I say no, and may I explain my "no"?

XQ. 746. Yes.

A. Unless these conditions under which the nitro group is reduced are followed, it is not possible to consistently obtain material which will pass the Public Health Service standard of 100 milligrams per kilo.

XQ. 747. If you use the nitro-oxyphenylarsinic acid prepared in acordance with the specifications in the patent, lines 34 to 49, which, when produced is purified as you have described, is it possible to produce therefrom arsphenamine which will pass the 100 milligram test without following the steps outlined in your article in the reduction of the nitro group, namely, that the substance should be subjected to very vigorous mechanical stirring while a cold solution of the nitro compound is slowly added to a cold solution of magnesium chlorid and sodium hydrosulphite and then followed by rapid heating to 55 degrees?

Mr. Anderson: Would your Honor have that question read again? I cannot understand it.

The Court: Yes.

(XQ. 747. repeated as recorded.)

A. No, and I want to explain my answer. Even starting with purified nitrohydroxyphenylarsinic acid it is not possible to obtain an arsphenamine of low toxicity consistently unless the conditions which I have described in my paper are followed.

Mr. Kresel: That is all.

The Court: You may define what you mean by "consistently." You may make any explanation either now, or after your re-direct examination is closed that you desire, with respect to any answers that you have made to a question by Mr. Kresel.

Re-Direct Examination.

By Mr. Anderson:

RDQ. 748. Speaking as a chemist, do you regard the conditions which you have described for the process of purification during the development of this product as indicated from the nature of the experiment and the product to be produced?

Mr. Kresel: I object to that as grossly leading.

The Court: Sustained on that ground.

RDQ. 749. Can you state whether or not in your opinion, a chemist skilled in the art, would or would not regard the conditions which you have described as essential to the production of a pure article which will pass the Public Health test, as indicated by the nature of the process, the nature of the materials used and the purposes for which the product is intended?

Mr. Kresel: Do you mean the conditions that I read from his article, Colonel?

Mr. Anderson: Yes, conditions necessary for purification. If you do not understand the question will you have it re-read?

The Court: I will be glad if you would.

(RDQ. 749. repeated by the Stenographer as recorded.)

The Court: You mean of course, a chemist who had the skill in the art at the time of the issuance of the patent, and not chemists of today; do you not, Colonel Anderson?

Mr. Anderson: I mean such a chemist as he would get when he made the first experiment here.

The Court: You mean the time at which he issued his patent, Colonel Anderson, not now.

Mr. Knight: Is that the question? The question as I understand you is as to the value of these patents in April, 1919. The question does not arise as to the performance of the process before.

The Court: I see the point of your suggestion, and then, instead of the date of the issuance of the patent, let it be 1919; but what I was trying to get is the distinction between the skill of a person today and the skill of a person at the crucial time, whether that be at the issuance of the patent, which it would be if the question of validity were involved.

Mr. Anderson: I withdraw the question as it is a little involved at that point, and I will make it more specific.

RDQ. 750. When did you say, Doctor, that you made your first experiment in this manner?

A. My first experiment of arsphenamine was made on December 8, 1919.

RDQ. 751. Now then, I will ask you would you at that time, under the conditions then prevailing, have regarded the character of the ingredients used, the nature of the experiment or process and the purposes for which the product was to be used, as well as the nature of the product as indicating to a chemist skilled in the art, the precautions or steps of purification which you indicated in your answer to Mr. Kresel?

Mr. Kresel: If your Honor please, I am sorry that I do not know to what the question is directed. I want to know specifically whether it is directed to the steps outlined by Dr. Christiansen in the article that I read.

Mr. Anderson: I have not the article before me, so I can not follow the language used by Doctor Christiansen.

Mr. Kresel: Here it is, right there, beginning there (handing paper).

The Court: Will you reframe your question or stand on the one you have put?

Mr. Anderson: I will reframe it then.

RDQ. 752. I will put it this way: In your article of June 21, 1921, to which counsed for the defendant has referred, there appears this language which he read to you: "The procedure best suited for the development of low toxicity is very vigorous mechanical stirring, while a cold solution of nitro compound is slowly added to a cold solution of magnesium chloride and sodium hydrosulphite followed by rapid heating to 55 degrees." I ask you whether at the time that you used that method as shown by the notes which you have read, you were of the opinion as a chemist that taking into consideration the nature of the process, the character of ingredients used and the character of the product and the use to which it is put when injected into human veins, would you or would you not say that the procedure indicated by you for the purification of this product for producing a low degree of toxicity, which is the same thing, would be indicated to any one skilled in the art, in the then condition of the literature on the subject?

Mr. Kresel: Your Honor, I am sorry, I do not want to object, and yet I think we should have a question which all of us will understand the bearing of. I do not think this does. It speaks of purification to which the extract from the article is not directed. It speaks of conditions which are not described. I do not think that anybody could be helped by an answer to this question.

Mr. Anderson: If your Honor please——

The Court: I am going to overrule that objection and I think I would rather have the answer. I want the answer to that question.

Mr. Anderson: If it is confusing to you in the question, please have the Stenographer read the question.

A. I think I understand that. I believe that a person skilled in the art and having knowledge of the chemistry of arsenicals in general would, taking the quantities given in the patent, follow approximately the procedure which I have indicated as being most favorable, but I doubt if he would be able the first time to pick out exactly those conditions which I have outlined in my paper. He would be able to approximate them, but not pick them out exactly.

The Court: You mean the combination of conditions?

The Witness: The combination of conditions, sir.

RDQ. 753. You state, Doctor, the procedure best suited for the development of low toxicity as that indicated in your paper. If those conditions were approximated, would or would you not say that a condition of satisfactory toxicity would be produced?

Mr. Kresel: What conditions were approximated?

Mr. Anderson: The conditions which I read to him in this paper, and which he said any one would approximate.

Mr. Kresel: How can you approximate very vigorous stirring? How can you approximate 55 degrees C.? I do not understand that.

The Court: May the question be read and the answer be given?

Mr. Kresel: All right, your Honor.

(RDQ. 753. repeated by the Stenographer as recorded.)

A. If those conditions are approximated, the product, although not being tolerated in maximum doses would, in all probability pass the Public Health Service standards.

RDQ. 754. Of 100 milligrams?

A. Of 100 milligrams per kilo.

RDQ. 755. Did you, in fact, in your experiments, as shown by your notes which I have not before me, vary the procedure which you outlined here, as what you think is best? Do you want to see what you said? You have a right to look at the paper.

A. I know know those conditions, Colonel. In my research I have varied those conditions over a wide range.

The Court: That does not answer your question. Do you want it restated?

Mr. Anderson: No, sir. I will ask another one.

RDQ. 756. Will you take your notes which you have before you of your various experiments and indicate if you can do so, the extent of the variation of the procedure which you outline in your paper in relation to the reduction of toxicity? If I do not make any question clear, please say so, because I am not a chemist. If you can take your notes, indicate the extent of the variation either way from the procedure outlined.

The Court: That is very clear, but I assume that each experiment was based on a different combination of conditions; that is, some of the conditions may have remained stable, while other ones changed. It seems to me he would have to put straight all the facts disclosed by his notes in order to give that.

Mr. Anderson: If he will take his notes where he varied to any degree the procedure indicated, I will ask him to state all the facts and explain what are their relations to each other.

The Court: I will let you have the answer, but the answer will not mean a single thing to me for this reason: The witness has indicated that he believes the first experiment strictly followed the patent. Now then, if he is going to make his answer on that assumption, then his answer is uncertain in effect so far as I am concerned, because I think he will have to get right down to the facts that he used, rather than to his opinion as to whether it was a departure from the patent.

Mr. Knight: The particular remark, your

Honor, which the counsel for the defendant has referred to so much in his cross-examination, is not in the patent, it is in this article, and the article states, as you might say, the epitome, the final result of a great series of things.

THE COURT: Yes.

MR. KNIGHT: Not of the final experiment, but a great many experiments.

THE COURT: Yes.

MR. KNIGHT: I do not think we can get the meaning of this with relation to the patent, if I may say so, without considering at least generally what variations he made.

THE COURT: In what? Variations he made in what?

MR. KNIGHT: In the conditions which are referred to in this article.

THE COURT: I recall the article very clearly. Well, you may take the answer to the question. Read it, Mr. Smart, please.

MR. KNIGHT: This may not be just the question to bring out the point I am after.

(RDQ. 756. read as above recorded.)

A. I have varied the temperature from eight degrees to thirty degrees at the time of reduction of the nitro group. Those are the limits of variation of the temperature. I have varied the rate of agitation or stirring from a very slow rate to a very high rate of stirring of the solution. I have varied the time which is occupied in adding the nitro solution to the hydrosulphite, from approximately five seconds to a minute and half. I have varied the time required to bring those solutions, from the initial temperature of the reaction to 55 degrees, from I think seven minutes to thirty or forty minutes. I believe those are the conditions which I stipulate in that paper of mine.

By **Mr. Knight**:

RDQ. 757. I note on page 2205 of this publication which contains your article, the American Chemical Society Journal, a table showing the influence of conditions of preparation on toxicity.

Mr. Kresel: Is this a question, or what is it? Is this a question to the witness?

Mr. Knight: Yes.

Mr. Kresel: I am sorry. I did not understand it.

RDQ. 757. (Continued.) Please look at this table and for the purpose of the layman and also the chemist explain the relation that has to the explanation of the result stated in the matter that has been quoted from your article.

Mr. Kresel: Mr. Knight, you will pardon, me, but I do not quite understand what you mean by asking what relation it has. I have no objection to putting the table in. I have no objection to having him explain it if you think it needs explanation. I have already asked him a question or two about that very table. Suppose you put it in evidence.

Mr. Knight: This table, as I understand, gives the variations of results more exactly than is expressed more generally in the first statement.

Mr. Kresel: Then let us put it in.

Mr. Knight: I want him to say what relation that has and to explain it so a layman can understand it, that is all. That table does not convey any meaning to me and I do not know whether it would to your Honor.

The Court: I would be glad to get any help that I could from you, but do you want to put the table in or not?

Mr. Knight: I think it should go in. I think it should be here read into the question on the record.

The Court: Do you want the whole article in?

Mr. Anderson: Have you a copy of this paper?

The Witness: I have a copy of this paper.

Mr. Knight: I suggest that the whole article be offered in evidence now.

Mr. Kresel: No objection, sir.

The Court: Admitted.

Mr. Anderson: Have you a copy of it, Mr. Christiansen?

The Witness: It is in my room at the hotel.

Mr. Anderson: We now offer in evidence article dated the 21st day of June, 1921, written by the witness and published in the American Chemical Journal of July-December, 1921, Volume 43, and will hand up later a reprint from that article to be substituted in place of the book, as Plaintiff's Exhibit No. 681.

Received in evidence and marked "Plaintiff's Exhibit No. 681." (Copy to be furnished.) (*See Exhibits, Vol. III, page 1733.*)

The Court: Is the last question withdrawn or do you press for an answer—as to the relation of that to something else? I do not recall the question.

Mr. Knight: I wanted him to explain the meaning of this table, that is all.

A. In this table I have recorded data showing the influence which the important conditions under which the nitro group is reduced play upon the toxicity of arsphenamine.

The first two conditions which were discovered were the rate of stirring the solutions at the time of the reduction of the nitro group and I find that with rapid stirring the toxicity of the product is—the average is 110 milligrams per kilogram of rat; whereas with slow stirring the toxicity averages 73 milligrams per kilogram of rat.

The next condition which was discovered was the rate at which the nitro solution is added to the solution of hydrosulphite, and this condition was combined with the rate of stirring, by which I mean that with rapid stirring and with slow addition of the nitro acid, the tolerated dose of the product rose to 115 milligrams per kilo; whereas the tolerated dose of the more toxic product remained at 73 milligrams per kilo.

The next condition was the temperature. In these experiments the most favorable ones were made by a combination of the conditions of rapid stirring, slow addition of the nitro acid solution, and a temperature, which I have recrded here, of 10 degrees, and the average tolerated dose was found to be 118 milligrams per kilo, whereas in the experiments used to produce the less desirable product the conditions were a slow rate of stirring, a rapid reduction of the nitro group, and a temperature of 30 degrees, and the product was tolerated in doses of 79 milligrams per kilo.

Now, to explain—that is the average of a number of experiments. The limits of those tolerated doses were 60 milligrams as a lower limit and 90 milligrams as an upper limit, whereas in the toxic products obtained in the previous cases, the upper limits were 100 milligrams per kilo, showing that I had lowered the upper limit of the tolerated dose.

The final condition which I developed as being desirable was a rapid rate of heating of the solutions after the reduction of the nitro group, and this combination of conditions, namely, a rapid stirring at the time of reduction of the nitro group, a slow rate of addition of the nitro solution, having the temperature at 10 degrees and rapidly heating to 55 degrees, gave me an average tolerated dose of 134 milligrams per kilogram of rat, the limits of those tolerated doses being 130 milligrams and 150 milligrams.

And in the opposite series of experiments, where I obtained a less desirable product, the solutions were stirred slowly, the nitro solution was added rapidly, the temperature was 30 degrees, and the combined solutions were heated slowly to 55 degrees. This product was only tolerated in doses of 55 milligrams per kilo, and the limits of this tolerated dose were, the lower limit 50 milligrams, and the upper limit 60 milligrams per kilo.

In that table I have recorded experiments made from impure nitro acid, as I have used the word "impure," and from recrystallized nitro acid, which corresponds with what I call pure nitro acid. Also experiments are included in that table in which the nitro acid was obtained by different methods. There are three different methods of obtaining this compound, and I have included results in which the nitro acid was obtained by each one.

The experiments include those in which sodium hydrosulphite, which is a commercial product, was obtained from different commercial houses, and different methods of conversion of the base into the dihydrochloride.

RDQ. 758. Mr. Christiansen, arsphenamine is inherently a toxic, is it not, or arsinic compound?

Mr. Kresel: Is it arsinic or arsinic compound you are talking of?

Mr. Anderson: I will put it this way:

RDQ. 759. Arsphenamine is an arsinic compound and is inherently toxic, is it not?

A. Arsphenamine must have a certain toxicity. Every drug must.

RDQ. 760. I will ask you to take this patent No. 986,148, follow it from the first line of the process to the last, take your notes of your first experiment before you and compare them with the detailed process in the patent. If the notes are not complete, fill in the facts as you recall them; state the exact variation in each case, if any, and the reason therefore in your own language.

Mr. Kresel: If your Honor please, this seems to me to be duplicating something that has already been done. The witness has already pointed out the differences between the note of his first experiment and the steps outlined in the patent. As to his reasons, I object thereto. We are not bound by his reasons, in view of his direct testimony that he got the result that he said he obtained by following exactly the outlines of the patent.

Mr. Anderson: May it please the Court, in every instance I have noted here, in which he undertook to add to the specific answer an explanation, he was told he could not explain and that he could do it on re-direct. This gentleman is a scientist and I think he is entitled to take his paper, say why he did it, what he did and why he did it, if there is a variation, and let your Honor determine whether it is a valid reason for variation or a material variation.

Mr. Kresel: The difficulty is that that is not what we are trying here. The question that this witness undertook to answer on his direct was specifically that he got the result by following the patent. If it is made to appear by his testimony that he did not follow the patent, this does not answer it. As to the reason why he did not follow it or what his result was otherwise, it seems to me that is immaterial.

Mr. Anderson: The question of whether he followed the patent is a conclusion. This witness can take the patent and tell what he did.

The Court: I do not think it is a conclusion. I do not think it is any conclusion to say that he followed the patent. When the patent says one thing and he does another, I do not think that is a conclusion. But I am going to let him answer and make any explanation, give any reasons that moved him to take the steps that he did in following the patent or in departing from the patent; and when he gets through I am going to ask him—or he can answer it now—why he did not follow, with respect to the quantity of ingredients and temperatures, the exact figures of the patent, or the fixed proportions of the amounts specified in the patent, and why in each of these experiments he departed in smaller or greater degree, because there is sometimes a very small change which makes a big difference in result I have found. I concede, Mr. Kresel, that "why" may not have any bearing at all but I am going to let him explain that to see whether it will throw any light on the interpretation of the patent, for instance. I do not suppose it will, but I am going to see if it will.

Mr. Anderson: Your Honor has stated exactly what my question was intended to bring out. If it had not been brought out on the first answer, I would have brought it by another question.

The Court: I am interested in your changes in the proportion of ingredients of the ultimate arsphenamine; and in answer to this question, you can tell me why you made those changes and used different proportions or different percentages of the different ingredients as you went along in your different experiments instead of following the fixed figures of the patent. I would be glad to have you do that, because I do not understand it now.

A. The patent states that in dissolving the nitrohydroxy acid prior to its reduction, it shall be dissolved in a definite amount of water, to which a definite amount of sodium hydroxide at twice the normal strength is added. I did not use the exact procedure of the patent, but obtained the identical result for this reason: Instead of preparing 2-normal caustic soda, I calculated how much solid caustic soda would be necessary to obtain a 2-normal solution. As every chemist knows, commercial caustic soda is not an article of 100 per cent. purity. It cannot be. I assumed that it was approximately 91 per cent. purity and then used that much additional caustic soda; and instead of using a 2-normal solution, I used that weight of solid material and added to the amount of water prescribed by the patent the corresponding amount of water which would be required to dissolve that much solid caustic soda to prepare a 2-normal solution. That is the reason for the discrepancy between the amount of water which I used and the amount of water required by the patent. Every chemist can state that by the method which I used in dissolving my nitro acid and the method required by the patent—those two methods will lead to the same point in dissolving that nitro acid.

> The Court: My difficulty is this: You started with a fractional portion of 32.9 in a preparation which would be represented by the fraction of 32.9 over 66. Why did you not carry that out with all of your ingredients?

A. (Continuing.) I was coming to that later, sir. I think that clears up the question about the volume of water and the use of solid caustic soda in this solution of 2-normal caustic soda.

The next item as I recall it is the quantity of sodium hydrosulphite which is used. Sodium hydrosulphite is a commercial material which from its nature and from its method of preparation cannot be obtained in a pure form. The obtaining of hydrosulphite of over 99 per cent. purity is a very difficult problem and that material cannot be purchased on the market. The material on the market has varying degrees of purity. The patent does not state what the purity shall be.

As I recall my first work in 1919, I had found at some place in the literature figures stating the approximate purity of sodium hydrosulphite which was being currently used in Germany at the time this work was done. Then the sodium hydrosulphite which is obtained in this country—I do not know the exact purity of it—as I remember it, differed from the purity of sodium hydrosulphite which was recorded in the German literature and which is not recorded in the patent. And, in order to allow for that difference in purity and therefore in the amount of actual sodium hydrosulphite itself which is used, I used this different quantity of sodium hydrosulphite.

I think that is the best explanation I can give as to the difference in the quantity of sodium hydrosulphite used. The figure on magnesium hydrochloride I do not——

Mr. Kresel: Calculate exactly how much I could use. I wonder if I could have that.

Mr. Hershkopf: 85½.

The Witness: 85½ and I used 86½ grams. My magnesium chloridehexahydrate is a substance very difficult to handle in the laboratory. It has so much water that it forms a soup, and when that material was weighed out on a piece of paper it was very hard to transfer that quantitatively to the vessels in which I carried out my reaction. Therefore, I weighed out a slightly greater amount of magnesium chlorid on my balances on the piece of paper, and assumed that the amount which I took additional would be mechanically lost, and therefore I would obtain in my reaction vessel the proper amount of magnesium chloridehexahydrate. It is due to the physical nature of that substance and the difficulty in handling it that I used a slightly different amount in weighing it out on my balances. Mr. Kresel calculated the figure of the amount of water I should have used. May I have that?

MR. KRESEL: Should have used 2137½ cubic centimeters; you used 2110.

THE WITNESS: Yes, sir. Now, my notes show that I used a smaller amount here. The difference there is very slight, and the difference in volume in that total reduction would, I am positive, have no effect upon the product. The difference of 27 cubic centimeters in a total bulk of over 2 liters would be a matter of small importance, and I think I can give the reason why I used a little bit less. That nitrohydroxy acid is contained, we will say, in a small glass flask. That is transferred to the reduction mixture containing magnesium chloride and hydrosulphite. In that process, it is absolutely—everyone will admit that in pouring that nitro solution out of the flask it is impossible to pour out every bit, that the walls of the flask will be coated with a film of that solution; so then in order to get quantitative transference of that material I rinsed it out with a little water, and I just assumed that perhaps I might use 27 cubic centimeters of water in washing that flask out. It is for that reason, I am very sure, that I used less water.

That explains, first, the discrepancy we find in making up the nitro solution. It explains why I used more hydrosulphite. It explains the very slight and insignificant total amount of water used. The next thing is the temperature at which

I carried out this reaction. The patent states 50 degrees and my notes show that I used 55 to 60 degrees. This reaction will proceed with the production of arsphenamine. Now I am not talking about the toxicity of the product and the patent states nothing about toxicity at all. It says you will obain a yellow powder. That reaction will give a yellow powder irrespective of the exact temperature at which the reaction is carried out.

By The Court:

Q. 761. Will it give a powder that it is safe to use on a human being?

A. Your Honor, the patent does not state anything about the use of this—about the toxicity of the product. It states you will get a yellow powder.

Q. 762. Of what use would it be if it is not for use on human beings?

A. It would be of no use, but then we must remember that years ago when this product was first prepared they did not obtain a product of as low toxicity as we obtain today. At that time the quality of the product was much lower than we obtain today, and the patent states that you get a yellow product, a yellow crystalline product, at 50 degrees.

Now I have shown if you carry that reaction out at lower than 50 degrees, you get a yellow product, if you carry it out at above 60 degrees you get a yellow product; but in every chemical reaction it is a known fact that the rapidity of that reaction is a function of the temperature at which you operate. If you operate, we will say, at 40 to 45 degrees instead of 50 degrees, your reaction will be that much slower. It may take a period of over three hours to arrive at complete reaction. If we take a range of temperature of from 60 to 65 degrees or 65 to 70 degrees, our reaction will proceed with much greater rapidity, and it was in order to speed up this reaction, to obtain my product a little bit more rapidly in the laboratory, that I operated at 55 to 60 degrees. In subsequent notes, realizing that I had deviated from the patent to the extent, we will say, of an average of 7 degrees, I examined this factor and its importance in its relation to toxicity, and I could not find that operating at less than 50 degrees or above 60 degrees I obtained—I could not find that my product varied very markedly in toxicity, and the product which I obtained below 50 degrees and above 60 degrees was tolerated by animals in doses higher than those which were required of the original German product by the United States Public Health Service.

I have taken up now the difference in my method of preparation of my nitro solution, my quantity of hydrosulphite, my very slight deviation in quantity of magnesium chlorid, my deviation in quantity of water, the reasons and the effect of the slight variation in temperature, and now we come to the next point.

Mr. Kresel pointed out that I washed my product with water in the first case; in water containing carbon dioxide in the second case; and the patent does not require that you wash the product with water.

Q. 764. What does the patent say?

A. The patent says it should be filtered and dried. I have got the patent here, your Honor.

Now, any chemist who is preparing a product and has to filter a solid out of a solution containing inorganic or other materials which he does not desire in his product will absolutely wash his product with some solvent in order to get out the impurities. If he does not wash that with water, he will leave a film over each particle of his product, which contains in solution the other materials which are dissolved in that reaction mixture.

When he dries it the water disappears and the impurities are left on the product whch he desires. Therefore I washed that product with water in order to remove the undesired products, and that is a thing which every chemist would do. It is unnecessary to state such a thing as that in the patent, because—now, for instance, when I was teaching in college, if my student did not wash his product with water, why, we thought he was a very poor student indeed. Every student, even a sophmore, in college, should know enough in filtering out his product to wash it with water. It is unnecessary to state in an article to a scientific man that he should wash his product with water or some solvent. Now, that is my reason for using water.

In the second case, I state that I used water in which carbon dioxide was dissolved, and I will give the reason for doing that. We know that arsphenamine is a substance which undergoes oxidation by the atmosphere, and also we know that water has a certain amount of air dissolved in it. Now, my precaution at this point was entirely unnecessary, but I will give my reason for doing it. In order to remove the oxygen and the air which was dissolved in the water, I passed carbon dioxide through it, and thereby the water saturated with carbon dioxide would gradually remove the oxygen by—the oxygen would partially go into the bubbles of carbon dioxide and disappear, and what is more, carbon dioxide has no oxidizing action in itself, and therefore could not by any means produce the impurity—the oxidation which might lead to a high toxicity of my product. That is my reason for using that.

It was in order to safeguard myself and avoid oxidation at that point, that I used carbon dioxide water. That was entirely unnecessary and in subsequent experiments I have not done so. That explains my washing of the product and my use of carbon dioxide.

Now we come to the next point. The patent says

"Dry"—dry the product. Well, as your Honor said, there are many ways of drying a product. We could heat it; we could blow air over it; we could let it stand in the air; or we can dry it in vacuum at room temperature, or at a higher temperature; or we can dry it over a dehydrating agent. Here we have a product which is a yellow powder, and which may oxidize, and which upon oxidation is known to give a substance which is more poisonous, more toxic, than arsphenamine itself.

Q. 765. When did that become known?

A. Ehrlich, in working with arsphenamine, states that we should avoid the formation of 3-amino-4-hydroxyphenylarsenious oxide, because that substance is much more toxic than arsphenamine itself, and that is known to be an oxidation product of arsphenamine. Therefore, we must avoid that formation.

If you leave this product out in the air, which contains approximately 20 per cent nitrogen, we would always expect that product to undergo oxidation with a possibility of formation of that poisonous substance. Therefore, everybody would know, or every chemist should know that that product would necessarily be dried in vacuum to keep away the oxygen of the air, or heat driving inert gas—you might drive in nitrogen; that would be perfectly possible, but it would not be feasible in the laboratory. Therefore, we must dry it in vacuum, and I said, over caustic soda.

If you just take a product which is wet with water, saturated with water, and put it in a vacuum desiccator, and evacuate it, and let the water gradually evaporate from that surface, it is a very slow process and it would take a long time to dry the product. But if, in the bottom of that container in which I am carrying out the drying, I put a dehydrating agent, that dehydrating agent will pick up the water as it evaporates from the solid, and hold it very tightly, therefore accelerating my degree of drying—my rapidity of drying.

It enables me to work faster. It is just a process of acceleration. I state in my notes "forty-four hours." The patent does not state forty-four hours. It says, dry it. Well, we would have to dry it until it is dry, that is all there is to it, and I do not remember why I picked out forty-four hours. Maybe I was away for one day in the laboratory, or some reason. At the end of forty-four hours my product was dried. It was probably dry before that. It may not have been dry before that. That is an entirely unessential matter. The patent says to dry it and I dried it, and I stated the time which I dried it.

If, in my notes, I just said "dried," Mr. Kresel could have found no objections. All I have done is to make it more complete and show how I dried it. I stated in my direct testimony that following the directions of the patent I obtained a 90 per cent. yield. The patent gives directions for the preparation of arsphenamine base. It does not say—it does not specify conversion of that into the hydrochloride. Therefore, in testifying I said that I obtained 90 per cent. yield of the reaction that is described in the patent, and in my notes I have an 89.6 per cent. yield of the arsphenamine base, and that is the substance which is described in these detailed directions in the patent.

Q. 766. And claimed?

A. And not claimed, your Honor. There is no yield claimed in the patent.

Q. 767. But what is the product claimed? Is it the base or the hydrochloride?

A. "As a new product, diaminodioxyarsenobenzene"—arsphenamine base. It does not say arsphenamine, but that is the arsphenamine base—"being a yellow powder, insoluble in water, alcohol, ether and benzene, readily dissolving in caustic soda lye and dilute hydrochlorid acid, and decomposing when heated to about 165° C.; said product being in the form of its dihydrochlorid, a light yellow powder, readily soluble——"

By Mr. Kresel:

RXQ. 768. That is the arsphenamine, is it not—the dihydrochlorid?

A. Yes, arsphenamine is the dihydrochlorid; but he stipulates as a new product diaminodioxyarsenobenzene. He says that is his new product. His words say so.

RXQ. 769. But he says it is in the form of dihydrochlorid?

A. "Said product being in the form of its dihydrochlorid, a light yellow powder, readily soluble in water and methyl-alcohol, scarcely soluble in ethyl-alcohol, insoluble in ether or benzene; and decomposing when heated at about 190° C."

He states that his new product is the base, and he states in the form of a dihydrochlorid it has these definite properties.

Now, I obtained a 90 per cent. yield of what he says his new product is—his base. In his patent, he says this: "Its dihydrochlorid, which may be precipitated from a methyl-alcoholic solution by ether, is a light yellow powder." He does not say how it shall be done. A chemist reading that would say he dissolves his base in methyl-alcohol containing hydrochloric acid, and precipitates with ether.

Now, the chemist is given leeway indefinitely as to the amount of solvent he shall use, the technique which he shall use, the temperature at which he shall do it, and in every respect. He says it can be done. Therefore, no matter what conditions I use in precipitating my—in converting my arsphenamine base into the dihydrochlorid, I am within the limits of the patent. I am doing what he says can be done. He does not state how to do it.

I dissolve my base in methyl-alcohol containing hydrochloric acid, and I pour it into ether. Inasmuch as he does not say how it shall be done, what difference does it make how I do it That is entirely up to me. He gives no quantities here. In my first experiment I had to make a guess as to what I should use.

By The Court:

Q. 770. A guess with respect to what?

A. I had to decide for myself exactly the quantities of reagents I should use, my bulk of solutions, because he does not state what I should use. Therefore, in a review of such experiments, I made what I consider a poor guess. I dissolved 9½ grams of this material in 330 c.c.'s, a total of 334 c.c.'s of methyl-alcohol containing hydrochloric acid. That is the combined volume. I poured that material into two volumes of ether. Now, I possibly should have known that two volumes of ether would not be sufficient; but the fact is the patent does not state so and I did not know.

Q. 771. But were you or were you not skilled in the chemical art at that time?

A. Well, I do not want to state whether I was skilled or not. I admitted that I did not know that two volumes of ether was not sufficient. The patent does not say I should stir my ether. The patent does not state what kind of ether I should use. I used ether which I had in my laboratory, and it had approximately 3 per cent ethyl-alcohol in it. The patent does not say it should have 3 per cent ethyl-alcohol, and anybody who works with ether knows on account of its volatility that he should work in the cold; he should not keep it hot. It boils at 36 degrees.

Therefore, I put my ether in ice and water, which is a perfectly obvious thing to do.

And the patent does not say whether I should stir it or not. I did stir it, because I thought that was the proper thing to do in order that when I poured my ethyl-alcohol solution into my ether, I should not have all my ethyl-alcohol in one place and all my ether in another place. You want to mix them. That is obvious.

My notes say at first I got a precipitate which later dissolved. Well, as soon as I saw that dissolved, I knew that I had not enough ether in here, because the first introduction of methyl-alcohol, when there was a little methyl-alcohol and a whole lot of ether, precipitated my product. Therefore I added another 600 c.c.'s of ether which did throw my product out, which was to be expected. Everybody would know that would happen.

Here I had my yellow product of the arsphenamine hydrochlorid. That is to be filtered. He does not say it has to be filtered; but it has to be filtered; we know that, to get it out. And again I state that anybody in filtering a product will wash it with the solvent from which he is filtering it. I washed my product with ether. It is the thing that every chemist would do.

And here at this point we still have our product in an oxidizable form. It is not as oxidizable as the original product; but again we must dry it in vacuum to get out the air. I dried my product in vacuum over sulphuric acid. Sulphuric acid may be used in dehydrating, and I used it at this point because it does dissolve ether and aids the dehydration.

Now, I could perfectly well have dried this in a vacuum without any dehydration whatsoever, because ether is very volatile, and just by putting that product in a vacuum, just keeping my pump working on there, the ether would disappear. I do not need any dehydrating agent.

In later experiments I used caustic soda, because concentrated sulphuric acid in a desiccator is a very disagreeable thing to use. It is a solid and in carrying your desiccator from one room to another you have to be very careful. Caustic soda being a solvent, you may handle your desiccator much more roughly and do not have to use such great care.

In that way I obtained this yellow powder, the dihydrochlorid, the procedure for which the patent does not describe the preparation.

Now, Mr. Kresel has taken up the fact that I only got a 67.6 per cent. conversion of the base into the hydrochlorid. Arsphenamine hydrochlorid, as precipitated from ether, is a slightly difficult substance to handle. You must use special technique. You have got to wash it rapidly, and so on, and if the air is terribly moist, the arsphenamine will pick up water and form a sort of a jelly thing. We have that trouble especially in hot weather. In the summer we have a great deal of difficulty in doing that. Therefore, you must work rapidly, and in working rapidly we all know we cannot scrape up the last little bit of stuff that is sticking around on a beaker or in a flask or on a filler. We must work rapidly and get it into the desiccator.

Therefore, our degree of mechanical loss is increased very greatly, and that is the reason for this low conversion.

Now, here I have my product. I have explained why and given my reasons, and my reasons are perfectly good for every deviation from this patent, and I have my product here which analyzed and obtained the Public Health—I have forgotten what the exact arsinic content required by the Public Health Service is —I obtained a product which analyzed for 30 to 45 per cent. arsinic.

The rats died at 130 milligrams per kilogram, and lived at 120 milligrams per kilogram. Now, the arsinic content of arsphenamine is always found lower than what you calculate it to be, for the reason that arsphenamine is always, when obtained by this process of reduction, no matter what conditions you use, if you use what I think to be the best conditions, is alway an impure product. There are sulphur compounds in it; there are oxygen derivatives. Now, there may be other products. Those products, especially the sulphur compound, having a higher molecular weight, will lower the arsinic content of the product, and that is why the arsinic content is usually lower than what it is calculated to be.

Now, your Honor, I have gone through my first experiment, giving you what I consider a very detailed account of all my reasons, and everything.

Now I would like to take up the subject of my second experiment.

The Court: I shall not go into that unless counsel on one side or the other goes into it.

The Witness: I should like to.

Mr. Anderson: I would like to give him a chance to do it.

The Witness: I shall not go into this in detail. I will go into the conversion of the hydrochloride, the process which the patent does not stipulate and which I have developed for myself. I found I used an unnecessary large volume of methyl-alcohol. I used 334 c. c. per 9½ grams, and then I did not use enough stuff; but when a chemist is not given the exact directions for doing a thing, and he makes it the first time, he will not make the same mistake a second time. That would follow. So I took my product and dissolved it in less methyl-alcohol per gram, and used a larger quantity of ether, which all these things in my first experiment indicated, and I did not find my difficulties. I did not have to add a second amount of ether to precipitate my base, because I had a large relation of ether—I mean precipitate my hydrochloride—I had my conditions more nearly exact; and I have found that using say one gram of base in a total of 7½ c. c. of methyl-alcohol solution, and precipitating with 10 volumes of ether, it is perfectly satisfactory. I do not know that in my first experiment anybody told me. I had to find out, and I incorporated that in my second experiment. That is the point I want to clear up in my second experiment, your Honor.

By Mr. Anderson:

RDQ. 772. What did you get in your second experiment in the way of yield and toxicity?

A. My second experiment gave me a 97.7 yield of arsphenamine base. The new product which is described in this patent, and for which the quantities are given, again I got 69.9 per cent. conversion which I say gave me considerable difficulty mechanically owing to the nature of arsphenamine itself and the toxicity, the toxicity of my first part. In this experiment, which I call experiment 2 in my whole series of work, I have it that at the time the animal lived at 130 milligrams per kilo. That is the only data which I have here. If the animal lived at 130 milligrams per kilo, we would certainly not expect any animals to die at 100 milligrams per kilo except when we get animals which are abnormal. It is a well-known fact that animals are like all human beings, and have their abnormalities. We cannot expect if we take ten rats, at 100 milligrams per kilo, that they are all going to live. As a matter of fact, some rats may be very defective; their lungs may be poor; or their intestines may be poor. We do not know from looking at them. Therefore, we might get an animal which lived at 130 milligrams per kilo, and we would not expect to get any at 100 per kilo unless we had normal animals.

RDQ. 773. Mr. Christiansen, can you recall any other respect in which you varied from or enlarged upon the Ehrlich patent No. 986,148?

A. In my detailed description of experiment 1, I have given every deviation which I can see from my notes and which I can recall from the patent.

The Court: In that experiment or all of them?

The Witness: In this first experiment.

RDQ. 774. And that experiment is the first time you had ever undertaken to make arsphenamine?

A. It was the first arsphenamine I had ever seen.

RDQ. 775. Do you know whether arsphenamine or salvarsan is used upon other animals than rats?

A. Experimentally, we have used arsphenamine in toxicity determinations on other animals than rats, but I do not know much about the use on other animals except in that respect

RDQ. 776. You spoke of Ehrlich having published some article with reference to the question of toxicity and accompanying impurities at one stage in your explanation of your first experiment. Do you recall your statement?

A. I do.

RDQ. 777. About when was that article published, do you know?

A. I cannot say. I remember reading it. I can probably find it in my reading notes, but I have not got it in my mind.

RDQ. 778. Was it before you carried on this experiment, do you know?

A. I had that knowledge before I carried on this experiment.

RDQ. 779. And you are sure you derived it from an article published by Ehrlich, is that true?

A. To the best of my knowledge I derived that from a paper published by Ehrlich.

RDQ. 780. Mr. Christiansen, if you can find that article when you return home, I would ask you to produce it, and I will ask leave to file it with the Clerk of the Court, and when we come back at another time, to file it in evidence, if I can do so. We have to close the case today.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: I should like to see it first, your Honor.

MR. ANDERSON: Of course. With that understanding, I will ask that you send it to Mr. Mahaffy, the Clerk of the Court, whose name you will get before you leave, please; and send to both Mr. Kresel and myself—if you send it to me, I will send it to Mr. Kresel—a reference to where the article is found, in what publication, and then we can look it up.

THE WITNESS: All I have on my reading notes The original publication and copies of it are not available for me and all I would be able to send you would be the reference. The Clerk would have to get a copy for the files in some other way. I cannot send a copy of the paper myself. It is not my personal property. All I have are my reading notes.

RDQ. 781. I will ask you to look at this bibliography on the subject of this paper published by Ehrlich and S. Harper in 1911 and see if you can identify that as the paper.

A. I have not read that paper. I did not read that paper because at the time I was interested in the chemistry of the product, and I considered from the title to this that it would not have a great deal of chemistry in it. I was not interested in the pharmacology at the time.

RDQ. 782. After you go off the stand, I will ask you to look over this bibliography, and if you can, locate the paper to which you refer. I will try to get a copy before we adjourn. Something was asked you about digesting the product at a certain stage in the procedure, and the fact that no time was specified for such digesting process. Could you explain the term "digesting" in a chemical sense?

A. "Digesting" is a very indefinite term and it should be used more advisedly. "Digesting" would mean that the materials are brought to this condition and kept there. To give an example: suppose we want to boil some stuff up and keep it in a flask. We will say, "digest it." "Digest" might mean that you keep this material there with stirring or without stirring. We do not know.

RDQ. 783. What is the result of the digesting? Could you give me that?

A. The digesting produces a yellow powder. The patent does not state how long you shall digest it in order to get that yellow powder. That can be done very easily.

It is, of course, obvious that you want to digest it until the reaction is complete, in order to get as much of a yield as possible. To determine that, you just take out a small portion of your main reaction mixture and remove what yellow powder is formed, and then see if any more will form from the clear filtrate which you obtain from that yellow powder. That is a perfectly sensible and logical thing to do.

RDQ. 784. Have you among your notes any other experiments in which you follow closely the outline of this patent?

Mr. Kresel: That of course assumes that he did at any time.

THE COURT: I did not understand you, Mr. Kresel.

MR. KRESEL: I say that assumes that he followed it at any time.

THE COURT: He assumes he followed it at any time.

MR. KRESEL: Yes, sir. Your Honor will hear the question.

THE COURT: I understand the question.

A. I have in my notes experiments in which I have followed the patent as I have understood it and with the changes which I have given in my first experiment and which I gave reasons for, but which vary in this way: The patent does not state any experimental conditions. It says one solution shall be introduced into another. There are loads of ways of introducing solutions into one another; we may pour them together rapidly, we may pour them together slowly—they are introduced into each other just the same. Therefore, I have experiments in which I have varied these conditions and, therefore, conformed to the patent as closely as my first one does. They only differ in the experimental procedure, which is not specified by the patent.

RDQ. 785. In other words, you varied your conditions?

A. Yes, sir.

RDQ. 786. But followed the process in the patent, as you understood it?

A. Yes.

RDQ. 787. Did I understand you correctly to say whether, starting with the impure nitro compound, impure in the sense in which you use it, you can by the recognized purifying processes produce the high grade arsphenamine in the conclusion?

MR. KRESEL: He did not say that.

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Mr. Anderson: I so understood him. I h
a note to that effect.

A. The word "purifying" is not well used ther

RDQ. 788. What word do you want to use?
can explain it any way you please.

A. The process under well recognized techniqu
there is no purification in this thing under the best
ditions.

Mr. Kresel: The what?

The Witness: There is no purification p
ess recorded in this patent.

RDQ. 789. What did you do when you took w
you call the impure crude compound and started
and produced salvarsan or arsphenamine of a qua
which would pass the Public Health Service, as
stated?

A. I started with impure nitro-hydroxy acid—
pure in the sense which I have already explaine
used the quantities of reagents which I have recorde
my first experiment and which differ slightly from
patent, but as to which I give reasons, for making th
deviations—starting that way and using what I
sider the proper conditions for carrying out the r
tion. The arsphenamine so obtained will pass
United States Public Health Service requirement
100 milligrams per kilo.

The Court: I do not understand his ans
Do you want to clarify it? I do not know whe
he means the rapid stirring, the increased t
perature, or what.

RDQ. 790. You spoke of using the conditions
rounding the experiment or process which you thou
were satisfactory or desirable. To what condition
you refer?

A. I refer to the conditions which I have descri in that paper. Now, if one uses the conditions which I have described in that paper, one obtains a tolerated dose well above the United States Public Health Service standard, but if one did not know those exact conditions and just approximated them, he might not obtain a tolerated dose of the highest degree, but he would obtain material which would pass the tolerated dose required by the Public Health Service, namely, 100 milligrams per kilo, because that is very easily obtained.

RDQ. 791. You mean it is easy to obtain a product arsphenamine or salvarsan, for one skilled in the art, by approximating the best conditions which you have undertaken to describe?

A. I do.

RDQ. 792. And you can do that using the intermediates and elements and otherwise following the process or formula described in the patent, under conditions which approximate good conditions or best conditions?

A. Yes.

Mr. Anderson: I think that is all I want to ask Mr. Christiansen.

Re-Cross-Examination.

By Mr. Kresel:

RXQ. 793. Dr. Christiansen, the conditions that you say are necessary to get a product of low toxicity, were conditions that you discovered?

Mr. Anderson: If your Honor please, counsel went through that at the greatest length in cross-examination. He asked him that identical question. I have not brought out a thing on re-direct examination that was not in reply to cross. To go back now and go over this whole thing again, these complicated formulae, means that I will have to go back on re-direct, and if we are going to finish tonight we cannot do it, sir.

The Court: I recall exactly what his testimony was, Mr. Kresel, with respect to that—that he published this article for the medical art or science and that he was giving that information, which up to that time had not been disclosed to them. Is that what you wanted to bring out?

Mr. Kresel: Yes, sir.

RXQ. 794. You say that even though a person does not exactly follow the conditions that you discovered, but approximates them, he would get an arsphenamine that would pass the Public Health test at 100 milligrams?

A. I do.

Mr. Anderson: I object. Well, your Honor, he has answered; but I do not think this is re-cross-examination, sir. We went over in the most extensive detail every possible process.

The Court: My difficulty with that, Colonel Anderson, is that if the table——

Mr. Kresel: I am coming to that table, your Honor.

The Court: No, I mean if the method of purification discovered by him and disclosed by him to the art was a good method and somebody who approximated that would get a satisfactory result, it seems to me that possibly those skilled in the art would have to know his method before they might be able to properly approximate his method.

Mr. Anderson: But may I suggest to your Honor that a person skilled in the art would not have to know one method in order to follow a good method. It is all a matter of baking a cake, and one cook might do a little better than the other, but one would not have to go to look at the other cook to do it. It is just going over the same ground again.

THE COURT: I am not sure of that, Colonel Anderson. I allowed him to testify fully and without restriction, so I do not think I better close the door now.

RXQ. 795. It is apparent from the table contained in your article that when you did not observe those conditions you got a result very much lower than the 100 milligrams, did you not?

A. When I——

RXQ. 796. Well, didn't you?

A. When I did not even approximate them.

RXQ. 797. Now look. I show you your table. Look at your last experiment. When your rate of stirring was not rapid and your rate of addition of the nitro solution was rapid, and your rate of heating was slow, you got a fifty to sixty milligram result did you not?

A. I did.

RXQ. 798. When your rate of stirring was rapid but your rate of heating was slow——

A. Rate of addition was slow.

RXQ. 799. Rate of addition was slow and your rate of heating was rapid, all those conditions being what you discovered to be necessary, you got a result of 134 average, did you not?

A. I did.

RXQ. 800. That is the best that you obtained?

A. I did.

RXQ. 801. Then when you drop out the rate of stirring, instead of stirring rapidly you stir slowly and yet continue the addition rapidly, you got an average of 79?

A. Well, you are still combining the two conditions which I have in the last line.

RXQ. 802. Certainly.

A. Yes.

RXQ. 803. You got an average of 79?

A. Yes.

RXQ. 804. So that in order to get an average of 100 according to your table you had to have rapid stirring, slow addition, the proper temperature, and rapid heating?

A. To obtain 134, I had to have that—not 100.

RXQ. 805. Have you any example here where you obtain 100—an average of 100?

A. The closest I have is an average of 110.

RXQ. 806. Of 110. Now that example or that experiment wherein you obtained 110, you have nothing to show as to whether your condition was slow or upward, have you?

A. I have not.

RXQ. 807. You have nothing to show what temperature you used?

A. I have not.

RXQ. 808. So that that can hardly be taken as an example of what you are trying to show, can it?

A. I think it can.

RXQ. 809. You think it can?

A. I do.

RXQ. 810. Do you know whether you added slowly or rapidly there?

A. I can say as a chemist——

RXQ. 811. No, no. Not what you can say as a chemist. Do you know?

A. Those solutions we added fairly slow.

RXQ. 812. Why did you not put it down?

A. Because I could not give——I could not say that we did as slowly as in later experiments, but that we did fairly slowly.

RXQ. 813. Why did you not say so?

A. Because in each experiment, that factor not being understood, was variable. Therefore I did not put it down, and it did not——

RXQ. 814. Now, is not the reason that you did not put it down this, that you did not realize at the time you were making your experiment, that it was of any importance?

A. It is.

RXQ. 815. That is the real reason, is it not?

A. I did not, yes.

RXQ. 816. In other words when you started experimenting you did not know that it was important as to whether you did it rapidly or slowly; whether you stirred the thing rapidly or slowly, or whether you had a particular kind or a particular degree of temperature?

A. I did not know those.

RXQ. 817. So that that was not anything that was generally known in the art at the time, was it?

A. One would not know those conditions were going to be so vital. He could not tell that.

Mr. Kresel: That is what I thought. That is all.

Re-Direct Examination.

By Mr. Anderson:

RDQ. 818. You discovered it in the first experiment you made, didn't you?

A. I discovered that using the technique——

Mr. Kresel: No, no. Just answer the question. Did you discover it in the first experiment you made?

The Witness: I did not discover the vital importance in the first experiment.

Mr. Kresel: That is what I thought.

RDQ. 819. How long did it take you to discover it?

A. I cannot say exactly.

RDQ. 820. Can you say approximately how many experiments you worked, before you saw the effect of those conditions?

A. It would necessitate that I look through here; it would necessitate that I look through these notes.

RDQ. 821. Just look through them.

A. It was after approximately 150 experiments in which I was examining a number of other factors than the conditions, that I began to examine the conditions, and I found it of vital importance. In the previous experiment I was examining a great many other factors and was not considering these conditions at all and that accounts for the large number of experiments required.

RDQ. 822. It was of vital importance to what?

Mr. Kresel: What is that?

Mr. Anderson: He is speaking of "vital importance."

Mr. Kresel: I do not think that upon the re-direct this gentleman should be allowed to explain every word that he uses. "Vital importance" are two English words, and they are well understood. They have no technical meaning.

RDQ. 823. And they apply to a great many conditions here and I want to see what conditions he refers to.

The Court: You may take the answer.

A. I refer to the importance of the conditions under which the nitro group is reduced in its relation to the toxicity of the product.

RDQ. 824. And the fact is that on your first experiment you did follow those conditions?

Mr. Kresel: What conditions?

Mr. Anderson: Those conditions which brought about the low toxicity.

A. I followed approximately the base conditions.

RDQ. 825. You did on your first experiment?

A. On my first experiment.

Mr. Kresel: Are you through?

Mr. Anderson: I suppose I am, unles you reopen it, and I may have then something else to say.

RE-CROSS-EXAMINATION.

By MR. KRESEL:

RXQ. 826. You say you followed those conditions on your first experiment?

A. I say approximately, I did not say exactly.

RXQ. 827. Did you——

THE COURT: Mr. Kresel, I am wondering whether you can bring out anything that has not already been brought out. I am going to let you do it if you want to; but it seems to me you have in detail, in your first cross-examination the full facts, and he has testified about his third, about his drying, and temperatures, and all that; so I am wondering, whatever his conclusion is, as to whether he followed his table or not.

MR. KRESEL: That is the trouble, your Honor. He is allowed to give conclusions, when the facts are the other way.

THE COURT: He is allowed to give them, but I am not concerned with his conclusions.

MR. KRESEL: That is all. Any further question?

THE COURT: I want to ask one question.

By THE COURT:

Q. 829. Was nitroxyphenylarsinic acid a product that could be obtained on the market at the beginning of 1919, or at the end of 1919?

A. Not to my knowledge.

RXQ. 829. It was not then available?

A. Not to my knowledge.

THE COURT: I see.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 830. That brings up another question. Did you produce this acid yourself?

A. I did.

RDQ. 831. I note that there are certain proceedings or formula indicated in this patent beginning a line 33 and coming down to the period at line 49, whic states that it formed a yellowish white crystalline powder. Now is this yellowish white crystalline powde the acid referred to?

A. It is.

RDQ. 832. What did you do, Mr. Christiansen, i producing that acid?

Mr. Kresel: You mean what steps he took?

Mr. Anderson: What steps he took with th patent.

A. I dissolved anhydrous sodium para-hydroxyphenylarsinic and concentrated sulphuric acid, an with vigorous stirring, maintained a temperature a or below zero degree. I added slowly a mixture o nitric and sulphuric acids, thereby what we call "nitrating" the product. After the nitric acid and sulphuric acid had been added, I allowed the temperature to rise to 10 degrees, and poured this mixture this nitrate mixture into a large volume of water, thereby precipitating the nitrohydroxyphenylarsinic acid which I obtained as a yellowish white product. It is very pale yellow compound. This material was filtere out and washed, as everybody would do, and dried.

RDQ. 833. And what was the product then, wha would you call your product?

A. That gives me what I call crude or impur nitrohydroxyphenylarsinic acid.

RDQ. 834. Then after getting that you followe the steps you have outlined and which need not be reviewed?

A. I did.

RDQ. 835. Mr. Christiansen, before you leave th stand, you have spoken of three different articles o papers that you read, which you call the literatur that you read. I would like you very much to get them, if you can do it here, or give us a reference to them while we are here. If not, do it when you get back.

means of suction and the semi-dry product obtained was further dried, either in the air or in a vacuum drier; and the substance was then purified by recrystallization from solvents.

Q. 11. What did you get?

A. I got cinchophen.

Q. 12. Was this done in the laboratory of the Calco Chemical Company?

A. My first experiments were done in the laboratory, yes, sir.

Q. 13. Where were your later experiments done?

A. In the plant. I would not call them experiments.

Q. 14. That was in commercial production?

A. Commercial production, yes.

Q. 15. When did the Calco Chemical Company begin to produce and market cinchophen?

A. In September; about the middle or the end of September.

Q. 16. What year?

A. 1917.

Q. 17. When did you leave the Calco Chemical Company?

A. The company itself, in general?

Q. 18. Yes.

A. September 1, 1919.

Q. 19. Was the Calco Chemical Company selling this product on the market in 1919?

A. In 1919, did you say?

Q. 20. Yes.

A. I do not think they were selling it on the market in 1919.

Q. 21. Did they sell it after 1917?

A. Yes, they did.

Q. 22. To whom, do you know?

A. Yes, I do.

Q. 23. To whom did they sell it?

A. To the firm of Schering & Glatz.

Q. 24. Do you know the character of the firm, its general business?

A. It is a firm dealing in pharmaceuticals.

Q. 25. Wholesale or retail?

A. Both, I think. I am not sure.

Q. 26. They began to market this product in the autumn of 1917?

A. Yes, sir.

Q. 27. Was the product which they marketed produced in the manner in which you have described?

Mr. Kresel: If he knows.

Q. 27 (continuing). If you know?

A. May I ask, who marketed?

Q. 28. I mean the Calco Chemical Company. Was the product which they sold produced in the manner which you have described?

A. Yes, sir.

Q. 29. You spoke of production in the plant. About how long after you began your experiments in the laboratory were they producing industrially in the plant?

A. About four to five weeks.

Q. 30. Did you work with anyone else in the production of this material in the manner which you have described under that patent?

Mr. Kresel: You mean in his experiments.

Q. 31. In your experiments, yes. Any other chemists?

A. No; not chemists.

Q. 32. Did you make these experiments for the Calco Chemical Company in the laboratory in which you developed this product, as you have indicated in your testimony?

A. I did.

Q. 33. You did personally.

A. Yes, sir.

Q. 34. Did you then go into the plant and apply the results of that laboratory work in the industrial production of this drug?

Mr. Kresel: A leading question, but I will let it go.

A. I did.

Q. 35. It has been testified here by Dr. Crossley as to the cost of experimental work on cinchophen. Do you know when Dr. Crossley came with the Calco Chemical Company?

A. I know approximately.

Q. 36. When?

A. Either the end of 1917 or the beginning of 1918, I am not certain.

Q. 37. Can you state whether at that time the Calco Chemical Company was in fact producing cinchophen industrially and selling it to the merchants you have spoken about?

A. I can.

Mr. Kresel: Do you mean at the time——

Mr. Anderson: That Dr. Crossley came.

Q. 38. You can so state?

A. I can.

Q. 39. Was it a fact that it was or was not?

A. It is a fact that it was.

Q. 40. You were engaged in the laboratory of the Calco Chemical Company during that entire period, were you?

Mr. Kresel: What period?

Mr. Anderson: I mean the entire period of experimentation until the beginning of production of this material.

A. What was the beginning of that question.

Q. 41. During the entire period of experimentation and research?

A. Yes.

Q. 42. And during the entire period of the production of this material industrially?

A. I was engaged on it.

Q. 43. On this work?

A. Yes, sir.

Q. 44. It has been testified here that the Calco Chemical Company spent $60,000 in research work on cinchophen. Can you state whether that is a fact or not?

Mr. Kresel: If he knows anything about it.

The Witness: I know.

Q. 45. Can you state whether they spent $60,000 in that work?

A. I am pretty sure that sum is considerably exaggerated.

Mr. Anderson: The witness is with you, Mr. Kresel.

Cross-Examination.

By Mr. Kresel:

XQ. 46. You know Dr. Crossley, I assume?

A. I do.

XQ. 47. You regard him as a man of character?

A. I do.

XQ. 48. And as a man of some prominence in the scientific world?

A. I do.

XQ. 49. You understand that it was he that testified that the Calco Chemical Company spent about $60,000 in experimenting with cinchophen, do you not?

A. Yes, sir.

XQ. 50. And you understand that your testimony here, the last answer to the last question, was that the amount was exaggerated—$60,000?

A. So I think.

XQ. 51. You think that was exaggerated?

A. Yes, sir.

XQ. 52. You understand thereby, don't you, that you are testifying that Dr. Crossley made an untruth-ful statement in that regard; isn't that your understanding?

A. So it would imply.

XQ. 53. Well, you understood that to be the case?

A. Yes, sir.

XQ. 54. Now I want to know what you had to do with spending any of the money for this experimental work on cinchophen?

A. I had nothing to do with spending the money.

XQ. 55. And having had nothing to do with spending of the money, you are willing to testify here, and have testified, that Dr. Crossley lied when he said it was $60,000, is that right?

A. Well, I wouldn't say——

XQ. 56. Is that right? Answer it.

Mr. Anderson: I think he was answering. I think he has got a right to explain it.

XQ. 57. Is that right? I want an answer to my question—"yes" or "no."

A. I cannot sit here, Mr. Kresel, and claim that Dr. Crossley lied. He may have been misinformed.

XQ. 58. What do you know about how much was spent, if you did not spend a dollar of it?

A I had access to the records. I was shown the records of the money—of the amount of money that the research work on cinchophen cost.

XQ. 59. Who showed them to you?

A. Dr. Fine.

XQ. 60. When?

A. In 1918.

XQ. 61. Were you still with the Calco then?

A. I was.

XQ. 62. What records did he show you?

A. He showed me all the cost sheets that came in from the Comptroller's Office.

XQ. 63. Did you examine them?

A. I did.

XQ. 64. Carefully?

A. Not very carefully.

XQ. 65. Did you make any memorandum of what they showed?

A. I did not.

XQ. 66. Do you know now what they showed?

A. No, I cannot remember.

XQ. 67. Not knowing what they showed, not remembering what they showed, you are still saying under your oath that Dr. Crossley's statement that it was $60,000 was not correct?

A. Yes, sir.

XQ. 68. You are employed by Herman Metz, aren't you?

A. I am.

XQ. 69. What work are you doing for Herman Metz?

A. I am doing research work on pharmaceuticals and bio-chemistry.

XQ. 70. And who told you to come here as a witness?

A. No one told me to come. Mr. Metz asked me if I would care to come.

XQ. 71. And I suppose you talked with Mr. Metz before you came here as to what you were going to testify about, did you not

A. Mr. Metz spoke to me about——

XQ. 72. Didn't you, yes or no?

A. I did.

XQ. 73. And you told Mr. Metz, did you, what you were going to testify?

A. No, I did not.

XQ. 74. Did he ask you what you were going to testify?

A. No.

XQ. 75. Who was at the head of the chemical work of the Calco Chemical Company in 1917?

A. You mean the Pharmaceutical Department or the whole Chemical Company?

XQ. 76. The whole Chemical Company.

A. In 1917, I believe Dr. Beardsley.

XQ. 77. And were you working under Dr. Beardsley?

A. I was not.

XQ. 78. Who was at the head of the work that you were prosecuting?

A. Dr. M. S. Fine.

XQ. 79. How many chemists were there working under Dr. M. S. Fine in 1917

A. At what period in 1917?

XQ. 80. In the fall of 1917.

A. Two were working under Dr. Fine.

XQ. 81. Were you one of the two?

A. I was.

XQ. 82. When Dr. Crossley came there, did he take Dr. Fine's place?

A. No, sir, he did not.

XQ. 83. What was his position there?

A. Whose?

XQ. 84. Dr. Crossley's.

A. He was made chief chemist, supposedly—there were usually half a dozen chief chemists—of the plant in general.

XQ. 85. And were you a chemist in the plant then?

A. In the Pharmaceutical Department.

XQ. 86. So during the remainder of your stay with the Calco Company Dr. Crossley was the chief chemist?

A. Yes.

XQ. 87. And you were one of the chemists in the Pharmaceutical Department?

A. That is correct.

XQ. 88. And your testimony is that you started experimenting with cinchophen in the fall of 1917?

A. That is correct.

XQ. 89. And you took this patent and you followed exactly the steps that are outlined there for the manufacture of cinchophen?

A. Correct.

XQ. 90. And having followed those steps exactly, you obtained cinchophen?

A. I did.

XQ. 91. The first time that you ever attempted it?

A. That is correct.

XQ. 92. And what yield did you get?

A. I don't recall the exact yield, but I believe about 60 per cent. of the theoretical.

XQ. 93. That is a pretty good yield, is it not?

A. No, not in chemistry in general. It is for this compound fairly good.

XQ. 94. That is what I mean; we are talking only about this compound. Do you remember when it was that you obtained this result from your first experiment?

A. Do you mean the exact date?

XQ. 95. I do.

A. I do not recall the exact date.

XQ. 96. And what month?

A. In August, 1917.

XQ. 97. Did you keep a record of your work?

A. I did.

XQ. 98. Where is it?

A. It is in the records and the property of the Calco Chemical Company.

XQ. 99. Made by you?

A. Made by me.

XQ. 100. Was that the only experiment you made on cinchophen?

A. No, sir.

XQ. 101. Did you continue to experiment?

A. Yes, sir.

XQ. 102. On cinchophen?

A. Yes, sir.

XQ. 103. How long did you continue?

A. About two to three weeks.

XQ. 104. And you were the only one that did the work?

A. At that period; yes, sir.

XQ. 105. You did it all yourself?

A. No, sir.

XQ. 106. Did you do any of it yourself?

A. Considerable.

XQ. 107. What part of the experiment did you do yourself?

A. Practically all of it—mixing the ingredients, carrying out the reaction, purifying the product.

XQ. 108. How many experiments did you make in those two or three weeks?

A. I should say at least fifty.

XQ. 109. And every experiment you made a record of?

A. Yes, sir.

XQ. 110. And those records are with the Calco Company?

A. They are.

XQ. 111. In what form were they?

A. In notebooks.

XQ. 112. Written in ink or pencil?

A. Both ink and pencil.

XQ. 113. And you made the records yourself?

A. I did.

XQ. 114. In your own handwriting?

A. In my own handwriting.

XQ. 115. Cinchophen is a drug that is widely used?

A. [illegible]

Q. 118. You have been with Mr. Metz since [illegible]?

A. Yes, sir.

Q. 119. Does Metz make [illegible]?

A. [illegible]

Q. 120. [illegible] make it?

A. [illegible]

Q. 121. [illegible] contained in the contract?

A. That's correct.

[illegible] That is all.

By [illegible]

Q. [illegible]

[illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

[illegible]

[illegible]

By Mr. [illegible]

Q. 123. Mr. Freedman, in manufacturing [illegible] there is an intermediate called pyruvic acid; that is correct?

A. That is correct.

Q. 124. And where did you get it in 1917?

A. We made it ourselves.

Q. 125. You mean you made it?

A. Some laborers—helpers.

XQ. 126. Under your instructions?

A. Under mine and Dr. Fine's instructions.

By The Court:

Q. 127. How long does it take you to make cinchophen?

A. The actual reaction will take about five to six hours.

Q. 128. I am going to ask you to make some for me. Are you equipped to do it?

A. Here?

Q. 129. Yes.

A. I doubt it, sir.

The Court: I will see that you get the equipment. We are up against a proposition here which I want some additional information upon.

Mr. Anderson: Your Honor has now come to a question that I wished to raise and I was going to do it at a later stage. At the time of the discussion of the trade secrets a few days ago your Honor suggested, you will recall, that you would be very glad to permit the Government to actually produce with proper equipment in the courtroom, if that is practicable, or elsewhere, under proper regulations, any of the products called for by these patents. Some of which, like dyes, of course, would take weeks or months.

The Court: Yes, I understand that, but this only takes four or five hours.

Mr. Anderson: I therefore determined this morning to ask permission of the Court to have the chemists, perhaps two chemists representing the Government and Dr. Freedman, if your Honor desires, on cinchophen, produce salvarsan and cinchophen chemically in a properly equipped laboratory such as may be designated, and make such tests as the conditions may seem to warrant, on white rats or otherwise, both chemically and biologically, and that the Government be allowed to make several of these experiments with the formula—I do not know exactly how to express it, but your Honor understands—with leave to the defense to suggest others, the defense to be represented by chemists and counsel to witness the experiments and certify them to the Court, and with such other reasonable conditions imposed as may be deemed proper, all of which I can not recite for the moment because it requires a great deal of technical knowledge.

I am told that that will require a laboratory properly equipped and the use of ingredients which can be tested chemically, if desired by both sides. I therefore suggest and I feel that I can say the Government would be very glad to have these experiments carried on in the presence of the defendant's witnesses at the Hygienic Laboratory in Washington or at any other Laboratory properly equipped for this service.

MR. KRESEL: The defendant joins cheerfully in the suggestion now adopted by the Government in having these experiments performed. As to cinchophen, however, I understand there need be no delay since it is not going to take very long; and since Dr. Freedman is here, I should suggest that that be done immediately. As to the other experiments on salvarsan my understanding is that it will take days to do that. Dr. Christiansen said it would take him three days even if we started with the intermediate already made. I take it that we are not going to be held here now while that is being done. That may be done between now and the final argument. I am simply making that suggestion.

THE COURT: That may be begun; and then if there is any disagreement among the chemists with respect to the certificate, I will accept the certificate if counsel can agree upon the facts; if not, some time prior to argument, we will hear the chemists.

Mr. Anderson: I would like to have a chance, when we fix the details of this arrangement, to go more into detail to fully protect the experiments, so there can be no question on the subject.

Mr. Kresel: The Court will lay down instructions about that.

Mr. Anderson: As to the cinchophen, this gentleman would have to have laboratory equipment and he would have to have ingredients which he knew to be the proper ingredients. I do not think he could stand up there in the courtroom and produce it at this time.

I understand Dr. Freedman is compelled to leave, unless the Court orders otherwise; and I therefore requested him to come over today and give this testimony. He is going to be married. That is something we would not like to interfere with. He asked if he could go away today. But he will make the experiment under such conditions as your Honor will deem reasonable. It will take only four or five hours.

The Court: Three hours, I thought you said.

The Witness: Longer than that. It will take at least from five to six hours. There are two different condensations, which take from two to three hours.

The Court: I thought you told me it would take about three hours. My memory fails me. You can begin the experiment and complete it in five or six hours.

The Witness: About six hours, yes.

Mr. Kresel: We will arrange to place at this gentleman's disposal a laboratory and any of the ingredients that he requires. Dr. Bolton, is there a laboratory at the DuPont Company available?

Dr. Bolton: There is a laboratory on the outskirts of the town, at the Experimental Station.

The Court: Are you satisfied with that? If not, I will ask the defendant to produce here in this building, and use the corner room on this floor, such material and equipment as may be necessary.

Mr. Anderson: I shall be very glad, sir. I do not know what equipment and material are necessary, but first I will go over with Dr. Freedman whether the laboratory is one that he can easily use. In the second place, nothing would give me greater pleasure than to have Dr. Bolton as one of the witnesses at the experiment.

The Court: I shall let the defendant make its own selection.

Mr. Anderson: In suggesting that we want to go over the laboratory conditions, we want to know that they are conditions under which he could produce this stuff favorably. If not, we would not want to produce here.

The Court: Mr. Kresel, will you assign someone, designate now someone to arrange with Dr. Freedman with respect to a laboratory? Dr. Freedman must be free in his choice to perform the experiment at the DuPont Company's experimental station, if he so desires, or not.

Mr. Kresel: Very well.

The Court: And if the witness does decline, I will ask you to equip the corner room on this corridor with such material and equipment as may be necessary, if that can be done, and I think it can be done most readily, and let the proceedings begin forthwith so that it may be done today.

Mr. Kresel: I want to make a suggestion, your Honor. If Dr. Freedman does not deem the experimental station of the DuPont Company as proper or available, I understand that at the Delaware State University they have a very fine laboratory; and perhaps Dr. Freedman would be willing to do the experimenting there. That is only a few minutes away.

Mr. Anderson: That will be entirely agreeable to us. Whatever Dr. Freedman says will be satisfactory to the Government. The materials that he requires or the ingredients, I will leave entirely to him to select, of course.

The Court: Now then, if counsel are unable to agree as to the details, I will specify the details. I shall not make any further suggestions unless there is disagreement of counsel. That is all on both sides?

Mr. Anderson: I would like to ask, while this witness is on the stand, that the accounts of the Calco Chemical Company, showing the amount of expenditures for experimental work, as to the matters testified by Dr. Crossley, be produced on Monday, if you can do that without a subpoena duces tecum.

The Court: What was the extent of Dr. Crossley's testimony with respect to that? Was it aggregate or in detail?

Mr. Kresel: In aggregate.

Mr. Anderson: He stated on cinchophen and one other account and still one other, on three, aggregating a very large sum of money. I would like to have these accounts produced on Monday. Of course, I know counsel will do it if he can. If the Company will not respond to counsel's request, I make the suggestion at this time in order that I may ask the Court for a subpoena duces tecum for their production on Monday.

Mr. Mahaffy: I am informed that the State Board Laboratory has been recently removed to the City Building, to be equipped here. I am informed that the State Board of Health Laboratory has been recently fitted up there.

The Court: Make your own arrangements. If you can agree, I am satisfied. If not, I will specify the details. Will you include in your request, also, Col. Anderson, the note books of Dr. Freedman?

Mr. Anderson: I shall be very glad to have the note books produced. If they are among the records of the Calco Chemical Company, they may be produced.

I understand that the defendant will have a chemist present and the Government will have another chemist present and that counsel on either side may attend as well.

The Court: Yes.

XQ. 130. Dr. Freedman, my understanding was that you could do this work in six hours.

A. Yes, sir, according to the patent.

XQ. 131. You say now that you need some ingredients that you have got to make?

A. The patent says pyroracemic acid.

XQ. 132. Well, you did not include that in your estimate?

A. I did not.

XQ. 133. How long will it take you to make that?

A. I can not definitely state, but it may take a a day before I get enough for it. It is a process that requires a dry distillation at a high heat, and I need a certain kind of a retort for it, which may or may not be available, I don't know.

XQ. 134. Then I understand that you say now that it will take you a day to do this experiment?

A. At least a day.

By Mr. Anderson:

RDQ. 135. Making the intermediate?

A. Making the intermediate, if I have luck.

By Mr. Kresel:

XQ. 136. If you have luck?

A. Yes, sir.

The Court: Let the process begin as soon as possible.

Mr. Kresel: Of course, it is understood, your Honor, that no one is to assist this gentleman or give him any instructions, either Dr. Gibbs or anybody else.

Mr. Anderson: Of course, that goes without saying.

The Court: Necessarily; and it necessarily follows that such instructions would not be of any service anyhow, because the process of the patent is to be followed strictly.

Mr. Anderson: Dr. Gibbs, you will understand, of course, that the patent is to be followed.

The Court: No, Dr. Gibbs has nothing to do with it, except as an observer.

Mr. Anderson: As an observer. What I meant was that your Honor's suggestion was to be followed.

The Court: And the experiment is solely that of Dr. Freedman, without any suggestion from Dr. Gibbs, either positively or negatively.

Mr. Anderson: Quite true, sir.

The Court: All observers may take notes of each step, and those notes will be available in Court, if necessary, and may be used as a basis for refreshing their recollection in the event of examination.

Mr. Anderson: And I understand, your Honor, that the chemist making the experiment may have every opportunity to be sure of the quality of his ingredients before he starts.

The Court: Absolutely.

Mr. Anderson: And satisfy himself that he has the proper quality of ingredients to carry out the experiment, no matter how much time it takes.

The Court: Correct. And I reserve the right at the conclusion of the testimony to call on my own initiative any and all persons present at the time the experiment is made, if I conclude to do so.

Mr. Anderson: Yes, sir. You understand that, Dr. Freedman?

The Witness: Yes, sir.

The Court: Mr. Kresel, have you made your selection of an observer?

Mr. Kresel: Yes, your Honor, I have sent for Dr. Crossley. It will be some time before he can get here; but in the meantime I have designated Dr. Joyce to follow the experiment.

Mr. Anderson: Who is Dr. Joyce?

Mr. Kresel: Dr. Joyce is a chemist of the Chemical Foundation.

The Witness: May I ask Mr. Kresel a question?

Mr. Kresel: Certainly.

The Witness: If you have sent for Dr. Crossley, he could easily bring some of that pyroracemic acid with him, because they make it there; then the operation can start as soon as I get the ingredients.

Mr. Kresel: All right; I am going to try to get word to him to that effect.

Mr. Kresel: If your Honor please, I would rather not. I prefer this gentleman make his pyroracemic acid.

(Colloquy between Court and counsel off record.)

Re-Direct Examination.

By Mr. Anderson:

RDQ. 137. Dr. Freedman, you have just stated to me that you would have to get a certain acid or make it yourself in your laboratory, and that you did not believe that you had the instruments here. You asked if I could arrange with the Court to have you come back here at the end of next week, cut your honeymoon short and make the experiment next week in the presence of anybody you saw fit.

A. Yes, sir.

Mr. Anderson: I wanted to put the witness on the stand to state that.

RDQ. 138. Will you make the statement to the Court that you made to me just now, for the information of the Court?

A. Your Honor, I would be willing to come back here shortly after my wedding.

By The Court:

Q. 139. When is your wedding?

A. Tuesday night.

Q. 140. Would it interfere with your plans to take the six hours necessary today, or continue during the night?

A. Well, you see, your Honor, in order to make cinchophen I must have pyroracemic acid, and in order to make that in a pure state I must have a high pressure vacuum pump, otherwise the matter decomposes.

The Court: Well, could those things be furnished?

Dr. Bolton: I am not quite familiar with those facilities at the Station. We may have it, and it seems to me we should have apparatus of that kind.

The Witness: I would not be confident of the stuff unless I made it in my own laboratory, and I can easily do that within a day.

RDQ. 141. You mean the starting ingredient?

A. The starting ingredients, yes, sir. I can buy two of them. Benzol and anilin I can purchase on the market pure, but the other one I believe I will have to make.

The Court: But you start with something.

RDQ. 142. What does the patent start with?

Mr. Kresel: If your Honor please, this man said that he made the ingredient that went in——

The Witness: Yes, I did.

Mr. Kresel: What?

The Witness: Pyroracemic acid.

Mr. Kresel: I want him to have this thing made from the very beginning, just as he said he did in the Fall of 1917.

Mr. Anderson: If your Honor will permit me, as I understand the witness's position, it is this: He made it and he can make the necessary ingredient in his laboratory now. The obligation here is to start with the starting point of the patent, having the ingredients called for by the patent, and follow through the patent and make this stuff. Dr. Freedman tells me that the original ingredients are of the greatest importance in starting this, as well as the proper appliances; that it will take him time to make the original ingredients or to get them where he knows they are absolutely pure, otherwise he would be risking his whole reputation and everything else on this experiment. Of course, he must not do that: he must get these ingredients pure or make them himself, but his obligation here is to start at the starting point of the patent.

The Court: He is in a position now where he has no alternative.

Mr. Anderson: That is right, and he recognizes that, and he wants to be sure that every step is right, that is all. I think he is entitled to every chance to do that. But he is perfectly willing to make this experiment. He is naturally risking his reputation, his good name and his word on this situation, and he naturally wants to be very careful of his ingredients, and I would too.

The Court: I am not complaining of that, but my first thought was it took three hours; then I thought it took six hours, and then I thought it took a day.

The Witness: If your Honor please, it would take six hours if I had all the ingredients present.

Re-Cross-Examination.

By Mr. Kresel:

RXQ. 142-a. May I ask, Dr. Freedman, what is the first ingredient that is spoken of in the patent (handing patent to the witness)? Just read it.

A. Yes, sir. Just a minute. Anilin.

RXQ. 143. You do not have to make anilin?

A. I don't.

RXQ. 144. You did not make it in 1917?

A. No, sir.

RXQ. 145. That you have got available?

A. Yes, sir.

RXQ. 146. That is the first thing you start with, is it?

A. Yes, sir.

RXQ. 147. You are sure about that?

A. Positive.

RXQ. 148. That is the first thing that is mentioned in that patent?

A. That is right.

RXQ. 149. What is the next thing that you take?

A. Benzaldehyde.

RXQ. 150. Did you make that in 1917?

A. No, sir.

RXQ. 151. That is readily available?

A. Yes, sir.

RXQ. 152. And you can satisfy yourself before you start as to whether that is pure?

A. I can; yes, sir.

RXQ. 153. So there is no difficulty there?

A. No, sir.

RXQ. 154. What is the next ingredient?

A. Pyroracemic acid, otherwise known as peruvic acid.

RXQ. 155. Peruvic acid you made in 1917?

A. Yes, sir.

RXQ. 156. It was not available in the market?

A. It was not.

RXQ. 157. And what ingredients do you need to make peruvic acid?

A. I need sodium bitartrate, tartaric acid.

RXQ. 158. That is easily available?

A. Yes, sir.

RXQ. 159. What is the next?

A. Sodium bisulphate.

RXQ. 160. You can get that easily?

A. I think so.

RXQ. 161. And you can satisfy yourself as to the purity of those?

A. I think so, yes.

RXQ. 162. How long will it take you to get those, to make peruvic acid sufficient for your experiment?

A. If I have the proper equipment?

RXQ. 163. Yes.

A. One day.

RXQ. 164. A whole day to make the acid?

A. Yes, sir, because I must purify the acid.

RXQ. 165. What equipment do you need for the purpose?

A. I need an iron retort of about a capacity, maybe, of half a gallon; I need a large burner, gas burner; I need a condenser, and I need a glass receiver.

RXQ. 166. Is that all?

A. That is all for the beginning of this——

RXQ. 167. For the peruvic acid, I mean?

A. Yes. Now, I must purify this acid before I can use it. I need some round bottom flasks made out of glass.

RXQ. 168. Those are available, of course?

A. Yes. And I need a high vacuum pump to give me at least 10 millimeters vacuum, and very few places have a pump like that.

RXQ. 169. Well, I think we can furnish it to you.

A. All right, very good.

RXQ. 170. Then having made your peruvic acid, will it take you six hours more after that to complete your experiment and obtain what you say is cinchophen?

A. Approximately six hours; yes, sir.

RXQ. 171. So we can count on your spending a day and six hours in making that experiment?

A. Yes, sir.

RXQ. 172. Is that as long as it took you in making your experiment at the Calco Laboratory, which resulted in your producing 60 per cent cinchophen?

A. Approximately that time. In making crude cinchophen, if you please.

RXQ. 173. Crude cinchophen?

A. Yes, sir.

RXQ. 174. You did not tell us anything on your direct about crude cinchophen.

A. We were talking, if you please, Mr. Kresel, about the patent.

RXQ. 175. Were you not asked by Col. Anderson whether you had produced cinchophen?

A. Accordingly—as given in the patent.

RXQ. 176. Just answer my question. Weren't you?

A. Yes.

RXQ. 177. Did you not understand that he was asking you whether you produced crude cinchophen; was that your understanding?

A. Cinchophen as given in the patent.

RXQ. 178. Was that your understanding?

A. Yes, sir.

RXQ. 179. So what you meant to say was that you produced crude cinchophen in the Calco Laboratory by working a day and six hours?

A. Yes, sir.

RXQ. 180. And that you produced it the first time you tried?

A. Yes, sir.

RXQ. 181. And that it was a sixty per cent. yield?

A. Approximately that. I do not remember the exact figures.

RXQ. 182. Well, you told us sixty per cent. on your direct. Do you want to correct that?

Mr. Anderson: He did not say exactly.

A. I said approximately sixty per cent.

RXQ. 183. What distinction do you draw between cinchophen and crude cinchophen?

A. Crude cinchophen is the substance obtained directly from the reaction; cinchophen as put on the market is a substance by which the crude cinchophen is purified by crystallization from various solvents.

RXQ. 184. Did you purify it?

A. Yes, sir.

RXQ. 185. You finally produced the pure cinchophen?

A. That is correct.

RXQ. 186. Will it take you any more time than the day and six hours to produce the purified cinchophen?

A. It may take me a little time to purify it.

RXQ. 187. How long will it take you to purify it?

A. Oh, approximately—I cannot say definitely. Maybe three, maybe four hours.

RXQ. 188. So now we have it a day and ten hours that it will take you to make this experiment?

A. That is correct.

RXQ. 189. And you would prefer to do it in your own laboratory?

A. I would, to make my pyroracemic acid in my own laboratory.

RXQ. 190. I see. Well, if the ingredients are obtainable to you in any laboratory, and the equipment that you have described, you have no objection to doing the work there?

A. Absolutely none.

Mr. Kresel: All right, we will try to accomodate you.

The Court: Any questions, Col. Anderson?

Mr. Anderson: None whatever. The only question in my mind was whether we are going to carry on these other experiments and the Court would——

The Court: I will not bring Dr. Freedman back here at the end of the week. I do not think that would be right. So let the process begin, Mr. Kresel to arrange to get the equipment, and they can use any laboratory that counsel agree on; if you do not agree we will let you and the Government——

Mr. Kresel: You will designate one.

The Court: We will equip one here in the building.

Mr. Anderson: (Addressing witness): You understand, Doctor, that in the making of this experiment you are entitled to take all the time necessary to either make sure or to satisfy yourself of the purity of all ingredients that you use, to the end that your experiment may express your chemical knowledge.

The Witness: I do.

Mr. Anderson: And you are also entitled to have the instruments and appliances which are adequately suited to the performance of your experiment.

The Court: Now then, if the appliances furnished are not what you want, do not begin your experiment, but come back here and let me know wherein the appliances furnished are inadequate or not what you want, because I am not going to permit you to say should you fail—and I am not anticipating a failure—should you fail you will not be excused on the ground of inadequate equipment. So be satisfied with your equipment when you begin.

The Witness: All right.

The Court: Let the experiment begin as soon as possible.

Mr. Anderson: Who is going to represent the defendant, of the chemists?

Mr. Kresel: Dr. Bolton, for the present. But as soon as Dr. Crossley comes, I want Dr. Crossley to join Dr. Bolton.

Mr. Anderson: In that event, I shall want others too.

Mr. Kresel: I had no objection to the Government having as many as we have.

Mr. Anderson: Is there going to be a representative of the Court or Marshal in charge of the performance?

The Court: I had hoped that that would not be necessary.

Mr. Anderson: It looks like it is going to last two days and I want every safeguard thrown around it. In other words, the material should never be left at any time except in the presence of someone, I think, designated by the court. I think the material should be guarded night and day.

The Court: Too great safeguards can not be thrown around the experiment.

Mr. Anderson: I agree with your Honor.

The Court: As I understand, Dr. Bolton and Dr. Crossley are the two chemists representing the defendant.

Mr. Kresel: Yes, your Honor.

The Court: I will designate not only the Marshal, but I will ask him to submit to me the names of deputies.

Mr. Anderson: I would ask leave to put someone there with Dr. Gibbs so that Dr. Gibbs can be relieved. A man can not sit up two days. We want one man present at all times.

The Court: Does it take constant attention?

Mr. Anderson: I do not know, sir. I do not know a thing about it. But at all times there should be one.

THE COURT: I thought you were going to have two on either side. You have your witness—he is your witness—and one additional chemist. Then you would have two chemists on the other side. Your witness is one chemist and any other chemist you want to put with him is another. Against those two, it seems to me the defendant is entitled to two.

MR. ANDERSON: But it is the witness's work that is being observed. Suppose a controversy arose as to what he did, something of that kind, then the defendant has two witnesses.

THE COURT: But he is on the same basis as any witness that you send along with him. I think he is one of your men. I should take his testimony and take the testimony of the others. I do not think that you are entitled to an additional representative.

THE COURT: I will designate not only the difference arose as to what was the exact step taken, and the two witnesses for the defense testified against the one witness for the Government. The evidence of the witness who was doing the experiment, if there was such a controversy, would be under great handicap.

THE COURT: No; I would take his evidence just as quickly as I would that of the other representatives, as far as I am concerned. I will consider asking persons not interested to join in the observation. I do not think of a person at the moment, but I will think of it, and you may proceed with your next witness, and do not let the experiment begin until your representatives are present. You may collect your materials; but let there be two chemists on each side present when the experiment begins.

Mr. Kresel: Colonel, Dr. Christiansen has asked me whether he may go for the day. As far as I am concerned, if we are going on on Monday, as I assume we are, he may go for the day, but the understanding is that he will be back Monday morning.

(Discussion off record.)

Mr. Anderson: I suggest, Dr. Christiansen, that you wait until the end of the morning session.

The Court: Dr. Christiansen, is the Harvard Medical School under the direction of the University?

Dr. Christiansen: It is; it is a part of the University.

WILLIAM O. EMERY.

William O. Emery, called as a witness on behalf of the plaintiff, in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Please state your name and where you live.

A. William O. Emery, Washington, D. C.

Q. 2. What is your profession?

A. Chemist, organic.

Q. 3. Dr. Emery, please state where you were educated; the degrees, if any, you hold; and briefly, your experience as an organic chemist.

A. Graduate Worcester Polytechnic Institute, B. S.; Ph. D. University of Erlangen in 1888; student, research chemist, instructor, in Docent, University of Bonn, 1886 to 1893.

Q. 4. Where is the University of Bonn?

A. Germany.

Q. 5. Go ahead.

A. Then, research laboratory in Chicago, 1893 to 1895. From 1895 to 1901, Professor of Chemistry, Wabash College, Indiana. From 1901 to 1907 research chemist here and abroad. From 1907 to the present time in the Bureau of Chemistry, fifteen years Chief of Synthetic Products Laboratory, Division of Drugs, Bureau of Chemistry.

Q. 6. Dr. Emery, have you ever tried to make salvarsan or arsphenamine?

A. I have.

Q. 7. In what year?

A. Toward the end of 1916 and the beginning of 1917, about.

Q. 8. I hand you Defendant's Exhibit No. 156, Patent No. 986,148, March 7, 1911, to Paul Ehrlich and Alfred Bertheim. Will you please examine that patent and state if you did your work in the making of salvarsan or arsphenamine in connection with that patent?

Mr. Anderson: And then I am going to ask him what he did.

A. Substantially according to this patent, but most strictly according to the——

Mr. Kresel: No, no.

Q. 9. Just say "yes" if you can.

A. Yes.

Q. 10. Now I will ask you to take the patent, if you wish, and state what you did in making this product as if you were telling me or the Court exactly the steps by which you did it, and how it was to be done.

A. The time is rather remote, of course, during which the experiments were performed; but in general, I can say that the well-dried sodium salt of the hydroxy acid named in the patent was introduced into concentrated sulphuric acid in the proportions named——

Mr. Kresel: Named where, please?

A. (continued) In the patent; and the temperature maintained was not allowed to rise above zero.

After the incorporation of this hydroxy acid in the sulphuric acid, a nitrating mixture consisting of equal parts of nitric acid of definite strength and concentrated sulphuric acid was slowly added, and during both these treatments the mixture constantly agitated —stirred, the temperature being always kept at or below zero, the reaction flask being surrounded by ice and salt.

After a time, the temperature was permitted to rise about ten degrees—perhaps one or two degrees below—but not higher than ten degrees, and in the first batch, after three or four hours, this product was poured into water. The second batch, as I recall, the mixture was allowed to stand over night in a refrigerator.

At the time the reaction was believed to be complete, a light yellow crystalline product separated out and that was filtered off by suction, washed, and then recrystallized from hot water, whereby the color seemed to become a little brighter. The nitro product so obtained was then dissolved in the required amount of the patent.

Q. 11. You are entitled to look at the patent to refresh your memory.

A. I do not think I want to. I have that pretty clearly in mind. It is only necessary to form a sodium salt of this nitro compound and one never uses it more than the caustic required. That was so dissolved and poured, with stirring, into an aqueous mixture of hydrosulphite and magnesium chlorid in the proportions named.

Mr. Kresel: Named in the patent, I assume?

A. (continuing) In the patent, as near as I could follow. And the mixture maintained at about a temperature of 50. Gradually a powdery light yellow product separated and when the separation appeared to have ceased, the separated product was filtered off by suction and washed, dried, and then converted into the dihydrochlorid by treatment with methyl alcohol containing hydrochloric acid and this liquid poured into ether. The precipitate of hydrochlorid was then filtered out by suction, very carefully dried and subjected to tests, chemically.

Q. 12. What did you find you had produced?

A. I had produced salvarsan, arsphenamine. In the first case, I could not be proud of the product because I thought it was not yellow enough. In the second case it appeared to have the proper color and both samples seemed to correspond to the chemical tests laid down and according to which we were operating at the time.

Q. 13. Where did you make these tests?

A. In the Bureau of Chemistry, Washington.

Mr. Kresel: You mean these experiments?

Mr. Anderson: These experiments.

Q. 14. In the Bureau of Chemistry at Washington?

A. Yes.

The Court: (Addressing Deputy Marshal Ball):

Marshal, some cinchophen is to be made by Dr. Freedman who was on the stand this morning. That experiment is to be made at a laboratory selected by Dr. Freedman, either the duPont Company experimental laboratory or the one in the City Building, or one set up in the corner room of this corridor. There is to be present the experimenter, Dr. Freedman; and Dr. Gibbs is to be your representative, Colonel Anderson?

Mr. Anderson: Yes, sir. He is the only man I have available today.

The Court: There will be another chemist present on behalf of the Government. Dr Bolton who testified yesterday or a few days ago will be one of the representatives for the defendant. Dr. Crossley will be the other representative of the defendant.

Mr. Kresel: Until Dr. Crossley arrives, I have asked Dr. Joyce to be present.

The Court: Have you obtained Dr. Crossley?

Mr. Kresel: He will be here after four.

The Court: Is there any objection to the substitution?

Mr. Anderson: I would rather we would not. I think if we are going to start this thing, we ought to start it with the men who are going to stay through.

The Court: Very well. Let the experiment start with the arrival of Dr. Crossley and then hurry it as much as you can, because I prefer to have the same witnesses throughout; because otherwise there might be a question as to the value. The representatives of the press have, by consent of counsel, been authorized to be present; and a lawyer from each side is authorized to be present.

I want you to take personal charge of the laboratory in which this is made and see that at no time is there any person in that laboratory save when there are both chemists of each side present; and if counsel agree, that there shall also be legal representatives from each side. We will restrict your duties to seeing that no person is in the laboratory except you or your deputy unless all of the four chemists are there. You need not be concerned about the lawyers. You will need a deputy, and before you appoint him, I will ask you to do the unusual thing of submitting his name to me for approval. This is to apparently begin at four o'clock this afternoon and you will be put in touch with these people by Colonel Anderson or Mr. Kresel. But I am looking to you to know whether that experiment is carried out wholly beyond all suspicion as far as the people in the room are concerned. It is a continuous process because, even though they are not experimenting all the time, you will have to have a man there. Have you anybody in mind at the moment?

Marshal Ball: No, your Honor. I will take it up with you at recess.

The Court: Very well.

By **Mr. Anderson**:

Q. 15. Can you state about the time that you made each of the experiments mentioned?

A. I think the first one was carried out toward the end of December, 1916 and the second one toward the end of January or the beginning of February, 1917. That is to the best of my memory.

Q. 16. As I understand, you did not test this product on animals?

A. Not at all.

Q. 17. Did you test it chemically?

A. Yes, sir.

Q. 18. Did it give a satisfactory chemical test?

A. Both were entirely satisfactory as far as the chemical tests went. The color of the first product in the aqueus solution was too dark, was slightly darker, somewhat darker than should be in first-class preparations.

Q. 19. How about the second, sir?

A. That was perfectly all right.

Q. 20. Did you carry your experiments any further than you have indicated?

A. Not at all. On account of information I had received, they were discountinued.

Mr. Kresel: I ask that the latter part, from "not at all" on, be stricken out.

The Court: Motion granted.

Mr. Anderson: No objection, sir.

Q. 21. Dr. Emery, as a chemist with the experience which you have indicated, where a formula in a patent or otherwise is given you for the production of a highly dangerous drug, either for internal administration or injection into the veins, would you or would you not assume as an element indicated to one skilled in the art that the ingredients used should be pure or purified at proper stages in the process?

A. Undoubtedly.

Q. 22. Would or would it not be necessary, in your opinion, to state to one skilled in the art that such purity in ingredients or purification at proper stages was an essential in the production of drugs for that purpose and of that character?

Mr. Kresel: I object to that on the ground that that is not a subject of expert testimony.

The Court: I think that objection is well taken. I will hear you though, Colonel Anderson.

Mr. Anderson: I think, sir, that the practice, the recognized principles of chemistry as applied to the manufacture of things of that kind, is one of the things as to which experts can testify.

The Court: We get back do we not, to the fundamental difficulty of who is skilled in the art, which is a question for legal determination.

I will take his answer and grant an exception to the defendant.

The Witness: May I have that question repeated, please?

(Q. 22 repeated as recorded above.)

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 23. Dr. Emery, the Government maintains various chemical laboratories, does it not?

A. Yes, sir.

XQ. 24. For instance, there is this laboratory with which you are connected. What do you call it, a pharmaceutical laboratory?

A. No. Up to within recent times, it was the Division of Drugs.

XQ. 25. Division of Drugs of what department?

A. Bureau of Chemistry, Department of Agriculture.

XQ. 26. In other words, there is a Bureau of Chemistry in the Department of Agriculture and that Bureau of Chemistry has several divisions?

A. Yes, sir.

XQ. 27. And one of these divisions is the Division of Drugs?

A. Yes, sir.

XQ. 28. And that is the one with which you are connected?

A. Yes, sir.

XQ. 29. And I take it that in the Bureau of Chemistry of the Department of Agriculture, there are quite a number of chemists employed?

A. Yes, sir.

XQ. 30. About how many?

A. In Washington and outside?

XQ. 31. Yes.

A. I could not say. I could only make a rough guess.

XQ. 32. Approximately.

A. During the war, I suppose, or about the war period, we had from 150 to 200; a very rough guess.

XQ. 33. Counsel did not ask you and I do not understand that you have said so, but I want to ask you whether the result that you obtained, as you have described it, was obtained by you by simply following the steps set forth in that patent?

A. Absolutely.

XQ. 34. You did not add any step; you did not omit any step; is that correct?

A. Not to my knowledge.

XQ. 35. And you obtained a yellow powder?

A. Yes, sir.

XQ. 36. You did not test it on animals or human beings?

A. Not at all.

Mr. Kresel: That is all.

Re-Cross-Examination.

By Mr. Anderson:

RDQ. 37. I think I asked the question before: You did test it chemically in your laboratory?

A. Undoubtedly.

Mr. Anderson: I thought I asked that question, but I wanted to be sure.

Re-Cross Examination.

By Mr. Kresel:

RXQ. 38. Dr. Emery, I intended to ask you whether you knew in late 1916 and early in 1917 that there was a great scarcity of salvarsan in this country.

A. Undoubtedly.

RXQ. 39. The tests that you made were what you chemists call qualitative tests or quantitative tests?

A. Both.

By The Court:

Q. 39-a. There is one question I want to ask. If the patent in specifying the steps to be taken to make one of the intermediates should not produce a pure intermediate and the patent said nothing about taking additional steps to bring about such purity, would you consider it a necessarily implied provision in the patent that such additional steps should be taken?

A. Always. May I explain? No matter under what label an organic chemical comes to me, I always test its purity, even the so-called Kjeldahl class, either by redistilling or recrystallization; at any rate verifying the constants that the particular substance should have.

By The Court:

Q. 40. This patent specifies, for instance, the first intermediate?

A. Hydroxyarsinic acid.

RXQ. 41. Does it produce a pure intermediate when you follow the steps of the patent, or do you have to take steps in addition to that?

A. It might; but I always prefer to——

RXQ. 42. No, not your preference; but following the process of the patent, does it or does it not produce a pure intermediate?

A. I could not say that without knowing the quality of the starting drug.

By Mr. Kresel:

RXQ. 43. Doctor Emery, will you describe exactly what quantitative test you made?

A. Why, I used both the Lehmann and the Ewens tests for the determination of arsenic.

Now, the Lehmann test is considerably shorter, and for that reason preferable. In the Lehmann test the procedure consists essentially of destroying the arsenical by treating with permanganate of potash in presence of sulphuric acid, then destroying any excess of permanganate of potash by the addition of hydrogen peroxide, getting rid of the excess of hydrogen peroxide by the addition of oxalic acid; then adding potassium iodide to the re-action mixture, whereby iodine is set free by the arsinic acid formed in this decomposition, and then after a certain period of standing, titration of the liberated iodine with standard hypo solution—sodium thiosulphate of the photographer.

(No RXQ. 44.)

RXQ. 45. Had you finished?

A. That covers the Lehmann method. Now, the Ewens method is essentially a Kjeldahl method——

RXQ. 46. Without your going into a description of the method, this test was made for the purpose of determining what?

A. The percentage of arsenic, total arsenic in the compound.

RXQ. 47. Only arsenic?

A. Arsenic, yes, sir.

RXQ. 48. Not nitrogen?

A. Not at all.

RXQ. 49. What was the amount of total arsenic that you found to exist in this yellow powder as a result of your first experiment?

A. Slightly under 31 per cent., and practically the same percentage of arsenic in the second; apparently a little difference in arsenic content in both samples.

Mr. Mahaffy: Will your Honor pardon me just a moment. There is some dispute about the test, and I want to explain it to counsel, so that they may bring it to the attention of the Court.

The Court: Yes.

(Mr. Mahaffy confers with Mr. Kresel.)

Mr. Kresel: The first question, I understand, that has come up, is this: Dr. Freedman insists that he will get his own peruvic acid wherever he pleases. Our understanding is that he is to make the acid as he says he made it in 1917.

Mr. Anderson: Not unless the patent calls for it, sir.

The Court: What does the patent call for?

Mr. Anderson: If the patent calls for the making of the acid, then he must make the acid; but if the patent merely calls for the use of the acid, then he does not have to make it.

Mr. Kresel: Here is what the patent says: "According to Dobner & Gieseke"—then he gives a reference to some volume—"2-phenylquinolin-4-carboxylic acid can be obtained by dissolving equal molecules of pyroracemic acid and benzaldehyde and gradually adding to the solution——"

The Court: Is that the process there is a dispute about?

Mr. Anderson: The pyroracemic acid is the thing that they want to make.

The Court: And the patent specifies the manner of its making?

Mr. Anderson: No, sir, it only specifies its use.

The Court: I thought Mr. Kresel was reading from it.

Mr. Kresel: Let me read it again.

Mr. Anderson: I will leave that to Dr. Alleman. Does it specify the making of pyroracemic acid or does it specify its use?

Dr. Alleman: I would not care to answer that, Colonel, because I have not read the patent.

Mr. Kresel: "According to Dobner & Gieseke, 2-phenylquinolin-4-carboxylic acid can be obtained——"

The Court: Is that the acid which is in question?

Mr. Kresel: I do not know.

Mr. Anderson: No, sir.

Mr. Kresel: "By dissolving equal molecules of pyroracemic acid and benzaldehyde and gradually adding to the solution——"

The Court: Pyroracemic acid is the acid in question?

Mr. Anderson: That is the acid that is spoken of here that he says is essential. The putting of those two together produces that result.

The Court: Pyroracemic acid is the acid that——

Mr. Kresel: That he said was not obtainable here at the time, and that he made it.

Mr. Anderson: That is true; but he made it because it was not obtainable at the time. But there is nothing in this patent that requires a man to make that acid. The patent calls for the use of that.

Mr. Kresel: We are testing the credibility of this witness.

Mr. Anderson: Not at all. We are testing his ability to make this stuff under this patent.

The Court: He may use his pyroracemic acid; but your chemist may subject that pyroracemic acid used by him to all the tests which are necessary for you to determine its quality, and sufficient of that is to be supplied by him to you to enable your chemist to determine the quality of that acid.

Mr. Kresel: That is all, Doctor.

By **Mr. Anderson:**

RXQ. 50. The methods of test, the chemical test that you spoke of, Dr. Lehmann's and some other tests are well known in the art, are they not, the standard tests to chemists?

A. Yes, sir, they are well-known; they are in fact laid down in a bulletin issued by The Public Health Service.

By **Mr. Kresel:**

RXQ. 51. Doctor, how did you know that you had arsphenamine?

A. I suppose skill in the art.

RXQ. 52. What?

A. I suppose skill in the art, familarity with those substances.

RXQ. 53. Had you ever before made it?

A. No, sir.

RXQ. 54. You did not test it on any animals or human beings?

A. Yes, sir.

RXQ. 55. You had a yellow powder?

A. Yes, sir.

RXQ. 56. Do you know any other in your capacity as a chemist for so many years; have you ever seen any other yellow powder?

A. Lots of them.

MR. ANDERSON: Stand aside, Doctor.

(Witness excused.)

MR. ANDERSON: Dr. Gibbs, will you take the stand.

MR. KRESEL: Your Honor, I am sorry to keep interrupting this way, but Dr. Bolton informs me that Dr. Freedman wants to send to New York for this acid.

THE COURT: Is that the acid that he said it would take a specified time to make?

MR. KRESEL: Yes, a day to make.

MR. ANDERSON: A day.

THE COURT: Allowing them a day and ten hours or nine hours, whatever it was, for completing the process?

MR. KRESEL: Yes, sir.

THE COURT: Is that the acid he said he made in 1917, which was not then available?

MR. KRESEL: Yes, sir.

THE COURT: He can use in his experiment such acid as he wants, but I will ask him if he can carry on both processes apparently, to make pyroracemic acid. He need not delay his first experiment by making pyroracemic acid, but I shall ask him to make pyroracemic acid as well and report to the Court.

Mr. Anderson: And I would respectfully ask, if your Honor please, that if he wants to send for the acid made, that I will be very glad to have anyone go with him to get his acid, and to see that he brings the stuff, or any other precaution; but if he wants to send for an acid that will take him twelve hours to make, and which is a difficult chemical process outside of the patent, and he has got the acid that he knows he can use, then I will ask that he be allowed to send for it.

The Court: Why, I say that he may use it, but we have two things. We have in his testimony the statement that he produced under this patent. That is important. We have also in his testimony what is not less important, that he produced in 1917 under this patent—1916 or 1917, which was it?

Mr. Anderson: Nineteen hundred and seventeen, but not under this patent, sir.

The Court: No, not that he produced pyroracemic acid under this patent, but that he produced pyroracemic acid in 1917 and used the product of his own manufacture in carrying out the processes of the patent.

Mr. Anderson: Very true, sir.

The Court: So there is a dual thing involved, that is the production under this patent and also the production in 1917, of this acid. So he may send for his pyroracemic acid, but I am going to ask him to make some pyroracemic acid at the same time.

Mr. Anderson: I would reserve the objection, though I do not wish to argue it at this time—because I have no doubt he would be very glad to make the pyroracemic acid—that the effort to make the complicated intermediate requires an entire day and I would respectfully argue that that would not in any way affect the statement that he had made it, would not affect the statement that he had made cinchophen under this patent.

The Court: I think not, but you see we may get a product varying from here to here, in quality and in quantity, and so on.

Mr. Kresel: One of my points is, your Honor, that this man said in 1917 he made cinchophen using the peruvic acid that he made.

The Court: Of his own manufacture?

Mr. Kresel: Of his own manufacture. That is one of the things that I would like to have him show us. I understand his Honor to rule that he may use any acid that he already has.

The Court: Yes.

Mr. Kresel: And carry through an experiment with that.

Mr. Anderson: Or any acid he can buy.

The Court: Or any acid that he wants——

Mr. Anderson: To select.

The Court (continuing): To select. But before he left the stand he indicated clearly he wanted the time necessary to make the pyroracemic acid so as to be sure it was pure. I am going to let him use either that or——

Mr. Anderson: I will ask that he comply with the patent, with your Honor's permission, by using any acid or ingredient he may select. Then if your Honor desires him, after making it according to the patent, to make the ingredient not called for by the patent, that is another question.

The Court: I will get him to do both before reporting, and he may get his pyroracemic acid any place he desires, supplying the chemists of the defendant with such amount as will enable them to determine its quality.

Mr. Anderson: All right, sir.

HARRY D. GIBBS.

Harry D. Gibbs, a witness called on behalf of the plaintiff in rebuttal, being duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Please state your name and place of residence.

A. Harry D. Gibbs, Washington, D. C.

Q. 2. What is your profession?

A. Chemist.

Q. 3. Where are you now employed and what is your position?

A. My title is Senior Chemist in the Hygienic Laboratory of the Public Health Service.

Q. 4. The Public Health Service of the United States?

A. Of the United States, Treasury Department.

Q. 5. Dr. Gibbs, will you please state your education and experience as a chemist, briefly—just summarizing it?

A. I studied, after primary education, at the Rose Polytechnic Institute, Cornell University, University of California, Stanford University; received the degrees of Bachelor of Science at Cornell University and Doctor of Philosophy at Stanford University.

Q. 6. Now state your experience generally, if you please.

A. My experience, briefly stated, omitting many unimportant things, consists of the following:

Two years assistant professor of chemistry at the Oregon Agricultural College; research assistant, Stanford University, for about a year; four years City chemist of the City of San Francisco; seven years chemist in the Bureau of Science, Manila, P. I., and a part of that same time head of the Chemical Department of the University of the Phillipines. At that same time, for part of the period, I was a member of the Food and Drug Board of the Phillipine Islands.

After this term of service I entered the employ of the Department of Agriculture, Bureau of Chemistry, Washington, D. C., where I remained for five years, after which period I went to E. I. duPont de Nemours & Company for about three years. After resigning that position I accepted my present one.

THE COURT: We will take the morning recess, and I would like to have counsel come into chambers.

(A short recess was taken at this point.)

MR. ANDERSON: I have another matter to bring to your Honor's attention, with regard to Mr. Christiansen's personal notes of his experimentation.

THE COURT: Yes.

MR. ANDERSON: If they are to be submitted to any other chemist or to be given here publicly, he desires some order for protection of his work that any chemist examining those notes shall be required not to make use of them. I see the complication that arises, because that matter was taken up with respect to Dr. Gibbs, your Honor will recall, and I think Mr. Christensen's private notes are entitled to the same protection as any other——

THE COURT: That was one of the matters

which gave me some concern after adjournment last night. My thought on that was this: Their production was called for and I immediately began to consider whether this situation was identical with that which arose before. My first impression was that it was, my second and last impression was that Dr. Christiansen testified he followed literally the process of the patent, and consequently that there was nothing in his notes other than is contained in the patent, and could not be. Consequently, there was nothing to conceal. Is there a flaw in that statement?

Mr. Anderson: I think there is a flaw, possibly in the matter of precedent, which is my duty to bring to your Honor's attention. Mr. Crossley was on the stand and said he failed to produce some product after experimentation. I asked him what his experiment was.

The Court: No, I think not, Colonel Anderson.

Mr. Anderson: What was it?

The Court: Because I was watching as closely as I could to see whether I could allow the answers to go in, and my recollection is that you asked Dr. Crossley how he eventually produced and not his intermediate steps.

Mr. Anderson: Your Honor's memory is very much better than mine on that and I may be mistaken, but that was my understanding. In any event, I suggest that the laboratory notes of the chemist, which is more than the mere following of a process because it involves technique as well as technical use, that knowledge which is not possessed by us all, is a matter that is valuable to him. However, I have submitted his request to the Court and I must and he must, of course, abide by the rules of the Court.

The Court: I do not want him to be under even an erroneous impression that he is not receiving protection. I gave that matter consideration and I did not see the reason for making his notes secret, because he testified he followed the process of the patent.

Mr. Kresel: And neither omitted anything nor added anything. Your Honor will recall you asked him that question.

The Court: Yes, I appreciate that.

Mr. Anderson: That was in his first and second experiments. He then had a great many other experiments, testing both up and down the line for variations or for variance. Now, I understand that counsel on the other side is using a chemist who is a manufacturer of this product. Mr. Christiansen has done a great deal of work and I——

The Court: Colonel Anderson, there is no question in my mind as to the fairness of your proposition, and I realized that at the time of the adjournment. My thought was that I would have to make some order on the production of those notes with respect to the protection of Dr. Christiansen. Then I recalled that he had testified, as I understood him, in the 1200 and then in the 600 complete processes that he had followed literally and verbatim the instruction of the patent and had not varied therefrom either by omission or by addition. Consequently I could not see th there was anything to protect. If that was tr I could not see why it was necessary to mak either 600 or 1200 experiments.

Mr. Anderson: I think his statement on that was that he was experimenting in the laboratory and he was not allowed to say why. There was a good reason for it. He was experimenting up and down, using pure and impure ingredients, for the purpose of testing out these various methods.

The Court: So far as the impure ingredients are concerned, his answer to Mr. Kresel was that he deliberately used an impure intermediate at first and still got a usable and safe product.

Mr. Anderson: Yes, and to the extent that his notes are published, he would not object to it, as I understand it. I am in an entirely new field, so far as my experience goes, and my own view is that when a witness comes into court to testify, unless he is forced in by subpœna, that he must tell what he knows; but I felt that I ought to bring that to your attention, because the witness asked me to.

The Court: I am glad you did so.

Mr. Anderson: He is a young man and I do not want to do him any injury by bringing him here to testify.

The Court: I agree with you thus far. This is fundamental and we will take time to point out our difference of views. I do not agree that a person, whatever his occupation or position, should feel "I desire to escape testifying on material matters in a court" and should avoid testifying unless under subpœna. I feel that a court is a place to which a person should come freely and willingly to tell what he knows without a subpœna, with full faith and belief, and knowledge, as far as he can have knowledge, that his rights are going to be fully protected; that he is not going to be abused by counsel, unless his attitude on the stand makes that an inevitable consequence of his own acts, and then not to any material extent; and I do not make any distinction between a witness who is under subpœna and one who is not, because I think the sooner the citizen of America can be convinced that that is one of the duties of citizenship, the better off the country will be. Mr. Kresel, have you anything to add?

Mr. Kresel: No, your Honor, I have nothing to add.

The Court: I think I have indicated by my remarks already what my thoughts have been. I have not been able to see that there is anything to protect, because the patent is public, and his processes made in conformity with that patent were necessarily and consequently public also. But Colonel Anderson suggests that there may be questions of technique. I prefer to err on the side of protecting the witness, so long as I can do so without damage to the issues in the case. So I will ask you to confer with Colonel Anderson with respect to the persons to whom you may and the circumstances under which you may reveal Dr. Christiansen's notes.

Mr. Kresel: I will do that. I have not the notes now. We returned them to Dr. Christiansen, so between now and the time I confer with Colonel Anderson, there is no danger of any revelation.

The Court: I hope you will be able to agree. If not, I will make an order in regard to it.

Mr. Kresel: We will certainly try, your Honor.

Q. 7. How long have you now been connected with the Hygienic Laboratory, in this present service?

A. Almost a year; not quite.

Q. 8. I think you testified you had formerly been connected with the Government Laboratory at a former stage, did you not?

A. I have been connected with three Government laboratories—four Government laboratories; the Government of the City of San Francisco, the Government of the Philippine Islands, the United States Department of Agriculture, and the United States Department of the Treasury.

Q. 9. When were you connected with the Department of Agriculture, Experiment Station or Laboratory, for what period

A. Nineteen hundred and fourteen, the middle of 1914, until the middle of 1919; a little over five years.

Q. 10. In what capacity?

A. I accepted first the position of Assistant Chief of the Eastern District, including the Eastern Drug Inspection District, after which I occupied other positions. I conceived and organized the Color Laboratory of the Bureau of Chemistry, obtaining appropriations for that work for three or four years. Up to the time I left, I was head of the laboratory.

Q. 11. And you left there what year?

A. Nineteen hundred and nineteen.

Q. 12. Where did you go then

A. E. I. duPont de Nemours & Company.

Q. 13. At Wilmington?

A. The company is at Wilmington but my work was across the river at Deep Water.

Q. 14. You mean at the dye plant?

A. At the dye plant.

Q. 15. In what capacity?

A. I was chemist in the Jackson Laboratory, which is the research laboratory.

Q. 16. How long were you there?

A. About three years, I think it was a trifle short of three years.

Q. 17. And you returned from there to the present Hygienic Laboratory, did you?

A. After resigning from the duPont Company, I accepted the position in the Hygienic Laboratory which I now hold.

Q. 18. Dr. Gibbs, did you ever make or have made under your direction officially any salvarsan or arsphenamine?

Mr. Kresel: Which is it, make, or have made?

Mr. Anderson: I will ask either.

The Court: The second question will probably clear that up. Can you answer yes or no, Dr. Gibbs?

The Witness: I can, yes.

Q. 19. What did you do in that connection, or if you did not do it in that connection, who did it, in connection with the making of salvarsan either by you or under your direction? State the facts.

Mr. Kresel: What time, please?

Q. 20. State the time and the facts as near as you can give it.

A. Some questions concerning arsphenamine, which was then called salvarsan, arose in 1917; and I directed a chemist in my laboratory to begin experimental work on the subject. This man was Dr. James B. Conant, who is now Professor of Chemistry at Harvard University.

Q. 21. What was done, and have you any official report to you on that subject?

A. He completed his experimental work in 1917, and submitted to me an official report upon the subject.

Q. 22. Did he work under your immediate direction?

A. He did, largely in the same room in which I had my office. We were very crowded. It was during the war and we had a great deal of war work; and for the reason that we were crowded, he did a great deal of his work in my own office where there were some laboratory facilities, and I saw almost all that was done.

Q. 23. Have you his official report to you, as an officer of the Government, of the results of his efforts?

A. I have.

Q. 24. Will you produce it?

A. (Produces paper.)

Mr. Anderson: Do you wish to see it before I offer it in evidence, Mr. Kresel?

Mr. Kresel: Yes.

Mr. Anderson: Would you let me offer it in evidence so that I may proceed? I may want to ask some questions about it.

Mr. Kresel: No, I am sorry. I cannot without reading it determine whether I want to raise any objection.

Mr. Anderson: Very well.

Mr. Kresel: Your Honor, may I ask the witness one or two questions preliminarily?

The Court: Yes.

Cross-Examination.

By Mr. Kresel:

XQ. 25. Dr. Gibbs, I do not find that this report is dated. Could you tell me at what date it was made?

A. I can tell within a few days. In September, the early few days of September, or the last few days of the preceding month, in 1917. I——

XQ. 26. That is all I wanted.

A. I wanted to tell you in addition that I think it was probably the first day or two in September.

XQ. 27. At that time you were working in the Color Laboratory?

A. I was chemist in charge of the Color Laboratory, Bureau of Chemists.

XQ. 28. Did the Color Laboratory have anything to do with experimenting with salvarsan?

A. We did.

XQ. 29. That was part of the work of the Color Laboratory?

A. It was made part of the work of the Color Laboratory.

XQ. 30. The report consists of two papers. One of them appears to be signed by James B. Conant. The other one does not. When did you first see them?

A. When they were typewritten and handed to me at the time of making them.

XQ. 31. In September, 1917?

A. About that time.

XQ. 32. Did you keep a copy thereof for yourself?

A. No, I did not keep a copy personally. The copy was always in the files of the Bureau of Chemistry.

XQ. 33. After you received it, it was filed away?

A. There were probably several copies made, and there was a copy submitted also to the Chief of the Bureau for his information.

XQ. 34. Were you the Chief of the Bureau?

A. No, sir.

XQ. 35. I say, the copy that you saw or which was handed to you was filed away in the Government archives, is that it?

A. Well, I saw all the copies that were made.

XQ. 36. You did not keep a copy?

A. Personally?

XQ. 37. Yes.

A. Take it away from the Bureau of Chemistry?

XQ. 38. Yes.

A. No, sir.

XQ. 39. Do you know where the copy that was filed has been all this time?

A. This one that you have in your hands?

XQ. 40. Yes.

A. It has been in the Bureau of Chemistry.

XQ. 41. Do you know whether it is the same paper as it was when it was filed there?

A. I do.

XQ. 42. If so, how do you know it?

A. Well, I am very well acquainted with the files employed in the Bureau and in the Color Laboratory from my five years experience there. I know the stenographer that has charge of those things and the paper was taken from the files a few days ago and forwarded to me by mail.

XQ. 43. That is all you know about it?

A. It was forwarded to me indirectly, yes. That is practically all. I may think of some more things.

XQ. 44. The results of experiments of this nature are published, are they not?

A. Dr. Conant——

XQ. 45. Are they or are they not published by the Government, or is it confidential property?

A. I cannot say that they were all published. Some of the things are of little interest. There was a scientific publication prepared embodying the things that Dr. Conant considered and that I considered of scientific interest.

XQ. 46. Well, were they published?

A. The publication was made, yes.

XQ. 47. In what journal?

A. My recollection is, it was in the *Journal of the American Chemical Society* shortly after.

XQ. 48. The result of this very experiment?

A. I do not know what you mean by "this very experiment."

XQ. 49. I mean the experiment of what this paper purports to show.

A. That paper summarizes a large number of experiments.

XQ. 50. Well, have you the publication in the *American Medical Journal?*

A. The *Journal of the American Chemical Society.* I have not a copy with me.

XQ. 51. You have not?

A. No, sir.

XQ. 52. Can you give us the date when it was published?

A. No, I cannot.

XQ. 53. Was it published under Dr. Conant's name?

A. It was.

Mr. Kresel: We will try to find it.

By Mr. Anderson:

Q. 54. Do you know whether that publication embodied this entire report or not?

A. No, sir, it did not embody the entire report.

Q. 55. Dr. Gibbs, can you identify this report as the report made to you by Dr. Conant?

A. I can.

Mr. Kresel: How?

Q. 56. Do you recognize this as the report made to you by Dr. Conant?

A. I recognize it as the report. I recognize the general form. I recognize the paper of the Agriculture Department. I recognize our stamp index. I recognize Dr. Conant's signature at the end of the report. I recall the circumstances surrounding it.

Mr. Anderson: I offer in evidence paper entitled "Report on Some Experiments on Methods for Synthesizing Salvarsan," addressed to Dr. Gibbs, on Department of Agriculture, Bureau of Chemistry stationery, which the witness has identified, consisting of five and a half typewritten pages, and signed by James B. Conant, with a note at the bottom "Attached report on work on salvarsan" and paper attached entitled "Preparation of Sodium Oxyphenylarsonate, Report of Work on Salvarsan" by James B. Conant, consisting of eight typewritten pages, which I will ask to be identified and read in evidence as Plaintiff's Exhibit No. 680.

Mr. Kresel: We object to that upon the ground that it is immaterial and irrelevant, that it has not properly been proven as an official report; and furthermore, the effect of it is going to be, if admitted, that it puts in the one-sided statement of a man who is not presented as a witness and the defendant is deprived of the opportunity to cross-examine.

Mr. Anderson: If your Honor please, so far as the proof of the report is concerned, Dr. Gibbs has identified it, as an officer of the Government, as a report made to him by one of his assistants or subordinates. So far as the last point is concerned, after Dr. Stieglitz was permitted to testify not only of matters that came to him verbally in his position which he claimed to occupy in connection with various departments of the Government, and also to testify as to what his laboratory assistants had done in the making of salvarsan, although he said he had never made any himself, it seems to me that it is a little late to raise the objection that an official report of the Government, some hundreds of which we have put in here on both sides, cannot be put in without calling the witness who made the report. If we are going to start back there, we will have to start at the beginning.

Mr. Kresel: It is never too late, Colonel. As to what you say about Professor Stieglitz, Professor Stieglitz testified without any objection from you and did not testify about what any assistant did, but what he personally saw. I have raised no objection to this witness stating what he saw his assistant do. But if you put in a written report of somebody whom you do not present as a witness, and claim that that states the facts, you cannot deny that it deprives us of the right to cross-examine that witness.

Mr. Anderson: I think I have made that objection some dozens of times and was overruled; and I stopped making them because I supposed that was to be the rule. I suppose there are at least 100 official reports introduced here, of Colonel Joyes and various other people, as to which I stated we were entitled to have the witness cross-examined; and the rule being adopted to the contrary, I have stopped raising that objection.

The Court: Of course, the plaintiff is the Government; and those reports coming from the opposite side probably would come in from a little different point of view than if presented by the Government itself. Nevertheless, I am going to resolve this into a question of the weight of this document and not into its admissibility. Now then, whether it will be given more than the very slightest weight under the circumstances, if the persons who made the tests are available, will be a question which I will subsequently determine. I will admit this now and give Mr. Kresel an exception.

Received in evidence and marked "Plaintiff's Exhibit No. 680." (*See Exhibits, Vol. III, page 1732a.*)

By Mr. Anderson:

Q. 57. Dr. Gibbs, did you ever have any talk with Mr. Garvan about the production of salvarsan under the salvarsan patent?

Mr. Kresel: That is objected to as not proper rebuttal.

The Court: As the question now stands, the objection will have to be sustained.

Q. 58. Dr. Gibbs, the Chemical Foundation, the defendant here, is attacking the value of the salvarsan patent on the grounds, among others, that it does not disclose sufficient information to enable those skilled in the art to readily produce the substance. Did you ever have any talk with Mr. Garvan in 1919, on this subject?

Mr. Kresel: Objected to upon the ground that it is immaterial and irrelevant and is not proper rebuttal.

The Court: How is it in rebuttal?

Mr. Anderson: It is in rebuttal, in that it does two things. It answers the entire claim as to these patents and it brings home to the President of the Chemical Foundation the knowledge that this stuff has been produced and that it could be produced under this patent before they ever bought them.

The Court: That is a different question. You see, you went into the question of value of the salvarsan patent in chief. Now then, if the salvarsan patent was admitted to have a value by the defendant or some person duly authorized, that would also be part of that. You cannot split your case between chief and rebuttal. So that it is clear to my mind that this question as now put is not in rebuttal. If you want to show, however, the other matters to which you referred in your last remark, I will let you put your question and rule on that.

Mr. Anderson: In order that I may conform to your Honor's ruling, would your Honor indicate what remark you referred to?

The Court: As to the workability of the patent. You intimated in your last statement that you proposed to bring out that Mr. Garvan had made such statements as either expressly or by implication said that the salvarsan could be made under the salvarsan patent.

Mr. Anderson: I did not say Mr. Garvan—that he was advised it could be made by an officer of the Government under the salvarsan patent.

The Court: Your statement is that Mr. Garvan was advised by officers of the Government that salvarsan could be made under that patent?

Mr. Anderson: By this witness, that salvarsan could be made under the salvarsan patent.

Mr. Kresel: I had understood it to be an elementary rule that you can not contradict a witness without first giving him an opportunity to tell the truth.

Mr. Anderson: I am not contradicting Mr. Garvan.

Mr. Kresel: Now, wait a minute, please. There was not any question put to Mr. Garvan upon his cross-examination as to whether he had ever had any talk with Dr. Gibbs about this patent. How can they now call a witness and open that question upon rebuttal?

The Court: If it is a ground of contradiction, and no grounds were laid during the examination of Mr. Garvan for contradiction—I did not understand, though, that that was the purpose.

Mr. Anderson: I do not claim that Mr. Garvan said——

Mr. Kresel: If that is not the purpose, then it introduces an entirely new element in the case on rebuttal, and therefore is not permitted. If they have any information that they say was brought to the attention of Mr. Garvan before this transaction was made, it was their business to put it in on their direct case, not to wait until rebuttal to do that.

Mr. Anderson: If your Honor please, on our direct case no question was raised as to whether this stuff could be made under this patent. As a matter of fact, we had no information, even in the answer, that such a claim was going to be made in this case.

Mr. Kresel: Our answer shows it.

Mr. Anderson: We have not raised that point; but as a matter of fact, we further assumed that no such claims would be made in this case for the very good reason that the position of the parties, which I have already indicated, and the acts of the defendant were such as to estop them. That question, of course, is reserved.

Now the defendant, of which corporation Mr. Garvan is President, and therefore he speaks for the defendant, comes into court and says that these things were of no value or of little value on April 10, 1919, because since that time, apparently, they have found difficulties in making the product under the process patent.

Surely, in rebuttal of that line of testimony, of which there is so much that there is no use in referring to it in detail, it is competent, since no proof was made on direct, and that is an entirely original proposition made by the defense, for the plaintiff to come here and show, not only that the stuff could be produced, that it had been produced under the patent, but that an officer of the Government at a time when Mr. Garvan was himself an officer of the Government, before these patents were for sale, and also an officer of the Chemical Foundation who was competent to advise him and whom he consulted on the subject, advised him that it could be made under that patent.

THE COURT: Is that in general refutation of the defense set up, or is it in contradiction of some specific statement of Mr. Garvan?

MR. ANDERSON: It is not in contradiction of any specific statement of Mr. Garvan, because Mr. Garvan was not asked about it. He would probably have been asked if I had known about it at the time; but he was not asked about it, and therefore I can not say that it is a contradiction of Mr. Garvan. I do not claim Mr. Garvan has said anything on the subject at all.

THE COURT: You may take the answer, and I will consider as to whether or not the answer may be met, if there is an offer to do it, in surrebuttal. You may take the answer, specifying the time, place and circumstances, before the answer is made.

Q. 59. You have heard his Honor's statement. Would you now answer the question?

A. I would like the question again. I do not remember it.

MR. ANDERSON: Read the question, please.

(Q. 58 repeated as above recorded.)

THE COURT: And before you state your answer, specify the time and place and persons present.

A. (To Q. 58) I had a talk with Mr. Garvan on the subject. At the present moment I can not fix the date accurately, and to the best of my recollection there was no one else present.

THE COURT: And the place?

A. (continued) The place was in one of the offices of the Alien Property Custodian in Washington, D. C.

MR. KRESEL: And the time?

A. (continued) To the best of my recollection it was early in 1919; not being able to fix the date accurately.

THE COURT: What difference does it make?

Q. 60. I will now further ask, that if you know of any data by which you can fix the date accurately, that between now and Monday you go to Washington and bring it back here, as I want the exact date if you can get it.

A. If you please, if I do that, I will have to suspend my duties.

Q. 61. That is so. Then go ahead and testify to the best of your knowledge today.

THE COURT: But, Colonel Anderson, can you fix the time as to whether it was January, February, March, or April, or some time thereafter?

Q. 62. State it as accurately as you can, Dr. Gibbs, to the best of your knowledge.

A. I think that I have some papers that will fix the time to the day, and further than that I would not like to commit myself. I think, your Honor, if you please——

THE COURT: As that stands, do you want the answer under those circumstances?

Q. 63. Can you state approximately the month, to the best of your belief, subject to correction if you can find the date?

A. I do not like to commit myself in view of the fact that I may be able to locate the exact day, and it will be a month or two one way or the other.

THE COURT: Do you want his answer before he can do that, for obvious reasons?

MR. ANDERSON: I am going to ask that your Honor permit me to take the answer anyhow. As the witness is engaged in this test business, I do not know whether I can send him to Washington tomorrow; but I am going to try to look up that date and ask leave, if necessary, when we come to the question of proof of these tests, to introduce the exact date.

THE WITNESS: Can I have the question again?

(Q. 58 repeated as above recorded.)

Q. 64. And I would like to ask if you can now, from your memory, fix it prior to April 10, 1919.

THE COURT: Whether he can fix it from his memory, and if so, when it was.

While he is thinking of that, will you come to the bench Colonel Anderson, and Mr. Kresel?

(Discussion of Court and counsel then ensued at the bench.)

THE COURT: Have you agreed upon your laboratory?

MR. ANDERSON: I do not know, sir.

THE COURT: It may be that the duPont Laboratory is just the place for it.

MR. KRESEL: They were to let me know. I have not heard yet.

MR. ANDERSON: If it is a good laboratory. As soon as we take the adjournment I am going to take all that up and see if we can get together.

THE COURT: Yes.

MR. KRESEL: I understand it is agreed upon to get a room in the duPont experimental station and that all the equipment is being assembled in that room.

MR. ANDERSON: I would like to have the question read to the witness.

THE COURT: I think the witness remembers the question. Can you answer it?

A. I can fix the date as on or before April 10, 1919, and with additional information it is possible I may do it even more accurately than that.

MR. KRESEL: But you mean it was positively before April 10th?

The Witness: I said on or before April 10, 1919.

Mr. Kresel: I do not know what that means.

Q. 65. For the information of counsel will you state how you fix the date?

Mr. Kresel: No, I do not want to know that. All I want to know is whether he now says it was before April 10, 1919.

Mr. Anderson: He said on or before—either on that day or prior to that day.

Q. 66. Is that correct, Doctor?

A. That is correct.

Mr. Kresel: Very well.

Q. 67. As you recall, at that time only you and Mr. Garvan were present; is that right?

A. That is my recollection.

Q. 68. Will you state as nearly as you can from memory what was said? Not your conclusions, but as nearly as you can what was said, or the substance of the conversation if you can not state the exact words.

A. The substance of the conversation, the bulk of the conversation, was carried on by Mr. Garvan and was to the effect that the patents taken out by German interests in this county——

The Court: Just a minute. Isn't this witness going beyond your inquiry?

Mr. Anderson: Yes.

Q. 69. I will ask you to limit your reply to the matter of salvarsan.

The Court: And not the conversation, but what this witness communicated to him, is what I understood was your question.

Mr. Anderson: Yes, and I supposed he was going to state the inquiry to him and what he replied.

Q. 70. Just what you told Mr. Garvan. It does not matter what Mr. Garvan said to you, but state what you told him about salvarsan.

A. I told Mr. Garvan that I could not substantiate the contention that the German patents were unworkable from the experience that my laboratory had had with salvarsan.

Q. 71. Did you state anything further; did you tell him what that experience was?

A. I possibly stated that our experiments——

THE COURT: No, do not guess.

MR. KRESEL: I object to what he possibly stated.

THE COURT: You either did or did not. Did you, Doctor?

MR. ANDERSON: Remember or do not remember.

THE COURT: Yes.

Q. 72. Do you remember whether you did state to him the result of your laboratory work?

A. I stated that we had made salvarsan in the laboratory under the German patents. I possibly stated——

THE COURT: No, I do not want "possibly". That indicates you are drawing on your imagination for the information. I want it accurate.

Q. 73. As I understand it, the two things you are prepared to say you did say to Mr. Garvan, on which your recollection is definite, is that you could not sustain the suggestion that the German patents were unworkable because of your experience, the experience of your laboratory, in the making of salvarsan under the German patents, and that you had made salvarsan under the German patent in that laboratory, or it had been made in the laboratory?

A. Yes.

Q. 74. Does that summarize what you know you said?

A. That is correct.

Q. 75. The balance of it you are not sure of. Dr. Gibbs, you saw the experiment which Dr. Stieglitz worked here in the courtroom, did you not?

A. I recall three experiments carried on by Professor Stieglitz.

Q. 76. You were in the courtroom at the time?

A. I was.

Q. 77. Have you ever worked those experiments?

A. I have.

Q. 78. When?

A. When I was a Freshman——

Mr. Kresel: What difference does that make?

Mr. Anderson: It makes this difference: Here was a great development, and of a laboratory character, that made this thing so important——

Mr. Kresel: Wait a minute.

The Court: I did not get that impression, and I have not any objection to stating now that my impression was that it was a pure elementary demonstration of aniline and the different products to be obtained——

Mr. Kresel: From the same base.

The Court: That the same base could be used in three different ways.

Mr. Kresel: That is all.

Mr. Anderson: The impression I got was it was something connected with this dye industry, in connection with these patents. I do not recall the testimony or how it was connected up.

Mr. Kresel: On the contrary.

The Court: The only purpose that it had, so far as I could see, was to show that anilin could be used for military or commercial purposes.

Mr. Kresel: Or dye purposes, yes.

The Court: And it had no other purpose, as far as I could see. I have no objection to your taking the answer that he performed that in his Freshman year at college. That is what I think he was saying, was it not?

THE WITNESS: At Cornell.

Q. 79. In your experience, if you as a chemist skilled in the art were given a formula to produce any inorganic compound or medicine for internal insertion into the human body or injection into the veins, and no reference was made therein to the purity of the ingredients, would you as a chemist regard that as an essentially implied condition or not?

A. I would regard it as an essential.

Q. 80. Would you under such conditions use pure ingredients or intermediates, or purify at the various stages?

A. I would.

Q. 81. Are those principles matters of common knowledge and acceptation to those skilled in the art?

THE COURT: Your question is leading.

Q. 82. Can you say whether those principles are common knowledge and accepted by those skilled in the art of organic chemistry?

A. I can.

Q. 83. What would you say about it?

A. They are taught by every——

MR. KRESEL: Well, they are or they are not. Never mind what was taught.

MR. ANDERSON: I think he can say that, your Honor.

THE COURT: No, the question calls for yes or no, Colonel Anderson.

MR. ANDERSON: I asked him what he would say about it. He answered yes, and then I asked him "What would you say about it?" I did not want to lead him; I asked him what he would say on the subject.

Mr. Kresel: I object to what he would say on the subject. I dare say this gentleman could sit here for an hour and talk on the subject.

The Court: I do not think the answer to the question helps me a particle, because I have got to determine what is meant by those skilled in the art, and I have yet to determine whether that is necessarily an implied condition in the highly technical patent. The answer will not help me. You can take it, briefly, if you want to, but it won't help me a particle.

Mr. Anderson: I will ask that he answer briefly. I will ask that the question be read.

(Q. 83. read as above recorded.)

A. The principles involved are taught by every Professor and Instructor in chemistry under whom I have studied. They are well known to the teachers of chemistry and to the students.

Mr. Anderson: The witness is with you Mr. Kresel.

Mr. Kresel: How late is your Honor going to sit? I am willing to go on or to suspend.

The Court: We will adjourn at 12 o'clock unless there is an agreement to the contrary.

Cross-Examination.

By Mr. Kresel:

XQ. 84. Dr. Gibbs, if you were writing the specifications of a patent and you knew that if a person followed out those specifications and used impure products the result would be that it would kill the patient, and if you knew that all sorts of chemists, those that are good and those that are poor, tried to carry out experiments according to patents, would you or would you not make sure to say in the patent "Be sure that your product is pure before you start"?

Mr. Anderson: I object on the ground, if your Honor please, that the only test, as to those skilled or unskilled in the art, is that a man who used impure articles is prima facie and conclusively unskilled in the art—to make that for injection into the veins of a human being.

Mr. Kresel: What sort of an objection is this?

The Court: I did not get that.

Mr. Anderson: And the assumption is not based on any evidence in this case that there is anybody unskilled in the art who ever tried to manufacture under those patents.

The Court: I find one difficulty with your question. I do not understand the objection fully, but I find one difficulty with your question, and that is with reference to the use of the word "poor." Instead of that, you might use the words "having only ordinary experience and skill" instead of "poor." You use the expert and "poor" in the question.

Mr. Kresel: I did not mean to say "poor." If it was in the question it was an inadvertence. I will make it those that are skilled and those that are unskilled.

The Court: It includes persons who are of ordinary and fair information and skilled in the art. If you want to use those words, reframe your question and I will listen to the objection.

XQ. 85. Dr. Gibbs, if you were writing the specifications of a patent and you knew that a person attempting to carry out those specifications, if he uses an impure ingredient, the product if administered to a human being would kill that human being, and if you also knew that persons of ordinary information and skilled in the art or science, as well as those very skillful in the art or science would attempt to carry out the specifications laid down in the patent, would you not be sure to put into the patent the warning that no one must carry out the experiment without first seeing that the ingredients were pure?

Mr. Anderson: I object first on the ground that the assumptions contained in the question are not sound. I notice your Honor has referred to an authority there, and I do not know what the authority is.

The Court: Walker on Patents, Section 156, the reference I made the other day.

Mr. Anderson: All right, but I would say that where chemists were engaged in the manufacture of stuff to be injected into the veins of human beings, that would require persons of more than ordinary or fair intelligence doing that work; because that is a character of work requiring the highest order of intelligence. On the other hand, if you had a man engaged in making material for sprinkling the streets, a man of ordinary intelligence could do it because it would not do anybody any harm if his intelligence was not quite up to the standard for that kind of requirement.

Therefore, while the general principle applicable to all patents may be as laid down, all general principles must have in their application a due regard to the facts and conditions under which they are to be applied.

In the second place, it is not a question what Dr. Gibbs would write into a patent. He may be a very cautious, an extremely cautious man; he may not be an extremely cautious man. He is not drawing a patent The sole question that can be raised here is whether in the opinion of a man who is experienced in chemistry the specifications or the formulae of a patent would be such as to indicate to the mind of a reasonably prudent man, so skilled, the use of pure ingredients or the proper purification of the same at different stages.

It does not matter what Dr. Gibbs would personally do. If that is indicated to a man of skill in the production of drugs for this highly dangerous use and of highly dangerous character by the combinations, the character of the product and the use thereof, then that is the sole question so far as this patent is concerned, and not the personal views of anybody.

THE COURT: I think that is true, but I think your question with reference to those skilled in the art laid the ground for cross-examination of this character. I think there may be some question or some doubt as to the validity of your objection on the hypothesis of this question to the extent that Mr. Kresel has used the words "would kill." I would suggest that the words "might kill" be substituted.

MR. KRESEL: Very well, your Honor.

THE COURT: That is the only difference I know of or that I think of. Do you think of any more?

MR. ANDERSON: I have stated my objections, of course.

THE COURT: I will let the answer be taken.

MR. ANDERSON: Exception.

A. I would like to hear the question again.

MR. KRESEL: And in the reading of the question insert the words "might kill."

(XQ. 85. read with the above modification, as follows:)

"Dr. Gibbs, if you were writing the specifications of a patent and you knew that a person attempting to carry out those specifications, if he used an impure ingredient, and that product if administered to a human being might kill that human being, and if you also knew that persons of ordinary information and skill in the art or science as well as others very skillful in the art or science would attempt to carry out the specifications laid down in the patent, would you not be sure to put into the patent the warning that no one must carry out the experiment without first seeing that the ingredients were pure?"

A. If I may be allowed to explain, I would first say——

XQ. 86. No. I do not want your explanation at the present time. I would like you to answer the question.

A. No.

The Court: Now do you want to modify that?

The Witness: I would, yes.

The Court: Very well.

The Witness: I have taken out a great many patents and my experience has been that I tell an attorney what I have discovered and he does the rest.

XQ. 87. Dr. Gibbs, how did you come to go to Mr. Garvan's office on this occasion which you say was either on the 10th of April, 1919, or prior thereto?

A. (Examining paper) Mr. Garvan requested information from me and to the best of my recollection he asked me to come to his office. I say to the best of my recollection. It may have been one of his clerks that asked me to come to his office.

XQ. 88. You say he requested information from you. Was that request made in writing?

A. No, sir; not to the best of my recollection.

XQ. 89. Did you have a personal acquaintance with Mr. Garvan before this visit to his office?

A. I did.

XQ. 90. How long had you known him?

A. I first became acquainted with Mr. Garvan in the latter part of 1918.

XQ. 91. Was your acquaintance with him in the way of official duty?

A. I can place it a little closer. I think it was October. I am not quite certain, but about October.

XQ. 92. Nineteen eighteen?

A. Yes.

XQ. 93. I say your first acquaintance with him was in the course of either your or his official duties?

A. It was.

XQ. 94. At that time you were with the Department of Agriculture attached to the color laboratory?

A. I occupied several positions at that——

XQ. 95. No, were you with the Department of Agriculture in the color laboratory on this occasion when you first met Mr. Garvan?

A. I was in conference with Mr. Garvan the first time——

XQ. 96. Can't you answer that question?

A. In my official capacity representing the Bureau of Aircraft Production, a branch of the War Department.

XQ. 97. Then you were attached to the Bureau of Aircraft Production?

A. I was.

XQ. 98. At what time?

A. From about that time in 1918, as I recollect——

XQ. 99. October?

A. I am not sure. I think my connection began before that. Until the end of the war. I was loaned to the Bureau of Aircraft Production on part time by the Department of Agriculture.

XQ. 100. You mean from October until the Armistice?

A. I can not fix the exact date. They are matters of record, though.

XQ. 101. But was it after the Armistice?

A. Oh, after.

XQ. 102. You said after the war?

A. It took me some time to finish my work there.

XQ. 103. When you had the talk with him on the 10th of April or before that were you then with the Bureau of Aircraft Production?

A. I was, part time.

XQ. 104. Were you putting in any of your time in the color laboratory?

A. I was.

XQ. 105. So that your recollection is that either Mr. Garvan personally or someone from his office asked you to come to Mr. Garvan's office?

A. Yes, sir.

XQ. 106. And that that communication was not in writing, is that right?

A. To the best of my recollection.

XQ. 107. And that you then went over there?

A. Yes, sir. In fact, I am almost positive it was not in writing. We were telephoning our business mostly at that time.

XQ. 108. Have you a clear recollection of the entire conversation you had with Mr. Garvan?

A. Not at the present moment.

XQ. 109. Is the only thing that you clearly recall what you have said on the direct?

A. No, sir.

XQ. 110. Will you now give us all of the conversation with Mr. Garvan on this occasion that you can recall?

A. Well, Mr. Garvan asked me for a little help occasionally, now and then.

XQ. 111. That was not the conversation on this occasion, was it?

A. Yes, sir; that was his request.

XQ. 112. You do not understand me. I do not want to know what he asked you on other occasions; I am speaking of this particular occasion as to which you testified on your direct.

A. On this particular occasion——

XQ. 113. Now, we can not both talk at the same time, Doctor. I want to know the entire conversation on that occasion.

A. I have not been able to fix that occasion definitely. We had several conversations and they were upon different subjects.

XQ. 114. Dr. Gibbs, I do not want to misunderstand you and I do not want to confuse you. You have testified on the direct to a particular conversation, have you not?

A. I have.

XQ. 115. You have not been able to fix the exact date, but you say it was either on the 10th of April or prior thereto. That is correct, is it not?

A. Yes, sir.

XQ. 116. That is the occasion and that is the conversation that I am now questioning you about. I want you to tell me the whole of the conversation.

A. I am afraid my recollection won't permit me to do that, because I think in one week——

XQ. 117. I do not want your reasons.

A. (continued) I saw Mr. Garvan several times.

THE COURT: Strike out the reasons, and all of the answer after "because".

XQ. 118. I do not want your reasons. Can you recall anything else that was said either by you or Mr. Garvan on this occasion in addition to what you have testified on the direct?

A. May I state that I can recall——

XQ. 119. Can you or can you not?

A. Can I explain this?

The Court: You can, of course, say yes or no; and then if there is any explanation to follow, we will hear that. You either can remember it or you can not.

The Witness: I will say no, with the explanation that there were several conversations, and what occurred at this conversation, and what occurred at this conversation or the other conversation, I can not testify to. I remember seeing Mr. Garvan several times in the same week.

XQ. 120. Then it follows, does it not, that the conversation that you undertook to give upon your direct you can not fix the date of?

A. Not any more accurately at the present moment than I have already done.

XQ. 121. Were all your conversations with Mr. Garvan before the 10th of April, 1919?

A. To the best of my recollection they were.

XQ. 122. You now say, do you, that you have had no conversation with Mr. Garvan later than the 10th of April, 1919?

A. I can not recollect any.

XQ. 123. Well, can you recollect positively that you did not have any conversation with him after April 10, 1919?

A. I am almost certain that I did not.

XQ. 124. Then you are willing to swear now, are you, that although you cannot fix the exact date, the conversation that you testified about on your direct positively took place either on the 10th of April or before that date?

A. Yes, sir.

XQ. 125. What?

A. Yes, sir.

XQ. 126. Tell me, if you will, how many conversations you had with Mr. Garvan?

A. I think about five or six—four, five or six.

XQ. 127. Can you give me the date of any of them?

A. Yes, sir.

XQ. 128. Please do.

A. April 10th is the date of one, 1919.

XQ. 129. Please stop there a minute. I notice you have referred to some paper that you hold before you, after reading which you said April 10, 1919 was one of them. I should like to see that paper.

Mr. Anderson: No objection.

A. (Witness hands paper.)

The Court: Mr. Kresel, when you reach a convenient point, or when you finish this point, if you find it convenient, we will adjourn.

XQ. 130. Without stopping to read this entire letter, Dr. Gibbs, doesn't this letter show that you did have on the 10th of April, 1919, a conversation with Mr. Garvan about the German patents?

A. I have not read that letter—I would like to read it again before I answer that. I have read it, but I do not recall what is in it.

XQ. 131. You are positive you had a conversation with him on the 10th of April?

A. Yes, sir.

XQ. 132. Isn't that the conversation as to which you gave testimony on the direct?

A. I have not undertaken to fix the date any closer than on or before April 10th.

XQ. 133. I know you have not and I am trying to get you to fix——

A. (Continuing) If it was before, it was not that conversation.

XQ. 134. What was that?

A. (continuing) If it was before April 10th, it was not that conversation.

XQ. 135. I do not follow you, but perhaps that is my fault.

(No answer.)

Mr. Kresel: Does your Honor desire to stop now?

The Court: You may finish this point, if you wish, and then we will adjourn.

Mr. Anderson: I am ready to adjourn, but I understand you wish to ask some more questions.

Mr. Kresel: No, I do not think I want to ask him very many more questions.

XQ. 136. As you sit there, Dr. Gibbs, your mind is a perfect blank as to anything Mr. Garvan said to you or you said to Mr. Garvan on the occasion as to which you testified on the direct, in addition to what you did say on the direct; is that correct?

A. No—I would like to have that read, please.

(XQ. 136 repeated as above recorded.)

The Witness: I do not understand the last part of that at all.

XQ. 137. Perhaps it is a little involved. I say, your mind is a perfect blank as to anything that Mr. Garvan said to you or that you said to Mr. Garvan except what you have already testified to on the direct?

A. At any conversation?

XQ. 138. No, I mean that conversation?

A. No, it is not.

XQ. 139. Then at least tell us what else you recall as to that conversation?

A. Well, I started to make a few remarks as to my recollection concerning what Mr. Garvan said to me.

XQ. 140. Well, go on; I have been asking you to give it to us.

A. Mr. Garvan introduced the subject of the American patents that were German owned, and while I can only remember in a very sketchy way what he said, the substance of it is the same as he has made in speeches on many occasions, referring to the non-workability and questions of seizure and use in this country and general questions of that description——

XQ. 141. Wait a minute.

A. (Continuing) And that called forth my remarks concerning——

XQ. 142. Wait a minute, Doctor, please; I have got to interrupt you. I do not mean to interfere with you. You have said——

Mr. Anderson: I object. Let him finish his answer.

Mr. Kresel: Now wait a minute.

XQ. 142. (Continued) You have said that he made the same remarks that he made in speeches about the non-workability or the seizure. Don't you see that does not give us any information? What did he say?

A. Well, I can only say in a very rough way the substance.

XQ. 143. Do it the best you can.

A. That he had understood that these patents were designed to conceal information and that they were taken out for the purposes of obstruction of American industries, and that possibly—I guess he stated pretty positively that most of them were not workable, or words to that effect. I cannot give it much more in detail; but that was the reason for my——

XQ. 144. No, no. I do not want to know your conclusions. What did he say? What did you say?

A. I said then that I could not bear out such contentions regarding the non- workability from the experience of my laboratory on arsphenamine.

XQ. 145. And then you told him what your experience had been?

A. I—yes.

XQ. 146. Well, that is what you said on your direct. You do not want to take that back, do you?

A. I want to say that of course I did not tell him what our experience had been as I would talk to a chemist. I just merely stated it so that he could understand it.

XQ. 147. What did you say to him?

A. That we had made salvarsan in the laboratory according to the German patents.

XQ. 148. You said that to him positively? Now, there is no question about that?

A. Oh, yes, there is no question about that.

XQ. 149. Now have you given us your best recollection of your entire conversation; what he said and what you said?

A. Yes, I have at the present moment.

XQ. 150. You made no memorandum of that conversation?

A. I would not like to state as to that point. I may have. It is possible that a memorandum concerning it may be filed; I do not know.

XQ. 151. If you find such a memorandum, I assume you will produce it?

> Mr. Anderson: I am going to ask the witness to hunt for the memorandum and see if he can find it. That is the reason I want him to go down tomorrow; but he cannot on account of his other duty; and search through his private papers.
>
> The Court: He may be able to get away before Monday so as to come back here by Monday noon.
>
> Mr. Anderson: If he is, why, we will do it.
>
> The Court: And when the experiment is completed, the Marshal will keep his men in charge of the office, and then on Monday morning the product produced may be obtained from

the laboratory, wherever produced, by the four chemists. That means that Dr. Gibbs must be here then.

Mr. Anderson: Counsel called for a copy of letter dated April 10, 1919, produced by the witness, to show what evidence he had of a conversation of that date. I would like to ask leave to put that letter in evidence.

The Court: The calling for it by Mr. Kresel does not give you the authority to introduce it, because the counsel has the right to examine any memorandum which a witness may be directed to produce.

Mr. Anderson: That is the reason I said I would like to introduce that in evidence, if there is no objection.

Mr. Kresel: It is simply for the purpose of showing that there had been a conversation. That is all that I wanted that letter for. Otherwise it is absolutely immaterial and irrelevant and refers to entirely different matters.

The Court: Consider that and do it on Monday.

Mr. Anderson: Yes, sir.

Mr. Kresel: Now, may I inquire of counsel before the Court adjourns, as to whether the Government is through now or whether it proposes to present other witnesses?

Mr. Anderson: It does propose to present other witnesses on Monday, within the regulations laid down by the Court. In addition to that, I have already asked for the production of the books of account of the Calco Chemical Company, showing their experimental cost. I would like to ask for the production of Dr. Crossley's notes on his efforts to produce the drugs as to which he testified here, which were cinchophen, neo-cinchophen and novocain, on Monday morning, or to-morrow, if they are available.

I think it is proper at this time to make another motion that I am going to make and state the purpose of, because I do not think it is necessary to go through the form of examining somebody if the witness's evidence would not be allowed when he comes here, and that is this: I now move the Court that a subpoena duces tecum be issued to the President and Treasurer of the Atmospheric Nitrogen Company, which the evidence shows to be operating a plant for the production of synthetic ammonia at Syracuse, and to the two persons who Dr. Parsons testified were the two persons that knew of the catalyst there produced, requiring them to attend before this Court on Monday, to testify to the exact process being followed, and to the method of production of the catalyst so-called, and to compare such process and such catalyst and the methods of production of the same in detail with the patents introduced by Dr. Parsons, 58 in number, or so many thereof as may be applicable to the process or patent, for the purpose of pointing out in detail the variations, if any, in such process of manufacture, and in such catalyst from that prescribed in these patents.

At the present time I am unable to give the Court the exact names of these officers, but I will get them, and if the subpoenaes are issued, I have a special agent of the Department of Justice ready to take those subpoenaes and serve them between now and Monday morning, and require the production of those papers on Monday, and of this testimony.

Mr. Kresel: This grand-stand play, your Honor——

Mr. Anderson: Now, if your Honor please, we have had a good deal of that sort of thing.

Mr. Kresel: Yes, you are going to have more.

Mr. Anderson: And I think, if counsel wish to object to the motion, I want to ask the Court to protect me as a member of the bar, from comments of that character, from which I cannot protect myself.

Mr. Kresel: I am going to let the Court know —if your Honor will permit me; now, this is going to be a matter of personal privilege here between Col. Anderson and myself, and I think I am entitled to as much as Col. Anderson is, and I know your Honor will extend it to me. This business of saying in open court that he wants a subpoena issued on the last day of his rebuttal, I say is nothing more than grand-stand play because——

The Court: Well——

Mr. Kresel: He has had seven weeks in which to do that.

Mr. Anderson: Now, if your Honor please, I must interrupt.

The Court: I am going to get you——

Mr. Kresel: And I have no objection to any subpoena going out. I have nothing to do with it. That is within counsel's privilege. He does not have to move for the issuing of a subpoena.

The Court (interrupting): Is there anything to be said as to why the testimony if produced under subpoena duces tecum would not be admissible?

Mr. Kresel: I have nothing to say about that. When the testimony is produced, Your Honor, I think that is the time to take any objection.

The Court: Your request specifically is what, Col. Anderson?

Mr. Anderson: Is for a subpoena against the officers of the Atmospheric Nitrogen Company, its appropriate officers, and I will try to get their names and give them to the Clerk this afternoon. Under the statute I can only issue that subpoena with your Honor's order.

The Court: I think that perhaps should be by written order, should it not, Col. Anderson?

Mr. Anderson: Yes, sir.

The Court: On petition?

Mr. Anderson: Yes, on motion or petition. It does not say how the proceeding shall be. The statute says that they can be summoned by order of Court. The usual practice which I have followed in asking for the examination of a witness residing at a distance of more than 100 miles, has been either a personal request or a motion in Court. I have never filed a petition.

The Court: I think the records in the Clerk's office should disclose the basis for the issuance of the subpoena duces tecum. I have forgotten the exact phraseology of the statute, Montgomery on Federal Procedure.

Mr. Anderson: The statute is a very recent one, your Honor.

The Court: Yes; but I think the recent edition of Montgomery affords us some help. Before issuing that, Col. Anderson, I am going to ask you to point out just now, so that you can embody it in your petition later, the grounds upon which from your standpoint such testimony, if and when produced, would be admissible and relevant.

Mr. Anderson: I will be very glad to do that, sir. The first ground is this: The attack has been made upon the Haber patents, so called (I will use

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that expression for identification) on the ground that they do not disclose adequate information for the production of ammonia by the synthetic ammonia process that is embodied in those 58 patents, including the patents covering the catalyst construction.

The Court: Is there any evidence in this case to show when they began to manufacture? When, as a matter of fact, do you contend that they began to manufacture?

Mr. Anderson: You mean whom, now, your Honor?

The Court: The persons for whom you desire the subpoenaes issued.

Mr. Anderson: The evidence is that the Semet-Solvay Company which now, according to the evidence, controls, with the General Chemical Company, was a licensee of the Federal Trade Commission; that the present Atmospheric Nitrogen Company is controlled by the two companies, General Chemical and Semet-Solvay, which are both subsidiaries of the Allied Chemical. Now, the beginning of the manufacture——

Mr. Kresel: There is no evidence of that, your Honor.

Mr. Anderson: The beginning of the manufacture, if your Honor will permit me, according to Dr. Parsons' testimony was, I think—I will not be sure without reference to it—in the summer of either 1920 or 1921, when he said when the plant began operation he severed his connection with the plant.

Mr. Kresel: That was August, 1921.

The Court: How can that be material if produced? There is no evidence, is there, that there was any production under the Haber patents in

America prior to their transfer on April 10, 1919, and as I recall the testimony, the Sheffield Plant No. 1 had proved a practical failure prior to April 10, 1919.

Mr. Anderson: Under a modified process?

The Court: Under a modified process, but which I assume was in the view of the Government and its advisers a more practical process than the pure Haber process, or it would not have been used. Would that not be an inevitable practical conclusion?

Mr. Anderson: I think so, upon the evidence in this case, sir. I think the more natural conclusion to draw from it was that at that time the General Chemical Company had been experimenting in an effort to produce atmospheric nitrogen in the slightly modified manner from that described in the Haber process; and they proposed to give to the Government, for the consideration named, the use of their experimental work and of their employes, and represented their belief to the Government, which was undoubtedly their honest belief—I do not question that—that they could produce a plant down there that would produce synthetic ammonia by their modified process. With that experience and the need for synthetic ammonia, the Government contracted for this plant.

It is quite a complicated state of facts and involves a great many papers; and therefore, I do not undertake to go into details. That was, as Secretary Baker said, a variation from the German process. The German process on the contrary, while it may have been a variation—I think with the patents in evidence here, I can probably show to your Honor that it was even in its variation probably an infringement of the Haber process. Then the General Chemical Company or its subsidiary, the Atmospheric Nitrogen Company, constructed a plant in the light of their experience there——

THE COURT: In the light of what?

MR. ANDERSON: In the light of experience down at Sheffield Number 1—constructed a plant at Syracuse, which has been claimed to be a modification of the Haber process and which is claimed to have been successful from the moment it began operation. Now, I have tried to get from these witnesses that came here to tell us about that modification, what the modification was.

MR. KRESEL: And you closed Dr. White's mouth. Dr. White said he would give it to you, but you pleaded the privilege of the United States.

MR. ANDERSON: To the contrary, his opinion related exclusively to information at Nitrogen Plant No. 1.

MR. KRESEL: Certainly.

MR. ANDERSON: And under the contract with the General Chemical Company, as I construe it and as the Government construed it, and as I was advised to construe it, I had to do what I was told.

THE COURT: My difficulty is this, Colonel Anderson. Certain attempts had been made in America and certain facts were associated with the Haber patents, or certain viewpoints existed in America with respect to the Haber patents on April 10, 1919. One of the things that happened then and one of the things that stood out prominently, it seems to me, Colonel Anderson, on April 10, 1919, with respect to the Haber patents, was, as I understand the testimony now, and for the purposes of your application, a practically complete failure. Whether, under subsequent dedevelopment, without expense or without time, or with much time and much money, somebody has found a method of improving on that plant, which might or might not come under the process of the Haber patents or some of them, if that has been developed, what effect would that have?

MR. ANDERSON: I was going on to answer just that question. It would have this effect. If your Honor is going to decide and if the courts are going to decide this issue, if it becomes an issue in the case, on the conditions as they existed on the 10th of April, 1919, or the dates of the several conveyances thereafter as to those patents, then it might be that all this evidence, including the development of a successful system in America on a modified scale afterwards would be utterly immaterial. But I can not tell what the courts are going to decide; and therefore, if your Honor will allow me to finish the answer to the first question, if I do not interrupt your Honor's thought, if the Atmospheric Nitrogen Company has taken out a license under the Haber patents, as the evidence here shows, paying $2500 for it, and then, protected by that license, proceeds to manufacture atmospheric nitrogen or synthetic ammonia without trouble and without difficulty, and when the value of the Haber patents is challenged, comes in and says, not through its own witnesses but through others, that these processes they are now using are different, then it becomes a matter of the most profound importance to show where that difference comes in, or whether they are really manufacturing under the Haber process and calling it another process. Nobody can tell but themselves. Nobody but themselves can tell, because it has been testified here that they did not allow even their own engineers in the plant.

The Court: Let me ask you this: Mr. Metz testified that the salvarsan patent in his opinion was worth a million dollars and that he would have been prepared, at the time of the sale, to have given a million dollars for it had he had the opportunity. So that in chief you went into the value of the patents, did you not?

Mr. Anderson: Of that patent; yes, sir. But they having bunched all those patents and sold them, I can show the value of each of them. Some were never mentioned. We have split them up. The Haber patents are a distinct group of patents and could have been sold separately and distinct from all of the others. Therefore, their value becomes important.

The Court: You did not go into it because Dr. Holdermann testified with respect to the value of the Haber patents. I deny the motion because I think the testimony called for is not in rebuttal. I deny it now so that it may be on the record. I have no doubt whatever about it.

Mr. Anderson: I am glad your Honor feels that way, of course; but your Honor will allow me an exception.

The Court: Certainly.

Mr. Kresel: Before your Honor adjourns, this question of Dr. Christiansen's notes has not been settled.

The Court: I have this suggestion to make, unless you have something to suggest.

Mr. Kresel: I have no suggestion to make.

The Court: Dr. Christiansen's notes, even though he testified that all his experiments were in strict accordance with the patent, must be kept as secret as it is possible, so that the assets that he has therein, which asset constitutes in part at least his personal capital must not be prejudiced by their use in Court any more than is absolutely necessary.

Without any reflection upon anybody, because you understand there is no reflection in these examinations, but it reduces the chances of disclosure if the inspection is restricted, I would make this suggestion: That he submit these notes to one of these two persons: Dr. Stieglitz or Dr. Bolton, which ever you prefer, but not both; Dr. Stieglitz being a man engaged at a University and not being in a position where he would be called into a manufacturing plant. Dr. Bolton is engaged in the manufacture of dyes and not pharmaceuticals, so I think in each of these instances there is a protection to Dr. Christiansen which he would not otherwise get.

Mr. Anderson: Without raising any unpleasant question, I hope your Honor will understand me when I say that I feel constrained on behalf of this gentleman to submit to your Honor a request that the matter be further limited, without making any objection to persons. I have no objection to Dr. Bolton in the least, having any information that we have of any kind or character. I am perfectly willing to have submitted to Dr. Bolton, who I believe to be a very high type of scientist, any information we have.

The Court: Will both counsel please come to the bench?

(Consultation between Court and counsel.)

Mr. Anderson: There is one other matter. This morning we had up the question of this experimental production of salvarsan. We would like to have two chemists do that separately with the right to select a number of examples of the patents introduced here and produced under any or all of them as the case may be. But it would probably take some time to fix that and my suggestion is to adjourn now and take it up after lunch.

THE COURT: I will discuss that with you when we come back at a quarter of two. We will take a recess until 1.45. That does not mean any afternoon session. But something may come up at our conference which will need to be done in open court.

(Recess until 1.45 o'clock P. M., standard time.)

AFTER RECESS.

THE COURT: We will re-convene in chambers as if in open Court.

Now then, Dr. Gibbs, I will get you to make your inquiry if you wish to.

MR. GIBBS: For the purpose of the record, we desire to ask instructions. A question has arisen concerning the members of the committee, and Dr. Joyes has raised the question that he is going to act on this committee for a short time only, and then he is going to be replaced by Dr. Crossley. My understanding was not such, and I would like to have information concerning the subject.

THE COURT: That was not my understanding but that the experiment would be delayed until Dr. Crossley's arrival, which will be about 4 o'clock, for this reason, that even if the observers would be numerically balanced, yet the two would not see the same things yet it might in a sense be considered cumulative; so I think we will wait until Dr. Crossley arrives, unless you want Dr. Joyes to go through entirely.

Mr. Kresel: I think so. We had better have Dr. Crossley. Then we will wait until he arrives and Dr. Joyes will not take part in it, and there is no reflection on him.

Mr. Gibbs: Then I understand your Honor, the only four people who are to be present are the experimentor, Dr. Bolton, Dr. Crossley and myself.

The Court: Dr. Bolton is going to be one of the observers for the defendant, and Dr. Gibbs for the Government and Dr. Crossley will be the other one for the defendant. The experimentor, Dr. Freedman, will be the other one for the Government. Now Dr. Alleman of Swarthmore, none of you observers take any part in the experiment. You simply see what goes on without making suggestions. If there is a departure from the patent, for instance, you permit it to go on, but make a note of those facts so that they can be testified to. There is no objection so far as I can see to the inquiry, I suggest this now, to see how it sounds, rather than to make sure of its being right—if some of you think that Freedman has inadvertently made a mistake in measurement or in temperature, I see no objection to anybody calling his attention to that omission. I think, though, on the contrary, all you observers had better keep still and let him make the experiment all by himself, and then let him testify precisely what he did do. That is, if he makes a mistake, let it pass, and let him make the experiment and you people take notice.

Mr. Anderson: I think the experimentor in a case of this kind should be allowed to carry on all three experiments at once. In other words, with one experiment, he can carry forward others. I notice in some of the cases they have as many as five, and in some, three. He can carry on all these experiments in his own discretion, as to a reasonable number of them.

THE COURT: I shall have no objection to that so long as it strictly follows the patent, because I assume it may be possible that one might go wrong for some reason and an accident come at the end of it, and then he would have to start all over again.

MR. ANDERSON: I understand that is the usual practice in such cases.

THE COURT: Then he may conduct as many as three experiments at the same time, if he so desires. What is the name of that acid—peruvic. At the same time, let him make that peruvic acid; but if he does not make the peruvic acid which he makes in his cinchophen experiment, he may use such as he desires in that.

MR. ANDERSON: He can use either as he may propose.

THE COURT: Yes.

MR. GIBBS: May I suggest the additional instruction that none of the observers be permitted to return or make any objections to any of the chemicals employed, on the ground that they were not sure as to the nature of the chemicals that Dr. Freedman employed. We are supposed to assure ourselves that the chemicals he uses are as stated by him.

THE COURT: No. That is not correct. You are all to know whether the chemicals employed by him are the chemicals called for by the patent, in quantity and quality, if I can put it that way—the quality called for by the patent, and the quanings, and as to the evidence which may be suitable or satisfactory to your Honor, I am perfectly willing to leave to these three gentlemen, their broad discretion, with the consent of the experimentor.

The Court: That will be entirely satisfactory. Unless it has been satisfactorily arranged with regard to the experimental laboratory, I prefer that you do it at the Swarthmore laboratory of Dr. Alleman.

Dr. Alleman: You understand that I do not know that we have everything you require, your Honor?

The Court: I understand that.

Mr. Bolton: I have a list of the apparatus.

The Court: You can take that up with Dr. Gibbs and you can take anything from the laboratory that you want that will supplement what Dr. Bolton wants.

Mr. Bolton: I think so, yes, sir.

The Court: Then I will leave it like that.

Mr. Bolton: Pardon me for interrupting you. I want to state it will be necessary for us to make arrangements if we work at the station, to have brought to us whatever food is necessary, and ask your indulgence to begin the work and stay with the experiments until finished. They may not be finished until tomorrow afternoon, that means working through the night, but that is entirely satisfactory to myself.

The Court: I think you had better go to Swarthmore.

Mr. Anderson: Any expense these gentlemen incur we will be very glad to deal with in the same manner as we have in other cases. We are quite authorized to incur expense, so far as we are concerned.

The Court: Yes, you can just let me know what that is, and that will be taxed as part of the costs, I mean to be allowed to you as part of the costs. Anything else I can do. Doctor, if there arises any doubt at any time, you just tell them what to do, I mean as to any detail that comes along.

Mr. Kresel: Dr. Crossley has arrived, they tell me. Come in, Dr. Crossley.

The Court: Now we are all here except Dr. Freedman, please bring him in.

Mr. Anderson: I think I may have stated this in the record, that Dr. Freedman is entitled, and it is his duty to the Court, to be satisfied that his materials, his equipment, and conditions of work, and all the other factors are to his satisfaction before he starts his work and during the time of his work, so that if he does not get his materials in time, he is at liberty to defer until he does get them. I think it was also stated here that he was at liberty to carry on three experiments at once, so that he should not have to start all over again if one failed.

The Court: And at the same time to make the peruvic acid for us at the same time.

Dr. Freedman: I will try to make that acid, your Honor. I require an iron retort. I will try to make it otherwise.

The Court: Do what you like about that.

Dr. Alleman: Dr. Freedman, we have a pot like this, that will hold two leaders. I wonder if this would satisfy your requirements? You can make an iron retort out of it quickly. It is not an ordinary iron retort. (Illustrating.)

Dr. Freedman: What is it made of?

Dr. Alleman: Cast iron.

Dr. Freedman: That is all right.

The Court: I would suggest before he begins, that Dr. Freedman is satisfied that he has everything and will not have to stop in the middle of it, because we might wonder why he stopped.

Mr. Anderson: Satisfy yourself, Dr. Freedman. You have everything ready before you go through, and you are not required to use this peruvic acid, or whatever it is that you make, if you can get it satisfactorily from some other source.

Dr. Freedman: I understand that.

Mr. Kresel: May I make this observation, your Honor: Dr. Crossley tells me that Dr. Freedman was with the Calco Company for two years, and of course during his employment he gained certain information which he ought not to be at liberty to divulge. Of course our understanding is that he is going to follow the patent.

The Court: Yes.

Mr. Kresel: Because as long as he follows the patent nobody can complain, and he is not divulging any information. I think that the observers should be instructed to observe carefully, so that if Dr. Freedman does deviate from the specifications in the patent, that they make proper note of it and report it to the Court.

The Court: How many copies of the patent have you?

Mr. Bolton: I have one.

The Court: Will somebody supply Dr. Alleman with a copy?

Mr. Kresel: Dr. Alleman ought to have a copy. I have a photostat copy in my bag which I shall give Dr. Alleman.

Dr. Alleman: Judge Morris, there is one thing: You made the suggestion that no one was allowed to enter this laboratory. We have a fire inspection every hour at night. We could seal certain rooms in that laboratory.

THE COURT: There is no difficulty on that score if you will point it out to the Marshal who will go along. Thank you very much, Dr. Alleman.

THE COURT: Mr. Stenographer, you had better note this: I understand from Mr. Kresel that possibly some of the cards which Mr. Christiansen handed to him this morning had been made public, and that you have no objection to anyone seeing those particular cards?

MR. CHRISTIANSEN: I have no objection at all.

THE COURT: Now then, can you separate those cards? There are certain other cards the contents of which have not been refused by you generally.

MR. CHRISTIANSEN: There are.

THE COURT: Can you separate those cards into those two classes?

MR. CHRISTIANSEN: I could if I had reference to my other data in the laboratory, which has a record of the experiments which I have incorporated in all my papers. I have thirteen papers out in the Journals and it would be a matter of little time to check through and find out which experiments had been put into them and which experiments had not.

THE COURT: How long would that take?

MR. CHRISTIANSEN: It would not take very long if I had my other——

THE COURT: You have not them?

MR. CHRISTIANSEN: I have not them with me.

THE COURT: We are trying to get through on Monday and we must get through on Monday.

MR. CHRISTIANSEN: Your Honor, the experiments to which I refer are of no value as practical experiments. They are interesting from the standpoint of the theory of chemistry only.

Mr. Kresel: What experiments do you refer to?

Mr. Christiansen: I am referring to unpublished experiments. They are interesting from the standpoint of chemistry, and if I had a definite promise that the chemist who examines my work will never try to incorporate the results of those unpublished experiments into any paper which he publishes, I am perfectly willing he should have everything.

Mr. Kresel: May I ask a question? I am trying to get to an understanding. Is the unpublished part of your work the latter part of the work or the first part of the work?

Mr. Christiansen: Mainly in the latter part, but there is some scattered throughout all my work.

Mr. Kresel: I was thinking that I would forego examining your latter part of the work if you could release to me the stuff that you had really published. Cannot you by sitting down and looking over your notes, separate them?

Mr. Christiansen: I can do so.

Mr. Kresel: Substantially?

Mr. Christiansen: Substantially.

Mr. Kresel: Suppose we try that.

The Court: Do you see any objection to that, Col. Anderson? I am asking you now as an officer of the Court and not as counsel for the Government.

Mr. Anderson: I see no objection provided the papers that Mr. Christiansen gives do not carry any information which he has a right to keep confidential.

Mr. Kresel: He won't give me any such papers.

The Court: He is not to give any of such character.

Mr. Anderson: Whatever Mr. Christiansen feels that he can give without disclosing work which can be used otherwise or adversely to him or to his prejudice would be entirely agreeable, it seems to me.

The Court: I understand from Dr. Christiansen that the work that he has done is not of a kind which would benefit a manufacturer, but he does not want some other chemist to come along and claim the credit in published articles for the work which he has spent many years in working out.

Mr. Anderson: If the cards or statements on which those experiments which had been published are contained, do not contain information of a technical character or technique which would enable some other chemist to avail himself of them and work out an article which might look like an original discovery, which seems to be his objection, then I see no reason why he should not give those cards; but if they do, I think he is entitled to protection.

I think that Dr. Christiansen made clear he is not concerned with the manufacturing part; it is only the plagiarism.

Mr. Kresel: Suppose we try to do that right away.

Mr. Christiansen: Certainly.

Mr. Kresel: I think we can get through that in a very few minutes.

The Court: While that is being done, suppose you and Dr. Christiansen go in here? (Here Mr. Kresel and Mr. Christiansen went into the other room.)

The Court: Now, let the record show this: That Dr. Christiansen has now handed to Mr. Kresel only those cards which contain information already made public. It is therefore unnecessary to impose any restriction upon the person with whom Mr. Kresel confers in connection with those cards. That is correct, is it not, Dr. Christiansen?

Mr. Christiansen: Yes, sir.

The Court: You have given him practically all of them, keeping out only about half a dozen; is that right?

Mr. Christiansen: I just kept a very few experiments that I could say——

The Court: You have given him the vast majority of the cards?

Mr. Christiansen: Yes, sir.

Mr. Kresel: Yes, sir.

The Court: There are no restrictions?

Mr. Kresel: I am entirely satisfied, and I am willing to say that Dr. Christiansen has been frank and open with me about it.

The Court: You may confer with any person you please, Mr. Kresel. Thank you very much, Dr. Christiansen.

Now, another matter. The Calco Chemical man—will you come in? (Here Mr. King entered the courtroom.)

Now, with regard to the matter which was just touched upon by Dr. Crossley a moment ago, namely, that Dr. Freedman had acquired certain information from his association with the Calco Chemical Company, was mentioned, and when I went across the hall a minute ago this gentleman here told me he was a director of the Calco Chemical Company and wanted to know what was going on.

Mr. Kresel: What is the gentleman's name?

Mr. King: I am Mr. King.

The Court: Will you give that a moment's reflection, Colonel Anderson?

Mr. Anderson: Dr. Crossley is chief chemist?

Mr. King: Yes, sir.

Mr. Anderson: I am inclined to think that is sufficient for the Calco Chemical Company, and if it needs anything, and if any information is given in any way, Dr. Crossley can communicate it and it cannot be objected to.

The Court: I am inclined to that same view.

Mr. King: May I say a word, your Honor?

The Court: Yes.

Mr. King: My reason for asking permission your Honor and gentlemen, is that I am really the only man who is competent to know whether Dr. Freedman is going to employ any of the methods of manufacturing operations which are ours. He was in our employ for a while, and may have learned some of them, and this fact has brought me here.

The Court: That is laboratory work.

Mr. King: Quite so, but the methods employed in the factory may also be employed in the laboratory, and they may not be described in the patent. To a person familiar with them, they may not be observed right away, and my real object is to observe just that. I have no other object, because Dr. Crossley is quite as competent as the rest of us.

The Court: You mean that Dr. Crossley is not familiar with these particular things?

Mr. King: I am very much more familiar with them than he is. The manufacturing operations are under my directions.

Mr. Knight: Are you a chemist?

Mr. King: Yes, sir.

Mr. Knight: Will the defendant substitute you for Dr. Crossley? I only make the suggestion.

The Court: Mr. Kresel may select whosoever he pleases.

Mr. King: I do not want to replace Dr. Crossley by myself, but I want to observe that feature of it, if I might.

The Court: My thought is that we are getting into a collateral thing. We want to protect him, and I am going to protect you as far as I can, but I think as to whether you or Dr. Crossley goes on that, you can confer with Mr. Kresel, and that is his affair and not mine.

Mr. King: I see. Can we decide that later?

The Court: You can decide that any time and you do not have to confer with me. Now, Mr. Kresel, your memorandum will authorize the substitution so far as the Marshal is concerned and so far as Dr. Alleman is concerned.

Mr. Kresel: Certainly. If you will wait outside, Mr. King, I will see you.

Mr. Anderson: Of course, it will be understood that he is to begin from the beginning if there is any substitution.

The Court: There is no substitution after the experiment begins. That is right, is it not, Mr. Kresel?

Mr. Kresel: Yes.

The Court: Now, the other thing was salvarsan.

Mr. Anderson: The suggestion was made this morning that we would probably ask for salvarsan to be made by two separate chemists under the patents.

Mr. Kresel: Two separate chemists representing the Government?

Mr. Anderson: Two separate chemists experimenting. One who has been on the stand is Mr. Christiansen, and the other will go on the stand on Monday morning, Dr. Myers of the Public Health Service and now with Mr. Metz.

Mr. Kresel: That is all right; I have no objection. On the contrary, I will welcome it. Now, Dr. Christiansen thought it would take him three days to make an experiment starting with the intermediate already prepared. What suggestion has the Government as to when and how this is to be undertaken?

Mr. Anderson: I think it will be impossible to finish the experiments before the conclusion of the case. Therefore, my suggestion would be that which the Court embodied in the original suggestion, that the experiments be made here under regulations which the Court would impose, substantially along the lines that we have been discussing the others, and that at the conclusion of those experiments the results be taken in evidence at a time convenient to all concerned at any time before the argument.

Mr. Kresel: My suggestion at this minute would be that your Honor allow this matter to stand over until Monday morning. I should like to think about it. I may have some suggestions to make, with the understanding that your Honor will give us directions about that before we conclude on Monday night.

The Court: Very well. It seems to me that in connection with the salvarsan patent I might be helped a little by those experiments, and I was about to say in a particular way. I think I will; and that is this: So far as I can see from the evidence so far in the case, there are only three things to be particularly looked out for in order to produce probably a useful product, a product that may be used.

Now then, it seems to me that it is a question whether anyone using those three things will produce a useful and safe product. A person not using them might not, and I assume that any person who would make it would use those three steps, and that you would contend that they were necessarily implied from the patent and would be known to a person skilled in the art, while I assume Mr. Kresel's position is the contrary. Consequently, I am wondering whether, while the evidence rests just as it is so far as salvarsan is concerned, an experiment is going to help me, except this: that it might be interesting to have Dr. Christiansen manufacture a safe product from an impure intermediate. Now, that would be instructive for me.

If he takes a pure intermediate, then there are only two steps in addition, so far as the testimony now reveals to me. I will be curious to see whether he puts them in or not, as the testimony now stands, and I suspect, therefore, Colonel Anderson, it would be better to leave this question until Monday morning, so that you can think over just what I have mentioned, and also until after you have had Dr. Myers testify. Do you see any objection?

Mr. Anderson: It is agreeable to me. It was stated this morning, and your Honor suggested that you would consider that question before or after adjournment. I brought it up at this time so that it might be disposed of, if your Honor wished, and in that connection I would not only suggest that we would make salvarsan, but we would have it injected into white rats to be brought here under the same conditions, and test not only its chemical conditions, but its physiological effects on animals in accordance with the tests of the Public Health Service.

THE COURT: If it can be done, omitting the three steps. You recall the three to which I refer?

MR. ANDERSON: Yes, sir.

THE COURT: If you have anybody who can do that, omitting those three steps, I think that might be interesting; but if he is going to make the experiment following the patent by taking those three steps, which you probably contend are necessarily implied, and Mr. Kresel not implied, then we do not get anywhere from the experiment, do we? It goes right back then as to whether those steps are implied or not and known to one skilled in the art. Do you see what I mean, Mr. Knight?

MR. ANDERSON: I do not for the moment recall them all, because it is very confusing.

MR. KNIGHT: I think, if your Honor please, that those things can best be determined, like all other matters concerning technique, by an actual view of the thing. You get really a better perspective of these things by seeing the thing in operation.

THE COURT: But I do not get a chance to view it.

MR. KRESEL: Mr. Hershkopf makes a suggestion which I rather think well of, and I am going to make to all present here. Why does not your Honor select a chemist of good standing, who has had no connection with this case, who does not know what the testimony is, who has never made salvarsan, and let him try to follow the patent and see where he gets.

Of course, Dr. Myers, if that is his name, who has been with Metz for three years, or Dr. somebody else who has been with another concern, who has been making salvarsan for three or four years, can today, with the knowledge that they have obtained, and with Dr. Stieglitz's testimony before them, I assume, make salvarsan; but that would bring us nowhere.

Mr. Anderson: If the Court please, there is just the point. The question is whether a person skilled in the art can make salvarsan. Now, this gentleman Mr. Christiansen—I do not speak of Dr. Myers at all—has made salvarsan, according to his testimony, and is prepared to make salvarsan before the Court from following the patents. He is prepared to test it and bring assistants here who tested it under his direction on white rats, and test this salvarsan by the test of the Public Health Service.

If I may suggest, that seems to me to be a pretty good way to find out whether salvarsan can be made under this patent. There are many chemists, chemists who may be the ablest chemists in the world, who are not experienced in this particular instance, just as they might call me on a criminal law case in West Virginia and I could not testify with effect, but if they called me on a corporate law case, I could testify satisfactorily; the same way with chemists. It is a specialized business. A man is supposed to be skilled in the art of doing this and that particular branch of chemistry.

The Court: I am going to let you make the experiment, that is, the demonstration, if you want to.

Mr. Anderson: I shall be glad to think it over until Monday.

The Court: I only mention these other things but is not this the position: I have been in the habit of putting all my cards on the table all the way through, so far as I have reached any conclusion, but I have a notion of this kind, Colonel Anderson, that I think it may be reflected in the Coca-Cola case, that to take a transaction you pretty nearly always have got to take the setting as of them; that is, you take a contract or you take a statute, for instance, take the Civil War statute, and if you do not put in Civil War history, but, leaving out that history, try to see what that means, I doubt if you can.

Suppose you take the transaction with respect to the salvarsan patent. It seems to me that the testimony you offered this morning of Dr. Gibbs, if his recollection is substantial, may furnish a part of the setting. It does not furnish all the setting. The testimony which you read from Dr. McCoy's testimony before the Winslow Committee is a part of the setting, showing the facts and the circumstances and the atmosphere under which this took place.

The point of all this talk is that while I am glad to have, so far as I am concerned at the moment, half a dozen chemists say they can make salvarsan according to that patent, yet I am wondering whether the sum total of such testimony will weigh much unless it be shown that it was so recognized, generally speaking, at the time of the sale.

It seems to me to be going a step further. I mention Dr. Gibb's testimony as it seems to me of some importance as to what he said to Mr. Garvan, and it seems to me there is testimony equally as important if not more important in Dr. McCoy's testimony before the Winslow Committee, that there was a general understanding throughout the country that it would not work.

Mr. Anderson: I do not think Dr. McCoy said that.

Mr. Kresel: Yes, he did.

The Court: I do not mean to state it as strongly as I probably did; but as having that tendency rather than stating it absolutely. If we receive the testimony of these chemists and they say that it will work, and they demonstrate it, I would not be surprised if we could get a number of chemists now who could demonstrate it. You know, it is common in patent law that after a thing is done, Mr. Knight, there are plenty of people who can do it after somebody else has and told them how. I think the general impression in the art at the time of the transaction is also of some help to me. I do not know whether it would be to any other court, but it is to me.

Mr. Knight: It seems to me, your Honor, that a good part of the consideration here has been as to what might be called, if we come to see these experiments in process, or the reports of them, that they may involve differences in chemical technique. Now, one chemist will follow one technique and another another technique, and it seems important to see whether one has employed an especially favorable technique. Another one may have a different technique and may have quite a different slant on the things which a chemist will naturally, according to his own idiosyncracies, follow. But if I remember rightly, Dr. Myers talked about what he had done while he was with the Public Health Service, and he made a certain series of tests and manufactures in a laboratory of this drug, and if he should duplicate it, if that is what this calls for—I am not quite sure; I have not worked that out—if he should really duplicate what he did with the technique he then used, then it will appear from the reports of such experts as your Honor assigns to it, what was done and whether Christiansen or Myers did anything unusual at that time; whether, in other words, there is such a departure from the bare bones of the patent as to call for special comment.

THE COURT: Yes, but then you get into this difficulty Mr. Knight: If the manufacturers of the country were attempting to produce a product and the Public Health Service—I am only giving you the thoughts that occur to me at the moment—and the Public Health Service found it necessary to put the standard down at a certain time, say, to sixty milligrams——

MR. KNIGHT: Fifty is the lowest.

MR. KRESEL: As low as fifty.

THE COURT: That in itself possibly carries some weight. So I am not just sure. I would like to have your view.

MR. KNIGHT: Those exact facts may also come out, and as a result of these experiments, it may lead to something of that kind.

THE COURT: I am glad to have the experiments.

MR. KNIGHT: You would get light from them, your Honor. I do not know how they will come out. A man always goes into these experiments with fear and trembling, because anything may happen; but the Government would like to demonstrate.

THE COURT: I think the Government has the right. The defendant says it can not be done and it is easy to make a failure.

Mr. Knight: We want to have the opportunity to do it.

The Court: You may have it. I will arrange the time on Monday at the close of the testimony.

Mr. Anderson: Very good, sir. Any time at your Honor's disposal.

Mr. Kresel: The curious feature to my mind is the United States Government and its Public Health Service and its laboratory found that salvarsan could be made so easily that the country was permitted to starve for salvarsan, and the United States Public Health Service went around and testified before the committee that nobody knew how to do it.

(Whereupon, at 3:00 o'clock P. M. standard time, adjournment was taken until Monday, July 23, 1923, at 8:00 o'clock A. M. standard time.)

(Continuation of session July 23, 1923.

Mr. Anderson: I would state to the Court that last Friday or Saturday, counsel for the defendant requested Dr. McCoy to bring here certain data. He was under cross-examination at that time. Dr. McCoy is in Court and I would like to get as many cross-examinations out of the way as I could, before I take up other witnesses. In the second place, I will state that Dr. Gibbs is under cross-examination, but he is otherwise engaged under your Honor's orders. I would like to ask in that connection what time your Honor is going to take a recess for luncheon today. Of course, I understand we are going to sit right through.

The Court: Can we shorten the noon recess to an hour?

Mr. Anderson: I will be very glad to.

The Court: We will take a noon recess in half an hour, at 12 o'clock standard time.

Mr. Kresel: As far as Dr. McCoy is concerned I have no desire to further cross-examine him. If he has any documents, I would be glad to look at them. I will do that in a little while. I do not want to do it now.

PAUL A. BLAIR.

Paul A. Blair, was called as a witness on behalf of the plaintiff, in rebuttal, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Mr. Blair, state your full name and place of residence.

A. Paul A. Blair; residence, Washington, D. C.

Q. 2. What is your profession?

A. Patent Attorney and more especially representing the Bureau of Ordnance, Navy Department.

Q. 3. You are connected with the Navy Department?

A. To the above extent.

Q. 4. Are you a brother of Mr. Blair of the firm of Emery, Varney, Blair & Hoguet of New York?

A. I am his brother, but he is no longer connected with that firm.

Q. 5. Was he connected with it in 1919?

A. He was.

Q. 6. In 1920?

A. Yes.

Q. 7. There has been introduced in evidence here a letter dated January 23, 1920, from you to the Chief of the Bureau of Ordnance and it was introduced by the defendant as Defendant's Exhibit 86 I think. The instrument is called a Release and License from the Chemical Foundation to the Navy Department, which appears to have been executed on the 17th day of November, 1921, with a statement of acceptance thereon by Theodore Roosevelt, Acting Secretary of the Navy, December 1921. Can you state if you had anything to do with the negotiations in connection with that license and with whom?

Mr. Kresel: To that I object on the ground that it is immaterial and irrelevant. If there were any negotiations they are merged in the final instrument. The testimony is therefore incompetent.

The Court: I will hear you, Colonel Anderson.

Mr. Anderson: There may be some ground for the objection. I was hoping that it would not be made because of the fact that I had arranged and expected to bring the evidence in, as counsel understands, by another witness entirely who has not been called. I will not go into the circumstances. I think that in the circumstances of this case, the conditions under which this license——

The Court: Are they pleaded in the Bill?

Mr. Anderson: No, sir. The license is not pleaded at all in the Bill. It is a matter brought out absolutely on defense. There is no reference to it in the Bill. It is a matter of defense pure and simple. Therefore, I think the conditions surrounding the granting of the license and the negotiations connected therewith are relevant under the peculiar facts of this case. I think that is all I have to say about it.

Mr. Kresel: I do not know what peculiar facts counsel is referring to. Here is an instrument made between the two parties to this suit. It sets forth the conditions. They can not be varied by any external testimony and therefore this witness can not be permitted to testify as to what the negotiations were.

The Court: I do not know of any ground on which I could accept his answer. It seems to me the objection is well taken. If you have any authority on which you stand in asking this question, I will be glad to see it and will be glad to have you refer to it. I do not think of any at the moment.

Mr. Anderson: My purpose in asking the question is to prove by this witness that the negotiations——

Mr. Kresel: If your Honor please, I do not think it is proper for counsel to put it on the record.

Mr. Anderson: I think I have a right to state my purpose under Rule 46, your Honor having sustained the objection, to the end that your Honor may better understand my purpose.

The Court: I will hear the purpose and then I will hear you, Mr. Kresel.

Mr. Anderson: My purpose is to show that the negotiations granting to the Government this license were taken up as between the Chemical Foundation and the Government with or by and at the office of Mr. Hoguet, New York. Whether that circumstance, taken in connection with other circumstances, would have any bearing in this case, I do not now desire to argue because the evidence is voluminous and I have not had a chance since Saturday to go over more than the evidence taken on Saturday. It seems to me under the facts and circumstances of this case which need not be recited, and with which your Honor is familiar, that that evidence is material. I have stated to your Honor as frankly as I can that I recognize under ordinary conditions the rule invoked by counsel applies, but I think the conditions here are such as to take it out of the rule. Your Honor is as familiar with those conditions as I am.

THE COURT: I still do not see the relevancy of that fact. The objection is sustained.

MR. ANDERSON: Your Honor will allow me an exception?

THE COURT: Yes. Furthermore, I think it is not proper rebuttal. It is neither relevant nor in rebuttal, as I understand it, Colonel Anderson.

MR. ANDERSON: If your Honor will permit me, we certainly did not have anything on direct on the question of licenses, because it was introduced in the defense.

THE COURT: If it has any bearing in any way whatsoever, it must be an element in the charge of conspiracy; and you can not split your evidence with respect to the conspiracy. So that if this is a point in the conspiracy, it ought to have been put in in chief and not in rebuttal. It is not in answer to anything that has been brought out as far as I know.

MR. ANDERSON: May I suggest, sir, that I suppose the license in question is pleaded as an estoppel by the United States, which is an affirmative defense, and therefore a matter which we ought to have the right, I think, to reply to?

THE COURT: Do you contend that that would invalidate the license?

MR. ANDERSON: No, sir, I am not concerned with that at all. I do not think as a matter of law it can be revoked. But I think, as long as it is invoked here as an estoppel, the circumstances surrounding it should be shown.

THE COURT: Do you contend that this evidence which you now offer would tend to show that the license is invalid or void?

MR. ANDERSON: I would not say that that would show that the license is invalid and void, but I would say that there are circumstances surrounding it that might make it invalid or void. The only reason, I take it, that the license has been introduced in evidence, this great voluminous paper, is to claim that the United States Government is estopped in the question of this sale. This paper was produced for the first time on defense, and if we can not reply now, we would never have a right to say anything about it at all.

THE COURT: I ask you what is the legal purpose and your contention as to the legal effect of the evidence which you offer.

MR. ANDERSON: To show that under the circumstances of this case, even if there could be an estoppel upon the Government of the United States, that this paper would not operate to estop it.

THE COURT: I do not know why yet. It may be fraud, accident, mistake, or something else. I have not my attention directed to the particular matter unless you point it out to me; and that is what I am asking you to do.

MR. ANDERSON: My view is this, that if this instrument which is introduced in evidence is introduced as an estoppel, and it appears in connection with other evidence in the case that it was negotiated and given to the United States of America under circumstances which indicated a desire to use it as an estoppel, it would very seriously affect its value for that purpose, assuming that in law it could operate as an estoppel.

The Court: I am afraid I cannot get it very clearly, so I will stand by the ruling and the objection is sustained. Your exception was noted.

Q. 8. Mr. Blair, do you know Mr. A. M. Holcomb, Major Holcomb, so-called?

A. I have known Mr. Holcomb for approximately six years.

Q. 9. Did you know him during the war?

A. I met him very early during the war.

Q. 10. He was connected with the War Department, Patent Division, during the war, was he not?

A. He was.

Q. 11. Do you know where he has been since he left the Army?

A. He has been the Washington representative of the firm of Emery, Booth, Janney & Varney of Boston.

Q. 12. Was he formerly before the dissolution of the firm of Emery, Varney Blair & Hoguet, a representative of that concern?

A. He also represented the New York office which is the same.

Q. 13. Which is the same thing?

A. Substantially, yes.

The Court: The New York office of what?

Mr. Anderson: The New York office of Emery, Varney, Blair & Hoguet.

Q. 14. Which is the organization or office of which Mr. Ramsey Hoguet was a member, is it not?

A. Yes. I might explain that there is the main office in Boston and a separate office in New York; a third office in Chicago and a fourth in Washington. Mr. Holcomb has charge of the Washington office.

Q. 15. Do you know about what time he took charge of the Washington office?

A. I should say some time during 1919, I believe.

Q. 16. Do you know Howard W. Dix?

A. I met Mr. Dix I should say about 1915, in the Patent Office.

Q. 17. He was also an officer of the Army, Ordnance Department, Patent Division, during the war, was he not?

A. He was.

THE COURT: This is in rebuttal of what, Colonel Anderson? I can not quite follow you and I will have to get you to tell me.

MR. ANDERSON: If your Honor please, I do not know directly that it is in rebuttal of anything except the conclusions which may be drawn from the general evidence—no specific statement I will say, however, that I had intended to put Mr. Hoguet on the stand on the affirmative case, to prove these facts on the record. Mr. Kresel stated to me, I think, in Court, that it was his purpose to put on Mr. Palmer, Mr. Garvan, Mr. Choate and Mr. Hoguet. Conditions arose subsequently which he explained to me, to my entire satisfaction, so that he could not put on Mr. Hoguet. Therefore, it became necessary to agree on those facts or I would be put in the position——

THE COURT: I knew nothing about that arrangement.

MR. ANDERSON: Of course, you knew nothing about that. I did not want to mention it, because it is one of those arrangements between counsel that I did not want to mention at all.

THE COURT: I do not understand how this is rebuttal. But if there is no objection, under the circumstances, it may be taken.

Mr. Anderson: I merely wanted to ask Mr. Blair those connections.

Q. 18. Do you know where Mr. Dix is now?

A. Not positively, but I think he has a separate office in the Woolworth Building.

Q. 19. Where did he go when he left the War Department?

A. He returned to Emery, Booth, Janney & Varney in New York.

Q. 20. And that was the firm with which Mr. Hoguet was then connected?

A. Yes.

Q. 21. That was in 1921?

A. Approximately that date, I believe.

Mr. Anderson: In the circumstances, sir. the objection having been sustained on this other point, I have no further questions to ask Mr. Blair.

Mr. Kresel: That is all, Mr. Blair.

Mr. Anderson: I wish to state to the Court that a few days ago, counsel for the defendant called on the Government to produce the original report of Colonel Joyes—I have forgotten his name—and the original report of Major Sill, supposed to be on file in the War Department. The request was communicated to the office of the Attorney General, with the request that he ask the Secretary of War to have the papers produced. I am advised by him that the Acting Secretary of War, the Assistant Secretary, Mr. Davis, declines to produce the papers, deeming it in the public interest, unless by an express order of the Court; the circumstances being such that he feels it is not in the public interest.

I may state that a similiar letter was received from the Secretary of State as to certain papers requested, which I think was communicated at the time; and so far as I know, all other papers asked for of the Government have been produced.

There was one other request of counsel for a copy of the report of Mr. Palmer to the President in 1918, a letter to him in regard to procedure, I think, with regard to alien property. The request was communicated to the White House and we are advised that a careful search has been made for the report and the same can not be found. There is no record of it that they can find. I would be very glad to produce that letter here. It came in this morning but I forgot to bring it over.

I am making this statement at this time because I have these matters in my notes here and I want to see if I have responded to all the requests counsel have made.

THE COURT: Do you press for an order with respect to Major Sill's report, Mr. Kresel?

MR. KRESEL: No, your Honor. Under the circumstances, if the Government feels that it is against public interest to produce those, I shall not press it.

THE COURT: That applies to the papers in the office of the Secretary of State as well?

MR. KRESEL: Yes.

MR. ANDERSON: I regret myself that it can not be done, sir, but I have done my best. I think in regard to the formal request at the Bar for cablegrams between Mr. Bradley Palmer and Mr. A. Mitchell Palmer and Mr. Garvan we have complied with that request. Is that not true, Mr. Kresel, so far as you know?

MR. KRESEL: Some such papers have been

handed to us. I have one that I am going to ask to put in evidence before we close.

Mr. Anderson: I will state to your Honor that I think it was in connection with some of those papers being transmitted between the Peace Conference and Washington that the Secretary of State wrote a personal letter to the Attorney-General, stating that he could not produce them. But all that they did produce we had brought up here by a representative of the State Department and copies of the originals made here and turned over to counsel. That is the best we can do under the circumstances.

The Court: I wonder whether you could not inspect those documents and, if they have any bearing upon any of the issues of this case or any evidence that the Government has presented, you could not make use of them without disclosing their contents. I will leave that entirely with you, Colonel Anderson.

Mr. Anderson: I shall be very glad, sir, at my earliest opportunity to look at those papers as far as they will permit me to see them, and report to the Court whether I feel an order should be entered to produce them, if they have any bearing.

The Court: No, I do not want them produced; but I do not think the Government of the United States in presenting its suit here, or any of the Executive Departments, should conceal from you information disclosed by those documents. I shall be perfectly satisfied with anything that you do with respect to this case, or any of the evidence in this case, after you have inspected them; but if they are supposed to be relevant and material I think you ought to inspect them. If necessary I will make an order to that effect.

Mr. Anderson: Insofar as the War Department is concerned, as I understand the law your Honor's order would apply. I do not know how far the records of the State Department even could be shown to me, because the President sometimes refuses to transmit them to the Senate even for Executive session, as your Honor knows. That question has been up in the past. I do not know the law on that subject, but whatever order your Honor makes I should do my best to comply with, that is all.

The Court: No, I will begin and stop here—that I think and am of the opinion that there should not be withheld from you in prosecuting this suit in behalf of the Government of the United States any documents or information which would be relevant or material to the issues of this cause. I do not go further than that because I feel confident that should there result from such disclosure a conviction on your part that your position should be modified in any particular, you will not hesitate so to modify it.

Mr. Anderson: Not in the slightest.

The Court: Consequently, I stand ready at any moment that I find any information is withheld from you by any Governmental department to make such order as will aid you in getting that information, or to make such disposition with respect to this suit as will enable you to know whether you want to stand on the evidence now in.

Mr. Anderson: The only information that has been directly withheld from me, sir, is the information which I have stated that the State Department and War Department have declined to produce in Court. Whether they would let me see it I do not know, but I think probably they would. The only other information is that of the Tariff Commission, which I asked for. One of the Commissioners came to Wilmington and explained to me that under the law as they understood it they could not even give it to me. I said that being true, I must get along without it. I do not think it was statistics in regard to dyestuffs and I do not know that it is so valuable that I could not conduct the case without it, although I was very anxious to get it. I declined to press the matter further because I felt if they held that view I would not use it.

THE COURT: You see, you agreed to present here after the first of August those official publications.

MR. ANDERSON: The official publications do not give all the information I wanted, sir, and the other was confidential.

THE COURT: Well, I hope you will try to see those documents.

MR. ANDERSON: I will do my best, if your Honor please. I would ask leave, if your Honor please, to clean up a few things before adjournment, because there is no use putting a witness on the stand and qualifying him and then taking a recess.

I would ask leave, if your Honor please, in connection with the statement from the testimony of Mr. George J. Roberts read by counsel for the defendant in the closing days of their case from the hearings on H. R. 10329 and Senate 3390 before the Committee on Military Affairs of the

House of Representatives in April, 1920, from page 95 of those hearings, to read a sentence in addition to what counsel read. Counsel read a statement which I will not re-read, as to the negotiations between Mr. Roberts and certain private interests, to take over Nitrate Plant No. 1 To that I now refer. The closing part of the paragraph is as follows:

"An effort was also made to get certain financiers in New York to undertake to form a company to operate these plants. Scant consideration was given to the claim and no investigation undertaken. An appeal was likewise made to the coke oven interests with the same result."

There counsel stopped. The additional sentence appears in the same paragraph, as follows:

"There seems to be a decided antipathy of capital to engage in any partnership arrangement with the Government."

That is explanatory.

The remaining documents which I wish to introduce here, which are merely supplemental to what was put in by counsel for the defence, will require some little time, and in the order of the record I should very much prefer to put them in at the conclusion of the case. I am confident, unless something unusual happens, that the case can be concluded at some reasonable hour either this afternoon or this evening. Therefore, as it is now twelve o'clock, I should like an adjournment at this point instead of going into something else.

Mr. Kresel: May I inquire how many more witnesses the Government will call?

Mr. Anderson: Possibly two or three. It depends upon whether some of them can get here in time to be called today. We are trying to get them. If we cannot, why we will stop and close as best we can; and the other points that we discussed on last Saturday I will ask leave to take up later. At the present time, if it is convenient to the Court, I would like to take an adjournment to the end that I may not break in on some other line of questioning.

Mr. Kresel: I understand that they are ready to report on that other matter. Does your Honor want to take it up now?

The Court: Report on what?

Mr. Kresel: On this experiment.

The Court: We will take that up after recess. Recess for one hour.

(Recess.)

AFTER RECESS.

Mr. Anderson: Is it now your Honor's pleasure to take up the experiment made under your Honor's direction?

The Court: Yes. Let Dr. Freedman take the stand.

Mr. Anderson: Before he takes the stand, if your Honor please, I would like to ask leave to substitute the reprint of the article by Dr. Christiansen, for the copy offered from the books this morning.

The Court: Let the substitution be made.

Louis Freedman, resumed the stand.

RE-DIRECT EXAMINATION.

By **Mr. Anderson:**

RDQ. 191. Dr. Freedman, on Saturday the Court directed that you should, in the presence of chemists representing either side and one appointed by the Court, undertake to make cinchophen under the patent, which you have seen, and to which you referred in your testimony. Have you carried out the Court's instructions in that regard?

A. I have.

RDQ. 192. Please state where the experiment took place?

A. The experiments took place at the Hall of Chemistry of Swarthmore College, Swarthmore, Pennsylvania.

RDQ. 193. Please state when you began your work?

A. I began my work Saturday night at approximately ten o'clock. It continued till about midnight, and the work consisted in preparing some of the laboratory equipment, getting ready for the actual experiment. The actual experiment started at seven o'clock Sunday morning and continued until 5.30 this morning.

RDQ. 194. Monday morning?

A. This morning, Monday morning, and then tests were made on the products from eight this morning until 11.30.

RDQ. 195. The record shows that the Government nominated Dr. H. D. Gibbs, who has testified in this case, as a chemist to observe your work in behalf of the Government; that the defendant nominated Dr. Bolton and Dr. Crossley, both of whom have testified in this case, to observe on behalf of the defendant; and the Court appointed Dr. Alleman, of Swarthmore College; and it was required that the experiment should be conducted under the supervision of the United States Marshal or his Deputy. Were these gentlemen present during the period of your experimental work all the time?

A. The gentlemen you have enumerated were all present.

RDQ. 196. At all times during the work?

A. Yes, sir.

RDQ. 197. Did you obtain anywhere, from New York or elsewhere, as you indicated a desire to do, the ingredients or intermediates to use in making this cinchophen?

A. I did, I obtained them from New York City.

RDQ. 198. By special messenger?

A. By special messenger; yes, sir.

RDQ. 199. The Court directed that you should make one of the ingredients or intermediates, which has been called here pyruvic acid, if I recall correctly. Did you undertake to manufacture that ingredient in the laboratory?

A. I undertook to manufacture it; yes, sir.

RDQ. 200. The Court then directed that you should make, following the process outlined in the patent, as to which you testified, cinchophen under the direction of these gentlemen. Did you undertake to do that?

A. I did undertake to do that.

RDQ. 201. I will ask you if the laboratory material furnished by Swarthmore College, I mean equipment now, under the direction of Dr. Alleman, was suitable for your work?

A. They were as suitable as I could expect under the circumstances.

The Court: You were satisfied with them before you began your experiment?

The Witness: Yes, sir; excepting, your Honor, the capacity of the iron still. It was a little small, but as I could find no other to do the work, I undertook to carry out the experiment in that still on a smaller scale.

RDQ. 202. Doctor Alleman, who was in charge of the laboratory, extended to you every courtesy and facility that he had, did he?

A. Dr. Alleman did yeoman service in extending to me every facility that he could.

RDQ. 203. Did you work steadily at this experiment from Sunday morning—at what hour did you say?

A. At seven o'clock, approximately.

RDQ. 204. Until five o'clock the next morning?

A. 5.30. Yes, sir, the time taken out for eating.

RDQ. 205. Did you sleep any in the meantime?

A. No, sir.

RDQ. 206. I believe you said that you are to be married on Tuesday night?

A. Yes, sir.

RDQ. 207. You facilitated this work in every way that you could, did you?

A. I did; yes, sir.

RDQ. 208. Now, I will ask you to state what you did and what was the result? If you have any notes of your work before you, you can refer to them.

A. The first experiment in the preparation of cinchophen I started at 8:15 A. M. Sunday morning. I added the ingredients as directed in the patent and carried out the reaction as directed in the patent, according to the time and the proper means given in the specifications of the patent.

I started the second experiment for the preparation of cinchophen shortly after the first was started, while the first was still in operation. In the first reaction I used chemicals which were sent to me from New York, my own. I used the—

> Mr. Anderson: One moment, if your Honor please, this witness has had no sleep since the little sleep he had Saturday night. I would ask, therefore, that every consideration be shown in testifying, as I know your Honor would be only too glad to do, that he may go slow. He is under very great strain, of course.

THE COURT: He may.

RDQ. 209. Now go ahead, Doctor, speak slowly, and take it easily under the direction of the Court.

A. In carrying out the first reaction, I used the re-agents that were sent to me from New York, including pyruvic acid, which I found to be desirable and of good quality. In the first reaction, the quantities carried out were exactly what is given in the patent. In the second experiment, the quantities were exactly as given in the patent, but they were proportionately cut in half.

RDQ. 210. Proportionately what?

A. Cut in half, which under the patent, I had the right to do. In the second experiment, at the suggestion of Dr. Alleman, and in agreement with the other observers, I used his re-agents—his re-agents.

RDQ. 211. Name them, please.

A. Benzaldehyde, aniline oil.

RDQ. 212. Yes.

A. And cologne spirits.

RDQ. 213. Go ahead.

A. On the question of pyruvic acid, which was a second sample also sent to me from New York, but which was not of the same quality as the first, and which I used without rectifying, as it was inexpedient for me to rectify that intermediate, due to the fact that time was lacking and it would have necessitated the stopping of the manufacture of pyruvic acid by changing pumps, and I would not have had time to manufacture pyruvic acid if I had taken the time to rectify that substance; I therefore went ahead and used it as it was.

RDQ. 214. Yes. Now follow through the steps which you undertook, and first, you might take up pyruvic acid, and follow the steps which you followed and tell us what you got.

A. Yes, sir, in the first reaction—

RDQ. 215. You are speaking of pyruvic acid?

A. Yes. Pardon me, did you say the manufacture of pyruvic acid?

RDQ. 216. No. I am speaking now of your manufacture of pyruvic acid; suppose you take that first and say what you did get.

A. Well, I am not yet through with cinchophen.

RDQ. 217. Go ahead and finish your way.

A. The first reaction was completed entirely at 1:40 P. M.

RDQ. 218. On Sunday?

A. On Sunday, yes, sir. The crude product obtained was isolated and experiments were immediately started by me for purification of this product by the methods known to me.

RDQ. 219. Were they methods known generally?

A. Methods known generally and methods which I obtained in my chemical experience. This purification method was not disclosed in the patent.

The Court: What does the patent say on that point?

The Witness: It says the product is then purified in the known manner.

RDQ. 220. Very good. Go ahead. What result did you get as the result of the first?

A. As the result of that reaction I obtained a crude product which gave me a net weight of 1.84 grams.

RDQ. 221. What purified product did you get?

A. The purified product which I obtained was a product which, from my experience I recognized as cinchophen.

RDQ. 222. What yield did you get?

A. The yield was 67 grams. This product had a melting point of 210-1-2 degrees to 211 degrees Centigrade. It darkened slightly at 197 to 200 degrees Centigrade and softened at 205 to 206 degrees Centigrade.

In testing with ammonia, it gave a slight opalescence. This compound at the present time, I will say, is not a first grade marketable product; but if time had permitted me and my physical condition had enabled me, I could easily have made this a highly marketable product within one hour's time, with the loss of four to five grams at the most.

RDQ. 223. Could you have done that by known methods?

A. By known methods; yes, sir.

RDQ. 224. Have you completed your statement as to the first experiment?

A. No, sir; not yet.

RDQ. 225. All right. Finish it.

A. I also took one of the alcohol mother liquors from the first experiment and obtained by suitable means from that mother liquor 15 grams of crude material, to prove my contention that the mother liquors contain additional cinchophen which can be obtained by suitable means after the product is purified; that is, after the main product is purified.

RDQ. 226. When you speak of suitable means, are those means known to those skilled in the art?

A. They are, to those experienced in that work.

RDQ. 227. Have you finished yet?

A. Yes, I have.

RDQ. 228. That is your first reaction?

A. That is my first reaction.

RDQ. 229. What was the product that you obtained as a result of that experiment under the patent?

A. The product which I obtained in the experiment under the patent was cinchophen.

RDQ. 230. You spoke of the second experiment with the mother liquor. Did you in fact obtain cinchophen from his experiment with the mother liquor, in addition to that which had resulted from the original crystallization or operation?

A. I did not test this product, but I know it from my experience to be a crude cinchophen.

RDQ. 231. I neglected to ask you, Doctor; have you made any cinchophen yourself since 1918?

A. Since 1918, I have made no cinchophen.

RDQ. 232. You did not have with you any of your laboratory notes, anything of that kind, did you?

A. Except in the manufacture of pyruvic acid.

RDQ. 233. Before we come to pyruvic acid, I will ask you to take the second experiment, which you said you did with a pyruvic acid which was produced in New York, which was not of the same grade as that used in the first experiment, and explain to the Court exactly what the circumstances were, follow through the details and give the result.

A. In the second experiment, which was started at 8:45 A. M.—

RDQ. 234. Sunday morning?

A. On Sunday morning, I used the same parts by weight as given in the patent, but I took half of the proportional amount of each ingredient named, as the patent stated the parts by weight. I carried out the reaction according to the patent substantially as the first reaction was carried out. The reaction was completed at 1.54 P. M., Sunday. This reaction gave me a darker crude product and material which from appearances did not look so fine as the first crude product.

RDQ. 235. Are you prepared to say to what that is to be attributed?

A. I believe that is attributable to the pyruvic acid.

RDQ. 236. Proceed. Did you test that product and crystallize it, or what was necessary to bring the result?

A. No, that product was purified first.

RDQ. 237. By the same method employed in the other case?

A. By substantially the same method as given in the first. There may have been little variations of time when each step was done, but substantially the method was the same.

RDQ. 238. And what did you get?

A. I obtained cinchophen.

RDQ. 239. As to the grade, have you anything to say. I believe you said it was not as good a product as that obtained in the first experiment?

A. The crude product was 79 grams net, and on final purification the yield was 17.8 grams. The compound melted at 211 to 212 degrees centigrade fairly shortly. On testing with ammonia, it gave no opalescence, showing that the product is a good, marketable product.

RDQ. 240. What would you call the product which was produced?

A. Cinchophen.

RDQ. 241. Did you have any trouble in either of those experiments with any of the apparatus used, or any accidents of any kind?

A. No, sir, not in those experiments.

RDQ. 242. Is that all you have to say or can think of in giving the Court the facts as to the first and second experiments for making cinchophen, beginning with the pyruvic acid?

A. I just wish to modify that, in the second experiment I was working with smaller quantities, and in the purification when working with small quantities the loss was considerably greater proportionately than when working with larger quantities; and consequently, my yield was cut down considerably. But the substance cinchophen can still be obtained from the mother liquors, as I have shown from Experiment 1. Those mother liquors have all been placed in the custody of the Marshal, and they are at the liberty of the Court.

RDQ. 243. In the event that the Court so desires, could you return here say in two weeks and complete the analysis of those?

A. I can, yes, sir.

RDQ. 244. The Court allowed in its order that you should make three experiments. You only made two?

A. I only made two, yes, sir.

RDQ. 245. Why did you not make the third?

A. I did not make the third because time did not allow me to. I was running three experiments, two on cinchophen and one on pyruvic acid, and I am only human; I cannot tear myself apart. I was on my feet all day, running from one bench to the other, and it was not humanly possible for me to take care of more than the work I did.

RDQ. 246. Did you suffer from physical or mental weariness during the conduct of these experiments?

A. Well, I suffered temporarily. I do not expect any permanent injury. I was very weary as you might expect.

RDQ. 247. Now, Doctor, take up the pyruvic acid and state what you did in the production of that acid.

THE COURT: Let me inquire as to when these experiments began.

By THE COURT:

Q. 248. They began at 7 and 8:45, and ended when?

A. The actual experiments began at 8:15, the first, and ended at 1:40 P. M.—that is, the reaction itself. The purification was done as I could find time in the interim.

By MR. ANDERSON:

RDQ. 249. But you were working steadily from 7 until 5 this morning, were you?

A. Absolutely, yes, sir, until 5:30 this morning.

RDQ. 250. If you have nothing further to add, and the Court desires no further questions about that, I would be glad if you would tell the Court just what you did in the matter of making the pyruvic acid which the Court directed you also to make.

A. The equipment which I had at my disposal under the kindness of Dr. Alleman was a vacuum pump, which on testing on the line gave me 25 or 26 inches of vacuum, which was suitable for that first part of the experiment—I do not know how it would have worked for the other because I did not try it—and an iron retort of approximately two liters capacity. The ingredients which I used were 180 grams of potassium bitartrate and 345 grams of potassium bisulphate. They were mixed in a uniform mixture and deposited in the retort, the retort sealed, and the retort heated in a methyl bath which was prepared for me by Dr. Alleman with the aid of some of the other observers. The methyl bath was heated on a free flame and the distillation was begun, starting suction. A short time after the beginning of the reaction, or the distillation, rather, the pump stopped due to the breaking of the belt. Some little difficulty was necessary in fixing it. The reaction was again started at 5:58.

RDQ. 251. When did you start first?

A. 5:25 P. M.

RDQ. 252. 5:25 P. M.?

A. Sunday.

RDQ. 253. All right, go ahead.

A. Shortly after reaction started some of the material foamed over and plugged the line, which necessitated my waiting until the retort cooled sufficiently so that I could remove the glass tube and supply a new one. The reaction was again started and was finished without difficulty about midnight—approximately seven hours.

RDQ. 254. What did you then do?

A. I beg your pardon?

RDQ. 255. What did you then do, at the time of finishing the reaction or distillation?

A. Directly then?

RDQ. 256. Yes. I mean did you do anything further with the pyruvic acid?

A. That product which I obtained was crude pyruvic acid, and I did not do anything further with it.

RDQ. 257. You did not use that in your process of making cinchophen?

A. No, sir. In order to utilize that substance for making cinchophen it must be rectified.

RDQ. 258. I believe you said you did not have the time to rectify it?

A. That is correct.

RDQ. 259. Has that substance been turned over to the Marshal?

A. All in the hands of the Marshal.

RDQ. 260. Would it be practicable at a later day for you to return and rectify it?

A. Yes, sir.

RDQ. 261. Under the direction of the Court you would be willing to do that, of course?

A. Yes, sir.

RDQ. 262. You did, then, as a result of the operation which you have described make pyruvic acid in its crude form, which for use in the making of the drug cinchophen would require further rectification, is that true?

A. That is correct.

RDQ. 263. You said that you were busy up to 7 o'clock this morning. What did you do from midnight till 7 o'clock?

A. From midnight till 7 o'clock I was busy in the purification of the cinchophen.

RDQ. 264. Did you work any after 7 o'clock?

A. I beg your pardon, did you say until 7 o'clock? Not until seven.

RDQ. 265. Did you have to do anything more after that?

A. From about 8:30 on, the substance was tested and I was kept busy in drying the purified materials and supplying them to Professor Alleman for proper testing.

RDQ. 266. What time did you complete the entire operation?

A. I think it was about 10:30 to eleven o'clock, between.

RDQ. 267. Today?

A. Today, yes, sir.

RDQ. 268. Were you working steadily from seven o'clock yesterday morning until 10:30 or 11 today?

A. With the exception of about half an hour when I went back to the Strathmore Inn in Swarthmore—I believe that is the name—and I laid down for about half an hour but did not sleep. Subsequently I arose and started to make out my report.

RDQ. 269. Would you care to file your report with the Court in this case, or would you rather keep it—just as the Court may require.

A. My report, exclusive of the notes was—I started but I did not finish it—I started it as a statement to the Court.

RDQ. 270. Yes. Would you prefer to take that, and finish your statement or report?

A. Yes, sir, I would.

Mr. Anderson: And file it later. Would your Honor be willing to have that?

The Court: Yes. I am not concerned with his report. I am only concerned with his testimony.

Mr. Anderson: I do not know whether your Honor wanted the report or not.

The Court: No. You need not trouble about the report.

Mr. Anderson: Is there any other question the Court wishes me to ask? I do not recall any.

The Court: I will see whether there is any cross-examination, and at the close of that, if there is anything to ask, I will.

Mr. Kresel: I think, sir, it might be advisable to reserve any cross-examination until your Honor has heard the testimony of the observers. I assume that your Honor desires to do that.

The Court: That will be satisfactory.

Mr. Anderson: I have no objection in the world.

The Court: All right.

Mr. Anderson: I would like to get Dr. Freedman away this afternoon if we could.

The Court: Very glad to hasten the matter for him as much as we possibly can.

Mr. Anderson: Because he is very anxious to get home, of course. Then, you can stand aside for the moment, Dr. Freedman, and would your Honor permit me to call Dr. Alleman first, or Dr. Gibbs?

The Court: I think Dr. Alleman should be called last.

Mr. Anderson: Last. Yes, sir. Then I will call Dr. Gibbs.

Harry D. Gibbs, resumed the stand.

Re-Direct Examination.

By **Mr. Anderson**:

RDQ. 152. You have been sworn, Doctor?

A. I have.

RDQ. 153. In this case?

A. I have.

RDQ. 154. I think that will be sufficient. You are the same Harry D. Gibbs that testified on Friday or Saturday in this case, are you not?

A. I am.

RDQ. 155. Dr. Gibbs, you were appointed, or nominated by the Court and the Government to observe the experiment which the Court directed to be made by Dr. Freedman for the making of cinchophen which has been discussed in evidence here, and also pyruvic acid covering that product, also incidentally thereto the intermediate or ingredient called pyruvic acid. Did you attend upon this experiment in that capacity?

A. I did.

RDQ. 156. You have heard the testimony of Dr. Freedman as to where the experiments were held, the appliances used or provided, and the persons present, have you?

A. Yes.

The Court: Dr. Gibbs came in a little later, but you need not go through anything else. Bring him right down to the steps.

RDQ. 157. Now, Doctor, will you please tell the Court briefly, but as clearly as you can, exactly what took place at this experiment which it has been testified was held at Swarthmore College, dealing first with the experiments for the making of cinchophen, and secondly, with the experiment for the making of pyruvic acid, and tell us clearly in your own way as an officer appointed by the Government—nominated by the Government but appointed by the Court—

The Court: Appointed by the Government.

The Court: Mr. Kresel, are you concerned with having him go through all the steps of it?

Mr. Kresel: I just want the result.

The Court: Or are you satisfied to have him say whether or not there was any departure from the steps of the patent and the quality and the quantity of the ultimate product.

Mr. Kresel: That is it.

The Court: Probably we can be of some service to Dr. Freedman by shortening the examination in that particular unless you want to go through the details.

RDQ. 158. You understood the Court's suggestion, Dr. Gibbs?

A. I did.

RDQ. 159. Tell if there was any variation from the patent exactly what took place and the ultimate result of the experiments in each case separately?

A. In regard to the experimental work of Dr. Freedman, I am prepared to state that in my opinion there was no variation from the patent. I realize, however, that on two minor points there may be differences of opinion. The first of these is referring to the making of a mixture, I believe the patent says, "simultaneously"—pouring two substances in simultaneously.

The Court: Let us get the patent and see where that is.

RDQ. 160. State what the patent says and exactly what variation was suggested as having taken place?

A. Under example 2, which states "106 parts by weight of benzaldehyde and 93 parts by weight of anilin simultaneously dissolved in alcohol."

In one experiment, Dr. Freedman dissolved one of these constituents in alcohol and added the other. In the other experiment, he did them simultaneously, just as carefully and to the best interpretation of the patent that any one could give. In my opinion it was absolutely simultaneous.

RDQ. 161. In which one did he dissolve them separately and which simultaneously, the first or the second?

A. My recollection is that in the first experiment it was dissolved in the alcohol and the other added immediately, as soon as possible. In the second experiment, the "simultaneous" was carried out to the best of one's ability.

RDQ. 162. I would like to ask you if, in your opinion as a chemist, there is any material chemical difference in the two methods.

THE COURT: I am not concerned with that.

MR. KRESEL: I object to that.

RDQ. 163. All right, sir. Go ahead and tell exactly what took place?

A. In the same example, the second sentence reads, "to the boiling solution 88 parts by weight of pyroracemic acid," etc. One experiment was performed exactly as worded in the patent. The other experiment was performed on the basis of the pyroracemic acid being not quite pure, of about 94 per cent. purity. So, therefore on the interpretation that one should add 88 parts by weight of pyroracemic acid, the actual quantity of material weighed out should be a little more, which was done.

RDQ. 164. Do you know how much more?

A. I have the figures exactly, if you wish them.

RDQ. 165. Suppose you give them exactly.

A. The pyruvic acid was taken as 94 per cent. purity, which required therefore a weight of 93.6 grams to be employed on the basis of 88 parts. I think that is correct.

RDQ. 166. Was that in the first or the second of the experiments described by Dr. Freedman?

A. That was the first experiment as he performed them.

RDQ. 167. That is, the additional weight of acid was used in the first experiment performed, as he described it?

A. Correct.

RDQ. 168. Proceed, Doctor, and tell the Court any other variations in either of the experiments, designating which one, if there was a variation.

A. I could discover no other variations from the specifications of the patent.

RDQ. 169. What was the result of the experiment?

A. The result in both cases was the substance that, if I may so state, I believe it is the agreement of the committee, is cinchophen. I have never personally worked on cinchophen before this, but there is no dispute upon this point as I understand the committee's report.

RDQ. 170. Then you would state to the best of your knowledge and belief that that was cinchophen?

A. It is cinchophen.

RDQ. 171. You heard Dr. Freedman's testimony, did you not, as to the amount of production and yield?

A. I did, in a rather loose way. I can not recall it. I think his figures are correct. I can give them from my own notes, if you wish them.

RDQ. 172. Unless you know of some variation from his figures as given in the two processes—

A. No, I do not.

RDQ. 173. —then it is unnecessary to repeat them it seems to me?

A. I have no doubt his figures are correct. We are in agreement on that. We weighed these things together and every one on the committee saw the results.

RDQ. 174. You were present during the entire experiment, or part of the experiments, were you?

A. I was present during the entire time of the work until 4 o'clock this morning, when there was nothing of much interest going on and some of us were asleep and the Marshal told me I had better go to bed, which I did for two hours and a half, or three hours, I believe; so that during that time I was away and I do not know what happened while I was absent.

RDQ. 175. You left the other observers there, did you?

A. Everything was as it should be when I left.

RDQ. 176. Did Dr. Freedman show mental or physical strain while he was doing this work?

A. Yes, sir.

RDQ. 177. At what stages of the work?

A. After a few hours continuous work the strain began to tell, and I would say that on a scale of efficiency his efficiencey was gradually running down, which applies to my own observations at the same time.

RDQ. 178. Dr. Gibbs, I would be glad if you would state anything else you wish to add to what Dr. Freedman stated and what you have stated, to give a fair report to the Court of what took place as to cinchophen. I will take up the other one with you in a moment. Are there any other surrounding facts or circumstances or conditions that you think ought to be stated to the Court in order that he may have a picture of the situation?

A. I can only think of the question of yield, if that is material. There is no question but what the product is as it should be. The question of purity, we found that one product was purer than—the result of one of the experiments gave a product that was a little purer than the other experiment; but the yields were not very large. However, there were by-products —not by-products, but other products from the mother liquors that probably, so far as I know, contained cinchophen which could be worked up, thus increasing the yields. Of that I have no definite knowledge. The process, of course, was carried through in as hurried a manner as it possibly could be done; and I can think of nothing else material to add.

By The Court:

Q. 179. The yield was what percentage of the theoretical?

A. (Referring to papers) The quantity of material taken out from the first experiment and regarded as the high grade material, showing the melting point of 210 to 211, gave a yield of 26.9 per cent of the theory, this, of course, not covering the crude product which was not worked up.

By Mr. Kresel:

RXQ. 180. As to which you know nothing, you say?

A. Nothing except that I saw it.

By The Court:

Q. 181. And that was experiment No. 1 or No. 2?

A. No. 1.

Q. 182. And No. 2?

A. In experiment No. 2 the same general statements can be made, the yield figuring, I believe, 14.3 per cent. This product seemed to be of a higher degree of purity, showing a melting point of 210.5 to 212 degrees Centigrade.

By Mr. Anderson:

RDQ. 183. Were you present when the tests were made on this product?

A. I was.

RDQ. 184. What was the result with reference to the test indicating whether it was a product called for by the patent?

Mr. Anderson: I don't know whether I need ask that.

The Court: Not unless there is some question made of that, otherwise you need not press it. If there is, you can ask it on re-direct.

RDQ. 185. The other question I would like to ask is whether you observed the steps or the experiments for the making of the pyruvic acid?

A. I did.

RDQ. 186. Did you hear Dr. Freedman's testimony on that subject?

A. I heard most of it. I was here and a few of his sentences escaped me, but in general I heard it all.

RDQ. 187. Have you any additions to make, to what he said on that subject?

A. Nothing except that the process, while he was doing the work, I went into the library for a short period and got a book, I think published in 1881, descriptive of the process, and read it.

RDQ. 188. You read it?

A. I read it.

RDQ. 189. The results obtained in the experiment for pyruvic acid were as he stated them, were they, to the best of your knowledge?

A. They are.

Mr. Anderson: That is all I want to ask now.

The Court: Did you read the book to Dr. Freedman—or just for your own information?

The Witness: My own information.

The Court: Any cross-examination?

The Witness: I might state, your Honor, if you please—

The Court: Yes.

The Witness: That during the work as far as I could see Dr. Freedman consulted no literature.

RDQ. 190. Have you anything else to add?

A. Nothing that I can think of.

RDQ. 191. That the Court may know all the facts.
A. (No answer.)

MR. ANDERSON: You can stand aside, Doctor. I suppose counsel for the defendant will call the observers of the defendant now.

THE COURT: Yes.

(Witness excused.)

ELMER K. BOLTON, recalled by the defendant.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 504. Dr. Bolton, I shall not ask you to go over the preliminary steps, I assume you were present throughout and observed. Please tell us what you saw, what the result was, what the yield was, and what the product was?

A. (Examining paper) In the first experiment on cinchophen there was a slight deviation, as pointed out by Dr. Gibbs, in the method of adding the ingredients. The denatured alcohol, the medium in which the reaction was carried out, had been measured out in a measuring flask and had been tared into an Erlenmeyer flask, which was then tared, and after the flask and the alcohol had been tared, then the requisite quantity of benzaldehyde was added. Then the requisite amount of anilin was poured into the flask, and that is the deviation in the first experiment which I observed.

RDQ. 505. The patents prescribing what method?

A. The patent prescribes the— I think I had better read it.

RDQ. 506. Yes.

A. 106 parts by weight of benzaldehyde and 93 parts by weight of anilin are simultaneously dissolved in alcohol, the solution being boiled for about two hours. I do not suppose you wish to go into the intimate details of the process?

RDQ. 507. No.

A. After the reaction had been carried out for two hours, then the pyruvic acid was added, requiring a period of 50 minutes for the addition. The patent calls for the gradual addition of pyruvic acid, as discovered in the claims of the patent. After the reaction was complete, then the material was allowed to crystallize out, and further crystallization facilitated by cooling with ice water or an ice and water mixture. Then the product was washed with the mother liquor to rinse out all the material out of the flask, and then washed twice with benzol. denatured alcohol, which was supplied from New York, and then finally purified by heating with alcohol, substantially as described by Dr. Freedman. There was no variation there.

RDQ. 508. And are all those steps that you have just mentioned described in the patent?

A. The purification is not described—the exact method of purification. The patent, however, does call attention to the purification which can be carried out in the known manner.

RDQ. 509. I see. Now, have you finished the first experiment?

A. I have not stated the yields.

RDQ. 510. Now, please do that.

The Court: You have spoken so far of the first experiment only, I take it.

Mr. Kresel: That is my understanding.

A. I thought I would speak of the yields of the first experiment. The material was a very slight cream white in color. The weight was 67 grams amounting to 26.9 per cent of the theory. From the alcohol mother liquors, an additional quantity of a crude dark cream colored cinchophen was obtained from the filtrate. This crude material, I presume, could be purified into good quality cinchophen, but I do not know. The product starts to melt at 197 degrees, that is a little on the top it begins to melt at that temperature, and at half melts up to 205 degrees, and all is melted at 210 to 211 degrees. That is substantially the same as reported by Dr. Freedman. The product gives an opalescence on dissolving in ammonia. I understand, but I do not know, that this is one of the tests prescribed by the pharmacopoeia specifications. I might add that the materials which were used in the first experiment—

RDQ. 511. Before you get to that, Doctor, as long as you are speaking about the pharmacopoeia, how about the product of the first experiment; was that such as would pass the test of the pharmacopoeia?

A. I have never seen those specifications.

RDQ. 512. You can not tell that then?

A. I can not tell definitely.

RDQ. 513. Very well. You may proceed.

A. The materials for the first experiment were supplied by Dr. Freedman. The materials of the second experiment were supplied by Doctor—

RDQ. 514. Before you go to the second experiment, Dr. Freedman testified that the product of the first experiment was not a marketable product. Do you concur in that?

A. I think Dr. Freedman's judgment is better than my own on that. The second experiment was carried out with materials produced by Dr. Alleman, with the exception of the pyruvic acid. There was no pyruvic acid, I believe, in stock, and Dr. Freedman supplied this material. The quantities of the experiment were half those taken in the first experiment; and as the result of the suggestion, this experiment was carried out according to the specifications of the second example in the patent.

RDQ. 515. Was the first experiment, according to the specifications in the first example of the patent?

A. I tried to point out that difference, that very slight difference, in the addition of materials.

RDQ. 516. With the reference that you point out, did the first experiment follow the first example in the patent?

A. No. I should have said that before work was carried out, Dr. Freedman informed us that he wished to follow the specifications of the second example.

RDQ. 517. I see. So that both experiments were under the second example of the patent?

A. Under the second example of the patent.

RDQ. 518. May I ask you there, Dr. Bolton—Dr. Gibbs has spoken of an increase of pyruvic acid that was made in one of these experiments; instead of 88 parts, there were 93.6 parts. Was that in the first or the second experiment?

A. That, according to my record was in the first experiment. I neglected to mention that Dr. Freedman—

RDQ. 519. Pardon me; so that in the first experiment there were two deviations; first there was the deviation in that the two elements were not poured simultaneously?

A. There was that deviation.

RDQ. 520. And then there was the second one in which there was an increase of one of the ingredients. My note here is that it was pyruvic acid. Is that correct?

A. That is true. The materials that Dr. Freedman used in this experiment, that is, the materials other than pyruvic acid, were assumed to be of 100 per cent purity. Now, he made an analysis of his pyruvic acid by specific gravity determination. I do not know anything about the accuracy of that method. But as a result of that determination, Dr. Freedman added sufficient material to give 88 parts by weight of 100 per cent pyruvic acid. I would not call that a deviation from the set procedure. If the aldehyde were lower in quality, I think it is perfectly justifiable to add sufficient to give you the right amount of 100 per cent material.

RDQ. 521. Now then, we come to the second.

A. The second experiment was carried out with half the quantities employed in the first experiment. The alcohol used for the reaction was Cologne spirits, analyzing about 97 per cent. That was the analysis which Dr. Alleman reported. The benzaldehyde had been obtained from Magnus, Mabie & Raymond—I do not know anything about this firm—and the Kauhlbaum Aniline was used. The addition of the ingredients was made exactly as prescribed in the second example of the patent.

There was a slight deviation, which, at least to me, appeared of some significance. That is, a deviation from his first procedure in the addition of pyruvic acid. In looking over the patent and the references which are cited here in the patent, it seemed to me that the novelty of this patent, the salient feature of the patent, was the gradual addition of pyruvic acid, and you will note in the claims of this patent that there is a reference in each one of them to a gradual addition of pyroracemic acid, or pyruvic acid, and that called my attention to the particular method which was employed at that point in these experiments.

I have told you how the first experiment required a period of about 50 minutes for the addition of the pyruvic acid. In the second experiment (witness refers to papers)—I have that figure some place, if you will pardon me a moment, please.

RDQ. 522. Yes, take your time and get it.

A. According to my records, the addition began at two minutes after eleven and was complete at 29 minutes after eleven, requiring a period of 27 minutes.

I do not know whether there is anything in this particular point. I am giving you only my impressions. And I looked over the patent, the literature, the prior art, which was obtainable from these references, and I found that the reaction of making cinchophen had been known before from benzylidene aniline and from pyruvic acid; but here it brings out this one feature, the gradual addition, which appears in every claim of the patent. Otherwise, the experiments were about the same and there were no other deviations of any note.

RDQ. 523. What was the result of the second experiment?

A. In the second experiment, 17 and eight-tenths grams of material were obtained of a product of a cream color. It had little more yellow tinge than the first material. It was soluble in 17 per cent of ammonia hydroxide with a very slight opalescence. I think that if it were compared with the water standard, there would be what could be described as a slight opalescence. The melting point is 210.5 to 212 degrees. The particles darkened a little at 207 degrees. I might add that these melting points were made by Dr. Alleman after he had first made a check determination. They are not my own observations. I have taken his word. I know that he was making the melting point. I was there part of the time, but not so close in order not to create a draft around the apparatus. The percentage yield of theory in this experiment is 14.3 per cent. I believe I have given the weight of 17.8 grams.

RDQ. 524. Is that all you think you need state in this respect?

A. That is all.

RDQ. 525. How about the pyruvic acid experiment?

A. The pyruvic acid in this experiment was not assumed to be 94 per cent pure, but the quantity prescribed by the example of the patent was added. This is the experiment which I believe gives the best material, although the yields are lower.

RDQ. 526. How about the experiment to make pyruvic acid?

A. The experiment to make pyruvic acid—

RDQ. 527. Of course, we understand that in both of the experiments for cinchophen, all ingredients were supplied. They were not made by Dr. Freedman?

A. No, they were not made by Dr. Freedman.

RDQ. 528. Now, he attempted to make pyruvic acid. Tell us about that.

A. The reaction was carried out in an iron pot with a ground cover for a lid so that the pot was capable of holding a vacuum with the proper kind of a gasket. The pot was lined with asbestos paper and sodium silicate. I believe the reaction is a very drastic reaction; and in order to protect the apparatus, this precaution was taken.

The materials are essentially the same as Dr. Freedman stated, according to my records, 180 grams of potassium bitartrate and 347 grams of potassium bisulphite, to which a small undetermined amount of sodium bisulphite, sodium salt, had been added. I do not know the reason why. I think the sodium would act just the same as potassium, and it was, I think, to make up the deficit in weight. These materials were mixed until a rather uniform mixture was obtained and the pot was about half-filled.

There were no preliminary tests made to see whether the apparatus would stand vacuum, but it was assumed after set up it would be satisfactory. During the reaction, according to my observations, which were made about 12:15 to 12:45, the vacuum was about 20 inches. Some material was obtained which amounted to about 136.5 grams. When I smelt it, it was sharp and pungent. I do not know anything at all about the pyruvic acid content of the material.

After the experiment was completed, a monometer was attached to the vacuum pump and showed that that pump was capable of pulling 26.5 inches of vacuum. The vacuum during the experiments, at the time when I made my observations, was being reduced somewhat by decomposition products. There were gases that were giving off, as could be readily seen, by bubbling through the caustic soda solution which was placed there to safeguard the pump from these gases.

RDQ. 529. Is that all you observed with reference to the last experiment?

A. Well, I have not gone into the smaller details of it.

RDQ. 530. I do not think it is necessary. What was the product obtained, if you know?

A. Well, the product—I do not want to say definitely what it was—I do not know. That is, there was not any analysis of it made. I do not think there is any question but that this reaction gives pyruvic acid in some quantity or other. Whether it is accompanied by considerable by-products, I do not know. I have had no previous experience with pyruvic acid.

RE-CROSS-EXAMINATION.

By MR. ANDERSON:

RXQ. 531. Dr. Bolton, did the experimenter in this case show the effects of physical and mental strain?

A. Yes, he did, Colonel Anderson. Toward the end, the efficiency of the man was quite low.

RXQ. 532. It was quite low?

A. Yes, it was.

RXQ. 533. As an experienced chemist, would you say that working as he did work, under the conditions that he did, that that would compare favorably with the man working in his own laboratory to produce stuff of this kind, with time to do it and average ordinary conditions?

A. Well, I think as far as the experiments on cinchophen are concerned—I do not know whether they could have been carried out much better or not. I think that one of the troubles was not losses in crystallization so much as quality of material that was produced in the reaction. Those experiments were started rather early in the morning before I observed any signs of fatigue. I think that perhaps better results could have been obtained with the pyruvic acid.

RXQ. 534. This is rather a difficult chemical process, is it not?

A. I have not had any experience with it. But it looks like a bad one. I saw how the material foamed and it would require constant attendance to carry out the reaction smoothly without having the material form into the tube connecting the pot with the condenser—and that material freezes quite hard.

RXQ. 535. He had no assistance from any source, did he?

A. No, sir; other than very trivial things, nobody assisted him in the experiments. He did the work alone.

RXQ. 536. He was under constant observation of the four chemists?

A. There was always one of us there. We spent most of our time in this room and only left the room for getting apparatus or something like that. We were confined to this room practically the entire day.

RXQ. 537. Are not results in chemical work, especially in delicate chemical work, largely affected by the conditions under which the man is working?

THE COURT: I do not know what you mean by that, Colonel Anderson. The witness may, but I do not.

MR. ANDERSON: I mean that I could not make an argument in this room after ten or twelve hours' standing on my feet to save my life. My mental forces would break down; and I want him from his experience to say whether those things do not affect a man in chemical work.

THE COURT: You mean, applying to the pyruvic acid?

MR. ANDERSON: Applying to pyruvic acid or any other reactions.

THE COURT: I notice you have included questions about the physical and mental strain. I do not understand why there was any physical strain, at least so far as making the experiments 1 and 2 with regard to cinchophen is concerned.

MR. ANDERSON: The physical strain there would be that the man had been in this work since 1 o'clock on Saturday. He had been getting ready for it. He was on his feet in the laboratory carrying on three experiments from 7 o'clock in the morning until that afternoon.

THE COURT: As I understood his testimony, the pyruvic acid experiment did not begin until 5:58.

MR. ANDERSON: That is true, if your Honor please, but he had not finished the other two then, as I understand it.

THE WITNESS: No, the work was not complete. The crystallization or purification of the product was not complete at that time.

RXQ. 538. It was not completed until late in the night?

A. No, it was in the morning that it was completed.

RXQ. 539. And there were three going on at once?

THE COURT: That was a third one that had begun.

RXQ. 540. And two up to that?

THE COURT: Only two during the day.

MR. ANDERSON: I should say, your Honor, that the purification was the one that required the greatest balance and judgment and mental poise and physical readiness to act, of any of them, and I wanted to ask the Doctor that question.

THE COURT: I do not object at all to your asking him. I want to understand myself.

MR. ANDERSON: I wanted the record to show exactly the conditions under which the man worked, not only for the benefit of the record, but as a duty to him.

THE COURT: I think that is right.

RXQ. 541. You understand my question?

A. May I have it re-read, please?

THE COURT: If you recall it, you can re-state it.

RXQ. 542. The question in effect, Doctor, was this, whether the conditions under which this man worked were favorable for fair results, or were the conditions such as would probably affect his physical and mental capacities in performing this work to get the best results?

A. Well, to get the very best results, I think that perhaps it did have some effect, but it depends a whole lot upon the physical condition of the man at the time he undertakes the work, and I do not know what it might have been in the case of Dr. Freedman. We have men in our organization who will work twenty-four hours, and carry out pretty difficult work. That happens time and time again, particularly in starting out new processes.

RXQ. 543. But did this man show the effect of this physical and mental strain?

A. Well, he was quite tired. He was very tired toward the end.

RXQ. 544. Yes?

A. Yes.

By The Court:

Q. 544-A. This morning or last night?

A. This was this morning.

By Mr. Anderson:

RXQ. 545. And was he not engaged practically all day in association with you and others on Saturday and Saturday afternoon and Saturday night getting everything ready?

A. Well, I do not know what happened Saturday afternoon. We left here about eight o'clock Saturday evening and motored to Swarthmore and went to the laboratory about—my recollection shows 9:45. Then we began to look around for the best locations for carrying out the work, and that selection was made by Dr. Freedman, and then the selection of equipment began.

RXQ. 546. What time did you get through, Doctor?

A. According to my record, we left there at 11:45 P. M.

RXQ. 547. Standard time?

A. No, daylight saving time.

RXQ. 548. Where did you go then?

A. We walked back to the hotel. It required about a fifteen-minute walk.

RXQ. 549. And then you started the next morning at seven o'clock?

A. We arrived at the laboratory, according to my record, at 7:15. I have forgotten what time we got up.

RXQ. 550. What time did you leave the laboratory when the thing was over today?

A. I think we left about—

RXQ. 551. I mean what time did Dr. Freedman leave, of course.

A. Today?

RXQ. 552. Yes.

A. When everything was finished?

RXQ. 553. Yes.

A. I think he left first in the morning; I think it was about 5:35—I have not the exact record of that—and we went back to the hotel. Then we returned. I think it was after about an hour and a half.

RXQ. 554. And then stayed until about 10:30, left and came here?

A. Yes. Then the work was completed.

RXQ. 555. Dr. Bolton, in your opinion as a chemist, could you say whether there is any difference in results from these two ingredients not being poured simultaneously, as you said was the slight variation in the first experiment?

A. My observations in the past have led me to this conclusion; that the success of operations depends upon attention to the very smallest details. In the manufacture of dyes and intermediates we find that it is some very small detail that makes for the success of a process, and if that is neglected it has a very much wider, a more significant influence upon the results of the reaction than can be imagined. That, I think, is our general experience.

RXQ. 556. In the second instance or illustration he poured simultaneously—followed the exact terms of the patent?

A. Yes.

RXQ. 557. Did you notice any difference which led you to believe that the slight variation, not pouring simultaneously, but in the manner you have described, had any effect upon the resulting product?

A. I am not familiar enough with the mechanism of the reaction to tell whether it would or not. I do believe there is a theoretical possibility. He had his alcohol, and the aldehyde had been added, and then the anilin was added. I want to get this straight (examining paper). Yes, that should give him, I believe, as the chief product of his reaction the benzylidene aniline, as far as I can see theoretically. But if the aniline, for example, had been added first and the benzaldehyde added afterwards, you would have conditions there during the pouring in of the benzaldehyde where an excess of aniline was always present. Aniline and benzaldehyde are two reactive substances and it is possible to form two different compounds, one compound as prescribed in the patent, consisting of combination of benzaldehyde, one molecule of benzaldehyde, with one molecule of aniline. Where you have an excess of aniline present with only a small amount of benzaldehyde there is a possibility of having two molecules of aniline combined with one molecule of benzaldehyde, which would give you a product known as phenylmethylindianilin. There is that theoretical possibility. Now, when you add both of them simultaneously, you do not find large excesses of either one.

RXQ. 558. And you avoid that theoretical possibility?

A. That is a possibility on paper. I do not know how it is—

RXQ. 559. You saw nothing in the result from which you say that any such possibility took place?

A. No, you can not see anything.

RXQ. 560. To the best of your knowledge and belief, cinchophen was produced in both experiments, was it not?

A. As far as my training as a chemist goes, I believe that cinchophen was the product of the reaction, and in one case it was purer than in the other.

RXQ. 561. In the manner which you have described?

A. We, of course, have not checked up the constitution of these products by a carbon and hydrogen and nitrogen analysis, and to state definitely that this product is cinchopen it is necessary for us to do some work on it. I would not care to state that a melting point and the color of a solution in ammonia are definite identifications of this product as cinchophen.

RXQ. 562. And conclusive?

A. Yes.

RXQ. 563. But as far as they went, they indicated that fact, did they not?

A. I believe that cinchophen was the product in hand.

THE COURT: Colonel Anderson, I would like to know what the witness has to say about the yield.

RXQ. 564. Doctor, have you anything that you can say on the subject of the yield? I ask you in that general way; I am not cross-examining you.

A. I think that the yield speaks for itself, Colonel. There is a theoretical possibility of getting very much larger quantities than were realized in these experiments. I saw a yield of 53 per cent, I believe, mentioned in the second reference. That 150 per cent which they claim here works out to about 53 per cent of the theory, that is given in the specification of the patent.

RXQ. 565. Anything else that you can say on that subject? Do you know the purpose of this inquiry?

If you can enlighten the Court in any way, I am perfectly willing to have you do it.

The Court: From a practical standpoint; a commercial standpoint as well as a laboratory standpoint.

A. From a commercial standpoint these yields would be entirely too low. They would never permit the commercial manufacture of the product.

Mr. Kresel: Are you through, Colonel?

Mr. Anderson: Yes.

The Court: I want Colonel Anderson to make such inquiries with respect to my last question as he may desire to make.

RXQ. 566. Doctor, you have no way of knowing, have you, what commercial results Dr. Freedman has obtained in his experiment on this work in 1917, about which he testified?

A. No, sir.

RXQ. 567. Is it not often the experience that in an experiment carried out under new conditions, with new instruments, under pressure, and with observers of such high standing as yourself around to make them nervous, that we do not get the best results the first time or the second time?

A. It depends upon the familiarity of the chemist with the process, I think, to some extent.

RXQ. 568. Dr. Freedman testified that he had not actually carried out this process since 1918 at all. Would you think that would have any bearing upon the question of his success on the first effort?

A. I am under the impression, however, that the testimony has been given that he had two years experience.

RXQ. 569. Yes, he did; he said he started in 1917 and quit in 1918.

A. If that was the case, I would expect a chemist to know pretty well what was taking place in the reaction; after two years experience with the reaction, chemists ought to know it very intimately.

RXQ. 570. Would you or would you not think that operating under the conditions that he was operating, it would be most probable that in two experiments carried out at the same time he would have some difficulty in getting the best results?

THE COURT: I will let you take that answer, but you will recall that the condition was that he could elect to carry on one, two or three, as he desired. So I am afraid he will be estopped from setting that up, although I will let you take the answer if you want it.

MR. ANDERSON: I would not want to argue that question to your Honor at this time; but I would want to argue it later.

THE WITNESS: Do you wish me to answer?

MR. ANDERSON: Yes, I wish you would answer that, Doctor.

A. I think it depends a great deal upon the temperament of the chemist. Some men can only do one thing at a time, and they are good chemists at that; other men can carry on two or three things. If I were in the same position, I know that with my own temperament I would very probably be—my work would be somewhat affected.

RXQ. 571. You do not know, of course, Dr. Freedman's temperament?

A. I have never met him prior to this time.

THE COURT: Are you through?

MR. ANDERSON: Yes, sir.

THE COURT: Anything further?

MR. KRESEL: Nothing further.

(Witness excused).

Moses L. Crossley, resumes the stand.

Re-Direct Examination.

By Mr. Kresel:

RDQ. 278. Dr. Crossley, without repeating anything that the other witnesses have already testified to, I am going to ask you the broad question to state what you observed with reference to these experiments, two on cinchophen, and the other on pyruvic acid?

A. In regard to cinchophen, in the first experiment Dr. Freedman departed from the patent specifications in one particular respect, and that is, in not adding the benzaldehyde and aniline simultaneously as called for in the patent.

RDQ. 279. What, in your opinion, was the effect of that?

A. In my opinion, that is an important point.

RDQ. 280. Will you explain why you think it is an important point?

A. I might add that while I have no theoretical grounds on which to elucidate that point, my general experience in dealing with this particular product has taught me that better yields are obtained by the conditions under which the first experiment was carried than under the conditions of the second experiment, which was conducted exactly as specified in the patent.

RDQ. 281. How was that reflected in the yields?

A. The yield in the first place was 26.9 per cent; but that is a yield of an impure product, a product which has been mentioned here melted at 210 to 211, but that is not correct. The record shows that the melting point of that particular product was as follows: The melting point started—the product started to melt at 197. Half of that product melted at 205 and the rest of that product melted between 210 and 211.

Now, any chemist knows that a product that begins to soften or melt at 197 and continues through a number of degrees, as stated here, 197 to 211, is impure. That product is also demonstrated to be impure, recognized by Dr. Freedman to be impure, by the ammonia test, which showed insoluble on the ammonia test, which also confirms the melting point test.

The color of that product is fairly good, I will say. I think in comparison with the standard cinchophen the color of that product would be, in my judgment, about a grade B product. If I should take this product as a standard, I think that the product obtained by the first experiment is a little darker in color; more of a yellow shade. These samples are available, and I think it would be highly instructive to have the samples while we are talking about them. They are in the custody at the present time of the Marshal.

THE COURT: Marshal, will you bring in the product?

(Box produced by Marshal.)

RDQ. 282. You were going to point out how, in your opinion, the departure in the first experiment was reflected in the yield. You had spoken of the yield of the first experiment. What about the yield of the second experiment?

A. In the first experiment I should add that Dr. Freedman used, of course, all his own materials. Pyruvic acid has been questioned. The pyruvic acid came in small bottles sealed. I think we have a specimen of that pyruvic acid in these specimens.

That pyruvic acid is a German-made product, sold and purchased by Dr. Freedman, apparently, in this market, in small quantities, small bottles. That product he thought was impure by the specific gravity determination. I did not agree, as a chemist, knowing a good deal about pyruvic acid, I do not think that the specific gravity is a true criterion of purity in pyruvic acid, and therefore I objected at the time, but passed it on as an agreement among the others that he should use whatever he decided was best for his experiment.

Now, another regard: The patent says nothing about the method of purification. The patent says that the product is purified in the well-known way. Just what that is, I do not know. We did not interfere. Dr. Freedman proceeded in the purification as he thought best.

I have here what—I think I have got everything, a complete record of what he did. There are several steps in the purification, and yet the ultimate product obtained is not pure as compared with the product which has to be sold. A product which melts between 213.3 and 213.5 is the product which we sell in this market and which we guarantee under our name of "Calco Brand," for quality.

Also this product has a color grade A. Also the product is soluble, completely soluble in ammonia. This product was not completely soluble in ammonia, but showed considerable opalescence. Also I thought that point was agreed to by all the men on both sides, and there is no question about the statement as to its melting point, because Dr. Alleman took the melting point himself, and we all agreed to accept that.

RDQ. 283. Is there a prescribed test by the United States Pharmacopoeia with reference to this drug? There is the pharmacopoeia—

RDQ. 284. How does the product of the patent by the first experiment compare with it?

A. It is impure compared with it and would not pass the pharmacopoeia—

> The Court: You are speaking of pyruvic acid?
>
> Mr. Kresel: No, your Honor, we are speaking of cinchophen from the first experiment.
>
> The Court: Go ahead.

A. (Continuing) The Pharmacopoeia calls for a product which melts at about 210. This product starts to melt at 197. The pharmacopoeia requires also it should be completely soluble in ammonia.

RDQ. 285. And you said this was not?

A. It was not. On the solubility of ammonia, that is the way I remember it, I do not happen to see it on this leaflet at the present time although I am not reading it very carefully.

RDQ. 286. What have you to say as to the second experiment, doctor?

A. The second experiment, after it was called to Dr. Freedman's attention—

RDQ. 287. After what was called to his attention?

A. That the first experiment had not been carried out in accordance with the patent, exactly in accordance with the patent and specifications—he proceeded in accordance with the patent and specifications, adding the materials simultaneously. The result of that experiment was, as has been stated, a very much lower yield, although a product which had a better melting point, but would not pass on color, and that yield was 14.3 per cent of theory.

RDQ. 288. Dr. Crossley, with such a yield as 14.3 per cent of the theoretical, would it be possible to commercially produce this product?

A. No, it would not, in my judgment. I also want to call to your attention the fact that this 14.3 yield was obtained with "C. P." materials.

RDQ. 289. What does that mean?

A. Chemically pure materials, which could not be obtained in this market. By chemically pure materials, I mean that they were put up under the seal of firms well known in the trade to deliver chemically pure materials. They were not tested for purity.

In this experiment No. 2, Dr. Freedman used alcohol delivered to him by Dr. Alleman. This alcohol is known as cologne spirits. It is supposed to be one of the best grades of alcohol we have. I think Dr. Alleman said it contained 97 per cent alcohol. He used a benzaldehyde, the bottle of which had not been opened, it was sealed when he received it. It was labeled "Oil of bitter almonds," which is supposed to be an excellent grade of benzaldehyde made by Magnus, Mabee & Reynard. He used an anilin of Kauhlbaum's make, with Kauhlbaum's label, the bottle of which had not been opened.

RDQ. 290. It is Kauhlbaum's product?

A. A Kauhlbaum's product made in Germany. I beg your pardon, it was not in a bottle, it was in a tin container which had not been opened. So far as the purification is concerned, he varied purification here somewhat in detail. Instead of carrying out the purification in the various steps with benzine and alcohol, in some of these steps the process was somewhat reversed. I do not know that that makes very much difference.

RDQ. 291. Have you stated now all that you desire to state as far as your observation went, with reference to the two cinchophen experiments?

A. No, I particularly wanted to make the statement; on this witness stand I made the statement that as a result of this patent there was obtained cinchophen and tar, chiefly tar. I make that statement now again, as our experience in this mother liquor, which I am going to show you here, is a product which I call tar. Our experience has taught us that we cannot take that tar and convert it into cinchophen to 100 per cent yield. While it is possible to get perhaps a small part of cinchophen out of it, and that perhaps varies in degree of purity, and after a long and tedious process you perhaps, will get some cinchophen out of that, to build a yield up from 14.3 to a practical yield, in my judgment, is impossible.

RDQ. 292. What would you say about the costs of the materials that were used to produce this 14.3 per cent of the theoretical yield?

A. Of course, I have not had the time since I returned, in view of the fact that I have not been in bed since, or have not slept since Friday night, and in view of the fact that the gentleman who is supposed to have collapsed, did get some sleep and I got none at all last night—although I am not offering that as an alibi—I have not had time to check these figures, but I think the cost will be demonstrated to the Court to be considerable. The material that was purchased here, as purchased in small quantities, is very expensive, and could not be considered on a commercial basis at all.

RDQ. 293. What about the pyruvic acid experiment?

A. Oh, pardon me, I would like to add, the question has been raised as to the quality of pyruvic acid in the second experiment. I am not certain that there is a specimen of it here. The pyruvic acid was also in a sealed bottle, a Kauhlbaum product imported from Germany. The color of that pyruvic acid was a little darker than the color of the pyruvic acid used in the preceding experiment.

I witnessed the attempt of Dr. Freedman to make a specific gravity determination on that product as well as on the former one. I think, although I am recalling now a memory of early this morning, that we both agreed that so far as the specific gravity is concerned, it was satisfactory, although I am not absolutely certain of that fact. However, I will state there again that I do not believe that a specific gravity on pyruvic acid is a criterion of importance.

RDQ. 294. Could you by stepping down here pick out from this mess the result of the first experiment?

A. (Witness leaving stand) This is the pyruvic acid that was purified in the first experiment (indicating).

The Court: Cinchophen?

The Witness: Cinchophen, yes, sir, which melts at 197, or starts to melt at 197, half melts up to 205, and the remainder from 210 to 211.

RDQ. 295. That is so written on the label?

A. Written on the label by the Marshal. The product of the second experiment is here (indicating). It is also labelled by the Marshal Sample No. 2. It began to darken at 207, the black particles forming at 207, melting completely between 210 and 212 and one-half, reading from the right.

RDQ. 296. That shows the mother liquor, so-called?

A. This is the mother liquor of the No. 1 experiment (indicating), in which I claim there is chiefly tar, or the difference between the yield of 26.9 as represented by this product (indicating) and these two products (indicating). This is the impure 15 grams (indicating) to which your attention has been called. This product (indicating) was obtained and was not purified this morning, although had the experience of purifying this been continued three or four further washings would have been necessary to get it to this purity, in my judgment.

This is the mother liquor from No. 2 experiment (indicating). I particularly want to call your attention to the difference in color, which is reflected in the difference in yield. This product (indicating) goes with this product (indicating). This is 14.3 per cent yield on the basis of 100 per cent possible. This contains the remainder (indicating). This is one of the bottles from which the pyruvic acid was taken that was used in the first experiment. This is an unused sample of the same pyruvic acid, still labelled with the paper around it, not opened, made in Germany and purchased from C. A. F. Kauhlbaum Chemische Fabrik. This is another sample (indicating) or bottle representing the same product.

By the way, these are several of the same bottles of pyruvic acid used (indicating). This is a sample of the aniline furnished by Dr. Alleman used in experiment No. 2, Kauhlbaum's aniline, marked on the bottle by the Marshal "Unopened can." This is the benzaldehyde, U. S. P., from the U. S. P. Chemical & Drug Company, used in the first experiment and obtained by Dr. Freedman. This is the crude pyruvic acid or crude product which Dr. Freedman obtained as pyruvic acid (indicating).

RDQ. 297. Have you a sample of pyruvic acid here?

A. I have. This is glacial pyruvic acid, melting point 10.8. That is the pyruvic acid is a product the purity of which can best be obtained by freezing or getting a crystalline product which can be identified, because the product decomposes at high temperature. This as a product by Dr. Freedman (indicating).

This is the Cologne spirits of alcohol furnished Dr. Freedman for his second experiment by Dr. Alleman. This is the benzaldehyde from Magnus, Mabee and Reynard, "unopened bottle" marked on the label by the Marshal and furnished to Dr. Freedman for the second experiment by Dr. Alleman. I have one of the bottles of the pyruvic acid used in the first experiment, made in Germany, with the label on the bottle, obtained from Kauhlbaum. This is the denatured alcohol, benzene denatured alcohol, used by Dr. Freedman in his first experiment, supplied by me. This is the aniline oil he used obtained from the Chemical & Drug Company, 114-118 Liberty Street, New York. These are the products he used, which are marked on the label, "C. P. Chemical & Drug Company" in the production of this pyruvic acid. This is the potassium bitartrate analyzed by the Baker Chemical Company, a firm of high reputation—"sodium bisulfate C. P." marked on the label.

RDQ. 298. Dr. Crossley, what is the melting point of the cinchophen that is produced by the Calco Company?

A. 213 and a fraction; as a rule. Our cinchophen as a rule melts within one degree.

By The Court:

Q. 299. Melting begins when?

A. In that sample, 213.3 to 213.5.

By Mr. Kresel:

RDQ. 300. Is there anything else?

A. As to pyruvic acid, I would like to add one statement, since the question of pyruvic acid has been asked. I made this statement to the committee or to the group there and I want to make it clear to the Court. This man tried to make pyruvic acid with the information secured in our plant in working there two years. Pyruvic acid is made possible on a commercial scale only by certain information which he secured, that enables a manufacturer of pyruvic acid to use tools which will stand corrosive action of the pyruvic acid. This man demonstrated or tried to demonstrate the production of pyruvic acid by using the information he secured in our plant to protect the tool for so doing.

> Mr. Anderson: I wish to make a statement to the Court, sir, that he was doing this under the orders of the Court. He said that he had made this stuff. But that was not covered by the patent and at the suggestion of counsel for the defendant, the Court asked that he make the pyruvic acid also. It is not covered by the patent; it is not under the patent; and he was required to do this on the suggestion of counsel for the defense and by order of the Court.

Mr. Kresel: I do not recall that I made the suggestion. I think the Court made the suggestion.

The Court: I think the Court did request that he make pyruvic acid, because as I recall his testimony in chief, he said he made the pyruvic acid from which he made his cinchophen; and he made them both in 1917.

Mr. Anderson: Quite true.

RDQ. 301. Was your company making pyruvic acid at that time?

A. It was.

RDQ. 302. Is this the pyruvic acid produced by Dr. Freedman?

A. That is a sample produced by him.

RDQ. 303. How about the odor of that and the pyruvic acid that you have produced. Is there any difference in those, can you tell?

A. There is a slight difference. His product, of course, has other things in it that contaminate the odor. This, being a glacial product, of course is stronger.

RDQ. 304. Dr. Crossley, Dr. Freedman testified on Saturday that not only did he succeed in making cinchophen the very first time that he tried it in the Calco plant—

The Court: Are you going outside of the experiment now?

Mr. Kresel: I was going outside.

The Court: If you want to go into that, I think it had better be reserved for another time in your sur-rebuttal proper. This witness is now called as one of the observers of this experiment.

Mr. Kresel: Very well, your Honor.

Mr. Anderson: If the Court please, I asked for the production of Dr. Crossley's notes of his effort to make cinchophen.

RE-CROSS-EXAMINATION.

By MR. ANDERSON:

RXQ. 305. At Jewell College, was it?

A. No, sir; I have never made cinchophen at any college.

RXQ. 306. Did you ever try to make it?

A. I have never made cinchophen myself by my own hands anywhere, nor did I say so on the stand. I say I directed the work of other men making it at the Calco Chemical Company.

RXQ. 307. Have you any notes on the subject?

A. The Calco Chemical Company has records which are not my personal records.

RXQ. 308. Of your own production?

A. Not records of my experiments, no, sir.

RXQ. 309. Then you have no records of your experiments at all upon the subject and in fact have never made any experiments?

A. I have made no experiments with my own hands. I have directed the work of other men.

RXQ. 310. Does that apply to the other drugs as to which you testified?

A. It does; yes, sir.

MR. ANDERSON: I also called for the production on last Saturday of the books of the Calco Chemical Company showing the details of their so-called research costs which were testified to by Dr. Crossley.

MR. KRESEL: That is a question, your Honor, that does not come up now while this man is on the stand.

MR ANDERSON: I want to raise it now because I want to reserve the right at the proper time so there will be no question of my being estopped, not at this time, but later.

I also at this time wish to ask for the production of the note books left by Dr. Freedman with the Calco Chemical Company of his work there at the laboratory.

The Court: Have you any cross-examination of this witness with respect to his observations?

Mr. Anderson: I have not, sir. That is all.

Mr. Kresel: That is all.

Mr. Anderson: I do want to ask leave to ask one question.

RXQ. 311. You said that the melting point provided by the pharmacopoeia was 210, did you not?

A. 210, yes, sir.

RXQ. 312. What was the melting point, the accurate melting point of the first product?

The Court: The product of experiment No. 1?

RXQ. 313. Yes, sir; the actual melting point; where did it actually melt?

A. I will give you that, sir. The product began to soften at 197, half of it was melted at 205 and the remainder between 210 and 211.

RXQ. 314. What was the actual melting point of the product on the second experiment?

A. It began to darken, or black particles formed at 207, and was completely melted between 210 and a half and 212 C.

Mr. Anderson: You can stand aside, Doctor.

The Court: What were those last figures, please?

The Witness: Between 210 and a half and 212 C.

(Witness excused.)

The Court: In order to save counsel on either side any embarrassment, I will call Dr. Alleman, and you may each proceed to examine him as in cross-examination.

GELLERT ALLEMAN.

Gellert Alleman, was called as a witness, and having been duly sworn, testified as follows:

Examination by The Court:

> Mr. Anderson: May I make the suggestion that your Honor ask the questions that will interest you.
>
> The Court: I will ask one general question and then you can make any inquiries on either side that you like.

Q. 1. Dr. Alleman, you were appointed by the Court to observe these experiments made by Dr. Freedman. You may stand or sit as you like, I think. I assume that you did observe them, and I will get you to tell us what you observed. What was the result of the experiments, wherein the experiments followed the patent, and wherein they departed from the patent, if at all; and then outside of the patent tell us what you observed with regard to the making of pyruvic acid?

A. Do you wish me to detail all that which has gone before, when we left here, or shall I be very brief?

Q. 2. Be as brief as you like and then let counsel on either side go into such details as they desire.

A. The time I occupied in these experiments, with two interruptions, was twenty-six hours and thirty-five minutes, from the beginning to the time when the dried materials were obtained, to the melting points of the two dried materials determined by me. Insofar as I am able to determine from my general knowledge, I should say that the products of the two materials might be determined essentially cinchophen. None of the chemicals which were produced by Dr. Freedman, and none of the chemicals which were produced by me have been analyzed, but we have every reason to believe that they are the substances which have been labeled. In the first experiment, in the manufacture of cinchophen, a yield of 26.9 per cent of the theory was obtained. That material had a melting point from 188 to 209¾, one portion. Another portion had a softening point of 197. Half of which melted at 205, and the remaining half at between 210½ and 211. That was known as experiment 1, wherein Dr. Freedman used his personal chemicals, operating on materials furnished by me, with the exception of the pyruvic acid which was furnished by him. He obtained a yield in the second experiment of 14.3 per cent of the theoretical. That material after being purified, melted between 210 1-2 and 212. In the first experiment the materials were not added simultaneously? In the second experiment the materials were added simultaneously.

Q. 3. Did you notice any departure—have you finished?

A. No, sir, I am trying to think—

Q. 4. I will postpone what I want to ask you.

A. I observed, and it puzzled me much why, with the materials which I furnished operating in accordance with the patent yielded only 14.3 per cent of the purified product, which had a rather good melting point; whereas, with the materials furnished by Dr. Freedman, operating in a slightly different manner than is specified in the patent, there was yielded 26.9 per cent of a material which had a very much larger range of melting point. Ordinarily—may I give an opinion here?

Q. 5. Yes.

A. Ordinarily, I should not consider that the addition of materials simultaneously would much affect a reaction, but I confess that the results of the operation indicate to me that there is something in the caution to add these materials simultaneously. Since I have heard some of these witnesses, I can conceive of a number of reactions, which, when taken place simultaneously, and removing from the field of action by solution, certain products which are formed, might and probably do, account for the formation of such impurities as I have indicated. Dr. Freedman was furnished at our laboratory with absolutely everything he asked for, and I think he has been perfectly satisfied with the materials which were offered. That is all I have to say about the first experiment.

Q. 6. And the second?

A. In the second experiment, in the manufacture of pyruvic acid, he operated, as has been described here—I have no criticism of any of the testimony in that regard which has been produced—and he obtained a material, a sample of which is here in Court. I know nothing about that sample, except that I saw it weighed, and I saw it dropping off from the condenser. I have not examined it. I do not know whether it is pyruvic acid.

THE COURT: You may proceed, Colonel Anderson, with such inquiries as you like.

By MR. ANDERSON:

Q. 7. Doctor, when you spoke of the product of the two materials being cinchophen, did you mean two experiments or two materials?

A. I beg your pardon.

Q. 8. I say did you mean two experiments. You said the product of the two materials was cinchophen.

A. I mean the two experiments.

Q. 9. I thought you used the word "materials" in place of "experiment."

MR. KRESEL: He did not say it was cinchophen. He said it might be termed essentially cinchophen. Those were his words.

Q. 10. This man worked practically 26 1-2 hours, did he?

A. Yes, sir.

Q. 11. Did he show strain?

A. He did.

Q. 12. To any degree, to any considerable degree?

A. Considerable degree.

Q. 13. As he has expressed it, you did everything that anybody could do to facilitate his work, he expressed that on the stand, but do you think the conditions surrounding his work, and the continued period of work in which he was engaged, taken into consideration the type of man, were favorable to the best results?

A. So far as the material equipment is concerned, I may say, sir, that he was offered everything.

Q. 14. Yes. He said so too.

A. So far as the mental and physical strain is concerned, he certainly was handicapped.

Q. 15. No assistance was given him, except to furnish him the supplies?

A. I supplied everything to him. I carried it to him, but did not interfere with his apparatus.

Q. 16. Of course. Dr. Alleman, as to the slight variation you speak of, have you satisfied yourself as yet, whether there was any real effect resulting from that variation of not pouring together one following the other, or is that rather drawn from the results, that opinion?

A. I have not satisfied myself, but I have been thinking about it since I examined the two products and considered the different yields.

Q. 17. Yes; and that to your mind offers one possible solution of what seems to you rather a mystery in the situation, is that about the statement of the fact?

A. Yes, sir.

Q. 18. That is about as far as you can go at this time?

A. Yes, sir.

Q. 19. As to the pyruvic acid, you said you had not made the test, as I understood Dr. Freedman to say, that was completed at a very late hour, and that yet remained to be purified, is that true?

A. That pyruvic acid experiment was discontinued at 5:35 this morning, and we have had no opportunity to test it since.

Q. 20. And after its discontinuance, he stated that he had not had a chance to carry it through to the process of purification, the known processes of purification, he did not have an opportunity to do that as far as you know, did he?

A. No, sir.

Q. 21. Are you prepared to say, to the best of your knowledge and belief, Doctor, based upon the facts which you have recited to the Court, and which have been recited here, Dr. Freedman did produce cinchophen, as cinchophen—I believe it is—under the process named in this patent?

A. Yes, sir, with the exception which I have already noted in regard to the variation.

Q. 22. In the one experiment?

A. Yes, sir.

Q. 23. No exception in that other experiment?

A. No, sir.

Q. 24. Where he followed the exact terms of the patent?

A. No, sir.

The Court: There is one question. Somebody has mentioned here something about the addition of pyruvic acid, in the second experiment, I think it was.

Mr. Kresel: No, sir, that was in the first experiment.

The Court: The first experiment.

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CARD 52

By The Court:

Q. 25. What have you to say about that, Doctor, if anything?

A. Dr. Freedman—you mean the quantities?

Q. 26. The quantity.

A. Yes, Dr. Freedman determined the specific gravity of the pyruvic acid furnished by Kauhlbaum, but informed us it was not 100 per cent, and he desired to add an additional amount in order to bring up that amount to 106 grams, or whatever the amount was.

Q. 27. Do you happen to know anything about the specific gravity, whether it was accurate or not?

A. I do not.

Mr. Anderson: Just one second. I was looking at some notes and did not catch the question by you and his reply. Would you read the question? (Record repeated as recorded.)

By Mr. Anderson:

Q. 27A. Did you have any reason to believe that the statement of Dr. Freedman, on this point, Dr. Alleman, was in any respect different from the facts as to this acid?

A. None whatever, sir.

Q. 28. He made chemical tests of the acids before he made that statement, did he not?

A. He did.

Q. 29. I believe that you said that the product of the first experiment began to darken a little at about 197, half melted at 205, and all melted at 210 to 211; is that right?

A. Yes, sir.

Q. 30. And that the second product began to darken a little at 207 and melted between 210 and 212 1-2.

Mr. Kresel: 210 1-2 and 212.

Mr. Anderson: It is marked "210" and "212 1-2."

The Witness: 210 1-2 and 212.

Mr. Anderson: Then it is marked wrong.

Q. 31. Is it not usual in a substance of this character for it to begin to show a little coloration just before the melting point is reached?

A. In commercial substances, yes, sir. It indicates the impurities present.

Q. 32. The one that melted from 210 1-2 to 212 was the second experiment where he followed exactly the language of the patent; is that true?

A. Yes, sir.

Mr. Anderson: I think that is all.

Mr. Kresel: No questions.

(Witness excused.)

Mr. Kresel: Now I would like to ask Dr. Freedman a few questions.

Louis Freedman, resumed the stand.

The Court: Are there any further questions you desire to ask him at this time, Col. Anderson?

Mr. Anderson: I do not think so, sir. None occur to me at the moment.

The Witness: If your Honor please, may I make a few statements in order to indicate my position?

The Court: Yes. Is there any objection, Mr. Kresel?

Mr. Kresel: No, sir, none whatever.

The Witness: Regarding the so-called deviation from the patent, as described by some of the men who acted as witnesses: when I started this experiment I first had the alcohol in my flask, 200 c.c., and then I added 106 grams of benzaldehyde.

Just as soon as I added the benzaldehyde, the significance of the word "simultaneously" occurred to me, and I, the first one, called the attention of the gentlemen to the fact that perhaps there may be some discussion about that word "simultaneously," and I immediately, as quick as I could, added 93 grams of aniline, and everyone present agreed that under the circumstances they would consider it as simultaneously.

Now then, when I first made this experiment in 1917, that was the way I construed the patent, and that was the way I first made the experiment.

When benzaldehyde is added to aniline, benzylidene aniline is obtained. When aniline is added to benzaldehyde, benzylidene aniline is obtained, either without any solvent or in the presence of alcohol. The compound formed is what is known as a Schiff's base. An aniline reacts with an aldehyde, giving what is known as a Schiff's base, with the elimination of water. That is a common reaction. In this present case no other compound could be formed.

Dr. Bolton testified on the stand that in the presence of an excess of aniline, he said that the only possible difference that might occur to him—theoretical difference—was that in the presence of an excess of aniline you might get other compounds formed. In my testimony, and in the testimony of the other witnesses, they have said and I have said, that I added the benzaldehyde first and the aniline after.

Therefore, there could not have been an excess of aniline, because there was all the time present an excess of benzaldehyde. I did not intentionally divert from the patent. It was while carrying on the reaction, and as I remember having carried it on the first time while in the employ of the Calco Chemical Company, and as I construed the patent, I started to carry the reaction that way, and it immediately occurred to me about the word "simultaneously."

Now then, while in the employ of the Calco, I also carried on experiments to find out the significance of adding benzaldehyde and aniline together or separately, one after the other, in solution, without solution, and I could find no essential difference.

The patent states 93 parts by weight of aniline are slowly added while stirring, to 106 parts by weight of benzaldehyde, while at a temperature of about 40 to 50 C. When these two reagents are added together, the reaction takes place—what is called exothermo reaction—with the elimination of heat, and water is formed in the reaction.

According to part 1 of this experiment, the compound obtained is benzylidene aniline. This benzylidene aniline is then reacted with pyroracemic acid in the presence of alcohol, either after purification or as such.

According to the first part of the patent then, the adding of aniline to benzaldehyde does not make any difference, because the patent says so. I can add aniline to benzaldehyde because I get benzylidene aniline. Therefore why should it have any difference in the second part of the patent?

Every chemist knows that interpreting the word "simultaneously" means that the authors of the patent wanted this compound not to get overheated, as said in the first part—40 to 50 degrees Centigrade, and the second part is done in alcohol. Therefore, they wanted it stirred together, and when it is added simultaneously in the presence of alcohol, there is no superheating. By "simultaneously" I at first construed that to mean to get them together as quickly as possible, no waiting; and adding one and then the other immediately after, certainly lives up to that specification.

If it please your Honor, may I have a moment to look this over?

The Court: Take your time.

The Witness (after referring to papers): According to the testimony given in which I inadvertently stated, I believe—I am not sure—I used a little more pyruvic acid in the first experiment than was called for in the patent. The patent calls for 88 grams and I used 93.6, or 93.4, I believe—93.6 is correct.

While in the employ of the Calco Chemical Company I was authorized to undertake research work with the assistance of a chemist by the name of Mr. Swenson. This piece of research work was the determination of specific gravity tables of pyruvic acid.

We prepared what we considered 100 per cent pyruvic acid by several—I do not remember the number, but there were many—vacuum distillations of pyruvic acid, and subsequent analysis of the acid by titration with normal alkali.

This was checked up in other ways—I have not got the figures; they are in the note books which are the property of the Calco Chemical Company—and Mr. Swenson and myself prepared tables. We used this 100 per cent pyruvic acid, and by the addition of various amounts of water we prepared various percentages of acid, and those tables were taken by the Calco Chemical Company as accurate, and they were framed and put up in the plant in Building 25 and used as accurate determinations for pyruvic acid by the foreman when he designated a job to the employees, or when any of the employees added the acid. They referred to those tables and they considered them as accurate.

I have a copy of those tables, and I use them as my own personal privilege; but I have never or will never divulge them to any other concern. It being my work, I have the personal privilege of using them for my own interest. That is construed as ethical among the chemists and scientific men.

Furthermore, the patent says: "In the foregoing examples the quantities of the reagents may, of course, be varied." That explains itself.

Dr. Alleman testified that the fact that I obtained a low yield with a high melting point in experiment 2, and a high yield with low melting point in experiment 1, was a puzzle to him. Well, I can easily explain that puzzle in this way: That the reaction in the preparation of cinchophen, when you get a too highly-iced exothermo reaction—by that I mean giving off of heat in both parts of the reaction—you will get variations.

You can run the same experiments, two experiments, identically the same, and you may obtain variations. It cannot be explained. It is chemistry. No one knows why.

Between the gentlemen who testified here and myself the purity of the various products which I prepared was described. My compounds—compound No. 1 I admitted was not up to the present-day standard of cinchophen, but I stated and I here reiterate that I am capable within one hour's time of taking that compound and putting it through at least one or at most two steps with the loss of not more than four or five grams, and I will obtain pure stuff which will satisfy the melting point or the criterion of the U. S. Pharmacopoeia. The compound that fails to dissolve in ammonia is a compound melting at 228. It was isolated and found, but the composition never determined. This compound is always, or it is pretty near always formed in that reaction.

As a matter of fact, there are three or four side reactions there. The bulk of the compound formed is cinchophen, of course, but there are at least two more that I know of, and some tarry substance which is due to polymerisation, and this compound melting at 228 is always present and makes a lot of trouble in the melting point. A very minute amount of this substance will cause a considerable drop in the melting point of the compound and will cause so-called darkening.

Every chemist knows that a small, a minute amount of impurities will often lower the melting point of a pure compound considerably and does not conflict with the pharmacological value of that compound. I will reiterate that I am confident I can take as much as any doctor will prescribe for me, of any of those two compounds which I made. I stand here ready to consume any amount of that any doctor would prescribe—taken into my own system. In 1917 the criterion of purity——

The Court: Dr. Freedman, I have not interrupted you because I do not desire to prevent you making any statement that you want, but unless you have something further that you want to say specifically, then I will ask you to answer such questions as Mr. Kresel may put to you.

The Witness: I was just making those statements, your Honor, to vindicate myself, in your estimation, and if you think I have——

The Court: No, I am perfectly willing to hear you make any statements.

The Witness: Your Honor, I have not done this to make any grand stand play. I was put on trial under very severe test at a very unusual time, your Honor will realize.

The Court: No, I did not realize it, and I do not realize it now, Dr. Freedman, because I understood you in your testimony to say you could do it in three hours, then I understood your testimony that you could do it in six hours.

The Witness: Yes, your Honor, providing all the apparatus is given to me and I can start work immediately, but I had to gather the apparatus with the aid of Dr. Alleman, and that took considerable time. In fact, took most of the time. A good part of the time was devoted to getting the apparatus and pyruvic. While I was running the other operations, I was running back and forth getting the apparatus ready for the pyruvic distillation.

The Court: Have you any further questions, Mr. Kresel?

Mr. Kresel: Yes, sir.

Re-Cross-Examination.

By Mr. Kresel:

RXQ. 271. Dr. Freedman, I understood you to say in your statement that you have just made to the Court, that this variation between the first and second experiments, namely, that in the first experiment you did not simultaneously pour in the benzaldehyde and the aniline, but poured in the benzaldehyde first and the aniline second——

A. That is correct.

RXQ. 272. I understood you to say that in your opinion and from your experience, that would make no difference in the result; is that correct?

A. In my opinion it would not.

RXQ. 273. And, indeed, I understood you to say that you did that exact same thing in the first experiment that you ever made in 1917 with the Calco Chemical Company; that is right?

A. If my recollection is correct. That is my recollection.

RXQ. 274. In other words then, the fact is that the very first experiment that you made, as to which you testified on Saturday, was made by you by first pouring in benzaldehyde and then as soon as you could the aniline; that is right?

A. Pardon me. Will you just ask me that question again?

MR. KRESEL: I will have the stenographer repeat it.

(RXQ. 274 repeated as above recorded.)

A. To my best recollection, that is so.

RXQ. 275. And therefore it follows, does it not, Dr. Freedman, that your first experiment that you made in 1917, when you were with the Calco Chemical Company, was in that respect not according to the patent?

A. Not according to my interpretation, no.

RXQ. 276. That is a matter of interpretation. You have been asking for your laboratory notes. I have them here. Now I will give you this book and ask you to state whether that is the laboratory book containing your notes?

A. This is one of them.

RXQ. 277. Is it the first one?

A. I will have to look at it.

RXQ. 278. Please.

A. This is the first one, yes.

RXQ. 279. Will you please find therein the first

A. I thought it was the first experiment.

RXQ. 297. Do you want to change it now?

A. No; because I don't remember.

RXQ. 298. Well, when you said it was the first experiment, didn't you know whether it was?

A. I wasn't sure.

RXQ. 299. Well, why didn't you say you were not sure? Now, let me read it to you. I read from your cross-examination, page 4604:

> "Q. And your testimony is that you started experimenting with cinchophen in the fall of 1917?
>
> "A. That is correct.
>
> "Q. And you took this patent and you followed exactly the steps that are outlined there for the manufacture of cinchophen?
>
> "A. Correct.
>
> "Q. And having followed those statements exactly, you obtained cinchophen?
>
> "A. I did.
>
> "Q. The first time that you ever attempted it?
>
> "A. That is correct."

Now, is it correct, or isn't it correct?

A. It is correct that I obtained cinchophen the first time I tried it, as recorded on page 75.

RXQ. 300. Is it correct, or isn't it correct, that the first time that you attempted it, you got a yield of approximately 60 per cent?

A. My testimony says I am not absolutely certain, but I think it was approximately 60 per cent.

RXQ. 301. Now let us turn to your page 75. What does "P. Q." stand for?

A. That was the designation given to cinchophen by the company, just to make it shorter.

RXQ. 302. This shows, does it not, that in this experiment you had 318 grams of benzaldehyde, is that right?

A. Yes, sir.

RXQ. 303. Turn to the patent. How many grams are required by the patent?

A. 96 parts by weight of benzaldehyde. I beg your pardon. 106 parts by weight. 106 times 3 is 318. I used 3 parts by weight according to these figures.

RXQ. 304. Which weight is 3 grams?

A. No, no, no. The patent says 106 parts by weight. I can take one part by weight or two or three or four, as many as I please, providing I take the same number of parts by weight of the other ingredients.

RXQ. 305. Pardon me. I simply want to understand you. You are required by the patent to take 106 parts by weight?

A. That is correct.

RXQ. 306. Your interpretation is therefore, that you can multiply that 106 by any number, provided you multiply by the same number the other ingredients and your result will be the same; is that your answer?

A. That is correct.

RXQ. 307. Tell me how much aniline the patent says you should use?

A. 93 parts by weight.

RXQ. 308. That would give you how many parts if you multiplied by three?

A. 279.

RXQ. 309. How much pyruvic acid is required?

A. 88 parts by weight.

RXQ. 310. Multiply that by three.

A. That gives 264, I think.

RXQ. 311. You then put down here under these numbers of grams a star opposite the 318 grams, which represents what, benzaldehyde?

A. Benzaldehyde, technical, from Forasynth Laboratory.

RXQ. 312. That simply shows where the benzaldehyde came from?

A. Exactly, and the date received.

RXQ. 313. Now, what is next? Read the next.

A. Yield, 323 grams crude product (50 per cent).

RXQ. 314. Of the crude?

A. Yes.

RXQ. 315. Did you ever refine the crude?

A. Some of it, yes.

RXQ. 316. Upon a yield of 50 per cent crude, how much refined product would you get, from your experience? I am testing your experience only.

A. Well, I do not remember, Mr. Kresel; I have not done it in such a long time. I can not recall what I would get.

RXQ. 317. Well, would you get more than 30 per cent of the crude in the form of final product?

A. I don't know. I can't recall what I got and I don't know what I will get.

RXQ. 318. I am not asking you what you will get. I was trying to see whether you could help me to the extent of your knowledge.

A. I will try.

RXQ. 319. Can you tell what percentage of final product you get from the crude?

A. I can not tell exactly.

RXQ. 320. Approximately?

A. To the best of my knowledge, I think it would come out that 60 per cent of crude I would get pure; about 50 to 60 per cent of that crude.

RXQ. 321. Fifty to sixty per cent of the crude you would get in refined product?

A. In refined product, not counting what would be in the mother liquors.

RXQ. 322. We were not talking of that. We are not talking about mother liquor now; let us leave that out. Fifty per cent of fifty per cent of the crude would give you 25 per cent of final refined product, would it not?

A. Yes, according to my mathematics.

RXQ. 323. Between 25 and 30 per cent, therefore, would be your final yield?

A. About that.

RXQ. 324. Doctor, how is it that in this first experiment you did not put down the steps that you took in getting your fifty per cent of the crude?

A. To tell you the truth, I don't know.

RXQ. 325. I read further from your notes the following: "Took fifty grams, extracted"—I wonder whether I am reading that correctly.

A. If you will show it to me perhaps I can help you.

RXQ. 326. Yes, read it (handing witness).

A. Took fifty grams, extracted, in 150 c.c. alcohol, filter, wash with 25 c.c. alcohol, then repeated.

RXQ. 327. In other words, you took 50 grams of what?

A. Of that crude product.

RXQ. 328. Of the 323 grams that you had obtained?

A. That is correct.

RXQ. 329. And you washed that in 150 c.c. of alcohol?

A. That is right.

RXQ. 330. What did you get?

A. What does it say there?

RXQ. 331. You read it.

A. Let me have it.

RXQ. 332. Just read it (handing witness).

A. It does not say anything yet. The next statement is: "Recrystallize from 250 c.c. alcohol."

RXQ. 333. And then finish it up.

A. "Product poor." "M. P." Meaning melting point. "204 to 205," meaning degrees, "with darkening."

RXQ. 334. So your first experiment, according to your own notes, gave you a poor product, melting point

204, and you did not put down a single step that you took to produce it; that is right, is it not?

A. That is right, sure.

RXQ. 335. And that is the experiment as to which you testified on Saturday, that you made following exactly the steps in the patent, and you got a yield of about 60 per cent., is it not?

A. I said I did not remember exactly. I thought it was that.

RXQ. 336. You thought about 60 per cent.; is that right?

A. (Witness nods his head.)

Mr. Kresel: I think that is all, Doctor. I will have to ask that this page 75 be marked in evidence.

The Court: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 368." (*See Exhibits, Vol. V, page 3466.*)

Re-Direct Examination.

By Mr. Anderson:

RDQ. 337. When did you make those notes?

A. The date is given. August 3rd, I believe.

Mr. Kresel: August 3, 1917.

RDQ. 338. Where has that book been since that?

A. It has been in the hands of the Calco Chemical Company. It is their property.

RDQ. 339. When did you leave the Calco Chemical Company?

A. I left the Calco Chemical Company to my best knowledge and belief I believe in September, 1919.

RDQ. 340. Have you ever seen that book since that?

A. No, sir.

RDQ. 341. And I believe you said you had not made any cinchophen since 1918?

A. That is correct.

RDQ. 342. You were asked on cross-examination the other day how you happened to come here to testify. Were you requested to come here by the counsel for the Government?

A. A man by the name of Mr. Wright came up to see me.

RDQ. 343. He told you he was a representative of the Department of Justice, did he not?

A. I think so, yes. That is what I understood.

RDQ. 344. And he requested you to come here and testify, did he not?

A. Yes.

Mr. Anderson: I would like an opportunity to examine these notes a little, if I might, sir. I called for the production of that book Saturday and today.

The Court: Are you through with the witness?

Mr. Anderson: If I could examine those notes I might be through with him.

Mr. Kresel: We have no objection.

Mr. Anderson: And let a chemist go over them. He might stand aside.

Mr. Kresel: No, we object to any chemist going over them. These are records of this company relating to their business. I do not think that is fair. I have no objection to Colonel Anderson examining them.

Mr. Anderson: Of course, I would like to go over them with the witness, because they do not mean anything to me. They may just as well be in Sanscrit as far as I am concerned. I will have to have someone to interpret them, put them into the English language.

Mr. Kresel: I will say this to Colonel Anderson: I have no objection to Dr. Freedman going over it with him. Surely nobody can explain it better to him than Dr. Freedman. I say I have no objection to Dr. Freedman doing it, because he already knows the contents thereof; but I do not think it is proper that some other chemist should now go pawing over our records.

Mr. Anderson: I have no objection to that, sir, but I would like Mr. Knight to run over that book and see if there are any further questions to ask Dr. Freedman. I do not know of any. If there are not, he might leave. Then I would ask in the next half hour, if your Honor would have no objection, that he might go back to New York.

The Court: If you are through with him, I am through with him.

Mr. Anderson: In the second place, I wish to state now in the presence of Dr. Freedman that he is ready to return here after a reasonable time—I do not know how much time he expects to be away—and complete the work under the direction of Dr. Alleman or anybody else.

The Court: You may have him do that if you like. I am not interested in its completion.

The Witness: May I make one more statement, your Honor?

The Court: Make all the statements you like.

The Witness: There is one point here which I meant to state which Dr. Crossley showed you, but he did not go into an explanation about this, which I believe a very important part of it. This (indicating) shows some filter papers taken from the funnel, in which the substance was filtered.

The Court: Colonel Anderson, the witness is yours. I am not going to stop him.

Mr. Anderson: I think myself we have gone enough into those experiments, if it is satisfactory to your Honor.

The Witness: I want to show a great quantity of the substance adheres to these papers, and in carrying out the reaction with very small quantities considerable is lost.

Mr. Anderson: Those will be kept with the remainder of the stuff, will they?

The Court: The Marshal will take all of that and keep it locked up.

Mr. Anderson: You may stand aside, Dr. Freedman.

The Court: Mr. Kresel, as I understand, you have turned this book over to Mr. Knight or Colonel Anderson, have you not?

Mr. Kresel: I have turned it over and Mr. Knight now has it in his possession. May I ask the witness another question?

The Court: You may.

Re-Cross-Examination.

By **Mr. Kresel**:

RXQ. 345. Dr. Freedman, do you remember you testified on Saturday that you saw the cost sheets from which you learned that the cost of research on cinchophen was not anything like $60,000? Do you remember saying that?

A. I thought they were the cost sheets of cinchophen.

RXQ. 346. You thought what?

A. They were the cost sheets on that particular product.

RXQ. 347. Don't you know whether what you saw were the cost sheets on cinchophen?

A. That was my recollection.

RXQ. 348. Look at these papers. Are these the papers you refer to (handing witness)?

A. What is the—no, Mr. Kresel, these are 1919.

RXQ. 349. But look for 1917; you will find them there? Do you find them?

A. I think some of these were the papers, yes.

RXQ. 350. Very well.

A. Of course, it is just memory. I have no proof and no pictures of them.

RXQ. 351. Oh, of course, it is memory. Please look at those for 1917 and point out any place where you find a single item of research work.

A. There is laboratory expenses, $45.96.

RXQ. 352. Laboratory expense on what?

A. Under the big head of manufacturing expenses.

RXQ. 353. But I am not talking about that.

A. You said research work.

RXQ. 354. I did.

A. And laboratory work.

RXQ. 355. What?

A. Laboratory work. Yes, I agree with you, that is correct.

RXQ. 356. That is not research work, is it?

A. Yes, I agree with you. I may have seen other papers by Dr. Fine; I do not recall exactly. It was in 1917. I can not remember all those things.

RXQ. 357: Tell me, Dr. Freedman, what was it—were you trying to find out at that time what it was costing the Calco Chemical Company in its research work?

A. What do you mean, Mr. Kresel?

RXQ. 358. My quesion is perfectly simple, I think. I will put it in a different way.

A. Very well.

RXQ. 359. Just how did it come about that you were examining their cost sheets?

A. To my best recollection and belief now they were shown to me by Dr. Fine.

RXQ. 360. You were just a chemist in the laboratory there, were you not?

A. Exactly.

RXQ. 361. What was your pay at that time?

A. When?

RXQ. 362. In 1917.

A. I started with the Calco—in 1917 I believe it was $1,200 a year.

RXQ. 363. $1,200 a year?

A. That is correct.

RXQ. 364. Do you still persist in saying that the Calco Company to your knowledge did not spend $60,000 in research work on cinchophen?

Mr. Anderson: He did not say to his knowledge, Mr. Kresel; he said to the best of his recollection and belief it was exaggerated.

A. The Calco Company may have done——

RXQ. 365. Pardon me a minute. Are you doubtful as to what you said on the subject? If you are, I will read it to you.

A. Yes, please read it.

RXQ. 366. I will read it to you. This was on direct by Colonel Anderson, at page 4600: "Q. 44. It has been testified here that the Calco Chemical Company spent $60,000 in research work on cinchophen. Can you state whether that is a fact or not?" That question was not answered, but the next question was: "Q. 45. Can you state whether they spent $60,000 in that work? A. I am pretty sure that sum is considerably exaggerated."

Now, do you still say that?

A. I think the direct research work, according to my interpretation and opinion of what research work on cinchophen was up to the time I left—I think that sum is exaggerated, yes.

Mr. Kresel: I do not think I want to ask anything more.

Mr. Anderson: You may stand aside, and I will call Dr. Myers.

Mr. Kresel: Dr. McCoy asked me before luncheon if I would get through with him as soon as I could. Of course, I could not interrupt the other thing. May he be called now, sir?

Mr. Anderson: That is satisfactory to me, sir.

Mr. Kresel: All right, I will call Dr. McCoy. I am sorry to have kept him waiting so long.

(Witness excused.)

George W. McCoy resumes the stand.

Mr. Anderson: May it please the Court, the matter of the record produced by Dr. McCoy, that request was made in chambers and we requested Dr. McCoy to go back to Washington and find what records he could and bring them here by today, if possible. He did bring them up last night. If those records are to be used I am inclined to the view that they should be shown in chambers.

Mr. Kresel: If your Honor please, I have a suggestion to make which I think will obviate the difficulty of going into chambers and going through all these technical matters. I have examined some of the records during the recess hour, in the presence of Dr. McCoy, and they are perfectly plain. I mean no technical information is required to explain them. If it is agreeable to counsel I will just take one of these books—that is, the only one I am interested in—and ask that certain portions thereof be marked in evidence. That will obviate the necessity of going into chambers. I shall not read any portions.

Mr. Anderson: The point is that they are records of the Health Department, of the Treasury Department, and Dr. McCoy has said to me while he would be very glad to produce them, they are all he has and he did not want to leave them here. If he can take them back, I suppose you can put them in evidence.

Mr. Kresel: We can put them in evidence and copies may be supplied to the Clerk.

Mr. Kresel: I am sure, your Honor, that what I shall ask will be only about dates, so there is no reason why they cannot be given here. I am not going to ask any names.

Re-Cross-Examination.

By Mr. Kresel:

RXQ. 109. What is the first day when the United States Public Health Service Hygienic Laboratory analyzed the first sample of arsphenamine?

The Court: Any objection to that?

Mr. Anderson: No, sir. I just want it to appear of record that all of the records that Dr. McCoy was able to find of the test analyses, etc., which were called for as the basis for questions which it is claimed are hearsay, have been produced in Court, and if necessary, I am willing to go in Chambers, but I am also willing for counsel to proceed with the examination, as I am sure he will not exceed the limits imposed by your Honor; and if Dr. McCoy feels these limits are being exceeded, he has the right to stop at any time and ask the Court to say so.

The Court: He may say so.

Mr. Anderson: Then I have not the slightest objection.

RXQ. 110. Just the date?

A. The first on this record is 12/12/17, December 12, 1917.

RXQ. 111. Was there a preceding record?

A. There probably were, but I have been unable to find them.

Mr. Kresel: These pages are not numbered. I offer in evidence the record under date of January 9, 1918.

RXQ. 112. Is that the correct date for this (indicating)?

Mr. Kresel: That will be what number, Mr. Clerk?

The Court: January 9th, from what book, Mr. Kresel, so that it might be identified?

Mr. Kresel: Book No. 7,167, entitled "Arsphenamine. U. S. Treasury Department Hygienic Laboratory."

The Court: Produced by Dr. McCoy, and being one of the Government records.

Mr. Kresel: That is my understanding.

The Witness: Yes, sir.

Mr. Anderson: I have no objection if it be understood that Dr. McCoy's book will not be marked, but that Dr. McCoy will supply a copy or photostat. Will you have that done?

The Witness: Yes.

Mr. Anderson: The photostat or whatever it is will occupy the position of the book, a note being made by the Clerk that it will be supplied.

Mr. Kresel: That is satisfactory.

Received in evidence and marked "Defendant's Exhibit No. 369." (*Not printed.*)

Mr. Kresel: I offer in evidence the record under date of February 1st, date received February 6th, and I ask Dr. McCoy if that is 1918?

The Witness: I so assume. I have every reason to believe so.

Received in evidence and marked "Defendant's Exhibit No. 370." (*Not printed.*)

Mr. Kresel: I offer in evidence the page der date of February 25, 1918.

Received in evidence and marked "Defe ant's Exhibit No. 371." (*Not printed.*)

RXQ. 113. You will have photostats made, you?

A. Yes.

RXQ. 114. We will give you a memorandum.

A. Very well.

RXQ. 115. Is this the next one?

A. Yes, but the arsphenamine begins pretty back in that book.

RXQ. 116. Will you show it to me?

A. Yes, sir. (Indicating.) This begins the a phenamine.

RXQ. 117. This is 1918, is it not?

A. I would have to go through it a little bit find the date. Yes, this is 1918.

Mr. Anderson: May I ask this question Dr. McCoy?

By Mr. Anderson:

RDQ. 118. Dr. McCoy, are these records pu records for the information of the public?

A. I would say not; but I do not pretend to be expert. They are confidential records of the labo tory.

Mr. Anderson: In those circumstances, would ask that the copies of these records be cluded in the records taken in Chambers, with appropriate notation on this record that they so included as exhibits. Being uninformed mys as to their status, I want to make no mistake.

The Court: I was under the impression t they were being so offered.

Mr. Anderson: Because they involve mea etc., which I think might have to be kept secret

Mr. Kresel: Yes, that is all right.

Mr. Anderson: And be taken subject to the conditions imposed as to the evidence in Chambers.

The Court: Yes.

Mr. Kresel: I offer in evidence the record on page 106 of this book, which is entitled "Arsphenamine, G. C. Lake, Hygienic Laboratory," found at page 106 under date of February 9th, and March 1st, also March 2nd; also page 107; also the matter on page 108 under date of February 23rd and March 5th, 1918; on page 116, under date of March 21st and March 20th; and on page 122, under date April 2nd, 1918.

Received in evidence and marked "Defendant's Exhibit No. 372." (*Not printed.*)

The Court: Mr. Mahaffy, you understand that those exhibits when received are not to be put with the public records, but with the private records.

The Clerk: Yes, sir.

Mr. Kresel: I think that is all.

Mr. Anderson: I desire to offer in evidence the additional pages of the book first referred to as Nos. 7167, beginning with the first page, on which the data is kept, headed "Tests made 12/20/17" and going down to the page beginning with the heading "2/25" under the date line, exclusive of the pages which have been offered by the defendant, to the end that the record may be complete, and subject to the same conditions therein imposed, and the same right to reserve the book and substitute copies.

By Mr. Anderson:

RDQ. 119. Dr. McCoy, you will give me copies of them, and I will send them to the Clerk?

A. Yes, sir.

Papers offered by Mr. Anderson received in evidence and marked "Plaintiff's Exhibit No. 682." (*Not printed.*)

Mr. Anderson: I now offer in evidence all the pages of the book entitled "Arsphenamine, G. C. Lake," referred to by counsel for the defendant, beginning at page 106, down to and including page 196, with the exclusion of those pages put in evidence by the defendant.

The Court: Are they all pertinent, in your opinion? Have you gone over them?

Mr. Anderson: Yes, sir, I have been over them, and I think if any go in, we ought to have the complete record of these tests. I think they are very important, sir.

The Court: Anything to say, Mr. Kresel?

Mr. Kresel: That is going to make a tremendous record, your Honor.

Mr. Anderson: I am very sorry, sir. I do not think any of it has anything to do with the case; but if any of it goes in, I think the record ought to be complete.

The Witness: May I say something, your Honor?

The Court: Yes.

The Witness: Those pages contain a lot of data of a purely experimental nature, which has nothing to do with the acceptance or rejection of the product, and unless interpreted by someone thoroughly familiar with them, might lead to some serious errors.

Mr. Kresel: Col. Anderson has said he examined it all and he knows what he wants.

By **Mr. Anderson:**

RDQ. 120. Does that apply to all the pages of this book?

A. That applies to much of the book. I am not prepared to say now just what pages might be an exception to that; but a great deal of all of these records

—experimental and routine testings, were put down in chronological order.

RDQ. 121. As a matter of fact, no arsphenamine was allowed to be sent out to be sold, unless it passed these tests, was it?

Mr. Kresel: May I make a suggestion which I think will solve this and give the Government what I think it wants. If we may step up to the bench, I will make the suggestion.

(Counsel confer wih Court at the bench.)

Mr. Anderson: Since the conference between the Court and counsel off the record, in order to shorten the record, I will ask that by consent of the parties Dr. McCoy be allowed to take the two books which have been presented here and have copies made or photostats made as may be convenient, of all those parts which relate to the tests of salvarsan or neosalvarsan made by the Public Health Service for the period covered by the pages of these books which I have indicated.

Mr. Kresel: What is the last date?

Mr. Anderson: The last date will be September 21, 1918, in this book.

Mr. Kresel: I think that in order to make the record complete, you had better carry it down, if you will, Dr. McCoy. I see you have another book here.

The Witness: I have two more here.

Mr. Kresel: Carry it down to say the end of 1918.

Mr. Anderson: I would want to carry it even further than that .

Mr. Kresel: You want it further?

Mr. Anderson: I do.

Mr. Kresel: How much further?

Mr. Anderson: I should say certainly up to the end of 1919.

Mr. Kresel: All right.

RDQ. 122. Would that be a fair exposition of the experience, Dr. McCoy?

A. It would be fair enough, but it is a big job for somebody.

RDQ. 123. Well, so long as we are in it, we have got to do it.

A. It would be a month's work to go over these records, sir, and call out the pertinent data and exclude the experimental.

Mr. Kresel: Do it as best you can and as soon as you can.

RDQ. 124. I am sorry, Doctor, but in view of the fact that some of it is going in, I think that it is due to the Government and due to the parties concerned, the individuals and manufacturers concerned, that the data should be complete; and therefore I will have to ask that you do it if you can.

A. Excluding the experimental?

RDQ. 125. Excluding the purely experimental; but all notes of tests; and if you find it necessary, in order to make it clear, to put an explanatory note on to any item, you will please do so, and when you make copies, make three copies, if possible, that I may submit one to Mr. Kresel, have one for myself, and one for the Clerk.

Mr. Kresel: The explanatory notes, I understand, are to be simply to where Dr. McCoy is in doubt as to whether the entry is an experiment or a test.

Mr. Anderson: Where the entry standing alone would not tell the truth, I should think. That applies to books 1 and 2. Now, Dr. McCoy, have you got the book covering up to the end of 1919?

The Witness: June 30, 1919.

Mr. Anderson: That will be late enough.

Mr. Kresel: All right, that satisfies me, June 30, 1919.

Mr. Anderson: The request includes the data in your records up to June 30, 1919?

RDQ. 126. Will you have that done, Doctor?

A. Yes, sir.

Mr. Anderson: Then the papers will be filed at a later date, I think.

Received in evidence as "Plaintiff's Exhibit No. 683" (to be supplied). (*Not printed.*)

Mr. Anderson: If that is all, Dr. McCoy may stand aside.

Mr. Kresel: That is all.

(Witness excused.)

Mr. Kresel: Would you like me to finish with Dr. Gibbs?

Mr. Anderson: If you have any further questions to ask of Dr. Gibbs, I would be glad if you would.

Mr. Kresel: I have two questions I desire to put to Dr. Gibbs.

RE-CROSS-EXAMINATION.

By **Mr. Kresel**:

RXQ. 192. Dr. Gibbs, have you had any experience in chemistry work in relation to the dye industry?

A. I have.

RXQ. 193. How long has that experience continued?

A. Approximately seven years.

Mr. Anderson: I would like to give notice that this is outside of the direct, and if counsel takes this question up, he will be his own witness.

Mr. Kresel: I have finished. That is all I wanted to know. That is all, Dr. Gibbs.

RE-DIRECT EXAMINATION.

By **MR. ANDERSON**:

RDQ. 194. Where did you have that experience?

A. I was chemist in charge of the color laboratory of the Bureau of Chemistry and I was an employee of the DuPont Company.

RDQ. 195. Did you want to make some explanatory statement?

A. If your Honor please, there is a mistake in my testimony of last Saturday. I would like to correct it, if I may.

RDQ. 196. Yes, you may make the correction.

A. It is not extremely material, but I would like to have it accurate, if I may have page 4669.

RDQ. 197. All right, Doctor.

A. On the fifth line: "THE WITNESS: I have helped to draw a great many patent specifications."

I did not say that. I said I have taken out a great many patents. Then the last word of the same sentence should be "rest" instead of "work." I said, "I tell an attorney what I have discovered and he does the rest." I did not say "work."

RDQ. 198. "I have taken out a great many patents," did you say?

A. Yes.

MR. ANDERSON: May I make the change in the record, sir?

RE-CROSS-EXAMINATION.

By **MR. KRESEL**:

RXQ. 199. Dr. Gibbs, have you been able to fix the date of your conversation with Mr. Garvan any better than you could do it last Saturday?

A. Are you referring to my first conversation with him?

RXQ. 200. I am referring to the conversation at which you told him that salvarsan had been made in your laboratory?

A. No, sir.

RXQ. 201. You have not been able to?

A. No, sir. I have been very busy since then and I have not thought of the matter. I might state, if you desire it, that I have been able to fix more accurately the date of my first conversation with him, the first time I met Mr. Garvan.

RXQ. 202. I have no objection to your stating it.

A. Not that it is material at all, but I stated, I think, sometime in October, and I ran across a reference to something that leads me to believe that my first acquaintance with him occurred about two months earlier, in August. It is perfectly immaterial, but I want to be as accurate as possible.

RXQ. 203. And do you still say that you did not have any conference with him after April 10th, 1919?

A. I am just as certain of that now as when I made the statement.

RXQ. 204. You are, sir?

A. Nothing has occurred to change my opinion in any way.

Mr. Anderson: Dr. Gibbs, as the record discloses, has been engaged on other duties since Saturday. I intended for him to go to Washington and look at his notes and memoranda on this matter, but it has been impossible. I would therefore ask if there is any question about it, that he go to Washington and at some later day, in some of the proceedings here, to verify his statement or produce the contemporaneous memoranda to support the same if he can find it.

Mr. Kresel: I do not want to be a party to keeping this case open for any such purpose.

The Court: He may send to you if you desire, with the consent of Colonel Anderson, such memoranda as he may find, and then if you deem it of any particular importance, possibly on the date of the argument there may be a stipulation entered.

Mr. Anderson: We shall be very glad to do that and I shall ask Dr. Gibbs to get any data he has to support that date. I want to fix that date. You can stand aside, Doctor.

(Witness excused.)

Mr. Anderson: Now, Dr. Myers, I will call you to the stand.

CHESTER N. MYERS.

Chester N. Myers was called as a witness in rebuttal on behalf of the plaintiffs, and having been duly sworn, testified as follows:

Direct Examination.

By **Mr. Anderson**:

Q. 1. Please state your name and place of residence—

Mr. Kresel: Colonel Anderson, do you desire anything more from the Calco Chemical people about their figures? They are here and very anxious to get away.

Mr. Anderson: I should like to have a chance to examine their figures as to cost, or somebody else might do it. Mr. Galloway might do it or somebody.

Mr. Kresel: Suppose you put Mr. Galloway in touch with them.

Mr. Anderson: Will you take that up, Mr. Galloway, and see what the cost was.

Q. 2. Please state your name and place of residence?

A. Chester N. Myers, 34 Cedar Place, Yonkers, New York.

Q. 3. What is your profession?

A. Essentially a chemist.

Q. 4. Where were you educated?

A. I was educated at Williams College, Williamstown, Massachusetts, and Johns Hopkins University, Baltimore, Maryland.

Q. 5. What degrees, if any, have you?

A. I received the degree of Bachelor of Arts at Williams College in 1906, and the degree of Doctor of Philosophy of Johns Hopkins University, in June, 1910.

Q. 6. What has been your general experience in your profession?

A. I was Fellow by courtesy of Johns Hopkins University; University Scholar of Johns Hopkins University, and Carnegie Assistant for the Carnegie Institution for the Advancement of Science assigned to Johns Hopkins University; Associate in the Carnegie Institution for the advancement of science at Johns Hopkins University; Assistant in Johns Hopkins University Graduate School, Department of Chemistry; Associate in the Graduate Department of Chemistry, Johns Hopkins University; Director of Research for the Texas Oil Company, during the summer periods in that interval; Associated with the United States Government as Technical Assistant, Organic Chemist, and in the last few months rated as Associate Pharmacologist.

Q. 7. Where are you now employed?

A. Employed at the H. A. Metz Laboratories, 122 Hudson Street, New York City.

Q. 8. Are you here to testify by request of the Government in this case?

A. I am.

Q. 9. How long were you in the service of the United States, in the Public Health Service?

A. From the beginning of 1914 until March, 1919.

Q. 10. During your connection with the Public Health Service, did you ever undertake to make, or make, arsphenamine or salvarsan or any of its derivatives?

A. I did.

Q. 11. In what year?

A. I began my first work with the arsphenicals in 1915. The work directly with the preparation of salvarsan and its derivatives was in 1918.

Q. 12. You were then connected with the Public Health Service?

A. I was.

Q. 13. When did you leave that Service, Dr. Myers?

A. The early part of March, 1919.

Mr. Anderson: Will you let me see the Federal Trade Commission license for salvarsan.

Q. 14. Dr. Myers, are you familiar with the patents granted by the United States in relation to salvarsan or arsphenamine and its accompanying remedies?

A. I am.

Q. 15. Did you become familiar with that subject while an officer of the Public Health Service?

A. I did.

Q. 16. Can you state how many of those patents there are, so far as you know?

A. No, I could not.

Q. 17. Well, I will ask you to take, first, the patent 986,148 granted March 7, 1911, that is in evidence as Defendant's Exhibit No. 156. Are you familiar with that patent?

A. I think I am.

Q. 18. Have you ever undertaken yourself, personally, to make arsphenamine, or salvarsan?

A. I have.

Q. 19. When did you undertake to do this?

A. In 1918.

Q. 20. While you were still connected with the Public Health Service?

A. I was.

Q. 20A. Take the patent which I have just handed you; follow down the steps named therein, stating where you started?

Mr. Kresel: Will you please ask him to fix the date. He said in 1918.

Mr. Anderson: I will start the question again.

Q. 21. Fix the date as nearly as you can, Dr. Myers, when you began the work or experiments in making salvarsan, and if you can do so, approximately when you stopped the work, the personal work of making salvarsan; that is, I want to get the dates of your work approximately as near as you can now remember.

A. May I ask you a question?

Q. 22. Yes.

A. Just what do you mean by making salvarsan —intermediates or—

Q. 23. Experimental work.

Mr. Kresel: Wait a minute, please. He was answering the question. He had not finished.

The Witness: What do you regard as the starting point of making salvarsan?

Mr. Anderson: I do not think anybody knows, but I would say that possibly when you began to experiment in connection with the German patents is what I am coming to.

The Witness: As soon as the product was licensed in the United States, because for this reason—

Mr. Kresel: One minute, please, you were asked to fix a date. Fix a date as nearly as you can.

THE WITNESS: I think the requirements for the manufacture and production of the drug was issued by the Federal Trade Commission.

MR. KRESEL: Can you fix the date?

THE WITNESS: I can not, to a decisive day.

MR. KRESEL: All right.

Q. 24. Did you do this work under the direction of the Public Health Service?

MR. KRESEL: Please do not lead him.

A. I did.

Q. 25. Now, state how you came to do that; that is, under what instructions you did it, from what source, and about when you started?

A. At the direction of the Assistant Surgeon General of the United States Public Health Service, a Division of Scientific Research has extended through the Director of the Hygienic Laboratory and the Chief of the Division of Pharmacology.

Q. 26. Where did you carry on your experiments?

A. Partly at the Hygienic Laboratory and partly in Brooklyn.

Q. 27. Where in Brooklyn?

A. The H. A. Metz Laboratories.

Q. 28. State whether or not you were ordered there by the Public Health Service?

A. I received final orders from the Surgeon-General of the United States Public Health Service, which passed through the Director of the Hygienic Laboratory, directing me to undertake research at the Metz Laboratories.

MR. KRESEL: If that is in writing, I would like to see it.

Q. 29. Have you that order?

A. I have not.

Q. 30. You went there under those orders, did you?

A. I did.

Q. 31. Will you take the patent which you have in your hand first and state what you did in the experiment to make salvarsan under that patent?

A. Having obtained this patent, I proceeded to read it over with care and after having read it over with care, I referred to the original literature which was available at that time for carrying out processes of this nature. At that point, I carried out the procedure as illustrated in line 35 of this patent No. 986,148, in which a sodium salt of para-oxyphenylarsinate, which was anhydrous, was introduced in small portions into concentrated sulphuric acid at zero degrees Centigrade, with continuous stirring; and into this mass—

Mr. Kresel: Let the record show that he is reading from the patent.

A. (Laying aside patent)—and into this mass I ran a mixture of nitric and sulphuric acid in equal proportions, thereby nitrating the mixture, forming what is known as a mononitroparahydroxyphenylarsinic acid. This product was then poured in cold water and the nitrooxyphenylarsinic acid was precipitated out as a yellow powder. This yellow powder was filtered and washed, recrystallized and dried. The product was then one which is known as a mother substance of salvarsan or 606 in the Ehrlich terminology. The reduction process as described by this patent is carried out in the following manner.

Mr. Kresel: I object to what the patent says. It is what you did. That is the question.

Mr. Anderson: You may go ahead, Doctor, and answer what you did.

The Court: Did you make an objection, Mr. Kresel?

Mr. Kresel: No, your Honor, he is taking my suggestion.

A. (continuing) I dissolved the nitrooxyphenylarsinic acid in the warm water and added to it sufficient alkali to convert it into the sodium salt and used a temperature of about 50 degrees Centigrade. Sodium hydrosulphite which is the substance used for reducing pentavalent arsenic preparations of this type to the corresponding equivalent of arseno base.

Mr. Kresel: I object to all that. It is not a question of what is usual. It is what the witness did.

A.: (Continuing)—was dissolved in water at approximately zero degrees Centigrade. A warm solution of nitrooxy was poured into the cold solution of sodium hydrosulphite with continued and vigorous stirring. The container in which the mixture was placed was surrounded by a water jacket so that the temperature might be increased at a gradual increase of temperature. The temperature at which a precipitate known as arseno base came out of solution was about 30 degrees Centigrade. The reduction was continued until a temperature ranging between 50 and 55 degrees was attained. After allowing the reduction to continue for a period of about one hour and a half, the solution and suspension were allowed to stand, thereby allowing the reduced product known as arseno base to collect at the bottom of the container.

The super-natant liquid was then withdrawn by means of a siphon. The precipitate was then collected upon a filter and protected by means of carbondioxide, using vacuum for the separation of the solid and the liquid. This material was washed with cold distilled water until no acid reaction was obtained.

When the base had been thoroughly separated from the chemically held liquid, it was suspended in methyl alcohol and treated with hydrochloric acid in methyl-alcoholic solution, thereby producing what is known as a dihydrochlorid of dioxydiaminoarsenobenzene.

THE COURT: We will now take a recess until seven o'clock standard time. Is Dr. Bolton going to be here this evening? I wanted to ask him one question before this case closed.

MR. KRESEL: Yes, sir. I shall see that he is here, your Honor.

THE COURT: Dr. Bolton was up all last night and I do not want to keep him up this evening.

MR. ANDERSON: It is quite agreeable to me to interrupt the proceeding right now and call Dr. Bolton.

ELMER K. BOLTON recalled by the Court.

By THE COURT:

Q. 572. Dr. Bolton, I think in answer to a question by Col. Anderson you testified you considered it necessary or that a chemist would always use a pure intermediate in the making of an ultimate product. Have I stated that correctly; do I bring to your mind the matter which you testified in that particular?

A. Yes. I would like to state, however, that the question of purity in organic chemistry is a term that might require a little elucidation. We do not have in our business products that are absolutely pure. There is not in the commercial manufacture of these products an absolute purity. It is a purity which can be reached by commercially practicable processes. For example we use anthracene. I do not think that the anthracene is more than 92 or 93 per cent pure. It is possible to get anthracene almost 100 per cent pure, but the amount of money which is necessary to carry the purification to such a point is so large that the cost is almost prohibitive.

Q. 573. Then what you meant was that you used commercially—

A. Commercially pure, yes,—a commercial interpretation of that word.

Q. 574. The specific thing that I had in mind to ask you was this: The patent of which you spoke at that time, as I recall it, specified the steps for making an acid. Then the patent, as I recall it, immediately proceeds to say "this acid." I may be asking you something that will fall to my lot eventually in the determination of this case, but I am wondering whether to you, as a practical chemist, where the steps in making the particular acid have been specified, you would feel there was implied therein the necessary steps for purification. Before you answer that I will turn to the patent.

The Court: Have counsel a copy of it?

Mr. Kresel: Does your Honor mean the salvarsan patent?

The Court: Yes.

Mr. Kresel: We have.

Q. 573. (continued) Ending there (indicating). Read that and tell me (handing witness patent).

A. In answering this question I can only go back to certain experience that we have with this class of bodies, or at least try to draw something from past experience which would lead to an interpretation of what should be done. As a general rule we do not purify products, that is by crystallization, after nitration processes; we give them a washing under certain conditions. But as for a crystallization from a solvent, I do not believe that I would have that clearly in mind until after I tried the other possibilities. Because the methods which we use for the purification of such products cost less for the solvents and also for labor, require less time, putting a product into a solution and in some cases giving it a filtration before the crystallization of the product. It depends entirely upon the character of the products which you get as by-products, and I do not know whether you can formulate really a general rule as to what should be done in such a case.

Q. 574. It occurred to me that possibly if the patent or the directions mention the use of the particular acid, you as a practical chemist, one skilled in the art, might or might not interpret that to mean a pure acid; but I was wondering whether the skilled chemist would consider that purification was implied, where the steps in making the intermediate are set out, and then the patent saying "this acid."

A. Well, in drawing on past experience you have here, as I understand it, the nitration of a product which contains the hydroxl group, that is the hydroxyphenylarsinate. The nitration of hydroxy bodies—I do not know anything about this particular one, but I do know of a number of cases where the nitration gives you oxidation products. That is, I would not expect in the nitration of a body with a group exposed like the hydroxyl group, to get a clear, clean-cut product without doing something to it.

THE COURT: My inquiry, which is one really that I have to pass on possibly from a legal standpoint, was whether the steps in producing a specific intermediate being set forth, and then the patent immediately saying something with respect to this intermediate, a person skilled in the art would interpolate in there a purification step. It is a question I will have to answer from the legal standpoint if necessary, but I was wondering whether you could give me any views you might have from the practical side of it, and I think you have given me such information as will be of assistance to me. Do you want to ask Dr. Bolton any questions with respect to this?

Mr. Anderson: Yes, I would like to ask Dr. Bolton a question.

Re-Cross-Examination.

By Mr. Anderson:

RXQ. 575. Dr. Bolton, if you were making a product derived from this intermediate which you have spoken of here as capable of oxidation, to be injected into the veins of a human being, as an arsenic product, which is highly poisonous, would you not either use pure intermediates, or purify at the proper stages those intermediates?

A. I do not believe that I would overlook the necessity of looking into a problem like that. Of course, I think that is done in almost any process, whether it is a dye or a product like this.

Now, you have in certain cases, the case that came up in my testimony, where we were talking about indanthrene blue. Indanthrene blue is a very important product. It was the most important one of the indanthrene series; and the first patent that came out covered the fusion. It was principally indanthrene blue mixed with by-products. The product claims, as they stood, were sufficient to protect that product for all time. Nobody could go ahead and manufacture indanthrene blue without infringing that patent. But after that time, they came through, they knew how to purify the product, and they brought out another patent covering the purification of the product, and covered that as a new article of manufacture.

RXQ. 576. In the case of a drug of highly poisonous character to be injected into the veins of a human being, would not the highest degree of care with respect to purity be expected, and be exercised by a chemist or person skilled in the art?

Mr. Kresel: I do not think that that is a matter for the witness to answer.

Mr. Anderson: You have started there. Let us get this thing done.

A. Well, it is certainly a problem that a chemist has got to look into. I cannot answer that from any previous experience that I have had, because my experience is foreign to this field.

RXQ. 577. With this particular kind of compound, unless you took great precautions, you would expect impurities in by-products, would you not?

Mr. Kresel: Which compound?

RXQ. 577. (continued) Used in this patent which you have described. You said that just now, I thought.

A. If you refer to the para-oxyphenylarsinate which you introduce into sulphuric acid and then nitrate, whether you would carry it through a purification or not, would depend entirely upon your ability to identify your by-products. If you find that you have produced a product which is impure, and you can identify it as being impure, I believe that in my own experience I would try to purify the product to raise the purity. I do not know anything at all about the difficulties of such products. You do have impurities that show almost the same chemical behavior as the main product of the reaction. It depends upon the ease of identifying such impurities.

The Court: But how would I know, if a chemist, when reading that patent, that the first intermediate called for was not the product obtained from following those steps, but the product obtained after purification by some well known means, if such means there were? Do you see my difficulty or not? That is, if, when reading a patent of that kind, it specifies the steps for making an intermediate, then it specifies what use you shall make of this intermediate. The difficulty I have had in thinking over the construction to put upon this patent is how would I know that in this particular instance the product identified by the patent, and not a purification thereof, would be called for?

I am wondering what there is in the art, if there is anything in the art, which would enable me to know that I should not stop where the patent stops, I should not use the product which those steps produce, but should take other steps to obtain that product before carrying out the subsequent steps mentioned in the patent.

I do not know of anything at the moment in law which would tell me to do that, and consequently, I have got to get my information from the chemist in order to enable me to do that, if I must do it in the eventual determination of the case.

Mr. Kresel: May I ask the witness a question?

By Mr. Kresel:

RDQ. 578. Dr. Bolton, as the Court has pointed out, assuming that this intermediate of this salvarsan patent would ordinarily be a toxic intermediate and if not purified at that point, would, if subsequently used, produce a very toxic drug. As I understand, the Court's difficulty is this: Does it necessarily follow that every man skilled in the art would know that he would have to purify it if the patent did not tell him so—that he had to purify it at that point?

Mr. Anderson: I object.

The Court: No, that is not my difficulty, Mr. Kresel.

Mr. Anderson: I object on the ground that this is purely a legal and argumentative question. Dr. Bolton has testified on this subject three times.

I certainly do not object to your Honor asking any person any question.

THE COURT: My difficulty is this, Colonel Anderson: If I should take that salvarsan patent and attempt to interpret it purely from the books and what little I know about patents from the legal standpoint, I should not interpolate therein any purification step. I should not do it in this patent. If the patent had said merely use this acid and named the acid, I would not have much difficulty in interpreting that as meaning the pure acid; but then I find in considering the matter that I do have difficulty when the patent specifies how to make this particular acid.

MR. KRESEL: And says nothing about purifying.

THE COURT: And says nothing about purification, and then in the very next word says—what is this word, Dr. Bolton? Will you read it there? I think it is on line 47 or line 49.

THE WITNESS: This nitro-oxyphenylarsinic acid.

THE COURT: This acid—not this acid or acid of this name when purified, but this acid. So it seems to me that I would need more help at that point than I have had so far to enable me to put in there a purification step.

MR. ANDERSON: If your Honor please, of course, I do not want to argue with your Honor on the question of construction at this time; but I do wish to call your attention to this fact: Every witness, practically, who has testified here, has said that that acid is practically the starting point in this patent—the preceding steps—you can get that acid. If you cannot, you can make it that way. They have all testified that when you have made the salvarsan at the end of the process, it is not a drug that can be purified. It is going into the veins of a human being. It can be purified at that point or it can be purified at subsequent steps, according to the testimony, but not when it is finally produced.

That being the case, the sole question, as I take it, that Dr. Bolton could answer as an expert, which I concede he is, would not be what he would do under this patent, unless he had tried it, but whether a man who was going to make a product that would go into the veins of a human being, as highly poisonous as arsenic compounds, would not either start with pure drugs which would keep a condition of purity, or purify it at such stages as chemistry indicated.

The Court: My difficulty was this: I can assume that you want as low a degree of toxicity in your ultimate product as you can get. How to get it is another problem; but my difficulty, I find, in reading over that patent, is whether this particular patent does not tell me to use the product of those steps and that acid, and not a purified acid. Unless you have some other questions on this to ask Dr. Bolton, I have none.

Mr. Anderson: I will put to Dr. Bolton the straight question whether he, as a scientist, will say that if a man was making a drug of a dangerous or poisonous character like an arsenic compound, to put into the veins of a human being, he would or would not, either start with pure drugs or purify at all stages necessary to get the lowest degree of toxicity as a prudent chemist.

Mr. Kresel: I must object to that, your Honor. That is a purely hypothetical question.

Mr. Anderson: I put it as a hypothetical question.

Mr. Kresel: Some chemists might do one

thing and some chemists might do another thing. I do not believe it is going to be helpful to have an answer to that.

The Court: I think I have gotten you all into trouble by my question; but I had some difficulty there as a legal problem, and it seemed to me it was a practical problem, as I said, from the standpoint of the ultimate product. I can see that there would not be injected or used a product high in toxicity, without danger of death from poisoning probably; but that is not the specific problem which is confronting me. I thought probably Dr. Bolton could help me out, but I do not believe he can further than he has. I will take his answer to your question, if you want it, but that will not help me.

Mr. Anderson: Regardless of whether it helps your Honor or not, I would like to test what Dr. Bolton would say to that proposition.

The Court: You can make such other assumptions in answering that question, if you cannot answer it on these assumptions, as you want to, Dr. Bolton.

The Witness: Colonel, it all depends upon whether you know that a thing is pure or not. I would start out without any experience on this class of bodies, and I would work on it, and I would get a final product. I know nothing about the physical constants of this particular product.

Now, none of these reactions in organic chemistry are so clean-cut that when the reaction is over you can say "here is the pure product, here is the one thing, and here are the impurities," and this expression is very simple, but you might have impurities present which would escape your observation for a very long period of time, and it would be only by the accumulated experience with that body and testing it with the different reactions, getting better acquaintance with its character, that you would begin to find that it was not quite pure.

We have that duplicated time and time again in new products. We get to a point from time to time where we think that an intermediate is pure, and we do not have it pure. We go still beyond that point, but that is an accumulative experience. It is something that you cannot say what the man is going to do without any experience a priori in this particular line.

By Mr. Anderson:

RXQ. 579. Now, Dr. Bolton, would he sell that stuff and put it into the veins of a human being until he had satisfied himself it was pure?

A. He does to the best of his ability, I should think.

The Court: That is another matter. Recess until 7 o'clock standard time.

(Recess.)

After Recess.

8 o'clock P. M.

Mr. Kresel: If your Honor please, before he resumes his testimony, I desire whether it is your Honor's wish to hear argument on which counsel gave me notice.

Mr. Anderson: I have not made it yet. I may not make it.

Mr. Kresel: Notice was given to me.

Mr. Anderson: I handed counsel a copy so that in the event that I did make a motion there would be no question but what he would have a chance to examine it. But I have not made the motion.

Dr. Myers, will you take the stand, please.

CHESTER N. MYERS resumed the witness stand.

DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

Q. 32. Dr. Myers, in the year 1918, at which time you said you produced salvarsan by your own experiments, had you taken occasion to familiarize yourself with existing literature on the subject which had been published prior to that date?

A. I did.

Q. 33. Can you state or refer to some of the leading literature on that subject which had been published prior to the summer of 1918 at which time you spoke of doing this work?

A. There were three main sources of literature available at that time. One was in English, the handbook of arsenical combinations by Bertheim. The second was a publication on the chemical theory of the Chemotherapy of Spirillosis, by P. Ehrlich and S. Hata.

Q. 34. Can you state the date of the publication about? If you haven't it there, I can give you a bibliography to refresh your memory.

A. I can give it to you exactly, if you care for it. The experimental Chemotherapy of Spirillosis was published in London in 1911. The exact title of the book in German was Handbuch der Organischen Arsenerbindungen, published at Stuttgart, 1913. The other sources of literature available at that time were found in the volumes of the Berichter, from Volume 40, which I think was 1907, to Volume 45, which is 1912; and the specific reference in the last one was page 756.

Q. 35. 756 of what book?

A. The Berichte Deutsche Chemische Gesellschaft, Volume 45, Page 756.

Q. 36. You spoke of sources of information. I would be glad if you would state and put into the record, the publications, with the date of publication which had come out prior to 1918, with which you were then familiar, if you have the bibliography available?

A. All abbreviated matters, you will find them on page 354 of this little booklet here.

Q. 37. Will you state what it is, because that does not mean anything?

A. This booklet here was published in 1918. These references are all previous.

Q. 38. What is the name of the book, by whom, give the title?

A. "Organic Compounds of Arsenic and Antimony," by Gilbert T. Morgan.

Q. 39. Where was it published and when?

A. Published by Longmans Green & Co., 39 Paternoster Row, London, New York, Bombay and Calcutta, 1918. This book refers to the references which are dated previously.

Q. 40. Now, as you are familiar with the patent, which you have examined before adjournment, I will ask you what steps did you take from the beginning to the end, in making the intermediates and the final product of arsphenamine in accordance with patent No. 986,148, dated March 7, 1911, and will ask you to point out from the patent each step where you derived the same from the patent or the literature, available up to April 10, 1919. Are you clear now what I mean?

> Mr. Kresel: I object to the question. I object to it upon the ground that it is leading, and further that it assumes that the witness followed the patent, which the witness has not said yet. I object upon the ground that it is cumulative, and the witness has already answered the question fully as to what he did. It will be found on page 4814, and goes on for two pages thereafter.

Mr. Anderson: Your Honor, I wish the witness would take the patent and point out in the patent the sources of his authority in connection with the literature with which he said he is familiar, for each of the steps which he testified he took from the patent.

Mr. Kresel: The witness has not said that he followed the patent at all.

Mr. Anderson: I want him to state that now, if your Honor please. I want him to state what he did, and what sources of information there were in the patent for what he did.

The Court: Then you object to the question as amended?

Mr. Kresel: I do not understand it as amended. I would suggest that Col. Anderson re-frame his question.

The Court: Will you re-frame it. I think the question as raised was not leading, but I think the objection is well taken.

Q. 41. Then I will ask you to take this patent and point out to the Court the steps which you took, and the sources of the information on which you based those steps, taken in connection with the literature with which you were familiar at that time?

Mr. Kresel: I object to the question again on the ground that it assumes that this witness followed the patent. I again say that this witness has not been asked and he has not answered that he followed the patent in the slightest.

The Court: I think the objection is well taken.

Q. 42. I will ask you to state whether or not you followed the processes outlined in that patent in making salvarsan in 1918 as you described?

A. I followed the process described in that patent, with the interpretations which seemed wise to me as one who is familiar with arsenicals.

Q. 43. Then I will ask you now to take the patent and follow through the steps that you took, pointing to the patent to indicate the sources from which you took them, upon what information derived from the patents you acted, and your interpretation thereof as you indicated?

> Mr. Kresel: Again I object on the ground that the witness has not indicated to what degree, if any, he followed this patent.
>
> He would say yes or no. I do not see why any distinction is made with this witness unless such be the fact, that he did not follow it.
>
> Mr. Anderson: My reason was, sir, that I think the question "Did you follow the patent" is a conclusion, and I was trying to avoid getting into the complication which I apparently got into. I have asked the witness whether he followed the patent. He said he followed the patent with the interpretation which his experience with arsenicals as a chemist indicated. Now I want him to show just exactly what he did follow, what the sources of his information were and fit his acts to the patent. I am trying to put that question the best I can under the circumstances without asking him for a conclusion.
>
> Mr. Kresel: I shall not object to the conclusion. What I am interested in, your Honor, is this, and I am entitled to get it now—whether this witness did or did not follow the patent exactly. He may have added certain things, but what I want to know is did he follow the patent?
>
> Mr. Anderson: I think when he has answered the question I have asked, it will appear whether he followed the patent with his interpretations thereon.

The Court: As I understand your question, you are asking the witness what he did in making arsphenamine, and to point out either from the patent or from the literature of the period, the justification for each of the steps.

Mr. Anderson: That is what I am trying to get at, sir.

The Court: Is there any objection to the question as so interpreted?

Mr. Kresel: Not as interpreted that way, your Honor.

The Court: Do you understand the question?

The Witness: I think I do; yes, sir.

The Court: Very well; answer it.

Mr. Anderson: The patent is No. 986,148, of March 7, 1911.

A. Patent No. 986,148 deals specifically with—

Mr. Kresel: One minute.

The Court: That is not the question.

Mr. Kresel: We are sitting at night here, and we do not want to waste time.

The Court: Strike out the answer. Tell what you did in making arsphenamine in 1918?

The Witness: All right, sir.

The Court: And the authority for each of the steps that you took.

A. In 1918 I prepared nitro-oxyphenylarsinic acid as described in lines 33 to 50 inclusively. I likewise prepared nitro-oxy by means which are described in the Berichte of the German Chemical Society, arriving at, in each instance, products which were identical in nature. The products were crystallized for the—

Mr. Kresel: When you say "products," will you tell what product you are talking about?

A. (continued) The nitro-oxy prepared by each method was re-crystallized as a result of having read an article I—

Mr. Kresel: I object to that, your Honor. If there is any article to go in, I want to see it.

Q. 44. Have you got the article?

A. Yes, I think the article is back there; Berichte 44, I think it is.

Q. 45. Is this the book to which you refer (handing book)?

A. This is one of them. This article to which I refer is the Berichte 44, No. 9, for May 20, 1911, and the suggestions are found on page 1260 and page 1261 for products of this nature. There is an additional reference.

Mr. Kresel: May I make a suggestion, your Honor? Would it not lend to clearness if this witness would first tell us what he did under the patent, and then, if he did something because of something else that he had read, let him tell it to us after that? This is going to confuse the thing. He says "I did this under the patent." Then he jumps to some German article. I have no objection to his giving the full information; but I think it would be much better for everybody concerned if he would first confine himself to the patent and then go to the next thing.

The Court: The witness may or may not adopt your suggestion, as he prefers.

The Witness: I would be glad to adopt your suggestion, Mr. Kresel.

Mr. Kresel: I wish you would, Doctor, it would help me.

The Witness: You will feel more at ease, and we will have the thing amicably settled. What you wish is that I should go through the patent first?

Mr. Kresel: Yes; please tell us what you did under the patent.

The Witness: All right, sir. In following the patent, as I have already pointed out to you, on line 34: "The procedure for preparing the new compound may, for instance, be as follows," and with that interpretation I prepared nitro-oxyphenylarsinic acid by two methods. I followed the patent explicitly, as described in the lines 33 to 50 inclusively, yielding the nitro-oxyphenylarsinic acid, which is regarded as the mother substance of arsphenamine, which is the dihydrochloride, this patent specifically mentioning the arsphenamine base.

In other words, it is a product not containing the two hydrochloride acid groups. In order to carry these experiments along simultaneously, I likewise prepared the nitro-oxyphenylarsinic acid by the conversion of the nitro-aminophenylarsinic acid into nitro-oxyphenylarsinic acid.

By Mr. Kresel:

Q. 46. That last step is not in the patent at all?

A. No, not specifically described here, but it says it may be made as follows.

Q. 47. I do not mean to interrupt you, but I simply want it clear. The last step of converting the nitro-amino into nitro-oxyphenyl is not described in the patent?

A. Not this particular patent.

Q. 48. That is what I mean. That is the one we are dealing with.

A. This nitro-oxyphenylarsinic acid was purified by re-crystallization by distilled water, for the reason that it is apparent—

Mr. Kresel: I object to his reason.

The Court: Sustained.

The Witness: It is purified and then it is dried, ready for the reduction process.

Q. 49. You mean you did it, not that it is done?

A. Yes, sir; I did it myself.

The second procedure which is described in this patent consists in the reduction of the product nitro-oxyphenylarsinic acid and that reduction was carried out by dissolving 66 grams of the nitro-oxyphenylarsinic acid in hot water at 50 degrees. This product then was converted into the sodium salt by the addition of concentrated sodium hydroxide.

In my experiment I used 88 per cent sodium hydro-sulphate and I used an amount of sodium hydrosulphite which would give me an amount equivalent to the 855 grams of anhydrous sodium hydrosulphite described in the patent. 171 grams of magnesium chloride was dissolved in the cold water at zero degrees, preparatory for the reduction. The sodium salt of nitro-oxyphenylarsinic acid was then poured into the reduction mixture with vigorous stirring. The temperature of the moisture, as I recall, was about 10 or 11 degrees Centigrade. The product was continuously stirred until the temperature reached about 30 degrees Centigrade, when a precipitate began to form. The reduction was continued until a temperature of 63 to 65 degrees was obtained, giving a complete precipitation of the arsphenamine or salvarsan base, as indicated by testing the solution which remained in the reduction kettle. This base was then allowed to settle and after the settling process had taken place so that most of it was lying at the bottom of the container, the super-natant liquid was siphoned off, leaving the reduced arseno compound in the container. This residue—

Mr. Kresel: You gave us all that before we adjourned.

The Witness: You asked me to go through it again for you.

Mr. Kresel: I did not. Your counsel asked you. This is exact repetition, your Honor, of what we had before.

The Court: Colonel Anderson, if that be your understanding, can we not shorten this by asking him to tell us what steps he took in addition to those described by him before we took the recess, and the authority for such additional steps?

Mr. Anderson: I could ask him that, sir; or I could ask him to do what I first asked him, to state the sources of each act in the patent and the accompanying literature with which he was familiar and the reasons therefor and his interpretation of the patent.

The Court: By "reasons," you mean what?

Mr. Anderson: The interpretation of the patent in the light of such literature; and if that interpretation is wrong, it is for the Court to say.

The Court: If you can abbreviate your answer by making reference to the answer given before recess, you may do that.

The Witness: Briefly I can tell you the reason that I used a little higher temperature, because the reaction—

The Court: The only reasons that Colonel Anderson has asked you for are those which have been described in the literature which was read by you prior to your experiment, as I understand the question.

By Mr. Anderson:

Q. 50. I intended to ask him for his interpretation of the patent so that the answer might be complete. His interpretation of the patent may or may not be right, but he is entitled to give his interpretation as showing what he did. Do you understand, Doctor, what we are driving at? Take your interpretation of the patent, together with the literature, and say what you did, and give the sources of your authority for doing it under that patent?

A. The reason for re-crystallizing is found on page 12.

> Mr. Kresel: I object to his reason for re-crystallizing.
>
> The Court: You mean because it is stated as a reason, or because there is no authority in the patent for it, no instructions for it?
>
> Mr. Kresel: I object to it upon both grounds, your Honor. In the first place, it is an operation of his mind, which is not at all material here, and secondly because there is nothing of that sort in the patent.
>
> Mr. Anderson: I think the operation of his mind is material.

Q. 51. Please say, doctor, the sources of your authority for re-crystallization?

> Mr. Kresel: I object to that. This man does not need any authority for what he did. It is either in the patents or it is not.
>
> Mr. Anderson: It is to the contrary, your Honor.
>
> Mr. Kresel: The patent speaks for itself.
>
> Mr. Anderson: This interpretation of the patent, taking its clauses together, indicated re-crystallization, and it is for him to say so. If the literature of the times suggests re-crystallization, it is for him to point to it.
>
> The Court: We are dealing here with the value of the patent and not its validity; so I had assumed, Col. Anderson, in your question, that you had assumed the validity of the patent; and I assume that the defendant had likewise taken the patent as valid, but showing that it had been abbreviated with respect to the detailed instructions. Consequently I had assumed that your question

was directed to this, namely, as to whether in 1918, when he made his experiment, the literature with respect to such compounds was more extensive than it was probably in 1911, and that the value of the patent would have to be ascertained on April 10, 1919, in the light not only of the patent, which would be presumably valid, but in the light of all the literature, scientific literature, which might be read in connection therewith. Do I misunderstand the point?

MR. ANDERSON: Your Honor understands my position. I was trying to get it condensed, instead of going through the patent and saying that others did that and the literature did this, that is what the interpretation of putting the two together led him to do.

THE COURT: I do not know that is interpretation, but I will take his answer with respect to the re-crystallization, and he may tell us what authority he found in the literature on the subject in America at that time, which was generally known to those skilled in the art.

MR. ANDERSON: Your Honor, in saying in America he does not mean, of course, to exclude literature of foreign countries, which was in the libraries of America, in the University libraries and so forth, that has actually gone to make that clear to the witness.

THE COURT: No.

MR. ANDERSON: Now, you understand the Court's statement. Will you please proceed as best you can to respond to that suggestion.

A. The literature available at that time on the question of re-crystallization was based upon laws in that you might have dinitro compound form instead of all mononitro compound, which would lead to a reduction of the product known as the tetramonohydroxyarsinbenzol; in other words, there would be two nitro groups going on instead of one, and that product presumably was more toxic than the mononitro. Therefore, it seemed obvious that the re-crystallization should take place at that stage, in order to remove a product which undoubtedly will be formed in small quantities when keeping a very low temperature. The other factor which was dealt with at that particular point is that you may have side products formed which are formed to the parent substance, that is, by-products due to small reactions taking place, rather than giving you one large nitroxyphenylarsinic acid. The only way to remove those are by re-crystallization or a difference in solubility in various types of solvents; and the suggestion bearing out that particular feature is found in an article by the originators of the idea, Ehrlich and Bertheim, which was published on May 20, 1911.

THE COURT: What is the date of the patent?

MR. ANDERSON: March 7, 1911.

THE WITNESS: That is briefly covering it.

By MR. KRESEL:

Q. 52. Have you that available?

A. Yes, sir.

Q. 53. Is it in German or English?

A. That is in German.

Q. 54. Will you read it; have you a translation of it?

A. The article is by Paul Ehrlich and A. Bertheim, and the subject of the article is the reduction produced on arsinic acids and their derivatives and its decomposition products with the p. p. arsino benzene; and it describes the two methods of reduction, the step by step reduction and the direct reduction. The step by step reduction is one using the sodium manganese or some of its side products, the one which we are distinctly interested in here is the use of sodium hydrosulphite on the direct reduction.

Q. 55. Can you translate German?

A. I think I can.

Q. 56. Will you say what is your authority for doing that? Now, the page you are reading from is what?

A. Page 1261.

Q. 57. And what is the volume?

A. I beg your pardon.

Mr. Kresel: What is the volume?

The Witness: Volume 44, No. 9.

Mr. Kresel: Of the Berichte?

The Witness: Yes.

Mr. Kresel: Now, go ahead.

Mr. Anderson: I would like to state to counsel that the witness did not say it was his authority, but that it was indicated or suggested in that authority and also indicated in the patent.

Mr. Kresel: I am not binding him down to a particular word.

The Court: I understood him to say the step was disclosed.

Mr. Kresel: That was my understanding You do not mind if I follow you in your German?

The Witness: No. The reduction products contained not only small quantities of impurity, by-products, ash, residues, and the solution which is used in precipitation whose removal is very difficult. That is the principal feature. If the arsenal combinations were either directly distillable or even lent themselves to precipitation, still it would lead to their removal through crystallization because they possess many of the unknown colloidal substances. Chemically and physically they show themselves entirely opposite. That is the particular part.

By Mr. Anderson:

Q. 58. You can proceed. Is there any other literature or any other matter on the subject which you wish to state?

A. The production of the dihydrochloride is described to a considerable extent in the literature in Volume 45 page 756, et seq., of the Berichte.

Q. 59. Of what time?

A. 1912.

Q. 60. The dihydrochloride is the last product; after you have arrived at the salvarsan base provided for in the patent, then you produce the dihydrochloride in the method you have already indicated?

A. Yes, sir, that is the last stage.

Q. 61. And you say that was described in the publication to which you refer in 1912?

A. In addition to the patent.

Q. 62. Doctor, in following the procedure which you have outlined, what did you get?

A. Salvarsan base and salvarsan dihydrochloride.

Q. 63. Is salvarsan dihydrochloride the commercial product?

A. It is.

Q. 64. The quality used as a drug?

A. It is.

Q. 65. Did you test that chemically or biologically or both?

A. I did.

Q. 66. With what result?

A. It conformed to the test for salvarsan as outlined in the United States Public Health Service Bulletin.

Q. 67. In 1918?

A. The tests were made in 1918. I do not remember the exact date of that publication. (Examining papers.) Yes, 1918.

Q. 68. Did you personally see that product tested, that you produced?

A. I did it myself.

Q. 69. On what animals?

A. Not on any animals. The question which I think you intended to ask me was about these quantitative and qualitative tests?

Q. 70. Yes.

A. That is a chemical test without the use of animals.

Q. 71. Is that the test issued by the Public Health Service?

A. It is.

Mr. Kresel: It is what.

Mr. Anderson: Issued by the Public Health Service of the United States.

Mr. Kresel: I do not understand that. Do you mean the test that you made is issued?

The Witness: Yes, this right here.

Q. 72. Were then issued?

A. It is the Bulletin issued by the United States Public Health Service on the quantitative and qualitative test for arsphenamin and neo-arsphenamine, reprint No. 472.

By Mr. Kresel:

Q. 73. I did not understand you, Doctor. You mean the kind of test as prescribed by the Public Health Service; is that what you mean to say?

A. Yes, sir.

Q. 74. You do not mean to say that the very tests you made were published by somebody?

A. They were published by myself, yes.

Q. 75. In that?

A. Yes.

Q. 76. Let me see it?

A. (Witness hands pamphlet).

Mr. Kresel: Go ahead; do not wait for me.

By **Mr. Anderson**:

Q. 77. And you did that as an officer of the Public Health Service?

A. I did.

Mr. Kresel: You need not wait for me; go ahead.

Mr. Anderson: I was going to offer that paper in evidence.

Mr. Kresel: Go ahead; offer it (handing paper).

Mr. Anderson: I would like to offer this paper in evidence as identified by the witness.

Received in evidence and marked "Plaintiff's Exhibit No. 684." (*See Exhibits, Vol. III, page 1743.*)

Q. 78. Have you any specimen of the salvarsan that you produced at that time?

A. I believe I have (producing specimen).

Q. 79. Have you got it there?

A. I have. (Handing.)

Q. 80. Was this produced in the manner which you have described in your testimony? This is called "Salvarsan Arsphenamine."

A. It was not prepared according to the last question asked me, in which I was to follow the patent specifically.

Q. 81. You did prepare some in accordance with that, did you?

A. I did.

Mr. Kresel: Pardon me, Colonel.

Mr. Anderson: Then I will not introduce this. I thought he had some that he did prepare under that patent. He prepared this by other processes, so I am not interested in it in the slightest. The witness is with you now.

Mr. Kresel: Before I cross-examine the witness, if your Honor please, Dr. Bolton, as your

Honor knows, has been up late and he wants to get away. I have been keeping him here because Colonel Anderson several days ago requested us to supply him with some more figures with reference to the research cost of the duPont Company. I was afraid that if I did not have Dr. Bolton here, I might not be able to meet the requirements; so I have kept him here. I inquire, therefore, whether Colonel Anderson still wants those figures.

Mr. Anderson: Yes.

Mr. Kresel: We have some here.

Mr. Anderson: I am perfectly willing to suspend the examination at this point, for the courtesy of Dr. Bolton, and let the figures go in.

Mr. Kresel: I do not need to call Dr. Bolton. I will offer the figures. But you may want to call him. That is the reason I have been keeping him here.

If your Honor please, Colonel Anderson wanted these figures that we supplied here cut up by years. We have done that from 1916 to January 1, 1923. There is a copy (handing paper to Mr. Anderson).

Dr. Bolton, perhaps you had better take the witness stand. There may be a question or two we want to ask you.

ELMER K. BOLTON.

Elmer K. Bolton, recalled for further examination, having been duly sworn, testified further as follows:

Direct Examination.

By Mr. Kresel:

Q. 580. Dr. Bolton, have you now produced a statement showing the research expenditures of the duPont Company covering products licensed from The Chemical Foundation beginning in 1916 and down to January 1, 1923?

A. I have.

Q. 581. The total thereof is how much?

A. On page 8 is found the total expenses for products licensed from The Chemical Foundation amounting to $640,656.88. I would like, if possible, to make a brief explanation in regard to these figures.

Q. 582. Will you do it, please?

A. In the early days when we began the work in the dye industry, you will appreciate that we had a very difficult problem in building up an organization; and that difficulty also extended to our accounting department. In those days, there was considerable confusion in accounts. We had open accounts. For example, as to indanthrene, everything was charged to that account which was carried on on any indanthrene dye and it is quite possible that some expenditures were charged there that should not be charged there and other expenditures were charged some other place, so that there was a certain amount of confusion. Now, this statement contains the figures for which we can vouch. We know that we have made these expenditures, but the statement is not complete. The amount is larger than given here. I can illustrate that by a general account which we had for indanthrene amounting to something over $21,000 and that was stretched over a period of three years, covering work at the experimental station. But we have not inserted that. So that the totals will give you a very good idea of the amount of money which has been invested in research work, but it will not tell you the whole story on account of the disorganization at that time in the accounts.

Q. 583. Is that all you want to say about that?

A. That is all I care to say about that.

Mr. Kresel: You can examine, if there is anything you want, Colonel Anderson. I offer this statement in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 373." (*See Exhibits, Vol. V, page 3469.*)

Cross-Examination.

By Mr. Anderson:

XQ. 584. Doctor, of course, you did not have anything to do personally with the keeping of the accounts?

A. No, sir.

Mr. Kresel: Do I understand there is any objection on that ground? Because if there is, I have Mr. Eliason here.

Mr. Anderson: No, I am perfectly willing to admit on the record that if Mr. Eliason went on the stand, he would say he made up this statement from the accounts of the duPont Company. I do not want to have any question about that at all.

XQ. 585. Do you know whether what you call intermediate or laboratory work is included in this?

A. This includes all the experimental expenditures which come under research. That includes laboratory and small scale experimental work. It does not include any manufacturing accounts.

XQ. 586. As I understand, you first have the laboratory work and then when you get to a point where you think it is about ready for commercial production, you test it out in what you call a small scale or intermediate work?

A. Test it out in miniature plants in quantities of ten to as high as fifty pounds of the product, which may be manufactured at one time.

XQ. 587. That expense is included in this statement?

A. That expense is included in that statement.

The Court: Are you through with Dr. Bolton on both sides?

Mr. Anderson: I think I will let Dr. Bolton go to bed.

Mr. Kresel: Is it all right to let Dr. Bolton go?

Mr. Anderson: As far as I am concerned.

Chester N. Myers resumed the witness stand.

Cross-Examination.

By Mr. Kresel:

XQ. 82. I understand, Dr. Myers, that between 1914 and 1919, you were in the Government service?

A. I was.

XQ. 83. And you were connected with the Public Health Service?

A. I was.

XQ. 84. The Hygienic Laboratory?

A. I was.

XQ. 85. That is the laboratory that had under supervision the testing of arsphenamine for toxicity?

A. It is. .

XQ. 86. And that work started in 1917?

A. Approximately.

XQ. 87. And under the governmental directions, all manufacturers of arsphenamine were obligated to send samples of their production for testing by the Hygienic Laboratory?

A. They were.

XQ. 88. You said something about having been instructed by your superiors to go to the Metz Laboratories in 1918. Whatever instructions you received, were those in writing or were they verbal?

A. They were in writing.

XQ. 89. From whom were the instructions?

A. Surgeon-General of the United States Public Health Service.

XQ. 90. Surgeon-General of the United States Public Health Service. Just who was he?

A. He is the officer in charge.

XQ. 91. I mean the name?

A. Oh, the name—Dr. Cumming.

XQ. 92. And were those instructions directed to you or were they directed to your superior in the Hygienic Laboratory?

A. They were directed to me.

XQ. 93. To you personally?

A. Yes, sir.

XQ. 94. Where is that writing containing the instructions?

A. With the account; with my expense account.

XQ. 95. Well, that does not tell me where it is.

A. Well, I do not know either.

XQ. 96. Well, where do you file your expense account?

A. With the Secretary of the Treasury, in some division.

XQ. 97. Pursuant to those instructions, did you go to the Metz Laboratory?

A. No, sir.

XQ. 98. Then did you ever go to the Metz Laboratories?

A. What is the question again?

XQ. 99. Did you ever go to the Metz Laboratories?

A. The previous question?

XQ. 100. I asked you whether pursuant to those instructions you had gone to the Metz Laboratories?

A. I just didn't get that question. I did.

XQ. 101. When did you go there?

A. On July 5, 1918.

XQ. 102. How long did you remain there?

A. Some time about the middle of November.

XQ. 103. 1918?

A. Yes, sir.

XQ. 104. And then did you resume your duties in the Hygienic Laboratory?

A. I did.

XQ. 105. Between July and November did you spend all your time at the Metz Laboratories?

A. I did not.

XQ. 106. Did you also perform duties in Washington?

A. I did.

XQ. 107. Did you spend most of your time at the Metz Laboratories?

A. I did.

XQ. 108. Is it the fact that you were sent to the Metz Laboratories in order to help those Laboratories produce a pure arsphenamine?

A. I was not.

XQ. 109. Is it the fact that when you went to the Metz Laboratories they were not producing a pure arsphenamine?

A. Not to my knowledge.

XQ. 110. Is it a fact that up to the time that you were sent to the Metz Laboratory they had had difficulty in producing an arsphenamine with a sufficiently low toxicity to pass the United States Health Service test?

A. There was a difference of opinion.

XQ. 111. What did you do between July and November, 1918, at the Metz Laboratories?

A. Investigated arsenicals.

XQ. 112. That is, you were prosecuting experimental work?

A. I was.

XQ. 113. Research work?

A. I was.

XQ. 114. Just for the information of the Hygienic Laboratory?

A. I was.

XQ. 115. Not for Metz?

A. Not for Metz.

XQ. 116. You did not in any way divulge to the Metz Laboratories the results that you obtained?

A. I did not.

XQ. 117. You in no way assisted them in producing arsphenamine?

A. I did not.

XQ. 118. At any time between July and November, 1918?

A. Between July 5th and November, 1918.

XQ. 119. Prior to your going to the Metz Laboratories you had been prosecuting research at the Hygienic Laboratory?

A. I was.

XQ. 120. You had had all the facilities there that were necessary to prosecute that work?

A. I did not.

XQ. 121. What facilities did not the United States give you that you had at the Metz Laboratories?

A. Actual contact with large scale production.

XQ. 122. You mean that the Metz Laboratories produced in large quantities; is that it?

A. Relatively.

XQ. 123. Were you experimenting in factory production or in laboratory production?

A. In laboratory production.

XQ. 124. Then why did you not prosecute your work as well at the Hygienic Laboratory?

A. For the reason that I was not in contact with actual process operation.

XQ. 125. But you have told me that your research work was laboratory work?

A. Yes, sir.

XQ. 126. That was the kind of work you had been doing before 1918?

A. Yes, sir.

XQ. 127. Dr. Myers, when did you enter the employ of the Metz Company?

A. About March, 1919.

XQ. 128. So, having worked in his place, between July and November, 1918, three or four months thereafter you entered his employ?

A. I did.

XQ. 129. And have been in his employ ever since?

A. I have.

XQ. 130. Have you had charge of his factory which manufactures salvarsan? I mean technical charge.

A. No, if I may explain.

XQ. 131. Wait a minute before you explain. Perhaps my question was not clear.

A. It covers a good deal.

XQ. 131A. I do not mean that you are the foreman there or anything of that sort; I mean you are in charge as the chemist there. Or am I wrong about that?

A. Your question covers a great many points.

XQ. 132. I will not enter into that. If that is not the fact, you will pass on.

A. I will answer your question for you. I am in charge of the Research section.

XQ. 133. And have been since March, 1919?

A. I have.

XQ. 134. Now, Dr. Myers, I am perfectly willing to accept your statement if you want to leave it that way—that the United States Government sent you to do laboratory research work at the Metz Laboratories, that you stayed there from July to November; and that that was not done for the purpose of helping Metz produce a proper arsphenamine. That is your statement, is it?

A. Yes, sir.

XQ. 135. But there was some difference of opinion as to whether he was producing a good arsphenamine; is that your testimony?

A. I believe that is correct.

XQ. 136. And you knew of that difference of opinion as an official of the Hygienic Laboratory, did you not?

A. I did.

XQ. 137. Dr. Myers, is it not a fact that in or about the month of July, 1918, you were employed by Mr. Metz to come to his factory to help him to put out a good arsphenamine?

A. I was not.

XQ. 138. You know Dr. Lake?

A. I do.

XQ. 139. He was connected with the Public Health Service too, was he not?

A. He was.

XQ. 140. Didn't you and Dr. Lake go over to Metz's laboratory about July, 1918, to help him out?

A. We did not.

XQ. 140 (continuing)—to make a good arsphenamine?

A. We did not.

XQ. 141. Did Dr. Lake?

A. I don't know.

XQ. 142. Was he there in July, 1918?

A. He was not.

XQ. 143. Was he ever connected with the Metz Laboratories?

A. He was.

XQ. 144. When?

A. About 1920.

XQ. 145. Not before?

A. I stand by my answer, as near as I am aware.

XQ. 146. I will come back to this subject when I get the letters. Dr. Myers, I am not yet clear whether you testify that you made any arsphenamine by strictly following the specifications in this patent. Did you or did you not?

A. With my interpretations.

XQ. 147. I do not want your interpretations. We will come to your interpretations later. Did you or did you not, by simply and strictly following the steps described in this patent manufacture arsphenamine?

A. I produced nitro-oxy as described in the patent.

XQ. 148. Did you or did you not by simply and strictly following the outlines in this patent produce arsphenamine?

A. I produced nitro-oxy.

XQ. 149. And not arsphenamine?

A. I just went to the nitro-oxy stage.

XQ. 150. Did you produce arsphenamine?

A. I did.

XQ. 151. Why did you hesitate, and it took me half a dozen questions to get the answer?

A. I did not hesitate.

XQ. 152. Do you say now that by simply and explicitly following these steps in Patent No. 986,148 you manufactured arsphenamine?

A. I did not.

XQ. 153. Now I have both answers; that you did and that you did not. Which is true?

A. Both are true.

XQ. 154. Both are true? Very good. I think that is a chemical reaction. (No answer).

XQ. 155. Dr. Myers, can you make nitrooxyphenylarsinic acid by treatment of nitro-arsinilic acid with ammonia?

A. Not to my knowledge.

XQ. 156. Is it true that in order to make good arsphenamine nitrooxyphenylarsinic acid must be free of certain impurities?

A. It is preferable.

XQ. 157. Is it true that it must be free of certain impurities, in order that it may be a safe drug to administer into the veins of a human being?

A. Yes, depending upon the dose.

XQ. 158. Is it true that it must be free of dinitrooxyphenylarsinic acid?

A. It is preferable.

XQ. 159. Is it true that it must be free of that element in order to make it a safe drug to inject into the veins of a human being?

A. It is preferable.

XQ. 160. Is it safe to inject into the veins of a human being any arsphenamine which contains dinitrooxyphenylarsinic acid?

A. In some doses, small doses.

XQ. 161. How small?

A. I do not know.

XQ. 162. Is it true that in order to obtain an arsphenamine of low toxicity, you must work at a temperature below zero?

A. With what?

XQ. 163. With the oxyphenylarsinic acid?

A. Would you repeat your question.

XQ. 164. Will you read the question? (XQ.162 and 163 repeated.)

A. There is no connection between the first product and the last product which you have questioned me about.

XQ. 165. Then your answer is no?

A. It is not. I can not give you an answer. They are two isolated compounds.

XQ. 166. Then your answer is that you can not answer the question?

A. I can not answer the question.

XQ. 167. Have you got the patent before you? I am reading from the answer that you gave before recess as to what you had done to produce arsphenamine. You said, referring to the nitro product that a warm solution of nitro-oxy was poured into the cold solution of sodium hydrosulphite with continued and vigorous stirring. I would like you to read that to me from the patent.

A. The words which you have read are not found in the patent.

XQ. 168. You said that the container in which the mixture was placed was surrounded by a water jacket so that the temperature might be increased at a gradual increase of temperature. I would like you to read me from the patent anything of that nature.

A. Line 67.

XQ. 169. Read it.

A. "On digesting the solution at 50 degrees Centigrade a light-yellow, microcrystalline precipitate separates which consists of the diaminodioxyarsenobenzene."

XQ. 170. Let me read the question to you again, and I will leave it to you to say whether that is an answer to it. The question is this: You said the container in which the mixture was placed was surrounded by a water jacket so that the temperature might be increased at a gradual increase of temperature." Read me what there is in the patent of that nature.

A. "On digesting the solution at 50 degrees C., a light-yellow, microcrystalline precipitate separates which consists of the diaminodioxyarsenobenzene."

XQ. 171. You say the temperature at which the precipitate known as the arseno base came out of solution was about 50 degrees Centigrade. Then you say the reduction was continued until a temperature ranging between 50 and 55 degrees was attained. Give me the line in the patent which speaks of a temperature between 50 and 55 degrees?

A. On line 68 it says, "Digesting the solution at 50 degrees Centigrade.'

XQ. 172. Fifty degrees?

A. Yes, sir.

XQ. 173. It does not say anything about 55, does it?

A. It does not.

XQ. 174. Nor does it say anything about "between 50 and 55," does it?

A. It does not.

XQ. 175. You continue in your answer as follows: "After allowing the reduction to continue for a period of about one hour and a half, the solution and suspension were allowed to stand, thereby allowing the reduced product known as arseno base to collect at the bottom of the container." Read me anything out of that patent which speaks of allowing the reduction to continue for a period of about one and one-half hours?

A. Line 70: "Its separation is completed by gently heating for some time."

XQ. 176. I continue: "The precipitate was then collected upon a filter and protected by means of carbondioxide, using vacuum for the separation of the solid and the liquid." What is there in the patent that speaks of precipitating the stuff upon a filter and protecting it by means of carbondioxide?

A. That is not my statement, precipitating it on a filter.

XQ. 177. I will read it again: "The precipitate was then collected upon a filter"—

A. Yes, sir.

XQ. 178. "And protected by means of carbondioxide."

A. Yes, sir.

XQ. 179. Read out of the patent where that is referred to.

A. "When filtered off."

XQ. 180. That is all?

A. Yes, sir.

XQ. 181. You then say: "This material was washed with cold distilled water until no acid reaction was obtained." What is there in the patent that speaks of that?

A. "When filtered off and dried."

XQ. 182. Then you go on and say that when the base had been thoroughly separated from the chemically held liquid, it was suspended in methyl-alcohol and treated with hydrochloric acid in methyl-alcoholic solution. Read me what the patent says about that.

A. "Its dihydrochlorid, which may be precipitated from the methylalcoholic solution by ether."

XQ. 183. That is all?

A. Yes.

XQ. 184. You spoke at one point in your direct testimony this evening about using a temperature between 63 and 65 degrees. At what point in the procedure did you use that temperature?

A. At the end of the reduction.

XQ. 185. Read me anything in that patent that speaks of using a temperature of between 63 and 65, in any step?

A. I made no suggestion of it.

XQ. 186. No suggestion of what?

A. I have made no suggestion that I took that statement from the patent.

Mr. Kresel: That is all. I may want to ask the witness another question. I have sent for a paper at the hotel, your Honor.

XQ. 187. I do not suppose you are going to leave right away?

A. No, sir; I will be here as long as you wish.

Mr. Kresel: That is all.

Re-Direct Examination

By Mr. Anderson:

RDQ. 188. You have in several of your answers referred to the patent as interpreted by you. Can you define more clearly what you mean when you say you produced salvarsan under the patent as interpreted by you?

Mr. Kresel: If your Honor please, I must object to that. This witness was questioned both upon the direct and upon the cross as to whether he did or did not carry out the specifications in the patent. What his answers were your Honor knows. I do not think at this time, upon the re-direct, the witness should be permitted to state what interpretation he placed thereon. I do not think that is a question of expert testimony.

Mr. Anderson: I assume that we are trying to get at the facts.

Mr. Kresel: I had been assuming that for some time. I have given it up.

Mr. Anderson: That is obvious, you have. What I wanted to say was this: When a scientist or an expert in a science gets on the stand and you ask him if he followed A, B, C—that is one thing. But if he is a man skilled in any art, like a lawyer when he reads a paragraph from a book, he reads it in the light of the general principles of the law which are assumed to be within his mind and the mind of the court. He does not have to follow that up by a letter. The same way with any expert or scientist. He must read a technical formula in the light of the general chemical knowledge which he is supposed to possess. It means something to him and indicates certain conditions required, certain surrounding conditions as it does certain appliances and apparatus for the carrying out of the formula; while to a man like myself, who knows nothing of chemistry in the technical sense, it would mean nothing.

What I think is essential, if I may suggest, is how did this witness or any other witness read that patent? In other words, he may have read it wrong, but that is for your Honor to determine. How did he read it is an essential thing to ascertain whether he was acting within the reasonable intent and meaning of the patent or not. After all the law is supposed to be common sense and that is the common sense of it. I do not know what the Patent law is.

The Court: I think the objection is well taken. The question is not proper in re-direct examination. You may recall the witness and ask him the question in that manner if you so desire. I will then hear any objections that there may be to the question.

Mr. Anderson: I then avail myself of your Honor's consent to recall the witness. I will have the question read and ask Dr. Myers to answer it.

(RDQ. 189 repeated as above recorded.)

The Court: Do I understand there is no objection to this on re-direct?

Mr. Kresel: No, your Honor. My objection lies to this question even though the witness be considered to be recalled for direct. I consider it is immaterial and irrelevant and not binding.

The Court: I think the objection is well taken, but in order to save time I will permit the answer to be taken of record.

A. Before actually preparing these products, I gained access to a complete literature on the subject of arsenicals.

Mr. Kresel: Will you please stop there a moment. I move to strike that out, first, as not responsive and second, as repetition.

The Court: Motion granted. Repeat the question.

(RDQ. 189 repeated as above recorded.)

A. My interpretation of the reduction process described in this patent was such that I knew that a few degrees increase in temperature would hasten the reaction, a condition which is known to every man who has had advanced training in chemistry.

Mr. Kresel: I object to his statement that it is known to every man who has any knowledge of chemistry, which it is obviously impossible for this man to swear to, and I ask that that part be stricken out.

Mr. Anderson: I think that that is one of the facts of the case, sir, that there are certain matters that are supposed to be within the knowledge of every trained man.

Mr. Kresel: He did not even say "supposed to be." He said they were within the knowledge of everybody.

The Court: Can he testify to that as a fact?

The Witness: I said, to every man trained in advanced chemistry.

Mr. Anderson: Claiming knowledge of chemistry, as I understood his language.

Mr. Kresel: Just have it read and your Honor will see.

Mr. Anderson: Strike it out and repeat the question, please. Let us go on.

(RDQ. 189 repeated as above recorded.)

A. It is known to me that reactions proceed with greater rapidity at a higher temperature than they do at a lower temperature. It was therefore obvious that I could accomplish the same results of reduction in a shorter period by an increase of temperature; and having worked on this type of products, it was obvious that my interpretations would lead to a product possessing the same chemical properties as those specifically described in the patent and verified by chemical tests applied to the arsphenamine base so obtained, according to these directions.

Mr. Kresel: Will you stop there a minute. I now move to strike that part of the answer out as not responsive.

Mr. Anderson: I cannot see why it is not. That is his interpretation of the question. The question of whether it is a right interpretation is for your Honor to decide. That is what the question is intended to draw forth and such a reply is appropriate.

The Court: I do not see how that is an interpretation of the patent. I do not see how it can be. If the patent specifies a temperature of 50 degrees, I do not see how it can be interpreted to mean 55. Did you say 55 to 60, or 55?

The Witness: 55.

Mr. Anderson: 50 to 55.

By The Court:

Q. 190. Did you say 50 to 55, or 55?

A. 55, your Honor. I may add one other thing, in line 70 it says, "separation is completed by gently heating for some time." In order to overcome the indefiniteness of "some time," you have one procedure available, and that is to raise the temperature, complete your reaction within a fixed time, test the solution if there is any more of the reaction—

Q. 191. Then what you say is, that the method you pursued was an equivalent and not the method of the patent?

A. It is an equivalent and to my mind was the patent, because that line 70-71 says "separation is completed by gently heating for some time."

Mr. Kresel: May I ask a question here?

The Court: You may.

Mr. Kresel: Well, never mind; I will wait.

The Court: You may take the answer, and you may cross-examine fully, Mr. Kresel. We will save time that way, I think.

By Mr. Anderson:

RDQ. 192. You were asked as to the purification of the nitro-oxy acid, to be brief. May I ask you why you purified the nitro-oxy acid?

Mr. Kresel: I object to that as being immaterial.

The Court: That question was asked in chief and gone over fully, and he said in chief that he based that step upon the German translation which he made, is that not correct?

Mr. Anderson: I do not remember, sir.

By The Court:

Q. 193. Isn't that correct, Dr. Myers?

A. Yes, sir.

By Mr. Anderson:

RDQ. 194. You were asked about the expression in your answer, before adjournment of vigorous stirring during a certain period of reduction. What was your authority for that statement?

Mr. Kresel: That has been gone over, your Honor, both on direct—

Mr. Anderson: No, we did not go over that on direct. Your Honor is quite right; I did ask him about the acid, although I am not sure what the question was.

The Court: You may take his answer again.

A. The question of vigorous stirring is one which involves the fineness and physical condition of the powder which is produced. The powder and the physical condition of the powder so produced is a factor which determines the toxicity in a certain measure of the final product in the form of a disodiumphenylate used for intravenous injection.

RDQ. 195. In your opinion as a chemist, was such a treatment or method indicated by the character of the process?

A. It was.

Mr. Kresel: One minute; I object. May the answer be stricken out?

The Court: Strike out the answer.

I did not understand the question, Colonel Anderson. Won't you have it read to you? It may be clear to you, though it is not to me.

(RDQ. 195 repeated as above recorded.)

The Court: You mean by the patent?

Mr. Anderson: Yes, by the character of the process embodied in the patent and the nature and use of the drug to be produced thereby.

Mr. Kresel: Surely the nature of the drug hasn't anything to do with it.

Mr. Anderson: I submit that the use of the drug has a very important bearing upon the interpretation and meaning of a patent. In other words, it is elementary that a man using a high degree of dangerous instrumentality—it does not matter what it is; whether it be a locomotive engine or a motor car or drug—is supposed to exercise a high degree of care in its use and its production.

The Court: No; the question here is as to whether the patent is sufficiently explicit in the technique or in the method of following the steps specified in this patent; for instance, heating for some time.

Mr. Anderson: Quite true, sir; but if there is a general principle universally recognized applicable to such things by those skilled in the art, then that is supposed to be read into the patent as well as gained from the literature. Now, if such things are indicated to those skilled in the art by the very nature of the process, the product and the use, why, then it necessarily follows that they are supposed to know and use this method.

The Court: Will you read the question, please?

(RDQ. 195 repeated as follows:)

RDQ. 195a. In your opinion as a chemist, was such a treatment or method indicated by the character of the process embodied in the patent and the nature and use of the drug to be produced thereby?

The Court: You mean was it indicated by the patent?

Mr. Anderson: Yes, sir.

The Court: You may take his answer to that question.

A. Having read the original description of the production of the dihydrochloride by Ehrlich and Bertheim, page 756, Volume 45, 1912, at the bottom of page 764 he brought up the question of colloidal condition of the product, therefore having been studying colloidal absorptions at that particular period, it naturally occurred to me that I should look out for that particular feature.

By The Court:

Q. 196. Would a person who had not read that particular book to which you referred be a person skilled in the art to which this patent belongs, in your opinion?

Mr. Anderson: Would your Honor permit—

Well, I will not object to the Court's question; I can not do that. I want your Honor to get all the information you want on the subject.

A. May I give an explicit answer, your Honor?

Q. 196. (continued) Yes.

A. As I have already stated, your Honor, I believe that it is necessary that you should have both the chemical and medical touch simultaneously in the production of intravenous products, and those who should be engaged in the manufacture of products of this kind were, as originally described in the patent. You referred to the patent. One was a physician and the other was a chemist. They were using a combination of conditions, medical and chemical. To my mind, those who work with arsenicals or drugs of any kind for intravenous medication should know the physiology, the pharmacology and the chemistry of those products. Without knowing them, you are leaving a great loop hole in the actual administration and preparation of drugs of this nature.

It is one of the explanations of a series of failures and upsets that have arisen from the preparation of this particular type of drug. The same thing occurred in England and is found in His Majesty's Stationery Report, I think it is No. 44, about Colonel Harrison of the Medical Corps, in which they went into those same features, and it is only by access and continuous contact with medical men at the Hygienic Laboratory in Washington, D. C., that we were able to exchange our ideas and arrive at definite means of producing a satisfactory drug.

Q. 196a. You mean salvarsan?

A. Salvarsan and diaminosalvarsan.

Mr. Anderson: I think that is all, sir.

Mr. Kresel: I have reason to believe that there is in the possession of Professor Stieglitz, a letter which would be of assistance to me in completing the cross-examination of this witness. Professor Stieglitz takes the position that he cannot, without an order from the Court, allow me to see that letter. I now make application to the Court that Dr. Stieglitz be instructed to let me inspect the letter.

Mr. Anderson: I think that Dr. Stieglitz under the circumstances ought to take the stand and state the circumstances of the letter. I do not want to object——

Mr. Kresel: That is all right. I am quite willing to call Dr. Sietglitz to take the stand.

The Court: Mr. Myers, will you retire from the stand a moment.

Julius Stieglitz resumes the stand.

The Court: Dr. Stieglitz, the general order which I made with respect to your disclosures and documents when you were first on the stand applies to any questions which may now be asked you, by either counsel for the defendant or for the Government. It likewise applies to any documents in your possession, and you are now directed to make full disclosures of both documents and facts in reply to such questions as may be asked you.

Re-Direct Examination.

By Mr. Kresel:

RDQ. 231. Dr. Stieglitz, have you any letter from Herman A. Metz or the Metz Laboratories, wherein the name of Dr. Myers, the preceding witness, is mentioned?

A. I have.

RDQ. 232. Have you more than one such letter?

A. Not from the Metz Laboratories.

RDQ. 232A. Have you any from the Metz Laboratories?

A. Only this one.

RDQ. 233. Only one?

A. Yes.

RDQ. 234. Now, I ask you to produce that.

A. As far as I have looked through my files, but I have this one.

RDQ. 235. I ask you to produce that now?

A. I have it here (handing letter).

MR. KRESEL: That is all. I am going to use it in examining Mr. Myers.

MR. ANDERSON: Now that Dr. Stieglitz is on the stand, I wish to move to strike out each question and answer in the evidence given by him, both in the Court and in Chambers, when he was formally on the stand, which does not appear on the face thereof to have been within his own knowledge on the ground that it is hearsay. At that time, if your Honor will recall, I am not sure from the record whether at the time this evidence was taken, although it was indicated by one statement of the Court, that it is subject to objection, at the conclusion of the case, and therefore I wish to make that motion. I can make it more specific if desired, but it would take time, but I desire to reserve that objection to the testimony.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: No, your Honor.

THE COURT: I think it unwise to consider the motion until it is specific, instead of general. Your motion has now been made, and you may make it specific at your convenience.

MR. ANDERSON: I would like to take time to indicate the exact questions and answers, but it would now require me to go over Dr. Stieglitz's testimony, and I only want to reserve the point of my objection while the witness is on the stand.

MR. KRESEL: That is all. Now, Dr. Myers, I would like to ask you a few questions.

(Witness excused.)

CHESTER N. MYERS resumes the stand.

RE-CROSS-EXAMINATION (Continued).

By MR. KRESEL:

RXQ. 197. I ask you again, Dr. Myers, whether when you went to the Metz Laboratories in July, 1918, you did not go there in order to examine their processes and report thereon to the Public Health Service with reference to whether or no they were making a proper arsphenamine?

MR. ANDERSON: I object to that question in its form, your Honor, for the reason that the witness did not testify that he did not go there for that purpose. He asked him again. That was not a question.

THE COURT: Read the question. (Question repeated as recorded.)

MR. KRESEL: Strike out the word "again." (Question repeated.) Will you answer it, please?

THE WITNESS: Please read the question as final.

(RXQ. 197 repeated as amended: "I ask you, Dr. Myers, when you went to the Metz Laboratories in July, 1918, you did not go there in order to examine their processes and report thereon to the Public Health Service with reference to whether or no they were making a proper arsphenamine?")

A. I did.

RXQ. 198. Then you did not go there to do experimental work?

A. I did.

RXQ. 199. Then you went for both purposes?

A. There is only one purpose.

RXQ. 200. Well, was the purpose in order to determine whether their product was a proper product or not?

A. It was not.

RXQ. 201. Was the purpose in order to determine whether their product was good arsphenamine and for the purpose of reporting thereon to the Public Health Service?

A. The purpose of my visit was to report to the Public Health Service that which I observed and found.

RXQ. 202. What were you asked to observe and find?

A. That which I could see.

RXQ. 203. Do you think that that was a proper answer to the question, Dr. Myers?

A. I do, sir.

RXQ. 204. You were told to go there and look and report what you saw; is that what you want the Court to understand?

A. And to report, yes, sir, all of which reports you will find in Dr. McCoy's possession.

Mr. Kresel: I ask that "all of which reports you will find in Dr. McCoy's possession" be stricken out.

The Court: Motion granted.

RXQ. 205. Did you go there, Dr. Myers, in order to find out how they were making their arsphenamine?

A. I knew.

RXQ. 206. Did you go there in order to find out how they were doing it and reporting thereon to the Public Health Service?

A. It was known to the Public Health Service.

Mr. Kresel: I am afraid, your Honor, that I cannot make the witness answer questions, if he won't do it.

Mr. Anderson: I do not think the witness refused to answer the question.

Mr. Kresel: I am perfectly willing to leave that to the Court. There is no argument about it at all. I will try again.

The Court: Do you want the answer stricken out?

Mr. Kresel: No, your Honor. I would rather have it stand, so that we may read it later.

RXQ. 207. I ask you again, Dr. Myers, whether you did not go to the Metz Laboratories in order to find out how they were making their arsphenamine, and make a report thereon to the Public Health Service?

A. I did.

RXQ. 208. And did you follow out your instructions?

A. I did.

RXQ. 209. Did you during the five months that you were there at the Metz Laboratories make any suggestions to the Laboratories as to how to improve their product?

A. I did not.

Mr. Kresel: I offer this letter in evidence.

Mr. Anderson: While I do not think it is admissible, I am not going to object to it.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 374." (*See Exhibits, Vol. V, page 3489.*)

RXQ. 210. I do not recall whether I asked you if you are still working for Mr. Metz?

A. You did.

RXQ. 211. And you are?

A. I am.

Mr. Kresel: May I read that letter, please. This is directed to Dr. Julius Stieglitz and is dated August 13, 1918, after this gentleman had gone there (reading Defendant's Exhibit 374).

RXQ. 212. Did you go through all their processes for the Public Health Service?

A. I did.

RXQ. 213. Now, why did you do that?

A. Because I was directed to.

RXQ. 214. Well, why did the Public Health Service want to go through Metz's processes?

Mr. Anderson: I object, if your Honor please. He was directed to go there. The reason why the Public Health Service wanted to have him do that is not for this witness to say. He was obeying orders. It is entirely outside of any re-direct examination. This is an entire reopening of the whole thing.

The Court: You mean outside of any cross?

Mr. Anderson: Any direct or re-direct. The whole thing has come up on cross-examination. I did not object. It looked like he wanted to get the information that Dr. Stieglitz had and I was taking the position that I would not object to any of it. Now he asks why the Public Health Service wanted to do something.

Mr. Kresel: If he knows. He was an officer thereof. He was doing the work.

Mr. Anderson: He said he was obeying orders. He was sent there under orders by the Surgeon-General in charge of Public Health.

RXQ. 215. Let me put it this way. Do you know why the Public Health Service wanted that information?

A. I do not.

Mr. Kresel: Then I can not inquire why. That is all.

Mr. Anderson: You can stand aside, Dr. Myers.

(Witness excused.)

Mr. Anderson: May it please the Court, while I am looking for a letter, I would like to introduce certain documents in rebuttal to certain evidence introduced by counsel. It will be recalled that during the progress of the cause, when counsel read from certain of the Congressional records into the record, I reserved the right on rebuttal to read in some additional portions of the same record bearing upon this act.

Mr. Kresel: Which act is this?

Mr. Anderson: The act of March 28th, 1918. Counsel read one statement from Senator Underwood, who was in charge of the bill, the amendment of March 28th. I only want to read two short paragraphs. In order to save reading a long discussion to your Honor, I will state what your Honor examining the record will be able to verify, that the conference committee, consisting I think of Senator Martin of Virginia, Senator Underwood in charge of the bill, and one other person—I have forgotten his name—returned this bill with the amendment of March 28th, to the Senate, and it was a portion of that debate which was read to your Honor.

In discussing the provision with respect to the power of the President to order a private sale, which was the subject of debate at the time, Mr. Underwood said:

> "As to the item referred to by the Senator from New Jersey, the only changes made in that item were to specify more distinctly the terms and conditions of public sale and

> to authorize the President when he directed that it should be done and gave in writing his reason for so doing, to set aside one of these sales.
>
> "The personal action of the President is required to accomplish that result and he is required to give in writing his reasons therefor. It seems to me clear that there ought to be that opportunity under the Act. Cases may arise when you can not reach the desire of the Government to protect this property or the desire of the Government to take it away from an alien enemy by public sale, and if the President of the United States, acting himself and not through an agent, determines that it is necessary to be done, and in writing gives his reasons for doing so, it seems to me that is ample protection to the public and to the property."

That from which I have read is at page 4003 of the Congressional Record for March, 1918.

Your Honor will recall that at an earlier stage of the proceeding it was first agreed that both sides would be allowed to refer to this booklet entitled, "Trading With the Enemy Act," and to any Executive orders therein, either upon the trial, appeal or the re-trial of this case. Subsequently counsel for the defendant decided to put in certain Executive orders. That being true to the end that no question may be raised I reserved the right to put in others. I now desire to introduce in evidence the Executive orders in this book which have not already been expressly introduced, and I will call them off for convenience and ask that they be indicated by proper and appropriate numbers.

Mr. Kresel: Does that mean, Colonel, that you are offering all that are not already in?

Mr. Anderson: As far as we know, and Mr.

Galloway states that they are. I may state in addition that it is my view the Court will take judicial notice of them anyhow. But we want to make the record consistent. I will just read them off this list as given to me by my associate, and the book may be taken and the Clerk give them appropriate numbers.

Page 27, Executive Order of October 29th, 1917.

Received in evidence and marked "Plaintiff's Exhibit No. 685." (*See Exhibits, Vol. III, page 1759.*)

MR. ANDERSON: Page 28, Executive Order of December 7, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 686." (*See Exhibits, Vol. III, page 1761.*)

MR. ANDERSON: Page 29, Executive Order of January 22, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 687." (*See Exhibits, Vol. III, page 1762.*)

MR. ANDERSON: Pages 29 to 36, Executive Order of January 26, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 688." (*See Exhibits, Vol. III, page 1762.*)

MR. ANDERSON: Page 36, Executive Order of February 5, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 689." (*See Exhibits, Vol. III, page 1777.*)

MR. ANDERSON: Pages 37 to 42, Executive Order of February 26, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 690." (*See Exhibits, Vol. III, page 1778.*)

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Received in evidence and marked "Plaintiff's Exhibit No. 698." (*See Exhibits, Vol. III, page 1799.*)

Mr. Anderson: Page 48, Executive Order of May 31, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 699." (*See Exhibits, Vol. II, page 1800.*)

Mr. Anderson: Pages 49 to 53, Executive Order of June 15, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 700." (*See Exhibits, Vol. III, page 1802.*)

Mr. Anderson: Page 60, Executive Order of August 20, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 701." (*See Exhibits, Vol. III, page 1812.*)

Mr. Anderson: Page 60, Executive Order of August 29, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 702." (*See Exhibits, Vol. III, page 1813.*)

Mr. Anderson: Pages 61 to 63, Executive Order of September 12, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 703." (*See Exhibits, Vol. III, page 1814.*)

Mr. Anderson: Page 63, Executive Order of September 13, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 704." (*See Exhibits, Vol. III, page 1818.*)

Mr. Anderson: Page 63, Executive Order of September 13, 1918, the same page and date.

Received in evidence and marked "Plaintiff's Exhibit No. 705." (*See Exhibits, Vol. III, page 1819.*)

Mr. Anderson: Page 64, Executive Order of September 13, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 706." (*See Exhibits, Vol. III, page 1821.*)

Mr. Anderson: Page 65, Executive Order of September 13, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 707." (*See Exhibits, Vol. III, page 1823.*)

Mr. Anderson: Page 66, Executive Order of September 13, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 708." (*See Exhibits, Vol. III, page 1825.*)

Mr. Anderson: Page 67, Executive Order of September 13, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 709." (*See Exhibits, Vol. III, page 1827.*)

Mr. Anderson: Page 68, Executive Order of September 30, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 710." (*See Exhibits, Vol. III, page 1829.*)

Mr. Anderson: Pages 68 to 71, Executive Order of November 12, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 711." (*See Exhibits, Vol. III, page 1830.*)

Mr. Anderson: Page 73, Executive Order of July 15, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 712." (*See Exhibits, Vol. III, page 1837.*)

Mr. Anderson: Page 73, Executive Order of July 18, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 713." (*See Exhibits, Vol. III, page 1838.*)

Mr. Anderson: Page 74, Executive Order of July 18, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 714." (*See Exhibits, Vol. III, page 1840.*)

Mr. Anderson: Page 75, Executive Order of July 18, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 715." (*See Exhibits, Vol. III, page 1842.*)

Mr. Anderson: Page 76, Executive Order of July 19, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 716." (*See Exhibits, Vol. III, page 1843.*)

Mr. Anderson: Page 76, Executive Order of July 24, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 717." (*See Exhibits, Vol. III, page 1845.*)

Mr. Anderson: Pages 77 to 79, Executive Order of July 24, 1918.

Received in evidence and marked "Plaintiff's Exhibit No. 718." (*See Exhibits, Vol. III, page 1847.*)

Mr. Anderson: Page 80, Executive Order of August 1, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 719." (*See Exhibits, Vol. III, page 1852.*)

Mr. Anderson: Page 80, Executive Order of August 1, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 720." (*See Exhibits, Vol. III, page 1854.*)

Mr. Anderson: Pages 81 to 83, Executive Order of August 1, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 721." (*See Exhibits, Vol. III, page 1856.*)

Mr. Anderson: Page 83, Executive Order of August 12, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 722." (*See Exhibits, Vol. III, page 1860.*)

Mr. Anderson: Page 84, Executive Order of August 16, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 723." (*See Exhibits, Vol. III, page 1862.*)

Mr. Anderson: Pages 85 to 87, Executive Order of August 30, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 724." (*See Exhibits, Vol. III, page 1864.*)

Mr. Anderson: Page 87, Executive Order of September 21, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 725." (*See Exhibits, Vol. III, page 1868.*)

Mr. Anderson: Page 88, Executive Order of November 25, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 726." (*See Exhibits, Vol. III, page 1871.*)

Mr. Anderson: Page 89, Executive Order of November 25, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 727." (*See Exhibits, Vol. III, page 1873.*)

Mr. Anderson: I am willing to agree with counsel now or at any future time that in making up the record this book of Executive Orders need not be printed. We think the Government can probably supply enough for use in all Courts.

Mr. Kresel: Very well.

Mr. Anderson: My associate tells me they are not printed, and I am afraid we will have to print them. Most of them are very short.

Mr. Kresel: We will facilitate it as much as possible.

Mr. Anderson: And the same with respect to the orders of Mr. Polk, pages 90 to 114.

Received in evidence and marked "Plaintiff's Exhibits No. 728 to No 728-Q, inclusive." (*See Exhibits, Vol. III, pages 1874 to 1924, inclusive.*)

Mr. Anderson: Also the proclamations from pages 114 to 139.

Received in evidence and marked "Plaintiff's Exhibits No. 729 to No. 729-H, inclusive." (*See Exhibits, Vol. III, pages 1926 to 1972, inclusive.*)

Mr. Anderson: In connection with the messages of the President introduced, I desire to introduce three additional messages of the President, and I am perfectly willing to stipulate these need not be printed in the record, because I think they are probably available in public documents. The first is the message of April 3rd, 1917, I think that is the date on which he addressed Congress recommending the declaration of war.

Mr. Kresel: April 6th.

Mr. Anderson: April 6th was it; I thought the declaration was the 6th and he made the address on the 3rd. But, anyhow, I ask that the record be corrected if it be a different date.

Received in evidence and marked "Plaintiff's Exhibit No. 730." (*See Exhibits, Vol. III, page 1979.*)

Mr. Anderson: The message of December 4th, 1917.

Received in evidence and marked "Plaintiff's Exhibit No. 730½." (*See Exhibits, Vol. III, page 1991.*)

Mr. Kresel: I wonder what there is in those messages that bears upon this case. Your Honor will recall the two messages I put in had a direct bearing on it, and I read a portion.

Mr. Anderson: I could point it out, but I do not want to go into the argument if I can help it, because I am trying to get through as rapidly as possible.

The Court: Can you indicate the purpose without going into it?

Mr. Anderson: It is this. I think this case will have to be argued against a very broad background. It is contended here that the President approved this sale. In my view I can take the record of the addresses of the President and his public communications, put them side by side with this transaction, and demonstrate to this Court that that would have been impossible without charging the President with a gross inconsistency. Of course, therefore, it is all the more important, in view of the relationship which here existed and the delicate questions which arise as to the President at that time charged with these great duties, that we should have the surrounding facts and circumstances of this case as fully developed as possible, and I think when I come to argue this case I can demonstrate the papers I am now putting in are papers which should be considered as the background against which the picture must be painted.

I also offer in evidence certified copy of the communication from the President to the Pope, on the same principle.

Mr. Kresel: From the President to whom?

Mr. Anderson: From the President to the Pope, an official communication.

Mr. Kresel: To the Pope?

Mr. Anderson: To the Pope of Rome, a public address on the objects of America and its purposes in the war, in a reply to the Pope's communication suggesting a peace.

Mr. Kresel: I can not conceive, your Honor, how anything that the President said to the Pope of Rome can have any bearing on the disposition of these patents. I know your Honor's rule has been very liberal about admitting documents, and I assume that under that rule this will go in, but I can not let it go in without at least registering my objection thereto.

Mr. Anderson: It is a certified copy.

The Court: I assume the basis for that, Colonel Anderson, is that that is an official utterance which as interpreted by you is in conflict with the contentions of the defendant.

Mr. Anderson: In essential features and particulars in conflict with the transaction here involved, sir.

The Court: And the date is what?

Mr. Anderson: The date is just prior to this transaction.

Mr. Kresel: What is the date there?

Mr. Anderson: It is in the late summer of 1918, I think. Your Honor will recall the Pope addressed a communication to all the warring nations suggesting peace, and the President made that reply, which is probably the great classic of the war.

Mr. Kresel: It is August 1st, 1917, Colonel.

The Court: My difficulty with all these that were prior to the submission of the Alien Property Custodian's report, in February or early in March of 1919, is how those papers are relevant. I will not ask you to discuss it now.

Mr. Anderson: I hope you won't, because I think I can demonstrate it, and if I can not, there can not be very much harm, and in view of the size of the record anyhow, and at the proper time I will try to demonstrate it.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 731." (*See Exhibits, Vol. III, page 2003.*)

Mr. Anderson: I now wish to introduce in evidence specifically a copy of the license of November 20, 1919, to the Textile Alliance, embodied in a communication by The Chemical Foundation, to be read as Plaintiff's Exhibit No. 732.

Received in evidence and marked "Plaintiff's Exhibit No. 732." (*See Exhibits, Vol. III, page 2007.*)

Mr. Anderson: In the same connection, I offer the list of patents thereto annexed, as Plaintiff's Exhibit No. 732-A.

Received in evidence and marked "Plaintiff's Exhibit No. 732-A." (*See Exhibits, Vol. III, page 2009.*)

Mr. Anderson: Also a letter of December 9, 1919, as Plaintiff's Exhibit No. 732-B.

Received in evidence and marked "Plaintiff's Exhibit No. 732-B." (*See Exhibits, Vol. III, page 2010.*)

Mr. Anderson: A letter of December 9th, 1919, as Plaintiff's Exhibit No. 732-C, and an accompanying state of patents, with the last letter as Plaintiff's Exhibit No. 732-D.

Received in evidence and marked "Plaintiff's Exhibits Nos. 732-C and 732-D." (*See Exhibits, Vol. III, pages 2001, 2002.*)

Mr. Kresel: Who vouches for the correctness of these copies?

Mr. Galloway: They are taken from your files, Mr. Kresel.

Mr. Anderson: I will be very glad to stipulate, if they are not correct, correct copies may be substituted. I did not want to ask for the original and substitute it.

Mr. Kresel: You say you took this from our files?

Mr. Galloway: You gave us your license and we had it copied. Those are from your files. You see, it is accepted at the bottom, by the act of the Secretary of the Textile Alliance.

Mr. Kresel: Your Honor, I have had no opportunity to read this. I can not see where this is rebuttal, Colonel.

The Court: I thought these were reserved papers.

Mr. Kresel: I know of no such reservation.

Mr. Anderson: On the contrary, Mr. Kresel, you recall I asked you to produce all your licenses before I closed my case and you said you would put on Mr. Garvan, who would produce the licenses and a list of analysis of the licenses, showing a schedule thereof, with certain facts in connection with it.

Mr. Kresel: Which he did.

Mr. Anderson: And I reserved, as I understood our arrangement, the right then to deal with the question of these licenses or put any of them in evidence deemed desirable. I did not put them in evidence. I have had them checked over and I think the statement is sufficient, with the exception of these two, and I specially asked for this one when Mr. Garvan was on the stand. I thought I had introduced this before, but I did not.

The Court: This license is what?

Mr. Anderson: The one is to the Textile Alliance on the importation of dyes under the patents. The other that I now want to offer in evidence—I have already offered that, the license of The Chemical Foundation to the Atmospheric Nitrogen Company of Syracuse, New York, dated July 24th, 1920.

The Court: Are they offered in rebuttal or as part of your case in chief?

Mr. Anderson: This is offered in rebuttal on the question of the Haber patents, and I could not put it in otherwise.

The Court: What are the relevant portions?

Mr. Kresel: How is it rebuttal?

Mr. Anderson: If your Honor recalls the very elaborate evidence taken on the question of these Haber patents and their alleged invalidity——

The Court: No, not invalidity.

Mr. Anderson: I mean their alleged imperfections; I will put it that way.

Mr. Kresel: Not even that; as to the Haber patents.

Mr. Anderson: I did not in the original case introduce any evidence on that subject.

Mr. Kresel: Yes, you did; you put Dr. Holdermann's testimony in.

The Court: The only evidence that I know of that I now recall that was introduced by the defense was with respect to their value and not to their validity. My recollection is that Dr. Holdermann's testimony went to their value, and that was met or attempted to be met, whichever it may prove to be, by certain evidence offered by the defendant. Just what is this evidence and how is it rebuttal?

Mr. Anderson: Your Honor will recall that

The Chemical Foundation originally licensed the Semet-Solvay Company under the Haber patents.

Mr. Kresel: No, that is not the fact.

The Court: The Federal Trade Commission.

Mr. Kresel: The Federal Trade Commission did that. You said The Chemical Foundation.

Mr. Anderson: I meant the Federal Trade Commission. And then subsequently The Chemical Foundation licensed the Atmospheric Nitrogen Company under the Haber patents, which, on Mr. Garvan's testimony, appeared to be a license for $2,500 and certain conditions?

I do not think that the conditions stated in Mr. Garvan's statement are in anywise complete as to the terms of that license. I do not mean to say that they were not intended to be complete so far as he thought them material; but I think the terms of the license are very important, and the list of the patents attached thereto is very important.

Therefore I would like to put this in; I have offered this license in evidence to cover that situation. I think it is clearly rebuttal.

Mr. Kresel: Colonel, it is not rebuttal; but I will withdraw any objection.

Mr. Anderson: Very good; then we are through with that.

The Court: There being no objection, it will be admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 733." (*See Exhibits, Vol. III, page 2014.*)

Mr. Anderson: If your Honor will recall, in the evidence in chief I offered a certified copy of opinion by Judge Julius Mayer in the case of Metz against Garvan. Mr. Kresel stated at the time that it was reported. I can not find that the opinion is reported; and if it is not officially reported, I would like very much to put a copy in evidence. I would have offered it at that time, and did offer it; but I withdrew it on his statement that it was reported.

Mr. Kresel: That is quite true. I do not know; I can not give you the reference. But even at that I do not think that the opinion should go in evidence. If the Court desires it for reference, well and good; but to make it a part of the record is not proper.

The Court: You may make it a part of your briefs, but it has no place among the exhibits.

Mr. Anderson: Very good, sir. We will then use it in a brief instead, so long as I can use it.

At page 3473 of the record, I requested Mr. Thompson then on the stand to furnish me a list of prices of certain dyes in 1913. At page 3487 of the record I requested Mr. Hobbs to furnish me the prices of certain dyes in 1913. At page 3487 of the record, I requested Mr. Hobbs to send me labels from containers of dyes. At page 3507, I requested Mr. Cheney to send me a list of the dyes used by him; also labels on dye packages. At page 3508 I requested Mr. Cheney to furnish me prices of dyes used by him in 1913. These gentlemen have not sent in this information; and if it is not available, I should like to reserve the right to file it later.

Mr. Kresel: Wait a moment. I think I have some of this information for you. What did you ask of Mr. Thompson?

Mr. Anderson: A list of prices of certain dyes in 1913. He gave the prices now, but I wanted them for then.

Mr. Kresel: Here is a list of dyestuffs purchased from Germany in 1921 and in 1913. Is that what you want?

Mr. Anderson: Yes.

Mr. Kresel: Here is a list purchased in 1922. That is all I have from Mr. Thompson. Isn't that all you asked for?

Mr. Anderson: I think that is what I asked for from Mr. Thompson, yes. The others are from Mr. Hobbs and Mr. Cheney.

Mr. Kresel: With reference to labels, this letter from Mr. Imbrie, who, speaking for Mr. Thompson, says:

> "I have communicated with our several plants where the dyes are used and have telegrams today from all of them to the effect that they find no reference to Chemical Foundation licenses on any color packages received by us."

The letter also says:

> "Mr. Thompson was asked by Colonel Anderson to ascertain whether any of the barrels or packages containing American dyes purchased by us bore any marks or labels to indicate that the colors were made under Chemical Foundation licenses."

What do you want from Mr. Hobbs?

Mr. Anderson: I wanted a statement of the cost.

Mr. Kresel: Here is a statement of prices from 1913 to 1918. With reference to labels, Mr. Hobbs writes:

> "We have also examined all of the dyestuffs now in stock and there are no labels on the barrels or containers that show any reference to their manufacture or sale under any patent rights controlled by The Chemical Foundation."

Here is a statement from Cheney Brothers with reference to the German colors used during 1922. I think that is all you asked for.

Mr. Anderson: He did not send me the prices, did he?

Mr. Kresel: No. This is a list of dyes used. That is all I have.

Mr. Anderson: I would like to offer in evidence the statements which have been handed me by counsel: First, the one from Cheney Brothers, of German colors used in 1922.

Received in evidence and marked "Plaintiff's Exhibit No. 734." (*See Exhibits, Vol. III, page 2024.*)

Mr. Anderson: Chief colors of American manufacture in 1921 with prices.

Received in evidence and marked "Plaintiff's Exhibit No. 734-A." (*See Exhibits, Vol. III, page 2025.*)

Mr. Anderson: Dyestuffs purchased from Germany in 1921, with prices.

Received in evidence and marked "Plaintiff's Exhibit No. 734-B." (*See Exhibits, Vol. III, page 2025.*)

Mr. Anderson: Additional testimony furnished by Mr. Franklin W. Hobbs, President of the Arlington Mill.

Received in evidence and marked "Plaintiff's Exhibit No. 734-C." (*See Exhibits, Vol. III, page 2026.*)

Mr. Anderson: Mr. Kresel, you said you had the books or accounts of the Calco Chemical Company on the question of the cost of research.

Mr. Kresel: No, I beg your pardon. I did not say that I had the books of account. You asked for their accounts. I asked them to produce them. I have not seen them. They have some books here. I told Mr. Galloway this afternoon, so as to put him in touch with these people. What they have, I do not know.

Mr. Anderson: I would like to see what they have.

Mr. Kresel: Go ahead. Whom do you want?

Mr. Anderson: I do not know who has them.

Mr. Kresel: Here is Mr. Berry. You can call him.

Mr. Anderson: Will you take the stand, please?

GEORGE A. BERRY.

George A. Berry was called as a witness on behalf of the plaintiff, in rebuttal, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. What is your name and where do you live?

A. My name is George A. Berry. I live at Bound Brook, New Jersey.

Q. 2. What is your position with the Calco Chemical Company?

A. I am Vice-President and General Manager.

Q. 3. I requested the counsel for the defendant to have produced here the books of the Calco Chemical Company, showing the amounts of their expenditures for research in the development of various drugs as to which Dr. Crossley had testified. Have you had that request communicated to you?

A. Yes, it was communicated to me Saturday.

Q. 4. Have you those original books in your possession?

A. I got together as much of my organization Sunday as I could in the short space of time, and I prepared an abstract from the books as far as time permitted. I have some information with me, but not all.

Q. 5. You have not all the information with you? Have you the books with you?

A. No, I have not the books with me.

Q. 6. This is data you made up and is not complete?

A. It is data abstracted from the books by the Company's controller.

Q. 7. But it is not complete?

A. It is not complete in the division of the research expenses as between the items in question and the other research expenditures of the company.

Q. 8. Did you make up that data yourself?

A. Well, I supervised the making of it, yes, sir.

Q. 9. Did you check it against the books yourself?

A. No, not personally.

Q. 10. I think that would be useless, sir. It is useless to produce it.

A. I might say that in sufficient time we can produce the original books of the company and the men who are responsible for the entries, who can swear to them.

Q. 11. You can not, of course?

A. I can in that the Accounting Department of the company is under my jurisdiction and under my instructions. I know what they have done and why and how.

Q. 12. But you did not, as I understand, check this data back against the books as to divisions or distributions?

A. Not item by item. It involves something in excess of 5,000 items.

Q. 13. And you therefore cannot of your own knowledge say that it is true?

A. No, sir.

Mr. Anderson: In the circumstances, I will not ask for the production of the data, because I could not admit it in evidence.

Mr. Kresel: Who could not admit it?

Mr. Anderson: I could not.

Mr. Kresel: In other words, you call a witness, you find out if he knows the fact, and then you won't take it from him.

Mr. Anderson: I certainly will not, because I want the data from the original source.

Mr. Kresel: That is all.

Mr. Anderson: I called for the production of the books of the company showing these expenditures, and they have not been produced, and I will not take secondary evidence on that subject.

Mr. Kresel: That is all, sir.

(Witness excused.)

Mr. Anderson: Would your Honor take a recess for about five minutes? I think I can probably then promptly conclude this case.

The Court: Recess for five minutes.

After Short Recess (9.30 P. M.)

Mr. Anderson: May it please the Court, upon consideration yesterday of the testimony, the Government reached the conclusion that while paragraph thirty-nine of the Bill was drawn upon the information before it, yet the testimony is inconsistent with that information, and therefore it is proper that an application should be made for an amendment of the Bill, the formal amendment of the Bill to conform to the facts as appear in the testimony, under Rule 19.

I therefore wish to move the Court for leave to amend the Bill, paragraph 39, beginning with the words, "Complainant is informed, believes and therefore avers," in lines 16 and 17 on page 54, and continuing to the end of said paragraph, and in place thereof, insert the following:

> "Complainant is informed, believes, and therefore avers that the patents and other rights purported and attempted to be sold, assigned and transferred by the said instrument dated the 27th day of April, 1921, did not relate to the objects and purposes of the said Chemical Foundation, Incorporated, as expressed and defined in its Charter; that the alleged purchase price named in said instrument and paid by the defendant to the Alien Property Custodian——"

THE COURT: Won't you begin again, Colonel Anderson, you want to strike out all the 39th paragraph?

MR. ANDERSON: Beginning with the words "Complainant is informed, believes and therefore avers," in lines 16 and 17 on page 54.

THE COURT: I have it.

MR. ANDERSON: And continuing, and to substitute for that last paragraph as I recall it in the Bill—I have not got it before me at the moment—this language:

> "Complainant is informed, believes and therefore avers that the patents and other rights purported and attempted to be sold, assigned and transferred by the said instrument dated the 27th day of April, 1921, did not relate to the objects and purposes of the said Chemical Foundation, Incorporated, as expressed and defined in its Charter; that the alleged price named in said instrument and paid by defendant to the Alien Property Custodian, as aforesaid, was fixed and determined arbitrarily and had no relation to the real value thereof; that no effort or attempt was made to ascertain or determine what in fact, was the real value of said patents and other rights; that said alleged purchase price was inadequate and greatly less than the real value of said patents and other rights;

> and that the real purpose for which the said patents and other rights were attempted to be assigned and transferred to defendant was to enable a concern called The Norma Company of America to obtain from defendant, for a nominal sum, the right or license to use said patents and other rights in connection with the business being conducted by it.
>
> "Complainant is informed, believes and therefore avers that no consideration whatever was paid by defendant to the Alien Property Custodian for the said alleged and attempted sale, assignment and transfer of November 5, 1921, nor was any consideration received by the Alien Property Custodian from anyone else therefor, and that said instrument was made, executed and delivered without any consideration whatever.
>
> "Complainant therefore avers that these alleged instruments of alleged sale, assignment and transfer were irregular and contrary to law, and were and are, in all respects null and void and of no effect in law or equity."

It seemed to me the duty of the Government in view of the evidence developed here, to propose that amendment to the Bill, to make it conform to the evidence. As I have said, when the Bill was drawn, it was drawn upon information that was believed to be supported by the understanding of the persons from whom the information was derived, and by their statements, but evidently there was a mistake on the part of those persons who acquired the information in some respects, and therefore I feel that it is the duty of the Government to propose that amendment, although it may or may not be material.

THE COURT: Is there objection?

MR. KRESEL: There is a very serious objection, your Honor Before arguing the objection, I think the defendant is entitled——

The Court: I do not care for any argument. I am ready to rule on it now, unless you want to argue it on both sides.

Mr. Kresel: I do not.

The Court: The motion is denied for the reason that the Bill is verified by the very person who was supposed to have knowledge or information with respect to the facts set forth in that particular paragraph. The amendment of the Bill at this stage of the case is in the discretion of the Court, and I think it would be an abuse of discretion to permit that paragraph to be amended, it having been verified by the individual upon whose subsequent testimony the proposed amendment is now based. The motion is denied.

Mr. Anderson: I respectfully defer to your Honor's views, since it is entirely in your Honor's discretion; but I felt I ought to make the motion. With that statement and with one or two reservations which appear of record, the Government closes its case.

Mr. Kresel: May I know what those reservations are?

Mr. Anderson: I could not possibly state those now. If they are not of record they are not made. As we progressed, there were certain other papers to be filed from time to time, if produced, and if they appear of record as having been reserved, of course, it is right; otherwise, I make no reservations at this time.

The Court: Do you have those papers in mind?

Mr. Anderson: If your Honor please, I haven't anything in mind at the moment. I do not recall anything that was reserved.

I understand from my associates that Dr.

McCoy was to file certain papers and there was a reservation that Dr. Gibbs, if he found certain papers, would send them to counsel and myself. Those are the matters that immediately occur to me, and as the record went on there were things reserved to be filed later, if obtained. That is what I was referring to.

The Court: Those records to be produced by Dr. McCoy were given an exhibit number and were to be supplied within a reasonable time.

Mr. Kresel: As far as Dr. Gibbs is concerned, I do not understand that he is at liberty to file anything. My understanding is that he thought he had some paper which would enable him to definitely fix the date of his conversation with Mr. Garvan.

The Court: And it was to be admitted by stipulation of counsel, as I recall it, in the event that it was deemed relevant or material.

Mr. Kresel: Yes; it was to be submitted to counsel first.

The Court: And filed at the time of argument.

Mr. Kresel: Exactly.

Mr. Anderson: I think that was my understanding, sir, as I recall it; but I merely want in closing the case not to appear to waive whatever reservations there were on the record which I can not recall.

The Court: Then you now close without reservation, save that you may by stipulation admit the memorandum or memoranda that may be filed by Dr. Gibbs with respect to the time of his conversation with Mr. Garvan?

Mr. Anderson: So far as Dr. McCoy's papers are referred to——

The Court: They are in and can be supplied.

Mr. Anderson: So far as I now recall, those were the only two reservations that we made.

The Court: Do you close on both sides?

Mr. Kresel: No, your Honor, not on my side. There are one or two things that I desire to bring to the attention of the Court and then I have a witness whom I want to call for one question.

To begin with, your Honor, last Saturday, Colonel Anderson—I do not know in what connection—spoke of my having made an announcement that I was going to call Mr. Hoguet as a witness and that I had explained to Colonel Anderson the reason why I had not called him, which reason he said was entirely satisfactory to him, but which reason did not appear upon the record. I think it is due to the Court and counsel that the record should be entirely clear upon the subject.

To begin with, I do not recall what Colonel Anderson refers to as my announcement of calling Mr. Hoguet. It may be that in my opening statement I said that. If I did, of course the record will show it. I do not recall. At all events, the fact is that Mr. Hoguet was under subpoena by the Government for several weeks and was in attendance here waiting to be called. Whether he was ever formally discharged from that subpoena, I have no knowledge. Certainly he was not discharged with my consent or with my knowledge.

I did intend to call Mr. Hoguet, but last Wednesday, I think, I learned for the first time that he was ill and could not appear. Immediately upon learning that, I notified Colonel Anderson. I showed Colonel Anderson a letter from Mr. Hoguet, and also a telegram from his doctor, stating that he was in bad health and could not be a witness. Colonel Anderson, of course, said that was all right under the circumstances. I think that that ought to appear upon the record, because I think your Honor is entitled to know why Mr. Hoguet was not called as a witness.

I think, too, it is proper that the Court should know, as I think counsel will concede, that Mr. Hoguet has been and is now in the employ of the Government. He has been and is now a special assistant to the Attorney General in the matter of some patent litigation, and my understanding is that he is directly under the supervision of Mr. Knight, who has charge of that work for the Attorney General. I say that both angles of that matter it is proper that the Court should have before it.

I have here Mr. Hoguet's letter. I have his physician's telegram to me. I do not see the necessity of putting them in evidence, but if Colonel Anderson desires, I shall be very glad to do it.

Mr. Anderson: In view of the statement of counsel, first I think counsel will concede that he did state to me personally, and I understood him to say in open Court, that the four gentlemen I named would be called.

Mr. Kresel: I do not recall it, but Colonel, if you say it, I will not deny it.

Mr. Anderson: Well, we discussed it several times. I had Mr. Hoguet summoned as a witness and I did not put him on the stand because I understood he would be called by the defendant and I thought he was properly a defendant's witness. I do not know whether he has been released from subpoena. He left here several weeks ago. I have not kept up with that detail of this case.

Mr. Kresel: I knew nothing about it.

Mr. Anderson: The fact is that I expected him to be called until you showed me that letter and telegram.

Mr. Kresel: Mr. Clerk, if he has been released, will not your records show?

The Clerk: He has never been formally discharged.

Mr. Anderson: If he has not been, he should be. I had intended to call Mr. Hoguet, but as I understood he was to be put on by the defense, I did not call him. I could not put in some papers this evening for the reason that he had not been called. If there was any misunderstanding or anything of that kind, then I am sorry. I thought that subject was quite clear.

Since counsel has made the statement, I might say that Mr. Hoguet was appointed as Special Assistant to the Attorney General in June, 1919. I think he has been handling patent litigation from time to time since then and is doing so now. I am perfectly willing to concede that fact, the date of the appointment, and that he is still handling certain patent cases for the Government.

Mr. Kresel: Have you got the date?

Mr. Anderson: The date is in the paper I showed you just now. You suggested I should not put in the appointment, because we could agree on the record.

Mr. Kresel: That is right.

Mr. Anderson: He was appointed by Mr. A. Mitchell Palmer on the 29th day of September, 1919. I thought it was June.

I think in view of the circumstances and the statement made by counsel, that it would be well to have the letter and telegram go in evidence.

Mr. Kresel: I will be very glad to offer them. I offer the letter from Mr. Hoguet, dated July 17, 1923.

Received in evidence and marked "Defendant's Exhibit No. 375." (*See Exhibits, Vol. V, page 3490.*)

Mr. Kresel: I offer in evidence telegram dated July 18, 1923, signed "J. A. McCreary, M.D."

Received in evidence and marked "Defendant's Exhibit No. 376." (*See Exhibits, Vol. V, page 3491.*)

Mr. Kresel: Before the case closes, your Honor, I should ask your Honor to direct now that any applications of exhibits may be eliminated with the consent of both sides, without making a special application each time to the Court. I think that will facilitate our printing of the record and of the exhibits.

The Court: It is so ordered; and all exhibits not expressly or specifically admitted are now admitted as if each had been so admitted.

Mr. Kresel: Your Honor, we have prepared a memorandum with reference to the dye legislation by Congress.

The Court: Do you want to put that in here or do you want to put it in the briefs? It has really no particular place here any more than, I think, the opinion. It is a summary.

Mr. Kresel: I think that is a very good suggestion. We can use it in our brief without putting it in evidence. That is all right, your Honor.

Mr. Anderson: I do not know the source of that information.

Mr. Kresel: It is in public acts.

Mr. Anderson: Oh, legislation?

Mr. Kresel: Yes.

Mr. Anderson: Wherever it is an act of Congress, of course, it can be used in briefs.

The Court: If you prefer to have it an exhibit, of course, you may.

Mr. Kresel: We were quite willing to have it in as evidence, but the Government did not have any means of checking up our memorandum. I was going to suggest that it might go in evidence subject to correction. But I really do think that we can use it in our brief without having it in evidence.

I am sorry, your Honor, that the translation of the French document is not yet completed. We have had some difficulty in getting a proper translation. Of course, before it can be admitted, it has to be passed on by the Government. I should like, therefore, to reserve the right to submit to the Government, as speedily as may be, a complete translation of that French document and then file it with the Clerk; and the complete translation may take the exhibit number of the partial translation in evidence.

The Court: So ordered, without objection.

Mr. Kresel: Your Honor directed that we furnish information as to the exact date of the publication of the book entitled, "Coal Tar and Dye Intermediates," by E. de Barry Barnett, an extract from which was used upon Dr. Crossley's examination. Your Honor will recall that the book itself showed that it was published in 1919; but the exact date of publication did not appear.

The Court: The English book?

Mr. Kresel: Yes, your Honor. We have made inquiry from the publishers, and the information is that it was published in January, 1919. That, of course, is subject to correction, but that is the best information we could get.

Col. Anderson, is there any objection to stipulating that none of the patents in question here have been adjudicated prior to April 10, 1919?

Mr. Anderson: Mr. Kresel, I would rather not stipulate that, because I do not know a thing about it. There may have been a number of them adjudicated, or questions decided upon them, and I do not want to bind the Government by a stipulation. If I knew the fact, I would not hesitate, sir.

Mr. Kresel: Let it pass.

I offer in evidence cablegram from Mr. Garvan to Bradley Palmer, which is one of the series of correspondence that passed between the Secretary of State's office and Mr. Bradley Palmer and Mr. Garvan at the time of the Peace Conference. It is dated April 12, 1919. It is one of those that was produced for us from the office of the Secretary of State.

Mr. Anderson: I would have to object to that, sir, on the ground of immateriality and irrelevancy, and further that it has been available for some days, and I think it should have been introduced before we closed our case.

Mr. Kresel: It was not given to us until after the plaintiff's case had been closed, until after the defendant's case had been closed, and you were on your rebuttal.

Mr. Anderson: We have some of those telegrams and letters and papers that we probably would have wanted to put in if the correspondence had been put in; but it was not put in, and we had no notice that it was going to be put in.

Mr. Kresel: Had no notice that what was going to be put in?

Mr. Anderson: If this correspondence had been put in, we would probably want to put in other correspondence.

Mr. Kresel: I have put in one cablegram, and it was not furnished to us until after our case was closed.

Mr. Anderson: We should at least have been given notice of a purpose to put it in.

The Court: Was it called for?

Mr. Anderson: It was called for and we gave it to these gentlemen some days ago.

Mr. Kresel: Last Friday we received these cables.

Mr. Anderson: We began our rebuttal on Thursday, and as soon as we got them from Washington, we gave them to these gentlemen.

The Court: Applying strict rules, as you are furnishing them, you may put it in evidence. Those rules have not been enforced at any stage of this case. There was no opportunity in the regular order of the procedure for the defendant to present it during rebuttal. Have you any specific communications that you want to present as offsetting the effect of his cable?

Mr. Anderson: May I see the cable that was put in? (Examines cable offered by Mr. Kresel.)

I will object to this telegram as immaterial and irrelevant in any event. It is not a telegram of the Government of the United States. It is a telegram from Mr. Garvan to Mr. Bradley Palmer. I think if these telegrams are going in, they ought all go in.

The Court: I do not think that follows, Colonel Anderson. In so far as they are relevant——

Mr. Anderson: I would like your Honor to read this telegram (handing to Court). I do not want to read it because I do not want it to go on the record. But I would very much like your Honor read it, as I do not know on what possible theory that can be put in evidence by the defense in this case.

The Court: Mr. Kresel, it seems to me that it antedated April 12th. It is two days after the first assignment. It would not help me.

Mr. Kresel: The Exhibit is withdrawn.

Dr. Stieglitz has read over his testimony in Chambers, your Honor, and has certain corrections that he desires to make. He has written them out on two sheets of paper. I do not want to take the time to read them into the record.

The Court: Have you submitted them to Col. Anderson?

Mr. Kresel: No, sir. May they not be given to the stenographer and the stenographer directed to correct them accordingly?

Would you like to see them?

Mr. Anderson: Without seeing them, I do not know how far I would object; but if they in any way enlarge or change the testimony, I would object.

The Court: You may examine them now and take as much time as necessary for that purpose.

(Mr. Anderson examines paper.)

Mr. Anderson: There are certain of these corrections, sir, which are merely verbal and immaterial. There are others on which I will have to read the context a little more carefully. I think I would like to ask Mr. Knight if he would do it whilst I proceed with the remainder of the case.

Mr. Kresel: All right, but we will finish it before we leave tonight. Mr. Garvan, will you take the stand, please.

DEFENDANT'S REBUTTAL PROOFS.

FRANCIS P. GARVAN.

Francis P. Garvan was recalled as a witness in sur-rebuttal, on behalf of the defendant, and having been previously duly sworn, testified further as follows:

Direct Examination.

By Mr. Kresel:

Q. 1607. Mr. Garvan, last Saturday Dr. Gibbs was a witness here and he testified about an alleged conversation that he had with you. I shall read to you two or three sentences, which constitutes the testimony given by Dr. Gibbs in that connection.

At page 4661 the following testimony was given by Dr. Gibbs:

> "Q. 70. Just what you told Mr. Garvan. It does not matter what Mr. Garvan said to you, but state what you told him about salvarsan?
>
> "A. I told Mr. Garvan that I could not substantiate the contention that the German patents were unworkable from the experience that my laboratory had had with salvarsan.
>
> "Q. 71. Did you state anything further; did you tell him what that experience was?
>
> "A. I possibly stated that our experiments" —and then he was interrupted by the Court, who said, "No, do not guess." And finally the question was repeated as follows:
>
> "Q. 72. Do you remember whether you did state to him the result of your laboratory work?
>
> "A. I stated that we had made salvarsan in the laboratory under the German patents. I possibly stated——"

And then he was again cautioned against using the word "possibly," and then this question was put to him:

> "Q. 73. As I understand it, the two things you are prepared to say you did say to Mr. Garvan, on which your recollection is definite, is that you could not sustain the suggestion that the German patents were unworkable because of your experience, the experience of your laboratory in the making of salvarsan under the German patents, and that you had made salvarsan under the German patent in that laboratory or that it had been made in the laboratory?
>
> "A. Yes."

Then upon cross-examination he was again asked about this conversation with you, and his testimony upon the subject was this—I read from page 4675:

> "XQ. 140. Well, go on; I have been asking you to give it to us?
>
> "A. Mr. Garvan introduced the subject of the American patents that were German owned, and while I can only remember in a very sketchy way what he said, the substance of it is the same as he has made in speeches on many occasions, referring to the non-workability and questions of seizure and use in this country and general questions of that description——"

Then he is asked to be more specific about it, and his answer is this:

> "A. That he had understood that these patents were designed to conceal information, and that they were taken out for the purposes of obstruction of American industries, and that possibly—I guess he stated pretty positively that most of them were not workable, or words to that effect. I cannot give it much more in detail; but that was the reason for my——"

And then he went off into something else.

As to the date of this alleged conversation, Dr. Gibbs has stated that he was positive that it was either on April 10th or prior to April 10th, 1919, but that he did not have any conference with you subsequent to April 10th, 1919. Now, did you in the year 1919 have any conferences with Dr. Gibbs?

A. I did.

Q. 1608. Did Dr. Gibbs at any of those conferences say to you, either in words or in substance, that in his laboratory, that is the color laboratory or anywhere else, either he had made, or anybody under his supervision had made salvarsan?

A. He did not.

Mr. Kresel: That is all.

Mr. Anderson: You can stand aside.

(Witness excused.)

Mr. Kresel: Defendant rests.

The Court: You rest on both sides.

At the close of this case, I want to thank counsel on each side for their patience and uniform courtesy throughout the trial. I also want to thank you, Mr. Smart, and your assistants for the thorough manner in which you have reported these proceedings.

Mr. Kresel: Will your Honor permit me, on behalf of my associates, and on behalf of the defendant, to express our deep appreciation of the uniform courtesy that your Honor has extended to us, and for the treatment that counsel for the defendant have received at the Court's hands.

Personally I am a stranger in this jurisdiction. I have had some limited experience in the trial of cases, and I say this full-heartedly, that I have never appeared before a Court, either State or Federal, where counsel have been treated as counsel have been treated in this case. I deem it a great pleasure to have been before your Honor, and I trust that I shall pretty soon have another occasion to be before you.

Mr. Anderson: The counsel for the Government desire to thank the Court for the very courteous remarks addressed by the Court to counsel in this case. They desire also to express their appreciation of the courtesy and consideration of the Court toward counsel for the Government during the trial. We recognize the fact that this long and tedious trial has been a severe tax upon the Court as it has been to counsel. It is hoped that any unpleasant incidents which may have occurred may be forgotten and only those which are pleasant may be remembered.

(Whereupon, at 10.20 P. M., Standard Time, on Monday, July 23, 1923, the case was closed.)

ORDER APPOINTING STENOGRAPHER.

(Filed May 7, 1923.)

And now, to wit, this seventh day of May, A. D. 1923, it appearing to the court from the bill of complaint and answer filed in the above entitled cause that it is necessary that the testimony adduced at the trial of this cause in open court be taken down in shorthand and transcribed, it is Ordered by the court that William F. Smart be and he hereby is appointed official stenographer in this cause to take down such testimony and furnish a transcript or transcripts thereof, his fee for taking such testimony and furnishing a transcript thereof to the court to be ultimately taxed as part of the costs of this cause. The expense of taking a deposition and furnishing a transcript or transcripts thereof shall be advanced by the party calling the witness.

(Sgd.) HUGH M. MORRIS, *J.*

ORDER FOR PRINTING RECORD.

(Filed July 23, 1923.)

And Now, to-wit, this twenty-third day of July, A. D. 1923, after hearing counsel for the parties in the above cause regarding the printing of the record herein, for use in this and any appellate court, it is

Ordered by The Court that a transcript of the record be forthwith prepared and printed as reported, including statements of counsel at opening of and during the trial, and without reducing the same to narrative form, under the supervision of the clerk, in such manner and form that the same may be available for use in any appellate court;

And it is Further Ordered by The Court, counsel of record for the parties consenting in this behalf, that the expense of printing one hundred copies of the said transcript shall be advanced from time to time and borne in equal amounts by the plaintiff and defendant, and form part of the taxable costs of said cause; the costs of additional copies, if any, which may be furnished to the parties respectively, shall be borne by the party or parties receiving such additional copies.

(Sgd.) HUGH M. MORRIS, *J.*

OPINION OF COURT.

(Filed January 3, 1924.)

By this suit in equity instituted by the United States of America against The Chemical Foundation, Incorporated, the plaintiff seeks the annulment of sales of property purporting to have been made by the plaintiff to the defendant. The property sold consisted mainly of U. S. letters patent, copyrights and trademarks pertaining to chemicals and pharmaceuticals. At the outbreak of the war it was owned by subjects of Germany. During the war it was seized as enemy property by the Alien Property Custodian. The President, stating the reasons therefor in the public interest, authorized the Custodian to sell the same to the defendant at private sale upon such terms and conditions as to the Custodian might seem proper. The sales were made in the years 1919, 1920 and 1921. Conditions of sale were that the property should be held in a fiduciary capacity for the Americanization of such industries as might be affected thereby and for the advancement of chemical and allied science and industry in the United States; that non-exclusive licenses, only, should be granted; that the United States should receive free licenses; and that other licenses granted should be upon reasonable and equal terms without advantage as between licensees. The monetary consideration paid was approximately $271,000.

The plaintiff challenges the power to make the sale. It asserts, and the fact is not disputed, that the price for which the property was sold was far less than the property was worth to the Germans from whom it was seized. It asserts that the conditions of sale were partially destructive of the selling value even to American citizens. This is likewise conceded. It contends that no authority existed for selling enemy property for less than its fair monetary value and that conditions of sale destructive of its fair monetary value, though in the public interest and even though the independence of the United States might have depended thereon, could not be imposed. (R., pp. 3041-3049.) The defendant takes the position that in the disposition of enemy property there was not only a power but also a primary duty to consider and safeguard the public interest; that the President and the Custodian were clothed with this power and burdened with this duty and that, in the absence of fraud, their acts done in the exercise of this power and in the performance of this duty are not subject to judicial review. There is thus presented the broad question of power with respect to the seizure and sale of enemy property.

Enemy property found upon land in the United States cannot be condemned as enemy property without an act of Congress. A declaration of war is not such an act. Brown v. United States, 8 Cranch 110. The Trading with the Enemy Act (40 Stat. 411), approved October sixth, 1917, as amended in March and November, 1918 (40 Stat. 460 and 1020) is here relied on. Whether considered as originally passed or as amended that act is strictly a war measure finding its sanction in the constitutional provision, Art. 1, Sec. 8, Cl. 11, empowering the Congress "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." Stoehr v. Wallace, 255 U. S. 239, 241-2; Commercial Trust Co. of New Jersey v. Miller, 281 Fed. 804 (C. C. A. 3) affirmed 262 U. S. 51. We are here concerned with captures on land, only. By section 5 of the act the President is in terms authorized to "exercise any power or authority conferred by this Act through such officer or officers as he shall direct." Section 6 authorized the President to appoint and "prescribe the duties of" an official to be known as the Alien Property Custodian and empowered the Custodian to receive all money and property in the United States due or belonging to an enemy and to hold, administer and account for the same under the general direction of the President and as provided in the act. Section 7(a) imposes upon all persons in the United States the duty of reporting to the Alien Property Custodian the enemy owned property within their control. Section 7(c), as originally passed, authorized the President to require all enemy property to be paid, transferred or delivered to the Alien Property Custodian. An amendment of November 4, 1918, 40 Stat. 1020, makes the provisions of this subsection apply expressly to "patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description" and authorizes the seizure by the Custodian of any property that the President might require to be paid, transferred or delivered to the Custodian.

By an amendment of March 28, 1918, 40 Stat. 460, the fourth paragraph of Section 12 was made to read as follows:

"The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, *in addition thereto,** acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: Provided, That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, *unless the President stating the reasons therefor, in the public interest shall otherwise determine*: * * * "

Under this amendment the powers granted with respect to the disposal of enemy property are broad, indeed. It first expressly authorized "any" disposition, by sale or otherwise, as though the Custodian were the absolute owner thereof. Stoehr v. Wallace, 255 U. S. 239, 243. Whether under this broad power the Custodian, acting under the supervision and direction of the President, would have authority to destroy enemy property—for example, propaganda books and pamphlets, munitions of war unsuitable for America's use, or property whose mere presence here might constitute an actual or possible menace to the public health—need not be determined for the transaction here in question was a sale. But it is clear that, save as limited by the first proviso, the powers of sale conferred by the amendment are as broad as those of an absolute owner. An absolute owner may sell his property under any terms and conditions that he, in his absolute discretion, may deem proper. He may sell it at public sale to the highest bidder, as ordinarily he would do where the only advantage to be derived by him from the sale is directly monetary. He may likewise sell it at private sale to the low bidder. Indeed, he frequently does so if, in his opinion, there will accrue to him directly, or indirectly, from such sale benefits and advantages more than sufficient to offset and overcome the direct and immediate monetary loss. The proviso, however, recognizes that with respect to some enemy property the public interest may be peculiarly interwoven. It thus recognizes that enemy property may consist of two classes—the ordinary and usual class and a special class. For the former class the proviso, itself, prescribes and rigidly fixes the conditions of sale. With respect to the special class the last clause of the proviso—"unless the President stating the reasons therefor, in the public interest shall otherwise determine"—empowers the President to nullify any or all of the statutory conditions of sale prescribed for property of the ordinary and usual class. United States v. Standard Brewery, 251 U. S. 210, 218; Levinson v. United States, 258 U. S. 198, 201. It does more. It authorizes the President to substitute other conditions in place of those nullified, for such is the meaning of "otherwise determine" when read in connection with the remainder of the amendment. But that is unimportant, for if the President acting under the last clause of the proviso removes the statutory conditions as to specified property, but does not prescribe other conditions of sale in place of the nullified statutory conditions, the provisions in the body of the amendment apply and the Custodian, acting under the supervision and direction of the President, may sell such property as though he were the absolute owner thereof. I see no escape from the conclusion that as to property brought within the last clause of the proviso by presidential determination in the public interest the amendment permits a freedom of action with respect to the terms and conditions of sale ample to safeguard the public interest, whatsoever be the requirements of that interest and whatever be the character of the property sold.

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*All italics throughout this opinion are mine unless otherwise indicated.

It is said by the plaintiff, however, that the fourth paragraph of section 12 of the act expressly makes the Custodian a common-law trustee; that, were this not true the Custodian holds the enemy property in his possession only in his official capacity; that a public office is a public trust and that as a trustee may not sell trust property for less than its fair monetary value the Custodian, a trustee, may not do so. It is true that by the act the Custodian is "vested with all of the powers of a common-law trustee in respect of all property" coming into his possession. But it is likewise true that to the Custodian, acting under the supervision and direction of the President, the statute grants *additional* powers including the express power to sell the trust property "as though he were the absolute owner thereof" if the President in the public interest removes the conditions and limitations of the proviso. The sales here in question were made not by virtue of the "common-law trustee" powers of the Custodian but in the exercise of the additional powers. Yet, it is of course true that neither the President nor the Custodian is the owner of enemy property. "As though he were the absolute owner" was inserted in the act merely to state the extent and scope of the grant of additional power—not to confer upon the President or Custodian, personally, the beneficial interest in the property. Hence, in the sale of enemy property all officers act in an official or fiduciary capacity. But because a trustee with only the usual powers may not ordinarily sell trust property at private sale for less than its fair monetary value it by no means follows that the Custodian, acting under the supervision and direction of the President, may not do so. It will not be disputed, I take it, that the powers of a trustee over the trust property depend upon the nature of the trust and the terms of the instrument by which it is created. 26 R. C. L. 1279. Obviously the primary purpose of the Trading with the Enemy Act was the protection of the nation, not the benefit of the enemy. The trust thereby created was constituted for the benefit of the nation and the public at large. It was a public, not a private, trust. In the disposal of property under the "additional" statutory powers the statute—the instrument creating the trust—makes the President the controlling factor and the Custodian his instrumentality or agent. In all such sales the statute requires the President to consider the public interest. Public interest is not a synonym for money. It may not be defined in terms of finance. It embraces all the great public needs. It permits dealing with the conditions which exist in the nation so as to bring out of them the greatest welfare of its people. With the safety of the nation, the permanence of peace and the health of its citizens it is vitally concerned. In the category of the great public needs these are not outranked by the nation's revenue.*

Considering the public interest in connection with the disposal of trust property requires the balancing in judgment and marshalling of the conflicting demands to which in the public interest the trust property is subject. The extent to which the trustee may act in conformity with a judgment so formed depends upon the scope of his powers. Where, as here, the powers granted with respect to the disposal of trust property are as broad as those of an absolute owner, the trustee is the judge, and, in the absence of fraud, the sole and exclusive judge, of the rank and priority to which each of the divers demands is entitled. Under such a trust there is confided to the keeping of the trustee not only the trust property but also the public interest to the extent that that interest is interwoven with the trust property or with its disposition. Under such a trust the trustee, in so far as the nature of the trust property permits, may in the sale of that property promote and advance the safety of the nation, the permanence of peace, the health of its citizens, or the national finances. He may promote and advance all, or he may promote and advance either at the expense of the others. If in his judgment the widespread use of the trust property would tend to advance the safety of the nation, the health of its citizens, or the permanence of peace, the property may in its disposition be devoted to the public use even though thereby its monetary value for purposes of sale would be substantially destroyed. Such powers are, in truth, broad. But they were granted in the public interest in time of war by Congress, in the exercise of its war powers, to him who, by virtue of his office, knows "the state of the Union" and is Commander-in-Chief of its Army and Navy.

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*Since the above was written what I conceive to be the same thought has been better expressed, with respect to the sale of Muscle Shoals, thus:—

"While the price is an important element, there is another consideration even more compelling. The agriculture of the Nation needs a greater supply and lower cost of fertilizer. This is now imported in large quantities. The best information I can secure indicates that present methods of power production would not be able profitably to meet the price at which these imports can be sold. To obtain a supply from this water power would require long and costly experimentation to perfect a process for cheap production. Otherwise our purpose would fail completely. It seems desirable, therefore, in order to protect and promote the public welfare, to have adequate covenants that such experimentation be made and carried on to success. The great advantage of low-priced nitrates must be secured for the direct benefit of the farmers and the indirect benefit of the public in time of peace, and of the Government in time of war. If this main object be accomplished, the amount of money received for the property is not a primary or major consideration." (President's Address to Congress, December, 1923. *Congressional Record* of December 6, 1923.)

The history of the times, the condition of the country, and the uses to which enemy property in America was being put by the enemy, serve but to confirm the intent of Congress as made manifest by the plain words of the amendment. On April 6, 1917, almost three years after the outbreak of the European conflict and long after right upon right of this nation had been ignored and violated, Congress declared a state of war to exist. Six months thereafter the Trading with the Enemy Act was passed. As originally passed the fourth paragraph of section 12 authorized a "disposition" of enemy property coming into the hands of the Custodian only "if and when necessary to prevent waste and protect such property and to the end that the interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded." It was then purely a conservation act. Property rights were made pre-eminent and guarded with the greatest solicitude. America, bearing no malice, no hatred, no ill-will toward any people, suspected no designs upon her sovereignty or the health of her citizens and was suspicious of no misuse of the rights and opportunities she had freely granted to the subjects and nationals of the foe. There was then little accurate or definite knowledge as to the nature or extent of the German investment in the United States. While it was known to be large it was not generally believed to be either powerful or particularly unfriendly to American interests. The Custodian became active. The reports of enemy owned property called for by section 7(a) of the act began to pour in. They came by the thousands. The extent of enemy ownership was amazing. It permeated every state of the Union and every territory and insular possession. It affected every industry. Some it monopolized. It amounted in value to hundreds of millions of dollars. (Deft.'s Ex. No. 30, Ex., pp. 2103-4; R., pp. 2511, 2523-5.) Much of this property was not innocently held or held solely for the purposes of trade and commerce. It was found that before the war a number of German owned insurance companies had insured a large number of properties here which the insurance agents periodically inspected. Another large German owned company erected and installed railways within industrial plants and mills. It had possession of their ground plans and knew the details of their construction and arrangement. All this and like information acquired by other German owned companies had been transmitted, it was found, to Berlin and there collated, indexed, arranged and made available to German competitors and to the German government. (R., p. 2754; Pltff.'s Ex. No. 16, Ex., pp. 566-8.) A German owned lumber company located on Pensacola Bay, Florida, was seized by the Custodian. It was found to own "every advantageous place on the finest harbor in the Gulf of Mexico, the nearest harbor on American soil to the Panama Canal.'' Its files were filled, not with business papers but with pan-German literature. It was ''a distribution center for propaganda in this country.'' The Custodian found other properties that were similarly used. (R., pp. 2535-6.) Let us turn to the chemical and pharmaceutical situation to which the attention of the Custodian was early attracted. As head of the Alien Property Custodian's bureau of investigation Francis P. Garvan began an investigation of this field. He was soon joined by Joseph H. Choate, Jr., who devoted himself exclusively to that task. (R., pp. 3142-3.) The inquiry was painstaking and exhaustive. Persons having knowledge of the situation were examined. Information gathered by the secret service and intelligence departments of the Government and of its allies was availed of. Reports in the archives of the Government were searched. Wireless messages passing between persons in the United States and in Germany during a period before America entered the war were inspected. Suspected persons were interrogated under oath and their books and papers examined. The salient facts thus obtained, the evils threatening the public interest and the remedy by a sale of the German chemical and allied patents to the defendant as a means for bringing about their widespread use in the United States were stated and pointed out in the report (Deft.'s Ex. No. 30) made by the Custodian to the President on February 27, 1919, and by the President transmitted to Congress on March first. This report must speak for itself. It cannot be epitomized without depriving it of strength. It must suffice to state a few facts and then let the German Consul General portray the situation. At the outbreak of the war Germany had attained in the manufacture of dyestuffs and medicinals not only the first place but to all intents and purposes a world monopoly. Prior to that time American industry in dyestuffs and medicines consisted of little more than a series of rather small assembling plants. In medicinals very little real American manufacture existed. Scarcely any of the necessary intermediates were made here and the manufacture of dyes was confined almost entirely to working upon intermediates imported from Germany. From time to time American citizens had become interested in the development of an American industry but German bribery and dumping had prevented its success or destroyed it. The Germans applied for and were granted numerous patents. "As there was substantially no effort (with small exceptions) by any of the German concerns to manufacture in the United States, these patents were obviously obtained and held in order to prevent the formation of an American dye industry and to make impossible importation from other countries." (Ex., p. 2139.) The importation of chemicals and medicinals was cut off at the outbreak of the war. The effect upon America was duly reported to his government in Berlin, in March, 1916, by the German Consul General, Hossenfelder. He said (Deft.'s Ex. No. 72, Ex., pp. 2519-20):

"Neither through money nor the granting of credit, nor by any other means, can that critical situation be relieved which has been called forth by the removal of certain articles which are obtainable only in Germany. These articles are chiefly potash, chemicals, and dyestuffs. Potash is desired by agriculture, inclusive of the cotton-planters, all the more urgently since even last year sufficient fertilizer could not be brought to the soil. To enumerate the industries which are suffering from the scarcity of German chemicals would lead too far. *I may, however, mention that the cry for help which comes from the world of physicians is becoming louder and louder and more and more insistent.*

"The country, however, is being hit hardest by the

lack of dyestuffs, which makes itself felt more and more every day. * * * What the United States is able to produce in dyestuffs is neither in quality nor in shades in the remotest sufficient to meet the existing demands. It is now acknowledged here on all sides that the reports to the contrary of Mr. Norton are not only too optimistic but directly untrue. * * * In estimating the effect which will be produced by cutting off the importation of potash, chemicals, and dyestuffs it should be taken into consideration that the circle of persons affected is very extraordinarily large. Through the lack of dyestuffs alone not only is a whole list of important industries (wool, cotton, leather, paper industry, etc.), gradually made lame but for the great public living becomes more expensive both through the rise in price as well as through the small durability of all products for whose production colors are used. *We are here unquestionably face to face with conditions which are without a parallel in the past.*"

Theretofore the German Ambassador to Washington had sent to Berlin this cablegram (Deft.'s Ex. No. 62, Ex., p. 2427):

"It is reported to me by Hossenfelder * * * that the stock of dyes in this country is so small that by a German embargo about 4,000,000 American workmen might be thrown out of employment."

With respect to the withholding of medicines from us, Dr. Julius Stieglitz, professor of chemistry at the University of Chicago and who during the war was chairman of the Committee on Synthetic Drugs of the National Research Council, the scientific adviser of the Government (R., p. 3576), has since said:

"The pitiful calls of our hospitals for local anæsthetics to alleviate suffering on the operating table, the frantic appeals for the hypnotic that soothes the epileptic and staves off his seizure, the almost furious demands for remedy after remedy, that came in the early years of the war, are still ringing in the hearts of many of us.''

The President of the United States, in his message of May 20, 1919, to Congress (Deft.'s Ex. No. 164, p. 2863), said:

''The experiences of the war have made it plain that in some cases too great reliance on foreign supply is *dangerous*, and that in determining certain parts of our tariff policy domestic considerations must be borne in mind which are political as well as economic. Among the industries to which special consideration should be given is that of the manufacture of dyestuffs and related chemicals. Our complete dependence upon German supplies before the war made the interruption of trade a cause of exceptional economic disturbance. The close relation between the manufacturer of dyestuffs, on the one hand, and of explosives and poisonous gases, on the other, moreover, has given the industry an exceptional significance and value. Although the United States will gladly and unhesitatingly join in the program of international disarmament, it will, nevertheless, be a policy of obvious prudence to make certain of the successful maintenance of many strong and well-equipped chemical plants. The German chemical industry, with which we will be brought into competition, was and may well be again, a thoroughly knit monopoly capable of exercising a competition of a peculiarly insidious and dangerous kind.''

By her patent monopoly, by bribery and by dumping Germany had prevented the building up of an organic chemical industry in the United States. The relation of chemical plants operating in time of peace to the national defense in time of war was pointed out by the acting Secretary of War (Ex., pp. 2884-5) in these words: "I may state that such plants would be of unquestionable value to any government, and that their maintenance in time of peace, with the complete equipment would enable their output to be changed from dyestuffs to explosives in a week's time, [and] as claimed by Dr. Schoellkopf, would remove to a great extent the necessity for the erection and maintenance of special large plants for explosives for war purposes." The technical skill and equipment provided by an active chemical industry furnishes the means, and almost the sole means, to which the nation must look, in war and in peace, for advances in the application of chemical science to practical undertakings.

At the time of the passage of the March amendment America was, at home, truly "face to face with conditions * * * without a parallel in the past" but on the battle front she was engaged in conflict with an enemy waging a chemical warfare and passing from the use of deadly to more deadly gases. To America's credit be it said that she sought to refrain from the use of gas in warfare, forbidden by international convention. But it soon became apparent that America would be fighting on disastrously unequal terms unless she should make use of all the dread weapons being used against her by the foe. When Germany persisted in her attempts to destroy her opponents by waves and shells of poison gas in contravention of all international agreements Germany made it manifest that America's future safety lay in America's chemical independence. It was obvious that chemical independence and readiness in time of war could only follow chemical independence and development in time of peace for "the same plant that converts the benzene and the toluene, the anilin and the toluidin of the coal tar into flaming colors or into the pain-soothing or disease curing medicinals'' are ready "to convert in war time these crude products into the all powerful T. N. T., picric acid and similar'' weapons of war. But American chemical independence could only follow an unfettered opportunity to develop that science. The amendment of March, 1918, was passed during the darkest days of the war. The Germans were striking blow after blow and making advance after advance. It was thought that Paris was about to fall and the channel ports be taken. (R., p. 2538.) It looked as if upon America was to fall the burden of carrying the war to victory. Such were the circumstances under which Congress struck out the fourth paragraph of section 12 of the Trading with the Enemy Act which authorized a disposition of enemy property only for purposes of conservation and substituted in its stead a power of disposition in the public interest as broad as that of an absolute owner. The character of the change in the statute, the circumstances under which it was made and the plain words of the amendment combine to make it clear that Congress saw that at least some enemy property was clothed with a public interest and that it was the intent of Congress to subordinate mere property rights to the welfare of the nation; they combine to make it clear that in passing the March amendment it was the intent and purpose of Congress to permit enemy property clothed, in the judgment of the President, with a public interest affecting the safety of the nation, the permanence of peace or the health of its citizens to be sold under such terms and conditions as would devote such property to the public use and thus give to the nation its greatest value and insure that not again, in peace or in war, should the health, the pain and the suffering of American citizens or the employment of American workmen or the safety of the nation itself be dependent upon the will of another nation or its nationals. The Trading with the Enemy Act was in full force at the time the sales in suit were made. Commercial Trust Co. v. Miller, 281 Fed. 804, 806; 261 U. S. 51, 57.

The plaintiff advances many reasons, however, why the amendment should not receive this construction. Of these the most fundamental, perhaps, is that it would permit partial, and possibly total confiscation of enemy property; that confiscation of enemy property is in conflict with the law of nations and that an act of Congress should not be construed to violate the law of nations if any other construction is possible. Conceding, *arguendo,* that certain conditions of sale, though imposed in the interest of the nation, might be at least partially destructive of the monetary value of the property sold, and thus lessen the selling price, let us see if such confiscation, if confiscation it be, is in conflict with the law of nations. Inasmuch as this Government received the law of nations in its modern state of purity and refinement and for one hundred and thirty years, as plaintiff in its brief points out, has observed that law in the face of all temptation and has taken a leading part in upholding the principles of international right and the protection of private property in time of war, it is probably not necessary to go beyond the decisions of our own tribunals for guidance in ascertaining what that law is. Ware v. Hylton, 3 Dallas 199, was instituted by a subject of the King of Great Britain against citizens of the State of Virginia to recover a *debt* due at the outbreak of the Revolutionary War from the latter to the former. The defendant pleaded the confiscation of the debt by the State of Virginia. To this plea the plaintiff replied that the treaty of peace concluded between the United States and Great Britain provided "that the creditors of either side should meet with no lawful impediment to the recovery * * * of all *bona fide* debts theretofore contracted." The defendants demurred to the replication. Judgment was had by the plaintiff, not on the ground that the plea was bad, but on the ground that the replication was good. Chase, Justice, at p. 231, said:

> "From these observations, and the authority of Bynkershoek, Lee, Burlamaque and Rutherforth, I conclude, that Virginia had a right, as a sovereign and independent nation, to confiscate any British property within its territory, unless she had before delegated that power to congress, which Mr. Lewis contended she had done."

and at p. 235:

> "It appears to me, that the plea, by the defendant, of the act of assembly, and the payment agreeable to its provisions, which is admitted, is a bar to the plaintiff's action, for so much of his debt as he paid into the loan-office; unless the plea is avoided or destroyed, by the plaintiff's replication of the fourth article of the definitive treaty of peace between Great Britain and the United States, on the 3d of September, 1783."

The view of Mr. Justice Patterson was expressed at p. 254 thus:

> "It has been made a question, whether the confiscation of debts, which were contracted by individuals of different nations, in time of peace, and remain due to individuals of the enemy, in time of war, is authorised by the law of nations among civilized states? I shall not, however, controvert the position, that by the rigor of the law of nations, debts of the description just mentioned may be confiscated."

Mr. Justice Iredell, who sat in the court below and who, though not voting, read the reasons given by him in support of the judgment of the Circuit Court, observed, p. 268:

"If the state, *de jure*, according to the law of nations (which I strongly incline to think), had a right wholly to confiscate this debt, they had undoubtedly a right to proceed a partial way towards it, by receiving the money, and discharging the debtor, substituting itself in his place."

At page 270:

"For these reasons, I am clearly of opinion, that under the acts of sequestration, and the payment and discharge, the discharge will be a complete bar in the present case, unless there be something in the treaty of peace to revive the right of the creditor against the defendant, so as to disable the latter from availing himself of the payment into the treasury, in bar to the present action."

Wilson, Justice, p. 281, states:

"When the United States declared their independence, they were bound to receive the law of nations, in its modern state of purity and refinement. By every nation, whatever is its form of government, the confiscation of *debts* has long been considered disreputable: and we know, that not a single confiscation of that kind stained the code of any of the European powers, who were engaged in the war which our revolution produced."

But he immediately adds:

"Nor did any authority for the confiscation of debts proceed from congress (that body, which clearly possessed the right of confiscation, as an incident of the powers of war and peace), and therefore, in no instance can the act of confiscation be considered as an act of the nation."

In Brown v. United States, 8 Cranch 110, a case arising out of the War of 1812, Chief Justice Marshall, as to the right of confiscation, at pp. 122-3, said:

> "Respecting the power of government, no doubt is entertained. That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself. That remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will. But until that will shall be expressed, no power of condemnation can exist in the court."

and at pp. 128-9:

> "When war breaks out, the question, what shall be done with enemy property, in our country, is a question rather of policy than of law. The rule which we apply to the property of our enemy, will be applied by him to the property of our citizens. Like all other *questions of policy*, it is proper for the consideration of a department which can modify it at will; not for the consideration of a department which can pursue only the law as it is written. It is proper for the consideration of the legislature, not of the executive or judiciary."

In that case Mr. Justice Story who held the view, contrary to that of a majority of the Court, that the declaration of war in and of itself authorizes confiscation, said, p. 143:

> "On a review of authorities, I am entirely satisfied, that, by the rigor of the law of nations and of the common law, the sovereign of a nation may lawfully

confiscate the debts of his enemy, during war, or by way of reprisal: and I will add, that I think this opinion fully confirmed by the judgment of the supreme court in *Ware v. Hylton,* 3 Dall. 199, where the doctrine was explicitly asserted by some of the judges, reluctantly admitted by others, and denied by none.

"In respect to the goods of an enemy, found within the dominions of a belligerent power, the right of confiscation is most amply admitted by Grotius, and Puffendorf, and Bynkershoek, and Burlamaqui, and Rutherforth and Vattel. See Grotius, and Puffendorf, and Bynkershoek, *ubi supra*; and Bynk. Qu. Pub. Jur. c. 4, and 6; 2 Burlam. p. 209, § 12, p. 219, § 2, p. 221, § 11; Ruth. lib. 2, c. 9, pp. 558-73. Such also is the rule of the common law. Hale, in Harg. Law Tracts, p. 245, c. 18."

On August 6, 1861, and July 17, 1862, the Congress passed statutes, commonly termed the confiscation acts, providing for the seizure and sale of enemy property. Wherever brought in question these acts have been uniformly upheld as a legitimate exercise of the war power of the nation. In Miller v. United States, 11 Wallace 268, it was urged that these acts were unconstitutional. The court in overruling this contention said at pp. 305-6:

"The question, therefore, is, whether the action of Congress was a legitimate exercise of the war power. The Constitution confers upon Congress expressly power to declare war, grant letters of marque and reprisal, and make rules respecting captures on land and water. Upon the exercise of these powers no restrictions are imposed. Of course the power to declare war involves the power to prosecute it by all means and in any manner in which war may be legitimately prosecuted. It therefore includes the right to seize and confiscate all property of an enemy and to dispose of it at the will of the captor. This is and always has been an undoubted belligerent right. If there were any uncertainty respecting the existence of such a right it would be set at rest by the express grant of power to make rules respecting captures on land and water. It is argued that though there are no express constitutional restrictions upon the power of Congress to declare and prosecute war, or to make rules respecting captures on land and water, there are restrictions implied in the nature of the powers themselves. Hence it is said the power to prosecute war is only a power to prosecute it according to the law of nations, and a power to make rules respecting captures is a power to make such rules only as are within the laws of nations. Whether this is so or not we do not care to inquire, for it is not necessary to the present case. It is sufficient that the right to confiscate the property of all public enemies is a conceded right. Now, what is that right, and why is it allowed? It may be remarked that it has no reference whatever to the personal guilt of the owner of confiscated property, and the act of confiscation is not a proceeding against him. The confiscation is not because of crime, but because of the relation of the property to the opposing belligerent, a relation in which it has been brought in consequence of its ownership. It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property. In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy's country, no matter what his nationality. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which, by depriving an enemy of property within reach of his power, whether within his territory or without it, impairs his ability to resist the confiscating government, while at the same time it furnishes to that government means for carrying on the war. Hence any property which the enemy can use, either by actual appropriation or by the exercise of control over its owner, or which the adherents of the enemy have the power of devoting to the enemy's use, is a proper subject of confiscation."

The Spanish-American war was followed by Juragua Iron Co. v. United States, 212 U. S. 297, and Herrera v. United States, 222 U. S. 558. In the former the court, at p. 306, quotes with approval the language of Miller v. United States that "It is sufficient that the right to confiscate the property of all public enemies is a conceded right." In the Herrera case the court, pp. 571-2, referring to The Grapeshot, 9 Wall. 129, observed:

> "But it was not intended to express a limitation upon the undoubted belligerent right to use and confiscate all property of an enemy and to dispose of it at will."

That there are no restrictions upon the war power of Congress to confiscate enemy-owned property is, as I venture to think, no longer debatable. Yet, while the right of the nation to confiscate enemy property is absolute, the extent to which that right shall be exercised during any particular war is a matter of policy to be determined solely by Congress in the passage of its war measures. Courts may inquire whether an act passed by Congress is within the scope of its constitutional *power*. Beyond this they may not go. The scope of judicial inquiry does not extend to a review of legislative *policy*. Whether a legislative act is wise or unwise, whether it is based on sound theory or principle, are matters solely for the judgment of Congress. Such matters are not within the range of judicial cognizance. Chicago B. & Quincy R. Co. v. McGuire, 219

U. S. 549, 569; German Alliance Ins. Co. v. Kansas, 233 U. S. 389, 414; Hamilton v. Kentucky Distilleries Co., 251 U. S. 146, 161. If it be supposed, as sometimes it is supposed, that there resides in the court a power to fashion and mould a statute according to its own notions of justice, of wisdom, or of policy, I know of no such power. The judicial function is to give voice and effect to the law as it is—not to make the law. Moreover, the tendency of modern enlightened nations to exempt, as a general rule enemy property from confiscation arose with respect to debts and property acquired in the usual course of trade. Magna Charta Sec. 41; Lawrence's Wheaton on International Law, pp. 526, 536. "It is not an immutable rule of law, but depends on political considerations which may continually vary." Chief Justice Marshall in Brown v. United States, 8 Cranch 110, 128. Consequently, it is not surprising that no authority has been cited and none has been found showing that the modern usage has ever been extended to property whose return to the enemy might jeopardize the interest, the welfare, the safety or the independence of the capturing nation. On the contrary it affirmatively appears that it has been recognized, only recently, that certain property does not fall within the modern liberal rule. Interpreting the Act of Congress of August 6, 1861, the Supreme Court in Kirk v. Lynd, 106 U. S. 315, 316, 317, after quoting Miller v. United States, *supra,* that the statute "was aimed exclusively at the seizure and *confiscation* of property used to aid, abet, or promote the rebellion, then a war, or to maintain the war against the government," said:

"In war the capture of property in the hands of the enemy, used, or intended to be used, for hostile purposes, is allowed by all civilized nations, and this whether the ownership be public or private."

The principle of that case would seem to extend to all enemy property affecting the public interest of the nation. Moreover it is readily seen that political considerations and a due regard for the public interest would leave the capturing nation without choice in the matter of the retention or return of certain enemy property, for instance, property whose return would leave the capturing nation without modern weapons of war, or opportunity to produce them, and, so, defenseless. Construed according to its plain language and without resort to extrinsic facts I think the amendment is not in conflict with the rules of international law with respect to the confiscation of enemy property but in consonance, rather, with the most modern practice of the most enlightened nations relating thereto. Construed in the light of the history of the times, the condition of the country and the uses being made of enemy property in America the result is the same.

The examination of plaintiff's contention with respect to confiscation should not be concluded, however, without an investigation and appreciation of its full significance.

It is not denied, in fact it is one of the premises upon which plaintiff plants its case that, speaking abstractly, it is possible to impose conditions of sale that will destroy in whole or in part the value of the property sold. This is equally true whether the sale be public or private. If it is confiscation to impose at a private sale conditions that will prevent the proceeds of sale of enemy property from being equal in value to the property of which the enemy owner is deprived it is, of course, confiscation if the same conditions, or other conditions having the like effect, are imposed at a public sale. But if international law or the enlightened practice thereunder forbids the former, the latter is likewise forbidden. Consequently, if the statute itself directly and expressly imposes conditions of sale under which the proceeds of sale would inevitably be less than the value of the property to its enemy owner such statutory conditions of sale would be confiscatory and fall under the ban of plaintiff's contention in the same manner as the conditions imposed with respect to the sale of the property in suit. Yet it cannot be denied that the statute authorizes a sale of any enemy property coming into the possession of the Custodian; that the amendment of November, 1918, expressly authorizes the seizure and disposal of enemy owned patents; and that the March amendment requires, in the absence of presidential action, "that any property sold under this Act, * * *, shall be sold only to American citizens." Dr. Holderman testified that the Haber process patents were worth millions of dollars to their original German owners. (R., p. 2381.) Yet the evidence is overwhelming that the Haber process patents were and are without substantial affirmative value to American citizens. (R., pp. 3820-22, 3971-3, 4013-15.) Had those patents been sold to American citizens at public sale instead of at private sale and only the net proceeds of such sale paid to their former enemy owners those owners would have suffered an almost total loss in the value of their property. If that is not confiscation a similar result produced by conditions imposed at a private sale is not confiscation and plaintiff's contention with respect to confiscation is without merit. If it is confiscation it follows that the plaintiff's contention is of a character to prevent or nullify that which the statute, section 7 (c) and section 12 as amended, expressly authorizes, namely, the sale of enemy owned patents to American citizens only. It would prevent or nullify the sale, either public or private, of every enemy owned patent having any real value to its original enemy owner. This is true for that which has been said with respect to the Haber patents applies in greater, lesser or like degree to practically all enemy patents. American citizens, or for that matter allies and neutrals, could pay for enemy patents, without regard to whether the sale is public or private, not more than a fractional part of the value such patents would have to the former enemy owner. The title to the patents was uncertain. They might have been assigned or licenses on nominal terms might have been granted to neutrals by the enemy owners prior to sale and these facts have been unknown to American citizens. Yet when sold under the Trading with the Enemy Act they are accompanied by no warranty of title. The patents might be perfectly valid and so known to be by their German owners. Yet they were unadjudicated and an American citizen by reason of the war would be unable to satisfy himself upon this point. For the most part the German patents had not been used in the United States. An American citizen purchasing the patents under the statute would not be able to obtain from the inventor or the German owner the benefit of the inventor's practical experience in arriving at the invention or the German owner's practical experience in operating thereunder. "From the nature of the property the real value of patents can only be determined after the invention is introduced and in use." Insurance Press v. Montauk Wire Co., 103 N. Y. App. Div. 472, 475. "The value of a patent is in its nature speculative." Alpha Portland Cement Co. v. Schratweiser, (C. C. A. 2) 221 Fed. 258, 259. German patents had a bad reputation. In a book published in 1917—Seward's Science and the Nation, Defendant's Ex. 50, p. 18—Sir William Pope was quoted as saying:

"In fact, some German patents are drawn up for the purpose of discouraging investigation by more practical methods; thus, any one who attempted to repeat the method for manufacturing a dye-stuff protected by Salzmann & Krueger in the German Patent No. 12,096, would be pretty certain to kill himself during the operation."

In the official report of the Department of Commerce 1915, Special Agent Series No. 96 (Deft.'s Ex. No. 51, p. 48) it was said: "It is claimed with authority that not over one per cent. of the German patents in this industry [dyestuffs] have ever proved remunerative." Dr. George W. McCoy, Director of the laboratory of the United States Public Health Service, and a witness for the plaintiff in this case, testifying before the Committee on Interstate and Foreign Commerce of the House of Representatives with respect to the salvarsan patents, (R., pp. 4454-5) said:

"Doctor McCoy. The processes, as described by the patents, I am told—now, this is hearsay—are the very minimum required to secure the patent, and in no way adequate to enable even a competent chemist to reproduce the material.

"Mr. Huddleston. So that the parties who are now producing a satisfactory quality of this product are not proceeding by the formula as filed in the Patent Office, but are proceeding as their experience has taught them, having figured out in some way how to produce this substance?

"Doctor McCoy. Yes, that is a fair statement * * *.

"Doctor McCoy. I have talked that matter with some of the most able chemists in the United States and they all say that the description in the patent is so sketchy and there is so much necessary that is omitted that a well-qualified chemist cannot proceed and produce the material. He has to do a great deal of experimenting. I know one large, well-equipped manufacturing house commanding the best chemical talent money can secure, that spent about eighteen months before they turned out the first commercial batch of salvarsan."

That which was testified to by Dr. McCoy before the Congressional Committee is established by the evidence in this case with respect to the chemical and pharmaceutical patents generally. These and other obvious risks and hazards incident to the purchase of enemy patents make it clear that from a business point of view they constituted an investment of a most highly speculative character. Their certain affirmative value was too slight and problematical to warrant the payment by American citizens of a sum even remotely approximating what they may have been worth to the German owners for monopolistic or other purposes. Any ability to practice the process of the patents or to make the products thereof that might become apparent after sale as a result of long periods of costly experiments, or otherwise, is without practical evidential value in determining what an American citizen would have been justified in paying for the patents or would pay for them before such ability became apparent. Nor could any knowledge howsoever acquired by an American citizen prior to sale of how to use an enemy patent be properly considered in estimating the value to an American citizen of the naked patent unless that information was disclosed by the patent itself, or was known to the man skilled in the art of the patent. As a sale of the naked enemy patents under the express conditions of sale laid down in the Trading with the Enemy Act could produce only a fractional part of the value of such property to the original enemy owner it is manifest that the upholding of plaintiff's contention with respect to confiscation would be destructive in a large measure of the express provisions of the Act. But, in any event, neither the power to seize the property in suit nor the lawfulness of that seizure is denied. (R., p. 2767.) The price at which property so seized is sold is not decisive of the amount of indemnity, if any, that will be paid to the original enemy owner for such seizure and sale. In the matter of indemnity the courts are without jurisdiction. That is a matter for other departments of the government. It was said in Young v. United States, 97 U. S. 39, 60, "* * * an aggrieved enemy must look alone for his indemnity to the terms upon which he agrees to close the conflict." By the Treaty of Berlin, Germany gave to the United States and the United States accepted the benefits of the Treaty of Versailles. By the latter Treaty it was provided that as between the Allies and Associated Powers or their nationals on the one hand and Germany or her nationals on the other hand, all the exceptional war measures, or measures of transfer, or acts done or to be done in execution of such measures, in paragraphs 1 and 3 of the Annex should, with certain reservations not here pertinent, be considered as final and binding upon all persons. (Treaty of Versailles, Part X, Art. 297 [d].) By paragraph 1 of the Annex to that article of the Treaty the validity of all orders, directions, decisions or instructions made or given or purporting to be made or given with regard to enemy property, rights and interests was confirmed and it was there provided that no question should be raised as to the regularity of a transfer of any property, rights or interests dealt with in pursuance of any such order, direction, decision or instruction. Furthermore by paragraph (i) of the same article of the Treaty Germany undertook to compensate her nationals in respect of the sale or retention of their property, rights or interests in Allied or Associated States. Manifestly all claims of Germany and Germany's nationals to the property in suit are barred. Herrera v. United

States, 222 U. S. 558, 574. If Germany or Germany's nationals are incidentally suffering from the exercise by the United States of its constitutional powers and its confirmed acts it is for Congress, not for the Executive or for the Courts, in a suit prosecuted by the Attorney General or otherwise, to determine whether under the circumstances of the particular case justice requires that compensation or additional compensation be made. Union Bridge Co. v. U. S., 204 U. S. 364, 403.

I think the construction hereinbefore placed upon the Trading with the Enemy Act is neither forbidden nor made doubtful by any law or practice of nations with respect to enemy property.

Turning from questions of international law the plaintiff urges that the construction hereinbefore placed upon the Trading with the Enemy Act brings it in conflict with the Constitution of the United States in that the power to confiscate enemy property is a legislative power and cannot be delegated either to the Custodian acting under the supervision and direction of the President, or to the President. That Congress cannot delegate its legislative power is, of course, not questioned. But in the Trading with the Enemy Act there is no delegation of legislative power. The statute is, in practical effect, in the alternative. It contemplates the existence of two classes of enemy property—the ordinary and usual class and a special class distinguished from the former by its relation to the public interest. The statute places upon the President the duty of dividing the enemy property into those classes by placing upon him the duty of designating the property of the latter class. With respect to each of these classes the powers of the executive officers are fixed by the statute. For the sale of property of the usual class the conditions of sale are expressly fixed by the statute. In the disposition of property of the special class—with which the public interest is interwoven—the powers of sale are as broad as those of an absolute owner. Neither in the determination of the fact that certain enemy property is linked with the public interest nor in the exercise of the discretion with respect to the terms and conditions of its sale—matters within the discretion of an absolute owner—is there to be found the exercise of a legislative power. The leading case upon this question is Field v. Clark, 143 U. S. 649. The court, pp. 693-4, said:

" 'The true distinction,' as Judge Ranney speaking for the Supreme Court of Ohio has well said, 'is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.' Cincinnati, Wilmington &c. Railroad v. Commissioners, 1 Ohio St. 88. In Moers v. City of Reading, 21 Penn. St. 188, 202, the language of the court was: 'Half the statutes on our books are in the alternative, depending on the discretion of some person or persons to whom is confided the duty of determining whether the proper occasion exists for executing them. But it cannot be said that the exercise of such discretion is the making of the law.' So, in Locke's Appeal, 72 Penn. St. 491, 498: 'To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.' The proper distinction, the court said, was this: 'The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and, must, therefore, be a subject of inquiry and determination outside of the halls of legislation.' "

The objection now urged to the validity of the March amendment if given the meaning hereinbefore attributed to it has frequently been urged with respect to the validity of section 18 of the River and Harbor Act of March 3, 1899, 30 Stat. 1153, Sec. 9970, Comp. Stat. 1916. That statute authorizes the Secretary of War (1) to determine that a bridge constructed over a navigable waterway is an unreasonable obstruction to the free navigation of such waters and (2) to specify the changes required to be made. In Union Bridge Co. v. United States, 204 U. S. 364, arising under that statute, Field v. Clark and many other cases are reviewed. In Monongahela Bridge v. United States, 216 U. S. 177, 192, the court summarized its prior decisions thus:

"That §18 of the River and Harbor Act of March 3, 1899, 30 Stat. 1151, could not reasonably be taken as a delegation of legislative and judicial power to an Executive Department of the Government; that the statute did not in any real, constitutional sense delegate to the Secretary of War any power that must, under our system of government, be exclusively exercised either by the legislative or judicial branch of the Government; that under its paramount power to regulate commerce on and over the navigable waters of the United States Congress could require that such waters be freed from unreasonable obstructions to navigation; that the statute in effect prescribed the general rule, applicable to all navigable waters, that free navigation should not be hampered by unreasonable obstructions arising from bridges of insufficient height, width of span or other defects; that instead of exerting its power by direct legislation in each case of a bridge alleged to constitute an unreasonable obstruction to navigation, Congress charged the Secretary of War with the duty of ascertaining, in each case, upon notice to the parties concerned, whether the particular bridge came within the general rule prescribed; that any other method was impracticable in view of the vast and varied interests of the Nation requiring legislation from time to time; that the Secretary of War, proceeding under the act of 1899, could not be said to exercise strictly legislative or judicial power any more than when, upon investigation the Head of a Department ascertains, under the direction of Congress, whether a particular applicant for a pension belonged to a class of persons who, under a general rule prescribed by Congress, were entitled to pensions; and that a denial to Congress of authority, under the Constitution, to delegate to an Executive Department or officer the power to determine some fact or some state of things upon which the enforcement of its enactment may depend, would often render it impossible or impracticable to conduct the public business, and to successfully carry on the operations of the Government.''

In my opinion the position of plaintiff is not well taken.

The plaintiff further urges that the construction hereinbefore placed upon the amendment to section 12 of the Trading with the Enemy Act would bring it in conflict with the fifth amendment to the Constitution in that it would permit the confiscation of property of American citizens ''resident within the territory * * * of any nation with which the United States is at war,'' "enemies" by virtue of Section 2 of the act. The same objection was raised in Miller v. United States, 11 Wall. 268, 304, with respect to the Civil War confiscation acts. The court said:

> "* * * if the statutes were not enacted under the municipal power of Congress to legislate for the punishment of crimes against the sovereignty of the United States, if, on the contrary, they are an exercise of the war powers of the government, it is clear they are not affected by the restrictions imposed by the fifth and sixth amendments. * * * The confiscation is not because of crime, but because of the relation of the property to the opposing belligerent, a relation in which it has been brought in consequence of its ownership. It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property. In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy's country, no matter what his nationality."

In Juragua Iron Co. v. United States, 212 U. S. 297, 308, the Court quoted with approval from Whiting's "War Powers Under the Constitution" as follows:

"A neutral, or a citizen of the United States, domiciled in the enemy's country, not only in respect to his property, but also as to his capacity to sue, is deemed as much an alien enemy as a person actually born under the allegiance and residing within the dominions of the hostile nation." The point having been expressly decided by the Supreme Court there is here neither occasion nor room for its discussion.

Plaintiff's next contention is not that the construction placed upon the amendment of March, 1918, would render *that* amendment unconstitutional but that it would bring into conflict with the fifth amendment to the Constitution that portion of the amendment of November, 1918, to section 7 (c) of the act which provides:

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States."

That provision applies only to citizens, allies and neutrals whose property has been mistakenly seized or seized and sold. It does not apply to "enemies or allies of enemies." Sigg-Fehr v. White, 285 Fed. 949, 952. Section 7 (c) is not directly involved in this suit. Plaintiff's theory with respect to the last clause of that section, as I understand its theory, is that persons not enemies or allies of enemies under the act are entitled, by virtue of the fifth amendment of the Constitution, to just compensation for any property of theirs that may be seized and sold under the belief that it is enemy property; that any property sold under the March amendment may mistakenly include property belonging to persons not enemies or allies of enemies; that if such property may be sold for less than just compensation it would render unconstitutional the provision limiting the relief of allies, neutrals and resident citizens to the net proceeds received for their property and that a statute should be construed as a whole, so as, if possible, to bring no part into conflict with a constitutional provision. But if it be clear that the validity of sales made under the express statutory conditions of the March amendment is not dependent upon whether or not the proceeds of sale amount to just compensation it may not be presumed that there is any implied requirement that the proceeds of a sale made otherwise than under the statutory conditions must amount to just compensation. It cannot be denied that property actually enemy owned was the dominant theme of the March amendment—the only property within its direct aim. With respect to such property the fifth amendment, as we have just seen in Miller v. United States and in Juragua Iron Co. v. United States, is without application. The statutory conditions are "that any property sold under this Act, * * * , shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, * * *." That is all. There is no express requirement that at such a sale the proceeds must equal just compensation. Were there such a requirement, when and by whom would it be determined whether the proceeds of sale are equivalent to just compensation? Not by the officers making the sale, for the determination of what constitutes just compensation is a judicial, not an executive or a congressional, function. United States v. New River Collieries, 262 U. S. 341; Monongahela Navigation Co. v. United States, 148 U. S. 312, 327. But there is no statutory provision for judicial confirmation of the sale. Does the question remain open and the validity of the sale hang in the balance until determined in a suit instituted against the purchaser by the United States urged to diligence by no statute of limitation? Such a possibility would make every purchase a speculation, a purchase price equivalent to just compensation a remote contingency and the statute self-destructive. Nor are the bare statutory conditions laid down in the proviso of the March amendment adequate to make certain that the purchase price will in fact invariably amount to just compensation. The advertisements though made in strict conformity with the statute and in the utmost good faith may not be seen by any persons particularly interested in the property to be sold. Storms may prevent the attendance of many bidders. The bidders in attendance may not know how to use the property offered for sale or be appreciative of its true value. A judicial determination that the price received for property sold under the bare statutory conditions amounts as a matter of law in all cases and under all circumstances to just compensation for the property sold would be a judicial stultification. It would devitalize the fifth amendment. The field of operation of the last clause of the November amendment is narrow. It is not of the gist of the statute. It is but an incidental provision. It does not even provide the sole or main relief for persons whose property has been mistakenly seized, the primary relief being that prescribed by section 9. Ahrenfeldt v. Miller, 282 Fed. 944 (C. C. A. 3); Kahn v. Garvan, 263 Fed. 909, 916. Its constitutionality is not raised by the facts of this case and is not decided. I think it sufficient to say that, whether it is valid as to property of American citizens not enemies under the act, allies and neutrals, or any of them (see New York Central R. R. Co. v. Winfield, 244 U. S. 147), it casts no doubt upon the compelling clearness of purpose evident in the language of the amendment of March, 1918, with respect to property actually enemy owned.

Passing from objections based upon the Constitution to one founded solely upon the statute itself the plaintiff urges that the construction heretofore placed upon the Trading with the Enemy Act as amended is inconsistent with the sixth paragraph of section 12 of that act which provides:

"After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct." The amount of enemy property and money subject to congressional action after the war was necessarily dependent upon the extent, the terms and the conditions of the disposition thereof by Congress during the war—not contrariwise. Acts of executive officers done during the war in the exercise of the powers of disposal conferred upon them by Congress have the same force and effect "that would have been accorded to direct action" by Congress. See Monongahela Bridge v. United States, 216 U. S. 177, 195. The sixth paragraph of section 12 of the act did not purport to control or prescribe the powers of disposition of enemy property during the war or the terms and conditions of such disposal. Those matters were expressly dealt with by other provisions of the act and particularly by the amendment of March, 1918. In the construction of that amendment I think the sixth paragraph of section 12 of the act affords no material guidance. The construction hereinbefore placed upon the Trading with the Enemy Act must stand.

That the power conferred by the statute was not validly exercised is a further contention of the plaintiff. It takes the position that the power conferred upon the President by the March amendment could be exercised only by the President in person. With certain exceptions not here pertinent the President by an order of December 3, 1918 vested in Frank L. Polk all power and authority conferred upon the President by the provisions of section 12 of the act as amended. Mr. Polk was the Solicitor of the Department of State and as such an officer of the United States. The orders with respect to the property in suit were made by Mr. Polk on February 26 and April 5, 1919. In the view of the plaintiff these orders are a nullity. A similar objection was made in Stoehr v. Wallace, 255 U. S. 239, which arose under that portion of section 7 (c) of the act as amended dealing with property of persons "who shall have been determined by the President, after investigation, to be an enemy or ally of enemy." The President directed that that power be exercised by the Custodian. It was contended that the act of the Custodian determining after investigation the enemy ownership of the property in suit was void. The court, pp. 244-245, said:

> "Whether the objection would be good if it turned entirely on the words of §7c, on which the plaintiff relies, we need not consider; for they obviously are qualified and explained by §5, which very plainly enables the President to exercise his power under §7c 'through such officer or officers as he shall direct.' By the orders already noticed the President directed that this power be exercised through the Alien Property Custodian. It therefore is as if the words relied on had been 'which the President, acting through the Alien Property Custodian, shall determine after investigation' is enemy-owned, etc. In short, a personal determination by the President is not required; he may act through the Custodian, and a determination by the latter is in effect the act of the President. Central Union Trust Co. v. Garvan, 254 U. S. 554; The Confiscation Cases, 20 Wall. 92, 109."

The words of section 5 are, in my opinion, as applicable to the amendment to section 12 as to the amendment to section 7(c).

The validity of the order of the President of December 3, 1918, is further challenged because as plaintiff interprets the order the power therein conferred upon Mr. Polk was to be exercised by him in his personal capacity and not as an officer of the United States. It is true that the words "as Solicitor of the Department of State" do not follow the name of Mr. Polk or appear elsewhere in the order. But it is likewise true that Mr. Polk was Solicitor of the Department of State and as such an officer of the United States. He was not lacking in capacity to exercise the powers granted. The mere addition or omission of the official designation after the name of a person is not conclusive upon the question of the capacity in which he acts. 6 R. C. L. 877; 22 R. C. L. 476. A striking illustration of this principle is found in Exhibit M to the bill of complaint. That document, signed by our late lamented President, though clearly an official act, in terms nowhere alludes to the office of President. It cannot be presumed that in making the order of December 3, 1918, the President was doing a vain thing. On the contrary there is a presumption of law that every public officer acts rightly. The maxim is *omnia præsumuntur rite esse acta.* That construction which sustains and vitalizes an instrument should be preferred to that which strikes down and paralyzes it. United States Fidelity & G. Co. v. Board of Com'rs, 145 Fed. 144, 149 (C. C. A. 8). There are in the order no affirmative words showing unmistakably that the grant of power was made to Mr. Polk in his personal capacity. The objection stands wholly upon the failure to insert in the order after Mr. Polk's name the words "Solicitor of the Department of State." This fact is not sufficient, I think, to invalidate the order. Moreover, the sales to the defendant authorized and directed by Mr. Polk were ratified by the President himself by order of February 13, 1920.

It is asserted that the purpose of sale was not to secure a fair value for the property, but to promote the interest of the dye and chemical industries and that the transaction was in legal effect the granting of a subsidy to private industry. This challenge of the motives of the officers making the sale is supported, I think, neither by the facts nor by the law. Property becomes "clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large." Munn v. Illinois, 94 U. S. 113, 126. In Clark v. Nash, 198 U. S. 361, a use of property was declared to be public which, independent of the conditions existing in the State, might otherwise have been considered as private. This was reaffirmed in Bacon v. Walker, 204 U. S. 311, 315. See also Block v. Hirsh, 256 U. S. 135, 155; Noble State Bank v. Haskell, 219 U. S. 104, 110, 580. The extent to which the property in suit is of public consequence and how greatly its use affects the community at large has already been pointed out as has also the fact that the greatest value of the property to the nation lay in its use, not in its monetary worth. Mr. Polk, in whom resided the power to decide the matter, determined that "the public interest will be best served by a wide use of the inventions covered by said letters patent and similar rights." (Order of Feb. 26, 1919, R., Vol. I, p. 551.) To serve that interest and to obtain for the nation the greatest benefit it was essential that the property should be devoted to the public use. If the property was sold under such terms and conditions as to assure its being devoted to the public use it matters not what benefits or detriments may have flowed as incidents therefrom. It, therefore, becomes pertinent to inquire whether the terms and conditions under which the property was sold were such as to afford assurances that it would be and remain devoted to the public use. The defendant was chartered under the laws of the state of Delaware February 19, 1919, with the special object and purpose of acquiring from the Alien Property Custodian "patents, and applications therefor, trademarks, choses in action, and rights and claims of every character and description, owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy, as defined by said act, [The Trading with the Enemy Act] which the Alien Property Custodian is authorized by said act, and amendments thereto, to require and seize, and to sell and convey, * * * and to hold any such property and rights so acquired in a fiduciary capacity for the Americanization of such industries as may be affected thereby, for the exclusion or elimination of alien interests hostile or detrimental to the said industries, and for the advancement of chemical and allied science and industry in the United States." (R., pp. 90, 91.) In furtherance of those objects and purposes the charter provides that "the corporation may grant non-exclusive licenses only, to make, use, and sell the inventions covered by any patents owned or controlled by it to the United States of America, upon such terms as the board of directors may determine, and also upon reasonable and equal terms and without advantage, as between licensees, to the following: (1) Natural persons, citizens of the United States; (2) Copartnerships, all the members of which are citizens of the United States; and (3) corporations organized under the laws of the United States or of any State, Territory, or dependency of the United States, of which not less than three-fourths of the capital stock and the beneficial interest therein is owned by stockholders who are citizens of the United States and who were not, prior to the 'end of the war', as used in the 'Trading with the Enemy Act', enemies or allies of enemies, as defined by said act, and the amendments thereto.

The board of directors may refuse to issue any license or may revoke any license granted by the corporation and may prescribe the terms and conditions of said licenses." (R., p. 91.) The general powers are limited to those having "connection" with the special object of the corporation. The authorized capital stock is $500,000, divided into 4,000 shares of preferred stock, non-voting save upon proposed amendments to the charter, and 1,000 shares of common stock. The preferred stock is entitled to cumulative dividends at the rate of 6% per annum and is subject to redemption at par and accumulated dividends. Dividends upon the common stock are non-cumulative and are limited to 6% per annum. After the redemption of the preferred stock the net earnings of the corporation in excess of the amount necessary for working capital "shall be used and devoted to the development and advancement of chemistry and allied sciences, in the useful arts and manufactures in the United States, in such manner as the board of directors may determine." (R., p. 94.) As some citizens, either naturalized or native born, might if granted a license use that license not "for the advancement of chemical and allied science and industry in the United States" but to its detriment, it was obviously necessary to leave the power to refuse or revoke a license to the board of directors. It was equally important that that discretionary power, with which the board of directors was necessarily vested in order to prevent the subversion of the dominant purpose of the transfer of the property to the defendant, should not be exercised to restrict the use of that property to any less than the whole number of Americans who should desire in good faith to use that property for the advancement of science and industry in America. To this end and to prevent the possibility that self interest might obscure the broad public interest intended to be served the persons then engaged in the chemical industry in America, who purchased the capital stock of the defendant, were permitted neither to act as directors nor to name the directors of the defendant. It was made a condition of the sale that the original directors and officers "should be of those who had been particularly and intimately associated with the work of investigating the German hold upon the chemical industry in America." (R., p. 2631.) The directors elected in accordance with this plan were Francis P. Garvan, Douglas I. McKay and George J. Corbett none of whom were financially interested in the chemical industry. But the term of office of an officer or director of the defendant—a Delaware corporation—is short. It was necessary to look beyond that term and provide for the safeguarding of the public interest throughout the life of the longest patent. Hence, the stockholders of the defendant were required to transfer and deliver their shares of stock to trustees to be held by them until January 1, 1936. The trustees selected were likewise persons who had no private or selfish interest to serve and whose patriotism and loyal devotion to the public interest had also been tried under the stress and strain of the war. The persons designated as the trustees were Otto T. Bannard, George L. Ingraham, Cleveland H. Dodge, Benjamin H. Griswold, Jr., and Ralph Stone who constitued by appointment of the President the Advisory Sales Committee of the Alien Property Custodian. The trustees were made self perpetuating. The result was characterized by the President as a "wonderful accomplishment." (Deft.'s Ex., No. 150, R., p. 3238; Ex., p. 2843.) The devotion of the property to the public use stands not upon written documents alone. It has a deeper foundation—the property is in the keeping of men who have in its management no selfish interest to serve and whose devotion to the public interest has been established. No better plan for devoting the property to the public use has been suggested. The plan has stood the most severe of all tests—actual trial. The defendant has kept the faith. This it has done not only by granting licenses in furtherance of the purpose for which defendant was chartered but also at its great expense by the distribution of books and pamphlets showing the national necessity for the practical development of chemical science in America. If, perchance, those heretofore engaged in the chemical and allied industries have derived an incidental advantage from the plan that incidental result cannot invalidate a transaction lawfully consummated in the public interest. The same charge would lie against the validity of every tariff act. Incidental results flowing from the accomplishment of his main purpose have been used, but ineffectively, to nullify the acts of the Secretary of War under the statute of March 3, 1899. Scranton v. Wheeler, 179 U. S. 141; Union Bridge Co. v. United States, 204 U. S. 364. The transaction in suit was not one granting a subsidy to a private industry. It was a devotion in the public interest of the property to a public use. The property is available for any American citizen, copartnership or corporation that desires to use it for the advancement in the United States of the only science or industry to which, by reason of its nature, that property is applicable. The sale was in effect a sale to America and its citizens, not to persons then engaged in chemical and allied industries. But there is a further reason that prevents the upholding of this and other contentions of the plaintiff with respect to the terms and conditions of the sale.

If the executive officers upon whom Congress conferred the power of disposal of enemy property acted within the scope of their powers their acts are not subject to judicial nullification or review. Acts done within the field of power marked out by Congress are controlled only by the judgment and discretion of those to whom the power has been granted. The boundaries of that field are barriers for the officers and the courts alike. Beyond those boundaries the officers may not pass, within them the courts may not go. The invasion of that field by the courts to determine whether the public interest required that the property in suit should be sold otherwise than under the statutory conditions of sale prescribed for property of the ordinary and usual class and to set aside the sale should the judgment of the courts be different from that of the President would be a judicial nullification not only of the act of the President, but, also, of the act of Congress conferring upon the President the power to determine what the public interest required. The power to dispose of the property in suit as though he were the absolute owner thereof having been granted to the Custodian, acting under the supervision and direction of the President, the courts may not nullify the sale because the terms and conditions thereof were otherwise than in the judgment of the court they should have been. Moreover, what the public interest requires depends upon the conditions existing in the nation. Courts do not know the "state of the Union" and, as I apprehend, are not equipped to ascertain it. Those to whose keeping the public interest, so far as it is intermixed with enemy property, has been confided by Congress must be the sole judges of what the public interest requires. In Dakota Cent. Tel. Co. v. South Dakota, 250 U. S. 163, the right of the President to take over and control intrastate telephone lines in the exercise of his power under the joint resolution of Congress of July 16, 1918, was challenged. The court held, as stated in the syllabus that "whether the exercise of the power so conferred was justified by the conditions at the time, or was actuated by proper motives, are questions of executive discretion not within the cognizance of the judiciary, under the Constitution." That "the judicial may not invade the legislative or executive departments so as to correct alleged mistakes or wrongs arising from asserted abuse of discretion" was reaffirmed. (Page 184.) In Martin v. Mott, 12 Wheat. 19, 30, the Supreme Court was asked to review the decision of the President, made under the Constitution and an act of Congress, that the situation in one of the states was such as to make it necessary to call out the militia. Mr. Justice Story, speaking for the court, said:

"* * * We are all of opinion, that the authority to decide whether the exigency has arisen, belongs exclusively to the President, and that his decision is conclusive upon all other persons. We think that this construction necessarily results from the nature of the power itself, and from the manifest object contemplated by the act of Congress. * * * Besides, in many instances, the evidence upon which the President might decide that there is imminent danger of invasion, might be of a nature not constituting strict technical proof, or the disclosure of the evidence might reveal important secrets of state, which the public interest, and even safety, might imperiously demand to be kept in concealment. * * *

"The law does not provide for any appeal from the judgment of the President, or for any right in subordinate officers to review his decision, and in effect defeat it. Whenever a statute gives a discretionary power to any person, to be exercised by him, upon his own opinion of certain facts, it is a sound rule of construction, that the statute constitutes him the sole and exclusive judge of the existence of those facts. And in the present case, we are all of opinion, that such is the true construction of the act of 1795. It is no answer, that such a power may be abused, for there is no power which is not susceptible of abuse. The remedy for this, as well as for all other official misconduct, if it should occur, is to be found in the Constitution itself. In a free government, the danger must be remote, since, in addition to the high qualities which the Executive must be presumed to possess, of public virtue, and honest devotion to the public interests, the frequency of elections, and the watchfulness of the representatives of the nation, carry with them all the checks which can be useful to guard against usurpation or wanton tyranny."

That the same principles apply to an officer, other than the President, acting only under an act of Congress is likewise settled. In Monongahela Bridge v. United States, 216 U. S. 177, the defendant, in a suit instituted by the United States to compel the making of alterations in a bridge determined by the Secretary of War to be an unreasonable obstruction to navigation, offered to prove that the bridge was not an unreasonable obstruction to navigation and that the changes in the bridge ordered by the Secretary of War were not necessary. The court, page 195, said:

"It was not for the jury to weigh the evidence and determine, according to *their** judgment, as to what the necessities of navigation required, or whether the bridge was an unreasonable obstruction. The jury might have differed from the Secretary. That was immaterial; for Congress intended by its legislation to give the same force and effect to the decision of the Secretary of War that would have been accorded to direct action by it on the subject. It is for Congress, under the Constitution, to regulate the right of navigation by all appropriate means, to declare what is necessary to be done in order to free navigation from obstruction, and to prescribe the way in which the question of obstruction shall be determined. Its action in the premises cannot be revised or ignored by the courts or by juries, except that when it provides for an investigation of the facts, upon notice and after hearing, before final action is taken, the courts can see to it that Executive officers conform their action to the mode prescribed by Congress. Learned counsel for the defendant suggests some extreme cases, showing how reckless and arbitrary might be the action of Executive officers proceeding under an act of Congress, the enforcement of which affects the enjoyment or value of private property. It will be time enough to deal with such cases as and when they arise."

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*Italics in text.

The requirement of the amendment of March, 1918, that the reasons in the public interest for the President's determination be stated does not, in my opinion, affect the pertinency of the principles of the cases cited to the case at bar. The statement of the reasons actuating the President does not make his act any the less an act of discretion. Moreover, the judicial power to determine whether the reasons assigned are supported by the facts extends to any and all reasons or to none. It is conceded that the President may not be brought into court to substantiate his reasons. The statute does not require him to disclose to the purchaser the evidence upon which his reasons were based. The statute does not limit the Executive in the assignment of reasons to such as may be supported by legal evidence or by facts available to the public. Obviously, if the validity of a sale of enemy property to a purchaser may be challenged at any time by the United States on the ground that the reasons assigned by the President in the public interest were not supported by the facts and the sale be set aside unless the purchaser succeeds in establishing by legal proof in a court of law that the President's reasons were supported by facts few, if any, purchasers could meet the burden. They would be wholly at the mercy of the seller, the United States. A sale of that character would be nothing more than a game of chance in which the result—the stability or validity of the sale—would always be within the control of the seller. A sales statute exposing such a solecism would be not only useless, it would be paradoxical.

The bill of complaint charges that the seizure and sales of the property in suit were induced, brought about and accomplished by and through a combination, scheme and conspiracy of certain representatives of the chemical and dye industries. The charge is found in paragraph 22 of the bill. It is:

> "That with the object and purpose of securing such control of said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor, and for the purposes hereinbefore stated, said persons, firms, corporations, and trade associations and others associated with them in said industry and in the control and monopoly thereof conceived and entered into a scheme, combination, and conspiracy prior to or about November, 1918, to induce and procure the seizure of said enemy-owned patents, copyrights, trade-marks, labels, and other similar rights and applications therefor by the Alien Property Custodian, and the sale, transfer, and assignment thereof by said Alien Property Custodian to themselves or to some corporation, agency, or institution controlled by them."

At the opening of the trial the court announced that each party to the suit would be permited, without regard to the usual rules of evidence, to take and put of record all evidence that, in the opinion of its counsel, would in any manner tend to prove or disprove any issue of the case. (R., pp. 869-871, 2589.) Notwithstanding the generality of the allegations and the unlimited opportunity afforded the plaintiff to support them by evidence the charges of deception and conspiracy have failed utterly. The contrast between the allegations and the proof may be illustrated by that which was alleged concerning the two assignments made by the present Custodian and his testimony pertaining thereto. The bill of complaint, which was verified by the present Custodian, states (R., p. 54): "Complainant is informed, believes, and therefore avers that said instruments of alleged sale, assignment, and transfer were prepared by or at the instance and procurement of said defendant, * * *." His testimony was (R., pp. 2197-8). "XQ. 414. Now, Colonel, I want to take up with you the two assignments to the Chemical Foundation that you signed. Those were drawn in your office, were they not? A. Why certainly; any order that I sign is drawn in my office. XQ. 415. Well, those were drawn in your office, were they not? A. Yes, sir. XQ. 416. And they were drawn by your employees? A. Yes, sir." Immediately following the above quoted allegation the bill of complaint states (R., p. 54) that the Alien Property Custodian "executed said instruments without knowledge of the facts herein set forth and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had the true facts been known to him; * * * ." The testimony of the Custodian was (R., p. 2200): "XQ. 434. What facts are there that you know now or when you signed the bill of complaint that you did not know when you signed the assignment? Now, have I made it plain? A. As your question, Mr. Kresel, concerns two different questions [assignments] by me, I must discuss in my answer the two assignments separately. XQ. 435. I wish you would. A. I would not have signed the second assignment of November 1 [5], 1921, had I known all of the information brought to me by my counsel, by the Department of Justice, at the time the Chemical Foundation suit came up. I would sign the first transaction of April 27, 1921, over again and I have got no apologies for it and I criticize no one for bringing it to me. * * * XQ. 451. What were the facts which came to your knowledge before you verified the bill of complaint herein which, if you had known in November, 1921, you would not have signed this assignment of November, 1921? Do you understand my question? A. Yes, sir. Why, the bringing of this suit, which was brought at the direction of the President, upset what we might term the friendly relations existing between my office and the Chemical Foundation. And I certainly would not have executed the November 5, 1921, assignment had I known that the Chemical Foundation sale was going—XQ. 452. The Chemical Foundation what? A. (Continuing.) That the Chemical Foundation sale was going to be questioned by the Department of Justice. * * * XQ. 455. You say in this paragraph that I have read to you that facts were withheld from you with intent and purpose to secure the execution by you of the aforesaid instrument. What facts were withheld and suppressed from you? A. I cannot enumerate any facts at this time, Mr. Kresel. * * * XQ. 457. * * * You say in your bill that facts were withheld and suppressed from you. Can you not state what facts were withheld or suppressed from you? A. I can not state any more facts in answer to your questions than I already have." In view of this testimony and the obvious fact that the power to charge persons with fraud and conspiracy is a weapon with which serious irremediable injury may be done to innocent persons if such charges are lightly made it is difficult to understand why the specific charges to which the foregoing testimony relates were made. Yet the remaining like charges were equally lacking in evidential support. In fact, at the argument the plaintiff seemed no longer to press those charges against the persons alleged to be the conspirators, but it sought to have the charges sustained as against the officers of the government who formulated and carried out in the public interest the plan of sale of the property in suit. No authority is necessary to show that this may not be done. But if that were legally permissible it would not avail the plaintiff for such charges, too, would be without evidential support. While I know of no case where by implication of law the duty of clearing itself from imputed fraud rests upon the defendant, yet the defendant has met even this burden. The testimony of Mr. Palmer, who was neither cross-examined nor contradicted, discloses the circumstances which gave rise to the plan and that it was at his request that representatives of the industry to which the patents in suit appertain gave their aid and financial assistance in carrying it into execution. (R., pp. 2598-2606.) Mr. Garvan's testimony is to the same effect. (R., pp. 2790-2791.) But the establishment of this fact is not left to depend upon memory. It is corroborated, if not independently established, by the documentary evidence of the plaintiff. (Pltff.'s Ex. No. 27, dated January 25, 1919, Ex., p. 84.) Its allegations and evidence with respect to conspiracy and deception do not advance the plaintiff towards the goal for which it strives.

The plaintiff contends that the assignments made by Mr. Garvan as Alien Property Custodian to the defendant are invalid for the further reason that at the time of making the assignments Mr. Garvan was its president. Prior to Mr. Palmer's resignation as Alien Property Custodian he caused the organization of the defendant "for the purpose of diverting these German Chemical Patents into general public use for the benefit of this country." The terms and conditions of sale had been agreed upon. To make certain that all the purposes for the consummation of which the defendant was organized would be carried out not only in the letter but in the spirit in which they were conceived Mr. Palmer made it a condition that the officers of the defendant should be persons named by him. Mr. Garvan, who had been particularly and intimately associated with the work of investigating the German hold upon the chemical industry in America and in evolving the plan to be carried out through the instrumentality of the defendant and who "was more familiar with this situation than anybody in the country" was selected by Mr. Palmer to be the president of the defendant. Mr. Garvan agreed to accept. Mr. Palmer was then appointed Attorney General of the United States. Late in the afternoon of March 3, 1919, he called upon the President of the United States to present his resignation as Alien Property Custodian and to urge the immediate appointment of his successor. The sale of the property to the defendant was discussed. The President was told the facts above narrated (R., pp. 2625-2636). Mr. Palmer stated to the President that he considered the actual consummation of the Americanization of the German chemical patents was the most important constructive work that "we had on hand." Mr. Palmer urged Mr. Garvan's appointment as Custodian and said "* * * that my purpose in urging Mr. Garvan's appointment as Alien

Property Custodian was quite largely in view of the fact that he had undertaken to be the president of this corporation and I knew he could be absolutely trusted to carry out its plans and purposes to the letter and in their full spirit. I would not have felt so safe in putting this plan over if I had not been able to pick out from my organization men of that kind who could and would operate it not only as we wanted it to be run but with a patriotic desire to serve their country.'' (R., p. 2632.) Mr. Palmer had with him the commission in blank as Alien Property Custodian and after Mr. Palmer's statement the President took the commission and wrote in the name of Francis P. Garvan. Mr. Palmer delivered it to Mr. Garvan that evening. Mr. Garvan took the oath of office the next day. He became president of the defendant on March 8th. With the exception of the two assignments executed by the present Custodian all the assignments to the defendant were executed by Mr. Garvan as Custodian. Plaintiff's present contention rests upon section 41 of the Criminal Code of the United States which provides: ''No officer or agent of any corporation, joint stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint stock company, association, or firm. Whoever shall violate the provision of this section shall be fined not more than two thousand dollars and imprisoned not more than two years.'' (35 Stat. 1097.) The first paragraph of section 7 (e) of the Trading with the Enemy Act provides, however, that ''No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule or regulation made by the President under the authority of this Act.'' If, as was held in Miller v. United States, 11 Wall. 268, statutes with respect to enemy property are ''not enacted under the municipal power of Congress to legislate for the punishment of crimes against the sovereignty of the United States'' but, on the contrary, ''are an exercise of the war powers of the government'' and ''are not affected by the restrictions imposed by the fifth and sixth amendments'' to the Constitution it is equally clear that with respect to enemy property Congress may, if it chooses, free the President and those ''acting under his supervision and direction'' from the restraint of statutes passed when only the normal affairs of the nation are in contemplation. That Congress did elect so to do with respect to enemy property in America during the late war is, I think, placed beyond controversy by the clear, broad and general language of section 7 (e) of the Trading with the Enemy Act. As said by the German Consul General America was ''unquestionably face to face with conditions * * * without a parallel in the past.'' Congress met those conditions, in part, by the passage of the Trading with the Enemy Act. Thereby almost unlimited power with respect to enemy property was conferred upon the President. None of that property could be disposed of save under his supervision and direction. In the public interest he could make such disposition thereof as he deemed proper and the nature of the property permitted. By the Trading with the Enemy Act Congress made him commander in chief of the civil officers having to do with enemy property almost if not quite as completely and effectively as the Constitution made him commander in chief of the army and navy. It did more. It made the Trading with the Enemy Act and the orders of the President thereunder the supreme law with respect to enemy property. It validated every act done by a subordinate officer in obedience to such orders of the President. See Martin v. Mott, 12 Wheat. 19, 29-32. The Custodian, who was not barred by section 41 of the Criminal Code or otherwise from being also an officer of the defendant, was subject to the order and direction of the President. All acts done by the Custodian touching the property in suit were done "under the supervision and direction of the President." By reason of section 7 (e) of the Trading with the Enemy Act, section 41 of the Criminal Code is without relevancy to acts so done, and, hence, without relevancy to the issues of this suit.

During the trial of thirty-three days, in the closing argument, consuming five full days and in the briefs containing approximately two thousand pages, some other questions with respect to the validity of the sale were raised, but none, I think, after examining them, that call for further consideration or make it necessary to extend an opinion whose present length is justified only by the great mass of testimony and exhibits and the earnestness and thoroughness with which the many questions presented were debated by the counsel for the respective parties.

In view of the conclusions hereinbefore arrived at the incidental motions of the parties become moot and are denied.

Finding no ground upon which the sale of enemy property to the defendant may be set aside the bill of complaint must be dismissed.

(Sgd.) HUGH M. MORRIS,
J.

January 3, 1924.

FINAL DECREE.

(Filed February 18, 1924).

And Now, to wit, this eighteenth day of February, A. D. 1924, this cause having been brought to final hearing, and having been argued by counsel for the respective parties, thereupon, upon consideration thereof, it is

Ordered, Adjudged and Decreed by the Court as follows:

1. That the bill of complaint filed by the United States of America in the above-entitled cause, be and hereby is dismissed.

2. That the Chemical Foundation, Incorporated, defendant, do recover from the United States of America, plaintiff, the moneys advanced by the defendant under the orders of the Court herein entered May 7, A. D. 1923, and July 23, A. D. 1923, for fees in taking testimony and expenses in printing the record, in pursuance of said orders, the amounts thereof to be taxed by the clerk as costs in this cause.

(Sgd.) HUGH M. MORRIS,
J.

PETITION FOR APPEAL.

(Filed January 26, 1924.)

The above-named complainant conceives itself aggrieved by the decree made and entered herein on the eighteenth day of February, 1924, in the above-entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Third Circuit for the reasons specified in the assignment of errors which is filed herewith and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit. Said complainant further prays the court that since the entire evidence in this cause taken has been by order of this court printed at a great expense and sufficient copies thereof are now available for the purpose of this appeal, that the parties hereto be relieved of the requirement of reducing the evidence herein to a narrative form and that this court enter an order requiring the entire evidence, so printed as aforesaid, to be inserted and included in the transcript of the record to be forwarded to said United States Circuit Court of Appeals for the Third Circuit.

UNITED STATES OF AMERICA,
By (Sgd.) H. M. Daugherty,
Attorney General of the United States.
(Sgd.) James M. Beck,
Solicitor General of the United States.
(Sgd.) James H. Hughes, Jr.,
United States District Attorney for the District of Delaware.
(Sgd.) Henry W. Anderson,
Special Assistant to the Attorney General.
(Sgd.) Herman J. Galloway,
Special Assistant to the Attorney General.
Its Solicitors of Record.

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thereto constituted a valid delegation of legislative power by Congress; that said act and amendments thereto authorized the confiscation in whole or in part of the property mentioned and described in the record in this cause; that said act and amendments thereto authorized the sale or disposition of said property for less than its fair value; and authorized the Alien Property Custodian or other officers of the United States to regard the public interest or benefit as consideration in whole or in part for the sale or disposition of said property; that said act and amendments thereto conferred upon the Alien Property Custodian the powers of an absolute owner in and with respect to said property and the sale and disposition thereof; and that said act and amendments thereto authorized the sale and assignments of the properties mentioned and described in the record in this cause as, in the manner and for the consideration therein set forth; and in not holding that said act and amendments thereto required the Alien Property Custodian as a trustee or fiduciary having control of said properties in making sale thereof to make a fair sale for an adequate and proper consideration, with only the rights and powers and subject to the duties of a trustee with respect thereto; and that said alleged sales and assignments as shown in the record, were unauthorized by said act and amendments thereto, were in violation thereof, and were illegal, null and void and conferred no rights upon the defendant.

III. The Court erred in holding that said "Trading With the Enemy Act" and amendments thereto, as construed and interpreted by the Court, were valid and constitutional, and in not holding that said act and amendments thereto as so construed were in violation of the Constitution of the United States and amendments thereto, and were therefore unconstitutional, null and void, in that, among other things, as so construed they constituted an invalid effort to delegate the legislative functions and powers of Congress; undertook to confer upon executive officers the power to confiscate property; undertook to authorize the confiscation of private property of American citizens, neutrals and other persons not enemies or allies of enemies within the meaning of said act; undertook to authorize executive officers of the Government to grant bounties to private industry; and were as so construed otherwise in violation of the Constitution of the United States and amendments thereto.

IV. The Court erred in holding that the acts of the Alien Property Custodian and other officers and agents of the United States, as set forth in the record in this cause, and in the opinion of the Court herein, were not justiciable or subject to judicial review; and in not holding that it was the function and duty of the court to review and determine the power of said officers, and the legality of any and all of their said acts, and to consider and adjudicate any and all questions raised by and in the record in this cause as to or affecting the legality, validity and effect of said acts or any of them on any ground whatever; and in not holding that the acts of said Alien Property Custodian in making said alleged sales and assignments as disclosed by the record, were illegal, null, void and of no effect.

V. The Court erred in holding that private sales and assignments of the properties mentioned and described in the record in this cause were lawfully authorized, and among other things in holding that the power to determine upon a private sale of alien property vested in the President by Section 12 of said "Trading With the Enemy Act," as amended, could be delegated to, vested in, or exercised by any other officer or person; that Frank L. Polk was lawfully authorized to exercise said powers; that the orders of said Frank L. Polk in this regard were legal or valid, or conferred any power to make private sales of said properties; or that the same were ever ratified by the President; and in not holding that the powers vested in the President by said Section 12 of said act, as amended, could only be exercised by him personally; that the authority alleged to have been vested in Frank L. Polk by the order of December 3, 1918, was sought to have been conferred upon him personally and not as an officer of the United States, and that said alleged authority was for these and other reasons invalid; that said Frank L. Polk was without lawful authority to determine upon or authorize private sales of said properties; that the orders of said Frank L. Polk of February 26, 1919, and April 5, 1919, were unlawful, null and void; that the same were never ratified by the President; that there was no valid or lawful authority to make private sales and assignments of said properties, and that the pretended sales and assignments of said properties as set forth in the record were unauthorized, illegal, null and void.

VI. The Court erred in holding that the President stating his reasons therefor lawfully authorized the Alien Property Custodian to sell at private sale to the defendant the properties involved in this suit upon such terms and conditions as the said Alien Property Custodian might see fit; and in holding that any lawful authority was given or had for said alleged sales or assignments; and holding that the alleged authority to make said alleged private sales, or said alleged sales or assignments or any of them, were ever ratified by the President.

VII. The Court erred in holding that said alleged sales and assignments to defendant were lawful and valid; and in not holding that the same were unlawful, null and void, for the reasons among others that the same were not lawfully authorized; that they were not made in accordance with the alleged orders of Frank L. Polk; that no effort was made to ascertain or to obtain the fair value of said properties; that many separate properties held in separate trusts were attempted to be sold in bulk and without any apportionment of the purchase price, and under such conditions as made any equitable apportionment thereof impossible; that there was a combination of all prospective bidders therefor and prospective purchasers thereof; that said properties were attempted to be sold in a manner and under such conditions as destroyed or impaired the value thereof; that the relations of the parties attempting to sell and purchase said properties to each other and to the subject matter were such as to make said alleged sales illegal; that the price was arbitrarily arrived at, and was grossly inadequate; that said alleged sales were not fair sales of said property for a just and adequate consideration, and for other reasons apparent upon the face of the record in this cause.

VIII. The Court erred in holding that the properties sought to be sold or assigned to defendant as set forth in the record were without substantial value, and that the same were sold for a valid and adequate consideration; and in not holding that the said properties were of large value individually and in the aggregate, and that the alleged sales and assignments thereof were for invalid and inadequate considerations and were illegal, null and void.

IX. The Court erred in holding that the alleged sales and assignments of properties to defendant as set forth in said record, did not constitute an unlawful confiscation of property and the unlawful granting of bounties to private industry; and in not holding that the same did constitute an unlawful confiscation of property and the unlawful granting of bounties to private industry, and were therefore illegal, null and void.

X. The Court erred in holding that the alleged sales and assignments set forth in the record were not induced by and made in pursuance and as a part of an unlawful combination, scheme or conspiracy to do or cause to be done a lawful act in an unlawful manner and for an unlawful purpose, and to unlawfully restrain or monopoize the foreign and interstate commerce of the United States, in violation of the statutes and laws of the United States; and in not holding that said alleged sales and assignments were induced by and made in pursuance and as a part of such unlawful combination, scheme and conspiracy, and were illegal, null and void as against the United States.

XI. The Court erred in holding that the various properties sought to have been sold and assigned by the Alien Property Custodian to defendant as shown by the record were at the beginning of the war, or at the time of the seizure thereof, all owned by subjects of Germany.

XII. The Court erred in holding that the properties mentioned and described in the record or any of them were sold and assigned to the defendant to be held by it for the public benefit, or to be held upon the terms and conditions set forth in the charter of the defendant; and in not holding that the same were undertaken and intended to be sold and assigned to defendant without any reservation or limitation whatsoever, and that such alleged sales and assignments were illegal, null and void.

XIII. The Court erred in holding that the evidence was overwhelming that the Haber Process patents were and are without substantial affirmative value to American citizens; and in each and every of its rulings upon the evidence as to said Haber Process patents adverse to complainant as shown upon the record in this cause; and in overruling the motion of complainant for subpœna *duces tecum* to be directed to the officers of the Atmospheric Nitrogen Corporation requiring them to produce their records and to appear and give evidence as to the use of said Haber Process patents by said corporation and the value thereof, reference being hereby made to the record in this cause for the terms of said motion and the ruling of the Court thereon.

XIV. The Court erred in sustaining the objections of defendants to questions propounded to witnesses Volwiler and Bolton as to processes used by the Abbott Laboratories and the E. I. du Pont de Nemours Company in the production of certain manufactured products produced and sold under licenses issued under certain patents involved in this suit described in said questions and evidence, and in refusing to permit complainant to inquire into said processes and the use thereof, upon the ground that it would require the disclosure of trade secrets, and in thus denying to complainant the right to prove the use of said patents and processes and the value thereof.

XV. The Court erred in overruling the motion of the complainant to require the production of the books and records of the E. I. du Pont de Nemours Company, showing the products manufactured and sold under patents involved in this suit, and the profits derived therefrom as showing the value of said patents and processes.

XVI. The Court erred in each and every of its rulings adverse to the complainant, upon the admission and exclusion of evidence, and on motions for the production of books, records and testimony during the trial of the cause, which said motions, questions and rulings are fully set out in the record in this cause, and are hereby referred to as if herein copied at length.

XVII. The Court erred in each and every of its conclusions of law as set out in its decisions and rulings adverse to complainant during the trial of this cause appearing at length upon the record; and in each and every of its conclusions of law contained in its opinion in this cause made a part of the record herein.

XVIII. The Court erred in ordering the taxation of the costs of the cause against the United States of America.

XIX. The Court erred in dismissing the bill of complaint herein and in denying to complainant the relief prayed for in each and all of the prayers of said bill.

WHEREFORE, complainant prays that the final decree in this cause may be reversed, and that complainant may be granted appropriate relief in the premises, in accordance with the prayers of the bill of complaint herein.

THE UNITED STATES OF AMERICA,
By (Sgd.) H. M. DAUGHERTY,
Attorney General of the United States.
(Sgd.) JAMES M. BECK,
Solicitor General of the United States.
(Sgd.) JAMES H. HUGHES, JR.,
United States District Attorney for the District of Delaware.
(Sgd.) HENRY W. ANDERSON,
Special Assistant to the Attorney General.
(Sgd.) HERMAN J. GALLOWAY,
Special Assistant to the Attorney General.
Its Solicitors of Record.

ORDER ALLOWING APPEAL.

(Filed February 26, 1924.)

The complainant herein having this day filed in open court its petition for appeal to the United States Circuit Court of Appeals for the Third Circuit, and its assignment of errors and further praying that the entire evidence in this cause, which has heretofore been printed in accordance with an order of this Court, be included and inserted in the transcript of record to be forwarded to the United States Circuit Court of Appeals for the Third Circuit, and that said complainant be relieved of the requirement of reducing the evidence herein to a narrative form, and the Court having considerd the same and having heard counsel thereon, it is this twenty-sixth day of February, 1924,

ADJUDGED, ORDERED AND DECREED, that complainant's claim of appeal be and the same is hereby allowed and that complainant herein be relieved of the requirement of reducing the evidence herein to a narrative form and that the entire evidence in this cause which has heretofore been printed in accordance with an order enterd by this Court be included and inserted in the transcript of the record to be forwarded to the said United States Circuit Court of Appeals for the Third Circuit.

(Sgd.) HUGH M. MORRIS,
Judge of the United States District Court for the District of Delawre.

CITATION.

(Filed February 26, 1924.)

UNITED STATES OF AMERICA, *ss.:*

THE PRESIDENT OF THE UNITED STATES,

To The Chemical Foundation, Incorporated, a Corporation Organized and Existing Under the Laws of the State of Delaware:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Third Circuit in the city of Philadelphia, State of Pennsylvania, on the twenty-seventh day of March, A. D. 1924, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Delaware, wherein United States of

America is appellant and you are appellee, and show cause, if any there be, why said decree against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Hugh M. Morris, Judge of the District Court of the United States for the District of Delaware, at (Seal) Wilmington, in said District, this twenty-sixth day of February, A. D. 1924, and the independence of the United States of America the one hundred and forty-eighth.

(Sgd.) HUGH M. MORRIS,
United States District Judge,
District of Delaware.

February 26, 1924.

Service accepted for The Chemical Foundation, Incorporated, appellee.

(Sgd.) Guthrie, Jerome, Rand & Kresel.
(Sgd.) Wm. G. Mahaffy,
Solicitors for Defendant-Appellee.

PRÆCIPE FOR TRANSCRIPT OF RECORD.

(Filed February 26, 1924.)

Please prepare and certify transcript of record in the above-entitled cause for filing in the United States Circuit Court of Appeals for the Third Circuit, including therein the following, *viz.:*

1. Docket entries.
2. Bill of complaint with exhibits, motion to amend bill and amendments to bill; Answer and motion to strike out portion thereof; Record of proceedings at trial as printed for use of District Court, (Volumes 1

to 12, inclusive), and evidence taken in camera and sealed.

3. Exhibits of defendant not included in the printed record to be used as physical exhibits.

4. Exhibits of plaintiff not included in the printed record to be used as physical exhibits.

5. Volume thirteen of the record of the District Court in the cause, said volume containing copies of the patents involved in the cause, to be used as a physical exhibit.

6. Order of Court dated May 7, 1923, appointing William F. Smart, official stenographer to take the testimony in the cause; order of Court dated July 23, 1923, directing the preparation and printing of the record of proceedings in the cause and providing for expenses of said printing.

7. Opinion of the District Court.

8. Decree entered by the District Court.

9. Petition for Appeal, Order allowing appeal and Assignments of error.

10. Citation.

11. Præcipe for transcript of record.

12. Clerk's certificate.

(Sgd.) HERMAN J. GALLOWAY,
(Sgd.) JAMES H. HUGHES, JR.,
Solicitors for Complainant-Appellant.

To H. C. Mahaffy, Esq.,
Clerk, U. S. District Court:

Service of a copy of the foregoing præcipe accepted this twenty-sixth day of February, A. D. 1924.

(Sgd.) GUTHRIE, JEROME, RAND & KRESEL.
(Sgd.) WM. G. MAHAFFY,
Solicitors for Respondent-Appellee.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA, } *ss.:*
DISTRICT OF DELAWARE, }

I, HENRY C. MAHAFFY, JR., Clerk of the District Court of the United States for the District of Delaware, do hereby certify that I have carefully compared the writings annexed to and accompanying this certificate, in twelve volumes:

Volume I, pleadings, pages 1 to 590, inclusive.
Volume II, testimony, pages 591 to 1360, inclusive,
Volume III, testimony, pages 1361 to 2110, inclusive,
Volume IV, testimony, pages 2111 to 2866, inclusive,
Volume V, testimony, pages 2867 to 3618, inclusive,
Volume VI, testimony, pages 3619 to 4390, inclusive,
Volume VII, testimony, opinion and appeal papers, pages 4391 to 4983, inclusive,
Volume VIII, Exhibits, Volume I, pages 1 to 740, inclusive,
Volume IX, Exhibits, Volume II, pages 741 to 1448, inclusive,
Volume X, Exhibits, Volume III, pages 1449 to 2028, inclusive,
Volume XI, Exhibits, Volume IV, pages 2029 to 2700, inclusive,
Volume XII, Exhibits, Volume V, pages 2701 to 3491, inclusive,

and find the same to be true and correct copies of their respective originals, so full and complete as the same now remain on file and of record in my office, being a complete exemplification of the record and proceedings in the case of United States of America v. The Chemical Foundation, Incorporated, No. 502 in equity, pending in said court, made up in accordance with the præcipe of counsel for the complainant-appellant filed in said cause.

In Witness Whereof I have hereunto set my hand and affixed the seal of said court, at Wilmington, in said district, this seventeenth day of March, A. D. 1924, and the independence of the United States of America the one hundred and forty-eighth.

(Seal)

(Sgd.) H. C. MAHAFFY, Jr.,
Clerk U. S. District Court,
District of Delawre.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT.

October Term, 1924. No. 3160 (List No. 49).

United States,
Appellant,
v.
Chemical Foundation, Incorporated,
Appellee.

And afterwards, to wit on the 10th, 11th and 12th days of November, 1924, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley and Honorable J. Warren Davis, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 26th day of March, 1925, come the parties aforesaid by their counsel aforesaid, and the court, now being fully advised in the premises, renders the following decision:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT.

October Term, 1924. No. 3160.

United States of America,
Complainant-Appellant,
v.
The Chemical Foundation, Incorporated,
Respondent-Appellee.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

OPINION OF THE UNITED STATES CIRCUIT COURT OF APPEALS.

(Filed March 26, 1925.)

Before BUFFINGTON, WOOLLEY and DAVIS, *Circuit Judges.*

WOOLLEY, *Circuit Judge.*

This suit was instituted by the United States of America against The Chemical Foundation, Incorporated, by direction of President Harding, on a bill in equity filed September 8, 1922 in the District Court of the United States for the District of Delaware. The Government in its bill declares upon the Act of Congress approved October 6, 1917 (40 Stat. 411), known as the "Trading with the Enemy Act," and its several amendments, particularly those of March 28, 1918 (40 Stat. 460) and November 4, 1918 (40 Stat. 1020), creating the office of Alien Property Custodian and authorizing the seizure of property of enemy aliens and its disposition at public sale, or at private sale if the President, in the public interest, should so determine. The Government charges by the bill that certain persons and corporations engaged in the dye and chemical industry desired to acquire the great number of American patents, copyrights and trade-marks owned by German enemies and thereby obtain a monopoly of the dye industry of the United States, and that, pursuant to a scheme or conspiracy into which they entered, the Alien Property Custodian seized approximately 4500 of such patents and many copyrights and trade-marks and sold them at private sale to The Chemical Foundation, a corporation of which he was an officer and whose stock was held by the persons and concerns that had instigated the seizure and sale. It avers that in making the sale the Custodian exceeded all powers conferred upon him by the statute; that his act was in effect a confiscation of property by one other than Congress where alone such power resides, and that the transfer of the patents to the corporation was a donation or subsidy given to a private industry without authority of law; that the Custodian, a public official, in selling the patents to a corporation of which he was an officer and in which he had an interest, violated principles of equity applicable to sales by fiduciaries, whether public or private, and that he, with others, violated Section 41 of the Criminal Code; that if the Custodian was authorized by the statute to sell seized property at private sale, in this transaction he lacked the authority of the President of the United States, who alone might determine when in the public interest a sale otherwise than public should be made; and that, aside from questions of power and authority and fidelity, the sale was irregular in many particulars, especially in that the price was merely nominal, that it was arbitrarily fixed without reference to value, and was grossly inadequate. Maintaining that for these reasons the sale and assignments of patents, copyrights and trade-marks were illegal, the Government by its bill prays that the court declare them void and require The Chemical Foundation to cancel all instruments of conveyance and return the properties to the United States and account for the revenues derived from them during the period of its possession.

The defendant, by its answer, traversed most of the allegations of the bill and made several specific defenses, namely; want of equity, because of which it moved to dismiss the bill; laches and acquiescence on the part of the Government; and justification of the sale on the ground that it was made to promote the interests of the dye and chemical industry of the United States and thereby to establish a national defense in chemical warfare. The Government moved to strike out parts of the answer and particularly the part on which the defense of justification was set up. The court declined to entertain either motion at that stage and directed the parties to proceed to trial.

The case came on for hearing before the District Court on June 4, 1923 and ended on the twenty-third of July, with a record of 9000 pages. It was argued in October of the same year. On an opinion by the trial judge, filed January 3, 1924, holding adversely to all contentions of the Government, the court, on February 18, 1924, entered a decree dismissing the bill. 294 Fed. 300. The case is here on the Government's appeal. This is a summary of the litigation.

We now come to the story of the case, for every case has a story. This case, however, has two: One told by the evidence as the attorneys for the Government read it and the other told by the evidence as we read it. Believing that the contrast will bring the issues sharply into view, we shall give both. In reciting the Government's story we shall (in our desire to state its case on the facts precisely as it sees it) use the words of its brief as nearly as we can and the words of the transcribed stenographic notes of the oral argument made by the Special Assistant to the Attorney General, upon whom devolved the opening on this appeal. Greatly compressed, it is as follows:

On January 13, 1919, A. Mitchell Palmer, the Alien Property Custodian, held a conference with his heads of departments with reference to a discussion between himself and the Federal Trade Commission having to do with issuing licenses under German patents upon authority of the Trading with the Enemy Act. As a result of that conference Mr. Palmer filed with the department a memorandum showing his interpretation of the amendment in respect to the seizure and sale of enemy-owned patents and laid down the general policy that the Custodian would seize and sell only such patents as form an actual part of an enemy-owned business and which, accordingly, are necessary to enable the purchaser to carry on the business protected by the patents. Two days later, January 15, 1919, Mr. Houget, patent counsel for the Custodian, wrote a long letter to his chief. That letter is the genesis of the transactions out of which this suit arises. Referring to certain extracts of the letter, Mr. Houget states:

> "We have also talked over the matter with the attorneys representing some of the principal chemical industries in the country to get, if possible, the bulk of an industry which would be vitally effective by our proposed program."
>
> "My recollection of your agreement with General Fort (Chairman of the Federal Trade Commission) is that we then had no intention of demanding and selling any patents except such as formed an actual part of the business which we had demanded and were selling so as to enable the business to continue what it had previously been doing with the assent and concurrence of the related German company."

"In view of this agreement, and of the attitude of the President towards this entire question, I believe that the power of seizure of patents should not be exercised in any wholesale fashion, but only in connection with establishing American businesses and then only for the most cogent reasons."

"My conferences with the representatives of certain chemical companies indicates a very definite and positive feeling that a very large number of German owned American patents is necessary to the development of and the continuance of the business of American dye and chemical industries, and that it was clearly preferable to obtain a right to offer it under such patents, (whether by purchase or by license), through the Alien Property Custodian rather than through the Federal Trade Commission."

"This being the feeling of the industry and our endeavor being to benefit the industry as a whole—and I believe that the industry itself is best qualified to know how this should be done—I suggest that wherever possible the industry, as represented by the patent counsel for the more important companies of the industry, determine just what patents should be seized. You could then not be accused of seizing patents in wholesale fashion but would be placed in a position of aiding an industry in a manner which it desires to be aided and I think that our position would be better than if we determined ourselves to what extent seizures were to be made."

"We have been offered the very fullest cooperation of the representatives of the chemical industry; they assured me that they would undertake to make any reasonable investigation that we may require at their own expense without any guaranty that they would ultimately become purchasers or licensees."

In a postcript he says:

"Since writing the aforegoing Mr. Garvan (Chief of the Bureau of Investigations) and I had a conference with Mr. Poucher of the duPont Com-

> pany, who states that he believes that the Institute of Dye Manufacturers, an association representing practically all of the dye manufacturers in the country, will make a request to the Custodian that he take and sell the German owned American patents, on the ground that proper protection is not afforded by Federal Trade Commission licenses."

Having stated what the Government represents to be the initial move by Government officials in the offending transaction, we shall do as counsel did at the argument and digress for a moment to give the background of this letter and of the events that followed.

At the time the war broke out the dye and chemical industries in the United States were comparatively small, and a large proportion of their important products was imported from Germany. When the English blockade was established and dye and chemical importations were cut off, there was, as will be remembered, a large and insistent demand for such dyestuffs and chemicals by the American public. In consequence a good deal of embarrassment was caused textile and chemical manufacturers. As a result there almost immediately developed in the United States extensive dye and chemical manufactories. The business grew very rapidly. It increased so immensely during our own period of the war that, before the end, the manufacturers in the United States were not only producing the leading chemical and medical products like salvarsan, neo-salvarsan and novacaine in quantities greater than were needed in this country and better than Germany had produced, but they were in fact producing ninety per cent. of the dyestuff requirements of the textile and other industries of the United States under about sixty groups of licenses of enemy-owned patents granted by the Federal Trade Commission, running for the life of the patents subject to certain postwar adjustments.

It was obvious long before the war closed that, not unnaturally, the dye and chemical manufacturers of the United States should consider what would take place after the war. They were not willing to take the risk of the policy which Congress might adopt on the return of peace and of legislation which might be enacted either as to the disposition of the patents or the protection of the industry. They determined to take measures for their own protection. Accordingly, in July, 1918, they made efforts to induce the Government to establish a licensing system restrictive of importation similar to that employed in England and to impose high tariff duties.

In December, 1918 and January, 1919, after the armistice, the manufacturers became very active. Corporations like the General Chemical Company and the National Aniline Company were consolidated into larger corporations. These corporations then organized themselves into two bodies, one the Dye Manufacturers' Association and the other the American Dyes Institute, unincorporated trade associations, subsequently consolidated into the American Dyes Institute, whose membership embraced concerns manufacturing ninety per cent. of the dyestuffs produced in the United States. Mr. Poucher, the head of the dye department of the duPont Company, was chairman of the Executive Committee of this association.

Returning to the letter of Mr. Houget, of January 15, 1919, the starting point in the Government's case, it appears that from that time there were numerous conferences between representatives of the dye and chemical industries and members of the staff of the Alien Property Custodian.

The principal organization of the Alien Property Custodian was in Washington, but he maintained in New York an office in which there was the Bureau of

Investigations, having in hand the investigation of conditions leading up to seizures of enemy-owned property. Mr. Francis P. Garvan was chief of this bureau, Mr. Joseph H. Choate, Jr. was attached to it in charge of the investigation of the chemical and dye business, and Mr. Ramsay Houget was patent counsel of the Custodian. In the conferences to which Mr. Houget refers in his letter all these gentlemen participated. As the industries had determined to acquire control of the German patents through the Custodian, proceedings to that end were rapidly developed in view of the anticipated early signature to a treaty of peace which might interfere with it. So the representatives of the industries and the New York members of the Custodian's staff arranged a formal conference to be held in Washington on January 27, 1919. At that conference Mr. Mansfield Ferry, general counsel for the Custodian, Mr. Hahn, another counsel, Mr. Choate and Mr. Houget representing the Custodian, were present. Mr. Palmer and Mr. Garvan were absent. On the other side there were representatives of the American Dyes Institute, the National Aniline Company and E. I. duPont deNemours & Company. A plan, conceived by Mr. Garvan, for the purchase at private sale of the German dye patents by a corporation to be organized by the Dyes Institute was submitted. In this plan it was the part of the Custodian to obtain permission of the President for a private sale of the patents, the number of which was not known but it was guessed there would be between 1000 and 3000. The value of the patents was not discussed, but it was suggested that, as it cost about $50 to acquire a patent, the price should be based on that cost. Mr. Houget named the figure of $250,000. However, the conference adjourned with an understanding that the Custodian should proceed at once with the seizure of the patents and the price would be determined later. This was the twenty-seventh day of January, 1919.

Returning to New York, the representatives of the Dyes Institute promptly called a meeting of the Executive Committee which approved the appraisal and agreed to underwrite the cost of listing the patents and arranged that patent attorneys of the National Aniline Company and the duPont Company should be placed in the Patent Office at Washington to do the work.

The plan for the seizure proceeded, beginning early in February, 1919. Lists of the patents intended to be seized were made by attorneys for the industries and the titles to the patents were abstracted by attorneys for the Custodian. In the meantime numerous conferences were held between representatives of the Custodian and representatives of the industries at which the scheme was further developed and the price of $250,000 was finally agreed upon, although the number of patents to be sold was yet unknown and no steps had been taken to ascertain their value. Moreover, the terms of the sale were framed so as to exclude all competitive bidding. Members of the Dyes Institute representing nearly all of the dye producers of the country agreed to underwrite the entire capital stock of the proposed purchasing corporation. This accomplished, the Custodian, on February 21, 1919, signed a formal demand for a number of the listed patents and presented it to the Commissioner of Patents. This constituted a seizure. By like demands seizures of other patents were made on March 4 and April 9.

Mr. Garvan, still Chief of the Bureau of Investigations, then appeared before the Sales Committee of the Custodian and submitted the plan to it. This committee was established by Mr. Palmer when, as Custodian, he was given power to sell enemy-owned property. It was in fact a sales organization, established with the knowledge and approval of President Wilson, with power to make regulations for the guidance of the Custodian and to approve his transactions of sale. This committee consisted of Mr. Otto G. Bannard, Mr. George D. Ingraham, Mr. Stone and two others, men of standing in the business and of wide knowledge and high character. They had power to pass upon all sales with special reference to the purchasers, the adequacy of the consideration and as to their general propriety. The plan was submitted to this committee before the patents had been seized, the price fixed, or the corporation organized. The committee approved it. Further, the members of the committee consented to act as voting trustees of the stock of the proposed purchasing corporation. At another conference between representatives of the industry and Mr. Choate, Mr. Houget and Mr. Garvan, it was agreed that Mr. Garvan, then Chief of the Bureau of Investigations, should become President of the corporation, that Mr. Choate should obtain its charter (for which service later he received a substantial fee) and that he should be its general counsel, and that Mr. Houget should be its patent counsel, (in which position later he received very large fees).

On February 19, 1919 the charter of the corporation, known as The Chemical Foundation, Incorporated, now the defendant in this suit, was filed in Delaware with nominal incorporators, that is, local people and clerks in the office. The corporation was organized on March 3, 1919, when the informal incorporators subscribed to the minimum capital stock and transferred their subscription rights to Mr. Garvan, Mr. McKay and Mr. Corbitt, who were elected directors of the corporation in their places. The remaining shares were subscribed by chemical manufacturers interested in the patents at the rate of two shares of common stock each with varying amounts of the preferred stock. The first meeting of the directors was held on March 8, 1919. Up to this time Mr. Palmer, the Alien Property Custodian, does not apear on the record at all. He testified, however, that he discussed this matter constantly with Mr. Garvan and that all the proceedings had his approval.

On February 26, 1919, Mr. Palmer appeared for the first time in the transaction and he appeared then because up to this point the necessary authority for the Custodian to dispose of the patents to the proposed corporation at private sale had not been obtained from the President. By an order of December 3, 1918, the President, before going abroad, vested in Frank L. Polk, then Counsellor of the State Department, the power which Section 12 of the Act, as amended, gave the President to determine when in the public interest a private sale should be made. The executive order did not purport to vest this authority in the official or in the office but in Mr. Polk personally. The President returned from Europe on February 25, 1919. On the next morning Mr. Palmer addressed a communication to Mr. Polk enclosing an executive order for him to sign, authorizing the private sale of the patents. Mr. Polk, though in ignorance of the whole matter, signed the order. On March 4, 1919, Mr. Palmer resigned as Alien Property Custodian and on March 5 became Attorney General of the United States. On the day of his resignation, the President, on Mr. Palmer's recommendation, appointed Mr. Garvan Alien Property Custodian. On March 8, pursuant to the previous arrangement, Mr. Garvan became President of The Chemical Foundation and from that date was both President of the corporation purchasing the patents and Alien Property Custodian making the sale, and in these wholly opposite official positions determined the price which should be paid by one of his principals and received by the other. Moreover, Mr. Choate, counsel in chief of the Chemical Division of the Bureau of Investigations, became general counsel for the purchasing corporation, and Mr. Houget, patent counsel for the Custodian, became patent counsel for the corporation, and the five members of the Advisory Sales Committee, who, acting for the Government, had passed on the sale, became the voting trustees of the stock of the corporation.

Early in April seizure of the remainder of the listed patents was made and on April 10, in completion of the unlawful scheme or conspiracy, approximately 4700 patents and a large number of copyrights and trade-marks, amounting to more than 6000 in all, were formally assigned to The Chemical Foundation for the consideration of $250,000, and this in face of the known fact that during the previous year licenses of a relatively small number of the same patents granted by the Federal Trade Commission had yielded a revenue of $300,000 and of the fact generally known that some of the patents assigned were worth many million dollars. This, briefly, is the Government's story.

With entire respect for the way in which the eminent counsel for the Government read the record, we are constrained to say that the evidence reveals to us a very different transaction—different in origin, purpose, conduct and achievement. Much of the evidence, and particularly that which concerns the negotiations of sale and the naming of terms, is not disputed. The controversy centers mainly on the inferences properly to be drawn.

Before stating the case as it appears to us it will be necessary to give the background against which stand out the acts and motives of the men in the transaction. In order to do this we must advance a step further in our examination of the Trading with the Enemy

Act. This Act, as we have said, was approved October 6, 1917, six months after the United States had entered the war. As originally enacted it provided, among other things, for the seizure and administration of "enemy-owned" money and property in the United States. To this end it defined the word "enemy," (Sec. 2); authorized the President to exercise "any power or authority conferred by this Act through such officer or officers as he shall direct" (Sec. 5, a); created the office and provided for the appointment by the President of the Alien Property Custodian (Sec. 6); required all persons in the United States to report to the Alien Property Custodian enemy-owned poperty in their custody (Sec. 7, a); provided for the seizure of enemy-owned property by authorizing the President to require the payment and delivery thereof to the Alien Property Custodian (Sec. 7, c); prescribed methods by which anyone not an enemy or ally of enemy might recover property mistakenly seized (Sec. 9); gave authority to the President to grant licenses under enemy-owned patents to citizens of the United States, later exercised by him through the Federal Trade Commission (Sec. 10); authorized the administration of seized property by the Alien Property Custodian under Presidential supervision; and postponed until after the war settlement of any claim made by an enemy to seized property (Sec. 12).

While this law authorized the President in his discretion to take over enemy property, it constituted the Alien Property Custodian a mere custodian or conservator thereof, permitting him, under Presidential supervision, merely to hold, preserve and manage it as a "common law trustee," and to dispose of it by sale only "when necessary to prevent waste, and to the end that the interests of the United States in such property and rights, or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded."

It is clear that the law as originally enacted was purely one of conservation. In consonance with its policy, Mr. A. Mitchell Palmer, who had been appointed Alien Property Custodian, issued an official statement assuring the public that enemy-owned property would be carefully preserved.

When the law was enacted and this announcement made there was little knowledge of German investments in the United States. They were known to be large but they were not suspected as being hostile to American interests. But this idea was quickly dispelled. Responding to the mandate of the Act, persons and corporations in the United States having enemy-owned property in their custody made 35,000 reports of such property to the Custodian. These reports showed property of more than $500,000,000 in value, extending into every state in the Union and the territories and insular possessions, affecting every industry and monopolizing some. It was the Custodian's duty under the statute to take over and operate this huge aggregation of property and it at once became apparent that he was earning large profits as manager of enemy-owned businesses. Many of these were engaged in the manufacture of articles necessary for the war. Enemy-owned textile mills were profitably manufacturing army uniforms, and enemy-owned machine shops were profitably turning out ordnance. The ultimate outcome seemed plain. If, after the war, enemy-owned property and its earnings were to be returned to enemy-owners, they would reap huge war profits which the Custodian had made for them.

It was also quickly revealed that all enemy-owned property was not property of casual private German investors but, on the contrary, was in large part owned by the Junker class and no inconsiderable part was owned by the Royal Family and by the Kaiser himself. It also developed almost at once that a large portion of the property had definite hostile effects upon the interests of the United States. These are examples:

The Orenstein Arthur-Koppel Co., a great German firm engaged in the business of installing inside railways in industrial plants, had for twenty years been competing for plant equipment all over the country on plans and specifications which were forwarded to their office in Berlin and thence to the German Government.

A number of German-owned fire insurance companies had accumulated plans of industrial plants which likewise were forwarded to their home offices and thence to the proper German bureaus.

The Bosch Magneto Company manufactured special apparatus for aeroplanes. Before the entrance of the United States into the war it had made contracts (in some instances through American concerns) to supply such appliances to the Allies. In complicity with Privy Councillor Albert, the German financial representative in the United States during the early period of the war, it succeeded by a policy of deception and delay in postponing deliveries for fifteen months.

Employees of the Hamburg-American Line and the Nord-Deutsche Lloyd, German-owned steamship lines, kept close watch on the maritime business of the United States and reported to the German Government every ship and its cargo leaving these shores.

The Florida Lumber Company had acquired every advantageous place on the finest harbor in the Gulf of Mexico, the nearest harbor on American soil to the Panama Canal. Its files instead of containing matters pertaining to the lumber business were filled with Pan-German literature. The lumber plant was a distributing center of propaganda.

Other concerns cornered the market in coal tar products that were convertible into explosives in order to hamper the manufacture of munitions. Their achievements in acquiring essential chemicals were regarded by the German authorities as equivalent to the destruction of a train of four hundred cars loaded with explosives.

Among the industries in this country which the Custodian discovered were completely owned by German enemies was the chemical industry dealing principally in medicinals and dyestuffs. As this industry is the center of the controversy here in suit we must pause still further to inquire into its character and its relation to the United States.

The character, operations and magnitude of the German chemical industry prior to the war and during the war and the size and position of the American chemical industry during the same period appear in the record at great length and are admirably condensed in the chapter on the chemical industry prepared by Mr. Choate and contained in Mr. Palmer's report to the President of February 15, 1919, and transmitted by the President to Congress on March 1, following. Though vitally pertinent to the questions here involved we shall be able to sketch only in the barest outline this mass of facts.

Before the war the manufacture of heavy chemicals, such as sulphuric acid and nitric acid, was well developed in this country. These products, being of relatively simple composition, were easily made; and being cheap to produce and expensive to transport, they were profitably manufactured in any given locality. Due to cheap electric power the electro-chemical industry was also well developed. For well-known reasons the oil industry had attained full growth. But in the great field of organic chemistry the United States was entirely dependent upon the Germans, who had a world monopoly.

This position of the United States was due to a variety of circumstances: The Germans had started early in the industry and had made amazing strides; they had formed great trusts, or kartels, with the approval of their government, and with government aid they were able to enter our markets and destroy or thwart such feeble competition as from time to time arose or struggled on. By practices of "full line forcing," foremen bribery and "dumping" they consolidated their control. But, more important than all, they applied for and obtained several thousand American patents which it was supposed blanketed the art of organic chemistry and the essentially related art of by-product coke ovens in this country.

Organic chemistry is the chemistry of carbon and its compounds. Carbon differs from other elements in that instead of combining with a few other elements in a few definite proportions it will combine with numerous other elements in almost unlimited proportions. The result of this extraordinary facility of combination is that the chemistry of carbon involves a study and production of a multitude of totally diverse products. The importance of this branch of science is due chiefly to the fact that organic chemistry is the chemistry of life. Almost all the chemical substances found in living bodies are organic products, and at one time it was supposed they could be produced only by some action of the principle of life. But about the middle of the last century urea, one of the most well-known organic compounds, was produced synthetically out of coal tar. From this it was conceived that every compound which enters into the body structure can be reproduced synthetically by processes of organic chemistry. Next grew the thought that all diseases are the result of poisons produced in the system, usually by germs, and these being susceptible of identification may be neutralized or destroyed by appropriate chemical compounds. For example, salvarsan, an organic chemical product originally made in one of the great German dyeworks, is a synthetic product which definitely and positively neutralizes the poison of syphilis.

It happens that the only industry that calls into play resources of this kind is the dye industry. Its base is coal tar and its output is a most extraordinary variety of products. The dyemaker starts with ten well-known "crudes"—toluol, benzol, phenol, cresol, and others—found in coal tar and nowhere else, and converts them by given processes into about three hundred complex compounds appropriately named "intermediates," and by variations of processes these are converted into other intermediates, and these into still others, and so on indefinitely until, finally, innumerable finished products consisting of perfumes, photographic chemicals, tanning materials, medicinals and dyes of many thousand colors are produced. Thus it will be seen that the chemical industry is probably the most complex industry calling for unusual qualities in the men who direct and partake of its activities.

Intermediates being unfinished products (as the name denotes) are of no particular use in themselves and have no commercial value except when sold to other chemical producers for further treatment. But they are of the highest importance in the industry because slight variations in their development make great differences in the finished products. Therefore it is in the proper handling of such sensitive compounds that the genius of the inventor and the skill of the operator are most severely tested.

"But if organic chemistry is the science of life, it is also the science of death." Every one of the great explosives and every one of the great modern war gases is an organic product. Their base is coal tar, a by-product obtained in the modern manufacture of coke. Otto Coking Co. v. Koppers Co., 258 Fed. 122. It is now realized that the striking power of a nation is in proportion to its supply of coke by-products. Germany's initial strategy in the war was based in part on this fact as was evidenced by its first act of seizing Belgium and Northern France where there were more by-product coke resources (outside of its own) than in all of Europe. These, when combined with its own, gave Germany control of coke by-products vastly greater than were to be found in all the rest of the world.

Coal tar, as we have said, is the base of the dye industry, and finished explosive products are obtained by slight variations in the intermediates produced in the development of dyes. For example, trinitrotoluol (T. N. T.),—picric acid and tetryl,—is produced by the ordinary dye process, in dye apparatus, by dye workmen, from toluol, a coal tar crude. The intermediate from which it is produced (P. N. T.) was for many years a dead product, but the Germans discovered that it could be made into T. N. T. Picric acid is itself a useful dye; and in the long process of manufacturing sulphur black, the most largely used dye (except indigo), a slight variation of the final step will turn the product, at will, into either the black coloring matter or the high explosive.

The war value of the organic chemical industry is even more apparent in the field of poison gases. The war just ended was mainly a chemical war. In the last of the fighting more than half of the shells fired contained gases. It is fair to assume that, even if no further advances are made in chemistry, the next war will begin where the last left off.

As in the case of explosives, poison gases are the product of the materials, apparatus, processes and technique found in dyeworks and nowhere else. It is equally true that protective defenses against gas attacks, such as the chemicals used in gas masks, have been discovered and developed in dyeworks. Hence, dyeworks in times of peace are potential munition plants maintained and equipped to become, in the event of war, actual munition plants on almost a day's notice. Germany demonstrated that munition plants based on an organic chemical industry can be effectively created and maintained in no other way. Having no such industry when it entered the war, the United States built the Edgewood Arsenal at a cost of $35,000,000. Though a colossal plant, it is valueless unless vast sums are annually spent, not in maintaining the structure, but in producing organic chemicals and keeping chemists, workmen, foremen and technicians constantly trained that they may know how to carry on the manufacture of munitions when the demands of war come. It was therefore evident to the officials of the national government that a dye industry is a national bulwark in chemical warfare and that in the United States it had become an imperious necessity.

The chemical industry is also one of great importance in times of peace. It is a key-industry. Its products are essential to the woolen and cotton textile industries, to the photographic and phonographic arts, to the manufacture of paper, ink, leather, and a vast number of other products, amounting in the United States to between $2,000,000,000 and $3,000,000,000 annually. Such a position in commerce carries with it corresponding power, as was demonstrated before our country entered the war when Germany (holding the key) exercised its power by trying to force the United

States to cause the British Government to raise the blockade in consideration of a supply of dyestuffs and medicinals to meet the public demand in this country. The President, however, firmly resisted the pressure at home and the insistence abroad.

We shall not repeat the evidence disclosing the power of the German kartels as it affected the United States during the early months of the war further than to show the belief expressed by the German Ambassador at Washington in a cablegram to Berlin:

> "That the stock of dyes in this country is so small that by a German embargo about four million American workmen might be thrown out of employment";

and to quote a reference to the situation made by the German Consul General, Hossenfelder, in a report to his government:

> "I may, however, mention that the cry for help which comes from the world of physicians is becoming louder and louder and more and more insistent."

Nor shall we review the trade practices employed by the German kartels in selling their products in the American market. Though relevant, such matters are secondary to the main consideration of the national defense.

We have made this digression on the subject of organic chemistry because of our conviction that no one can have even an approximate understanding of the case at bar without some knowledge and apprecia-
ity of the United States to meet them.
tion of the conditions of modern warfare and the abil-

Returning to the actors in this case, it was apparent to Mr. Palmer, the Alien Property Custodian, as time went on, that the mere powers of conservation of enemy-owned property conferred upon him by the Act of October 6, 1917, were wholly inadequate to meet the situation. He laid the problems of his office before committees of Congress and showed them the necessity of going a step beyond conservation and advancing to the sale of seized property. So, Congress, by the Amendment of March 28, 1918, repealed Section 12 of the Act and substituted another section which, beginning with the same words, vested in the Custodian "all of the powers of a common law trustee in respect of all property" that he shall seize, and "in addition thereto" gave him power "to make any disposition (of such seized property) by sale or otherwise. . . ." Continuing, the section, however, placed limitations upon this power, which are "That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement . . . unless the President, stating the reasons therefor, in the public interest, shall otherwise determine." Under this power, Mr. Palmer sold many seized properties. Before long, however, he discovered that a number of enemy-owned businesses were conducted under enemy-owned patents, and that, consequently, to sell the physical assets without the appurtenant patent rights meant to give the purchaser not a business but a lifeless plant. To remedy this situation he had to have authority to sell patents as well as physical property. Being in doubt as to his power to do this, he asked for an opinion by the Attorney General who replied that the Act, as it stood, did not confer power to seize and sell patents. To overcome that difficulty an amendment to Section 7 c of the Act was drafted and proposed to Congress by Mr. Palmer and, on November 4, 1918, Congress amended the Act by authorizing the seizure of "patents, copyrights, applications therefore . . ., trade-marks, choses in action, and rights and claims of every character and description owing to or belonging to . . . an enemy or ally of enemy." (40 Stat. 1020.)

The first important exercise of the power conferred by the last amendment arose in respect to the sale of Bayer & Company, Inc. This company represented, as sales agent, the giant concern of Bayer Company of Leverkusen, and had established a considerable manufactory in the United States. To evade taxation by concealment of profits another company had been organized known as Synthetic Patents Company, Inc., all of the stock of which, like that of the Bayer Company, was held by the German parent concern and to which all the American patents of the German house were conveyed. These, about 1200 in number, were dye and chemical patents.

On December 12, 1918, the Alien Property Custodian sold the property of the Bayer Company and the Synthetic Patents Company, including the patents, at public auction to the Sterling Products Company of West Virginia, the highest bidder.

The Sterling Products Company was not known to the Custodian prior to the sale. The German names of some of its officers arousing suspicion, an inquiry was made into the concern. There was the possibility that the plant had been sold to Germans or to men with German connections, though later this was found to be incorrect. Mr. Palmer realized that he had sold to a private corporation a large group of patents with unrestricted patent monopolies; that there was no assurance that the patents might not be reconveyed to the Germans after the war; that the purchaser enjoyed a monopoly of these patents and that thereby if any considerable number of patents were bought by the same concern a monopoly of Americans might be substituted for that of Germans.

These possibilities were portentious, and it was then that Mr. Palmer (not Mr. Garvan, as the Government maintains) conceived the idea of so disposing of the German patents as to create an American chemical industry.

Shortly after the Bayer sale Mr. Palmer, still alarmed at the possibilities which that sale suggested and believing that something should be done to prevent them from becoming actualities, sent for Mr. Garvan, Mr. Choate and Mr. Houget and laid before them in a general way the ideas which that sale had prompted and requested that they go home, think them over and bring back a perfected plan for his consideration. Testifying as to that interview Mr. Palmer said:

> "The information that I had received had impressed me with the importance of several things in relation to this chemical patent business, all of which were factors in the working out of the problem. The tremendous development of the chemical science and industry for war purposes, as the war had demonstrated, made the chief and largest impression upon my mind. The absolute necessity, as demonstrated by Germany, of having a war industry in this country—I mean having a chemical industry in this country, if we were going to be adequately prepared for the kind of wars the last was showed the next war to be, led me to declare that we must work out some plan by which this German grip upon the chemical industry, so far as it applied to America, must be transferred to a new American industry under such conditions as would safeguard the Government in the use of every product of the chemical industry which it might require for its own safety and protection in the future; that it ought to be built up and developed in such a way that the Government could constantly have the benefit of it.

> "That was the one broad phase of the plan that I laid down to these gentlemen. The other was, and it was not my own entirely, but largely the result of the Federal Trade Commission's views and of what I knew to be the general policy of the administration, that in the building up of that industry a plan had to be worked out by which it should be a competitive industry and no monopoly should result from it.
>
> "Now, these were the two big ideas. It was all nebulous in my mind. It was very general and very broad. The purpose was plain. We wanted to build up an American industry in order that the Government and the people should benefit from it. We wanted to do it in a way that would make that absolutely certain forever and in a way that would not result in monopoly. Now, with that broad and general plan these men went out and tried to work out the plan."

Mr. Palmer was corroborated by the testimony of Mr. Garvan, who said:

> "He (Mr. Palmer) told us to go off and work out something and come back and report."

Mr. Choate testified:

> "I never heard a suggestion of it from outside until after it had been very completely discussed inside the office."

It is pertinent to note that when on the stand Mr. Palmer was not cross-examined, nor was his testimony contradicted. We therefore find that the plan to seize and sell German patents was not instigated by representatives of the industry and that its genesis was not the letter writen by Mr. Houget to Mr. Palmer, bearing the date of January 15, 1919, as the Government maintains, but that it had its birth in the mind of Mr. Palmer in the month preceding.

Mr. Garvan, Mr. Choate and Mr. Houget returned to New York and in obedience to the direction of their chief set about formulating a plan. They conferred with members of the American Dyes Institute and the Manufacturing Chemists' Association. As a business proposition the idea of purchasing the patents with non-exclusive rights made no appeal to the members of the industry but they indicated a willingness to participate in some such plan as a matter of public interest. These representatives of the Custodian had many conferences with the Executive Committee of the Dyes Institute and the Executive Committee of the Manufacturing Chemists' Association, of which Mr. Palmer was regularly informed. He refused to adopt certain proposals, agreed to others, and supplemented those agreed upon by naming conditions and requirements which occurred to him as necessary to insure the purpose he had in mind. Finally, a conference to be held in Washington was arranged, which was the one previously referred to as of January 27, 1919, when representatives of the industry and of the Custodian were present. At that meeting a plan was proposed and agreed to. The terms and conditions of the plan were in the main dictated and in the whole decided by Mr. Palmer. Therefore, we find that the terms of the plan which ultimately resulted in the sale of the patents were not imposed by the industry but were laid down by Mr. Palmer representing the Government. They were in substance these:

That a corporation should be organized to purchase all the organic chemical and related enemy-owned patents; that its stock should be available for subscription to any member of the industry; that its stock, whether common or preferred, should be entitled to not more than six per cent. dividends per annum, and that the surplus, if any, should first be used to redeem the preferred stock and then for the advancement and development of chemical science in the United States; that the corporation should be obligated to issue non-exclusive licenses under all its patents to all qualified American manufacturers, upon fair and equal terms regardless of whether the applicant for a license was a stockholder or not; that the corporation's duty should be to hold the patents in trust for American industry and to protect them against infringers; that all the stock of the corporation should be trusteed for seventeen years, that is, as long as the possible life of the patents to be sold; that the trustees who should have plenary powers over the affairs of the corporation, including the election of its officers, should be appointed by Mr. Palmer and thereafter be self-perpetuating; and that the Government should have free non-exclusive licenses for all governmental purposes under all the patents.

At this conference, as previously stated, the price of the patents was not agreed upon, although, contrary to the statement of the Government that "no effort whatever was made to ascertain the value of the property," the subject was carefully considered and all realized the practical impossibility of determining their value with any degree of approximation. Later, Mr. Palmer in dealing with members of the industry strove to obtain the highest obtainable price, but it appeared that under the required conditions and especially under the one which provided for the issuance of non-exclusive licenses, the most that the industry could raise was $500,000. It was thought that at least half of that amount would be required for working capital of the new corporations, involving inevitably the expenditure of substantial sums in patent litigation. That left $250,000 available as a cash consideration to be paid for the patents. The propriety of that sum was seriously considered and discussed and it was finally agreed upon. It should be noted here that at this time

Mr. Palmer, not Mr. Garvan, was Alien Property Custodian, and also that, as of February 15, 1919, Mr. Palmer, the Alien Property Custodian, made full report of the proposed sale and its terms to the President of the United States, who, in turn submitted the report to Congress on the first of March, following.

But before its acceptance could be effected the plan had to be submitted to the Advisory Sales Committee, which, as we have stated, was a committee organized to pass upon all sales made by the Custodian. The members of this Committee were: Honorable George D. Ingraham, former Presiding Justice of the Appellate Division of the First Judicial Department of the Supreme Court of the State of New York; Mr. Otto T. Bannard, President of the New York Trust Company; Mr. Cleveland H. Dodge; Mr. B. Howell Griswold, Jr., senior partner of the banking firm of Brown Brothers; and Mr. Ralph Stone, President of the Detroit Trust Company. These gentlemen were all of the highest standing, were in no way connected with the chemical industry and were serving the Government without compensation. They approved the plan and on the request of Mr. Palmer agreed to serve as trustees of the stock of the proposed purchasing corporation.

In due course a charter for the corporation was filed in Delaware embodying the terms of the plan whose substance we have given and providing a capitalization of $500,000 of which $400,000 was six per cent. cumulative preferred stock and $100,000 common stock also limited to six per cent. dividends.

When the corporation was organized Judge Ingraham of the Advisory Sales Committee and the Honorable George Gray of Delaware, formerly a judge of this court and then retired, drafted the voting trust agreement.

The listing of the patents began in February, 1919, by patent lawyers who were paid with funds temporarily advanced for the work by the American Dyes Institute and later repaid by The Chemical Foundation. When the patents had been listed, demands were made upon the Commissioner of Patents and by these symbolic acts of capture formal seizures were completed. But before the patents could be sold at private sale and assigned the consent of the President had to be obtained under the amendment to Section 12 of the Trading with the Enemy Act, approved March 28, 1918. Before the President left for Europe he delegated his power under this section of the Act to Frank L. Polk, then Counsellor of the State Department. Mr. Palmer, enclosing an extract of his report to the President showing the proposed plan of sale, wrote a letter to Mr. Polk requesting that he sign the necessary order for the private sale of the patents. Mr. Polk testified that he carefully read the extract of Mr. Palmer's report. Therefore we assume that Mr. Polk knew what he was doing when he signed the order and returned it to Mr. Palmer. This order (and another signed later) purported to authorize a private sale of enemy-owned patents to The Chemical Foundation on the terms we have recited. Moreover, Mr. Palmer testified that in an interview on March 3, 1919, he explained the whole transaction to the President and recommended that, as he was about to resign in order to become Attorney General, the President consider Mr. Garvan as his successor because of his valuable services in the Bureau of Investigations, his familiarity with the chemical industry and in view of the fact that under the plan of Americanizing that industry he was to be President of the purchasing corporation. Mr. Palmer carried with him a blank commission which the President filled in and signed, appointing Mr. Garvan Alien Property Custodian. It is entirely clear from his uncontradicted testimony that Mr. Palmer fully acquainted the President with the proposed disposition of the German patents and the Americanization of the chemical industry and that it had the President's approval.

(It may be noted that the President had long known the relation of the organic chemical industry to modern warfare. In January, 1916, before the United States entered the war, Mr. Henry B. Thompson, President of the National Association of Finishers of Cotton Fabrics, discussed with him the dependence of the nation upon organic chemistry for its munitions and urged him to do something, at least in the way of tariffs, toward creating an American dye industry for national defense.)

On April 10, 1919, the first of several assignments of patents was made and The Chemical Foundation began business. Other assignments followed. In the meantime certain doubts arose in regard to the transfer of various rights connected with the properties assigned. In order to avoid the possibility of having a question raised in connection with the validity of the sale, the President on February 13, 1920 executed an instrument broadly ratifying the transaction.

We shall not review the great volume of testimony concerning the way in which The Chemical Foundation performed the trusts imposed by the sale. It is enough to say that it granted the United States free licenses for all government purposes under all the patents it had acquired; that it granted licenses on equal terms to all applicants save one; that it received from the licenses very substantial revenues, none of which has it disbursed in dividends and all of which it has expended for the advancement and development of chemical science in the United States; and that its efforts and expenditures are reflected in the progress of the chemical industry in the United States which in 1920, according to a report of the Senate Committee on Finance (not "at the time the sale took place" as the

Government represents), was producing about 90 per cent. of the dyes needed in this country, and in 1922, as shown by a report of the Tariff Commission, was producing 93.5 per cent. This, greatly compressed, is the story of the case told by the evidence as we read it.

We have reached the discussion and shall now review the questions raised by the Government in assigning errors in the decree of the court dismissing the bill. All matters touching the merits of the case will, of course, be laid aside; also all comments on the policy of Congress in its enactments, for with the policy of legislation the courts have nothing to do. We are concerned only with the legality of what was done. The legality of these things depends on questions of power—power of Congress to enact the Trading with the Enemy Act and power of Government officials under the Act to execute the transaction which they put through, and then, if such existed, on questions whether the Government officials lawfully exercised their power.

These questions rest for their solution first on the constitutionality of the Trading with the Enemy Act and next on the meaning of that Act; and its meaning, in turn, depends on the construction properly to be given its terms. Admissions by the Government made in its brief and at the oral argument have materially simplified the issues of this case and have relieved us of the necessity of discussing many matters presented and urged in the District Court. Before construing the statute we shall summarize these admissions:

Addressing itself to the Trading with the Enemy Act and its several amendments, the Government does not question the sovereign power of the United States to seize enemy property as a war measure, and having seized it, it does not question its sovereign power to confiscate it. It admits that the supreme power over the property in this case was in Congress and that Congress could delegate to the Alien Property Custodian power to seize it. Therefore, it admits that the seizure of the patents by the Alien Property Custodian was lawful. It further admitted at the oral argument that Congress could delegate to the Alien Property Custodian power to sell the seized patents and that, if properly exercised, the Custodian could assign the patents and vest complete title in the purchaser, and that thereafter the patents would be free from the power of a court of equity to lay hands on them. Further, the Government admits that a private sale of such property, when authorized by the President in the public interest, would be lawful, and that the determination by the President that such a sale would be in the public interest, being the exercise of discretion vested in him as the Chief Executive, would not be open to inquiry by the courts. It also concedes that it was the policy of Congress, as indicated by the statute, to eliminate enemy-ownership of enemy-held properties in this country and to place those properties in American hands and render them available for the needs of war.

By these admissions on the law, concerning which it is now needless to repeat the discussion into which the learned trial judge was compelled to enter, we are enabled to come directly to the complaints of the Government, which, grouping the assignments of error, it has condensed into six propositions. The first of these, and the most important, is error charged to the trial court "in its construction of the Trading with the Enemy Act, and especially of Section 12 thereof, conferring upon the Custodian power of sale of property in his custody pending final disposition thereof by Congress." The very center of this controversy therefore is Section 12 of the Act. As originally enacted it read as follows:

> "The alien property custodian shall be vested with all the powers of a common-law trustee in re-

> spect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. . . . The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him."

The basic considerations which moved Congress to this legislation were, in its own words, "the safety of the United States" and "the successful prosecution of the war." These vital objects appear throughout the Act and its subsequent amendments. At the time the law was enacted this country had but lately entered the war and it was uncertain just what was necessary for the safety of the nation and the successful prosecution of the war in respect to trading with the enemy. Therefore the law as originally enacted contemplated nothing more than taking and holding enemy property and was a purely conservation measure. On this everyone agrees. Also, everyone concedes that upon the seizure of enemy property under authority of the Act the title of the enemy-owners passed out of them. Passing out of them, it went somewhere. The Act, however, does not say where the title went, that is, whether it vested in the Custodian or in the United States, or whether the legal title vested in the Custodian and the equitable title in the United States. This question is academic to the issues here involved and does not call for decision, for, in any event, the United States reserved to itself the whole beneficial interest and gave the Custodian "powers" over the property. As to these powers the statute said that "in respect of all property . . . which shall come into his possession in pursuance of this Act," the Custodian "shall be vested with all the powers of a common-law trustee," meaning by that inartificial expression, we imagine, the powers of a trustee in equity. The powers of a trustee are always limited by the instrument creating the trust, so here the Custodian's powers were limited by the Act to conservation of the property and extended to its disposition by sale only when necessary to prevent waste. It authorized him to hold, manage and protect it "to the end that the interests of the United States in such property *or* of such person as may ultimately become entitled thereto, . . . may be preserved and safeguarded." The purposes for which, in the alternative, the Custodian as trustee was authorized to hold seized property are significant, for they show quite clearly that as of that date (October 6, 1917) Congress had not determined what it would do with property thus seized under its war power. So, by Section 12 it said in effect that, except when sold to prevent waste, the Custodian shall preserve and safeguard the property for the United States or (using the disjunctive) for anyone else who ultimately may become entitled to it. Congress further indicated its uncertainty as to what disposition of seized property it would ultimately make by providing in a later paragraph in the same section that:

> "After the end of the war any claim of an enemy or of an ally of enemy to any money or other property received and held by the alien prop-

> erty custodian or deposited in the United States Treasury, shall be settled as Congress shall direct."

Thus, by the Act of October 6, 1917, Congress carefully reserved to itself complete freedom of action in the future.

But Congress concluded, as it had full power to do, not to wait until "after the end of the war" to determine who should be entitled to seized enemy-property —whether previous enemy-owners or the United States. So, on March 28, 1918, Congress, to meet the problems of the Alien Property Custodian and to strike a blow at the enemy in the darkest hour of the war, determined that question then and there by repealing Section 12 and enacting a new section in its place.

"When the law distinguishes we look for some difference," and when a legislative body repeals one provision of a statute and substitutes another we also expect to find some difference in the provision newly enacted and the provision repealed and also some difference in the situations from which the two provisions arose and in the purposes intended to be effected first by one and then by the other. And such difference in situation and purpose is clearly disclosed.

The Amendment repeats substantially the words of the original section down to the word "Act," vesting the Alien Property Custodian "with all of the powers of a common-law trustee in respect of all property" coming into his possession in pursuance of its provisions, and then in new words continues:

> "and in addition thereto (that is, in addition to the powers of a common-law trustee), acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, (the custodian) shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof

> or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: Provided, That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: . . . The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him. . . .
>
> "After the end of the war any claim of an enemy or of an ally of enemy to any money or other property received and held by the alien property custodian, or deposited in the United States Treasury, shall be settled as Congress shall direct."

It is evident that by this amendment Congress transformed the Trading with the Enemy Act from a purely conservation measure to one of action, definite and drastic. It no longer left the ultimate disposition of seized enemy property in suspense but determined its disposition with finality. While it gave the Custodian the same custodial powers which it had previously vested in him, Congress gave him additional powers over seized enemy property to meet a war situation which had arisen since the date of the original enactment and to meet other war situations as they should arise in the future. It did not limit these powers to the sale of the seized property but gave the Custodian the broad "power to . . . make any *disposition* thereof,"—dis + ponere, to displace. As though this were not enough, the provision continues: "disposition thereof, by sale or *otherwise.*" As we are not presently concerned with a disposition of seized property otherwise than by sale, we advert to the word "otherwise" in the power merely to observe that Congress, seeking to confer very broad powers upon the Custodian, authorized him to dispose of the property in ways other than by sale. But when disposed of by sale Congress sought to confer upon the Custodian still broader powers by using terms which in themselves seem to confer a power almost without limit. They are: "power to . . . make any disposition thereof, by sale or otherwise, . . . in like manner as though he were the absolute owner thereof." Had the section stopped here we are clearly of opinion that the power thus conferred, if properly exercised, would embrace the disposition of the patents by a sale of the kind in controversy. But, in the next words, the section tentatively limits "disposition . . . by sale" by providing "that any property sold under this Act, except when sold to the United States (the latter phrase indicating still further the breadth of the Custodian's power of disposition) shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement. . . ." Obviously, these are limitations on the Custodian's power of disposition by sale, and had the section ended here the transaction of sale in the case at bar would, of course, be invalid. But the section immediately withdrew these limitations by making an exception, which is that seized property "shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement. . . . , *unless* the President stating the reasons therefor, in the public interest, shall otherwise determine." When the President had otherwise determined, as we shall assume for the moment he did in this case, the effect of his determination "otherwise" was, as we construe the statute, to annul, for the occasion, the limitations of the Custodian's power to dispose of seized property at public sale to American citizens at the highest bid after advertisement and leave him with all the "power to . . . make disposition thereof, by sale or otherwise, . . . in like manner as though he were the absolute owner thereof,"—just as though the quoted paragraph giving him this power had come to an end at the point immediately preceding the limiting provisos.

The question is therefore reduced to this: Having received the President's authority, did the first paragraph of Section 12, as amended, give the Custodian power to dispose of the patents to the respondent at private sale upon the conditions and for the consideration named? The Government says it did not for a number of reasons; first, for the reason that, as it interprets the section, "the change of policy with respect to sale of enemy property embodied in the Amendment of March, 1918, did not change the policy of conservation but only authorized a conversion of property into cash while in custody, reserving to Congress the determination after the war of all questions as to final disposition thereof." Conceding that it was the policy of Congress to eliminate German ownership and put the seized properties of Germans in American hands and render them available for war, the Government nevertheless maintains that "this policy could and was intended to be fully carried out and this purpose completely accomplished by fair sale of this property to American citizens, and by the substitution therefor of its fair equivalent *in cash* in the hands of the Treasurer of the United States." Stated differently, the contention of the Government is that, "the property in the hands of the Custodian was held with the enemy interest in suspension awaiting the final action of Congress as to the disposition thereof after the war. If Congress intended to return it or its proceeds to the original owners, no beneficial interest therein would ever have accrued to the United States or the people thereof . . . ; Congress has never created any trust of this property for the benefit of the nation and could not do so out of property which had never been acquired by confiscation or otherwise and which was not owned by the Government.'' Using its words, we think this fairly states the position of the Government, and it is based on two propositions, either one of which, if sound, sustains its conclusions. The first is that the Custodian, even without the descriptive words of the section, is a fiduciary, subject to all the familiar duties and obligations of an ordinary trustee; that the powers of a ''common-law trustee'' with which the amended section vested the Custodian charged him with the duty to conserve the estate just as the original section did, and that the additional power conferred upon him by the amendment—the power to sell seized property—was subordinate to and therefore was to be exercised in consonance with his trusteeship; and that as an ordinary trustee in equity can sell trust property only for money, and only for the largest amount obtainable, the Custodian was bound to sell the seized patents at a price which would bring the largest return in dollars and was not authorized to be influenced by other considerations, however advantageous they were to the United States, or, even though they affected the life of the nation. We think there is infirmity in this premise and that, in consequence, the syllogism is faulty. The statute provides for public sale to the highest bidder ''*unless* the President, stating the reasons therefor, in the public interest, shall otherwise determine.'' The inevitable logic of this provision is that when the President shall, in the public interest, determine otherwise, seized property may be sold at private sale to a lower bidder. This expression of the section contemplates something more than money because by its terms it calls upon the President to regard the public interest in departing from the statute's general rule of public sale. Public interest is not limited to dollars. When therefore in the public interest the President authorizes a private sale, the statute permits the Custodian to dispose of the property "in like manner as though he were the absolute owner thereof." An absolute owner is at liberty to consider and impose conditions of sale and to be influenced by something other than the monetary return. It is common knowledge of all lawyers and many business men that the highest bid is not always the best bid and that a lower bid may be the best bid when based on conditions sufficient to overbalance the difference between the two. And so here, concededly, the patents were sold for less than their value to their previous German owners, and perhaps less than their value to the United States had they been offered at public sale without conditions, for then the purchasers would have acquired them with their characteristic of monopolies in force. But when the President determined that the public interest required that they should be sold at private sale, it was, we surmise, lawful for the Custodian in fixing the terms of the sale to keep the public interest in mind, as he did in this case, and impose conditions which would be not only advantageous to his principal but would carry out the express purpose of the Act by assuring "the safety of the United States." With these conditions announced it is obvious that the money price would be less than the price which would be obtained at a sale without conditions.

So long as the Custodian had seized property in his hands, and until he had disposed of it under the new powers given him by the amendment, he was, of course, bound to conserve it with all the care of a trustee. Property not sold and remaining in his possession was "after the end of the war" subject to ultimate disposition by Congress. But when, before the end of the war, he acted under the powers of disposition newly given him (and under the authority of the President to sell otherwise than at public sale), he was, by the new instrument of trust as we may call it, relieved of his custodial duties, and was authorized to sell the property free of any trust for a price and on such terms and conditions as, under the President's supervision, he should decide upon; and on such a sale, in the absence of fraud, all title to the property passed to the purchaser,—not to be divested "after the end of the war."

The other proposition which the Government advances against this sale under the statute is that to divest enemy property of enemy interests and vest it in the Custodian with full power of final disposition, the enemy property must first be confiscated; that power of confiscation resides in Congress alone, and that Congress never having confiscated the patents in question, their sale by the Custodian in the public interest was in effect a confiscation by him. We are not persuaded to this view because two things had happened: First, Congress, knowing that enemy property cannot be condemned without an act of Congress, Brown v. United States, 8 Cranch. 110, enacted the Trading with the Enemy Act as a strictly war measure, having its sanction in the Constitutional Provision, Art. I, Section 8, Cl. 11, empowering the Congress "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." Commercial Trust Co. v. Miller, 281 Fed. 804; Miller v. United States, 11 Wall. 268, 305. Congress could not physically make captures of enemy property itself, so by this Act it created the Alien Property Custodian and employed him as an instrument to that end. Under the Act as originally passed and as amended, Congress authorized him to seize and hold property of enemy aliens. Upon seizure the title of the enemy-owners was not held "in suspension" but passed out of them and became vested, legally or beneficially, in the United States. But this is not all that Congress did. Concluding not to wait until the end of the war to dispose of seized property either by restitution or appropriation, it disposed of it by the amendment of March 28, 1918 in the only way it could, namely; by employing some instrument to carry out its will. This it did by again using the Alien Property Custodian and empowering him, under the supervision and direction of the President, to dispose of seized property at public sale, or otherwise when in the public interest the President should so determine. When the Custodian acted under the power which Congress granted him and under the direction of the President in the public interest, he was a mere instrument selected by Congress to carry out what it had determined should be done. His act was not the exercise of legislative power delegated to him, but was the act of Congress operating through him with the same effect and validity as though Congress itself had made the capture and the sale. Although, admittedly, the Custodian acted under the power only when in his judgment an occasion for its exercise arose, we find no infirmity in this for such action is in consonance with years of practice sustained by a long line of decisions of which the most familiar are: Field v. Clark, 143 U. S. 649; Union Bridge Company v. United States, 204 U. S. 364, 380-3; Monongahela Bridge v. United States, 216 U. S. 177; Buttfield v. Stranahan, 192 U. S. 470; United States v. Grinaud, 220 U. S. 506, 516-21; Selective Draft Law Cases, 245 U. S. 366, 389. The following excerpt from the opinion in Field v. Clark shows the law:

> " 'The true distinction,' as Judge Ranney, speaking for the Supreme Court of Ohio, has well said, 'is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.' Cincinnati, Wilmington &c. Railroad v. Commissioners, 1 Ohio St. 88. In Moers v. City of Reading, 21 Penn. St. 188, 202, the language of the court was: 'Half the statutes on our books are in the alternative, depending on the discretion of some person or persons to whom is confided the duty of determining whether the proper occasion exists for executing them. But it cannot be said that the exercise of such discretion is the making of the law.' So, in Locke's Appeal, 72 Penn. St. 491, 498: 'To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.' The proper distinction, the court said, was this: 'The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and, must, therefore, be a subject of inquiry and determination outside of the halls of legislation.' "

For these reasons we are of opinion that the sale was made by the Custodian within the powers conferred upon him by the statute and is to that extent valid. It remains to be determined whether in making the sale the Custodian validly exercised his powers.

The Government, by the next group of assignments of error, asserts that, aside from all questions of power, the sale and assignments of patents to The Chemical Foundation "were illegal and void, as being in violation of Section 41 of the Criminal Code of the United States and to those principles of law and equity which forbid a fiduciary to make sale of trust property in his custody to himself or to a corporation of which he is the head." Section 41 of the Criminal Code reads as follows:

> "No *officer or agent* of any corporation, . . . or *person directly or indirectly interested* in the pecuniary profits or *contracts* of such corporation, . . . shall be employed or *shall act as officer or agent of the United States for the transaction of business with such* corporation. . . . Whoever shall violate the provisions of this section shall be fined not more than two thousand dollars and imprisoned not more than two years." (35 Stat. 1097.)

Although this is not a criminal action and the persons charged with violating this statute are not presently on trial, the Government, quite logically, finds it necessary to convict them (potentially at least) in order to sustain its contention that because of their crime the things they did are void.

This is a subject of extreme delicacy. No implications are involved for, quite the contrary, it is based on direct accusations. The Government charges that at the time the sale and assignments of the patents were made (with the exception of the last two) the forbidden relations of the parties conducting this transaction for the Government and for The Chemical

Foundation, the seller and purchaser, respectively, were as follows:

Francis P. Garvan was Alien Property Custodian and President of The Chemical Foundation; Douglas I. McKay was a representative of the Custodian and Vice-President of The Foundation; George J. Corbitt was a representative of the Custodian and Secretary and Treasurer of The Foundation; Messrs. Garvan, McKay and Corbitt, when holding the government positions above set forth also constituted the Board of Directors of The Foundation; Joseph H. Choate, Jr., when Chief of the Chemical Division of the Bureau of Investigations under the Alien Property Custodian, became general counsel of The Foundation; Ramsay Houget was patent attorney for the Custodian and also patent attorney for The Foundation; Otto P. Bannard, George D. Ingraham, Cleveland H. Dodge, Benjamin H. Griswold, Jr., and Ralph Stone, constituting the Advisory Sales Committee of the Custodian were also voting trustees of the common stock of The Foundation. The Government, charging these gentlemen with felony, continues:

> "The mere statement of these facts in the light of the broad and clear language of the statute should, we submit, be sufficient to dispose of this case; to establish the illegality of the transaction in question and the right of the Government to a decree."

We are of opinion that more than this is required, because the criminality of the parties named and the invalidity of the things they did depend first on the law and then on facts not found in the statement.

There is no doubt that Section 41 of the Criminal Code was in force at the time the transaction of sale was consummated, but there is doubt whether that section of the Criminal Code applies to a transaction of this kind. And this is because Section 7 c of the Trading with the Enemy Act expressly provides that,

> "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulations made by the President under the authority of this Act."

The learned trial judge held that by reason of this provision Section 41 of the Criminal Code is without relevancy to the acts done, and, hence, without relevancy to the issues in this suit. We avail ourselves of his discussion to show our grounds for arriving at the same conclusion. 294 Fed. 334, 335.

Aside from the law, we are of opinion that, on the facts, the transaction does not come within the offense defined by the criminal section, for these reasons:

In defining the offense the statute discloses that it has several elements; (a) that the offending person shall hold opposite and incompatible positions, in that (b) he shall be an officer or agent of the United States and (c) at the same time an officer or agent of a corporation engaged in a transaction with the United States, and (d) as such he shall be directly or indirectly interested in the pecuniary profits or contracts of such corporation. In searching the transaction for these essential ingredients of the offense, we repeat what we have already found, that the transaction was conceived by Mr. Palmer, that the terms of the sale were dictated by him and that the contract of sale (as distinguished from its performance) was completed by him when he was Alien Property Custodian. This finding may be challenged on the ground that at the time Mr. Palmer was Alien Property Custodian and the contract was made The Chemical Foundation had not been incorporated and therefore it was not in existence. That is true. But it is familiar business practice for persons to negotiate and fully complete contracts for the benefit of corporations intended to be organized and, of course, not in existence, and the courts sustain such contracts when later the corporations are organized and they assume the contracts. Commonwealth Steamship Co. v. American Shipbuilding Co., 197 Fed. 780, 797; *Id.* 215 Fed. 297; Irwin Glass Co. v. Buchanan, 289 Fed. 348, 350.

When Mr. Palmer made the contract of sale Mr. Garvan was an officer of the United States serving his government without compensation, being one of that class generally known as "dollar-a-year men." He was not then an officer of The Chemical Foundation. When, later, he became Alien Property Custodian and also President of The Chemical Foundation, there was present the element of two official positions, and in these positions it is true he carried out the contract previously made, but there was lacking the element of a direct or indirect interest on his part in the pecuniary profits or contracts of The Foundation, for he agreed to serve as its President without compensation and he has kept his agreement. He has not received from it any money for any purpose, even for his expenses. Moreover, the by-laws of the corporation provide that the President and Vice-President shall serve without pay. Mr. Garvan, together with Mr. McKay and Mr. Corbitt, while holding positions under the United States and at the same time acting as directors of The Foundation, were not holders of the stock of the corporation other than shares placed in their names to qualify them as directors. Therefore, with respect to these three gentlemen there is wholly lacking the element of a direct or indirect pecuniary interest in the profits or contracts of The Foundation.

Coming to Mr. Choate, we find him in the same position with Mr. Garvan in that he was a dollar-a-year man in the service of the Government at the time another (Mr. Palmer) made the contract.

Mr. Houget was an attorney and, like Mr. Choate and Mr. Garvan, was not an officer of The Foundation when the contract was made.

Judge Ingraham, Mr. Bannard, Mr. Dodge, Mr. Griswold and Mr. Stone were all dollar-a-year men when the contract was made by Mr. Palmer and also later when they became voting trustees of the corporation. No one of these gentlemen, and no one of the others just named, owned a single share of stock of The Foundation or was interested in the chemical industry. In consequence all lacked the element of pecuniary interest in the profits or contracts of the corporation. And finally, if the ten persons named violated the cited criminal statute, they did it with the full knowledge and complicity of the other participants —Mr. Palmer, Mr. Polk, Judge Gray and President Wilson. An examination of the evidence, however, makes it clear that at no time did any one of these gentlemen perform acts within the offense defined by the law. It follows that the transaction was not consummated in violation of this criminal statute and therefore it is not invalid on this ground.

The contention that the sale and assignments were illegal and void because in conflict with settled rules and principles of law and equity applicable to such transactions does not, in view of our construction of the Trading with the Enemy Act, call for separate discussion. We have considered it in our discussion of other subjects and shall touch upon it again in connection with another matter.

The Government, by other assignments of error, takes the position that the President did not give the Alien Property Custodian the requisite authority to make a private sale of the patents in question, and, lacking that authority, the sale is void.

On December 3, 1918, the President, on the eve of going abroad, made a number of executive orders addressed to the Alien Property Custodian, the Federal Trade Commission and Frank L. Polk in one instrument. The part pertinent to this inquiry is the following:

> "V. I hereby vest in Frank L. Polk all power and authority conferred upon the President by the provisions of Section 12 of the said 'Trading with the Enemy Act' as amended. . . .
>
> "Woodrow Wilson."

Under authority of this executive order Mr. Polk made the two orders purporting to authorize the Custodian to make a private sale of the patents to The Chemical Foundation on the terms named, stating the reasons therefor in the public interest. The Government says these orders are invalid because the President's order of December 3 is itself invalid. It challenges the validity of the President's order, first, because it is addressed to a person, not to an official; next, because it is a confidence reposed by him in a person, not in an official; and, lastly, because the President had no right to delegate the authority at all. True, no official designations were made. Yet there can be no doubt as to the identity of the men whose names appear in the order. One was Counsellor of the State Department, the other the President of the United States. To men in such stations, titles add nothing. The solitary name "A. Lincoln" comes to the eye of every student of Civil War literature, as do the names of officers whom that immortal Commander-in-Chief addressed quite informally on grave official matters. We apprehend no one ever questioned the official character of those communications. Moreover, in official intercourse between officers high in the Government service something very definite must appear to induce a finding that a power reposed by one in the other was personal in the sense of a confidence such as a testator reposes in a named testamentary trustee. There is nothing in the record which indicates that the President in making the executive order of December 3, 1918 reposed a confidence in Mr. Polk personally. Therefore, by every intendment of law it must be found that he contemplated the exercise of his authority by an officer engaged in the same public service.

At all events, the President, by executive order of February 13, 1920, quieted all doubts in this regard by confirming the actions of the Alien Property Custodian taken pursuant to Mr. Polk's orders, and by words sufficiently comprehensive to cover the whole transaction ratified the sale to The Chemical Foundation.

While on the subject of confirmation and ratification we shall briefly dispose of two contentions of The Foundation: One is that the transaction was also ratified by Congress. This is based on the inaction of Congress following its receipt, on March 1, 1919, of Mr. Palmer's report to the President showing the proposed sale to The Foundation and the reasons therefor. Congress cannot be estopped by its silence from exercising its constitutional power of legislation. Nor does the silence of Congress indicate its approval or disapproval of matters coming to its knowledge in the course of its deliberations. The only significance of submitting the report of the proposed transaction to Congress and through Congress to the public is that such an act is unusual for one engaged in a conspiracy against the Government.

The Foundation maintains that the transaction was also confirmed and ratified by the United States in the Treaty of Berlin. We find no substance in this contention. The most that the United States did by the Treaty of Berlin was to recognize, not ratify, the transaction. This is what happened: When the President went to

Paris he took with him a representative of the Custodian intimately informed on all the details of the patent transaction and retained him there throughout the negotiations in order to have the facts of the situation available. By the Treaty of Versailles it was provided that as between the allies and associated powers and their nationals on the one hand and Germany and her nationals on the other hand, all the exceptional war measures, or measures of transfer, or acts done or to be done in execution of such measures (named in certain paragraphs and with reservations not here pertinent) should be considered as final and binding on all persons, Treaty of Versailles, Part X, Art. 297 (d), and that the nationals of each government should look to their own government for the redress of whatever wrongs they had suffered. This covered what the United States had done in respect to German patents. By the Treaty of Berlin, Germany gave to the United States and the United States accepted the benefits of the Treaty of Versailles among which were the benefits of the patent transaction. This action by treaty between Germany and the United States, while significant, would of course not estop the United States, from asserting any rights it may have against its own citizess.

Returning to the President's order to Mr. Polk, the real point of this phase of the case, as we observe it, is whether the President under the Trading with the Enemy Act could validly delegate to another official the exercise of the discretionary powers conferred upon him by Section 12. Certainly he could not, unless the statute authorized him to do so. And this, we think, the statute did.

The war being on, Congress gave the President—the executive of the nation and the Commander-in-Chief of the Army and Navy—war powers and imposed upon him duties which were vast in number and amazing in magnitude. Conscious that no living man could perform all of them, it authorized him in large measure to delegate those powers and duties to his subordinates. In the field of war activities touching trading with the enemy, Congress by the Act in question imposed particularly heavy duties upon the President and conferred upon him many powers, but by Section 5 of the same Act it said:

> "The President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct."

Mr. Polk was an officer of the United States within the meaning of the Act; a constitutional officer appointed by the President and confirmed by the Senate. Burnap v. United States, 252 U. S. 512, 514-5. The authority thus conferred upon the President to exercise his powers through others was broad. By express terms it included the exercise of "any" power. One of the President's powers was that of determining when, under Section 12, seized enemy property should, in the public interest, be disposed of otherwise than at public sale. If the question of the President's exercise of this war power through another were raised without precedent for its solution we should not hesitate to affirm it, but now the solution of the question is made easier by decisions of the Supreme Court sustaining the delegation of powers and duties committed to the President by this Act which are similar in their quasi-judicial and discretionary character to the one in question. Stoehr v. Wallace, 255 U. S. 239, 244-5; Central Trust Co. v. Garvan, 254 U. S. 554; Commercial Trust Co. v. Miller, 262 U. S. 51, 53; Behn, Meyer & Co., Ltd. v. Miller, U. S. .

We cannot subscribe to the contention of the Government that the power of delegation conferred upon the President by Section 5 is limited to Section 7 (c) of the Act. We are of opinion that it extends as well to Section 12 as amended.

Having decided that the sale of patents was made under powers conferred by the statute with the authority of the President, and that to this point the transaction is valid, the next contention of the Government is that, even so, the sale is void and conferred no title upon the purchaser because irregular in particulars which we shall briefly note.

These alleged irregularities go mainly to the amount paid for the patents and the conduct of the parties in fixing the price. On these matters there is a mass of testimony whose applicability and probative force are in great confusion, due evidently to the different views of the opposing parties as to the powers and duties of the Custodian in disposing of the patents. The Government says:

> "The consideration of the question here presented is predicated upon the discussion of the provision and construction of the Trading with the Enemy Act,"

and, accordingly, the Government, pursuing its theory that the statute raised a pure trust and stopped there, bases its argument against the irregularities upon the principle that,

> "One fundamental essential of a sale by a trustee or any person occupying a confidential position is that it must be a fair sale in every sense of that word, and the property must be sold under such conditions as will enable it to bring its fair equivalent *in money.*"

On this contention the evidence shows one thing. But we have held that even though he had powers of a trustee, the Custodian, "in addition," was authorized by the statute to do what he did. In that situation the evidence shows another thing. In determining whether the price paid for the patents was grossly inadequate,—the main irregularity charged—it will, therefore, be necessary first to find in what way was it inadequate—inadequate in respect to what, or inadequate in respect to whom?

This will require us to view the evidence from three angles. If, in looking at it in one way, inadequacy of price means that the $250,000 paid was not enough in that it was less than the value of the patents in the hands of their previous German owners, we promptly say the price was grossly inadequate. But the patents passed from the German owners when they were seized, therefore we are not concerned in this case with their value to the Germans. Thus a large part of the testimony on the question of inadequacy of price must be set aside. On leaving the Germans the patents passed to the United States, becoming its property, either legal or equitable. Hence, we must determine their value to the United States, their new owner,—first, at public sale and then at private sale.

In making this inquiry we have constantly kept in mind that the Trading with the Enemy Act expressly directs that when seized property shall be sold at public sale it shall be sold "only to American citizens," and that the transaction of private sale here in question followed that statutory policy and likewise limited the sale to a corporate American citizen. So the value of the patents to the United States was their value in the American market. What was the character of that market at the time? It had but started in the organic chemical art and knew little of the subjects matter of the patents and less of their value. If the patents had been put up at public sale (without restrictions or conditions, and carrying full monopolies) with the single intention that they bring "their fair equivalent in money,"—this is the second angle,—anyone who contemplated making a bid would have been confronted by the problem normally incident to such matters and, in that particular case, by an abnormal problem as well. The normal problem would have been the worth of the patents.

The true value of a patent, and particularly of an unadjudicated patent, is, from its very nature, difficult, if not impossible, to determine. A patent is valid and therefore valuable only if it cover invention, and invention is involved only if the subject matter be new and useful within the meaning of the term "invention," which is impossible of definition. Again, the thing—mechanism, product, or process—may be "useful" in the sense of invention but not "usable" in a practical sense, and if not usable it therefore may not be valuable. With patents of this class the Patent Office is crowded. John Barker Waite in his treatise on Patent Law (107), from which we quote without intimating an opinion on his words, says:

> "There are, for instance, of record, in the neighborhood of 700 patents for various types of explosion turbines and parts thereof. Yet manufacturers are unanimous in saying that a usable, practicable, explosion turbine can not be built, so far as present knowledge of metals goes. It is evident therefore that these 700 patents are not for 'usable' devices; yet no one would deny that they are valid patents."

Moreover, some of the patents are product patents, that is, patents for products with nothing to show how to make them. More serious still,—such a sale being limited to American citizens,—the evidence discloses that American citizens had at that time very little of the "know how," and hence the process patents meant less to them than to the Germans. Here is the abnormal problem. Then again, German patents have not always enjoyed the best reputation, Alpha Portland Cement Co. v. Schratweiser, 221 Fed. 258, 259; Rohn, et al. v. Martin Dennis Co., 263 Fed. 388; Seward's Science and the Nation, p. 18, the disposition of German applicants for patents being to make meager and sometimes insufficient disclosures. For example, Dr. Holdermann, who was a member of the German firm which before their seizure owned the Haber nitrogen-fixation patents and who came from Germany to attend the trial of this case, testified that these process patents (fifty-eight in number) are worth $17,000,000, yet the learned trial judge found on evidence which we think abundantly sustains him that, because their disclosures are of doubtful adequacy even to Germans other than those specially trained under the patents, and because their disclosures are wholly inadequate to workers in the chemical art in America, these patents are without substantial affirmative value to American citizens.

This brief discussion of patent values may throw some light on the very real difficulty of fixing prices that might have been paid for the German patents by American bidders if they had been offered at public sale. Difficult as the problem is, we are, nevertheless, of opinion that $250,000, if paid for the outright, unlimited and unconditional purchase of these patents by American citizens at a supposed public sale would be inadequate, and we base our conclusion on the royalties which were being paid and received for some of them in 1919. But the $250,000 paid for the patents in the transaction in question was not paid for an unrestricted and unconditional purchase. Therefore the true inquiry—and this is the third angle—is whether the price was adequate under the terms of the actual sale. Put in another way, assuming that the legal or equitable title was in the United States, and assuming of course that the United States had a right to full return for its property, was the price adequate? That depends upon how the patents were sold and what the United States got in return. By authority of the Act, which means by authority of Congress, the patents were sold stripped of their characteristic of monopolies and sold on conditions that the United States should have free licenses under all of them and that its citizens should have non-exclusive licenses on equal terms. These, briefly, were the conditions. What did the United States receive? It received the $250,000; it also received licenses under the patents; and it obtained the creation of an industry which stands equipped, manned and maintained in full operation ready to be converted at once into a line of national defense in the event of war. There is no evidence of the value of the licenses which the Government received, nor, very naturally, is there evidence of the value of the national defense in chemical warfare placed in the Government's hands. Yet, we surmise, these things have values, and, taken together, we believe they are greater than the value of the patents at the time of their sale. We are of opinion that the price paid in the circumstances was not inadequate.

We shall not discuss the other alleged irregularities in the sale for, like that of inadequate price, they disappear from the case on our construction of the statute. For the same reason we shall not review the Government's contention that the transaction constituted in legal effect an unauthorized confiscation of property and a donation thereof to private industry in violation of the Constitution and laws of the United States.

The remaining contention of the Government is that the alleged sale and assignments of the patents are illegal and void in that they were induced, brought about, and accomplished in pursuance and as a result of an unlawful scheme or conspiracy. Early in the trial, the learned judge, realizing the gravity of the charges made and the issues involved in the case, lowered all barriers to the admission of evidence and announced that each party to the suit would be permitted, without regard to the usual rules of evidence, to take and put on record all evidence that, in the opinion of its counsel, would in any manner tend to prove or disprove any issue. Throughout the trial he adhered to this announcement except when on cross-examination the Government sought to bring out and uncover secret processes which certain licensees had, at great cost and labor, developed in attempting to practice the inventions of some of the patents. He ruled—rightly, we think—against such questions.

By this action of the judge in suspending the rules of evidence the way was made clear for the Government to prove the scheme or conspiracy it had charged in the bill. It had charged a conspiracy entered into by "persons, firms, corporations and trade associations and others associated with them in said industry . . . to induce and procure the seizure of enemy-owned patents," etc. Not being satisfied with its progress, the Government during the trial shifted its charge from the persons named in the pleading to the officers of the Government (not named in the pleading) who formulated the plan and carried out the sale. These are all the previously named officers and agents of the Government participating in the transaction except the President against whom the charge is withheld on the theory that he was either uninformed or misinformed as to what was going on.

The Government has insistently pressed its charge of conspiracy throughout the proceedings in the trial court and here on appeal. We have therefore kept the subject constantly before us in our study of the case and in our deliberations. It will be enough to say that we have found no evidence that sustains either the charge of conspiracy first made against representatives of the industry or the charge of conspiracy later made against officers and agents of the Government.

Resolving against the appellant the question of costs raised by its eighteenth assignment of error, the decree below is

Affirmed.

Buffington, *Circuit Judge.*

I concur in the conclusion reached by the court but, in one particular, on different grounds. The Act of Congress on which this sale rests provides, "That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement . . . unless the President stating the reasons therefor, in the public interest shall otherwise determine." In my judgment Congress by this twelfth section of the Act confided a personal trust and imposed a personal duty on the President. It was the President who was to determine and his determination involved his ascertainment of public necessity and his statement of the reasons thereto moving him. In my judgment this personal presidential trust could not be delegated and the delegation of it to Mr. Polk was not in accord with the statute, and therefore was without warrant of law. But the President's subsequent approval and ratification of what was done under the delegation constituted such personal action by the President as validates the sale. I therefore concur in the conclusion reached.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT.

October Term, 1924. No. 3160 (List No. 49).

United States,
Appellant,
v.
Chemical Foundation, Incorporated,
Appellee.

Appeal from the District Court of the United States, for the District of Delaware.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of Delaware, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed.

Philadelphia,
March 26, 1925.

VICTOR B. WOOLLEY,
Circuit Judge.

(Endorsements: 3160. Order Affirming Decree. Received and Filed March 26, 1925. Saunders Lewis, Jr., Clerk.)

MANDATE.

(Filed May 4, 1925.)

UNITED STATES OF AMERICA, *ss.:*

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Honorable the Judges of the District Court of the United States for the District of Delaware,

(Seal)

GREETING:

Whereas, lately in the District Court of the United States for the District of Delaware, before you or some of you, in a cause between United States of America (complainant below), Appellant, and The Chemical Foundation, Incorporated (defendant below), Appellee, a decree was entered in the said District Court on the eighteenth day of February, 1924, which decree is of record in the office of the Clerk of the said District Court, to which reference is hereby made, and the same is hereby expressly made a part hereof, as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Third Circuit by virtue of an appeal by the United States agreeably to the Act of Congress, in such case made and provided, more fully and at large appears.

And whereas, in the term of October, in the year of our Lord one thousand nine hundred and twenty-four, the said cause came on to be heard before the said United States Circuit Court of Appeals on the said transcript of record and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed.

Philadelphia,
March 26, 1925.

You, therefore, are hereby commanded that such execution and further proceeding be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS, THE HONORABLE WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, at Philadelphia, the fourth day of May, in the year of our Lord one thousand nine hundred and twenty-five (1925).

Costs of ....
Clerk, . . . $.............
Printing Record $.............
Attorney . . $.............
$.............

SAUNDERS LEWIS, JR.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

In the United States Circuit Court of Appeals, for the Third Circuit.

1925. No. 3160.

United States of America,
Complainant-Appellant,

v.

The Chemical Foundation, Incorporated,
Defendant-Appellee.

ASSIGNMENTS OF ERROR.

(Filed May 7, 1925.)

Now comes appellant, the United States of America, by its solicitors of record, and make and file this its assignments of error and upon which it relies as supporting its appeal from the judgment and decree entered on 26th day of March, 1925, in the Circuit Court of Appeals for the Third Circuit of the United States, and under which assignments of error said appellant seeks the reversal of the decision, judgment, and decree of said Circuit Court of Appeals:

I.

The Court erred in the construction and in sustaining the District Court's error in the construction of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendments thereto, mentioned and described in the record in this cause and in the opinion of the District Court, and in the opinion of the Court herein, among other things, in holding that said act and amendments thereto authorized the confiscation in whole or in part of the property mentioned and described in the record in this cause; that said act and amendments thereto authorized the sale or disposition of said property for less than its fair value; and authorized the Alien Property Custodian or other officers of the United States to regard the public interest or benefit as consideration in whole or in part for the sale or disposition of said property; that said act and amendments thereto conferred upon the Alien Property Custodian the powers of an absolute owner in and with respect to said property and the sale and disposition thereof; and that said act and amendments thereto authorized the sale and assignments of the properties mentioned and described in the record in this cause as, in the manner and for the consideration therein set forth; and in not holding that said act and amendments thereto required the Alien Property Custodian as a trustee or fiduciary having control of said properties in making sale thereof to make a fair sale for an adequate and proper consideration, with only the rights and powers and subject to the duties of a trustee with respect thereto; and that said alleged sales and assignments as shown in the record, were unauthorized by said act and amendments thereto, were in violation thereof, and were illegal, null and void and conferred no rights upon the appellee.

II.

The Court erred in holding and in sustaining the District Court's error in holding that said "Trading with the Enemy Act" and amendments thereto, as construed and interpreted by the Court, were valid and constitutional, and in not holding that said act and amendments thereto as so construed were in violation of the Constitution of the United States and amendments thereto, and were therefore unconstitutional, null and void, in that, among other things, as so construed they constituted an invalid effort to delegate the legislative functions and powers of Congress; undertook to confer upon executive officers the power to confiscate property; undertook to authorize the confiscation of private property of American citizens, neutrals and other persons not enemies or allies of enemies within the meaning of said act; undertook to authorize executive officers of the Government to grant bounties to private industry; and were so construed otherwise in violation of the Constitution of the United States and amendments thereto.

III.

The Court erred in holding and in sustaining the District Court's error in holding that the alleged sales and assignments made by Francis P. Garvan to the appellee, the Chemical Foundation, Incorporated, were not in violation of the statutes and laws of the United States, and especially of Section 41 of the Criminal Code of the United States and in holding that Section 7, Clause (c) of the "Trading with the Enemy Act," as amended, made said statutes and laws including Section 41 of said Criminal Code inapplicable to this case; and in not holding that said alleged sales and assignments by said Francis P. Garvan to said appellee were in violation of said statutes and laws of the United States, and especially in violation of said Section 41 of said Criminal Code, and were null, void and of no effect, and that appellant was entitled to the relief prayed in the bill.

IV.

The Court erred in holding that one of the elements essential to a violation of Section 41 of the Criminal Code is that the offending person must be directly or indirectly interested in the pecuniary profits or contracts of a corporation with which such offending person as an officer or agent of the United States transacts business, and in not holding that the only elements essential to a violation of said Section 41 are that the offending person shall be an officer or agent of the United States and, at the same time, an officer or agent of a corporation engaged in a transaction with the United States, and that the inquiry as to whether or not an officer of the government so transacting business with such corporation of which he is also an officer or agent has a pecuniary interest in the profits or contracts of such corporation is immaterial, and unessential to establish a violation.

V.

The Court erred in holding and in sustaining the District Court's error in holding that private sales and assignments of the properties mentioned and described in the record in this cause were lawfully authorized, and among other things in holding that the power to determine upon a private sale of alien property vested in the President by Section 12 of said "Trading with the Enemy Act," as amended, could be delegated to, vested in, or exercised by any other officer or person; that Frank L. Polk was lawfully authorized to exercise said powers; that the orders of said Frank L. Polk in this regard were legal or valid, or conferred any power to make private sales of said properties; or that the same were ever ratified by the President; and in not holding that the powers vested in the President by said Section 12 of said act, as amended, could only be exercised by him personally; that the authority alleged to have been vested in Frank L. Polk by the order of December 3, 1918, was sought to have been conferred upon him personally and not as an officer of the United

States, and that said alleged authority was for these and other reasons invalid; that said Frank L. Polk was without lawful authority to determine upon or authorize private sales of said properties; that said Frank L. Polk entered said orders under a misapprehension of the facts; that the orders of said Frank L. Polk of February 26, 1919, and April 5, 1919, were unlawful, null and void; that the same were never ratified by the President; that there was no valid or lawful authority to make private sales and assignments of said properties, and that the pretended sales and assignments of said properties as set forth in the record were unauthorized, illegal, null and void.

VI.

The Court erred in holding and in sustaining the District Court's error in holding that the President stating his reasons therefor lawfully authorized the Alien Property Custodian to sell at private sale to the appellee the properties involved in this suit upon such terms and conditions as the said Alien Property Custodian might see fit, and in holding that any lawful authority was given or had for said alleged sales or assignments; and in holding that the alleged authority to make said alleged private sales, or said alleged sales or assignments or any of them, were ever ratified by the President.

VII.

The Court erred in holding and in sustaining the District Court's error in holding that said alleged sales and assignments to appellee were lawful and valid; and in not holding that the same were unlawful, null and void, for the reasons among others that the same were not lawfully authorized; that they were not made in accordance with the alleged orders of Frank

L. Polk; that no effort was made to ascertain or to obtain the fair value of said properties; that many separate properties held in separate trusts were attempted to be sold in bulk and without any apportionment of the purchase price, and under such conditions as made any equitable apportionment thereof impossible; that there was a combination of all prospective bidders therefor and prospective purchasers thereof; that said properties were attempted to be sold in a manner and under such conditions as destroyed or impaired the value thereof; that the relations of the parties attempting to sell and purchase said properties to each other and to the subject matter were such as to make said alleged sales illegal; that the price was arbitrarily arrived at, and was grossly inadequate; that said alleged sales were not fair sales of said property for a just and adequate consideration, and for other reasons apparent upon the face of the record in this cause.

VIII.

The Court erred in holding and in sustaining the District Court's error in holding that the properties sought to be sold or assigned to appellee as set forth in the record were without substantial value, and that the same were sold for a valid and adequate consideration; and in not holding that the said properties were of large value individually and in the aggregate, and that the alleged sales and assignments thereof were for invalid and inadequate considerations and were illegal, null and void.

IX.

The Court erred in holding and in sustaining the District Court's error in holding that the alleged sales and assignments of properties to appellee as set forth in said record, did not constitute an unlawful confiscation of property, and the unlawful granting of bounties to private industry; and in not holding that the same did constitute an unlawful confiscation of property and the unlawful granting of bounties to private industry, and were therefore illegal, null and void.

X.

The Court erred in holding and in sustaining the District Court's error in holding that the alleged sales and assignments set forth in the record were not induced by and made in pursuance and as a part of an unlawful combination, scheme or conspiracy, to do or cause to be done a lawful act in an unlawful manner and for an unlawful purpose, and to unlawfully restrain or monopolize the foreign and interstate commerce of the United States, in violation of the statutes and laws of the United States; and in not holding that said alleged sales and assignments were induced by and made in pursuance and as a part of such unlawful combination, scheme and conspiracy, and were illegal, null and void as against the United States.

XI.

The Court erred in holding and in sustainnig the District Court's error in holding that the various properties sought to have been sold and assigned by the Alien Property Custodian to appellee as shown by the record were at the beginning of the war, or at the time of the seizure thereof, all owned by subjects of Germany.

XII.

The Court erred in holding and in sustaining the District Court's error in holding that the properties mentioned and described in the record or any of them were sold and assigned to the appellee to be held by it for the public benefit, or to be held upon the terms and conditions set forth in the charter of the appellee; and in not holding that the same were undertaken and intended to be sold and assigned to appellee without any reservation or limitation whatsoever, and that such alleged sales and assignments were illegal, null and void.

XIII.

The Court erred in holding and in sustaining the District Court's error in holding that the Haber Process patents were and are without substantial affirmative value to American citizens; and in sustaining the rulings of the District Court upon the evidence as to said Haber Process patents adverse to appellant as shown upon the record in this cause, and in sustaining the District Court's error in overruling the motion of appellant for subpœna *duces tecum* to be directed to the officers of the Atmospheric Nitrogen Corporation requiring them to produce their records and to appear and give evidence as to the use of said Haber Process patents by said corporation and the value thereof, reference being hereby made to the record in this cause for the terms of said motion and the ruling of the District Court thereon.

XIV.

The Court erred in sustaining the District Court's error in sustaining the objections of appellee to questions propounded to the witnesses Volwiler and Bolton as to processes used by the Abbott Laboratories and the E. I. du Pont de Nemours in the production of certain manufactured products produced and sold under licenses issued under certain patents involved in this suit, described in said questions of evidence and in sustaining the District Court's error in refusing to permit appellant to inquire into said processes and the use thereof, upon the ground that it would require the disclosure of trade secrets and in thus denying the appellant the right to prove the use of said patents and processes and the value thereof.

XV.

The Court erred in sustaining the error of the District Court in each and every ruling of said District Court adverse to the appellant, upon the admission and exclusion of evidence and on motions for the production of books, records and testimony during the trial of the cause, which said motions, questions and rulings are fully set out in the record in this cause, and are hereby referred to as if herein copied at length.

XVI.

The Court erred in sustaining the District Court's error in each and every conclusion of law of said District Court as set out in its decision and rulings adverse to appellant during the trial in this cause, appearing at length upon the record; and in each and every conclusion of law contained in the opinion of said District Court in this cause made a part of the record therein.

XVII.

The Court erred in each and every of its conclusions of law as set out in its decision and contained in its opinion in this cause made a part of the record herein.

XVIII.

The Court erred in sustaining the error of the District Court in ordering and in itself ordering the taxation of the costs of the cause against the United States of America.

XIX.

The Court erred in sustaining the District Court's error in dismissing the bill of complaint herein and in denying the appellant the relief prayed for in each and all of the prayers of said bill.

UNITED STATES OF AMERICA,

By JOHN G. SARGENT,
Attorney General of the United States.

JAMES M. BECK,
Solicitor General of the United States.

HERMAN J. GALLOWAY,
Assistant Attorney General of the United States.

HENRY W. ANDERSON,
Special Assistant to the Attorney General.

Its Solicitors of Record.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT.

1925. No. 3160.

United States of America,
Complainant-Appellant,
v.
The Chemical Foundation, Incorporated,
Defendant-Appellee.

PETITION FOR APPEAL.

(Filed May 7, 1925.)

The above-named appellant, conceiving itself aggrieved, by the decree made and entered herein on the twenty-sixth day of March, 1925, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith and it prays that this appeal may be allowed as the case involves more than $1000, besides costs and there is a right to an appeal under Section 241, Judicial Code, and that a transcript of the record, proceedings and papers upon which such order was made, duly authenticated, may be sent to the Supreme Court of the United States. Said appellant further prays the Court that since the entire evidence in this cause taken was by order of the District Court of the United States for the District of Delaware, filed July 23, 1923, printed at great expense, and since the District Court of the United States for the District of Delaware, in its order filed February 26, 1924, allowing an appeal to this court, ordered that appellant be relieved of the requirement of reducing the evidence in this cause to narrative form and ordered that the entire evidence that had theretofore been printed in accordance with the order of said District Court be included and inserted in the transcript of the record forwarded to this court, and since sufficient copies of said printed evidence are now available for the purpose of this appeal that the parties hereto be relieved of the requirement of reducing the evidence herein to a narrative form, and that this court enter an order requiring the entire evidence, so printed as aforesaid, to be inserted and included in the transcript of the record to be forwarded to said Supreme Court of the United States.

UNITED STATES OF AMERICA,

By JOHN G. SARGENT,
Attorney General of the United States.

JAMES M. BECK,
Solicitor General of the United States.

HERMAN J. GALLOWAY,
Assistant Attorney General of the United States.

HENRY W. ANDERSON,
Special Assistant to the Attorney General
Its Solicitors of Record.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT.

1925. No. 3160.

United States of America,
Complainant-Appellant,

v.

The Chemical Foundation, Incorporated,
Defendant-Appellee.

ORDER ALLOWING APPEAL.

(Filed May 12, 1925.)

The appellant herein having this day filed in open court a petition for appeal to the Supreme Court of the United States, and its assignment of errors, and further praying that the entire evidence in this cause, which has heretofore been printed in accordance with an order of the District Court of the United States for the District of Delaware, and which was, by order of the District Court of the United States for the District of Delaware, filed February 26, 1924, included and inserted in the transcript of record forwarded to this court, and further praying that said appellant be relieved of the requirement of reducing the evidence herein to a narrative form, and the Court having considered the same and having heard counsel thereon, it is this eleventh day of May, 1925.

ORDERED, that appellant's petition for appeal be and the same is hereby allowed and that appellant herein be relieved of the requirement of reducing the evidence herein to a narrative form and that the entire evidence in this cause, which has heretofore been printed in accordance with the order of the said District Court of the United States for the District of Delaware and which was forwarded to this court be included and inserted in the transcript of the record to be forwarded to the Supreme Court of the United States.

JOSEPH BUFFINGTON,
United States Circuit Judge.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT.

1925. No. 3160.

United States of America,
Complainant-Appellant,

v.

The Chemical Foundation, Incorporated,
Defendant-Appellee.

CITATION.

(Seal)

THE UNITED STATES OF AMERICA,
To the Chemical Foundation, Incorporated:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, District of Columbia, within thirty days pursuant to an appeal filed in the clerk's office of the Circuit Court of Appeals of the United

States for the Third Circuit, wherein the United States is appellant and the Chemical Foundation, Incorporated, is appellee, to show cause, if any there be, why the judgment and decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Joseph Buffington, United States Circuit Judge, this eleventh day of May, A. D., one thousand nine hundred and twenty-five.

JOSEPH BUFFINGTON,
United States Circuit Judge.

Service accepted for the Chemical Foundation, Incorporated, appellee, this day of , 1925.

....
Solicitors for the Defendant-Appellee.

CLERK'S CERTIFICATE.

United States of America,
Eastern District of Pennsylvania, } *Sct.:*
Third Judicial Circuit,

I, Saunders Lewis, Jr., clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in this court in the case of: United States, appellant, v. Chemical Foundation, Incorporated, appellee, No. 3160, on file, and now remaining among the records of the said court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this day of May, in the year of our Lord one thousand nine hundred and twenty-five and of the Independence of the United States the one hundred and forty-ninth.

(Seal)

SAUNDERS LEWIS, Jr,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

TRANSCRIPT

OF

RECORD

272 US 1 U.S. SUP. CT. RECORDS, BRIEFS 1926 FO
UNITED STATES V. CHEMICAL FOUNDATION, INC. NO. 127

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CARD 55

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
11	Executive Order, dated December 3, 1918, appointing Frank L. Polk to exercise the powers of the President, (Same as Exhibit No. 1 to Answer).	II	908	Rec. I	547
12	Excerpt from report of A. Mitchell Palmer as A. P. C., dated Feb. 22, 1919, (Same as Exhibit No. 2 to Answer)	II	910	IV	2125
13	Letter of A. Mitchell Palmer to the President, dated February 22, 1919, transmitting report	II	911	I IV	58 2029
14	Letter of the President to the Senate and House of Representatives, dated Feb. 28, 1919, transmitting report by A. Mitchell Palmer, A. P. C.	II	911	I	59
15	Constitution of American Dyes Institute	II	927	I	60
15-A	By-laws of American Dyes Institute ...	IV	2312	I	65
16	Excerpts from address of Francis P. Garvan, A. P. C., before the National Cotton Manufacturers Association (Same as Exhibit No. 6 to Answer)	II	929	Rec. I	560
17	Prospectus of The Chemical Foundation, Inc. (Same as Exhibit No. 7 to Answer)	II	929	Rec. I	577
18	Letter of A. M. Patterson to Francis P. Garvan, dated June 14, 1918, introducing M. R. Poucher	II	933	I	68
19	Letter of A. M. Patterson to Francis P. Garvan, dated June 14, 1918	II	934	I	69
20	Letter of M. R. Poucher to Francis P. Garvan, A. P. C., dated June 26, 1918	II	936	I	71
21	Letter of C. Cyril Bennett, Secretary, American Dyestuff Manufacturers Assn., to H. E. Danner, Secretary, National Association of Cotton Finishers, dated November 18, 1918	II	937	I	72

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
	Synopsis of plan proposed by American Dyestuff Manufacturers Assn., as a method of protecting the industry, &c., (enclosed with Plaintiff's Exhibit No. 21)	II	937	1	73
22	Letter of H. E. Danner, Secretary, to C. Cyril Bennett, Secretary, American Dyestuff Manufacturers Assn., dated November 20, 1918	II	940	I	75
23	Letter of H. E. Danner, Secretary, to Frank Hemmingway, Member of Executive Committee, American Dyes Institute, dated August 1, 1918	II	942	I	76
24	Letter of H. E. Danner, Secretary, to M. R. Poucher, member of Executive Committee, American Dyes Institute, dated August 1, 1918	II	943	1	78
25	Letter of M. R. Poucher, Director Dyestuffs Sales Dept., E. I. duPont de Nemours & Co., to H. E. Danner, Secretary, American Dyes Institute, dated August 6, 1918	II	943	I	80
26	Minutes of meeting of Executive Committee of American Dyes Institute, January 22, 1919	II	944	I	81
27	Letter of H. E. Danner, Secretary, to W. H. Cottingham, President, American Dyes Institute, dated January 25, 1919	II	944	I	84
28	Minutes of conference of dye manufacturers had at office of A. P. C., January 27, 1919	II	945	I	85
29	Minutes of meeting of Executive Committee, American Dyes Institute, January 31, 1919	II	1013	I	110
30	Letter of American Dyes Institute to A. Mitchell Palmer, A. P. C., dated February 7, 1919	II	1016	I	118

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31	Letter of H. E. Danner, Secretary, to A. Mitchell Palmer, A. P. C., dated February 8, 1919	II	1017	I	122
32	Letter of H. E. Danner, Secretary, to M. R. Poucher, E. I. duPont de Nemours & Co., dated February 8, 1919	II	1017	I	122
33	Minutes of meeting of Executive Committee, American Dyes Institute, February 7, 1919	II	1019	I	123
34	Letter of M. R. Poucher to C. C. Bennett, Secretary, American Dyes Institute, dated February 21, 1919	II	1023	I	135
35	Office memorandum, A. P. C., from Mr. Hoguet to Mr. Palmer, dated January 28, 1919	II	1030	I	136
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37	Letter of H. E. Danner, Treasurer, to National Aniline & Chemical Co., dated February 11, 1919	II	1032	I	138
38	Letter of H. E. Danner, Treasurer, to M. R. Poucher, E. I. duPont de Nemours & Co., dated February 11, 1919	II	1032	I	139
39	Letter, M. R. Poucher, Director, to H. E. Danner, Secretary, American Dyes Institute, dated February 12, 1919	II	1032	I	140
40	Letter of H. E. Danner, Secretary, to Will T. Gordon, dated February 19, 1919	II	1032	I	140
41	Letter of M. R. Poucher, Director, to H. E. Danner, Secretary, American Dyes Institute, dated February 21, 1919	II	1033	I	141
42	Letter of H. E. Danner, Secretary, to M. R. Poucher, E. I. duPont de Nemours & Co., dated February 24, 1919	II	1033	I	142

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45	Letter of H. E. Danner, Treasurer, to Will T. Gordon, dated March 14, 1919	II	1034	I	144
46	Letter of E. I. duPont de Nemours & Co. to H. E. Danner, Secretary, American Dyes Institute, dated September 24, 1919	II	1035	I	145
47	Letter of H. E. Danner, Treasurer, to E. I. duPont de Nemours & Co., dated September 24, 1919	II	1035	I	146
48	Letter of F. E. Barrows to American Dyes Institute, dated February 28, 1919	II	1036	I	147
49	Letter of Ramsay Hoguet to A. Mitchell Palmer, A. P. C., dated January 15, 1919	II	1037	I	149
50	Letter of Ramsay Hoguet to Mansfield Ferry, office A. P. C., dated January 17, 1919	II	1037	I	156
51	Letter of J. H. Choate, Jr., to M. R. Poucher, E. I. duPont de Nemours & Co., dated January 17, 1919	II	1037	I	156
52	Letter of Will T. Gordon to Ramsay Hoguet, dated July 9, 1919	II	1038	I	157
53	Minutes of meeting of American Dyes Institute, December 9, 1918	II	1038	I	158
54	Articles of Incorporation and By-Laws of defendant (Same as Exhibit "B" to Bill of Complaint)	II	1040	Rec. I	90
55	List of subscribers to The Chemical Foundation, Inc. (Same as Exhibit "C" to Bill of Complaint)	II	1041	Rec. I	107

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56	Minutes of first meeting of incorporators of defendant	II	1041	I	173
57	Minutes of first meeting of directors of defendant	II	1044	I	178
58	Minutes of meeting of Board of Directors of defendant, April 4, 1919	II	1045	I	187
58-A	Prospectus issued by defendant	IV	2279	I	191
58-B	Blank form of subscription to stock of defendant	IV	2279	I	197
58-C	Article entitled "The Formation of The Chemical Foundation, Inc."	IV	2279	I	199
59	Minutes of meeting of Board of Directors of defendant	II	1045	I	203
60	List of preferred and common stockholders of defendant (Same as Exhibit "D" to Bill of Complaint)	II	1046	Rec. I	108
61	Voting Trust Agreement as to stock of defendant (Same as Exhibit "F" to Bill of Complaint)	II	1046	Rec. I	110
62	Minutes of meeting of Board of Directors of defendant, November 20, 1919	II	1046	I	204
63	Minutes of Stockholders' Meeting of defendant, December 2, 1919	II	1046	I	207
64	Constitution and By-Laws of defendant (Same as Exhibit "F" to Bill of Complaint)	II	1047	Rec. I	118
65	Report of W. T. Gordon for Bureau of Investigation, A. P. C., to American Dyes Institute, dated February 28, 1919	II	1077	I	240
66	Letter of M. R. Poucher, Chairman, Committee, American Dyes Institute, to Will T. Gordon, dated February 6, 1919	II	1082	I	246
67	Letter of Will T. Gordon for Bureau of Investigation, to American Dyes Institute, dated February 10, 1919	II	1081	I	247

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68	Letter of Ramsay Hoguet, Bureau of Investigation, to Will T. Gordon, dated February 16, 1919	II	1102	I	248
69	Letter of H. E. Danner, Secretary, American Dyes Institute, to Will T. Gordon, dated February 19, 1919	II	1102	I	249
70	Letter of Ramsay Hoguet to Will T. Gordon, dated February 25, 1919 ..	II	1104	I	250
70-A	Letter of W. H. Swenarton, Captain, Ordnance Dept., U. S. A., to Ramsay Hoguet, A. P. C., dated February 19, 1919 (enclosed with Exhibit No. 70)	II	1104	I	251
71	Letter of Ramsay Hoguet to Will T. Gordon, dated February 26, 1919	II	1116	I	253
72	Letter of F. E. Barrows to Will T. Gordon, dated March 4, 1919	II	1116	I	254
73	Letter of F. E. Barrows to Will T. Gordon, dated March 4, 1919	II	1117	I	255
74	Letter of Will T. Gordon to F. E. Barrows, dated March 6, 1919	II	1118	I	257
75	Letter of Ramsay Hoguet to Will T. Gordon, dated March 7, 1919	II	1118	I	258
76	Letter of F. E. Barrows to Will T. Gordon, dated March 10, 1919	II	1118	I	258
77	Letter of Will T. Gordon to Ramsay Hoguet, dated March 11, 1919	II	1119	I	259
78	Letter of Will T. Gordon to H. E. Danner, Treasurer, American Dyes Institute, dated March 13, 1919	II	1119	I	260
79	Letter of Ramsay Hoguet to Will T. Gordon, dated March 15, 1919	II	1119	I	261
80	Letter of Will T. Gordon to Ramsay Hoguet, dated March 15, 1919	II	1120	I	263
81	Letter of Ramsay Hoguet to Will T. Gordon, dated March 29, 1919	II	1120	I	264
82	Letter of Will T. Gordon to Ramsay Hoguet, dated March 28, 1919	II	1121	I	264

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83	Blank form of subscription to stock of defendant	II	1154	I	266
84	Letter of Thomas Ewing, Chairman, Munitions Patents Board, to Ramsay Hoguet, dated November 10, 1918	II	1156	I	268
85	Memorandum of conference between Thomas Ewing, Chairman of Munitions Patents Board, Major Holcombe of Ordnance Dept., and Ramsay Hoguet, Patent Counsel to A. P. C., April 22, 1919	II	1156	I	269
86	Letter of C. C. Williams, Major Gen., Chief of Ordnance, U. S. A., to Asst. Secretary of War, dated February 7, 1919	II	1158	I	272
87	Letter of A. M. Holcombe, Major, Ordnance Dept., U. S. A., to A. P. C., dated February 11, 1919	II	1167	I	274
88	Memorandum from A. P. C. to Mr. Hoguet, dated February 12, 1919	II	1170	I	276
89	Memorandum of A. M. Holcombe, Major, Ordnance Dept., U. S. A., of conference with A. Mitchell Palmer, A. P. C., February 12, 1919	II	1170	I	277
90	Letter of A. Mitchell Palmer to Frank L. Polk, Acting Secretary of State, dated February 26, 1919	II	1188	I	279
91	Order of Frank L. Polk, dated February 26, 1919 (Same as Exhibit No. 3 to Answer)	II	1191	Rec. I	551
92	Letter of Francis P. Garvan to Frank L. Polk, Acting Secretary of State, dated March 31, 1919	II	1193	I	280
93	Letter of Ramsay Hoguet to Mansfield Ferry, office A. P. C., dated April 1, 1919	II	1193	I	281
94	Order of Frank L. Polk, dated April 5, 1919 (Same as Exhibit No. 4 to Answer)	II	1194	Rec. I	554

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96	Page of Individual Trust Ledger, A. P. C., account of Abraham Kranstein, Trust No. 36501	II	1276	I	284
97	Memorandum from Asst. Secretary of War to Chief of Ordnance, dated February 12, 1919	II	1288	I	285
98	Letter of Ramsay Hoguet to A. Mitchell Palmer, A. P. C., dated February 16, 1919	II	1288	I	286
99	Letter of Capt. W. H. Swenarton to Major A. M. Holcombe, dated February 19, 1919	II	1288	I	288
100	Letter of S. Whitaker, Asst. General Counsel, to Ramsay Hoguet, dated March 7, 1919	II	1289	I	292
101	Memorandum of Mr. Whitaker to Mr. Garvan, dated March 7, 1919	II	1289	I	292
102	Letter of B. Crowell, Acting Secretary of War, to the President, dated March 13, 1919	II	1289	I	293
103	Memorandum for the Acting Chief of Ordnance, from B. Crowell, Asst. Secretary of War, dated March 11, 1919	II	1289	I	294
104	Memorandum for Secretary of War, dated March 13, 1919, approved by the President	II	1289	I	295
105	Letter of Ramsay Hoguet to G. H. Dorr, Asst. Director of Munitions, dated April 4, 1919	II	1291	I	296
106	Letter of Rudolph Forster to the Attorney General, dated June 2, 1923	II	1292	I	297

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
107	Memorandum for Patent Section, Purchase Branch, P. S. & F. Division, War Dept., by H. W. Dix, Captain, Ordnance Dept., U. S. A.	II	1293	I	298
108	Memorandum from Major A. M. Holcombe, for Mr. Dorr, dated April 14, 1919	II	1293	I	300
109	Letter from Captain W. H. Swenarton to Lt. S. H. Graves, Administration Division, Patent Sec., dated April 16, 1919	II	1313	I	302
110	Letter of A. G. Glasgow to G. H. Dorr, Asst. Director of Munitions, dated April 21, 1919	II	1316	I	305
111	Memorandum from Major A. M. Holcombe, to G. R. Dorr, dated April 25, 1919	II	1316	I	306
112	Letter from Douglas I. McKay, Vice-President of defendant, to Chief of Ordnance, dated August 19, 1919 ...	II	1317	I	307
113	Letter of W. H. Swenarton, Major, U. S. A., to Major D. P. Gaillard, Nitrate Division, dated September 4, 1919	II	1319	I	309
114	Letter of Geo. J. Roberts, Special Assistant to Chief of Ordnance, to Capt. S. H. Graves, Chief Patent Branch, Advisory Section, dated September 9, 1919	II	1327	I	314
115	Minutes of meeting of Advisory Committee on Sales of A. P. C., February 14, 1919	II	1327	I	316
116	Assignment from Francis P. Garvan as A. P. C. to defendant, dated April 10, 1919 (Same as Exhibit "H-1" to Bill of Complaint)	II	1330	Rec. I	404
116-A	Schedule 1 annexed to Bill of Complaint	II	1331	Rec. I	124

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
117	Assignment from Francis P. Garvan as A. P. C., to defendant, dated May 2, 1919 (Same as Exhibit "H-2" to Bill of Complaint)	II	1330	Rec. I	410
117-A	Schedule 2 annexed to Bill of Complaint	II	1331	Rec. I	292
118	Assignment from Francis P. Garvan as A. P. C., to defendant, dated May 6, 1919 (Same as Exhibit "H-3" to Bill of Complaint)	II	1330	Rec. I	415
118-A	Schedule 3 annexed to Bill of Complaint	II	1331	Rec. I	294
119	Assignment from Francis P. Garvan as A. P. C., to defendant, dated May 15, 1919 (Same as Exhibit "H-4" to Bill of Complaint)	II	1330	Rec. I	418
119-A	Schedule 4 annexed to Bill of Complaint	II	1331	Rec. I	294
120	Assignment from Francis P. Garvan as A. P. C., to defendant, dated June 17, 1919 (Same as Exhibit "H-5" to Bill of Complaint)	II	1330	Rec. I	421
120-A	Schedule 5 annexed to Bill of Complaint	II	1331	Rec. I	295
121	Assignment from Francis P. Garvan as A. P. C., to defendant, dated June 21, 1919 (Same as Exhibit "H-6" to Bill of Complaint)	II	1330	Rec. I	424
121-A	Schedule 6 annexed to Bill of Complaint	II	1331	Rec. I	297
122	Assignment from Francis P. Garvan as A. P. C., to defendant, dated October 17, 1919 (Same as Exhibit "H-7" to Bill of Complaint)	II	1330	Rec. 1	429
122-A	Schedule 7 annexed to Bill of Complaint	II	1331	Rec. 1	301

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
123	Assignment from Francis P. Garvan as A. P. C., to defendant, dated December 9, 1919 (Same as Exhibit "H-8" to Bill of Complaint)	II	1330	Rec. I	432
123-A	Schedule 8 annexed to Bill of Complaint	II	1331	Rec. I	302
124	Assignment from Francis P. Garvan as A. P. C., to defendant, dated February 26, 1920 (Same as Exhibit "H-9" to Bill of Complaint)	II	1330	Rec. I	435
124-A	Schedule 9 annexed to Bill of Complaint	II	1331	Rec. I	303
125	Assignment from Francis P. Garvan as A. P. C., to defendant, dated February 26, 1920 (Same as Exhibit "H-10" to Bill of Complaint)	II	1330	Rec. I	438
125-A	Schedule 10 annexed to Bill of Complaint	II	1331	Rec. I	325
126	Assignment from Francis P. Garvan as A. P. C., to defendant, dated March 9, 1920 (Same as Exhibit "H-11" to Bill of Complaint)	II	1330	Rec. I	441
126-A	Schedule 11 annexed to Bill of Complaint	II	1331	Rec. I	328
127	Assignment from Francis P. Garvan as A. P. C., to defendant, dated May 4, 1920 (Same as Exhibit "H-12" to Bill of Complaint)	II	1330	Rec. I	444
127-A	Schedule 12 annexed to Bill of Complaint	II	1331	Rec. I	331
128	Assignment from Francis P. Garvan as A. P. C., to defendant, dated May 15, 1920 (Same as Exhibit "H-13" to Bill of Complaint)	II	1330	Rec. I	447
128-A	Schedule 13 annexed to Bill of Complaint	II	1331	Rec. I	333

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
129	Assignment from Francis P. Garvan as A. P. C., to defendant, dated July 20, 1920 (Same as Exhibit "H-14" to Bill of Complaint)	II	1330	Rec. I	451
129-A	Schedule 14 annexed to Bill of Complaint	II	1331	Rec. I	344
130	Assignment from Francis P. Garvan as A. P. C., to defendant, dated December 21, 1920 (Same as Exhibit "H-15" to Bill of Complaint)	II	1330	Rec. I	453
130-A	Schedule 15 annexed to Bill of Complaint	II	1331	Rec. I	345
131	Assignment from Francis P. Garvan as A. P. C., to defendant, dated December 21, 1920 (Same as Exhibit "H-16" to Bill of Complaint	II	1330	Rec. I	457
131-A	Schedule 16 annexed to Bill of Complaint	II	1331	Rec. I	356
132	Assignment from Francis P. Garvan as A. P. C., to defendant, dated December 21, 1920 (Same as Exhibit "H-17" to Bill of Complaint)	II	1330	Rec. I	460
132-A	Schedule 17 annexed to Bill of Complaint	II	1331	Rec. I	357
133	Assignment from Francis P. Garvan as A. P. C., to defendant, dated December 21, 1920 (Same as Exhibit "H-18" to Bill of Complaint)	II	1330	Rec. I	464
133-A	Schedule 18 annexed to Bill of Complaint	II	1331	Rec. I	379
134	Assignment from Francis P. Garvan as A. P. C., to defendant, dated February 19, 1921 (Same as Exhibit "H-19" to Bill of Complaint)	II	1330	Rec. I	467
134-A	Schedule 19 annexed to Bill of Complaint	II	1331	Rec. I	382
135	Stipulation as to, corrections in Exhibit "G" to Bill of Complaint	II	1332	I	330

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
136	Corrections to Exhibit "G" to Bill of Complaint (These corrections embodied in Exhibit "G" as printed)	II	1333	Not printed	
137	Letter of J. H. Choate, Jr., to Lucien H. Boggs, office A. P. C., dated November 14, 1919	II	1333	I	331
138	Letter of J. H. Choate, Jr., to Lucien H. Boggs, office A. P. C., dated November 18, 1919	II	1334	I	332
139	Office memorandum, A. P. C., from Mr. Goldstein to Mr. Boggs, dated November 21, 1919	II	1334	I	333
140	Letter from Mr. Boggs to Mr. Dunbar, office of A. P. C., dated December 20, 1919	II	1335	I	334
141	Letter of C. E. Dunbar, Asst. General Counsel, A. P. C., to J. H. Choate, Jr., dated December 22, 1919	II	1336	I	335
142	Letter of J. H. Choate, Jr., to C. E. Dunbar, dated December 30, 1919	II	1336	I	337
143	Letter of Lucien H. Boggs to Joseph H. Choate, Jr., dated January 7, 1920	II	1336	I	338
144	Letter of J. H. Choate, Jr., to Lucien T. Boggs, dated January 21, 1920	II	1337	I	340
145	Office memorandum, A. P. C., from Mr. Dunbar to Mr. Garvan, dated February 10, 1920	II	1337	I	341
146	Note of Francis P. Garvan to Joseph P. Tumulty, dated February 11, 1920	II	1337	I	341
146-A	Memorandum attached to Plaintiff's Exhibit No. 146	II	1338	I	342
147	Letter of Francis P. Garvan, A. P. C., to the President, dated February 10, 1920	II	1339	I	342
148	Executive Order of February 13, 1920 (Same as Exhibit No. 5 to Answer)	II	1339	Rec. I	557

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
149	Letter of Joseph P. Tumulty to Francis P. Garvan, dated February 13, 1920	II	1339	I	343
150	Minutes of meeting of Advisory Committee on Sales of A. P. C., March 28, 1919	II	1340	I	344
151	Minutes of a conference with Ramsay Hoguet before Federal Trade Commission, June 10, 1919	II	1348	I	351
152	Letter of Ramsay Hoguet to A. Mitchell Palmer, Attorney General, dated June 28, 1919	II	1349	I	372
153	Memorandum from R. T. Scott to Mr. Brown, dated July 3, 1919	II	1349	I	374
154	Letter of LaRue Brown to Ramsay Hoguet, dated July 8, 1919	II	1349	I	374
155	Assignment from Francis P. Garvan as A. P. C., to defendant, dated March 1, 1921 (Same as Exhibit "I" to Bill of Complaint)	II	1355	Rec. I	472
156	Assignment from Thomas W. Miller, A. P. C., to defendant, dated April 27, 1921 (Same as Exhibit "J" to Bill of Complaint)	II	1355	Rec. I	480
156-A	Schedule attached to assignment of April 27, 1921 (Plaintiff's Ex. No. 156) (Same as Schedule 20 of Exhibit "G" to Bill of Complaint)	II	1357	Rec. I	390
157	Assignment from Thomas W. Miller, A. P. C., to defendant, dated November 5, 1921 (Same as Exhibit "K" to Bill of Complaint)	II	1356	Rec. I	485
157-A	Schedule 3 attached to assignment of April 5, 1921 (Plaintiff's Ex. No. 157) (Same as Schedule 21 of Exhibit "G" to Bill of Complaint)	II	1357	Rec. I	391

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
158	Letter from Bureau of Trusts, A. P. C., to Pacific Flush Tank Co., dated February 5, 1918	III	1362	I	376
159	Letter of Federal Trade Commission to F. J. Horne, dated February 12, 1918	III	1362	I	377
160	Letter of League of Minnesota Municipalities to A. Mitchell Palmer, A. P. C., dated March 13, 1918	III	1364	I	378
161	Letter of Pacific Flush Tank Co., to A. Mitchell Palmer, A. P. C., dated March 20, 1918	III	1365	I	381
162	Memorandum from R. C. Goldstein, Division of Patents, A. P. C., to Mr. Horne, dated March 22, 1919	III	1366	I	382
163	Letter of Pacific Flush Tank Co. to A. Mitchell Palmer, A. P. C., dated January 9, 1919	III	1371	I	386
164	Memorandum from Mr. Goldstein to Judge Brodhead, dated February 18, 1919	III	1372	I	388
165	Letter of J. Davis Brodhead to Francis P. Garvan, A. P. C., dated March 28, 1919	III	1403	I	392
166	Report of J. R. Zimmerman, Patent Section, A. P. C., re Imhoff Patents	III	1404	I	401
167	Letter of Robert C. Goldstein to F. C. Youmana, dated August 6, 1919	III	1404	I	402
168	Minutes of meeting of Board of Directors of defendant, August 2, 1921	III	1406	I	406
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3	Letter of Will T. Gordon to Ramsay Hoguet dated February 3, 1919	II	1131	IV	2035
3a	Letter of Will T. Gordon to M. R. Poucher, American Dyes Institute, dated February 3, 1919	II	1131	IV	2036
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44	Cablegram from Bradley W. Palmer to Francis P. Garvan, A. P. C., dated April 23, 1919	IV	2639	IV	2312

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47	Letter from Julius Stieglitz to A. Mitchell Palmer, Attorney General, dated March 14, 1919	IV	2664	IV	2314
47-A	Memorandum accompanying Plaintiff's Exhibit No. 47	IV	2664	IV	2316
48	Book entitled "The German Great Banks and their Concentration"	IV	2719	Not printed	
49	Book entitled "Germany's Commercial Grip on the World—Her Business Methods Explained"	IV	2723	Not printed	
50	Book entitled "Science and the Nation"	IV	2723	Not printed	
51	Report on Dyestuffs for American Textile and other Industries by Thomas H. Norton, Commercial Agent of Department of Commerce	IV	2724	Not printed	
52	Extract from Hearings before the Committee on Ways and Means, House of Representatives, on H. R. 2706 and H. R. 6495	IV	2726	IV	2323
53	Supplementary and Final Report on Farbwerke-Hoechst Co. of New York	IV	2727	IV	2379
54	Report of Kuttroff, Pickhardt & Co., Inc., dated January 11, 1919	IV	2727	IV	2382
55	Letter from Hoechst Company signed by Hauser to H. A. Metz dated September 20, 1919	IV	2728	IV	2418
56	Letter from Badische Anilin & Soda Fabrik, Rumph, dated September 3, 1913	IV	2729	IV	2421
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59	Telegram from Badische, Germany, to Adolph Kuttroff	IV	2730	IV	2426
60	Telegram from Badische, Germany, to Adolf Kuttroff	IV	2730	IV	2426
61	Letter from Dr. Albert to "My dear Benefactors and Friends" dated November 16, 1914	IV	2732	IV	2426
62	Telegram from Bernstorff to Foreign Office in Berlin	IV	2732	IV	2427
63	Telegram from Charles Suchard to Millington Behren, Berlin	IV	2733	IV	2428
64	Letter to Dr. Hossenfelder dated April 19, 1915	IV	2733	IV	2428
65	Letter from K. Boy-Ed to Dr. Albert dated April 28, 1915	IV	2742	IV	2429
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65-B	Letter from Dr. Albert to K. Boy-Ed dated April 28, 1915	IV	2742	IV	2431
66	Letter from H. A. Metz to Robert F. Rose, Foreign Trade Adviser, dated April 8, 1915	IV	2743	IV	2431
67	Letter from H. A. Metz to William C. Redfield dated April 9, 1915	IV	2743	IV	2434
68	The Chemists' War	IV	2745	IV	2438
69	Article published in "The Yale Review" of April, 1918	IV	2745	IV	2457
70	German Militarism and Its Influence upon the Industries	IV	2745	IV	2477
71	The President's Protest to Great Britain and Its justification by the perils to our trade and industries	IV	2746	IV	2491
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75	Letter from Bernstorff to Dr. Albert dated June 21, 1916	IV	2747	IV	2530
76	Letter from Mr. Kuttroff to Dr. Albert dated September 20, 1916	IV	2747	IV	2534
77	Report by Dr. Schweitzer to Count Von Bernstorff	IV	2747	IV	2534
78	Excerpt from speech of Lord Moulton on "The German Dye Factories"	IV	2748	IV	2543
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83	Statement of The Chemical Foundation, Inc., of income on licenses from April 10, 1919, to December 31, 1922, on patents and trade-marks assigned to it by Alien Property Custodian	IV	2824	IV	2583
84	Form of Agency Agreement of The Chemical Foundation, Inc.	IV	2825	IV	2619
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85-A	Release from Alien Property Custodian to The United States	IV	2830	IV	2624
86	Release and license by Chemical Foundation, Inc., to Navy Department dated Nov. 17, 1921	IV	2835	IV	2629

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89	List of Licensees of The Chemical Foundation and what they manufacture, dated December 31, 1922	IV	2844	IV	2653
90	Statement of The Chemical Foundation, Inc., showing number of licenses issued each year and number of patents involved	IV	2845	IV	2658
91	Statement of Chemical Foundation's Income and expenses from beginning of operations to December 31, 1922	IV	2848	IV	2659
91-A	Statement of Chemical Foundation's Educational expense from April 10, 1919, to December 31, 1922	IV	2849	IV	2660
92	Statement of Chemical Foundation, Inc., of costs of properties acquired from Alien Property Custodian	IV	2861	IV	2666
93	Summary Statement by Chemical Foundation, Inc., of Income and other receipts and disposition thereof from April 10, 1919, to December 31, 1922, and balance net assets remaining at December 31, 1922	IV	2861	IV	2667
94	Summary by Chemical Foundation, Inc., showing yearly expiration of income-producing patents and amounts earned thereon	IV	2862	IV	2668
95	(See Defendant's Exhibit No. 102) ...	—	—	—	—
96	Book entitled "Creative Chemistry," by Edward E. Slosson	V	2869	Not printed	
97	Pamphlet entitled "The Future Independence and Progress of American Medicine in the Age of Chemistry"	V	2869	Not printed	

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99	Pamphlet entitled "An Exhibit prepared under the Auspices of the National Research Council with the co-operation of the Chemical War Service of the United States Army," now permanently installed at the Smithsonian Institute, Washington, D. C.	V	2870	Not printed	
100	Bulletin, 1920, No. 26, Bureau of Education, Department of the Interior, entitled "Reorganization of Science in Secondary Schools"	V	2871	Not printed	
101	Pamphlet entitled "The Dyes Question"	V	2872	Not printed	
102	Statement by Chemical Foundation showing earnings on the 874 trademarks acquired from Alien Property Custodian	V	2872	IV	2671
103	Statement by Chemical Foundation of Income received on Arsphenamine Patents from April 10, 1919, to December 31, 1922, divided as between patents formerly licensed by Federal Trade Commission and patents licensed by Chemical Foundation, Inc.	V	2876	IV	2674
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110	Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 26, Census of Dyes and other Synthetic Organic Chemicals 1921"	V	2885	Not printed	
111	Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 1922, Census of Dyes and Coal Tar Chemicals 1919"	V	2885	Not printed	
112.	Report of U. S. Tariff Commission entitled "Report on Dyes and Related Coal-Tar Chemicals 1918 printed for use of the Committee on Ways and Means of the House of Representatives"	V	2887	Not printed	
113	Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 15, Costs of production in the Dyes Industry, 1918 and 1919 details of costs for a selected list of dyes and intermediates"	V	2887	Not printed	
114	Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 11, Census of Dyes and Coal-Tar Chemicals, 1918"	V	2887	Not printed	
115	Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 6, Census of Dyes and Coal-Tar Chemicals, 1917"	V	2887	Not printed	

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116	Publication of Department of Commerce, Bureau of Foreign and Domestic Commerce entitled "Special Agents Series No. 121, Artificial Dye Stuffs used in the United States, quantity and value of foreign imports and of domestic production during the fiscal year 1913-1914"	V	2888	Not printed	
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118	Statement showing comparison of pounds of dyes—domestic and imported—controlled by patents owned by Chemical Foundation, Inc., for years 1919, 1920, 1921 and 1922	V	2899	V	2704
119	Letter from Bureau of Trusts to F. M. Eugene Blass dated November 11, 1920	V	2899	V	2705
120	Publication entitled "Temporary List of Patents and Copyrights transferred to the Chemical Foundation, Inc."	V	2903	Not printed	
121	Publication entitled "Patents Transferred to The Chemical Foundation, Inc." dated June, 1921	V	2903	Not printed	
122	Booklet entitled "Vat Dye Patents, owned by The Chemical Foundation, Inc."	V	2903	Not printed	
123	Booklet entitled "Drug and Medicinal Patents owned by The Chemical Foundation, Inc."	V	2903	Not printed	
124	Book entitled "Electro-Chemical and Electro-Metallurgical Patents owned by The Chemical Foundation, Inc."	V	2903	Not printed	
125	Book entitled "Paper Patents owned by The Chemical Foundation, Inc."	V	2904	Not printed	

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280	U. S. Patent No. 966,092 dated August 2, 1910	VI	4197	"	
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299	Executive Order dated December 11, 1922, authorizing Alien Property Custodian to sell certain property at private sale	VI	4377	V	3368
300	Pamphlet entitled "The Future Independence and Progress of American Medicine in the Age of Chemistry" (Same as Defendant's Exhibit No. 97)	VI	4386	Not printed	

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311	Letter from Charles B. McVay, Jr., to defendant dated March 24, 1921	VII	4402	V	3401
312	Letter from Charles B. McVay, Jr., to defendant dated March 30, 1921	VII	4402	V	3402
313	Minutes of Meeting of Munitions Patent Board, December 17, 1918	VII	4402	V	3403
314	Minutes of meeting of Munitions Patent Board dated April 23, 1919	VII	4403	V	3405
315	Minutes of Meeting of Munitions Patent Board February 10, 1919	VII	4403	V	3408
316	Report of E. I. duPont de Nemours & Company of expenditures for research work on products licensed from Federal Trade Commission, 1916 to Jan-				

Ex. No.		Admitted Record		Printed Exhibits	
		Vol.	Page	Vol.	Page
	uary 1, 1923	VI	4295	V	3413
317	Report of E. I. duPont de Nemours & Company of Research Expenditures for products licensed from defendant, 1916 to January 1, 1923	VI	4296	V	3414
318	List of Literature distributed by defendant	VII	4404	V	3421
319	Memorandum from Mr. Caton to Thomas W. Miller, Alien Property Custodian, re seizure of Blass Patent (Same as Plaintiff's Exhibit No. 481)	VII	4405	II	893
320	Second Prospectus of Defendant (Same as Exhibit 8 to Defendant's answer)	VII	4405	Rec. I	583
321	Report of British Mission dated February 26, 1919	VII	4406	V	3437
322	Article from "Journal of Industrial and Engineering Chemistry," June, 1919	VII	4410	V	3448
323	Extract from Annual Report of Federal Trade Fiscal year ended June 30, 1918	VII	4411	V	3456
324 to 367	Literature distributed by defendant (For the several items see Defendant's Exhibit 318)	VII	4497	V	3421
368	Page 75 from Notebook of Louis Freedman of Experiments at Calco Chemical Company	VII	4793	V	3466
369	(Annexed to Deposition of Dr. George W. McCoy, taken in Chambers)	VII	4801	Not printed	
370	(Annexed to deposition of Dr. George W. McCoy, taken in Chambers)	VII	4801	"	
371	(Annexed to deposition of Dr. George W. McCoy, taken in Chambers)	VII	4802	"	
372	(Annexed to deposition of Dr. George W. McCoy, taken in Chambers)	VII	4803	"	
373	Statement of Research Expenditures for products licensed from Defendant from 1916 to January 1, 1923	VII	4845	V	3469

Ex. No.		Admitted Record Vol.	Admitted Record Page	Printed Exhibits Vol.	Printed Exhibits Page
374	Letter from H. A. Metz to Julius Stieglitz dated August 13, 1918	VII	4869	V	3489
375	Letter from Ramsay Hoguet to Isidore J. Kresel, dated July 17, 1923	VII	4899	V	3490
376	Telegram from J. A. McCreery to Isadore J. Kresel dated July 18, 1923	VII	4899	V	3491

PLAINTIFF'S EXHIBIT No. 01.

Letter of the President to Col. Thomas W. Miller, Alien Property Custodian, dated July 1, 1922, demand made by Alien Property Custodian upon Chemical Foundation, Incorporated, and reply of the Chemical Foundation, Incorporated, to Alien Property Custodian.

Note: Same as Exhibit "M" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 492.)

PLAINTIFF'S EXHIBIT No. 1.

EXECUTIVE ORDER VESTING POWER AND AUTHORITY IN DESIGNATED OFFICERS AND MAKING RULES AND REGULATIONS UNDER TRADING WITH THE ENEMY ACT AND TITLE VII OF THE ACT APPROVED JUNE 15, 1917.

By virtue of the authority vested in me by "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, and by Title VII of the act approved June 15, 1917, entitled "An act to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States, to punish espionage and better to enforce the criminal laws of the United States and for other purposes" (hereinafter designated as the espionage act), I hereby make the following orders and rules and regulations:

WAR TRADE BOARD.

I. I hereby establish a War Trade Board to be composed of representatives, respectively, of the Secretary of State, of the Secretary of the Treasury, of the Secretary of Agriculture, of the Secretary of Commerce, of the Food Administrator, and of the United States Shipping Board.

II. I hereby vest in said board the power and authority to issue licenses under such terms and conditions as are not inconsistent with law, or to withhold or refuse licenses, for the exportation of all articles, except coin, bullion or currency, the exportation or taking of which out of the United States may be restricted by proclamations heretofore or hereafter issued by me under said Title VII of the espionage act.

III. I further hereby vest in said War Trade Board the power and authority to issue, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse, licenses for the importation of all articles the importation of which may be restricted by any proclamation hereafter issued by me under section 11 of the trading with the enemy act.

IV. I further hereby vest in said War Trade Board the power and authority not vested in other officers by subsequent provisions of this order, to issue, under such terms and conditions as are not inconsistent with law, or to withhold or refuse, license to trade directly or indirectly with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy or is conducting or taking part in such trade directly or indirectly for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

V. I further hereby vest in said War Trade Board the power and authority, under such terms and conditions as are not inconsistent with law, to issue to every enemy or ally of enemy, other than enemy or ally of enemy insurance or reinsurance companies, doing business within the United States through an agency or branch office, or otherwise, applying therefor within 30 days of October 6, 1917, licenses temporary or otherwise to continue to do business, or said board may withhold or refuse the same.

VI. And I further hereby vest in said War Trade Board the executive administration of the provisions of section 4 (b) of the trading with the enemy act relative to granting licenses to enemies and enemy allies to assume or use other names than those by which they were known at the beginning of the war. And I hereby authorize said board to issue licenses not inconsistent with the provisions of law or to withhold or refuse licenses to any enemy, or ally of enemy, or partnership of which enemy or ally of enemy is a member or was a member at the beginning of the war, to assume or use any name other than that by which such enemy or ally of enemy or partnership was ordinarily known at the beginning of the war.

VII. I hereby revoke the Executive order of August 21, 1917, creating the Exports Administrative Board. All proclamations, rules, regulations, and instructions made or given by me under Title VII of the espionage act and now being administered by the Exports Administrative Board are hereby continued, confirmed, and made applicable to the War Trade Board, and all employees of the Exports Administrative Board are hereby transferred to and constituted employees of the War Trade Board in the same capacities, and said War Trade Board is hereby authorized to exercise without interruption the powers heretofore exercised by said Exports Administrative Board.

VIII. The said War Trade Board is hereby authorized and empowered to take all such measures as may be necessary or expedient to administer the powers hereby conferred. And I hereby vest in the War Trade Board the power conferred upon the President by section 5 (a) to make such rules and regulations, not inconsistent with law, as may be necessary and proper for the exercise of the powers conferred upon said board.

War Trade Council.

IX. I hereby establish a War Trade Council to be composed of the Secretary of State, Secretary of the Treasury, Secretary of Agriculture, Secretary of Commerce, the Food Administrator, and the chairman of the Shipping Board, and I hereby authorize and direct the said War Trade Council thus constituted to act in an advisory capacity in such matters under said acts as may be referred to them by the President or the War Trade Board.

Secretary of the Treasury.

X. I hereby vest in the Secretary of the Treasury the executive administration of any investigation, regulation, or prohibition of any transaction in foreign exchange, export or earmarking of gold or silver coin, or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States) and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, or between residents of one or more foreign countries, by any person within the United States; and I hereby vest in the Secretary of the Treasury the authority and power to require any person engaged in any such transaction to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters, or other papers in connection therewith in the custody or control of such person, either before or after such transaction is completed.

XI. I further hereby vest in the Secretary of the Treasury the executive administration of the provisions of subsection (*c*) of section 3 of the trading with the enemy act relative to sending, or taking out of, or bringing into, or attempting to send, take out of, or bring into, the United States, any letter, writing or tangible form of communication, except in the regular course of the mail; and of the sending, taking, or transmitting, or attempting to send, take, or transmit, out of the United States, any letter, or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy. And said Secretary of the Treasury is hereby authorized and empowered to issue licenses to send, take or transmit out of the United States anything otherwise forbidden by said subsection (*c*) and give such consent or grant such exemption in respect thereto, as is not inconsistent with law, or to withhold or refuse the same.

XII. I further authorize the Secretary of the Treasury to grant a license under such terms and conditions as are not inconsistent with law or to withhold or refuse the same to any "enemy" or "ally of enemy" insurance or reinsurance company doing business within the United States through an agency or branch office or otherwise, which shall make application within 30 days of October 6, 1917.

XIII. I hereby authorize and direct the Secretary of the Treasury, for the purpose of such executive administration, to take such measures, adopt such administrative procedure, and use such agency or agencies as he may from time to time deem necessary and proper for that purpose. The proclamation of the President, dated September 7, 1917, made under authority vested in him by Title VII of said act of Congress, approved June 15, 1917, shall remain in full force and effect. The Executive order, dated September 7, 1917, made under the authority of said title shall remain in full force and effect until new regulations shall have been established by the President, or by the Secretary of the Treasury, with the approval of the President, and thereupon shall be superseded.

CENSORSHIP BOARD.

XIV. I hereby establish a Censorship Board to be composed of representatives, respectively, of the Secretary of War, the Secretary of the Navy, the Postmaster General, the Ward Trade Board, and the chairman of the Committee on Public Information.

XV. And I hereby vest in said Censorship Board the executive administration of the rules, regulations, and proclamations from time to time established by the President under subsection (d) of section 3, of the trading-with-the-enemy act, for the censorship of communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country from time to time specified by the President, or carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country.

XVI. The said Censorship Board is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

FEDERAL TRADE COMMISSION.

XVII. I further hereby vest in the Federal Trade Commission the power and authority to issue licenses under such terms and conditions as are not inconsistent with law or to withhold or refuse the same, to any citizen of the United States or any corporation organized within the United States to file and prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label, or copyright, and to pay the fees required by law and the customary agents' fees, the maximum amount of which in each case shall be subject to the control of such commission; or to pay to any enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents, trade-marks, prints, labels, and copyrights.

XVIII. I hereby vest in the Federal Trade Commission the power and authority to issue, pursuant to the provisions of section 10 (c) of the trading-with-the-enemy act, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse a license to any citizen of the United States, or any corporation organized within the United States, to manufacture or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on or cause to be carried on a process under any patent, or to use any trade-mark, print, label, or copyrighted matter owned or controlled by an enemy or ally of enemy, at any time during the present war; and also to fix the prices of articles and products manufactured under such licenses necessary to the health of the military and the naval forces of the United States, or the successful prosecution of the war; and to prescribe the fee which may be charged for such license, not exceeding $100 and not exceeding 1 per cent. of the fund deposited by the licensee with the alien property custodian as provided by law.

XIX. I hereby further vest in the said Federal Trade Commission the executive administration of the provisions of section 10 (d) of the trading-with-the-enemy act, the power and authority to prescribe the form of, and time and manner of filing statements of the extent of the use and enjoyment of the license and of the prices received and the times at which the licensee shall make payments to the alien property custodian, and the amounts of said payments, in accordance with the trading-with-the-enemy act.

XX. I further hereby vest in the Federal Trade Commission the power and authority, whenever in its opinion the publication of an invention or the granting of a patent may be detrimental to the public safety or defense, or may assist the enemy, or endanger the successful prosecution of the war, to order that the invention be kept secret and the grant of letters patent withheld until the end of the war.

XXI. The said Federal Trade Commission is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

THE POSTMASTER GENERAL.

XXII. I hereby vest in the Postmaster General the executive administration of all the provisions (except the penal provisions) of section 19, of the trading-with-the-enemy act, relating to the printing, publishing or circulation in any foreign language of any news item, editorial, or other printed matter respecting the Government of the United States or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war or any matter relating thereto, and the filing with the postmaster at the place of publication, in the form of an affidavit of a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper or publication, and the issuance of permits for the printing, publication and distribution thereof free from said restriction. And the Postmaster General is authorized and empowered to issue such permits upon such terms and conditions as are not inconsistent with law and to refuse, withhold or revoke the same.

XXIII. The sum of $35,000 or so much thereof as may be necessary is hereby allotted out of the funds appropriated by the trading-with-the-enemy act, to be expended by the Postmaster General in the administration of said section 19 thereof.

XXIV. The Postmaster General is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

SECRETARY OF STATE.

XXV. I hereby vest in the Secretary of State the executive administration of the provisions of subsection (b) of section 3 of the trading-with-the-enemy act relative to any person transporting or attempting to transport any subject or citizen of an enemy or ally of enemy nation, and relative to transporting or attempting to transport by any owner, master or other person in charge of a vessel of American registry, from any place to any other place, such subject or citizen of an enemy or enemy ally.

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XXVI. And I hereby authorize and empower the Secretary of State to issue licenses for such transportation of enemies and enemy allies or to withhold or refuse the same.

XXVII. And said Secretary of State is hereby authorized and empowered to take all such measures as may be necessary or expedient to administer the powers hereby conferred and to grant, refuse, withhold or revoke licenses thereunder.

SECRETARY OF COMMERCE.

XXVIII. I hereby vest in the Secretary of Commerce the power to review the refusal of any collector of customs under the provisions of sections 13 and 14 of the trading-with-the-enemy act, to clear any vessel, domestic or foreign, for which clearance is required by law.

ALIEN PROPERTY CUSTODIAN.

XXIX. I hereby vest in an alien-property custodian, to be hereafter appointed, the executive administration of all the provisions of section 7 (a), section 7 (c), and section 7 (d) of the trading-with-the-enemy act, including all power and authority to require lists and reports, and to extend the time for filing the same, conferred upon the President by the provisions of said section 7 (a), and including the power and authority conferred upon the President by the provisions of said section 7 (c), to require the conveyance, transfer, assignment, delivery or payment to himself, at such time and in such manner as he shall prescribe, of any money or other properties owing to or belonging to or held for, by or on account of, or on behalf of, or for the benefit of any enemy or ally of an enemy, not holding a license granted under the provisions of the trading with the enemy act, which, after investigation, said alien-property custodian shall determine is so owing, or so belongs, or is so held.

XXX. Any person who desires to make conveyance, transfer, payment, assignment or delivery, under the provisions of section 7 (d) of the trading with the enemy act, to the alien-property custodian of any money or other property owing to or held for, by or on account of, or on behalf of, or for the benefit of an enemy or ally of enemy, not holding a license granted as provided in the trading with the enemy act, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, shall file application with the alien-property custodian for consent and permit to so convey, transfer, assign, deliver or pay such money or other property to him, and said alien-property custodian is hereby authorized to exercise the power and authority conferred upon the President by the provisions of said section 7 (d) to consent and to issue permit upon such terms and conditions as are not inconsistent with law, or to withhold or refuse the same.

XXXI. I further vest in the alien-property custodian the executive administration of all the provisions of section 8 (a), section 8 (b), and section 9 of the trading with the enemy act, so far as said sections relate to the powers and duties of said alien-property custodian.

XXXII. I vest in the Attorney General all power and authority conferred upon the President by the provisions of section 9 of the trading with the enemy act.

XXXIII. The alien-property custodian, to be hereafter appointed, is hereby authorized to take all such measures as may be necessary or expedient, and not large enemy holdings are quickly liquidated. He will, of course, require a fair and adequate price in order that the United States at the end of the war may be in a position to account in such manner as Congress shall direct for the actual value of the properties taken over and sold, or otherwise liquidated.

PLAINTIFF'S EXHIBIT No. 3.

Washington, D. C., June 6, 1918.

I, A. Mitchell Palmer, Alien Property Custodian, do announce hereby the following plan of organization, and do make hereby the following rules and regulations governing the sales to be made by me, or under my authority:

SELLING ORGANIZATION.

The selling organization consists of

(1) The Alien Property Custodian,
(2) Washington Committee,
(3) Advisory Committee in New York,
(4) Sales Manager in New York,
(5) Representatives of the Alien Property Custodian in charge of the property to be sold (called Local Representatives).
(6) Attorney representing Alien Property Custodian in respect of the property to be sold (called Local Attorney).

The sale of enemy properties held or controlled by the Alien Property Custodian, is to be conducted in the following manner:

The property to be sold shall be designated by the Alien Property Custodian, and no property shall be sold without his personal authority.

Washington Committee.—A committee in Washington, selected by the Alien Property Custodian, shall prepare the general rule of procedure and the general forms to be used as far as appropriate in each transaction. The order for the sale of each specific property shall be transmitted through such committee, which shall add such particular instructions with respect to each property as may be appropriate.

Advisory Committee.—The purpose of the Advisory Committee is to give the Alien Property Custodian appropriate and adequate advice and recommendations with regard especially to

(1) The advisability or propriety in the public interest of selling any specific property,
(2) The manner of selling any specific property, with recommendations as to any special conditions or details respecting the same,
(3) The minimum or up-set price, and whether or not the same should be announced, either before or at the sale,
(4) The manner of advertising, and any special class of purchasers to be invited to bid,
(5) The acceptance of the highest bid, or recommendation to reject all bids, with the reasons therefor. Under the act of Congress, the Alien Property Custodian may reject all bids, but only on the order of the President, stating the reasons therefor. The reasons must be sufficient to justify the President in making such order.

The two principal considerations for the Advisory Committee concern—

(1) The possibility of favoritism or unfairness in the sale,
(2) The qualifications of the purchaser.

It is necessary that every precaution shall be taken to enable properties to be sold fairly and for a proper price, without any possibility of favoritism or undue advantage in favor of any particular purchaser. The experience and views of the Advisory Committee will be especially desired in guarding against any such possibility.

The qualifications of the purchaser should be considered with regard both to American citizenship and to the public interest. In some instances the public interest will require that certain classes of purchasers be excluded, either in cases where there is a possibility that the control might revert to or be in sympathy with alien owners, or where there is danger of monopoly, restriction of competition or some similar condition affecting the public policy or welfare.

The responsibility of final decision rests upon the Alien Property Custodian, but he desires the support of the best available advice in order that his decision may be proper in every respect.

The Advisory Committee may call in experts and ask the views of other persons in their discretion. They will be expected to render the Alien Property Custodian full recommendation, signed by the Committee or a majority thereof.

Sales Manager.—The order of sale with the instructions and recommendations of the Washington Committee shall be sent to the Sales Manager in New York, who shall thereafter have charge of the details.

The Sales Manager shall communicate with the Local Representatives, if any, in charge of the specific property, ascertaining their views and suggestions from time to time, communicating the same to the Washington Committee, and to the Advisory Committee, and making sure that all questions are satisfactorily decided before final action.

The Sales Manager shall communicate with the Local Attorney who shall prepare all detailed forms, and all necessary corporate action in connection with the sale. The Local Attorney shall submit a full detailed report to the Sales Manager as to the procedure to be followed, suggesting and discussing all legal questions involved, and expressing his views as to the best legal course to be followed. He shall study the laws relating to the specific property, including the charter and by-laws of any corporation involved, and shall make a full and complete report on all legal phases.

The Sales Manager shall communicate this report to the Washington Committee and to the Advisory Committee, and shall be sure that the views of the said committee and the Local Attorney are harmonized.

Public accountants shall be selected by the Bureau of Audits, who shall be satisfactory to the Advisory Committee. They shall make a complete examination and report on the specific property in form satisfactory to the Advisory Committee, and containing so far as appropriate the details hereinafter described. Such report shall contain all information necessary for intending purchasers to acquaint themselves with all details enabling them to bid for the purchase of the property, and to put such intending bidders in as favorable a position as to information as all others having knowledge of the affairs and business of the specific property. The Sales Manager shall receive four copies of the reports and transmit one to the Advisory Committee and one to the Washington Committee and one to the Bureau of Audits.

The Sales Manager shall see that the advertisement of sale is satisfactory to the Local Attorney, the Local Representatives, the accountants, the Advisory Committee and the Washington Committee, and that such advertisement is duly published for the length of time and in the manner to be prescribed by the Washington Committee in each case.

The Sales Manager shall see that prospective purchasers have an opportunity to obtain such information concerning and such inspection of property or properties offered for sale as they may desire, subject, however, to such limitations as may be prescribed generally or with respect to the specific property or properties. No such information shall be given or inspection allowed which will disclose trade formulas, processes or other trade information of a secret or confidential character, general knowledge of which would tend to make less valuable the property or properties thus offered for sale. The Advisory Committee shall make recommendations in each case as to the extent of such information and inspection to be given and allowed.

The Sales Manager shall see that the sale takes place at the time and place advertised, and that a proper auctioneer or representative of the Alien Property Custodian is present to conduct the same.

After the sale, the Sales Manager shall report promptly to the Advisory Committee and the Washington Committee, including the names of all bidders, amounts bid, and any information he may have as to the qualifications of the three highest bidders.

In the meantime, the Sales Manager shall see that the Local Attorney has prepared proper deeds and instruments of transfer ready for execution and delivery immediately after the sale, in time so that such deeds and instruments of transfer may be submitted to and approved by the Washington Committee before the sale.

The Sales Manager shall see that complete records and certified copies of the auditor's report, advertisement of sale with evidence of publication, opinion of Local Attorney, report of Local Representatives and recommendations of Advisory Committee are obtained for the Washington files, retaining full copies thereof for his own files.

The Sales Manager will have access to all files in Washington and copies thereof, but the original files shall be kept in Washington unless absolutely necessary to be removed therefrom temporarily, in which case proper receipt must be given.

Auditor's Report.—A date shall be selected when the books shall be balanced and the accountants instructed to prepare a statement of assets and liabilities as of that date.

Unless the fixed assets and equipment have been acquired or appraised by some representative appraisal company since July 1, 1914, such appraisal company will be employed to determine the replacement value of the fixed assets, for comparison with the values at which they are carried on the books.

The auditor's report should certify to the following:

a. That the statement is a correct statement of the financial position of the enterprise or company as of the date fixed.

b. That the value of the fixed assets and equipment is as has been determined by the appraisal company as of that date, or explanation shall be given as to how book values have been arrived at.

c. Upon what basis the value of the inventory of all material, supplies, work in process, semifinished stock and finished stock, if any, have been computed; particularly obsolete materials not being included.

d. That they have examined the records pertaining to the receivables, and if consistent for them to do so, that in their opinion the amount at which the receivables are carried on the books is a sound liquidating value, or state what value they would consider a proper one.

e. That other assets are fairly valued, with any comments the auditors may deem appropriate.

The auditors should also include the following:

A statement of liabilities, designating those that are due and accrued, any contingent liabilities as revealed by records and statements of officers, and any guarantees for materials.

A statement of unfilled purchase orders, showing with whom order was placed, date order was placed when same is to be filled, article purchased and price.

A statement of unfilled sale orders, giving name, date received, when to be filled and price, and probable profit on unfilled orders.

A statement showing the results of operations for the past five fiscal years, in order that the buyer may have some idea of the earning capacity. It should show, by each year:

a. The gross and net sales.

b. Manufacturing expenses, reasonably divided to show cost of materials, supplies, direct labor, factory burden, depreciation, and then the gross manufacturing profit.

c. Then in sufficient detail to make it intelligent, the commercial overhead should be divided into general office expenses, branch expenses, selling expenses, etc., thus arriving at the net profits.

d. The disposition of net earnings should be shown, stating:

(1) Amounts paid out in interest or dividends.

(2) Amounts used for depreciation of assets, unless the depreciation was shown as an operating or manufacturing expense.

(3) Any miscellaneous distribution, such as bonuses.

(4) Finally, what was passed to surplus account.

(The object in having the auditors comment upon how the value of the assets is determined and furnish the other information suggested, is so that the statement, with the auditor's comments, may be handed to prospective purchasers, and give enough information so that an intelligent analysis can be made of the value of the property sold, and for furnishing information as to its sale value.)

GENERAL RULES.

1. Sales should be made at public auction whenever it is possible to do so, and unless the Advisory Committee recommend different procedure. This applies not only to sales by the Alien Property Custodian, but also to sales by and in the name of corporations controlled by him.

2. Under no circumstances will any person in the employ, or connected with the organization, of the Alien Property Custodian be permitted to bid for or purchase any property, or be interested directly or indirectly in any such purchase, or in any corporation or syndicate interested therein. This provision also applies to Local Representatives and Local Attorneys in the sales of properties in respect of which they have represented or acted for the Alien Property Custodian.

3. The expenses of each sale, which shall include all expenses and costs of every kind, shall be paid out

of the funds of the specific property sold, or out of the purchase money received from such sale, or deducted from the purchase price.

4. Form of advertisement and terms of sale (subject to variation according to the circumstances of each case).

PUBLIC SALE

BY ALIEN PROPERTY CUSTODIAN, OF PROPERTY OF

Notice is hereby given that the Alien Property Custodian of the United States, pursuant to the provisions of the Act of Congress, known as the "Trading with the Enemy Act," as amended, acting by an auctioneer, appointed by him, will offer to American citizens at public sale to the highest bidder, subject to the conditions hereinafter set forth, on the premises at
at ...... o'clock, on the .... day of ...., 1918, the following property, to wit:

All and singular the property, real and personal, tangible and intangible, rights, titles, interests, effects and assets of every kind and description whatsoever, wheresoever situate in the United States of America, as defined in the "Trading with the Enemy Act," including claims, choses in action (but not money or cash or deposits in bank) and all incidents and appurtenances thereto belonging to or owned, possessed, held and enjoyed by, in the name of, or for, or on behalf of the following and each of them, namely—

(Insert name of Enemy.)

Including without restricting the generality of the foregoing descriptions the following, to wit:

TERMS OF SALE.

1. The said property and assets will be offered for sale in one parcel and as an entirety, and as of the date when the bids are made.

2. The Alien Property Custodian, his representative or attorney, or the auctioneer, shall have the power and right to adjourn said sale from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication may proceed with the said sale on any day to which the same may have been adjourned, and may, at his option, give such further notice of sale, or of any adjournment thereof, as he may think proper.

3. The auctioneer shall receive no bids from anyone offering to bid, unless such person so offering to bid shall have first deposited with the Alien Property Custodian, or his attorney, as a pledge that he will make good his bid in case of its acceptance, the sum of .... dollars in cash, or by certified check upon any bank or trust company acceptable to the Alien Property Custodian, his representative or attorney, and shall have furnished an address to which notices hereinafter provided for may be sent. Such deposits may be made with the auctioneer or

4. Bids will be received from American citizens only and the Alien Property Custodian shall have the right to require either before or after any bidding or acceptance of any bid, evidence satisfactory to him that the bidder is an American citizen.

5. After all bids have been made, the auctioneer shall declare the bidding to be closed. The bid of the highest bidder qualified to bid under the terms of sale and to purchase the property according to law, shall be subject to acceptance by the Alien Property Custodian within .... days during which time (or any extension thereof agreed to by such highest bidder) the Alien Property Custodian shall have the right

to reject all bids made at the same, according to law, or to accept the bid of the said highest bidder and to declare such bidder to be the purchaser of the property offered for sale. Notice of such acceptance shall be given by depositing said notice in a postoffice or postoffice box addressed to the said bidder at the address furnished by him. In case of acceptance, the check or deposit of the purchaser shall be credited on account of the purchase price.

6. All checks and deposits received from unsuccessful bidders shall be returned. In case the Alien Property Custodian shall reject the said bids or shall fail to accept the said highest bid within the said period of .... days, the check or deposit of the highest bidder shall be returned to him.

7. In case any bidder or purchaser shall fail to make good his bid upon its acceptance by the Alien Property Custodian by failing to make any of the payments herein provided for in consummation of his purchase, then the sums paid or deposited by such bidder or purchaser shall be forfeited as a penalty for such failure and shall be applied towards payment of the expenses of a resale and towards making good any deficiency or loss in case the property shall be sold at a less price upon such resale.

8. In case of the acceptance of a bid, twenty-five per cent. of the purchase price shall be paid in cash upon demand of the Alien Property Custodian, and the balance shall be paid on receipt of a deed from the Alien Property Custodian within .... from the acceptance of the said bid.

9. The purchaser shall, as a part of the consideration and purchase price of the property purchased, in

addition to the sums paid by him accept the property and receive the deed, or deeds, or instruments of transfer thereof, upon the express condition that he shall pay, satisfy and discharge any unpaid current liabilities, indebtedness and obligations of any of the aforementioned companies and assume all obligations which have been legally contracted or incurred in the conduct of the business conducted in the United States by or for the corporations above named or any of them. From the date when the bids are received until the date when the deed or instrument of transfer is delivered the property and assets sold shall be held and the business carried on for the account and at the risk and expense of the purchaser.

10. Intending purchasers may obtain further information respecting the property offered for sale and the financial condition of the business from .... Neither the Alien Property Custodian nor the United States shall be deemed to make any representation or guaranty in any respect with regard to any information or to the property or business offered for sale.

11. The sale is to be made under and subject to the provisions of the "Trading with the Enemy Act" approved October sixth, 1917, as amended by act of Congress approved March 28, 1918, from which the following is a quotation, to wit:

> "The alien property custodian shall be vested with all of the powers of common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power

> to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof; PROVIDED, That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons thereof, in the public interest shall otherwise determine:
>
> PROVIDED, FURTHER, That when sold at public sale, the alien property custodian upon the order of the President stating the reasons therefor, shall have the right to reject all bids and re-sell such property at public sale or otherwise as the President may direct. Any person purchasing property from the alien property custodian for an undisclosed principal, or for re-sale to a person not a citizen of the United States or for the benefit of a person not a citizen of the United States, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than $10,000, or imprisonment for not more than ten years, or both, and the property shall be forfeited to the United States."

The selling organization and the rules govering sales above set forth are subject to change at any time by the Alien Property Custodian and all sales at all times are subject to control by him in any way he may see fit to act.

The Washington Committee is as follows:

Lee C. Bradley, Chairman,
Bradley W. Palmer,
Homer A. Dunn,
J. Davis Brodhead,
Joseph A. Bower.

George P. Wagner will act as secretary of the Washington Committee.

Otto T. Bannard will be chairman of the Advisory Committee. The remaining members will be designated later.

(Sgd.) A. MITCHELL PALMER,
Alien Property Custodian.

PLAINTIFF'S EXHIBIT No. 4.

Washington, D. C., July 16, 1918.

I, A. Mitchell Palmer, Alien Property Custodian, make the following announcement, and the following appointments, and the following rules and regulations in connection with sales of property to be made by me or under my authority:

In addition to the Alien Property Custodian the new selling organization will consist of a Washington Committee, an Advisory Committee in New York, a Sales Manager in New York, representatives of the Alien Property Custodian in charge of each property to be sold (called Local Representatives), and an attorney representing the Alien Property Custodian in respect of each property to be sold (called Local Attorney).

The Advisory Committee consists of the following:

Chairman—Otto T. Bannard,
(Chairman of the Board of Directors of the New York Trust Company, President of the Yale Club, and a member of the Yale Corporation.)

George L. Ingraham,
(Former Presiding Justice of the Appellate Division of the New York State Supreme Court.)

Cleveland H. Dodge,
(Well known New York banker and business man. Classmate of President Wilson at Princeton, and prominent in civic and philanthropic work in New York City.)

Benjamin H. Griswold, Jr.,
(Head of the banking firm of Alexander Brown & Sons, of Baltimore.)

Ralph Stone,
(President of the Detroit Trust Company. Mr. Stone was formerly Director of the Bureau of Trusts of the Alien Property Custodian's office, the work of the Bureau having been organized under his supervision.)

The Washington Committee consists of members of the Alien Property Custodian's organization as follows:

Chairman—Lee C. Bradley,
(General counsel.)

Bradley W. Palmer,
(Associate General Counsel.)

Homer A. Dunn,
(Director of Bureau of Audits.)

J. Davis Brodhead,
(Chief of Department of Corporation Management.)

Jos. A. Bower,
(Chief of General Business Department.)

George P. Wagner will act as Secretary of the Washington Committee (whose office will be at 16th & P Sts., N. W., Washington).

The Sales Manager of the selling corporation will be Jos. F. Guffey, of Pittsburgh, formerly General Manager of the Philadelphia Company, and a prominent oil operator. Mr. Guffey is now President of the Natural Gas Association of America, and was formerly on the Petroleum Committee of the Council of National Defense. Mr. Guffey's headquarters will be in the New York Office of the Alien Property Custodian at 110 West 42nd Street.

Ralph J. Baker, of Harrisburg, Pa., and Spier Whitaker of Birmingham, Alabama, Assistants General Counsel to the Alien Property Custodian, have been assigned as counsel for the Sales Manager and Washington Committee, respectively, with headquarters at Washington.

........................,
Alien Property Custodian.

PLAINTIFF'S EXHIBIT No. 5.

EXECUTIVE ORDER PRESCRIBING ADDITIONAL RULES AND REGULATIONS, AND MAKING CERTAIN DETERMINATIONS RESPECTING THE EXERCISE OF THE POWERS AND AUTHORITY AND THE PERFORMANCE OF THE DUTIES OF THE ALIEN PROPERTY CUSTODIAN.

[No. 2916.]

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading With the Enemy Act," as amended by "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and prior fiscal years, on account of war expenses and for other purposes," approved March 28, 1918, I hereby make the following orders, rules and regulations, and determinations.

DEFINITIONS.

1. The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

2. The word "enemy," as used herein, shall be deemed to mean either an "enemy" or "ally of enemy," as the case may be.

POWERS OF MANAGEMENT AND ADMINISTRATION, INCLUDING SALE OR OTHER DISPOSITION.

The Alien Property Custodian shall have power, and he is authorized and directed, to hold, manage, administer, protect, preserve, control and sell or otherwise dispose of, in accordance with the following rules and regulations, any and all property other than money which has been or shall be conveyed, transferred, assigned, delivered, and/or paid over to him pursuant to the provisions of the Trading With the Enemy Act as amended and the Executive proclamations and orders issued pursuant thereto or which has been or shall be required so to be conveyed, transferred, assigned, delivered and/or paid over to him.

1. The Alien Property Custodian shall have the power and authority to do any and all things reasonable and proper in or about the custody, management, administration, protection, preservation, and control of any such property according to the nature and character of the property and the attendant circumstances, including (but without limiting the generality of the foregoing) the power and authority to collect all bills, notes, accounts, dividends, interest, rents, royalties, annuities and other receivables, and income and profits and accumulations and distribution of principal or income, to pay all rents, royalties, interest and other

accounts and liens or charges; to make repairs, additions and alterations to property, whether real or personal; to rent, lease or otherwise grant the use or right to use or occupy property of any kind; to insure property against loss, and to cancel or surrender insurance policies and collect return premiums and surrender values, and to do any other act or thing with respect to insurance or insurance policies; to grant by lease, license or otherwise, the right to use or other rights under or in respect of patents, copyrights, trade marks, trade secrets and other similar rights; to vote in person or by proxy shares of stock or other beneficial interest in corporations, unincorporated associations, companies or trusts upon any questions at all times and upon all matters upon which any owner of such stock or other beneficial interest shall have the right to vote; including the power and authority to vote for or against and to take part in any sale, dissolution, consolidation, amalgamation or reorganization of any sort, of any such corporation, unincorporated association, company or trust, or of its assets, or any part thereof, and to exercise any rights or privileges that may be or become appurtenant to the ownership of such stock or other beneficial interest with like force and effect and under like circumstances in all respects as though the absolute owner thereof, to give any notices and file any papers or writings of any kind, proper or necessary for the creation, perfection, protection, liquidation or otherwise in respect of any claims, demands, choses-in-action or other rights of any kind, and to settle, compromise and adjust claims, demands and choses-in-action; to intervene in any suit or proceeding and to file and maintain claims, demands and suits of all kinds in or before, any court, board, commission or other body; to determine and pay all reasonable and proper expenses incurred in or about or with respect of the exercise of any of the powers and authority vested in the Alien Property Custodian or any depositary for him, including expenses that may be incurred in or about securing possession, custody or control of any such property, and including also taxes and other charges heretofore or hereafter lawfully assessed upon or against such property by any body politic; provided that this shall not be construed to require the payment of any stamp or other taxes upon or on account of conveyance, transfer, assignment or delivery of property to the Alien Property Custodian or to any agent, attorney, bailee, nominee or depositary for him; and provided further that this shall not in any way affect the power of the Commissioner of Internal Revenue or any regulations made by him or under his authority.

2. Whenever any such money or other property or any part or parcel thereof is or shall be subject to any claim of lien, charge or incumbrance, or is or shall be held or retained adversely to the Alien Property Custodian or to any requirement with respect to such money or other property made by him, the Alien Property Custodian may compromise or settle such controversy and pay any such claim in any way that he shall decide to be proper and as though he were the absolute owner of the money or other property involved; and he shall have the power and authority to make any payment or payments necessary and to execute and deliver any instruments or writings necessary and proper to effect or evidence the same.

3. Whenever any such property or any part or parcel thereof shall be used or employed in the conduct or other operation of a mine, plant, factory, railroad or other transportation facility, warehouse, mercantile or trading establishment or any sort of a going business or undertaking, the Alien Property Custodian,

in addition to the rights, powers and authority elsewhere herein conferred upon him, in respect of the property so used or employed, may continue the conduct or other operation of such business or undertaking; and for such purpose he shall have the right, power and authority to employ and discharge agents, attorneys, servants and other employees; to buy and sell supplies, materials and commodities required or necessary for the conduct of such business, or dealt in or handled thereby, or mined, produced, manufactured or created by it; to take out insurance; to require money owing by banks, trust companies or other depositaries on special or general deposit to be paid to him or upon his order; to collect debts and other receivables owing to the said business or undertaking or to the former enemy owner or owners thereof and created out of or by the operation of such business or undertaking, and also debts, accounts and other receivables accruing or arising out of the conduct or other operation of such business or undertaking, by the Alien Property Custodian or under his direction or authority; to pay the wages and salaries of agents, attorneys, servants and other employees, and rents, royalties, and other current accounts and liabilities; to intervene in any suit or action pending in any court or before any board, commission or other body, in which such business or undertaking or any of the property or assets thereof shall be involved or concerned and to prosecute or defend, as the case may be; to file, prosecute and maintain in the name of the Alien Property Custodian or otherwise as may be proper, any claim or suit arising out of or based upon transactions had prior or subsequent to the time when such property was conveyed, transferred, assigned, delivered and/or paid over to the Alien Property Custodian or was required so to be, but growing out of the conduct or operation of such business or undertaking or any other use, custody, control or management of any property or assets thereof; and generally to manage, administer, preserve, conduct, operate and control such business or undertaking and any or all parts or parcels and assets thereof as though the absolute owner, either in the name of the Alien Property Custodian or otherwise as he shall determine.

4. The Alien Property Custodian may appoint agents, attorneys, bailees, depositaries and/or managers who, under his direction and control and within the limits of the authority conferred by him, shall be authorized and directed to hold, manage, administer, protect, preserve and otherwise control property conveyed, transferred, assigned, delivered or paid over to him or required so to be, or any part or parcel thereof; and they may be authorized and directed to continue the conduct or other operation of any going business or other undertaking which the Alien Property Custodian himself, as provided elsewhere herein could continue. Such agents, attorneys, bailees, depositaries and managers shall have and exercise the rights, powers and authority which shall be from time to time conferred upon him or them by the Alien Property Custodian; and such rights, powers and authority may be enlarged, restricted or revoked by the Alien Property Custodian at any time and without giving any notice or reason therefor; and the remuneration of all such agents, attorneys, bailees, depositaries and managers shall be fixed by the Alien Property Custodian and may be increased or reduced at any time.

5. The Alien Property Custodian shall have full power and discretion with respect to property to be sold, and may sell any property or properties as an entirety or in such groups or parcels and at such time or times as he shall determine, and without reference

to the previous enemy or ally of enemy ownership thereof. Whenever any such property shall be used or employed in the conduct or other operation of any mine, plant, factory, railroad or other transportation facility, mercantile establishment or any sort of going business or undertaking, the Alien Property Custodian may sell such property as a going business or undertaking and may include not only the tangible property but any and all patents, trade marks, trade names, good will and other intangible rights and assets; and any number of such going businesses or undertakings may be sold together as above specified.

6. Whereas said Trading With the Enemy Act as amended provides that "any property sold, except when sold to the United States, shall be sold only to American citizens at public sale to the highest bidder, after public advertisement of the time and place of sale, which shall be where the property or a major portion thereof is situated, unless the President, stating the reasons therefore in the public interest shall otherwise determine."

Now therefore I do thus determine otherwise as follows:

(a) Shares of stock or other beneficial interest in a corporation, unincorporated association, company or trust, and claims, receivables and intangibles of all kinds may be advertised and sold wherever the Alien Property Custodian shall determine; and it shall be immaterial whether such shares of stock or other beneficial interest and such claims, receivables and intangibles be represented or evidenced by certificates or instruments or writings of any kind, and whether the Alien Property Custodian shall or shall not have possession or control thereof in the event that the same shall be thus represented or evidenced.

(b) Any corporation incorporated within and under the authority of the laws of any state or territory of the United States or of any of its insular possessions shall be allowed to bid at any sale of any such property, but the Alien Property Custodian shall have the right to exclude from bidding at any such sale and/or from purchasing or otherwise acquiring property from him directly or indirectly, any corporation which he shall after investigation determine to be controlled, managed or operated wholly or mainly by or for the account or benefit of a person or persons not a citizen or citizens of the United States or of its insular possessions.

(c) The Alien Property Custodian, upon order of the President stating the reasons therefor, shall have the right to reject all bids for any property thus sold and to resell such property at public sale or otherwise as the President may direct; but the Alien Property Custodian may at or before any sale, by public announcement or by publication, fix a period after the expiration of which the right thus to reject all bids and to resell such property will not be exercised.

My reasons for the foregoing determinations in the public interest are:

(a) That such sales may be made at the place of favorable demand and under the best circumstances to secure the market price therefor.

(b) That bidders able to purchase and pay for the properties to be sold may be secured.

(c) That the powers of sale given to the Alien Property Custodian may be effectively exercised by him.

7. Any property sold by the Alien Property Custodian either at public or private sale may be sold for cash or upon credit; and in the latter event such se-

curity for the payment of that portion of the purchase price remaining unpaid may be taken as he shall deem proper in the premises. He shall be authorized to set a minimum or upset price upon any property offered for sale by him; to fix and prescribe the terms and conditions upon which bids will be received; to determine generally and specially qualifications to be met by persons offering to bid; to require deposits from prospective bidders; to determine generally or specially the nature and extent of information concerning any property or properties offered or to be offered for sale which shall be given prospective bidders, and the inspection thereof which shall be allowed; to have made auditor's reports and appraisals of property or properties offered or to be offered for sale; and to make and establish general and special terms and conditions to govern any and all sales to be made by him. Any property or properties thus sold may be sold subject to or free from any or all debts, claims, obligations and liabilities of all kinds created or arising out of or in respect of, any such property or properties or the conduct or other operation of any such business or other undertaking by the Alien Property Custodian or otherwise; and subject to or free from liens, charges or incumbrances; and payment of such debts, claims, obligations, liabilities and liens, charges and incumbrances, and of all expenses of such sale or sales may be made out of the proceeds from such sale or sales, or may be required to be made or assumed by the purchaser, as the Alien Property Custodian shall determine.

8. All costs and expenses incurred by reason of or in respect of, and all claims and demands of every kind, character and description based upon or arising out of, the custody, management, administration, protection, preservation and control of any such prop-

erty and the conduct or other operation of any such going business or other undertaking and the sale or other disposition of any such property, shall be limited to and paid or satisfied out of only the property or business or undertaking involved and out of which, on account of which, or in respect of which such cost, expenses, claim or demand shall have been incurred and shall have arisen or been created; provided that whenever such property or the income therefrom or the assets of any such going business or other undertaking shall be insufficient therefor, such cost, expenses, claim or demand shall be charged thereto, but may be paid or satisfied out of money or other property received from, or as the property of, the same enemy. Neither the Alien Property Custodian nor any agent, attorney, bailee, manager or depositary appointed by him shall be liable personally to any one for or on account of anything done or omitted in respect of, or for any debt or other obligation of any kind or character owing, created or growing out of or in any other way arising from, any such property or the custody, management, administration, protection, preservation, control and/or sale or other disposition thereof, and/or from the conduct or other operation of any going business or undertaking; except in the event of intentional injury or fraudulent misconduct by the person attempted to be charged with liability.

9. The Alien Property Custodian and agents, attorneys, bailees, managers and depositaries for him, within the limits of the authority granted by him, shall have power and authority to do any and all things reasonable or proper in or about or in respect of the exercise of any of the powers and authority specifically granted above; and in addition are authorized and directed hereby to manage all such property and to do any act or things in respect thereof or make any dis-

position thereof or any part thereof by sale or otherwise and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof, in like manner as though the Alien Property Custodian were the absolute owner thereof, subject to no limitations or restrictions other than those specifically set forth herein or in said "Trading With the Enemy Act," as amended or any prior Executive orders issued pursuant thereto not in conflict herewith.

POWER TO ISSUE REQUIREMENTS NOT INCONSISTENT WITH LICENSES GRANTED UNDER THE AUTHORITY OF THE PRESIDENT.

1. Whenever the Alien Property Custodian shall after investigation determine that any money or other property, including any going business or other undertaking, which is being held, managed, used or employed under a license granted by the President, or in the exercise of the power and authority conferred upon the President by said "Trading With the Enemy Act" as amended, is owing or belonging to or held for, by, on account of, on behalf of, or for the benefit of an enemy or ally of enemy, and such license provides as one of its terms or conditions that such property shall, upon demand or requirement of the Alien Property Custodian, be conveyed, transferred, assigned, delivered, and/or paid over to him, the Alien Property Custodian may, without the revocation of such license, require that said money or other property or any part or parcel thereof be conveyed, transferred, assigned, delivered or paid over to him; subject, however, to the continued exercise of such license, but under his supervision or under such other supervision as he may prescribe, and for such period of time or until the happening of such event as he shall prescribe. Whenever such money or property or any part thereof,

at the time such requirement is made, shall be used or employed in or about the conduct or management of any mine, plant, factory, railroad or other transportation facility, warehouse, mercantile or trading establishment or any sort of a going business or undertaking, the Alien Property Custodian may require that such money or other property and/or the proceeds from the conduct or management of such business be conveyed, transferred, assigned, delivered or paid over to him, subject to the continued exercise of such license and the continued conduct or management of such business or other undertaking as above provided; and he may leave all or such part of the money or other property of such business or other undertaking in the possession of the licensee or the agent or representative of the licensee to be used, disposed of, and accounted for, in the continued exercise of such license. Any requirement made by the Alien Property Custodian pursuant to the provisions hereof shall be subject to modification or change by him at any time prior to the final compliance therewith. Any of such property other than money, including any such going business or undertaking, may be advertised and sold by the Alien Property Custodian, subject to the exercise of any such license, but for the account of the Alien Property Custodian or for the account of the purchaser as the Alien Property Custodian may determine; and until the purchaser of such property shall be placed in the possession thereof or during such other period as the Alien Property Custodian may determine.

EFFECT UPON THE STATUTORY POWERS OF THE ALIEN PROPERTY CUSTODIAN AND UPON PRIOR EXECUTIVE ORDERS.

1. Nothing herein contained shall limit or shall be construed to limit, in any way the rights, powers and authority conferred upon the Alien Property Cus-

todian by the "Trading With the Enemy Act" and the amendments thereto and the Executive orders heretofore issued pursuant thereto.

2. All Executive orders heretofore made are amended and modified hereby to such an extent as may be necessary to conform with the provisions hereof; but with this exception, all of such orders in force and effect at the time this order is issued are expressly ratified and continued in full force and effect.

WOODROW WILSON.

THE WHITE HOUSE,
16 July, 1918.

PLANTIFF'S EXHIBIT No. 6.

EMERY, BOOTH, JANNEY & VARNEY
COUNSELLORS AT LAW
50 Congress St., Boston 149 Broadway, New York
10 South La Salle St., Chicago

Frederick L. Emery
Thomas B. Booth
Laurence A. Janney
Lucius E. Varney
Irving U. Townsend
Robert S. Blair
Ramsay Hoguet
Jesse W. Morton
Edward H. Palmer

Everett S. Emery
Louis A. Jones
John W. Thompson
Edward G. Curtis
Manvel Whittemore
Lawrence G. Miller
Delos G. Haynes
Sebastian Hinton
Preston Upham
Howard W. Dix

Telephones
Boston Main 5161
New York Courtlandt 8677
Chicago Franklin 1145

Cable
EMBOJAVA
Western Union Code

New York, January 24, 1918.

Mr. Lee C. Bradley,
Office of the Alien Property Custodian,
16th & P Streets, N. W., Washington, D. C.

SUBJECT: Advice on Patent Matters—Attention of Mr. McClintock.

Dear Sir:

Confirming my interview with Mr. McClintock yesterday, it seems that the cases which require advice as to patents at present in the Office of the Alien Property Custodian may be divided into three general classes.

1. Those cases in which it is desirable that uniform rulings should be made by the Federal Trade Commission and the Alien Property Custodian. As to these, Mr. McClintock will prepare a memorandum of such cases as have come to his attention and forward the same to us; and Messrs. Phelps and Palmer of the Federal Trade Commission will give us a memorandum of the rulings they have already made and such cases as may occur to them. After we have considered the matter, we will have a conference (probably next week) to determine upon the rulings to be made.

2. Cases which occur a great number of times and which are of relatively little importance. Mr. McClintock mentioned several of these to me yesterday and will give me a memorandum of the states of facts of such cases. These can probably be disposed of very quickly.

3. Cases which because of their peculiar facts or large amounts involved require individual attention. I think that in these cases we had better be furnished with a copy of the files, study these cases here, and if necessary, confer with your office before giving you a written opinion in each case. I believe that in such cases it is desirable for the Alien Property Custodian to have in the file of each case a written opinion from ourselves, in order to show that advice had been taken before a ruling had been made.

I am going over the Act carefully, with a view to suggesting amendments or executive orders, if necessary.

Very truly yours,
(Sgd.) RAMSAY HOGUET.

RH/P

PLAINTIFF'S EXHIBIT No. 7.

EMERY, BOOTH, JANNEY & VARNEY
Counsellors at Law
50 Congress St., Boston. 149 Broadway, New York
10 South LaSalle Street, Chicago

Frederick L. Emery
Thomas B. Booth
Laurence A. Janney
Lucius E. Varney
Irving U. Townsend
Robert S. Blair
Ramsay Hoguet
Jesse W. Morton
Edward H. Palmer

Everett S. Emery
Louis A. Jones
John W. Thompson
Edward G. Curtis
Manvel Whittemore
Lawrence G. Miller
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Chicago Franklin 1145

Cable
EMBOJAVA
Western Union Code

New York, January 30, 1918

Hon. Alien Property Custodian,
Sixteenth & P Streets, N. W.,
Washington, D. C.

Bureau of Law—Attention of Mr. McClintock.

SUBJECT: Patent Licenses.

Dear Sir:

This is in response to your letter of January 24, 1918, submitting certain questions relating to patent licenses to us. I answer these questions seriatim as follows:

1. It is not necessary for anyone holding a pre-war license to apply for a Federal Trade Commission license in any case, including those under headings a, b and c. Of course, if a pre-war license for any reason (as by expiring by limitation) terminates during the war, then it is necessary for the licensee to obtain a Federal Trade Commission license if he would operate as a licensee and not as an infringer.

A demand for royalty under a pre-war contract by the alien property custodian is a recognition of the existence of the pre-war contract, but I can not see that such recognition has any effect.

The alien property custodian should not notify the licensee that a Federal Trade Commission license is necessary where a pre-war license exists; and should not notify the attorney-general where a concern appears to be operating in infringement of a patent. The Act does not forbid one to infringe a patent. The attorney-general should be notified where a pre-war license exists and the licensee neither obtains a Federal Trade Commission license nor deposits the accrued royalties under the pre-war license with the alien property custodian.

2. The alien property custodian should not take over applications for Letters Patent nor Letters Patent.

3. The alien property custodian ought not to be liable to enemy aliens after the war if he has used reasonable care and caution in ascertaining the amounts due the alien. Reasonable care and caution does not require an audit unless the facts reported to the alien property custodian are such as to put him on inquiry. In my opinion, all necessary information can be obtained by a properly directed series of questions to be answered under oath.

My reasons for the foregoing answers are more fully given in the enclosed memorandum.

Respectfully,

RH/P (Sgd.) RAMSAY HOGUET.

* * * * * * * * * * * * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received Jan. 31, 1918 *
* Noted .... Date .... *
* Ans'd......... Date .... *
* Report No..... Trust No. ... *
* * * * * * * * * * * * * * * * * *

OPINION ACCOMPANYING MR. HOGUET'S LETTER IN RESPONSE TO THE INQUIRIES CONTAINED IN YOUR COMMUNICATION OF JANUARY 24, 1918.

The answers to the questions contained in your letter of January 24, 1918, have induced the following considerations:

For the purpose of applying the Trading With the Enemy Act, I regard the division of licenses into exclusive and non-exclusive licenses as artificial and affording no useful criterion. Patent licenses generally arise out of bilateral agreements. Some patent licenses, however, are simply grants from patentees and nothing else. Clearly, where a license is simply a grant (which has passed to a United States citizen) it must survive a declaration of war, just as any kind of property passed by an alien to a United States citizen before the war would be the latter's property after the declaration of war, the assumption being, of course, that the assignment was not made in contemplation of war. I see no difference in such a case between a direct grant from the Government and a grant indirectly from the Government through an alien patentee.

Where, however, licenses arise in or out of bilateral agreements, we have at the outset to determine whether the agreement itself survives the declaration of war, that is to say, whether the obligations and rights arising thereunder are *ipso facto* terminated and the agreement rendered null and void by reason of the declaration of war.

For several reasons, I am of the opinion that agreements made before the war with enemy aliens do survive in general, except, of course, where they were made in contemplation of the war. In the first place, this appears to be the general rule of law (*Hanger* v.

Abbott, 6 Wallace 532). In the second place, the provisions of the Act, particularly as embodied in Section 8, sub-divisions (a), (b) and (c) thereof, seem entirely inconsistent with any other view. Furthermore, the whole spirit of this Act appears to be to suspend performance of agreements with the enemy only insofar as performance during the war may benefit the enemy during the war, and to substitute the alien property custodian for an enemy so far as lawful performance is concerned. In short, it would seem that after the war the enemy may sue and employ every legal remedy which he had before the war to recover upon any obligation or contract made before the war and not in contemplation of the war; and this appears to be so whether the obligation matured prior to or during the war, except insofar as the present Act makes performance unlawful or impossible during the war. I can not find anything in the policy of our laws, or in any modern Federal case, or in the present Act, or in the spirit in which the Act appears to have been framed and passed, which would lead to any other belief or conclusion.

What I have said in the foregoing paragraphs seems to be applicable to any contract; and so far as patent licenses arise by contract with patentees, there would seem to be no exception to this general rule. The same rule applies to patent license contracts as to other contracts relating to different species of property. There is nothing, generally speaking, inherent in a patent right which distinguishes it, in this respect, from transactions involving other forms of personal property; and the same rule should therefore be applied in the case of these patent contracts as is applied in the case of other contracts relating to personal property.

I must conclude, therefore, that all patent licenses (whether exclusive or non-exclusive), which arise either by a simple grant from a patentee not made in contemplation of the war, or out of a bilateral agreement with the patentee not made in contemplation of the war are valid and subsisting, notwithstanding the declaration of war. I do not see how any other conclusion can be reached.

In this connection, I might refer to Section 2, sub-division (c), and Section 3, sub-division (a), which in terms forbid the performance of any contract with an enemy during the war. Patent license contracts are of course included as well as others; but in my opinion, these provisions of the Act do not vitiate or nullify any contracts but merely suspend performance thereof during the war, and then only to the extent that no communication shall be had with and no beneficial advantage shall result to the enemy during the war.

Now, as regards the relation of the Federal Trade Commission (or the President, whose arm in this respect the Federal Trade Commission virtually is), it seems to me that the Federal Trade Commission may lawfully (that is, under the Act) issue a license upon any application therefor where in its discretion it seems wise to do so. I see no limitation whatever on the power of the Federal Trade Commission to issue such licenses. Nevertheless, the necessity for obtaining a license from the Federal Trade Commission in every case is not fully apparent. I will now state the considerations which lead to this conclusion.

First, the Act does not make it obligatory upon any person in the United States to seek or obtain a license [Section 10, sub-division (c).] One is just as free as before the war to operate in defiance of a patent; and where one so elects, I can not see that the Federal Trade Commission, the President, or the

Alien Property Custodian has any function or jurisdiction in the matter whatever. In my opinion, none of these officials or boards should advise anyone in respect to which course to follow. It should be left to the individual and his counsel to decide as a pure matter of risk or expediency as the case may be.

Second, if I am correct in what I have said above about the validity and subsistence of licenses existing before the war and not made in contemplation of the war, it follows that the grant of a presidential license to one already holding a license by virtue of a contract or grant made before the war and not in contemplation of the war, is unnecessary. Such a presidential license would not, I think, vest any further license rights in the licensee, although it might operate under the Act to change the relation of the licensee somewhat in respect to the alien property custodian and also to modify somewhat the respective rights of the licensee and patentee both during and after the war. I do not need enumerate here the different conditions which would thus arise. I simply allude to possibilities which the taking of a presidential license by a pre-war licensee may give rise to. These possibilities are for the individual licensee to consider and the alien property custodian has no function or jurisdiction in respect thereto, nor can he change them.

(a) There are other considerations which bear upon this general topic. To my mind, where a pre-war license contract or license grant exists requiring the payment of royalties from time to time to the patentee, no matter how fixed or determined, the alien property custodian (assuming that there has been a presidential proclamation under Section 7, sub-division (c)), should demand the amount of these royalties at the times when the payments are due, even though the Federal Trade Commission may have granted a license which, under its terms, requires payment of a smaller sum, or at different times; but where a presidential license has been granted to a licensee which requires payment at a larger rate than the royalties reserved in the agreement, demand should be made for such larger sums.

(b) Where an exclusive licensee under a contract made prior to the declaration of war elects not to apply for a presidential license but to proceed under his pre-war contract the Federal Trade Commission, in my opinion, should not, when said contract is brought to its attention, grant a license to any other person.

(c) I understand that the Federal Trade Commission is following the practice of refusing to grant a license where an exclusive license already exists in another. I approve this practice and should extend it to cases where the prior exclusive license is one which existed before the war as well as to cases where the exclusive license was granted by the Federal Trade Commission.

(d) I should also recommend to the Federal Trade Commission, that where a license is applied for by one who has a pre-war license requiring the payment of royalties in excess of the five per centum arrangement, such license be withheld, unless the Federal Trade Commission can lawfully require the payment to the alien property custodian of an amount (under the license so granted) at least equal to the amount required under the pre-war license. I doubt if the Federal Trade Commission has any such power. In my opinion, the provisions of Section 10, sub-division (c) do not permit the President to prescribe the royalties to be paid, but to prescribe only such conditions as regulate the exercise of the license in other respects.

(e) I suggest that, in order to coordinate the efforts of the Federal Trade Commission and the alien property custodian, there should be exchanged between them memoranda showing what license agreements have been reported to the alien property custodian and what licenses have been issued by the Federal Trade Commission or brought to its attention. These memoranda should at least state the names of the licensor and licensee, the numbers of the patents and the amounts of the royalties.

I will now briefly consider patents as property in order to determine whether the alien property custodian is or may become vested as trustee with the titles of such patents as were owned by enemy aliens at the beginning of the war. For it is apparent that a trustee of patent titles would be required to do a great many acts and things (in order to preserve the property rights in these titles) which would be very onerous and burdensome indeed to the alien property custodian.

I have read the Act very carefully and I can not find any clear statement which would require the alien property custodian to demand, or anybody who happened to have Letters Patent deeds in his possession belonging to enemy aliens, to deliver them to the alien property custodian. The Letters Patent deeds themselves are only evidences of the patent rights which they disclose,—not the rights themselves; and are of no more value than a recorded conveyance. The right itself is incorporeal property and has no definite situs. If such a right can be said to have any situs at all, it being a personal right, probably resides where the patentee or owner himself resides.

As I read the Act, the only things to be delivered up to and received by the alien property custodian are (1) tangibles (2) debts and choses in action and (3) beneficial interests in property which would entitle the enemy to avails or privileges of some kind or other. (See particularly Section 7, third paragraph of subdivision (a)). The object and spirit of the Act, in this respect, appears to be two-fold; (1) that the alien shall not be benefited during the war by such property and shall have no control over it and (2) that the alien property custodian shall prevent waste and render such care and attention to it as to preserve it for such interests as the United States and citizens thereof may have in it as well as those which the alien enemy may have in it.

Now, giving attention to the language and spirit of the Act in this respect and also noting that by the provision for licenses, the patent property of the alien is not being wasted, that is to say, is being made to produce; and finally, noting the provision of Section 10, sub-division (g) which specifically authorizes the alien himself to sue, even during the war, for infringements of his patents and to obtain at least an interlocutory decree for an injunction, whereby his rights may be preserved, I am of the opinion that it is not the duty of the alien property custodian to take over patents belonging to aliens or to administer and take care of these patents.

It may be that a case will arise where an alien-owned business is taken over entire, which business includes patents and trademarks as part of its assets. Such a case may require special consideration which we do not need to go into at the present moment.

I now come to the specific questions which you propound in your letter of January 24, 1918, and I answer them seriatim. 1. Your first question relates to the necessity of applying for a presidential license to continue the use of a patent already licensed under a pre-war agreement. I answer this in the negative for all three cases under sub-divisions a, b and c of your question. Moreover, I see no distinction between the three cases which would affect the administration of such cases.

The fact that the alien property custodian demands royalty where no Federal Trade Commission license is issued would, in my opinion, involve recognition of the validity of the pre-war contract; but the recognition of such contract by the alien property custodian has no particular effect or significance, so far as I can see. If the contract is invalid, his demand for royalty can not validate it. If, on the other hand, it survives a declaration of war and is valid, he is doing nothing more than performing his duty to collect. In any event, I think he should collect. In this connection, I may point out that many license contracts with which you will deal will involve a provision enabling the licensee to terminate on notice or in some manner prescribed by the contract. Where a licensee may terminate by giving notice, and gives such notice to the alien property custodian under the provisions of Section 8, sub-division (a), then apparently the license contract and the license granted thereunder comes to an end. In such a case, of course, I should advise that the alien property custodian treat the license as no longer existing, providing he determines to his satisfaction that the provisions for termination have been fulfilled.

As to the last part of your first question, I see no duty on the part of the alien property custodian to advise licensees as to what course they should pursue. As stated above, I think that this is a matter to be decided by the licensee himself. In fact, I think it is inadvisable for the alien property custodian to act as counsel to individual licensees. Neither should the attorney-general be notified, because I do not understand that the Act makes it mandatory upon licensees to obtain presidential licenses. One who operates without a license defies the patent, becomes an infringer, and is liable to suit which (under Section 10, sub-division (g)) may be brought by the enemy himself during the war or thereafter. I see nothing in the Act which prevents one from electing to infringe in preference to obtaining a license, if he so desires.

2. I answer your second question in the negative for the reasons set forth above. Moreover, Section 10, Sub-division (a) provides that enemy aliens may file applications for Letters Patent and prosecute them. This being so, I see no reason why the alien property custodian should interfere with the prosecution of applications.

3. In general, I should answer the first part of your third question in the negative and the second part in the affirmative. I believe that with a copy of any pre-war contract in the possession of the alien property custodian, and such full statement, under oath, from the licensee as may be obtained by properly directed questions to such licensee by the alien property custodian, the latter would be fully protected. In short, the alien property custodian is only expected to exercise reasonable caution and reasonable caution requires no more than this.

In this connection, I think it would be advisable to have some blank forms prepared for licensees under pre-war contracts to fill out; and if you wish, I will prepare a series of questions for such forms, which in my opinion will constitute sufficient inquiry to determine the status of these contracts in each case.

In conclusion, it seems to me that the most important single consideration is whether contracts of patent licenses survive the declaration of war and inasmuch, as I have pointed out above, that these contracts are subject to the same application of law as other contracts relating to personal property, I suggest that the Bureau of Law take Mr. Coleman's opinion thereon.

I may add that I have consulted with my partner, Mr. Varney, and others of our organization; and that the foregoing opinion represents the opinion of the firm as well as my own personal opinion.

(Sgd.) RAMSAY HOGUET.

Alien Property Custodian
Received Jan. 31, 1918
Noted .... Date ....
Ans'd......... Date ....

PLAINTIFF'S EXHIBIT No. 8.
Minutes of Noonday Conference.

April 6, 1918.

Present: The Alien Property Custodian, Messrs. Bradley, Stone, Fitzpatrick and Cooper.

It was decided not to sell enemy-owned patents or patent rights.

PLAINTIFF'S EXHIBIT No. 9.

Copy

October 31, 1918.

Hon. Thos. W. Gregory,
Attorney General,
Washington, D. C.

My dear Mr. Attorney General:

Re: *Bosch Magneto Co.*

I understand that the Federal Trade Commission is about to issue a license under the Trading with the Enemy Act to the Splitdorf Electrical Company under certain patents owned by the Bosch Magneto Company, a corporation which I have taken over as Alien Property Custodian.

Shortly before Mr. Davis was appointed Ambassador to Great Britain and while he was acting Attorney General, I appeared before him in this matter and requested that the Department of Justice instruct the Federal Trade Commission to withhold this license until your Department determined whether patents could be seized by me under the Trading with the Enemy Act. Since then, your Department has ruled that patents are not seizable by me and we have endeavored to cure this defect in the Act by an amendment which is attached to the Military Deficiency Bill and is now before the President for signature. This amendment specifically gives the President the power to seize enemy owned patent rights.

The Bosch Magneto Company will be sold by me in the course of the next month and in view of the confusion which would be created by the issuance of the license in the meanwhile and of the amendment of the Act, may I ask that your Department instruct the Federal Trade Commission to withhold the license until an Executive Order is made regulating the administration of patent rights under the Act.

Respectfully,
(Sgd.) A. MITCHELL PALMER.

Dictated by
Mr. Hoguet.

PLAINTIFF'S EXHIBIT No. 11.

Executive Order of December 3, 1918, Appointing Frank L. Polk to Exercise Powers of the President.

Note: Same as Exhibit No. 1, annexed to answer, and not reprinted here. (See Record, Vol. I, page 547.)

PLAINTIFF'S EXHIBIT No. 12

Excerpt From Report of A. Mitchell Palmer as Alien Property Custodian, Dated February 22, 1919.

Note: Same as Exhibit No. 2, annexed to defendant's answer, and not reprinted here. (See Record, Vol. I, page 550.)

PLAINTIFF'S EXHIBIT No. 13.

REPORT OF ALIEN PROPERTY CUSTODIAN.

Washington, D. C., February 22, 1919.

Dear Mr. President:

The trading with the enemy act, section 6, requires "that the President shall cause a detailed report to be made to Congress on the 1st day of January of each year of all proceedings had under this act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof."

I have the honor to submit a report of all proceedings had under said act during the year 1918 on the part of the Alien Property Custodian. I have deferred making the report beyond the time mentioned in the act in order to make it more nearly complete. At the end of the year 1918 I was in the middle of my selling program and many investigations of enemy property had not been completed. I think I am now able to say that practically all known enemy property in the United States has been taken over by me and is being administered according to the provisions of the trading with the enemy act. The more important of the properties which have been within the purview of our sales program have been disposed of. This report, therefore, is made as of the close of business on February 15, 1919. Full details with respect to all of the operations of this office appear in the following pages.

Respectfully submitted,
(Sgd.) A. MITCHELL PALMER.

To the President
The White House

PLAINTIFF'S EXHIBIT No. 14.

Extract from Congressional Record, 65th Congress, Third Session, Saturday, March 1, 1919, Vol. 57, No. 81, Page 4880.

ALIEN PROPERTY CUSTODIAN.

The SPEAKER laid before the House the following message from the President of the United States, which was read and referred to the Committee on the Judiciary and ordered printed without the accompanying documents:

To the Senate and House of Representatives:

As required by section 6 of the trading-with-the-enemy act, I transmit herewith for the information of the Congress a detailed report by the Alien Property Custodian of all proceedings had by him under said act during the calendar year 1918 and to the close of business on February 15, 1919.

WOODROW WILSON.

THE WHITE HOUSE, 28 February, 1919.

PLAINTIFF'S EXHIBIT No. 15.
Constitution of American Dyes Institute.

CONSTITUTION

ARTICLE I.

NAME.

The name shall be AMERICAN DYES INSTITUTE.

ARTICLE II.

OBJECTS.

A. To promote and encourage the manufacture and use of American dyes; to cooperate with Congress, the Tariff Commission, the Federal Trade Commission and all governmental agencies to secure protection against unfair competitive methods by foreign producers who at the conclusion of the war may seek to destroy a new and necessary industry and to again monopolize the American market, not only in dye stuffs but in chemicals essential to national protection.

B. Publicity in the transaction of business, and cordial and friendly relations among members, by means of monthly and other stated meetings, thereby removing, so far as possible, misunderstandings and ill feelings due to the spreading of false reports and baseless charges and ignorance of conditions prevailing in the industry.

C. To collect and disseminate accurate information relating to the manufacture and sale of dyes and chemicals and kindred products, to the end that each manufacturer, whatever his output, may be on equal footing with other manufacturers with respect to the data necessary for the intelligent conduct of his business, on the belief that a policy of publicity in trade is better than one of secrecy, and in the hope that through the distribution of authentic and statistical information, manufacturers may be enabled more accurately to gauge the flow of supply and demand, and thereby keep their works in more constant operation and give labor more steady employment.

D. To co-operate with the Federal Trade Commission to expose and suppress unfair methods of competition.

E. To devise a scientific system of cost accounting, to the end that every one engaged in the industry may accurately know the cost of his output. In this connection, it is not the purpose of the Institute to impose upon any member any cost items or to use in any manner the cost system as a means for controlling prices.

F. The bringing out into the open of all competitive conditions and the introduction of the open-price policy, to the end that whatever price information is distributed will be absolutely accurate and confined to sales and prices that have been actually made. Nothing herein stated permits any member of the Institute to file any information regarding any price he expects to make or would like to obtain.

G. The standardization so far as practical of Dyes to the end that wasteful duplications and wasteful production of many shades differing very slightly one from the other may be eliminated or minimized and also to the end that the manufacturer best situated and best equipped to produce certain dyes may confine his attention as far as possible to the dyes he can most economically produce.

It is a fact at the present time that with the rapid growth of the industry due to War conditions manufacturers are attempting to produce a variety of dyes much larger in number than they can possibly hope to produce and sell under normal peace conditions; therefore, the conservation of resources and the firm establishment of the industry demand that the most careful consideration be given to the particular advantages each manufacturer may have for making a particular product. Without attempting any arbitrary allotment or apportionment of the business, the development of accurate cost and price statistics will enable each manufacturer to determine for himself wherein he can supply the public at the lowest cost.

No Penalties.—There are no penalties of any kind or character connected with the operation of the Institute. Members may or may not file information called for by the Reporting Plan hereinafter set forth; if they do not file they get no information; if they do file, they get like information in return.

No Secrecy.—There is nothing secret about either the meetings or the operations of the Institute. All its proceedings are reduced to writing and carefully preserved in the minutes. Customers may attend meetings and become familiar with the operations of the organization. Members are free to invite competitors, who are not members, to attend meetings.

No Restraint.—Nothing in the plan or operation of the Institute shall be understood or construed as directly or indirectly restraining the freedom of any member to at all times quote such prices and terms as he pleases, each member being free to compete for business as he would be if the Institute did not exist.

Article III.

OFFICERS.

Section 1. The officers shall be a President, Vice-President, Secretary, Treasurer. The Secretary may act as Treasurer.

Section 2. All officers, except Secretary, shall be elected at the annual meeting and shall hold office for one year, or until their successors have been duly elected.

The Secretary shall be appointed by the Executive Committee and shall receive such salary as may be agreed upon.

Section 3. The Executive Committee shall consist of President, Vice-President, Treasurer, and four members to be elected at the annual meeting.

Section 4. The Executive Committee shall have power to call meetings of the Institute, when deemed advisable, to fill vacant offices until the next stated or special meeting, to employ counsel and, subject to the approval of the Institute, such officers and employes as may be necessary to carry out the objects of the Institute.

Article IV.

MEMBERS.

Section 1. Any corporation, firm or individual engaged in the manufacture of Dyes and Intermediates and kindred products in the United States is eligible to membership and may become a member by being proposed by any member of the Institute and approved by the Executive Committee and duly elected by a majority of the members present at any regular meeting and who qualifies upon the payment of $200.00 initiation fee.

SECTION 2. Application for membership and resignations must be transmitted in writing to the Secretary.

ARTICLE V.

MEETINGS.

SECTION 1. The regular meetings of the Institute shall be held on the first Tuesday of each month, or at such dates and places as the Executive Committee shall name.

Due notice of meetings shall be sent by the Secretary to each member at least ten days in advance of such meeting.

SECTION 2. A majority of the members, when present at any meeting, shall constitute a quorum.

SECTION 3. The meeting held in the month of January of each year shall be the annual meeting of the Institute.

All meetings of the Institute shall be open to members, competitors and customers.

ARTICLE VI.

ELECTION OF OFFICERS.

The election of officers shall take place at the regular annual meeting in January. Those having a majority of votes of those present shall be declared elected.

ARTICLE VII.

AMENDMENTS.

Amendments to these articles may be proposed at any regular or special meeting. Due notice of such amendments shall be sent by the Secretary in writing to each member at least ten days in advance of the meeting at which such amendments are to be voted upon, and an amendment to be adopted must receive at least a two-thirds vote of the members present.

ARTICLE VIII.

FREEDOM OF TRADE.

No member shall enter into any agreement or understanding of any nature or kind whatsoever, the object of which is to restrain trade, limit competition, regulate prices, or do any act which is contrary to the spirit and letter of the law, or which is contrary to the objects of the Institute, as set forth in this constitution.

PLAINTIFF'S EXHIBIT No. 15-A.
By-Laws of American Dyes Institute.

BY-LAWS.

SECTION 1. PRESIDENT. It shall be the duty of the President to preside at all meetings of the Institute and of the Executive Committee, to appoint all committees not otherwise provided for, and in case of the equal division of the members on any question, to cast the deciding vote. He shall also have power to call the Executive Committee together at such time and place as he may select and, upon the written request of five members, he shall be required to call a special meeting of the Institute.

SECTION 2. VICE-PRESIDENT. It shall be the duty of he Vice-President to perform the duties of the Presi-lent in the absence of the latter.

SECTION 3. TREASURER. It shall be the duty of the reasurer to collect and receive all moneys of the Institute, to pay all orders for money, when countersigned by the Secretary, and to keep a correct record of the receipts and disbursements, an abstract of which, together with the necessary vouchers, he shall exhibit at the regular January meeting, or whenever called upon by the Executive Committee.

SECTION 4. SECRETARY. It shall be the duty of the Secretary to keep a careful record of the transactions of the Institute and of the Executive Committee, to notify all members at least five days in advance of the times and places of all meetings, to examine all bills and countersign all orders on the Treasurer, to conduct correspondence, to collect information contemplated in the constitution and reporting plan, and to perform such other duties as may be assigned to his office.

SECTION 5. EXECUTIVE COMMITTEE. The Executive Committee shall have the management of the affairs of the Institute and, subject to the approval of the Institute, fix the dates and amounts of assessments. They shall also, subject to the approval of the Institute, fix the compensation and terms of employment of the Secretary, employ counsel, and provide for such other expenditures as may be necessary.

SECTION 6. MEMBERSHIP. Applications for membership may be acted upon at each monthly meeting, due notice of application having been given to the Secretary at least ten days before the meeting at which action shall be taken, so that the Secretary can notify the members of such application.

SECTION 7. VOTING POWER. Members may be represented at any meeting by authorized delegates, who shall be entitled to full rights and privileges of the members they represent, but only one vote shall be cast on behalf of each member.

Section 8. Dropping of Members. By a two-thirds vote of the members present at any meeting, a member, providing he has been given ten days' notice of the proposed action and an opportunity to be heard, may be dropped for failure to pay any assessments within thirty days after same are made, or for failure to conform to the constitution and the by-laws, or for filing false or misleading information.

Section 9. Regular Committees. The following committees will be appointed by the Executive Committee:

Committee on Standardization.
Committee on Cost Accounting.
Committee on Trade Promotion.

Section 10. Order of Business. The order of business shall be as follows:

1. Calling the roll.
2. Reading of the minutes.
3. Reports from members of conditions affecting the industry.
4. Election of new members.
5. Reports of officers.
6. Reports of committees.
7. Receiving of communications.
8. Unfinished business.
9. New business.
10. Election of officers.

Section 11. Amendments to By-Laws. Amendments to by-laws may be proposed at any regular or special meeting. A copy of such proposed amendment must be sent to each member by the Secretary, in writing, at least ten days in advance of such meeting. To adopt any amendment it must receive a two-thirds vote of the members present.

PLAINTIFF'S EXHIBIT No. 16.

Excerpts from Address of Francis P. Garvan, Alien Property Custodian, before The National Cotton Manufacturers Association.

Note: Same as Exhibit No. 6 to defendant's answer and not reprinted here. (See Record, Vol. I, page 560.)

PLAINTIFF'S EXHIBIT No. 17.

Prospectus of The Chemical Foundation, Inc.

Note: Same as Exhibit No. 7 to defendant's answer and not reprinted here. (See Record, Vol. I, page 577.)

PLAINTIFF'S EXHIBIT No. 18.

June 14, 1918.

Francis P. Garvan, Esq.,
110 West 42nd Street,
New York City.

Dear Mr. Garvan:

This letter will introduce Mr. M. R. Poucher. I intended to ask you to lunch to meet him but cannot do so because we have been unable to find ourselves in town on the same day for several weeks.

Poucher was formerly Vice-President of the

Badische Company, and is now the head of the Sales Department of the dye-stuffs of the Du Pont Company. He is thoroughly familiar with the manufacturing of dye-stuffs, organization of the trade in Germany, and organization of the trade here. He knows all the German interests here and how they have concealed their true ownership under present conditions. He has considerable general knowledge of other German chemical companies not engaged in the dye business. In particular, he is well informed on the question of patents whose German ownership now hampers the development of the American dye-stuff industry and will hamper it even more after the war.

I hope you will see Poucher and introduce him to Mr. Choate. I can say frankly of him that he is one of the few people engaged in the dye-stuff business whose statements can be accepted implicitly.

Very sincerely yours,
A. M. PATTERSON,
President.

AMP-h

PLAINTIFF'S EXHIBIT No. 19.

June 14, 1918.

Francis P. Garvan, Esq.,
110 West 42nd Street,
New York City.

Dear Mr. Garvan:

I have been trying to arrange a luncheon so that you and Mr. Choate could meet Mr. Poucher of the Du Pont Company who knows more about the German dye-stuff houses in this country than any trustworthy American of my acquaintance. I have been unable to do so and have given Mr. Poucher a letter of introduction to you.

I do not think that Poucher has any axe to grind, except that he wants to build up the Du Pont business. He is absolutely reliable in every way. He severed his connections with his German firm for patriotic motives and at great personal financial risk. I think you will find him both interesting and profitable in the course of your official duties.

I might mention at this time that I have started in to work for the War Industries Board and shall probably go abroad for them. This has made it necessary for me to resign as director in the two companies in which the A. P. C. nominated me, namely, Dr. Jaeger Sanitary Woolen System Co., and Dresden Lace Works, Inc. As to the latter, I have taken the liberty of suggesting that the man who succeeds me should be a practical lace man, as this business is exceedingly technical. I would suggest Mr. F. Gilbert Hinsdale of the Wilkes-Barre Lace Mfg. Co. He is a man of independent means and judgment, and his company does not compete so far as I know with the Dresden Lace Works.

Yours very truly,

A. M. PATTERSON,
President.

AMP-h

PLAINTIFF'S EXHIBIT No. 20.

E. I. Du Pont De Nemours & Company,
Wilmington, Delaware.

Dyestuffs Sales Department.

21 East 40th St.,
New York City.

June 26, 1918.

Mr. Francis P. Garvan,
Alien Property Custodian,
110 West 42d Street,
New York City.

Dear Mr. Garvan:

I enclose letter from our mutual friend, Mr. A. N. Patterson, President of the Textile Alliance.

My home, as Mr. Patterson may have told you, is in Wilmington; I am in New York for the day and would be very glad to call at your office at any time that may be convenient to you.

Please read into this a desire to be of any service I can to Mr. Choate and yourself.

If inconvenient to answer by bearer, you can reach me by telephone—Vanderbilt 3700, Extension 16.

Yours very truly,

(Sgd.) M. R. POUCHER.

MRP:JM.

PLAINTIFF'S EXHIBIT No. 21.

American Dyestuff Manufacturers' Association
INCORPORATED
21 East Fortieth Street

New York, Nov. 18, 1918.

M. R. POUCHER, President
L. A. AULT, Vice-President
FRANK HEMINGWAY, Vice-President
C. CYRIL BENNETT, Secretary
CHARLES JENKINSON, Treasurer
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Executive Committee
AUGUST MERZ
ROBERT C. JEFFCOTT
ROBERT P. DICKS
J. MERRITT MATTHEWS

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Ault & Wiborg Co.
Cincinnati, Ohio
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United Piece Dye Works
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New York, N. Y.
FRANK HEMINGWAY
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SAMUEL ISERMAN
Chemical Company of America
New York, N. Y.
ROBERT C. JEFFCOTT
Calco Chemical Co.
New York, N. Y.
ROBERT W. KEMP
Holliday-Kemp Co.
New York, N. Y.
J. MERRITT MATTHEWS
The Grasselli Chemical Co.
Cleveland, Ohio
GEORGE A. MARTIN
Sherwin-Williams Co.
Cleveland, Ohio
AUGUST MERZ
Heller & Merz Co.
Newark, N. J.
MOUNTFORD S. ORTH
Marden, Orth & Hastings Corp.
New York, N. Y.
MORRIS R. POUCHER
E. I. du Pont de Nemours & Co.
Wilmington, Del.
STANLEY STANISLAUS
The Stanley Aniline Chemical Works, Inc.
Lock Haven, Pa.
GEORGE S. WHALEY
John Campbell & Co.
New York, N. Y.

Mr. H. E. Danner, Secy.,
National Assn. of Cotton Finishers,
320 Broadway, New York City.

Dear Mr. Danner:

Attached you will find a synopsis of the plan whi the American Dyestuff Industry considers the mo satisfactory way of protecting the Industry until it grown to a point where it is on a par with the pre-w German Industry.

This synopsis is based upon the English propo law, and it would appear from the amount of literatu that we have read on the subject, that they have go into the situation very carefully.

I trust that you will have time in the near futu to talk the matter over with those members of yo Association who you consider to be leaders, and me know as soon as you can, what the general attitu of the cotton finishers will be towards the idea.

Yours very truly,

(Sgd.) C. CYRIL BENNETT,
Secretary

CCB.VS.

ENC. Synopsis of plan.

SYNOPSIS OF PLAN.

Proposed by the American Dyestuff Manufacturers' Assn., Inc., as a method of protecting the Industry during the period of re-construction, and until such a time as it can be demonstrated that the Dye Industry of America is on the same footing as the pre-war German monopoly.

(1) The American Dyestuff Industry has had to establish itself under extremely trying conditions. First came the sudden demand for a product of which we knew nothing; second, the gradual bringing of essential crudes into the market was hampered by the requirements of our Allies for explosives; third, the entrance of ourselves into the war intensified this demand for crudes, and at the same time, took a great many of our young technical chemists into Government service for munitions of war, and also by a serious limitation of our ability to secure proper materials, apparatus and labor.

(2) In spite of this, the American Industry has fairly well taken care of the dyestuff needs of the Textile and other industries, thereby maintaining our industrial supremacy.

(3) It is the proposal of the British Government, who have studied this subject very carefully, and regard the Dyestuff Industry not only as a pivotal industry in times of peace, but an essential part of the War program (namely, explosives), that in order to conserve their Industry, it will be necessary to have a system of licensing for the control of imports of dyestuffs for a period of ten years after the war. This measure has already passed the Asquith Administration, and the Lloyd George Administration, and without any question, will be enacted into law. Their method of procedure, as suggested, is that they will

have a mixed commission of equal representation of the dye manufacturers and dye consumers, with the Board of Trade acting as the Government agent in the matter. By this means they will be able to go ahead and develop the various colors which they have not yet manufactured, and, at the same time, conserve the interests of the dyestuff consumer by allowing such amounts of essential dyestuffs to come in as would meet the requirements of the consumers.

(4) The American Dyestuff manufacturers feel that this is about the only way in which the Industry can be conserved in this country; that no matter how much tariff you put on those articles which are not manufactured here, there will always be in the hands of the competitor, a line of products which might be used as a "force line"; moreover, the consumer naturally is not going to pay the huge price for dyes that he has been paying, and will certainly not stand for any excessive tariff.

(5) In view of the political situation as now exists in Washington, with the Administration committed to free trade, and the House and Senate committed to protective tariff, it would seem that the only solution to be found would be in a middle course, and adopt a policy which could be characterized as nonpartisan. The War Trade Board has been exercising a function almost identical with the above plan of licensing of imports, and while it is a war body, and would probably not have any constitutional rights in times of peace, yet it may be possible to work out some plan whereby the Dyestuff Industry could be protected from the world.

(6) The Dyestuff manufacturers feel that their fate more or less lies in the hands of the consumer, and without the sympathetic support of the consumer, they will not be able to gain much headway even as

was the case in the memorable Tariff fight of March, 1916.

American Dyestuff Manufacturers' Assn., Inc.
21 East 40th Street, New York, N. Y.

November 20, 1918.

C. Cyril Bennett, Esq.,
Secretary,
American Dyestuff Manufacturers Ass'n,
21 East Fortieth Street,
New York.

Dear Sir:

Acknowledging yours of the 18th inst. enclosing copy of the plan which the American Dyestuff Industry considers practical in protecting the Industry, I would advise you that our representatives will be in Washington on November 25th, to meet with the Dyestuff Section of the War Industries Board, and this matter will no doubt receive attention.

I am submitting the Synopsis of your plan to them and will advise you further on receipt of their report.

Very truly yours.

Secretary.

HED/NW

PLAINTIFF'S EXHIBIT No. 22.

November 20, 1918.

C. Cyril Bennett, Esq.,
Secretary,
American Dyestuff Manufacturers Ass'n,
21 East Fortieth Street,
New York.

Dear Sir:—

Acknowledging yours of the 18th inst. enclosing copy of the plan which the American Dyestuff Industry considers practical in protecting the Industry, I would advise you that our representatives will be in Washington on November 25th, to meet with the Dyestuff Section of the War Industries Board, and this matter will no doubt receive attention.

I am submitting the Synopsis of your plan to them and will advise you further on receipt of their report.

Very truly yours,

H. E. DANNER,
Secretary.

HED/NW

PLAINTIFF'S EXHIBIT No. 23.

August 1st, 1918

Frank Hemingway, Esq.,
Member Executive Committee
American Dyes Institute,
115 Broadway,
New York City.

Dear Sir:

You will recall that as per resolution adopted at a special Industry Meeting, held at the Hotel Biltmore, New York City, on June 25th, 1918, the Chairman, Dr. J. Merritt Matthews, appointed the following committee:

Mr. E. V. Patterson,
E. I. duPont de Nemours & Co., CHAIRMAN,
21 East 40th Street,
New York City

Mr. T. A. Green,
553 Munsey Building,
Washington, D. C.

Mr. J. O. Hasson,
The Sherwin-Williams Co.,
Cleveland, Ohio,

to represent the Dyestuff Manufacturers and urge upon the War Industries Board the importance and the necessity of establishing the manufacture of dyes and intermediates as an essential industry.

I am advised by Mr. Patterson that Dr. J. Merritt Matthews, Mr. T. A. Green, and Mr. E. V. Patterson met last Monday, in Washington, for the purpose of organizing and outlining a plan of procedure.

It was the judgment of this committee that in order to obtain a proper hearing they must be officially accredited as representing the industry, and therefore Dr. Matthews is preparing to submit to the executive committee of the American Dyestuff Manufacturers Association, Inc., and also the executive committee of the Chemical Alliance, the advisability of both organizations appointing Mr. Patterson, Mr. Green, and Mr. Hasson as their representatives before the War Industries Board.

In line with the above, I am therefore addressing this letter to each member of the executive committee, and would ask that you kindly advise by return mail, if possible, if you, as a member of the executive committee of the American Dyes Institute vote to appoint the above mentioned gentlemen as a committee to represent the American Dyes Institute in the matter outlined above.

If

The Chemical Alliance,
The American Dyestuff Mfrs. Assn., Inc., and
The American Dyes Institute

through their executive committees appoint this special committee, it will feel more confident of receiving proper recognition by the War Industries Board.

Soliciting your prompt reply, I remain

Very truly yours,

H. E. DANNER,
Secretary.

HED: IF.

PLAINTIFF'S EXHIBIT No. 24.

August 1st, 1918.

Mr. R. Poucher, Esq.,
Member Executive Committee
American Dyes Institute,
Church Building,
Wilmington, Del.

Dear Sir:

You will recall that as per resolution adopted at a special Industry Meeting, held at the Hotel Biltmore, New York City, on June 25th, 1918, the Chairman, Dr. J. Merritt Matthews, appointed the following committee:

Mr. E. V. Patterson,
E. I. duPont de Nemours & Co., CHAIRMAN,
21 East 40th Street,
New York City

Mr. T. A. Green,
553 Munsey Building,
Washington, D. C.

Mr. J. O. Hasson,
The Sherwin-Williams Co.,
Cleveland, Ohio,

to represent the Dyestuff Manufacturers and urge upon the War Industries Board the importance and the necessity of establishing the manufacture of dyes and intermediates as an essential industry.

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In line with the above, I am therefore addressing this letter to each member of the executive committee, and would ask that you kindly advise by return mail, if possible, if you, as a member of the executive committee of the American Dyes Institute vote to appoint the above mentioned gentlemen as a committee to represent the American Dyes Institute in the matter outlined above.

If

The Chemical Alliance,
The American Dyestuff Mfrs. Assn., Inc., and
The American Dyes Institute

through their executive committees appoint this special committee, it will feel more confident of receiving proper recognition by the War Industries Board.

Soliciting your prompt reply, I remain

Very truly yours,

H. E. DANNER,
Secretary.

HED: IF

PLAINTIFF'S EXHIBIT No. 25.

duPont
Established 1802
E. I. duPont de Nemours & Company
Wilmington Delaware
Dyestuffs Sales Department

August 6th, 1918.
File 2975.

Mr. H. E. Danner, Sec'y.,
American Dyes Institute,
320 Broadway, New York City.

Dear Mr. Danner:—

I find upon my return to the office to-day your letter of the 1st instant.

I had a talk with Dr. Matthews about this Committee and it comes down to this: the first thing to consider is the proper avenue of approach to the War Industries Board. The answer to this is that there is but one approach, namely, the Dyes and Intermediates Division of the Chemical Industry. The province of this committee therefore is not to undertake to represent the chemical industry of the American Dyestuff Manufacturers Association and the American Dyes Institute before the War Industries Board, but rather to prepare suitable matter in behalf of the American Dyestuff Manufacturers Association and the American Dyes Institute, and to place this matter in the hands of Dr. Charles L. Reese, Chairman, and Dr. J. Merritt Matthews, Secretary, of the Dyes and Intermediates Division of the Chemical Alliance. The matter will pass from this Division to the Chemical Alliance, as a body and with their endorsement will go to the War Industries Board.

I was not present at the meeting when this committee was authorized.

I have sent Dr. Matthews a copy of this letter, and suggest that you have a talk with him.

Yours very truly,

DYESTUFFS SALES DEPARTMENT,
M. R. POUCHER,
Director.

MRP:S.

PLAINTIFF'S EXHIBIT No. 26.

MINUTES OF MEETING
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE
JANUARY 22ND, 1919.

A meeting of the Executive Committee of the American Dyes Institute was held in the office of the Secretary, Mr. H. E. Danner, 320 Broadway, New York City, on Wednesday, January 22nd, 1919, at 2:00 P. M.

The following firms were present and represented as follows:

E. I. DUPONT DE NEMOURS & CO.	Mr. M. R. Poucher Judge Laffey
GRASSELLI CHEMICAL CO.	Dr. J. Merritt Matthews
THE HELLER & MERZ CO.	Mr. August Merz
FRANK HEMINGWAY, Inc.	Mr. Frank Hemingway
NATIONAL ANILINE & CHEMICAL CO.	Mr. W. T. Miller Mr. Wigglesworth Mr. H. Ottis

The meeting was called to order by Mr. W. T. Miller.

The question as to the practicability and advisability of the American Dyes Institute undertaking (through a properly organized corporation) to purchase all German owned patents (for the manufacture of Dyes and Intermediates) from the Alien Property Custodian, was discussed at length.

It was understood that if such a corporation were organized and did purchase such patents and operating licenses, they would resell same to American Manufacturers without profit. Mr. Wigglesworth then moved, and it was unanimously adopted, that inasmuch as this was a matter of national interest, it should be referred to a committee of three, with President Mr. W. H. Cottingham, acting as an Ex-Officio member, it being the understanding that this committee would investigate this subject and be prepared to make recommendations to the members of the Institute at the next regular meeting.

Thereupon the Chair appointed the following committee:

Mr. M. R. Poucher..........CHAIRMAN
E. I. duPont de Nemours & Co.
Mr. Wigglesworth,
National Aniline & Chemical Company
Mr. August Merz,
The Heller & Merz Company,

and, as stated above,

Mr. W. H. Cottingham—Ex-Officio Member
The Sherwin-Williams Co.

In connection with the above, it was understood by the members present that the Alien Property Custodian had indicated his desire to dissolve his office and wind up his duties, and place all patents in the hands of the American Industry.

It was suggested, inasmuch as the Hercules Powder Company were offering Intermediates for sale, that Mr. Poucher approach this firm with the thought that they might be interested in becoming members of the Institute.

The galley proof of the pamphlet prepared by Mr. Eddy was read paragraph by paragraph, and with certain minor changes, the Secretary was instructed to request the printer to furnish an estimate for lots of 5,000, 10,000 and 50,000 booklets, this estimate to cover two sizes, one a 3-½ x 6-¼ booklet, the other a 5-⅜ x 8-¼ booklet.

The Secretary was also instructed to prepare a sketch of a new letterhead for the Institute, such letterhead to include the names of all the Officers, Executive Committee, and Board of Governors.

The meeting then discussed the subject of a budget for the coming year, and inasmuch as some of the members had expressed themselves as being willing to subscribe only to the general work of the Association, and had indicated their unwillingness to have any part of their assessments used for Open Price Work, the Secretary was instructed to send to each member of the Executive Committee a questionnaire with the request that he place opposite the names of the members listed thereon what, in his judgment, each member should be assessed.

1. In order to raise $50,000 for expenses for the current year.
2. In order to raise or provide $25,000 for expenses for the current year.

On motion, the next meeting of the Executive Committee was set for Monday, January 27th, same to be held in the office of the Secretary, 320 Broadway, New York City, at 1:30 P. M.

There being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 27.

January 25th, 1919.

Mr. W. H. Cottingham, President,
American Dyes Institute,
New York City.

Dear Mr. Cottingham:

I find through error a letter which I wrote to you on the 27th, the day following the last meeting of the Executive Committee, was not mailed and became misplaced, and I am extremely sorry for this oversight.

At this meeting there was a long discussion with reference to the possibility of the members of the American Dyes Institute undertaking to purchase all the present German patents and operating licenses held by the Alien Property Custodian. Mr. Poucher explained that the Alien Property Custodian was anxious to wind up his affairs and had proposed that the above mentioned patents be purchased by a Corporation, who would, in turn, resell same to those interested, but without profit. It was thought this would make the patents available to the public rather more readily and more equitably than by public auction. It was considered that this was a matter of national interest and upon motion of Mr. Wigglesworth, who was present from the National Aniline & Chemical Company, it was decided to refer the matter to a special committee of three, with yourself as President, acting in an Ex-Officio capacity and to represent Cleveland and Cincinnati interests.

Thereupon, the following committee was appointed:

Mr. M. R. Poucher............CHAIRMAN
E. I. duPont de Nemours & Co.

Mr. Wigglesworth,
National Aniline & Chemical Co.

Mr. August Merz,
The Heller & Merz Co.,

and yourself.

The entire matter will, of course, be referred to the Institute at their regular meeting on February 7th.

Very truly yours,
H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 28.

CONFERENCE OF DYE MANUFACTURERS
Held at the Office of the Alien
Property Custodian, January 27,
1919

Present:

Representing the Alien Property Custodian—
Mansfield Ferry
F. J. Horne
W. T. Gordon
Joseph H. Choate, Jr.
Ramsay Hoguet

Committee of the American Dyes Institute—
M. R. Poucher

Henry Wigglesworth
August Merz
R. C. Jeffcott
B. C. Hesse
F. E. Barrows
Representing National Analine Co.
C. Protto Judge Laffey, Counsel.
Representing E. I. Du Pont de Nemours Co.

Mr. Hoguet: I suggest that Judge Laffey, who has given considerable thought to the organization necessary to carry out the proposed program, outline his views on what should be done.

Judge Laffey: The general purpose of the proposition, as I understand it, is that the Alien Property Custodian is to sell, either by Executive Order or under the Act, the patents that are germane to the dye industry as a whole, for a fair and proper consideration to be arrived at by proper negotiations by the parties interested and the Alien Property Custodian. From the standpoint of the dye industry, and speaking for the dye industry as a whole, it is proposed, in order to make this plan effective, that the members of the dye industry and such others as may be interested in joining with them co-operate to form a corporation for the purpose of becoming the purchaser at this sale. The certificate of incorporation, as the fundamental contract between the stockholders, should contain proper safeguards and conditions to the effect that the corporation purchasing these patents should grant now exclusive personal licenses not only to their own stockholders, but to all American manufacturers desiring to use the same on some uniform basis; the cardinal principle being that everybody in the industry that can use these patents have the right to apply for a license on the same terms that the stockholders of the company should have, there being no discrimination among the stockholders or others desiring to take and pay the license fee therefor. The declared purpose of the incorporators being not to make this a money-making corporation, but to charge such a license fee as will pay proper dividends on the capital invested, after paying running expenses of the corporation and a sufficient additional sum to amortize the patents; that is to say, as soon as enough surplus was paid in in the way of license fees to redeem the preferred stock, which my thought would be to use as a money-raising stock, that that stock could be redeemed and at that point, the licenses to everybody should drop to a nominal sum. That in general is the plan which the purchaser suggests.

Mr. Ferry: Is that the view of the entire committee, a representative statement?

Judge Laffey: That is the scheme we are trying to develop. The Committee is working on the assumption that it would meet the approval of the Dyes Institute.

Mr. Poucher: What we did was to call a meeting of the Executive committee of the Dyes Institute and submit the general plan to the Committee. Judge Laffey made to that Committee the same statement covering the general outline he has made here today, and that has the approval of the Executive Committee, in accordance with the resolution, of which I sent you a copy, Mr. Hoguet. The next step would of course be, if we are in accord, to call a meeting of the entire membership of the Institute.

Mr. Hoguet: The American Dyes Institute, I understand, is an association of dye manufacturers which represents a very large number of concerns interested in this line of business.

Mr. Poucher: We think it represents ninety odd per cent of the production.

Mr. Hoguet: This is a list of the officers and members of the Institute.

Mr. Poucher: The Institute and the Association were two organizations; one an open price organization known as the Institute; the other an association containing among its membership some who did not belong to the Institute. A few weeks ago, these were amalgamated, and stand today as one organization. The list is of the members of the Institute as it stands under the consolidation.

Mr. Hoguet: I will attach to this memorandum, a printed copy of the constitution of the American Dyes Institute.

Mr. Poucher: Mr. Danner, Secy. of the Institute, called up and said there were several minor changes to be made in the print of the By-laws, also that Mr. Eddy had not yet corrected this proof. Another print will come along later, but this will serve the general purpose.

Mr. Ferry: What provision will be made for financing this proposed corporation?

Judge Laffey: The stockholders co-operating would of course be expected to finance it.

Mr. Ferry: Who would be expected to be the stockholders?

Judge Laffey: Members of the Dye Institute and possibly others who might see fit to join.

Mr. Ferry: Has any estimate been made of the amount of capital needed?

Judge Laffey: No, sir.

Mr. Ferry: Does the Dye industry stand ready to subscribe to such an amount of stock as is necessary?

Mr. Poucher: I think the Industry stands ready to finance the proposition, if the patents can be established to justify them in going into it.

Mr. Ferry: Are the limitations understood to which the Custodian is subject in making a sale?

Mr. Poucher: You mean at public sale unless an Executive Order provides for private sale.

Mr. Ferry: That is true, but at the same time it is very much against the policy of the office to apply for an Executive Order for private sale, except in most exigent cases, where a very real need arises, and if you can, give reasons for making it private rather than public sale, to justify submitting it to the President.

Mr. Jeffcott: It was a national emergency that brought this Act into being. Patents were obtained not from individual owners in Germany, but from all German interests. The same national emergency has brought to light the need of a national industry in this country, and unless it (as such, not as individuals) can be protected against German ownership of patents, it will suffer. This, as I understand it, is more or less being viewed as an altruistic proposition.

Mr. Ferry: The reason applies to the necessity for such a corporation, but why is it pertinent to the question of public or private sale?

Mr. Ferry: Why do you consider that a public sale would not be expedient, and that a private sale of patents is necessary?

Mr. Wigglesworth: As we interpret the nature of the Act, it empowers the Enemy Alien Custodian to sell these patents, as obliging him to consider their sale in the light of the ability of the buyer to perform; that is, to say, in developing a substantial dye industry in this country able to hold its own in competition with whatever the future may bring. We feel that in a number of instances of sales that have already been made by the Custodian, involving a number of dye and other patents, this has not been accomplished, and that the development of the dye industry is threatened if such sales be repeated. No speculative buyer, or no well-intentioned buyer, is competent to realize the stupendous difficulties that he will be involved in through litigation, intimidation and German intrigue, and we believe that only an association such as the Dye Institute represents can be expected to face the situation and finance and carry out the proceedings and responsibilities that will be involved in the ownership.

Mr. Hoguet: May I ask, Mr. Wigglesworth, what the reasons are for stating that the patents should be sold to an association representing the industry as a whole, rather than to an individual, and what the responsibilities of ownership are that he refers to?

Mr. Wigglesworth: The first responsibility is an actual productive development of the patented dye. We can not round out the industry and satisfy the enormous number of consumers who require these dyes to finish two to three billion dollars worth of goods.

Mr. Ferry: Goods in course of production?

Mr. Wigglesworth: Goods waiting finishing by means of printing and otherwise, with dyes. I mean, of course, cotton printing and finishing in other senses of the word. The industry remains threatened so long as the United States is unable to complete the work it has undertaken by adding to the variety and number of dyes that the textile and other consuming manufacturer are accustomed to employ to give the variety and diversity of products that the public were accustomed to before the war. The dye industry up to this point has been concerned in dyeing uniforms and in making it possible for the public to be supplied with plain colors such as were involved in war times—blacks, blues, and khaki colors—quantity production rather than variety production. We have succeeded in those four years in passing from mere quantity production without reference to quality, into quantity production plus quality, but we have not succeeded in passing from quantity production into variety production, and we could very easily be knocked out of the industry by the introduction of varieties, which according to the Norton census, made for the fiscal year 1913-14 amounted to over six thousand colors.

Mr. Hoguet: You regard these patents then as a possible means of excluding importation of a number of these varieties after the war?

Mr. Wigglesworth: We think that is very doubtful, on account of the difficulties involved in litigation, since any importer becomes owner of one of these patented dyes. If he buy, say a hundred tons of one of these patented dyes, the litigation would involve you against that importer, and not against the former owner of the patent.

Mr. Choate: Would not that work out to the direct advantage of the proposed corporation, in that the importer would be a weak antagonist in litigation, by virture of the smallness of his interest?

Mr. Wigglesworth: The importer I think in the past has generally been the victim of litigation, the medium through which these many lawsuits were carried out. I do not think in the past we would find that it was importer against importer, but that it was the German producers themselves that were in litigation with the importer actually representing one of their German competitors aiming at this same field.

Mr. Choate: Mr. Wigglesworth, why do you feel that the Germans, with all their immense knowledge of this business, troubled and went to the extent of taking out hundreds, and in fact, thousands, of patents covering the manufacture of dyestuffs in this country?

Mr. Wigglesworth: I would remind you that German dye industry was a world monopoly, not a German monopoly, but an international monopoly supplying all the world. Until this war we believed that it was perhaps the most favorable economic scheme for the development of an industry of such small importance in its financial aggregate, but since the war there has been made plain to everybody the fact that this small industry is a key industry that is the determining factor of the value of two or three billion dollars worth of goods in an ultimate destiny—whether they shall be dyed with inferior or superior dyes.

Mr. Ferry: Two or three billion annually?

Mr. Wigglesworth: Yes, annually, and that the consumer can not give his fabrics and goods the precise finish he wants unless industry, which is in the hands of the Germans, concludes to permit him to use the best dye, a second rate dye, or a third rate dye, and in that sense, the moment these quantities of goods get into the markets of the world, more particularly into export markets, the German is in a position to dictate whether they shall be equal to competition with him or shall not be equal to compete.

Mr. Hoguet: That does not answer my question. I want you to tell me why the Germans found it worth while to spend the hundreds of thousands of dollars necessary to get those patents, having no intention whatever of manufacturing over here, unless they felt that those patents did furnish an obstacle to importation by anybody else from anywhere else. They knew the business better than anybody else. Were they right in that sense? If they were, these patents form an obstacle now. It seems to me that this question divides itself into two branches. You can consider the patents from two points of view; either as being used by the Germans as a medium to prevent the manufacture in this country by American industry, or as being used by American owners to exclude importation after the war. I think Mr. Jeffcott has some views on that subject.

Mr. Jeffcott: I am not half so much interested in the second part as I am in the first part. It seems the patents alone are adequate to justify or enable us to perform. We could ignore these patents that you are selling if we had an adequate research department. It takes time. It will take time, even with the patents.

Mr. Ferry: It is for that reason that you do not feel that the ownership of these patents by any one corporation would give the protection that is needed?

Mr. Wigglesworth: Yes, that is so.

Mr. Ferry: Would it be a question of resources on the part of the corporation?

Mr. Wigglesworth: That is, scientific and legal and financial resources.

Mr. Ferry: Would any one corporation be able through its own financial resources and its resources in all ways, to withstand the assaults of Germany, which from what you have said, I understand would not be the assault of one manufacturer, but would be the assault of the entire trade, which would have been organized by Germany for that purpose?

Mr. Wigglesworth: The United States has twice fairly launched this industry, and twice the Germans have torpedoed it. In 1883 they persuaded the consumer that America was dilletante, dabbling in scientific pursuits that it could never make a success of, and Congress withdrew a tariff of 50 cents a pound. That instantaneously destroyed all the structural foundations that had been created. In 1910 the General Chemical Co. and the Barrett Manufacturing Co. and the Solvay Process Co., fully cognizant of these difficulties confronting anybody that entertained a notion of building up this industry, agreed that sooner or later it should be done, and that the first step involved embarking into the manufacture of intermediates. They agreed that they would launch another start, notwithstanding the experiences of the past, and selected, instead of manufacturing dyes, the most important field, primary intermediates, namely aniline oil, which is the basis of aniline colors. They were disposed to believe that the Germans would hesitate to combat an effort inaugurated by such a powerful group as those three concerns represented. Congress at this time recognized the need of the industry and shortly afterward placed a duty on aniline oil of 10 per cent, which was approximately one cent a pound. The Germans promptly sent an emissary, selecting at that time an English manufacturer, English and French being in their Kartels, to notify us that we were trespassing, and going to involve ourselves in difficulties, and that we had better acquiesce in an arrangement that would not be to our injury, and promptly retire before they torpedoed us again. As we would not discuss the matter, the one cent a pound duty was promptly asborbed by the German producer and the price dropped one cent a pound lower than the market preceding that tariff placed on aniline oil. One of their highest officials said at that time, "We admit that this is only a small cloud on the horizon, but we do not propose to see it grow into a great thunderstorm above us."

Mr. Barrows: May I reply to Mr. Choate in one respect? Perhaps he has exaggerated both the number of patents and the cost of taking them out in this country. As I figure out the total number of patents, excluding the Bayer patents, which was by far the largest group of dye patents of German origin, there are remaining approximately 1,000 patents still in force relating to dyestuffs and intermediates and dyeing apparatus. The government fees for each patent were $35, so that the total government fees for taking out these patents is $35,000 approximately. The United States patents are in most cases literal translations of the German patents. They were prepared abroad and the same specification followed in Great Britain as in America. The expense of soliciting those patents in this country was comparatively small, because that was handled largely by their central patent organization in Germany, and the United States local representative was an agent who acted upon their instructions, so that assuming $100 as perhaps a fair estimate of the cost in this country, supplementing what they did in Germany, and the patents would cost perhaps $100,000 to take out, and that distributed over 17 years would be perhaps $6,000 a year, or say $10,000 a year for the government fees and the cost of taking out their patents. That is put up by several companies.

Mr. Choate: Mr. Barrows, you can include for the purpose of my discussion, the Bayer patents and the expired patents, and every patent that has been taken out by the German industry in this country. All I was citing them for was a proof of what the Germans considered the value of patents in excluding importation. My idea was that they were not at all afraid of manufacture.

Mr. Barrows: They can get their patent in this country for a very few thousand dollars a year, and the cost to them of getting it is small.

Mr. Choate: Still it represents a figure of $300,000 all told, for 3,000 patents at $100 per.

Mr. Barrows: Where do you get the 3000 patents? You spread those out over a number of years, and it is a very few thousand dollars a year it would cost to do it.

Mr. Hoguet: I do not see that the cost of soliciting the patents has anything to do with it. It seems to me the question is whether the industry wants the patents or not. It does not make any difference what they cost.

Mr. Wigglesworth: The Germans wanted a monopoly, and the patents were a small part of the expense of maintaining that monopoly. They spent more on graft, ten times over, in assuring themselves that the dyers would use their dyes only, and that only its domestic dye would be selected in preference. They did not even take the chance of preference coming in. They saw to it that practically every dyer in the country was given four, and perhaps ten times the salary he was getting, in order to use their dyes, and that is infinitely more expensive than any patent soliciting.

Mr. Horne: What better protection by a corporation taking over these dye patents would be had than if they went to a private individual by the ordinary means of a public sale?

Mr. Jeffcott: As a small manufacturer we do not want to see that go to one individual.

Mr. Wigglesworth: I would answer that by saying that a public sale brings out a large number of speculators who are entranced with the glamor of the dye industry. They think "Here is a golden opportunity—an industry that has never been exploited in the country, and we can outbid any one else making a tender, and exploit it," not for the purpose of creating the industry, but for the purpose of stock jobbing.

Mr. Choate: The Sales Committee of the Alien Property Custodian will never confirm a sale to a purely speculative person, but I take it, only to a competent manufacturer.

Mr. Hoguet: Mr. Wigglesworth, is not what you say about a corporation representing the industry buying these patents, as distinguished from any of the individual members of the industry buying them, summed up by saying that the industry as a whole wants these patents to go to a body which represents the industry as a whole, so that that body may administer the patents in the way the industry wants them administered?

Mr. Wigglesworth: I think a very good way has been arrived at, of disposing of these patents, probably the only way that they can be disposed of constructively. The only difficulty I see is arriving at the value, and if you are willing, we will now give you as far as we have gone, the classification that we have made in order to attempt to appraise the value of these patents that are now under consideration.

Mr. Hoguet: I would rather you would defer that. There is one point we have not considered, and that is that the Custodian should have the views of the trade as to why the system of licensing established under Section 10 of the Act and administered by the Federal Trade Commission does not fully meet the necessities of the trade. I understand that the industry would not be here asking to buy these patents of the Custodian if the established procedure through the Federal Trade Commission were altogether satisfactory. So I assume that that is not an entirely satisfactory system and Mr. Poucher has stated more or less to me in previous conferences some ideas he has on the subject.

Mr. Poucher: We have taken a number of licenses, and there is quite a long list that we have applied for, as the only proceeding that was open at the time. If it is between the licenses and the ownership of patents in some organization such as outlined here, I do not think we have any doubt as to which would be the better. I think we would be very glad to surrender our licenses under the Federal Trade Commission for participation in the ownership of patents through some such company as this. I think the position of all the companies is very much stronger on that score. Under those licenses you pay a royalty which is unquestionably a handicap, which amounts to 10 per cent. Our license calls for 5 per cent of the value of the use or 5 per cent of the gross sums received by the licensee from the sale.

Judge Laffey: One objection to the license that suggests itself to me is the uncertainty as to the amount of royalty which the licensee is ultimately obliged to pay. Under the Act, the Federal Trade Commission fixes a tentative license. The Act itself provides that within one year after peace is declared, the owner of the patent has the right to file a suit in any District Court of the United States where he can obtain a proper service on the defendant, and have the Court fix the amount of the royalty to be paid, thereby leaving it in great uncertainty as to what royalty the licensee will be ultimately required to pay. In addition to that, the Court must at that time either cancel the license and end the matter, or grant an extension of the license for the full life of the patent, and as a condition precedent to the Court's granting a license for the life of the patent, or for any duration after the suit, the licensee must establish to the satisfaction of the Court that he has invested capital before the suit was brought, for the purpose of exercising the license or practicing the art under the license. The latter is very unsatisfactory, because of the uncertainty as to whether you are going to have a license at all, and as to the amount you will have to pay for it; if the title to the patent remains in the German owner, it is not conceivable that the German owner will appear in this Court to prosecute the suit. He will assign that to some American plaintiff or American corporation, and as I see it, each Federal Judge will exercise his own judgment, depending upon how the evidence strikes him, as to what the license fee shall be. Great confusion it seems to me would result.

Mr. Ferry: The amount of the royalty is not limited to 5 per cent?

Mr. Hoguet: No.

Judge Laffey: I might suggest further that the differential arises in this, that the American licensee will be compelled, in order to be permitted to use the license at all, to pay to the German owner a license fee as fixed and determined by the Court. The German owner, who is therefore a competitor, not only receives 5 per cent from his American competitor, but he has a differential of 10 per cent in that he has 5 per cent received from his American competitor to trade on.

Mr. Choate: While the American competitor has an additional 5 per cent in his cost of operation.

Mr. Ferry: If the Court should determine that it was not a royalty of a mere 5 per cent, but a larger royalty, the differential would simply be that much larger?

Judge Laffey: Certainly, it would be double. And we all know from experience that the matter of fixing the amount of royalty as a question of fact will be determined by each Federal Judge largely in accordance with the proof of the case before him, and his conclusions will depend largely upon how the evidence strikes him.

Mr. Choate: Mr. Gordon points out that in addition to these disadvantages, the system will compel the licensee to submit his books for audit.

Judge Laffey: Yes, I believe that is in the Act.

Mr. Hoguet: The Dupont Company is the largest single applicant for licenses before the Federal Trade Commission. Would you mind stating the reason why the Dupont Company pursued this policy?

Judge Laffey: For the reason that it was the only avenue open to the Dupont Company, to obtain licenses to use It concluded to embark in this industry, and German patents were an obstacle to the company's proceeding in the industry. Knowing the difficulties surrounding a suit for infringement and the undesirability of investing capital in a manufacture that was so honeycombed with patents as the dye industry, we desired of course to get licenses and to be free from the obstacles that lay in the way of the owner of the patent contending that we were infringing. We therefore applied for and got such licenses to use such patents as we felt we desired to use or were possibly involved in our operations. We have already received some licenses, and have quite a large number of applications for licenses now pending. We have already signified our willingness to co-operate with the members of the Dye Institute in the formation of such a corporation to acquire these patents, to be used in common by the industry as a whole, if they can be acquired under proper terms and for a proper price, and it does not involve too much of a risk in their acquisition. In event of titles to the patents being acquired by such corporation, who would hold them virtually as trustee for the industry, we would surrender such licenses as we now have under the Federal Trade Commission and not prosecute further our applications for licenses.

Mr. Hoguet: May I ask what the Committee's feeling is regarding the inclusion in the patents they propose to purchase, of all patents which relate not only to dyes, but those which relate to pharmaceutical and general chemical subject matter? My impression is that this proposition might be more easily handled because of the difficulty of segregating the patents into groups, and because of the fact that there may be overlapping fields for the patents, by delivering to this corporation not only the dye patents, but all chemical patents generally. Does the Committee feel that that would be a desirable thing, and if so, have they interviewed the representatives of other branches of the chemical industry to see what their feeling is? My suggestion to Judge Laffey was made because it occurs to me that possibly there may be some industries which are engaged in more than one particular class of chemical work. For instance, the dye industry might use its by-products to manufacture pharmaceuticals, or a more or less general chemical industry might use its processes to manufacture the dye intermediates or pharmaceuticals. In the same way it is possible that certain classes of patents overlap from one branch of the industry into the other, so that it might be desirable to place all of these patents, that is, those which relate to general chemical subjects, and dyes, intermediates, pharmaceuticals, etc., in the hands of one administrative body so that that body might be in a position to assist the industry along the lines it thought best. Of course in the event that this plan were pursued, I assume that the general chemical manufacturers and pharmaceutical manufacturers would signify their desires as this Institute has in relation to dyestuffs, and that it would be called upon to make its proper contribution towards the capital of the corporation.

Mr. Wigglesworth: I think it desirable not to consider them as a whole, or at least to divide them into two broad classifications recognized by chemists—organic and inorganic; that is to say, the carbon compounds as distinguished from the inorganic group. In the inorganic field the industry has developed and is well able to meet with German competition, and yet there are a number of very important patents the ultimate disposition of which at present is unknown. They should be considered by the inorganic manufacturers through their own association, which is much older than the dye Institute. When you come to the carbon compounds, it is difficult to draw a line between medicinals and dyes, because they are all carbon compounds, but it is inconceivable to me that any of the members of the Dye Institute are prepared to consider embarking into any other enterprise at this time until legislation, influence and Congressional action generally in supporting the industry is better known. At the moment we are not even convinced that the consuming public are prepared to make the sacrifice. When I say the consuming public I do not mean the public at large, who have all shown an extraordinary interest in the successful development of this industry, but we are not certain that the manufacturer who consumes our goods, and who has a distinct financial responsibility, is prepared to make all the sacrifices involved in supporting the dye industry at this initial period of its development, when those sacrifices are very pronounced. So we are uncertain as to the amount of support we are going to get from the actual dye user. How unwise it would be to add to our difficulties entertained in development into the art of pharmaceuticals. We have taken the trouble to meet with some of the world renowned pharmaceutical distributors, who in this country are not really manufacturers, although they are generally supposed to be manufacturers. They are really only dispensers and distributors and have made a great art of this dispensing. There is nobody in Europe to compare with the magnitude and success in the art of dispensing pharmaceuticals. When we ask how far they are prepared to encourage with financial assistance the inauguration of that industry, we get no response whatever at this moment, so I can only add to what Judge Laffey says that I do not think that we should attempt to bid for these patents as a whole unless they are thrown in at a mere nominal value. I think we can arrive at an approximate value of the dye patents and that we can not go further than to speculate upon the future of the pharmaceutics.

Mr. Poucher: You asked, Mr. Hoguet, if the Committee had taken any action about it. They have not. We stand as having discussed the situation in a broad way, more particularly having in mind, of course, the dye patents only. It strikes we that if it is the desire of the Custodian to carry out some such plan as this, and he would like to use the Institute for the purpose, that a way could be found, maybe in connection with some of these other associations to do it. Whether this is desirable or not, I do not think we have come to a conclusion ourselves. It has not been discussed.

Mr. Wigglesworth: I should like to correct the record where I said no response. I mean by that, a negative response. The pharmaceutical people are absolutely negative. No, they will not do it. This is worse than mere lack of interest.

Mr. Jeffcott: Did they give an indication as to their motive?

Mr. Wigglesworth: The only reason they gave is that they have no interest. They are too much involved in dispensing and distributing, and they recognize that as the line of demarkation. They do not want to be manufacturers.

Mr. Hoguet: Are there not a lot of pharmaceutical manufacturers in this country corresponding, for instance, to the Bayer Company?

Mr. Jeffcott: There will be no large manufacturer of dyes that will not make the pharmaceutical.

Mr. Wigglesworth: That step will hardly come about in the patents for the moment under discussion until the field clears itself. You must first sweep away these difficulties and see what is ahead of us. I think anybody will be very unwise to discuss or consider complicating the question by a field so absolutely nebulous. There is not a single pharmaceutical manufacturer of carbon compounds involved in these dye patents who is capable of either co-operating with us or entering into it himself.

Mr. Hoguet: Mr. Wigglesworth, can you give us the names of the trade organization which corresponds to this in the pharmaceutical and similar lines, that might be interested in these patents?

Mr. Wigglesworth: There is the National Wholesale Druggists Association and the Association of Manufacturers of Medical Products. Both of these people bear the same relation to the industry as Riker and Hegeman and Liggetts and these other people bear to our industry. They are mere dispensers. You go in there, hand in your prescription, and they dispense it. The National Wholesale Druggists Association and the Association of Manufacturers of Medical Products bring together these various dispensers, the largest of whom are Parke, Davis & Co. of Detroit and Lilly & Co. of Indianapolis, who in place of dispensing one prescription at a time, put up a million prescriptions.

Mr. Hoguet: May not the attitude of these dispensers you refer to toward the patents be due to their expectation that they will purchase from the German importer after the war, and that they do not wish to shut off their source of supply?

Mr. Wigglesworth· That is true, owing to the inability or failure of America to step into this undertaking.

Mr. Hoguet: I take it from what you have said that there is no established coal tar or pharmaceutical manufacturing industry in this country?

Mr. Wigglesworth: I think it is no injustice to answer that, "No."

Mr. Hoguet: What I would like to know now is what is the chance of such an industry being established by industries in similar lines of work, as for instance the dye industries, were these patents covering these particular pharmaceuticals given over to the dye industry.

Mr. Wigglesworth: That in itself would not be a sufficient inducement. We have first of all got to build up a great organization that involves medical study and therapeutic study of these things and of the medical effects upon the human system, as well as a great army of specialists, which we have been attempting to do in dyes. Nobody has begun it in this country. I think it would be very foolish to even dream of attempting it until we see where we are going to. Let us see light through the woods we have entered before we complicate it with the pharmaceutical, more particularly since the close connection of the carbon compounds makes it quite possible to steer away from those dyes which would involve you in the production of a by-product that may be converted into a pharmaceutical. We have not run into it once in our progress where we were involved in a by-product that we could not see our way to dispose of without entering into the pharmaceutical field.

Mr. Wigglesworth: I certainly think it would simplify problems if the whole of these organic chemical patents are disposed of to one organization or association. I think the inorganic patents should not be disposed of without reference to the Manufacturing Chemists Association of the United States.

Mr. Hoguet: Your point as I understand it then is that you feel, for the fullest future development, that the way should be left open for the dye manufacturers to go into pharmaceuticals if they wish to, but at the present time the industry is not developed along those lines sufficiently to warrant the dye industry in paying a large sum for these patents.

Mr. Wigglesworth: I think the future is so nebulous that we have not sufficiently cleared up the problems of the dye industry, without considering embarking into pharmaceuticals, though it is a very desirable field to have left open.

Mr. Jeffcott: The question of where the control of these patents be put is secondary, so long as the same principle applies to all of them.

Mr. Hoguet: That is, so long as any industry that wished to develop along a particular line would be able to secure the rights to develop along that line on a reasonable basis?

Mr. Jeffcott: Yes.

Mr. Poucher: The coal tar factories of Europe have followed two lines. Some of them have produced coal tar dyes and also lines of pharmaceuticals. Others have confined their efforts entirely to coal tar dye, but it seems to me that if we are going to serve the interests of an industry in this country we should certainly be put in a position to follow the line of those who manufacture both coal tar dyes and pharmaceuticals.

Mr. Hoguet: That is, you want to be in as good a position with respect to patents as the Germans are.

Mr. Jeffcott: Is it not true that most of the German dye makers also made pharmaceuticals?

Mr. Poucher: I think there were three out of the six who did.

Mr. Horne: It is not altogether clear to me why a private sale should be necessary rather than a public sale, as in the case of physical properties.

Judge Laffey: The reasons why we suggest a private sale are that it would appear to be an obvious proposition that if these patents are to be sold, it is desirable that the industry concerned purchase them as a whole, in such a way as will facilitate the development of that industry in this country, and will enable all the manufacturers to use them on terms of equality. I assume that at a public sale only those interested in using the patents would be the bidders, as the only parties interested. As to speculative bidders, they should be discouraged. If the industry by and through a corporation to act as a holder of the patents for the common use of all industries interested, is the purchaser at a public sale, there would probably be only one bid, and that might result in the sale of those patents at a very low, or even a nominal figure.

Mr. Horne: To various holders?

Judge Laffey: Or to various holders, which would confer on the holders all the monopoly that goes with the patent, and would result in injury to the industry as a whole. On the other hand, in a private sale the price is always one arrived at by negotiations between the seller and the buyer, and is quite common in trustees' or receivers' sales. As I have heretofore stated, the organization of a corporation for the purpose of purchasing would seem to facilitate such a purchase and enable the purchaser to grant licenses not only to the stockholders of that corporation but to all eligible persons, firms and corporations, and by eligibility I mean citizens of the United States and corporations or partnerships of the United States, whose stockholders are American citizens holding actual as well as beneficial interest in the business. This policy would be pursued, and it would be put into the certificate of incorporation of the company as a part of the fundamental contract between the stockholders, and any proper assurances could be given by the purchaser or exacted from the purchaser by way of representative, to the effect that all eligible users would be assured of the right to obtain a license to use upon terms of equality with all the others.

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American Dyes Institute
Room 511 320 Broadway
New York

Minutes of Meeting
Executive Committee
American Dyes Institute

January 31st, 1919.

A meeting of the Executive Committee of the American Dyes Institute was held in the office of the Secretary, 320 Broadway, New York City, on Friday, January 31st, 1919, at 1.30 P. M.

The following firms were present and represented as follows:

E. I. DuPont De Nemours & Co., Mr. M. R. Poucher.
The Grasselli Chemical Co., Dr. J. M. Matthews.
The Heller & Merz Co., Mr. August Merz.
Frank Hemingway, Inc., Mr. Frank Hemingway.
Marden, Orth & Hastings Corp., Mr. R. C. Jeffcott.
Nat'l. Aniline & Chem. Co., Inc., Mr. W. T. Miller, Mr. Henry Wigglesworth, Mr. Barrows.
The Sherwin-Williams Co., Mr. W. H. Cottingham.

Meeting was called to order by the President, Mr. W. H. Cottingham.

Mr. Poucher submitted a report of the special Committee in the matter of the purchase of Enemy owned patents from the Alien Property Custodian copy of which follows and forms a part of the minutes of this meeting.

REPORT OF SPECIAL COMMITTEE OF THE EXECUTIVE COMMITTEE OF THE DYE INSTITUTE IN THE MATTER OF THE CONFERENCE AT WASHINGTON, D. C., WITH THE ALIEN PROPERTY CUSTODIAN.

The Committee met at the office of the Alien Property Custodian in Washington, D. C. at 10.30 on Monday, the 27th day of January. Owing to the illness of A. Mitchell Palmer, Alien Property Custodian, he was unable to be present. His office, however, was represented by Joseph H. Chote, Jr., Ramsey Hoguet, Mr. Horn and Mr. Perry. A meeting was held in which the views of the Committee and their counsel were presented in response to interrogatories propounded by those representing the Alien Property Custodian. A stenographic report was made of the meeting which set forth the views of the various members of the Committee and others present at the meeting. It was the conclusion of the meeting that it is not only desirable but necessary to the successful prosecution of the Dye Industry of the United States that the right to use all German-owned patents which the Alien Property Custodian is authorized to take over and sell be acquired and held under some plan which will enable all interested manufacturers to acquire a non-exclusive personal license to use the same upon equal terms, provided always the price to be paid therefor is fair and reasonable. It was the conclusion of the meeting that a private sale by Executive Order is preferable to a public sale. It was also the conclusion of the meeting that in addition to the patents relating to the dye industry it was desirable to concentrate all chemical patents into the hands of one holding company.

On the assurance that Mr. Palmer, the Custodian, would be able to meet the Committee at 10.30 on Tuesday the 28th, the meeting adjourned until that hour. On Tuesday at 10.30 the Committee again met, but owing to the inability of Mr. Palmer to attend on account of continued illness the meeting adjourned. It was informally suggested by Mr. Hoguet that the price for all Dye and Chemical patents be fixed at $250,000. The question of price, however, is to be taken up with the Appraisal Committee appointed to advise with the Alien Property Custodian in the matter of prices on property taken over and sold by the Custodian. It was also informally agreed by the members of the Committee that the members of the Dye Institute would finance the cost of searching the titles to the patents in question until a holding company is formed and assist the Alien Property Custodian in determining the question of enemy-owned ownership and the scope of the proposed sale.

After considering the matter carefully and conferring with representatives of the Alien Property Custodian in New York and Washington, the committee recommends the formation of a corporation to the capital of which any member of the Institute or other Chemical Association or manufacturers of chemicals and pharmaceuticals is elegible to subscribe. The subscription to the stock will be represented by a preferred stock paying a seven per cent dividend and the common stock will be issued to such persons and placed under such restrictions by way of voting trust, or otherwise, as may seem expedient to the representatives of the organizations and companies concerned and to the Alien Property Custodian, to insure the administration of the corporation along the lines contemplated.

The proposed corporation will purchase from the Alien Property Custodian at a reasonable price to be agreed upon, all of the enemy owned United States patents relating to dyes, intermediates, chemicals, pharmaceuticals and chemical apparatus and will issue licenses at a uniform and low rate of royalty to all applicants who can demonstrate their thorough Americanism.

The license fees received by the corporation will be used (first) for the operating expenses of the corporation, including the necessary litigation and (second), to retire the preferred stock. After the preferred stock is retired the license rate will be reduced so as to provide only sufficient funds to take care of the operating expenses of the corporation.

In order to thoroughly canvass the situation and to advise the Alien Property Custodian which patents may be seized, the members of your committee have offered the services of their respective patent counsel gratis and the committee asks for the co-operation of the patent counsel of the members generally in this work.

Your committee recommends that the members of the institute be asked to signify whether they would be willing to subscribe to the capital of the proposed corporation.

Your committee has already approached representative manufacturers in other lines of chemical manufacture and is enlisting their support.

Respectfully submitted,
The Committee,
M. R. POUCHER,
Chairman.
HENRY WIGGLESWORTH,
AUGUST MERZ,
WALTER H. COTTINGHAM.

It was understood in connection with the above report that it was not planned that the American Dyes Institute would become a Holding Company, but a separate Company would be formed to take over all matters pertaining to the purchase and sale of these patents. Pending the formation of such a company, the American Dyes Institute were doing the necessary negotiating.

Mr. Barrows estimated that it would cost from two to ten thousand dollars for the searching of titles and preliminary work, and on motion it was unanimously

> RESOLVED that pending a formation of a separate company, as outlined in the report of the Committee, the American Dyes Institute finance the preliminary expenses, it being understood that the Institute would be reimbursed by the new company when formed.

Mr. Wigglesworth stated that the Manufacturing Chemists Association were to hold a Meeting on Tuesday, February 4th, and he suggested that the special committee of the American Dyes Institute present this matter to the Manufacturing Chemists Association and invite this Association to appoint a committee to act with the special committee of the American Dyes Institute, and on motion, unanimously adopted,

> IT WAS RESOLVED that the Manufacturing Chemists Association be invited to appoint a special committee to act with the committee of the American Dyes Institute as a joint committee with power to close negotiations with the Alien Property Custodian.

Mr. Wigglesworth stated that the Secretary of Commerce had appointed a number of commissioners to go to Europe and study conditions in various industries as it was considered that such a survey would furnish valuable information to industries in the United States. He said he had been appointed as the commissioner to study the Dye Stuff and Chemical Industry and he intended to sail early in February and would make a general survey of conditions and report to the Secretary of Commerce. He suggested that the Secretary would be glad to receive from the Institute a notification indorsing the appointment of Mr. Wigglesworth.

On Motion It Was Resolved that the Executive Committee recommend, at the next meeting of the Institute, that the members indorse the appointment of Mr. Wigglesworth and that the Secretary be instructed to advise the Secretary of Commerce to this effect.

Budget for 1919.

As directed at the last meeting of the Executive Committee, the Secretary had sent to each member of the Committee a questionnaire requesting each member to indicate what in his judgment the various members of the Institute should be assessed in order to provide funds for the Institute work in 1919. Accordingly this matter was discussed and each member stated what he thought each company should and would be willing to pay toward the expenses.

It was understood that each member of the Institute is charged $250.00 annual dues and below is tabulated the unanimous opinion as to a fair and equitable distribution of assessments to provide a total of Fifty Thousand Dollars for expenses in 1919.

Name of Member	*$250.00 Annual Dues*	*Assessment*	*Total*
The Althouse Chemical Co.	$250.00	$250.00	$500.00
American Aniline Prod. Inc.	250.00	750.00	1000.00
Atlas Color Works Inc.	250.00	——	250.00
The Ault & Wiborg Co.	250.00	2750.00	3000.00
Beacon Color & Chemical Co.	250.00	——	250.00
Butterworth-Judson Corp.	250.00	2750.00	3000.00
The John Campbell Co.	250.00	750.00	1000.00
Certified Chemical Corp.	250.00	100.00	350.00

Name of Member	*$250.00 Amount Dues*	*Assessment*	*Total*
Chem. Co. of America	$250.00	———	$250.00
Commonwealth Chem. Co.	250.00	———	250.00
Consolidated Color & Chem. Company	250.00	2000.00	2250.00
Dicks, David Co. Inc.	250.00	750.00	1000.00
The Low Chemical Co.	250.00	1500.00	1750.00
E. I. duPont de Nemours & Co.	250.00	6750.00	7000.00
Dye Products & Chem. Co.	250.00	250.00	500.00
Essex Aniline Works, Inc.	250.00	1000.00	1250.00
The Grasselli Chem. Co.	250.00	3000.00	3250.00
The Heller & Merz Co.	250.00	1500.00	1750.00
Frank Hemingway, Inc.	250.00	500.00	750.00
Holland Aniline Co.	250.00	250.00	500.00
Holliday-Kemp Co.	250.00	500.00	750.00
Hydrocarbon Chem. Prod. Co.	250.00	100.00	350.00
H. Kohnstamm & Co.	250.00	250.00	500.00
Marden, Orth & Hastings Corp.	250.00	2000.00	2250.00
Merrimac Chemical Co.	250.00	750.00	1000.00
Metals Disintegrating Co.	250.00	———	250.00
Monroe Color & Chem. Co.	250.00	250.00	500.00
Monsanto Chemical Works	250.00	500.00	750.00
Geo. H. Morrill Co.	250.00	250.00	500.00
National Anil. & Chem. Co.	250.00	9750.00	10000.00

Name of Member	*$250.00 Amount Dues*	*Assessment*	*Total*
Naugatuck Chemical Co.	$250.00	$250.00	$500.00
Organic Salt & Acid Co.	250.00	———	250.00
The Sherwin-Williams Co.	250.00	1500.00	1750.00
Transatlantic Chem. Corp.	250.00	———	250.00
U. S. Color & Chem. Co.	250.00	500.00	750.00
Zobel Color Works, Inc.	250.00	———	250.00
Total	$9000.00	$41,450.00	$50,450.00

At the suggestion of Mr. Jeffcott, the Secretary was instructed to prepare a letter to be sent to each member of the Institute showing the assessments made to each member, this letter to be first submitted to the members of the Executive Committee for further discussion at their meeting to be held at the Hotel Biltmore on Friday, February 7th.

Dr. Matthews submitted correspondence he had received from the Ault & Wiborg Company, suggesting that the Institute draft a bill which would incorporate the principles of a licensing system, approved by the Institute and by consumers. It was the judgment of those present that at the present time the Institute was not prepared to recommend any Bill to either the Tariff commission or to Congress. Doctor Matthews was requested to advise the Ault & Wiborg Company to this effect.

The next meeting of the committee was set for 10.30 A. M. on Friday, February 7th, to be held at the Hotel Biltmore, New York City.

There being no further business the meeting was adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 30.

Officers

President
W. H. COTTINGHAM
The Sherwin-Williams Co.

Secretary-Treasurer
H. E. DANNER

Counsel
ARTHUR J. EDDY

Executive Committee
L. A. AULT
The Ault & Wiborg Co.

FRANK HEMINGWAY
Frank Hemingway, Inc.

R. C. JEFFCOTT
Marden, Orth & Hastings Corp.

J. MERRITT MATTHEWS
The Grasselli Chemical Co.

AUGUST MERZ
The Heller & Merz Co.

W. T. MILLER
National Aniline & Chemical Co., Inc.

M. R. POUCHER
E. I. du Pont de Nemours Co.

American Dyes Institute
320 Broadway
New York

An Association of dye-stuff manufacturers in th
United States

February 7th, 1919.

Hon. A. Mitchell Palmer,
Alien Property Custodian,
16th & P Streets, N. W.,
Washington, D. C.

Dear Sir:

The Chemical industries in this country and pa ticularly the dye industry will find itself in a peculiarl critical position so far as the patent situation is con cerned unless steps are taken to relieve the industr of the burden of enemy owned monoplies.

The Badische Aniline und Soda Fabrick own nearly five hundred patents in the United States no one of which has been the subject of any use by a American manufacturing concern. These patents hav been held solely for the purpose of preventing manu facture in this country which might compete with th importation of the German made article. This sit ation exists also in connection with the United State patents owned by several other of the large Germa Chemical manufacturers, notably Meister, Lucius Bruning, The Kalle Chemical Company, Aktien Gesel schaft fur Anilin Fabrikation (Berlin Anilin), Grie heim-Elektron and others.

It seems obvious that unless the chemical industr in this country obtains manufacturing rights unde these patents, upon conditions that would justify the embarking into manufacture, that the German pate owners will be in a position to enforce their monopolies in this country after the war and to a great extent nullify the efforts which have been made to establish this industry in this country independently of Germany. This would imperil an enormous investment made in the establishment of dye and other chemical plants in this country which amounts, excluding explosive plants, to upwards of one hundred and fifty million dollars and it might prevent the establishment of a thoroughly American dye and chemical industry which is universally recognized to be a necessity for the United States.

Under the Trading with the Enemy Act two courses are apparently open to the chemical industry: (1) Securing license rights from the Federal Trade Commission under Section 10 of the Act and (2) The purchase of all of the patents outright from the Alien Property Custodian by a holding corporation under Section 7 (c) as amended and Section 12 of the Act. The first of these courses is considered by the trade to be entirely impractical for the following reasons:

1. It subjects the American manufacturer to the payment of a five per cent. royalty to his direct German competitor, thus establishing a ten per cent. differential between the American manufacturer and his competitor.

2. The licenses are terminable at the pleasure of a court so that a manufacturer is obliged to make a large investment on a mere chance of being able to continue operations or will refrain from making the investment because of the uncertainty of the license.

3. Licenses under Section 10 require opening of the books of the American companies to German competitors.

4. The rate of royalty fixed by the Federal Trade Commission is a mere tentative rate subject to increase after the war, so that a manufacturer is never certain to what extent his manufacturing cost may be increased.

The second possible mode of procedure if regulated in the proper manner is considered by the trade as represented by this institute to be the only practical solution. It should be pointed out that under the power of sale vested in the Custodian he may dispose of the German owned patents in any way that the actual owner of the patents might dispose of them, since he is vested with the entire title thereto. He may therefore either sell the patents in whole or in groups outright to individual manufacturers, or he may make a sale under the terms of which the industry as a whole may benefit. This institute considers that the sale of the patents or any part of them outright without restriction to an American manufacturer would not affect the desired result, since it would merely substitute an American patent owner for a German patent owner and would thus hamper the free development of the other chemical companies. It is also probable that if a sale of this kind were made, an American purchaser would find himself in possession of a large number of patents which he could not possibly use because of the limitations of his plant or equipment but which he would nevertheless monopolize and that these patents would therefore lie idle and the industry as a whole suffer in consequence.

It therefore seems that the greatest benefit to the industry as a whole will be obtained by selling the German owned American patents in such a way as to permit any American corporation operating in the industry affected to obtain manufacturing rights if it desires.

In order to carry out this plan, this Institute has appointed a sub-committee of its Executive Committee to formulate a proposal to be made to the Alien Property Custodian, whereby the desired plan may be put into effect. The sub-committee has recommended to the Custodian as follows:—

(Copy report of the Committee attached.)

The plan proposed above and recommended to the Institute will obviate the difficulties noted above, in our opinion, and will permit the fullest possible development of the industry. It will be noted that the corporation proposed to be formed is not a money-making corporation, but one which eventually contemplates the issuance to its licensees of licenses substantially without royalty. We may also refer to the fact that this corporation being controlled and operated by those immediately interested in the industry will be necessarily used to promote the industries in the manner in which the industry wishes them to be promoted and may be effectively used to exclude competition by reason of German importation after the war to the extent that the imported products infringe product patents owned by the corporation.

Respectively,

THE AMERICAN DYES INSTITUTE,
(Sgd.) Walter H. Cottingham,
President.
(Sgd.) H. E. Danner,
Secretary.
(Sgd.) A. J. Eddy,
Counsel.

Executive Committee:
(Sgd.) J. Merritt Matthews,
(Sgd.) Wm. Miller,
(Sgd.) Frank Hemingway,
(Sgd.) August Merz,
(Sgd.) M. R. Poucher.

PLAINTIFF'S EXHIBIT No. 31.

February 8th, 1919

Hon. A. Mitchell Palmer,
Alien Property Custodian,
16th and P. Streets, N. W.,
Washington, D. C.

Attention: Mr. Loder

Dear Sir:

Referring to our letter of February 7th, I would advise that by mistake the wrong report of the Executive Committee was attached to our letter and I am sending you herewith a copy of the report made by the Executive Committee to the Institute at their meeting yesterday.

Will you kindly substitute the enclosed report for that already sent you before our letter is submitted to Mr. Palmer?

Very truly yours,

H. E. DANNER,
Secretary.

HED:IF.
Enclosure.

PLAINTIFF'S EXHIBIT No. 32.

February 8th, 1919.

Mr. M. R. Poucher,
E. I. duPont de Nemours & Co.,
Church Bldg.,
Wilmington, Del.

Dear Mr. Poucher:

I have this morning seen Mr. Hoguet and have submitted the letter forwarded to Mr. Palmer last night, which included the original report of the sub-committee to the Executive Committee regarding the purchase of enemy owned patents.

Mr. Hoguet has suggested that I write to Mr. Loder (Assistant to Mr. Palmer), requesting that the enclosure sent with the letter last night be withdrawn, and that in its place the report of the Executive Committee made to the Institute yesterday, be submitted.

Very truly yours,

H. E. DANNER,

Secretary.

HED:IF.
ENCLOSURE.

PLAINTIFF'S EXHIBIT No. 33.

AMERICAN DYES INSTITUTE
Room 511 320 Broadway
New York

MINUTES OF MEETING
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE
February 7th, 1919.

A meeting of the Executive Committee of the American Dyes Institute was held at the Hotel Biltmore, New York City, at 10:30 A. M. on Friday, February 7th, 1919.

The following members were present:

THE SHERWIN-WILLIAMS CO.	Mr. W. H. Cottingham
THE HELLER & MERZ COMPANY	Mr. August Merz
E. I. DUPONT DE NEMOURS & CO.	Mr. M. R. Poucher
NATIONAL ANILINE & CHEM. CO.	Mr. W. T. Miller
FRANK HEMINGWAY, INC.	Mr. Frank Hemingway

The Grasselli Chemical
Company......................Dr. J. Merritt Matthews

Meeting called to order by the President, Mr. W. H. Cottingham.

The following report in reference to the purchase of enemy owned patents was read, and approved and ordered to be read at the general meeting.

Report of Special Committee of the Executive Committee to the American Dyes Institute in the matter of conferences with the Alien Property Custodian concerning the proposal to acquire enemy owned patents.

* * * * * *

Since our last monthly meeting, a matter has been brought to the attention of the Executive Committee by the Alien Property Custodian which vitally concerns the chemical industry of the United States and particularly the new dyestuff industry. The proposal concerns the taking over of all enemy owned U. S. patents for dyes, intermediates, pharmaceuticals and other chemicals. The underlying idea of the Alien Property Custodian is to assist those new branches of the chemical industry in this country, by placing all of those enemy owned patents in the hands of a trustee for the benefit of the entire industry. It is proposed that the various branches of the chemical industry in this country come together and join in the formation of a company that would act as the owning and licensing company for all these patents.

Your Executive Committee appointed a sub-committee to confer with the Alien Property Custodian. This committee met at the Custodian's office in Washington on Monday, January 27th. Owing to illness, Mr. A. Mitchell Palmer, Alien Property Custodian, was unable to be present; his office, however, was represented by Joseph H. Choate, Jr., Ramsay Hoguet, Mr. Horn and Mr. Ferry. A meeting was held in which the view of the committee and their counsel was presented in response to interrogatories propounded by those representing the Alien Property Custodian. It was the conclusion of the meeting that it is not only desirable but necessary to the successful prosecution of the dye industry in the United States, that the right to use German owned patents, which the Alien Property Custodian was authorized to take over and sell, be acquired and held under some plan which will enable all interested manufacturers to acquire non-exclusive personal licenses and to use the same upon equal terms, provided always, the price to be paid therefor is fair and reasonable. It was the conclusion of the meeting that a private sale by executive order is preferable to a public sale. It was also the conclusion of the meeting that in addition to the patents relating to the dye industry, it was desirable to concentrate all chemical patents into the hands of one Holding Company. The question of price is to be taken up with the Appraising Committee appointed to advise with the Alien Property Custodian in the matter of prices on property taken over and sold by the Custodian. It was also informally agreed by the members of the Committee, that the members of the Dye Institute finance the cost of searching the titles to the patents in question until a Holding Company is formed, and assist the Alien Property Custodian in determining the question of enemy owned ownership and the scope of the proposed sale. After considering the matter carefully, conferring with representatives of the Alien Property Custodian in New York, the committee recommended the formation of a corporation, to the capital of which any member of the Institute or other chemical associations is eligible to subscribe, the subscriptions to the stock to be represented by a preferred stock paying 7% dividend and the common stock to be issued to such persons and placed under such restrictions by way of a voting trust or otherwise, as may seem expedient to the representatives of the organizations and companies concerned and to the Alien Property Custodian, to insure the administration of the corporation along the lines directed. The proposed corporation will purchase from the Alien Property Custodian, at a reasonable price to be agreed upon, all of the enemy owned U. S. patents relating to dyes, intermediates, pharmaceuticals, chemicals and chemical apparatus, and will issue licenses at a uniform and low rate of royalty to applicants, who can demonstrate their thorough Americanism. The license fee received by the corporation will be used first, for the operating expenses of the corporation, including the necessary litigation and second, to retire the preferred stock. After the preferred stock is retired, the license fee will be reduced, so as to provide only sufficient funds to take care of the operating expenses of the corporation.

In conclusion it might be stated that the members of the committee offered to the Alien Property Custodian the services of their respective patents counsel, gratis, and the committee asks for the co-operation of the patents counsel of the members generally in this work. Each member of the Institute will shortly be asked to signify the amount of his subscription to the capital of the proposed corporation and it is hoped and desired that every member of the Institute will participate.

Pursuing the matter a step further, your committee had a conference with the Executive Committee of the Manufacturing Chemists Association in company with Mr. J. H. Choate, Jr., and Mr. Ramsay Hoguet, representing the Alien Property Custodian. The result of this conference was a resolution endorsing the plan and promising co-operation.

Respectfully submitted.

THE COMMITTEE:

....

....

....

....

Chairman.

. . . .

At the suggestion of Mr. Poucher the following letter was ordered to be addressed and mailed to Mr. A. Mitchell Palmer, Alien Property Custodian.

February 7th, 1919.

Hon. A. Mitchell Palmer,
Alien Property Custodian,
16th & P. Streets, N. W.,
Washington, D. C.

Dear Sir:

The Chemical industries in this country and particularly the Dye Industry will find itself in a peculiarly critical position so far as the patent situation is concerned unless steps are taken to relieve the industry of the burden of enemy owned monopolies.

The Badische Aniline und Soda Fabrik owns nearly five hundred patents in the United States, not one of which has been the subject of any use by an American manufacturing concern. These patents have been held solely for the purpose of preventing manufacture in this country which might compete with the importation of the German made article. This situation exists also in connection with the United States patents owned by several other of the large German chemical manufacturers, notably Meister, Lucius & Bruning, The Kalle Chemical Company, Aktien Gesellschaft fur Anilin Fabrikation (Berlin Anilin), Griesheim-Elektron and others.

It seems obvious that unless the chemical industry in this country obtains manufacturing rights under these patents, upon conditions that would justify their embarking into manufacture, that the German patent owners will be in a position to enforce their monopolies in this country after the war and to a great extent nullify the efforts which have been made to establish this industry in this country independently of Germany. This would imperil an enormous investment made in the establishment of dye and other chemical plants in this country which amounts, excluding explosive plants, to upwards of one hundred and fifty million dollars and it might prevent the establishment of a thoroughly American dye and chemical industry which is universally recognized to be a necessity for the United States.

Under the Trading With the Enemy Act two courses are apparently open to the chemical industry: (1) Securing license rights from the Federal Trade Commission under Section 10 of the Act and (2) The purchase of all of the patents outright from the Alien Property Custodian by a holding corporation under Section 7 (c) as amended and Section 12 of the Act. The first of these courses is considered by the trade to be entirely impractical for the following reasons:

1. It subjects the American manufacturer to the payment of a five per cent. royalty to his direct German competitor, thus establishing a ten per cent. differential between the American manufacturer and his competitor.

2. The licenses are terminable at the pleasure of a

court so that a manufacturer is obliged to make a large investment on a mere chance of being able to continue operations or will refrain from making the investment because of the uncertainty of the license.

3. Licenses under Section 10 require opening of the books of the American companies to German competitors.

4. The rate of royalty fixed by the Federal Trade Commission is a mere tentative rate subject to increase after the war, so that a manufacturer is never certain to what extent his manufacturing cost may be increased.

The second possible mode of procedure if regulated in the proper manner is considered by the trade as represented by this Institute to be the only practical solution. It should be pointed out that under the power of sale vested in the Custodian he may dispose of the German owned patents in any way that the actual owner of the patents might dispose of them, since he is vested with the entire title thereto. He may therefore either sell the patents in whole or in groups outright to individual manufacturers, or he may make a sale under the terms of which the industry as a whole may benefit. This Institute considers that the sale of the patents or any part of them outright without restriction to an American manufacturer would not affect the desired result, since it would merely substitute an American patent owner for a German patent owner and would thus hamper the free development of the other chemical companies It is also probable that if a sale of this kind were made, an American purchaser would find himself in posesssion of a large number of patents which he could not possibly use because of the limitations of his plant or equipment, but which he would nevertheless monopolize and that these patents would therefore lie idle and the industry as a whole suffer in consequence.

It therefore seems that the greatest benefit to the industry as a whole will be obtained by selling the German owned American patents in such a way as to permit any American corporation operating in the industry affected to obtain manufacturing rights if it desires.

In order to carry out this plan, this Institute has appointed a sub-committee of its Executive Committee to formulate a proposal to be made to the Alien Property Custodian, whereby the desired plan may be put into effect. The sub-committee has recommended to the Custodian as follows:

(Copy report of the Committee attached.)

The plan proposed above and recommended to the Institute will obviate the difficulties noted above, in our opinion, and will permit the fullest possible development of the industry. It will be noted that the corporation proposed to be formed is not a money-making corporation, but one which eventually contemplates the issuance to its licensees of licenses substantially without royalty. We may also refer to the fact that this corporation being controlled and operated by those immediately interested in the industry will be necessarily used to promote the industries in the manner in which the industry wishes them to be promoted and may be effectively used to exclude competition by reason of German importation after the war to the extent that the imported products infringe product patents owned by the corporation.

Respectively,

THE AMERICAN DYES INSTITUTE,
President—Secretary—Counsel.

Executive Committee.

Mr. Poucher submitted the following correspondence which is made a part of the minutes of this meeting.

COPY.

February 3, 1919.

Mr. M. R. Poucher,
Chairman, Committee of American Dyes Institute,
C/o E. I. duPont de Nemours Company,
Wilmington, Delaware.

Dear Sir:—

As directed by Mr. Hoguet while in New York Saturday, I have instructed several patent abstractors to report to me at the Washington Loan & Trust Building Tuesday, February 4th, to begin work on Classes 8 and 23. The stenographic help and my services, of course, to be furnished by the Alien Property Custodian.

The abstractors expect their pay by the week, so I am drawing on you for $500.00 initial expense in accordance with your agreement with Mr. Hoguet. I shall deposit this fund in the Washington Loan & Trust Company, Will T. Gordon, Agent, and keep a strict account of expenditures and vouchers showing items paid, which will be subject to inspection at all times.

Mr. Barrows representing the American Aniline & Chemical Company and Mr. Squares representing the Du Pont Company are here now determining how many classes and sub-classes of patents shall be abstracted at the expense of the Institute. Mr. Barrows discussed with me Saturday the advisability of disclosing the plan of the proposed purchase to the Federal Trade Commission and also to the various parties holding license under the Federal Trade Commission for the purpose of enlisting their co-operation.

I have advised Mr. Barrows positively against such action. Mr. Palmer, Mr. Hoguet, and myself are fully informed as to the Federal Trade Commission's attitude, and I am positive that any discussion between Mr. Barrows or other members of the Institute and the Federal Trade Commission or its licensees will not have a good effect.

Mr. Hoguet was very positive Saturday in instructing me as to the direction of this work, which is being done primarily for the Alien Property Custodian and after Mr. Barrows and Mr. Squares have determined the classes of patents to be searched at the expense of the Institute, the only further service I could suggest for them for the time being is the work of abstracting, should they see fit to engage in such work.

Very truly yours,

WILL T. GORDON,
For Director,
Bureau of Investigation.

WTG:LBF.

COPY

February 6th, 1919.
File 2975.

Copy to H. E. Danner:

Mr. Will T. Gordon,
For the Director
Bureau of Investigation,
Alien Property Custodian,
16th & P Sts., N. W.,
Washington, D. C.

Dear Sir:—

I am in receipt of your letter of the 3rd instant also the draft for $500.00 which I have duly paid and will turn in to the Institute.

Please note for the sake of order, to in the future draw upon the American Dyes Institute, 320 Broadway, New York. Kindly advise Mr. H. E. Danner the Treasurer a few days in advance of your intentions, so that he may be prepared to meet the obligations as they come along. It would be well if you could give him an estimate of your needs several weeks ahead, however this is a matter I leave you to arrange with Mr. Danner. If he has any further suggestions to offer he will write to you.

Yours very truly,

M. R. POUCHER.

HRP.S.

February 6, 1919.
File 2975.

Mr. H. E. Danner, Sec'y,
American Dyes Institute,
320 Broadway, New York.

Dear Sir:—

Under an arrangement with the Alien Property Custodian, the Dyes Institute, by a resolution passed at the last meeting of the Executive Committee, will finance the work of the patents counsel in Washington. This is in charge of Mr. Will T. Gordon, for the Director, Bureau of Investigation, Alien Property Custodian, 16th & P. Streets, N. W., Washington, D. C.

Attached is a letter which I received from Mr. Gordon advising that he has made a draft for $500.00, initial expenses for account of this fund. Instructions have not yet been given to Mr. Gordon as to how this money will be put into his hands, and he made the draft upon me; I paid it personally and hand it to you herewith. You may refund it to me when you get your funds in hand. I have written to Mr. Gordon today how the transaction is to be carried on in the future, copy of this letter attached.

Yours very truly,
M. R. POUCHER.

MRP:S.

. . . .

In view of the necessity of providing funds for financing the work of the patents counsel in Washington the Treasurer was instructed to request each member of the Executive Committee to deposit with him one thousand ($1000.00) as a fund to be used for this purpose, it being understood that same would be refunded by the new corporation to be formed. The Treasurer was also instructed to refund to Mr. Poucher, the $500.00 mentioned in the above correspondence.

Publicity Work

The proposed pamphlet was discussed and on motion the Secretary was instructed to order 10,000 small pamphlets and 5000 larger pamphlets, the cost of which would be $652.00.

New Letter Head

A new letterhead including the names of all officers and the Board of Governors was submitted and approved.

Budget

After discussion the proposed letter to be sent to each member with the budget for the year 1919 was approved.

Lease for Office

The Treasurer was instructed to sign a new lease for his present office (320 Broadway) dating from May

1st, 1919, to April 30, 1920, at the rate of $600.00 per year.

SECRETARIES

On motion it was unanimously resolved—that Mr. C. C. Bennett and Mr. H. E. Danner be appointed Secretaries for the year 1919, at their present salaries, their respective duties to be as follows:—

Mr. Bennett to be Secretary for the general work of the Institute and Mr. Danner to be Secretary of the Open Price Section.

There being no further business on motion meeting adjourned.

H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 34.

Form 12363 Y

February 21st, 1919.
File 2975.

Du Pont
Established 1802
E. I. du Pont de Nemours & Company
Incorporated
Wilmington, Delaware
Dyestuffs Sales Department

Mr. C. C. Bennett, Sec'y.,
American Dyes Institute,
21 East 40th St., New York.

My dear Mr. Bennett:

Mr. Weston will be in New York on Monday and will come in to see you. He is coming up to keep an appointment with the Custodian's office, relative to the preparation of the matter for the announcement which will be made shortly regarding the taking over of enemy owned U. S. Patents.

Obviously this announcement must come from the Custodian and not from the Institute or any individual member of the Institute. We must all continue to be very careful on this point. It is true there has been a leak, but I think the Custodian has located it.

Yours very truly,
(Sgd.) M. R. POUCHER,

MRP:S

PLAINTIFF'S EXHIBIT No. 35.

A. P. C. Form 7

ALIEN PROPERTY CUSTODIAN
OFFICE MEMORANDUM

To Mr. Palmer.
Date, January 28, 1919.
From Mr. Hoguet.
In re...
When reply wanted..........

The representatives of the Dye industry, who stayed over another day to see you regarding the purchase of German patents, will submit their recommendations in brief form within a few days.

Mr. Garvan and Mr. Choate advise taking up the question of price with the Advisory Sales Committee in New York, and arrangements are being made for a conference with the committee tomorrow.

I greatly regret that your illness prevented you being present, as we had a most interesting conference, and the representatives of the most important companies in the industry all seemed enthusiastically in favor of the proposed plan.

I trust you will not be confined to your house very long, and if you wish to confer with any of these gentlemen they stand ready to come to Washington at any time for that purpose.

PLAINTIFF'S EXHIBIT No. 36.

February 11, 1919.

Mr. August Merz,
The Heller & Merz Co.,
Newark, N. J.

Dear Sir:—

Referring to the matter of the purchase of Enemy owned patents, at the last meeting of the Executive Committee it was decided that temporarily it would be necessary to establish a fund to provide for the expenses incident to the searching of patents.

As outlined in the minutes of the meeting sent in this mail, a number of patent Abstractors are now engaged in Washington and expect to be paid by the week, and to this end Mr. Poucher has already personally furnished $500.00.

It was agreed that the firms represented on the Executive Committee should deposit with the Treasurer the sum of $1,000.00 each, which will be reimbursed by the new Corporation when it is formed.

Your Treasurer would therefore request that this matter have your immediate attention and hopes to receive your check at your early convenience, in order that the work at Washington may not be delayed.

Yours very truly,

H. E. DANNER,
Treasurer.

HED:AM

PLAINTIFF'S EXHIBIT No. 37.

February 11, 1919.

Mr. W. T. Miller, Secretary,
National Aniline & Chemical Co.,
21 Burling Slip,
New York City.

Dear Sir:—

Referring to the matter of the purchase of Enemy owned Patents, at the last meeting of the Executive Committee it was decided that temporarily it would be necessary to establish a fund to provide for the expenses incident to the searching of patents.

As outlined in the minutes of the meeting sent in this mail, a number of patent Abstractors are now engaged in Washington and expect to be paid by the week, and to this end Mr. Poucher has already personally furnished $500.00.

It was agreed that the firms represented on the Executive Committee should deposit with the Treasurer the sum of $1,000.00 each, which will be reimbursed by the new Corporation when it is formed.

Your Treasurer would therefore request that this matter have your immediate attention and hopes to receive your check at your early convenience, in order that the work at Washington may not be delayed.

Yours very truly,

H. E. DANNER,
Treasurer.

HED:AM

PLAINTIFF'S EXHIBIT No. 38.

February 11, 1919.

Mr. M. R. Poucher,
E. I. duPont deNemours & Co.,
Church Bldg.,
Wilmington, Del.

Dear Sir:—

Referring to the matter of the purchase of Enemy owned Patents, at the last meeting of the Executive Committee it was decided that temporarily it would be necessary to establish a fund to provide for the expenses incident to the searching of patents.

As outlined in the minutes of the meeting sent in this mail, a number of patent Abstractors are now engaged in Washington and expect to be paid by the week, and to this end Mr. Poucher has already personally furnished $500.00.

It was agreed that the firms represented on the Executive Committee should deposit with the Treasurer the sum of $1,000.00 each, which will be reimbursed by the new Corporation when it is formed.

Your Treasurer would therefore request that this matter have your immediate attention and hopes to receive your check at your early convenience, in order that the work at Washington may not be delayed.

Very truly yours,

H. E. DANNER,
Treasurer

HED:AM

PLAINTIFF'S EXHIBIT No. 39.

Form 12363 Y
Du Pont
Established 1802
E. I. du Pont de Nemours & Company
Wilmington, Delaware
Dyestuffs Sales Department

February 12th, 1919.
File 2975.

Mr. H. E. Danner, Sec'y.,
American Dyes Institute,
320 Broadway, New York.

Dear Mr. Danner:—

Your letter of the 11th. I have passed on your request for a check of $1,000 for the Washington fund.

Yours very truly,
DYESTUFFS SALES DEPARTMENT,
(Sgd.) M. R. Poucher,
Director.

MRP:S.

PLAINTIFF'S EXHIBIT No. 40.

February 19th, 1919.

Mr. Will T. Gordon,
For the Director,
Bureau of Investigation,
Alien Property Custodian,
16th & P. Sts., N. W.,
Washington, D. C.

Dear Sir:

As per the request of Mr. Poucher and Mr. Hoguet, I am sending you herewith check for $2000.00, to be used in connection with expenses incident to the searching of titles.

Very truly yours,

HED:IF.
H. E. DANNER,
ENCLOSURE.
Secretary.

PLAINTIFF'S EXHIBIT No. 41.

Form 12363 Y
DU PONT
Established 1802
E. I. DU PONT DE NEMOURS & COMPANY
Incorporated
Wilmington, Delaware
Dyestuffs Sales Department

February 21st, 1919.
File 2975.

Mr. H. E. Danner, Sec'y.,
American Dyes Institute,
320 Broadway, New York City.

Dear Mr. Danner:—

How did you come out with Mr. Hoguet regarding the payment he asked for, for account of the Washington patent matter? Have the others paid up? Have you an estimate from Mr. Hoguet as to what the total cost is to be?

I think you will find they are somewhere between 75 and 90% finished.

Yours very truly,
DYESTUFFS SALES DEPT.
(Sgd.) M. R. POUCHER,
MRP:S.
Director.

[Memo. in lead pencil]

Paid $1000—
Sherwin Williams
August Merz.
W. T. Gordon
2/13 2/19

PLAINTIFF'S EXHIBIT No. 42.

February 24th, 1919.

Mr. M. R. Poucher,
E. I. duPont de Nemours & Co.,
Church Bldg.,
Wilmington, Del.

Ref.: *File No. 2975*

Dear Mr. Poucher:

Acknowledging yours of the 21st inst., I would advise that I telephoned Mr. Hoguet on Wednesday, the 19th inst., and he recommended that I send an additional check for $2,000.00 to Mr. Gordon, covering advance payments in connection with the Washington patent matter, which I did.

This makes a total of $4,000.00, which I have advanced to Mr. Gordon in addition to the $500.00 which you personally advanced, and I advised Mr. Hoguet that I shall expect Mr. Gordon to render his accounts, attaching his receipts of $4500.00, and his detail of disbursements.

I have received $1,000.00 each from

The Heller & Merz Company
The Sherwin-Williams Co.
E. I. duPont de Nemours & Co.
The Calco Chemical Company
The National Aniline & Chem. Co., Inc.

This leaves

Frank Hemingway, Inc.
The Grasselli Chemical Company
Ault & Wiborg Company

missing.

I have asked Mr. Hoguet for an estimate of the total cost but find that he has been away from New York since the 21st. In any event, this special fund is being kept separate and a complete detail will be rendered to the new corporation when organized.

Very truly yours,

H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 43.

February 26th, 1919.

Mr. M. R. Poucher,
E. I. duPont de Nemours & Co.,
Church Bldg.,
Wilmington, Del.

Dear Mr. Poucher:

With further reference to yours of the 21st inst., I talked with Mr. Hoguet yesterday and he advised me that he has every reason to believe that the $2,000.00 sent to Mr. Gordon the other day will amply cover the total expenses in the Washington patent matter.

I understand the work of search has been completed and there is a total of about 45,000 patents.

In addition to the money sent to Mr. Gordon, I have received a bill from Mr. Barrows, amounting to $1713.10, and understand there will be additional bills from Mr. Barrows. It would therefore look as if the total expenses will be in the neighborhood of $6500.00.

Very truly yours,

H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 44.

March 12th, 1919.

Mr. Will T. Gordon,
For the Director,
Bureau of Investigation,
Alien Property Custodian,
16th & P. St., N. W.,
Washington, D. C.

Dear Sir:

Mr. Hoguet called me on the wire today, requesting me to send a check covering a statement you had rendered to the Institute.

I do not recall receiving a statement from you, but we did receive a number of vouchers, without any statement, which total to $4245.86. As against this you have received a total of $4500.00.

I should be glad to have you advise just how your accounts stand, as I understand this matter can now be cleaned up.

Very truly yours,

H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 45.

March 14th, 1919.

Mr. Will T. Gordon,
For the Director,
Bureau of Investigation,
Alien Property Custodian,
16th & P. Sts., N. W.,
Washington, D. C.

Dear Sir:

Replying to yours of the 13th instant, and confirming telegram sent you today, I am enclosing herewith check for $2350.00, which I trust you will find in order.

I thank you for your letter of February 28th, and regret that the original letter was not received.

Very truly yours,

H. E. DANNER,
Treasurer.

HED:IF.
Encl.

PLAINTIFF'S EXHIBT No. 46.

Form 12363 Y

Du Pont
Established 1802
E. I. duPont de Nemours & Company
Incorporated
Wilmington, Delaware
Dyestuffs Sales Department

Sept. 24, 1919.

Mr. H. E. Danner,
American Dyes Institute,
320 Broadway,
New York City.

Dear Sir:—

During February we advanced $1,000.00 as a portion of the necessary expenses to employ patent abstractors in Washington, with the understanding that this money would be refunded. Mr. Poucher advised sometime ago that he would take it up with you, and as a matter of record, will you kindly give us some idea as to when this money will be received.

Very truly yours,

E. I. du PONT de NEMOURS & CO.
Dyestuffs Sales Department.

FHC:FLR.

PLAINTIFF'S EXHIBIT No. 47.

AMERICAN DYES INSTITUTE
320 Broadway, New York

September 24, 1919.

Mr. F. H. Clymen,
E. I. duPont de Nemours & Co.,
Dyestuffs Sales Dept.,
Wilmington, Del.

Dear Sir:—

This will acknowledge your favor of the 24th with reference to $1,000. advanced by your company as a portion of the necessary expense to employ patent abstractors in Washington in connection with the organization of the Chemical Foundation, Inc.

You are correct in your understanding that it was understood at the time that this $1,000. was paid that it would be refunded to you just as soon as we were repaid by the Chemical Foundation, Inc., for advances made in their behalf.

We have requested the Chemical Foundation, Inc., on several occasions to refund to us, but have not as yet received their remittance. As soon as same is received you and the other members who advanced $1,000. will be repaid.

We have asked Mr. Poucher to take this matter up with the Chemical Foundation, Inc.

Very truly yours,

H. E. DANNER,
Treasurer.

HED:AM.

PLAINTIFF'S EXHIBIT No. 48.

February 28, 1919.

6-10
5935

American Dyes Institute,
320 Broadway,
New York City.

Gentlemen:

As a matter of record I am writing to give you the field and scope of the investigation of enemy-owned United States patents which has been conducted in Washington in co-operation with the Alien Property Custodian. This investigation was conducted pursuant to the authorization of the Executive Committee of the Institute on January 31, and pursuant to the understanding that the members of the Committee would contribute the services of their respective patent counsel to assist in this work.

The scope of the investigation will be apparent from the following list of classes and subjects which were investigated, and from which all or part of the patents were selected as of relevant subject matter to be included in those sold to the proposed holding corporation, provided the subsequent title search showed these patents to be still enemy-owned:

Dyestuffs and dyeing processes and apparatus; organic and inorganic chemicals and chemical processes generally; medicines and medicinal foods; explosives; fertilizers; mineral and fatty oils; metallurgy, including alloys and metallurgical processes and apparatus; electrochemistry, including electric furnaces; paints, varnishes, and other coating and impregnating composition; fuel compositions; coke; wood impregnation; wood distillation; tanning; portland cement; quartz; quartz glass; plasters and plastic compositions, *e. g.*, cellulose derivatives, synthetic resins, rubber vulcanization and regeneration, etc., photographic developers and color photography; electrical fume arresters and air purifiers (Cottrell process); bone black and decolorizing carbon; alcohol production and rectification (except beer and alcoholic beverages); linoleum and other impregnated fabrics; liquefaction and separation of air and other gases; hydrogen production; pyrometers, spectroscopes, calorimeters, balances, etc.

In making our investigation we have made use of the classified lists of *prima facie* enemy-owned patents, issued by the Federal Trade commission; but these lists, which were found to be incomplete and inaccurate, were supplemented by searches of the patent office records to obtain complete lists of patents granted to the leading German companies and to certain inventors; by searches of the assignment records to obtain complete lists of patents and pending applications assigned to many of these German companies; and by searches of the classified patents at the patent office of the more relevant and important classes.

The total number of patents thus selected as being of relevant subject matter was between 4200 and 4300 patents. Copies of practically all of these patents were obtained from the patent office and turned over to Mr. Gordon, representing the Alien Property Custodian, to be used as the basis of the title searches which were made under Mr. Gordon's supervision. Mr. Gordon took entire charge of the making of these title searches; so that our investigation was of a preliminary character and involved the ascertainment of patents of relevant subject matter to be further investigated as to their present ownership.

In addition to the patents above referred to, the lists of enemy-owned pending applications have been compiled by the primary examiners of the main chemical divisions of the patent office, with the approval of the Commissioner of Patents; and these lists of pending applications have likewise been turned over to Mr. Gordon for further investigation as to their present ownership, and with the object of including all which are now found to be enemy-owned.

Our investigation has been conducted under the immediate supervision of Mr. Squair, representing the du Pont Co. and the writer, representing the National Aniline and Chemical Co. We have also conferred with Messrs. Byrnes, Townsend and Brickenstein, representing the Grasselli Chemical Co. and have obtained valuable assistance from them. Our investigation had been initiated prior to its definite authorization by the Executive Committee of the institute; and it proceeded daily thereafter until it was finally completed and the last patents turned over to Mr. Gordon on last Friday, February 21st.

Yours very truly,

(Sgd.) F. E. BARROWS.

PLAINTIFF'S EXHIBIT No. 49.

Ramsay Hoguet
149 Broadway
New York City

New York, January 15, 1919.

Hon. A. Mitchell Palmer,
Alien Property Custodian,
Washington, D. C.

Dear Mr. Palmer:

Mr. Whittemore has reported to me the result of his conferences with you and with the other members of the organization, relating to the seizure of patents and I have talked over the subject with him and given sufficient consideration to it to let you have my views in a preliminary fashion. I have also talked over the matter with the attorneys representing some of the principal chemical industries in the country to get, if possible, the outlook of an industry which would be vitally affected by our proposed program.

My recollection of your agreement with Governor Fort is that we then had no intention of demanding and selling any patents except such as form an actual part of a business which we had demanded and were selling so as to enable the purchaser of the business to continue what it had previously been doing with the assent and concurrence of the related German company. We, however, made exceptions in the cases of some patents unrelated to any industry which were proposed to be sold to the Government, notably the wireless patents proposed to be sold to the Navy and you also stated that there were doubtless a number of patents which were not related to industries under your control but to other American industries which should be sold to the American industries in order to put them into a position to manufacture a product which had theretofore been imported. In view of this agreement and of the attitude of the President towards this entire question, I believe that the power of seizure of patents should not be exercised in any wholesale fashion, but only in connection with established American businesses and then only for the most cogent reasons. This does not express my personal inclination. If you were entirely free in the matter, I should advocate seizing all German patents, irrespective of their nature since, as I have frequently told you, I see no reason why patents should be the subject of any different policy from that applied to other property. I am also firmly convinced that the procedure established by Section 10 is vicious in that it subjects the American manufacturer who obtains a license to a burden in favor of his German competitor. As Section 10 is administered by the Federal Trade Commission, the American manufacturer who invests his money in building up an industry is at least ten per cent worse off than his direct German competitor.

In view of the circumstances in which we are now placed, I recommend:

1. Pursuing our present policy of selling with the corporations sold by the Alien Property Custodian such patents as are related to its business by reason of license or their ownership by the parent German company or its inventors.

2. The seizure by the Alien Property Custodian of such patents as he is advised by competent persons are necessary to the continuation or development of an existing American industry, irrespective of whether the Alien Property Custodian controls companies operating in these industries. I see no reason why power of seizure should be exercised in respect of patents relating to industries which have not been established in the United States unless there appears to be a definitely recognized need for the establishment of the industry.

3. The seizure for Governmental purposes of all alien enemy owned United States patents which relate to the several Governmental agencies; for instance, patents relating to ordnance, munitions, airplanes, radio-telegraphy, etc.

4. Aside from the classes above mentioned, I do not think that any patents should be seized.

My conferences with the representatives of certain of the chemical companies indicate a very definite and positive feeling that a very large number of German owned American patents is necessary to the development of and the continuance of the business of the American dye and chemical industries, and that it was clearly preferable to obtain a right to operate under such patents (whether by purchase or by license) through the Alien Property Custodian rather than through the Federal Trade Commission. The reasons stated were briefly, the uncertainty of the term or royalties payable under a license from the Federal Trade Commission, the objection to divulging to an alien enemy competitor the secrets of the business through an examination of the books, and the creation through the payment of royalties of a differential of at least ten per cent. between the importer and the domestic manufacturer. Other advantages, such as the certainty as to the amount of investment in the event of a purchase from the Custodian, the necessity of giving a monopoly to a purchaser where large investment in building up an industry were required, and other points were also discussed. A disagreement between the representatives of the various companies, however, developed on the question of whether exclusive rights should be given under the enemy owned patents seized or whether some scheme should be worked out by which the industry could be generally licensed, some of the gentlemen preferring an outright sale and others a general non-exclusive license to all manufacturers. I will take this matter up later, but at this time merely wish to point out that the industry as a whole believes that better results are to be secured through the Custodian than through the Federal Trade Commission.

This being the feeling of the industry and our endeavor being to benefit the industry as a whole—and I believe that the industry itself is best qualified to know how this should be done—I suggest that wherever possible the industry, as represented by the patent counsel for the more important companies of the industry, determine just which patents should be seized. You could then not be accused of seizing patents in a wholesale fashion but would be placed in a position of aiding an industry in the manner in which it desires to be aided and I think that your position would be better than if we determined ourselves to what extent seizures were to be made.

I have been offered the very fullest co-operation by the representatives of the chemical industry who have assured me that they would undertake to make any reasonable investigation we might require at their own expense and without any guaranty that they would ultimately become purchasers or licensees. I feel very certain that the work of examining the titles of the enemy owned patents and of making the recommendation to the Custodian as outlined above can be parceled out in such a way as to be very expeditiously done at a relatively small expense to each of the companies taking part. I also believe that we can get the co-operation of the patent departments of the larger companies in the electrical field in the same manner. Of course, the field of investigation can be greatly reduced by checking out all of the enemy owned patents which have been reported or demanded.

The sale of the patents after seizure presents several interesting possibilities. The Custodian having taken absolute title to the patents can exercise any rights over them he wishes and can therefore sell them outright or parcel them out in various ways. It may be that in some cases the patent rights could be distributed throughout the trade and in others sold outright to one purchaser. I am inclined to advocate their outright sale. As you know, I have no sympathy for a denatured patent monopoly, but should it be deemed advisable to spread the monopoly over the industry, it can be done in a number of ways; for instance, forming a Government corporation to take title to the patents, selling the patents to a syndicate of manufacturers, selling the patents subject to a covenant to issue sub-licenses, selling undivided interests in the patents to several manufacturers, and otherwise.

It seems to me that the object to be achieved is to promote so far as we can the manufacture of products under the patents and to this end I suggest the segregation of the patents after seizure into groups of allied patents and selling the group outright so that the manufacturer best fitted to put the group of patents to use could purchase them. Thus, for instance, the du Pont Company might be peculiarly well fitted to manufacture a group of toluol dyes, while the Bayer Company might be peculiarly well fitted to manufacture salicylic acid pharmaceuticals. In this way we could put the patents into the hands of those who had the equipment, experience and market best adapted to their use.

The plan of procedure which I shall follow with your approval is as follows:

1. Confining our attention for the present to the most important phases of the situation: to wit, dyes, chemicals and pharmaceuticals.

2. Take the list of enemy owned patents compiled by the Federal Trade Commission and have Mr. Gordon and my office eliminate from it such patents as have already been reported and demanded.

3. Secure the co-operation of the attorneys for the larger chemical companies along the lines indicated above and parcel out the corrected list to their attorneys for a report on title to the patents of the corrected list. If they will do as agreed, they will furnish us with abstracts of title to the patents and eliminate such patents as they know have been assigned to American owners since issuance.

4. Secure from the companies a statement that

such patents are essential to the development of the industry and a recommendation that they be seized by the Custodian.

5. Demand the patents.

6. Subdivide the patents seized into groups as indicated above and sell them in accordance with the usual procedure.

After we get the chemical classes under way, we can conduct an investigation to determine what other classes should be proceeded with and secure the cooperation of the interested companies in these several fields.

I have been trying to go to Washington for the last ten days to consult you personally about this matter, but I have been confined to my house for the larger part of the time and am still unable to undertake the trip, but will do so at the very earliest opportunity. In the meantime, I have asked for Mr. Gordon's assistance and am starting him and my office in the work of compiling the necessary information. If you care to drop me a line after reading the foregoing or call me on the telephone, I would appreciate it. Believe me,

Very truly yours,
RAMSAY HOGUET.

RH:P

P. S.

P. S. Since writing the foregoing, Mr. Garvan and I have had a conference with Mr. Poucher of the du Pont Company who states that he believes that the Institute of dye manufacturers, an association representing practically all of the dye manufacturers in the country will make a request to the Custodian that he take and sell the German owned American patents, on the ground that proper protection is not afforded by Federal Trade Commission licenses. I will advise you definitely as to this when I hear from him again.

R. H.

PLAINTIFF'S EXHIBIT No. 50.

Alien Property Custodian
Sixteenth and P Streets, N. W.
Washington, D. C.

Ramsay Hoguet,
149 Broadway,
New York City.

New York, January 17, 1919.

Mr. Mansfield Ferry,
Office Alien Property Custodian,
Sixteenth & P Streets, N. W.,
Washington, D. C.

Dear Ferry:

I am sending you herewith a copy of a letter I have written Mr. Palmer re the patent situation.

Yours very truly,

(Sgd.) RAMSAY HOGUET.

RH:P.

PLAINTIFF'S EXHIBIT No. 51.

J. H. Choate, Jr.

New York Office,
110 West 42nd Street.

January 17, 1919.

M. R. Poucher, Esq.,
c/o E. I. DuPont de Nemours Company,
Wilmington, Delaware.

Dear Mr. Poucher:

With reference to our talks of yesterday, I think it is very desirable that if possible we should meet the Committee of the Institute as soon as may be. I think, moreover, that such a meeting would be desirable even if it had to take place before the Committee had entirely matured its plans, as it may well be that much waste of labor could be saved by the clear understanding that would thus be brought about.

If you will call up by telephone, preferably in the morning in the early part of next week, between 10 and 12, we can make an appointment at your convenience.

Yours very truly,

(Sgd.) J. H. CHOATE, Jr.

JHC:EMI.

PLAINTIFF'S EXHIBIT No. 52.

Alien Property Custodian
Sixteenth and P Streets NW.
Washington, D. C.

Bureau of Investigation
Francis P. Garvan
Director

July 9, 1919.

Mr. Ramsay Hoguet,
Singer Building,
New York City.

Dear Mr. Hoguet:—

I am enclosing you herewith American Railway Express Company receipt for the two boxes of reports and demands shipped to the Chemical Foundation under date of July 1st.

I trust that by this time they have arrived safely at the office of the Chemical Foundation.

Very truly yours,

(Sgd.) WILL T. GORDON.

WTG:LBF

PLAINTIFF'S EXHIBIT No. 53.

MINUTES OF MEETING OF AMERICAN DYES INSTITUTE

December 9th, 1918.

A regular monthly meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Monday, December 9th, 1918.

Luncheon was served at 1:00 P. M., after which the meeting was called to order by the President, Mr. W. H. Cottingham.

The following firms were present and represented as follows:

MEMBERS	
John Campbell Co.	Mr. Morrisey (arrived late)
Dicks-David Co. Inc.	(Mr. R. P. Dicks (Major B. F. Welton
Dow Chemical Co.	Mr. James T. Pardee
E. I. duPont de Nemours Co.	(Mr. M. R. Poucher (Mr. E. V. Patterson
Grasselli Chemical Co.	Dr. J. M. Matthews

Heller & Merz Co.	Mr. August Merz
Hydrocarbon Chemical Prod. Co.	Mr. Hyndman
Marden, Orth & Hastings Corp.	(Mr. R. C. Jeffcott (Mr. F. Fargo (arrived late)
The Sherwin-Williams Co.	(Mr. W. H. Cottingham (Mr. W. S. Woodrow
Transatlantic Chemical Co.	Mr. E. B. Clary

NON MEMBERS

Gaskill Chemical Corp.	Dr. G. W. Gaskill
National Aniline & Chemical Co.	(Mr. W. T. Miller (Mr. Jacoby

Counsel, Mr. Arthur J. Eddy, and Secretary, Mr. H. E. Danner, were also present.

Inasmuch as a copy of the minutes of the previous meeting had been sent to each member, and as there were no corrections, they stood approved, and on motion, the reading of same was omitted.

THE SECRETARY REPORTED AS FOLLOWS:

The following members are reporting price information covering Contracts, Orders and Quotations, and the information filed for the month of November is as follows:

	Contracts	*Orders*	*Quotations*	*Total*
Marden, Orth & Hastings Corp.		254	120	374
The Sherwin-Williams Co.	2	4	8	14
Hydrocarbon Chemical Prod. Co.	0	0	0	0
E. I. duPont de Nemours & Co.			6(Open) (market)	6

	Contracts	*Orders*	*Quotations*	*Total*
Dicks, David Co. Inc.		17	25	42
The Dow Chemical Co.		4	25	29
Certified Chemical Co.	1	1		2
	3	280	184	467

The total number filed to date is 4653, as indicated below:

	Contracts	*Orders*	*Quotations*	*Total*
Marden, Orth & Hastings Corp.	95	2542	1248	3885
The Sherwin-Williams Co.	72	62	168	302
Hydrocarbon Chemical Prod. Co.	0	1	27	28
E. I. duPont de Nemours & Co.	105	60	13	178
Dicks, David Co. Inc.	0	45	25	70
Dow Chemical Co.	12	59	117	188
Certified Chemical Co.	1	1		2
	285	2770	1598	4653

The total number of reports filed covers approximately 1409 customers, of whom 238 have business relations with two or more of the members reporting.

Since the Secretary's last report there have been three (3) direct exchanges covering similar products *quoted* to the same customer.

Attention is called to the fact that this office has no record that any of the above quotations resulted in an order.

A discussion of the Secretary's report followed. Mr. Cottingham stated that up to the present time his firm had been reporting on only certain products but that he had now given instructions to extend the reports of the Sherwin-Williams Company to cover all products and the Secretary would soon receive same.

Mr. Miller stated that the National Aniline & Chemical Company expected to begin filing on five products.

Mr. Poucher again explained that the delay in the daily reports from his firm was because the matter had been left in the hands of those who had charge of the reporting plan of the Explosive Institute, which plan was different from that of the Dyes Institute. This matter had now been adjusted and the work taken over by his department (the Dyestuff Section) and he anticipated that in a short time (certainly by January 1st) he will have filed copies of all his outstanding contracts on Dyes and Intermediates, and thereafter, from day to day, a copy of all quotations, orders or contracts would be filed.

On motion the Secretary's report was accepted and ordered to be placed on file and made a part of these minutes.

REPORT OF PUBLICITY COMMITTEE:

Mr. Poucher, reporting for the Publicity Committee, stated that a proposed pamphlet had been prepared in proof form and submitted to the Executive Committee for suggestions a number of which had been made. It was considered that in view of a proposed amalgamation of the American Dyestuff Manufacturers Association, and the American Dyes Institute, it was wise to have the pamphlet representative of the United Industry, and it was therefore agreed that this matter be submitted for action at the next meeting of the Institute.

REPORT OF GRIEVANCE COMMITTEE:

Mr. Poucher submitted a copy of a circular letter and questionnaire distributed by The Curtis Publishing Company, copy of which follows and forms a part of these minutes.

COPY

THE CURTIS PUBLISHING COMPANY
Independence Square
Philadelphia

The Ladies' Home Journal
The Saturday Evening Post
The Country Gentleman

Advertising Department — Philadelphia
William Boyd — Division of Detail
Advertising Director — Chas. G. Hall, Manager.
Offices: Chicago, New York
Philadelphia, Boston, San Francisco.

November 27, 1918.

Mrs. W. J. Cahalan,
Wilmington, Del.

Dear Madam:

We are making a study of the American Dye Industry and your opinion on a number of questions that have arisen will assist us materially. We are writing a list of representative women like yourself all over the United States believing that they will be willing to help in a study of the dye industry which so directly affects them.

If you will answer the questions on the accompanying sheet and return it in the enclosed stamped envelope, we will appreciate your courtesy. We will not use your name nor further solicit your attention in the matter and assure you that the information you give will be of the greatest value to us.

Thanking you, I remain,
Yours very truly,

CHARLES COOLIDGE PARLIN,
Division of Commercial Research,
Advertising Department,
The Curtis Publishing Company.

CCP/CA

Copy.

Question I.

During the past year have you had trouble with colors in materials or garments you have purchased? If so will you kindly fill out the following table:

Trouble	*Yes*	*No*	*Color*	*Material (Wool, cotton or silk)*
Fading				
Washing out				
Crocking				

Question II.

If you have had trouble with colors during the past year, has the trouble been greater than you had in the same length of time before the war?

Question III.

Other things being equal, would you prefer to buy fabrics dyed with American dyes as against German dyes?

Question IV.

Would you like to have some means of identification provided by which you could know what goods and fabrics were dyed with American dyes?

Question V.

Is there any name or company that is associated in your mind with the American dye industry?

If so, what?

From the discussion it was apparent that the members present were of the opinion that the Curtis Publishing Company had issued this questionnaire as part of its business practice and with no intention of strengthening the various unjust and unsound claims as to the Dyes made in America. It was the opinion of those present that the questionnaire was unfortunate in its wording and opened the way to a dangerous use by enemy propaganda. It is known that many of the unsatisfactory colors were not the result of inferior Dyes, but were the result of Dyes (both Foreign and Domestic) being used for colors and on fabrics for which they were not intended.

On motion of Mr. Poucher it was

> RESOLVED That the chair appoint a committee of three to call on the Curtis Publishing Company and discuss the above.

The Chair then appointed—

Mr. Hyndman of Hydrocarbon Chemical Products Co.

Mr. Lord of E. I. duPont de Nemours & Co.

Mr. Lemperley of The Sherwin-Williams Company.

The Secretary submitted a tag taken from a garment recently purchased from the John Wanamaker store reading as follows:

> "On account of the dye situation we cannot guarantee colors in fabrics to be absolutely fast."

Mr. Miller stated that his firm employed a corps of young ladies to visit the department stores and whenever they were advised that a color was not guaranteed they obtained a sample of same which was analyzed. They then dyed a sample to match and returned same to the store with a request that their sample be tested. Mr. Miller stated that in this way his firm was demonstrating that American colors could be guaranteed.

The matter was left in the hands of the Grievance Committee.

The following letter from Messrs. Barrow, Wade, Guthrie & Company was read:

New York, December 7th, 1918.

H. E. Danner, Esq.,
American Dyes Institute,
320 Broadway, New York.

Dear Sir:

In reply to your favor of December 4th, 1918, inquiring as to the progress of the tabulation of the Reports of Sales, we submit the following:

The original list contained 117 names, one name has since been removed and one added, leaving the number of replies to be received 117. Of this number

20 Replies have been received furnishing the information required.
4 Reply that they have no figures to submit.
2 Refuse to comply.
1 Reply promised as soon as information can be obtained.
1 Reply states: man in charge of these figures away and they are unable to furnish same at this time.
88 Not replied.

117

The above figures include all replies received up to and including the morning of December 7th, 1918.

We have not yet sent out second requests; perhaps you will be good enough to let us know whether this should now be done.

Yours very truly,
(Signed) Barrow, Wade, Guthrie & Co.

E/W

The Secretary was instructed to request Messrs. Barrow, Wade, Guthrie & Company to send a second request to those who have not replied, and at the same time send in substance a copy of the above letter.

Counsel advised the members that a representative of the Federal Trade Commission had called on the Secretary in relation to the subject of "Graft."

Here follows an extract from a letter written to Counsel by the Secretary:

> "Yesterday afternoon I had a long call from Mr. William B. Horne, Special Agent of the Federal Trade Commission in connection with the subject of 'Graft.'
>
> "The Federal Trade Commission have apparently started on a campaign of investigation and intend to locate or identify those engaged in the manufacture of Dyestuffs and Intermediates, who are continuing the practice of offering gratuities to buyers for the sake of placing their products.
>
> "As you are aware, this has been a practice in the Dyestuff Industry by those firms who represented or sold German Products. I understood from Mr. Horne that the Federal Trade Commission have reason to believe that some of the American firms are doing likewise.
>
> "This office has been requested to give its assistance to the end that this practice will be discontinued.
>
> "I informed Mr. Horne that the American Dyes Institute was on record (in their minutes) as opposed to this practice, and I felt very certain that our President, Mr. Cottingham (who came through with a clean slate on the investigation of the varnish people), was opposed to the above practice, and that he would use his best endeavors to the end that the members of the American Dyes Institute should not be involved.
>
> "It has occurred to me that you might desire to bring this matter before the members present at our meeting on December 9.

"Mr. Horne suggests, if any of our members have been offering gratuities and are desirous of discontinuing this practice, that they come forward with a full statement to the Federal Trade Commission, who will give their statement the attention it deserves. In other words, if any of our members have been in the habit of giving gratuities, now is the time for them to talk quite candidly with the Federal Trade Commission."

Counsel spoke very very strongly against the use of gratuities or presents of any kind to influence trade. He expressed himself in hearty sympathy with the efforts being made by the Federal Trade Commission.

Mr. Poucher stated that the Trade Committee of the American Dyestuff Manufacturers Association had been dealing with this subject for sometime, and had adopted the following resolution:

> THE TRADE COMMITTEE of the American Dyestuff Manufacturers' Association, Inc., recognizing the evil effects of the bribery system inaugurated by the German monopoly in the sale of dyestuffs in the pre-war period, are extremely desirous that this evil shall be stamped out by the members of the above Association. For that purpose they have prepared the following resolution which they now submit for the approval of the members. It is hoped that each member will agree to this resolution and co-operate in every way possible with the TRADE COMMITTEE IN SEEING THAT IT IS CARRIED OUT TO THE LETTER.
>
> In co-operation with the Federal Trade Commission in its efforts to uproot all cases of bribery and unfair practices in commerce, the undersigned member of the American Dyestuff Manufacturers' Assn., Inc., hereby agrees to the following:
>
> (1) That we, as members of the American

Dyestuff Manufacturers' Assn., Inc., our attorneys, agents, servants or employees, will not allow to a buyer or prospective buyer, the payment of any sum of money, or any gift representing its equivalent, that could possibly be construed as a means of influencing the business of said buyer or prospective buyer.

(2) That we, as members of the American Dyestuff Manufacturers' Assn., Inc., will hold ourselves responsible for all actions of our attorneys, agents, servants or employees in connection with the sale and distribution of intermediates, dyestuffs and chemicals.

(3) That we, as members of the American Dyestuff Manufacturers' Assn., Inc., will report to the Trade Committee every case where we have reason to believe that either bribery or unfair practices are being used to influence the decision of a buyer or prospective buyer.

On motion of Mr. Jeffcott seconded by Mr. Miller it was unanimously

RESOLVED

THAT THE AMERICAN DYES INSTITUTE INDORSES THE ACTION OF THE AMERICAN DYESTUFF MFGRS. ASSOCIATION AND PLEDGES ITSELF TO GIVE ITS ASSISTANCE TO THE FEDERAL TRADE COMMISSION IN ITS ENDEAVOR TO ELIMINATE ANY UNFAIR COMPETITION—SUCH AS THE GIVING OF GRATUITIES OR ITS EQUIVALENT.

REPORT FROM THE EXECUTIVE COMMITTEE.

The President reported that the Executive Committee had met prior to this meeting and had been joined by a special committee (Mr. Dicks, Mr. Miller, and Mr. Pardee) from the American Dyestuff Manufacturers' Association.

This Committee had reported that at the last meeting of the American Dyestuff Mfgrs. Association the members had voted for an amalgamation of the two asociations providing it was desired and agreeable to the American Dyes Institute; and had been empowered to perfect same.

Mr. Cottingham said that the Executive Committee of the American Dyes Institute recommends an amalgamation of the two associations and after discussion with the special committee of the American Dyestuff Manufacturers' Association submits the following recommendations for discussion.

1. It is unanimously recommended that the two associations be amalgamated and the name to be American Dyes Institute.

2. It is unanimously recommended that qualifications for membership be covered by the present qualifications of the American Dyestuff Mfgrs. Association and those of the present American Dyes Institute, and that those applying for membership who are not at present qualified to join either of the above associations shall not become a member of the American Dyes Institute.

3. It is unanimously recommended that the services of Dr. J. M. Matthews be secured as a salaried Vice-President who will devote his time and expert knowledge to the industry and institute; also that the services of Mr. C. C. Bennett be secured in such capacity and on such terms as the Executive Committee will hereafter determine.

4. It is unanimously recommended that the present Board of Governors of the Manufacturers' Association be and hereby are declared Governors

of the American Dyes Institute and that the members of the Executive Committee of the Mfgrs. Association who are not now members of the Executive Committee of the Institute, be and hereby are declared members of the Executive Committee of the American Dyes Institute.

5. It is unanimously recommended that all committees of the American Dyestuff Mfgrs. Association be and are hereby declared Committees of the American Dyes Institute.

6. It is unanimously recommended that the future budget of the American Dyes Institute and the assessments to cover same be referred to the Executive Committee.

7. It is unanimously recommended that counsel prepare the proper amendments to the present By-Laws and Constitution of the Institute.

8. It is unanimously recommended and understood that any member of the American Dyestuff Mfgrs. Association who is not now a member of the Institute is in no way liable to any obligation incurred by the Institute up to this date.

In connection with the above recommendations it was explained and understood by all present that this was not an absorption of the American Dyestuff Manufacturers' Association by the American Dyes Institute, but was an amalgamation, and that the work formerly performed by the American Dyestuff Manufacturers' Association will now be done by the Institute, and the work formerly performed by the American Dyes Institute will now be carried on as an open price section of the new American Dyes Institute.

On motion of Mr. Jeffcott, seconded by Mr. Poucher, it was unanimously resolved that all of the above recommendations of the Executive Committee be approved, and that the Executive Committee be authorized to proceed with the necessary details to perfect the amalgamation.

On motion of Mr. Poucher, duly seconded, it was unanimously resolved that the members of the American Dyestuff Manufacturers' Association be declared members of the Institute.

REPORT OF COMMITTEE ATTENDING ATLANTIC CITY CONVENTION.

Mr. Poucher reported that the convention of the War Industries Boards of the Chamber of Commerce of the United States, held at Atlantic City on December 4th, 5th, and 6th, proved to be very interesting and instructive. He said that the 34 resolutions which were adopted by the Major group were very far-reaching and represented the "high points" in American business and problems. One of the 34 resolutions adopted dealt with the licensing plan as a means of protecting newly found industries created during the war.

A complete report of the proceedings, including the addresses and final resolutions adopted, are to be reported in the "Nation's Business" for January and will be published at a low price, and Mr. Poucher recommended that every member obtain sufficient copies from the United States Chamber of Commerce, Riggs Building, Washington, D. C., and distribute same to customers and employees, such as Superintendents, Salesmen, Overseers, etc.

Then followed a long discussion with reference to prospective tariff or protection, in some form, for the Dyestuff Industry.

Dr. Matthews reported the progress his committee had made and he was urged to continue giving this matter his attention, in view of the necessity for immediate action.

CONDITIONS OF BUSINESS.

All of the members present reported a material falling off in business, varying from 50 to 70%, and some of the members reported that in view of this they were curtailing their output.

DAILY BULLETINS.

Mr. Fargo instructed the Secretary to resume distributing in the daily bulletins a record of his prices quoted or obtained.

The question of "store-door deliveries" was also mentioned, but as the hour was late, it was decided to present this subject for discussion at the next meeting.

In the meantime attention was called to the fact that the open price plan provided that all inducements offered to secure business were reported on the daily records filed with the Secretary and that if each member would report complete and accurate details of all his transactions the information would be distributed regularly to all members, who would then be advised accurately as to what their competitors are doing.

The next meeting was set for Wednesday, January 8th, 1918, at 1.00 P. M.

There being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 54.

Articles of Incorporation and By-Laws of The Chemical Foundation, Incorporated.

Note: Same as Exhibit "B" attached to bill of complaint, not reprinted here. (See Record, Vol. I, page 90.)

PLAINTIFF'S EXHIBIT No. 55.

List of subscribers to The Chemical Foundation. Incorporated.

Note: Same as Exhibit "C" attached to bill of complaint, not reprinted here. (See Record, Vol. 1, page 107.)

PLAINTIFF'S EXHIBIT No. 56.

THE CHEMICAL FOUNDATION, INCORPORATED

MINUTES OF FIRST MEETING OF INCORPORATORS.

The first meeting of the incorporators and subscribers to the stock of THE CHEMICAL FOUNDATION, INCORPORATED, was held on the 3rd day of March, 1919, at 4:15 P. M., at its principal office, No. 1007 Market Street, Wilmington, Delaware, pursuant to a written waiver of notice signed by all said incorporators and subscribers, fixing said time and place, as follows:

THE CHEMICAL FOUNDATION, INCORPORATED

WAIVER OF NOTICE
MEETING OF INCORPORATORS AND SUBSCRIBERS.

We, the undersigned, being all the incorporators and subscribers to the stock of THE CHEMICAL FOUNDATION, INCORPORATED, organized under the laws of the State of Delaware, DO HEREBY WAIVE NOTICE of the time, place and purpose of the first meeting of the said corporation and do fix the 3rd day of March, at 4:15 o'clock in the afternoon, as the time, and the principal office of said corporation at the office of the CORPORATION TRUST COMPANY OF AMERICA, No. 1007 Market Street, Wilmington, Delaware, as the place of said meeting.

And we do hereby waive all the requirements of the statutes of Delaware, both as to the notice of this meeting and the publication thereof; and we do consent to the transaction of such business as may come before said meeting.

Dated, March 3, 1919.

(Sgd.) M. M. CLANCY
(Sgd.) P. B. DREW
(Sgd.) H. E. KNOX.

The following incorporators and subscribers were present in person:

Name	*Number of Shares Common*
M. M. Clancy	13
P. B. Drew	1
H. E. Knox	1

being all of the incorporators and subscribers to the stock of the corporation.

Upon motion, P. B. Drew was chosen as chairman, and M. M. Clancy was chosen as secretary of the meeting.

The chairman reported that the certificate of incorporation was filed in the office of the Secretary of State of Delaware, on the 19th day of February, 1919, and that a certified copy thereof was recorded on the 19th day of February, 1919, in the office of the recorder of deeds of New Castle County, Delaware, and the secretary was instructed to cause a copy of such certificate of incorporation to be inserted in the minute book.

The secretary presented a form of by-laws for the regulation of the affairs of the corporation, which were read, section by section.

Upon motion, duly made, seconded and carried, it was

> RESOLVED, that the by-laws submitted at and read to this meeting be, and the same hereby are, adopted as and for the by-laws of this corporation, and that the secretary be, and he hereby is, instructed to cause the same to be inserted in the minute book immediately following the copy of the certificate of incorporation.

The chairman stated that the next business before the meeting was the election of a board of directors.

C. L. Rimlinger and S. E. Dill were appointed inspectors of election and thereupon subscribed and swore to the following oath:

THE CHEMICAL FOUNDATION, INCORPORATED

INSPECTORS' OATH.

STATE OF DELAWARE,
COUNTY OF NEW CASTLE, } *ss.*

C. L. Rimlinger and S. E. Dill being sworn upon their respective oaths do severally promise and swear that they will faithfully, honestly and impartially perform the duties of inspectors of election, at the election of directors of THE CHEMICAL FOUNDATION, INCORPORATED, to be held this day, and will to the best of their skill and ability conduct said election, and a true report make of the same.

Subscribed and sworn to before me this 3rd day of February, 1919.

(Sgd.) C. L. RIMLINGER,
(Sgd.) S. E. DILL.

(Sgd.) HERBERT E. LATTER,
Notary Public.

The secretary presented transfers of subscription from M. M. Clancy, P. B. Drew and H. E. Knox to Francis P. Garvin, Douglas I. McKay and George J. Corbett for fifteen shares of common stock to take effect at the close of the meeting.

Upon motion, duly made, seconded and carried, the same were approved.

Said transfers of subscription are as follows:

THE CHEMICAL FOUNDATION, INCORPORATED

TRANSFER OF SUBSCRIPTION.

KNOW ALL MEN BY THESE PRESENTS, That I, M. M. Clancy, in consideration of one dollar, lawful money of the United States, and other good and valuable consideration, to me paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto Francis P. Garvin, thirteen shares of the common capital stock of THE CHEMICAL FOUNDATION, INCORPORATED, a corporation organized under the laws of the state of Delaware, subscribed for by me as an incorporator of said corporation, and I do hereby request and direct the said corporation to issue the certificate for said thirteen shares to and in his name or to such other person as he may name.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 3rd day of March, 1919.

(Sgd.) M. M. CLANCY. (Seal)

Sealed and delivered
in the presence of:
(Sgd.) P. B. DREW

THE CHEMICAL FOUNDATION, INCORPORATED

TRANSFER OF SUBSCRIPTION.

KNOW ALL MEN BY THESE PRESENTS, That I, P. B. Drew, in consideration of one dollar, lawful money of the United States, and other good and valuable consideration, to me paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto Douglas I. McKay, one share of the common capital stock of THE CHEMICAL FOUNDATION, INCORPORATED, a corporation organized under the laws of the state of Delaware, subscribed for by me as an incorporator of said corporation, and I do hereby request and direct the said corporation to issue the certificate for said one share to and in his name or to such other person as he may name.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 3rd day of March, 1919.

(Sgd.) P. B. DREW. (Seal)

Sealed and delivered
in the presence of:
(Sgd.) H. E. KNOX.

THE CHEMICAL FOUNDATION, INCORPORATED

TRANSFER OF SUBSCRIPTION.

KNOW ALL MEN BY THESE PRESENTS, That I, H. E. Knox, in consideration of one dollar, lawful money of the United States, and other good and valuable consideration, to me paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto George J. Corbett, one share of the common capital stock of The Chemical Foundation, Incorporated, a corporation organized under the laws of the state of Delaware, subscribed for by me as an incorporator of said corporation, and I do hereby request and direct the said corporation to issue the certificate for said one share to and in his name or to such other person as he may name.

In Witness Whereof, I have hereunto set my hand and seal this 3rd day of March, 1919.

(Sgd.) H. E. KNOX. (Seal)

Sealed and delivered
in the presence of:
(Sgd.) P. B. Drew.

Messrs. Francis P. Garvin, Douglas I. McKay and George J. Corbett were nominated for directors of the corporation, to hold office until their respective successors are elected and qualified. No other nominations having been made, the polls were duly opened, and all the stockholders having voted by ballot, the chairman declared the polls closed. Thereupon the inspectors canvassed the vote cast and made and presented the following certificate showing the result of the election:

PLAINTIFF'S EXHIBIT No. 57.

Minutes of First Meeting of Directors.

The first meeting of the board of directors of The Chemical Foundation, Incorporated, was held at #110 West 42nd Street, New York City, on the 8th day of March, 1919, at 10:15 A. M.

Present: Messrs. FRANCIS P. GARVAN
DOUGLAS I. MCKAY
GEORGE J. CORBETT
constituting all the members of the board.

Mr. McKay was chosen temporary chairman and Mr. Corbett was chosen temporary secretary of the meeting.

The secretary presented and read the following waiver of notice of the meeting, signed by all the directors:

THE CHEMICAL FOUNDATION, INCORPORATED

INSPECTORS' CERTIFICATE.

WE, THE SUBSCRIBERS, INSPECTORS OF ELECTION appointed to act at the meeting of the incorporators and subscribers to the stock of THE CHEMICAL FOUNDATION, INCORPORATED, held this 3rd day of March, 1919, do report that, having taken an oath impartially to conduct the election for directors, we did receive the votes of the incorporators and subscribers by ballot.

We report that 15 votes were cast for the election of directors and that the following persons received the number of votes set opposite their respective names, to wit:

For Directors.	*Number of Votes.*
Francis P. Garvin	15
Douglas I. McKay	15
George J. Corbett	15

Respectfully submitted,

(Sgd.) C. L. RIMLINGER,
(Sgd.) S. E. DILL,
Inspectors.

The chairman thereupon declared Messrs. Francis P. Garvin, Douglas I. McKay and George J. Corbett duly elected directors of the corporation to serve until their respective successors are elected and qualified.

Upon motion, duly made, seconded and carried, it was

> RESOLVED that the board of directors be and they hereby are authorized, in their discretion, to issue the capital stock of this corporation to the full amount or number of shares authorized by the certificate of incorporation, in such amounts and for such considerations as from time to time shall be determined by the board and as may be permitted by law.

Upon motion, duly made, seconded and carried, the meeting thereupon adjourned.

(Sgd.) M. M. CLANCY,
Secretary of the meeting.

WAIVER OF NOTICE

FIRST MEETING OF THE BOARD OF DIRECTORS.

We, the undersigned, being all the directors of THE CHEMICAL FOUNDATION, INC., do hereby waive notice of the time, place and purpose of the first meeting of the board of directors of said corporation.

We designate the 8th day of March, 1919, at 10:15 o'clock in the forenoon as the time, and #110 West 42nd Street, New York City, as the place of said meeting, the purpose thereof being to elect officers, authorize the issue of the capital stock, complete the organization of said corporation, and to transact such other business as may be necessary or advisable.

Dated, March 8th, 1919.

(Sgd.) FRANCIS P. GARVAN,
(Sgd.) GEO. J. CORBETT,
(Sgd.) DOUGLAS I. McKAY.

The minutes of the first meeting of incorporators were read and approved.

The following persons were nominated for officers of the corporation to serve until their respective successors are chosen and qualify:

President,	Francis P. Garvan
Vice-President,	Douglas I. McKay,
Secretary, Treasurer,	George J. Corbett

Ballot having been duly had and all the directors present having voted, the chairman announced that the aforesaid persons had been unanimously elected to the offices set before their respective names.

The president thereupon took the chair.

It was ordered that the secretary be sworn to the faithful discharge of his duty and he thereupon subscribed and swore to the oath of office and entered upon the discharge of his duties.

It was ordered that the treasurer give a bond in the sum of Fifty Thousand Dollars ($50,000.00), in a form to be presented at the next meeting.

Said secretary's oath is as follows:

Secretary's Oath.

State of New York, }
County of New York, } *ss.*

I, George J. Corbett, do solemnly promise and swear that I will faithfully, impartially and justly perform the duties of Secretary of The Chemical Foundation, Inc., a corporation of the State of Delaware, according to the best of my abilities and understanding. So help me God.

Subscribed and sworn to before me this 8th day of March, 1919. } (Sgd.) GEORGE J. CORBETT.

(Sgd.) J. Metz,
Notary Public, Nassau Co.
Certificate filed in N. Y. Co. No. 22
New York County Register's No. 100.
Term expires March 20, 1920.

Upon motion, duly made, seconded and carried, it was

Resolved that the treasurer be and he is hereby authorized to open a bank account in behalf of the corporation with the Central Union Trust Company of New York.

Further Resolved that until otherwise ordered, said Trust Company be and hereby is authorized to make payments from the funds of this corporation on deposit with it upon and according to the check of this corporation signed by two officers of the Company, one of whom shall be the Treasurer.

Upon motion, duly made, seconded and carried, it was

Resolved that the Corporation Trust Company of America be and is hereby appointed the agent of this corporation, in charge of the principal office in Delaware and of the books required by law to be kept in that office, and the agent upon whom process against this corporation may be served in accordance with the laws of Delaware:

Further Resolved that Joseph H. Choate, Jr., Esq., be retained as General Counsel of the Company and that said Corporation Trust Company may apply to and act upon the instructions of the said counsel in respect to any questions arising in connection with said agency;

Further Resolved that Ramsay Hoguet, Esq., be retained as Patent Counsel of the Company;

Further Resolved that the secretary be and is hereby authorized to sign, and seal with the corporation's seal a certificate of authorization to said Corporation Trust Company in the form submitted at this meeting.

Upon motion, duly made, seconded and carried, it was

Resolved that a temporary office of the corporation be established and maintained at #60 Wall Street, in the City of New York, in the office of the firm of Evarts, Choate & Sherman, and that meetings of the board of directors from time to time may be held at the registered office in Wilmington, Delaware, or at such office in the City of New York or elsewhere, as the board of directors shall from time to time order:

Further Resolved that the entire authorized capital stock of the Company, both preferred and common, be issued for cash at par, and

Further Resolved that the subscribers to the preferred stock of the Company be required to pay in 70% of their subscriptions within ten days from date.

Further Resolved that the subscribers to the common stock of the Company be required to pay in their entire subscriptions within ten days from date.

Further Resolved that the Treasurer and Secretary issue temporary receipts for such subscriptions paid in.

Further Resolved that no subscriptions for common stock shall be received, nor shall any certificates of stock be issued in accordance with such subscriptions unless and until such subscribers shall become signatories to the voting trust agreement hereinafter approved.

Upon motion, duly made, seconded and carried, it was

RESOLVED that the treasurer be and he is hereby authorized to pay all fees and expenses incident to and necessary for the organization of the corporation.

Upon motion, duly made, seconded and carried, the meeting thereupon adjourned to March 12th, 1919, at 10 A. M., the adjourned meeting to be held at the temporary office of the corporation at #60 Wall Street, New York City.

(Sgd.) GEO. J. CORBETT,
Secretary.

The adjourned meeting of the Board of Directors was continued at the temporary office of the Company at #60 Wall Street, New York City, on Wednesday, March 12, 1919, at 10 A. M.

Present: Messrs. DOUGLAS I. MCKAY,
GEORGE J. CORBETT

Mr. McKay was chosen temporary chairman of the meeting in the absence of the president.

The minutes of the last meeting were read and approved.

On motion, duly made, seconded and unanimously adopted, THE CENTRAL UNION TRUST COMPANY was chosen and appointed stock registrar of the corporation.

The secretary presented the seal of the corporation and on motion, duly made, seconded and adopted the said seal was approved and adopted as the seal of the corporation.

The following is an impression of the said seal:

[Impression of Seal]

* * * * * * * * *
* The Chemical Foundation, *
* Incorporated. Corporate *
* Seal 1919 Delaware. *
* * * * * * * * *

Upon motion, duly made, seconded and carried the meeting thereupon adjourned to Friday, March 14th, 1919, at 9:30 A. M., the adjourned meeting to be continued at the office of the Alien Property Custodian, at #110 West 42nd Street, New York City.

(Sgd.) GEO. J. CORBETT,
Secretary.

The adjourned meeting of the Board of Directors was continued at the office of the Alien Property Custodian at 110 West 42nd Street, New York City, New York, on Friday, March 14th, 1919, at 9:30 A. M.

Present:

Messrs. Francis P. Garvan.
Douglas I. McKay.
George J. Corbett.

Mr. Francis P. Garvan presided.

Mr. Francis P. Garvan expressed his regrets at having been unable to attend the prior meeting of the Board of Directors of March 12th, 1919.

The minutes of the said prior meeting of March 12th, 1919, were read by the Secretary, and on motion duly made, seconded and unanimously carried, the acts and resolves of the directors present at said prior meeting of March 12th, 1919, were ratified, approved, confirmed and adopted in toto as the acts and resolves of all of the Directors of The Corporation.

On motion duly made, seconded and unanimously carried, the Treasurer, Mr. George J. Corbett, was directed to close with an offer heretofore made by the owners of the Market and Fulton Bank Building situated on the corner of Fulton and Gold Streets, for a lease of the fourth floor of the said building for five years at the rate of seventy-five thousand ($75,000.00) dollars per annum.

Counsel thereupon presented a fac simile of certificates of the preferred and common capital stock of The Corporation, with forms of transfer and for the necessary consent thereto of The Corporation endorsed thereon, which had been prepared by the Directors and approved by counsel of The Corporation.

On motion duly made, and seconded it was unanimously

"RESOLVED" that said forms of certificates of preferred and common stock of The Corporation and the endorsement thereon prepared by the Directors of The Corporation be and the same hereby are approved and adopted as forms of certificates of the preferred and common stock respectively, of The Corporation and that the same be inserted in the Minute Book.

There being no further business, the meeting adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 58.

A meeting of the Board of Directors was held at the office of the Alien Property Custodian, 110 West 42nd Street, New York City, on Friday, April 4, 1919, at 10.30 a. m.

Present:

Mr. Francis P. Garvan,
Douglas I. McKay,
George J. Corbett,

The reading of the minutes of the last meeting was waived.

Mr. Joseph H. Choate, Jr., of counsel for the company, presented and read a form of prospectus intended to be used in securing the distribution of the underwritten stock.

On motion duly made and seconded the said form was adopted and ordered printed. A copy of the same is hereto annexed.

Mr. Ramsey Hoguet, Patent Counsel of the company, thereupon presented and read a proposed form of assignment from the Alien Property Custodian to The Chemical Foundation, Inc., covering the patents and other property intended to be conveyed by the said Custodian to the Foundation.

On motion duly made and seconded the said form of assignment was approved and adopted and the treasurer was authorized to accept, on behalf of the Foundation, delivery of the same, and thereupon to pay over to the Alien Property Custodian as the agreed purchase price of the said patents and other property so transferred the sum of $250,000.00.

The secretary then presented duplicate originals of a lease, dated March 15, 1919, from The Irving Trust Company to The Chemical Foundation, Inc., of the fourth floor of the Market and Fulton Bank Building, at No. 81-83 Fulton Street, New York City, for the term of five years, commencing on May 1, 1919, at the yearly rent of $7500, executed on behalf of the Foundation by the Vice President, Mr. Douglas I. McKay.

On motion duly made and seconded, the said lease was approved and the secretary was directed to affix the seal of the Foundation thereto, and the officers of the Foundation were authorized and directed to deliver the same.

The secretary thereupon presented a letter to the Irving Trust Co., dated March 15, 1919, from The Chemical Foundation, Inc., by George J. Corbett, secretary, in the following terms:

"March 15th, 1919.

Irving Trust Company,
81-83 Fulton Street,
New York City.
Gentlemen:

In consideration of your leasing to us the fourth floor of the building 81-83 Fulton Street for five years from May 1st, 1919, at a rental of $7500 per annum, we agree to pay one-half of the cost of the following work in said premises:

Removal of present dividing walls and partitions as desired.

Repair of plastering and flooring and redecorating of the premises.

Installation of semi-indirect lighting fixtures at present outlets.

We will pay the extra cost of any new walls or partitions and any extra lighting fixtures or outlets which we may require.

Very truly yours,
THE CHEMICAL FOUNDATION, INC.,
By ....
Secretary."

On motion duly made and seconded, the signature

60 Wall Street, City of New York, State of New York, counsel for this Company, or to Larkin & Perry, No. 54 Wall Street, New York City, Counsel for said Registrar, for advice or instructions, and for its action in reliance thereon this Company shall fully protect and hold it harmless against all liability; and

FURTHER RESOLVED that the Vice President and Secretary be and they hereby are directed to certify these resolutions under the seal of this Company and to lodge same with the Registrar, together with certified copies of the Charter or Articles of Incorporation and of the By-Laws of this Company.

On motion duly made, seconded and adopted the meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 58-A.

THE CHEMICAL FOUNDATION, INCORPORATED

In order to free the American manufacturing chemical industry from the limitations imposed upon it by the Enemy owned United States chemical patents, The Chemical Foundation, Incorporated, has been organized to buy, and has bought from the Alien Property Custodian, the greater part of all such patents in all branches of the chemical industries. The Foundation is a quasi-trustee corporation organized not for profit, but to hold and defend present and future patents for the benefit of American industry, and to act as a center of industrial and scientific research. As such it is believed that its work will profoundly affect most chemical enterprises in the United States. It is therefore desirable from the point of view both of the public and of those engaged in the industry, that the stock should be held, not in large blocks by a few companies, but in the greatest possible number of small holdings. To this end subscriptions to the stock of the Foundation are invited.

The subscription requested is for one thousand dollars ($1000) of the stock, or such less amount as may be allotted, in the proportion of four shares of preferred to one of common. This indefinite form is adopted in order to procure the widest possible distribution, and so that if enough subscriptions are received the amount held by each purchaser may be reduced to a minimum. The Foundation reserves the right to reject in whole or in part any subscription even though made in response to this statement, and also to close the subscription books at its discretion without notice.

The authorized capital of the Foundation, all of which is to be issued is $500,000, divided into four thousand shares of preferred and one thousand shares of common stock, each share being of the par value of $100. Each class of stock is limited *to not more than six per cent.* annual dividends. The limitation of each class of stock and the rights of its holders are set forth in the Charter of which a copy is enclosed. Each is transferable only with the consent, endorsed thereon, of the Corporation.

The preferred stock is preferred as to principal and is entitled to a fixed cumulative dividend when and as declared of six per cent. but is subject to redemption as a whole at par and accumulated dividends on January 21, 1921, or any first of January thereafter. It is hoped that this power will be exercised and the whole of the preferred stock redeemed as early as possible. This class of stock has no voting power except upon the question of the amendment of the charter.

The common stock has full voting power, but is also limited as to dividend to six per cent. payable only after payment of all accumulated dividends due upon the preferred Surplus earnings, over the sum required for this dividend, and to be applied first for the redemption of the preferred, and thereafter for research and the advancement of science. A trust agreement has been prepared for the purpose of placing in the hands of trustees the entire issue of common stock, and none will be issued except upon a subscription, in the form enclosed, authorizing the directors to issue such common shares as may be allotted to the subscriber, directly to the Trustees, who will thereupon issue to the subscriber trust certificates in place thereof. The Trust-certificates, like the stock, will be non-transferable except with the consent of the Foundation. They will entitle the holder to such dividends as may be received by the Trustees on the stock represented thereby, and also of course to delivery of the stock itself on the dissolution of the Trust-agreement. The Trust is to continue till January 1st, 1936.

Under subscriptions made in accordance with this offer, the subscriber, if accepted, will receive eight shares or less of preferred stock, and voting trust certificates covering two shares or less of common stock. The preferred will give the subscriber a voice in the amendment of the charter. The common will give a vote, after the dissolution of the trust, in all corporate affairs. As the Foundation may be expected to develop into a permanent and powerful body, this may be a right which no important business can afford to do without. The common stock, however, cannot be a source of profit, since the charter requires surplus to be used for public purposes. It should also be noted that stock gives its holders no special privilege in regard to the obtaining of licenses from the Foundation.

As will appear from the foregoing this offer represents an opportunity, not to make a profitable investment but to support an undertaking which the directors deem of vital importance and value both to your industry and to your country. This belief is based upon the following facts in regard to the personnel and purposes of the corporation.

The trustees, in whom under the trust agreement, the control of the Foundation will be lodged, are the following gentlemen, who have been serving for many months as the Advisory Committee which has passed upon all sales made by the Alien Property Custodian: Otto T. Bannard, Esq., (Chairman The New York Trust Company). Hon. George L. Ingraham, (Late presiding Justice Appellate Division, New York Supreme Court). Cleveland H. Dodge, Esq. B. Howell Griswold, Jr., Esq., (Of Alexander Brown & Sons, Baltimore). Ralph Stone, Esq., (President, Detroit Trust Company). The officers and directors of the Foundation are as follows: President, Mr. Francis P. Garvin, (The Alien Property Custodian). Vice-President, Col. Douglas I. McKay. Treasurer and Secretary, Mr. George J. Corbett. The legal advisers of the Foundation are the following: General Counsel, Mr. Joseph H. Choate, Jr. Patent Counsel, Mr. Ramsay Hoguet.

The Trust Agreement gives these trustees the power to fill vacancies in their board, so that during the continuance of the trust, they will be a self-perpetuating body. They elect the directors of the Company, whose resignations are always in their hands.

To the Foundation as thus organized substantially all of the chemical, dye and allied patents and processes acquired by the Alien Property Custodian with the exception of those which were included in the prior sale of the Bayer Co., Inc., have been sold by him for the sum of Two hundred and fifty thousand dollars ($250,000). These patents and processes cover a very wide field, the classification including metallurgy, fertilizers, fixation of nitrogen, hydrogenation of oils, etc., and in number approximate four thousand (4,000). The transfer thereof to the corporation has been completed. They will be used to encourage manufacturing thereunder in the United States and to prevent infringing importations from Germany or elsewhere.

Non-exclusive licenses will be granted to competent American manufacturers, whether stockholders or not, by the corporation upon reasonable and equal terms, subject to the power of the directors to refuse licenses when in their opinion the condition of the business is such as to make the grant of further licenses unfair, or disadvantageous to the public. Importations of infringing products will be prosecuted with all possible vigor and in view of the fact that many of the patents are product patents, an effort will be made to exclude infringing goods from any source whatsoever and thus give effective protection to a part of the new American chemical and dye industry.

The Alien Property Custodian has also seized certain trade-marks and copyrights covering indispensable literature of science, which have likewise been sold to the corporation and a plan is now being formulated under which it is hoped licenses may be issued to use the same.

The full powers which the corporation has under its charter to purchase or otherwise acquire such personal property as may be necessary, useful or advisable in connection with any or all of the objects specified in its charter (particularly new patents), may be taken advantage of, in order to stimulate chemical invention and at the same time to create a new field for its activities.

It is the intention of the Trustees and the Board of Directors to make the corporation eventually a center of research and thereby fulfill the provision of its charter which provides that "after the full redemption of the preferred stock, the net earnings of the corporation over and above such amounts as may be necessary for the purpose of working capital shall be used and devoted to the development and advancement of chemistry and allied sciences, in the useful arts and manufactures in the United States." If the patents and processes acquired prove to be as valuable as they at present appear, a considerable income will be available for research purposes. The corporation should form a link heretofore unknown between industrial and academic research, and be in a position to bring about cooperation between the laboratories of the universities and those of the chemical and dye works as close as that which has existed in Germany in the past.

Informal offers have already been received from important laboratories placing their facilities at the disposal of the corporation and resolutions having for their object the same purpose, are now pending before the governing bodies of various large Companies and Institutions.

The corporation intends to conduct a laboratory census of the United States, a step which it is believed has never been attempted; and as a result thereof, it is hoped that a Bureau of Information can be established wherein a scientist engaged in an important research may be able to ascertain where the resources most necessary to him can be obtained and what progress has been made in similar branches of research. The country's facilities for research would thus be rendered more available and material aid would no doubt be rendered in the advancement of chemical science, particularly in medicine.

Subscriptions must be made upon the enclosed form and must be accompanied by a certified check for one thousand dollars ($1000) payable to the order of the Central Union Trust Company of New York, and both should be mailed to The Chemical Foundation, Inc., 81 Fulton St., New York City, N. Y. Such portions of such payments as represent subscriptions rejected in whole or in part will be promptly returned, but no interest will be allowed on such payments. Delivery may be made in the form of interim certificates, exchangeable for Definitive Preferred Stock and Voting Trust Certificates as soon as the same can be prepared.

THE CHEMICAL FOUNDATION, INCORPORATED.

PLAINTIFF'S EXHIBIT No. 58-B.

SUBSCRIPTION

The Chemical Foundation, Inc.,
Care of Central Union Trust Co.,
80 Broadway,
N. Y.

I,
We, hereby subscribe for eight (8) shares of the 6% non-voting cumulative preferred stock, and for two (2) shares of the common stock of The Chemical Foundation, Incorporated and we enclose herewith my
our check for one thousand dollars ($1,000) being payment in full for the same at par.

In case of the acceptance of this subscription, and

in consideration thereof we hereby transfer to Otto
I
T. Bannard, George L. Ingraham, Cleveland H. Dodge, B. Howell Griswold, Jr., and Ralph Stone as trustees under a certain trust agreement dated , 1919, between the said Trustees and Francis P. Garvan, Douglas I. McKay, and George J. Corbett, any and all rights conferred upon me by such subscription to receive such shares or parts of shares of common stock
us We
as may be allotted to me thereunder. hereby au-
I
thorize you to issue to and in the names of the said Trustees as such Trustees the certificates for the said common stock, and to deliver the said certificate to the said Trustees for deposit under the said Trust
me
Agreement, and to deliver to in place of said
us
certificates for common stock, trust certificates representing the same issued by the said Trustees.

This subscription is made subject to previous allotment and sale by you, and for the stock and voting trust certificates when, as and if issued. It is distinctly understood and agreed that no interest is to be allowed on the payment made herewith.

I
hereby further agree that you may reject this
We
subscription in whole or in part, allot less of either class of stock, or of trust certificates, that the amount hereby applied for, and close your subscription books at any time in your discretion without notice.

....

PLAINTIFF'S EXHIBIT No. 58-C.

THE FORMATION OF THE CHEMICAL FOUNDATION, INC.

When the United States entered the war Congress recognized the need of making this country independent of German commercial domination, and, therefore, by law authorized The Federal Trade Commission to grant licenses to American manufacturers, allowing them to use enemy patents under stipulated royalties, which were to be held in trust until the end of the war.

Under the terms authorized, it seemed to manufacturers that, after the war, suits could be brought against them by enemy owners for increased royalties, both during the period of the war and afterward. Manufacturers could not with certainty feel that they were not buying a law suit in taking out a license. Such large capital investment was needed to develop products covered by some of these patents that comparatively few manufacturers felt it safe to proceed with the doubt as to whether they would be able to recoup their expenditure in this new field.

There were patented products greatly needed in this country, and to stimulate progress Congress, in the Fall of 1917, authorized the sale outright of these patents like other enemy property, so that there might be no doubt in the minds of manufacturers of their rights thereunder. While many of these (so-called chemical) patents related to the dye and pharmaceutical industries, others covered processes or products used in the paper, cotton, soap, paint, hat, rubber, silk, leather, metallurgical, explosive, fertilizer, ceramic and other industries.

Proceeding under the law to sell enemy property to American citizens, the Alien Property Custodian, among other parcels, sold the plant of The Bayer Company, near Albany, together with a large number of patents owned by it. This sale immediately brought many dye and pharmaceutical manufacturers to a realization that the progress of their development was being blocked, and their future limited by the sale of these patents at auction to one manufacturer in this manner.

Immediately protests were made to the Alien Property Custodian, it being pointed out that it was a national emergency which had created this situation and caused Congress to pass the bill allowing the patents to be seized and sold, and that they should not be sold for the benefit of the highest bidder, unless that bidder would so use the patents as to make them available to the manufacturers of this nation.

The fact was emphasized that few of the patents had been taken out in good faith with a view to manufacturing in this country; they were simply intended to prevent manufacture here, so that the owners abroad could manufacture there and maintain a monopoly here without fear of interference by American manufacturers. The transfer of patents to private owners in this country would give the same opportunity for monopoly by the new American owners, and that no guarantee could be obtained that an individual, or a group, might not buy these patents for the purpose of exacting almost a blackmailing toll from American industries through claims of infringement by existing processes employed by American manufacturers.

It was recognized that nationalizing the patents would not meet the situation, for this would allow the enemy owners, with their vastly superior experience and skill in some of these lines, to start manufacturing in this country and ruin the investments in plant which were being made by American citizens to meet the emergency existing in this country.

Out of this situation there arose the conclusion that it would be unfortunate for the development of the American industry if the buyer of the patents should be an individual or a corporation carrying on a manufacturing business or guided by other than altruistic motives.

This situation was of most immediate importance to the new coal-tar chemical industry, but of great importance to all the industries into which chemistry entered, and which were affected by these German patents. Smaller dye and intermediate manufacturers immediately recognized that their very existence was threatened, and, in fact, all the manufacturers realized that, unless some plan could be evolved, it was likely that all benefit from the action of Congress in taking over these patents would flow to some one manufacturer, or possibly to a single speculator. They, therefore, advocated that these patents be sold in such a manner that no company or individual could obtain any advantage over any other, and they offered to the Alien Property Custodian to guarantee the money for the purchase of these patents until such time as a plan could be evolved and carried into effect to have them used for the benefit and upbuilding of all American industry.

As a result of the combined suggestions, it was decided to form The Chemical Foundation, Incorporated, to purchase these German patents and to hold them as a trustee for American industry. When this suggestion was made, it met with the instantaneous and enthusiastic approval of all with whom it was taken up, and the $500,000 of stock was at once informally underwritten.

While, as mentioned above, the possession of rights to manufacture under these patents was of the most immediate importance to the dye and pharmaceutical manufacturers, it is also of much importance to the other industries mentioned, and in order that the stockownership may be distributed throughout all the industries of the nation, it is desired that there shall be five hundred stockholders at $1000. each, evenly distributed so far as may be, amongst all the manufacturing and consuming industries affected, rather than that the dye makers and users should own all the stock.

The income of The Foundation will be from royalties on non-exclusive licenses granted only to American citizens or corporations, at least 75% of whose stock is owned in the United States and, under the terms of The Foundation's charter, every interest has equal opportunity to profit by the use of these patents, and each will pay the same rate of royalty, whether the output be large or small.

It is intended that the first earnings of The Foundation, after payments of the 6% dividends, shall be applied toward redeeming the preferred stock, and thereafter, there will be five hundred stockholders, each owning two shares of common only, or one thousand stockholders each owning one share; afterward the earnings will be available for making The Foundation a center of Industrial Research bringing the industries closer to the universities in the manner which brought German industries so rapidly to the front.

American manufacturers will realize the importance, not only to their own industry, but to all American industries, of an institution organized to break the control of German monopoly and the desirability of clearly placing it, even to its list of stockholders, in the position of the nationalized institution which it essentially is.

PLAINTIFF'S EXHIBIT No. 59.

A meeting of the Board of Directors was held at its office, No. 81 Fulton Street, New York City, on Thursday, June 19th, 1919, at 12 o'clock Noon.

Present: Messrs. Douglas I. McKay
George J. Corbett

The reading of the minutes of the last meeting was waived.

Mr. Ramsay Hoguet, Patent Counsel of the Company, presented and read a form of assignment from The Alien Property Custodian to The Chemical Foundation, Incorporated, covering 53 patents and 20 applications of letters patent in consideration of $3,650.

On motion duly made and seconded, the said assignment was approved, and the Treasurer was authorized to accept on behalf of The Foundation, delivery of the same, thereupon to pay over to The Alien Property Custodian as agreed, purchase price of said patents and applications for letters patent, the sum of $3,650.

Mr. Ramsay Hoguet, Patent Counsel of the Company then stated that the National Aniline and Chemical Company had offered to transfer to The Foundation its interests in certain letters patent, in consideration of a release, consideration to be fixed by the Board of Directors or Board of Trustees on hearing the facts.

On motion made and seconded, it was unanimously voted that the Vice-President and Secretary be authorized to execute and deliver to the National Aniline and Chemical Company a release in the form submitted by Mr. Hoguet and to accept from the National Aniline and Chemical Company an assignment of its interest in said letters patent. Mr. Hoguet was also authorized to write the National Aniline and Chemical Company that the compensation in addition to the release should be promptly determined by the Board of Directors or Board of Trustees at its option.

On motion duly made and seconded, Mr. Frederick A. Morlock was duly elected Assistant Secretary of the Company.

The meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 60.

List of Preferred and Common Stockholders of The Chemical Foundation, Incorporated.

Note: Same as Exhibit "D" attached to bill of complaint and not reprinted. (See Record, Vol. I, page 108.)

PLAINTIFF'S EXHIBIT No. 61.

Voting Trust Agreement as to Stock of Chemical Foundation, Incorporated.

Note: Same as Exhibit "E" to bill of complaint and not reprinted here. (See Record, Vol. I, page 110.)

PLAINTIFF'S EXHIBIT No. 62.

A meeting of the Board of Directors was held at the office of The Corporation, No. 81 Fulton Street, New York City, New York, on November 20th, 1919, at 12:15 P. M.

Present: Messrs. Francis P. Garvan
Douglas I. McKay
George J. Corbett

Mr. Francis P. Garvan presided.

Mr. Francis P. Garvan expressed his regrets on having been unable to attend the two prior meetings of the Board of Directors held on the days of June 19th, 1919, and June 28th, 1919, but stated that he had acquainted himself with the doings of the Directors present at said meetings and that their doings met with his approval. The minutes of the said two prior meetings of June 19th, 1919 and June 28th, 1919, were read and on motion duly made, seconded and unanimously carried. The acts and resolves of the Directors present at said prior meetings of June 19th, 1919 and June 28th, 1919, were ratified, approved, confirmed and adopted in toto as the acts and resolves of all of the Directors of The Corporation.

Colonel McKay explained the situation regarding camphor patents which involves the claim of the Monsanto Chemical Company, that they acquired title to certain patents which The Chemical Foundation, Incorporated appears to have valid ownership of and it was decided that Mr. Hoguet should investigate to determine ownership of these patents and that The Chemical Foundation, Incorporated be guided by his findings in issuing licenses on these patents.

A temporary adjournment was taken at 1:15 P. M. and the meeting reconvened at 3 P. M.

The question of issuing a bi-monthly bulletin to subscribers, licensees of The Foundation, was discussed and it was unanimously decided to issue such bulletin, same to be in printed form and to cover chemical publications and translations from articles appearing in foreign publications.

There was discussed the advisability of forming

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an Advisory Committee to The Foundation. The plan was unanimously approved by the Board and the date of December 2nd, 1919, fixed for the meeting of subscribers to form this committee.

The question of the advisability of adopting regulations for non-restriction of licenses, or for restriction under stated circumstances, was brought up and it was unanimously decided by the Board that this question should be submitted at a later date to the proposed Advisory Committee.

The question of stimulating license applications was brought to the attention of the Board and it was decided that this matter should also be submitted at some later date to the proposed Advisory Committee but that for the present, attention should be given to infringement investigations and prosecution thereof.

Mr. Hoguet, Patent Counsel of The Foundation, reported concerning Federal Trade Commission licenses and he stated that the Commission was refusing the surrender of licenses previously granted, that this action restricts The Foundation from licensing these chemical manufacturers and consequently royalties accruing from the patents, are being paid to the Federal Trade Commission. The Board decided that since this matter is having the attention of Mr. Hoguet, there was no further specific action to be taken by the Board at this time.

Mr. Corbett thereupon reported subscriptions to stock being 133. The question of stock subscription was discussed and it was decided that at a later date the proposed Advisory Committee should be notified to study the best method to increase the number of stockholders of The Foundation and to submit to The Board a comprehensive plan for so doing.

There being no further business, the meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 63.

Minutes

of Stockholders' Meeting of the Chemical Foundation, Inc., Held at the Offices of the Chemical Foundation, Inc., 81 Fulton St., New York, December 2, 1919, at 2.30 P. M.

The meeting was called to order by Col. D. I. McKay, Vice President of The Foundation, who made the following remarks:

> "Gentlemen, if you will give me your attention, we will call the roll of subscribers and, as the name of each company is called we will appreciate it, if a representative is present, to say, 'Here,' and then give us his name. We will try and get through with the roll call in fifteen minutes."

The roll of subscribers was called, and the following companies were represented:

Ault & Wiborg,	Messrs. Wiborg and Holt.
Barrett & Co.,	Mr. Jayne.
Central Dyestuffs & Chem.,	Mr. Metz.
Consolidated Color & Chem.,	Mr. Metz.
John Campbell & Co.,	Mr. Whaley—Miss Simmons.
Dow Chemical,	Mr. Pardee.
Dye Products & Chemical,	Messrs. Simons and Lowenthal.
E. I. DuPont de Nemours,	Messrs. Harrington, Bolton and Patterson.
General Chemical,	Mr. Wigglesworth.
Grasselli Chemical,	Messrs. Grasselli and Cachman.
Heller & Merz,	Mr. A. Merz.

G. H. Morrill,	Mr. Anthony.
Merck & Co.,	Mr. Murray.
H. A. Metz Lab.,	Mr. Metz.
Monsanto Chemical Co.,	Mr. McCartney.
Merrimac Chemical Co.,	Mr. Howard.
Naugatuck Chemical,	Mr. Ballantyne.
Newport Chemical,	Mr. Lang.
National Aniline & Chem.,	Messrs. Baldwin, Kalish & Atherton.
Roessler & Hasslacher,	Mr. Rigney.
Union Carbide & Carbon,	Dr. Townsend.
Electric Boat Co.,	Mr. Dawson.
Aniline Dye and Chem.,	Mr. Fieldhouse.
Permutit Co.,	Mr. Norton.
Lindsay Light,	Mr. Sinai.
American Cellulose & Chem.,	Mr. Larkin.
Lehn & Fink,	Mr. Plaut.
American Chemical Society,	Dr. Herty.
National Ammonia,	Mr. Guernsey and Mr. Atwood.
Parke-Davis,	Mr. Smith.
C. E. Bischoff,	Mr. Kuhl.
Mallinckrodt Chemical,	Mr. Bary.
Zinsser & Co.,	Mr. Zinsser.
Eastern Drug Co.,	Mr. West.
Powers-Weightman & Rosengarten,	Mr. Rosengarten.
Kelly Springfield Co.,	Mr. Seaman.
Abbott Laboratories,	Dr. Abbott.
Peerless Color Co.,	Mr. Corneliuson.
Commercial Research,	Mr. Sutherland.
Winthrop C. Durfee,	Mr. Durfee.
Jos. Bancroft & Son,	Mr. Bancroft.
Upjohn & Co.,	Mr. Upjohn.
E. R. Squibb Sons,	Dr. Anderson.

Johnson & Johnson,	Dr. Kilmer.
F. E. Atteaux,	Mr. Atteaux.
Hercules Powder Co.,	Mr. Norman.
Irvington Smelting & Refining,	Mr. Barker.
Baker & Co., Inc.,	Mr. Colby.
American Platinum Works,	Mr. Englehart.
C. Engelhardt,	Mr. Newcomb.
Hanovia Chem.,	Mr. Robinson.
American Cotton Oil Co.,	Mr. Lamb.
Lonsdale Co.,	Mr. Langdon.
Rhodia Chemical Co.,	Mr. White.
General Bakelite,	Dr. Backeland.
Citro Chemical Co.,	Mr. White.
Borne-Scrymser,	Mr. Waring.
Mt. Hope Finishing,	Mr. Williams.
United Piece Dye Works,	Mr. Blum.
Heyden Chem. Co.,	Mr. Chamberlain.
Armour Fertilizer Works,	Mr. Riley.
Schieffelein & Co.,	Dr. Schiefflein.
John Lucas,	Mr. Gilmore.
E. C. Klipstein & Sons,	Mr. Klipstein and Major Sill.
R. H. Comey & Co.,	Mr. Parsons.

There were also present:

Douglas I. McKay, Vice President of The Chemical Foundation.

H. E. Bateman, Asst. to Vice Pres. The Chemical Foundation.

S. A. Tucker, Chief Chemist, The Chemical Foundation.

Joseph H. Choate, Jr., General Counsel, The Chemical Foundation.

Ramsay Hoguet, Patent Counsel, The Chemical Foundation.

E. T. Connelly, Manufacturing Chemists' Association.

Address by Colonel McKay:

Gentlemen: I have before me what purports to be a program of the meeting for the proceedings this afternoon. I am rising to the second item on that program entitled "Address by the Presiding Officer." I assure you that, when this program was arranged, it was confidently expected that Mr. Garvan could be here to address you. It is most unfortunate for you and for myself that government business prevents him being here today. If what I have to say may be dignified by the term "Address," I can at least assure you it will have the virtue of brevity. This Chemical Foundation belongs to you. After some months of operation, its officers say to you that it is a valuable property. As a valuable property, it is entitled to the care and attention that any valuable property should receive. It is entitled to that kind of care and attention that comes from the wise counsel of all those who are interested in it. The purpose of this meeting today is to arrange for the cooperation, the help, and the guidance of those of you who are the owners of this property. I shall take but one moment to describe the purposes of The Foundation and something of its organization. As you well know, The Foundation acquired the titled and ownership to the former German owned patents relating to the chemical industry. At the time of its formation, and in the by-laws of The Foundation, it was made mandatory that The Foundation should not sell its patents for the reason that the sale of patents would tend to create monopoly. For the same reason, The Foundation does not issue exclusive licenses. Another guiding principle of The Foundation is that its active administration shall be in the hands of people not financially interested in the conduct of its affairs. All very well. Now, we come to the time when The Foundation being ready to put off its swaddling clothes, the officers and directors of

The Foundation want to invite the fullest partnership from those whose experience can best contribute to the success of The Foundation. I promised to be brief. I am going to be. I have nothing more for this moment to say, except that we deeply appreciate the broad interest that is shown by this attendance this afternoon and, if there is one word of caution that will help us all, I think it will be that, as we rise to discuss the various matters that are put before us this afternoon, we all take especial pains to stick to the subject. There is enough of it to occupy quite a lot of our time and, where the attendance is so large, it will help all if we can stick strictly to the business before us.

I next want to lay before you a draft of a constitution for the creation of an Advisory Committee to The Chemical Foundation. When it is read in full, we would like to have a most complete discussion of its provisions. I am going to call on Mr. Connolly, if I may, who has been good enough to familiarize himself with the text, to step forward here and read this draft of constitution.

The draft of constitution (as per copy attached hereto) was read by Mr. Connelly.

Col. McKay:

Gentlemen, that completes the reading of the draft of the constitution. So that you may better understand the proceedings, I may say here we shall next take up a discussion of this proposed constitution. Following that, we should like to proceed to apportioning all the stockholders present to these several committees or sections that are to be organized. You will recall that the stockholders here represented are privileged to join one of these sections. We will then follow with a recess, during which we should like to have all the subscribers who took a particular section group themselves together. Following that, the proceedings will then reconvene and we hope to then open the meeting to any propositions which may follow.

The meeting is prepared to discuss the draft of the constitution. May I suggest, possibly to expedite matters, that Mr. Connelly describe, possibly in other words, just what this constitution proposes.

Mr. Connelly:

The idea underlying the constitution is simply that the stockholders of The Chemical Foundation, Inc., shall be divided into various sections; for instance, those who manufacture heavy chemicals will be assigned to the heavy chemical section; those who manufacture dyes will be assigned to the dye section; and each section shall elect a committee of at least three persons to whom in general the various questions that affect the general chemicals for the General Chemical Section, or dyes for the Dye Section will be referred; that is, if it is necessary to make any investigation on that particular line of manufacture. Each section will have a committee chairman. The committee chairman will be a member of the Advisory Committee, and it is to this Advisory Committee that it is expected The Chemical Foundation will refer the various practical questions that may come up from time to time and on which The Foundation wishes the advice of the manufacturers. If there are any questions, I shall be glad to answer them.

Mr. Howard, Merrimac Chemical Co.:

Mr. President, in order to bring the matter before us, I would move the adoption of the constitution and by-laws. This motion was seconded.

Col. McKay:

It has been moved and seconded that this proposed constitution be adopted. Is there any discussion?

Dr. Anderson, E. R. Squibb:

You spoke of investigations by these various sections and committees. What type of investigation do you have in mind? Investigations of technical matters or administrative?

Mr. Connelly:

I think Mr. Howard can answer that.

Mr. Howard:

Some of the proper questions that would come up before such a committee are as follows: There has been some criticism among certain of the licensees of The Foundation as to the form of license. The Advisory Committee would try to work out a form to recommend to the Board of Directors that would be satisfactory to the stockholders and licensees, and Mr. Garvan has stated that such recommendations would undoubtedly be likely to be followed. Of course, we cannot make a statement in advance that, irrespective of what they would be, they would be followed, but that would be one of the questions that would come up. Another question of great importance is the question of to whom licenses would be granted; whether licenses should be granted to any bona fide manufacturer who comes along and wants one, or whether The Chemical Foundation should try to decide when a sufficient number of licenses had been granted for any one patent. There is a very broad question that The Chemical Foundation wants to know the feeling of the stockholders about. There are two exceedingly important matters. Another very important matter is to assist in propaganda work looking toward the development of the patents that we have, and that is why this organization is developed along the lines that it is, to interest a large number of the stockholders actively in the matter. We have in The Chemical Foundation some 4500 patents, and only a very small number of them at the present time are under license. Those patents are all being divided and classified, I understand, and the classified lists will be available soon, and those classified lists will be turned over to the particular section, and one of the duties of that section will be to try to interest and bring these to the attention of manufacturers of its section to get them to undertake the working of suitable processes in this country; in other words, to make the maximum use of the very valuable material which The Foundation possesses. Another point in the by-laws is that the voting is done by one vote only for each company. There has been a certain idea among the general public that because the DuPont Company and two or three other large companies underwrote this thing in the beginning that they have some sort of larger interest in the company as a result of that. Those who followed the thing closely, of course, know that that is not so, but these by-laws and constitution will emphasize the fact that the DuPont Company or any other company will have no more influence on the committee than any stockholder who holds a single share of stock. The whole purpose and method in which the by-laws are drawn up tend to make them as broad as possible to make every stockholder feel that he has exactly the same interest as every other stockholder. I would suggest, as a means of expediting the program this afternoon, if the stockholders approve of this, there ought to be the organization of these different groups and each group would be expected to elect at this time its chairman so as to create at once the Advisory Committee, and possibly a simple procedure would be to again read the thing through, and then let anyone stop at any point that he wishes to question.

Mr. Choate:

I think if you would read only the constitution of the committee and the sections we would have the bones of the thing.

Dr. Anderson:

In other words, that would be in regard to administrative questions.

Mr. Choate:

Before you begin, I would like to say one word about this. I was very glad indeed that this proposal was made and that the draft of this constitution was prepared by some of your number. I want to say that it was not prepared by the officers of The Foundation. The Foundation owns a great number of patents, some of which must be of great potential value, and The Foundation not only wants your guidance as to how it may best use the patents which are now useful but also how it may bring into use those which ought to be used and which would also furnish a valuable asset to your industry. For that reason, I think the constitution offers a very valuable mechanism. I hope something of the sort will be adopted.

Mr. Baldwin, National Aniline:

It seems to me this is far too important a matter to be disposed of this afternoon after one reading. I don't think we have been able to absorb it at all.

Col. McKay:

Would you find some use in our going over this, section by section, with the suggested interruptions?

Mr. Baldwin:

It occurred to me that we might adopt the constitution simply as a matter of procedure at this meeting. We might have this on a basis of discussion, but I don't think it ought to be adopted without an opportunity being given to everybody to read it over.

Col. McKay:

It can be amended by the Advisory Committee.

Dr. Anderson:

I really can see no use in putting off the ratification of the constitution. I would suggest that if anybody has any special point to raise to raise it. If not, let us have a vote on it.

Col. McKay:

Has anyone any special point to raise on the constitution?

Mr. Durfee:

I would like to have the sections read.

Mr. Connelly reread the portion of the draft of constitution relating to the organization of sections.

Mr. Durfee:

May I ask the question: the section applied to textiles, would that include people whose main business is supplying materials, but are not manufacturers of materials?

Mr. Choate:

They can go in whatever section they would like under this constitution. It would be their own option.

Mr. Zinsser, Zinsser & Co.:

I disapprove of two sections, one dyestuffs and the second, medicinals. To me the division of these two is very unfortunate, and it should be one section.

Mr. Choate:

With the consent of the directors of The Chemical Foundation, they can belong to two, and I imagine that consent would not be refused unless there would be some particular reason.

Mr. C. W. Abbott, Chicago:

We are not well acquainted with each other. I suggest, sir, that when a gentleman addresses the chair and rises to speak he give his name and his firm so that we can hear it provided he is not ashamed of it.

Voice:

Will you be good enough to identify yourself?

Mr. Choate:

I will say for Dr. Abbott that he gave his name quite loudly, but in this direction.

Col. McKay:

Are there any further points to be raised?

Mr. Plaut, Lehn & Fink:

I would like to ask, I believe at present the purpose is to have the President of the Foundation appoint five members. If so, I wonder if it would not be as well to have those elected by all the stockholders.

Col. McKay:

It is open for any suggestions.

Mr. Plaut:

Personally, I feel they ought to be elected by the stockholders.

Mr. Robinson, Hanovia Chemical Co.:

I would like to suggest that in that classification there is no field for metals or metallurgical industries. That seems to be important.

Col. McKay:

We have, I think, considered it and have decided that there are not sufficient stockholders, to be identified with metallurgical industries, but there is nothing to prevent an amendment of this proposed draft to include another section.

Mr. Robinson:

What classification would you suggest that they would best fit into under that scheme?

Col. McKay:

I can't make the suggestion.

Mr. Baldwin, National Aniline & Chemical Co.:

I move the adoption of the constitution as a rule of procedure for the meeting only.

Col. McKay:

Any discussion on that amendment? Has that been seconded?

The motion was seconded.

Gentlemen, it has been moved that we proceed to adopt this constitution as procedure for this meeting only.

Mr. Howard:

Mr. President, I think a good many stockholders here have come from considerable distance and given up a great deal of time for this matter. I for one have come from some little distance. I know others have come from a great distance. I see no useful purpose in delaying the matter. I believe we can take this matter up section by section with plenty of time to go over it this afternoon. I hope the motion won't proceed because it isn't a complicated thing.

Mr. Cashman, Grasselli Chemical Co.:

I should like to endorse what Mr. Howard has said. I have come from a considerable distance, and I hope the motion will not succeed. We cannot know or say that this is something which is perfect, but it is at least a mechanism by which this Foundation can get on the way of doing something useful. There is a provision by which it can be amended by a meeting of the stockholders. I hope that at this splendid gathering this afternoon the constitution will be passed.

Col. McKay:

Motion by Mr. Baldwin, National Aniline, that the proposed constitution be adopted at this meeting for plan of procedure only.

Not carried.

Mr. Plaut, Lehn & Fink:

Mr. President, I would like to put in an amendment that the five members be elected by the stockholders and not appointed by the president.

Dr. Anderson:

I think this motion is something that ought to be up to the officers of The Chemical Foundation. I see no reason for the stockholders electing these members. I can see reasons why the officers of The Foundation should select them.

Col. McKay:

Motion by Mr. Plaut of Lehn & Fink that the five members proposed be elected by the stockholders of The Foundation.

Not carried.

Mr. Robinson of Hanovia Chemical Co.:

Chairman, I move an amendment to the other list of sections that a section for the metallurgical industry be included.

Col. McKay:

Any discussion?

Mr. Howard:

Mr. President, it seems to me that, as there is interest shown in having a special metallurgical section, it would be wise to create such a section now and, if there are not enough in it, the men who make the motion and second it get additional stockholders to make a good section.

Col. McKay:

It may be out of order, but the chair will very cordially endorse that idea.

Motion by Mr. Robinson of Hanovia Chemical that there be created an additional section known as a Metallurgical Section.

Carried.

Mr. Rigney, Roessler & Hasslacher:

I move that an amendment be adopted permitting each of the stockholders to join two sections without consent of the Board of Directors.

Col. McKay:

The motion is by Mr. Rigney of Roessler & Hasslacher that each subscriber be permitted to join two sections instead of one. As the constitution now reads each subscriber may join one of the five sections that has been provided and can become a member of two or more provided his membership in those additional sections is approved by the President or Directors of The Chemical Foundation. Any discussion on that motion?

Mr. Jayne, Barrett Co.:

I would like to know the reason for that amendment.

Mr. Rigney:

A large number of chemical manufacturers are interested in more than one line, and they would like to know what is going on in the sections that represent those particular lines. I don't think that it is fair that a large company should be restricted to one section, provided his business covers more than one line.

Mr. Howard:

The idea was taken from the organization of the Textile Alliance where we had sections in a similar way, and it was always a matter that any member who wanted to join two, three, or four sections, if his business included those sections, would be allowed to do so, but if he simply wanted to get into some other section because he wanted to be in there to know what was going on when he had no real business in that section he wouldn't be granted the opportunity to do it. It was assumed that in the beginning they would elect the proper section. If he wants to go into three sections and was manufacturing articles that were concerned with these three sections, we cannot conceive of his not being allowed to do so under the present wording. I would suggest that the article be read again.

Col. McKay:

Will Mr. Connelly please read the article under consideration.

Mr. Connelly again read the article in regard to Organization of Sections, also mentioning the fifth section which had been added called Metallurgical.

Col. McKay:

Any further discussion?

Mr. Wigglesworth:

This subject has been given considerable consideration by many of us, but nothing like what it will get and have to get. The fact has been realized that The Chemical Foundation has been occupied with preliminary work and has not organized and functioned along the lines that we chemical people would like to see it function. We have discussed it at various meetings of The Manufacturing Chemists Association, and I think at the Dyes Institute it has been discussed. I don't think any of us think that the scheme will exactly fit. I think we all feel that it has been sufficiently tried in time of war through the Chemical Alliance to render it certain that it will serve to enable us to organize under the technical lines that are required. Chemical industry is so widely diversified that it is a difficult thing to map out just the representation that you require, but broad representation has been given here and every subscriber has the same rights whether he has one hundred dollars or one hundred thousand dollars, he has equal power by his vote. I think it is desirable that we act upon the resolution which has been made and seconded and at least get to work since it gives the opportunity of hearing from everybody and providing the mechanism that will make use of every patent The Chemical Foundation owns.

Dr. Abbott:

If I may be permitted another moment. I have the honor of belonging to the largest medical association in the world. We are divided into sections. The experience is that one man may belong to one section. That doesn't mean that he can't come in and enjoy deliberations of any section should he care to do so. He belongs to that section for voting purposes only, and I warn you gentlemen if you depart from what your proposed constitution has given you will get into hot water before you have gone very far.

Col. McKay:

We have a motion by Mr. Rigney of Roessler & Hasslacher that, instead of membership in one section, stockholders shall be privileged to have membership in two sections. I presume, Mr. Rigney, that membership in a third section will be provided for as in the draft.

Not carried.

Mr. Howard:

It occurs to me that there should be one other section and that is a miscellaneous section in which we are liable to have men who do not belong to any of the other sections and would not properly go into them. I would therefore make a motion that we add another section to be called a Miscellaneous Section, or Unclassified Section, whichever you want to call it.

To be called Unclassified Section. Motion Seconded.

Col. McKay:

We have motion before us by Mr. Howard for a sixth section to be called Unclassified Section. Carried.

Col. McKay:

We now proceed to vote upon the draft and these amendments. Carried.

Col. McKay:

Gentlemen, our program now provides the apportioning of stockholders in sections.

We will read from the list of those present and ask the representatives to choose one of the sections to which they wish to be identified. Is there any doubt as to the names of sections? If so, we will ask Mr. Connelly to read them again.

Mr. Connelly read the names of the six sections as follows:

1. Dyes and Intermediates.
2. Pharmaceuticals and Medicinal Chemicals.

3. General Chemicals and Fertilizers.
4. Textiles, including Dyers and Finishers.
5. Metallurgical.
6. Unclassified.

Col. McKay:

I think if we call the roll and each one gives the number of the section he wishes to join, that will be the easiest way.

The roll was called and the members present were classified as follows:

SECTION 1.

Ault & Wiborg
Barrett & Co.
Central Dyestuffs & Chem.
Consolidated Color & Chem.
John Campbell & Co.
Dow Chemical
Dye Products & Chem.
E. I. DuPont de Nemours
Grasselli Chemical
Heller & Merz
G. H. Morrill
Naugatuck Chemical
Newport Chemical
National Aniline
Lindsay Light
American Chemical Society
G. Bischoff
Zinsser & Co.
Peerless Color Co.
F. E. Atteaux
E. C. Klipstein Sons

SECTION 2.

Merck & Co.
H. A. Metz Lab.

Monsanto Chemical
Lehn & Fink
Parke Davis
Mallinckrodt Chemical
Powers Weightman & Rosengarten
Abbott Laboratories
Upjohn & Co.
E. R. Squibb Sons
Johnson & Johnson
Rhodia Chemical Co.
Citro Chemical Co.
Heyden Chemical Co.
Schieffelein & Co.

SECTION 3.

General Chemical
Merrimac Chemical
Roessler & Hasslacher
Union Carbide & Carbon
National Ammonia
Hercules Powder Co.
Armour Fertilizer Works

SECTION 4.

Winthrop C. Durfee
Jos. Bancroft Sons
Lonsdale Co.
Mt. Hope Finishing
United Piece Dye Works
R. H. Comey & Co.

SECTION 5.

Electric Boat Co.
Irvington Smelt. & Ref.
Baker & Co. Inc.
Amer. Platinum Works
C. Englehardt
Hanovia Chemical

SECTION 6.

Aniline Dye & Chemical
Permutit Co.
American Cellulose & Chemical
Eastern Drug
Kelly Springfield Co.
Commercial Research
American Cotton Oil
Borne-Scyrmser
John Lucas
General Bakelite Co.

The different sections met in separate rooms.

Col. McKay:

The chair declares a recess. 3.50 P. M.

The meeting was reconvened at 4.15 P. M.

Col. McKay:

Is section 1 ready to report?

Motion made and seconded that committee be increased to seven and that the names nominated be elected to Section Committee with power to elect two more members.

Col. McKay:

Gentlemen, to save some of our time, it has been suggested that we proceed with a general meeting. Section No. 1 is still deliberating.

Is Section 2 ready to make a report?

Section 2:

We have five to represent us.

Oscar Smith of Parke Davis & Co.
Dr. Kilmer of Johnson & Johnson.
Dr. Anderson of Squibb & Co.

Mr. Murray of Merck & Co.
Dr. W. J. Schiefflein of Schiefflein & Co.
Dr. Schiefflein, Chairman.

Section 3:

The committee has seven menbers, Mr. President. They have elected myself, Mr. Rigney of Roessler & Hasslacher as Chairman.

Col. McKay:

Are you going to proceed to select committeemen at a later time?

Mr. Rigney:

If it is permissible, we desire to do so. We feel that, in view of the small representation present, it would be unfair to that section to select a committee at this time.

Section 4:

There were only four members present and we elected as a temporary chairman, Mr. Blum of the United Piece Dye Works. Mr. Blum asked me to announce to the committee because of the few men present and our desire to bring in more of the finishers and dyers he wished to get time to get the other members and then elect a permanent chairman later on. Mr. Blum considers himself a temporary chairman.

Section 5:

There were five members present and we have elected three as a committee:

Mr. E. A. Colby, Baker & Co.
Mr. F. W. Robinson, Hanovia Chemical Co.
Mr. Thomas C. Dawson, Electric Boat Co.
Mr. Dawson, Chairman.

Section 6:

There were nine representatives present. The following were elected as a committee:

Mr. K. B. Lamp, American Cotton Oil Co.
Mr. J. C. Gilmore of John Lucas.
Mr. S. S. Norton, Permutit Co.
Mr. Norton, Chairman.

Col. McKay:

Section 1 not yet ready to report.

Gentlemen: The afternoon papers carry the President's message to Congress. Among the very important and emphatic items in his message is a strong recommendation to Congress that the dye industry be given special support and protection.

Applause.

I am going to ask Mr. Choate to say a word or two on what becomes of the patents now owned by The Chemical Foundation upon the signing of the peace treaty.

Mr. Choate:

Perhaps Mr. Hoguet can answer that.

Mr. Hoguet:

The Peace Treaty confirms the title to the patents, if ratified in its present form, in a very sweeping and final manner.

Mr. Howard:

Supposing that Congress in two weeks or so should declare this country at peace with Germany. What will become then of the patents?

Mr. Choate:

One man's goods is as good as another, but the transfer is an accomplished fact. The courts will have the natural tendency to sustain war measures, so even if the proposition were open and the argument would be equal on either side I think the action of the Alien Property Custodian would be sustained. I think the case is a good deal stronger than that. I should expect to see the transfer sustained at any event. I think the difficulties that Congress would get into by declaring that a state of peace existed without any treaty would be so great that I cannot conceive of their doing it.

Dr. Schiefflein:

Mr. Chairman, I would like to ask a question. How many subscribers are there, and would it not strengthen The Foundation if there were a great many more?

Col. McKay:

At the present time, there are 139 subscribers. Most of these subscribers are in the amount of $1000. There are a few who have subscribed in the amount of $500. There is no reason that the officers and directors can see why there should not be at least 500 subscribers. Certainly such a batch of subscribers would be far more representative of the work which The Foundation has undertaken. I wish, if you will sir, that you will tell us how to promote subscriptions to the stock of The Foundation. My own thought has been that with this large number present and with your direct interest in the work of this Foundation we got, say, only three subscribers among those whom each of you know, we would then have a very broad and representative business. I would like Dr. Schiefflein to speak on that subject.

Mr. Abbott:

I will guarantee three.

Dr. Schiefflein:

The lesson we have learned through the war is to apportion the burden among everybody throughout the country. I understand you would rather have 1000 subscribers at $500, than 500 subscribers at $1000. I will agree to get three at $500.

Col. McKay:
Is Dr. Abbott in the room?

Dr. Abbott:
There was once a body of men gathered together and those of you who remember your histories will recall that same body said the only way to resume is to resume. The only way to get these subscribers is to go out and get them, and with the ammunition that you have in your possession, which is a list of this association and a record of those present today, it is very easy for you to raise those subscribers right on this floor. The Abbott Laboratories will raise its subscription from $500. to $1000., and do its level best and I think guarantee to bring in two members.

Mr. Choate:
You understand there is no financial difficulty here. What we want is representation.

Dr. Abbott:
You have my representation.

Dr. Backeland:
The situation here in the United States has been handled in a very different way than it has ever been handled in the past. I foresaw the difficulties when it came about to confiscate the patents, and I wondered how that difficulty could be overcome when finally some of those minds thought of The Foundation. I made up my mind it was one of the most remarkable inventions ever made. It is totally different from anything attempted in England or in France. The per-

sonnel of the men identified with this organization, the people at the head of it, are all of value and confidence. I cannot imagine that there is any chemical manufacturer who wouldn't become a member. I believe now is the time to clearly and concisely put before everybody in the United States who is interested in the growth and success of chemical enterprises that they ought to become a member. What the gentlemen who proceeded me have said seems to be the experience of everyone of us. I was astounded to find several firms who represent good Americans whose names were not mentioned. I believe if you will furnish us with several sets of the literature telling the purposes and the names of the people present, and also tell them of the well attended meeting of today, I think that before a couple of weeks we should have a full list of subscribers.

Mr. Wigglesworth:

I understand that The Chemical Foundation shows evidence of self support and of carrying out research work. If the chair can give us some idea of retiring stock I think it would aid everybody in securing additional subscribers.

Col. McKay:

Mr. Wigglesworth, to discuss this matter in its entirety would take the rest of the afternoon. Our situation financially is entirely different. As Mr. Choate pointed out, it is not important that additional subscriptions be secured to finance the organization. It is solely important to get a larger and more representative body behind The Foundation and behind what it is trying to do. It is, however, true that, in spite of the expenses of organization and getting started, even of acquiring patents, The Foundation is commencing to be self supporting. It would be entirely so and directly so were it in immediate receipt of the license fees that accrue on account of licenses previously issued by The Federal Trade Commission. I take it that you all understand that, where those licenses had issued, the royalties that accrue under them do not come directly into our hands. By far, the most lucrative patents of the moment are those, the worth of which was appreciated at the earliest time, and which were accordingly licensed by The Federal Trade Commission. Were we in receipt of the income that accrued from those licenses we would be far more than self supporting. Until it does come into hand, I can say it is the policy of the officers of The Foundation to proceed rather cautiously regarding many things, such as research, that we would like to be actively engaged in right now.

Col. McKay:

I want to hear a word from Mr. Atherton on the subject of stock subscriptions.

Mr. Atherton:

Mr. Chairman, I think someone a little more familiar with the details of the organization could speak on it better than I could. I think it is a subject we are all interested in, and the National will do its share bringing in members. I think we can bring in three, and all I can do is to offer our support to this movement, which I should say is bound to be successful.

Mr. Jayne:

Perhaps the members who are not represented here would like to join those sections. Is it the intention of The Foundation to circularize them?

Col. McKay:

I may say, Mr. Jayne, that we will do that.

Mr. Robinson:

Now that we have our section on Metallurgy—

Col. McKay:

I was of the impression, Mr. Robinson, that electro metallurgical processes went in somewhere else.

Dr. Tucker:

May I say that they go into several different cases. We have a number of heavy chemicals and we have a good many metallurgical. We have some on fine chemicals, organic compounds, and so on.

Mr. Robinson:

I was speaking of the electro metallurgy. We want to get some more of the metallurgical men in the country. I noticed a number of representative firms not on the list. It would help us if we could have a list of those metallurgical patents as soon as possible.

Col. McKay:

Dr. Tucker, will you see that those are furnished Mr. Robinson.

Col. McKay:

I am waiting for the report on Section 1.

Section 1.

The chairman is James T. Pardee of The Dow Chemical Co.

Col. McKay:

That completes the program, and, unless there is some further discussion, we will entertain a motion to adjourn.

Dr. Anderson:

I would like to make the suggestion with reference to this question of increasing the membership of the number of stockholders, and would suggest that it might be desirable to have the chairman of these advisory committees constitute a committee on membership and, under those conditions inaugurate a commission to secure stockholders.

Mr. Atteaux:

I think it would be wise of the Advisory Board to appoint a membership committee. If a membership committee has got this work to do they will do it. If they are members of a number of different sections it may not be done. I don't think there ought to be any question but that we could get a thousand members. Mr. Choate answered a question that I was going to ask in regard to what was going to become of the patents after the peace treaty was signed. I know at least a dozen people who I talked to in regard to this matter. The universal question has been what is going to become of the patents after peace is declared. With this assurance, I have no doubt it will be a very easy matter to secure membership. I can assure you of three, even if the courts decide against it, because at least we know each other and can co-operate with each other. I think it would be wise to appoint a membership committee. I don't say that because I want to get on the committee because I am going to leave you in a few weeks for a few months.

Mr. Jayne:

It seems to me that the way we handle it as in The Chemical Alliance, where you have a sectional chairman. The men in that particular group has a special membership committee. The section chairmen are in better position to do that than anyone else.

Mr. Hoguet:

Mr. Atteaux has brought up a point which seems to be of interest to a good number of people. Let me tell you for the purpose of telling your friends that everything that could possibly be done has been done to secure these titles. You must bear in mind that the title to the patents which The Foundation owns are in exactly the same situation as the title to five hundred million dollars worth of other property that the Alien Property Custodian has sold to American citizens. It isn't conceivable in my mind that legislation would upset the sale of half a billion dollars worth of property. Why should it be any more conceivable that the title to these patents, which are simply personal property the same as the stocks of these corporations, are, should be upset?

The other point is the question of how soon subscribers shall be repaid. That depends entirely on the success of our Foundation in issuing licenses. As Col. McKay said, if we could be in immediate receipt of the royalties which are accruing all the time by reason of the licenses issued by The Federal Trade Commission, we would be on Easy Street. The difficulty is that up the present time we have been unable to pursuade the Federal Trade Commission to accept surrender of those licenses. If every member of this association who has a license from the Federal Trade Commission and who wishes to exchange his license for one from The Foundation would insist on an immediate surrender from the Federal Trade Commission, it would go a long way to solving that problem. These license fees that are accruing by reason of the Federal Trade Commission licenses would aggregate $40,000. a year. That figure is well below the actual amount. They amount to a good deal more than $40,000. a year, which we will eventually get by suit under Section 10 of the Trading with the Enemy Act after the war is over, but the point is we don't get them now and we should get them. They also are holding up the issuance of licenses by The Chemical Foundation for dye patents as, for instance, vat dyes that are being developed by some of the manufacturers here. If the vat dyes get into production in this country, those who are familiar with the situation tell me that on the basis of 5%, assuming the quantity produced will be the same as before the war, we should be assured an income of $200,000. a year or more in royalties on that class of patents alone. That leaves out of consideration all these other patents, metallurgical, electro chemical, heavy chemicals, and so on, some of which have already been licensed at a favorable rate. We are here primarily not to make money, and all The Foundation wants is its fair share of the profit that a licensee makes by operating under the patent. In every case, the directors of The Foundation have fixed the royalty by negotiation with the prospective licensee. The licensee comes in here and together we arrive at what is a fair share of the profit for The Foundation to claim. In some cases he has made more than he expected and the royalty has been raised. In others, we had a case today, where we had to cut it in half because he had met with so much competition he was not making much money. We want to be in a position to go before the Senate Committee on the Dye Licensing Bill which comes up shortly and say that we represent 500 concerns and not 139. Our strength will be more than five times as great if we represent 500 concerns than if we represent 139.

Voice: May I ask if all the licensees are stockholders?

Col. McKay:

No sir, but there are very few exceptions, and I think they have all expressed their willingness to become stockholders.

Dr. Herty:

May I have one word in regard to this question of membership and that is the importance of getting it quickly. I think it is the moral effect of this organization, and I think of that in connection with the conversation which I had a short time ago with the heads of six German chemical concerns, and I know that they are very deeply worried about this movement in America, and I think it will be all the stronger and they will be worried all the more, the more American concerns are connected with it, and they are going to be up against a solid body of men in this country.

Dr. Abbott:

Mr. Chairman, The Abbott Laboratories are working under some patents licensed to them by The Federal Trade Commission. When this organization was formed, it was a question with us whether we could try to secure the privilege of transfer to this association or continue as we were. If you will permit me, gentlemen, I will speak very frankly. We were seriously in doubt. As I take it, there is a scrap on between the two organizations, one I have mentioned, The Federal Trade Commission, and this Chemical Foundation. Now, I take it that The Chemical Foundation will be strengthened if the peace treaty is signed. What if the peace treaty is not signed? Second, you have asked us to use our influence to secure to this association the royalties coming from the license fees paid to the other organization. What is this association, represented by our Vice President, going to do with the surplus money that it gets? Is it going back to subscribers, or is it going to be used for a Rockefeller Institution?

Mr. Choate:

That's one of the things you are here to tell us. That's what the Advisory Committee is for. We are bound to spend such surplus in the promotion of research. You are here to tell us how we can best use such funds.

Dr. Abbott:

The Abbott Laboratories is very well satisfied on that point. It wants to knows its status as represented in the status of this Foundation if the peace treaty is not signed. I should be very pleased to have it answered.

Mr. Hoguet:

Your position will be exactly what it would be if the treaty was not signed. The peace treaty simply ratifies the act which the best legal authorities in this country agree is a perfectly proper and valid one anyway.

Mr. Choate:

All these sales which were made by the Alien Property Custodian were made to purchasers who are spending millions on them. Those purchasers got the best lawyers they could to pass on the title. They would never have spent their millions not knowing whether the title they purchased was good. You needn't worry about that. You have a license from the Federal Trade Commission. The validity and value of that depends on the validity and value of the act under which the Federal Trade Commission was acting. You may get a license from The Chemical Foundation. The validity of that depends upon the title of The Chemical Foundation to the patents. As the Chemical Foundation owns the patents, it can license you on any terms it sees fit and you see fit to accept.

Dr. Abbott:

The Abbott Laboratories feels it is very well advised. We are advised by such representative attorneys to go slow in disturbing our present relations and re-establishing ourself. Once, a man bought a horse and later discovered the horse was blind. He went to the man who sold him the horse and said, "Why didn't you tell me the horse was blind?" He replied, "The man who sold him to me didn't tell me about it, and I thought it was confidential." We want to go ahead. We are interested in the thing that you represent, and we will be very happy to see it grow to the possibility of living, and that is great, but we all want to know where we are going to stand and where we do stand.

Mr. Hoguet:

Dr. Abbott, I had hoped that we wouldn't have to discuss that matter because I discussed it with all the licensees.

Dr. Abbott: (Interrupting) Is it confidential?

Mr. Hoguet:

No, it is not confidential in the least. I am sorry to have to refer to the issue between this organization and the Federal Trade Commission. I will answer your question directly. The act provides that the Federal Trade Commission, or rather, the nominee of the President, may issue licenses under certain restrictions; that within a year after the termination of the war, the owner of the patent may bring a suit to recover the royalty paid under those patents. Consequently, The Chemical Foundation succeeds to those rights. However, the act is silent as to whether the court when suit is brought will rewrite the license in favor of the then owner of the patent, but it seems it must because the then owner of the patent would bring another suit within a year and recover additional royalties. The only question now is whether The Chemical Foundation will be obliged to get its royalties through the circuitous route of bringing suit under Section 10 of the Act, or whether it will get them directly from its licensees. It will get them in any event, but we want them now.

Col. McKay:

Now, that we are all in agreement, and since it is five o'clock, the motion to adjourn will be in order.

The meeting was adjourned at 5 P. M., with a vote of thanks to the officers of The Chemical Foundation for calling this meeting.

TAK.

PLAINTIFF'S EXHIBIT No. 64.

Constitution and By-Laws of Chemical Foundation, Incorporated.

Note: Same as Exhibit "F" to bill of complaint and not reprinted here. (See Record, Vol. I, page 118.)

PLAINTIFF'S EXHIBIT No. 65.

COPY

February 28th, 1919.

Mr. H. E. Danner, Treas.,
American Dyes Institute,
320 Broadway,
New York City.

Dear Sir:

I submit to you herewith report of work done in connection with abstracting, reporting and demanding patents from February 5th to February 25th inclusive, together with statement of expenditures hereto attached, Schedule "B" with receipts attached being the amounts paid, and Schedule "C" the amounts due.

From February 5th to the 23rd inclusive, I had abstracted 3520 patents. Of this number 330 were found to be American owned, and 99 to be owned by Neutrals or Allies. Three thousand and eighty-six were found to be owned by persons, firms or corporations in Germany or Austria, for which reports and demands were prepared at the expense of the Institute, with the exception of stamping the report and trust number on each, which is now being done at the Alien Property Custodian's office. In addition to this number 423 of the Badische patents previously reported were added. A summary of the patents abstracted is hereto attached, and marked Schedule "A."

I employed Mr. E. T. Brandenburg as Chief Abstractor with authority to employ other abstractors, one shift for day work and another shift for night work, the patent office being open by special permission nights, Sundays and Holidays for this work. I authorized Mr. Brandenburg to pay for the abstracting at the rate of $25.00 a day for day work, and $4.00 an hour for night and Sunday work, this being the same rates paid by Mr. Hoguet for similar work during the last two months.

I considered the appointment of Mr. Brandenburg as Chief Abstractor absolutely necessary in that it was a physical impossibility for me to personally stay in the patent office day and night, and at the same time direct the clerical work of four offices. I agree to pay Mr. Brandenburg $50.00 a day, as he worked both day and night, and I used his office as a main office for myself and typists.

The Alien Property Custodian's office supplied me with filing cases and folders, carbon paper, paper clips, memorandum pads, and one typewriter. The Dye Institute was charged with only such supplies as were not available from the Alien Property Custodian's Office, such as rental of typewriters, printing of reports, etc.

The printing bill seems to me to be rather high, and I am enclosing you herewith copy of my letter to Mr. Barrows relative to same, which is self-explanatory.

Bill for typewriting is higher than I had expected because I did not realize the enormous amount of work involved, but considering that four sheets were necessary (original and duplicate) for every patent report made, and ten sheets were necessary for every demand written (original and four duplicates), it required a great deal of time, in fact about as much time in arranging and separating carbons and copies as in actual typewriting. Am enclosing blank copies of forms used.

I had from twenty-twenty-five stenographers in addition to the two brought down by Mr. Barrows from New York, and found it necessary to use four offices for the report and demand writing.

Good typists are very hard to get in Washington, as those few who have been released by the government departments have been immediately transferred to other departments. I had several whose advertisements I answered to refuse temporary work, and the typewriter companies could not supply me with typists. Therefore, I had to make it attractive for those I employed, most of whom were "off on sick leave" (?) from several departments, everyone of whom were experts, and Mr. Barrows, who understands from first-hand knowledge the scarcity of typists, agreed with me that $1.00 an hour for day work, and $1.50 an hour for night, Sunday and holiday work, was the best we could do under the circumstances, this being the smallest rate charged by public stenographers, and I could not use public stenographers with any degree of success because they would not work more than a few hours a day in order that they might continue the work of their regular customers.

It was necessary that an attorney be in charge of each of the four offices in order to interpret abstractors' reports of doubtful cases, and see that the checking and verifying was carefully done, and otherwise manage the force. This work was done by Mr. Everett from Mr. Hoguet's office, Mr. F. E. Haynes of Washington, M. C. D. Shreve of Wash. and myself in charge of the main office, Mr. Shreve using his own office and typewriters. Mr. Everett's services were loaned by Mr. Hoguet. The only expense to the Dye Institute was his hotel and traveling expenses. I agreed to pay Mr. Shreve $3.00 an hour for his time, and Mr. Haynes $2.00 an hour, Mr. Haynes being a younger man, and with less experience, and not using his own office and typewriters.

I have $16.14 left in bank, and owe $1891.04 as itemized in Schedule "C" attached. Please send me a check for $2000.00 to cover the amounts due, and to pay for the abstracting of 87 additional patents as follows: 20 Licenses by the Federal Trade Commission not heretofore included, 46 Cassella Co. patents, 17 Badische Co. patents, and four others. Mr. Hoguet having directed me this week to include the foregoing. I will remit to you whatever balance I have after paying for the foregoing.

I expect to move back to the Alien Property Custodian's office tomorrow, and the typewriting in connection with these reports and demands will be done by my stenographer there.

I trust that the foregoing report contains all the information you desire at present, but if not, I shall be very glad to go into further details of any branch of the work.

The expense is about twice as much as I thought it would be, but more than twice as much work has been done than I expected to do, as Mr. Hoguet, as well as other officers of the Alien Property Custodian's office, expected that 2000 patents, including the 423 Badische patents, would be about as many as it would be possible to abstract and report, but every single person engaged in this work has worked to the maximum of human endurance from nine o'clock in the morning until twelve and one every night, and though we may have made a few mistakes, I consider that such mistakes were inevitable on account of the enormous amounts of work involved, and the rush in which it was done.

Very truly yours,

W. T. GORDON,
For Bureau of Investigation.

WTG/JL.

Copy to Mr. Ramsay Hoguet.

SCHEDULE A.

Total number patents & applications abstracted.	3515
American & Neutral owned	429
Wholly or partially enemy owned	3086
Badische Co. patents previously reported	423
Total on Sales List	3509

SCHEDULE B.

Paid by	Check No.	NAME	AMOUNT
2-10-19	1	E. T. Brandenburg	$446.00
2-11-19	2	Underwood Typewriter Co.	3.50
2-15-19	3	Miss Josephine Lavinder	78.00
2-16-19	4	C. D. Shreve	129.00
2-15-19	5	Miss Edna P. Swanson	33.00
2-15-19	6	Miss Greta Hazelhurst	51.00
2-17-19	X	Notes Auction House	8.00
2-17-19	9	E. T. Brandenburg	1695.25
2-18-19	10	H. F. Clark, Jr.	28.65
2-18-19	11	Webster Electric Co.	2.50
2-18-19	12	Rebuilt Typewriter Co.	2.50
2-19-19	13	Underwood Typewriter Co.	8.00
2-24-19	14	Ringgold Hart, Notary Fees for 169 reports	42.25
2-24-19	15	Jas. T. Wood	200.00
2-25-19	16	Horace F. Clark	11.65
2-24-19	17	Mrs. R. H. Cromwell	81.25
2-24-19	18	Miss Louise Faber	91.50
2-24-19	19	Miss Leona Faber	87.75
2-27-19	20	Mrs. B. B. Thompson	97.06
2-27-19	21	P. E. Everett	38.00
2-27-19	22	Miss Edna L. Fox	150.00
2-26-19	23	Miss Josephine Lavinder	37.50
2-26-19	24	Miss Greta Hazelhurst	30.00
2-26-19	25	Miss Irma B. Rhodes	69.50
2-26-19	26	Miss Edna P. Swanson	63.00
2-26-19	27	Miss Dorothy V. Aplin	251.00
2-26-19	28	E. T. Brandenburg	633.25
2-28-19	29	Miss Pauline Cauthen	54.75
2-28-19	30	Miss Ruth Stewart	26.25
2-28-19	31	Miss Mary L. Morgan	33.75
			4483.86

Receipts showing foregoing hereto attached.

SCHEDULE C.

Amounts Due.

C. D. Shreve & two typists, day, night & Sunday work	$585.00
F. E. Haynes, night & Sunday work	124.00
E. T. Brandenburg & 5 abstractors	947.00
Bal. on printing bill	228.04
Underwood Typewriter Co.	7.00
	$1891.04

PLAINTIFF'S EXHIBIT No. 66.

DU PONT
Established 1802
E. I. DU PONT DE NEMOURS & COMPANY
Wilmington, Delaware
Dyestuffs Sales Department

February 6th, 1919.
File 2975.

Mr. Will T. Gordon,
For the Director,
Bureau of Investigation,
Alien Property Custodian,
16th & P Sts., N. W.,
Washington, D. C.

Dear Sir:—

I am in receipt of your letter of the 3rd instant also the draft for $500.00 which I have duly paid and will turn in to the Institute.

Please note for the sake of order, to in the future draw upon the American Dyes Institute, 320 Broadway, New York. Kindly advise Mr. H. E. Danner the Treasurer a few days in advance of your intentions, so that he may be prepared to meet the obligations as they come along. It would be well if you could give him an estimate of your needs several weeks ahead, however, this is a matter I leave you to arrange with Mr. Danner. If he has any further suggestions to offer he will write to you.

Yours very truly,

(Sgd.) M. R. POUCHER,
Chairman, Committee Am. Dyes Institute.

MRP:S.

PLAINTIFF'S EXHIBIT No. 67.

February 10, 1919.

Mr. H. E. Danner, Treas.,
American Dyes Institute,
320 Broadway,
New York City.

Dear Sir:—

I am enclosing you copy of letter from Mr. M. R. Poucher, Chairman Committee American Dyes Institute, which is self-explanatory.

Mr. Ramsay Hoguet was here last week, and instructed me that our work must be completed in much less time than we at first contemplated. In accordance with his instructions I am working a corp of abstractors day and night, and made arrangements for the Patent Office to be open for them Sundays. I hope to complete the abstracting by next Sunday or Monday.

I shall draw on you for $2000.00, which please arrange to meet in time for me to make disbursements Saturday, February 15th. The $500.00 sent me by Mr. Poucher was not sufficient to pay for last week's work in full, but I hope to make the $2000.00 cover the entire balance of expense, provided I can finish by next Sunday.

I am keeping record of disbursements made to each attorney or clerk employed by the hour or day as the case may be, and will submit proper receipts to you.

Very truly yours,
WILL T. GORDON,
For Bureau of Investigation.

WTG/JL.

PLAINTIFF'S EXHIBIT No. 68.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets, N. W.
WASHINGTON, D. C.

RAMSAY HOGUET
149 Broadway
New York City

New York, February 16, 1919.

Mr. Will T. Gordon,
Bureau of Investigation,
Office Alien Property Custodian,
Sixteenth & P Streets, N. W.,
Washington, D. C.

Dear Mr. Gordon:

In making your demands for chemical patents address the demands to anybody you may know who has custody or control of the patents in the United States. I think it will be unnecessary to put in the last attorney of record in each case, but if you happen to know of anybody who has control the demands should be addressed to him. For instance, in the case of Meister, Lucius & Bruning the demand should be addressed to Herman A. Metz; in the case of Casella to National Aniline Chemical Company; in the case of Badische, to Bauff & Warland or Kuttroff, Pickhardt & Company, Inc.

I am asking Mr. Choate to send you a list of the recognized agents in this country, of the principal German firms.

Yours very truly,

(Sgd.) RAMSAY HOGUET,

Bureau of Investigation.

RH:P.

Bureau of Investigation.
Received Feb. 17, 1919.

PLAINTIFF'S EXHIBIT No. 69.

AMERICAN DYES INSTITUTE
320 Broadway,
New York

An Association of dye-stuff manufacturers in the United States

Officers
President
COTTINGHAM
-Williams Co.
-Treasurer
DANNER
Counsel
R J. EDDY
Committee
A. AULT
& Wiberg Co.
HEMINGWAY
mingway, Inc.
JEFFCOTT
th & Hastings
Corp.
T MATTHEWS
li Chemical Co.
ST MERZ
r & Merz Co.
MILLER
line & Chemical
, Inc.
POUCHER
nt de Nemours
Co.

February 19th, 1919.

Mr. Will T. Gordon,
For the Director,
Bureau of Investigation,
Alien Property Custodian,
16th & P. Sts., N. W.,
Washington, D. C.

Dear Sir:

As per the request of Mr. Poucher and Mr. Hoguet, I am sending you herewith check for $2000.00, to be used in connection with expenses incident to the searching of titles.

Very truly yours,

(Sgd.) H. E. DANNER,

Secretary.

HED:IF.
ENCLOSURE.

PLAINTIFF'S EXHIBIT No. 70.

Alien Property Custodian
Sixteenth and P Streets, N. W.
Washington, D. C.

Ramsay Hoguet
149 Broadway
New York City

New York, February 25, 1919.

Mr. Will T. Gordon,
916 Washington Loan & Trust Building,
Washington, D. C.

Dear Mr. Gordon:

I enclose herewith a letter received from the Nitrate Division. Will you please see whether all of the patents and applications listed in this letter have been demanded.

Some of these patents may be included in the demand intended to be issued for the patents in which the Norsk-Hydro Company was interested and I have therefore asked Captain Swenarton to advise me whether title searches have been made to definitely ascertain the title of each of the patents. You might call him on the 'phone and ask him whether the list contained in his letter was made as the result of a title search or not. If a title search has been made and the title is at present in the Badische Company, please issue a demand immediately for all of the patents not included in demands made by us heretofore.

Yours very truly,

(Sgd.) RAMSAY HOGUET.

RH:P.

PLAINTIFF'S EXHIBIT No. 70-A.

Copy

War Department
Office of the Chief of Ordnance
Nitrate Division

108570

Washington, February 19, 1919.

Mr. Ramsay Hoguet,
Office Alien Property Custodian,
149 Broadway, New York City.

Subject: Assignment of Enemy-Owned Patents.

Sir:

By direction of the Chief of Ordnance, your letter of February 18, 1919, file 108328, is acknowledged, and you are informed that the following is a list of the patents referred to in the letter in this Section of Feb. 14th, 107759.

It might be stated, however, that the aforesaid list has been prepared on the assumption that the consideration required from the War Department would be nominal, as in the case of the wireless patents transferred to the Navy Department. Otherwise, owing to the possible invalidity of certain of these patents, this Division would hesitate to proceed with the acquisition of the same.

971501	to F. Haber and R. le Rossignol	Sept. 27, 1910
1006206	" " "	Oct. 17, 1911
1202995	" " "	Oct. 31, 1916
1053951, 2	" C. Bosch and A. Mittasch	Feb. 18, 1913
1068966, 7, 8	Bosch, Mittasch, Wolf & Stern	July 29, 1913
1083585	C. Bosch and A. Mittasch	Jan. 6, 1914
1089185	" "	Mar. 3, 1914
1094194	" "	Apr. 21, 1914
1118628	" "	Nov. 24, 1914
1128843	" "	Feb. 16, 1915
1158167	" "	Oct. 26, 1915
1225755	" "	May 15, 1917
1244580	" "	Oct. 30, 1917
	(F. Stern)	
1148570	to Bosch/, A. Mittasch & H. Wolfe	Aug. 3, 1915

	1152930	Stern, A. Mittasch & H. Wolfe	Sept. 7, 1915
	1149510	" " " & F. Haber	Aug. 10, 1915
Ap.	10627	" & C. Beck	Feb. 25, 1915
	1207706	" " " "	Dec. 12, 1916
	1207707	" " " "	" " "
	1207708	" " " "	"
	1211394	" " " "	Jan. 9, 1917
	1075085	" " & Lappe	Oct. 7, 1913
Ap.	720412	C. Bosch	Sept. 14, 1912
Ap.	818087	"	Feb. 11, 1914
	1086130	"	Feb. 3, 1914
	1102716	"	July 7, 1914
	1188530	to C. Bosch	June 27, 1916
	1243382	"	Oct. 16, 1917
	1077034	"	Oct. 28, 1913
	1261900	"	April 9, 1918
	1113096	" & W. Wild	Oct. 6, 1914
	1113097	" "	Oct. 6, 1914
	1113776	" "	Nov. 3, 1914
	1126371	" "	Jan. 26, 1915
	1133087	" "	Mar. 23, 1915
	1157669	" "	Oct. 26, 1915
	1200805	" "	Oct. 10, 1916
	1094182	to H. Wölfe	Apr. 21, 1914
	1128804	" Mittasch & C. Schneider	Feb. 16, 1915
	1196101	" W. Gaus	Aug. 29, 1916
	1207968	" Wm. Meiser & C. Krauch	Dec. 12, 1916

Of all the above patents and applications, all are assigned to the Badische Anilin and Soda Fabrik of Ludwigs-hafen-am-Rhine, Germany. The following patent is not owned by the Badische Anilin and Soda Fabrik, but was issued in the name of Wilhelm Ostwald, a German national of Leipzig, Germany.

858904 July 2, 1907

This Division is particularly interested in acquiring rights under this patent.

According to advices received from Major Holcombe, you are expected in Washington the latter part of this week, and it is hoped that a conference may be had at that time concerning this and related matters.

Ap.=Pending application.

W. H. SWENARTON,
Capt., Ord. Dept. U. S. A.

PLAINTIFF'S EXHIBIT No. 71.

A. P. C. 197

In Replying Address Only
THE ALIEN PROPERTY CUSTODIAN
And Refer to No.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets, N. W.
Washington, D. C.

RAMSAY HOGUET
149 Broadway
New York City

New York, February 26, 1919.

Mr. Will T. Gordon,
916 Washington Loan & Trust Building,
Washington, D. C.

Dear Mr. Gordon:

I noticed in looking over the demands that you have used the second sheet for *patents* in demanding *applications*. The application form should request the Commissioner of Patents to issue patents upon the application to the Alien Property Custodian and these demands will therefore have to be revised. I thought I sent you a form for applications with the set of forms, but in case I did not do so, I send you a copy herewith.

Now that Mr. Polk has signed the executive order, there is no necessity for the extreme hurry which has obtained heretofore.

Yours very truly,

(Sgd.) RAMSAY HOGUET.

RH:P.

PLAINTIFF'S EXHIBIT No. 72.

PENNIE, DAVIS, MARVIN AND EDMONDS
Counsellors at Law
35 Nassau Street

John C. Pennie
William H. Davis
Arba B. Marvin
Dean S. Edmonds

L. W. Rosenthal
F. E. Barrows
W. B. Morton
Walter J. Gill, Jr.
G. J. Hesselman
F. D. Hardesty
Merton W. Sage
H. McCarteney

Washington Offices
Pennie, Goldsborough & O'Neill
Washington, D. C.

New York Cable Address
Penangold, New York
Western Union Code

Telephone 1127 Rector

GC
69

New York
March 4, 1919.

W. T. Gordon, Esq.
Bureau of Investigation
Alien Property Custodian
Washington, D. C.

My dear Mr. Gordon:

We have made a typewritten copy of the patents of our card index which we compiled at the time we turned the patents over to you. We intended to keep a complete record of all these patents, so that this list would represent all the patents we had forwarded to you for further investigation.

I do not know whether this list may have any interest to you, but I am enclosing a copy herewith, in case it does.

Have you any idea how long it will be before your complete sale list of patents will be available, so that we can ascertain just which patents the new corporation will acquire? I assume, in due course, this list will be published, but am wondering whether it will be available before that time.

You may be interested to know that Mr. Pennie has been selected as legal adviser of the President at the Peace Conference, regarding patent matters, and that he is sailing for Europe next Saturday.

Very sincerely yours,

(Sgd.) F. E. BARROWS.

PLAINTIFF'S EXHIBIT No. 73.

PENNIE, DAVIS, MARVIN AND EDMONDS
Counsellors at Law
35 Nassau Street

John C. Pennie
William H. Davis
Arba B. Marvin
Dean S. Edmonds

L. W. Rosenthal
F. E. Barrows
W. B. Morton
Walter J. Gill, Jr.
G. J. Hesselman
F. D. Hardesty
Merton W. Sage
H. McCarteney

Washington Offices
Pennie, Goldsborough & O'Neill
Washington, D. C.

New York Cable Address
Penangold, New York
Western Union Code

Telephone 1127 Rector

GC
69

New York
March 4, 1919.

W. T. Gordon, Esq.
Bureau of Investigation
Alien Property Custodian
Washington, D. C.

My dear Mr. Gordon:

I have your letter of February 28th, which I found awaiting me after a few days out of town. Mr. Wood's bill which you enclose seems rather high, and it seems to me it would be proper to ask him whether he could revise his figures to a more reasonable sum, as you suggest. At the same time, the work was rush work, and promptly done, so that I am not disposed to be over-critical about it. I have a feeling that some of the larger printing establishments there in Washington would probably have charged a much larger price for the same work, done under the same conditions.

Accordingly, if Mr. Wood is not disposed to reduce the amount of his charge, I would recommend paying the bill and ending the matter without further controversy. As I understand it, Mr. Wood had to buy all of the paper for the various copies, so that the paper alone represented a very substantial disbursement on his part; so that the actual amount of the printing itself would be correspondingly reduced.

Speaking more generally about the whole investigation, it seems to me it was made under such high pressure and the urgency of getting the matter completed regardless of the expense involved was such as to justify anything within reason to accomplish this end, and, moreover, it seems to me there is occasion for a great deal of satisfaction all around in having brought the matter to such a satisfactory consummation within the allotted time.

I am particularly glad to know that your own strenuous endeavors have at last eased up so that you are able again to get your "beauty sleep."

I found some of that delicious sausage meat waiting for me upon my return to New York, and there was sufficient so that we continued to enjoy it for several days.

With kindest personal regards to Mrs. Gordon and yourself, I remain

Very sincerely yours,

(Sgd.) F. E. BARROWS.

PLAINTIFF'S EXHIBIT No. 74.

March 6, 1919.

Mr. F. E. Barrows,
Attorney and Counsellor-at-law,
35 Nassau St.,
New York City.

My dear Mr. Barrows:

I am in receipt of your letters of March 4th and enclosure with patents submitted me for abstracting, for which please accept my thanks. This list will save me unnecessary checking in my office.

The following schedule shows the total number of patents and applications abstracted, and those eliminated from this list. We have a numerical card index of 3509 patents from which we made the sales sheets, and I would gladly send you a copy of this sales list but for the fact that I need several more copies than I have for several departments of the Alien Property Custodian's office. However, I will be glad to advise you whether or not any particular patents you may have in mind are included in this list.

Mr. Hoguet asked me how sure we were of having one hundred per cent. of the enemy owned patents relating to chemistry or its allied industries. I told him that the Federal Trade List was followed as a basis for ordering these patents, and in addition to this an assignee search was conducted at your direction to determine all patents standing of record in the name of the principal German companies.

Please let me know if there is anything I may add to this statement as you directed entirely this branch of work.

With kindest personal regards, I am,

(Sgd.) WILL T. GORDON,
For Bureau of Investigation.

WTG/JL.

PLAINTIFF'S EXHIBIT No. 75.

Alien Property Custodian
Sixteenth and P Streets, N. W.
Washington, D. C.
Ramsay Hoguet,
149 Broadway, New York.

New York, March 7, 1919.

Mr. Will T. Gordon,
916 Washington Loan & Trust Building,
Washington, D. C.

Dear Mr. Gordon:

I am sending you herewith a list numerically arranged, of patents sent you by Mr. Squair and Mr. Barrows which you may use in checking against the demands sent to the Patent Office.

Yours very truly,
(Sgd.) RAMSAY HOGUET.

RH:P.

PLAINTIFF'S EXHIBIT No. 76.

Pennie, Davis, Marvin and Edmonds
Counsellors at Law
35 Nassau Street
New York.

March 10, 1919.

Will T. Gordon, Esq.,
Bureau of Investigation
Alien Property Custodian
Washington, D. C.

Dear Mr. Gordon:

Replying to your letter of March 6th, and to your inquiry as to how sure we are of having 100%

of the enemy owned patents relating to chemistry or allied industries, I would say that we had probably included from 90 to 95% of them and that the additional 5 or 10% would be developed upon a further checking up and investigation of the various classes.

I have just talked the matter over with Mr. Hoguet on the telephone, and he thinks that a supplemental investigation of this kind might better await the completion of the transfer of the patents included in the present sales lists.

From Schedule A, accompanying your letter, I note that 3,515 patents were abstracted in addition to the 423 Badische patents, making 3,938 patents in all. According to our list there were between 4,200 and 4,300 patents which were selected and turned over to you. I suppose ultimately this list can be checked up to see whether any of the patents were mislaid or went astray, in their passage through the hands of the various individuals working upon them.

I assume you have included in Schedule A the patents which had been otherwise reported to the Bureau of Investigation so that abstracting was not necessary, although if these had been omitted, it might account for the apparent discrepancy in number between our total and yours.

Very truly yours,
(Sgd.) F. E. BARROWS.

PLAINTIFF'S EXHIBIT No. 77.

March 11, 1919.

Mr. Ramsay Hoguet,
Singer Building,
New York City.

Dear Mr. Hoguet:

The list submitted me by Mr. Barrows contains 4273 patent numbers. Our sales list now shows 3757 patents, 38 of which are not on the list submitted by Mr. Barrows. I have reduced the eliminated list of American and Neutral owned to 355, and have on my desk now 17 doubtful cases. The foregoing accounts for 4091 of the patents on Barrows' list.

I am having one of my stenographers copy the name, date and title of the 168 patents on Barrows' list, of which I have no record of ever having received for abstracting.

After carefully checking the list compiled by Mr. Shepherd at the direction of Mr. Barrows, which was made from an assignee search of the principal German Chemical Companies, I find 30 patents we had not included in our list. This will make about 200 additional patents to be abstracted.

We also have on the sales list, not included in the foregoing figures, 217 applications which were furnished us by the Examiners of the several divisions in the patent office.

Yours very truly,
WILL T. GORDON,
For Bureau of Investigation.

WTG/JL.

PLAINTIFF'S EXHIBIT No. 78.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets NW.
Washington, D. C.

March 13, 1919.

Mr. H. E. Danner, Treas.,
American Dyes Institute,
320 Broadway,
New York City.

Dear Sir:

I am enclosing you herewith copy of my letter of February 28th, which evidently you did not receive with the receipts submitted. Since this matter was written I have added between three and four hundred patents to the total number on the sales list, some of which were for the time being omitted on account of being doubtful cases, and about fifty or seventy-five subsequently *abstracted*, reported and demanded.

Further checking developed that about two hundred more patents should be abstracted, reported and demanded, and added to the list. This number will carry the total well over four thousand.

Schedule "C" attached to my letter of February 28th shows expenditures up to that date, and subsequent to that time I have had abstracting and stenographic work done amounting to about $125.00 to $150.00, and the two hundred patents above referred to to be abstracted and reported will cost around $300.00, so I suggest that you send me a check for $2350.00 to cover the expenses set out in Schedule "C," together with the work to be done.

Mr. Hoguet is here today, and it is his direction that the 200 additional patents should be abstracted, reported and demanded.

Very truly yours,
(Sgd.) WILL T. GORDON.

WTG/JL.

PLAINTIFF'S EXHIBIT No. 79.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets, N. W.,
Washington, D. C.

RAMSAY HOGUET
149 Broadway,
New York City.

New York, March 15, 1919.

Mr. Will T. Gordon,
916 Washington Loan & Trust Bldg.,
Washington, D. C.

Dear Mr. Gordon:

I have yours of the 14th. Confirming my telephone conversation with you today, I have spoken to

Mr. Garvan and Mr. Horne of the necessity of getting more rapid action in the Patent Division and they have promised to issue orders whereby the matter will be expedited.

I trust that you and Mr. Goldstein will be able to co-operate a little more in this matter as it not only produces a situation which may become embarrassing through the omission of some of the patents, but it is also likely to result in considerable delay.

I am writing Mr. Goldstein today as per enclosed copy.

Upon consideration of the matter of the fees for recording The Chemical Foundation demands, I shall try to arrange Monday to have a fund deposited either by the Alien Property Custodian or by The Chemical Foundation, as I do not think that we should be called upon to advance fees which will aggregate over three thousand dollars. Our not making a deposit for a day will not delay matters, as you can continue to get demands through the Patent Division of the Alien Property Custodian's office and serve them upon the Commissioner of Patents even though they are not recorded on the day of service.

The following patents have been called to my attention and I would like you to be sure that they are included in the list:

	No. 1,083,903	
Schmidt	1,216,612	(Badische)
"	1,089,797	
"	1,191,480	(Badische)
"	1,278,229	(Badische)
Chemische fav. v. Schering	1,075,171	
Schaller	1,256,929	
"	1,256,930	

and application Serial No. 804,744, Schmidt. (Badische.)

Dr. Samuel A. Tucker, now a major in the Army attached to the Chemical Warfare Division, whose address is 1827 S Street, N. W., Washington, D. C., has been appointed chemist for the Foundation and will shortly commence work in the classification of the patents. I have suggested to him that the general lines of the Office classification might be the best to follow and he may need some assistance in the preliminary stages of the work. I have told him that you have a file of copies of the demands, reports and patents which he might use. Please place all of your facilities at his disposal.

Yours very truly,
(Sgd.) RAMSAY HOGUET.

RH:P
1 enclosure.

PLAINTIFF'S EXHIBIT No. 80.

March 15, 1919.

Mr. Ramsay Hoguet,
Singer Building,
New York City.

Dear Mr. Hoguet:

I am enclosing you a list of Trade Marks found to be registered by enemies. This represents two days work of Mr. Everett, and a little over a day for Miss Fox, today's work not being included in the list, and I would judge the task is about ten per cent. completed.

Please blue-pencil such registrations as you think would not be necessary to demand, and advise whether or not in your opinion the title search should be made on those we report.

Yours very truly,
WILL T. GORDON,
For Bureau of Investigation.

WTG/JL.

PLAINTIFF'S EXHIBIT No. 81.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets NW.,
Washington, D. C.

RAMSAY HOGUET
149 Broadway
New York City.

New York, March 29, 1919.

Mr. Will T. Gordon,
916 Washington Loan & Trust Bldg.,
Washington, D. C.
Dear Mr. Gordon:

I have yours of the twenty-eighth. I do not know that it is worth while trying to do anything with Mr. Mulvey about this matter. We will need his good will, not only now, but afterwards if we find it necessary to make changes in the list, etc. You might say to him that I considered the bill rather high, but I think you had better not insist on a reduction. I return the bill herewith.

Yours very truly,
(Sgd.) RAMSAY HOGUET.

RH:P.

PLAINTIFF'S EXHIBIT No. 82.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets NW.
Washington, D. C.

Bureau of Investigation
Francis P. Garvan
Director

March 28, 1919.

Mr. Ramsay Hoguet,
Singer Building,
New York City.
Dear Mr. Hoguet:—

I am enclosing you herewith statement submitted by Mr. Mulvey yesterday afternoon for night and Sunday work for himself and two assistants in checking the sales list. You will probably remember that you were here Thursday, the 20th, which was the first day the patent office employees started to work, and authorized the night work in order to rush the checking of the sales list, but I had no idea at the time that it would aggregate $281.00, which is about 7¢ apiece for checking demands and the sales list.

I talked to Mr. Mulvey for about fifteen minutes to try and get him to reduce his time to a figure less than $4.00 an hour, as such clerical work should not in my opinion be paid for at the rate of pay for abstracting.

However, he insisted that it was very tedious work, and the further excuse that he had not been paid for some work done last fall, and did not feel like reducing the charge.

I suggest that you write me a sharp letter of criticism on this bill which I will submit to him, and see if I cannot save about $50.00 of the expense.

I am afraid I under-estimated the amount of money I would need to finish the entire expense, as I find I owe the abstractors for the last three hundred

or so patents abstracted	$260.00
Mulvey's bill enclosed	281.00
balance printing bill	150.00
Mrs. Thompson	100.00
Shreve for verifying and four typists for night and Sunday work here will run probably to	$150.00

so you had better make my check $900.00 instead of $750.00, which with the $100.00 you will return for Mr. Everts I am sure will be enough with probably $50.00 to $100.00 balance.

I do not see any necessity for further night work unless we should start into a new field, as I am now writing the cards for the sales sheets for trade-marks which will be finished this week.

Yours very truly,
(Sgd.) WILL T. GORDON,
For Bureau of Investigation.

WTG/JL.

PLAINTIFF'S EXHIBIT No. 83.

SUBSCRIPTION

The Chemical Foundation, Inc.,
Care of Central Union Trust Co.,
80 Broadway,
N. Y.

I,
We, hereby
subscribe for eight (8) shares of the 6% non-voting cumulative preferred stock, and for two (2) shares of the common stock of The Chemical Foundation, Incor-
my
porated and we enclose herewith check for one
our
thousand dollars ($1,000) being payment in full for the same at par.

In case of the acceptance of this subscription and in consideration thereof we hereby transfer to Otto T.
I
Bannard, George L. Ingraham, Cleveland H. Dodge, B. Howell Griswold, Jr., and Ralph Stone as trustees under a certain trust agreement dated , 1919, between the said Trustees and Francis P. Garvan, Douglas I. McKay, and George J. Corbett, any and all rights conferred upon me by such subscription to receive such shares or parts of shares of common

us We
stock as may be allotted to me thereunder. here-
I
by authorize you to issue to and in the names of the said Trustees as such Trustees the certificates for the said common stock, and to deliver the said certificate to the said Trustees for deposit under the said Trust
me
Agreement, and to deliver to in place of said cer-
us
tificates for common stock, trust certificates representing the same issued by the said Trustees.

This subscription is made subject to previous allotment and sale by you, and for the stock and voting trust certificates, when, as and if issued. It is distinctly understood and agreed that no interest is to be allowed on the payment made herewith.

I
hereby further agree that you may reject this
We
subscription in whole or in part, allot less of either class of stock, or of trust certificates, that the amount hereby applied for, and close your subscription books at any time in your discretion without notice.

....

PLAINTIFF'S EXHIBIT No. 84.

War Department
Office of the Assistant Secretary
Washington, D. C.
Munitions Patents Board

November 10, 1918.

Ramsay Hoguet, Esq.,
149 Broadway,
New York City.

Dear Sir:

1. I have your letter of November 13th. It has been suggested by the Patents Section of the Federal Trade Commission that it might be desirable for the War Department to take out licenses under enemy owned patents where the question of infringement is likely to be raised after the war, particularly in cases where the rights have been infringed by contractors for the Government and the Government has agreed to hold the contractors harmless.

2. I am to take this matter up with Mr. Wardman of the Patents Section of the Federal Trade Commission and may have occasion to write you again on the subject.

Very truly yours,

THOMAS EWING,
Chairman.

TE;kse
Room 237
State, War & Navy Bldg.

PLAINTIFF'S EXHIBIT No. 85.

April 23, 1919.

MEMORANDUM OF CONFERENCE BETWEEN HON. THOMAS EWING, CHAIRMAN OF THE MUNITIONS PATENTS BOARD, AND MAJOR A. M. HOLCOMBE, LT. S. H. GRAVES, OF THE ORDNANCE DEPARTMENT, AND MR. RAMSAY HOGUET, PATENT COUNSEL TO THE ALIEN PROPERTY CUSTODIAN, AT 160 BROADWAY, NEW YORK CITY, APRIL 22, 1919.

The following papers were submitted to Mr. Ewing in advance of the conference for his information:

Captain Swenarton's letter of April 16, 1919, to Lt. Graves,

Major Holcombe's letter to Mr. Dorr, April 18, 1919,

Mr. Dorr's reply thereto, April 18, 1919,

Lt. Graves's 1st Ind. on Capt. Swenarton's letter,

Letter from Col. Hoguet to Major Holcombe, April 21, 1919.

Mr. Ewing stated that, in the absence of some express provision of the Peace Treaty, it is his opinion that the Alien Property Custodian cannot dispossess Germans of their rights under U. S. patents except by a bona fide sale conformable to the provisions of the Federal Trading with the Enemy Act. Mr. Ewing stated that no transfer to a bureau of the Government or to a corporation organized by officers of the Government for the purpose of holding title for the benefit of the Government would be conformable to that Act. In order that a sale may be conformable to the Act, it must appear that the price was approved by disinterested persons competent to judge of the value of the patents, and that the price must represent a fair value.

Mr. Ewing stated that he sees no reason why the United States should acquire full title to enemy-owned patents, as it is only interested in extinguishing such liability as it may be under. In some cases it may be desirable to procure a license, in order to continue manufacture for the future, particularly with reference to patents which relate exclusively to war materials and have little commercial value. As to the greater number of enemy-owned patents, the commercial value is probably greater than the military value, and the effect of the United States acquiring title to such patents would be, principally, to release private concerns from liability for past infringement and future use. Mr. Ewing thinks there is no reason why the United States should assume to protect private concerns, and that it is preferable to leave such concerns to look out for themselves.

Mr. Ewing seemed inclined to favor the War Department's taking advantage of any provisions which may have been or may be put into the Peace Treaty authorizing the Alien Property Custodian to dispossess Germans of their patent property; although he stated it to be his personal opinion that it would be bad policy to put a provision in the Peace Treaty authorizing such action. His view is that the War Department should keep clear of the matter, and that the Alien Property Custodian should assume the entire responsibility for whatever action is taken.

Mr. Hoguet stated that the Alien Property Custodian has no particular interest, one way or the other, in the disposition made of German-owned patents of interest to the War Department. He stated, further, that the Chemical Foundation had no desire to take over patents generally outside of those relating to chemical matters, but that it would take over other patents if the War Department or the Navy Department should urge it strongly to do so. He stated that the directors had not adopted any policy with reference to licensing the United States, although it is expected that a free license will be given to the United States, but not to contractors manufacturing for the United States.

Mr. Hoguet further stated that he would await a request from the War Department before taking further action with reference to patents already seized relating to war inventions.

Major Holcombe requested Mr. Ewing to formulate his ideas in a communication which can be presented to the Secretary of War along with the other papers bearing on the matter, for consideration, in order that some policy may be adopted with reference to the disposition to be made of enemy-owned patents relating to war materials.

The organization of a corporation similar to the Chemical Foundation for the purpose of taking over munitions patents and other patents non-chemical in nature of interest to the War Department was not discussed in detail, because of Mr. Ewing's opinion that a transfer to such a corporation would (if controlled by the War Department) be open to the same objections as a transfer to the War Department itself.

A. M. HOLCOMBE,
Major, Ord. U. S. A.

AMH:LJL

PLAINTIFF'S EXHIBIT No. 86.

War Department
Office of the Chief of Ordnance
Washington

February 7, 1919.

In replying refer to No. 106768

From: Chief of Ordnance,
To: The Assistant Secretary of War,
Director of Munitions.
M. P. B. 0728 (Enemy-owned).

Subject: Enemy Owned Patents pertaining to Munitions.

1. This office has unofficial information to the effect that there have been recent sales to citizens and corporations by the Alien Property Custodian of enemy owned patents—especially a number relating to chemical processes, some of which are more or less directly involved in the production of munitions of war.

2. This office is not informed as to whether or not the right of the United States Government to the use, direct or indirect, of these patents so sold has been in any way reserved and protected. If not, it is conceivable that the needs of the United States Government for munitions of war may be in the position of being satisfied only after payment, directly or indirectly, of unduly high royalties for processes now being purchased at reasonable rates from the Alien Property Custodian.

3. Furthermore, it is conceivable that private parties, or corporations, now purchasing enemy patents at reasonable rates might through the control of an industry, or particular process thus obtained, so restrict the development of that industry or process and so control it that in time of need the United States

would find inadequate commercial facilities existing for that particular essential of war preparation, and, having no direct rights under the patents, the Government would be handicapped and embarrassed at least in any efforts to develop in its own works facilities for meeting that particular need.

4. It is regarded as most essential that for adequate preparation for any future possibilities, offensive or defensive, the United States Government should assure itself that adequate facilities and experience for all processes required to produce the raw materials and the finished products of war uses be developed either by a sufficient purely commercial development supported by commercial profits, or by some coordination between industrial organizations and government agencies, or by direct governmental research development and manufacture.

5. To this end, and having in mind not alone generally the many processes essential to the materials and appliances coming under the head of munitions of war, but having in mind particularly those processes which are embraced under the terms "fixation of nitrogen" and "concentration of nitric acid," etc., and which are essential to the deliverance of this country from its dependence upon outside sources for the prime essential of war munitions, nitric acid—I would most seriously recommend that a formal request be made upon the Alien Property Custodian to safeguard these military interests of the Unitel States as respects all enemy owned patents affected.

6. It would seem desirable even that effort be made in the case of patents already sold which may bear upon especially the fixation of nitrogen, or the concentration of nitric acid, to secure free license to the United States Government to use at its own works, or to have used in private works for its direct military needs, all such patents, and even if that be not feasible,

to assure that hereafter all sales of enemy patents made by the Alien Property Custodian shall be made subject to an explicit proviso that the United States shall have unrestricted license to use the processes or apparatus covered by the patents, either directly in its own works, or indirectly in the works of others for the purposes of the United States Government.

(Sgd.) C. C. WILLIAMS,
Major General,
Chief of Ordnance,
U. S. A.

PLAINTIFF'S EXHIBIT No. 87.

February 11, 1919.

The Alien Property Custodian,
16th & P Streets,
Washington, D. C.

Dear Sir:

1. I am requested by the Assistant Secretary of War to arrange for a conference with you with reference to the seizure and disposal of enemy owned patents, patent applications, and claims against the United States thereunder, in order to secure the protection of the interests of the United States in the same.

2. This matter has been discussed informally with Mr. Ramsay Hoguet of your office, who has given assurance that no sale of any enemy owned patents of any class relating to munitions or materials entering into the prosecution of the war will be made by you in advance of notice thereof to the War Department.

3. Mr. Hoguet suggested that the War Department prepare a list of all enemy owned patents under which claim might be made on account of any use of the inventions covered thereby by the United States

However, in view of the large number of these patents, it is hardly feasible to make a sufficient investigation within the time available to prepare a complete list and it is feared that unless complete, the interests of the United States could not be adequately secured.

4. It is believed that whatever action can be taken with respect to any patents of the classes referred to should be taken with respect to all enemy owned patents. The amount of labor involved in investigating and determining what patents the Government will require protection against is much more than would be involved in drafting blanket terms of sale for all enemy owned patents whether relating to war materials or not for the purpose of insuring adequate protection to the United States therefrom. If the patents are of interest to the United States, it is certainly desirable to secure a release on account of past use and a license for the future; and if the patents are not of any interest to the United States, the purchaser under such a blanket agreement would not be prejudiced by the acceptance of the same.

5. Moreover, the separation of enemy owned patents into two classes, comprising in one class patents which relate to inventions used by the Government, and in other class patents which do not relate to inventions used by the Government, would provide a means of informing persons who might be disposed to make claims against the United States of the interest of the United States in such patents. Also, future development of inventions not at present of interest to the Department may result in a desire later on to acquire rights of manufacture and use which are not ascertainable at present. The furnishing of any information which might serve as the basis for a claim against the United States is contrary to the policy of the War Department.

6. The interest of the United States in patents owned by enemies, particularly Germans, is believed to be considerable on acount of the probable extensive use made of the inventions covered thereby during the war. The points referred to above are suggested merely as indicative of the problems which the sale of these patents present, and it is believed that a full discussion thereof should be had with a view to defining a policy and procedure whereby the interests of the United States may be safeguarded.

Respectfully,

A. M. HOLCOMBE,
Major, Ord. U. S. A.
War Department Representative
Munitions Patents Board.

PLAINTIFF'S EXHIBIT No. 88.

ALIEN PROPERTY CUSTODIAN
Memorandum from the Custodian

February 12, 1919.

To Mr. Hoguet:

I was favored with a visit today from Major A. M. Holcombe and two other patent attorneys in uniform from the Ordnance Department, who left with me a letter hereto attached. (Returned to A. M. P.)

I explained to them that we could not possibly sell patents at wholesale to the War Department, but if they would indicate the patents which were necessary for their purpose, we could do business in much the same way as we had with the Navy.

They did not, of course, know of my understanding with the Federal Trade Commission and the policy of this office growing out of that understanding. They finally submitted this proposition:

That in selling patents, especially chemicals, dyes, etc., we should make it a condition of the sale that the purchaser would give a free license to the Government of the United States for its own use in the manufacture of the products covered by the patents, and would not make any claim for past or future infringements of which patents by the Government.

I told them you would give consideration to this proposal and that you would communicate with them in reference thereto. I further told Major Holcombe that you would be glad to see that they were given all information about all patents that were to be sold by us, so that they can take up each individual case with us at or before sale.

AMP

PLAINTIFF'S EXHIBIT No. 89.

MEMORANDUM OF CONFERENCE WITH MR. A. MITCHELL PALMER, ALIEN PROPERTY CUSTODIAN, FEBRUARY 12, 1919.

Pursuant to memorandum of February 7, 1919, from the Assistant Director of Munitions, the writer, Captain Dix and Captain Swenarton, of the Nitrate Division, Office of the Chief of Ordnance, called upon the Alien Property Custodian at his office, 16th & P Streets, N. W., Washington, D. C., with reference to safeguarding the interests of the United States from claims under enemy-owned patents, and particularly with reference to such patents as may be sold by the Alien Property Custodian in the performance of his duties.

A letter setting forth the views of the War Department was handed him at the interview. Copy of this letter is attached.

The Alien Property Custodian stated that he would be glad to sell to the War Department for a nominal sum any patents in which the War Department is interested, as has already been done in the case of certain wireless patents in which the Navy Department is interested; but that he did not propose to sell enemy-owned patents to American generally except in connection with the sale of enemy-owned businesses actually carried on in this country, or in special cases in which the patents dominate the control of an American industry.

He said that the matter of the patents was largely in the hands of Mr. Hoguet, and that he would be glad to have the War Department present to Mr. Hoguet for consideration a form of purchase agreement for use in disposing of patents to American purchasers which would safeguard the interests of the United States in so far as past use of inventions covered by enemy-owned patents is concerned. He did not look with favor upon requiring such purchasers to give the United States free licenses to use the invention in the future; but he stated that he would consider any recommendations which Mr. Hoguet might make in reference to this phase of the matter.

He stated, further, that it is proposed not to sell enemy-owned patents wholesale. It is not proposed to sell enemy-owned patents under which the Federal Trade Commission had granted licenses, without the approval of the Federal Trade Commission, and that his power under the Act of November 4, 1918, to seize enemy-owned patents generally was restricted by an understanding with the President which permitted him to seize only such enemy-owned patents as did not conflict with the exercise by the Federal Trade Commission of its concurrent powers.

A. M. HOLCOMBE,
Major, Ord. U. S. A.

PLAINTIFF'S EXHIBIT No. 90.

February 26, 1919.

Hon. Frank L. Polk,
Acting Secretary of State,
Washington, D. C.

Dear Frank:

I tried to see you this morning but was obliged to leave before you came in.

I enclose the Executive Order which I am anxious to have signed at once. I also enclose proof of my report on the chemical industry. If you will take a minute to read the last four pages of this report where I have marked "X," you will see the vital importance of this Executive Order. In a word, we propose to sell at private sale a large number of German-owned patents which were never used in this country, but which are of vital interest to the chemical industry. Sale will be made to a corporation which has been formed by all the dye and chemical manufacturers of the United States, a corporation which is really not for profit but for research and educational work, and which proposes to license these patents on reasonable terms to all applicants. It is a great idea and I am anxious to have it put across.

I would go to the President about it, but you know the situation at the White House, and I see no reason why you should not make the order. If you want to talk to me about it, I will come down any time you say.

Yours truly,
(Sgd.) A. MITCHELL PALMER.

PLAINTIFF'S EXHIBIT No. 91.

Order of Frank L. Polk, dated February 26, 1919.

Note: Same as Exhibit No. 3 attached to defendant's answer and not reprinted here. (See Record, Vol I, page 551.)

PLAINTIFF'S EXHIBIT No. 92.

(Copy)

Alien Property Custodian
Sixteenth and P Streets, N. W.
Washington, D. C.

March 31 1919.

Hon. Frank L. Polk,
Acting Secretary of State,
Washington, D. C.

Dear Sir:

I am sending you herewith, for your approval and signature, an order under the authority of executive order of December 3, 1918, relating to the sale to The Chemical Foundation, Inc., of certain copyrights, applications for letters patent and for the registration of trademarks.

This order supplements your order of February 26th, 1919, under which certain rights under letters patent and trademarks were permitted to be sold to The Chemical Foundation, Inc. I believe that to fully carry out the purposes of your order of the 26th of February, 1919 and of The Chemical Foundation, Inc. this supplementary order is necessary. I particularly refer to the question of copyrights. Since the order of the 26th of February, I find upon investigation that it is necessary for a body such as The Chemical Foundation, Inc. to control the copyrighted German scientific works so as to prevent the issuance of unauthorized and misleading translations of said works in the United States which would greatly hinder the development of the arts to which they relate and to permit the reproduction, translation and wide circulation of works or scientific character.

Faithfully yours,

(Sgd.) FRANCIS P. GARVAN.

PLAINTIFF'S EXHIBIT No. 93.

A. P. C. 197
In Replying, Address Only
THE ALIEN PROPERTY CUSTODIAN
And Refer to No. 00724

ALIEN PROPERTY CUSTODIAN
SIXTEENTH AND P STREETS NW.
WASHINGTON, D. C.

New York, April 1, 1919.

Mansfield Ferry, Esq.,
Alien Property Custodian,
Washington, D. C.

Dear Ferry:

I am sending you herewith an executive order relating to copyrights and the like, and a letter from Mr. Garvan to Mr. Polk. This order is necessary to permit the seizure and sale of the German copyrighted scientific work to the Chemical Foundation, and I trust you will be able to secure his signature immediately as we wish to transfer these rights as soon as possible.

When the order is signed I would appreciate it if you will telephone or wire me the date on which it is signed and whether or not any changes have been made, so that I may note them on the copy which I will keep. Will you also notify Mr. Horne of the signature of the order?

Yours very truly,

(Sgd.) RAMSAY HOGUET.

RH/LR

PLAINTIFF'S EXHIBIT No. 94.

Order of Frank L. Polk, dated April 5, 1919.

Note: Same as Exhibit No. 4 attached to defendant's answer and not reprinted here. (See Record, Vol. I, page 554.)

PLAINTIFF'S EXHIBIT No. 95.

A. P. C. Accounting Form No. 5.
SHEET No. 1
TRUST No. 46542.

ALIEN PROPERTY CUSTODIAN, WASHINGTON
INDIVIDUAL TRUST LEDGER

ACCOUNT OF { Enemy / Ally of Enemy } Owners of various Patents sold to Chemical Foundation.
ADDRESS
DEPOSITARY

Dates	Particulars	Posting Reference	Direct Expenses (Memo.)	Sec'y of the Treas'y. U. S. Debit	Sec'y of the Treas'y. U. S. Credit	Depositaries Debit	Depositaries Credit	Investments Debit	Investments Credit	Income Debit	Income Credit	Principal Debit	Principal Credit
1919	R 47574												
Aug 30	Proceeds of sale of sundry patents R 47574	33949				249775.00						4925.00	254700.00
	Balance August 31, 1919.					249775.00							249775.00
1920 July 9	Cash trans To Secy patents	33949		249775.00			249775.00						
Aug 28	Proceeds of Sale to Chem. Foundation & rights & etc	34921		6480.00								120.00	6600.00
Dec 10	Proceeds of Sale to Chem. Foundation & rights & etc	37054		4596.00								404.00	5000.00
1921 Mar 12	In paymt of Assignment dated 2/19/21 R 47709	38230		5000.00 265851.00								524.00	5000.00 266375.00
May 13	Consideration for certain patents assigned 4/27/21 R 47732	C 6720		550.00									550.00
1922													266925.00
June 16	To pay claim for expense	C 7933			3.50							3.50	
				266401.00	3.50							527.50	

I hereby certify that the foregoing is a true and exact photostatic copy of the ledger account in the records of the Alien Property Custodian, Washington, D. C., and given Trust No. 46542, Owners of the various Patents sold to Chemical Foundation.

(Seal)

(Sgd.) WILLIAM W. WILSON,
Acting Alien Property Custodian.

PLAINTIFF'S EXHIBIT No. 96.

*Items starred represent possible equity in patent rights, etc., or the proceeds thereof, said rights having been sold to the Chemical Foundation. See account "A." #46542

ALIEN PROPERTY CUSTODIAN, WASHINGTON
INDIVIDUAL TRUST LEDGER

A. P. C. Accounting Form No. 5.

SHEET No. 1

ACCOUNT OF Enemy / Ally of Enemy Abraham Kranstein

TRUST No. 36501

ADDRESS, Karlsruhe, Gy.

DEPOSITARY

Dates	Particulars		Posting Reference	Direct Expenses (Memo.)	Sec'y of the Treas'y. U.S.		Depositaries		Investments		Income		Principal	
					Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit
1919														
Aug 30	Patent No. *919,031	Reg. 4-20-09	C 3292						1.00					
	*826,860	7-24-06							1.00					
	*843,401	2- 5-07							1.00					
	*737,249	8-25-03							1.00					
	*833,063	10- 9-06							1.00					5.00
	*799,065	9-12-05							1.00					1.00
	Balance August 31, 1919.								6.00					6.00

conversation of yesterday, I believe that practically all of the War Department's needs will be taken care of by the general release of claims against the Government under the patents proposed to be conveyed to the new chemical patents holding company, since these patents include explosives and patents on kindred subjects.

We obviously can not comply with the suggestion contained in paragraph 4 of Major Holcombe's letter since we can not release claims under all patents without first having demanded the patents and we can not of course make a blanket demand. I think after we get the patents conveyed to the new corporation it would be well to ask the Ordnance Department to let us know whether there are any patents outside of the particular classes covered by these conveyances in which it is interested.

You will be interested in knowing that we have arrived at a final form of certificate of incorporation for the new company, which will be filed on Monday. We have selected the name "The Chemical Foundation, Inc." at the suggestion of Mr. Garvan.

I was much pleased that Mr. Garvan has consented to serve as a member of the Board.

Very truly yours,

(Sgd.) RAMSAY HOGUET.

RH:P

PLAINTIFF'S EXHIBIT No. 99.

WAR DEPARTMENT
OFFICE OF THE CHIEF OF ORDNANCE
NITRATE DIVISION
Washington WHS/FHS.

Attention of
Capt. Swenarton.
108504

February 19, 1919.

From: Capt. W. H. Swenarton, Patent Branch, Res. Tech. Sec., Nitrate Division, O. O.
To: Major A. M. Holcombe, Chief of Patent Sec., Purchase Branch, P. S. & T. Division, O. O.
Subject: Points for Conference concerning Enemy-Owned Patents.

1. Your letter to Mr. Ramsay Hoguet, Patent Counsel for the Alien Property Custodian, of February 15, 1919, file P. S. & T. 072-15, containing clause relating to the release of the United States from liability on account of the use of enemy-owned patents which you state will probably be made the subject of a clause in the final peace treaty, is acknowledged. It is noted that you state "The following clause has been suggested as a basis of discussion."

2. Referring to said clause, the third paragraph thereof provides as follows:

> "THEREFORE, the respective Allied and Associated Governments shall not be liable for the payment of royalties, damages, profits or other compensation of any kind, arising or to arise hereafter in connection with any expenditure already or hereafter incurred as aforesaid, under any Letters Patent of such Allied or Associated Government now, or at any date subsequent to the entry of the respective Governments into the War,

owned or controlled by enemy nationals or organizations; however, nothing herein contained shall invalidate any right to or under such Letters Patent as aforesaid which the said Governments respectively, under their Enemy Property Laws, have legally granted or shall legally grant to their own nationals."

3. In view of the fact that you state that this clause has been suggested as a basis of discussion, I take the liberty of commenting thereon, and in fact, I feel that I would be delinquent in my duty were I to withhold this comment in view of my strong conviction as to the inadequacy of this clause to accomplish what I believe are the purposes intended.

4. As regards the third paragraph above quoted, it is noted that my recollection of the same as the result of my hasty perusal of this clause at the conference we had in Mr. Dorr's office, which was attended by Colonel Joyes and Mr. Glasgow, is confirmed, and that there is no word other than the "expenditure" to cover the infringing act or acts of the Government, against which it is desired to save the United States harmless.

5. As stated to you in our telephone conversation of Feb. 17th, I do not consider that the word "expenditure" is sufficiently comprehensive to adequately protect the United States; and I feel that not only you, as the Chief of the Patent Section of the Purchase Storage & Traffic Division, but that any other Government patent lawyer familiar with the operations of the War Department will concur in this. As a specific example, I might refer to the effect of such a clause as bearing upon the operations of the Nitrate Division. One of the nitrate plants was constructed with a purpose of carrying out certain processes which were not considered as infringing certain enemy-

owned patents, either because of the low pressures employed or because of the fact that the degree of heat employed in the operation was different from that covered by the enemy-owned patents, or for various similar reasons. It might well be that the Nitrate Division may desire to modify the processes and so vary the pressures employed, or the temperatures, that the processes will become infringements of enemy-owned patents. In fact, the modification might be such, and probably will be such, that the net result will not involve any *expenditure* on the part of the Nitrate Division, but will result in a decided *saving* to the Nitrate Division. In my opinion, therefore, the release covered by such a clause as now drafted would in no wise serve to protect the United States against a claim for infringement under these enemy-owned patents should the Government see fit to so modify its present processes as to later infringe these patents, even though the identical operation now installed in the plants could be employed for the operation of such infringing process. As you well know, in a great many instances, the infringement of a patent results in a *saving* to the infringer rather than an *expenditure*. Therefore, it is to my mind quite apparent that if the United States is to effect a real release from future claims because of infringement of enemy-owned patents arising from its enforced operations in connection with its conduct of the war, some such amendment to this clause as the following should be incorporated therein; *viz:*

> "THEREFORE, the respective Allied and Associated Governments shall not be liable for the payment of royalties, damages, profits or other compensation of any kind *because of any infringement*, arising or to arise hereafter, *either* in connection with any *such* expenditure already or hereafter incurred as aforesaid, *or in any other*

> *manner,* of any Letters Patent of such Allied or Associated Government now, or at any date subsequent to the entry of the respective Governments into the war, etc."

6. There is another point that seems to warrant the most careful scrutiny and consideration, and that is the last portion of the aforesaid clause, commencing with "however, nothing herein contained shall invalidate any right to or under such Letters Patent as aforesaid which the said Governments respectively, under their Enemy Property Laws, have legally granted or shall legally grant to their own nationals." Examination of this portion of the clause discloses the fact that the United States nationals (that is, citizens and corporations in the United States) are *protected* against the operation of this clause as *against* themselves and in favor of the United States. This portion of the clause does not protect the United States as against any other portion of the treaty containing provisions which would invalidate the acquirement by the United States Government of enemy-owned patents from the Alien Property Custodian, and it seems as if such a clause were imperative in order to properly protect the interests of the United States. Accordingly, some such clause should be inserted in it, either by way of amendment to the foregoing, or as an additional clause, as the following:

> "Any rights acquired to or under any such Letters Patent as aforesaid by the said respective Governments under their Enemy Property laws are hereby validated and legalized with the same force and effect as if granted under this treaty."

(Sgd.) W. H. SWENARTON,
W. H. SWENARTON,
Capt., Ord. Dept., U. S. A.

PLAINTIFF'S EXHIBIT No. 100.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets, N. W.
Washington, D. C.

March 7, 1919.

In re: Nitrate Patents

Ramsay Hoguet, Esquire,
c/o Emery, Booth, Janney & Varney,
149 Broadway,
New York City.

Dear Sir:

We have received a letter from the Assistant Secretary of War stating that the War Department is desirous of purchasing certain nitrate patents, which apparently were to be included in the transfer to the Chemicals Foundation.

Apparently this request should have your consideration before these patents are disposed of as I believe the policy of this office is to give other Departments of the Government priority in the purchase of any property to be disposed of by us. I assume that you will be in Washington early next week and that you and Mr. Garvan will then discuss this matter.

Yours very truly,

S. WHITAKER,
Assistant General Counsel.
Counsel Washington Committee on Sales.

SW/FE.

PLAINTIFF'S EXHIBIT No. 101.

March 7, 1919.
In Re: Nitrate Patents.

To— Mr. Garvan
From— Mr. Whitaker

Mr. B. Crowell, Assistant Secretary of War, has written us stating that the War Department is desirous of purchasing certain patents which apparently are included in the list to be transferred to the Chemical Foundation.

They request a hearing before final action by us. I have written Mr. Hoguet advising him of the receipt of letter, and suggesting that he take the matter up with you. The original letter I have referred to Mr. Goldstein, as it properly belongs in his Division.

SW/FE.

PLAINTIFF'S EXHIBIT No. 102.

(Copy)

T-120 Allotment
March 13, 1919.

Dear Mr. President:

I recommend that the accompanying memorandum receive your signature and be then returned to me.

Its main purpose is to make available for my use $10,000.00 from the $20,000,000 appropriation "Nitrate Plants (Sec. 124, Nitrate Supply Act, approved June 3, 1916), for the purpose of acquiring for the United States Government certain U. S. patents owned by enemy aliens, and bearing upon the processes of Nitrogen Fixation, which might embarrass our use of the United States Nitrate Plants if sold to private parties, as would be done by the Alien Property Custodian, if they are not bought by the Government.

The memorandum also allots from the same appropriation $340,000 for active prosecution of investigations in nitrogen fixation. This is less urgent, but there is need of scientific research on this subject, and no appropriations other than this have been made available therefor.

The sum of $350,000 is made available for these two allotments by revocation of sums aggregating that amount, which were allotted for purchase of a site for the Muscle Shoals plant—not now needed therefor as the site was paid for from other available funds.

Very sincerely,

(Sgd.) B. CROWELL,
Acting Secretary of War.

To the President.

*Reported signed by Acting Sect'y about March 19, 1919, and with T-110848 forwarded to the President. G. B. A.

PLAINTIFF'S EXHIBIT No. 103.

T-110849

WAR DEPARTMENT
OFFICE OF THE ASSISTANT SECRETARY.
OO. War Dept.
230 2232/114
Mar. 11, 1919.

Memorandum for the Acting Chief of Ordnance.

The Secretary of War has approved the general plan for the revocation and re-allotment of certain funds under the appropriation "Nitrate Plants" and directs that the necessary papers be prepared for the President, together with a further brief statement all for his signature. These will be forwarded to him by courier.

I am returning to you letter to General Biddle which has been signed by me and which you may forward.

(Sgd.) B. CROWELL,
The Assistant Secretary of War.

Incls. O. O. 2302232
113 with 112
and extra copies of each.
RC104200.

PLAINTIFF'S EXHIBIT No. 104.

March 13, 1919.

MEMORANDUM FOR THE SECRETARY OF WAR:

I hereby authorize and direct the following revocation and allotments of funds appropriated by the Congress in the "Section 124, Nitrate Supply" of the Act approved June 3, 1916, namely:

Revoked:

The sums allotted by me Nov. 27, 1917, and March 12, 1918, for the purchase of a site for an ammonium nitrate factory, aggregating	$350,000

Allotted for use by the Secretary of War:

(a) For the purchase of United States patents protecting processes incident to nitrogen fixation, etc......	10,000
(b) For the active prosecution of investigation of processes for the industrial production of nitrate compounds useful in the manufacture of explosives or fertilizers........	340,000

Approved, 8 April, 1919.

(Sgd.) WOODROW WILSON,
President.

PLAINTIFF'S EXHIBIT No. 105.

(Copy)

EMERY, VARNEY, BLAIR & HOGUET
Counsellors at Law
149 Broadway, New York

April 4, 1919.

Mr. G. H. Dorr,
Assistant Director of Munitions,
Munitions Building,
Washington, D. C.

Dear Mr. Dorr:

I have yours of the 28th referring to the Nitration patents. I have gone into this matter at length with Mr. Palmer and Mr. Garvan and the consensus of opinion seems to be that these patents should be transferred to the Chemical Foundation, to be administered by it.

As I stated to you at our recent conference, I believe that the Chemical Foundation can do anything that the War Department could do with these patents and perhaps a little more.

I trust that you will not hesitate to advise us what course of action you think should be pursued in administering these patents.

Believe me,

Very truly yours,

(Sgd.) RAMSAY HOGUET.

RH:P

PLAINTIFF'S EXHIBIT No. 106.

THE WHITE HOUSE
WASHINGTON

June 2, 1923.

My dear Mr. Attorney General:

In response to your request for certain data as to President Wilson's trips to France and his return to Washington from his Western tour in 1919, I find that our records show that President Wilson left Washington at 12:30 a. m., December 4, 1918, for New York, where he embarked on the same date for Paris. On his return from France he arrived in Boston, Massachusetts, on February 24th and reached Washington at 5:00 a. m., February 25, 1919. He again left Washington on March 4th for New York, and again embarked for France on March 5, 1919. On his return from France he reached New York on July 8th and returned to Washington at 11:45 p. m., on the same date.

On his tour of the country in 1919, the trip was abandoned at Wichita, Kansas, on the morning of September 26th, and the President reached Washington on Sunday, September 28, 1919.

Sincerely yours,

(Sgd.) RUDOLPH FORSTER.

Hon. H. M. DAUGHERTY,
Attorney General.

PLAINTIFF'S EXHIBIT No. 107.

HWD/es

WAR DEPARTMENT
Purchase, Storage and Traffic Division
General Staff
Washington

Memorandum for Patents Section, Purchase Branch, P., S. & T. Division:

Subject: Conference re fixation nitrogen patents and discussion as to organization of Foundation Corporation.

1. The following information was gained in respect to this Corporation yesterday in a conference in Mr. Dorr's office between Mr. Dorr, Mr. Glasgow, Lieut. Col. White of the Nitrate Division, Ordnance Department, Mr. Townsend of Burns, Townsend & Brickenstein, and the writer. Later Mr. Hoguet representing the Alien Enemy Custodian arrived.

2. The Foundation Company is incorporated and the Directors are men of unquestioned Americanism. The object of this corporation is to take over certain patents and to extend licenses to the manufacturers for the processes. The stock of this company has been subscribed by the directors and the royalties which will be paid under the licenses will go to take up the stock, and when the stock has been paid for the royalties will be used for development work.

3. The Foundation Company at the present time is particularly interested in the chemical industry in the United States and the value of this company is that it will practically control and educate the American manufacturers in the chemical industry by sending to them licenses to operate. Each one of the manufacturers must prove his Americanism before he is given

a license. There is an agreement between the Enemy Property Custodian and the Foundation Corporation to transfer approximately four thousand patents from the former to the latter. The corporation will operate under these patents and in time they will reach out into other fields where the industries apparently need their assistance so that the United States will not be tied up at any future time with foreign controlled manufacturing processes and apparatus, the latter including the Prime Contractors and sub-contractors.

4. The Foundation Company will give to the United States, at a nominal fee, practically any type of license to manufacture, have manufactured, use and sell any particular product that it desires. As to processes, this Company will undoubtedly give the United States any type of license that it desires.

5. Captain Swenarton has written to Mr. Hoguet a letter wherein about fifty patents are mentioned by number that the Nitrate Division desires to own so that it may complete successfully its investments in Nitrate plants and processes. These 50 patents are included in the four thousand which the Alien Property Custodian intends to transfer to the corporation, and the question now stands as to whether it is best to let these 50 patents be transferred to the corporation and the corporation giving the Nitrate Division any licenses that it desires. This question is not agreed in by the representatives of the Nitrate Division as they desire the ownership of the patents so that they will have a whip hand with the General Chemical Company, or any other company, and can in the future, after the investment by the United States has been made successfully, trade with these patents or licenses which the Nitrate Division itself would desire to give under these patents which they desire to own.

6. Mr. Hoguet is to consider this situation with the Directors of the Foundation Company and especially in view of the fact that agreement has been practically made to transfer these 50 patents. He is at present not in favor of excepting these 50 patents from the 4000, although he takes the position that practically any patents the Government desires which the Alien Property Custodian has he will give to the Government at a nominal fee.

7. Conference between Mr. Hoguet and Mr. Glasgow at some future date is to be held in order to determine just how this situation should be handled.

8. The Nitrate Division representatives feel that the 50 patents they desire will give them a more open hand in connection with this situation and that they may deal directly with the General Chemical Company or anybody else rather than having to proceed through the Foundation Company for any control or pressure which it is desired should be exerted. This last stated position of the Nitrates representative is agreed to by Mr. Dorr. In fact he favors it more than having to proceed through the Foundation Company for purposes of control or pressure.

H W D
(H. W. Dix)
Captain, Ord. U. S. A.

PLAINTIFF'S EXHIBIT No. 108.

Munitions Bldg. AMH/es
Room 2541
War Tel. Br. 1447

April 14, 1919.

MEMORANDUM FOR MR. DORR:

Subject: Transfer of Enemy Owned Patents Relating to Production of Nitrates.

1. Pursuant to your request, Captain Dix and

the writer called upon Francis P. Garvan, Alien Property Custodian, today to ascertain what steps, if any, had been taken toward protecting the United States with reference to the production of nitrates, and particularly as to what action has been taken pursuant to the request of March 5th from the Assistant Secretary of War to the Alien Property Custodian with reference to the nitrates patents listed in the letter from the Chief of Ordnance.

2. Mr. Garvan stated that the patents listed in the memorandum accompanying the Assistant Secretary's letter has been included in the list of patents transferred to the Chemical Foundation Company, Incorporated. He stated that the transfer to the Chemical Foundation Company did not include the right to claim compensation for past use by the United States, but that a release had been prepared from the Alien Property Custodian to the Secretary of War releasing all right of compensation for past use of such patents.

3. It is too late to change the action taken by the Alien Property Custodian as the assignment to the Chemical Foundation Company has been recorded.

4. Mr. Garvan stated his willingness to recommend that the Chemical Foundation Company take over all enemy owned patents relating to munitions, materials, machinery and processes for making the same of interest to the War Department with the release of all claims against the War Department on account of past infringement thereof, and a license for the future upon nominal terms. An investigation is now under way under my supervision for the purpose of determining what patents should be included.

5. Mr. Garvan also stated that the sub-section of the Commission of the Peace Conference charged with the matter has drafted for insertion in the Peace

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UNITED STATES V. CHEMICAL FOUNDATION, INC. NO. 127

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Treaty a clause acknowledging and ratifying the Alien Property Custodian's acts with reference to the disposition of enemy owned property in this country. Mr. Garvan undertook to furnish a copy of this clause as soon as it is received by him.

6. If the Peace Treaty contains a suitable clause ratifying the acts of the Alien Property Custodian with reference to patents there would seem to be no further action necessary by the War Department other than to notify the Alien Property Custodian what patents it desires to have protection against.

(A. M. HOLCOMBE)
Major, Ordnance, U. S. A.
Chief, Patents Section, Purchase Br.
P. S. & T. Division.

PLAINTIFF'S EXHIBIT No. 109.

War Department
Office of the Chief of Ordnance
Nitrate Division
Washington

WHS/IMB.
April 16, 1919.

From: Capt. W. H. Swenarton, Nitrate Division.
To: Lieut. S. H. Graves, Administration Division, Patents Section. B-2-225.
Subject: Transfer of Additional Non-Chemical Patents to Chemicals Foundation.

1. Confirming conference with you over the telephone to-day as to the proposed transfer of enemy-owned patents to the Chemicals Foundation, in addition to the 4500 odd patents already acquired by it, I would state that this is a matter which, in my mind,

should be given the most careful scrutiny, for the following reasons:

1. The form of assignment used in connection with the aforesaid 4500 odd patents transferred on or about April 11, 1919, to said Foundation does not carry with it the release of claims against the United States. Therefore, in so far as any benefit because of past infringement is concerned, the United States acquires none, were such an assignment of additional Ordnance patents or other patents in which the Government is interested to be made to said Foundation.

2. As far as release from claims of future infringement is concerned, it appears from a reading of the charter of the Chemicals Foundation that the United States is not to be given a free license as has been generally understood by press reports to be the case, but that the Board of Directors may determine upon what terms the United States will receive a license and that all private concerns or individuals, if licensed, shall be licensed on an equal footing with each other—or words to that effect. In other words, the Board of Directors could, if it so desired, charge the United States anything it saw fit even charging it more than a private concern or individual. There is nothing in the charter requiring that the license to the United States shall be a free license. As I understand it, there is no provision whereby the United States has any voice in the appointment of the directors or trustees and accordingly, should the trustees become hostile or unfriendly to the idea of granting a free license to the United States, there will be no way by which the United States could compel the granting of such a free license.

3. It is a serious question whether the control of such a vast number of patents should be placed exclusively in the hands of a single body such as the Chemicals Foundation uncontrolled by any direct Government supervision.

4. The disregard of the recent request of the representative of the Secretary of War that certain patents relating to the fixed-nitrogen activities of the Ordnance Department be transferred to the Government, is a slight indication of the respect which might be given future wishes of the War Department.

5. If it could be arranged, it seems to be preferable to have a corporation similar to the War Finance Corporation or the Emergency Fleet Corporation incorporated which should be under the direct supervision and control of the Government for the purpose of acquiring and administering the enemy-owned patents seized but not yet disposed of by the Alien Property Custodian.

I understand that while you have not yet had a chance to fully consider this matter, that you are at present in accord with me as regards most, if not all, of the above mentioned points and if such is the case, I trust that you will co-operate in having this matter brought to the attention of the proper authorities in order that the action finally taken shall be in the best interests of the Government.

(Sgd.) W. H. SWENARTON,
Capt., Ord. Dept., U. S. A.

PLAINTIFF'S EXHIBIT No. 110.

1640 Rhode Island Avenue
Washington, D. C.

April 21, 1919.

G. H. Dorr, Esq.,
Assistant Director of Munitions,
Munitions Building,
War Department,
Washington.

My dear Dorr:

With reference to the action of the Alien Property Custodian and Mr. Ramsay Hoguet concerning the German Synthetical Ammonia Patents: I consider that the War Department has been treated with gross discourtesy in this matter, and that our efforts to salvage Nitrate Plant No. 1 with maximum efficiency have been handicapped by the action of Mr. Hoguet. It may prove later advisable to call their procedure to the attention of the President; but, meanwhile, you and I are pretty well occupied, and I think we may leave this matter in abeyance without further prejudice to the situation.

Believe me,

Yours very sincerely,

(Sgd.) A. G. GLASGOW.

PLAINTIFF'S EXHIBIT No. 111.

Munitions Building
Room 2541

AMH/mho.

April 25, 1919.

Memorandum for Mr. G. R. Dorr.

Subject: Communication from Mr. Glasgow, dated April 21, 1919, with reference to action of the Alien Property Custodian concerning the German Synthetical Ammonia Patents.

1. As stated to you recently, I saw Mr. Garvan and told him that the War Department was astonished and disappointed at his action in this matter. At the present time no further action by the War Department would seem to be required; but if, in the future, a satisfactory process is developed for producing nitrates and it appears that this process is covered by any patents (either formerly enemy-owned or otherwise) the United States can acquire the right to use such patented process by condemnation under the authority contained in Section 124 of the National Defense Act, approved June 3, 1916.

2. Mr. Glasgow's suggestion that the matter may be held in abeyance without further prejudice to the situation is indorsed in view of the foregoing.

A. M. HOLCOMBE,
Major, Ordnance, U. S. A.
Chief, Patents Section, Purchase Branch, P. S. & T.

PLAINTIFF'S EXHIBIT No. 112.

Francis P. Garvan,
President.
Douglas I. McKay
Vice-President.
George J. Corbett,
Treasurer.
Joseph H. Choate, Jr.,
General Counsel.
Ramsay Hoguet,
Patent Counsel.

THE
CHEMICAL FOUNDATION
Incorporated
81 Fulton Street
New York City

Trustees:
Otto T. Bannard,
Chairman;
Cleveland H. Dodge,
George L. Ingraham,
N. Howell Griswold, Jr.,
Ralph Stone.

Cable address:
Chemfound

August 19, 1919.

Chief of Ordnance,
Washington,
D. C.

SUBJECT: Haber Patents and Related Patents.

1. A proposal is pending before the Chemical Foundation, Incorporated, on the motion of a representative of the War Department for grant of a license to the War Department, whereby, said department would be entitled to conduct manufacturing operations for the production of Nitric Acid, Ammonia Hydrogen, Fertilizer, etc. under patents owned by The Chemical Foundation, Incorporated.

2. This matter was discussed at a recent meeting between Captain Swenarton and officials of The Chemical Foundation.

3. The Chemical Foundation is disposed to exercise prompt compliance with the requests of the War Department, issuing in this connection its standard form of license, of which duplicate copies are attached. But, certain modifications are necessarily to be considered. Presumably, these are not of particular importance to the War Department, except in the case of royalty. It will be understood in advance, that no royalties would accrue to the Chemical Foundation by reason of manufacture by the Government for its own

consumption, but there is quite a different aspect to the situation, if the Government were planning to undertake, or did actually undertake, to produce and market, whether directly or indirectly, the products capable of production under the patents, or planned to undertake or did actually undertake to employ the processes of manufacture similarly covered.

4. Since it is conceivable that the Chemical Foundation might license private interests to manufacture the products and employ the processes covered by its patents, and in such case might charge and collect royalty based on the sales value of manufacturing operations, it would be manifestly unfair to expect private interests to compete with Government sales and carry no charge on account of royalty. It is therefore expedient to inquire at this time, whether the War Department can and will say that it will conduct no operations under the patents in question except for purposes of consumption by the Government and will not sell in competition with private production under the patents involved.

5. If such an engagement cannot be given the Chemical Foundation feels that as an alternative it should be stipulated in the license that the license is revocable immediately, to the extent that, and in respect of any patents, whether product or process patents, under terms of which the Government produces material for sale in the open market.

6. An indication of the attitude of the War Department in respect to this is invited at your earliest convenience.

Very truly yours,

DOUGLAS I. McKAY,
Vice-President.

DIM/HR

PLAINTIFF'S EXHIBIT No. 113.

Copy.
War Department
Office of the Chief of Ordnance
Nitrate Division
Washington

No. 127196.

September 4, 1919.

From: W. H. Swenarton, Consulting Patent Expert
Nitrate Division, Ord. Office.

To: Maj. D. P. Gaillard, Nitrate Div., O. O.

Subject: Chemical Foundation Patents.

1. Your letter of August 30, 1919 file T-126733 with enclosures is acknowledged and pursuant to your request the following report of the conference with the officials of the Chemical Foundation and also recommendations as to the nature of the reply to be made to the letter from the Chemical Foundation are submitted:

2. Report of Conference.—On August 11, 1919, a conference was held at the office of the Chemical Foundation between Messrs. D. I. McKay, Vice-president; Ramsay Hoguet, Patent Counsel, and Tucker, Chemist, representing the Chemical Foundation, and the undersigned, on behalf of the Nitrate Division, for the purpose of considering the question of a license to the United States under patents formerly Enemy-owned, and acquired by the Chemical Foundation from the Alien Property Custodian, relating to Nitrogen Fixation and Fertilizers. Among these patents under which a license was sought was substantially every one which the Ordnance Department and the Assistant Secretary of War, Mr. Crowell, requested the Alien Property Custodian to seize and sell to the War Department pursuant to a verbal offer so to do, pre-

viously made by Mr. A. Mitchell Palmer himself at a conference with Maj. A. M. Holcombe and Capt. Dix of Patent Section, P. S. & T. Div. and the undersigned, representing the Nitrate Division, held many weeks prior to the actual transfer of these patents to the Chemical Foundation by Mr. Palmer's successor in the office of Alien Property Custodian, *viz.,* F. P. Garvan (while a report of said conference with the then Alien Property Custodian was made and filed with Maj. Holcombe, it is considered most unfortunate from the standpoint of the War Dept. that all of the War Department's representatives at said meeting, with the exception of the undersigned, are now, as I have been informed, either associated with or about to become associated with the same patent law firm that the said Ramsay Hoguet, dual patent counsel for the Chemical Foundation and the Alien Property Custodian is associated with).

3. Col. McKay, who acted as spokesman for the Chemical Foundation representatives at said August 11th meeting, was unalterably opposed to granting either an unrestricted non-exclusive free license or an irrevocable non-exclusive free license to the United States under the aforesaid patents, notwithstanding Mr. Palmer's aforesaid offer, when Alien Property Custodian, to sell the principal patents under discussion to the United States. Col. McKay declined to give consideration to the report current in the War Department Patent circles that the Alien Property Custodian had been assured by the Chemical Foundation that it was the *intention* of the Company to give the Government a *free* license so that it would make no material difference to the Government whether it acquired the patents itself or whether the Chemical Foundation did so, but that on the other hand the Chemical Foundation was in a better position to ad-

minister the patents, and especially to prosecute infringers, than the Government would be.

4. Col. McKay insisted that the license be surrenderable and revocable in accordance with their usual license form. Furthermore, he insisted that if the U. S. manufactured material for sale in the open market, that proportion of the total material manufactured which was so sold should pay the same royalty as if made by any other licensee of the Chemical Foundation under these particular patents.

5. While I assured him that I was of course unauthorized to commit the Government to any policy, it seemed to me that as long as the Government was not yet operating even for its own requirements and since he was unwilling to grant an unrestricted, *irrevocable* free license to the U. S. under these patents, yet a license might well be granted at the present time with a proviso that it was to be "Without fee or royalty whatsoever unless and until modified." This he agreed to do and if I read paragraph b of his letter correctly this is what he now proposes, except that it shall be affirmatively stipulated that insofar as the U. S. shall produce material for sale in the open market the *free* license shall be cancelled. Apparently, he is now unwilling that this question as to whether or not the Government will pay any royalty on material it produces for sale in the open market should be left for decision at such time as such manufacture for sale in the open market was commenced by the U. S. This change of attitude on his part, can doubtless be attributed to the fact that at the request of Mr. Roberts, Deputy Administrator, a specific inquiry was made during the week ending August 23d as to just what royalty they would expect of the U. S. if it manufactured products for sale in the open market under a license agreement. Mr. Ramsay Hoguet, Patent Counsel for the company, replied that no licenses to com-

mercial concerns had as yet been negotiated under these patents, but that some were under negotiation and they might be granted in about *three weeks* from that time.

6. So much for the report of the conference.

7. Recommendations.—Since the United States cannot be enjoined for infringement of patents and especially since in peacetime its own requirements of nitrates will be extremely small and in wartime it could commandeer these patents, I consider that there is little to be gained by accepting a *restricted* free license from the Chemical Foundation. The United States can either await an adjudication of the validity of the transfer of these patents by the Alien Property Custodian (a quasi common law trustee) to a concern of which he is now president and acting on the advice of an attorney who was ostensibly representing the Alien Property Custodian as well as the purchasing corporation, or it can even go so far as to commandeer these patents or at least a license thereunder, under the Nitrate Supply Sec. 124 of National Defense Act.

If the Chemical Foundation valued these patents at but about $60 per patent for "purchasing purposes," it is hard to believe a court would allow more than $60 for the same if "commandeered" as the Chemical Foundation would be in a rather embarrassing position in view of the fact F. P. Garvan, Alien Property Custodian, and Ramsay Hoguet were officials of the company. Certainly it would be reasonable to believe that if only a mere non-exclusive license was sought, the court would not allow more than $60 per patent; as there would not be more than 100 patents that it would be necessary to seek licenses under at the outside, it would require not over say $6,000.

8. I do not believe anything can be accomplished amicably by correspondence with the Chemical Foundation, but only, if at all, by conferences. Accord-

ingly, I would advise that their letter be acknowledged and that they be requested to advise the Government what amount of royalty has been settled upon in those negotiations of licenses under these patents with the commercial concerns to which Mr. Hoguet referred in the long distance telephone conference and which he expected would be completed at about this date, *viz.*, three weeks from August 22. It can be stated that as the fullest possible information is desired in order that the policy to be adopted respecting the operation of the Nitrate Plants can be determined, it is deemed advisable to secure definite figures as to just what basis of royalty the Chemical Foundation would expect to charge the Government if the plants were operated on a scale largely in excess of the Government consumption.

9. It might further be stated that when this question was taken up with them in the first instance, it was on the assumption that an "unrestricted" free license would issue to the United States as it had always been the impression in the War Department that the position of the Government was not to be in any way prejudiced by the fact that Mr. Garvan had refused the request of the War Dept. to sell the more important enemy-owned, nitrogen-fixation patents to the United States and had transferred such patents to the Chemical Foundation instead.

10. It is believed the foregoing covers the various matters inquired about in your letter.

11. I expect to return to New York the 14th inst., and can arrange to be in Washington for a few days almost any time after that.

(Sgd.) W. H. SWENARTON,
W. H. SWENARTON,
Major, U. S. R.

PLAINTIFF'S EXHIBIT No. 114.

GJR/an
Tel. War Br. 1169
B-2-224

WAR DEPARTMENT
Office of the Chief of Ordnance
Washington

September 9, 1919.

From: Mr. Geo. J. Roberts, Spec. Asst. to Chief of Ordnance.

To: Capt. S. H. Graves, Chief Patent Branch
Advisory Section, Administration Division.

Subject: Chemical Foundation Patents.

1. I am enclosing herewith a letter from Douglas I. McKay, Vice-President of the Chemical Foundation, Incorporated, your first indorsement, and a letter from W. H. Swenarton of September 4th.

2. On August 8th, Mr. A. G. Glasgow, Fixed-Nitrogen Administrator, wrote to the Secretary of War a letter, from which I quote in part:

> "We made every effort to induce the Custodian of Alien Property to turn these patents over to the War Department for administration, because, among other reasons, the War Department owned the only synthetic ammonia plant in the United States, and the right to these patents was necessary to salvage the War Department's investment in this plant. You may remember that we inaugurated the movement by cabling to General Bliss a Clause for the Peace Treaty regarding patents, and that we later obtained the President's cabled permission to spend $10,000 of his Fund, in order to pay the same price for this group of patents that was being arranged by the Custodian of Alien Property with the Chemical Foundation, Inc. The Custodian of Alien

Property, however, ignored the War Department's representations, and turned this group of patents with some forty-five hundred other German chemical patents over to the Chemical Foundation, Inc. We learned of this decision, in spite of repeated inquiries by Mr. Dorr, after the arrangement had been consummated. This action seriously weakened our strategical position with reference to the General Chemical Company, and is possibly the indirect cause of the failure of our negotiations."

3. The General Chemical Company, having declined to do anything more with the plant at Sheffield, known as Nitrate Plant No. 1, it was necessary for us to make our plans toward the salvaging, or making valuable, this plant. We had sent a commission to Europe to study the synthetic ammonia processes and expected them home by the middle of September; therefore it was necessary that we should know what was our status before undertaking any work in remodeling Nitrate Plant No. 1. With this in view, we asked the Chemical Foundation, Inc. to give us a license free of royalty that we might develop Nitrate Plant No. 1. From all that I can learn, synthetic ammonia plants are not commercial in Germany, although more has been done on synthetic processes by them than any other country in the world. The question of producing synthetic ammonia in the United States will have to be undertaken either by private capital or by the U. S. Government, and if private capital will undertake to develop and operate synthetic ammonia plants, my recommendation would be that they be allowed to do so and the Government proceed no further in this field of activity. If, on the other hand, private capital will not undertake to develop the synthetic processes and manufacture nitrate products

by means of these processes, then the United States must proceed with the development of these processes as a means of national defense in time of war. It therefore would seem to be that the Chemical Foundation must declare itself, and live up to its declaration, and should not be permitted to play "the dog in the manger." The Government of the United States is the only one today who is expending any money in research upon synthetic ammonia processes in the United States. The Government being the only agency expending any money in the development of synthetic ammonia is entitled to a free license, the Government's expenditure on research being many times the cost of the patents to the Chemical Foundation, Inc.

(Sgd.) GEO. J. ROBERTS,
GEO. J. ROBERTS,
Spec. Asst. to the Chief of Ord.

3 inc.

PLAINTIFF'S EXHIBIT No. 115.

Minutes of Meeting of Advisory Committee on Sales, Held at the New York Office of the Alien Property Custodian, 110 West 42nd Street, New York City, on Friday, February 14, 1919, at 10:00 O'clock A. M.

Present:

Messrs. Otto T. Bannard;
George L. Ingraham;
Cleveland H. Dodge;
Benjamin H. Griswold, Jr.;
Ralph Stone, (Excused);

By INVITATION:

Hon. A. Mitchell Palmer, Alien Property Custodian;

Messrs: F. P. Garvan, Director Bureau of Investigation;

Ralph J. Baker, Assistant General Counsel;

Joseph F. Guffey, Director Bureau of Sales;

F. X. Anglim, Assistant Director Bureau of Sales;

H. D. Green, Assistant Chief Division of Insular Possessions;

George P. Wagner, Secretary to the Committee.

The minutes of the previous meeting were read and approved.

Claims of Horace R. Kelly & Company Against the Enemy Firm of Germann & Company (in Liquidation):

Mr. A. Mitchell Palmer presented certain facts and conclusions in connection with two certain claims against the aforesaid enemy firm, and read a report thereon of Mr. Walter D. Denegre, Chief of the Division of Insular Possessions. Mr. Horace R. Kelly, the claimant, and Mr. Malcolm Sumner, his counsel, were called before the Committee and stated certain facts in support of their claim, and after consideration, this Committee

APPROVES the report and recommendations of Mr. Palmer, and *recommends* as to the first claim that the $300,008.59 heretofore paid by Horace R. Kelly & Company be returned, with interest to date of return, with payment of actual expenses incurred by Horace R. Kelly & Company and a

> sum not to exceed $25,000. in lieu of damages; and *recommends* as to the second claim that said Horace R. Kelly & Company be paid the sum of $102,615.84 in full satisfaction of any rights or claims against Germann & Company or the Alien Property Custodian by reason of failure to comply with contract for the delivery of any stripped tobacco to Horace R. Kelly & Company by Germann & Company, or the Alien Property Custodian.

Re Patents on Dyes and Chemicals:

Mr. Garvan presented the facts, and a proposed plan in reference to a sale of enemy owned patents covering certain chemicals and dyes, etc. to a corporation or association to be formed, the new corporation to license the patents to the American trade; after consideration, this Committee

> APPROVES the plan as a general proposition.

Locomotive Superheater Company: Sales No. 171.

Mr. Bannard reported on behalf of a sub-committee, stating that Mr. Bradley Palmer did not request that this Committee approve the purchase price of this stock. After hearing Mr. A. Mitchell Palmer, on motion duly made and seconded, this Committee

> RESOLVES that by agreeent with the Alien Property Custodian, this Committee will not be called upon to pass on the adequacy of the purchase price of the stock of Locomotive Superheater Company, and that the sub-Committee be discharged.

New Brunswick Chemical Company: Sales No. 177.

Mr. Anglim, Assistant Director Bureau of Sales, reported that on the 5th day of February, 1919, at 12:00 o'clock, Noon, at the main office of the company, on Allen Avenue, Township of North Brunswick, New Jersey, Mr. Guffey offered for sale 755 shares of the common capital stock of the above named company, out of a total outstanding issue of 1,000 shares; that Hugo Koblenzer, or 170 West 73rd Street, New York City, was the highest bidder therefor, having bid the sum of $22,100. After consideration, this Committee

> Recommends that the bid of $22,100. be rejected, the purchase price being inadequate, and that if a satisfactory purchase price should not be secured, this company be liquidated.

Golde Patent Manufacturing Company, Inc. Sales No. 57.

Mr. Anglim reported that on the 6th day of February, 1919, at 11:00 o'clock A. M., at the main office of the company, 509-515 West 56th Street, New York City, Mr. Guffey offered for sale 750 shares of the common stock, 250 shares of the preferred stock, certain patent rights, etc. in connection therewith; that G. M. Thurmauer, 6 East 20th Street, New York City, was the highest bidder therefor, having bid the sum of $33,750. therefor.

After consideration, this Committee

> Recommends that the bid of $33,750. be rejected, the purchase price being inadequate, and that, if a satisfactory purchase price should not be secured, this company be liquidated.

Eisemann Magneto Company: Sales No. 40.

Mr. Anglim reported that on the 11th day of February, 1919, at 11:00 o'clock A. M., at the front door of the main factory building of Eisemann Magneto Company, 32 Thirty-third Street (Bush Terminal Building No. 8), Borough of Brooklyn, New York City, New York, Mr. Guffey offered for sale 1500 shares of the common stock of the Eisemann Magneto Company, together with certain patent rights in connection therewith; that G. E. Matthies, F. S. Jerome, and associates, of Seymour, Connecticut, were the highest bidders therefor, having bid the sum of $907,600.

After consideration, this Committee

RECOMMENDS, that this sale be approved as to price, but no action taken as to the purchasers, pending investigation.

There being no further business to come before the meeting, on motion duly made and seconded, the Committee adjourned.

....

Secretary.

APPROVED:

(Sgd.) OTTO T. BANNARD,
Chairman.

PLAINTIFF'S EXHIBIT No. 116.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated April 10, 1919.

NOTE: Same as Exhibit "H-1" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 404.)

PLAINTIFF'S EXHIBIT No. 116-A.

Schedule 1 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 124.)

PLAINTIFF'S EXHIBIT No. 117.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated May 2, 1919.

NOTE: Same as Exhibit "H-2" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 410.)

PLAINTIFF'S EXHIBIT No. 117-A.

Schedule 2 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 292.)

PLAINTIFF'S EXHIBIT No. 118.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated May 6, 1919.

NOTE: Same as Exhibit "H-3" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 415.)

PLAINTIFF'S EXHIBIT No. 118-A.

Schedule 3 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 294.)

PLAINTIFF'S EXHIBIT No. 119.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated May 15, 1919.

NOTE: Same as Exhibit "H-4" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 418.)

PLAINTIFF'S EXHIBIT No. 119-A.

Schedule 4 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 294.)

PLAINTIFF'S EXHIBIT No. 120.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated June 17, 1919.

NOTE: Same as Exhibit "H-5" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 421.)

PLAINTIFF'S EXHIBIT No. 120-A.

Schedule 5 annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 295.)

PLAINTIFF'S EXHIBIT No. 121.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated June 21, 1919.

NOTE: Same as Exhibit "H-6" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 424.)

PLAINTIFF'S EXHIBIT No. 121-A.

Schedule 6 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 297.)

PLAINTIFF'S EXHIBIT No. 122.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated October 17, 1919.

NOTE: Same as Exhibit "H-7" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 429.)

PLAINTIFF'S EXHIBIT No. 122-A.

Schedule 7 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 301.)

PLAINTIFF'S EXHIBIT No. 123.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated December 9, 1919.

NOTE: Same as Exhibit "H-8" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 432.)

PLAINTIFF'S EXHIBIT No. 123-A.

Schedule 8 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 302.)

PLAINTIFF'S EXHIBIT No. 124.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated February 26, 1920.

NOTE: Same as Exhibit "H-9" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 435.)

PLAINTIFF'S EXHIBIT No. 124-A.

Schedule 9 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 303.)

PLAINTIFF'S EXHIBIT No. 125.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated February 26, 1920.

NOTE: Same as Exhibit "H-10" annexed to bill of complaint and not reprinted here. (See Record, Vol I, page 438.)

PLAINTIFF'S EXHIBIT No. 125-A.

Schedule 10 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 325.)

PLAINTIFF'S EXHIBIT No. 126.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated March 9, 1920.

NOTE: Same as Exhibit "H-11" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 441.)

PLAINTIFF'S EXHIBIT No. 126-A.

Schedule 11 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 328.)

PLAINTIFF'S EXHIBIT No. 127.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated May 4, 1920.

NOTE: Same as Exhibit "H-12" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 444.)

PLAINTIFF'S EXHIBIT No. 127-A.

Schedule 12 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 331.)

PLAINTIFF'S EXHIBIT No. 128.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated May 15, 1920.

NOTE: Same as Exhibit "H-13" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 447.)

PLAINTIFF'S EXHIBIT No. 128-A.

Schedule 13 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 333.)

PLAINTIFF'S EXHIBIT No. 129.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated July 20, 1920.

NOTE: Same as Exhibit "H-14" annexed to bill of complaint and not reprinted here. (See Record, Vol I, page 451.)

PLAINTIFF'S EXHIBIT No. 129-A.

Schedule 14 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 344.)

PLAINTIFF'S EXHIBIT No. 130.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated December 21, 1920.

NOTE: Same as Exhibit "H-15" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 453.)

PLAINTIFF'S EXHIBIT No. 130-A.

Schedule 15 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 345.)

PLAINTIFF'S EXHIBIT No. 131.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated December 21, 1920.

NOTE: Same as Exhibit "H-16" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 457.)

PLAINTIFF'S EXHIBIT No. 131-A.

Schedule 16 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 356.)

PLAINTIFF'S EXHIBIT No. 132.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated December 21, 1920.

NOTE: Same as Exhibit "H-17" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 460.)

PLAINTIFF'S EXHIBIT No. 132-A.

Schedule 17 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 357.)

PLAINTIFF'S EXHIBIT No. 133.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated December 21, 1920.

NOTE: Same as Exhibit "H-18" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 464.)

PLAINTIFF'S EXHIBIT No. 133-A.

Schedule 18 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 379.)

PLAINTIFF'S EXHIBIT No. 134.

Assignment from Francis P. Garvan as Alien Property Custodian to The Chemical Foundation, Incorporated, dated February 19, 1921.

NOTE: Same as Exhibit "H-19" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 467.)

PLAINTIFF'S EXHIBIT No. 134-A.

Schedule 19 annexed to bill of complaint, and not reprinted here. (See Record, Vol. I, page 382.)

PLAINTIFF'S EXHIBIT No. 135.

STIPULATION AS TO CORRECTIONS IN EXHIBIT "G" TO BILL OF COMPLAINT.

IT IS HEREBY STIPULATED that Exhibit G to the bill of complaint herein, including the descriptive headings therein, as amended by the schedule hereto attached marked "Correction of Exhibit G," constitutes a true and correct enumeration of the properties described in the several instruments of assignment executed by the Alien Property Custodian to the defendant herein and of the other facts in said exhibit set forth; and with reference to the items appearing on pages 53 to 55 inclusive of said corrected schedule that the properties intended to be sold by the said Custodian and intended to be purchased by the defendant were as stated in the said pages of said schedule; and that said Exhibit G, with the descriptive headings aforesaid may be introduced in evidence without further proof thereof.

Dated, Wilmington, Delaware,
this 12 day of June, 1923.

(Sgd.) HERMAN J. GALLOWAY,
Special Asst. to Atty. Gen.
Solicitor for Plaintiff.

(Sgd.) LUCIEN H. BOGGS,
Solicitor for Defendant.

PLAINTIFF'S EXHIBIT No. 136.

Corrections to Exhibit "G" to bill of complaint.

(NOTE: The corrections set forth in this Exhibit (approximately 908 in number) have been made in the Exhibit, and Exhibit "G" to bill of complaint as printed in Volume I embodies such corrections.)

PLAINTIFF'S EXHIBIT No. 137.

004802

Nov. 14, 1919.

Lucien H. Boggs, Esq.,
Alien Property Custodian,
Washington, D. C.

Dear Mr. Boggs:

In accordance with my telephone message today I enclose drafts for a proposed executive order and proposed assignment by the Alien Property Custodian to the Chemical Foundation. The latter will have to be completed before execution by the addition of a schedule a draft of which I will send you as soon as possible.

The situation is this: Lehn & Fink have a contract with the German manufacturers of Lysol, an unpatented article, granting the American rights of manufacture. Under this contract Lehn & Fink were obliged to pay very large royalties to the German concern. The American trademark, however was actually owned by Lehn & Fink. The right of the Germans under this contract seems, therefore not to come within the precise terms of either of the executive orders of Feb. 26 or April 5, 1919 which authorized the transfers to the Chemical Foundation. Counsel for Lehn & Fink state that this is particularly true because they do not come within the reasons of those orders, as stated therein. At the same time the interest of the Alien Property Custodian in this contract was included in the conveyance to the Chemical Foundation dated April 10, 1919.

Lehn & Fink are perfectly willing to pay the royalties but are afraid to pay them to us under the existing state of the record. It is obviously desirable that the Foundation should receive these royalties which will greatly aid its work and it is undesirable that there should be any possibility that any German Chemical firm should recover a contract which would furnish it with such a supply of the sinews of war and under which, in case of cancellation or breach, it might recover the right to carry on in the United States so important a chemical business as the manufacture and sale of lysol.

Accordingly Mr. Hoguet and I have prepared the enclosed drafts, on the theory which I believe to be entirely sound, that it was the intention of the original orders to bring about the conveyance of all such rights.

If you approve of these drafts will you be good enough to see if you can bring about their execution. We shall, of course, be grateful for any suggestion you may have to make.

Yours very truly,

(Sgd.) J. H. CHOATE, JR.

JHCJr. H

PLAINTIFF'S EXHIBIT No. 138.

004802

Nov. 18, 1919.

Lucien T. Boggs, Esq.,
c/o Alien Property Custodian,
Washington, D. C.

Dear Mr. Boggs:

With reference to my letter of Nov. 14th I enclose herewith copies of the proposed schedule to be annexed to the confirmatory assignment before execution by the Alien Property Custodian in case such execution is authorized by executive order.

Very truly yours,

(Sgd.) J. H. CHOATE, JR.

JHC:Jr...H
Encl.

PLAINTIFF'S EXHIBIT No. 139.

004802

OFFICE MEMORANDUM

To Mr. Boggs
From Mr. Goldstein

Nov. 21, 1919.

I see no objection to our complying with the request of the Chemical Foundation as indicated in Mr. Choate's letter of Nov. 4, 1919. There are two things however to which I respectfully draw your attention. One is that the last three contract rights in the schedule were not conveyed in the original instrument of Apr. 10, 1919, that is, Nos. 47, 48 and 49 and therefore an additional consideration should be received by the Custodian for these.

The other is that the meaning is not clear to me of the intendment and purpose of the three lines at the bottom of page 2 of the proposed assignment, as well as the first few lines on page 3. I cannot see that it is necessary for the purpose at hand, that the Alien Property Custodian should go a bow-shot beyond, and by way of gratuity exclude himself from making any valid objection to a misdirection, say, by the Chemical Foundation of any property or rights that he may have hitherto conveyed to them. I am not sure that this is the meaning of the lines indicated nor do I entertain the thought but that the Chemical Foundation will do the proper thing with respect to such property and rights, but I take it that there should be no misunderstanding or doubt about the interpretation of the terms of any instrument that the Custodian is asked to sign.

PLAINTIFF'S EXHIBIT No. 140.

THE JOHN HOPKINS HOSPITAL

On train to Jax 12/20/19
re: Chemical Foundation

Dear Dunbar:

Miss Keys will get for you correspondence between Choate and myself concerning additional assignments of trade mark rights & choses in action connected therewith. My letter states that 3 of these items were not covered in our deal with Chem. Foundation last spring and hence should be subject of a new deal with the Custodian. I further objected to the phraseology of the Custodian's proposed assignment. Goldstein is familiar with the entire matter, which is a title curing proposition.

Yesterday Choate pressed me further for action but I was so crowded for time I did not take it up with you. Choate says an assignment from the A.PPC. to the Foundation *subsequent to the big assignment* purports to cover 2 out of the 3 items referred to in my letter and that the 3d one he does not care about.

Please take it up with Goldstein and if he can find where the A.P.C. has already ineffectually attempted to convey these rights then we should validate his title by getting the executive order and new assignment. If we have not attempted to convey them before, we can do so now only for fresh consideration agreeable to Mr. Garvan, & Choate should be so advised.

If we do give him a new assignment the objectionable phraseology should be eliminated as per suggestion in my letter to Choate. Goldstein also knows about this. Please get at this immediately.

Heavy snow stayed with us till bed time last night but its quite mild down here (outskirts of Savannah).

Mr. Garvan promised Whitaker 2 A.P.C. stenographers. I told Whitaker we couldn't spare *any* from Bureau of Law. *Stick to it.*

Sincerely,

BOGGS.

PLAINTIFF'S EXHIBIT No. 141.

File 004802

December 22, 1919.

J. H. Choate, Jr., Esq.,
c/o Evarts, Choate, Sherman & Leon,
60 Wall Street,
New York City.

Dear Sir:

In re: Proposed assignment of choses in action to the Chemical Foundation.

Referring to your recent correspondence and conversations with Mr. Boggs, General Counsel in this matter, I would say that he on the eve of his leaving for Jacksonville, Fla. for his Christmas vacation, from which he will be back here on the 29th instant, sent me a memorandum from which I gather that subsequent to the receipt by you of his letter of the 25th ultimo, you spoke to him of there having been an assignment from the Alien Property Custodian to the Chemical Foundation of a date later than the big or general assignment of April 10, 1919; and that such later assignment covers (inadequately) two of the three items known as Nos. 47, 48 and 49, and that the third one, not covered, is a matter immaterial to you as to further covering.

Mr. Goldstein, of our Division of Patents, has made a thorough search of our records here, and as far as what we have on file here shows, there is no trace of such later assignment in the files of the Washington office. I presume of course that you have the original of this later assignment, and that it must therefore have just missed filing here, or reference to it here must have been omitted. Therefore, if you will forward to me this original assignment, I shall be glad to take up promptly the matter of a curative assignment to the Chemical Foundation, coupled with appropriate Executive Order. However, such assignment would necessarily be along the lines of Mr. Boggs' letter to you of the 28th ultimo, with respect to the clause in your submitted draft of assignment of which he made some criticism in that letter.

If I am in error as to the purport of Mr. Boggs' memorandum to me, or mistaken as to your having such later assignment, then the Alien Property Custodian
now
could not only convey these two items, as an entirely new proposition, for a fresh consideration, agreeable to Mr. Garvan.

Awaiting your further advises in this matter, I remain,

Very truly yours,

C. E. DUNBAR,
Assistant General Counsel.

CED/hra

PLAINTIFF'S EXHIBIT No. 142.

004802

Evarts, Choate, Sherman & Leon
60 Wall Street, N. Y.

Dec. 30, 1919.

C. E. Dunbar, Esq.,
Asst. General Counsel,
Alien Property Custodian,
16th & P. Sts.,
Washington, D. C.

File 004802-L

In re: Proposed assignments of choses in action to the Chemical Foundation.

Dear Sir:

In answer to yours of December 22nd, the supplemental conveyance in regard to which I spoke to Mr. Boggs was that of June 21, 1919, of which I enclose a copy. This, as you will see, covers the cerofirm and the electric boat rights Nos. 47 and 49 of our proposed new assignment.

Mr. Hoguet informs me that he has sent three copies at various times of this assignment to your office and that recently when you were again unable to find it, he sent one of his clerks down to Washington with the originals and that phostatic copies of the originals were then made. It is apparent therefore, that you must have in your office a sufficient record of this transaction.

Yours very truly,

(Sgd.) J. H. CHOATE, Jr.

JHC-Jr/L
Enclosure

PLAINTIFF'S EXHIBIT No. 143.

004802

Jan. 7, 1920.

Mr. Jos. H. Choate, Jr.,
Care of Evarts, Choate, Sherman & Leon,
60 Wall Street, New York City.

Dear Mr. Choate:

Under separate cover I am returning redrafts of the proposed Executive Order and assignment. The original draft of the Executive Order is modified but eligible in the first two lines of paragraph 5. In addition to the other changes the term "in the public interest" is transposed from the first line of the 6th paragraph.

In the assignment the phrase beginning with "without any reservation," next to the last line of page 2 of the original draft, to the word "subject," on the first line of page 3 and the word "only" on the second line are eliminated.

This is the first time that I have had my attention directed to the assignment to the Chemical Foundation. These changes in the proposed assignment are made for the purpose of removing any opportunity for public criticism. Both of the orders of Mr. Polk lay emphasis upon the thought that "the Chemical Foundation has been incorporated for the purpose of holding letters patent, trade marks, and similar rights relating to the chemical and allied sciences as a trustee for American industry."

As appears in paragraph 5 in Mr. Polk's order of April 5, 1919, one of the reasons why a private conveyance was permitted to be made to the Chemical Foundation, Inc., was that a public sale as required in other cases might make it possible for patents and similar rights to fall "into the hands of purchasers who would be unwilling or unable to carry out the purpose of The Chemical Foundation, Inc." The Executive Order which you are asking to have executed contains as its moving purpose the reason that the public interest will be best served by devoting any payments arising from the choses in action, or agreements, "to the promotion of the object stated in its charter." It seems, therefore, that it would not appear quite consistent or either proper or circumspect for the Alien Property Custodian to execute an assignment to the Chemical Foundation wherein he expressly states that the assignment is made "without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws."

I am sure you will agree that the primary basis for the conveyance of payments and similar rights to the Chemical Foundation was in virtue of the aims it sought to promote and foster, as set forth in its charter, and as referred to in the orders of Mr. Polk.

The present assignment is intended to be curative of all of former assignments wherein the phrase "without reservation," and so on, appears, as well as of the question of the choses in action and rights under contracts or assignments.

If you will return the order and assignment, they will be executed as soon as possible. I shall, however, be pleased to consider any further suggestions you may desire to offer.

Very truly yours,

LUCIEN H. BOGGS,
General Counsel.

RCG:MA.

PLAINTIFF'S EXHIBIT No. 144.

Evarts, Choate, Sherman & Leon
60 Wall Street
New York.

Jan. 21, 1920.

Lucien T. Boggs, Esq.,
Alien Property Custodian,
16th & P. Sts.,
Washington, D. C.

Dear Mr. Boggs:—

I return herewith the original and copies of your re-draft of our proposed executive order which Mr. Hoguet and I have examined and find entirely satisfactory. I hope that you will be able to have it executed as soon as possible. In the meantime, we have discovered an error or two in the proposed assignment and are preparing a corrected draft of this which I will send you shortly together with an additional schedule containing six or eight new items which ought to be added to the schedule which you already have.

I must apologize for the delay in answering your letter. It was due to the fact that just after it arrived I had to leave for Washington where I have been ever since except for a week's illness, and have, therefore, had absolutely no time for this or any other matter.

Very truly yours,

(Sgd.) J. H. CHOATE, Jr.

PLAINTIFF'S EXHIBIT No. 145.

OFFICE MEMORANDUM

Feb. 10, 1920.
File 004802

To Mr. Garvan
From Mr. Dunbar

Herewith please to find proposed Executive Order for the signature of the President in the matter of curing possible defects in our previous conveyances to the Chemical Foundation, Inc., made under orders of Hon. Frank L. Polk of date Feb. 26, 1919, and April 5, 1919. There also accompanies a letter of transmittal of this order to the President for your signature. Thereupon please to put your letter and the enclosure in regular course for presentation to the President. A copy of the Executive Order also is sent herewith for your retention or for sending to the President as may be customary.

CED/HMS

PLAINTIFF'S EXHIBIT No. 146.

ALIEN PROPERTY CUSTODIAN
WASHINGTON, D. C.

February 11, 1920.

Dear Joe:

Will you please take up the matter of the enclosed Executive Order at the earliest possible moment? It is essential, and vital, that it be done.

Sincerely yours,

FRANK.

Hon. JOSEPH P. TUMULTY,
White House,
Washington,
D. C.

[Note in lead pencil: Who is Frank?]

W. W.

PLAINTIFF'S EXHIBIT No. 146-A.

Dear Governor:

"Frank" is Francis P. Garvan, the Alien Property Custodian.

THE SECRETARY,
WFJ.

12 February, 1920.

PLAINTIFF'S EXHIBIT No. 147.

A. P. C. 197

In Replying, Address Only
THE ALIEN PROPERTY CUSTODIAN
And Refer to No.

CED/HMS

ALIEN PROPERTY CUSTODIAN
SIXTEENTH AND P STREETS NW.
WASHINGTON, D. C.

February 10, 1920.

The President,
The White House,
Washington, D. C.

Sir:

Some doubt has arisen as to whether the Alien Property Custodian in conveyances made by him under orders dated February 26, 1919, and April 5, 1919, and made by the Honorable Frank L. Polk was amply authorized to sell and convey to the Chemical Foundation, Inc., certain choses in action and rights, interests and benefits in contracts or agreements determined to belong to or to be held for or for the benefit of persons declared to be enemies within the purview of the Trading with the Enemy Act and the amendments thereto.

The attached draft of an executive order is intended to be curative of the possible defect in the title and your signature to such order is therefore asked.

I have the honor to be

Very respectfully,

(Sgd.) FRANCIS P. GARVAN,
Alien Property Custodian.

encl.

Alien Property Custodian	Alien Property Custodian
Washington, D. C.	Washington, D. C.
INCLOSURE	INCLOSURE
No. 6820	No. 6820
1—506	APC 72

(Order signed and sent to State Dept. Feb. 13, 1920.)

PLAINTIFF'S EXHIBIT No. 148.

EXECUTIVE ORDER OF FEBRUARY 13, 1920.

NOTE: Same as Exhibit No. 5 attached to defendant's answer and not reprinted here. (See Record, Vol. I, page 557.)

PLAINTIFF'S EXHIBIT No. 149.

THE WHITE HOUSE
WASHINGTON

February 13, 1920.

My dear Frank:

The President signed and sent to the State Department today the Executive Order transmitted with your letter of February 10th, concerning the sale and conveyances of certain choses in action and rights, interests and benefits in contracts or agreements determined to belong to or to be held for or for the benefit of persons declared to be enemies within the purview of the Trading with the Enemy Act and the amendments thereto.

Sincerely yours,
(Sgd.) J. P. TUMULTY,
Secretary to the President.

Mr. Francis P. Garvan,
Alien Property Custodian.

PLAINTIFF'S EXHIBIT No. 150.

MINUTES OF MEETING OF ADVISORY COMMITTEE ON SALES HELD AT THE NEW YORK OFFICE OF THE ALIEN PROPERTY CUSTODIAN, 110 WEST 42ND STREET, NEW YORK CITY, ON FRIDAY, MARCH 28, 1919, AT 10:00 O'CLOCK A. M.

PRESENT:

Messrs. George L. Ingraham, Presiding,
Ralph Stone,
Benjamin H. Griswold, Jr.,
Cleveland H. Dodge,
Otto T. Bannard (Excused).

BY INVITATION:

Messrs. Joseph F. Guffey, Director, Bureau of Sales,
Francis X. Anglim, Assistant Director, Bureau of Sales,
Spier Whitaker, Assistant General Counsel,
George P. Wagner, Secretary.

The minutes of the previous meeting were read, and as corrected, approved.

New Brunswick Chemical Company.

Mr. Anglim recited the circumstances in connection with this case and his activity in trying to establish a value of the good will of this concern, and on consideration, this Committee

Recommends: That action be deferred until the next meeting.

Goetze Gasket & Packing Company.

Mr. Garvan having reported verbally on the purchaser this Committee now approves the purchaser.

Eisemann Magneto Company.

Action in this matter is deferred until the next meeting of the Committee.

F. Ad Richter.

The purchase price having heretofore been approved, the question of approval of the purchaser is referred to a sub-committee to consist of Judge Ingraham and Mr. Bannard, with power in the premises.

La Salle Portland Cement Company.

The Committee having discussed the matter of approving the purchaser of this property, action was deferred until the next meeting.

American Storage Company.

A report of investigation of the purchaser having been read and filed, this Committee now approves the purchaser, the price having heretofore been approved.

Raffloer Erbsloh Company.

The price having been approved, the matter of approving the purchaser is hereby referred to a subcommittee consisting of Judge Ingraham and Mr. Bannard, with power.

American Lumber Company.

Report of investigation of the purchaser having been filed, this committee now

APPROVES the purchaser, the price having been heretofore approved.

Select Realty Company.

Mr. McCloy, A. P. C. Counsel having appeared before the Committee and reported that Parcel No. 1 being premises 349 East 54th Street, New York City, subject to a mortgage of $7000, being held by the Select Realty Company, but not being merged, was offered for sale; that parcel No. 2 was offered for sale, being the mortgage of $7000 on the aforesaid premises; that Harry Jackson of Newberg, New York, was the highest bidder for both of said parcels. After considering the facts, this Committee

RECOMMENDS: That the sale of Parcel No. 1 be approved at $5800; that the premises be conveyed free of the mortgage; that the bid for Parcel No. 2, being the mortgage on said premises be rejected; that the matter of the approval of purchaser be referred to Judge Ingraham and Mr. Bannard, as a sub-committee with power.

Mr. McCloy further reported that Parcel No. 3 was offered for sale, being premises 351 East 54th Street, subject to a mortgage of $9000 held by a third party, the Company not being liable on the bond; that the highest bid was $100 over and above the mortgage, made by .... Krell of New York City. After consideration, this Committee

RECOMMENDS: That the bid of $100 over and above the mortgage be approved as to price, and if the purchaser refuses to complete the sale, this Committee

RECOMMENDS: That a deed be given to the

mortgagee; that the matter of approving the purchaser be referred to Judge Ingraham and Mr. Bannard as a sub-committee with power.

Dr. Jaeger's Sanitary Woolen System Company.

Mr. Anglim reported the possibility of liquidation or a re-sale in this matter, stating that a proposed bid of $200,000 has been made, and in view of the circumstances, this committee

RECOMMENDS: A re-sale of this property.

Lutz Shipping Company.

Mr. Anglim reports sale of "John Francis," which sale was held on the 15th day of March, 1919, at 11:00 o'clock A. M. on the steps of the Custom House, Pensacola, Florida; that at said sale George W. Howe of Pensacola, Florida, was the highest bidder therefor, having bid the sum of $7300. Mr. Guffey stated that in his opinion the bid should be accepted and so recommended, and on Mr. Guffey's recommendation this Committee

RECOMMENDS: That the sale be approved as to price and purchaser subject to report of investigation.

Traun Rubber Company.

Mr. Anglim reported that on the 20th day of March, 1919, at 11:30 A. M. at the main office of The Traun Rubber Company, No. 239 Fourth Avenue, New York City, Mr. Guffey offered for sale 960 shares of the capital stock of The Traun Rubber Company; that William Schrader of 239 Fourth Avenue, New York City was the highest bidder therefor, having bid the sum of $20,000. After consideration, this Committee

RECOMMENDS: That the price be approved, subject to an arrangement by the A. P. C. with the purchaser to collect the amounts due the enemy in the sum of $101,400.15.

M. Welte & Sons Company.

Mr. Anglim reported that on the 21st day of March, 1919, at 11:00 o'clock A. M. at the main office of M. Welte & Sons, Inc., at 667 Fifth Avenue, Borough of Manhattan, New York, N. Y., Mr. Guffey offered for sale 1,762 shares of the common stock and 2,997 shares of preferred stock of M. Welte & Sons, Inc., together with certain patents and patent applications in connection therewith; that H. E. Mitchell, as Manager and agent for Otto H. Kalm, Barney Dreyfuss, L. B. Barnheim, Louis Hollweg, A. H. Jarecki, George D. Pratt, C. C. Billings, Edward Hollrook and L. D. Lovekin, was the highest bidder therefor, having bid the sum of $100,000. After consideration, this Committee

> RECOMMENDS that the price and purchaser be approved, subject to filing a report of investigation.

Riedel & Company, Inc.

Mr. Anglim reported that on the 21st day of March, 1919, at 3:30 o'clock at the main office of the company, 35 West 32nd Street, New York City, N. Y., Mr. Guffey offered for sale 210 shares of the capital stock of Riedel & Company, Inc., together with certain patents, trade marks and other property in connection therewith; that George U. Tompers, 326 Broadway, New York City, was the highest bidder therefor, having bid the sum of $52,000.00. After consideration this Committee deferred action until next meeting.

Rossie Velvet Company.

Mr. Anglim having reported that on the 24th day of March, 1919, at 11:30 A. M. at the office of the company, 95 Madison Avenue, Borough of Manhattan, New York City, New York, Mr. Guffey offered for sale 400 shares of the common capital stock of the Rossie

Velvet Company that Wm. Openhym & Sons of 95 Madison Avenue, New York City, were the highest bidders therefor, having bid the sum of $592,000.00 for said 400 shares together with the remaining 100 shares offered for sale by Wm. Openhym & Sons. After consideration, this Committee

Recommends: That action be deferred until the next meeting.

International Textile Company.

Mr. Anglim reported that on the 26th day of March, 1919, at 11:30 o'clock A. M. at the principal office of the company in the City of Bridgeport, Connecticut, Mr. Guffey offered for sale 2298 shares of the common capital stock of the International Textile Company, together with certain patents, patent applications and trade marks in connection therewith; that W. B. Lasher of Bridgeport, Connecticut, was the highest bidder therefor, having bid the sum of $1,518,000. The Committee

Recommends: That the price be approved, and no action was taken as to the purchaser, pending investigation.

Heyden Chemical Company.

Mr. Anglim reported that on the 27th day of March, 1919, at 3 o'clock P. M. at the main office of The Heyden Chemical Company, at Garfield, New Jersey, Mr. Guffey offered for sale 747 shares of the capital stock of said Company, together with certain patents, trade-marks and other property in connection therewith; that Allan A. Ryan was the highest bidder therefor, having bid the sum of $1,500,000. After consideration, this Committee:

Recommends: The price and purchaser be approved, subject to report of investigation.

K. & E. Neumond, Inc.

Mr. Anglim reported that on the 19th day of March, 1919, at 11 o'clock A. M. at the principal office of the company, 501-511 Elysianfield Street, New Orleans, Louisiana, Mr. Guffey offered for sale 939 shares of the capital stock of K. & E. Neumond, Incorporated; that Ludwig Eisemann of New Orleans, La., was the highest bidder therefor, having bid the sum of $98,595.00. After consideration, this Committee

RECOMMENDS that the bid be rejected.

Chemical Foundation, Inc.

Judge Ingraham reports Judge Gray, of Delaware, has approved the charter. That the matter of the trust agreement is being referred to Judge Gray, for certain modifications as to the terms and conditions thereof.

There being no further business, this Committee adjourned, to be called at the instance of Mr. Guffey.

....

Secretary.

Approved:

....

Chairman.

PLAINTIFF'S EXHIBIT No. 151.

BEFORE THE FEDERAL TRADE COMMISSION.

* * * * * * *

Conference with Mr. Ramsay Hoguet, Patent Counsel for the Alien Property Custodian, and for The Chemical Foundation, Inc.

* * * * * * *

Office of Commissioner Colver,
Washington, D. C.,
June 10, 1919, 3:45 P. M.

PRESENT:

Hon. William B. Colver Chairman Hon. Victor Murdock, Hon. Huston Thompson	Commissioners.

Secretary Yoder
Mr. Hoguet

PROCEEDINGS.

Chairman Colver: Mr. Hoguet, what is this matter that you want to present to the Commission this afternoon?

Mr. Hoguet: I wanted to ask the Commission what its attitude was going to be with regard to its licensees under patents which were formerly owned by enemies and which are now owned by The Chemical Foundation. The situation as it is now is that certain licensees are operating under Federal Trade Commission licenses, paying their royalties in to the Alien Property Custodian, who pays them into the Treasury, to a fund, in accordance with Section 10 of the Act, and the patents have been seized by the Alien Property Custodian and sold to the Chemical Foundation. So that I assume that at least for the period after the sale to the Chemical Foundation, the Chemical Foundation can recover from that fund the royalties paid by the licensees under the Federal Trade Commission licenses.

In order to regularize that situation, I suggested to Mr. Phelps that an arrangement be worked out whereby these licensees be permitted to surrender their licenses to the Federal Trade Commission, take new licenses from the Chemical Foundation on the same or similar terms, and in the case of these pharmaceuticals like arsphenamine and neoarsphenamine under the same regulation by the same committee, so as to have their royalties paid direct to the Chemical Foundation instead of into the fund and then from the fund to the Chemical Foundation.

I have to apologize to you gentlemen because of a misunderstanding that arose between Mr. Phelps and myself, by which I assumed that such an arrangement had actually been reached, and wrote several licensees to that effect. I saw Mr. Yoder about a month ago, and I explained the matter to him, and subsequently sent out letters correcting that misinformation.

Commissioner Murdock: Did you send those letters to each of the persons to whom you sent the first notification?

Mr. Hoguet: Yes, I think so; so far as I know. It is unfortunate that I misunderstood Mr. Phelps.

Mr. Phelps suggests to me today the possibility that the peace treaty may not fully ratify the acts of the Alien Property Custodian with regard to this sale, so that the title of the Chemical Foundation to these patents may be in doubt, and suggests the advisability of the licensees retaining their Federal Trade Commission licenses, and also taking a license from the Chemical Foundation, until the peace treaty is actually signed and we know exactly what the terms are.

That appears to me to be a very valuable suggestion. But unfortunately, representing the Chemical Foundation, it would be rather difficult for me to urge the licensees to fall in with it. But I think that it would be a very good thing if the Commission could urge the licensees to do this, and I certainly should not offer any opposition to it.

Commissioner Murdock: If it will not interrupt you, tell us what the Chemical Foundation is.

Mr. Hoguet: I brought over a little literature for you, thinking that you might ask about this, and I will submit that to you.

Commissioner Murdock: All right. Tell us about it.

Mr. Hoguet: We found, that is, in the Alien Property Custodian's office, that the dye and chemical industry here was absolutely controlled—not absolutely, but to a very large extent—by American patents owned by German interests which were being held here simply for the purpose of preventing manufacture. As an instance of that, the Badische Anilin und Soda Fabrik held about five hundred patents in the United States and never had actually worked one of them. The importations of several of the important pharmaceuticals like arsphenamine, for instance, novocaine, and a number of the products made by Meister Lucius & Bruning, of Hoechst, were being presented by those patents that they owned here. Those patents were used simply to protect importation and prevent manufacture in this country.

The manufacturers came to the Alien Property Custodian and suggested that because of the way in which the act was drawn it was impossible to obtain adequate relief in a situation of that sort in any other way except by an ouster of the Germans from the ownership of the patents, because, they said, "If we take a license under that act as it stands at present, we have to pay a 5 per cent royalty to our immediate competitor, who is not restricted from importation, and we thereby establish a 10 per cent differential between ourselves and the importer." There is no protection afforded here as against importation, and the manufacturer in this country is handicapped to the extent of 10 per cent with respect to his competitor's importer. That is what they are trying to avoid.

Chairman Colver: Is there any tariff on these products?

Mr. Hoguet: On some of them; yes. We are now trying to get an additional tariff; but, as one of these men put it, this is like the man whose mother-in-law died, and the undertaker inquired whether he should cremate her or bury her at sea or dig a hole in the ground, and he said "Do all three, and take no chances." That is about the situation here.

Commissioner Murdock: Then the feeling that there was a restriction upon them under the license system provided for by Congress led to the establishment of the Chemical Foundation?

Mr. Hoguet: Yes.

Commissioner Murdock: Now, what is the Chemical Foundation?

Mr. Hoguet: The Chemical Foundation is a quasi-trustee corporation. That is, it is a private corporation, all the stock of which is owned in small lots by the people in the industry. They are now distributing it, and the idea is to let no person in the industry own more than a thousand dollars' worth of stock. The stock capital is $500,000 divided into $400,000 of preferred and $100,000 common. The preferred is non-voting stock, which is retirable at par at any time after 1921, and the common stock is the voting stock, which according to the plan will be sold one share to each person in the industry; and then, for additional protection against any one interest dictating the policies of the Foundation, this stock is put into a voting trust for seventeen years. The voting trustees are Mr. Otto Bannard, Mr. Cleveland Dodge, Judge Ingraham, Mr. Ralph Stone of Detroit, and Mr. Griswold of Baltimore. They are the gentlemen who are serving as the advisory sales committee of the Alien Property Custodian; so that they will control the policies of the concern.

Commissioner Murdock: Are all those terms coterminous?

Mr. Hoguet: Of the patents?

Commissioner Murdock: No; of the trustees.

Mr. Hoguet: Yes. They are a self-perpetuating body for seventeen years. We said seventeen years as being the life of the patents we are taking over.

Commissioner Murdock: Now will you explain—because this is all virgin to me, and I would like to know—how does this quasi trust that you speak of get the right to grant a license for the use of the patent; by purchase?

Mr. Hoguet: The Foundation purchases the patents from the Alien Property Custodian, and, as the owner of the patents, issues non-exclusive licenses to American manufacturers who propose to manufacture in the United States; and it will also use the patents to prevent importation by the Germans after the war.

Commissioner Thompson: Is this Chemical Foundation the creation of the Alien Custodian?

Mr. Hoguet: It is the creation of the Alien Custodian at the suggestion of the industry; that is, the Manufacturers' Chemical Association and the American Dyes Institute and other organizations of that sort were back of the movement.

Chairman Colver: Does any American dye manufacturers or any American concern which desires to become a dye manufacturer have equal opportunity, on equal terms, to secure its license?

Mr. Hoguet: Oh, yes. Licenses will be non-exclusive, on equal terms, at the same royalty.

Chairman Colver: And to anybody?

Mr. Hoguet: Yes; to anybody who can show his true Americanism.

Commissioner Thompson: Does he have to qualify on a financial basis in any way?

Mr. Hoguet: The idea is to prevent the industry from being injured by fly-by-nights and irresponsibles getting into it, and in every application for a license they make pretty searching inquiries as to the man's financial stability, his ability to turn out the product, and so on

Commissioner Thompson: Who passes on that—Mr. Dodge and these other men?

Mr. Hoguet: The voting trustees and the directors of the corporation. The directors are Mr. Garvan, the Alien Property Custodian, who is the president; Mr. Douglas I. McKay, who was colonel on the General Staff during the war, and who is vice-president; and the treasurer, Mr. George J. Corbett, who is the assistant secretary of the Central Union Trust Company of New York. We have Mr. Samuel A. Tucker, who was manager in the gas service during the war, as a chemical adviser, and we are building up a force recruited from the War Trade Board and Alien Property Custodian's office and such places for the purpose of investigation.

Chairman Colver: Is this Chemical Foundation a corporation for profit?

Mr. Hoguet: No. The idea is to redeem the preferred stock out of the royalties as soon as possible, and then use any income that is received from it for research work and the promotion of the chemical industry in the United States.

Commissioner Thompson: Has the Chemical Foundation been approved by the President; do you know?

Mr. Hoguet: Yes; it has. Perhaps I had better not put this on the record.

Commissioner Thompson: All right.

(Discussion off the record.)

Commissioner Thompson: I have read some executive order in which, I think, Mr. Pope signed this thing——

Mr. Hoguet: Yes.

Commissioner Thompson: And in which he refers to some approval by the President. Is that correct?

Mr. Hoguet: The order does not refer to approval by the President, but I understand that this order was submitted to the President for signature by Mr. Pope.

Commissioner Thompson: There is nothing on record to show that the President, however, issued any order himself?

Mr. Hoguet: No. I think what you have in mind, Mr. Thompson, is the fact that there is an executive order delegating certain powers to Mr. Pope during the President's absence.

Commissioner Thompson: Yes, I know there is. I have read that. Then following that order there is some sort of a statement issued by Mr. Pope in which he recites something about this Chemical Foundation?

Mr. Hoguet: There is an executive order by Mr. Pope, made under the authority of the executive order of December 3, which delegated the President's authority to Mr. Pope, permitting the private sale by the Alien Property Custodian of the patents in question to the Chemical Foundation.

Commissioner Thompson: What do you understand is the situation with respect to licenses under that executive order of the President's creating the Alien Custodian? Do we as a commission cease to have any review of licenses after that?

Mr. Hoguet: As I understand the situation, the Commission loses its jurisdiction to issue licenses on enemy-owned patents as soon as the patents cease to be enemy-owned. As soon as the Alien Property Custodian seizes the patent, the patent becomes vested in the Alien Property Custodian, a citizen, and therefore is no longer enemy-owned.

Chairman Colver: That is my understanding; but my understanding is also that the Alien Property Custodian seized only so much of a patent as remained after any license or licenses were issued by the Federal Trade Commission; that is, he seized the remnant of the patent; he seized the patent with the burden of the licenses on it, and then when he sells it he sells that alien-owned patent to an American citizen or concern with the burden of the Federal Trade Commission's license upon it.

Mr. Hoguet: The Federal Trade license is irrevocable except by the Commission.

Chairman Colver: Or by court.

Mr. Hoguet: Or by the court, under the provisions of the act, until the year after the war. It may be granted for the life of the patent; all the licenses are granted for the life of the patent, as I remember; consequently the patent is burdened with that license where it is seized. It is as if the Alien Property Custodian seized a building, a room of which had been leased to a lessee; he would take it subject to the lease.

Chairman Colver: That is exactly as we understood it. I think you were present when we talked the thing over with the Alien Property Custodian at one time.

Mr. Hoguet: Oh, yes; we had a number of conferences some months ago.

Chairman Colver: It would seem to me that the situation is something like this: Here are a number of patents, alien-owned, which have been seized and sold to the Chemical Foundation. Some of those patents, if not all of them, have had one or more Federal Trade Commission licenses issued against them, and are in the hands now of licensees. The Federal Trade Commission can revoke those licenses—can revoke any license, since it made all of them revocable. Investment has been made, presumably, under the Federal Trade Commission's license, and there is more or less of a vested right there. The right of the Federal Trade Commission to revoke the license was based on the non-user of the license or abuse of the license. A sale to the Alien Property Custodian was not contemplated and is not provided for. Now, it seems to me that in this particular case the Chemical Foundation succeeds to the rights of the alien owner of the patent.

Mr. Hoguet: Yes.

Commissioner Murdock: How is that?

Chairman Colver: The Chemical Foundation, by its purchase from the Alien Property Custodian, succeeds to all the rights and nothing more than the rights of the alien enemy owner of the patent. The rights of the alien enemy owner of the patent, in so far as this particular controversy is concerned, are described in Section 10 (f); and that paragraph provides that within a year—it is not at the end of a year, but within the year——

Mr. Hoguet: Within the year after the end of the war.

Chairman Colver: (Continuing:) Within the year—he does not have to wait a year, but within a year after the end of the war—the enemy owner of the patent (or in this case his successor, the Chemical Foundation) can be heard to come into court and move, first, that the license be cancelled by the court, or that the terms of the license as to royalty and conditions of manufacture, and that sort of thing, may be revised by the court, or that the licensee may be forbidden to exercise his rights as a licensee any longer, but in return, and before he ceases, must be recouped for any investment that he has made, and made whole again. It is very clear, to my mind, that that is what that paragraph meant. That is three things. Then there are other alternatives in the paragraph as to how the enemy owner of the patent (or its successor in this case, the Chemical Foundation) can come in and either get possession of the patent or enjoy the royalties from the patent that have been fixed by the Federal Trade Commission.

Mr. Hoguet: If I may suggest, he recovers from the fund which has been paid by the licensee.

Chairman Colver: Yes.

Mr. Hoguet: That fund does not fix the amount of his recovery, however. It is a guarantee.

Chairman Colver: Now, it seems that the only power that the Federal Trade Commission has—this is my own opinion—the only power that the Federal Trade Commission has now is either to revoke the license or to accept a voluntary surrender of the license. As to revoking the license, the whole theory in law seems to be opposed to that.

Mr. Hoguet: That would be unfair.

Chairman Colver: That would be unfair, and it would be unthinkable, in my opinion, for the Commission to consider that. So that leaves only the acceptance of a voluntary surrender. If that is true, then it does not seem that the Federal Trade Commission has the right to urge, encourage, or invite such surrender; and certainly no one else would have such a right. The licensee has something. He has a vested right; he has something which he has paid for; he has complied with the law, and, so far as has been shown, has used his license properly, and he is the one to make the election now as to what he shall do. When it comes to the device of substituting a license from the Chemical Foundation for the Federal Trade Commission license, that is a thing that I do not see how the Federal Trade Commission could know anything about. That is none of its business. Certainly the licensee under a license if the Federal Trade Commission does not need another license from the Chemical Foundation. The propriety of the substitution of the license from the Foundation for the Federal Trade Commission license, or the feasibility of having the licensee take out two licenses instead of one, when one is all he needs, raises a question that goes to the whole law, I should think, so clearly that it would be a matter that under our ordinary practice we would have to refer to the Attorney General. That is something that we have nothing to do with.

Mr. Hoguet: Mr. Colver, is not that rather a matter for the licensee?

Chairman Colver: It all depends on the degree of his spontaneity. If this is really voluntary on his part, that is well and good.

Mr. Hoguet: Of course, I may say that most of these licensees are stockholders of the Foundation, and the more important of them are the fathers of the scheme.

Chairman Colver: Yes. The cornerstone of the theory of the Federal Trade Commission's administration of the Trading with the Enemy Act has been to avoid substituting a home-made monopoly in any line of manufacture for a monopoly that prior to the war had existed in alien enemy ownership. That is why we made the licenses, without exception, non-exclusive and revocable, and that is the one thing that we have safeguarded, I think, more jealously than anything else, to avoid substituting one monopoly for another, we being the custodians of competition.

Mr. Hoguet: I may say that of course this scheme implies no criticism of what the Commission has been doing. These licensees and those companies that are interested in the plan have simply tried to go further than the Commission could under the Act; that is, they have put the monopoly in hands which could enforce it as against the enemy to prevent his importation and thereby protect the industry here after the war. That is what they were aiming at.

Secretary Yoder: Provided, of course, the agreement is included in the peace treaty, as to patents?

Mr. Hoguet: If the peace treaty ratifies the acts of the Custodian to the extent of patent transfers; yes.

Secretary Yoder: But if it does not?

Chairman Colver: I do not see that the matter of the Federal Trade Commission licenses has anything at all to do with preventing the former alien owner of the patent from importing after the war.

Mr. Hoguet: No.

Chairman Colver: The only right he had left when you bought his patents was the right to import or manufacture here under his license, but subject to the competition of the licensees.

Mr. Hoguet: Exactly.

Chairman Colver: Now, if you bought that remnant as against him, you can keep him from importing?

Mr. Hoguet: That is the idea.

Chairman Colver: And the outstanding Federal Trade Commission licenses——

Mr. Hoguet: Continue.

Chairman Colver: Continue. So the possession of them or the cancelling of them does not aid you at all as against the former enemy owner?

Mr. Hoguet: Not in the least. It is simply a matter of facilitating the mechanism of the collection of the royalties.

Chairman Colver: It seems to me that is all there is left.

Mr. Hoguet: That is all there is to it. The idea is simply to enable the Foundation to collect the royalties direct from the licensee, instead of having to go into court within a year after the war, under the provisions of the statute, and recover them through the medium of a court proceeding.

Chairman Colver: That seems to be all there is left, and that is a part of the law with which the Commission has no business at all; because we were told by the law to issue or not issue licenses, and issue them under any terms that seemed to be best and were acceptable, and the license having been issued then it was the duty of the Secretary of the Treasury to receive the royalty and to hold it subject to the disposition to be ordered by a court later. Now, there is no ground that I can see where we can come in and change the operation of that law. We have issued the license, and the only thing we can do is to accept a voluntary surrender or to revoke the license; and we are all agreed—Mr. Hoguet agrees—that for us to revoke these licenses is not a thinkable thing.

Mr. Hoguet: I should not for a moment urge the Commission to revoke a license that had been granted and upon which a man had made an investment.

Chairman Colver: How many licensees are involved here?

Mr. Hoguet: I could not say. Roughly, all those which manufacture dyes and pharmaceuticals.

Chairman Colver: Of course, many of them hold a number of licenses from us, but I wonder how many individuals and concerns there are. Do you know?

Mr. Hoguet: I think not more than ten or a dozen are involved in this.

Chairman Colver: How long is your mailing list that you send communications to?

Mr. Hoguet: I think that is about all. I could not say offhand. There were four or five licensees under the arsphenamine patents, and then practically the only other were the Du Pont National Aniline Company, which had licenses under the dye patents, a few scattering other ones like the Pacific Flush Tank Company, the Imhoff patents, and one or two others whose names I do not remember at the present time; but I should say that ten or a dozen licensees were about all that were involved.

Commissioner Thompson: What sort of replies did you get from those letters. Did they want to voluntarily surrender them?

Mr. Hoguet: Nearly all of them offered to surrender them before we approached them at all. That is, the Du Pont National Aniline Company and some of the pharmaceutical manufacturers were the principal powers behind this plan, and they took that matter up when the thing was in its inception.

Commissioner Murdock: I am not clear as to what becomes of the royalty in the shift from the Federal Trade Commission license to the Chemical Foundation license. What becomes of the royalty which may be recovered by the original owner of the patent in Germany?

Mr. Hoguet: As to that there is a difference of opinion. The act says that the owner of the patent may come into court within a year after the war and recover the royalties from this fund. Now, whether that means the owner at the time the application was made to the court, or whether it means that the royalties deposited in the fund will be apportioned according to the length of ownership, I do not know.

Commissioner Murdock: Take it in a case where there has been no assignment.

Mr. Hoguet: The original German owner comes in and recovers the entire royalty. In this case there has been an assignment by operation of law, that is, by seizure. Now, whether the royalties will be apportioned as of the date of that seizure or not, I do not know. Mr. Phelps, in the interest of one of his clients, claims that the owner at the time the suit is brought, is entitled to all of the royalties. I cannot say that I fully share that opinion with him, and the matter is now being put up to the Department of Justice for decision.

Commissioner Murdock: Will the licensee under the Chemical Foundation have in his possession funds which are recoverable by the German owner of the patent?

Mr. Hoguet: Not under that license; no—not unless he has been previously a licensee of the Federal Trade Commission. The act provides that in case the 5 per cent. fund is insufficient to meet the royalty adjudged to the patent owner by the court, the patent owner shall recover the balance against the licensee; but in the case of a license from the Chemical Foundation, assuming the title of the Chemical Foundation to be good, the only remedy of the German ex-patent-owner will be against the proceeds of the sale from the Alien Property Custodian to the Chemical Foundation, in accordance with Section 7 (c) as amended by the amendment of November 4.

Commissioner Thompson: Your control would only extend for a year after the war?

Chairman Colver: No; they must bring their suit within a year.

Mr. Hoguet: The suit to recover royalties paid under the Federal Trade Commission license must be brought within a year.

Commissioner Thompson: I mean, how will the license be restored to the original owner, if ever?

Mr. Hoguet: The patent?

Commissioner Thompson: Yes.

Mr. Hoguet: It will never be. The Federal Trade Commission license is for the life of the patent. He can never get it back. All he can get are his royalties.

Chairman Colver: The only thing that the alien owner or his successor, in this case the Foundation, has now is the patent less the license, and the only way he can get the license back would be for the Federal Trade Commission either to revoke or accept a surrender of the license, in which case naturally the patent still in the hands of the alien or of the Foundation would be enlarged by just that much; that is, just that much burden would be taken off the patent.

Mr. Hoguet: As Mr. Colver says, the Foundation steps into the shoes of the enemy owner.

Commissioner Murdock: Exactly.

Mr. Hoguet: And it can recover in this suit brought within a year after the war against this fund which has been paid under the Federal Trade Commission licenses.

Now, my suggestion is this: Why force the Chemical Foundation to bring this suit? Why not allow the licensee to surrender his license to the Federal Trade Commission, take a new license from the Chemical Foundation, and pay his royalties direct?

Chairman Colver: You will have to bring a suit anyway for the royalties that have accrued to May?

Mr. Hoguet: Yes; but it is only a couple of months. These amounts are inconsiderable.

Commissioner Murdock: But does not the Federal Trade Commission licensee really have some advantage in court as against a possible German suit, over the position of a licensee of the Chemical Foundation as against a suit by the original German owner of the patent?

Mr. Hoguet: A suit by the original German owner of the patent against the licensee of the Chemical Foundation is impossible.

Commissioner Murdock: You said a few minutes ago that he could sue for recovery of his rights——

Mr. Hoguet: Against the Alien Property Custodian.

Commissioner Murdock: Yes; that is right.

Mr. Hoguet: Not against the licensee.

Commissioner Murdock: Well, does not the original German owner of the patent have an advantage in a suit against a Federal Trade Commission licensee as against a suit against the Alien Property Custodian?

Chairman Colver: No; it is the other way around.

Commissioner Murdock: No, I don't know.

Mr. Hoguet: I get Mr. Murdock's point. His point is this: If the enemy owner is limited by Section 7 (c) as amended, to the proceeds of the sale, he is in no position to attack the licensee at all, whereas if the licensee is a licensee under a Federal Trade Commission license, the suit is directly against him by the German patent owner.

Commissioner Murdock: That is my idea.

Mr. Hoguet: That is, you are protecting your licensee by giving him a Chemical Foundation license, because you interpose between him and the German patent owner the Alien Property Custodian, and you limit the recovery of the enemy patent owner to the proceeds of the sale.

Secretary Yoder: But is not his protection from the Federal Trade Commission license founded on an Act of Congress, whereas the other is not founded on legislation?

Mr. Hoguet: I hope it is founded on legislation; because if it is not, it is no good.

Secretary Yoder: I mean, aided by legislation.

Mr. Hoguet: No; I think not. I think the advantage to the licensee is all in favor of the Chemical Foundation scheme, because he knows exactly what his rights are. His royalty obligations are fixed once and for all, and he does not have to have his license reviewed by a court. I may say that I asked Dr. Hersey, the chief chemist of the General Chemical Company, why he had not taken any licenses out under the Trading with the Enemy Act with the Federal Trade Commission. He said "Because we did not know where we were going to get off. We were subjecting ourselves to litigation after the war, in which our royalty might be increased to a rate which would be prohibitive, and we did not care to invest the necessary money to develop this industry under that license, with that staring us in the face."

Chairman Colver: They could always surrender it, of course—get out from under by surrendering.

Mr. Hoguet: Well, of course he would lose his investment, and subject himself to suit for infringement. Of course that is his personal view.

Commissioner Murdock: Of course, an expression in the peace treaty on this proposition is vital to your whole project.

Commissioner Thompson: The peace treaty is all published in the *New York Times* today. Have you read it?

Mr. Hoguet: I have read those portions of it that affect the Alien Property Custodian.

Commissioner Thompson: I was going to ask what is the effect.

Mr. Hoguet: Our opinion in the Alien Property Custodian's office is that the treaty is an eminently satisfactory one so far as we are concerned.

Chairman Colver: Has any letter been written to these licensees by the Commission on this subject?

Secretary Yoder: Just a letter of explanation.

Some of them protested against surrendering their licenses.

Commissioner Thompson: Several of them wrote in to us, and we simply said we had made no ruling.

Mr. Hoguet: I think that was the Sterns Roger Manufacturing Company of Denver. They wrote to me and wanted to know whether they ought to surrender or not. I wrote back that it was entirely up to them; they would have to get the consent of the Commission anyway.

Chairman Colver: It would seem that the Federal Trade Commission is obligated to "tote fair" with its licensees. Those American concerns which did come in when we were at war, and did take the chance, which the General Chemical Company expert advised them was a chance—so great a chance that they would not take it—those who did come in and did cast their fortunes with the Federal Trade Commission, and did take their licenses and did develop the business, must now certainly have the right to say whether or not they are to continue under that license which they got at that time, provided, of course they have not abused it and not non-used it. The only two grounds we have are abuse and non-use.

Mr. Hoguet: That is their undoubted right, Mr. Colver.

Chairman Colver: And it is our undoubted obligation to protect them in that right. Any surrender must be a voluntary surrender, and we have, I think, no right at all to suggest that they substitute now some other license, if they can get it, for a perfectly good license which they are to surrender. Of course it is immaterial to the Federal Trade Commission except that all the rights of its licensees are scrupulously observed. It seems a pity to make these people travel a long distance. It seems to me it would be quite possible for the Commission itself to take the matter up with each one of these licensees; perhaps make its letter the medium of conveying the proposition of the Chemical Foundation, and say to them, "Here is the proposition that is made. On the other hand, you have a Federal Trade Commission license. You can choose freely between the two, and let your choice be a free choice."

Mr. Hoguet: I think that would be a very good way of handling it.

Chairman Colver: We would put them under notice that they do not have to surrender. I would like to be thoroughly satisfied that——

Mr. Hoguet: They are acting voluntarily?

Chairman Colver: Yes; and I would like to be thoroughly satisfied, too, before the complete patent monopoly passes into the hands of any one concern, the Chemical Foundation or anybody else, that the tests for future licenses will be perfectly fair, so that the monopoly can not be substituted for the competition which was brought about by the issuance of these licenses by the Federal Trade Commission.

Commissioner Murdock: Is the Chemical Foundation in any sense a Government body?

Mr. Hoguet: It is a Government body in that it is run by the Alien Property Custodian, Mr. Garvan, personally, and under the direction of gentlemen who constitute the advisory sales committee of the Alien Property Custodian.

Commissioner Thompson: They are not responsible to the Government, though, are they?

Mr. Hoguet: Oh, no.

Commissioner Murdock: They make no annual reports?

Mr. Hoguet: No.

Chairman Colver: They are not members of that board of trustees ex-officio?

Mr. Hoguet: Oh, no.

Chairman Colver: It is just incidental?

Mr. Hoguet: They were named because they were gentlemen of very high caliber, and who were in sympathy with the purposes of the Custodian's office.

Chairman Colver: Yes; but of course the Alien Property Custodian and his staff will not be in existence after seventeen years?

Mr. Hoguet: Oh, no.

Chairman Colver: So they are not there ex-officio, but that is incidental, and for very good reason, of course.

Mr. Hoguet: Yes; as individuals.

Chairman Colver: So the answer to your question, "Is it a Government body?" is, "It is not."

Mr. Hoguet: As I said, it is in the sense that people who have been working with that particular governmental agency are interested.

Commissioner Thompson: Mr. Garvan, I presume, is out of it now, is he not?

Mr. Hoguet: No; he is working on the Foundation a great deal, as a matter of fact. He is very keen about it.

Chairman Colver: What do you think of the suggestion that we convey to each one of these licensees a statement—any such statement as the Foundation wants to make, and with any such statement as we want to make of our understanding of their rights provided they do not wish to surrender their license; make it a perfectly clear election on their part?

Mr. Hoguet: I do not think there is any necessity of making it an inter-partes matter, so to speak, Mr. Colver. I think the Foundation would be entirely satisfied to have the Federal Trade Commission write any letter it pleases to these licensees.

Chairman Colver: I would rather have you suggest the description of your device. I do not believe any of us here in the room could attempt to describe it.

Mr. Hoguet: We would be very glad to do that.

Commissioner Thompson: I am rather impressed with the idea, at first blush, that we ought to put the proposition right up to the Attorney General and ask him to advise us what we ought to do.

Chairman Colver: I think so; especially with respect to that part of the law which is not under our supervision at all, namely, the custodianship of the royalty and the final disposition of that royalty.

(Thereupon, at 4.45 P. M., the conference adjourned.)

PLAINTIFF'S EXHIBIT No. 152.

EMERY, VARNEY, BLAIR & HOGUET
Counsellors at Law
149 Broadway
New York

Frederick L. Emery
Thomas B. Booth
Laurence A. Janney
Lucius E. Varney
Irving H. Townsend
Robert S. Blair
Ramsay Hoguet
Jesse W. Morton
Edward H. Palmer
Osgood H. Dowell
Everett S. Emery
Louis A. Jones
Edward G. Curtis
Manvel Whittemore

John W. Thompson
Lawrence G. Miller
Sebastian Hinton
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Howard W. Dix
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10 South La Salle St.
Tel. Franklin 1145

Washington
Emery, Booth, Janney & Varney
Washington Loan & Trust Bldg.
Tel. Franklin 7974

Cable Embojava
Western Union Code

June 28, 1919

Hon. A. Mitchell Palmer,
Attorney-General,
Department of Justice,
Washington, D. C.

My dear Mr. Palmer:

I have been considering bringing a suit immediately upon the termination of the war, on behalf of The Chemical Foundation, Inc., for the recovery of royalties paid under Federal Trade Commission licenses under patents which the Chemical Foundation now owns. I had quite a talk with Mr. Ferry last night and we agreed that it was desirable for such a suit to be brought immediately so that the Act might be interpreted in a litigation conducted by persons who were in full sympathy with one another. As you know, Section 10 is very obscure and we think it would be better to have it interpreted in a litigation which we could control rather than in a suit brought by an enemy or by some other purchaser of a United States patent from the Alien Property Custodian.

If you will assign somebody to this work, I shall be more than happy to co-operate with him in the matter. It is my idea that this litigation should be a more than friendly one, conducted in thorough understanding between the Alien Property Custodian's office, the Attorney-General's office and The Chemical Foundation, Inc.

Believe me,

Sincerely yours,

(Sgd.) RAMSAY HOGUET.

RH:P.

9-17-157-3
Department of Justice
Jul 5 1919 A. M.

PLAINTIFF'S EXHIBIT No. 153.

[Department of Justice Cut]

Office of
The Private Secretary

July 3, 1919.

Mr. Brown:

In the Attorney General's absence I am sending this to you for your attention.

R. T. SCOTT.

Mr. Whitaker:

Yes, but conduct suit at arm's length in every respect. All right to have all possible friendliness but no special concessions which might open way to later complications.

L. B.

PLAINTIFF'S EXHIBIT No. 154.

SW-PD

9-17-157

July 8, 1919.

Mr. Ramsay Hoguet,
149 Broadway,
New York City.

Sir:

In re The Chemical Foundation, Inc.

In reply to your letter of June 28th respecting proposed action on behalf of the Chemical Foundation, Inc., you are advised that this matter will be handled by Mr. Spier Whitaker, who has been appointed Special Assistant to the Attorney General in connection with cases arising under the Trading with the Enemy Act.

There appears no reason why the action should not be conducted in a friendly manner, but, insofar as all legal questions and propositions which may be involved are concerned, it would appear necessary to conduct the litigation in every respect at arm's length.

Respectfully,

For the Attorney General,
(Signed) LaRUE BROWN.
Assistant Attorney General.

PLAINTIFF'S EXHIBIT No. 155.

Assignment by Francis P. Garvan as Alien Property Custodian to Chemical Foundation, Inc., dated March 1, 1921.

NOTE: Same as Exhibit I to bill of complaint and not reprinted here. (See Record, Vol. I, page 472.)

PLAINTIFF'S EXHIBIT No. 156.

Assignment by Thomas W. Miller as Alien Property Custodian to Chemical Foundation, Inc., dated April 27, 1921.

NOTE: Same as Exhibit J to bill of complaint, and not reprinted here. (See Record, Vol. I, page 480.)

PLAINTIFF'S EXHIBIT No. 156-A.

Schedule attached to assignment of April 27, 1921, Plaintiff's Exhibit No. 156.

NOTE: Same as Schedule 20 of Exhibit G to bill of complaint and not reprinted here. (See Record, Vol I, page 490.)

PLAINTIFF'S EXHIBIT No. 157.

Assignment by Thomas W. Miller as Alien Property Custodian to Chemical Foundation, Inc., dated November 5, 1921.

NOTE: Same as Exhibit K attached to bill of complaint and not reprinted here. (See Record, Vol. I, page 485.)

PLAINTIFF'S EXHIBIT No. 157-A.

Schedule 3, attached to assignment of April 5, 1921, Plaintiff's Exhibit No. 157.

NOTE: Same as Schedule 21 of Exhibit G to bill of complaint and not reprinted here. (See Record, Vol. I, page 491.)

PLAINTIFF'S EXHIBIT No. 158.

TRUST FILE.
In Re Trust No. 963.

February 5, 1918.

Pacific Flush Tank Company,
4241 Ravenswood Ave.,
Chicago, Ill.

Gentlemen:

In reply to your letter of January 29, 1918, with reference to the deduction of $500.00, from the amount of royalties owing to Dr. Karl Imhoff, which sum was paid out for a license from the Federal Trade Commission, we beg to inform you that in the opinion of our Bureau of Law such deduction cannot be allowed by this office.

However, you may file claim for this amount with the Alien Property Custodian under Section 9 of the Trading with the Enemy Act. When you make returns on the demand which we have sent to you, you will please include therein all sums collected by you in behalf of Dr. Karl Imhoff up to the date of the license issued you by the Federal Trade Commission. After the date of the license by the Federal Trade Commission, you will be responsible for payments of the royalties fixed by the Commission to the Alien Property Custodian.

Trusting that you will give this matter your immediate attention, we are,

Very truly yours,

Assistant Director,
EIMc:MF. *Bureau of Trusts.*

PLAINTIFF'S EXHIBIT No. 159.

FEDERAL TRADE COMMISSION
WASHINGTON

WILLIAM J. HARRIS
Chairman
JOSEPH E. DAVIES
WILLIAM B. COLVER
JOHN FRANKLIN FORT
VICTOR MURDOCK

LEONIDAS L. BRACKEN
Secretary

Address
FEDERAL TRADE COMMISION
In Replying Please quote
Ex. K 1

February 12, 1918.

This letter was received by me 2/19/18
E. I. Mc.

Mr. F. J. Horne,
Assistant Director Bureau of Trusts,
c/o Alien Property Custodian,
Washington, D. C.

Dear Sir:

Your letter of February 5th to the Pacific Flush Tank Company has been transmitted by that Company to this office. Our impression is that the $500 license fee might possibly be chargeable to Imhoff, and we would be glad to have an expression of your views showing the reasons why you have apparently come to an opposite conclusion.

Very truly yours,
FEDERAL TRADE COMMISSION,
(Sgd.) L. L. BRACKEN,
Secretary.

E.S.R./J.E.S.

* * * * * * * * *

ALIEN PROPERTY CUSTODIAN
Received Feb. 13, 1918
Noted ...... Date ......
Ans'd 2/19 E. J. Mc.

* * * * * * * * *

PLAINTIFF'S EXHIBIT No. 160.

LEAGUE OF MINNESOTA MUNICIPALITIES
ORGANIZED AUGUST 21, 1913

President
MICHAEL BOYLAN
Former Mayor, Virginia
Vice-President
GEORGE G. MAGNUSON
Com. of Finance and Accounts
St. Cloud
Secretary-Treasurer
RICHARD R. PRICE
Director of University Extension
University of Minnesota
Minneapolis

Trustees
J. A. FARRELL
Alderman, Duluth
CHAS. P. HALL
City Attorney, Red Wing
J. N. NICHOLSEN
Attorney, Austin
Executive Secretary
E. L. BENNETT
Secretary of the Municipal
Reference Bureau
University of Minnesota
Minneapolis

Sixth Annual Convention
October 16-17, 1918
ROCHESTER
Address reply to the University of Minnesota

Minneapolis, Minn.,
March 13th, 1918.

Mr. A. Mitchell Palmer,
Custodian of Alien Property,
Washington, D. C.

Dear Sir:

I have seen a copy of a letter written to you by

Burns and McDonnell, of Kansas City, under date of March 11, 1918, on the subject of the disposition of the patent rights of Dr. Karl Imhoff of Essen, Germany, on the Imhoff tank system of sewage treatment.

Speaking for the League of Minnesota Municipalities, I wish to convey our complete endorsement of the suggestion that the rights to use the processes covered by the Imhoff Patents be not sold, but dedicated to the service of the American people who live in municipalities. We esteem it a matter of vital importance in the conduct of the war that municipalities shall protect the health and the lives of their citizens, and of other American citizens whose water supply might be contaminated by the absence or inefficiency of sewage treatment. It is needful both that the sewage be treated effectively, and that it be treated as cheaply as may be. In all but a few cases that means the use of Imhoff tanks. We believe that the use of this process should not be hampered or restricted, especially as such restriction ultimately involves financial gain for an alien enemy, and typhoid fever and deaths for Americans. We believe that the patent should not be sold to an American, as that would not relieve the cities and villages of America from the payment of royalties for the use of a natural process, but would merely change the destination of a part of the profits. The people of our municipalities, who need the protection, would find the obstacle of a royalty still confronting them. We see no reason why this process, so essential for the protection of the public health, should fall into other private hands.

We realize that it may require action by Congress to effect the dedication desired. Will you kindly advise us at your earliest convenience whether this is the case. If this should be found to be so, we respectfully request that you ask such authority from Congress. We have complete confidence that the proposed dedication to the public of these patent rights will be adequately justified by the increased availability of these processes for the safeguarding of American health and American lives.

Very truly yours,

League of Minnesota Municipalities,
(Sgd.) E. L. Bennett,
Executive Secretary.

ELB:MG

P. S. The League of Minnesota Municipalities is comprised of some one hundred twenty villages and cities of Minnesota, including all but a very few of those cities having three thousand or more inhabitants, and representing fully ninety per cent. of the urban population of the state. Most of the League members have sewer systems, but enough in and out of the League still need them to make it a very important matter for the state. The enclosed folder shows further the character of the League.

E. L. B.

* * * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received Mar. 16, 1918 *
* Noted .... Date .... *
* Ans'd .... Date .... *
* Report No. ... Trust No. ... *
* * * * * * * * *

United States. This company collected royalties for Imhoff, under the pre-war contract, based on the population to be served, which royalties run from $25 to $2,500.

Sometime in December, 1917, they applied for and secured an exclusive license from the Federal Trade Commission to continue to represent Imhoff, charging 30 per cent of the fees collected. They had poor success in collecting the royalties from the towns and cities using the invention, in spite of the fact that they have secured the assistance of both the Federal Trade Commission and this office, in having us advise from time to time that the company was accounting to the Alien Property Custodian for royalties.

Recently the president of the company made a personal visit to this office and tried to get us to use strong-arm methods in cajoling the various towns and cities into paying the royalties to the company. We have not been inclined to do this for the reason that we did not feel justified in constituting ourselves what was in effect a mere collection agency, particularly in view of the fact that the company would be entitled to 30 per cent of the royalties, the collection of which we had effectuated.

Out of 145 towns and cities using the patent, 109 of them refuse or neglect to pay the royalties. It appears that the American municipalities have been unwilling to make remittances to the government, partly for the reason that the proceeds would eventually reach the enemy owner of the patent in Germany, but more particularly because they feel that an invention which deals with the health and physical comfort of the people at large should be free from monopolistic control, and especially from foreign monopoly. There is at present an organization whose personnel is constituted of the officials of American municipalities, the primary object of which is to oppose the payment of royalties under this patent. I think its headquarters are now in California. I recall quite distinctly that they circularized the members of the Congress preceding the last one, in respect to this matter. Quite a number of the circular letters were transmitted by various Congressmen and Senators to this office for attention. As you know, we have been feeling our way in patent matters and apparently nothing was done for lack of a definite policy.

The municipalities using the invention seem to be of the opinion that now is an opportune time for this patent to be seized and dedicated to the public in such manner that American towns and cities may be emancipated from undesirable foreign mastery and relieved from what seems to them an unequitable burden. They contend that the patent should not be sold to an American citizen, as that would merely substitute a domestic master for a foreign one, which may or may not give the necessary relief.

In order fully to present the views of some of the towns and cities interested, there is attached hereto a copy of a letter to this office from the League of Minnesota Municipalities. You will observe that the league is composed of 120 villages and cities in Minnesota. It makes a strong appeal to us to assist and protect them in the respect indicated. Most of the cities and towns using this enemy patent are of small population. Among the larger cities, however, are Akron, Ohio, Detroit, Michigan, Fort Worth, Texas, Canton, Ohio, Duluth, Minnesota, and Albany, New York.

The matter had been called to the attention of Mr. Palmer and Mr. Hoguet, and Mr. Palmer had requested Judge Brodhead to examine the situation. To date, however, nothing definite has been done other than the seizure of the patent. The patent is included among those that are to be conveyed to the Chemical

Foundation. You will recall that the Chemical Foundation is to have transferred to it all the chemical, pharmaceutical and allied patents, and I presume that this was considered as a patent allied to the chemicals. As I understand it, however, the patent happens to cover merely a design or plan for the construction of a sceptic tank.

It seems advisable that an early disposition be had of this matter, in view of the fact that it would appear that this is an opportunity for this office to render a definite public service and secure for itself a desirable kind of publicity. It would appear that since the patent has been taken over the matter should be presented for the immediate consideration of the Board of Directors, or any advisory committee, whatever may happen to be its particular designation, of the Chemical Foundation, and that they call a meeting of the officials of the cities, towns and organizations interested and agree upon terms which would either mean that the cities would be in some way relieved altogether from the payment of royalties, or at least conditions could be so arranged that the cities would have to pay a mere nominal royalty to the Foundation.

It may be well to indicate that the Federal Trade Commission has been approached on the subject and it seems that they would be ready to cooperate with us and withdraw the exclusive license issued to the Pacific Flush Tank Company.

Whatever course is decided upon, I am of the opinion that we should proceed without further delay, in view of the fact that terms of peace may now be agreed upon at any date.

PLAINTIFF'S EXHIBIT No. 163.

INERTIA, INDIFFERENCE AND BLACKNESS WILL PROLONG THE WAR. GET BUSY!

S. FISHER MILLER, Pres. E. L. WALCOTT, Vice-Pres.
W. H. MILLER, Treas. L. E. REIN, Secy.

PACIFIC FLUSH-TANK COMPANY
Manufacturers of
Siphons for Flushing Sewers
Sewage Disposal Air-Lock Controls for Operating Bacteria Beds
Taylor Nozzles
Sewage Ejectors for Municipal Installations
Flexible Jointing Compounds for Sewer Pipe
4241 & 3 E. Ravenswood Ave.
Chicago.
Singer Building,
New York.

Chicago, Jan. 9, 1919.

A. Mitchell Palmer, Alien Property Custodian,
16th and P Streets,
Washington, D. C.

Attn: Mr. Goldstein.

Dear Sir:

This Company has carefully considered your request made to the writer on Saturday the 4th inst., asking for a suggestion from us as to a disposition of the patents known as the Imhoff Patents which would protect the Cities in future, from claims for royalties under these patents for building tanks of this character and with a view to meeting this request, this Corporation at a Director's Meeting yesterday, the 8th inst., and by resolution passed, authorized the writer to state to you that in our opinion the only way the

Cities could be protected from claims for royalties for the use of Imhoff Tanks, would be for a Corporation like ourselves, (an all American interest) to have the opportunity of purchasing from you, with a proper title, these aforesaid patents, and the writer is authorized to say that we would be willing to pay the sum of $2000.00 for all these Imhoff Patents, on the passing of a valid title to us, and in consideration of the same would undertake and agree to dedicate these patents to the American Public immediately after date of said title, notice to this effect to be published so that all Cities and Municipalities throughout the United States would be advised of this fact.

The above suggestion entirely complies with your request for a suggestion to cover this matter, we believe, and would remove the present German interest and we await your valued further advices.

The writer will be in his New York office on and after January 15, 1919.

Yours very truly,

PACIFIC FLUSH TANK COMPANY
(Sgd.) S. FISHER MILLER,
President.

LMH

Exclusive Licensees under License #7
dated December 17th, 1917, issued by the
United States Government Federal Trade
Commission.

* * * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received Jan. 11, 1919 *
* Noted RCG Date Feb. 18, 1919 *
* Ans'd RCG Date Feb. 18, 1919 *
* * * * * * * * *

PLAINTIFF'S EXHIBIT No. 164.

MEMORANDUM

Trust 963
Reports 15858 and 1106
February 18, 1919.

To Judge Brodhead
From Mr. Goldstein

The Pacific Flush Tank Company, were, up to May 1917, the commercial representatives in the United States and Canada of Carl Imhoff, an inventor of a certain tank and method of treating sewage in sewage disposal plants in common use among towns and cities throughout the United States.

This company collected royalties for Imhoff, based on the population to be served. Sometime in December 1917, they applied for and received an exclusive license from the Federal Trade Commission to continue to represent Dr. Imhoff, on the basis of 30 per cent. of the fees collected. The company has had a difficult time to collect the royalties from the towns and cities using the tank, in spite of the fact that it has secured the assistance of both the Federal Trade Commission and this office in having us advise the various cities using the tank that the company was accounting to the Alien Property Custodian for royalties.

Recently the president of the company made a personal visit and tried to get us to use strong arm methods in cajoling the various towns and cities into payment of royalties to the company. We have not been inclined to do this for the reason that we did not feel justified in constituting ourselves, a collection agency, particularly where the company, whose duty it is to make the collection, would be entitled to 30 per cent. of the royalties, the collection of which we had effectuated.

Out of 145 towns and cities using the patent, 109 refuse or neglect to pay royalties. It appears that the American municipalities have been unwilling to make remittances to the company, partly for the reason that the proceeds would eventually reach the enemy owner of the patent in Germany, but more particularly because they feel that an invention which deals with the health and physical comfort of the people should be free from the control of foreign monopoly.

There is at present an organization, whose personnel is constituted from the officials of American municipalities, whose primary object it is to fight this particular monopoly. I recall very distinctly that they circularized the members of Congress at the last session in respect to this matter. Quite a number of the circulars were transmitted by various Congressmen and Senators, to this office for attention. However, it seemed that nothing could be done at that time. We were feeling our way in patent matters, and as you know there was considerable doubt as to whether we actually had the power to seize an enemy-owned patent.

The municipalities using the invention appear to be of the opinion that now is an opportune time for such an important enemy owned patent, so vital to public health, to be seized and disposed of in such manner that American towns and cities may be emancipated from undesirable foreign mastery on the one hand, and that on the other, some practical arrangement could be made whereby the towns and cities in the United States could have the free use of this patent. They also believe that the patent should not be sold to American citizens as that would merely substitute a local master for a foreign one, which may or may not be any better and would not relieve them of the payment of royalties for the use of a natural process but would simply change the destination of part of the profits.

We have in our files a letter written by the Executive Secretary of the League of Municipalities of Minnesota, composed of 120 villages of Minnesota. This letter makes a strong appeal to us to assist and protect them in the respect indicated. A copy is attached.

Most of the cities and towns using this patent are of small population. However, there is also on the list the following:

Akron, Ohio
Detroit, Michigan
Canton, Ohio
Duluth, Minnesota
Rochester, New York
Albany, New York
Fort Worth, Texas

Merely by way of indicating a practical line of procedure I suggest that a meeting be called of the Association referred to and other persons who are now actively interested in this matter to discuss with them the advisability of having them organize a corporation to take over the patent on the condition that it will be easily available on an equal basis, to all the towns and cities desiring to use it and if it could be so properly arranged on the basis of a nominal consideration. The corporation should be a separate entity and its officers should be composed of officers or officials of the municipalities using the invention.

As I have already indicated, the Pacific Flush Tank Company is the exclusive licensee, but inasmuch as a condition of the license is the ability to exercise the right granted, it would seem that the company has failed to meet the obligation which it undertook and that little difficulty should be experienced in persuading the Federal Trade Commission to cancel the license for non-user.

You will recall that we were in conference recently with Mr. Miller, the president of the company and presented all these facts to him and requested a suggestion from him or his company, of the way out. We have a letter from him, dated January 9, 1919, in which he advised that in the opinion of the company, that the only way the towns and cities could be protected from claims for royalties for use of the patent, would be for a corporation like *themselves* to have the opportunity to purchase the patent. He further states that he is authorized to offer $2000., for the use of the patent, upon the passing of the valid title to them and in consideration and as a condition of the sale, that the company would undertake and agree to dedicate the patent to the American Public immediately after the title was transferred and that notice to this effect would be published so that all towns and cities throughout the United States would be advised thereof. I am not advised of the reason that prompts this generous impulse from the Pacific Flush Tank Company, other than that it may be an effort to secure advertising advantages which perhaps would bring them greater returns than the sum paid for the patent. It seems to me that the desirable plan is to take this patent out of the hands of individuals and transfer it into the hands of a corporation who would be interested primarily in the public good.

PLAINTIFF'S EXHIBIT No. 165.

Duplicate
No. 155.

J. Davis Brodhead
Attorney and Counsellor at Law
South Bethlehem, Pennsylvania

Washington, D. C.,
1756 N Street, N. W.,
March 28, 1919.

Trust No. 963.
Report Nos. 15858—1106.

Hon. Francis P. Garvan,
Alien Property Custodian,

In re the Imhoff Patents for the building of city sewage disposal plants.

Dear Sir:

The following is my report in the above stated matter:

Carl Imhoff, an Enemy, residing in Germany, was the owner of those certain patents, known as the "Imhoff Patents" for a method of treating city sewage by means of his patented sewage disposal plant.

His commercial representative in the United States prior to our declaration of war with Germany was "The Pacific Flush Tank Co.," an American corporation (office in Singer Building in New York) all of the stockholders of which are reported to be American citizens.

Under this contract with Imhoff, this company was to collect the royalties from the several American municipalities using the patents and remit 70% thereof to Imhoff, retaining the remaining 30% as their compensation. The royalties were based on the population served.

In December 1917, the Federal Trade Commission granted an *exclusive license* to this Pacific Flush Tank Co. to continue to represent Imhoff under the same terms as set forth in the contract between the company and Imhoff, *viz.*, the division of the royalties on the basis of 70% and 30%.

The A. P. C. issued a demand for the 70% due Imhoff, of which about 6000 dollars has been collected and paid into the Treasury of the United States, leaving outstanding and as yet uncollected $27,483.00 as will appear by the attached list, marked "Exhibit A," in which the names of the cities and the royalties, paid and unpaid, are set forth. There are 145 towns and cities using this patent, out of which 109 refuse or neglect to pay the royalties. It appears that almost all of these municipalities are unwilling to pay these royalties, giving as their reasons that such payment would eventually be for the benefit of the enemy and especially because they think that this method of sewage disposal, being for the preservation of the health of the people, should not be monopolized by friend or foe.

Under the last amendment to the "Trading with the Enemy" Act of November 4th 1918, the A. P. C. has demanded these Imhoff Patents, and such demand has been duly recorded in the proper office of the commissioner of patents, thus placing the title to the patents in the A. P. C., *subject however, to the exclusive license granted to the Flush Tank Company.* This company is, however, unable to collect the outstanding and unpaid royalties without suit.

Offer of the Flush Tank Co.

If the sale of these patents is made to the Flush Tank Company for, say $2000, then and in that event this company will pledge itself to make a public dedication of the patents, so that every city and town in the

United States may use the patents free from any claim for royalties. Why this apparently generous offer from the company? I suppose the company would expect to profit by the incidental advertisement and would expect to install the plants and be compensated for engineering and construction work.

In accordance with your instructions I took this matter up last week with Mr. Ramsay Hoguet. He suggested that the Federal Trade Commission be asked to revoke the said exclusive license and that then these patents be sold and transferred by the A. P. C. to the Chemical Foundation to be handled by it as might be deemed to the best interest of all concerned. If this is done, I would recommend that the present claims for the outstanding royalties be likewise sold and transferred, so as to centralize the title to the patents and the right to collect, or to remit, the unpaid royalties.

Possible Procedure

The patents and the claims for overdue royalties, having been seized by the A. P. C., could be

> (a) Retained by the A. P. C. and the 70% royalty collected from the Flush Tank Company, (who would be assisted by the A. P. C. in making the collections) and paid into the Treasury of the United States, to be hereafter distributed "as Congress shall direct." This plan might eventually restore the patents and accumulated royalties to the enemy.
>
> (b) The patents and claims could be offered at public sale by the A. P. C. to the highest bidder.
>
> This plan would probably result in lodging in the hands of an American Company or syndicate a monopoly, and the American cities would still

be under the necessity of paying royalties for the use of this sewage system which is deemed necessary for the public health.

(c) By Executive order, the patents and claims could be sold at private sale to the Pacific Flush Tank Co. for a consideration agreed upon, which would include the company's agreement to remit all or a stipulated portion of the unpaid royalties and a public dedication of the patents.

(d) Or, by Executive order, a sale could be made to the Chemical Foundation, and the question of the collection or remittance of the royalties and the public dedication of the patents left to the judgment of the Directors of the Foundation.

This last course, if adopted, might raise the question as to the right of the Foundation to license or sell these patents to a municipal corporation. The charter of the Chemical Foundation provides for such sales, (1) to natural persons, (2) co-partnerships, (3) corporations, "of which not less than three-fourths of the capital stock is owned by citizens of the United States." A municipal corporation, strictly speaking, would not be included in any one of these three classes.

My own opinion is that the Foundation, having acquired the patents, could make the sale or license to a municipal corporation, as the enumeration of the company's specific powers in its charter, would not limit its general powers conferred by the laws of Delaware, the State of its creation, which gives the power of sale generally.

I would be glad to be of further service in this matter, with or without compensation, and I await your definite instructions in the premises. I am,

Yours truly,
(Sgd.) J. DAVIS BRODHEAD.

EXHIBIT A.

List of towns and individuals using the Imhoff patents, showing the royalties collected and uncollected.

Town or Individual	*Royalty*	*70%*	*30%*	*Collected*	*Collected but not reported.*
Albany, N. Y.	3,400.00	2,380.00	1,020.00		
Akron, Ohio	1,500.00	1,050.00	450.00		
Bad Axe, Mich.	255.00	178.50	76.50		
Beaver Falls, Pa.	540.00	378.00	162.00		
Big Lake, Minn.	10.00	7.00	3.00		
Brooklyn, Ia.	105.00	73.50	31.50		
Bryan, Texas	145.00	101.50	43.50		
Canton, Ohio	1,500.00	1,050.00	450.00		
Celina, Texas	50.00	35.00	15.00		
Chariton, Ia.	255.00	178.50	76.50		
Cleveland, Tenn.	280.00	196.00	84.00	280.00	
Comfrey, Minn.	35.00	24.50	10.50		
Compton, Calif.	100.00	70.00	30.00		
Deerwood, Minn.	20.00	14.00	6.00		
Elkton, Minn. (school)	25.00	17.50	7.50		
Farmingdale, N. Y.	80.00	56.00	24.00		
Forest Grove, Ore.	175.00	122.50	52.50		
Forney, Texas	50.00	35.00	15.00		
Frankfort, N. Y.	230.00	161.00	69.00		
Fredicksburg, Ia.	80.00	56.00	24.00	80.00	
Freeport, Mich.	10.00	7.00	3.00	10.00	
(G. R. G. H. & Mich. R)					
George West, Tex.	50.00	35.00	15.00		
Granville, Ohio	105.00	73.50	31.50		
Grosse Point, Mich.	255.00	178.50	76.50	255.00	
Hanford, Calif.	335.00	234.50	100.50		
Harbor Beach, Mich.	130.00	91.00	39.00		
Imperial, Calif.	172.00	120.40	51.60	172.00	
Jewell Junction, Ia.	80.00	56.00	24.00		
Johnson Creek, Wis.	50.00	35.00	15.00		
Knoxville, Ia.	105.00	73.50	31.50	105.00	
Lakeland, Fla.	125.00	87.50	37.50		
Lake Village, Ark.	130.00	91.00	39.00		
Lexington, Ky.	1,250.00	875.00	375.00	1,250.00	1,250.00
Manatee, Fla.	105.00	73.50	31.50		
Marietta, Ga.	105.00	73.50	31.50		
Marion, Ill.	230.00	161.00	69.00		
Marysville, Ohio	280.00	196.00	84.00	R-28947	Also
Mason City, Ia.	600.00	420.00	180.00		

Town or Individual	*Royalty*	*70%*	*30%*	*Collected*	*Collected but not reported.*
Modena, Pa. (Megarge Paper Mills)	25.00	17.50	7.50		
Mineral Wells, Tex.	400.00	280.00	120.00		
Mt. Vernon, Ohio	280.00	196.00	84.00		
Nazareth, Ky. (Nazareth Academy)	50.00	35.00	15.00	50.00	
New Hampton, Ia.	175.00	122.50	52.50	175.00	
Newton, Ia.	243.00	170.10	72.90		
New Phila., Ohio	485.00	339.50	145.50		
Ocala, Fla.	255.00	178.50	76.50		
Ocean Beach, L. I.	105.00	73.50	31.50		
Oxford, N. Y.	25.00	17.50	7.50		
Perrysburg, N. Y. (J. N. Adams Hosp.)	50.00	35.00	15.00		
Plainfield, N. J. (Joint Plant)	1,250.00	875.00	375.00	1,250.00	
Plant City, Fla.	230.00	161.00	69.00		
Port Chester, N. Y.	740.00	518.00	222.00		
Rochester, N. Y.	4,500.00	3,150.00	1,350.00		
Ridgefield, N. J.	230.00	161.00	69.00		
Seaside Park, N. J.	130.00	91.00	39.00		
Sedalia, Mo.	400.00	280.00	120.00	400.00	
Spirit Lake, Ia.	130.00	91.00	39.00		
Springfield, Mo.	1,100.00	770.00	330.00		
Sweetwater, Tex.	325.00	227.50	97.50		
Victoria, Tex.	230.00	161.00	69.00		
Virginia, Minn.	400.00	280.00	120.00		
Walnut Creek, Calif.	130.00	91.00	39.00		
Wappinger Falls, N. Y.	280.00	203.00	87.00		
Wingdale, N. Y.	130.00	91.00	39.00		
Albia, Ia.	110.00	77.00	33.00		
Ankeny, Kan.	95.00	66.50	28.50	95.00	95.00
Anthony, Kan.	165.00	115.50	49.50		
Augusta, Tex.	155.00	108.50	46.50	155.00	
Bellvilie, Kan.	140.00	98.00	42.00		
Cambridge, Ill.	80.00	56.00	24.00	80.00	
Carnegie, Okla.	80.00	56.00	24.00	80.00	
Corcoran, Calif.	130.00	91.00	39.00	130.00	
Cordell, Okla.	130.00	91.00	39.00		
Creston, Ia.	255.00	178.50	76.50	255.00	255.00
Detroit, Mich.	15.00	10.50	4.50		

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UNITED STATES V. CHEMICAL FOUNDATION, INC. NO. 127

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CARD 60

Town or Individual	*Royalty*	*70%*	*30%*	*Col-lected*	*Collected but not reported.*
(Palmer Woods Sub. Div.)					
(Grandmont Sub. Div.)	130.00	91.00	39.00	130.00	
(Krifer Homes Sub. Div.)	68.00	47.60	20.40	68.00	
(Venice-On-Lakes Sub. Div.)	80.00	56.00	24.00	80.00	
McDougall-Duluth Co. (Duluth, Minn.)	40.00	28.00	12.00	40.00	
Elkhart Lake, Wis.	80.00	56.00	24.00	80.00	
Ellis, Kans.	120.00	84.00	36.00		
Ft. Worth, Tex. (Camp Taliaferro Field #1)	155.00	108.50	46.50		
Ft. Worth, Tex. (Field #2)	155.00	108.50	46.50		
Ft. Worth, Tex. (Camp Bowie Hosp.)	90.00	63.00	27.00		
Ford Republic, Mich.	15.00	10.50	4.50	15.00	
Gatesville, Tex. (State Juvenile Train School)	80.00	56.00	24.00	80.00	
Grand Rapids, Mich. (Kent City Infirmary)	15.00	10.50	4.50		
Grinnell, Ia.	255.00	178.50	76.50		
Hastings, Mich.	50.00	35.00	15.00	50.00	
Hiawatha, Kans.	180.00	126.00	54.00		
Lake Geneva, Wis. (Miss Gertrude Allen Residence)	10.00	7.00	3.00		
Lenox, Ia.	95.00	66.50	28.50		
McKinney, Tex.	255.00	178.50	76.50		
Marcus, Ia.	80.00	56.00	24.00		
Marlow, Okla.	130.00	91.00	39.00		
Montezuma, Ia.	130.00	91.00	39.00		
Mt. Pleasant, Ia.	130.00	91.00	39.00	130.00	130.00
Mountain Lake, Minn.	90.00	63.00	27.00	90.00	
Neodesha, Kan.	175.00	122.50	52.50	175.00	
Nokomis, Ill.	130.00	91.00	39.00		
Oconomowoc, Wis. (F. W. Matheissen Residence)	10.00	7.00	3.00		
Onawa, Ia.	140.00	98.00	42.00		
Pontiac, Ill.	360.00	252.00	108.00		

Town or Individual	*Royalty*	*70%*	*30%*	*Col- lected*	*Collected but not reported.*
Pringhas, Ia.	75.00	52.50	22.50		
Reed City, Mich.	130.00	91.00	39.00		
River Edge, N. J.	90.00	63.00	27.00	90.00	
Rolfe, Ia.	75.00	52.50	22.50	75.00	75.00
San Antonio, Tex. (South Western Insane Asylum)	130.00	91.00	39.00	130.00	130.00
Seymour, Ia.	130.00	91.00	39.00	130.00	130.00
Sun Prairie, Wis.	105.00	73.50	31.50	105.00	
Wadena, Minn.	80.00	56.00	24.00	80.00	
Waukegan, Ill. (Lake County Hosp.)	10.00	7.00	3.00		
West Burlington, Ia.	85.00	59.50	25.50		
Woodward, Ia. (State Hosp. & Colony for Epileptics)	80.00	56.00	24.00	80.00	
Worthington, Minn.	155.00	108.50	46.50	155.00	
Ada, Okla.	255.00	178.50	76.50		
Alliance, Ohio	510.00	357.00	153.00		
Altamont, N. Y.	40.00	28.00	12.00	40.00	40.00
Bridewell, Md. (Md. House of Correction)	80.00	56.00	24.00	80.00	80.00
Bayhead, N. J.	180.00	126.00	54.00		
Centerburg, O.	80.00	56.00	24.00		
Dearborn, Mich.	180.00	126.00	54.00		
Denmark, Wis.	80.00	56.00	24.00	80.00	80.00
Dover, N. J. (Picatinny Arsenal)	50.00	35.00	15.00		
Duluth, Minn. (Villa Sancta Scholastica)	25.00	17.50	7.50		
Erie, Pa. (Hammerhill Paper Co.)	10.00	7.00	3.00		
Erie, Pa. (Hammerhill Paper Co.)	80.00	56.00	24.00	90.00	90.00
East View, N. Y. (Westchester County Alms House)	68.00	47.60	20.40	68.00	68.00
Erie County, N. Y.	50.00	35.00	15.00		
Indianola, Pa. (Inland Steel Co.)	90.00	63.00	27.00	90.00	90.00
Johnsonburg Borough, Pa.	235.00	164.50	70.50		
Lapeer, Mich.	130.00	91.00	39.00	130.00	130.00

Town or Individual	*Royalty*	*70%*	*30%*	*Col-lected*	*Collected but not reported.*
(Mich. Home & Train School)					
Laurel, Md.	180.00	126.00	54.00		
Monticello, Wis.	68.00	47.60	20.40		
Mt. Horeb, Wis.	68.00	47.60	20.40	68.00	68.00
Mt. Morris, N. Y.	188.00	131.60	56.40	188.00	188.00
Onandaga County, N. Y.	25.00	17.50	7.50		
Phila. General Hospital	130.00	91.00	39.00		
Pitman, N. J.	235.00	164.50	70.50		
Plainfield, Conn.	130.00	91.00	39.00		
(Lawton Mills Corp.)					
Providence, R. I.	25.00	17.50	7.50	25.00	25.00
(Hope Company)					
Ripon, Wis.	180.00	126.00	54.00		
Sanatorium, Md.	80.00	56.00	24.00	80.00	80.00
(Maryland Tuberculosis Sanitorium)					
San Diego County, Calif.	20.00	14.00	6.00	20.00	
(Tubercular Hosp.)					
Waukesha, Wis.	462.00	323.40	138.60		
Waupum, Wis.	105.00	73.50	31.50		
Whitewater, Wis.	105.00	73.50	31.50	105.00	105.00
	35,152.00	24,606.40	10,545.60	7,669.00	3,109.00
Am't collected	7,669.00				
" due	27,483.00				

The following royalties were collected by the Flush Tank Company and duly reported on Febrûary 18, 1918:

Town		*Credits*
Tampa	Fla.	2,500.00
Boro of Lodi	N. J.	400.00
Auburn	Calif.	110.00
Los Angeles	Calif.	30.00
Eloise	Michigan	205.00
Greenville	Pa.	315.00
Stuart	Iowa	105.00
Salem	Illinois	50.00
Oskaloosa	Iowa	260.00
El Centro	California	258.00
Cluiro	"	105.00
Pine Camp, Richmond	Virginia	10.00

Town			*Credits*
Los Angeles	California	60.00	
Coatesville	Pa.	105.00	
Braeside	Illinois	10.00	
Coatesville, Pa		105.00	
Ball & Socket Mfg. Co. (West Chesire)	Connecticut	25.00	
Burro Mt. Copper Co. (Tyrone)	N. Mexico	100.00	
Bedford	Iowa	105.00	
Lexington	N. Carolina	80.00	
High Point	"	475.00	
Sedan	Kansas	90.00	
Coatesville	Pa.	65.00	
Loretto	"	65.00	
Interest—1st Trust & Savings Bank		57.78	$5,690.78
Attorney's fees, traveling expenses, Taxes, Personal Tax, etc.		532.89	
Government License		500.00	
30% Commission		1,707.23	2,740.12
			$2,950.66

PLAINTIFF'S EXHIBIT No. 166.

Report No. 1106.

This report covers royalties accruing under a contract between Karl Imhoff and the Pacific Flush Tank Co. This contract was superceded by Federal Trade Commission license No. 7, see Report No. 27059.

The contract referred to in this report was reported and demanded under Report No. 47189. This contract was conveyed by the Alien Property Custodian to the Chemical Foundation, Inc. under assignment dated Feb. 26, 1920.

The patents covered by this contract have been reported and demanded under Report No. 37349 and Report No. 38214.

These patents have been conveyed by the Alien

Property Custodian to The Chemical Foundation, Inc. under assignment dated Apr. 10, 1919.

(Sgd.) J. R. ZIMMERMAN,
Patent Section.

PLAINTIFF'S EXHIBIT No. 167.

Trust G-963
Report 15858

August 6, 1919.

Mr. F. C. Youmans,
381 Montford Avenue,
Asheville, N. C.

Dear Sir:

Referring to your letter of July 30, 1919, in which you advise that you built a septic tank covered by the patents belonging to Dr. Carl Imhoff, of 24 Kronprinzenstrasse-Ezzen, Ruhr, Germany, and desire to be advised concerning the payment of royalties, you will please be informed that under the license granted by the Federal Trade Commission to the Pacific Flush Tank Company, 4241 Ravenswood Avenue, Chicago, Ill., the Pacific Flush Tank Company is entitled to receive in the first instance all royalties accruing for the use of the Imhoff patents.

The Imhoff patents have been seized by the Alien Property Custodian, and conveyed to the Chemical Foundation, Inc., subject to the license issued by the Federal Trade Commission to the Pacific Flush Tank Company. All royalties which have accumulated prior to the date of assignment from the Alien Property Custodian to the Chemical Foundation, are to be paid by the Pacific Flush Tank Company, to this office. All royalties accumulated subsequent thereto are to be paid by the Pacific Flush Tank Company direct to the Foundation. The royalties are to be paid by you direct to the Pacific Flush Tank Company, who in turn will account therefor, either to the Alien Property Custodian or to the Chemical Foundation.

You will please advise this office immediately of the amount of royalties in your custody and the period during which they accrued, and such other and further facts as will clearly present the matter.

Very truly yours,

DIVISION OF PATENTS,
By (Sgd.) ROBERT C. GOLDSTEIN,
Chief of Division.

RCG:SMB.

PLAINTIFF'S EXHIBIT No. 168.

A meeting of the Board of Directors was held at the office of The Corporation, No. 81 Fulton Street, New York City, on the 2nd day of August, 1921.

Present:

Messrs. FRANCIS P. GARVAN,
GEORGE J. CORBETT.

Mr. George J. Corbett moved for a reconsideration of the motion and resolution passed by the Board of Directors at the meeting of May 14th, 1919, adopting a certain form of license agreement, which motion was seconded and unanimously carried. Mr. Corbett thereupon stated that the experiences of the past months indicated that the license agreement heretofore used should be revised and he submitted a new form of license agreement.

On motion duly made, seconded and unanimously carried, the new form of license agreement, copy of which was ordered filed herewith, was adopted for use by The Corporation, subject to the necessary modifications to meet requirements of particular cases, and it was unanimously

Resolved that the President, or the Vice-President in the absence of the President, be and they hereby are authorized, without further action of the Board of Directors, to execute and issue, in the name and on behalf of The Corporation, license agreements in proper cases in said form or in such other form as the Board of Directors may hereafter adopt; and the Secretary be and he hereby is authorized and directed to attach the corporate seal and attest the same by his signature, to any license agreements executed by the President or Vice President as aforesaid.

Mr. George J. Corbett then reported that he had been negotiating with the Pacific Flush Tank Company concerning the exploitation and commercialization of the so-called Imhoff Process Sewage Tank patents. The Pacific Flush Tank Company acted as United States agent for the inventor Karl Imhoff, prior to the war. The patents had been acquired by the Corporation. The Pacific Flush Tank Company continued after the war to operate under Federal Trade Commission license. Said Company is willing to surrender its Federal Trade Commission license and accept an appointment from The Corporation as agent under an agreement which Mr. Corbett then read.

On motion duly made, seconded and unanimously carried, it was decided to close with the Pacific Flush Tank Company and the President was authorized to execute this contract in the name and on behalf of The Corporation, and the Secretary authorized and directed to attach the corporate seal and attest the same, and the Treasurer authorized and directed upon the execution of the agreement, to pay to the Pacific Flush Tank Company, out of the funds of The Corporation, the sum of Two thousand seventy and 50/100 ($2,070.50) dollars as provided in the agreement.

Mr. George J. Corbett stated that the books of The Corporation had been audited for the quarter ending June 30th, 1921, by Messrs. Fedde and Pasley, certified accountants, who submitted the following balance sheet:

BALANCE SHEET

As at June 30, 1921.

Assets		
Patents, Trade Marks and Formulae		271850.00
Furniture and Fixtures—New York and Washington	22833.25	
Less: Reserve for Depreciation	1732.42	21100.83
Cash:		
Central Union Trust Co. on Deposit	36185.90	
Chase National Bank, on Deposit	2714.04	
Irving National Bank, on Deposit	20000.00	
Petty Funds	610.59	59510.53
Initial License Fees Accrued		500.00
Deferred Charges, Prepaid Insurance		59.01
Organization Expense		11574.84
		364595.21
Liabilities		
Capital Stock		
Preferred, Authorized $400,000 Issued	399700.00	

Common, Authorized $100,000 Issued	29200.00	
	428900.00	
Deduct: Deficit at June 30, 1921.	123465.50	305434.50
Deferred Credit—Royalties Received in advance		1875.00
Due Sundry Creditors for Literature, Legal and Miscellaneous Expenses, etc.		57285.71
		364595.21

On motion duly made, seconded and unanimously carried, this report was accepted and the complete report of the auditors, containing all the schedules supporting the above balance sheet, ordered kept on file.

There being no further business, the meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 168-A.

License No. ....

LICENSE

THE CHEMICAL FOUNDATION, INCORPORATED

To

....

Dated 19

Product

Patents

LICENSE.

AGREEMENT made this day of 19 , By and Between THE CHEMICAL FOUNDATION, INCORPORATED, a corporation organized under the laws of the State of Delaware (hereinafter called the LICENSOR) and

(hereinafter called the LICENSEE).

WHEREAS, the LICENSOR is the owner of, or has the right to grant licenses under certain letters patent of the United States enumerated in Schedule A hereto attached (hereinafter called the LICENSED PATENTS); and

WHEREAS, the LICENSEE has represented to the LICENSOR that

proof of which facts will be furnished at any time by the LICENSEE on the request of the LICENSOR; and

WHEREAS, the LICENSEE is desirous of obtaining a non-exclusive license under the LICENSED PATENTS upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the faithful performance of the covenants herein contained, IT IS DISTINCTLY UNDERSTOOD AND AGREED:

1. The LICENSOR hereby grants to the LICENSEE and the LICENSEE hereby accepts from the LICENSOR, upon the terms and conditions hereinafter specified, a non-exclusive and (except as hereinafter provided) non-assignable license to make, use and sell throughout

the United States, its territories and dependencies,

(hereinafter called the LICENSED PRODUCT) under the LICENSED PATENTS to the full end of the terms for which the LICENSED PATENTS are issued, unless sooner terminated as hereinafter provided.

2. The LICENSEE shall not and hereby covenants and agrees that the LICENSEE will not, without first having obtained the written permission of the LICENSOR import or cause to be imported into the United States, its territories or dependencies, any product which is covered by any of said patents enumerated and included in Schedule A hereto attached, or use or cause to be used or sell or offer for sale in the United States, its territories or dependencies any such product made outside of the United States, its territories or dependencies.

3. The LICENSOR agrees to furnish, so far as is reasonably possible, upon request of the LICENSEE, such engineering data, copies of drawings, formulae, or other information as it now has or may hereafter acquire with respect to the LICENSED PATENTS, for the assistance of the LICENSEE in making or using the inventions of the licensed patents, upon payment by the LICENSEE of the actual cost of furnishing such engineering data, copies of drawings, formulae, or other information, but the LICENSOR shall be in no way responsible or liable for inaccuracy or insufficiency of such data, drawings, formulae, or other information furnished hereunder. The LICENSOR and/or the LICENSEE shall not disclose confidential information which they have or may receive from each other. The LICENSOR shall upon the request of the LICENSEE in-

form the LICENSEE of all licenses granted by it to other LICENSEES under any of the patents enumerated in Schedule A.

4. The LICENSOR will at its own expense bring and diligently prosecute such suits for infringement of the LICENSED PATENTS, as may be reasonably necessary and proper in the opinion of its counsel to enforce said patents and prevent unlicensed competition by manufacture, use or sale in the United States, and will at its own expense defend any suit brought against the LICENSEE by any person claiming title to the LICENSED PATENTS or any of them and hold the LICENSEE harmless in such suits to the extent of the royalties paid by the LICENSEE under this license, but the filing of any claim or of any such suit shall not relieve the LICENSEE from the regular and timely payments of royalties as hereinafter provided during the pendency of such claim or suit.

5. The LICENSEE shall pay to the LICENSOR, simultaneously with the execution and delivery of this license, a license issue fee of One Hundred ($100.00) Dollars for each of the patents enumerated and included in Schedule A hereto attached, the total license issue fee being Dollars, which said license issue fee is deemed earned immediately upon the execution and delivery of this license agreement and is in consideration of expenses incurred and of services, various and sundry, rendered by the LICENSOR, incidental to the preparation of this License.

6. It is understood and agreed that should the LICENSOR establish any more favorable rate of royalty for the manufacture, use and/or sale of the LICENSED PRODUCT than that charged herein the LICENSOR will give the LICENSEE the benefit of such more favorable rate from and after the date it is established

7. It is understood and agreed that should the LICENSOR hereafter establish any higher rate of royalty for the manufacture, use, and/or sale of the LICENSED PRODUCT than that charged herein said higher rate shall be substituted for and instead of and become effective as the royalty rate from and after thirty days from the date of notice to the LICENSEE by registered mail of said higher royalty rate, unless the LICENSEE shall, within five days after the receipt of such notice, serve notice on the LICENSOR by registered mail that the LICENSEE considers the increased royalty rate unfair and unreasonable. The LICENSEE shall further state in said notice what the LICENSEE considers a fair and reasonable royalty rate at the time and under the conditions prevailing in the trade generally and shall further state in said notice the trade conditions, reasons and circumstances on which the objections to the higher royalty rate are based; but the LICENSEE agrees, nevertheless to render royalty reports and pay royalties on the basis of the increased rate pending agreement or arbitration as hereinafter provided, subject to later adjustment in conformity with the rate ultimately established. If the LICENSEE shall so duly object to the higher royalty rate and the LICENSOR and LICENSEE shall be unable, within thirty days after receipt of LICENSEE's notice of objection, to agree upon a royalty rate satisfactory to both parties, then and in that event the question of a fair and reasonable royalty rate shall be settled by arbitration in the manner following:

Each party shall select and appoint one Arbitrator, the two so selected shall select a third, and the written decision of a majority of said Arbitrators as to the royalty rate shall be final, binding and conclusive and be effective as the royalty rate from the date the increased royalty rate would have been effective had objection thereto not been made by the Licensee. The Arbitrators shall be at liberty to examine the parties and their witnesses under oath, or otherwise, also their books, documents and papers, to the extent said Arbitrators may require. If either party fails (1) to select and appoint its Arbitrator and (2) give notice by registered mail of such appointment to the other party, within ten days after demand by registered mail so to do, such default shall constitute a waiver of all rights to arbitration and an acceptance of the royalty rate proposed by the party serving said demand.

It is understood and agreed, however, anything herein contained to the contrary notwithstanding, that during the pendency of the arbitration proceedings, the Licensee shall pay the increased royalties established by the Licensor, and the Licensee covenants and agrees to make such payments. Upon the termination of the arbitration and decision of the Arbitrators an adjustment shall be made with respect to all royalties paid on operations under this license subsequent to the date the royalty rate as fixed by the Arbitrators becomes effective, whereupon either (1) the Licensor shall repay to the Licensee the excess, if any, of the royalties paid by the Licensee pending the arbitration, over and above the royalty rate fixed by the Arbitrators, or (2) the Licensee shall pay to the Licensor the excess, if any, of the royalty rate fixed by the Arbitrators, over and above the royalties paid by the Licensee pending the arbitration. It is understood and agreed that the Licensor and the Licensee shall bear equally the costs and expenses of the arbitration.

8. For the rights and privileges granted under the license, the Licensee will pay to the Licensor, in the manner hereinafter provided, to the end of the terms of the Licensed Patents or until this license is surren-

dered, cancelled or terminated as hereinafter provided, a royalty of (subject to revision as hereinbefore provided)

9. The LICENSEE shall keep full, true and accurate books of account containing all particulars which may be necessary for the purpose of showing the amount payable to the LICENSOR by way of royalty as aforesaid, and all such other particulars as may be required by the LICENSOR from time to time of the LICENSEE's operations under this license, which books of account shall be kept at LICENSEE's place of business, and said books and the premises where such LICENSEE's business is carried on, insofar as may be necessary to determine the nature and extent of the LICENSEE's operations under this license, shall at all reasonable times within the period of this license and within one year from any surrender, cancellation or termination of this license, be open to the inspection of the LICENSOR or its representatives, who shall be at liberty to make copies of or extracts from said books of account.

10. The LICENSEE within thirty days after the first day of January, April, July and October of each year, shall furnish the LICENSOR a true and accurate report, giving such particulars of the business conducted by the LICENSEE during the preceding three months under this license as are pertinent to an accounting under this license and simultaneously with the making of each such report shall pay to the LICENSOR the royalty shown to be due thereby for the period covered by such report, and if the LICENSOR shall so require such reports shall be under oath and shall include any special relevant particulars or technical information

which the Licensor may require. The rendering of any report and/or the payment of royalty shown to be due thereby shall not, in any event bar, or in any way operate as an estoppel of, the Licensor's rights of examination, inspection and audit, as hereinbefore provided for, nor any rights or remedies of the Licensor to any additional royalties which may be found to be due, all of which rights and remedies, it is mutually understood and agreed by the parties hereto, shall survive and shall not be deemed to have been waived by any act or omission on the part of the Licensor.

11. The Licensee by accepting this license admits, as between itself and the Licensor, and not otherwise, the patentability, novelty and utility of the inventions of the Licensed Patents and the right, title and interest of the Licensor thereto.

12. The Licensee shall prominently mark the Licensed Product which is covered by any of the patents enumerated and included in Schedule A, hereto annexed, and when intended for use and/or sale in the United States, its territories and dependencies, with the words "Licensed by The Chemical Foundation, Incorporated, under the following United States Letters Patent" or other similar adaptable words to which the written consent and approval of the Licensor has first been obtained, followed by a list of the date or dates of issue of said patent or patents, and no product shall be considered duly licensed unless so marked, and when advertising the same in the United States, its territories and dependencies, the Licensee shall prominently state in such advertisement that said product is licensed by the Licensor.

13. The Licensee shall upon request of the Licensor furnish to the Licensor whenever practicable, sam-

ples of its product made under this license and shall, if required by the LICENSOR, indicate upon the labels carried by said product or, when that is not practicable, in another appropriate way, the grade, concentration and/or color, which qualities shall be expressed in terms of a scale of standards to be established by the LICENSOR. Where the LICENSED PRODUCT is one which may effect the public health or safety, the LICENSOR reserves the right to prescribe the limits of purity and strength of the product to be sold and to prescribe tests to which said product shall be subjected.

14. The LICENSEE shall not be liable for contributory infringement of patents owned by the LICENSOR by reason of the use of the LICENSED PRODUCTS by others, nor shall the LICENSEE be deemed to have violated any of the provisions of this license by such infringing use by others. Where Schedule A includes patents which may be infringed by the use of the LICENSED PRODUCTS, the LICENSEE may authorize its customers to use the said product under the LICENSED PATENTS, but the LICENSEE is not hereby permitted nor authorized to permit its customers to use the LICENSED PRODUCT in any way or for any purpose which may constitute an infringement of any patent or patents owned by the LICENSOR but not included in this license.

15. If the business of the LICENSEE shall become bankrupt or insolvent and/or placed in the hands of a Receiver, Assignee, or Trustee, whether by the voluntary act of the LICENSEE or otherwise, this license shall immediately terminate. Upon the death of the LICENSEE, if an individual, his license shall immediately terminate, but if the LICENSEE be a co-partnership, this license shall continue in force for the benefit of the remaining co-partner or co-partners.

16. If the Licensee shall default in rendering reports or in payment of royalties as herein provided it shall be lawful for the Licensor to summarily cancel this license by notice by registered mail to the Licensee, addressed to the Licensee's last known address.

17. This license may be cancelled and terminated by the Licensor for any cause or causes other than as hereinbefore specified in the following manner:

The Licensor shall give written notice to the Licensee of the proposed cancellation or termination, assigning in said notice the cause or causes for which it is proposed to cancel and terminate. If the Licensee shall so require by written notice to the Licensor within five days after the receipt of said notice of proposed cancellation or termination, the Trustees of The Chemical Foundation, Incorporated, under the Deed of Trust dated May 1, 1919, shall set a time, place and date for a hearing and give the Licensee written notice thereof. After hearing the Licensee or upon its failure to appear at the time, place and date set for such hearing, the Trustees shall make a determination in writing, a copy of which shall be furnished to the Licensee. If the Licensee shall have failed to duly require a hearing, or if the Trustees shall determine that the cause or causes assigned justify the cancellation or termination of this license, the Licensor may give the Licensee thirty days' notice of termination and cancellation and at the end of said thirty days, this license shall cease and terminate.

18. The Licensee may surrender or terminate this license at any time on thirty days' notice to the Licensor by completing and executing in detail the statement and affidavit annexed hereto, and returning the same with this license by registered mail to the Licensor.

19. Upon any surrender, cancellation or termination of this license, all unpaid royalties on operations under this license shall accrue and become immediately due and payable and royalties at the rate last paid or payable by the LICENSEE upon the LICENSED PRODUCT shall accrue and become immediately due and payable for all of the LICENSED PRODUCT on hand, or in the course of manufacture.

20. The surrender, cancellation or termination of this license shall in no way affect the liability of the LICENSEE for any sums of money accruing or becoming due or payable prior to the date such surrender, cancellation or termination becomes effective and shall be without prejudice to any rights of the LICENSOR as respects anything which may occur during the period that this license is in force or to any right of action or remedy of the LICENSOR for the recovery of any moneys then due hereunder.

21. The LICENSEE agrees to furnish promptly, upon the request of the LICENSOR, a complete statement, under oath, of any and all manufacture, use and/or sale by the LICENSEE prior to the date of this license, of any product covered by any of the LICENSED PATENTS, and to permit the LICENSOR or its representatives to inspect the LICENSEE's books, records and accounts insofar as may be necessary to ascertain whether there have been any infringing operations prior to the date of this license, and the extent thereof. It is understood and agreed that the granting of this license shall in no way effect or operate as a waiver of any rights or remedies of the LICENSOR, in law or in equity, against the LICENSEE, for infringing acts of the LICENSEE, prior to the date of this license.

22. Upon the written consent of the LICENSOR first had and obtained and endorsed on this license, but not otherwise, this license may be assigned by the LICENSEE as a part of a sale of the LICENSEE's entire business and upon the LICENSOR's approval and recognition of such assignment, the term "LICENSEE" where used in this license shall include the Assignee of the LICENSEE.

23. All written notices or permissions referred to herein shall be given by registered mail addressed to the last known address of the respective parties.

24. This agreement shall be interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and duly executed this license agreement the day and year first above written.

THE CHEMICAL FOUNDATION, INCORPORATED.
By ....
President.
Vice-President.

Attest:

....................*Secretary.*

....

....

....

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.:*

On this day of , in the year 19 , before me personally appeared, to me known, who, being by me duly sworn, did depose and say that he resides in ; that he is the of The Chemical Foundation, Incorporated, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

......................Notary Public.

STATE OF
COUNTY OF } *ss.:*

On this day of , in the year 19 , before me personally appeared, to me known, who being by me duly sworn, did depose and say that he resides in ; that he is the of , the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

...................Notary Public.

STATE OF
COUNTY OF } *ss.:*

On this day of , in the year 19 , before me personally appeared, to me known and known to me to be the person described in and who executed the foregoing instrument and duly acknowledged that he executed the same.

....................Notary Public.

SCHEDULE "A."

Patent No.	*Date of Issue.*	*Subject.*

STATEMENT AND AFFIDAVIT FOR SURRENDER OR TERMINATION OF LICENSE BY LICENSEE.

(Under Section 18 of annexed license.)

KNOW ALL MEN BY THESE PRESENTS, that

described in the annexed license and hereinafter known as the LICENSEE, does hereby surrender and terminate the annexed license in accordance with the terms thereof, and said LICENSEE represents, declares and covenants, as follows:

I. That said LICENSEE has not, under past or present business operations, made use of or availed itself of any privilege or license under or because of the annexed license to manufacture or cause to be manufactured for it, to use and/or sell, within the United States, its territories or dependencies, any of the LICENSED PRODUCT specified in said license, except as follows:

II. That said LICENSEE has heretofore paid to THE CHEMICAL FOUNDATION, INCORPORATED, all royalties due according to the provisions of the annexed license on all operations heretofore or at present being conducted by the LICENSEE under the annexed license, except the sum of $, check for which is tendered herewith.

III. That said LICENSEE does not intend now or hereafter to manufacture, use and/or sell the LICENSED PRODUCT specified in the annexed license or carry on any operations under the LICENSED PATENTS specified in the annexed license, or any of them, during the terms for which the LICENSED PATENTS are issued, without first obtaining the written permission of THE CHEMICAL FOUNDATION, INCORPORATED, its successors or assigns.

IN WITNESS WHEREOF, the LICENSEE has hereunto set hand and seal this day of , 19 .

....

....

....

— .

STATE OF
COUNTY OF } *ss.:*

On this day of , in the year 19 , before me personally appeared, to me known, who being by me duly sworn did depose and say that he resides in ; that he is the of the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

....

Notary Public.

STATE OF
COUNTY OF } *ss.:*

On this day of , in the year 19 , before me personally appeared, to me known and known to me to be the person described in and who executed the foregoing instrument and duly acknowledged that he executed the same.

....

Notary Public.

PLAINTIFF'S EXHIBIT No. 169.

A meeting of the Board of Directors was held at the office of The Corporation, No. 81 Fulton Street, New York City, on the 5th day of October, 1921.

Present: Messrs. FRANCIS P. GARVAN
GEORGE J. CORBETT

Mr. George J. Corbett reported that the contract with the Pacific Flush Tank Company appointing the latter agent for The Foundation in commercializing and exploiting the Imhoff Process Sewage Tank patents, had been duly executed by both parties and the sum of Two thousand seventy and 50/100 ($2,070.50) dollars provided for in said contract had been paid, as authorized by the Board of Directors.

He further reported that a form of license had been drawn up and he presented the proposed form which on motion duly made, seconded and unanimously carried, was adopted for use in licensing the inventions covered by these patents. Copy of this form was ordered filed herewith, and it was unanimously

Resolved that the President, or the Vice-President in the absence of the President, be and they hereby are authorized, without further action of the Board of Directors, to execute and issue, in the name and on behalf of The Corporation, licenses for the use of inventions embraced within the Imhoff Process Sewage Tank patents, in proper cases, in said form, or in such other form as the Board of Directors may hereafter adopt; and the Secretary be and he hereby is authorized and directed to attach the corporate seal and attest the same by his signature, to any license agreement executed by the President or Vice-President as aforesaid.

* * * * * *

There being no further business the meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 169-A.

License No...........

LICENSE

THE CHEMICAL FOUNDATION, INCORPORATED
(Represented by the Pacific Flush-Tank Co.)

To

....

LICENSE.

WHEREAS, THE CHEMICAL FOUNDATION, INCORPORATED, a corporation organized under the laws of the State of Delaware (hereinafter called the LICENSOR) is the owner of Letters Patent of the United States No. 924,664, No. 978,889, No. 1,056,548, No. 1,057,154, and No. 1,053,396, (hereinafter called the LICENSED PATENTS) and the inventions, processes and methods described therein, (commercially known and hereinafter called the IMHOFF PROCESS); and

WHEREAS,
(hereinafter called the LICENSEE) is desirous of obtaining a non-exclusive license to use and operate IMHOFF PROCESS sewage tanks under the LICENSED PATENTS, within the confines of , of a capacity collectively to serve a population of not exceeding ( ) persons, according to the Schedule of Royalty Fees, hereto attached;

Now, Therefore, in consideration of Dollars ($) royalty and interest thereon at the legal rate of ( ) per cent. per annum from the date of beginning of the use and operation of the Imhoff Process sewage tanks licensed hereunder to the date said royalty is paid, and of the statements hereinafter set forth in the Schedule of Statements, which statements the Licensee makes and warrants to be true by the acceptance of this license, the Licensor hereby grants unto the Licensee a non-exclusive license as aforesaid, to the full end of the terms for which said Licensed Patents are issued subject to the following conditions:

Condition A. The Licensee shall, before or immediately upon the issuance of this license, pay unto the Licensor or unto the licensor's authorized agent, the Pacific Flush-Tank Company, all unpaid royalties and accrued interest thereon.

Condition B. The Licensee by accepting this license, admits as between itself and the Licensor, and not otherwise, the patentability, novelty, and utility of the inventions, processes and methods of the Licensed Patents and the right, title and interest of the Licensor thereto.

Condition C. The Licensor or its representative shall have the right to inspect any sewage disposal tank operated by the Licensee for the purpose of determining whether the inventions, processes and methods covered by the Licensed Patents are employed in the use and operation thereof, and to determine the capacity thereof, and the Licensee shall prepare the tank for such inspection upon ten day's notice in writing addressed to the Executive Head of the Bureau or Department in charge of said operations.

SCHEDULE OF STATEMENTS.

Statement No. 1. Name of LICENSEE...............

Statement No. 2. Name of Department or Bureau in charge of sewage disposal operations.......
....

Statement No. 3. Name of head of Department or Bureau.................................

Statement No. 4. Population to be served (See Schedule of Royalty Fees hereto attached)...
....

Statement No. 5. Date of beginning of the use and operation of the tanks licensed hereunder ...
....

Statement No. 6. Number of tanks................

Statement No. 7. Location of tanks................

Statement No. 8. The LICENSEE does not use or operate any sewage disposal tanks other than those mentioned in statement numbered 5, 6, and 7 above, except as follows:

....
....
....
....

IN WITNESS WHEREOF, THE CHEMICAL FOUNDATION, INCORPORATED, has caused this license to be signed by its duly authorized officers and its corporate seal to be hereunto affixed, but the same not to be binding upon the LICENSOR unless countersigned by PACIFIC FLUSH-TANK COMPANY, the duly authorized representative of the LICENSOR, by said representative's President or Vice-President.

Dated, New York, , 19 .

THE CHEMICAL FOUNDATION, INCORPORATED.
By

Attest:

President
Vice-President.

Secretary.

Countersigned by PACIFIC FLUSH-TANK COMPANY this day of 19 .
By

President
Vice-President.

SCHEDULE OF IMHOFF TANK ROYALTY FEES
To Be Paid To
PACIFIC FLUSH-TANK COMPANY
Chicago New York
Representing the Chemical Foundation, Incorporated, New York

Pop.	*Fee* *	*Pop.*	*Fee*	*Pop.*	*Fee*
100	$ 10.00 min.	9,000	$ 395.00	90,000	2,350.00
200	20.00	10,000	430.00	100,000	2,550.00
300	30.00	12,500	510.00	125,000	3,000.00
400	40.00	15,000	590.00	150,000	3,450.00
500	50.00	17,500	670.00	175,000	3,850.00
600	58.00	20,000	750.00	200,000	4,300.00
750	65.00	22,500	800.00	250,000	5,200.00
1,000	80.00	25,000	850.00	300,000	6,000.00
1,500	105.00	30,000	1,000.00	350,000	6,800.00
2,000	130.00	35,000	1,150.00	400,000	7,600.00
2,500	155.00	40,000	1,300.00	450,000	8,300.00
3,000	180.00	45,000	1,400.00	500,000	9,000.00
3,500	200.00	50,000	1,500.00	600,000	10,150.00
4,000	220.00	55,000	1,650.00	700,000	11,100.00
4,500	235.00	60,000	1,750.00	800,000	12,000.00
5,000	255.00	65,000	1,850.00	900,000	12,600.00
6,000	290.00	70,000	2,000.00	1,000,000	13,000.00
7,000	325.00	75,000	2,100.00	1,500,000	14,000.00
8,000	360.00	80,000	2,200.00	2,000,000	15,000.00

PLAINTIFF'S EXHIBIT No. 170.

Copy

Memorandum of Agreement made this 12th day of August, 1921, between The Chemical Foundation, Inc., a corporation of the State of Delaware, 81 Fulton Street, New York City, and the Pacific Flush-Tank Co., a corporation of the State of Illinois, 4241-3 Ravenswood Avenue, Chicago, of which not less than three-fourths of the capital stock and the beneficial interest therein is owned by stockholders who are citizens of the United States.

Whereas, The Chemical Foundation, Inc., is now the owner of certain letters patent of the United States enumerated in schedule 1, hereto, which said patents were originally issued to Karl Imhoff, of Bradeney, near Esse-en-en-the Ruhr, Germany, for the so called Imhoff process and tanks used in the disposal of sewage; and

Whereas, the Pacific Flush-Tank Company was at one time the agent for Karl Imhoff in the United States for the exploitation, licensing and operation of the inventions of said patents; and

Whereas, on December 17th, 1917, the Federal Trade Commission, under authority of and in conformity with the Trading with the Enemy Act, and with the Executive Order of October 12, 1917, under patent license No. Seven licensed the Pacific Flush-Tank Company exclusively to make or cause to be made, to use or cause to be used, and carry on or cause to be carried on within the United States, the inventions, processes and methods described in the said letters patent, for the term of said patents, under certain royalties provided in said license, which said license is still subsisting; and

WHEREAS, The Chemical Foundation, Inc., thereafter under certain Executive Orders, and other proceedings, duly acquired title to the said letters patent and each thereof, and is now the owner of said letters patent; and

WHEREAS, it is desired by the parties hereto to constitute the Pacific Flush-Tank Company the agent or representative of The Chemical Foundation, Inc., the present owner of the said letters patent, for the exploitation, licensing and operation of the inventions, processes and methods described in said letters patent, upon substantially the same terms and conditions as those formerly in force between the Pacific Flush-Tank Company and the said Karl Imhoff;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Pacific Flush-Tank Company shall forthwith surrender its license from the Federal Trade Commission with respect to the said Imhoff patents, and this contract is conditioned upon the acceptance by the Federal Trade Commission of such surrender and the cancellation of such license.

2. Upon said surrender and cancellation The Chemical Foundation, Inc., constitutes and appoints the Pacific Flush-Tank Company its exclusive agent or representative as aforesaid, in connection with the exploitation, licensing and operation of the inventions, processes and methods described and claimed in said letters patent, for the remainder of the terms thereof. It is understood and agreed, however, that all appli-

cations to the Pacific Flush-Tank Company for licenses under the said Letters Patent enumerated in Schedule 1, are to be submitted to The Chemical Foundation, Incorporated, for its approval, that no licenses will be issued without such approval, and if the application is approved by The Chemical Foundation, Incorporated, the latter shall draw the license and transmit the same to the Pacific Flush-Tank Company to be issued. The Chemical Foundation, Inc., authorizes the Pacific Flush-Tank Company to collect for it royalty upon the basis shown in schedule II hereto, of which the Pacific Flush-Tank Company may retain forty (40) per cent. of all such royalties collected without suit, as compensation for its services; where suit is necessary no royalty is payable to the Pacific Flush-Tank Company. No suit is, however, to be started unless the Pacific Flush-Tank Company has exhausted all efforts to collect, and until the Pacific Flush-Tank Company reports to The Chemical Foundation, Inc., that the amounts are uncollectable, unless the Pacific Flush-Tank Company shall fail to make report as to collectibility of any given account upon request of The Chemical Foundation, Inc., in which event such account shall be deemed uncollectible after the expiration of two months from the due date thereof and suit may thereupon be entered forthwith.

3. Suits shall be brought only by The Chemical Foundation, Inc., and after the approval of its counsel. The Pacific Flush-Tank Company is to proceed in the matter of collections, duly notifying all interested parties, and all collections to be reported and remitted as hereinafter provided.

4. The Pacific Flush-Tank Company undertakes to use every effort and endeavor to collect for and to keep track of all Imhoff tank construction, and all use

by any one of any of the inventions described and claimed in the patents included in Schedule 1 hereto; but failure on the part of the Pacific Flush-Tank Company to collect in particular cases shall not be construed as a breach of this contract.

5. The Chemical Foundation, Inc., agrees forthwith to re-imburse the Pacific Flush-Tank Company for certain expenses heretofore incurred by it as follows:

Fees and expenses in connection with Federal Trade Commission license,	$1828.75
625 catalogues at 25 cents each,	156.25
24 half tone cuts, $3.00 each,	75.00
7 zinc cuts, 1.00 each,	10.50
	$2070.50

The Chemical Foundation, Inc., however, is not to be held liable or responsible for any cost or expense of advertising or additional literature without its express authorization in writing. In the event of such authorization The Chemical Foundation, Inc., will assume the expense of such advertising or additional literature.

6. The Pacific Flush-Tank Company shall keep full, true and accurate books of account containing such particulars as may be required by The Chemical Foundation, Inc., from time to time, of its operations under this contract, which books, in so far as it shall be necessary to ascertain the nature and extent of the Pacific Flush-Tank Company's operation hereunder, shall be open to the inspection of The Chemical Foundation, Inc., and its representatives, at all reasonable times; and all receipts from royalties shall be deposited by it in a separate bank account.

The Pacific Flush-Tank Company also agrees to permit The Chemical Foundation, Inc., and its representatives, at all reasonable times, to inspect said Pacific Flush-Tank Company's books, records, accounts and data concerning said Pacific Flush-Tank Company's past operations in connection with said patents, as agent of Karl Imhoff and as licensee of the Federal Trade Commission, and to furnish such data and information concerning such past operations as The Chemical Foundation, Inc., may from time to time require.

7. The Pacific Flush-Tank Company, within thirty (30) days after January first, April first, July first, and October first of each year, shall furnish The Chemical Foundation, Inc., a true and accurate report, under oath if required, giving such particulars of the business conducted by it during the preceding three months under this contract as may from time to time, be required by The Chemical Foundation, Inc., and as are pertinent to an accounting under this contract; and simultaneously with the making of each such report shall pay to The Chemical Foundation, Inc., the royalty shown to be due thereby for the period covered by such report, which said royalty, as herein provided, shall to the amount prescribed in Schedule II, minus forty (40) per cent. to be retained by the Pacific Flush-Tank Company as compensation for its services but the Pacific Flush-Tank Company shall not be responsible for or obligated to pay to The Chemical Foundation, Inc., the share due The Chemical Foundation, Inc., being sixty (60) per cent. of the royalties collected by the Pacific Flush-Tank Company, except for such royalties as are hereafter collected and received by the Pacific Flush-Tank Company as hereinbefore provided in section numbered Two (2) of this agreement.

8. The Chemical Foundation, Inc., will, at its own expense, bring and diligently prosecute such suits for infringement of the patents included in Schedule 1 as may be reasonably necessary and proper in the opinion of its counsel, to enforce said patents and to prevent unlicensed manufacture, use and sale in the United States, and will, at its own expense, defend any suit brought to question the validity, patentability, novelty, utility and title of The Chemical Foundation, Inc., if, in the opinion of its counsel, such suit should be defended.

9. The Chemical Foundation, Inc., will, at its own expense, defend any suit brought against the Pacific Flush-Tank Company by any person under the provisions of the "Trading with the Enemy Act" of October 6, 1917, and amendments thereto, or otherwise, by reason of the use, subsequent to the execution of this agreement, of the inventions, processes or methods described in said Licensed patents enumerated in Schedule 1 hereto and hold the Pacific Flush-Tank Company harmless in such suits to the extent of the royalties paid by the Pacific Flush-Tank Company under this agreement.

10. The filing of any suit or claim as specified herein, by or against The Chemical Foundation, Inc., or against the Pacific Flush-Tank Company, shall not relieve the Pacific Flush-Tank Company of its duties to use every effort and endeavor to collect royalties and to make regular and timely reports of operations and to make regular and timely payments of royalties due and payable hereunder all as hereinbefore provided, pending the outcome of such suit or claim.

11. If any suit is brought by The Chemical Foundation, Inc., to collect royalties in instances where the Pacific Flush-Tank Company has failed to collect, or

brought or defended by The Chemical Foundation, Inc., involving the validity of the patents enumerated in Schedule 1, the Pacific Flush-Tank Company shall cooperate with the Chemical Foundation, Inc., in the prosecution or defence of such suits and shall, at the request and expense of The Chemical Foundation, Inc., assist in obtaining information and evidence and procuring the attendance of necessary witnesses.

12. Upon failure of the Pacific Flush-Tank Corporation to render reports of its operations under this agreement or make payments as herein provided, of royalties collected, The Chemical Foundation, Inc., may terminate this contract by serving written notice upon the Pacific Flush-Tank Company; but the Pacific Flush-Tank Company shall not thereby be discharged from any liability to The Chemical Foundation, Inc., for any royalties due or to become due by reason of anything that may occur during the time that this contract is in force, and such termination shall be without prejudice to any right of action or remedy of The Chemical Foundation, Inc., for the recovery of any moneys due or to become due under this contract.

13. This contract may be assigned by the Pacific Flush-Tank Company as a part of a sale of its entire business, but the Pacific Flush-Tank Company shall give The Chemical Foundation, Inc., immediate notice of such sale.

14. All written notices of terminations referred to herein shall be given by registered mail addressed to the last known address of the respective parties.

15. This agreement shall be interpreted in accordance with the laws of the State of New York.

In Witness Whereof the parties hereto have caused their respective corporate seals to be hereunto affixed and duly attested, and these presents to be signed by their duly authorized officers the day and year first above written.

THE CHEMICAL FOUNDATION, Inc.,
By
Francis P. Garvan.

(Corporate Seal)

Attest:
Geo. J. Corbett,
Secretary.

PACIFIC FLUSH-TANK COMPANY,
By:
E. L. Walcott.

(Corporate Seal)

Attest:
L. E. Rein,
Secretary.

(Note.—An acknowledgement, dated August 12, 1921, by Corbett in statutory form is attached to the agreement; as is also one by L. E. Rein, dated August 23, 1921. Schedule I attached to the agreement is a list of the Imhoff patents; and Schedule II is a tabulation of fees to be charged licensees, based upon population of cities and ranging from $10 for a city of 100 inhabitants to $15,000 for cities of 2,000,000.)

PLAINTIFF'S EXHIBIT No. 170½.

SEYMOUR AND SEYMOUR
Corporation and Patent Law
Equitable Building
New York

December 27, 1918.

The Washington Sales Committee,
C/o Alien Property Custodian,
6th & P Sts.,
Washington, D. C.

Sirs:

Subject: Sale of Letters Patent No. 1191480 and 1216612 and Patent Application Serial No. 804744 to Otto Schmidt Assignor to Badische Anilin and Soda Fabrik.

In this matter, Mr. Goldstein made the suggestion that I should submit to you the following considerations, which may affect your action with reference to the above matter.

I represent E. C. Klipstein & Sons Company, to whom in August last the Federal Trade Commission granted a license under the above mentioned patent which was intended to be of scope broad enough to include the manufacture and sale of a product covered by the above specified pending application

The form of the license so far as now material is enclosed herewith.

The subject which I have in mind relates to the power of Badische Anilin and Soda Fabrik, the enemy owners of these patents, to defeat the action of the Alien Property Custodian and the probability of its having already exercised that power.

It is well known that the Badische concern is astute, alert, well-informed, advised by able counsel and a persistent litigant and owner of many United States Patents and familiar with patent law and procedure.

There appears to be no provision in the "trading with the Enemy Act," which precludes an assignment of Letters Patent by an enemy owner to a neutral or to an ally or to a United States citizen resident in a foreign country. It is only an assignment to "any person in the United States" which is made unlawful. (Section 3 (a))

Even if such an assignment has not already been made, nevertheless, under the fourth paragraph of the amendment of November 4, 1918, a claim filed by such an assignee between the time of the seizure and the time of the sale would probably attach to the patent and put a cloud upon the title thereafter conveyed by the Alien Property Custodian, or, perhaps, an injunction might issue to prevent the conveyance. The advertisement of these patents would probably stimulate such an assignment.

The seizure is made by the Alien Property Custodian, subject to the rights under the aforesaid license granted by the Federal Trade Commission.

The invention has not been practiced in this country, or, so far as known, in any country, except by the licensee under the Federal Trade Commission License, and it is as yet too early to know the commercial value of the invention, or even to reach final conclusions as to the wearing property of leather in the tanning of which the process has been used, or the adaptibility of the process in a large way to tanning purposes, and a purchase at public sale of these patents and this application will be highly speculative.

As an alternative to a public sale, it is suggested that there be considered a private sale to the licensee and that the consideration for that sale be the royalty already determined to be fair by the Federal Trade

Commission, with such provision as may be just to secure its payment. Such a sale would serve the public welfare, protect the purchaser against prior assignment of patent to a neutral, eliminate the speculative feature of the transaction and furnish such protection as is possible to the investment of the licensee in establishing a new industry now beneficial and minimize the injury which would result if there should develop a prior assignment by the enemy owner to a neutral, thereby defeating the sale by the Alien Property Custodian.

By executive order of December 3, 1918, the President vests in the Alien Property Custodian the executive administration of the provisions of Section 7 (c) of the "trading with the Enemy Act," but by the last paragraph of that executive order provides that nothing in the order shall nullify or impair any license heretofore granted by the Federal Trade Commission.

The action now being taken by the Alien Property Custodian is pursuant to this executive order, and the sale, if made, should be subject to the license already granted by the Federal Trade Commission.

An opportunity to appear before your Committee with reference to the matters herein referred to is solicited.

Respectfully submitted,
(Sgd.) FRED. K. SEYMOUR.

(Enc.)

* * * * * * * *
* Alien Property Custodian *
* Received Dec 28 1918 *
* Noted ..... Date ..... *
* Ans'd ..... Date ..... *
* * * * * * * *

PLAINTIFF'S EXHIBIT No. 171.

Follow up Thursday next week.

December 31, 1918.

Fred K. Seymour,
Equitable Building,
New York City, N. Y.
Dear Sir:

In re: Sale of Letters Patent No. 1191480 and 1216612 and Patent Application Serial No. 804744 to Otto Schmidt Assignor to Badische Anilin and Soda Fabrik.

Your letter of December 27 addressed to the Washington Sales Committee has been referred to me as Counsel to that committee for reply. The arguments advanced in favor of a private sale of these patents are not sufficient to convince us that such action should be taken. This same argument would apply to practically every sale being made by this office, and if accepted would negative entirely the expressed declaration of Congress that sales made by the Alien Property Custodian should be at public sale, except where the reasons to the contrary are sufficient to justify the President in making an Executive Order to that effect.

We will, however, be glad to discuss with you at any time after this week the matter of sale of these patents.

Yours truly,

(Sgd.) SPIER WHITAKER,
Assistant General Counsel,
Counsel to Washington
Committee on Sales.

SW.LED

PLAINTIFF'S EXHIBIT No. 172.

Trust 734
Report 33251

RCG-F

JOSEPH J. HART
No. 1137 STERLING PLACE
Brooklyn, New York City

Feby. 5, 1919.

Hon. A. Mitchell Palmer,
Washington, D. C.

My dear Mitchell:

Referring to the four foreign owned patents—the subject of our last talk in Washington—Could they be put up for sale at an early date—If not incompatible with your regulations I trust this could be arranged with as little delay as may be.

Your Mr. Goldstein, I believe, is familiar with all details. Please advise me.

Very truly yours,

(Sgd.) JOSEPH J. HART,

Tanning
E. C. Klipstein
& Sons Co.

Room 933
Municipal Bldg.,
New York City.

* * * * * * * *

Executive Office
Received
Feb 7 1919
Referred to ....
Ans'd ..... Date .....

* * * * * * * *

PLAINTIFF'S EXHIBIT No. 173.

MEMORANDUM

February 20, 1919.
Re: Trust G-734
Report 33251

To Mr. A. Mitchell Palmer
From Mr. R. C. Goldstein
Division of Patents

This is to recall to your mind the three Patents and the Application for a Patent in which Messrs. E. C. Klipstein & Sons Company are interested as prospective purchasers.

You will recall that Mr. Frederick Seymour has called on you personally about this and also that Mr. Joseph J. Hart is interested, and has, I understand, called upon you in relation thereto.

All of the Patents, as well as the Application for a Patent, cover a tanning composition and processes involved in its production used in the initial stages in the tanning of hides and skins.

I am calling Mr. Whitaker's attention to this matter, as I understand he is the counsel for the Washington Sales Committee. I am also attaching my memorandum to you of December 23, 1918.

Please indicate your wishes.

PLAINTIFF'S EXHIBIT No. 174.

A. P. C. 198

ALIEN PROPERTY CUSTODIAN

MR. WAGNER

MEMORANDUM FROM THE CUSTODIAN

February 22, 1919.

To Washington Committee on Sales.

Please note attached report from Mr. Goldstein, Division of Patents. I wish you would arrange for sale of these patents at an early date.

(Sgd.) A. M. P.

PLAINTIFF'S EXHIBIT No. 175.

A. P. C. 198

ALIEN PROPERTY CUSTODIAN

MEMORANDUM FROM THE CUSTODIAN

March 3, 1919.

To Mr. Whitaker.

In re Klipstein & Sons Co.

If the Sales Committee believes that these patents belong to the class which ought to be conveyed to the Chemical Foundation Corporation, I shall offer no objection, but I was under the impression that they were patents which were being used in this country in the production of leather or some leather products and did not strictly come within the purview of the purpose of the Foundation.

If they are used at present in connection with an active going industry, it seems to me we ought to sell them in pursuance of our usual custom. I am inclined, therefore, without knowing near as much as he does, to disagree with Mr. Hoguet's opinion.

If there is still doubt on the subject, Mr. Garvan should be consulted.

(Sgd.) A. M. P.

PLAINTIFF'S EXHIBIT No. 176.

A. P. C. 197 ——

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets, N. W.
Washington, D. C.

RAMSAY HOGUET
149 Broadway
New York City

New York, March 10, 1919.

Mr. Spier Whitaker,
Office Alien Property Custodian,
Sixteenth & P Streets, N. W.,
Washington, D. C.

Re E. C. Klepstein & Sons Co.
Badische Anilin & Soda Fabrik

Dear Mr. Whitaker:

Referring to your letter of March 3rd and your memorandum to Mr. Palmer, I think it would be very inadvisable to convey these patents to any private individual and think they should be conveyed to The Chemical Foundation with the other patents in the class to which they relate.

Yours very truly,
(Sgd.) RAMSAY HOGUET.

RH:P

* * * * * * * * * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received Mar 11 1919 *
* Noted ....Date........ *
* Ans'd ....Date........ *
* * * * * * * * * * * * * * *

PLAINTIFF'S EXHIBIT No. 177.

General
Cable Address
CONMOVER
New York

E. Leitz File

E. LEITZ
Inc.
NEW YORK
Incorporated
Organized Under the Laws
of the State of New York
Manufacturers Wholesalers Importers and Exporters
in
Laboratory Apparatus Microscopical and
Bacteriological Supplies
30 East 18th Street
New York

In Reply Refer to AT:JS

May 20th, 1919.

Alien Property Custodian,
Division of Patents,
Washington, D. C.

Dear Sir:—

We understand that you have taken possession of patents held by citizens of enemy countries and that these patents are for sale.

We are interested in patent #998091 July 18, 1911, patentee: F. Hellige of Freiburgh, Breisgau, Germany, article: Color measuring device. Recently we have perfected a method for fusing glass and therefore are able to now manufacture the glass vessels which are part of the patent referred to.

If this patent is for sale, we desire to be familiarized with the method of how this patent can be purchased and eventually its price.

Hoping to hear favorably from you, we remain
Yours faithfully,
E. LEITZ, Inc.,
Per (Sgd.) A. Fraizer,
General Manager.

* * * * * * * * * * * * * * *
* Alien Property Custodian *
* Received May 21 1919 *
* Noted ....Dated........ *
* Ans'd R. C. G. Date 5/31/19 *
* * * * * * * * * * * * * * *

PLAINTIFF'S EXHIBIT No. 178.

E. Leitz File

Cable Address E. Leitz
Conmover Inc.
New York New York
Incorporated
Organized Under the Laws
of the State of New York
Manufacturers Wholesalers Importers and Exporters
in
Laboratory Apparatus Microscopical and
Bacteriolgical Supplies
30 East 18th Street
New York

In Reply Refer to AT:JS General

May 29th, 1919.

Alien Property Custodian,
Division of Patents,
Washington, D. C.

Dear Sir:—

We respectfully confirm our letter of the 20th instant to which we have not received your answer as yet. We deem it advisable to enclose herewith copy of same, hoping that your reply will be forthcoming at an early date.

Thanking you in advance, we remain

Yours faithfully,
E. LEITZ, Inc.,
Per (Sgd.) A. Fraizer,
General Manager.

Enclosure (1)

* * * * * * * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received May 31, 1919 *
* Noted R. C. G. June 2, 1919. *
* Ans'd ....Date........ *
* * * * * * * * * * * * *

PLAINTIFF'S EXHIBIT No. 179.

Your reference
AT JS

E. Leitz File

May 31, 1919.

General
E. Leitz, Inc.
30 East 18th Street,
New York, N. Y.

Gentlemen:

It is desired to acknowledge your letter of May 20, 1919, in which you state that you desire to purchase patent No. 998091, dated July 18, 1911, issued to F. Hellige, of Freonirgh, Breisgau, Germany, covering "Color Measuring Device."

This matter is now receiving our attention and you will be further advised.

Very truly yours,
DIVISION OF PATENTS.
By (Sgd.) Robert C. Goldstein,
Chief of Division.

RCG:SMB

PLAINTIFF'S EXHIBIT No. 180.

Ramsay Hoguet General File

General

May 31, 1919.

Mr. Ramsay Hoguet, Esquire,
149 Broadway,
New York, N. Y.

Dear Mr. Hoguet:

We have received a letter from E. Leitz, Inc., of New York, dated May 20, 1919, in which they advise that they are interested in patent No. 998091 dated July 18, 1911, issued to F. Hellige of Freiburgh, Breisgau, Germany, covering "COLOR MEASURING DEVICE."

It occurs to us that you might be interested in this matter on behalf of the Chemical Foundation, Inc.

Please advise.

Very truly yours,
DIVISION OF PATENTS.
By (Sgd.) ROBERT C. GOLDSTEIN,
Chief of Division.

RCG:SMB

PLAINTIFF'S EXHIBIT No. 181.

General File No. 736

COPY.

EMERY, VARNEY, BLAIR & HOGUET,
140 Broadway,
New York.

April 22, 1919.

File G O—736

Arabol Manufacturing Company,
100 William Street, New York.

Dear Sirs:

The interest of the enemy in a certain contract between Dr. Frederick Supf and Arabol Manufacturing Company, including the right to receive future royalties, has been seized by the Alien Property Custodian and sold to the Chemical Foundation, Inc. The Chemical Foundation thus becomes entitled to receive all future royalties under such agreement and payments accruing from and after April 10, 1919, the date of the conveyance to The Chemical Foundation, Inc., should not be made to the Alien Property Custodian as heretofore, but to his assignee, The Chemical Foundation, Inc. These payments may be made to Mr. George J. Corbett, Treasurer, 61 Broadway, New York.

The terms of your license are unaffected by this transfer and you will continue to exercise the same privileges and be subject to the same liabilities as heretofore. Should you desire any confirmation of this letter, you may obtain it by addressing the Division of Patents, Alien Property Custodian, Washington, D. C.

Yours very truly,

(Sgd.) RAMSAY HOGUET.

RH:P

* * * * * * * * *

* ALIEN PROPERTY CUSTODIAN *
* Received Apr 25 1919 *
* Noted...... Date...... *
* Ans'd...... Date...... *

* * * * * * * * *

PLAINTIFF'S EXHIBIT No. 182.

General File No. 736

Cable Address: "Arabol New York."
L. M. Weingärtner, President.
A. F. Voigt, Vice-President.
F. Drittler, Treasurer.
F. W. Zeimer, Secretary.

THE ARABOL MANUFACTURING CO.,
100 WILLIAM STREET.

New York, April 24, 1919.

General File G O 736

Alien Property Custodian,
Division of Patents,
16th & P Sts., N. W.,
Washington, D. C.

Gentlemen:

We today received a letter of which the enclosed is a copy.

The above letter was the first intimation that either our Company or anybody connected therewith had of the sale or intention to sell the royalty contract mentioned in the enclosed note; if notice of intention to sell had been sent to us we may have been interested in submitting an offer for an assignment of such contract.

In view of the foregoing will you please send to us, at your early convenience, all details regarding the above sale and a duplicate of the documents issued thereon and such other facts and circumstances connected with such above mentioned sale as may be pertinent, and at the same time will you please advise us whether you concur in the requests made in the enclose letter.

Please acknowledge receipt hereof.

Yours truly,

(Sgd.) THE ARABOL MFG. CO.,
A. F. Voigt,
V. P.

AFV:AB

* * * * * * * * * * *
* Alien Property Custodian *
* Received Apr 25 1919 *
* Noted...... Date...... *
* Ans'd R. H. 6/6/19 *
* * * * * * * * * * *

PLAINTIFF'S EXHIBIT No. 183.

General File No. 736
May 6, 1919.

General File G O—736

The Arabol Manufacturing Company,
100 William Street,
New York, N. Y.

Gentlemen:

Answering your favor of April 24, 1919, it is desired to state that the Alien Property Custodian has sold to the Chemical Foundation, Incorporated, the enemy interest under the license agreement to which you refer, and you will, therefore, in the future, pay your royalties to the Chemical Foundation, Incorporated, instead of to the Alien Property Custodian.

Mr. Ramsay Hoguet's letter states the facts fuller. We suggest that you call upon him, at 149 Broadway, New York.

Very truly yours,
DIVISION OF PATENTS,
By (Sgd.) Robert C. Goldstein,
Chief of Division.

RH:SMB

PLAINTIFF'S EXHIBIT No. 184.

"A Powerful Antiseptic, Somewhat Stronger in This Respect Than Mercuric Chloride and Considerably Stronger Than Phenol." (Report Council on Pharm. and Chem., A. M. A., by Whom Chinosol Has Been Accepted.)

CHINSOL CO.
PARMELE PHARMACAL CO., SELLING AGENT
47-49 West Street
New York

Charles Roome Parmele, Prest.
F. G. Zinsser, Vice-Prest.
Charles R. Parmele, Jr., Treas.

Cable Address
"Arsenauro"
Telephone
Bowling Green 8880.

March 21, 1919.

Alien Property Custodian,
Division of Patents,
Washington,
D. C.

Dear Sir:

Your valued communication of March 19th
In re: Trust 36983, Report 37327
Enemy Leopold Ostermann.

We beg to state that we have no possible interest in Patent No. 1099761 issued June 9, 1914, entitled "Process for the formation of Diaryl Ether" and did not know of its existence.

In reference to Patent No. 906918 issued December 15, 1908, entitled "Process of making Neutral Exychinolin Salts," let us state most positively that that patent is the property of the Chinosol Company. It was assigned to us by its owner, Leopold Ostermann and the assignment was placed on file in the United States Patent Office May 6, 1911, in Liber A. 87, page 105 of transfer of patents. We hold this duly recorded assignment bearing the seal of the Patent Office of the United States of America and by no possible process of reasoning could it be claimed that this patent belongs to anyone except the Chinosol Company, of which the writer is the president.

As has previously been stated to your department, there is not now, nor has there at any time ever been, one single penny of alien money invested in the Chinosol Company, either directly or indirectly. It is owned entirely by Americans and always has been.

The procedure which you suggest is entirely out of order and we positively decline to accept service.

We will not convey, or transfer, or assign or deliver this patent to you—It is the property of the Chinosol Company duly recorded and we ask for your reply notifying us that you have made an error in this instance.

Under the circumstances, we respectfully return herein the document which you wished us to sign.

Yours very truly,
CHINOSOL COMPANY,
(Sgd.) CHAS ROOME PARMELE,
President.

* * * * * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received Mar 26 1919 *
* Noted...... Date...... *
* Ans'd R C G Date 3/26 *
* * * * * * * * * * *

PLAINTIFF'S EXHIBIT No. 185.

Division of Patents.

March 26, 1919.

IN RE: TRUST G-36983, REPORT 37327.

Chinosol Company,
47 West Street,
New York, N. Y.

Gentlemen:

Referring to your letter of March 21, 1919, in relation to patent No. 906,918 covering "Process of

Making Neutral Oxychinolin Salts," which you advise is as having been assigned to you and put of record in the Patent Office May 6, 1911, you will please be advised that this matter is receiving our attention and that you will be informed of our decision relative thereto in due course.

Very truly yours,
DIVISION OF PATENTS,
By (Sgd.) ROBERT C. GOLDSTEIN,
Chief of Division.

RCG:SD

PLAINTIFF'S EXHIBIT No. 186.

"A Powerful Antiseptic, Somewhat Stronger in This Respect Than Mercuric Chloride and Considerably Stronger Than Phenol." (Report Council on Pharm. and Chem., A. M. A., by Whom Chinosol Has Been Accepted.)

CHINSOL CO.,
PARMELE PHARMACAL CO., SELLING AGENT
47-49 West Street,
New York

Charles Roome Parmele, Prest.
F. G. Zinsser, Vice-Prest.
Charles R. Parmele, Jr., Treas.

Cable Address
"Arsenauro"
Telephone
Bowling Green [illegible]

Alien Property Custodian,
Division of Patents,
Washington,
D. C.

IN RE: TRUST 36983—REPORT 37327.

Gentlemen:

Referring again to your letter of March 26th, let us ask that you send to us such document as will completely clear our title to Patent No. 906918.

Your letter of March 26th said, "You will be informed of our decision relative thereto in due course."

No communication from you has reached us.

We have clearly stated our position in this matter and we hold official assignment of patent, said assignment having been placed on file in the United States Patent Office May 6, 1911, in Liber A, 87, page 105 of transfer of patents and it bears the official seal of the government.

By no possible procedure had you the authority to include this patent in the list of patents which were turned over to the Chemical Foundation. The officers of that organization have clearly seen that they have no right to the title to that patent and we have received from the Chemical Foundation a document duly signed by Mr. Douglas I. McKay, Vice President, dated August 25th, 1919, saying—

> "Complying with request contained in your favor of August 22nd, I beg to state that the Chemical Foundation has no claim to Letters Patent No. 906918."

A very serious injustice was done to us and a very considerable damage caused to our Company through the unwarranted inclusion of our patent among those which were turned over to the Chemical Foundation and we must now ask that you send us such document as will clear this matter up.

It is not unreasonable for us to ask that you give this matter your prompt attention, in view of the fact that nearly eight months have elapsed since your last communication reached us.

Yours truly,
CHINOSOL COMPANY,
(Sgd.) CHAS. ROOME PARMELE,
President.

* * * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received Oct 11 1919 *
Noted R. C. G. Date 10/13/19
* Ans'd ...... Date ...... *
* * * * * * * * *

PLAINTIFF'S EXHIBIT No. 187.

October 14, 1919.

In re: Trust 36983
Report 37327

Enemy: Leopold Ostermann.

Chinosol Company,
47-49 West Street,
New York, New York.

Gentlemen:

Replying to your letter received by this office October 11, 1919, in which you advise that Patent No. 906918 dated December 15, 1908, covering a process of making neutral oxychinolin salts, and which has been taken over by this office and conveyed to the Chemical Foundation, Incorporated, 81 Fulton Street, New York, New York, was assigned to you and that the assignment is on record in the Patent Office, as of May 6, 1911, in Liber A-67, page 106.

You will please be advised that we are writing to the Chemical Foundation, Inc., and asking them to take this matter up with you directly.

Very truly yours,

DIVISION OF PATENTS,
By (Sgd.) Robert C. Goldstein,
Chief of Division.

RCG:CFM

PLAINTIFF'S EXHIBIT No. 188.

"A Powerful Antiseptic, Somewhat Stronger in This Respect Than Mercuric Chloride and Considerably Stronger Than Phenol." (Report Council on Pharm. and Chem., A. M. A., by Whom Chinosol Has been Accepted.)

CHINOSOL CO.
Parmele Pharmacal Co., Selling Agent
47-49 West Street
NEW YORK

Charles Roome Parmele, Prest.
F. G. Zinsser, Vice-Prest.
Charles R. Parmerle, Jr., Treas.

Cable Address
"Arsenauro"
Telephone
Bowling Green 8880

October 17, 1919.

Alien Property Custodian,
Bureau of Trusts,
16th & P. Streets, N. W.,
Washington, D. C.

Special Attention Mr. Robert C. Goldstein,
Chief of Division.

Dear Sir:

Your letter dated October 14th, posted in Washington October 15th and addressed to us in the letter as 47 West Street, yet incorrectly addressed on the envelope as "29 Broad Street," reaches us October 17th.

You acknowledge receipt of our letter which reached you on October 11th, yet you have evidently not read it. We would ask that you carefully do so.

We particularly stated that we had received a letter from the Chemical Foundation and we quoted to you its contents verbatim. Your letter tells us that you have asked the Chemical Foundation, Incorporated, to take this matter up with us. They have absolutely nothing on earth to do with it. The point is that the Alien Property Custodian assumed the right, strictly contrary to our vested interests, to make disposition of a patent which belongs to us and what we ask for is a document from the Alien Property Custodian, stating that our patent stands in exactly the same position in which it stood before the Alien Property Custodian assumed the power to make disposition of it.

We will not again communicate with the Chemical Foundation, Incorporated, and it is entirely immaterial to us what the Chemical Foundation may or may not see fit to write to us. Our case is entirely with the Alien Property Custodian and as this matter has now hung fire in most unwarranted way for over seven months, we feel that we are not unduly insistent when we again ask that you shall send to us a document stating that the rights to process patent No. 906918 rest exactly where they did prior to the action which was taken by the Alien Property Custodian.

Mr. Hoguet, the patent attorney of the Chemical Foundation, stated to me four months ago that he realized that it was a mistake on the part of the Alien Property Custodian to have included our patent in the transfer to the Chemical Foundation and that he was going to Washington the next night and would request the Alien Property Custodian to write to us an official communication covering the situation.

We can see no real excuse for further delay on the part of the government in sending to us the communication which we are so clearly entitled to.

We hope for your very prompt reply.

Yours truly,
CHINOSOL COMPANY,
(Sgd.) Chas. Roome Parmele,
President.

ALIEN PROPERTY CUSTODIAN
Received Oct 20 1919
Noted R. C. G. Date Oct. 21, 1919
Ans'd ....Date..........

PLAINTIFF'S EXHIBIT No. 189.

October 21, 1919.

In Re: Trust 36983
Report 37327
Enemy: Leopold Ostermann.

Chinosol Company
47-49 West Street
New York, New York

Gentlemen:

With reference to your letter of October 17, 1919, it is desired to state that Patent No. 906,918 was demanded by this office, as belonging to Leopold Ostermann, subject to the rights, if any, of your Company. If, therefore, you have any substantial rights in this patent they have actually not been affected by such demand.

Should it appear upon investigation that in fact there existed at the time of the demand no enemy interest in this patent and if for any reason it should be desired to clear the record in the patent office so that the patent should stand in status quo as of the date previous to the demand, in that event there appears to be only one practical method of procedure and that is, for the Chemical Foundation, Inc., either to execute a deed to you in the nature of a reconveyance, or quit-claim, whichever may be preferred.

As the record in the patent office now stands, the patent has been demanded by the Alien Property Custodian and conveyed to the Chemical Foundation, Inc., subject to whatever rights you may have therein. It should readily appear to you that if the Alien Property Custodian should now execute a deed to you directly, in the nature of a reconveyance or quit-claim, he would then be in the position of conveying a patent to you, title to which is in the Foundation.

For these reasons the matter has been referred to the Foundation, with the request that there be an adjustment through it. A copy of this letter is being forwarded to the Foundation.

If you have any suggestions to offer, this office will be pleased to give them careful consideration.

Very truly yours,

DIVISION OF PATENTS,
By (Sgd.) Robert C. Goldstein,
Chief of Division.

RCG:CFM

PLAINTIFF'S EXHIBIT No. 190.

October 21, 1919.

In re Trust 36983
Report 37327
Enemy: Leopold Ostermann.

Ramsay Hoguet, Esq.,
129 Broadway,
New York, New York.

Dear Sir:

The attached copy of a letter to the Chinosol Co., which is self-explanatory, is referred to you for your attention.

The Chinosol Co. claims that it has been the record owner of Patent No. 906918 since May 6, 1911. They have advised us that they took up this matter with the Chemical Foundation, Inc., and that the Foundation has informed them in a letter of August 25, 1919, signed by Mr. Douglas I. McKay that the Chemical Foundation has no claim to this patent.

Their letter to us of October 17, 1919 does not make pleasant reading. It accuses us of the usual high crimes and misdemeanors. Will you not, therefore, give this matter your preferred consideration and communicate with the Chinosol Co., at the earliest possible moment.

Very truly yours,

DIVISION OF PATENTS,
By (Sgd.) Robert C. Goldstein,
Chief of Division.

RCG:CFM

PLAINTIFF'S EXHIBIT No. 191.

Extracts from Minutes of certain meetings of American Dyes Institute.

Note: This exhibit withdrawn as copies of the minutes of the different meetings of American Dyes Institute were subsequently offered and admitted in evidence.

PLAINTIFF'S EXHIBIT No. 192.

Statement of Lee C. Bradley, Esq., General Counsel, Alien Property Custodian, before the sub-committee of the Committee of Appropriations of the United States Senate, on October 21, 1918.

Note: Same as Exhibit "A" annexed to bill of complaint and not reprinted here. (See Record, Vol. I, page 75.)

PLAINTIFF'S EXHIBIT No. 194.

IN RE CHEMICAL FOUNDATION. STATEMENT OF MONEYS RECEIVED BY ALIEN PROPERTY CUSTODIAN ON ACCOUNT OF

Date Assigned to Chem. Fdn.	Page Complaint	Trust No.	Issued to	Date of Issue	Patent Numbers and Trade-Marks	Name of Patentee or
4/10/19	288	33738-9	General Ceramics Co., Inc.	Not shown.	936844-1124380	Oscar Zahn & Deutsche Ten-und
“	288	33738-9-40-43	“	“	1099451	“
“	284	33051-17541	The Metal Thermit Corp.	“	Not given	Badische Analin & Soda Fabrik
“	303	33741-2	General Ceramics Co., Inc.	“	881806-1151801	C. H. Borrmann
6/21/19	311	39866	New Process Gas Mantle Co.	“	1020255	Cerofirm-Gesellschaft G. M. B. H.
4/10/19	286	8876	F. H. Kindel	“	703940	F. H. Kindel Agent Coln-Musen
“	286	3816	Contract Process Company	“	Not given	Chemische Fabrik Rheina
“	289	28323	Reinschild Chemical Co.	“	896807-943163	Chemische Fabrik Helfenberg
2/26/20	339	3816	Stallmann & Co.	“	618167-8627981-TM's 27454-29836-29831	Chemische Fabrik Rhenania
4/10/19	302	23146	Cranby Mining & Smelting Co.	“	979349	Erzroest Gesellschaft M. B. H.
2/26/20	337	34378	Frieda Lolb	“	700056-751303-823-688-839396-975081-1057174	Gesellschaft fur Abwasserklarun
4/10/19	285	21180	Beckton Dickinson & Co.	“	823859	Friederich Grosche
2/26/20	340	963	Pacific Flush Tank Co.	“	924664-978889-1053396-1056548-1057154	Kare Imhoff
4/10/19	285	3362	Kneipp Malt Food Company	“	513252	Kathreiners Malzkaffel Fabriken
“	287	11269	Eastman Kodak Co.	“	1188376-1217027	Leon Lilienfeld
6/21/19	311	537	Merck & Co	“	Trade-Marks 32737-27388	Firm of E. Merck
2/26/20	338	204	National Carbon Co.	“	Not given	Franz Meiser
“	338	3722	Montanin Company	“	Trade-Mark 66726	Montana Company
“	339	12681	American Kitchen Prod. Co.	“	Not given	Carl W. Rademacher
4/10/19	285	17647	Stearns-Rogers Mfg. Co.	“	1078125	Reinische Dampfkessel & Maschi
“	287	2267	Lehn & Fink	“	Trade-Marks 53927-53938	Schulke & Mayr Aktiengesellsch
“	284	18678	Arabol Mfg. Co.	“	974448	Dr. Frederick Supf.
6/21/19	312	39200	Electric Boat Co.	“	868383-995113-1083903-1130785-1261987	Alfred Wilm & Heinrich Krauts
4/10/19	294	986	American Creosoting Co. of N. J.	“	12707-709799-1088864	Huelsberg & Cia
“	291	986	Atlantic Coast Line R. R. Co.	“	“ “ “	“
“	289	986	Atchison Topeka & Santa Fe	“	“ “ “	“
“	301	986	Ayer & Lord Tie Co.	“	“ “ “	“
“	298	986	Boston Elevated Ry. Co.	“	“ “ “	“
		986	“	“	“ “ “	“
“	290	986	Continental Tie & Lumber Co.	“	“ “ “	“
“	293	986	Joseph B. Card	“	“ “ “	“
“	292	986	Central Creosoting Co.	“	“ “ “	“
“	302	986	Compressed Wood Preserving Co.	“	“ “ “	“
“	299	986	Central of Georgia Ry. Co.	“	“ “ “	“
		986	“	“	“ “ “	“
“	297	986	Charlotte Harbor & Northern Ry.	“	“ “ “	“
“	295	986	El Paso & S. W. Co.	“	“ “ “	“
“	292	986	The Gulf Creosoting Co.	“	“ “ “	“
“	299	986	The Jennison Wright Co.	“	“ “ “	“
“	290	986	Kettle River Lumber Co.	“	“ “ “	“
“	294	986	Lembcke Von Bermuth & Co.	“	“ “ “	“
“	301	986	Michigan Wood Preserving Co.	“	“ “ “	“
“	300	986	Missouri Kansas & Tex. Ry. Co.	“	“ “ “	“
“	300	986	National Lumber & Creosot'g Co.	“	“ “ “	“
“	295	986	Ohio Wood Preserving Co.	“	“ “ “	“
“	299	986	Pittsburgh Wood Preserving Co.	“	“ “ “	“
“	298	986	Pennsylvania R. R. Co.	“	“ “ “	“
			“	“	“ “ “	“
“	297	986	Philadelphia & Reading Rwy. Co.	“	“ “ “	“
“	296	986	Pacific Creosoting Co.	“	“ “ “	“
“	291	986	Southern Wood Preserving Co.	“	“ “ “	“
“	301	986	St. Paul & Tacoma Lumber Co.	“	“ “ “	“
“	296	986	Southern Creosoting Co.	“	“ “ “	“
“	295	986	Santa Fe Tie & Lumb. Prsvg. Co.	“	“ “ “	“
“	290	986	St. Helena Creosoting Co.	“	“ “ “	“

OF THE FOLLOWING DESCRIBED CONTRACT RIGHTS ASSIGNED BY A. P. C. TO CHEMICAL FOUNDATION.

or Assignor	Royalties to Dec. 31, 1917	Royalties to June 30, 1918	Royalties to Dec. 31, 1918	Royalties to June 30, 1919	Royalties to Dec. 31, 1919	Royalties to June 30, 1920	Total Royalties	Remarks
-und Steinseng Werke								
brik		3,019.17	3,105.19	2,172.88			8,297.24	
B. H.								
usener-Bergs Athiewerein	125.00	375.00	125.00	238.89			863.89	
	1,029.05	40.74	51.30				1,121.09	
g			396.39				396.39	
	173.53	70.11	18.54	23.29	37.71	23.65	346.83	
H.								
rung M. B. H.	350.00						350.00	
		180.00		90.00		11.42	281.42	
	3,450.66						3,450.66	
ken	2,951.38	544.54	389.99	227.07			4,112.98	
	6,897.70	2,204.00	2,160.00	497.25			11,758.95	
		720.00				212.00	932.00	
		75.00	150.00	75.00			300.00	
		20,303.99	26,030.11	6,229.94	5,507.55	2,856.04	60,927.63	
schin Fab. Liberty Bonds	8,025.00						8,025.00	
llschaft	2,702.07	8,480.05	1,364.76				12,546.88	
	213.09		136.10	21.45			370.64	
rautschneider								
		1,579.26					1,579.26	
	1,943.81						1,943.81	
		13,472.84					13,472.84	
	320.86						320.86	
		24.29					24.29	
	1,464.99						1,464.99	
		84.29					84.29	
		55.81					55.81	
		626.10					626.10	
		650.12					650.12	
		10,352.72					10,352.72	
		2,252.74					2,252.74	
		26.45					26.45	
		870.80					870.80	
		55.38					55.38	
	2,196.63						2,196.63	
		1,646.51					1,646.51	
		65.49					65.49	
		3.36					3.36	
	773.21						773.21	
	254.51						254.51	
	32,871.49	67,778.76	33,927.38	9,575.77	5,545.26	3,103.11	152,801.77	

SUMMARY

Royalties Earned

To December 31, 1917
To June 30, 1918
To December 31, 1918
To June 30, 1919
To December 31, 1919
To June 30, 1920

CONTRACT RIGHTS ASSIGNED BY A. P. C. TO CHEMICAL FOUNDATION.

Royalties to June 30, 1918	Royalties to Dec. 31, 1918	Royalties to June 30, 1919	Royalties to Dec. 31, 1919	Royalties to June 30, 1920	Total Royalties	Remarks
3,019.17	3,105.19	2,172.88			8,297.24	
375.00	125.00	238.89			863.89	
40.74	51.30				1,121.09	
	396.39				396.39	
70.11	18.54	23.29	37.71	23.65	346.83	
					350.00	
180.00		90.00		11.42	281.42	
					3,450.66	
544.54	389.99	227.07			4,112.98	
2,204.00	2,160.00	497.25			11,758.95	
720.00				212.00	932.00	
75.00	150.00	75.00			300.00	
20,303.99	26,030.11	6,229.94	5,507.55	2,856.04	60,927.63	
					8,025.00	
8,480.05	1,364.76				12,546.88	
	136.10	21.45			370.64	
1,579.26					1,579.26	
					1,943.81	
13,472.84					13,472.84	
					320.86	
24.29					24.29	
					1,464.99	
84.29					84.29	
55.81					55.81	
626.10					626.10	
650.12					650.12	
10,352.72					10,352.72	
2,252.74					2,252.74	
26.45					26.45	
870.80					870.80	
55.38					55.38	
					2,196.63	
1,646.51					1,646.51	
65.49					65.49	
3.36					3.36	
					773.21	
					254.51	
67,778.76	33,927.38	9,575.77	5,545.26	3,103.11	152,801.77	

SUMMARY.

Royalties Earned		Total Royalties
To December 31, 1917	$32,871.49	
To June 30, 1918	67,778.76	
To December 31, 1918	33,927.38	
To June 30, 1919	9,575.77	
To December 31, 1919	5,545.26	
To June 30, 1920	3,103.11	$152,801.77

PLAINTIFF'S EXHIBIT No. 195.

Contract, In Re American Kitchens Products Company. Subsequently offered and admitted in evidence as Plaintiff's Exhibit No. 402.

PLAINTIFF'S EXHIBIT No. 196.

Statement to be compiled and offered in evidence as this exhibit not offered as data called for is embodied in statement offered and admitted in evidence as Plaintiff's Exhibit No. 400.

PLAINTIFF'S EXHIBIT No. 197.

MEMORANDUM FOR THE UNITED STATES DEPARTMENT OF JUSTICE.

August 17th, 1922.

We have verified all of the accounts containing patents, trade-marks, copyrights, contracts and serial numbers (application for letters patent) assigned to he Chemical Foundation, Incorporated and have found no royalties received in this office other than on the schedule furnished the Department of Justice showing royalties received on contract assignment trusts.

ALIEN PROPERTY CUSTODIAN
DIVISION OF TRUSTS
(Sgd.) H. W. Schmits
For Assistant Chief.

HWS/CM

* * * * * * * *

a/c Invest
DEPARTMENT OF JUSTICE
Oct 6 1922 A. M.
MAILS AND FILES DIVISION

* * * * * * * *

Trust No. 33738-9
Report No. 33872

Patents 936,844 and 1,124,380
Enemy Owner: Oskar Zahn & The Deutsche
Ten-und Steinseug Werke, A. G.
Payee: General Ceramics Company, Inc.
AMOUNT: NONE

Trust Nos. 33743; 33738-9-40
Report No. 33879.
Patent: 1,099,451
Enemy Owner: Oskar Zahn, doing business as
The Deutsche Ton-und Steinzeug-Werke, A. G.
Payee: General Ceramics Company, Inc.
AMOUNT: NONE

Trust No. 734
Report No. 33052 & 17541.
Patent: (None Given.)
Enemy Owner: Badische Aniline and Soda Fabrik
Payee: The Metal Thermit Corp.

Date Received	Period Covered	An
5/14/18	4/17 to 2/18	$3,0
8/26/18	3/18 to 7/18	1,8
2/25/19	8/18 to 9/18	1,2
5/1/19	10/18 to 3/19	2,1
3/31/20	4/1/19 to 4/10/19	

Trust Nos. 33741-2
Report No. 33874
Patents: 881,806—1,151,801
Enemy Owner: C. H. Borrmann
Payee: The General Ceramics Co.
AMOUNT: NONE

Trust No. 39866
Report No. 40335
Patent: 1,020,255
Enemy Owner: Cerofirm-Gesellschaft, G. M. B. H.
Payee: Harry Polasky & O. B. Eisendrath, co-partners
trading as New Process Gas Mantle Company.
AMOUNT: NONE

Trust No. 8876
Report No. 9772

Patent: 703,940
Enemy Owner: F. H. Kindel, Agent for
Coln-Musener-Berwegs Ahtienverein

Date Received	Period Covered	Amount
2/11/18	7/17 to 9/17	$ 125.00
4/17/18	10/17 to 3/18	250.00
8/12/18	4/18 to 6/18	125.00
10/30/18	7/18 to 9/18	125.00
10/20/21	10/18 to 4/10/19	238.89

Trust No. 3816
Report Nos. 2582 & 705
Patent: (Not Given.)
Enemy Owner: Chemische Fabrik Rheina
Payee: The Contract Process Company

Date Received	Period Covered	Amount
3/21/18	1/1/16 to 12/31/17	$1,029.05
5/10/18	1/1/18 to 3/31/18	18.36
8/5/18	4/1/18 to 6/30/18	22.38
10/17/18	7/1/18 to 8/20/18	51.30

Trust No. 28323
Report No. 29355
Patents: 896,807—943,163
Enemy Owner: Chemische Fabrik Helfenberg
Payee: Reinschild Chemical Company

Date Received	Period Covered	Amount
11/25/18	Up to 8/15/18	$ 396.39

Trust No. 3816
Report No. 2582
Patents: 618,167 & 8,627,981.
Trade Marks: 27454 "Nosophen"; 29831 "Endoxin";
29836 "Antinosen."
Enemy Owner: Chemische Fabrik Rhenania
Payee: Stallman Company

Date Received	Period Covered	Amount
2/14/18	7/1/15 to 6/30/17	$ 173.53
5/23/18	7/1/17 to 3/31/18	51.05
10/25/18	4/1/18 to 6/30/18	19.06
10/3/18	7/1/18 to 9/30/18	10.16
1/3/19	10/1/18 to 12/31/18	8.38
4/4/19	1/1/19 to 3/31/19	8.80

Date Received	Period Covered	Amount
7/2/19	4/1/19 to 6/30/19	$14.49
10/7/19	7/1/19 to 9/30/19	22.49
2/3/20	10/1/19 to 12/31/19	15.22
4/3/20	1/1/20 to 3/31/20	10.24
7/3/20	4/1/20 to 6/30/20	13.41

Trust No. 23146
Report No. 38862
Patent: 979349
Enemy Owner: Erzroest Gesellschaft, M. B. H.
Payee: Granby Mining & Smelting Company
AMOUNT: NONE

Trust No. 34378
Report No. 34450
Patents: 700056; 751303; 823688; 839396;
975081; 1057174; 1192569
Enemy Owner: Gesellschaft fur Abwasserklarung m. b. h.
Payee: Frieda Loeb.

Date Received	Period Covered	Amount
3/8/22	Full payment of royalties from time of Contracts Dated 12/1913 & 2/1914	$ 350.00

Trust No. 21180
Report No. 21536
Patent: 823859
Enemy Owner: Friederick Grosche
Payee: Becton Dickinson & Company

Date Received	Period Covered	Amount
8/16/18	5/17 to 5/18	$ 180.00
5/18/19	6/18 to 5/19	90.00
8/26/21	6/19 to 5/20	11.42

Trust No. 963
Report No. 1106
Patents: 924664; 978889; 1053396; 1056548;
1057154
Enemy Owner: Karl Imhoff
Payee: Pacific Flush Tank Company

Date Received	Period Covered	Amount
2/2/18	4/1/17 to 11/30/17	$3,450.66

Trust 3362
Report 2280
Patent: 513252
Enemy Owner: Kathreiners Malzkaffe Fabriken, M. B. H.
Payee: Kneipp Malt Food Company

Date Received	Period Covered	Amount
2/8/18	7/1/16 to 12/31/17	$2,951.38
8/31/18	1/1/18 to 6/30/18	544.54
1/27/19	7/1/18 to 12/31/18	389.99
5/24/19	1/1/19 to 4/10/19	227.07

Trust No. 11269
Report No. 11766
Patents: 1188376; 1217027
Enemy Owner: Leon Lilienfeld
Payee: Eastman Kodak Company

Date Received	Period Covered	Amount
3/14/18	6/16 to 1/18	$6,897.70
8/29/18 and 8/30/19	1/1/18 to 6/30/18	2,160.80 & 43.20
1/6/19	7/1/18 to 12/31/18	2,160.00
7/31/19	1/1/19 to 4/10/19	497.25

Trust No. 537
Report Nos. 40674 & 39129
Trademarks: 32737 & 27388
Enemy Owner: Firm of E. Merck
Payee: Merck & Co.
AMOUNT: NONE

Trust No. 204
Report No. 250
Patent: (Not Given.)
Enemy Owner: Franz Meiser
Payee: National Carbon Company

Date Received	Period Covered	Amount
4/13/20	No definite period.	$ 212.00
4/2/18	Bonus paid whenever furnace was installed.	720.00

Trust No. 3722
Report No. 3822 & 47184
Trademark: 66726
Enemy Owner: Montana Company
Payee: Montanin Company

Date Received	Period Covered	Amount
7/18/18	3/18 to 6/18	$ 75.00
9/9/18	7/18 to 9/18	75.00
12/7/18	10/18 to 12/18	75.00
3/14/19	1/19 to 3/19	75.00

Trust No. 12681
Report No. 47187
Patent: (Not Given.)
Enemy Owner: Carl W. Rademacher
Payee: American Kitchen Products Co.

Date Received	Period Covered	Amount
8/13/18	1/18 to 3/18	$3,455.93
8/13/18	4/18 to 6/18	1,848.06
10/21/18	7/18 to 9/18	3,353.19
2/27/19	10/18 to 12/18	5,618.30
4/26/19	1/19 to 3/19	4,059.87
7/16/19	4/19 to 6/19	2,170.07
10/22/19	7/19 to 9/19	3,052.05
2/28/20	10/19 to 12/19	2,455.50
5/3/20	1/20 to 3/20	2,856.04
4/6/18	1st payment on principal payment due in six parts	5,000.00
5/8/18	2nd payment	5,000.00
6/8/18	3rd payment	5,000.00
7/15/18	4th payment	5,000.00
8/16/18	5th payment	5,000.00
9/11/18	6th & last payment	7,058.62

Trust 17647
Report No. 18236
Patent: 1078125
Enemy Owner: Rheinische Dampfkessel &
Maschinenfabrik Buttner, G. M. B. H.
Payee: Stearns-Roger Manufacturing Co.

Date Received	Period Covered	Amount
5/31/18	Year 1917	2-$1,000.00 U.S.L.L.Bonds
5/21/18	do	6-$1,000.00 U.S.L.L.Bonds
5/21/18	do	25.00

rust No. 2267
eport No. 2277
ademarks: 53927 & 53938
emy Owner: Schulke & Mayr Aktiengesellschaft
yee: Lehn & Fink, Inc.

Date Received	Period Covered	Amount
2/8/18	1/1/17 to 3/31/17	$2,702.07
9/12/18	4/1/18 to 6/30/18	8,480.05
10/17/18	7/1/18 to 9/30/18	768.14
1/2/19	10/1/18 to 12/18	596.62

ust No. 18678
port No. 19059
tent: 974448
emy Owner: Dr. Frederick Supf
yee: Arabol Manufacturing Co.

Date Received	Period Covered	Amount
7/3/18	Years 1916 & 1917	$ 213.09
2/6/19	Year 1918	136.10
	Jan. to Apr. 10/19	21.45

ust No. 39200
port No. 39841
tents: 868383; 995113; 1083903;
1130785; 1261987
emy Owner: Alfred Wilm & Heinrich Krautschneider
yee: Electric Boat Company
MOUNT: NONE. Date Received

ust No. 986
port No. 26726
tents: 12,707; 709,799; 1,088,864.
emy Owner: Huelsberg & Cie

yee	Date Received	Period Covered	Amount
erican Creosoting Co. of N. J.	5/16/18	2/3/17—1/18/18	$1,579.26
lantic Coast Line R. R. Co.	*1/30/18	3/1/17—7/31/17	1,943.81
tchison, Topeka & Santa Fe,	NONE		
yer & Lord Tie Company	*3/14/18	1/1/17—1/16/18	13,472.84
ston Elevated Ry. Co.	*11/30/18	11/1/17—12/31/17	320.86
" " " "	2/28/18	1/1/18—1/17/18	24.29
ntinental Tie & Lumber Co.	NONE		
seph B. Card	NONE		
ntral Creosoting Co.	NONE		

Payee	**Date Received**	**Period Covered**	**Amount**
Compressed Wood Preserving Co.	NONE		
Central of Georgia Ry. Co.	*3/6/18	8/1/17—12/31/17	$1,464.99
" " " " "	3/6/18	1/1/18—1/17/18	84.29
Charlotte Harbor & Northern Railway Company	NONE		
El Paso & Southwestern Co.	NONE		
The Gulf Creosoting Co.,	4/25/18	Up to 2/27/18	55.81
The Jennison-Wright Co.,	5/6/18	10/1/17—1/17/18	626.10
The Kettle River Lumber Co.	8/8/18	1/1/17—1/17/18	650.12
Lembcke von Bermuth & Co.	*2/4/18	7/1/17—1/17/18	10,352.72
Michigan Wood Preserving Co.	NONE		
Missouri, Kansas & Texas Ry. Co.	NONE		
National Lumber & Creosoting Co.	4/30/18	4/30/17—1/16/18	2,252.74
Ohio Wood Preserving Co.	4/22/18	Up to 1/17/18	26.45
Pittsburgh Wood Preserving Co.	4/20/18	10/6/17—1/17/18	870.80
Pennsylvania Railroad Co.	1/9/19	1/1/18—1/17/18	55.38
" " "	*2/2/18	10/1/17—12/31/17	2,196.63
Philadelphia & Reading Railway Company	*2/2/18	9/1/17—1/16/18	1,646.51
Pacific Creosoting Company	*2/6/18	12/1/17—1/17/18	65.49
Southern Wood Preserving Co.	NONE		
St. Paul & Tacoma Lumber Co.	NONE		
Southern Creosoting Co.	2/18/18	12/11/17—1/17/18	3.36
Santa Fe Tie & Lumber Preserving Company	3/18/18	Up to 11/30/17	773.21
St. Helene Creosoting Company	4/25/18	5/26/16—10/10/17	254.51

* Approximate date.

PLAINTIFF'S EXHIBIT No. 198.

License	Issued to	Date of Issue	Patent Numb
1	The Dermatological Research Lab.	Nov. 26, 1917	1,116,398- 98
1A	" " "	"	1,081,592-1,08
1B	" " "	"	
1C	" " "	"	
1d	" " "	Mar. 4, 1918	13,848-Re-
2	Takamine Laboratory Inc.	Nov. 26, 1917	1,116,398- 98
2A	" "	"	1,081,592-1,08
2B	" "	"	
2C	" "	"	
2d	" "	Mar. 4, 1918	13,848-Re-
3	Farbwerke Hoechst Co.	Nov. 26, 1917	986,148
3a	" "	Mar. 4, 1918	13,848
4	" "	Dec. 17, 1917	812,554
5	Rector Chemical Company	Dec. 17, 1917	812,554
Out) 6			
7	Pacific Flush Tank Company	Dec. 17, 1917	924,664- 97
	" "	"	1,056,548-1,057
	" "	"	1,053,396-
8	Diarsenal Company, Inc.	Jan. 12, 1918	1,116,398-
8a	" "	"	986,148
8b	" "	"	1,081,592
8c	" "	"	1,081,897
8d	" "	Mar. 4, 1918	13,848-Re-
9	Abbott Laboratories	Jan. 10, 1918	812,554
10	Lembcke von Bernuth Co.	Jan. 17, 1918	709,799-Re-
			12,707-1,00
ut) 11			
12	Calco Chemical Co., Inc.	Feb. 18, 1918	812,554
13	French Battery & Carbon Co.	"	1,123,843
ut) 14			
15	Abbott Laboratories	Feb. 23, 1918	1,075,171
ut) 16			
ut) 17			
18	E. I. Dupont de Nemours & Co.	Jan. 21, 1918	1,063,173- 73
			1,055,701- 75
			1,150,863- 73
			787,859- 81
			796,393- 90
			1,003,268- 96
18a	" "	Jan. 21, 1918	711,377
19	" "	"	718,340
20	" "	"	931,598
21	" "	"	1,101,111-1,03
			1,042,356
22	Albert B. Moses	Apr. 8, 1918	1,139,031
23	F. L. Smidth & Company	Jul. 16, 1918	1,043,349
24	E. C. Klipstein & Sons Co.	Apr. 8, 1918	711,377- 79
ut) 25			
ut) 26			
27	Nat. Aniline & Chemical Co.	Jun. 28, 1918	682,523- 71
	" "		724,789- 73
			734,866- 73
28	" "	Jun. 28, 1918	892,897- 91
			965,170
29	" "	"	931,598
30	" "	"	714,882- 74
			770,177- 80
			858,064

Patent Numbers	Name of Patentee or Assignor	Royalties to December 31, 1917				Royalties to June 30, 1918				Royal
		Earned	Paid	Unpaid	Overpaid	Earned	Paid	Unpaid	Overpaid	Earned
1,116,398- 986,148	Farbwerke Vorm. Meister Lucius & Bruning	1,682.87	814.61	868.26		12,036.38	9,815.67	2,220.71		13,565.19
1,081,592-1,081,897	" "									
13,848-Re-issue	" "	√	√	√		√	√	√		√
1,116,398- 986,148	" "	39.35	39.35							6.73
1,081,592-1,081,897	" "									
13,848-Re-issue	" "	√	√	√		√	√	√		7.67
986,148	" "									265.00
13,848	" "	√	√	√		√	√	√		√
812,554	" "	274.05	274.05			3,538.83	3,538.83			
812,554	" "					663.36	663.36			4,412.31
924,664- 978,889	Karl Imhoff					3,192.00	3,192.00	12-17-17 to 7-31-18		4,622.80
1,056,548-1,057,154	"									
1,053,396-	"									
1,116,398-	Farbwerke Vorm. Meister Lucius & Bruning									
986,148	" "									
1,081,592	" "					4,077.00	4,077.00			7,837.95
1,081,897	" "									
13,848-Re-issue	" "					178.54	386.61		208.07	2,162.23
812,554										1,279.91
709,799-Re-issue										
12,707-1,008,864	Hulsberg & Cia					7,403.00	7,403.00	2-1 to 7-31		10,598.59
812,554	Farbwerke Vorm. Meister Lucius & Bruning									
1,123,843	Philip Burger	No sales or operation under this license.								
1,075,171	A. Thiele & Wichnau									22.54
1,063,173- 734,789-	Badische Aniline & Soda Fabrik									
1,055,701- 753,659										
1,150,863- 739,145										
787,859- 819,992										
796,393- 906,367										
1,003,268- 961,612										
711,377	" "	No sales or operation under this license.								
718,340	" "									
931,598	" "	No sales or operation under this license.								
1,101,111-1,034,853										
1,042,356	Chemische Fabrik Griesheim-Elektron	No sales or operation under this license.								
1,139,031	Fritz Gospel									
1,043,349	Heinrich Ostwald	No sales or operation under this license.								
711,377- 795,755	Badische Anilin & Soda Fabrik									
682,523- 715,662	" "									
724,789- 734,325										
734,866- 739,145etc.										
892,897- 916,029										
965,170	Farbwerke Vorm. Meister Lucius & Bruning	No sales or operation under this license.								
931,598	Badische Anilin & Soda Fabrik									
714,882- 741,029										
770,177- 807,422										
858,064	Farbwerke Vorm. Meister Lucius & Bruning									
										146.2

ties to December 31, 1918			Royalties to June 30, 1919				Royalties Paid to Dec. 31, 1919				Royalties Paid to June 30, 1920				Roy
Paid	Unpaid	Overpaid	Earned	Paid	Unpaid	Overpaid	Earned	Paid	Unpaid	Overpaid	Earned	Paid	Unpaid	Overpaid	Earned
13,945.59		380.40	14,695.76	11,733.66:	1,150.29		11,125.55	9,133.24	)	556.55	11,674.61	6,018.49)	520.69		13,217.20
				1,811.81:			√	2,548.86	)	√	√	5,135.43:)	√		√
6.73			534.77	538.48		3.71	209.40	193.94	15.46		328.94	309.72	19.22		138.79
√	7.67		2,273.68	1,955.55	318.13		731.31	756.68		25.37	1,786.40	1,722.99	63.41		3,186.07
265.00			5,938.23	5,938.23											
√	√		√												
4,412.31			1,226.02	1,226.02			1,166.52	1,166.52			878.51	878.51			8.50
4,622.80	8-1-18 to 1-31-19		82.60	82.60	2-1 to 7-31-19		182.00	182.00	8-1-19 to 1-31-20		480.20	480.20	2-1 to 7-31-20		2,746.10
7,837.95			2,401.08	2,401 08			2,076.71	2,076.71			1,904.09	1,904.09			1,171.38
2,162.23			2,554.72	2,554 72			1,339.20	1,339.20			1,450.23	1,450.23			1,045.73
1,279.91			644.56	644.56			492.84	492.84			595.17	595.17			479.27
10,598.59	8-1 to 1-31-19		10,113.71	10,113.71	2-1 to 7-31		17,336.86	17,336.86			1,726.56	1,726.56			
											79.52	86.61	To 8-31-20	7.09	
22.54			90.29	90.29			458.53	458.53			1,060.44	1,060.44			3,288.56
											1,680.52	1,680.52	To 1-31-20		8,423.36
											61,884.98	61,884.98	To 1-13-20		
			21.81	21.81			4.50	4.50			1.10	1.10			
											.11	.11			
							10.04	10.04			44.36	44.36			12.20
							3.25	3.25			4.00	4.00			7.76
146.29							1,371.63	1,371.63			410.73	410.73			846.72

, 1920		Royalties Paid to Dec. 31, 1920				Royalties Paid to June 30, 1921				Royalties Paid to Dec. 31, 1921				Royalties Paid, to June		
	Overpaid	Earned	Paid	Unpaid	Overpaid	Earned	Paid	Unpaid	Overpaid	Earned	Paid	Unpaid	Overpaid	Earned	Paid	Unp
19		13,217.20	6,351.57)		318.38	2,458.43)	2,458.43									
		√	7,184.01)			7,520.40)	7,520.40									
22		138.79	45.06	93.73		44.95	44.95			11.32	11.32					
11		3,186.07	1,460.37	1,725.70		522.15	522.15			5.20	5.20					
		8.50	8.50													
to 20		2,746.10	2,746.10	8-1 to 1-31-20		1,557.50	1,557.50	2-1-21 to 7-31-21		91.00	91.00	8-1-21 to 8-23-21				
		1,171.38	1,171.38			1,335.94	1,335.94			824.87	824.87					
		1,045.73 479.27	1,045.73 479.27			762.98 454.77	554.91 454.77	208.07		729.70	729.70					
1-20	7.09					31.03	23.94	7.09	To 2-28-21	3.92	3.92			.11	.11	
		3,288.56	3,288.56			4,144.12	4,144.12									
1-20		8,423.36	8,423.36	To 8-31-20												
1-20																
		12.20	12.20							20.02	20.02					
		7.76	7.76			2,10	2.10									
		846.72	846.72			740.33	740.33			769.10	769.10					

id to June 30, 1922			Royalties Paid to December 31, 1922				License	New	Total Royalties			Remarks
id	Unpaid	Overpaid	Earned	Paid	Unpaid	Overpaid	Cancelled	License	Earned	Paid	Unpaid	
							May 31, 1921		87,976.39	84,471.77	3,503.62	Subsequently paid 8-31-21
									1,314.25	1,189.55	124.70	
									8,512.48	6,422.94	2,089.54	
							July 1, 1918	–34	6,203.23	6,203.23		
							July 1, 1918	34a				No sales or operations under this license
							July 1, 1918	35	3,812.88	3,812.88		
							May 19, 1922		8,355.22	8,355.22		No sales since Dec. 31, 1920.
							Aug. 23, 1921		12,954.20	12,954.20		
									21,629.02	21,629.02		
									10,223.33	10,223.33		
							Surrender tendered 11-23-21		3,946.52	3,946.52		
							Patent 709799 Expires 9-23-19		47,178.72	47,178.72		Patent 709799 expired 9-23-19.
.11									114.58	114.58		
							Surrender tendered 11-23-21		9,064.48	9,064.48		
							Sept. 1, 1920		10,103.88	10,103.88		
							Sept. 1, 1920					
							Sept. 1, 1920		61,884.98	61,884.98		Patent expired January 13, 1920.
							Sept. 1, 1920					
							Sep.					
							Sept. 1, 1920					
									1.10	1.10		
									26.42	26.42		
									86.62	86.62		
									17.11	17.11		
									4,284.80	4,284.80		

Royalties Paid to June 30, 1921				Royalties Paid to Dec. 31, 1921				Royalties Paid to June 30, 1922				Royalties Paid to December 31, 1922				License	New	Total Royalties			Remarks
arned	Paid	Unpaid	Overpaid	Earned	Paid	Unpaid	Overpaid	Earned	Paid	Unpaid	Overpaid	Earned	Paid	Unpaid	Overpaid	Cancelled	License	Earned	Paid	Unpaid	
																Dec. 6, 1919					
229.89				31.43	31.43			120.95	120.95			68.53	68.53					450.80	450.80		Patent 711377 exp. 10-14-19; #795755 e 7-25-22.
716.50	2,716.50			1,831.50	1,831.50													31,677.81	31,677.81		
271.43	18,271.43			14,319.13	14,319.13													102,826.97	102,826.97		
527.21	2,527.21																	18,552.66	18,522.66		
121.82	121.82			96.79	96.79			72.39	72.39									953.03	953.03		
293.66	299.28		5.62	462.70	456.53	6.17										Jul. 11, 1921		7,927.94	7,927.94		
029.07	1,029.07			1,272.90	1,272.90			1,112.11	1,112.11			1,168.64	1,168.64					8,004.46	8,188.60		
37.50	37.50																	382.88	382.88		
15.00	15.00																	644.50	644.50		
42.33	42.33																	3,570.67	3,570.67		
13.38	13.38																	31.88	31.88		
24.59	1,424.59			1,405.86	1,405.86			1,535.12	1,535.12									10,281.82	10,281.82		
																		3,254.34	3,254.34		Patent expired Oct. 13, 1920.
																					Patent expired July 7, 1920.
343.57	343.57																	3,946.44	3,946.44		Patent expired Apr. 11, 1921.
35.30	135.30		}	56.97	56.97		}	37.34	37.34		}	5.63	5.63				}	296.26	296.26		
75.95	46,566.41	215.16	5.62	21,932.41	21,926.24	6.17		2,878.02	2,878.02			1,242.80	1,242.80					490,492.67	484,957.95	5,534.72	
75.95	46,566.41	215.16	5.62	21,932.41	21,926.24	6.17		2,878.02	2,878.02			1,242.80	1,242.80					490,492.67	484,957.95	5,534.72	
64.14	164.14		}	107.76	107.76		}	108.76	108.76		}	16.07	16.07				}	778.71	778.71		
																Sep. 20, 1920					
50.00	50.00			50.00	50.00			50.00	50.00									300.00	300.00		
90.09	46,780.55	215.16	5.62	22,090.17	22,084.00	6.17		3,036.78	3,036.78			1,258.87	1,258.87					491,571.38	486,036.66	5,534.72	

PLAINTIFF'S EXHIBT No. 198-A.

ROYALTIES EARNED AND PAID
LICENSES ISSUED ON PATENTS AND TRADEMARKS
BY THE FEDERAL TRADE COMMISSION
COVERING THE PERIOD DEC. 31, 1917, TO DEC. 31, 1922.

SUMMARY.

Period Covered	Amount Earned	Amount Paid	Amount Unpaid	Amount Overpaid
To Dec. 31, 1917	1,996.27	1,128.01	868.26	
" Jun. 30, 1918	31,089.11	29,076.47	2,220.71	208.07
" Dec. 31, 1918	65,755.19	66,127.92	7.67	380.40
" Jun. 30, 1919	64,382.13	63,022.34	1,468.42	108.63
" Dec. 31, 1919	65,481.46	66,049.84	36.20	604.58
" Jun. 30, 1920	121,874.60	121,270.85	627.04	23.29
" Dec. 31, 1920	67,708.78	66,201.03	1,826.13	318.38
" Jun. 30, 1921	46,898.02	46,780.55	215.16	97.69
" Dec. 31, 1921	22,090.17	22,084.00	6.17	
" Jun. 30, 1922	3,036.78	3,036.78		
" Dec. 30, 1922	1,258.87	1,258.87		
	$491,571.38	$486,036.66	$7,275.76	$1,741.04

Amount Paid		$486,036.66
Amount Unpaid	7,275.76	
Amount Overpaid	1,741.04	5,534.72
ROYALTIES EARNED		$491,571.38

PLAINTIFF'S EXHIBIT No. 199.

PLAINTIFF'S EXHIBIT No. 199.

THE CHEMICAL FOUNDATION INCORPORATED.
Adjustment of Earnings as Shown by Plaintiff's Statement.
From Properties Assigned to The Chemical Foundation.

	Federal Trade Commission	Alien Property Custodian	Chemical Foundation	Total
Total Earnings per summary	$491,571.38	$152,801.77	$677,511.38	$1,321,884.53
Deduct: Moneys received by Foundation on Linz & Mansfield patents not assigned to Foundation by Alien Property Custodian			2,166.28	2,166.28
Moneys received on Trust #12681 American Kitchen Products Co.—payment on principal		30,000.00		30,000.00
Balance	$491,571.38	$122,801.77	$675,345.10	$1,289,718.25

272 US 1 U.S. SUP. CT. RECORDS, BRIEFS 1926 FO
UNITED STATES V. CHEMICAL FOUNDATION, INC. NO. 127

Microcard Editions
An Indian Head Company
A Division of Information Handling Services

CARD 61

Segregation of Income Between Period Prior to Date of Assignment of Properties to Foundation and Subsequent Thereto.

			Prior to date of assignment.	Subsequent to assignment.	Total.
Federal Trade Commission					
From Dec., 1917, to Dec. 31, 1918		$98,740.57			
" " 31, 1918, to June 30, 1919,	$64,382.13				
Agreed 1/2	32,191.07	32,191.06			
Adjustment of income on DuPont License #19—$61,884.98 amount applicable to prior periods 15/24 thereof		38,675.25			
			$169,606.88	$321,964.50	$491,571.38
Alien Property Custodian Earned prior to assignment	$152,801.77				
Deduct Trust #12681	30,000.00		122,801.77		122,801.77
Chemical Foundation	$677,511.38				
Less Linz & Mansfield	2,166.28			675,345.10	675,345.10
			$292,408.65	$997,309.60	$1,289,718.25

PLAINTIFF'S EXHIBI

IN RE CHEMICAL FOU

CONSOLIDATED STATEMENT SHOWING ROYALTIES EARNED
ALIEN PROPERTY CUSTODIAN AND C
COMPILED FROM RECORDS PREPARED BY THE FEDERAL TR
TODIAN, AND REPORTS OF AUDITORS FO

From December 31, 1917, to Dec

Period Covered	Royalties Earned or Paid to	Amount Earned	Amount Paid
December 31, 1917	Federal Trade Commission	$ 1,996.27	$1,128.01
	Alien Property Custodian	32,871.49	32,871.49
	Chemical Foundation	0	0
December 31, 1918	Federal Trade Commission	31,089.11	29,076.47
		65,755.19	66,127.92
	Alien Property Custodian	67,778.76	67,778.76
		33,927.38	33,927.38
	Chemical Foundation	0	0
December 31, 1919	Federal Trade Commission	64,382.13	63,022.34
		65,481.46	66,049.84
	Alien Property Custodian	9,575.77	9,575.77
		5,545.26	5,545.26
	Chemical Foundation	13,636.16	13,636.16
December 31, 1920	Federal Trade Commission	121,874.60	121,270.85
		67,708.78	66,201.03
	Alien Property Custodian	3,103.11	3,103.11
	Chemical Foundation	164,796.54	164,796.54
December 31, 1921	Federal Trade Commission	46,898.02	46,780.55
		22,090.17	22,084.00
	Alien Property Custodian	0	
	Chemical Foundation	282,921.65	282,921.65
December 31, 1922	Federal Trade Commission	3,036.78	3,036.78
		1,258.87	1,258.87
	Alien Property Custodian	0	
	Chemical Foundation	106,765.85	106,765.85
		114,841.89	114,841.89
		$1,327,335.24	$1,321,800.52

PLAINTIFF'S EXHIBIT No. 200.

IN RE CHEMICAL FOUNDATION.

HOWING ROYALTIES EARNED OR PAID TO FEDERAL TRADE
PROPERTY CUSTODIAN AND CHEMICAL FOUNDATION.
EPARED BY THE FEDERAL TRADE COMMISSION, THE ALIEN PR
D REPORTS OF AUDITORS FOR CHEMICAL FOUNDATION.

From December 31, 1917, to December 31, 1922.

r Paid to	Amount Earned	Amount Paid	Amount Unpaid	Amount Overpaid	Total Earned	Rema
ommission	$ 1,996.27	$1,128.01	$868.26			
ustodian	32,871.49	32,871.49				
tion	0	0			$34,867.76	
ommission	31,089.11	29,076.47	2,220.71	208.07		To J
	65,755.19	66,127.92	767	380.40		" D
ustodian	67,778.76	67,778.76				" J
	33,927.38	33,927.38				" D
tion	0	0			198,550.44	
Commission	64,382.13	63,022.34	1,468.42	108.63		To J
	65,481.46	66,049.84	36.20	604.58		" D
stodian	9,575.77	9,575.77				" J
	5,545.26	5,545.26				" D
tion	13,636.16	13,636.16				After
					158,620.78	
Commission	121,874.60	121,270.85	627.04	23.29		To J
	67,708.78	66,201.03	1,826.13	318.38		" D
Custodian	3,103.11	3,103.11				" J
tion	164,796.54	164,796.54				E
					357,483.03	
Commission	46,898.02	46,780.55	215.16	97.69		To J
	22,090.17	22,084.00	6.17			" D
Custodian	0					
tion	282,921.65	282,921.65				E
					351,909.84	
Commission	3,036.78	3,036.78				To J
	1,258.87	1,258.87				" D
Custodian	0					
tion	106,765.85	106,765.85				" J
	114,841.89	114,841.89				" D
					225,903.39	
	$1,327,335.24	$1,321,800.52	$7,275.76	$1,741.04	$1,327,335.24	

DE COMMISSION,

PROPERTY CUS-

emarks

To June 30, 1918
" Dec. 31, 1918
" June 30, 1918
" Dec. 31, 1918

To June 30, 1919
" Dec. 31, 1919
" June 30, 1919
" Dec. 31, 1919
After Feb'y 19, 1919

To June 30, 1920
" Dec. 31, 1920
" June 30, 1920
Entire Year

To June 30, 1921
" Dec. 31, 1921

Entire Year

To June 30, 1922
" Dec. 31, 1922

" June 30, 1922
" Dec. 31, 1922

NOTE: Included in the amounts of Royalties shown as Chemical Foundation are license fees as follows:

After February	19, 1919	2,600.00	
Entire year	1920	12,100.00	
" "	1921	9,400.00	
To June	30, 1922	2,400.00	
" Dec.	31, 1922	4,400.00	$30,900.00

SUMMARY.

FEDERAL TRADE COMMISSION	491,571.38
ALIEN PROPERTY CUSTODIAN	152,801.77
CHEMICAL FOUNDATION	682,962.09
	1,327,335.24
Deduct Royalties paid to June 30, 1922	5,450.71
TOTAL	$1,321,884.53

PLAINTIFF'S EXHIBIT No. 201.

Exhibit B Schedule 1.

ROYALTIES AND LICENSE FEES

Summary of Detail Sheets Numbers 1-19.

		License Fees.	*Total Royalties to Dec. 31, 1921.*	*Royalties 1922.*	*Total Royalties.*
Licensed Patents:					
Manufactured Products	Sheets 1-3	$28200.	$130664.64	$137308.38	$267973.02
Imported Products	Sheet 4	100,	147846.36	62757.49	210603.85
Contracts Acquired	Sheet 4		1686.15	755.91	2442.06
Licensed Trademarks	Sheet 5	2600.	5148.00	3448.76	8596.76
Imported Products Under War Trade Board Licenses	Sheet 6-19		95476.28	59062.74	154539.02
Miscellaneous Income			2456.67		2456.67
			$383278.10	$263333.28	$646611.38
Add: License Fees.		$30900.			$30900.00
					$677511.38

PLAINTIFF'S EXHIBIT No. 202.

Bureau of Sales Form 6

ALIEN PROPERTY CUSTODIAN—WASHINGTON

BUREAU OF SALES—GENERAL LEDGER

Property held by The Chemical Foundation, Inc. Report No. Sdy.
For account of (Enemy or Ally) Sdy Enemies. Trust No. "

Date	*Particulars*	*Folio*	*Payments* *Dr.*	*Receipts* *Cr.*	*Balance*
1919					
Mar. 19	Ck. to Will T. Gordon, for payment of recording fees in the Patent Office for the demand for the patents which are to be sold to the above company,		3000.—		
" 20	Ck. of The Chemical Foundation, Inc., for $3000.— dated 3/17/19 drawn on Central Union Trust Co. N. Y. payable to Jos. F. Guffey, Trustee as a payment on account for purchase of patents,	CB. 80		3000.—	C
Mar. 31	Ck. #102.— of The Chemical Foundation, Inc., for $1500.— dated 3/28/19 drawn on Central Union Trust Co. N. Y. payable to Jos. F. Guffey as a payment on account of purchase of patents,	CB. 84		1500.—	1500.
" 31	Ck. to Will T. Gordon for payment of recording fees in the Patent Office for the demand for the patents which are to be sold to the above company,	CB. 92	1500—		C
Apr. 12	Ck. #108 of The Chemical Foundation, Inc., dated 4/11/19 drawn on Central Union Trust Co. N. Y. payable to Joseph F. Guffey, balance due account of purchase of enemy owned patents,	CB. 99		245500.—	245500.—

Bureau of Sales Form 6

ALIEN PROPERTY CUSTODIAN—WASHINGTON

BUREAU OF SALES—GENERAL LEDGER

Property held by The Chemical Foundation, Inc. Report No. Sdy.
For account of (Enemy or Ally) Sdy Enemies. Trust No. "

Date	*Particulars*	*Folio*	*Payments*	*Receipts*	*Balance*
			Dr.	*Cr.*	
1919					
Apr. 14	Balance from other page,				245500.—
" 14	Ck. to Will T. Gordon, for payment of recording fees, trade-marks, copyrights and patents in the Patent Office for the patents which are to be sold to the above company,	CB. 102	425.—		245075.—
May 23	Rcd from Chemical Foundation, Inc., Ck. #119 drawn on Central Union Trust Co. N. Y. for $600.— payable to Jos. F. Guffey, Trustee, in payment of the following considerations from the Alien Property Custodian to the Chemical Foundation, Inc., assigning letter patent #868397 issued 10/15/07 for transforming nozzle for obtaining kinetic energy from flowing gases and vapors $50.— Trade-mark #68059 "Duron" and #70391 C. W. H. H. and all of the rights under a certain agreement between Chemische Werke Hansa, G. m. b. H. and Arobol Mfg. Co. $50.— 14 patents relating to gyroscopic devices $500	CB. 125		600.—	245675.—

N. Y. O. 4—B. S.

ALIEN PROPERTY CUSTODIAN—WASHINGTON

BUREAU OF SALES—GENERAL LEDGER

Property held by The Chemical Foundation, Inc. Report No. Sdy.
For account of (Enemy or Ally) Sdy Enemies. Trust No. "

Date	*Particulars*	*Folio*	*Payments* *Dr.*	*Receip* *Cr.*	*Balance*
1919			4925.—		
June 28	Balance from other page,			250600	245675.—
" 28	Ck. #156.— of the Chemical Foundation, Inc., dated 6/25/19 drawn on Central Union Trust Co. N. Y. to order of Joseph F. Guffey, for $3650.— in payment for 53 patents and 20 applications conveyed to the Chemical Foundation, Inc., by the Alien Property Custodian by assignment dated 6/17/19 at private sale,	CB. 144		3650.—	249325.—
July 17	Ck. #169 of the Chemical Foundation, Inc., dated 7/3/19 for 450.— drawn on Central Union Trust Co. N. Y. to order of Joseph F. Guffey, covering patents, application for letters patent, trademark, and rights, interests and benefits under agreements sold by the A. P. C. to above company,	CB. 155		450.—	249775.—
Sept. 3	Ck. to F. P. Garvan, A. P. C. for net proceeds to close account,	CB. 174	249775.—		C

N. Y. O. 4—B. S.

ALIEN PROPERTY CUSTODIAN—WASHINGTON

BUREAU OF SALES—GENERAL LEDGER

Property held by The Chemical Foundation, Inc. Report No. Sdy.
For account of (Enemy or Ally). Trust No. "

Date	*Particulars*	*Folio*	*Payments Dr.*	*Receipts Cr.*	*Balance*
1919					
Dec. 11	Ck. #302 of The Chemical Foundation, Inc., dated 12/4/19 drawn on Central Union Trust Co. N. Y. to order of Jos. H. Guffey, payment for 21 Letters Patents assigned to The Chemical Foundation, Inc.,	CB. 211		1050.—	1050.—
" 23	Ck. #318 of The Chemical Foundation, Inc., dated 2/18/19 drawn on Central Union Trust Co. N. Y. to order of Jos. H. Guffey, in payment for 22 applications for letters patents assigned to The Chemical Foundation, by A. P. C. under date of Dec. 9-1919,	CB. 212		1100.—	2150.—
1920					
Jan. 5	Ck. to Haskins & Sells, for auditing services,	CB. 217	120.—		2030.—
Mar. 15	2 Cks of The Chemical Foundation, Inc., totaling $2700.— in payment of certain assignments, agreements, rights letters patents, trademarks etc.,	CB. 226		2700.— 4850.—	4730.—
May 12	Ck. to F. P. Garvan, A. P. C. for net proceeds to close account,	CB. 236	4730.—		C
			4850.—	4850.—	C

N. Y. O. 4—B. S.

ALIEN PROPERTY CUSTODIAN—WASHINGTON

BUREAU OF SALES—GENERAL LEDGER

Property held by The Chemical Foundation, Inc. Report No. Sdy.
For account of (Enemy or Ally) Sdy Enemies. Trust No. "

Date	*Particulars*	*Folio*	*Payments* *Dr.*	*Receipts* *Cr.*	*Balance*
1920					
May 26	Ck. #142 of The Chemical Foundation, Inc., dated 5/21/20—drawn on Central Union Trust Co. N. Y. to order of Joseph H. Guffey, in payment of assignment of Patents to the Chemical Foundation, Inc., dated May 4th, 1920,	CB. 241		1750.—	1750.—
June 10	Ck. to F. P. Garvan, A. P. C. for net proceeds to close account,	CB. 243	1750.—		C
			1750.—	1750.—	C

N. Y. O. 4—B. S.

ALIEN PROPERTY CUSTODIAN—WASHINGTON

BUREAU OF SALES—GENERAL LEDGER

Property held by The Chemical Foundation, Inc.	Report No. Sdy.
For account of (Enemy or Ally) Sdy Enemies.	Trust No. "

			Payments	*Receipts*	
Date	*Particulars*	*Folio*	*Dr.*	*Cr.*	*Balance*
1920					
Aug. 9	Two checks to Chemical Foundation, Inc., totaling $414.— being payment for recording fees of patents and trademarks,	CB. 248		414.—	414.—
" 24	Ck. to Commissioner of Patents, for payment account of assignments of patents,		414.—		C
Sept. 13	Ck. #278 of Chemical Foundation, Inc., dated 9/3/20—drawn on Central Union Trust Co. N. Y., being balance due for recent assignment of patents,	CB. 251		4586.—	4586.—
" 20	Ck. to A. W. Anthony, from C. for net proceeds to close accounts,	CB. 203	4590.—		10.—
" 20	Ck. to W. Anthony, from U. S. Patent Office, for refund account of a remittance of August 26th, 1920,	CB. 253		10.—	C
			5010.—	5010.—	C

PLAINTIFF'S EXHIBIT No. 203.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets NW.
Washington, D. C.

Bureau of Trusts
F. J. Horne
Director

March 19, 1919.

In re: Trust 36983, Report 37327
Enemy Leopold Ostermann

Dear Sir:

We enclose herewith an original and a copy of a demand for the application for United States Letters Patent described therein. It is thought that you may be connected with this application, either as attorney or in some other capacity, and it is therefore desired to pursue this means of advising you of our action.

Will you kindly accept service upon the original in the place provided therefor, returning it to the Division of Patents, Alien Property Custodian, and retaining the copy for your files? A self-addressed envelope is also enclosed for your convenience.

Very truly yours,

Division of Patents,

By (Sgd.) R. C. GOLDSTEIN
Chief of Division.

2 enclosures
APC-MM-5

PLAINTIFF'S EXHIBIT No. 203-A.

DEMAND FORM (3)

Trust No. 36983.
Report No. 37327

PATENT OWNED BY ENEMY SUBJECT TO THE RIGHTS OF OTHERS.

Chinosol Company
New York, N. Y.
To The Commissioner of Patents,
Washington, D. C.

To All To Whom These Presents May Come:

I, A. MITCHELL PALMER, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, under and by virtue of the authority vested in me as Alien Property Custodian, after investigation, do determine that

Leopold Ostermann,
Hamburg, Germany.

is an enemy not holding a license granted by the President within the purview of said Act as amended and said orders and proclamations; and I do further, after investigation, determine that certain letters patent of the United States, identified as follows:

Patent No.	*Date of Issue.*	*Title*
906,918	Dec. 15, 1908	Process of making Neutral Oxychinolin Salts.
1,099,761	June 9, 1914	Process for the Formation of Diaryl Ethers.

and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of

Chinosol Company,
New York, New York.

belongs to, or is held for, or on account of, or on behalf of, or for the benefit of said enemy,

Leopold Ostermann,

As such Alien Property Custodian, I do seize said letters patent and every right, title and interest with respect thereto including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights if any, of

Chinosol Company

and I hereby require that you convey, transfer, assign and deliver the same to me, to be by me, as Alien Property Custodian, held, administered and accounted for as provided by law.

I, as Alien Property Custodian, do request that the Commissioner of Patents record this requirement upon the books and records kept by him, to show the assignment and transfer of letters patent, in respect to said letters patent above mentioned.

This demand is supplementary to any and all requirements and demands heretofore made with respect to said property and is in addition to and without prejudice to such requirements and demands, and shall in no way affect the interests, rights and powers acquired by me as Alien Property Custodian by virtue of such previous requirements and demands.

Witness my hand and seal of office this 1st day of March, 1919.

Alien Property Custodian.

Service of the foregoing demand is hereby acknowledged, this 19th day of March, 1919.

PLAINTIFF'S EXHIBIT No. 204.

CHARLES ROOME PARMELE
47-49 West Street, New York

COPY

Telephone
Bowling Green 8880, 8881
Home Telephone
Tompkinsville 253

Cable Address
"Arsenauro"

June 20, 1919.

Mr. Hoguet,
Singer Bldg.,
N. Y.

Dear Mr. Hoguet:

Do you think you are treating me with just the courtesy which you would expect from me?

You named yesterday forenoon—Not a word from you. You then named this forenoon—Not a word yet. I have told you that your published list is damaging me. I cannot believe that you are intentionally indifferent.

Sincerely yours
(Sgd.) CHAS. ROOME PARMELE.

PLAINTIFF'S EXHIBIT No. 205.

THE
CHEMICAL FOUNDATION
Incorporated
81 Fulton Street
New York City

Francis P. Garvan
President
Douglas I. McKay
Vice-President
George J. Corbett
Treasurer
Joseph H. Choate, Jr.
General Counsel
Ramsay Hoguet
Patent Counsel

Trustees
Otto T. Bannard, Chairman
Cleveland H. Dodge
George L. Ingraham
B. Howell Griswold, Jr.
Ralph Stone

June 21, 1919.

Parmele Pharmacal Company,
47 West Street,
New York City.

Gentlemen: *Attention of Mr. Parmele*
Subject: Chinosol

If convenient for you to do so, we should very much like to have you call—preferably on Thursday, June 26th, at 12:00 o'clock—as the officers wish to talk over the matter of Chinosol with you.

If this appointment is not convenient for you, would you kindly advise?

Yours very truly,

THE CHEMICAL FOUNDATION INCORPORATED.

(Sgd.) S. A. TUCKER,
S. A. Tucker, Chemist.

SAT/S

PLAINTIFF'S EXHIBIT No. 206.

EMERY, VARNEY, BLAIR & HOGUET
Counsellors at Law
149 Broadway
New York

Frederick L. Emery
Thomas B. Booth
Laurence A. Janney
Lucius E. Varney
Irving U. Townsend
Robert S. Blair
Ramsay Hoguet
Jesse W. Morton
Edward H. Palmer
Osgood H. Dowell
Everett S. Emery
Louis A. Jones
Edward G. Curtis
Manvel Whittemore

John W. Thompson
Lawrence G. Miller
Sebastian Hinton
Preston Upham
Howard W. Dix
Thomas J. Johnston
Clarence O. McKay
Edward M. Evarts
Hadley F. Freeman

Telephone Cortlandt 8677

Boston
Emery, Booth, Janney & Varney
50 Congress St.
Tel. Main 5161

Chicago
Emery, Booth, Janney & Varney
10 South La Salle St.
Tel. Franklin 1145

Washington
Emery, Booth, Janney & Varney
Washington Loan & Trust Bldg.
Tel. Franklin 7974

Cable Embojava
Western Union Code

June 23, 1919.

Mr. Charles Roome Parmele,
47 West Street, New York.

My dear Mr. Parmele:

I find your letter upon my return to town and regret that I have been unable to connect with you. Believe me there is no intention on my part to treat you with anything except the greatest consideration.

I have had an answer from Washington which does not give me any satisfactory explanation of the seizure of the patent and I have as yet been unable to obtain anything further and more definite. In the meantime, however, I have consulted the directors of The Chemical Foundation and they have asked me to ask you to meet them. They feel that if your claim in this mater is recognized it should be in such a way as to insure the best interests to the industry in the United States.

Very truly yours,

RH:P (Sgd.) RAMSAY HOGUET.

PLAINTIFF'S EXHIBIT No. 207.

EMERY, VARNEY, BLAIR & HOGUET
Counsellors at Law
149 Broadway
New York

Frederick L. Emery
Thomas B. Booth
Laurence A. Janney
Lucius E. Varney
Irving U. Townsend
Robert S. Blair
Ramsay Hoguet
Jesse W. Morton
Edward H. Palmer
Osgood H. Dowell
Everett S. Emery
Louis A. Jones
Edward G. Curtis
Manvel Whittemore

John W. Thompson
Lawrence G. Miller
Sebastian Hinton
Preston Upham
Howard W. Dix
Thomas J. Johnston
Clarence O. McKay
Edward M. Evarts
Hadley F. Freeman

Telephone Cortlandt 8677

Boston
Emery, Booth, Janney & Varney
50 Congress St.
Tel. Main 5161

Chicago
Emery, Booth, Janney & Varney
10 South La Salle St.
Tel. Franklin 1145

Washington
Emery, Booth, Janney & Varney
Washington Loan & Trust Bldg.
Tel. Franklin 7974

Cable Embojava
Western Union Code

(Note in lead pencil)
McKay Cort 2900—
30 Church
Room 840

August 21, 1919.

Mr. Charles Roome Parmele,
47 West Street, New York.

My dear Mr. Parmele: See letter Aug. 22-1919

I am sending you herewith the agreement between The Chemical Foundation and the Chinosol Company. Please have the company execute it in duplicate and return one copy to The Chemical Foundation, 81 Fulton Street, New York City.

Very truly yours,

P (Sgd.) RAMSAY HOGUET,
P.

PLAINTIFF'S EXHIBIT No. 208.

COPY

47 West Street, New York.
August 22, 1919.

Ramsay Hoguet, Esq.,
149 Broadway,
New York City.

Dear Mr. Hoguet:

The agreement between the Chemical Foundation and the Chinosol Company, as outlined by your good self, reached me this morning. You must realize that it would be entirely improper for me to execute it.

The Chinosol patent belongs to the Chinosol Company and your Mr. McKay admitted you have no legal right to it. All I ask is that one of the officers of the Chemical Foundation shall write to the Chinosol Company making the plain statement that they have no claim to our Chinosol patent. The property is ours and I am entirely unwilling to sign any document which in any way limits the full enjoyment of the rights which belong to us. The Chemical Foundation surely has no right to nominate the conditions under which I shall enjoy that which I own. I thus must return the documents to you and having had a conversation with Mr. McKay in reference to the matter, I will thank you if you will promptly send to me a duly executed document, acknowledging that the Chemical Foundation has no claim to or interest in our patent.

The delay in this matter has already cost me much money and I cannot think that you would wish to further embarrass and distress me by withholding a document which we clearly are entitled to receive at your hands.

If you are unwilling to grant this, then I shall take the matter up with the authorities at Washington. Several months have already been wasted and I assure you that the loss to me is quite serious.

Sincerely yours
CHINOSOL COMPANY,
(Sgd.) Chas. Roome Parmele,
President.

PLAINTIFF'S EXHIBIT No. 209.

The Chemical Foundation
Incorporated
81 Fulton Street,
New York.

Francis P. Garvan
President
Douglas I. McKay
Vice-President
George J. Corbett
Treasurer
Joseph H. Choate, Jr.
General Counsel
Ramsay Hoguet
Patent Counsel

Trustees
Otto T. Bannard, Chairman
Cleveland H. Dodge
George L. Ingraham
B. Howell Griswold, Jr.
Ralph Stone

August 25, 1919.

Mr. Charles Roome Parmele,
47 West Street,
New York City.

Dear Sir:

Complying with request contained in your favor of

August 22nd, I beg to state that the Chemical Foundation has no claim to Letters Patent No. 906918.

Very truly yours

CHEMICAL FOUNDATION INCORPORATED

(Sgd.) DOUGLAS I. McKAY,
Vice President.

The original of the above letter was sent November 13-1919 to Commissioner of Patents, Washington, D. C.

PLAINTIFF'S EXHIBIT No. 210.

COPY

47 West Street, New York.
August 27, 1919.

Mr. Douglas I. McKay, Vice President,
The Chemical Foundation.
81 Fulton Street,
New York City.

My dear Sir:

Thank you for your courtesy in sending to me your valued letter of August 25th, in which you state officially that the Chemical Foundation has no claim to our Letters Patent No. 906918.

I really regret exceedingly the receipt of a letter dated August 25th from Mr. Ramsay Hoguet in which he says that I have "been willing to do absolutely nothing to assist the Foundation." That statement is far from correct.

You will kindly bear in mind that it is over ninety days since I first asked for the communication which has only just now reached me. The delay has really cost me a great deal in dollars and cents and if this delay had been equally expensive to Mr. Hoguet, I question whether he would have held his patience in check quite as well as I have done. It would have been an absolute forfeiture of the rights which I represent, had I been willing to accept from your good selves a communication which would nominate the conditions under which I was to act in the enjoyment of the rights over which I preside. The justice of this statement must be manifest to any fair minded man and I thus regret that Mr. Hoguet should have written so facetiously.

I certainly am trying to act through the Chemical Foundation in securing merchandise which may be obtainable through some of your associates and which would, in fact, be of benefit to those associates to supply. Of course I am obliged for such information as your Chemical Foundation can give me.

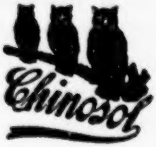
Yours sincerely
CHINOSOL COMPANY,
(Sgd.) Chas. Roome Parmele,
President.

PLAINTIFF'S EXHIBIT No. 211.

U. S. Patent No. 906,918, Dated December 15, 1908.
(See Patent Exhibit Book.)

PLAINTIFF'S EXHIBIT No. 212.

TRADE-MARK.
FRANZ FRITZSCHE & CO.
Antiseptics, Perfumery, and Other Similar
Compounds.
No. 28,750. Registered Aug. 11, 1896.



Proprietors,
FRANZ FRITZSCHE & CO.

Attorneys,
WHITMAN & WILKINSON.

Witnesses:
D. H. BLAKELOCK.
JOHN H. HALB.

UNITED STATES PATENT OFFICE.

Franz Fritzsche & Co., of Hamburg, Germany.
Trade-Mark for Antiseptics, Perfumery, and Other Similar Compounds.

Statement and Declaration of Trade-Mark No. 28,750, registered August 11, 1896.
Application filed July 11, 1896.

STATEMENT.

To all whom it may concern:

Be it known that we, FRANZ FRITZSCHE & Co., a firm domiciled and doing business in Hamburg, in the Empire of Germany, have [5] adopted for our use a Trade-Mark for Antiseptics, Perfumery, and other Similar Compounds, of which the following is a full, clear, and exact specification.

The trade-mark of the said firm consists of [10] the fanciful word-symbol "Chinosol," either alone or associated with the representation of three owls. This word-symbol is generally used in connection with the representation of three owls sitting upon a branch of a tree, as [15] shown in the accompanying facsimile, wherein the three owls are arranged in perspective upon the branch and the word-symbol "Chinosol" in script is arranged beneath the representation of the owls and the branch, but the [20] relative position of the owls to each other and the said word-symbol is immaterial and may be varied at will without affecting the nature of the mark, the essential feature of which is the fanciful word-symbol "CHINOSOL," either [25]

(Note: Numbers in brackets refer to lines of Patent Office copy of patent Declaration and Statement.)

alone or associated with the representation of three owls.

This mark has been used by the said firm since May, 1895.

The class of goods to which the said mark [30] is appropriated is chemicals and pharmaceutical substances, and the particular description of goods comprised in such class upon which said mark is used is antiseptics, perfumery, and other similar compounds.

[35] The mark is usually applied to the bottles themselves or printed on the labels attached to the bottles or boxes containing the compounds, but it may be affixed in any suitable manner preferred.

[40] In witness whereof we hereunto set our hand in presence of two witnesses.

FRANZ FRITZSCHE & CO.,
By L. OSTERMANN,
Partner.

Witnesses:
SOLES F. SUTER,
THEODOR CRANLSEN.

DECLARATION.

United States consulate Hamburg, ss.

LEOPOLD OSTERMANN, a subject of the German Emperor, residing at Hamburg, Empire of Germany, being duly sworn, deposes [5] and says that he is a partner of the firm of FRANZ FRITZSCHE AND COMPANY, the applicants named in the foregoing statement; that he verily believes that the foregoing statement is true; that the said firm has at this [10] time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to [15] deceive; that the said mark is used by the said firm in commerce between the United States and foreign nations and particularly between Germany, and England and France and the United States, and that the description [20] and facsimiles presented for record truly represent the trade-mark sought to be registered, and that he is a subject of the German Emperor.

L. OSTERMANN.

Sworn and subscribed before me, a U. S. vice and deputy consul, at Hamburg, this 2d day of June, 1896.

(L. S.) Chas. H. Burke,
U. S. Vice and Deputy Consul.

PLAINTIFF'S EXHIBIT No. 213.

2—390

Department of the Interior,
United States Patent Office.

To all persons to whom these presents shall come,
Greeting:

This Is to Certify that the annexed is a true copy from the records of this office of an Instrument of Writing

Recorded May 6, 1911,
in
Liber A-87, page 105 of Transfers of Patents.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this 19th day of June, in the year of our Lord, one thousand nine hundred and twenty-three and of the Independence of the United States of America the one hundred and forty-seventh.

(Seal)

(Sgd.) WM. A. KINNAN,
Acting Commissioner of Patents.

A-87-105

WHEREAS, Franz Fritzsche and Dr. Leopold Ostermann, co-partners under the firm name and style Franz Fritzsche and Company, Hamburg, have heretofore obtained letters patent of the United States for certain improvements in the manufacture of oxychinolin salts, numbered 56316, and upon their application filed May 25th, 1906, numbered 318762, were granted further patent of the United States dated December 15th, 1908, and numbered 906918, for the process of making neutral oxychinolin salts and have registered their trademark in the United States under the number of 28750 on August 11th, 1896, consisting of the fanciful word-symbol "Chinosol"—and

WHEREAS, the said Franz Fritzsche and Dr. Leopold Ostermann, co-partners as aforesaid, have entered into an agreement with the Chinosol Company of New York, dated June 1st, 1908, and

WHEREAS, by said agreement Franz Fritzsche and Company have made, constituted and appointed the said Chinosol Company of New York, sole licensee and assignee for and in the United States, its territories, and colonial dependencies for the said patents and all improvements thereon or reissue thereof, and sole licensee and assignee to use the said trademark "Chinosol" and to sell the said product called Chinosol and have conferred upon the said Chinosol Company the exclusive right to Chinosol patents and trademark upon terms and conditions as more fully set forth in the agreement above mentioned of June 1st, 1908.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that for and in consideration of the sum of one dollar, lawful money of the United States, the said Franz Fritzsche and Company in hand paid, the receipt of which is hereby acknowledged, and for other good and valuable consideration, the said Franz Fritzsche and Company have assigned, sold and set over, and do hereby assign, sell and set over unto the said Chinosol Company of New York all the right, title and interest which the said Franz Fritzsche and Dr. Leopold Ostermann, individually and severally, and the firm Franz Fritzsche and Company have in the said inventions as secured to them by letters patent of the United States, and improvements thereon, and in the said registered trademark or trade name "Chinosol," upon terms and conditions as more fully set forth in the agreement above mentioned of June 1st, 1908, and for the duration of time that this agreement shall remain in force and shall not have been impaired by breach of the same by the parties thereto of the second part.

The Same to be held and enjoyed by the said Chinosol Company of New York for its own use and behoof, and for the use and behoof of its successor and legal representatives to the full end and term for which the said letters patent are granted, and the said trademark or trade name may be enjoyed, as fully and entirely as the same would have been held and enjoyed by them if this assignment and sale had not been made, and for so long a time as the above-mentioned agreement of June 1st, 1908, shall be in force and valid; it being understood that this assignment shall be nil and void in the event of a breach of the contract by the parties thereto of the second part, the assignees in this present assignment, and that this assignment of trademark and patents shall become completely nil and void either by breach or abandonment of the said agreement of June 1st, 1908, by the parties thereto of the second part.

In Testimony Whereof, we, Franz Fritzsche and Dr. Leopold Ostermann, individually and in the name of our firm, have hereunto set our hands and affixed our seals this 3d day of April, nineteen hundred and eleven.

FRANZ FRITZSCHE,
By Franz Fritzsche (Seal)
and
By Dr. L. Ostermann. (Seal)

Sealed and delivered
in the presence of:
E. H. L. Mummenhoff,
Edward Hopp.

United States Consulate General }
at Hamburg, Germany, } *ss.:*

On this 3rd day of April in the year Nineteen Hundred and eleven, before me personally came Franz Fritzsche and Dr. Leopold Ostermann, both to me known and known to me to be the individuals described in and who executed the foregoing instrument and who acknowledged to me that they executed the same.

E. MUMMENHOFF,
U. S. Vice Dep. Consul General.

American Consulate,
Hamburg, Germany.

American Consular Service $2 Fee Stamp	U. S. Consulate General, Apr. 3, 1911 Hamburg, Germany.

Recorded May 6, 1911.
E. H. G.
L. L. W.

PLAINTIFF'S EXHIBIT No. 214.

ASSIGNMENT.

WHEREAS, The Alien Property Custodian of the United States, acting under authority of law, seized as belonging to Franz Fritzsche & Co., of Hamburg, Germany, the trade-mark "Chinosol, either alone or associated with the representation of three owls," registered in the United States Patent Office August 11, 1896, under the number 28,750, and certain rights and benefits appurtenant thereto, thereafter sold the same subject to the terms and conditions of the assignments evidencing such sale, to THE CHEMICAL FOUNDATION, INCORPORATED (hereinafter called THE FOUNDATION), a corporation organized and existing under and by virtue of the laws of the State of Delaware; and

WHEREAS, CHINOSOL COMPANY (hereinafter called THE COMPANY), a corporation organized and existing under and by virtue of the laws of the State of New York, has represented to said THE FOUNDATION that it was at the time of said seizure and still is the owner of the said registered trade mark, and has requested said THE FOUNDATION to assign to it all right, title and interest in and to said registered trade mark acquired by said THE FOUNDATION by virtue of the above-mentioned assignments by the said Alien Property Custodian, which said THE COMPANY would have held and enjoyed had the above-mentioned seizure and assignments by the said Alien Property Custodian not been made; and

WHEREAS, in accordance with the terms and conditions of the aforementioned sale, THE FOUNDATION has granted and issued a certain Release and License, covering said Registered Trade Mark, to the Government of the United States of America, the same being dated November 17, 1921;

Now, Therefore, In consideration of the premises and the sum of One Dollar, lawful money of the United States, to it paid by said The Company, and other good and valuable considerations, the receipt of which is hereby acknowledged, the said The Foundation does hereby quitclaim, assign, transfer and set over unto said The Company, subject to the aforesaid Release and License, all right, title and interest in and to the said registered trade mark, and all rights and benefits appurtenant thereto, acquired by said The Foundation by virtue of the above-mentioned assignments by said Alien Property Custodian, which said The Company would have held and enjoyed had the above-mentioned seizure and assignments by said Alien Property Custodian not been made.

In Witness Whereof, The Chemical Foundation, Incorporated, has caused these presents to be signed and its corporate seal to be hereunto affixed by its officers thereunto duly authorized, this 22nd day of November, 1922.

THE CHEMICAL FOUNDATION, INCORPORATED,
By (Sgd.) Francis P. Garvan,
President.

Attest:
(Sgd.) Edwin S. Haaren,
Secretary.

Received and recorded
in U. S. Patent Office
Dec. 8, 1922,
In Liber 0 117, page 392,
of Transfers of Patents.
Thomas E. Robertson,
Commissioner of Patents.
Exd
J. A. R.

STATE OF NEW YORK, } *ss.:*
COUNTY OF NEW YORK, }

On this 22nd day of November, 1922, before me personally came FRANCIS P. GARVAN, to me personally known, who being by me duly sworn, did depose and say that he resides in the Borough of Manhattan, City of New York; that he is the President of THE CHEMICAL FOUNDATION, INCORPORATED, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

In witness whereof I hereunto set my hand and affix my notarial seal.

(Sgd.) THERESA A. KRAUS,
(Seal) *Notary Public.*
Notary Public New York County,
Clerk's No. 367, Register's No. 3350,
Commission expires March 30, 1923.

PLAINTIFF'S EXHIBIT No. 215.

COPY.

RELEASE AND DISCHARGE.

WHEREAS, The Alien Property Custodian of the United States, acting under authority of law, seized as belonging to Franz Fritzsche & Co., of Hamburg, Germany, the trade-mark "Chinosol, either alone or associated with the representation of three owls," registered in the United States Patent Office August 11, 1896, under the number 28,750, and certain rights and benefits appurtenant thereto, thereafter sold the same subject to the terms and conditions of the assignments evidencing such sale to THE CHEMICAL FOUNDATION, INCORPORATED (hereinafter called THE FOUNDATION), a corporation organized and existing under and by virtue of the laws of the State of Delaware; and

Whereas, in accordance with the terms and conditions of the aforementioned sale, The Foundation has granted and issued a certain Release and License, covering said Registered Trade Mark, to the Government of the United States of America, the same being dated November 17, 1921; and

Whereas, this company, to wit, Chinosol Company (hereinafter called The Company), a corporation organized and existing under and by virtue of the laws of the State of New York, was at the time of said seizure and still is the owner of said registered trade mark, and upon its representations and request said The Foundation has assigned to it, subject to the aforesaid Release and License, all right, title and interest in and to said registered trade-mark, acquired by said The Foundation by virtue of the above-mentioned assignments by said Alien Property Custodian, which said The Company would have held and enjoyed had the above-mentioned seizure and assignments by said Alien Property Custodian not been made;

Now, Therefore, in consideration of the premises and the sum of One Dollar, lawful money of the United States, to it paid by said The Foundation, the receipt of which is hereby acknowledged, said The Company does forever release and discharge said The Foundation, its successors and assigns, and said Alien Property Custodian and the United States of America, its officers and agents, from any and all claims and actions of every character and description which said The Company, its successors and assigns, has or might hereafter assert against said The Foundation, its successors and assigns, said Alien Property Custodian and said United States of America, its officers and agents, by reason of the above-mentioned seizure and assignments of said registered trade mark and said rights and benefits appurtenant thereto or other dealings therewith.

In Witness Whereof, Chinosol Company has caused these presents to be signed and its corporate seal to be hereunto affixed by its officers thereunto duly authorized, this 29th day of Nov., 1922.

CHINOSOL COMPANY,
By (Sgd.) Chas. Roome Parmele,
Prst.

Attest:

....

State of New York, }
County of New York, } *ss.:*

On this 29th day of Nov., 1922, before me personally came C. R. P., to me personally known, who being by me duly sworn, did depose and say that he resides in that he is the of Chinosol Company, the corporation described in and which executed the foregoing; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

(Sgd.) RUTH GINSBERG,
Notary Public.

STIPULATION AS TO PLAINTIFF'S EXHIBITS No. 216 to No. 275, Both Inclusive.

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF DELAWARE.

UNITED STATES OF AMERICA, *Plaintiff*, *v.* THE CHEMICAL FOUNDATION, INCORPORATED, *Defendant*.	In Equity No. 502

WHEREAS, It is the desire of the parties hereto to simplify and shorten the printed record in this cause.

IT is hereby stipulated and agreed by and between the parties hereto, by their respective solicitors of record, as follows:

Plaintiff's Exhibits, Nos. 216 to 275, both inclusive, shall be treated in the printed record of this suit as hereinafter specifically set forth in schedule marked "A," hereto attached, with respect to each of said exhibits, and

IT is further understood and agreed that attached to each of said Federal Trade Commission Licenses, Exhibits Nos. 216 to 275, both inclusive, there were annexed copies and/or schedules of the Patent or Patents specifically mentioned in each of said licenses respectively, and

IT is further understood and agreed that none of these Patents shall be printed and without further reference or statement, it will be understood that copies thereof will be found in the Patent Exhibit Book which is covered by a separate stipulation in this suit; and

It is further agreed that this Stipulation is entered into solely for the purpose of this suit and shall not be used for or against either party hereto in any other matter or in any other suit and that in so stipulating the Defendant does not waive any objections made in this suit to the admission in evidence of any of said Exhibits Nos. 216 to 275, both inclusive.

This stipulation shall be printed immediately preceding the printed text of Plaintiff's Exhibit No. 216 as hereinafter set forth.

Dated at Wilmington, Delaware,
this 24 day of July, 1923.

UNITED STATES OF AMERICA,
Plaintiff,
By (Sgd.) Herman J. Galloway,
Solicitor.

THE CHEMICAL FOUNDATION,
INCORPORATED,
Defendant.
By (Sgd.) Lucien H. Boggs,
Solicitor.

SCHEDULE "A."

PLAINTIFF'S EXHIBIT No. 216.

[License No. 1, 1(a), 1 (b) & 1 (c).]

United States of America
FEDERAL TRADE COMMISSION
License Issued to
THE DERMATOLOGICAL RESEARCH LABORATORIES.

UNDER Patents
NUMBER 1,116,398, No. 986,148, 1,081,592, 1,081,897.

DATE OF LICENSE, November 26, 1917.

CANCELLATION OF LICENSES.

The Federal Trade Commission, pursuant to surrender thereof by the licensee, hereby cancels and terminates the following licenses heretofore issued to The Dermatological Research Laboratories, of Philadelphia, Pennsylvania, under United States Letters Patent Nos. 1,116,398; 986,148; 1,081,592; and 1,081,897, but subject to the terms of the license.

Dated: May 31, 1921.

FEDERAL TRADE COMMISSION.
(Sgd.) J. P. YODER,
Secretary.

License No. 1 (Patent).

United States of America
FEDERAL TRADE COMMISSION.

License to The Dermatological Research Laboratories.
of
Philadelphia, Pennsylvania.
under

Patent No. 1,116,398.

Dated November 10, 1914.

To Paul Ehrlich and Alfred Bertheim, Assignors to Farbwerke vorm. Meister Lucius & Brüning, of Höchst-on-the-Main, Germany.

For Improvement in Dihydrochloride Diaminodioxyarsenobenzene.

The Federal Trade Commission under authority of and in conformity with the Trading with the Enemy Act and with the Executive Order of October 12, 1917, hereby licenses The Dermatological Research Laboratories, an unincorporated voluntary association, of 1818 Lombard Street, Philadelphia, Pa., the members of which association are all represented to be citizens of the United States, to make, use and vend within the United States the invention described in United States Letters Patent to Paul Ehrlich and Alfred Bertheim, Assignors to Farbwerke vorm. Meister Lucius & Brüning, No. 1,116,398, dated November 10, 1914 (copy annexed hereto), for the term of the patent unless sooner terminated.

This license is one of four, No. 1, No. 1 (a), No. 1 (b) and No. 1 (c), issued contemporaneously by the Federal Trade Commission to the licensee, under a group of patents to Paul Ehrlich and Alfred Bertheim, covering:

No. 1 The product introduced as "Salvarsan" or "606" and now designated "Arsphenamine."

No. 1 (a), An ingredient and a process of making such ingredient.

No. 1 (b), A method of conserving and packing the finished product by enclosing in ampules.

No. 1 (c), The procedure and method of administration.

The numbers of such patents, respectively, are as follows:

No. 1,116,398, No. 986,148, No. 1,081,592 and No. 1,081,897. Copies are attached to the respective licenses.

The aggregate royalty to be paid by the licensee under such four licenses shall be five per cent. of the gross sums received by the licensee from the sale of Arsenobenzol, which is the name adopted by the licensee to distinguish the product made by it under the patents herein licensed, which sums during the continuance of this license the licensee shall pay to the Alien Property Custodian semi-annually within thirty days after the first day of January and the first day of July in each year.

The licensee shall, during the continuance of this license, keep proper accounts and separate books containing full particulars of:

(a) All articles made and sold under this license, and of the price or prices charged and amounts received therefor;

(b) All items of cost incurred in the use of such invention and the manufacture and sale of articles made thereunder; and

(c) All other matters and things, which, in the opinion of the Federal Trade Commission, may be material for the purpose of showing the amounts from time to time payable by the licensee concerning such royalty and what is a fair and reasonable price to the public for such article.

The licensee shall, within 10 days after each of the semi-annual days aforesaid, deliver a sworn statement to the Federal Trade Commission in writing showing the aforesaid particulars.

The licensee shall during the continuance of this license, give all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee under this license, the cost of the use of such invention, the cost of producing and the price or prices charged by the licensee for the said article, and for that purpose shall, if requested by the Federal Trade Commission, permit such person or persons as shall be authorized in that behalf by the Federal Trade Commission, at any time or times to enter upon and inspect any factory or place of business of the licensee in which the use of the said invention or the manufacture of the said article shall be carried on and all books, papers, and documents of such licensee relating to such use, manufacture and sale.

If any payment under this license shall not be made within one month after the same shall have become due under the provisions herein contained (whether demand therefore shall have been made or not), or if the licensee shall or shall attempt to assign or part with the benefit of or grant any sub-license under this license, or shall make default in the performance or observance of any obligation on his part herein contained, or shall have violated any of the conditions of this license or any of the provisions of the statute under which it is granted, and if, after 10 days' notice in writing, shall have failed to comply with the aforesaid, then the Federal Trade Commission may, by notice in writing, and after a hearing, cancel and terminate this license as from the date of such notice, but without prejudice to and so as not in any manner to affect any liability hereunder or on the part of the licensee which may then be subsisting or have accrued.

If, in the opinion of the Federal Trade Commission, the licensee has failed to use this license so as to satisfy the reasonable requirements of the public with regard to the subject matter thereof; or

If, in the opinion of the Federal Trade Commission the licensee has failed to supply to the public the articles made under this license at reasonable prices; or

If, in the opinion of the Federal Trade Commission, the licensee has charged unreasonable or excessive prices for articles made under this license; or

If, in the opinion of the Federal Trade Commission, the articles made under this license are of unsatisfactory quality, or fail to conform to such rules and standards as may from time to time be prescribed by the U. S. Public Health Service; (The rules and standards now in effect are attached hereto and made a part of this license and accepted and agreed to by the licensee, who undertakes and agrees to conform thereto and to all other rules and standards which may from time to time be prescribed, and when so prescribed said revised rules and standards shall be added to and become terms and conditions and a part of this license); or

Circumstances have arisen, which, in the opinion of the Federal Trade Commission, make it advisable that this license be canceled in whole or in part: Then

The Federal Trade Commission may, in its absolute discretion, terminate and cancel this license in whole or in part and, if canceled and terminated, the same shall be without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

Any sums which may at any time be payable by the licensee under the provisions of this license shall be a debt due from the licensee to the people of the United States, and shall be recovered in an appropriate action in the name of the people of the United States against the licensee.

This license is issued by the Federal Trade Commission and is accepted by the licensee on the express condition that it is without prejudice to and with full recognition of the right of the Federal Trade Commission to fix the price or prices at which the licensed subject matter shall be sold by the licensee if and whenever in the opinion of the Federal Trade Commission it is to the public interest to do so.

Dated, November 26, 1917.

(Sgd.) L. L. BRACKEN,
Secy. Federal Trade Commission.

Attest:
(Sgd.) C. H. McDONALD,
Counsel in Charge.
Accepted and agreed to.

THE DERMATOLOGICAL RESEARCH LABORATORIES.
by
(Sgd.) JAY FRANK SCHAMBERG,
Director.
(Sgd.) GEORGE W. RAIZISS,
Chemist,
(Sgd.) JOHN A. KOLMER,
Pathologist,
Licensee.

RULES AND STANDARDS PRESCRIBED BY THE UNITED STATES PUBLIC HEALTH SERVICE FOR THE CONTROL OF LICENSEES FOR THE MANUFACTURE AND SALE OF ARSPHENAMINE, Promulgated, September 25, 1918.

1. Except as provided in paragraph 3 hereof, only the abbreviated chemical term Arsphenamine immediately followed by the descriptive chemical name shall be used on packages to designate the preparation.

2. Arsephenamine shall be offered for sale only in colorless glass ampules in an atmosphere of an inert gas or in a vacuum.

3. Each ampule shall be plainly marked so as to show the license number, the lot number, the name of the preparation, the actual amount of Arsphenamine in the container, and the name and address of the manufacturer, in the following manner:

> License No. Lot No.
>
> This package contains grams of arsphenamine (Hydrochloride of 3-diamino-4-dihydroxy-1-arsenobenzene) Prepared under regulations issued by the Federal Trade Commission and conforms with tests approved by the U. S. Public Health Service.
>
> Made by ....

No names of diseases or symptoms shall appear on any label or package.

The licensee shall use the name Arsphenamine, immediately followed by the extended scientific name of the article. The word Arsphenamine, when used upon labels attached to packages and cartons, shall be printed in 10-point Roman capitals. On ampules, 8-point Roman capitals may be used. Specimens of the licensee's labels are hereto attached.

The licensee may, if it desires, use upon labels and packages its particular brand or trade name, provided, that whenever any such brand or trade name is used it shall invariably be accompanied, without intervening printed matter, with the name Arsphenamine and the extended scientific name of the article, as provided in the preceding paragraph.

4. Before being placed on the market, each lot shall be tested by the manufacturer for arsenic content and toxicity.

(1) The total arsenic content of the air-dried drug shall not be below 29.5 nor above 31.6 per cent. when determined according to Lehmann's method as described in Public Health Reports, Vol. 33, June 21, 1918, page 1012.

(2) The maximum tolerated dose shall be not less than 100 mg. per kilo body weight for albino rats when tested as follows:

(a) Animals must be from healthy stock, weighing from 100 to 150 gm. Pregnant animals shall not be used.

(Note: It is uncommon to find pregnancy in a rat of less than 120 gm.)

(b) Feeding and care of animals.

(Note: A constant supply of fresh water is essential and should be given by some arrangement which will prevent its contamination by rats. This precaution will practically eliminate epidemics of diarrhœa.)

The rats should be fed on a well-balanced ration. For a period of several days preceding the injection, and during the period of observation, the rats should be fed on a mixture of cracked corn and oats. Previous to this the animals should have a more liberal diet, including sufficient animal protein and inorganic salts.

The rats should not have access to food for from 12 to 18 hours preceding the injection.

(c) Preparation of solution.

The shortest possible time should elapse from the opening of the ampule until the injections are completed. The drug is dissolved in freshly glass-distilled water and made into the alkaline solution by the addition of 0.9 cc. of N/1 sodium hydrate for each 0.1 gm. of the drug. The final concentration of the drug shall be 2 per cent.

(d) Method of injection.

This should preferably be by the gravity method and into the saphenous vein. However, a tuberculin syringe, accurately graduated to 0.01 cc., may be used.

(e) Rate of injection.

This shall be at from 12 to 15 seconds for each 0.1 cc. of the solution and with the greatest uniformity obtainable.

(f) No anaesthetic shall be used.

(g) For each toxicity test a series of not less than five rats shall be used and at least 60 per cent. of the animals injected must survive at least 48 hours from the time of the injection, provided, that if the first test be made on five rats only, and more than one die, the test must be repeated and the final result based on the total number of rats injected.

5. In addition to tests made by the manufacturer before the drug is put in ampules, final tests of the product as prepared for the market shall be made on each lot by the U. S. Public Health Service before its release. For this purpose samples of each lot shall be forwarded by the manufacturer to the Hygienic Laboratory of the U. S. Public Health Service. The number of samples supplied shall be not less than ten ampules from any lot, and from lots of over 1,000 ampules 1 per cent. shall be furnished. Each ampule forwarded shall contain at least 0.6 gm. Arsphenamine. Accompanying each lot, the manufacturer shall send a

copy of the report of the toxicity test on which it was passed.

6. Officers of the Federal Trade Commission, or of the Public Health Service, when duly detailed, may enter establishments for the purpose of securing samples and conducting inspections.

7. When lots have passed satisfactorily the prescribed tests, they may be offered for sale, but the right is reserved to require the withdrawal from the market of any lot designated by the Federal Trade Commission.

8. Manufacturers shall retain 2 per cent. of the product from each lot for a period of three months from the time the preparation is placed on the market, provided, that in no case shall this be less than 10 ampules of at least 0.6 gm. each.

License No. 1 (a). (Patent)

United States of America
FEDERAL TRADE COMMISSION

License to The Dermatological Research Laboratories.
of
Philadelphia, Pennsylvania
under

Patent No. 986,148.
Dated, March 7, 1911.
To Paul Ehrlich and Alfred Bertheim, Assignors to Farbwerke vorm. Meister Lucius & Brüning, of Höchst-on-the-Main, Germany.
For Derivative of Oxyarylarsinic Acids and Process of Making Same.

The Federal Trade Commission under authority of and in conformity with the Trading with the Enemy Act and with the Executive Order of October 12, 1917, hereby licenses The Dermatological Research

Laboratories, an unincorporated voluntary association of 1818 Lombard Street, Philadelphia, Pa., the members of which association are all represented to be citizens of the United States, to make, use and vend within the United States the invention described in United States Letters Patent to Paul Ehrlich and Alfred Bertheim, Assignors to Farbwerke vorm. Meister Lucius & Brüning, No. 986,148, dated March 7, 1911 (copy annexed hereto), for the term of the patent unless sooner terminated.

This license is one of four, No. 1, No. 1 (a), No. 1 (b) and No. 1 (c), issued contemporaneously by the Federal Trade Commission to the licensee, under a group of patents to Paul Ehrlich and Alfred Bertheim, covering:

No. 1, The product introduced as "Salvarsan" or "606" and now designated "Arsphenamine."

No. 1 (a), An ingredient and a process of making such ingredient.

No. 1 (b), A method of conserving and packing the finished product by enclosing in ampules.

No. 1 (c), The procedure and method of administration.

The numbers of such patents, respectively, are as follows:

No. 1,116,398, No. 986,148, No. 1,081,592 and No. 1,081,897. Copies are attached to the respective licenses.

The aggregate royalty to be paid by the licensee under such four licenses shall be five per cent. of the gross sums received by the licensee from the sale of Arsenobenzol, which is the name adopted by the licensee to distinguish the product made by it under the patents herein licensed, which sums during the continuance of this license the licensee shall pay to the Alien Property Custodian at the times and in the manner as provided in License No. 1.

Each and all of the provisions and conditions of said License No. 1 as shown in and by the copy hereto annexed, are binding upon the licensee herein and are hereby accepted, agreed to and made a part hereof and shall have the same force and effect as if bodily incorporated herein.

Dated November 26th, 1917.

(Sgd.) L. L. BRACKEN.
Secretary, Federal Trade Commission.

Attest:
(Sgd.) C. H. McDONALD,
Counsel in Charge.

Accepted and agreed to.

THE DERMATOLOGICAL RESEARCH LABORATORIES,
by
(Sgd.) JAY FRANK SCHAMBERG,
Director,
(Sgd.) GEORGE W. RAIZISS,
Chemist,
(Sgd.) JOHN A. KOLMER,
Pathologist,
Licensee.

License No. 1 (b). (Patent)

United States of America
FEDERAL TRADE COMMISSION

License to The Dermatological Research Laboratories.
of
Philadelphia, Pennsylvania
under

Patent No. 1,081,592.
Dated, December 16, 1913.

To Paul Ehrlich and Alfred Bertheim, Assignors to Farbwerke vorm. Meister Lucius & Brüning, of Höchst-on-the-Main, Germany.

For Medicinal Preparations.

The Federal Trade Commission under authority of and in conformity with the Trading with the Enemy Act and with the Executive Order of October 12, 1917, hereby licenses The Dermatological Research Laboratories, an unincorporated voluntary association of 1818 Lombard Street, Philadelphia, Pa., the members of which association are all represented to be citizens of the United States, to make, use and vend within the United States the invention described in United States Letters Patent to Paul Ehrlich and Alfred Bertheim, Assignors to Farbwerke vorm. Meister Lucius & Brüning, No. 1,081,592, dated December 16, 1913, (copy annexed hereto), for the term of the patent unless sooner terminated.

This license is one of four, No. 1, No. 1 (a), No. 1 (b) and No. 1 (c), issued contemporaneously by the Federal Trade Commission to the licensee, under a group of patents to Paul Ehrlich and Alfred Bertheim, covering:

No. 1, The product introduced as "Salvarsan" or "606" and now designated "Arsphenamine."

No. 1 (a), An ingredient and a process of making such ingredient.

No. 1 (b), A method of conserving and packing the finished product by enclosing in ampules.

No. 1 (c), The procedure and method of administration.

The numbers of such patents, respectively, are as follows:

No. 1,116,398, No. 986,148, No. 1,081,592 and No. 1,081,897. Copies are attached to the respective licenses.

The aggregate royalty to be paid by the licensee under such four licenses shall be five per cent. of the gross sums received by the licensee from the sale of Arsenobenzol, which is the name adopted by the licensee to distinguish the product made by it under the patents herein licensed, which sums during the continuance of this license the licensee shall pay to the Alien Property Custodian at the times and in the manner as provided in License No. 1.

Each and all of the provisions and conditions of said License No. 1 as shown in and by the copy hereto annexed, are binding upon the licensee herein and are hereby accepted, agreed to and made a part hereof and shall have the same force and effect as if bodily incorporated herein.

Dated November 26th, 1917.

(Sgd.) L. L. BRACKEN.
Secy., Federal Trade Commission.

Attest:
(Sgd.) C. H. McDonald,
Counsel in Charge.

Accepted and agreed to.

THE DERMATOLOGICAL RESEARCH LABORATORIES,
by
(Sgd.) Jay Frank Schamberg,
Director,
(Sgd.) George W. Raiziss,
Chemist,
(Sgd.) John A. Kolmer,
Pathologist,
Licensee.

License No. 1 (c) (Patent)

United States of America
Federal Trade Commission

License to The Dermatological Research Laboratories.
of
Philadelphia, Pennsylvania
under

Patent No. 1,081,897.

Dated, December 16, 1913.

To Paul Ehrlich and Alfred Bertheim, Assignors to Farbwerke vorm. Meister Lucius & Brüning, of Höchst-on-the-Main, Germany.

For Medicinal Preparations.

The Federal Trade Commission under authority of and in conformity with the Trading with the Enemy Act and with the Executive Order of October 12, 1917, hereby licenses The Dermatological Research Laboratories, an unincorporated voluntary association of 1818 Lombard Street, Philadelphia, Pa., the members of which association are all represented to be citizens of the United States, to make, use and vend and to cause to be made, used and vended the product and invention, and to carry on and cause to be carried on within the United States the process described in United States Letters Patent to Paul Ehrlich and Alfred Bertheim, Assignors to Farbwerke vorm. Meister Lucius & Brüning, No. 1,081,897, dated December 16, 1913, (copy annexed hereto) for the term of the patent unless sooner terminated, and the licensee may, by an appropriate notice on its label or otherwise, authorize purchasers and users of Arsenobenzol to use and administer the same in the customary or in any proper manner, and to this extent may cause the product herein licensed to be made, the invention herein licensed to be used, and the process herein licensed to be carried on and shall not be deemed to have violated the provisions hereof forbidding sublicenses.

This license is one of four, No. 1, No. 1 (a), No. No. 1 (b) and No. 1 (c), issued contemporaneously by the Federal Trade Commission to the licensee, under a group of patents to Paul Ehrlich and Alfred Bertheim, covering:

No. 1, The product introduced as "Salvarsan" or "606" and now designated "Arsphenamine."

No. 1 (a), An ingredient and a process of making such ingredient.

No. 1 (b), A method of conserving and packing the finished product by enclosing in ampules.

No. 1 (c), The procedure and method of administration.

The numbers of such patents, respectively, are as follows:

No. 1,116,398, No. 986,148, No. 1,081,592 and No. 1,081,897. Copies are attached to the respective licenses.

The aggregate royalty to be paid by the licensee under such four licenses shall be five per cent. of the gross sums received by the licensee from the sale of Arsenobenzol, which is the name adopted by the licensee to distinguish the product made by it under the patents herein licensed, which sums during the continuance of this license the licensee shall pay to the Alien Property Custodian at the times and in the manner as provided in License No. 1.

Each and all of the provisions and conditions of said License No. 1 as shown in and by the copy hereto annexed, are binding upon the licensee herein and are hereby accepted, agreed to and made a part hereof and shall have the same force and effect as if bodily incorporated herein.

Dated November 26th, 1917.

(Sgd.) L. L. BRACKEN.
Secy., Federal Trade Commission.

Attest:
(Sgd.) C. H. McDONALD,
Counsel in Charge.

Accepted and agreed to.

THE DERMATOLOGICAL RESEARCH LABORATORIES,
by
(Sgd.) JAY FRANK SCHAMBERG,
Director,
(Sgd.) GEORGE W. RAIZISS,
Chemist,
(Sgd.) JOHN A. KOLMER,
Pathologist,
Licensee.

PLAINTIFF'S EXHIBIT No. 217.

[License No. 1 (d).]

Exhibit 217 is a license issued by the Federal Trade Commission to the Dermatological Research Laboratories. It is numbered 1 (d), dated March 4, 1918. It grants to the licensee a license to make, use and vend within the United States the invention described in United States Re-issued Letters Patent No. 13848, for the term of the patent unless sooner terminated. It recites that it is one of five, four of which, 1, 1(a), 1 (b), and 1 (c), have been heretofore issued, and each and all of the provisions and conditions of said other four licenses are by reference made a part of this license, except that separate rules and standards prescribed by the U. S. Public Health Service covering the licensed product are attached. The royalty to be paid the Alien Property Custodian by the licensee is five per cent (5%) of the gross sums received by the licensee from the sale within the United States of Neo-Arsphenamine. License was cancelled pursuant to surrender thereof, on May 31, 1921. There is no Revision of Royalty rider attached.

PLAINTIFF'S EXHIBIT No. 218.

[License No. 2, 2 (a), 2 (b) and 2 (c).]

This Exhibit is a group of four licenses issued by the Federal Trade Commission to the Takamine Laboratory, Inc., all of which are dated November 26, 1917, and designated as License No. 2, 2 (a), 2 (b) and 2 (c), respectively. They respectively license the licensee to make, use and vend, within the United States, the inventions and processes described in United States Letters Patents Nos. 1,116,398; 986,148; 1,081,592 and 1,081,897 respectively, for the term of the patents, unless sooner terminated. The licenses provide that the aggregate royalty to be paid by the licensee under such four licenses to the Alien Property Custodian, shall be five per cent (5%) of the gross sums received by the licensee from the sale of Arsaminol, which is the name adopted by the licensee to define the product made by it under the licenses. Attached to License No. 2 is a copy of the rules and standards of the United States Public Health Service. The terms and conditions of License No. 2 are by reference made a part of the other three licenses. There is no cancellation nor Revision of Royalty rider attached.

Otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 219.

[License No. 2(d).]

This is a license issued by the Federal Trade Commission to the Takamine Laboratory, Inc. It is numbered 2 (d), dated March 4, 1918. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 13,848, Re-issue, for the term of the patent unless sooner terminated. It recites that it is one of five, four of which 2, 2(a), 2(b) and 2(c) have been heretofore issued, and each, and all of the provisions and conditions of said other four licenses are by reference made a part of this license, except that separate rules and standards prescribed by the U. S. Public Health Service, covering the licensed product are attached. The royalty to be paid the Alien Property Custodian by the licensee is five per cent. (5%) of the gross sums received by the licensee from the sale within the United States of Neo-Arsphenamine. Print of the labels to be used are attached. There are no cancellation nor Revision of Royalty riders attached.

PLAINTIFF'S EXHIBIT No. 220.

(License No. 3.)

This Exhibit is a license from the Federal Trade Commission to the Farbwerke-Hoechst Company, dated November 26, 1917, and designated as License No. 3. It licenses the licensee to make, use and vend within the United States, the invention described in

United States Letters Patent No. 986,148, for the term of the Patent unless sooner terminated. It provides that a royalty of five per cent. (5%) of the gross sums received by the licensee from the sale of Salvarsan, which is the name applied by the licensee to the product, shall be paid by the licensee, to the Alien Property Custodian. Attached to the license is a print of the label to be used. Attached to the license is a cancellation rider dated July 1, 1918. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216. There is no Revision of Royalty rider attached.

PLAINTIFF'S EXHIBIT No. 221.

[License No. 3(a).]

This Exhibit is a license issued by the Federal Trade Commission to Farbwerke-Hoechst Company. It is numbered 3(a), dated March 4, 1918. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 13,848, Re-issue, for the term of the patent unless sooner terminated. It recites that it is one of two, No. 3 and No. 3(a), No. 3 of which has been heretofore issued, and each and all of the provisions and conditions of said license No. 3, are by reference made a part of this license, except that separate rules and standards of the U. S. Public Health Service covering the licensed product are attached. The royalty to be paid the Alien Property Custodian by the licensee is five per cent. (5%) of the gross sums received by the licensee from the sale within the United States of Neo-Arsphenamine. The license contains a cancellation rider dated July 1, 1918. There is no Revision of Royalty rider attached.

PLAINTIFF'S EXHIBIT No. 222.

(License No. 4.)

This Exhibit is a license from the Federal Trade Commission to Farbwerke-Hoechst Company, dated Dec. 17, 1917, and designated as License No. 4. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 812,554, for the term of the patent unless sooner terminated. It provides that the royalty to be paid the Alien Property Custodian by the licensee shall be five per cent. (5%) of the gross sums received by the licensee from the sale of the product so licensed to be made. Attached to the license is a Cancellation rider dated July 1, 1918. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216. There is no Revision of Royalty rider attached.

PLAINTIFF'S EXHIBIT No. 223.

(License No. 5.)

This Exhibit is a license from the Federal Trade Commission to Rector Chemical Company, Inc., dated Dec. 17, 1917, and designated as License No. 5. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 812,554, for the term of the patent unless sooner terminated. It provides that the royalty to be paid the Alien Property Custodian by the licensee shall be five per cent. (5%) of the gross sums received by the licensee from the sale of the product so licensed to be made. Attached to the license is a Cancellation rider dated May 19, 1922. There is no Revision of Royalty rider attached. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 224.

(License No. 7.)

License No. 7. (Patent)

United States of America
FEDERAL TRADE COMMISSION

License Issued to

PACIFIC FLUSH TANK COMPANY, 4241-3 Ravenswood Avenue, Chicago, Ill.

UNDER PATENTS

NUMBERS 924,664, 978,889, 1,056,548, 1,057,154 and 1,053,396.

To Karl Imhoff

DATED June 15, 1909; Dec. 10, 1910; Mar. 18, 1913; Mar. 25, 1913; and Feb. 18, 1913, respectively.

FOR Imhoff Process and Tanks used in the Disposal of Sewage.

DATE OF LICENSE, December 17, 1917.

License No. 7. (Patent)

CANCELLATION OF LICENSE.

The Federal Trade Commission, pursuant to surrender thereof by the licensee, hereby cancels and terminates the following license heretofore issued to Pacific Flush Tank Company, of Chicago, Ill., under certain Letters Patent covering Process and Method of

Treating Sewage, but subject to the terms of the license.

Dated: August 23, 1921.

FEDERAL TRADE COMMISSION,
(Sgd.) J. P. YODER,
Secretary.

ESR-RKE 1-10-18

License No. 7 (Patent).

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION.
License to Pacific Flush Tank Company

Patent No. 924,664 dated June 15, 1909; No. 978,889 dated December 10, 1910; No. 1,056,548 dated March 18, 1913; No. 1,057,154 dated March 25, 1913; No. 1,053,396 dated February 18, 1913, all above patents.

To Karl Imhoff of Bredeney, near Essen-on-the-Ruhr, Germany.

For Imhoff Process and Tanks used in the disposal of sewage.

The Federal Trade Commission under authority of and in conformity with the "Trading with the Enemy Act" and with the Executive Order of October 12, 1917, hereby licenses the Pacific Flush Tank Company, a corporation of the State of Illinois, 4241-3 avenswood Avenue, Chicago, Illinois, exclusively to make or cause to be made, to use or cause to be used, to sell or cause to be sold and to carry on or cause to be carried on within the United States the inventions, processes and methods described in certain United States Letters Patent employed in the disposal of sewage, under what is commercially known as the Imhoff Process and Tanks for term of each of said patents, unless sooner terminated said patents are as follows:

Number 924,664, dated June 15, 1909, to Karl Imhoff of Bredeney, near Essen-on-the-Ruhr, Germany, for Sewage-Treatment Apparatus; Number 978,889 dated December 10, 1910 to Karl Imhoff of Bredeney near Essen-on-the Ruhr, Germany, for Treating Sewage; Number 1,056,548 dated March 18, 1913 to Karl Imhoff of Bredeney, near Essen-on-the-Ruhr, Germany, for Process of Drying Sludge; No. 1,057,154 dated March 25, 1913, to Karl Imhoff of Bredeney, near Essen-on-the-Ruhr, Germany, for Settling Tank, and number 1,053,396 dated February 18, 1913, to Karl Imhoff of Bredeney, near Essen-on-the-Ruhr, Germany, for Sewage Purification. All of which patents are conjointly used in the installation and operation of the said Imhoff Process and Tanks. Copies are annexed hereto.

The aggregate royalty to be paid by the licensee under this license shall be 5 per cent of the value of the conjoint use of the said inventions.

The value of the conjoint use of such inventions to the licensee has been established by the Federal Trade Commission and such values are set forth in detail on the attached schedule of values and 5 per cent thereof, which the Federal Trade Commission has determined to be a reasonable royalty, shall be paid by said licensee during the continuance of this license to the Alien Property Custodian, semi-annually, within 30 days after the first day of February and the first day of August, respectively of each year.

The authority and license to said Pacific Flush Tank Company to cause to be made, used, sold and carried on the Process and inventions of said patents, shall only include the sale to and the making, carrying on and use thereof by the municipalities and others listed on Schedule 1 hereof and no others unless and until permission and authority in writing of the Federal Trade Commission to the sale to and the making, carrying on and use of said Process and inventions by others shall first be had and obtained, when the names of such others shall be added to said Schedule.

The licensee shall, during the continuance of this license, keep proper accounts and separate books containing full particulars of:

(a) The names of the municipalities and others together with the population thereof and the fee charged, for all sewage disposal plants contracted for under said letters patent, through the licensee.

(b) The names of the Engineers and the Contractors and the amount of the Contracts involved in the building of all such sewage disposal plants.

(c) All other matters and information which in the opinion of the Federal Trade Commission may be material for the purpose of showing the amounts from time to time payable by the licensee concerning such Royalty.

The licensee shall, within ten days after the first day of February and the first day of August of each year, deliver a sworn statement to the Federal Trade Commission in writing showing the aforesaid particulars.

The licensee shall, during the continuance of this license, give all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee under this license, the cost of all operations thereunder and for that purpose shall, if requested by the Federal Trade Commission, permit such person or persons as shall be authorized in that behalf by the Federal Trade Commission at any time or times to enter upon and inspect such offices, places of business of the licensee in any way concerned with the use of said process or inventions, and all books, papers and documents of the licensee relating to such use and carrying on, and shall furnish or procure to be furnished all such information as the Federal Trade Commission shall consider to be material for the purpose of ascertaining the amounts payable to the licensee by the municipalities and others whose names appear in Schedule 1 hereto and any others who may from time to time be authorized to use the said Imhoff Process and Tanks and said licensee shall procure permission to be given to such person or persons as shall be authorized in that behalf by the Federal Trade Commission at any time or times to enter upon and inspect any place in which said process and inventions shall be used or carried on, and any books, papers and documents relating thereto.

If any payment under this license shall not be made within one month after the same shall have become due under the provisions of this license (whether demand therefor shall have been made or not), or, if the licensee shall or shall attempt to assign or part with the benefit of or without permission and authority in writing from the Federal Trade Commission first had and obtained shall or shall attempt to grant any sublicense, under this license, or shall make default in the performance or observance of any obligation on its part herein contained, or shall have violated any of the conditions of this license or any of the provisions of the statute under which it is granted, and if, after ten days' notice in writing, shall have failed to comply with the aforesaid, then the Federal Trade Commission may by notice in writing and after a hearing, cancel and terminate this license as from the date of such notice, but without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

If in the opinion of the Federal Trade Commission, the licensee has failed to use this license so as to satisfy the reasonable requirement of the public with regard to the subject matter thereof; or

Circumstances have arisen which in the opinion of the Federal Trade Commission, make it advisable that this license may be canceled in whole or in part; then

The Federal Trade Commission may in its absolute discretion terminate and cancel this license in whole or in part and if canceled and terminated the same shall be without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may be subsisting or have accrued.

Any sums which may at any time be payable to the licensee under the provisions of this license shall be a debt due from the licensee to the people of the United States and shall be recovered in an appropriate action in the name of the people of the United States against the licensee.

Dated December 17, 1917.

FEDERAL TRADE COMMISSION,
by
(Sgd.) L. L. BRACKEN,
Secretary.

Attest:
(Sgd.) C. H. MCDONALD,
Counsel in Charge.

Accepted and agreed to.

(Sgd.) PACIFIC FLUSH-TANK CO.,
Licensee.
Per E. L. WALCOTT,
Vice Pres.

SCHEDULE OF VALUES.

Pacific Flush Tank Co.

Population	Minimum Fee	30% Pacific Flush Tank Co.	70% Imhoff	Value of Use of Patents per Federal Trade Commission	
				Value	5% of Value
100	$ 10.00	$ 3.00	$ 7.00	$140.00	$ 7.00
200	20.00	6.00	14.00	280.00	14.00
300	30.00	9.00	21.00	420.00	21.00
400	40.00	12.00	28.00	560.00	28.00
500	50.00	15.00	35.00	700.00	35.00
600	58.00	17.40	40.60	812.00	40.60
750	65.00	19.50	45.50	910.00	45.50
1000	80.00	24.00	56.00	1120.00	56.00
1500	105.00	31.50	73.50	1470.00	73.50
2000	130.00	39.00	91.00	1820.00	91.00
2500	155.00	46.50	108.50	2170.00	108.50
3000	180.00	54.00	126.00	2520.00	126.00
3500	200.00	60.00	140.00	2800.00	140.00
4000	220.00	66.00	154.00	3080.00	154.00
4500	235.00	70.50	164.50	3290.00	164.50
5000	255.00	76.50	178.50	3570.00	178.50
6000	290.00	87.00	203.00	4060.00	203.00
7000	325.00	97.50	227.50	4550.00	227.50
8000	360.00	108.00	252.00	5040.00	252.00
9000	395.00	118.50	276.50	5530.00	276.50
10000	430.00	129.00	301.00	6020.00	301.00
12500	510.00	153.00	357.00	7140.00	357.00
15000	590.00	177.00	413.00	8260.00	413.00
17500	670.00	201.00	469.00	9380.00	469.00
20000	750.00	225.00	525.00	10500.00	525.00
22500	800.00	240.00	560.00	11200.00	560.00
25000	850.00	255.00	595.00	11900.00	595.00
30000	1000.00	300.00	700.00	14000.00	700.00
35000	1150.00	345.00	805.00	16100.00	805.00
40000	1300.00	390.00	910.00	18200.00	910.00
45000	1400.00	420.00	980.00	19600.00	980.00
50000	1500.00	450.00	1050.00	21000.00	1050.00
55000	1650.00	495.00	1155.00	23100.00	1155.00
60000	1750.00	525.00	1225.00	24500.00	1225.00
65000	1850.00	555.00	1295.00	25900.00	1295.00
70000	2000.00	600.00	1400.00	28000.00	1400.00
75000	2100.00	630.00	1470.00	29400.00	1470.00
80000	2200.00	660.00	1540.00	30800.00	1540.00
90000	2350.00	705.00	1645.00	32900.00	1645.00

				Value of Use of Patents per Federal Trade Commission	
Population	Minimum Fee	30% Pacific Flush Tank Co.	70% Imhoff	Value	5% of Value
100000	$2550.00	$765.00	$1785.00	$35700.00	$1785.00
125000	3000.00	900.00	2100.00	42000.00	2100.00
150000	3450.00	1035.00	2415.00	48300.00	2415.00
175000	3850.00	1155.00	2695.00	53900.00	2695.00
200000	4300.00	1290.00	3010.00	60200.00	3010.00
250000	5200.00	1560.00	3640.00	72800.00	3640.00
300000	6000.00	1800.00	4200.00	84000.00	4200.00
350000	6800.00	2040.00	4760.00	95200.00	4760.00
400000	7600.00	2280.00	5320.00	106400.00	5320.00
450000	8300.00	2490.00	5810.00	116200.00	5810.00
500000	9000.00	2700.00	6300.00	126000.00	6300.00
600000	10150.00	3045.00	7105.00	142100.00	7105.00
700000	11100.00	3330.00	7770.00	155400.00	7770.00
800000	12000.00	3600.00	8400.00	168000.00	8400.00
900000	12600.00	3780.00	8820.00	176400.00	8820.00
1000000	13000.00	3900.00	9100.00	182000.00	9100.00
1500000	14000.00	4200.00	9800.00	196000.00	9800.00
2000000	15000.00	4500.00	10500.00	210000.00	10500.00

PLAINTIFF'S EXHIBIT No. 225.

[License No. 8, 8(a), 8(b) and 8(c).]

This Exhibit is four licenses issued by the Federal Trade Commission to Diarsenol Company, Inc., each dated January 12, 1918, and designated as Licenses Nos. 8, 8(a), 8(b) and 8(c) respectively. They license the licensee to make, use and vend within the United States, and to cause to be made for them in the United States, the inventions described in United States Letters Patents No. 1,116,398; No. 986,148; No. 1,081,592 and No. 1,081,897, for the term of said patents respectively, unless sooner terminated. In addition thereto Licenses 8, 8(a) and 8(b) include the making in Canada. The royalty to be paid by the licensee to the Alien Property Custodian is five per cent. (5%)

of the gross sums received by the licensee from the sale within the United States of Diarsenol which is the name adopted by the licensee to distinguish the product made by it under the patents licensed. Attached to the license No. 8 is a print of the label, together with a copy of the rules and standards of the United States Public Health Service. The terms and conditions of said License No. 8 are by reference made a part of the other three licenses. No Cancellation, nor Revision of Royalty riders are attached. Otherwise the terms and conditions of the licenses are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 226.

[License No. 8(d).]

This Exhibit is a license from the Federal Trade Commission to Diarsenol Company, Inc., dated March 4, 1918, and designated as License No. 8 (d). It licenses the licensee to make, use and vend within the United States and cause to be made for them either in Canada or the United States the invention described in United States Letters Patent No. 13,848, Reissue, for the term of the patent unless sooner terminated. It recites that it is one of five licenses, four of which, namely, Nos. 8, 8 (a), 8 (b) and 8 (c) have been heretofore issued, and each and all of the provisions and conditions of said other four licenses are by reference made a part of this license, except that separate rules and standards prescribed by the U. S. Public Health Service covering the licensed product are attached. The royalty to be paid by the licensee to the Alien Property Custodian is five per cent. (5%) of the gross sums received by the licensee from the sale within the United States of Neo Arsphenamine. Attached is a print of the labels to be used. There is no Cancellation nor Revision of Royalty rider attached.

PLAINTIFF'S EXHIBIT No. 227.

(License No. 9.)

This Exhibit is a license issued by the Federal Trade Commission to The Abbott Laboratories, dated January 10, 1918, and designated as License No. 9. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 812,554, for the term of the Patent unless sooner terminated. It provides for the payment by the licensee to the Alien Property Custodian of a royalty of five per cent. (5%) of the gross sums received by the licensee from the sale of the product so licensed to be made. There are no Cancellation nor Revision of Royalty riders attached. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 228.

(License No. 10.)

This Exhibit is an exclusive license issued by the Federal Trade Commission to Lembcke, Von Bermuth Company, Incorporated, dated January 17, 1918, and designated as License No. 10. It licenses the licensee exclusively to use or cause to be used and to carry on or cause to be carried on within the United States for the term of each of certain United States Letters Patents employed in the operation of what is known as the Rueping Process for treating timber. The certain Patents so licensed are United States Letters Patents No. 709,799; No. 12,707 Re-issue and No. 1,008,864. It provides for a royalty to be paid by the licensee to the Alien Property Custodian of five per cent. (5%) of the value of the conjoint use of said inventions, the value of which has been established by said commission and is five cents (5¢) per cubic foot of wood treated, and five per cent. (5%) thereof or .0025 cents per cubic foot of wood treated. No cancellation nor Revision of Royalty riders are attached. Otherwise the terms and conditions are substantially like those set forth in Plaintiff's Exhibit No. 224, except that the license to cause to be used and carried on and the method and process of said patents only include the carrying on and use thereof by the persons listed in Schedule 1 attached, which Schedule 1 is hereinafter printed.

License No. 10.
Schedule 1.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
License to Lembcke, von Bermuth Company, Incorporated.

Patent No. 709,799.
dated September 23, 1902.
Reissued October 22, 1907, and Patent No. 1,008,864,
Dated November 14, 1911.
To Max Rueping, of Charlottenburg, Germany.
For Methods of Impregnating Wood, etc.

American Creosote Works, Inc., New Orleans, La.

American Creosoting Company, 17 Battery Place, New York, N. Y.

Atchison, Topeka & Santa Fe Ry. System, Topeka, Kan.

Atlantic Coast Line Railroad Co., Wilmington, N. C.

Ayer & Lord Tie Co., Chicago, Ill.

Boston Elevated Railway Co., Boston, Mass.

J. B. Card, 111 West Washington Street, Chicago, Ill.

Central Creosoting Co., 111 West Washington Street, Chicago, Ill.

Central of Georgia Railway Co., Savannah, Ga.

Charlotte Harbor & Northern Ry. Co., Boca Grande, Fla.

Compressed Wood Preserving Co., Cincinnati, Ohio.

Continental Tie & Lumber Preserving Co., Denver, Colo.

El Paso & Southwestern System, El Paso, Texas.

Eppinger & Russell Co., 165 Broadway, New York, N. Y.

Gulfport Creosoting Co., Gulfport, Miss.

International Creosoting & Construction Co., Galveston, Texas.

Jennison-Wright Co., Toledo, Ohio.

Joyce-Watkins Co., Chicago, Ill.

Kettle River Company, Minneapolis, Minn.

Missouri, Kansas & Texas Ry. Co., St. Louis, Mo.

Michigan Wood Preserving Co., Pittsburgh, Pa.

National Lumber & Creosoting Co., Texarkana, Ark.

Ohio Wood Preserving Co., Pittsburgh, Pa.

Pacific Creosoting Co., Seattle, Wash.

Pennsylvania Railroad Co., Philadelphia, Pa.

Philadelphia & Reading Ry. Co., Philadelphia, Pa.

Pittsburgh Wood Preserving Co., Pittsburgh, Pa.

Republic Creosoting Co., Indianapolis, Ind.

St. Helens Creosoting Co., Portland, Ore.

St. Paul & Tacoma Lumber Co., Tacoma, Wash.

Southern Creosoting Co., Ltd., Slidell, La.

Southern Wood Preserving Co., Atlanta, Ga.

PLAINTIFF'S EXHIBIT No. 229.

(License No. 12.)

This Exhibit is a license issued by the Federal Trade Commission to The Calco Chemical Company, dated February 18, 1918, and designated as License No. 12. It licenses the licensee to make, use and vend within the United States, the invention described in United States Letters Patent No. 812,554 for the term of the patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent. (5%) of the gross sums received by the licensee from the sale of the product so licensed to be made. Attached is a cancellation rider, dated May 19, 1922. No Revision of Royalty rider is attached. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 230.

(License No. 13.)

This Exhibit is a license from the Federal Trade Commission to French Battery & Carbon Company, dated February 18, 1918, and designated as License No. 13. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 1,123,843, for Depolarizer for Galvanic Cells, for the term of the Patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty at the rate of five per cent. (5%) of the value of the use of said invention, which value has been established by said commission and is five dollars ($5.00) per thousand cells sold, and five per cent. (5%) or twenty-five cents (25¢) per thousand cells sold.

There are no Cancellation nor Revision of Royalty riders attached. Otherwise its terms and conditions are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 231.

(License No. 15.)

This Exhibit is a license from the Federal Trade Commission to The Abbott Laboratories, dated March 23, 1918, and designated as License No. 15. It licenses the licensee to make, use and vend within the United States, the invention described in United States Letters Patent No. 1,075,171, for the term of the patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent. (5%) of the gross sums received by the licensee from the sale of the product so licensed to be made. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit 216. There are no Cancellation, nor Revision of Royalty riders attached.

PLAINTIFF'S EXHIBIT No. 232.

(License No. 18.)

No. 18 (Patent)

United States of America
Federal Trade Commission
License Issued to
E. I. du Pont de Nemours & Company.
(Anthracenes)

Under

Certain Letters Patent for Intermediates, Dyes and the Application of Dyes, Owned by Enemies or Allies of Enemies.

Date of License, January 21, 1918.

License No. 18 (Patent)

CANCELLATION OF LICENSE.

The Federal Trade Commission pursuant to surrender thereof by the licensee hereby cancels and terminates, subject to the terms of the license, the following license heretofore issued to E. I. duPont de Nemours & Company, under certain Letters Patent for intermediates, dyes and the application of dyes, such patents being identified in schedule attached to license.

Dated, September 1, 1920.

FEDERAL TRADE COMMISSION,
(Sgd.) J. P. YODER,
Secretary.

License No. 18 (Patent).

REVISION OF ROYALTY.

Pursuant to General Order of the Commission dated September 2, 1919, establishing a uniform rate of royalty under all licenses involving dyes and chemicals (not including drugs), License No. 18, dated January 21, 1918, to E. I. du Pont de Nemours & Company, under certain Letters Patent for intermediates, dyes and the application of dyes, such patents being identified in schedule attached to license, is hereby so amended that from and after August 1, 1919, royalty payable thereunder shall be at the rate of 2% of the gross amounts received by the licensee from the sale of the products included in the license.

Dated, January 14, 1920.

FEDERAL TRADE COMMISSION,
By
(Sgd.) J. P. YODER,
Secretary.

License No. 18. (Patent).

UNITED STATES OF AMERICA,
FEDERAL TRADE COMMISSION.

License to E. I. du Pont de Nemours and Company
of
Wilmington, Delaware,
under
Certain Letters Patent for Intermediates, Dyes and the Application of Dyes Owned by Enemies or Allies of Enemies.

The Federal Trade Commission under authority of and in conformity with the Trading with the Enemy Act and with the Executive Order of October 12, 1917, hereby licenses E. I. du Pont de Nemours and Company, a corporation of the State of Delaware, of Wilmington, Delaware, to make, use and vend within the United States the inventions described in certain United States Letters Patent owned or controlled by enemies or allies of enemies, relating to the manufacture of certain intermediates and dyes and to cause to be made, used and vended, and to carry on and cause to be carried on the processes and inventions of certain United States Letters Patent owned or controlled by enemies or allies of enemies relating to the application of dyes, for the terms of each of the respective patents, unless sooner terminated.

Said United States Letters Patent under which this license is granted, are included in a schedule annexed hereto, and it is the purpose and intent of this license to authorize and license the said licensee to use and employ the inventions of the said letters patent and each of them, and such others (owned or controlled by an enemy or ally of an enemy), whether included in such schedule or not, as may be found desirable, in order to make, use and vend the group of dyes known as Anthracenes, and to carry on and cause to be carried on, the processes disclosed and claimed in such letters patent, with respect to such group, and to relieve the licensee of liability for infringement of these and of any letters patent owned or controlled by an enemy or ally of enemy, by reason of the manufacture, use or sale or the carrying on or causing to be carried on of any process of any such letters patent concerning said Anthracene group of dyes, and with respect to the letters patent owned or controlled by an enemy or ally of an enemy included in the annexed schedule and any other, whether or not subsequently added thereto as hereinafter provided, which have to do with the application of such dyes to fabrics, and the use of processes by dyers and others who may purchase the products of the licensee, the licensee may, by an appropriate notice on packages, invoices or otherwise, authorize purchasers and users of the said products to use and apply the same, and the licensee shall not thereby be deemed to have violated the provisions hereof forbidding sub-licenses.

The licensee during the continuance of this license shall pay to the Alien Property Custodian semi-annually within thirty days after the 1st day of February and the 1st day of August in each year, a royalty of five per cent. (5%) of the net profit derived from the sale of the products included in this license, which sum the Federal Trade Commission has determined is a reasonable royalty, and which shall be the aggregate royalty to be paid by the licensee under all of the said letters patent.

The enumeration of said letters patent in said schedule is provisional and upon application by the licensee other letters patent may from time to time be added thereto or removed therefrom, but the addition of any letters patent to said schedule or the removal of any letters patent therefrom, or the failure to include therein any letters patent owned or controlled by an enemy or ally of an enemy necessary or desirable to be used in the manufacture, use or sale by the licensee of Anthracene dyes shall not affect this license, the terms thereof or the royalty payable thereunder.

The licensee shall, during the continuance of this license, keep proper accounts and separate books containing full particulars of:—

(a) All products made and sold under this license and of the price or prices charged and the amounts received therefor;

(b) All items of cost incurred in the use of such inventions and the manufacture and sale of products made thereunder; and

(c) All other matters and things, which, in the opinion of the Federal Trade Commission, may be material for the purpose of showing the amounts from time to time payable by the licensee concerning such royalty and what is a fair and reasonable price to the public for such product.

The licensee shall, within 10 days after the first day of February and the first day of August in each year, deliver a sworn statement to the Federal Trade Commission in writing showing the aforesaid particulars.

The licensee shall, during the continuance of this license, give all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee under this license, the cost of the use of such invention, the cost of producing and the price or prices charged by the licensee for the said products, and for that purpose shall, if requested by the Federal Trade Commission, permit such person or persons as shall be authorized in that behalf by the Federal Trade Commission, at any time or times to enter upon and inspect any factory or place of business of the licensee in which the use of said invention or the manufacture of the said products shall be carried on and all books, papers and documents of such licensee relating to such use, manufacture and sale.

If any payment under this license shall not be made within one month after the same shall have become due under the provisions herein contained (whether demand therefor shall have been made or not), or if the licensee shall or shall attempt to assign or part with the benefit of or grant any sublicense under this license, except as hereinbefore provided, or shall make any default in the performance or observance of any obligation on its part herein contained, or shall have violated any of the conditions of this license or any of the provisions of the statute under which it is granted, and if, after 10 days' notice in writing, shall have failed to comply with the aforesaid, then the Federal Trade Commission may, by notice in writing, and after a hearing, cancel and terminate this license as from the date of such notice, but without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

If, in the opinion of the Federal Trade Commission, the licensee has failed to use this license so as to satisfy the reasonable requirement of the public with regard to the subject matter thereof; or

If, in the opinion of the Federal Trade Commission, the licensee has failed to supply to the public the products made under this license at reasonable prices; or

If, in the opinion of the Federal Trade Commission, the licensee has charged unreasonable or excessive prices for products made under this license; or

If, in the opinion of the Federal Trade Commission, the products made under this license are of unsatisfactory quality, or fail to conform to such rules and standards as may from time to time be prescribed by the Federal Trade Commission or by any competent United States authority (and the licensee shall furnish to the Federal Trade Commission in the manner prescribed by it, and when and as often as required, samples and specimens for inspection, analysis and test); or

Circumstances have arisen, which, in the opinion of the Federal Trade Commission, make it advisable that this license be canceled in whole or in part; Then

The Federal Trade Commission may, in its absolute discretion, terminate and cancel this license in whole or in part, and if canceled and terminated, the same shall be without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

Any sums which may at any time be payable by the licensee under the provisions of this license shall be a debt due from the licensee to the people of the United States, and shall be recovered in an appropriate action in the name of the people of the United States against the licensee.

Dated, January 21, 1918.

FEDERAL TRADE COMMISSION,
By
(Sgd.) L. L. BRACKEN,
Secretary.

Attest:
(Sgd.) C. H. McDONALD,
Counsel in Charge.

Accepted and agreed to.

E. I. DU PONT DE NEMOURS AND COMPANY,
Licensee,
By

G. V. L.

I. DU PONT,
Vice Presdt.

Schedule annexed to and forming part of License No. 18. (Patent)

Issued to E. I. du Pont de Nemours and Company under letters patent concerning anthracene dyes.

Patent No. 1,063,173, dated May 27, 1913.

To Christian Rampini, deceased by William E. Warland, administrator, Brooklyn, N. Y., assignor to Badische Anilin & Soda Fabrik, Ludwigshafen-on-the-Rhine, Germany.

For "Producing Amino-Anthraquinones and Derivatives Thereof."

Patent No. 724,789, dated April 7, 1903.

To René Bohn, Mannheim, Germany, Assignor to Badische Anilin and Soda Fabrik, Ludwigshafen-on-the-Rhine, Germany, a Corporation.

For "Blue Dye and Process of Making Same."

Patent No. 753,659, dated March 1, 1904.

To René Bohn, Mannheim, Germany, assignor to Badische Anilin und Soda Fabrik, Ludwigshafen-on-the-Rhine, Germany, a Corporation of Baden.

For "Anthracene Derivative and Process of Making Same."

Patent No. 1,055,701, dated March 11, 1913.

To René Bohn, Mannheim, Germany, assignor to Badische Anilin & Soda Fabrik, Ludwigshafen-on-the-Rhine, Germany, a Corporation.

For "Pigment and Process of Making the Same."

Patent No. 1,150,863, to Richard Just and Fritz Eckard, dated August 24, 1915, assigned to Badische Anilin.

For "Pigment and the Process of Making Same."

Patent No. 739,145, dated September 15, 1903.

To René Bohn, Mannheim, Germany, assignor to Ba-

dische Anilin and Soda Fabrik, Ludwigshafen-on-the-Rhine, Germany, a Corporation of Baden.
For "Anthracene Dye."

Patent No. 787,859, dated April 18, 1905.
To Roland H. Scholl, Karlsruhe, and Oscar Bally, Mannheim, Germany, assignors to Badische Anilin & Soda Fabrik, Ludwigshafen-on-the-Rhine, Germany, a Corporation of Baden.
For "Anthracene Compound and Process of Making Same."

Patent No. 818,992, dated April 24, 1906.
To Oscar Bally and Max H. Isler, Mannheim, Germany, assignors to Badische Anilin & Soda Fabrik, Ludwigshafen-on-the-Rhine, Germany, a Corporation.
For "Anthracene Dye and Process of Making Same."

Patent No. 796,393, dated August 1, 1905.
To Oscar Bally, Mannheim, Germany, assignor to Badische Anilin & Soda Fabrik, Ludwigshafen-on-the-Rhine, Germany, a Corporation of Germany.
For "Anthracene Coloring-Matter and Process of Producing the Same."

Patent No. 906,367, dated December 8, 1908.
To Oscar Bally, Mannheim, and Hugo Wolff, Ludwigshafen-on-the-Rhine, Germany, assignors to Badische Anilin & Soda Fabrik, Ludwigshafen-on-the-Rhine, Germany, a Corporation.
For "Anthracene Dye and Process of Making Same."

Patent No. 1,003,268, dated Sept. 12, 1911.
To Richard Just and Hugo Wolff, Ludwigshafen-on-the-Rhine, Germany, assignors to Badische Anilin & Soda Fabrik, Ludwigshafen-on-the-Rhine, Germany, a Corporation.
For "Anthracene Dye and Process of Making Same."

Patent No. 961,612, dated June 14, 1910.

To Max Henry Isler, Mannheim, and Hugo Wolff, Ludwigshafen-on-the-Rhine, Germany, assignors to Badische Anilin & Soda Fabrik, Ludwigshafen-on-the-Rhine, Germany, a Corporation.

For "Anthracene Compound and Process of Making It."

PLAINTIFF'S EXHIBIT No. 233.

(License No. 19.)

This Exhibit is a license from the Federal Trade Commission to E. I. du Pont de Nemours & Company, dated January 21, 1918, and designated as License No. 18 (a). It licenses the licensee to make, use and vend within the United States the inventions described in U. S. Letters Patent No. 711,377 and No. 795,755, for the terms of the respective patents unless sooner terminated. The licensee is required to pay to the Alien Property Custodian a royalty of two per cent (2%) of the gross receipts derived from the sale of the products included in the license, otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216. It contains a Cancellation rider, dated September 1, 1920. There is no Revision of Royalty rider attached.

PLAINTIFF'S EXHIBIT No. 234.

(License No. 19).

This Exhibit is a license from the Federal Trade Commission to E. I. du Pont de Nemours & Co., dated January 21, 1918, and designated as License No. 19. It licenses the licensee to make, use and vend within the United States the inventions described in certain United States Letters Patent, owned or controlled by enemies or allies of enemies relating to the manufacture of certain intermediates and dyes, and to cause to be made, used and vended, and to carry on and cause to be carried on the processes and inventions of certain United States Letters Patents, owned or controlled by enemies or allies of enemies relating to the application of dyes for the term of each of the respective patents, unless sooner terminated. The said patents under which the license is granted are No. 680,395; No. 868,294 and No. 718,340, enumerated in the schedule attached. The license recites that it is the purpose and intent of the license to authorize and license the said licensee to use and employ the inventions of the said letters patents and each of them, and such others (owned or controlled by an enemy or an ally of an enemy) whether included in the schedule or not, and as may be found desirable, in order to make, use, and vend the group of dyes known as Indigo and its derivatives, and to carry on and cause to be carried on, the processes described in such letters patent with respect to such groups. The licensee is required to pay to the Alien Property Custodian a royalty of five per cent. (5%) of the net profit derived from the sale of the products included in the license. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 232. A rider entitled "Revision of Royalty" dated January 14, 1920, is attached, which provides that the license is so amended that from and after August 1, 1919, the royalty payable shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the products included in the license. Cancellation rider dated September 1, 1920, is attached.

PLAINTIFF'S EXHIBIT No. 235.

(License No. 20.)

This Exhibit is a license from the Federal Trade Commission to E. I. du Pont de Nemours & Company, dated January 21, 1918, and designated as License No. 20. It licenses the licensee to make, use and vend within the United States the inventions described in certain United States Letters Patent owned or controlled by enemies or allies of enemies relating to the manufacture of certain intermediates and dyes, and to cause to be made, used and vended, and to carry on and cause to be carried on the processes and inventions of certain United States Letters patent, owned or controlled by enemies or allies of enemies, relating to the application of dyes, for the term of each of the respective patents, unless sooner terminated. The said patent under which the license is granted is No. 931,598, set out in the Schedule attached. The license recites that it is the purpose and intent of the license to authorize and license the said licensee to use and employ the inventions of the said Letters Patent and each of them and such others (owned or controlled by an enemy or an ally of an enemy) whether included in the Schedule or not as may be found desirable in order to make, use and vend the group of dyes known as Sulphur dyes, and to carry on and cause to be carried on the processes disclosed in such Letters Patent with respect to such group. The licensee is required to pay to the Alien Property Custodian a royalty of five per cent (5%) of the net profit derived from the sale of the products included in the license, otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 232. A rider entitled

"Revision of Royalty," dated January 14, 1920, is attached, which provides that the license is so amended that from and after August 1, 1919, the royalty payable shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the products included in the license. Cancellation rider dated September 1, 1920, is attached.

PLAINTIFF'S EXHIBIT No. 236.

(License No. 21.)

This Exhibit is a license from the Federal Trade Commission to E. I. du Pont de Nemours & Company, dated January 21, 1918, and designated as License No. 21. It licenses the licensee to make, use and vend within the United States, the inventions described in certain United States Letters Patent owned or controlled by enemies or allies of enemies relating to the manufacture of certain intermediates and dyes, and to cause to be made, used and vended and to carry on and cause to be carried on the processes and inventions of certain United States Letters Patents owned or controlled by enemies or allies of enemies relating to the application of dyes, for the term of each of the respective patents unless sooner terminated. The said patents under which the license is granted are: Nos. 1,101,111; 1,034,853; 1,042,356; 1,206,232; 1,193,566 and 1,127,027, enumerated in the schedule attached. The license recites that it is the purpose and intent of the license to authorize and license the said licensee to use and employ the inventions of the said letters patent and each of them, and such others, owned or controlled by an enemy, or ally of an enemy, whether included in the schedule or not, as may be found desirable in order to make, use and vend the group of dyes known as Azo Dyes, and to carry on and cause to be carried on the processes disclosed in such letters patents with respect to such group. The licensee is required to pay to the Alien Property Custodian a royalty of five per cent (5%) of the net profits derived from the sale of the products included in the license, otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 232. A rider entitled "Revision of Royalty," dated January 14, 1920, is attached, which provides that the license is so amended that from and after August 1, 1919, the royalty payable shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the products included in the license. Attached is a cancellation rider, dated September 1, 1920.

PLAINTIFF'S EXHIBIT No. 237.

(License No. 22.)

This is a license from the Federal Trade Commission to Albert B. Moses, dated April 8, 1918, and designated as License No. 22. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 1,139,031, for the term of the patent unless sooner terminated. The Licensee is required to pay to the Alien Property Custodian a royalty at the rate of two per cent (2%) of the gross sums received by the licensee from the sale of the products produced by the use of the invention licensed, otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216. There are no cancellation nor Revision of Royalty riders attached.

PLAINTIFF'S EXHIBIT No. 238.

(License No. 23.)

This Exhibit is a license from the Federal Trade Commission to F. L. Smidth & Company, dated July 16, 1918, and designated as License No. 23. It licenses the licensee exclusively to make, use and vend within the United States the invention described in United States Letters Patent No. 1,043,349, for the term of the said patent, unless sooner terminated. It provides for a royalty to be paid by the licensee to the Alien Property Custodian of five per cent (5%) of the cost of the equipment necessarily added to the standard apparatus in order to utilize said invention. The Patent is entitled: Ball-Mill. It contains no cancellation nor Revision of Royalty rider, otherwise its terms and conditions are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 239.

(License No. 24.)

This is a license from the Federal Trade Commission to E. C. Klipstein & Sons Company, dated April 8, 1918, and designated as License No. 24. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 711,377, and No. 795,755, for the terms of the respective patents unless sooner terminated. It requires the licensee to pay to the Alien Property Custodian a royalty of two per cent (2%) of the gross receipts derived from the sale of the products included in the license, otherwise the terms and conditions are substantially like those set forth in Plaintiff's Exhibit No. 216. There is no Cancellation nor Revision of Royalty rider attached.

PLAINTIFF'S EXHIBIT No. 240.

(License No. 27.)

This Exhibit is a license issued by the Federal Trade Commission to National Aniline & Chemical Company, Inc., dated June 28, 1918, and designated as License No. 27. It licenses the licensee to make, use and vend within the United States the inventions described in certain United States Letters Patent owned or controlled by enemies or allies of enemies, relating to the manufacture of certain intermediates and dyes, and to cause to be made, used and vended and to carry on and cause to be carried on the processes and inventions of certain United States Letters Patent owned or controlled by enemies or allies of enemies, relating to the application of dyes, for the terms of each of the respective patents unless sooner terminated. The said patents under which the license is granted are: Nos. 682,523; 715,662; 724,789; 734,325; 734,866; 739,145; 739,579; 753,659; 754,768; 787,859; 796,393; 809,892; 818,336; 818,992; 828,778; 844,914; 856,811; 863,397; 876,810; 906,367; 925,917; 929,442; 948,204; 955,105; 958,325; 961,048; 961,612; 970,878; 999,062; 1,003,268; 1,063,172; 1,063,173; 1,104,943; 1,145,934, enumerated in the schedule attached. The license recites that it is the purpose and intent of the license to authorize and license the said licensee to use and employ the inventions of said letters patent, and each of them, and such others (owned or controlled by an enemy or an ally of an enemy) whether included in the schedule or not as may be found desirable, in order to make, use and vend the group of dyes known as Anthracenes, and to carry on and cause to be carried on the processes disclosed in such letters patent, with respect to such groups. The licensee is required to pay to the Alien Property Custodian a royalty of five per cent. (5%) of the net profits derived from the sale of the products included in the license. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 232. A rider entitled "Revision of Royalty" dated November 26, 1919, is attached, which provides that the license is so amended that from and after July 1, 1919, the royalty payable shall be at the rate of two per cent. (2%) of the gross amounts received by the licensee from the sale of the products included in the license. There is no cancellation rider attached.

PLAINTIFF'S EXHIBIT No. 241.

(License No. 28.)

This Exhibit is a license from the Federal Trade Commission to the National Aniline and Chemical Company, Inc., dated June 28, 1918, and designated as License No. 28. It licenses the licensee to make, use and vend within the United States the inventions described in certain United States Letters Patent owned or controlled by enemies or allies of enemies, relating to the manufacture of certain intermediates and dyes, and to cause to be made, used and vended, and to carry on and cause to be carried on the processes and inventions of certain United States Letters Patents owned or controlled by enemies, or allies of enemies, relating to the application of dyes for the term of each of the respective patents, unless sooner terminated. The said patents under which the license is granted are No. 892,897; No. 916,029; No. 965,170; No. 968,697; No. 999,439, and No. 718,340, enumerated in the Schedule attached. The license recites that it is the purpose and intent of the license to authorize and license the said licensee to use and employ the inventions of the said letters patent and each of them and such others (owned or controlled by an enemy or ally of an enemy) whether included in the schedule or not as may be found desirable, in order to make, use and vend the group of dyes known as Indigo and its derivatives and to carry on and cause to be carried on the processes disclosed in such Letters Patent with respect to such group. The licensee is required to pay to the Alien Property Custodian a royalty of five per cent. (5%) of the net profit derived from the sale of the products included in the license. The terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 232. A rider entitled, "Revision of Royalty" dated November 26, 1919, is attached, which provides that the license is so amended that from and after July 1, 1919, royalty payable shall be at the rate of two per cent. (2%) of the gross amounts received by the licensee from the sale of the products included in the license. There is no cancellation rider attached.

PLAINTIFF'S EXHIBIT No. 242.

(License No. 29.)

This Exhibit is a license from the Federal Trade Commission to National Aniline & Chemical Company, Inc., dated June 28, 1918, and designated as License provides that the license is so amended that from and after July 1, 1919, the royalty payable shall be at the rate of two per cent. (2%) of the gross amounts received by the licensee from the sale of the products included in the license. There is no cancellation rider attached.

PLAINTIFF'S EXHIBIT No. 244.

(License No. 32.)

This Exhibit is a license issued by the Federal Trade Commission to Stearns-Roger Manufacturing Company, dated July 16, 1918, and designated as License No. 32. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 1,078,125. The patent is entitled "Cellular Drying Apparatus" and the license provides that the licensee shall pay to the Alien Property Custodian a royalty at the rate of $37.50 for each cubic meter of content of the drum used in said apparatus. The license is for the term of the patent unless sooner terminated. Attached is a cancellation rider dated December 16, 1919. There is no Revision of Royalty rider attached. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 245.

(License No. 33.)

This Exhibit is a license issued by the Federal Trade Commission to Merrimac Chemical Co., dated July 16, 1918, and designated as License No. 33. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 711,377, and No. 795,755, for the term of the respective patents unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of two per cent (2%) of the gross receipts derived from the sale of the products included in the license. There is no cancellation nor Revision of Royalty rider attached, otherwise the terms and conditions are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 246.

(License No. 34.)

This Exhibit is a license issued by the Federal Trade Commission to H. A. Metz Laboratories, Inc., dated July 1, 1918, and designated as License No. 34. It licenses the licensee to make, use and vend, within the United States, the invention described in United States Letters Patent No. 986,148, for the term of the patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent (5%) of the gross sums received by the licensee from the sale of Salvarsan which is the name applied by the licensee to the product made under the patent so licensed. Attached is a copy of the rules and standards of the United States Public Health Service and a copy of the labels. There is no cancellation nor Revision of Royalty rider attached, otherwise the terms and conditions of the license are substantially like those set forth under Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 247.

[License No. 34 (a).]

This Exhibit is a license issued by the Federal Trade Commission to H. A. Metz Laboratories, Inc., dated July 1, 1918, and designated as License No. 34 (a). It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent re-issue No. 13,848, for the term of the patent unless sooner terminated. It states that this license is one of two, No. 34 and 34 (a), and that the product intended to be licensed under 34 (a) is the product introduced as Neo Salvarsan, and designated as Neo Arsphenamine. It provides that a royalty of five per cent. (5%) of the gross sums received by the licensee from the sale within the United States of Neo-Arsphenamine shall be paid by the licensee to the Alien Property Custodian and provides further that the license is subject to the same provisions and conditions as those contained in Federal Trade Commission License No. 34, which provisions and conditions are made a part of this license except that separate rules and standards prescribed by the United States Public Health Service covering the licensed product are attached. Attached is a print of the label. There is no cancellation nor Revision of Royalty rider attached.

PLAINTIFF'S EXHIBIT No. 248.

(License No. 35.)

This Exhibit is a license issued by the Federal Trade Commission to H. A. Metz Laboratories, Inc., dated July 1, 1918, and designated as License No. 35.

It licenses to the licensee to make, use and vend within the United States the invention described in United States Letters Patent 812,554, for the term of the patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent (5%) of the gross sums received by the licensee from the sale of the product so licensed. There is no cancellation nor Revision of Royalty rider attached, otherwise the terms and conditions are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 249.

(License No. 36).

This Exhibit is a license issued by the Federal Trade Commission to General Ceramics Co., dated July 19, 1918, and designated as License No. 36. It licenses the licensee to make, use and vend within the United States, the invention described in the United States Letters Patent No. 1,141,266, for the term of the patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent (5%) of the gross sums received by the licensee from the sale of the devices under such patent. There is no cancellation nor Revision of Royalty rider attached, otherwise the terms and conditions of this license are substantially like those set forth under Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 250.

(License No. 38)

No. 38 (Patent)

United States of America
FEDERAL TRADE COMMISSION
License Issued to
E. C. KLIPSTEIN & SONS COMPANY.

Under Patents

Numbers 1,216,612, dated Feb. 20, 1917. 1,191,480, dated July 18, 1916.
To Otto Schmidt.
For "Producing Soluble Tanning Agents," and "Tanning."

Date of License, August 15, 1918.
Cancelled and terminated July 11, 1921.

CANCELLATION OF LICENSE

The Federal Trade Commission, pursuant to surrender thereof by the licensee, hereby cancels and terminates the following license heretofore issued to E. C. Klipstein & Sons Company, a corporation of the State of New Jersey, under United States Patents Nos. 1,216,612 and 1,191,480, but subject to the terms of the license.

Dated: July 11, 1921.

FEDERAL TRADE COMMISSION,
(Sgd.) J. P. YODER,
Secretary.

REVISION OF ROYALTY.

Pursuant to General Order of the Commission dated September 2, 1919, establishing a uniform rate of

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royalty under all licenses involving dyes and chemicals (not including drugs), License No. 38, dated August 15, 1918, to E. C. Klipstein & Sons Company, under U. S. Letters Patent Nos. 1,216,612, covering Producing Soluble Tanning Agents, and 1,191,480, covering Tanning, is hereby so amended that from and after September 1, 1919, royalty payable thereunder shall be at the rate of 2% of the gross amounts received by the licensee from the sale of the products included in the license.

Dated, November 26, 1919.

FEDERAL TRADE COMMISSION,
By
(Sgd.) J. P. YODER,
Secretary.

License No. 38 (Patent)
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UNITED STATES OF AMERICA,
FEDERAL TRADE COMMISSION

License to E. C. Klipstein & Sons Company
of
New York City
under

Patent No.	1,216,612.
Dated	February 20, 1917.
To	Otto Schmidt, of Ludwigshafen-on-the-Rhine, Germany, Assignor to Badische Anilin & Soda Fabrik, of Ludwigshafen-on-the-Rhine, Germany, a Corporation.
For	"Producing Soluble Tanning Agents."

Patent No.	1,191,480
Dated	July 18, 1916.
To	Otto Schmidt, of Ludwigshafen-on-the-Rhine, Germany, Assignor to Badische Anilin & Soda Fabrik, of Ludwigshafen-on-the-Rhine, Germany, a Corporation.
For	"Tanning."

The Federal Trade Commission, under the authority of and in conformity with the "Trading with the Enemy Act," and of the Executive Order of October 12, 1917, hereby licenses E. C. Klipstein & Sons Company, a corporation of the State of New Jersey, under Letters Patent of the United States, Numbered—1,216,612 and 1,191,480, issued respectively on February 20, 1917 and July 18, 1916, to Otto Schmidt of Ludwigshafen-on-the-Rhine, Germany, Assignor to Badische Anilin & Soda Fabrik of Ludwigshafen-on-the-Rhine, Germany, a corporation;—one for "Producing Soluble Tanning Agents" and the other for "Tanning," and under any other United States Patent or Patents now issued or hereafter and during the continuance of the present war issued to or owned or controlled by an enemy or an ally of an enemy, to use and employ the inventions described or claimed in said Letters Patent No. 1,216,612 and 1,191,480 for their respective terms, and to practice any process and to make, use and vend any products therein referred to, and to authorize its vendees to use and employ such products or any of them and such authorization shall not constitute a violation of the terms hereof prohibiting sub-licenses.

The licensee during the continuance of this license shall pay to the Alien Property Custodian semi-annually within thirty days after the 1st day of September and the 1st day of March in each year a royalty of three per cent. of the gross receipts derived by it from the sale of the products included in this license, which sum the Federal Trade Commission has determined is a reasonable royalty and shall be the aggregate royalty to be paid by the licensee under all said Letters Patent issued or to be issued.

The licensee shall, during the continuance of this license, keep proper accounts and separate books containing full particulars of:

(a) All products made and sold under this license and of the prices charged and amounts received therefor.

(b) All items of cost incurred in the use of such inventions and the manufacture and sale of products made thereunder; and

(c) All other matters and things, which, in the opinion of the Federal Trade Commission, may be material for the purpose of showing the amounts from time to time payable by the licensee concerning such royalty and what is a fair and reasonable price to the public for such products.

The licensee shall, within 10 days after each of the semi-annual days aforesaid, deliver a sworn statement to the Federal Trade Commission in writing showing the aforesaid particulars.

The licensee shall, during the continuance of this license, give all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee under this license, the cost of the use of such inventions, the cost of producing and the price or prices charged by the licensee for the said products, and for that purpose shall, if requested by the Federal Trade Commission, permit such person or persons as shall be authorized in that behalf by the Federal Trade Commission at any time or times to enter upon and inspect any factory or place of business of the licensee in which the use of the said inventions or the manufacture of the said products shall be carried on, and all books, papers, and documents of such licensee relating to such use, manufacture and sale.

If any payment under this license shall not be made within one month after the same shall have become due under the provisions herein contained (whether demand therefor shall have been made or not), or if the licensee shall, or shall attempt to assign or part with the benefit of or grant any sublicense under this license, except as hereinbefore stated, or shall make default in the performance or observance of any obligation on its part herein contained, or shall have violated any of the conditions of this license or any of the provisions of the statute under which it is granted, and if, after 10 days' notice in writing, shall have failed to comply with the aforesaid, then the Federal Trade Commission may, by notice in writing, and after a hearing, cancel and terminate this license as from the date of such notice, but without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

If, in the opinion of the Federal Trade Commission, the licensee has failed to use this license so as to satisfy the reasonable requirement of the public with regard to the subject matter thereof; or

If, in the opinion of the Federal Trade Commission the licensee has failed to supply to the public the products made under this license at reasonable prices; or

If, in the opinion of the Federal Trade Commission the licensee has charged unreasonable or excessive prices for products made under this license; or

If, in the opinion of the Federal Trade Commission the products made under this license are of unsatisfactory quality (and the licensee shall furnish to the Federal Trade Commission in the manner prescribed by it and when and as often as required, samples and specimens for inspection, analysis and test); or

Circumstances have arisen, which, in the opinion of the Federal Trade Commission make it advisable that this license be canceled in whole or in part: Then

The Federal Trade Commission may, in its absolute discretion, terminate and cancel this license in whole or in part, and, if canceled and terminated, the same shall be without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

Any sums which may at any time be payable by the licensee under the provisions of this license shall be a debt due from the licensee to the people of the United States, and shall be recovered in an appropriate action in the name of the people of the United States against the licensee.

Dated, August 15, 1918.

FEDERAL TRADE COMMISSION,
By
(Sgd.) L. L. BRACKEN,
Secretary.

Attest:
(Sgd.) ROBERT M. SEE,
Counsel in Charge.

Accepted and agreed to.

E. C. KLIPSTEIN & SONS COMPANY,
Licensee.
By
(Sgd.) E. H. KLIPSTEIN,
Treasurer,
(Sgd.) W. A. KLIPSTEIN,
Secy.

PLAINTIFF'S EXHIBIT No. 251.

(License No. 39.)

This Exhibit is a license issued by the Federal Trade Commission to Merck & Co., dated Sept. 25, 1918, and designated as License No. 39. It licenses the licensee, to make, use and vend within the United States the invention described in United States Letters Patent No. 943,578 for the term of the patent unless sooner terminated. It provides for the payment by the licensee to the Alien Property Custodian of a royalty of five per cent (5%) of the gross sums received by the licensee from the sale of the product so licensed to be made. There is no cancellation nor Revision of Royalty rider attached, otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 252.

(License No. 42.)

This Exhibit is a license issued by the Federal Trade Commission to the Draeger Oxygen Apparatus Company, dated December 16, 1918, and designated as License No. 42. It licenses the licensee to make, use and vend within the United States the inventions described in United States Letters Patent, Nos. 1,049,346, 1,044,031 and 1,136,517, for the term of said patents unless sooner terminated. It provides for the payment by the licensee to the Alien Property Custodian on January 1, 1919, as royalty, a sum equal to five per cent (5%) of the gross amounts received by the licensee during the period between October 12, 1917 and December 16, 1918, from the sale of apparatus such as is described in said Letters Patent and in addition to the amount to be paid January 1, 1919, for the payment thereafter of a royalty of five per cent (5%) of the gross amounts received from such sale during the respective periods stated. There is no cancellation nor Revision of Royalty riders attached, otherwise the terms and conditions of the license are substantially like those set forth under Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 253.

(License No. 43.)

This Exhibit is a license issued by the Federal Trade Commission to The Draeger Oxygen Apparatus Company, dated December 16, 1918, and designated as License No. 43. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 1,214,941, for the term of said patent unless sooner terminated. It provides for the payment by the licensee to the Alien Property Custodian on January 1, 1919, as royalty, a sum equal to five per cent (5%) of the gross amounts received by the licensee during the period between October 12, 1917, and December 16, 1918, from the sale of apparatus such as is described in the said Letters Patent and in addition to the amount to be paid January 1, 1919, for the payment thereafter of a royalty of five per cent (5%) of the gross amounts received from such sales during the respective periods stated. There is no cancellation nor Revision of Royalty rider attached. Otherwise the terms and conditions of the license are substantially like those set forth under Plaintiff's Exhibit 216.

PLAINTIFF'S EXHIBIT No. 254.

(License No. 44.)

This Exhibit is a license issued by the Federal Trade Commission to The Draeger Oxygen Apparatus Company, dated December 16, 1918, and designated as License No. 44. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent, 1,085,674, for the term of such patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian on January 1, 1919, as royalty, a sum equal to five per cent of the gross amounts received by the licensee during the period between October 12, 1917, and December 16, 1918, from the sale of apparatus such as is described in said Letters Patent and in addition to the amount to be paid January 1, 1919, for the payment thereafter of a royalty of five per cent (5%) of the gross amounts received from such sales during the respective periods stated. There is no cancellation nor Revision of Royalty riders attached, otherwise the terms and conditions of the license are substantially like those set forth under Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 255.

(License No. 46.)

This Exhibit is a license issued by the Federal Trade Commission to The Draeger Oxygen Apparatus Company, dated December 16, 1918, and designated as license No. 46. It licenses the licensee to make, use and vend within the United States the inventions described in United States Letters Patents Nos. 1,005,816 and 1,033,681, for the terms of the patents unless sooner terminated. It provides for the payment by the licensee to the Alien Property Custodian on January 1, 1919, as royalty, a sum equal to five per cent (5%) of the gross amounts received by the licensee during the period between October 12, 1917 and December 16, 1918, from the sale of apparatus such as is described in said Letters Patent and in addition to the amount to be paid January 1, 1919, for the payment thereafter of a royalty of five per cent (5%) of the gross amounts received from such sales during the respective periods stated. There is no cancellation nor Revision of Royalty rider attached. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 256.

(License No. 47.)

This Exhibit is a license issued by the Federal Trade Commission to Reinschild Chemical Company, dated December 31, 1918, and designated as License No. 47. It licenses the licensee to make, use and vend within the United States the inventions described in United States Letters Patent No. 896,807, and No. 943,163, for the term of said patents unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian on February 1, 1919, as royalty, a sum equal to five per cent (5%) of the gross amounts received by the licensee during the period between August 15, 1918, and December 31, 1918, from the sale of the product described in said Letters Patent and in addition to the amount to be paid February 1, 1919, for the payment thereafter of a royalty of five per cent (5%) of the gross amounts received from such sales during the respective periods stated. There is no cancellation nor Revision of Royalty rider attached, otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 257.

(License No. 48.)

This Exhibit is a license issued by the Federal Trade Commission to Arma Engineering Company, dated January 15, 1919, and designated as License No. 48. It licenses the licensee to make, use and vend within the United States the inventions described in United States Letters Patent Nos. 794,654—841,612—877,034— 973,611— 1,019,582— 1,092,816— 1,141,099—1,173,241— 1,186,339— 1,186,686— 1,228,061 and 1,231,-933, respectively, for the term of each patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent of the gross sums received by the licensee from the sale of the apparatus described in the patents. There is no cancellation nor Revision of Royalty rider attached. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 258.

(License No. 50.)

This Exhibit is a license issued by the Federal Trade Commission to The Ault & Wiborg Company, dated February 19, 1919, and designated as License No. 50. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 741,029, for the term of the patent unless sooner terminated. It provides for the payment to the Alien Property Custodian by the licensee of a royalty of five per cent (5%) of the gross receipts derived from the sale of the product included in the license. Attached is a rider entitled "Revision of Royalty" dated November 26, 1919, wherein the license is amended so that the royalty to be paid from and after June 1, 1919, shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the licensed products. There is attached a rider entitled "Assignment of License" dated September 20, 1920, which recites that the assignment and transfer on July 1, 1920, to the Cincinnati Chemical Works, Inc., by the licensee of this license, is approved as of July 1, 1920. There is no cancellation rider attached, otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 259.

(License No. 51.)

This Exhibit is a license issued by the Federal Trade Commission to Central Dyestuff & Chemical Company, dated February 19, 1919, and designated as License No. 51. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 733,280, for the term of the patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent

(5%) of the gross receipts derived from the sale of the product included in the license. Attached is a rider entitled "Revision of Royalty" dated November 26, 1919, wherein the license is amended so that the royalty from and after June 1, 1919, shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the licensed product. There is no cancellation rider attached. Otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 260.

(License No. 52.)

This Exhibit is a license issued by the Federal Trade Commission to Ultro Chemical Corporation, dated March 4, 1919, and designated as License No. 52. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent 757,109, for the term of the patent unless sooner terminated. It provides for the payment by the licensee to the Alien Property Custodian of a royalty of five per cent (5%) of the gross receipts derived from the sale of the product included in the license. Attached is a rider entitled "Revision of Royalty," dated November 26, 1919, wherein the license is amended so that from and after June 1, 1919, the royalty shall be at the rate of two per cent of the gross amounts received by the licensee from the sale of the licensed product. There is no cancellation rider attached. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 261.

(License No. 53.)

This Exhibit is a license issued by the Federal Trade Commission to Consolidated Color & Chemical Co., dated March 4, 1919, and designated as License No. 53. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 867,305, for the term of the patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent (5%) of the gross amounts received from the sale of the product covered by the license. Attached is a rider entitled "Revision of Royalty" dated November 26, 1919, wherein the license is amended so that from and after June 1, 1919, the royalty shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the licensed product. There is no cancellation rider attached. Otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 262.

(License No. 54.)

This is a license issued by the Federal Trade Commission to Consolidated Color and Chemical Co., dated March 4, 1919, and designated as License No. 54. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 1,025,174, for the term of the patent unless sooner terminated. It provides for the payment by the licensee to the Alien Property

Custodian of a royalty of five per cent (5%) of the gross amounts received from the sale of the product covered by the license. Attached is a rider entitled "Revision of Royalty," dated November 26, 1919, wherein the license is amended so that from and after June 1, 1919, the royalty shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the licensed product. There is no cancellation rider attached. Otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 263.

(License No. 55.)

This Exhibit is a license issued by the Federal Trade Commission to Consolidated Color & Chemical Co., dated March 4, 1919, and designated as License No. 55. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 916,029, for the term of the patent unless sooner terminated. It provides for the payment by the licensee to the Alien Property Custodian of a royalty of five per cent (5%) of the gross amounts received from the sale of the product covered by the license. Attached is a rider entitled "Revision of Royalty," dated November 26, 1919, wherein the license is amended so that from and after June 1, 1919, the royalty shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the licensed product. There is no cancellation rider attached, otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 264.

(License No. 56.)

This Exhibit is a license issued by the Federal Trade Commission to the Consolidated Color & Chemical Co., dated March 4, 1919, and designated as License No. 56. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 892,897, for the term of the patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent (5%) of the gross amounts received from the sale of the product covered by the license. Attached is a rider entitled "Revision of Royalty," dated November 26, 1919, amending the license so that from and after June 1, 1919, the royalty shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the licensed product. There is no cancellation rider attached. Otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 265.

(License No. 57.)

This Exhibit is a license issued by the Federal Trade Commission to Consolidated Color & Chemical Co., dated March 4, 1919, and designated as License No. 57. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 968,697, for the term of the patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent of the gross amounts received from the sale of the product covered by the license. Attached is a rider entitled "Revision of Royalty" dated November 26, 1919, amending the license so that from and after June 1, 1919, the royalty payable shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the licensed product. There is no cancellation rider attached, otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 266.

(License No. 58.)

This Exhibit is a license issued by the Federal Trade Commission to Consolidated Color & Chemical Company, dated March 4, 1919, and designated as License No. 58. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 1,025,138, for the term of the patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent (5%) of the gross amounts received from the sale of the product covered by the license. Attached is a rider entitled "Revision of Royalty" dated November 26, 1919, wherein the license is amended so that from and after June 1, 1919, the royalty to be paid thereunder shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the licensed product. There is no cancellation rider attached. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 267.

(License No. 59.)

This Exhibit is a license issued by the Federal Trade Commission to Consolidated Color & Chemical Company, dated March 4, 1919, and designated as License No. 59. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 999,439, for the term of the patent unless sooner terminated. It provides for the payment by the licensee to the Alien Property Custodian of a royalty of five per cent. (5%) of the gross amounts received from the sale of the licensed product. Attached is a rider entitled "Revision of Royalty" dated November 26, 1919, amending the license so that from and after June 1, 1919, the royalty payable thereunder shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the licensed product. There is no cancellation rider attached. Otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 268.

[License Nos. 60, 60 (a), 60 (b) and 60 (c).]

This Exhibit is a group of four licenses issued by the Federal Trade Commission to Division of Laboratories and Research of the New York State Department of Health, all of which are dated March 12, 1919, and designated as License Nos. 60, 60 (a), 60 (b) and 60 (c) respectively. They respectively license the licensee to make, use and vend, within the State of New York, but not elsewhere, the inventions and processes described in United States Letters Patents 1,116,398; No. 986,148; No. 1,081,592; and No. 1,081,897, for the term of the patents unless sooner terminated. The licenses respectively provide that the aggregate royalty to be paid by the licensee under such four licenses to the Alien Property Custodian shall be one cent (1¢) per ampule of 0.6 grams content for each ampule used or sold by the licensee. Attached to license No. 60 is a copy of the rules and standards of the United States Public Health Service. The provisions and conditions of License No. 60 are by reference made a part of the other three licenses. There is no cancellation nor Revision of Royalty rider attached, otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 269.

(License No. 61.)

This is a license issued by the Federal Trade Commission to Semet-Solvay Company, dated March 4, 1919, and designated as License No. 61. It licenses the licensee to make, use and vend within the United States the inventions described in certain United States Letters Patent owned or controlled by enemies or allies of enemies and to carry on the processes and inventions of certain United States Letters Patent owned or controlled by enemies or allies of enemies relating to the production of Ammonia for the terms of each of the respective Patents unless sooner terminated; said licensed Patents being included in a schedule attached which enumerates the following:

No. 971,501; No. 1,006,206; No. 1,053,951; No. 1,053,952;

No. 1,068,966; No. 1,068,967; No. 1,068,968; No. 1,068,969;
No. 1,075,085; No. 1,077,034; No. 1,083,585; No. 1,089,185;
No. 1,094,194; No. 1,118,628; No. 1,128,843; No. 1,148,570;
No. 1,149,510; No. 1,152,930; No. 1,158,167; No. 1,173,532;
No. 1,175,693; No. 1,202,995; No. 1,225,755; No. 1,243,382;
No. 1,244,580.

It provides for the payment by the licensee to the Alien Property Custodian of a royalty of five per cent (5%) of the gross amounts received by the licensee from the sale of products manufactured according to the processes of the patents involved. Attached is a rider entitled "Revision of Royalty" dated November 26, 1919, wherein the license is amended so that from and after June 1, 1919, the royalty to be paid shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of products manufactured according to the processes of the patents involved. There is no cancellation rider attached. Otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 270.

[Licenses No. 62, 62 (a), 62 (b) and 62 (c).]

This Exhibit is a group of four licenses issued by the Federal Trade Commission to Massachusetts State Department of Health, all of which are dated March

21, 1919, and designated as Licenses Nos. 62, 62(a), 62(b) and 62(c), respectively. They respectively license the licensee to make, use and vend within the State of Massachusetts, but not elsewhere, except to vend and distribute at actual cost to the Boards or Departments of Health of Maine, New Hampshire, Vermont, Rhode Island and Connecticut such amounts of the invention as may be required by these Boards or Departments of Health for use in the institutions of their respective states and the official clinics which have been established for the treatment of syphilis in accordance with the cooperative plan for venereal disease control entered into by the United States Public Health Service and the various State Boards or Departments of Health under the terms of the Act of Congress approved July 9, 1918, Chap. 15, "An Act making appropriations for the support of the Army for the Fiscal year ending June 30, 1919," the inventions and processes described in United States Letters Patent No. 1,116,398; No. 986,148; No. 1,081,592 and No. 1,081,897, for the terms of the respective patents unless sooner terminated. They provide respectively for the payment by the licensee to the Alien Property Custodian of an aggregate royalty under said four licenses of one cent (1¢) per ampule of 0.6 grams content for each ampule used or sold by the licensee. Attached to License No. 62 is a copy of the rules and standards of the United States Public Health Service. The provisions and conditions of License No. 62 are by reference made a part of the other three licenses. There is no Cancellation nor Revision of Royalty rider attached. Otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 271.

(License No. 63.)

This Exhibit is a license issued by the Federal Trade Commission to Horatio Nelson Fraser, dated March 4, 1919, and designated as License No. 63. It licenses the licensee to make, use and vend within the United States the invention described in United States Letters Patent No. 994,437, for the term of the patent unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent (5%) of the gross amounts received from the sale of the product manufactured according to the process of the patent. Attached is a rider entitled "Revision of Royalty" dated November 26, 1919, amending the license so that from and after June 1, 1919, the royalty to be paid shall be at the rate of two per cent (2%) of the gross amounts received by the licensee from the sale of the product manufactured according to the process of the patent. There is attached a rider entitled "Assignment of License," dated May 31, 1921, which recites that the assignment and transfer to the Chemical Refining Syndicate of this license is authorized and approved, subject to the terms of the license as of May 31, 1921. There is no cancellation rider attached. Otherwise the terms and conditions of this license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 272.

(License No. 65.)

This Exhibit is a license issued by the Federal Trade Commission to Green & Bauer, Inc., dated

March 17, 1919, and designated as License No. 65. It licenses the licensee to make, use and vend within the United States the inventions described in United States Letters Patent No. 1,122,011 and No. 1,218,423, for the term of the patents unless sooner terminated. It provides that the licensee shall pay to the Alien Property Custodian a royalty of five per cent of the gross amounts received from the sale of the devices manufactured according to the descriptions and claims of the patents involved. Attached is a cancellation rider, dated September 20, 1920. There is no Revision of Royalty rider attached. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 273.

(License No. 66.)

This is a license issued by the Federal Trade Commission to The Sperry Gyroscope Company, dated March 4, 1919, and designated as License No. 66. It licenses the licensee to make, use and vend within the United States the inventions described in certain United States Letters Patent owned or controlled by enemies or allies of enemies, relating to the manufacture of gyroscopic compasses, for the term of each patent unless sooner terminated; said licensed patents being enumerated in a Schedule annexed, which are as follows: No. 841,612; No. 877,034; No. 1,019,582; No. 1,180,365; No. 1,180,815; No. 1,186,339; No. 1,186,686; No. 1,231,933 and No. 1,228,061. It provides for the payment by the licensee to the Alien Property Custodian of a royalty of five per cent (5%) of the gross amounts received from the sale of apparatus covered by the patents. There is no cancellation nor Revision of Royalty riders attached. Otherwise the terms and conditions of the license are substantially like those set forth in Plaintiff's Exhibit No. 216.

PLAINTIFF'S EXHIBIT No. 274.

(Copyright License No. 5.)

UNITED STATES OF AMERICA,
FEDERAL TRADE COMMISSION
License Issued to
THE JOHN CRERAR LIBRARY.

Under Copyright
Number 4914 Class A, XXc.
To Otto Spamer.
Dated December 28, 1911.
For Book Entitled: "Die Schwefelfarbstoffe ihre Herstellung und Verwendung. Mit Figuren. Chemische Technologie, Spezieller Teil."

Date of License, March 30, 1918.

UNITED STATES OF AMERICA,
FEDERAL TRADE COMMISSION
License to The John Crerar Library
of
Chicago, Illinois
under

Copyright	No. 4914 Class A, XXc.
Dated	December 28, 1911.
To	Otto Spamer, Leipzig, Germany.
For	"Die Schwefelfarbestoffe ihre Herstellung und Verwendung. Mit Figuren. Chemische Technologie, Spezieller Teil." Dr. Otto Lange, of Germany.

The Federal Trade Commission under the authority of and in conformity with the Trading with the Enemy Act, and of the Executive Order of October 12, 1917, hereby licenses The John Crerar Library, a corporation of the State of Illinois (not for pecuniary profit), of Chicago, Ill., to exercise within the United States all the rights created by the copyright laws of the United States of America, being the Act of March 4, 1909, as amended, with respect to the subject matter of copyright to Otto Spamer, of Leipzig, Germany, No. 4914 Class A, XXc, for the book entitled: "Die Schwefelfarbstoffe ihre Herstellung und Verwendung. Mit Figuren. Chemische Technologie, Spezieller Teil," for the period of the said copyright unless sooner terminated.

The licensee during the continuance of this license shall pay to the Alien Property Custodian semi-annually within thirty days after the 1st day of May and the 1st day of November in each year, respectively, a royalty of one per cent. of the gross sums received by the licensee from the sale of the copyrighted work so licensed.

The licensee shall, during the continuance of this license, keep proper accounts and books containing full particulars of:

(a) All copies of said copyrighted work made and sold under this license, and of the prices charged and amounts received therefor;

(b) All items of cost incurred in the manufacture, copying, publication, use and sale of said copyrighted work;

(c) All other matters and things, which, in the opinion of the Federal Trade Commission may be material for the purpose of showing the amounts from time to time payable by the licensee concerning such royalty and what is a fair and reasonable price to the public for such copyrighted work.

The licensee shall, within ten (10) days after each of the semi-annual days aforesaid, deliver a sworn statement to the Federal Trade Commission in writing showing the aforesaid particulars.

The licensee shall, during the continuance of this license, give all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee under this license, the cost of producing and the price or prices charged by the licensee for th said copyrighted work, and for that purpose shall, i requested by the Federal Trade Commission,

If in the opinion of the Federal Trade Commission, the licensee has failed to supply to the public th copyright work at reasonable prices; or

If, in the opinion of the Federal Trade Commission the licensee has charged unreasonable or excessive prices for said copyright work; or

Circumstances have arisen, which, in the opinio of the Federal Trade Commission make it advisabl that this license be canceled in whole or in part; The

The Federal Trade Commission may, in its absolute discretion, terminate and cancel this license i whole or in part, and if terminated and canceled, th same shall be without prejudice to and so as not i any manner to affect any liability hereunder on th part of the licensee which may then be subsisting o have accrued.

Any sums which may at any time be payable b the licensee under the provisions of this license sha be a debt due from the licensee to the people of th United States and shall be recovered in any appropr ate action in the name of the people of the United States against the licensee.

Dated March 30, 1918.

FEDERAL TRADE COMMISSION,
By (Sgd.) L. L. BRACKEN,
Secretary.

Attest:
(Sgd.) C. H. McDONALD,
Counsel in Charge. B.

Accepted and agreed to:

THE JOHN CRERAR LIBRARY, CHICAGO, ILL.
By (Sgd.) C. W. ANDREWS, *Treas.*,
Licensee.

PLAINTIFF'S EXHIBIT No. 275.

(Trade-mark License No. 3.)

License No. 3. (Trade-Mark.)

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
LICENSE ISSUED TO
The Draeger Oxygen Apparatus Company.

	Number 94,620.
Under Trade-Mark	To Drägerwerk, Heinr. & Bernh. Dräger, of Lübeck, Germany.
	Dated December 23, 1913.
	For "PULMOTOR" for Mechanical Respiratory Apparatus and Devices for Administering Oxygen.
Date of License	December 16, 1918.

License No. 3. (Trade-Mark.)

United States of America,
Federal Trade Commission.

License to The Draeger Oxygen Apparatus Company,
A Corporation of New York,
under

Trade-Mark	94,620.
Dated	December 23, 1913.
To	Drägerwerk, Heinr. & Bernh. Dräger, of Lübeck, Germany.
For	"Pulmotor" for Mechanical Respiratory Apparatus and Devices for Administering Oxygen.

The Federal Trade Commission, under the authority of and in conformity with the Trading with the Enemy Act and of the Executive Order of October 12, 1917, hereby licenses The Draeger Oxygen Apparatus Company, a corporation organized under the laws of the State of New York, and having its principal place of business at Wilkinsburg, Pennsylvania, to use the trade-mark shown in United States Registration to Drägerwerk, Heinr. & Bernh. Dräger, No. 94,620, dated December 23, 1913 (copy annexed hereto), until the further order of the Federal Trade Commission.

The license under the aforesaid trade-mark is subject to the following conditions:

(1) That the said trade-mark shall be used solely upon and in connection with apparatus made and sold under the licenses issued by the Federal Trade Commission to the said The Draeger Oxygen Apparatus Company, concurrently herewith, authorizing manufacture, use and sale of the inventions covered by United States Letters Patents Nos. 1,049,346; 1,044,031; 1,136,517; 1,214,941; 1,085,674; 1,005,816, and 1,033,681.

(2) That the said trade-mark be so used only when there is a clear and unmistakable notice in connection therewith that the article in association with which it is used is the product of the licensee.

The royalty to be paid by the licensee under this license shall be One Hundred Dollars ($100.00) per year payable in instalments of Fifty Dollars ($50.00) each on the first day of January and July of each year that the licensee uses said trade-mark, the first payment hereunder to be made July first, 1919.

If any payment under this license shall not be made within one month after the same shall have become due under the provisions herein contained (whether demand therefor shall have been made or not), or if the licensee shall or shall attempt to assign or part with the benefit of or grant any sub-license under this license, or shall make default in the performance or observance of any obligation on its part herein contained, or shall have violated any of the conditions of this license or any of the provisions of the statute under which it is granted, and if, after ten (10) days' notice in writing, shall have failed to comply with the aforesaid, then the Federal Trade Commission may, by notice in writing, and after a hearing, cancel and terminate this license as from the date of such notice, but without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

If, in the opinion of the Federal Trade Commission, the licensee has failed to use this license so as to satisfy the reasonable requirements of the public with regard to the subject-matter thereof; or

If, in the opinion of the Federal Trade Commission, the licensee has failed to supply to the public the articles made under this license at reasonable prices; or

If, in the opinion of the Federal Trade Commission, the licensee has charged unreasonable or excessive prices for articles made under this license; or

Circumstances have arisen, which, in the opinion of the Federal Trade Commission, make it advisable that this license be canceled in whole or in part: Then

The Federal Trade Commission may, in its absolute discretion, terminate and cancel this license in whole or in part and, if canceled and terminated, the same shall be without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

Any sums which may at any time be payable by the licensee under the provisions of this license shall be a debt due from the licensee to the people of the United States, and shall be recovered in an appropriate action in the name of the people of the United States against the licensee.

Dated: Dec. 16, 1918.

FEDERAL TRADE COMMISSION,
(Sgd.) J. P. Yoder,
Secretary.

Attest:

....
Counsel in Charge.

Accepted and Agreed to:

DRAEGER OXYGEN APPARATUS CO.,
(Sgd.) F. F. Morris,
President.
Licensee.

UNITED STATES PATENT OFFICE.

Drägerwerk, Heinr. & Bernh. Dräger, of Lübeck, Germany.

T.ade-Mark for Mechanical Respiratory Apparatus and Devices for Administering Oxygen.

94,620. Registered Dec. 23, 1913.
Application filed May 22, 1912. Serial No. 63,710.

STATEMENT.

To all whom it may concern:

Be it known that Drägerwerk, Heinr. & Bernh. Dräger, a firm created by authority of the German commercial law, located in the city of Lübeck, German Empire, and doing business at 53 Moislinger Allee, in Lübeck, and composed of the following members, Johann Heinrich Dräger and Alexander Bernhard Dräger, both subjects of the German Emperor, have adopted for its use the trade-mark shown in the accompanying drawing, for mechanical respiratory apparatus and devices for administering oxygen, in Class 44, Dental, medical, and surgical appliances.

This trade-mark has been continuously used in our business since February, 1909.

The trade-mark is applied or affixed to the goods or to the receptacles containing same by placing thereon a printed, impressed or embossed label, or metallic sheet on which the mark is shown, or it may be printed or impressed on or applied to boxes, wrappers or any other receptacles or packages containing the goods aforesaid or used as a brand or sealing.

DRÄGERWERK, HEINR. &
BERNH. DRÄGER,
By ALEXANDER BERNHARD DRAGER,
A Member of the Firm.

Witnesses:
FRIEDRICH L. GATH,
JOHN WOLF.

Pulmotor

DECLARATION.

United States consulate at Lübeck, German Empire ss.

Alexander Bernhard Dräger being duly sworn deposes and says that he is a partner of the firm of Drägerwerk, Heinr. & Bernh. Dräger, acting for the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said firm is the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief has the right to use said trade-mark either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark has been registered in Germany under No. 121207 dated February 18th 1909/August 31st, 1909, that the drawing presented truly represents the trademark sought to be registered and that the specimens show the trade-mark as actually used upon the goods.

ALEXANDER BERNHARD DRÄGER.

Subscribed and sworn to before me at Lübeck, this 4th day of May, 1912.

(L. S.) WOLFGANG GAEDERTZ,
U. S. Consular Agent.

PLAINTIFF'S EXHIBIT No. 276.

101A

"Dermatological Research Laboratories" 1720-22 .1818 Lombard St. Philadelphia, Pa 1B & 1C

11/25/17 Patent

re: Patent of ~~[illegible]~~ Paul Ehrlich & Alfred Bertheim assignors to Farbwerke vorm. Meister Lucius & Bruning of Germany, for the term of the Patents (1)

1A. Derivatives of Oxyarylarsinic Acids and Process of Making Same. (1) Dihydrochloride Diaminodioxy-arsenobenzol

1B. Medicinal Preparations (1C) Medicinal Preparations

5% of the Gross Sums received from the sale of "Arsenobenzol" "Arsphenamine"

: January & July first

: February & August first

11/2 Cancelled 5/31/21

Jan. 9 1918	$ 814 61	Feb. 7 1918
July 9 1918	9815 67	Aug. 5 1918
Jan 10, 1919	13,945 59	Mch. 25, 1919
July 11, 19	11,733 66	ck to A.P.C 8/5/19
Febr. 10, 1920	$9133 24	March 9, 1920
July 9, 1920	$6018 44	August 13, 1920
Feb 7, 1921	$6351.57	APC ackd 2/15/21
9/15/21	1/1/21 - 5/31/21	$2458.45

License Cancelled 5/31/21

$3503.62 covering shortages on former payts under this and License #1 A paid to A.P.C. 8/25/21 See report in files for details

2/11/21 {total pd under all licenses $87,975.39}

PLAINTIFF'S EXHIBIT No. 277.

LicenseNo. 1(d)
~~NO~~. Patent.
DatedMarch 4,'18.

Dermatological Research Laboratories, 1818 Lombard St, Phila., Pa.
(License) (Address)

Subject re Patent to George Korndörfer and Baptist Reuter, assignor to Farbwerke

Patent No.: vorm. Meister Lucius & Bruning, of Germany for the term of the Patent (13,848)

For: Derivatives of Diaminodioxyarsenobenzene and Process of Making Same

Owner: 5% of gross sums received from the sale within the U. S. of "Neo-arsphenamine"

Cancelled 5/31/1921

See other card for total payments

Royalty:

Reports to be filed January & July Payments to be made February & August.

Report received	Amount of Royalty		Royalty paid(Date)	Report received	Amount of Royalty		Royalty paid(Date
Jan 14/19	No sales		No sales	See Licenses 1;1(a);1(b):1(c) for correct			
July 11 19	1811	81	8/4/19	figures under Neo audit			
Feby 10 1920	$2548	86	March 9 1920				
July 9, 1920	$5135	43	August 13 1920				
Feb 7, 1921	$7184	01	A.P.C. ackd 2/16/21		License		Cancelled
9/15/21	1/1/21 9/31/21		$7520.40		May	31,	1921
	Royalty	Per	[illegible] for Correct) Payment.				

Takamine Laboratory Inc.

Clifton - N. J.
~~120 Broadway New York City~~
New York office - 12 Dutch St.

2.2A.2B.2C
Patent 2.

re. Patents to Paul Ehrlich & Alfred Bertheim assignors to Farbwerke vorm Meister Lucius and Bruning, for the terms of the Patents. (2) Dihydrochloride Diamino dioxyarsenobenzene (2A) Derivative of Oxyarylarsinic Acids and Process of Making Same. (2B) Medicinal preparations. (2C) Medicinal Preparations

Licence dated 11/26/17.

5% of the Gross sums received from the sale of "Arsaminol" (Arsphenamine)

only discontinued
Apr 1921 / rec'd
rept Sal/on
Land as paid

to January & July first

February & August first
Def

			Due	Overpaid
Jan. 10. 1918	$39 35	Feb. 7 1918		
July 10. 1918	no sales	no sales		
Jan 10, 1919	$6.73	Mch. 5. 1919		
July 9. 19	$538.48	Aug. 13. 1919		$3.71
Mch 12, 1920 thru 489.00	$193.94	Apr 22. 1920	$15.46	
7/14/20	$309.72	11/15/20.	19.22	
	$450.65		93.73	
		Due	128.41	
		less overpaid	3.71	
		Due	$124.70	

1/27/21 Dr. Takamine handed
4/9/21 W. W. Coffin 90 day note
covering this and amt due on 2.5.

Total of notes given
Takamine
Licensee
F.Z.-B.C. $124.70
Licensee
F.P. 2089.54
$2214.24

PLAINTIFF'S EXHIBIT No. 278. ③

License
No.
Dated

Takamine Laboratory Inc
(License) (Address)

Subject

Patent No.:

wner: Takamine Laboratory

oyalty: License 2(a) - (b) (c)

eports to be filed

Payments to be made

eport received	Amount of Royalty		Royalty paid(Date)	Report received	Amount of Royalty		Royalty paid(Date
1/7/21 - Thru 6/30/21		″ 44	95				
1/9/22	″ 12/31/21	″	11.32				
7/31/22	(1/1/22 - 7/2/22)	No sales - cured product on hand					

See Dec (1) 3-1- & 15 3-1- for payments

PLAINTIFF'S EXHIBIT No. 279. ⓪

Takamine Laboratory, Inc.

Clifton, N.J.
120 Broadway, New York City
New York Office - 12 Dutch St -

2 II
Patent

re Patents to G. Kamdörfer & B. Reuter, assignors to Farbwerke vorm Meister Lucius & Brüning of Germany for the Term of the Patent (#13.848)

For: Derivatives of Diaminodioxyarsenobenzene and Process of Making Same.

License dated March 11 1918

5% of gross sums received from the sale within the U.S. of "Neo-arsphenamine".

mfg discontinued Apr 1921 - will report bal on hand as sold.

to January & July first

February & August first

July 10. 1918 no Sales no Sales due $7.67

Jan 10, 1919 No Sales

July 9.19 $1,955.55 — Aug 13 1919 " $318.13

Mar 12, 1920 $756.68 — Apr 22.1920 (should be $731.31) overpd $25.37

thru 6/30/20

1/4/20 - $1,722.99 9/16 and 11/15/20 — $63.41

1/27/21 $1,460.37 - reverse $5. error in note

$1,723.70

due $2114.91

less overpd 25.37

2089.54

4/7/21 Note (30 days) handed W. W. Buffum to cover

A.P.C. acc. Mutual

Note to A.P.C. was Pd

$2214.24 Covering

$124.70 - License 2.a.b

2089.54 " 25

$2214.24

PLAINTIFF'S EXHIBIT No. 279. ②

Takamine Laboratory Inc.
(License) (Address)

License
No.
Dated

Subject

Patent No.:

Owner: Takamine Laboratories

Royalty: License 2(d)

Reports to be filed — Payments to be made

Report received	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty		Royalty paid (Date)
8/1/21 –	thru 4/30/21	$	522.15				
1/9/22	" 12/31/21		* 5.20			(1)	
1/31/22	(1/1/22 – 7/1/22)	No	sales ~~thus~~ no product on hand.		8-1-15 3-1-		

See file for payments

PLAINTIFF'S EXHIBIT No. 280.

3

Farbwerke Hoechst Company — 122 Hudson Street, New York City

Patent

re: Patent issued to Paul Ehrlich & A. Bertheim, assignors to Farbwerke vorm. Meister Lucius & Bruning, for the term of the Patent — dated 1/26/17

●- Derivatives of Oxyarylarsinic Acids and Process of making Same.

5% of Gross sums received from sale of "Salvarsan" (arsphenamine)

to January & July first — February & August first

Jan. 8. 1918	$ 265 00	Jan 23 1918
July 5. 1918	5938 23	Aug. 23 1918

$6203.23 total

DEPT. OF JUSTICE

Cancelled July 1. 1918
(see license # 3a)

PLAINTIFF'S EXHIBIT No. 281.

Farbwerke Hoechst Co. 122 Hudson St. New York City 3 A
Patent

U.S. Patent to G. Korndörfer & B. Reuter, Germany, assignors to Farbwerke vorm Meister Lucius & Bruning, Germany, for term of patent.

For - Derivatives of Diaminodioxyarsenobenzene & Process of Making same. "Neo-arsphenamine"

Dated: March 4. 1918

5% of the gross sums received from sale (within U.S.) of neo arsphenamine)

	to January & July first	February & August 1st
July 5. 1918	No sales	No sales

Cancelled July 1. 1918
(see license # 34 A)

PLAINTIFF'S EXHIBIT No. 282.

"

Farbwerke Hoechst Company   122 Hudson Street, N.Y. City   Patent

re: Patent of Alfred Einhorn, assignor to Farbwerke vormals Meister Lucius and Brüning of Germany, for the term of the patent
For - Alkamin Esters of Para-aminobenzoic Acid

$3812.88

5% of Gross Sums received from the sale of "Novocaine" (Procaine)

Dated Dec: 7. 1917 to January & July first   February & August first

Jan. 8. 1918	$224.05	Jan. 23 1918
Jan. 17. 1918	50.00	Jan. 23 1918
July 5. 1918	3538.83	Aug. 23 1918

Cancelled July 1. 1918
(see License # 35)

PLAINTIFF'S EXHIBIT No. 283.

5

Rector Chemical Company   2 Rector St. New York City

Patent 812,554 dated Feb. 13, 1906.

re: Patent to Alfred Einhorn, assignor to Farbwerke vormals Meister Lucius and Brüning, Germany, for the term of the patent

For: Alkamine Esters of Para-amidobenzoic Acid

$8,355.58

dated Dec. 17/17   5% of the gross sums received from sales of "Procaine"

	to January & July first	February & August first
Jan. 8. 1918	No sales	No sales
July 5. 1918	$663.26	Aug. 17 1918
Jan 9, 1919	441.77	Feb. 25. 1919
July 9. 19	1226.02	Aug. 7 1919
Jan. 8/20.	1166.52	April 22 1920.
July 9, 1920	$878.51	August 5, 1920
1/5/21	$8.50	Jan. 7, 1921
7/1/21	No mfg. thru 6/30/21	
1/1/22	No mfd and no sales thru 12/31/21	

should be $412.31 - ck. for $1.54 covering underpaymt handed A.P.C. 5/12/21

6/28/22 A P C advised no royalty due from 1/1/22 to 5/19/22 when license cancelled

License Cancelled May 19 1922

PLAINTIFF'S EXHIBIT No. 284.

2

"Pacific Flush Tank Company 4241-3 Ravenswood Ave. Chicago. Ill

Patent

for Patents to Karl Imhoff of Germany - for term of Patents.
for process and methods of treating Sewage

Cancelled Aug. 23, 1921

See files for numbers

License dated: Dec 17 1917

5% of value of use - see my schedule showing values of use, according to population of municipalities.

to February & August first

March & Sept first

Aug. 14 1918 $3192 00 Sept. 30, 1918. 7/19/21 (8-1-21 - 8/22/21) $91.00 - a. P. & acked 9/28/21
Feb. 3, 1919 $4622 80 Mch. 5, 1919
Aug. 14, 1919 82 60 Aug. 30. 1919
Feb. 1, 1920 $182 00 Feb. 20, 1920
Aug. 2, 1920 $480 20 - Aug. 13, 1920
Feb. 1, 1921 $2746.10 Adjusted by 20c 3/25/2
$11305.70 - ok Jeff and ex. 4/30/21
8/3/21 (thru 7/31/21) $1557.50 Aug 11, 192[illegible]

License Cancelled & terminated
August - 23, 1921.

PLAINTIFF'S EXHIBIT No. 285.

902 04 [illegible]

Diarsenol Company Inc.   475 Elliot Square, Buffalo, New York   8-8A-8B-8C
243 [illegible] St. Toronto, Canada –   Patents

re: patents to P. Ehrlich & A. Bertheim, assignors to Farbwerke vorm Meister Lucius and Brüning, Germany, for term of Patents. 8- Product introduced as Salvarsan or 606 and now designated "Arsphenamine". 8A. An ingredient & a process of making such ingredient. 8B- A method of conserving & packing the finished product by enclosing in ampules. 8C. Procedure & method of Administrat

(date - Jan 17 1918)

5% of the Gross sums received from sale of "Diarsenol"

to January & July first   February & August 1st

July 23/18 $4077 00 Aug. 19 1918   7/26/22 (1/1/22 - 7/2/22) $518.46
Jan 6, 1919 7837 95 Feby 8, 1919
July 7, 1919 2401 08 Aug 4, 1919.
Jany 10, 1920 2,076 71 Feby 20, 1920.
July 9, 1920 $1,904.09 August 4, 1920.
Jan 25, 1921 $1,171.38 Feby 2, 1921
July 11/21 (1/1/21 - 6/30/21) - $1335.94 - Acknd. 7/7/21
Jan. 10, 1922 (7/1 - 12/31/21) $824.87.

STATED BY
No. 7244
Date 6/19/23
Apprd. A. T. J.
Chkd. LL
DEPT. OF JUSTICE

PLAINTIFF'S EXHIBIT No. 286.

1 —

Diarsenol Company Inc.

902-04 Ellicott Square
475 Ellicott Square, Buffalo, New York
Toronto Canada 243 College St.

8 II —
Patent

re: patents to G Korndörfer & B. Reuter, of Germany, assignors to Farbwerke vorm. Meister Lucius & Brüning, Germany for term of Patent.

For: Derivatives of Diaminodioxyarsenobenzene and Process of Making Same "neo-arsphenamine"

Date: March 4. 1918

5% of the gross sums received from sale of neo-arsphenamine.

	to January & July first		February & August 1
July 23/18	$386 61	Aug 19 1918	shd be $178.54 -- credit of $208.07
Jan 16/19	2162 24	Feby 8, 1919	
July 7. 19	2554 72	Aug 4, 1919	
Jany 10, 1920	1339 20	Feby 20, 1920	
July 9, 1920.	$1,450 23	August 4, 1920	
Jan 25, 1921	$1045.73.	Feb 2, 1921	
July 11/21	(1/1/21-6/30/21) $762.98 less credit of $208.07 as above = $554.91 due		

a.o.e.

Paid 1921

9/1/21 Recorded as credit of $208.07 to deduct on next account.

PLAINTIFF'S EXHIBIT No. 286.

License
No. 8 ½.
Dated

Dearsend Company, Inc
(License) (Address)

Subject

Patent No.:

Owner:

Royalty:

Reports to be filed — Payments to be made

Report received	Amount of Royalty		Royalty paid(Date)	Report received.	Amount of Royalty		Royalty paid(Date
Jan 10 1922	(7-1-21 – 12/31/21)		$729.70.				
7/26/22	(1/1/22 – 7/2/22)	$	1063.14				

PLAINTIFF'S EXHIBIT No. 287.

Abbott Laboratories 4739-57 Ravenswood Ave. Chicago. Ill. (Patent

re patent 813554 dated February 13 1906. of Farbwerke vorm. Meister Lucius and Brüning, Germany.) for

Term of patent.

For Alkamin Esters of Para-aminobenzoic Acid.

Date of license: Jan. 10 1918

5% of gross sums received from sales. (Novocaine)

626.24
159.78
$786.02 total

New

Accepted

to January · July first				$ February · August 1
July 1 1918	no sales	no sales	due	unpaid
Jan 20, 1919	1236 00	3/8/19 ackd by A.P.C.	1279.91	43.91
Sept. 16, 1919	506 46	A.P.C. ackn 1/31/20	644.56	138.10
Feby. 9, 1920	~~272 85~~	" " 2/20/20		
7/27/20 licensee report	# 308 99	A.P.C. ackn. 3/4/20	492.84	183.85
July 20, 1920	# 404 27	A.P.C. ackn 8/31/20	595.17	190.90
Febr 11, 1921	# 409.79	A.P.C. acknd 2/17/21	479.27	64.48
total	2865.51		3491.75	626.24 unpd

Abbott Laboratories	4753 Ravenswood Ave. Chicago, Ill	License 9
		No. Patent
(License)	(Address)	Dated 1/10/18

Subject Re Patent 812,554 dated February 13, 1906 to Farbwerke vorm. Meister Lucius

Patent No.: and Bruning, Germany for term of the patent.

For- Alkamin Esters of Para-Aminobenzoic Acid.

Owner:

Royalty: 5% of gross sums received from sales (Procaine)

Royalty:

Reports to be filed Jan. & July first Payments to be made Feb. & Aug.

Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date
On audit	1/10/18-6/30/18	No sales	Total a	ccrued to 6/30/21 —	$3946 52
(our method)	7/ 1/18-12/31/18	$1279.91	Paid A	P C to 6/30/21 —	3160 50
	1/ 1/19- 6/30/19	644.56	7/1/21 D	ue and unpaid	$ 786.02
	7/ 1/19-12/31/19	492.84	with no	report rendered	covering
	1/ 1/20- 6/30/20	595.17	7/1/21 to 11/2	3/21 when surre	nder tendered
	7/ 1/20-12/31/20	479.27	See	File 3-1 31(6) for	details
	1/1/21- 6/30/21	454.77	7/1/21 - 11/23/21	- $368 59	

PLAINTIFF'S EXHIBIT No. 287.

their method pd Custodian 4/11/21

1/1/21 - 4/30/21 — $294.99 — Excess due by our method $159.78
our method — $454.77

7/1/21 — 11/23/21 — their method 135.18 Excess due by our method $133.41
our method 268.59

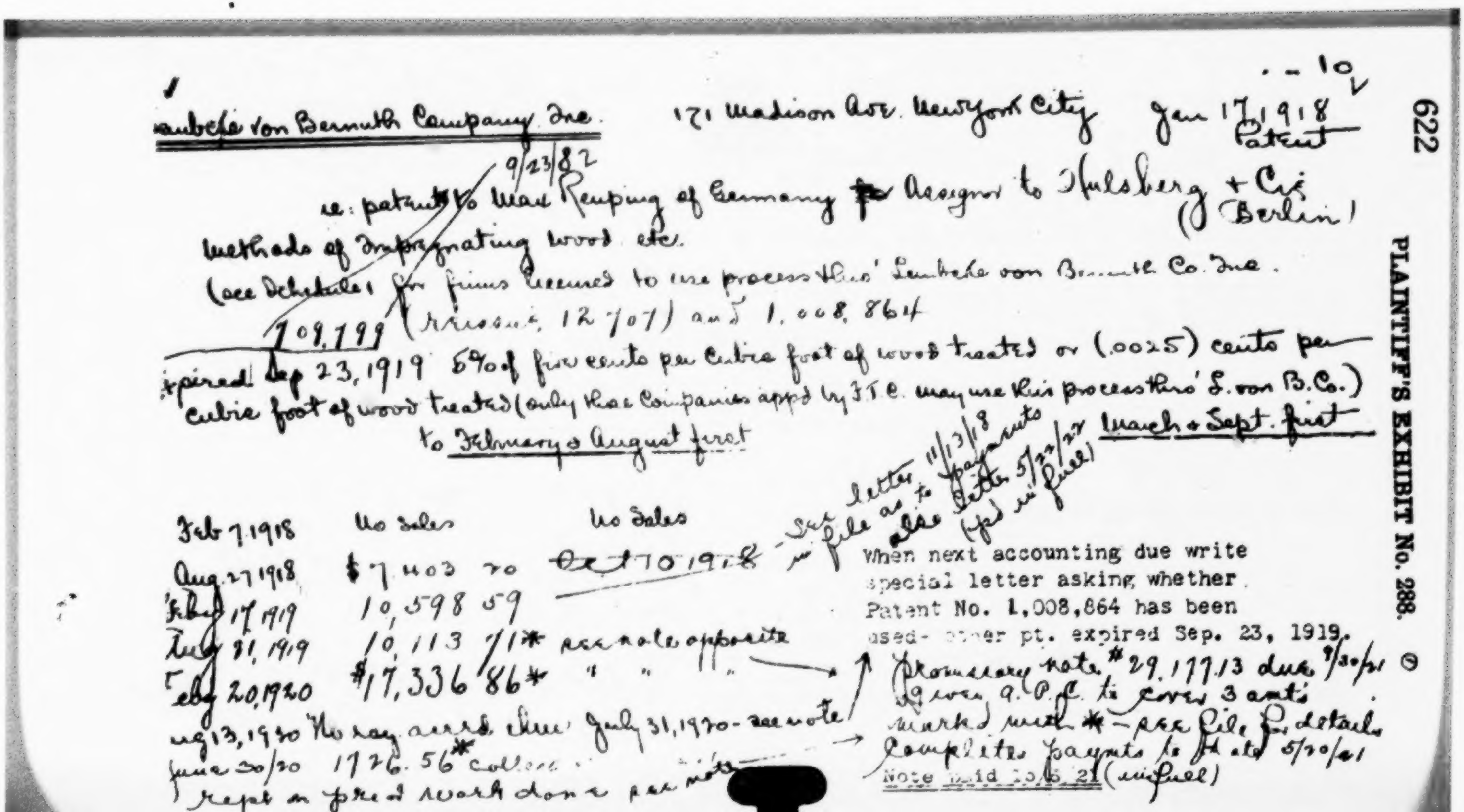
11/24/21 - 6/30/22 their method $264.89 Excess due by our acctg. $264.39
ours 529.28

Total excess due by our acctg 1/1/21 - 6/30/22 $557.58

Plus - amt due by our method prior to 1/1/21 — 786.02

total excess by our method $1343.60

PLAINTIFF'S EXHIBIT No. 288.



-- 10 ✓

1

aubeke von Bernuth Company Inc. 171 Madison Ave. New York City Jan 17, 1918 Patent

9/23/82

re: patent to Max Ruping of Germany ~~for~~ Assignor to Hulsberg + Cie (Berlin)

Methods of Impregnating wood etc.

(see Schedule, for firms licensed to use process thro' Lunbeke von Bernuth Co. Inc.

709,799 (reissue 12707) and 1,008,864

xpired Sep 23, 1919 5% of five cents per cubic foot of wood treated or (.0025) cents per cubic foot of wood treated (only those Companies appd by J.T.C. may use this process thro' L. von B. Co.)

to February & August first March & Sept. first

See letter 11/13/18 file as to payments also letter 5/22/27 (pd in full)

Feb 7.1918 No sales No Sales

Aug. 27 1918 $7,403 ro ~~Oct 10 1918~~

Feb 17 1919 10,598 59

Aug 31, 1919 10,113 71* see note opposite

Feb 20, 1920 $17,336 86* " " "

Aug 13, 1920 No pay accrd. thru July 31, 1920 - see note

June 30/20 1776.56* collec...

) rept on pred work done per note

When next accounting due write special letter asking whether Patent No. 1,008,864 has been used- other pt. expired Sep. 23, 1919.

Promissory note #29,177.13 due 9/30/21 given a.P.C. to cover 3 amts marked with * - see file for details completes paymts to date 5/20/21

Note paid 10/6/21 (in full)

PLAINTIFF'S EXHIBIT No. 288. (2)

License
No.
Dated

[illegible] Permutit Co. Inc.
(License) (Address)

Subject

Patent No.:

Owner:

Royalty:

Reports to be filed | Payments to be made

Report received	Amount of Royalty		Royalty paid(Date)	Report received	Amount of Royalty		Royalty paid(Date
10/10/21- For period	(2/1/21-7/31/21)		No sales & no royalty	accrued			
2/4/22	thru 1/31/22	No	sales & no royalty	accrued.			
10/14/22	No sales	and	no roy accrued	thru	7/2/22		

PLAINTIFF'S EXHIBIT No. 289.

12

The Calco Chemical Company Bound Brook, New Jersey Patent

dated February 13, 1906.

re: Patent # 812.554 to Alfred Einhorn, Munich, Germany, assignor to Farbwerke vormals Meister Lucius & Bruning, of Hochst-on-the-Main, Germany, for: Alkamine Esters of Para-Aminobenzoic Acid (Procaine) - for the life of the Patent

License dated: February 18, 1918

5% of the Gross Sums received from sale of product

$107.49 Total royalty

March & September 10 ~~License~~ surrendered May 19, 1922 April & October 1

Sept. 30, 1918. No sales No sales

Apr. 24, 1919 No Sales "

Sept. 10, 1919 No Sales "

~~Mch 8, 1920 no sales thru Feby 1920. of their own product~~

See corrected report below.

3/9/21 (9/1/20 – 2/28/21) $23.94 due - less credit of $7.09 on former payments - $16.85 due pd. 3/24/21

9/8/21 (3/1/21 – 8/31/21) $3.92 a.p.c. ackd. 11/29/21

3/2/22 (9/1/21 – 2/28/22) $ .11 a.p.c. ackd. 3/9/22

6/23/22- No sales no royalty 3/1/22-5/19/22 when license surrendered.

Should be $2.80 } are credit of $7.09

$76.32 } to be deducted from next payment

9/2/20 thru 2/27/20 $2.30 } a.p.c. ackn.

$84.31 } 10/4/20 [illegible]

PLAINTIFF'S EXHIBIT No. 290.

French Battery & Carbon Co. Madison Wisconsin ✓ 13 Patent

No 1123843 dated Jan 5, 1915

re: patent/to Philipp Burger. Germany for term of patent No. 1,123,843.

For: Depolarizer for Galvanic Cells

Date - Feb. 18.1918

75 cents per 1000 Cells sold

To April & October first

May & November first

Oct. 7, 1918. No sales No sales

3/25/20 No operations under license up to-date (can't secure one ingredient)

7/6/20 No operations under license up to date -

3/30/21 No operations to-date

10/19/21 No operations to-date

4/8/22 No operations to-date

8/4/22 (4/1/22 - 7/1/22) No operations -

PLAINTIFF'S EXHIBIT No. 291.

License 15
No. Patent
Dated 3/23/18

Abbott Laboratories, 4753 Ravenswood Ave. Chicago, Ill
(License) (Address)

ubject Re Patent No. 1,075,171 dated October 7, 1913, to A. Thiele & Wichman, assignors

atent No.: to Chemische Fabrik auf actien (Vorm E. Schering) Germany, for term of patent.

For: Process for the manufacture of 2-Phenylquinolin-4 Carboxylic Acid
~~"Phenylcinchoninic Acid"~~ (ATOPHAN)

wner: Royalty: 5% of the gross sums received.

oyalty:

eports to be filed April & Oct. 1 Payments to be made May & November.

STATED BY
DEPT. OF JUSTICE

Report received	Amount of Royalty	Royalty paid(Date)	Report received	Amount of Royalty		Royalty paid(Date
On audit	4/ 1/18- 9/30/18	$ 22.54	accrued	to 3/31/21	$ 9	064.48
ar method	10/ 1/18- 3/31/19	90.29	Pd A	P.C. to 3/31/21	6	284.16
	4/ 1/19- 9/30/19	458.53 D.	ue and unpaid	3/31/21 –	$	2780.32
	10/ 1/19- 3/31/20	1060.44	[illegible] period	4/1/21 – 11/23	/21	(when surrender
	4/ 1/20- 9/30/20	3288.56	tendered)	not accou	nt	ed for.

PLAINTIFF'S EXHIBIT No. 291.

Abbott Laboratories 4739 Ravenswood Ave. Chicago. Ill. 15 Patent

re patent to A. Thiele & G. Wichmann, assignors to Chemische Fabrik auf Actien No. 1.075.171 dated Oct. 7, 1913. (Vorm E. Schering) Germany, for term of Patent.

For: Process for the manufacture of 2-Phenylquinolin-4-Carboxylic Acid "Phenylcinchoninic Acid" Dated: March 23.1918 (ATOPHAN)

5% of the gross sums received

due 9064.48
pd 6784.16
2810.32 unpd

			to April & October 1	to May & November 1
				due
2/17/19 (due to 9/30/18)	$19.60 ackd by A.P.C 3/8/19		22.54	2.94
Aug 20, 1919 thru 3/31/19	$80.05	dept. 5, 1919	90.29	10.24
11/20/19 thru 9/30/19	$340.05 A.P.C. ackn.	1/31/20	458.53	118.48
5/14/20	$568.67 " "	5/26/20	1060.44	491.77
11/19/20 (THRU) 9/30/20	$2320.41 " "	2/21/21	3288.56	968.15
			4144.12	4144.12
				5735.70
			pd 5/28/21	2955.38
			bal.	$2780.32

$2955.38 rec A.P.C. for period 10/1/20 - 3/31/21 per letter 5/28/21 A.P.C ackd 5/31/21

PLAINTIFF'S EXHIBIT No. 291.

#2780.32 unpaid (our method calculation
covering period prior to 3/31/21

4/1/21 – 11/23/21	(their method)	#3177.24
" "	(our ")	4856.34
11/24/21 – 6/30/22	(their method)	#1276.16
" "	(our ")	3158.67
diff 4/1/21 – 11/23/21	—	#1679.10
" 11/24/21 – 6/30/22	—	1882.51
excess due by our method 4/1/21 – 6/30/22		#3561.61
		2780.32
total excess by our method of accounting		#6341.93.

PLAINTIFF'S EXHIBIT No. 292.

E. I. du Pont de Nemours & Co. Wilmington, Delaware Patent 12

covering fourteen 12 ~~(14)~~ patents of Enemies or allies of enemies re:
ANTHRACENE group of dyes, for terms of patents – all assigned to Badische
date: Jan. 21. 1918 Anilin & Soda Fabrik of Germany

~~6% of Net Profits derived from sale of products~~
Revised to 2% of gross amounts dating from August 1, 1919.
February & August first March & Sept. first

Aug. 24/18 no Profits to July 31. 1918
Feb. 28/19 " " " January 31 1919
" " Aug 1. 1919
2/26/20 (to 2/1/20 $1,682.52 – A.P.C. ackn 4/22/20
(then 7/31/20) $6,625.85 – A.P.C. ackn 9/1/20.
9/9/20 8/1/20 – 8/31/20 1797.51 – ackd by A.P.C. 10/28/20 being included in ck
covering also royalty under License #19.
License Revoked 9/1/20 —— A.P.C. advised 9/17/21

PLAINTIFF'S EXHIBIT No. 293.

License 18a ✓
No. Patent
Dated Jan. 21/18

E. I. du Pont de Nemours & Co. Wilmington, Delaware.
(License) (Address)

Subject Patent No. 711,377, dated Oct. 14, 1902, to Max Bazlen, of Ludwigshafen-On-The
Germany, Assignor to the Badische Anilin & Soda Fabrik, of Ludwigshafen, Germany,
Patent No. for "Solid Alkaline Hydrosulfites & Process of Making Same". and Patent No.
795,755, dated July 25, 1905, to Max Bazlen, of Ludwigshafen-On-The-Rhine, Ger-
many, Assignor to the Badische Anilin & Soda Fabrik, of Ludwigshafen-On-The-
Owner: Rhine, Germany, a Corporation of Baden, for "Process of Making Stable Dry
Hydrosulfites".

Royalty: 2% of gross receipts derived from sale of products included in license.

Reports to be filed February & August Payments to be made March & September

Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date
	No ~~profits~~ sales thru	Aug 1 1919			
2/26/20	no sales	to Feby 1 1920			
8/25/20	No Sales thru	July 31, 1920			
No	sales thru	08/31/20 & License	Cancelled		9/1/20
	A. P. C. Co.	as advised	1/17/21		

PLAINTIFF'S EXHIBIT No. 294.

E.I. du Pont de Nemours & Co. Wilmington. Delaware. Patent 19

covering ~~two~~ (3) patents re: INDIGO and its DERIVATIVES

for terms of patents
dated. Jan. 24.1918

5% of net profit derived from sale of product -

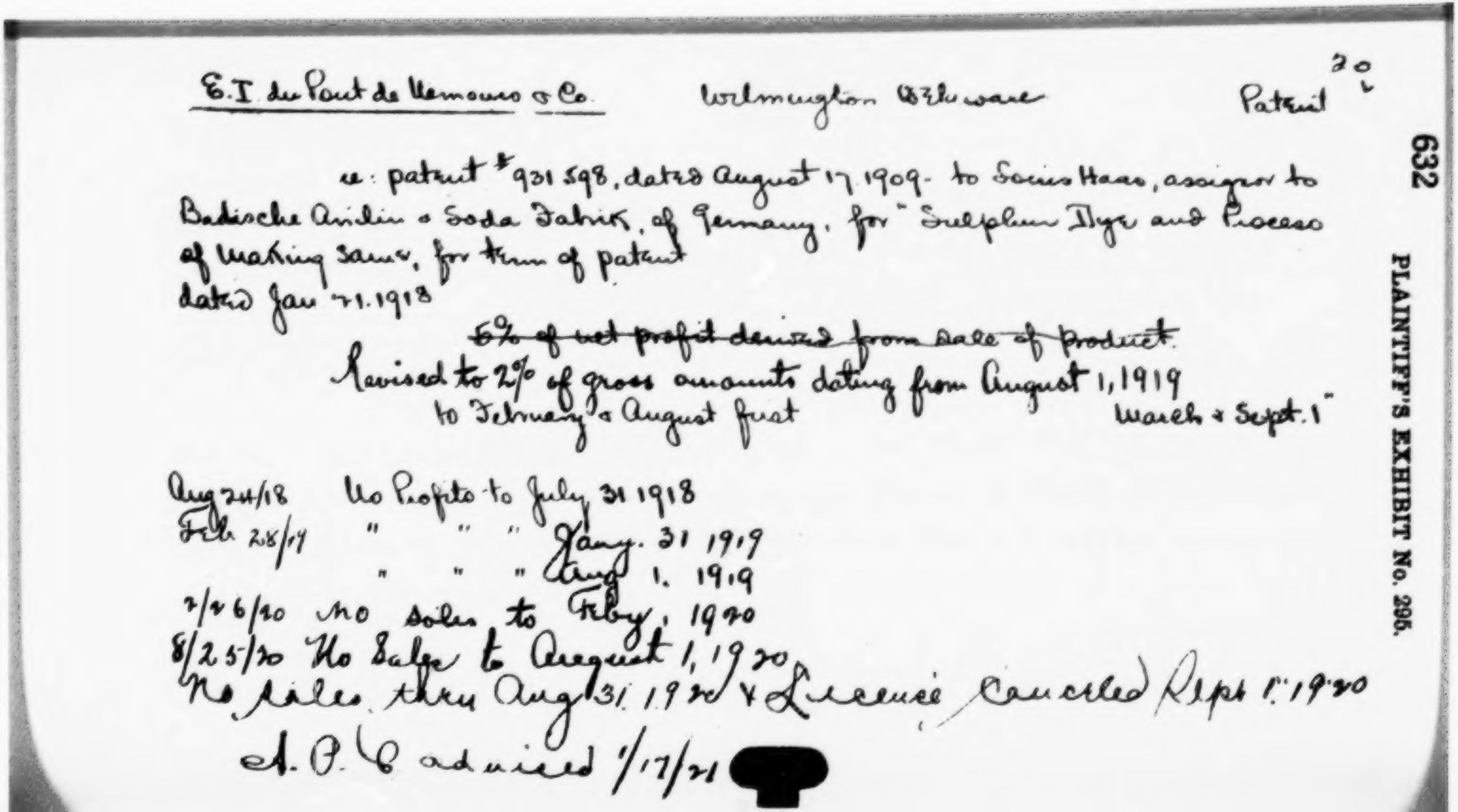
Revised to 2% of gross amts. dating from August 1.1919

to February + August first March + Sept 1

Aug 24/18 no Profits to July 31.1918
Feby 28/19 " " " January 31,1919
" " " Aug 1, 1919
~~2/26/20 no sales to Feby 1.1920~~
~~8/25/20 No Sales to August 1, 1920~~
License canceled 9/1/20
A.P.C. advised 1/17/21

Only lbs. used under this License was #718340 – which Expired January 13 1920. Only royalty accrued from 7/26/19 to 1/13/20 – $61,884.98 Pd by chks to A.P.C. $54068.58 on 9/28/20 + $7816.40 of ck for $9613.91 pd 10/29/20 – balance of $1797.51 covers royalty License #18

PLAINTIFF'S EXHIBIT No. 295.



E.I. du Pont de Nemours & Co. Wilmington Delaware Patent 20

re: patent #931598, dated August 17.1909- to Louis Haas, assignor to Badische Anilin & Soda Fabrik, of Germany, for "Sulphur Dye and Process of making same", for term of patent dated Jan 21.1918

~~5% of net profit derived from sale of product.~~

Revised to 2% of gross amounts dating from August 1, 1919

to February & August first March & Sept. 1"

Aug 24/18 No Profits to July 31 1918

Feb 28/19 " " " Jany. 31 1919

" " " Aug 1. 1919

2/26/20 No sales to Feby. 1920

8/25/20 No Sales to August 1, 1920

No sales thru Aug 31. 1920 & License cancelled Sept 1" 1920

A. P. C advised 1/17/21

PLAINTIFF'S EXHIBIT No. 296.

E.I. du Pont de Nemours & Co. Wilmington. Delaware Patent 24 ✓

covering six (6) patents re: AZO DYES - for terms of Patents

dated Jan. 21.1918.

~~5% of net Profits derived from Sale of Products.~~

Revised to 2% of gross amounts dating from August 1, 1919

to February & August first March & Sept. 1st

Aug. 31/18 no net Profits to July 31.1918

2/28/19 no net profits to January 31.1919

" " " " Aug 1. 1919.

2/26/20 no sales to Feb. 1, 1920

8/25/20 No sales to August 1, 1920.

No sales thru 8/31/20 & License cancelled 9/1/20

A. P. C. advised 1/17/21

RESTATED BY

NO. 7241

DATE 6/1/21

APPROVED

CHKD. W.

DEPT. OF JUSTICE

PLAINTIFF'S EXHIBIT No. 297.

1551 North Lake Avenue
22

lbert B. Moses 909 Eighth Ave. Seattle. Washington Patent V

re: Patent # 1139 031 / dated May 11, 1915 to Fritz Gössel, Germany, for term of patent.

for manufacture of artificial linen

Dated April 8. 1918

2% of the gross sums received from sale of products produced

to February & August first — March & Sept first

ug. 20, 1918. No sales No sales
Feb. 24, 1919 " " to January 31 1919
ug. 14, 1919. " " to July 31, 1919
March 23, 1920 No Sales / to January 31, 1920
~~ct 13, 1920 No sales thru~~ July 31, 1920 $1.10 - A.P.C. advised 4/7/22. amended report.
[illegible] (1921)
Mar. 22, 1921 No mfg. since date of last report.
1/4/22 (2-1-21 — 1-31-22) No manufacturing ~~in~~ period
8/31/22 No operations from 2/1/22 - 7/3/22.

PLAINTIFF'S EXHIBIT No. 298.

License No. 23
Patent

F. L. Smidth & Company   50 Church St. N.Y. City

dated Nov. 5, 1912.

re: patent No. 1.043.349 to Heinrich [illegible] of Cologne, Germany.

for "Ball-Mill". for term of Patent

Dated: July 16. 1918

5% of the cost of the Equipment necessarily added to the Standard apparatus in order to utilize said invention

February & August first   March & Sept first

7/20/23 no mfg.- no sales 8/1/22 - 7/1/23
A. P. C. advised 7/21/23

Feby 6, 1919 No sales
Aug. 8, 1919 No sales.
Feby 11, 1920 No Sales.
Aug 5, 1920 (then July 31, 1920) No mfg. and no sales to date.
Feb 5, 1921 (then Jan 31, 1921) " " " " " " .
/3/21 (then 7/31/21) No mfg. & no sales to date.
/2/22 (" 1/31/22) No mfg. & no sales to date.
/31/22 (2/1/22-7/2/22) No mfg. & no sales.-

PLAINTIFF'S EXHIBIT No. 299.

" E. C. Klipstein & Sons Co. 644 Greenwich St. N.Y.C. Patent 24

Oct 14, 1902 July 25, 1905.
re. patents Nos 711.377 & 795.755 to Max Bazlen, assignor to Badische Anilin & Soda Fabrik, Germany, for terms of Patents. (1) Solid Alkaline Hydrosulfites & Process of Making Same, (2) Process of Making Stable Dry Hydrosulfites.

Dated: April 8. 1918

~~5% of net profit derived from sale of products [illegible]~~

~~License~~ 2% of the gross receipts derived from the sale of products
to May & November first June & December 1

11/11/18 No mfg to date
July 10, 1919 21 81 Sept 9. 1919
~~[illegible]~~ No sales from May 1 to Oct 31/19. Error
12/9/19 (due 10/30/19) 4.50 12/31/19 Same Aug 19 & 9.
~~[illegible] No mfg and no sales.~~ ? Watch carefully when accepting.
Revised report for period 11/1/1919 - 4/30/1920 — 11¢ due - A.P.C. asked 4/20/21
[illegible]. No sales since above rept. and production stopped.

Patent 711,377 expired Oct. 14,1919
Patent 795,755 expired July 25,1922

⑦

1/12/22 " no sales since 11/10/21

PLAINTIFF'S EXHIBIT No. 299.

License
No.
Dated

(License) (Address)

Subject

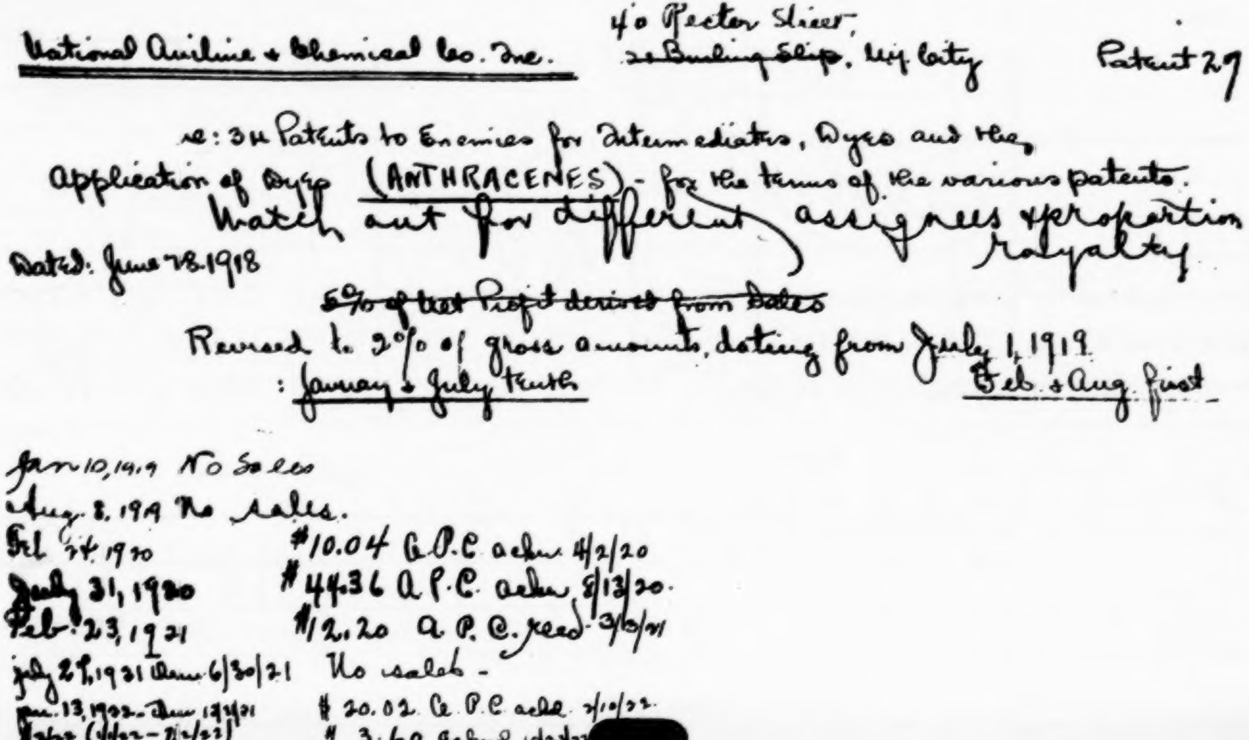
Patent No.:

Owner: E. C. Klepstein & Sons Co

Royalty:

Reports to be filed			Payments to be made		
Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date)
8/8/22	(6/12/22 – 7/2/22)	No mfg – no stock on hand.			
				$26.42	

PLAINTIFF'S EXHIBIT No. 300.



National Aniline & Chemical Co. Inc. 40 Rector Street; ~~22 Burling Slip~~, N.Y. City Patent 27

re: 34 Patents to Enemies for Intermediates, Dyes and the Application of Dyes (ANTHRACENES) - for the terms of the various patents.

Watch out for different assignees & proportion royalty

Dated: June 28.1918

~~5% of net Profit derived from Sales~~

Revised to 2% of gross amounts, dating from July 1, 1919

: January & July tenth Feb & Aug first

Jan 10, 1919 No Sales

Aug. 8, 1919 No sales.

Feb 24. 1920 #10.04 A.P.C. ackn. 4/2/20

July 31, 1920 #44.36 A.P.C. ackn. 8/13/20.

Feb. 23, 1921 #12.20 A.P.C. recd 3/10/21

July 29, 1921 Due 6/30/21 No sales -

Jan. 13, 1922 - Due 12/31/21 # 20.02 A.P.C. ackd. 2/10/22.

PLAINTIFF'S EXHIBIT No. 301.

National Aniline & Chemical Co. Inc. 40 Rector Street ~~24 Burling Slip~~. N.Y. City Patent 28

re certain letters patent for Intermediates, Dyes and the application of Dyes owned by Enemies or Allies of Enemies - for the Term of the various patents (INDIGO) Watch out for different assignees and proportion royalty

Dated: June 28.1918

~~5% of Net Profit derived from Sales~~

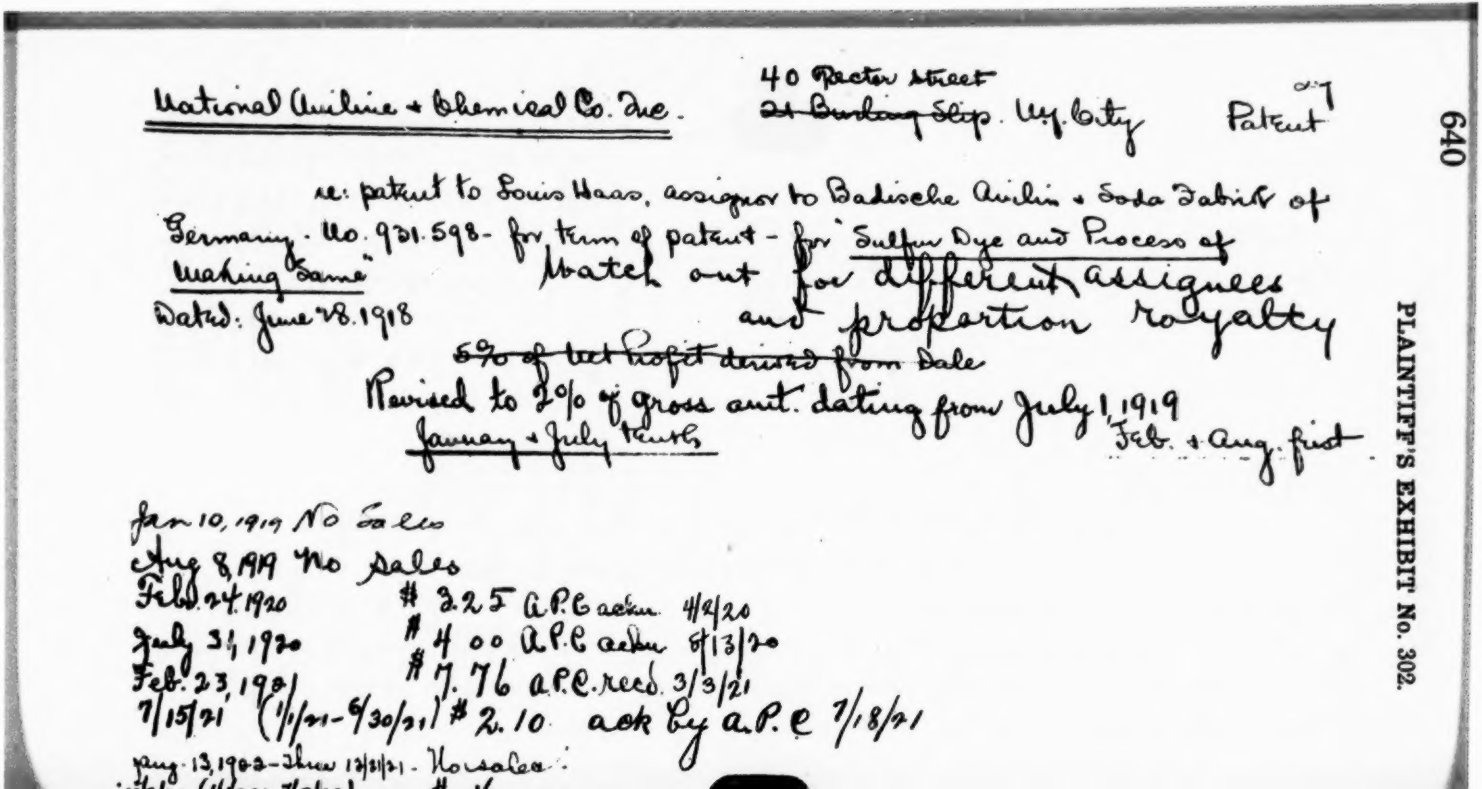
Revised to 2% of gross amts. dating from July 1, 1919 Feb & Aug. first

~~January & July tenth~~

Jan 10, 1919 No Sales
Aug. 8. 1919 No Sales
Feby 24.1920 No Sales
July 31, 1920 No sales.
Feb 23, 1921 No sales.
July 27, 1921 Thru 6/30/21 - No sales -
Jany 13, 1922 - Thru 12/31/21 No sales.
8/3/22 No sales to July 3, 1922

DEPT. OF JUSTICE

PLAINTIFF'S EXHIBIT No. 302.



National Aniline & Chemical Co. Inc.
40 Rector street ~~21 Burling Slip~~. N.Y. City
Patent 27

re: patent to Louis Haas, assignor to Badische Anilin & Soda Fabrik of Germany. No. 931.598- for term of patent - for "Sulfur Dye and Process of Making Same"

Watch out for different assignees and proportion royalty

Dated: June 28. 1918

~~5% of net profit derived from sale~~

Revised to 2% of gross amt. dating from July 1, 1919

~~January & July tenth~~ Feb. & Aug. first

Jan 10, 1919 No Sales
Aug 8, 1919 No sales
Feb. 24. 1920 $3.25 A.P.C. ackn. 4/2/20
July 31, 1920 $4 00 A.P.C. ackn. 8/13/20
Feb. 23, 1921 $7.76 A.P.C. recd. 3/3/21
7/15/21 (1/1/21-6/30/21) $2.10 ack by A.P.C 7/18/21
Jany. 13, 1922 - Thru 12/31/21 - No sales.

PLAINTIFF'S EXHIBIT No. 303.

National Aniline & Chemical Co. Inc. 40 Rector Street
21 Burling Slip, N.Y. C. 30
Patent

Re: Certain letters patent for Intermediates, Dyes and the application of Dyes, owned by Enemies or Allies of Enemies - for the terms of the various patents - for "AZO DYES" Includ'g Pat #741029

Dated: June 28. 1918   Watch Aust. various assignees!

~~5% of net Profit~~ derived from Sales   Proportion Royalty!

Revised to 2% of gross amts, dating from July 1, 1919

January & July tenth   Feb & Aug first

Jan 10, 1919 No Sales report corrected below 8/3/22 (1/1/22 - 7/1/22) #28.47 - ackd 10/27/22.
1/8/19 thru Dec. 31, 1918 - #146.29 - A.P.C. ackn. 4/2/20
" - " June 30 1919 net loss
1/24/20 " Dec 31, 1919 #1371.63 A.P.C. ackn. 4/2/20
July 31, 1920 ' # 410.73 A.P.C ackn 8/13/20
Feb. 23, 1921 #846.72 A.P.C rec'd 3/3/21
? 15/21 1/1/21 - 6/30/21 - $740.33 A.P.C ack 7/18/21.
1/3/22 - (7/1/21 - 12/31/21) # 769.10 } ackd 2/10/22

PLAINTIFF'S EXHIBIT No. 304.

The Strauss-Roger Mfg. Co. 1720 California St. Denver. Colo. Patent 32

a patent No. 1.078.175 to August Büttner. of Germany, for "Cellular Drying Apparatus" for term of Patent.

Dated: July 16.1918

$37.50 for each cubic meter of content of the drum used in apparatus, (using outside diameter & length of shell for calculating cubic content)

February & August first March & Sept. 1"

Feby 11.1919 No sales No sales
Aug. 6.1919 No sales No sales
12/1919 no operations to date of cancellation

Surrendered & Cancelled
December 6 1919

[illegible] STATED BY DEPT. OF JUSTICE
NO.
DATE 6/

33

Merrimac Chemical Company 148 State St Boston Mass. 7/12/22 Patent

Re: patent Nos. 711.377 (A) & 795 755 (B) Expired to Max Bazlen, assignor to Badische Anilin & Soda Fabrik, of Germany, for: (A) Solid Alkaline Hydrosulfites and Process of Making Same and (B) Process of Making Stable Dry Hydrosulfites. for the Terms of Patents

Dated: July 16.1918

2% of Gross Receipts derived from sale of Products

March & Sept. first

April & October first

7/12/19 No sales to 3/1/19 Development work only
9/8/19 No sales to date - plant not yet completed
Feb. 28. 1920 do " " " "
Sep. 3, 1920 No sales thru August 31, 1920.
March 8, 1921. $229.89 A.P.C. acknd 3/22/21
Sept 9, 1921 $31.43 " " 9/12/21
Mar 8, 1922 $120.95
7/31/22 (3/1 – 7/25/22) $68.53 acknd 25/22
$450.80

BOTH PATENTS EXPIRED

711,377 on Oct. 14, 1919 and
795,755 on July 25, 1922.

PLAINTIFF'S EXHIBIT No. 306.

311

H. A. Metz Laboratories Inc.   177 Hudson St. New York City   Patent

re: Patent # 986.148 issued to P. Ehrlich & A. Bertheim assignors to Farbwerke vorm. Meister Lucius & Brüning, for the term of the Patent, for Derivatives of Oxyarylarsinic Acids and Process of Making Same.
Dated July 1 1918

5% of Gross Sums received from Sale of "Salvarsan" (arsphenamine)

To January & July first   Feb. & Aug. first

Jan 9/19	11,036 81	Mch 5, 1919
7/22/19	4,070 34	Sept. 3, 1919
Jan. 8, 1920	$3,645.45	February 5, 1920
July 7, 1920	$4199 15	August 3, 1920
Jan 5, 1921.	$4178,06	January 25, 1921
July 6, 1921	$2716.50	July 18, 1921
Jan. 5, 1922	$1838.50	Jan. 12, 1922
7/10/22 (1/1/22-7/1/22)	$1677.68	Aug 8, 1922

total
$33,362.49

311A

H. A. Metz Laboratories Inc.   122 Hudson Street N.Y. City   Patent

re: Patent # 13.848 (reissue) to G. Kerndorfer & B. Reuter, assignors to Farbwerke vorm Meister Lucius & Bruning, for the term of the Patent, for Derivatives of Diaminodioxyarsenobenzene and Process of making Same
Dated July 1. 1918

5% of gross sum received from sale of "Neo. Arsphenamine"

PLAINTIFF'S EXHIBIT No. 307.

	to January & July first		Feb. & Aug first
Jan. 9, 1919	132.46	Mch. 5. 1919	
July 22/19.	9897 99	Sept. 3, 1919	
Jan. 17, 1920	17,097.38	February 8. 1920	
July 1, 1920	22,542.02	August 5, 1920	
Jan 5, 1921	$20,566.56	January 25, 1921.	
July 6, 1921	18,271.43	July 13, 1921	
Jan 5, 1922	14,317.13	June 13, 1922	
7/1922 (1/1/22-7/1/22)	$14,834.99	Aug 25, 1922 [redacted]	

Total $117,661.96

STATED BY DEPT. OF JUSTICE

35

H. A. Metz Laboratories Inc. — 122 Hudson St. New York City — Patent

re: Patent # 812.554 to A. Einhorn, assignor to Farbwerke vorm Meister Lucius & Bruning. for the term of the Patent, for Alkamine Esters of Para-Aminobenzoic Acid.
Dated: July 1. 1918

5% of Gross Sums received from sale of "Procaine"

to January & July first		Feb & Aug first
Jan 9 '19	6638.57	Mch. 5. 1919
July 22/19	2,272.92	[illegible] 3/19
Jan. 7. 1920	2.410.82	February 5, 1920
July 7, 1920	2.175.93	August 5. 1920
Jan. 5 1921.	2574.21	January 25, 1921
July 6 1921	2527.21	July 13, 1921
Jan. 5, 1922	2498.16	January 12, 1922
Prop. (1/1/22-7/2/22)	2800.29	Aug 25, 1922

total $ 23.898.11

DEPT. OF JUSTICE

PLAINTIFF'S EXHIBIT No. 309.

36

Patent

General Ceramics Company 50 Church St. N.Y. City

U.S. patent No. 1.141.266 dated June 1, 1915 to Fritz Raschig - for "*Improvement in Absorption and Reaction Tower for Acids, etc.*", for term of Patent.

Dated: July 19 1918

5% of gross sums received from the Sale of devices under patent

February & August first

March & Sept. first

2/15/19	$156.33 — 7/31/19	#156 33	
8/18/19		82. 92	Aug. 30. 1919
2/10/20		#254 05	April 7. 1920
8/9/20 thru 7/31/20		#168 73	Aug 10, 1920
Feb 9, 1921		#121 .82	Feb 10, 1921
8/2/21 - thru 7/31/21 -		#96 .79	Aug 11, 1921.
2/8/22 - thru 1/31/22.		#72. 39	Feb. 9. 1922
		#953.03	

approved on audit

10/31/22. Licensee claims entry of equity suit relieves of obligation to make report covering period 2/1/22 - 7/31/22 — G.C.C and Dept of Justice so advised.

PLAINTIFF'S EXHIBIT No. 310.

C. C. Keipstein & Sons Company 644 Greenwich St. New York City License No. 38

License . Cancelled July 11, 1921. Patent

re patent Nos. 1.716.617 to O. Schmidt, assignor to Badische Anilin & Soda Fabrik, of Germany, for "Producing Soluble Tanning agents" and No. 1.191.480 to O. Schmidt, assignor to Badische Anilin & Soda Fabrik of Germany, for "Tanning" for their respective terms.

Dated: August 15. 1918

~~3%~~ of gross sums receipts derived from sale of products

#7731.77 Revised to 2% of gross recpts. dating from September 1, 1919

March & September 10 April & October first

3/26/19 $2712.89 ✓ April 22, 1920. should be $2707.80 — credit $5.09 debit

10/2/19 (thru 8/31/19) $2310.34 June 1, 1920 " " 2331.08 — $20.74

3/20/20 (thru 2/29/20) $1122.13 June 1, 1920 " " 1105.93 — $16.20

10/2/20 (thru 8/31/20) $1026.77 }

March 15, 1921 $299.28 } A.O.C. advd. 4/20/21 " " 1021.15 $5.62

$26.91 $20.74

9/23/21 (3/1/21 to 7/11/21) $456.53

less credit for overpayment 6.17

$450.36 — ack by A.P.C. 11/29/21

{ net credit of $6.17 to be deducted on accts for period ending 2/28/21

License Canceled 7/11/21

Deducted 9/23/21

PLAINTIFF'S EXHIBIT No. 311.

Merck & Company (Licensee) 45 Park Place, New York City (Address)

License Patent
No. 39
Dated Sept. 25. 19

bject Digitalis Extract

tent No.: 943.578 dated Dec. 14, 1909 $7189.52 total royalty

mer: R. Tambach assignor to Knoll & Company of Ludwigshafen on the Rhine. Germany.

valty: 5% of gross sums received

ports to be filed April & October 16 Payments to be made May & November 1

eport ceived	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty		Royalty paid (Date) credit	debit
1/10/19	$1501	72	5/14/19	Would be	$1401.89 —		$99.83	
0/7/19	499	52	April 22, 1920	"	$476.86 —		$22.66	
4/9/20	843	08	" 26, 1920	"	$866.89			$23.72
8/20	$762	28	October 26, 1920	"	$768.98			6.70
9/21	$1029	07	May 13, 1921	deducts			$122.49	$30.42
10/21	1272	90	Nov. 29, 1921	make here	Net credit of $92.07 to be deducted on next accts beyond ending 3/31/21			
8/22	$1112	11						

deducted ok

PLAINTIFF'S EXHIBIT No. 311.

Merck & Company (License)	45 Park Place New York City (Address)	License Patent No. 39 Dated Sept 25,1918

Subject Digitalis Extract

Patent No.: 943,578 dated December 14, 1909

Owner: R. Tambach, assignor to Knoll & Company, of Ludwigshafen-on-the-Rhine, Germany

$8189.37 total paid under license

Royalty: 5% of gross sums recd

Reports to be filed April & October 10 Payments to be made May & November 1

Report received	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty		Royalty paid (Date)
/10/19	9/25/18 - 3/30/19	$1401.	89 5/14/19	8/1/22	4/1/22 - 7/1/22	$1168.	64 8/25/22
/9/19	4/1/19 - 9/30/19	$471.	86 4/22/20				
/20	10/1/19 - 3/30/20	$866.	80 4/26/20		See Old Card Attached		
/8/20	3/30/20 - 9/30/20	$768.	98 10/26/20				
4/9/21	10/1/20 - 3/31/21	$1121.	14 5/3/21				
10/10/21	4/1/21 - 9/30/21	$1292.	90 11/29/21				

PLAINTIFF'S EXHIBIT No. 311.

License
No.
Dated

(License)

new card started

(Address)

Subject

Patent No.:

Owner: Merck & Company –

Royalty:

Reports to be filed			Payments to be made		
Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date
8/1/22	(1/1/22 - 6/30/22)	$1168.64	Paid 8/25/22		

6/19/22 … OF JUSTICE

PLAINTIFF'S EXHIBIT No. 312.

Now "American Atmos Corporation"

Dracper Oxygon Apparatus Co.	Wilkinsburg, Penn.	License No. 42 ~~No.~~ Patent Dated Dec. 16, 1918.
(License)	(Address)	

ubject re Patent Nos. 1,019,346, dated Jan. 7, 1913 to Johann Dräger, for Artificial Breathing Apparatus; 1,044,031. dated Nov. 12, 1912. to Johann Dräger, of Lübeck, Germany, for Method ~~xxxxxxx~~ of Causing Artificial Respiration; 1,136,517, dated April 20, 1915, to Johann Dräger, of Lubeck, Germany, for Artificial Breathing Apparatus.

wner: Royalty: On January 1, 1919, a sum equal to 5% of gross amounts received from sale of apparatus during period between October 12, 1917 and December 16, 1918- also thereafter semi-annually 5% of gross sums recd. from sale of apparatus.

oyalty:

eports to be filed June 1 and December 1. Payments to be made July and January.

Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date)
1/1/19 to	Dec 1918 = $106.75	no payment yet	made	O.K.C.	
to	6/1/19 106.87				
REVISED REPORT RECD JUNE 18, 1920:					
Oct 12/17-Dec 16/18	$106.50				
Dec 17/18- May 30/19	$105.75				
June 1/19- Nov. 30/19	$ 44.25				
12/1/19 to 5/30/20	52.13			387.88	

PLAINTIFF'S EXHIBIT No. 312.

License 42
No. Patent
Dated 12/16/18

~~Draeger Oxygen Apparatus Co.~~ Wilkinsburg, Penn.
(License) (Address)
Now
American Atmos Corporation,

Subject Re Patent Nos. 1,049,346, dated Jan. 7, 1913 to Johann Dräger, for Artificial Breathing Apparatus; 1,044,031, dated Nov. 12, 1912, to Johann Dräger, of Lübeck,

Patent No. Germany, for Method of Causing Artificial Respiration; 1,136,517, dated April 20, 1915, to Johann Dräger, of Lübeck, Germany, for Artificial Breathing Apparatus.

Owner: **Royalty:** On January 1, 1919, a sum equal to 5% of gross amounts received from sale of apparatus during period between October 12, 1917 and December 16, 1918- Also thereafter semi-annually 5% of gross sums recd. from sale of apparatus.

Royalty:

Reports to be filed June 1 and December 1. Payments to be made July and January.

Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date)
On audit	10/12/17- 12/16/18	$106.50	Pd by	cks to A.P.C.	as follows
	12/17/18- 5/31/19	105.75	4/22/21	$106.15	
	6/ 1/19- 11/30/19	44.25	5/18/21	239.23	
	12/ 1/19- 5/31/20	52.13	7/20/21	37.50	
	6/ 1/20- 11/30/20	36.75		$382.88	
	12/ 1/20- 5/31/21	37.50	6/1/22	no sales 6/1/21	-11/30/21
		$382.88	9/7/22	no sales 12/1/21	– 5/31/22

add A.P.C. change name → Now "American Atmos Corporation"

Draeger Oxygen Apparatus Company, The (License) Wilkinsburg, Penn. (Address)	License 43
	No. Patent.
	Dated Dec. 16, 1918

Subject re Patent No. 1,214,941, dated February 6, 1917, to Frank Fairchild Morris, and Frederick Melchoir Luchs, Assignors to the Firm of Drägerwerk. Heinr. and Bernh, Dräger

Patentee: ~~of Lubeck, Germany, for "Resuscitating Device"~~

Owner: Royalty : On January 1, 1919, a sum equal to 5% of gross amounts received from sale of apparatus during period between October 12, 1917 and December 16, 1918-- also thereafter semi-annually 5% of gross sums received from sale of apparatus.

Royalty:

Reports to be filed June 1 and December 1. Payments to be made July and January.

Report received	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty		Royalty paid (Date)
~~10/12/17 to Dec 1918~~	~~$~~	~~383.12~~	no pymt yet made A.P.C.				
~~" to 6/1/19~~	~~$~~	~~60.45~~					
REVISED REPORT RECD JUNE 18/20-			See corres before re[illegible] A.P.C.				
Oct 12/17—Dec 16/18	$367	.37	391.88				
Dec 17/18- May 30/19-	$ 58	.87	58.87				
June 1/19 - Nov/30/19-	69	.75	69.75				

6/1/20 - 11/30/20 50.

PLAINTIFF'S EXHIBIT No. 313.

License 43	
No. Patent	
Dated 12/16/18	

~~Draeger Oxygen Apparatus Company.~~ Wilkinsburg, Penn.
(License) (Address)
Now
American Atmos Corporation

Subject Re Patent No. 1,214,941, dated February 6, 1917, to Frank Fairchild Morris, and

Patent No. Frederick Melchoir Luchs, assignors to the Firm of Drägerwerk. Heinr. and Bernh, ~~Dräger, of Lubeck, Germany, for~~ "Resuscitating Device".

661.25
19.24
$680.49

Owner: Royalty: On January 1, 1919, a sum equal to 5% of gross amounts received from sale of apparatus during period between October 12, 1917 and December 16, 1918--also thereafter semi-annually 5% of gross sums received from sale of apparatus.

Royalty:

Reports to be filed June 1 and Dec. 1. Payments to be made July and Jan.

Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date)
On audit.	10/12/17-12-16-18	$391.88	On audit	6/ 1/21-11/30/21	644.50 $16.75
	12/17/18- 5/31/19	58.87 Pd	A. O. C. Co.	Chs as follows:	661.25
	6/ 1/19-11/30/19	69.75 4/23/21		$383.12	
	12/ 1/19- 5/31/20	59.00 5/20/21		246.38	
	6/ 1/20-11/30/20	50.00 8/11/21		15.00	
	12/ 1/20- 5/31/21	15.00 1/10/22		16.75 $661.25	
		644.50	9/4/22 [illegible] 7/1/22)	$ 19.24	A.O.C. ck. $19.24 [illegible]

PLAINTIFF'S EXHIBIT No. 314.

Draeger Oxygen Apparatus Company, The./ "American Atmos Corporation" Wilkinsburg, Penn.	License 44
(License) (Address)	No. Patent
	Dated Dec. 16, '18

Subject re Patent No. 1,085,674, dated Feb. 3, 1914, to Alexander Bernhard Dräger, of Lubeck Germany, Assignor to Drägerwerk, Heinr. & Bernh. Drager, of Lubeck, Germany, A Firm, for "Battery for Absorbing Carbonic Acid Such as Used in Breathing Apparatus"

Owner: Royalty: On January 1, 1919 a sum equal to 5% of gross amounts received from sale of apparatus during period between October 12, 1917 and December 16, 1918- also thereafter semi-annually 5% of gross amounts recd. from sale of apparatus

Royalty:

Reports to be filed June 1 and December 1. Payments to be made July and January

Report received	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty		Royalty paid (Date)
~~16 feb [illegible]~~	~~Dec 1918~~	~~$ [illegible].85~~	no payment yet made				
~~" [illegible]~~	~~19~~	~~$ 572.84~~					
REVISED REPORT RECD JUNE 18/20:							
Oct 12/17—	Dec 16/18 $	1823.12	1873.76				
Dec 17/18 —	May 30/19 $	521.65	521.66				
~~June 1/19~~	Nov.20/19	124.87	421.69		$ 3571.97		

PLAINTIFF'S EXHIBIT No. 314.

License 44
No. Patent
Dated 12/16/18

Draeger Oxygen Apparatus Company. Wilkinsburg, Penn.
Now
(Licensee) (Address)
American Atmos Corporation.

Subject Re Patent No. 1,085,674, dated Feb. 3, 1914, to Alexander Bernhard Dräger, of Lubeck, Germany, Assignor to Drägerwerk, Heinr. & Bernh. Drager, of Lubeck, Germany, A Firm, for "Battery for Absorbing Carbonic Acid Such as Used in Breathing Apparatus"-

Patent No.:

Owner:

Royalty: On January 1, 1919 a sum equal to 5% of gross amounts received from sale of apparatus during period between October 12, 1917 and December 16, 1918 also thereafter semi-annually 5% of gross amounts received from sale of apparatus.

Royalty:

Reports to be filed June 1 and Dec. 1. Payments to be made July and Jan.

Report received	Amount of Royalty	Royalty paid(Date	Report received	Amount of Royalty		Royalty paid(Date
On audit	10/12/17-12/16/18	$1823.76	Pd	A. P. C. by	Chas	as follows
	12/17/18- 5/31/19	521.66	4/23/21	$1794	85	
	6/ 1/19-11/30/19	421.69	5/13/21	1733	49	
	12/ 1/19- 5/31/20	439.59	8/11/21	42	33	
	6/ 1/20-11/30/20	321.64		$3570	67	
	12/1/20 - 5/31/21	42.33	9/1/22	No sales 6/1/21-11/30/21		
		3570.67	9/7/22	No sales 12/1/21-[illegible]2.22		

PLAINTIFF'S EXHIBIT No. 315.

Now American Atlas Corporation

Draeger Oxygen Apparatus Company, The. Wilkinsburg, Penn. | License 46
(License) (Address) | ~~No.~~ Patent.
Dated Dec. 16,'18.

Subject to Patent Nos. 1,005,816, dated Oct. 17, 1911, to Alexander Bernhard Dräger, of Lubeck, Germany, Assignor to the Firm of Drägerwerk Heinr. Und Bernh. Dräger, of

Patent No. Lubeck, Germany, for "Portable Breathing Apparatus"; 1,053,681, dated July 24, 1912, to Alexander Bernhard Dräger, of Lubeck, Germany, Assignor to the Firm of Drägerwerk Heinr. & Bernh. Dräger of Lubeck, Germany, for "Universal Coupling".

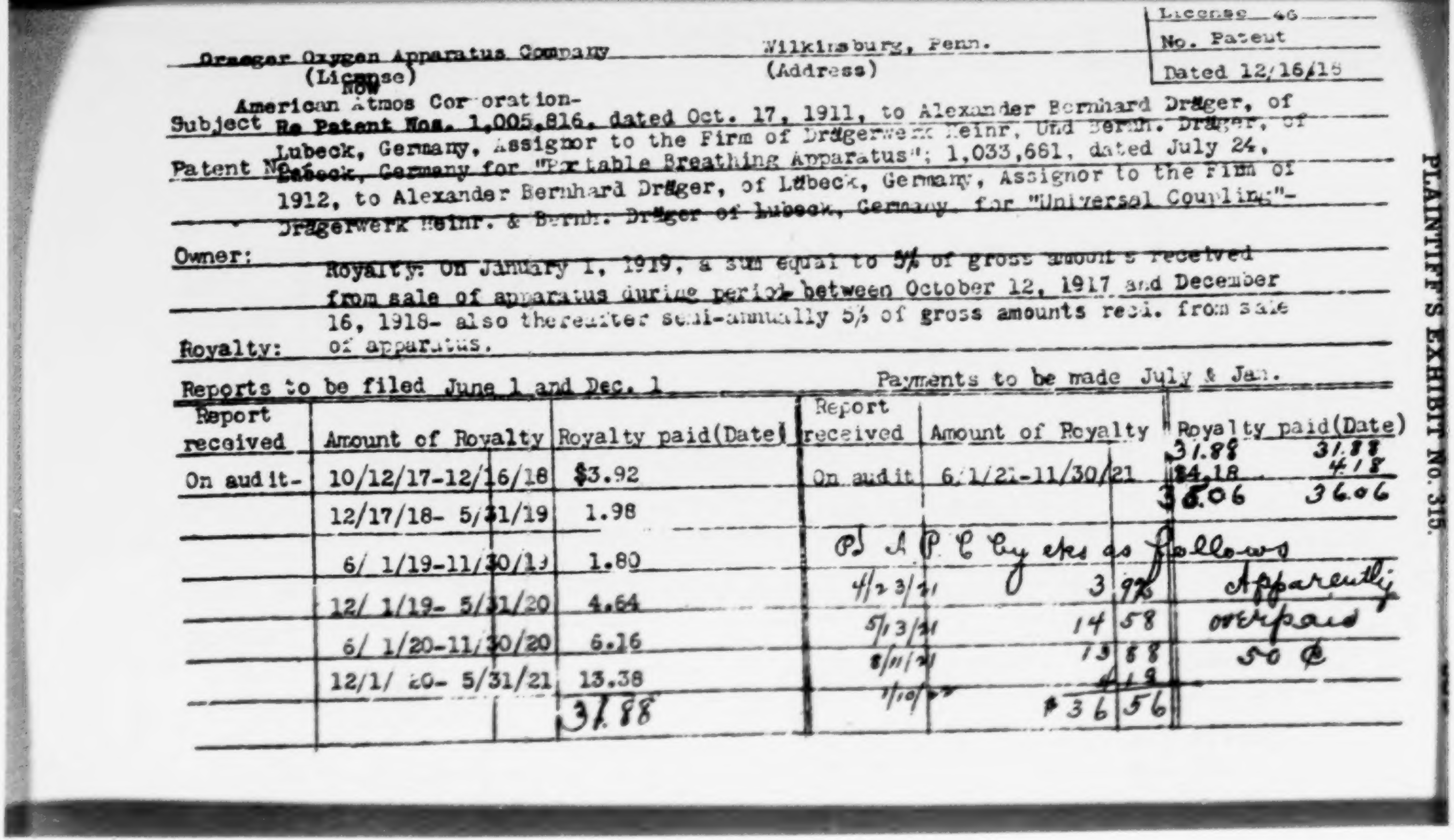
Owner:

Royalty: Royalty: On January 1, 1919, a sum equal to 5% of gross amounts received from sale of apparatus during period between October 12, 1917 and December 16, 1918- also thereafter semi-annually 5% of gross amounts recd. from sale of apparatus.

Reports to be filed June 1 and December 1. Payments to be made July and January.

Report received	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date)
10/14/19 to	Dec 1919	$3.92	No paymt yet made A.P.C.			✓
" to	4/4/19	1.92				
REVISED	REPORT RECD JUNE 18/20:					
Oct 12/17	--Dec 16/18	$ 3.95	3.92 ✓			
Dec 17/18	- May 30/19-	$ 1.98	198			
June 1, 19	- Nov 30/19	$ 1.80	180		$ .96.38	
12/1/19 6/1/20	5/31/20 11/30/20		4.24 6.16			

PLAINTIFF'S EXHIBIT No. 315.



License 46

No. Patent

Dated 12/16/18

Draeger Oxygen Apparatus Company Wilkinsburg, Penn.
(License) (Address)
NOW
American Atmos Corporation-

Subject Re Patent Nos. 1,005,816, dated Oct. 17, 1911, to Alexander Bernhard Dräger, of Lubeck, Germany, Assignor to the Firm of Drägerwerk Heinr. Und Bernh. Dräger, of

Patent No. Lubeck, Germany for "Portable Breathing Apparatus"; 1,033,661, dated July 24, 1912, to Alexander Bernhard Dräger, of Lübeck, Germany, Assignor to the Firm of Drägerwerk Heinr. & Bernh. Dräger of Lubeck, Germany, for "Universal Coupling"-

Owner:

Royalty: On January 1, 1919, a sum equal to 5% of gross amounts received from sale of apparatus during period between October 12, 1917 and December 16, 1918- also thereafter semi-annually 5% of gross amounts recd. from sale of apparatus.

Royalty:

Reports to be filed June 1 and Dec. 1 Payments to be made July & Jan.

Report received	Amount of Royalty	Royalty paid(Date)	Report received	Amount of Royalty	Royalty paid(Date)
On audit-	10/12/17-12/16/18	$3.92	On audit	6/1/21-11/30/21	31.88 31.88 $4.18 4.18
	12/17/18- 5/31/19	1.98			36.06 36.06
	6/ 1/19-11/30/19	1.80	P. I. P. C by cks as follows		
	12/ 1/19- 5/31/20	4.64	4/23/21	3 98	Apparently
	6/ 1/20-11/30/20	6.16	5/13/21	14 58	overpaid
	12/1/ 20- 5/31/21	13.38	8/11/21	13 88	50 ¢
		31.88	1/10/22	4 19 $36 56	

PLAINTIFF'S EXHIBIT No. 315.

License
No. 46.
Dated

(License) (Address)

Subject

Patent No.:

Owner: Draeger Oxygen Co.

36.06
1.47
37.53

Royalty:

Reports to be filed

Payments to be made

Report received	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty		Royalty paid (Date)
9/7/22	(12/1/21-7/2/22)	$1.47	A.P.C. ackd	9/22			

Heinschild Chemical Company (Licensee) | 47-49 Barclay St. N. Y. City. (Address) | License No. 47 Dated 12-31-18

Patent No. 943,163, dated December 14, 1909, to Adolph Schmidt of Dresden, Germany, assignor to Chemische Fabrik, Helfenberg, Germany, for Agar-Agar-Cascara Product; and Patent No. 896,807, dated August 25, 1908, to Karl Dieterich, of Helfenberg, Germany, for Agar-Agar-Cascara Product and Process of Making Same.

Royalty: 5% of gross sums received from sales (See below for payment due 2/1/19)

Reports to be filed: June and Dec. Payments to be made July 1 and January 1

Paid 11/22/18 396.39 AMOUNT ACCRUED UNDER PRE-WAR AGREEMENT

5% of sales from 8/15/18 to 12/31/18 date of license
pd Dec 1918 per stmt from A.P.C. in file.

8/15/18--12/31/18---$694.08
1/ 1/19-- 4/10/19--- 637.87
PAID BY CHECK AS FOLLOWS:
3/25/19---$583.20
6/4/19---400.40
3/5/20---348.35
BALANCED 4/10/19 $1331.95 $1331.95

4/10/19--6/1/19---435.44- ERRONEOUSLY PD. CHEM. FOUN. 6/1/19
6/1/19--11/30/19---1283.81- Paid A. P. C. 3/5/20

6/9/20---1640.72 A. P. C. acknd. July 7, 1920.
12/8/20---1224.33 A. P. C. " Dec. 30, "
12/1/20- 5/31/21 Rept. Recd 6/7/21- 1424.57 " " " " 6/10/21

PLAINTIFF'S EXHIBIT No. 316.

PLAINTIFF'S EXHIBIT No. 316.

License
No.
Dated

(License) (Address)

Subject

Patent No.:

$9857.89

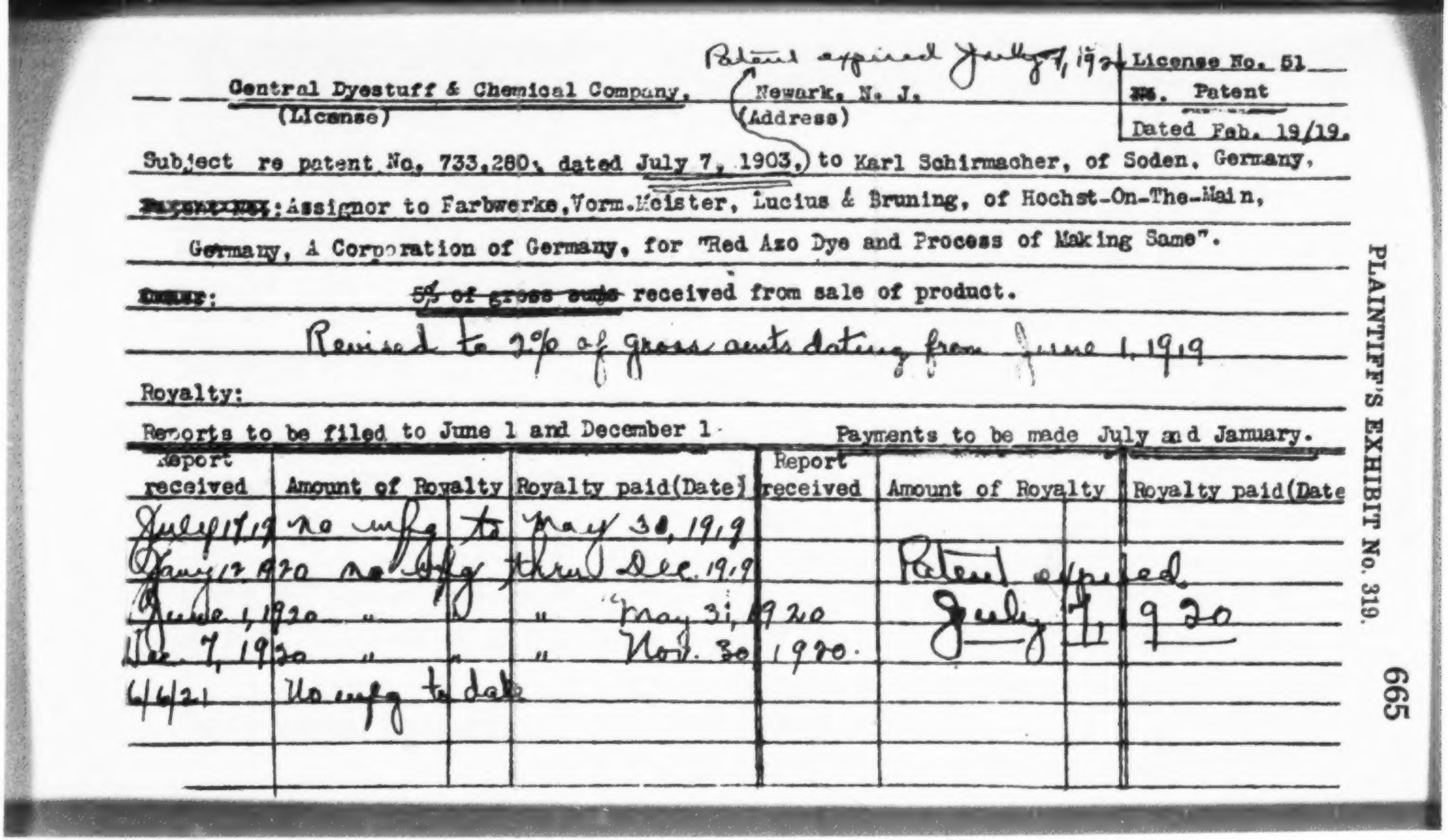
Owner:

Royalty:

Reports to be filed June & Dec. Payments to be made July and Januar

Report received	Amount of Royalty		Royalty paid(Date)	Report received	Amount of Royalty		Royalty pai
12/1/21 —	$1405	86	A. P. C. ackned 12/1/21.				
6/1/22	$1535	12	A P C. ackned 6/7/22				
8/15/22 (6/1/22 – 7/2/22)	$270.15		A.P.C. ackned. 8/19/22				
12/10/22 (7/2/22-12/1/22)	$1092.	97	Licensee relieved of liability to pay at this time.				
6/9/23 (12/1/22-5/31/23)	$1457.	13	Licensee relieved of liability to pay at this time				

PLAINTIFF'S EXHIBIT No. 319.



Patent expired July 7, 1920

Central Dyestuff & Chemical Company, Newark, N. J.
(License) (Address)

License No. 51
~~No.~~ Patent
Dated Feb. 19/19.

Subject re patent No. 733,280, dated July 7, 1903, to Karl Schirmacher, of Soden, Germany,

~~[illegible]~~: Assignor to Farbwerke, Vorm. Meister, Lucius & Bruning, of Hochst-On-The-Main, Germany, A Corporation of Germany, for "Red Azo Dye and Process of Making Same".

~~[illegible]~~: ~~5% of gross sums~~ received from sale of product.

Revised to 7% of gross amts dating from June 1, 1919

Royalty:

Reports to be filed to June 1 and December 1. Payments to be made July and January.

Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date
July 17, 1919	no mfg to	May 30, 1919			
Jan. 12, 1920	no mfg	thru Dec. 1919		Patent expired	
June 1, 1920	" "	" May 31, 1920		July 7, 1920	
Dec. 7, 1920	" "	" Nov. 30 1920.			
6/6/21	No mfg to date				

PLAINTIFF'S EXHIBIT No. 320.

License 52	
No. Patent	
Dated 3/4/19	

Ultro Chemical Corporation 41 Union Square, N. Y. City.

(License) (Address) expired April 11, 1921

Subject Patent No. 757,109, dated April 12, 1904, to Gillis Gullbransson, of

Patent No.: Höchst-on-the-Main, Germany, assignor to Farbwerke, vorm Meister, Lucius & Brüning, Germany, for BLUE RED LAKE & PROCESS OF MAKING SAME.

Owner:

Royalty- ~~3% of gross sums received from sale~~

Revised to 2% gross sales dating from June 1, 1919.

Royalty:

$3946.84 total

Reports to be filed June 1 & Dec. 1 Payments to be made July 1 & Jan. 1.

Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid(Date
6/10/19	3/5/19 - 5/31/19 $384.86	to A.P.C. 7/15/19	See	Rider re Ultramarine	Tones 1
12/5/19	4/1/19 - 11/30/19 $456.85	4/22/20			
6/7/20	12/1/19 - 5/31/20 $1359.97	pd 7/6/20	[illegible]	$1393.40 ch $33.	43 Bal to A.P.C. 1/24/21
Ultramarine Tones 1 3/26- 5/31/20		$80.53			
12/27/20	6/1/20 - 11/30/20 $949.69	pd 1/24/21	ch $419.07	to A.P.C.	7/11/21
Ultramarine Tones 1	6/1/20 - 11/30/20 -	$338.54	Patent expired		4/11/21 - [illegible]

PLAINTIFF'S EXHIBIT No. 321.

License No. 53
~~MH.~~ XX. Patent
Dated March 4,1913

Consolidated Color & Chemical Co., 122 Hudson St., New York City.
(License) (Address)

Subject re patent No. 867,305, dated Oct.1,1907, to Karl Schirmacher and Bernhard Deicke, of Hochst-On-The-Main, Germany, Assignors to Farbwerke Vorm. Meister, Lucius & Bruning,
~~Patent No.~~: of Hochst-On-The-Main, Germany, A Corporation of Germany, for "Vet Dyestuff".

Owner: ~~5% of gross amounts~~ received from sale of product.

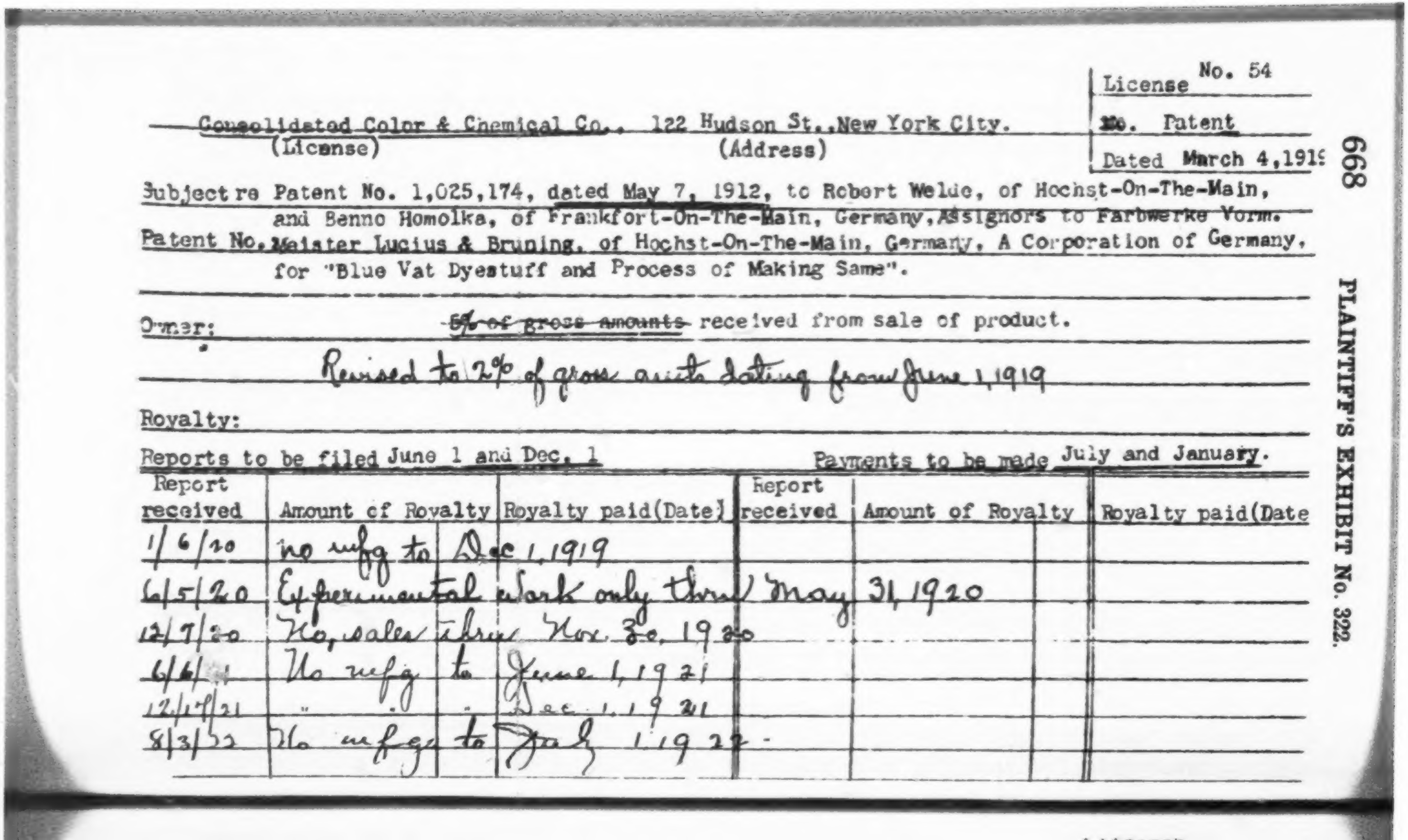
Revised to 2% of gross amts dating from June 1,1919

Royalty:

Reports to be filed June 1 and Dec. 1. Payments to be made July and January.

Report received	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty		Royalty paid (Date
1/6/20	No mfg	to	Dec 1 1919				
6/5/20	Experimental work		only thru	May 31, 1920			
12/7/20	No sales		thru Nov. 30	1920			
6/6/21	No mfg	to	June 1, 1921				
12/17/21	" "	"	Dec. 1, 1921				
8/8/22	No mfg	to	July 1 1922				

PLAINTIFF'S EXHIBIT No. 322.



License No. 54
No. Patent
Dated March 4,1919

Consolidated Color & Chemical Co., 122 Hudson St.,New York City.
(License) (Address)

Subject re Patent No. 1,025,174, dated May 7, 1912, to Robert Welde, of Hochst-On-The-Main, and Benno Homolka, of Frankfort-On-The-Main, Germany, Assignors to Farbwerke Vorm.
Patent No. Meister Lucius & Bruning, of Hochst-On-The-Main, Germany, A Corporation of Germany, for "Blue Vat Dyestuff and Process of Making Same".

Owner: ~~5% of gross amounts~~ received from sale of product.

Revised to 2% of gross sales dating from June 1, 1919

Royalty:

Reports to be filed June 1 and Dec. 1 Payments to be made July and January.

Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date
1/6/20	no mfg to	Dec 1, 1919			
6/5/20	Experimental	Work only thru	May	31, 1920	
12/7/20	No, sales thru	Nov. 30, 1920			
6/6/[illegible]	No mfg to	June 1, 1921			
12/17/21	" "	Dec. 1, 1921			
8/3/22	No mfg to	July 1, 1922.			

PLAINTIFF'S EXHIBIT No. 323.

Consolidated Color & Chemical Co. — 122 Hudson St., New York City. — No. Patent
(License) — (Address) — Dated March 4, 1919

Subject re patent No. 916,029, dated March 23, 1909, to Albrecht Schmidt and Ernst Bryk, of Hochst-On-The-Main, Germany, Assignors to Farbwerke Vorm. Meister Lucius & Bruning, of

Patent No. Hochst-On-The-Main, Germany, A Corporation of Germany, for "Red-Violet Dye and Process of Making Same".

Owner: ~~5% of gross amounts~~ received from sale of product.

Revised to 2% of gross amts dating from June 1, 1919

Royalty:

Reports to be filed June 1 and Dec. 1 — Payments to be made July and January.

Report received	Amount of Royalty		Royalty paid(Date)	Report received	Amount of Royalty		Royalty paid(Date
1/6/20	no mfg to	Dec	1, 1919				
6/5/20	Experimen	tal	Work only thru	May	31, 1920		
12/7/20	No sales	thru	Nov 30	1920			
6/6/21	No mfg	to	June 1, 1921				
12/1/21	"	"	Dec 1, 1921				
8/3/22	No mfg	to	July 1, 1922				

272 US 1 U.S. SUP. CT. RECORDS, BRIEFS 1926 FO
UNITED STATES V. CHEMICAL FOUNDATION, INC. NO. 127

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CARD 63

PLAINTIFF'S EXHIBIT No. 324.

License No. 56.
~~No.~~ Patent
Dated March 4, 1919

Consolidated Color & Chemical Co., 122 Hudson St., New York City.
(License) (Address)

Subject re patent No. 892,897, dated July 7, 1908, to Karl Schirmacher and Hermann Landers, of Hochst-On-The-Main, Germany, Assignors to Farbwerke Vorm. Meister Lucius & Bruning, Patent No.: ~~of Hochst-On-The-Main, Germany, A Corporation of Germany, for "Red Vat Dye".~~

Owner: ~~5% of gross amounts~~ received from sale of product.

Revised to 2% of gross amts dating from June 1, 1919

Royalty:

Reports to be filed June 1 and Dec. 1. Payments to be made July and January.

Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date
1/6/10	no mfg to	Dec 1 1909			
6/5/20	Experimental	Work only Thru	May	31, 1920	
12/7/20	No sales thru	Nov 30	1920		
6/6/21	No mfg to	June 1, 1921			
12/17/21	" " "	Dec 1, 1921			
8/3/22	No mfg to	July 1, 1922			

DEPT. OF JUSTICE

License No. 57
~~No~~. Patent
Dated March 4, 1919

Consolidated Color & Chemical Co., 122 Hudson St., New York City.
(License) (Address)

Subject re patent No. 968,697, dated August 30, 1910, to Albrecht Schmidt, Ernst Bryk, and Robert Voss, of Hochst-On-The-Main, Germany, Assignors to Farbwerke Vorm. Meister Lucius &

Patent No. Bruning, of Hochst-On-The-Main, Germany, A Corporation of Germany, for "Vat Dye and Process of Making Same".

Owner: ~~5% of gross amounts~~ received from sale of product.

Revised to 2% of gross amts dating from June 1, 1919

Royalty:

Reports to be filed June 1, and Dec. 1 Payments to be made July and January.

Report received	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty		Royalty paid (Date)
1/6/20	no mfg	to	Dec 1, 1919				
6/5/20	Experimental	work	only thru	May	31, 1920		
12/7/20	No sales	thru	Nov. 30, 1920				
6/6/21	No mfg	to	June 1, 1921				
12/6/21	"	"	Dec. 1, 1921				
8/3/22	No mfg	to	July 1, 1922				

Consolidated Color & Chemical Co., (License)	122 Hudson St., New York City. (Address)

License No. 58
No. Patent
Dated March 4, 1919

Subject re patent No. 1,025,138, dated May 7, 1912, to Erwin Hoffa, of Hochst-On-The-Main, Germany, Assignor to Farbwerke Vorm. Meister Lucius & Bruning, of Hochst-On-The-Main, [illegible]: Germany, A Corporation of Germany, for "Violet Blue Vat Dyestuff".

Owner: ~~5% of gross amounts~~ received from sale of product.

Revised to 2% of gross with dating from June 1, 1919

Royalty:

Reports to be filed June 1 and Dec. 1 Payments to be made July and January.

Report received	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty		Royalty paid (Date
1/6/20	no mfg to	Dec	1, 1919				
6/5/20	Experimental		work only,	thru May	31, 1920		
12/7/20	No sales		thru Nov. 30,	1920.			
6/6/21	No mfg.	to	June 1, 1921				
12/19/21	"	"	Dec 1, 1921				
8/3/22	No mfg	to	July 1, 1922				

PLAINTIFF'S EXHIBIT No. 327

License No. 59
~~No~~. Patent
Dated March 4,1919

Consolidated Color & Chemical Co. 122 Hudson St., New York City.
(License) (Address)

Subject re patent No. 999,439, dated August 1,1911, to Karl Elbel and Edward Wray, of Biebrich, Germany, Assignors to The Firm of Kalle & Company, Aktiengesellschaft, of Biebrich

Patent No.: ~~Germany, for "Vat-Dyeing Coloring Matter".~~

Owner: ~~5% of gross amounts~~ received from sale of product.

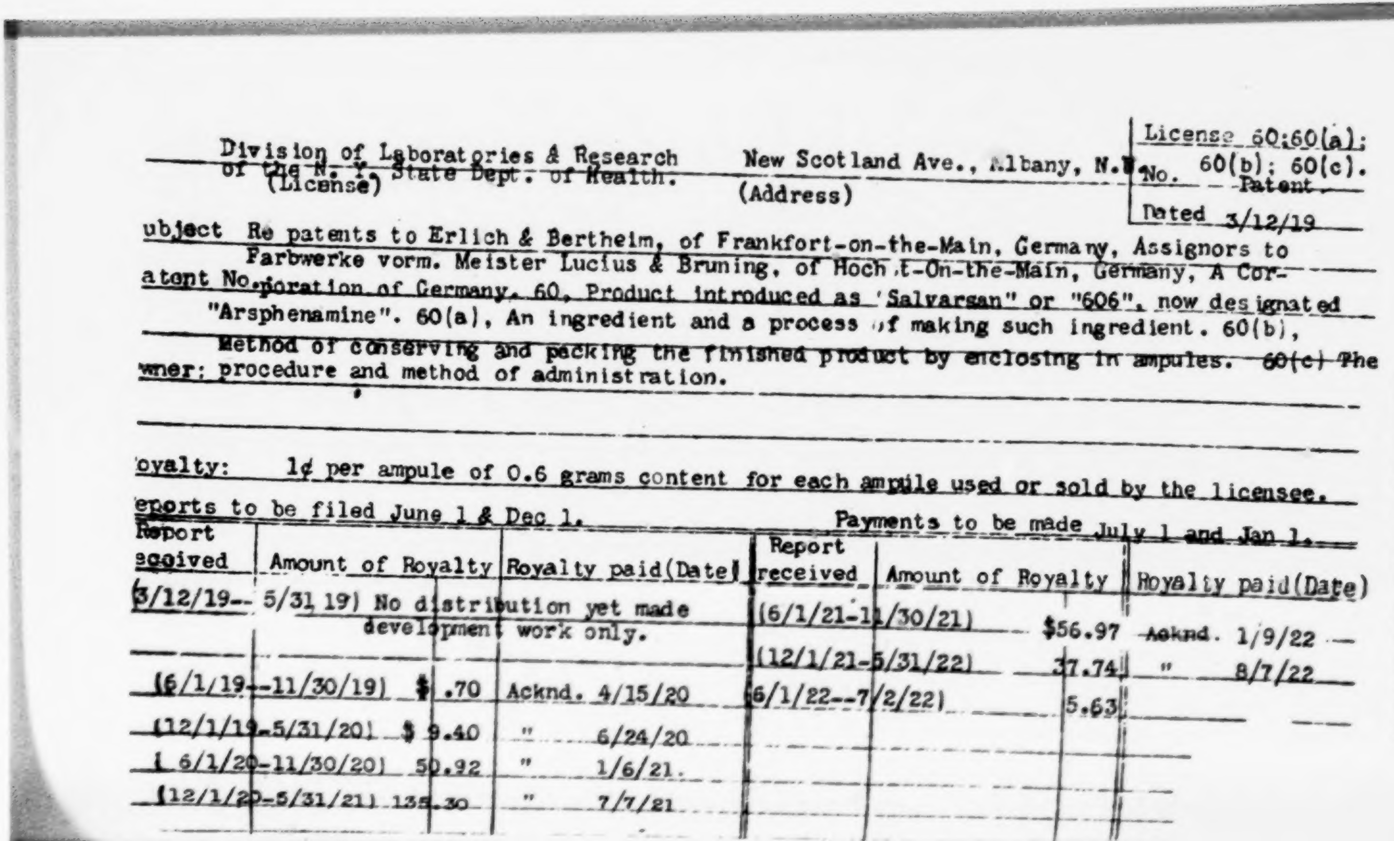
Revised to 2% gross amts, dating from June 1, 1919

Royalty:

Reports to be filed June 1 and Dec. 1. Payments to be made July and January.

Report received	Amount of Royalty		Royalty paid(Date)	Report received	Amount of Royalty		Royalty paid(Date)
1/6/20	no mfg	to	Dec 1. 1919				
6/5/20	Experimental		work only thru	May	31, 1920		—
12/7/20	No sales		thru Nov	30, 1920			—
6/6/21	No mfg		to June 1, 19	21			—
12/7/21	"	to	Dec 1, 19	21			—
8/3/22	No mfg.	to	July 1 19	22			

PLAINTIFF'S EXHIBIT No. 328.



Division of Laboratories & Research of the N. Y. State Dept. of Health. (License)
New Scotland Ave., Albany, N.Y. (Address)

License No. 60;60(a); 60(b); 60(c). Patent
Dated 3/12/19

ubject Re patents to Erlich & Bertheim, of Frankfort-on-the-Main, Germany, Assignors to Farbwerke vorm. Meister Lucius & Bruning, of Hochst-On-the-Main, Germany, A Corporation of Germany. 60, Product introduced as 'Salvarsan" or "606", now designated "Arsphenamine". 60(a), An ingredient and a process of making such ingredient. 60(b), Method of conserving and packing the finished product by enclosing in ampules. 60(c) The procedure and method of administration.

atent No.

wner:

oyalty: 1¢ per ampule of 0.6 grams content for each ampule used or sold by the licensee.

eports to be filed June 1 & Dec 1. Payments to be made July 1 and Jan 1.

Report eceived	Amount of Royalty	Royalty paid(Date)	Report received	Amount of Royalty	Royalty paid(Date)
(3/12/19--5/31 19)	No distribution yet made development work only.		(6/1/21-11/30/21)	$56.97	Acknd. 1/9/22
			(12/1/21-5/31/22)	37.74	" 8/7/22
(6/1/19--11/30/19)	$ .70	Acknd. 4/15/20	6/1/22--7/2/22)	5.63	
(12/1/19-5/31/20)	$ 9.40	" 6/24/20			
(6/1/20-11/30/20)	50.92	" 1/6/21.			
(12/1/20-5/31/21)	135.30	" 7/7/21			

PLAINTIFF'S EXHIBIT No. 329.

License No. 61
~~Tm.~~ Patent
Dated March 4,1919

Semet-Solvay Company, (License) — Solvay, N. Y. (Address)

Subject re patents relating to the manufacture of Ammonia

Patent(No.: See schedule. to Badische Anilin & Soda Fabrik of Ludwigshafen a/Rhine-Germany

~~5% of gross~~ amounts received by the licensee from sale of products.

Owner: Revised to 2% of gross amts, dating from June 1, 1919

Royalty:

Reports to be filed June 1 and Dec. 1 — Payments to be made July and January.

Report received	Amount of Royalty	Royalty paid(Date)	Report received	Amount of Royalty	Royalty paid(Date
Dec 8/19	No operations to	Dec 1, 1919			
6/8/20	No operations thru	May 31, 19	20		
12/20/20	Experimental	Work only.			
6/1/21	"	" "			
11/5/22	No production	thru Nov. 30, 1922.			
6/1/22	(12/1/21 - 7/1/22)	No production;	No royalties	accrued.	

PHOTOSTATED BY
NO. 7244
DATE 6/19/23
APPRCV. A.T.S.
CHKD. W.L.
DEPT. OF JUSTICE

PLAINTIFF'S EXHIBIT No. 330.

License No. 62; 62a; 62b; 62c.

Dated 3/21/19

Massachusetts State Department of Health (License) Boston, Mass (Address)

Subject Re patents to Erhlich & Bertheim, of Frankfort-on-the-Main, Germany, Assignors to

Patent No.: Farbwerke vorm. Meister Lucius & Bruning, of Hochst-on-the-Main, Germany, a Corporation of Germany. 62, Product introduced as "Salvarsan" or 606, now designated ~~"Arsphenamine 62a, An ingredient and a process of making such ingredient.~~ 62b,

Owner: Method of conserving and packing the finished product by enclosing in ampules. 62c, The procedure and method of administration.

Royalty: 1¢ per ampule of 0.6 grams content for each ampule used or sold by licensee.

Reports to be filed June 1 and Dec. 1 Payments to be made July and January.

Report received	Amount of Royalty	Royalty paid(Date)	Report received	Amount of Royalty	Royalty paid(Date
Aug 27, '19	$ 33.49	April 22, 1920	June 2, '22	$ 108.76	Acknd. 8/7/22
Jan. 15'20	77.44	" " "	Aug. 3, '22	(6/1/22-7-2/22)	$16.07
June 1',20	147.46	July 23, 1920	12/2/22	7/2/22 - 11/30/22 $85.76	- not payment
Nov. 30, '20	123.59	Jan. 28, 1921		not required at this	time. see file
June 6, '21	164.14	June 13, 1921			
Dec. 28, '21	107.76	Jan. 21, 1922			

PLAINTIFF'S EXHIBIT No. 331.

License No. 63
~~No.~~ Patent
Dated March 4,191

Horatio Nelson Fraser / Transferred to Chemical Refining Syndicate 218 Lincoln Place, Brooklyn, N. Y.
(License) (Address)
The Fraser Tablet Company-453 19th St Brooklyn N.Y.

Subject re patent No. 994,437, dated June 6, 1911 to Ossian Aschan and Wilhelm Kempe, Assignors to Chemische Fabrik auf Actien(vorm. E. Schering), for

Patent No.: "Process of Preparing Camphor".

Owner: ~~5% of gross sums~~ received from sale of product.

Revised to 2% of gross amts, dating from June 1, 1919

Royalty:

Reports to be filed June 1 and Dec. 1 Payments to be made July and January.

Report received	Amount of Royalty	Royalty paid(Date)	Report received	Amount of Royalty	Royalty paid(Date
6/29/19	No sales				
1/15/20.	No operations thru Nov. 30, 1919.				
6/24/20	Experimental work only thru May 31, 1920.				
12/8/20	No sales				
6/13/21	No sales thru May 31, 1921 (Date of transfer to Chemical Refining Syndicate)				
5/10/22	(6/1/21-11/30/21) No sales - Experimental work to date				
8/2/22	(12/1/21 to 7/2/22) No Sales				

PLAINTIFF'S EXHIBIT No. 332.

License No. 65.
~~No.~~ Patent.
Dated March 17, 1919

Green & Bauer, Inc. Hartford, Conn. Cancelled
(License) (Address)

Subject re patent No. 1,122,011, dated December 22, 1914, to Julius Edgar Lilienfeld, of Leipzig, Germany, for "Process and Apparatus for Producing Roentgen Rays"; and patent No

Patent No.: 1,218,423, dated March 6, 1917, to Julius Edgar Lilienfeld, of Leipzig, Germany. for "Roentgen Ray Tube".

5% of/gross amounts received from sale .

Owner:

Royalty:

Reports to be filed Dec. 1 and June 1 Payments to be made January and June

Report received	Amount of Royalty	Royalty paid(Date)	Report received	Amount of Royalty	Royalty paid(Date)
7/30/19	No sales thru May 31, 1919.				
1/16/20	No sales thru Nov. 30/1919				
Aug 27, 1920.	No sales to date and no royalty due				
	License Cancelled and terminated				
	September 20, 1920				

PLAINTIFF'S EXHIBIT No. 333.

License No. 66
~~No.~~ Patent.
Dated March 4, '19

The Sperry Gyroscope Company.
(License)

Manhattan Bridge Plaza.
~~36 Flatbush Ave.~~ Brooklyn. N. Y.
(Address)
36 Flatbush Extension. Brooklyn N.Y.

Subject re patents to Herman Anschutz Kaempfe, Schuler, and Wolfgang Otto, of Neumuhlen, Germany, assignor to Anschutz & Company, of Neumuhlen, near

Patent No. ~~Kiel, Germany, for "Gyroscopic Compasses".~~

Owner: 5% of the gross amounts received from sale of apparatus.

Royalty:

Reports to be filed June 1 and Dec. 1 Payments to be made July and January.

Report received	Amount of Royalty	Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date
7/30/19.	No mfg. thru May	31, 1919.			
Jany 12, 1920	no mfg thru	Nov. 1919			
(8/30/20	thru May 31, 1920.	No operation	to date.		
12/15/20	No operation thru	Nov. 30, 1920.			
6/6/21	" mfg. thru	5/31/21			
12/16/21	" " "	11/30/21.			
8/1/22	(12/1/21 to 7/2/22)	No mfg.			

PLAINTIFF'S EXHIBIT No. 334.

License 3
No. Trade-Mark
Dated Dec. 16, '18

Draeger Oxygen Apparatus Company, The ↗ Now American Atmos Corporation   Wilkinsburg, Penn.
(License)   (Address)

Subject re Trade-Mark No. 94,620, registered December 23, 1913, to Drägerwerk, Heinr & Bernh. Dräger, of Lubeck, Germany, for "Pulmotor".

Patent No.:

Royalty: the sum of $100 per year payable on the first day of July and January ~~of each year in installments of $50 each.~~

Owner:

Royalty:

Reports to be filed Not stated.   Payments to be made July and January.

Cancelled

Report received	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty		Royalty paid (Date
10/14/19	to 7/1/19 #	50.	ck for #100				
3/23/1920	to 1/1/20	50	to A P.C. 3/30/1920				
			See Card[illegible]				
Renewed 7/22/20							
			(100				

U.S. STATE ... No. 72411 DATE 6/14/... APPRV. ... CHKD. ... DEPT. OF JUSTICE

License 3
No. Trade-Mark
Dated 12/16/18

Draeger Oxygen Apparatus Company. Wilkinsburg, Penn.
(License) (Address)
American Atmos Corporation
New

Subject

Patent No.: Re Trade-Mark No. 94,620, registered December 23, 1913, to Drägerwerk, Heinr & Bernh, Dräger, of Lubeck, Germany, for "Pulmotor".

Owner:

Royalty: The sum of $100 per year payable on the first day of July and January of each year in installments of $50 each.

Royalty:

Reports to be filed Not stated Payments to be made July and Jan.

Report received	Amount of Royalty		Royalty paid (Date)	Report received	Amount of Royalty	Royalty paid (Date)
On audit	7/1/19	$ 50.00		Payments recd by A. P. C. as follows:		
	1/1/20	50.00		5/13/21	$100.00	
	7/1/20	50.00	v50	8/11/21	50.00	
	1/1/21	50.00		1/10/22	50.00	
	7/1/21	50.00		4/1/20	100.00	
					300.00	paid
	1/1/22	50.00		7/1/22	$50.00 APC recd 9/9/22	
7/1/22	Due $ 300.00					

PLAINTIFF'S EXHIBIT No. 335.

5

The John Crerar Library Chicago, Ill. ✓ Copyright

re: copyright to O. Spamer, Germany

For "Die Schiessbaumwollstoffe ihre Herstellung und Verwendung, mit Figuren, Chemische Technologie, Spezieller Teil - Dr. O. Lange, for period of copyright

Dated: March 30 1918

1% of the gross sums received from sale of Book

to May & November first June & December 1

Paid direct to APC - see letter 3/18 .11

9/4/19 no sales — —

7/27/20 no sales thru Oct 31, 1919

10/15/20 No sales to date.

5/16/21 no sales to date

5/8/22 No sales to date.

8/7/22 (5/8/22 - 7/7/22) No sales -

PLAINTIFF'S EXHIBITS Nos. 336 to 399, Inclusive.

Plaintiff's Exhibit No. 661.

Stipulation Concerning Plaintiff's Exhibits Nos. 336 to 399, Inclusive.

DISTRICT COURT OF THE UNITED STATES DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, *Plaintiff*, *v.* THE CHEMICAL FOUNDATION, INCORPORATED, *Defendant*.	In Equity. No. 502.

WHEREAS it is the desire of the parties hereto to simplify and shorten the printed record in this cause. Now, therefore, it is hereby

STIPULATED and agreed by and between the parties hereto, by their respective solicitors of record as follows:

In place of printing in full plaintiff's Exhibits 336 to 399, both inclusive, there shall be printed in full only Exhibits 336 and 338 (excluding the Exhibits attached to same), and in addition there shall be printed the following statement:

> "Plaintiff's Exhibits 336 to 399, both inclusive, are certified copies of all bills of complaint purporting to be brought under Section 10 (f) of the Trading with the Enemy Act by the defendant herein, The Chemical Foundation, Inc., as

> plaintiff against Frank White, as Treasurer of the United States, and various licensees as defendants for the purpose of collecting compensation under Federal Trade Commission licenses affecting or involving patents, trade marks, and other rights involved in this suit of the United States of America against the Chemical Foundation, Incorporated.
>
> "A full and complete list of said various suits, giving the names of the defendants in each of said suits and the United States District Court in which each of said suits, respectively, has been brought and the numbers of the Federal Trade Commission licenses involved in each of said respective suits, is included in the Schedule "A" of suits offered as the defendant's Exhibit #287, and reference thereto for further specification and identification of said suits is here made. The bills of complaint in the suits involving licenses 18; 19; 28; 29; 30 and 38; are substantially like the bill of complaint offered as plaintiff's Exhibit #336, (involving license #27) printed in full here; and the bills of complaint in the suits involving licenses 1 and 1-A to 1-D inclusive; 2 and 2-A to 2-D inclusive; 7; 8 and 8-A to 8-D inclusive; 9; 10; 15; 34; 34-A; 35; 36; 39; 42; 43; 44; 46; 47; 50; 52; 53; 54; 55; 56; 57; 58; 59; 61 and 63 are substantially like plaintiff's Exhibit #338, (involving license #5) printed in full."

It is further agreed that this stipulation is entered into solely for the purpose of this action and shall not be used for or against either party hereto in any other place or any other action, and in so stipulating the defendant does not waive any objections heretofore made by it to the admission in evidence of any of plaintiff's Exhibits numbered 336 to 399 inclusive.

Dated, at Wilmington, Delaware,
this 19 day of July, 1923.

UNITED STATES OF AMERICA,
Plaintiff,
By (Sgd.) HERMAN J. GALLOWAY,
Solicitor.

THE CHEMICAL FOUNDATION, INC.
By (Sgd.) LUCIEN H. BOGGS,
Solicitor.

PLAINTIFF'S EXHIBIT No. 336.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA.

JUNE TERM, 1922. No.

IN EQUITY.

The Chemical Foundation, Incorporated, Plaintiff,
vs.
National Aniline & Chemical Company, Inc., a Corporation,
and
Frank White as Treasurer of the United States, Defendants.

BILL OF COMPLAINT.

I.

TO THE HONORABLE THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA:

Plaintiff is The Chemical Foundation, Incorporated, a corporation of the State of Delaware and a citizen of said State, with its principal office in the City of Wilmington in said State. The defendants are National Aniline & Chemical Company, Inc., a corporation of the State of New York, which has its principal place of business at Marcus Hook, Delaware County, Pennsylvania, in the District aforesaid; and Frank White, as Treasurer of the United States, who resides and as such officer has his office in the City of Washington, District of Columbia.

II.

This suit is brought under Section 10 of the Act of Congress, approved October 6, 1917, known as the "Trading with the Enemy Act," as amended.

III.

Heretofore the following Letters Patent of the United States of America were granted and issued, to-wit: 682,523, 715,662, 724,789, 734,325, 734,866 739,145, 739,579, 753,659, 754,768, 787,859, 796,393, 809,892, 818,336, 818,992, 828,778, 844,914, 856,811, 863,397, 876,810, 906,367, 925,917, 929,442, 948,204, 955,105, 958,325, 961,048, 961,612, 970,878, 999,062, 1,003,268, 1,063,172, 1,063,173, 1,104,943 and 1,145,934; the names of the inventors and patentees, the dates of issuance and the title or description of the several inventions or discoveries indicating their nature and design being set forth in the said Letters Patent. Copies of the specifications thereof are hereto annexed, made a part hereof, and marked Exhibits A-1 to A-34 inclusive, and the said Letters Patent or certified copies thereof are ready to be produced at the hearing of this cause. The inventors named in each of said Letters Patent were the original, first and sole inventors of the respective inventions or discoveries therein set forth, and lawfully filed and prosecuted applications for said Letters Patent; and having complied in all respect with the statutes and the rules of the Patent Office, the said Letters Patent were lawfully granted and issued pursuant to said applications.

Each of the said inventions or discoveries of said inventors was new, useful and not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication anywhere before his invention or discovery thereof, or more than two years prior to his application for United States patent, and not in public use or on sale in the United States for more than two years prior to the application, and not patented in any foreign country on an application filed more than twelve months before his said application was filed in the United States, and not abandoned.

IV.

Under authority of and in conformity with the said "Trading with the Enemy Act" and the Executive Orders made pursuant thereto, the Federal Trade Commission on or about the 28th day of June, 1918 granted upon the terms and conditions therein stated a certain license under Section 10 of said Act to the defendant, National Aniline & Chemical Company, Inc., under the aforementioned Letters Patent, as more fully set forth in the copy of said license hereto annexed, made a part hereof, marked Exhibit B. Said license, among other things, provided that the said defendant should pay to the Alien Property Custodian semi-annually a royalty of five per cent (5%) of the net profit derived from the sale of the products included in said license.

V.

On or about the 26th day of November, 1919 by order of the Federal Trade Commission acting under like authority, said license was amended so as to provide that from and after July 1, 1919 royalty payable thereunder should be at the rate of two per cent (2%) of the gross amounts received by the defendant licensee from the sale of the products included in said license, as more fully set forth in the copy of said order hereto annexed, made a part hereof, marked Exhibit C.

VI.

Subsequent to the granting of the license aforesaid, the Alien Property Custodian, acting under authority of and in conformity with the "Trading with the Enemy Act," as amended, and the proclamations and Executive Orders made pursuant thereto, after investigation, determined to be enemy owned and seized as enemy owned all of the said Letters Patent and every right, title and interest with respect thereto; and thereafter under authority of and in conformity with law as aforesaid, the said Custodian sold to the plaintiff said Letters Patent and every right, title and interest with respect thereto. The said seizures and the instruments evidencing said sales were duly filed and recorded in the United States Patent Office, all as will more fully appear from the schedule hereto annexed, made a part hereof, marked Exhibit D, which seizures and instruments are by reference made a part hereof.

VII.

By reason of the foregoing plaintiff became on, to-wit, the 10th day of April, 1919 and now is the sole owner of the said Letters Patent and the inventions and discoveries covered thereby and of every right, title and interest therein, including the rights inuring to the "owner" of said Letters Patent under Section 10 of the "Trading with the Enemy Act."

VIII.

Plaintiff is informed and believes and states the fact to be that the said license is still in full force and effect and the defendant, National Aniline & Chemical Company, Inc., has operated and acted thereunder and continues so to do, and has realized and continues to realize divers proceeds from the sale of products included therein; but plaintiff is not informed as to what moneys, if any, may have been paid or are payable by said defendant to the Alien Property Custodian, as required by the terms of said license, nor as to what moneys, if any, are now held by the defendant Treasurer of the United States by virtue thereof.

IX.

In addition to the inventions covered by the Letters Patent enumerated in Paragraph III hereof, there were licensed by the aforementioned license such other inventions owned or controlled by an enemy or ally of an enemy as might be found desirable in order to further the purposes and intent of said license, as more particularly set forth therein; and plaintiff is the owner of divers inventions covered by United States Letters Patent other than those specified in said Paragraph III which at divers times were determined by the Alien Property Custodian to be enemy or ally of enemy owned and as such were seized and sold to the plaintiff, and which may have been used by the defendant licensee as desirable for the furtherance of the intent and purposes of said license. Plaintiff is not informed as to which, if any, of said additional Letters Patent owned by it were so used by the defendant licensee, nor as to the nature or extent of such use; but such Letters Patent, if any there be, are hereinafter referred to as "additional licensed patents." With reference to each of such additional licensed patents, each and every the allegations, so far as applicable of Paragraph III hereof and each and every the allegations, so far as applicable of Paragraph VI hereof, are hereby by reference repeated and alleged as fully as though incorporated herein. By reason of the premises the plaintiff became and now is the sole owner of the said additional licensed patents and the inventions and discoveries covered thereby, and of every right, title and interest therein, including the rights inuring to the "owner" of Letters Patent under Section 10 of the "Trading with the Enemy Act."

WHEREFORE, the premises considered, the plaintiff prays as follows:

First.—That the usual process of this Court be issued to and served upon the defendant, National Aniline & Chemical Company, Inc., and that by special order of this Court under Section 17 of the "Trading with the Enemy Act," process be by the Clerk of this Court transmitted to the United States Marshal of the District of Columbia to be by him served upon the defendant, Frank White, as Treasurer of the United States.

Second.—That said defendant, National Aniline & Chemical Company, Inc., be required to make full and true discovery of its operations under said license and its profits thereunder with respect to the Letters Patent involved in this proceeding from and after the time plaintiff became the owner thereof, as aforesaid, including the exact specification of the Letters Patent under which such operations were conducted, and that upon such discovery being had, the plaintiff be given leave to make such amendment to this bill of complaint as it may be advised.

Third.—That this Court do fix and determine the amount of a reasonable royalty for the use and enjoyment of said Letters Patent under said license subsequent to the time last mentioned and do adjudge and decree the payment thereof to the plaintiff.

Fourth.—That an accounting be taken by this Court or under its direction to ascertain the amounts due by the defendant, National Aniline & Chemical Company, Inc., to the plaintiff in the premises, and to ascertain the amounts paid by said defendant to the Alien Property Custodian and now held by the defendant, Frank White, as Treasurer of the United States.

Fifth.—That upon the stating of said account the defendant, Frank White, as Treasurer of the United States, be ordered to pay to the plaintiff the money, if any, so deposited with him under said license, or so much of said deposit as is necessary to satisfy the judgment and decree of this Court; and if such deposit be insufficient to pay such judgment and decree in full, that the plaintiff have decree against the said defendant, National Aniline & Chemical Company, Inc., for the deficiency.

Sixth.—That by decree of this Court the said license issued by the Federal Trade Commission to the defendant, National Aniline & Chemical Company, Inc., be cancelled and terminated; that said defendant be ordered to surrender the same to said Commission for cancellation; and that from and after the issuance of such decree the said defendant, National Aniline & Chemical Company, Inc., its officers, agents, servants, employees and all persons acting or claiming to act by, through or under the said defendant, be enjoined and restrained until the expiration of said Letters Patent from making, using or selling within the United States the inventions or discoveries described and claimed in the said Letters Patent, including said additional licensed patents, and for the period aforesaid be enjoined and restrained from asserting or claiming any right, title or interest under the said license or the said Letters Patent.

Seventh.—That the plaintiff may have such other and further relief as may be consonant with equity and as the nature of the case may require.

(Sgd.) DUANE, MORRIS & HECKSCHER,
DUANE, MORRIS & HECKSCHER,
Solicitors of Plaintiff.

(Sgd.) EVARTS, CHOATE, SHERMAN & LEON,
Of Counsel.

PLAINTIFF'S EXHIBIT No. 338.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE CHEMICAL FOUNDATION, INCORPORATED, *Plaintiff,* *v.* RECTOR CHEMICAL COMPANY, INC. (a corporation) and FRANK WHITE as TREASURER OF THE UNITED STATES, *Defendants.*	Bill of Complaint, Equity No. 24/129

To the Honorable Judges of Said Court in Chancery Sitting:

I

Plaintiff is THE CHEMICAL FOUNDATION, INCORPORATED, a corporation of the State of Delaware and a citizen of said state, with its principal office in the City of Wilmington in said state. The defendants are

Rector Chemical Company, Inc., a corporation of the State of New York, which has its principal place of business at No. 2 Rector St., in the Borough Manhattan, in the City of New York, in the District aforesaid; and Frank White, as Treasurer of the United States, who resides and as such officer has his office in the City of Washington, District of Columbia.

II

This suit is brought under Section 10 of the Act of Congress, approved October 6, 1917, known as the "Trading with the Enemy Act," as amended.

III

On or about the 13th day of February, 1906, Letters Patent of the United States of America, No. 812,-554, were granted and issued to Alfred Einhorn, of Munich, Germany, Assignor to Farbwerke vorm. Meister Lucius & Bruning, of Hochst-on-the-Main, Germany, a corporation of Germany; the title or description of the invention or discovery indicating its nature and design being set forth in the said Letters Patent. A copy of the specifications thereof is hereto annexed, made a part hereof, marked Exhibit A and the said Letters Patent or a certified copy thereof are ready to be produced at the hearing of this cause. The inventor therein named was the original, first and sole inventor of said invention or discovery, and lawfully filed and prosecuted application for said Letters Patent; and having complied in all respects with the statutes and the rules of the Patent Office, the said Letters Patent were lawfully granted and issued pursuant to said application.

The said invention or discovery of the said inventor was new and useful, and not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication anywhere before his invention or discovery thereof, or more than two years prior to said application for United States patent, and not in public use or on sale in the United States for more than two years prior to said application, and not patented in any foreign country on an application filed more than twelve months before his said application filed in the United States, and not abandoned.

IV

Under authority of and in conformity with the said Trading with the Enemy Act and the Executive Orders made pursuant thereto, the Federal Trade Commission on or about the 17th day of December, 1917, granted upon the terms and conditions therein stated a certain license under Section 10 of said Act to the defendant, RECTOR CHEMICAL COMPANY, INC., under the aforementioned Letters Patent, as more fully set forth in the copy of said license hereto annexed, made a part hereof, marked Exhibit B. Said license, among other things, provided that the said defendant should pay to the Alien Property Custodian semi-annually a royalty of five per cent (5%) of the gross sums received by the said defendant licensee from the sale of the product so licensed to be made.

V

Subsequent to the granting of the license aforesaid, the Alien Property Custodian, acting under authority of and in conformity with the Trading with the Enemy Act, as amended, and the proclamations and executive orders made pursuant thereto, after investigation, determined to be enemy owned and seized as enemy owned the said Letters Patent and every moneys, if any, are now held by the defendant Treasurer of the United States by virtue thereof.

WHEREFORE, The premises considered, the plaintiff prays as follows:

First. That the usual process of this court be issued to and served upon the defendant, RECTOR CHEMICAL COMPANY, INC.; and that by special order of this court under Section 17 of the Trading with the Enemy Act, process be by the Clerk of this Court transmitted to the United States Marshal of the District of Columbia to be by him served upon the defendant, Frank White as Treasurer of the United States.

Second. That said defendant, RECTOR CHEMICAL COMPANY, INC., be required to make full and true discovery of its operations under said license and its profits thereunder with respect to the Letters Patent involved in this proceeding from and after the time plaintiff became the owner thereof, as aforesaid.

Third. That this court do fix and determine the amount of a reasonable royalty for the use and enjoyment of said Letters Patent under said license subsequent to the time last mentioned and do adjudge and decree the payment thereof to the plaintiff.

Fourth. That an accounting be taken by this court or under its direction to ascertain the amounts due by the defendant, RECTOR CHEMICAL COMPANY, INC., to the plaintiff in the premises, and to ascertain the amounts paid by said defendant to the Alien Property Custodian and now held by the defendant Frank White as Treasurer of the United States.

Fifth. That upon the stating of said account the defendant, Frank White, as Treasurer of the United States, be ordered to pay to the plaintiff the money, if any, so deposited with him under said license, or so much of said deposit as is necessary to satisfy the judgment and decree of this court; and if such deposit be insufficient to pay such judgment and decree in full, that the plaintiff have decree against the said defendant, Rector Chemical Company, Inc., for the deficiency.

Sixth. That by decree of this court the said license issued by the Federal Trade Commission to the defendant, Rector Chemical Company, Inc., be cancelled and terminated; that said defendant be ordered to surrender the same to said Commission for cancellation; and that from and after the issuance of such decree the said defendant, Rector Chemical Company, Inc., its officers, agents, servants, employees and all persons acting or claiming to act by, through or under the said defendant, be enjoined and restrained until the expiration of said Letters Patent from making, using, or selling within the United States the inventions or discoveries described and claimed under the said Letters Patent; and for the period aforesaid be enjoined and restrained from asserting or claiming any right, title or interest under the said license or the said Letters Patent.

Seventh. That the plaintiff may have such other and further relief as may be consonant with equity and as the nature of the case may require.

EVARTS, CHOATE, SHERMAN & LEON,
Solicitors for Plaintiff.

(Sgd.) Joseph H. Choate, Jr.,
Of Counsel.

PLAINTIFF'S EXHIBIT No. 400.

STATEMENT OF PAYMENTS TO ALIEN PROPERTY CUSTODIAN ON PRE-WAR CONTRACT ASSIGNED TO CHEMICAL FOU

Trust No.	Issued To	Date Patent Issue	Patent No.	Date of Contract	Date Expiration Contract	Date Receipt by A. P. C.	Date Deposit with U. S. Treasur.	Remarks (See Affdvt. from U. S. Treasur)	Date of Ctf. of Deposit From U. S. Treas.
734	General Ceramics Co., Inc.	:10-12-09	936844	5-10-13	Indefinite	: 5-15-18	5-23-18		6- 1-18
"	"	: 1-12-15	1124380	"	"	: 8-22-18	9- 3-18		9-19-18
"	"	: 6- 9-14	1099451	7-26-13	"	:12-24-18	3- 6-19		6- 7-19
"	"	: "				: 4-17-19	5- 3-19		5-27-19
"	"					: 3-31-20	4- 9-20		4-21-20
8876	F. H. Kindel	: 7- 1-02	703940	1-18-16	7- 1-19	: 2-11-18	2-13-18		3- 6-18
"	"	: "				: 4-17-18	4-25-18		5- 7-18
"	"	: "				: 8- 8-18	8-30-18		9-25-18
"	"	: "				:10-30-18	11- 8-18		11-26-18
38 "	"	: "				:10-20-21		See Affd. of Trs.	4-16-18
3816	Contract Process Co.	(not given)	(not given)	5-26-02	8-20-18	: 3-23-18		"	
"	"			"	"	: 5-13-18		"	
"	"			"	"	: 7-25-18		"	
"	"					:10- 9-18		"	
28323	Reinschild Chemical Co.	8-25-08	896807						
		12-14-09	943163	12-28-05	Indefinite	11-22-18	12-13-18		1- 7-19
3816	Stallman & Co.	1-24-99	618167	10-27-08	5-11-18	2-14-18		"	
"	"	1-24-99	618168	"	"	5-23-18		"	
"	"	7- 4-99	627981	"	"	10- 1-18		"	
"	"	12-10-95	TM 27454	"	"	7-31-18		"	
"	"	4-13-97	" 29836	"	"	1- 2-18		"	
"	"	4-13-97	" 29831	"	"	4- 1-19		"	
"	"			"	"	7- 2-19		"	
"	"			"	"	10- 7-19		"	
"	"			"	"	2- 3-20		"	
"	"			"	"	4- 3-20		"	
"	"			"	"	7- 3-20		"	
34378	Freida Lolb	5-13-02	700056	12- 7-13	Life Pat.	: 3- 8-22		"	
"	"	2- 2-04	751303	2- 3-14	"	:			
"	"	6-19-06	823688		"	:			
"	"	12-25-06	839396		"	:			
"	"	11- 8-10	975081		"	:			
"	"	3-25-13	1057174		"	:			
"	"	7-25-16	1192569		"	:			
21180	Beckton Dickinson & Co.	6-19-06	823859	6- 1-12	"	5-23-18	8-16-18		8-26-18
"	"					5- 8-19	5-12-19		5-27-19
"	"					8-26-21		"	
963	Pacific Flush Tank Co.	6-15-09	924664	5-26-11	5-26-13	2-28-18	3- 1-18		3-12-18
"	"	12-10-10	978889	"	"	:			
"	"	3-18-13	1056548	"	"	:			
"	"	3-25-13	1057154	"	"	:			
"	"	2-18-13	1053396	"	"	:			
3362	Kneipp Malt Food Co.	1-23-94	513252	6-26-95	Life Pat.	2- 8-19		"	
"	"				"	8-12-18	8-29-18		9-18-18
"	"					1-24-19	1-31-19		2-26-19
"	"					5-23-19	5-26-19		6-16-19
11269	Eastman Kodak Co.	6-20-16	1188376	8- 5-12	Conditional	3-14-18		"	
"	"	2-20-17				8-24-18		"	
"	"					8-12-18		"	
"	"					1- 4-19		"	
"	"					7-28-19		"	
204	National Carbon Co.	Not Stated	Not stated	9-23-14	9-23-29	4- 4-18		"	
"	"	"				4-12-20		"	
3722	Montanin Co.	12-24-07	TM 66726	8-26-15	Indeterminate	7-17-18	7-24-18		8- 6-18
"	"	"				9- 9-18	9-13-18		9-30-18
"	"	"				12- 6-18	12-13-18		1- 7-19
"	"	"				3-14-19	3-26-19		4- 7-19

XHIBIT No. 400.

IN RE CHEMICAL FOUNDATION.

Sheet 1

F PAYMENTS TO ALIEN PROPERTY CUSTODIAN ON PRE-WAR CONTRACT ASSIGNED TO CHEMICAL FOUNDATION.

	Date Patent Issue	Patent No.	Date of Contract	Date Expiration Contract	Date Receipt by A. P. C.	Date Deposit with U. S. Treasur.	Remarks (See Affdvt. from U. S. Treasur)	Date of Ctf. of Deposit From U. S. Treas.	Number of Certificate of Deposit	Amount	Totals.
nc.	:10-12-09	936844	5-10-13	Indefinite	: 5-15-18	5-23-18		6- 1-18	5171	3,019.17	
	: 1-12-15	1124380	"	"	: 8-22-18	9- 3-18		9-19-18	11163	1,874.75	
	: 6- 9-14	1099451	7-26-13	"	:12-24-18	3- 6-19		6- 7-19	30424	1,230.44	
	: "				: 4-17-19	5- 3-19		5-27-19	30010	2,115.34	
					: 3-31-20	4- 9-20		4-21-20	47717	57.54	8,297.24
	: 7- 1-02	703940	1-18-16	7- 1-19	: 2-11-18	2-13-18		3- 6-18	1082	125.00	
	: "				: 4-17-18	4-25-18		5- 7-18	3386	250.00	
	: "				: 8- 8-18	8-30-18		9-25-18	11366	125.00	
	: "				:10-30-18	11- 8-18		11-26-18	15066	125.00	
	: "				:10-20-21		See Affd. of Trs.	4-16-18	2342	238.89	863.89
	(not given)	(not given)	5-26-02	8-20-18	: 3-23-18		"			1,029.05	
			"	"	: 5-13-18		"			18.63	
			"	"	: 7-25-18		"			22.38	
					:10- 9-18		"			51.30	1,121.36
	8-25-08	896807									
	12-14-09	943163	12-28-05	Indefinite	11-22-18	12-13-18		1- 7-19	18287	396.39	396.39
	1-24-99	618167	10-27-08	5-11-18	2-14-18		"			173.53	
	1-24-99	618168	"	"	5-23-18		"			51.05	
	7- 4-99	627981	"	"	10- 1-18		"			10.16	
	12-10-95	TM 27454	"	"	7-31-18		"			19.06	
	4-13-97	" 29836	"	"	1- 2-18		"			8.38	
	4-13-97	" 29831	"	"	4- 1-19		"			8.80	
			"	"	7- 2-19		"			14.49	
			"	"	10- 7-19		"			22.49	
			"	"	2- 3-20		"			15.22	
			"	"	4- 3-20		"			10.24	
			"	"	7- 3-20		"			13.41	346.83
	5-13-02	700056	12- 7-13	Life Pat.	: 3- 8-22		"			350.00	
	2- 2-04	751303	2- 3-14	"	:						
	6-19-06	823688		"	:						
	12-25-06	839396		"	:						
	11- 8-10	975081		"	:						
	3-25-13	1057174		"	:						
	7-25-16	1192569		"	:						
o.	6-19-06	823859	6- 1-12	"	5-23-18	8-16-18		8-26-18	9441	180.00	
					5- 8-19	5-12-19		5-27-19	30067	90.00	
					8-26-21		"			11.42	281.42
	6-15-09	924664	5-26-11	5-26-13	2-28-18	3- 1-18		3-12-18	1192	3,450.66	3,450.66
	12-10-10	978889	"	"	:						
	3-18-13	1056548	"	"	:						
	3-25-13	1057154	"	"	:						
	2-18-13	1053396	"	"	:						
	1-23-94	513252	6-26-95	Life Pat.	2- 8-19		"			2,951.38	
				"	8-12-18	8-29-18		9-18-18	10757	544.54	
					1-24-19	1-31-19		2-26-19	21922	389.99	
					5-23-19	5-26-19		6-16-19	30893	227.07	4,112.98
	6-20-16	1188376	8- 5-12	Conditional	3-14-18		"			6,897.70	
	2-20-17				8-24-18		"			43.20	
					8-12-18		"			2,116.80	
					1- 4-19		"			2,160.00	
					7-28-19		"			497.25	11,714.95
	Not Stated	Not stated	9-23-14	9-23-29	4- 4-18		"			720.00	
	"				4-12-20		"			212.00	932.00
	12-24-07	TM 66726	8-26-15	Indeterminate	7-17-18	7-24-18		8- 6-18	7975	75.00	
	"				9- 9-18	9-13-18		9-30-18	11729	75.00	
	"				12- 6-18	12-13-18		1- 7-19	18308	75.00	
	"				3-14-19	3-26-19		4- 7-19	25922	75.00	300.00

PLAINTIFF'S EXHIBIT No. 400.

STATEMENT OF PAYMENTS TO ALIEN PROPERTY CUSTODIAN ON PRE-WAR CONTRACT ASSIGNED TO CHEMI

Trust No.	Issued To	Date Patent Issue	Patent No.	Date of Contract	Date Expiration Contract	Date Receipt by A. P. C.	Date Deposit with U. S. Treasur.	Remarks (See Affdvt. from U. S. Treasur)	
12681	American Kitchen Prod. Co.	Not Stated	Not stated	5-10-19	Indeterminate	4-24-18	8-21-18		
"	"					8-12-18	8-21-18		
"	"					10-19-18	10-23-18		
"	"					2-18-19	3- 1-19		
"	"					4-26-19	4-29-19		
"	"					7-16-19	7-18-19		
"	"					10-22-19	10-25-19		
"	"					2-28-20	3- 4-20		
"	"					5- 3-20	5- 7-20		
"	"					4- 6-18		See Affd. of Trs.	
"	"					5- 8-18		"	
"	"					6- 8-18	7-13-18		
"	"					7-15-18	8-21-18		
"	"					9-10-18	9-14-18		
"	"					8-16-18	9- 6-18		
17647	Stearns Rogers Mfg. Co.	11-11-13	1078125	12-20-12	Indefinite	5-21-18	6-11-18		
"	"	"	"			5-21-18	6-11-18		Lib.
"	"	"	"			5-31-18	6-11-18		
2267	Lehn & Fink	6-12-06 TM	53937	2- 5-14	Indefinite	9-11-18		"	
"	"	" "	53938	"	"	10-15-18		"	
"	"					12-28-18		"	
"	"					2- 8-18		"	
18678	Arabol Mfg. Co.	11- 1-10	974448	10-12-08	Life Pat.	7- 3-18	7-16-18		
"	"					2- 5-19	2-11-19		
"	"					12-10-19	12-12-19		
986	American Creosoting Co. of N. F.	10-22-07	12707	7-16-09	Not given	5-16-18		"	
		9-23-02	709799						
		11-14-11	1008864						
"	Atlantic Coast Line R. R. Co.	"	"	11-28-13	"	1-28-18		"	
"	Ayer & Lord Tie Co.	"	"	11-19-07	"	3-11-18		"	
"	Boston Elevated Railway Co.	"	"	12-27-15	"	1-28-18		"	
"	"	"	"	"	"	2- 9-19		"	
"	Central of Georgia Ry Co.	"	"	4-15-12	"	3- 6-18		"	
"	"	"	"	"	"	3- 6-18		"	
"	The Gulf Creosoting Co.	"		5-19-08	"	4-25-18		"	
986	The Jennison Wright Co.	11-14-11	1008864	6-21-13	Not Stated	5- 6-18	8-23-18	See Affdvt. of Treas.	
"	Kettle River Lumber Co.	"	"	1-17-12	"	8- 8-18		"	
"	Lembcke von Bermuth & Co.	"	"	4-19-07	"	2- 1-18		"	
"	National Lumber & Creosoting Co.	"	"	1910	"	4-30-18		"	
"	Ohio Wood Preserving Co.	"	"	Not dated	"	4-22-18		"	
"	Pittsburgh Wood Preserving Co.	"	"	9-22-10	"	4-20-18		"	
"	Pennsylvania R. R. Co.	"	"	3-30-11	"	1-09-19	2- 3-19	"	
"	"	"	"	"	"	1-30-18		"	
"	Philadelphia & Reading Ry Co.	"	"	12-18-12	"	1-31-18		"	
"	Pacific Creosoting Co.	"	"	1-28-14	"	2- 5-18		"	
"	Southern Creosoting Co.	"	"	6-25-14	"	2-16-18		"	
"	Santa Fe Tie & Lumber Preserving Co.	"	"	1-16-05	"	3-18-18		"	
"	St. Helena Creosoting Co.	"	"	10-24-13	"	4-25-18		"	

SUMMARY

Payments as above shown		152,758.04
Trust #11269 short	44.00	
" 3816 over	.27	43.73
Total		$152,801.77
Exhibit # 194 (Storck)		$152,801.77

PAYMENTS TO ALIEN PROPERTY CUSTODIAN ON PRE-WAR CONTRACT ASSIGNED TO CHEMICAL FOUNDATION.

	Date Patent Issue	Patent No.	Date of Contract	Date Expiration Contract	Date Receipt by A. P. C.	Date Deposit with U. S. Treasur.	Remarks (See Affdvt. from U. S. Treasur)	Date of Ctf. of Deposit From U. S. Treas.	Number of Certificate of Deposit	Amount	Totals.
Co.	Not Stated	Not stated	5-10-19	Indeterminate	4-24-18	8-21-18		9- 5-18	9968	3,455.93	
					8-12-18	8-21-18		9- 5-18	9968	1,848.06	
					10-19-18	10-23-18		11-15-18	13589	3,353.19	
					2-18-19	3- 1-19		3-26-19	24342	5,618.30	
					4-26-19	4-29-19		5-24-19	29873	4,059.87	
					7-16-19	7-18-19		8-19-19	35286	2,170.07	
					10-22-19	10-25-19		11- 6-19	40322	3,052.05	
					2-28-20	3- 4-20		3-16-20	45987	2,455.50	
					5- 3-20	5- 7-20		5-20-20	49461	2,856.04	
					4- 6-18		See Affd. of Trs.			5,000.00	
					5- 8-18		"			5,000.00	
					6- 8-18	7-13-18		7-29-18	7538	5,000.00	
					7-15-18	8-21-18		9- 5-18	19979	5,000.00	
					9-10-18	9-14-18		10- 4-18	11926	7,058.62	
					8-16-18	9- 6-18		9-26-18	11430	5,000.00	60,927.63
o.	11-11-13	1078125	12-20-12	Indefinite	5-21-18	6-11-18		7- 2-18	6653	25.00	
	"	"			5-21-18	6-11-18		Lib. Bonds		6,000.00	8,025.00
	"	"			5-31-18	6-11-18		"		2,000.00	
	6-12-06 TM	53937	2- 5-14	Indefinite	9-11-18		"			8,480.05	
	" "	53938	"	"	10-15-18		"			768.14	
					12-28-18		"			596.62	
					2- 8-18		"			2,702.07	12,546.88
	11- 1-10	974448	10-12-08	Life Pat.	7- 3-18	7-16-18		7-29-18	7467	213.09	
					2- 5-19	2-11-19		4-15-19	26354	136.10	
					12-10-19	12-12-19		12-22-19	42278	21.45	370.64
of N. F.	10-22-07	12707	7-16-09	Not given	5-16-18		"			1,579.26	1,579.26
	9-23-02	709799									
	11-14-11	1008864									
Co.	"	"	11-28-13	"	1-28-18		"			1,943.81	1,943.81
	"	"	11-19-07	"	3-11-18		"			13,472.84	13,472.84
Co.	"	"	12-27-15	"	1-28-18		"			320.86	320.86
	"	"	"	"	2- 9-19		"			24.29	24.29
o.	"	"	4-15-12	"	3- 6-18		"			1,464.99	1,464.99
	"	"	"	"	3- 6-18		"			84.29	84.29
o.	"		5-19-08	"	4-25-18		"			55.81	55.81
											132,984.02
									Forwarded		132,984.02
o.	11-14-11	1008864	6-21-13	Not Stated	5- 6-18	8-23-18	See Affdvt. of Treas.	9-12-18	10564	626.10	626.10
o.	"	"	1-17-12	"	8- 8-18		"			650.12	650.12
Co.	"	"	4-19-07	"	2- 1-18		"			10,352.72	10,352.72
oting Co.	"	"	1910	"	4-30-18		"	7-12-18	7017	2,252.74	2,252.74
o.	"	"	Not dated	"	4-22-18		"			26.45	26.45
ing Co.	"	"	9-22-10	"	4-20-18		"			870.80	870.80
	"	"	3-30-11	"	1-09-19	2- 3-19	"	2-15-19	20709	55.38	55.38
	"	"	"	"	1-30-18		"			2,196.63	2,196.63
Ry Co.	"	"	12-18-12	"	1-31-18		"			1,646.51	1,646.51
	"	"	1-28-14	"	2- 5-18		"			65.49	65.49
	"	"	6-25-14	"	2-16-18		"			3.36	3.36
Preserving Co.	"	"	1-16-05	"	3-18-18		"			773.21	773.21
	"	"	10-24-13	"	4-25-18		"			254.51	254.51
											$152,758.04

SUMMARY

Payments as above shown		152,758.04
Trust #11269 short	44.00	
" 3816 over	.27	43.73
Total		$152,801.77
Exhibit # 194 (Storck)		$152,801.77

PLAINTIFF'S EXHIBIT No. 401.

License No.	Issued To	License No.	Date License Issued
1, 1A, 1B, 1C, 1D	Farbwerke vorm Meister Lucius & Bruning and The Dermatological Research Laboratories		
" " " " "	" " "		
" " " " "	" " "	1, 1A, 1B, 1C	Nov. 26, 1917
" " " " "	" " "		
" " " " "	" " "	1D	March 4, 1918
" " " " "	" " "		
" " " " "	" " "		
" " " " "	" " "		
" " " " "	" " "		
2, 2A, 2B, 2C, 2D	Farbwerke vorm Meister Lucius & Bruning and Takamine Laboratory, Inc.		
" " " " "	" " "		
" " " " "	" " "		
" " " " "	" " "		
" " " " "	" " "	2, 2A, 2B, 2C	Nov. 26, 1917
" " " " "	" " "		
" " " " "	" " "	2D	March 4, 1918
" " " " "	" " "		
" " " " "	" " "		
" " " " "	" " "		
4	Farbwerke Hoechst Co. & Farbwerke vorm Meister Lucius & Bruning	4	Dec. 17, 1917
3	" " " " " " " "	3	Nov. 26, 1917
	" " " " " " " "		
5	Rector Chemical Co. & Farbwerke vorm Meister Lucius & Bruning		
5	" " " " " " " "		
5	" " " " " " " "		
5	" " " " " " " "	5	Dec. 17, 1917
5	" " " " " " " "		
5	" " " " " " " "		
5	" " " " " " " "		
7	Pacific Flush Tank Co. & Karl Imhoff		
7	" " " " " "		
7	" " " " " "		
7	" " " " " "		
7	" " " " " "	7	Dec. 17, 1917
7	" " " " " "		
7	" " " " " "		
7	" " " " " "		
8, 8A, 8B, 8C, 8D	Diarsenol Co., Inc., & Farbwerke vorm Meister Lucius & Bruning		
" " " " "	" " " " " "		
" " " " "	" " " " " "	8	Jan. 12, 1918
" " " " "	" " " " " "	8A	Jan. 12, 1918
" " " " "	" " " " " "	8B	Jan. 12, 1918
" " " " "	" " " " " "	8C	Jan. 12, 1918
" " " " "	" " " " " "	8D	March 4, 1918
" " " " "	" " " " " "		

STATEMENT OF PAYMENTS TO THE ALIEN PROPERTY CUSTODIAN ON FEDERAL TRADE COMMISSION LICENSES COVERING PATENT

Patent Number	Patent Date	Date of Expiration	Date of Receipt by Alien Property Custodian	Date of Deposit with U. S. Treasury	Remarks (See Affidavit from U. S. Treasury)	Date of Certificate of Deposit from U. S. Treasury
1,116,398	Nov. 10, 1914	Nov. 10, 1931	Jan. 25, 1918	Feb. 7, 1918		Feb. 18, 1918
986,148	March 7, 1911	March 7, 1928	July 30, 1918	Aug. 28, 1918		Sept. 9, 1918
1,081,592	Dec. 16, 1913	Dec. 16, 1930	April 21, 1919	April 24, 1919		May 22, 1919
1,081,897	Dec. 16, 1913	Dec. 16, 1930	August 8, 1919	August 13, 1919		August 27, 1919
13,848	Dec. 15, 1914	Dec. 15, 1931	August 14, 1919	August 21, 1919		Sept. 5, 1919
			March 4, 1920	March 9, 1920		March 23, 1920
			August 12, 1920	August 20, 1920		Sept. 3, 1920
			Feb. 16, 1921	Feb. 23, 1921	From Receipt Memo. No Transmittal letter.	March 10, 1921
			August 3, 1921	August 6, 1920	No letter of transmittal. From stamp on receipt memo.	August 19, 1921
			Jan. 12, 1918	February 7, 1918	"	Feb. 18, 1918
			Jan. 16, 1919	April 4, 1919		May 3, 1919
1,116,398	Nov. 10, 1914	Nov. 10, 1931	August 4, 1919	August 8, 1919		August 18, 1919
986,148	March 7, 1911	March 7, 1928	Jan. 31, 1920	Febr. 12, 1920		Feb. 26, 1920
1,081,592	Dec. 16, 1913	Dec. 16, 1930	Sept. 20, 1920	Sept. 23, 1920	From Receiving Slip	(See affidavit)
1,081,897	Dec. 16, 1913	Dec. 16, 1930	Nov. 15, 1920	Nov. 19, 1920		Dec. 6, 1920
13,848	Dec. 15, 1914	Dec. 15, 1931	May 4, 1921	May 13, 1921	From Receiving Slip	June 2, 1921
			July 18, 1921	July 25, 1921	From Receiving Slip	(See affidavit)
			Dec. 29, 1921	Jan. 6, 1922	From Receiving Slip	Jan. 17, 1922
			Jan. 10, 1922	Jan. 16, 1922	From Receiving Slip	Jan. 27, 1922
812,554	Feb. 13, 1906	Feb. 13, 1923	Jan. 12, 1918	Jan. 22, 1918	From Receiving Slip	(See affidavit)
986,148	March 7, 1911	March 7, 1928	Jan. 12, 1918	Jan. 22, 1918	From Receiving Slip	"
			July 11, 1918	August 27, 1918		Sept. 6, 1918
			July 20, 1918	August 15, 1918		August 26, 1918
			Jan. 28, 1919	April 2, 1919		May 3, 1919
			August 1, 1919	August 5, 1919		August 15, 1919
812,554	Feb. 13, 1906	Feb. 13, 1923	Jan. 12, 1920	Jan. 16, 1920		Jan. 29, 1920
			July 24, 1920	July 29, 1920		August 9, 1920
			Jan. 7, 1921	Jan. 18, 1921	From Receiving Slip	Feb. 17, 1921
			May 20, 1921	June 9, 1921	From Receiving Slip	June 22, 1921
			Feb. 3, 1919	March 26, 1919		April 11, 1919
			August 21, 1918	August 28, 1918		Sept. 20, 1918
924,664	June 15, 1909	June 15, 1926	August 14, 1919	August 20, 1919		Sept. 8, 1919
978,889	Dec. 10, 1910	Dec. 10, 1927	Feb. 5, 1920	Feb. 20, 1920		March 9, 1920
1,056,548	March 18, 1913	March 18, 1930	August 5, 1920	August 7, 1920		August 25, 1920
1,057,154	March 25, 1913	March 25, 1930	Feb. 9, 1921	Feb. 16, 1921	From Receiving Slip	March 7, 1921
1,053,396	Feb. 18, 1913	Feb. 18, 1930	August 8, 1921	August 17, 1921	From Receiving Slip	Sept. 2, 1921
			Sept. 28, 1921	Sept. 28, 1921	From Receiving Slip	Oct. 14, 1921
			July 31, 1918	August 28, 1918		Sept. 12, 1918
			July 28, 1919	July 30, 1919		August 13, 1919
1,116,398	Nov. 10, 1914	Nov. 10, 1931	Jan. 30, 1919	May 10, 1919		May 31, 1919
986,148	March 7, 1911	March 7, 1928	Jan. 31, 1920	Feb. 18, 1920		March 2, 1920
1,081,592	Dec. 16, 1913	Dec. 16, 1930	August 5, 1920	August 7, 1920		August 19, 1920
1,081,897	Dec. 16, 1913	Dec. 16, 1930	Feb. 2, 1921	Feb. 8, 1921	From Receiving Slip	Feb. 21, 1921
13,848	Dec. 15, 1914	Dec. 15, 1931	Sept. 29, 1921	Oct. 6, 1921	From Receiving Slip	Oct. 22, 1921
			April 18, 1922	April 26, 1922	From Receiving Slip	May 11, 1922

PERTY CUSTODIAN ON FEDERAL TRADE COMMISSION LICENSES COVERING PATENTS ASSIGNED TO CHEMICAL FOUNDATION, INC.

Date of Receipt by Alien Property Custodian	Date of Deposit with U. S. Treasury	Remarks (See Affidavit from U. S. Treasury)	Date of Certificate of Deposit from U. S. Treasury	No. of Certificate of Deposit	Amount	Totals	Differences Accounted for Over	Short		Tru No.
Jan. 25, 1918	Feb. 7, 1918		Feb. 18, 1918	609	$ 814.61					12679
July 30, 1918	Aug. 28, 1918		Sept. 9, 1918	10,325	9,815.67					
April 21, 1919	April 24, 1919		May 22, 1919	29,461	13,945.59					
August 8, 1919	August 13, 1919		August 27, 1919	35,503	11,733.66					
August 14, 1919	August 21, 1919		Sept. 5, 1919	35,939	1,811.81					
March 4, 1920	March 9, 1920		March 23, 1920	28	11,682.10		2548.86 9133.24			
August 12, 1920	August 20, 1920		Sept. 3, 1920	53,467	11,153.92		6018.49 5135.43			
Feb. 16, 1921	Feb. 23, 1921	From Receipt Memo. No Transmittal letter.	March 10, 1921	83	13,535.58		6351.57 7184.01			
August 3, 1921	August 6, 1920	No letter of transmittal. From stamp on receipt memo.	August 19, 1921	113	9,978.83	$84,471.77				
Jan. 12, 1918	February 7, 1918	"	Feb. 18, 1918	608	39.35					12680
Jan. 16, 1919	April 4, 1919		May 3, 1919	27,308	6.73					
August 4, 1919	August 8, 1919		August 18, 1919	35,255	2,494.03					
Jan. 31, 1920	Febr. 12, 1920		Feb. 26, 1920	45,405	950.62					
Sept. 20, 1920	Sept. 23, 1920	From Receiving Slip	(See affidavit)		1,000.00					
Nov. 15, 1920	Nov. 19, 1920		Dec. 6, 1920	53,769	1,032.71					
May 4, 1921	May 13, 1921	From Receiving Slip	June 2, 1921	97	500.00					
July 18, 1921	July 25, 1921	From Receiving Slip	(See affidavit)		500.00					
Dec. 29, 1921	Jan. 6, 1922	From Receiving Slip	Jan. 17, 1922	136	300.00					
Jan. 10, 1922	Jan. 16, 1922	From Receiving Slip	Jan. 27, 1922	141	200.00	7,023.44	589.05		Royalties accrued	
Jan. 12, 1918	Jan. 22, 1918	From Receiving Slip	(See affidavit)		274.05					
Jan. 12, 1918	Jan. 22, 1918	From Receiving Slip	"		265.00					
July 11, 1918	August 27, 1918		Sept. 6, 1918	10,160	9,477.06	10,016.11				
July 20, 1918	August 15, 1918		August 26, 1918	9,390	663.36					
Jan. 28, 1919	April 2, 1919		May 3, 1919	27,233	4,410.77					
August 1, 1919	August 5, 1919		August 15, 1919	35,204	1,226.02					
Jan. 12, 1920	Jan. 16, 1920		Jan. 29, 1920	18	1,166.52					
July 24, 1920	July 29, 1920		August 9, 1920	48	878.51					
Jan. 7, 1921	Jan. 18, 1921	From Receiving Slip	Feb. 17, 1921	76	8.50					
May 20, 1921	June 9, 1921	From Receiving Slip	June 22, 1921	100	1.54	8,355.22				
Feb. 3, 1919	March 26, 1919		April 11, 1919	26,178	4,622.80					
August 21, 1918	August 28, 1918		Sept. 20, 1918	11,243	3,192.00					
August 14, 1919	August 20, 1919		Sept. 8, 1919	35,969	82.60					
Feb. 5, 1920	Feb. 20, 1920		March 9, 1920	45,864	182.00					
August 5, 1920	August 7, 1920		August 25, 1920	53	480.20					
Feb. 9, 1921	Feb. 16, 1921	From Receiving Slip	March 7, 1921	82	2,746.10					
August 8, 1921	August 17, 1921	From Receiving Slip	Sept. 2, 1921	116	1,557.50					
Sept. 28, 1921	Sept. 28, 1921	From Receiving Slip	Oct. 14, 1921	120	91.00	12,954.20				
July 31, 1918	August 28, 1918		Sept. 12, 1918	10,641	4,463.61					
July 28, 1919	July 30, 1919		August 13, 1919	35,106	4,955.80					
Jan. 30, 1919	May 10, 1919		May 31, 1919	30,279	10,000.19			.01	Excess of decimal fraction	
Jan. 31, 1920	Feb. 18, 1920		March 2, 1920	21	3,415.91					
August 5, 1920	August 7, 1920		August 19, 1920	50½	3,354.32					
Feb. 2, 1921	Feb. 8, 1921	From Receiving Slip	Feb. 21, 1921	78	2,217.11					
Sept. 29, 1921	Oct. 6, 1921	From Receiving Slip	Oct. 22, 1921	123	1,890.85					
April 18, 1922	April 26, 1922	From Receiving Slip	May 11, 1922	154	1,554.57	31,852.36				
							589.05	.01		

CHEMICAL

License No.	Issued To	License No.	Date License Issued
9	The Abbott Laboratories & Farbwerke vorm Meister Lucius & Bruning	9	Jan. 10, 1918
9	" " " " " "		
9	" " " " " "		
9	" " " " " "		
9	" " " " " "		
9	" " " " " "		
9	" " " " " "		
10	Lembke von Bermuth & Hulsberg & Co. M. B. H.	10	Jan. 17, 1918
10	" " " "		
10	" " " "		
10	" " " "		
10	" " " "		
12	Calco Chemical Co. & Farbwerke vorm Meister Lucius & Bruning	12	Feb. 18, 1918
12	" " " " " "		
12	" " " " " "		
12	" " " " " "		
15	Abbott Laboratories & Chemische Fakrik auf Actien (vorm E. Schering)	15	March 23, 1918
15	" " " " "		
15	" " " " "		
15	" " " " "		
15	" " " " "		
15	" " " " "		
18	E. I. du Pont de Nemours Co. & Badische Anilin & Soda Fabrik & Richard Just and Fritz Eckard	18	Jan. 21, 1918
18	" " "		
18	" " "		
19	E. I. du Pont de Nemours Co. & Badische Anilin & Soda Fabrik & Deutsche Gold & Silber Scheide, Anstalt vorm Roesler & Farbwerke vorm Meister Lucius & Bruning	19	Sept. 1, 192[illegible]
19	" " "		
22	Albert B. Moses & Fritz Gossel	22	April 8, 1918
24	E. C. Klipstein & Sons Co., Licensee, & Badische Anilin & Soda Fabrik	24	April 8, 1918
24	" " " " " "		
24	" " " " " "		
27, 29, 30	The National Aniline & Chemical Co.	27, 29, 30	See Separate
27, 29, 30	" " "		
27, 29, 30	" " "		
27, 29, 30	" " "		
27, 29, 30	" " "		
27, 29, 30	" " "		
27, 29, 30	" " "		
27, 29, 30	" " "		
33	Merrimac Chemical Co. & Badische Aniline & Soda Fabrik	33	July 16, 1918
33	" " " " "		
33	" " " " "		
33	" " " " "		
33	" " " " "		
34, 34A, 35	H. A. Metz Laboratories, Inc., and Farbwerke vorm Meister Lucius & Bruning		

CHEMICAL FOUNDATION, INC. FEDERAL TRADE COMMISSION LICENSES

e	Patent Number	Patent Date	Date of Expiration	Date of Receipt by Alien Property Custodian	Date of Deposit with U. S. Treasury	Remarks	Date of Certificate of Deposit from U. S. Treasury
918	812,554	Feb. 13, 1906	Feb. 13, 1923	Feb. 10, 1919	Apr. 1, 1919	From Receiving Ticket	See Affidavit U. S. Tr
				Sept. 19, 1919	Sept. 24, 1919	From Receiving Ticket	See Affidavit U. S. T
				Feb. 12, 1920	Feb. 20, 1920		March 9, 1920
				Feb. 26, 1920	March 2, 1920		March 19, 1920
				July 23, 1920	July 29, 1920		August 24, 1920
				Feb. 18, 1921	March 1, 1921	From Receiving Ticket	March 22, 1921
				July 27, 1921	Aug. 4, 1921	From Receiving Ticket	August 19, 1921
918	709,799	Sept. 23, 1902	Sept. 23, 1919	Oct. 10, 1918	Feb. 19, 1919	From Receiving Slip	See Affidavit U. S. Tr
	1,008,864	Nov. 14, 1911	Nov. 14, 1928	April 11, 1919	May 17, 1919	From Receiving Slip	See Affidavit U. S. Tr
				March 3, 1919	May 13, 1919	From Receiving Slip	See Affidavit U. S. Tr
				Transfer from Trust	#986. No particular	check involved	
				Oct. 1, 1921	Oct. 6, 1921	From Receiving Slip	Oct. 19, 1921
918	812,554	Feb. 13, 1906	Feb. 13, 1906	Oct. 14, 1920	Oct. 23, 1920	From Receiving Slip	Nov. 12, 1920
				March 24, 1921	March 28, 1921	From Receiving Slip	April 16, 1921
				Nov. 10, 1921	Nov. 19, 1921	From Receiving Slip	Dec. 7, 1921
				March 9, 1922	March 15, 1922	From Receiving Slip	See Affidavit U. S. Tre
918	1,075,171	Oct. 7, 1913	Oct. 7, 1930	Feb. 19, 1919	May 12, 1919	From Receiving Slip	See Affidavit U. S. Tre
				August 22, 1919	August 26, 1919	From Receiving Slip	See Affidavit U. S. Tre
				Nov. 24, 1919	Dec. 5, 1919	From Receiving Slip	See Affidavit U. S. Tre
				May 18, 1920	May 25, 1920		June 15, 1920
				Nov. 22, 1920	Nov. 27, 1920	From Receiving Slip	See Affidavit U. S. Tre
				May 31, 1921	June 9, 1921	From Receiving Slip	June 24, 1921
918	1,063,173	May 27, 1913	May 27, 1930				
	724,789	Apr. 7, 1903	April 7, 1920				
	753,659	March 1, 1904	March 1, 1921				
	1,055,701	March 11, 1913	March 11, 1930				
	1,150,863	Aug. 24, 1915	Aug. 24, 1932	April 6, 1920	April 9, 1920		April 21, 1920
	739,145	Sept. 15, 1903	Sept. 15, 1920	Sept. 1, 1920	Sept. 7, 1920	From Receiving Slip	Sept. 18, 1920
	787,859	April 18, 1905	April 18, 1922	Nov. 1, 1920	Jan. 24, 1921	From Receiving Slip	Feb. 9, 1921
	818,992	April 24, 1906	April 24, 1923				
	796,393	Aug. 1, 1905	Aug. 1, 1922	Sept. 23, 1920	Sept. 28, 1920	From Receiving Slip	Oct. 12, 1920
	906,367	Dec. 8, 1908	Dec. 8, 1925				
	1,003,268	Sept. 12, 1911	Sept. 12, 1911				
	961,612	June 14, 1910	June 14, 1910				
192	680,395	Aug. 13, 1901	Aug. 13, 1918				
	868,294	Oct. 15, 1907	Oct. 15, 1924	Nov. 1, 1920	Jan. 24, 1921	From Receiving Slip	Feb. 9, 1921
	718,340	Jan. 13, 1903	Jan. 13, 1920				
918	1,139,031	May 11, 1915	May 11, 1932	March 27, 1922	March 29, 1922	From Receiving Slip	April 8, 1922
918	711,377	Oct. 14, 1902	Oct. 14, 1919	August 4, 1919	Sept. 6, 1919	From Receiving Slip	See Affidavit U. S. Tre
				Dec. 15, 1919	Dec. 31, 1919	From Receiving Slip	See Affidavit U. S. Tre
	795,755	July 25, 1905	July 25, 1922	April 18, 1921	Apr. 22, 1921	From Receiving Slip	May 9, 1921
ee Separate	Schedule*			August 11, 1919	August 26, 1919	From Receiving Slip	See Affidavit U. S. Tre
				Feb. 25, 1920	March 2, 1920		March 15, 1920
				August 2, 1920	August 6, 1920	From Receiving Slip	See Affidavit U. S. Tre
				Feb. 24, 1921	March 5, 1921	From Receiving Slip	March 16, 1921
				July 16, 1921	August 4, 1921	From Receiving Slip	August 18, 1921
				Jan. 14, 1922	Feb. 11, 1922	From Receiving Slip	Feb. 24, 1922
				July 16, 1921	August 4, 1921	From Receiving Slip	August 18, 1921
				Jan. 14, 1922	Feb. 11, 1922	From Receiving Slip	Feb. 24, 1922
918				March 22, 1921	March 28, 1921	From Receiving Slip	April 16, 1921
	711,377	Oct. 14, 1902	Oct. 14, 1919	Sept. 12, 1921	Sept. 15, 1921	From Receiving Slip	Sept. 30, 1921
				March 9, 1922	March 15, 1922	From Receiving Slip	April 3, 1922
	795,755	July 25, 1905	July 25, 1922	March 28, 1922	May 5, 1922	From Receiving Slip	May 20, 1922
				August 9, 1922	August 16, 1922	From Receiving Slip	August 30, 1922
				Jan. 31, 1919	March 17, 1919		Apr. 5, 1919

ISSION LICENSES

Date of Receipt by Alien Property Custodian	Date of Deposit with U. S. Treasury	Remarks	Date of Certificate of Deposit from U. S. Treasury	No. of Certificate of Deposit	Amount	Totals	Differences Accounted for Over	Differences Accounted for Short	
Feb. 10, 1919	Apr. 1, 1919	From Receiving Ticket	See Affidavit U. S. Treasury		$1,236.00		589.05	.01	
Sept. 19, 1919	Sept. 24, 1919	From Receiving Ticket	See Affidavit U. S. Treasury		506.46				
Feb. 12, 1920	Feb. 20, 1920		March 9, 1920	45,851	272.85				
Feb. 26, 1920	March 2, 1920		March 19, 1920	26	36,14				
July 23, 1920	July 29, 1920		August 24, 1920	51	404.27				
Feb. 18, 1921	March 1, 1921	From Receiving Ticket	March 22, 1921	87	409.79				
July 27, 1921	Aug. 4, 1921	From Receiving Ticket	August 19, 1921	114	294.99	$ 3,160.50	786.02	Royalties accrued to June 30, 1921	
Oct. 10, 1918	Feb. 19, 1919	From Receiving Slip	See Affidavit U. S. Treasury		18.36				
April 11, 1919	May 17, 1919	From Receiving Slip	See Affidavit U. S. Treasury		5.33				
March 3, 1919	May 13, 1919	From Receiving Slip	See Affidavit U. S. Treasury		10,430.73				
Transfer from Trust	#986. No particular	check involved			7,547.37				
Oct. 1, 1921	Oct. 6, 1921	From Receiving Slip	Oct. 19, 1921	121	29,177.13	47,178.92		.20	Error in transcribing
Oct. 14, 1920	Oct. 23, 1920	From Receiving Slip	Nov. 12, 1920	63	86.61				
March 24, 1921	March 28, 1921	From Receiving Slip	April 16, 1921	92	16.85				
Nov. 10, 1921	Nov. 19, 1921	From Receiving Slip	Dec. 7, 1921	128	3.92				
March 9, 1922	March 15, 1922	From Receiving Slip	See Affidavit U. S. Treasury		.11	107.49	7.09	Subsequently deducted as a credit	
Feb. 19, 1919	May 12, 1919	From Receiving Slip	See Affidavit U. S. Treasury		19.60				
August 22, 1919	August 26, 1919	From Receiving Slip	See Affidavit U. S. Treasury		80.05				
Nov. 24, 1919	Dec. 5, 1919	From Receiving Slip	See Affidavit U. S. Treasury		340.05				
May 18, 1920	May 25, 1920		June 15, 1920	38	568.67				
Nov. 22, 1920	Nov. 27, 1920	From Receiving Slip	See Affidavit U. S. Treasury		2,320.41				
May 31, 1921	June 9, 1921	From Receiving Slip	June 24, 1921	101	2,955.38	6,284.16	2,780.32	Royalties accrued to March 21, 1921	
April 6, 1920	April 9, 1920		April 21, 1920	32	1,680.52				
Sept. 1, 1920	Sept. 7, 1920	From Receiving Slip	Sept. 18, 1920	57	6,625.85				
Nov. 1, 1920	Jan. 24, 1921	From Receiving Slip	Feb. 9, 1921	72	1,797.51	10,103.88			
Sept. 23, 1920	Sept. 28, 1920	From Receiving Slip	Oct. 12, 1920	59	54,068.58				
Nov. 1, 1920	Jan. 24, 1921	From Receiving Slip	Feb. 9, 1921	71	7,816.40	61,884.98			
March 27, 1922	March 29, 1922	From Receiving Slip	April 8, 1922	151	1.10	1.10			
August 4, 1919	Sept. 6, 1919	From Receiving Slip	See Affidavit U. S. Treasury		21.81				
Dec. 15, 1919	Dec. 31, 1919	From Receiving Slip	See Affidavit U. S. Treasury		4.50				
April 18, 1921	Apr. 22, 1921	From Receiving Slip	May 9, 1921	96	.11	26.42			
August 11, 1919	August 26, 1919	From Receiving Slip	See Affidavit U. S. Treasury		146.29				4423
Feb. 25, 1920	March 2, 1920		March 15, 1920	25	1,384.92				
August 2, 1920	August 6, 1920	From Receiving Slip	See Affidavit U. S. Treasury		459.09				
Feb. 24, 1921	March 5, 1921	From Receiving Slip	March 16, 1921	84	866.69				
July 16, 1921	August 4, 1921	From Receiving Slip	August 18, 1921	112½	2.10				
Jan. 14, 1922	Feb. 11, 1922	From Receiving Slip	Feb. 24, 1922	146	20.02				4666
July 16, 1921	August 4, 1921	From Receiving Slip	August 18, 1921	112½	740.33				
Jan. 14, 1922	Feb. 11, 1922	From Receiving Slip	Feb. 24, 1922	146	769.10	4,388.54		.01	Excess decimal fraction
March 22, 1921	March 28, 1921	From Receiving Slip	April 16, 1921	93	229.89				
Sept. 12, 1921	Sept. 15, 1921	From Receiving Slip	Sept. 30, 1921	119	31.43				
March 9, 1922	March 15, 1922	From Receiving Slip	April 3, 1922	148	101.97				
March 28, 1922	May 5, 1922	From Receiving Slip	May 20, 1922	155	18.98				
August 9, 1922	August 16, 1922	From Receiving Slip	August 30, 1922	164	68.53	450.80			
Jan. 31, 1919	March 17, 1919		Apr. 5, 1919	25,765	17,807.84		4,162.48	.22	

CHEMICA

License No.	Issued To	License No.	Date License Issued
34, 34A & 35	H. A. Metz Laboratories, Inc., and Farbwerke vorm Meister Lucius & Bruning	34	7/1/18
" " "		34A	" (Rels)
" " "		35	7/1/18
" " "		"	
" " "		"	
" " "		"	
" " "		"	
" " "		"	
" " "		"	
" " "		"	
" " "		"	
" " "		"	
36	General Ceramics Co. & Dr. Fritz Raschig	36	7/19/18
36		"	
36		"	
36		"	
36		"	
36		"	
36		"	
38	E. C. Klipstein Co., Licensee, & Badische Anilin & Soda Fabrik	38	8/15/18
38		"	"
38		"	
38		"	
38		"	
39	Merck & Co. and Knoll & Co.	39	9/25/18
39		"	
39		"	
39		"	
39		"	
39		"	
39		"	
39		"	
42, 43, 44, 46	Draeger Oxygen Apparatus	42	12/16/18
" " " "		42	"
" " " "		42	"
" " " "		43	12/16/18
" " " "		44	12/16/18
" " " "		46	12/16/18
43		"	"
47	Reinschild Chemical Co. and Chemische Fabrik	47	12/31/18
47		"	"
47		"	
47		"	
47		"	
47		"	
47		"	

CHEMICAL FOUNDATION, INC. FEDERAL TRADE COMMISSION LICENSES

Date License Issued	Patent Number	Date of Patent	Date of Expiration	Date of Receipt by Alien Property Custodian	Date of Deposit with U. S. Treasury	Remarks
7/1/18	986,148	3/7/11		July 10, 1919	July 15, 1919	
" (Rels)	13,848	12/15/14	3/7/28	Jan . 15, 1920	Jan. 19, 1920	
7/1/18	812,854	2/13/06	12/15/31	July 23, 1920	July 29, 1920	
			2/3/23	Jan. 19, 1921	Jan. 28, 1921	From Receiving Slip
				Jan. 19, 1921	Jan. 28, 1921	From Receiving Slip
				Jan. 19, 1921	Jan. 28, 1921	From Receiving Slip
				July 13, 1921	July 27, 1921	From Receiving Slip
				July 13, 1921	July 27, 1921	From Receiving Slip
				July 13, 1921	July 27, 1921	From Receiving Slip
				Jan. 12, 1922	Jan. 16, 1922	From Receiving Slip
				Jan. 12, 1922	Jan. 16, 1922	From Receiving Slip
				Jan. 12, 1922	Jan. 16, 1922	From Receiving Slip
7/19/18	1,141,266	6/1/15	6/1/32	Feb. 20, 1919	March 8, 1919	From Receiving Slip
				August 20, 1919	Aug. 26, 1919	From Receiving Slip
				March 27, 1920	April 7, 1920	
				Aug. 10, 1920	Aug. 17, 1920	
				Feb. 10, 1921	Feb. 16, 1921	From Receiving Slip
				Aug. 5, 1921	Aug. 6, 1921	From Receiving Slip
				Feb. 9, 1922	Feb. 11, 1922	From Receiving Slip
8/15/18	1,216,612	2/20/17	2/20/34	March 28, 1919	Apr. 11, 1919	
"	1,191,480	7/18/16	2/18/33	May 26, 1920	May 28, 1920	
				May 26, 1920	May 28, 1920	
				April 18, 1921	Apr. 22, 1921	From Receiving Slip
				Oct. 21, 1921	Nov. 2, 1921	From Receiving Slip
9/25/18	943,578	12/14/09	12/14/26	Apr. 19, 1919	May 17, 1919	From Receiving Slip
				Oct. 21, 1919	Oct. 25, 1919	From Receiving Slip
				Apr. 22, 1920	Apr. 26, 1920	
				Oct. 14, 1920	Oct. 26, 1920	From Receiving Slip
				May 13, 1921	May 24, 1921	From Receiving Slip
				Oct. 18, 1921	Nov. 2, 1921	From Receiving Slip
				Apr. 17, 1922	Apr. 26, 1922	From Receiving Slip
				Aug. 9, 1922	Aug. 16, 1922	From Receiving Slip
12/16/18	1,049,346	1/7/13	1/7/30	Apr. 1, 1920	Apr. 14, 1920	
"	1,044,031	11/12/12	11/12/29	Apr. 18, 1921	Apr. 23, 1921	From Receiving Slip
"	1,136,517	4/20/15	4/20/32	May 13, 1921	May 24, 1921	From Receiving Slip
12/16/18	1,214,941	2/6/17	2/6/34	July 27, 1921	Aug. 4, 1921	From Receiving Slip
12/16/18	1,085,674	2/3/14	2/3/31	Jan. 3, 1922	Jan. 6, 1922	From Receiving Slip
12/16/18	1,005,816	10/17/11	10/17/28	Aug. 10, 1922	Aug. 30, 1922	From Receiving Slip
"	1,033,681	7/23/12	7/23/29	Aug. 21, 1922	Aug. 30, 1922	From Receiving Slip
12/31/18	896,807	8/25/08	8/25/25	March 25, 1919		
"	943,163	12/14/09	12/23/26	June 4, 1919	June 6, 1919	From Receiving Slip
				March 30, 1920	Apr. 14, 1920	
				July 2, 1920	July 7, 1920	
				Dec. 30, 1920	Jan. 5, 1921	From Receiving Slip
				May 18, 1921	May 23, 1921	From Receiving Slip
				June 16, 1921	June 23, 1921	From Receiving Slip

LICENSES

of Receipt by Alien Property Custodian	Date of Deposit with U. S. Treasury	Remarks	Date of Certificate of Deposit from U. S. Treasury	No. of Certificate of Deposit	Amount Detail	Totals	Differences Accounted for			
							Over	Short		
10, 1919	July 15, 1919		Aug. 2, 1919	34,775	$16,241.25		4,162.48	.22		
15, 1920	Jan. 19, 1920		Feb. 3, 1920	19	23,153.65					
23, 1920	July 29, 1920		Aug. 9, 1920	49	28,917.10					
19, 1921	Jan. 28, 1921	From Receiving Slip	Feb. 9, 1921	70	4,178.06					
19, 1921	Jan. 28, 1921	From Receiving Slip	Feb. 9, 1921	70	20,566.56			2,552.16	Error in transcribing	
19, 1921	Jan. 28, 1921	From Receiving Slip	Feb. 9, 1921	70	2,574.21					
13, 1921	July 27, 1921	From Receiving Slip	Aug. 11, 1921	111	2,716.50					44417
13, 1921	July 27, 1921	From Receiving Slip	Aug. 11, 1921	111	18,271.43					
13, 1921	July 27, 1921	From Receiving Slip	Aug. 11, 1921	111	2,527.21					
12, 1922	Jan. 16, 1922	From Receiving Slip	Jan. 25, 1922	139	1,838.50					
12, 1922	Jan. 16, 1922	From Receiving Slip	Jan. 25, 1922	139	14,319.13					
12, 1922	Jan. 16, 1922	From Receiving Slip	Jan. 25, 1922	139	2,498.16	155,609.60				
20, 1919	March 8, 1919	From Receiving Slip	See Affidavit U. S. Treasury		156.33					
20, 1919	Aug. 26, 1919	From Receiving Slip	See Affidavit U. S. Treasury		82.92					
27, 1920	April 7, 1920		April 21, 1920	31	254.05					
10, 1920	Aug. 17, 1920		Aug. 31, 1920	56	168.73					
10, 1921	Feb. 16, 1921	From Receiving Slip	Feb. 28, 1921	80	121.82					
5, 1921	Aug. 6, 1921	From Receiving Slip	Aug. 18, 1921	112	96.79					
9, 1922	Feb. 11, 1922	From Receiving Slip	Feb. 24, 1922	147	72.39	953.03				
28, 1919	Apr. 11, 1919		May 15, 1919	28,509	2,712.89					
26, 1920	May 28, 1920		June 9, 1920	37	2,310.34					
26, 1920	May 28, 1920		June 9, 1920	37	1,122.13					
18, 1921	Apr. 22, 1921	From Receiving Slip	May 9, 1921	96	1,326.05					
21, 1921	Nov. 2, 1921	From Receiving Slip	Nov. 28, 1921	126	450.36	7,921.77	6.17		Subsequently deducted July 11, 1921	
19, 1919	May 17, 1919	From Receiving Slip	See Affidavit U. S. Treasury		1,501.72					34491
21, 1919	Oct. 25, 1919	From Receiving Slip	See Affidavit U. S. Treasury		499.52					
22, 1920	Apr. 26, 1920		May 6, 1920	34-A	843.08					
14, 1920	Oct. 26, 1920	From Receiving Slip	See Affidavit U. S. Treasury		762.28					
13, 1921	May 24, 1921	From Receiving Slip	See Affidavit U. S. Treasury		1,029.07					
18, 1921	Nov. 2, 1921	From Receiving Slip	Nov. 23, 1921	125	1,272.90					
17, 1922	Apr. 26, 1922	From Receiving Slip	May 9, 1922	152	1,112.11					
9, 1922	Aug. 16, 1922	From Receiving Slip	Aug. 29, 1922	162	1,168.64	8,189.32		.72	Error in transcribing	
1, 1920	Apr. 14, 1920		May 7, 1920	35	100.00					
18, 1921	Apr. 23, 1921	From Receiving Slip	See Affidavit		2,288.04					
13, 1921	May 24, 1921	From Receiving Slip	See Affidavit		2,333.68					
27, 1921	Aug. 4, 1921	From Receiving Slip	See Affidavit		158.71					
3, 1922	Jan. 6, 1922	From Receiving Slip	See Affidavit		70.93					
10, 1922	Aug. 30, 1922	From Receiving Slip	Sept. 13, 1922	167	60.09					
21, 1922	Aug. 30, 1922	From Receiving Slip	Sept. 13, 1922	167	10.62	5,022.07		92.14	Subsequent payments not included.	
25, 1919			See Affidavit		583.20					
4, 1919	June 6, 1919	From Receiving Slip	See Affidavit		400.40					
30, 1920	Apr. 14, 1920		Apr. 26, 1920	34	1,632.16					
2, 1920	July 7, 1920		July 19, 1920	47	1,640.72					
30, 1920	Jan. 5, 1921	From Receiving Slip	See Affidavit		1,224.33					
18, 1921	May 23, 1921	From Receiving Slip	See Affidavit		435.44					
16, 1921	June 23, 1921	From Receiving Slip	July 12, 1921	103	1,424.59					
							4,168.65	2,645.24		

License No.	Issued To	License No.	Date License Issued
47	Reinschild Chemical Co. & Chemische Fabrik	47	12/31/18
47		"	"
50	Ault & Wiborg Co. & Actien Gesclleschaft für Aniline-Fabrikation	50	2/19/19
50		"	"
50		"	"
50		"	"
50		"	"
52	Ultra Chemical Corp. & Farbwerke vorm Meister Lucius & Bruning	52	3/4/19
52	" " " " " "	"	"
52	" " " " " "	"	"
52	" " " " " "	"	"
52	" " " " " "	"	"
52	" " " " " "	"	"
60, 60A, 60B, 60C	Division of Laboratories and Research of N. Y. State Dept. of Health and Farbwerke vorm Meister Lucius & Bruning	60	3/12/19
" " " "	" "	60A	3/12/19
" " " "	" "	60B	"
" " " "	" "	60C	"
" " " "	" "	"	
" " " "	" "	"	
" " " "	" "	"	
62, 62A, 62B, 62C	Mass. State Dept. of Health & Farbwerke vorm Meister Lucius & Bruning	62	3/21/19
"	" "	62A	"
"	" "	62B	"
"	" "	62C	"
"	" "		
"	" "		
"	" "		
"	" "		
	" "		

CHEMICAL FOUNDATION, INC. FEDERAL TRADE COMMISSION LICENSES

se	Patent Number	Date of Patent	Date of Expiration	Date of Receipt by Alien Property Custodian	Date of Deposit with U. S. Treasury	Remarks	Date of Certificate of Deposit from U. S. Treasury
	896,807	8/25/08	8/25/25	Dec. 14, 1921	Dec. 16, 1920		Dec. 29, 1921
	943,163	12/14/09	12/23/26	July 6, 1922	July 14, 1922	From Receiving Slip	See Affidavit
	741,029	10/13/03	10/13/20	August 11, 1919	Sept. 6, 1919	From Receiving Slip	See Affidavit
				June 24, 1920	June 30, 1920		July 14, 1920
				Jan. 2, 1920	Jan. 22, 1920	From Receiving Slip	See Affidavit
				Jan. 8, 1921	Jan. 18, 1921	From Receiving Slip	Feb. 17, 1921
				July 30, 1921	Aug. 4, 1921	From Receiving Slip	Aug. 18, 1921
	757,109	4/12/04	4/12/21	July 18, 1919	July 22, 1919		Aug. 2, 1919
				Dec. 12, 1919	Dec. 18, 1919	From Receiving Slip	See Affidavit
				June 25, 1920	June 30, 1920		July 14, 1920
				Jan. 24, 1921	Jan. 28, 1921	From Receiving Slip	Feb. 9, 1921
				Feb. 11, 1921	Feb. 17, 1921	From Receiving Slip	Feb. 28, 1921
				June 13, 1921	June 23, 1921	From Receiving Slip	July 12, 1921
	1,116,398	11/10/14	11/10/31	Apr. 6, 1920	Apr. 9, 1920		Apr. 22, 1920
	986,148	3/7/11	3/7/28	June 21, 1920	June 24, 1920		June 30, 1920
	1,081,592	12/16/13	12/16/30	Jan. 6, 1921	Jan. 10, 1921	From Receiving Slip	June 24, 1921
	1,081,897	12/16/13	"	July 7, 1921	July 14, 1921	From Receiving Slip	July 27, 1921
				Jan. 9, 1922	Jan. 13, 1922	From Receiving Slip	Jan. 26, 1922
				June 28, 1922	July 3, 1922	From Receiving Slip	July 15, 1922
				Sept. 12, 1922	Sept. 22, 1922	From Receiving Slip	Oct. 10, 1922
	1,116,398	11/10/14	11/10/31	Oct. 29, 1919	Nov. 19, 1919	From Receiving Slip	See Affidavit
	986,148	3/7/11	11/10/28	Feb. 16, 1920	Feb. 25, 1920		March 16, 1920
	1,081,592	12/16/13	12/16/30	July 23, 1920	July 29, 1920	From Receiving Slip	Aug. 13, 1920
	1,081,897	12/16/13	12/16/30	Jan. 19, 1921	Jan. 28, 1921	From Receiving Slip	Feb. 14, 1921
				June 13, 1921	June 23, 1921	From Receiving Slip	July 15, 1921
				Jan. 21, 1922	Jan. 30, 1922	From Receiving Slip	Feb. 13, 1922
				July 14, 1922	July 21, 1922	From Receiving Slip	Aug. 4, 1922
				Sept. 18, 1922	Sept. 22, 1922	From Receiving Slip	Oct. 9, 1922

Tot
Certified C
H. A

ISSION LICENSES

Date of Receipt by Alien Property Custodian	Date of Deposit with U. S. Treasury	Remarks	Date of Certificate of Deposit from U. S. Treasury	No. of Certificate of Deposit	Amount	Totals	Differences Accounted for Over	Short	
Dec. 14, 1921	Dec. 16, 1920		Dec. 29, 1921	132	1,405.86		4,168.65	2,645.24	
July 6, 1922	July 14, 1922	From Receiving Slip	See Affidavit		1,535.12	10,281.82			
August 11, 1919	Sept. 6, 1919	From Receiving Slip	See Affidavit		1,118.43				
June 24, 1920	June 30, 1920		July 14, 1920	41A	711.91				
Jan. 2, 1920	Jan. 22, 1920	From Receiving Slip	See Affidavit		523.32				
Jan. 8, 1921	Jan. 18, 1921	From Receiving Slip	Feb. 17, 1921	75	232.00				
July 30, 1921	Aug. 4, 1921	From Receiving Slip	Aug. 18, 1921	112½	668.68	3,254.34			
July 18, 1919	July 22, 1919		Aug. 2, 1919	34,646	384.86				
Dec. 12, 1919	Dec. 18, 1919	From Receiving Slip	See Affidavit		455.85				
June 25, 1920	June 30, 1920		July 14, 1920	42	1,359.97				
Jan. 24, 1921	Jan. 28, 1921	From Receiving Slip	Feb. 9, 1921	69	983.12				
Feb. 11, 1921	Feb. 17, 1921	From Receiving Slip	Feb. 28, 1921	81	419.07				
June 13, 1921	June 23, 1921	From Receiving Slip	July 12, 1921	104	343.57	3,946.44			
Apr. 6, 1920	Apr. 9, 1920		Apr. 22, 1920	33	.70				
June 21, 1920	June 24, 1920		June 30, 1920	40	9.40				
Jan. 6, 1921	Jan. 10, 1921	From Receiving Slip	June 24, 1921	66	50.92				
July 7, 1921	July 14, 1921	From Receiving Slip	July 27, 1921	108	135.30				
Jan. 9, 1922	Jan. 13, 1922	From Receiving Slip	Jan. 26, 1922	140	56.97				
June 28, 1922	July 3, 1922	From Receiving Slip	July 15, 1922	157	37.74				
Sept. 12, 1922	Sept. 22, 1922	From Receiving Slip	Oct. 10, 1922	173	5.63	296.66		.40	Error in transcribing
Oct. 29, 1919	Nov. 19, 1919	From Receiving Slip	See Affidavit		33.49				
Feb. 16, 1920	Feb. 25, 1920		March 16, 1920	45,995	77.44				
July 23, 1920	July 29, 1920	From Receiving Slip	Aug. 13, 1920	50A	147.46				
Jan. 19, 1921	Jan. 28, 1921	From Receiving Slip	Feb. 14, 1921	74	123.59				
June 13, 1921	June 23, 1921	From Receiving Slip	July 15, 1921	105	164.14				
Jan. 21, 1922	Jan. 30, 1922	From Receiving Slip	Feb. 13, 1922	144	107.76				
July 14, 1922	July 21, 1922	From Receiving Slip	Aug. 4, 1922	161	108.76				
Sept. 18, 1922	Sept. 22, 1922	From Receiving Slip	Oct. 9, 1922	171	16.07	778.71			
							4,168.65 2,645.64	2,645.64	
			Totals			$484,513.65	1,523.01	$486,036.66	

Certified Correct
H. ANDREW SMITH

Royalties earned	491,571.38
" unpaid	5,534.72
Amount paid	$486,036.66

PLAINTIFF'S EXHIBIT No. 401.

CHEMICAL FOUNDATION, INC. Sheet 5

Special Schedule of Patent Numbers and Dates Under Licenses, 27, 29 & 30

License No.	Date License Issued	Patent Number	Patent Date	Date of Expiration
27	June 28, 1918	682,523	Sept. 10, 1901	Sept. 10, 1918
		715,662	Dec. 9, 1902	Dec. 9, 1919
		724,789	Apr. 7, 1903	Apr. 7, 1920
		734,325	July 21, 1903	July 21, 1920
		734,866	July 28, 1903	July 28, 1920
		739,145	Sept. 15, 1903	Sept. 15, 1920
		739,579	Sept. 22, 1903	Sept. 22, 1920
		753,659	March 1, 1904	March 1, 1921
		754,768	Mar. 15, 1904	Mar. 15, 1921
		787,859	April 18, 1905	Mar. 18, 1922
		796,393	Aug. 1, 1905	Aug. 1, 1922
		809,892	Jan. 9, 1906	Jan. 9, 1923
		818,336	Apr. 17, 1906	Apr. 17, 1923
		818,992	Apr. 24, 1906	Apr. 24, 1923
		828,778	Aug. 14, 1906	Aug. 14, 1923
		844,914	Feb. 19, 1907	Feb. 19, 1924
		856,811	June 11, 1907	June 11, 1924
		863,397	Aug. 13, 1907	Aug. 13, 1924
		876,810	Jan. 14, 1908	Jan. 14, 1925
		906,367	Dec. 8, 1908	Dec. 8, 1925
		925,917	June 22, 1909	June 22, 1926
		929,142	July 27, 1909	July 27, 1926
		948,204	Feb. 1, 1910	Feb. 1, 1927
		955,105	Apr. 12, 1910	Apr. 12, 1927
		958,325	May 17, 1910	May 17, 1927
		961,048	June 7, 1910	June 7, 1927
		961,612	June 14, 1910	June 14, 1927
		970,878	Sept. 20, 1910	Sept. 20, 1927
		999,062	July 25, 1911	July 25, 1928
		1,033,268	Sept. 12, 1911	Sept. 12, 1928
		1,063,172	May 27, 1913	May 27, 1930
		1,063,173	May 27, 1913	May 27, 1930
		1,104,943	July 28, 1914	July 28, 1931
		1,145,934	July 13, 1915	July 13, 1932
29	June 28, 1918	931,598	Aug. 17, 1909	Aug. 17, 1926
30	June 28, 1918	714,882	Dec. 2, 1902	Dec. 2, 1919
		741,029	Oct. 13, 1903	Oct. 13, 1920
		770,177	Sept. 13, 1904	Sept. 13, 1921
		807,422	Dec. 12, 1905	Dec. 12, 1922
		858,065	June 25, 1907	June 25, 1924

PLAINTIFF'S EXHIBIT No. 401-A.

Federal Trade Licenses

(Seal)

DIVISION OF
BOOKKEEPING AND WARRANTS

TREASURY DEPARTMENT
OFFICE OF THE SECRETARY
WASHINGTON

I, M. J. O'Reilly, Chief of the Division of Bookkeeping & Warrants, of the United States Treasury Department, and as such is the custodian of the accounts and records of the Alien Property Custodian in the United States Treasury Department, do hereby certify that there was received for deposit on dates and in the amounts as shown on the three sheets annexed hereto and made a part hereof; that the amounts so indicated were collected and credited to the various accounts as indicated.

Dated at Washington, D. C., this 20th day of June, 1923.

(Sgd.) M. J. O'REILLY,
Chief of Division of
Bookkeeping and Warrants.

Subscribed and sworn to before me this 20th day of June, 1923.

(Sgd.) H. W. STUTLER,
(Seal) *Notary Public.*
My commission expires on Sept. 21, 1925.

Trust: 12117, Name: Farbwerke Hoechst Co. and Farbwerke vorm Meister Lucius & Brunig.

Date deposited	Amounts	
Jan. 22, 1918	274.05	
Jan. 22, 1918	265.00	539.05

Trust: 39491 Name: Merck & Co. and Knoll & Co.

Date deposited	Amounts	
May 17, 1919	1501.72	
Oct. 25, 1919	499.52	
Oct. 26, 1920	762.28	
May 24, 1921	1029.07	3,792.59

Trust: 46625 Name: Cales Chemical Co. and Farbwerke Meister Lucius & Brunig.

Mar. 15, 1922	0.11	0.11

Trust: 46255 Name: Reinschild Chemical Co. and Chemische Fabrik.

April 1, 1919	583.20	
June 6, 1919	400.40	
Jan. 5, 1921	1224.33	
May 23, 1921	435.44	
July 14, 1922	1535.12	4,178.49

Trust: 46260 Name: American Atmos Corp. vorm Draeger Oxygen Apparatus Co. and Draegerwerke Heinr. and Bernh. Draeger.

April 23, 1921	2288.04	
May 24, 1921	2333.68	
Jan. 6, 1922	50.00	4,692.65
Jan. 6, 1922	16.75	
Jan. 6, 1922	4.18	

TRUST: 45552 NAME: Mass. State Dept. of Health and Farbwerke Meister Lucius & Brunig.

Nov. 19, 1919	33.49	33.49

TRUST: 45231 NAME: New Jersey Machine Corp. and Richard Hogfeld.

Date deposited	Amount	
Sept. 15, 1919	200.00	
Nov. 4, 1922	250.00	450.00

TRUST: 45209 NAME: Lembcke von Bermuth Co., and Huelsberg & Co. m. B. H.

Feb. 19, 1919	18.36	
May 17, 1919	5.33	
May 13, 1919	10,430.73	10,454.42

TRUST: 45200 NAME: Firm of E. Merck and Rector Chemical Co.

Dec. 18, 1919	195.76	195.76

TRUST: 45198 NAME: Ultra Chemical Corp. Farbwerke vorm Meister Lucius and Brunig.

Dec. 18, 1919	455.85	455.85

TRUST: 39775 NAME: Abbott Laboratories and Chemische Fabrik auf Actien vorm (E. Schering).

May 12, 1919	19.60	
Aug. 26, 1919	80.05	
Dec. 5, 1919	340.05	
Nov. 27, 1920	2320.41	2,760.11

TRUST: 45179 NAME: Anton Chiris & E. Merck.

Oct. 16, 1919	1102.23	
Oct. 20, 1920	1021.41	
Oct. 26, 1920	.06	2,123.70

TRUST: 45170 NAME: E. C. Klipstein Co. Licensee Badische Aniline & Soda Fabrik.

Dec. 31, 1919	4.50	4.50
Sept. 6, 1919	21.81	21.81

TRUST: 45171 NAME: Ault Wiborg & Co. and Actien Ges. fuer Anilin Fabrikation.

Sept. 6, 1919	1118.43	1118.43
Jan. 22, 1920	523.32	523.32

TRUST: 44417 NAME: General Ceramics Co. and Dr. Fritz Raschig.

Date deposited	Amount	
Mar. 8, 1919	156.33	
Aug. 26, 1919	82.92	239.25

TRUST: 46661 NAME: Badische Anilin and Soda Fabrik and Farbwerke von Meister Lucius & Brunig Chemische Fabrik Gresheim Elektron Gesellschaft.

Oct. 21, 1922	3.60	3.60

TRUST: 46662 NAME: Farbwerke von Meister Lucius and Brunig A. G. and Badische Anilin & Soda Fabrik Kalle & Co., A. G. and The National Anilin & Chemical Co., Inc.

Oct. 21, 1922	28.47	$28.47

TRUST: 44237 NAME: National Anilin & Chemical Co. Inc. and Badische Anilin & Soda Fabrik.

Aug. 26, 1919	146.29	
Aug. 6, 1920	459.09	
Oct. 21, 1922	.16	605.54

TRUST: 38724	NAME: The Abbott Laboratories and Farbwerke von Meister Lucius & Brunig.	
April 15, 1919	1,236.00	
Sept. 24, 1919	506.46	1742.46

TRUST: 12680	NAME: Farbwerke von Meister Lucius & Brunig & Takamine Laboratories, Succ.	
Sept. 23, 1920	1,000.00	
July 25, 1921	500.00	1500.00

M J O'R

PLAINTIFF'S EXHIBIT No. 401-B.

Alien Property Contracts

(Seal)

DIVISION OF
BOOKKEEPING AND WARRANTS

TREASURY DEPARTMENT
OFFICE OF THE SECRETARY
WASHINGTON

I, M. J. O'Reilly, Chief of the Division of Bookkeeping & Warrants of the United States Treasury Department, and as such is the custodian of the accounts and records of the Alien Property Custodian in the United States Treasury Department, do hereby certify that there was received for deposit on dates and in the amounts as shown on the two sheets annexed hereto and made a part hereof; that the amounts so indicated were collected and credited to the various accounts as indicated.

Dated at Washington, D. C., this 20th day of June 20, 1923.

(Sgd.) M. J. O'REILLY,
Chief of Division of
Bookkeeping and Warrants.

Subscribed and sworn to before me this 20th day of June, 1923.

(Sgd.) H. W. STUTLER,
(Seal) *Notary Public.*

My commission expires on Sept. 21, 1925.

Trust: 2267, Schulke & Mayr, A. G.

Feb. 9, 1918	2,702.07	
Sept. 18, 1918	8,480.05	
Oct. 22, 1918	768.14	
Jan. 7, 1919	596.62	12,546.88

Trust: 12681, Carl W. Rademacher.

April 9, 1918	5,000.00	
May 23, 1918	5,000.00	10,000.00

Trust: 3362, Katherines Malzkaffee Fabriken.

Feb. 12, 1918	2,951.38	2,951.38

Trust: 11269, Dr. Leon Lilienfeld.

Mar. 22, 1918	6,897.70	
Sept. 4, 1918	43.20	
Sept. 12, 1918	2,116.80	
Jan. 11, 1919	2,160.00	
Aug. 1, 1919	497.25	11,714.95

Trust 8876, Coln Musener Bergwerks, Aktien Verein.

Nov. 2, 1921		238.89

Trust 21180, Friedrich Grosche.

Sept. 2, 1921		11.42

Trust 34378, Gesselschaft fur Alwasserklarung.

Mar. 15, 1922		350.00

Trust 3816, Chemische Fabrik Rheina.

July 15, 1918	18.63	
Aug. 15, 1918	22.38	
Oct. 23, 1918	51.30	92.31

Trust 204, Franz Meiser.

Apr. 5, 1918	720.00	
Apr. 16, 1920	212.00	932.00

Trust 3816, Chemische Fabrik Rhenama.

Feb. 15, 1918	173.53	July 7, 1919	14.49	
May 28, 1918	51.05	Oct. 10, 1919	22.49	
Oct. 31, 1918	19.06	Feb. 14, 1920	15.22	
Oct. 9, 1918	10.16	Apr. 9, 1920	10.24	
Jan. 8, 1919	8.38	July 13, 1920	13.41	
Apr. 9, 1919	8.80			346.83

Trust: 986, Hulsberg & Co.

May 22, 1918	1,579.26
Jan. 30, 1918	1,943.81
Mar. 14, 1918	13,472.84
Jan. 30, 1918	320.86
Feb. 12, 1918	24.29
Mar. 6, 1918	1,464.99
Mar. 14, 1918	84.29
May 9, 1918	55.81
May 27, 1918	626.10
Feb. 4, 1918	10,352.72
May 2, 1918	26.45
June 25, 1918	870.80
Feb. 2, 1918	2,196.63

Feb. 2, 1918	1,646.51	
Feb. 6, 1918	65.49	
Feb. 18, 1918	3.36	
Mar. 20, 1918	773.21	
May 4, 1918	254.51	35,761.93

M J O'R

PLAINTIFF'S EXHIBIT No. 402.

TRUST No. 12681.
REPORT No. 13076.

I, Henry S. Livingston, Secretary of American Kitchen Products Company, do hereby certify that the annexed copies of agreements, dated respectively May 10th, 1909, September 29th, 1909, and September 9th, 1913, are true copies of the originals of said agreements, which originals are in the possession of this company.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said company, the Sixth day of March, 1918.

(Sgd.) HENRY S. LIVINGSTON.

(Seal)

STATE, COUNTY AND CITY OF NEW YORK } *ss.:*

Subscribed and sworn to
before me this Sixth
day of March, 1918.

(Sgd.) H. S. PATTERSON,
(Seal) *Notary Public.*
Kings County.

This Agreement made the 10th day of May, 1909, between Dr. W. J. Schieffelin and Dr. Nathan Sulzberger both of the city of New York, parties of the first part and Carl W. Rademacher of the Cities of New York, N. Y. and Hamburg, Germany, party of the second part.

Witnesseth that

Whereas the party of the second part has been manufacturing in New York City and Hoboken, N. J. certain Bouillon or beef tea preparations, according to his own processes and methods, and has at said localities, certain stock of merchandise, materials and machinery.

Now, Therefore, in consideration of the mutual covenants and agreements hereinafter set forth and of the sum of $1.00 paid by the parties of the first part to the party of the second part at and before the execution of this agreement, the receipt whereof is hereby acknowledged, it is hereby mutually covenanted promised and agreed as follows:

First: The party of the second part will at once place the parties of the first part in possession of his said processes and methods for the manufacture of said Bouillon or beef tea preparations and the party of the second part hereby represents and guarantees to the parties of the first part:

A: That the said processes and methods do not infringe any patent or rights held or applied for by any other person, firm or corporation.

B: That the party of the second part has the full and legal right to transfer and dispose of the said processes and methods in the United States to the parties of the first part to the exclusion of all persons absolutely both as to ownership and use.

C: That no objectionable chemical preparations whatsoever are put into the said Bouillon or beef tea preparations or used in the processes of manufacturing the same.

D: That at present prices the cost of said product and package ready for sale does not exceed sixty-five cents per hundred half-inch cubes like sample packed in boxes of 100 cubes.

E: That in the preparation of the said Bouillon or beef tea preparations only such ingredients are necessary as are unobjectionable and permitted by law to be used in commerce as food products and which are used in cooking soups by most housewives.

F: That the beef tea cubes keep in good condition for six months if properly handled, i. e., when kept closed and in a cool place, and that cubes which soften, can be put up again without any possible sanitary or other objection so that there can be no appreciable damage to material.

G: That he will not directly or indirectly divulge said processes or methods to any other person, firm or corporation in the United States.

Second: The parties of the first part hereby acquire and the party of the second part hereby sells and transfers to the parties of the first part the said processes and methods for the manufacture of the said Bouillon or beef tea preparations, and the parties of the first part may either hold and use the said processes and methods themselves, or may transfer the same or the right to use the same to any other person, firm, corporation or corporations now existing or hereafter to be formed, it being, however, expressly understood and agreed that if the parties of the first part do so transfer the said processes or the right to use the said processes to any other person, firm or corporation, such transfer by the parties of the first part shall be made strictly subject to the terms of this present agreement, and that upon such transfer or transfers, so subject to this agreement, the parties of the first part shall be absolutely released and discharged of and from all liability to the party of the second part with regard to the portion so transferred, or to all the subject matter of this contract, if all their rights thereunder be so transferred, and the transferee or transferees shall be substituted in their stead in every respect and any cause of action which might arise by reason of the breach by such transferee or transferees, of any covenant or agreement contained in the agreement of transfer to him or them, relating to the rights hereunder of the party of the second part, shall belong to and be deemed to be hereby assigned to the party of the second part by the party of the first part.

Third: The parties of the first part agree to purchase from the party of the second part, the merchandise, materials and machinery which the party of the second part has on hand at the time of the making of this agreement, at New York and Hoboken, in connection with his business of manufacturing said beef tea preparations, provided, however, that this agreement shall only apply to so much of the said materials, merchandise, stock in trade or machinery as can be used in the manufacture of the said beef tea preparations, and is in good and sound condition, and the party of the second part hereby agrees to sell the same at cost price, plus customs duties with five percent additional on the merchandise only, covering freight, brokerage, etc. thereon.

It being, however, expressly understood and agreed that the total amount which may thus become payable for the said merchandise, materials and machinery, from the parties of the first part to the party of the second part, shall in no event exceed in the aggregate the sum of $2700, and that the purchase price of said merchandise materials and machinery, as in this paragraph set forth, shall be payable to the party of the second part six months after the date of this agreement, except as hereinafter specifically set forth.

Fourth: The party of the second part hereby grants, sells and transfers to the parties of the first part the said processes and methods for the manufacture of beef tea preparations, and also the exclusive right to use the same and to sell the said preparations in the United States of America.

It being, however, expressly understood and agreed that the parties of the first part shall have the right and privilege to manufacture and sell such preparations manufactured by them anywhere outside of the United States of America and to use the said processes outside of the United States of America, with the exception of England, Germany, Austria, Hungary, France and the French Colonies, in which last mentioned countries the parties of the first part agree that they will not use nor cause to be used the said processes or the said beef tea preparations by sale or otherwise.

Fifth: The party of the second part promises and agrees that upon execution of this contract he will turn over to the parties of the first part in writing, a full description of the said processes and methods, including any analyses that he may have, together with a list of the various prices of raw materials and the sources where such raw materials, as also packages and printed matter are purchased from.

Sixth: The said processes and methods are granted, transferred and ceded by the party of the second part to the parties of the first part for their use or for that of their assigns or transferees, and the parties of the first part promise to keep the same as secret as it shall be possible for them to do so, but it is expressly understood by the party of the second part that an indiscretion on the part of the parties of the first part occurring either unintentionally or through oversight, shall not render the parties of the first part liable for damages to the party of the second part.

Seventh: The party of the second part hereby agrees to place at the disposal of and turn over to the parties of the first part, all data which he has collected in his experience in the business of manufacture of beef tea cubes, and to promptly communicate to the parties of the first part all details as to improvements, further inventions, processes and productions which he may hereafter make therein for their use or that of their transferees or assigns as their property, without cost or charge to them, upon the same terms as herein set forth, with the exception that the parties of the first part shall not be required to purchase any merchandise materials and machinery.

Eighth: It is hereby agreed that the American trademark "STEERO" with the image of a steer with cube, as also the trademark "Famos" which has not as yet been registered, or any patents or other trademarks which the party of the second part may obtain on said processes or preparations in the United States, shall during the continuance of this agreement belong to the parties of the first part exclusively, who shall be alone entitled to use the said trademarks and patents in the United States of America, provided, however, that under no circumstances shall the said trademarks be used outside of the United States so as to collide with the export business of the party of the second part in Hamburg.

It is further agreed that any patents, trademarks or other protective rights may be hereafter registered or acquired by the parties of the first part or their successors in interest upon said processes or preparations and such patents and trademarks shall be the property of the parties of the first part and remain their property at all times even after any termination of this contract, and the party of the second part shall not be entitled to the use of the same in any country.

Ninth: The party of the second part agrees that he will not compete in any way with the parties of the first in the United States of America either directly or indirectly and neither through the sale or manufacture of beef tea preparations nor by the grant to anyone other than the parties of the first part or their successors in interest, of such methods or processes, or the right to use the same.

It is hereby further mutually covenanted and agreed that the parties of the first part or their successors in interest, transferees or assignees, shall not become interested in the manufacture of any Bouillon or beef tea preparations, in competition with those covered by this contract, except such preparations as the parties of the first part or any of them carry, manufacture or deal in at the time of the making of this agreement, or which any future assignee or transferee may have dealt in or manufactured prior to such transferees or assignees taking up of the beef tea preparations, forming the subject of this agreement, or unless the party of the second part shall be paid on the sales of any competing preparation as in paragraph "Tenth" hereof is provided for the sale of the preparations forming the subject of this contract.

Tenth: The parties of the first part agree to pay the party of the second part 5% of the amount of actual gross sales, it being hereby specifically agreed that the amounts as shown by the invoices of all goods sold by them or their agents, branch houses or other representatives in the United States or elsewhere, shall be the basis of computation of the amounts so payable to the party of the second part.

Eleventh: The parties of the first part agree to keep proper books of account, showing all sales and the amounts thereof, and the computation and payment of the amount of 5% as aforesaid, to the party of the second part shall be made quarter-annually.

It being expressly understood and agreed between the parties hereto that by the amount of actual gross sales mentioned in paragraph "Tenth" hereof is meant only the amount actually received by the parties of the first part in payment of all invoices on their sales of said preparations during the period for which the accounting is made.

The party of the second part, or his duly authorized representatives, at reasonable times, shall have access to such books of the parties of the first part relating to their business in said beef tea preparations.

Twelfth: It is hereby further agreed that if the parties of the first part should make during the two first years from the date of the making of this contract, a profit of not less than Fifty Thousand ($50,000) Dollars, out of the manufacture and sale of the said beef tea preparations, that then and in that event, the parties of the first part will pay to the party of the second part, once, to wit: three months after the expiration of the said period of two years, an extra bonus of Five Thousand ($5,000.00) Dollars.

Thirteenth: It is hereby further mutually covenanted and agreed that the parties of the first part at their option may at any time during the continuance of this contract, pay to the party of the second part, the sum of One Hundred and Fifty Thousand ($150,000) Dollars cash in lieu of any and all payments that the party of the second part is entitled to pursuant to the provisions of this contract. It being, however, expressly agreed that if such option is exercised by the parties of the first part after the expiration of two years from date hereof, and the party of the second part shall have then received a bonus of Five Thousand ($5,000.) Dollars as set forth in Paragraph "Twelfth" hereof, that then the said sum of Five Thousand Dollars ($5,000.) the amount of such bonus, shall be deducted from the said sum of One Hundred and Fifty Thousand Dollars ($150,000).

Fourteenth: It is hereby further agreed that the party of the second part on at least thirty days written notice to each of the parties of the first part or their successors in interest, shall have the right to terminate this agreement at the end of five years from the date hereof, in the event of his not having received the sum of Twenty Thousand Dollars ($20,000) exclusive of the purchase price of the said merchandise, materials and machinery, as set forth in paragraph "Third," hereof, provided, however, that it shall make no difference whether the said sum of Twenty Thousand Dollars ($20,000) shall have been paid to the party of the second part by way of his interests of five percent. on gross sales, as hereinbefore set forth, or by any voluntary payment by the parties of the first part, bringing the total amount received by the party of the second part to the sum of Twenty Thousand ($20,000) Dollars, exclusive of such purchase price of the said merchandise, materials and machinery, which voluntary payment may be made at any time up to the expiration of the said period of five years.

In the event of such termination, the parties of the first part shall be entitled to comply and meet with all their obligations contracted up to the expiration of the said period of five years with relation to the said processes or beef tea preparations.

Fifteenth: It is hereby further covenanted and agreed that the party of the second part will place at the disposal of the parties of the first part, for the period of three months from the date hereof, Mr. Emil Rademacher, for the purpose of organizing the manufacture and teaching the processes in consideration of which services the parties of the first part shall pay the said Mr. Emil Rademacher at the rate of Twenty-five Dollars ($25.00) per week for the time thus spent by him in their behalf. The party of the second part hereby represents that Mr. Emil Rademacher is absolutely conversant with and skilled in the manufacture of beef tea or bouillon preparations and fully capable to install everything necessary for the manufacture of said preparations.

In case the parties of the first part should desire to have Mr. Emil Rademacher continue in directing the work of manufacturing said preparations, the party of the second part agrees said Mr. Emil Rademacher will serve the parties of the first part for another year at a salary of not more than Two Thousand Dollars ($2,000.) per annum and the party of the second part further agrees and promises that Mr. Emil Rademacher will keep the processes and affairs in connection with the said manufacture and sale of beef tea preparations confidential and secret, and that the party of the second part further agrees that anything done by Mr. Emil Rademacher within six months of the date hereof, either in the manufacture, handling or disclosure of the processes or preparations shall be considered for the purposes of this agreement the act of the party of the second part.

Sixteenth: The party of the second part hereby agrees that the parties of the first part may, if they so desire, use the firm name of "Carl W. Rademacher" but it is hereby mutually expressly covenanted and agreed that the parties of the first part assume no liabilities of the party of the second part, either with regard to outstanding accounts, debts or otherwise; that all orders received prior to the signing and execution of this contract shall be executed by the party of the second part; that the parties of the first part shall be entitled to all proceeds of the business from the time of such signing and execution hereof.

Seventeenth: It is hereby further mutually covenanted and agreed that this contract shall always be subject to and construed according to the laws of the State of New York where the same is made and entered into.

And it is hereby specifically and expressly covenanted and agreed and guaranteed by the party of the second part that if any representation made by him in this agreement proves to be wrong, that then and in that event, parties of the first part shall have the right at their option to terminate this agreement on thirty days written notice to the party of the second part, and that the party of the second part guarantees to hold the parties of the first part free, clear and harmless of all damages, which may be caused to them by reason of the party of the second part not having the right as represented to sell, grant and transfer to the parties of the first part such processes and methods and the right to use the same and to sell such beef tea preparations.

Eighteenth: And it is further convenanted and agreed by the parties of the second part that the sum not to exceed Two Thousand Seven Hundred Dollars ($2,700.) as set forth in paragraph "Third" hereof shall not become duly payable in case within six months from the date hereof, any of the representations of the party of the second part herein made, shall be found to be untrue, and that in case such discovery shall be made after said sum is paid, the party of the second part hereby agrees to at once repay to the parties of the first part, the amount of the said sum received by him.

Nineteenth: It is hereby further covenanted and agreed that the two parties of the first part have each a several half interest in this contract.

Twentieth: And it is further mutually covenanted and agreed that this agreement shall in all respects be binding upon and enure to the benefit of the parties hereto and their respective executors, administrators, legal representatives and assigns.

Twenty-first: And it is further mutually covenanted and agreed that due recognition shall be given by the parties hereto to the representatives of the other party or parties duly authorized in writing by a legally executed and acknowledged Power of Attorney.

In Witness Whereof the parties hereto have hereunto set their hands and seal the day and year first above written.

(Signed)	(Signed)
L. H. Hobby, Jr.	Wm. Jay Schieffelin (L. S.)
L. H. Hobby, Jr.	Dr. Nathan Sulzberger (L. S.)
R. Jaeger as to	Carl W. Rademacher (L. S.)

State of New York, }
County of New York, } *ss:*

On this 28th day of July, 1909, before me personally came Dr. W. J. Schieffelin and Dr. Nathan Sulzberger to me known and known to me to be the individuals described in and who executed the foregoing instrument and they severally duly acknowledged to me that they executed the same.

(Signed) J. W. George #33,
Notary Public New York County.

PLAINTIFF'S EXHIBIT No. 402-A.

Agreement made this 28th day of July 1909.

Whereas, the parties hereto have heretofore executed an agreement under date of May 10th, 1909, and now desire to make certain provisions therein more clear and to modify certain others, as hereinafter set forth:

Now, Therefore, this agreement witnesseth: that in consideration of the premises, Wm. Jay Schieffelin and Nathan Sulzberger, parties of the first part in said contract of May 10th, 1909 and herein have agreed and do hereby agree to and with Carl W. Rademacher, the party of the second part in said contract of May 10th, 1909 and herein as follows:

First: In explanation of paragraph "Eighth" of said contract of May 10th, 1909, the parties of the first part agree that in any export trade that they may carry on they will not use either of the trademarks "Sterro" or "Famos."

Second: In explanation of paragraph "Ninth" of said contract of May 10, 1909, the parties of the first part agree that the words in said paragraph "shall not become interested in the manufacture, etc." shall mean and shall be construed to mean "shall be expressly prohibited from interesting themselves in the manufacture, etc."

Third: In explanation of paragraph "Tenth" and "Eleventh" of said contract of May 10th, 1909, the parties of the first part agree that the words in said paragraphs "actual gross sales" shall mean and be construed to mean "all actual sales."

Fourth: In modification of paragraph "Fourteenth" of said contract of May 10th, 1909, the parties of the first part agree that the final paragraph thereof shall be changed so as to read as follows: viz.:

"In the event of such termination, the parties of the first part shall be entitled, within six months after such termination, to comply and meet with all their obligations contracted up to the expiration of the said period of five years with relation to the said processes of beef tea preparations."

FIFTH: In modification of paragraph "Eighteenth" of said contract of May 10th, 1909, the parties hereto agree that said paragraph shall be modified by the addition of the following paragraphs, viz.:

"The parties of the first part shall however, in the event of such discovery, return to the party of the second part such of the merchandise, materials and machinery named in paragraph "Third" hereof as are in existence, and shall pay the party of the second part for any of such merchandise, materials and machinery received by them and not returned, payment to be made at the invoice prices, but not in any event to exceed the sum of $2,700."

This agreement shall bind and ensure to the benefit of the parties hereto and their respective executors, administrators, legal representatives and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

L. H. HOBBY, JR. (Sgd.) WM. JAY SCHIEFFELIN
L. H. HOBBY, JR. NATHAN SULZBERGER
R. JAEGER as to CARL W. RADEMACHER

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss:

On this 28th day of July 1909, before me personally came WM. JAY SCHIEFFELIN AND NATHAN SULZBERGER, to me known and known to me to be the individuals described in and who executed the foregoing instrument and they severally duly acknowledged to me that they executed the same.

(Sgd.) J. W. GEORGE #33,
Notary Public N. Y. County.

PLAINTIFF'S EXHIBIT No. 402-B.

Trust No. 12681
Report No. 13076

Know all men by these presents:—That we, William J. Schieffelin and Nathan Sulzberger, both of the City of New York, for and in consideration of the sum of Five Thousand ($5,000) dollars to be paid to us in capital stock, at its par value, of American Kitchen Products Company, a corporation organized under the laws of the State of New York, said stock to be issued one-half to each of us, have bargained and sold, and do hereby transfer, assign and set over unto said American Kitchen Products Company, all of the following described contracts and all our rights, benefits and privileges therein and thereunder, viz.:—

1. A contract made between us and Carl W. Rademacher under date of May 10th, 1909.

2. An agreement made with us by Emil Rademacher under date of July 23rd, 1909.

3. An agreement dated July 28th, 1909, between us and Carl W. Rademacher explanatory of said agreement of May 10th 1909, (said agreement of July 28th, 1909, having been arranged for with Carl W. Rademacher, but not yet executed by him), together with all trade-marks, patents, secret processes and methods that may have been transferred to us under said contracts, or any of them, and all our rights, benefits and privileges therein and thereto.

Subject, however, to the terms of the said contracts and to the obligations imposed on us in and by said contracts, which obligations the said American Kitchen Products Company hereby assumes and agrees to perform from and after said date of May 10th, 1909, to the end that the said Company may be substituted in the place of us as parties to said contracts in every respect.

We do hereby severally covenant and agree to and with said American Kitchen Products Company, each of us for himself, that we have not made any assignment of any of the property, rights, privileges and advantages hereinabove assigned, nor have we created any encumbrance thereon, and that we have good right to assign and transfer the said contracts and their property, and that the said American Kitchen Products Company shall, and may have, hold, possess and enjoy the same (subject to the terms of said contracts) against the lawful claim of all persons.

And we do hereby further severally covenant and agree to and with said American Kitchen Products Company, that on receiving said agreement dated July 28th, 1909, after the execution by said Carl W. Rademacher, we will forthwith deliver the same to said American Kitchen Products Company, and will execute and deliver any and all further assignments that may be desired by said American Kitchen Products Company to convey to it fully said agreement without encumbrance, and all our rights thereunder, and will execute and deliver any and all instruments of further assurance that may seem to said Company desirable to the end that it may become fully and completely vested with the title to said contracts and all of them, subject to the terms thereof.

In Witness Whereof, we have hereunto set our hands and seals this 29th day of September, 1909.

Wm. Jay Schieffelin (L. S.)
Nathan Sulzberger (L. S.)

State of New York, } *ss:*
County of New York, }

On this 29th day of September, 1909, before me personally came William J. Schieffelin and Nathan Sulzberger to me known and known to me to be the individuals described in and who executed the foregoing instrument, and acknowledged that they executed the same.

J. W. George,
Notary Public, New York County.

(seal.)

PLAINTIFF'S EXHIBIT No. 402-C.

This Agreement, made the 15th day of April 1910, between American Kitchens Products Company, a corporation organized under the laws of the State of New York, in the United States of America, (hereinafter called the "Company") party of the first part, and Carl W. Rademacher of the City of Hamburg, in the Empire of Germany, party of the second part.

Witnesseth, that

Whereas, under date of the 10th day of May 1909 Dr. Wm. Jay Schieffelin & Dr. Nathan Sulzberger of the City of New York, entered into a contract with the said Carl W. Rademacher relating to the manufacture and sale of certain bouillon or beef tea preparations, as is in said contract more fully set forth, reference thereto being hereby made, and

Whereas, by an agreement under date of the 28th day of July 1909, the said contract dated May 10th, 1909, was by the parties thereto made more clear as to certain provisions and modified as to certain other provisions; and

Whereas, the said contract dated May 10th, 1909, and the said agreement dated July 28th, 1909, were by the said Dr. Wm. Jay Schieffelin and Dr. Nathan Sulzberger duly assigned, transferred, and set over unto American Kitchen Products Company, and the said "Company" thereby became vested with the title to the said contract and agreement and with all the rights of the said Dr. Wm. Jay Schieffelin and Dr. Nathan Sulzberger thereunder; and

WHEREAS, the parties to this agreement now desire to modify certain provisions in said contract dated May 10th, 1909, (as modified and explained by said agreement of July 28th, 1909), as hereinafter set forth;

NOW, THEREFORE, in consideration of the promises and of the sum of One Dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, it is mutually agreed by and between the parties hereto as follows:

FIRST: In modification of paragraph "Eighth" of said contract of May 10th, 1909 (as explained by paragraph "First" of said agreement of July 28th, 1909), it is hereby mutually agreed that notwithstanding the provisions of said paragraphs, the "Company" shall have the right to use the trade marks "STEERO" and "FAMOS" in any export trade that it may carry on with any part of the continent of North America (including Mexico), and with the Islands near or adjacent to said continent, (including the Bahamas, West Indies and Bermudas), and with the Philippine Islands.

SECOND: In extension of paragraph "Ninth" of said contract of May 10th, 1909, the said Carl W. Rademacher hereby agrees that he will not use either of said trademarks or brands "STEERO" or "FAMOS" in any trade that he may carry on with the territory hereinabove referred to, but this shall not be construed to prevent him from selling any other brand of Beef Tea preparation throughout such of said territory as is outside of the United States of America.

Third: It is further mutually agreed that the provisions of said contract of May 10th, 1909, and of said agreement of July 28th, 1909, and of this agreement, are hereby extended to and shall be construed as applying to the additional territory hereinabove referred to so far as said provisions may be applicable thereto.

Fourth: The said Carl W. Rademacher hereby confirms in all respects the said agreement of May 10th, 1909, as modified and explained by said agreement of July 28th, 1909, and by this agreement;

Sixth: This agreement shall bind and ensure to the benefit of the parties hereto and their respective executors, administrators, legal representatives, successors and assigns.

In Witness Whereof, American Kitchen Products Company has caused its corporate seal to be hereto affixed and these presents to be signed by its President, and the said Carl W. Rademacher has hereto affixed his hand and seal the day and year first above written.

American Kitchen Products Company.

Signed in presence of
Alterations and Erasures
made before signing

By
(Signed) Wm. Jay Schieffelin,
President

(Signed) Carl W. Rademacher

L. H. Hobby, Jr.
Henry S. Livingston
R. Jaeger

PLAINTIFF'S EXHIBIT No. 402-D.

Trust No. 12681
Report No. 13076

This Agreement, made the 9th day of September, 1913, between American Kitchen Products Company, a corporation organized under the laws of the State of New York in the United States of America, (hereinafter called the "Company") party of the first part, and Carl W. Rademacher of the City of Hamburg in the Empire of Germany, party of the second part,

Witnesseth:

That in modification of the agreements made between Dr. W. J. Schieffelin and Dr. Nathan Sulzberger, of the one part, and the said Carl W. Rademacher, of the other part, under date of May 10, 1909, and July 28, 1909, respectively (which agreements are now, by assignment from the said W. J. Schieffelin and Nathan Sulzberger, held and owned by the "Company") the parties hereto agree as follows:

First: That all royalties or percentages due under said agreements to the said Carl W. Rademacher have been duly paid up to the first day of July, 1915, (except the sum of Seven hundred and fifty dollars ($750.00), and that the now existing rate of royalties or percentages shall be continued in force up to the 30th day of September, 1913, inclusive, and no longer.

Second: That from and after the first day of October, 1913, in lieu of the royalty or percentage of five per cent (5%) provided in paragraph Tenth of the agreement of May 10, 1909, the said Carl W. Rademacher shall be entitled to receive, and the "Company" hereby agrees to pay him a royalty or percentage of Two per cent (2%) and the sum of Thirty thousand dollars ($30,000.), payable in six successive annual payments of Five thousand dollars ($5,000) each, all of such payments to be made without interest, the first of such payments to be made on October 1st, 1914, and one of such payments to be made on October 1st in each of the years, 1915, 1916, 1917, 1918 and 1919.

THIRD. That all of the terms and conditions of the said agreements relating to the method by which the said five per cent. (5%) royalty or percentage was to be computed and paid shall apply to and govern the computation and payment of the new royalty or percentage of two per cent (2%) subject, however, to the further modification thereof by the new arrangement about to be entered into respecting the Dominion of Canada.

The said Carl W. Rademacher hereby covenants and agrees to and with the "Company" that he has not assigned or in any way encumbered or impaired his right to receive the royalties payable pursuant to said agreements.

This agreement shall bind and enure to the benefit of the parties hereto and their respective executors, administrators, legal representatives, successors and assigns.

IN WITNESS WHEREOF, AMERICAN KITCHEN PRODUCTS COMPANY has caused its corporate seal to be hereto affixed and these presents to be signed by its President, and the said CARL W. RADEMACHER has hereto affixed his hand and seal, the day and year first above written.

AMERICAN KITCHEN PRODUCTS COMPANY

(SEAL)
HENRY S. LIVINGSTON,
(L. S.) *Secy.*

By WM. JAY SCHIEFFELIN *President.*
CARL W. RADEMACHER (SEAL)

Witnesses as to
Carl W. Rademacher:
EMIL RADEMACHER
GRETCHEN WITTES

TRANSCRIPT OF RECORD

PLAINTIFF'S EXHIBIT No. 403.

2-394

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of the Certificate of Registration, Statement, Declaration and Drawing in the matter of the Trade-Mark Registered by Farbwerke vorm. Meister Lucius & Brüning, May 22, 1906, Number 53,072.

The certificate of registration was granted for the term of twenty years, and so far as is disclosed by the records of this office, said certificate is in full force and effect.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed, in the District of Columbia, this twenty-eighth day of December, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the United States of America the one hundred and forty-seventh.

(Seal)

(Sgd.) KARL FENNING,
Acting Commissioner of Patents.

2-372.

No. 53072

THE UNITED STATES OF AMERICA,

TO ALL TO WHOM THESE PRESENTS SHALL COME:

THIS IS TO CERTIFY That by the records of the United States Patent Office it appears that Farbwerke

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UNITED STATES V. CHEMICAL FOUNDATION, INC. NO. 127

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vorm. Meister, Lucius & Brüning, of Höechst-on-the-Main, Germany, a corporation organized under the laws of the Empire of Germany, did on the 2nd day of November, 1905, duly file in said Office an application for Registration of a certain

Trade-Mark

for Anesthetics that it duly filed therewith a drawing of the said Trade-Mark, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And upon due examination thereof, it appearing that the said applicant is entitled to registration of its said Trade-Mark under the law, the said Trade-Mark has been duly registered to Farbwerke vorm. Meister, Lucius & Brüning, and its successors or assigns, in the United States Patent Office, this 22nd day of May, 1906.

This certificate shall remain in force for Twenty Years, unless sooner terminated by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-second day of May, in the year of our Lord one thousand nine hundred and six, and of the Independence of the United States the one hundred and thirtieth.

(Seal)

(Sgd.) F. I. ALLEN,
Commissioner of Patents.

TRADE-MARK

No. 53,072. Registered May 22, 1906
Farbwerke Vorm. Meister Lucius & Brüning.
Anesthetics.
Application Filed Nov. 2, 1905.

NOVOCAIN

Attest:
(Sgd.) C. S. Madison,
(Sgd.) Edward N. Sarton.

Proprietor
Farbwerke vorm. Meister Lucius & Brüning.
(Sgd.) By RICHARDS & Co.,
Attys.

UNITED STATES PATENT OFFICE.

FARBWERKE VORM. MEISTER LUCIUS & BRUNING, OF HOCHST-ON-THE-MAIN, GERMANY.
Trade-Mark for Anesthetics.

Statement and Declaration.

No. 53,072. Registered May 22, 1906.
Application filed November 2, 1905. Serial No. 14,207.

STATEMENT.

To all whom it may concern:

Be it known that the Farbwerke vorm. Meister Lucius & Brüning, a corporation duly organized under the laws of Germany, and located and doing business in the city of Höchst-on-the-Main, Germany, has adopted for its use a trade-mark, of which the following is a description.

The trade-mark consists of the word "Novocain."

The trade-mark has been continuously used in the business of said corporation since July 1, 1905.

The class of merchandise to which the trade-mark is appropriated is pharmaceutical products, and the particular description of goods comprised in said class upon which said trade-mark is used is anesthetics.

The trade-mark is usually displayed on the packages containing the goods by placing thereon a printed label on which the same is shown.

FARBWERKE VORM. MEISTER,
LUCIUS & BRUNING.
By HERBERT VON MEISTER,
Director.

DECLARATION.

United States consulate-general, Frankfort-on-Main,
Empire of Germany, ss:

Herbert von Meister being duly sworn, deposes and says that he is a director of Farbwerke vorm. Meister, Lucius & Brüning the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes the said corporation to be the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark has been registered in Germany under No. 82,058 on October 7th, 1905; that the description, drawings and specimens, or facsimiles, presented truly represent the trade-mark sought to be registered.

HERBERT VON MEISTER.

Subscribed and sworn to before me, a consul-general of the United States, this 20th day of October, 1905.

[L. S.] RICHARD GUENTHER,
Consul-General.

PLAINTIFF'S EXHIBIT No. 403-A.

2—391

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of an instrument of writing Recorded February 26, 1917, in Liber W-102, page 53. Said record has been carefully compared with the original and is a correct transcript of the whole thereof.

(Seal) IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 19th day of April, in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States of America the one hundred and forty-first.

(Sgd.) F. W. H. CLAY,
Acting Commissioner of Patents.

Liber W-102,
Page 53.
(Seal) (Seal)

ASSIGNMENT.

WHEREAS the Trade Mark registered in the Patent Office of the United States of America No. 53,072, dated May 22nd, 1906, is and has been used in the business of importing and selling in the said United States goods manufactured by Farbwerke vorm.

Meister Lucius & Brüning of Hoechst-on-Main, Germany, and

WHEREAS said business of importing and selling goods so manufactured is and has been carried on and possessed exclusively by the Farbwerke-Hoechst Company, a New York Corporation, and its predecessors, and it is desired that the title to said Trade Mark for the United States shall accompany the good will of said business in which it is used in the United States.

NOW, THEREFORE, for and in consideration of the premises and of One Dollar in hand paid, the receipt of which is acknowledged, said Farbwerke vorm. Meister Lucius & Brüning has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over unto said Farbwerke-Hoechst Company all the right, title and interest in and to said Trade Mark in and for the United States of America and in and to said Letters of Registration therefor, together with the good will of said business, the same to be held and enjoyed by the said Farbwerke-Hoechst Company for its own use and for the use and behoof of its successors in said business of importing and selling in the United States goods of said manufacturer, as fully and entirely as the same would have been held and enjoyed by the said assignor had said assignment and sale not been made.

Signed, sealed and delivered at Hoechst-on-Main this twenty-eighth day of January, 1915.

(Seal) (Seal) (Seal)

Farbwerke vorm. Meister
Lucius & Brüning
R. Weidlich
A. Ammelburg

Vorstehende, heute als eigenhändig vollzogen vor mir anerkannte Unterschriften der mir persönlich bekannten Herren:

1. Dr. Richard Weidlich, Rechtsanwalt.
2. Dr. Alfred Ammelburg, Chemiker, beide wohnhaft in Höchst a/M.

werden hierdurch amtlich beglaubigt mit dem Hinzufügen, dass die genannten Herren zur Vertretung der Aktiengesellschaft "Farbwerke vorm. Meister Lucius & Brüning" in Höchst a/M. befugt sind.

Höchst a/M., den 28. Januar 1915.

It is hereby officially certified that the following gentlemen, who are personally known to me, namely

1. R. Weidlich, Ph.D. and Counsellor at Law,
2. A. Ammelburg, Ph.D., chemist, both of Hoechst-on-Main,

have acknowledged to-day personally before me their foregoing signatures, said gentlemen being duly authorized to sign on behalf of the firm "Farbwerke vorm. Meister Lucius & Brüning" at Hoechst-on-Main.

Hoechst-on-Main, 28th, January 1915.

(Seal)

Schreiber, Koeniglich Translischer Notar
Notar

No. 22 Not. Reg. für 1915
Kosten. Wert: M 3000.—ang.

1., Gebühr§ 43 pr. Ger. K. Ges	M 1,90
2., Pauschale	M 0,50
3., Stempel z. Beglaubigung	M 3.—
4., Stempel z. Urkunde	M 1.50
Summa:	M 6,90

Schreiber

Kingdom of Prussia, Empire of Germany
Province of Hesse-Nassau
Consulate General of the U. S. of America
at Frankfort-on-Main
} ss:

I, H. W. Harris, Consul General of the United States of America at Frankfort-on-Main, Germany, duly commissioned and qualified, do hereby certify that Norbert Schreiber whose name is subscribed to the document hereunto annexed was at the time of subscribing the same Notary Public at Hoechst on Main, Prussia, Germany, duly commissioned, and that his signature and official seal affixed thereto are genuine and as such are entitled to full faith and credit.

In witness whereof I have hereunto set my hand and official seal this 30 day of January, 1915.

(Seal) (Seal) (Seal)

H. W. HARRIS,
Consul General of the
United States of America.

No. 158 Fee $2.00 recd.
equal to Marks 9.20.
Recorded February 26, 1917.

PLAINTIFF'S EXHIBIT No. 404.

UNITED STATES PATENT OFFICE.

Farbwerke Vorm. Meister Lucius & Brüning, of Höchst-on-the-Main, Germany.

Trade-Mark for a Remedy for Certain Diseases.

Statement and Declaration.

79,969. Registered Oct. 25, 1910.
Application filed February 23, 1909. Serial No. 40,734.

STATEMENT.

To all whom it may concern:

Be it known that FARBWERKE VORM. MEISTER LUCIUS & BRUNING, a corporation duly organized under the laws of the German Empire, located at Höchst-on-the-Main, Germany, and doing business at Höchst-on-the-Main, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since October 21st, 1908.

The class of merchandise to which the trade-mark is appropriated is Class 6, Chemicals, medicines and pharmaceutical preparations, and the particular description of goods comprised in said class upon which said trade-mark is used is a powder to be used as a remedy for syphilis, sleeping-sickness, trypanosomiatis and other tropical infectious diseases.

The trade-mark is usually displayed on the packages containing the goods, by placing thereon a printed label on which the same is shown.

FARBWERKE VORM. MEISTER LUCIUS & BRÜNING,
By Herbert Von Meister,
Director.

DECLARATION.

United States consulate general. Frankfort-on-Main, Empire of Germany. ss.

Herbert von Meister, doctor of philosophy of Sindlingen near Hoechst-am-Main, being duly sworn, deposes and says that he is a director of the corporation Farbwerke vorm. Meister Lucius & Bruning, the applicant named in the foregoing statement; that he believes that the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive;

that said trade-mark has been registered in Germany, Number 114511, dated January 29th, 1909, and that the description, drawing and specimens presented truly represent the trade-mark sought to be registered.

HERBERT VON MEISTER.

Subscribed and sworn to before me, a U. S. consul general, this 9th day of February, 1909.

RICHARD GUENTHER,
(L. S.) *U. S. Consul-General.*

TRADE-MARK.

Farbwerke vorm. Meister Lucius & Brüning.
A Remedy for Certain Diseases.
Application Filed Feb. 23, 1909.
79,969. Registered Oct. 25, 1910.

SALVARSAN

Proprietor,
FARBWERKE VORM. MEISTER LUCIUS & BRÜNING,
By BYRNES, TOWNSEND & BRICKENSTEIN,
Attorneys.

PLAINTIFF'S EXHIBIT No. 404-A.

2—391.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of the office of an instrument of writing

Vorstehende, heute als eigenhändig vollzogen vor mir anerkannte Unterschriften der mir persönlich bekannten Herren:

1. Chemiker Max Epting, wohnhaft in Höchst am Main
2. Rechtsanwalt Victor Krug von Nidda, wohnhaft in Frankfurt am Main,

werden hierdurch amtlich beglaubigt mit dem Hinzufügen, dass die genannten Herren zur Vertretung der Aktiengesellschaft

" Farwerke vorm. Meister Lucius & Brüning, in Höchst, am Main

befugt sind.

Hochst am Main, den 5. Marz 1914.

It is hereby officially certified that the following gentlemen, who are personally known to me, namely:

1. Max Epting, Dr. ing., chemist of Höchst-on-Main
2. Victor Krug von Nidda, Counsellor at Law of Frankfort-on-Main,

have acknowledged to-day personally before me their foregoing signatures, said gentlemen being duly authorized to sign on behalf of the firm

" Farbwerke vorm. Meister Lucius & Brüning" at Höchst-on-Main.

Hochst-on-Main, March 5th, 1914.

Schreiber, Bonighiber,
Notar

* * * * * * * *
Oberlandesgerichtsz
Norbert Schreiber
Frankfurt am
Hochst am
Notair-Blg.
Kgl. Preuss
* * * * * * * *

No. 120 Not. Reg. 1914
Kosten Wert 3000 mk.

1. geb, 143 p. g. k. geb.	1.90 M
2. Stempel 3 Cnzl	3.00 "
3. Pauschsatz	0.50 "

Pu 5.40 mk. Tinnon

Kingdom of Prussia, Empire of Germany,
Province of Hesse-Nassau,
Consulate General of the U. S. of America,
at Frankfort-on-Main, } *ss.:*

I, Heaton W. Harris, Consul General of the United States of America at Frankfort-on-Main, Germany, duly commissioned and qualified, do hereby certify that Norbert Schreiber, whose name is subscribed to the document hereunto annexed, was at the time of subscribing the same Notary Public at Hoechst-on-Main, Prussia, Germany, duly commissioned, and that his signature and official seal affixed thereto are genuine and as such are entitled to full faith and credit.

In witness whereof I have hereunto set my hand and official seal this 1. day of April, 1914.

H. W. HARRIS,
Consul General of the United States of America.

American
Consulate
General
Frankfort-on-Main
Germany.

American
Consular
Service $2
Fee Stamp

No. 256 Fee $2.00 recd.
equal to Marks 8.50
Recorded May 6, 1914.

PLAINTIFF'S EXHIBIT No. 405.

UNITED STATES PATENT OFFICE.

Farbwerke vorm. Meister Lucius & Brüning, of Höchst-on-the-Main, Germany.

Trade-Mark for a Remedy for Certain Named Diseases.

88,862. Registered Oct. 29, 1912.

Application filed May 22, 1912. Serial No. 63,727.

STATEMENT.

To all whom it may concern:

Be it known that FARBWERKE VORM. MEISTER LUCIUS & BRUNING, a corporation duly organized under the laws of the German Empire, located at Höchst-on-the-Main, Germany, and doing business at Höchst-on-the-Main, Germany, has adopted and used the trade-mark shown in the accompanying drawing, for a remedy for syphilis, sleeping-sickness, trypanosomiasis, and other tropical infectious diseases, in Class No. 6, Chemicals, medicines, and pharmaceutical preparations.

The trade-mark has been continuously used in the business of said corporation since March 29, 1912.

The trade-mark is usually displayed on the packages containing the goods, by placing thereon a printed label on which the same is shown.

FARBWERKE VORM. MEISTER LUCIUS & BRÜNING,
By VIKTOR KRUG V. NIDDA,
Secretary.

NEOSALVARSAN

Declaration.

United States consulate general, Frankfort-on-the-Main, Empire of Germany. ss.

Viktor Krug von Nidda, attorney and counselor-at-law of Frankfort-on-the-Main, being duly sworn, deposes and says that he is a secretary of the corporation Farbwerke vorm. Meister Lucius & Bruning, at Höchst-on-the-Main, the applicant named in the foregoing statement; that he believes that the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark has been registered in Germany under Number 155,845, dated 6th March, 1912, and that the description, drawing and specimens or fac-similes presented truly represent the trade-mark sought to be registered.

VIKTOR KRUG v. NIDDA.

Subscribed and sworn to before me, this first day of May, 1912.

Frank D. Hill,
(L. S.) *U. S. Consul General.*

Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

PLAINTIFF'S EXHIBIT No. 405-A.

2—391

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of an instrument of writing

Recorded May 6, 1914,
in
Liber D-94, page 430.

Said record has been carefully compared with the original and is a correct transcript of the whole thereof.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of (SEAL) Washington, this 26th day of June, in the year of our Lord one thousand nine hundred and fourteen and of the independence of the United States of America the one hundred and thirty-eighth.

(Sgd.) J. T. NEWTON,
Acting Commissioner of Patents.

Liber D 94
Page 430.

ASSIGNMENT.

WHEREAS the trade-mark registered in the Patent Office of the United States of America, No. 88,862, dated October 25, 1912, is and has been used in the business of importing and selling in the said United States goods manufactured by Farbwerke vorm. Meister Lucius & Brüning of Hoechst-on-the-Main, Germany, and

WHEREAS said business of importing and selling goods so manufactured is and has been carried on and possessed exclusively by the Farbwerke-Hoechst Company, a New York corporation, and its predecessors, and it is desired that the title to said trade-mark for the United States shall accompany the good will of said business in which it is used in the United States.

NOW THEREFORE, for and in consideration of the premises and of One Dollar in hand paid, the receipt of which is acknowledged, said Farbwerke vorm. Meister Lucius & Brüning has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over unto said Farbwerke-Hoechst Company all the right, title and interest in and to said trade-mark in and for the United States of America and in and to said Letters of Registration therefor, together with the good will of said business; the same to be held and enjoyed by the said Farbwerke-Hoechst Company, for its own use and for the use and behoof of its successors in said business of importing and selling in the United States goods of said manufacture, as fully and entirely as the same would have been held and enjoyed by the said assignor had said assignment and sale not been made.

Signed, sealed and delivered at Hoechst-on-Main this fifth day of March 1914.

(Seal) FARBEWERKE VORM. MEISTER LUCIUS & BRUNING

EPTING KRUG V. NIDDA,
Direktor. *Procurist.*

Vorstehende, heute als eigen-händig vollzogen vor mir anerkannte Unterschriften der mir persönlich bekannten Herren:

1. Chemiker Max Epting wohnhaft in Höchst am Main
2. Rechtsanwalt Victor Krug, von Nidda, wohnhaft in Frankfurt am Main,

werden hierdurch amtlich beglaubigt mit dem Hinzufügen, dass die genannten Herren zur Vertretung der Aktiengesellschaft

"Farbwerke vorm. Meister Lucius & Brüning" in Höchst am Main

befugt sind.

Höchst am Main, den 5. Marz 1914.

(German Seal)

It is hereby officially certified that the following gentlemen, who are personally known to me, namely:

1. Max Epting, Dr. ing, cnemist of Höchst-on-Main
2. Victor Krug von Nidda, Counsellor at Law of Francfort-on-Main,

have acknowledged to-day personally before me their foregoing signatures, said gentlemen being duly authorised to sign on behalf of the firm

"Farbwerke vorm. Meister Lucius & Brüning" at Höchst-on-Main.

Höchst-on-Main, March 5th, 1914.

Schreiber,
Bonighiber Notar.

No. 121. Not. Reg. fr 1914
Kosten Wert 3000 mk.

1. geb. 143 p. g. K geb.	1.90 M.
2. Pauschsatz	0.50 "
3. Stpl. 3 Cnzl.	3.00 "
Pu	5.40 mk Tinnon

KINGDOM OF PRUSSIA, EMPIRE OF GERMANY,
Province of Hesse-Nassau,
CONSULATE GENERAL OF THE U. S. OF AMERICA, at Frankfort-on-Main, } *ss:*

I, Heaton W. Harris, Consul General of the United States of America at FRANKFORT-ON-MAIN, GERMANY, duly commissioned and qualified, do hereby certify that Mr. Norbert Schreiber whose name is subscribed to the document hereunto annexed was at the time of subscribing the same Notary Public at Hoechst-on-Main, Prussia, Germany, duly commissioned, and that his signature and official seal affixed thereto are genuine and as such are entitled to full faith and credit.

In witness whereof I have hereunto set my hand and official seal this 1. day of April 1914.

H. W. HARRIS
Consul General of the United States of America.

* * * * * * * * *
* H. W. H. *
* 4/1st/14 *
* AMERICAN *
* CONSULAR *
* SERVICE $2 *
* FEE STAMP *
* * * * * * * * *

AMERICAN
CONSULATE
GENERAL
FRANKFORT
ON-MAIN
GERMANY

No. 257 Fees $2.00 recd.
equal to Marks 8.50

Recorded May 6, 1914.

PLAINTIFF'S EXHIBIT No. 406.

Address Communications to
Federal Trade Commission

In Replying Please Quote
Enemy Trade Div.
M. R. W.

FEDERAL TRADE COMMISSION
WASHINGTON

August 29, 1919.

M. R. W-G. L. K
8-29-19

* * * * * * * * * * * * * * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received AUG. 30, 1919 *
* Noted........Date........ *
* Ans'd........Date........ *
* * * * * * * * * * * * * * * * * * * *

Alien Property Custodian,
16th and P Streets, N. W.,
Washington, D. C.
Attention Robert C. Goldstein,
Division of Patents.

Dear Sir:

In connection with License No. 10 (Patent) dated January 17, 1918, to Lembcke von Bernuth Co., Inc. under Patents Nos. 709,799, (reissue No. 12,707) and Patent No. 1,008,864 to Max Rueping for Methods of Impregnating Wood, please be advised that this Commission is in receipt of a report showing that during the accounting period from January 31, 1919, to July 31, 1919, inclusive, royalty accrued under said license in the amount of $10,113.71. The licensee has been instructed to make payment to your Office of this amount. Said amount when received is to be held as a Trust Fund for Lembcke von Bernuth Company, Inc., and Hulsberg & Cie. The usual receipt form is enclosed. Please fill out and return when payment has been received.

Very truly yours,
(Sgd.) M. R. WILSON
M. R. Wilson,
Chief, Enemy Trade Div.

Encl: 1.

PLAINTIFF'S EXHIBIT No. 407.

Agreement made this 12th day of November 1902, between Farbwerke vorm. Meister Lucius & Bruening, a corporation organized and existing under the laws of Germany, having its principal place of business at Hoechst near Frankfort-on-the-Main (hereinafter called the Farbwerke); Herman A. Metz, of the City of New York; Victor Koechl & Co., a corporation organized and existing under the laws of West Virginia, having its principal business office in the City of New York; and The Consolidated Color & Chemical Company, a corporation organized and existing under the laws of New Jersey, having its principal business office at Newark in the last named State; Witnesseth:

I:

That the said Metz shall cause to be formed under the laws of the State of New York a corporation under the name of H. A. Metz & Co., with power to take over and continue all of the business of said Victor Koechl & Co., and with such further and other powers as to him may seem advisable; which new corporation shall have a capital of Two Hundred Thousand 00/100 ($200,000.) Dollars, divided into two thousand (2000) shares of the par value of One Hundred Dollars each, all common stock. It is intended that there shall be five organizers of the said corporation, to wit: the said Metz; Charles L. Gagnebin of Brookline, Massachusetts; Charles Fuehrlein of Jersey City, New Jersey; Charles M. Patterson, of Providence, Rhode Island; and Eugene Widmann of Brooklyn, New York; and that the directors for the first year be three in number, to wit: the said Metz, Fuehrlein, and Gagnebin. But should any of the said proposed organizers or directors, except said Metz, for any reason fail or refuse to act as such, the said Metz may select any other person or persons so to act. Each of said organizers shall subscribe for one share of stock by the certificate of incorporation; and the said Metz shall thereafter subscribe for the remaining shares.

II:

Victor Koechl & Co., immediately upon the organization of H. A. Metz & Co., will sell, assign, transfer and set over unto the said Metz in consideration of stock of the said Victor Koechl & Co. as hereinafter provided, all of the furniture, fixtures, money and securities for money, contracts, leases, books, papers, bills, notes, accounts receivable, cash on hand and in bank, merchandise, machinery, samples, patents, processes, secrets, formulæ, trademarks, good-will and assets of every name and nature, whether tangible or intangible (except its tradename), employed by or appertaining to any business now being carried on by the said Victor Koechl & Co., except its pharmaceutical business; and the said Metz agrees to purchase the said assets and pay for the same by transferring to the said Company two thousand (2000) shares of the preferred stock and twenty-nine hundred (2900) shares of the common stock of Victor Koechl & Co., aggregating the par value of Four Hundred and Ninety Thousand 00/100 ($490,000.) Dollars, belonging to him. An inventory of the assets so to be sold shall be made by the said Metz as of January 1st, 1903.

III:

Victor Koechl & Co. will thereupon, pursuant to the statute of West Virginia in such case made and provided, forthwith retire all of the said preferred stock and twenty-five hundred (2500) shares of the said common stock so acquired by it; thus reducing its capital stock to Fifty Thousand 00/100 ($50,000) Dollars divided into five hundred (500) shares of common stock of the par value of One Hundred Dollars each; whereof one hundred (100) shares will then be outstanding in the name or under the control of said Metz, and four hundred (400) shares will then be in the treasury of said Company. And it is agreed that if and when said treasury stock is issued by said Company, it shall be divided between said Metz and the said Farbwerke in the proportion of three shares to the said Metz and one share to the said Farbwerke. But the said stock shall be issued to the said Metz and by him distributed by endorsement and delivery of the certificates of stock, as provided in paragraph X. *infra,* unless the said Farbwerke request that its shares be issued to it direct.

IV:

Said Metz will thereupon, on or as of January 1st, 1903, sell and assign to the said Farbwerke for the sum of Two Thousand Five Hundred 00/100 ($2,500) Dollars cash, and said Farbwerke will buy from the said Metz for said sum, twenty-five (25) shares of the capital stock of Victor Koechl & Co., being one-quarter of the one hundred (100) shares remaining outstanding in accordance with the last foregoing paragraph.

V:

Said Metz and said Victor Koechl & Co. agree that the assets which are to remain in possession of said Company after the sale to be made pursuant to paragraph II. *supra* (to wit, the assets of the pharmaceutical business) will at the time of said sale be of the book value of at least Ten Thousand 00/100 ($10,000) Dollars.

VI:

All of the assets purchased by the said Metz from Victor Koechl & Co., as provided in paragraph II. *supra,* shall be sold by him to, and purchased from him by, the said H. A. Metz & Co., in consideration of the entire issue of capital stock of the said last named corporation, which stock shall be issued as follows:

To the said Metz,	1,996 shares
To each of the other four organizers one share,	4 shares
Total,	2,000 shares

VII:

The said Metz will thereupon, on or as of January 1st, 1903, sell and assign to the said Farbwerke, for the sum of Fifty Thousand 00/100 ($50,000) Dollars in cash, and the said Farbwerke will buy from said Metz for said sum, five hundred (500) shares of the capital stock of H. A. Metz & Co., being one quarter of the said capital stock.

VIII:

The Consolidated Color & Chemical Company shall forthwith, pursuant to the Statute of New Jersey in such case made and provided increase its authorized capital stock from Fifty Thousand 00/100 ($50,000) Dollars to Two Hundred Thousand ($200,000) Dollars. The authorized increase of fifteen hundred (1500) shares (all to be common stock) will be issued to the said Metz (who already owns or controls the five hundred shares of stock now outstanding), in consideration of the transfer by said Metz to the Consolidated Color & Chemical Company of real estate, plant, and other assets suitable to its business, which assets shall be of sufficient book-value, when added to the book-value of the present assets of said Company, to make a total book-value of Two Hundred Thousand 00/100 ($200,000) Dollars, over and above all liabilities. And said Metz agrees to transfer such assets to said Company in consideration of the stock issued as aforesaid. An inventory of the assets so to be sold shall be made by the said Metz as of January 1st, 1903.

IX:

The said Metz will thereupon, on or as of January 1st, 1903, sell and assign to the Farbwerke for the sum of One Hundred Thousand 00/100 ($100,000.) Dollars in cash, and the said Farbwerke will buy from the said Metz for said sum, one thousand (1000) shares of the capital stock of the Consolidated Color & Chemical Company, of which, however, the Farbwerke will transfer two (2) shares to such two persons as the said Metz may designate (one share to each) for the purpose of qualifying them as directors. And the said Metz agrees that of the one thousand (1000) shares retained by him, he will transfer two (2) to two other persons (one share to each) for the like purpose; so that, including the said Metz, there shall be five persons in the United States qualified to act as directors.

X:

The shares of the said three corporations to be sold by Metz to the Farbwerke as aforesaid, are to be transferred by endorsement and delivery of the certificates thereof; but the transfer shall not be entered upon the books of any of the corporations aforesaid, except upon demand of the said Farbwerke; nor shall the fact that the Farbwerke is a stockholder or has any share or interest in any of said Companies, be made known to any person or persons other than the parties to this agreement and such other persons to whom it must be disclosed in order to carry this Agreement into effect, or to carry on the business of said corporations. Said transfers, or any of them, on demand of the Farbwerke, will however at any time be entered upon the books of the respective corporations.

XI:

Should there at any time, while the said Farbwerke and the said Metz both continue to hold stock in any of said three American corporations, be an increase in the capital stock of any of said corporations, the new shares as, if, and when issued, shall be divided between the said Metz and the said Farbwerke in the following proportions: As to Victor Koechl & Co. or H. A. Metz & Co., three parts to the said Metz and one part to the said Farbwerke. As to the Consolidated Color & Chemical Company, one part to said Metz and one part to said Farbwerke. Any such new stock intended for the Farbwerke, must be issued to said Metz and by him transferred by endorsement and delivery of the stock certificates, so that the said Farbwerke need not appear as a stockholder of record, unless a demand be made by said Farbwerke that such stock be transferred to it of record or issued to it direct.

XII:

Before the Farbwerke shall sell or otherwise dispose of any of the stock of any of said three corporations (whether the shares to be transferred to it as of January 1st, 1903, as aforesaid, or shares subsequently acquired by it), to any person or persons other than said Metz,, it shall first tender all of such stock in all of such corporations to the said Metz or his personal representatives, and he or his said representatives shall have the right of pre-emption as to said shares at the following prices:

All of the shares of Victor Koechl & Co. then owned or controlled by the said Farbwerke, at the book value of the said shares at the time of tender;

All of the shares of H. A. Metz & Co. then owned or controlled as aforesaid, at par;

All of the shares of the Consolidated Color & Chemical Company, then owned or controlled as aforesaid, at the book value of the said shares at the time of tender:

The option hereby given is to purchase all of the shares of said three corporations, and is not an option to purchase the shares of one or two such corporations only.

XIII:

Should the said Metz die, or for any reason withdraw from the active management of the said three companies, he or his personal representatives, as the case may be, must tender all of the shares of stock in all of such corporations then owned or controlled by him or them, to the said Farbwerke; and the said Farbwerke shall have the right of pre-emption as to said shares at the following prices:

The original fifteen hundred (1500) shares of H.

A. Metz & Co. for Two Hundred and Fifty Thousand 00/100 ($250,000.) Dollars; and any shares of H. A. Metz & Co. representing an increase of capital stock then owned or controlled by the said Metz or his personal representatives, at par.

All of the shares of Victor Koechl & Co. then owned or controlled as aforesaid, for the book value thereof at the time of tender;

All of the shares of the Consolidated Color & Chemical Company, then owned or controlled as aforesaid, for the book value thereof at the time of tender.

The option hereby given is to purchase all of the shares of said three corporations, and is not an option to purchase the shares of one or two such corporations only.

XIV:

Said Metz agrees to continue, and the said Farbwerke agrees to continue him, in the active control and management of the said three corporations, for the term of five years from the first day of January, 1903, unless the Farbwerke becomes the owner or acquires control of all the stock of such corporations, in which case the authority of the said Metz as manager shall *ipso facto* cease.

And the said Farbwerke agrees that if the said Metz faithfully performs his obligations under this agreement, the said H. A. Metz & Co., for the term of five years from said January 1st, 1903, shall have the exclusive sale of the products of the said Farbwerke in the United States of America; and the said Farbwerke during the said term will not directly or indirectly sell any of its products to any other person, association or corporation in the United States of America, without the written consent of the said Metz first obtained; and the said Farbwerke during the said period will sell its products to the said H. A. Metz & Co. at their lowest market prices, and will not directly nor indirectly sell any of its products to any person, association or corporation in any part of the world, except to European manufacturers of goods similar to the products of said Farbwerke, at a lower price or upon more favorable terms than those given to the said H. A. Metz & Co.

This paragraph XIV. shall remain in force for a further period of five years from the 1st day of January, 1908, unless the said Metz or the said Farbwerke shall, on or before the 1st day of January, 1907, give written notice of intention to let the same expire on January 1st, 1908. Such notice may be given personally or by registered mail.

XIVa:

And the said Metz further agrees that so long as both he and the said Farbwerke remain stockholders in any of said three corporations, or so long as he remains manager of any of said corporations, and so long as the said Farbwerke faithfully observes the terms of this agreement, he will not, without the written consent of the said Farbwerke first obtained, directly or indirectly, as principal, agent, employe, partner, or director, engage or become interested in any other business of a nature kindred to that of any of the said three corporations, nor permit the use of his name in any such business.

XV:

The said Metz further agrees that he will not sell the whole nor any part of his stock in any of said three corporations to any person or persons other than the said Farbwerke, without first tendering all of such stock of all of said corporations to the said Farbwerke at the prices mentioned in paragraph XIII *supra;* and that for the period of three years after the sale by him to the Farbwerke of all of his stock in all of said three corporations, he will not, anywhere within the United States of America, except Nevada, without the written consent of the said Farbwerke first obtained, directly or indirectly, as principal, agent, employe, partner, or director, engage or become interested in any other business of a nature kindred to that of any of the said three corporations, nor permit the use of his name in any such business.

XVI:

All of the stock certificates already issued or hereafter to be issued by any of the said three American corporations (excepting those which are to be surrendered to Victor Koechl & Co. under paragraph II of this agreement, and excepting any certificates of shares, not exceeding five shares as to any one corporation, which it may be necessary or expedient to issue or from time to time transfer for the purpose of qualifying directors), are to be deposited, for the security of the rights of pre-emption by this agreement conferred upon the said Metz and the said Farbwerke respectively, with the Eastern Trust Company, in the City of New York, under a written contract between said Metz, said Farbwerke, and said Trust Company, to the effect that none of said certificates shall be delivered to any person whatever, except upon the written order of both the said Metz and the said Farbwerke, or their executors, administrators, legal successors or representatives. But the said contract with the Trust Company shall not defeat nor impair any right in, or claim upon, the said certificates or the shares thereby represented, based upon this agreement; and for an unauthorized refusal to join in a written order upon the said Trust Company for the delivery of any such certificates, the said Farbwerke or the said Metz, or their respective executors, administrators, legal successors or representatives, as the case may be, shall, of course, be liable to such judgment or decree as to any competent court may seem just.

XVII:

The said Metz, in his capacity as general manager of said three American corporations, will, within three months next after January 1st, and July 1st, in each year, while he continues in such capacity, render to the said Farbwerke a full, just, true and detailed account in writing of the assets and liabilities, profits and losses, earnings and expenses, of each of said corporations as of January 1st or July 1st, as the case may be. As to all of said corporations, the value of assets on hand for the purpose of the July account may be estimated; but account of stock shall be accurately taken for the purpose of the January statement. He further agrees, that during each month, while he continues as such general manager, he will make a written report to the said Farbwerke, containing a copy of the minutes of directors' and stockholders' meetings, certified by the secretary or assistant secretary of the company in question, and a general outline of the business of each of said corporations for the month immediately preceding such report. And the said minutes shall be a full and true record of all proceedings of such directors' and stockholders' meetings.

XVIII:

Said Metz has heretofore been accustomed to allow to certain of the employes of Victor Koechl & Co., in addition to their stated compensation, a bonus or premium, consisting of a part of his personal dividends or profits. It is his purpose to continue to do so as to all three of said corporations; but it is expressly agreed that while he, as manager, is hereby authorized (except as hereinbelow provided) to fix all regular salaries and compensation of employes of the said three American companies, as well as the expenses of said companies generally, yet any such bonus or premium must continue to be a charge upon the profits or dividends of said Metz personally, and must not be an expense of the business of any of said companies. On January 1st, 1903, said Metz will furnish to the Farbwerke a schedule of the salaries of the principal employes of the said three corporations, and he agrees that, so long as the said Farbwerke continues to own stock as aforesaid, he will not increase nor allow to be increased, the compensation of the said Gagnebin, Fuehrlein, Patterson, Widmann, or himself whether by way of salary or by way of bonus, without the consent of the Farbwerke first obtained.

XIX:

In case the management or control of the said three corporations passes to the said Farbwerke by reason of the death or retirement of said Metz, or the sale of his stock to it, if the said Gagnebin, Fuehrlein and Widmann, or either of them are or is at the time still in the service of any of said corporations, the said Farbwerke will cause their or his employment to be continued by the said corporation or corporations, for the further term of five years, upon the same terms as to salary, bonus and duties to be performed, as may be in force at the time of such change of management between the said employes respectively on the one hand, and the said corporation or corporations and said Metz on the other hand; upon the condition, however, that the said employes or employe shall agree with the said corporations or corporation and with the Farbwerke, that they or he will not, at any time within two years from the change of control as aforesaid, leave the service of such corporations or corporation, nor engage, directly or indirectly, in any competing business.

XX:

The phrase "book-value," when applied in this agreement to assets, means actual value; and when applied to a share of stock, means the value of such share as determined by deducting from the actual value of the assets of the corporation in question, the actual amount of its liabilities, and dividing the difference by the number of shares outstanding.

XXI:

Any tender provided for by this agreement may be made by depositing with the custodian of said stock (the Eastern Trust Company), a written order to deliver the certificates of stock to the party thereto entitled upon receipt of the agreed price thereof as aforesaid, and giving written notice of said order and of its deposit, personally or by registered mail, to the party entitled to the stock. The time for the acceptance of any such tender is limited to three months from the date of notice as aforesaid, except in a case where the price named in the order is disputed, in which case, if the dispute be referred to arbitration according to this agreement, the time for acceptance shall continue for one month after the arbitrators will have made their award and given written notice thereof to the parties or their representatives, in person or by registered mail. Any refusal or neglect to submit such dispute forthwith to arbitration shall terminate the right of the party, so refusing or neglecting, to purchase the stock in question, and shall confer upon the other party the unlimited right to sell such stock when, and to whom, such party pleases.

XXII:

Wherever in the foregoing agreement, the said Metz undertakes, in certain contingencies, to transfer to the Farbwerke all of the stock owned or controlled by him, in the corporations named, it is understood that he or his personal representatives are so to transfer not only the stock belonging to him or them, but also any shares which may have been transferred by the Farbwerke or Metz to any persons of his own selection to qualify them as directors. But any such qualifying shares which may have been contributed by the said Farbwerke need not, of course, be paid for a second time by said Farbwerke.

XXIII:

Should any dispute arise between or among the parties to this agreement, under or concerning the terms thereof such dispute shall be submitted to three arbitrators, of whom one shall be appointed by the said Farbwerke, its legal representatives or successors; one shall be appointed by the said Metz, or his legal representatives; and the third shall be appointed by the two thus chosen. And the award or determination of any two of the said three arbitrators shall be binding and conclusive upon all of the parties to this agreement.

XXIV:

When by the terms of this agreement notice may be given by registered mail, it is understood that such notice is to be sent in duplicate, each counterpart being enclosed in a separate envelope, one of said counterparts to be mailed on the day of its date, and the other not less than one week nor more than ten days thereafter. Such notice shall date from the mailing of the first counterpart.

ADDENDUM:

It is expressly agreed that business-failure either of said Metz or of said Farbwerke, accompanied by a general assignment for the benefit of creditors, or by bankruptcy, voluntary or involuntary, or by Konkursverfahren, or by a receivership, or by any like transfer of assets, shall entitle said Farbwerke or said Metz, as the case may be, to an immediate option to buy the entire holdings of stock of said Metz or said Farbwerke at the prices stated in paragraph XIII. as to a purchase by said Farbwerke, or at the prices stated in paragraph XII. as to a purchase by said Metz. In other words, business-failure of said Metz as aforesaid, will *ipso facto* give an immediate right to said Farbwerke to purchase from his assignee, trustee, receiver, or other like person, his stock in the three American corporations at the prices stated in paragraph XIII.; and business-failure of said Farbwerke will *ipso facto* give an immediate right to said Metz to purchase from its assignee, trustee, Konkursverwalter, receiver, or other like person, its stock in said corporations at the prices stated in paragraph XII. And any transfer of the stock of said Metz or of said Farbwerke, to an assignee, trustee, Konkurs-verwalter, receiver, or any like person as aforesaid, shall be subject to, or burdened with, the right of said Farbwerke or said Metz, as the case may be, to purchase said stock at the prices stated. Such right must be exercised by making tender of the agreed price to such assignee, trustee, Konkurs-verwalter, receiver or other like person, within three months after any such transfer; in default whereof the right so to purchase shall be deemed abandoned.

Such tender shall be made by depositing with the said Trust Company the amount to be paid, together with a written direction to pay the same over to such assignee, trustee, Konkurs-verwalter, receiver, or other like person, upon receipt from the latter of authority to deliver the stock certificates in question to the party making the tender; and by giving written notice of such deposit and direction, personally, to such assignee, trustee, Konkurs-verwalter, receiver, or other like person.

It is further agreed that the words "legal successors" or "legal representatives" in the foregoing Agreement shall be so construed as to include an assignee, trustee, Konkurs-verwalter, receiver, or other like person, wherever such construction shall be necessary to carry out the intent of said agreement and of this addendum.

It is further agreed that paragraph XIV. is to be interpreted, construed, and amplified, to mean that the Farbwerke will, as to prices, in no event permit underselling of said H. A. Metz & Co. in the markets of the United States; but in case of extraordinary or special instances, arising in the sale of the products of the Farbwerke in other countries, when it is necessary to meet special competition in such countries, the Farbwerke may, in order to meet such special competition, sell at prices below the "lowest market price" referred to in said paragraph XIV., which "lowest market price" means the general and ordinary lowest market price.

IN TESTIMONY WHEREOF the parties hereto have hereunto severally set their hands and seals, the day and year first above written.

The words "or otherwise" stricken out in paragraphs XIVa. and XV. before execution and the word "or" before "director" in both said paragraphs inserted before execution.

Witness:
(Sgd.) Frank H. Pierce.

(Sgd.) FARBWERKE VORM. MEISTER LUCIUS & BRÜNING,
D. G. Bruning, (Seal)
Attorney in Fact.

Witness as to
Dr. G. v. Bruening:
(Sgd.) Frank H. Pierce.

(Sgd.) FARBWERKE VORM. MEISTER LUCIUS & BRÜNING,
By A. W. Ridder, (Seal)
Director.

Witness as to
A. W. Ridder,
(Sgd.) Dr. H. von Meister,
(Sgd.) Adolphus Diehl.
By (Sgd.) D. H. v. Meister, (Seal)
Director.

Witness as to
H. A. Metz:
(Sgd.) Frank H. Pierce.
(Sgd.) HERMAN A. METZ. (Seal)

(Sgd.) VICTOR KOECHL & CO., (Seal)
By H. A. Metz,
President.
Attest
(Sgd.) Chas. Fuehrlein,
Treasurer.

(Sgd.) CONSOLIDATED COLOR & CHEMICAL CO., (Seal)
By H. A. Metz,
President.
Attest
(Sgd.) Jacob R. Roether,
Secretary.

State of New York,
City and County of New York, } *ss.:*

On this 12th day of November, 1902, before me personally come Dr. Gustav von Bruening, to me personlly known and known to me to be the Attorney in fact of Farbwerke vorm. Meister Lucius & Bruening, one of the corporations described in and which, by the said attorney in fact, executed the foregoing Agreement; and he acknowledged to me that he executed the same as the act and deed of said corporation, by virtue of a letter of attorney from the said corporation to himself, bearing date the 16th day of September, 1902.

(Seal) (Sgd.) FRANK H. PIERCE,
Notary Public #97,
New York Co.

State of New York,
City and County of New York, } *ss.:*

On this 12th day of November, 1902, before me personally came Herman A. Metz, to me known and known to me to be one of the individuals described in, and who executed the foregoing Agreement, and he acknowledged to me that he executed the same.

(Seal) (Sgd.) FRANK H. PIERCE,
Notary Public #97,
New York Co.

State of New York,
City and County of New York, } *ss.:*

On this 28th day of November 1902, before me personally came Charles Fuehrlein with whom I am personally acquainted, who being by me duly sworn, deposes and says: that he resides at 44 Madison Avenue in the City of Jersey City State of New Jersey; that he is the Treasurer of Victor Koechl & Co., one of the corporations described in and which executed the foregoing Agreement; that he is well acquainted with the corporate seal of said corporation; that the seal affixed to the foregoing Agreement is such corporate seal, and was affixed thereto by order of the Board of Directors of said corporation; and that he signed his name thereto by the like order, as Treasurer of said corporation; that he is well acquainted with Herman A. Metz and knows him to be the President of said corporation; that the signature of the said President subscribed to the said Agreement is in the genuine handwriting of the said president and was thereto subscribed by the like order of said Board of Directors in the presence of deponent.

(Seal) (Sgd.) FRANK H. PIERCE,
Notary Public, 97,
New York Co.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.:*

On this 28th day of November 1902, before me personally came Jacob R. Roether with whom I am personally acquainted, who being by me duly sworn, deposes and says: that he resides at 130 Shepherd Avenue in the Borough of Brooklyn City of New York State of New York; that he is the secretary of THE CONSOLIDATED COLOR & CHEMICAL COMPANY, one of the corporations described in and which executed the foregoing Agreement; that he is well acquainted with the corporate seal of said corporation; that the seal affixed to the foregoing Agreement is such corporate seal and was affixed thereto by order of the Board of Directors of said corporation; and that he signed his name thereto by the like order as secretary of said corporation; that he is well acquainted with Herman A. Metz and knows him to be the President of said corporation; that the signature of the said president subscribed to the said Agreement is in the genuine handwriting of the said president, and was thereto subscribed by the like order of said Board of Directors in the presence of deponent.

(Seal) (Sgd.) FRANK H. PIERCE,
Notary Public, 97,
New York Co.

UNITED STATES CONSULATE GENERAL, } *ss.:*
FRANKFORT-ON-THE-MAIN, EMPIRE OF GERMANY, }

BE IT KNOWN, that on the 11th day of December 1902, before me, Richard Guenther, Consul General of the United States of America at Frankfort-on-the-Main, personally came and appeared AUGUST DE RIDDER and DR. HERB. VON MEISTER, to me personally known and known to me to be two of the Directors of FARBWERKE VORM. MEISTER LUCIUS & BRUENING, one of the corporations described in, and which by the said Directors executed the foregoing Agreement, and severally acknowledged that they executed the same as such Directors, and acknowledged said Agreement to be the act and deed of said corporation.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the seal of the said Consulate General, the day and year last above written.

(Seal)

(Sgd.) RICHARD GUENTHER,
Consul General.

* * * * * * * * * * *
* No. 864 *
* Fee of $2.00, or *
* Mks. 8.50, rec'd *
* * * * * * * * * * *

NOTE to paragraphs I., VII., and XIII., of the Agreement between FARBWERKE VORM. MEISTER LUCIUS & BRUENING, HERMAN A. METZ, VICTOR KOECHL & Co., and THE CONSOLIDATED COLOR & CHEMICAL COMPANY, bearing date the day of 1902.

The said Farbwerke and the said Metz, being desirous that their reason for fixing the price of Two Hundred and Fifty Thousand 00/100 ($250,000.00) Dollars upon the original fifteen hundred (1500) shares of H. A. Metz & Co. mentioned in said paragraph XIII., should appear of record, hereby declare such reason to be that said sum of $250,000 when added to the $50,000 to be paid by the Farbwerke to the said Metz under said paragraph VII., will make a total of $300,000 to be paid in the event that the said Farbwerke acquires all of the 2,000 shares of H. A. Metz & Co. described in said paragraph I.; $300,000 being the same sum which was paid by the said Metz for the business of Victor Koechl & Co. when he purchased the same from its former owner.

Dated, New York, Nov. 12th 1902.

(Sgd.) HERMAN A. METZ,

FARBWERKE VORM. MEISTER LUCIUS & BRUENING.

By (Sgd.) A. DE RIDDER,
Director.

By (Sgd.) D. H. v. MEISTER,
Director.

PLAINTIFF'S EXHIBIT No. 408.

AGREEMENT made the 4TH DAY OF AUGUST, 1905, between the FARBWERKE VORM. MEISTER LUCIUS & BRUENING, a corporation organized and existing under the laws of Germany, having its principal office in Hoechst-on-M, near Frankfort-on-M (herein called the Farbwerke); HERMAN A. METZ, of the City of New York; VICTOR KOECHL & Co., a corporation organized and existing under the Laws of West Virginia, having its principal office in the City of New York; the CONSOLIDATED COLOR & CHEMICAL COMPANY, a corporation organized and existing under the laws of New Jersey, having its principal office in Newark in the same State, and H. A. METZ & Co., a corporation organized and existing under the Laws of New York, having its principal office in the City of New York in the same State.

BE IT KNOWN:

WHEREAS it is expedient to alter and amend in several respects the agreement made on the 12th day of November, 1902, between the first four parties above named, the following has been agreed upon by way of supplement to the said agreement.

I: Herman A. Metz agrees and the Farbwerke likewise agrees that the said Metz continue to act as heretofore as Manager of the above named three American corporations, for the term of seven years from the 1st day of January, 1905, provided that the Farbwerke do not in the meantime become the owner or acquire the control of the total capital stock of such three corporations, in which event the position of said Metz as Manager shall *ipso facto* cease, as has been provided in the agreement of November 12th, 1902. In any event the position of said Metz as Manager shall end on the 31st day of December, 1911, unless the said Metz and the said Farbwerke shall before that time have agreed that the said Metz shall continue to act as Manager for the three corporations.

II: From the first day of January, 1905, throughout the time during which the said Metz shall act as Manager of the three corporations, Herman A. Metz and the Farbwerke shall so divide the profits of said three corporations that the Farbwerke shall receive one-half of the entire profit of each corporation. Accordingly, the said Metz agrees, insofar as the Farbwerke would be entitled to less than the half as shareholder of the corporations, to pay to the Farbwerke the balance of the said half out of the share of profits coming to him; the Farbwerke on its part accordingly agrees, insofar as it would receive more than half of the total profits of any corporation as a shareholder, to pay over the overplus to the said Metz. Nevertheless, after the expiration of five years, that is to say, from and after January 1st, 1910, if the Farbwerke shall deem it expedient and shall demand it for the remaining time during which the said Metz is to act as Manager, the profit of the Hoechst Color Company shall be so divided that the said Metz shall receive one-fourth of the same—that of the remaining three-fourths of the principal employees shall first of all receive a suitable portion to be agreed upon (and, accordingly, the said Metz will allow nothing more to the employees out of his own profits), and that the Farbwerke shall receive the profit then still remaining.

The Farbwerke agrees further to pay over to the said Metz during the time for which he acts as Manager of the three corporations, one-fourth of the profits which they will derive from sales to such three corporations.

III: Said Metz and H. A. Metz & Co. agree that the name of the said H. A. Metz & Co. will be changed to Hoechst Color Company, at the time when the

Farbwerke may deem such change expedient and may demand it. By this change of name nothing will be altered as to any agreements or relations of the contracting parties—but the Hoechst Color Company will in every respect take the place of H. A. Metz & Co.

The Farbwerke also reserves the right to install as President of the Hoechst Color Company, one of its (the Farbwerke's) Board of Directors (Aufsichtsrath) or Managing Board (Vorstand), in lieu of the said Metz, who is at this time President of H. A. Metz & Co., and who accordingly is also in contemplation as President of the Hoechst Color Company.

IV: H. A. Metz & Co. (or as the case may be, the Hoechst Color Company) agrees not to buy or sell any products competing with those of the said Farbwerke, without reporting such purchases to the Farbwerke, for its approval or disapproval. The said H. A. Metz & Co. (or the Hoechst Color Company) agrees to send a report every three months to the Farbwerke, of all such competing products purchased, whether with or without its permission, and to deliver samples of said products to the Farbwerke if it shall so desire, and, furthermore, to send to the Farbwerke as often as it may so demand, a statement of the stock-in-trade on hand, and to give to the Farbwerke weekly, when requested, a statement of all goods and wares delivered, with the prices. From and after the time of the change of name from H. A. Metz & Co. to Hoechst Color Company, all goods sold by the Hoechst Color Company shall be branded or labeled with no other name than that of the Hoechst Color Company.

V: Herman A. Metz agrees to sell and transfer to the Farbwerke, for the sum of Sixty Thousand

00/100 ($60,000.00) Dollars in cash, an additional six hundred shares of the capital stock of H. A. Metz & Co. After the sale and transfer of these six hundred shares, in case there should be an increase of the capital stock of H. A. Metz & Co. (or Hoechst Color Company), the new shares shall be divided between the said Metz and the said Farbwerke (if both are at that time still stockholders) in proportion to their holdings of stock.

Herman A. Metz further agrees to sell and transfer to the Farbwerke, for the sum of Twenty-five Hundred 00/100 ($2,500.00) Dollars in cash, an additional twenty-five shares of the capital stock of Victor Koechl & Co.

The Farbwerke will, furthermore, pay to the said Metz the sum of Forty Thousand 00/100 ($40,000.00) Dollars in cash, upon the shares of H. A. Metz & Co. thus transferred.

The Farbwerke remains entitled, as provided in the agreement of November 12th, 1902, in case the said Metz should die or should withdraw from the active management of said three American corporations, to acquire from him or his personal representatives or legal successors, all shares still owned or controlled by him or them.

Nevertheless, in that event, if the said Farbwerke shall already have acquired the further six hundred shares from Metz as above contemplated, the price of the original nine hundred shares of H. A. Metz & Co. (or of the Hoechst Color Company), which shall still belong to the said Metz, shall be One Hundred and Fifty Thousand 00/100 ($150,000) Dollars.

If the said Farbwerke shall decline (after having previously acquired the six hundred shares) to take over the said original nine hundred shares from the said Metz or his personal representatives or legal successors, then it must pay to the said Metz or his personal representatives or legal successors upon the eleven hundred shares owned by it, an additional Fifteen Thousand 00/100 ($15,000) Dollars, so that the price of each share will be One Hundred and Fifty 00/100 ($150.00) Dollars.

VI: Said Victor Koechl & Co., and the said Consolidated Color & Chemical Company, agree at any time when the said Farbwerke shall so demand, to transfer to the said H. A. Metz & Co. (or said Hoechst Color Company), at book value, their entire business, with all books, moneys, stock of goods, credits, apparatuses, plants, patents, trade-marks, contracts, goodwill and everything else pertaining to the business, and to dissolve and liquidate. The said H. A. Metz & Co. (or Hoechst Color Company) agrees at the time when the said Farbwerke may so demand, to take over at book value the entire business of the said Victor Koechl & Co., and of the said Consolidated Color & Chemical Company.

VII: Except as modified by the foregoing agreement, the earlier agreement of November 12th, 1902, continues in force unchanged, and shall be deemed to have been made for a period extending to December 31st, 1911, instead of for five years from January 1st, 1903, only.

The provisions of Paragraph X. of said contract of November 12th, 1902, shall, of course, apply to the transfers of stock to the Farbwerke, under this present agreement of August 4th, 1905.

In Testimony Whereof the parties hereto have hereunto severally set their hands and seals, the day and year first above written.

FARBWERKE VON MEISTER, LUCIUS
(Seal) & BRÜNING.

Witness as to
Dr. G. Bruening
Dr. Herbert von Meister
Jean Grund.

(Seal) By (Sgd.) Dr. G. BRUNING,
Director.

and by

Witness as to
First Director.
(Sgd.) Adolf Haeuser,

(Seal) (Sgd.) D. HERBERT VON MEISTER,
Director.

Witness as to
Second Director.
(Sgd.) Heinrich Hahn.

(Seal) (Sgd.) HERMAN A. METZ.

Witness as to
H. A. Metz,
(Sgd.) J. A. Wygant.

CONSOLIDATED COLOR &
(Seal) CHEMICAL CO.,
(Sgd.) H. A. Metz,
President.

Attest
(Sgd.) Jacob R. Roether,
Secretary.

(Seal) VICTOR KOECHL & CO.,
(Sgd.) H. A. Metz,
President.

Attest
(Sgd.) Chas. Fuehrlein,
Treasurer.

(Seal) H. A. METZ & CO.,
(Sgd.) H. A. Metz,
President.

Attest
(Sgd.) Chas. Fuehrlein,
Treasurer.

UNITED STATES CONSULATE GENERAL,
FRANKFORT-ON-THE-MAIN, EMPIRE OF GERMANY, } *ss.:*

BE IT KNOWN, that on the 23rd day of November, 1905, before me, Richard Guenther, Consul General of the United States of America, at Frankfort-on-the-Main, personally came and appeared Dr. G. Brüning and Dr. Herbert Von Meister to me personally known and known to me to be two of the Directors of FARBWERKE vorm. MEISTER LUCIUS & BRUNING, one of the corporations described in, and which by the said Directors executed the foregoing Agreement, and severally acknowledged that they executed the same as such Directors, and acknowledged said Agreement to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Consulate General, the day and year last above-written.

(Sgd.) RICHARD GUENTHER,
U. S. Consul General.

(Seal)

* * * * * * *
* No. 848 *
* Fee of $2.00 or *
* Mks. 8.50 rec'd *
* * * * * * *

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.:*

On the 21st day of October, 1905, before me personally came HERMAN A. METZ, to me known and known to me to be one of the individuals described in, and who executed the foregoing Agreement, and he acknowledged to me that he executed the same.

(Sgd.) JOSEPHINE A. WYGANT,
(Seal) *Notary Public, Kings County*
Cert. filed in N. Y. Co.

State of New York,
City and County of New York, } *ss.:*

On this twenty-first day of October, 1905, before me personally came Charles Fuehrlein, with whom I am personally acquainted, who being by me duly sworn, deposes and says: that he resides at #44 Madison Ave., in the City of Jersey City, State of New Jersey; that he is the Treasurer of Victor Koechl & Co., one of the corporations described in, and which executed the foregoing Agreement; that he is well acquainted with the corporate seal of said corporation; that the seal affixed to the foregoing Agreement is such corporate seal, and was affixed thereto by order of the Board of Directors of said corporation; and that he signed his name thereto by the like order, as Treasurer of said corporation; that he is well acquainted with Herman A. Metz, and knows him to be the President of said corporation; that the signature of the said President subscribed to the said Agreement is in the genuine handwriting of the said President and was thereto subscribed by the like order of said Board of Directors in the presence of deponent.

(Sgd.) JOSEPHINE A. WYGANT,
(Seal) *Notary Public, Kings County.*
Cert. filed in N. Y. Co.

State of New York,
City and County of New York, } *ss.:*

On this 21st day of October, 1905, before me personally came Jacob R. Roether, with whom I am personally acquainted, who being by me duly sworn, deposes and says: That he resides at No. #130 Shepherd Ave., Borough of Brooklyn, City of New York, State of New York; that he is the Secretary of the

Consolidated Color & Chemical Company, one of the corporations described in, and which executed the foregoing Agreement; that he is well acquainted with the corporate seal of said corporation; that the seal affixed to the foregoing Agreement is such corporate seal, and was affixed thereto by order of the Board of Directors of said corporation; and that he signed his name thereto by the like order as Secretary of said corporation; that he is well acquainted with Herman A. Metz, and knows him to be the President of said corporation; that the signature of the said President subscribed to the said Agreement is in the genuine handwriting of the said President, and was thereto subscribed by the like order of said Board of Directors in the presence of deponent.

(Sgd.) JOSEPHINE A. WYGANT,
(Seal) *Notary Public, Kings County.*
Cert. filed in N. Y. Co.

State of New York,
City and County of New York, } *ss.:*

On this 21st day of October, 1905, before me personally came Charles Fuehrlein, with whom I am personally acquainted, who being by me duly sworn, deposes and says: That he resides at #44 Madison Ave., in the City of Jersey City, State of New Jersey; that he is the Treasurer of H. A. Metz & Co., one of the corporations described in, and which executed the foregoing agreement; that he is well acquainted with the corporate seal of said corporation; that the seal affixed to the foregoing agreement is such corporate seal, and was affixed thereto by order of the Board of Directors of said corporation; and that he signed his name thereto by like order as Treasurer of said corporation; that he is well acquainted with Herman

A. Metz, and knows him to be the President of said corporation; that the signature of said President subscribed to the said Agreement is in the genuine handwriting of the said President, and was thereto subscribed by the like order of the said Board of Directors, in the presence of deponent.

(Sgd.) JOSEPHINE A. WYGANT,
(Seal) *Notary Public, Kings County.*
Cert. filed in N. Y. Co.

PLAINTIFF'S EXHIBIT No. 409.

Duplicate Original

Supplemental Agreement made this 26 day of September, 1904, between Farbwerke vorm. Meister Lucius & Bruening, Herman A. Metz. Victor Koechl & Co., and The Consolidated Color & Chemical Company; Witnesseth:

Whereas, the said parties entered into an agreement as to certain business and stock transactions, which agreement is dated November 12, 1902, by virtue of which certain certificates of stock were deposited in the Eastern Trust Company in the City of New York; and

Whereas, the affairs of said Eastern Trust Company are about to be wound up owing to a voluntary dissolution, and said company, therefore, can no longer execute the trust as to said securities;

Now, it is agreed by and between the parties to said agreement of November 12, 1902, that said agreement shall be considered amended by substituting for the words "The Eastern Trust Company in the City of New York," wherever they occur, the words "Guardian Trust Company," and that all of the duties, rights and obligations of said Eastern Trust Company be transferred to and assumed by the Guardian Trust Company; so that the securities hitherto held by said Eastern Trust Company under said agreement of November 12, 1902, may hereafter be held by said Guardian Trust Company under the terms of said agreement precisely as if said latter company had been mentioned in said agreement in place of said Eastern Trust Company.

Pursuant to the terms of said agreement of November 12, 1902, said Herman A. Metz and said Farbwerke hereby direct that the securities now held by said Eastern Trust Company and which were deposited with it by said Metz and said Farbwerke on February 4, 1903, be delivered, together with the copy of the agreement of November 12, 1902, at the time deposited with said Eastern Trust Company, to said Metz and to Fred. W. and A. E. Hinrichs, attorneys at law of 76 William Street, Manhattan, N. Y., representing said Farbwerke, in order that said securities may be deposited with the Guardian Trust Company under an agreement with the latter company such as was entered into with the Eastern Trust Company at the time of the deposit of said securities with it.

In Testimony Whereof the parties hereto have hereunto severally set their hands and seals the day and year first above written.

Witness as to

No. 288 N Ave. Reg. No. 1904.

Nebenstehende Namensunterschrift des Vorstandes der Aktien-Gesellschaft Farbwerke, vorm. Meister Lucius u. Brüning, Höchst a. M., des Hrn. August de Ridder zu Höchst ist in meiner Gegenwart heute eigenhändig von Ihm vollzogen.

Höchst a. M. 1904, Septemb. 16,

der königliche Notar,

(Sgd.) L. FEINGOLD.

Witness as to

Nebenstehende Namensunterschrift des Mitgliedes des Vorstandes der Aktien-Gesellschaft Farbwerke vorm. Meister Lucius u. Brüning Höchst a. M., des Hrn. Dr. Gustav von Brüning zu Höchst a. M., ist in meiner Gegenwart heute eigenhändig von Ihm vollzogen.

Höchst a. M. 1904, Septemb. 16,
der königliche Notar,
(Sgd.) L. FEINGOLD.

FARBWERKE VORM. MEISTER
LUCIUS & BRUENING, (Seal)
(Sgd.) AUGUST DE RIDDER.

FARBWERKE VORM. MEISTER
LUCIUS & BRUENING, (Seal)
DR. GUSTAV VON BRUENING.

Witness as to
HERMAN A. METZ:
(Sgd.) FRED W. HINRICHS.

HERMAN A. METZ. (Seal)
VICTOR KOECHL & CO., (Seal)
(Sgd.) By H. A. METZ,
President.

Attest:
(Sgd.) CHAS. FUEHRLEIN,
Treasurer.

CONSOLIDATED COLOR &
CHEMICAL CO., (Seal)
(Sgd.) By H. A. METZ,
President.

Attest:
(Sgd.) CHAS. FRANKLIN,
(Sgd.) CHAS. FUEHRLEIN,

UNITED STATES CONSULATE GENERAL,
FRANKFORT-on-the-MAIN, Empire of Germany, } *ss.:*

BE IT KNOWN, that on the 26th day of September, 1904, before me, George H. Murphy, Vice and Deputy Consul General of the United States of America at Frankfort-on-the-Main, personally came and appeared August de Ridder and Dr. Gustav von Brüening, to me personally known and known to me to be two of the Directors of Farbwerke vorm. Meister Lucius & Bruening, one of the corporations described in and which by the said Directors executed the foregoing instrument, and severally acknowledged that they executed the same as such Directors, and acknowledged said instrument to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Consulate General, the day and year last above written.

(Seal)

(Sgd.) GEORGE H. MURPHY,
American Vice & Dep.
Consul General.

* * * * * * * *
* No. 690 *
* Fee of $2.00 or *
* Mks. 8.50, rec'd *
* * * * * * * *

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.:*

On this 17th day of October, 1904, before me personally came Herman A. Metz, to me known and known to me to be one of the individuals described in, and who executed the foregoing Agreement, and he acknowledged to me that he executed the same.

(Sgd.) JOSEPH B. BRAMAN,
(Seal) *Notary Public,*
New York County
120 and 1274 Broadway, New York City.

State of New York,
City and County of New York, *ss.:*

On this 17th day of October, 1904, before me personally came Charles Fuehrlein, with whom I am personally acquainted, who being by me duly sworn, deposes and says: that he resides at 44 Madison Avenue, in Jersey City, State of New Jersey; that he is the treasurer of Victor Koechl & Co., one of the corporations described in, and which executed the foregoing Agreement; that he is well acquainted with the corporate seal of said corporation; that the seal affixed to the foregoing Agreement is such corporate seal, and was affixed thereto by order of the Board of Directors of said corporation; and that he signed his name thereto by the like order, as treasurer of said corporation; that he is well acquainted with Herman A. Metz, and knows him to be the President of said corporation; that the signature of the said President subscribed to the said Agreement is in the genuine handwriting of the said President and was thereto subscribed by the like order of said Board of Directors in the presence of deponent.

(Sgd.) CHAS. FUEHRLEIN.

Sworn to before me this
17th day of October,
1904.

(Sgd.) Joseph B. Braman.
(Seal) *Notary Public N. Y. Co.,*
120 and 1274 B'way, N. Y. City.

State of New York,
City and County of New York, } *ss.:*

On this 17th day of October, 1904, before me personally came Charles Fuehrlein, with whom I am personally acquainted, who being by me duly sworn, deposes and says: that he resides at 44 Madison Avenue, in Jersey City, State of New Jersey; that he is the treasurer of The Consolidated Color & Chemical Company, one of the corporations described in, and which executed the foregoing agreement; that he is well acquainted with the corporate seal of said corporation; that the seal affixed to the foregoing agreement is such corporate seal and was affixed thereto by order of the Board of Directors of said corporation; and that he signed his name thereto by the like order as treasurer of said corporation; that he is well acquainted with Herman A. Metz and knows him to be the President of said corporation; that the signature of the said President subscribed to the said Agreement is in the genuine handwriting of the said President, and was thereto subscribed by the like order of said Board of Directors in the presence of deponent.

(Sgd.) CHAS. FUEHRLEIN.
(Sgd.) JOSEPH B. BRAMAN,
(Seal) *Notary Public,*
New York County,
120 and 1274 Broadway,
New York City.

PLAINTIFF'S EXHIBIT No. 410.

AGREEMENT made the 22ND DAY OF JULY 1912, between FARBWERKE VORM. MEISTER LUCIUS & BRUENING, a corporation organized and existing under the Laws of Germany, having its principal place of business at Hoechst, near Frankfort-on-the-Main (hereinafter called the German corporation), HERMAN A. METZ, of the City of New York, H. A. METZ & Co., a corporation organized and existing under the Laws of the State of New York, and VICTOR KOECHL & Co., a corporation organized and existing under the Laws of West Virginia, WITNESSETH:—

1: H. A. Metz & Co., has instituted, and shall carry through to completion with all practicable dispatch, a proceeding under the statute in such case made and provided, for the change of its corporate name from the present name H. A. METZ & Co., to the name FARBWERKE-HOECHST COMPANY. As soon as such change of name shall take place, notice thereof shall be given by said Company to all persons having business relations with H. A. METZ & Co.; and the new name shall be employed upon the signs, labels, stationery, goods and other places and things upon which the name H. A. METZ & Co. has customarily appeared; and said new name shall thenceforth be used to the exclusion of the name H. A. METZ & Co. But it shall be permissible to use in connection with the name FARBWERKE-HOECHST COMPANY, the phrase "formerly H. A. METZ & Co.," or some other phrase of similar tenor; and such phrase shall be used so long, and in such form, as the German corporation may direct. Whenever in this contract H. A. METZ & Co. is referred to, it shall be understood that FARBWERKE-HOECHST COMPANY is implied, if the context permits.

2. Immediately upon the execution of this contract, the said HERMAN A. METZ shall sell, assign, transfer and set over to the said German corporation, eight hundred and ninety (890) shares of the capital stock of H. A. Metz & Co., and the said German corporation shall pay to the said METZ therefor the sum of One Hundred and Fifty Thousand Dollars ($150,000) in cash in lawful money of the United States. The said German corporation having heretofore acquired eleven hundred (1100) shares of the said capital stock, which 1100 shares still stand, however, upon the stock-book of the said H. A. METZ & Co., in the

name of the said Herman A. Metz, and (or) certain employees of H. A. Metz & Co.—it is agreed that the said 1100 shares heretofore acquired, and the said 890 shares hereafter to be acquired by the said German corporation, shall be forthwith transferred upon the books of H. A. Metz & Co. to the name of the said German corporation. Stock-transfer stamps as required by the laws of the State of New York, shall be duly affixed and canceled, at the expense of the vendor. The certificates of stock for said 1990 shares issued, and to be issued, pursuant to this agreement, to the said German corporation, shall be deposited in the Guardian Trust Company of New York, subject to the exclusive control and order of the said German corporation; and the fees and charges of the Guardian Trust Company for acting as custodian of said stock certificates shall be paid by the said German corporation.

3: The remaining 10 shares of the issued and authorized capital stock of H. A. Metz & Co., shall remain the outright property of Herman A. Metz, and shall stand in his name upon the books of the corporation.

4: Proceedings have been instituted, and shall be promptly carried to a conclusion, pursuant to the statute in such case made and provided, for the increase of the number of directors of H. A. Metz & Co. from three (the present number) to five. Such amendments of the By-Laws of H. A. Metz & Co. shall be promptly adopted, as may be required by reason of the change of name of the company, and the consequent change in the legend upon the seal of the company, and said By-Laws shall be further amended to provide for the election of two Vice-Presidents, instead of one as heretofore, and to provide that directors or officers holding over or appointed to fill a vacancy or serve an unexpired term, shall be subject to summary removal by the stockholders at any meeting duly called. Thereupon the directors now in office (except the said Metz) and those first appointed to bring the Board to its increased membership of five, shall respectively resign, and shall be reappointed to fill the vacancies caused by such resignations; and the officers (except the said Metz) shall in like manner resign, and be re-appointed to fill the vacancies caused by such resignations.

5: As soon as may be after the change of name and re-organization of H. A. METZ & Co., as heretofore provided, VICTOR KOECHL & Co. shall liquidate its affairs, go out of business, and become dissolved, in manner following: Said H. A. METZ & Co. shall forthwith institute a new department, to be known as the Pharmaceutical Department, which shall take over and continue the business that has heretofore been conducted by VICTOR KOECHL & Co., including dealing in the article known as "Salvarsan," and which shall conduct all the future pharmaceutical business of H. A. METZ & Co. The German corporation will transfer its consignment account from VICTOR KOECHL & Co. to said Pharmaceutical Department. Victor Koechl & Co. will then have no assets except cash and accounts receivable, and no liabilities except an indebtedness to the German corporation. VICTOR KOECHL & Co. will do no new business, but will collect said accounts receivable, pay off said indebtedness, and from time to time distribute all of the cash on hand and to be so collected (less necessary expenses of collection, and less expenses incidental to dissolution as hereinafter provided) one-half to the German corporation (owner of 50% of the capital stock of Victor Koechl & Co.) and one-half to Herman A. Metz (owner of the remaining 50% thereof). When the collection and distribution aforesaid are complete, the certificates of stock of Victor Koechl & Co. shall be surrendered to that company for cancellation, and thereupon the said company shall institute and carry to conclusion appropriate proceedings looking to a dissolution or other termination of its corporate existence. And the said Metz is hereby appointed Attorney in Fact of the German corporation, with power of substitution and revocation, in the name or on behalf of said corporation to do and perform any act or thing, and to execute any writing, that may be requisite or expedient for carrying out the provisions of this paragraph.

6: Separate books of account shall be kept by H. A. Metz & Co., one set for the business and transactions of its general business (meaning all of its business except that of its Pharmaceutical Department), —and one set for those of its Pharmaceutical Department; and the German corporation shall keep separate accounts of the pharmaceutical business transacted by it with H. A. Metz & Co. And the said Metz shall receive on account of compensation for his services as President and General Manager as hereinafter provided, twenty-five *per cent* of any net profits earned by the said German corporation in its dealings in pharmaceutical products with H. A. Metz & Co., and twenty-five *per cent* of any sums distributed as dividends by H. A. Metz & Co., out of the profits of its Pharmaceutical Department.

7: Herman A. Metz shall be retained, and agrees to serve, as President and General Manager of H. A. Metz & Co., at least until the 31st day of December, 1916, and thereafter for one year, in the absence of written notice, given at least six months in advance, by the said German corporation to said Metz, or by said Metz to the German corporation, that his term is to end on December 31st, 1916. And if not sooner terminated as aforesaid, then after December 31st, 1917, the term of said Metz as President and General Manager shall continue from year to year in the absence of such notice, given at least six months in advance, that said term shall cease on the 31st day of December then next ensuing. So long as the said Metz remains President and General Manager as aforesaid, he shall receive one-half of the net profits (except profits of the Pharmaceutical Department already provided for) that may from time to time be distributed by H. A. Metz & Co., as dividends. Out of the fifty *per cent.* of dividends thus paid to the said Metz, he shall retain twenty-five per cent. to his own use on account of his compensation, and shall personally distribute to certain of the other important employees of H. A. Metz & Co., the other twenty-five per cent. as a bonus in addition to salaries. But the said German corporation reserves the right at any time, upon written notice to said Metz, to re-arrange the distribution of such dividends, so that but one-fourth of such dividends thus distributed from time to time as aforesaid, shall be paid to the said Metz, on account of his compensation, and so that an amount equal to one-fourth of such dividends shall be divided by the German corporation direct among said other employees. But if the German corporation so undertakes the payment of bonuses to employees at any time before December 31st, 1916, it shall continue until such date and out of said amount equal to one-fourth of such dividends, to give to each of the said employees annually the same proportion of such dividends as the said Metz will be giving as of the time when the German corporation itself undertakes the distribution. Such proportion of dividends shall be paid as of the period in which they were earned. The shares of profits and dividends to be paid to the said Metz, as provided for in this and the preceding paragraph—shall be in full of his compensation.

7a: The powers and duties of said Metz as President and General Manager, shall be such as he has heretofore enjoyed and performed. He is hereby expressly authorized to determine the amount to be paid from time to time as dividends out of profits; provided that in the future, as in the past, due regard shall be had, in declaring dividends, to the needs of the business for a surplus in addition to capital to provide sufficient working-funds. And he is further expressly authorized (except as hereinbelow provided) to fix all regular salaries and compensation of employees of said H. A. Metz & Co., as well as the expenses of said company generally. Any bonus or premium paid to any of the employees in addition to salary, as hereinabove provided, must continue to be a charge upon the share of the said Metz personally in the profits or dividends, so long as the distribution of such bonus is left to him, and a charge upon the German corporation if it undertakes such distribution, and is not to be deemed an expense of the business of said H. A. Metz & Co. On the execution of this agreement, the said Metz will furnish to the German corporation a schedule of the salaries of the principal employees of said H. A. Metz & Co., and he agrees that he will not increase nor allow to be increased the compensation of Gagnebin, Fuehrlein, Widmann, Hein or himself, whether by way of salary, or by way of bonus, without the consent of the German corporation first obtained.

8: The dividends of H. A. Metz & Co. shall be paid in the usual manner to the holders of record of its stock; but in making division thereof between the German corporation and Herman A. Metz, the entire sum paid as dividends to all stockholders out of the profits of the general business shall be regarded as one amount, and the entire sum so paid out of the profits of the Pharmaceutical Department shall be regarded as another amount; and said entire sums shall be the basis for calculating the above fifty *per cent.* or the twenty-five *per cent.* (as the case may be). And the said Metz shall have no separate claim to the dividends, on the ten shares of stock of which he is to remain owner. Those portions of the profits of the pharmaceutical business of the German corporation, and those portions of the dividends of H. A. Metz & Co., out of the profits of its general business and out of the profits of its Pharmaceutical Department, which are not to be paid to Metz as aforesaid, are to be the property of the German corporation, subject only to the bonuses payable to employees as aforesaid if the German corporation elects to undertake such distribution.

9: In order that it may be practicable to pay dividends and make distribution of the amount thereof as above provided, and to attend to the necessary details of the business in the United States, the said German corporation will give to the said Metz a power of attorney authorizing him to receive, collect and give acquittance for, all dividends or other moneys of H. A. METZ & Co. (FARBWERKE-HOECHST COMPANY), payable or belonging to the said German corporation, and to deposit, and draw against, such dividends and moneys. And the said German corporation will also give to the said Metz a power of attorney or proxy to enable him to vote in its behalf at any special or annual meeting of stockholders of the said H. A. METZ & Co. Neither of the said powers of attorney shall be revocable so long as said Metz continues to be President and General Manager.

10: When the said Metz, whether pursuant to notice as aforesaid, or by reason of death or resignation by reason of mental or physical incapacity, or for any other reason, except a wilful breach of this contract on his part, ceases to be President and General Manager as aforesaid, there shall be paid to him or his estate his above-specified proportions of the profits and dividends as above provided, for the following periods: If he so ceases at a time on or after January 1st, and before July 1st, then he or his estate shall receive his above-specified proportions (so far as not already drawn by or paid to him) of the profits and dividends for the six months ending June 30th; while if he so ceases at a date on or after July 1st, and before January 1st, he or his estate shall receive his above-specified proportions of the profits and dividends (so far as not already drawn by or paid to him) for the entire year ending December 31st. The total amount of the dividends for any such period, shall be in the same proportion to the actual profits of such period as the dividends of the previous year bore to the actual profits of such previous year, unless it shall hereafter be agreed by the said German corporation and the said Metz, in a supplemental agreement in writing signed by them both, that this paragraph shall be otherwise construed.

11: And the said German corporation agrees that if the obligations under this agreement by the other parties to be performed are faithfully performed by them, the said H. A. Metz & Co., so long as the said Metz remains President and General Manager as aforesaid, shall have the exclusive sale of the products of the said German corporation in the United States of America; and the said German corporation during the said term will not, directly or indirectly, sell any of its products to any other person, association or corporation in the United States of America, without the written consent of the said Metz first obtained; and during the said period it will sell its products to the said H. A. Metz & Co. at their lowest market prices, and will not, directly, or indirectly, sell any of its products to any person, association or corporation in any part of the world, except to European manufacturers of goods similar to the products of said German corporation, at a lower price or upon more favorable terms than those given to the said H. A. Metz & Co. This paragraph is understood to mean that the German corporation will, as to prices, in no event permit underselling of said H. A. Metz & Co. in the markets of the United States; but in case of extraordinary or special instances, arising in the sale of the products of the German corporation in other countries, when it is necessary to meet special competition in such other countries, the German corporation may, in order to meet such special competition, sell at prices below the "lowest market price" above referred to, which "lowest market price" means the general and ordinary lowest market price.

12: The said Metz agrees that so long as he remains President and General Manager as aforesaid, and in any event until the 1st day of January, 1917, he will not, without the written consent of the said German corporation first obtained, directly or indirectly, as principal, agent, employee, partner or director, engage or become interested in any other business of a nature kindred to that of any of the corporations which are parties to this agreement, nor permit the use of his name in any such business, except that he may continue his present connection with the CONSOLIDATED COLOR & CHEMICAL COMPANY, a New Jersey corporation (in which Company, or its stock, said German corporation is no longer interested), so long as said Consolidated Color & Chemical Co. does not compete in other kinds of products than those which it now manufactures and deals in. On the execution of this Agreement, said Metz shall furnish to said German corporation a list of the products of the Consolidated Color & Chemical Co., which enter into competition with those of any of the corporations which are parties to this agreement. And until said 1st day of January, 1917, the agreement in this paragraph contained shall remain in force even though the said Metz should cease to be President and General Manager as aforesaid; but after the last-mentioned date, the agreement in this paragraph contained shall remain in force only so long as the said Metz shall remain President and General Manager as aforesaid.

13: The said Metz, as President and General Manager, will, while he continues in such capacity, within three months next after January 1st, and July 1st, in each year, render to the said German corporation a full, just, true and detailed account in writing of the assets and liabilities, profits and losses, earnings and expenses, of the general business and (separately) of the Pharmaceutical Department of said H. A. Metz & Co., as of January 1st or July 1st, as the case may be. For the purposes of the July account, the value of assets on hand may be estimated; but account of stock shall be accurately taken for the purpose of the January statement. He further agrees that during each month while he continues in such capacity, he will make a written report to the said German corporation, containing a copy of the Minutes of Directors' and Stockholders' meetings, certified by the Secretary or Assistant Secretary of H. A. Metz & Co., and a general outline of the business of the said company for the month preceding such report. And the said minutes shall be a full and true record of all proceedings of such Directors' and Stockholders' meetings.

14: In case for any reason the said Metz ceases before December 31st, 1916, to be President and General Manager as aforesaid, if Messrs. Gagnebin, Fuehrlein, Widmann and Hein (who are amongst the important employees referred to in paragraph 7 of this Agreement) or either of them, are or is, at the time still in the service of H. A. Metz & Co., the said German corporation will cause their or his employment to be continued by the said H. A. Metz & Co.

until December 31st, 1916, upon the same terms as to salary, bonus and duties to be performed, as may be in force at the time between the said employees respectively on the one hand, and the said H. A. Metz & Co., and (or) said Metz on the other hand; upon the condition, however, that each of the employees in question shall at the time agree in writing with his employer and with the German corporation that he will not at any time within two years after January 1st, 1917, engage, directly or indirectly, in any competing business.

15: Any notice to be given by any of the parties to this agreement to any other party, shall be in writing, and may be delivered personally or by registered mail; but if given by registered mail, it must be sent in duplicate, each counterpart being enclosed in a separate envelope, one to be mailed on the day of its date, and the other not less than one week nor more than ten days thereafter. A notice given by mail shall be deemed to have been given on the day of the mailing of the first counterpart. If the length of notice is not otherwise specified by this agreement, thirty days' notice shall be understood. Notices by mail shall be addressed as follows:

H. A. METZ, 122 Hudson Street, New York City.
FARBWERKE VORM. MEISTER LUCIUS & BRUENING,
Hoechst a/M., Germany.
H. A. METZ & CO. or
FARBWERKE-HOECHST COMPANY,
122 Hudson Street, New York City.
VICTOR KOECHL & CO.,
122 Hudson Street, New York City.

16: So long as paragraph 11 of this agreement remains in force, the said H. A. Metz & Co. agrees not to buy or sell any products competing with those of the said German corporation, without referring each such transaction to the German corporation for its approval or disapproval. And said H. A. Metz & Co. agrees to send a report every three months to the German corporation of all such competing products purchased, whether with or without its permission, and to deliver samples of said products to the German corporation, if it shall so desire, and furthermore to send to the German corporation as often as it may so demand, a statement of the stock-in-trade on hand, and to give to the German corporation weekly, when requested, a statement of all goods and wares delivered, with the prices.

17: Should any dispute arise between or among the parties to this agreement, under or concerning the terms thereof, such dispute shall be submitted to three arbitrators, of whom one shall be appointed by the said German corporation, its legal representatives or successors; one shall be appointed by the said Metz, or his legal representatives, and the third shall be appointed by the two thus chosen. And the award or determination of any two of the said three arbitrators, shall be binding and conclusive upon all of the parties to this agreement.

18: This agreement merges and supersedes all previous agreements between the parties in relation to the same subject-matter, and especially the written agreement dated November 12th, 1902, between the said German corporation, Herman A. Metz, Victor Koechl & Co., and Consolidated Color & Chemical Co., also the written agreement signed and acknowledged by Herman A. Metz, in the presence of Charles Edgar Mills, on February 4th, 1903; also the written agreement dated August 4th, 1905, between the said German corporation, Herman A. Metz., Victor Koechl & Co., the Consolidated Color & Chemical Co., and H. A. Metz & Co., also a supplement or postscript subscribed by the said German corporation, and dated the 18th day of August, 1909.

19: This agreement shall bind and accrue to the benefit of the several parties, and their respective heirs, personal representatives and successors.

IN WITNESS WHEREOF, the parties hereto have severally executed this instrument, the day and year first above written.

FARBWERKE VORM. MEISTER LUCIUS & BRÜNING,
(Seal)
(Sgd.) By HERBERT VON MEISTER,
Director.
(Sgd.) By ADOLF HAEUSER,
Director.

In presence of
(Sgd.) JOSEPH FLACH.

(Sgd.) HERMAN A. METZ, (Seal)

In presence of
(Sgd.) CHARLES FUEHRLEIN.

H. A. METZ & CO.,
(Sgd.) By H. A. METZ,
President.

(Seal of
H. A. M. & Co.)

Attest:
(Sgd.) A. H. HEIN,
Asst. Secy.

VICTOR KOECHL & CO.,
(Sgd.) By H. A. METZ,
President.

(Seal of
V. K. & Co.)

Attest:
CHARLES FUEHRLEIN,
Treasurer.

UNITED STATES CONSULATE
at Frankfort-on-the-Main, } *ss.:*
EMPIRE OF GERMANY,

On this 1st day of August, 1912, before me personally came Herbert von Meister, and Adolf Haeuser, to me personally known and known to me to be two of the Directors of FARBWERKE VORM. MEISTER LUCIUS & BRUENING, one of the corporations described in, and which, by the said Directors, executed the foregoing Agreement; and they severally acknowledged to me that they executed the same as the act and deed of said corporation.

(Sgd.) WILLIAM WARNER, JR.,
(Seal) *Vice & Deputy Consul General.*
No. 799. Fee $2.00 recd.
equal to Marks 8.50.

STATE OF NEW YORK,
THE CITY AND COUNTY OF NEW YORK, } *ss.:*

On this 22d day of July, 1912, before me personally came ALBERT H. HEIN, Assistant Secretary of H. A. METZ & Co., with whom I am personally acquainted, who being by me duly sworn, said that he resided in the City of South Orange, N. J., that he was the Assistant Secretary of H. A. METZ & Co.; that he knew the corporate seal of the said company; that the seal affixed to the above instrument was such corporate seal; that it was so affixed by order of the Board of Directors of the said Company; and that he signed his name thereto by the like order as Assistant Secretary of the said Company. And the said ALBERT H. HEIN further said that he was acquainted with HERMAN A. METZ, and knew him to be the President of said Company; that the signature of the said HERMAN A. METZ, subscribed to the said Instrument, was in the genuine handwriting of the said Herman A. Metz, and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Albert H. Hein.

(Sgd.) JACOB R. ROETHER,
(Seal) *Notary Public, Kings County.*
Certificate filed in N. Y. County.

State of New York,
The City and County of New York, } *ss.:*

On this 22 day of July, 1912, before me personally came Charles Fuehrlein, Treasurer of Victor Koechl & Co., with whom I am personally acquainted, who being by me duly sworn, said that he resided in the City of Jersey City, N. J., that he was the Treasurer of Victor Koechl & Co.; that he knew the corporate seal of the said Company; that the seal affixed to the above Instrument was such corporate seal; that it was so affixed by order of the Board of Directors of the said Company; and that he signed his name thereto by the like order as Treasurer of the said Company. And the said Charles Fuehrlein further said that he was acquainted with Herman A. Metz, and knew him to be the President of said Company; that the signature of the said Herman A. Metz subscribed to the said Instrument was in the genuine handwriting of the said Herman A. Metz, and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Charles Fuehrlein.

(Sgd.) JACOB R. ROETHER,
(Seal) *Notary Public, Kings County.*
Certificate filed in N. Y. County.

STATE OF NEW YORK, } *ss.:*
THE CITY AND COUNTY OF NEW YORK, }

On this 22 day of July, 1912, before me personally came HERMAN A. METZ, to me known and known to me to be the individual described in, and who executed the foregoing Instrument, and he duly acknowledged to me that he executed the same.

(Sgd.) JACOB R. ROETHER,
(Seal) *Notary Public, Kings County.*
Certificate filed in N. Y. County.

PLAINTIFF'S EXHIBIT No. 411.

[On Postal Telegraph Blank]

XIW BV 60 U S Gvt 905p

Washington DC Aug 21-14

Hon Herman A Metz,
House of Reps. Washn-DC

Just recd telegram from Consul General at Rotterdam as follows:

Quote No Dyestuffs here. No communication Rail or Boat Germany at present. Better conditions expected soon when Dyestuffs can be shipped through Holland to America. Buyers must deposit purchase money Rotterdam. Reliable agents available. End Quote.

W J BRYAN
Secy of State

PLAINTIFF'S EXHIBIT No. 412.

[On Postal Telegraph Blank]

3sdnf 31 USG 537p
Department of State Washington D C Aug 23-14
Honorable Herman A Metz
House of Reps or Residence
Washndc

Following just received from Frankfort quote. Communications concerning Dyestuff not yet obtained. Navigation on Rhine open far as Rotterdam. Unquote.

BRYAN

PLAINTIFF'S EXHIBIT No. 413.

[On Postal Telegraph Blank]

W 5 6 W 69 Collect N L 4 Extra
Washington DC Sept 17-14
Honorable Herman A. Metz
122 Hudson Street New York City

Following received from Ambassador Berlin dated sixteenth, this is for Representative Metz. Dr. Adolf Heanser Representing Farbwerke Meister Lucius says they are ready to deliver dyestuffs and medical chemicals F O B to Metz firm on neutral ship at Rotterdam but German Government will not permit export unless Metz guarantees that such goods will not be taken off by countries at war with Germany.

ROBERT LANSING
Acting Secretary of State

PLAINTIFF'S EXHIBIT No. 414.

New York, September 18, 1914.

Hon. Robert Lansing,
Acting Sec'y of State, Washington.

My Dear Mr. Lansing:

I thank you for your telegram, which I received this morning, conveying the news received from Ambassador Gerard regarding his interview with Dr. Adolf Haeuser, of Hoechst Farbwerke. I was very gratified to get this information. I would like to find out one thing more, and if you can have it added to a telegram sent to Ambassador Gerard, I will be obliged to you.

It refers to Ambassador Gerard's cable received on the 12th that the embargo on Salvarsan and Neosalvarsan to this country had been raised. If you can add the following to your telegram, I will appreciate it:

> "Representative Metz desires information when Hoechst Farbwerke will resume shipments Salvarsan and Neosalvarsan. Both urgently desired by Army, Navy and Public Health Service for continued treatments now in hand. Guaranteed for use in U. S. only."

With this information obtained through Ambassador Gerard, we will have no further trouble in satisfying any inquiries we may receive, so far as my end of the chemical and medicinal line is concerned.

It is quite natural that Germany desires to withhold Salvarsan and similar products, as well as dyestuffs, from such countries as are now at war with her, and we, of course, in this country feel bound not to export products obtained from Germany to the countries in question. I understand from other sources that unless this is agreed to on the part of importers receiving products in this country, the embargo which has been raised in favor of the United States will again be placed upon these products.

I hope to see you early in the week.

Yours very truly,

HAM HJC (Sgd.) H. A. METZ.

PLAINTIFF'S EXHIBIT No. 415.

Address Official Communications to
The Secretary of State,
Washington, D. C.

DEPARTMENT OF STATE
WASHINGTON

September 22, 1914.

The Honorable H. A. Metz,
House of Representatives.

Sir:

The receipt is acknowledged of your letter of September 18, in regard to the importation from Germany of salvarsan and neosalvarsan into the United States.

You request that the previous instructions to the American Ambassador at Berlin be supplemented by the following cablegram:

> "Representative Metz desires information when Hoechst Farbwerke will resume shipments salvarsan and neosalvarsan. Both urgently desired by Army, Navy and Public Health Service for continued treatments now in hand. Guaranteed for use in U. S. only."

The Department is glad to comply with your request and you are informed that the desired instruction is being transmitted.

I have the honor to be, Sir,

Your obedient servant,

(Sgd.) ROBERT LANSING,
811.1255/3 *Acting Secretary of State.*

PLAINTIFF'S EXHIBIT No. 416.

Address Official Communications to
The Secretary of State,
Washington, D. C.

DEPARTMENT OF STATE
WASHINGTON

September 23, 1914.

The Honorable Herman A. Metz,
House of Representatives.

My dear Mr. Metz:

Pursuant to your request by telephone, I am enclosing a copy of a telegram dated September 22, 1914, from the American Ambassador at Berlin, in regard to the exportation of dyestuffs from Germany. In view of the fact that the Embassy's information seemed to come from private sources, and the need of official information upon the subject, on receipt of the telegram above mentioned I drafted a telegram, instructing the American Ambassador to have confirmed, if possible, by the German Government, the information obtained from Mr. Haeuser, and also to report the present attitude of the German Government as to the exportation in neutral vessels of all non-warlike articles especially desired by American concerns.

Very truly yours,

(Sgd.) W. B. FLEMING,
Foreign Trade Adviser.

Enclosure:
As noted.

PLAINTIFF'S EXHIBIT No. 416-A.

Copy Berlin,
L. (Via Rome September 22, 1914)
Dated September 21.
Recd September 22, 10:20 A. M.

Secretary of State,
Washington.
241 twenty-first.
For Department and Representative Metz:
Department's 193, eighteenth.

Adolf Haeuser informed me that export dyestuffs, etc., had been forbidden but now allowed on the giving of a guarantee by his company here to the German Government that goods would not be taken from neutral ships and fall into hands of British. As I understand the situation Government here having taken position against export did not like to reverse itself without getting some sort of guarantee.

GERARD.

PLAINTIFF'S EXHIBIT No. 416-B.

Copy TELEGRAM RECEIVED CIPHER.
S FROM BERLIN,
Dated Sept. 22, 1914.
Rec'd Via Copenhagen, Sept. 23, 11 p. m.

Secretary of State,
Washington,
September 22, 10 p. m. No. 271.

Referring to my telegram number two hundred twenty-seven, nineteenth. The embargo on cyanide is on the kind used in mining industry and was put on to prevent British getting cyanide for their production gold in the Transvaal. Although certain exporters had informed me that the Secretary of the Interior here had agreed to export of dyes, quantities cyanide, on their giving guarantee that consignment was for United States, I am now informed by under Secretary of Foreign Affairs that because of fear that British may take goods of this kind from Holland ships on the way to America that no exports of dye-stuffs, cyanide, chemicals and medicines will be allowed although destined for United States in Holland ships but I am informed that if American ships are sent to Holland that such exports will then be allowed. Suggest that such ships can bring a cargo of cotton and copper consigned to Holland merchants. Cannot such ship under international law come direct to German ports? If America wants dye-stuffs, cyanide and chemicals send these American ships.

GERARD Berlin.
American Minister Copenhagen.

PLAINTIFF'S EXHIBIT No. 417.

[On Postal Telegraph Blank.]

K13W-MU, 910 PM, 180 Collect NL, 4ex
Washington, DC, Oct, 9-14

Hon. Herman A Metz,
122 Hudson St, NewYork.

Cablegram from Berlin states. Quote I agree with Ambassador Gerard that we try to exchange cotton for dyestuffs. The impression in America is that manufacturers in Germany are well supplied with wool and cotton but frank conversation discloses the fact that manufacturers here are as much in need of cotton as American cotton mills are in need of dyestuffs. Approximately twenty thousand bales of cotton could be brought here by Steamer Matanzas. This is equal to about full cargo of chemicals and dyestuffs. To arrange the payment therefore becomes an easy matter, both sides assuming that both cargoes get away. Generally speaking, it seems that there is available for immediate shipment three or four months supply of dyestuffs. Additional quantitys available in two months when second cargo of cotton might be sent over. Mr. Edward Lovelace could undertake the purchase of the cotton on the basis of finding of New York buyers to be offered charter Matanzas for cargo. I recommend that Steamer Matanzas be held for a few days pending decision. Poucher. Gerard. End quote.

ROBERT LANSING,
Acting Secretary of State.

PLAINTIFF'S EXHIBIT No. 418.

457.

Rotterdam, The Netherlands, October 10, 1914.

Embargo on and export of dyestuffs from Germany.

I have the honor to acknowledge receipt of Department instruction No. 298, dated September 18, 1914, regarding "dyestuffs."

As said instruction has practically been answered, as far as then possible, by my despatch No. 455 of Sept. 25th, I shall restrict myself here to stating regarding transportation facilities, that the communication by rail as well as by water (the Rhine-Maas) between Germany and the Netherlands is now established regularly, subject of course to interruption periodically when all means of transportation are wanted for movement of troops. Shipping facilities from Rotterdam to America are rather limited, and in fact practically confined to the neutral Holland—America Line Passenger—and freight steamers, and some American buyers have lately resorted to chartering steamers flying the American flag, for the purpose of transporting dyestuffs and chemicals from Rotterdam to America, one steamer, the "Matanzas" being expected here next week.

As to banking exchange conditions it is extremely difficult to make any definite statement, as conditions change from day to day. At present exchange is somewhat steady, but the rate low, American dollars f. i. quoted at Florins 2.37 and English Sterling at Florins 11.98.

Regarding the requirement of shippers of dyestuffs, that buyers must deposit the purchase money in Rotterdam, this is asked for the reason, that the German sellers—practically all dyestuffs coming from Germany—demand cash in hand before the goods are shipped from here. The American purchaser is requested to deposit money in a bank named by the German seller or the Rotterdam agent—f. i. the leading importer and exporter of dyestuffs in this city, Messrs. Outshoorn & van der Held, requires buyers to deposit necessary amounts at the "Disconto Maatschappy" of Rotterdam.

There is however at present no dyestuff available for export in The Netherlands as Germany has placed an embargo on the export of dyestuffs, which has only been raised by special arrangement for American purchasers. The above mentioned dealer in dyestuffs has to-day informed this office, that German manufacturers positively refuse to sell him even the smallest quantity.

I have the honor to be, sir,

Your obedient servant,
(Sgd.) S. LISTOE,
Consul-General.

File No. 690.

PLAINTIFF'S EXHIBIT No. 419.

[On Western Union Telegraph Blank.]

D105W XM 220 Collect NL 4 extra

Washington, D. C. October 16, 1914

Hon Herman A. Metz
122 Hudson Street, New York

Department in receipt of cable from Ambassador Gerard stating that the German Government and exporters must have a guarantee from this Government that goods shipped on the Matanzas shall not be reexported. Department has in mind to cable the Ambassador setting forth:

1—That this Government is assured that goods shipped on Matanzas are not to be re-exported and passes this assurance to German Government.

2—That the present demands for these goods for immediate use in this country constitute additional guarantee that they will not be re-exported.

3—That the Department will undertake to secure at once from all consignees of goods on Matanzas a formal declaration and bond guarantee that goods will not be reexported, except portion of consignment of cyanide to Mexico only.

4—That the administrative officers of this Government cannot lay a legal embargo on the reexportation.

The Department desires a formal declaration and bond guarantee to the Department, say in double the amount of the value of shipments by consignees that goods will not be reexported from the United States and that the same are for consumption in the United States, except as to cyanide as above explained. Upon notice from you that the importers will execute this guarantee Department will cable to Ambassador Gerard instructions as stated above.

ROBERT LANSING,
Acting Secretary of State.
9.35 P. M.

PLAINTIFF'S EXHIBIT No. 420.

Address Official Communications to
The Secretary of State, Washington, D. C.

(Seal)

DEPARTMENT OF STATE
WASHINGTON
October 19, 1914.

Honorable H. A. Metz,
122 Hudson Street,
New York City.

Sir:

Relative to the matter of the importation of dyestuffs, etc., from Germany and the exportation of cotton to Germany, the Department is in receipt of a telegram to the effect that while the reexportation of cotton is forbidden by the Netherlands Government, cotton shipped to Holland and intended for Germany is in transit, which the Netherlands Government does not forbid. This would seem to simplify the matter of shipping cotton into Germany through Rotterdam, and probably a cargo could be provided from Rotterdam to this country.

Very truly yours,
(Sgd.) ROBERT F. ROSE,
Foreign Trade Adviser.

PLAINTIFF'S EXHIBIT No. 421.

[On Western Union Telegraph Blank.]

D9W XM 176 Collect 2 extra. SD
Washington, D. C., Oct. 27, 1914.

Hon. Herman A. Metz
122 Hudson St., New York

Following is paraphrase of telegram dated Oct. twenty-sixth from Howard W. Bible received through the American Embassy at London and American Legation at the Hague, Quote There is confusion regarding consignments of dyestuffs physical evidence of ownership other than American makes portions legally seizable suggests that it is probable that British inquiries have been made as to the actual ownership of dyestuffs and that cargoes be consigned to Department of Commerce American Cotton Representatives in Rotterdam urge guarantee of safety of shipments to the United States. Paragraph. Any interference with the Matanzas will tend to discourage further shipments to America of all commodities. Matanzas can carry only portion of dyes available and the remainder will be withheld if Matanzas is troubled please inform Congressmen Metz and Johnson Senator Maine and Simmons Senator North Carolina. Paragraph. Am ready to assume charge of ship contents if so directed. Minister Van Dyke desires definite instructions for cooperation. Paragraph. Following received from Berlin. Quote German cotton merchants need fifty thousand Austria twenty-five thousand bales per month approximately. Gerard.

ROBERT LANSING,
Acting Secretary. 604 P. M.

PLAINTIFF'S EXHIBIT No. 422.

Department of State,
Washington, October 29, 1914.

Hon. Herman A. Metz,
122 Hudson Street,
New York City.

Sir:

The department has received your letter of October 23, relating to the guaranties on goods imported into the United States from Germany, with inclosure of guaranty from Walter F. Sykes & Co., importers, New York.

You state that the German Government regards bonds for the consumption of imports in the United States as essential and that Count Bernstorff has expressed to you the satisfaction of his Government with the filing of the guarantees and the agreement to give bond for domestic consumption of consignments.

You also state that you and Count Bernstorff have agreed to have the bonds of the importers made to you, and that you will draft a form for the Count's approval and for the signatures of the importers.

The Department is gratified that your efforts have led to an arrangement satisfactory alike to the American importers, the German Government, and this department itself and trusts that thereby the importers will be relieved of the embarrassment to which their business has been subjected.

I have the honor to be, sir,

Your obedient servant,

ROBERT LANSING,
Acting Secretary of State.

PLAINTIFF'S EXHIBIT No. 423.

Address Official Communications to
The Secretary of State
Washington, D. C.
(Seal) Department of State
WASHINGTON
November 19, 1914.

The Honorable Herman A. Metz,
122 Hudson Street,
New York, N. Y.

Sir:

I have the honor to acknowledge receipt of your letter of November 7, addressed to the President of the United States, in which you set forth the existing conditions under which the manufacturers of textiles and other articles requiring dyestuffs and chemicals are being supplied with these products imported from Germany. Your letter has been referred to the Department and is being placed on file.

I have the honor to be, Sir,

Your obedient servant,
(Sgd.) ROBERT LANSING,
Acting Secretary of State.

165.102/247.

PLAINTIFF'S EXHIBIT No. 424.

Address Official Communications to
The Secretary of State, Washington, D. C.
(Seal) Department of State
WASHINGTON
November 12, 1914.

Hon. James W. Gerard,
American Ambassador,
Berlin.

My dear Mr. Gerard:

It gives me pleasure to present to you the Honorable Herman A. Metz, a Representative in the Congress of the United States from the State of New York, who is proceeding to Berlin with a view to arranging for the importation of dye-stuffs from Germany to the United States.

Mr. Metz is himself interested in industries in this country using and depending upon Germany for their supply of dye-stuffs, and I respectfully commend him to your attentive consideration and bespeak for him every assistance you may be able to render him, consistently with your official duties, in facilitating his mission.

Very truly yours,
(Sgd.) W. J. BRYAN.

PLAINTIFF'S EXHIBIT No. 425.

PARAPHRASE OF
TEXT OF CIPHER TELEGRAM RECEIVED DECEMBER 3, 1914
AMERICAN EMBASSY BERLIN
857 From Rome December 2.
727 From Department. November 30, 6 p. m.

Congressman Metz, address Berlin or care of Hoechst, is due to arrive at Rotterdam on November 27th on the S. S. RYNDAM. He and Mr. Paul Pickhardt should be informed as follows:

Distribution of the dyestuffs which came on the steamer MATANZAS is now being made among the cotton manufacturers. The S. S. "SUN" is reported as scheduled to reach New York tomorrow. Altogether the cotton mills in the United States will have barely two months' supply of dyestuffs. The following plan has been evolved for the discharge of the obligation resting upon all parties who participated in the cargoes brought by the MATANZAS and the SUN to ship cotton in exchange for any further shipments of chemicals and for release of any coal tar dyes. A steamer has been chartered by the cotton manufacturers to be loaded with cotton immediately at a southern port and to sail to Rotterdam. They have also taken an option on a second vessel which could be loaded a fortnight later. The cargoes are covered by American Government insurance. The financial plan is very simple. The American firms will deposit their funds in a New York bank against which the cotton buyers would draw to an amount corresponding to what the German cotton buyers will turn over to the Deutsche Bank to the credit of German firms. Seven hundred thousand dollars are required for the first two ships. If mutually desired the plan can be further extended. What does Commander Gherardi think as regards the practicability of shipping cotton to Bremen? All complications such as were experienced in the case of the MATANZAS can be avoided. Mitchell is the charterer. Freights for the return passage for cargo of dyestuffs have been engaged by us from Mitchell. We need most of all indigo indanthrene colors for both cotton and paper, also liberial amounts of hydro sulphite, rongalite also basic and acid colors. In order that the cargo may be loaded immediately on the discharge of the cotton cargo it should be in Rotterdam on the arrival of the steamer. A fixed time for discharge and loading is allowed by the charter, but a penalty of five hundred dollars per day arises for any delay. It is highly important that all arrangements be made in ample time in advance. It would be better for both of us if you could limit this shipment to this steamer to a full carge of about three thousand tons to ourselves and have the others ship by any one of the other American vessels which are coming to Rotterdam with food stuffs and so avoid any further arrangements with other parties regarding the Mitchell plan. We assume that permits for the other shippers could be arranged for by Congressman Metz. These details have been elaborated since Metz sailed. He promised his cooperation and consented to withhold his remittance pending developments. The maximum amount available should be cabled to Vandiver. Lohmann's representatives here have telegraphed request for immediate deposit of four hundred thousand dollars in the Deutsche Bank. Lohmann is to arrange the transfer of this sum to the American Exchange National Bank, New York, through his friend Elberfeld. It is absolutely necessary that no cable messages concerning the plan be sent to American dye houses as publicity might thereby be created and information about the plan here will be totally fatal to success.

Kuttroff, Poucher, Mitchell.

Lansing, Nelson Page, American Ambassador.

PLAINTIFF'S EXHIBIT No. 426.

[On Postal Telegraph Blank.]

x9wxn. 9:20p 35—Collect, N.L. 3 extra

Washington, D. C., Dec. 8-14

H. A. Metz, 122 Hudson st. New York.

Ambassador at Berlin states that in order to secure return cargoes information is desired at least one months in advance giving sailing dates, cargoes, capacity and approximate return freight rates demanded.

W. J. BRYAN, *Secretary of State.*

PLAINTIFF'S EXHIBIT No. 427.

[On Western Union Telegraph Blank]

D86W ACA 95 COL ECT NL 3 EX W
Washington D C Jan 18 1915
Herman A Metz
122 Hudson St New York

Department received following from Berlin: Badische replies that certain shipments are now on the way to Rotterdam that they have accorded American friends very extensive consideration that German factories produce in limited quantity that no promise to deliver stated amounts as stated was ever made by them, that they said only that it would be desirable and fair for America to send cotton following which they were convinced they could send colors far as possible and if production continued Hoechst replies requests will be given due consideration as far as possible.

W. J. BRYAN,
Secy of State.

PLAINTIFF'S EXHIBIT No. 428.

(Copy)

TREASURY DEPARTMENT
WASHINGTON,

Office of
the Secretary

September 3, 1915.

The Honorable
The Secretary of State.

Sir:

I have the honor to advise you that the Public Health Service of this Department has placed an order with Mr. Herman A. Metz, President of the Fabwoeke Hoecht Co., 160 Hudson St., New York City, for 500 tubes of salvarsan and 200 tubes of neosalvarsan at $2.25 per tube, free of duty. Mr. Metz has promised to obtain this material, if possible, from Germany. It has been ascertained that these preparations cannot be obtained in this country in such quantities as are required in the treatment of government patients, and I have therefore to request that such action will be taken by your Department as will be necessary to insure the delivery of the material.

Respectfully,
(Sgd.) W. G. McADOO,
Secretary.

(Copy)

PLAINTIFF'S EXHIBIT No. 429.

Address Official Communications to
The Secretary of State
Washington, D. C.

DEPARTMENT OF STATE
WASHINGTON

November 8, 1915.

The Honorable Herman A. Metz,
122 Hudson Street, New York City.

Sir:

I have the honor to acknowledge the receipt of your letter of October 28, 1915, in further relation to the detention by the British authorities of shipments of Salvarsan, Neosalvarsan and Novocain, ordered by you from Germany.

Pursuant to your request, the Department returns herewith the original enclosures to your letter.

There are herewith enclosed for your information copies of the telegrams on this subject which were sent by the Department, on November 3, to the American Ambassadors at London and Paris, respectively.

I have the honor to be, Sir,
Your obedient servant,
For the Secretary of State:
(Sgd.) FRANK T. POLK,
Counselor.

Enclosures as above.

PLAINTIFF'S EXHIBIT No. 429-A.

COPY

Telegram sent,
Department of State,
Washington, November 3, 1915.

Am Embassy,
Paris.

Department understands from Embassy London you are familiar with situation regarding shipment salvarsan and neo-salvarsan from Germany to United States but before giving you definite instructions it desired accumulate tangible evidence of conditions which were stated to make request to British and French Governments desirable and urgent. Department now has in its possession copies of letters patent number 986,148 and 1,053,300 issued by United States Patent Office, March 7, 1911, and February 18, 1913, respectively, covering drug compositions salvarsan and neosalvarsan. Under provisions Section 4884 Revised Statutes United States, patentee, his heirs or assigns acquire by such letters patent exclusive right make, use and vend invention or discovery throughout United States and its Territories for period seventeen years.

American representative of assignee of these patents has furnished Department with following documents:

First. Sworn statement that there are still unshipped on orders placed by him with German manufacturers on November 16, 1914, 85,000 ampules these drugs.

Second. Sworn list orders placed with him by hospitals and other similar institutions during thirty-eight days September sixteenth to October twenty-third last, both inclusive, showing three hundred thirteen such orders for total 3,642 ampules these drugs.

Third. Sworn statement that in addition these hospital orders he has received similar orders from 3,164 individual physicians for aggregate 31,000 ampules.

Fourth. Sworn extracts from letters from forty-one physicians located in twenty different states, each requesting shipment these drugs for use in urgent cases, in some of which saving of life is said to depend on ability obtain drug.

Fifth. Sworn copy of letter addressed, on October 8, last, by Poulenc Freres, Paris, to Parmele Pharmacal Company, New York, the writer being same company which, according your number 2975, October 9, French Government states is prepared supply drug identical with neo-salvarsan in form neo-arseno benzol, which letter states in part quote. In order make introduction our products possible in United States American Government would have to take steps similar to those taken by English Government. They would have to grant licenses manufacture all patent German products unobtainable in American market as result prevailing conditions. In case such license should be granted we could not consider sale our products in United States only as long as the war lasts; in fact, we would have to increase our output considerably in order fill numerous orders we would receive. As this would require very extensive equipment we would not consider matter in case we would only have access to American market for a few months unquote.

Sixth. Sworn copy judgment District Court United States, Eastern District of Michigan, dated January twelfth, last, upholding validity letters patent number 986,148, perpetually enjoining one Albert C. Smith and his agents from selling or using in the United States the drug which he had offered as substitute for salvarsan. Judgment also required payment to plaintiff all profits derived by defendant from sale of infringing article, damages sustained by defendant from infringement and costs litigation.

Seventh. Sworn statement showing deposits by American representative with manufacturers on April nineteenth and May twenty-first last of marks 981,927 and present balance remaining for payment pending orders, marks 902,346, paragraph.

Department is receiving petitions from physicians and medical organizations explaining urgent need for salvarsan and neo-salvarsan and soliciting Department's aid in obtaining these drugs although it appears writing of such petitions has been discouraged by American distributor.

It appears evident from above mentioned documents there is large and urgent demand in United States for these drugs and that much suffering is resulting from lack thereof.

If, as stated by French Government, product of Poulenc and Company is identical with neo-salvarsan, its sale in United States would doubtless constitute infringement of patents granted by United States Patent Office. Furthermore, even though Poulenc Company, contrary to statement in its above quoted letter, were willing sell its products in United States under present conditions it would admittedly be unable supply present demand, and it seems improbable anyone would undertake responsibility selling such presumably infringing article. Moreover, it is represented to Department that use of substitutes for salvarsan and neo-salvarsan has in some cases resulted unfavorably and that use such untried substitutes, if obtainable, would be experimental and not generally adopted.

Ambassador London has been instructed unofficially bring foregoing facts to attention Foreign Office and request that, in view existing legal situation, the insignificant benefit that would result to enemies Great Britain and France, and out of consideration for the numerous unfortunates whose suffering is apparently being aggravated by lack these drugs, British and French Governments agree to permit shipments from Germany of such quantities thereof as will supply urgent needs medical profession in United States.

You will cooperate with Ambassador London in effort obtain favorable decision this matter using above facts in most efficacious manner.

LANSING.

PLAINTIFF'S EXHIBIT No. 430.

Address Official Communications to
The Secretary of State
Washington, D. C.

DEPARTMENT OF STATE
WASHINGTON

January 6, 1916.

Mr. Herman A. Metz,
122 Hudson Street,
New York, N. Y.

Sir:

There is enclosed for your information the duplicate copy of despatch No. 2019 of December 11, 1915, from the American Ambassador at Berlin, Germany, relative to the application filed by the Embassy with the German authorities on behalf of the Farbwerke Hoechst for the exportation of 50 ampules each of salvarsan and neosalvarsan to the Medical Supply Depot, U. S. Army, the Panama Canal, 543 Greenwich Street, New York N. Y.

It will be observed that the issuance of the export permit is made dependent upon the receipt of a guarantee from the American Government that the consignment will arrive at its destination and remain in the United States. It is not practicable for this Government to give such a guarantee. If, however, you have obtained from the British Government a permit for the uninterrupted shipment of these products to the United States once they have arrived at a neutral port and will file with the Department your written assurance that if received the products will be consumed in the United States, it is possible that the German Government would regard the condition as fulfilled.

It does not appear from the records of the Department whether a permit has been issued to you by the British Government covering this particular quantity of salvarsan and neosalvarsan.

I am, Sir,

Your obedient servant,

For the Secretary of State:

(Sgd.) ALVEY A. ADEE,
Second Assistant Secretary.

Enclosure:
From Berlin,
December 11, 1915.
611629/254
O

PLAINTIFF'S EXHIBIT No. 430-A.

COPY
AMERICAN EMBASSY
BERLIN
Berlin, December 11, 1915.

No. 2019
The Honorable
The Secretary of State,
Washington.

Sir:

With reference to my despatch No.1869 of November 16, 1915, and previous correspondence, I have the honor to report that in answer to an additional application filed by this Embassy with the German authorities on behalf of the Farbwerke Hoechst for the exportation of 50 ampules each of Salvarsan and Neosalvarsan to the Medical Supply Depot U. S. Army, the Panama Canal, 543 Greenwich Street, New York City, the issuance of an export permission is likewise made dependent upon the receipt of a guarantee from the American Government that the consignment will arrive at its destination and remain in the United States.

I have the honor to be, Sir,
Your obedient servant,
(Sgd.) JAMES W. GERARD.

PLAINTIFF'S EXHIBIT No. 431.

New York February 9th 1916

Via Sayville
Farbwerke Hoechst Main Germany

State Department informs me permit for export hundred fifty thousand ampules subject to guarantee

272 US 1 U.S. SUP. CT. RECORDS, BRIEFS 1926 FO
UNITED STATES V. CHEMICAL FOUNDATION, INC. NO. 127

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A Division of Information Handling Services

CARD 65

safe arrival and Red Cross supervision distribution American Red Cross entirely unofficial body supervision unnecessary and impossible will personally guarantee proper distribution the permit now in Rotterdam absolute guarantee of safe arrival spurious and infringing products simply flooding this market during delay inform American Embassy Berlin

HERMAN METZ.

PLAINTIFF'S EXHIBIT No. 432.

Address Official Communications to
The Secretary of State
Washington, D. C.

DEPARTMENT OF STATE
Washington
February 3, 1916.

The Honorable Herman A. Metz,
122 Hudson Street, New York City.

Sir:

The Department is in receipt of your letter of January 17, 1916, relative to the Salvarsan and Neosalvarsan, intended for the Medical Supply Depot, United States Army, Panama Canal, which was shipped by parcels post from Copenhagen and among the packages taken from the steamship UNITED STATES by the British authorities.

In reply you are advised that, on January 27, 1916, the substance of your letter was communicated, by cable, to the American Ambassador at London, with instructions to endeavor to have this shipment released.

I am Sir, your obedient servant,

For the Secretary of State:

(Sgd.) ALVEY A. ADEE,
Second Assistant Secretary.

341.115 M56/3

PLAINTIFF'S EXHIBIT No. 433.

[On Postal Telegraph Blank.]
B86SA FO 28 Cable Count 23OP
Berlin via Sayville NY Feb 12
Feb 12 2 42 PM -16

Hermann Metz
122 Hudson St New York

Accept condition re supervision Salvarsan distribution Apply Red Cross Official note Observation of this mere formality Might prevent export permission

FARBWERKE HOECHST

PLAINTIFF'S EXHIBIT No. 434.

Address Official Communications to
The Secretary of State
Washington, D. C.

DEPARTMENT OF STATE
Washington
February 10, 1916.

Mr. Herman A. Metz,
122 Hudson Street,
New York, N. Y.

My dear Mr. Metz:

With reference to your letter of February 8, 1916, and your telephone conversation with me in regard to the shipment of salvarsan and novocain which you desire to obtain from Germany, I beg to inform you that the Department is cabling the American Ambassador at Berlin that as the British Government has given an assurance of non-interference with the shipment of these goods, there should be no doubt about their safe arrival in the United States and that you are willing to guarantee that none of this salvarsan will be exported and will all be sold directly to physicians in the United States.

The Department is adding that the Red Cross has no official standing in the United States and does not supervise the distribution of goods in this country, instructing the Ambassador to endeavor to obtain permission for this shipment, which is urgently needed in the United States, to come forward under the assurance of the British Government and your guarantee.

As soon as any further information in regard to the matter is received it will be communicated to you. At a later date you will be informed of the cost of the Department's cablegram and of any reply thereto.

Very truly yours,
(Sgd.) CHARLES A. HOLDER,
Foreign Trade Adviser.

PLAINTIFF'S EXHIBIT No. 435.

Address Official Communications to
The Secretary of State
Washington, D. C.

DEPARTMENT OF STATE
WASHINGTON

February 10, 1916.

Mr. Herman A. Metz,
122 Hudson Street,
New York, New York.

My dear Mr. Metz:

Thank you for your letter of February 9, 1916, enclosing a copy of the wireless which you sent to the Farbwerke, Germany, yesterday.

As I told you over the telephone, we have cabled Ambassador Gerard asking him to do everything possible to forward all the drugs that you have ordered.

Very truly yours,
(Sgd.) CHARLES A. HOLDER,
Foreign Trade Adviser.

PLAINTIFF'S EXHIBIT No. 436.

[On Postal Telegraph Blank.]

W 163 W 35 Collect NL 3 Ex 1245A
W Washington DC Feb 28-16
Mr Herman A Metz
122 Hudson Street New York New York

American Embassy London Cables February twenty five that the British authorities have given assurance of noninterference with the shipment of the two cargoes of dyestuffs. British Consul Rotterdam being instructed accordingly.

ROBERT LANSING,
Secretary of State.

PLAINTIFF'S EXHIBIT No. 437.

Address Official Communications to
The Secretary of State
Washington, D. C.

DEPARTMENT OF STATE
WASHINGTON

March 11, 1916.

Mr. Herman A. Metz,
122 Hudson Street,
New York, N. Y.

My dear Mr. Metz:

I have delayed replying to your letter of March 6, 1916, with reference to your desire to obtain shipments of salvarsan and novocain from Germany, as you stated in your letter that you expected to see me in Washington some day this week.

I beg to refer you to my letter of February 10, 1916, stating that the Department had again cabled the American Ambassador at Berlin, instructing him to make representations with reference to both salvarsan and novocain. The American Ambassador at

Berlin had previously been instructed to inform the German Foreign Office that the British Government had given assurance of non-interference with the shipment of these goods. No further evidence of this assurance of non-interference was requested in the reply of the German Government to the Ambassador's representations, and the German Government has never requested to be furnished with a copy of an actual permit issued by the British authorities in cases where the statement was made by the American Ambassador that such assurance of non-interference had actually been given by Great Britain. It is impossible to send a copy of the permit to the American Ambassador at Berlin, as no actual permit is communicated to this Government. The permit is issued, under instructions from London, by the British Consul General at Rotterdam at the time when the goods are actually shipped from that port.

As you were informed in my telegram of February 26, 1916, the American Ambassador at Berlin has informed the Department that he expects an early reply to his representations and that he believes the question of the supervision by the Red Cross will probably be satisfactorily arranged.

Very truly yours,

(Sgd.) CHARLES A. HOLDER,
Foreign Trade Adviser.

PLAINTIFF'S EXHIBIT No. 438.

Address Official Communications to
The Secretary of State
Washington, D. C.

DEPARTMENT OF STATE
WASHINGTON

Mr. Herman A. Metz, March 23, 1916.
122 Hudson Street,
New York City.

Sir:

The Department has received your letter of the 17th instant, enclosing a wireless message received by you from the Farbwerke, vorm. Meister Lucius and Bruening of Hoechst am Main, Germany, giving details regarding their shipment of salvarsan and neosalvarsan for the United States Army.

In reply you are informed that the markings of the packages of salvarsan and neosalvarsan, as contained in the copy of the telegram attached to your letter, have been cabled to the American Ambassador at London.

I am, Sir,
Your obedient servant,
For the Secretary of State:
(Sgd.) ALVEY A. ADEE,
Second Assistant Secretary.

341.115M56/9

PLAINTIFF'S EXHIBIT No. 439.

PATTERSON & GREENOUGH
45 EAST 17TH STREET
NEW YORK

October 1st, 1914.

H. A. Metz, Esq.,
#122 Hudson Street,
New York City, N. Y.

Dear Mr. Metz:

I beg to acknowledge receipt of your check for

$5000, to be devoted to the expenses of the Dyestuff Committee of the American Association of Woolen & Worsted Manufacturers.

Needless to say I am exceedingly obliged to you for your support and interest.

Yours very truly,
(Sgd.) A. M. PATTERSON.

PLAINTIFF'S EXHIBIT No. 440.

COPY

May 15th, 1914.

A. M. Patterson, Esq.,
President, Textile Alliance,
New York City.

My dear Mr. Patterson:

For the purpose of showing my appreciation and approval of the objects of your Alliance, I enclose herewith check for $5000.00 as a contribution toward helping along the good work which you have undertaken to bring about improvements and efficiency in the sale of supplies to the textile mills.

I shall be glad to renew this contribution annually, for three years, if the Alliance continues in its activity during that time.

Yours very truly,
(Sgd.) H. A. METZ.

PLAINTIFF'S EXHIBIT No. 441.

COPY

October 1, 1914.

A. M. Patterson, Esq.,
#45 East 17th Street,
New York City.

My Dear Mr. Patterson:

On my return from Washington I find yours of the 30th.

I enclose herewith check for $5000.00 as a contribution of the Farbwerke-Hoechst Company towards the fund expended by you and your associates in your endeavor to improve the methods of business in mill supplies in the textile industry.

Yours very truly,
(Sgd.) H. A. METZ.

Enclosure
HAM HJC

PLAINTIFF'S EXHIBIT No. 442.

Copy

Office of
HERMAN A. METZ
122 Hudson Street
New York

April 26th, 1917.

Dr. W. G. Stimpson,
Assistant Surgeon General,
Public Health Service,
Washington, D. C.

Dear Sir:

I received your favor of the 25th with blanks for proposals on 200 tubes of Arsenobenzol.

This is the product made by Dr. Schamberg of

Philadelphia and I have quoted $1.50 per ampule which is the price I am paying Dr. Schamberg for the product. I can deliver the goods promptly.

When I begin deliveries of Salvarsan and Neosalvarsan from my Brooklyn plant, I shall give it to the Government at cost price or if they prefer, I am willing to turn my plant over to them for their purposes so as to insure a continued supply to the Government during the war.

Yours very truly,
(Sgd.) H. A. METZ.

PLAINTIFF'S EXHIBIT No. 442-A.

COPY

Office of
HERMAN A. METZ
122 Hudson Street
New York

June 2nd, 1917.

Hon. Newton D. Baker,
Secretary of War,
Washington, D. C.

Dear Sir:

My attention has been called to certain claims that Salvarsan or equivalent products will not be available for use in the army and navy unless existing patents are abrogated.

I beg to call your attention to the fact that although the importation of the German product has stopped and the supplies on hand are practically depleted, I have equipped a plant for making under license from the manufacturers and am turning out the product now in Brooklyn, and will very shortly be able to turn it out on a commercial scale.

In the meantime, I am supplying, so far as the

Surgeons, intravenous tests of the toxicity of specimens of salvarsan marked "4 A, prepared by the H. A. Metz Laboratories," were made at the laboratories of the Department of Health, 80 milligrams per kilo being given to two rabbits without any noticeable disturbance. On this satisfactory showing I can assure you that the Department is entirely satisfied as to the safety of your product, and the Department will use whatever has not been necessary to make the tests, where necessary in its treatment of syphilis in its hospitals or clinics.

Very truly yours,
(Sgd.) H. EMERSON,
Commissioner.

EC

PLAINTIFF'S EXHIBIT No. 444.

POWER OF ATTORNEY

United States Consulate General } s.s.
Francfort-on-main, Germany }

On the 16th day of December 1911 before me personally appeared the undersigned Conrad Blank and Victor Krug and being duly sworn, they depose and say that they are citizens of the Empire of Germany, residing at Frankfurt on Maine and entitled to sign for the Farbwerke vorm. Meister Lucius & Brüning, a corporation organised under the laws of Germany and located and doing business at Hoechst o/Main, Germany, and they declare the following:

That, on behalf of the said corporation Farbwerke vorm. Meister Lucius & Brüning, they hereby appoint Herman A Metz of No 122 Hudson Str. New York City New York their Attorneys with full power to safeguard and protect all interests and rights conferred upon said corporation Farbwerke vorm. M. L. & B. by U. S. Patent No. 986,148; to bring actions at Law or actions in equity against any and every person, persons, firms or corporations infringing said patent, and to take all legal proceedings in connection therewith;

That they furthermore give power to the aforesaid Herman A Metz to safeguard and protect all rights conferred upon the said Farbwerke v. M. L & B. to the following U. S. trade-marks, viz:

"Salvarsan" registered in the U. S. Patent-Office on the 25th. October 1910 under No. 79969

"Sarvarsan" (label) registered in the U. S. Patent Office on the 4th. April 1911 under No. 81388 and to take legal proceedings for suing any and every person, persons, firms, corporations infringing said trade-mark rights;

and That they authorize the said Herman A Metz to transfer the foregoing Power of Attorney to any person, persons, firms or corporations whom they may chose.

Farbwerke vorm. Meister Lucius & Brüning
BLANK (Sgd.) KRUG
Director *Procurist*

Sworn to and subscribed before me this 16th day of December 1911.

(Sgd.) WILLIAM RUTSAF,
Vice & Deputy Consul General.
No. 1184 Fee $2.00 recd.
(Seal)

PLAINTIFF'S EXHIBIT No. 445.

TREASURY DEPARTMENT
BUREAU OF THE PUBLIC HEALTH SERVICE,
DIVISION OF VENEREAL DISEASES,
Washington, March 14, 1919.

H. A. Metz,
President Metz Laboratories (Inc.)
122 Hudson Street,
New York City.

Dear Sir:

Reference is made to your letter of March 10, in which you state that, with a view of cooperating to the fullest extent with the efforts of the Public Health Service in combating and bringing under control venereal diseases, you are going to make the price of arsphenamine 75 cents per ampule of 0.6 gram, and neosalvarsan will be reduced to $1 per ampule of 0.9 gram, after March 15, 1919.

Your action in reducing the price of this remedy is greatly appreciated by the bureau and will make available to a larger clientele the use of this remedy.

Respectfully,
RUPERT BLUE,
Surgeon General.

PLAINTIFF'S EXHIBIT No. 446.

2—390

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of an instrument of writing

Recorded July 24, 1918
in
Liber G-105, page 137 of Transfers of Patents.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this 5th day of January in the year of our Lord, one thousand nine hundred and twenty-three and of the Independence of the United States of America the one hundred and forty-seventh.

(Seal)

(Sgd.) KARL FENNING,
Acting Commissioner of Patents.

ASSIGNMENT.

This indenture made the 15th day of July, 1918, between Farbwerke Hoechst Company, a corporation of the State of New York, having its office at #122 Hudson Street, in the City of New York and State of New York, party of the first part, and H. A. Metz Laboratories, Inc., a corporation of the State of New York, having its office at #122 Hudson Street, in the City of New York and State of New York, party of the second part;

Whereas the party of the first part is now the owner of the following trade-marks used in its business, which trade-marks have been registered in the United States Patent Office as follows:

Salvarsan, certificate No. 79,969, registered October 25th. 1910.

Neosalvarsan, certificate No. 88,862, registered October 29th 1912.

Novocain, certificate No. 53,072, registered May 22nd, 1906.

And Whereas, the party of the second part has purchased from the party of the first part, all its assets including the good-will of the business the stock in trade thereof, and the said registered trade-marks, and the right to use said trade-names;

And Whereas, the party of the first part has delivered to the party of the second part the stock in trade of its business:

Now This Indenture witnesseth that in consideration of the premises, the party of the first part hereby assigns and transfers to the party of the second part the said trade-marks herein before described, to hold the same unto the party of the second part absolutely.

Signed, sealed and delivered this 15th day of July, 1918.

FARBWERKE-HOECHST COMPANY,
By Herman A. Metz
President.

[Farbwerkle-
Hoechst
Company
Seal]
New York

Attest;
Albert H. Hein
Secretary.

State of New York, }
County of New York, } *ss.:*

On this 15th day of July, 1918, before me,........, a Notary Public, personally appeared Herman A. Metz, President of the Farbwerke-Hoechst Company, who, being duly sworn, deposes and says, that he resides in the City of New York and that he was personally present at the execution of the foregoing instrument and affixed thereto the corporate seal of the above named corporation; that the seal so affixed to the foregoing instrument is the corporate seal of said corporation, and that the foregoing instrument was duly signed, sealed and delivered as and for the act and deed of the said corporation and by order of the Board of Directors thereof, and that he Signed his name thereto by like order.

Jacob R.	JACOB R. ROETHER
Roether	*Notary Public*
Notary	Notary Public Kings Co.
Public	Certificate Filed in N. Y. County
New York	Recorded July 24, 1918.
& Kings County	

PLAINTIFF'S EXHIBIT No. 447.

Robert Ramsey and Harry D. Nims
Counsellors at Law
17 E. 42nd Street, New York

July 16, 1921.

H. A. Metz Laboratories, Inc.,
122 Hudson Street,
New York City.

Dear Sirs—

Our client, the Chemical Foundation, Inc., calls my attention to an application made by you to register in the United States Patent Office the same Salvarsan Sodium, and also the name Silver Salvarsan.

You are of course entirely familiar with the work and purposes of the Foundation. No doubt you are not familiar with the fact that the Foundation is now the owner of trade-marks #81388, Salvarsan and #79969, Salvarsan; also #106308, Salvarsan Natrium.

It would seem to us that these marks, registration of which is applied for by you, are in entire conflict with the trade-marks owned by the Foundation. Will you kindly therefore, let me hear from you on receipt of this letter, as to your position in respect to these registrations.

Very truly yours,

5455/25 (Sgd.) HARRY D. NIMS

PLAINTIFF'S EXHIBIT No. 448.

Ramsay Hoguet
149 Broadway,
New York City.

New York, February 4, 1919.

Hon. A. Mitchell Palmer,
Alien Property Custodian,
Sixteenth & P Streets, N. W.,
Washington, D. C.

Dear Mr. Palmer;

At a meeting of the Chemical Manufacturers' Association this morning the plan of the Dyes Institute for the acquisition of the German owned patents in the chemical industry was enthusiastically endorsed. They have passed appropriate resolutions and have appointed a committee to cooperate with the committee of the dyes institute.

The committee advises us that they expect to have the entire plan prepared and the certificate of incorporation of the proposed company drafted within a few days so as to be able to submit it to you probably at the end of this week. In the meantime, as I advised you yesterday, we are proceeding with all possible expedition to determine the title and enemy ownership of the patents in the particular classes affected.

My plan is to have the corporation formed and the principal patents conveyed to it within from two to three weeks. I trust we will be able to do it.

I shall be in Washington on Thursday in case you wish to speak to me further about this matter.

Yours very truly,

RH:P (Sgd.) RAMSAY HOGUET

PLAINTIFF'S EXHIBIT No. 449.

PENNIE, DAVIS, MARVIN AND EDMONDS
Counsellors at Law
35 Nassau Street

John C. Pennie
William H. Davis
Arba B. Marvin
Dean S. Edmonds

L. W. Rosenthal
F. E. Barrows
W. B. Morton
Walter J. Gill, Jr.
G. J. Hesselman
F. D. Hardesty
Merton W. Sage
H. McCarteney

Washington Offices
Pennie, Goldsborough & O'Neill
Washington, D. C.

New York Cable Address
Penangold, New York
Western Union Code

Telephone 1127 Rector

GC
69

New York
March 4, 1919.

W. T. Gordon, Esq.
Bureau of Investigation
Alien Property Custodian
Washington, D. C.

My dear Mr Gordon:

I have your letter of February 28th, which I found awaiting me after a few days out of town. Mr. Wood's bill which you enclose seems rather high, and it seems to me it would be proper to ask him whether he could revise his figures to a more reasonable sum, as you suggest. At the same time, the work was rush work, and promptly done, so that I am not disposed to be over-critical about it. I have a feeling that some of the larger printing establishments there in Washington would probably have charged a much larger price for the same work, done under the same conditions. Accordingly, if Mr. Wood is not disposed to reduce the amount of his charge, I would recommend paying the bill and ending the matter without further controversy. As I understand it, Mr. Wood had to buy all of the paper for the various copies, so that the paper alone represented a very substantial disbursement on his part; so that the actual amount of the printing itself would be correspondingly reduced.

Speaking more generally about the whole investigation, it seems to me it was made under such high pressure and the urgency of getting the matter completed regardless of the expense involved was such as to justify anything within reason to accomplish this end, and, moreover, it seems to me there is occasion for a great deal of satisfaction all around in having brought the matter to such a satisfactory consummation within the allotted time.

I am particularly glad to know that your own strenuous endeavors have at last eased up so that you are able again to get your "beauty sleep."

I found some of that delicious sausage meat waiting for me upon my return to New York, and there was sufficient so that we continued to enjoy it for several days.

With kindest personal regards to Mrs. Gordon and yourself, I remain

Very sincerely yours,
(Sgd.) F. E. BARROWS

* * * * * * * *
* BUREAU OF INVESTIGATION *
* Noted ...... Date ...... *
* Received Mar 11 1919 *
* Ans'd ...... Date ...... *
* Report No. .... *
* Trust No. .... *
* * * * * * * *

* * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received Mar 5 1919 *
*Noted .... Date .... *
* Ans'd ..... Date ..... *
* * * * * * * *

PLAINTIFF'S EXHIBIT No. 450.

LETTER FROM WILL T. GORDON TO F. E. BARROWS, DATED MARCH 6, 1919.

(NOTE: Same as Plaintiff's Exhibit No. 74 and not reprinted here. See Record, Exhibits, Volume I, page 257.)

PLAINTIFF'S EXHIBIT No. 451.

LETTER FROM F. E. BARROWS TO WILL T. GORDON, DATED MARCH 10, 1919.

(NOTE: Same as Plaintiff's Exhibit No. 76 and not reprinted here. See Record, Exhibits, Volume I, page 258.)

PLAINTIFF'S EXHIBIT No. 452.

LETTER FROM WILL T. GORDON TO RAMSAY HOGUET, DATED MARCH 11, 1919.

(NOTE: Same as Plaintiff's Exhibit No. 77 and not reprinted here. See Record, Exhibits, Volume I, page 259.)

(Attached to Plaintiff's Exhibit No. 452)

Washington, D. C.
March 14, 1919

Mr. Ramsay Hoguet,
Singer Building,
New York City.

Patents Numbers eight six eight three eight three stop Nine Nine Five One One three stop One One three naught seven eight five stop one two six one nine eight seven stop are all on the sales list. One naught eight three nine naught three is not on sales list. Don't forget Danner's letter.

WILL T. GORDON.

PLAINTIFF'S EXHIBIT No. 453.

MEMORANDUM.

January 13, 1919.

Memorandum of Conference in regard to Patent situation.

Present: Mr. A. M. Palmer, Mr. Caton, Mr. Horne, Mr. Whitaker, Mr. Keohan, Mr. Whitemore, Mr. Gordon, Mr. Ferry.

Mr. Palmer laid down the general policy of the office in regard to patents under his arrangement with the Federal Trade Commission. He pointed out that these patents might be divided into three (3) classes:

1. Those intimately connected with, affiliated with, or necessary to companies in which the Alien Property Custodian has a predominant stock interest.

2. Though not necessary to a company in which the Alien Property Custodian has a predominant interest, those are connected with and important to, an industry in which the Alien Property Custodian has an interest through his ownership of stock, or otherwise.

3. All patents not included within either class one or two.

Patents included within class one or two are subject to demand by the Alien Property Custodian. Those in class 3 are completely subject to the jurisdiction of the Federal Trade Commission, and are not subject to a demand by the Alien Property Custodian.

Mr. Gordon is to prepare a letter to the Federal Trade Commission for Mr. Palmer's signature, asking for an extension of the time within which objection must be made to the issue of licenses by the Federal Trade Commission, in respect to patents where the time of the Alien Property Custodian for objection expires on January 15th. This letter is also to state to the Commission that a list of enemy held patents is not desired for the purpose of making demands in any cases other than those connected with industries in which the Custodian already has an interest by reason of his control of corporations engaged in that industry.

a. A record of patents reported to, or demanded by, the Alien Property Custodian is to be kept in the Division of Patents in addition to the usual Trust and Report Docket. This report is to be kept in such form as Mr. Hoguet shall determine.

3. Mr. Hoguet is to determine upon the propriety of demands for patents to be issued, and within his jurisdiction will lie the determination as to whether the patent comes within a class to be demanded by the Custodian under his arrangement with the Federal Trade Commission, and whether the demand is in proper form. He will also pass upon the fact of enemy ownership.

This memorandum is subject in all ways to the revision of Mr. Hoguet. If correct, he will make out a more detailed memorandum of procedure for Mr. Palmer's approval.

PLAINTIFF'S EXHIBIT No. 454.

In replying address only
The Alien Property Custodian
and Refer to No.

RAMSAY HOGUET
149 Broadway
New York City

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets NW.
Washington, D. C.

New York, January 17, 1919

Mr. Mansfield Ferry,
Office Alien Property Custodian,
Sixteenth & P Streets, N. W.,
Washington, D. C.

Dear Mr. Ferry:

I acknowledge receipt of your letter of January 13, 1919 enclosing memorandum of conference on the patent situation.

Yours very truly,
RH:P (Sgd.) RAMSAY HOGUET

A. P. C.
Bureau of Law
Received Jan 20 1919
Referred to ....
Answered None ....
Date " ....
No. ....

PLAINTIFF'S EXHIBIT No. 455.

Alien Property Custodian
Sixteenth and P Streets NW.
Washington, D. C.

New York, February 4, 1919.

Ramsay Hoguet
149 Broadway
New York City

Mr. Mansfield Ferry,
Office Alien Property Custodian,
Sixteenth & P Streets, N. W.,
Washington, D. C.

My dear Ferry:

I have yours of the twenty-ninth enclosing a copy of the conference of dye manufacturers. I have no need at present for the other copies.

The proposition appears to be progressing very well and we have today enlisted the support of another important body of chemical manufacturers.

Yours very truly,

RH:P (Sgd.) RAMSAY HOGUET

A. P. C.
Bureau of Law
Received Feb. 5, 1919.
Referred to ....
Answered None ....
Date " ....
No. ....

PLAINTIFF'S EXHIBIT No. 456.

JOHN LOTKA
Patent Attorney
23 Beaver Street

Telephone 1625 Broad
Cable Address: Jalotka, New York

New York, March 24, 1919.

Alien Property Custodian,
Division of Patents,
Washington, D. C.

Dear Sir:—

In re: Trust 37192, Report 37698, Enemy Ferdinand Max Eugen Blass.

Confirming my letter of the 21st inst., I beg to report the receipt to-day from Mr. *Blass* of a letter dated the 22nd inst. and giving his *present address* as *105 11th Avenue, Newark, N. J.* This letter confirms my belief that Mr. Blass came to this country before August 1, 1914, and has resided in this country since he came here before August 1, 1914 to the present day.

Mr. Blass also writes that he ***has obtained his first*** (naturalization) ***paper*** from the U. S. District Court, in New Jersey, under date of December 13, 1918, No. 2811.

In view of these circumstances, it seems to me the seizure of Mr. Blass' applications for patents Ser. Nos. 63,231 and 63,232 may have been due to the erroneous impression (caused by the statement of his old German residence in the application papers) that he was actually residing in Germany, when as a matter of fact he has resided in this country since some time prior to August 1, 1914. I shall appreciate suggestions as to the proper steps to be taken by my client to clear his applications from seizure.

Very respectfully,
(Sgd.) JOHN LOTKA
Attorney for Ferdinand Max Eugen Blass
in the matter of above-named applications for patents.

* * * * * * * * * * * * * * * * * * *
* Alien Property Custodian *
* Received Mar 25 1919 *
* Noted C D C Date 4/21/19 *
* Ans'd ......Date ...... *
* * * * * * * * * * * * * * * * * * *

PLAINTIFF'S EXHIBIT No. 457.

LETTER FROM JOHN LOTKA, ATTORNEY FOR FERDINAND MAX EUGEN BLASS, TO ALIEN PROPERTY CUSTODIAN, DATED MARCH 24, 1919.

(NOTE: Same as Plaintiff's Exhibit No. 456 and not reprinted here. See Record, Exhibits, Volume 1, page 862.)

PLAINTIFF'S EXHIBIT No. 458.

105 11th. Ave., Newark, N. J.
April 16th. 1919.

The Alien Property Custodian,
Washington, D. C.
Dear Sir:—

Regarding your act: Trust *#37192*, *Report #37698*, I refer you to my letter of March 22nd, and the letters of my Patent Attorney dated March 21st and 24th., which three letters must be in your position for nearly one month, however I have no word that you made good the mistake of your department.

Therefore I ask you again,—under reference to the law,—to prove to me the right to your act and that you have as stated twice in the same:

"after investigation, determined" and, I will prove that your investigation was never done right, because I can prove that my patent attorney has protested against your act, that I was in correspondence myself from here and through two patents attorneys with the U. S. A. Patent Offices in Washington, D. C. at the time of war between U. S. A. and Germany and that I am staying in this Country for years, before U. S. A. declared war, and that therefore your act and statements therein are holdless, based only on errors and lack of investigation and absolut against the law, mentioned therein.

I have other applications on inventions and Patent allowed and I wish to point out, that you have no right at all to take, dispose or keep anything of my property according to the laws and that I protest again against your act above mentioned and others, if done, and demand the immediate reconstruction of my rights and damages, occurred by any of your acts against my property.

Your New York office, Mr. Kennedy, whom I saw Thursday, March 26th, regarding this matter stated that he knows nothing about the act and the letters above mentioned and that he would do nothing in the case, but He was unable to show me any law or any right that would be able or fit to back up your action. His only excuse stated also in your act that in my application, prepared in 1914 before the big war started and made in 1915, my home address was given in Germany gives you no right to date back, the law mentioned in your act to pre war time, not even a foreign law in power before the said U. S. A. law came into power would give you the right to your act, which I declare as null and void on account of holdless statements in the same, non-investigation and errors.

I await your prompt attention after you failed to do so for the last four weeks, and oblige

Veru truly yours,
(Sgd.) F. M. EUGENE BLASS.

Alien Property Custodian
Received April 17 1919
Noted C. D. C.
Date 4/24/17
Ans'd ....Date......

PLAINTIFF'S EXHIBIT No. 459.

April 22, 1919.

In Re: Trust No. G-37192, Report 37698

John Lotka, Esquire,
Patent Attorney,
23 Beaver Street,
New York, N. Y.

Dear Sir:

Referring to your letter of March 24, 1919, in which you state that Ferdinand Max Eugen Blass has been a resident in the United States since August 1, 1914, and indicate, therefore, that the seizure of the application for patents was erroneous, please be advised that this matter is receiving our attention, and that you will be informed in due course.

In replying, please refer to the above Trust and Report numbers.

Very truly yours,
Division of Patents.
By

Chief of Division.

RCG:SMB

PLAINTIFF'S EXHIBIT No. 460.

Alien Property Custodian
Sixteenth and P Streets NW.
Washington, D. C.

April 24, 1919.

Mr. R. C. Goldstein:
Washington, D. C.

Re Trust No. 37192—Report No. 37698

Dear Mr. Goldstein:

Referring to the letter of Mr. John Lotka he should present a claim to the Alien Property Custodian and give notice to The Chemical Foundation. He is of course limited to the proceeds under the Act as amended, but if the case is a meritorious one some arrangement can probably be arrived at with The Foundation.

Yours very truly,
RH:P (Sgd.) RAMSAY HOGUET.

* * * * * * * * * * * * * * * * *
* Alien Property Custodian *
* Received April 25 1919 *
* Noted C D C Date 4/29/19 *
* Ans'd ....Date...... *
* * * * * * * * * * * * * * * * *

PLAINTIFF'S EXHIBIT No. 461.

May 3, 1919.

In Re: Trust G-37192, Report 37698

John Lotka, Esquire,
Patent Attorney,
23 Beaver Street,
New York, N. Y.

Dear Sir:

With reference to your letter of March 24, 1919, in relation to several applications which have been taken over by the Alien Property Custodian, as belonging to Ferdinand Max Eugen Blass, Mulheim-on-the-Rhine, Germany, it is desired to state that these applications have been transferred to the Chemical Foundation, Incorporated, of New York, Ramsay Hoguet, Esquire, Patent Counsel, 149 Broadway, New York.

It is suggested that you may communicate with Mr. Hoguet, in relation to the transfer if you so desire.

Very truly yours,
DIVISION OF PATENTS,
By (Sgd.) Robert C. Goldstein,
Chief of Division.

RCG:SMB

PLAINTIFF'S EXHIBIT No. 462.

210 North Clinton St.,
East Orange, N. J.
May 9th, 1919.

The Alien Property Custodian,
Washington, D. C.

Dear Sir:—

I refer you to my letters of March 22nd. and April 1yth., 1919, sent from 105 11th. Ave., Newark, N. J., and protest again against your act and the transferring of my property to the Chemical Foundation, Inc., New York, as well as against the discharge of my Patent Attorney, as done so, stated in your letter of May 3th. and the letter of the Patent Offices, mailed to my Patent Attorney.

Will you please inform me as soon as possible, why you omit to answer my protests and why you, knowing that your act is holdless and against the law, have transferred and disposed over my property? You are liable for your doings.

Very truly,

(Sgd.) EUGENE BLASS.

* * * * * * * *
* General File No. 2114 *
* * * * * * * *

* * * * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received May 12, 1919 *
Noted R C G Date May 12, 1919
* Ans'd ...... Date ...... *
* *
* * * * * * * * * *

PLAINTIFF'S EXHIBIT No. 463.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets NW.
Washington, D. C.

June 2, 1919.

Mr. Robert C. Goldstein,
Division of Patents,
Washington, D. C.

Trust No. G-37192—Report No. 37698
In re: F. M. Eugene Blass

Dear Mr. Goldstein:

In making the investigation for the seizure of patents which were sold to The Chemical Foundation, it was obviously impossible to find the present address of each patent owner and it was therefore necessary to be guided entirely by the record. If it is a fact that these applications are owned by a resident, it will be a simple matter for The Chemical Foundation to rectify the error. In fact a much more simple manner would be to rectify the error through the procedure prescribed by Section 9 of the Trading with the Enemy Act.

Will you please write Mr. Blass asking him to let us have a short verified statement of the facts so that the directors of The Chemical Foundation may have something to act upon, and I will have the matter taken up immediately.

Yours very truly,
(Sgd.) RAMSAY HOGUET.

RH:P

* * * * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received June 3, 1919. *
* Noted ...... Date ...... *
* Ans'd ...... Date ...... *
* * * * * * * * * *

PLAINTIFF'S EXHIBIT No. 464.

June 18, 1919.

Trust G-37192
Report 37698

Mr. F. M. Eugene Blass,
210 N. Clinton Street,
East Orange, N. J.

Dear Sir:

With reference to your letter of June 10, 1919, it is desired to state that we have taken this matter up with Mr. Ramsay Hoguet, Esquire, 149 Broadway, New York, the Patent Counsel for the Chemical Foundation, Inc., of New York, and he suggests that we advise you to file with him a short verified statement of the facts so that the Chemical Foundation, Inc., may have your statement of the case properly before them, and upon receipt of this statement the matter will be given immediate attention.

Very truly yours,
DIVISION OF PATENTS,
By (Sgd.) ROBERT C. GOLDSTEIN,
Chief of Division.

RCG:SMB

PLAINTIFF'S EXHIBIT No. 465.

September 11, 1919.

Ramsey Hoguet, Esq.,
149 Broadway,
New York, N. Y.

Re Trust G-37192—Report 37698 Enemy F. M. Eugene Blass:

Dear Mr. Hoguet:—

The Blass matter comes up again in a letter which he has written to the President. I have talked it over with Mr. Garvan and he concurs in my recommendation that the Chemical Foundation should turn over the patents in question to Blass, taking from him, if it so desires, an assignment of his right to claim the sale value thereof under Section 9.

This of course, is on the assumption that Blass has proved that he is the owner of the patent.

Can you not get the matter settled shortly? Blass has written to the two New Jersey Senators, two Representatives, the Alien Property Custodian and the

President of the United States, and I do not know whom he will tackle next.

Very truly yours,
(Sgd.) H. E. AHERN,
Director, Bureau of Trusts.

HEA/S.H.

PLAINTIFF'S EXHIBIT No. 466.

Alien Property Custodian
Sixteenth and P Streets NW.
Washington, D. C.

Ramsay Hoguet
149 Broadway
New York City

R. C. G. Sept. 16, 1919
September 13, 1919.

Mr. H. E. Ahern,
Bureau of Trusts,
Alien Property Custodian,
Sixteenth & P Streets, N. W.,
Washington, D. C.

Trust G-37192—Report 37698—Enemy: F. M. Eugen Blass

My dear Mr. Ahern:

I have your letter of the eleventh instant re the above trust.

Of course I have no objection whatever to re-assigning the applications in question to Blass if he will establish that he is the owner of them and that he was not at the time of the seizure an enemy as defined by the "Trading with the Enemy Act" and no enemy interest in the patents existed. You will realize, of course, that in making these seizures we have to be guided entirely by the record. We can not investigate the residence of each applicant or patentee and must accept the statement of residence contained in his patent or specification. This may lead to a mistake in seizure of course, since the applicant or patentee may have changed his residence since filing his application, and this is apparently what happened in this case. I have two or three other cases of the same character which we are adjusting without difficulty.

The trouble in this case seems to be that Blass is a crank and will not give us the information upon which we can act. As far back as July 8th I wrote to Mr. John Lotka, Mr. Blass' attorney, that we would take action upon receipt of a verified showing of the facts as to Blass' citizenship and residence and communicated with him over the telephone about the matter. I was given to understand that this statement was forthcoming promptly. On June 2nd I wrote Mr. Goldstein asking him to write Mr. Blass requesting a short verified statement of the facts and I assume that Mr. Goldstein followed my instructions. I am again writing Mr. Lotka, asking for a statement of the facts and I trust you will appreciate that while I have all the good will in the world in this matter, we cannot act until we have some definite information. If Mr. Blass would have devoted one-half the interest that he has devoted to senators, representatives and the President to getting up a short statement of the facts, we could have cleaned the matter up long ago. I trust that we will be able to get the matter settled without further inconvenience to you. It looks as if Mr. Blass has exhausted all the sources of letter writing, although he might consider writing to Colonel House and Mr. Gompers.

Believe me,

Very truly yours,
(Sgd.) RAMSAY HOGUET.

L:PA

* * * * * * * * * * * *
* ALIEN PROPERTY CUSTODIAN *
* Received Sept. 16, 1919 *
* Noted ...... Date ...... *
* Ans'd ...... Date ...... *
* * * * * * * * * * * *

PLAINTIFF'S EXHIBIT No. 467.

EMERY, VARNEY, BLAIR & HOGUET
Counsellors at Law
149 Broadway
New York

Frederick L. Emery
Thomas B. Booth
Laurence A. Janney
Lucius E. Varney
Irving U. Townsend
Robert S. Blair
Ramsay Hoguet
Edward H. Palmer
Osgood H. Dowell
Everett S. Emery
Louis A. Jones
Edward G. Curtis
Manvel Whittemore
John W. Thompson

Lawrence G. Miller
Preston Upham
Howard W. Dix
Thomas J. Johnston
Edward M. Evarts
Amasa M. Holcombe
Hadley F. Freeman
Tine N. Daggett
Henry J. Weidner

Telephone Cortlandt 1090

Boston
Emery, Booth, Janney & Varney,
50 Congress St.
Tel. Main 5161

Chicago
Emery, Booth, Janney & Varney,
10 South La Salle St.
Tel. Franklin 1145

Washington
Emery, Booth, Janney & Varney,
Washington Loan & Trust Bldg.
Tel. Franklin 7974

Cable Embojava
Western Union Code

October 29, 1920.

Mr. Harry Caton,
Alien Property Custodian,
Sixteenth & P Streets, N. W.,
Washington, D. C.

My dear Caton:

I find on looking up the Blass matter that in November of last year I wrote Mr. Ahern stating that I had prepared an assignment of the patents in question. I sent a copy to Mr. Blass's attorney, together with a release of any claims Blass might have against the Custodian, but not having received the release from Blass, the assignment has not been delivered. I thought it unwise to assign the inventions without getting a clean bill of health for the Custodian, as Blass might make trouble even after his property had been returned to him.

In case you wish to take the matter up directly with him, I am sending you herewith the executed assignment which you may deliver or not as you think wise.

Very truly yours,
(Sgd.) RAMSAY HOGUET.

L:PA

* * * * * * * * * *
* Alien Property Custodian *
* Received Oct. 30, 1920. *
* Noted ...... Date ...... *
* Ans'd ...... Date ...... *
* * * * * * * * * *

PLAINTIFF'S EXHIBIT No. 468.

COPY

R. M. Eugene Blass
8 West Park St.
Newark, N. J., Nov. 3, 1919.

To the President
Executive Mansion,
Washington, D. C.

Mr. President:—

With letter of August 30, 1919, I have brought your attention to the fact that the Alien Property Custodian, Mitchell Palmer, has against Law and proclamation seized my two valuable patent applications, and in spite of several protests made immediately after issue of the seizure act, knowing that the act was holdless, he resp. his successor turned over the property to my competitors and revoked the power of my attorney.

The enclosure explains the matter more in detail, I have signed the statements before a notary public to give without further loss on time, a true explanation about the whole affair, and I await prompt action in this matter, and an early reply that you are willing to do under consideration of the law and your own proclamations, after the Custodian and his staff failed to make good their mistakes, and did not give me satisfaction, and I am without a reply to my above named letter, stating what you have found and decided by investigation of the case.

I have lost on account of the war, without my fault, my position and money and through the seizure act I am handicapt to use these valuable inventions in my lines or to offer the same for utilization and to obtain money thereon for living. Is it possible that you allow that a man with his family has to suffer for the simple reason that he was born in Germany, and that an officer of the U. S. Government took away from him, on wrong statements, his property which would have enabled him to build up a new existence, after he lost completely by the war? Can you allow the doings of said custodian in spite of your own words and for the sake of humanity and justice?

Respectfully submitted

(Sgd.) F. M. EUGENE BLASS.

1 Affidavit.

PLAINTIFF'S EXHIBIT No. 469.

COPY

F. M. Eugene Blass
8 West Park St.
Newark, N. J., Nov. 3, 1919.

Affidavit.

To Whom it May Concern:

I, the undersigned, Ferdinand Max Eugene Blass, sole owner and inventor of the inventions, placed with the U. S. A. Patent Office, Washington, D. C., and filed there on November 24, 1915, under: Serial No. 63,231 and 63,232, entitled respectively: "Device for

Charging Retorts and the like" and "Gas Producer" declare that I came to this Country first on the Steamer Kaiser Wilhelm II on April 23, 1913, and left with the same steamer on Dec. 17, 1913 after my staying in South Bethlehem, Pa.

On January 27, 1914 I returned with my family on the Steamer George Washington and since that time I have not left the United States of America, but have lived in Bethlehem, Pa.; Perth Amboy, N. J.; Providence, R. I.; Pawtucket, R. I.; Long Branch, N. J.; Newark, N. J., and East Orange, N. J.

I have stated in my both before named patent applications that my residence were in Muelheim-on-the-Rhine for certain true and considerable reasons, however, the same applications I have signed and sworn to before a notary public, in New York, U. S. A. in 1915, after I had ordered my attorney John Lotka to file both applications in the summer of 1914, on which time I had still my residence in Germany and intended to return to it, as I have stated by my landing 1914.

The fact that my applications are made and sworn to in New York, in 1915, proves that I was in this country after the big war started; my correspondence with the Patent Offices and its acceptance of my check sent from Newark in time of War between the U. S. A. and Germany, and my registrations as war measurement in the several cities and government offices, give further evidence regarding my staying in this Country in time of war, and the obtaining of my first paper, taken out last December in the U. S. Court, Newark, N. J., is further evidence that I am not an enemy under the "Trade with the Enemy Act" and that according to this Act and the proclamation of the U. S. A. President I am entitled to full protection of myself and my property and that therefore the before named Patent Applications cannot be taken away from me, or disposed of against my will and consent.

I further declare, that the Seizure Act of the Alien Property Custodian, dated March 1, and signed by Mitchell Palmer cannot be held upright under the "Trade with the Enemy Act" and the statements named and signed in the Seizure Act, which is based on wrong statements and carried out under protests of my attorney and myself, by letters and in person, placed with the office of said Custodian, the New Jersey Senators Frelinghuysen and Edge, the Congressman of the 9th District, and the President of the U. S. A., have never been evidenced by said Mitchell Palmer or his staff, in spite that I have asked for at several times and that my patent attorney, Mr. John Lotka, New York; and I have offered to prove the contrary of the statements in the seizure act.

Both patent applications are turned over to my competitors, a Corporation in New York, incorporated under the laws of Delaware in spite of the protests made against the seizure act and after my attorney was informed that our protest should find due consideration. The power of my attorney was revoked while he protested against the seizure act, about 14 days after he was informed that our protest should find due consideration and since beginning of May 1919 my property is in the hands of my competitors and all my efforts to have restored my right and properly protection are still resultless.

I do not intend to stop my protests against the unjust and unexcusable doings of said Custodian and his staff, however, I will set forth with all possible means my efforts to have restored my valuable property and payment for damages occurred through the false statements in the Seizure Act and nonobservance of the protests made immediately after issue of the

Seizure Act, March 21, 1919, before the property was turned over to my competitors.

I can furnish unquestionable proofs for these statements made before and I swear that they are true and correct.

State of New Jersey, }
County of Essex, } *ss*:

(Sgd.) F. M. EUGENE BLASS.

Subscribed and sworn to before me this third day of November 1919.

(Sgd.) FRED H. CARL.
Notary Public.

(Seal)

PLAINTIFF'S EXHIBIT No. 470.

G-37192
R-37698

November 11, 1920.

F. M. Eugen Blass, Esq.,
209 Union Avenue,
Long Branch, New Jersey.

Dear Sir:

In answer to your letter dated October 1, 1920 addressed to Mr. Francis P. Garvan, Alien Property Custodian, and previous correspondence on the subject of your application for letters patent of the United States No. 63231 and 63232, you are advised as follows:

Based upon the record of the Patent Office, that you were a resident at Mulheim-on-the-Rhine, Germany, your rights in these applications was demanded by the Alien Property Custodian under the terms of the Trading with the Enemy Act. By virtue of such demand the Alien Property Custodian conveyed such interest to the Chemical Foundation, Incorporated.

Upon your showing that at the time of our demand you were a resident of the United States, we have secured from the Chemical Foundation, Incorporated, a release and assignment conveying to you said applications, the effect of which would be to reinstate you in all of your rights thereunder as such rights existed at the time of our action. Sometime since Mr. Ramsay Hoguet sent to you a form of release for execution by you and stated that upon the delivery of such release, the assignment would be delivered to you. This office holds the assignment properly executed by the Chemical Foundation, Incorporated, and upon delivery of the release referred to will deliver to you the assignment. You will see from the above that the office is ready to satisfy you as to all of your rights upon your compliance with the proper request of the Alien Property Custodian in the matter.

Very truly yours,

BUREAU OF TRUSTS.

By (Sgd.) CHAS. B. CALVERT.

CBC/MS.

PLAINTIFF'S EXHIBIT No. 471.

EMERY, VARNEY, BLAIR & HOGUET
Counsellors at Law
149 Broadway
New York

Frederick L. Emery
Thomas B. Booth
Laurence A. Janney
Lucius E. Varney
Irving U. Townsend
Robert S. Blair
Jesse W. Morton
Ramsay Hoguet
Edward H. Palmer
Osgood H. Dowell
Everett S. Emery
Louis A. Jones
Edward G. Curtis
Manvel Whittemore

John W. Thompson
Lawrence G. Miller
Sebastian Hinton
Preston Upham
Howard W. Dix
Thomas J. Johnston
Clarence O. McKay
Edward M. Evarts
Hadley F. Freeman

Telephone Cortlandt 8677

Boston
Emery, Booth, Janney & Varney,
50 Congress St.
Tel. Main 5161

Chicago
Emery, Booth, Janney & Varney,
10 South La Salle St.
Tel. Franklin 1145

Washington
Emery, Booth, Janney & Varney,
Washington Loan & Trust Bldg.
Tel. Franklin 7974

Cable Embojava
Western Union Code

November 11, 1919.

Mr. H. E. Ahern,
Managing Director,
Alien Property Custodian,
Washington, D. C.

Trust No. G-37192; Report No. 37,698

Dear Mr. Ahern:

Please send me the original of Mr. Blass's affidavit and I will use it as a basis for the reconveyance of the patents.

Very truly yours,
(Sgd.) RAMSAY HOGUET.

L:PA

ALIEN PROPERTY CUSTODIAN
Received Nov. 13, 1919
Noted H E A Date ......
Ans'd ....Date 11/13/19

PLAINTIFF'S EXHIBIT No. 472.

November 13, 1919.

F. M. Eugene Blass, Esquire,
#6 West Park Street,
Newark, New Jersey.

Re: Trust G-67192—Report #67694:

Dear Sir:—

Your two letters of November 3rd, 1919, one to the Alien Property Custodian, and one to the President of the United States, have been referred to me for reply.

As we have frequently informed you, the only method by which these patents may be re-assigned to you, is by action of the Chemical Foundation, Incorporated. I have sent the affidavit which you inclosed with your letter to the President, to Mr. Ramsay Hoguet, counsel for the Chemical Foundation, who will take the matter up with you.

You may save yourself much trouble by getting in touch with Mr. Hoguet. Please do so. I think that the matter can be arranged satisfactorily to you in short order.

Yours very truly,

Managing Director.

HEA/SH

PLAINTIFF'S EXHIBIT No. 473.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets NW.
Washington, D. C.

RAMSAY HOGUET
149 Broadway
New York City

November 15, 1919.

Mr. H. E. Ahern,
Managing Director,
Alien Property Custodian,
Washington, D. C.

Trust No. G37192—Report No. 37698

Dear Mr. Ahern:

I acknowledge receipt of yours of the 13th in the above matter, enclosing the affidavit of F. M. Eugen Blass. I have prepared an assignment of the patents, a copy of which I have sent to his attorney, together with a release of any claims Blass may have against the Custodian and hope to get the matter closed shortly.

Very truly yours,
(Sgd.) RAMSAY HOGUET.

L:PA

R C G Nov. 18, 1919.

PLAINTIFF'S EXHIBIT No. 474.

209 Union Ave., Long Branch, N. J.
Nov. 22, 1920.

Alien Property Custodian, G.-37192
Washington, D. C. R.-37698

Sir:—

In reply to yours of the 11th. Inst. I bring your attention to the fact, that you have had no legal right to base the seizure of my patents applications on statements of the patent office, nor on the statements I made in said applications in 1914 before the great war started or in 1915, two years before the U. S. A. declared war on Germany.

The Trade with the Enemy Act came into effect in October, 1917, at which time, as stated in my affidavit, I was in this Country, the same I was, as stated in my applications of the two patents: sworn to before a notary public in New York in 1915.

It is unlegal to make up a seizure act, stating therein: "After careful investigation" etc. and have not made an investigation at all but only acted an a list of office employees who know nothing about investigation and right. But this was not the only fault in your doings: You acted, my attorney and I myself protested against your holdless act. You promised due investigation, but you did not investigate, but sold and transferred my property. There are three unexcusable faults on your part:

1. Dating back a law for three years.
2. Holdless statements under service oath.
3. Neglecting my protests and selling and transferring of my property, knowing that I was no alien enemy under the Trading with the Enemy Act and living in this Country.

I can prove that the U. S. Patent Office cashed my checks in time of war 1917, before you seized my property in 1919 after the Armistice was signed and that shows just enough that you and the Patent Offices did wrong and all your doings against me is illegal. You have caused me unnecessary troubles and loss and I want my property back from you and full restoration of all my rights and power, also recovering of damages, and I refuse to assign my legal rights against you and the Patent Offices or the U. S. A. Treasurer to the Chemical Foundation, Co., Inc., because I have nothing to do with them. If you had done right after you received my protest right after the seizure act, you could not sell and transfer my property, nor could you legal revoke the power of my attorney, which I have paid, because you have no right to interfere with my private business and stop my attorney to take care of my interests, because that is against the Constitution.

According to the facts, you have to change the statements of your letter, and I await prompt attention and action.

Very truly yours,
(Sgd.) F. M. EUGENE BLASS.

ALIEN PROPERTY CUSTODIAN
Received Nov. 24, 1920.
Noted .... Date 11/24/20
Ans'd .... Date ....

See letter
of 11th. inst.
by Calvert

PLAINTIFF'S EXHIBIT No. 475.

DUELL, WARFIELD & DUELL
Counsellors at Law
19 West 44th Street, New York

Frederic P. Warfield
Holland S. Duell
Charles H. Duell
James W. Anderson
Leonard A. Watson
Roscoe Stewart
David A. Woodcock
Carl W. Weeks

George C. Beach
Of Counsel

Patent, Corporation
and Trade-Mark Law
Telephone Vanderbilt [illegible]
Cable Address "Duelfield"

January 3, 1921.

Alien Property Custodian,
P and 16th Streets, N. W.,
Washington, D. C.

Re: Trust G-37192

Dear Sir:

Your letter of November 11, 1920, to Mr. F. M. E. Blass was brought to this office together with previous correspondence in this case.

I have had Mr. Blass execute the release and assignment to the Chemical Foundation, Inc., similar to the one you forwarded to him. I did not use the form forwarded by you because in the form you sent, the serial numbers of the patent applications were incorrectly stated. In your form the serial numbers were put down as 62,231 and 62,232, whereas they should be 63,231 and 63,232.

Inasmuch as your office holds the assignment properly executed by the Chemical Foundation, Inc., I am sending the release and assignment to you.

I am also enclosing the original form sent by you. Please send the assignment from the Chemical Foundation, Inc., to me.

Yours very truly,

(Sgd.) CHESTER A. DUNHAM.

CAD MCB
Enclosures.

ALIEN PROPERTY CUSTODIAN
Received Jan. 4, 1921.
Noted ...... Date ......
Ans'd JRZ Date 1/5...

PLAINTIFF'S EXHIBIT No. 476.

January 5, 1921.

Chemical Foundation, Inc.,
81 Fulton Street,
New York City.

Attention, Dr. L. Van Doren.

Dear Doctor:—

As I am in trouble again, I am going to ask you to do me a favor.

Under date of November 18, 1919, the Chemical Foundation, Inc., executed an Assignment covering Serial Nos. 63,231 and 63,232, assigning the same to Ferdinand Max Eugen Blass.

On account of various delays in securing a proper release, this Assignment was never delivered and is now out of date.

I have made an exact copy of this Assignment in triplicate and am going to ask you if you will kindly have it executed and returned to me, retaining one of the carbons for your files.

I am holding the executed release which is made out to the Chemical Foundation, Inc., and will forward the same to you on receipt of the re-executed Assignment.

Thanking you in advance, I am,

Very truly yours,

....

Divi

PLAINTIFF'S EXHIBIT No. 477.

January 5, 1921.

Duell, Warfield & Duell,
19 West 44th Street,
New York City.

Attention, Mr. Chester A. Dunham.

Gentlemen:—

I am in receipt of your letter of January 3rd., enclosing executed release and Assignment to the Chemical Foundation, Inc.

The Assignment by the Chemical Foundation, Inc., to Mr. F. M. E. Blass was executed November 18, 1919, and not having been recorded within ninety days, as I understand is required by law, would not convey a perfect title.

I have made out a copy of this Assignment and have forwarded it to Dr. L. Van Doren, of the Chemical Foundation, Inc., with the request that it be executed and returned to me at once, and am holding your release until I receive the re-executed Assignment.

I will give this matter my personal attention and do all in my power to have it handled promptly.

Yours very truly,

....

Division of Records.

JRZ:MBJ

PLAINTIFF'S EXHIBIT No. 478.

209 Union Ave., Long Branch, N. J.
3/27.21

Thomas W. Miller, Esq.
Alien Property Custodian,
Washington, D. C,

Sir:—

In reply to yours of the 25. inst. I wish to state, that I am unable to understand in which way I shall co-operate with your office, after they have refused to accept my release of January 3th, 1921 and fullfil their promise given to me in the letter of Nov. 11, 1920 to me and afterwards to my attorney, named in previous letters, according to which promise my ownership rights must have been restored immediately after January 4th, 1921.

Having given the release only under such terms, and upon failure of the office (Bureau of Trusts) to keep their promise regarding the immediate restoration of my rights and after I was informed that your office refused to accept the release I had given them on their own request (as said before), and because the release came not back in my hands and I had to fear that it could be used to diminish my legal rights, and, after the letter of the Chemical Foundation Corp. of Jan. 26, 1921, proved to me, that they did not intend to return my property without further troubles or me unknown things, I had to protect my interest by mailing my letter of January 31, 1921.

The attitude of the office of the former Custodian and the said Corporation, neglecting my protests, letters and inquiries did not left any other step for me. I never have given up my claims on my property and damages, because I have no reason to do so. Seizure act and further proceedings were illigal and I have the law and constitution for my protection.

I have asked in several letters for a clear and unbiassed statement of the whole affair and have shown and offered my willingness to work with you or the U. S. A. Government, to obtain a quick and friendly settlement, but your office has failed to answer my questions and neglected my letters, the same is done by the Chemical Foundation Corp. Inc., therefore I cannot understand what I could gain now by negotiation with the latter.

After the office of the former Custodian, last January refused to accept the release and failed to restore to me, my property in an undamaged form without saying for what reason they did not live up to the promise of Nov. 11, 1920, I have to fear that there are damages done and I want to have full protection by the U. S. A. Gorvernment and the Patent Offices (based on the law) against any damages on these inventions that may be due to the seizure act or the transfering of the same. Especially I want to know, 1) at which date the inventions were sold and transfered and 2) the amount paid for by said Corporation?

3) What did they do with said inventions?

4) What amendmends and proceedings were made by them?

5) What persons, corporations or firms have had an opportunity to see the inventions or the applications for letter of patents and the proceedings, after March 1, 1919?

6) What negotiations regarding the utilization of the inventions were carried on by the Chemical Foundation Corp. Inc.

7) What amount of damages will be paid to me:
   a) for the holdless seizure act?
   b) for revoking of the power of my attorney, Mr. John Lotka?
   c) for the sale and transfer of my property, after I had protested against the seizure act, and the Custodian had promised an intensive investigation?
   d) for damages occurred by holding back my property against law and right, making the utilization of the same impossible for me?

8) What amount of money for claimed damages will the Chemical Foundation Corp. Inc. receive from the U. S. A. Government, for which proceedings

they want from me the release and assignment of my claims? They can not have any legal claims for damages in the case, the only party, entitled for damages is the writer of this letter, and therefore he wants to know what is going on in the matter, after his proper release, requested by the office, was rejected last January.

9) What became of my release, dated Jan. 3th, 1921? I would like it back!

As soon as I receive satisfactory replies to my questions of former letters and the above, and the whole matter is cleared in a satisfactory way for all concerned, I will do everything possible in my power to assist you and the U. S. A. Government to straighten out in a satisfactory way and manner the troubles brought on by the former Custodian and his staff.

Assuring you again my full co-operation and asking you again for a prompt attention and settlement, I wish to remain,

Respectfully yours,
(Sgd.) F. M. EUGENE BLASS.

PLAINTIFF'S EXHIBIT No. 479.

G-37192
R-37698

March 17th, 1921.

Mr. F. M. Eugene Blass,
209 Union Avenue,
Long Branch, New Jersey.

Dear Sir:

Your letter dated March 13th, 1921 addressed to Thomas W. Miller, Alien Property Custodian, in reference to certain patents registered in your name and demanded by this office, has been referred to me for attention. It has been our desire to adjust this matter in accordance with your legal rights under the limitations of the Trading with the Enemy Act. The patents referred to were demanded because according to the Patent Office records your residence was stated as Mulheim-on-the-Rhine, Germany, and upon the basis of this record we demanded the patents as enemy property. By virtue of this demand the patents became vested in the Alien Property Custodian and were transferred in usual course in accordance with the law to the Chemical Foundation, Inc. Upon being informed by you of the fact, and our investigation of the matter being in accordance with your statement that you were not an enemy under the Trading with the Enemy Act, we secured from the Chemical Foundation, Inc., a re-assignment of the patents demanded to you. We have advised you that we would deliver this assignment to you upon the execution by you of a release to the Chemical Foundation, Inc., and the Alien Property Custodian and the reason you have not secured the assignment is because you refused to concur in this arrangement of the matter. The only method under the law to secure a return to you of your rights in these patents is by the method which we propose or the filing by you of a claim under Section 9 of the Trading with the Enemy Act, the allowance thereof and then a reassignment from the Chemical Foundation, Inc., to you upon the execution of proper release. The procedure under Section 9 of the Trading with the Enemy Act is more circuitous and therefore not as expeditious as the one that we propose.

If you are willing to execute the release to the Chemical Foundation, Inc., and the Alien Property Custodian, that we have requested, we will procure an assignment from the Chemical Foundation, Inc., to you and thus re-establish in your name your full rights in the property referred to. We trust that there will be no further difficulty in adjusting this matter with this full explanation of the necessary procedure to be followed.

Very truly yours,

Bureau of Trusts.

By (Sgd.) CHAS. B. CALVERT.

CBC/HMS

PLAINTIFF'S EXHIBIT No. 480.

209 Union Ave., Long Branch, N. J.
March 18, 1921.

Thomas W. Miller, Esq.
Alien Property Custodian,
Washington, D. C.

Sir:—

I have addressed to you March 13, an appeal for investigation and assistance in the case of seizure of my two valuable patent applications: G-37192, R-37698 and I received today a letter signed by Mr. Charl. B. Calvert that I can not understand considering all circumstances.

I give my reply to this letter enclosed and I would appreciate it very much indeed, if after all troubles I had in the matter, you would undertake or order an intensive investigation of the matter by an umpire in order that this matter can be settled without further loss of time, because if it goes on in the old way nothing can be gained for all concerned, it only will result in loss and dissatisfaction.

It looks to me that there is some mixup in the matter and that the writter of the letters, Mr. Charl. B. Calvert, Bureau of Trusts, who signed the letter Nov. 11, 1920 and March 17; is not rightly informed about the whole situation and the fact that my release was forwarded to the office of the Custodian as asked by him, but rejected, and that therefore said office failed to fulfill their promise; now they try again to blame me, as they always did in order to find an excuse.

If the protests of my attorney and myself would have had the prompt attention of the office of the Custodian, in March and April 1919, that property could not have been sold and transferred, and all concerned would not have had the troubles and expenses. If the office of the former Custodians had had really the good will to make good their mistakes, as the officers state in several letters, why not did they withdraw the seizure act in March 1919, after the first protests were placed with them, that would have saved all the troubles and loss they have made me. They could not sell and transfer before they seized my property, and my protests where filed immediately after the act of seizure was made known to my attorney. If the property was sold and transferred before it was seized, the whole action is void anyhow and it would be useless to release the Chemical Foundation Corp. or to assign to them my legal rights out of the seizure act. There must be somethings entirely wrong and that should be cleared.

Respectfully yours,
(Sgd.) F M. EUGENE BLASS.

PLAINTIFF'S EXHIBIT No. 481.

MEMORANDUM

To: Colonel Miller March 23, 1921.
From: Mr. Caton.

The facts in the case referred to in the attached letter addressed you by F. M. Eugene Blass are as follows:

On March 4th, 1919 Will T. Gordon after an examination of the records of the Patent Office made Report No. 37698 reporting that Ferdinand Max Eugen Blass, whose residence according to the Patent Office records was Mulheim-on-the-Rhine, Germany, was the owner of patent applications, serial Nos. 63,231 and 63,232.

The residence of the owner of the patent applications appearing to be in Germany, the Custodian issued a demand directed to the Commissioner of Patents, service of which demand was accepted March 24th, 1919 and the demand recorded in the records of the Patent Office on March 26th, 1919.

On March 25th, 1919 the Custodian received from John Lotka, attorney for Mr. Blass, the first intimation that Mr. Blass was resident in this country.

On April 10th, 1919 the Custodian executed an assignment to the Chemical Foundation which assignment covered a large number of patents, patent applications and trademarks. This assignment was drawn up some days prior to its execution and included the two patent applications reported as the property of Ferdinand Max Eugen Blass. Mr. Blass was advised of the situation and of the fact that the Custodian was communicating with the attorney for the Chemical Foundation with a view of having executed by the Chemical Foundation a quit claim or reassignment of the two patent applications and thus cure the defect in his record title to the applications. The attorney for the Chemical Foundation took the matter up with Mr. Blass' attorney, and agreed to have the Chemical Foundation execute a reassignment and deliver the same against a release executed by Mr. Blass.

On the 18th of November, 1919 the Chemical Foundation executed the reassignment and forwarded the same to this office to be delivered to Mr. Blass upon the receipt of the release.

In January, 1921 Mr. Blass forwarded to this office the release, but inasmuch as the assignment executed by the Chemical Foundation had been executed for more than ninety days, it was invalid for recordation purposes and the Chemical Foundation was on January 5th, 1921 requested to execute a new assignment.

On January 5th, 1921 the attorneys for Mr. Blass were advised of the situation and of the fact that the Chemical Foundation had been requested to execute the new assignment.

On January 31st, 1921 Mr. Blass addressed this office and withdrew the release.

Mr. Blass was advised that if he would reexecute the release withdrawn by him and present the same to the Chemical Foundation, the Foundation would reexecute the quit claim. It appears that he has not pursued the course suggested by us, but has preferred to complain rather than to cooperate in a settlement of the case.

HBC:CK

PLAINTIFF'S EXHIBIT No. 482.

209 Union Ave., Long Branch, N. J.
March 13, 1921.

G-37192.
R-37698.

Thomas W. Miller, Esq.
Alien Property Custodian,
Washington, D. C.

Sir:—

Since nearly two years I am waiting for the restoration of my ownership rights on two valuable patent applications, which was seized under false statements and under protests, but in spite of these protests sold to the Chemical Foundation Corp. who still holds the same.

My several letters to the office of the Alien Custodian are mostly ignored. I have appealed to the New Jersey Senators and the Congressman also to the former President of the U. S. A. and placed with him my affidavit, dated Nov. 3, 19.

With letter of November 11, 1920, I was informed by Mr. Chas. B. Calvert, Bureau of Trusts, that upon delivery of my release, they would immediately restore my rights.

Then I have taken up this matter with an attorney, who had investigated the case and taken up the matter with the office of the Custodian, have signed the release and he has forwarded same, January 3th to the Custodian, but up to the present, the Custodian has failed to do as promised in his letter of Nov. 11, 1920.

After receiving a letter of the Chemical Foundation Corp. I have, protecting my rights, with letter of January 31, withdrawn my release, because I had given the same only under the terms, that after the same was placed with the Custodian, he would, according to his promise immediately return my property. I do not know what the Chemical Foundation Corp. nor the Alien Custodian has in their mind by holding back the property, after the first one had under certain pretence obtained my signature.

I have called at the Chemical Foundation Corp. two times, once in person with a party interested in the patents, but I could not obtain any information or reason for their attitude and they have failed up to the present to follow my request for a written statement. Through the holdless and illegal seizure act and selling of my property, my business is completely crippled and I am unable to utilize my inventions or to go ahead with my business.

Therefore I would appreciate it very much indeed if you would investigate the case and help me to get back my property, undamaged as it was taken about two years ago, in order that I can use the inventions and can go back to my trade in which I was engaged for more than 20 years.

Very respectfully yours,
(Sgd.) F. M. EUGENE BLASS.

PLAINTIFF'S EXHIBIT No. 483.

T-37192
R-37698

April 7, 1921.

The Chemical Foundation, Inc.,
81 Fulton Street,
New York, N. Y.

Attention: Mr. Corbett

Gentlemen:

In connection with certain patents demanded in the name of FERDINAND MAX EUGEN BLASS, which were assigned to The Chemical Foundation, Inc., and it subsequently appearing that Mr. Blass was a resident of the United States and therefore not to be classed as an enemy, and Mr. Blass having complained to this office in respect to the seizure of his property, your Company executed an assignment dated the 18th of November 1919 to Mr. Blass which assignment was not delivered in proper time on account of delay in receiving a release therefor. Mr. Blass has complained to this office repeatedly about the delay in securing an assignment to him of his property and to satisfy him, insofar as we are able under the law, we are returning herewith the assignment heretofore executed in that the same cannot be recorded at the present time; likewise enclosing a copy of a new assignment for execution by The Chemical Foundation, Inc., and copy of release to be delivered upon the surrender of such assignment to Mr. Blass. We are writing to Mr. Blass of even date, whose address is 209 Union Avenue, Long Branch, New Jersey, that we have forwarded these papers to you and that you will take the necessary action to close the matter. We shall appreciate it if you will have this assignment executed promptly and notify Mr. Blass that the same is ready for delivery to him upon the execution of the necessary release.

Very truly yours,
Bureau of Trusts.
By (Sgd.) CHAS. B. CALVERT.

CBC/HMS.
encl.

PLAINTIFF'S EXHIBIT No. 484.

VER PLANCK & PRINCE,
Counsellor at Law,
Singer Building 149 Broadway,
New York City.

July 28, 1920.

Alien Property Custodian,
Washington, D. C.

Rep. 47187

Trust No. 12681 G, Division of Patents.

Dear Sir:

Our client, American Kitchen Products Co., has heretofore reported to you regarding the contract it

Las with Carl W. Rademacher, a citizen of Germany. This contract provides for the payment to Rademacher of royalties on a process or formulae for making bouillion cubes which was invented by Rademacher and now owned by the American Kitchen Products Company. Our client wants to know if you contemplate selling the rights of Rademacher in this contract. Will you kindly advise us regarding the same, and oblige,

Very truly yours,

VER PLANCK & PRINCE.

WJD/L

Original in report 47187

PLAINTIFF'S EXHIBIT No. 485.

July 30, 1920

Ver Planck & Prince,
Singer Building
149 Broadway,
New York City, N. Y.

Trust 12681

Gentlemen:

Receipt is acknowledged of your letter of July 28, 1920, regarding the contract between the American Kitchen Products Company and Carl W. Rademacher, a citizen of Germany. You will please be advised that all right, title, and interest in this contract formerly vested in the Alien Property Custodian by reason of his demand was tranferred to the Chemical Foundation, Inc., 81 Fulton Street, New York, February 26, 1920. All royalties accruing up to February 26, 1920, should be paid to the Alien Property Custodian. The royalties accruing subsequent to that date should be paid to the Chemical Foundation, Inc.

For such further information as you may desire, you are respectfully referred to the Foundation.

Yours very truly,

DIVISION OF PATENTS,
By R. C. G.,
Chief of Division.

RCG LED

[Note in lead pencil.]

Copied from carbon copy in office copies of all correspondence sent out. In charge of Miss Merrill. In charge of mails and files. 7/21/22.

PLAINTIFF'S EXHIBIT No. 486.

Ramsay Hoguet
149 Broadway
New York City

New York, January 16, 1919

Hon. A. Mitchell Palmer,
Alien Property Custodian,
Washington, D. C.

Dear Mr. Palmer:

I am attaching hereto a rather long letter on the subject of patent seizures and thought that in case you did not have time to go over it in detail I had better summarize my conclusions.

I believe that in view of the President's attitude the right of the Custodian to demand the patents should be exercised sparingly.

If possible, the industry affected by the patent seizure should be the moving party and the Custodian should act at its request and upon its representations. Conferences with representatives of the chemical industry indicated that this can be done very easily.

I believe that we can secure the cooperation of the industries affected to do the necessary clerical work and make searches to establish title in the enemy.

The established policy of selling patents connected with businesses being sold by the Custodian should be continued.

A large number of patents are of no interest whatever and we should confine our efforts to establish industries of importance.

Yours very truly,
(Sgd.) RAMSAY HOGUET.

RH:P

PLAINTIFF'S EXHIBIT No. 486-A.

Ramsay Hoguet
149 Broadway
New York City

New York, January 16, 1919

Hon. A. Mitchell Palmer,
Alien Property Custodian,
Washington, D. C.

Dear Mr. Palmer:

Mr. Whittemore has reported to me the result of his conferences with you and with the other members of the organization, relating to the seizure of patents and I have talked over the subject with him and given sufficient consideration to it to let you have my views in a preliminary fashion. I have also talked over the matter with the attorneys representing some of the principal chemical industries in the country to get, if possible, the outlook of an industry which would be vitally affected by our proposed program.

My recollection of your agreement with Governor Fort is that we then had no intention of demanding and selling any patents except such as form an actual part of a business which we had demanded and were selling so as to enable the purchaser of the business to continue what it had previously been doing with the assent and concurrence of the related German company. We, however, made exceptions in the cases of some patents unrelated to any industry which were proposed to be sold to the Government, notably the wireless patents proposed to be sold to the Navy and you also stated that there were doubtless a number of patents which were not related to industries under your control but to other American industries which should be sold to the American industries in order to put them into a position to manufacture a product which had theretofore been imported. In view of this agreement and of the attitude of the President towards this entire question, I believe that the power of seizure of patents should not be exercised in any wholesale fashion, but only in connection with established American businesses and then only for the most cogent reasons. This does not express my personal inclination. If you were entirely free in the matter, I should advocate seizing all German patents, irrespective of their nature since, as I have frequently told you, I see no reason why patents should be the subject of any different policy from that applied to other property. I am also firmly convinced that the procedure established by Section 10 is vicious in that it subjects the American manufacturer who obtains a license to a burden in favor of his German competitor. As Section 10 is administered by the Federal Trade Commission, the American manufacturer who invests his money in building up an industry is at least ten per cent worse off than his direct German competitor.

In view of the circumstances in which we are now placed, I recommend:

1. Pursuing our present policy of selling with the corporations sold by the Alien Property Custodian

such patents as are related to its business by reason of license or their ownership by the parent German company or its inventors.

2. The seizure by the Alien Property Custodian of such patents as he is advised by competent persons are necessary to the continuation or development of an existing American industry, irrespective of whether the Alien Property Custodian controls companies operating in these industries. I see no reason why power of seizure should be exercised in respect of patents relating to industries which have not been established in the United States unless there appears to be a definitely recognized need for the establishment of the industry.

3. The seizure for Governmental purposes of all alien enemy owned United States patents which relate to the several Governmental agencies; for instance, patents relating to ordnance, munitions, airplanes, radio-telegraphy, etc.

4. Aside from the classes above mentioned, I do not think that any patents should be seized.

My conferences with the representatives of certain of the chemical companies indicate a very definite and positive feeling that a very large number of German owned American patents is necessary to the development of and the continuance of the business of the American dye and chemical industries, and that it was clearly preferable to obtain a right to operate under such patents (whether by purchase or by license) through the Alien Property Custodian rather than through the Federal Trade Commission. The reasons stated were briefly, the uncertainty of the term or royalties payable under a license from the Federal Trade Commission, the objection to divulging to an alien enemy competitor the secrets of the business through an examination of the books, and the creating through the payment of royalties of a differential of at least ten per cent between the importer and the domestic manufacturer. Other advantages, such as the certainty as to the amount of investment in the event of a purchase from the Custodian, the necessity of giving a monopoly to a purchaser where large investment in building up an industry were regarded, and other points were also discussed. A disagreement between the representatives of the various companies, however, developed in the question of whether exclusive rights should be given under the enemy owned patents seized or whether some scheme should be worked out by which the industry could be generally licensed, some of the gentlemen preferring an outright sale and others a general non-exclusive license to all manufacturers. I will take this matter up later, but at this time merely wish to point out that the industry as a whole believes that better results are to be secured through the Custodian than through the Federal Trade Commission.

This being the feeling of the industry and our endeavor being to benefit the industry as a whole—and I believe that the industry itself is best qualified to know how this should be done—I suggest that wherever possible the industry as represented by the patent counsel for the more important companies of the industry, determine just which patents should be seized. You could then not be accused of seizing patents in a wholesale fashion but would be placed in a position of aiding an industry in the manner in which it desires to be aided and I think that your position would be better than if we determined ourselves to what extent seizures were to be made.

I have been offered the very fullest cooperation by the representatives of the chemical industry who have assured me that they would undertake to make any reasonable investigation we might require at their own expense and without any guaranty that they would ultimately become purchasers or licensees. I feel very certain that the work of examining the titles of the enemy owned patents and of making the recommendation to the Custodian as outlined above can be parceled out in such a way as to be very expeditiously done at a relatively small expense to each of the companies taking part. I also believe that we can get the cooperation of the patent departments of the larger companies in the electrical field in the same manner. Of course, the field of investigation can be greatly reduced by checking out all of the enemy owned patents which have been reported or demanded.

The sale of the patents after seizure presents several interesting possibilities. The Custodian having taken absolute title to the patents can exercise any rights over them he wishes and can therefore sell them outright or parcel them out in various ways. It may be that in some cases the patent rights could be distributed throughout the trade and in others sold outright to one purchaser. I am inclined to advocate their outright sale. As you know, I have no sympathy for a denatured patent monopoly, but should it be deemed advisable to spread the monopoly over the industry, it can be done in a number of ways: for instance, forming a Government corporation to take title to the patents, selling the patents to a syndicate of manufacturers, selling the patents subject to a covenant to issue sub-licenses, selling undivided interests in the patents to several manufacturers, and otherwise.

It seems to me that the object to be achieved is to promote so far as we can the manufacture of products under the patents and to this end I suggest the segregation of the patents after seizure into groups of allied patents and selling the group outright so that the manufacturer best fitted to put the group of patents to use could purchase them. Thus, for instance, the duPont Company might be peculiarly well fitted to manufacture a group of toluol dyes, while the Bayer Company might be peculiarly well fitted to manufacture salicylic acid pharmaceuticals. In this way we could put the patents into the hands of those who had the equipment, experience and market best adapted to their use.

The plan of procedure which I shall follow with your approval is as follows:

1. Confining our attention for the present to the most important phases of the situation; to wit, dyes, chemicals and pharmaceuticals.

2. Take the list of enemy owned patents compiled by the Federal Trade Commission and have Mr. Gordon and my office eliminate from it such patents as have already been reported and demanded.

3. Secure the cooperation of the attorneys for the larger chemical companies along the lines indicated above and parcel out the corrected list to their attorneys for a report on title to the patents of the corrected list. If they will do as agreed, they will furnish us with abstracts of title to the patents and eliminate such patents as they know have been assigned to American owners since issuance.

4. Secure from the companies a statement that such patents are essential to the development of the industry and a recommendation that they be seized by the Custodian.

5. Demand the patents.

6. Subdivide the patents seized into groups as indicated above and sell them in accordance with the usual procedure.

After we get the chemical classes under way, we can conduct an investigation to determine what other classes should be proceeded with and secure the cooperation of the interested companies in these several fields.

I have been trying to go to Washington for the last ten days to consult you personally about this matter, but I have been confined to my house for the larger part of the time and am still unable to undertake the trip, but will do so at the very earliest opportunity. In the meantime, I have asked for Mr. Gordon's assistance and am starting him and my office in the work of compiling the necessary information. If you care to drop me a line after reading the foregoing or call me on the telephone, I would appreciate it. Believe me,

Very truly yours.

RH:P

P. S.

P. S. Since writing the foregoing, Mr. Garvan and I have had a conference with Mr. Poucher of the duPont Company who states that he believes that the Institute of dye manufacturers, an association representing practically all of the dye manufacturers in the country will make a request to the Custodian that he take and sell the German owned American patents, on the ground that proper protection is not afforded by Federal Trade Commission licenses. I will advise you definitely as to this when I hear from him again.

R. H.

PLAINTIFF'S EXHIBIT No. 487.

ABSTRACTS OF ASSIGNMENTS BY THE CHEMICAL FOUNDATION, INC.

1. *Assignee*: Amid Duron Co.
   Date of Assignment: August 1, 1919.
   Date of Recording Assignment: August 28, 1919.

Property: Patent No. 1,143,499—Manufacture of Emulsions and Substances for Use Therein, together with all profits and damages with respect thereto.

Reason for Assignment: Patent No. 1,143,499 was, prior to its seizure and on or about Dec. 30, 1915, assigned to Amid Duron Co., which assignment was recorded Feb. 7, 1916, Liber. Q-99, page 276.

* * * * * * * * *

2. *Assignee*: General Briquetting Co.

Date of Assignment: Sept. 29, 1919.

Date of Recording of Assignment: Oct. 11, 1919.

Property:

Patent No.	*Title.*
Reissue 12,643	Method of forming blocks of ores for metallurgical purposes.
933,269	Manufacture of agglomerated bodies from blast-furnace dust.
933,270	Manufacture of coherent bodies from blast-furnace dust.

Also all profits and damages with respect thereto.

Reason for Assignment: According to a prewar agreement between the Allgemeine Brikottierungs Gesellschaft, m. b. h. and the General Briquetting Co., the German company agreed to assign to the General Briquetting Co. the letters patent forming the subject matter of the agreement and also all patents and applications therefor on improvements which might thereafter belong to the German company. The General Briquetting Co. requested the German company to make the assignment of patents mentioned in the agreement, but this request was not complied with before the seizure.

Conditions of Assignment: This assignment was made subject to all conditions and reservations made in favor of the Allgemeine Brikettierungs Gesellschaft, m. b. h. in two certain agreements between the Allgemeine Brikettierungs Gesellschaft m. b. h. and the General Briquetting Co. and the Metal Briquetting Co. dated March 6, 1911, and March 8, 1911, respectively, to which conditions and reservations The Chemical Foundation, Inc., has succeeded.

* * * * * * * * *

3. *Assignee*: Benno Borzykowski.

Date of Assignment: September 30, 1919.

Property:	*Patent No.*	*Title*
	1041587	Process of producing dyed cellulose ester.
	1100518	Process of producing cupramonium solutions.
	1133548	Method of making imitation textile products from solutions of cellulose or plastic substances.
	1143569	Production of articles or materials from viscose.

Also all claims and demands for past infringement of these patents except claims and demands against the U. S. of America.

Reason for Assignment: Benno Borzykowski, the inventor of each of the above patents, had never been vested with "enemy" or "ally of enemy" character, because he was a Russian subject at the time of the filing of the applications, became a subject of Poland after the war, and has resided in the U. S. since Oct. 1, 1915.

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4. *Assignee*: The Linde Air Products Company.

Date of Assignment: October 9, 1919.

Property:	*Patent No.*	*Title.*
	1020102	Process for the production of hydrogen from gas mixtures containing hydrogen.
	1027862	Apparatus for the separation of hydrogen from a gaseous mixture.
	1027863	Apparatus for the separation of hydrogen.

Reason for Assignment: There was a prior conveyance of these patents to the Linde Air Products Co.

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5. *Assignee*: The Linde Air Products Company.

Date of Assignment: October 9, 1919.

Date of Recording of Assignment: October 13, 1919.

Property: *Application for Patent.*

Serial Nos.	*Title.*
879,492	Method for Separation of the Constituents of Air.
188,039	Process of separating the constituents of air.
188,040	Process of separating the Constituents of air.

Reason for Assignment: There was a prior conveyance of these applications for patents to Linde Air Products Co.

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6. *Assignee*: Lehn & Fink, Inc.

Date of Assignment: October 30, 1919.

Property:

Trade-mark Nos.	*Date.*	*Registrant.*
27,456	Dec. 10, 1895	Schulke & Mayr
53,937	June 12, 1906	" "

Together with the good will and business appurtenant thereto, as well as all profits and damages for past infringement of these trademarks. This assignment was made with the provision that any right, title or interest of The Chemical Foundation in a certain agreement between Schulke & Mayr and Lehn & Fink dated Feb. 5, 1914, shall not be affected thereby.

Reason for Assignment: These trademarks together with the good will and business appurtenant thereto were assigned to Lehn & Fink in two certain assignments recorded on Feb. 6, 1914, Liber X-94, page 50 and on April 16, 1914, Liber L-94, page 405.

* * * * * * * * *

7. *Assignee*: Metal & Thermit Corporation.
Date of Assignment: November 18, 1919.

Property: Patent No. 1,115,262, Process for detinning, together with all claims and demands for profits and damages for past infringement thereof.

Reason for Assignment: The Metal & Thermit Corporation was shown to be the equitable owner of this patent.

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8. *Assignee*: Chinosol Company.

Date of Assignment: November 20, 1919.

Property: A certain interest in Patent No. 906,918, Process of Making Neutral Oxychinolin Salts.

Reason for Assignment: This patent was assigned to the Chinosol Company by instrument dated April 3, 1911.

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9. *Assignee*: Permutit Company.

Date of Assignment: November 20, 1919.

Property:	*Patent No.*	*Title.*
	1107199	Process for clarifying and sterilizing water.
	1117831	Process of removing oxygen from water.
	1121490	Process of producing alumino-silicates.

Property:	*Patent No.*	*Title.*
	1140262	Method of manufacturing base-exchanging substances.

9. Also all claims and demands for profits and damages for past infringement thereof.

Reason for Assignment: The rights to the above inventions were acquired by the Permutit Company by assignment duly executed and ready for delivery on July 24, 1914, but not recorded because of subsequent war circumstances.

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10. *Assignee*: Sterling Products, Inc.

Date of Asignment: Oct. 21, 1920.

Property:	*Patent No.*	*Title.*
	701523	Process of making alkyl ethers of cinchona-alkaloid carbonic acids.
	770743	Process of making dialkyl barbituric acids.
	782739	C - C -Dialkyl - barbituric acid and process of making same.
	782740	Dipropyl - barbituric acid, analogous derivatives, and process of making them.
	782741	Disubstituted barbituric acid and process of making same.
	782742	Trisubstituted barbituric acids and

Property:	*Patent No.*	*Title.*
		process of making same.
	1151536	Potentiated sera and process of making them.
	1191551	Serum mixture.
	1196065	Serum therapy.
	1205138	Phosphorus and oxygen containing organic compounds.

Together with all damages and profits for past infringement. The Chemical Foundation also releases and quit-claims unto the Sterling Products, Inc. these patents and any right, title and interest hereafter acquired by it with respect thereto.

Reason for Assignment: These patents together with all damages and profits for infringement were sold on or about December 12, 1918 to Sterling Products, Inc. by the Alien Property Custodian. Therefore this assignment was made to correct the erroneous transfer to The Chemical Foundation, Inc.

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11. *Assignee*: Bayer Company, Inc.

Date of Assignment: October 21, 1920.

Property:	*Trade-mark Nos.*	*Trade-mark.*	*Date of Registration.*
	15986	Sulfonal	Nov. 6, 1888
	16309	Tetronal-Bayer	Feb. 26, 1889
	16310	Tetronal	Feb. 26, 1889

Property:	*Trade-mark. No.*	*Trade-mark.*	*Date of Registration.*
	16311	Trional-Bayer	Feb. 26, 1889
	16392	Phenacetin-Bayer	Mar. 19, 1889
	16468	Sulfonal Bayer	Apr. 9, 1889
	23606	Antinonnin	Sept. 12, 1893
	23823	Somatose	Nov. 14, 1893
	28502	Sucrin	June 30, 1896
	29314	Sycose	Dec. 15, 1896
	29406	Iodothyrine	Jan. 5, 1897
	31386	Ferro-Somatose	Mar. 8, 1898
	31387	Lacto-Somtose	Mar. 8, 1898
	31389	Iron-Somatose	Mar. 8, 1898

Together with the business and good will appurtenant thereto, and all damages and profits from past infringement. Also the Chemical Foundation grants and quitclaims to the Bayer Co. any right, title or interest hereafter acquired with respect to these trademarks.

Reason for Assignment: These trademarks together with the business and good will appurtenant thereto were the property of the Bayer Co. who had at the dates of seizure and assignment the sole and exclusive ownership thereto.

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12. *Assignee*: Radium Therapy Corporation.

Date of Assignment: Nov. 5, 1920.

Property:	*Patent No.*	*Title.*
	1032779	Radio-Active Material
	1032951	Radio-Active Material.

Together with any claims arising from past infringement thereof.

Reason for Assignment: These patents were assigned to the Radium Therapy Corp., on May 11, 1914.

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13. *Assignee*: American Thermos Bottle Company.

Date of Assignment: Dec. 3, 1920.

Property:	*Patent No.*	*Title.*
	918503	Making double-walled vacuum vessels.
	923136	Making double-walled vacuum vessels.

Together with any claims arising from infringement thereof.

Reason for Assignment: The American Thermos Bottle Co. was shown to be the equitable owner of these patents because of a certain agreement dated Feb. 27, 1907.

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14. *Assignee*: Alien Property Custodian.

Date of Release: Dec. 21, 1920.

Property:	*Patent No.*	*Title.*
	701523	Process of making alkyl ethers of cinchona-alkaloid carbonic acids.
	770743	Process of making dialkylbarbituric acids.

Property:	*Patent No.*	*Title.*
	782739	C-C-Dialkyl - barbituric acid and process of making same.
	782740	Dipropyl - barbituric acid analogous derivatives, and process of making them.
	782741	Disubstituted barbituric acid and process of making same.
	782742	Trisubstituted barbituric acids and process of making them.
	935849	Apparatus for washing caoutchouc, gutta-percha, and similar substances.
	936635	Apparatus for washing caoutchouc, and similar substances.
	1151536	Potentiated sera and process of making them.
	1191551	Serum mixture.
	1196065	Serum therapy.
	1205138	Phosphorus and oxygen containing organic compounds.

Trademark No.	*Registration Date.*
18,827	Jan. 13, 1891
33,865	Dec. 12, 1899
33,866	Dec. 12, 1899
36,588	June 11, 1901
47,110	Oct. 24, 1905
72,455	Jan. 26, 1909
84,922	Jan. 9, 1912

Reasons for Release: These patents and trademarks were included by mistake in the assignment dated April 10, 1919, by the Alien Property Custodian to The Chemical Foundation. Therefore in order to correct this error, The Chemical Foundation released and quitclaimed any right, title and interest to these patents and trademarks.

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15. *Assignee*: Oskar Matter.

Date of Assignment: June 13, 1921.

Property:	*Patent No.*	
	1237076	Method of manufacturing polyvalent alcohols.
	Application Ser. No.	
	119550	Method of manufacture of polyvalent alcohols.

Reason for Assignment: Oskar Matter had always been a citizen of Switzerland and also the owner of the above patent and application for patent.

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16. *Assignee*: Kaffee Hag Corporation

Date of Assignment: May 16, 1921.

Property:	*Patent No.*	
	1009610	Process of decaffeinizing coffee beans, together with certain rights and benefits appurtenant thereto.

Reason for Assignment: All rights, title and interest to this patent were assigned to the Kaffee Hag Corp. on May 11, 1914.

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17. *Assignee*: The Grasselli Chemical Company.

Date of Assignment: Nov. 23, 1921.

Property:

Trademark No.	*Registration Date.*	*Trademark*
20487	Dec. 22, 1891	Benzo-Black
20488	Dec. 22, 1891	Benzo-Black-Blue
20489	Dec. 22, 1891	Benzo-Brown
20490	Dec. 22, 1891	Benzo-Grey
20491	Dec. 22, 1891	Sulfon-Azurine
20492	Dec. 22, 1891	Azofuchsine
20493	Dec. 22, 1891	Thiazole-Yellow
28432	June 23, 1896	Rhodulin
29323	Dec. 15, 1896	Katigen
67669	Feb. 11, 1908	Metakalin

Together with all rights and benefits appurtenant thereto.

Reason for Assignment: These trademarks together with the business and good will were assigned to the Grasselli Chemical Co. on March 14, 1919, which was prior to the seizure thereof by the Alien Property Custodian.

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18. *Assignee*: The Grasselli Chemical Co.

Date of Assignment: Nov. 23, 1921.

Property: *Trademark No.*

31,422 Mar. 15, 1898, as applied to colors and color "intermediates," but not otherwise, and all rights and benefits appurtenant thereto.

Reason for Assignment: This trademark as applied to colors and color "intermediates," but not otherwise was assigned to Grasselli Chemical Co. on Mar. 14, 1919, which was prior to the seizure thereof by the Alien Property Custodian.

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19. *Assignee*: Westinghouse Lamp Company.
Date of Assignment: Mar. 2, 1922.

Property: *Patent No.*

1180264	Incandescent body for electric lamps, together with all rights and benefits appurtenant thereto.

Reason for Assignment: The Westinghouse Lamp Co. was found to be the equitable owner of this patent by an assignment previous to its seizure by the Alien Property Custodian.

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20. *Assignee*: Alien Property Custodian.
Date of Release: April 11, 1922.

Property:

Patent No.	*Title*
912352	Objective.
1108307	Spherically, Chromatically, astigmatically, and comatically corrected double objective.

Reason for Release: These patents were included by mistake and through inadvertence in an assignment to The Chemical Foundation.

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21. *Assignee*: Alien Property Custodian.

Date of Assignment: May 23, 1922.

Property:	*Patent No.*	*Title*
	1109447	Generation of hydrogen by means of iron.
	1109448	Manufacture of hydrogen.
	1152196	Process of making hydrogen.
	1152197	Process of and apparatus for making hydrogen.
	1225262	Apparatus for producing hydrogen.
	1225263	Apparatus for producing hydrogen.
	1225264	Process of producing hydrogen.

Together with certain rights and benefits appurtenant thereto. This assignment was made subject to a certain release and license to the Government of the U. S. of America.

Reason for Assignment: It appeared from evidence submitted that the Government might have a claim under certain alleged contracts pertaining to these patents and that the best interests of the Government would be served if these patents were returned to the Custodian, as evidenced by a letter dated May 23, 1922, from The Chemical Foundation to Colonel Thomas W. Miller.

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22. *Assignee*: Chinosol Company.

Date of Assignment: November 22, 1922.

Date of Recording Assignment:

Property: *Trade-Mark No.*

28,750 Subject to release and license to the United States.

Reason for Assignment: The Chinosol Company was the owner of this trade-mark at the time of seizure.

PLAINTIFF'S EXHIBIT No. 488.

A meeting of the Board of Directors was held at the office of the Alien Property Custodian, No. 110 West 42nd Street, New York City, on Wednesday, May 14th, 1919, at 11 A. M.

Present: Messrs. Francis P. Garvan
Douglas I. McKay
George J. Corbett

The minutes of the last meeting were read and approved.

On motion duly made, seconded and carried, Mr. Hoguet, the patent counsel of The Foundation, was instructed to take all the measures necessary to accomplish the substitution of licenses from The Chemical Foundation for licenses from the Federal Trade

Commission, in all cases in which Federal Trade Commission licenses under the patents now owned by the Foundation had been issued.

Counsel then presented a proposed form of license agreement adapted as nearly as possible to universal use in issuing licenses under patents owned by The Foundation.

On motion duly made, seconded and unanimously carried, this form of agreement (copy of which was ordered filed herewith) was adopted for use subject to the necessary modifications and it was unanimously

Resolved that the President, or the Vice-President in the absence of the President, be and they are hereby authorized, without further action of the Board of Directors, to execute, in the name and on behalf of The Corporation, license agreements in proper cases in said form; and the Secretary be and he hereby is authorized and directed to attach the corporate seal and attest the same by his signature, to any license agreements executed by the President or Vice-President as aforesaid.

On motion duly made, seconded and unanimously carried, the Treasurer was authorized to accept on behalf of The Corporation an assignment of letters patent No. 868,397, issued October 15, 1907, for Transforming-nozzle for obtaining kinetic energy from flowing gases and vapors, from the Alien Property Custodian, and to pay the Alien Property Custodian the consideration of fifty dollars mentioned in said assignment.

On motion duly made, seconded and unanimously carried, the Treasurer was authorized to accept on behalf of The Corporation an assignment from the Alien Property Custodian of Trademarks No. 68,059 "Duron" and No. 70,391 "C. W. H. H." and all the rights under a certain agreement between Chemische Werke Hansa, G. m. b. H. and Arabol Manufacturing Company, and to pay the Alien Property Custodian the consideration of fifty dollars mentioned in said assignment.

On motion duly made, seconded and unanimously carried, the Treasurer was authorized to accept on behalf of The Corporation, an assignment from the Alien Property Custodian of fourteen patents relating to gyroscopic devices and to pay the Alien Property Custodian the consideration of Five hundred dollars mentioned in said assignment.

The meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 488-A.

LICENSE
THE CHEMICAL FOUNDATION, INC.
to
....

Dated 19

Product

Patents

LICENSE.

AGREEMENT made this day of 19 , between THE CHEMICAL FOUNDATION, INC., a corporation organized under the laws of the State of Delaware (hereinafter called the LICENSOR) and ,
a corporation organized under the laws of
(hereinafter called the LICENSEE).

WHEREAS, the LICENSOR is the owner of, or has the right to grant licenses under certain letters patent of the United States enumerated in Schedule A hereto attached (hereinafter called the LICENSED PATENTS); and

WHEREAS, the LICENSEE is desirous of obtaining a non-exclusive license under the LICENSED PATENTS upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the faithful performance of the covenants herein contained, IT IS AGREED:

1.—The LICENSOR hereby grants to the LICENSEE upon the terms and conditions hereinafter specified, a personal, non-exclusive and (except as hereinafter provided) non-assignable license to make, use and sell throughout the United States, its territories and dependencies,

(hereinafter called the LICENSED PRODUCT) under the LICENSED PATENTS to the full end of the terms for which the LICENSED PATENTS are issued, unless sooner terminated as hereinafter provided.

2.—Where product patents are included in Schedule A the LICENSEE shall not, without the written permission of the LICENSOR, import into the United States, its territories or dependencies any product which is covered by any of said patents or sell in the United States, its territories or dependencies any such product made outside of the United States.

3.—The LICENSOR agrees to furnish, so far as is reasonably possible, upon request of the LICENSEE, such engineering data, copies of drawings, formulæ, or other information as it now has or may hereafter acquire with respect to the LICENSED PATENTS for the assistance of the Licensee in making or using the inventions of the Licensed Patents upon payment by the Licensee of the actual cost of furnishing such engineering data, copies of drawings, formulæ, or other information. The Licensor shall not disclose confidential information which it has received from the Licensee or others and shall be in no way responsible or liable for the accuracy, correctness or sufficiency of any such data, drawings, formulæ, or other information furnished hereunder. The Licensor shall upon request of the Licensee inform the Licensee of all licenses granted by it to other licensees under any of the patents of Schedule A.

4.—The Licensor will at its own expense bring and diligently prosecute such suits for infringement of the Licensed Patents, as may be reasonably necessary and proper in the opinion of its counsel to enforce said patents and prevent unlicensed competition by manufacture, use or sale in the United States, and will at its own expense defend any suit brought against the Licensee by any person claiming title to the Licensed Patents or any of them and hold the Licensee harmless in such suits to the extent of the royalties paid by the Licensee under this license.

5.—The Licensor agrees that should it hereafter establish any more favorable rate of royalty for the manufacture, use and/or sale of the Licensed Product than that charged herein it will give the Licensee the benefit of such more favorable rate from and after the date it is established.

6.—For the rights and licenses hereby granted the Licensee will pay to the Licensor, in the manner hereinafter provided, a royalty of per cent.

of the net selling price received by the LICENSEE for the LICENSED PRODUCT to the end of the term of

If the LICENSED PRODUCT is used by the LICENSEE in the manufacture of other and unlicensed products, the LICENSEE shall, for such of the LICENSED PRODUCT so used, pay a royalty at the same rate computed on the average net selling price of the LICENSED PRODUCT in the trade at the time of such use, or if there be no ascertainable average net selling price in the trade at such time, then at the rate of per .

One royalty only shall be payable for the manufacture, use and/or sale of the LICENSED PRODUCT.

7.—The LICENSEE will keep full, true and accurate books of account containing such particulars as may be required by the LICENSOR from time to time, of its operations under this license, which books and the premises where such licensed business is carried on, insofar as it may be necessary to determine the nature and extent of the LICENSEE's operations under this license, shall be open to the inspection of the LICENSOR or its representatives at all reasonable times.

8.—The LICENSEE within thirty days after January first, April first, July first and October first of each year, shall furnish the LICENSOR a true and accurate report, under oath if required, giving such particulars of the business conducted by the LICENSEE during the preceding three months under this license as may from time to time be required by the LICENSOR and as are pertinent to an accounting under this license and simultaneously with the making of each such report shall pay to the LICENSOR the royalty shown to be due thereby for the period covered by such report.

9.—The LICENSEE by taking this license does not admit, except as between itself and the LICENSOR personally the patentability, novelty and utility of the inventions of the LICENSED PATENTS and the right or title of the LICENSOR thereto and the respective rights of the LICENSEE and third parties as between themselves shall remain unaffected thereby.

10.—If required by the LICENSOR, the LICENSEE shall, whenever practicable, mark the LICENSED PRODUCT, if subject to a product patent included in Schedule A and when intended for sale in the United States, its territories and dependencies with the words "Licensed by THE CHEMICAL FOUNDATION, INC., under the following United States Letters Patent" followed by a list of the date or dates of issue of said product patent or patents, and when advertising the same in the United States, its territories and dependencies shall, if required by the LICENSOR, state in such advertisement that said product is licensed by the LICENSOR.

11.—The LICENSEE shall upon request of the LICENSOR furnish to the LICENSOR whenever practicable, samples of its product made under this license and shall, if required by the LICENSOR, indicate upon the labels carried by said product or, when that is not practicable, in another appropriate way, the grade, concentration and/or color, which qualities shall be expressed in terms of a scale of standards to be established by the LICENSOR. Where the LICENSED PRODUCT is one which may affect the public health or safety the LICENSOR reserves the right to prescribe the limits of purity and strength of the product to be sold and to prescribe tests to which said product shall be subjected.

12.—The LICENSEE shall not be liable for contributory infringement of patents owned by the LICENSOR by reason of the use of the LICENSED PRODUCT by others, nor shall the LICENSEE be deemed to have violated any of the provisions of this license by such infringing use by others. Where Schedule A includes patents which may be infringed by the use of the LICENSED PRODUCT, the LICENSEE may authorize its customers to use the said product under the LICENSED PATENTS.

13.—This license may be cancelled and terminated in the following manner:

The LICENSOR shall give written notice to the LICENSEE of the proposed cancellation and termination assigning in said notice the cause for which it is proposed to cancel and terminate. If the LICENSEE shall so require within five days after receipt of said notice, the trustees of THE CHEMICAL FOUNDATION, INC., under the deed of trust dated May 1, 1919, between said trustees and Francis P. Garvan, Douglas I. McKay and George C. Corbett shall set a date for a hearing and give the LICENSEE written notice thereof. After hearing the LICENSEE, or upon its failure to appear at the place and date set for such hearing, the trustees shall make a determination in writing, a copy of which shall be furnished to the LICENSEE and which shall be conclusive, final and binding upon the LICENSEE and shall not be reviewable by a Court. If the LICENSEE shall fail to require a hearing or if the trustees shall determine that this license should be cancelled and terminated the LICENSOR may give the LICENSEE ninety (90) days' notice of termination and cancellation and at the end of said ninety days, this license shall cease and terminate. The LICENSEE may surrender this license upon ninety (90) days' written notice to the LICENSOR. The surrender or termination of this license shall in no way affect the liability of the LICENSEE for any sums of money accruing or becoming due or payable prior to the date of surrender or termination. Upon surrender or termination of this license by the LICENSEE royalties at the rate last paid or payable by the LICENSEE upon the LICENSED PRODUCT shall accrue and become immediately due and payable for all of the product manufactured and on hand, or in course of manufacture, or sold and payment for which has not yet been received.

14.—This license may be assigned by the LICENSEE as a part of a sale of its entire business, but the LICENSEE shall give the LICENSOR immediate notice of such sale.

15.—All written notices or permissions referred to herein shall be given by registered mail addressed to the last known address of the respective parties.

16.—This agreement shall be interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have hereunto caused their respective corporate seals to be hereunto affixed and duly attested and these presents to be signed by their duly authorized officers, the day and year first above written.

THE CHEMICAL FOUNDATION, INC.,
By ....

Attest:

....
Secretary.

....

By ....

Attest:

....
Secretary.

PLAINTIFF'S EXHIBIT No. 489.

A meeting of the Board of Directors was held at the office of The Corporation, No. 81 Fulton Street, New York City, New York, on Saturday, June 28th, 1919, at 10 A. M.

Present: Messrs. Douglas I. McKay
George J. Corbett

The reading of the minutes of the last meeting was waived.

Mr. Ramsay Hoguet, Patent Counsel of the Corporation, thereupon presented and read a form of assignment from the Alien Property Custodian to The Chemical Foundation, Incorporated, covering two patents, one application for letters patent, three trademarks and the rights, interests and benefits formerly owned by enemies under three contracts for the consideration of four hundred fifty ($450.00) dollars.

On motion duly made, seconded and carried, said assignment was approved and the Treasurer was authorized to accept on behalf of The Foundation, delivery of the same, and thereupon to pay over to the Alien Property Custodian aforesaid patents and property for the sum of four hundred fifty ($450.00) dollars.

On motion duly made, seconded and unanimously carried, it was

Resolved that, that the President be and he is hereby authorized to procure further assignments of patents, applications for letters patent, trademarks, copy-rights, contract rights, and property and rights appurtenant to the foregoing from the Alien Property Custodian and others, to The Corporation, for such consideration as any two of the Directors of The Corporation shall agree upon as proper, and, that thereupon, the Treasurer be authorized and empowered without further official act of the Board of Directors to accept, on behalf of The Corporation, the delivery of the property embraced within any such assignments, and pay out of the funds of The Corporation the consideration agreed upon.

On motion duly made, seconded and carried, it was

RESOLVED that, until further action of the Board of Directors, any two Directors of The Corporation, acting together, shall constitute a Licensing Committee to fix and determine, from time to time as occasion requires, the uniform license fees or royalties that shall be paid by the persons, firms or corporations licensed by The Foundation, and that the license fees or royalties so fixed shall be binding on The Corporation, subject to the provisions of the uniform license or agreements which have or may hereafter be adopted.

There being no further business, the meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 490.

A special meeting of the Board of Directors of the Chemical Foundation, Incorporated was held at 2 P. M. on July 6th, 1920, at its offices, 81 Fulton Street, New York City, N. Y.

There were present:

Mr. Douglas I. McKay, *Vice President.*
Mr. George J. Corbett, *Secretary and Treasurer.*

The counsel of the company presented papers necessary for authorization of the corporation to do business in the State of New York.

On motion duly made and seconded it was

Resolved that the Vice President and Secretary or other proper officers of the corporation forthwith take all such steps as they may be advised by the counsel of the corporation to be necessary and proper to secure authorization for the corporation to do business in the State of New York, and it was further

Resolved that Mr. George J. Corbett, Secretary and Treasurer of the corporation, whose office is at the New York office of the corporation, No. 81 Fulton Street, New York City, be and he hereby is designated in that connection as the person upon whom process against the corporation may be served within the State of New York.

Thereupon the Secretary and Treasurer, Mr. George J. Corbett, presented to the Board for consideration, a letter of the General Chemical Company to which was attached two hundred and thirty-five (235) shares of preferred stock of the Chemical Foundation, Incorporated, and necessary transfer stamps, requesting transfer of said shares to the National Aniline and Chemical Co., Inc. On motion duly made and seconded, it was

Resolved that the Central Union Trust Company of New York be advised of the approval of the Board of such transfer, and instructed to cancel said certificates No. 115 one hundred (100) shares; No. 116 one hundred (100) shares and No. 118 thirty-five (35) shares, and issue new certificates in like amount in the name of the National Aniline and Chemical Company, Inc.

Thereupon the Secretary and Treasurer presented to the Board for consideration a letter of Proctor and Schwartz, Inc. requesting that the stock of the Chem-

272 US 1 U.S. SUP. CT. RECORDS, BRIEFS
UNITED STATES V. CHEMICAL FOUNDATION, INC.

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ical Foundation, Incorporated, subscribed to by the Philadelphia Textile Machinery Company be issued in their name, as they had purchased the Philadelphia Textile Machinery Company since the subscription was made. Upon motion duly made and seconded, it was

Resolved that the Central Union Trust Company of New York be advised of the approval of the Board; that stock certificates covering the subscription of the Philadelphia Textile Machinery Company be issued in the name of Proctor and Schwartz, Inc.

Thereupon the Secretary and Treasurer presented to the Board for consideration a letter of the Industrial Ownership Corporation, which was formerly the Marden, Orth and Hastings Company, requesting that stock certificates covering the underwriting of Marden, Orth and Hastings Company be issued in the name of the Calco Chemical Company, inasmuch as said underwriting was made in behalf of the Calco Chemical Company. On motion duly made and seconded, it was

Resolved that the Central Union Trust Company of New York be advised of the approval of the Board; that stock certificate covering the underwriting of Marden, Orth and Hastings Company be issued in the name of the Calco Chemical Company.

Thereupon the Secretary and Treasurer brought to the attention of the Board the tremendous expense incurred for medical attention to Mr. J. M. Gray, statistician of the Foundation, by his many months of illness, and proposed that the Board vote to Mr. Gray a bonus of $2,500. for efficient services in the past, and, further, that his name be taken from the weekly payroll and an advance of salary be made to him in the amount of $1,500—said advance to cover period to November 16th, 1920; upon this date his name to again be included in the weekly pay roll at the rate of $4,000. per annum. On motion duly made and seconded, it was

Resolved that the Treasurer be and he is hereby directed to draw a corporation check to the order of Mrs. J. M. Gray in the amount of $4,000.—same being a bonus of $2,500. for efficient services in the past, and an advance of salary of $1,500—same to cover period to November 16th, 1920.

There being no further business the meeting adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 491.

A special meeting of the Board of Directors was held at the offices of the Corporation, No. 81 Fulton Street, New York City, on the afternoon of October 4, 1920.

The following directors were present:

Mr. Francis P. Garvan, *President*
Mr. Douglas I. McKay, *Vice-President*
Mr. George J. Corbett, *Secretary and Treasurer*

There were also present:

Mr. William F. Keohan
Mr. Joseph H. Choate, Jr.

Mr. Francis P. Garvan presided.

Mr. Francis P. Garvan expressed his regret at having been unable to attend the two prior meetings of the Board of Directors held on the dates of April 21, 1920 and July 6, 1920, but stated that he had acquainted himself with the doings of the directors present at said meetings and that their doings met with his approval.

The minutes of the said two prior meetings of

April 21, 1920 and July 6, 1920 were read, and on motion duly made, seconded, and unanimously carried, the acts and resolves of the directors present at said prior meetings of April 21, 1920 and July 6, 1920 were ratified, approved, confirmed and adopted in toto as the acts and resolves of all the directors of the Corporation.

Mr. George J. Corbett called attention to the fact that an agency agreement for use in licensing the trademarks acquired by the Corporation had been drawn up and submitted by counsel and had been informally adopted, and several of these had heretofore been issued.

On motion duly made, seconded and unanimously carried, this form of agency agreement (copy of which was ordered filed herewith) was adopted for use in licensing the use of trademarks subject to any necessary modifications as any given case might require, and on motion duly made, seconded and unanimously carried it was

RESOLVED that the acts of the President or Vice-President and Secretary in heretofore executing and issuing on behalf of the Corporation, agency agreements in said form, be ratified and confirmed and further

RESOLVED that the President, or the Vice-President in the absence of the President be and he hereby is authorized without further action of the Board of Directors to execute and issue in the name and on behalf of the Corporation, agency agreements in proper cases in said form or in such other form as the Board of Directors may hereafter adopt; and the Secretary be and he hereby is authorized and directed to attach the corporate seal and attest same by his signature to any agency agreements executed by the President or the Vice-President as aforesaid.

The Treasurer then stated that the Alien Property Custodian had assigned certain patents to The Chemical Foundation, Incorporated in error; that the claimants to the patents so assigned in error had filed affidavits in support of their claims and assignments dated prior to the war, and in each case after thorough investigation by the officers of The Chemical Foundation, Incorporated, there was found to be no question of the equitable ownership of the claimants and The Chemical Foundation, Incorporated, had reassigned such patents to the original owners thereof. On motion duly made, seconded and carried, it was thereupon

Resolved that the acts of the President, Vice-President and the Secretary of the Corporation or of some or any of them, in executing in the name of and on behalf of the Corporation, the following reassignments of patents, trademarks and other like property of the Corporation or interests therein heretofore assigned to the Corporation, be and they hereby are in all respects ratified, approved and confirmed as the acts of the Corporation:

Reassignment to Amid Duron Company, a New York Corporation, under date of August 1st, 1919, Patent No. 1,143,499.

Reassignment to General Briquetting Company, a Maine Corporation, subject to agreement between the Allegemeine Brikettierungs Gesellschaft, m. b. H and General Briquetting Company, under date of September 29th, 1919, Patents Re-issue Nos. 12,643
933,269
933,270

Reassignment to Linde-Air Products Company, an Ohio Corporation, under date of October 9th, 1919, Patents No. 1,020,102.
1,027,862
1,027,863

Reassignment to Linde-Air Products Company, an Ohio Corporation, under date of October 9th, 1919, Patent No. 1,360,853.
under Serial Nos. 188,039
188,040

Reassignment to Lehn & Fink, Inc., a New York Corporation, under date of October 30th, 1919, Trademarks Nos. 27,456
53,937

Reassignment to Chinosol Company, a New York Corporation, under date of November 20th, 1919, Patent No. 906,918.

Reassignment to Permutit Company, a Delaware Corporation, under date of November 20th, 1919, Patents Nos. 1,117,831
1,221,490
1,140,262
1,107,199

Reassignment to Benno Borzykowski of Ohio, under date of September 30th, 1919, Patents Nos. 1,041,587
1,100,518
1,133,548
1,143,569

Reassignment to Metal & Thermit Corporation, a New Jersey Corporation November 18th, 1919, Patent No. 1,115,262.

Reassignment to Bernard R. Armour, under date of July , 1920, Trademarks Nos. 18,827
47,110

Reassignment to Donald D. Davis, under date of July , 1920, Patents Nos. 935,849
936,835

Reassignment to Henry Pfeiffer, Gustavus A. Pfeiffer and Garfield D. Merner, under date of July , 1920, Trademarks Nos. 72,455
84,922

Reassignment to John Detjens under date of July , 1920, Trademark No. 36,588.

Reassignment to Harry P. Friedman and Morris Friedman, under date of July , 1920, Trademarks Nos. 33,865
33,866

On motion duly made, seconded and carried, it was thereupon

Resolved that the President be and he hereby is authorized and empowered, until otherwise ordered, to inquire into, investigate and consider the merits of any and all claims now pending or hereafter presented against The Chemical Foundation, Incorporated, by or in behalf of persons, firms or corporations claiming, irrespective of the assignments to The Chemical Foundation, Incorporated, ownership or title to any patents, trademarks, copyrights, contract rights and property appurtenant to the foregoing, and thereupon to take such action as to him may seem proper, either to reject or to allow any claims in whole or in part, or to impose any conditions which in his judgment should be imposed; and to execute and deliver in the name and on behalf of the Corporation any contract, agreement, conveyance, assignment and any other instruments that may be deemed by him necessary and proper to carry out his decision or action on or concerning any such claim, all without any further act or resolution of this Board; and the Secretary be and he hereby is authorized and directed to attach the corporate seal and attest same by his signature to any instruments executed by the President as aforesaid.

The Treasurer then reported that pursuant to the authority granted in the resolution of the Board of Directors, passed June 28th, 1919 and ratified November 20th, 1919, that the President had procured further assignments from the Alien Property Custodian up to the present date of 487 patents, 23 applications for patents and 20 trademarks, the consideration for which amounted to $11,600.00; that the Treasurer had accepted delivery of the property and had paid out of the funds of the Corporation to the Alien Property Custodian the said consideration of $11,600.00; that to date there had been acquired from the Alien Property Custodian in all, 4,449 patents, 279 applications for letters patents, 876 trademarks, 492 copyrights, 50 contracts for a total consideration paid of $266,300.00.

On motion duly made, seconded and unanimously carried, this report was accepted and the acts of the President and Treasurer were ratified and approved.

The Vice-President, Mr. Douglas I. McKay, presented his resignation as Vice-President. On motion duly made, seconded and carried, it was

Resolved that the resignation of Mr. McKay be accepted with regret and that the thanks of the Board be expressed to him for the invaluable services which he had rendered to the Foundation during his term of office.

The President then reported that Mr. George J.

Corbett, the Secretary and Treasurer of the Corporation, had arranged to sever his other business connections and devote his entire time to the services of the Foundation.

On motion of Mr. Douglas I. McKay, duly made and seconded it was

Resolved (Mr. Corbett not voting) that the salary of Mr. Corbett as Secretary and Treasurer of the Corporation, be fixed at the sum of $15,000. annually, to commence from October 1, 1920.

Thereafter, Mr. Douglas I. McKay also presented his resignation as a Director of The Chemical Foundation, Incorporated, and on motion, duly made and seconded, the same was regretfully accepted, with the thanks of the Board for the great amount of time and thought expended by Mr. McKay in his capacity as Director in the service of the Corporation.

The President then stated that Mr. W. F. Keohan, who was representing The Chemical Foundation, Incorporated, in Washington, D. C. for the past year and one-half, has done very valuable work for The Chemical Foundation, Incorporated, in the past and it was requested by the President that Mr. W. F. Keohan receive a salary from The Chemical Foundation, Incorporated.

On motion, duly made, seconded and carried, it was

Resolved that the salary of Mr. W. F. Keohan, as representative of The Chemical Foundation, Incorporated, in Washington, D. C., be fixed at the sum of $6,000. annually, to commence September 15, 1920.

The President further stated that Mr. Larkin G. Mead, had for the past year done very valuable work in connection with the advertising and educational campaign being conducted by The Chemical Foundation, Incorporated, and it was requested by the President that Mr. Larkin G. Mead receive a salary from The Chemical Foundation, Incorporated. On motion, duly made, seconded and carried, it was

Resolved that the salary of Mr. Larkin G. Mead, as Manager of the advertising and educational campaign being conducted by The Chemical Foundation, Incorporated, be fixed at the sum of $12,000.00 annually, to commence September 1, 1920.

The meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 491-A.

Agency Agreement.

Whereas,

did adopt and use as a trademark for
and caused to be registered as a trademark for the same in the United States Patent Office the following mark on the following date and under the following number, to wit:

Trademark. *Date of Registration.* *Regsitration No.*

and

Whereas, the Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto, and the executive orders and proclamations issued in pursuance thereof, did, by virtue of a requirement or demand, issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be ical Foundation, Inc., samples of its product, to indicate upon the labels carried by said product, or in another appropriate way, the grade, concentration and/or color, which qualities shall be expressed in terms of a scale of standards to be established by The Chemical Foundation, Inc., to manufacture such product only within the limits of purity and strength prescribed by The Chemical Foundation, Inc., and to submit to the general supervisory authority of The Chemical Foundation, Inc., in the manufacture and sale of such product.

6.--This agreement and the agency granted hereby may be canceled and terminated in the following manner:

The Chemical Foundation, Inc., shall give written notice to the Applicant of the proposed cancelation and termination assigning in said notice the cause for which it is proposed to cancel and terminate. If the Applicant shall so require within five days after receipt of said notice, the trustees of The Chemical Foundation, Inc., under the deed of trust dated May 1, 1919, between said trustees and Francis P. Garvan, Douglas I. McKay and George J. Corbett shall set a date for a hearing and give the Applicant written notice thereof. After hearing the Applicant, or upon its failure to appear at the place and date set for such hearing, the trustees shall make a determination in writing, a copy of which shall be furnished to the Applicant and which shall be conclusive, final and binding upon the Applicant and shall not be reviewable by a Court. If the Applicant shall fail to require a hearing or if the trustees shall determine that its agency should be canceled and terminated The Chemical Foundation, Inc., may give the Applicant ninety (90) days' notice of termination and cancelation and at the end of said ninety days, this agreement together with the agency aforesaid shall cease and terminate. The APPLICANT may surrender this agreement and the agency aforesaid upon ninety (90) days' notice to THE CHEMICAL FOUNDATION, INC. The surrender or termination of this agreement and said agency shall in no way affect the liability of the APPLICANT for any sums of money accruing or becoming due or payable prior to the date of surrender or termination. Upon surrender or termination of said agency by the APPLICANT commissions at the rate last paid or payable by the APPLICANT upon the aforesaid product shall accrue and become immediately due and payable for all of the product manufactured and/or on hand, or in course of manufacture, or sold and payment for which has not yet been received.

7.—All written notices or permissions referred to herein shall be given by registered mail addressed to the last known address of the respective parties.

8.—This agreement shall be interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have hereunto caused their respective corporate seals to be hereunto affixed and duly attested and these presents to be signed by their duly authorized officers, this day of , 192 .

THE CHEMICAL FOUNDATION, INC.,
By......................

Attest:
....
Secretary.

....
By..............

Attest:
....
Secretary.

PLAINTIFF'S EXHIBIT No. 492.

A special meeting of the Board of Directors of the Chemical Foundation, Incorporated, was held at the office of Mr. Francis P. Garvan, 16th & P Streets, Washington, D. C., on December 18th, 1920, at 11 A. M.

Present: Messrs. Francis P. Garvan, President
George J. Corbett, Secretary & Treasurer.

The reading of the minutes of the prior meeting was waived.

The Secretary brought before the Board the fact that the annual Stockholders Meeting should, according to the by-laws be held February 1st, 1921, and notice thereof be given. On motion duly made, seconded and carried, it was

Resolved that pursuant to section one, article two of the by-laws, the annual meeting of the stockholders of the Corporation, appointed to be held on the first day of February, 1921, be held at the office of the Corporation, No. 81 Fulton Street, in the borough of Manhattan, state of New York, at 2.30 P. M.

The President then reported that pursuant to the authority granted in the resolution of the Board of Directors, passed October 4th, 1920, he had inquired into and investigated and considered the merits of certain claims presented against the Corporation by and in behalf of persons, firms or corporations claiming ownership of certain patents and applications for letters patent, irrespective of the assignments to the Corporation; that there being no question in his mind of the equitable ownership of the claimants, he had acted on these claims and had executed reassignments as follows:

Reassignment to Radium Therapy Corporation, a New York Corporation, under date of November 5th, 1920, Patents Nos. 1,032,779
1,032,951

Reassignment to Sterling Products, Inc., a West Virginia Corporation, under date of October 21st, 1920, Patents Nos.

1,151,536
1,191,531
1,196,065
1,205,138
701,523
770,743
782,739
782,740
782,741
782,742

Reassignment to Bayer Company, Inc., of New York, under date of October 21st, 1920, trademarks Nos.

15,986
16,309
16,310
16,311
16,392
16,468
23,606
28,502
29,314
29,406
31,386
31,387
31,389
23,823

Reassignment to American Thermos Bottle Company, a Maine Corporation, under date of December 3rd, 1920, Patents Nos. 918,503
923,136

On motion duly made, seconded and carried, this report was accepted and the acts of the President and Secretary in executing the above assignments, were duly ratified and confirmed.

There being no further business, the meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 493.

The Adjourned Annual Meeting of the Stockholders of The Chemical Foundation, Incorporated, was held at the office of the Corporation, No. 81 Fulton Street, New York City, on the 4th day of April, 1921, at 2.30 P. M.

Mr. Francis P. Garvan, President of the corporation, presided over the meeting, and Mr. George J. Corbett, Secretary of the corporation, acted as Secretary.

There were present, in person, stockholders representing 292 shares of common stock of the corporation, being all of the common stock issued and outstanding.

The Treasurer stated that none of the shares of stock held by the stockholders present at the meeting had been transferred on the books of the corporation within the period of twenty days preceding this date.

The minutes of previous adjournments of this meeting from February 1, 1921, the date fixed for the annual meeting by the By-laws, February 24, 1921, and March 14, 1921, were read and approved.

The following resolutions to amend the By-Laws were unanimously passed:

Resolved that Section I of Article II of the By-Laws be amended so as to read as follows:

"Section I, The annual meeting of Stockholders shall be held on the first Monday of February in each year at the office of the corporation in the city of New York, unless in any year the Directors shall have designated a different place for the holding of such meeting, and notice of such change in place shall have been given to the stockholders as required by the laws of Delaware.

At every annual meeting three Directors shall be elected by ballot, by the majority of the outstanding stock having full voting power and present at such meeting in person or by proxy, to hold office until the next annual meeting, or until their successors shall have been duly elected and qualified, and such other business may be transacted as shall be presented."

RESOLVED that Section 3 of Article III of the By-Laws be amended so as to read as follows:

"Section 3. The annual meeting of the Board of Directors shall be held on the first Monday of February in each year at the office of the corporation in the city of New York, unless in any year the Directors shall by resolution designate a different place for the holding of such meeting. Stated meetings of the Board may be held at such times and places as shall be determined from time to time by resolution of the Board. Both annual and stated meetings may be held without notice thereof."

Mr. Frederick A. Morlock, Assistant Secretary of the corporation, and Mr. James Garretson, of counsel, were then appointed Inspectors of Election and qualified.

The meeting then proceeded to the election of three Directors to hold office until the annual meeting of the corporation in 1922, and after a ballot duly taken the Inspectors of Election reported that the following gentlemen were unanimously elected by the stockholders:

Mr. Francis P. Garvan
Mr. George J. Corbett
Mr. Thomas W. Miller

The President then addressed the meeting upon the scope and progress of the corporation's work during the past year, and its plans for the future.

The report of the auditors for the year ending December 31, 1920, was then submitted to the meeting, and copies thereof were delivered to each stockholder.

There being no further business the meeting was adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 494.

A meeting of the Board of Directors was held at the office of the Corporation, No. 81 Fulton Street, New York City, on the 21st day of June, 1921, at 3 P. M.

Present: Messrs. Francis P. Garvan, President
George J. Corbett, Secretary & Treasurer

On motion duly made, seconded and carried, it was

Resolved that the Treasurer be and he hereby is authorized to open a bank account in behalf of the Corporation with the Market and Fulton office of the Irving National Bank and it was further

Resolved that until further ordered the said Market and Fulton Office of the Irving National Bank be and hereby is authorized to make payments from the funds of this Corporation on deposit with it, upon and according to the checks of this Corporation, signed by two officers of the Company, one of whom shall be the Treasurer.

The President then stated that Mr. Thomas W. Miller, who had been elected Director of the Corporation at the adjourned annual Stockholders Meeting held on the 4th day of April, 1921, had communicated to him that owing to the demands on his time, he found it impossible to accept the honor of being a Director of the Chemical Foundation, Incorporated, and for that reason had declined to qualify.

The President then stated that this left a vacancy on the Board of Directors which under section two of article six of the by-laws should be filled by affirmative vote of the majority of the remaining Directors. He thereupon called for nominations and no response being made, it was thereupon moved, seconded and carried that the matter of electing a successor be postponed until a later meeting.

The President then stated that various legal questions had heretofore arisen and would arise in the future concerning trademarks owned by the Chemical Foundation, Incorporated, and rights appurtenant thereto and in order to safeguard the interests of the Corporation, he had deemed it advisable to retain special counsel and had subject to the approval of the Board of Directors retained Mr. Harry D. Nims as Trademark Counsel. On motion duly made, seconded and carried, the acts of the President in retaining Mr. Nims as Trademark Counsel were ratified, confirmed and approved.

There being no further business, the meeting then adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 495.

A meeting of the Board of Directors was held at the office of The Corporation, No. 81 Fulton Street, New York City, on the 22nd day of July, 1921.

Present: Messrs. FRANCIS P. GARVAN, President
GEORGE J. CORBETT, Secretary & Treasurer

Mr. George J. Corbett, Secretary, stated that in the course of events, The Corporation has heretofore and will hereafter become involved in litigation and it has been necessary heretofore and will hereafter be necessary to execute papers, pleadings and documents, various and sundry, in connection with suits and actions at law and in equity, and he requested that the Board take some action to authorize the proper officer to execute such papers on behalf of The Corporation when and as required. It was thereupon regularly moved, seconded and unanimously

RESOLVED that it shall be the duty of the Secretary, and/or the Treasurer to verify and duly execute such papers, pleadings and documents as may from time to time be necessary; and further

RESOLVED that any such acts heretofore performed by the Secretary and/or Treasurer be and the same hereby are ratified and adopted as the acts of The Corporation the same as if this resolution had been operative prior to the performance of any such acts.

Mr. George J. Corbett, Treasurer, then reported that pursuant to the authority granted in the resolution of the Board of Directors, passed June 28th, 1919, and ratified November 20th, 1919, the President had procured further assignments from the Alien Property Custodian, up to the present date, of 364 patents, 2 applications for letters patent and 6 contract rights, consideration for which amounted to Five thousand five hundred fifty ($5,550.00) dollars. That the Treasurer had accepted delivery of the property aforesaid and had paid out of the funds of The Corporation to the Alien Property Custodian the said consideration of Five thousand five hundred fifty ($5,550.00) dollars. That to date there had been acquired from the Alien Property Custodian in all, 4,813 patents, 281 applications for letters patent, 876 trade marks, 492 copyrights, and 56 contract rights, for a total consideration paid of Two hundred seventy-one thousand eight hundred fifty ($271,850.00) dollars.

On motion duly made, seconded and unanimously carried, this report was accepted and the actions of the President and Treasurer were ratified and approved.

Mr. Francis P. Garvan, President, then reported that pursuant to the authority granted in the resolution of the Board of Directors passed October 4th, 1920, he had inquired into and investigated and considered the merits of certain claims presented against The Corporation by and in behalf of persons, firms or corporations claiming ownership of certain patents and applications for letters patent, irrespective of the assignments to The Corporation, that there being no question in his mind of the equitable ownership of the claimants, he had acted on these claims and had executed reassignments as follows:

Reassignment to Kaffee Hag Corporation, June 16th, 1921, patent #1,009,610.

Reassignment to Oskar Matter, June 13th, 1921, patent, #1,237,076, application serial #119,550.

Reassignment to F. Max E. Blass, May 16th, 1921, applications serial #63,231 and #63,232.

That these reassignments executed by him and sealed and attested by the Secretary would be delivered to the claimants upon receipt of releases. On motion duly made, seconded and unanimously carried, this report was accepted and the action of the President and Secretary in executing the above assignments was duly ratified and confirmed.

Mr. George J. Corbett, Secretary, then reported that in accordance with the resolution of the Board of Directors passed June 28th, 1919, and ratified November 20th, 1919, the Licensing Committee had from time to time fixed and determined the uniform license fees or royalties on various products which had been carefully indexed.

On motion duly made, seconded and unanimously carried, this report was accepted and the actions of the Licensing Committee ratified and confirmed, and the Secretary was directed to attach to these minutes a list of the various products on which license fees had been fixed and determined.

Mr. George J. Corbett, Secretary, then reported that the Department of War of the United States Government, through the offices of the Secretary of the Navy, had been in communication with The Foundation relative to use by the Government of various inventions embraced within patents owned and controlled by The Foundation.

On motion duly made, seconded and unanimously carried, it was decided that The Chemical Foundation, Incorporated, should grant to the United States Government full license and authority to manufacture or have manufactured for its use any products under any patents or applications for letters patent owned and controlled by The Foundation and that the United States Government should be released from any claims, past, present or future, arising out of use by the United States Government of patents, applications for letters patent, trademarks or copyrights, owned or controlled by The Foundation and that the Secretary of The Foundation should cause the necessary release and license to be drawn up to effectuate the above.

There being no further business, the meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 495-A.

License Product	Patents Included in Product	Royalty Rate
Acriflavine & Proflavine	1,005,176	5%
Agar-Agar-Cascara	896,807	
	943,163	5%
Aldehyde Sulfoxylates	793,610	3% for first 10 months, then 2%
	885,566	
	885,567	
Ammonia	(132 Patents)	2% (See license)
Anthrarufin & Chrysazin	788,670	½ of 1%
Antithyroidin Moebius (Trade Mark)	54,995	1%
Aromatic Amins & Catalyst	1,207,802	1½¢ per lb.
Arsphenamine	986,148	
	1,116,398	
	1,081,592	5%
	1,081,897	
Aspirin	1,058,904	3% first year then 5%
Bromipin	774,224	1%
Chrome Black	770,177	2%
Cinchophen	1,075,171	
	1,197,462	
	1,086,881	2½%
	1,045,759	
	1,181,485	
Color Lakes containing Phospho Tungstic Acid	1,232,551	
	1,232,552	5%
	1,378,882	
Color Lakes derived from Red for Lake D	878,964	2%
Color Measuring Device	998,091	10%
Conversion of Heavy Hydrocarbons into Light Hydrocarbons	1,205,578	See license
Cyanin Dye, Blue Quinolin	805,143	
	844,804	$1. per Gr

License Product	**Patents Included in Product**		**Royalty Rate**
Digitalis Extract	943,578		5%
Diplosal	922,995		5%
Epinephrine	815,653		2½%
Fibrolysin	868,204		10%
Filling Material for Columns	1,141,266		Equal to 10% of the cost of the licensed product.
Fur and Hair Dye and application of Same.	992,947		
	1,105,554		5%
Gas Retorts, and Method of Making Gas therewith	904,043	1,181,431	
	1,228,879	815,438	
	822,246	926,702	
	928,494	955,970	$4.00 per unit or 10% of usage chg
	801,268	782,129	
	819,596	899,503	
	1,208,134		
	1,281,775		
Gas Washers	794,201		
	807,695		5%
	895,313		
Gyroscope	841,612	1,186,339	
	877,034	1,186,686	
	1,019,582	1,231,933	
	1,180,365	1,228,061	5%
	1,180,815	794,654	
	973,611	1,173,241	
Hexa Brom Indigo	1,061,781		3%
Hydron Blues	919,572		
	931,598		
	956,348		5%
	966,092		
	1,141,148		
Hydrogen Peroxide	1,035,756		3% first year & 5% after.
Hydron Violets	1,129,574		5%
Hydron Yellow	1,055,287		
	1,196,127		5%
Hydrosulfite Stable Dry	795,755		
	861,014		2%
Indanthrene Dark Blue O	818,992		2%
Indanthrene Olive G	922,282		5%
Iodipin	774,224		1%

License Product	Patents Included in Product	Royalty Rate
Insecticide	1,097,406	5%
Lake Red C	733,280	2%
Leukotrope	1,036,241	
	1,106,970	5%
Magnesium Alloy	965,485	1½¢ per lb.
	982,022	
Magnetic Separator	1,037,563	5%
Micrometer-Gage	1,048,073	
	1,049,860	5%
Morphin & Narcotin	1,061,139	5%
Neo-Arsphenamine	13,848	
	1,081,592	5%
Neo-Cinchophen	1,045,759	2½%
Nickel Catalyst	1,314,642	2.39¢ per lb
Nito-Ortho-Oxy-Azo Color	958,912	2%
Nitramine	763,756	4%
Optochin	1,062,203	10%
Penta Brom Indigo	1,070,541	3%
Permanent Red	955,068	5%
Pigment Scarlet G	837,128	5%
Pivotal Jaw Device	1,059,545	3%
Ponsol Blue G Paste	739,579	
	753,659	
	844,914	5%
	1,063,173	
	1,104,943	
Ponsol Dark Blue B R	787,859	
	818,992	5%
Ponsol Green B	787,859	
	796,393	5%
	818,992	
	876,679	
Ponsol Paper Blue	1,055,701	5%
Ponsol Violet R	787,859	
	818,336	5%
	906,367	
Ponsol Violet R R	818,336	
	906,367	5%
	1,003,268	
Ponsol Yellow G Paste	739,145	
	1,063,173	5%
	1,104,943	
Procaine	812,554	5%
Quinine Diethylbarbiturate	1,185,637	5%
Red Azo Dye	752,562	2% first 12 mos then 3%

License Product	Patents Included in Product	Royalty Rate
Red Blue Lake	757,109	2%
Red for Lake D	878,964	2%
Red Sulphur Dye & Thio-Indoxyl Derivative	819,348	
	850,827	3% for 15 mo then 4%
Reinforced Paper	1,169,895	
	1,197,315	1¾%
(Application)	157,659	
Rodol Dyes	992,947	
	1,105,447	
	1,183,748	5%
	1,105,554	
Salicine Black	770,177	
	807,422	2%
	778,476	
Santyl	862,858	1%
Silver Arsphenamine	1,127,603	
	1,091,881	5%
	1,081,592	
Sodium Arsphenamine	1,078,135	
	1,059,983	5%
	1,081,592	
Sulphur Yellow G G	892,455	5%
Synthetic Camphor	725,890 802,793	
	770,940 903,047	
	790,601 907,941	
	801,483 989,651	5%
	801,485 994,437	
	1,030,334	
	1,066,758	
	1,105,378	
Tanning Materials	1,191,480	
	1,216,612	
	1,278,229	
	1,336,759	
	1,237,405	
	1,232,620	
	1,254,364	3%
	1,133,108	
	1,107,107	
	1,289,280	
	1,281,494	
Therapeutic Apparatus	834,209	$5. per lamp
Tungsten Filaments	1,256,929	
	1,256,930	5%

License Product	Patents Included in Product	Royalty Rate
X Ray Accessory	1,164,987	5%
X Ray Tube	1,122,011	
	1,218,423	10%
Zeolite	1,161,200	1%
Alkyl Ethers of Cellulose	1,188,376	
	1,217,027	1%
Alkyl Ethers of Cellulose (Artificial Textile Material)	1,217,028	2%
Lysoform (Trade Mark)	35,979	1%
Indanthrene Violet 2R Extra	787,859	
	906,367	5%
	1,003,268	
Intermediate Product	787,859	
	796,393	5%
	818,992	
Diacetyl-amino-azo-toluene	1,076,840	5%
Method of Producing Metallic Coatings	251,576 (Appli)	5%
Arylamids of Beta-Oxy-Naphthoic Acid. Derivatives of Same.	1,034,853	
	1,042,356	
	1,122,564	
	1,127,027	
	1,206,232	
	1,101,111	5%
	1,121,026	
	1,099,108	
	1,193,566	
	1,169,267	
Immedial Yellow G G	892,455	5%
Quartz Bodies	1,031,900	
	1,051,035	
	1,107,386	
	1,107,387	2%
	1,051,036	
	1,068,716	
	989,671	
Sulfur Dyes	818,980	2½%
Indanthrene Paper Blues	1,150,863	5%
Indanthrene Green B	796,393	5%
Indanthrene Red G or Bordeaux B	863,397	5%
Indanthrene Bordeaux B Extra	961,612	5%
Benzanthrene	787,859	5%

License Product	Patents Included in Product	Royalty Rate
Indanthrene Gold Orange G	856,811	5%
Dianthraquinonyl	828,778	5%
Anthraflavones	837,840	5%
Amino-Anthraquinones	1,063,173	5%
Indanthrene Brown B	876,190	5%
Indanthrene Red BX	1,011,068	5%
Olive Green Vat Dye	1,093,427	5%
Diazo Cotton Blue	1,113,468	5%
Red Wool Dyestuff	1,123,430	5%
Yellow, Red or Green Azo Dyes for Cotton and Paper.	1,126,656	5%
Claret-Red Trisazo Dye	1,150,825	5%
Pigment Color	1,150,863	5%
Blue Gray to Green Gray Vat Dyes	1,169,404	5%
Blue Tekrakisazo Dyes	1,180,985	5%
Green Cotton Dyes	1,183,831	5%
Yellow Vat Dyes	1,196,127	5%
Quinoline Yellow	1,197,632	5%
Pastes of Sulfur Dyes	1,200,055	5%
Green Vat Dyes	1,201,968	5%
Bordeaux Vat Dyes	1,202,260	5%
Black & Dyestuffs	1,206,232	5%
Olive Green Vat Dye	1,207,762	5%

PLAINTIFF'S EXHIBIT No. 496.

A meeting of the Board of Directors was held at the office of The Corporation, No. 81 Fulton Street, New York City on the 2nd day of November, 1921.

Present:

Messrs. Francis P. Garvan,
George J. Corbett.

Mr. George J. Corbett, Secretary, reported that the necessary instrument releasing the United States Government from any and all claims arising out of the use by the United States Government of patents, etc., owned by The Foundation and licensing the United

States Government to use the inventions covered by patents owned by The Foundation had, pursuant to the instructions of the Board of Directors, been drawn up and he thereupon read this release and license as prepared and, on motion duly made, seconded and unanimously carried, the President was authorized to execute this instrument in the name of and on behalf of The Corporation and the Secretary was authorized and directed to attach the corporate seal and attest the same with his signature and thereupon to deliver this instrument so executed to the Corporation's legal representative in Washington to be by the latter submitted to the Secretary of the Navy for final action on the part of the Government.

Mr. Francis P. Garvan, President, then reported that pursuant to the authority granted in the resolution of the Board of Directors passed October 4, 1920, he had inquired into and investigated and considered the merits of a certain claim presented against the Corporation by and in behalf of Dr. Zendko Metzl, claiming ownership of patent No. 1,104,326, irrespective of the assignment to The Foundation. That, there being no question in his mind of the equitable ownership of this claimant, he had executed a reassignment of this patent to Dr. Zendko Metzl. That this reassignment executed by him and sealed and attested by the Secretary would be delivered to the claimant upon receipt of release.

On motion duly made, seconded and unanimously carried this report was accepted and the action of the President and Secretary in executing the above assignment was duly ratified and confirmed.

There being no further business, the meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Secretary.

PLAINTIFF'S EXHIBIT No. 497.

MINUTES OF THE ANNUAL MEETING OF THE STOCKHOLDERS OF THE CHEMICAL FOUNDATION, INCORPORATED, HELD AT THE OFFICES OF THE CORPORATION, No. 81 FULTON STREET, MANHATTAN, NEW YORK CITY, ON THE SIXTH DAY OF FEBRUARY, 1922, AT 2.30 P. M.

The following officers and trustees were present in person:

Mr. Francis P. Garvan, President.

Mr. Otto T. Barnard, Chairman of Board of Trustees.

There were also present:

Mr. Joseph H. Choate, Jr.

Mr. William W. Buffum.

Mr. Francis P. Garvan presided and called the meeting to order at 3 P. M.

Mr. Francis P. Garvan called attention to the absence of Mr. George J. Corbett, Secretary & Treasurer of The Corporation, due to illness, and appointed Mr. William W. Buffum, Secretary pro tem. This appointment was unanimously ratified.

The Secretary pro tem reported that more than ten days previous to the date of the meeting, the Secretary of The Corporation had caused to be prepared a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and that such list had been kept open throughout the entire period thereafter at the office of The Corporation where the meeting was to be held, pursuant to the provisions of the Corporation Law of the State of Delaware. The Secretary pro tem then presented the affidavit of the mailing of the notices of meeting.

The Secretary pro tem reported, after the calling of the roll, that there were present in person or by proxy stockholders representing two hundred and ninety-two shares of common stock of The Corporation, being all of the common stock issued and outstanding.

The Secretary pro tem reported that none of the shares of stock held by the stockholders present at the meeting in person or by proxy, had been transferred on the books of The Corporation within the period of twenty days preceding and that hence all of the stock represented at the meeting was entitled and qualified to vote or be voted.

The minutes of the previous annual meeting of the stockholders held April 4th, 1921, were then read and there being no omissions or corrections were approved.

Mr. Francis P. Garvan, President, then rendered a report of the activities of The Corporation for the preceding year and spoke about the general plans for the future.

Owing to the absence of Mr. George J. Corbett, Secretary and Treasurer, no report was received from him in person, but Mr. Francis P. Garvan stated that the Secretary & Treasurer's report was incorporated in the report of the Company's auditors and he submitted same, and copies of the balance sheet were delivered to each stockholder.

On motion duly made, seconded and carried, the reports of the President and Secretary & Treasurer were accepted and the complete report of the auditors containing all the schedules supporting the balance sheet were ordered to be kept on file, and a copy of the balance sheet ordered to be filed with these minutes.

Mr. Francis P. Garvan, President, then called upon the Secretary, pro tem, for a reading of the minutes of all the meetings of the Board of Directors held since the prior Annual Meeting of the Stockholders and after the reading thereof it was, on motion duly made, seconded and unanimously carried,

Resolved that the acts of each and every officer of The Corporation and of each and every director, which have been performed in the name of and on behalf of The Corporation since the last meeting of the stockholders, April 4th, 1921, be and they hereby are ratified, approved and confirmed as proper and in order and as the acts of The Corporation.

Mr. William W. Buffum and Mr. John L. Kane were appointed inspectors of election and duly qualified as such and the meeting then proceeded to the election of three directors to hold office until the next Annual Stockholders Meeting or until their successors shall have been duly elected and qualified. After a ballot duly taken the inspectors of election reported that the following gentlemen were unanimously elected directors:

Mr. Francis P. Garvan,
Mr. George J. Corbett,
Mr. Frank L. Polk.

The President was then requested to see that the proper notification of their election be sent to the newly elected directors and stated that he would do so.

The meeting then proceeded to a general, informal discussion of the welfare of The Chemical Foundation, Incorporated, following which there being no further business, the meeting was adjourned.

(Sgd.) WM. W. BUFFUM,
Secretary Pro Tem.

PLAINTIFF'S EXHIBIT No. 498.

MINUTES OF MEETING OF THE BOARD OF DIRECTORS OF THE CHEMICAL FOUNDATION, INCORPORATED, HELD AT THE OFFICE OF FRANCIS P. GARVAN, NO. 67 WALL STREET, MANHATTAN, NEW YORK CITY, ON THE 22ND DAY OF JUNE, 1922, AT 2:30 P. M.

Present: Messrs. Francis P. Garvan, *President.*
George J. Corbett, *Secretary and Treasurer.*

There was also present, by invitation, Mr. Edwin F. Haaren.

Mr. Francis P. Garvan presided.

Mr. Corbett presented a waiver and consent signed by all the Directors, waiving formal notice of the time and place of the meeting and consenting that the same be held on the 22nd day of June, 1922, at 2:30 P. M. at the office of Mr. Francis P. Garvan, No. 67 Wall Street, New York City.

The reading of the minutes of the last meeting of the Board of Directors was waived.

The President stated that he had notified the Directors elected at the annual stockholders' meeting of their election, but that Mr. Frank L. Polk had declined to qualify. The President then called attention to the fact that this left a vacancy in the Board of Directors which, under Section 2 of Article 6 of the By-Laws, should be filled by affirmative vote of a majority of the remaining Directors. The meeting then proceeded to the election of a Director and by unanimous vote of the remaining Directors Mr. Edwin F. Haaren was duly elected. He accepted the office and it was then decided, on motion duly made, seconded and unanimously carried, to proceed with the meeting, the full Board of Directors being present, and each Director thereupon affixed his signature to the aforesaid waiver and consent and the meeting then proceeded, with the full Board of Directors present. The waiver and consent follows:

THE CHEMICAL FOUNDATION INCORPORATED

——o——

WAIVER OF NOTICE AND CONSENT OF MEETING

——o——

We, the undersigned, Directors of THE CHEMICAL FOUNDATION INCORPORATED, a corporation organized and existing under the Laws of the State of Delaware, do hereby severally waive notice of the time, place and purpose of meeting of the Board of Directors of the said corporation and consent that the same be held at the office of Mr. Francis P. Garvan, No. 67 Wall Street, New York City, on the 22nd day of June, 1922, at 2:30 P. M., and we do further consent to the transaction of all business that may properly come before the meeting.

Dated, June 22, 1922.

(Sgd.) GEO. J. CORBETT,
(Sgd.) FRANCIS P. GARVAN,
(Sgd.) GEO. J. CORBETT,
(Sgd.) FRANCIS P. GARVAN,
(Sgd. EDWIN F. HAAREN.

The Secretary, Mr. George J. Corbett, presented his resignation as Secretary. His resignation was accepted with regret. On the recommendation of the President it was ordered noted on the minutes that, at Mr. Corbett's own suggestion, payment of Mr. Corbett's salary had, since April 15, 1922, been held in abeyance owing to depression in business and the condition of the Company's finances; that Mr. Corbett had been continuously laboring for the benefit and welfare of the Foundation and has been continuously carrying on and discharging the duties of the offices held by him, and it was hoped that, at some later day, the Foundation will be in a position to fully discharge its obligations accrued and accruing to him.

The meeting then proceeded to the election of a Secretary to succeed Mr. Corbett. Mr. George J. Corbett nominated Mr. Edwin F. Haaren and, there being no further nominations, vote was taken and the President reported that Mr. Edwin F. Haaren was unanimously elected to said office of Secretary.

It was ordered that the Secretary be sworn to the faithful discharge of his duties, and he thereupon subscribed and swore to the oath of office and entered upon the discharge of his duties. The Secretary's oath is as follows:

THE CHEMICAL FOUNDATION INCORPORATED

——o——

SECRETARY'S OATH.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } *ss:*

I, EDWIN F. HAAREN, do solemnly promise and swear that I will faithfully, impartially and justly perform the duties of Secretary of THE CHEMICAL FOUNDATION INCORPORATED, a corporation of the State of Delaware, according to the best of my abilities and understanding. So help me God.

(Sgd.) EDWIN F. HAAREN.

Subscribed and sworn to
before me this 22nd day
of June, 1922.
(Sgd.) LORETTO T. CONROY,
(Seal) *Notary Public.*

Kings County Clerk's No. 430.
Register's No. 3136.
Certificate filed in New York County. Clerk's No.
461. Register's No. 3352.
Commission expires March 30, 1923.

On motion of Mr. George J. Corbett, duly made and seconded, it was

Resolved, (Mr. Haaren not voting) that the salary of Mr. Edwin F. Haaren as Secretary of the Corporation, be fixed at the sum of $5000.00 annually, payable in bi-monthly installments to commence immediately.

On motion duly made, seconded and carried, it was

Resolved, that until further action of the Board of Directors the office of Vice President be left vacant.

Mr. Corbett, Treasurer, reported that the release and license to the United States Government, authorized by the Board of Directors at meeting of July 22, 1921, had been completed and executed on behalf of the Foundation November 17, 1921 and accepted by the Government of the United States of America by Theodore Roosevelt, Acting Secretary of the Navy on December 27, 1921. On motion duly made, seconded and unanimously carried this report was accepted.

Mr. Francis P. Garvan, President, then reported that pursuant to the authority granted in a resolution of the Board of Directors passed on October 4, 1920, he had inquired into and investigated and considered the merits of certain claims presented against the Corporation by and on behalf of various claimants of ownership of certain patents and trademarks, irrespective of the assignments to the Foundation, that there being no question in his mind of the equitable ownership of the claims, he had acted on these claims and had executed the assignments as follows:

Reassignment to Westinghouse Lamp Co. Executed March 2, 1919. Reassignment delivered and release received from claimant. Patent No. 1,180,264.

Reassignment to Graselli Chemical Co. Executed November 23, 1921. Reassignments delivered and releases received from claimant. Trademarks Nos. 20,487, 20,488, 20,489, 20,490, 20,491, 20,492, 20,493, 28,432, 29,323, 67,669, 31,423.

Quit Claim Deed to Alien Property Custodian and Amendatory Agreement executed Patents Nos. 912,352 and 1,108,307.

Reassignment to Stadtgemeinder Karlsbad. Executed June 22, 1922. Reassignment to be delivered on receipt of release. Trademark No. 9,100.

That these reassignments as executed by him had been sealed and attested by the Secretary. On motion duly made, seconded and unanimously carried this report was accepted and the action of the Secretary and President in executing the above assignments and quit claim deed and amendatory agreement was duly ratified and confirmed.

Mr. Francis P. Garvan reported that one Dr. J. E. Lilienfeld has presented a claim for the return of patents Nos. 1,122,011 and 1,218,423 on the ground of Polish citizenship. That the claim had been investigated, but was not satisfactorily established although some facts appeared in favor of the claim. That under the circumstances Mr. Garvan had settled the matter by an agreement between Dr. J. E. Lilienfeld and the Foundation which had been executed by both parties and which was then read and on motion duly made, seconded and carried this report was accepted and the action of the President in so disposing of the claim was ratified and approved.

Mr. Francis P. Garvan reported that one Dr. Leon Lilienfeld had presented a claim for the return of patents Nos. 732,189, 815,600, 834,739, 904,269, 960,100, 980,648, 1,018,329, 1,037,158, 1,074,633, 1,090,-730, 1,140,174, 1,188,376, 1,217,027, 1,217,028, 1,350,820, 1,355,985, 1,379,351, applications for letters patent, serial No. 213,440, trademarks Nos. 34,132, 35,771 and 35,772 on the ground of Polish citizenship. That the claim had been investigated, but was not satisfactorily established, although some facts appeared in favor of the claim. That under the circumstances Mr. Garvan had settled the matter by an agreement between Dr. Leon Lilienfeld and the Foundation which had been executed on behalf of the Foundation and transmitted to Dr. Leon Lilienfeld for formal execution by him and which was then read and on motion duly made, seconded and carried this report was accepted and the action of the President in so disposing of the claim was ratified and approved.

Mr. Corbett then reported that he had received from C. Bischoff & Co. certificate #113, issued for eight shares of preferred capital stock, and common stock trust certificate #116, issued for two shares, all standing in the name of said concern, with the request that the same be transferred to Carbic Color & Chemical Co., Inc. C. Bischoff & Co. advised that this is a change in name only and not the formation of a new corporation. On motion duly made, seconded and unanimously carried the Board of Directors voted its approval of this transfer and authorized the Treasurer to endorse the stock certificates accordingly and to cause these certificates to be cancelled and new certificates issued in their stead in the name of Carbic Color & Chemical Co., Inc., for an equal number of shares.

Mr. Corbett then reported that he had received from Hess Goldsmith & Co. certificate #52, issued for eight shares of preferred capital stock, and common stock trust certificate #56 for two shares, all standing in the name of said concern, with the request that same be transferred to Hess Goldsmith & Co., Inc. Hess Goldsmith & Co., Inc. is reported to be a New York corporation, all the stock of which is American beneficially owned, with the folowing officers: President, James A. Goldsmith; Vice President, Max G. Goldsmith; Secretary and Treasurer, Harry C. Goldsmith. On motion duly made, seconded and unanimously carried the Board of Directors voted its approval of this transfer and authorized the Treasurer to endorse the stock certificates accordingly and to cause these certificates to be cancelled and new certificates issued in their stead in the name of Hess Goldsmith & Co., Inc., for an equal number of shares.

Mr. Corbett then reported that the Foundation had received a letter under date of June 16th from Ciba Company, Incorporated, a New York corporation, inquiring whether the stock of the Chemical Foundation, Incorporated, held by the Aniline Dye & Chemical, Incorporated, a concern which had been purchased by Ciba Company, Incorporated, can be transferred to the latter. Mr. Corbett stated that he had ascertained that the stock standing in the name of Aniline Dye & Chemical, Incorporated, is eight (8) shares preferred, represented by stock certificate No. 7 and two (2) shares common, represented by common stock certificate No. 7. On motion duly made, seconded and unanimously carried the Board of Directors voted its approval of this transfer upon receipt of the said stock certificates properly endorsed and authorized the Treasurer to so advise the Ciba Company, Incorporated, and to endorse the approval of the Board of Directors on said certificates when so received, and then to cause such certificates to be cancelled and new certificates issued in their stead in the name of Ciba Company, Incorporated, for an equal number of shares.

Mr. Corbett then reported that the Foundation had received from Mr. Douglas I. McKay, holder by assignment of subscription right to one share of common stock, James E. Morgan, holder by assignment of subscription right to one share of common stock and Thomas F. Conroy, holder by assignment of subscription right to thirteen shares common stock, offers to surrender their subscription rights and release the Foundation from all obligations by reason thereof upon the Foundation in turn agreeing to consider such subscriptions cancelled and releasing all parties from all obligations by reason thereof. The following resolution was thereupon offered and on motion duly made and seconded was unanimausly carried:

Whereas, M. M. Clancy, an original subscriber to thirteen shares of the common capital stock of the Corporation, has assigned his said subscription and all of his rights thereunder to Francis P. Garvan, by assignment dated March 3, 1919, and said Francis P. Garvan has in turn assigned said subscription and all his rights thereunder by virtue of said assignment to Thomas F. Conroy by further assignment dated June 15, 1922; and

Whereas P. B. Drew, an original subscriber to one share of the common capital stock of the corporation, has assigned his said subscription and all of his rights thereunder to Douglas I. McKay, by assignment dated March 3, 1919; and

Whereas H. E. Knox, an original subscriber to one share of the common capital stock of the corporation, has assigned his said subscription and all of his rights thereunder to George J. Corbett, by assignment dated March 3, 1919, and the said George J. Corbett has in turn assigned said subscription and all of his rights thereunder by virtue of said assignment to James E. Morgan, by further assignment, dated June 15, 1922; and

Whereas nearly three hundred shares of the authorized common capital stock of the corporation have been subscribed, issued and fully paid for, and the corporation is desirous of following the policy of having the ownership of its stock limited, as nearly as may be practicable, to corporations, firms and individuals actually engaged in or associated with the business of the dyestuffs, textile or chemical industries, including the importation and exportation of the products of said industries, or engaged in investigation and research for their benefit and development; and

Whereas the said Thomas F. Conroy, Douglas I. McKay and James E. Morgan have offered to surrender up said subscriptions respectively assigned to them, and all rights accruing to them thereunder, and release and discharge the corporation from any and all obligations to them thereon arising, in consideration of the Corporation's agreement to in turn release and discharge them, and their respective assignors, from any and all obligations to it by reason of such subscriptions and said assignments thereof:

Resolved that the said offers of the said Thomas F. Conroy, Douglas I. McKay and James E. Morgan be and they hereby are accepted and that said subscriptions be deemed to have been cancelled and that the corporation does by this act of its Board of Directors forever release and discharge the said Thomas F. Conroy, Douglas I. McKay and James E. Morgan, and each of them, and their respective assignors, from any and all obligations to it by reason of said several subscriptions and said assignments thereof; and further

Resolved that the Secretary be and he hereby is authorized and directed to communicate to each of the said Thomas F. Conroy, Douglas I. McKay and James E. Morgan the action taken by the Board of Directors on their offers and the acceptance of such offers by and on the part of the corporation and the cancellation of the aforesaid subscriptions pursuant to such acceptance.

The fact was then brought before the meeting that the Irving National Bank, Market and Fulton Streets Branch, had requested that the Foundation designate anew the persons to have access to the Foundation's safe deposit vault. On motion duly made, seconded and unanimously carried, it was

Resolved. That access to the safe deposit vault No. 228, rented by and standing in the name of the Chemical Foundation, Incorporated, in the Market and Fulton office of the Irving National Bank, N. Y., at No. 81 Fulton Street, New York City, and control of the contents thereof, with full power to surrender said safe shall be had, subject to the rules and conditions of said safe deposit vault, by any one of the following named, to wit,

Mr. George J. Corbett,
Mr. William W. Buffum,
Mr. John L. Kane,

this authority to continue in force until cancelled at any meeting of the Board of Directors of the Chemical Foundation, Incorporated, and the safe deposit vault notified in writing.

There being no further business the meeting thereupon adjourned.

(Sgd.) GEO. J. CORBETT,
Retiring Secretary.
(Sgd.) EDWIN F. HAAREN,
Secretary.

PLAINTIFF'S EXHIBIT No. 498-A.

June 19, 1922.

The Chemical Foundation, Inc.,
81 Fulton St.,
New York City.

Dear Sirs:

I am the assignor of Francis P. Garvan of the right to subscribe to thirteen (13) shares of your common capital stock. I understand that upwards of three hundred shares of that stock have already been paid for and issued, and that it is your policy to limit the ownership thereof so far as possible to corporations, firms and individuals actually engaged in or associated with the business of the dye-stuffs, textile or chemical industries, or in investigation or research for their benefit and development; and as I do not fall within that category, and do not care to exercise my subscription, I hereby offer to surrender the same and release you from any and all obligation to me by reason thereof, upon your in turn agreeing to consider such subscription as cancelled, and releasing me from all obligation to you by reason thereof.

Yours truly,
(Sgd.) THOS. F. CONROY.

PLAINTIFF'S EXHIBIT No. 498-B.

ASSIGNMENT OF SUBSCRIPTION

FOR VALUE RECEIVED, I, FRANCIS P. GARVAN, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto THOMAS F. CONROY, my subscription to thirteen shares of the common capital stock of THE CHEMICAL FOUNDATION, INC., a corporation of the State of Delaware, and all of the rights thereunder, such subscription and rights having been acquired by me by assignment from M. M. Clancy, dated March 3rd, 1919, and I do hereby authorize and empower the Treasurer or Secretary of said corporation to register this transfer on the books of the company.

WITNESS my hand and seal this 15th day of June 1922.

(Sgd.) FRANCIS P. GARVAN (L. S.)

In presence of:
(Sgd.) LORETTO T. CONROY.

PLAINTIFF'S EXHIBIT No. 498-C.

July 31, 1921.

The Chemical Foundation, Inc.
81 Fulton St.,
New York City.

Dear Sirs:

I am the assignor of P. B. Drew of the right to subscribe to one (1) share of your common capital stock. I understand that upwards of three hundred shares of that stock have already been paid for and issued, and that it is your policy to limit the ownership thereof so far as possible to corporations, firms and individuals actually engaged in or associated with the business of the dye-stuffs, textile or chemical industries, or in investigation or research for their benefit and development; and as I do not care to exercise my subscription, I hereby offer to surrender the same and release you from any and all obligation to me by reason thereof, upon your in turn agreeing to consider such subscription as cancelled, and releasing me from all obligation to you by reason thereof.

Yours truly,

JG/RES (Sgd.) DOUGLAS I. McKAY.

PLAINTIFF'S EXHIBIT No. 498-D.

June 19, 1922.

The Chemical Foundation, Inc.,
81 Fulton Street,
New York City.

Dear Sirs:

I am the assignor of George J. Corbett of the right to subscribe to one (1) share of your common capital stock. I understand that upwards of three hundred shares of that stock have already been paid for and issued, and that it is your policy to limit the ownership thereof so far as possible to corporations, firms and individuals actually engaged in or associated with the business of the dye-stuffs, textile or chemical industries, or in investigation or research for their benefit and development; and as I do not fall within that category, and do not care to exercise my subscription, I hereby offer to surrender the same and release you from any and all obligations to me by reason thereof, upon your in turn agreeing to consider such subscription as cancelled, and releasing me from all obligation to you by reason thereof.

Yours truly,

(Sgd.) JAMES E. MORGAN.

PLAINTIFF'S EXHIBIT No. 498-E.

ASSIGNMENT OF SUBSCRIPTION

FOR VALUE RECEIVED, I, GEORGE J. CORBETT, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto JAMES E. MORGAN, my subscription to one share of the common capital stock of THE CHEMICAL FOUNDATION, INC., a corporation of the State of Delaware, and all of the rights thereunder, such subscription and rights having been acquired by me by assignment from H. E. Knox, dated March 3rd, 1919, and I do hereby authorize and empower the Treasurer or Secretary of said corporation to register this transfer on the books of the company.

WITNESS my hand and seal this 15th day of June, 1922.

(Sgd.) GEO. J. CORBETT (L. S.)

In presence of:
(Sgd.) LORETTO T. CONROY.

PLAINTIFF'S EXHIBIT No. 498-F.

THE CHEMICAL FOUNDATION
INCORPORATED
81 FULTON STREET
New York City

Refer to

Cable Address:
Chemfound

June 28, 1922.

Mr. Thomas F. Conroy,
1927 New York Avenue,
Brooklyn, N. Y.

Dear Sir:

This is to advise that your offer to the Chemical Foundation, Incorporated, to surrender to the Chemical Foundation, Incorporated, the rights acquired by you by assignment to subscribe to thirteen shares of the common capital stock of the Chemical Foundation, Incorporated, and to release the Chemical Foundation, Incorporated, from all obligations to you by reason thereof, in consideration of the Chemical Foundation, Incorporated, in turn agreeing to cancel said subscription and release you and your assignor from all obligations by reason thereof, has been submitted to the Board of Directors of the Chemical Foundation, Incorporated, and accepted; and by resolution of the said Board of Directors adopted the 22nd day of June, 1922, the Secretary was authorized and directed to and hereby does communicate to you the said action of the said Board of Directors and the cancellation of such subscription pursuant to such acceptance.

Very truly yours,

CHEMICAL FOUNDATION, INCORPORATED,
By (Sgd.) EDWIN F. HAAREN,
Secretary.

PLAINTIFF'S EXHIBIT No. 498-G.

THE CHEMICAL FOUNDATION
INCORPORATED
81 FULTON STREET
New York City

Refer to

Cable Address:
Chemfound

June 28, 1922.

Mr. Douglas I. McKay,
17 East 42nd Street,
New York City.

Dear Sir:

This is to advise that your offer to the Chemical Foundation, Incorporated, to surrender to the Chemical Foundation, Incorporated, the rights acquired by you by assignment to subscribe to one share of the common capital stock of the Chemical Foundation, Incorporated, and to release the Chemical Foundation, Incorporated, from all obligations to you by reason thereof, in consideration of the Chemical Foundation, Incorporated, in turn agreeing to cancel said subscription and release you and your assignor from all obligations by reason thereof, has been submitted to the Board of Directors of the Chemical Foundation, Incorporated, and accepted; and by resolution of the said Board of Directors adopted the 22nd day of June, 1922, the Secretary was authorized and directed to and hereby does communicate to you the said action of the said Board of Directors and the cancellation of such subscription pursuant to such acceptance.

Very truly yours,

CHEMICAL FOUNDATION, INCORPORATED,
By (Sgd.) EDWIN F. HAAREN,
Secretary.

PLAINTIFF'S EXHIBIT No. 498-H.

THE CHEMICAL FOUNDATION
INCORPORATED
81 FULTON STREET
New York City

Refer to

Cable Address:
Chemfound

June 28, 1922.

Mr. James E. Morgan,
7 West 92nd Street,
New York City.

Dear Sir:

This is to advise that your offer to the Chemical Foundation, Incorporated, to surrender to the Chemical Foundation, Incorporated, the rights acquired by you by assignment to subscribe to one share of the common capital stock of the Chemical Foundation, Incorporated, and to release the Chemical Foundation, Incorporated, from all obligations to you by reason thereof, in consideration of the Chemical Foundation, Incorporated, in turn agreeing to cancel said subscription and release you and your assignor from all obligations by reason thereof, has been submitted to the Board of Directors of the Chemical Foundation, Incorporated, and accepted; and by resolution of the said Board of Directors adopted the 22nd day of June, 1922, the Secretary was authorized and directed to and hereby does communicate to you the said action of the said Board of Directors and the cancellation of such subscription pursuant to such acceptance.

Very truly yours,

CHEMICAL FOUNDATION, INCORPORATED,
By (Sgd.) EDWIN F. HAAREN,
Secretary.

PLAINTIFF'S EXHIBIT No. 499.

MINUTES OF MEETING OF THE BOARD OF DIRECTORS OF THE CHEMICAL FOUNDATION, INCORPORATED, HELD AT THE OFFICE OF FRANCIS P. GARVAN, NO. 67 WALL STREET, MANHATTAN, NEW YORK CITY, ON THE 22ND DAY OF NOVEMBER, 1922, AT 2:30 P. M.

Present:

Messrs. Francis P. Garvan, President.
George J. Corbett, Treasurer.
Edwin F. Haaren, Secretary.

Mr. Corbett presented a waiver and consent signed by all the directors, waiving formal notice of time and place of the meeting and consenting that the same be held on the 22nd day of November, 1922, at 2:30 P. M. at the office of Mr. Francis P. Garvan, No. 67 Wall Street, New York City. The waiver and consent follows:

THE CHEMICAL FOUNDATION, INCORPORATED.

WAIVER OF NOTICE AND CONSENT OF MEETING.

We, the undersigned, Directors of The Chemical Foundation, Incorporated, a corporation organized and existing under the Laws of the State of Delaware, do hereby severally waive notice of the time, place and purpose of meeting of the Board of Directors of the said corporation and consent that the same be held at the office of Mr. Francis P. Garvan, No. 67 Wall Street, New York City, on the 22nd day of November, 1922, at 2:30 P. M., and we do further consent to the transaction of all business that may properly come before the meeting.

Dated, November 22, 1922.

(Sgd.) FRANCIS P. GARVAN,
" GEO. J. CORBETT,
" EDWIN F. HAAREN.

The reading of the minutes of the last meeting of the Board of Directors was waived.

Mr. Francis P. Garvan, President, reported that Chinosol Company, a New York corporation, had made claim of ownership of registered trademark "CHINOSOL," No. 28750, irrespective of the record title being in the Foundation under assignment from the Alien Property Custodian. That pursuant to the authority granted in the resolution of the Board of Directors, passed October 4, 1920, he had inquired into and investigated and considered the merits of the claim and had found the situation to be similar to that which actuated the reassignment of United States Letters Patent 906,918 in January, 1920, which reassignment was formally approved by the Board of Directors October 4, 1920. That he therefore recommended the reassignment of said trademark "CHINOSOL," No. 28750, to Chinosol Company, provided a release be obtained from said Company in conjunction with the reassignment. On motion duly made, seconded and unanimously carried said report was accepted and the President authorized and instructed to execute on behalf of the Foundation proper assignment, and the Secretary authorized and instructed to attach and attest corporate seal and to deliver such assignment so executed to Chinosol Company in exchange for release from them, all without further action of the Board of Directors.

Mr. Corbett, Treasurer, then reported that he had received from Lackawanna Steel Company certificate No. 60 issued for eight shares of preferred stock and common stock trust certificate No. 64 for two shares, all standing in the name of said concern, with a request that same be transferred to Bethlehem Iron & Steel Corporation. Bethlehem Iron & Steel Corporation is reported to be a New York corporation with offices at No. 25 Broadway, New York City, with the following officers: President, C. A. Buck; Vice President, H. S. Snyder; Vice President, J. H. Ward; Secretary, R. E. McMath; Treasurer, W. J. Burns. On motion duly made, seconded and unanimously carried, the Board of Directors voted its approval of this transfer and authorized the Treasurer to endorse the stock certificates accordingly and to cause these certificates to be cancelled and new certificates issued in their stead in the name of Bethlehem Iron & Steel Corporation for equal numbers of shares respectively.

There being no further business, meeting thereupon adjourned.

(Sgd.) EDWIN F. HAAREN,
Secretary.

Dated: November 22, 1922.

PLAINTIFF'S EXHIBIT No. 500.

MINUTES

OF MEETING OF ADVISORY COMMITTEE OF THE CHEMICAL FOUNDATION, INCORPORATED, HELD DECEMBER 17, 1919, AT 2.30 O'CLOCK P. M.

PRESENT:

- Col. D. I. McKay, Vice President, The Chemical Foundation, Inc.
- James T. Pardee, The Dow Chemical Co., Midland, Mich.
- P. Samuel Rigney, Roessler & Hasslacher, 100 William St., New York.
- Thomas C. Dawson, Electric Boat Co., 11 Pine St., New York.
- S. S. Norton, Permutit Co., 440 Fourth Ave., New York.
- Dr. J. Merritt Mathews, Representing American Dyes Institute, 21 East 40th St., New York.

E. T. Connelly, Representing Manufacturing Chemists Association, 84 State St., Boston, Mass., on behalf of Mr. Howard.

There were also present:

Ramsay Hoguet, Patent Counsel of The Chemical Foundation, Inc.

S. A. Tucker, Chief Chemist of The Chemical Foundation, Inc.

Absent:

Dr. W. J. Schiefflein, Schiefflein & Co., 170 William Street, New York.

Mr. Blum, United Piece Dye Works, 132 Madison Ave., New York.

The first thing on the program was the acceptance by the Committee of the verbatim report of the Stockholders' Meeting of December 2, 1919. The report was accepted after it had been noted that The General Bakelite Company was omitted from Section 6, and instructions given that the constitution be rewritten to include amendments, and copies sent to members of the Advisory Committee.

Colonel McKay announced that the directors had not formulated any precise questions to be put before the meeting and explained that practically all the time of the staff of The Foundation was being given to the preparation of data for the Finance Committee of the Senate Hearings on the Licensing Bill. He then suggested that some part of the meeting be devoted to the members getting better acquainted. This suggestion was followed by each representative giving a short account of the activities of the concern which he represented.

Mr. Rigney, while speaking of the Roessler & Hasslacher Company, said that he was particularly interested in getting a complete list of the patents owned by The Foundation, as there probably were a great many that they might be able to take up.

After Mr. Dawson of The Electric Boat Company mentioned the interest of his company in Duralumin, Colonel McKay discussed with the members the question of the Duralumin license whereby what was previously an exclusive license held by The Electric Boat Company has become a non-exclusive license.

Colonel McKay then announced that there were several things to be presented formally at an early meeting, notably some definite policy to build up stock ownership in The Foundation. Mr. Hoguet also spoke of this question, and Dr. Mathews proposed the desirability of getting a well informed party to personally call on people who might be interested. Dr. Tucker mentioned the plan Mr. Jeffcott started, but which was abandoned on account of the necessity of Mr. Jeffcott's presence in Washington.

Mr. Dawson felt that an argument on the stability of the ownership of the patents by The Foundation should be presented to prospective subscribers. He also said that actual copies of patents should be furnished members so that they could talk intelligently to people that they were trying to interest. Mr. Hoguet stated that Dr. Tucker and his assistants had prepared a digest of every patent, stating its nature, its process, the steps of the process, and the result gotten from it.

Colonel McKay then brought the discussion of this subject to a close by recommending that this matter should be presented to the full committee so that everybody would have an opportunity to present a plan for getting stock subscriptions. Then, it might be put in the hands of a sub-committee who would work out the details with the help of The Foundation and its staff.

The question of putting the patents owned by The Foundation to work was then brought up. It was explained that there were two classes of patents; those that have been licensed, and those that have not been licensed. Colonel McKay said that he felt that a large number of valuable patents are being overlooked, and that this was a question that was going to be presented for the consideration of the Committee.

Mr. Hoguet then explained that this, being his particular end of the business, he had some definite views on it. He said that The Foundation wanted to promote the widest possible use of the inventions of the patents to build up the industry and duplicate as far as possible similar lines that were practised abroad, and to use it as a basis for further development in this country, and incidentally to produce a revenue for The Foundation. He said there were probably manufacturers using our patents without knowledge of infringement, and that efforts should be made to secure royalties from this use. The other definite line is that manufacturers are not using patents because they are ignorant of the benefits that might be derived from their use. He thought a scheme should be developed to stimulate applications for licenses.

Answering a question by Mr. Dawson in regard to infringement, Mr. Hoguet cited the Arsphenamine case, which was very simple because it was a definite chemical compound.

Mr. Hoguet then went on to say that The Foundation was organized to be friends to the industry, and that he did not think it right to bring suit when it was shown that the infringement was innocent. Mr. Dawson said that he personally did not believe in being lenient, for we were charged with the duty of protecting our licensees. He also said that it was an advertisement for The Foundation to prospective licensees if suit were filed immediately against those who infringe.

Colonel McKay agreed that we owed a duty to our licensees, and said that our licensees are the most fruitful source of information about infringements.

Colonel McKay asked Dr. Tucker to explain what he was doing in regard to patents. Dr. Tucker said that the list of patents, which was numerically arranged, had been brought up to date, and divided into twenty-five classes. The specifications have been briefed giving title, number, date, etc., to whom it was assigned, if there was an assignment, a description of how the patent is worked out, what it is useful for, and what its properties are. He also stated that a pamphlet on the briefs of vat dyes would be issued shortly, and that typewritten lists had been prepared of the other classifications, giving the patent number, and name of the product. Mr. Dawson suggested that, if these lists were printed with a caption that briefs would be forwarded by The Foundation on request, it would help.

According to Dr. Tucker, Mr. Connelly felt that some publication of the dye patents separate from others would be of advantage, but that owing to the large number of dye patents it was a pretty hard proposition. Mr. Connelly thought that something could be gotten out on the application of these dyes and Dr. Mathews was asked for suggestions. Dr. Mathews said it was very difficult to get a good classification of all the dye patents as it was very hard to recognize certain dyes from the patents. Colonel McKay suggested an estimate of the cost of presenting these patents in printed form.

Mr. Rigney then brought up again the subject of being informed as to just what patents The Foundation owns, saying that there was a possibility that his company might be using patents belonging to The Foundation.

Mr. Dawson asked Mr. Hoguet what would happen to the patents after the peace treaty is signed. Mr. Hoguet replied that patents are personal property, and that personal property is being sold by the Alien Property Custodian under the Trading with the Enemy Act. Mr. Hoguet said that the title of The Foundation to the patents is just as good as the title to a share of stock that an American purchaser bought from the Alien Property Custodian, and this title was good enough to prompt the investment of about half a billion dollars in alien property, and was passed upon by attorneys for all the various purchasers.

Mr. Dawson requested the preparation of a brief statement by Mr. Hoguet outlining exactly the status of the patents in the event that the treaty was not passed in its present form. Emphasis was given to the desirability of having this statement just as brief as would permit of clear understanding of the situation.

On a question from Mr. Rigney as to what would happen if the peace treaty were not ratified and the United States forced to negotiate a new treaty, Mr. Hoguet said that he felt that there would be a treaty containing the economic clauses, particularly those with regard to industrial property, as those must necessarily be uniform in all countries, and there were no objections raised to these clauses.

There being no further business, the Committee on motion adjourned.

TAK.

PLAINTIFF'S EXHIBIT No. 501.

MINUTES OF MEETING OF ADVISORY COMMITTEE OF THE CHEMICAL FOUNDATION, INC., HELD FEBRUARY 18, 1920, AT 2.30 O'CLOCK P. M.

Present:

Col. D. I. McKay, Vice Pres., The Chemical Foundation (Chairman).

James T. Pardee, The Dow Chemical Co., Midland, Mich.

Dr. W. J. Schieffelin, Schieffelin & Co., 170 William St., New York.

Henry Wigglesworth, General Chemical Co., 25 Broad St., New York.

Thomas C. Dawson, Electric Boat Co., 11 Pine St., New York.

Henry Howard, Merrimac Chemical Co., 148 Bay St., Boston, Mass., representing Manufacturing Chemists Association.

There were also present:

George J. Corbett, Secretary and Treasurer of The Chemical Foundation.

S. A. Tucker, Chief Chemist of The Chemical Foundation.

Ramsay Hoguet, Patent Counsel of The Chemical Foundation.

H. E. Bateman, Secretary of Advisory Committee.

The meeting was called to order by the Chairman, Colonel Douglas I. McKay.

Motion that the minutes of the last meeting be accepted without being read was made, seconded, and adopted.

The Chairman asked for a report on the subject of trademarks. This question was discussed at the last meeting at which time members expressed a desire to confer with counsel before any action was taken. There was no report from members present. As it seemed to concern the Section on Pharmaceuticals and Medicinal Chemicals more than any other, action was postponed until the arrival of Dr. Schieffelin.

The Chairman then presented the resolution prepared by Mr. Hoguet addressed to the Federal Trade Commission requesting acceptance of surrender of licenses on patents owned by The Foundation. As there is some doubt as to what stand the State Department is going to take with regard to the Treaty of Prussia and its effect on the acts of the Alien Property Custodian, a motion was made that action on the resolution to the Federal Trade Commission be deferred until next meeting. Seconded and adopted.

A resolution was then offered referring the action of the Advisory Committee in connection with the German Patent Convention to Mr. Hoguet for report at next meeting. Seconded and adopted.

In this connection, it was decided that a memorandum was to be sent Mr. Howard requesting him to supply Mr. Hoguet with a digest of opinions of the counsels of members of the Manufacturing Chemists Association.

The question of stock subscriptions was then discussed. Mr. Corbett told the Committee what had been done by his office in the way of circularizing the industry and submitted literature used to the Committee for review. It was decided that the Advisory Committee would endeavor to secure the required number of subscribers. For this purpose, each member of the Committee will be sent the following:

1. Prospectus.
2. List of Stockholders.

3. Division of list of stockholders into the six sections.
4. Division of our patents into lists which correspond to the titles of the six sections.
5. The legal opinion according to the letter recently prepared by Mr. Hoguet regarding the status of The Foundation after Peace. (Bulletin No. 3).

Dr. Schieffelin was then called on for report from his section on the question of the adoption of names for drugs and pharmaceuticals by the Foundation as recommended by the American Medical Association. Dr. Schieffelin explained that he did not have required information in his possession to make a report, and it was agreed that he was to be supplied with such information by the Secretary of the Committee.

The trademark situation was then discussed, and a motion was made, seconded, and adopted that Mr. Hoguet be requested to thoroughly investigate the trademark situation and report at the next meeting, which report will be accompanied by a list of trade marks owned by The Foundation.

The Chairman then referred to the question of the policy of The Foundation in regard to restriction of licenses and stated that, in Mr. Garvan's absence, he did not feel that the Committee was equipped to go into the matter very deeply. It was decided that discussion be postponed until next meeting.

Mr. Pardee stated that he wished to go on the record, as he would not be able to be present at the next meeting, as being in favor of non-exclusive licenses, except where there were particular reasons in special cases.

A resolution was then made, seconded, and adopted recommending that the Directors and Officers of The Foundation support House Bill 11984 providing for an amendment in the Patent Act with regard to increase of salaries of employees of the Patent Office, also to the mode of recovering damages in patent suits by permitting a court in fixing damages to take the testimony of experts as to what a reasonable measure of damages should be, and that the Section Chairmen of the Advisory Committee be advised that such legislation is pending, and that in the event of the resolution being adopted by the Directors of The Foundation, such Section Chairmen be urged to solicit through their own agencies further support for this bill, and that the President of The Foundation be requested to appear in support of the bill at any Congressional Hearings.

As there was no further business, the Committee on motion adjourned.

HEB/TAK.

PLAINTIFF'S EXHIBIT No. 502.

Minutes of Meeting of Advisory Committee of The Chemical Foundation, Inc., Held March 17, 1920, at 2.30 o'clock P. M.

Present:

- Henry Howard (Chairman *pro tem*), Merrimac Chemical Co., 148 Bay St., Boston, Mass., representing Manufacturing Chemists Association.
- Herbert H. Dow, The Dow Chemical Co., Midland, Mich.
- Dr. W. J. Schieffelin, Schieffelin & Co., 170 William St., New York.
- Henry Wigglesworth, General Chemical Co., 25 Broad St., New York.

Henry L. Blum, United Piece Dye Works, 132 Madison Ave., New York.
Thomas C. Dawson, Electric Boat Co., 11 Pine St., New York.
S. S. Norton, Permutit Co., 440 Fourth Ave., New York.
Dr. J. Merritt Matthews, Representing American Dyes Institute, 21 East 40th St., New York.

There were also present:
Joseph H. Choate, Jr., General Counsel of The Chemical Foundation.
Ramsay Hoguet, Patent Counsel of The Chemical Foundation.
S. A. Tucker, Chief Chemist of The Chemical Foundation.
H. E. Bateman, Secretary of Advisory Committee.

In the absence of Mr. Garvan and Colonel McKay, Mr. Henry Howard by vote of the Committee acted as Chairman of the meeting.

A motion was made that the reading of the minutes of the last meeting be dispensed with and that they be approved as written. Adopted.

The resolution addressed to The Federal Trade Commission requesting acceptance of surrender of licenses on patents owned by The Foundation deferred from meeting of February 18th on account of an article in the Journal of Commerce which stated that the acts of the Alien Property Custodian were reviewable under the Treaty with Prussia was then taken up. Mr. Hoguet read an opinion written by him to Mr. Wigglesworth in which he stated that there was no justification for the article in the Journal of Commerce. The Committee then voted that the resolution be amended omitting the word "large" before "royalties" and forwarded to the Federal Trade Commission.

The Foundation's attitude on the continuance of the Patent Convention was then brought up. Only two briefs on this question from counsel of members of the Manufacturing Chemists Association were submitted to Mr. Hoguet, who expressed his view on the subject of a working clause and suggested entering into a convention which would reserve our liberty of action.

Mr. Wigglesworth then by motion proposed a resolution to call the attention of the State Department to the desirability of preserving as far as possible freedom of action in the future in respect to the Treaty of February 23, 1909. This motion was seconded and adopted

The policy of The Foundation in regard to adopting names for drugs and pharmaceuticals recommended by the American Medical Association was then discussed. Dr. Schieffelin offered a resolution that at present it was not deemed advisable for The Foundation to require licensees to use any particular trade name. This motion was seconded and adopted.

Mr. Hoguet explained the trademark situation and plan of The Foundation with regard to issuing agency agreements for the use of trademarks. A motion was made, seconded, and adopted that such measures as may appear to counsel to be desirable to perfect the title of The Foundation to its trademarks and perpetuate the business conducted thereunder, by the establishment of agencies or otherwise, be pursued.

The question of furthering the stock membership of The Foundation was then taken up. Mr. Wigglesworth thought that some sort of financial assurance in the form of a statement from The Foundation should accompany literature sent out to prospective subscribers. The Committee requested, by motion which was seconded and adopted, that at the next meeting they be furnished a resume of the financial condition of The Foundation.

After some discussion on the subject of restriction of licenses, the Committee adopted a resolution stating that, in the opinion of the Advisory Committee, there should be no limitation to the number of licenses issued by The Foundation.

A further resolution was offered, seconded, and adopted that licenses should only be issued to such people who prove their responsibility to properly conduct the business under licenses.

There being no further business, the Committee on motion adjourned.

HEB/TAK.

PLAINTIFF'S EXHIBIT No. 503.

MINUTES OF MEETING OF ADVISORY COMMITTEE OF THE CHEMICAL FOUNDATION, INC., HELD APRIL 21, 1920, AT 2.30 O'CLOCK P. M.

Present:

Col. D. I. McKay, Vice Pres., The Chemical Foundation, Inc. (Chairman).

Dr. W. J. Schieffelin, Schieffelin & Co., 170 William St., New York.

Thomas C. Dawson, Electric Boat Co., 11 Pine St., New York.

Dr. J. Merritt Mathews, Representing American Dyes Institute, 21 East 40th St., New York.

Henry Howard, Representing Manufacturing Chemists Assn., Care Merrimac Chemical Co., 148 Bay St., Boston, Mass.

There were also present:

Joseph H. Choate, Jr., General Counsel of The Chemical Foundation, Inc.

Dr. S. A. Tucker, Chief Chemist of The Chemical Foundation, Inc.

H. E. Bateman, Secretary of Advisory Committee.

* * *

The meeting was called to order by the Chairman, Colonel Douglas I. McKay.

Motion was made that the reading of the minutes of the last meeting be dispensed with and that they be accepted without alteration and filed.

Colonel McKay announced that the License Board had received an application for a license to import Duralumin, the manufacture and sale of which is covered by patents owned by The Foundation.

After discussion, Mr. Howard moved that this application be disapproved and that no license to import be granted. Mr. Dawson offered an amendment providing that the applicant for license be permitted to import small quantities for sample purposes for a period of twelve months. This amendment was later withdrawn, and the motion as proposed by Mr. Howard seconded and adopted.

Financial statement, as requested at the last meeting was presented by the Secretary.

There being no further business, the meeting on motion adjourned.

HEB/TAK.

PLAINTIFF'S EXHIBIT No. 504.

MINUTES OF MEETING OF ADVISORY COMMITTEE OF THE CHEMICAL FOUNDATION, INC., HELD JULY 21, 1920, AT 2.30 O'CLOCK P. M.

Present:

- Col. D. I. McKay, Vice Pres., The Chemical Foundation, Inc. (Chairman.)
- James T. Pardee, The Dow Chemical Co., Midland, Mich.
- Henry Wigglesworth, General Chemical Co., 25 Broad St., New York.
- Henry Howard, Representing Manufacturing Chemists Assn., care Grasselli Chemical Co., Cleveland, Ohio.
- Dr. W. J. Schiefflein, Schiefflein & Co., 170 William St., New York.
- H. E. Bateman, Secretary of Advisory Committee.

* * *

The meeting was called to order by the Chairman, Colonel Douglas I. McKay.

The minutes of the last meeting were read and approved, subject to the amendment embodied in the following resolution proposed by Dr. Schiefflein: Resolved that it is the recommendation of the Advisory Committee that the Foundation adopt as its policy, with regard to the further disposition of the Preferred Stock the suggestion approved at the last meeting and referred to counsel to be put in the form of a minute and submitted at a subsequent meeting of the Committee, which provided that each underwriter deposit all excess stock in the hands of the Foundation as Treasury Stock, and as subscriptions are received, the funds therefrom be prorated among the depositors in proportion to the amount of their holdings, and that counsel be and hereby is instructed to draft such resolution in proper legal form.

The resignation of Mr. Thomas C. Dawson as a member of the Advisory Committee, and also as a member of the Metallurgical Committee, Section 5 of the Advisory Committee, was received and accepted.

A report made by Colonel McKay of the method and policy used by the Licensing Board in granting Licenses was approved by the Committee.

There being no further business the Commitee, on motion, adjourned.

H. E. BATEMAN,
HEB/EP *Secretary.*

PLAINTIFF'S EXHIBIT No. 505.

(Sent to all members of Advisory Committee).

THE
CHEMICAL FOUNDATION
INCORPORATED
81 FULTON STREET
NEW YORK CITY

August 19, 1920.

Col. Douglas I. McKay,
81 Fulton St., New York.

Dear Colonel McKay:

Although there was an absence of a quorum at the proposed regular meeting of the Advisory Committee on August 18th, several matters were informally discussed which I feel should be brought to the attention of members of the Committee.

The Progress Report, as submitted at the meeting, showed that The Foundation had acquired 616 patents since the original 4500. The best method of bringing these patents to the attention of interested parties was discussed. It was finally proposed that a short description of these patents be published in the bi-monthly bulletin issued by The Foundation.

The question of The Foundation being supplied with a list of dyes being produced in this country, together with data as to their chemical composition, was also discussed. It was felt that this proposition should be brought up at a stockholders' meeting so that unanimous consent to such a proposal could be obtained.

Payment of royalties by the Government for the use of Foundation patents was discussed. The particular point was the use by the Government of certain patents for electrolytic gold refining. It was thought by the members present that this matter should be brought to the attention of the Government.

On account of the fact that the next monthly meeting of the Manufacturing Chemists Association has been postponed from September 15th to September 22d, it was decided to also postpone the meeting of the Advisory Committee one week so that these two meetings would, as usual, fall on the same date. Members are hereby advised of this change.

Copy of Progress Report submitted to the Committee is attached.

Very truly yours,

(Sgd.) H. E. BATEMAN,

HEB/TAK. *Secretary of Advisory Committee.*
Enc.

PLAINTIFF'S EXHIBIT No. 506.

MEETING OF ADVISORY COMMITTEE OF THE CHEMICAL FOUNDATION, INC., HELD SEPTEMBER 22, 1920, AT 2.30 P. M.

Present:

Col. D. I. McKay (Chairman), Vice Pres. The Chemical Foundation, Inc.

Dr. W. J. Schieffelin, Schieffelin & Co., 170 William St., N. Y. C.

S. S. Norton, Permutit Co., 440 Fourth Ave., New York.

Henry Howard, Representing Manufacturing Chemists Assn. Care Grasselli Chemical Co., Cleveland, Ohio.

James T. Pardee, The Dow Chemical Co., Midland, Mich.

Dr. J. Merritt Mathews, Representing American Dyes Institute, 21 East 40th St., New York.

There were also present:

Joseph H. Choate, Jr., General Counsel of The Chemical Foundation.

S. A. Tucker, Chief Chemist of The Chemical Foundation.

H. E. Bateman, Secretary of Advisory Committee.

The meeting was called to order by the Chairman, Colonel Douglas I. McKay.

Progress report of The Chemical Foundation was submitted to members of the Committee.

Colonel McKay asked Dr. Tucker to place the facts in regard to an application of Harold M. Bennett to import certain instruments made by Carl Zeiss, Jena, Germany, on which The Foundation owns patents and trademarks before the Committee, Dr. Tucker stated that Mr. Bennett had formerly been the agent of Zeiss in the United States, and originally applied to import a small quantity of these instruments. Upon investigation, it was found that manufacturers of similar articles in the United States did not object to such an arrangement. Mr. Bennett was, therefore, offered an import license by The Foundation covering a period of one year at a royalty rate of 10%. He refused to accept this license because he considered the royalty rate excessive. In the meantime, Dr. Tucker came into possession of information showing that Mr. Bennett, instead of wanting to bring in a limited quantity, proposed to make large importations running into probably a million or two million dollars a year. While no definite action was taken by the Committee, it was the consensus of opinion that The Foundation should not recede from its position.

Dr. Tucker gave a brief account of his visit to the meeting of the American Chemical Society of Chicago, and also to the plants of several of our licensees in that section.

Mr. Choate referred to the resolution that was passed at the meeting of July 21st in regard to the further disposition of the preferred stock of The Foundation, requesting that counsel be instructed to draft such resolution in proper legal form. Mr. Choate stated that the resolution as passed is all that is necessary, for the minutes of the Advisory Committee, and that he was preparing a plan which would put the resolution into effect.

Mr. Choate also reported that The Foundation has reached a very satisfactory arrangement with the War Trade Board in regard to exchanging information which would tend to protect licensees of The Foundation from importation.

Colonel McKay then announced that the directors had decided to strengthen the administration of The

Foundation, realizing that it had become necessary for an executive to take charge who could devote his full time and services to this work. Mr. Corbett, Secretary and Treasurer, had made himself available in this capacity, and so it was decided by the directors that this arrangement be put into effect.

There being no further business, the Committee on motion adjourned.

HEB/TAK

PLAINTIFF'S EXHIBIT No. 507.

The first meeting of the Executive Committee of the American Dyestuff Manufacturers' Association, Inc., was held at 4 P. M. Wednesday, April 10th, 1918, at the Chemists' Club, 50 E. 41st Street, New York City, at which were present a full quorum as follows:

M. R. Poucher,
August Merz,
Robert C. Jeffcott,
Robert P. Dicks,
J. Merritt Matthews.

A motion was made by J. Merritt Matthews, seconded and passed unanimously, that a two-year lease be taken on Room 1007, 21 E. 40th St., New York City, at a yearly rental of $750 for the permanent offices of the Association.

The secretary was authorized to furnish office with necessary furniture, stationery, etc.

The secretary's salary was fixed at $3500 a year to start on this date, April 10th. For additional office help he was allowed $2000 a year. Fixed salaries not to exceed the sum of $5500 a year.

Motion made by Mr. Poucher that in order to facilitate matters, the secretary be appointed assistant treasurer with power to sign checks and attend to all matters of finance in connection with the Association. Motion was seconded by Dr. Matthews and passed unanimously.

The secretary was instructed to issue a bulletin from time to time, setting forth the activities of the Association and other information which he may obtain of value to members of the Association.

The secretary was instructed to put the Association in touch with all branches of the Government, in order to co-operate to the fullest extent in all matters of mutual interest.

It was decided to commence the active work of the Association by creating the following committees as soon as members had signified upon which committee they desire to serve:

Secretary instructed to obtain statement of account from Counsel Benj. M. Kaye for service rendered to date.

Meeting adjourned at 6:25 P. M.

PLAINTIFF'S EXHIBIT No. 508.

A meeting of the EXECUTIVE COMMITTEE of the American Dyestuff Manufacturers' Association, Inc., was held at the office of the Association, 21 E. 40th Street, on May 22nd, 1918, at 5 P. M.

Present: M. R. Poucher, August Merz, Dr. J. Merritt Matthews, C. Cyril Bennett.

Secretary brought before the Committee the applications for membership of the following: The Dow Chemical Co., United States Color & Chemical Co., Inc., John Campbell & Co., Dicks, David Co., Inc., Essex Aniline Works, Inc., and Metals Disintegrating Co., Inc., all of which were passed upon.

Discussion ensued on the attitude of Mr. Shaw of the National Aniline & Chemical Co. towards joining the Association.

Correspondence with Fine Colors Co., Paterson, N. J., regarding their eligibility to join the Association, was read. It was decided to do nothing further in the matter.

Secretary read letter of May 21st from Alien Property Custodian.

Secretary read letter of May 20th from War Trade Board on the subject of intermediates shipped to Spain. It was decided that the Secretary get all the information he can obtain from the Board in Washington, on the matter of these intermediates, and endeavor to find out if they are used in the manufacture of dyes.

Secretary read letter from the National City Bank on the matter of inferior dyes shipped to Cuba. It was decided that Mr. Bennett take this matter up with the Federal Trade Commission on his next trip to Washington.

Mr. H. Gardner McKerrow's correspondence in the matter of expenses he incurred in the formation of the organization, was discussed, and it was decided to let the matter stand as at the last meeting.

The following members were suggested for the Tariff Committee: Dr. J. Merritt Matthews, Chairman, L. A. Ault, M. R. Poucher, August Merz, Henry Blum and R. C. Jeffcott, and Geo. A. Martin.

It was decided to pay Mr. Benj. M. Kaye $250 for services rendered in the incorporation of the Association.

Meeting adjourned at 6:15 P. M.

PLAINTIFF'S EXHIBIT No. 509.

A meeting of the Executive Committee of the American Dyestuff Manufacturers' Association was held on Tuesday, Sept. 3rd, 1918, at 4 P. M. in the office of the Association, Room 1007, 21 East 40th Street, New York City.

Present: Dr. J. M. Matthews, Mr. M. R. Poucher, A. Merz, R. P. Dicks, and C. C. Bennett.

Mr. Bennett moved that the Executive Committee hold a monthly meeting the first Tuesday of every month, at 4 P. M. Motion duly seconded and carried.

It was moved that Dr. J. Merritt Matthews represent the Association at the Convention of the American Chemical Society of Cleveland, on Sept. 10th to 12th, in Cleveland. Motion carried.

After discussion of the eligibility of the U. S. Conditioning and Testing Co., for membership in this Association, it was decided to invite Dr. Pierce to serve on the Standardization Committee. Secy. Bennett was requested to write this invitation.

Secy. Bennett brought before the Committee the letters from R. C. Jeffcott, A. Merz and R. P. Dicks giving their suggestions for members of the Trade, Standardization and Publicity Committees respectively. Mr. Poucher moved that their suggestions be accepted (with one or two substitutions), and that the Secretary write letters of invitation to the respective parties suggested. Motion carried.

Secy. Bennett brought to the attention of the Committee the matter of Dr. Reinsch's visit to this country with regard to dyestuff trade between the United States and China, and read correspondence between the Association and Mr. Snow of the Department of Commerce. Brief discussion followed.

Commonwealth Chemical Corp's membership was passed upon.

It was decided to call a meeting of the Board of Governors, and Secy. Bennett was instructed to issue this notice to the Board.

Meeting adjourned at 5:45 P. M.

PLAINTIFF'S EXHIBIT No. 510.

A meeting of the Board of Governors of the American Dyestuff Manufacturers' Association, Inc., was held at the office of the Association, 21 E. 40th Street, New York City, on Monday, Sept. 16th, 1918, at 4 P. M.

The meeting was attended by Messrs. Woodrow, Merz, Poucher, Dicks and Drs. Matthews and Iserman.

The necessary majority of the Directors not being present, and there being no quorum, an informal meeting was held.

The financial report (attached) up to date of Sept. 16, 1918, was read.

It was decided to call a meeting of the dyestuff manufacturers on Thursday, September 26th, at 4:00 P. M. at the Hotel Biltmore to discuss:

1st.—Priorities in regard to the Dyestuff Industry.

2nd.—What action should be taken by the Dyestuff Industry as a whole, under the new registration act.

3rd.—The question of following the British lead in establishing a ten-years' restriction of imports of dyes after the war.

Meeting adjourned.

PLAINTIFF'S EXHIBIT No. 511.

MINUTES OF MEETING
HELD
SEPTEMBER 26TH, 1918.

A meeting of the members of the Chemical Alliance, Inc., The American Dyes Institute, and the American Dyestuff Manufacturers Association, Inc., was held on Thursday, September 26th, 1918, at the Hotel Biltmore, New York City.

Dr. J. Merritt Matthews, Secretary of the Chemical Alliance (Dyestuff and Intermediate Section), presided, and called the meeting to order at 4:15 P. M.

Mr. H. E. Danner, Secretary of the American Dyes Institute, called the roll, and the following members were represented:

Firm	*Represented By*
The Althouse Chemical Co.	Mr. C. Scott Althouse
The American Aniline Products Co.	Mr. B. Armour
The Ault & Wiborg Co.	Mr. A. B. Davis Mr. Hilton Mr. Lichtenstein
The Butterworth-Judson Corp.	Mr. Glass
The Chemical Co. of America	Dr. Iserman Mr. Kendall
Consolidated Color & Chem. Co.	Mr. H. A. Metz Mr. Widman
Dye Products & Chem. Co.	Mr. C. K. Simon Mr. Lowenthal
Monroe Color & Chemical Co.	Mr. E. N. Monroe
Calco Chemical Co.	Mr. R. C. Jeffcott Mr. Berry

Firm	*Represented By*
	Mr. C. E. Mensing Dr. L. M. Crossley Dr. A. P. Beardsley
John Campbell & Co.	Mr. G. S. Whaley Mr. Jones
The Dow Chemical Co.	Mr. Pardee
E. I. duPont de Nemours & Co.	Mr. M. R. Poucher Mr. E. V. Patterson Dr. Chambers Mr. Protto Dr. C. L. Reese
Grasselli Chemical Co.	Dr. J. Merritt Matthews Mr. Wallach
The Heller & Merz Co.	Mr. August Merz Mr. Eugene Merz
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo Mr. Litter Mr. Chapin
Naugatuck Chemical Co.	Mr. Wm. Valentine Mr. R. J. King Mr. J. E. Caskey
The Sherwin-Williams Co.	Mr. W. S. Woodrow Mr. H. J. Hain Mr. R. V. Brown
Transatlantic Chemical Corp.	Mr. W. L. Stevenson
Central Dyestuff & Chemical Co.	Dr. G. A. Prochazka Dr. G. A. Prochazka, Jr.
Essex Aniline Works	Mr. Hyde
Geo. H. Morrill Co.	Mr. Carlyle Mr. Carey
Organic Salt & Acid Co.	Mr. Rothberg
National Aniline & Chemical Co.	Mr. Biddison Mr. Watkins
United Piece Dye Works	Mr. Hy Blum
Zobel Color Works, Inc.	Adolph Zobel

Dr. Matthews' Opening Address:

"This meeting has been called for the purpose of discussing the following four questions, contained in the notices sent out to the members of the Alliance, Institute and Association:

1st.—Whether the dye industry shall attempt to secure a preferred classification on the Priority List.

2nd.—What steps can be taken to protect the American Dye Industry under the new registration act.

3rd.—The appointment of a committee requested by the War Industries Board, which shall be known as the "War Service Committee," to represent the Industry as a whole.

4th.—A discussion as to the practicability of following the course adopted by the British Government in restricting imports of dyes for a period of years after the war.

With regard to the *first* question, it is very important for everybody to completely understand the matter—as to what the situation is—just what is the status of the Dye Industry as regards Priority and Preference listing—whether it comes in under General Chemical classification in the Fourth Class, or not. Probably Dr. Reese can start us off with some discussion on this subject, as he has been down to Washington and is familiar with the situation down there."

Dr. Matthews interrupted by asking if there were any newspaper reporters present, expressing the intention that the meeting be given no publicity, it being entirely confidential.

Dr. Matthews asked Dr. Reese: "Dr. Reese, can you give us your point of view on this matter of priority?"

Dr. Reese took the floor: "There seems to be some considerable confusion as to the meaning of "Priorities" and "Preference." There are two lists, covered by two entirely different circulars. One is the Priority list, issued by the Priority Division of the War Industries Board, which covers industries which get automatic priority for the materials they require for production. Circular #20, which was recently issued, covers a certain preference list. It has a list of Industries, and also a list of factories. Now in this list the industries are classified as Class 1-2-3-4, and according to this circular they have classed or listed certain factories which may not come under the Industries represented on this list of Industries; and also certain factories which might come under these Industries, but which, for certain reasons, may have a higher classification. In this connection, I might say, as Chairman of the Dye Section of the Chemical Alliance, that at the last meeting of the directors of the Chemical Alliance, this matter was brought to the attention of the directors, and nobody seemed to know anything about Circular #20. A statement was made that this list of factories and Industries would be used by the Draft State Boards for the purpose of granting deferred classification. A number of Industries represented by the directors of the Chemical Alliance were not represented in this list. The chemical industries on this list were classified under Class 2. The industries for the production of Chemicals required in the manufacture of army trucks, aeroplanes, army and navy machinery, etc.: chemicals used in warfare, were classed under Class #1.

For example: The General Chemical Company—none of their plants occur in this list of plants.

The Grasselli Chemical Company does not occur in this list.

The E. I. duPont de Nemours Company has a few of its plants occurring in this list, but the principal plants that are producing munitions are not covered by it, so there was a great deal of confusion at this meeting; also confusion because of the fact that at a conference held by the members of the Chemical Alliance Board, the matter was brought up that none of the plants in the Fertilizer Industry were on this list. Members of the Board who represented the Fertilizer Industry and the General Chemical Company had an interview with Mr. Phillips, who is Secretary of the Priorities Division of the War Industries Board, and also had an interview with men in his office. The information given by the men in the office, and by Mr. Phillips himself, were absolutely contradictory, so that nobody seemed to know where they stood.

The Chemical Alliance Directors have a meeting in the morning, at which only the directors are present; in the afternoon, members of the Government are invited—members of the various Governmental Departments—to come in and give such information as would be of benefit.

In the afternoon session, Col. Conkling, representing General Crowder's office, attended the last meeting. He was questioned on the matter of securing deferred classification in draft. The directors had an interesting talk with him, he went very fully into the matter. The result of this conference was published in the circulars of The Chemical Alliance, and also by the Dyestuff Section, and those of you who are members of the Chemical Alliance have had a report of that interview. I was under the impression that members of the American Dyestuff Manufacturers' Association, Inc., and the American Dyes Institute, were practically the same as the Chemical Alliance. I would like to say here that those of you who are not members of The Chemical Alliance ought to become members, because it is a body which was formed by Mr. Baruch, to aid the War Industries Board in connection with the Chemical Industries of the country.

The result of the conference was that although it was given out that this circular No. 2 would be used by the District Boards in granting deferred classification, General Crowder's office did not recognize that fact to any extent further than that the District Boards should use the list for reference purpose, and General Crowder sent a letter of explanation to the District Boards to use this list of factories for reference purposes only, and not to be guided by it in granting deferred classification in any sense.

Another point that was brought out in connection with this list of factories is the statement the Secretary of the Priority Division made—that no factory or industry could get on this list without filling out Form P. L. No. 1. Telegrams were sent out advising the members of the Chemical Alliance to fill in this form (which could be obtained from the Priorities Division of the War Industries Board) and return the form with the request that they furnish the owner of factory with certificate showing his classification. In accordance with arrangement made with the Chemical Alliance by Mr. Phillips, which certificate could be used by the Draft Boards, without referring to the list in trying to secure deferred classification.

In discussing the matter of deferred classification, the impression that I got from Col. Conkling's talk was the desire on the part of the government to get deferred classification for all necessary men. The impression that I got from other sources is that the requirements of the Army have reached beyond that of supplies; consequently, it is necessary to get up the supplies.

Another point that he made considerable of was that the old draft or questionnaire forms used the word "essential." Now it will be seen that in the new draft form the word "essential" has been eliminated and the word "necessary" has been put in its place, the two words having entirely different meanings. No man is absolutely *essential;* he can be replaced by another man; but a man may be absolutely *necessary.*

This pamphlet No. 20 does not refer to "Priorities" for the purpose of securing preferment in obtaining materials. It relates only to the securing of coal, labor and transportation. It has nothing to do with securing equipment or materials for manufacturing. That comes under the Priorities list in Circular No. 4.

In connection with the list of Industries in Circular No. 4 there is a great deal of confusion as to what these two kinds of classification mean. It is important for everybody to get on this list of factories, but on account of the large number of plants that are not on it, and which, no doubt, should be, the priority list is incomplete, and another list is expected to be gotten out very shortly. But there is no difficulty in securing a proper place on this list for coal, labor and transportation.

With regard to filling out Form P. L. No. 1, and asking for a certificate of classification, I think it would be better for all parties to take it up directly with the Priorities Division. Mr. H. G. Phillips, Secretary, is the man who is in charge of that.

Try to learn the difference between "priorities" as referred to securing materials for equipment, etc., and "preference" as regards fuel, labor and transportation on manufactured supplies and materials. I am speaking extemporaneously, and possibly have not covered the subject as fully as may be desired. Are there any questions?"

Dr. Matthews asked: "Did you encounter any antagonism down in Washington?"

Dr. Reese: "The first question that came to my mind as regards the Dye Industry was whether the War Industries Board would consider the Dye Industry as coming under the General Classification of Chemical Industries in this Preference List of Industries. I tried to get hold of Dr. Schoellkopf in Washington but could not. When I got back to Wilmington, I telephoned Dr. Schoellkopf and instead of answering the question, he referred me to Mr. Phillips. I got very little satisfaction out of Mr. Phillips, except that it was necessary to fill out Form P. L. No. 1 to get on that list.

There is another form, P. L. No. 3, which is required by the factory that gets on the Preference List, to be filled out every month—the 15th day of each month—for the purpose of showing whether the factory is producing sufficient material for war purposes to maintain it on the list. In order to be on this list, 75% of the factory's production must be for war purposes; if the production should fall off any month, and become a lesser percentage than 75, the factory may be taken off the list. To be on the preference list, the production of the factory must be *principally* 75% of the materials in that industry, and they must issue a monthly report on it. Plants are put on the Preference List and taken off, according to their production of material for war purposes.

As I said before, I tried to get in touch with Dr. Schoellkopf, but could not.

Dr. Matthews wrote to Dr. Schoellkopf, who is Chief of the Natural and Artificial Dye Section of the War Industries Board, and is the man we should get after for assistance and help. Dr. Schoellkopf has written in response, the following letter:

> "In response to the inquiry contained in your letter of September 16th, beg to advise that the Dyestuff Industry does not automatically come under Class IV of the essential industries. The Priorities Board has deemed it advisable to consider individually all applications of dyestuff manufacturers. If upon investigation the applicant can show that he is actually manufacturing Dyes, he will be placed in Class IV. In view of this I would suggest to you that all the members of your association make application to the Priorities Board for a place on the Preference List."

Some of the dye manufacturers have been placed in Class 2. Anyone who gets the circular can see that there is some reason why that particular Dye Industry was placed in Class 2. I think the opinion in the office of the War Industries Board was that there is reason for any dye manufacturer, because of the dyes he is producing mainly for war purposes, to be placed in Class 1."

Dr. Matthews asked: "Has everybody filled out the Form P. L. No. 1? It is the starting point of the whole thing, and everybody must fill out this form and file it."

Mr. Merrick explained: "Any priorities for construction materials you get on rating. Rating is different from this classification, on this list—1, 2, 3, 4. Ratings on this priority list run from A-1, 2, 3, 4, 5, up to the highest rating. It does not matter what your classification is; the priority rating is a different thing entirely. It has nothing to do with the classification. The priority rating has got to be taken out by every individual for requirement of some pieces of machinery. Classification into 1, 2, 3, etc., on this preference list, and the priority rating are entirely different, and each manufacturer is required to make his application direct to the War Industries Board for classification and rating.

One part of the organization of the War Industries Board is the Priorities Committee, for handling matters of materials and giving priority rating.

The Priorities Board gives classification for equipment. If you want to get yourself classified, fill out the form and send it to the Priorities Board, and Mr. Phillips will give the classification. If you are in need of material to work your plant with, fill out another form and make application for priority certificate to the Secretary of the Priority Committee. The priority certificate is required for the assurance of the shipper in the plant—so that he may know that the material is going into war work, and that is his assurance to ship the material first. It is the assurance of the firm to the shipper that the material he is giving you is going into something on the preference list; if you want to hurry something through the plant, and get a preferred place on his schedule, you require this priority certificate."

Dr. Matthews: "The next question is:

> 2nd.—What steps can be taken to protect the American Dye Industry under the new registration act."

Dr. Reese: "The industry is looking forward to losing a good many men under the new registration act, and proper steps should be taken to get deferred classification.

It is proposed, in Washington, to have industrial advisers on the Draft Board. These advisers are to be three for each Draft Board; one appointed by the Department of Agriculture; one appointed by the Department of Labor, who will be the industrial adviser, and one will be appointed by the Board itself. These industrial advisers have no vote on the Board but they have the right to bring arguments up, or bring cases up for deferred classification at any time up to the time that the man is inducted into service. When a man is classified, the advisers can bring up new information and arguments up to the last day before he is inducted into service. With these new facts they can go to the Board and have the man's cases held over for further investigation. The advisers are also intended to help the manufacturers who have questions to ask with regard to this matter, and to help their men.

Full information on this subject, as given by Col. Conkling, is contained in Bulletin #14, issued by Dr. Matthews of the Chemical Alliance."

Dr. Matthews read bulletin No. 14 to the members.

Dr. Reese explained:

"In the case of an employee who has obtained deferred classification for his work with one manufacturer, changing his position, it is possible for that employee to obtain similar deferred classification if his work with his new employer is equally necessary."

Dr. Matthews:

"The third question is:

3rd.—The appointment of a committee requested by The War Industries Board, which shall be known as the "War Service Committee," to represent the industry as a whole."

Dr. Matthews:

"The Chemical Alliance has been working with the War Industries Board and other Governmental departments, representing industries in chemical lines, divided into different sections. There are some firms not in the Chemical Alliance, but who are in the Association or Institute. The question then comes up to unify these groups, because the War Industries Board wants to work through one representative committee. The question is whether to appoint another committee to represent all three organizations, or whether the Chemical Alliance should represent the Industry and work with the War Industries Board. What shall it do? The matter is open for discussion and views."

Interruption:

> Dr. Matthews: "If the technical men present wish to retire to another room to discuss matters outside of those under discussion here, they may do so. The room across the hall is at their disposal." (Several men withdrew from the room.)

Dr. Matthews:

"Practically all the members of the American Dyes Institute and the American Dyestuff Manufacturers' Association are members of the Chemical Alliance in one form or another.

The Chemical Alliance is purely an organization to work with the Government. It is a semi-official body to aid the various Governmental Departments in their work relating to the different sections of the Chemical Industry.

Dr. Schoellkopf of the War Industries Board is very desirous of getting a unified group together. I will read you his letter to Dr. Reese on the subject:

War Industries Board
Washington

September 4th, 1918.

B. M. Baruch,
Chairman.

From: Dr. J. F. Schoellkopf, Jr.,
War Industries Board,
Artificial & Vegetable Dye Section,
Washington, D. C.

To: Dr. C. L. Reese,
E. I. duPont de Nemours & Co.,
Wilmington, Del.

1. For sometime it has been my earnest desire to have a War Service Committee representing the Dye-

stuff Industry, which would be somewhat more representative than the Committee on Dyestuffs of the Chemical Alliance of which you are Chairman. It is my understanding that two other organizations are representing the Dyestuff Manufacturers exist; namely: The American Dyes Institute and the Dyestuff Manufacturers' Association. If it were possible to form a new committee representing the three organizations, it would seem to me to be an ideal arrangement and would place the Dyestuff Industry in the position of presenting a united front. For the purpose of discussing this matter more in detail with you, the writer will appreciate your calling upon him the next time you are in Washington.

2. For your information would say that I am here only on Tuesdays, Wednesdays and Thursdays, but could arrange to meet you either here, or elsewhere, at any other time that you may designate.

(Signed) J. F. Schoellkopf, Jr.,
Chief, Artificial & Vegetable
Dye Section.

JFS/Jr—G.

Dr. Matthews:

"In so far as the Alliance is in touch with all the Boards at Washington, personally I would suggest that this committee, instead of forming a fourth organization, should use the machinery of the Chemical Alliance, which would put them in good working order for an active committee.

A new committee might have considerable trouble in getting into working order. This is merely a suggestion, and is not intended to influence the appointment of the committee in any way. The Chemical Alliance already has its mechanism in Washington, and it would seem to me to be a sensible thing to utilize this machinery."

Mr. Jeffcott:

"Was it Dr. Schoellkopf's idea that this new committee be subordinate to the Chemical Alliance?"

Dr. Matthews:

"No, Dr. Schoellkopf merely wants the War Industries Board to work with one committee instead of three. If a fourth committee were formed, it would seem like piling up too many organizations."

Dr. Reese:

"I suggest that even those who are not members of the Chemical Alliance be appointed to this committee.

In speaking of the Chemical Alliance, after the Counsel for National Defence had organized its Chemical Committee, when the War Industries Board was formed it abolished this Chemical Committee, but asked the same committee to form an organization which was done just about one year ago, and is known as The Chemical Alliance. This organization took up the work of the old Chemical Committee of the Counsel for National Defence, so that the Chemical Alliance was formed with these various sections, which were the same kind of sections that had comprised the old Chemical Committee of the Counsel for National Defence, formed at the request of the War Industries Board, as a body to get together and act in conjunction with the War Industries Board.

The Acid Section of the Chemical Alliance has already helped the War Industries Board in fixing prices on acids, etc.

As I have said before, when the Chemical Alliance meets to take care of its business, the meeting of the members is held in the morning, and in the afternoon, they meet with various members of the War Industries Board and discuss all subjects of interest to the Board and Alliance.

It is a well-organized body and it seems to me that it would be useless to organize or form another committee to do work which this organization was formed to do, at the request of Mr. Baruch of the War Industries Board.

Dr. Schoellkopf was advised that the members of these two organizations (American Dyes Institute and the American Dyestuff Manufacturers' Association) were largely members of the Chemical Alliance, and that practically satisfied him as far as he was concerned."

Dr. Iserman expressed his approval of the suggestion under discussion.

Dr. Reese suggested that those who were not members of the Chemical Alliance should become members without any further delay, and thereby strengthen the Government in aiding it in its work.

Dr. Matthews suggested that the present committee act as a working organization, have a meeting and then form a new committee to represent the whole Industry on any question concerning the entire Industry.

Mr. Althouse (of the Althouse Chemical Company) moved that the Dyestuff and Intermediate Section of the Chemical Alliance represent the War Service Committee of the Dyestuff Industry. Motion seconded by Mr. Poucher (of E. I. duPont de Nemours & Company) and carried.

Dr. Matthews:

"The Chemical Alliance will send out a notice of a meeting in a very short time, and representatives can meet and elect a committee which will be representative of the entire Dye and Intermediate Section."

Dr. Reese:

"It will require one month to get the rest of the members of the other associations into the Chemical

Alliance. Those concerns who are not members of the Chemical Alliance can make their application for membership so that they can be acted upon at the next meeting of the directors of the Chemical Alliance. The gentlemen who are members of the Chemical Alliance in other sections can be put into the Dye Section."

Mr. Poucher suggested that membership applications for the Chemical Alliance be made at the meeting, and Dr. Matthews asked those who wished to join the Alliance to signify their desire to do so. Three concerns joined the Chemical Alliance.

Mr. Metz moved that "pending the forming of this new committee to represent the Dye Industry as the War Service Committee, the present committee represent the Industry in Washington." Motion seconded and carried.

Dr. Matthews:

"The last question is:

4th.—The practicability of following the course adopted by the British Government in restricting imports of dyes for a period of years after the war.

The proposed movement is no doubt intended to keep out German products after the war, if they thought so advisable. The English Government is taking a keen interest in the progress of the up-building of the Dyestuff Industry and considers it a pivotal industry for the whole country. There is a Dye Commissioner who takes care of the problems of the Dyestuff Industry. We thought it well to bring this matter up for discussion to see what a consensus of opinion will be. There have been recommendations to bring the matter before the proper authority in Washington and see how they feel about it."

Mr. H. A. Metz (Consolidated Color & Chemical Co.) called to the attention of the members, the fact that although the British proposal was primarily intended to keep out dyes of enemy-production, it appears that the measure will keep out American dyes also, claiming that he has been endeavoring, for some length of time to obtain a permit for some dyes which he wishes to ship to England, and has been unable to secure such permit. He said that since we were building up an industry for export business as well as domestic, it is absolutely essential that some stringent measure be adopted to protect the American Dyestuff Manufacturers' interests.

Mr. Bennett (Secretary of the American Dyestuff Manufacturers' Association) said:

"From a recent talk with Mr. Taussig of the Tariff Commission, I know that he unquestionably feels that the Present Tariff Bill, as enacted, is not going to save the American Dye Industry. He communicated to me the fact that from a very influential quarter the question of total prohibition had been brought to his attention. Whatever this organization, or anybody does, I think that they will have to consult Mr. Taussig first.

Mr. Taussig has already devoted much of his time to the Dye situation, as far as the Administration goes, and I believe, out of courtesy to him, we should consult him first. If we went to the President with the matter, it would come back to Mr. Taussig, and I think the time is ripe for a move of some such arrangement. If it is going to be a question of the world against Germany, it is very possible that the American Dye Industry will have to make arrangements between the British and French manufacturers before anything else can be done; therefore, I think Washington will be ready to receive this proposal in a very keen spirit today, and adopt something along these lines to aid the industries which have sprung into existence since the war started."

Dr. Matthews:

"It is very evident that the main idea of the British proposal was to have protection against the enemy, and to build up a Dye Industry in their own country. If, after the War, their markets were flooded with German Dyes, it would seriously hamper the operation of factories in England, and the English Government wants to build up a Dye Industry of their own."

A general discussion followed as to the advisability of going into the matter thoroughly with the American Dyestuff Manufacturers, and bring it before Mr. Taussig with the view to obtaining suitable protection.

Mr. Bennett called attention to the fact that the British Government was so keenly interested in the up-building of its Dye Industry because it had money in the Industry.

Dr. Matthews suggested that the matter would also have to be gone into with the consumers, as the Government would undoubtedly consider them more important than the manufacturers. He advised getting the opinion of Mr. Taussig on this matter, and asked whether it would be more advisable to broach the matter to him or the consumers first.

Mr. Metz suggested approaching the consumers on this matter.

Dr. Matthews suggested that in taking the matter up with the consumers and advising the restriction of imports of dyes, it be brought to their attention that the American Dye Industry can take care of their requirements independently.

Dr. Reese suggested bringing the matter before the Textile Industry and other users of dyestuffs, to get an expression of opinion from them as to whether they are in favor of the suggestion.

Dr. Iserman suggested that since the British Government was using this method of protection for *their* Dye Industry, it was unquestionably the best course for us to pursue to up-build our own Industry.

Dr. Matthews again called attention to the fact that we could not get anywheres in the matter unless we had the cooperation of the consumer, and if we wanted their cooperation, Now was the time to approach them on the subject. "We must start the ball rolling by telling them what will happen if our Industry has not sufficient protection against the dumping of foreign-made dyes into this country after the war."

Mr. Metz suggested that it be a good thing to form a committee to consider this feature of the case.

Mr. Bennett suggested that it be ascertained what Washington has to say about this.

Dr. Matthews: "The problem is to get the Textile and other Industries together with us, and point out conditions to them and get them to work with us."

Dr. Reese: "I think the matter should be discussed with Mr. Taussig."

Mr. Bennett: "I think you will find Mr. Taussig a very willing listener on the subject of building up a Dye Industry in this country, and we must utilize every advantage."

Mr. Metz again suggested the appointment of a committee to confer with Mr. Taussig on this question.

Dr. Matthews called attention to the Tariff Committee which is now being formed by the American Dyestuff Manufacturers' Association, of which committee he was appointed Chairman, and suggested that it would be well to get this committee to take care of the matter under discussion, since it being the object of this committee to obtain suitable tariff protection for the American Dye Industry.

Dr. Reese suggested that the Chemical Alliance withdraw from this subject, as it was not a proper subject for them to enter into.

Mr. R. C. Jeffcott moved that the committee, as suggested, be appointed to confer with Mr. Taussig on the subjects of tariff and restriction of imports, and get his views concerning same. Motion seconded and carried. (The Chemical Alliance was not represented in this vote.)

Dr. Matthews called attention to the fact that this subject would have to be given considerable thought and that the new committee would be glad to receive any comments or recommendations from all members, on this subject. He expressed the view that if "such a thing could be brought about, it would be a very radical move in behalf of protecting the Dye Industry of this country."

Mr. Jeffcott moved that the meeting be adjourned. Motion seconded and carried. Meeting adjourned at 6:00 P. M.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 512.

A meeting of the Executive Committee of the American Dyestuff Manufactures' Association, Inc., was held on Tuesday, November 12th, 1918, at the office of the Association, 21 East 40th Street.

Meeting was opened 3:30 P. M.

Present: C. Cyril Bennett, Secy., Dr. J. M. Matthews, Mr. August Merz, Mr. R. P. Dicks, and Mr. M. R. Poucher.

Application of National Aniline & Chemical Co. for membership was passed upon.

Discussion of the ten-year licensing plan for dye imports after the war was held.

Suggestions for speakers at the dinner following the annual meeting on December 6th, were made, and

Mr. Bennett was requested to make the arrangements for the speakers.

Mr. August Merz, Chairman of the Standardization Committee, brought to the attention of the Committee that the Stand. Com. was composed of only five members, whereas seven were required. He suggested that Mr. Watkins of the National Aniline & Chem. Co., and Mr. O. P. Anthony of Geo. H. Morrill Co., be invited to serve on this Committee, and Mr. Bennett was requested to extend these invitations.

Meeting adjourned at 5:00 P. M.

RECEIPTS FROM MEMBERS

Althouse Chemical Co.	$200.00
American Aniline Products Inc.	200.00
Atlas Color Works	200.00
Ault and Wiborg	200.00
Bay State Chemical Co.	200.00
Calco Chemical Co.	200.00
Campbell and Co., John	200.00
Chemical Company of America	200.00
Commonwealth Chemical Corp.	200.00
Dicks David Co.	200.00
Dow Chemical Co.	200.00
du Pont de Nemours and Co., E. I.	200.00
Dye Products and Chemical Co.	200.00
Essex Aniline Works, Inc.	200.00
Grasselli Chemical Co.	200.00
Heller and Merz Co.	200.00
Hemingway, Inc., Frank	200.00
Holliday Kemp Co.	200.00
Kohnstamm Co., H.	200.00
Metals Disintegrating Co.	200.00
Monroe Color and Chemical Co.	200.00
Organic Salt and Acid Co.	200.00
Sherwin-Williams Co.	200.00
United Piece Dye Works	200.00
United States Color and Chemical Co.	200.00

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Holland Aniline Works	$200.00
Butterworth Judson Corp.	200.00
Morrill Co., Geo. H.	200.00
	$5600.00

Expenses from April 10th, 1918, to September 16th, 1918

Furniture and Fixtures	$337.85
Rent (including Rumford Hall, $50.00)	362.50
Telephone	30.89
Stationery	105.41
Traveling Expenses	202.56
Petty Cash (including postage, wires, sundries)	185.30
Salaries (C. C. Bennett and Miss Segall)	2158.74
Attorney Fees (formation of Association)	285.00
	$3668.25

Balance on Hand

Receipts	$5600.00
Disbursements	3668.25
	$1932.75

PLAINTIFF'S EXHIBIT No. 513.

Minutes

Annual Meeting

American Dyestuff Manufacturers' Association, Inc.

Friday, December 6, 1918.

The Annual Meeting of the American Dyestuff Manufacturers' Association, Inc., was held on Friday, December 6th, 1918, in the office of the Association, 21 East 40th Street, New York City.

Mr. M. R. Poucher, President of the Association, took the chair and called the meeting to order at 3:00 P. M.

Mr. Poucher:

"The order of business in the Constitution and By-Laws is as follows:

(1) Calling the Roll."

Mr. Bennett, Secretary of the Association, called the roll, and the following members were represented:

Althouse Chemical Co.	Mr. C. Scott Althouse
Calco Chemical Company	Mr. F. M. Fargo, Jr.
Chemical Company of America	Mr. C. Kendall
Commonwealth Chemical Corp.	Mr. O. K. Mayland
Dicks, David & Co.	Mr. R. P. Dicks
E. I. du Pont de Nemours & Co.	Mr. M. R. Poucher
Dow Chemical Co.	Mr. J. T. Pardee
Beacon Color & Chemical Co.	Mr. E. J. Feeley
John Campbell & Co.	Mr. G. A. Whaley
American Aniline Products, Inc.	Mr. B. R. Armour
Atlas Color Works	Mr. H. Z. Zobel
Dye Products & Chemical Co.	Mr. L. M. Lowenthal
Essex Aniline Works, Inc.	Mr. W. Weinz
Grasselli Chemical Co.	Dr. J. M. Matthews
Heller & Merz Co.	Mr. A. Merz
Frank Hemingway, Inc.	Mr. F. Hemingway
Holland Aniline Co.	Mr. B. P. Donnelly
Holliday-Kemp Co.	Mr. H. J. McGrane
National Aniline & Chemical Co.	Mr. W. T. Miller
The Sherwin-Williams Co.	Mr. W. S. Woodrow

Mr. Poucher:

(2) "Next is Reading the Minutes of Previous Annual Meeting. As this is the first Annual Meeting, there are no previous Minutes."

(3) "Reports of Officers and Committees.

"We have three standing committees. First we will have the Treasurer's Report."

Mr. Bennett (Asst. Treasurer) read the Financial Report. (Attached marked A)

The Treasurer's report was passed upon by the members.

Mr. Poucher:

"Of standing committees, we have three. One is the Tariff, one the Trade and the other the Standardization. Tariff Committee, Dr. Matthews, Chairman."

Dr. Matthews:

"Our chief activities on the Tariff Committee have been the development of the idea of an Export License System as applied to imports of dyestuffs, feeling that probably in the near future, the dyestuff industry here will be somewhat menaced by the importation of German dyes in large quantities, and following the suggestion of the British Government during the last year, in the development of this same idea—that is, to have a License System of Imports of Dyestuffs, if possible, so that their imports be limited to the best interests of their own industry, we thought this would be a good plan to follow over here, so that we could keep out those dyes for which we have no necessity here. This idea seems to have received the endorsement of the British Government, and is laid out as a policy for their Administration to follow. We have talked it over with the dye manufacturers, and also with many consumers, and the license idea seems to be one that is capable of being developed. As far as Tariff goes, we all know that Tariff is a political issue, and our Committee has not attempted to stir up new ideas on the Tariff, or increase rates on the tariff at the present time, as there is a question whether it is advisable at the present time to raise a tariff issue at all, or to force a tariff issue at this time. I believe that many of the dyestuff consumers would aid us in asking for increased tariff rates, but whether the increased tariff rates that would be allowed by the government would be, of the same aid to us as the obtaining of a License System of Imports, I doubt very much, as the License System of Imports is an elastic plan that can be utilized to prevent unjust competition, and at the same time allow those dyes to come into the country that are needed here, as we have to protect the consumers as well as ourselves. Whatever we get through Congress has to be gotten with the aid of the consumers, because we are naturally a small body as a voting power in this country. We have felt all along that all our work should be with the support of the consumers and in harmony with their ideas, and in developing our ideas we have been careful to consult with many of the representative dyestuff consumers, so that when it comes to formulating any policy to lay before Congress we want to find them working in harmony with us. In connection with this matter we went down to Washington several times and spoke to members of the War Industries Board and War Trade Board. This led to the calling of a meeting by Dr. King of the War Industries Board (who has been very kind to us in these matters). The meeting was called for representatives of dyestuff manufacturers and dyestuff consumers, to discuss the question of how the War Industries Board could aid in maintaining the Dyestuff Industry in this country. As a result of this meeting they passed a Resolution which no doubt many of you have already read. For those who have not read it, I will do so now." (Resolution attached—marked B.)

Dr. Matthews:

"As I stated this resolution was brought up at the meeting called by Dr. King of the War Industries Board, and Dr. King told me that it would be brought to the attention of Mr. Baruch. At the meeting at Atlantic City the last two or three days, of the War Service Committee, under the auspices of the U. S. Chamber of Commerce, our Section of the Chemical Alliance also brought up this same question, and the War Service Committee also passed this resolution and that resolution will go forward through the Congressmen working down there, and receive some official recognition. I might also say that we have brought this policy to the attention of quite a number of people already; furthermore, we have taken it up with various of the consuming organizations and they have also passed resolutions endorsing this policy. For instance, the Home Market Club of Boston, and the Southern Wholesale Dry Goods Association, and the National Woolen Association—the Cotton Association is considering it—so that all of these organizations show a desire to aid the Dyestuff Industry. I have yet to find any antagonism on this policy. As far as actual tariff matters go, I do not think that it would be advisable at this time to attempt to secure any increase in tariff rates. I don't believe such a bill could be gotten through Congress, whereas this policy of licensing might be brought up, if gone at right and energetically, as a reconstruction measure. Of course this subject has to be carefully considered as far as the details go, in drawing up such a measure and the method of administering it, and the far-reaching ramifications that it might lead to. At the present time I do not think that any of us have a very clear, definite idea of the details. So far our idea has been to get this into form of resolutions before various bodies of people, and get the public force back of it, as we feel that it is necessary to have this public force back of it before we can accomplish anything definite. So far we have not yet gone into the newspapers. We don't feel that the time is quite ripe, but we will have to build up public opinion later, as dyestuffs are very close to the heart of the public. We found this out in our past tariff legislation, and we think we can get a good hearing before the public. When the time is ripe for bringing the matter before the public in a careful, well-considered manner, I think the newspapers will be a very efficient means of getting up considerable force back of this movement."

Mr. C. Scott Althouse:

"In connection with Dr. Matthews' talk, I had the opportunity of speaking to several men representing the Textile Workers' Union in my vicinity, and they all seemed to be in favor of this plan. There was a question in my mind, however, as to whether we want them to endorse this. I would like to have an expression of opinion, and know if there is any objection to bringing this matter before the Textile Workers' Union. It might be well to bring a Resolution before their Council and have them endorse it, as the Trade Union representing the Textile Workers represent the largest amount of votes than any other organization." (This question, owing to considerable private discussion among the members, was not answered.)

Mr. W. J. Robertson:

"Dr. Matthews, have you encountered any opposition from the importers?"

Dr. Matthews:

"I have not yet run across any such opposition, but as soon as the subject gains more headway, we may hear from them."

Mr. M. R. Poucher:

"The next committee is the Trade Committee, Mr. Fargo, Chairman."

Mr. F. M. Fargo, Jr.:

"The Trade Committee has concerned itself entirely with the question of commercial bribery and we have passed a resolution which we circulated among the members of the Association. So far we have heard from twenty-three of the thirty members; seventeen signatures and six conditional acceptances of it. We now propose to make some minor changes in the resolution and submit it again to the members. We would like to have an opinion as to whether, if the majority sign it, after it is amended, we might be given permission to send it out to the trade in general—that is, a copy of the resolution showing the name of the signers, to be accompanied by a brief letter showing the position of this Association on that question. This is the only question that the Trade Practices Committee has to bring before the Association."

Mr. Poucher:

"Do you want an expression of opinion, Mr. Fargo, as to whether you can send this out to the trade?"

Mr. Fargo:

"Yes."

Mr. R. P. Dicks:

"I move that the Resolution be sent out to the trade, as the Trade Committee suggests."

Mr. W. J. Robertson:

"Gentlemen, this is a good thing, and we ask you to give us the authority to send it out with your name signed to it. I wish each one of you would consider it. This resolution with your signature would go to everyone in the trade that you do business with—showing by your signature that you do not do any bribing."

Mr. Poucher:

"It might be well to read the Resolution. There may be some people present who have not heard it."

Mr. Fargo read the Trade Committee Resolution. (Attached—Marked C.)

Mr. Poucher:

"Would it not be well to state what the Federal Trade Commission has done in this matter? Either you or Mr. Dicks have heard from them. They have had this matter under discussion for some time, and have taken it up with a number of organizations representing various industries."

Mr. Fargo:

"I don't know exactly what they have done, and I know some of the things they have done. They have had the question up with many manufacturers, and have followed up any information manufacturers have given them concerning any one who might be bribing in business, investigating the matter thoroughly, and finding out just what they can do towards stamping it out. I believe the Federal Trade Commission has not the power under the law to prosecute in any way, as I understand it, but they have the privilege of putting witnesses under oath and examining them on this question. I assume as a result of that they have the power to make recommendations to the Department of Justice.

I might say that the Federal Trade Commission itself took exception to the fourth clause in our Resolution; that is the one covering giving a box of cigars for Christmas. That is very much contrary to their own report, and we figure it is one of the minor changes we will have to make in it."

Mr. Poucher:

"As I understand it, they favor a bill, or caused a bill to be framed, whether it has been introduced in the House as yet, I don't know. Do you know what has become of that or what has been done?"

Mr. Fargo:

"I believe it is still in the Committee."

Mr. Poucher:

"Mr. Fargo asked that a motion be made to authorize the Trade Committee to publish a trade letter to be distributed among the consumers of dyestuffs, containing the Resolution which he read, coupled with a list of the names of those manufacturers who have signed it, agreeing to do no bribing in obtaining business."

Mr. Dicks:

"I move that it be instructed that the Trade Committee publish such a letter at such a time as it is ready to do so, with the signatures." Motion was seconded.

Mr. B. P. Donnelly did not quite understand whether the motion was to bind all the members of the American Dyestuff Manufacturers' Association to this agreement, or just the members who had signed the resolution, and the facts were duly explained to him.

Mr. Poucher:

"You have all heard the Motion. What is your pleasure?"

Motion was duly carried.

Mr. Poucher:

"Motion carried, and will be duly ordered."

Mr. Poucher:

"Has the Trade Commitee dealt with any kindred subject?"

Mr. Fargo:

"We have discussed somewhat the question of terms, but so far have not been able to come to an agreement. We would like to have an expression of you will see that it is a live subject. You can rest assured of that."

"Anything else on the Trade Committee? Any other suggestions?"

Mr. W. T. Miller:

"Do I understand that you ask if there are any suggestions for the Trade Committee to take up as a proper subject for them to handle?"

Mr. Poucher:

"Yes."

Mr. Miller:

"I was wondering if this Commitee would do something with regard to the retail stores putting tags on the garments; for instances, hosiery, etc., things of that kind—'We cannot guarantee the dye in this fabric on account of the use of American Dyes.' That is something that the Trade Committee should see if it cannot remedy. The Dyestuff Industry has progressed far enough in this country and we are in a position to supply dyes of the same quality as the Germans. The Germans did not guarantee their colors, nor can we guarantee our colors, but we can guarantee that the colors we make are just as fast as the colors the Germans made. I think that the Trade Committee should give this matter attention."

Considerable discussion among the members on this subject followed, and Mr. Hemingway (Frank Hemingway, Inc.) called attention to the fact that the Saturday Evening Post had circulated a letter among their women subscribers concerning the matter of dyes. (Attached, marked D) and stated that such an action might prove injurious to the American Dyestuff Industry, inasmuch as the letters went to people who were ignorant in the matter of dyes, and the answers which might be received to such a letter as was circulated, might be very harmful to the interests of the American Dyestuff Industry. Mr. Hemingway stated that it ought to be ascertained from what source such a move on the part of the Curtis Publishing Company originated, and what their motive was in taking such a step.

Mr. Bennett:

"I might answer Mr. Hemingway's question right now. They did it to be able to go to the Du Ponts or National Aniline and try to sell them a double-page spread for $5000 for an advertisement on dyestuffs."

Mr. Dickman stated that he had occasion recently to be at a counter of a store where handkerchiefs were being sold, and a gentleman was ordering some initials stamped thereon in colored silk, whereupon the saleslady stated that he would have to assume the responsibility and risk of using the colors he ordered, since they were American-dyed and could not be guaranteed. After the gentleman in question left the store, Mr. Dickman states he took the saleslady aside and told her that she ought to be educated on the matter of dyes, that her store could obtain American dyes that were fast, so that she would not have necessity for asserting that they could not be guaranteed as to fastness, because of the fact that they were American-made.

Mr. B. P. Donnelly told of one of his experiences. He had occasion to purchase a bathing suit and on enquiring as to the dye used therein, was told that it was guaranteed to be fast, although American-made. He then enquired how American-made dyes could be guaranteed, and the saleslady brought in the buyer for the respective department. Mr. Donnelly repeated his question as to why they guaranteed the dye in the suit he purchased, since it was American-made, and the buyer stated that so far there had been no complaints, and they were able to guarantee same. Mr. Donnelly then congratulated the buyer.

(This story moved the audience to applause.)

Subsequent discusion brought out the opinion that the people to be brought to task in this connection were the manufacturers of fabrics or garments who put these tags on their finished products, and they should be educated to the appreciation of the quality of American-made dyes.

Mr. Frank Hemingway:

"I move that the proper officer of this Association be requested to communicate with the Curtis Publishing Co. and enquire as to the authority for sending out this letter and asking the questions contained therein, in the first place, and to suggest to the Curtis Publishing Co. that in the future all matters pertaining to dyestuffs be referred to this Association."

Motion was duly seconded and carried.

Mr. Poucher:

"The report of the Standardization Committee is next on the programme. Mr. Merz, Chairman."

Mr. August Merz:

"The Standardization Committee has only recently been fully organized, and therefore has not been able to accomplish as much as might be desired. One thing, however, is certain, and that is that we must establish standards of testing. No matter what standards we have, we must have a tape measure to measure these standards. Then there is another question in regard to the tariff. As you know the Secretary of the Treasury has the power to determine the pre-war standards that are to be brought into this country. I went down there recently and had an interview with Dr. Pickrell, with the view to finding out how we could co-operate in any work that might be done. Of course we will have to take up such matters with the departments at Washington. They have their own ideas as to how materials should be tested. They state that a direct paste would be better than a purely scientific paste. The Bureau of Standards at Washington has in mind a purely scientific paste. We have not yet communicated with these departments but will do so at the first opportunity and hope to get into close touch with both the Bureau of Standards and the Treasury Department, and see what can be done."

Mr. Poucher:

"Is there any questions you would like to ask?"

(4) Special Business. Now under this head I would like to bring to your attention that at a meeting of the Executive Committee of the American Dyes Institute, the subject was brought up of a consolidation of this Association and the Dyes Institute along some such line as this. The Institute has a membership of some sixteen or seventeen and the Association, thirty. Of this number a certain number are members of both organizations, and the suggestion has been made whether we could not have one organization in this industry that would do all the Institute does, plus the work of this Association; that if these two organizations get together there would be a good deal more force to it than if they worked separately. There could be an open-price division, such as there is in the American Dyes Institute. The reason that there were two organizations from the start was that there was a certain number who wanted open-price. There are some who have no knowledge of the open-price, what it means and what it stands for. Now we have been over the work of both organizations very carefully; have a clear idea of what both are doing,

and it seems to be entirely feasible and practicable—incidentally it would save expense to bring the whole Industry into one organization. This subject I would like to bring to your attention for discussion and some decision.

Mr. R. P. Dicks:

"It seems to me that this is a very good idea. The two organizations have given the Industry as a whole a double expense to maintain, there have been a number of meetings each week for both the Institute and the Association, and the work of each more or less overlaps that of the other. A lot of time could be saved if there was one organization, and besides the expense would be less. Our membership in both organizations has cost us $600 this last year—$400 for the Institute and $200 for the Association. We would much rather spend that $600 in one organization than in two. The open-price end of the work of the Institute could be carried on as a division of the organization. A budget of approximate expenses has been compiled, amounting to $25,000. I have a memorandum from two firms both of whom are willing to start this amount with subscriptions for $5000 each, which will make $10,000 of the $25,000, and then there are fifteen more members of both the Institute and the Association who would contribute $1000 each to make up the rest. The du Pont's and the National will both give $5000 to this work."

Mr. Dicks argued strongly in favor of the consolidation of the two organizations, claiming that the work that could be accomplished through such combination would be greatly facilitated in building up, an American Dyestuff Industry in this country.

Mr. Poucher:

"We don't know exactly what the cost is going to be just yet."

Mr. Dicks:

"Whether it costs us $600 or $800 or even $1000 I would rather see the money spent on one concerted action rather than divison."

Mr. Miller:

"We have a lot before us to do in the way of developing this Industry, and the National would be very much in favor of consolidation so that we can all get together having in mind one action and one purpose. The two organizations would absorb a lot of time at the various meetings—for instance, we have this meeting here today, and another meeting of the Institute on Monday—it takes up a lot of time, which is very valuable. Speaking for the National, I want to say we are very much in favor of it"

Mr. Poucher:

"Mr. Merz, how does your company feel about it?"

Mr. August Merz:

"The Heller & Merz Co. is in favor of the combination."

During subsequent discussion on the matter, it was pointed out that the open-price division of the Institute could be maintained as a division of the consolidated organization, the expense of the open-price end to be borne by those members who take advantage of the open-price plan.

Mr. B. P. Donnelly:

"I move that this Association absorb the Dyes Institute without any financial obligations."

Mr. Poucher:

"It is not a question of the Association absorbing the Institute, or the Institue absorbing the Association. It is a question of the two organizations consolidating. Of course the Institute will have to settle all their financial matters first. There are various matters to be adjusted, since the Institute is not a chartered organization, and the Association is Incorporated. We will have to meet with the Dyes Institute on Monday and find out under what conditions they agree to be taken over. There are certain qualifications to be met before one can become a member of the Association. I suggest that a committee be appointed to meet the Dyes Institute and discuss this matter with them on Monday. The committee will have to be composed of men who are not on the Executive Board of the Institute."

Mr. Miller:

"I move that a committee be appointed at this meeting to represent this Association at the American Dyes Institute meeting on Monday relative to discussing the matter of consolidation." Motion duly seconded and carried.

Mr. Poucher:

"It will be duly ordered. We will now appoint such a committee to consult with the Dyes Institute on the matter of details at their meeting on Monday."

Mr. Jas. T. Pardee:

"I move that the President of this Association appoint a committee of three to arrange the details for combining the two organizations, with a similar committee appointed by the Dyes Institute."

Mr. Poucher appointed Mr. Donnelly, Mr. Miller and Mr. Pardee. Mr. Donnelly asked to be relieved as it was necessary for him to return to Holland, Mich., by Monday. Mr. R. P. Dicks was appointed in his place, and the committee then was composed of Mr. Dicks, Mr. Miller and Mr. Pardee.

Mr. Poucher:

"That I take it disposes of that matter. Another question under 'special business' is the matter of taxation with regard to plants. The depreciation of plants is probably not taken care of as adequately as it should be in the case of dyestuff plants. The depreciation allowed for a period of ten years is not adequate, and a higher percentage should be allowed in the tax schedule. I don't know whether any of you know of the suggestion made that we try to convince the Treasury Department that a higher per cent. of depreciation should be allowed in the case of the Dyestuff Industry. The matter was brought up by the Ault & Wiborg Co. and some of us made inquiries as to what the situation is. This has been a matter of consideration for some time with the expensive plants. Accountants have been taken in at the Treasury's office, and the authorities in Washington are going into the matter, as to just exactly the line in writing off some of these plants. In some cases allowances have to be made for the excess cost that it has cost, particularly does this apply to the last one or two years. There are a number of questions which have to be gone into, and it would be advisable to get together a committee of accountants from different firms. We would be very glad to lend our chief accountant, who has charge of all these matters for the company. If a number of these accountants get together we could determine exactly how far we can get in this matter.

Mr. Ault has brought up this question and if there is anything you would like to do about it, would be glad to have a motion."

Mr. Miller:

"I suggest we appoint a committee of five accountants to represent the Industry and look into this matter."

Dr. Matthews:

"I move that a committee of five accountants be appointed to look into this matter of depreciation of plant, with regard to taxation."

Motion duly seconded and carried.

Mr. Poucher:

"Our chief accountant will be very glad to give his services to this undertaking. How about your company, Mr. Merz?"

Mr. Merz:

"We have outside accountants working for us, but I can arrange to have one of them for this work."

Mr. Poucher:

"Will the National give their accountant, Mr. Wigglesworth?"

Mr. Wigglesworth:

"Yes, I believe this is a very vital subject to the entire industry."

Dr. Matthews:

"I suggest a committee of three accountants instead of five."

Discussion of some foreign matter interrupted, and the subject was dropped at this point.

Mr. Poucher:

"The next on the programme of Order of business is Election of Officers.

Dr. Matthews:

"I move that the Annual Meeting be postponed until after the committee of this Association has met that of the Dyes Institute." Motion duly seconded and carried.

Mr. B. P. Donnelly:

"With regard to the Tariff question of License, as previously discussed. Personally I feel quite keenly that the Licensing System would be the windup of the Dye Industry in the United States. Possibly I am taking the wrong view of it. However I have brought with me one of our associates in the dye field. He is not really connected with the business, but is a man who has had very large experience politically and legislatively, and a man who has vastly interested himself in many factories in our district. He has given a great deal of thought to the subject in question, and has spoken to quite a number of people. I would like to have you listen to Mr. Dickman who will give you his views in a general way."

Mr. Poucher:

"We will be very glad to do so."

Mr. Dickman stated that perhaps the view of an outsider was not wholly desirable as he was apt to know less about the subject than those on the inside, but inasmuch as he had given a great deal of thought to the subject, and had a great deal of legislative experience, possible his views might be helpful. He stated that it was indeed most essential and desirable that the American Dyestuff Industry be protected and maintained in this country, but did not think that the License Plan would do it, as it was not a feasible plan for putting through Congress, since it was not a political issue. He claimed that such a measure would not receive favorable attention in Congress, especially with the Democratic Party. He stated that the Democratic Party had a pet baby which they called the "protective" baby—the protective tariff—and inasmuch as that baby had grown up splendidly well since 1910, they would not be inclined to sacrifice that baby in a case such as the License Plan. He said that as was the case after the Spanish War, after a War there is aways a "patriotic wave" over the entire country which influences the people to discriminate against trading with those countries they had been at War with. That now, while this wave of sentiment against Germany was on, was indeed the psychological time to endeavor to build up an American Dyestuff Industry, but that this could not be accomplished without political aid. That political aid, he claimed, would never be given to such a measure as the License System, and that the only course of action the Industry should pursue in seeking protection was through a "solid wall" of protective tariff.

The members were highly pleased with Mr. Dickman's interesting talk and applauded him when he finished speaking.

Mr. Poucher:

"Thank you very much."

Dr. Matthews:

"The reason the Tariff Committee has not attempted to ask for an increase in tariff rates at the present time, is that we did not feel that we could get sufficient tariff increase for considerable time to come, but if we could get this License plan through as a reconstruction measure, it would help in eliminating unfair competition from the Germans until our own industry was fully developed."

Considerable discussion followed between Dr. Matthews for the License Plan, and Mr. Dickman opposed to the plan, the latter emphasizing his point that nothing could be accomplished without political aid, and Dr. Matthews stating that it was not the desire of the Dye Industry to raise any political issue.

Mr. Poucher:

"Mr. Dickman, you will hear what the Tariff Commission has to say about this, through Mr. Taussig at the dinner tonight."

Mr. Miller:

"If we were to think of asking for any increase in tariff, the first thing we would be sure to be asked is what tariff we think we ought to have, and I don't believe that any of us are in a position to answer this question at this time. We are working under extraordinary conditions, with materials, labor, overhead, and everything else very high, and we cannot tell what our position will be in normal times. If Congress should say to us 'What tariff do you want?' I don't believe that we could say what we do want. We have not had a chance to operate under normal conditions, and therefore I think that we had better stick to the License proposition to give us a chance to find out what tariff we need."

General discussion of the License Plan, Tariff, etc., followed among the members. Dr. Matthews gave a brief outline of the activities of the British Government in their proposed Licensing Plan.

Mr. Miller:

"I move that we adjourn."

Motion seconded and carried.

Meeting adjourned at 5.30 P. M.

PLAINTIFF'S EXHIBIT No. 514.

MINUTES OF MEETING
AMERICAN DYES INSTITUTE
MAY 7, 1918.

A meeting of the Executive Committee of the

American Dyes Institute was held at the Hotel Biltmore on Tuesday, May 7, 1918 at 12:15 P. M.

The following members were present:

Mr. W. H. Cottingham, *President*
Mr. R. C. Jeffcott, *Vice President*
Mr. August Merz
Mr. Albert Blum
Mr. M. R. Poucher
Mr. H. E. Danner, *Treasurer*

The Treasurer reported as follows:

Total Receipts	$2,200.00
Expenditures	335.08
Balance	1,864.92
Accounts Payable	None
Accounts Receivable	800.00

The above report was approved and the Treasurer was instructed to read same at the general meeting to follow. The Treasurer was also instructed to send a duplicate bill to the members who had not yet paid their initiation fees.

The Secretary announced applications for membership from the following firms:

Transatlantic Chemical Corpn, 192 B'way, N.Y.C.
Grasselli Chemical Co., 244 Madison Ave.,N.Y.C.
The John Campbell Co., 75 Hudson St., N.Y.C.

He stated that the applications had been received too late to send notices to all members, in accordance with the By-Laws, and, on motion of Mr. Jeffcott, it was resolved that the Executive Committee report the above applications and recommend their election under waiver of the By-Laws and Constitution.

The Secretary also reported receipt of communication from the Western Reserve Chemical Company announcing that for the present they desire to withdraw as a member of the Institute.

The Secretary announced the receipt of 775 reports covering contracts, orders and quotations, and stated that this total covered approximately 450 customers, but that in no instance did he find occasion to make any direct exchanges in accordance with the Reporting Plan. However, the reports showed that twenty-one customers had business relations with two or more of the five members reporting.

On motion the Secretary's Report was accepted and he was instructed to read same at the general meeting, and, on discussion, it was the opinion of the members that in order to give the members the benefit of information on file in the Secretary's office, he should interchange among the reporting members information showing what members had business relations with the same customer, but it was understood that this information should not disclose what materials or products were purchased by the said customer.

Then followed a discussion regarding the filing of a list of products now being manufactured. It appeared that only four of the members had filed this information, and it was the judgment of the Committee that this matter should be thoroughly discussed in the general meeting and all the members urged to report the statistics at the earliest possible moment, and it was also considered that members should, in addition, report on a list of products which they intend to manufacture or which they are preparing to manufacture. Mr. Poucher was requested to submit this matter at the general meeting for discussion, and such action as might be taken.

There being no further business, on motion, the meeting was adjourned.

(Sgd.) H. E. DANNER,
Secretary.

PLAINTIFF'S EXHIBIT No. 515.

MINUTES OF MEETING
AMERICAN DYES INSTITUTE
JUNE 5, 1918.

The regular meeting of the Executive Committee of the American Dyes Institute was held at the Hotel Biltmore on Wednesday, June 5th.

The following members were present:

Mr. Albert Blum
Mr. August Merz
Mr. M. R. Poucher
Mr. H. E. Danner, *Treasurer*

In the absence of the President, Mr. Poucher acted as Chairman.

The Treasurer reported as follows:

The Treasurer reported an error in the report at the previous meeting due to an item of Petty Cash which had been omitted, therefore, the balance as of May 1st, 1918 should have read $1890.36 instead of $1864.92. The account for the month of May 1918 follows:

Balance on hand May 1st, 1918	$1890.36
Receipts (Initiation Fees)	400.00
Total	$2290.36
Expenditures	$560.33
Balance on hand June 1st, 1918	$1730.03
Balance—Petty Cash on hand	38.28
Cash in Bank	$1691.75
	$1730.03
Accounts Receivable	$1200.00
Accounts Payable	None

On motion, the above report was approved and the Treasurer was instructed to read same at the general meeting.

The Secretary submitted a list of the members who had replied to the request that they file a list of:

1—Products *now being manufactured*

2—Products which the members *are* preparing to manufacture

3—Products which the members *intend or expect to manufacture*

Mr. Poucher was requested to call to the attention of the members at the general meeting the importance of filing this information promptly.

The Secretary reported an application for membership from the Dow Chemical Company, of Midland, Michigan, and, on motion, said application was approved and Mr. Poucher was requested to recommend the Dow Chemical Company for election at the general meeting.

The Secretary submitted a list of 202 products, which, up to the present time, was represented by the reports received from the members. He called attention to the fact that very few direct exchanges had been made, and that possibly some of the products in the list which he submitted might be corresponding products under different brands or names. Therefore, Mr. Poucher and Mr. Merz very kindly offered to check up this list and advise the Secretary if there were any articles which were comparable and would therefore call for an interchange of reports covering these materials.

Mr. Blum called attention to the fact that the Secretary had been engaged and had been acting as such since March, but that no definite arrangements had been made with reference to his compensation, and thereupon it was suggested that Mr. Danner's compensation would be $3,500 per year, all of which was satisfactory to the members present and was agreed upon.

The Treasurer called attention to the bank balance, and stated that it would seem wise to carry a more substantial balance than this, as he desired to pay all bills promptly. It was therefore agreed that the Treasurer should send out bills to provide for $5,000 in the treasury, same to be divided among the present members; it being understood that at the end of six months the expenses of the Institute would be pro rated to the members in accordance with a plan to be worked out by the Executive Committee.

The Secretary announced that he had received the very sad news of the death of Mr. Cottingham's wife, and the Chairman was requested to offer a suitable resolution of sympathy at the general meeting.

It was suggested that in view of the fact that the next regular meeting of the Institute would naturally fall on July 3d, the day preceding the Fourth, a national holiday, the date of the next meeting should be changed, and it was agreed that the next meeting of the Executive Committee would be held on Wednesday, July 10, at 12.30, and the general meeting be held on the same date at 1 P. M.

(Sgd.) H. E. DANNER,
Secretary.

PLAINTIFF'S EXHIBIT No. 516.

MINUTES OF MEETING
EXECUTIVE COMMITTEE OF
THE AMERICAN DYES INSTITUTE

November 6th, 1918.

A meeting of the Executive Committee of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Wednesday November 6th, 1918, at 12:00 o'clock Noon.

The following members were present:

Mr. W. H. Cottingham, *President*
Mr. M. R. Poucher
Mr. August Merz
Mr. Frank Hemingway
Mr. H. E. Danner, *Treasurer*

Counsel, Mr. Arthur J. Eddy, was also present.

The Secretary reported that he had received a verbal application for membership from the Althouse Chemical Co., of Reading, Pa., and on discussion it was decided to recommend to the general meeting that the application of the Althouse Chemical Company be received, and under waiver of the By-Laws and Constitution, should be recommended for election of membership in the Institute.

The report of the Secretary and Treasurer was read and approved and he was directed to read same at the general meeting.

The President then submitted correspondence he had received from Mr. Herman A. Metz of the Consolidated Color and Chemical Company, in reference to his previous application for membership in the Institute, and on discussion it appeared to the members present that although the connection of Mr. Metz with the Consolidated Color & Chemical Company was truly American, he at the same time (so far as they knew) retained his former connections with German manufacturers, and it was therefore decided that Mr. Cottingham should communicate with Mr. Metz, advising him that action had been postponed.

Attention was called to the fact that the United States Chamber of Commerce had called a convention (to be held in Atlantic City on December 4th, 5th, and 6th, 1918), of all War Service Committees in various

Industries, and on discussion it was resolved that the Executive Committee would recommend to the general Association that the American Dyes Institute and the Industry should be represented at this conference, and that the following should be asked to attend:

Mr. M. R. Poucher—A member of the Institute.
Dr. J. Merritt Matthews—Representing the American Dyestuff Manufacturers Association, and also the Chemical Alliance.
Mr. W. T. Miller—Of the National Aniline & Chemical Company. Neither a member of the Institute nor the American Dyestuff Manufacturers Association.

It was further recommended that if the general meeting approved of the above report, the Secretary should advise the Chamber of Commerce that the above parties would attend the conference and represent the Dyestuff Industry.

Mr. Poucher then spoke of the work of the Institute and the work of the American Dyestuff Manufacturers Association, which seemed to overlap in a number of channels, and he (Mr. Poucher) suggested the possibility of the two organizations being merged into one. It developed that the members of the Institute were also members of the American Dyestuff Manufacturers Association, with some exceptions, *i. e.*, The American Dyestuff Manufacturers Association had members who were not members of the American Dyes Institute, and on the other hand, the American Dyes Institute had members who were not members of the American Dyestuff Manufacturers Association, and inasmuch as the activities of the two Associations seem to overlap and cause duplication of work, it was considered that it was practicable to merge the two Associations and provide some plan whereby those who do not wish to participate in the reporting plan called for in the Institute, would still have the privilege of attending all meetings and participate in all discussions.

The matter was left in the hands of Mr. Poucher, President of the American Dyestuff Manufacturers Association, as it seemed to be a matter as to whether or not those members of the American Dyestuff Manufacturers Association would consent to becoming members of the American Dyes Institute because of financial obligations. In this connection it was the opinion of the committee that equitable arrangements could be made as to each member's proportionate share of the expenses of the Association.

Counsel called attention to a proposed copy of a pamphlet to be issued by the Institute, and on discussion it was decided that this pamphlet should be printed in proof form and submitted to the members of the Executive Committee, which, if approved, would be printed as pamphlet No. 1, and a supply sent to all members to be distributed to the trade.

The above was approved subject to the approval of the general meeting.

There being no further business the meeting adjourned.

(Sgd.) H. E. DANNER,
HED:IF. *Secretary.*

PLAINTIFF'S EXHIBIT No. 517.

MINUTES OF MEETING
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE

December 9th, 1918.

A regular monthly meeting of the Executive Committee of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Monday, December 9th, 1918, at 12:00 O'clock Noon.

The President, Mr. W. H. Cottingham, presided.

The following members were present:

Mr. W. H. Cottingham.
Mr. R. C. Jeffcott.
Mr. August Merz.
Mr. M. R. Poucher.
Mr. H. E. Danner—Treasurer.

Counsel, Mr. Arthur J. Eddy, also attended.

The Treasurer reported as follows:

November 1st, Balance	$1260.82
Received during November, 1918	200.00
	1460.82
Expenditures during November	792.91
Balance Dec. 1st, 1918	667.91
Accounts payable	$7975.01
Mr. Arthur J. Eddy	7500.00
Mr. H. E. Danner	475.01
Accounts receivable	$1000.00

Attention was called to the necessity of providing funds to meet payments due which would be increased by December 31st, the end of the Institute year.

As regards accounts receivable Secretary announced that the firm of J. J. White, Inc., has tendered their resignation.

No action was taken, pending the proposed amalgamation of the American Dyestuff Manufacturers Association and the American Dyes Institute.

Mr. Poucher then reported that at the annual meeting of the American Dyestuff Manufacturers Association it had been proposed that the two Associations be amalgamated, and to that end a committee, with power, had been appointed to confer with the Executive Committee of the American Dyes Institute and arrange the details of such an amalgamation if desired and approved by the American Dyes Institute.

Mr. Dicks of Dicks, David & Co., Mr. Miller of The National Aniline & Chemical Company, Inc., and Mr. Pardee, of the Dow Chemical Company, the committee appointed by the American Dyestuff Manufacturers Association, then joined the meeting.

After discussion it was unanimously resolved that the Executive Committee should recommend to the Institute meeting that the amalgamation be brought about, as it was considered the interests of all members would be better served

Then followed a further discussion which resulted in the meeting adopting the following recommendations to be submitted to the Institute Meeting:

1—It is unanimously recommended that the two associations be amalgamated and the name to be American Dyes Institute.

2—It is unanimously recommended that qualifications for membership be covered by the present qualifications of the American Dyestuff Manufacturers Association and those of the present American Dyes Institute, and that those applying for membership who are not at present qualified to join either of the above Associations shall not become a member of the American Dyes Institute.

3—It is unanimously recommended that the services of Dr. J. M. Matthews be secured as a salaried Vice-President who will devote his time and expert knowledge to the industry and Institute; also that the services of Mr. C. C. Bennett be secured in such capacity and on such terms as the Executive Committee will hereafter determine.

4—It is unanimously recommended that the present Board of Governors of the Manufacturers Association be, and hereby are, declared Governors of the American Dyes Institute and that the members of the Executive Committee of the Manufacturers Association who are not now members of the Executive Committee of the Institute, be, and hereby are, declared members of the Executive Committee of the American Dyes Institute.

5—It is unanimously recommended that all committees of the American Dyestuff Manufacturers Association be, and hereby are, declared Committees of the American Dyes Institute.

6—It is unanimously recommended that the future budget of the American Dyes Institute and the assessments to cover same be referred to the Executive Committee.

7—It is unanimously recommended that Counsel prepare the proper amendments to the present By-Laws and Constitution of the Institute.

8—It is unanimously recommended and understood that any member of the American Dyestuff Manufacturers Association who is not now a member of the Institute is in no way liable to any obligation incurred by the Institute up to this date.

The President was requested to report the above recommendations to the general meeting of the Institute.

There being no further business on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF.

COPY OF RECOMMENDATIONS ADOPTED AT AMERICAN DYES INSTITUTE MEETING ON DECEMBER 9TH, 1918.

1—It is unanimously recommended that the two associations be amalgamated and the name to be American Dyes Institute.

2—It is unanimously recommended that qualifications for membership be covered by the present qualifications of the American Dyestuff Mfgrs. Association and those of the present American Dyes Institute, and that those applying for membership who are not at present qualified to join either of the above associations shall not become a member of the American Dyes Institute.

3—It is unanimously recommended that the services of Dr. J. M. Matthews be secured as a salaried Vice-President who will devote his time and expert knowledge to the industry and institute; also that the services of Mr. C. C. Bennett be secured in such capacity and on such terms as the Executive Committee will hereafter determine.

4—It is unanimously recommended that the present Board of Governors of the Manufacturers Association be and hereby are declared Governors of the American Dyes Institute and that the members of the Executive Committee of the Mfgrs. Association who are not now members of the Executive Committee of the Institute, be and hereby are declared members of the Executive Committee of the American Dyes Institute.

5—It is unanimously recommended that all committees of the American Dyestuff Mfgrs. Association be and are hereby declared Committees of the American Dyes Institute.

6—It is unanimously recommended that the future budget of American Dyes Institute and the assessments to cover same be referred to the Executive Committee.

7—It is unanimously recommended that counsel prepare the proper amendments to the present By-Laws and Constitution of the Institute.

8—It is unanimously recommended and understood that any member of the American Dyestuff Mfgrs. Association who is not now a member of the Institute is in no way liable to any obligation incurred by the Institute up to this date.

PLAINTIFF'S EXHIBIT No. 518.

April 11, 1918.

MINUTES OF MEETING

AMERICAN DYES INSTITUTE

A meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, April 10, 1918. A luncheon was served at 1 o'clock, after which those present adjourned to a meeting room.

The following firms were present and represented as follows:

Ajax Aniline Works, Inc., M. Frankforter.
The Calco Chemical Co., R. C. Jeffcott, F. M. Fargo, Jr.
John Campbell Co., Mr. Whaley.
Dicks, David Co., Robert P. Dicks, A. S. Brumnier.
E. I. duPont de Nemours & Co., M. R. Poucher.
Grasselli Chemical Co., Dr. J. N. Mathews, George M. Eno.
Heller & Merz, August Merz.

Frank Hemingway, Inc., Frank Hemingway.
Marden, Orth & Hastings Corpn., M. S. Orth, C. A. Mace, H. D. Ruhu.
Merrimac Chemical Co., S. W. Wilder.
Naugatuck Chemical Co., Wm. Valentine.
The Sherwin-Williams Co., W. H. Cottingham, W. S. Woodrow.
Transatlantic Chemical Corpn., Edmund B. Clary.
United Piece Dye Works, Albert Blum.
Hydrocarbon Chemical Products Co., Mr. Hindman.
Mr. C. Cyril Bennett.
Counsel, Mr. Arthur J. Eddy, also attended.

The meeting proceeded to the selection of a temporary chairman, and on motion Mr. Albert Blum was unanimously requested to take the chair.

The chair then announced that nominations were in order for President. Mr. Jeffcott nominated Mr. W. H. Cottingham, and the nomination was seconded by Mr. Poucher. Mr. Cottingham asked to be excused, but was finally persuaded to accept the nomination, and on motion nominations were closed and Mr. Cottingham was unanimously elected President for the ensuing year.

Mr. R. C. Jeffcott was nominated for Vice President, and on motion nominations were closed and the chair announced that Mr. Jeffcott had been unanimously elected Vice President for the ensuing year.

Nominations were then in order for Treasurer, and on motion of Mr. Cottingham the Secretary, Mr. Harry E. Danner, was nominated and elected to act as Treasurer for the ensuing year.

The chair then called for nominations for four members to serve with the above mentioned officers on the Executive Committee. The following names were placed in nomination:

Mr. Frank Hemingway.
Mr. M. R. Poucher.
Mr. August Merz.
Mr. Albert Blum.

On motion nominations were closed, and it was further agreed to cast one ballot for the election of the four named. The Secretary therefore announced the unanimous election of Mr. Frank Hemingway, Mr. M. R. Poucher, Mr. August Merz and Mr. Albert Blum to serve as members of the Executive Committee for the ensuing year.

Mr. Blum then requested Mr. Cottingham, the President, to take the chair.

The Secretary announced that he had already received one hundred and fifty reports of contracts or orders. These had been filed by the Calco Chemical Company and Marden, Orth & Hastings. There were no exchanges. However, the Secretary stated that he was prepared to make any exchanges called for on the Reporting Plan as soon as he received reports which required same. He stated he had engaged an office, which would be ready for occupancy shortly after the 1st of May.

It developed that some of the members were ready to file a record of all their contracts and orders, as called for in the Reporting Plan, but had thought they were to receive a special form of printed blank. The Secretary explained that these blanks had not yet been prepared, but now that he had already received some reports which were actual copies of the orders or contracts sent to the customer, he was prepared to draft a form which he hoped would provide for all the details required on the Reports.

Counsel then read the modified Reporting Plan, which provided that for the present contracts and orders would be exchanged only with contracts and orders, and that they would not be exchanged with quotations.

After the Reporting Plan was discussed quite thoroughly, the chair requested the members of the Institute to state whether or not they would report all price information called for in the Reporting Plan. The following members, who were present, stated they would file everything called for:

Frank Hemingway, Inc.
The Calco Chemical Company.
Dicks, David Co., Inc.
E. I. duPont de Nemours & Co.
Hydrocarbon Chemical Products Co.
United Piece Dye Works.
Marden, Orth & Hastings Co., Inc.

The Sherwin-Williams Company stated they would report on some of their products, and the Merrimac Chemical Company stated that for the time being they would not report any of the price information called for. Mr. Merz, of The Heller & Merz Company, stated that he was not then prepared to say he would report on all his products.

The chair then asked the others present, and who were not already members of the American Dyes Institute, whether or not they would care to become members. The Ajax Aniline Works, The Grasselli Chemical Company, the Transatlantic Chemical Corporation and the John Campbell Company all said that at the present time they were not prepared to state.

The Naugatuck Chemical Company stated they would like to participate, and therefore, there and then indicated their desire to become a member, and, on motion, the by-laws and constitution requiring a ten days' notice to all members was set aside, and the Naugatuck Chemical Company was elected to membership under waiver of the by-laws and constitution.

Mr. Valentine stated that his company manufactured aniline oil and nitro benzol, and a large part of their product was used by his own company; that is, only a small part was sold in the market in competition with similar products of other members.

It was understood by all the members present that quotations, orders and contracts filed with the Secretary would cover domestic trade. However, if any member desired to report similar information as regards his export business, he was at liberty to do so, and if he would state on his report that it was for export, the Secretary would provide that reports covering export work would be exchanged only with other members reporting to the same customer on the same product for export.

Under the heading of "Communications," the chair read a letter from the Dye Products & Chemical Company, Incorporated. This firm had indicated its desire to become a member of the American Dyes Institute, but now had withdrawn its name.

Mr. Blum called attention to an advertisement appearing in the *New York Times* of March 3rd. This was an advertisement of a large department store in New York City, and laid special stress on the fact that a certain fabric was dyed with Imported Dyes. He also read an article appearing in the *Daily News Record* of March 12th, in which a clothing firm of Chicago had stated that it was no longer possible to guarantee fast colors or wearing service. Thereupon, there was considerable discussion, and it was the sense of the meeting that American sellers should promote the use of American dyes and discourage such propaganda. On motion this matter was referred to Mr. Poucher, with the thought that the American Dyestuff Manufacturers Association might very properly take up this matter and request the cooperation of American institutions. In this connection Mr. Blum stated that in his experience the foreign manufacturers of dyes had never absolutely guaranteed fastness, and it was his opinion that such guarantees had simply grown as a trade practice of the distributors of merchandise.

Counsel stated that at the last meeting of the National Association of Finishers of Cotton Fabrics, a motion had been passed that, inasmuch as they were large consumers of dyes and desired to cooperate with American manufacturers, they were prepared to report to their Secretary a list of the dyes which they purchased and used during the year 1917, and thereafter would also every three months of the current year, provide a similar list. These totals would be transcribed to the Secretary of the American Dyes Institute. Mr. Blum, on behalf of the members of the silk section of the National Association of Finishers, stated that he had no doubt the members would be willing to file a similar report.

On motion, it was resolved that the American Dyes Institute should spread upon the records their appreciation of the motion taken by the National Association of Finishers of Cotton Fabrics, and it was also suggested that the Secretary address the associations in the woolen, leather, paper and paint trades, stating this fact and asking if their associations would be willing to cooperate to the same extent.

On motion of Mr. Hemingway it was resolved:

> That the Secretary request each member to file a list of all the products which they make and to also state if they would be willing to have their list given to either a competitor or buyer if it was requested.

The date for the next meeting was set for Tuesday, May 7th, to be held at the Hotel Biltmore, at 1 P. M.; there being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

PLAINTIFF'S EXHIBIT No. 519.

AMERICAN DYES INSTITUTE
MINUTES OF MEETING

May 7, 1918.

A regular meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Tuesday, May 7, 1918. Luncheon was served at one o'clock. The regular meeting was called to order by the President, Mr. W. H. Cottingham, at 2 o'clock.

The following firms were present and represented as follows:

The Calco Chemical Co., R. C. Jeffcott, F. M. Fargo.
E. I. duPont de Nemours & Co., M. R. Poucher.
The Heller & Merz Co., August Merz.
Hydrocarbon Chemical Products Co., Mr. Hyndman.
Marden, Orth & Hastings Corpn., F. M. Fargo.
Merrimac Chemical Co., S. W. Wilder.
The Sherwin-Williams Co., W. H. Cottingham, W. S. Woodrow.
United Piece Dye Works, Albert Blum.
Naugatuck Chemical Co., Wm. Valentine.
The Grasselli Chemical Co., George M. Eno.
Transatlantic Chemical Corpn., Edmund B. Clary.
Cosmic Aniline Works, Mr. Kalman.
The Althouse Chemical Co., Mr. Althouse.
Counsel, Mr. Arthur J. Eddy, also attended.

Inasmuch as a copy of the minutes of the previous meeting had been mailed to each member, and as there were no corrections, they stood approved, and, on motion, reading was omitted.

The Secretary announced applications for membership from the following firms:

Transatlantic Chemical Corpn., 192 B'way, New York City.
The Grasselli Chemical Co., 244 Madison Ave., New York.
John Campbell & Co., 75 Hudson St., New York City.

He reported that these applications had been submitted to the Executive Committee, and were approved and recommended for election under waiver of the by-laws requiring the Secretary to send a ten days' notice. On motion, the Secretary was instructed to cast one ballot for their unanimous election.

The Treasurer reported receipts of $2,200.00 and expenditures during April of $335.08, leaving a balance of $1864.92. Accounts payable none—accounts receivable $800.00. On motion, the Treasurer's report was accepted as read and ordered to be filed.

The Secretary reported that five members, that is—

The Calco Chemical Company
E. I. duPont de Nemours & Company
Marden, Orth & Hastings Corpn.
The Sherwin-Williams Company
United Piece Dye Works

were filing records of their contracts, orders and quotations. Mr. Cottingham stated that his firm was reporting all of the information called for in the Reporting Plan on a limited number of products. The other reporting members stated that they were reporting all of the information called for on all of their products. Up to date there was a total of

190 contracts
384 orders
201 quotations

Making a total of 775 reports filed.
This total covered approximately 450 customers, and in no instance did the Secretary find any occasion to make any direct exchanges in accordance with the Reporting Plan, inasmuch as no two members had reported to the same customer covering the same dyes or intermediates.

However, the record showed that 21 customers had business relations with two or more of the five members reporting covering materials which do not interchange.

On discussion it was the sense of the meeting that, in order to make a start and give the members the benefit of the information on file in the Secretary's office, he should exchange this information among the members who reported to the same customer, without disclosing what materials or products were being purchased by said customer.

The Secretary also reported that, in accordance with resolution passed at the last meeting, he had requested the members to file with his office a list of all the products which they were now making. To this he had received replies from four members, namely

The Sherwin-Williams Company
E. I. duPont de Nemours & Company
Merrimac Chemical Company
United Piece Dye Works.

Then followed a discussion, and it was the judgment of the majority present that this information would be particularly valuable, and it was hoped that each member would file his record promptly.

Mr. Cottingham then reported for the Executive Committee, and stated that this subject had been discussed at the Executive Meeting and it was their recommendation that each member file not only this information, but in addition report to the Secretary all products he was preparing or expected to make, also a list of all products which he had in mind to make in the near future. It was explained that the record of the dyes and intermediates each member was preparing to make cover the products for the manufacture of which a member was already committed, either in the form of an investment or purchase of raw materials. The list of the products which a member had in mind to manufacture in the near future would be those for which he had made no actual commitments at the present time. On motion it was resolved:

> "That the Secretary send a request to each member and provide suitable blanks for the reporting of this information"

and he was instructed to interchange this information among members reporting like information. It was felt that the interchange of these lists would lead to closer cooperation and greater economy. It was suggested by Mr. Jeffcott that this information should also be sent to the National Association of Finishers of Cotton Fabrics, and to other consumers of dyes or intermediates who requested same. This matter was left for further discussion at the next meeting, inasmuch as the reports as planned cover only materials actually manufactured by each member, and it developed that some of the members supplemented their list of products by purchasing from others.

The discussion of the subject developed the fact that the Government was not only requesting but taking steps to enforce the strictest economies in the use of certain raw materials necessary to the manufacture of dyes, and it was the feeling of those present that if the members would file reports of products already made and products they contemplated making, it would lead to a more intelligent diversification of production and to the conservation of supplies.

Report of Committee—Mr. M. R. Poucher reported progress regarding the matter referred to him at the last meeting, with reference to an advertisement appearing in the *New York Times* of March 3d.

AMERICAN DYES INSTITUTE

Addition to Minutes of Meeting held May 7th, 1918.

In connection with Page 4—Minutes of Meeting of American Dyes Institute—please note that the Special Committe of the Dyestuff and Intermediate Section of the Chemical Alliance is as follows:

C. L. Reese, Chairman
H. A. Metz
R. W. Hochstetter
August Merz
I. F. Stone
F. M. Fargo
H. D. Ruhm
A. R. Curtin
J. M. Mathews, Secretary

Address—50 E. 41st Street, New York City.

Mr. Blum stated that competitive conditions were bad in some products, and on the other hand some colors were not made which consumers would like to get.

It was then suggested that the Secretary request the National Association of Finishers of Cotton Fabrics to state what products they would like to have but were unable to obtain, and in what quantity.

Mr. Cottingham stated his firm had been notified that Acetic Acid was required by the Government, and therefore they would be permitted only 25% of their requirements for commercial consumption.

Mr. Poucher then told the members that his firm had appealed to the War Industries Board to reclassify Synthetic Indigo and place same in Class A, which was done, and that not only his firm but any others manufacturing Synthetic Indigo could obtain 100% of their requirements of Acetic Acid. He also reported that in all cases where a party desired a reclassification in the priority list the Government would be guided by the advice of the Committee of The Chemical Alliance —Dye and Intermediate Division.

The members of the Section are:

American Aniline Products, Inc., 80 Fifth Ave., N. Y. C.
Ault & Wiborg, Cincinnati, Ohio.
Calco Chemical Company, Woolworth Bldg., New York City.
Central Dyestuff & Chemical Co., Newark, N. J.
Chemical Company of America, 28 Platt St., New York City.
Consolidated Color & Chemical Co., 122 Hudson St., N. Y. C.
E. I. duPont de Nemours & Co., Wilmington, Del.
Dye Products & Chemical Co., Inc., 200 Fifth Ave., N. Y. C.
Grasselli Chemical Company, Cleveland, Ohio.
The Heller & Merz Co., Newark, N. J.
Middlesex Aniline Co., 129 Broadway, New York.
National Aniline & Chemical Co., 244 Madison Ave., N. Y. C.
Naugatuck Chemical Company, Naugatuck, Conn.
Newport Chemical Co., 120 Broadway, New York.
United Piece Dye Works, 132 Madison Ave., New York City.
United Oil & Chemical Corpn., 61 Broadway, New York City.

It was the sense of the meeting that the President should appoint a Standing Committee from the American Dyes Institute to cooperate with the Government and the committee of the Chemical Alliance.

The following Standing Committee was appointed:

Mr. M. R. Poucher, Chairman
Mr. R. C. Jeffcott
Mr. August Merz

and the members were advised to submit any questions about this subject to the Committee. If any member applies for a new rating on any products, it will be necessary to advise the Committee complete details and outline what products into which the material goes and its relation to any other products dependent on the supply of the particular material in question. Mr. Blum reported that the Silk Association had cooperated with the Government and had agreed to curtail the use of Bichloride of Tin.

Mr. Poucher again referred to the matter of filing a list of products being made, and urged the members to do so, as it would not only be of great benefit to the members and tend to prevent overlapping in products, but would probably be required by the Government at an early date. He said that, in his judgment, there were already some products which could be made in quantities far in excess of normal consumption, for instance, Sulphur Black, while, an the other hand, there were materials not being made but which should be developed. Mr. Jeffcott reported he was having trouble in obtaining a supply of Methyl Alcohol.

It was understood by the members that the reports of contracts, orders or quotations cover all materials offered for sale, whether or not actually manufactured by the member. Mr. Wilder asked if anyone present was making H. Acid. Mr. Poucher stated that his firm would produce this intermediate very shortly.

Reference was made to a communication which had been sent to each member calling attention to the fact that twenty-six varnish firms had been ordered by the Federal Trade Commission to discontinue the giving of gratuities for the purpose of inducing buyers to purchase their products. It was the sense of the meeting that the members of the American Dyes Institute were heartily in favor of abolishing this practice, which has long been known in the dye industry. The matter was held for further discussion at the next meeting.

Mr. Cottingham asked the members if they had considered the development of export business, and this subject was held for further discussion at the next meeting.

It was then moved that the regular monthly meetings of the Institute be held on the first Wednesday of every month, and therefore the meeting for June will fall on Wednesday, the 5th. There being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

PLAINTIFF'S EXHIBIT No. 520.

MINUTES OF MEETING
AMERICAN DYES INSTITUTE
June 5, 1918

A regular meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Wednesday, June 5, 1918.

Luncheon was served at one o'clock, after which, in the absence of the President and Vice President, the meeting was called to order by counsel, Mr. Arthur J. Eddy.

Mr. M. R. Poucher was elected Chairman for the day.

The following firms were present and represented as follows:

The Calco Chemical Company—Mr. G. A. Berry, Mr. R. N. Shreve.

E. I. du Pont de Nemours & Co.—Mr. M. R. Poucher.

The Heller & Merz Co.—Mr. August Merz.

Hydrocarbon Chemical Products Co.—Mr. Hyndman, Mr. Brimmer.

Marden, Orth & Hastings Corp.—Mr. F. M. Fargo, Mr. Ruhu.

Adolph Zobel Color Works—Mr. Adolph Zobel.

Transatlantic Chemical Corp.—Mr. E. B. Clary.

Dow Chemical Co.—Mr. J. T. Pardee.

Counsel—Mr. Arthur J. Eddy also attended.

Dr. J. Merritt Mathews arrived late.

Inasmuch as a copy of the minutes of the previous meeting had been mailed to each member, and as there were no corrections, they stood approved, and, on motion, the reading of same was omitted.

New Members:

The Secretary announced the receipt of application for membership from the Dow Chemical Company, of Midland, Michigan, and stated that same had been submitted to the Executive Committee, who approved and recommended the Dow Chemical Company for election as a member of the Institute.

On motion, the Secretary was instructed to cast one ballot for unanimous election. The Secretary thereupon announced the unanimous election of the Dow Chemical Company, of Midland, Michigan, to membership in the Institute.

Report of Officers

Treasurer:

The Treasurer reported an error in the report at the previous meeting due to an item of Petty Cash which had been omitted, therefore, the balance as of May 1st, 1918 should have read $1890.36 instead of $1864.92. The account for the month of May 1918 follows:

Balance on hand May 1st, 1918	$1890.36
Receipts (Initiation Fees)	400.00
Total	$2290.36
Expenditures	560.33
Balance on hand June 1st, 1918	$1730.03
Balance—Petty Cash on hand	38.28
Cash in Bank	1691.75
	$1730.03
Accounts Receivable	$1200.00
Accounts Payable	None

On motion the Treasurer's report was accepted as read and ordered to be filed.

Secretary: The Secretary reported as follows—

The following members are reporting price information covering contracts, orders and quotations, and to date have filed a total of 1,544 reports, as indicated in the table below:

	Contracts.	*Orders.*	*Quotations*	*Total.*
The Calco Chemical Co.	63	502	227	792
Marden, Orth & Hastings Corp.	32	163	253	448
The Sherwin-Williams Co.	60	11	53	124
Hydrocarbon Chemical Prod. Co.			9	9
E. I. du Pont de Nemours & Co.	42			42
United Piece Dye Works	55	60		115
Dicks, David Co., Inc.		14		14
				1544

The total number of reports filed covers approximately 800 customers. During the month of May there has been three direct exchanges .covering similar products sold to the same customer by two members, namely, The Sherwin-Williams Company and the Calco Chemical Company.

The records show that 87 customers have business relations with two or more of the members reporting, and this information has been interchanged daily.

In accordance with resolution passed at the last meeting, each member has been provided with blanks on which to report—

1st—A LIST OF PRODUCTS *now being manufactured*

The following firms have filed this information:

The Sherwin-Williams Co.
E. I. Du Pont de Nemours & Co.
Merrimac Chemical Co.
Naugatuck Chemical Co.
Transatlantic Chemical Co.
Dow Chemical Company.
United Piece Dye Works
Marden, Orth & Hastings Corpn.
The Calco Chemical Co.

This information has been interchanged among members reporting.

2nd—A LIST OF PRODUCTS WHICH THE MEMBERS *are preparing to manufacture.*

This information has been filed by:

The Calco Chemical Company
Marden, Orth & Hastings Corpn.
Transatlantic Chemical Co.

3rd—A LIST OF PRODUCTS WHICH EACH MEMBER *intends or expects to manufacture.*

This information has been filed by:
The Calco Chemical Company
Marden, Orth & Hastings Corpn.
Transatlantic Chemical Co.

The records show that up to the present time there is a total of 202 products reported on.

On motion, the above report was accepted as read.

Attention was called to the importance of members filing their lists of

1st—Products *now being manufactured*
2nd—Products which the members *are preparing to manufacture*
3rd—Products which the members *intend or expect to manufacture.*

Mr. Merz, of the Heller & Merz Company, indicated that their hesitancy in filing a list of products actually manufactured was prompted by the fact that they supplemented their list of manufactured products by other products which they purchased and offered for sale under their own brands, and he felt that the distribution of a list of products manufactured gave competitive salesmen an opportunity to solicit business with the argument that they were direct producers, whereas their competitors were simply distributors of the product made by their own firm.

It struck the counsel that the tendency would be strongly the other way. The tendency would be to support and strengthen the good-will of one another. Certainly the member who sells a product to another for resale has nothing to gain by interfering with the resale; it is to his interest to promote it. The open price plan tends strongly toward finer and better salesmanship; it tends directly toward the elimination of false and prejudicial statements and the suppression of unfair competitive methods.

As an alternative, it was suggested that for the time being those members who hesitated about filing a list of the products they manufacture as distinguished from all the products they sell, file a list of all the products they sell with the statement it is such a list and it be exchanged with the lists filed by other members, but that in such exchanges the secretary will not indicate on any list the products manufactured and the products sold—that is, will not segregate the two. Mr. Merz expressed himself as favoring the filing of such a list, and said he would consider the indication of the products manufactured by his company.

In the discussion it was noticeable that the disposition to file generally all reports had developed materially since the last meeting.

Mr. Poucher told how in England the Government had fostered cooperation and the comparison of products with the view to secure the largest possible results with the least waste of labor and raw material; he pointed out that unless some plan of filing such as suggested were followed, the industry is in no position to even answer a question in Washington intelligently, it is all guess work as to products made, capacities, needs for raw material—need for tariff protection, etc., etc.

Counsel analyzed the report of the Secretary and showed how there had been a material advance in the filing. He told the members they were doing as well as most organizations, and far better than some, considering the time so far spent.

Report of Committees:

Mr. Poucher, reporting for the commitee appointed at the last meeting to cooperate with the committee of the Chemical Alliance, stated that he had talked with Dr. Rees and Dr. Mathews of the Committee of the Chemical Alliance, and that the Chemical Alliance would be very glad to take up any questions which the members of the Institute had to present to them in connection with establishing any priorities claim for supplies necessary in producing products required for Government work, either directly or indirectly, and Mr. Poucher stated that no member has as yet availed himself of this privilege. Mr. Hyndman, of the Hydrocarbon Chemical Products Company, then asked Mr. Poucher if this applied to the supply of coal as well as intermediates. Mr. Poucher was of the opinion that the Special Committee of the Chemical Alliance (Dyestuff Section) would be very glad to present the situation as regards the coal supply, as well as any other supply which was necessary for the continuance of the manufacture of products which the War Industries Board considered necessary to the prosecution of the war.

The Chairman then called upon Dr. J. Merritt Mathews, Secretary of the Special Committee, Dyestuff Section, of the Chemical Alliance.

Dr. Mathews explained that the Chemical Alliance was formed for the purpose of coordinating the work of the manufacturers of dyes and intermediates in connection with the Government relations or requirements. He also outlined the very serious situation which was now before the manufacturers. He stated that the War Industries Board was confronted with a very serious situation as regards shipping either for export or domestic purposes, and that at present it appeared that the production of dyes and intermediates for commercial use was considered to be non-essential and would be placed upon the non-essential list. Dr. Mathews stated especially that, in his opinion, the exporting of intermediates would be cut off and that only finished dyes would be permitted as an export product. He also stated that Government requirements for sulphuric acid appeared to be greater than the present production, and that it was not likely that members requiring sulphuric acid for other than direct Government use would be able to obtain same for the manufacture of finished products sold for commercial purposes.

Dr. Mathews also advised that when any member applies for an export license for individual shipments, he be particularly careful to specify exactly the materials exported, as otherwise the license would be returned for specific details. In other words, an application for an export license for "aniline colors" would not pass the board, and such an application would only cause delay to the member and extra work for all concerned.

Then followed a discussion as regards this subject.

The Secretary then submitted a copy of a special form issued by the Government for "Application for place on preference list." This form is numbered "P. L. Form No. 1"—Application for place on Preference List. Copies of this form may be obtained by application to the Priorities Board of War Industries Board, Washington, D. C.

On discussion, it appeared quite impracticable for the members to answer all of the questions on this form with complete accuracy. For instance, it was quite impossible for a member to state positively what percentage of his product was used for direct or indirect Government work. This was particularly true in regard to intermediates.

Mr. Poucher stated that the Government had commandeered a considerable quantity of looms for the production of fabrics required for the army and navy departments, and that therefore the mills formerly producing goods for commercial purposes would necessarily be required to entirely readjust their conditions; consequently, in the case of dyes contracted for, for the production of orders already on hand, such orders would necessarily be either cancelled or delayed, due to Government requirements. However, it was recommended that each member of the Institute write to the Priorities Board of War Industries Board, Washington, D. C., requesting two copies of "Form P. L. No. 1," and that they file their individual replies as promptly as possible.

The discussion of this subject was very thorough, and at the close the following was the unanimous expression of the sense of the meeting:

The American Dyes Industry *as a whole* is an *essential* industry, and it should not be left to each dye manufacturer to establish that his particular operation is essential.

The industry as a whole is essential because the manufacture of dyes is intimately bound up with the manufacture of explosives and chemicals essential to war purposes. Irrespective of the use of any particular dye, the industry must be conserved and encouraged. Never again should this country be dependent upon German or foreign dyes and chemicals.

The growth of the American Dye Industry is the direct outcome of war conditions, and is so affected by war demands that its future is precarious enough without the added burden of being called upon to show that particular dyes are going into Government uses under penalty of being compelled to shut down.

While it is possible for some manufacturers to trace dyes into large Government work, it is obviously impossible for manufacturers to so trace all the dyes and intermediates they make, they simply know what everyone knows, that almost all producers and finishers of silk and cotton and woolen fabrics and other colored products have large orders from the several departments of the Government. If it should be argued or insisted that a plant cannot have coal or chemicals except for the dyes and intermediates that actually go into Government work, then portions of plants must shut down, to the entire disorganization of the essential parts, thereby increasing the cost of dyes and intermediates needed in Government work and discouraging the industry. The little gained would be far more than counterbalanced by the loss.

It was the sense of the meeting that the industry should be classed as essential, and if for good reasons any particular manufacturer could not show that his particular plant is essential, then the ruling should be against him alone—instead of vice versa, as had been suggested.

It was also recognized that among the vicissitudes and violent changes to which this growing industry in the United States is already subject is the commandeering of a large number of looms for special purposes, or the commandeering of the production of mills producing denims; all of which obligates the mills previously having contracts for special dyes to cancel their obligations and expect a recognition of the cancellation, due to the fact that their production has since been commandeered by the Government for other purposes.

It was also pointed out that the English Government had recognized the importance of the establishment of an industry devoted to the production of dyes and intermediates, all of which was very closely allied to the production of explosives, and in view of the fact that many manufacturers of either dyes or intermediates are absolutely unable to trace or specify for what their products are utilized, either directly or indirectly for Government requirements, it was resolved:

> "That the special committee of the American Dyes Institute be requested to make the proper representation outlining the necessity of placing the entire industry of producing dyes and intermediates on the priority list, but at the same time recognizing that individual manufacturers who were unable to claim a place on this list may be excluded, rather than place the industry as a whole on the non-essential list and obligating all members to a reply of the categorical questions (particularly 8, 9 and 10) included on the form for 'Application for place on Preference List'."

Dr. Mathews also pointed out that in the past consumers of export products had complained that the dyes and intermediates produced and sold by American firms were not up to standard or as represented, and it was therefore suggested that a standing committee to be known as a Committee on Grievances should be appointed, it being understood that the servives of this Committee be at the disposal of all producers and users who have any grievances with reference to the quality of goods delivered. This matter was left for further discussion at the next meeting.

The Chairman announced to the members present the very sad news that he had learned of the great loss of the President, Mr. Cottingham, in the death of his wife, and, on motion unanimously adopted, the Secretary was especially directed to send a telegram to Mr. Cottingham, as follows:

> "The members of the Institute desire to express their deepest sympathy with you in your very great affliction."

Inasmuch as the next regular meeting of the Institute would fall on Wednesday, the 3rd of July, and the day preceding a national holiday, it was announced that the Executive Committee had set the next regular meeting of the Institute to be held on Wednesday, July 10th. Meeting to be held at the Hotel Biltmore, New York City, as usual. There being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

PLAINTIFF'S EXHIBIT No. 521.

MINUTES OF MEETING
OF
AMERICAN DYES INSTITUTE

July 10th, 1918.

A regular meeting of the American Dyes Institue was held at the Hotel Biltmore, New York City, on Wednesday, July 10th, 1918.

Luncheon was served at 1:00 o'clock, after which the general meeting was called to order by Mr. August Merz, who acted as Chairman in the absence of the President and Vice-President.

The following firms were present and represented as follows:

MEMBERS

The John Campbell Company	Mr. O'Hara
The Calco Chemical Company	Mr. G. A. Berry
Dicks, David Co., Inc.	Mr. R. P. Dicks
E. I. duPont de Nemours & Co.	(Mr. M. R. Poucher (Dr. Chambers (Mr. Patterson
Dow Chemical Co	Mr. J. T. Pardee
Heller & Merz Company	Mr. Aug. Merz
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo
Naugatuck Chemical Co.	Mr. W. Valentine
Hydrocarbon Company	Mr. Bremmer
Grasselli Chemical Co.	Dr. Matthews

NON MEMBERS

Dye Products & Chemical Co....	Mr. L. M. Lowenthal
Holliday Kemp Company.......	Mr. McGrane
Hellenic Chemical & Color Co..	(Mr. Hawtof (Mr. H. G. Fener
Ault & Wiborg................	Mr. Davis

Counsel, Mr. Arthur J. Eddy, and Secretary, Mr. H. E. Danner, were also present.

Inasmuch as a copy of the minutes of the previous meeting had been mailed to each member, and as there were no corrections, they stood approved, and, on motion, the reading of same was omitted.

The Secretary reported as follows:

SECRETARY'S REPORT

To date reports covering contracts, orders and quotations have been filed as follows:

	Contracts	*Orders*	*Quotations*	*Total*
Calco Chemical Co.	63	605	320	988
Marden, Orth & Hastings	32	311	423	766
Sherwin-Williams Co.	64	34	77	175
Hydrocarbon Chem Prod. Co.			25	25
DuPont de Nemours & Co.	47			47
United Piece Dye Works	55	60		115
Dicks, David & Co., Inc.		28		28
	261	1038	845	2144

The total number of reports filed covers approximately 950 customers.

Among the reports filed during the past month there have been five direct exchanges covering similar products sold to the same customer by two members. The exchanges have been made between the Calco

Chemical Company and the Sherwin-Williams Company; the Calco Chemical Company, and Dicks, David Company, Inc.

To date the following firms have filed the following information:

1st—A List of Products Now Being Manufactured

The Sherwin-Williams Co.
E. I. DuPont de Nemours & Co.
Merrimac Chemical Co.
Naugatuck Chemical Co.
Transatlantic Chemical Co.
Dow Chemical Co.
United Piece Dye Works
Marden, Orth & Hastings Corp.
The Calco Chemical Co.
Dicks, David & Co., Inc.
The Heller & Merz Co.
The Hydrocarbon Chemical Products Co.

2nd—A List of Products Which the Members Are Preparing to Manufacture

Transatlantic Chemical Co.
Calco Chemical Co.
Marden, Orth & Hastings Corp.
Dicks, David Company, Inc.
Hydrocarbon Chemical Products Co.

3rd—A List of Products Which the Members Intend or Expect to Manufacture

Transatlantic Chemical Company
Calco Chemical Company
Marden, Orth & Hastings Corp.
Hydrocarbon Chemical Products Co.

Counsel analyzed the Secretary's report and called attention to the fact that there was a material progress in the Reporting Plan, and he stated that although there were only five direct exchanges (according to the Reporting Plan) during the month previous, this was not unusual, as, in his experience, he had found when statistics were compiled it had developed that direct competitive business was very much less than what the members had been led to believe by reports in the industry.

Counsel also called attention to the reports from members, covering a record of the products which they are now manufacturing, a list of the products which the members are preparing to manufacture, and a list of products which the members intend or expect to manufacture.

He stated it appeared from the Secretary's report that there had been material progress in the number of reports covering the above mentioned items, and this led to a general discussion regarding this subject.

Attention was called to the fact that although twelve (12) members had already filed a list of the products they are now manufacturing (that is, Section 1 of the Secretary's report), these lists simply indicated what products are being manufactured, but did not state the quantities which are being manufactured, or any capacities which the aforesaid members were able to produce.

Mr. Valentine asked if any one present had sold Nitro Benzol at a price lower than 16¢, and it appeared that none of the members present had taken any orders at a price lower than 16¢. Mr. Merz stated that he is a buyer of this material and the last price which he had paid for same was 16½¢.

Mr. Fargo stated that all the reports filed with the Secretary for both the accounts of the Calco Chemical Company, and Marden, Orth & Hastings Corp., were filed by the firm of Marden, Orth & Hastings. Mr. Fargo also expressed disappointment that more members were not reporting all records of Quotations, Orders, and Contracts, as it was his opinion that there should be more exchanges. He also stated that his prices were advancing.

Mr. Merz reported that at a previous meeting of the Executive Committee the Secretary had submitted a list of products upon which he had received reports from members and that he, Mr. Merz, and Mr. Poucher, had been requested to go over this list for the purpose of recognizing duplications, which would call for an exchange from the Secretary's office, in accordance with the Reporting Plan. Mr. Merz said it was apparent that some of the products were reported under special names, and were, in reality, competing products, but that it was impossible for the Secretary to determine the propriety of an exchange unless some means were found whereby the members would use a common language or index numbers so as to enable the Secretary to recognize duplications or competitive products.

There followed a long discussion, and it resulted in the following resolution being unanimously adopted:

> RESOLVED, That the members will file with the Secretary a list of the products upon which they report price information, and will designate each product by the equivalent number in the "Schultz Table of 1914," and, furthermore, each member who files a product which has no equivalent in said table will advise the Secretary with what other product of a competitor it should be exchanged, whereupon the Secretary will notify the interested parties that unless otherwise advised he will in future exchange price information covering the products named.

Mr. Pardee reported that his firm had offered Indigo direct to a consumer, but had found that he was obliged to sell to this consumer through a broker who acted as a purchasing agent, and that, therefore, his firm was obliged to pay a brokerage fee for the sale of the product which they would be glad to sell direct. Mr. Poucher stated that there were some firms who purchased all of their supplies through Agents, and that his firm sold such accounts at their regular prices with brokerage charges added.

Mr. Hawtof reported that the Government had refused to allow small samples of dyed goods to be mailed abroad.

Mr. Davis, representing Ault & Wiborg, expressed a keen interest in the work of the Institute, and stated that at the present time his firm were selling their products through a selling organization, and he was uncertain as to how, at the present time, he could participate in the open price plan, but he would give the matter very serious consideration and possibly find some means of reporting on some, if not all, of the products made by Ault & Wiborg.

Mr. Lowenthal called attention to a ticket which he stated was placed on a large number of sweaters offered for sale by B. Altman & Company. This ticket read substantially as follows:

> "COLOR NOT GUARANTEED ON ACCOUNT OF THE DYE SITUATION."

It was the opinion of all present that such a ticket attached to each garment and given such publicity was detrimental to the American Dye Industry. It tended to make the Public lose confidence in American Dyes, many of which were already equal in quality to dyes previously imported. Mr. Poucher stated that in the past, even with imported dyes, Silk Fabrics had never been absolutely guaranteed as to color.

It was thought that this matter should be presented to B. Altman & Company, and any others who were making similar statements in a proper manner, with the idea of soliciting co-operation and help from American Merchants. It was the opinion that if a firm did not wish to guarantee the color, a ticket stating the fact that they did not guarantee the color was all that was necessary.

Thereupon, on motion, the Chairman was requested to appoint a committee of two to be known as a "Grievance Committee," to whom all such subjects shall be submitted in future, and the Chair then appointed Mr. M. R. Poucher and Dr. J. Merritt Matthews.

Mr. Fargo requested the Secretary to read the following article which appeared in the *New York Sun* under date of June 10th, 1918:

> DYE IMPORTERS COMBINE
>
> "Importers of dyestuffs and colors are forming an organization here to protect their interests in the matter of tariffs, etc., The organization is to be composed of the largest firms of the kind in the United States. Plans of domestic dye makers to bring about increased rates of importation of dyes are causing the Importers to combine in an attempt to defeat this purpose.
>
> Walter F. Sykes, of Walter F. Sykes & Co., is mentioned as the first president of the organization, which, it is said, will include among others, A. Klipstein & Co., Walter F. Sykes & Co., and Georgy & Company, of this City, Atteaux & Co., of Boston, and Forstman & Company, of Philadelphia."

Mr. Fargo explained that Manufacturers of American Dyes were in competition with Importers, and he suggested a committee be appointed to obtain information regarding the Imports of Dyes. Mr. Fargo was then appointed a "committee of one," to report further on this subject at the next meeting of the Institute.

Counsel said he had had the pleasure of reading an address delivered by Mr. Poucher at Atlantic City and also several articles on the subject of dyes manufacture in this country and England. It seemed to him the address and the articles referred to contained so much information of general interest to laymen that a pamphlet covering the ground should be prepared in convenient form for slipping in envelopes with mail, and that such pamphlet should be generally distributed to Members of Congress and the public. He thought possibly the makers of dyes assumed too much information on the part of the public. The public and Congress are most favorably disposed toward the infant American Dyes industry and if people generally could know what England is doing to build up an English dye industry it would tend to accentuate the present favorable sentiment.

As a result of the discussion started by remarks of Counsel the chair appointed a special committee consisting of Dr. Matthews and Mr. Poucher, to prepare a pamphlet or leaflet along the lines outlined.

The next meeting of the Institute was set for Wednesday, August 7th.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 522.

MINUTES OF MEETING
AMERICAN DYES INSTITUTE

August 7th, 1918.

A regular monthly meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on August 7th, 1918.

Luncheon was served at one o'clock, after which the meeting was called to order by the President, Mr. W. H. Cottingham.

The following firms were present and represented as follows:

Members

The John Campbell Co.	Mr. John Ward
Dicks, David Co. Inc.	Mr. R. P. Dicks
E. I. duPont de Nemours & Co.	Mr. E. V. Patterson
The Heller & Merz Co.	Mr. August Merz
Naugatuck Chemical Co.	Mr. W. Valentine
The Sherwin-Williams Co.	Mr. W. H. Cottingham Mr. W. S. Woodrow
Transatlantic Chemical Corp.	Mr. E. B. Clary
The Grasselli Chemical Co.	Dr. J. M. Matthews

Non-Members

Consolidated Color & Chemical Co.	Mr. H. A. Metz
Butterworth-Judson Corp.	Mr. Clark

Counsel, Mr. Arthur J. Eddy, was also present.

Inasmuch as a copy of the minutes of the previous meeting had been mailed to each member, and as there were no corrections, they stood approved, and, on motion, the reading of same was omitted.

The Treasurer reported as follows:

Treasurer's Report.

July 1st Balance	$963.59
Nothing received	
Expenditures during July	423.12
Balance	531.47

On motion, the above report was accepted as read, and ordered to be filed.

The Secretary reported as follows:

Secretary's Report

The following members are reporting price information covering Contracts, Orders, and Quotations, and to date have filed a total of 2,692 reports, as indicated below:

	Contracts	*Orders*	*Quotations*	*Total*
Marden, Orth & Hastings	95	1264	871	2230
Sherwin-Williams Co.	67	43	97	207
Hydrocarbon Chem. Prod. Co.		1	27	28
E. I. duPont de Nemours & Co.	47		5	52
Dow Chemical Co.	12	8	12	32
United Piece Dye Works	55	60		115
Dicks, David Co., Inc.		28		28
	276	1404	1012	2692

The total number of reports filed covers approximately 1034 customers.

During the month of July there have been only two direct exchanges covering similar products sold or quoted to the same customer.

The lack of direct exchanges is probably due to the inability to identify similar products owing to special trade names, etc., and in this connection the members are reminded that they have been asked to file with the Secretary's office a statement of all of their products, designating each by the equivalent number in the "Schultz Table of 1914."

None of the members have replied to the above request, but it is hoped that such lists will be furnished at an early date so as to enable the office to determine the propriety of an exchange of price information.

The records show that 134 customers have business relations with two or more of the members reporting.

Counsel called attention to the fact that the Secretary's report showed an increase in the number of members filing price statistics; that is, it was noticed that the Dow Chemical Company were filing information as to prices made on their products.

Mr. Merz stated that he was giving the matter of reporting the most careful consideration and discussing it with his associates, and he had no doubt that in the very near future his Company would begin reporting on certain products.

Attention was called to the fact that although the number of direct exchanges covering competitive business was remarkably small (and probably accounted for by the fact that the Secretary's office was unable to identify similar products until the members filed their lists of products with equivalent numbers in the Schultz Table), it was still a matter of record that among the members filing price statistics, covering a total of 2,692 reports, and 1,034 customers, it was found that only 134 customers have business relations with one or more of these members, which, obviously, in most instances, does not cover the same or similar products.

Then followed a discussion, and the members present were of the unanimous opinion that it would be advisable for each member to file with the Secretary a complete list of their customers' names, which would permit the Secretary to exchange information as to the names of customers who have business relations with one or more members, even though such relations did not over-lap as regards similar products purchased. It was fully explained that such an interchange of information would be only among members reporting and covering only such customers' names as were common to other members. Inasmuch as all members were not present, the Secretary was instructed to address a letter to each member, asking if they would file such a list.

Mr. Cottingham, speaking for the Sherwin-Williams Company, stated at once that they would file a list of customers and all other representatives who felt authorized to speak for their companies stated that their companies would file. There were one or two representatives who could not at the moment speak authoritatively for their companies, but said they could see no reason why that information should not be filed.

It was believed that if all members would make a beginning along this very simple line, after the names of customers common to two or more members were interchanged among those members the filing of orders, quotations and contracts would speedily follow.

Mr. Metz indicated his desire to make application for membership in the Institute, and the Secretary was instructed to send Mr. Metz information regarding the operation of the Institute, and it was understood that the firm of Consolidated Color & Chemical Company would be presented for consideration at the next regular meeting of the Executive Committee.

The Secretary was also instructed to address a letter to those members who had not yet filed a list of the products they are now manufacturing and request such list to be furnished for the purpose of interchanging among members reporting.

Report of Grievance Committee—Dr. J. Merritt Matthews.

Dr. Matthews reported that in connection with the ticket which had been placed upon a quantity of sweaters offered for sale by B. Altman & Company, and which read substantially that "owing to the color situation the garments were not guaranteed as to fastness of color," it was very difficult to take up these matters with any degree of assurance. He said that the fashion shades were made up without any respect to the colors which are now produced successfully in the United States, and it was a fact that there was a lack of direct colors which are fast. He said there was a large merchandising problem of the retailer to be considered, because it had become a custom for retailers to sell their products with either a direct or an implied guarantee, and due to the fact that the foreign dyes were so nearly correct, a retailer could afford to assume the responsibility of replacing faded garments because the percentage of return merchandise was so small; whereas, now, the retailer is not in a position to make the same guarantees.

Mr. Dicks expressed the opinion that, even granting the facts brought out by Dr. Matthews, the buying public was now more exacting than at any previous time.

In this connection the Chairman submitted a letter from John Campbell & Company, to which was attached a ticket taken from a purchase made at Gimbel's. This ticket was stamped as follows:

> "Owing to the dye situation we cannot guarantee against fading or shrinking."

It was pointed out that the quality of the dyes could certainly have no connection with the guarantee as to *shrinking* and it was felt that such advertising was unjustifiable and that retail stores should not take advantage of the situation and prejudice the public with unjustifiable statements.

This lead to the Chairman calling upon Dr. Matthews to report for the Committee appointed as a

Publicity Committee.

Dr. Matthews reported progress and stated that in addition to gathering together information to be put into pamphlet form, as a primer, and to be distributed by the Institute to consumers and the public, it was hoped that it would be possible to educate customers to the necessity of limiting their purchases of colored merchandise to such colors as could be produced successfully.

Dr. Matthews stated that he would get into communication with Mr. Poucher and endeavor to have ready for discussion at the next regular meeting such information and articles as could be printed in a pamphlet and distributed by the members and the Institute. Counsel stated that he would prepare a preface to be printed in the pamphlet.

The Chairman expressed the hope that the Publicity Committee would submit a draft of the suggested pamphlet and send same to all members for their consideration and criticism prior to the next meeting, and Dr. Matthews assured the Chairman that this would be done.

Members were urged to cooperate with Mr. Poucher and Dr. Matthews and furnish any information which they would suggest for the proposed pamphlet.

Dr. Matthews referred to an industry meeting which was held on June 25th, at which meeting

Mr. E. V. Patterson,
E. I. duPont de Nemours & Co.,
New York City,

Mr. T. A. Green,
553 Munsey Building,
Washington, D. C.,

Mr. J. O. Hasson,
The Sherwin-Williams Co.,
Cleveland, Ohio,

were appointed a committee of three to urge upon the War Industries Board the importance and the necessity of establishing the manufacture of dyes and intermediates as an essential industry. This had particular reference to being placed upon the priority list as regards a sufficient supply of coal. He said that it had developed that the Chemical Alliance had been officially recognized and the Government desired to deal with one rather than with a number of different organizations, and that therefore it was apparent that the Committee named above could be of no service in pressing the subject directly to the War Industries Board. Dr. Matthews further stated that the War Industries Board had requested the Chemical Alliance to furnish a complete list of all plants engaged in the manufacture of dyes and intermediates and a list of products manufactured by each, and he earnestly urged manufacturers who were not at the present time members of the Chemical Alliance to join same. The question of priorities is a very important one and no doubt will come up through the Chemical Alliance.

For the benefit of all members, you are advised that Dr. J. Merritt Matthews, 50 E. 41st St., New York City, is the Secretary of the Chemical Alliance Dyestuff and Intermediate Section.

The Chairman suggested the advisability of the practical or operating men of each plant holding regular meetings for the purpose of discussing technical questions. This was in line with a previous recommendation of Mr. Poucher's, who had suggested that the technical men of each plant should attend the regular monthly meetings of the Institute.

The next meeting of the Institute was set for Wednesday, September 4th.

There being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,

HED:IF. *Secretary.*

PLAINTIFF'S EXHIBIT No. 523.

MINUTES OF MEETING
AMERICAN DYES INSTITUTE

September 4th, 1918.

A regular monthly meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on September 4th, 1918.

Luncheon was served at 1:00 P. M., after which the meeting was called to order by the President, Mr. W. H. Cottingham.

The following firms were present and represented as follows:

MEMBERS

E. I. duPont de Nemours & Co.	Mr. M. R. Poucher Mr. E. V. Patterson
The Heller & Merz Co.	Mr. August Merz
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo
Sherwin-Williams Company	Mr. W. H. Cottingham
The Dow Chemical Company	Mr. J. T. Pardee

NON-MEMBERS

Althouse Chemical Company	Mr. C. Scott Althouse
American Dyestuff Mfrs. Assn.	Mr. Bennett
New York Color & Chemical Co.	Mr. John G. Wardlaw

Counsel, Mr. Arthur J. Eddy, was also present.

Inasmuch as a copy of the minutes of the previous meeting had been mailed to each member, and as there were no corrections, they stood approved, and, on motion, the reading of same was omitted.

The Treasurer reported as follows:

TREASURER'S REPORT

August 1st balance..............	$531.47
Received during August.........	1,800.00
	$2,331.47
Expenditures during August.....	412.67
Balance, Sept. 1st..........	1,918.80

On motion, the above report was accepted as read, and ordered to be filed.

The Secretary reported as follows:

SECRETARY'S REPORT

The following members are reporting price information covering Contracts, Orders and Quotations, and to date have filed a total of 3,195 reports, as indicated below:

	Contracts	*Orders*	*Quotations*	*Total*
Marden, Orth & Hastings	95	1531	1035	2661
Sherwin-Williams Co.	67	49	117	233
Hydrocarbon Chem. Co.		1	27	28
E. I. duPont de Nemours & Co.	105	60	5	170
Dicks, David Co.		28		28
Dow Chemical Co.	12	21	42	75
	279	1690	1226	3195

The total number of reports filed covers approximately 1143 customers.

During the month of August there has been only one direct exchange covering similar products sold or quoted to the same customer.

The records show that 153 customers have business relations with two or more members reporting.

Pursuant to last meeting, the members have been asked to file a record of their customers so that the Secretary may be able to interchange information when members have customers in common. This list has been furnished by the Sherwin-Williams Company, and E. I. duPont de Nemours & Company. As soon as others file similar lists the Secretary's office will be able to make the necessary exchanges.

The members have also been requested to file a list of their products with the equivalent number in the "Schultz Table of 1914." This list has been furnished by the Sherwin-Williams Company, but no other members have reported.

On motion duly made, seconded, and carried, it was resolved that in future all checks of the Institute should be signed by the Secretary-Treasurer, Mr. H. E. Danner, and countersigned by the Vice-President, Mr. R. C. Jeffcott, or Mr. F. M. Fargo, of Marden, Orth & Hastings Corp., and that a copy of this resolution be forwarded to the bank with which the Treasurer does business, together with the signature of Mr. Jeffcott and Mr. Fargo.

The attention of the Institute has been called to the "Spring Card, 1919," issued by the Textile Color Card Association of the United States, which card had attached thereto a notice to the effect that certain "blue" dyes are not fast, and also a statement that a fast blue dye would be on the market in November, and a still better blue on the market in February, 1919. It also contained language which conveyed a direct impression that the Silk and Woolen Dyers of the Country were using, exclusively, a certain blue dye, namely, Sulphonated Indigo, which is incorrect as a matter of fact; it is therefore—

> Resolved, That it is the feeling of the Institute that statements of this character are not part

of the work of the Textile Color Card Association; that it is no part of the work of that Association to comment upon dyes that may or may not be used, and certainly it is no part of the work of that Association to announce that particular dyes will come on the market. We believe that, in all fairness to the makers and users of dyes, the statements referred to, which are inaccurate as a matter of fact, should be promptly withdrawn in some suitable manner.

On motion duly made, seconded, and carried, the Secretary was instructed to send a copy of this resolution to the Textile Color Card Association.

On motion duly made, it was resolved that daily quotation bulletins be issued to all members, even to those not reporting regularly, such bulletins to be issued without either the buyers' or sellers' names appearing.

Mr. Poucher, of the Publicity Committee, suggested that a printed bulletin be issued regarding the promotion and maintenance of the American Dye Industry, and that this bulletin be printed by the Institute and furnished to the members.

Reports were then received from members present on conditions prevailing in the industry.

Mr. Wardlaw stated that he had just come in as an "onlooker," with purposes of becoming a member of the Institute.

Mr. Fargo raised the question of containers, which was becoming a matter of importance at the present time. From the statements of various members, it appears that drums are charged to customers at the rate of $15.00 each, and that same are credited on their return. In regard to barrels, they have heretofore been included in the price.

Mr. Poucher stated the practice of the duPont

Company, which was similar to that outlined by Mr. Fargo.

The subject of charges for wooden containers was also discussed, and the practice seemed to be to cover this cost in the charge for contents.

Then followed a discussion in regard to the method of standardization or determining the different strength of dyes. Mr. Althouse stated that it is very desirable to come to an understanding on this question; but it is difficult to set a standard of strength, giving "Congo Red" as an example. Mr. Bennett, representing the American Dyestuff Manufacturers Association, stated that Dr. Matthews, Mr. Merz, Dr. Pierce and several others are taking up the matter of standardization, and that probably something further would be heard regarding this matter in the near future.

The Secretary presented a statement of the dye consumption of twenty-seven members of the Cotton Finishers' Association, which was interesting, and on motion of Mr. Bennett, it was decided to endeavor to get a list of the quantities of the various dyes used before the war, as this information would be most valuable in connection with the statement of dyes and substitutes used since the war.

In regard to the date of the next meeting of the Institute, Mr. Bennett suggested that an industry meeting be called on a day during the week of the Chemical Exposition, September 23rd, 1918. On motion duly carried, a committee consisting of Messrs. Bennett, Fargo, Patterson, and Danner, was appointed to arrange for the next meeting to be held at the Hotel Biltmore on September 26th, at 4:00 P. M., to be followed by a dinner at 6:00 P. M.

In connection with the above meeting, the Secretary was instructed to write to each member of the Institute, suggesting that the technical men are especially invited to attend the next meeting, and that suitable provisions will be made for them to meet independently.

There being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 524.

MINUTES OF MEETING OF AMERICAN DYES INSTITUTE

November 6th, 1918.

A postponed monthly meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on November 6th, 1918. Luncheon was served at 1:00 P. M., after which the meeting was called to order by the President, Mr. W. H. Cottingham.

The following members were present and represented as follows:

The Calco Chemical Company	Mr. G. A. Berry
E. I. du Pont de Nemours & Co.	Mr. M. R. Poucher Mr. E. V. Patterson
The Heller & Merz Co.	Mr. August Merz
Frank Hemingway, Inc.	Mr. Frank Hemingway
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo
Merrimac Chemical Company	Mr. S. W. Wilder
The Sherwin-Williams Company	Mr. W. H. Cottingham Mr. W. S. Woodrow
Transatlantic Chemical Corp.	Mr. Wm. Stevenson

The following were present as guests of the Institute:

The National Aniline & Chem. Co.	Mr. W. T. Miller Mr. A. H. Jacoby Mr. S. R. David

Dr. J. Merritt Matthews and Mr. C. C. Bennett arrived late and left before the meeting was concluded.

Counsel Mr. Arthur J. Eddy and Secretary Mr. H. E. Danner were also present.

Inasmuch as a copy of the minutes of the previous meeting had been mailed to each member and as there were no corrections, they stood approved, and on motion, the reading of same was omitted.

The Treasurer reported as follows:

Treasurer's Report

AMERICAN DYES INSTITUTE

September 1st Balance		$1918.80
Received since September 1st		412.08
		$2330.88
Expenditures since Sept. 1st		1070.06
		$1260.82
Accounts payable		None
Accounts Receivable		$1000.00
Certified Chemical Corp.	$200.00	
Hydrocarbon Chem. Prod. Co.	200.00	
Transatlantic Chem. Corp.	200.00	
John J. White Co.	200.00	
Adolph Zobel Color Works	200.00	

On motion, the above report was accepted as read, and ordered to be filed.

The Secretary reported as follows:

Secretary's Report

The following members are reporting price information covering Contracts, Orders and Quotations, and to date have filed a total of 4,187 reports, as indicated below:

	Contracts	*Orders.*	*Quotations.*	*Total.*
Marden, Orth & Hastings	95	2288	1128	3511
The Sherwin-Williams Co.	70	58	160	288
Hydrocarbon Chem. Prod. Co.		1	27	28
E. I. du Pont de Nemours & Co.	105	60	7	172
Dicks, David & Co.		28		28
The Dow Chemical Co.	12	55	92	160
	202	2500	1414	4187

Attention is called to the fact that only three of the above members, i. e., Marden, Orth & Hastings, Corp., The Sherwin-Williams Company, and the Dow Chemical Company, are reporting a record of their *daily* quotations or orders. This seriously interferes with the exchange of information as provided in the reporting plan.

The total number of reports filed covers approximately 1317 customers.

During the month of September there has been only one (1) direct exchange covering a similar product sold to the same customer and during the month of October there have been four (4) direct exchanges.

The records taken from price quotations show that 170 customers have business relations with two or more of the members reporting. From the independent list furnished by Marden, Orth and Hastings, E. I. du Pont de Nemours & Co., and The Sherwin-Williams Company, combined with the records of quotations or orders on file, we show a total of 1279 customers of whom 225 have business relations with two or more members.

In connection with the Secretary's report Counsel called attention to the necessity of more cooperation among the members. He said it is aparent that

Marden, Orth & Hastings Corp.,
The Sherwin-Williams Company,
The Dow Chemical Company,

are reporting their daily quotations, orders and contracts on all materials on which they agreed to file their reports, but that the

Hydrocarbon Chemical Products Co.,
Dicks, David & Co.,
E. I. du Pont de Nemours & Co.,

are not filing records of their daily transactions.

Mr. Poucher stated that he was under the impression that his office was adhering strictly to the reporting plan of the Institute. It appeared from the discussion that the du Pont Company had delegated the work of reporting to parties who also reported to the Institute of Explosives. Counsel explained that the Institute of Explosives was an open price association in the explosive industry, but the reporting plan was entirely different from that of the American Dyes Institute. Mr. Poucher said he would give this his personal attention and instruct his office to report to the American Dyes Institute strictly in accordance with the reporting plan.

Mr. Hemingway advised that he was not aware that his company was not reporting on any of the products which he manufactured, and said he would give this his attention and have his reports filed.

Mr. Cottingham stated that he was reporting all his prices on a limited line of products and he had now decided to report on all his products.

In reference to the "Daily Bulletin" issued from the Secretary's office, it was agreed that same would be of great interest and value if it could be extended to include a record of daily prices of all the members. Special attention was called to the fact that this bulletin is impersonal; that is, it does not give the name of the buyer or seller, but simply tabulates a record of the number of sales or quotations made each day on each product, and the prices obtained or asked. Several present could see no objection to reporting only for this bulletin, but desired to consider the matter further.

On motion Mr. F. M. Fargo was appointed a committee of one to take up this matter and endeavor to induce others to participate so that the daily bulletin may be enlarged and be of the value it properly should.

Then followed a discussion as to the collecting of statistics covering the value of the product in the American Dyes Industry. It was recognized that the industry or any committee from the Industry was at a great disadvantage because apparently no one could state with any degree of authority what the industry represented.

In view of the approaching termination of the war, and the obvious foreign competition which would present itself, it was felt that the industry should be in possession of reliable figures for use of the Government in any legislative acts which might be taken up. It was therefore agreed that each member of the Institute be requested to file with a Certified Public Accountant the following record of their six months' business up to November 1st, 1918:

1—Gross sales of all Intermediates of own manufacture.

2—Gross sales of all Dyes of own manufacture.

3—Gross value of all Intermediates manufactured and used in own business. (The value to be taken at present market prices.)

The detailed information filed with a Certified Public Accountant would be confidential, but the Accountant would compile the information into a record of totals to be used by the Industry in any representations they may have to make to the Government either in connection with Tariff, War Service, or other Government Committees.

In order to make the above information complete, it was agreed that producers of dyes and intermediates, not members of the Institute, be requested to also file similar figures.

The Secretary's report was then approved and ordered to be filed and made a part of these minutes.

The Executive Committee reported the receipt of an application for membership from The Althouse Chemical Company, of Reading, Pa., and stated that they approved of the election of this firm to the Institute, and recommended that under waiver of the By-Laws and Constitution, this firm be elected to membership, and on motion, the Althouse Chemical Company was unanimously elected.

The Committee also called attention to the fact that the United States Chamber of Commerce had called a convention of the War Service Committees of various industries to be held at Atlantic City on December 4th, 5th, and 6th, and recommended that the Institute and the industry be represented at this convention, and suggested that Mr. M. R. Poucher, of E. I. du Pont de Nemours & Company; Dr. J. Merritt Matthews, and Mr. W. T. Miller, of the National Aniline and Chemical Company, be requested to attend this convention.

On motion of Mr. Wilder, seconded by Mr. Woodrow, the report of the Executive Committee was approved, and Mr. Poucher, Dr. Matthews and Mr. Miller were requested to attend the above mentioned convention.

Publicity Committee

Mr. Poucher reported that Counsel had prepared a semi-popular pamphlet which it was proposed to print for distribution generally. Counsel stated that this pamphlet was in rough form, and would no doubt require some revision by practical men, and thereupon, on motion of Mr. Fargo, seconded by Mr. Patterson, it was resolved to leave the matter in the hands of the Executive Committee and that Counsel proceed with the necessary work of preparing same for final distribution.

Counsel called attention to a recent decision of Judge Morton, of the Federal District Court in Massachusetts, an extract of which is given below and made part of these minutes.

"In the case of the United States v. M. Piowaty & Sons, the Federal District Court in Massachusetts has just held an indictment insufficient under the Sherman Act, which did not plead clearly an unlawful agreement. Judge Morton has the following to say, which is interesting reading in connection with the operation of open price associations:

> "In my opinion, unlawful agreement is the essence of the offense of combination or conspiracy under the Sherman Act. It is what separates what is permitted from what is forbidden. To hold it illegal for persons in the same business and same trade organization, after exchanging information and views, to act in the same way, but independently of each other, on buying, selling, or prices, would extend the scope of the act beyond anything heretofore decided, and beyond its proper meaning, and would cause the greatest confusion and uncertainty."

Mr. Wilder suggested that it would be interesting, if those present would exchange ideas as to their views on the situation after the war. He spoke especially about the possible increase in the supply of Sulphuric and Nitric Acid, due to the curtailment or tapering off of the use of these products in the explosive industries. He also spoke of Benzol and Toluol.

Mr. Miller stated that while he believed there would be a sufficient supply of these products he did not look for any large over-production, and he also expressed the belief that there were no large stocks of chemicals or dyes in Germany which would be imimported after peace was declared. In this connection Mr. Hemingway called attention to a pamphlet entitled:

"After the War—What?"
written by
"A. Barton Hepburn,"

and issued by the Chase National Bank.

The Secretary was requested to obtain copies of this pamphlet and distribute same to the members. Counsel also spoke of an interesting publication entitled "Germany's Commercial Grip on the World," by "Henri Hauser."

It appeared from questions put to those present that the plants in the industry were operating to practically full capacity although there was some slowness in placing of business, possibly because of recent peace rumors.

Mr. Poucher expressed his belief that the business after the war would be satisfactory. He based his judgment from the textile industry and stated that in conversation with men in this trade, it was their belief that the textile industry would be brisk, as there would be a large quantity of clothing required by men who returned from the front, and he was looking forward to satisfactory conditions for at least two or three years.

Mr. Miller expressed his interest in the work of the Institute, and said that his firm was seriously considering membership, but that they were undecided principally because of the question of assessments, which, if made on a pro-rata basis, would result in his company paying more than it reasonably should. On motion, it was decided that the Executive Committee take this matter up with the National Aniline & Chemical Company and endeavor to arrange for an equitable adjustment of expenses of the Institute.

The next meeting was set for Monday, December 9th.

There being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 525.

A joint meeting of the Executive Committees of the AMERICAN DYESTUFF MANUFACTURERS' ASSOCIATION, INC., and the AMERICAN DYES INSTITUTE was held on Tuesday, January 7th, 1919, in the office of the Association, Room 1007, #21 East 40th St.

PRESENT: Mr. W. H. Cottingham, Pres. of the Institute; Mr. M. R. Poucher, Pres. of the Association; Dr. J. M. Matthews, Mr. C. C. Bennett, Mr. F. Hemingway, Mr. A. Merz and Mr. F. M. Fargo, Jr.

Mr. Cottingham presided and opened the meeting at 11:00 A. M.

Dr. Matthews and Mr. Cottingham discussed the amalgamation of the two organizations, Dr. Matthews being of the opinion that the combination was to represent an entirely new Institute, whereas Mr. Cottingham's understanding was that the By-Laws of the present Institute were to be changed in accord with the undertaking of the work previously handled by the Association, in conjunction with their own work, which would be incorporated in an Open-Price Division of the new Institute.

Mr. Cottingham read the proposed changes and amendments to the present By-Laws of the Institute.

Dr. Matthews stated that from a recent conversation had with Mr. Wigglesworth of the National Aniline & Chemical Co. he understood that the latter would not go into the Open-Price Division of the new Institute, whereas Mr. Cottingham stated that to his knowledge the National Aniline & Chemical Co. had signified their desire to become members of the Open-Price Division, through their Mr. Miller.

Mr. Merz called attention to the fact that nothing in the suggested amendments covered the Open-Price Division, with regard to its financing, etc., and suggested that they be changed to cover this part of the work, as the amendments as reading at present committed every member who joined the Institute, to the Open Price Section, as well.

Discussion as to the getting up of the budget for the Open-Price Section followed, it being understood that those members who wished to avail themselves of the Open-Price feature would bear the expense of maintaining this division.

Mr. Poucher stated that in his opinion the time was now ripe to send out a joint letter to all the members, putting down the plan of the amalgamation exactly as it is, so that they may understand every detail of the combination, and explaining the two different sections of the new Institute thoroughly, so that there may be no misunderstanding with regard to the financing, etc.

Mr. Poucher suggested that inasmuch as there were only about five members who were really exchanging information in the last few months, it is advisable to find out how many of the members are going to continue to report prices, and how many are not.

Mr. Cottingham expressed the opinion that his firm had found the exchange of prices and information very valuable, and that the more experience they have had with it, the more it has benefitted them in many ways.

During discussion of exchange of trade information, prices, etc., Mr. Poucher called attention to the fact that the Association had gotten up a committee of three accountants to deal with the matter of depreciation of plants, and that the results of such cooperative work are expected to be very beneficial to the Industry. General discussion of this matter followed.

Mr. Bennett and Mr. Cottingham got up a rough schedule of how the proposed budget of $45,000 for the new Institute for the coming year would be made up, allotting to each member of the Institute and Association such subscriptions as was thought they could afford, and naming the annual dues of $250 for such members who could not be expected to pay any more for their membership.

After considerable discussion it was decided to leave the matter to the Budget Committee (composed of Messrs. Poucher, Miller, Fargo and Cottingham) who decided to hold an informal meeting the next day, Wednesday, January 8th, at 10:30, preceding the Annual Meeting of the American Dyes Institute, which was scheduled for 1:00 P. M. at the Hotel Biltmore.

During general discussion of the amalgamation, it appeared to be the understanding that Mr. H. E.

Danner would be retained as Secretary of the Open Price Division of the new Institute.

Mr. Frank Hemingway's report for the Nominating Committee was read.

Discussion of selection of Treasurer in place of Mr. Charles Jenkinson of the National City Bank, was held, and it was decided that it would be desirable to have some officer of the National City Bank in this position, as the latter bank could be of material assistance in supplying valuable information on foreign markets, etc.

Mr. Cottingham, on being nominated for the Presidency of the new Institute, voiced the plea that he be released from this office, inasmuch as he was going to make a few trips to Europe in the near future and did not think he would have the time to devote to this office, which he claimed should be an active one. He stated that he would at all times be glad to help in any way in his power, but that he did not believe he could do justice to the office of President in view of the fact that he would be absent from the country a greater part of the time during the coming year. He suggested that Mr. Jeffcott's name be substituted for his in the Nominations.

Mr. Merz expressed the opinion that Mr. Cottingham's remarks were worthy of consideration, after which they ought to be disregarded, believing that Mr. Cottingham should accept the nomination for President.

Mr. Frank Hemingway stated that it was desirable to have as President some one who was not very closely identified with any big interests, as he claimed in the event that such a man as Mr. Poucher or a member of the National Aniline & Chemical Co. was elected President, the opinion in the trade would be that the duPont's or the National Aniline "were running the Institute," which would not be very desirable. To put it tersely, he thought it well to have as President someone who had no "axe to grind."

Meeting was adjourned at 12:30.

PLAINTIFF'S EXHIBIT No. 526.

MINUTES OF MEETING
AMERICAN DYES INSTITUTE

January 16th, 1919.

A postponed annual meeting of the American Dyes Institute was held at the Hotel Biltmore, New York, on Thursday, January 16th, 1919, at 1:00 o'clock.

Luncheon was served at 1:00 P. M., after which, in the absence of the President, the meeting was called to order by Mr. W. T. Miller, of the National Aniline & Chemical Company.

The following firms were present and represented as follows:

Beacon Color & Chem. Co.	Mr. E. J. Feeley
Dye Products & Chem. Co.	Mr. L. M. Loewenthal
E. I. duPont de Nemours & Co.	Mr. M. R. Poucher
	Mr. E. V. Patterson
Frank Hemingway, Inc.	Mr. Frank Hemingway
Heller & Merz Company	Mr. August Merz
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo
Naugatuck Chemical Company	Mr. Wm. Valentine
National Aniline & Chem. Co.	Mr. W. T. Miller
	Mr. A. H. Jacoby
	Mr. Baldwin
Sherwin-Williams Co.	W. S. Woodrow
Transatlantic Chemical Corp.	Mr. Stevenson
Grasselli Chemical Company	Dr. J. M. Matthews
Chemical Company of America	Mr. Kendall
Consolidated Color & Chem. Co.	Mr. H. A. Metz

Mr. C. C. Bennett, Secretary of the American Dyestuff Manufacturers Association, and Secretary H. E. Danner also attended.

As this meeting was the postponed annual meeting of the Institute, Mr. Hemingway was called upon to report for the Nominating Committee, and he submitted the following report:

January 16th, 1919.

To: American Dyes Institute

Your "Nominating Committee" begs to submit the following report:

1. The merger of the American Dyes Institute and the American Dyestuff Manufacturers Association necessitates some changes in organization and your committee recommends the following plan:

A. A President, who will act as the Chairman.

B. Secretaries, to be selected by the Executive Committee, One Secretary for the Open Price Division of the Institute and the other for the general work of the Institute.

C. Treasurer, a representative of the National City Bank.

D. Counsel Mr. Arthur J. Eddy (Open Price Division).

2. In the place of the two Vice-Presidents, as was the plan followed by the Association, we recommend an Executive Committee of seven with the power to increase their number in case of need.

3. Following the plan of the Association we recommend a Board of Governors which will include the members of the Executive Committee and which will represent in its entirety as many different States as possible with the view to rendering aid, in the time of need, concerning Washington affairs.

To carry out this program your Committee proposes:

President: Mr. Walter H. Cottingham

Secretaries: To be selected by the Executive Committee

Treasurer: Representative of the National City Bank

Executive Committee.

Mr. L. A. Ault, representing The Ault & Wiborg Company

Mr. Frank Hemingway, representing Frank Hemingway, Inc.

Mr. R. C. Jeffcott, representing Marden, Orth & Hastings Corp.

Dr. J. M. Matthews, representing The Grasselli Chemical Company.

Mr. August Merz, representing The Heller & Merz Co.

Mr. W. T. Miller, representing the National Aniline & Chem. Co.

Mr. M. R. Poucher, representing E. I. duPont de Nemours & Co.

Board of Governors.

Mr. C. Scott Althouse, The Althouse Chemical Co.

Mr. B. R. Armour, American Aniline Products, Inc.

Mr. L. A. Ault, The Ault & Wiborg Co.

Mr. R. P. Dicks, Dicks, David Co., Inc.

Mr. B. P. Donnelly, Holland Aniline Company

Mr. Frank Hemingway, Frank Hemingway, Inc.

Mr. R. C. Jeffcott, Marden, Orth & Hastings Corp.

Mr. R. W. Kemp, Holliday-Kemp Company

Mr. G. A. Martin, The Sherwin-Williams Co.

Dr. J. Merritt Matthews, The Grasselli Chemical Company

Mr. August Merz, The Heller & Merz Co.
Mr. W. T. Miller, The National Aniline & Chemical Co.
Mr. J. T. Pardee, The Dow Chemical Company
Dr. E. W. Pierce, Zobel Color Works, Inc.
Mr. M. R. Poucher, E. I. duPont de Nemours & Co.
Mr. G. A. Whaley, John Campbell & Company
Mr. S. W. Wilder, Merrimac Chemical Company

(Signed) Frank Hemingway,
Chairman.
W. T. Miller,
M. R. Poucher.

Mr. Bennett stated he had been advised that the National City Bank had reported they were not prepared to undertake the Treasurership of the Institute, and thereupon Mr. Merz moved that the Nominating Committee substitute the name of Mr. H. E. Danner as Treasurer of the Institute, which was unanimously adopted. Thereupon, on motion, duly made and seconded, it was unanimously adopted that the report of the Nominating Committee be approved and the Secretary was instructed to cast one ballot for the unanimous election, as above indicated.

In connection with the above nominations, it was understood by all present that the nominations for members of the Executive Committee covered the *firm name* rather than individuals and that the firms mentioned have the option of appointing alternatives to represent them at any meeting of the Executive Committee.

Mr. Bennett then suggested that inasmuch as it had been decided to have one Treasurer for the Institute, it would be advisable for his accounts to be audited, after which, any monies he had in the Treasury would be transferred to the Treasurer of the

American of the American Dyes Institute. Thereupon Mr. Hemingway moved that an Auditing Committee of three be appointed to wait upon Mr. Bennett for the purpose of auditing his accounts, and then transfer his balance to the new Treasurer.

This motion being duly seconded and carried the Chairman appointed Mr. Fargo, Mr. Hemingway, and Mr. Patterson as an Auditing Committee of three to audit Mr. Bennett's accounts, after which it was understood that any balance would be transferred to Mr. Danner, as Treasurer of the American Dyes Institute.

Mr. Miller then announced that in connection with the Open Price Plan his firm had decided to report on all products which are being reported upon by any other member and are in competition with the products of the National Aniline & Chemical Company, and he said that these reports would be filed with the Secretary as promptly as possible.

Mr. Fargo reported that he had been requested by a member of the Institute to provide for a Committee to consider matters of dispute between customers and sellers, and he asked for information regarding this point.

Mr. Baldwin thereupon called upon the Secretary, asking him to explain the *Modus Operandi* in the Finishers Association, regarding similar matters. The Secretary then explained that in case of dispute between a buyer and seller it was provided in the operation of the Finishers Association that such matters be submitted to a special committee, as follows:

The President of the Finishers Association appoints one representative; the President of the Convertors Association (customers of the members of the Finishers Association) appoints one representative. These two representatives select a third party,

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who act as a Committee to consider the question i
volved. In addition, each party submits either to th
Secretary of the Finishers Association or the Secr
tary of the Convertors Association his own stor
which is retranscribed to the Committee of Three,
outlined above, but in no instance is the Committ
advised as to the parties involved. In other word
the report of the Secretary of either the Finishe
Association or the Convertors Association is impe
sonal, inasmuch as the Secretary omits all names
identification marks. Therefore, the report that go
to the Committee is impersonal, and the committ
makes the report without knowing the name of eith
parties involved.

It was the opinion of the members present th
this matter should be held in abeyance subject to fu
ther discussion.

Dr. Matthews suggested that in future it shou
be provided that the discussions of the members
reference to Open Price matters should be disti
guished from the discussions of the members of t
entire Institute, and he suggested that the Executi
Committee consider this matter in arranging the ord
of business at the regular monthly meetings.

The Chairman then introduced Mr. Charles Denb
Special Agent for the Government in connection wi
trade in China. Mr. Denby made a short address a
indicated that from his observation and experience
China he had come in contact with the Dyestuff situ
tion, and he stated that from his observation he w
of the opinion that the Dyestuff Manufacturers in t
United States were not handling the export tra
properly. He strongly recommended that the man
facturers in the United States give particular atte
tion to the export trade and study the necessities a
requirements of the Foreign consumer. He stated

particular that the China trade must be handled in a co-operative way rather than in an individual way, and he expressed the opinion that the American Dyestuff Manufacturers could co-operative under the "Webb Law" and meet the requirements of the Oriental market.

On motion duly seconded, it was unanimously carried that a vote of thanks be given to Mr. Denby for his courtesy in attending the meeting and addressing the members.

On motion it was agreed that the next meeting of the American Dyes Institute should be held at the Hotel Biltmore, New York City, on Friday, February 7th, at 1:00 P. M.

There being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF.

PLAINTIFF'S EXHIBIT No. 527.

Minutes of American Dyes Institute, January 22, 1919.

Note: Same as Plaintiff's Exhibit No. 26 and not reprinted here. (See Record, Exhibits, Volume I, page 81.)

PLAINTIFF'S EXHIBIT No. 528.

MINUTES OF MEETING
AMERICAN DYES INSTITUTE

February 7th, 1919.

A regular monthly meeting of the American Dyes

Institute was held on Friday, February 7th, 1919, at the Hotel Biltmore, New York City.

Luncheon was served at one o'clock.

The meeting was called to order at two o'clock by the President, Mr. W. H. Cottingham.

The following firms were present and represented as follows:

Althouse Chemical Company	Mr. C. S. Althouse
American Aniline Products, Inc.	Mr. P. Nobbe
John Campbell Company	Mr. C. H. Jones
Chemical Company of America	Mr. Chas. Kendall
Consolidated Color & Chemical Co.	Mr. H. A. Metz
Dicks, David Co., Inc.	Major B. F. Welton
Dow Chemical Company	Mr. J. T. Pardee Mr. G. L. Camp
E. I. duPont de Nemours & Co.	Mr. M. R. Poucher Mr. E. V. Patterson Mr. Gregg Judge Laffey
Dye Products & Chemical Co.	Mr. L. M. Loewenthal
Essex Aniline Works, Inc.	Mr. P. Kent, Jr.
Grasselli Chemical Company	Dr. J. M. Matthews
The Heller & Merz Company	Mr. August Merz Mr. Robinson
Merrimac Chemical Company	Mr. S. W. Wilder
National Aniline & Chem. Co., Inc.	Mr. Wigglesworth Mr. Barrows Mr. Jacoby Mr. Kalish Mr. W. T. Miller
Naugatuck Chemical Co.	Mr. Valentine
Rector Chem. Co.	Mr. Marx Hirsch
The Sherwin-Williams Co.	Mr. W.H. Cottingham
Transatlantic Chemical Corp.	Mr. E. B. Clary

The following were also present:

Mr. Ramsay Hoguet, and Mr. Joseph H. Choate, Jr., representing the Alien Property Custodian.

Lieutenant Jones, representing the War Trade Board.

Counsel, Mr. Arthur J. Eddy, and Secretaries, Mr. C. C. Bennett and H. E. Danner, also attended. (Mr. Danner acted as recording Secretary.)

Inasmuch as the minutes of the previous meeting had been sent to each member and there were no corrections, on motion, the reading of same was omitted.

Mr. Poucher, reporting for the Executive Committee, requested the Secretary to read a written report, a copy of which is given below and forms a part of the minutes of this meeting:

Report of Special Committee of the Executive Committee to the American Dyes Institute in the matter of conferences with the Alien Property Custodian concerning the proposal to acquire enemy owned patents.

* * * * * * * * *

Since our last monthly meeting, a matter has been brought to the attention of the Executive Committee by the Alien Property Custodian, which vitally concerns the chemical industry of the United States and particularly the new dyestuff industry. The proposal concerns the taking over of all enemy owned U. S. patents for dyes, intermediates, pharmaceuticals and other chemicals. The underlying idea of the Alien Property Custodian is to assist these new branches of the chemical industry in this country, by placing all of these enemy owned patents in the hands of a trustee for the benefit of the entire industry. It is proposed that the various branches of the chemical industry in this country come together and join in the formation of a company that would act as the owning and licensing company for all these patents.

Your Executive Committee appointed a sub-committee to confer with the Alien Property Custodian. This committee met at the Custodian's office in Washington on Monday, January 27th. Owing to illness, Mr. A. Mitchell Palmer, Alien Property Custodian, was unable to be present; his office, however, was represented by Joseph H. Choate, Jr., Ramsay Hoguet, Mr. Horn, and Mr. Ferry. A meeting was held in which the views of the committee and their counsel were presented in response to interrogatories propounded by those representing the Alien Property Custodian. It was the conclusion of the meeting that it is not only desirable but necessary to the successful prosecution of the dye industry in the United States, that the right to use German owned patents, which the Alien Property Custodian was authorized to take over and sell, be acquired and held under some plan which will enable all interested manufacturers to acquire non-exclusive personal licenses and to use the same upon equal terms, provided always, the price to be paid therefore is fair and reasonable. It was the conclusion of the meeting that a private sale by executive order is preferable to a public sale. It was also the conclusion of the meeting that in addition to the patents relating to the dye industry, it was desirable to concentrate all chemical patents into the hands of one Holding Company. The question of price is to be taken up with the Appraising Committee appointed to advise with the Alien Property Custodian in the matter of prices on property taken over and sold by the Custodian. It was also informally agreed by the members of the committee, that the members of the Dye Institute finance the cost of searching the titles to the patents in question until a Holding Company is formed, and assist the Alien Property Custodian in determining the question of enemy owned ownership and the scope of the proposed sale. After considering the matter carefully, conferring with representatives of the Alien Property Custodian in New York, the committee recommended the formation of a corporation, to the capital of which any member of the Institute or other chemical associations is eligible to subscribe, the subscriptions to the stock to be represented by a preferred stock paying 7% dividend and the common stock to be issued to such persons and placed under such restrictions by way of a voting trust or otherwise, as may seem expedient to the representatives of the organizations and companies concerned and to the Alien Property Custodian, to insure the administration of the corporation along the lines directed. The proposed corporation will purchase from the Alien Property Custodian, at a reasonable price to be agreed upon, all of the enemy owned U. S. Patents relating to dyes, intermediates, pharmaceuticals, chemicals and chemical apparatus, and will issue licenses at a uniform and low rate of royalty to applicants who can demonstrate their thorough Americanism. The license fee received by the corporation will be used first, for the operating expenses of the corporation, including the necessary litigation, and second, to retire the preferred stock. After the preferred stock is retired, the license fee will be reduced, so as to provide only sufficient funds to take care of the operating expenses of the corporation.

In conclusion it might be stated that the members of the committee offered to the Alien Property Custodian the services of their respective patents counsel, gratis, and the committee asks for the cooperation of the patents counsel of the members generally in this work. Each member of the Institute will shortly be asked to signify the amount of his subscription to the capital of the proposed corporation and it is hoped and desired that every member of the Institute will participate.

Pursuing the matter a step further, your committee had a conference with the Executive Committee of the Manufacturing Chemists Association in company with Mr. J. H. Choate, Jr., and Mr. Ramsay Hoguet, representing the Alien Property Custodian. The result of this conference was a resolution endorsing the plan and promising cooperation.

Respectfully submitted,

THE COMMITTEE,
(M. R. POUCHER,)
Chairman.

Judge Laffey, Mr. Hoguet, and Mr. Choate supplemented the above report, and in reply to questions directed to them, explained legal and practical matters in reference to the carrying out of the plan.

The long discussion resulted in the following motion being unanimously adopted:

RESOLVED—

That the report of the Executive Committee be approved and that the Executive Committee be empowered to enter into negotiations and take whatever steps are necessary to carry out the recommendations contained in the report.

Following the above resolution, and as an earnest of their intention to subscribe and become stockholders in the proposed holding Company the following members there and then signed a subscription memorandum as follows:

The Sherwin-Williams Co., Walter Cottingham	$100.00
Rector Chemical Co., Marx Hirsch	100.00
Althouse Chemical Co., C. Scott Althouse	100.00

American Aniline Products, Inc.,	Paul Nobbe	$100.00
Chemical Company of America,	C. Kendall	100.00
Consolidated Color & Chem. Co.,	H. A. Metz	100.00
Central Dyestuff & Chem. Co.,		100.00
H. A. Metz Laboratories, Inc.		100.00
The Dow Chem. Co.,	J. T. Pardee	100.00
Dicks, David Co., Inc.,	B. F. Welton	100.00
Dye Products & Chem. Co.,	Clarence K. Simon	100.00
Essex Aniline Works, Inc.,	P. Kent, Jr.	100.00
Grasselli Chem. Co.,	J. M. Matthews	100.00
The Heller & Merz Co.,	August Merz	100.00
National Aniline & Chem. Co., Inc.,	Wm. Miller	100.00
Merrimac Chem. Co.,	S. W. Wilder	100.00
E. I. duPont de Nemours & Co.,	M. R. Poucher	100.00

The representatives of the following firms stated they would discuss the matter with their firm and advise later:

John Campbell Company,
Naugatuck Chemical Company,
Transatlantic Chemical Corp.

Lieut. Jones, representing the War Trade Board, was then introduced. He said the War Trade Board were compiling price statistics which would be of value to the Tariff Commission. A certain number of Crudes, Intermediates, and Coal-Tar Dyes had been selected and it was the purpose to collect and tabulate a record of average prices for the years 1913 to 1918, inclusive. He said further he had seen a number of manufacturers in person who were quite willing to cooperate and furnish information; and at the suggestion of Mr. Bennett, he came to this meeting to solicit the cooperation of all members of the Institute.

The members present assured Lieut. Jones of their readiness to furnish him with their prices, and thereupon each member was handed a questionnaire and requested to mail same to the Secretary, 320 Broadway, N. Y. City, who would forward same to Lieut. Jones.

The Chairman announced that the Executive Committee had prepared and authorized the printing of a Pamphlet which would be the beginning of a publicity campaign, the purpose of which is to educate the public concerning American Dyes. The pamphlets will be distributed by the Institute, and if any member should desire extra copies for his own use he will communicate with the Secretary.

The Chair also announced that the Secretary of Commerce had appointed Mr. Henry Wigglesworth a special trade commissioner to go to Europe, and report on conditions in the Chemical and Dyestuff Industry. Mr. Wigglesworth replied and stated he was going as the representative of the Government and all his reports would be made direct to the Department of Commerce. He also said it was intended to develop a closer cooperation between the Department of Commerce and those engaged in the Industry, and while he could not undertake to report or reply to any inquiries except those of the Secretary of Commerce, it would be very desirable to receive suggestions especially in regard to Dyestuffs. To this end he recommended that the Institute appoint a committee to cooperate with the Department of Commerce and forward any such suggestions or recommendations to the Department.

On motion it was unanimously

RESOLVED—

That the American Dyes Institute desires to express its approval of the appointment of Mr. Henry Wigglesworth by the Secretary of Commerce, as a special trade commissioner to go to Europe in connection with the study of conditions in the Chemical and Dyestuff Industry.

Attention was called to the fact that the President, Mr. W. H. Cottingham, was sailing for Europe on the following day, and all joined in wishing him a safe voyage.

The next meeting of the Institute was set for Friday, March 7th, 1919, to be held at the Hotel Biltmore, New York City, at 1:00 P. M.

There being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,
HED:IF. *Secretary.*

PLAINTIFF'S EXHIBIT No. 529.

An Executive Committee meeting of the AMERICAN DYES INSTITUTE was held on Monday, February 17th, 1919, at the office of the Institute, Room 1007, #21 East 40th Street, New York City, at 3 P. M.

Present: C. Cyril Bennett, Secretary; Mr. M. R. Poucher, Dr. J. M. Matthews; Mr. August Merz, Mr. Baldwain (Natl. Anil. & Chem. Co.) and Mr. Gregg of the Du Pont Co.

The chief matter under discussion was the formation of THE CHEMICAL FOUNDATION INCORPORATED.

Mr. Poucher briefly outlined the facts concerning the stock, subscriptions, etc.

Mr. Gregg read the draft of the Certificate of Incorporation.

Mr. Bennett went through the list of the membership of the Institute, assigning to each member present, a number of concerns whom they are to interview relative to obtaining their subscriptions to the stock of the CHEMICAL FOUNDATION, INCORPORATED.

Mr. Poucher stated that the formation of this company would materially aid in putting through the proposed import license measure.

Meeting adjourned 4:30 P. M.

PLAINTIFF'S EXHIBIT No. 530.

A meeting of the Executive Committee of the American Dyes Institute was held on Friday, February 28th, 1919, at 2 P. M. in Room 1007, #21 East 40th Street, New York City.

Present: C. Cyril Bennett, Secy., Mr. H. E. Danner, Treas., Mr. M. R. Poucher, Mr. F. M. Fargo, Jr., Dr. J. Merritt Matthews, Mr. August Merz and Mr. W. T. Miller.

The Membership Applications of the Rector Chemical Co. Inc. and Atlantic Dyestuff Co. were recommended for acceptance, to be brought before the meeting of the Institute to be held on March 7th.

The resignation of the Beacon Color & Chemical Co. was recommended for acceptance, to be brought before the meeting of the Institute to be held on March 7th.

The matter of the invitation from The National Foreign Trade Council to appoint delegates to participate in the Sixth National Foreign Trade Convention to be held at The Congress Hotel, Chicago, Ill., April 24th to 26th, was discussed, and it was decided to invite Mr. Hilton of the Ault & Wiborg Co. and Mr. Martin of the Sherwin-Williams Co., to attend the Convention. The matter to be again brought up at the meeting on March 7th.

The matter of subscriptions to the stock of The Chemical Foundation, Inc., was discussed, and Mr. Poucher informed the Committee of the subscriptions received to date.

The Treasurer's report showed that to date twenty-one members had remitted their $250 dues and that The Ault & Wiborg Co. had paid their assessment of $2750.

Discussion of the method of collecting the proposed assessments was held, but no definite course decided upon.

The Committee expressed the desire that the Accounting Committee meet at any early date, with the view to acquainting the members of the Institute with their recommendations on the subject of amortization and obsolescence, and the Secretary advised that he would endeavor to arrange a meeting for next week.

Meeting adjourned at 4:00 P. M.

PLAINTIFF'S EXHIBIT No. 531.

Minutes of Meeting
American Dyes Institute

March 7th, 1919.

A regular meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Friday, March 7th, 1919.

Luncheon was served at 1:00 P. M., after which the meeting was called to order by Mr. August Merz of the Heller & Merz Company.

The following were present:

American Aniline Products, Inc.	Mr. Paul Nobbe
Butterworth-Judson Corp.	Mr. Wm. H. Clark Mr. McIntosh
Consolidated Color & Chem. Co.	Mr. H. A. Metz
Dicks, David Co., Inc.	Major B. F. Welton
E. I. duPont De Nemours & Co.	Mr. M. R. Poucher Mr. E. V. Patterson Mr. H. G. Stephenson Mr. Gregg
Dye Products & Chem. Co.	Mr. Lowenthal Mr. C. K. Simon

Essex Aniline Works, Inc.	Mr. Phineas Kent, Jr.
Grasselli Chem. Co.	Dr. J. M. Matthews
	Mr. Cashman
The Heller & Merz Co.	Mr. August Merz
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo
Merrimac Chem. Co.	Mr. S. W. Wilder
National Aniline & Chem. Co.	Mr. W. T. Miller
	Mr. A. H. Jacoby
Naugatuck Chem. Co.	Mr. Wm. Valentine
Sherwin-Williams Co.	Mr. J. O. Hasson
Transatlantic Chem. Co.	Mr. Stevenson

Mr. Chatfield and Mr. Nugent, representing the War Trade Board were also present.

Counsel, Mr. Arthur J. Eddy, and Secretaries, Mr. C. C. Bennett and Mr. H. E. Danner, also attended.

Inasmuch as a copy of the minutes of the previous meeting had been sent to all members and there were no corrections, on motion, the reading of same was omitted and they stood approved.

Secretary reported as follows:

Secretary's Report

The following members are reporting price information covering Contracts, Orders, and Quotations, and the information filed since the Secretary's last report is as follows:

	Contracts	*Orders*	*Quotations*	*Total*
Marden, Orth & Hastings Corp.		190	216	406
Sherwin-Williams Co.		239	48	287
E. I. duPont de Nemours & Co.		349	441	790
Dicks, David Co., Inc.		128	82	210
Dow Chemical Company	1	10	41	52
	1	916	828	1745

The total number filed to date is 8,796, as indicated below:

Marden, Orth & Hastings Corp.	95	3227	1827	5149
Sherwin-Williams Co.	74	366	339	779
Hydrocarbon Chem. Prod. Co.	0	1	27	28
E. I. duPont de Nemours & Co.	105	865	756	1726
Frank Hemingway, Inc.	0	1	9	10
Dicks, David Co., Inc.	0	439	290	729
Dow Chemical Co.	13	95	265	373
Certified Chem. Corp.	1	1	0	2
	288	4995	3513	8796

The total number of reports filed covers approximately 2,181 customers, of whom 376 have business relations with two or more of the members reporting.

Since the Secretary's last report there have been 18 direct exchanges covering similar products quoted to the same customer, and 12 direct exchanges covering similar products sold to the same customer. None of the above quotations resulted in an order.

On motion, the above report was accepted as read.

The Chairman then introduced Mr. Chatfield, and Mr. Nugent, representing the War Trade Board, who explained briefly the desire of the War Trade Board to co-operate with American industries. They spoke of radical measures necessary during the war, in respect to shipping both for export and import. Now that the necessity of shipping and transporting only those things necessary to the prosecution of the war was being relieved, the Board was receiving many applications for import licenses. They spoke particularly of applications for licenses to import Swiss Dyes, which at the present time were held in suspense because of a belief that they were manufactured from German intermediates.

It was pointed out that the Board were desirous of doing that which was best for the Color Industry in this country, but in order to do this they suggested the cooperation of practical and fair-minded men to the end that the Board may receive reliable and dependable information as to the manufacture of Swiss Dyes, it being the desire of the War Trade Board to ascertain definitely, if possible, whether or not these Dyes were manufactured in whole or in part from German intermediates.

A long discussion followed, and, on motion of Mr. Miller, seconded by Mr. Poucher, it was resolved that the Chair appoint a committee of three to cooperate with the War Trade Board in the matter of importation of Swiss Dyes.

On motion of Mr. Miller, seconded by Mr. Lowenthal, it was further

> *Resolved—That the committee to be named should be prepared to go to Washington with Mr. Nugent on Sunday evening and consult with the War Trade Board as to how the committee could be of practical assistance to the War Trade Board.*

The Chair then appointed Messrs. W. T. Miller, F. M. Fargo, Jr. and August Merz, as a committee of three to cooperate with the War Trade Board in the matter of importation of Swiss Dyes.

On motion of Mr. Miller, duly seconded, a unanimous vote of thanks was extended to Mr. Chatfield and Mr. Nugent for their courtesy in appearing at the meeting, and for their suggestions.

The Executive Committee reported that copies of pamphlet No. 1 had already been mailed to the consumers represented in the Dyeing and Finishing Industry; also to the consumers represented in the Garment Association, and it was proposed that the Secretary would further distribute these pamphlets to members of

The National Wholesale Dry Goods Ass'n.,
The National Retail Dry Good Ass'n.,
The National Clothiers Association,
The Southern Wholesale Dry Goods Association,

and possibly other bodies representing consumers of Dyestuffs.

It was also announced that the Secretary would forward to each member of the Institute 50 copies, and that additional copies could be obtained from the Secretary, if required.

Announcement was also made of the receipt of a resignation from the Beacon Color & Chemical Company, of Boston, Mass. The Executive Committee recommended the acceptance of this resignation, and on motion, the resignation of the Beacon Color & Chemical Company was received.

The following applications for membership were also reported:

Rector Chemical Company, Inc., New York City.
Atlantic Dyestuff Company, Boston, Mass.

The above applications had been acted upon by the Executive Committee and the firms were recommended for election. On motion, duly seconded, the Secretary was instructed to cast one ballot for the unanimous election of the above mentioned firms to membership in the American Dyes Institute.

Report of the Trade Committee—Mr. Fargo, Chairman.

Mr. Fargo reported that subsequent to a meeting of the Trade Committee on December 18th, 1918, the Committee had written to the members of the Institute as follows:

> "Your Trade Committee sees the necessity of the adoption of uniform terms by reason of the

> fact that it is very possible to use terms which include either unusually large cash discounts or long time for payment, as a means of cutting prices, which would inevitably lead to a wide variation in terms, and would certainly lead to large buyers dictating, in many cases, the terms under which they would buy.
>
> "It is certainly most desirable for purposes of accounting, collection and uniformity of practice, that we have among the members of this Association, terms which are uniform or as nearly so as can be definitely agreed upon."

In the above letter they had proposed uniform terms, and had requested the members to advise as to their attitude. The members had responded and in general had approved of the uniform terms suggested, and, therefore, Mr. Fargo offered the following resolution:

> "*Resolved*—That it is the sense of this Institute that all buyers, large and small, should be treated on a footing of equality in the matter of terms and conditions of sale, and that all unfair discrimination between buyers should be discontinued; therefore, it is recommended that members of the Institute and all manufacturers of Dyes and Intermediates adopt uniform terms of 30 days net or 1% discount ten days from date of invoice; that these terms apply to each and every sale and invoice, with the exception of cases where the customer has in force rules for payment of merchandise invoices, such as '10th of month following purchase' or '15th of the month following purchase,' and where such rule is an old and well established practice, which can hardly be discontinued or varied from without very considerable inconvenience and extra accounting expense."

There followed a long discussion, after which, on motion, the above resolution was adopted.

As it was apparent from the discussion that while the members present all had standard terms, they, at the same time, granted exceptions to same, and furthermore, inasmuch as a number of the members of the Institute were not present, and for the sake of accuracy and a clear understanding as to what terms were being given by each member, the Secretary was instructed to send a copy of the above resolution to each member and inquire if the member would be willing to report to the Secretary any variations he made to the above mentioned terms, it being understood that this was in no way connected with the Open Price Plan, and that the reports would be filed without naming the products or the prices.

It was further understod that those who did file this information would receive like information covering competitors' reports.

The Treasurer reported as follows:

February 1st, 1919, Balance	$6578.60
Income During February, 1919	15400.00
Total	$21978.60
Expenditures	8028.09
Balance on hand March 1st, 1919	$13950.51

The Secretary announced receipt of an invitation from the National Foreign Trade Council, inviting the Institute to appoint a delegate to participate in the Sixth National Foreign Trade Convention to be held in Chicago, on April 24th, 25th, and 26th.

In reference to the above, the Executive Committee had asked Mr. Hilton of the Ault & Wiborg Company, and Mr. Martin of the Sherwin-Williams Company, to represent the Institute.

The following proposed amendments to the By-Laws and Constitution, which had been sent to each member, were unanimously adopted.

Proposed Amendment to Article III of the Constitution

Article III

Officers

Section 1. The officers shall be a President, a Treasurer and one Secretary for the Open Price Division of the Institute, and one Secretary for the General Work of the Institute.

The selection of the Secretaries, together with their compensation, shall be named by the Executive Committee, subject to the approval of the Institute; the Executive Committee may in its discretion combine the work of the two Secretaries in the office of one Secretary.

Section 2. There shall be an Executive Committee consisting of the President and seven members.

The Executive Committee shall have power to increase its number.

The Executive Committee shall have the selection of the Secretary or Secretaries, the fixing of their compensation and also the retaining of counsel at such compensation as may be agreed upon—all subject to the approval of the Institute.

Section 3. A Board of Governors, which will include the members of the Executive Committee, and will represent as nearly as possible as many different states, and as many different branches of the Industry as possible. The Board of Governors will name the members of the Executive Committee and unless otherwise provided by resolution of the Institute, or the Board of Governors, the members of the Executive Committee and the members of the Board of Governors will hold office for one year or until their successors are appointed.

Proposed Amendment to Sec. 2 of the By-Laws

SECTION 2. *Board of Governors.* It shall be the duty of the Board of Governors to name the members of the Executive Committee, and perform such other duties as may be assigned to them by the Institute.

Proposed Amendment to Section 4 of the By-Laws

SECTION 4. *Secretary.* It shall be the duty of the Secretary to keep a careful record of the transactions of the Institute and of the Executive Committee, to notify all members at least five days in advance of the times and places of all meetings, to examine all bills and countersign all orders on the Treasurer, to conduct correspondence, to collect information contemplated in the constitution and reporting plan, and to perform such other duties as may be assigned to his office.

In the event two Secretaries are named by the Executive Committee, it shall be the duty of one Secretary to perform such duties in connection with the Open Price Division as may be assigned to his office by Executive Committee or the Institute, and it shall be the duty of the second Secretary to perform such general and other duties as may be assigned to his office by the Executive Committee or the Institute.

Proposed Amendment to Section 5 of the By-Laws

SECTION 5. *Executive Committee.* The Executive Committee shall have the management of the affairs of the Institute, and, subject to the approval of the Institute, fix the dates and amounts of assessments. They shall also, subject to the approval of the Institute, fix the compensation and terms of employment of the Secretary or Secretaries, employ counsel, and provide for such other expenditures as may be necessary.

The next meeting of the Institute was set for

Friday, April 4th, to be held at the Hotel Biltmore, New York City, at 1:00 P. M.

There being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF

PLAINTIFF'S EXHIBIT No. 532.

A meeting of the Executive Committee of the American Dyes Institute was held on Friday, March 14th, 1919, in Room 1007, #21 East 40th Street, New York City.

Present: Mr. C. Cyril Bennett, Secy., H. E. Danner, Treas., Dr. J. Merritt Matthews, Mr. August Merz, Mr. F. M. Fargo, Jr., Mr. W. T. Miller and Mr. M. R. Poucher.

Meeting opened at 10:30 A. M.

The matter under chief discussion was The Chemical Foundation Incorporated.

It was decided to send Night Letters (confirmed by mail) to all the subscribers to the stock of The Chemical Foundation Incorporated, asking payment of 60% of the subscription, and the Secretary was instructed to do so.

Pending decision of the subscription of The National Aniline & Chemical Company the meeting was adjourned at 12:00 o'clock until 4 P. M.

A 4 P. M. the subscription list was added up and showed a total subscription of $462,500 to which The National Aniline & Chemical Co. added $37,500, making a total of $500,000 the capitalization amount.

The National Aniline & Chemical Company reported their willingness to underwrite to the extent of $37,500 with the understanding that later on they would be willing to discuss adjusting this sum with any other member who cared to either increase or decrease the amount of their subscription.

Meeting adjourned at 5 P. M.

PLAINTIFF'S EXHIBIT No. 533.

A meeting of the Executive Committee of The American Dyes Institute was held on Friday, March 21st, 1919, in Room 1007, #21 East 40th Street, at 2 P. M.

Present: C. Cyril Bennett, Secy., H. E. Danner, Treas., Dr. J. M. Matthews, Mr. M. R. Poucher, Mr. August Merz and Mr. W. T. Miller.

Mr. Poucher moved that The American Dyes Institute become members of the U. S. Chamber of Commerce. Seconded by Mr. Miller, and carried.

Mr. Bennett advised the Committee that Mr. Nugent of the War Trade Board wished someone to go down to Washington with regard to the matter of importation of Swiss dyes.

Mr. Miller informed the Committee that he anticipated going to Washington next week, and he was requested to take up the matter with the War Trade Board. He stated that he would do so.

Mr. Bennett called the attention of the Committee to the fact that he had mailed to all members of the Institute, bills for their respective Assessments, and gave each member of the Executive Committee his respective bill, requesting that payment of same be made promptly, in view of the shortage of funds on hand.

Mr. Danner informed the Committee that Mr.

Choate (of Alien Property Custodian's office) suggested having an officer of the Institute entrusted with the keeping of the subscriptions, as he preferred not to do so. (Subscriptions to Chemical Foundation, Inc.)

Mr. Miller moved that a list of the patents purchased by The Chemical Foundation, Inc., be sent out to prospective subscribers, with the view to securing additional subscriptions. Seconded by Mr. Poucher, and carried.

Mr. Danner called the attention of the Committee to recent correspondence with The Sherwin-Williams Co. re the latter's advance of $1000.00 towards the operating expenses of the Chemical Foundation Inc. The Sherwin-Williams Co. wished to know whether this amount would apply against their subscription to the stock, and Mr. Danner informed them that same was regarded as a loan, to be returned when the financial matters of the organization were settled. Mr. Danner wished to know how soon he might expect to be able to repay this loan; also the various bills he states he has accumulated.

Dr. Matthews suggested to Mr. Danner to make up a bill incorporating the items of expense incurred, and submit it to the Chemical Foundation, Inc. Mr. Danner stated he would do this as soon as he received some definite information in connection with the expenses entailed in the Washington end of the work.

Mr. Danner also informed the Committee that in communication with the Collector of Internal Revenues, he informed them that as the American Dyes Institute was not an incorporated organization for profit-making, they were not subject to taxes.

Meeting adjourned at 4:30 P. M.

PLAINTIFF'S EXHIBIT No. 534.

A meeting of the Executive Committee of the American Dyes Institute was held on Friday, March 28th, 1919, in Room 1007 #21 East 40th Street, New York City, at 2 P. M.

Mr. E. V. Patterson of the E. I. duPont de Nemours & Co. was requested to act as Chairman.

Present: Mr. E. V. Patterson, Mr. C. Cyril Bennett, Secy., Mr. H. E. Danner, Treas., Mr. W. T. Miller, Mr. August Merz and Dr. J. Merritt Matthews. Mr. F. M. Fargo, Jr., was present for a short while.

Dr. Matthews read to the Committee a paragraph from a letter in his possession, relating to the shipments of intermediates from Switzerland.

Mr. W. T. Miller moved that the matter be referred to the Department of Commerce for their attention. Motion was duly seconded and carried.

Mr. Bennett brought before the Committee the resignation of H. Kohnstamm & Co. and inquired if any of the members were well enough acquainted with this firm to endeavor to induce them to remain in the Institute. Mr. Miller offered to take up the matter with H. Kohnstamm & Co., and he was requested to do so.

Mr. Bennett requested Mr. Patterson to inform Mr. Poucher that the reason for the Sherwin-Williams' subscription of $5000 to the Chemical Foundation, Inc., was due to the fact that Mr. Martin (of the Sherwin-Williams Co.) on receiving request for subscription, 'phoned Mr. Ault of The Ault & Wiborg Co. enquiring as to the amount of the latters' subscription, on which information he based his decision for the amount of the subscription of his company.

Mr. Miller, as Chairman of the Committee appointed to go to Washington on March 9th to confer with the Department of Commerce on the matter of the importation of German dyes, reported that the Committee called on Mr. Cutler of the Department of Commerce relative to cable from Mr. Wigglesworth, which cable enquired as to the attitude of the Institute on the matter of allowing German dyestuffs to come out of the Rhineland section. The Committee asked Mr. Cutler to transmit a cable prepared by the Committee, which cable, however, was not sent, but the one attached forwarded in its place.

The Committee was asked if they could lay claim to the attitude conveyed in their proposed cable, as being the attitude of the entire Institute, by possessing the signatures of all their members, and upon being informed that the Committee did not have these signatures on hand, Mr. Cutler advised that he would confer with the War Trade Board on the matter of the cable, before dispatching same.

Mr. Miller stated, with reference to the mention in the cable finally sent—"Dyes Institute is general speaking against importation of German Dyes" that he is of the opinion the War Trade Board inserted this phrase.

Discussion followed on the inadvisability of having an indifferent "Inter-allied committee" control exports from Germany, in preference to having our own Licensing Board.

Mr. Miller stated that he expected to be again in Washington on Monday, and would see Mr. Cutler again with regard to this matter.

Dr. Matthews suggested to Mr. Miller that in talking with Mr. Cutler in Washington, he be impressed with the importance of having a body of men control the importation of dyestuffs into this country, with a view to taking care of the country's individual needs, rather than leave the matter in the hands of a committee who cannot meet conditions in this country as can a board constituted in this country.

Mr. Patterson advised Mr. Miller that he could inform Mr. Cutler now that instead of the seventy-two signatures of Textile manufacturers previously attached to the memorial sent to the President, one hundred and fifty signatures had been obtained, which additional names include some of the most prominent mills in the vicinity of Boston, Providence, Philadelphia and New York. Mr. Patterson was requested to mail this list of names to Mr. Miller at his Washington hotel, which he said he would do.

Mr. Bennett advised Mr. Miller that he could undertake to claim that the entire Institute was in favor of such a proposal as above-mentioned, and that every member had at some time or other signified his approval; that the term "generally speaking" was insufficient to express the attitude of the Institute on this matter; that the consumers were in sympathy with the manufacturers of dyes in their efforts to maintain this most essential industry in this country, and that such procedures as the importation of dyes into this country ought to be regulated by American bodies, not any foreign "inter-allied committee."

Mr. Bennett informed the Committee that Mr. Hilton of The Ault & Wiborg Co. who had been requested to attend the Sixth National Foreign Trade Convention of the National Trade Council, to be held in Chicago on April 24, 25th and 26th, was unable to do so, and requested that another delegate be sent for the Institute. Mr. Miller stated that he would ask their Chicago representative to attend the Convention.

Mr. Bennett brought before the Committee the matter of a recent communication from the Commonwealth Color & Chemical Co. relative to their joining the Institute. Mr. Bennett advised that at some time in the past this concern was in the hands of the Federal Trade Commission on some unfair practice, and asked the Committee for their advices in connection with the application of this concern for membership.

Dr. Matthews suggested that a letter be written to the Federal Trade Commission endeavoring to secure from that body any information regarding this concern's trade practices, and be guided by such information in the matter of advising this concern as to their application for membership.

Mr. Bennett stated that he would do this, and in the meantime advise the Commonwealth Color & Chemical Co. that their application would come before the next Executive Committee meeting.

Dr. Matthews brought up the question of compiling a list of the patents taken over by the Chemical Foundation, Incorporated, and Mr. Bennett informed the Committee that Mr. Choate was unable to have this done at present, but that the latter would get together with Mr. Garvan relative to the preparation of a small prospectus for canvassing the chemical field for more subscriptions to the stock.

Mr. Miller moved that By-Laws of the Institute be printed. Motion duly seconded and carried. Mr. Danner was instructed to have about 200 copies printed.

Mr. Patterson informed the Committee that Mr. Poucher had advised him, in connection with the forms issued by the Tariff Commission for information on cost of production of dyes, etc. (distributed among the members of the Institute by the Tariff Committee, Dr. J. M. Matthews, Chairman) that these forms were not suitable for the requirements of the duPont Company, and that it was not possible to give the information requested thereon, with the present machinery of the duPont Company.

Dr. Matthews stated that it was the desire of the

Tariff Commission that helpful criticism and recommendations be made on these forms.

Mr. Danner asked the Committee when they desired to hold their next Executive Committee meeting, in view of the fact that the next regular meting of the Institute was scheduled for Friday April 4th, at 1:00 P. M. It was thereupon decided to have the next meeting of the Executive Committee held on the same day, at 12:00 o'clock.

Mr. Danner informed the Committee that he had distributed about 1161 of the small pamphlets on the Dye Industry, among the Wholesale Drygoods Dealers (which list he had obtained from one of the mailing agencies); that he could obtain a list of the Retail Drygoods stores in the country, numbering 37,896, for $75.00, if it was the desire of the Committee to circularize this list. He stated that he had 10,000 small pamphlets and 5,000 large ones, of the latter of which none had as yet been distributed.

After calculating the cost of such circularizing, it was found that the cost would be entirely too high for the Institute to assume, and it was then proposed that a list of stores doing over $5,000 Business annually, be circularized. This list consisted of 18,000 names, and would cost $50. Mr. Bennett advised that he had a list of 2250 department stores rated over $100,000.

Mr. Patterson suggested that the figures and estimates of cost of the various proposed methods of circularizing be tabulated and brought before the next regular meeting of the Institute for discussion and decision, inasmuch as the undertaking would entail heavy expense, which the Executive Committee was not warranted in assuming before the approval of the Institute had been obtained.

Mr. Merz suggested that it might be advisable to use space in the trade papers for this publicity, but

Mr. Bennett stated that in his opinion it would not be advisable to use these mediums for this publicity.

Mr. Patterson's suggestion to put the matter before the members of the Institute for their approval, was favored by the Committee, and it was decided to have this done.

Mr. Miller suggested that these pamphlets be sent to all the public officials, the various Governmental departments, all Senators and Congressmen, etc. Mr. Danner was instructed to do this.

Meeting adjourned at 4:00 P. M.

COPY

INFORMAL

March 25, 1919.

Hon. William Phillips,
Asst. Secretary of State,
Washington, D. C.

Dear Mr. Phillips:

I should greatly appreciate it if the Department of State would send the following cablegram in cipher to the American Ambassador at Paris, France, for the Secretary in the absence of the Commercial Attache:

> "Following for Butler from Department of Commerce. Sixty-two. For Wigglesworth and Snow. Replying to your cable March twentyone from Paris the Dyes Institute is generally speaking against importation of German dyes. Textile manufacturers in general wish to foster American dye industries as a national necessity but this week have sent to the President a cablegram fully stating their position which you should see. The Alien Property Custodian has sold to the Chemical Foundation Incorporated former German patent rights which will presumably give protection here to the dyes so patented. See War Trade Board letter with enclosure dated March twelve

to McCormick. Departments of State, Commerce and War Trade Board are of the opinion that trade in commodities from German-occupied territory and Germany should be established slowly and cautiously, especially where it would tend to impose hardship upon key industries such as dyes which are becoming established as result of war necessities and whose continuance is now considered highly desirable from standpoint of national necessity. War Trade Board however feels that the control of importation of such dyes as it may be advisable or necessary to import in this country should be established by the proper interallied committees controlling exports from Germany rather than to have the control established by War Trade Board here which would be to a large extent a reversal of policy already established. Department Commerce would be willing to act with Chemical Foundation in judging foreign varieties least harmful to American industries if imported here."

Very truly yours,

Chief of Bureau.

PLAINTIFF'S EXHIBIT No 535.

MINUTES OF MEETING
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE

April 4, 1919.

A regular meeting of the Executive Committee of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Friday, April 4, 1919, at 12:00 o'clock noon.

The following members were present:

Mr. F. M. Fargo, Jr., representing Marden, Orth & Hastings Corporation.

have replied stating their willingness to report this information.

Secretary also requested the members to file a revised list of all Dyes and Intermediates now being manufactured or intended to be manufactured. To date seven (7) members have replied.

* * * * * * * *

On motion, the Secretary's report was accepted and ordered to be read at the general meeting to follow.

The Treasurer reported as follows:

March 1st, 1919, balance		$13,950.51
Received during March		4,259.12
		$18,209.63
Expenditures		5,261.99
Balance April 1st, 1919		$12,947.64
Accounts Receivable	$36,800.00	
Accounts Payable	10,833.32	

On motion the Treasurer's report was accepted and ordered to be placed on file and read at the general meeting.

Mr. Bennett stated that Mr. Choate, representing the Chemical Foundation, Inc., was preparing a prospectus for the Chemical Foundation, Inc., and he said that the office of the Chemical Foundation, Inc., was not as yet sufficiently organized to assume the work of soliciting subscriptions, and, therefore, it was suggested that the American Dyes Institute should offer to the Chemical Foundation, Inc. whatever services were necessary.

Thereupon it was agreed that Mr. Bennett, as Secretary of the American Dyes Institute, should offer to the Chemical Foundation, Inc., the facilities of his office, it being understood that the expenses of stationery, circularizing, etc., should be assumed by the Chemical Foundation, Inc.

Mr. Bennett then submitted a communication from the National Exposition of Chemical Industries which was to be held in Chicago during the week of September 22. After discussion, it was agreed that Mr. Bennett should make inquiries and report at a subsequent meeting what would be the expense involved, and whether or not the Institute could obtain desirable space.

The application of the Commonwealth Color & Chemical Company for membership in the Institute was discussed and it appeared from correspondence which Mr. Bennett had received from the Federal Trade Commission that this firm was a defendant before the Federal Trade Commission as regards giving gratuities, etc. Therefore it was

> *Resolved*—That Mr. Bennett should advise the Commonwealth Color & Chemical Co. that their application was pending awaiting the decision of the Federal Trade Commission.

Counsel thereupon advised the members that they should first submit to him all correspondence intended for the Federal Trade Commission.

Mr. Bennett submitted a letter dated April 4 from the National Foreign Trade Council (6th National Foreign Trade Convention to be held in Chicago April 24, 25 and 26, inclusive), and on motion it was

> *Resolved*—That a representative from the Sherwin-Williams Co., Mr. B. L. Miller, representing E. I. duPont de Nemours & Co. in Chicago, and Mr. Northridge, representing the National Aniline & Chemical Co. in Chicago should attend this convention as representatives of the American Dyes Institute.

Dr. Matthews read the following telegram together with his reply, all of which forms a part of the minutes of this meeting.

"1919 March 31 PM 5 32
A620 NY 40 Govt
W. A. Washington D C 5P 31
J. Merritt Matthews,
50 East 41st St., N. Y. City.

Commissioner Culbertson will address American Chemical Society in Buffalo on April Eight and wishes in advance knowledge of attitude of Dye Institute toward suggested Cost Investigation.

Thomas Walker Page, Vice Chairman"

"April 1, 1919

Thomas Walker Page,
Tariff Commission,
Washington, D. C.

Members of American Dyes Institute very sympathetic towards suggested cost investigation of products. They are working on the suggested forms and expect to soon have recommendations for you.

J. M. Matthews."

The Secretary submitted a letter received from R. Graupera Garrigo of Barcelona, Spain, and he was instructed to send a copy of same to all members.

Mr. Poucher submitted the following letter from Mr. Cutler, of the Department of Commerce, a copy of which is transcribed below and forms part of these minutes:

DEPARTMENT OF COMMERCE
WASHINGTON

April 1, 1919.

Mr. Morris R. Poucher,
E. I. duPont de Nemours Co.,
Wilmington, Dela.

My dear Mr. Poucher:

The time seems right, even pressing, for joint action between the dye industry in this country and the several Bureaus of the Government interested in standardization of colors to act together for the benefit of our home and our foreign trade. This belief, however, is based on lack of knowledge by me of any activities which you may have already undertaken in the industry. Dr. Stratton, of the Bureau of Standards, has been experimenting on the spectroscope for this purpose, and, together with the Bureau of Chemistry in the Department of Agriculture and the Department of the Interior, may be able to suggest something of permanent value to you. A conference between your Executive Committee and the several Bureaus, including this Bureau, on the commercial side of the question may be held at any time that you and one or more of the Committee can visit Washington with an entire day to devote to the subject. Necessarily my own part in it would be merely to establish the ground of our commercial interest and let the scientific discussion be taken up by the other people.

Very truly yours,
BSC/p/pws (B. S. Cutler) Chief of Bureau.

On motion the Secretary was instructed to advise Mr. Cutler that the matter had been referred to the Committee on Standardization.

Mr. Miller submitted a letter from Mr. Harold Otis, dated April 2, which letter enclosed a bill for $1586.85, covering professional services in connection with efforts toward the Amendment of the Federal Revenue Bill in the interest of the Dye Industry. On motion this matter was referred back to Mr. Miller with the request that he talk with Mr. Wigglesworth and take up the matter at a later date.

H. E. DANNER,
Secretary.

HED/IF

PLAINTIFF'S EXHIBIT No. 536.

A meeting of the Executive Committee was held on Friday, April 11th, 1919, in Room 1007, #21 East 40th Street, New York City, at 11:00 A. M.

Present: C. Cyril Bennett, Secy., Mr. H. E. Danner, Treas., Dr. J. M. Matthews, Mr. M. R. Poucher, Mr. August Merz, Mr. W. T. Miller, Mr. F. M. Fargo, Jr., and Dr. Wallach (Grasselli Co.).

First matter under discussion was the proposed exchange of food for German dyestuffs and Mr. Poucher briefly outlined the facts in connection therewith as follows:

"The amount of dyestuffs to be exchanged by the Germans for food is 12,000 long tons, which will be divided into three or four parts, to be distributed among Great Britain, France, Italy and the United States. It is proposed that the Chemical Foundation, Incorporated, be responsible for the character, kind and tonnage of dyestuffs to be brought into this country, to be assisted by the Advisory Board, selected last week. It was thought that this method was more satisfactory than placing it in the hands of the Department of Commerce, and the latter department agreed to it. It was desired that the responsibility for the importation of these German dyestuffs, in exchange for food, be placed in the hands of *one* specific body, and that body, The Chemical Foundation, Incorporated."

Mr. Miller advised the Committee that he was recently requested to go over the statistics of the Exports during the years 1908, 1913 and 1918 as compiled in a Report of Foreign Trade by the Chemical Alliance, and to pass on the Dye Section thereof. Mr. Miller informed them that he would prefer to have the matter placed before the American Dyes Institute for their recommendations, and requested that a copy of the report be sent to the Institute.

The question of the activity of the Economic Board abroad, on the matter of dyestuffs, was brought up for discussion and Mr. Poucher stated that in all their proposed methods of procedure the Department of Commerce seems to be entirely left out of the programme, that all cables and communications must go through the War Trade Board, from which board it does not appear that the desired information can be obtained; that the facts can be obtained from Mr. MacDowell (on the other side), but that his communications also come through the War Trade Board; that Mr. Wigglesworth, representing the interests of the American Dye Industry, is also handicapped in communicating with the proper bodies in the United States, by necessity to do so through the War Trade Board. Mr. Poucher, however, stated that he felt that our interests will be taken care of by the Economic Board abroad, but that we are not getting the true facts over here; also that he feels (that our interests will be taken care of by that Economic Board). Mr. MacDowell is in full sympathy with the American Dyes Industry, as represented by the American Dyes Institute and the Chemical Foundation, Incorporated.

The question then came up as to what method would be used in the selection of the German dyestuffs to be brought into this country, with the consequent proposal that a representative board of the American Dyes Industry be sent abroad to look after this end of the transaction.

In this connection Mr. Miller read copies of communications between himself and the War Trade Board and Department of Commerce—Attached, marked (A) (B) and (C).

Mr. Poucher stated that at the present time the

War Trade Board has the authority to grant exclusive blanket import licenses, which blanket import license would have to be granted to the Chemical Foundation, Incorporated, for the importation of the German dyestuffs, until the action of Congress on the Treaty of Peace.

Informal discussion of the possible injurious results of the distribution of these German dyestuffs in the United States brought up the expression of approval of the members of the Executive Committee, to the proposal that the entire shipment of German dyestuffs be destroyed, and the food granted in exchange donated to Germany, thereby eliminating the possibility of future trouble in the Industry. It was thought that the distribution of these German dyestuffs in this country would be absolutely suicidal to the American Dyestuff Industry.

Mr. Bennett brought before the Committee the membership application of the Gaskill Chemical Corporation. Upon motion, duly seconded and carried, the application of this firm was accepted.

Mr. Bennett brought before the Committee the invitation received from the Home Market Club of Boston, to attend their Dinner on Thursday, April 11th, and asked if a delegation was desired to attend the Dinner as representing the American Dyes Industry.

Upon motion, duly seconded and carried, it was resolved that Mr. Bennett represent the American Dyes Industry at the Dinner of the Home Market Club on Thursday, April 11th.

Mr. Bennett suggested that it would be very desirable to arrange to have Mr. Joseph H. Choate, Jr., address the guests at the Dinner, on the matter of the German activities in this country and the Alien Property Custodian's efforts in eliminating them, with the result of the formation of the Chemical Foundation, Incorporated. Mr. Bennett advised that he had gotten in touch with Mr. Thos. O. Marvin, Secy. of the Home Market Club, relative to inviting Mr. Choate to speak, and anticipated hearing from Mr. Marvin at an early date.

Mr. Poucher, upon consulting Mr. Danner, informed the Committee that up to date all members had been sent the Daily Bulletins of the Open Price Section, regardless of whether or not they were reporting their prices. This was the suggestion of Mr. Eddy, who stated that the method could be stopped . . . where the non-reporting members are concerned . . . at any time, without explanation, and the Bulletins sent only to those who were reporting; that the members enquiring why they did not continue to receive the Bulletins would be informed that only those members reporting would be sent Bulletins, the idea being to pave the way for more members in the Open Price Section.

Upon motion, duly seconded and carried, it was resolved that the sending of Bulletins to non-reporting members be stopped.

Mr. Poucher brought before the Committee the matter of the use of the statistical figures in the possession of the Tariff Commission, for publication, stating that inasmuch as they were not up-to-date, they were detrimental to the interests of the Industry, and therefore he took exception to the use of the figures for publicity. It was suggested that it might be advisable to eliminate the names of the firms who had given the figures in the past, and use merely the figures, with an X for the name of the firm.

This brought up the reiteration of opinion that it was absolutely essential for the development of the American Dyes Industry, that the Institute have in its possession as complete and detailed a record of production of various dyestuffs, by each member of the Institute, as possible. It was stated in all legislative measures to be enforced for the protection of the Industry it would be necessary to present the facts concerning the production of dyestuffs in this country, in order to substantiate any plea that might be made in behalf of the Industry.

Dr. Matthews expressed the opinion that unless we have statistics to back up our statements, we cannot hope to be successful in our proposed undertakings; that in the distribution of the dyestuffs to come into this country from Germany, or the granting of import licenses, it would be absolutely necessary to be able to show just what and how much of it was made in this country.

In this connection he also brought to the attention of the Committee that to the recent questionnaire circulated among the members by the Tariff Committee of the Institute (Dr. Matthews, Chairman), at the request of the Tariff Commission for suggestions, recommendations and criticism on their proposed Cost Investigation of Coal-Tar Products (for use in any proposed revision of the Tariff Act relating to dyestuffs and intermediates) only two members had replied, and as it was absolutely necessary to obtain this information, it was most important that the members give the matter their attention, whereupon he was requested to follow-up the members on this matter and endeavor to obtain replies from them.

Mr. Poucher again stated that it was essential that we have our own representatives on the board to regulate the importation of these German dyestuffs.

The question of the standardization of dyestuffs was brought up, and Dr. Wallach suggested that an expert chemist on dyestuffs be employed to establish standards of dyestuffs, which standards would be submitted to several large firms for their approval of such samples being established as standards, and then sent to the Department of Commerce with the statement that such are the standards for the colors represented.

Mr. Merz stated that it was not so essential that standards be determined, as it was important to establish a method of determining the strength of the various colors.

Mr. Merz was then asked who constituted the Standardization Committee. He informed the Committee as follows: Mr. August Merz, Chairman, Mr. H. J. McGrane (Holliday-Kemp Co.), Mr. A. G. Bruinier (formerly with Dicks, David Co.), Dr. J. M. Matthews (Grasselli Co.), Dr. E. W. Pierce (now with the Zobel Color Works), Mr. O. P. Anthony (Geo. H. Morrill Co.), and Mr. W. H. Watkins (National Aniline & Chemical Co.). In view of the fact that Mr. Bruinier was no longer connected with the Dicks, David Co. it was suggested that another member be substituted in his place.

Upon motion, duly seconded and carried, Dr. Roger Wallach of The Grasselli Company was elected as a member of the Standardization Committee.

Mr. Poucher then brought before the Committee the resignation of Mr. C. Cyril Bennett as Secretary of the American Dyes Institute, stating that in view of the inability of Mr. Bennett to devote to the work of the Institute the time required for the successful execution of the important work to be undertaken in the very near future, Mr. Bennett deemed it advisable to secure the services of a man who could devote all his time to the office of Secretary of the Institute; a man who was able to spend a great deal of time in Washington, where the developing of proposed measures would have to be undertaken, and in general be able to apply himself assiduously to the task of performing the manifold duties connected with the Secretaryship of the Institute.

General regret was expressed at the resignation of Mr. Bennett, but Mr. Bennett assured the Executive Committee that he was at all times ready to enlist his services in the fight for the establishment of the American Dyes Industry in this country, and that he anticipated being able to pull some ropes with the next Republican Congress, in favor of the Dyes Industry.

Mr. Poucher informed the Committee that the name of Mr. W. E. Corwine, now Secretary of the Clothiers' Association, was suggested as a desirable man to have as Secretary of the Institute, being a man of high standing in Washington, and knowing the ropes of legislative activity very well, having been connected with the enforcement of the Hill Bill. It was stated that inasmuch as the future work of the Institute would necessitate the Secretary's presence in Washington a great deal of the time, the securing of Mr. Corwine as Secretary was indeed commendable. It was cited that the proposed Import Licensing Plan would have to be put through as an Act of Congress, and the enlisting of legislative sympathy and support in this connection was a matter to be taken into consideration in the selection of a new Secretary for the Institute.

It was also expressed that for the success of the undertakings of the American Dyes Institute it was absolutely necessary to keep the Open Price Division of the Institute entirely separate from the general work of the Institute.

Upon motion, duly seconded and carried, it was resolved that Mr. Bennett confer with Mr. Corwine in an endeavor to make arrangements for the latter's acceptance of the Secretaryship of the American Dyes Institute, and report developments at the next meeting of the Executive Committee.

Meeting adjourned at 12:45 A. M.

(A)

Copy

Telegram

Washington, D. C.
11 2 P April 1st, 1919.

Mr. T. P. Miller (should be Mr. W. T. Miller)
Secy. Natl Aniline and Chem. Co., 21 Burling Slip NY
as member of Executive Committee you may be called upon at very early date to name varieties which may be imported with least prejudice to Industry here bearing in mind necessity of liberality on grounds of necessary exchange whether we comply or not conference welcomed at Washington any time.

B. S. CUTLER 1 48 P

(B)

Copy

Department of Commerce

Dear Sir:

As a first step in the selection of an advisory committee to the Secretary of Commerce for the purpose of ascertaining what foreign-made dyes may be imported into the United States without prejudice to the national and commercial policies already agreed upon, I hereby appoint you a member of a committee of two (acting with Mr. Joseph H. Choate) to submit to me the names of a committee representing the following organizations and interests:

Chemical Foundation, Inc.
American Dyes Institute.
American Chemical Society.
National Association of Finishers of Cotton Fabrics.
Silk Association of America.
American Assn. of Woolen & Worsted Mftrs.

My purpose is to make a choice of individuals who will instinctively entertain a comprehensive view of the problem rather than advocates of particular interests, even though they may stand for those interests in commercial association. Be good enough to have these names before me within the next thirty-six hours if possible.

Very truly yours,

Secretary.

Dr. William T. Miller,
c/o American Dyes Institute,
320 Broadway, New York, N. Y.

(C)

Copy
110 West 42nd Street
New York City
April 4th, 1919.

B. S. Cutler, Esq.
Chief Bureau of Foreign & Domestic Commerce
Department of Commerce
Washington, D. C.

In accordance with your request yesterday we beg to suggest the following gentlemen as representatives of the Dye Consuming Industry Mister Henry B. Thompson President National Cotton Finishers Association Three hundred twenty Broadway Mister Arthur S Draper President American Cotton Manufacturers Association Charlotte North Carolina also Chairman of the Council of the National and the American Cotton Manufacturers Association Mister Frank D. Cheney South Manchester Connecticut of the Silk Manufacturers Association Mister Franklin W Hobbs President Woolen Association Lawrence Massachusetts Stop As representatives of Chemical Industries

Mister M R Poucher Wilmington Delaware of Dupont Company Mister W H Watkins Buffalo New York National Aniline and Chemical Company Mister August Merz of Heller and Merz Newark New Jersey Stop These three gentlemen were nominated by American Dyes Institute at its meeting today also Doctor Charles H Herty past president American Chemical Society as representative of last named Society Stop We suggest naming four representatives of producers and four representatives of consumers instead of three each because all the gentlemen named seem to be of the greatest value on such a committee and because if we limit suggestions for representatives of producers to three we must leave out either one of the largest producers or all of the smaller producers or the representative of the American Chemical Society.

W. T. MILLER and
JOSEPH H. CHOATE, Jr.

PLAINTIFF'S EXHIBIT No. 537.

Minutes

Meeting, Executive Committee, April 18th, 1919.

A meeting of the Executive Committee of the American Dyes Institute was held on Friday, April 18th, at 2 P. M. in Room 1007, #21 East 40th Street, New York City.

Present: C. Cyril Bennett, Secy., Mr. H. E. Danner, Treas., Dr. J. M. Matthews, Mr. August Merz, Mr. W. T. Miller, Mr. F. M. Fargo, Jr., Dr. Roger Wallach; also Dr. Grinnell Jones of the U. S. Tariff Commission and Mr. Joseph H. Choate, Jr., of the Alien Property Custodian.

Mr. August Merz acted as Chairman.

Mr. Bennett introduced Dr. Jones, informing the

Committee that the purpose of Dr. Jones' visit was to discuss with the members the best method of assembling the cost data on the manufacture of Dyes and Intermediates desired by the Commission, as covered by the recent plans and letters circulated among the members of the Institute by the Tariff Committee.

Dr. Jones briefly outlined the political situation in Congress, with a Republican House; the Senate almost evenly divided, and the President's fourteen points providing for as little economic interference with foreign trade as possible. He stated that two things could happen: one, that the House could put through a very radical bill providing high rates of tariff for protection of the Industry, with possibly a licensing system, etc., which measures would be highly satisfactory to the dyestuff manufacturers, but with the Senate no action could be expected, as the Senate is evenly divided, and any measure proposed there would result in merely becoming a political record, but no legislative action could be expected; the other, in his opinion the only way of obtaining any aid in the way of protection, would be with the support of the Tariff Commission.

Dr. Matthews enquired if it is the intention of the Tariff Commission to compare the cost of manufacture here with the costs of manufacture abroad, and so base their recommendations for increase in tariff rates to be placed before the Ways and Means Committee. He stated that Dr. Taussig had always maintained that it was not within the function of the Tariff Commission to suggest any change in rates.

Dr. Jones replied that heretofore the Commission had no actual facts concerning costs, etc. in their possession, on which to base sound judgment, such information not having been available because of the fact that the manufacturers claimed lack of knowledge on the matter of cost of production, but that it was necessary to have this information as a working basis for further consideration.

Mr. Merz enquired if the costs of manufacture in this country were obtained, whether they could be compared with foreign costs of manufacture, it being unlikely that the latter information could be secured.

Dr. Jones advised that Congress would be certain to ask for that sort of information concerning production in this country, but that the Tariff Commission might have to inform Congress that the manufacturers themselves are unable to supply this information, conditions of production being so abnormal, etc. He further stated that if the Tariff Commission could submit a report to Congress, showing that costs are several times what the German costs were before the war, we would have more of a chance to put a bill through for higher rates, as the Republicans would be sure to ask for such information.

Mr. Miller enquired of Dr. Jones if the latter did not collect such information about a year ago, and Dr. Jones replied that the work was started about that long ago, at which time he made some preliminary investigations among individual concerns, but was informed that conditions were so chaotic then that the information was unobtainable and the Tariff Commission deemed it advisable to lay aside the matter for a time.

Dr. Jones stated that the Tariff Commission's attitude on this matter was briefly as follows: The Tariff Commission wants to know if it is the desire of the Dye Industry that they shall collect this data for presentation to Congress in connection with proposal for increase in tariff rates (or protection to the Industry in general) and if that was the case, whether the manufacturers would co-operate with the Commission in compiling these statistics.

Dr. Matthews stated that it was his opinion that the Institute could not accomplish very much in this connection, with the method now employed, as the members seem unwilling to disclose their costs to the Institute which is comprised of their competitors, but that the Tariff Commission would be in a better position to secure this data from the manufacturers direct.

Dr. Jones asked if it was thought that the plan of visiting the manufacturers, going over their accounts with their accountants, and having heart-to-heart talks with the manufacturers themselves, would produce better results than the efforts of the Institute as a whole to collect this data for the Tariff Commission and he was informed that it was the opinion of the Committee that this would be the better plan, and that the members would gladly co-operate with the Tariff Commission in this connection.

Dr. Jones showed the members the manner in which the Tariff Commission compiled cost statistics of the Sugar Industry.

In a general discussion of the difficulty of averaging the cost of manufacture of individual dyes . . . because of the fact that the overhead expenses, etc., could not be attributed to the cost of production of any one particular dye . . . Dr. Jones stated that it was necessary to pick a list of dyes and intermediates which would be typical of the Industry and represent the various types; such as some cheap intermediates and some expensive ones, etc. etc.

At this point Mr. Bennett interrupted by introducing Mr. Joseph H. Choate, Jr., of the Alien Property Custodian's office, who wished to bring some matter before the Executive Committee.

Mr. Choate explained that there was a good deal of difference of opinion here and abroad as to what German dyes should come into this country. He stated that a cable had been received from abroad, signed by

Mr. Baruch and Mr. MacDowell, the substance of which proposed to place in the hands of the Chemical Foundation, Inc., the control of the importation of German dyestuffs into this country, whereupon the War Trade Board, which has in its power the issuing of all import licenses, stated that it was not possible to grant an exclusive blanket import-license to the Chemical Foundation, Inc., as such an act would be "delegating the powers of the War Trade Board"; in other words "they disclaimed any purpose or power to act for the protection of American Industry."

Mr. Choate advised that Mr. Garvan (Alien Property Custodian) in his cabled reply, accepted the matter as it stood, but emphasized that we must have control of prices.

Mr. Choate further stated that the War Trade Board proposed to appoint an advisory committee, but if their plan is carried out, the selection of the dyes which are to come into this country will be undertaken by the War Trade Board itself, an unsympathetic body, disclaiming any purpose of protecting the Industry, and guided only by an advisory committee, selected by the War Trade Board itself, which may or may not be satisfactory to the Industry. He stated that in this manner there was nothing to prevent the War Trade Board from issuing such licenses as they may see fit, and, with no restraint, the field would again be laid open to German importers and their unscrupulous business methods. He admonished the committee that "something ought to be done."

The question was asked Mr. Choate as to whom the shipment of German dyes would be consigned, and Mr. Choate stated that he thought the best plan would be to have it consigned to the Secretary of Commerce, who would then re-consign it to the Chemical Foundation Inc. which would have to act as an agent of the Government in the matter.

Mr. Choate read to the Committee the cable of March 27th from Mr. Baruch and Mr. MacDowell.

Mr. Choate then brought before the Committee his draft of a reply to that cable, which he read to the committee. A passage in the cable referred to the "confessedly unsympathetic" attitude of the War Trade Board in "disclaiming purpose and power to act for protection of American Industry," which Mr. Choate explained as being the words of the War Trade Board.

Dr. Jones apologized for participating in the discussion of this matter but stated that he thought the phrase unfair, inasmuch as the War Trade Board, in his opinion, was at all times willing to do all in its power to aid an Industry, but by "disclaiming purpose and power to act for protection of American Industry," they evidently meant they had to limit themselves to such powers as were granted them by Congress when the Board was instituted.

Mr. Choate then changed the phrase in question and submitted it to the committee for their approval.

Dr. Matthews moved that the cable be sent in submitted form. Motion duly seconded and carried. It was ordered that the cable be sent; copy attached.

Mr. Choate left the meeting at the close of this matter.

Dr. Jones resumed his conference with the Committee on the matter of cost-investigation, informing the members that it appeared to him the thing to do would be for the Tariff Commission to go ahead with the work, with the assistance of an active committee of accountants, and work out the details of the best plan to present the facts to Congress, requesting the Committee to appoint a committee of accountants for this purpose.

He stated that in this work there were four points to be taken into consideration: (1) the period to be covered; (2) particular products to be selected; (3) arrangement of accounting details; (4) the best method of presenting the facts to Congress.

He suggested, upon inquiry, that the period to be covered be the first half of this year, because of the situation of the Tariff Commission on the subject of their appropriation for such work.

Dr. Wallach suggested that instead of conducting an investigation of cost of manufacture of individual dyes, the method of "lumping" production of intermediates and dyes be used, giving the Tariff Commission total figures; showing the products which are just starting to be manufactured, and those already perfected in. He stated that there are some experts in this country who would be able to inform the Tariff Commission with regard to the percentages the Germans used to produce at before the War, as compared with the cost of American manufacture. He stated that we would naturally compare "unfavorably" with the Germans in the cost of labor, research work, repairs, amortization, interests on invested capital, etc.

Dr. Jones reminded the committee that the difficulty in using averages or percentages arises from the fact that the Accountant of the Tariff Commission must swear to the figures he submits on the witness stand (sometimes before a hostile body), and therefore he must be absolutely accurate in the statistics he submits.

Dr. Wallach assured him that this would be the case, as the manufacturers would submit the statistics in dollars and cents. The other members of the Committee acquiesced in the assurance that the Tariff Commission would be given the privilege of verifying the figures by the books of the various manufacturers.

Mr. August Merz enquired if it is not within the province of the Tariff Commission to demand this information from such firms as would not be inclined to grant same on request, and Dr. Jones replied that while it was, the Tariff Commission was loathe to exert this power, assuming that the Industry would willingly submit the information desired, particularly in view of the fact that the result of the investigation would aid the Industry in securing some protection against foreign trade intrusion.

Following a general discussion of this matter, Mr. Danner summed up the attitude of the Executive Committee on this subject as follows:

"It is the sum of this meeting that in so far as possible, it is desirable that statistics covering costs of Dyes and Intermediates be collected by the U. S. Tariff Commission for the use of Congress in the forming of tariff legislation. It is therefore

> RESOLVED that the American Dyes Institute appoint a special committee to consult with the U. S. Tariff Commission as to the practical means of collecting and presenting such information."

Duly seconded and carried.

Upon motion of Dr. Matthews, duly seconded and carried, it was resolved that the committee of accountants be selected from the following firms: The National Aniline & Chemical Co., E. I. du Pont de Nemours Co., Heller & Merz, The Grasselli Chemical Co., Calco Chemical Co., Newport Chemical Works, Ault & Wiborg and the Sherwin-Williams Co.

Dr. Jones enquired as to Mr. Poucher's recent mention of exception taken to the Tariff Commission's publishing of statistics furnished by dye manufacturers some time ago, and was informed that the matter was discussed at the last Executive Committee meeting.

Mr. Miller informed the Committee that he had been visited by Mr. A. C. Harragin, Secretary of the American Trona Corp. who wanted to know if the

American Dyes Institute would co-operate with the potash people in procuring a licensing system.

Mr. Miller remarked that it was his recollection that some time ago a similar subject arose before the Institute, and the latter then deemed it inadvisable to have any other industry "hanging on to the tail of the kite of the Institute in the matter of securing the licensing plan."

Upon motion of Mr. Miller, duly seconded and carried, it was resolved that a negative reply be given to Mr. Harragin, and Mr. Miller was requested to attend to this matter.

Mr. Bennett brought before the committee Mr. W. E. Corwine's letter *re* his application for the Secretaryship of the American Dyes Institute, and Mr. Cottingham's telegram requesting that no action be taken in the matter until he had had an opportunity to confer with the Executive Committee *re* same, as he had another prospective candidate in view.

Mr. Merz suggested, in view of Mr. Cottingham's telegram, that the matter be held in abeyance until the Committee had consulted with Mr. Cottingham.

Upon motion, duly seconded and carried, the meeting adjourned at 4 P. M.

COPY

CABLE.........April 18th, 1919

MR. VANCE MCCORMACK
American Peace Commissioner,
Paris, France.

American Dyes Institute respectfully protests against the adoption of the present plan of War Trade Board for admission of German dyes subject only to control of War Trade Board acting under advice of committee appointed by it (Stop) If German dyes must be admitted the Institute cordially approves and advocates plan outlined in Baruch cable of March twenty seventh placing whole subject in control of Chemical Foundation (Stop) War Trade Board has expressly disclaimed purpose and power to act for protection of American Industry (Stop) Its plan provides no check on distribution (Stop) Even if only such dyes as are least likely to damage American manufacture are selected for admission nevertheless distribution carried on without carefully determining price time and conditions of sales so as to avoid injuring domestic producers will cripple native industry and unless the task is entrusted with full discretion to a responsible body like Chemical Foundation will open an easy path to restoration of old German importers and their unscrupulous business methods.

AMERICAN DYES INSTITUTE.

PLAINTIFF'S EXHIBIT No. 538.

A meeting of the Executive Committee of the American Dyes Institute was held on Friday, April 25th, 1919, at 2 P. M. in Room 1007, #21 East 40th Street, New York, N. Y.

Present: Mr. W. H. Cottingham, Pres., Mr. C. C. Bennett, Secy., Mr. Frank Hemingway, Mr. W. T. Miller, Dr. J. M. Matthews, Mr. M. R. Poucher and Mr. R. W. Hilton (The Ault & Wiborg Co.).

Mr. Hilton enquired of the committee if—in view of the fact that Mr. Ault was in China and he could not find it possible to come to the Executive Committee meetings—it would be agreeable to have Mr. Lichtenstein of Aniline Dyes & Chemicals Inc. (who sell the Ault & Wiborg products) represent them on the Executive Committee. After some discussion the

Committee stated that it would be inadvisable to have this representation, as the Aniline Dyes & Chemicals were importers and not manufacturers. It was decided that either Mr. Hilton or Mr. Davis would represent the Ault & Wiborg Co. on the Executive Committee in place of Mr. Ault.

Mr. Bennett brought to the attention of the Committee the proposed campaign for distributing the stock of the Chemical Foundation Incorporated throughout the chemical and allied industries, stating that it was primarily thought by Mr. Choate to be the duty of the underwriters to float this stock, but this was overruled by Mr. McKay and Mr. Corbett who stated that it was the function of the Chemical Foundation Incorporated itself to undertake the task of distributing the stock as widely as possible.

Mr. Hilton brought up the subject of competitors hiring chemists from one another, stating his case briefly as follows:

It has been the experience of his company on various occasions to invest a good deal of time, effort and money in the training and developing of young chemists, and that, when they have reached a stage of independent capability, despite the fact that they were practically "made" by the company in question, they would be snatched up by some competitor who offered them more compensation, in view of the fact that the employee was in some measure a trained chemist. He stated that it was the principle of his company not to hire any chemist who made application to them while in the employ of another concern, and that they had made certain agreements with some concerns not to break this rule, but there were some concerns who did engage men while in the employ of his company. He enquired if it were not possible to employ some method of eliminating this hardship on the manufacturers.

Mr. Hemingway stated that the methods of seeking better employment, used by some of the men making applications for changes, while in the employ of other concerns, were absolutely dangerous to the manufacturers; i. e., he related that he had the occasion to speak to one man who was looking about for a better job, and that this man, who had evidently had thousands of dollars spent on him by his concern in training him, was willing to "sell" his old employers by informing his prospective new employer on many confidential matters concerning production, etc. Mr. Hemingway likewise agreed that it was absolutely essential for the protection of the manufacturers that some measure be adopted for the elimination of this evil.

After some discussion among the members on the various phases of this evil, Mr. Hilton moved that

> The matter of hiring chemists from each other be brought before the Institute as a whole (at their next meeting) for discussion, and decision as to the best method of eradicating this harmful practice.

Duly seconded and carried.

Mr. Bennett brought before the meeting again the question of application of Mr. Corwine for the Secretaryship of the Institute. After some discussion it was decided to interview Mr. Corwine and he was requested to present himself at the meeting.

After the Executive Committee had interviewed Mr. Corwine, Mr. Cottingham introduced his proposed candidate for the office, Mr. W. H. Krause, associated with Law Offices of Harold J. Pack, Washington, D. C., who was interviewed in the same manner as was Mr. Corwine.

After the departure of both candidates the general opinion of the Committee seemed to be that Mr.

Corwine was better fitted for the position from the viewpoint of experience in Association work and Washington activities, whereas Mr. Krause was the younger and more aggressive of the two, but not nearly so well acquainted with the essential facts concerning Washington affairs. It was agreed that Mr. Corwine would be able to handle the Washington end of the proposed activity of the Institute within the next year very admirably, by virtue of his past experience both in legislative circles and his connection with the enforcement of the Hill Bill, which was a most commendable accomplishment, whereas Mr. Krause, while perhaps more desirable for a Secretary in years to come, would have to be trained, more or less, in the matter of handling our affairs in Washington within the next year.

Mr. Poucher held that inasmuch as our activities in Washington within the next year would be most crucial to the Industry, and would perhaps mean the establishment or destruction of the American Dyes Industry, it was essential that a man of Mr. Corwine's *experience* (which he claims is the only thing that will count in the next year, and enable us to accomplish anything) be obtained for the office of Secretary.

In view of the inability of the Committee to decide definitely on the selection of the new Secretary, it was decided to hold the matter over for another week, so that the Executive Committee may be enabled to look about for a man who would perhaps be able to meet the requirements of youth and aggressiveness on the one hand, and experience in legislative circles and association work on the other hand.

Dr. Matthews brought up the subject of appointment of accountants to collaborate with Dr. Grinnell Jones of the U. S. Tariff Commission on the matter of Cost Investigation, and it was decided that a meeting of these accountants be called for Friday, May 2nd, at 10 A. M., in the room of the Institute, 21 East 40th Street.

Meeting adjourned at 4:30 P. M.

(Copy)

CENTRAL BUREAU OF PLANNING AND STATISTICS
116 New Interior Building

Memo to: C. L. Reese, E. I. du Pont de Nemours Co., Wilmington, Del.

From: E. F. Gay, Director.

Subject: Statistical Report of the Chemical Alliance.

1. Enclosed you will find an early copy of the Statistical Report of the Chemical Alliance dealing with the World's trade in chemicals in 1908 and 1913 and such figures as are available for 1917. These tables were prepared in conjunction with the Central Bureau of Planning & Statistics, and for the time being must be regarded as *confidential.*

My purpose in writing to you is as follows:

We wish you to take up the subject of Coal Tar Intermediates, Dyes and Medicinal organic chemicals and give your opinion of the condition of:

(a) The present World trade in contrast with the period before the war.

(b) The United States manufacturing capacity, export trade possibilities now, in contrast v the period before the war.

(c) Any general observations you may care make in regard to the present condition of this line of chemical industry at this time so far as *domestic trade* is concerned.

(d) Should any special representation be made to the Peace Council regarding the particular branch of the industry you are reviewing.

(e) A statement giving your opinion of the possibilities of foreign trade so far as domestic organization is concerned independent of any Government action.

2. Your report on this subject will be forwarded to the Peace Council over your name, but will not be published. It will go before a committee consisting of three executive officers of the Chemical Alliance and three Government officers. This committee is not expected to make any changes in your manuscript, and will not do so in any case without consulting you. This Committee will simply supervise the reports in order to see that our Economic representatives in Paris receive sufficiently full information.

3. You understand that these reports should go forward as soon as possible. Will you kindly send two signed copies of your report to this office where it will be copied for use in the way indicated above.

4. Please be as brief as is consistent with the importance of the subject, and if possible forward your report within one week.

(Signed) EDWIN F. GAY,
Director.

(Copy)

Wilmington, Del., April 17th, 1919.

Mr. E. F. Gay, Director,
Central Bureau of Planning and Statistics,
116 New Interior Building,
Washington, D. C.

Dear Sir:

Our File RW-2275-A

Referring to your letter of no date, enclosing a copy of the Statistical Report of the Chemical Alliance dealing with the World's trade in chemicals in, 1908 and 1913, I will answer seriatim the questions you have asked.

1. (a) Question: The present World trade in contrast with the period before the war.

Answer: The following records of exports of dyestuffs show the increase from 1915 to 1918 inclusive, over pre-war conditions. Exports before the war were mostly dye-woods and various vegetable dyes. The exports of coal tar dyestuffs began in 1916 with the development of the coal tar industry in this country.

1900	$49,000	1910	$380,000
1901	394,000	1911	326,000
1902	531,000	1912	315,000
1903	620,000	1913	348,000
1904	518,000	1914	357,000
1905	475,000	1915	1,178,000
1906	491,000	1916	5,102,000
1907	487,000	1917	11,709,000
1908	438,000	1918	16,922,000

(b) Question: The United States manufacturing capacity, export trade possibilities now, in contrast with the period before the war.

Answer: The experience of Germany in the coal tar dye industry has shown conclusively that no country can succeed in the development of this industry without an export trade. This will be true of Great Britain and will also be true of the United States. Naturally the first effort put forth both in England and in the United States was to supply the needs of the home market.

We have now in the United States a development in the coal tar dye industry sufficient to make necessary a very substantial export trade, practically all of which development has been since August 1, 1914.

(c) Question: Any general observations you may care to make in regard to the present condition of this line of chemical industry at this time so far as *domestic trade* is concerned.

Answer: The American Dyes Institute put down two factors necessary for the upbuilding and maintenance of the coal tar industry in the United States: (1) the taking over of all enemy-owned chemical patents in the United States. This has been done by the Alien Property Custodian. A holding company known as the Chemical Foundation Inc. was formed, which has the unqualified support of the dyestuff and textile industries; see attached documents. (2) The licensing of imports for a substantial length of time, along the lines of the British regulation. Great Britain studied this problem for three years, and the final outcome was the plan for the licensing of imports for a period of ten years. The manufacturers of dyes, as represented by the American Dyes Institute and the Chemical Alliance, advocate a similar plan for the United States. The leading textile consumers have endorsed the plan; see attached copy of memorial to the President cabled to Paris March 25, 1919, with a full list of the signers.

It is proposed to place the authority for the carrying out of this plan, pending the ratification of the Terms of Peace by the Senate, in the Chemical Foundation, Incorporated, President, Mr. Francis P. Garvin, Alien Property Custodian. Following the carrying out of this plan will come the move for an Act of Congress to continue the plan for a fixed period.

(d) Question: Should any special representation be made to the Peace Council regarding the particular branch of the industry you are reviewing.

Answer: Representations should certainly be made regarding the plan of licensing imports, in accordance with this memorandum and the accompanying documents. As you will see from the foregoing, the matter is now well under way.

(e) Question: A statement giving your opinion of the possibilities of foreign trade so far as domestic organization is concerned independent of any Government action.

Answer: Up to this time there has been no organized movement among the coal tar dyestuff manufacturers in this country, such as has taken place in other industries under the Webb Act. The reason for this is that the demand has greatly exceeded the supply and up to this time the buyers from foreign countries have made their purchases here. Ultimately the dyestuff manufacturers in this country will have to seek the foreign markets.

2. The Manufacture of Coal Tar Dyes in Switzerland. Owing to the apparent connection between the dyes manufactured in Switzerland and the dye intermediates manufactured in Germany, I am attaching copy of a memorandum prepared by the American Dyes Institute and filed with the War Trade Board on March 11, 1919, concerning the issuing of licenses to import Coal Tar Dyes from Switzerland.

I am also attaching a letter and a copy of a memorandum of the American Dyes Institute of March 1, 1919, covering the recommendation of the Dyes and Intermediates Division of the Chemical Alliance, which were sent to Mr. Charles H. McDowell at his request for information in connection with this subject previous to his departure for Europe.

Yours very truly,

CHARLES L. REESE,

Chairman, Dyes & Intermediates Section,

CLR.S *Chemical Alliance Inc.*

Enclosures:

(1) Copy of the memorial Textile Industry to the President of the United States, endorsing the plan of licensing imports.

(2) Copy American Dyes Institute's memorandum of March 11 to the War Trade Board.

(3) Copy of my letter to Mr. McDowell forwarding him a letter addressed to me by Mr. Poucher of the American Dyes Institute.

(4) Prospectus and Certificate of Incorporation of the Chemical Foundation Incorporated.

PLAINTIFF'S EXHIBIT No. 539.

A special meeting of the Executive Committee of the American Dyes Institute was held on Wednesday, April 30th, 1919, at 2:45 P. M. in Room 1007, #21 East 40th Street, New York City.

Present: Mr. M. R. Poucher, Mr. F. M. Fargo, Jr., Mr. R. T. Baldwin, Mr. W. T. Miller, Mr. R. A. Shaw, Mr. August Merz, Mr. C. C. Bennett and Dr. C. Herte.

The special meeting was called for the purpose of looking over the lists of German dyestuffs (loaned to the Committee by the Alien Property Custodian) to be exchanged for food.

The committee looked over these lists, and on motion duly seconded and carried, it was

> Resolved: That copies be made of these German dyestuff lists and one each be given to the members of the Licensing Committee, composed of Mr. Poucher, Dr. Watkins, Dr. Herte and Mr. August Merz.

Mr. Bennett called to the attention of the Committee, the desire of Mr. Garvan to have the Institute assist in the campaign for distributing the stock of the Chemical Foundation, Inc. throughout the Chemical field; also that the Institute co-operate with him in securing the largest number of signatures possible to the memorial proposed to be sent to the President on the matter of importation of German dyestuffs.

On Motion, duly seconded and carried, it was

> RESOLVED that the Institute inform Mr. Garvan of its willingness to co-operate with him in every way possible, in both the distribution of the Chemical Foundation stock, and the securing of signatures for the proposed memorial.

Meeting adjourned at 4:15 P. M.

PLAINTIFF'S EXHIBIT No. 540.

MINUTES OF MEETING
AMERICAN DYES INSTITUTE

May 2nd, 1919.

A regular monthly meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Friday, May 2nd, 1919.

Luncheon was served at 1:00 P. M.

Inasmuch as Counsel, Mr. Arthur J. Eddy, was obliged to leave early for Chicago, he spoke briefly at the luncheon table and recommended that the members follow the plan adopted at the last monthly meeting—that is, each member should feel free to ask definite and direct questions of other members, and to this end it was decided that the Chairman would call each member present in turn and ask if any other members present had any questions to direct to the party as his name was called.

After luncheon the meeting was called to order by Mr. W. T. Miller, who, on request, acted as Chairman.

The following firms were present and represented as follows:

American Aniline Products, Inc.	Mr. Paul Nobbe
The Ault & Wiborg Company	Mr. Hilton
Butterworth-Judson Corp.	Mr. Clark
John Campbell & Company	Mr. John Ward
Chemical Company of America	Dr. Iserman
Consolidated Color & Chem Co.	Mr. Clarkson (arrived late)
Dicks, David Co., Inc.	Mr. R. P. Dicks Major B. F. Welton
E. I. duPont de Nemours & Co.	Mr. Stephenson
Dye Products & Chemical Co.	Mr. C. K. Simon Mr. L. M. Loewenthal
Essex Aniline Works, Inc.	Mr. Phineas Kent
Grasselli Chemical Company	Dr. Wallach
The Heller & Merz Company	Mr. Robertson
Frank Hemingway, Inc.	Mr. Frank Hemingway
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo, Jr.
National Aniline & Chem. Co., Inc.	Mr. W. T. Miller Mr. Bishop
Naugatuck Chemical Company	Mr. Wm. Valentine
Rector Chemical Company	Mr. Max Hirsch Mr. J. H. Buck
Transatlantic Chemical Corp.	Mr. Wm. Stevenson

Secretary, Mr. H. E. Danner, also attended.

Inasmuch as a copy of the minutes of the previous meeting had been sent to each member, and there were no corrections, on motion, the reading of same was omitted.

The Chairman stated that he was in hearty sympathy with the remarks of Counsel. He said that the present time was very vital to the Manufacturers of Dyes and Intermediates. It was understood that there was a large quantity, approximately 12,000 tons, of Dyestuffs in Germany, which it was proposed to send to the United States in exchange for food, and this quantity represented approximately one year's prewar consumption. It was Mr. Miller's opinion that sooner or later the American Industry would have keen competition from the German plants, and he believed that the members of the Institute should endeavor at all times to become better acquainted, and to this end he thought free and open discussion of conditions in the Industry would bring the members to a better understanding and enable them to more successfully compete with foreign products.

Mr. Miller replying to Mr. Nobbe, stated that at the present time he saw no indication of his firm reducing the price of "DIRECT BLACK." He said his price for this material had not been changed for two years.

Mr. Nobbe, replying to Mr. Fargo, stated that he was not as yet in a position to state as to whether or not it was his intention to participate in the reporting plan.

Mr. Hilton called attention to the fact that he had submitted to the Executive Committee a request that in the absence of Mr. Ault, his firm be represented at the meetings of the Executive Committee by Mr. Lichtenstein, of Aniline Dyes & Chemicals, Inc., and it was the judgment of the Executive Committee that Mr. Lichtenstein should not represent the Ault & Wiborg Company on the Executive Committee. There was a short discussion, and it was generally thought by those present that the Ault & Wiborg Company should endeavor to have one of their own representatives present at the Executive Committee meetings, instead of being represented by Mr. Lichtenstein, who was an Importer. It was also suggested that Mr. Lichtenstein was no doubt a member of the Importers Association.

Mr. Clark, of Butterworth-Judson Corp., stated that he had no objection to reporting a list of the products he was manufacturing or intended to manufacture and the Secretary was requested to send Mr. Clark a duplicate set of the forms on which to report this information. Mr. Clark also stated that he was not as yet prepared to participate in the reporting of prices as he felt that during the period when he was receiving the daily bulletins he had recognized discrepancies—that is, he was sure he knew of prices which had been made and which did not appear on the bulletin. Mr. Clark was asked to mention an individual instance, but he stated he was not prepared to do so at the present time.

It was pointed out to Mr. Clark that unreliable information is oftentime furnished by interested buyers or salesmen, and in fairness to all parties concerned, these reports should be checked up for the sake of accuracy and to remove misunderstandings as to actual prices made.

Dr. Iserman, replying to Mr. Bishop, stated that he was not manufacturing *"Aniline Oil."*

Mr. Stephenson, of E. I. duPont de Nemours & Company, answering Mr. Clark, stated that his price for Victoria blue was $6.00, and for Crystal Violet, $6.50. Mr. Clark was of the opinion that lower prices than the above had been made, of which Mr. Stephenson was not aware. Mr. Stephenson thereupon stated he would advise Mr. Clark if his company had sold the above products at lower prices; also if these products were sold under any other name.

Mr. Hilton, of the Ault & Wiborg Company, stated that his Company operated a small plant for the manufacture of "*H. Acid,*" for his own consumption. He did not know what was being produced by other manufacturers and was therefore undecided as to whether or not his Company should increase their present production or discontinue same and buy from parties who were fully equipped to produce all requirements. Mr. Clark, of Butterworth-Judson Corp., stated that he expected to offer "*H. Acid*" in from thirty to forty days. Mr. Hilton then suggested the advisability of the members now manufacturing or intending to manufacture *H. Acid,* meeting for the purpose of determining wherein there was duplication or waste, and thereby be able to diversify their products more intelligently, and in a spirit of cooperation. An interesting discussion followed, and it developed that the same condition existed in the manufacture of other Intermediates.

Mr. Hemingway expressed the opinion that this was a matter of great importance and he therefore moved:

> *That the important tonnage intermediates should be grouped and that the manufacturers of same should meet at an early date for the purpose of determining the quantity now being produced and what is expected will be produced in the near future.*

The above motion was passed and the Secretary was instructed to advise the members that meetings among members already producing or intending to produce the Intermediates listed below would be held as follows:

1—Those already producing or intending to produce *H. Acid* will meet in the office of Mr. Bennett (21 E. 40th Street, N. Y. City), on Tuesday, March 13th, at 10:00 A. M.

2—Those already producing or intending to produce *Beta Napthol* will meet in the office of Mr. Bennett (21 E. 40th St., N. Y. City), on Wednesday, May 14th, at 10:00 A. M.

3—Those already producing or intending to produce Aniline Oil will meet in the office of Mr. Bennett (21 E. 40th St., N. Y. City), on Thursday, the 15th inst., at 10:00 A. M.

In connection with the above, it was understood that the Executive and Technical men should attend these meetings, inasmuch as the discussion would no doubt resolve itself into two phases:

1—General conditions, and the practicability of cooperative work.

2—Cost of Production.

On motion of Mr. Dicks it was

RESOLVED—

That whenever a member of the Institute had surplus product to dispose of he would file a record of same with the Secretary, who would tabulate same on a bulletin, either under a code number, or with the name of the party offering the product (according to the direction of the member).

It was also

RESOLVED—

That whenever a member was interested in purchasing either dyes or intermediates he would likewise file an inquiry with the Secretary, who would distribute same among members, either under a code number, or by name (as directed by the member).

It was understood that the Secretary would prepare a printed form upon which all the above offers or inquiries would be tabulated in a uniform manner.

At the request of Mr. Fargo, the Secretary was instructed to again circularize the members, requesting them to file—

1—A complete list of all Dyes and Intermediates *now being manufactured* by each member.

2—A list of all Dyes and Intermediates which each member is *preparing* to manufacture. By preparing is meant some actual commitment in the way of equipment, contract for raw materials, etc.

3—A list of all Dyes and Intermediates that each member *intends* or *expects* to manufacture. This covers Dyes and Intermediates to the manufacture of which the member has not committed himself in any way, but has more or less definitely in mind for the comparatively near future.

Mr. Miller, replying to Mr. Fargo, stated that his firm was now filing all price information on all Intermediates. Mr. Miller replied to Mr. Hilton that his entire production of *Acid Green* was sold as fast as made, the consumption being in the Textile trade.

Mr. Valentine, answering Mr. Fargo, said that he was not as yet prepared to state as to his participation in the Open Price plan.

Mr. Bishop asked the members present what they charged for Drums, and it developed from the replies that the charges vary from $10.00 to $25.00. It was the opinion of those present that the variation in these prices causes considerable confusion among customers. The Secretary was requested to write to the Manufacturing Chemists Association and ascertain, if possible, if there was any standard price for these Drums or Containers.

The Secretary presented an application for membership from the Gaskill Chemical Corporation, of

Brooklyn, and he reported that this application had been submitted to the Executive Committee, and approved, and thereupon, on motion, the Gaskill Chemical Corporation was unanimously elected to membership in the Institute.

The Treasurer reported as follows:

April 1st, 1919, Balance	$12,947.64
Received During April	21,533.81
	$34,481.45
Expenditures	10,350.02
	$24,131.43
Accounts Receivable	$16,300.00

On motion, the above report was accepted as read, and ordered to be placed on file.

The Secretary reported as follows:

The following members are reporting price information covering Contracts, Orders and Quotations, and the information filed since the Secretary's last report is as follows:

	Contracts	*Orders*	*Quotations*	*Total*
Marden, Orth & Hastings Corp	1	367	299	667
The Sherwin-Williams Company		25	77	102
E. I. duPont de Nemours & Co.		484	244	728
Dicks, David Co., Inc.		158	66	224
The Dow Chemical Company		2	15	17
National Aniline & Chemical Co.		0	36	36
Rector Chemical Company		2	1	03
	1	1038	738	1777

The total number filed to date is 12,161, as indicated below:

Marden, Orth & Hastings Corp.	104	3961	2403	6468
The Sherwin-Williams Co.	74	409	451	934
Hydrocarbon Chemical Prod. Co.	0	1	27	28
E. I. duPont de Nemours & Co.	105	1786	1214	3105
Frank Hemingway, Inc.	0	1	9	10
Dicks, David Company, Inc.	0	779	356	1135
The Dow Chemical Company	14	116	301	431
Certified Chemical Co.	1	1	0	2
National Aniline & Chem. Co., Inc.	0	1	44	45
Rector Chemical Company	0	2	1	3
	298	7057	4806	12,161

The total number of reports filed covers approximately 2745 customers, of whom 610 have business relations with two or more of the members reporting.

Since the Secretary's last report there have been 11 direct exchanges covering similar products quoted to the same customer, and 21 direct exchanges covering similar products sold to the same customer. One of these quotations resulted in an order.

In reference to the distribution of Pamphlet No. 1, you are advised that approximately 5900 of the small pamphlets have been distributed among consumers, and 487 of the large pamphlets have been distributed to members of the House of Representatives, and the U. S. Senate.

On motion, the Secretary's report was accepted as read and ordered to be placed on file.

The date of the next meeting was set for Friday, June 6th, 1919, and in connection with same, Mr. Hilton moved that the members come prepared to make constructive suggestions as to how the Industry could be benefited.

There being no further business, on motion, the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED.IF.

PLAINTIFF'S EXHIBIT No. 541.

A meeting of the Executive Committee of the American Dyes Institute was held on Friday, May 9th, 1919, at 10 A. M. in Room 1007, #21 East 40th Street, New York, N. Y.

Present: C. Cyril Bennett, Secy., Mr. H. E. Danner, Treas., Mr. R. T. Baldwin, Dr. J. M. Matthews, Mr. August Merz, Mr. M. R. Poucher, Mr. W. H. Cottingham, Mr. Frank Hemingway, Mr. F. M. Fargo, Jr., and Dr. Wallach (Grasselli).

Mr. Bennett brought before the Committee correspondence received from Mr. Hilton of The Ault & Wiborg Co. regarding the latters' conferences with Mr. Nicholas Longworth, conveying the impression that Mr. Longworth deems the licensing plan impracticable and increased tariff rates the only available protection for the Dye Industry.

Mr. Poucher explained that present conditions are somewhat changed by the new developments abroad—in that the matters pertaining to our Dye Industry have been taken out of the hands of the Economic Board and the other Boards which go out of existence on June 30th or thereabouts, and placed into the hands of the new Reparation Board abroad, which Board controls the exports from Germany. Mr. Poucher states that it appears our Government has taken the stand of joining with England, France and Italy in the control of their exports (which phase of development has been included in the Peace Treaty), and that it is almost inconceivable that our Government should stand in a position of controlling half of the trade—which is their option—while allowing goods to come in from neutral countries. He states that if there is a board to control the exports from Germany, there should certainly be a licensing plan here to exclude importation of dyes from neutral countries. Mr. Poucher thought our position in the matter of securing the licensing plan has been strengthened by the stand the Government has taken, as it is clearly shown there is absolute necessity to control imports into this country, in the same manner as the exports from some foreign countries are going to be controlled.

Upon reference to Mr. Longworth's interest in the matter, Mr. Poucher advised that the latter be requested to reserve his judgment on the licensing plan until full details of the latest developments abroad can be put before him.

Mr. Bennett called attention to the fact that Mr. Longworth is particularly anxious to hear from the American Dyes Institute as to the latters' wishes in the matter of increased tariff rates, because he intends to introduce a bill for revised tariff rates on dyes and intermediates the first day that Congress convenes. Mr. Bennett informed the Committee of Mr. Longworth's proposed revision in rates.

Discussion of this matter led to inquiries as to the personnel of the Tariff Committee of the Institute, and upon reference to memorandum thereof, it was decided to add Mr. Jos. H. Choate, Jr. (as representing The Chemical Foundation, Inc.), Dr. Chas. H. Herty and Mr. R. C. Jeffcott; also to substitute Mr. Baldwin in place of Mr. Wigglesworth (as it was presumed the latter's services on the committee would not be available at the outset of their activity in Washington), and Mr. Robt. W. Hilton in place of Mr. L. A. Ault (who is in China).

Upon motion, duly seconded and carried, it was

> Resolved, That the Tariff Committee of the American Dyes Institute be composed of the following: Dr. J. M. Matthews, Chairman, Mr. R. T. Baldwin, Mr. Eugene Merz, Mr. Geo. A. Whaley, Mr. C. Scott Althouse, Mr. Robt. W. Hilton, Mr. M. R. Poucher, Mr. Jos. H. Choate, Jr., Dr. Chas. H. Herty and Mr. R. C. Jeffcott.

It was suggested that this Committee be called together at the earliest possible date and arrangements made to go to Washington for the purpose of conferring with Mr Longworth on the matters previously referred to. It was suggested that an endeavor be made to have the committee go to Washington on Wednesday next, May 14th.

Mr. Bennett advised that Mr. Choate desired that from all the Associations representing the Dye Consuming trades, there be obtained statements covering each industry—the entire membership of the various associations; total number of concerns; total number of employees; capital investment (as far as can be ascertained); annual output; annual turn-over, etc., to show in as large a manner as possible, the industries dependent on the Dye Industry of this country, and its tremendous importance to the entire Industrial life of the country.

Mr. Bennett then read to the Committee correspondence from Dr. Reese to Mr. Cutler of the Department of Commerce and Dr. Herty to the same Department, with reference to the Department's proposed appointment of Dr. Norton to be sent abroad for the purpose of securing information to be used in connection with our Dye Industry. Dr. Herty's letter in sum advised the selection of such a delegation to be left to an organization such as the American Dyes Institute, giving his views in the matter very fully, and it was the general opinion of the Committee that Dr. Herty's suggestion was most commendable. It was recommended that the Secretary write a letter to Mr. Redfield stating the sentiments of the Executive Committee on the matter, and referring to the source of this knowledge of the matter in a very general way.

Mr. Bennett brought to the attention of the Committee the matter of taking space at the forthcoming National Chemical Exposition to be held in Chicago, for the purpose of an Exhibit, and it was deemed advisable to have such an Exhibit in connection with the Chemical Foundation Inc., and the Secretary was instructed to proceed to make the necessary arrangements for the securing of the space, provided desirable space could be obtained and at reasonable cost.

Mr. Bennett brought before the Committee some correspondence between Mr. Danner and the Atlas Color Works, regarding the Open Price Division of the Institute. The Atlas Color Works had enquired as to the reason for the discontinuance of their receipt of the Daily Bulletin showing the quotations of their competitors (reporting under the Open Price Plan), and, as this concern had not reported, Mr. Danner duly informed them that only those firms reporting their prices, in the same manner as their competitors, would receive the Bulletins, it being assumed that those not interested in reporting their prices were likewise not interested in receiving their competitors' quotations (through the medium of these Daily Bulletins), etc. etc.

Mr. Bennett informed the Committee of the sum of the work of the Committee who went to Washington on April 30th, in the matter of investigating the War Trade Board's participation in the distribution of the German dyestuffs to come into this country on the food-exchange basis, stating that Dean Gay, with whom they had an interview, intimated that the Dye Industry would be given the "minimum of protection" in the matter.

Mr. Bennett advised the Committee of the circularizing work his office had undertaken to assist the Chemical Foundation, Inc., and enquired if it was authorized by the Executive Committee that the Institute bear the expense of mailing the initial letter in the campaign (which is to go out in the name of the American Dyes Institute, calling attention to the forthcoming literature from The Chemical Foundation, Inc.), which expense was estimated at $90 or $100.

Upon motion, duly seconded and carried, it was

> Resolved that the American Dyes Institute bear the cost of postage on the initial letter in the circularizing campaign to be conducted in the stock-distribution canvass for the Chemical Foundation, Inc.

Mr. Poucher also called attention to the fact that it was the desire of Mr. Choate that printed memorial-copies be distributed throughout the dye-consuming industries, for the purpose of securing the largest number of signatures thereto that it is possible to obtain.

Upon motion, duly seconded and carried, it was

> Resolved that 5000 copies of this memorial be printed for distribution among the dye-consuming trades, with the view to securing the largest number of signatures possible; 5000 more copies to be printed additional if required.

Mr. Danner was instructed to have this printing done.

Dr. Matthews informed the Committee of a recent conference he had with Dr. Herte and another gentleman representing the American Defence Society, regarding the latter's suggestion that propaganda work be started among the women in the country, to create a similar attitude towards German dyes as was accomplished in the matter of importation of German toys, etc.; to create the sentiment of desire and purpose to use American dyes only. It was estimated that this wide-spread propaganda, which would be over the entire country, would entail an expense of about $10,000 a month.

Dr. Matthews further stated that Dr. Herte had gotten in touch with Mr. Garvan on the matter, and that the latter had advised him to "hold off on the proposal for a while" as other very important things were brewing in Washington, and while he could not state at the time just what they were, they are important enough to await developments on.

Dr. Matthews further stated that the American Defence Society had formed a committee to handle this matter, and that they would probably expect the American Dyes Institute to do likewise, as they thought it advisable to start work along the suggested lines before Congress convenes.

The opinion was expressed that there was not sufficient time to start such activity before Congress convenes, but, in view of Mr. Garvan's advice to hold the matter in abeyance, it was decided to do so.

Mr. Baldwin also related an incident of a young lady calling at his office who claimed to represent the National Defence Society, and who informed him of some women's section of the magazine she was representing, wherein it was urged upon the women of the country to use the colors manufactured by the National Aniline & Chemical Co. Mr. Baldwin states that he thereupon informed her that it was not the desire of his company to have such propaganda promulgated; that the aim of the Industry and the concerns in it was to urge the use of AMERICAN colors (in preference to German) and not the colors manufactured by any one particular firm.

Mr. Danner enquired as to the manner in which the Chemical Foundation Inc. was to be called upon to reimburse the Institute for the cost of the preliminary investigation carried on in Washington, etc., which expense amounted to something like $9000, and he was authorized to render bill for these expenditures to the Chemical Foundation, Inc. He stated that after this reimbursement, he would refund the sum of $6000 loaned by individual members ($1000 each) for the carrying-on of this preliminary work.

Dr. Matthews informed the Committee of the work accomplished at the first meeting of the Committee of Accountants assembled for the purpose of conducting the proposed cost-investigation of coal-tar products, as outlined by the Tariff Commission, stating that the Committee of Accountants suggested the appointment of a neutral accountant for the purpose of harmonizing the returns of this cost-investigation, which may be received from the various members, before submitting same to the Tariff Commission. While the idea of appointment of an accountant as suggested did not seem to meet with general approval, the matter was not given sufficient attention (owing to lack of time) to warrant arriving at any well-considered decision.

The election of the new Secretary was brought up, and after some preliminary discussion of the two candidates—Mr. Wm. E. Corwine and Mr. Krause—it was decided to hold the vote.

Mr. Wm. E. Corwine was unanimously elected Secretary of the American Dyes Institute, at the terms given in his letter of application.

The Committee expressed the desire that Mr. Corwine's services be obtained at the earliest possible date, in view of the urgent necessity of his immediate presence in Washington, in time for the opening of the Congressional session.

Mr. Danner's Notice #31 (calling for three meetings of the manufacturers of three specific products—one meeting Tuesday, May 13; another Wednesday, May 14th, and another Thursday, May 15th) was discussed, and it was decided that in view of the fact that these meetings were arranged without Mr. Eddy's knowledge, and because of the possible inability of his attendance at these meetings, it might be advisable to call them off until such a time as Mr. Eddy could attend them, as it was deemed most desirable to have Mr. Eddy attend them at the start.

Mr. Danner was instructed to get in touch with Mr. Eddy and endeavor to find out if the latter can attend these meetings, and in the event of his inability to attend, the meetings be called off.

Meeting adjourned at 12:30 A. M.

PLAINTIFF'S EXHIBIT No. 542.

Minutes of a meeting of the Executive Committee of the American Dyes Institute held Friday, May 23rd, 1919, at 10 A. M., in the rooms of the Institute.

In attendance:

Dr. J. Merritt Matthews
Mr. R. T. Baldwin
Mr. August Merz
Mr. M. F. Holt
Mr. H. E. Danner, Treasurer
Mr. W. R. Corwine, Secretary

Mr. Holt of The Ault & Wiborg Co. had been designated by it as its representative at the meetings of the Executive Committee, and the Executive Committee consented to this.

Mr. Poucher, by wire, had requested that Mr. Stephenson represent him at this meeting.

On motion Dr. Matthews was elected Chairman of the meeting.

The Secretary called attention to a letter from the Chemische Fabriken Vorm Weller-terMeer, dated April 15th, copy of which had been forwarded to him, in which a German dye house was offering dyestuffs and chemical products to American consumers. The Secretary stated that a copy had been sent to each member of the Executive Committee.

In that connection the Secretary also reported a conversation which he had had over the telephone with Mr. McGrane of Holliday-Kemp Co. to the effect that a salesman of that firm in Boston had come across a letter from Pickhardt & Von Kuttroff offering German dyes to the Woolen and Worsted trade. Mr. McGrane was trying to get a copy of the letter.

The Secretary also reported that he had sent copy of the letter from the Chemische Fabriken Vorm Weller-terMeer to Mr. Francis P. Garvan and Mr. Jos. H. Choate, Jr., and had reported to Mr. Garvan the conversation with Mr. McGrane.

The Treasurer submitted a report from Dicks David Co. Inc. stating that the Blandy Paper Co. of Greenwich, N. Y., and the American Wood Board Co. of Schuylerville, N. Y., through their buyer named D. C. Trondsen, stated openly that they would buy from Kutroff & Pickhardt Co. because they wanted German goods or as near to them as possible. The Treasurer also reported that the matter had been placed in the hands of the Secret Service people to look up and report, the name of the Secret Service agent being Mr. Jas. J. Tierney, of Room 746, Custom House, New York City.

The Secretary was requested to write to all members confidentially advising them of the matters as above stated, and asking each to pass up to the office any information obtained on offerings of German dyes in this market by German manufacturers or German agents.

The Secretary then referred to the membership of the American Dyes Institute in the Chamber of Commerce of the United States of America, and that, according to the number of the members of the Institute, it was entitled to one delegate to attend conventions and other meetings, and one councillor to attend to the routine work, such as correspondence, submission of referenda to members, etc. It was decided that the designation of a delegate be left to a time when the selection of one will become necessary, and that the Secretary should act as councillor.

The Secretary then submitted some correspondence which had passed between Mr. Poucher and Mr. Adams, the latter being Secretary of the American Cotton Manufacturers' Association, concerning representation at the 23rd Annual Convention of that Association to be held in Atlantic City May 27th and 28th. The Secretary also reported that he had heard indirectly that Mr. Poucher had agreed to attend the Convention. Thereupon the Executive Committee officially appointed Mr. M. R. Poucher and Dr. J. Merritt Matthews as its representatives at the Convention, and instructed the Secretary so to notify Mr. Adams.

The Treasurer reported that the signatures to the petition to the President, on the matter of licensing, were coming in very slowly.

The Treasurer also reported the balance on hand on this date to be $21,015.83.

The Secretary reported some correspondence between Dr. Chas. L. Reese, Mr. B. S. Cutler, Chief of the Bureau of Foreign & Domestic Commerce of the Department of Commerce, Washington, and Dr. Norton, indicating that a trade commissioner in Europe on dyes and chemicals would not be appointed by the

Department of Commerce until after the return of Mr. Wigglesworth.

The Secretary reported a letter from the Grasselli Chemical Co. proposing for membership, E. C. Klipstein & Sons Co. of 644 Greenwich St., New York City, with plants at So. Charleston, W. Va., Chrome, N. J., and Edgewater N. J. The A. Klipstein Co. had asked for application blank which had been sent them by the Secretary, but as the blank had not been returned, action on this proposal for membership was laid over.

The Secretary reported some correspondence with the Peerless Color Co. of Bound Brook, N. J. looking toward membership by that company in the American Dyes Institute, and stated that he had sent to the President of that company, an application blank and copy of the constitution and by-laws. Although the company was seeking election it was decided to hold the matter over until the application should have been signed and the name of the proposer filed.

Secretary reported a telegram from Mr. Poucher stating that he would be unable to attend, and that Mr. Stephenson would represent him, also suggesting that Mr. Merz make a report on the licensing plan as it developed at the recent meeting in Washington. This Mr. Merz did.

There was then some discussion on the suggestion made by Mr. Poucher in his telegram that the first thing the Advisory Board would need would be a complete census of the Dyestuff Industry in this country and that a plan for taking that census should be started at once. It was reported by Dr. Matthews and the Secretary that a Mr. Miller of the War Trade Board had been designated by the latter to obtain the information that Mr. Poucher thought should be sought, and that before taking any further steps the Secretary should confer with Dr. Herty, Secretary of the Advisory Committee, as Mr. Miller had been in touch with Dr. Herty.

The Secretary read a communication from Mr. John O'Day of the United States Color & Chemical Co., Inc., containing the suggestion that if the Advisory Committee be enlarged, the name of someone in the Eastern section be placed thereon. It was decided to refer the matter to Mr. Henry B. Thompson, Chairman of the Advisory Committee, at this office, 320 Broadway.

There being no further business, the meeting adjourned to Thursday, May 29th, 1919, at 2 P. M.

WM. R. CORWINE,
Secretary.

PLAINTIFF'S EXHIBIT No. 543.

MINUTES of a meeting of the Executive Committee of the American Dyes Institute held in the office of the Institute, 21 East 40th Street, New York City, May 29th, 1919, at 2 P. M.

In attendance:

Dr. J. Merritt Matthews,
Mr. R. T. Baldwin,
Mr. August Merz,
Mr. M. F. Holt,
Mr. H. E. Danner, Treasurer,
and Mr. W. R. Corwine, Secretary.

Mr. Baldwin was elected Chairman.

The Secretary announced that he had received a signed application for membership from the Peerless Color Company, Inc., at Bound Brook, N. J., together with a check for dues amounting to $250 and an invoice to be receipted and returned.

The Executive Committee passed favorably upon the application of the Peerless Color Co. which had been signed by Mr. R. W. Cornelison, Pres.

The Secretary then called the attention of the Committee to a letter which had been received from Mr. H. P. Fairbanks, Director of Bureau of Enemy Trade of the War Trade Board, asking the Institute to pass upon the advisability of issuing a license to the Compagnie Morana of 118 E. 27th St., New York City, for the purchase of some second-hand books of enemy origin obtainable in Switzerland, which they assert are needed in connection with their manufacture. Mr. Fairbanks stated that he thought it was good policy for his Bureau not to attempt to recognize different dye and chemical manufacturers who might desire to import books from Germany or from a neutral country, but that they should recognize the American Dyes Institute as a central authority on a question of that kind, the Institute being in a better position to determine the need of certain books in this country. He added that by having such applications referred to the Institute the risk of importing books not essential, or which may contain matter which would not be considered to the interest of the United States, would be minimized. Mr. Fairbanks attached to his letter a copy of the one received from the Compagnie Morana asking for the privilege of purchasing the books for their factory. The Compagnie Morana stated that it had already ordered the books.

The Committee expressed gratification at this recognition by the War Trade Board, and ordered that the Chairman appoint a Committee of three to consist of two representatives from the American Dyes Institute and one from the Chemical Foundation, Inc., to pass upon this and other matters of a similar nature which might be referred to the Institute.

The Chairman named as such committee, Dr. J. Merritt Matthews, Chairman, and Mr. August Merz, representing the Institute. The Secretary was instructed to write to the Chemical Foundation, Inc., asking it to name one man to add to the Committee.

There was then a discussion over the further activities of the representatives of German dye manufacturers in endeavoring to place orders in the American market or in taking preliminary steps to secure orders.

The Secretary read a letter which he had received from Mr. J. A. Barrington, Vice President of the Essex Aniline Works of Boston, reciting an instance where Kuttroff & Pickhardt, through their Boston office, had solicited the Arlington Mills of Lawrence, Mass., for orders for dyestuffs made by the Badische Co. through a Mr. Otterson, salesman. The latter had told the Arlington Mills that he expected to be able to deliver any goods sold because the Badische factory was in the territory occupied by Allied forces, and for that reason stated that the goods would be allowed to come through. Mr. Barrington had given the Secretary permission to verify this by corresponding with the Arlington Mills and the Secretary reported that he had already written to Mr. Franklin W. Hobbs, President of the Arlington Mills, setting forth the substance of Mr. Barrington's letter.

The Chairman submitted copy of another letter making a direct offer, subject to prior sale, of two kegs 220 pounds each Rhodamine B, Extra concentrated, at $40.00 per pound, F. O. B. Boston, Terms C. O. D. subject to examination. A statement was made in that letter that these were Swiss goods and guaranteed prewar type, full strength. The proposed seller offered to furnish sample, if required, and stated that the packages could not be broken. It was not disclosed to whom this letter went, but it was sent by W. L. Macomber & Co., 261 Franklin St., Boston, Mass.

The Chairman also submitted copy of a communication from Becker, Pennrich & Co., of 82 Beaver St., New York City, offering for immediate shipment from a European port, subject to licensing and safe arrival, 500 lbs. Benzo Fast Scarlet 3 B S, original Bayer's type, at $15.00 per lb. and 500 lbs. Benzo Fast Scarlet 8 B S, same quality and price, guaranteeing the merchandise to be strictly in accordance with the description and sold on that basis. The letter asked for a telegraphic reply if the proposal was accepted by the receiver of the letter.

The Secretary submitted a letter that he had received from John Campbell & Co. of 75 Hudson St., New York City, stating that that firm had received a letter from a German manufacturer to the effect that anticipating the conclusion of peace between Germany and the Allied countries in the near future, the manufacturer would like to resume business relations with John Campbell & Co. and asked what colors and chemicals that firm would like to import. John Campbell & Co. also recited in their letter that they had heard from Holland from a man who offered colors which he claimed to have purchased in Belgium, stating that they were intended for South America, but that he would ship them to the United States.

The Secretary was directed to send copies of these letters to Mr. Garvan, Alien Property Custodian, and Mr. Joseph H. Choate, Jr., Counsel.

The Secretary reported that he had already done this in connection with the letter from Essex Aniline Works and that he would do likewise in the other three cases.

Mr. Danner, Treasurer, produced a letter which had been sent to him by Dicks, David Co. of 299 Broadway, addressed to the latter company by the Harmon Paper Co. (through their Mr. J. J. Warren) declining to sign the memorial to the President. The Secretary was instructed to send a copy of that letter also to Mr. Garvan and Mr. Choate.

The Secretary then made a statement about the number of pamphlets of the Chemical Foundation, Inc., which it had been learned were to come to the Institute office, to the extent of 50,000 copies; that already between six and seven thousand copies had been received and unpacked, together with 50,000 envelopes and several cases containing between six and seven thousand copies more, which had not been unpacked; that already there had been forwarded, by Express or mail, or were in process of being forwarded from the Institute office, approximately 2200 copies. With the force on hand the Secretary stated that it would be slow work getting out these books and he suggested that the lists, so far as they could be obtained, be prepared at once and placed in the hands of an addressing agency where there were facilities for sending out in large quantities.

The Committee advised the Secretary to take this matter up with the Chemical Foundation, Inc., and reach a conclusion, offering, of course, all the co-operation the Institute could render.

The Treasurer asked instructions concerning Mr. Bennett's salary, and it was unanimously decided to pay him his full salary for the entire month of May, and that the new Secretary's salary should be adjusted from the 9th of May.

The Treasurer also reported his net balance on hand today as $20,377.97.

The Secretary then reported some of the details of the conference at Washington between the Committee of Accountants of the Institute on the one hand, and the Tariff Commission on the other. He stated that at the conference the Tariff Commission was represented by Commissioners Thomas Walker Page, Vice Chairman; David J. Lewis and Edward P. Costigan, together with Dr. Grinnell Jones, Chief Chemist, A. R. Willis, Assistant Chemist in charge of dyes, Mr. C.

R. De Long, also one of the assistant chemists, and Mr. Geo. C. Comer, Chief Accountant.

The Representatives of the Committee of Accountants were:

J. M. Gaines, of Calco Chemical Co., Chairman
Bernard Geo. Shinatz, National Aniline & Chemical Co.
T. A. Yalden, Heller & Merz Co.
Edwin H. Killheffer } Newport Chemical
Paul J. Kortsch, } Works, Inc.
William Rector, E. I. du Pont de Nemours Co.
W. R. Sieplein, Sherwin-Williams Co.
O. M. Hook, Grasselli Chemical Co.
and W. R. Corwine, Secretary

Mr. J. M. Gaines of Calco Chemical Co. had previously been nominated as Chairman.

The Secretary referred to the exceedingly cordial reception which had been accorded by the Commission and its attaches and of the very full and interesting conference which had been held, lasting from 2 in the afternoon to 6 in the evening.

He did not attempt to go into the details of all the points covered in the questionnaire which had been sent out by the Tariff Commission on the subject of dyes and intermediates investigation, but referred more specifically to a question which the Commission and the Committee of Accountants had asked him to take up with the Executive Committee bearing upon the list of Dyes and Intermediates as set forth on Page 2 of the document entitled "Proposed Cost-Investigation of Coal-Tar Products." The Members of the Commission and the Accountants Committee both agreed that the list might be amplified to include dyes which were more difficult to manufacture than many of those named in the list which had been prepared by the Commission, and all those present felt that the members of the Executive Committee could better amplify that list than the Committee of Accountants or perhaps the Commission itself.

Thereupon the Secretary read a letter which he had received from Dr. A. D. Chambers of the E. I. du Pont de Nemours Co. to whom the representative of that company on the Committee of Accountants had referred the suggestion of amplification of the list of Dyes, because it was understood that at the Executive Committee meeting there would be no representative from that company.

Dr. Chambers wrote that he thought it would be wise to add to the list some of the more complicated colors, such as Victoria Blue, Chrysophenine and Eosine and the necessary intermediates, such as Nitrotoluol, Ethyl Bromide, Phosgene, Phenylalphanaphthylamine, Resorcin and Phthalic Anhydride.

The Committee took this subject into consideration and as a result added the following additional dyes to be suggested to the Commission in connection with the request of that body:

Eosine
Alizarine Sapphirole
Magenta
Rhodamine B
Alizarine
Malachite Green
Methylene Blue
Victoria Blue
Chrysophenine
Naphthylamine Black

The Secretary was also requested to write at once to Dr. Grinnell Jones giving him this list and telling him that the Committee would be perfectly willing to leave to him the selection of the basic intermediates. This was done so as to expedite matters.

The Secretary was requested to write to the Department of Commerce asking for a sufficient number of copies to be sent to all the members of the Institute, of a report made by Dr. E. R. Pickrell, known as Miscellaneous Series #82, on Chemicals and Allied Products used in the United States.

Dr. Matthews reported his attendance at the American Cotton Manufacturers Convention and stated that the Secretary of that Association had asked him to take up with the Committee the advisability of membership in that Association by the members of the Dyes Institute. The Committee requested the Secretary to write to Secretary of the American Cotton Manufacturers Association giving him a list of the members of the Institute so that the former might, if he desired, solicit their membership in his Association from among the individual members.

Inasmuch as the next monthly meeting of the Institute was to be held at the Hotel Biltmore Friday, June 6th at one o'clock, it was decided to call a meeting of the Executive Committee for 12 o'clock at the Biltmore on that date.

The Secretary distributed among the members present, copies of the Bill introduced by Congressman Longworth providing for a tariff on Dyes, known as H. R. 2706, 66th Congress, 1st Session.

The Secretary also announced that he had sufficient copies for the rest of the members of the Committee but that that was all he could obtain for the present, stating that he might be able to secure additional copies later on.

There being no further business, the meeting adjourned until the date and place above named.

WM. R. CORWINE,
Secretary.

PLAINTIFF'S EXHIBIT No. 544.

MINUTES of an Executive Committee meeting of the American Dyes Institute held at the Hotel Biltmore, New York City, Friday, June 6th, 1919, at 12 o'clock noon.

In attendance:

Mr. August Merz
Dr. J. M. Matthews
Mr. M. R. Poucher
Mr. R. T. Baldwin
Mr. F. M. Fargo, Jr.

together with Mr. Henry Wigglesworth, Counsel, Mr. Arthur J. Eddy, Mr. H. E. Danner, Treasurer, and Mr. W. R. Corwine, Secretary.

Mr. August Merz was elected Chairman.

The Secretary read a letter from Mr. C. Cyril Bennett, his predecessor, as follows:

"The Executive Committee,
American Dyes Institute,
21 East 40th Street,
New York, N. Y.

Gentlemen:

I wish to extend my thanks to the members of the Executive Committee for the action which they took at their last session, authorizing a check to be sent to me for the month of May.

I have received a great many letters from various members of the Institute regarding my resignation, most of them so flattering and so very appreciative of my modest efforts that I feel as though my resignation has not taken effect at all. I stated to you gentlemen previously my sympathy is with you in all that you undertake, and you can always rely upon my giving you anything within my power that will advance the cause.

With deep appreciation,

Very truly yours,

C. Cyril Bennett,
Treasurer Color Trade Journal, Inc."

It was ordered spread in the Minutes.

The Secretary then presented a communication from the Treasurer calling attention to the difficulties which frequently arose in obtaining the counter-signature on checks as required by the present rules of the Institute, and suggesting that the extra signature be not required, hereafter, and that in lieu thereof the Treasurer be bonded by a bonding institution. The suggestion was approved and the Secretary was requested to bring the matter before the Institute at its meeting to be held after luncheon.

The Secretary reported a suggestion which had previously been made for the increase in salary of Miss Segall, from $27.00 a week to $35.00 a week. Mr. Bennett had recommended that the increase be made and the Secretary stated that he was more than glad to endorse the recommendation. Thereupon it was unanimously declared that the increase be made.

There was then presented a letter from Mr. Franklin W. Hobbs, Pres. of the Arlington Mills supplementing a statement which had been made concerning the activities of the Kuttroff-Pickhardt Co., Inc., representing the Badische Company, enclosing copy of a letter from that firm making certain specific offers on powders and pastes.

There was also presented a letter from Frank Hemingway, Inc., announcing that that house had heard that a large dye house had ordered forwarded two tons of Victoria Blue, Swiss type, to be sold at $5.00 per pound, as and when imported.

Statement was made by the Secretary that copies of letters in both cases had been sent to Messrs. Garvan and Choate.

There was then presented a letter from the Ontario Dyeing Co. referring to the high prices of Sulphur Browns and Sulphur Blues and the lack of Develop Black, Develop Blue and indanthrene colors very much needed in the cotton line.

The Secretary was requested to send copy of that letter to Dr. Chas. H. Herty.

There was then laid before the meeting and read, a letter from Mr. Harold Otis of Steele & Otis, lawyers, transmitting a bill for legal services amounting to $1500 and disbursements amounting to $86.85, a total of $1586.85, and asking if the services rendered should be paid for by the American Dyes Institute as a whole or by the National Aniline & Chemical Co. Inc. alone, although the work was undertaken at the request of Dr. Mathison of that Company.

It was finally decided to lay this matter over until a subsequent meeting by which time other bills incurred in the same work would probably be in hand and decision could be reached as to what was the proper policy to pursue.

Mr. Poucher explained to the Committee the situation in Washington concerning the licensing bill which it was understood had been prepared to be introduced in Congress within a few days. Mr. Poucher expressed the opinion that it would be necessary for some of the committee with the Secretary to be in Washington so as to keep in touch with the situation as it developed, not only prior to the hearing of the Ways and Means Committee on the licensing bill (which would probably be held early in the week beginning June 23rd) but also to assist in every proper manner in aiding to secure the passage of the bill. It was decided that for this purpose there should be a special committee appointed, and on authorization of the Executive Committee the Chairman announced the following as such special committee:

> Messrs. M. R. Poucher, Mr. Henry Wigglesworth and Mr. R. C. Jeffcott.

That committee was given power to do everything that in its judgment ought to be done to procure the licensing bill; to retain counsel and such other aid as might be necessary; to incur the expenses incident upon the work of the committee and to raise the funds which would be required by an assessment upon the members of the Institute.

Mr. Wigglesworth made a brief statement concerning the conditions as he had found them to exist in France, to which place he had gone especially commissioned by the Department of Commerce to investigate the dye situation.

> "Mr. Wigglesworth stated that among his duties as Trade Commissioner for the Chemical Industry he had been called upon while in Europe to attend the Rotterdam Conferences in regard to chemicals and dyes, and also various Inter-Allied meetings on the same subject in Paris. That on his arrival in Europe in February the conditions in Germany were just becoming known and understood. The shortage of foodstuffs there was alarming and likely to create a state of anarchy equal to that existing in Russia. It had therefore been concluded to supply foodstuffs to Germany. The bankers responsible for finding collateral discovered practically nothing but Potash and Chemicals (which of course included dyes). Fortunately, no hasty action resulted, as opposition to dye importations, emphatically expressed, developed on both sides of the ocean and the small values involved became more generally recognized at the Conference.
>
> "The terms of peace now provide for delivery each month to the Allies during the armistice,

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of one-half of the existing stocks of German dyes, to be divided between the Allies in proportion to former importations. As Germany however is permitted to use or sell the balance in their own interest, their dyes might reach this country through neutral countries or from the Allies unless some system of control is adopted.

"For this reason the licensing system is now generally recognized as the only suitable medium for controlling such a situation. It has been adopted by England and is likely to be put in force in France and Italy. The President's own message made clear the necessity of legislation to prevent the United States from being put at a disadvantage in such situations.

"In addition to this a great deal of discussion developed at the peace conference with reference to the unfair practices employed by Germans in the dye markets and the terms of peace require Germany to enact such laws as are necessary for the adoption of the same commercial standards as are observed by the Allies."

Meeting adjourned to attend the luncheon of the Institute and the meeting of the Institute to be held afterwards, deciding to reconvene later.

AFTERNOON SESSION OF EXECUTIVE COMMITTEE.

The meeting was called to order by the Chairman at four o'clock, after all other sessions had been concluded.

In attendance at the afternoon session:

Mr. August Merz, Chairman
Mr. F. M. Fargo, Jr.
Mr. R. C. Jeffcott
Dr. J. M. Matthews
Mr. R. T. Baldwin
Mr. M. R. Poucher

together with Mr. H. E. Danner, Treasurer, Mr. Arthur J. Eddy, Counsel, and Mr. Wm. R. Corwine, Secretary.

There was some further discussion about the Washington situation and finally Mr. Poucher submitted copy, which had been furnished him, of a brief prepared by Mr. Choate to be used as the opening argument on behalf of the Dyes Industry and in favor of the licensing bill before the Ways and Means Committee of the House of Representatives whenever the hearing should be arranged for.

The Secretary read the brief and it was approved by unanimous vote of all the Executive Committee in attendance.

The Secretary thereupon asked for the views of the committee on the subject of participating in a movement inaugurated by the Chamber of Commerce of the U. S. A. in favor of the adoption of a National Budget by the U. S. Government. It was decided that inasmuch as the purposes of the Institute were largely of a scientific nature and whose work necessarily centered on the development of the Dyes Industry, it would be inadvisable to attempt to participate now in movements of that kind.

The Secretary also introduced some communications from the National Foreign Trade Council and he was authorized to send to members of the Institute a copy of the declaration of that Council concerning foreign trade as based on the recent Convention which had been held in Chicago.

There was submitted one of the Commerce Reports just received in which there was an item headed "Standardization of American Dyes for China." This was read to the Committee and the Secretary was instructed to bulletin it to all the members.

Further correspondence with the War Trade Board was submitted, bearing upon the subject of purchase of books of enemy origin through neutral countries, to consider which a special committee consisting of Dr. Matthews and Mr. August Merz had been appointed at the meeting of May 29th. The Secretary reported that the Chemical Foundation Inc. had been requested to name a third member of the committee, but had not yet done so. He further stated that he had been informed that Col. McKay had submitted the matter to Mr. Garvan. This additional correspondence, together with previous letters, were taken over by Dr. Matthews, Chairman of that special committee.

The Secretary submitted further correspondence with the Tariff Commission in the matter of amplifying the list of dyes and intermediates in the list which had been originally prepared by the Commission, and concerning which the Committee had taken action at the meeting of May 29th. The Vice Chairman of the Tariff Commission had written that he had accepted certain suggestions as to additional dyes and had also added the necessary intermediates. The dyes and intermediates thus accepted by the Commission are as follows:

Eosine
Magenta
Malachite Green
Naphthylamine Black
Methylene Blue

Resorcin
Phthalic anhydride
Benzaldehyde
Dimethyl-p-phenylenediamin
O-Toluidin
P-Toluidin

There being no further business the meeting adjourned.

WM. R. CORWINE,
Secretary.

The Secretary reported that he had sent to all members a copy of *Collier's Weekly,* issue of June 7th, containing an article by Samuel Hopkins Adams, entitled "The Color Scheme of War" and the Committee gave the Secretary permission to have the article reprinted and send it to a list of retail drygoods and clothing merchants throughout the country, principally in the South and in the trans-Mississippi and Trans-Missouri zones. The Secretary announced that he had received permission from the magazine to reprint the article, giving, of course, credit to *Collier's*.

PLAINTIFF'S EXHIBIT No. 545.

Minutes of the Monthly Meeting of the American Dyes Institute, Held at the Hotel Biltmore on Friday, June 6th, 1919.

The meeting was called to order by Mr. August Merz, who had served as chairman of the Executive Committee meeting.

The Secretary presented a letter from Mr. Walter H. Cottingham, President of the Institute, in which Mr. Cottingham explained that it would be impossible for him to be present, expressing great regret at being unable to be with the other members.

The roll was then called. Those in attendance were:

The Ault & Wiborg Co. by	Mr. M. F. Holt
Consolidated Col. & Chem. Co.	Mr. Clarkson
E. I. duPont de Nemours Co.	Mr. M. R. Poucher Mr. E. V. Patterson
Dye Products & Chemical Co.	Mr. L. M. Lowenthal Mr. Simonson
Essex Aniline Works	Mr. Phineas Kent, Jr.
Grasselli Chemical Co.	Dr. J. M. Matthews Dr. R. N. Wallack
The Heller & Merz Co.	Mr. August Merz

Dow Chemical Co.	Mr. Jas. T. Pardee
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo, Jr.
National Aniline & Chemical Co.	Mr. R. T. Baldwin Mr. H. H. Replogle Mr. H. Wigglesworth Mr. Patterson
Rector Chemical Co.	Mr. Hasit
Transatlantic Chemical Corp.	Mr. W. M. Stevenson

together with Counsel, Mr. Arthur J. Eddy, Secretary-Treasurer, Mr. H. E. Danner and general Secretary, Mr. Wm. R. Corwine.

The Chairman announced that the Minutes of the previous monthly meeting had been sent to all members and if there were no objections or suggestions for changes the minutes would stand approved. There being no recommendations of any kind the Chair thus announced.

The signed application of the Peerless Color Co., Inc., was presented, the Secretary announcing that the application had been approved by the Executive Committee and that the proposed new member had forwarded check for the dues.

On motion duly seconded and carried unanimously, the Peerless Color Co. was elected a member of the American Dyes Institute.

The Treasurer presented his report which showed a balance at the close of May of $20,141.42 with all accounts paid, and accounts receivable, $15,750.00. It was received and ordered on file.

The Secretary then presented the suggestion which had been made to the Executive Committee and approved by that committee, that the counter-signature now required to be placed upon checks be eliminated on account of the difficulty oftentimes, in fact, generally, of obtaining the extra signature. This sometimes created embarrassment when funds were needed quickly. The further suggestion that the Treasurer be bonded, which had been presented to and approved by the Executive Committee, was laid before the meeting.

The following resolution was then introduced:

> RESOLVED: That from and after this date only one signature shall be required on the checks of the American Dyes Institute and that the signature shall be that of the Treasurer, Mr. H. E. Danner; that the Secretary advise the bank of the change in the regulations of the Institute and that the Treasurer be bonded by a surety company of standing, the amount of the bond to be arranged for between the Treasurer and the company which he selects for the bonding, and that the amount of the bond and the name of the company be reported by the Treasurer to the Executive Committee at its next meeting and at the next meeting of the Institute.

The motion was duly seconded and upon being put by the Chair was carried unanimously.

Dr. J. Merritt Matthews was called upon by the Chairman to report as Chairman of the Tariff Committee of the Institute. Dr. Matthews made a brief statement of the organization of the committee, setting forth that while the committee was watching the situation closely and was preparing to co-operate in whatever might be necessary to be done, yet for the immediate present it was awaiting developments.

The Chairman of the meeting, who is Chairman of the Standardization Committee, made a brief statement principally to the effect that his committee was endeavoring to harmonize the requests and suggestions made by various departments at Washington and that until there could be a harmonization on the part of those departments, but little could be accomplished. He expected that before long the committee would be able to report material progress.

The Chairman then asked Mr. Fargo to report on the work of the Trade Committee of which he is Chairman. Mr. Fargo said that he was only able to report progress at the present moment.

The Secretary read the letter referred to in the Minutes of the Executive Committee coming from the Bureau of Enemy Trade of the War Trade Board at Washington concerning the co-operation sought by that Bureau, and announced that the Executive Committee had appointed a committee of two, consisting of Dr. J. M. Matthews, Chairman, and Mr. August Merz representing the Institute, and that the Chemical Foundation, Inc., had been asked to name a third member so that technical knowledge might be at the disposal of the Bureau to which applications had been made for licenses to import books of enemy origin through neutral countries.

Mr. Pardee announced that one of the applications to which the Bureau of Enemy Trade had referred, had emanated from the chemist of the Dow Chemical Co. who desired the books he applied for for use in the library.

The Chairman then called upon Mr. M. R. Poucher to explain to the members the situation at Washington in connection with the proposed Licensing Bill. This Mr. Poucher did, his statement being practically the same as that which he made to the Executive Committee and which was to the effect that he had understood that a licensing bill was prepared to be introduced into Congress in a few days and that he had been informed that it was the intention of the Ways and Means Committee of the House of Representatives to hold a hearing on that bill probably in the week beginning June 23rd.

Mr. Poucher announced that a special committee had been appointed by the Executive Committee consisting of Messrs. Wigglesworth, Jeffcott and himself as Chairman, to represent the Institute at Washington and to do everything within its power to further the interests of the dye manufacturers of this country.

At the request of the Chairman the Secretary told about the agent of the War Trade Board, a Mr. Ralph B. Miller, who had been assigned to the Advisory Board created by the War Trade Board for the purpose of obtaining information concerning the Dye Industry, colors manufactured, intermediates made in this country and such other information as would be necessary to guide the Advisory Board in reaching conclusions on any question which might be referred to it by the War Trade Board concerning applications for licenses for the importation of dyes, chemicals, etc., pertaining to the Dye Industry.

Mr. Poucher amplified a bit upon the work of the Advisory Committee, knowledge of which was already possessed by the members through a statement issued by the War Trade Board itself, copy of which had been sent to all members as well as published in the press.

The desire of the War Trade Board in its licensing plan was, he said, to issue licenses only to those desiring to import those dyes into the United States which were not made in this country, or were not made in sufficient quantities to meet requirements, or where there was no apparent effort being made to manufacture those dyes in the near future. It would, however, he thought, be the position of the Advisory Committee and of the War Trade Board itself, that if legitimate preparations were being made to produce certain colors, and if it were apparent that those colors could be produced in marketable quantities within the near future—say, within a few months—then that fact would be taken into consideration in the issuing of licenses which might be applied for.

There was a discussion on some of the points brought out in the statements made by Mr. Poucher.

It was suggested that a certificate of membership be prepared which should be attractive in appearance and could be framed, and that that certificate should be furnished to each member of the Institute.

This suggestion was adopted and was supplemented by a further suggestion which was also adopted, that a committee of three consisting of two members of the Institute and the Secretary be appointed by the Chairman to prepare the certificate.

The Chairman appointed as such committee Mr. L. M. Lowenthal, Mr. F. M. Fargo, Jr., and Mr. Wm. R. Corwine, Secy.

Dr. J. M. Matthews was called upon by the Chairman to tell the meeting something of the Committee of Accountants. Dr. Matthews stated that the committee had met and organized and that preliminary steps had been taken to comply with the wishes of the Tariff Commission with regard to a uniform system of establishing cost factors as per the questionnaire which had been issued by the Commission, and that for the purpose of close co-operation between the Committee of Accountants and the Tariff Commission there had been a conference at Washington, which he had not been able to attend but which the Secretary had attended. Dr. Matthews expected that within a short period there would be a basis arrived at which would harmonize with the desires of the Tariff Commission and of which the members would be duly informed.

The Secretary was then called upon by the Chairman to inform the members of some of the details of the visit at Washington.

members who expressed approval of Mr. Corwine's prompt attention and close application to the work.

Mr. Danner submitted the bill rendered by Major T. W. Sill for expenses incurred by the latter in taking a trip to Washington to appear before the Ways and Means Committee on behalf of the Dyestuff Industry, and asked if the payment of this bill was approved by the Committee. The Committee promptly approved payment of the bill, whereupon Mr. Danner stated that he would communicate with Major Sill and ask the latter to change the bill from being addressed to "Alien Property Custodian" to "The American Dyes Institute."

The Treasurer reported his balance on hand as $17,608.25, accounts payable, $5000 loaned by five members of the Executive Committee towards the undertaking of the preliminary work in connection with the Chemical Foundation, Inc., and accounts receivable, $9,519.83 from Chemical Foundation, Inc., and $15,250.00 unpaid dues and assessments.

The Chairman called to the attention of the Committee the fact that the Secretary had contracted for space at the Chemical Exposition to be held in Chicago in September.

In connection with the amount of unpaid dues and assessments Mr. Danner requested the Committee to give him permission to go into this matter carefully with Mr. Corwine when the latter had the opportunity to do so, and determine upon what course of action to pursue in the case of the members who have not yet paid their dues, and what disposition was to be made of the record of unpaid assessments. To this request the Committee readily assented and Mr. Danner was instructed to take the matter up with Mr. Corwine at the first opportunity.

Mr. Danner also reported that he had taken out a bond for $20,000 with the American Surety Co. at a cost of $50 yearly.

Dr. Matthews called the attention of the Committee to a confidential report from the American Consul at Canton, China, relative to the conditions of the dye market in that country, sent to Mr. Corwine by the Department of Commerce. The Committee requested that this report be circulated among the members of the Institute marked "confidential."

Dr. Matthews presented for the attention of the Committee, a letter addressed to the Institute by Comptoir Nord-Americain (North-American Trading Company) of 150 Nassau St., New York City, asking for an appointment with the Secretary relative to putting his company in touch with American manufacturers of dyestuffs interested in exporting their products to France and Belgium, which letter the Committee requested be circulated among the members of the Institute.

Owing to the necessity of early departure of some of the members of the Committee the meeting adjourned at 3:20 P. M.

PLAINTIFF'S EXHIBIT No. 546-A.

June 25th, 1919.

To the Members of
AMERICAN DYES INSTITUTE.
Gentlemen:

The following is a summary of the report of your committee on Licensing and the Tariff.

On May 23rd, 1919, Congressman Nicholas Longworth of Ohio introduced into the House of Representatives a bill providing for an increase in the tariff on Coal-Tar Dyes, known as H. R. 2706.

The Ways and Means Committee called a hearing on this bill and invited the Chemical Foundation Incorporated and the American Dyes Institute to appear before the Committee. This hearing took place in Washington on Wednesday, Thursday and Friday, June 18th, 19th and 20th, 1919.

The following program was arranged and carried out:

(1) Judge J. Harry Covington of Washington, formerly a member of Congress and recently a Judge of the Supreme Court of the District of Columbia, made the introductory address.

(2) Major General W. L. Siebert, U. S. A., Chief of the Chemical Warfare Service in the United States spoke of the lack of preparedness which hampered the work of the Chemical Warfare Department in explosives, gases, etc.

(3) Lieut. Col. Amos Fries, U. S. A. Chief, Chemical Warfare Service of the American Army in France, whose testimony bore on conditions in Allied countries abroad, also due to the lack of preparedness in the Dye Industry which was absolutely necessary for the production of explosives, gases, etc.

(4) Lieut. Commander A. M. Hustudt, U. S. N. Bureau of Ordnance, whose testimony was along the same lines as that of General Siebert and Col. Fries.

(5) Major T. W. Sill, U. S. A. Member of the Commission which visited dyestuff factories in Occupied Territory was to have testified but was obliged to leave Washington owing to the delay in beginning the hearings. He prepared a statement which was subsequently filed with the committee and which will be printed in the proceedings.

Having shown from the testimony of the foregoing the value and importance of the Industry from the standpoint of National Defence the next step was to show the need of the Industry from the standpoint of the Medical Profession.

(6) Dr. Julius Stieglitz, Chairman of the National Research Council in Synthetic Medicinals, head of the Department of Chemistry of the University of Chicago and formerly President of the American Chemical Society, amplified his subject of Synthetic Medicinals unavailable through lack of preparedness.

The third step concerned the producers and the consumers of dyestuffs, and the following witnesses appeared.

(7) Mr. Rufus R. Wilson, Secretary of the National Cotton Mfrs. Assn. and Secretary of the Council of that Assn. and the American Cotton Manufacturers' Assn. also representing Mr. James R. McCall, Chairman of that Council, in turn representing cotton consumers both North and South, spoke for both organizations and strongly advocated the development of the Industry and also made a very forceful appeal for the Licensing system.

Following Mr. Wilson came a few individual representative manufacturers in various branches of the Textile Industry as follows:

(8) Mr. Frank D. Cheney of Cheney Bros., silk manufacturers, spoke as a consumer and emphasized the necessity for developing the Industry in this country, advocating the Licensing system.

(9) Mr. Andrew C. Imbrie, Treas. of the U. S. Finishing Co. also spoke as a consumer along the same lines as did Mr. Cheney.

(10) Mr. Franklin W. Hobbs, President of the Arlington Mills, had come to Washington at the request of the Committee but had to return to Boston before the hearings began. He prepared a statement which was subsequently filed with the committee and which will be printed in the record of the proceedings.

(11) Mr. D. F. Waters, President of the Master Dyers' Assn. of Philadelphia had to return to his city, but like Mr. Hobbs and Major Sill, prepared a statement which Congressman Moore introduced into the record where it will be printed.

(12) Mr. Chas. L. Auger of the National Silk Dyeing Co. had come prepared to testify as a consumer but he, too, was obliged to return, leaving a statement which was filed and will be printed.

In addition to the foregoing there were presented to the Committee and ordered printed in the record, the names of something over 500 signers to the memorial to the President of the United States. This list covered a wide range geographically and included the representative concerns in all dye-consuming industries.

This brought the hearing to the fourth step, namely, the introduction of testimony concerning the development of the Chemical and Dyestuff Industry in the United States since August 1st, 1914. The witnesses called to speak on this subject were as follows:

(13) Mr. Joseph H. Choate, Jr., General Counsel of the Chemical Foundation Incorporated and

advisory counsel for the American Dyes Institute, who occupied, with the consent of the Ways and Means Committee, an entire day in presenting the subject to that Committee. It was an unusually forceful and illuminating address and produced a very favorable effect. In connection with Mr. Choate's address you will find in the record a number of documents obtained from various departments of the Government and now published for the first time.

(14) Dr. Charles H. Herty, formerly President of the American Chemical Society. Dr. Herty reviewed his testimony before the Ways and Means Committee at a hearing held under the "Hill Bill" in 1916 and pointed out the development in the Industry since then and the changes that had taken place resulting in a revision of views concerning the needs of the Industry. Dr. Herty advocated

- (a) the Licensing system
- (b) an increase in the tariff
- (c) the same rate for intermediates as for finished dyes

During the hearing it developed that various members of the Committee were particularly anxious to know whether or not the new Industry had been established on a firm foundation and likely to survive if amply protected and particularly during the next few years.

(15) Mr. D. W. Jayne of the Barrett Co. had come from New York to testify but was obliged to go home before he was reached. He filed a statement on the production of crudes and intermediates which was introduced into the record.

(16) Dr. J. Merritt Matthews, who had been selected to speak for the manufacturers collectively under the name of the American Dyes Institute, presented a brief which will appear in full in the record. It is a very comprehensive statement and also answers a number of questions asked by various members of the Ways and Means Committee during the early part of the hearing. This document gives a comprehensive review of the Dye Industry bringing the record up to date.

The Tariff Commission, at the request of the Ways and Means Committee, prepared a "Report on Dyes and Related Coal Tar Chemicals" bringing their work up to date. This report was presented by:

(17) Dr. Grinnell Jones of the Tariff Commission and will appear in full in the record of the hearings.

In addition to the foregoing the Ways and Means Committee called from among those present:

(18) Mr. Herman A. Metz of New York who advocated a higher tariff and favored the Licensing plan.

(19) Mr. Louis Frusher of the U. S. Worsted Co. advocating a higher tariff and favoring the Licensing system.

The probabilities are that the Longworth Bill will be reported by the Ways and Means Committee at an early date. In the meantime we refer to (a) a press report sent out from Washington under date of June 23rd and printed in yesterday's New York Journal of Commerce, copy attached; (b) enclosed copy of Mr. Choate's brief on the Licensing plan as submitted to the Ways and Means Committee and amplified by him in his address.

The Ways and Means Committee will have ready for distribution probably inside of two weeks, the full text of the hearing including the various exhibits introduced by Mr. Choate, Dr. Herty, Dr. Matthews and others.

Mr. Corwine has arranged with the Ways and Means Committee to have a copy sent to each member of the Institute immediately upon publication.

During the hearing it became apparent that the attitude of the various consuming industries toward the Licensing plan was a matter of the utmost importance.

The Institute has received to date from all of its members approximately 600 signed copies of the memorial to the President. Later on (probably during July) there will be another hearing before the Senate Finance Committee and for this purpose we should have a very much larger list of signers, 5000 if possible. We therefore urge all members of the Institute to co-operate in this matter.

Respectfully submitted,

SUB COMMITTEE of the EXECUTIVE COMMITTEE of AMERICAN DYES INSTITUTE.
M. R. Poucher, Chairman
R. T. Baldwin,
R. C. Jeffcott.

Countersigned
WM. R. CORWINE, *Secretary.*

PLAINTIFF'S EXHIBIT No. 547.

MINUTES of a monthly meeting of the American Dyes Institute held at the Hotel Biltmore, New York City, Thursday, July 10th, 1919.

The meeting was called to order by the Secretary who called for nominations for chairman.

It was moved and seconded that Mr. August Merz be elected Chairman of the session. There being no further nominations the Secretary called for a vote and Mr. Merz was unanimously elected and thereupon took the chair.

There being no objections to the Minutes of the previous meeting held June 6th, 1919, copy of which had been sent to all members, the Chairman declared that the Minutes were approved.

The Roll was called and the following firms were present, represented as follows:

(American Aniline Products, Inc. not present)	
Atlas Color Works, Inc.	Mr. Alfred J. Thieme
The Ault & Wiborg Co.	Mr. A. C. Davis Mr. F. B. Wiborg
John Campbell & Co.	Miss Minna H. Simmons
Consolidated Color & Chemical Co.	Mr. H. A. Metz
E. I. du Pont de Nemours & Co.	Mr. M. R. Poucher Mr. E. V. Patterson Mr. Porch
Dye Products & Chemical Co.	Mr. Sidney Simon Mr. L. M. Loewenthal
Essex Aniline Works Inc.	Mr. Phineas Kent
Grasselli Chemical Co.	Dr. J. M. Matthews
The Heller & Merz Co.	Mr. August Merz

The Dow Chemical Co.	Mr. James T. Pardee
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo, Jr.
	Mr. R. C. Jeffcott
National Aniline & Chemical Co.	Mr. Henry Wigglesworth
	Mr. R. T. Baldwin
	Mr. H. H. Rephogle
Naugatuck Chemical Co.	Mr. Wm. Valentine
Rector Chemical Co.	Mr. J. H. Buck
Peerless Color Co. Inc.	Mr. R. W. Cornelison
	Mr. A. L. Benkert
The Sherwin-Williams Co.	Mr. J. B. Hasson
	Mr. W. S. Woodrow
Transatlantic Chemical Corp.	Mr. W. M. Stevenson
U. S. Color & Chemical Co.	Mr. John O'Day
Tower Manufacturing Co. (on invitation)	Mr. D. H. Jonas

together with Mr. H. E. Danner, Treasurer; Mr. Arthur J. Eddy, Counsel and Mr. Wm. R. Corwine, Secretary.

The membership application of the Newport Chemical Works Inc., which had been approved by the Executive Committee, was presented to the meeting and on motion duly made and seconded, the corporation was unanimously elected to membership.

The membership application of the Barrett Company was also presented, it having received the approval of the Executive Committee, and on motion duly made, seconded and carried that company was unanimously elected to membership.

The Secretary was called on to make his report. He made an oral statement, stating that as he had been in Washington practically all the time since the last meeting, where he had been stationed in connection with proposed Dye Legislation, he had not made up any official report and felt that as the Washington situation was the most interesting one at present and the one to which the attention of the members was directed, he would not take up the time of the meeting with a presentation of the detailed matters which the Executive Committee had had under consideration, and with which most of the members of the Institute were familiar.

The position of the Secretary in this matter was approved.

The Treasurer thereupon made his report which is as follows:

June 1, 1919 Balance		$20,141.42
Received in June		841.18
		20,982.60
Expenditures		3,881.68
		$17,100.92
Accounts Payable	$5,000.00	
Accounts Receivable	24,394.82	

The Treasurer added that in the Open Price Section, in response to a circular which had been sent to the members, the following is a digest of the results therefrom, where members supplied the information concerning the products offered for sale by them since June 26th, 1919:

"Record of Products offered for sale by Members since June 26, 1919:

Dinitrochlorbenzol
Calcium Chloride
Benzo Blue B. B.
Direct Union Navy Blue
Meta Toluylene Diamine
Sodium Sulphide
H Acid
Diamine Green
Beta Napthylamine
Dinitrobenzol
Paranitrophenol

Mr. Eddy, Counsel, made a statement concerning the work of the Open Price Section, which was filed with Mr. Danner, Secretary of that Division.

The Chairman thereupon called upon Mr. M. R. Poucher, Chairman of the Sub-Committee of the Executive Committee in charge of dye legislation to make a statement concerning the work which had been done by his Committee. Mr. Poucher stated that inasmuch as the Secretary had kept the members advised by bulletin, it was not necessary to go into details. He, however, briefly reviewed the position of the Bill now before Congress and said that every effort would be made to carry the matter to a successful conclusion.

The Chairman called upon Mr. L. M. Lowenthal as Chairman of the Committee appointed at the last meeting to consider the preparation of a certificate of membership, the other members of the committee being Mr. F. M. Fargo, Jr., and Mr. Wm. R. Corwine, Secretary. Mr. Lowenthal said the subject was under consideration and reported progress.

The Secretary made a report of the number of pamphlets entitled "The Chemical Foundation Incorporated" which had been sent out through the Rapid Addressing Machine Co. and which had also been mailed from the office of the Institute. He stated that inquiries were being received daily for copies and that there was under consideration a plan whereby the Chemical Foundation Inc. would send out further quantities of these Booklets to retailers throughout the Country.

The Secretary also reported the execution of a contract for space in the Fifth National Exposition of Chemical Industries to be held in Chicago, week of September 22nd, 1919, the place being the Coliseum and First Regiment Armory. He also stated that the manager of the Exposition had supplied the Institute with some poster stamps to be used on its mail, calling attention to the fact that the Institute would be represented at the Exposition.

There was a discussion which was participated in by several members, on the subject brought forward by Mr. Robert T. Baldwin concerning the advisability of following up through the sales manager or salesmen, all technical advertising done by members, so as to add to its effectiveness. Some members said that this was already being done; others said that nothing in that direction had been undertaken.

Mr. R. W. Cornelison of the Peerless Color Works spoke of the necessity of educating the public on colors so that knowledge might become more wide-spread as to conditions under which some colors were manufactured, and to generally disseminate more accurate information among the retailers and the consuming public. As this subject had been dealt with in a brief submitted to the Ways and Means Committee of the House of Representatives by Dr. J. Merritt Matthews, reference to it was made by Mr. Baldwin who said that his company was going to reprint Dr. Matthews' brief and use portions of it extensively.

Dr. Matthews thereupon told of some correspondence with the Bush Terminal people stating that at the request of the Institute he had prepared an article to be published in a bulletin to be issued by the Bush Terminal Sales Co., which would be widely distributed among retailers and buyers throughout the country, and that in the article he had treated some phases of the subject referred to by Mr. Cornelison, and along the lines upon which he had written in his brief submitted to the Ways and Means Committee.

The Secretary also reported that arrangements had been made for an article to be inserted in a magazine called "The Nation's Business" which was published monthly by the Chamber of Commerce of the U. S. A. and widely circulated throughout the entire country. The article includes from 2000 to 2500 words. It is hoped that it will be signed by Mr. Choate. It will treat of the difficulties in the manufacture of colors. The Secretary requested that all the members read the magazine, the next issue of which will be published in August, 1919.

The Chairman called upon Mr. A. C. Davis of the Accountants' Committee to report on behalf of that Committee in view of the absence of Mr. J. M. Gaines, Chairman of that Committee. Mr. Davis gave a digest of the work which had been done by that Committee and stated that he did not have with him at the time, copy of the report which the Chairman had prepared, but in substance it was that the Committee recommended that:

> All members of the Institute file their reports direct with the U. S. Tariff Commission without delay.
>
> That the Members submit in addition to the blanks which had been issued by the Tariff Commission, full explanatory schedules and other information that they might desire to furnish as to cost of materials manufactured by themselves, with special reference to the labor accumulated in such materials;
>
> That the company's own cost sheets for the period under report, as called for in the questionnaire of the Tariff Commission, would also be desirable additions;
>
> That any reports which members might make be taken to the Tariff Commission in person so that there might be a discussion at first-hand, rather than by correspondence, on any points which members might care to raise in connection with their respective reports.

The date of the next meeting was fixed for Thursday, August 7th, 1919, at the same time and place.

There being no further business the meeting adjourned.

PLAINTIFF'S EXHIBIT No. 547-A.

Hotel Biltmore, July 10th, 1919, 10:15 A. M.

The Sub-Committee of the Executive Committee of the American Dyes Institute, appointed in charge of proposed Dye Legislation in Washington, held a conference with Mr. Edwin L. Kalish, of 27 William Street, New York City, in connection with a number of amendments which had been proposed to the present Longworth Bill now before the Ways and Means Committee of the House of Representatives.

These amendments had been worked out by a committee of chemists representing dye manufacturers whose aim had been to simplify the bill and to draw into one group the intermediates and the finished products. This necessitated the recasting of most of the present bill.

The Committee with Mr. Kalish were in session until 1:30 P. M.

The changes adopted will be submitted to the Ways and Means Committee, possibly through Judge Covington and Mr. Choate, or through other channels.

As all the members of the Sub-Committee are members of the Executive Committee the meeting of the latter, scheduled for 12 M., was adjourned until after the meeting of the Institute which was to be held after luncheon.

PLAINTIFF'S EXHIBIT No. 548.

MINUTES of a meeting of the Executive Committee of the American Dyes Institute held Thursday, July 10th, 1919, at the Hotel Biltmore, New York City.

In attendance:

Dr. J. M. Matthews
R. C. Jeffcott
M. R. Poucher
R. T. Baldwin
August Merz
A. B. Davis, representing M. F. Holt for the Ault & Wiborg Company

together with Mr. H. E. Danner, Treasurer; Mr. A. J. Eddy, Counsel, and Mr. W. R. Corwine, Secretary.

In addition there were present Mr. Frank B. Wiborg and Mr. Henry Wigglesworth.

On motion duly made, seconded and carried, Mr. August Merz was elected Chairman.

The Minutes of the last meeting, copy of which had been sent to all members, were declared approved, no objections having been filed.

The application of The Barrett Company for membership in the American Dyes Institute was presented and approved.

The Secretary was authorized to subscribe to a clipping bureau during the pendency of the dyestuff bill in Congress.

So far as communications regarding foreign markets were concerned the Committee laid down the general rule that in all such instances the Secretary should bulletin the information to the members without further reference to the Executive Committee, leaving it to the members to take such action in connection therewith as they might desire.

This ruling was based, for the time being, upon two communications which the Secretary presented; one from the American-Roumanian Export & Import Co., and the other from a Mr. Heggelund of Kristiania.

There was then laid before the Committee a telegram from Mr. W. D. Adams, Secretary of the American Cotton Manufacturers' Association concerning the possibility of obtaining membership in that Association by the members of the American Dyes Institute. Mr. Adams' telegram also referred to a similar policy in connection with the National Association of Cotton Manufacturers. The members of the Committee felt that it would be an excellent thing if close co-operation could be established between these two great Associations representing dye consumers, and the manufacturers of dyes, and the Secretary was instructed to write to Mr. Adams and Mr. Rufus R. Wilson, Secretary of the National Assn. of Cotton Mfrs., asking them to furnish the Institute with a list of their members, indicating thereon those dye manufacturers that were already members in either one or both of the two organizations.

The Secretary was also requested to ask both Secretaries of the cotton organizations to send him application blanks for membership, which in turn can be sent to the members of the American Dyes Institute.

The question of making a survey of South American conditions so far as they might affect Chemical and Allied Industries was discussed, and it was announced that Dr. J. E. Zanetti of the Columbia University would be willing to visit South America and make a complete survey, but that the remuneration which he would receive, were he appointed by the Government to do that work, would be too small for a man of his capacity to accept as an income, but that if we guaranteed him a satisfactory amount he probably would be willing to go, representing the Manufacturing

Chemists' Association, the American Dyes Institute and certain other organizations interested in the development of South America.

As the raising of the fund required therefor would necessitate an assessment, it was decided to lay the matter over for the time being.

Dr. Zanetti had been connected with Chemical Warfare work and had made a fine record in Paris where he had been on behalf of the Government. He is Cuban by birth. His wife was a South American. He speaks Spanish and French as well as English and has an education along chemical lines. It was asserted on his behalf that he was the ideal man for making the survey suggested.

At this point Mr. Merz had to leave the meeting and Mr. R. T. Baldwin took the chair.

The Secretary read a notice from the War Trade Board to the effect that its present duties, powers, functions and records had been transferred to the Department of State as of July 1st, 1919, but that the transfer would not affect the exporting and importing public in any way. The notice stated that all licenses hitherto issued by the War Trade Board would continue to be valid except such ones as were specifically mentioned in the notice, but which did not affect the Dye Industry.

The functions of the War Trade Board, as set forth, would continue to be performed with the present personnel of that Board in its office at 20th and C Streets, Washington, D. C. and that all applications for licenses and all correspondence pertaining to the activities of that Board should be addressed to it as hitherto.

The Secretary presented and read a written report of the Accountants' Committee, which was approved. Subsequently there was ordered upon the Minutes certain extracts therefrom, these extracts to be sent to all members of the Institute:

"It was strongly recommended that all the members of the Institute file their reports direct with the Commission without delay. The Tariff Commission urgently requests this. It is suggested by your Committee that the members submit in addition to the Commission blanks, full explanatory schedules and also any other information they may desire as to costs of materials manufactured by themselves, with special reference to the labor accumulated in such materials. Companies' own cost sheets for the period under report would also be desirable additions. In the opinion of the Committee it would be desirable for the company accountant to file the report with the Tariff Commission in person in order to make such verbal explanation and amplification as opportunity permits, in this way better acquainting the Commission with the detail of this complicated new Industry.

The Standardized Cost Methods. Your committee, in discussing this report, has found considerable profit already in the discussion of cost methods and suggests to the Institute that it might be well for its activities to be continued in this direction, looking to standardized costing methods, especially in the treatment of overhead expenses, of by-products, of obsolescense of equipment, treatment of experimental and development work, of spoiled product, or that decomposing after manufacture, etc."

The Treasurer stated that he was about leaving on a vacation and that as the Secretary, representing the Sub-Committee of the Executive Committee in charge of legislation, might need funds, he wished authority to place such funds in the hands of the Secretary who would open a special account in Washington and render a statement on the return of the Treasurer. This was authorized.

There being no further business the meeting adjourned.

PLAINTIFF'S EXHIBIT No. 549.

MINUTES OF A SPECIAL MEETING OF THE EXECUTIVE COMMITTEE OF THE AMERICAN DYES INSTITUTE HELD AT THE CHEMISTS' CLUB, NEW YORK CITY, MONDAY EVENING, AUGUST 4TH, 1919.

In attendance:

Dr. J. M. Matthews,
Mr. M. R. Poucher,
Mr. R. C. Jeffcott,
Mr. R. T. Baldwin.

Mr. W. H. Watkins was also present by invitation.

Owing to the absence of the Secretary in Washington Dr. J. M. Matthews acted as Secretary.

The Sub-Committee of the Executive Committee in charge of legislation, through its Chairman, Mr. M. R. Poucher, made a report of what had been done in Washington recently and stated that the committee had reached the conclusion that it would be advisable to run off 10,000 copies of the various reports of the hearings, which are now contained in seven different pamphlets. The idea was to assemble these pamphlets and have them run off and bound together in one volume. Arrangements had been made whereby the Government printing office, which, of course, printed the original issues, would do this work at the expense of the Institute, and the committee was of the opinion that the work ought to be centered in that office because the material was already in type, and therefore the expense of such an issue would be far less than if the pamphlets were taken to some outside printer who would have to reset the entire matter which occupies 736 pages. The cost of doing this work by the Government would be $594.88 for the first 1,000 copies; $342.90 for each additional thousand. The cost, therefore, for 10,000 copies would be $342.90 multiplied by nine, which would equal $3086.10, to which amount there would have to be added the cost of the first thousand, $594.88, making the total cost $3680.98. This estimate was based upon some additional matter which the committee would like to have printed; *i. e.*, the bill as it was reported by the Ways and Means Committee of the House of Representatives, the majority report of the committee, prepared and filed by Congressman Longworth and the minority report which was subsequently filed by Congressman Moore. Mr. Longworth's summary of the bill was a very clean-cut document and one which the committee felt ought to be bound up with the Hearings. In doing that, however, it seemed only ethical that the minority report should also be included.

DR. J. M. MATTHEWS,
Acting Secretary.

The Executive Committee approved the report which was made orally by Mr. Poucher and authorized the Treasurer to expend the amount of money necessary to carry out the plan of the Committee for printing and circulating 10,000 copies of the various hearings before the Ways and Means Committee in the matter of dyestuff legislation.

There being no further business the meeting adjourned to reconvene at the next regular meeting which had been scheduled for Thursday, August 7th, 1919, at 12 M.

DR. J. M. MATTHEWS,
Acting Secretary.

PLAINTIFF'S EXHIBIT No. 550.

MINUTES,
EXECUTIVE COMMITTEE,
August 7th, 1919.

Minutes of the regular monthly meeting of the Executive Committee of the American Dyes Institute held at the Hotel Biltmore, New York City, Thursday, August 7th, 1919, at 12 M.

In attendance:

Mr. August Merz,
Mr. R. T. Baldwin,
Dr. J. M. Matthews,
Mr. F. M. Fargo, Jr.,
Mr. E. V. Patterson (attending in place of Mr. Poucher who was out of town)

and Mr. H. E. Atherton, on invitation, together with Mr. W. R. Corwine, Secretary.

Mr. E. V. Patterson was elected Chairman of the meeting.

As the Minutes of the last meeting had been sent out to the members of the committee and there were no objections or corrections made the Minutes were approved.

The application for membership of the Tower Manufacturing Co., Inc., which had been signed and filed, was laid before the committee. As there was no one present who had definite knowledge of the work of that company the matter was laid over until the next meeting.

The Secretary was instructed hereafter when applications for membership were filed with him, to send copies of such application to all the members of the Executive Committee in advance of the meeting at which the application was to be presented.

Attention was drawn to a conference to be held at Atlantic City during the week beginning Sept. 29th under the auspices of the Chamber of Commerce of the U. S. A. The Secretary explained that this conference had been called to consider international post-war trade conditions. To it, he said, there had been invited delegates of representative business men from all the Allied nations and that many of the Allies, especially the larger ones, such as England, France and Italy, had accepted the invitation and already had appointed delegates. All the associations belonging to the Chamber of Commerce of the U. S. A. had been invited to have representatives at the conference. The Secretary was named as the official representative of the Institute and it was understood that he would bulletin all the members concerning this conference, emphasizing its importance and suggesting that as many members as possible attend.

The matter of the National Exposition of Chemical Industries to be held in Chicago the week beginning Sept. 22nd was brought forward and discussed. It was announced that many members had already taken space on their own individual account, but it was thought that the Institute ought to have an Exhibit, preferably a chart showing its membership and other matters of interest connected with the Institute and its work; also that this would be a good opportunity for further distribution of the Chemical Foundation, Inc., pamphlets and of the bound volume of the Hearings of the Dyestuff Bill which it was proposed to print.

Finally a committee was appointed to arrange for the Exhibit. That committee, as named, consists of the Secretary, Mr. Wm. R. Corwine, Chairman, Dr. J. M. Matthews and Mr. August Merz.

Concerning the Chemical Convention of the American Chemical Society to be held in Philadelphia

Sept. 2nd to 6th, at the Hotel Bellevue-Stratford, it was thought that inasmuch as the American Dyes Institute was not a member of that association it would not be necessary for the Executive Committee officially to take any action, but it was announced that many of the members of the Institute would unquestionably be in attendance and it was stated that several members had already been approached to prepare addresses to be delivered during the convention.

There was laid before the meeting a letter from the Treasurer transmitting a communication which had been addressed to the American Dyes Institute, dated at Reading, Pa., July 30th, 1919, and signed by several dye consumers. It was reported by some members of the committee that a similar communication from the same consumers and on the same subject had been received by them. The substance of this letter was that dye manufacturers ought not to send technical experts to teach the consumers of dyes how to use them. It was asserted that there was no more excuse for this being done than there would be for a farmer to send an expert to show a miller how to make flour, or a furnace company to instruct a foundry, or a Dinitrochlorbenzol manufacturer to instruct the dye maker how to make Sulphur Black. The letter closed with an appeal to the Institute to do something to change the policy referred to. Those who received similar communications agreed to answer them direct, and the Secretary was requested to reply to the letter, stating that the Institute as a body had no authority to regulate the policy of individual members, but that each must work out his own problem for himself.

The Secretary asked for instructions concerning a suggestion which had been made by the Universal Leaf Tobacco Co. which occupies the greater part of the tenth floor at 21 East 40th Street, on which the office of the American Dyes Institute is located, which was to the effect that the Institute move to the 18th floor in a room which was in the same locality—on the floor as the one now occupied by the Institute with the same floor space. This request was made because the Universal Leaf Tobacco people desire to occupy more space on the floor than they now do, and while the rent of the room on the 18th floor is at the rate of $1700 per year, as against $750 a year now paid by the Institute, The Universal Leaf Tobacco Co. offer to pay the difference up to May 1st, 1920. The Secretary reported to the Committee that the change could be easily made and he was instructed to go ahead and move if he were willing so to do.

> Memo. The Secretary subsequently called upon the Universal Leaf Tobacco Co. (speaking to its Vice President) and also inspected the room on the 18th floor, #1807. The room is very much better than the present one occupied by the Institute, in that it has more light and is sub-divided so that the Secretary can have a private office. There are two windows on the west side, whereas in the office now occupied by the Institute the west side is a solid wall. It was learned, however, that the tenants in Room 1807 did not expect to move until October 1st on which date their lease expires. It was thereupon agreed between the Universal Leaf Tobacco Co. and the Secretary that the American Dyes Institute would move up to Room 1807 as soon as it was ready for occupancy, the Universal Leaf Tobacco Co. agreeing to pay the cost of moving the office furniture, and as set forth in their letter, also pay the difference between the rate of $1700 for the Room 1807, and $750 per year now being paid by the Institute for Room 1007. It was agreed that there would be no obligation of any kind by the Institute after May 1st, 1920. The foregoing was set forth in a letter which the Secretary wrote to the Universal Leaf Tobacco Co.

The situation in regard to membership by members of the American Dyes Institute in the National Assn. of Cotton Mfrs. and the American Cotton Manufacturers Assn. was discussed. The Secretary said that he had been in correspondence with Messrs. Wilson and Adams, the secretaries respectively of those two organizations, and had prepared a communication to be sent to the members of the Institute. He stated, however, that he would like to have some member go over it with him before it was put in shape for mailing. It was suggested to him that he send a copy of the draft to each member of the Institute inviting suggestions.

The Treasurer stated that according to his books the Chemical Foundation, Inc., owed the Institute $9519.83. It was his understanding, and it was stated by the members of the Executive Committee present, that it was their understanding that the preliminary expenses which had been assumed and paid by the Institute would be taken care of ultimately by the Chemical Foundation, Inc. Mr. Danner stated that he had sent a bill to the Foundation some time ago; that he had received a response from Mr. Choate to the effect that the matter would be attended to; that he had written a follow-up letter but had received no response to that letter. The Treasurer was thereupon requested to take the subject up direct with Mr. Corbett, Treasurer of the Chemical Foundation, Incorporated, and settle the matter.

Concerning the bill of Steele & Otis it was the opinion of the committee that this bill and the bill of Mr. Bright ought to be paid. The Secretary was requested to see Mr. Bright in Washington and obtain from him a bill for his services, if possible before the next meeting of the Executive Committee.

There being no further business the meeting adjourned.

WM. R. CORWINE,
Secretary.

WRC/VS

PLAINTIFF'S EXHIBIT No. 551.

Minutes of Regular Monthly Meeting of the American Dyes Institute Held at the Hotel Biltmore, New York City, Thursday, August 7th, 1919, at 2 P. M.

The following were in attendance:

American Aniline Products, Inc.	Mr. B. R. Armour
	Mr. Paul Nobbe
Atlas Color Works, Inc.	Mr. Alfred Thieme
The Ault & Wiborg Co.	Mr. Robt. W. Hilton
John Campbell & Co.	Miss M. H. Simmons
Consolidated Color & Chemical Co.	Mr. H. A. Metz
E. I. duPont de Nemours Co.	Mr. E. V. Patterson
Dye Products & Chemical Co.	Mr. Sidney Simon
Grasselli Chemical Co.	Dr. J. M. Matthews
The Heller & Merz Co.	Mr. August Merz
The Dow Chemical Co.	Mr. Jas. T. Pardee
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo, Jr.
National Aniline & Chemical Co.	Mr. C. M. Patterson
	Mr. R. T. Baldwin
	Mr. H. E. Atherton
Naugatuck Chemical Co.	Mr. Wm. Valentine
Newport Chemical Works, Inc.	Dr. E. H. Killheffer
Rector Chemical Co.	Mr. Hurst
Transatlantic Chemical Corp.	Mr. W. M. Stevenson

together with Mr. Wm. R. Corwine, Secy., and Mr. H. E. Danner, Treasurer.

Mr. E. V. Patterson was elected Chairman.

As there were no suggestions or corrections proposed to the minutes of the last meeting, copy of which had been sent to all the members in the usual form, the Chairman declared them approved.

The Treasurer then submitted his report which is as follows:

July 1, 1919, Balance	$17,100.92	
Received in July	1,000.00	
		$18,100.92
Expenditures		7,710.96
Balance, August 1st, 1919		$10,389.96
Accounts Payable	$5,000.00	
Accounts Receivable	24,269.83	

It was approved and ordered on file.

The Secretary was called upon for his report. He made a brief oral one stating that he had not prepared a written one because all of his activities had been in Washington and the principal work of the Sub-Committee and himself had been in that city in connection with the proposed dye legislation.

Mr. R. T. Baldwin made a brief report for the Sub-Committee of the Executive Committee in charge of legislation. It was an oral one. He did not go into details because the members had been advised of the developments, and suggested that when the volume containing the reports of the hearings was printed, it should be given careful attention. He felt that all the members would find it extremely interesting.

There being no further business brought before the meeting it was decided to adjourn and hold the next meeting at the same time and place, Thursday, Sept. 11, 1919.

WM. R. CORWINE,
Secretary.

WRC/VS

PLAINTIFF'S EXHIBIT No. 552.

Minutes of a meeting of the Executive Committee of the American Dyes Institute held in Room 1007, No. 21 East 40th Street, New York City, on Friday, Sept. 5th, 1919, at 2 P. M.

In attendance:

Dr. J. Merritt Matthews,
Mr. R. T. Baldwin
Mr. August Merz

together with Mr. H. E. Danner, Treasurer.

In the absence of the Secretary, Mr. Wm. R. Corwine, who is in Washington, Dr. Matthews acted as Chairman.

The membership application of the Tower Mfg. Co. was again laid before the Committee. In view of the fact that the information secured by the members present, relative to the character and work of this company, did not warrant their election to membership in the Institute, it was decided to write to Mr. W. S. Woodrow of the Sherwin-Williams Co., (who invited the representative of this company, Mr. D. H. Jonas, Secretary, to attend one of the Institute's monthly meetings, which visit resulted in the application for membership made by the Tower Mfg. Co.) enquiring if he could furnish the committee with any further information relative to this concern, its work, its officers, etc., which would qualify it for membership in the Institute. The Secretary's assistant was instructed to write this letter.

There was laid before the meeting, a letter from the Manufacturing Chemists' Assn. of Boston, dated August 23rd, addressed to Mr. Corwine as Secretary, enclosing copy of a resolution passed by that organization at a meeting held on August 20th, which Resolution reads as follows:

> "VOTED: That the Executive Committee of the Manufacturing Chemists' Association endorse the principle of safeguarding the Dye Industry in the present emergency by licensing imports of dyes as well as by the application of a protective tariff, which principle the American Dyes Institute has been advocating before Congress to secure effective and proper legislation. The Manufacturing Chemists' Association, having been instrumental in securing the protection obtained for the Dye Industry in 1916, now offers, through its Executive Committee, to the (Dyes Institute) American Dyes Institute, its assistance in any effort that the American Dyes Institute may contemplate making in connection with the advocacy of the prompt passage of this legislation."

It was decided to acknowledge, with thanks, receipt of this letter and advise the Manufacturing Chemists' Assn. that the matter would be laid before the next meeting of the Institute and spread upon the Minutes. The Secretary's assistant was requested to write this letter.

In consequence of a conference held between Mr. Lowenthal and Mr. Fargo (two members of the special committee of three appointed to take under consideration the preparation of a membership certificate) previous to this meeting of the Executive Committee, Mr. Lowenthal who happened to be present at the opening of the latter meeting, brought before the members present, the sketch he had of the proposed membership certificate. The general idea was unanimously approved of, and with some slight changes the layout was accepted by the Executive Committee as the membership certificate to be awarded to the members of the Institute.

It was duly moved, seconded and carried, that an order be placed with the originators of the design, for 250 copies of the certificate, 40 of which are to be framed for immediate use of the members; price to be $300 for the 250 certificates and $2.00 each for the frame. The Secretary's assistant was instructed to write out this order.

The Chairman called the committee's attention to the representation of the American Dyes Institute at the Chamber of Commerce Conference to be held in Atlantic City during the week of Sept. 29th, which representation to date is as follows: Mr. Wm. R. Corwine, Secy., Mr. H. H. Dow, Mr. Jas. T. Pardee, Mr. Paul Nobbe, Mr. Robt. W. Kemp, Mr. H. J. McGrane and Mr. M. R. Poucher. The committee expressed approval of the representation.

The Chairman read to the Committee extracts from the minutes of a recent meeting of the Accounting Committee (held on August 21st), apprising the committee of the work done by the accountants, and also of the desire of the Accountants Committee to increase its membership. The Accountants' Committee has requested the Secretary to approach eleven more members of the Institute with the view of enlisting their support and co-operation in the work proposed to be undertaken by the accountants, by each designating a member of their organization to work with the present Accountants Committee. The Secretary's assistant informed the committee that this was being done. The Committee expressed approval of the work of the Accountants' Committee and the advisability of having it continued with the aid of as many members of the Institute as possible.

The Chairman advised the committee of the activity of the National Assn. of Hosiery & Underwear Mfrs. in their efforts to gain backing to their protest against the licensing system of controlling dye imports.

There was laid before the committee communication from Mr. C. K. Weston of the Publicity Bureau of the E. I. du Pont de Nemours Co., transmitting copy for a series of post-card circulars intended to create sympathy with the efforts of the dye manufacturers to obtain the licensing feature of the proposed dye legislation now pending. The question arose as to the authority for this publicity work, and it was decided to write Mr. Corwine in Washington, relative to this matter. The Secretary's assistant was instructed to do this.

The Chairman read to the committee a letter from the Laundryowners' National Assn. extending an invitation to the Institute to have a representative address their convention to be held in New York City Oct. 6th to 9th, and transmitting a copy of their letter to the Great Western Laundry Co. of Chicago relative to the latters' method of disclaiming responsibility for fastness of color.

It was moved, seconded and passed that Mr. Jos. H. Choate, Jr., Counsel for the Institute, be requested to represent the Institute at the Convention referred to, and address them on the subject of American Dyes. The Secretary's assistant was requested to communicate this information to Mr. Corwine who was to be asked to extend the invitation to Mr. Choate.

Dr. Matthews informed the Committee that Mr. Corwine had advised him that the printed records of the hearings recently held before the Ways and Means Committee in Washington, in the proposed dyestuff legislation, were practically completed; that the members have been requested to advise the Secretary of their respective requirements of these pamphlets for distribution to interested parties; and that a quantity will be shipped to the Institute's booth at the forthcoming Exposition in Chicago, for discriminate distribution there.

There was laid before the committee further correspondence from the Althouse Chemical Co. relating to the method employed by some dye manufacturers in teaching dye users how to use their products, regarding which the Dyes Institute had previously advised Mr. Althouse, as representing the dyers in his territory on this matter, it could do nothing, as it had no authority to regulate the policies of its members. Mr. Althouse in his later letter, expressed disappointment at the attitude assumed by the Institute, feeling that, in view of the evident antagonism towards the Institute felt in his territory by the dyers, it might have been well to give the dyers a more satisfactory reply. After discussion of this matter, during which it was emphasized that practically every line of manufacture, necessitated the teaching to the purchasers, by the manufacturers, the methods of using their products, it was decided to reply to Mr. Althouse's letter to the effect that the Institute could not recede from the position it originally took on this subject. The Secretary's assistant was instructed to write this letter.

Another letter dealing with the same matter as covered by the Althouse Chemical Co., emanating from the Master Dyers' Exchange of New England, was laid before the Committee and carefully considered. It was decided, after discussion, to acknowledge, with due appreciation, receipt of the letter and convey to them the same attitude assumed in connection with the correspondence of the Althouse Chemical Co. on behalf of the dyers in the Reading, Pa., section.

Dr. Matthews, on behalf of the Grasselli Chemical Co., made a request to the Secretary of the Open-

Price Section, Mr. H. E. Danner, that a section be established for the interchange of information on the Open-Price plan covering Sulphur Colors, and it was decided to submit this request at the next meeting of the Institute and invite participation.

There was laid before the Committee some correspondence from the Secretary, Mr. Wm. R. Corwine, relative to a report made by a mixed French and British Commission which had made a visit to German Chemical Works in the zone of occupation, now in possession of the Department of Commerce, but copies of which were available on payment of cost of reproduction. It was decided to ask Mr. Corwine to ascertain the cost of reproducing the different subjects in the reports, and to prepare a bulletin to the members enquiring as to their willingness to purchase these sets at cost of reproduction, advising him, also, that the Committee anticipated ordering a limited number of sets for the Institute. The Secretary's assistant was instructed to write Mr. Corwine along these lines.

The Treasurer called attention to the fact that there were still several members in the Institute who had not paid their past dues, and he was instructed to write to these delinquent members, calling their attention to the probability of being crossed off the membership list, in accordance with the By-Laws of the Institute. There being no further business the meeting adjourned at 5 P. M., to the time of the next meeting, Thursday, September 11th, 1919.

PLAINTIFF'S EXHIBIT No. 552-A.

Minutes of a meeting of the Executive Committee of the American Dyes Institute held at the Hotel Biltmore on Thursday, Sept. 11th, 1919, at 12 M.

In attendance:
Mr. F. M. Fargo, Jr.,
Mr. A. Merz
Dr. J. M. Matthews
Mr. Henry Francis Atherton (representing the National Aniline & Chemical Company),
Mr. Arthur J. Eddy, Counsel
Mr. H. E. Danner, Treasurer
Mr. W. R. Corwine, Secretary.

Mr. Fargo was elected Chairman.

The Treasurer reported the three firms in arrears for dues; namely: The A. Zobel Color Works, the Hydrocarbon Chemical Products Co. and the Certified Chemical Corporation. Mr. Danner stated that all three firms had been written to under date of August 15th, as per the request of the Executive Committee; that no response having been received, a second or follow-up letter had been sent to them under date of Sept. 8th, to which no response had been made.

So far as the A. Zobel Color Works was concerned a statement was made by the Chairman that he had understood that that company had been absorbed in some way by the Tower Manufacturing Co., Inc.; that, as the latter had made application for membership it might be well to postpone action until after an answer had been received to the letter written to Mr. W. S. Woodrow of the Sherwin-Williams Co. who had been asked to give further information about the Tower Mfg. Co.

So far as the Hydrocarbon Chemical Products Co. and the Certified Chemical Corporation were concerned, it was decided to notify them that their names would be submitted to the Institute as not having paid their obligations, although requested so to do, and call attention to the fact that under the rules and regulations of the Institute they would be dropped from membership unless payment was made before the next meeting.

The Treasurer presented the resignation of H. Kohnstamm & Co. He stated that that firm had written to him under date of March 22nd, 1919 resigning from membership, but that after reporting that fact it had been decided not to accept the resignation but make an effort to have that firm retain its membership. The Treasurer reported that he had again written for the arrears of dues but that in reply, the H. Kohnstamm Co. had quoted their previous letter of March 22nd and had stated that that resignation must stand. Thereupon it was decided to accept the resignation as of date first tendered, namely: March 22nd, 1919.

The Secretary reported application for membership made by E. C. Klipstein & Sons Co., of #644 Greenwich St., New York City, in a letter written by Theodore W. Sill, who was formerly Major Sill of the U. S. Army and who had testified before the Ways and Means Committee on his investigation of dyestuff factories in the occupied zone. The Secretary was requested to write to Major Sill, enclosing a membership application blank and asking him to fill it out and file with the office.

There being no further business the meeting adjourned.

W. R. CORWINE, *Secy.*

PLAINTIFF'S EXHIBIT No. 553.

MINUTES
EXECUTIVE COMMITTEE MEETING
FRIDAY, NOVEMBER 7TH, 1919.

Minutes of a meeting of the Executive Committee of the American Dyes Institute held on Friday, November 7th, 1919, at 12 o'clock noon.

In attendance: Dr. J. Merritt Matthews, Mr. E. V. Patterson, Mr. August Merz, Mr. R. C. Jeffcott (arrived late) and Mr. H. E. Danner, Treasurer.

Dr. Matthews was elected Chairman, and in the absence of Mr. Corwine, the Treasurer acted as Secretary.

The Treasurer submitted his report as follows, all of which was approved in order to be read at the general meeting:

October 1, 1919, Balance		$11,791.57
Received during October		2,000.00
		$13,791.57
Expenditures in October		8,339.62
Balance, October 31st, 1919		$ 5,451.95
Accounts payable	$5,000.00	
Accounts receivable	15,819.83	

Attention was called to the fact that it will be necessary to provide for additional moneys for the Treasury. However, prior to making any additional assessments the Treasurer was requested to again write to the firms who had not yet paid their assessments, and also present at the next monthly meeting of the Executive Committee, a statement giving a list of those firms who had not yet been assessed for any moneys beyond their annual dues.

It was also the opinion of those present that the sum of $9519.83 owed to the Institute by the Chemical Foundation, Inc. should be honored by the Foundation. The Treasurer was asked to again take this matter up with them.

The Treasurer announced that on September 15th he had received from the Hydrocarbon Chemical Products Co. a check for $100 but this company was still in arrears to the amount of $300 as follows: $200 covering initiation fee in 1918, and $100 covering a bill of Dec. 21st, 1918, same being a proportionate share of the deficit at the time of the amalgamation of the American Dyes Institute and the American Dyestuff Manufacturers Association. As the Treasurer had made repeated attempts since August, 1918, to collect these overdue accounts, he was instructed to advise the Hydrocarbon Chemical Products Co. that unless a check for $300 was received prior to the next regular meeting of the Institute, it would be necessary to drop this firm from membership.

A communication from the Monsanto Chemical Works dated October 3rd, which refers to their assessment of $300 was read. In this letter the Monsanto Chemical Works expressed their thought that inasmuch as the purchase of enemy-owned patents had been turned over to the Chemical Foundation Inc. the original assessments made against the members might be reduced. The Treasurer was instructed to advise the Monsanto Chemical Works that in the judgment of the Executive Committee the original assessment should stand, as they felt the Monsanto Chemical Co. should find considerable interest in the success of the American Dye Industry. The Treasurer was asked to explain to this company that the original budget mentioning "the purchase of enemy-owned patents" as part of the expenses to be incurred by the Institute did not mean the actual purchase of the patents, but expenses incurred by the Institute in connection with general activities, of which this was a part.

The Treasurer asked for instructions with reference to forwarding a bill to the Tower Manufacturing Co. This firm was elected to membership in October and it was considered by those present that inasmuch as the Tower Manufacturing Co. will be members for only the last quarter of 1919, they ought not to be billed for the full year's dues; therefore the Treasurer was instructed to forward bill for $62.50, same being quarterly payment of the regular annual dues, and it was understood in future, in similar instances, the Treasurer would act accordingly; that is, a member elected during the year is to be billed with annual dues starting with the quarter of the year in which he is elected.

A letter from Patton, Tilman & Bruce of Greenville, S. C., dated October 13th, and addressed to the Secretary of the American Dyestuff Manufacturers' Assn. was submitted. This letter requested the name of a competent chemist in the United States, and the Secretary was instructed to advise the above-mentioned firm to communicate with Dr. J. Merritt Matthews.

A communication of October 4th from the Heyden Chemical Works of Garfield, N. J., signed by F. H. Chamberlain, President, and addressed to the Secretary, was read. Mr. Chamberlain had requested membership application blank; also a copy of the Constitution and By-Laws, all of which had been furnished to him. In his letter of October 4th he requested a list of the members showing the amount assessed to each member, presumably for the purpose of estimating his own assessment if his firm became a member of the Institute, and the Treasurer was directed to send such a list to Mr. Chamberlain.

Dr. Matthews submitted a letter which he had received from Mr. C. Scott Althouse under date of November 5th. This letter asked if the Institute would furnish a speaker to represent it at a meeting of the Knitgoods Association to be held at an early date in Philadelphia. It also stated that it was the purpose of the Knitgoods Association to provide a speaker to present arguments in opposition to the licensing plan. The Secretary was instructed to request Mr. Choate to represent the Institute and so advise Mr. Althouse, requesting definite information as to the date of the meeting.

There being no further business, on motion the meeting adjourned.

H. E. DANNER, *Treasurer,*
Acting Secretary.

HED/VS

PLAINTIFF'S EXHIBIT No. 554.

MINUTES OF SPECIAL MEETING
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE

November 19, 1919.

A Special Meeting of the Executive Committee of the American Dyes Institute was held at the Chemist Club, Tuesday, November 11th at 1 P. M.

The following members were present:

Dr. J. M. Matthews, Presiding,
Mr. August Merz,
Mr. R. C. Jeffcott,
Mr. R. T. Baldwin,
Dr. Wallach,
Mr. E. V. Patterson,

Mr. H. E. Danner, Treasurer and Mr. St. John Perret, Chief of the War Trade Board, Section State Department, also attended.

Before taking up the business for which the meeting was especially called, the Chairman referred to a communication each member of the Executive Committee had received from the Treasurer with reference to the date of the next regular meeting of the Institute, and it was unanimously agreed that this date would be set for Friday, December 5th.

The Chairman then requested Mr. Perret to report on the matter which he had to submit to the Committee.

Mr. Perret then stated the situation as regards the withholding of Import Licenses for Dyes and Intermediates. He outlined three groups of cases, all covering Non-Vat Dyes, as follows:

GROUP I—The Board has at present applications for the importation of a quantity of Non-Vat Dyes, and is in possession of sufficient information to advise the applicant that the license is refused on the grounds that the full requirements are obtainable in American made dyes in respect to price, quality and delivery.

In this event the Board would notify the applicant accordingly, but the War Trade Board, Section State Department, realize that unless it can furnish the applicant with a complete list of *all* the manufacturers producing the commodity it would lay itself open to severe criticism and charges of favoritism.

Mr. Perret said that the Board had circularized some two hundred manufacturers, asking for a list of all products manufactured, and in reply had received something like thirty-three responsive answers, and therefore knew it did not have a complete list of all the products manufactured by all the firms. Therefore it was obvious that in attempting to advise an applicant where the commodity was made the list of manufacturers would no doubt not include every manufacturer, but would be only a list of those manufacturers who had furnished information to the Board, and the furnishing of a list of manufacturers with even one name missing would lead to a charge of discrimination.

Therefore the Board made the following suggestion to the Institute:

Whenever the Board advise an applicant that his license is refused it will at the same time advise the applicant to apply to the Secretary of the American Dyes Institute for a list of the firms manufacturing the commodity in question. In this connection it is to be understood that the War Trade Board would furnish the Secretary with a memorandum of the dye required, the Schultz number, and a list of the manufacturers of which the Board has a record as producers of this dye. On receipt of this information the Secretary of the Institute would supplement the list furnished by the War Trade Board by immediately circularizing every manufacturer, whether a member of the Institute or not, asking if he produces the particular dye in question. This list of manufacturers thus obtained would then be furnished to the applicant in reply to his inquiry, and it would, obviously be a list of the manufacturers as complete and impartial as the Secretary was able to obtain.

It was recognized that there were practical difficulties in the way of the Secretary of the Institute obtaining a mailing list of every manufacturer in the United States, but it was thought that this could be compiled with a fair degree of accuracy and completeness.

Group II.—The Board has applications for the importation of certain dyes and the information in the hands of the Board is such that the application must be cut down or reduced in percentage, because a certain percentage of American made dyes is available at reasonable price and satisfactory quality.

In this event the War Trade Board would notify the applicant to reduce his import application to a certain percentage of his original request and obviously the reduced import application would be granted and the balance refused on the same grounds as outlined in Group 1, and the same procedure would be followed.

Group III.—The Board has applications for certain dyes and is in possession of information that satisfactory American made substitutes are available in sufficient quantities to meet requirements and therefore would refuse the license.

In this case the Board would advise the applicant that the license was refused on the grounds that a suitable American made substitute was available and request the applicant to avail himself of the opportunity to utilize this substitute, the name of which would be given him; and would also suggest that the names of the manufacturers producing this substitute could be obtained by applying to the Secretary of the American Dyes Institute, who would compile his list of manufacturers as outlined in Group 1.

It was thoroughly understood by all present that in the event this plan should be approved, it is to be understood by all members and non-members of the Institute, and by the War Trade Board that the information obtained by and on file with the Secretary of the American Dyes Institute shall be absolutely confidential with him and his immediate assistants, and shall be available to no member or non-member of the Institute: it of course being understood that at all times the information will be available to an accredited representative of the War Trade Board Section, State Department.

There was a long discussion and there developed a difference of opinion as to the advisability of the Dyes Institute undertaking this work.

Mr. Baldwin and Mr. Jeffcott were opposed and they pointed out the necessity of very careful consideration. It appeared to them that there was a possibility of the public, consumers, dealers, nonmembers of the Institute and opponents of the Licensing Plan misconstruing and misrepresenting the position of the American Dyes Institute, although it was pointed out that the only function which the Dyes Institute would fill would be that of simply acting as a directory for furnishing the most available and complete information to a consumer.

Mr. Perret read drafts of various letters or notifications it was proposed to send an applicant in the event of his import application being denied, and in the body of this letter it stated, in substance, that if the applicant desired the names of the American manufacturers of the commodity in question he should apply to the Secretary of the American Dyes Institute.

It was suggested that in the event the plan should be adopted this paragraph referring to the American Dyes Institute should be omitted and that the War Trade Board should simply notify the applicant that his application was denied and on what grounds. If, subsequently, the applicant requested information as to where he could obtain the American made product, then the War Trade Board would advise the party making the inquiry to communicate with the American Dyes Institute, which organization, being the only representative organization of American dye manufacturers, would furnish him with the most available and complete list possible.

Mr. Jeffcott then stated that if it was thoroughly understood that the granting or denying of an import license was in no way connected either directly or indirectly with the American Dyes Institute, he would withdraw his objection provided there was a unanimous approval of the plan. Mr. Perret stated that the withholding of a license was absolutely a completed transaction by the War Trade Board before it referred directly or indirectly to the American Dyes Institute.

Mr. Perret then stated that unless the Institute was prepared to undertake this work the War Trade Board would be obliged to issue the licenses already applied for, as it would not undertake to furnish the applicant with the names of manufacturers and subject itself to charges of discrimination.

It was apparent that very prompt decision was necessary and it was therefore agreed to call another Special Meeting of the Executive Committee on Saturday morning at 9.30 A. M., same to be held at the Chemists Club, New York City, and the Secretary was requested to telegraph Mr. Cottingham and Mr. Ault to endeavor to be present as it was desirable to have a full meeting.

On motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:AM

PLAINTIFF'S EXHIBIT No. 555.

MINUTES OF SPECIAL MEETING
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE

November 22, 1919.

A special meeting of the Executive Committee of the American Dyes Institute was held at the Chemists Club, New York City, on Saturday, November 22, 1919, at 9.30 A. M.

The following firms were present and represented as follows:

Grasselli Chemical Co.	(Presiding) Dr. J. M. Matthews,
National Aniline & Chemical Co.,	Dr. R. N. Wallach, Mr. R. T. Baldwin,
E. I. duPont de Nemours & Co.,	Mr. E. V. Patterson, Mr. Weston,
Heller & Merz Co.,	Mr. August Merz,
Marden, Orth & Hastings Corp.,	Mr. R. C. Jeffcott.
Calco Chemical Co.,	

Dr. E. H. Killheffer and Dr. Herty were also present by invitation.

The Treasurer, Mr. H. E. Danner, also attended.

The meeting was called pursuant to a special meeting held on November 19th to further consider the request of the War Trade Board that the American Dyes Institute compile a record of American manufacturers of particular dyes or intermediates, and to act as a directory by giving this information to a consumer whose import license had been refused by the War Trade Board—the details of which are given in the minutes of the special meeting of the Executive Committee held on November 19, 1919.

The plan was again thoroughly explained for the benefit of those who were not present at the meeting on the 19th inst., and in this connection it was understood by all that the American Dyes Institute would not undertake to circularize every manufacturer in the United States of which it had a record, requesting such manufacturers to file with the Institute a complete list of all its products. The function of the Institute would be as follows:

When the Secretary of the Institute is advised by the War Trade Board that an import license has been refused by the War Trade Board for a certain specific commodity, the Institute, through its Secretary, would then circularize the most complete and available mailing list of American manufacturers (both members and non-members) and request the manufacturers to state whether or not they make the particular product in question. This information so obtained would be recorded by the Secretary of the Institute and held by him as confidential information and would only be given in reply to a party, who having had his import application refused, inquired of the Institute for a list of manufacturers making the product in question.

It was again pointed out how difficult it might be for the Secretary of the Institute to obtain complete lists of all the manufacturers making the particular product, but it was agreed that the Secretary would circularize all manufacturers to the best of his ability, so that manufacturers not members of the Institute would have the opportunity of having their names included in the list sent to the applicant.

Mr. Baldwin again explained his reasons for his opposition to the suggestion, first of which was the matter of expediency in view of the pending dyestuff legislation, and another was the difficulty and possible embarrassment in the administration of the work, and Mr. Baldwin stated that while he wished his protest to be recorded in the minutes of this meeting, he had consulted with Mr. Choate and Mr. Palmer, and in consideration of their judgment and advice he did not feel prepared to be the one to hold out for the sake of the unanimous agreement to undertake the plan outlined by the War Trade Board.

THEREFORE it was unanimously agreed that Mr. Danner should telephone the following statement to Mr. St. John Perrett, Chairman of the War Trade Board Section, State Department:

> In view of your statement that when import license is refused, your department will not give

> out the names of manufacturers either in your hands or in the records of the Tariff Commission or any other governmental body, and you are unable to have any other governmental body do this, the Executive Committee of the American Dyes Institute will give the applicant the most available and complete list of manufacturers of the product in question it is able to obtain.
>
> It is also understood that you will only refer to the American Dyes Institute when an applicant writes you he is unable to obtain a desired color and requests the sources of supply.

At the suggestion of Mr. Baldwin and others Mr. Danner was requested to advise Mr. Choate of the above action and to request him to draft a letter of confirmation and the correct wording of the resolution to cover the sense of the above. The Treasurer was also asked to request Mr. Choate to draft a form of inquiry to be used by the Institute and sent to a mailing list of manufacturers, both members and non-members, whenever it becomes necessary to request information as to whether or not the manufacturer makes the particular product in question.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Acting Secretary.

HED:AM

PLAINTIFF'S EXHIBIT No. 556.

A meeting of the Executive Committee of the American Dyes Institute was held in the office of the Institute at 21 East 40th St., New York, on Saturday, January 3rd, 1920, at 10:30 A. M.

The following members were in attendance:

Mr. Frank B. Wiborg (elected Chairman).

Mr. August Merz
Dr. J. M. Matthews
Mr. J. O. Hasson (The Sherwin-Williams Co.)
Mr. E. V. Patterson
Mr. Chapin (Marden, Orth & Hastings Corp.)
Mr. H. E. Danner, Treasurer

Mr. Patterson outlined the importance of the present legislative work in Washington and it was pointed out that a number of members of the Committee would no doubt be obliged to be in Washington during the coming week as all bills in the hands of the sub-committees must be reported to the Senate Committee on Finance by January 12th.

It was also considered to be extremely important that the members be impressed with the necessity of attending the next regular meeting of the Institute and listen to a report from the Legislative Committee; also to be urged to hold themselves in readiness to go to Washington on short call after January 12th.

It was also believed that this was of such importance that the time of the meeting should be given over entirely to a discussion of this vital subject, and therefore it was decided to forward a letter to each member of the Institute urgently requesting his presence and, at the same time, stating that in view of the importance of the legislative work the annual meeting and election of officers would be postponed until the February meeting.

On motion unanimously adopted Dr. J. M. Matthews was appointed as the authorized representative of the American Dyes Institute to serve on the Advisory Committee of the Chemical Foundation, Inc.

The meeting was adjourned at 12 M.

H. E. DANNER,
Treasurer.

HED/VS

PLAINTIFF'S EXHIBIT No. 557.

MINUTES OF MEETING
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE

January 9th, 1920.

A regular monthly meeting of the Executive Committee of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Friday, January 9, 1920, at 11.30 A. M.

The following in attendance:

Mr. F. M. Fargo, Jr., elected chairman.
Mr. Frank Hemingway,
Dr. J. Merritt Matthews,
Mr. August Merz,
Mr. E. V. Patterson,
Mr. Atherton.

Mr. H. E. Danner, Treasurer.

Counsel, Mr. Arthur J. Eddy, also attended.

In the absence of Mr. Corwine, the Treasurer acted as Secretary.

The Treasurer reported as follows:

Treasurer's Report

AMERICAN DYES INSTITUTE

Balance, December 1, 1919		$4,693.53
Received during December		7,529.37
		$12,222.90
Expenditures during December		7,463.87
Balance, Jan. 1, 1920		$4,759.03
Accounts Payable	$5,000.00 (Chem. Foun.)	
Accounts Receivable	$17,519.83	

On motion the above report was accepted and ordered to be read at the General Meeting.

In connection with the items of Accounts Payable there was a discussion regarding an item of $9,519.83, owing by the Chemical Foundation, Inc.

Mr. Merz then referred to a letter which his brother had written to the Chemical Foundation, demanding payment of the $1000 which his firm had loaned the Chemical Foundation, Inc., for the preliminary work of searching titles, etc., of the chemical patents to be taken over by the Chemical Foundation.

It was the unanimous opinion of the members of the Executive Committee that the claim presented by the Heller & Merz Co. was one which should be presented to the Chemical Foundation, Inc., inasmuch as the American Dyes Institute appeared only as an intermediary.

In this connection, on motion of Dr. Matthews, and duly seconded, it was unanimously resolved that the attention of the Chemical Foundation, Inc., be called to the entire claim of the American Dyes Institute, which claim is made up of the following items: Funds advanced covering preliminary expenses,

Will T. Gordan, Agent	"	"	$6,850.00
Penny, Davis, Marvin, Edward		"	2,491.98
F. R. Squair	"	"	138.35
C. C. Bennett	"	"	39.50
			$9,519.83

The Secretary was directed to send a copy of this resolution to the Secretary of The Chemical Foundation, Inc.

The Secretary submitted a communication from the Rector Chemical Co., dated December 10, 1919, which tendered the resignation from the Institute of this Company, to take effect as of December 10, 1919.

In this communication the Rector Chemical Co. object to an assessment of $250 levied on December 9th and presumably this was the cause of the resignation. It also stated that inasmuch as this Company have not been making any dyes for several months past and only manufacture intermediates for their own use, they would receive no benefit from the proposed legislation. On motion it was resolved to recommend to the General Meeting the acceptance with regret of this resignation, same to take effect upon payment of outstanding account.

The resignation of the Zobel Color Works was received and read. This communication tendered resignation as of January 1st, and on motion it was resolved to recommend tc the General Meeting the acceptance of same with regret.

The Treasurer also reported that as directed at a previous meeting of the Executive Committee he had written a letter addressed to Wm. A. Bradford, Esq., of Butterworth-Judson Corp. calling attention to an assessment levied in March, and which has not yet been paid. This communication has not been replied to and Mr. Hemingway stated he would endeavor to take this matter up with the Butterworth-Judson Corp.

A communication from the Textile School, dated January 9th, was read. On motion the Secretary was directed to reply to the Textile School, sending a list of members of the Institute, and suggesting that the matter referred to be taken up individually with the members.

A communication from the Chemical Foundation, Inc., dated December 22d and enclosing a copy of an advertisement appearing in the New York Times, under date of December 21st, said advertisement being put out by Oppenheim Collins & Co., calling particular of appointing a delegate from among the members who were also members of the Manufacturers' Club of Philadelphia.

A communication dated November 20, 1919, from the Chamber of Commerce of the United States of America was again submitted to the Committee. This communication requested the Institute as a member of the Chamber of Commerce to subscribe an amount equal to five times the annual dues for the building fund. On motion, unanimously adopted the Treasurer was directed to forward a check to the Chamber of Commerce of the United States of America for $200, same to be applied to the building fund of the Chamber of Commerce.

An invitation from the "Nation's Business" for an aricle on dyestuffs to be published in that periodical was received. On discussion it was decided to defer this matter until a later date.

Dr. Matthews announced that he had accepted an invitation to appear and speak on Dyestuffs at a meeting of the American Pharmaceutical Association, which will be held on Monday, January 12th.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Treasurer and Acting Sec'y.

HED:AM

PLAINTIFF'S EXHIBIT No. 558.

MINUTES OF MEETING

EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE

April 8, 1920.

A meeting of the Executive Committee of the American Dyes Institute was held in the office of the

Treasurer, 320 Broadway, New York City, on Thursday, April 8, 1920, at 10.30 A. M. (New York time.)

The following member firms were present and represented as follows:

Atlantic Dyestuff Co.,	Mr. A. C. Burrage, Jr.,
Calco Chemical Company, Inc.,	Mr. F. M. Fargo, Jr.,
E. I. duPont de Nemours & Co.,	Mr. E. V. Patterson,
Grasselli Chemical Co.,	Dr. J. M. Matthews,
The Heller & Merz Co.,	Mr. August Merz,
National Aniline & Chemical Co.,	Mr. H. H. Replogle,
Newport Chemical Works, Inc.,	Dr. E. H. Killheffer

By unanimous vote, Mr. E. V. Patterson was elected Chairman.

In the absence of the Secretary, the Treasurer, Mr. H. E. Danner, acted as Secretary.

Mr. Fargo and Mr. Replogle, of the Special Committee to whom the report of the Auditors for the year 1919 had been referred for the purpose of making recommendations as to the disposition of the uncollected accounts which appeared thereon, reported the following:

Chemical Foundation, Inc.—$9,841.36—This item referred back to the Executive Committee because of peculiar relations of the Institute and its several members to the Foundation.

Butterworth-Judson Corp.—$2,750.00. The Committee will make further effort and investigate and report later. Carry item in suspense until definitely reported.

Frank Hemingway, Inc.—$500.00. Dispose of this according to Treasurer's ability to settle through Mr. Hemingway and The Sherwin-Williams Co.

Atlantic Dyestuff Co.—$1,250.00. This item was reduced to $750 as per direction of Executive Committee at its meeting in March and has since been paid.

Chemical Co. of America.—$250.00. This item has been paid.

Atlas Color Works	$250	Put in Suspense Account and cover by adding to 1920 budget —Keep acting toward collecting these amounts.
Commonwealth Cheml. Co.	250	
Metals Disintegrating	250	
Organic Salt & Acid Co.	800	
Transatlantic Chem. Co.	250	

Rector Chemical Co.—$250.00. This item has been written off books as per direction of Executive Committee at a previous meeting.

Adolph Zobel Color Works—$250. Write off. Call attention to Mr. Tompers and Tower Mfg. Co.

(Sgd.) F. M. Fargo, Jr.,
H. H. Replogle.

Following a discussion on the above report, the Special Committee offered to communicate with the several members who were delinquent and the Treasurer was directed to furnish Mr. Replogle with duplicate statement of the members' accounts together with Institute letterheads.

On motion the above report was approved, and the Treasurer was directed to be governed accordingly.

The resignation of the Monroe Drug Co. of Quincy, Ill., dated Jan. 12th, 1920, with which was returned bill of Jan. 5, 1920, for annual dues, was again submitted. This resignation had been referred to Dr. Matthews at the previous meeting of the Executive Committee. Dr. Matthews reported that he had communicated with this firm and it did not care to reconsider its resignation. On motion it was agreed to recommend the acceptance of same to the next meeting of the Institute and if accepted the Treasurer was directed to cancel the bill of January 5th, 1920, covering annual dues for 1920.

A communication from the National Industrial Conference Board, dated March 22, 1920, was submitted. This was an invitation to the American Dyes Institute to attend a meeting of the Board to be held in Chicago, April 16th, 1920. The purpose of the meeting is for a "discussion of the present Federal Revenue Law and its defects, and of proposals for immediate Congressional relief and for more permanent improvement." It is stated that it is hoped that out of the discussion there may come some "program for changes in the present law upon which the industrial interests may unite."

On discussion it was decided to ask the Dow Chemical Co. and The Sherwin-Williams Co. to each appoint a representative to attend in the interests of The American Dyes Institute, and to report the result of the Conference.

A communication from the Chamber of Commerce of the State of New York, enclosing a letter from the firm of Rene Klein of Strasbourg was received. This communication requested the names of manufacturers of Aniline Colors On discussion the Secretary was directed to acknowledge the letter and suggest that possibly the information required could best be obtained from the Dye Stuff Census issued by the Tariff Commission.

At the last meeting of the Institute the Executive Committee was directed to appoint a standing and permanent committee on Sanitization and Safety to prepare a National Code on Nitro and Amido Compounds, and accordingly the following standing Committee of three was appointed:

A representative of The Barrett Co., Chairman.

A representative of National Aniline & Chem. Co.

A representative of The Calco Chemical Co., Inc., it being understood that the firms would delegate their own representative as it was recognized that this Committee should be familiar with technical matters.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Treasurer.

HED:AM

PLAINTIFF'S EXHIBIT No. 559.

MINUTES OF MEETING
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE

May 7, 1920.

A regular monthly meeting of the Executive Committee of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Friday, May 7th, 1920, at 11.30 A. M.

The following firms were present and represented as follows:

Calco Chemical Co.,	Mr. F. M. Fargo, Jr.,
E. I. duPont de Nemours & Co.,	Dr. A. D. Chambers, Mr. Kinsmann,
Grasselli Chemical Co.,	Dr. J. M. Matthews,
The Heller & Merz Co.,	Mr. August Merz,
National Aniline & Chemical Co.	Mr. Atherton, Mr. Mahon,
Newport Chemical Works, Inc.,	Dr. E. H. Killheffer.

The Treasurer, Mr. H. E. Danner, also attended.

By unanimous election Mr. Fargo acted as Chairman.

In the absence of Mr. Corwine, the Treasurer, Mr. H. E. Danner, acted as Secretary.

The Treasurer submitted his monthly report, which was approved and ordered to be read at the General Meeting of the Institute.

A communication from Geo. H. Morrill Co., dated April 29th, tendering the resignation of this Company as a member of the Institute was received. This communication outlined that Geo. H. Morrill Co. did not manufacture dyes for sale, and only in comparatively small quantities for its own use and because the expense of maintaining membership is becoming so high in comparison to the benefit derived, that the Company considers it is no longer justified in continuing as a member of the Institute. The communication also stated that if in future there should be any change in the manufacture and sale of dyes as carried on by this Company, it would consider being again affiliated with the Institute, and it would take up the question of a resumption of membership.

On discussion it was considered by those present that inasmuch as the George H. Morrill Co. had paid its annual dues for the year 1920, and in addition had paid the six months' assessment levied against this Company, and in view of the representations in the communication this Company should not be assessed any further amounts for the year 1920, and that it should be considered that their entire financial obligations had been paid for the year.

The Treasurer was thereupon directed to write to this effect and to express the desire and hope of the Institute that the Geo. H. Morrill Co. would consent to be considered a member of the Institute for the balance of the year.

There followed a discussion with reference to the unpaid accounts from the year 1919. Mr. Fargo explained that as Chairman of the Special Committee on Audit he had endeavored to call upon Mr. Signer, of the Butterworth-Judson Corp., with reference to its account, but was unable to see Mr. Signer. The Treasurer stated that Mr. Signer had called at his office and talked over the matter quite at length, explaining that he felt that the Butterworth-Judson Corp. wished to do their proper share, but that the assessment as levied in 1919 was considerably in excess of its proper proportion. Mr. Signer had expressed regret that the various communications sent to his Company during the year 1919 had not been acknowledged.

It was therefore unanimously resolved that the matter be referred again to Mr. Fargo, and that he be authorized to state to Mr. Signer that the assessment for $2,750 (as levied in 1919) be cut in half, making the amount due $1,375.

The Secretary also submitted a communication of April 30th from the American Druggists Syndicate. This communication stated that the Organic Salt & Acid Co. of 81 Fulton St., had been taken over by the American Druggists Syndicate and that they knew nothing of the unpaid bill for the assessment for the year 1919. The Company stated however that they would investigate the matter.

On motion the communication was referred to Mr. Fargo as Chairman of the Special Committee on Audit.

The Secretary submitted a communication from Mr. L. A. Ault, of The Ault & Wiborg Co., dated April 27th and one of May 3d. Mr. Ault had written requesting an explanation of the method used in arriving at the proportion of assessment for the year 1920 which each member should bear, and also expressed the opinion that his Company was assessed in excess of their importance in the industry. Mr. Danner reported that as Treasurer he had replied to the original communication and referred Mr. Ault to the minutes of the previous meeting, which gave a full report of the action taken by the joint meeting of the Board of Governors and the Executive Committee, and the Institute meeting held subsequently. In this communication he had stated that Mr. Wiborg was present at the Institute meeting, and was familiar with the discussion—to which Mr. Ault had replied that Mr. Wiborg was not an authorized representative of his Company and he again requested an explanation of the entire subject.

On discussion and motion the Treasurer was directed to advise Mr. Ault to the effect that the assessments were levied as per the joint action of the Board of Governors and the Executive Committee, at which meeting it was regretted that The Ault & Wiborg Co. did not have their representative present. (Held on April 7th.) However, at the meeting of the Institute the following day Mr. Hilton was present as well as Mr. Wiborg, and it was assumed that the Company was duly represented. However, in view of Mr. Ault's protest as to his proportion of the assessment, the Treasurer was authorized to reduce the ratio originally assessed The Ault & Wiborg Co. from 5% to 4%, and to notify Mr. Ault accordingly.

Dr. Matthews reported that as the representative of the American Dyes Institute on the Advisory Board of The Chemical Foundation, Inc., he had referred to the bill which the American Dyes Institute had rendered to The Chemical Foundation covering organization expenses, incident to the formation of the Foundation, and he had received from the Chemical Foundation, Inc., a financial report which he filed with the Treasurer of the American Dyes Institute. He stated that it was the feeling of the Advisory Board of The Chemical Foundation, Inc., that the bill of the American Dyes Institute amounting to $9,841.36 should be honored and paid and that the Advisory Board would so recommend and he requested the Treasurer to let him have a duplicate of the bill which he would refer to the Advisory Board of the Chemical Foundation, Inc., as a formal request for the payment of this account.

The Treasurer read the telegram received from the Legislative Committee in Washington with reference to the situation in regard to the Dyestuffs Bill, and he was authorized to read same to the General Meeting of the Institute.

A communication from the Secretary requesting the Executive Committee to consider Referendum No. 30 of the Chamber of Commerce of the United States of America was submitted, and on discussion it was the judgment of those present that at this time the Committee could not come to any conclusion which would be representative of the majority of the Institute, and the Secretary was therefore directed to advise the Chamber of Commerce of the United States of America that the Institute would be unable to report its vote in this matter.

A communication from the Chamber of Commerce of the United States of America requests that the Secretary permit the use of his name among the membership of the Institute in order to introduce the "Nation's Business" (the official organ of the Chamber of Commerce of the United States) was received and on vote the Secretary was authorized to advise the Chamber that the use of his name would be entirely agreeable.

A communication from the Department of the Interior, Bureau of Education, dated April 9th, inviting the Institute to appoint a delegate to attend a national conference for education to be held in Washington on May 19th, 20th, 21st was received, and on vote the Committee delegated the Secretary to attend this meeting and report to the Institute.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Acting Secretary.

HED:AM

PLAINTIFF'S EXHIBIT No. 560.

MINUTES OF MEETING
AMERICAN DYES INSTITUTE

May 7th, 1920.

Following luncheon a regular monthly meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Friday, May 7th, 1920, at 1.30 P. M.

The following firms were present and represented as follows:

American Aniline Products, Inc.,	Mr. Paul Nobbe,
The Barrett Co., Inc.,	Mr. R. P. Dunning,
Butterworth-Judson Corp.,	Mr. Signer (arrived late)
Chemical Co. of America,	Mr. D. Kendall, Dr. S. Iserman,
Consolidated Color & Chemical Co.,	Mr. P. S. Clarkson,
E. I. duPont de Nemours & Co.,	Dr. A. D. Chambers, Mr. Kinsmann,
Dye Products & Chemical Co.,	Mr. L. M. Loewenthal Mr. S. Simon,
Grasselli Chemical Co.,	Dr. J. M. Matthews, Mr. A. H. Pierce,
The Heller & Merz Co.,	Mr. August Merz,
National Aniline & Chemical Co.,	Mr. Atherton, Mr. Mahon,
Transatlantic Chemical Corp.,	Mr. W. M. Stevenson.

By unanimous election Dr. J. M. Matthews acted as Chairman.

In the absence of Mr. Corwine, the Treasurer, Mr. H. E. Danner, acted as Secretary.

Inasmuch as a copy of the minutes of the previous meeting had been sent to each member and there were no corrections, on motion the reading of same was omitted.

The Treasurer reported as follows:

Treasurer's Report

As of May 1st, 1920.

Balance, April 1st, 1920		$ 3,974.53
Received during April		6,412.50
		$10,387.03
Expenditures during April		2,164.87
Balance, May 1st, 1920		$ 8,222.16
Accounts Payable	$ 7,500.00	
Accounts Receivable	$44,678.86	

* * * * * * * * *

The Secretary read a night lettergram from the Legislative Committee in Washington expressing the regret of the Committee that they could not be present at the meeting and therefore reported through this telegram and requested that no publicity be given outside of the Institute. The communication was received as read and ordered to be placed on file.

There was no report from the Committee on Joint Exposition, as Dr. Killheffer, Chairman of this Committee, was obliged to leave immediately after luncheon.

There was no report from the Committee on Sanitation and Safety, as none of the members were present.

Mr. Merz reported progress for the COMMITTEE ON EDUCATION, and stated the Committee hoped to have a complete report ready for the next meeting of the Institute.

There followed an informal discussion with reference to general conditions in the industry and it developed that all members were seriously handicapped on account of the shortage and high prices of raw materials. Special mention was made of Napthaline, Benzine, Aniline Oil and Wood Alcohol and it was pointed out that these prices were the result of conditions outside of the dyestuff industry. For instance, Benzine was dependent upon the production of Gasoline, and the price of Gasoline had advanced so materially that Benzine was likewise affected, which in turn affected Aniline Oil, which followed Benzine.

It was also noted that the members were unable to obtain sufficient supply of Wood Alcohol except at a material advance in price.

Mr. Nobbe stated that he had heard of a price of $1.00 per lb. for Beta Naphthol, and it was the opinion of those present that this was a price made by second hands, due to the fact that the manufacturers of Beta Napthol had probably sold their production and that the only product available was that which was held by second hands.

Mr. Nobbe also reported a demand for export trade and he expressed the opinion that England was unable to supply the demands of her own colonies.

Mr. Dunning reported that The Barrett Company had not been able to maintain or increase its output of Napthaline because of embargoes and it appeared that the transportation situation and the embargoes on so many products materially affected production.

The date for the next meeting was set for Friday, June 11th, 1920.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Acting Secretary.

HED:AM

PLAINTIFF'S EXHIBIT No. 561.

American Dyes Institute
Room 511, 320 Broadway
New York

MINUTES OF MEETING
EXECUTIVE COMMITTEE.
AMERICAN DYES INSTITUTE
May 17, 1920.

A special meeting of the Executive Committee of the American Dyes Institute was held in the office of the Treasurer, 320 Broadway, New York City, on Monday, May 17, 1920, at 2 P. M.

The following members attended:—

Mr. R. T. Baldwin, representing National Aniline & Chemical Co.
Dr. E. H. Killheffer, representing The Newport Chemical Wks., Inc.
Dr. J. M. Matthews, representing Grasselli Chemical Co.
Mr. M. R. Poucher, representing E. I. duPont de Nemours & Co.
Mr. August Merz, representing The Heller & Merz Co.

The following were also present:—

Mr. J. R. M. Klotz, Newport Chemical Works, Inc.
Dr. S. Iserman, Chemical Co. of America
Mr. C. Kendall, Chemical Co. of America
Mr. Jos. H. Choate, Jr., Counsel
Mr. H. E. Danner, Treasurer.

In the absence of Mr. Corwine, the Treasurer acted as Secretary.

By unanimous vote, Dr. E. H. Killheffer was chosen Chairman of the meeting.

Mr. Poucher outlined the situation as regards the work of the Legislative Committee in Washington to date, and there followed a general discussion.

Mr. Baldwin stated that the Bill was still on the Calendar and could be taken up at any time by a majority vote in the Senate, and this situation would obtain until March 4, 1921. Just when it would be called again would depend very largely upon conditions in the Senate, as to whether or not Congress recessed until after the Party conventions.

Reference was made to the statements coming from the opponents of the Bill that the Legislation was designed for the benefit of the larger manufacturers, and that it would produce a monopoly. Dr. Iserman, as a representative of one of the smaller manufacturers, had prepared a statement and had already obtained signatures from a number of the other small manufacturers—which was a forcible answer to these statements, and it was considered that this reply should be made part of a general statement to be presented by the Legislative Committee at the proper time, as a complete and forcible answer to such insinuations.

It was the judgment of those present that the legislative Committee should be enlarged by the addition of three to assist in the work before it, and on motion of Mr. Merz, seconded by Mr. Poucher, the following were added as members of the Legislative Committee:—

Mr. J. R. M. Klotz,
Mr. A. C. Burrage, Jr.,
Dr. S. Iserman.

Mr. Poucher then referred to the Open Price Section of the Institute, and stated that he understood

Counsel, Mr. Arthur J. Eddy, had advised a number of his Associations to temporarily discontinue the filing and distribution of price and production statistics, and he referred to an article he had seen in the *Journal of Commerce & Commercial Bulletin* under date of May 12, 1920.

Mr. Baldwin said that speaking for his firm, The National Aniline & Chemical Co., while never having participated actively in the filing of information in the Open Price Plan, he desired to go on record that it withdraws from any Open Price activities and does not desire any part of its assessment to be used to defray the expenses of the Open Price Section.

The Secretary stated that Counsel had not instructed that the Open Price Section discontinue its activities, as he understood the matter was academic in view of the fact that the Open Price Plan had not functioned for some time back. The members were not filing their information and at the meeting of the Board of Governors and the Executive Committee held on April 8th, 1920 a Special Committee was appointed to consider the question of continuing an Open Price Section in the Institute.

Thereupon, on motion of Mr. Baldwin, the Secretary was instructed to advise the Special Committee that the Executive Committee requested that the Open Price Committee be prepared to make its definite report at the next meeting of the Institute.

Mr. Baldwin then referred to the work the Treasurer was doing in an effort to assist consumers in locating sources of supply of domestic dyes in instances where Import Licenses had been refused by the War Trade Board.

He expressed the opinion that the members of the Institute and all American manufacturers were not earnestly co-operating in this work. He said that the members should be impressed with the necessity of answering all inquiries promptly and that the failure of a few manufacturers to answer the inquiries issued by Mr. Danner contributed to delays and dissatisfaction among consumers, and in addition if the manufacturers do not state that they make certain products it will certainly result in that particular product being imported. He also thought the method was very cumbersome, and he said that the Textile Alliance, which was a semi-official body, had had the benefit of two experts and had compiled authentic and authoritative data as to what products were being made in the United States and he thought that this information in the hands of the Textile Alliance, a semi-official body, should also be made available to the War Trade Board, which Board apparently was not in possession of reliable information as evidenced by their circular letter of May 8th, which had reference to the second allotment of 1200 tons of German dyestuffs. This circular detailed the various dyes in the lot and asked the manufacturers to indicate opposite each whether or not they make that product. This information was all, or practically all, already in the hands of the Textile Alliance and he thought that having once been answered, the domestic manufacturers should not be asked to spend the time to go through a subsequent list and reanswer the same questions.

No action was taken by the Committee.

Dr. Killheffer presented a contract for space in the coming Chemical Exposition to be held in Grand Central Palace, to cost $1,113.00.

It was thought, by those present, that it was advisable to take this space, and on motion the Treasurer was authorized to sign the contract and to remit the cost of same. In addition the Exposition people requested that the Institute appoint a Speaker to talk on dyestuffs, and it was agreed that at the next meeting of the Executive Committee the Speaker would be selected and the Exposition Authorities notified accordingly.

The Treasurer presented a letter he had received from Herman Goldman, Lawyer, to whom The Heller & Merz Co. had referred their claim for $1,000.00, covering advance made to The Chemical Foundation, Inc. Mr. Goldman has asked the Institute for an immediate settlement of this amount. The Treasurer was directed to reply to Mr. Goldman that the Institute understood The Chemical Foundation had recently prepared a financial statement and had under consideration the question of the repayment of the organization expenses which had been advanced to it.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Acting Secretary.

HED:AM

PLAINTIFF'S EXHIBIT No. 562.

American Dyes Institute
Room 511, 320 Broadway
New York

MINUTES OF MEETING
AMERICAN DYES INSTITUTE
June 11, 1920

A meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Friday, June 11, 1920, at 2 P. M.

The following were in attendance:

Althouse Chemical Co.	Mr. H. E. Quereau
Butterworth-Judson Corp.	Dr. Jones Mr. Signer
The Barrett Company	Dr. D. W. Jayne Mr. R. P. Dunning
The Calco Chemical Co.	Mr. F. M. Fargo, Jr.

John Campbell & Co.	Mr. Quinn
Chemical Co. of America	Dr. S. Iserman Mr. C. Kendall
Consolidated Color & Chemical Co.	Mr. P. S. Clarkson
Dow Chemical Co.	Mr. J. T. Pardee
E. I. du Pont de Nemours & Co.	Mr. M. R. Poucher Dr. A. D. Chambers Mr. Kinsman
Dye Products & Chemical Co.	Mr. S. Simon Mr. L. M. Loewenthal
Essex Aniline Works Inc.	Mr. H. W. Hyde
Grasselli Chemical Co.	Dr. J. M. Matthews
The Heller & Merz Co.	Mr. A. Merz Mr. W. J. Robertson
Monsanto Chemical Works Inc.	Mr. F. L. McCartney
National Anil. & Chem. Co.	Mr. R. W. Mahon Mr. R. T. Baldwin
Naugatuck Chemical Co.	Mr. W. Valentine
Newport Chemical Works Inc.	Dr. E. H. Killheffer Mr. J. R. M. Klotz
Peerless Color Co.	Mr. A. L. Benkert
Transatlantic Chemical Corp.	Mr. W. M. Stevenson

Mr. H. E. Danner, Treasurer
Mr. W. R. Corwine, Secretary

Mr. Jas. T. Pardee was elected Chairman of the meeting.

The Secretary asked permission to make a change in the minutes of the previous meeting. In the record the name of Dr. J. M. Matthews was given as the presiding officer while Mr. August Merz had presided. The permission asked for was accorded.

The Chairman called upon the Secretary to report for the Executive Committee and the latter made a brief statement of the more important matters which had been passed upon by that committee.

At the request of the Chairman the Secretary read the report of the special committee which had been appointed at the previous meeting to consider the advisability of continuing the Open Price Section. That report is as follows:

"Report of Special Committee Appointed at Joint Meeting of the Board of Governors and Executive Committee to Report on Open Price Plan.

"Gentlemen:

Your Committee has met and discussed the question of whether the Open Price Section of the Institute should be continued, or just what action should be taken with respect to same. At this meeting we had before us advice from our counsel, Mr. Arthur J. Eddy, to the effect that in his opinion it would never be practicable for the American Dyes Institute as such to follow the Open Price Plan. That it would be much better for particular groups, manufacturing the same or similar products, to organize by themselves entirely independently of the Institute. Mr. Eddy has, therefore, recommended that the Open Price Section be abandoned, and that, if we follow his advice, that his services be dispensed with.

Your Committee having carefully considered this believes that advice of our counsel as above should be followed, and so recommends to the Institute.

Respectfully submitted,
F. M. Fargo, Jr.,
E. H. Killheffer,
H. H. Replogle,
J. M. Matthews."

The Institute endorsed the action which had been taken by the Executive Committee in approving and accepting the report.

As it was apparent that it would be necessary to change the By-Laws because of the abolition of the Open Price Section the Secretary was instructed to note the changes which would be required and to take the necessary steps to have them adopted.

The Chairman then asked for a report from the Legislative Committee. Mr. M. R. Poucher, Chairman of that committee, in a brief oral statement told the members just what the situation was and said further that a written report was being prepared by Judge J. Harry Covington, Counsel for the committee in Washington, which it was expected would be ready in the near future, perhaps before the next meeting. When ready, Mr. Poucher added, it would be distributed to the members.

Messrs. R. T. Baldwin, J. R. M. Klotz and Dr. S. Iserman also spoke briefly in explanation of the situation.

Dr. Matthews introduced the following resolution which was passed unanimously:

> "Although the members of the Legislative Committee of the American Dyes Institute expressed themselves as being averse to any official endorsement of their work until they should have concluded their labors, yet, in view of what that Committee has accomplished, and for its support in what it still has to do, it is
>
> RESOLVED that the members of the American Dyes Institute hereby express their appreciation of the task performed by the members of the Legislative Committee in furthering, unselfishly and at great personal sacrifice, the Dye Industry through Congressional action, and
>
> RESOLVED Further, that the members of the Institute endorse the work of that committee and tender their thanks not only to its Chairman but to all its members, for their activities, it being the desire of the Institute that the committee should realize that the Institute is grateful for the earnest efforts of that committee to place the Indus-

try on a permanent basis in this country and that it, the Institute, stands loyally behind the Committee."

Mr. Klotz made an appeal for co-operation by the members in the legislative work and said that each ought to exert himself to help the committee in its work.

Mr. Klotz also spoke of the Chemical Exposition to be held in New York City, at the Grand Central Palace, during the week beginning September 20, and in that connection asked for co-operation. He particularly emphasized the necessity of developing speakers to present the cause of the American Dye Industry at the Exposition and at other meetings, and said that from among the manufacturers, it ought to be possible to obtain men who would be effective in such work, just as in other organizations there were prominent manufacturers who were equipped to speak in public on the conditions in their respective industries.

Mr. August Merz said in connection with a suggestion to use moving pictures in an educational campaign, that the Executive Committee had accepted an invitation to attend an Exhibit to be given at the Inter-Ocean Film Corporation at 218 West 42nd Street, at 3 o'clock. He asked that the members visit that studio as the exhibit might suggest some ideas which perhaps could be adopted in any campaign of publicity which might be inaugurated for the American Dyes Institute.

Mr. Poucher suggested that the next meeting be held at some place other than New York, and that the members prepare for a two days' stay. The point was that by spending a couple of days in that way the members would become better acquainted with each other than at the meetings in New York which are necessarily brief. He thought that if the plan were developed and proved satisfactory arrangements might be made for other meetings to be held in the same way. Mr. Klotz joined with Mr. Poucher in advocating this plan and the members present all concurred in the suggestion.

Under authority conferred upon him the Chairman appointed the following committee to select the time and place for the next meeting, and also to make all arrangements; *i. e.*, Mr. J. R. M. Klotz, Mr. M. R. Poucher and the Secretary.

The Treasurer's report was presented. It is as follows:

TREASURER'S REPORT
American Dyes Institute
June 11, 1920.
As of June 1, 1920.

Balance May 1, 1920		$8,222.16
Received during May		14,648.53
		$22,870.69
Expenditures during May		4,457.00
Balance, June 1, 1920		$18,413.69
Accounts Payable	$5000.00	To five members a/c Chemical Foundation
Accounts Receivable	29678.86	

The report was approved and accepted.

The Secretary announced that with the consent of the Executive Committee he had signed a lease for five years for space on the 11th floor of the Bush Terminal Sales Building at 130 West 42nd Street; that there was ample room there in which to hold committee meetings and perhaps even meetings of the Institute itself; that if more space were desired for the sessions of the Institute there were meeting rooms in the building which were available; that there was a restaurant in the building and that the steward had assured him that luncheons could be served in any meeting room; that the telephone number was Bryant 1128. The Secretary asked the members to avail themselves of the new offices as much as possible.

It was decided that all meetings except the one in July and such others as might be ordered outside of New York, be held in the new offices.

There being no further business the meeting adjourned.

Respectfully submitted,
WM. R. CORWINE,
Secretary.

Addendum:

After the meeting a delegation of members went to the studio referred to in the Minutes and saw the exhibit.

PLAINTIFF'S EXHIBIT No. 563.

AMERICAN DYES INSTITUTE
130 W. 42ND STREET
NEW YORK

MINUTES OF MEETING
AMERICAN DYES INSTITUTE
July 15, 1920.

A meeting of the American Dyes Institute was held at the Hotel Griswold, Eastern Point, New London, Conn., Thursday evening, July 15, 1920.

The meeting was called to order at 8:45 P. M. by the President, Mr. R. C. Jeffcott.

In attendance were the following members:

Atlantic Dyestuff Co.	By Mr. Chas. H. Stone
Barrett Company	" Dr. D. W. Jayne
Butterworth-Judson Corp.	" Mr. F. E. Signer

Calco Chemical Co.	By Mr. R. C. Jeffcott Mr. G. A. Berry Mr. F. M. Fargo, Jr.
Chemical Co. of America	" Mr. Chas. Kendall Dr. S. Iserman
Dicks, David Co. Inc.	" Mr. R. P. Dicks
E. I. du Pont de Nemours & Co.	" Mr. M. R. Poucher Mr. C. A. Meade Dr. A. D. Chambers Mr. E. V. Paterson Mr. Cesare Protto Mr. C. K. Weston Mr. J. W. Kinsman Mr. A. A. Harrison
Essex Aniline Works, Inc.	" Mr. R. E. Apthorp
Grasselli Chemical Co.	" Dr. J. M. Matthews
Heller & Merz Co.	" Mr. August Merz
National Anil. & Chem. Co.	" Mr. H. F. Atherton
Newport Chemical Works, Inc.	" Mr. J. R. M. Klotz
Sherwin-Williams Co.	" Mr. Frank Hemingway
Tower Mfg. Co.	" Mr. D. H. Jonas
United States Col. & Chem. Co.	" Mr. B. C. Waldringer

Wm. R. Corwine, Secretary.

Those not in attendance were:

Althouse Chemical Co.
Atlas Color Works, Inc.
John Campbell & Co.
Certified Chemical Corp.
Consolidated Color & Chemical Co.
Commonwealth Chemical Corp.

Dye Products & Chemical Co. Inc.
Gaskill Chemical Corp.
Holland Aniline Co.
Holliday-Kemp Co.
Hydrocarbon Chemical Prod. Co.
Merrimac Chemical Co.
Metals Disintegrating Co.
Monsanto Chemical Works
Geo. H. Morrill Company
Naugatuck Chemical Co.
Organic Salt & Acid Co. Inc.
Peerless Color Company
Trans-Atlantic Chemical Corp.

All those not present had responded to the notices about the meeting, explaining they could not be represented, except the following:

Atlas Color Works, Inc.
Certified Chemical Corp.
Commonwealth Chemical Corp.
Consolidated Color & Chem. Co.
Holland Aniline Co.
Metals Disintegrating Co.
Organic Salt & Acid Co.
Peerless Color Company

As the minutes of the previous meeting had been sent to all the members, and as no changes had been suggested, they were approved and the reading of them dispensed with.

The President called for the report of the Treasurer. In the absence of that officer, who was unable to attend, the Secretary read his report which was as follows:

TREASURER'S REPORT

American Dyes Institute
as of
July 1, 1920

Balance—June 1, 1920	$14,413.69
Income during June, 1920	1,581.56
	$19,995.25
Expenditures during June	5,805.20
Balance, July 1, 1920	$14,190.05
Accounts payable	$7,500.00
($5,000 to five members a/c Chem. Found. Inc. $2,500 to Mr. Eddy—Paid July 6, 1920).	
Accounts receivable	$26,863.86

The President asked for a report from the Secretary which should include the action taken by the Executive Committee at a meeting of the latter held Thursday morning, July 15. Thereupon the Secretary summarized some of the more important subjects which had been considered by the committee. These included

> A synopsis of a report submitted by the Committee on Sanitation and Safety which had held its first meeting at the Engineers' Club, Philadelphia, July 8th. Those who attended that meeting were Mr. George B. Bradshaw of E. I. du Pont de Nemours & Co., Mr. Victor L. King and Mr. Moses Crossley of the Calco Chemical Co., Mr. Albert G. Peterkin of the Barrett Company and the Secretary of the Institute, together with Dr. Francis D. Patterson, Chief of the Division of Industrial Hygiene & Engineering of the Department of Labor and Industry of the State of Penn-

sylvania and who is also a member of the committee organized at Washington on the general subject of standardization. Dr. Patterson had been specially invited to be present. That report recited the subjects which the committee had considered and announced that another meeting would be held on the 4th of August at the same place.

A report by Mr. J. R. M. Klotz of the Newport Chemical Works, Chairman of a Special Committee which had been appointed at the last meeting of the Institute to confer with the Internal Revenue Commissioner at Washington on the manufacture of commercial alcohol. That committee, besides Mr. Klotz, consists of Mr. D. H. Litter of the Calco Chemical Co. and Dr. S. Iserman of the Chemical Co. of America, and it expressed the opinion that the future held no difficulties for legitimate users of commercial alcohol.

Report of the Legislative Committee which had been filed and which would be explained later by the Chairman of that committee, and which naturally led up to and included the subject of publicity.

The Secretary's report was accepted.

The Chairman of the Legislative Committee, Mr. M. R. Poucher, then, on request of the President, submitted the report of that committee. It was read in full and is as follows:

"The Committee on Legislation of the Institute, selected in the Spring of 1919 to assist in promoting the development of the dye industry in the United States through appropriate legislation by the Congress for the protection of a complete and self-sustaining coal-tar chemical industry in the country, makes this general report concerning the matters incident to the proposed legislation, and concerning the situation at this time.

Of course the members of the Institute have for a long time been fully aware of the fact that following extensive hearings before the Committee on Ways and Means of the House of Representatives between June 18 and July 18, 1919, the bill known as H. R. 8078, entitled "An Act to Regulate the Importation of Coal Tar Products and to Promote the Establishment of the Manufacture Thereof in the United States" was duly reported to the House of Representatives, passed by that body in September, 1919, and sent to the Senate. It is also well known in the industry that this bill, as it passed the House of Representatives, in addition to an increase of tariff rates on imported dyes and intermediates over the rates in the existing law, as set forth in an amendment to the Chemical Schedule in the Underwood-Simmons Bill, contained provisions establishing a "license system," by which the importation of foreign dyes for domestic consumption for two years after the law was to become effective, could take place only after individual licenses were applied for and issued to dye consumers, or importers representing dye consumers, upon suitable declaration of the consumers under oath, that the quantities of dyes applied for were actually needed by the consumers for current use, and that they were not obtainable in the United States in quantities sufficient for domestic consumption upon reasonable terms as to price, quality and delivery. And the United States Tariff Commission was given the jurisdiction and the power to create the machinery necessary to determine those foreign dyes which might thus be imported into the United States, and to provide the regulations necessary to safeguard the issue of licenses for proper quantities of dyes to those consumers in good faith entitled to obtain them.

This bill, under the existing conditions, was admittedly satisfactory in principle to the great body of dye consumers in the United States because they had come to realize as the result of the recent war, that they ought to have available in this country at all times a complete and prosperous dyes industry to make them independent of foreign supply.

After the House bill reached the Senate it was referred, as most of you know, to the Finance Committee, and that body sent it to a sub-committee to conduct full hearings in reference to it. Those hearings were had in December, 1919, and January, 1920, and the testimony was as complete and convincing for legislation in addition to tariff, as it had been before the Committee on Ways and Means of the House.

During the progress of those hearings it developed that the "license system" to control imports of foreign dyes into the United States would not be accepted by the Senate, and in the place thereof a qualified embargo on the admission of foreign dyes to this country for a period of three years was devised by the Sub-Finance Committee, and the control of the administration of such embargo, and the regulations respecting the exceptions thereto which justify importations, was placed in the United States Tariff Commission, as had been the "license system" by the House of Representatives bill. With the view of the members of the Finance Committee that the embargo would be effective, and would during the years of its operation be sufficient protection, the proposed tariff rates on imported products were restored to the revenue rates in existence under the amended Chemical Schedule of the Underwood-Simmons Bill.

The amended bill was unanimously reported to the Senate on February 13, 1920, as will probably be recalled by those who have followed the progress of the legislation, and its principles were cheerfully accepted by the industry as a substitute for its own proposals, at the same time that the great majority of the dye consumers of the country approved it.

Of course it is known, however, that immediately upon the report of the bill it became the object of persistent criticism and attack from its opponents.

It would be useless at this time to review in detail the objections urged by the opponents of the Senate Bill. Your Committee and its counsel were constantly available to analyze from both the manufacturing and legal viewpoint the numerous proposals to amend the bill. Save in a few instances the opposition to the legislation was from the importers who obviously wanted the fullest possible chance to import foreign dyes with which to undersell the American producer, or from that minority of consumers more concerned with an immediate competitive market in dyes than with the establishment of a thoroughly independent and self-sustaining dye industry in the United States. It is fair to say in this connection that there were a few instances where constructive suggestions for changes came from consumers who are in sympathy with the proposed legislation.

Your Committee, in presenting the case for the American dyes industry to the Committee of the House of Representatives and the Senate, proceeded upon the openly declared idea that the testimony of impartial witnesses at the hearings would abundantly establish the fact that an American dye and related coal-tar chemical industry is absolutely essential to the national defense and national welfare, and that the existence of high tariff duties on foreign dyes and intermediates is not by any means enough to protect such an industry in the United States from destruction through foreign commercial attack during the temporary period when it is developing complete production for the country. In other words, your Committee proceeded upon the frank theory that a practical embargo against foreign dyes of the same kind and quality as those being produced commercially in the United States is a conceded necessity until our industry is fully developed.

You are familiar with the testimony at the hearings and, of course, know that it was established by the statements of military experts and chemists who have no connection with the dye manufacturers that a complete and self-sustaining dye and coal-tar chemical industry in the United States is a vital necessity for our national defense, national health and general industrial welfare. The completeness with which that truth was brought out is, we are entitled to believe, evidenced by the passage of the bill in the House of Representatives by a substantial majority, and by the favorable report of the amended Senate bill by the Finance Committee.

Notwithstanding the pressure of legislative business in the Senate, and the pendency of the Peace Treaty as a continual problem, the Senate by a very substantial majority vote took up the dyes bill for consideration with a view to its passage. With the urgent necessity for providing the necessary appropriations to operate the Government for the current fiscal year supplementing the Peace Treaty situation, those opposed to the legislation in the form in which it was reported by the Senate Committee were able to occupy a sufficient amount of the time of the Senate, under existing rules, to make those in charge of the bill appreciate the impossibility of attempting to press the measure for passage.

At the same time your Committee is glad to be able to report that apparently a decided majority of the members of the Senate favor the passage of legislation to protect the American dye industry on the general plan embodied in the pending bill. The essential character of the industry as related to the national defense and national health seems to have been generally accepted, the vote for consideration above referred to clearly justifying such assertion by your Committee.

In making this report it is eminently proper to state what the most of you know, that the great majority of the dye consumers of the country have been vigorously supporting the proposed legislation. These consumers have appreciated that both in the original "license system" proposed by the manufacturers and adopted by the House, and in the "qualified embargo" plan substituted by the Senate Committee, adequate provision was made for the consumers to secure from time to time all varieties of foreign dyes when the same kind or satisfactory substitutes are not made in this country.

The attitude of your Committee has been, and

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in that it knows it has expressed the view of the dye industry, that the consumer must be given ample opportunity to have as full a variety of colors as the consumers of other countries. Co-operation between the manufacturer and the consumer is essential in the dye industry, and it is the Committee's view that a continuance of the recent co-operation may be looked for from the consumers who have heretofore supported the legislation necessary to develop our industry.

For the information of those among you who are not familiar with the details of parliamentary procedure in the Congress of the United States it can be stated that the adjournment of Congress on June 5 last did not operate to defeat the pending bill. It retains its status as a bill passed by the House of Representatives, reported with amendments by the Senate Finance Committee, and on the Senate calendar for consideration. In other words, it may be called up for final passage in the Senate at any time in the session of Congress beginning on the first Monday of December next.

In the meantime it is, of course, known that the Congress provided an appropriation for the War Trade Board Section of the Department of State so that the dye consumers may import their necessary six months' supplies of dyes not yet made in the country, while at the same time the general importation of foreign dyes to injure or destroy the American producers may be effectively prevented.

Respectfully submitted,

M. R. Poucher, Chairman R. T. Baldwin
R. C. Jeffcott A. C. Burrage, Jr.
J. R. M. Klotz Dr. S. Iserman
Wm. R. Corwine, Secretary."

There then followed a discussion in which most of the members present participated, and which bore directly upon the report and matters which were collateral to and coincident with the work of the Legislative Committee. Numerous questions were asked of the Chairman for the purpose of elucidating some of the points which had been made in the report, and these questions were answered fully and directly.

The Chairman of the Legislative Committee explained the personnel, plan and scope of what was originally known as the War Trade Board and which is now known as the War Trade Board Section of the State Department, and the work of the Textile Alliance, Inc., which had been designated by the Government as the medium through which dyes had been and were being imported from the dyes in the control of the Reparation Commission under the terms of the Treaty of Peace with Germany. It was stated by the Chairman of the Legislative Committee that though the Treaty of Peace had not been ratified by our government yet the requests of the consumers for needed reparations dyes had been granted freely.

The history of the organization of the Advisory Committee to assist the War Trade Board in the granting of licenses in the importation of dyes was also recited. That Advisory Committee, composed of representatives of prominent consumers of dyes and of manufacturers of dyes, was also acting in an advisory capacity to the Textile Alliance. Numerous matters of detail in connection with this important subject and its ramifications were fully set forth by the Chairman of the Legislative Committee and by the President of the Institute, who is also a member of that committee. There was then a very full and frank discussion of the situation as it had existed and as it exists at present.

After the discussion several members who had not been present at the last meeting of the Institute suggested a resolution of thanks to the Chairman of the Legislative Committee and his associates for the efforts made by that Committee on behalf of the American Dye manufacturers, so that the Committee might be assured of the appreciation by the Institute of the unselfish devotion of the Committee to its fellow manufacturers, and of its willing active prosecution of the work which was thrust upon it, the burden of which its members had cheerfully accepted. In this suggestion several members of the Institute joined in paying the Committee a high measure of praise for its unceasing and well-directed activities, desiring it to know that the Institute endorsed heartily what the Committee had done and wanting it also to be assured that the Institute would stand behind the Committee in its future efforts to protect the American Dyes Industry. The attention of those members was called to the fact that at the meeting of the Institute held June 11, 1920, a resolution embodying its thanks and expressing its appreciation had been introduced and passed unanimously, and that it had been incorporated in the minutes and sent to all members. Those members, however, who were not then present, were of the opinion that the. fact that the Institute was grateful to the Legislative Committee could not be reiterated too often, and desired that the substance of what had been said be incorporated in the records of the proceedings.

As some of the members were not satisfied that the license certificate of the War Trade Board and the application which must be filed by the consumer properly protected the manufacturers' interests, the Secretary was requested to obtain copies of those documents and send one to each member of the Institute, and, at the same time, to obtain and send to members, copy of the list of dyes recently issued by the Textile Alliance. In this connection it was stated that the authorities in Washington on the various boards having anything to do directly or indirectly with the dye situation would welcome every possible co-operation by dye manufacturers and those manufacturers who had not already filed the lists of their products with the United States Tariff Commission, in response to the efforts of that Commission to co-operate with the War Trade Board Section of the Department of State, were advised to file them without delay. It was also suggested that in filing lists of products, manufacturers of dyes should give the pre-war titles or names of their products, to assist the War Trade Board in keeping out competing colors.

The President stated that he had been requested to appoint a committee on the nomenclature, spelling and pronounciation of chemical products as applied to the dyestuffs industry, and as this suggestion met with the approval of the meeting he named as members of that committee, Mr. J. Warren Kinsman of E. I. du Pont de Nemours & Co., Dr. D. W. Jayne of the Barrett Company, Mr. J. R. M. Klotz of the Newport Chemical Works, Dr. J. Merritt Matthews of the Grasselli Chemical Company and Mr. L. H. Cone of the National Aniline & Chemical Co., the committee to select its own chairman.

Dr. J. Merritt Matthews told of an interview which he had had with a representative of the Mellon Institute of Pittsburgh, in which the Institute had been asked to explain, for educational purposes, dyes in their relation to laundry work, so that laundrymen might understand better than they do now, just what the situation was and also so that dyers of washable goods might be more careful in dying garments which had to stand the usage of laundering. It was decided that this matter should receive attention and the Chairman was authorized to appoint a committee to study the subject and to ascertain the best way in which, in its judgment, the information sought might be imparted. The President nominated Dr. J. Merritt Matthews of the Grasselli Chemical Co., as Chairman of that Committee, and Mr. E. V. Patterson of E. I. du Pont de Nemours & Co., to co-operate with him, asking the members to file suggestions as to the names of other members who might serve efficiently on that committee.

The committee which had been appointed to arrange for the present meeting was discharged, but was immediately reappointed with power to fix the time and place for the next meeting. That committee consists of Mr. J. R. M. Klotz of the Newport Chemical Works, Mr. M. R. Poucher of E. I. du Pont de Nemours & Co. and Mr. William R. Corwine, Secretary of the Institute.

During the discussions the President made an earnest appeal for the co-operation of the members. He said that he appreciated the honor which had been bestowed in his selection for and election to the presidency of the Institute, that he would cheerfully serve upon the condition that the members, including the executives of the companies forming the membership of the Institute, co-operated in the important work which lay before the dye manufacturers of our country. He deprecated the absence from meetings of many of the leading men in the industry, and said that it was unfair that the burden of the work should fall upon a comparatively few of the loyal members. He spoke of his trip abroad and told how active were the German Dye manufacturers in Paris, how skilfully the presidents of the leading German companies were working to arrange conditions which would be favorable for themselves, and how poorly the United States manufacturers were represented. While our country had not ratified the Treaty, and, of course, could not be officially represented in the various conferences which were continually being held in Paris, yet the Germans managed to secure influence on the more important committees and insidiously worked to reestablish themselves in the use of their dyes. Their aims had been temporarily frustrated through the prescience of one of the representatives of the Allies who had sensed the result of the policy which the Germans were indirectly leading up to, but that our great industry, which had so much at stake, had had no part in developing a policy which would check the Germans. His conclusion in this connection was that the American Dye manufacturers ought to be represented by one of its most competent men, not by a brief visit to Paris, but to remain there for a long period of time to prevent our progress from being delayed through the machinations of the German representatives. The information which the President imparted was not only interesting but informative, and gave the Institute a new viewpoint. The Chairman of the Legislative Committee also told of the situation which had existed in Washington when the Advisory Committee to the War Trade Board had been appointed, and how arduously and intelligently it had worked to circumvent a policy which had been advocated and almost adopted, and which, if it had prevailed, would have resulted almost, if not entirely, in the extermination of the American Dye Industry. The President clearly showed that in work of this kind the members ought to co-operate, not in a perfunctory way, but actively and that through the presence of the executives of the corporations forming the membership the Institute would receive the benefit of the advice of men who had successfully conducted their own affairs, and who could help sha policies which would be not only for the benefit of t industry as a whole, but for the country itself.

The meeting adjourned at 11:45 P. M.

Respectfully submitted,
WM. R. CORWINE, *Secretary.*

WRC/VS

PLAINTIFF'S EXHIBIT No. 564.

MINUTES

OF MEETINGS OF BOARD OF GOVERNORS OF AMERICAN DYES INSTITUTE

HELD AT YAMA FARMS, NAPANOCH, N. Y.

In the Evening of Wednesday, September 29, and in the Morning and Afternoon of Thursday, September 30, 1920.

In attendance were the following members of the Board of Governors:

Mr. A. C. Burrage, Jr., Manager of Atlantic Dyestuff Co., of Boston, Mass.

Mr. R. C. Jeffcott, President of the Calco Chemical Co., of Bound Brook, N. J.

Dr. S. Iserman, President of The Chemical Co. of America, of New York City.

Mr. M. R. Poucher, Director of Dyestuff Sales Department of E. I. duPont de Nemours & Co., of Wilmington, Dela.

Mr. H. W. Hyde, President of Essex Aniline Works, Inc., of Boston, Mass.

Dr. J. M. Matthews, of the New York office of The Grasselli Chemical Co.

Mr. August Merz, of The Heller & Merz Co., of Newark, N. J.

Mr. S. W. Wilder, President of the Merrimac Chemical Co., of Boston, Mass.

securing the dyes needed by Textile manufacturers of this country, in co-operation with the War Trade Board Section of the Department of State for consignment to that Alliance. Mr. Chapin, in the course of his work, had visited many of the dye factories in Germany, had talked with Dr. Weinberg, Dr. Duisberg, Dr. Bosch and others of the German Cartel, and therefore had the latest first-hand information.

He had presented his report to a meeting which had been held that morning in New York, of the War trade Board Section of the Department of State, its Advisory Committee of Consumers and Dye Manufacturers and the Textile Alliance, Inc. The report had been received and approved, and Mr. Chapin had been given authority to impart to the Board of Governors of the American Dyes Institute, the information which it contained.

The Chairman called upon Mr. Chapin to address the session. This Mr. Chapin did. His statements were extremely interesting. They covered the salient points in his report. That report in full was released for publication October 2 and was published. A copy of it will be sent to all members.

After Mr. Chapin had finished his remarks there was a general discussion on the advisability of adopting a suggestion which had been made by Mr. R. C. Jeffcott, President, and emphasized by the address of Mr. Chapin, to the effect that the Institute itself have representatives at Paris. In this connection the thought was expressed that the usefulness of such representatives would be increased if they could, in some way, obtain the endorsement of the Department of State. It was the unanimous opinion that the policy outlined would be a wise one to adopt, and the suggestion was endorsed. The authority to act in this matter was given to the Legislative Committee.

Mr. Joseph H. Choate, Jr., was mentioned in the belief that he, with his wide knowledge of the dye industry, together with his ability as a lawyer, his standing at the Bar and his prestige, would be eminently the person to represent the Institute in Paris. It was not known, however, whether or not he would accept such an appointment. It was also thought that there should be appointed to assist him, one or more men of technical training who could advise him upon the complicated problems which were constantly arising.

The meeting adjourned at 12 midnight, to meet again the following morning, Thursday, September 30, at 9:30 o'clock.

SECOND SESSION.

At the second session in the morning of September 30 there was discussed the question of what, if any, policy should be pursued by the Institute in conducting an educational campaign. Various plans which had been submitted to the Committee on Education and also to the Legislative Committee were explained. This subject was discussed at considerable length and it was the opinion of a considerable majority that it would be inadvisable to undertake a campaign of that kind at the present time. The subject was not dismissed entirely, but was left in such shape that it might be taken up in the future.

It was the consensus of opinion that the Legislative Committee should be aided in every possible way in the work which it had in hand, and the whole question of what had best be done in the premises was left to that committee in whose members all present expressed the utmost confidence.

The session adjourned at one o'clock for luncheon, to assemble that same afternoon at 2:30 o'clock.

THIRD SESSION.

At the third, or afternoon session, September 30, there was a general discussion upon matters affecting the industry, and Judge J. P. Laffey, Counsel for E. I. duPont de Nemours & Co., was asked by the Chairman to address the meeting on the legal aspects of association work. Judge Laffey had been in close contact with Mr. Arthur J. Eddy, Counsel for the Open Price Association of the American Dyes Institute, who also to a large extent had been an advisor of the Institute itself. The informal talk of Judge Laffey was very interesting.

In the absence of the Treasurer the Secretary read the summary of the report of that official, as of September 1, 1920. It is as follows:

Treasurer's Report
AMERICAN DYES INSTITUTE
As of September 1, 1920.

Balance August 1, 1920	$11,892.82
Received During August, 1920,	5,385.51
	$17,278.33
Expenditures During August	2,120.10
	$15,158.23

Accounts Payable $5000 (to five members—a/c Chemical Foundation, Inc.).
Accounts Receivable—$33,066.36.

The Secretary filed a detailed statement of the Treasurer's Report for the seven months of the year from January 1 to July 31, 1920, and the Auditor's Report for the year ending Dec. 31, 1919.

At four o'clock the meeting adjourned without naming a future date but with expressions on all sides that similar meetings should be held in the future twice a year or oftener.

Respectfully submitted,
WM. R. CORWINE,
Secretary.

WRC/VS

PLAINTIFF'S EXHIBIT No. 565.

MINUTES OF A MEETING OF THE EXECUTIVE COMMITTEE OF THE AMERICAN DYES INSTITUTE HELD AT THE OFFICE OF THE INSTITUTE, OCTOBER 7, 1920, AT 10:30 A. M.

In attendance:

Mr. R. C. Jeffcott, President of the Institute, in the Chair,
Mr. R. T. Baldwin,
Mr. August Merz,
Mr. M. R. Poucher,
Dr. J. M. Matthews,
Mr. J. R. M. Klotz,
Mr. H. E. Danner, Treasurer, and
Mr. W. R. Corwine, Secretary.

Mr. James T. Pardee had wired and Mr. A. C. Burrage, Jr., had written that they could not be present.

As the minutes of the previous meeting had been sent to all the members of the Committee, and as there were no corrections suggested, the reading of them was dispensed with and they were declared accepted.

An invitation from the National Industrial Conference Board to participate in a Tax Conference at the Hotel Astor, Friday and Saturday, October 22 and 23, 1920, was submitted. The Institute had been asked to appoint two delegates to attend the conference. It was decided that the Institute ought to be represented at the conference. As, however, the Executive Committee, at a meeting held June 11, 1920, had decided not to join the National Industrial Conference Board, the Executive Committee reconsidered the action which had been taken at the June meeting. The Chairman was thereupon authorized to appoint two members to represent the American Dyes Institute at that conference and to report not only on the conference itself, but as to the advisability of joining that Board.

An invitation of the American Manufacturers' Export Association to attend the Eleventh Annual Convention of that association to be held at the Waldorf-Astoria Hotel Thursday, October 14, 1920, and also to attend the Annual Banquet to be held at that place on the evening of that date, was presented. It was decided not to accept that invitation.

A letter from the Commissioner of the Department of Labor and Industry of Harrisburg, Pa., concerning a meeting to be held at Harrisburg in or about the middle of October to discuss the subject of a State Building Code, was read. The Secretary was instructed to submit that subject to the members of the Committee on Sanitation and Safety.

The Treasurer's report was then read. It was as follows:

Treasurer's Report.

As of October 1st, 1920.
American Dyes Institute.

Balance, September 1, 1920,	$15,158.23
Received during September	131.85
	$15,290.08
Expenditures during September	3,196.65
Balance, October 1, 1920,	$12,093.43

Accounts Payable $5000 to 5 members a/c
Chemical Foundation, Inc.
Accounts Receivable $33,028.86.

The report was received and ordered on file.

In the discusion which followed it was decided that the Treasurer should consider the payments to the Treasury of $5000 each by the National Aniline & Chemical Co. and by the duPont Company in 1919 as advance payments to be applied against any assessments in 1920, and that the $1000 which had been advanced by each of five members in connection with the organization of the Chemical Foundation, Inc., should also be credited to the members who had made the advances and should be applied against their 1920 assessments.

Mr. J. R. M. Klotz, to whom had been referred certain accounts which were in arrears for dues and assessments, reported that he had collected the amount due from the Metals Disintegrating Co., *viz.*, $325, and had sent the check to the Treasurer, but that that company had tendered its resignation.

He moved that the resignation be accepted. The motion was carried.

The other accounts which had been turned over to him, *viz.*, those of the Transatlantic Chemical Corp., Organic Salt & Acid Co. and the Atlas Color Works were left in his hands for such action as he might deem it best to take in collecting the amounts due from each.

The Accounts Receivable, as shown on the Treasurer's books, were discussed and the manner and method of collecting them was referred to the Treasurer with whom Mr. J. R. M. Klotz consented to cooperate.

The account of the Chemical Foundation, Inc., as rendered to Mr. Jeffcott by Mr. Francis P. Garvan, was placed in the hands of the Legislative Committee to settle.

It was decided not to take space for the Seventh Exposition of Chemical Industries, at least at present, and the Chairman was authorized to appoint a committee to consider the whole subject of exhibiting at that Exposition with the view of learning to what extent the members would participate through or with the Institute and then to decide whether or not the Institute ought to participate.

The conclusion reached at the meeting of the Board of Governors held at Yama Farms, Wednesday evening, September 29, to the effect that the Institute should have a representative at Paris, was then discussed. Mr. Joseph H. Choate, Jr., had been spoken of at the Yama Farms meeting as being eminently the person to represent the Institute in Paris.

The question of the fees of Mr. Joseph H. Choate, Jr., and Judge J. Harry Covington for the work done by them in connection with the dyestuff legislation, was discussed. As no bills had ever been received from either one of the two, the Legislative Committee was requested to ask each of them to send in his bill, so that the matter might be attended to.

The Treasurer, Mr. Danner, was given authority to co-operate with the Chemical Foundation, Inc., in the same manner in which he was now co-operating with the War Trade Section of the Department of State in securing information about dyes which were made in this country for which applications for licenses to import were under consideration by the War Trade Board.

There being no further business the meeting adjourned.

Respectfully submitted,
WM. R. CORWINE,
Secretary.

PLAINTIFF'S EXHIBIT No. 566.

Minutes of a meeting of the Executive Committee of the American Dyes Institute held at the office of the Institute Friday, the 29th of October, 1920, at 11 A. M.

In attendance:

Mr. R. C. Jeffcott, President of the Institute in the Chair.
Mr. R. T. Baldwin,
Mr. H. G. Stephenson, representing Mr. M. R. Poucher, who was unable to attend
Dr. S. Iserman
Mr. August Merz,
Mr. J. R. M. Klotz,
Dr. R. N. Wallach

together with

Mr. H. E. Danner, Treasurer,
and Mr. W. R. Corwine, Secretary.

The Treasurer presented his report which was accepted and ordered on file. It was as follows:

TREASURER'S REPORT
American Dyes Institute.

Balance, October 1, 1920		$12,093.43
Received up to and including October 29		46,371.94
		$58,465.37
Expenditures up to and including October 29		31,860.05
Balance, October 29, 1920		$26,605.32
Accounts Payable	$25,000	(To Judge J. Harry Covington)
Accounts Receivable	26,108.54	

The meeting took up the work which the Legislative Committee had been engaged upon; that is to say: arranging for the proportions to be used as the basis for an assessment to be levied upon the members, the total amount of the assessment which had been suggested by the Legislative Committee being $70,000.

That amount was named as being necessary to meet expenses already incurred and for the purpose of continuing the activities of the Institute to the end of the year together with such publicity work as the Legislative Committee might consider necessary.

On behalf of one of the members of the Committee, namely, Mr. M. R. Poucher, it was suggested that for the purpose of arriving at a basis for working out percentages which would be adjusted automatically some method ought to be adopted which would produce such a result instead of forcing the designation of an arbitrary proportion in allocating assessments among members. On Mr. Poucher's behalf it was stated that in his opinion a fair method would be to base the assessment upon the output by pounds of intermediates and dyes manufactured for sale, and it was cited that the members were already filing their total production with the U. S. Tariff Commission. For purposes of assessment, therefore, Mr. Poucher thought that the total number of pounds produced for sale would be a fairer basis than the total output, as reported to the U. S. Tariff Commission, and that if such a plan were agreeable to the Institute, it might be possible to have the information required placed in the hands of, say, a chartered accountant, who could work out the percentages and hold inviolable the information filed with him.

In the discussion of that suggestion some members expressed the view that the Industry had not yet reached the point where it would be possible to develop that idea practicably, although nearly all expressed the hope, and even the belief, that before long the members would be willing to file figures showing the exact production.

The committee concluded the work which had been undertaken in connection with the suggestion of the Legislative Committee, and worked out a list of percentages applicable to each member.

The President announced that the bill of Mr. Joseph H. Choate, Jr., amounting to $25,000, had been paid just prior to the departure of that gentleman for Paris, but that Judge Covington's bill, in like amount, had not yet been paid. It was the opinion of all the members present that Judge Covington's bill ought to be paid as soon as possible.

In connection with the assessment, the Executive Committee adopted the following resolution:

> RESOLVED
>
> That for the purpose of meeting expenses already incurred, also obligations incurred, and for the purpose of continuing the activities to the end of the year, together with such publicity work as the Legislative Committee may consider necessary, an assessment of $70,000 upon the members of the Institute is hereby recommended by the Executive Committee, and that the Executive Committee recommends to the Institute that this amount of $70,000 be prorated among the members of the Institute in proportions as shown on the attached list.

The meeting then adjourned to meet later with the members of the Institute itself.

Respectfully submitted,

WM. R. CORWINE,
Secretary.

WRC/VS

PLAINTIFF'S EXHIBIT No. 567.

American Dyes Institute
130 W. 42nd Street
New York

MINUTES

MEETING—AMERICAN DYES INSTITUTE

Friday, October 29, 1920.

Minutes of a meeting of the American Dyes Institute held at the office of the Institute, Friday, October 29, 1920, at 2 P. M.

Mr. R. C. Jeffcott, President of the Institute, was in the chair.

The Treasurer, Mr. H. E. Danner, and the Secretary, Mr. Wm. R. Corwine, were also present.

The roll call disclosed the attendance of the following:

Firm	*Represented by*
Althouse Chemical Co.	Mr. H. E. Quereau
Atlas Color Works Inc.	Mr. A. J. Thieme
Butterworth-Judson Corp.	Dr. N. F. Borg
Calco Chemical Co.	Mr. R. C. Jeffcott
Chemical Co. of America	Dr. S. Iserman Mr. C. Kendall
Consolidated Color & Chemical Co.	Mr. H. A. Metz
Dicks, David Co. Inc.	Mr. A. B. Johnson
E. I. du Pont de Nemours & Co.	Mr. H. G. Stephenson
Dye Products & Chemical Co. Inc.	Mr. Sidney Simon Mr. L. M. Loewenthal
Grasselli Chemical Co.	Dr. R. N. Wallach
The Heller & Merz Co.	Mr. August Merz
Hydrocarbon Chemical Prod. Co.	Mr. Alfred J. Thieme
Merrimac Chemical Co.	Mr. S. W. Wilder

Firm	*Represented by*
National Aniline & Chemical Co.	Mr. Robert T. Baldwin
Naugatuck Chemical Co.	Mr. W. Valentine
Newport Chemical Works Inc.	Mr. J. R. M. Klotz
Transatlantic Chemical Corp.	Mr. W. M. Stevenson

The Treasurer's report was read by that officer and was as follows:

TREASURER'S REPORT.

American Dyes Institute

Balance October 1, 1920		$12,093.43
Received up to and including October 29		46,371.94
		$58,465.37
Expenditures up to and including October 29		31,860.05
Balance, October 29, 1920		$26,605.32
Accounts Payable	$25,000	(To Judge J. Harry Covington)
Accounts Receivable	$26,108.54	

The report was accepted and ordered on file.

As it had become known to the Institute that the Interstate Commerce Commission had under consideration a change in the classification of Wet Picric Acid from an Inflammable to an Explosive, a special committee had been appointed to study the subject on behalf of the Institute. That committee consists of:

Dr. N. F. Borg, Butterworth-Judson Corp., Chairman.
Mr. R. T. Baldwin, National Aniline & Chemical Co.
Mr. A. L. Gardner, Merrimac Chemical Co.
Dr. V. L. King, Calco Chemical Co.

Mr. J. W. Kinsman, E. I. du Pont de Nemours & Co.

Mr. W. R. Corwine, Secretary.

Dr. Borg, on behalf of the committee, read a report which is as follows:

Oct. 15, 1920.

"American Dyes Institute
130 West 42nd St.,
New York, N. Y.

Gentlemen:

The Committee on Transportation of Picric Acid has held three meetings on the following dates: August 26 and 31 and on September 24. The meetings were held in the Committee Room of the American Dyes Institute, and the committee consisted of the following representatives:

Dr. N. F. Borg, Butterworth-Judson Corp., Chairman.

Mr. R. T. Baldwin, National Aniline & Chemical Co.

Mr. A. L. Gardner, Merrimac Chemical Co.

Dr. V. L. King, Calco Chemical Co., Bound Brook, N. J.

Mr. J. W. Kinsman, E. I. du Pont de Nemours & Co.

together with

Mr. W. R. Corwine, Secretary.

The first meeting took the form of a general discussion with the suggestion that Dr. Borg see Col. Dunn of the Bureau of Explosives to ascertain his views.

Inasmuch as Col. Dunn, who is the Chief Inspector of the Bureau of Explosives, when interviewed by Dr. Borg, had expressed his willingness to confer with the committee, either in his own office or at our regular meeting office, it was arranged to have Col. Dunn present at our Second Meeting.

Col. Dunn was so present and stated his views principally as follows:

> 'A carload or a barge load of picric acid may or may not explode if a fire starts near it. The moisture content of the picric acid is immaterial as the water will be evaporated or boiled off by the heat from the fire and the temperature raised to the danger point.'

As an illustration Col. Dunn stated that his own investigation of the Black Tom disaster proved that a barge load of picric acid of unknown moisture content caught fire, drifted up stream with the tide and exploded. This explosion was in Col. Dunn's opinion due to the fact that the temperature of this bulk Picric Acid was raised to the critical point.

Col. Dunn admitted that under similar conditions a bulk of picric acid may not explode, but that there is no assurance that it would not. He contends that, owing to this fact, Picric Acid should no longer be classified as an inflammable but as a high explosive. This change, however, will not alter conditions in such a manner as to hamper transportation, other than the usual high explosive restrictions.

While is has been shown that wet picric acid is comparatively insensitive to detonators and blasting caps, nevertheless picric acid is only insensitive in this regard when wet. While it is impossible to explode picric acid containing 10% of water either by shooting bullets through it, dropping weights upon it, or exploding blasting caps in it, nevertheless melted picric acid is extremely sensitive to shocks of various kinds.

As the latter situation usually is obtained in fires, wet picric acid is potentially a high explosive. In all of the explosions, the descriptions of which are incorporated in our Minutes, the actual explosion took place when the roof fell into the fire, which substantiates the fact that melted picric acid is extremely sensitive to shock.

It naturally follows that any substance which during a fire may eventually become an explosive may be classified as such and this development may have a serious hampering effect on the manufacturing, handling and transportation of dyes.

In reference to the storing of picric acid, this is principally a question of locality and is covered in the table of American distances. Regarding the packing of picric acid, Col. Dunn asked the committee to make recommendations. The following letter was formulated and sent to Col. Dunn:

September 24, 1920.

'Col. D. W. Dunn, Chief Inspector,
Bureau of Explosives,
30 Vesey St., New York City.

Dear Sir:

The Committee of the American Dyes Institute has acted upon your suggestion and considered the size and weight of packages for the transportation of Picric Acid, the character, dimensions, and quality of containers and the method of loading cars, and wishes to submit the following recommendations:

Wet or Dry Picric Acid must be packed in wooden barrels, half barrels or kegs complying with I. C. C. Shipping Container Specification #17, except that in this case boxes shall be lined with paraffin paper instead of zinc, lead-coated steel or any other metal.

The gross weight of each package in any case shall not exceed 600 pounds.

Barrels, half barrels or kegs must be loaded on end in box cars. If more than one tier of containers are loaded into one car, planks must be placed between the tiers. An open space must be left between the doors of the box cars. All containers facing this space and in each tier must be held in place by two pieces of timber measuring at least 2" x 4" reaching across the face of each tier from side to side of the car and placed above and below the bilge in each tier and braced against each other across the open space. Under no circumstances should any of the bracing be nailed to any of the containers.

The members of this committee take this opportunity to thank you for the interest which you have taken in our work, for your helpful suggestions and for your co-operation.

Sincerely yours,

(Sgd.) N. F. Borg,
Chairman, Committee on Transportation of Picric Acid.
American Dyes Institute.'

Col. Dunn stated that he might have a conference with the Interstate Commerce Commission on the subject in question about Jan. 1, 1921, or possibly later and that if any change was made in the classification of picric acid, it would not take effect for ninety days after the change was ordered.

Despite the combined experience of the members of your committee and that of the firms they represent, as well as all other available evidence, it is impossible to dispute the contentions of the Bureau of Explosives on this matter or to prove that Picric Acid should not be correctly classified as a High Explosive. However, your committee holds itself ready for further action should such be deemed advisable by the American Dyes Institute.

Respectfully submitted,
N. F. Borg,
Chairman, Committee on Transportation of Picric Acid of American Dyes Institute."

The report was accepted and ordered filed, the committee being thanked for its work. It was requested to serve until the Interstate Commerce Commission had definitely acted on the subject.

The Secretary reported on behalf of the special committee on Sanitation and Safety. That committee consists of the following:

Mr. M. L. Crossley, Calco Chemical Co., Chairman
Mr. A. G. Peterkin, The Barrett Company,
Mr. G. B. Bradshaw, E. I. du Pont de Nemours & Co.

The Secretary stated that the committee had held two meetings at the Engineers' Club in Philadelphia; that a Tentative Code for Nitro and Amido compounds and covering the general subjects of Sanitation and Safety had been drafted; that it was under consideration and that another meeting would be held in the near future to give it further study before reporting to the Institute.

Mr. J. R. M. Klotz reported progress on behalf of the special committee of the Institute appointed to consider the subject of Nomenclature, Spelling and Pronunciation of Chemical Products as applied to the dyestuffs industry. Mr. Klotz stated that the committee felt that the matter was of such importance that it should be taken up with the American Chemical Society and that probably in the near future the committee would be able to report its conclusions.

The Secretary reported that the special committee which had been appointed to confer with the Laundry Owners' National Association on the question of the use of dyes in washable garments had not yet met, but that it would probably meet as soon as its Chairman returned home. That committee consists of Dr. J. M. Matthews, Chairman, and Mr. E. V. Patterson.

Mr. R. T. Baldwin, on behalf of the Legislative Committee, stated that at a recent meeting of the Board of Governors it was the unanimous opinion of all those present that the Institute ought to have a representative at Paris to study the actual conditions there in connection with matters arising from the deliberations and action of the Reparations Commission, particularly under Annex 6 of the Treaty of Peace. The Governors had mentioned Mr. Joseph H. Choate, Jr., as being the man well fitted to represent the Institute at Paris. Acting upon the conclusion reached by the Board of Governors, the Legislative Committee had secured the services of Mr. Choate, and Mr. Baldwin announced that Mr. Choate had sailed for Paris on Wednesday, October 20.

The following recommendation from the Executive Committee was then read:

> That for the purpose of meeting expenses already incurred, also obligations incurred, and for the purpose of continuing the activities of the Institute to the end of the year, together with such publicity work as the Legislative Committee may consider necessary, an assessment of $70,000 upon the members of the Institute is hereby recommended by the Executive Committee.

During the discussion which followed, the President and Treasurer and members of the Executive and Legislative Committees explained fully and in detail what had been done with the funds which had already been raised.

In this connection the President read the bills of Mr. Joseph H. Choate, Jr., of the law firm of Evarts, Choate, Sherman & Leon, and of Judge J. Harry Covington of the Washington law firm of Covington & Burling, each of whom, in his bill, had given an outline sketch of some of his activities.

The opinion was expressed by the members present that the expenses, including the bills of counsel, were reasonable in amount and were properly incurred.

The President stated that Mr. Choate's bill had been paid just prior to his departure for Paris, but that Judge Covington's bill had not yet been paid.

The recommendation of the Executive Committee as above quoted was adopted unanimously.

Thereupon another recommendation of the Executive Committee was introduced. It is as follows:

> That the Executive Committee recommends to the Institute that this amount of $70,000 be prorated among the members of the Institute in the following proportions:

Althouse Chemical Co.	.4
American Aniline Products Inc.	2.
Atlantic Dyestuff Co.	2.
Atlas Color Works	.2
The Barrett Company	3.
Butterworth-Judson Corp.	2.5
John Campbell & Co.	2.5
Calco Chemical Co.	6.
Certified Chemical Corp.	.2
Chemical Co. of America	.75
Commonwealth Chemical Co.	.3
Consolidated Color & Chemical Co.	4.

Dicks, David Co. Inc.	1.5
Dow Chemical Co.	3.
E. I. du Pont de Nemours & Co.	17.
Dye Products & Chemical Co.	.3
Essex Aniline	.75
Grasselli Chemical Co.	7.
Gaskill Chemical Corp.	.2
Heller & Merz Co.	4.
Holland Aniline Co.	.4
Holliday-Kemp Co.	.5
Hydrocarbon Chemical Co.	.2
Merrimac Chemical Co.	1.
Monsanto Chemical Co.	2.5
National Aniline & Chemical Co.	25.
Naugatuck Chemical Co.	1.
Newport Chemical Works, Inc.	8.
Organic Salt & Acid Co.	.1
Peerless Color Co.	.5
The Sherwin-Williams Co.	4.
Transatlantic Chemical Co.	.1
Tower Mfg. Co.	1.
U. S. Color & Chemical Co.	.4

The President explained that the Executive Committee had endeavored to arrive at an equitable allocation, but that the result of its work was, of course, subject to such changes as the members themselves might care to make. He recited a suggestion which had been made by one of the members of the Executive Committee, that for the purpose of arriving at a basis for working out percentages which would be adjusted automatically, some method ought to be adopted which would produce such a result instead of forcing the designation of an arbitrary proportion in allocating assessments among members. That member had further stated that in his opinion a fair method would be to base the assessment upon the output by pounds of intermediates and dyes manufactured for sale, and he referred to the fact that members were already filing with the U. S. Tariff Commission their total production. For purposes of assessments, however, the suggestion he had made of the total number of pounds produced for sale would be a fairer basis than the total output as reported to the U. S. Tariff Commission. He also thought that if such a plan were agreeable to the Institute it might be possible to have the information required placed in the hands of, say, a chartered accountant, who could work out the percentages and would hold inviolable the information filed with him.

It was felt that the Industry had not yet reached the point where it would be possible to develop that idea practically, although several members expressed the hope and even the belief that before long members would be willing to file figures showing exact production.

He then read the list of proportions and after these had been commented upon, the President asked for an expression of opinion from each member present as to whether or not, in his judgment, the proportion assigned to his firm or corporation was fair, and whether or not each would accept his proportion.

The roll of those in attendance was then called and the following stated that they were satisfied with the ratios affecting them:

Althouse Chemical Co.
Calco Chemical Co.
Chemical Co. of America
Consolidated Color & Chemical Co.
Dicks, David Co. Inc.
Dye Products & Chemical Co.
E. I. du Pont de Nemours & Co.
Grasselli Chemical Co.
The Heller & Merz Co.
Merrimac Chemical Co.

National Aniline & Chemical Co.
Newport Chemical Works, Inc.
Transatlantic Chemical Corp.

The representatives of the Atlas Color Works Inc., the Butterworth-Judson Corp. and the Hydrocarbon Chemical Products Co. stated that while individually the assessment seemed fair, yet that each felt that before committing himself he ought to confer with his officers. This each said he would do as soon as possible and report.

It was decided that a copy of the list of proportions, as set forth above, be sent to all members who were not present at the meeting, with a statement of those who had already agreed to them and that final disposition of them would be made at the next meeting of the Institute.

It was felt by the members present that the Institute should go on record with regard to the expenditures and commitments of the authorized committees, and therefore, upon motion duly made and seconded, it was unanimously

RESOLVED

That the actions of the Legislative Committee and the Executive Committee in respect of employing counsel and the various other items of expenditures in connection with the work of securing the needed legislation, be approved.

There then ensued an interesting discussion on business conditions, in which several members participated, each expressing the result of his observations and his opinion as to the outlook.

There being no further business the meeting adjourned to Friday, November 19, 1920, the session to be held at the office of the Institute, immediately after Luncheon on that date.

WM. R. CORWINE,
Secretary.

PLAINTIFF'S EXHIBIT No. 568.

Minutes of a meeting of the Executive Committee of the American Dyes Institute held at the office of the Institute Friday, October 29, 1920, at 3:20 P. M.

This was a session called after the adjournment of the Institute.

In attendance:

Mr. R. T. Baldwin,
Mr. H. G. Stephenson (representing Mr. M. R. Poucher, who was unable to attend),
Dr. S. Iserman,
Mr. August Merz,
Mr. J. R. M. Klotz,
Dr. R. N. Wallach,
together with Mr. H. E. Danner, Treasurer,
and Mr. W. R. Corwine, Secretary.

There were some minor matters discussed, which were presented by the Secretary from his files.

One was a suggestion from a committee of various trade organizations that the Institute join in a campaign for an amendment to the National Income Tax Bill by a proposed Joint Resolution. It was decided that it would be inadvisable to attempt to take up the matter at present.

The Secretary presented a duplicate bill of the Chemical Foundation, Inc., similar to the one which had been submitted some time before. It was ordered referred to the Legislative Committee which had that matter in charge. On behalf of that committee it was stated that efforts had been made to see Mr. Francis P. Garvan, President of the Chemical Foundation, Inc., for the purpose of getting a settlement of some items which the Institute had thought were not properly chargeable to it, but that it had been impossible to see him.

The Committee agreed to confer with Mr. Garvan at the earliest possible moment.

There was also submitted a resolution on the subject of Commercial Bribery which had been submitted by the American Society of Sales Executives. That subject was referred to the Trade Committee of the American Dyes Institute.

There being no further business the meeting adjourned.

Respectfully submitted,
WM. R. CORWINE,
Secretary.

WRC/VS

PLAINTIFF'S EXHIBIT No. 569.

March 10, 1919.

MEMO OF ARGUMENTS PRESENTED BY J. H. CHOATE, JR., AT HEARING ON MARCH 10, 1919.

War Trade Board,
Washington, D. C.

Gentlemen:

As Counsel for the Chemical Foundation, Inc., I desire to urge that licenses be not granted to import dyestuffs, pharmaceuticals and other chemicals produced in the occupied district of Germany. The Chemical Foundation, Inc., is the corporation organized by the industries, at the instance of the Alien Property Custodian, to purchase the German chemical patents and hold them in trust for the benefit of American industry in Germany. This company is completely controlled by a board of voting trustees, named by the Alien Property Custodian, and the Custodian himself, Mr. Garvan, is its President. It represents therefore a somewhat impartial view. The reasons which I wish to urge are as follows:

Our new American dyestuff industry is at a crucial period in its development. The indispensable vat dyes which were the basis of Germany's dye supremacy are not yet being produced here, but are on the point of production. These dyes are so necessary that any company which can supply them can compel the consumer to purchase also its other goods. If they become available from foreign sources before the American production is on the market, the capital invested here will be lost and the American industry will receive a body blow.

The occupied territory contains, at Ludwigs Haven, the largest of all the German dye works. Other factories are probably included. All the German houses are now comprised in a single, all-powerful kartel, with a real capital of half a billion dollars, organized avowedly to fight for foreign trade. For four years these factories have been abnormally prosperous. Our information is that they have accumulated great stocks of their most important products. For example, a report published by the *New York Tribune,* from an English source, states that the great house of Leopold Cassalla Company, of Frankfort, has on hand 100,000 pounds of double strength hydron blue. This is one of the most important vat dyes and one which the largest American producer has spent vast sums in duplicating and is now beginning to market. If licenses should be issued to import these goods into the United States, the effect on our industry would be disastrous. It will be remembered that the German dye kartels have always been absolutely unscruplous in their methods of commercial warfare, and have never hesitated to sell at a loss if by doing so they could destroy the industry of a competing country. Their need to dispose of these accumulations and their desire to re-capture their foreign trade, will be so great that they will undoubtedly, unless prevented, practice their former methods more ruthlessly than ever.

The occupied territory is still German. Its factories are owned by Germans, and their property therein will presumably not be confiscated. Financial benefits from such trade will therefore flow into German pockets. Recognizing to the full the immense importance of restoring activity to the industries of the occupied district, we feel that this can be accomplished without permitting the export of accumulations of goods manufactured during the war. The sale of such accumulations would provide money, but would not furnish the population with work, which we understand to be the essential.

The purchase of the German patents, will enable the Chemical Foundation, Inc., when fully organized, to protect the industry to some extent against imports of the more important known German products. Our information is, however, that during the war they have developed many valuable new products, not covered by the patents. These new products may be of sufficient importance to form a serious obstacle to our new dye industry. We, therefore, submit that licenses covering such products should be refused or granted only to the most limited extent.

The textile industries, we are informed, are entirely in sympathy with our position in this matter. They need the best dyes obtainable, but they need still more (and this they fully recognize) to be freed from the former German domination. The British textile industry is in an identical position with ours, yet the British Government has not hesitated to adopt a licensing plan by which all foreign dyes are excluded except when licensed. It is submitted that the question of imports from the occupied territory is totally distinct from that of imports from neutral and allied countries, and that the War Trade Board could properly refuse in the one case licenses which it would feel constrained to grant in the other.

For the above reasons, we ask that even if the inter-allied counsel should permit export of dyes or pharmaceuticals from the occupied territory, the War Trade Board should refuse corresponding licenses for import into this country.

PLAINTIFF'S EXHIBIT No. 570.

Alien Property Custodian
Sixteenth & P Sts., N. W.,
Washington, D. C.

March 11, 1919.

Mr. Lawrence Bennett, Sec.,
War Trade Board,
Washington, D. C.

Dear Mr. Bennett:

Attached you will please find copy of a statement prepared by Mr. Choate, General Counsel for the Chemical Foundation, Inc., to be transmitted to the Inter-Allied Council in Europe. This memorandum was prepared by Mr. Choate, following the suggestion at the conference yesterday.

I am also sending you a copy in proof form of the results of the investigation by the Alien Property Custodian of the chemical industry in this country. Should you desire additional copies, please advise me.

Very truly yours,

W. F. KEOHAN,
For the Alien Property Custodian.

WFK-GM-jh

PLAINTIFF'S EXHIBIT No. 571.

Form WTB 229

WAR TRADE BOARD

INTER-OFFICE MEMORANDUM

Date March 26, 1919.

To Mr. Gay, Mr. Bennett, Mr. Perret, Mr. deLaittre.
Bureau and Division ....
Subject ....

Following is an extract from a preliminary draft of the Board minutes of March 25, 1919, the same being paragraph (5) thereof:

"Mr. Perret read to the Board cablegram No. 7746 dated March 19, 1919, from Mr. Wigglesworth at Paris, and addressed to the Bureau of Foreign and Domestic Commerce, in connection with the importation of dyestuffs from 'enemy' territory. Thereupon, on motion duly made and seconded, the Board

> "AUTHORIZED and directed the Secretary to suggest to the Department of Commerce that, for the time being, the Chemical Foundation, Incorporated, should be consulted by the Board as an advisory body in considering the species of dyes that might be imported from 'enemy' territory, and that said Chemical Foundation, Incorporated, should be requested to prepare a report on the species of dyes that might be so imported, as against the day when Allied control over the importation of German dyes would be established."

(Sgd.) D. M. M.,
Assistant to Secretary.

From.
Bureau ....

PLAINTIFF'S EXHIBIT No. 572.

Paraphrase of a Cablegram.

From the American Ambassador at Paris, France.
Dated March 19, 1919, at 9 p. m.
Received 10:26 p. m.
No. 7746.

Referred for Attention to
Mr. Bennett.

The following is for the Bureau of Foreign and Domestic Commerce: Quote. The British, French and Italian Governments are each determined to promote their dyestuff industry and have provided protection. However, they are about to buy certain dyes from Germany which are urgently needed and not *domestic* produced. While it is not advisable to act hastily, it can be agreed by Dyes Institute and consumers that importations from Germany are needed, it is no doubt possible to buy dyes from occupied territory but the method and policy to pursue should be jointly agreed upon. Conclusions should be cabled to the Commercial Attache of the Embassy. Wigglesworth. End quote.

SHARP.

PLAINTIFF'S EXHIBIT No. 573.

From files in office of Dr. Young, Department of State.

Telegram Received.

From: Paris
Dated March 31, 1919.
Recd. 11:20 PM.

Secretary of State,
Washington, D. C.

Routine *7931*. March 31, 1 pm.

For Bennett, War Trade Board. #1270. Following is text of cable sent March 27th by Baruch to Secretary of State for Peek, War Industries Board. Please take up the following with the Chemical Foundation and advise their attitude. Garvin, Alien Property Custodian can put you in touch with their representatives.

One. Concerning proposal to include dyes among commodities accepted from Germany in exchange for food, it is proposed that Chemical Foundation be sole agent for receiving and distributing accepted dyes that War Trade Board license Chemical Foundation only and that Foundation completely control German dye supplies until ratification of Peace Treaty.

Two. Germany to furnish list and tentative prices of dyes available. Chemical Foundation to select from these lists supplies for United States in such quantities as may be just compromise between textile leather, paper, and other manufacturers and dye makers and the public interest and for which satisfactory sales and other guarantees may be obtained for the protection of Foundation. Foundation to establish machinery for acceptance, sales, and distribution under cognizance and responsibility of Foundation. Acceptance and primary sales to be taken at cost and profit on secondary distribution to be fairly limited.

Three. Price to Germany for dyes bought to be the same as price paid by England and France.

Four. Plan is temporary only intended to promote food movement during transition period until peace settlement. Approved by American economic advisors and McCormick who is wiring the War Trade Board.

Five. Wire at once whether Foundation will undertake this service. Urgently recommend you to do so. *Anybody* free to consult producers and consumers of dyestuffs but do not delay pending such consultation. MacFowell. Signed Baruch Ammission "McFadden."

SHARP.

LWR

PLAINTIFF'S EXHIBIT No. 574.

Note: Same as Plaintiff's Exhibit No. 573 and not reprinted here. See Record, Exhibits, Volume II, Page 1358.)

PLAINTIFF'S EXHIBIT No. 575.

Bureau Foreign Domestic Commerce

April 1, 1919.

Mr. T. P. Miller, Secretary,
National Aniline and Chemical Co.,
21 Bowling Slip,
New York, N. Y.

As member of Executive Committee you may be called upon at very early date to name varieties which may be imported with least prejudice to industry here bearing in mind necessity of liberality on grounds of necessary exchange whether we comply or not. Conference welcomed at Washington any time.

B. S. CUTLER.

PLAINTIFF'S EXHIBIT No. 576.

Bureau Foreign Domestic Commerce

April 1, 1919.

Mr. Morris R. Poucher,
E. I. du Pont de Nemours Company,
Wilmington, Delaware.

As member of Executive Committee you may be called upon at very early date to name varieties which may be imported with least prejudice to industry here bearing in mind necessity of liberality on grounds of necessary exchange whether we comply or not. Conference welcomed at Washington any time.

B. S. CUTLER.

PLAINTIFF'S EXHIBIT No. 577.

April 3, 1919.

Dear Sir:

As a first step in the selection of an advisory committee to the Secretary of Commerce for the purpose of ascertaining what foreign-made dyes may be imported into the United States without prejudice to national and commercial policies already agreed upon, I hereby appoint you a member of a committee of two (acting with Mr. Joseph H. Choate) to submit to me the names of a committee representing the following organizations and interests:

Chemical Foundation, Inc.,
American Dyes Institute,
American Chemical Society,
National Association of Finishers of Cotton Fabrics,
Silk Association of America,
American Assoc. of Woolen and Worsted Manufacturers.

My purpose is to make a choice of individuals who will instinctively entertain a comprehensive view of the problem rather than advocates of particular interests, even though they may stand for those interests in commercial association. Be good enough to have these names before me within the next thirty-six hours if possible.

Very truly yours,
WILLIAM C. REDFIELD,
Secretary.

Dr. William T. Miller,
c/o American Dyes Institute,
320 Broadway,
New York, N. Y.

bsc-m-pws

PLAINTIFF'S EXHIBIT No. 578.

April 3, 1919.

Dear Sir:

As a first step in the selection of an advisory committee to the Secretary of Commerce for the purpose of ascertaining what foreign-made dyes may be imported into the United States without prejudice to national and commercial policies already agreed upon, I hereby appoint you a member of a committee of two (acting with Dr. William T. Miller) to submit to me the names of a committee representing the following organizations and interests:

Chemical Foundation, Inc.
American Dyes Institute,
American Chemical Society,
National Association of Finishers of Cotton Fabrics,
Silk Association of America,
American Assoc. of Woolen and Worsted Manufacturers.

My purpose is to make a choice of individuals who will instinctively entertain a comprehensive view of the problem rather than advocates of particular interests, even though they may stand for those interests in commercial association. Be good enough to have these names before me within the next thirty-six hours if possible.

Very truly yours,
WILLIAM C. REDFIELD,
Secretary.

Mr. Joseph H. Choate,
110 West 42nd Street,
New York, N. Y.
bsc-m-pws

PLAINTIFF'S EXHIBIT No. 579.

Alien Property Custodian
Sixteenth and P Streets NW.
Washington, D. C.
New York Office
110 West Forty-second Street
New York City, N. Y.
Bureau of Investigation
Francis P. Garvan
Director

April 5, 1919.

Hon. B. S. Cutler,
Chief Bureau of Foreign & Domestic Commerce,
Department of Commerce,
Washington, D. C.

Dear Mr. Cutler:

In accordance with your request Mr. W. T. Miller and I sent you yesterday a telegram in the following terms:

> "In accordance with your request yesterday we beg to suggest the following gentlemen as representatives of the Dye Consuming Industry Mis-

ter Henry B. Thompson President National Cotton Finishers Association Three hundred twenty Broadway Mister Arthur S. Draper President American Cotton Manufacturers Association Charlotte North Carolina also Chairman of the Council of the National and the American Cotton Manufacturers Associations Mister Frank D. Cheney South Manchester Connecticut of the Silk Manufacturers Association Mister Franklin W. Hobbs President Woolen Association Lawrence Massachusetts stop As representatives of Chemical Industries Mister M R Poucher Wilmington Delaware of the Du Pont Company Mister W H Watkins Buffalo New York National Aniline and Chemical Company Mister August Merz of Heller and Merz Newark New Jersey stop These three Gentlemen were nominated by American Dyes Institute at its meeting today also Doctor Charles H. Herty past president American Chemical Society as representative of last named Society stop We suggest naming four representatives of producers and four representatives of consumers instead of three each because all the gentlemen named seem to be of the greatest value on such a committee and because if we limit suggestions for representatives of producers to three we must leave out either one of the largest producers or all the smaller producers or the representative of the American Chemical Society

W. T. Miller and Joseph H. Choate, Jr."

I am confident that on consideration you will find the gentlemen named are distinctly such as would entertain a comprehensive view of the problem, and that in general they are men whose public spirit would easily overcome their special interest.

Yours very truly,

(Sgd.) J. H. CHOATE, Jr.

JHC/SL

PLAINTIFF'S EXHIBIT No. 580.

April 7, 1919.

My dear Mr Merz:

At the suggestion of an informal committee of two, composed of Dr. W. T. Miller, of the executive committee of the American Dyes Institute, and Joseph H. Choate, Jr., attorney for the Chemical Foundation, Inc., your name has been submitted to me as one of seven forming an advisory committee in the selection by this Department of dyestuffs which may properly be admitted to this country from Germany without serious prejudice to our home industry or to the element of national defense involved.

I need not discuss further the plans under consideration except to say that it is the wish of the Allied High Commission at Paris to accept as many and as much German commodities in exchange for foodstuffs as we may properly dispose of in this market. Your acceptance of appointment will not commit you in the least to compliance with any policy of admission or exclusion which does not meet with your best judgment as a public spirited citizen.

At this writing we are led to believe that a list of dyestuffs containing quantities, prices, and possibly terms of delivery will be submitted to our combined judgment every thirty days.

Very truly yours,

Secretary.

Mr. August Merz,
Heller and Merz,
Newark, New Jersey.
bsc-pws

PLAINTIFF'S EXHIBIT No. 581.

Department of Commerce
Bureau of Foreign and Domestic Commerce
Washington

(Copy)

April 8, 1919.

Mr. Francis P. Garvan,
Alien Property Custodian,
Washington, D. C.

My dear Mr. Garvan:

Although you have been currently informed by Mr. Keoghan of the several conferences that have taken place in my office and at the War Trade Board between officials of the Chemical Foundation, the American Dyes Institute and ourselves, nevertheless it is well to put on record the decisions which were thus reached so that they may have your express consent, or correction, if you desire to make any.

Up to this date, and basing our ideas entirely on cabled recommendations from Mr. Baruch and Mr. Wigglesworth, it was the opinion of the Foundation, as expressed informally by Mr. Choate, that the Foundation was not able to purchase and market any imported dyes on its own responsibility and that further, any selection of German dyes necessary to the plan of European relief might better be done by the three elements in unison; that is, the Foundation, the American Dyes Institute, and the consumers—with the Foundation taking a necessary lead on account of its legal rights and its sympathy with a development of the home industry. Consequently, at the suggestion of Mr. Choate and with the compliance of Mr. Keoghan, a composite committee was suggested by Mr. Choate and Dr. W. T. Miller for appointment by the Secretary of Commerce in case you should approve this means of advising the Secretary of Commerce what varieties and quantities could be accepted from Germany with least prejudice to the home industry.

The Department of Commerce accepted in this way the position of conciliator between the several groups mentioned simply because the entire matter had been turned over to it by the War Trade Board who *has the licensing power.* It was agreed that any consignment by the Allied High Commission or by the Food Administration abroad to the Secretary of Commerce (as a usual matter of form) would be immediately reconsigned to the Chemical Foundation for distribution according to its own idea. As the result of a conference between Messrs. Choate, Keoghan, Miller, Tucker and Bright in my office, a nomination committee consisting of Messrs. Choate and Miller proposed the following advisory committee for the selection of said dyestuffs. It will undoubtedly be the opinion of the Secretary of Commerce, if this committee is appointed, that Mr. Choate, the attorney for the Foundation, should act as Chairman since the several legal complexities sure to be met must have recognition at the outset.

Joseph H. Choate, Jr., New York (Attorney for Chemical Foundation, Inc.)

Henry B. Thompson, New York (President National Cotton Finishers' Association)

Arthur S. Draper, Charlotte, N. C. (Pres. American Cotton Mfgrs. Assoc. and Chairman of the Council of the National and American Cotton Mfgrs. Assoc.)

Frank D. Cheney, South Manchester, Conn. (Silk Manufacturers' Association)

Franklin W. Hobbs, Lawrence, Mass. (President Woolen Association)

Morris R. Poucher, Wilmington, Del. (The Du Pont Company and American Dyes Institute)

W. H. Watkins, Buffalo, N. Y. (National Aniline & Chemical Co. and American Dyes Institute)

August Merz, Newark, N. J. (Heller and Merz and American Dyes Institute)

Dr. Charles H. Herty, New York (past President American Chemical Society).

If it now develops, as the result of finding Mr. MacDowell's cablegram of March 27 (No. 1354) that the exchange can be simplified by selection from the Chemical Foundation alone and by direct consignment to the Foundation, this Department will be very glad to relinquish any part in the transaction. What we seek is nothing more than ready decision and direct authority. From a mechanical standpoint, *it will probably be found indispensable to require the War Trade Board to issue a blanket license in favor of the Chemical Foundation* so that the latter may make distribution in accordance with its primary rights in the matter.

Very truly yours,

Chief of Bureau.

bsc-pws-jh

PLAINTIFF'S EXHIBIT No. 582.

Alien Property Custodian
Sixteenth and P Streets NW.
Washington, D. C.

April 9, 1919.

Burwell S. Cutler, Esquire,
Chief, Bureau of Foreign and Domestic Commerce,
Department of Commerce,
Washington, D. C.

My dear Mr. Cutler:

I beg to acknowledge receipt of your letter of April 8, and I thank you for the same. It manifests the same spirit of helpfulness and cooperation which you have given this Department and the Chemical Foundation throughout this entire matter, and I beg to express the gratitude of the Foundation to you for your persistent consideration.

Your statement of our negotiations agrees with my recollection, and I felt that we could work out matters satisfactorily to all concerned. However, the withholding from me of the cablegram of March 27 has alarmed me, and I was afraid that we had contributed some confusion to our representatives abroad. I therefore took advantage of your kind expression that if I felt the exchange could now be simplified by selections from the Chemical Foundation alone, and by direct consignment to the Foundation, your Department would be willing to relinquish our agreements.

Accordingly, I sent the enclosed cablegram to Mr. Bradley Palmer and Mr. Baruch, and followed it up with another cablegram this morning, of which I also enclose a copy. I trust you will feel that I have truthfully expressed the position of the Department of Commerce.

In my haste to get the telegram off last night I did not mention what I desire to say to you now, and that is that we propose to adopt as the Advisory Board of the Foundation the same Committee agreed upon between Mr. Miller, Mr. Choate, and yourself with, I hope, the addition of yourself as Chairman of that Committee. This would please, not only me as Alien Property Custodian, but also the Chemical Foundation and, I am sure, all industries concerned.

If, however, you feel that your duties will not allow you to accept the position, I wish you would feel free to appoint as many additional members from your Department on this Committee as you feel would adequately represent you. We are anxious to work throughout under the guidance and suggestion of your Department, and my cablegrams have been intended only to cut the knot of confusion and give to Paris a definite answer upon which they might go ahead.

Trusting this course meets with your approval, and again assuring you of our gratitude for your kindness and consideration, I remain,

Very truly yours,

(Sgd.) FRANCIS P. GARVAN.

FPG:MSH
Enc., 2.

PLAINTIFF'S EXHIBIT No. 583.

April 9, 1919.

The Honorable,
The Secretary of State.

Sir:

I will greatly appreciate it if you will forward by cable through your usual channels the following message to Bradley W. Palmer, representing the Alien Property Custodian at the Paris Peace Conference:

> Feeling here very strong and rising against any importation of dyes at all Over 500 leading textile firms have now signed protest to President, copy of which was sent you. Stop.
>
> Doubtful if any dyes will be used even if imported. Stop. You may face new Tea Party. Stop.
>
> People here cannot understand why at one stroke you relieve and equip failing German industry, dump on our new industry and ask departure of our consumers from their loyalty to American growing industry. Stop. They regard dyes as index of all past menaces and future perils. Stop.
>
> However, they sense your difficulties, and Foundation is willing to help, though opposed as always to the principle. Stop.
>
> Foundation must, however, be protected by broadest discretion as to time and manner of disposition. Stop. Must be in a position to give consideration to feelings of consumers and the people. Stop.

War Trade Board here opposed to your plan. Stop.

Say they have not heard from McCormick in reference to cablegram No. 1354, March 27. Stop.

Please see that they are instructed to grant Foundation full, complete and exclusive license covering not only dyes but all chemical imports until final end of war. Stop.

Under no other circumstances will Foundation touch the matter. Stop.

All industry and consumers back of this position. Stop.

Any other plan will meet the full front of our opposition. Stop.

We have asked Department of Commerce to assume chairmanship of Advisory Committee to Foundation. Every one here in unison, except War Trade Board. Stop.

Foundation must have right of reexport. Stop. See cable of April 8 to Baruch and Bradley Palmer.

We agree absolutely word for word with cable of March 27 No. 1354 Baruch-McDowell to Peek. Stop. Cable me if this is accepted. Stop.

We are ready. Stop.

Committee in Paris Wigglesworth, Yerkes, Patterson, President Textile Alliance. Stop.

License from War Trade Board must include power over all imports from neutral countries. Otherwise Foundation unable to accomplish anything in the way of protection.

(Signed) Garvan.

Very truly yours,

FPG:MSH

PLAINTIFF'S EXHIBIT No. 584.

ALIEN PROPERTY CUSTODIAN
SIXTEENTH AND P STREETS NW.
WASHINGTON, D. C.

Washington April 10 1919

Dr Charles H Herty
Hotel Statler
Buffalo New York

Many thanks for your extremely complimentary message Garvan and I think it would be advantageous if Association would pass resolution indorsing license plan expressing opinion that no tariff alone can protect new industry and recommending that until license plan can be definitely established by legislation the admission and disposition of imports be placed under control of Chemical Foundation

J H CHOATE JR.

Trust No.........Report No.........
From Custodian's Office Division
Approved by M. S. H.

DUPLICATE

PLAINTIFF'S EXHIBIT No. 585.

April 8, 1919.

Cable number 1354 dated March 27, 1919, withheld from Alien Property Custodian and Chemical Foundation until accidental discovery yesterday afternoon. Reasons for such withholding probably best found in contents of said cable. Alien Property Custodian and Chemical Foundation agree word for word with cable of March 27, 1919, Baruch McDowell to Peek, and will accept all its conditions, appointing proper advisory boards of producers and consumers of all descriptions. Hereby appoints as Chemical Foundation's advisory board here, Henry B. Thompson, President National Cotton Finishers Association; Arthur S. Draper, President American Cotton Manufacturers Association; Franklin W. Hobbs, President Woolen Association; Maurice R. Poucher, Dupont Company; W. H. Watkins, National Aniline Works; August Merz, and Dr. Charles H. Herty, President American Chemical Society. Chemical Foundation hereby appoints as Paris Committee to work with you Wigglesworth, Yerkes and A. N. Patterson, President Textile Alliance, who is either in London or Paris. Foundation and Advisory Committee here await advice from Wigglesworth, Yerkes and Patterson. Department of Commerce also knew nothing of cable of March 27. Now definitely state that they agree to the selection of Chemical Foundation alone, and direct consignment to the Foundation in exact accordance with original cablegram. Only necessary now for McCormick to order War Trade Board to issue exclusive general complete import license to Foundation. Again we repeat Foundation and Alien Property Custodian agree with all terms and conditions as defined in cablegram dated March 27, number 1354, and upon being granted full import license by War Trade Board are equipped to immediately take charge of situation represented by Wigglesworth, Yerkes and

Patterson in Paris, and by Foundation with necessary Advisory Committees here to guard interests of industries and of the public.

(Signed) GARVAN.

PLAINTIFF'S EXHIBIT No. 586.

Copy GMH

Sent to 24, 6, Mr. L. Bennett, Transportation, Mr. C. C. Richards, Exports, Mr. DeLaittre W. T. I., Bureau of Enemy Trade, 5, Mr. Perret. Imports.

War Trade Board

April 11, 1919.

AMEMBASSY
PARIS (FRANCE)
Forfadden No. 1040 for McCormick from Woolley.

IMPORTANT.

Referring to Embassy's 7931 March 31, 1 p. m., transmitting the text of a cablegram sent on March 27 by Beruch to Peck, suggesting that the War Trade Board grant to the Chemical Foundation entire control over the import of dyes and dye stuffs, including complete control over distribution and prices, it is stated in Baruch's cablegram that the plan has been approved by the American economic advisers and also by you and that you are writing the War Trade Board. Accordingly, we have deferred action in the matter while awaiting the receipt of a statement of your views. We were advised yesterday that, in the meantime, the Alien Property Custodian and the Chemical Foundation have approved this plan, although the War Trade Board were not consulted, and the representatives of the Alien Property Custodian and the Chemical Foundation are now pressing us for an immediate adoption of the plan. For the reasons hereinbelow set forth, we will not approve this plan until we have received from you an expression of your wishes in the matter. The following is a summary of the present position of the War Trade Board and the reasons therefor:

(1) The proposal to vest the entire control of the importation of dyes and dyestuffs in the Chemical Foundation involves a complete delegation by the War Trade Board of the authority delegated to them by the President. It is clear to us that the President did not authorize the War Trade Board so to delegate their control over imports to any other private or public body, and, up to the present time, we have never made any such complete delegation.

(2) Furthermore, this would be a delegation of our authority for the avowed purpose of protecting American industries, a matter which, as you know, we have always held to be the exclusive prerogative of Congress and wholly outside the jurisdiction of the War Trade Board.

(3) We have not received any advices from you which indicates that there is a present occasion for the adoption of such a plan. It is our understanding that, under the Brussels Agreement and the subsequent interpretations and addends, the United States

is not obligated to purchase the commodities which Germany is permitted under the Brussels Agreement to export, but that this is simply a permission granted to Germany. Furthermore, it is stated in Embassy's 7896, March 29, 4 p. m., your 1248, that dyestuffs are included in the prohibited list provided for in paragraph four of the minutes of the Brussels agreement, so that Germany is now absolutely prohibited from exporting dyes to the United States, unless the United States should urgently need certain specified dyes of German manufacture, and should therefore desire to take advantage of the exception contained in paragraph A of paragraph four of the communication set forth in your 1248. In other words, the temporary protection desired by the dye industry is already fully provided for by the inclusion of dyestuffs in the list of prohibited exports already communicated to the German Armistice Commission, and therefore the War Trade Board must and will refuse all imports of German dyestuffs unless and until compliance is had with the provisions of paragraph four of your 1248. Thus the only question really before us is whether there are any special dyestuffs which are so urgently needed in the United States that we should permit their importation under the exception contained in the above mentioned paragraph four, and it is our view that, until it is represented to us by the Advisory Committee hereinafter mentioned that merchants in the United States desire to take advantage of this exception, the War Trade Board are not called upon to take any action, but on the contrary should maintain an absolute prohibition against the importation of German dyes. This point of view is further confirmed by cablegram from Baruch to Woolley and Cutler. Mission's 1500, April 7, noon, which is a reply to Department's 7938, April 4, 4 p. m. to the Mission for Baruch from Woolley and Cutler.

(4) Referring to the question whether there are any particular German dyestuffs which are urgently needed in the United States, Department's 7842, March 26, 3 p. m. contains as adequate a statement of the present situation as we have been thus far able to obtain.

(5) On March 28, the Board recommended to the Secretary of Commerce the organization of a Committee consisting of two representatives of the textile industry, two representatives of the dye manufacturing industry and one representative of a governmental department, which committee will report to the Department of Commerce and the War Trade Board upon the needs for dyes and dyestuffs in the United States, with special reference to the importation of such commodities from Germany. In our opinion, this is the most expedient and proper method to deal with the present situation. As already stated, the only question before us is whether there are any dyes so urgently needed by the United States that we should permit their importation from Germany as an exception to the list of prohibited German exports; and the Committee above described will be fully competent to advise us in this regard.

We solicit an early expression of your views.

Prepared for W. T. B. In billing refer to
By Lawrence Bennett. W. T. B. No. 4111.

PLAINTIFF'S EXHIBIT No. 587.

War Trade Board
Inter-Office Memorandum

Date, April 12, 1919.

To Mr. Wooley, Mr. Gay, Mr. Warrington, Mr. Bennett, Mr. DeLaittre, Mr. Hamilton.
Bureau and Division
Subject

Following is an extract from a preliminary draft of the Board minutes of April 10, 1919, the same being paragraph (10) thereof:

> "Mr. Joseph Choate, representing the Chemical Foundation, Inc., and Mr. W. F. Keohan, of the Office of the Alien Property Custodian, appeared before the Board to discuss the control of the importation of dyes and dyestuffs into the United States. Mr. Choate stated, in this connection, that a cablegram had been despatched to the President, signed by almost all of the important consumers of dyes in the United States, advocating a licensing plan similar to that established by the British, for the purpose of excluding from the United States all dyes except those whose importation would not be injurious to the dye industry in this country. Mr. Choate then cited the correspondence which had passed between Mr. Baruch and the Department of Commerce covering the plan to vest the entire control of the importation of dyes in the Chemical Foundation, Inc., and he urged that the War Trade Board, in accordance with said plan, issue to the Chemical Foundation, Inc., an exclusive license which should permit the importation by the Chemical Foundation alone of all dyes and dyestuffs into the United States. In this connection, Mr. Choate stated to the Board that he had been informed that 3,000 tons of indigo, double strength, was about to be offered for sale by Germany under the terms of the Brussels

Agreement, at a price far below that at which American single strength indigo was now being sold, and that it was his understanding that, unless proper machinery were immediately set up to regulate the importation of dyes, the indigo first above mentioned would be imported into the United States to the grievous injury of the American dye industry. Mr. Choate stated that he had been informed by the Board that it was not their policy to restrict the importation of any commodity into the United States for the sole purpose of protecting American industries, and he urged that the issuance of a license such as that now requested would not be inconsistent with this policy. Mr. Gay then stated that the issuance of such a license would be a delegation of the powers of the War Trade Board and would be equivalent to doing indirectly what the policy of the Board forbade them doing directly. After a prolonged discussion, on motion duly made and seconded, the Board

> AUTHORIZED and requested Mr. Warrington to study all the correspondence relating to the matter at hand and to discuss the same with Mr. Cutler of the Department of Commerce and with Mr. Choate, and to report to the Board, at their meeting on Friday, April 11, 1919, the result of such conference."

(Sgd.) D. M. M.,
Assistant Secretary.

PLAINTIFF'S EXHIBIT No. 588.

PARAPHRASE OF A CABLEGRAM

From the American Ambassador at Paris, France.
Dated April 15, 1919, at 5 p. m.
Received 3:25 p. m.
Urgent, No. 7.

The following is for the War Trade Board: Quote. No. 1374. *This is personal for Mr. Wooley.* There have been representations made to Mr. McCormick that the textile manufacturers of the United States desire that for the present importations of dyestuffs from Germany should be admitted, controlled and possibly restricted altogether. *It is the desire of Mr. McCormick that you make inquiry among the manufacturers of textiles of the North and South* with a view to ascertaining whether or not the information received by him is a real expression relative to their desires so far as the importation of dyestuffs is concerned. It is suggested that this can be promptly obtained through the secretaries of the New England Cotton Manufacturers Associations as well as the Southern Cotton Manufacturers Associations and *it is thought important that expressions should be obtained from these organizations as regards their views.* McFadden. End Quote.

WALLACE.

PLAINTIFF'S EXHIBIT No. 589.

April 26, 1919.

Alien Property Custodian
AMMISSION,
Paris.

For Bradley W. Palmer from F P Garvan

QUOTE: Thanks for your cablegram dated April twenty-four number one seven sixty six stop Be assured we all appreciate what you have all tried to do and hesitate to add our trouble to your many embarrassments stop

For our position and the history of the situation we ask you to read again cables number one three five four of March twenty-seven Baruch McDowell to Peck dash number one four eight eight Ammission to Peck dated April five dash here note Wigglesworth appointed at your suggestion dash Garvan to Palmer April eight dash Garvan to Palmer April nine dash Baruch to Garvan April twelve dash Mitchell Palmer to McCormick April eleven dash Garvan to Palmer April eleven dash Letter from Department of Commerce dated April eight as follows "Although you have been currently informed by Mr. Keohan of the several conferences that have taken place in my office and at the War Trade Board between officials of the Chemical Foundation, the American Dyes Institute and ourselves nevertheless it is well to put on record the decisions which were thus reached so that they may have your express consent or correction if you desire to make any Paragraph Up to this date and basing our ideas entirely on cabled recommendations from Mr. Baruch and Mr. Wigglesworth it was the opinion of the Foundation as expressed informally by Mr. Choate that the Foundation was not able to purchase and market any imported dyes on its own responsibility and that further any selection of Germany dyes necessary to the plan of European relief might better be done by the three elements in unison that is the Foundation the American Dyes Institute and the consumers with the Foundation taking a necessary lead on account of its legal rights and its sympathy with a development of the home industry Period Consequently at the suggestion of Mr. Choate and with the compliance of Mr. Keoghan a compositive committee was suggested by Mr. Choate and Dr. W. T. Miller for appointment by the Secretary of Commerce in case you should approve this means of advising the Secretary of Commerce what varieties and quantities could be accepted from Germany with least prejudice to the home industry

Paragraph

The Department of Commerce accepted in this way the position of conciliator between the several groups mentioned simply because *the entire matter* had been turned over to it by the War Trade Board who has the licensing power Period It was agreed that any consignment by the Allied High Commission or by the Food Administration abroad to the Secretary of Commerce parenthesis as a usual matter of form parenthesis would be immediately reconsigned to the Chemical Foundation for distribution according to its own idea Period As a result of a conference between Messrs Choate Keoghan Miller Tucker and Bright in my office a nomination committee consisting of Messrs Choate and Miller proposed the following advisory committee for the selection of said dyestuffs Period It will undoubtedly be the opinion of the Secretary of Commerce if this committee is appointed that Mr Choate the attorney for the Foundation should act as Chairman since the several legal complexities sure to be met must have recognition at the outset Period Joseph T Choate Junior of New York Attorney for Chemical Foundation Henry B Thompson of New York President National Cotton Finishers Association Arthur S Draper of Charlotte North Carolina President American Cotton Manufacturers Association and Chairman of the Council of the National and American Cotton Manufacturers Association Frank D Cheney of South Manchester Connecticut of Silk Manufacturers Association Franklin W Hobbs of Lawrence Massachusetts President Woolen Association Morris R Poucher of Wilmington Delaware of the DuPont Company and American Dyes Institute W H Watkins of Buffalo New York of National Aniline and Chemical Company and American Dyes Institute August Merz of Newark New Jersey of Heller and Merz and American Dyes Institute Dr. Charles H Herty of New York past president American Chemical Society Paragraph If it now develops as the result of finding Mr MacDowells cablegram of March twenty seven number one three five four that the exchange can be simplified by selection from the Chemical Foundation alone and by direct consignment to the Foundation this Department will be very glad to relinquish any part in the transaction Period What we seek is nothing more than ready decision and direct authority Period *From a mechanical standpoint it will probably be found indispensable to require the War Trade Board to issue a blanket license in favor of the Chemical Foundation so that the latter may make distribution in accordance with its primary rights in the matter* Period. Signed B S Cutler Chief of Bureau Unquote See cable number one three nine three McCormick to Wooley April eighteen dash This very important Dash Garvan to Palmer April nineteen Stop This history shows our continual willingness to co-operate Stop All suggestions came from your side and we constantly tried to fit in with them Stop You now suggest our only remedy for period between signing of treaty and permanent legislation lies in Congress which will not meet until after signing Stop Period from now until indefinite time in future apparently now in personal hands of McCormick and industry comma consumers and Foundation now so understand it Stop Admission even for a short time of dyes from Germany and neutrals without careful discrimination as to kinds amount and prices with a view to avoid injuring our industry would destroy it Stop *So would distribution of even carefully selected dyes if allowed to be carried on by any but responsible disinterested body* Stop To permit individual import and distribution would reestablish Metz dash Kuttroff et cetera and discourage for good all help from consumers Stop Suggestion that we are acting in selfish interest hardly worthy of our history of the standing of our Trustees Stop Sole reasons for our activity are Quote One Independence and freedom of the textile leather paper paint and varnish pharmaceutical three billion dollar essential American business Two The necessity of our national defense Three Fairness to the three hundred million dollars invested in the chemical business by loyal Americans in the hour of our need Four The destruction and prevention of the German system of propaganda and espionage in our land Five The Advancement of pure science and research Six The advancement of medical science Unquote Please see McCormick and go over matter once more Stop No fight lost until won Stop *Could not Mitchell Palmer be used as mediator with War Trade Board Stop What about new proclamation from President in view of fact War Trade Board going out of business June thirty*

Acting

FPG
MSH-jh

Note: There is annexed to this exhibit a paper entitled "Memo of Arguments presented by J. H. Choate, Jr., at hearing on March 10, 1919," which is same as Plaintiff's Exhibit No. 569, and not reprinted here. (See Record, Exhibits, Vol. II, page 1353.)

PLAINTIFF'S EXHIBIT No. 590.

NOTE: Same as Plaintiff's Exhibit No. 589 and not reprinted here. (See Record, Exhibits, Volume II, page 1380.)

PLAINTIFF'S EXHIBIT No. 591.

WAR TRADE BOARD
INTER-OFFICE MEMORANDUM

Date May 5, 1919.

To Mr. Bennett, Mr. DeLaittre, Mr Gay.
Bureau and Division ....
Subject ....

Following is an extract from a revised draft of the Board minutes of May 2, 1919, the same being paragraph (16) thereof:

"Mr. Gay reported a conference with the Representatives of the dye industry in the United States, in the course of which it was stated by such Representatives that, apart from the necessity of protecting the American dye industry by limiting in kind and quantity the importation of dyes of German origin, there existed, in the opinion of such Representatives, the necessity of protecting the dye industry by rendering it impossible for the former German dye organization in the United States to regain their former domination of the dye industry, by preventing their exclusive participation in the distribution of dyes of German origin hereafter imported into the United States. After a discussion, on motion duly made and seconded, the Board

> "Requested Mr. DeLaittre to include, in the report which he is now preparing for submission to the Board in connection with the establishment of an organization within the War Trade Board to regulate the importation of German dyes, also a plan for the distribution of German dyes under such conditions as will prevent the exclusive participation in the importation of German dyes by the former German dye organization in the United States and the consequent return of their domination of the American dye industry."

(Sgd.) D. W. M.,
Assistant Secretary.

PLAINTIFF'S EXHIBIT No. 592.

Paris
Dated May, 1919.
Recd. 5:10 p. m.

Secretary of State,
Washington, D. C.
176, first, War Trade Board number 1434.

For Wolley from McCormick. "I have just seen Garvan's cable to Bradley Palmer number 1752. I think it important that you should see the same if you have not already done so. Garvan apparently believes that the authority upon this matter still rests with me notwithstanding that in my cable to you number 1393 of April 18th I gave full authority to the War Trade Board in Washington. I do not wish to shirk any responsibility in this matter but I believe that as you have all the information in your hands you are more competent to pass upon the questions involved and I will back your decision in the matter and if necessary assume full responsibility with you for the action taken because I have confidence in your doing the right thing. I think that it should be made plain to Mr. Garvan and other government officials that Mr. Baruch and his advisors are in accord with the position so far taken by us in the matter. In any event the information received over here is so conflicting and confusing that it has been impossible for us to make a satisfactory determination of the question here."

WALLACE.

OX

PLAINTIFF'S EXHIBIT No. 593.

War Trade Board

Extract From Proceedings of May 8, 1919.

(14) Mr. Gay referred to the dye situation and he reported to the Board that a plan had been formulated for the control of the importation of dyes produced or manufactured in Germany and for the equitable allocation among persons in the United States of all such dyes as should be permitted to be imported. Mr. Gay then referred to the action of the Board as set forth in paragraph (1) of the minutes of the meeting of March 28th, 1919, whereby the Board had recommended to the Department of Commerce the organization of an Advisory Committee which should report to the Department of Commerce and the War Trade Board upon the need in the United States for dyes and dyestuffs and Mr. Gay stated that it now seemed advisable that the Advisory Committee so referred to be appointed by the War Trade Board, and he submitted to the Board as nominees for membership on said Committee the gentlemen whose names are mentioned in the resolution hereinbelow set forth, stating that said persons had already been tentatively selected by the Department of Commerce as prospective members of the Committee which said Department had been requested by the War Trade Board to appoint. Thereupon, on motion duly made and seconded, the following preamble and resolutions were adopted:

> Whereas the Associated Governments have determined that Germany shall be permitted to export dyes and dyestuffs to the countries of said Governments, subject, however, to such municipal

dye organization in the United States to regain their previous domination of the dye industry, by preventing their exclusive participation in the importation of those dyes of German origin which should be permitted to be imported into the United States. Mr. Gay thereupon recommended that arrangements be made with the Chemical Foundation, Inc. similar to the arrangements heretofore made with various trade organizations throughout the country pursuant to the action of the Board set forth in paragraph (1) of the minutes of the meeting of December 1, 1917, whereunder said trade organization acted as consignees under appropriate arrangement with the Board of certain commodities imported into the United States and effected an equitable distribution of such commodities and insured their application to essential and proper uses. Thereupon, on motion duly made and seconded, the Board adopted the following preamble and resolutions:

> WHEREAS it has become necessary for the War Trade Board to formulate and administer a plan for the control of the importation into the United States of dyes and dyestuffs manufactured or produced in Germany; and
>
> WHEREAS, as an integral feature of said plan, it is considered advisable that all such dyes and dyestuffs permitted to be imported into the United States be consigned to a consignee designated by the War Trade Board to be released only upon the delivery to the War Trade Board of guarantees in form satisfactory to the War Trade Board; and
>
> WHEREAS the War Trade Board are of the opinion that the Chemical Foundation, Incorporated, which has been organized under the auspices of the Alien Property Custodian, is willing

and fully competent to act as such consignee and to assist the War Trade Board in securing the guarantees hereinabove referred to;

Resolved that the War Trade Board do hereby designate the Chemical Foundation, Inc. as the consignee of all dyes and dyestuffs of German origin hereafter permitted under licenses of the War Trade Board to be imported into the United States;

Further Resolved that the War Trade Board shall forthwith enter into such arrangements with the Chemical Foundation, Inc. as shall be necessary to carry out the plan hereinabove recited, and to realize the results to be thereby accomplished;

Further Resolved that the Chemical Foundation, Inc. is not granted, under the foregoing resolution, any authority whatsoever to grant or refuse import licenses and that its sole function shall be to act as consignee of such dyes and dyestuffs of German origin as shall by the War Trade Board be permitted, from time to time, to be imported; to release said dyes and dyestuffs under instructions from the War Trade Board and prior to such release to obtain such guarantees or other agreements as the War Trade Board may require; to keep full and complete records of all imports of dyes and dyestuffs of German origin; and to be informed, for the benefit of the Board, as to the use and disposition of said commodities and as to the observance by importers of any guarantees or agreements given in connection therewith—all under the direction, supervision and control of the War Trade Board;

Further Resolved that the Vice-Chairman and Mr. Gay are hereby authorized, on behalf of

> the War Trade Board, to take all such steps as shall be necessary to carry out the foregoing resolutions and the plan therein provided for, including the settlement of the details of the arrangements contemplated to be made with the Chemical Foundation, Inc. and the determination of the form of the guarantees, agreements and other instruments which are to be used in the administration of said plan.

(17) The Vice-Chairman stated to the Board that it was advisable to appoint a Special Counsel to advise and assist the Board in connection with the matters referred to in the foregoing paragraph of these minutes, and he recommended to the Board that Mr. P. Chauncey Anderson be so appointed. Thereupon, on motion duly made and seconded, the Board adopted the following resolution:

> RESOLVED that the War Trade Board do hereby appoint Mr. P. Chauncey Anderson as Special Counsel for the War Trade Board to advise and assist the Board in the formulation and administration of the plan for the control of the distribution of dyes and dyestuffs of German origin permitted to be imported into the United States.

I HEREBY CERTIFY that the foregoing is a true and correct extract from the records of the War Trade Board, showing proceedings duly had and action duly taken at a meeting thereof duly called and held on the eighth day of May, 1919.

(Sgd.) LAWRENCE BENNETT,
Secretary of War Trade Board.

May 12, 1919.

PLAINTIFF'S EXHIBIT No. 594.

2, 4-7, LB. T, X, Mr. DeLaittre,
W. T. I., B. E. T., Mr. Perret, I.

MBT

WAR TRADE BOARD.

May 9, 1919.

AMEMBASSY
PARIS (FRANCE)
FORFADDEN No. 1130.

(1) For McCormick from Woolley. Since the receipt of Embassy's 176, May 1, your 1434, in which you stated that you placed entirely in our hands *the solution of the dye situation,* we have been carefully studying the question. We are particularly desirous of keeping you fully posted with regard to the progress made, because we note that cablegrams are being sent on this subject by other Departments, which, if called to your attention, might give you the impression that the situation is more confused here than is actually the case. The policy adopted by the War Trade Board for its guidance has been communicated to you clearly and in full in Department's 8183, April 30, 6 p. m., our 1097.

(2) We are now proceeding to bring about a practical application of this policy to the dye situation, and, to this end, the *War Trade Board on May* 8 *has appointed a well balanced and representative committee of* 8 *persons prominent in the industries which produce and utilize dyestuffs.* This Committee will act in an advisory capacity toward the War Trade Board. The following is the personnel of the Committee: Henry B. Thompson, New Bedford, Mass., President National Cotton Finishers' Association; Arthur S. Draper, Charlotte, North Carolina, President Cotton Manufacturers' Association; Frank D.

Cheney, South Manchester, Connecticut, Silk Manufacturers' Association; Franklin W. Hobbs, Boston, Mass., President American Woolen Association; Morris B. Poucher, Wilmington, Delaware, Sales Manager E. I. du Pont de Nemours & Company; August Merz, Newark, New Jersey, American Dyes Institute; W. H. Watkins, Buffalo, New York, National Aniline & Chemical Company; Dr. C. H. Herty, New York City, New York, Ex-president American Chemical Society, Editor, Journal of Industrial & Engineering Chemistry.

(3) The personnel of the foregoing Committee was selected tentatively last month by the Department of Commerce pursuant to the action of the Board referred to in paragraph (5) of Department's 8003, April 11, 6 p. m., our 1040, but the appointment of the Committee was never actually made by the Department of Commerce and it has subsequently become our view that it is advisable that said Committee be a Committee appointed by the War Trade Board.

(4) We also propose to obtain the services of a competent trade adviser on dyes who will be a technical expert and have a full knowledge of the dye industry.

(5) The above mentioned advisory Committee and trade adviser together will be fully competent to make valuable recommendations to the War Trade Board with respect to the character and amounts of dyes produced or manufactured in Germany which should be permitted to be imported into the United States in accordance with the general policy of the Board.

(6) It is stated by the representative of the dye industry that one of the primary problems in this country is the need of allocating such dyes of German origin as are permitted to be imported in such a manner that the former German dye organization in

the United States will not again become the exclusive distributor of these products and thus regain its domination of the dye industry of this country. The Chemical Foundation offers us a well organized instrument for such allocation and the Board on May 8th designated the Chemical Foundation as the consignee and distributing agency of all dyes of German origin imported into the United States. The Chemical Foundation will operate in much the same way as the other distributing agencies heretofore utilized by the War Trade Board such as the Textile Alliance, the Rubber Association of America, etc. It will operate under instructions from and regulations prescribed by the War Trade Board and *will have no authority in the granting or refusing of import licenses* and no power on its own initiative to select the persons entitled to import.

(7) We are now formulating the administrative procedure incident to the administration of the plan hereinabove mentioned.

(8) Referring further Embassy's 59, April 19, 3 p. m., your 1398, has any definite action been taken toward dispensing with the necessity of earmarking the proceeds of goods exported from Germany to the Associated Countries?

Prepared for W. T. B. In billing refer to
By Lawrence Bennett. W. T. B. No. 4364.

PLAINTIFF'S EXHIBIT No. 595.

May 13, 1919.

War Trade Board
AMEMBASSY
PARIS (FRANCE)
FORFADDEN No. 1136

Referring Department's 8268, May 9, 6 p. m. our

1130. The plan for controlling imports of German dyes was approved at a conference yesterday by Palmer and Garvan.

POLK,
Acting.

Prepared for WTB
By Lawrence Bennett

In billing refer to
WTS No. 4379

PLAINTIFF'S EXHIBIT No. 596.

WAR TRADE BOARD
Washington

In reply refer to

June 26th, 1919.

War Trade Board,
Washington, D. C.

Subject: Applications for Import License from a Certain Import Agent, May 14th and June 12th, for the Importation of German Dyestuffs from Badische Aniline & Soda Fabrik, Ludwigshafen (Territory occupied by Allies) for Indanthene Dyes, 115 tons, value $370,000, and Anthracene Blues, 148,000 pounds, value $211,120.

Gentlemen:

At a meeting of the Advisory Committee on Dyes to the War Trade Board, held at the Chemist's Club, New York City, June 26th, 1919, there were present Chairman H. B. Thompson, and Messrs. Hobbs, Cheney, Poucher, Watkins, Merz and Herty, together with Dr. Penniman, the Trade Adviser of the War Trade Board, it was unanimously agreed that the following communication be sent to your Board.

The above two mentioned applications having been presented to this Committee by Dr. Penniman brings us face to face with the problems relative to all importations of German Dyestuffs. It seems to us that our policy is clearly outlined in the following paragraphs from the Peace Treaty, printed in the *Congressional Record* of June 9th:

Page 859, Article 236:

> "Germany further agrees to the direct application of her economic resources to reparation as specified in Annexes III, IV, V and VI, relating respectively to merchant shipping, to physical restoration and to coal and derivatives of coal, and to dyestuffs and other chemical products; provided always that the value of the property transferred and any services rendered by her under these Annexes, assessed in the manner therein prescribed, shall be credited to her towards liquidation of her obligations under the above articles."

Page 864, Annex VI, Paragraphs 1, 2, 3, 4 & 5:

1.

> "Germany accords to the Reparation Commission an option to require as part of reparation the delivery by Germany of such quantities and kinds of dyestuffs and chemical drugs as the Commission may designate, not exceeding 50% of the total stock of each and every kind of dyestuff and chemical drug in Germany or under German control at the date of the coming into force of the present treaty.
>
> This option shall be exercised within sixty days of the receipt by the Commission of such particulars as to stock as may be considered necessary by the Commission.

2.

> Germany further accords to the Reparation Commission an option to require delivery during the period from the date of the coming into force of the present Treaty until the 1st January, 1920,

and during each period of six months thereafter until the 1st January, 1925, of any kind of specified kind of dyestuff and chemical drug up to an amount not exceeding 25% of the German production of such dyestuffs and chemical drugs during the previous six months period. If in any case the production during such previous six months was, in the opinion of the Commission, less than normal, the amount required may be 25% of the normal production.

Such option shall be exercised within four weeks after the receipt of such particulars as to production and in such form as may be considered necessary by the Commission: these particulars shall be furnished by the German Government immediately after the expiration of each six-months period.

3.

For dyestuffs and chemical drugs delivered under paragraph 1, the price shall be fixed by the Commission having regard to pre-war net export prices and to subsequent increases in cost.

For dyestuffs and chemical drugs delivered under paragraph 2, the price shall be fixed by the Commission having regard to pre-war net export prices and subsequent variations of cost or the lowest net selling price of similar dyestuffs and chemical drugs to any other purchaser.

4.

All details, including mode and times of exercising the options, and making delivery, and all other questions arising under this arrangement shall be determined by the Reparation Commission; the German Government will furnish to the Commission all necessary information and other assistance which it may require.

5.

> The above expression 'dyestuffs and chemical drugs' includes all synthetic dyes and drugs and intermediate or other products used in connection with dyeing, so far as they are manufactured for sale. The present arrangement shall also apply to cinchona bark and salts of quinine."

These citations show that unless some action is taken there would be two channels of importation. One through the Reparation Commission for our share of the 50% of the stock and another channel through the 50% controlled by Germany; in the distribution of which the Allies have no control except by their own preventitive legislation. Obviously, therefore, according to this arrangement Germany has it in her power to dispose of all or any part of her share of the stock and also her share of future production over a period of five years in any country in the world either directly or through neutral countries.

In the case of the United States the object of Germany will be to supply this market from her own share rather than from the share supplied by the Reparation Commission. Presumably the German share will be distributed through the various agents in this country of the German manufacturers exactly as appears in these applications. The result of this would be that the Reparation Commission will be placed in competition with the German manufacturers and their American agents. Or, in other words, the German Government and its agents would be in competition with the American Government and its agents.

Therefore, it is evident that in these provisions of the Peace Treaty it was intended that the Allied Government should take their supplies of German dyestuffs from the Reparation Commission and through no other channels.

As there is an immediate necessity for securing for the American consumer certain colors not manufactured in this country, notably the Vat Colors, we would recommend that the Reparation Commission take immediate steps to establish some agency in this country for the direct and immediate importation and distribution of these dyes to the American consumer. We would emphasize this point, that trade conditions make immediate action necessary as the stocks of vat colors in this country have reached the point of exhaustion and the plants of the American manufacturers, which are being constructed in this country for the manufacture of such dyes, are not yet ready to offer their product in substantial amounts.

In order that the country may see that the needs of the consumer have been fully considered by the War Trade Board, we would advise that a statement regarding the importation of these necessary vat dyes and other special colors be prepared for the public press in order that the consuming trade may have immediate information as to when and how they will be able to secure these supplies.

Respectfully submitted,

(Sgd.) CHAS. H. HERTY,
Secretary.

PLAINTIFF'S EXHIBIT No. 597.

War Trade Board
Washington

In Reply Refer to

June 26th, 1919.

War Trade Board,
Washington, D. C.

Subject: The Question of Imports of Dyestuffs from Germany through the Reparation Commission.

Gentlemen:

At a meeting of the Advisory Committee on Dyes to the War Trade Board, held at the Chemist's Club, New York City, June 26th, 1919, there were present Chairman H. B. Thompson, and Messrs. Hobbs, Cheney, Poucher, Watkins, Merz, and Herty, together with Dr. Penniman the Trade Adviser to the War Trade Board, it was unanimously agreed that the following communication be sent to your Board.

We have been requested verbally through your Acting Chairman, Mr. Clarence M. Wooley, to suggest a comprehensive plan of action regarding the importation of dyestuffs, which plan he desires to present to your board.

The situation, as developed according to our letter to you of this date concerning certain applications for the importation of German Dyes, makes it entirely clear to us that any German dyes brought into this country must come exclusively through the channels of the Reparation Commission.

There are three interests that must be considered. Taking them in order:

1—The Dye and Chemical Industry as a National or key industry.
2—The consumers of dyes and chemicals.
3—The manufacturers of dyes and chemicals.

Obviously a disinterested body acting for all of the above interests should act as agent for the Reparation Commission. The Chemical Foundation, Inc., which was organized for the purpose of promoting, developing, and safeguarding our chemical industries, and which has no financial interest in such development is clearly the logical and suitable agent. This is particularly true because a large proportion of the dyes which are likely to be imported are covered by patents owned by the Foundation and can therefore be sold only with its consent.

The plan we propose is as follows:

1—No licenses be issued for the importation of German dyestuffs except those dyestuffs coming through the channel of the Reparation Commission.

2—The Chemical Foundation, Inc., should act as the consignee for all such shipments. Any licensing body would naturally and properly co-operate with the Chemical Foundation as follows:

(a) To secure America's share of such dyes.

(b) To secure an equitable distribution of these German dyes among all consumers in the United States.

3—In Mr. Woolley's letter of June 6th to Chairman H. B. Thompson appears this statement in paragraph 1:

> "All German dyes permitted to be imported will be required to be consigned to the Chemical Foundation, Inc., and they will be released to the importers by the Chemical Foundation, Inc."

We would like to ask if the word "Importers" means the agents of the German dyestuff cartel in the United States, or anyone who might import. The probabilities are that the consuming interests of this country whose interests we are seeking to serve will come together along the line of the consumers in Great Britain, who established a central importing agency. Some such body could be organized here composed of members of the cotton, woolen, silk, leather, paper and other dyestuff consuming associations.

We would propose therefore that import licenses be granted only to bona fide consumers and that importations be released to these consumers or to a central importing agency when formed, by the Chemical Foundation, Inc.

4—Quoting from paragraph 2, of the above mentioned letter:

> "The American purchaser will make payment to the German exporter in accordance with ordinary commercial usage. Our plan does not contemplate any control over the method in which payments are made except that, so long as the Brussels Agreement continues in effect, the purchase price must be segregated in such a way that it will be made available for the purchase of foodstuffs for Germany. Under the present regulations this segregation is effected by requiring the importer in the United States to pay the purchase price to the American Relief Administration which thereupon arranges for the payment of an equivalent amount to the German exporter in German marks."

The plan we propose would in no way interfere with the carrying out of the payment to the American Relief Administration. In one case the payment would be made to the American Relief Administration by the importers. According to our plan payments would be made in precisely the same manner by the consumers, or it could, no doubt, be arranged that one payment be made of the entire amount by the Chemical Foundation, Inc., acting in behalf of the consumers.

5—Quoting from paragraph three of the same letter:

> "The settlement of prices for German dyes will be arrranged according to the usual commercial practice and it is not intended that the imports control of the War Trade Board will be utilized in any way to control the prices which importers will pay for German dyes."

It is our understanding that the question of prices to be paid for these German dyestuffs is a matter between the consumers and the Reparation Commission. Quoting from Paragraph 3, Annex 6, of the Peace Treaty as printed in the Congressional Record of June 9th:

> "For dyestuffs and chemical drugs delivered under paragraph two the price shall be fixed by the Commission having regard to the pre-war net export prices and subsequent variations of cost or the lowest net selling price of similar dyestuffs and chemical drugs to any other purchase."

The question of price will, therefore, have to be settled by America's representative on the Reparation Commission.

Respectfully submitted,

(Sgd.) CHAS. H. HERTY,
Secretary.

PLAINTIFF'S EXHIBIT No. 598.

DEPARTMENT OF STATE
WAR TRADE BOARD SECTION

The Present Practice of the War Trade Board Section with respect to the Handling of Applications for the Importation of Dyestuffs.

1. *The War Trade Board Policy.* The present policy with respect to the importation of dyestuffs is that no dyestuffs of German origin shall be permitted to be imported unless the Advisory Committee on Dyes shall recommend such importation upon the ground that the particular dyestuffs included in their recommendation are urgently needed in the United States. Dyestuffs of other than German origin shall be permitted to be imported freely in accordance with the declared policy that the imports control shall not be used to protect domestic industries.

2. *Administration of the Policy.* In administering the foregoing policy, the licensing officials of the Bureau of Imports take the position that, because of the great intricacy of the dye manufacturing processes and the consequent difficulty of ascertaining the origin of dyestuffs sought to be imported from European countries and the well-known attempts of importers to bring German dyes into the United States through other countries, they will not license the importation of any dyestuffs from European countries, including Switzerland, Holland, Scandinavia, the United Kingdom, France, Italy and Belgium unless they have been satisfied by affirmative documentary proof that the dyestuffs were not produced or manufactured in Germany. They do not regard the Consular Certificate (Form 235) provided for in General Consular Instructions 593 as sufficient proof of non-German origin. The requirements of proof under the present administration are more exacting than during the period of hostilities. In other words, the administration of the above mentioned policy is being handled more cautiously than was necessary heretofore, but, at the same time, licenses are granted where the weight of evidence indicates that the dyes are of non-German origin.

(Sgd.) LAWRENCE BENNETT.
(Sgd.) W. N. D. PENNIMAN.

PLAINTIFF'S EXHIBIT No. 599.

Copy as sent by Department of State.

September 29, 1919.

A. M. Patterson, Esquire,
President, Textile Alliance, Inc.,
New York City.

Dear Sir:

Negotiations are now being carried on in Paris by the representatives of the Allied and Associated Governments for the purpose of securing the early delivery of German dyes, at prices similar to those described in Annex VI of Part VIII of the Treaty of Peace with Germany. For your convenience, there is enclosed herewith a copy of War Trade Board Ruling 819, in which the provisions of Annex VI are set forth in full.

The War Trade Board Section of the Department of State has determined to permit the importation of vat dyes from Germany in quantities sufficient to supply the requirements of the consumers of the United States for the six months' period, October 1, 1919, to April 1, 1920; and it may be desirable that manufacturers in the United States be enabled to avail themselves of the benefits of such plan as may result from the current negotiations in securing the above mentioned quantities of vat dyes. To bring this about, it would be necessary to designate a central agency to act as an intermediary between the consumers of dyes in the United States and the Allied authorities from, or through whom, the dyes are to be secured. The Department of State would be prepared to designate the Textile Alliance, Inc., as such agency to perform the following services under the terms and conditions hereinbelow set forth:

(1) The War Trade Board Section of the Department of State will issue allocation certificates to consumers in the United States, stating that said consumers are entitled to secure the importation from Germany of the vat dyes specified in such certificates.

(2) The War Trade Board Section of the Department of State will advise consumers of such arrangements as may result from the current negotiations and will also inform them that

the Textile Alliance, Inc., has been designated to act in the capacity described in this letter.

(3) The Textile Alliance, Inc., will accept from consumers holding the above mentioned allocation certificates orders for vat dyes in amounts not exceeding the amounts specified in such certificates.

(4) The prices to be paid for the dyes so ordered will be the prices agreed upon in Paris and communicated to the Textile Alliance, Inc., by its representatives in Paris hereinafter mentioned in paragraph (5). The terms and method of payment for all dyes ordered through the Textile Alliance, Inc., will be prescribed by the Textile Alliance, Inc., to accord with such arrangements as may result from the pending negotiations and they will be subject to the approval of the War Trade Board Section, and subject also to the conditions hereinbelow in paragraph (6) contained.

(5) The Textile Alliance, Inc., will send a representative to Paris. Said representative will receive by cablegram from the Textile Alliance, Inc., complete information as to the dyes which have been ordered through the Alliance as described above, and he will place these orders with or through the Allied authorities and will attend to all the details connected with the acquisition of, and payment for, the dyes and their shipment to the Textile Alliance, Inc., for distribution to the consumers who have ordered them. In all these matters, the representative of the Alliance will receive the co-operation and advice of Dr. Charles H. Herty, who is now in Paris as a Representative of the War Trade Board Section.

(6) The Textile Alliance, Inc., will be entitled to charge a commission for the services rendered

> by it, which commission shall be sufficient to defray all expenses incurred in carrying out the plan and performing the acts described in this letter; but it is to be understood that the Alliance will not retain any profits arising out of this transaction and that any overplus remaining out of commissions collected, after the payment of all expenses, will be distributed *pro rata* among the consumers by whom such commission shall have been paid.

The Department desires to be advised at an early date whether the Textile Alliance, Inc., would be willing to perform the services described in this letter, provided the situation would seem to make such an arrangement desirable.

Very truly yours,
(Sgd.) PHILLIPS,
Acting.

Copy to F. A. Fleisch,
Vice President, Textile Alliance, Inc.,
45 East 17th Street,
New York City.

PLAINTIFF'S EXHIBIT No. 600.

From files in office of Dr. Young, State Department.
In reply refer to—
WTB—

October 9, 1919.

The Textile Alliance, Incorporated,
45 East 17th Street,
New York City.

Gentlemen:

Referring to the Department's letter of September 29th setting forth the proposal that the Textile Alliance, Incorporated, should be designated as the agency to affect the importation and distribution of German dyes proposed to be secured as the result of negotiations then being conducted in Paris, and referring also to your letter of October 2nd, in which you informed the Department that the Textile Alliance, Incorporated, was prepared to act in the capacity aforesaid (subject to an exception which has since been withdrawn), the plan outlined in the first mentioned letter has been finally completed in all substantial respects; and, accordingly, the Textile Alliance, Incorporated, is hereby designated as the agency to effect the importation and distribution of German dyes under the conditions set forth in the above mentioned letters of September 29th, 1919.

The supervision of the operation of the above mentioned plan will be conducted for the Department by the War Trade Board Section, and you are requested to consult with the Chief of said section with respect to all further arrangements necessary for the consummation of the purchase, importation and distribution of the dyes which will be secured under said plan.

I am, Gentlemen,
Your obedient servant,
For the Secretary of State,
WILLIAM PHILLIPS,
Assistant Secretary.

PLAINTIFF'S EXHIBIT No. 601.

From office of Dr. Young—State Department.
October 11, 1919.

The Chemical Foundation, Incorporated,
81 Fulton Street,
New York City, New York.

Gentlemen:

There is enclosed herewith a copy of Ruling No.

825, issued by the War Trade Section of this department, on August 15, 1919. The dyes, dyestuffs and related chemicals which are enumerated in Paragraph 4 thereof are excluded from the scope of the general or blanket import license described in the Ruling, and accordingly, such commodities may be imported into the United States only upon issuance of such individual import licenses. When the commodities enumerated in the said paragraph 4 are of German origin the issuance of such individual import licenses is made dependent upon the need in this country of the commodities so licensed.

An urgent need in this country of certain quantities of dyes of German origin having been made manifest the War Trade Section has determined to issue individual import licenses authorizing the importation of such quantities of dyes of German origin as will satisfy the requirements of consumers for a six months' period. As a result of certain recent negotiations between the representatives of the Allied and Associated Governments and of the German Government, a substantial portion of the amount of such dyes as will be needed to satisfy the six months' requirements, will be made available to consumers in this country.

The obtainment by consumers of the dyes which have thus been made available from an official source can be effected only through the establishment of an official agency in this country, and accordingly, this Department has designated the Textile Alliance, Incorporated, 45 E. 17th Street, New York City, as such sole official agency to import and distribute on behalf of such consumers as might wish to avail themselves of the opportunity of obtaining a part of their requirements from such official source, the dyes which will be secured as the result of the negotiations hereinabove referred to. Consumers who desire to import

German dyes from such official source must do so exclusively through the Textile Alliance, Incorporated. Consumers who do not wish to import dyes from such official source may do so through any other American channel of importation.

This department is informed that the Chemical Foundation, Incorporated, and the Grasselli Chemical Co., are the sole purchasers from the Alien Property Custodian, of certain German owned American patent rights relating to dyestuffs which had theretofore been seized by the Alien Property Custodian pursuant to authority derived from the Trading with the Enemy Act. This Department is likewise informed that the importation of certain dyes of German origin, which are included among those which will be licensed for importation to satisfy the six months' requirements of American consumers, may possibly constitute an infringement of certain of those patents which were purchased by the Chemical Foundation, Inc., and the Grasselli Chemical Co., from the Alien Property Custodian. Accordingly this Department requests the Chemical Foundation, Incorporated, to inform it on the following points:

> 1. In view of the present need of American consumers for certain dyes which are not obtainable from American sources, will the Chemical Foundation, Inc., administer the rights which may accrue to it as purchaser of the patents referred to above, in such manner as will insure that all consumers in the United States will be accorded by the Chemical Foundation, in all respects the same treatment irrespective of whether such consumers obtain their six months' requirements through the Textile Alliance, Inc., or through other private American channels of importation?

2. If the Chemical Foundation, Inc., has determined to charge a royalty for such sale or use of imported German dyes (required by consumers for a six months' period) as might otherwise constitute an infringement of the patent rights now owned by the Chemical Foundation, Inc., will these royalties be nominal or substantial, and will the rate of royalty be made uniform for, and the privilege of paying the same be extended to, all consumers irrespective of whether they obtain their supplies through the Textile Alliance, Inc., or through any other American channel of importation.

3. Will the Textile Alliance incorporated, and all other American importers of dyes of German origin be accorded, by the Chemical Foundation, Inc., uniform treatment with respect to any action with the Chemical Foundation, Inc., may take as patent owner, in relation to the sale or use of dyes licensed for importation from Germany, to satisfy the six months' requirements of consumers.

This Department, of course, recognizes in the Chemical Foundation, Incorporated, an independence to exercise such patent rights and privileges as they may have, and accordingly, this department seeks from the Chemical Foundation, Inc., no dispensation from the possible infringement of patents owned by the Chemical Foundation, Inc., either on behalf of the Textile Alliance, Incorporated, or of private importers or consumers. However, it must be clear to the Chemical Foundation, Incorporated, that the Department of State could not place itself in the position of becoming a party to any action by the Chemical Foundation, Inc., which might result in a denial of equal rights to all American citizens in the matter of the sale or use of dyes imported from Germany.

Therefore, this Department would be disposed to proceed with the plan of partial importation from official sources through the Textile Alliance, Inc., if assurances were given to the Department that both the Chemical Foundation and the Grasselli Chemical Co., will accord the same treatment and extend the same privileges to both the Textile Alliance, Inc., and to all other importers of American citizenship, as well as to all consumers irrespective of the channels of importation through which such consumers effect their importations. In the absence of such assurances, this Department would consider the advisability of recalling its designation of an official agency for obtaining on behalf of consumers such portion of German dyes as have been made available as the result of the negotiations between the representatives of the Allied and Associated Governments and the German Government.

The Department of State solicits the promptest expression of the view of the Chemical Foundation, Inc., with reference to the foregoing.

I am, Gentlemen,

Your obedient servant,

ROBERT LANSING.

PLAINTIFF'S EXHIBIT No. 602.

AMERICAN DYES INSTITUTE
320 Broadway
New York
The Association of dye-stuff manufacturers in t
United States

Officers
President
W. H. COTTINGHAM
The Sherwin-Williams Co.
Secretary-Treasurer
H. E. DANNER
Secretary
C. C. BENNETT
Counsel
ARTHUR J. EDDY
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R. C. JEFFCOTT
J. MERRITT MATTHEWS
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M. R. POUCHER
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The Althouse Chemical Co.
Reading, Pa.
B. R. ARMOUR
American Aniline Products, Inc.
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The Ault & Wiborg Co.
Cincinnati, Ohio
R. P. DICKS
Dicks, David Co., Inc.
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Holland Aniline Co.
Holland, Mich.
FRANK HEMINGWAY
Frank Hemingway, Inc.
New York City
R. C. JEFFCOTT
Marden, Orth & Hastings Corp.
New York City
R. W. KEMP
Holliday-Kemp Co.
New York City
G. A. MARTIN
The Sherwin-Williams Co.
Cleveland, Ohio
J. M. MATTHEWS
The Grasselli Chemical Co.
Cleveland, Ohio
AUGUST MERZ
The Heller & Merz Co.
Newark, N. J.
W. T. MILLER
National Aniline & Chemical Co., Inc.
New York City
J. T. PARDEE
The Dow Chemical Co.
Midland, Mich.
E. W. PIERCE
Zobel Color Works, Inc.
New York City
M. R. POUCHER
E. I. du Pont de Nemours & Co.
Wilmington, Del.
G. S. WHALEY
John Campbell & Co.
New York City
S. W. WILDER
Merrimac Chemical Co., Inc.
Boston, Mass.

March 11, 1919.

War Trade Board,
Washington, D. C.

Dear Sirs:

The Committee of the American Dyes Institu
wishes to submit the following considerations in r
gard to the issue of licenses to import dyes fr
Switzerland.

1. Prior to the war, the Swiss dye indust
admittedly consisted of little more than the assembli
or finishing of German intermediates. Switzerla
produced no coal, no coal tar, no crudes, and ve
few of the necessary intermediates. Almost all
these were imported from Germany. Unless a
until this method of conducting the business w
changed, Swiss dyes would necessarily be the produ
of German materials. We therefore submit that
considering imports of Swiss colors, the Board shou
start with the presumption that the proposed impor
were the product of German goods and should thr
the burden of proof on the importer.

2. This burden of proof is not easily sustaine
Only a very complete knowledge of all the fac
coupled with expert judgment thereon, will serve
reach a correct decision. The affidavit even of
reputable manufacturer, is not enough. He m
truthfully state that the intermediates from which
dyes were made were not manufactured in Germa
when in fact, every step in their manufacture pr
to the last before he purchased them, was carried

in enemy territory. Each of the many steps in the manufacture of dyes ordinarily results in the manufacture of a chemical substance falling within the class of intermediates. The substance produced at each step is usually totally different from the last. The final substance in the chain of intermediates before a dye is produced, may be made from German materials by one factory in Switzerland which may then sell its product to another factory. The latter can then truthfully state that the intermediates purchased by him are of Swiss make, yet three quarters of the value of the resulting dyes may be the product of German labor and material. Even where the manufacturer's books have been open to examination, the evidence will be unsatisfactory unless the examination be made by one familiar with the chemical side of the manufacture. No one less informed, can determine whether the purchase of materials shown on the books are sufficient to account for the product alleged to have been produced therefrom.

The statistics of the War Trade Board Bureau of Research and Statistics, show that the measures which are said to have been taken to prevent the use of German materials in Swiss manufacture, may not have been efficient.

The following table shows the imports of Dye Bases from Germany and Austria into Switzerland, for the first four years of the war and the first six months of 1918:

Year	*Quantity in Lbs.*	*Value*
1911	5,350,000 lbs.	$ 230,000.
1912	4,642,000 "	243,000.
1913	6,232,000 "	250,000.
1914	3,465,000 "	169,000.
1915	522,000 "	91,000.

Year	*Quantity in Lbs.*	*Value*
1916	21,000,000 lbs.	$1,000,000.
1917	6,000,000 "	400,000.
6 mos. 1918	1,000,000 "	90,000.

These figures show that in 1916 the quantity of materials imported from enemy territory was so large, that it must have provided a surplus sufficient to last for many months, if not years. No figures known to us show any disposal of this quantity of materials.

The suggestion is irresistible that the Swiss dye makers must have stocked up on German materials and that if they have not used them in making dyes which were to be exported, their use must have freed a large quantity of other materials for the export trade.

A similar inference arises from the figures in regard to the import of finished dyes from Germany. These were as follows:

Year	*Quantity in Lbs.*	*Value*
1911	1,160,000 lbs.	$ 335,000.
1912	1,300,000 "	375,000.
1913	1,476,000 "	426,000.
1914	1,491,000 "	456,000.
1915	513,000 "	269,000.
1916	949,000 "	914,000.
1917	925,000 "	1,238,000.
6 mos. 1918	371,000 "	523,000.

These show an import during most of the war years entirely beyond the normal Swiss consumption, while during the years immediately preceding the war, the quantity imported was sufficient to require considerable re-export. If therefore, it be true that all the Swiss dyes exported during the last year or two are of pure Swiss origin, this state of affairs has been made possible purely by Swiss imports from Germany. As a matter of war economy, it makes little difference whether German goods come to us direct, or are simply used to make possible exports of other goods. The result, in the way of benefit to the enemy is the same.

In addition to these reasons for scrutinizing with the greatest care all attempts at proof that imports from Switzerland are of pure Swiss origin, it is necessary to remember that the British regulations have been carefully framed so as to insure that Great Britain shall get back in form of finished dyes, all materials exported by her to Switzerland. This covers the chief supplies received by Switzerland of crudes and intermediates since the beginning of the war from non-enemy sources.

Again it appears that many of the dyes exported by Switzerland at this time require the use of large quantities of crudes and intermediates, of which no considerable supply can have been obtained from Switzerland from any other source than Germany. Examples were cited by Mr. Merz of dyes requiring Benzol and also large quantities of wood alcohol. Neither of these substances could have come from the United States. The British output is believed to have been covered by the British regulations, above referred to, and it is therefore hard to understand how they could have been made except from German materials.

All this, it is submitted, calls for most careful scrutiny of all applications for import licenses from Switzerland and suggests that no proof should be accepted except after expert examination.

We respectfully suggest that the Dye Institute may be able to give the Board valuable assistance in this regard and that it would be glad to appoint a committee to furnish necessary information and to co-operate with the proper agency of the War Trade

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Board in examining each application. We also venture to suggest that there should be an expert in Switzerland itself, representing the War Trade Board, who could examine on the spot, proof submitted there.

Respectfully submitted,
W. T. MILLER, *Chairman*,
AUGUST MERZ,
J. M. MATTHEWS,
M. R. POUCHER,
F. M. FARGO, Jr.
Signed for the Committee,
(Sgd.) F. M. FARGO, Jr.

PLAINTIFF'S EXHIBIT No. 603.

No. 1794
United States of America
(Cut, Coat of Arms)
Department of State.

To all to whom these presents shall come, Greeting:

I Certify That the document hereto annexed is a true copy from the files and records of this Department.

In Testimony Whereof I, Charles E. Hughes, Secretary of State, have hereunto caused the Seal of the Department of State to (Seal) be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this twenty-ninth day of March, 1923.

CHARLES E. HUGHES,
Secretary of State.
By (Sgd.) Ben G. Davis,
Chief Clerk.

(Copy MEF/So)

DEPARTMENT OF STATE
WASHINGTON

November 8, 1919.

The Honorable Philander C. Knox,
United States Senate.

In reply refer to
TA-611.626/76

My dear Senator Knox:

I acknowledge the receipt of your letter of October 31 in relation to the present control by the War Trade Board Section of the Department of State over the importation of dyes, dyestuffs, and related chemicals of German origin, and in relation also to the policies of this Department in connection therewith and to the administration of those policies by the War Trade Board Section.

Your comments and inquiries have been accorded the most careful consideration and agreeably with your request I am replying thereto at length and in detail.

The War Trade Board (by Executive Order of the President, now the War Trade Board Section of the Department of State) so far as the control of imports is concerned, derives its authority from Section II of the Trading with the Enemy Act. It had always been the opinion of the War Trade Board and it is now the opinion of this Department that the Trading with the Enemy Act was enacted purely as a war measure. Accordingly, it has always been believed that the War Trade Board should function solely as a war agency. For this reason import restrictions were imposed during the war primarily for the purpose of conserving tonnage to divert it to war usages. The necessity for such conservation having disappeared after the signing of the armistice of November 11, 1918, the War Trade Board began to remove those restrictions as rapidly as possible. Since the conclusion of the armistice there have been presented to the War Trade Board numerous requests that import restrictions be maintained or instituted for the purpose of protecting industries and stabilizing prices. Consistently with the belief expressed above, those requests were not acceded to on the theory that the enactment of such protective measures appeared to be the exclusive prerogative of the Congress and that to maintain or impose restrictions in such cases would be a clear case of supererogation on the part of the War Trade Board.

The control over the importation of dyes, dyestuffs, and related chemicals of German origin was maintained as an exception to the above stated policy because of the peculiar and special circumstances which were involved. The War Trade Board were advised that a bill had been introduced in Congress for the purpose of protecting the American dye industry because of its relation to the problem of national defense. The War Trade Board were urgently requested to maintain the control as an interim measure against the day when the introduced legislation would become a law or would fail. Accordingly, the War Trade Board agreed to make the exception because of the emergencies of the case and to maintain the control temporarily, not for the purpose of protecting the industry for its own sake but because of its relation to the problem of national defense.

In order that the control thus maintained might be properly administered the War Trade Board appointed an Advisory Committee on Dyes, on which consumers and manufacturers have equal expert representation. Inasmuch as the War Trade Board were exercising the control as an interim measure against the possibility of legislation already introduced, the

War Trade Board believed that, in formulating their policies in relation to the control, every effort should be made to conform to, and not to exceed, the control contemplated by the legislation. Accordingly, the War Trade Board limited its control to the very dyes, dyestuffs, and related chemicals which were enumerated in the Longworth bill. The War Trade Board also borrowed textually the language of that bill in adopting the policy of authorizing the importation of the controlled commodities when the same are not obtainable from United States sources or, if obtainable from those sources, when they are not obtainable on reasonable terms as to price, quality and delivery.

In the early part of September, 1919, a need of certain quantities of vat dyes of German origin having been made manifest in this country, the Dye Advisory Committee informed the War Trade Board Section that those dyes were not obtainable from United States sources, and recommended that importations of quantities sufficient to meet the requirements of consumers for a six months' period should be permitted. The Dye Advisory Committee also recommended to the War Trade Board Section that, in authorizing the importation of the aforesaid quantities of dyes, consumers should be required to import the same exclusively through a designated official agency. The purpose of this recommendation was, avowedly, to bring about the elimination, as agencies of importation, of the former American agents of German dye manufacturers. The Dye Advisory Committee as well as a large number of manufacturers stated to the War Trade Board Section that in their opinion any substantial importation through those agencies would endanger the American industry. I instructed the War Trade Board Section to accede to the recommendation of the Advisory Committee to the extent of permitting importations to satisfy the six months' requirements of consumers, but to inform the Committee that the Department, howsoever much it desired to protect the American industry for reasons of national defense, could not compel consumers to effect their importations exclusively through a designated official agency; that the designation of such official agency would partake of the nature of an exclusive monopoly and that such exclusive monopoly would be repugnant in that it would be a discrimination against American citizens who were engaged in the business of importing.

Accordingly, a allocation of license privileges to import a six months' supply of vat dyes of German origin into this country was made among consumers on October 1, and consumers were advised that they themselves, or their assignees of the allocation certificates could apply to the War Trade Board Section and obtain, upon surrender of the certificates, licenses authorizing the importation of the quantities stipulated in the certificates.

In the latter part of September, the need of certain quantities of dyes of German origin, other than vat dyes, having been made manifest in this country, the Dye Advisory Committee recommended to the War Trade Board Section that importation of quantities sufficient to meet the requirements of consumers for a six months' period should be permitted. In this connection, the Dye Advisory Committee informed the War Trade Board Section that whereas, admittedly, vat dyes are not produced in this country to any appreciable extent, a substantial quantity of dyes, other than vat dyes, are manufactured in this country. Accordingly, when the War Trade Board Section, on October 8, advised consumers to file their applications for allocation certificates, the War Trade Board Section, mindful of the provisions of Section 503 (b) of the Longworth bill, advised consumers as follows:

> "Allocations will be made only when the articles desired to be imported are unobtainable from United States sources, or, though obtainable from United States sources, are unobtainable on reasonable terms as to price, quality and delivery."

The applications which have been received will be considered by the Advisory Committee at a meeting to be held on November 10, and at that meeting an allocation of license privileges will be made among consumers. As in the case of vat dyes, and for the same reasons of policy that prevailed then, consumers, upon receipt of their allocation certificates, will be advised that they themselves or their assignees of the certificates, may apply to the War Trade Board Section and obtain, upon surrender of the certificates, licenses authorizing the importation of the quantities stipulated in the certificates.

The Dye Advisory Committee upon being informed of the policy of this Department as stated above in relation to the forthcoming allocation, informed the War Trade Board Section that many dyes made in this country will do the same work as other dyes not produced in this country, and that accordingly, allocation certificates should be denied in every case where an equivalent or substitute dye, which is produced in this country, will do the same work as the dye which is sought to be imported. On instructions from me, the Committee has been advised by the War Trade Board Section that the stated policy of this Department, in connection with the forthcoming allocation, was to permit the issuance of allocation certificates in all cases when the articles sought to be imported are unobtainable from United States sources, or, though obtainable from United States sources, are unobtainable on reasonable terms as to prices, quality and delivery.

I appreciate that the substitutions which the Committee recommends may be of appreciable benefit to the American industry, but I have deemed it expedient to instruct the War Trade Board Section that substitutes and equivalents, howsoever satisfactory, should not be forced upon unwilling consumers. In issuing these instructions I was moved by the following considerations:

In the first place, as stated above, the present control of the War Trade Board Section should not, I believe, go beyond that which is contemplated in the pending legislation. The Longworth bill does not, in my opinion, authorize substitutes and equivalents.

In the second place, I fear that the Dye Advisory Committee and the War Trade Board Section will find it extremely difficult to decide upon a formula of reasonableness for price, quality, and delivery, which, after being defined, must be applied to the applications. In adopting this formula, howsoever accurate it might be, the Dye Advisory Committee and the War Trade Board Section, in my belief, will invite criticism on the part of many consumers. However, the administrative difficulties which the Dye Advisory Committee and the War Trade Board Section will experience in establishing the formula referred to above, are difficulties which the legislation itself suggests, and to that extent the control does not extend beyond that which is contemplated in the present legislation. However, the legislation does not authorize substitutes and equivalents, and I feel that if I should give my sanction thereto, the War Trade Board Section and the Dye Advisory Committee would find it more difficult to suffer the criticism of unwilling consumers because in that case the control would have been carried far beyond that which the legislation contemplates.

in this classification there is included allied subjects, such as metallurgy, fertilizers, fixation of nitrogen, hydrogenation of oils, etc.) have been seized by the Alien Property Custodian and sold to The Chemical Foundation. The Chemical Foundation will use the patents to prevent interference with the American industries to which they relate by Germans after the war, by issuing non-exclusive licenses to American manufacturers and will also institute suits for infringement based upon the importation of the goods of German manufacturers.

It seems to me that it would be desirable to advise the trade in the United States that importation of German chemical products may result in infringement of patents owned by The Chemical Foundation and thereby lay the importer open to prosecution.

For your information, I am enclosing herewith a copy of the charter of The Chemical Foundation, Inc.

Respectfully,

(Sgd.) FRANCIS P. GARVAN,
Alien Property Custodian.

PLAINTIFF'S EXHIBIT No. 605.

No.........

THE PEOPLE OF THE STATE OF NEW YORK

BY THE GRACE OF GOD FREE AND INDEPENDENT

To all to whom these presents shall come or may concern, GREETING:

KNOW YE, That we having examined the records and files in the office of the Clerk of the County of New York and Clerk of the Supreme Court of said

State for said County, do find a certain Certificate of Incorporation there remaining, in the words and figures following to wit:

(Seal)

ALLIED CHEMICAL & DYE CORPORATION

CERTIFICATE OF INCORPORATION.

WE, The Undersigned, all being persons of full age and citizens of the United States of America, and at least one of us a resident of the State of New York, desiring to form a stock corporation pursuant to the Business Corporations Law of the State of New York, do hereby make, sign and acknowledge this certificate for that purpose, as follows:

FIRST: The name of the proposed corporation (herein sometimes called the "corporation") is Allied Chemical & Dye Corporation.

SECOND: The purposes for which the corporation is to be formed are: To do, in any and all parts of the world, in any and every manner, as principal and as agent, alone and in association with others, any and all of the things hereinabove mentioned, and any and all things incidental or otherwise related thereto, viz.: To establish, carry on and develop the business of producing, manufacturing, utilizing and trading in any and all kinds of chemicals, organic and inorganic, crude and refined, and products of similar character, and any and all materails, products and articles directly or indirectly related thereto in any way including all those which may be ingredients or derivatives thereof, or which may be useful in the manufacture or production thereof, or which may be conveniently or advantageously manufactured or produced in connection therewith, or in the manufacture or production of which the same may be useful, and all by products of such operations; to engage in any business or operation incidental to any business above referred to; to conduct contracting and engineering operations; to search for, create, prospect, construct, manufacture, purchase, hold, develop, operate, treat, use, transport, sell, mortgage, pledge, import, export and otherwise acquire and dispose of and deal in and with properties and rights, of whatever character and wherever situated, real and personal, tangible and intangible, as may be necessary for or incidental to the purposes aforesaid, including lands, mines, minerals, buildings, plants, equipment, warehouses, materials, products, merchandise, securities, choses in action, inventions, secrets, patents, trade-marks and good-will; to make contracts; to borrow money, contract debts and issue notes, bonds, and other obligations; to acquire, by purchase, subscription or otherwise, and to hold and dispose of, all or any part of the stock, bonds and (or) other obligations of General Chemical Company, The Solvay Process Company, Semet-Solvay Company, National Aniline & Chemical Company, Inc., all New York corporations, and (or) of The Barrett Company, a New Jersey corporation, and (or) of any corporation or association, domestic or foreign, and issue in exchange therefor the stock, bonds or other obligations of this corporation; to purchase or otherwise acquire and to hold and dispose of the stock, bonds and other obligations of this corporation, provided that this corporation's capital be not impaired by any such acquisition of its own stock; to guarantee the stock, bonds or other obligations of, to lend money to and otherwise to assist any corporation or association whose stock, bonds or other obligations or any part thereof may be acquired, held or disposed of by this corporation, or in which this corporation may be otherwise interested in any way, and to do all things for the protection or improvement of such stock, bonds or other obligations; to purchase or otherwise acquire, from any person or persons, corporation or corporations, and to hold, manage, conduct and dispose of, all or any part of their respective properties and businesses of any character aforesaid, including all or any part of the estate, property, rights, privileges and franchises of any or all of the above named corporations, and to assume all or any part of the obligations thereof or incident thereto, and to pay, issue or assign, in consideration or part consideration therefor, cash or the stock, bonds or other obligations of this corporation or any other lawful consideration; and generally to do any and all things, not contrary to law, necessary or convenient for or in connection with the purposes aforesaid.

The purposes above stated are intended as both objects and powers; and no part of such statements is intended to be limited or restricted in any way by inference from any other part or otherwise except as expressly stated; nor are such statements intended to limit or restrict in any way general powers which the corporation may have under the present or future laws of the State of New York; but, anything herein to the contrary notwithstanding, the corporation shall not have power to do anything at any time not then permitted by law to be done by a corporation organized under the Business Corporations Law.

THIRD: The number of shares that may be issued by the corporation is Two Million Five Hundred Sixteen Thousand Seven Hundred Nineteen (2,516,719) of which Three Hundred Seventy-three Thousand Two Hundred Sixty-four (373,264) shares, of the amount or par value of One Hundred Dollars each, are to be preferred stock, and Two Million One Hundred Forty-three thousand Four Hundred Fifty-five (2,143,455) shares are to be common stock without any nominal or par value.

Fourth: Holders of the preferred stock shall be entitled to receive dividends thereon at the rate of seven per cent, per annum on the par value thereof, and no more, payable quarterly, out of the net profits or surplus of the corporation, as and when declared, before any dividends shall be paid or set apart on the common stock; said dividends on the preferred stock shall begin to accrue from the first day of January, 1921, except that in the case of shares of the preferred stock issued after the thirty-first day of March, 1921, such dividends shall begin to accrue either (1) from the date on which a regular quarterly preferred dividend shall have been paid next preceding the date of issue of such shares (unless such shares be issued on a date on which a regular quarterly preferred dividend shall be paid, and in such case from such date), or (2) from such other date as may be fixed by the Directors or stockholders upon the authorization of the issue of such shares; and said dividends on the preferred stock shall be cumulative, so that if not fully paid or set apart for any quarter at the full rate aforesaid, dividends to the amount of such deficiency shall thereafter be fully paid or set apart (without interest) on the preferred stock before any dividends (or further dividends) shall be paid or set apart on the common stock; but any dividends which might be paid on the common stock after payment of dividends on the preferred stock, as aforesaid, may be declared, paid and set apart concurrently with such dividends on the preferred stock.

In the event of dissolution, liquidation or distribution of the assets of the corporation, whether voluntary or involuntary, the holders of the preferred stock shall be entitled to be paid in full, out of any and all assets of the corporation, before any payment or distribution of, or out of, said assets shall be made to holders of the common stock, the full par value of the preferred stock, to wit, One Hundred Dollars per share, and, in addition thereto, the amount of all dividends accrued thereon, up to the date of such payment to holders of the preferred stock.

The corporation shall have the right to redeem, at its option, at any time, all or any part of the preferred stock then outstanding, at the price of One Hundred and Twenty Dollars per share plus the amount of all dividends then accrued thereon, at such time and place and by such method as the Board of Directors shall determine; provided that, not less than thirty days before the date so fixed for such redemption, (1) written notice from the corporation of such redemption, stating the date, place and other terms thereof, shall be mailed at New York City, postage prepaid, addressed to all then record holders of the preferred stock to be so redeemed at their respective addresses, if and as appearing on the corporation's books, and (2) a copy thereof shall be published in two daily newspapers of general circulation in the Borough of Manhattan, New York City. From and after the date of redemption stated in such notice, unless default shall be made by the corporation in providing the moneys required for the payment of said redemption price at the time and place stated in such notice, all dividends shall cease to accrue on the preferred stock so to be redeemed, and all rights of the holders of such preferred stock shall cease and determine, excepting only the right to receive said redemption price, without interest, upon surrender of the certificates for such stock duly endorsed for transfer.

The term "accrued," wherever used herein with reference to dividends on the preferred stock, means an amount equal to seven per cent per annum on the par value of the preferred stock from the date from which dividends thereon shall have first begun to accrue as above provided, less such amount or amounts as shall from time to time have been paid as dividends thereon, and without regard to whether there shall be or shall have been at any time any net profits or surplus and without regard to the amount of net profits or surplus at any time.

From time to time the corporation may issue and may sell its authorized shares, of either class alone or of both classes together, whether now or hereafter authorized, for the consideration of One Hundred Dollars per share of the preferred stock and Five Dollars per share of the common stock, either in money or money's worth of property or services, or for any other consideration, whether greater or less, now or from time to time hereafter permitted by law; and all shares so issued shall be fully paid and non-assessable; but shares of the preferred stock issued after the thirty-first day of January, 1921, for money only, must be first offered for subscription, at the price and upon the terms governing such issue (excepting any reasonable compensation for underwriting), to all holders of the corporation's outstanding stock, preferred and common, pro rata, according to the number of shares of such stock, preferred or common or both, held of record by them respectively, unless and except in so far as otherwise determined, with respect to any particular issue of shares of the preferred stock, by vote of the holders of two-thirds of each class of stock outstanding; and shares of the common stock issued after the thirty-first day of January, 1921, for money only, must be first offered for subscription, at the price and upon the terms governing such issue (excepting any reasonable compensation for underwriting), to all holders of the corporation's outstanding common stock, pro rata, according to the number of shares of the common stock held of record by them respectively, unless and except in so far as otherwise determined, with respect to any particular issue of shares of the common stock, by vote of the holders of two-thirds of each class of stock outstanding.

Holders of the stock of either class shall have no other or further right to subscribe for or receive any part of any issue of additional stock of either class than as hereinbefore provided.

Holders of the preferred stock shall have no other or further interest or right in or to the earnings or assets of the corporation than is hereinbefore provided.

Upon every question submitted to the stockholders, at meeting or otherwise, every stockholder of record of the corporation shall be entitled to one vote for every share of either class standing in his name on the books of the corporation.

FIFTH: The amount of capital with which the corporation will carry on business is Forty-eight Million Forty-three Thousand Six Hundred Seventy-five Dollars.

SIXTH: The principal business office of the corporation is to be located in the Borough of Manhattan, County, City and State of New York.

SEVENTH: The duration of the corporation is to be perpetual.

EIGHTH: The number of Directors of the corporation is to be twelve. No Director need be a stockholder.

NINTH: The names and post-office addresses of the Directors for the first year are:

Names.	*Post-Office Addresses.*
Wm. H. Nichols	25 Broad St., N. Y. City
W. H. Nichols, Jr.	25 Broad St., N. Y. City
E. L. Pierce	Syracuse, N. Y.
H. H. S. Handy	Syracuse, N. Y.
Eversley Childs	17 Battery Place, N. Y. City
Wm. Hamlin Childs	17 Battery Place, N. Y. City
Orlando F. Weber	21 Burling Slip, N. Y. City
Wm. J. Matheson	21 Burling Slip, N. Y. City
Rowland Hazard	Peace Dale, R. I.
Armand Solvay	Brussels, Belgium.
Roscoe Brunner	Norwich, England.
Emmanuel Janssen	Brussels, Belgium.

TENTH: The names and post-office addresses of the subscribers to this certificate, and the number of shares of stock (preferred) which each agrees to take in the corporation are as follows:

Names.	*Post-Office Addresses.*	*No. of Shares*
W. H. Nicholas, Jr.	25 Broad St., N. Y. City	three
Wm. Hamlin Childs	17 Battery Place, N. Y. City	one
Orlando F. Weber	21 Burling Slip, N. Y. City	one

ELEVENTH: Pursuant to the by-laws, an Executive Committee and (or) one or more other committees may be appointed from among the Directors or otherwise, to which may be delegated any or all of the powers and duties of the Directors, to the full extent permitted by law.

Any Director or Directors may be removed from office, and a successor or successors chosen, by the stockholders at special meeting at any time.

No contract or other transaction of the corporation shall be void, voidable, fraudulent or otherwise invalidated impaired or affected, in any respect, by reason of the fact that any one or more of the officers, Directors or stockholders of the corporation shall individually be party or parties thereto or otherwise interested therein, or shall be officers, directors or stockholders of any other corporation or corporations which shall be party or parties thereto or otherwise interested therein; provided that such contract or other transaction be duly authorized or ratified by the Directors or Executive Committee, with the assenting vote of a majority of the disinterested Directors or Executive Committeemen then present, or, if only one such is present, with his assenting vote.

IN WITNESS WHEREOF, we have made, signed and acknowledged this certificate this 16th day of December, nineteen hundred twenty.

W. H. NICHOLS, JR.
WM. HAMLIN CHILDS
ORLANDO F. WEBER

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.:*

On this 16th day of December, nineteen hundred twenty, before me personally came W. H. Nichols, Jr., Wm. Hamlin Childs and Orlando F. Weber, to me known and known to me to be the individuals described in and who executed the foregoing Certificate of Incorporation, and they severally acknowledged to me that they executed the same.

MARTHA T. BARRETT,
Notary Public, Kings County.
Certificate filed in New York County.
N. Y. Co. Clerk's No. 20.
N. Y. Co. Register's No. 2008.
Com. expires March 30, 1922.

(Seal)

TREASURER'S OFFICE—STATE OF NEW YORK.

$125 835 95 Albany Dec. 17 1920

Received from Allied Chemical & Dye Corporation One hundred twenty-five thousand eight hundred thirty-five & 00 Dollars, in full tax of five cents per share upon 2,143,455 shared without nominal or par value and one-twentieth of one per centum upon $37,-326,400/00 preferred capital stock, of the above-named Company for the privilege of reorganization, pursuant to chapter 62, Laws of 1909, as amended, and chapter 351, Laws of 1912, and chapter 484, Laws of 1917, as amended.

FREDK. J. SEAVER,
Cashier.

F. M. FANWELL,
Deputy Comptroller.

All which we have caused by these presents to be exemplified, and the Seal of our said Supreme Court to be hereunto affixed.

Witness, Hon. ISIDOR WASSERVOGEL, a Justice of the Supreme Court for the County of New York, the 21 day of June, in the year of our Lord one thousand nine hundred and 23, of our independence the one hundred and 47.

(Sgd.) JAMES A. DONEGAN,
Clerk.

(Seal)

ISIDOR WASSERVOGEL, a Justice at a Special Term, of the Supreme Court of the State of New York for the County of New York, do hereby certify that JAMES A. DONEGAN, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of New York, and Clerk of the Supreme Court for said County duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the Seal affixed to the exemplification is the seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated, New York, June 21, 1923.

(Sgd.) ISIDOR WASSERVOGEL,
Justice of the Supreme Court of the State of New York.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.:*

I, JAMES A. DONEGAN, Clerk of the Supreme Court of said State in and for the County of New York do hereby certify that Hon. Isidor Wasservogel whose name is subscribed to the preceding certificate, is Presiding Justice at a Special Term of the Supreme Court of said State in and for the County of New York, duly elected and sworn, and that the signature of said Justice to said certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court, this 21 day of June, 1923.

(Sgd.) JAMES A. DONEGAN,
(Seal) *Clerk.*

PLAINTIFF'S EXHIBIT No. 606.

List of Patents and other Data furnished by Karl Holdermann, as requested by counsel and ordered by the Court.

(The following symbols are used in connection with this list of patents):

o Product.
x Process.

AMMONIA PATENTS (including all patents related to the art of making Synthetic Ammonia and Fertilizers from it.

59 Patents.

971,501	999,025	1,006,206
1,053,951	1,053,952	1,063,007
1,068,966	1,068,967	1,068,968
1,068,969	1,075,085	1,077,034
1,083,585	1,086,130	1,173,550
1,188,530	1,196,101	1,091,234
1,094,182	1,094,194	1,102,716
1,106,919	1,113,096	1,113,097
1,115,776	1,118,628	1,126,371
1,128,804	1,128,843	1,133,086
1,133,087	1,148,570	1,149,510
1,152,930	1,157,669	1,158,167
1,200,805	1,202,995	1,207,706
1,207,707	1,207,708	1,207,968
1,211,393	1,211,394	1,216,059
1,225,755	1,243,382	1,244,580
1,261,900	1,274,503	1,286,650
1,292,019	1,301,151	1,330,772
1,344,673	1,369,383	1,379,387
1,386,760	1,200,806	

SYNTHETIC TANNING MATERIALS AND TANNING.

15 Patents

o Products.
x Process.

1,089,797 o	1,107,107 xo	1,133,108 x
1,191,430 x	1,203,069 x	1,216,612 x
1,232,620 x	1,237,405 xo	1,254,364 xo
1,278,229 xo	1,281,494 xo	1,289,280 xo
1,336,759 xo	1,414,045 xo	1,421,722 x

Dyestuffs and Dyeing. (Patents in force April 10, 1919.)

322 Patents.

o Product.
x Process.

698,328 x	698,355 x	699,033 x
699,581 ox	700,565 ox	707,373 ox
707,374 ox	710,059 o	711,377 ox
711,835 ox	713,437 ox	713,447 o
713,507 o	715,074 ox	715,662 ox
715,680 ox	716,242 ox	716,248 x
716,264 o	716,289 o	718,028 ox
718,032 ox	718,340 x	718,342 ox
718,356 o	718,389 o	719,720 o
720,501 x	723,125 ox	724,789 ox
730,148 ox	731,385 x	735,775 ox
737,445 o	738,614 ox	739,145 o
739,579 o	741,936 o	744,417 o
744,501 x	746,784 ox	746,965 x
746,981 ox	749,913 ox	750,113 o
752,562 o	752,947 x	753,657 ox
753,659 ox	754,264 ox	754,315 ox
754,856 o	755,428 ox	756,171 x
756,571 ox	756,759 ox	759,716 o
760,817 x	761,007 ox	763,233 ox
765,079 o	765,080 o	765,576 x
765,581 ox	765,590 x	765,597 ox
767,259 o	770,177 ox	772,237 ox
772,775 x	777,323 ox	778,175 o
778,656 x	778,725 ox	778,752 x
778,772 x	779,825 ox	779,860 o
780,404 x	780,886 x	785,003 ox
786,065 ox	786,767 o	787,767 o
787,768 o	787,824 x	787,859 ox
789,096 o	790,167 ox	791,869 ox

792,421	o	793,558	ox	793,559	ox
793,610	o	794,049	x	794,050	o
795,751	ox	795,755	x	796,393	ox
798,077	x	798,098	o	798,103	x
798,104	ox	799,058	ox	806,053	ox
806,077	o	809,892	ox	809,893	ox
809,894	ox	811,471	ox	814,137	ox
815,193	x	818,336	ox	818,341	x
818,992	ox	820,379	ox	820,501	ox
820,869	x	820,889	o	820,900	x
821,452	ox	826,428	x	828,741	ox
828,759	x	828,778	ox	831,002	ox
833,602	ox	833,605	o	833,654	ox
835,462	x	837,730	x	837,775	ox
837,840	ox	840,419	ox	843,566	x
844,914	x	845,129	x	855,248	x
856,811	ox	860,480	ox	860,575	o
861,014	x	863,396	o	863,397	ox
863,401	ox	863,761	x	867,167	x
868,399	ox	869,655	ox	871,600	x
871,629	o	872,181	x	876,190	ox
876,679	ox	876,810	ox	876,839	ox
879,053	ox	885,566	x	885,567	x
885,577	x	886,815	ox	891,708	x
892,900	ox	893,384	x	893,412	ox
893,507	ox	893,508	ox	896,610	x
906,367	o	909,800	ox	910,839	x
910,889	ox	913,633	x	913,634	x
914,144	ox	914,146	ox	921,546	ox
922,282	ox	925,917	ox	926,023	ox
929,442	ox	929,443	ox	931,598	ox
931,618	ox	932,266	ox	932,289	ox
932,290	ox	935,370	ox	935,371	o
936,951	o	941,320	ox	943,560	ox
943,561	ox	948,204	ox	948,241	ox
949,592	x	955,080	ox	955,105	ox
955,410	ox	957,683	ox	961,612	ox

963,656 x	968,376 o	970,340 ox
970,878 ox	983,834 x	984,312 o
990,173 o	992,567 o	995,936 ox
999,055 x	1,001,408 ox	1,002,066 o
1,003,268 ox	1,003,289 ox	1,004,433 ox
1,010,919 ox	1,010,930 o	1,011,068 o
1,011,084 x	1,011,085 x	1,012,363 ox
1,016,604 ox	1,018,836 o	1,018,837 o
1,025,652 ox	1,026,557 ox	1,026,588 ox
1,026,621 ox	1,027,836 x	1,027,908 ox
1,027,953 x	1,028,045 ox	1,032,215 ox
1,032,216 ox	1,034,898 ox	1,035,023 ox
1,036,241 ox	1,037,410 ox	1,042,679 x
1,044,673 o	1,044,674 o	1,044,675 o
1,047,812 ox	1,047,813 ox	1,052,507 ox
1,054,888 o	1,055,701 ox	1,057,243 ox
1,058,604 ox	1,061,714 ox	1,062,975 ox
1,062,988 o	1,062,990 ox	1,063,000 ox
1,063,004 o	1,063,172 x	1,063,173 x
1,065,102 ox	1,066,987 ox	1,067,046 o
1,071,274 x	1,073,902 o	1,073,903 o
1,073,904 o	1,073,905 o	1,073,951 o
1,075,305 ox	1,076,756 o	1,077,115 ox
1,077,655 o	1,083,051 x	1,083,110 o
1,086,123 ox	1,089,221 ox	1,090,123 ox
1,090,621 o	1,090,636 o	1,092,542 x
1,093,427 ox	1,095,731 x	1,095,780 o
1,095,793 o	1,098,145 x	1,104,611 o
1,106,970 ox	1,121,295 x	1,122,790 ox
1,126,475 o	1,126,656 o	1,128,836 ox
1,133,031 x	1,133,081 ox	1,150,863 ox
1,156,048 x	1,165,531 o	1,166,808 o
1,169,404 o	1,176,363 x	1,185,943 x
1,188,543 x	1,188,544 o	1,188,545 o
1,196,127 ox	1,200,848 ox	1,201,968 ox
1,202,260 ox	1,204,639 x	1,207,762 ox
1,207,802 x	1,207,981 ox	1,207,982 ox

1,216,134	ox	1,216,921	o	1,220,248	ox
1,232,551	ox	1,232,552	ox	1,238,932	ox
1,253,252	ox	1,264,604	ox	1,266,896	ox
		1,280,648	ox		

MISCELLANEOUS.

72 Patents.

o Products.
x Process.

812,098	ox	821,457	x	833,666	x
837,777	ox	879,030	x	883,651	x
889,059	x	892,899	o	898,307	ox
903,047	x	911,468	x	923,012	x
957,842	x	957,843	x	990,191	x
990,192	x	993,144	x	1,022,351	x
1,026,418	x	1,026,419	x	1,026,420	x
1,027,312	x	1,029,528	x	1,032,822	x
1,043,798	x	1,045,139	x	1,045,895	o
1,054,901	ox	1,061,725	x	1,062,973	x
1,065,182	x	1,070,294	x	1,078,937	x
1,083,164	x	1,083,165	x	1,089,185	x
1,089,253	x	1,089,775	x	1,091,276	x
1,098,858	x	1,098,859	x	1,102,654	x
1,102,655	x	1,102,715	x	1,126,627	x
1,157,668	x	1,166,790	o	1,168,070	x
1,173,532	ox	1,175,693	x	1,189,110	x
1,191,799	x	1,192,310	ox	1,200,886	o
1,201,850	x	1,202,282	x	1,215,334	x
1,215,335	o	1,215,396	ox	1,216,933	o
1,221,382	x	1,237,828	x	1,238,930	x
1,248,888	x	1,256,032	ox	1,258,529	x
1,271,013	ox	1,278,580	x	1,280,650	o
1,294,662	x	1,298,929	x	1,391,666	ox

DR. KARL HOLDERMANN.

May 9, 1923.

PLAINTIFF'S EXHIBIT No. 607.

Opinion accompanying Ramsay Hoguet's letter to Alien Property Custodian in response to inquiries contained in communication of January 24, 1918.

Note: Same as opinion attached to Plaintiff's Exhibit No. 7 and not reprinted here. (See Record, Exhibits, Vol. I, page 45.)

PLAINTIFF'S EXHIBIT No. 608.

#21 East 40th Street
April 7th, 1919.

Mr. M. R. Poucher,
E. I. du Pont de Nemours & Co.,
Wilmington, Delaware.

My dear Mr. Poucher:

I had hoped to see you before you got away on Saturday, as the substance of this letter I wished to convey to you personally.

In view of the fact that the President of the American Dyes Institute is not in this country, I presume that all matters of resignation should be addressed to the Executive Committee; therefore I am employing this method of placing in your hands my resignation as Secretary of the American Dyes Institute, by reason of the fact that the work of the Institute is now growing to such an extent that it requires more time than I can possibly afford to give to it, were the salary three times as much as I am now getting. I think I made this perfectly clear to the Institute when I accepted the Secretaryship in 1918—that I only consented to be Secretary if the Institute would accept such time as I could give to it. It has now gotten to the point where I have to devote nearly every minute of my time to one thing and another in connection with its affairs.

This does not imply that I will not undertake the work of distributing the stock of the Chemical Foundation Incorporated to the best of my ability, if such is the wish of the Executive Committee.

I was greatly surprised at the attitude of Counsel, Mr. A. J. Eddy, at last Friday's Executive Committee meeting, that the affairs of the Chemical Foundation Incorporated should not come before the Institute as a whole. To avoid annoyance and argument I camouflaged the situation with a reply of personal pride, but any man whose imagination is not warped can see where the Dye Industry of the United States will be most benefitted by doing everything in its power to make the Chemical Foundation Incorporated a strong creative body which will help to carry us in part to the goal for which we have worked so long. Moreover, I do not believe that in reviewing the facts connected with the formation of the Chemical Foundation Incorporated, it was anything else but an American Dyes Institute matter simon pure, and that the underwriters were acting only as a part of that Institute.

Please accept this resignation in the spirit that I have enjoyed the work with all the members of the Executive Committee and all the members of the American Dyes Institute. It has indeed been a pleasure.

I think this resignation should take effect at once, or upon the completion of the distribution of such stock as we can place among the Chemical Industry of the United States, providing that this work it is the wish of the Executive Committee that I should carry out.

Regarding the lease of this office, I would be very pleased to assume the responsibility and take it off the hands of the Institute. Any other items in connection with the furniture, etc., can very easily be arranged.

Assuring you and the whole American Dye Industry of my profound interest in your cause, and, as in the past, so in the future I am always ready and anxious to do my bit.

Very sincerely yours,

(Sgd.) C. C. BENNETT.

CCB/VS

PLAINTIFF'S EXHIBIT No. 609.

ALIEN PROPERTY CUSTODIAN

OATH OF OFFICE

I, Francis P. Garvan
do solemnly swear that I will support and defend
(Swear or affirm)
the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion: and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.

(Sgd.) FRANCIS P. GARVAN.
(Signature of appointee.)

Sworn to and subscribed before me this 12th day of Nov. A. D. 1917.

(Sgd.) N. B. DREHER,
Director Office Administration.

Bureau or office to which assigned: Office Alien Property Custodian.
Position: Attorney. Salary $1.00 per Annum.
Date of entrance upon duty: Nov. 12, 1917.

Form A. P. C. 4

PLAINTIFF'S EXHIBIT No. 610.

ALIEN PROPERTY CUSTODIAN
OATH OF OFFICE

I, Francis P. Garvan
do solemnly swear that I will support and defend
(Swear or affirm)
the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion: and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.

(Sgd.) FRANCIS P. GARVAN.
(Signature of appointee.)

Sworn to and subscribed before me this 4th day of March, A. D. 1919.

(Sgd.) ASHLEY M. GOULD,
Justice Supreme Court D. C.

Bureau or office to which assigned: Office Alien Property Custodian.
Position: Alien Property Custodian. Salary: 5000—
Date of entrance upon duty: March 4, 1919.

Form A. P. C. 4

PLAINTIFF'S EXHIBIT No. 611.

NOON CONFERENCE.

May 16, 1918.

PRESENT: The Alien Property Custodian. Messrs. Horne, Bradley, Dunn, Garvan, Dreher and Ferry.

Mr. Garvan reported that his investigation of the New England Waste Company showed that Company to be over 99% enemy-owned.

Effective May fifteenth, Francis P. Garvan, Director of the Bureau of Investigation, is appointed Managing Director for the Alien Property Custodian in charge of the New York office. He will have power and authority in New York similar to that exercised by the Managing Director of the home office at Washington. All Bureaus and Divisions represented in the New York office should report relative to business at New York to Mr. Garvan who will have general charge of the administration in the New York Office.

TRANSCRIPT

OF

RECORD

PLAINTIFF'S EXHIBIT No. 612.

TO BE SOLD

BY THE

ALIEN PROPERTY

CUSTODIAN

The Entire Capital Stock

of

THE BAYER COMPANY, Inc.

and

SYNTHETIC PATENTS CO., Inc.
RENSSELAER, N. Y.

and

Rights, Title and Interest in Certain Patents
and Contracts Set Forth in Order of Sale.

A. MITCHELL PALMER,
Alien Property Custodian.

JOSEPH F. GUFFEY,
Director, Bureau of Sales

RALPH J. BAKER
Counsel, Bureau of Sales
110 West 42nd Street
New York City

/50248

ORDER OF SALE

by

ALIEN PROPERTY CUSTODIAN

of

2,250 shares of Preferred Stock and 5,250 shares of Common Stock, constituting all of the capital stock of THE BAYER COMPANY, Inc., a corporation of the State of New York; and 500 shares, being all of the capital stock of SYNTHETIC PATENTS Co., Inc., a corporation of the State of New York; and all the right, title and interest, if any, heretofore held by Carl Duisberg, Christian Hess and Rudolph Mann, and each of them, under a certain alleged contract between them and Synthetic Patents Co., Inc.; and all the right, title and interest, if any, heretofore held by Farbenfabriken vormals Friedr. Bayer & Company, of Leverkusen, Germany, under an alleged contract supposed to have been entered into with the Bayer Company, Inc.; and all the right, title and interest, if any, heretofore held by Farbenfabriken vormals Friedr. Bayer & Company, Vereinigte Chininfabriken Zimmer & Co., G.m.b.H., the Firm of E. Merck, Emil Aberhalden and Richard Willstätter, in and to certain patents and patent rights.

I, A. MITCHELL PALMER, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," as amended, and the proclamations and Executive orders issued in pursuance thereof, do hereby order that the Director of the Bureau of Sales of the Alien Property Custodian, hereinafter referred to as "Director of Sales," offer for sale to the highest bidder, at public sale, after public advertisement of the time and place of sale, upon the terms and conditions hereinafter set forth, at the front door of the main office of The Bayer Company, Inc., a New York corporation, on Riverside Avenue, Rensselaer, New York, at 3 o'clock P. M., on Tuesday, December 3rd, 1918, the following:

(a) Two Thousand Two Hundred and Fifty (2,250) shares, amounting in par value to Two Hundred and Twenty-five Thousand ($225,000) Dollars of Preferred Stock, and Five Thousand Two Hundred and fifty (5,250) shares, amounting in par value to Five Hundred and Twenty-five Thousand ($525,000) Dollars, of Common Stock, constituting all of the capital stock of The Bayer Company, Inc., a corporation of the State of New York. The preferred stock is entitled to a preferential cumulative dividend of eight per cent. (8%) per year.

(b) Five Hundred (500) shares, amounting in par value to Fifty Thousand ($50,000) Dollars, of the capital stock of Synthetic Patents Co., Inc., a corporation of the State of New York, constituting all of the capital stock of said corporation.

(c) All the right, title and interest, if any, heretofore held by Carl Duisberg, Christain Hess and Rudolph Mann and each of them, in, to and under an alleged contract supposed to have been entered into between Synthetic Patents Co., Inc., a corporation of the State of New York, and the said Carl Duisberg, Christian Hess and Rudolph Mann, dated June 12, 1913, whereby a sum equal to a certain proportion of the earnings of the said Synthetic Patents Co., Inc., for the right to use certain patents, formulas, processes, trade-marks and trade names of said Synthetic Patents Co., Inc., are supposed to be paid annually to the said Carl Duisberg, Christian Hess and Rudolph Mann, and in and to all rights to any future share of the receipts, income or profits of Synthetic Patents Co., Inc., and all future claims whatsoever against Synthetic Patents Co., Inc., all of which right, title and interest, if any, has been heretofore required by the Alien Property Custodian to be transferred, assigned, delivered and paid over to him.

(d) All the right, title and interest, if any, heretofore held by Farbenfabriken vormals Friedr. Bayer & Company, of Leverkusen, Germany, a German corporation in, to and under an alleged contract supposed to have been entered into between The Bayer Company, Inc., a corporation of the State of New York, and the said Farbenfabriken vormals Friedr. Bayer & Company, of Leverkusen, Germany, dated June 12, 1913, whereby, in return for the granting to The Bayer Company, Inc., by said Farbenfabriken vormals Friedr. Bayer & Company of certain and exclusive rights for the sale of dyes, drugs and pharmaceuticals, The Bayer Company, Inc., is supposed under such alleged contract to pay to said Farbenfabriken vormals Friedr. Bayer & Company, of Leverkusen, Germany, a certain portion of the net profits realized by the Bayer Company, Inc., from the sale of the products which are the subject of the granting of the exclusive right under the alleged contract, and in and to all right to future compensation by reason of the ownership or enjoyment by The Bayer Company, Inc., of the rights and licenses purported to be granted to The Bayer Company, Inc., by said alleged agreement, all of which right, title and interest, if any, has been heretofore required by the Alien Property Custodian to be transferred, assigned, delivered and paid over to him.

(e) All the right, title and interest, if any, heretofore held by Farbenfabriken vormals Friedr. Bayer & Company, of Leverkusen, Germany, a German corporation, in, to and under those certain letters patent of the United States, specified in Schedule "A," hereto annexed, issued to said Farbenfabriken vormals Friedr. Bayer & Company, Leverkusen, Germany, all of which right, title and interest, if any, has been heretofore required by the Alien Property Custodian to be conveyed, transferred, assigned and delivered to him.

(f) All the right, title and interest, if any, heretofore held by Vereinigte Chininfabriken Zimmer & Co., G.m.b.H., of Frankfort-on-the-Main, Germany, in, to, and under those certain letters patent of the United States, specified in Schedule "B," hereto annexed, issued to said Vereinigte Chininfabriken Zimmer & Co., G.m.b.H., of Frankfort-on-the-Main, Germany, all of which right, title and interest, if any, has been heretofore required by the Alien Property Custodian to be conveyed, transferred, assigned and delivered to him.

(g) All the right, title and interest, if any, heretofore held by the Firm of E. Merck, of Darmstadt, Germany, in, to and under those certain letters patent of the United States, specified in Schedule "C," hereto annexed, issued to said Firm of E. Merck, of Darmstadt, Germany, and in and to the registered trademark "Veronal," registered April 14, 1903, under Number 40,115, all of which right, title and interest, if any, has been heretofore required by the Alien Property Custodian to be conveyed, transferred, assigned and delivered to him.

(h) All the right, title and interest, if any, heretofore held by Emil Aberhalden, of Halle-on-the-Salle, Germany, in, to and under those certain letters patent of the United States, specified in Schedule "D," hereto annexed, issued to said Emil Aberhalden, of Halle-on-the-Salle, Germany, all of which right, title and interest, if any, has been heretofore required by the Alien Property Custodian to be conveyed, transferred, assigned and delivered to him.

(i) All the right, title and interest, if any, heretofore held by Richard Willstätter, of Berlin, Germany, in, to and under those certain letters patent of the United States, specified in Schedule "E," hereto annexed, issued to said Richard Willstätter, of Berlin, Germany, all of which right, title and interest, if any, has been heretofore required by the Alien Property Custodian to be conveyed, transferred, assigned and delivered to him.

Terms and Conditions of Sale

1. Said parcels of property above specified will be offered for sale in one block, and as an entirety, and the bids therefor will be a single sum.

2. Said sale may be adjourned from time to time by announcement at the time and place appointed for such sale or such adjourned sale or sales, and without further notice or publication may be held on any day to which the same may have been adjourned.

3. No bid will be received unless the person offering to bid shall have deposited with the Alien Property Custodian or with Joseph F. Guffey, Director, Bureau of Sales, 110 West 42nd Street, New York City, as a pledge that he will make good his bid in case of its acceptance, a check for the sum of $100,000, certified by some bank or trust company and payable to the order of said Director, and shall have furnished

an address to which notices hereinafter provided for may be sent. Deposits from unsuccessful bidders will be returned at the close of the bidding or as soon thereafter as practicable.

4. Such property will be sold only to an American citizen or citizens, or to a corporation incorporated within and under the authority of the laws of a state or territory of the United States or of any of its insular possessions; but the Alien Property Custodian shall have the right to exclude from bidding at any such sale, and/or from purchasing or otherwise acquiring the above described property, any corporation which he shall, after investigation, determine to be controlled, managed or operated, wholly or mainly, by or for the account or benefit of a person or persons not a citizen or citizens of the United States or of its insular possessions. The Alien Property Custodian or said Director of Bureau of Sales shall have the right to require, either before or after any bidding or acceptance of any bid, evidence that the bidder is qualified, as above provided, to bid for and purchase said property.

5. The right is reserved to announce at the opening of said sale or at any time prior thereto an upset or minimum price for the property to be sold.

6. After all bids have been made, the Alien Property Custodian, his representative, or the auctioneer conducting the sale, shall declare the bidding to be closed, and the bid of the highest bidder qualified to bid for and purchase the said property shall be subject to acceptance by the Alien Property Custodian within thirty (30) days, during which time or any extension thereof that may be agreed to by the highest qualified bidder, the Alien Property Custodian, upon order of the President, stating the reasons therefor,

shall have the right to reject all bids for said property. In the event of the acceptance of such highest bid, notice thereof shall be given within said thirty (30) days or any extension thereof, as above provided, by depositing such notice in a post office or post office box addressed to said bidder at the address furnished by him. In the event the bid of said highest bidder shall not be accepted, the deposit made by him will be returned, and such return may be made by depositing check for same in a post office or post office box addressed to such bidder at the address furnished by him.

7. In case the bidder whose bid shall be accepted and who shall be declared the purchaser of said property shall fail to make good his bid, the sum or sums paid by him as a deposit prior to bidding, as above provided, and any payments in addition thereto upon the purchase money as hereinafter provided for, shall be applied toward payment of the expenses of a re-sale or re-sales and toward making good any deficiency or loss upon such re-sale or re-sales.

8. Upon acceptance of the bid of the highest bidder, as above provided, twenty-five (25%) per cent. of the purchase price shall be paid in cash to the Alien Property Custodian; another twenty-five (25%) per cent. of the purchase price shall be paid in cash to the Alien Property Custodian within thirty (30) days from the acceptance of such bid; another twenty-five (25%) per cent. of the purchase price shall be paid in cash to the Alien Property Custodian within sixty (60) days from the acceptance of such bid; and the balance of the purchase price shall be paid to the Alien Property Custodian within ninety (90) days from the acceptance of such bid; and upon payment of the purchase price in full, within said dates as

above, the property purchased will be transferred and delivered to the purchaser. The amount deposited prior to bidding shall be credited upon and deducted from the first twenty-five (25%) per cent. of the purchase price to be paid as above provided. Deferred payments shall bear interest at the rate of six (6%) per cent. per annum from date of acceptance of the bid as above provided.

9. Further information concerning the property to be sold and concerning The Bayer Company, Inc., and Synthetic Patents Co., Inc., and the alleged contract and patent rights, if any, may be had by application to said Joseph F. Guffey, Director of Sales, Alien Property Custodian, 110 West 42nd Street, Manhattan Borough, New York City, to whom applications or requests for such information, and for inspection of the property should be made. No inspection of the plant of The Bayer Company, Inc., or its subsidiary, the Williams and Crowell Color Company, will be allowed except upon written order from said Director of Sales, to be given only to those (a) who have qualified as bidders, or (b) who shall have deposited with said Director of Sales a certified check for $50,000., said check to be applied toward qualifying said person as a bidder, in the event such person shall so qualify; otherwise, to be returned as soon as practicable after the sale.

10. All checks deposited as a qualification for bidding, or for the purpose of securing the right of inspection, or as payment of or upon the purchase price for property sold, shall be made payable to "Joseph F. Guffey, Director of Sales," and must be certified by some bank or trust company acceptable to the Alien Property Custodian or to said Director of Sales.

11. Neither the United States nor the Alien Property Custodian nor any representative or agent or agency shall be held or admitted to make any representation or guaranty, express or implied, concerning or in any way respecting such property or business or any information concerning the same.

12. Said sale will be made by the Alien Property Custodian by virtue of, and subject to, the provisions of the Act of Congress known as the "Trading with the Enemy Act," as amended, and the proclamations and Executive orders issued in pursuance thereof, copies of which may be obtained by application to Joseph F. Guffey, Director of Sales, Alien Property Custodian, 110 West 42nd Street, New York City, or to the Alien Property Custodian, Washington, D. C.

A. MITCHELL PALMER,
Alien Property Custodian.

(Copies of Schedules A, B, C, D and E, attached to the original order and terms of sale may be examined at the office of the Director, Bureau of Sales, 110 West 42nd Street, New York City.)

THE BAYER COMPANY

History

About the year 1878 the firm of Friedrich Bayer & Company of Leverkusen, Germany, manufacturer of dye stuffs, commenced the sale of its products in the United States, through Preiss & Rumpf, a New York selling agency, and later through Ernst Sehlbach & Co., also of New York.

About that time several American manufacturers were attempting to produce aniline dyes, among them the Hudson River Aniline Color Works, a New York corporation, which had established a factory in Rensselaer, N. Y. Later this corporation employed Sehlbach & Co. as its sole selling agent, the latter firm acquiring a one-fourth interest in its stock. It was agreed at that time that the Hudson River Company should be limited to the manufacture of such dyes as could not be profitably imported from Germany.

In 1895 the firm of Ernst Sehlbach & Co. was dissolved and Farbenfabriken of Elberfeld Co., a New York corporation, was organized to conduct the sales agencies for both German and American concerns.

The limitation upon the product of the American Company led to the formation of the American Color & Chemical Company by Louis Waldman, President of the Hudson River Company. The American company built a factory in Albany and specialized so successfully in the manufacture of aniline dyes, especially blacks, that the Farbenfabriken vormals Friedrich Bayer & Co., the corporate successor of the firm of Friedrich Bayer & Co., bought up all the stock of both American companies dismantling the Albany plant and transferring its equipment and supplies to the Rensselaer factory.

This transfer of ownership marked the commencement of the manufacture of pharmaceutical goods at the Rensselaer plant, of which Aspirin became one of the principal products.

The Farbenfabriken of Elberfeld Co. of New York continued to sell products imported from Germany and the products of the Rensselaer plant until 1913, when the American business was reorganized by the incorporation under the laws of the State of New York on June 12, 1913, of The Bayer Company, Inc., and about the same date, of Synthetic Patents Company, Inc.

The real estate of the Rensselaer plant and all

United States patents owned by the Farbenfabriken of Elberfeld Company of New York were transferred to Synthetic Patents Co., Inc. The German concern executed to Synthetic Patents Co., Inc., a blanket assignment of many U. S. patents standing in its name. Equipment, machinery, supplies, manufactured goods, trade marks and sales rights were transferred to the Bayer Company, which also took from Synthetic Patents Company, Inc., a lease of the real estate upon which the plant was located and a license to manufacture under the patents owned by that Company.

The Farbenfabriken of Elberfeld Company was thereupon dissolved and the capital of the Hudson River Aniline Color Works reduced to $820.

The Bayer Company thereafter assumed control of production and sales, Synthetic Patents Co., Inc., being merely a holding company for real estate and patents.

The Bayer Company was incorporated with an authorized capital stock of $750,000, consisting of 2,250 shares of 8 per cent. cumulative preferred stock, and 5,250 shares of common stock, of the par value of $100 each, all of which is now outstanding.

The Synthetic Patents Company, Inc., was incorporated with an authorized capital stock of $50,000, consisting of 500 shares of the par value of $100 each, all of which is now outstanding.

On January 15, 1918, the entire outstanding stock of both companies stood in the name of H. C. A. Seebohm, who held it for Carl Duisberg, Christian Hess and Rudolph Mann, stockholders of the German corporation Farbenfabriken vormals Friedrich Bayer & Co. On that date all of the stock was seized by and transferred to A. Mitchell Palmer, Alien Property Custodian.

About two yeas before control was assumed by the Alien Property Custodian there had been organized in Providence for the manufacture of sulphur dyes, a Rhode Island corporation, called Williams & Crowell Company. Early in 1918 a New York Corporation of the same name, with a capital stock of $100,000, was formed by interests identified with The Bayer Company, which acquired the properties of the Rhode Island concern. The stock of the New York corporation has since been acquired by The Bayer Company and will pass to the purchaser at this sale, as an asset of The Bayer Company.

Plant and Realty

The plant of The Bayer Company is located at Rensselaer, New York, which is on the east side of the Hudson River, opposite Albany, the capital of New York State. It is on the main line of the New York Central Railroad, the distance from New York City being 142 miles.

The Company owns approximately 75 acres of land. On the west the property fronts on the Hudson River and on the east it adjoins the New York Central Railroad right-of-way. The distance from the eastern to the western boundary is about 1,700 feet.

The railroad shipping and receiving facilities are ample for the Company's requirements. There is a spur connection direct to the main line of the New York Central Railroad. The total lineal feet of track within the property limits is approximately 3,900.

There are 20 buildings in the manufacturing group. In general the buildings are of single story, mill type construction, concrete foundations and floors, brick walls and steel trusses. The floor area utilized by the different departments is as follows:

Pharmaceutical Department	57,138	Sq. Ft.
Dyestuff Department	201,588	" "
Power & Maintenance Department	29,737	" "
Total	288,463	" "

In addition to the manufacturing group, there are six dwellings located on the property.

The equipment in the Pharmaceutical Department is mostly of special design. It is used chiefly in the manufacture of Aspirin, although the Company also makes a small amount of miscellaneous drugs.

In addition to the equipment used directy in making dyestuffs, the Company has special apparatus for manufacturing raw and intermediate materials, as follows:

Nitric Acid Plant, daily capacity 6,000 pounds.
Sulphuric Acid Concentration Plant, daily capacity 12,000 pounds.
Nitrite Plant.
Hydrochloric Acid Plant.
Apparatus for making Nitrobenzol, Dinitrochlorbenzol and Dinitrotoluol.
Apparatus for making Aniline Oil.
Apparatus for making Amido Oil.

Power for operating the equipment is transmitted from motor driven shafting by means of belt drive. High tension electric current for power and lighting is purchased from the Albany Southern Railroad at 2.46c. per k. w. hour. The current is stepped down to 220 volts for commercial use.

Steam for power, heating and manufacturing purposes is generated in a new modern boiler plant of 2,000 H. P. capacity. The equipment consists of two batteries of 500 H. P. Stirling boilers, together with auxiliary apparatus. The boilers are built for 150 pounds steam pressure.

Water for the boiler plant, manufacturing purposes and fire protection is supplied from the Company's filtration plant, located near the water front. The plant has a daily capacity of 3,000,000 gallons.

The machine and carpenter shops are of ample size and well equipped to take care of the general repairs.

The plant as a whole is well laid out and to facilitate the transportation of raw material and finished product from one location to another the Company has installed an industrial railway system which connects all the buildings.

PLANT AND REALTY—WILLIAMS & CROWELL COLOR CO.

The offices of the Company are located on the second floor of the Hanley Building, 56 Pine Street, Providence, R. I., a portion of the floor space being utilized for a laboratory.

The Company has a color mixing department in the basement of the Electric Building, No. 99 Stewart Street, Providence, R. I., and owns the furniture, fixtures and equipment at both of these locations.

The Company owns and operates a plant at Packerville, Conn. This property consists of approximately 400 acres of land, a portion of which is a wooded tract.

The manufacturing building is a two-story (with basement) stone building of slow-burning construction type, erected in 1832. The building used for fusion kettles was built in 1917 and is a one-story brick structure.

In addition to the manufacturing buildings, the Company owns several workmen's dwellings and a three-story residence, known as the "Packer Mansion." There are also numerous miscellaneous structures, *i. e.*, Stores, Stable, Garage and Sheds. All of the latter buildings are of frame construction and are mostly in poor condition, the main manufacturing building being well constructed and shows evidence of having had renewals and additions at various times to keep it in a fairly good condition.

Shipping facilities are provided by rail on a spur track of the N. Y., N. H. & H. R. R. at Packerville, this track being located about one-quarter of a mile distant from the plant.

The Company owns water rights controlling two dams, each approximately 63 feet wide, with a 15-foot head of water.

Packerville is situated about two miles distant from Plainfield, Conn., and 42 miles from Providence. Auto trucks are utilized at present for receiving and shipping over the road.

Very little of the equipment installed in this plant was new at the time of installation, but it is serving the requirements of the Company in a fairly efficient manner.

A water turbine installed in the basement of the building develops about 35 horse-power and is in use at the present time. A steam engine is provided, of equal horse-power, in case of a breakdown.

Patents and Trade Marks

(a) At the time of the reorganization in 1913, a large number of United States patents for dyes and pharmaceuticals was held by the Farbenfabriken of Elberfeld Company of New York in trust for the German Company, Farbenfabriken vormals Friedrich Bayer & Co. Under date of June 12, 1913, blanket conveyances of all such patents were executed by both concerns to Synthetic Patents Company, and instruments specifically identifying the patents so assigned were recorded in the Patent Office November 4, 1913. Title to all these patents and also to patents since June 12, 1913, issued to Synthetic Patents Company is reported to be definitely established in that company.

(b) A still larger number of patents stood in the name of the German company itself. A blanket assignment of such patents to Synthetic Patents Company dated 1913 was recorded in the United States Patent Office in 1918—after a lapse of five years. Legal doubts as to the effectiveness of this assignment have led to the seizure by the Alien Property Custodian of all right, title and interest, of any, of the German company therein. He has also seized patents issued to the German company subsequent to 1913, which by contract were to be available to the American company, and for which no assignment has been discovered, and certain additional patents supposed to be controlled by Synthetic Patents Company, but found still of record in several enemy concerns and individuals, namely: Vereinigte Chininfabriken Zimmer & Co., G. M. B. H. of Frankfort-on-the-Main, E. Merk of Darmstatt, Emil Aberhalden of Halle-on-the-Salle and Richard Willstätter of Berlin. All of the patent rights mentioned in this paragraph will be offered for sale with the stocks of the Bayer Company and Synthetic Patents Company.

The patents are very numerous. The lists may be examined in the office of the Director of the Bureau of Sales, together with the reports thereon prepared by Messrs. Emery, Booth, Janney & Varney.

Generally it may be said that the dyestuffs and pharmaceuticals now produced by The Bayer Company are not claimed to be produced under patented processes. The patent rights owned by the Synthetic Patents Company and those to be sold by the Alien Property Custodian, as above stated, are believed to include, however, all outstanding United States patents for dyestuffs and pharmaceuticals manufactured by the German company, Farbenfabriken vormals Friedrich Bayer & Co.

The trade marks and trade names under which many of the Bayer Company's pharmaceuticals are marketed were assigned to the Bayer Company by

Farbenfabriken of Elberfeld Co. of New York and Farbenfabriken vormals Friedrich Bayer & Co. of Leverkusen in 1913, and are reported to be legally vested in the Bayer Company. Some additional trade marks have since been registered by The Bayer Company.

The Bayer Company is reported to have some special methods of manufacture in the nature of secret processes not possessed by other American concerns, which are said to be of considerable utility and value.

PROFIT SHARING CONTRACTS

1. An agreement dated June 12, 1913, between Synthetic Patents Company and The Bayer Company, granting to The Bayer Company a blanket license to manufacture and sell products under the patents and processes controlled by Synthetic Patents Company, provided for the payment to the latter company by the Bayer Company of a proportion of its net profits from sales of such products to be agreed upon annually by the said companies, and in the absence of agreement, to be 75 per cent. This agreement is terminable on January 1, 1921.

2. An agreement dated June 12, 1913, between Synthetic Patents Company and Messrs. Carl Duisberg, Christian Hess and Rudolph Mann, acknowledging valuable consideration, provided for the payment to said individuals of a sum equal to 75 per cent. of the receipts of Synthetic Patents Company for the right to the use of its patents and processes. This agreement does not purport to be terminable.

3. An agreement dated June 12, 1913, between The Bayer Company and the German company, Farbenfabriken vormals Friedrich Bayer & Co., granting to the Bayer Company the exclusive right for the sale

within the United States and Canada of all products of the German company, provided for the payment to the German company of a sum equal to one-half of the net profits realized by The Bayer Company (a) from such sales and (b) by reason of its right to manufacture any products as to which the German company should have a proprietary interest; payments by The Bayer Company to Synthetic Patents Company under the first agreement mentioned, to be deducted from gross receipts before ascertainment of net profits. This agreement is terminable on January 1, 1921.

Signed copies of the foregoing agreements have not been discovered, and their validity has been doubted, but the division of profits in accordance therewith has been consistently made. During the period from June 12, 1913, to June 30, 1918, approximately 56 per cent of the combined earnings of The Bayer Company and Synthetic Patents Company were credited to the German interests, consisting of Farbenfabriken vormals Friedrich Bayer Co. and Messrs. Duisberg, Mann and Hess. The distribution for each year is shown in the auditors' report. The rights, if any, of Messrs. Duisberg, Mann and Hess, under the second contract above described, and of Farbenfabriken vormals Friedrich Bayer Company under the third contract above described, have been seized by the Alien Property Custodian and will be sold with the stock of The Bayer Company and Synthetic Patents Company, in order that the purchaser may acquire the undisputed right to all of the profits of the latter company.

PRODUCTS

The products of The Bayer Co. plant may be classified as follows:

(a) Dyes.
(b) Pharmaceutical Goods.
(c) Photographic Chemicals.

(A) Dyes

Prior to 1914 the Rensselaer plant had manufactured relatively small quantities of dyes, the German owners of The Bayer Company finding it more profitable to produce abroad such dyestuffs as were needed to meet American demands.

Before the war, the only colors manufactured by The Bayer Company were: Bismarck Brown, Nigrosin, Chrysodine and Induline. Since then the Rensselaer plant has manufactured the following dyes: Azo-fuchsines, Azo-crimson L, Azo-phlozine Ga, Diamond blue blacks, Anthracene dark brown, Alizarine yellow GG, Direct pink, Chrome yellow O, Naphtylamine blacks, Wool green BSA, Diamond fast purples, Acid chrome greens and sulphur black. At the present time the principal finished products and output of the Dye Department are as follows:

Azo Colors	225 lbs. per month.
Nigrosin	50,000 lbs. per month.
Bismarck Brown	6,000 lbs. per month.
Induline	6,000 lbs. per month.
Sulphur Black	20,000 lbs. per month.

Colors manufactured by The Bayer Company are adapted not only for all branches of the textile trade, but also for leather, papers, lakes, paints, etc. Some of the more recent introductions were fast blacks and blues for wools, sulphur colors for cotton, and alizarine derivatives.

(B) Pharmaceutical Goods

Pharmaceutical goods manufactured and sold by The Bayer Company have been introduced solely to the medical profession, and have always been considered strictly ethical remedies, as evidenced by their acceptance by the Council of Pharmacy and Chemistry, of the American Medical Association. With the exception of Aspirin, none of them has ever been brought directly to the attention of the American public.

A few years after the introduction of Aspirin, which was sold only in powder form, a demand for tablets developed, and to meet this a number of manufacturers arranged with The Bayer Company to purchase Aspirin powder in bulk, from which were manufactured various brands of tablets. In 1915 The Bayer Company decided to place its own products in the market, and discontinued selling the powder to these manufacturers.

In July, 1916, an advertising campaign in behalf of Aspirin was inaugurated, in which the public was warned against substitutes and counterfeits, no claims being made for the efficacy of the article advertised. When the patent on acetyl-salicylic acid expired in February, 1917, a number of other firms began its manufacture, and placed a powder or tablet or both upon the market. Other firms also began to sell acetyl-salicylic acid under the name of Aspirin, as a result of which The Bayer Company has instituted suits for violation of trade mark rights.

Other products of the Pharmaceutical Department are: Phenacetin, Sulfonal, Trional, Aristol, Salophen, Protargol, Heroin, Sajodin, Veronal, Novaspirin, Adalin, Luminal and Elarson. About 50 other products are supplied by The Bayer Company, for some of which there is still a demand, although many of them cannot be supplied, because of the exhaustion of the present stock.

(C) Photographic Chemicals

The Bayer Company manufactures the following preparations, used in the photographic trade: Acetone Sulphite—Bayer, a preservative for developing and fixing baths; Edinol and Edinol-Hydro, developers.

Product—Williams and Crowell Company.

The principal products of this plant are Sulphur Colors, yellows, browns and greens—made entirely for cotton goods. The average monthly capacity is approximately 250,000 pounds.

SALES AGENCIES

The products of The Bayer Company are marketed through branch offices and agencies located in New York, Boston, Chicago, Providence, R. I., Philadelphia and San Francisco. All premises so occupied are leased, copies of leases being on file at the office of the Director, Bureau of Sales.

In addition agencies are maintained in the following countries: Argentine, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Curacoa, Ecuador, Guatemala, Honduras, Java, Mexico, Nicaragua, Peru, Porto Rico, San Salvador, Panama, Venezuela and in the Philippine Islands.

The main office of The Bayer Company is at 117 Hudson Street, New York City. Stocks of merchandise are held by each branch and the branch offices also collect all accounts receivable arising from goods sold in their territories. Remittances are made to the New York office.

The Bayer Company markets almost all of its color and dye products by contract with concerns engaged in the textile, dyeing, and leather industry and with manufacturers of shoe polish.

The pharmaceutical products are sold to wholesale druggists and chemists.

CONTRACT WITH HEYDEN CHEMICAL WORKS

Under an agreement dated December 12, 1916, The Bayer Company obligated itself to supply the Heyden Chemical Works, of Garfield, N. J., at cost, with acetyl-salicylic acid to be sold under that name.

In return the Heyden Chemical Works obligated itself to pay to The Bayer Company, one-third of the net profits realized from the sale of the acid. A copy of this contract which is terminable "six months following the conclusion of the definite peace by which the present European war shall be ended" is on file at the office of the Director, Bureau of Sales.

THE BAYER CO., Inc.

APPRAISAL

Estimated Cost of Reproduction New, Less Depreciation for Land, Plant and Equipment, at Rensselaer, as Prepared by Ford, Bacon & Davis, Engineers, New York City.

Summary of Valuation

	Reproduction Cost, New, Less Depreciation	
Classification	**Based on 1914 Prices**	**Based on 1918 Prices**
Land	$60,000	$ 60,000
Buildings and Miscellaneous Structures	616,766	1,060,261
Machinery	311,811	552,569
Transmission	12,235	19,575
Factory Equipment	12,522	22,935
Power and Filtration Plant Equipment	38,767	74,150
Pipe and Fittings	18,194	36,363
Power Wiring	2,391	3,827
Yard	109,575	183,552
Office Furniture and Fixtures	5,145	9,788
Total	$1,187,406	$2,023,020
Organization and Legal Expenses, Engineering and Supervision, Interest, Taxes and Insurance, during Construction and General Contingencies, 15% of the above	178,111	303,453
Reproduction Cost New, Less Depreciation	$1,365,517	$2,326,473
Amount of Depreciation	$177,662	$324,484
Reproduction Cost New	$1,543,179	$2,650,957

New York Sales Office

	Reproduction Cost New, Less Depreciation Based on 1914 Prices	Reproduction Cost New, Less Depreciation Based on 1918 Prices
Furniture and Fixtures	$14,969	$23,094
Amount of Depreciation	$10,633	$15,317
Total Reproduction Cost New	$25,602	$38,411

THE BAYER CO., Inc., BALANCE SHEET, JUNE 30, 1918

As prepared by Lybrand Ross Bros. & Montgomery, Certified Public Accountants.

ASSETS.

Current—		
Cash on hand and in bank		$191,140.81
Notes Receivable		7,000.00
Accounts Receivable:		
Domestic Customers' balance, net of reserve	$283,133.04	
*Foreign accounts (undepreciated)	167,284.23	
Heyden Chemical Works	48,211.66	
Williams & Crowell Color Co. (cash advanced)	130,000.00	
Advances to employees	3,898.91	632,527.84
Inventories—		
Materials, raw, partly finished and finished:		
Held in United States	$1,286,998.22	
*Held by foreign agencies	117,987.27	
Manufacturing expense supplies	176,820.23	1,581,805.72
Liberty Bonds purchased for account of employees		18,207.00

LIABILITIES.

Current—		
Notes Payable, Banks	$45,000.00	
Accounts Payable, Trade Creditors	224,028.10	
Accrued Commission, etc.	303.94	
Accrued Taxes Estimated on Existing Laws	57,102.11	
(Under proposed 1918 law the tax assessed would be about $5,000 additional for period ended June 30, 1918.)		
Employees' payments, account of Liberty Bonds	13,740.50	$340,174.65
Synthetic Patents Co. (60 per cent. of Bayer Co., Inc., Profits)	$298,552.42	
Less land transferred	8,500.00	290,052.42
Enemy Creditors—		
Dr. Duisberg et al., note due three months after close of war	$300,000.00	
Fredr. Bayer & Co., Brazil	19,776.01	
Fredr. Bayer & Co., Chile	13,994.47	
Farbenfabriken of Elberfeld (20 per cent. of Bayer & Co. profits)	99,517.48	433,287.96

Investments—		
U. S. Liberty Bonds (2d loan) deposited with A. Mitchell Palmer, A. P. C.	$290,000.00	
U. S. Liberty Bonds 2d Loan	50,000.00	
U. S. Liberty Bonds 3d Loan	14,000.00	
U. S. Finishing Co. Bonds	10,000.00	$364,400.00
Total Current Assets		$2,794,681.37
Plant—		
Buildings (erected on leased land)	$644,374.80	
Machinery and Tools	720,786.17	
Furniture and Fixtures	18,285.24	
Automobiles	21,184.76	
	$1,404,630.97	
Less Reserve for Depreciation	161,732.71	1,242,898.26
Deferred Charges—		
Unexpired Insurance	$3,551.49	
Prepaid Rentals	6,666.67	10,218.16
Enemy Debtors—		
Dr. Duisberg et al.	$38,189.83	
Fredr. Bayer & Co., Argentine	19,753.18	
H. C. A. Seebohm	736.33	
A. Mothwurf	3,062.87	
R. Hütz	437.02	62,179.23
		$4,109,977.02

*Includes Stock and Accounts approximately $110,000 held by certain blacklisted agents which are now in process of transfer to new agents.

Moneys received for undisclosed purposes,		
From China	$190,000.00	
From Brazil	100,000.00	$290,000.00
First Mortgage 6 per cent. Gold Bonds (converted into common capital stock June 20, 1917.)		
Second Mortgage Bonds, amounting to $500,000, were extinguished on December 31, 1915, according to the Company's record. These bonds, in the hands of C. J. Hardy, Oct. 17, 1918, should have been surrendered to the Columbia Trust Co., registrar, for cancellation of mortgage and satisfaction of records.		
Capital—		
Preferred Stock outstanding, 2,250 shares 8 per cent., cumulative, par $100	$225,000.00	
Common Stock issued and outstanding (5250 shares, par $100 authorized) ...	525,000.00	
Surplus, as annexed	2,006,461.99	2,756,461.99
		$4,109,977.02

WILLIAMS AND CROWELL COLOR COMPANY

APPRAISAL

Estimated Cost of Reproduction New, Less Depreciation for Land, Plant and Equipment as Prepared by Ford, Bacon & Davis, Engineers.

SUMMARY OF VALUATION.

	Reproduction Cost, New, Less Depreciation	
Classification	**Based on 1914 Prices**	**Based on 1918 Prices**
Land	$6,300.00	$6,615.00
Building and Miscellaneous Structures	29,804.15	50,050.78
Machinery	281.98	457.40
Transmission	1,387.95	2,511.30
Factory Equipment	15,350.92	27,212.59
Power Plant Equipment	1,000.00	1,800.00
Pipe and Fittings	291.67	525.00
Yard	4,419.62	7,109.69
Furniture and Fixtures	2,037.30	3,065.06
Organization and Legal Expenses, Engineering and Supervision, Interest, Taxes and Insurance, during Construction and General Contingencies, 15% of the above	9,131.04	14,902.07
Total	$70,004.63	$114,249.19
Stores and Supplies	8,192.89	14,747.19
Total Reproduction Cost New, Less Depreciation	$78,197.52	$128,996.38
Amount of Depreciation	$57,048.57	$88,665.60
Reproduction Cost New	$135,246.09	$217,661.98

Statement of Income for Six Months Ended June 30, 1918

Prepared by Haskins and Sells, Certified Public Accountants

Sales	$546,616.74
Gross Profit	260,085.21
General Expenses	14,540.78
Net Profit	245,544.43
Other Income	384.51
Income Charges	5,077.69
Net Profit	240,851.25

No provision for Income or Excess Profits Taxes is included in this statement.

WILLIAMS & CROWELL COLOR COMPANY, Inc., BALANCE SHEET, JUNE 30, 1918

As prepared by Haskins & Sells, Certified Public Accountants

ASSETS.

Current Assets—		
Cash on Deposit		$9,328.01
Cash on hand—New York office		17.73
Cash on hand—Providence office		533.41
Cash in hands of H. C. A. Seebohm, Treasurer		6,000.00
War Savings Stamps		41.70
United States Government Third Liberty Loan Bonds, purchased for employees		1,450.00
Subscription to United States Government Third Liberty Loan Bonds (25 per cent. paid)		2,000.00
The Bayer Company, Inc.:		
Due on Current Account	$184,313.71	
Less due on Loan	130,000.00	54,313.71
North Jersey Warehouse Company		101,600.00
Loan—William Fisher		750.00
Sundry Accounts Receivable		783.70
Inventories:		
Standardized Products and Mixtures		730.47
Work in process		38,546.59
Materials for product		65,135.91
Expense, material and supplies		5,829.71
Packages		7,042.00
Total Current Assets		$294,102.94

LIABILITIES.

Current Liabilities—	
The Chemical Company of America	$2,463.45
The Products & Chemical Company	6,883.20
Hine Brothers	1,902.18
The MacKenworth Company	257.60
John D. Lewis	306.93
Edwin Knowles	4.25
Unpaid installments on subscription to Third Liberty Loan Bonds	1,500.00
Total Current Liabilities	$13,317.61
Capital Stock, 1,000 shares, without par value	100,000.00
Profit and Loss Surplus	$240,851.25
Total	$354,168.86

Plant Property—	
Real Estate and Building	$3,000.00
Machinery and Equipment	17,004.87
Horses and Wagon	767.23
Furniture and Fixtures	676.68
Total Plant Property	$21,448.78
Good will and formulae	32,364.54
Deferred Debit Items—	
Improvements on Leasehold Property	5,405.31
Rent paid in advance	564.00
Insurance Premiums, unexpired portion	283.29
Total Deferred Debit Items	$6,252.60
Total	$354,168.86

NOTE—No provision for Federal Income and Excess Profits Taxes Accrued for the six months ended June 30, 1918, is included in the above statement.

THE BAYER COMPANY, Inc.

Condensed Comparative Summary of Earnings and Expenses from June 12, 1913, to June 30, 1918

Prepared from Report of Lybrand Ross Bros. & Montgomery, Certified Public Accountants.

	Six months to June 30, 1918	**Year Ended Dec. 31, 1917**	**Year Ended Dec. 31, 1916**	**Year Ended Dec. 31, 1915**	**Year Ended Dec. 31, 1914**	**June 12, 1913 to Dec. 31, 1913**
Sales	$2,841,422.60	$5,608,502.51	$6,006,618.77	$5,536,096.52	$6,465,320.01	$2,498,898.62
Gross Profit	1,031,406.81	2,810.726.14	2,922,621.14	2,708,608.25	2,702,391.71	1,066,553.49
Expense, Administrative, Selling and General....	533,390.59	1,047,583.64	704,396.13	626,336.51	877,245.98	439,047.01
Taxes	126,538.42	84,598.33	14,157.73	12,121.45	9,446.54	1,992.93
Profit from Operations	371,477.80	1,678,544.17	2,204,067.28	2,070,150.29	1,815,699.19	625,513.55
Other Income	148,214.89	90,022.61	12,109.69			
Income Charges	22,105.32		38,300.00	52,500.00	47,812.50	
Net Profits	497,587.37*	1,768,566.78	2,177,876.97	2,017,650.29	1,767,886.69	625,513.55

*The combined net earnings of the Bayer Company and its subsidiary, the Williams & Crowell Color Company, as shown by the condensed statements herein for the six months ending June 30th, 1918, was $738,438.62.

SYNTHETIC PATENTS CO., Inc.

Comparative Statement of Income for the Periods Ended December 31, 1913, to June 30, 1918

Prepared from Report of Lybrand Ross Bros. & Montgomery, Certified Public Accountants

	Six months ended June 30, 1918	Year Ended Dec. 31, 1917	Year Ended Dec. 31, 1916	Year Ended Dec. 31, 1915	Year Ended Dec. 31, 1914	June 4, 1913, to Dec. 31, 1913
Gross Income*	$325,114.50	1,079,128.47	$1,315,323.05	$1,359,184.00	$1,214,538.58	$255,241.54
Expenses	3,806.02	19,172.16	19,132,76	27,792.93	37,296.32	16,502.04
Gross Profit	$321,308.48	1,059,956.31	$1,296,190.29	$1,331,391.07	$1,177,242.26	$238,739.50
Deductions from Income:						
Dr. Duisberg et al.		10,000.00				
Interest on Loan		13,500.00	13,500.00	13,500.00	13,945.50	7,425.00
Amortization of Patents		19,750.00	19,750.00	195,500.00	172,000.00	
Taxes	41,385.69	7,674.51	1,457,04	1,359.51	529.72	
Total Deductions	$41,385.69	$50,924.51	$34,707.04	$210,359.51	$186,475.22	$7,425.00
Net Profit	279,922.79	1,009,031.80	1,261,483.25	1,121,031.56	990,767.04	231,314.50

*Entire income was derived from The Bayer Company, Inc., except $13,228.75 in 1918 and $10,030.95 in 1917.

BALANCE SHEET, JUNE 30, 1918

ASSETS:	
Cash in bank and on hand	$23,482.26
The Bayer Company, Inc.	290,052.42
Real Estate	58,500.00
Patents and Trade Marks at book values	16,000.00
Dr. Duisberg et al "Enemy Debtor"	538,146.51
	$926,181.19

LIABILITIES:		
Deposit on Rental		$6,666.67
Accrued Taxes estimated on existing laws		9,073.22
Dr. Duisberg "Enemy Creditor"		223,914.32
CAPITAL:		
Common Stock, 500 shares par value $100	$50,000.00	
Surplus	580,518.51	
Profits after dividends	56,008.47	
		686,526.98
		$926,181.19

PLAINTIFF'S EXHIBIT No. 613.

Statement of Fees and Compensation paid to the firm of Emery, Varney, Blair and Hoguet by Alien Property Custodian for dates stated as shown by Alien Property Custodian Report of 1922.

Name of Company	Page of Miller Report	Date of Payments	Amount
1. American Industrial Gas Co.	18	Sept. 22, 1919	$440.00
2. American Junkers Co.	20	June 3, 1919	103.25
3. American Lava Co.	23	Jan. 15, 1919	172.43
4. American Pyrophor Co.	35	Jan. 4, 1919	552.00
5. American Radium Co.	38	June 5, 1919	250.00
6. Amid Duron Co.	55	Nov. 1, 1919	528.50
7. Atlantic Communication Co.	61	(July 1, to (Nov. 26, 1919	7,110.72
8. American Welding Corp.	66	Nov. 1, 1919	952.25
9. The Bauer Chem Co.	79	(July 16, and May 3, 1919	1,139.16 1,573.83
10. The Bayer Co.	86	Jan. 30, 1919	2,615.59
11. Becker Steel Co.	90	(Jan. 23, and March 24, 1919	210.00
12. Ernest Gideon Beck Mfg. Co.	113	Sept. 2, 1919	876.65
13. Berger & Wirth	115	Jan. 10, 1919	350.00
14. Martin S. Bemet, Inc.	117		50.00
15. The Birkholz Co.	118	Nov. 1, 1919	75.00
16. Bosch Magneto Co.	135	(Nov. 1, 1918 (Jan. 20, 1919 (Dec. 6, 1918	(1,563.51 (782.51
17. Bronze Powder Works Co.	167	(Jan. 20, 1919	198.03
18. Chillingworth Mfg. Co.	183	May, 1922	217.00
19. J. P. Devine & Co.	197	March 26, 1920	501.75
20. Didier-March Co.	205	January, 1919	1,762.37
21. Eiseman Magneto Co.	212	June 5, 1919	(350.00 (150.00
22. Heins Frank Sons, Inc.	238	July 16, 1919	(541.00 (453.05
23. General Ceramics Co.	251	(Jan. 16, 1919 (June 5, 1919	(919.88 (496.46
24. Gen'l. Mfg. & Exporting Co.	257		50.00
25. Goerz American Optical Co.	293	Dec. 14, 1920	(882.60 (3,572.66

Name of Company	**Miller Report Page of**	**Payments Date of**	**Amount**
26. Goetze & Gasket Packing Co.			($437.42 (90.00
27. Golde Patent Mfg. Co.	302	June 5, 1919	(453.32 (378.87
28. Herman Delaire Shaefer Co.	309		150.00
29. G. & W. Heller Co.	320	Sept. 22, 1919	(100.00 (175.00
30. Chas. Hellmuth, Inc.	322	Sept. 22, 1919	402.35
31. J. A. Henckels	322	March 25, 1919	176.45
32. The Hayden Chem. Co.	328	(Nov. 25, 28, (1918 and May (3, 1919	(550.00 (725.00
33. International Textile, Inc.	337	(Jan. 15, 1919 (June 4, 1919	(200.00 (287.05
34. International Ultra-Marine Works	345	(Dec. 6, 1918 (Jan. 20, 1919	275.00
35. Dr. Jaegers Sanitary Woolen System Co.	348	May 3, 1919	735.00
36. Jagenberg Machine Co.	350	Sept. 19, 1919	(350.00 (669.25
37. The Jarecki Chem. Co.	352	June 5, 1919	125.00
38. Kaffee Hog Corp.	356	July 16, 1919	1,237.10
39. Kny-Scherer Corp.	369	Apr. 10, 1919	(2,721.08 (804.20
40. E. Lietz Inc.	385	March 26, 1920	300.00
41. The Litosilo Co. of America	391	Nov. 1, 1919	284.05
42. Locomotive Superheater Co.	393		900.00
43. H. Lock & Co.	395	Oct. 27, 1919	50.00
44. Martini & Huneke Co.	408	Sept. 22, 1919	920.45
45. Merck & Co.	411	(May 3, & July (16, 1919	1,213.75
46. Messer Mfg. Co.	415	Dec. 28, 1918 (March 15, 1919	(115.50 (50.00
47. Nuhmens & Knopff	419	(Nov. 22, 1919 (March 1, 1920	1,963.00
48. New Brunswick Chem. Co.	429	June 5, 1919	155.00
49. New York Patent Exportation Co.	439	Feb. 7, 1919	(1,265.00 (67.60
50. Norma Co. of America	442	July 16, 1919	1,620.00
51. Orenstein & Koppel	446	Sept. 28, 1918	2,000.00
52. The Pass-Kremer Hatband Mfg. Co.	463	April 5, 1919	(175.00 (35.00

Name of Company	Miller Report Page of	Payments Date of	Amount
53. Pass-Washburn Co.	465		$75.00
54. Perth Amboy Chem. Works	472		110.00
55. Ralak Tire & Rubber Co.	474	July 18, 1919	341.15
56. Ratan & King Co.	481	Dec. 27, 1919	50.00
57. G. Reis & Bro.	485	Sept. 22, 1919	302.00
58. F. A. Richter & Co.	488	May 3, 1919	(382.30 (250.00
59. Riedel & Co.	489	May 3, 1919	(431.50 (319.37
60. Roessler & Hasslacher Chemical Co.	493		4,327.52
61. Rohn & Haas	495	March 25, 1920	1,806.65
62. Schafer & Budenberg Mfg. Co.	505	July 18, 1919	1,217.68
63. Shutte & Koerting Co.	502	Nov. 18, 1919	(822.34 (1,160.85
64. Sales Co.	516		122.00
65. C. C. Siegle Co.	523	(Sept. 23, 1918 (Jan. 10, 1919 (Feb. 8, 1919	1,120.00
66. Robert Soltan & Co.	526	(Jan. 15, 1919 (July 16, 1919	(216.00 (283.55
67. F. Speidel & Co.	530	(Nov. 15, 1918 (Feb. 5, 1919	945.55
68. The Sterling Co.	539		190.00
69. Stollwerck Bros.	544	(Dec. 6, 1918 (Jan. 20, 1919	(846.32 (133.90
70. Thonet Bros.	552	Dec. 27, 1919	50.00
71. Traun Rubber Co.	564	July 16, 1919	(80.00 (102.50
72. United Brush Manufactories	569	Sept. 22, 1919	(1,180.63 (362.15
73. J. M. Boith Co.	585	March 25, 1920	410.00
74. M. Welte & Sons	590	June 10, 1919	177.25
75. Werner & Pfleiderer Co.	595	Sept. 22, 1919	2,630.55
76. Webster Stone Co.	601	Feb. 17, 1921	150.00
77. Wolfe Safety Lamp Co.	605	(July 16, 1919 (Apr. 23, 1919	481.25
78. George Benda	610	May 3, 1919	375.00
79. A. W. Taber	614	May 1, 1919	600.00
80. Germania Worsted Mills	620	Oct. 16, 1918	100.00
81. Waldes & Co.	631		285.25
82. White Metals Mfg. Co.	632	Jan. 13, 1919	317.53

In addition to the foregoing facts, Hoguet was a director and President of the American Junkers' Co. from August 30, 1918, to

June 11, 1919, and received (See p. 20, Custodian's Report) as fees, $100.

He was also a director of the Williamsburg Chemical Co. from September 4, 1918 to ——— (See p. 603, Custodian's Report) and received in fees, $600.

The Williamsburg Chemical Co. was returned under Section 9 of the Act.

PLAINTIFF'S EXHIBIT No. 614.

Navy Department
Bureau of Ordnance
Washington, D. C.

(Sp-1)-0
MTH.

Jan. 23, 1920.

Memorandum

To: Chief of Bureau.
Subject: Alien Enemy Patents.

1. I have just returned from New York where I had several interviews with Mr. Ramsay Hoguet, Special Counsel on patents for the Alien Property Custodian. Mr. Hoguet is also acting as Special Counsel for the Chemical Foundation Company, a semi-official corporation. It is suggested that the subject of acquiring licenses for the benefit of the Government and particularly the Navy Department under the patents seized by the Alien Property Custodian, some of which have been assigned to the Chemical Foundation Company—be taken up at the weekly conference of the several Chiefs of the Bureaus of the Department in the very near future.

2. The following explanation of the situation is presented. During the War the Alien Property Custodian, among his other functions and duties was re-

quested to seize all United States patents owned or controlled by enemy aliens or corporations. Approximately 7500 patents were thus seized, a large per cent. of which enter either directly or indirectly into the manufacture of munitions or supplies suitable for naval use. The variety of subjects is, of course, large and includes not only ordnance, director firing systems (optics and glass), projectiles, armor plate, explosives and chemicals all of material value to this Bureau, but also comprehends the manufacture or construction of ships, boilers, motors and generators of interest to the Bureaus of Construction and Repair and Steam Engineering; nautical instruments, gyros, compasses, and gyroscopes are of probable interest especially to the Bureau of Navigation; various medicines, chemicals and surgical devices are of value to the Bureau of Medicines and Surgery, numerous miscellaneous patents having to do with foods, food preservation, storage and packing, dyes and cloth are of perhaps indirect interest to Supplies and Accounts.

3. Of the above referred to 7500 patents approximately 4000 of these have been taken over by the Chemical Foundation Company which is strictly an American Corporation under a directorship of the Alien Property Custodian and who is also President of the Company, created for the purpose, among others, of taking over patents of a chemical nature, in its broadest aspect, from the Alien Property Custodian and acting as a holding company for the purpose of protecting American industries. It might be stated here that the larger part of German owned patents were for the purpose of protecting the use and sale of German products in this country, which products were manufactured in Germany. This Company is empowered to license any and all manufacturers in this country, desiring to manufacture a certain product or article covered by any particular patent or patents, on equal terms thus stimulating United States manu-

factures but the Company is given wide discretion regarding its dealings with the United States Government or any Department thereof.

4. Some of these 7500 patents would be of little or no interest to any Bureau of the Navy but probably would be to some Department of the Government. The majority of them, it is believed, would enter, either directly or indirectly in the manufacture of Navy supplies and some of them would be of great value to the Department. On the other hand, some of these patents are probably, from a strictly patent point of view, of little or no value due to the narrow scope of claim or the invalidity of such claims. Others are probably of an almost basic character and consequently the obtaining of rights thereunder would be of great value from a financial point of view. It is believed that to examine these patents with a view of determining those that were of interest or value would be an uncertain and very time consuming procedure involving the necessity of obtaining copies of all of the patents, making a preliminary division and distribution thereof to the respective Bureaus interested and awaiting and compiling reports and making recommendations based thereon.

5. The suggestion is, therefore, made for earnest consideration by the conference of the Chiefs of the Bureaus on,

> *1st.* The advisability of making a request at this time upon the Alien Property Custodian for a blanket license to manufacture and use and have manufactured for the use of the Navy Department any articles, devices, or processes covered by any and all of the patents seized by him and in which he now retains title.

2nd. That a request be made to the Chemical Foundation Company for such similar license under the patents now held by them.

6. It is believed by Mr. Hoguet that the consideration for the first license should be an adequate one, say not less than $100,000, which amount is about thirty-five dollars for each patent or the equivalent of the Government fees necessary to obtain such patent. This is to forestall any suit to recover title based on inadequate consideration. As to the 4000 patents now held by the Chemical Foundation Company, it is believed that a much smaller possibly a nominal consideration would be sufficient. Mr. Neagle, of the Solicitor's office, does not agree as to these considerations and believes both licenses should be obtained as a matter of right for nominal consideration. He also states that some patents have already been obtained but inquiry has not established such fact to date to any material extent.

7. Among the advantages obtained by such a step would be,

1st. The ultimate saving of perhaps millions of dollars required to be paid by the Government because of royalties on patents. It is possible that after the treaty is ratified that the property retained by the Alien Property Custodian will be returned to the former owners in which case the Government would be open to suits for infringement and demands for royalties on all such patents returned if infringed by use or manufacture.

2nd. It would eliminate the possibility of the exclusive manufacturing rights under any of these patents falling in the hands of any individual or Company who could place the Department under the same financial burden of patent royalties as the former alien enemy owner.

3rd. The question of competitive bids would be simplified to a certain extent and the unfairness of permitting one Company having patent rights to materially underbid a competitor by reason of royalty charges would be eliminated.

4th. The question of future damages or rights by United States of Departmental manufacture or use of the articles or process covered by such patents would also disappear.

8. All things considered, it is believed that this is an opportunity to save the Government vast sums of money at a very small expense. The time for taking action will be limited by reason of the ratification of the Peace Treaty or subsequent legislation regarding those rights in patents now held by the Alien Property Custodian. As it would probably take considerable time to negotiate and arrange for such licenses the necessity for early action will be apparent.

9. Colonel Wolff and Colonel Mount, of the War Department, are very anxious to cooperate in this matter and intend to file requests for similar licenses at an early date.

(Sgd.) P. A. BLAIR.

PLAINTIFF'S EXHIBIT No. 615.

Op-13 2/9

Feb. 11, 1920.

Sir:

With reference to the United States patents owned or controlled by enemy aliens or corporations that have been or may be seized by the Alien Property Custodian during the World War: A large percentage of these patents enter directly or indirectly into the manufacture of munitions or supplies suitable for naval use. They cover not only ordnance, directer firing systems, optics, glass, projectiles, armour plate, explosives, and chemicals of all kinds, but also the construction of naval vessels, boilers, generators, nautical instruments, gyros, compasses, gyroscopes, medicines, drugs, surgical devices, foods, food preseration, storage and packing, dyes and cloth. Some of these approximately 7,500 patents would be of little interest to the Navy Department, but the majority of them, it is believed, would enter, either directly or indirectly, into the manufacture of naval supplies and some of them are of great value to the Navy Department.

The detailed examination of this large number of patents, with a view of determining those that are of interest or value, would be a very uncertain and time consuming procedure, involving obtaining copies of all the patents, distributing them to the various bureaus and activities of the Navy Department, and the compilation of the various reports and recommendations based upon a detailed and careful examination. The Navy Department, therefore, requests that the Alien Property Custodian grant to the Navy Department a blanket license for the manufacture and use of articles, devices, or processes covered by any and all of the patents, formerly owned or controlled by enemy aliens or corporations, that have been seized by the Alien Property Custodian and in which he retains title.

The Navy Department further desires your advice as to what should be the proper considerations for the use of these patents, in order to protect the United States from future suits or actions.

The Secretary of the Navy begs to point out the following advantages to the United States that would probably result from the action requested above:

1st. The ultimate savings of perhaps millions of dollars required to be paid by the Government because of royalties on patents. It is possible that after the treaty is ratified that the property retained by the Alien Property Custodian will be returned to the former owners in which case the Government would be open to suits for infringement and demands for royalties on all such patents returned if infringed by use or manufacture.

2nd. It would eliminate the possibility of the exclusive manufacturing rights under any of these patents falling in the hands of any individual or Company who could place the Department under the same financial burden of patent royalties as the former alien enemy owner.

3rd. The question of competitive bids would be simplified to a certain extent and the unfairness of permitting one Company having patent rights to materially underbid a competitor by reason of royalty charges would be eliminated.

4th. The question of future damages or rights by United States for Departmental manufacture or use of the articles or processes covered by such patents would also disappear.

A blanket license somewhat similar to that requested above is now held by the Chemical Foundation, Inc.; and, as some of the patents thus granted that corporation concern the Navy Department, information is desired as to the proper parties to whom requests for a license to use patents now held by that body should be made.

Sincerely yours,
(Sgd.) JOSEPHUS DANIELS.

Hon. Francis P. Garvan,
Alien Property Custodian,
Sixteenth and P Streets,
Washington, D. C.
(Copy to Bu. Ord.)

PLAINTIFF'S EXHIBIT No. 616.

(L3-1)-O DH

July 28, 1920.

Subject: Ownership of Patents.

Sir:

Referring to your letter of inquiry of the 10th inst., regarding the ownership of the seven patents referred to in the Department's letter of July 1, 1920, the following information, taken from the patents, is furnished:

875,036 (Gyroscope) granted to Narciss Ach, of Marsburg, Germany, "a citizen of the German Empire."

954,634 (Turbine-drive of gyroscopic steering gears of torpedoes) granted to Albert Edward Jones, of Fiume, Austria, "subject of His Majesty, The King of Great Britain"—Patented April 12, 1920.

1,025,747 (Gyroscope for automobile torpedoes) granted to Albert Edward Jones, "assignor to Messrs. Whitehead and Co., of Fiume, Austria-Hungary, a corporation."

1,036,256 (Illuminating-Indicator) granted to Arthur Junghans, of Schramberg, Germany, "a subject of the King of Wurttemburg."

1,136,566 (Gyro-compass) granted to Hans Usener, of Kiel, Germany, "a subject of the King of Prussia."

1,143,975 (Gyroscope) granted to "Paul Kortmann, of Berlin-Waidmanns-lesst, Germany, assignor to Berliner Maschinenbau-Aktiengesellschact, Normals L. Schwartzkopff, of Berlin, Germany, a Corporation of Prussia."

1,173,435 (Gyroscopic Steering Device for Torpedoes) granted to Albert Edward Jones, of Fiume, "subject of the King of Hungary," patented February 29th, 1916.

Attention is invited to the fact that Albert Edward Jones, patentee in Number 954,634, is later described as a citizen of the King of Hungary, as pointed out in the Department's letter of June 24th, 1920, to the Alien Property Custodian.

Very truly yours,
CHAS. B. McVAY, Jr.
Rear Admiral, U. S. Navy,
Chief of Bureau.

Alien Property Custodian,
16th & P St., NW., City.

PLAINTIFF'S EXHIBIT No. 617.

Navy Department.
Bureau of Ordnance,
Washington, D. C.
June 18, 1920.

Memorandum for Chief of Bureau

Subject: Patents held by Alien Property Custodian—Acquisition of.

1. It is recommended that, if any action is taken towards purchase of any patents held by the Alien Property Custodian, the following patents be included:

1,098,074	May	26/14	F. Zottich —gyroscope
1,143,975	June	22/15	P. Kortmann—gyroscope
1,173,435	Feb.	29/16	A. E. Jones —gyroscope
954,634	Apr.	12/10	A. E. Jones —gyroscope
1,005,647	Oct.	10/11	A. E. Jones —torpedo engine

1,025,747	May 7/12	A. E. Jones	—gyroscope
899,304	Sept. 22/08	A. E. Jones	—immersion regulator

2. None of the above patents, in my opinion, are of great value, but if they can be acquired with others and at no great cost I believe that they should be obtained.

(Sgd.) G. B. WRIGHT.

PLAINTIFF'S EXHIBIT No. 618.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P. Sts. N. W.
Washington, D. C.

January 14, 1921.

Navy Department,
Bureau of Ordnance,
Washington, D. C.

Attention of Commander A. L. Norton

Dear Sir:

Attached you will find a list of one hundred and sixty (160) Patents which have been assigned to The Chemical Foundation, Inc., and which Dr. Van Doren agreed to license to the Government. I have sent the original of this list to Dr. Van Doren at his request, but will suggest that you write The Chemical Foundation, Inc., 81 Fulton Street, New York, attention of Dr. Van Doren, and request him to execute an Assignment to the Government, covering this list or such a part of it as your Department may desire.

I will appreciate it if you will do this without awaiting the completion of the full list of Patents you desire, as the placing of this Assignment on record would materially assist us in the final adjustment of our records.

I received this morning the correspondence in regard to the gyroscope and other patents and will give this immediate attention.

Very truly yours,
J. R. ZIMMERMAN,
Division of Records.

JRZ: MBJ

PLAINTIFF'S EXHIBIT No. 619.

The Chemical Foundation
Incorporated
81 Fulton Street
New York City

Commander A. L. Norton, January 17, 1921.
General Inspector of Ordnance.
Bureau of Ordnance.
Navy Department,
Washington, D. C.

Dear Sir:

In accordance with our conference of last week, we take pleasure in handing you herewith six (6) copies of the temporary list of patents owned by the Chemical Foundation, Inc.

We shall be pleased to assign to the War and Navy Departments a license to manufacture for their own use, the improvements set forth in any of the patents contained in the aforesaid list which you may feel will be of importance or value in your work.

Trusting that we may have the pleasure of hearing from you at an early date with respect to this matter, we remain,

Yours very truly,
THE CHEMICAL FOUNDATION INC.
By Lloyd Van Doran.

LVD: ACK
Encs

PLAINTIFF'S EXHIBIT No. 620.

N. Ord. 6.
In Reply Address
Bureau of Ordnance, Navy Department
and Refer to No.
37649/2(S1)—O
ALB

NAVY DEPARTMENT
BUREAU OF ORDNANCE
Washington, D. C.

MEMORANDUM

Jan. 19, 1921.

To: All desks.

Subject: Purchase of License under patents from the Alien Property Custodian.

Inclosure: (A) List of patents and copyrights transferred to the Chemical Foundation, Inc.
(Herewith)
(B) Copy of letter of Chem. Foundation of Jan. 17, to the Bureau of Ordnance.

1. It is requested that Desk "S" be furnished immediately with a list of patents from the attached temporary list of the Chemical Foundation, Inc., considered of importance or value to the Bureau in order that a license may be requested.

CHAS. B. McVAY, JR.,
Chief of Bureau.

PLAINTIFF'S EXHIBIT No. 621.

N. Ord. 6.

In Reply Address
Bureau of Ordnance, Navy Department
and Refer to No.

37649/2(S1)—O
ALB

NAVY DEPARTMENT
BUREAU OF ORDNANCE
Washington, D. C.

Jan. 19, 1921.

Attention Dr. Van Doren.

Dear Sir:

Mr. J. N. Zimmerman, Office of the Alien Property Custodian, under date of January 14th submitted to this Bureau a list of one hundred and sixty patents which have been assigned to the Chemical Foundation, Inc., the original of which list was forwarded on the same date to Dr. Van Doren at his personal request.

It will be appreciated if you will have an assignment made to the Navy Department for the United States Government of these one hundred and sixty patents without waiting for the completion of the full list of patents promised by Dr. Van Doren in a recent interview with the Bureau of Ordnance.

Copy of Mr. J. N. Zimmerman's letter of January 14th is inclosed herewith.

Very truly yours,
CHAS. B. McVAY, JR.,
Rear Admiral, U. S. Navy,
Chief of the Bureau of Ordnance.

1 inclos.

The Chemical Foundation, Inc.,
81 Fulton St.,
New York City.

PLAINTIFF'S EXHIBIT No. 622.

THE CHEMICAL FOUNDATION
81 Fulton Street,
New York City.

January 20, 1921.

Rear Admiral Chas. B. McVay, Jr.,
Chief of the Bureau of Ordnance,
Bureau of Ordnance,
Navy Department,
Washington, D. C.

in re: (S1)—O
ALB

Sir:

We beg to acknowledge receipt of your letter dated January 19, 1921, and in reply are pleased to inform you that an assignment covering the list of 160 patents forwarded to you by J. R. Zimmerman of the office of the Alien Property Custodian, will be immediately drawn up and placed in your hands at the earliest convenient date.

Yours very truly,

THE CHEMICAL FOUNDATION, INC.,
By LLOYD VAN DOREN.

LVD:ACK

PLAINTIFF'S EXHIBIT No. 623.

N. Ord. 6.
In Reply Address
Bureau of Ordnance, Navy Department
and Refer to No.
37649/2(S1)—O
ALB

NAVY DEPARTMENT
BUREAU OF ORDNANCE
Washington, D. C.

Feb. 17, 1921.

To: Bureau of Medicine and Surgery.

Subject: Purchase of License under Patents from the Alien Property Custodian.

Inclosure: (A) List of patents and copyrights transferred to the Chemical Foundation, Inc.
(Herewith)

(B) Copy of letter of Chem. Foundation of Jan. 17 to the Bureau of Ordnance.

1. Pursuant to an agreement between the Navy and War Departments and the Alien Property Custodian, the Navy Department through the Bureau of Ordnance has purchased a license under some five thousand eight hundred patents, which license has, together with a list of the patents so assigned, been deposited with the Bureau of Ordnance. A copy of this list is being made and will be forwarded upon its completion.

2. Attached hereto is a temporary list of patents and copyrights transferred to the Chemical Foundation, Inc., by the Alien Property Custodian and a copy of the letter of January 17 from the Chemical Foundation, Inc., in which the Chemical Foundation states that it will be pleased to assign to the War and Navy Departments a license to manufacture for their own use the improvements set forth in the patents contained in the aforesaid list.

3. If the Bureau of Medicine and Surgery will furnish the Bureau of Ordnance with a list of such patents selected from the accompanying pamphlet as it desires to have transferred, the Navy Department, Bureau of Ordnance, will include such list in its re-

quest for a blanket license to be issued to the War and Navy Departments.

4. An early statement of the license desired will be appreciated.

CHAS. B. McVAY, Jr.,
Chief of Bureau.

PLAINTIFF'S EXHIBIT No. 623-A.

Department of the Navy
Bureau of Medicine and Surgery

125884(21)
ELS/T
February 25, 1921.

1st Endorsement.

To: Naval Medical Supply Depot, Brooklyn, N. Y.

Subject: Purchase of license under patents from the Alien Property Custodian.

Reference: Attached letter from Bureau of Ordnance, #(S1)—O February 17, 1921.

Enclosure: (A) List of patents and copyrights transferred to the Chemical Foundation, Inc.
(B) Copy of letter of Chemical Foundation of January 17, to the Bureau of Ordnance.

1. Forwarded for comment and recommendation; prompt return of all papers requested.

E. R. STITT.

PLAINTIFF'S EXHIBIT No. 623-B.

9 March 1921.

M-1-13-ESB-MJB
2nd Endorsement
From: The Commanding Officer, Naval Medical Supply Depot, Brooklyn, N. Y.
To: The Chief of the Bureau of Medicine and Surgery.
Subject: Purchase of license under patents from the Alien Property Custodian.
Enclosure: (a) List of patents and copyrights transferred to the Chemical Foundation, Inc.
(b) Copy of letter of Chemical Foundation of 17 January 1921 to the Bureau of Ordnance.
(c) List of Patents.

1. Returned.

2. Enclosure (C) is a list of the patents which it is believed might be of use to the Medical Department. What merits these patents have is not revealed in the title, many of them possibly having no value. On the other hand, there are possibly a large number omitted from the list which would be of value, but such value or utility is not indicated by the title.

3. It is impossible for this Depot to determine from the information at hand if any of the patents relating to dyes or their manufacture would have a value to the Medical Department of the Navy, so none of these have been included in the list.

4. The character of articles used in the Medical Department is so diverse that it is possible that a very large part of the patents given in the list sub-

mitted by the Bureau of Ordnance would apply in the manufacture of articles used in the medical Department. As this Depot is not familiar with the full details of manufacture of all classes of goods, the list as given is as complete as it is possible to prepare.

5. If a blanket license is to be obtained for the War and Navy Departments, any patents of value to the Medical Department omitted from enclosure (c) would be covered.

E. S. BOGERT.

PLAINTIFF'S EXHIBIT No. 623-C.

ELS-DRG

125884 (21)

3rd Endorsement

11 March 1921

Bureau of Medicine and Surgery.

To: Bureau of Ordnance.

Subject: Purchase of license under patents from the Alien Property Custodian.

Reference: Your attached letter dated 17 February 1921

Enclosures: (a) List of patents and copyrights transferred to the Chemical Foundation, Inc.

(b) Copy of letter of Chemical Foundation, dated 17 January 1921, addressed to the Bureau of Ordnance.

(c) List of patents to be included by the Bureau of Ordnance in its request for a blanket license to be issued to the War and Navy Departments.

1. As requested in your letter, ref., the Bureau is enclosing herewith, encl. (c), a list of patents selected from encl. (a), that it desires to have the Bureau of Ordnance include in its request for a blanket license to be issued to the War and Navy Departments.

J. A. MURPHY,
Acting.

PLAINTIFF'S EXHIBIT No. 624.

THE CHEMICAL FOUNDATION
81 Fulton Street,
New York City.

March 28, 1921.

Mr. Chas. B. McVay, Jr.,
Rear Admiral, U. S. Navy,
Chief of the Bureau of Ordnance,
Navy Department,
Washington, D. C.

Re: Communication No. 37649/6 (S1)-O

Sir:

It is desired to acknowledge receipt of your letter dated March 24, 1921, and enclosure of letter from the War Department dated March 19, 1921.

In reply it is desired to state that The Chemical Foundation, Inc., will be pleased to comply with the request of the Navy and War Departments with respect to granting to the War and Navy Departments, as represented by the Secretary of the Navy and his successors in office, a license covering all of the patents which have been transferred to The Chemical Foundation by the Alien Property Custodian, excepting only, of course, those patents which have already been licensed in an instrument dated February 26, 1921, and such license will be prepared at the earliest possible moment. The War and Navy Departments will undoubtedly realize that the preparation of a license which will include a schedule of several thousand patents, is a rather laborious and time consuming procedure, and it is hoped hence that the said Departments will bear with the Foundation until the license can be properly prepared.

It is noted in the letter from the War Department that a request is made for 100 copies of a list of patents owned by The Chemical Foundation, Inc. There was prepared shortly after the incorporation of the Chemical Foundation, a temporary list of patents. This temporary list has been exhausted and a new list is in the course of preparation at the present time, but we are unable to say just when such list will be completed.

According to the present plans of the writer, he expects to be in Washington within about 10 days or two weeks, and he will be pleased to confer with you at that time concerning the license and the 100 copies of the list of patents, should it be possible for you to arrange for a conference.

Yours very truly,
THE CHEMICAL FOUNDATION,
INCORPORATED,
By Lloyd Van Doren.

LVD:ACK

PLAINTIFF'S EXHIBIT No. 625.

The Chemical Foundation
81 Fulton Street,
New York City.

July 19, 1921.

Commander A. L. Norton,
General Inspector of Ordnance,
Bureau of Ordnance,
Navy Department,
Washington, D. C.

Dear Sir:

Undoubtedly you are wondering what has ha pened to the License which the Chemical Foundation stated it was willing to grant to the United States Government as represented by the Secretary of the Navy. I may say that this work was held up in view of a thorough checking and rechecking of our list of patents.

This work has now been completed and a revised list of Patents owned by The Chemical Foundation has been issued. Hence, I am proceeding at once with the preparation of a License, extending to the Government a privilege to use any of the inventions covered by the Patents owned by The Chemical Foundation.

You will undoubtedly recall that in a communication from the War Department a request was made for one hundred (100) copies of a list of patents owned by The Chemical Foundation. I regret very much that owing to a limited supply of these lists, it will not be possible to forward one hundred (100) copies. However, I am forwarding to you under separate cover ten (10) copies of the list and will appreciate it greatly if some of these may be passed on to the War Department for their information.

I might add, that if it should seem highly desirable that a few additional copies be forwarded, this detail could probably be arranged

Thanking you very much for the keen appreciation which you have shown in connection with the difficulties pertaining to the preparation of the license, and hoping that we may be able to place the license in your hands in the very near future, we beg to remain

Very truly yours,

THE CHEMICAL FOUNDATION,
INCORPORATED,
By Lloyd Van Doren.

LVD:ACK

PLAINTIFF'S EXHIBIT No. 626.

LAW OFFICES,
PALMER, DAVIS AND SCOTT
220-7 Munsey Building
Washington, D. C.

December 15, 1921.

Chief, Bureau of Ordnance,
Navy Department,
Navy Building, Washington, D. C.

Attention: Commander Norton

Sir:

Referring to the correspondence heretofore had between your Bureau and The Chemical Foundation, Inc., relative to a license from The Foundation to the Government covering Letters Patent owned by it, we wish to respectfully advise that we have today delivered personally to Commander Norton duplicate originals of a proposed release and license executed by The Foundation, prepared for acceptance by The Secretary of the Navy on behalf of the Government.

We would be pleased to confer with you or such officers as you may suggest relative to this matter, if the same is desired. Otherwise, if the release and license meets with the approval of The Secretary of the Navy, we wish you would kindly return one of the duplicate originals as executed by him to this office.

Respectfully yours,
PALMER, DAVIS & SCOTT.

SMS/p

PLAINTIFF'S EXHIBIT No. 627.

N. Ord. 6.
In Reply Address
Bureau of Ordnance, Navy Department
and Refer to No.
37649/18 (S1)-O
ALB

NAVY DEPARTMENT
BUREAU OF ORDNANCE
Washington, D. C.

January 19, 1922.

Attention Mr. Stellwagon

Subject: Acceptance by Department of License from the Chemical Foundation, Inc., covering letters patent owned by it.

Reference: (a) Your letter of December 15, 1921, to the Bureau of Ordnance.

Enclosure: (A) Copy of license.

Gentlemen:

There is forwarded herewith, duplicate of release from the Chemical Foundation which has been accepted by the Navy Department.

In order that the original release may be properly recorded in the Patent Office, it is requested that the list of patents licensed thereunder be sent to the Bureau of Ordnance at as early a date as practicable and that the same be properly attested by the Secretary of the Chemical Foundation as accompanying the license of November 17, 1921.

Very truly yours,
CHAS. B. McVAY, JR.,
Rear Admiral, U. S. Navy,
Chief of Bureau of Ordnance.
A. L. NORTON,
Commander, U. S. Navy,
By direction.

Palmer, Davis and Scott,
220 Munsey Building,
Washington, D. C.

PLAINTIFF'S EXHIBIT No. 628.

Law Offices
Palmer, Davis and Scott
220-7 Munsey Bldg.,
Washington, D. C.

January 21, 1922.

Hon. Chas. B. McVay,
Rear Admiral, U. S. Navy,
Chief of Bureau of Ordnance,
Navy Department, Washington, D. C.
Your No. 37649/18-(S1)-O ALB.

Attention A. L. Norton, Commander, U. S. N.

Dear Sir:

We wish to acknowledge receipt of your letter dated January 19, 1922, inclosing duplicate original of release and license from the Chemical Foundation to the United States Government. We have carefully noted the remarks made in the second paragraph of your letter and are calling the same to the attention of The Foundation.

Very truly yours,
PALMER, DAVIS and SCOTT.

SMS/p

PLAINTIFF'S EXHIBIT No. 629.

Law Offices
Palmer, Davis and Scott
220-7 Munsey Bldg.,
Washington, D. C.

June 3, 1922.

Rear Admiral Chas. B. McVay, Jr.,
Chief, Bureau of Ordnance,
Navy Department,
Washington, D. C.

Attention of Commander A. L. Norton, U. S. N.
Your No. 37649/18-(S1)-O ALB.

Dear Sir:

At the request of the Chemical Foundation, Inc., we herewith transmit to you Schedules A, B, C, D and E, which are to accompany the Release and License issued by it to the Government of the United States of America; each of said Schedules being signed by Mr. George J. Corbett, Secretary of the Chemical Foundation, Inc., in accordance with the provisions of the said Release and License.

Very truly yours,
PALMER, DAVIS and SCOTT.

SMS R

PLAINTIFF'S EXHIBIT No. 630.

Statement of Col. Thomas W. Miller, Alien Property Custodian, before Committee on Interstate and Foreign Commerce.

STATEMENT OF COL. THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN

MR. MILLER. Mr. Chairman and members of the committee, if it meets with the pleasure of the chairman and the members of the committee, I would request that I be permitted, in a very few moments to briefly outline the purposes of this bill as we see it; and if it suits your pleasure, Mr. Chairman and gentlemen, that I be not interrupted for a few moments, so that I can make a connected and general statement.

If that meets your pleasure then, Mr. Chairman and gentlemen of the committee, I shall proceed along that line.

THE CHAIRMAN. We shall hope that the members of the committee will restrain their interest in the matter as you desire, but it is not guaranteed.

Mr. Miller. ' The bill which the chairman has referred to is the result of a number of months' study and consideration of the alien property situation which has developed since the establishment of peace and peace-time relations between the United States and the former powers with which she was at war.

Under the original trading with the enemy act, with which you gentlemen are undoubtedly familiar, the property belonging to enemy nationals, such as Germans, Austrians, and Hungarians, was seized and held by the Alien Property Custodian after the trading with the enemy act passed, on October 6, 1917. In addition thereto, under the provisions of that law, which were specific, property in this country was seized by the Alien Property Custodian belonging to people of other nationalities, who, at the time of war between the United States and the enemy Governments, were residing or abiding in the territories of the countries with which we were at war. I mention that because a considerable misunderstanding has been created, and rightfully so, as to why a number of people who are American citizens, or who claim to be American citizens, have had their property sequestered by the Alien Property Custodian, and in some cases under the law today we are unable to return it.

Briefly stated, the approximate amount of property taken over under the first Alien Property Custodian, Mr. A. Mitchell Palmer, amounted, in round figures, to $600,000,000. You have heard the figures, $800,000,000, and millions are juggled around in talking about this alien property as if they were dollars. With respect to the office, generally speaking, it is impossible to estimate accurately, within several millions, as to what this property is worth from day to day, or was worth when we took it over. Your Government, through the Alien Property Custodian's office, is administering probably the largest bank and trust company in the world. This property consists today of about 31,000 active accounts. I shall refer to them as trusts. Every piece of property seized was given a trust number. In a number of trusts there are more than one person participating. And this consists of property scattered from the Philippine Islands and Hawaii to the coast of New England, consisting of industrial plants, such as chemical and woolen mills, steamship lines, banks, land and cattle companies, salmon factories, gold, silver, and other precious mines of metal, and other miscellaneous industrial plants, to say nothing of thousands of parcels of real estate and trusts represented by securities and liquid assets.

We are holding that property in accordance with the provisions of the trading with the enemy act, which says it shall be held until such time as Congress shall direct disposition thereof. Under the Knox-Porter peace resolution, which brought about a state of peace between the former enemy powers and the United States, which was signed July 2, 1921, we find, in section 5, words to this effect: "That all property belonging to the nationals of these former enemy powers shall be held by the United States and no disposition thereof made, except such as shall have been heretofore or hereafter specifically provided by law, until such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have, respectively, made suitable provision for the satisfaction of all claims against such Government," etc.

I mention that not in any way to encroach upon the duties of the Department of State and the Mixed Claims Commission, which is now operating, but in order that in a discussion of this bill I may be the more readily understood. In theory this property is

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UNITED STATES V. CHEMICAL FOUNDATION, INC.

1926 FO
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awaiting such disposition as the Congress cares to make of it.

On the one side there are those who advocate the immediate return of all property, and without further delay, on the other side are those who advocate the retention of this property and the immediate utilization of that property for the payment of the claims of American citizens as they are adjudicated and awards made by the Mixed Claims Commission.

I am not here to discuss the international phase of the situation, nor to go into a detailed discussion of the law on that point. It is maintained by some that under the treaty of Versailles, those portions in which the United States participates, as well as under our treaty with Germany, Austria, and Hungary, we could today proceed to liquidate this alien property and pay these claims as they are adjudicated. On the other hand, this administration, as well as previous ones, has made no secret of the fact that as a Nation we are opposed to the confiscation of property of private citizens to pay the debts of the Imperial German Government or of the Imperial and Royal Austro-Hungarian Government. Nevertheless, under our resolution, to which I have referred, and our treaties with those countries, we have no other recourse at the present time but to hold this property as a guarantee—using the language of the resolution—until such time as these claims are adjudicated.

Now, to depart briefly and to give merely what I understand personally, it is said there will be probably a billion dollars' worth of claims filed with the Mixed Claims Commission against Germany and Austro-Hungary. That seems like a large sum of money. All precedents show that all war claims, in past wars, were settled on a basis of about 8 per cent. If that is carried out in an adjudication of these claims the settlements would amount to $80,000,000. Not that

I adhere to this principle, but you will find, if you look over the records of past wars, that loss of life has been settled at a 2 per cent. percentage. So in the case of our $190,000,000 of claims against Germany for losses of life on the high seas, if we go by any precedents in the past, they are to be considerably boiled down. The distinguished Senator from Alabama, Senator Underwood, asked me if I approved of the settlement of the *Lusitania* claims on a basis of 2 per cent. I told him, and I say the same to this committee, we are not governed by our feelings in this matter, but by past usages and precedents and what laws you gentlemen pass in Congress. I thought I would throw that in personally, because I touched upon the Mixed Claims Commission here today.

Now, this bill we are discussing drives down the middle of the road between those two angles that I have outlined heretofore. In our office we are the recipients of hundreds of the most pathetic appeals that anyone could receive. When you have several thousands of unwilling depositors, in this institution which I have compared to a trust company, you can well understand why they ask the question as to why they do not receive their property back, when we have been almost four years at peace, in theory, at least. And thousands of these people who have been connected with America are interested by their investments over here which we have seized and they have their friends and relatives in this country, and they, in turn, as you know, bombard you Members of Congress with queries which have been very difficult to answer or understand, as to why this property has not been returned to them four years after the armistice.

We, therefore, considered a way to temporarily, at least, handle the situation. We have suggested that all those amounts or trusts held by the Alien

Property Custodian of the value of $10,000 and under be returned to the people from whom the property was taken. That was just a dead line that was drawn by those of us who were considering the proposition.

Today, in the Alien Property Custodian's office, there are 30,368 active trusts. That represents generally more than 30,000 people—many more. There are 28,144 trusts of those active trusts, that are of a value of $10,000 and under. The average value of them is about $784. There are 2,224 trusts of the value of $10,000 and over.

Now, in arriving at the figures that I will give you, let me explain again that we can not state specifically, within perhaps several millions of dollars, what the return of property would amount to if this bill were enacted into law. It would take a lot of money and expert bookkeeping and accounting and far more personnel than I am allowed in the office to have a ledger every day showing just what every one of those accounts was worth. We have every conceivable character of stock or bond or mortgage that we are holding, and it would mean running over the quotations from the stock exchanges in the New York papers every day and multiplying the quotations by the number of stocks or bonds, etc., to say what it amounts to. It fluctuates so. But taking these figures, and our experience for what it is worth, if you returned all the trusts of $10,000 and under, it would amount to approximately $22,122,000.

It is only right and proper, and would probably be necessary to make the law just, at the same time we are returning the trusts under $10,000, to return $10,000 out of every trust of the value of $10,000 and over, and that would add an additional $22,240,000. So that today, the only accurate estimate I can give you of what this $10,000 return would take from the office is that it amounts to approximately $44,362,000.

The approximate value of the alien property on hand November 30, 1922, exclusive of any vessels, carried on the books at $34,000,000, was $347,310,000.

I have here, Mr. Chairman, a statement of the cash and assets on hand, as well as claims paid, on various dates. It is brought up to date, and is similar to a table I inserted during the hearings before the Senate Committee on the Judiciary on Senator Underwood's bill. It shows the various items of cash and other assets on hand, and claims paid, at the termination of the tenure of office of A. Mitchell Palmer as Alien Property Custodian on March 4, 1919; and also a similar statement at the termination of the tenure of office of Francis P. Garvan as Alien Property Custodian on March 16, 1921, and similar information with respect to the office under the present administration as of July 15, 1922, and as of November 29, 1922. With your permission, Mr. Chairman and gentlemen, I would like to insert this in my remarks on this point.

The Chairman. Without objection, it may go in.

(The statement referred to is as follows:)

Statement of cash and assets on hand and claims paid on various dates, submitted by Thomas W. Miller, Alien Property Custodian.

	Mar. 4, 1919.[1]	Mar. 16, 1921.[2]	July 15, 1922.	Nov. 29, 1922.
Cash deposited with the Secretary of the Treasury:				
Invested	$77,068,873.62	$160,128,081.17	$164,375,655.73	$169,797,869.28
Uninvested ..	9,568,587.02	10,397,151.17	6,214,528.66	5,047,314.38
Total cash .	86,637,460.64	170,525,232.34	170,590,184.39	174,845,183.66
Cash with depositaries	1,008,453.99	805,366.73	437,588.24	1,013,855.48
Stocks	166,501,790.05	88,049,656.00	72,351,870.95	69,833,509.16
Bonds, other than investments made by Secretary of the Treasury	60,926,044.86	55,367,184.04	51,190,218.92	50,232,028.77

	Mar. 4, 1919.[1]	**Mar. 16, 1921.**[2]	**July 15, 1922.**	**Nov. 29, 1922.**
Mortgages	$12,645,708.62	$8,312,066.38	$5,668,451.70	$5,406,773.30
Notes receivable	5,778,330.53	1,714,231.14	949,469.09	611,327.64
Accounts receivable	41,018,850.21	15,825,353.33	10,165,412.14	9,948,615.89
Real estate	10,456,200.74	7,671,492.87	5,138,490.33	5,018,499.72
Miscellaneous incoporated businesses and estates in liquidation and remainderman accounts	88,637,127.69	56,340,765.72	30,401,224.52	30,400,982.60
	473,609,967.33	404,602,348.55	346,892,910.28	347,310,776.22
Claims paid to date	1,468,347.18	129,515,453.23	199,452,540.76	203,699,155.68
Total property accounted for	475,078,314.51	534,117,801.88	546,345,451.04	551,009,931.90
Enemy vessels (an item carried on the books of the Alien Property Custodian of property not subject to his control)	34,193,690.00	34,193,690.00	34,193,690.00	34,193,690.00

[1] Termination of A. Mitchell Palmer's tenure of office as Alien Property Custodian.

[2] Termination of Francis P. Garvan's tenure of office as Alien Property Custodian.

PLAINTIFF'S EXHIBIT No. 631.

RELEASE BY THE CHEMICAL FOUNDATION, Inc., TO THE ALIEN PPOPERTY CUSTODIAN OF ALL ITS RIGHTS, TITLE AND INTEREST IN AND TO CERTAIN PATENTS AND TRADEMARKS

(1) WHEREAS, Francis P. Garvan, as Alien Property Custodian, did on the 10th day of April, 1919, during his incumbency of said office of Alien Property Custodian, transfer and assign to The Chemical Foun-

dation, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware, all right, title and interest in and to certain Letters Patent of the United States; and

(2) WHEREAS, as evidence of said transfer and assignment, the said Francis P. Garvan, as Alien Property Custodian, did deliver, during his incumbency of said office of Alien Property Custodian, to the said The Chemical Foundation, Inc., a duly executed instrument of assignment bearing date of April 10th, 1919, and did therein recite certain Letters Patent of the United States, all right, title and interest in and to which were thereby stated to be transferred and assigned to the said The Chemical Foundation, Inc., for the consideration specified in said instrument of assignment, which said instrument of assignment was thereafter, on the 21st day of April, 1919, recorded in the United States Patent Office in Liber Y-107, page 1; and

(3) WHEREAS, in confirmation and ratification of the aforesaid instrument of assignment, said Francis P. Garvan, as Alien Property Custodian, did deliver, during his incumbency of said office of Alien Property Custodian, to The Chemical Foundation, Inc., a duly executed instrument bearing date of March 1st, 1921, which said instrument of confirmation and ratification was thereafter, on the 3rd day of March, 1921, recorded in the United States Patent Office in Liber Q-112, page 301; and

(4) WHEREAS, It now appears that the two certain Letters Patent of the United States more particularly specified and described in paragraph seven (7) hereof, were by mistake and through inadvertence and without the intent and contemplation of the parties to said instruments and without agreement or consideration for the transfer or assignment thereof, in-

cluded in said recital of said instrument of assignment bearing date of April 10th, 1919; and

(5) Whereas, it is the desire and intention of the present incumbent of the said office of Alien Property Custodian and the desire and intention of the said The Chemical Foundation, Inc., to correct the said mistake; and

(6) Whereas, Thomas W. Miller was, on the 16th day of March, 1921, duly appointed and thereafter duly qualified as, and now continues to be the present incumbent of said office of, Alien Property Custodian, in succession of the said Francis P. Garvan;

(7) Now, Therefore, in consideration of the premises and the sum of One (1) Dollar, lawful money of the United States by each to the other in hand paid, the receipt whereof is hereby acknowledged, it is agreed by and between the said Thomas W. Miller, as Alien Property Custodian, and the said The Chemical Foundation, Inc., that the said instrument of assignment from the said Francis P. Garvan, as Alien Property Custodian to the said The Chemical Foundation, Inc., bearing date of April 10th, 1919, shall be amended by striking therefrom all reference to the following patents:

Patent No.	*Date of Issue*	*Title.*
912,352	February 16, 1909.	Objective.
1,108,307	August 25, 1914.	Spherically chromatically astigmatically and comatically corrected double objective.

and that the said instrument of confirmation and ratification bearing date of March 1st, 1921, shall, so far as it relates to said instrument of assignment of April 10th, 1919, be construed to confirm said instrument of assignment of April 10th, 1919, as thus amended; and the said The Chemical Foundation, Inc., does for itself and its successors and assigns hereby release and forever quitclaim any right, title and interest, real or apparent, in and to the said Letters Patent of the United States specified in this paragraph seven (7) hereof in favor of the said Thomas W. Miller, as Alien Property Custodian, his successors in office and assigns.

In Witness Whereof the said Thomas W. Miller, as Alien Property Custodian, has set his hand and caused his seal of office to be affixed hereto; and the said The Chemical Foundation, Inc., has caused these presents to be signed and its corporate seal to be hereunto affixed by its duly authorized officers this 11th day of April, 1922.

....
Alien Property Custodian.

THE CHEMICAL FOUNDATION, INC.
By (Sgd.) Francis P. Garvan,
President.

Attest:
(Sgd.) Geo. J. Corbett,
(Seal) *Secretary.*

PLAINTIFF'S EXHIBIT No. 631-A.

June 9, 1922.

Hon. Thomas W. Miller,
War Risk Building,
Washington, D. C.

In re: Reassignment of Patents
912,352 and 1,108,307

Sir:

On April 11, 1922, there were forwarded two (2)

The two copies of this quit-claim have not been returned to me, and I will appreciate it if you will take this matter up as promptly as possible, as I am anxious to have this adjusted before I leave.

JRZ/ams

PLAINTIFF'S EXHIBIT No. 631-D.

THE
CHEMICAL FOUNDATION
INCORPORATED
81 Fulton Street
New York City

Francis P. Garvan
President
Vice-President
George J. Corbett
Treasurer
Joseph H. Choate, Jr.
General Counsel
Ramsay Hoguet
Patent Counsel

Trustees
Otto T. Bannard, Chairman
Cleveland H. Dodge
George L. Ingraham
B. Howell Griswold, Jr.
Bradley W. Palmer

Cable Address
Chemfound

Refer to

April 11, 1922.

Mr. J. R. Zimmerman,
Office of Alien Property Custodian,
16th and P Streets, NW.,
Washington, D. C.

In re: Patent #912,352, 1,108,307

My dear Mr. Zimmerman:

I am enclosing herewith two (2) copies of a release by the Foundation to the Custodian of all of its right, title and interest in and to the Patents above identified.

The release has been drawn in duplicate because of certain features pertaining to the transfer and confirmation of the patents, and if you will kindly have the Custodian sign and seal the two copies, retaining one for the Custodian's file and returning the other to me, I shall appreciate it very much.

This release, we believe, will satisfy the situation surrounding the patents. An abstract of title which we have had made shows the title is now residing in the Foundation and does not show any other transfer by the Custodian. Hence I would suggest, although undoubtedly it is superfluous, that the present release be made a matter of record in the Patent Office.

Very truly yours,
(Sgd.) LLOYD VAN DOREN.

LVD: ACK
Encs.

PLAINTIFF'S EXHIBIT No. 631-E.

THE
CHEMICAL FOUNDATION
INCORPORATED
81 Fulton Street
New York City

Francis P. Garvan
President
Vice-President
George J. Corbett
Treasurer
Joseph H. Choate, Jr.
General Counsel
Ramsay Hoguet
Patent Counsel

Trustees
Otto T. Bannard, Chairman
Cleveland H. Dodge
George L. Ingraham
B. Howell Griswold, Jr.
Bradley W. Palmer

Refer to

Cable Address
Chemfound

March 29, 1922.

Mr. J. R. Zimmerman,
Office of Alien Property Custodian,
Washington, D. C.

In re: patents #912,352, 1,108,307

Dear Mr. Zimmerman:

The copies of the License given by the Custodian to the C. P. Goerz American Optical Company and the assignment to Merton E. Grush containing the two patents above mentioned, are at hand and I wish to thank you very much for having these copies prepared and for forwarding them to me.

They will undoubtedly be of material assistance in clearing up the situation concerning these patents.

There does not seem to be any immediate circumstance which will bring me to Washington, and it will probably be some time in the month of May until I will again make a trip. However, if something comes up in the meantime, you may rest assured that I will let you know my plans.

Extending our best wishes and kind personal regards to Mrs. Z. and yourself, I remain,

Very sincerely,

(Sgd.) LLOYD VAN DOREN.

LVD: ACK

PLAINTIFF'S EXHIBIT No. 631-F.

March 28, 1922.

The Chemical Foundation, Inc.,
81 Fulton Street,
New York City.

Attention: Dr. Van Doren

Gentlemen:

Replying to your letter of March 26th, in regard to the assignment from the Alien Property Custodian to Grush, covering Patent Nos. 912,352 and 1,108,307.

I am enclosing a copy of the assignment and also a copy of a license covering the same Patents given to C. P. Goerz American Optical Company.

This license was merely given to protect the Goerz American Optical Co., from infringement suits which might arise from the use of the Patents while held by the Alien Property Custodian, and I am simply sending it to you in order that you may have a complete record.

If I can be of any additional service to you in this matter, kindly call on me.

Whenever you are contemplating coming to Washington, let me know.

Yours very truly,
(Sgd.) J. R. ZIMMERMAN,
Patent Section.

JRZ/ams

PLAINTIFF'S EXHIBIT No. 631-G.

THE
CHEMICAL FOUNDATION
INCORPORATED
81 Fulton Street
New York City

Francis P. Garvan
President

Vice-President
George J. Corbett
Treasurer
Joseph H. Choate, Jr.
General Counsel
Ramsay Hoguet
Patent Counsel

Trustees
Otto T. Bannard, Chairman
Cleveland H. Dodge
George L. Ingraham
B. Howell Griswold, Jr.
Bradley W. Palmer

Refer to

Cable Address
Chemfound

March 26, 1922.

Mr. J. R. Zimmerman,
Office of the Alien Property Custodian,
Washington, D. C.

Dear Mr. Zimmerman:

We rather feel in connection with the consideration of quitclaiming to the Custodian Patents #912,352 and 1,108,307, that the assignment from the Custodian to Grush dated June 8, 1920, may be of assistance to us, and therefore if it may be so permitted, we will appreciate it very much if you will kindly send us a copy of this assignment.

With always best wishes, I remain,

Very truly yours,
(Sgd.) LLOYD VAN DOREN,
Per ACK.

LVD: ACK

PLAINTIFF'S EXHIBIT No. 631-H.

March 16, 1922.

The Chemical Foundation, Inc.,
81 Fulton Street,
New York City.

Attention: Dr. Van Doren

Gentlemen:

Referring to your letter of March 13, and mine of March 15, in regard to Patents 912,352 and 108,307, I beg to advise that I have just been authorized by the Alien Property Custodian to accept from the Chemical Foundation a quit-claim covering the two Patents mentioned, and to execute a new assignment to Merten E. Grush in order to adjust this duplication in assignments.

As stated in my letter of March 15, it will not be necessary to consider the license issued to the Government, as the sale to Grush was made subject to this license and the assignment, of course, would be executed subject to it.

Yours very truly,
(Sgd.) J. R. ZIMMERMAN,
Patent Section.

JRZ/ams

PLAINTIFF'S EXHIBIT No. 631-I.

March 15, 1922.

To: Col. Thomas W. Miller.
From: Mr. Zimmerman, Patent Section.

Several months ago, it was discovered that Patents #912,352 and 1,108,307 had been sold and assigned to the Chemical Foundation, Inc., on April 10, 1919, and also sold and assigned to Merten E.

Grush, the purchaser of the C. P. Goerz American Optical Company, on June 8, 1920.

At the time this was discovered, I took the matter up with the Chemical Foundation, and suggested the return of these two patents to the Alien Property Custodian, in order that some adjustment might be made, and recently the Chemical Foundation has expressed a willingness to quit-claim to the Alien Property Custodian these two patents.

Am I authorized to accept from the Chemical Foundation this quit-claim, and to execute to Merten E. Grush a new assignment in order that a perfect title may be conveyed to him? As matters now stand, the title is vested in the Chemical Foundation, and if it quit-claims to the Custodian, title will be vested in the Custodian, and not in Grush, the purchaser.

JRZ/ams

O.K.
M
3/15/22

PLAINTIFF'S EXHIBIT No. 631-J.

March 15, 1922.

The Chemical Foundation, Inc.,
81 Fulton Street,
New York City.

Attention: Dr. Van Doren

Gentlemen:

Replying to your letter of March 17, in regard to Patent Nos. 912,352 and 1,108,307, it is my opinion that the best way to handle this, would be for the Chemical Foundation to quit-claim these two patents to the Alien Property Custodian, and have him reassign them to Merten E. Grush.

The license to the United States Government is not really connected with this transfer, as the assignment to Merten E. Grush was subject to the license already issued to the Government.

Under present conditions, I do not feel that I am authorized to suggest this adjustment, but have today referred the whole question to Colonel Miller, requesting from him his authority to make the adjustment, and as soon as I receive a ruling on this, I will let you hear from me.

Yours very truly,
(Sgd.) J. R. ZIMMERMAN.
Patent Section.

JRZ/ams

PLAINTIFF'S EXHIBIT No. 631-K.

THE
CHEMICAL FOUNDATION
INCORPORATED
81 Fulton Street
New York City

Francis P. Garvan
President

Vice-President
George J. Corbett
Treasurer
Joseph H. Choate, Jr.
General Counsel
Ramsay Hoguet
Patent Counsel

Trustees
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Cleveland H. Dodge
George L. Ingraham
B. Howell Griswold, Jr.
Bradley W. Palmer

Refer to

Cable Address
Chemfound

March 13, 1922.

Mr. J. R. Zimmerman,
1307 Shephard Street, NW.,
Washington, D. C.

My dear Mr. Zimmerman:

You will recall that some time ago you called attention to the fact that Patents No. 912,352, and 1,108,307 which were assigned to the Foundation on April 10, 1919, had also been licensed to the Government on April 3, 1920, and that they had also been sold along with the other assets of the C. P. Goerz American Optical Company and assigned to Merten E. Grush on June 8, 1920.

Further, the question was raised whether Mr. Garvan would quitclaim these patents to Grush. The situation was presented to Mr. Corbett in a memorandum and he has requested Mr. Haaren to look into it and see what can best be done to straighten out the situation, and he raised the question as to what your thoughts are relative to a plan of procedure.

It would appear that the license to the Government would have to be considered, probably obtaining from the Government a quitclaim for the rights transferred to it in the license of April 3, 1920, then if the Foundation should also quitclaim to the Custodian rights transferred to it in the assignment of April 10, 1919, the Custodian's title would be unhampered and a new, in the nature of a corrective assignment, to Mr. Grush should clear the record and give to Grush the title which of course he does not have at the present time.

Undoubtedly Grush does not realize that he obtained nothing with respect to the two patents hereinbefore mentioned, inasmuch as the question of ownership has not been raised by him and in reality he can have no basis for a claim since the prior title resides in the Foundation.

I recall that when you were speaking of this matter last, it was your thought that there was little likelihood of any immediate embarrassment being caused the Office of the Custodian, but that there might possibly arise a controversy due to the double assignment of the patents. From what Mr. Haaren has said I judge the Foundation stands ready to assist in straightening out the situation in every way possible, and hence if you will kindly grant us your thoughts with respect to the same it will be appreciated.

Very truly yours,
(Sgd.) LLOYD VAN DOREN.

lVD:ACK

PLAINTIFF'S EXHIBIT No. 631-L.

THE
CHEMICAL FOUNDATION
INCORPORATED
81 Fulton Street
New York City

Francis P. Garvan
President

Vice-President
George J. Corbett
Treasurer
Joseph H. Choate, Jr.
General Counsel
Ramsay Hoguet
Patent Counsel

Trustees
Otto T. Bannard, Chairman
Cleveland H. Dodge
George L. Ingraham
B. Howell Griswold, Jr.
Bradley W. Palmer

Refer to

Cable Address
Chemfound
December 13, 1921.

Mr. J. R. Zimmerman,
Office of Alien Property Custodian,
16th and P Streets NW.,
Washington, D. C.

Dear Mr. Zimmerman:

The question of quitclaiming Patents Nos. 912,352 and 1,108,307, assigned to The Chemical Foundation Incorporated April 10, 1919, and subsequently sold along with the other assets of the C. P. Goerz American Optical ,Company, and assigned to Merten E. Grush, the purchaser of that company, under an assignment dated June 8, 1920, has been referred to Mr. Garvan through Mr. Corbett, and as soon as I have any knowledge pertaining to this question I shall be pleased to transmit the same to you at once.

Very truly yours,

(Sgd.) LLOYD VAN DOREN.

LVD: ACK

PLAINTIFF'S EXHIBIT No. 631-M.

THE
CHEMICAL FOUNDATION
INCORPORATED
81 Fulton Street
New York City

Francis P. Garvan
President
Vice-President
George J. Corbett
Treasurer
Joseph H. Choate, Jr.
General Counsel
Ramsay Hoguet
Patent Counsel

Trustees
Otto T. Bannard, Chairman
Cleveland H. Dodge
George L. Ingraham
B. Howell Griswold, Jr.
Bradley W. Palmer

Refer to

Cable Address
Chemfound

November 23, 1921.

Mr. J. R. Zimmerman,
Office of Alien Property Custodian,
16th & P. Streets, NW.,
Washington, D. C.

Dear Mr. Zimmerman:

With respect to the matter of quit-claiming Patents Nos. 912,352 and 1,108,307 which were sold and assigned subsequent to the assignment to the Foundation, I regret to say that I have not had an opportunity to take this matter up with Mr. Garvan, but I am trying to get a few minutes with him at the very earliest opportunity. As soon as I am able to present this matter to him I shall be pleased to inform you regarding his desires with respect to the same.

I note that you question in the last paragraph of your letter as to when I expect to be in Washington, and in answer thereto, as I see things now I do not expect to be in Washington again until after the first of the year. However, if there is something of real import I could probably arrange to come to Washington for a day or two.

Very truly yours,
(Sgd.) LLOYD VAN DOREN.

LVD:ACK

PLAINTIFF'S EXHIBIT No. 631-N.

Trust No. 12247.
Report No. 38549.

November 19, 1921.

The Chemical Foundation, Inc.,
81 Fulton Street,
New York City.

Attention, Dr. Van Doren.

Gentlemen:

On examination of our records, I find that patents Nos. 912,352 and 1,108,307 were assigned to The Chemical Foundation on April 10, 1919. They were also licensed to the Government on April 3, 1920, and they were sold along with other assets of the C. P. Goerz American Optical Company and assigned by the custodian to Merton E. Grush, the purchaser of that Company, under an assignment dated June 8, 1920.

Will you kindly take this matter up with Mr. Garvan and ask him for me if he will agree to quit claim these patents to Merton E. Grush.

My reason for asking you to do this is that you wil be able to get all of the data concerning these two patents compiled before submitting the matter to Mr. Garvan.

I will greatly appreciate your kind attention to this and will be glad to reciprocate whenever it is in my power.

Will you kindly advise me if you expect to be in Washington in the near future.

Yours very truly,

(Sgd.) J. R. ZIMMERMAN,
Patent Section.

JRZ:MBJ

PLAINTIFF'S EXHIBIT No. 632.

Norma Co. of America.

December 4, 1918.

Henry B. McCormick, Esquire,
305 North Front Street,
Harrisburg, Pa.

Dear Mr. McCormick:

I have your letter of the twenty-fifth ultimo, in reference to the Norma Company of America.

It is very difficult to arrange a private sale of any of these properties, because the law says we must sell at public sale unless the President "stating the reasons therefor in the public interest" shall otherwise determine. It is rather difficult to find reasons in the public interest for a private sale in this case, or indeed in any case.

I should think a plan might be worked out by which a public sale could be held, and Mr. Nones could be protected against any persons acquiring an interest in the property whom he might be afraid. I wish you would talk this matter over with Mr. Guffey, Director of the Bureau of Sales, 110 West 42nd Street, New York City, or with Ralph J. Baker of his office. Mr. Baker lives in Harrisburg and you might be able to see him there. I have shown your letter to Mr. Guffey and Mr. Baker.

Yours truly,
(Sgd.) A. MITCHELL PALMER

PLAINTIFF'S EXHIBIT No. 633.

Copy

Emery, Varney, Blair & Hoguet,
149 Broadway,
New York.

March 15, 1920.

Lucien H. Boggs, Esq.,
16th & P Streets, N. W.,
Washington, D. C.

Dear Mr. Boggs:

In regard to the matter of patents and trade marks now held by the Custodian and which relate to the business of concerns sold by him but which were not listed and sold in the prospectuses of such sales, I confirm what I said to you in Washington last week and await your definite advice and instructions.

Mr. Hoguet and I advise that in every such case, the purchaser be permitted to acquire, for a small sum, a naked license—a license which amounts simply to a waiver of suit thereunder—so that he will be immune from prosecution in the future under such patent or patents. As we left the matter, I understood that you were agreeable to this course and that you would take up the matter at once with the Custodian and fix the consideration for such a license. In my opinion, this should be paid as a lump sum and I think ten dollars per patent would be fair, reasonable and proper under all of the circumstances.

Mr. Hoguet and I also advise in the case of any such patent or patents, that they be offered for sale at public sale provided the purchaser of the business to which they relate will agree to bid at such public sale and to offer a price at least sufficient to cover the expenses of the sale.

As I told you, I discussed this matter fully with

Mr. Garvan when in Washington last week, and he was agreeable to this course.

Will you not write me definitely about this as soon as possible so that I can act in the matters of the Norma Company of America and the Jagenberg Machine Company in which this situation has arisen.

Yours very truly,

(Sgd.) L. E. VARNEY.

G:H

PLAINTIFF'S EXHIBIT No. 634.

THE NORMA COMPANY OF AMERICA
BALL BEARINGS, ROLLER BEARINGS
THRUST BEARINGS
Anable Ave., Long Island City,
New York, N. Y.

Trade Mark
"Norma"
Registered
Office of
Walter M. Nones
President

Cable Address
Normaco, New York
Liebers and A B C
(5th Edition) Codes

April 26th, 1921.

Hon. Col. T. W. Miller,
Alien Property Custodian,
16th & P Streets,
Washington, D. C.

Dear Sir:

I appreciate the receipt of your letter of the 23rd of April and thank you for your decision to grant me a non-exclusive license under the desired patents. I would naturally have preferred an exclusive license as this would give me better protection in developing any business that could be found for these devices. A non-exclusive license will, however, serve to protect my Company's interests and I appreciate very much the decision you have taken as this will answer this purpose. I see that the license is to come through the Chemical Foundation, Inc. These patents have nothing to do with the Chemical industry and I am wondering why the license comes through them.

I would appreciate knowing why this is and to know if I should now apply to them for this license or whether I shall hear from them through your action.

Sincerely yours,
(Sgd.) W. M. NONES,
President.

WMN/CW

* * * * * * * * *
* Alien Property Custodian *
* Received Apr 28 1921 *
* Noted P. S. Date..... *
* Ans'd ...... Date..... *
* * * * * * * * *

PLAINTIFF'S EXHIBIT No. 634-A.

ALIEN PROPERTY CUSTODIAN
SIXTEENTH & P STREETS, N. W.
Washington, D. C.

April 23, 1921.

Mr. Walter M. Nones,
The Norma Company of America,
Anable Ave.,
Long Island City, N. Y.

Dear Sir:

Replying to your call at this office, as well as your communication of recent date, asking for an exclusive license for the Norma Company of America, in connection with certain patents seized by the Alien Property Custodian, I beg to inform you that after giving this matter considerable thought, I have determined to grant you a non-exclusive license on these patents. I understand from you that this will answer your purpose, and in addition thereto, it will be impossible for me to give you an exclusive license, inasmuch as the Navy Department now holds a non-exclusive license for these patents.

The form of procedure is to assign these patents to The Chemical Foundation, Inc., which I have done today, and they in turn will license them to you.

Very truly yours,
(Sgd.) THOMAS W. MILLER,
Alien Property Custodian.

PLAINTIFF'S EXHIBIT No. 635.

March 23, 1920.
File 00724-D

Messrs. Emery, Varney, Blair & Hoguet,
149 Broadway,
New York, N. Y.
Attention Mr. L. E. Varney.

Dear Mr. Varney:

I am sorry that I missed you during my recent visit to New York, but had a very satisfactory conference with Mr. Hoguet concerning your letter of the 15th relating to outstanding patents connected with manufacturing concerns, but which were not sold with the stock on account of the fact that we did not know their connection with the business.

I told Mr. Hoguet that I could not recommend to the Custodian the acceptance of an arbitrary sum as purely nominal as $10.00, and after some discussion we agreed on the following plan:

In such cases your firm will select a patent expert whose qualifications to give an opinion on such a matter are recommended by you. This expert will make an examination of the patent in question in relation to the business, and furnish the Custodian with an opinion as to a fair charge to be made for a non-exclusive license for the life of the patent, plus a release for past infringements, the expense of the services of this expert and your charges, if any, to be borne by the proposed licensee.

I discussed this plan with the Custodian yesterday, and it met with his approval.

Yours very truly,
(Sgd.) LUCIEN H. BOGGS,
General Counsel.

LHB:FW
N.F.

PLAINTIFF'S EXHIBIT No. 636.

(Copy)

EMERY, VARNEY, BLAIR & HOGUET
COUNSELLORS AT LAW
149 Broadway
New York

February 17, 1921.

Mr. Paul Smith,
Chief Corporation Management Division,
Office Alien Property Custodian,
16th & P Streets, N. W.,
Washington, D. C.

In Re: Norma Company of America.

Dear Mr. Smith:

I am sorry that I was not here when you took up with Mr. Hoguet the matter of the patents and trademark referred to in yours of the 9th instant, addressed to my firm for my attention.

I happened to be in Washington at the time and telephoned you at the Alien Property Custodian office there to see if I could see you.

It is true that our records were burned in the Hotel Chamberlain fire; but I distinctly remember the situation so that I can set it forth here, I think, correctly.

It was just a year ago this month that I went to Washington to take this matter up with Mr. Garvan. I went to Old Point on a Saturday, intending to come up to Washington by boat the following Sunday night. I had taken with me all the papers in the Norma Company case. I reached Washington all right and saw Mr. Garvan; but the papers were burned.

The following is what I put up to Mr. Garvan at that time. When we made the original search for patents to be sold with the business of the Norma Company of America, there were certain patents which we did not find and which were brought to our attention after the sale. One reason why we did not find these patents was because some of them belonged to Fortuna Werke, a German concern which we did not associate with the Norma Company of America at that time. There were other reasons why these patents were not turned up. You will understand that in every case we tried to turn up the patents which were necessary to the conduct of any business which the Custodian was to sell and that, owing to the difficulties which naturally attended such an investigation and the limited time in which it had to be made there was always a likelihood that the list of patents found would be incomplete.

After the sale of the Norma Company had taken place, certain patents were brought to our attention by Mr. Nones, the purchaser of the Norma Company, and among these patents were those which you refer to in your letter and also the trademark to which you refer. To determine whether these patents properly belonged to the business which Mr. Nones bought, I made a personal investigation, noting what the patents covered, and examining into the manufacture of ball bearings at the Norma Company's plant to see if these inventions were used in the regular course of that business. The result was that I found these inventions were used, always had been used, and that to continue the business of the company as it had been conducted before the sale, these patents were really necessary. The chief patents which we discovered originally and concluded to be connected with the Norma Company's business, were the patents belonging to Norma Compagnie g.m. b.H., a German concern, apparently the parent concern of the Norma Company of America. All of those patents were listed and sold with the stock of the Norma Company to Mr. Nones.

And so, a year ago, when I saw Mr. Garvan, I laid this all before him and he told me to take it up with Mr. Boggs. I took it up with Mr. Boggs and Mr. Boggs, according to a memorandum which I made at the time opposed the transfer of these additional patents to the Norma Company or to Mr. Nones for the following reason:

> "The difficulty Mr. Boggs finds is that the patents in question are in a different trust and he does not think that any rights should be given under such patents without proper compensation."

What the Custodian decided to do in view of Mr. Bogg's recommendation was to give to Mr. Nones, without any further payment, a non-exclusive license under these additional patents and under the trademark. Or, in the alternative, to put these patents up at public sale provided the Norma Company would guarantee to bid at the public sale and to offer at least as much for the patents and trademark as the expenses of such public sale amounted to.

I took this up a year ago with Mr. Nones and so advised Mr. Kalish, Mr. Nones' counsel, and nothing further, so far as I know, was ever done. My own feeling at the time was that if Mr. Nones purchased the stock of the Norma Company with the understanding that he was obtaining from the Custodian for the price for which he bid the property in, all of the patent and trademark rights which the Norma Company of America had formerly enjoyed and which were necessary to a conduct of its business as the same had been carried on theretofore, then the Custodian ought to see that he had the same patent monopoly and therefore that these additional patents and trademark were transferred to him. As this would require an executive order, I even went so far as to formulate such an executive order and I enclose the copy of the same which I find in my files. You will see that this executive order refers to other patents besides those mentioned in your letter. I took all of these patents up at the time and believe that all of them should be transferred.

I am sorry that I have been away from my office for two weeks and hence have been unable to take this matter up before. When I returned this morning, I not only found your letter but a letter from Mr. Kalish and enclosing a copy of a letter which he wrote to the Custodian on January 24th.

I am therefore writing Mr. Kalish today and am sending him a copy of this letter which will advise him of what I have done.

Yours very truly,
(Signed)

G/H/Enc.

PLAINTIFF'S EXHIBIT No. 637.

(Copy)

KALISH & KALISH
COUNSELORS AT LAW
27 WILLIAM STREET
NEW YORK

January 24th, 1921.

Alien Property Custodian,
Division of Patents,
Washington, D. C.

Dear Sir:

Our client, The Norma Company of America, having its principal office at Anable Avenue, Long Island City, is desirous of procuring a license for the use of the following patents seized by the Alien Property Custodian, which patents we understand, have not been sold or assigned by the Custodian.

Patent No.	Date of Patent	Inventor	Invention
1,048,073	December 24, 1912	Carl A. Hirth, assignor to Fortuna-Werke Albert Hirth.	Gage.
1,049,860	January 7, 1913	Albert Hirth	Micrometer Gage. Application No. 748,875 filed Feb. 17, 1913—allowed Dec. 27, 1917, to Carl A. Hirth—assigned to Fortuna-Werke together with

Trademark "Minimeter" No. 73162 to Fortuna-Werke and Albert Hirth.

The Norma Company manufactures ball, roller and thrust bearings and is probably the fifth largest manufacturer of bearings in the United States.

The Company, its business and personnel are known to your office.

Will you be good enough to let us have information as to the terms and conditions under which licenses for the use of the above patents may be procured by the Company?

Yours truly,
(Signed) KALISH & KALISH.

PLAINTIFF'S EXHIBIT No. 638.

4-8-21

HIRTH MINIMETER

The Minimeter is a precision gaging or testing apparatus invented in Germany by Carl Albert Hirth. Hirth was the head of the Norma Compagnie, G.m.b. H. of Cannstatt-Stuttgart, Germany, and also part owner of Fortuna Werke Albert Hirth of the same place. This firm later changed its name to Fortuna Werke Spezial Maschinen Fabrik, G.m.b.H.

The Fortuna Werke were manufacturers of special machines. The Norma Compagnie, G.m.b.H. manufactured Norma ball bearings and Hirth invented his Minimeter for the particular purpose of gaging the parts of ball bearings in process of manufacture by Norma Compagnie, G.m.b.H.

As Norma Compagnie, G.m.b.H. were entirely manufacturers of bearings and as the Minimeter could be used for other work as well as for work on ball bearings the Minimeter invention was taken into the Fortuna Werke although Norma Compagnie, G.m.b.H. manufactured a great many of the instruments for their own use.

The high quality and extreme precision of Norma ball bearings is largely due to the use of this Minim-

and other patents had not been thought of or included and that thereby The Norma Company of America would suffer. The Alien Property Custodian's office was approached and it promptly seized the patents of Carl Albert Hirth and all other patents found to be taken out by or assigned to Fortuna Werke Albert Hirth and Fortuna Werke Spezial Maschinen Fabrik.

Requests were made by our Legal Counsel, Mr. Edwin L. Kalish, of Messrs. Kalish & Kalish, New York, supported by Mr. Varney of Messrs. Emery, Varney, Blair & Hoguet, Patent Counsel of the Alien Property Custodian who knew all the circumstances of the case, to sell these Minimeter and other patents to Mr. Nones or to The Norma Company of America by private sale. These requests having been refused requests were then made to give an exclusive license and in September 1919 Mr. Garvan, Alien Property Custodian, assured Mr. Kalish that the President would probably direct a private sale and that in any event we could be assured of an exclusive license. Again in January 1920 Mr. Garvan, Alien Property Custodian, informed Mr. Kalish that the President was opposed to any more private sales but that this difficulty might be overcome or perhaps a way could be found through the grant of an exclusive license by the Alien Property Custodian. In any event a non-exclusive license would be granted upon request.

We avoided making a request for a non-exclusive license as others might be granted similar rights and our control over the Minimeter and through it our control in the ability to produce a particularly high grade bearing would be hurt through the ability of others to obtain the use of the instruments that protected our precision production.

No action could be obtained upon these matters and in March 1920 following a petition by Mr. Varney that these patents should be sold to us the General Counsel of the Alien Property Custodian stated that the difficulty was that the patents in question were in a different trust, that is, not the Norma Trust, and were seized after the Norma sale and that the Alien Property Custodian had no authority to grant any rights under such patents without proper compensation to the Trust under which the seizure was made and that the Custodian only had power to grant a non-exclusive license and only after expert opinion was given as to the value of the license, the purchaser being expected to defray the expenses of the license including the expert's fee.

We continued to endeavor to obtain an exclusive license and it is only recently that we have been told that no license of any kind would be granted.

We cannot see the justice of this firstly because we were told by the Alien Property Custodian that if we had thought of these patents and they had been seized prior to Norma sale they would have been included in that sale. Secondly, because after that sale Mr. Garvan the Alien Property Custodian stated that he realized an excessively heavy price had been paid for the property and that if he could do anything to be of service to us he would be ready to do it. Thirdly, because these Hirth Minimeter patents are intimately tied up in The Norma Company of America and these instruments are absolutely required in the manufacture of its product. If they become the property of outside parties The Norma Company of America cannot obtain the benefit of their exclusive control and this exclusive control by The Norma Company of America has been one of its chief advantages in the manufacture of its high grade product.

W. M. Nones or The Norma Company of America desire an exclusive right to these patents for the reasons stated. If for any valid reason these exclusive rights cannot be granted then W. M. Nones or The Norma Company of America is ready in order to protect itself so that it can at least continue the use of these instruments to take a non-exclusive license and in either case to pay whatever reasonable compensation is demanded in return. In this request is included the request for the Trade-mark "Minimeter" by which name these instruments are known.

The patents are:

#1,048,073	December	24, 1912	Gage	C. A. Hirth assignor to Fortuna Werke Albert Hirth
1,049,860	January	7, 1913	Micrometer-Gage	C. A. Hirth

Trade-mark Registration #73,162—Minimeter.

The other patents relating to other Hirth inventions which are of value to The Norma Company of America are:

# 909,300	January	12, 1909	C. A. Hirth	Feed Device for Machine Tools, etc.
1,150,441	August	17, 1915	J. Loose	Flexible Coupling
1,162,720	November	30, 1915	C. A. Hirth	Measuring Tool
1,201,318	October	17, 1916	J. Loose	Grinding Machine
1,244,090	October	23, 1917	C. A. Hirth	Machine Bearing

Also Applications for Letters Patent of the United States

Serial No.	Filing Date		Inventor	Title
636,030	July	29, 1911	C. A. Hirth	Ball Bearings
748,875	February	17, 1913	C. A. Hirth	Gage

PLAINTIFF'S EXHIBIT No. 639.

THE CHEMICAL FOUNDATION, INC.

STATEMENT OF INCOME AND EXPENSES BY YEARLY PERIODS FROM BEGINNING OF OPERATION TO DECEMBER 31, 1922.

Supplementing Defendant's Exhibit 91.

	Total	Apl. 10/19 to Dec. 31/19	Twelve Months Ending Dec. 31 1920	1921	1922
INCOME					
Licensed Patents					
Manufactured Products	267,973.02	9,478.91	62,619.61	58,566.12	137,308.38
Imported "	210,603.85		48,601.93	99,244.43	62,757.49
Contracts acquired	2,442.06	1,557.25	274.37	*145.47**	755.91
Licensed Trade Marks	8,596.76		1,671.15	3,476.85	3,448.76
Imported Products under War Trade Board License	154,539.02		34,539.77	60,936.51	59,062.74
Miscellaneous Income	2,456.67		2,401.59	55.08	
Total	646,611.38	11,036.16	150,108.42	222,133.52	263,333.28
License Fees	30,900.00	2,600.00	12,100.25	9,399.75	6,800.00
Contributions received	11,500.00	11,000.00	500.00		
Interest on Bank balances and discounts	10,914.45	4,152.82	4,784.06	1,835.97	142.60
	699,925.83	28,787.98	167,492.73	233,369.24	270,275.88
EXPENSES					
Office and General Salaries	205,466.68	18,443.56	51,275.55	81,549.27	54,198.30
Legal Expenses	74,915.35	27,046.47	3,446.26	12,640.71	31,781.91
General	39,197.98	16,146.81	8,640.48	1,569.83	12,840.86
Patent Sundry Expense	62,562.08	17,286.71	34,112.69	9,243.43	1,919.25
Rent	27,500.00	5,000.00	7,500.00	7,500.00	7,500.00
Stationery, office supplies and postage	10,443.61	1,723.34	2,678.86	4,871.13	1,170.28
Traveling expense	13,249.21	3,052.20	2,214.62	4,326.21	3,656.18
Investigation "	2,037.28	294.97	385.10	1,006.20	351.01
Subscriptions and periodicals	1,149.33	39.00	195.38	544.28	370.67
Insurance	588.41	43.68	87.36	238.20	219.17
Telephone and telegraph	4,900.85	367.38	931.00	2,034.03	1,568.44
Office alterations	3,427.45	870.32	1,406.93	1,150.20	

		Apl. 10/19 to	Twelve Months Ending Dec. 31		
	Total	Dec. 31/19	1920	1921	1922
Taxes	2,752.70	102.00	783.90	797.90	1,068.90
Laboratory Expense	682.74		184.11	257.11	241.52
Photostat "	1,558.88		192.32	670.62	695.94
Depreciation on furniture and fixtures	6,451.37		1,732.42	1,943.93	2,775.02
Amount forward	456,883.92	90,416.44	115,766.98	130,343.05	120,357.45
Amount forward	456,883.92	90,416.44	115,766.98	130,343.05	120,357.45
Washington office expense	23,389.26			9,632.19	13,757.07
Miscellaneous expense	12,448.79	436.33	2,328.90	5,248.12	4,435.44
Light	306.46			167.22	139.24
Organization expense	11,574.84			11,574.84	
Lillienfield Patent expense	1,576.96				1,576.96
Loss on furniture sold	1,181.04				1,181.04
Total expenses	507,361.27	90,852.77	118,095.88	156,965.42	141,447.20
Net income before charging Educational Expense	192,564.56	*62,064.79**	49,396.85	76,403.82	128,828.68
Educational Expense Literature and pamphlets	340,245.76	7,689.26	28,727.72	227,600.87	76,227.91
Net Profit *or Loss*	*147,681.20**	*69,754.05**	20,669.13	*151,197.05**	52,600.77

*Matter in italics in red on original.

PLAINTIFF'S EXHIBIT No. 640.

THE UNIVERSITY OF CHICAGO
Department of Chemistry

May 3, 1919.

Mr. Francis P. Garvan,
110 West 42nd St.,
New York, N. Y.

Dear Mr. Garvan:

I am writing to make sure of the understanding reached in our conference on April 26 in regard to Arsphenamine. I understand that you would like to have a committee consisting of myself, Dr. G. W. McCoy, (Director of the Hygienic Laboratory, Washington, D. C.) and Mr. Edward S. Rogers, an attorney in Chicago, who has been connected with the Federal Trade Commission, and who has championed in splendid fashion the cause of the public in the matter of synthetic drugs, to assist you in an advisory capacity in matters connected with Arsphenamine. We would include the question of the issuance of further licenses, the question of public control of the toxicity of all preparations, the question of price, etc., subject, of course always to the final decision of the Chemical Foundation.

I am writing to make sure of this understanding because, as indicated to Mr. Choate in the conference, it seems to us that in the case of Arsphenamine the public interests would be better served if, in addition to the present licensees, not more than two, or at the utmost three, further firms be licensed. This limitation would be desirable because it would greatly facilitate, and reduce the expenses of, the control of toxicity, and further it would reduce overhead charges and make it possible to reduce the cost of this expensive drug to the public. This is already being done, as you no doubt are aware, by the Metz Laboratories.

If this view is in accordance with your own judgment it would be exceedingly important for the Committee to consider carefully what firms should be recommended for the additional licenses. In my judgment they should be 100% American, particularly in view of the fact that one of the old licensees has Japanese connections, another Canadian, and a third used to be affiliated with German firms.

The second point I would like to urge is that one of the new licensees should, if possible, be located in the West, partly in order to encourage this type of manufacturing in Western cities, partly in order to win the support of the West for the important plan of which you have in mind.

Finally, the licensees should, if possible, be well established and eminent firms.

I am already in correspondence with the Mallinckrodt Company of St. Louis, asking whether they would not be interested in an arsphenamine license. I am of the opinion that this firm stands pre-eminent in the West, both in its scientific experience and particularly also in its ethical relations to medicine. Other firms interested no doubt would be the Monsanto Chemical Company, the Abbott Laboratories, and possibly Parke, Davis and Company, but I consider the Mallinckrodt Company the best in the West.

Under another cover I am sending you two addresses in which the relation of Chemistry to Medicine is discussed. I am sending the same pamphlets to Mr. Keohan, and have asked that galley proof of third address be dispatched as soon as possible.

I am also supplying Mr. Keohan with a list of important drugs and their applications, a duplicate of which I am enclosing for you.

If there is anything further I can do in helping you bring these important problems before the public, kindly do not hesitate to call upon me.

I am

Yours sincerely,
(Sgd.) JULIUS STIEGLITZ.

PLAINTIFF'S EXHIBIT No. 641.

May 9, 1919.

Dr. Julius Stieglitz,
Department of Chemistry,
University of Chicago,
Chicago, Illinois.

My dear Doctor Stieglitz:

I have your letter of May 3rd, together with a considerable amount of literature which you have sent to me. I wish to thank you for it, and for your generous and patriotic interest in the work that we have undertaken.

Your understanding as to our conference is correct. It is my desire that you, Dr. McCoy, Mr. Rogers, and Mr. Phelps act as an Advisory Committee on pharmaceuticals to the Chemical Foundation. It is with this in mind that I am sending you a request for a license which I have received. Won't you please advise me as to whether or not you think this license should be granted? According to the charter of the Chemical Foundation, none but American citizens can obtain patents. The agent for the concern in this country, however, who is an American citizen, is willing to make the application himself. I would like your judgment on this application as early as convenient.

You will, of course, be interested to know that I have discovered about 2,000 ampules of salvarsan in

Kansas City, which were seized by the Customs authorities because it was smuggled into the country. Dr. McCoy is extremely anxious to get this salvarsan for use in the Public Health Service laboratories, and I have started machinery in motion to get it for him as speedily as possible.

I have been informed that the War Trade Board has granted quite a number of licenses for the importation of dyes. I hope to obtain a copy of these licenses within the next two or three days. We may find this list of great help to us.

Your suggestion that a license for the manufacture of salvarsan be granted to the Mallinskrodt Company of St. Louis is an excellent one. This Company, from the information at my disposal, appears to be a very high-class concern. I would suggest that you have this Company make application direct to the Chemical Foundation for an Arsphenamine license. Knowing your opinion, the rest would not be very difficult.

If any difficulty should arise in the distribution of the Luminal, please inform me immediately, as it is my intention that there be no holdup in the distribution of this most important remedy to the needy epileptics of the country.

Sincerely yours,

(Sgd.) FRANCIS P. GARVAN.

PLAINTIFF'S EXHIBIT No. 642.

THE CHEMICAL FOUNDATION INCORPORATED.

Statement of Salaries and Wages.

	1919	1920	1921	1922	Total
ers:					
G. J. Corbett, Sec. & Treas.		$3,750.00	$15,000.00	$4,375.00	$23,125.00
F. A. Morlock, Asst. Sec.	$921.16	3,118.82	3,721.19		7,761.17
E. F. Haaren				1,625.00	1,625.00
	$921.16	$6,868.82	$18,721.19	$6,000.00	$32,511.17
ral Office:					
H. E. Bateman, Asst. to V. Pres.	$1,227.41	$3,057.27			$4,284.68
J. M. Gray, Translator	1,817.40	6,077.11			7,894.51
J. L. Kane, Imports	472.80	1,614.90	2,633.34	4,166.62	8,887.66
N. G. O'Connor, Tele. Operator	684.77	1.557.90	490.45		2,733.12
Mrs. M. Ford, Tele. Operator			729.17		729.17
P. T. Boone, Accountant		240.80	1,730.97		1,971.77
W. Curran, Bookeeper			1,906.67	2,275.00	4,181.67
E. F. Haaren, Lawyer			2,173.16	1,500.00	3,673.16
A. McGrath, Office Boy	327.20	738.00	910.50	1,099.99	3,075.69
P. Caulfield " "			472.50		472.50
F. Halpin " "			84.00		84.00
Elevator Men		56.00			56.00
V. Bachman, Tele. Operator			158.66	1,000.00	1,158.66
W. W. Buffum, Accountant			2,387.85	5,208.38	7,596.23
J. A. Moore, Office Boy			205.53	225.00	430.53
	$4,529.58	$13,341.98	$13,882.80	$15,474.99	$47,229.35
ical Dept.					
S. A. Tucker, Chemist	$4,085.36	$7,700.00	$5,350.00	$1,000.02	$18,135.38
C. F. Chandler, "	726.63	2,166.71	2,000.06	2,000.04	6,893.44
A. W. Joyce "		2,346.45	3,038.66	3,125.00	8,510.11
E. J. Muhs, "	325.43	1,684.86	2,127.06	2,187.50	6,324.85
L. VanDoren "		923.16	4,051.46	2,777.75	7,752.37
A. Linz "			5,358.99	4,583.27	9,942.26
J. L. K. Snyder "	1,273.61				1,273.61
P. DeWolfe "	625.00	512.50			1,137.50
C. B. Sloan "	295.00				295.00
	$7,331.03	$15,333.68	$21,926.23	$15,673.58	$60,264.52

	1919	1920	1921	1922	Total
Investigation.					
L. F. Muccino	$1,623.29	$3,531.06	$5,570.53	$4,583.27	$15,30
J. J. Powers		600.00	1,373.35		1,973
	$1,623.29	$4,131.06	$6,943.88	$4,583.27	$17,281
File Dept.					
A. E. Dotterer, File Clerk	$900.12	$1,869.48	$1,823.20	$1,500.00	$6,092
C. Faye " "			720.71	996.70	1,717
E. F. Moran	325,43	852.39			1,177
	$1,225.55	$2,721.87	$2,543.91	$2,496.70	$8,988
Carried Forward	$15,630.61	$42,397.41	$64,018.01	$44,228.54	$166,274
Brought Forward	$15,630.61	$42,397.41	$64,018.01	$44,228.54	$166,274
Stenographers:					
Miss T. A. Kraus	$698.17	$1,637.48	$2,025.90	$2,083.38	$6,44
" L. M. Rapp	456.33	1,371.06	1,622.00	1,333.30	4,78
" H. Retzlaff	510.07	964.82			1,47
" L. T. Conroy		510.59	1,391.07		1,90
" M. K. Stauffer	698.73	502.02			1,20
" A. Karl		280.00	1,422.00	936.00	2,63
" A. E. Dittrich		150.00	1,580.00	1,666.62	3,39
" E. Taylor		183.09	653.99		83
" I. P. Davis			1,386.02	485.32	1,87
" E. Pollack		578.68			57
" V. Reed			733.37	1,250.00	1,98
" J. H. Vogt			994.02	1,213.31	2,20
" J. D. Noonan	90.00				9
" A. E. Mullaney	50.00				5
" F. B. Schenck	9.40				
(d) " D. M. Donegan				958.49	95
" A. E. Lins			3.00		3
(c) " M. E. Murray				43.34	4
	$2,512.70	$6,177.74	$11,811.37	$9,969.76	$30,47
Copyists:					
(b) Miss V. Bachman	$300.25	$950.40	$868.83		$2,11
" L. S. Webb			1,460.00		1,46
(c) " M. E. Murray			651.00		651
" M. Pittman			280.00		280
(d) " D. M. Donegan			183.31		183
" L. Lininger			4.00		
" G. Waagh			4.00		
" A. Shul			18.75		1
	$300.25	$950.40	$3,469 89		$4,72
Washington Office.					
W. F. Keohan, Mgr.		$1,750.00	$2,250.00		$4,00
Total	$18,443.56	$51,275.55	$81,549.27	$54,198.30	$205,4

PLAINTIFF'S EXHIBIT No. 643.

THE CHEMICAL FOUNDATION, INC.
EMENT OF EDUCATIONAL LITERATURE, SALARIES AND WAGES

	1919	1920	1921	1922	Total
ional Literature					
Work wages		263.35	1,067.75	75.25	1,406.35
ger:					
G. Mead		4,250.00	15,000.00	14,166.70	33,416.70
graphers:					
L. T. Conroy		288.48	924.42		1,212.90
K. Greves			1,153.87	1,875.00	3,028.87
L. S. Webb			160.00	585.00	745.00
:					
E. Sweeney			1,369.18	1,500.00	2,869.18
McGrath			102.56	45.83	148.39
J. Remmis		41.67	40.00		81.67
L. Swisky		40.00	40.00		80.00
S. Levine		41.67			41.67
M. Forman		30.02	536.00		566.02
V. Reed			320.00		320.00
R. S. Forman			440.00		440.00
K. R. Donovan			900.00	130.00	1,030.00
H. Haynes			492.00		492.00
F. Melvin			399.00		399.00
A. E. Wood			78.00		78.00
M. P. Lane			165.00		165.00
H. E. Guyan			550.04	130.00	680.04
M. Herbert			498.00	390.01	888.01
F. Murphy			276.00		276.00
W. Reilly			171.00		171.00
R. Jordan			684.00	754.03	1,438.03
D. M. Donegan			346.69		346.69
M. E. Murray			96.00	86.66	182.66
K. Reilly			51.00	345.00	396.00
E. Smith			51.00		51.00
L. M. O'Brien			49.50		49.50
L. M. Stanton			18.00	40.50	58.50
C. Weaver			51.00	6.00	57.00
E. J. Burke			60.00	63.00	123.00
P. Becker			60.00	6.00	66.00
L. V. Erickson			58.50		58.50
M. V. Gordon			60.00	49.50	109.50
E. Higgins			57.00	69.00	126.00
I. Stikolchich			15.00	67.50	82.50
F. Kilgour			9.00	69.00	78.00
C. Killy			9.00	67.50	76.50
Amount forward		4,955.19	26,358.51	20,521.48	51,835.18

	1919	1920	1921	1922
Amount forward		4,955.19	26,358.51	20,521.48
Miss J. B. Scott			9.00	69.00
" K. Ritzinger				30.00
" E. Murray				44.25
" Mae Griffin				28.50
" A. Valois				63.00
" Linda O'Brien				69.00
" E. Moller				64.50
" Violet Poss				33.00
" Walsh				5.25
" Booth				15.00
" M. Farrell				90.00
Addressograph Operators:				
Miss G. More			258.00	
" I. T. Towles			330.02	
" M. Kane			453.36	390.01
" D. Breakey			464.80	43.33
		4,955.19	27,873.69	21,466.32

PLAINTIFF'S EXHIBIT No. 644.

THE CHEMICAL FOUNDATION INCORPORATED.

LEGAL EXPENSE ACCOUNT

FROM BEGINNING OF OPERATIONS TO DECEMBER 31, 1922.

	Total	1919	1920	1921	1922
Varney, Blair & Ho-	$17,651.98	$7,809.98	$10,014.50		*172.50**
T. Gordon	2,500.00	2,500.00			
Choate, Sherman &	10,263.52		5,233.79	$5,029.73	
King, Tracy & Smith	200.00			200.00	
Ramsey & Harry D.	5,713.45			5,541.70	171.75
Stellwagen	5,000.00			5,000.00	
J. Kent	1,408.70			1,050.00	358.70
Warfield & Duell	14,237.59			500.00	13,737.59
F. Reed & Edwd. S.	973.47			84.50	888.97
& Caton	5,145.35				5,145.35
Thorndike, Palmer &	100.00				100.00
Hardin & Skinner	1,746.21				1,746.21
J. Casey	500.00				500.00
	200.00				200.00
Morris & Hechscher	439.64				439.64
H. Tyrell	1,217.55				1,217.55
Garvan-Pd. Boggs & Ca-	1,500.00				1,500.00
Jerome & Kressel	5,013.40				5,013.40
D. Nims	37.78			37.78	
X-Ray Tube Co.	500.00			500.00	
& Proctor	31.46		31.46		
Lightoner Oxtoly &	100.00		100.00		
	435.23	435.23			
	$74,915.35	$10,745.21	$15,379.75	$17,943.71	$30,846.66

in italics in red on original.

yearly total cannot be made to agree with the amounts shown by years on Exhibit No. , which was prepared from the reports of the auditors Defendant, but the total amount does agree.

PLAINTIFF'S EXHIBIT No. 645.

THE CHEMICAL FOUNDATION INCORPORATED.
GENERAL LITERATURE ACCOUNT
FROM BEGINNING OF OPERATIONS TO DECEMBER 31, 1922.

	Total	1919	1920	1921
Purposes of Chemical Foundation (1/2)	$7,689.25	$7,689.25		
Mailing " " "	1,375.62	1,375.62		
Postage " " "	1,100.00	1,100.00		
Envelopes " " "	885.85	885.85		
Cartage and Express "	106.43	106.43		
(Printing Circulars, Voting (Trust, Prospectus, Sub. (Blanks, etc.	965.07	965.07		
Postage, Advance on Pamphlet Testimony before Senate	3,000.00	3,000.00		
Pamphlet of Patents	801.00	801.00		
Miscellaneous	223.59	223.59		
Metallurgical Books	799.65		799.65	
Vat Dye Books	962.91		962.91	
Bulletins	2,181.58		670.00	1,511.58
Patent Index	30.00		30.00	
American Dye Inst., Printing, Postage, etc.	2,738.17		2,738.17	
Stencil Supplies	81.80		81.80	
Stationery	102.63		102.63	
Mimeograph Paper & Supplies	155.63		155.63	
Supplemental List of Patents	27.50		27.50	
Printing Hearing Before Committee on Finance	2,640.59		2,640.59	
Stenographer a/c above	431.60		431.60	
Pamphlets	58.25			58.25
500 Legal Reports	388.75			
Garvan's Testimony before Sub Com. Senate	6,807.32			
"Garvan Demands Harding Clear Him" Plates	3,750.00			
House Books 10 M	950.00			
Imhoff Tank Booklets, including Postage	944.79			
	$39,197.98	$16,146.81	$8,640.48	$1,569.83

PLAINTIFF'S EXHIBIT No. 646.

THE CHEMICAL FOUNDATION INCORPORATED.
PATENT SUNDRY EXPENSE
FROM BEGINNING OF OPERATIONS TO DECEMBER 31, 1922.

	Total	1919	1920	1921	1922
rding Fees	$ 949.00	$ 75.00	$ 173.00	$ 422.00	$279.00
peal "	410.00	220.00	120.00	50.00	20.00
al "	3,216.00	276.00	1,280.00	880.00	780.00
scellaneous	18,162.86	10,400.19	5,593.91	1,963.81	204.95
al Services & Searches					
Emery, Varney, Blair & Hoguet	23,447.84	3,297.00	19,825.00	325.84	
Van Doren & Evarts	9,200.00		9,200.00		
F. J. Mulvey	1,898.90		220.75	1,419.25	258.90
Mr. Evarts	558.00		558.00		
uff & Warland	90.00		90.00		
o. Ramsey & Harry D. Nims	409.03			221.45	187.58
Charles D. Clark	72.00			72.00	
eohan	774.63			774.63	
olen G. Fish	100.00			100.00	
yrnes, Townsend & Brickenstein	1,025.00			1,025.00	
Fredk. J. Moses	1,500.00			1,500.00	
Leonard B. Ziegler	335.00			335.00	
Duell, Warfield & Duell	188.82				188.82
Dr. Van Doren	225.00		225.00		
	$62,562.08	$14,268.19	$37,285.66	$9,088.98	$1,919.25

The yearly total cannot be made to agree with the amounts shown by years on Plaintiff's Exhibit No. , which was prepared from the reports of the uditors of the defendant, but the total amount does agree.

These amounts were charged to defendant by Emery, Varney, Blair & Hoguet, being employees of that firm.

PLAINTIFF'S EXHIBIT No. 647.

ORGANIZATION EXPENSE

Date	Name	Detail	Amount	Tot
1919				
Mar. 20	Secretary of State	State Tax	$50.00	
		Indexing	2.00	
		Certifying Cert. of Inc.	4.50	$56.
	Recorder of Deeds	Recording Cert. of Inc.	5.50	
		Notary Fees	.50	
		Revenue Stamps	.30	
		Messenger to Dover, Del.	4.30	
		Telephone & Telegraph	.70	
		Stock Ledger, Stock Transfer Book	7.00	
		Corporate Seal	3.00	
		Minute Book	10.00	31.
Apr. 5	Brown Green Co.	8 books of preferred & Common Stock Certificates		271.
Dec. 31	Joseph H. Choate, Jr.	Legal Services		10,000.
1920				
Apr. 29	Brown Green Co.	Printing 1,000 Trust Cert.		168.
June 15	Central Union Trust Co.	Imprinting 1 line on 250 Stock Certificates	5.00	
		Federal Tax Stamps on 840 shares preferred stock at 5¢ each	42.00	
		292 shares common stock at 5¢ each	14.60	61.
June 25	Geo. M. Fisher, State Treas.	Annual Franchise Tax for 1919		43.
July 7	Evarts, Choate, Sherman & Leon	Application Fee for authority to Corp. to do business in State of New York		11.
15	Kalamazoo Loose Leaf Binder Co.	2 full Latigo Current binders with R. M. lettered four lines gold and indexes		55.
23	Evarts, Choate, Sherman & Leon	Balance of application Fee to do business in N. Y. State—Total Fee $52.—		41.
				$10,739.

1920 Date	Name	Detail	Amount	Total
		Brought Forward		$10,739.39
ug. 11	Central Union Trust Co.	Federal Tax Stamps on 2371 shares preferred stock @ 5¢		118.55
26	Comptroller of State of New York	Capital Stock Foreign License Fee		536.13
ct. 22	Albert Hepp & Co.	1-200 Page Cash Book	$3.00	
		250 Triplicate Sets transfer sheets of Voting Trust Certificates-**Common Stock**-#1 to 250 and **Preferred stock** #1 -250	60.00	
		100 Sheets Carbon Paper	4.00	
		4 Permanent Binders for Transfer sheets of which 2—Common—Preferred	22.00	
		2 Temporary Binders for Transfer sheets of which 2—Common —2 Preferred	8.00	
		100 Ledger Sheets each Voting Trust Certificates for Common and Preferred stock	45.25	142.25
ec. 21	Lloyd Van Doren	R. R. tickets to Wash. D. C.		38.52
				$11,574.84

PLAINTIFF'S EXHIBIT No. 648.

THE CHEMICAL FOUNDATION, INC.
TRAVELLING EXPENSES FROM BEGINNING OF OPERATIONS TO DECEMBER 31, 1922.

	Total	1919	1920	1921	1922
. T. Boone	$404.51			$404.51	
eorge J. Corbett	826.34		37.63	788.71	
. de Wolf	11.89	11.89			
. G. Gordon	75.00	75.00			
. W. Joyce	146.62			139.00	7.82
. F. Keohan	1,173.51	57.85	766.81	348.85	

	Total	1919	1920	1921	1922
A. Linz	$403.77			$219.40	$184.3
L. G. Mead	1,821.27			69.41	1,751.8
Ralph B. Miller	72.35		72.35		
F. A. Morlock	72.60	4.10	30.76	37.74	
E. J. Muhs	44.96		20.25		24.7
R. F. Muccino	1,260.48	310.01	470.69	357.62	122.1
S. A. Tucker	1,370.82	593.35	694.50	82.97	
D. L. Van Doren	1,317.24		118.34	935.01	263.8
Miss Webb	262.84			262.84	
" Pittman	138.84			138.84	
J. L. Kane	210.78			143.03	67.7
Dr. C. H. Herty trip to Europe	2,000.00	2,000.00			
W. W. Buffum	1,548.44			344.05	1,204.3
F. E. Sweeney	52.47				52.4
F. P. Garvan				23.80	23.8
H. E. Horn	30.43			30.43	
Sundry	3.85		3.29		.5
	13,249.21	3,052.20	2,214.62	4,326.21	3,656.1

*In red on original exhibit.

PLAINTIFF'S EXHIBIT No. 649.

THE CHEMICAL FOUNDATION INCORPORATED.
WASHINGTON OFFICE EXPENSES
FROM BEGINNING OF OPERATIONS TO DEC. 31, 1922.

	Total	1919	1920	1921	192
Washington Office Expense					
Salary—W. F. Keohan	$9,750.00			$3,750.00	$6,000.0
" Clerks	2,409.42			1,035.92	1,373.5
Rent	1,415.00			720.00	695.0
Travelling Expense Keohan	2,213.03			1,245.86	967.1
Telephone & Telegraph	2,133.00			871.39	1,261.6
Mimeographing	275.76			275.76	
Taxicab	984.26			492.46	491.8
Sundry	2,410.47			1,240.80	1,169.6
Expense Congressional Investigation	1,783.47				1,783.4
" Tariff Hearings	14.85				14.8
	$23,389.26			$9,632.19	$13,757.0

PLAINTIFF'S EXHIBIT No. 649-A.

THE CHEMICAL FOUNDATION, INC.
WASHINGTON OFFICE EXPENSES

Name	Detail.	Amount.	Total.
W. F. Keohan, Manager	Salary @ $500 per month	750.00	
Agnes Riordan	" " 134 " "	201.00	951.00
The Munsey Building	Rent @ $80 per month		240.00
W. F. Keohan. Traveling Expenses	N. Y. to Lakewood & return	39.64	
" " "	N. Y. and return	41.18	
" " "	" " "	40.25	
" " "	" " "	69.15	
" " "	" " "	69.74	
" " "	" " "	50.66	310.62
Chesapeake & Potomac Telephone Co.	Service and Tell Charges	70.88	
"	" " " "	57.25	
Telegram		.51	
"		1.00	
"		1.00	
"		1.50	
"		.84	
"		1.90	
"		.51	
Telephone calls (Outside of office)		4.15	
" "		26.36	165.70
Rexford L. Holmes	Mimeographing Herty's Speech	28.62	
" " "	" Lefebure Work	247.14	275.76
Alice O'Brien	Correcting Mss. of Abstract of Amer. Dye Patents		40.00
National Academy of Science	3 subscriptions to Bulletin of Nat'l Research Council Vol. 1, 1920	15.00	
	" 2, 1921	5.00	
	3 sets Series of National Research Council #1, 12, 14	13.35	
Congressional Record	3 Subscriptions	13.50	46.85

Date.	Name.	Detail.	Amount.	Total
4/5	Taxi		$3.10	
4/6	"		2.35	
4/7	"		1.60	
4/8	"		3.10	
4/11	"		3.00	
4/13	"		2.20	
4/14	"		5.00	
4/17	"		3.00	
4/18	"		2.60	
4/20	"		3.10	
4/21	"		3.00	
4/23	"		2.40	
4/25	"		4.90	
			39.45	$2,029.9
		Brt. Forward	39.35	2,029.9
5/1	Taxi.		3.20	
5/3	"		2.20	
5/5	"		4.10	
5/6	"		2.20	
5/7	"		3.10	
5/9	"		4.20	
5/10	"		3.10	
5/12	"		3.60	
5/14	"		1.60	
5/16	"		2.20	
5/17	"		3.10	
5/19	"		1.20	
5/20	"		3.90	
5/21	"		4.10	
5/24	"		4.00	
5/27	"		2.10	
6/1	"		2.70	
6/3	"		2.50	
6/4	"		1.60	
6/7	"		4.20	
6/8	"		3.80	
6/10	"		3.00	
6/11	"		1.16	
6/13	"		4.00	
6/14	"		3.20	
6/14	"		3.00	
6/15	"		3.20	
6/16	"		4.00	
6/17	"		2.60	
6/20	"		2.10	
6/23	"		2.70	
6/24	"		2.50	

Date.	Name.	Detail.	Amount.	Total.
6/25	Taxi		$2.80	
6/27	"		3.50	
6/27	"		1.50	
6/28	"		2.50	
6/29	"		1.60	
6/30	"		2.80	
6/30	"		2.00	$150.21
4/11	Stamps		1.00	
5/17	"		3.00	
6/1	"		.34	
6/20	"		.50	
5/25	"		1.34	
6/30	"		3.00	9.18
4/21	Picture Frame		14.75	
4/23	Incidentals		47.70	
5/21	Whaley Eaton Service	Cable charges German production costs	18.40	
5/9	Sophie Hillman	Typing	5.00	
5/16	Woodward & Lothrop	Picture Frame	2.45	
6/16	Andrews	Office Supplies	11.39	
			99.69	2,189.32
		Brt. Forward	99.69	2,189.32
5/19	Andrews	Office Supplies	2.85	
5/18	Hanging pictures, etc.		1.50	
5/25	Moving Files		3.50	
5/31	Incidentals		48.10	
	National Geographic Society		12.50	
	Water Cooler		12.00	
	Washington Herald	Papers	2.88	
	Office Supplies		11.10	
/1	Book		2.50	
/1	Typing		5.00	
/3	Book		1.00	
/4	Ink		.30	
/5	Congressional Records		.14	
	Carfare		.60	
	Express charges		4.61	
/7	Rexford L. Holmes		3.60	
/8	Express charges		2.08	
	Government Printing Office	Documents	3.50	
/14	Hanloin	Sign	4.00	
	Conoy	Water	1.70	

Date.	Name.	Detail.	Amount.	Tot
6/18	Congressional Records		$ .90	
	Carfare		.90	
6/17	Re-mailing		.03	
6/18	Incidentals		56.35	
6/20	Express charges		2.00	
6/23	Evening Star Co.		.42	
6/24	Adlers Co.	Cards	7.10	
	Wiring for fan		2.00	
6/25	Congressional Records		.75	
6/27	W. F. Roberts	Pictures sent to N. Y.	15.00	
	Incidentals		5.00	
	Electric Wiring		.50	
6/28	Express charges		1.50	
6/29	Carfare		.30	
6/30	Ice Company		3.90	
	Miss Kilerlane	Typing	3.00	$323.
				2512.

THE CHEMICAL FOUNDATION, INC.
WASHINGTON OFFICE EXPENSES

Date	Name	Detail	Amount	Tot
		Balance June 30, 1921, detailed on previous report—		$2,512.
	Agnes Riordan	Salary, 7/1/21-12/31/21	$834.92	
	W. F. Keohan	" 7/1/21-12/31/21	3,000.00	3,834.
7/1/21/ to 11/30/21	The Munsey Building	Rent @ $80 per month		480.
7/1/21	W. F. Keohan	Traveling Expenses—N. Y. and return	117.68	
7/25/21	" " "	Trav. Exp.—N. Y. & return	55.68	
8/31/21	" " "	" " " " " "	76.64	
9/2/21	" " "	Wilmington, Edgewood, Baltimore, N. Y. & return	100.87	
9/12/21	" " "	Wilmington, Edgewood, Baltimore, N. Y. & return—	84.74	
9/21/21	" " "	New York and return	83.65	
10/1/21	" " "	" " " "	54.46	
10/6/21	" " "	" " " "	66.46	
10/9/21	" " "	Edgewood and return	11.00	
11/3/21	" " "	New York and return	64.16	
11/16/21	" " "	" " " "	65.64	
11/28/21	" " "	" " " "	43.73	
12/2/21	" " "	" " " "	39.24	
12/9/21	" " "	" " " "	71.29	935.

Date.	Name.	Detail.	Amount.	Total.
/18/21	Chesapeake & Potomac Telephone Co.	Service & Toll Chgs.	$115.41	
15/21	" " "	" " " "	70.97	
/10/21	" " "	" " " "	129.80	
0/10/21	" " "	" " " "	49.00	
15/21	W. F. Keohan	Telephone calls outside of office—June and July	47.75	
26/21	" " "	Telephone calls outside of office	33.41	
0/13/21	" " "	Telephone calls outside of office	15.10	
1/22/21	Chesapeake & Potomac Telephone Co.	Service & Toll Charges	61.92	
2/15/21	W. F. Keohan	Telephone calls outside of office	13.24	
2/28/21	Chesapeake & Potomac Telephone Co.	Service & Toll Charges	128.86	
2/17/21	W. F. Keohan	Telephone calls outside of office	25.66	$691.12
21/21	W. F. Keohan	Telegram	.65	
/22/21	" " "	"	.94	
/11/21	" " "	"	1.91	
/12/21	" " "	"	.90	
/24/21	" " "	"	1.45	
/25/21	" " "	"	1.90	
/1/21	" " "	"	4.32	
1/30/21	" " "	"	2.50	14.57
		Carried forward—		8,468.82
		Brought Forward—		$8,468.82
8/21	W. F. Keohan	Taxi	$3.20	
11/21	" " "	"	3.60	
12/21	" " "	"	1.00	
12/21	" " "	"	4.00	
13/21	" " "	"	6.00	
14/21	" " "	"	3.60	
15/21	" " "	"	2.50	
16/21	" " "	"	4.00	
18/21	" " "	"	3.00	
19/21	" " "	"	2.00	
20/21	" " "	"	3.30	
21/21	" " "	"	2.00	
25/21	" " "	"	2.50	
25/21	" " "	"	2.60	
28/21	" " "	"	5.00	
29/21	" " "	"	4.40	

Date.	Name.	Detail.	Amount.	Total.
8/1/21	W. F. Keohan	Taxi	$3.50	
8/2/21	" " "	"	2.80	
8/3/21	" " "	"	4.00	
8/4/21	" " "	"	3.00	
8/11/21	" " "	"	5.00	
8/12/21	" " "	"	4.50	
8/13/21	" " "	"	4.00	
8/13/21	" " "	"	2.20	
8/15/21	" " "	"	3.80	
8/19/21	" " "	"	2.60	
8/20/21	" " "	"	3.70	
8/24/21	" " "	"	2.40	
8/25/21	" " "	"	4.80	
8/26/21	" " "	"	6.60	
9/1/21	" " "	"	6.40	
9/2/21	" " "	"	6.60	
9/10/21	" " "	"	3.80	
9/12/21	" " "	"	6.80	
9/19/21	" " "	"	5.00	
9/21/21	" " "	"	3.60	
9/28/21	" " "	"	6.60	
10/3/21	" " "	"	4.00	
10/7/21	" " "	"	4.20	
10/10/21	" " "	"	3.20	
10/11/21	" " "	"	5.00	
10/12/21	" " "	"	3.50	
10/15/21	" " "	"	5.40	
10/17/21	" " "	"	4.50	
10/19/21	" " "	"	2.50	
10/20/21	" " "	"	2.50	
10/22/21	" " "	"	4.20	
10/25/21	" " "	"	3.50	
10/26/21	" " "	"	2.00	
10/28/21	" " "	"	5.50	
10/31/21	" " "	"	3.00	
		Carried Forward—	197.40	$8,468.
		Amount Brought Forward	$197.40	$8,468.
11/1/21	W. F. Keohan	Taxi	2.30	
11/2/21	" " "	"	5.50	
11/4/21	" " "	"	5.50	
11/7/21	" " "	"	2.50	
11/7/21	" " "	"	2.30	
11/8/21	" " "	"	3.50	
11/9/21	" " "	"	9.10	
11/10/21	" " "	"	4.95	

Date.	Name.	Detail.	Amount.	Total.
/12/21	W. F. Keohan	Taxi	$4.00	
/14/21	" " "	"	6.00	
/15/21	" " "	"	5.00	
/16/21	" " "	"	7.00	
/16/21	" " "	"	2.60	
/18/21	" " "	"	1.30	
/21/21	" " "	"	2.50	
/22/21	" " "	"	3.20	
/23/21	" " "	"	5.00	
/26/21	" " "	"	1.00	
/26/21	" " "	"	3.20	
/28/21	" " "	"	3.50	
/30/21	" " "	"	4.00	
/1/21	" " "	"	3.20	
/2/21	" " "	"	3.70	
/3/21	" " "	"	4.00	
/6/21	" " "	"	2.50	
/7/21	" " "	"	2.60	
/8/21	" " "	"	3.80	
/9/21	" " "	"	5.00	
/9/21	" " "	"	1.80	
/13/21	" " "	"	3.20	
/14/21	" " "	"	4.60	
/15/21	" " "	"	3.00	
/16/21	" " "	"	3.00	
/17/21	" " "	"	3.00	
/19/21	" " "	"	4.50	
/20/21	" " "	"	2.50	
/22/21	" " "	"	1.50	
/23/21	" " "	"	3.00	
/24/21	" " "	"	6.00	342.25
/13/21	Business Bureau	1000 5x8 cards	6.90	
		2 sets quides (pressboard)	5.00	
		100 Manila folders	2.00	
/8/21	Conroy Spring Water Company	Water Service—June	2.10	
/11/21	Sam Alston	Ice Service—August	3.75	
/15/21	Andrews	Wrapping paper	.40	
/14/21	Conroy Spring Water Company	Service for July	3.50	
		Carried forward—	$23.65	$8,811.07
		Brought Forward	$23.65	$8,811.07
/8/21	Daily Trade Board	Subscription 6/25/21-6/24/21	6.00	
/11/21	Andrews	Office Supplies	1.75	
/10/21	Conroy Water Co.	Water Service For August	2.10	

Date.	Name.	Detail.	Amount.	Tot
7/1/21	W. F. Keohan	Incidentals	$2.82	
7/9/21	" " "	Express Charges	4.89	
7/12/21	" " "	Parcel Post Charges	.56	
7/12/21	" " "	Express Charges	2.29	
7/12/21	" " "	" "	.83	
7/13/21	" " "	Subscription—Congres. Records	13.50	
7/13/21	" " "	Carfare	.30	
7/15/21	" " "	Copies—Congressional Records	2.00	
7/15/21	" " "	Express Charges	5.24	
7/16/21	" " "	Copies of Record	.54	
7/16/21	" " "	Copies—Congressional Records	10.00	
7/16/21	" " "	Carfare	.30	
7/16/21	" " "	Stamps	.66	
7/18/21	" " "	Express Charges	.82	
7/18/21	" " "	Stamps	.35	
7/19/21	" " "	Express Charges	1.03	
7/19/21	" " "	Carfare	.30	
7/20/21	" " "	Carfare	.30	
7/22/21	" " "	Express Charges	1.42	
7/22/21	" " "	Congressional Records	1.20	
7/22/21	" " "	Carfare	.30	
7/22/21	" " "	Express Charges	.51	
7/22/21	" " "	Stamps	.69	
7/22/21	" " "	Glue	.20	
7/22/21	" " "	Carfare	.30	
7/23/21	" " "	Congressional Records	2.54	
7/23/21	" " "	Stamps	1.56	
7/25/21	" " "	Incidentals	59.34	
7/25/21	" " "	Book	2.50	
8/1/21	" " "	Carfare	1.20	
8/5/21	" " "	Newspapers	.45	
8/15/21	" " "	Postage	1.10	
8/15/21	" " "	Express Charges	.66	
8/15/21	" " "	" "	1.50	
8/22/21	" " "	Incidentals	57.00	
9/26/21	" " "	"	74.00	
9/28/21	" " "	Express Charges	1.60	
10/1/21	" " "	Stamps	4.80	
10/1/21	" " "	Congressional Records	.08	
10/1/21	" " "	Carfare	1.05	
10/1/21	Sam Alston	Ice Service	4.05	
10/1/21	W. F. Keohan	Office Supplies	1.86	
10/1/21	" " "	List of Army & Navy Officers	.50	
10/1/21	" " "	Postage	.83	
10/1/21	" " "	Newspapers	.15	
10/10/21	Sam Alston	Ice Service	3.75	
		Carried Forward—	304.75	$8,811

Date.	Name.	Detail.	Amount.	Total.
		Amount brought forward—	$304.75	$8,811.07
/10/21	W. F. Keohan	Congressional Records	3.00	
/10/21	" " "	Parcel Post	.19	
/10/21	" " "	Carfare	.70	
/11/21	" " "	Incidentals	77.50	
/13/21	" " "	Packing boxes for freight	12.00	
/13/21	" " "	Stamps	1.37	
/13/21	" " "	Carbon Paper	1.50	
/13/21	" " "	Box of second sheets	1.00	
/19/21	" " "	Newspapers	1.66	
/19/21	" " "	3 drinking glasses	.09	
/20/21	" " "	copy of magazine	.40	
/31/21	" " "	John G. Hodges for binding; 3-part—8 Tariff Hearings	9.00	
/31/21	" " "	Typewriter Ribbon Coupon Book	5.00	
/31/21	" " "	Federal Freight Service for moving boxes	6.00	
/1/21	Sam Alston	Ice	3.75	
/7/21	W. F. Keohan	Incidentals	97.17	
/7/21	Science Service	Science News Bltn. for 1 yr.	5.00	
/9/21	Andrews	Office Supplies	3.35	
/12/21	Joe Davis	Polishing furniture	2.00	
/12/21	Andrews	Office Supplies	2.70	
/15/21	Jos. S. McGrath	Typing	25.00	
/15/21	K. Kilerlane	"	6.00	
/16/21	Andrews	Office supplies	4.50	
/21/21	"	" "	.90	
/22/21	"	" "	3.25	
/23/21	W. F. Keohan	Porter for packing boxes	1.50	
/23/21	Andrews	Office Supplies	3.20	
/25/21	"	" "	4.20	
/25/21	W. F. Keohan	Stationery	1.35	
/30/21	" " "	Pencils	.36	
/30/21	" " "	Carfare during month	1.05	
/30/21	" " "	Newspapers	2.90	
/30/21	" " "	Stamps for month	5.73	
/1/21	Sam Alston	Ice	3.90	
/2/21	Andrews	Office supplies	5.50	
/5/21	"	" "	6.25	
/6/21	"	" "	2.70	
/6/21	Jos. McGrath	Typing	40.00	
/6/21	W. F. Keohan	Congressional Records	32.00	
/7/21	Andrews	Office Supplies	2.70	
/19/21	W. F. Keohan	Incidentals	93.80	
/24/21	" " "	Xmas gifts to Postman, etc.	20.00	
/27/21	" " "	Newspapers for month	4.95	
/27/21	" " "	Express Charges	1.25	

Date.	Name.	Detail.	Amount.
12/27/21	W F. Keohan	Carfare for month	$1.40
12/27/21	" " "	Extra copies Congressn'l. Rcd.	2.44
12/27/21	" " "	Maps	.80
12/27/21	" " "	For packing boxes	1.00
12/27/21	" " "	Stamps for month	4.36

THE CHEMICAL FOUNDATION, INC.
WASHINGTON OFFICE EXPENSES

Date	Name	Detail	Amount
	Balance December 31, 1921—detailed on previous report		
	Agnes Riordan	Salary 1/1/22-6/30/22	$804.00
	W. F. Keohan	Salary 1/1/22-6/30/22	3,000.00
1/1/22 to 6/30/22	The Munsey Bldg.	Rent @ $80.00 per month	
12/30/21	W. F. Keohan	Trav. Exp.—N. Y. & return	68.96
1/9/22	" " "	" " " "	65.08
3/6/22	" " "	" " " "	59.33
3/11/22	" " "	" " " "	72.91
4/12/22	" " "	" " " "	66.01
5/21/22	" " "	" " " "	49.34
6/7/22	" " "	" " " "	
1/10/22	Chesapeake & Potomac Telephone Co.	Service—toll & add'l chgs. for December and January	
1/23/22	W. F. Keohan	Telephone calls outside of office	
2/10/22	Chesapeake & Potomac Telephone Co.	Service—Toll & add'l chgs for January and February	
2/17/22	W. F. Keohan	Telephone calls outside of office	
3/10/22	Chesapeake & Potomac Telephone Co.	Service, Toll & Add'l chgs. for February and March	
3/24/22	W. F. Keohan	Telephone calls outside of office	
4/10/22	Chesapeake & Potomac Telephone Co.	Service, Toll & Add'l chgs. for March and April	
4/17/22	W. F. Keohan	Telephone calls outside of office	

/22	Chesapeake & Potomac Telephone Co.	Service, Toll & Add'l chgs. for April and May	$51.35
3/22	W. F. Keohan	Telephone calls outside of office	32.05
/22	Chesapeake & Potomac Telephone Co.	Toll, and additional calls for May and local service for June	62.70
5/22	W. F. Keohan	Telephone calls outside of office	35.10
1/22	W. F. Keohan	Telegram	.50
8/22	" " "	Telegrams	3.52
1/22	" " "	"	1.25
3/22	" " "	"	1.90
8/22	" " "	"	1.27
8/22	" " "	"	1.35
		Carried forward—	$15,008.94
		Brought Forward	$15,008.94

Date.	Name.	Detail.	Amount.	Total.
3/22	W. F. Keohan	Taxi	$3.50	
4/22	" " "	"	5.00	
5/22	" " "	"	1.00	
6/22	" " "	"	2.00	
9/22	" " "	"	3.25	
10/22	" " "	"	3.25	
11/22	" " "	"	5.00	
12/22	" " "	"	3.30	
13/22	" " "	"	3.00	
19/22	" " "	"	5.00	
20/22	" " "	"	5.50	
24/22	" " "	"	5.00	
25/22	" " "	"	2.50	
28/22	" " "	"	3.50	
30/22	" " "	"	2.25	53.05
/22	" " "	"	2.00	
7/22	" " "	"	1.20	
/22	" " "	"	4.60	
13/22	" " "	"	4.80	
14/22	" " "	"	3.00	
16/22	" " "	"	2.00	
17/22	" " "	"	3.50	
18/22	" " "	"	4.60	
19/22	" " "	"	5.00	
20/22	" " "	"	6.00	
3/22	" " "	"	4.50	
15/22	" " "	"	4.00	

Date.	Name.	Detail.	Amount.	Tot
3/16/22	W. F. Keohan	Taxi	$5.00	
3/17/22	" " "	"	5.50	
3/24/22	" " "	"	5.50	
3/31/22	" " "	"	3.00	
4/1/22	" " "	"	6.90	
4/4/22	" " "	"	5.80	
4/6/22	" " "	"	6.40	
4/7/22	" " "	"	4.20	
4/11/22	" " "	"	5.50	
4/17/22	" " "	"	2.50	
4/18/22	" " "	"	6.25	
4/19/22	" " "	"	6.00	
4/20/22	" " "	"	5.50	
4/24/22	" " "	"	6.00	
5/1/22	" " "	"	2.50	
5/2/22	" " "	"	5.50	
5/3/22	" " "	"	6.20	
5/5/22	" " "	"	3.60	
5/9/22	" " "	"	5.50	
5/11/22	" " "	"	5.50	
5/13/22	" " "	"	3.50	$151.5
		Carried Forward—		$15,213.5
		Brought Forward		$15,213.5
5/15/22	W. F. Keohan	Taxi	$2.00	
5/16/22	" " "	"	2.20	
5/17/22	" " "	"	3.50	
5/18/22	" " "	"	3.60	
5/19/22	" " "	"	5.50	
5/22/22	" " "	"	4.00	
5/23/22	" " "	"	5.50	
5/25/22	" " "	"	5.50	
5/29/22	" " "	"	3.50	
6/1/22	" " "	"	5.50	
6/3/22	" " "	"	5.00	
6/5/22	" " "	"	3.50	
6/6/22	" " "	"	5.00	
6/12/22	" " "	"	5.75	
6/14/22	" " "	"	3.50	
6/15/22	" " "	"	2.50	
6/17/22	" " "	"	6.50	
6/19/22	" " "	"	3.50	
6/20/22	" " "	"	5.50	
6/21/22	" " "	"	6.50	
6/22/22	" " "	"	6.50	
6/24/22	" " "	"	5.00	
6/26/22	" " "	"	5.00	
6/27/22	" " "	"	6.50	
6/28/22	" " "	"	5.00	116.0

Date.	Name.	Detail.	Amount.	Total.
31/21	Sam Alston	Ice Service Month Dec	$3.90	
/22	W. F. Keohan	Tariff Hearings	14.85	
3/22	R. P. Andrews	2 Calendars	.50	
5/22	W. F. Keohan	Incidentals	79.88	
7/22	Conroy Spring Water C	Services Set, Oct, Nov Dec	8.40	
31/22	W. F. Keohan	Newspapers for Jan	6.15	
31/22	" " "	Stamps	2.44	
31/22	" " "	Carfare	.70	
31/22	Saml. C. Neidlinger	Expires Premium—Workmen's Compensation—Month of Jany	1.25	
3/22	" " "	ditto " Feby	1.25	
3/22	W. F. Keohan	Express on Pkge from N. Y.	.66	
5/22	" " "	Document Govmt. Ptg. Office	1.48	
9/22	" " "	Incidentals	86.66	
8/22	" " "	Newspapers for Feby	5.77	
8/22	Saml. Alston	Ice for Jany	3.60	
8/22	W. F. Keohan	Postage	5.09	
8/22	" " "	Carfare	1.05	
8/22	" " "	Office Supplies	1.78	
		forward	225.41	$15,329.59
		Brought Forward	225.41	15,329.59
1/22	W. F. Keohan	Expenses Incurred for March during Congressional Investigation	535.66	
1/22	" " "	Feby Expenses—Investigation	138.37	
1/22	" " "	Incidentals	38.00	
/22	Sam'l Alston	Ice for February	3.45	
/22	W. F. Keohan	Documents at Gov. Ptg. Office	.90	
11/22	R. P. Andrews	Office Supplies	.50	
4/22	W. F. Keohan	Express on case from Pathescope Co. of N. Y.	1.64	
7/22	" " "	ditto	1.02	
1/22	" " "	Incidentals for March	42.00	
1/22	" " "	Postage	1.55	
1/22	" " "	Carfare	.80	
1/22	" " "	Newspapers for Month	7.85	
1/22	Saml C. Neidlinger	Expired Prem — Workmen's Compensation for Month of March	1.25	
/22	Journal of Commerce & Com'l Bulletin	Subscription 3/16/22-3/16/23 for Washington Office	15.00	
/22	Saml Alston	Ice for March	3.90	
	W. F. Keohan	Expressage	1.27	
7/22	Conroy Spring Water Co.	Service for Jany	2.10	

Date.	Name.	Detail.	Amount.	To
4/27/22	W. F. Keohan	Stenographic Service	$2.50	
4/29/22	" " "	Incidentals	63.00	
4/29/22	" " "	Newspapers for Month	5.95	
4/29/22	" " "	Stamps for Month	1.00	
4/30/22	Saml Neidlinger	Expired prem — Workmen's Compensation for Month of April	1.25	
4/30/22	W. F. Keohan	Expenses in re Investigation at Washington, D. C., for April, 1922	408.55	
5/1/22	R. L. Polk & Co.	City Directory	24.00	
5/1/22	W. F. Keohan	Office Supplies	4.25	
5/4/22	R. P. Andrews	do do	.45	
5/4/22	Saml Alston	Ice Service for April	3.75	
5/5/22	R. P. Andrews	Paper	.25	
5/15/22	E. Fisher	Typing on Statement	1.00	
5/29/22	W. F. Keohan	Incidentals	59.00	
5/31/22	" " "	Varnishing Office Furniture	3.00	
5/31/22	" " "	Newspapers for Month	8.41	
5/31/22	" " "	Postage for Month	3.32	
5/31/22	Saml Neidlinger	Expired Prem — Workmen's Compensation for month of May	1.25	
6/1/22	R. P. Andrews	Office Supplies	.20	
6/2/22	Saml Alston	Ice service for May	3.90	
6/20/22	W. F. Keohan	Messenger service	.85	
6/21/22	" " "	Daily News Record	6.00	
6/23/22	" " "	Expenses in re investigation at Washington, D. C., for May, 1922	238.44	
6/24/22	" " "	1 book—Chemistry in household	3.00	
6/30/22	" " "	Incidentals	37.03	
6/30/22	" " "	Newspapers for Month	7.25	
6/30/22	" " "	Postage for month	3.05	1,91
		forward,		$17,24
		Brought Forward		17,24
6/30/22	Saml Neidlinger	Expired Prem — Workmen's Compensation—Month of June	1.25	
				$17,24

THE CHEMICAL FOUNDATION, INC.
WASHINGTON OFFICE EXPENSES

Name.	Detail	Amount	Total
Balance June 30, 1922—	detailed on previous report		$17,242.16
Agnes Riordan	Salary 7/1/22-8/31/22	$268.00	
" "	1/2 " 8/31/22-12/31/22	301.50	
W. F. Keohan	Salary 7/1/22-12/31/22	3,000.00	3,569.50
The Munsey Bldg.	Rent @ $80.00 per month	$80.00	
Percy H. Russell	Rent for August	15.00	
" " "	" " September	30.00	
" " "	" " October	30.00	
" " "	" " November	30.00	
" " "	" " December	30.00	215.00
W. F. Keohan	Trav. Exp.—N. Y. & return	37.22	
" " "	" " " "	35.78	
" " "	" " " "	62.41	
" " "	" " " "	49.91	
" " "	" " Wash., D. C.,-N. Y. and Racquette Lake	63.83	
" " "	Trav. Exp.—N. Y. & return	28.39	
" " "	" " " "	101.66	
" " "	" " " "	42.91	
" " "	" " " "	56.51	
" " "	" " " "	58.21	536.83
Chesapeake & Potomac Tel. Co.	Service, toll & add'l. chgs.— June and July	75.42	
" " "	Service, toll & Add'l. chgs.— 7/1/22-7/31/22	47.47	
W. F. Keohan	Tel. calls outside of office	38.30	
" " "	Additional telegrams	6.95	
Boggs & Caton	Tel. calls—Mr. Keohan for month of August	77.32	
W. F. Keohan	Tel. calls for Aug. & Sept.— outside of office	84.15	
Boggs & Caton	Tel. calls—Mr. Keohan for month of September	74.18	
W. F. Keohan	Tel. calls outside of office	23.25	
Boggs & Caton	Tel. calls—Mr. Keohan for month of October	80.28	
W. F. Keohan	Tel. calls outside of office	17.50	
Boggs & Caton	Tel. calls—Mr. Keohan for month of November	34.26	559.08
	forward,—		$22,122.57

Date.	Name.	Detail.	Amount.	To
		Brought Forward		$22,1
8/5/22	W. F. Keohan	Telegram	$.73	
8/8/22	" " "	Telegrams	4.84	
9/8/22	" " "	Telegrams	1.73	
9/8/22	" " "	Telegrams	1.63	
9/14/22	" " "	Telegrams	7.25	
9/29/22	" " "	Telegrams	7.07	
10/26/22	" " "	Telegrams	11.48	
11/17/22	" " "	Telegrams	5.39	
7/6/22	" " "	Taxi	5.00	
7/7/22	" " "	"	6.00	
7/10/22	" " "	"	5.50	
7/11/22	" " "	"	6.50	
7/12/22	" " "	"	5.20	
7/13/22	" " "	"	5.00	
7/14/22	" " "	"	9.00	
7/17/22	" " "	"	5.00	
7/28/22	" " "	"	6.00	
7/19/22	" " "	"	6.00	
7/20/22	" " "	"	6.00	
7/21/22	" " "	"	5.00	
7/29/22	" " "	"	5.00	
8/1/22	" " "	"	6.00	
8/2/22	" "	"	5.00	
8/3/22	" " "	"	5.00	
8/4/22	" " "	"	5.00	
8/7/22	" "	"	6.00	
8/10/22	" " "	"	4.30	
8/14/22	" " "	"	3.50	
8/15/22	" " "	"	2.75	
8/17/22	" " "	"	5.25	
8/24/22	" " "	"	4.25	
8/25/22	" " "	"	3.90	
8/27/22	" " "	"	3.50	
8/28/22	" " "	"	4.25	
8/29/22	" " "	"	4.85	
9/5/22	" " "	"	2.40	
9/6/22	" " "	"	5.00	
9/7/22	" " "	"	2.70	
9/11/22	" " "	"	3.80	
9/12/22	" " "	"	4.20	
9/14/22	" " "	"	3.50	
9/19/22	" " "	"	2.80	
9/20/22	" " "	"	4.70	
9/30/22	" " "	"	3.30	

Date.	Name.	Detail.	Amount.	Total.
31/22	L. Jonas & Co.	Daily newspapers sent to Wash., D. C., office for July	$22.05	
17/22	W. F. Keohan	Congressional Records	.73	
31/22	W. F. Keohan	Expenses at Raquette Club for month of June	197.29	
		forward	$220.07	$22,333.84
		Brought Forward	$220.07	$22,333.84
29/22	W. F. Keohan	Incidentals	27.50	
29/22	" " "	Moving Expenses	14.00	
"	" " "	Newspapers for month	7.15	
"	" " "	Sam Alston for ice	3.90	
"	" " "	Office Supplies	.49	
"	" " "	Stamps for month	3.63	
"	" " "	Boxes and porter to help move	4.00	
31/22	Samuel C. Neidlinger	Expired premium Workmen's Compensation—month of July	1.25	
2/22	W. F. Keohan	Incidental expenses in moving	10.10	
8/22	Conoy Spring Water Co.	Water service for July	4.20	
9/22	N. A. Parkinson	Carting literature	20.19	
29/22	W. F. Keohan	Expenses incurred for July during Congressional Investigation	165.14	
31/22	" " "	Postage for month	6.08	
"	" " "	Incidentals	22.00	
"	" " "	Newspapers for month	7.60	
"	" " "	Dime messengers to distribute "Testimony."	6.00	
"	" " "	Manilla Envelopes	2.25	
"	" " "	Rubber Keys for Typewriter	4.00	
"	" " "	Twine	.35	
"	" " "	Carfare	.08	
"	Samuel C. Neidlinger	Expired premium Workmen's Compensation—month of August	1.25	
28/22	W. F. Keohan	Expenses incurred for Aug. during Congressional Investigation	92.44	
29/22	" " "	Incidentals	36.50	
30/22	" " "	Sundries for month:—		
		9/5—Twine	.35	
		9/5—Subsptn.—Wash. Post for Mr. Garvan	.65	
		9/5—Subsptn.—Wash. Star for Mr. Garvan	.75	
		9/8—Balance water bill for Aug.	1.40	

		9/19—Publication at Gov. Printing Office	$1.00	
		9/29 " " " "	.56	
		9/30—Newspapers for month	9.42	
		9/30—Stamps for month	4.34	
		9/30—Carfare for month	1.64	
9/30/22	Samuel C. Neidlinger	Expired premium Workmen's Compensation—month of September	1.25	
10/4/22	W. F. Keohan	Typing licenses	12.00	$693.5
		forward,—		$23,027.3
		Brought forward,—		$23,027.3
10/26/22	W. F. Keohan	Expenses incurred for September during Congressional Investigation	$204.87	
10/31/22	" " "	Incidentals	24.00	
"	" " "	Postage for month	5.50	
"	" " "	Newspapers for month	7.33	
"	" " "	Carfare for month	1.60	
"	" " "	Publications for month at Printing Office	7.13	
10/31/22	Samuel C. Neidlinger	Expired premium Workmen's Compensation for month of October	1.25	
11/21/22	W. F. Keohan	Subsptns. to Congressional Record	4.50	
11/29/22	" " "	Incidentals	27.65	
"	" " "	Newspapers for month	6.35	
"	" " "	Carfare " "	1.20	
"	" " "	Postage " "	6.27	
11/29/22	Samuel C. Neidlinger	Expired premium workmen's Compensation for month of November	1.25	
12/30/22	W. F. Keohan	Incidentals	44.50	
12/30/22	" " "	Water for November	.70	
"	" " "	Newspapers for month	5.70	
"	" " "	Postage " "	2.97	
"	" " "	Carfare " "	2.87	
"	" " "	Xmas present for janitor	5.00	
12/31/22	Samuel C. Neidlinger	Expired premium Workmen's Compensation for month of December	1.25	361.8
				$23,389.2

PLAINTIFF'S EXHIBIT No. 650.

THE CHEMICAL FOUNDATION, INC.
MISCELLANEOUS EXPENSES
FROM BEGINNING OF OPERATIONS TO DECEMBER 31, 1922.

	Total	1919	1920	1921	1922
iscellaneous Expense.					
diting	$3,175.00		$1,010.00	$1,410.00	$755.00
elaware Charter Service	200.00			100.00	100.00
egistrar & Transfer Agts.	1,000.00			500.00	500.00
idelity Bonds	350.00			350.00	
ight	209.44			209.44	
acific Flush Tank Fees & Ex. n connection with contract	2,238.35			2,238.35	
ranscript Alleged Dye Monopoly	2,260.25				2,260.25
opy Garvan's Testimony before Sub. Com. Senate	153.90				153.90
undry	2,861.85	436.33	1,318.90	440.33	666.29
	$12,448.79	$436.33	$2,328.90	$5,248.12	$4,535.44

PLAINTIFF'S EXHIBIT No. 651.

[United States of America, Ordnance Department.]

These articles of agreement entered into this 30th day of September, 1917, between General Chemical Co., a corporation, organized under the laws of the State of New York (hereinafter called Contractor), of the first part, and the United States of America, by J. W. Joyes, colonel, Ordnance Department, United States Army (hereinafter called Contracting Officer), acting by authority of the Chief of Ordnance, United States Army, and under the direction of the Secretary of War, of the second part, witness:

Whereas war exists between the United States and Germany, constituting a national emergency; and

Whereas Contractor has made contracts or placed orders with various concerns for various materials and equipment, etc., at an aggregate cost of about $450,000, for the construction for its own uses of an ammonia plant at Shadyside, N. J., and the same have been partly completed and paid for, as per list attached hereto and made a part hereof, which list shows for some items prices originally agreed upon as between Contractor and the various concerns or persons from whom it had ordered, and shows in other cases estimated prices for items so ordered for which the actual price to be paid is contingent upon actual cost; and

Whereas the United States is now in need of materials and equipment, etc., identical in kind and quantity with those thus ordered or contracted for by Contractor, to be used in the construction of Government-owned ammonia plant at some other location not yet determined, for the production by the United States Government of nitrates and other products useful in the manufacture of munitions and also useful for the manufacture of fertilizers, as duly provided by law, namely by section 124 (nitrate supply) of the act of Congress "For making further more effectual provision for the national defense, and for other purposes," approved June 3, 1918; and

Whereas, in view of the present national emergency, time being of the essence, and a material period of time, as well as some expense, being thereby saved to the United States, it is to the manifest material interest of the United States to acquire from Contractor the aforesaid material and equipment, etc.:

Now, therefore, under the provisions of section 120 of an act of Congress relating to the national defense, approved June 3, 1916, and pursuant to all other laws of the United States and Executive orders of the President of the United States or heads of its departments under which the requirements of advertisement for proposals are dispensed with, and contracts in the form hereof duly authorized, and also the provisions of section 124 of the aforesaid act of Congress, and in consideration of the mutual agreements herein contained, the said parties have agreed, and by these presents do agree to and with each other as follows, viz:

Article I. Contractor hereby sells, assigns, and transfers to the United States all of Contractor's right, title, and interest in and to all of the aforesaid materials and equipment, etc., heretofore completed (exclusive of field work), shipped or ready for shipment, and contractor further sells, assigns, and transfers to the United States all its right, title, and interest in and to all the rest of said materials and equipment, etc., when and as similarly completed and ready for shipment, and in cases in which Contractor has made or shall make partial payments upon any of the aforesaid materials and equipment, etc., prior to the completion thereof, Contractor agrees to sell, assign, and transfer to the United States all such right, title, and interest in and to the aforesaid materials and equipment, etc., as Contractor shall have acquired by such partial payments; and Contractor further agrees to use all reasonable efforts to assist the Government of the United States, to the extent desired by Contracting Officer, in the procurement of such materials and equipment, etc., in the specifying, ordering, and procurement of the remaining apparatus for the plant in question and the extension thereof, to result in a total plant of approximately quadruple the capacity of the one hereinbefore described, by furnishing to the Government of the United States necessary drawings, specifications, engineering and other services, etc., and otherwise, and also furnishing such similar assistance as may be necessary and mutually agreeable to Contractor and Contracting Officer in the installation and initial operation of the entire plant; all of which the Contractor has voluntarily offered and agrees to do, subject to reimbursement of its actual expenses, but without profit or remuneration.

In consideration whereof the United States agrees to pay to Contractor immediately, in reimbursement of Contractor's expenditures up to and including the 31st day of August, 1917, for services and traveling expenses of its employees and engineering staff, permanent or temporary, in connection with the designing and ordering of the aforesaid materials and equipment, etc., the sum of $21,526.32, as shown by the statement attached hereto and made a part hereof; and to reimburse the Contractor in the sum of $3,176.55, representing an item of expense incurred and paid by Contractor by reason of the abandonment in the interest of the United States of Contractor's project of construction for its own use at Shadyside, N. J., after a considerable amount of material, in the shape of piling, etc., and of apparatus therefor, had been transported to that site and was necessarily removed therefrom at an expense to Contractor and without any advantage to it, and in the interest of the United States.

And the United States agrees to pay to Contractor all amounts heretofore paid or hereafter to be paid by Contractor, on account of the aforesaid material and equipment, etc., such prices being determined according to the circumstances of the particular order, as shown by the order or other evidence, to the satisfaction of constructing officer; also to pay to Contractor, in reimbursement of such items of expense as it may have incurred or shall hereafter incur for the storing, transportation, or insurance of, or other expense incidental to protecting and caring for the aforesaid material and equipment, etc., until actually delivered to the United States upon their premises, and also to reimburse Contractor for its actual expenditures on account of the services and traveling expenses of its engineering staff and otherwise in assisting the Government of the United States in the matter of the aforesaid ammonia plant as hereinafter specified, from and after the 31st day of August, 1917.

And, further, the United States agrees to pay to Contractor as reimbursement of expense incurred by it, interest at the rate of 6 per cent per annum upon all payments of the natures hereinbefore described made by Contractor, from the date of such payment by Contractor to the date of reimbursement by the United States.

Art. II. Reimbursement of amounts now due as aforesaid to Contractor shall be made by the United States as soon after the date of this agreement as it shall be practicable for the accounts to be prepared and approved. Thereafter payments shall be made by the United States upon statements of Contractor, approved by Contracting Officer, such payments being made monthly when feasible; but nothing herein shall be construed as precluding or forbidding more frequent payments by the United States.

Art. III. Contractor agrees to consent to all such modifications of all uncompleted orders and contracts, including such substitutions of material purchased and paid for directly by the United States, as Contracting Officer shall arrange with the other parties, but only upon receipt of written statements of such modifications, duly executed by the other parties and accompanied by Contracting Officer's written and signed approval thereof. For all increases in cost resulting from such modifications Contractor shall be reimbursed in the same manner as for the original purchase prices, and when such modifications for the furnishing of material and equipment, etc., shall result in lessening the aforesaid obligations of Contractor for payment to be made for material and equipment, etc., the original prices estimated or agreed upon shall be modified accordingly, to the benefit of the United States. It is agreed that Contractor shall be in no way responsible to the United States in connection with any of said orders, contracts, materials, and equipment, etc., except as hereinbefore expressly provided, it being expressly understood that when Contracting Officer shall, in the interest of the United States, request Contractor to restore or arrange for storing any of the property in question, Contractor will exercise due precaution and diligence to protect said property against loss or damage, insuring such property when Contracting Officer shall so request, in the interest of the United States.

Art. IV. Contractor agrees to use all reasonable efforts to assist Contracting Officer in arranging desired modifications of the contracts and orders hereinbefore referred to, and to secure the prompt and economical completion of said contracts and orders in accordance with their original or modified terms, the same as if the material and equipment, etc., were to be retained by the Contractor.

Art. V. Contractor agrees not to create or suffer to be created any mortgage, lien, pledge, or other incumbrance upon any of the increased facilities, materials, and equipment, etc., supplies or other property for which the United States shall pay, or title to which passes to the United States by virtue of this contract, and which are in possession of Contractor, and further agrees not to permit or suffer any attachments, mechanics' liens, or other liens or incumbrances to attach to such property, and in the event that any such attachment, lien, or incumbrance is created, agrees to pay and discharge the same, to the end that all property which shall have been paid for by the United States shall be and remain free and unincumbered property of the United States; provided, that nothing in this article contained shall require contractor to make any such payments so long as it shall in good faith contest the validity of the claim or claims therefor and so long as the operations under this contract are not interfered with; and provided further, that contractor shall bond the claim asserted. Contractor shall give due notice that all property which shall have been paid for by the United States belongs to the United States.

Art. VI. This contract shall not, nor shall any right to receive payment, or any other interest herein, be transferred or assigned by Contractor to any persons, firms, or corporations.

Art. VII. No Member of or Delegate to Congress, or Resident Commissioner, nor any person belonging to or employed in the military service of the United States, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this article shall not apply to this contract so far as it may be within the operation or exception of section 116 of the act of Congress approved March 4, 1909 (35 Stats., 1109).

Art. VIII. Except as this contract shall otherwise provide, any doubts or disputes which may arise as to the meaning of anything in this contract shall be referred to the Chief of Ordnance for determination. If, however, Contractor shall feel aggrieved at any decision of the Chief of Ordnance upon such reference, he shall have the right (save only as to the allowance and determination of costs hereunder) to submit the same to the Secretary of War, whose decision shall be final.

Art. IX. This contract may be executed in any number of counterparts, all of which together shall constitute one original contract. Whenever the term "Contracting Officer" is used in this contract the same shall be considered to mean the Contracting Officer executing this agreement, his successor or successors, his duly authorized agent or agents, or anyone designated by the Chief of Ordnance, from time to time, to act as Contracting Officer hereunder.

In witness whereof the party of the first part has caused this contract to be executed by its proper officers, thereunto duly authorized, and the United States of America has caused this contract to be executed by the undersigned Contracting officer, thereunto duly authorized.

GENERAL CHEMICAL CO.
[Seal] By Jas. L. Morgan,
Secretary, Contractor.

UNITED STATES OF AMERICA,
By J. W. Joyes,
Colonel Ordnance Department
U. S. A.,
Contracting Officer.

Witnesses:
F. H. Nichols,
G. H. Richmond.

PLAINTIFF'S EXHIBIT No. 652.

CONTRACT NO. T-14, MADE BY THE CHIEF OF ORDNANCE WITH CHEMICAL CONSTRUCTION CO., OF CHARLOTTE, N. C., FOR NITRIC ACID RECOVERY PLANT, DATED JANUARY 30, 1918.

FOR CONSTRUCTION AT UNITED STATES NITRATE PLANT NO 1.

These articles of agreement, entered into January 30, 1918, between Chemical Construction Co., a duly organized North Carolina corporation, first party (hereinafter called the contractor), and the United States of America, by J. W. Joyes, colonel, Ordnance Department, United States Army (hereinafter called the contracting officer), acting by authority of the Chief of Ordnance, United States Army, and under the direction of the Secretary of War, second party, witness:

Whereas war exists between the United States and the Imperial German Government, constituting a national emergency, and

Whereas the contracting officer has satisfied himself of the suitability for military use of the articles and work which the contractor proposes to furnish, and has also satisfied himself that the price and terms of delivery and payment hereinafter set forth are fair and just:

Now, therefore, under the provisions of section 120 of an act of Congress relating to national defense, approved June 3, 1916, and pursuant to all other laws of the United States and executive orders of the President of the United States or heads of its departments under which the requirements of advertisement for proposals are dispensed with, and contract in the form hereof duly authorized, and in consideration of the premises and of the mutual agreements, and the payments to be made, as hereinafter set forth, the said parties have agreed, and by these presents do agree, with each other as follows, viz.:

Article I. *The work.*—Contractor shall, in the shortest practicable time, design, erect, and build a complete nitric acid recovery plant, embracing oxidation and concentration plants, in general plan and arrangement substantially as shown and reasonably implied on blue print copies of drawings U. S. A. 503, 504, 509, 510, 520, 523, and 524, but specifically in accordance with the description and specifications contained in the estimates dated January 28, 1918, said drawings and estimates being appended as part of this contract. Contractor shall furnish all necessary labor, material, tools, machinery, equipment, facilities, and supplies, and do all things necessary for the construction and completion of the work. All matters herein shall be in every detail subject to supervision and direction by and approval of the contracting officer.

Wherever work in connection with the plant shall be carried on simultaneously by the contractor and one or more others, all parties will be required to work cooperatively in such reciprocal relationship as shall be for the best interests of the work as a whole. Contractor agrees to abide by the decision of the contracting officer upon any disputes that may arise between contractor and such others as may be working simultaneously with the contractor upon work in connection with said plant.

Contracting officer may from time to time, by written instructions issued to contractor, make changes in any of the drawings and specifications bearing upon the work herein contemplated, issue additional instructions, require additional work, or direct the omission of work previously ordered, and all of the provisions of this contract shall apply to all such changes, modifications, etc., and contractor shall comply with all such written instructions, as if they were embodied in the original terms, drawings, and specifications.

The oxidation plant shall consist of two complete units, each unit to consist of one gas-cooling plant, comprising gas-flue connections, gas cooler, and oxidation tower; and one nitric acid gas-absorption plant, with absorption towers, acid storage and weighing tanks, exhausters, and acid pumping equipment, and each of said units to be of sufficient capacity to treat 2,000 cubic feet of nitrous acid gas of approximately 10 per cent volume nitrous oxide (assumed to be equivalent to 15,000 pounds of ammonia per day), each unit to be capable of oxidizing 15,000 pounds of ammonia per day, and the plant as a whole to be capable, by way of excess capacity, of oxidizing 33,000 pounds of ammonia per day. Said measurements are based upon standard conditions, namely, 760 millimeters of mercury pressure at 0° centigrade temperature. Ample storage facilities for the products herein contemplated shall be provided as herein more explicitly set forth. The contractor hereby guarantees that it will so construct all towers hereinbefore mentioned so that they will neither crack nor leak, provided the leak or cracking is due to bad workmanship, or material and not caused from causes beyond contractor's control.

The concentration plant shall have sufficient capacity to concentrate from 50 to 92 per cent, 24,000 pounds of nitric acid (figured at 100 per cent acid) per day. Said concentration plant shall consist of two denitrating units, five absorption units, two condensing units, miscellaneous tanks and other equipment, one sulphuric acid concentrator, and all pumping and storage equipment, all to be housed in a building sufficiently large to accommodate equipment, etc., for complete units of twice the extent and number herein set forth. Contractor shall furnish drawings for said equipment, and the equipment itself, and drawings for the foundations and buildings, but shall not build the foundations or buildings.

Time being of the essence in every feature of this contract, contractor will furnish each unit complete within four months after its foundations, acid-pumping wells, and temporary sheds are turned over to contractor by the United States, and contractor shall be liable to the United States for any damage resulting from delay beyond said time in completing each and every such unit. Causes of delay beyond the control or fault of contractor shall be promptly reported to contracting officer, who, in such cases as he may deem proper, extend the time for completion for a period equal to any delays so caused.

Contractor shall and hereby agrees to:

1. Furnish all engineering services, complete designs, plans, blue prints, and specifications for all material and apparatus.

2. Purchase all the necessary material at market prices. If the United States be able to buy materials for lower prices than the contractor can, the right is reserved to the United States to make such purchases, furnishing contractor copies of all the purchase orders therefor. Upon the amounts of such purchase by the United States, however, contractor shall receive its hereinafter stated percentage fee as profit.

3. Furnish, as manufacturers, all materials for acid-proof masonry construction and all pacing materials at the prices indicated on its estimates hereto appended (Exhibit A), where marked "APM." Such prices shall be subject to Government revision or change, and changes therein made by the Government or the contracting officer shall apply and become effective for the purpose of this contract.

4. Guarantee that all said acid-proof masonry materials will be first class and the best of their respective kinds, and that the erection of same will be done in a first-class, workmanlike manner. For a period of one year after the plant is first placed in operation contractor will, at its own expense, repair or replace, if necessary, any part of such acid-proof masonry that in the course of normal operation may from faulty workmanship or material become defective.

5. Furnish all construction, supervision, skilled masons, necessary experts, and common labor for the erection of all materials and apparatus that may be required in the erection of this plant.

6. Install all materials and apparatus in a first-class, workmanlike manner; and be held responsible that the acid-proof material shall be satisfactory and

acceptable to the contracting officer as to its quality and character, and this for materials purchased from other manufacturers as well as from contractor, to the extent only, with respect to materials purchased from other manufacturers, of their respective guaranties to the contractor.

7. Supply complete general and detail plans of all concrete foundations, the concrete pit or well for lifts and pumping apparatus, concrete tanks, and concrete flues for the absorption units that may be required in connection with this plant, but none of the material or labor required to build and construct these items or the acid pumping wells. Contractor shall inspect, and hereby warrants and guarantees the safety and security of, all of the concrete foundations and the concrete wells to be furnished by the United States from designs, plans, or specifications prepared by contractor, its agents or employees.

8. Supply upon request in writing by the contracting officer, complete copies of all of its general and detail drawings pertaining to this work, of all of its purchase orders for materials for or in connection with this work, of all letters and instructions issued by the contractor to any persons whatsoever in connection with this work. Contractor agrees that all purchases made for this work, except such as the contracting officer may, in his discretion, except in writing from this requirement, shall be first subject to approval by the contracting officer.

The United States will—

1. Furnish all foundations and concrete work, including tanks, flues, drains, acid pumping wells, etc., required for this work.

2. Furnish such temporary buildings for the protection of the units, towers, and coolers as may be necessary and requisite, and proper sheds to protect

brick, cement, and other materials damageable by the weather.

3. Furnish such temporary housing for workmen and laborers, temporary office for engineering, accounting, and supervising forces, and contractor's field force, all with proper sanitary equipment, as in the contracting officer's discretion may be necessary.

4. Furnish necessary trackage and sidings for handling and unloading materials.

5. Furnish the necessary water for building and construction purposes and the necessary electric lighting for all of said buildings and operations.

6. Furnish air-compressor plant, water, air, and electric-power supply lines.

ART. II. *Reimbursement of costs.*—Contractor shall be reimbursed as hereinafter described for such of its actual net expenditures in the performance of the work herein contemplated, as may be approved or ratified by contracting officer and as are included in the following items:

(1) The cost of all direct labor and of all direct material which will presumably be worn out by use in the prosecution of said work, and which is necessary for and actually used in said work and actually paid for by contractor. This shall not be construed to cover tools owned by the workmen, articles upon which rental rates are charged or paid as hereinafter provided, machinery or equipment as contemplated by section 3 of this Article II, or any costs of work upon the designs for which a fixed sum is paid as hereinafter provided. The contractor shall make no departure from the standard rate of wages being paid in the locality where said work is done without the prior consent and approval of the contracting officer. All pay rolls for labor performed hereunder shall be prepared by contractor and submitted in advance of payment for approval by contracting officer.

(2) The net sums actually paid by contractor to subcontractor under all subcontracts made in accordance with the provisions of this agreement.

(3) Rental actually paid by the contractor, at rates not to exceed those mentioned in the schedule of rental rates hereto attached, for construction plant in sound and workable condition, such as pumps, derricks, concrete mixers, boilers, clam-shell or other buckets, electric motors, drills, hammers, and hoists, steam shovels, locomotive cranes, power saws, engineers' levels and transits, and such other equipment as may be necessary for the proper and economical prosecution of the work and will presumably be not worn out by its use thereon.

Rental to the contractor for such construction plant or parts thereof as it may own and furnish, at the rates mentioned in the schedule of rental rates hereto attached, except as hereinafter set forth. When such construction plant or any part thereof shall arrive at the site of the work the contractor shall file with the contracting officer a schedule setting forth the fair valuation at that time of each part of such construction plant. Such valuation shall be deemed final, unless the contracting officer shall, within 10 days after the machinery has been set up and is working, modify or change such valuation, in which event the valuation so made by the contracting officer shall be deemed final. When and if the total rental paid to the contractor for any such part shall equal the said valuation thereof, no further rental therefor shall be paid to the contractor and title thereto shall vest in the United States. At the completion of the work the contracting officer may, at his option, purchase for the United State any part of such construction plant then owned by the contractor by paying to the contractor the difference between the valuation of such part or parts and the total rentals theretofore paid therefor.

All equipment, tools, machinery, etc., shall be classified by the contractor, such classification to be subject to approval by contracting officer, as belonging to that class included in paragraph (1) or paragraph (3), Article II, before being put into use.

The rental rate of any equipment, tools, machinery, etc., classified by contractor, with approval by contracting officer, as belonging to that class included in paragraph (3), Article II, and not appearing on schedule of rental rates, shall be agreed upon in writing by contractor and contracting officer before such equipment, etc., is put into use.

Rental rates as substitutes for those scheduled may be agreed upon in writing between contractor and contracting officer, such substitute rates to conform to rates of rental charged in the vicinity of performance of the work herein contemplated. For any such equipment, etc., which contracting officer shall furnish or supply contractor shall be allowed no rental nor fee of any kind.

(4) Loading and unloading such construction plant, the transportation thereof to and from the place or places where it is to be used in connection with said work, the installation and dismantling thereof, and ordinary repairs and replacement during its use in said work, all subject to the provisions hereinafter set forth and to the right which the United States hereby reserves in itself to directly perform or pay for any such services without having the cost thereof thus borne directly by the United States, included in the cost of the work upon which contractor's fee is based.

(5) Such transportation and expenses to and from the work of the necessary field forces for the economical and successful prosecution of the work, procuring labor, and expediting the production and transporta-

tion of material and equipment as may be approved by contracting officer.

(6) Such salaries of resident engineers, superintendents, timekeepers, foremen, and other employees at the field offices of the contractor in connection with said work, in proportion to the actual time of such field employees applied to this work as contracting officer may approve.

(7) Such buildings and equipment required for necessary field offices and the cost of maintaining them, including such minor expenses as necessary telegrams, telephone service, expressage, postage, etc., as contracting officer may approve.

(8) Such bonds, fire, liability, and other insurance as the contracting officer may approve or require, and such losses and expenses not compensated by insurance or otherwise as are found and certified by the contracting officer to have been actually sustained (including settlements made with the written consent and approval of the contracting officer) by the contractor in connection with said work, and to have clearly resulted from causes other than the fault or neglect of the contractor. Such losses and expenses shall be included in the cost of the work for the purpose of reimbursement to the contractor, but not for the purpose of determining the contractor's fee, except as hereinafter provided with respect to the cost of reconstructing and replacing any of the work destroyed or damaged.

(9) Such permit fees, deposits, royalties, and other similar items of expense incidental to the execution of this contract and necessarily incurred as are approved in advance by contracting officer.

(10) Such proportion of the transportation, traveling, and hotel expenses of officers, engineers, and other employees of the contractor as is actually in-

curred in connection with this work, with the approval of contracting officer.

(11) Such other items as should, in the opinion of the contracting officer, be included in the cost of the work. When such an item is allowed by the contracting officer, it shall be specifically certified as being allowed under this paragraph.

The United States reserves the right to pay directly to common carriers any or all freight charges on material and equipment of all kinds furnished under this contract and certified by contracting officer as being for installation or consumption in the work hereunder; contractor shall be reimbursed for such freight charges of this character as it shall in writing be required to pay and as shall be specifically certified by contracting officer, and such payments by contractor shall be considered as part of the cost of the work upon which contractor's fee shall be based. Freight charges paid by the contractor for transportation of construction plant, equipment, etc., of every character shall be treated as part of the cost of the work upon which the contractor's fee shall be based; provided that charges for transportation of such construction plant, equipment, etc., over distances in excess of 500 miles shall require special approval by contracting officer.

No salaries of the contractor's executive officers, no part of the expense incurred in conducting the contractor's main office or regular established branch office, and no overhead expenses of any kind, except as specifically listed above, shall be included in the cost of the work; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

The contractor shall take advantage to the extent of its ability of all discounts available, and when unable to take such advantage shall promptly notify contracting officer of its inability and its reasons therefor.

All revenue from the operations of commissary, or other facilities, and all rebates, refunds, etc., shall be accounted for by contractor and applied in reduction of the cost of the work.

Art. III. *Compensation.*—As full compensation for the services rendered or to be rendered by contractor under this agreement, except the preparation of certain designs, payment for which is hereinafter separately provided to be made, the United States will pay to contractor, in the manner provided by Article III hereof, a fee of $50,000, to be paid in monthly installments, each of an amount equal to 8 per cent of such of contractor's actual, necessary, and proper expenditures on account of the cost of the work as defined in Article II hereof, as remain unpaid at the end of the next preceding calendar month, until the sum of such payments as fee shall equal $45,000, the remaining $5,000 of said fee to be retained by the United States until all of the articles and work herein contemplated shall have been furnished and satisfactorily completed, thereupon said remaining sum to be paid to contractor. If any changes in designs, specifications, or instructions, as permitted by paragraph 3 of Article I of this contract, made or ordered subsequently to the date of this instrument, shall require of contractor substantially additional service, contractor shall be paid therefor such additional sum of money, not to exceed an amount equal to 8 per cent of the cost of the additional work occasioned by such changes as may be agreed upon between contractor and contracting officer as just compensation for such additional service; this method to be followed also in determining contractor's compensation for reconstruction or replacing property destroyed or damaged from causes without contractor's fault or beyond its control, but property destroyed or damaged as the natural and proximate result of contractor's fault or negligence shall be repaired at contractor's expense.

No part of the cost of air-compressor plant, water, air, and electric power supply lines, foundations for equipment, buildings, concrete tanks and flues, acid-pumping wells, freight, other items not included in the work of the contractor, and all items specified herein as to be furnished by the United States, shall be included in the cost of the work for the purpose of determining the contractor's fee or amounts to be paid on account thereof.

As full payment for all of the designs prepared or to be prepared by contractor in connection with the work contemplated by this agreement, the United States will pay, when and as proper voucher or vouchers therefor may be submitted to and approved by contracting officer—at all events within 60 days after satisfactory completion of all of the work covered by this contract—the sum of $10,000.

ARTICLE IV. *Payments.*—On or about the 7th day of each month contractor shall prepare a statement showing as completely as possible all proper costs and expenditures up to and including the last day of the preceding month, including the amount of contractor's fee thereon. Contractor shall at such time deliver to the United States original signed pay rolls for labor, original invoices for materials purchased, and all other original and supporting papers not theretofore delivered covering expenditures made by contractor which properly may be included in the cost of the work. The United States will, upon proper vouchers approved by contracting officer, pay to contractor such proper amounts, less all previous payments. The United States may make other and more frequent payments to enable contractor to take advantage of discounts at intervals between the dates above mentioned or for other lawful purposes. Upon or within 60 days after final completion of the work and the execution by the contractor of a release forever discharging the United States of and from all manner of debts, claims, and damages whatsoever arising under or by virtue of this contract the United States will pay to contractor any balance of cost for which contractor may properly be reimbursed and of contractor's proper fee which may remain unpaid.

ARTICLE V. *Inspection and audit.*—The contracting officer shall at all times be afforded proper facilities for inspection of the work and have access to the premises, the work, and material, all books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description of the contractor pertaining to said work, and the contractor shall preserve for a period of five years after its completion or cessation of work under this contract all the books, records, and other papers just mentioned.

If at any time contracting officer shall find that bills for labor or material, or other bills legitimately incurred by contractor hereunder, are not promptly paid by the contractor, contracting officer shall have the right to refuse to make further payments to contractor until all such obligations past due shall have been paid. Should contractor neglect or refuse to pay such bills within five days after notice from contracting officer so to do, then contracting officer shall have the right to pay such bills directly, and no such direct payments shall be included in the cost of the work or in the total sum upon which contractor's fee is based.

ARTICLE VI. *Special requirements.*—The contractor hereby agrees that it will: (1) Begin the work herein specified at the earliest time practicable, and diligently proceed so that such work may be completed at the earliest possible date; (2) promptly pay for all labor, material or other service rendered; (3)

procure, and thereafter maintain such insurance, in such forms and amounts, and for such periods of time as contracting officer may approve or require; (4) procure all necessary permits and licenses, and obey and abide by all laws, regulations, ordnances, and other rules applying to such work, of the United States of America, of the State or Territory wherein such work is done, of any subdivision thereof, or of any duly constituted public authority; (5) unless this provision is waived by the contracting officer, insert in every contract made by it for the furnishing to it of services, materials, supplies, machinery, equipment, or the use thereof, for purposes hereunder, a provision that such contract is assignable to the United States; will make all such contracts in its own name, and not bind or purport to bind the United States or contracting officer thereunder; (6) in every subcontract made in accordance with the provisions hereof, require the subcontractor to agree to comply fully with all the undertakings and obligations of the contractor herein, except such as do not apply to such subcontractor's work; (7) at all times keep at the site of the work a duly appointed representative who shall receive and execute on the part of the contractor such notices, directions, and instructions as contracting officer may desire to give; (8) at all times use its best efforts in all its acts hereunder to protect and subserve the interests of the United States and of contracting officer.

ARTICLE VII. *Right to terminate contract.*—Should contractor at any time refuse, neglect, or fail in any material respect to prosecute the work promptly and diligently, or default in the performance of any of the agreements herein contained, contracting officer shall have the right, after five days' written notice to the contractor to terminate this contract, and may enter upon the premises and take possession, for the purpose of completing said work, of all materials, tools, equipment, appliances, all options, privileges and rights of the contractor, and may complete, or employ any other person or persons to complete said work. In case of such termination of the contract, the United States shall pay to contractor such amounts of money on account of the unpaid balance of cost of work and fee as will fully reimburse contractor for the cost of the work up to the time of such termination, plus a fee computed thereon at the rate or rates for monthly payment set forth in Article IV hereof; and the United States shall also pay to contractor compensation, either by purchase or rental at the election of contracting officer, for any equipment retained; such compensation, in the event of rental, to be in accordance with paragraph (3) of Article II, and in the event of purchase to be based upon the valuations declared at the time of arrival of the equipment at the site of the work, less any amounts paid as rental therefor up to the time of the taking of such possession by the United States. Contractor hereby agrees that such payments when made shall constitute full settlement of all claims of contractor against the United States for money claimed to be due to contractor for any reason whatsoever. In case of the termination of this contract for any cause, the United States shall assume and become liable as provided in Article VIII hereof, for all such obligations, commitments, and unliquidated claims arising out of this contract and not sounding in tort as contractor may have theretofore in good faith undertaken or blamelessly incurred in connection with said work, and contractor shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers, and take all such steps as contracting officers may require for the purpose of fully vesting in the United States all of the rights and benefits of the contractor under such obligations, commitments, etc. When contracting officer shall have performed the duties incumbent upon him under the provisions of this article, shall thereafter be entirely released and discharged of and from any and all demands, actions, or claims of any kind, on the part of the contractor, hereunder or on account hereof.

ARTICLE VIII. *Abandonment of work by contracting officer.*—If conditions should arise which in the opinion of contracting officer make it advisable or necessary to cease work under this contract, contracting officer may abandon the work and terminate this contract. In such case the United States will pay to contractor a sum of money to be computed as follows: To the unpaid remainder of the cost of the work up to the time of such abandonment, evidenced as hereinbefore provided, add to the total amount of the contractual obligations and commitments assumed by the United States under Article VII hereof, and to the sum add the proper fee to be paid contractor on the basis of said sum and the percentages provided by Article III hereof. After lawful liquidation of properly assumed claims as contemplated by Article VII hereof, unliquidated at the time of such abandonment of the work or termination of this contract, and when and as by proper authority ordered so to do, the United States will discharge such claims; no fee shall be paid to contractor upon the amounts thereof; the United States shall be the beneficiary of any latent valuable properties therein. When contracting officer shall have performed the duties incumbent upon him under the provisions of this article, the United States shall thereafter be entirely released and discharged of and from any and all demands, actions, or claims of any kind on the part of the contractor hereunder or on account hereof.

Article IX. *Patent rights.*—Contractor agrees to hold and save the United States and all persons acting under them harmless from and against all liability on account of any patent rights granted by the United States which may effect the articles herein contracted for, their component parts, or their manufacture, or the performance of this contract in any manner whatsoever: *Provided however,* That if the United States shall at any time transfer its rights to operate the plants herein contemplated to any third person, then this article shall not operate to deprive the contractor or any of its rights as patentee in the sulphuric-acid concentrator or the Southern Electro-Chemical Co., of New York, of any of its rights as patentee in the nitric-acid concentrator, both of which apparatuses are parts of said plants, as against such third persons.

Article X. *Bond.*—Contractor agrees to furnish to the United States within 10 days after signing this contract a bond with contractor as principal and such surety or sureties as shall be approved by contracting officer as surety or sureties thereon, in the penal sum of $70,000, conditioned upon the faithful and complete performance of this contract, including the carrying out of any changes as provided for by said contract, by the contractor.

Article XI. *Convict labor.*—No person or persons shall be employed in the performance of this contract who are undergoing sentence of imprisonment at hard labor imposed by the court of any of the several States, Territories, or municipalities having criminal jurisdiction.

Article XII. *Hours and conditions of labor.*—This contract is subject to the provisions of the Naval appropriation act approved March 4, 1917, and the President's Executive order dated March 24, 1917, which suspends the eight-hour law approved June 19, 1912, and brings into effect the proviso contained in said Naval appropriation act. Said Executive order provides as follows:

"Under authority contained in the Naval appropriation act approved March 4, 1917 (Public, 391, 64th Con.), whereby it is provided:

"That in case of national emergency the President is authorized to suspend provisions of law prohibiting more than eight hours of labor in any one day of persons engaged upon work covered by contracts with the United States; *Provided further* That wages of persons employed upon such contracts shall be computed upon a basic-day rate of eight hours' work, with overtime rates to be paid for at not less than time and one-half for all hours worked in excess of eight hours.

"It is hereby ordered that the provisions of the act approved June 19, 1912, limiting the hours of daily services of mechanics and laborers on work under contracts to which the United States is a party are suspended with respect to all contracts for ordnance and ordnance stores and other military supplies and material, contracts for buildings under construction or to be constructed at the arsenals and contracts for fortifications work during the pending emergency and until further orders.

"This order shall take effect from and after this date.

"Woodrow Wilson.

"The White House,
"24 March, 1917."

It is agreed that the contractor, in doing any part of the work contemplated by this contract, and any subcontractor contracting for any part of said work, shall comply with the provisions of the naval appro-

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UNITED STATES V. CHEMICAL FOUNDATION, INC. NO. 127

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priation act approved March 4, 1917, and the Executive order of the President of the United States dated March 24, 1917, in respect to the wages of persons employed upon contracts with the United States, so long as said act approved March 4, 1917, or said Executive order dated March 24, 1917, shall be in force and effect.

In the event of any dispute with reference to wages, hours, or other conditions appertaining to said work, between the contractor or any subcontractor and labor employed by him on said work, the contractor or subcontractor shall immediately notify the contracting officer of the existence of such dispute and the reasons therefor. Contracting officer may, at his option, instruct the contractor or subcontractor involved in such dispute as to the method or steps which the contractor or subcontractor should follow with reference thereto and the contractor or subcontractor shall thereupon comply with such instructions.

Article XIII. *Contract not to be assigned.*—Neither this contract nor any interest therein shall be assigned or transferred. The contractor shall not enter into any subcontract for any part of the work herein specified without the consent and approval in writing of the contracting officer. In case of such assignment, transfer, or subletting without the consent and approval, in writing, of the contracting officer, the contracting officer may refuse to carry out this contract either with the transferer or transferee, but all rights of action for any breach of this contract by the contractor are reserved to the United States.

Article XIV. *Government officials not to participate.*—No Member of or Delegate to Congress, Resident Commissioners, nor other persons belonging to or employed in the civil or military services of the United States is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this article shall not apply to this contract so far as it may be within the operation or exception of section 116 of the act of Congress approved March 4, 1909 (35 Stats., 1109).

Article XV. *Settlement of disputes.*—This contract shall be interpreted as a whole and the intent of the whole instrument, rather than of any special clause, shall govern. If any doubts or disputes shall arise as to the meaning or interpretation of anything in this contract, or if contractor shall consider himself prejudiced by any decision of contracting officer made under the provisions of Article V hereof, the matter shall be referred to the Chief of Ordnance, United States Army, for determination. If, however, contractor shall feel aggrieved by the decision of the Chief of Ordnance, he shall have the right to submit the same to the Secretary of War, whose decision shall be final and binding upon both parties hereto.

Article XVI. *Notice.*—Notice under this contract shall be deemed to have been sufficiently given to and received by the contractor when mailed in a sealed postpaid wrapper addressed to Chemical Construction Co., Charlotte, N. C.

Article XVII. This contract shall bind and inure to the contractor and its successors. This contract may be executed in any number of counterparts, all of which together shall constitute the original contract.

It is understood and agreed that wherever the words "contracting officer" are used herein the same shall be construed to include his successor in office, any other person to whom the duties of the contracting officer may be assigned by proper authority, and any duly appointed and authorized representative of the contracting officer.

In witness whereof the party of the first part has caused this contract to be executed by its proper officer thereunto duly authorized, and the United States of America has caused this contract to be executed by the undersigned contracting officer, thereunto duly authorized.

CHEMICAL CONSTRUCTION CO.,
By PETER S. GILCHRIST,
Its President, Contractor.
(Corporate Seal.)

THE UNITED STATES OF AMERICA,
By J. W. JOYES,
Colonel, Ordnance Department,
United States Army,
Contracting Officer.

Witnesses:
E. E. WARE.
C. H. RICHMOND.

PLAINTIFF'S EXHIBIT No. 653.

GENERAL CHEMICAL COMPANY
25 BROAD STREET
New York

April 30th, 1917.

Dr. Chas. L. Parsons:
Bureau of Mines
Washington, D. C.

Dear Dr. Parsons:

We herewith submit the figures asked for by Dr. Noyes. The cost of plant for producing 60,000 lbs. of NH_3 in 24 hours, built under normal conditions, we estimate to be $2,400,000. Of this $2,400,000 it is estimated that the H-N mixture plant will cost $1,600,000 and the Ammonia plant proper $800,000.

When this plant is operating under normal conditions, with cost of raw materials, power, labor, etc. as per our estimate II of April 17th, the manufacturing cost of H÷N mixture and conversion and liquefaction costs of the NH_3, will be as follows:

Manufacturing cost in Cents per 1-lb NH_3

	H÷N Mixture	*NH_3 Liquefied*
Raw Materials	.517	
Power	.103	.035
Labor	.253	.084
Repairs	.187	.065
Expense & Burden	.110	.040
Caustic Recovery	.125	
	1.295	.222
Int. & Deprec. 12½% on $1,600,000	1.000	
do 800,000		.500
	2.295	.722
Total Cost of 1-lb NH_3		3.017

As can be seen, the manufacturing cost is somewhat lower than the cost in Estimate II, which is due to the smaller investment.

If a plant is built under present conditions, with daily capacity of 15,000 lbs. NH_3, this plant is estimated to cost $1,000,000, of which the plant for H÷N mixture will cost $670,000 and the plant for conversion and liquefaction of Ammonia $330,000. The manufacturing cost figured as above will be as follows:

Manufacturing Cost in Cents per 1-lb. NH_3

	H÷N Mixture	*NH_3 Liquefied*
Raw Materials	.742	
Power	.338	.112
Labor	.379	.126
Repairs	.300	.100
Expense & Burden	.110	.040
	1.869	.378
Interest & depreciation on $670,000	1.700	
330,000		.800
	3.569	1.178
Total Cost 1-lb NH_3		4.747

In these plant costs are included all foundations, buildings and apparatus as well as power house and power plant, but no land or Railroad tracks.

Trusting this information is complete, I am

Yours very truly,

GENERAL CHEMICAL COMPANY,

(Sgd.) FREDRIK W. DE JAHN.

PLAINTIFF'S EXHIBIT No. 654.

[Ministry of munitions of war. Munitions inventions department.]

FINAL REPORT OF NITROGEN PRODUCTS COMMITTEE.

[Presented to Parliament by command of his Majesty.]

NITROGEN PRODUCTS COMMITTEE.

Col. Sir Henry E. F. Goold-Adams, K. B. E., C. B., C. M. G., R. A. (chairman).

G. S. Albright, Esq., M. A.

W. R. Bousfield, Esq., K. C., M. A., F. R. S.

Charles C. Carpenter, Esq., D. Sc., M. Inst. C. E.

Kenneth M. Chance, Esq., M. A. (co-opted).

Prof. J. Norman Collie, Ph. D., D. Sc., LL. D., F. R. S.

W. R. Cooper, Esq., M. A., B. Sc., M. I. E. E., representing the Physical Society.

Lieut. Col. A. W. Crossley, C. M. G., D. Sc., F. C. S., F. R. S., representing the Chemical Society.

Sir James J. Dobbie, M. A., LL. D., D. Sc., F. R. S., representing the Board of Agriculture and Fisheries.

Prof. F. G. Donnan, M. A., Ph. D., F. R. S.

Sir Arthur Duckham, K. C. B., M. Inst. C. E.

R. C. Farmer, Esq., O. B. E., Ph. D., D. Sc., representing the Explosives Department.

F. Gossling, Esq., B. Sc., representing the Board of Trade.

J. A. Harker, Esq., O. B. E., D. Sc., F. R. S., Director of Nitrogen Research Laboratory.

Prof. A. K. Huntington, A. R. S. M., M. I. M. M., M. I. M., representing the Faraday Society.

F. H. Jones, Esq., M. Inst. C. E. (co-opted).

C. H. Merz, Esq., M. Inst., C. E., M. I. E. E. (co-opted).

Right Hon. Lord Moulton of Bank, G. B. E., K. C. B., M. A., LL. D., F. R. S., Director General of Explosives Supply.

J. H. Rider, Esq., M. Inst. C. E., M. I. Mech. E., M. I. E. E. (co-opted).

E. J. Russell, Esq., O. B. E., D. Sc., F. R. S.

Sir John F. C. Snell, M. Inst. C. E., M. I. Mech. E., M. I. E. E., representing the Institution of Electrical Engineers.

Prof. The Hon. R. J. Strutt, M. A., F. R. S.

Sir Richard Threfall, K. B. E., M. A., F. R. S.

A. J. Walter, Esq., K. C., M. A., LL. B., representative of the Ministry of Munitions upon the Electric Power Supply Com. of the Board of Trade.

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NITROGEN FIXATION UNDER BRITISH CONDITIONS.

368. After a full consideration of the salient features of the various nitrogen fixation processes and of the ammonia oxidation process in the light of British conditions and of the resources and requirements of the country, the committee has arrived at the following broad conclusions:

(*a*) The arc process, although the most direct method of obtaining synthetic nitric acid, is handicapped by large power requirements, by low electro-chemical efficiency, and by the extensive and costly character of the necessary chemical plant (pars. 196-200). Nevertheless, the process would stand to advantage as compared with the retort (Chile nitrate) process as long as the cost of electrical energy was below 9 pounds per kilowatt-year (pars. 127-201).

(*b*) The calcium cyanamide process is a throughly well-established commercial proposition and is in operation on a large scale in many countries. With electrical energy costing not more than 5 pounds per kilowatt-year, the process yields a cheaper marketable form of combined nitrogen than any other established fixation process, and is the only such process giving a solid nitrogenous fertilizer as a primary product (pars. 206, 440). The process is very adaptable involving the manufacture of calcium carbide as an intermediate product and providing a ready, although indirect method of obtaining a comparatively cheap synthetic ammonia (pars. 213-214). Calcium cyanamide also constitutes a raw material for the manufacture of crude cyanides, and of organic products of growing importance, such as nitrate of urea (par. 213).

There is no reason why the manufacture of calcium cyanamide (and calcium carbide), if laid out on a large scale, should not be successful in this country, because the higher cost of electrical energy, although an important factor from the point of view of foreign competition, is to a large extent offset by other favorable factors, such as cheap and abundant raw materials and the elimination of overseas freights (par. 217).

A steam-power station of 30,000 kilowatts maximum load is the minimum size that would be justifiable for the economical operation of the calcium cyanamide process under British conditions (par. 128).

(*c*) The Haber process, which requires little electrical power and uses coke as the principal raw material, seems specially suitable for this country. It has hitherto been operated on a full commercial scale in Germany alone. With pure hydrogen at a cost not exceeding 2s. 6d. per 1,000 cubic feet, the process is capable of producing pure ammonia at a cost which is below that of any existing ammonia process and is on a parity with that of the cheapest form of combined nitrogen obtainable by any nitrogen fixation process, namely, calcium cyanamide (pars. 225-6, and Table 35, columns 1 and 3).

The process is the most promising of all the synthetic methods of manufacturing ammonia and ammonium sulphate, and is likely to have a great future (pars. 240, 434).

The experimental work carried out in full detail at the Munitions Inventions Research Laboratory under the direction of the committee warrants the erection of a manufacturing unit.

Further experience will doubtless lead to the overcoming of certain difficulties attending the operation of the process, and also to the production of pure hydrogen at a lower cost than hitherto (par. 240). In the opinion of the committee, a figure of 2s. 6d. per 1,000 cubic feet will ultimately be realized (par. 225). With the engineering and chemical experience available in this country, there is no reason why the process should not be quickly established as a commercial success on a substantial manufacturing scale.

* * * * * * *

XIV. RECOMMENDATIONS

654. In making the recommendations set out below, the committee has been guided by the following salient facts:

(*a*) The sources of supply of combined nitrogen in the United Kingdom must be increased considerably either site would cost about £445,000 of the above totals.

Upon the same basis (*i. e.*, prewar prices plus 50 per cent), the approximate cost, at the factory, of raw cyanamide (19.5 per cent nitrogen) would be—

TABLE 72.—*Estimated post-war factory costs of raw cyanamid.*

Source of power.	Price of electrical energy per kilowatt year.	Factory costs per metric ton of— Raw product (19.5 per cent nitrogen).	Factory costs per metric ton of— Combined nitrogen as raw cyanamid.
Water	£4.0	£6.4	£32.8
Steam (with coal at 11s. 3d. per ton)	5.6	7.0	36.0

The factory costs include interest on the capital outlay for the power section of the plant, but not on the chemical section, and are exclusive of any royalties.

The committee has ascertained that plans and working drawings of the chemical sections of the plant can be obtained for a reasonable consideration. Moreover, as the result of the action taken upon the committee's interim recommendations (Appendix I), considerable progress was made with the plans and specifications for a suitable steam-power station designed as the nucleus of a possible capital power station. These plans and specifications are available.

The committee suggests that it might prove desirable, in the first instance, to arrange for a certain proportion of the calcium carbide produced as an intermediate product to be utilized as such instead of converting it into cyanamid.

At the date of the interim report (Appendix I) the committee was informed by the board of agriculture that the establishment of the calcium cyanamid industry in this country would meet with their approval. As the outcome of a recent communication, the committee is authorized to state that the board are still of opinion that the establishment of this process would be beneficial.

Synthetic ammonia (Haber) process.—This process has hitherto only been operated on a full commercial scale in Germany. Nevertheless, as a result of the continuous experiments carried out since the summer of 1916 at the Research Laboratory of the Munitions Inventions Department, the Government decided early in 1918 to erect a large factory at Billingham-on-Tees for the manufacture of synthetic ammonia and ammonium nitrate. This factory, projected as an emergency war measure, did not reach an advanced stage through causes which it is unnecessary to specify and in view of the altered situation the need for the completion of the factory as an ammonium nitrate project no longer exists.

The committee, nevertheless, recommends that the synthetic ammonia process should be established forthwith on a commercial unit scale and extended as rapidly as possible as a post-war measure, up to a minimum manufacturing scale of 10,000 tons of ammonia (equivalent to 40,000 tons of ammonium sulphate) per annum. The Billingham factory should be utilized for the purpose if such a course is practicable.

The evidence on the question of capital cost is somewhat uncertain, but the outlay for a factory of the capacity indicated, on the basis of pre-war prices plus 50 per cent, would probably amount to £600,000 if ammonia were the end product or to £780,000 if the factory were laid out for the manufacture of synthetic ammonium sulphate.

Ammonia oxidation process.—This process, in its modern developments, has been proved to afford a reliable and simple means of obtaining nitric acid and nitrates. Early in the war a full-scale installation was erected on the Thames by private enterprise, supported by the Government, the older method of oxidation being utilized. A long series of experiments carried out at the research laboratory of the department resulted in the design of a simple and modified plant which has been installed on a trial scale at several works in the country. The designs of the ammonia oxidation section of the Government ammonium nitrate factory referred to above were based upon the results obtained in these research and trial operations.

The committee recommends that (*i*) An ammonia oxidation plant should be completed in conjunction with the synthetic ammonia factory already referred to, as was originally contemplated by the Government, on a scale sufficient to produce about 10,000 tons of strong nitric acid (95 per cent) per annum, or its equivalent in nitrates.

(*ii*) The plant should be designed to utilize either synthetic or by-product ammonia as a raw material, because the national interests demand that adequate experience in the production of nitric acid from ammonia from all sources should be available in this country.

Upon the basis of prewar prices plus 50 per cent., the estimated capital outlay for an installation having a capacity of 10,000 tons of strong nitric acid (calculated as 100 per cent) per annum would be £120,000.

The process, when thoroughly tested, will probably lead to the ultimate abandonment of the older retort method of producing nitric acid from Chile nitrate, and also to the abandonment of nitric pots in chamber sulphuric acid manufacture.

BY-PRODUCT AMMONIA INDUSTRIES.

657. The committee makes the following recommendations for conserving and increasing the output of combined nitrogen from existing by-product am-

monia industries for securing the better utilization of the national resources in coal, and for reducing the consumption of raw coal as a fuel.

The committee recommends that (*i*) Encouragement should be given to facilitate and to insure the replacement of nonrecovery coke ovens by recovery ovens at a much more rapid rate than hitherto, in order that the reserves of coking coal shall be utilized to the maximum advantage.

(*ii*) It should be incumbent on all gas works which now contribute to the home supplies of ammonia nitrogen to put into practice the various simple expedients that have been proved to result in a considerable diminution in the loss of ammonia by volatilization or otherwise. The statutory powers administered by the local government board through the chief inspector of alkali works, should, if necessary, be extended to insure that this is done.

(*iii*) In collaboration with the responsible organization of the gas industry, a comprehensive scheme of ammonia recovery and collection (including distribution of sulphuric acid) should be devised, which will be economically applicable to as many as possible of the smaller works where ammonia is at present allowed to run to waste. Wherever it can be shown that no financial loss would be incurred by any works included in the scheme, the works should be required, in the national interests, to cooperate. When a scheme has been devised, powers should, if necessary, be conferred upon the local government board to insure its operation and administration.

(*iv*) In collaboration with the responsible organizations of the by-product ammonia industries, definite standards of efficiency in ammonia recovery should be formulated (based upon the qualities of coal in use and upon good average practice realized under the conditions in force at by-product recovery installations of various classes and sizes), and all works contributing toward the home supplies of ammonia should be required to conform to appropriate standards of recovery. When such standards have been formulated, powers should, if necessary, be conferred upon the local government board to insure their observance.

(*v*) Encouragement should be given to all efforts to extend the use of coal gas and coke in the place of raw coal for domestic purposes, for steam raising, and for other industrial requirements.

TRIAL OPERATIONS AND RESEARCH.

658. With regard to the trial in the United Kingdom of various nitrogen fixation and recovery processes, and to the general question of research upon the nitrogen problem, the committee makes the following recommendations:

Hausser (or explosion) process.—The committee recommends that plans and estimates should be prepared for a plant of the smallest size sufficient for the thorough testing of the modified process (par. 278) by which nitric acid and power can be obtained simultaneously. In the event of the estimates proving favorable, a company possessing a coke-oven installation of the necessary capacity, or other suitable supply of gas, should be encouraged to erect the plant and carry out the trials.

Cyanide processes.—The barium process, using externally heated retorts, is at present under trial in this country.

The committee recommends that steps should be taken to test, by means of a trial plant on a small works scale, other modifications of the processes, and especially internal electrical heating. The problem of devising a continuous process for the production of ammonia should be thoroughly investigated at the same plant.

Low temperature carbonization of coal.—This subject is under investigation by the Fuel Research Board.

The committee recommends that any commercial plant erected or about to be erected in this country should be thoroughly tested. In the national interests, the trials should be organized and carried out by the Government.

Sulphate recovery processes.—The committee recommends that the possibilities of sulphate recovery processes which avoid the use of sulphuric acid (par. 626) should be thoroughly investigated on a commercial scale, and encouragement and assistance should be given to companies and undertakings willing to carry out the trials for the benefit of the by-product ammonia industries as a whole.

RESEARCH.

The committee recommends that (*i*) The researches on the nitrogen problem initiated during the war should be continued after the war under the auspices of the Government for the general benefit of the country.

(*ii*) The results of the researches carried out up to the present date should be edited and published at the earliest possible moment as a further appendix to this report, subject to such reservations as may be considered necessary by the Government.

(*iii*) Members of the research staff of the munitions inventions department should be allowed to communicate to scientific societies the details of the work they have been engaged upon, subject to such reservations as may be considered necessary by the Government.

IMPERIAL SUPPLIES.

659. The committee recommends that a coordinated policy should be framed for safeguarding the future nitrogen requirements of the Empire, and this should be done by an imperial authority.

As the information already available concerning the future prospects and possibilities in the different portions of the Empire will require to be supplemented before such a policy can be framed, the committee suggests that advisory bodies should be set up to examine the local aspects of the nitrogen problem and to furnish the imperial authority with the requisite data.

OTHER RECOMMENDATIONS.

660. In connection with other aspects of the committee's inquiry, the following additional matters arise.

Oxygen and other by-products from nitrogen plants.—The committee recommends that (*i*) All liquid air nitrogen plants used in connection with nitrogen fixation installations in the United Kingdom should be operated to the maximum advantage for supplying the growing home demand for oxygen and argon.

(*ii*) The imposition of restrictive trade agreements —such as have been operative at nitrogen fixation installations abroad—which prevent the recovery and utilization of by-product oxygen from nitrogen plants should not be permitted in this country.

STATISTICS.

The committee recommends that comprehensive annual statistics for the nitrogen industries of the United Kingdom and for the home consumption of coal by various classes of users and industries should be officially collected and a detailed summary of the figures should be published. Strong representations on this subject should be made to the Government departments concerned.

The committee suggests that the question of statistics is also worthy of the attention of the overseas governments.

PLAINTIFF'S EXHIBIT No. 655.

General Chemical Company
with
United States of America

Articles of Agreement

Dated April 23, 1919.

These Articles of Agreement entered into this 23rd day of April, 1919, by and between General Chemical Company, a corporation organized under and by virtue of the Laws of the State of New York (hereinafter called the "Contracting Corporation"), of the first part, and the United States of America (hereinafter called the "Government"), by A. G. Glasgow, Fixed Nitrogen Administrator, acting by authority of the Secretary of War, of the second part, Witnesseth: That

Whereas the parties to this agreement have been mutually co-operating in the attempt to bring to completion and successful operation one or more of the three units for the production of anhydrous ammonia at the Government plant known as U. S. Nitrate Plant No. 1, at Sheffield, Alabama, employing apparatus and processes for the fixation of nitrogen devised by the Contracting Corporation; and

Whereas in the latter part of 1918, following the Armistice, work at said plant was discontinued by the Government, at which time none of said ammonia units had yet been brought to a stage of operation satisfactory to either party; and

Whereas the Contracting Corporation, although not under any obligation to do so, is willing to bear the expense of continuing this work as hereinafter provided, for the mutual advantage of both parties;

Now, Therefore, said parties hereto hereby agree with each other as follows:

I. The Government agrees that, during the contract period hereinafter defined, the Contracting Corporation shall have complete, direct and unhindered possession, charge, control and use of all parts of said U. S. Nitrate Plant No. 1, necessary or useful for or in connection with the production of ammonia, including the buildings and contents known as the power-house, gas-house, process building, shops, storehouse, aqua-ammonia plant and storage equipment, water pump house, filter plant, chemical laboratory, offices, dwelling houses and barracks (excepting such dwelling houses and office buildings as the Government may desire for its own use, provided the same are not required for the use of the Contracting Corporation), and all piping, wiring and other connections between said various parts (hereinafter called collectively the "Plant"), and also all the Government's materials and supplies for construction or operation of said U. S. Nitrate Plant No. 1, whether now on hand or hereafter delivered, provided that the Government shall continue in possession, charge and control of said materials and supplies until the same shall be specifically demanded by the Contracting Corporation. The Government will freely co-operate with the Contracting Corporation in every reasonable way desired by it in connection with its work hereunder, not involving extra expense to the Government. Thus, the Government will afford the Contracting Corporation the benefit of all the Government's rights against others in respect of the erection of the Plant, the furnishing of apparatus, materials and supplies therefor and the remedying of defects therein.

II. The Government shall be under no liability or obligation to the Contracting Corporation with respect to any expense incurred by the latter in connection with the Plant during said contract period (whether for construction, repair, alteration, maintenance, research or operation); but all product of the Plant during said period shall be the property of the Contracting Corporation to dispose of as it sees fit. If the Contracting Corporation's aggregate receipts from disposal of such product, plus any amount received by it from the Government as compensation under Clause IV hereof, shall exceed the aggregate expenses of the Contracting Corporation in connection with the Plant during said contract period (whether for construction, repair, alteration, maintenance, research or operation), it will pay to the Government the amount of such excess as promptly as practicable after the end of said period.

III. Said contract period shall be three years from the tenth day following the date of final execution and delivery of this contract, except that the Contracting Corporation may at its option terminate the same at any time after one year from the beginning of said period, by giving the Government at least 30 days' advance written notice to that effect, and except, further, that the Government may likewise terminate the same at any time after said one year as hereinafter provided in Clause IV and in the event there stated.

IV. During said contract period, the Contracting Corporation shall at its own expense endeavor diligently and in good faith, and with due regard for economy, to put and keep one or more of said three ammonia units in regular operation, jointly or alternately, and, for that purpose, shall have the right to complete, maintain, repair, alter and operate all or any part of the Plant in such manner, to such extent and at such times within said period as it may desire, including the right to use free of charge all or any part of the Government's above mentioned materials and supplies; and the Contracting Corporation agrees to expend in and in connection with its said work during the first year of said contract period not less than $500,000 in the aggregate (nor, except at its option, more than $500,000); provided that the Contracting Corporation shall not be responsible for any interruption or delay, at any time during said contract period, either in said work or in the expenditure of any amount in that connection, if such interruption or delay shall be occasioned by non-delivery of necessary materials or supplies, strike, labor trouble, fire, accident, or other cause beyond its control. If at any time after the first year of said contract period, the Contracting Corporation shall abandon the work or shall cease to prosecute the work with due diligence, then and in such event the Government may at its option terminate said contract period by giving the Contracting Corporation at least 30 days' advance written notice to that effect, including a statement of the facts upon which such action is based; provided that, if the Contracting Corporation shall dispute the alleged justification for such termination and shall elect to refer such dispute to arbitration as hereinafter provided in Clause X and shall promptly do all things to be done on its part to that end, such notice of termination shall be effective only upon the arbitrators' determination of such dispute in favor of the Government, and in that event such termination shall take effect within 30 days thereafter. In the event of any such termination and acceptance thereof by the Contracting Corporation without arbitration as to the justification therefor, the Government will pay to the Contracting Corporation, promptly thereafter, as compensation, the reasonable value of any structural improvements to the Plant made during said contract period at the expense of the Contracting Corporation; it being contemplated that such value shall be determined by arbitration as hereinafter provided in Clause X and that the arbitrators selected by the parties for that purpose shall have the requisite technical knowledge.

V. At the end of said contract period, whether by expiration or by termination as hereinbefore provided, the Contracting Corporation shall return the Plant to the Government in not less valuable condition, structurally and otherwise, than at the beginning of said period, excepting ordinary wear and tear, and excepting damage or destruction by fire, accident or other casualty unless due to the negligence of the Contracting Corporation. The Contracting Corporation shall be under no liability or obligation to the Government in connection with the Plant other or further than as herein provided.

VI. During said contract period the Government shall at its own expense guard the complete U. S. Nitrate Plant No. 1 against intruders, but the Contracting Corporation may in addition at its own expense guard those parts of said plant under its control. The Contracting Corporation will maintain reasonably adequate employer's liability insurance covering its employees at the Plant during the contract period. The Contracting Corporation shall not be obliged to insure any part of the Plant against damage or destruction by fire, accident or other casualty, and shall not be responsible for any such damage or destruction unless due to its negligence.

VII. Upon reasonable notice from the Government, the Contracting Corporation will, from time to time during said contract period, furnish to the Government at cost, power, light and water, as required by it for its own use on the Government reservation for U. S. Nitrate Plant No. 1, to the extent of any then unused capacity of the facilities for that purpose under the control of the Contracting Corporation. The Contracting Corporation will not sell any power, light or water from the Plant without permission of the Government.

VIII. At all times during said contract period the duly accredited representatives of the Government, acting exclusively for the Government, shall have free access to the Plant and the right to inspect the same and all operations there conducted or incidental thereto and all records thereof, in any manner and to any extent not interfering with the work of the Contracting Corporation.

IX. The agreement between the parties hereto embodied in the Contracting Corporation's offer to the President dated June 5, 1917, accepted on behalf of the President by the Secretary of War under date of July 14, 1917, is hereby amended as follows: (1) The Government's rights under said agreement to use the apparatus and processes therein described are restricted to its operation of said three ammonia units already constructed or partly constructed at U. S. Nitrate Plant No. 1 and any similar units which may be hereafter constructed at said plant; and the Government agrees not to use the same elsewhere. (2) The Contracting Corporation releases the Government from all obligation to it by way of royalty for such use at said plant. (3) In view of the difficulty experienced by the Government in preventing disclosure of said apparatus and processes by its representatives, the Contracting Corporation releases the Government from any pecuniary liability on account of any such disclosure subsequent to said contract period; and each of the parties releases all its rights under said agreement to know or use any improvement or invention hereafter discovered, invented or installed by the other, except improvements developed during said contract period; but the Government will nevertheless take all such measures as it reasonably and conveniently can at all times, both during and after said contract period, to prevent disclosure of any of said apparatus and processes or any such improvement or invention. (4) The Government releases the Contracting Corporation from all obligation under said agreement to place its staff at the Government's disposal, except as provided in this agreement. (5) Subject only to the modifications above specified, said agreement is confirmed.

X. In the event of any dispute between the parties hereto either under this agreement or under said agreement of June 5-July 14, 1917, the same shall be promptly referred to arbitration by both parties in the following manner, at the election of either party, evidenced by written notice to the other to that effect specifying the issue, viz.: Promptly after such notice each party shall select one arbitrator and notify the other of such selection. Promptly thereafter such two arbitrators shall jointly select a third, or, in default thereof, said third arbitrator shall be selected by the United States District Court for the Southern District of New York, or by any judge of said Court, upon the application of either party after due notice to the other. Except as herein provided, the arbitration proceedings shall be conducted in such manner and form as the arbitrators shall deem proper. The concurrence of any two of the arbitrators shall control their determination of all questions whether of form or substance. The determination by the arbitrators of any dispute referred to them as aforesaid shall be made in writing, signed by at least two of the arbitrators and delivered to each of the parties, and when so made shall be final and binding on both parties.

WITNESS the due execution of this Agreement in duplicate by said parties hereto on the date first mentioned.

GENERAL CHEMICAL COMPANY,
By (Sgd.) W. H. NICHOLS, JR.,
President.

ATTEST:
(Sgd.) CHAS. W. MILLAUX,
Asst. Secretary.

UNITED STATES OF AMERICA,
By ....
Fixed Nitrogen Administrator.

Witness:

PLAINTIFF'S EXHIBIT No. 655-A.

GENERAL CHEMICAL COMPANY
office of the
CHAIRMAN OF THE BOARD
25 BROAD STREET
NEW YORK

April 23, 1919.

Arthur S. Glasgow, Esq.,
U. S. Fixed Nitrogen Administrator,
1640 Rhode Island Avenue,
Washington, D. C.

My dear Mr. Glasgow:

I enclose agreement (two copies) executed by the General Chemical Company, covering our initial operation of the Government's ammonia plant at Sheffield, which I think you will find fully meets the Government's wishes as expressed by you at our conference last Friday on the two substantial points which were then left in issue, viz.: (1) Our undertaking to expend $500,000; and (2) the release of the Government from all royalty obligation with respect to future extensions at Sheffield. The second recital has also been slightly modified to accord with the facts. In other respects, the enclosed form is as we agreed upon on Friday.

As I think you appreciate, this agreement is far from attractive to us as regards our material interests, but we have concluded, nevertheless, to go thus far to meet the Government's wishes in the matter, as you requested.

Assuming that the matter may now be regarded as settled, we should, of course, like to start work with the least possible delay, and to this end we would ask that you execute and return one of the enclosed copies of the agreement as promptly as practicable. As you will see, we have assumed your legal authority to sign the contract alone on behalf of the Government, but you will, of course, know best whether any further signature is necessary or desirable. In any case, we are relying upon you to see that the contract is so executed as to bind the government without question.

Permit me to assure you of our confidence that so long as you continue in charge for the Government there will be no difficulties in carrying out this agreement which mutual good faith and good-will can prevent.

Yours very truly,

(Sgd.) WM. H. NICHOLS,

Encls. *Chairman.*

PLAINTIFF'S EXHIBIT No. 656.

GENERAL CHEMICAL COMPANY
25 Broad Street
New York
April 19th 1918

Acting Chief of Ordnance
U. S. Army
Washington, D. C.
(Attention Col. J. W. Joyes
In Charge Nitrate Division)

Dear Sir:—

In compliance with request of the Chief of Ordnance, U. S. Navy, you are hereby authorized to permit inspection of the Synthetic Ammonia Processes at Sheffield, Alabama, by any officer designated by the Navy, and we further grant authority to the U. S. Army to instruct the Navy fully and freely in regard to the Synthetic Ammonia Processes owned and controlled by the General Chemical Company.

We do this with the understanding that all reasonable means will be exercised by the Navy Department to preserve our rights in the Synthetic Ammonia Processes unimpaired, and that every officer of the Government who receives information or instruction regarding said processes will be cautioned as to the rights which are reserved to us and will be directed to recognize those rights in accordance with our Agreement with the Government, to-wit:

> "5. It is understood that for all purposes of this agreement and generally so far as concerns the use of said processes or any part thereof, by the Government, its agents or other parties claiming under it, it and they shall at all times acknowledge and recognize the General Chemical Company as the sole owner of said processes and

of the exclusive right to use the same subject only to the rights granted to the Government pursuant to this tender, and shall so far as practicable, exclude the public from all works in which said processes shall be employed, and, generally, shall use all reasonable means to preserve said rights unimpaired."

Yours very truly,
GENERAL CHEMICAL COMPANY.
HW/EH per
(Sd)
Vice-President.

PLAINTIFF'S EXHIBIT No. 657.

American Dyes Institute—Chronology From May 23, 1919, to December 21, 1921.

May 23, 1919: First bill for protection of dyestuffs industry introduced in the House of Representatives by Congressman Longworth of Ohio. Bill known as H. R. 2706. Purely a tariff measure. It was at once referred to the Committee on Ways and Means.

June 6, 1919: Legislative committee of the American Dyes Institute appointed with power. Committee consisted of Mr. R. Poucher, chairman; R. T. Baldwin; and R. C. Jeffcott.

June 18, 1919: Hearings began before the Ways and Means Committee and continued through June 20, 1919.

June 23, 1919: A substitute bill for the protection of the American dyes industry was introduced by Congressman Longworth. It carried the same number as the original bill. It provided for a licensing plan to be administered by a dye licensing committee to consist of 11 commissioners who should be appointed by the President; 5 commissioners to represent manufacturers of coal-tar dyestuffs, 5 to represent consumers of coal-tar products and 1, not actively connected with any phase of the dyestuffs industry or the consumption of its products, who should be chairman.

July 14, 1919: Hearings reopened before the Ways and Means Committee and continued through July, 18.

July 31, 1919: Congressman Longworth introduced a third bill known as H. R. 8078. That bill made a change in the personnel of the dye licensing committee providing that 1 commissioner should be appointed by the National Association of Wool Manufacturers, 1 by the American Association of Woolen and Worsted Manufacturers, 1 by the National Council of American Cotton Manufacturers, 1 by the National Association of Finishers of Cotton Fabrics, 1 by the Silk Association of America, 1 by the American Paper and Pulp Association, 3 by the American Dyes Institute, 1 by the American Drug Manufacturers, these 10 to elect the eleventh commissioner who was not to be identified with the industry either in its manufacturing or its consuming phase.

August 1, 1919: Bill reported from the Ways and Means Committee to the House of Representatives by Congressman Longworth recommending the passage of the bill as voicing the views of the majority of the Republican Members of that committee. There was a minority report by Congressman Moore of Philadelphia, Mott of New York, and Young of North Dakota.

September 22, 1919: The bill which had calendar No. 61 was called up in the Committee of the Whole House on the state of the Union. The arguments for and against the bill continued until Friday, September 26, when late in the afternoon the bill was passed by a vote of 156 to 119. The only important change made in the bill was an amendment striking out the Dye Licensing Commission section and placing the entire control of the licensing of imports in the hands of the United States Tariff Commission.

September 29, 1919: Bill sent to Senate from House of Representatives. It was referred to the Committee on Finance.

November 10, 1919: Senator Penrose, chairman of Committee on Finance, introduced a joint resolution known as Senate Joint Resolution 125, providing for a continuance of the powers of the War Trade Board in case during the recess of Congress about to take place there should be a declaration of peace.

November 18, 1919: Joint resolution 249 passed the Senate. A similar resolution, which had been introduced in the House of Representatives by Congressman Green, known as House Joint Resolution 249, passed the House on the same day. The joint resolution extended the powers of the War Trade Board in case peace should be declarerd until January 15, 1920.

November 19, 1919: Congress adjourned, thus ending the special session which had convened May 19, 1919.

December 1, 1919: Congress assembled in regular session.

December 4, 1919: The Senate Finance Committee appointed a subcommittee to consider the Longworth bill (H. R. 8078). That committee consisted of the following:

Republicans: James E. Watson, of Indiana, chairman; Howard Sutherland, West Virginia; Charles Curtis, Kansas; William M. Calder, New York.

Democrats: Furnifold McL. Simmons, North Carolina; Andrieus A. Jones, New Mexico; John F. Nugent, Idaho.

December 8, 1919: Hearings began before the above-named subcommittee and continued throughout the week, closing late Saturday p. m., December 13.

January 12, 1920: Hearings were reopened to consider some amendments which had been suggested by the opposition to the bill.

January 30, 1920: Subcommittee finally agreed upon a bill which was submitted to the entire Finance Committee, which was approved by the latter and was ordered to be reported favorably.

February 14, 1920: Bill reported to the Senate by order of the Finance Committee and its passage advocated in a report made by Senator Watson, chairman of the subcommittee. The report was numbered 425. There was no minority report. The bill received the calendar No. 380.

February 21, 1920: Senator Spencer of Missouri introduced an amendment to which there was no opposition, providing for the inclusion in the bill, of camphor, natural and synthetic, crude and refined with a duty of 25 per cent.; caffeine, with a duty of $1.50 a pound; chloral hydrate, with a duty of 15 cents a pound.

February 25, 1920: Senator Watson called up the bill. It was debated during the afternoon. No vote was taken on the bill itself although the vote to take it up was 57 in favor of its consideration to 11 opposed.

March 11, 1920: Senator Keyes of New Hampshire introduced four amendments. These, with certain changes in phraseology, were afterwards agreed to.

March 11, 1920: Senator Moses of New Hampshire introduced an amendment changing the character of the bill. That amendment was not incorporated in the bill.

May 1, 1920: Senator Watson called up the bill again. Senator Frelinghuysen of New Jersey occupied the afternoon in advocating the passage of the bill.

May 5, 1920: Senator Thomas of Colorado spoke during all the available time up to and including Friday afternoon, May 7, in opposing the bill.

May 8, 1920: Senator Nugent spoke, favoring the bill.

May 10, 1920: The bill was called up again, but as a filibuster which had been started by Senator Thomas was to continue, the bill was temporarily laid aside for the shipping bill although it was to keep its number on the calendar so that it could be called up again in case there was opportunity so to call it up before the adjournment of Congress which was scheduled for June 5, 1920.

May 11, 1920: Senator Moses of New Hampshire introduced another amendment as a substitute for the one of March 11. Nothing was done with it.

May 18, 1920: The executive committee of the American Dyes Institute added three members to serve on its legislative committee. These were J. R. M. Klotz, A. C. Burrage, Jr., and Samuel Iserman.

May, 1920: The War Trade Board by Executive order had been transferred to the Department of State, and was designated as the War Trade Board section of that department. The House of Representatives had not made any provision for funds for that section. Its available funds would last only to the end of the fiscal year, or June 30, 1920. The Senate inserted a provision for that section. In conference between the House and the Senate the amount allotted by the Senate was cut down, but still there was allowed to remain in the emergency deficiency bill an appropriation which would allow the War Trade Board section to function after June 30, 1920.

June 3, 1920: Senator Frelinghuysen, of New Jersey, introduced into the Record a statement signed by 63 of the smaller manufacturers requesting the passage of the bill.

June 5, 1920: Congress adjourned to reconvene in regular session, Monday, December 6, 1920.

December 6, 1920: During the session from that date to March 4, 1921, when the Sixty-sixth Congress expired at noontime by constitutional limitation, nothing of importance was done concerning the dyestuff legislation.

April 11, 1921: The Sixty-seventh Congress convened in special session on call of the new President, the Hon. Warren G. Harding. Prior to the calling of that session the Ways and Means Committee of the House of Representatives had begun the consideration of a new tariff bill. That committee assigned to Congressmen Longworth, Copley and Hadley the study of the chemical schedule. That subcommittee, of which Congressman Longworth was chairman, did not call for any hearings because the testimony which had been taken before the committees of the Sixty-sixth Congress was so complete that it was not considered necessary again to go over that portion of the schedule affecting coal-tar products.

April 15, 1921: The House of Representatives not having completed the tariff bill passed an emergency tariff bill, to be operative for six months from its final passage. That bill was sent to the Senate. It did not contain any provisions for the dyestuff industry.

April 18, 1921: The Senate Finance Committee began hearings on the emergency tariff bill.

April 26, 1921: Hearings closed on that day. Senator Knox of Pennsylvania had submitted to the Finance Committee an amendment to the emergency tariff bill providing for the protection of the dyestuffs industry during the life of that bill.

April 30, 1921: The Senate Finance Committee reported the emergency tariff bill with numerous changes, including the amendment submitted by Senator Knox, which became title 5 of that bill. The bill was placed on the calendar of the Senate with the No. 17, the report of the Finance Committee being No. 16.

May 2, 1921: The emergency tariff bill was, with the report on it, laid before the Senate by Senator Penrose, chairman of the Finance Committee.

May 3, 1921: The bill was called up again, but consideration was postponed until the following day, namely, May 4.

May 4, 1921: The bill was called up, was read with amendments embodied in it by the Senate Finance Committee. The discussion of the measure began.

May 5, 1921: Further discussion of the bill.

May 6, 1921: Again there was discussion. Before the close of the session Senator Penrose introduced an agreement calling for unanimous consent, which, if adopted, would close the discussion on Wednesday, May 11, at 12 o'clock noon, and which provided that the final vote be taken at 3 o'clock that afternoon, and further that between 12 o'clock noon and 3 o'clock in the afternoon no Senator should speak more than once or longer than 10 minutes upon the bill, or more than once or longer than 10 minutes upon any amendment offered to the bill. The agreement was adopted.

May 7, 1921: Again there was discussion.

May 9, 1921: Further discussion.

May 10, 1921: Again the day was occupied in discussion.

May 11, 1921: Pursuant to the agreement which had been entered into the discussion was closed at 12 o'clock noon, and thereafter until 3 o'clock only 10 minutes were allowed to any Senator who desired to speak on the bill or to speak upon any amendment. Numerous amendments were offered from the floor, but these were all defeated. The amendments which emanated from the Finance Committee were all carried, including the one embodying title 5, by a vote of 61 to 25. The entire bill when put to final vote was carried by 63 to 28. As there were changes made in the bill as it came from the House, Senator Penrose asked for a conference between the two Houses. The Vice President, as President of the Senate, appointed the following as the conferees from that body, namely, Senators Penrose, McCumber, and Smoot, Republicans; and Senators Simmons and Williams, Democrats.

May 12, 1921: The Speaker of the House appointed as conferees representing the House of Representatives, Congressmen Fordney, Green and Longworth, Republicans; and Congressmen Garner and Collier, Democrats.

May 20, 1921: The conference report was presented to the Senate, and, after some discussion, was adopted by a vote of 53 to 25. In the conference report, the period of time during which title 5 was to be operative was cut down from six months to three months.

May 23, 1921: The conference report which had been presented to the House on May 20, was, after discussion, adopted by a vote of 246 to 98.

May 27, 1921: The President signed the emergency tariff bill, which, by its terms, became a law immediately. The limitation of time therefore for the general bill would expire November 27, 1921, while the limitation of time for the dyestuff section or title 5, would expire August 27, 1921.

June 29, 1921: Congressman Fordney, chairman of the Ways and Means Committee, announced to the House that the permanent tariff bill had been completed and was ready for submission. With the bill there were three reports—one, by the majority of the committee favoring the bill; another one by Congressman Frear, of that committee, criticizing many of the schedules and more particularly that portion thereof providing for the protection of the dyestuff industry; and the third, filed by the minority leader, Congressman Kitchin, opposing the entire measure.

The reports are printed together on the date of July 6, 1921, and the pamphlet is known as report No. 248, divided into parts 1, 2, and 3. The bill is designated as H. R. 7456, and bears the Union Calendar No. 110, Title 1, paragraphs 25 to 27, both inclusive, provides the form of legislation which the committee had prepared for the dyestuff industry.

July 6, 1921: The debate on the bill began in the House of Representatives which sat as the Committee of the Whole on the state of the Union. It was agreed that certain disputed schedules on which the majority of the committee had not been a unit should be voted on separately.

July 16, 1921: Under that agreement Congressman Frear moved to strike out the dyestuff section. The motion was lost by a vote of 106 to 122. The vote in Committee of the Whole was not a recorded one but was counted by tellers.

July 21, 1921: After daily debate, the Committee of the Whole rose and the bill itself came before the House in regular session. The disputed schedules again were voted on separately but with a recorded vote. Congressman Frear renewed his motion to strike out the dyestuff section and that time the motion was carried by a vote of 209 to 193. That vote, therefore, eliminated that part of the chemical schedule of the permanent tariff bill which sought to protect the dyestuff industry. The bill with its various amendments was finally passed by the House that same afternoon.

July 22, 1921: The bill was sent to the Senate, where it was referred to the Committee on Finance, retaining the House designating number H. R. 7456.

July 25, 1921: The Senate Finance Committee began hearings on the bill and continued them up to and including August 17, 1921. Testimony was offered by the dye industry favoring the protection of that industry.

August 8, 1921: Congressman Longworth introduced in the House of Representatives a bill to extend the dye-licensing feature of the emergency tariff law from August 27, 1921.

August 9, 1921: The Ways and Means Committee of the House favorably reported the Longworth bill providing for the extension of time for the dyestuff portion of the emergency tariff bill for three months after August 27, 1921, or until November 27, 1921, making, therefore, this expiration coterminous with that of the emergency tariff bill itself.

August 11, 1921: Congressman Longworth read into the record a letter from President Harding advocating the adoption of the extension of time. On that date the House, by a vote of 196 to 91, passed the extension act. The bill was at once sent to the Senate.

August 25, 1921: The Senate, by a vote of 29 to 22, passed the extension act just as it came from the House, and the President signed the bill.

November 8, 1921: The emergency tariff act, including the dye embargo section, extending the time for its termination until the action be repealed by the enactment of the pending permanent tariff bill, passed the Senate. The House concurred in this action by a vote of 233 to 93.

November 14, 1921: The bill was signed by the President.

PLAINTIFF'S EXHIBIT No. 658.

Form 14062

DuPont
Established 1802
E. I. du Pont de Nemours & Company
Incorporated
Wilmington, Delaware

Dyestuffs Sales Department
21 East 40th Street
New York City

August 15th, 1919.

Mr. W. R. Corwine,
c/o Wardman Park Inn,
Washington, D. C.

Dear Mr. Corwine:

In a letter from Mr. Poucher to-day he suggests inviting Dr. Herty to join the Executive Committee of the American Woolen Manufacturers Association when it is definitely settled as regards their visit to Marcus Hook and Deepwater. So will you be kind enough to carry this in your mind so as to notify Dr. Herty when arrangements to carry this plan out are complete. Dr. Herty states that he is very glad to accept and when the time comes he will consult with Mr. Baldwin so that Mr. Baldwin will know that he plans to join the party, which, of course, is the right way to do it and the courteous thing to do.

In order that you may know my correspondence with Mr. Poucher on several matters, attached you will find copy of letter to him to-day. I may not have all the facts about the cablegram perfectly correct but I think it will serve the purpose of making Mr. Poucher feel restful on the mysterious matter about which we wanted to reach him.

With kind regards, I am

Sincerely yours,

HGS:SMC (Sgd.) H. G. STEPHENSON.
Encl. 1.

PLAINTIFF'S EXHIBIT No. 658-A.

Copy to Mr. W. R. Corwine,
" " Mr. E. V. Patterson.

August 15th, 1919.

Mr. M. R. Poucher,
Sparhawk Hall,
Ogonquit, Wells, Me.

Dear Mr. Poucher:

Have received and carefully noted yours of August 13th, also your telegram of to-day suggesting that Dr. Herty telegraph you. Just before receiving the telegram I had consulted with Dr. Herty and Mr. Baldwin and found that the matter in question is not to be acted upon until the middle or latter part of next week, so it was not necessary to get into direct communication with you about it.

The story in this connection is that Dr. Herty received from Mr. Keohan, at Washington, a copy of a cablegram which was received by the State Department at Washington from Mr. Polk, who I understand is acting for Mr. Lansing. The gist of it is that there has been a meeting at Versailles between representatives of the English *dyestuff manufacturers* and representatives of *dye consumers* from France, Italy, and Belgium. This meeting was also in touch with a German representative. At this informal meeting France, Italy, and Belgium put forth their dire need for certain amounts of dyestuffs from Germany at once that their mills might immediately resume work. The discussions at this meeting were quite heated and it was finally decided to form a temporary commission to investigate the possibility of finding some way of anticipating the functioning of the Reparation Commission. England, at first, was quite averse to this but finally admitted that France particularly, as well as Italy and Belgium, had need of certain dyes from Germany. It was also agreed that nothing could be done without the co-operation of the United States. As I remember it England particularly took this stand. Mr. Polk's cable expressed the urgent need of an expert representative of the United States dye industry being present over there.

Yesterday morning I went to Dr. Herty's office, at his request, to be present at a meeting to consider this matter. There were present at this meeting Mr. Baldwin, Dr. Matthews, Mr. Corwine, Dr. Herty, and Mr. Kalish. It was stated in the cable that France is particularly anxious to get 350 tons as soon as they can. At the meeting Mr. Kalish was strong for offering to furnish these goods from the United States. This did not seem feasible to me as I do not understand why Switzerland is suddenly out of the running, neither do we know what the colors are which France desires. It, of course, would not be wise for France to get the first chance at German vat colors at the expense of the other Allies' proportion later. Mr. Kalish telephoned Mr. Webber at Mr. Baldwin's request and Mr. Webber said his first impression was that he is opposed to it as he thought this to be the first of more demands to come upon us later. Late yesterday Mr. Keohan telephoned Dr. Herty that an answer to the cable has been postponed partly on account of the resignation of Mr. Dulles, now in Europe, and the matter of answering the cable is to be left until the State Department consults with the President next week. This is why we did not telegraph you further. Am unable to send you a copy of the cablegram because on account of it's private nature Dr. Herty is not permitted to have a copy made or to let it out of his office. Everybody feels that there is nothing at all urgent in connection with this anyway until you return. Mr. Garvan, of course, is not in Washington. Of course, as mentioned in the cablegram, Germany is quite in accord with starting something pending operations of the Reparation Commission, stating that it would help her in knowing what the demands upon her would be.

As requested, I have made copies of your letter, received to-day, together with the marked portion of Mr. Corwine's telegram, which has been submitted to Dr. Herty. One set was also made for Mr. Patterson. This refers to the National Shirt Manufacturer's Association. Dr. Herty has already had some talk with Mr. Bennett about this matter and has written him a letter to-day, copy of which is attached. Dr. Herty feels that consideration should be given to their request for a hearing and believe that the Committee to hear them should consist of dyestuff consumers such as Mr. Hobbs and Mr. Cheney, perhaps, and Dr. Herty plans to be present himself. He thinks the result would be more effective than to have them tell their story to a committee of dyestuff manufacturers.

As regards the American Woolen Manufacturers Association. Mr. Corwine wrote you yesterday that this is having his attention. Had a talk with Mr. Hudson about it to-day and he is to put the matter before Mr. Hobbs with the idea that Mr. Hobbs shall see Mr. Metcalf, President of this association.

In regard to having the Executive Committee of this association visit the Marcus Hook and Deepwater Plants. Dr. Herty will be very glad indeed to join such a party if the thing goes through and will consult with Mr. Baldwin as regards the Marcus Hook part of it as soon as something definite is settled.

Am advising Mr. Corwine in full so that he will be informed as you suggested.

By the way, Dr. Herty mentioned that his letter to Mr. Bennett, copy of which is attached, and above referred to, will, of course, be presented to Mr. Bennett's secretary, Dr. Penniman, but he thought it best to write direct to Mr. Bennett first.

With kind regards.

Sincerely yours,
(Sgd.) H. G. STEPHENSON.

HGS:SMC

PLAINTIFF'S EXHIBIT No. 659.

Copy to Mr. C. Cyril Bennett.

March 3, 1919.

Henry Howard, Esq.
Merrimac Chemical Co.,
Boston, Mass.

Dear Mr. Howard:

I am told today by the Alien Property Custodian that an executive order has been signed since the return of President Wilson and that the matter will progress rapidly from the side of the Government.

We are asked to be ready to meet the obligation probably within the next week or ten days.

I understand that your secretary sent out his letters to the members of your Association last week and I would ask that you keep our secretary Mr. C. Cyril Bennett, address 21 East 40th Street, New York advised.

It appears that the subscription has to date exceeded the capital stock of the Company and that a readjustment will be necessary. The Custodian imposed two conditions.

1. That we answer as quickly as possible whether or not the total amount could be subscribed between

the two organizations. This question has already been answered in the affirmative.

2. The condition that we have a maximum number of subscribers of minimum amount rather than minimum number of subscribers at maximum amount, or in other words the best would be for every member of both organizations to subscribe, even if the majority of them come in for only a small amount, say $500. The strength of the organization lies in numbers rather than money. We hope the result of it all will be something helpful to the Chemical Industry in this country for years to come.

Sincerely yours,

(Sgd.) M. R. POUCHER.

MRP*MC

PLAINTIFF'S EXHIBIT No. 660.

AMERICAN DYES INSTITUTE
320 Broadway
New York

The Association of dye-stuff manufacturers in the United States

OFFICERS
President
W. H. COTTINGHAM
The Sherwin-Williams Co.
Secretary-Treasurer
H. E. DANNER
Secretary
C. C. BENNETT
Counsel
ARTHUR J. EDDY
Executive Committee
L. A. AULT
FRANK HEMINGWAY
R. C. JEFFCOTT
MERRITT MATTHEWS
AUGUST MERZ
W. T. MILLER
M. R. POUCHER
Board of Governors
C. S. ALTHOUSE
The Althouse Chemical Co.
Reading, Pa.
B. R. ARMOUR
American Aniline Products, Inc.
New York City
L. A. AULT
The Ault & Wiborg Co.
Cincinnati, Ohio
R. P. DICKS
Dicks, David Co., Inc.
New York City
B. P. DONNELLY
Holland Aniline Co.
Holland, Mich.
FRANK HEMINGWAY
Frank Hemingway, Inc.
New York City
R. C. JEFFCOTT
arden, Orth & Hastings Corp.
New York City
R. W. KEMP
Holliday-Kemp Co.
New York City
G. A. MARTIN
The Sherwin-Williams Co.
Cleveland, Ohio
J. M. MATTHEWS
The Grasselli Chemical Co.
Cleveland, Ohio
AUGUST MERZ
The Heller & Merz Co.
Newark, N. J.
W. T. MILLER
ational Aniline & Chemical Co., Inc.
New York City
J. T. PARDEE
The Dow Chemical Co.
Midland, Mich.
E. W. PIERCE
obel Color Works, Inc.
New York City
M. R. POUCHER
I. du Pont de Nemours & Co.
Wilmington, Del.
G. S. WHALEY
John Campbell & Co.
New York City
S. W. WILDER
rimac Chemical Co., Inc.
Boston, Mass.

March 3, 1919.

C. Cyril Bennett, Esq.,
Secty. American Dyes Institute,
21 East 40 Street,
New York City.

Dear Mr. Bennett:

For the purpose of a record I enclose carbon copies of two letters.

Dr. Charles L. Reese, Chairman of the Dyes and Intermediates Division of the Chemical Alliance Inc. received a request from the President of the Alliance, Mr. Horace Bowker for a memorandum from the American Dyes Institute concerning the licensing of imports and asked that this be given to Mr. Charles H. MacDowell who will sail on S. S. Geo. Washington from New York on March 5th. for Paris. This at the request of President Wilson.

Mr. MacDowell will have in hand many matters touching the Chemical Industry and we have taken advantage of the opportunity to place in Mr. MacDowell's hands a memorandum in behalf of the Executive Committee; Copy enclosed. This memorandum has the endorsement of the Dye and Intermediates Division of the Chemical Alliance as you will see by the Chairman's letter of March 1st. to Mr. MacDowell, copy attached.

Very truly yours,
(Sgd.) M. R. POUCHER.

MRP*MC

PLAINTIFF'S EXHIBIT No. 661.

Stipulation as to Plaintiff's Exhibits Nos. 336 to 338, both inclusive. (Printed at Page 683 of Exhibits.)

PLAINTIFF'S EXHIBIT No. 662.

E. I. duPONT de NEMOURS & COMPANY.

COMPLETE LIST OF FIRST PRODUCTION AND FIRST SALES OF PRODUCTS COVERED BY LICENSES FROM THE CHEMICAL FOUNDATION.

Name of Dye	Date of first Manufacture		Date of first Sales	
Pontachrome Black 6BX (Pontachrome Blue Black R)	April	1919	November	1919
Ponsol Blue RP (Ponsol Paper Blue)	October	1921	October	192
Ponsol Violet R	October	1919	December	1919
Ponsol Violet RR	December	1919	December	1919
Ponsol Dark Blue BR	August	1919	September	1919
Ponsol Green B	September	1919	September	1919
Ponsol Black B	December	1919	December	1919
Ponsol Yellow G	November	1919	December	1919
Ponsol Blue G	November	1919	December	1919
Heliopont Blue R	June	1921	June	1921
Heliopont Green G	June	1921	June	1921
Heliopont Blue ME	April	1922	May	1922
Heliopont Pink G	June	1921	June	1921
Heliopont Blue G	June	1921	June	1921
Heliopont Blue 4G	June	1921	June	1921
Heliopont Blue M	February	1922	March	1922
Sulphogene Yellow GG	September	1919	April	1920
duPont Naphthanil AS	September	1921	November	1921
duPont Naphthanil BS	November	1921	January	1922
Sulphogene Bordeaux G	April	1922	July	1922
Sulphogene Bordeaux B	October	1919	November	1919
Sulphogene Bordeaux 5B	October	1922	November	1922
Sulphogene Ochre G	June	1922	August	1922
Sulphanthrene Pink FF	April	1923	May	1923
Pontacyl Fast Light Yellow 2G	November	1922	December	1922
Pontacyl Fast Light Yellow 3G	April	1923	May	1923
Ponsol Blue 3G	November	1922	December	1922
Lithosol Bordeaux B	July	1922	July	1922

Note: In some instances plants under construction have not been completed or placed into operation. In other instances the experimental work is not complete on the products.

PLAINTIFF'S EXHIBIT No. 663.

E. I. duPONT de NEMOURS & COMPANY.

SCHULTZ NUMBERS OF THE VAT DYES FOR WHICH LICENSES HAVE BEEN OBTAINED FROM THE CHEMICAL FOUNDATION.

mical ndation ense No.	German Name	duPont Name	Schultz Number
	Indanthrene Blue GCD	Ponsol Blue G	842*
	Indanthrene Yellow G	Ponsol Yellow G	849*
	Indanthrene Dark Blue BO	Ponsol Dark Blue BR	763
	Indanthrene Green B	Ponsol Green B	765
	Indanthrene Violet R	Ponsol Violet R	766
	Indanthrene Violet RR	Ponsol Violet RR	767
	Hydron Blue R	Undetermined	748
	Hydron Blue G	Undetermined	748
	Indanthrene Blue 3G	Ponsol Blue 3G	840
	Indanthrene Golden Orange G	" Golden Orange G	760
	Indanthrene Golden Orange R	" Golden Orange RRT	761
	Indanthrene Bordeaux B Extra	" Claret B	827
	Indanthrene Red BN	" Red BN	831
	Indanthrene Violet RN	" Violet RN	832

*The Patent included in this license covers a process for the production of beta-amino-anthraquinone, which is the intermediate for Ponsol Blue G and Ponsol Yellow G.

Note: The Schultz tables do not give numbers and constitutions for all of the vat dyes for which the duPont Company is licensed from the Chemical Foundation.

PLAINTIFF'S EXHIBIT No. 664.

E. I. duPont de Nemours & Company.

Patents Covering the Manufacture of Phenylglycine Which Can be Used as an Intermediate for Indigo

U.S.P. 718,340, Jan. 13, 1903, Badische Company

Process for making omega cyan-methyl-aniline from aniline formaldehyde and bisulphite. Process patent.

This product is converted by saponification into phenylglycine, which process is not covered by a patent.

U.S.P. 778,656, Dec. 27, 1904, Badische Company

Preparation of omega cyan-methylaniline from anhydro-formaldehyde aniline with a solution of hydrocyanic acid in dilute alcohol. Process patent.

This product is converted by saponification into phenylglycine, which process is not covered by a patent.

U.S.P. 818,341, April 17, 1906, Badische Company

Process of making phenylglycine salt by reacting on chloracetic acid with an excess of aniline until the phenylglycine is converted into its anilide, separating this anilid and saponifying it with caustic alkali. Process patent.

U.S.P. 701,044, May 27, 1902, Farbwerke Hoechst

Process for making phenyl-amido-aceto-nitrile by action of glycollic acid nitrile (OH) CH_2CN to act on aniline.

This product can be converted by saponification into phenylglycine, which process is not covered by a patent.

U.S.P. 841,456, Jan. 15, 1907, Farbwerke Hoechst

Process for making aromatic phenylglycines which consists in causting chloracetic acid to act on aromatic nitrohydrocarbons in the presence of iron, transforming the iron glycinate thus obtained into alkali glycinate by means of alkali, distilling off the excess of aromatic amine with steam and precipitating the glycine with dilute acids from the residue filtered from the iron oxide.

U.S.P. 868,294, Oct. 15, 1907, Farbwerke Hoechst

Process for making phenylglycine which consists in causing primary aniline bases to interact with chloracetic acid in presence of ferrous hydrate and a saturated indifferent alkali salt solution.

U.S.P. 712,190, Oct. 28, 1902, Chemische Fabrik von Heyden

Process for manufacturing phenylglycine which consists in reacting upon one molecule of mono-chloracetic acid upon three or more molecules of aniline and separating the phenylglycine formed.

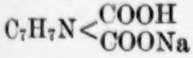
PLAINTIFF'S EXHIBIT No. 664-A.

E. I. duPont de Nemours & Company.

Patents Covering the Manufacture of Phenylglycine Ortho-Carboxylic Acid Which Can Be Used as an Intermediate for Indigo

U.S.P. 690,325, Dec. 31, 1901, Badische Company

Anthranilic acid is condensed with sodium chloracetate to form the acid salt of phenylglycocol ortho carboxylic acid having the formula



$C_7H_7N<\begin{matrix}COOH\\COONa\end{matrix}$ Process and Product Patent.

U.S.P. 765,576, July 19, 1904, Badische Company

Process of making omega cyan-methyl-anthranilic acid from anthranilic acid, formaldehyde, sodium bisulphite and a metallic cyanide. Process patent.

This product is converted by saponification into the salt of phenylglycine ortho carboxylic acid which process is not covered by a patent.

U.S.P. 675,217, May 28, 1901, Farbwerke Hoechst

Process for manufacturing phenylglycine ortho carboxylic acid which consists in heating a mixture of ortho halogen benzoic acid and glycol. Process patent.

U.S.P. 662,754, Nov. 27, 1900, Farbwerk Mulheim

Process for making cyan methyl anthranilic acid from anthranilic acid formaldehyde and hydrocyanic acid.

This product is converted by saponification into the salt of phenylglycine ortho carboxylic acid. See U.S.P. 662,755.

U.S.P. 662,755, Nov. 27, 1900, Farbwerk Mulheim

Process for phenylglycocol ortho carboxylic acid which consists in treating anthranilic acid with hydrocyanic acid and formaldehyde and saponifying the resulting product.

PLAINTIFF'S EXHIBIT No. 665.

TREASURY DEPARTMENT
UNITED STATES PUBLIC HEALTH SERVICE

MISCELLANEOUS PUBLICATION No. 22

Regulations for the Control of Arsphenamine, Neoarsphenamine, and Sodium Arsphenamine

in the District of Columbia and in Interstate Traffic

Supplementary to Regulations for the Sale of Viruses, Serums, Toxins, and Analogous Products, approved February 12, 1919
Miscellaneous Publication No. 10

WASHINGTON
GOVERNMENT PRINTING OFFICE
1920

REGULATIONS FOR THE CONTROL OF THE MANUFACTURE AND SALE OF ARSPHENAMINE.

1. Arsphenamine shall not be sold in interstate traffic, or in the District of Columbia, or exported or imported, except as provided herein.

2. Arsphenamine shall be offered for sale only in colorless glass ampules containing an atmosphere of an inert gas, or in a vacuum.

3. Each ampule shall be plainly marked so as to show the license number, the lot number, the name of the preparation, the actual amount of arsphenamine in the container, and the name and address of the manufacturer, in the following manner:

License No. ____________ Lot No. ____________
This package contains ____________________ grams of arsphenamine (hydrochloride of 3-diamino-4-dihydroxy-1-arsenobenzene) and conforms with regulations and tests prescribed by the United States Public Health Service. Made by ____________________________________

The name arsphenamine shall be given precedence on the labels of containers and packages over the particular brand or trade name, and the size of type and display used for the name arsphenamine shall be at least as conspicuous as that used for the brand or trade name.

4. Each lot of the finished product shall be tested by the manufacturer for arsenic content and toxicity.

(1) The total arsenic content of the drug as obtained from the ampule shall not be below 30 per cent nor above 32 per cent, when determined according to Lehmann's method as described in Public Health Reports, volume 33, June 21, 1918, page 1012.

(2) The maximum tolerated dose shall not be less than 100 milligrams per kilo body weight for albino rats when tested as follows:

(*a*) Animals must be well nourished and free from disease, weighing from 100 to 150 gm. Pregnant animals shall not be used.

(*b*) *Feeding and care of animals.*—The rats should be fed both before and during the period of observation on a ration consisting of white bread, cracked corn, oats, cow's milk, and, in addition, twice weekly, fresh beef and cabbage. An adequate supply of fresh, clean water should be provided at all times. The rats should have no access to food for from 18 to 12 hours preceding the injection, though water should be supplied during this time.

(*c*) *Preparation of solution.*—The drug shall be dissolved in freshly glass-distilled water and made into the alkaline solution by the addition of 0.9 cc. N/1 sodium hydrate for each 0.1 gm. of the drug. The final concentration of the drug shall be in the proportion of 2 parts to 100. The drug shall be completely soluble in water in this proportion.

(*d*) *Method of injection.*—This should be made into the saphenous vein by means of a burette or a syringe, accurately graduated to 0.01 cc. When hemorrhage occurs it should be controlled mechanically.

(*e*) *Rate of injection.*—This shall be at from 12 to 15 seconds for each 0.1 cc. of the solution.

(*f*) An anesthetic is not required.

(*g*) For each toxicity test a series of not less than five rats shall be used, and at least 60 per cent of the animals injected must survive at least 48 hours from the time of the injection, provided that if the first test is made on five rats only and more than one die the test must be repeated and the final result based on the total number of rats injected.

5. In addition to tests made by the manufacturer before the drug is put in ampules, final tests of the product as prepared for the market shall be made on each lot by the United States Public Health Service before its release. For this purpose samples of each lot shall be forwarded by the manufacturer to the Hygienic Laboratory of the United States Public Health Service. The number of samples supplied shall not be less than 10 ampules from any lot, and from lots of over 1,000 ampules 1 per cent shall be furnished. Each ampule forwarded shall contain at least 0.6 gm. arsphenamine. Accompanying each lot, the manufacturer shall send a copy of the report of the toxicity test and arsenic determination on which it was passed.

6. Officers of the United States Public Health Service, when duly detailed, may enter establishments for the purpose of securing samples and conducting inspections.

7. When lots have satisfactorily passed the prescribed tests, they may be offered for sale; but the right is reserved to require the withdrawal from the market of any lot designated by the Surgeon General of the United States Public Health Service.

8. Manufacturers shall retain 2 per cent of the product from each lot for a period of three months from the time the preparation is placed on the market, provided that in no case this is less than 10 ampules of at least 0.6 gm. each.

REGULATIONS FOR THE CONTROL OF THE MANUFACTURE AND SALE OF NEOARSPHENAMINE.

1. Neoarsphenamine shall not be sold in interstate traffic, or in the District of Columbia, or exported or imported except as provided herein.

2. Neoarsphenamine shall be offered for sale only in colorless glass ampules containing an atmosphere of an inert gas, or in a vacuum.

3. Each ampule shall be plainly marked so as to show the license number, the lot number, the name of the preparation, the actual amount of neoarsphenamine in the container, and the name and address of the manufacturer in the following manner:

License No. .... Lot No. ....

This package contains .... grams of neoarsphenamine (a compound prepared from arsphenamine by means of formaldehyd-sulphoxylate) and conforms with the regulations and tests prescribed by the United States Public Health Service. Made by ....

The name neoarsphenamine shall be given precedence on the labels of containers and packages over the particular brand or trade name, and the size of type and the display used for the name neoarsphenamine shall be at least as conspicuous as that used for the brand or trade name.

4. Each lot of the finished product shall be tested by the manufacturer for arsenic content and toxicity.

(1) The total arsenic content of the drug as obtained from the ampule shall not be below 18 nor above 20 per cent when determined according to Lehmann's method as described in Public Health Reports, volume 33, June 21, 1918, page 1012. The drug should be freely mobile in ampule and soluble in cold water (1 gm. in 10 c. c. of water in 5 minutes).

(2) The maximum tolerated dose shall not be less than 200 milligrams per kilo body weight for albino rats, when tested as follows:

(*a*) Animals must be well nourished and free from disease, weighing from 100 to 150 gm. Pregnant animals shall not be used.

(*b*) The rats should be fed both before and during the period of observation on a ration consisting of white bread, cracked corn, oats, cow's milk, and, in addition, twice weekly, fresh beef and cabbage. An adequate supply of fresh, clean water should be provided at all times. The rats should have no access to food for from 18 to 12 hours preceding the injection, though water should be supplied during this time.

(*c*) *Preparation of solution.*—The drug shall be dissolved in cold glass-distilled water. A preparation which is not readily soluble in cold distilled water should be discarded at once as a dangerous product. The final concentration of the solution shall be in the proportion of 4 parts per 100.

(*d*) *Method of injection.*—This should be made into the saphenous vein by means of a burette or a syringe, accurately graduated to 0.01 cc. When hemorrhage occurs it should be controlled mechanically.

(*e*) *Rate of injection.*—This shall be at from 12 to 15 seconds for each 0.1 cc. of the solution.

(*f*) An anesthetic is not required.

(*g*) For each toxicity test a series of not less than five rats shall be used, and at least 60 per cent of the animals injected must survive at least seven days from the time of the injection, provided that if the first test is made on five rats only and more than one die the test must be repeated and the final result based on the total number of rats injected.

5. In addition to tests made by the manufacturer before the drug is put in ampules, final tests of the product as prepared for the market shall be made on each lot by the United States Public Health Service before its release. For this purpose samples of each lot shall be forwarded by the manufacturer to the Hygienic Laboratory of the United States Public Health Service. The number of samples supplied shall not be less than 10 ampules from any lot, and from lots of over 1,000 ampules 1 per cent shall be furnished. Each ampule forwarded shall contain at least 0.9 gm. neoarsphenamine. Accompanying each lot, the manufacturer shall send a copy of the report of the toxicity test and arsenic determination on which it was passed.

6. Officers of the Public Health Service, when duly detailed, may enter establishments for the purpose of securing samples and conducting inspections.

7. When lots have satisfactorily passed the prescribed tests, they may be offered for sale; but the right is reserved to require the withdrawal from the market of any lot designated by the Surgeon General of the United States Public Health Service.

8. Manufacturers shall retain 2 per cent of the product from each lot for a period of three months from the time the preparation is placed on the market, provided that in no case this is less than 10 ampules of 0.9 gm. each.

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REGULATIONS FOR THE CONTROL OF THE MANUFACTURE AND SALE OF SODIUM ARSPHENAMINE.

1. Sodium arsphenamine shall not be sold in interstate traffic, or in the District of Columbia, or exported or imported, except as provided herein.

2. Sodium arsphenamine shall be offered for sale only in colorless glass ampules containing an atmosphere of inert gas, or in a vacuum.

3. Each ampule shall be plainly marked so as to show the license number, the lot number, the name of the preparation, the actual amount of sodium arsphenamine in the container, and the name and address of the manufacturer, in the following manner:

License No.............. Lot No..............

This package contains .... grams of sodium arsphenamine (a compound prepared from arsphenamine by treating with sodium hydroxide) which conforms with the regulations and tests prescribed by the United States Public Health Service. Made by ....

The name "Sodium arsphenamine" shall be given precedence on the labels of containers and packages over the particular brand or trade name, and the size of type and display used for the name "Sodium arsphenamine" shall be at least as conspicuous as that used for the brand or trade name.

4. Each lot of the finished product shall be tested by the manufacturer for arsenic content and toxicity.

(1) The total arsenic content of the drug as obtained from the ampule shall be 20 per cent, plus or minus 1 per cent (20 ± 1 per cent) i. e., the percentage of arsenic shall be between 19 and 21 per cent, preferably as near 20 per cent as possible, when determined according to Lehmann's method as described in Public Health Reports vol. 33, June 21, 1918, page 1012.

(2) The maximum tolerated dose shall be not less than 180 mgm. per kilo bodyweight for the albino rat when tested as follows:

(*a*) Animals must be healthy and weigh from 100 to 150 grams. Pregnant animals shall not be used.

(*b*) *Feeding and care of animals.*—The rats shall be fed both before and during the period of observation on a ration consisting of white bread, cracked corn, cow's milk, and, in addition, twice weekly, fresh beef and cabbage. An adequate supply of fresh, clean water shall be provided at all times. The rats shall have no access to food for from 18 to 12 hours preceding the injection, though water should be supplied during this time.

(*c*) The drug must be readily and completely soluble at room temperature in freshly glass-distilled water, in which it shall be dissolved for toxicity testing. The concentration of the drug shall be in the proportion of 4 parts in 100.

(*d*) *Method of injection.*—This should be made into the saphenous vein by means of a burette or syringe, accurately graduated to 0.01 c. c. When hemorrhage occurs it should be controlled mechanically.

(*e*) *Rate of injection.*—This shall be at from 12 to 15 seconds for each 0.1 c. c. of the solution.

(*f*) An anaesthetic is not required.

(*g*) For each toxicity test a series of not less than five rats shall be used, and at least 60 per cent of the animals injected must survive at least 48 hours from the time of the injection, provided that if the first test is made on five rats only and more than one die the test must be repeated and the final result based on the total number of rats injected.

5. In addition to tests made by the manufacturer final tests of the product as prepared for the market shall be made on each lot by the United States Public Health Service before its release. For this purpose samples of each lot shall be forwarded by the manufacturer to the Hygienic Laboratory of the United States Public Health Service. The number of samples supplied shall not be less than 10 ampules from any lot, and from lots of over 1,000 ampules 1 per cent shall be furnished. Each ampule forwarded shall contain at least 0.6 gm. of sodium arsphenamine. Accompanying each lot, the manufacturer shall send a copy of the report of the toxicity test and arsenic determination on which it was passed.

6. Officers of the Public Health Service, when duly detailed, may enter establishments for the purpose of securing samples and conducting inspections.

7. When lots have satisfactorily passed the prescribed tests they may be offered for sale, but the right is reserved to require the withdrawal from the market of any lot designated by the Surgeon General of the United States Public Health Service.

8. Manufacturers shall retain 2 per cent of the product from each lot for a period of three months from the time the preparation is placed on the market, provided that the quantity so retained is in no case less than 10 ampules of at least 0.6 gm. each.

[32 Stat., 728.]

AN ACT To regulate the sale of viruses, serums, toxins, and analogous products in the District of Columbia, to regulate interstate traffic in said articles, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after six months after the promulgation of the regulations authorized by section four of this act no person shall sell, barter, or exchange, or offer for sale, barter, or exchange in the District of Columbia, or send, carry, or bring for sale, barter, or exchange from any State, Territory, or the Distict of Columbia into any State, Territory, or the District of Columbia, or from any foreign country into the United States, or from the United States into any foreign country, any virus, therapeutic serum, toxin, antitoxin, or analogous product applicable to the prevention and cure of diseases of man, unless (a) such virus, serum, toxin, antitoxin, or product has been propagated and prepared at an establishment holding an unsuspended and unrevoked license, issued by the Secretary of the Treasury as hereinafter authorized, to propagate and prepare such virus, serum, toxin, antitoxin, or product for sale in the District of Columbia, or for sending, bringing, or carrying from place to place aforesaid; nor (b) unless each package of such virus, serum, toxin, antitoxin, or product is plainly marked with the proper name of the article contained therein, the name, address, and license number of the manufacturer, and the date beyond which the contents can not be expected beyond reasonable doubt to yield their specific results: *Provided,* That the suspension or revocation of any license shall not prevent the sale, barter, or exchange of any virus, serum, toxin, antitoxin, or product aforesaid which has been sold and delivered by the licentiate prior to such suspension or revocation, unless the owner or custodian of such virus, serum, toxin, antitoxin, or product aforesaid has been notified by the Secretary of the Treasury not to sell, barter, or exchange the same.

Sec. 2. That no person shall falsely label or mark any package or container of any virus, serum, toxin, antitoxin, or product aforesaid; nor alter any label or mark on any package or container of any virus, serum, toxin, antitoxin, or product aforesaid so as to falsify such label or mark.

Sec. 3. That any officer, agent, or employee of the Treasury Department, duly detailed by the Secretary of the Treasury for that purpose, may, during all reasonable hours, enter and inspect any establishment for the propagation and preparation of any virus, serum, toxin, antitoxin, or product aforesaid for sale, barter, or exchange in the District of Columbia, or to be sent, carried, or brought from any State, Territory, or the District of Columbia into any other State or Territory or the District of Columbia, or from the United States into any foreign country, or from any foreign country into the United States.

Sec. 4. That the Surgeon General of the Army, the Surgeon General of the Navy, and the supervising Surgeon General of the Marine Hospital Service be, and they are hereby, constituted a board with authority, subject to the approval of the Secretary of the Treasury, to promulgate from time to time such rules as may be necessary in the judgment of said board to govern the issue, suspension, and revocation of licenses for the maintenance of establishments for the propagation and preparation of viruses, serums, toxins, antitoxins, and analogous products, applicable to the prevention and cure of diseases of man, intended for sale in the District of Columbia, or to be sent, carried, or brought for sale from any State, Territory, or the District of Columbia, into any other State, Territory, or the District of Columbia, or from the United States into any foreign country, or from any foreign country into the United States: *Provided*, That all licenses issued for the maintenance of establishments for the propagation and preparation in any foreign country of any virus, serum, toxin, antitoxin, or product aforesaid, for sale, barter, or exchange in the United States, shall be issued upon condition that the licentiates will permit the inspection of the establishments where said articles are propagated and prepared, in accordance with section three of this act.

Sec. 5. That the Secretary of the Treasury be, and he is hereby, authorized and directed to enforce the provisions of this act and of such rules and regulations as may be made by authority thereof; to issue, suspend, and revoke licenses for the maintenance of establishments aforesaid, and to detail for the discharge of such duties such officers, agents, and employees of the Treasury Department as may in his judgment be necessary.

Sec. 6. That no person shall interfere with any officer, agent, or employee of the Treasury Department in the performance of any duty imposed upon him by this act or by regulations made by authority thereof.

Sec. 7. That any person who shall violate or aid or abet in violating any of the provisions of this act shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

Sec. 8. That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

Approved July 1, 1902.

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PLAINTIFF'S EXHIBIT No. 666.

TREASURY DEPARTMENT
UNITED STATES PUBLIC HEALTH SERVICE
HUGH S. CUMMING, SURGEON GENERAL

PREPARATION AND ADMINISTRATION OF ARSPHENAMINE AND NEOARSPHENAMINE

STANDARD INSTRUCTIONS FOR THE PREPARATION AND INTRAVENOUS ADMINISTRATION OF ARSPHENAMINE AND NEOARSPHENAMINE FOR USE BY THE MEDICAL DEPARTMENTS OF THE ARMY, OF THE NAVY, AND OF THE VETERANS' BUREAU, AND BY THE PUBLIC HEALTH SERVICE

[Issued July 1, 1922; superseding all previous instructions]

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WASHINGTON
GOVERNMENT PRINTING OFFICE
1922

PREPARATION AND ADMINISTRATION OF ARSPHENAMINE AND NEOARSPHENAMINE.[1]

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[Issued July 1, 1922; superseding all previous instructions.]

Reasons for Issuing Instructions.

Reactions following the use of arsphenamine and neoarsphenamine are still occurring in the Government services, although experience has shown that these reactions can be reduced to a minimum by the use of proper methods of procedure. Practically all serious reactions which have occurred in the Government services during the last five years have been specially investigated, and in nearly every instance it has been shown that the reactions were due (1) to some error in the technique of the preparation and administration of the drug or (2) to faulty examination of the patient, especially in relation to the effects of previous injections. In no case has it been possible to prove that the reactions have been due primarily to inherent toxicity of the drug itself. It therefore seems desirable to issue a complete set of instructions on technique.

Instructions are issued by each manufacturer, and they vary in some details with each product. In general, these instructions are satisfactory for the particular brand concerned; but as the same standard of relative nontoxicity is required by the Government for all brands, it is not considered desirable in these instructions to individualize the products.

The following instructions may seem unnecessarily explicit, and the technique outlined may differ from others which give satisfactory results. However, every essential statement contained herein is based on the results of the study mentioned above. The procedures given are designed to make the treatment safe and at the same time not to make the technique unnecessarily exacting or cumbersome for the clinician.

Medical officers are directed to follow these instructions and are cautioned that they will be held responsible for the untoward results following the use of procedures which are essentially different.

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[1] Reprint from the Public Health Reports, vol. 37, No. 31, Aug. 4, 1922, pp. 1867-1882.

Any of the specified apparatus which is not on hand will be furnished upon request through regular channels.

Choice of Drug.

Although neoarsphenamine is more popular than arsphenamine, on account of ease of preparation and administration, which constitutes a real advantage under some circumstances, attention is called to the fact that neoarsphenamine is a much less constant and less reliable preparation than arsphenamine.

Not only do certain batches of all brands of neoarsphenamine show a tendency to deteriorate with age but there is also a pronounced irregularity in the therapeutic activity of different batches of neoarsphenamine, regardless of the age and source of the preparations. As a result of these variations, the physician may obtain a much less satisfactory therapeutic result than when arsphenamine is used. Arsphenamine, regardless of age, brand, or lot number, shows a more uniform therapeutic activity. It is probably, also, inherently more potent. Arsphenamine should, therefore, be used whenever practicable, and neoarsphenamine should be reserved for situations in which it is difficult to give arsphenamine.

Other members of the arsphenamine series are considered to be still in the experimental stage and not for routine use.

In regard to different brands, any product which has passed the requirements of the United States Public Health Service may be used. The labels of duly licensed products bear imprint to this effect and the license number.

Arsphenamine.

I. LICENSED PRODUCTS.

The following firms have been licensed by the Treasury Department to manufacture or to import arsphenamine:

A. LICENSED TO MANUFACTURE.

Name of firm and address.	Name of trade product.
Dermatological Research Institute, 1720 Lombard Street, Philadelphia, Pa.	Arsenobenzol.
Diarsenol Company (Inc.), Buffalo, N. Y.	Diarsenol.
Mallinckrodt Chemical Works, St. Louis, Mo.	Arsphenamine.
H. A. Metz Laboratories (Inc.), 122 Hudson Street.	Salvarsan.
Powers-Weightman-Rosengarten Co., Philadelphia, Pa.	Arsenobenzol Billon.
E. R. Squibb & Sons, New Brunswick, N. J.	Arsphenamine.

B. LICENSED TO IMPORT.

Name of firm and address.	Name of trade product.
Farbwerke, vorm. Meister Lucius und Brüning, Hoechst-am-Main, Germany.	Salvarsan.
Poulenc Frères, 92 Rue Vieille-du-Temple, Paris, III, France.	Arsenobenzol Billon.

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II. METHOD OF INJECTION.

Only the gravity method should be employed in administering arsphenamine.

III. MATERIALS REQUIRED.

A. Erlenmeyer flasks, 500 to 1,000 c. c. capacity.

B. Funnels, glass, 4-inch.

C. Cylinders, graduated, 500 to 1,000 c. c. capacity.

D. Gravity apparatus, consisting of—

1. Gravity graduated glass cylinders, 300 c. c. capacity: long graduations at the 100 c. c. marks; medium long graduations every 25 c. c.; short graduations for each 5 c. c.; the zero point to be at the top and the 300 mark to be at the bottom of the cylinder.

2. Rubber tubing, pure gum, heavy wall, inside diameter, 5/32-inch (about 4 mm.), of lengths to limit height of the cylinder to 3 feet above the patient's arm.

Caution: Before being used the first time the tubing should be filled with normal sodium hydroxide solution for not less than six hours. It should then be thoroughly rinsed in water, sterilized by boiling, and then thoroughly rinsed with sterile water again just before using.

3. Needles with slip joint, 19 standard gauge, medium bevel, length of cannula 1½ inches. While not necessary, the Fordyce type of needle is a great convenience. The correct gauge is highly important, as it influences the rate of flow. Proper care of the needles is important. They should be cleansed immediately after use, and precautions taken to prevent rust. Just before sterilization, the point should be freshened on a stone, if necessary. A dull needle tends to make a dissatisfied patient.

4. Glass tubing, 6 mm. in diameter, for windows, which should be inserted in the rubber tubing so as to be a few inches from the lower end.

5. Adapters for attaching needles to end of tubing. These may be of metal or glass. If of glass they will serve as extra windows as well as adapters.

6. Pinch cocks (Mohr's) for cutting off the flow, to be applied a short distance above the needle.

E. Sterile gauze, cut in small squares, for filtering the solution.

F. Sterile freshly distilled water. This water should be distilled in glass or block tin and should be sterilized immediately by autoclaving or boiling in Erlenmeyer flasks. These flasks should be stoppered with a gauze-wrapped cotton plug and capped with paper or tin foil. Preparation of the water preferably should be carried out on the day before use, so that it will be both fresh and cool at the time needed.

G. Sterile salt solution. This should be made with water prepared as above and chemically pure sodium chloride. Sterilization should be carried out as given above. The strength of the salt solution should be the usual 0.85 per cent. The use of salt solution in the place of distilled water for the dilution is considered a refinement which is not necessary in routine work, but it may have some advantages, since a solution of arsphenamine in distilled water is not isotonic.

H. Normal sodium hydroxide volumetric solution, U. S. P. IX, p. 573. Enough of this can be prepared at one time to last for a month or longer, provided it is kept in a rubber stoppered wax- or paraffin-lined bottle. There is danger of deterioration on account of absorption of CO_2 from the air and of reactions with the glass container. A wax-lined bottle can be prepared by placing wax or paraffin in a bottle, sterilizing with dry heat, and spreading the melted wax by rotation over the inside of the bottle as it is cooling. If precipitate is found in the alkali, it is probably an evidence of deterioration of the solution, which should be discarded. For use in large clinics, a 2-liter bottle, protected from the action of the alkali and of the atmospheric CO_2 and set up with an automatic measuring burette, is a great convenience and will insure the safe-keeping of the alkali for a long period.

I. Burette or pipette. A graduated burette or pipette for accurately measuring the alkali.

All the glassware mentioned above should be of chemical standard. All apparatus should be surgically clean, freshly sterilized, and cool at time of using. The apparatus should be sterilized by dry heat or autoclave, with the exception of the tubing and the needles, which should be boiled.

If the medical officer has any doubt about being able to obtain pure normal sodium hydroxide solution, the same will be supplied on request to the Army Medical School, the Naval Medical School, or to the Hygienic Laboratory, Washington, D. C.

IV. INSPECTION OF DRUG.

A. Note and record manufacturer, lot number, and particularly the dosage stated on the label. In this connection it is a great convenience, and more economical, to employ dosages which are just sufficient to make up the unit batch of solution desired; e. g., if 10 doses of 0.4 gram are made up at a time, use ampules containing 4 grams. An ampule containing 10 doses is the largest that should be used.

B. Examine ampules critically and do not use any which are cracked or in which the powder is not freely mobile and is not of a pale yellow to a lemon-yellow in color. Forward any suspected ampules with explanatory letter directly to the Hygienic Laboratory, Washington, D. C., for examination.

C. The ampules, having satisfactorily passed preliminary inspection, should be immersed in 95 per cent alcohol, primarily to detect any minute cracks in the glass not visible on preliminary inspection and also to cleanse the ampule. Lay ampules on sterile towel to dry or wipe off alcohol with sterile gauze.

V. PREPARATION OF SOLUTIONS.

A. The amount to be prepared at one time will depend on the number of patients, but unit batches of more than 10 average doses should not be prepared.

B. Place in Erlenmeyer flasks about 10 c. c. of freshly distilled sterile water for each decigram of arsphenamine to be used; e. g., 100 c. c. for 1 gram. Open ampule and sprinkle—do not dump—contents on surface of water. The temperature of the water is of great importance. For all brands of arsphenamine, except for arsenobenzol manufactured by the Dermatological Research Institute, the water should be at room temperature and, as a rule, the drug should go into solution, with little or no agitation, within a few minutes. A slight amount of shaking is permissible with any product, but shaking should always be kept at a minimum.

Exception: The arsphenamine manufactured by the Dermatological Research Institute requires either hot water alone, or it can be dissolved in cold water if the powder is first thoroughly moistened with ethyl alcohol (about 1 c. c. to 0.6 gram). This amount of alcohol is harmless. In either case it is essential, immediately after contact with the water, to shake the powder vigorously for a few seconds in order to prevent the formation of gummy masses. After this shaking it should stand until completely dissolved and until the solution is cool.

When the arsphenamine has completely dissolved, forming a perfectly clear solution with an absence of any gelatinous particles when viewed by transmitted light, it is ready for alkalinization. If for any reason the arsphenamine fails to form a perfect solution, it must be discarded.

C. Correct alkalinization is extremely important; failure to alkalinize properly causes more reactions than any other error connected with the use of arsphenamine.

1. The exact method consists in the addition all at once of 0.85 c. c. normal sodium hydroxide solution for each 0.1 gm. of arsphenamine used; e. g., 8.5 c. c. for 1 gm. of drug. This is the correct amount necessary to form the disodium salt of arsphenamine (see V, p. 1873), the form which is best tolerated by the patient.

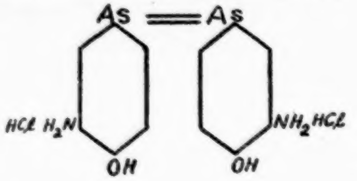
2. Approximate method of alkalinization. An exception to the rule that only standardized normal alkali should be used may be made in case this is not obtainable. Under such circumstances, the exact concentration of alkali being unknown, the operator should keep in mind the following facts: Arsphenamine as it appears on the market is the dihydrochloride of the arsphenamine base (see I, p. 1873), which is soluble in water; but the solution is strongly acid and highly toxic. Upon the gradual addition of sodium hydroxide a precipitate at once begins to form and then redissolves. This property of the drug, not understood by some physicians, has caused them to mistake the end point. This mistake is especially likely to occur when the operator thinks he is using a 15 per cent solution, when in reality the solution is only 4 or 5 per cent. The drug when injected in this still strongly acid state, the monohydrochloride (see II, p. 1873), produces serious reactions.

When a little over one-fourth of the amount of alkali indicated under (1) has been added, the precipitate no longer redissolves. From this point on, until there has been added almost three-fourths of the amount of alkali necessary to form the disodium salt, the precipitate remains and does not redissolve on shaking (see III, p. 1873). But when three-fourths of the total amount necessary has been added, the precipitate redissolves (see IV, p. 1873).

It is at this point, when just enough alkali has been added to dissolve the precipitate, that the solution has very frequently been injected. *This solution of the monosodium salt is the most frequent cause of reactions.* At this point 75 per cent of the correct amount of sodium hydroxide solution has been added, and hence an additional one-third of the total amount of alkali used up to this point should now be added (see V, p. 1873). This last addition is the remaining 25 per cent of the correct amount corresponding to a total of 0.85 c. c. per 0.1 gm. of standardized $\frac{N}{1}$ NaOH solution as mentioned under (1) above; e. g., if 3.3 c. c. of an unknown solution were required for completely clearing a

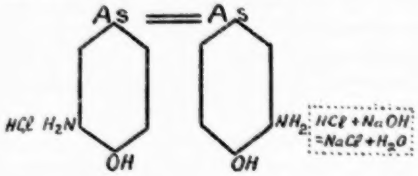
The Chemical Transformation of Arsphenamine into its Disodium Salt for Intravenous Administration by the Addition of Sodium Hydroxide.

I. ARSPHENAMINE DIHYDROCHLORIDE



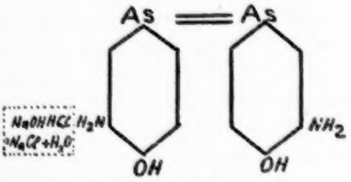
I. Arsphenamine (dihydrochloride). This is the drug as it appears on the market. It is soluble in distilled water, strongly acid to litmus, highly toxic, and must not be injected.

II. ARSPHENAMINE MONOHYDROCHLORIDE



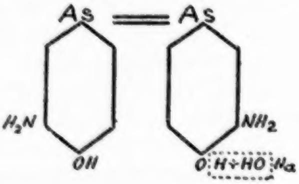
II. Arsphenamine monohydrochloride is formed when one-fourth the amount of sodium hydroxide necessary to form the disodium salt has been added, or 0.85 c. c. of normal sodium hydroxide per 0.4 gram of arsphenamine. It remains in solution, is still strongly acid to litmus, is highly toxic, and must not be injected.

III. ARSPHENAMINE BASE



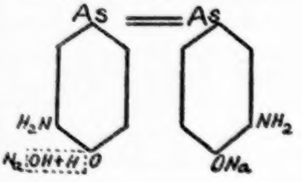
III. The base is formed when one-half the amount of sodium hydroxide necessary to form the disodium salt has been added, or 1.70 c. c. of normal sodium hydroxide for 0.4 gram of arsphenamine. A heavy insoluble precipitate is formed. This suspension must not be injected.

IV. MONOSODIUM ARSPHENAMINE



IV. The monosodium salt of arsphenamine is formed when three-fourths the amount of sodium hydroxide necessary to form the disodium salt has been added, or 2.55 c. c. of normal sodium hydroxide per 0.4 gram of arsphenamine. It is just soluble in water, and forms an unstable, slightly alkaline solution, which must not be injected.

V. DISODIUM ARSPHENAMINE



V. The disodium salt of arsphenamine is formed when the final fourth of the full amount of normal sodium hydroxide necessary has been added, or 3.4 c. c. of normal sodium hydroxide for 0.4 gram of arsphenamine. This amount is one-third more than the amount used for the monosodium salt IV. This form is a stable alkaline solution. It is the only form in which the drug should be injected.

solution containing 2 gms. of arsphenamine, 1.1 c. c. more should be added. With a thorough understanding of the above, the operator may roughly standardize his alkali against the arsphenamine. No two brands of arsphenamine vary greatly in the amount of alkali required, whereas various alkali solutions vary in strength by several hundred per cent.

The P_h of a proper solution is about 10, and it is impossible to buffer it to neutrality by common buffers without precipitation. Moreover, the alkaline solution is well tolerated if given slowly and well diluted.

3. "*Haphazard method*" of alkalinization, or *drop method.* This is mentioned only to condemn it. It is inconceivable that the operator will be unable to secure some sort of a graduated measuring device in order to measure the alkali instead of guessing at the amount. Numerous reactions from underalkalinization have occurred with this method, particularly where several doses of the drug are prepared at one time. The alkali has been added with a dropper until clearing occurred, and then a few additional drops have been added regardless of whether the solution contained 1 or 10 doses. Less frequently overalkalinization has also occurred. The injection of an overalkalinized solution causes pain along the vein, and thrombosis.

D. *Filtration and dilution to proper strength* of the alkalinized solution.—With sterile forceps place 4 layers of sterile gauze in the funnel. Wash with sterile water. Pour alkalinized solution of arsphenamine through this gauze into a graduated cylinder and then rinse the filter with enough sterile distilled water to bring the total for each decigram of drug up to 25 c. c.; e. g., for 1 gram of arsphenamine 250 c. c. of solution should be made. This washing of the drug through the filter with the water insures full dosage. If a saline solution is desired, it is used at this point in place of the distilled water, at usual strength, 0.85 per cent.

E. *Time the solution should be allowed to stand.*—The *properly alkalinized, filtered,* and *diluted* solution should now stand for at least 30 minutes before being injected, to allow completion of the chemical reactions. The toxicity is considerably reduced by this delay. The solution may stand as long as three hours without undergoing any increase in toxicity, provided it is protected from the air, not shaken, and provided the temperature does not exceed 30° C. The solution is now ready for administration.

F. *Temperature.*—Thirty degrees C. is the correct temperature at which the drug should be introduced; in no case should it be warmed above this point.

G. *Dosage.*—As a rule the initial dose should be small. The average dose used is about 0.4 gram for 150 pounds body weight, but no hard and fast rule can be laid down; each case should be considered individually by the clinician. When a radical cure is being sought and the patient tolerates the injections well, full doses should be given.

VI. ADMINISTRATION.

A. Emphasis should be laid on the complete physical examination preliminary to administering arsenical treatment, for evidence of renal, cardiovascular, or visceral changes, in the presence of which it should be used cautiously. Weekly urinalyses should be made during treatment. The patient should be questioned concerning any reactions following the last treatment, with special reference to any toxic skin eruptions as danger signals against further treatment. Any evidence of an exfoliative dermatitis is an *absolute contraindication* against any further treatment with any arsenical. Evidence of jaundice should also be looked for and, if present, is an indication for caution. In late cases the possibility of a Herxheimer reaction following a large injection should be remembered. This may be fatal should vital structures be involved. *Each patient should receive individual consideration.*

B. *Preparation of patient.*—The patient should be given a mild cathartic the night before and should eat no food within two or three hours before the injection. Only a light meal should be taken a few hours following the injection. Ambulatory patients should rest for a short time after the injection. If large doses are being given, the patient preferably should be kept in bed until the following morning.

C. The patient should be placed in a recumbent position.

D. The gravity apparatus should be arranged to provide a column of solution not over 3 feet in height. The tubing should be rinsed with sterile water; then the cylinder and tubing should be filled with the solution and the air expelled by lowering the end of the tube below the level of the fluid in the cylinder. Apply pinch cock.

E. Select a suitable vein in either arm and sterilize the overlying skin by applying tincture of iodine, which should preferably be removed after a minute or two with 95 per cent alcohol.

F. Apply rubber turniquet.

G. Insert needle, bevel up, in two stages (first through the skin, second into the vein), and allow a few drops of blood to escape to indicate entrance to the vein. The needle should be slid well into the vein in order to avoid escape of the point from the vein on further slight manipulations. Now connect adapter attached to gravity apparatus. Open pinch cock and snap it over the window.

H. *Rate of injection.*—If the specifications as to the gauge of needle, etc., have been followed, the correct rate of injection is practically insured, i. e., by the size of the needle and the length of the tube; however this should not be taken for granted, but the exact time should be observed, and in no case should the rate exceed 25 c. c. in one minute or 0.4 gram dose in four minutes; five minutes is preferable. A graduated sand glass which runs for five minutes is a convenient timer. The rate of flow should be even as well as slow. Should patient show any signs of reaction, stop. It is highly desirable, in sensitive patients, to wait a minute or two after injection of first 0.1 gram before proceeding with rest of injection. When the necessary amount has been injected, cut off flow with pinch cock, disconnect tubing, allow a few drops of blood to escape, and then withdraw needle and place sterile gauze over the puncture, instructing the patient to hold it there for a few minutes. If another injection is to be given and there is any suspicion of contamination of the tubing with blood, empty cylinder and start over with a new sterile tube.

VII. REACTIONS.

Following the above methods, reactions should be rare. If a serious reaction does occur, a complete account should be forwarded to the Surgeon General, including clinical history, dose injected, lot number, and manufacturer of the drug. Samples should also be sent of the same lot of drug; also samples of the sodium hydroxide, distilled water, and saline used for purposes of investigation.

The prevention and treatment of reactions is very important. A discussion of this subject is not undertaken here, except to call attention to general hygiene, diet, foci of infection, dosage, etc., as well as care in preparation and administration of the drug in prophylaxis of these reactions. Patients that continually show immediate reactions should receive prior administration of atropine or divided doses of arsphenamine or combinations of both. In the clinical control of the immediate or nitritoid types of reactions, the chief preparation of value is epinephrin $\frac{1}{1000}$, about 1 c.c. intramuscularly. This is also of value in the very severe type of reaction—hemorrhagic encephalitis. In the severe types of skin reactions, as exfoliative dermatitis, rapid alkalinization of the patient is indicated. In all these delayed types of arsenical poisoning excellent results are said to be derived from the use of sodium thiosulphite given by mouth or intravenously.

Neoarsphenamine.

I. LICENSED PRODUCTS.

The following firms have been licensed by the Treasury Department to manufacture or import neoarsphenamine:

A. LICENSED TO MANUFACTURE.

Name of firm and address.	Trade name of product.
Dermatological Research Institute, 1720 Lombard Street, Philadelphia, Pa.	Neoarsphenamine.
Diarsenol Co. (Inc.), Buffalo, N. Y.	Neodiarsenol.
H. A. Metz Laboratories (Inc.), 122 Hudson Street, New York City	Neosalvarsan.
Powers-Weightman-Rosengarten Co., Philadelphia, Pa.	Novarsenobenzol Billon.
E. R. Squibb & Sons, New Brunswick, N. J.	Neoarsphenamine

B. LICENSED TO IMPORT.

Name of firm and address.	Trade name of product.
Farbwerke, vorm. Meister Lucius und Brüning, Hoechst-am-Main, Germany	Neosalvarsan.
Poulenc Frères, 92 Rue Vieille-du-Temple, Paris, III, France	Novarsenobenzol.

II. METHOD OF INJECTION.

The use of the gravity method is strongly recommended, especially in clinics where a considerable number of doses are to be given. It was demonstrated in one clinic that the average time required to give 100 injections was reduced, without changing the personnel, when the gravity method was substituted for the syringe method, and a high percentage of reactions, due directly or indirectly to the syringe method, also ceased to occur. With the gravity apparatus arranged to deliver a dose in about four minutes, one operator was able to run two tables much more easily than one table with the syringe method.

It is recognized, however, that there are circumstances in which the syringe method is indicated, as in the field, where apparatus must be reduced to a minimum. Under these circumstances the use of neoarsphenamine by the syringe method is a valuable therapeutic measure. It fills a need; but technically is inferior to the gravity method; and, therapeutically, neoarsphenamine given by either method is inferior to arsphenamine given by the gravity method.

III. APPARATUS REQUIRED.

A. When the gravity method is to be used:
1. Gravity apparatus (see Arsphenamine, III-D).
2. Erlenmeyer flasks, 50-300 c.c.
3. Funnels, glass, 2-inch.
4. Sterile gauze.

5. Graduated glass cylinders, 100 to 500 c. c.
6. Sterile distilled water (see Arsphenamine, III-F).
7. Saline, 0.85 per cent (see Arsphenamine, III-G).

B. When syringe method is to be used:

As above, except in place of gravity apparatus.

1. 10 to 50 c. c. all-glass syringes.
2. Rubber tubing, short, with adapters connecting syringe and needle.
3. Needles, 25 standard gauge, medium bevel.

IV. INSPECTION OF DRUG.

An even more critical examination should be made than in case of arsphenamine, as neoarsphenamine occasionally decomposes in the ampule, even when no cracks are present. The powder should be freely mobile and lemon-yellow to canary-yellow in color. When it approaches a red color, is distinctly lumpy or solidified, do not use, but forward samples to the Hygienic Laboratory for examination.

Immerse in alcohol the ampules which have passed inspection, to further eliminate the presence of cracks and to clean the ampule.

V. PREPARATION OF SOLUTION.

A. *Amount to be prepared at one time.*—In marked contrast to the practice with arsphenamine, do not prepare any more solution at one time than can be administered within 20 minutes.

B. *Concentration.*—Preferably, 1 decigram should be dissolved in 12.5 c. c. of water. This solution is then twice as concentrated as an arsphenamine solution. Concentrations as high as 1 decigram in 0.5 c. c. of water can be used in the field, or under other special circumstances. The highly concentrated solutions, however, should be given very slowly.

C. *Solution:*

1. Put in Erlenmeyer flask 12.5 c. c. sterile distilled water for each decigram of neoarsphenamine. In the field the concentrated solution can be made in the ampule itself by using water supplied in another ampule. (*Caution:* The distilled water used must be at room temperature and not to exceed 30° C.)

2. Open ampule and sprinkle—do not dump—powder into the water and, by preference, allow it to go into solution with no agitation whatever. Slight rotation of the flask is permissible. *Shaking the solution increases its toxicity and should be avoided.*

IN CASE THE SOLUTION IS NOT PERFECTLY CLEAR AND TRANSPARENT, IT SHOULD UNDER NO CIRCUMSTANCES BE USED. WHETHER IT REQUIRES ONE MINUTE OR TEN MINUTES FOR THE DRUG TO FORM A PERFECT SOLUTION IS UNIMPORTANT, BUT IT

SHOULD NOT REQUIRE MORE THAN TEN MINUTES. THE IMPORTANT POINT IS, NOT THE *RATE* OF SOLUBILITY BUT THE *COMPLETE* SOLUBILITY OF THE DRUG.

3. As soon as the neoarsphenamine is in solution, *filter* through washed gauze into tall, narrow cylinders and keep stoppered. It is preferable to use a size of cylinder which the solution will nearly fill. The smaller the air column over the solution the less the danger of increased toxicity. The solution is now ready to inject, and, in marked contrast to the arsphenamine solution, which should stand at least 30 minutes before its injection, the neoarsphenamine solution should be injected *immediately*, and in no case shall it be allowed to stand longer than 20 minutes.

4. *Dosage.*—The initial dose, as a rule, should be small. The average dose is about 0.6 gram for 150 pounds body weight; but no attempts to lay down a hard and fast rule in this regard are made. The patient must be individualized.

VI. ADMINISTRATION.

The directions made under arsphenamine (p. 1875, VI) to apply the administration of neoarsphenamine, with the exception of the dosage, rate, and method of administration.

Rate.—If instructions have been followed, the proper rate is practically insured by the character of the apparatus, but it must be checked by using a time-piece, and in no case, *whether the gravity or the syringe method is used, should more than 0.1 gram of neoarsphenamine be injected in 30 seconds,* or 0.6 gram in 3 minutes. This time is one-half that required for arsphenamine. In giving concentrated solutions, especial care is necessary in order to carry out this rule.

VII. REACTIONS.

See instructions under Arsphenamine, VII.

CONDENSED STANDARD INSTRUCTIONS FOR THE PREPARATION AND INTRAVENOUS ADMINISTRATION OF ARSPHENAMINE AND NEOARSPHENAMINE FOR THE MEDICAL DEPARTMENTS OF THE ARMY, OF THE NAVY, AND OF THE VETERANS' BUREAU, AND BY THE PUBLIC HEALTH SERVICE.

ARSPHENAMINE.

Reactions are usually due to errors in technique or failure to adapt treatment to needs of patient. Arsphenamine is preferable to neoarsphenamine.

I. Use any properly licensed product.

II. Use only the gravity method.

III. *Materials needed.*—Erlenmeyer flasks, glass funnels, graduated cylinders, sterile gauze, sterilized freshly distilled water, normal sodium hydroxide solution, graduated pipette or burette, and gravity apparatus, consisting of 300 c. c. gravity cylinder, pure gum rubber tubing about 40 inches length, diameter $\frac{5}{32}$ inch., end adapter, glass window, slip needles, 19 standard gauge, 1½-inch cannula, medium bevel, and pinch cocks.

IV. *Inspection of drug.*—Record name and lot number; note especially dosage, color, and mobility of powder. If ampules are cracked, or if powder is other than pale yellow to lemon color and not freely mobile, *do not use.*

V. *Preparation of solution.*—Prepare not more than enough for 10 patients at one time.

A. Immerse ampules in alcohol.

B. Place in Erlenmeyer flask about 10 c. c. distilled water at room temperature for each 0.1 gram of the drug to be used, open ampule and sprinkle powder—do not dump—on surface of water; allow to go into solution with little or no agitations.

Exception.—Arsenobenzol (D. R. I.) requires for rapid solution either the use of hot water alone or cold water after having been previously moistened with ethyl alcohol (1 c. c. to 0.6 gm.). In either case immediate, vigorous shaking for a few seconds is essential to prevent the formation of gummy masses. After shaking, wait for complete solution and cooling.

C. *Alkalinization.*—When solution is complete, add 0.85 normal alkali (U. S. P.) for each 0.1 gram of drug (e. g., 1 gm. requires 8.5 c. c.). When standardized normal sodium hydroxide is not avilable, see detailed instructions for procedure. *The drop method of measuring the alkali should never be used.*

D. *Filtration.*—Filter the clear, alkalinized, amber colored solution through sterile gauze, four-ply, previously washed out with distilled water, into a graduated cylinder (not the gravity cylinder).

E. *Dilution.*—Dilute with distilled water so that 0.1 gram arsphenamine is contained in 25 c. c. (e. g., 100 c. c. contains 0.4 gram.)

F. *Time of standing.*—The filtered, perfectly clear, alkalinized and properly diluted solution should now *stand for 30 minutes* before being injected.

G. *Dosage.*—The initial dose should be small. The average dose is about 0.4 gm., but in this respect each case should receive individual consideration. For radical cure, full doses are indicated.

VI. *Administration:*

A. *Preparation of patient.*—In each instance attention should be given to the physical condition, effects of previous treatments of arsphenamine, etc.

B. The use of gravity apparatus, with level of fluid 3 feet above the vein, and 19 gauge needle should give proper rate of injection. However, it should be checked by a timepiece and not more than 25 c. c. (0.1 gm. of drug) should be injected per minute. It is advisable to take about 5 minutes for injection of the average dose (0.4 gm.).

VII. *Reactions.*—See detailed instructions.

NEOARSPHENAMINE.

I. Use any properly licensed product.

II. The gravity method of injection is strongly recommended, in view of the fact that reactions have occurred much less frequently in large clinics using this method as compared with large clinics using the syringe method. The syringe method, however, is a valuable one especially in the field. If the syringe is used, it should be with a 25-gauge needle connected to the syringe with a short piece of rubber tubing.

III. *Materials needed.*—Gravity apparatus, as for arsphenamine, or 10 to 50 c. c. all-glass syringes, with 25-gage needles and short rubber connections. Erlenmeyer flasks, funnels, sterile gauze, cylinders, and sterile freshly distilled water.

IV. *Inspection of drug* is even more important than in case of arsphenamine, as neoarsphenamine may, under certain conditions, change in the ampule. Note manufacturer, amount contained, and especially color, mobility, and bulk of the powder. If ampules are cracked, or if powder is other than canary yellow and not freely mobile, *do not use.*

V. *Preparation of solution:*

A. Immerse ampules in alcohol.

B. Place in an Erlenmeyer flask, 12.5 c. c. of distilled water for each 0.1 gram of the drug to be used, and sprinkle—do not dump—powder on the surface of the water. Allow it to go into solution without shaking. Slight agitation by rotating the flask is permissible. *Shaking increases toxicity.* While in the field and under special circumstances a concentration as high as 0.1 gram in 0.5 c. c. of water can be used, the use of 12.5 c. c. to each 0.1 gram is strongly recommended. *Discard any product which is incompletely soluble.*

C. *Filtration.*—Filter the perfectly clear solution through washed sterile gauze into a narrow graduated cylinder.

D. *Time of standing.*—Neoarsphenamine solutions, in marked contrast to arspheanmine solutions, should not stand but should be given at once, and *in no case should they be allowed to stand for more than 20 minutes. If any haziness or clouding occurs, do not use.*

E. *Dosage.*—The initial dose should be small. The average dose is 0.6 gm., but in this respect each patient should receive individual consideration.

VI. *Administration.*—Pay particular attention to preparation of patient and to rate of injection, which must not exceed the introduction of more than 0.1 gm. of neoarsphenamine in 30 seconds, whether the gravity or the syringe method be employed. The rate may be almost perfectly controlled by the use of the gravity apparatus specified. With the syringe method the use of the small sized needle specified and the short rubber tube connector will enable one to inject sufficiently slowly without great difficulty, although greater care is necessary than with the gravity method. The rate should be frequently checked with a timepiece.

VII. *Reactions.*—See detailed instructions.

PLAINTIFF'S EXHIBIT No. 667.

Mimeographed Copy of Report of Conference.

(Note: This exhibit admitted in evidence during taking of testimony of Dr. George W. McCoy in Chambers and annexed to his testimony so taken.)

PLAINTIFF'S EXHIBIT No. 668.

TREASURY DEPARTMENT
UNITED STATES PUBLIC HEALTH SERVICE

HYGIENIC LABORATORY—BULLETIN No. 113
JULY, 1918

I. AN EXPERIMENTAL INVESTIGATION OF THE TOXICITY OF CERTAIN ORGANIC ARSENIC COMPOUNDS

By GEORGE B. ROTH

II. ON THE TOXICITY OF EMETINE HYDROCHLORIDE, WITH SPECIAL REFERENCE TO THE COMPARATIVE TOXICITY OF VARIOUS MARKET PREPARATIONS

By GLEASON C. LAKE

WASHINGTON
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I. AN EXPERIMENTAL INVESTIGATION OF THE TOXICITY OF CERTAIN ORGANIC ARSENIC COMPOUNDS.[1]

By George B. Roth.

[From the Division of Pharmacology, Hygienic Laboratory, United States Public Health Service, Washington, D. C.]

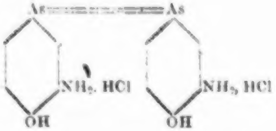
PART I. SALVARSAN MADE IN AMERICA.

INTRODUCTION.

Previous to the present war salvarsan [2] was exclusively a German product. Shortly after the outbreak of the war importation of salvarsan into the United States was stopped and, as the available supply was limited, it soon became practically impossible to obtain German-made salvarsan. To prevent the United States from being deprived of this valuable remedy, certain investigators in this country immediately took up the question of its manufacture and after a period of investigation placed upon the market, through the American agents of the German manufacturer of salvarsan, a substance which is practically identical with the German product.

About the same time that investigations were begun in the United States, similar studies were made in England, France, Canada, and Japan, which resulted in the production of compounds which are now used as substitutes for the original.

Salvarsan is the dihydrochloride of 3–3′ diamino 4–4′ dioxyarsenobenzene. Its structural formula as given by Ehrlich and Bertheim (1912), is as follows:



It is also known as kharsivan (England), arsenobenzol (France), arsenobenzol and salvarsan (United States), diarsenol (Canada), and arsaminol (Japan).

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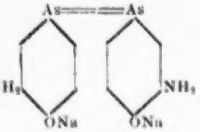
[1] Manuscript received for publication Jan. 24, 1918.

[2] The name salvarsan, as used in this paper, refers to the arsenic compound 3–3′ diamino 4–4′ dioxyarsenobenzene dihydrochloride.

The substance was first prepared by Bertheim in 1910 at the suggestion of Ehrlich, and was given the name "606" from the laboratory number of the preparation. It was later shown, by Ehrlich and others, to be a specific in combating infection with the organism of syphilis. It is unlike certain other organic preparations of arsenic in that it contains the arsenic in the trivalent form. The arsenic content of salvarsan averages about 30 per cent.

Salvarsan is a yellow powder which dissolves quite readily in hot water, making an acid solution. Aqueous solutions of salvarsan, either acid or alkaline, are very unstable. According to Ehrlich and Bertheim (1912), the powder itself is very readily oxidized in the air and forms amino-oxyphenylarsenic oxide which is (according to these investigators) about 20 times as toxic as salvarsan. When salvarsan is made alkaline with sodium hydroxide it forms the sodium salt of dioxydiamino-arsenobenzene, which, according to Ehrlich and Hata (1910), has the following structural formula:



Theoretically, the arsenic in salvarsan should exist in the organic form only. It has been found, however, that regardless of the fact that the utmost care may have been taken in the manufacture of salvarsan, a certain variable amount of arsenic will be present in the inorganic form. In this latter form arsenic is many times more toxic than in the form of salvarsan. It has been shown, furthermore, that at times certain organic arsenic compounds which possess a higher toxicity than salvarsan may enter into the composition of the finished product. Chemical analysis will not reveal the presence of these more toxic products and it is therefore essential to determine the toxicity of salvarsan by biologic tests before it is placed on the market.

A few reports have already been made relative to the biological effects of American-made salvarsan. The investigations of Wile (1916), of Ormsby and Mitchell (1916), and of Moody (1916) show that the salvarsan made in the United States is no more toxic clinically than the original German product; while the report of Gardner (1916) would indicate that salvarsan made in Canada is a true substitute for German salvarsan. In addition to the above-named clinical papers there has recently appeared a report of a very extensive laboratory investigation by Schamberg, Kolmer, and Raiziss (1917). These observers corroborated the findings of Wile (1916) and others by means of biological tests carried out in the laboratory.

The salvarsan made in America, obtainable at the time of this investigation,[1] was limited to three products, namely: (1) Arsenobenzol, which is manufactured by the Dermatological Research Laboratories, of Philadelphia; (2) diarsenol, a product made by the Synthetic Drug Co., of Toronto, Canada; and (3) salvarsan, which is manufactured by the Farbwerke-Hoechst Co., at the H. A. Metz Laboratories, of New York.

Inasmuch as requests have recently been made for information regarding the toxicity of American-made salvarsan, it was deemed advisable to carry out certain studies which would elucidate this point. Toxicity studies on rabbits, rats, and guinea pigs therefore were made with arsenobenzol (Dermatological Research Laboratories, of Philadelphia), diarsenol (Synthetic Drug Co., Toronto), and of salvarsan (Metz Laboratories). These products were compared with authentic samples of German salvarsan.

DESCRIPTION OF SAMPLES OF SALVARSAN EXAMINED.

The samples of arsenobenzol examined were obtained in June, 1917, through the American agent of the Farbwerke-Hoechst Co., who at that time acted as the distributing agent for this product. Two lots were examined, bearing the lot numbers 257 and 271, respectively. One lot of the diarsenol which was examined was obtained in June, 1917, directly from the Synthetic Drug Co. The 10 individual ampoules which were received bore the letter A and were numbered from 32790 to 32799, inclusive. The second lot of diarsenol was received in November, 1917, directly from the manufacturers. The 12 individual ampoules were numbered B72900 to B72911, inclusive. The salvarsan made by the Metz Laboratories was received in September, 1917, and was obtained directly from the manufacturer. It was designated as lot A2.

One lot of German salvarsan, with which the American-made salvarsan was compared, was sent to the director of the Hygienic Laboratory in 1913 and bore no lot number. The second lot was said to be part of a consignment received from Germany a short time before the entrance of the United States into the war, and was obtained from the American agent of the Farbwerke-Hoechst Co. in July, 1917. It bore the lot number A28001

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[1] This investigation was practically completed when the report of the Federal Trade Commission relative to the manufacture of salvarsan in America appeared. On Nov. 30, 1917 (see Public Health Reports, 1917, vol. 32, p. 2071), the Federal Trade Commission issued orders for licenses to manufacture and sell the product heretofore known under the trade names of "Salvarsan," "606," "Arsenobenzol," and "Arsaminol," to the following manufacturers: Farbwerke-Hoechst Co. (Herman A. Metz Laboratory), of New York; Dermatological Research Laboratories, of Philadelphia; and the Takamine Laboratory (Inc.), of New York. The drug is to be manufactured and sold under the name of "Arsphenamine." [illegible]

COLOR, REACTION, AND SOLUBILITY OF THE VARIOUS PRODUCTS INVESTIGATED.

All of the preparations examined were put up in sealed glass ampoules and consisted of a light canary-yellow powder. The samples of arsenobenzol and diarsenol were of a slightly deeper yellow than the German salvarsan and therefore could be distinguished from the others by this difference in color alone. However, a sample of arsenobenzol recently received but not examined could not be distinguished from the German product in this way.

Every preparation was acid to litmus and required approximately the same amount of sodium hydroxide to make it distinctly alkaline to litmus, that is, about 1.2 c. c. of a 15 per cent solution for each 0.6 gm. of material.

Arsenobenzol was somewhat less soluble in hot water than the other preparations. While no accurate quantitative methods were used in determining the solubilities of these preparations, it appeared that the 1913 sample of German salvarsan was slightly more soluble in hot water than any of the others.

In order that the results of the present investigation may be readily compared with the results obtained by previous investigators, an epitome of the literature relating to the determination of the toxicity of salvarsan by a similar laboratory method is given in Table 1. The table relates only to the results obtained from the intravenous administration of an alkaline solution of the drug to rabbits. No data are available with reference to the toxicity of the drug for guinea pigs, when administered by the intravenous route; while for rats, only two references were found. Schamberg, Kolmer and Raiziss (1917), carried out an extensive series of experiments upon rats, the drug being injected through the exposed jugular vein, and found that these animals could tolerate arsenobenzol (Phila. Dermatological Research Laboratory) in amounts ranging from 0.070 to 0.100 gm. per kilo of body weight. The drug was dissolved in 1 c. c. of water. Hata and Hirano (1916) determined the tolerated dose of arsaminol for rats, when given intravenously, as 0.1 gm. per kilo of body weight.

TABLE 1.—*Epitome of literature relating to the toxicity of salvarsan when given intravenously to rabbits as an alkaline aqueous solution.*

Observer.	Where reported.	Preparation.	Dose per kilo.	Remarks.
Castelli	Ztschr. f. Chemotherap. Orig. 1912-3, p. 321.	Salvarsan (German).	Dosis tolerata 0.1 gm.	
Ehrlich and Hata.	Chemotherapie der Spirillosen, 1910, p. 21.	do.	do.	
Hata and Hirano.	Saikin - Gaku - Zasshi, 1916, No. 244, p. 321.	Salvarsan (German) and arsaminol (Japan).	M. L. D.: 0.1 gm. of either preparation.	Observation period, weeks.
Hoke and Rihl. Lbr. 8	Ztschr. f. Exp. Path. u. Therap. 1911, vol. 9, p. 332.	Salvarsan (German).	M. L. D.: 0.204 gm.	Given through jugular vein as a 0.5 per cent solution in 0.9 per cent saline.

TABLE 1.—*Epitome of literature relating to the toxicity of salvarsan when given intravenously to rabbits as an alkaline aqueous solution*—Continued.

Observer.	Where reported.	Preparation.	Dose per kilo.	Remarks.
Hoppe and Schreiber.	Verhandlung. Deutsch Kongress f. Innere Med. 1910, p. 243.	.....do..........	Toxic dose (M. L. D?) 0.15 gm.	
Kersten........	Centralbl. f. Bakt. 1912, vol. 65, p. 369 (Orig.).	.....do..........	Dosis tolerata 0.075 gm. (ave).	0.1 gm. killed 30 per cent in 1 to 2 days; given as 1 or 2 per cent solution.
Kuhmann.....	Münch. Med. Wchnschr. 1912, vol. 59, p. 18.	.....do..........	M. L. D. (delayed death): 0.1 gm.; M. L. D. (acute) 0.2 gm.	Perfused slowly as 2 to 3.5 per cent solution. 0.1 gm. killed in 9 days; 0.2 gm. killed in 2 hours. Observed for 18 days.
Marschalkó and Veszprémi.	Deutsch. Med. Wchnschr. 1912, vol. 38, p. 1222.	.....do..........	Dosis tolerata less than 0.1 gm.	Given in saline as a 1 per cent solution.
Pearce and Brown.	J. Pharmacol. and Exper. Therap. 1917, vol. 9, p. 334.	.....do..........	M. L. D.; 0.112 gm.	M. L. D. includes death either from acute or chronic poisoning. Injection rate 2 c. c. per minute; given as a 1 per cent solution. (Personal communication.)
Schamberg, Kolmer and Raiziss.	Jr. Cutaneous Dis. 1917, vol. 35, p. 286.	Arseno-benzol (Phila. Derm. Research Lab.)	Tolerated dose 0.060 gm.	Injection time several minutes; wait of 2 minutes after one-half was given. Given in 15 c. c. distilled water. Animal should live 2 weeks.
Willcox and Webster.	Brit. M. J. 1916, vol. 1, p. 473.	Kharsivan (English salvarsan).	Tolerated dose 0.1 gm.	Given as a 1 per cent solution.

Some of the observers quoted in this table of the literature on salvarsan used acid as well as alkaline solutions of the drug, and found that the acid solution was considerably more toxic for rabbits when given intravenously than was the alkaline solution. Similar investigations on the toxicity of the acid solution of salvarsan for rabbits were made by Hering (1910), Auer (1911), and Miedreich (1913).

ARSENIC CONTENT OF THE SALVARSAN PREPARATIONS EXAMINED.

The arsenic content of the salvarsan preparations[1] used in this investigation was determined by the method described by Ewins (1916), and is shown in the following table:

TABLE 2.

Preparation.	Manufacturer's or laboratory No.	Arsenic content (per cent).
Salvarsan (German)........................	1913 sample..................................	29.5
Do..	1917 sample (A29001)..........................	31.7
Salvarsan (Metz Laboratory)...............	A2..	30.4
Arsenobenzol (Phila. Derm. Research Lab.)..	257...	30.7
Do..	271...	30.9
Diarsenol (Synthetic Drug Co.)............	A32798..	29.8
Do..	B72911..	29.8

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[1] I am indebted to Dr. C. N. Myers of the Hygienic Laboratory for the determination of the salvarsan preparation made by the Metz Laboratory and to Dr. A. S. Seidell, also of the Hygienic Laboratory, for the determination of all others.

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The above table shows that the arsenic content of the preparations examined ranges from 29.5 to 31.7 per cent and that, for all samples it averages 30.4 per cent. It is furthermore shown that the greatest variation is between the two German samples examined, the difference being over 2 per cent.

TEST ANIMALS EMPLOYED.

Healthy rabbits, rats, and guinea pigs were employed as test animals in the present investigation. The rabbits were obtained from various sources and consisted largely of the short-haired Belgian type, although many white, black and mixed types were used. An attempt was made to secure rabbits of a weight ranging between 1.2 and 1.8 kilos, but it was found impossible to secure invariably animals which met the above weight requirements.

The rats were, in practically all cases ordinary albino rats; in some instances they were of a mixed type and presented a mottled coating of white and black hair. The rats were obtained for the most part from the Wistar Institute of Philadelphia and from local dealers.

The guinea pigs were obtained from fresh Hygienic Laboratory stock.

In these experiments the animals were confined in suitable laboratory cages and were fed the usual laboratory diet, which previous experience had shown to be adequate.

Length of observation period of animals.—Although the animals were practically all kept for one month before being discharged, it was considered that a two weeks' period was sufficient, and perhaps best, as a time limit for the estimation of the minimal lethal dose. This time limit was chosen largely because it was shown by Burnascheff (1912) that when salvarsan was given to rabbits intravenously in alkaline solution, only traces of arsenic could be found in the various organs of the body after three weeks. Furthermore, a two weeks' period obviates other possible factors, such as decreased resistance, due to prolonged confinement under laboratory conditions.

In all the following tables, if death did not occur within two weeks, or, if it occurred later than two weeks after the injection, the result is designated by a minus sign (−). This sign therefore means that the animal lived for two weeks or longer. If death occurred before the two weeks had elapsed, the result is designated by a plus sign (+).

Method of administering the drugs.—The drugs were administered intravenously in all cases, in order not only to preclude any loss of the drug by nonabsorption but to eliminate differences in the rate of absorption, such as may occur when the drug is given subcutaneously; moreover intravenous administration is the method usually employed in therapeutics. In the rabbit, injections were made in the marginal ear vein; in the rat, the large superficial vein of the inner side of the hind leg was employed in practically all of the experiments, although in a small number of instances, one of the superficial veins at the base of the tail was used. In the guinea pig, one of the superficial veins of the outer side of the front leg was used.

The vessel used in the rat and guinea-pig was exposed by a small skin incision; by compressing it beyond the incision the injection of the drug was rendered simple. An anesthetic was neither required nor used in any of the experiments. To prevent hemorrhage in the guinea pig and rat a small compress of cotton was placed between the skin and the vessel; this was removed, usually after a day or two. If this procedure did not prevent bleeding, the vessel was ligated. Bleeding was prevented in the rabbit by means of an improvised wire clamp.

For measuring the doses required for rats and guinea pigs, glass syringes of 1 or 2 c. c. capacity were used. The same syringe which was used for measuring the drug was also used for its injection into these animals. The syringes had been standardized by the manufacturers, but before being used they were standardized in the laboratory against each other.

In the earlier experiments the drugs were given to rabbits by means of glass syringes of 5 to 10 c. c. capacity; while in the later experiments a burette of 25 c. c. capacity was used. Injections were made in rabbits by means of syringes, or from a burette by gravity.

The same syringes, cylinders, and burette were used throughout the investigation.

MANNER OF MAKING THE SALVARSAN SOLUTION.

The solution of salvarsan was made up as follows unless otherwise stated. To make a 1 per cent solution of salvarsan an ampoule containing 0.6 gm. of the drug[1] was dissolved in a 100 c. c. glass-stoppered cylinder which contained about 50 c. c. of hot water (recently redistilled in glass). The distilled water had previously been sterilized by boiling and was transferred to the cylinder immediately thereafter, so that the solution of the salvarsan was made in water that had a temperature only a little lower than the boiling point. After a complete solution of the drug through vigorous shaking, a 15 per cent solution of sodium hydroxide was added drop by drop (shaking after the addition of each drop or two) until the solution was slightly alkaline. This required about 1.2 c. c. of the sodium hydroxide solution. Sterile distilled water was then added to make a 1 per cent solution. When prepared in the above manner the solutions were always clear and did not require filtration.

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[1] The salvarsan was invariably weighed on an analytical balance previous to making the solution. The weight was found to be practically as stated. In a few instances a variation of about 10 mg., either greater or less than stated, was found.

CONCENTRATIONS EMPLOYED AND RATE OF ADMINISTRATION.

The salvarsan preparations were given intravenously as 1 or 2 per cent alkaline aqueous solutions. They were given to rats and guinea pigs at the rate of about 0.5 to 0.7 c. c. per minute (leg vein), while to rabbits the rate was increased to about 1 c. c. per minute (ear vein). If the injections were made at the above rate immediate symptoms rarely resulted. If immediate symptoms occurred the injection was stopped until their disappearance and then resumed.

LENGTH OF TIME SOLUTIONS STOOD BEFORE BEING USED.

The injections were almost invariably made as soon as possible after making up the solution. Except in one instance, a solution was never used for toxicity tests after it was more than three hours old. In that instance it was tested 5 and 6 hours after making, in order to determine whether it had deteriorated.

ANTISEPTIC METHODS OBSERVED.

The animals were prepared for the injection of the drugs by shaving the hair over the site of the skin incision and then painting the skin with tincture of iodine, or washing it with 70 per cent alcohol. All instruments were sterilized by boiling.

TABLE 3.—*Toxicity of salvarsan, German (1913 sample), when given intravenously to rabbits (ear vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M.=male; F.=female.	Weight in kilos.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
69	F	1.61	60	+	Died 6 d.
70	F	1.62	60	−	Disch. 32 d.
71	F	1.66	60	−	Do.
75	M	1.54	60	+	Died 13 d.
68	M	1.52	100	−	Disch. 33 d.
73	F	1.53	100	−	Do.
77	F	1.94	100	+	Died 4 d.
79	F	1.77	100	+	Do.
72	F	1.59	175	+	Died 2 d.
74	F	1.59	175	+	Died 1 hr.
76	F	1.56	175	+	Died 2 d.
78	M	1.71	175	+	Died 3 d.

Weight variation, 1.52 to 1.94 kilos.
Average weight, 1.64 kilos.
Variation in amount of fluid injected, 9.3 to 29.9 c. c.

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TABLE 4.—*Toxicity of salvarsan, German (1913 sample), when given intravenously to rats (leg vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
131	M	170	50	−	Disch. 31 d.
132	M	122	50	−	Do.
137	F	110	50	−	Do.
138	M	138	50	−	Do.
78	M	178	60	−	Do.
83	F	124	60	−	Do.
89	F	160	60	−	Disch. 30 d.
94	M	135	60	−	Do.
133	M	121	70	−	Disch. 31 d.
134	F	170	70	+	Died 18 hrs.
139	F	158	70	−	Disch. 31 d.
140	F	122	70	−	Do.
79	F	130	80	+	Died 4 d.
86	F	130	80	+	Died 15 hrs.
90	F	169	80	−	Disch. 30 d.
95	M	140	80	−	Do.
135	M	170	90	+	Died 18 hrs.
136	F	122	90	+	Do.
141	F	142	90	−	Disch. 31 d.
142	M	138	90	−	Do.
80	F	122	100	+	Died 6 d.
84	F	118	100	+	Died 4 d.
91	F	179	100	−	Disch. 30 d.
96	M	116	100	−	Do.
81	M	116	135	+	Died 15 hrs.
87	M	130	135	+	Do.
92	F	166	135	+	Died 5 hrs.
97	F	134	135	+	Died 15 hrs.
82	F	104	175	+	Do.
85	F	110	175	+	Do.
93	F	147	175	+	Died 1 min.
98	M	105	175	+	Died 5 hrs.

Weight variation, 104 to 179 gm.
Average weight, 138 gm.
Variation in amount of fluid injected, 0.55 to 2.57 c. c.

TABLE 5.—*Toxicity of salvarsan, German (1917 sample A 28001), when given intravenously to rabbits (ear vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in kilos.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
106	M	1.43	60	−	Disch. 31 d.
107	M	1.5	60	+	Died 6 d.
109	F	1.52	60	−	Disch. 31 d.
112	F	1.77	60	−	Do.
105	F	1.79	80	−	Do.
108	M	1.59	80	+	Died 7 d.
115	F	1.77	80	−	Died 21 d.
116	F	1.82	80	+	Died 7 d.
110	F	1.7	100	−	Disch. 32 d.
111	F	1.52	100	+	Died 7 d.
113	M	1.57	100	+	Died 8 d.
114	F	1.66	100	−	Disch. 31 d.
117	F	1.48	135	+	Died 6 hrs.
118	F	1.39	135	+	Died 3 d.
119	F	1.44	135	−	Disch. 31 d.
120	F	1.52	135	+	Died 6 hrs.
121	F	1.2	175	+	Died 2 d.
122	F	1.48	175	+	Died 6 d.
123	F	1.43	175	+	Died 2 d.
124	F	1.18	175	+	Died 3 d.

Weight variation, 1.18 to 1.82 kilos.
Average weight, 1.54 kilos.
Variation in amount of fluid injected, 8.6 to 25.9 c. c.

TABLE 6.—*Toxicity of salvarsan, German (1917 sample A28001), when given intravenously to rats (leg vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male. F=female.	Weight in grams.	Dose per kilo.	Result: + dead; − living.	Time of death or discharge.
			Mgm.		
155	F	194	30	−	Disch. 31 d.
156	M	192	30	−	Do.
161	F	140	30	−	Disch. 36 d.
162	F	192	30	+	Died. 2 d.
157	F	170	60	−	Disch. 31 d.
165	F	140	60	−	Disch. 35 d.
166	M	150	60	−	Disch. 30 d.
167	F	140	60	+	Died 14 hrs.
168	M	152	70	−	Disch. 33 d.
174	M	118	70	−	Do.
169	F	140	70	−	Do.
188	M	140	70	−	Disch. 32 d.
158	M	190	76	+	Died 1 hr.
159	F	116	80	−	Disch. 31 d.
160	M	184	80	−	Disch. 36 d.
163	F	130	80	+	Died 14 hrs.
164	M	102	80	+	Do.
170	M	142	90	−	Disch. 35 d.
171	M	142	90	−	Do.
175	M	120	90	−	Do.
189	M	140	90	+	Died 8 min.
172	M	122	100	−	Disch. 33 d.
173	M	120	100	−	Do.
190	M	132	100	+	Died 5 hrs.
191	M	134	100	−	Disch. 32 d.
194	F	116	110	+	Died 4 hrs.
176	M	124	135	−	Died 22 d.
178	M	128	135	+	Died 14 min.
192	M	130	135	+	Died 10 min.
193	M	118	135	+	Died 2 hrs.
177	F	122	175	+	Died 45 min.
179	F	110	175	+	Died 5 hrs.
195	F	116	175	+	Do.
196	F	106	175	+	Died 2 hrs.

Weight variation, 106 to 194 gm.
Average weight, 141 gm.
Variation in amount of fluid injected, 0.7 to 2.1 c. c.

TABLE 7.—*Toxicity of salvarsan, German (1917 sample A28001), when given intravenously to rats (leg vein) as a 2 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
443	M	112	50	−	Disch. 30 d.
444	M	110	50	−	Do.
445	M	112	50	−	Do.
446	F	140	50	+	Died 4 hrs.
439	M	100	60	+	Died 10 d.
440	F	100	60	−	Disch. 30 d.
441	M	114	60	−	Do.
442	M	100	60	−	Died 20 d.
435	M	104	70	−	Disch. 30 d.
436	M	102	70	+	Died 4 hrs.
437	M	104	70	+	Died 5 hrs.
438	M	110	70	+	Died 7 hrs.
412	M	122	80	−	Disch. 30 d.
413	M	128	80	+	Died 7 hrs.
414	M	136	80	−	Disch. 30 d.
415	M	140	80	−	Do.
411	M	110	89	+	Died 2 hrs.
420	M	110	90	+	Died 5 hrs.
421	M	110	90	+	Died 3 hrs.
422	M	110	90	+	Do.
407	M	140	100	+	Died 40 min.
408	M	125	100	+	Died 3 hrs.
409	F	150	100	+	Died 20 min.
410	F	150	100	+	Died 10 min.
416	M	120	135	+	Died 1 hr.
417	M	120	135	+	Died 20 min.
418	M	110	135	+	Died 10 min.
419	M	110	135	+	Died 5 min.

Weight variation, 100 to 150 gm.
Average weight, 118 gm.
Variation in amount of fluid injected, 0.28 to 0.81 c. c.
Remarks.—Rat No. 446 was somewhat emaciated when the drug was given.

TABLE 8.—*Toxicity of salvarsan (Metz Laboratory), lot A2, when given intravenously to rabbits (ear vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in kilo.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			mgm.		
140	F	1.4	90	−	Disch. 31 d.
141	M	1.2	90	+	Died 24 d.
142	F	1.5	60	+	Died 19 d.
143	F	1.45	60	−	Disch. 31 d.
149	F	1.8	80	−	Do.
150	M	1.3	80	+	Died 1 d.
152	M	1.35	80	−	Disch. 31 d.
151	M	1.65	82	+	Died 9 d.
137	F	1.25	100	+	Died 3 d.
138	F	1.1	100	+	Died 2 d.
139	M	1.35	100	−	Disch. 31 d.
144	M	1.6	120	+	Died 10 d.
153	F	1.7	135	+	Died 5 d.
154	M	1.35	135	+	Do.
155	F	1.35	135	+	Do.
156	F	1.4	135	+	Died 2 d.
145	F	1.1	175	+	Died 6 hr.
146	F	1.25	175	+	Died 2 d.
147	M	1.45	175	+	Died 1 hr.
148	M	1.45	175	+	Do.

Weight variation, 1.2 to 1.7 kilos.
Average weight, 1.44 kilos.
Variation in amount of fluid injected, 7.2 to 25.4 c. c.

TABLE 9.—*Toxicity of salvarsan (Metz Laboratory), lot A2, when given intravenously to rats (leg vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			mgm.		
260	F	140	50	−	Disch. 31 d.
261	M	130	50	−	Do.
270	F	120	50	−	Do.
271	M	120	50	−	Do.
262	F	130	60	+	Died 20 min.
263	F	130	60	−	Disch. 31 d.
272	M	110	60	−	Do.
273	F	110	60	−	Do.
276	M	112	63	+	Died 1 min.
274	M	110	70	+	Died 35 min.
275	F	110	70	+	Died 17 min.
285	M	120	70	+	Died 30 min.
286	F	120	70	+	Died 2 d.
264	F	128	80	+	Died 1 min.
265	M	130	80	−	Disch. 31 d.
282	F	112	80	−	Do.
277	M	110	80	+	Died 3 hrs.
278	M	130	90	−	Disch. 31 d.
279	M	135	90	+	Died 6 hrs.
287	M	113	90	+	Died 2 hrs.
288	F	118	90	−	Disch. 31 d.
266	F	125	100	+	Died 3 d.
267	M	124	100	+	Died 30 min.
280	M	120	100	+	Died 17 hrs.
281	M	120	100	+	Died 25 min.
268	M	120	113	+	Died 35 min.
269	M	120	113	+	Died 1 min.
283	M	110	113	+	Died 20 min.
284	F	110	113	+	Died 10 min.
289	M	113	135	+	Died 5 hrs.
290	F	112	135	+	Died 9 hrs.
291	M	110	135	+	Died 4 hrs.
292	F	112	135	+	Died 5 hrs.

Weight variation, 110 to 140 gm.
Average weight, 119 gm.
Variation in amount of fluid injected, 0.6 to 1.56 c. c.

TABLE 10.—*Toxicity of salvarsan (Metz Laboratory), Lot A2, when given intravenously to rats (leg vein) as a 2 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			mgm.		
378	F	148	50	+	Died 10 d.
379	F	142	50	−	Disch. 31 d.
380	F	128	50	−	Do.
381	M	124	50	−	Do.
359	M	110	60	−	Do.
360	F	110	60	−	Do.
361	F	120	60	+	Died 5 d.
362	F	120	60	−	Disch. 31 d.
374	F	130	70	+	Died 4 hrs.
375	F	138	70	+	Died 5 d.
376	F	102	70	−	Disch. 31 d.
377	F	100	70	+	Died 10 d.
363	F	130	80	+	Died 2 d.
364	F	108	80	+	Died 11 min.
365	F	130	90	−	Disch. 31 d.
366	F	108	80	+	Died 25 min.
370	M	114	90	+	Died 5 min.
371	M	118	90	+	Died 2 d.
372	F	112	90	−	Disch. 31 d.
373	F	108	90	−	Do.
355	M	150	100	+	Died 50 min.
356	F	160	100	+	Died 8 min.
357	F	102	100	+	Died 30 min.
358	F	102	100	+	Died 1 hr.
367	F	150	112	+	Died 4 min.
368	F	150	135	+	Died 10 min.
369	F	112	135	+	Died 40 min.
382	F	110	135	+	Died 3 hrs.
383	F	110	135	+	Died 30 min.

Weight variation, 100 to 160 gm.
Average weight, 123 gm.
Variation in amount of fluid injected, 0.31 to 1.08 c. c.

TABLE 11.—*Toxicity of arsenobenzol (lot No. 257, Philadelphia Dermatological Research Laboratory) when given intravenously to rabbits (ear vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in kilos.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			mgm.		
80	F	1.35	60	−	Disch. 30 d.
81	M	1.47	60	−	Do.
82	F	1.64	60	−	Do.
87	F	1.71	60	−	Disch. 31 d.
93a	F	1.53	60	−	Do.
88	M	1.38	80	+	Died 7 d.
89	F	1.38	80	−	Disch. 31 d.
90	M	1.54	80	−	Disch. 30 d.
91	F	1.4	80	+	Died 9 d.
83	F	1.42	100	−	Died 19 d.
84	F	1.7	100	+	Died 4 d.
85	F	1.67	100	+	Do.
86	M	1.5	100	+	Died 10 d.
95	F	1.38	100	−	Disch. 30 d.
92	F	1.54	135	+	Died 1 min.
93b	M	1.45	135	+	Died 3 d.
94	F	1.36	135	+	Died 2 hrs.
96	F	1.35	135	+	Died 7 d.
97	F	1.2	175	+	Died 3 d.
98	M	1.16	175	+	Do.
99	F	1.13	175	+	Died 2 d.
104	F	1.66	175	−	Disch. 31 d.

Weight variation, 1.13 to 1.71 kilos.
Average weight, 1.46 kilos.
Variation in amount of fluid injected, 8.8 to 29 c. c.

Remarks.—The dose given to animal 104 was over twice as large as that given to 88 and 91, yet 104 survived, whereas 88 and 91 died within 2 weeks. Rabbit 80 developed, after 15 hours, slight swelling at the base of the injected ear. Rabbit No. 104 had a slight blood stained exudate in both ears when discharged.

TABLE 12.—*Toxicity of arsenobenzol (lot No. 257, Philadelphia dermatological Research Laboratory) when given intravenously to rats (leg vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
119	M	160	50	−	Disch. 31 d.
120	M	142	30	−	Do.
123	F	150	50	−	Disch. 30 d.
124	M	122	50	−	Do.
99	M	143	60	−	Disch. 31 d.
104	M	142	60	+	Died 3 d.
106	M	127	60	−	Disch. 30 d.
301	M	120	60	−	Do.
121	M	145	70	−	Disch. 31 d.
122	M	124	70	−	Do.
125	F	155	70	−	Disch. 30 d.
126	M	130	70	−	Died 20 d.
110	F	130	75	+	Died 3 hrs.
100	F	148	80	+	Died 11 hrs.
105	M	151	80	−	Disch. 30 d.
111	M	132	80	+	Died 7 d.
112	M	120	80	+	Died 21 hrs.
127	F	150	90	+	Died 20 min.
128	M	112	90	+	Died 1 hr.
129	M	122	90	+	Died 18 hrs.
130	F	145	90	+	Died 6 hrs.
101	M	115	100	+	Died 4 hrs.
107	F	156	100	+	Died 42 min.
113	M	150	100	+	Died 11 min.
115	F	134	100	+	Died 13 min.
102	F	135	135	+	Died 2 hrs.
108	M	136	135	+	Died 40 min.
114	F	130	135	+	Died 7 min.
116	F	124	135	+	Died 10 min.
117	F	112	175	+	Died 14 min.
103	F	118	175	+	Died 1 min.
109	F	125	175	+	Do.
118	M	112	175	+	Died 11 min.

Weight variation, 112 to 160 gm.
Average weight, 134 gm.
Variation in amount of fluid injected, 0.51 to 2.18 c. c.

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TABLE 13.—*Toxicity of arsenobenzol (Lot No. 257, Philadelphia Dermatological Research Laboratory) when given intravenously to rats (leg vein) as a 2 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
310	F	122	60	+	Died 3 hrs.
311	M	130	60	−	Disch. 30 d.
312	M	138	60	−	Do.
313	M	132	60	−	Do.
319	M	134	70	−	Do.
320	M	112	70	−	Do.
321	M	122	70	−	Do.
322	M	120	70	−	Do.
323	M	140	80	−	Do.
324	M	140	80	−	Do.
325	M	146	80	−	Do.
326	M	144	80	−	Do.
306	M	125	90	+	Died 30 min.
307	M	130	90	+	Died 5 hrs.
308	M	130	90	−	Disch. 30 d.
309	M	136	90	−	Do.
302	M	120	100	+	Died 2 hrs.
303	M	122	100	−	Disch. 30 d.
304	M	122	100	+	Died 4 hrs.
305	M	122	100	−	Disch. 30 d.
317	M	138	110	+	Died 1 min.
314	M	140	135	+	Died 5 hrs.
315	M	140	135	+	Died 10 hrs.
316	F	144	135	+	Died 1 hr.
318	F	136	135	−	Disch. 30 d.
327	M	110	175	+	Died 30 min
328	M	120	175	+	Do.
329	M	112	175	+	Died 20 min.
330	F	118	175	+	Died 3 hrs.

Weight variation, 110 – 146 gm.
Average weight, 129 gm.
Variation in amount of fluid injected, 0.37 to 1.95 c. c.

Remarks.—Rats Nos. 310 and 316 were pregnant.

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TABLE 14.—*Toxicity of arsenobenzol (Lot No. 271, Philadelphia Dermatological Research Laboratory) when given intravenously to rabbits (ear vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M = male, F = female.	Weight in kilos.	Dose per kilo.	Result: + dead; − living.	Time of death or discharge.
			Mgm.		
46	M	1.58	30	−	Disch. 31 d.
45	F	1.73	30	−	Do.
19	M	2.34	30	+	Died 16 d.
31	M	2.1	30	−	Disch. 43 d.
20	F	2.1	40	+	Died 46 d.
50	F	1.48	45	−	Disch. 30 d.
51	M	1.55	45	−	Do.
21	M	1.65	50	+	Died 43 d.
22	F	1.65	60	+	Died 5 d.
29	F	2.35	60	−	Disch. 43 d.
30	M	1.7	60	+	Died 3 d.
35	F	1.6	60	+	Died 6 d.
23	F	1.64	80	+	Died 31 d.
28	F	1.5	80	−	Disch. 45 d.
32	M	1.45	80	+	Died 14 d.
36	F	1.54	80	+	Died 7 d.
24	F	1.62	100	+	Died 10 d.
33	F	1.46	100	+	Died 5 d.
34	F	1.43	100	+	Died 4 d.
37	F	1.5	100	+	Died 3 d.
38	F	1.5	100	+	Died 2 d.
49	M	1.47	125	+	Died 8 d.
25	M	1.57	125	+	Died 2 d.
27	M	1.35	125	+	Died 3 d.
39	F	1.46	125	+	Died 1 hr.
26	F	1.3	150	+	Died 12 hrs.
40	F	1.45	150	+	Died 1 hr.
41	F	1.37	150	+	Died 25 hrs.
42	M	1.84	150	+	Died 6 d.
47	M	1.31	175	+	Died 4 hrs.
48	F	1.45	175	+	Died 3 hrs.
43	F	1.52	175	+	Died 2 d.
44	M	1.23	175	+	Died 2 hrs.

Weight variation, 1.23 to 2.35 kilos.
Average weight, 1.6 kilos.
Variation in amount of fluid injected, 4.8 to 27.6 c. c.

Remarks.—Practically all of the animals which received doses of 100 milligrams or more showed an increase of respiration after the injection. Animal No. 43 developed, after about 24 hours, marked œdema of the tissues at the base of the injected ear.

[illegible]

TABLE 15.—*Toxicity of arsenobenzol (Lot No. 271, Philadelphia Dermatological Research Laboratory) when given intravenously to rats (tail or leg vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
24	M	200	20	−	Disch. 31 d.
23	M	190	20	+	Died 6 d.
2	M	285	30	−	Disch. 44 d.
37	M	219	30	−	Disch. 31 d.
22	F	185	30	−	Died 24 d.
21	F	182	30	−	Disch. 39 d.
40	F	200	40	−	Disch. 31 d.
3	M	280	40	−	Disch. 44 d.
10	M	250	40	+	Died 1 min.
20	F	160	40	−	Died 17 d.
1	F	195	50	−	Disch. 46 d.
6	F	280	50	+	Died 15 hrs.
7	M	280	50	+	Died 1 min.
19	F	160	50	−	Disch. 39 d.
39	M	200	60	−	Disch. 31 d.
18	F	150	60	−	Disch. 39 d.
17	F	130	60	−	Died 18 d.
16	F	130	60	−	Disch. 39 d.
4	F	183	70	−	Disch. 46 d.
8	M	280	70	+	Died 15 hrs.
9	M	250	70	+	Died 1 hr.
15	F	116	70	−	Disch. 39 d.
26	M	242	80	+	Died 18 hrs.
29	M	212	80	+	Died 10 min.
30	M	202	80	−	Disch. 33 d.
38	M	190	80	−	Disch. 31 d.
27	F	172	90	+	Died 12 min.
31	M	190	90	+	Died 10 min.
32	M	185	90	+	Died 3 hrs.
36	M	190	90	+	Died 18 hrs.
5	F	160	100	−	Disch. 46 d.
11	M	245	100	+	Died 15 hrs.
13	M	210	100	+	Died 1 min.
34	M	157	100	+	Died 18 hrs.
33	M	155	125	+	Do.
35	F	165	125	+	Died 4 min.
12	M	230	125	+	Died 1 min.
14	F	210	125	+	Died 6 min.
28	M	150	150	+	Died 18 hrs.
25	M	150	150	+	Died 3 min.

Weight variation, 116 to 285 gm.
Average weight, 197 gm.
Variation in amount of fluid injected, 0.38 c. c. to 2.87 c. c.

Remarks.—Rats Nos. 1 to 14, inclusive, received the drug through one of the tail veins; all others through one of the veins of the hind leg.

None of the rats showed any very decided organic changes at necropsy except rat No. 22 which died of pulmonary disease.

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Table 16.—*Toxicity of arsenobenzol (Lot No. 271, Philadelphia Dermatological Research Laboratory) when given intravenously to guinea pigs (leg vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
3	M	300	30	−	Disch. 46 d.
1	M	350	30	−	Disch. 42 d.
24	M	320	30	−	Disch. 39 d.
16	F	280	35	−	Disch. 42 d.
4	M	285	50	−	Disch. 46 d.
2	M	310	50	−	Disch. 42 d.
15	M	295	50	−	Do.
21	M	335	50	−	Disch. 39 d.
22	M	330	50	−	Do.
11	M	275	57	+	Died 4 d.
26	M	320	60	+	Do.
27	M	340	60	−	Disch. 37 d.
28	M	320	60	−	Do.
29	M	325	61	+	Died 15 hrs.
31	F	310	70	−	Disch. 31 d.
7	M	275	70	+	Died 3 d.
9	M	280	70	−	Died 15 d.
5	M	300	70	+	Died 20 min.
14	M	295	70	−	Disch. 42 d.
17	M	275	70	+	Died 4 d.
20	M	310	70	+	Died 12 hrs.
23	M	330	70	−	Disch. 39 d.
30	F	325	80	+	Died 5 d.
6	M	275	80	+	Died 4 d.
8	F	300	80	+	Died 7 min.
19	M	300	80	+	Died 1 min.
33	F	320	90	+	Died 4 d.
34	M	310	90	+	Died 7 min.
13		295	90	+	Died 6 d.
12	M	295	90	+	Died 2 min.
32	F	300	100	+	Died 18 min.
10	M	275	100	+	Died 1 hr.
25	M	340	100	+	Died 25 min.
18	M	250	104	+	Died 2 min.

Weight variation, 250 to 350 gm.
Average weight, 304 gm.
Variation in amount of fluid injected, 0.78 to 3.4 c. c.

Remarks.—Nos. 10 and 11 received the drug as a 2 per cent solution.

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Table 17.—*Toxicity of arsenobenzol (Lot No. 271, Philadelphia Dermatological Research Laboratory) when given intravenously to guinea pigs (leg vein) as a 2 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
43	M	244	60	+	Died 14 d.
44	F	240	60	−	Disch. 31 d.
45	M	240	60	−	Do.
46	F	240	60	+	Died 10 d.
51	M	230	70	+	Died 30 min
52	F	234	70	−	Died 23 d.
53	F	236	70	−	Disch. 31 d.
54	M	234	70	−	Do.
39	F	228	80	+	Died 30 min.
40	F	228	80	+	Died 4 d.
41	M	230	80	+	Died 6 d.
42	F	230	80	+	Died 4 d.
47	F	228	90	+	Died 30 min.
48	M	210	90	+	Do.
49	M	220	90	+	Died 11 d.
50	F	220	90	+	Died 6 d.
35	M	192	100	+	Died 1 min.
36	F	180	100	+	Died 7 min.
37	M	198	100	+	Died 25 min.
38	F	204	100	+	Died 4 d.

Weight variation, 180 to 244 gm.
Average weight, 223 gm.
Variation in amount of fluid injected, 0.72 to 1.02 c. c.

Remarks.—Animal No. 52 probably died of pulmonary disease rather than from the effects of the arsenobenzol.

Table 18.—*Toxicity of diarsenol (Lot A 32790–99, Synthetic Drug Co.) when given intravenously to rabbits (ear vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in kilos.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
54	F	1.47	60	+	Died 9 d.
60	M	1.82	60	−	Disch. 31 d.
61	F	1.78	60	−	Do.
62	M	1.69	60	−	Died 18 d.
100	F	1.51	80	−	Disch. 33 d.
101	F	1.53	80	−	Do.
102	F	1.56	80	−	Died 18 d.
103	F	1.57	80	−	Died 29 d.
56	F	1.55	100	+	Died 4 d.
58	M	1.54	100	+	Died 3 d.
59	F	1.54	100	+	Died 4 d.
63	M	1.67	100	−	Disch. 31 d.
64	M	1.29	135	+	Died 4 d.
65	M	1.38	135	+	Died 15 hrs.
66	F	1.26	135	+	Died 4 d.
67	F	1.38	135	+	Died 15 hrs.
52	F	1.54	175	+	Do.
53	M	1.54	175	+	Do.
55	F	1.44	175	+	Died 21 hrs.
57	F	1.67	175	+	Died 15 hrs.

Weight variation, 1.26 to 1.82 kilos.
Average weight, 1.54 kilos.
Variation in the amount of fluid injected, 8.8 to 29.2 c. c.

ABLE 19.—*Toxicity of diarsenol (Lot A 32790-99, Synthetic Drug Co.) when given intravenously to rats (leg vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
76	F	149	30	−	Disch. 35 d.
77	M	150	30	−	Died 17 d.
66	M	180	30	−	Disch. 37 d.
68	M	160	30	−	Do.
65	F	152	50	−	Do.
67	M	154	50	−	Died 24 d.
70	M	120	50	−	Disch. 36 d.
72	M	122	50	−	Died 18 d.
47		164	60	−	Disch. 31 d.
48	F	210	60	−	Disch. 33 d.
50	M	184	60	−	Disch. 31 d.
52	M	210	60	−	Died 25 d.
63	M	152	70	−	Disch. 37 d.
69	M	124	70	−	Do.
71	M	120	70	+	Died 2 d.
75	F	137	70	−	Disch. 35 d.
45		177	80	−	Disch. 31 d.
46	M	180	80	+	Died 15 hrs.
49	F	180	80	+	Do.
51	M	250	80	+	Do.
143	F	116	80	−	Disch. 31 d.
144	M	154	80	−	Do.
149	F	160	80	−	Do.
150	F	118	80	−	Do.
56	M	240	83	+	Died 1 min.
145	M	118	90	−	Disch. 31 d.
146	M	150	90	−	Do.
151	F	118	90	−	Died 30 d.
152	F	140	90	−	Disch. 31 d.
41		145	100	+	Died 2 d.
42		130	100	−	Disch. 31 d.
43	F	170	100	+	Died 15 hrs.
44		170	100	−	Disch. 31 d.
55	M	130	125	+	Died 15 hrs.
58	M	215	125	+	Do.
60	F	115	125	−	Disch. 38 d.
61	F	105	125	−	Do.
62	M	144	125	+	Died 2 d.
64	M	142	125	+	Do.
73	F	127	125	+	Died 15 hrs.
74	F	117	125	+	Do.
147	M	104	135	−	Disch. 31 d.
148	F	120	135	−	Do.
153	M	130	135	−	Do.
154	M	108	135	−	Do.
53	M	290	150	+	Died 15 hrs.
54	M	220	150	+	Do
7	M	160	150	+	Do
59	M	138	150	+	Do.

Weight variation, 104 to 290 gm.
Average weight, 156 gm.
Variation in amount of fluid injected, 0.45 to 1.35 c. c.

TABLE 20.—*Toxicity of diarsenol (B72900-11, Synthetic Drug Co.) when given intravenously to rabbits (ear vein) as a 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in kilos.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
178	F	1.5	60	−	Disch. 30 d.
179	F	1.5	60	−	Do.
180	M	1.45	60	−	Do.
182	F	1.65	60	−	Do.
191	M	1.4	75.7	+	Died 1 min.
184	F	1.4	80	−	Disch. 30 d.
185	M	1.4	80	−	Do.
186	M	1.6	80	−	Do.
187	M	1.5	80	−	Do.
190	M	1.45	83.1	+	Died 1 min
188	M	1.7	100	−	Died 15 d.
189	F	1.6	100	−	Disch. 30 d
193	F	1.65	100	−	Do.
194	M	1.35	100	−	Do.
192	M	1.88	135	+	Died 58 hrs
195	F	1.5	135	+	Died 4 d.
197	F	1.6	135	+	Died 5 d.
199	F	1.7	135	−	Disch. 30 d.
210	M	1.4	135	−	Do.
211	M	1.43	135	+	Died 4 d
181	M	1.3	175	+	Died 41 hrs.
183	F	1.4	175	+	Do.
196	F	1.6	175	+	Died 4 d.
198	M	1.53	175	+	Do.

Weight variation, 1.3 to 1.88 kilos.
Average weight, 1.5 kilos.
Variation in amount of fluid injected, 8.7 to 28 c.c.

Remarks.—The solution which rabbits Nos. 190, 191 and 192 received was made from the entire contents of a tube of diarsenol. The method of making the above solution differed somewhat from the regular manner, in that the neutralization of the acid solution of diarsenol was effected very rapidly, that is, instead of adding the 15 per cent sodium hydroxide solution drop by drop and shaking after each drop or two, 0.5 c.c. of the alkali were added at one time. This was followed by a second addition of a 0.5 c.c. amount of alkali and the remainder of the alkali which was required to make the solution slightly alkaline was added drop by drop. Inasmuch as Nos. 190 and 191 died immediately after receiving about 80 milligrams per kilo, it appeared that this solution possessed unusual toxicity. Furthermore No. 192, which died after 58 hours from a dose of 135 milligrams per kilogram, manifested toxic symptoms after 100 milligrams per kilo had been given, as shown by a marked increase in respiration. After the entire dose of 135 milligrams per kilo was given the animal was very drowsy. As the results of the experiments with animals Nos. 190 to 192 inclusive were so out of keeping with the rest of the series, and since the only possible difference in the technique employed for these animals was in the method of making the solution, the same technique was employed for making up a new solution which was tested on rabbits Nos. 210 and 211, that is, the alkali was added to the acid solution of diarsenol in two amounts of 0.5 c.c. each and the remainder added drop by drop until the solution became slightly alkaline. The results, however, were not in keeping with those previously obtained; the only symptom which these animals showed was a slight increase in respiration.

TABLE 21.—*Toxicity of diarsenol (B72900-11, Synthetic Drug Co.) when given intravenously to rats (leg vein) as a 2 per cent alkaline aqueous solution.*

No. of animal.	Sex: M—male; F—female.	Weight in grams.	Dose per kilo.	Result: +dead; —living.	Time of death or discharge.
			Mgm.		
386	M	132	80	—	Disch. 32 d.
387	M	155	80	—	Do.
388	M	116	80	—	Died 25 d.
389	M	155	80	—	Disch 32 d
378	M	150	100	—	Do.
379	M	112	100	—	Do.
380	M	142	100	—	Do.
381	M	150	100	—	Do.
398	M	120	115	+	Died 51 hrs.
399	M	110	115	—	Disch. 30 d.
400	M	120	115	—	Died 22 d.
401	M	122	115	+	Died 22 hrs.
404	M	110	127	+	Died 12 min.
382	M	140	135	+	Died 20 hrs.
383	M	140	135	+	Died 5 hrs.
384	M	100	135	+	Died 10 d.
385	F	100	135	—	Disch. 32 d.
390	M	142	135	+	Died 4 hrs.
391	M	140	135	—	Disch. 30 d.
392	M	110	135	+	Died 34 hrs.
393	M	112	135	+	Died 49 hrs.
394	M	120	150	+	Died 22 hrs.
395	M	132	150	+	Do.
396	M	110	150	+	Died 46 hrs.
397	M	110	150	+	Died 7 hrs.
402	M	112	175	+	Died 6 hrs.
403	M	110	175	+	Died 5 hrs.
405	M	110	175	+	Died 4 hrs.
406	M	124	175	+	Died 10 hrs.

Weight variation, 100 to 155 gm.
Average weight, 125 gm.
Variation in amount of fluid injected, 0.47 to 1.08 c. c.

It will be noticed in the epitome of literature relating to salvarsan that the toxicity of the preparations is denoted by the expressions "Dosis tolerata," "Tolerated dose," "M. L. D.," and "Toxic dose." All of these expressions are indefinite. This is largely because the observation period of the various observers differs. For instance the "M. L. D." may refer either to death within a short time after the administration of the drug or to death from chronic poisoning.

For the sake of clearness and to enable a better comparison of the results obtained in the present investigation the following divisions were made of each series of experiments: (1) The minimal dose which kills 75 per cent or more within 24 hours; (2) the minimal dose which kills 75 per cent or more within 2 weeks; (3) the maximal dose which is tolerated by 75 per cent or more for 24 hours; (4) the maximal dose which is tolerated by 75 per cent or more for 2 weeks.

The results of this investigation are grouped in the above four divisions in tables 22, 23, and 24, thus permitting a ready comparison of the toxicity of the preparations examined.

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TABLE 22.—*Showing the comparative toxicity of salvarsan (German), salvarsan (Metz Laboratory), arsenobenzol, and diarsenol when given intravenously to rabbits as a 1 per cent alkaline aqueous solution.*[1]

Preparation	Salvarsan (German).		Salvarsan (Metz).	Arsenobenzol.		Diarsenol.	
Lot number or date of purchase	1913	A28001 (1917).	A2	257	271	A32790-99.	B72900-11
Minimal dose which kills 75 per cent or more within 24 hours	175+	175+	175	175+	175+	175	175+
Minimal dose which kills 75 per cent or more within 2 weeks	[2] 100-175	135	100	100	[3] 60	100	135
Maximal dose which is tolerated by 75 per cent or more for 24 hours	175+	175+	135	175+	125	100	175+
Maximal dose which is tolerated by 75 per cent or more for 2 weeks	60-	60	60	60	[3] 60	80	100

[1] Doses calculated in milligrams per kilogram of body weight.
[2] Dose probably lies between 100-175 milligrams.
[3] The 80 milligram dose was survived by 75 per cent.

TABLE 23.—*Showing the comparative toxicity of salvarsan (German), salvarsan (Metz Laboratory), arsenobenzol, and diarsenol, when given intravenously to rats as a 1 per cent alkaline aqueous solution.*[1]

Preparation	Salvarsan (German).		Salvarsan (Metz).	Arsenobenzol.		Diarsenol.
Lot number or date of purchase	1913	A28001 (1917).	A2	257	271	A32790-99.
Minimal dose which kills 75 per cent or more within 24 hours	135	135	[2] 100	90	90	150
Minimal dose which kills 75 per cent or more within 2 weeks	135	135	[2] 100	80	90	[3] 125
Maximal dose which is tolerated by 75 per cent or more for 24 hours	70	100	60	70	[4] 60	135
Maximal dose which is tolerated by 75 per cent or more for 2 weeks	70	100	60	70	[4] 60	[3] 135

[1] Doses calculated in milligrams per kilogram of bodyweight.
[2] The dose of 100 milligrams was regarded as the minimal dose required to kill within 24 hours, or within two weeks, rather than 70 milligrams on account of the fact that the 80 and 90 milligram doses killed less than 75 per cent.
[3] All the animals survived the 135 milligram dose whereas the dose of 125 milligram killed 75 per cent.
[4] The dose of 50 milligrams killed 50 per cent.

TABLE 24.—*Showing the comparative toxicity of salvarsan (German), salvarsan (Metz Laboratory), arsenobenzol, and diarsenol, when given intravenously to rats as a 2 per cent alkaline aqueous solution.*[1]

Preparation	Salvarsan (German).	Salvarsan (Metz).	Arsenobenzol.	Diarsenol.
Lot number or date of purchase	A28001 (1917)	A2	257	B72900-11
Minimal dose which kills 75 per cent or more within 24 hours	[2] 90	100	135	150
Minimal dose which kills 75 per cent or more within 2 weeks	[2] 90	70	135	135
Maximal dose which is tolerated by 75 per cent or more for 24 hours	[2] 80	60	80	135
Maximal dose which is tolerated by 75 per cent or more for 2 weeks	[2] 80	60	80	100

[1] Doses calculated in milligrams per kilogram of body weight.
[2] The dose of 70 milligrams killed 75 per cent, whereas the 80-milligram dose killed only 25 per cent.

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KEEPING PROPERTIES OF SALVARSAN SOLUTIONS.

The keeping properties of salvarsan solutions were studied, using salvarsan (German, 1917) and arsenobenzol (lot No. 257). One solution of salvarsan (German, 1917) was allowed to stand for from 5 to 6 hours in a glass-stoppered cylinder, the solution only partially filling the cylinder, so that a column of air remained above the fluid. As no precipitate appeared in this solution, it was unnecessary to add sodium hydroxide to clear the solution. A second solution of salvarsan (German, 1917) was examined after it stood for one week in a glass-stoppered cylinder, partially filled. The addition of sodium hydroxide was necessary to clear the solution of the precipitate that had formed. The solution was made alkaline in this way before its administration. In addition arsenobenzol (lot No. 257), which had been kept for one month in a glass stoppered cylinder, partially filled, was examined. This solution was also given as an alkaline solution.

All of the experiments were carried out on rats in the usual manner.

TABLE 25.—*Toxicity of salvarsan, German (1917 sample A28001), after standing 5 to 6 hours under ordinary conditions; given intravenously to rats (leg vein) as a 2 and 1 per cent alkaline aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: + dead; − living.	Time of death or discharge.
			mgm.		
431	M	110	50	−	Disch. 30 d.
432	M	110	50	−	Do.
433	M	110	30	−	Do.
434	M	104	30	−	Do.
427	F	155	60	−	Do.
428	F	120	60	−	Do.
429	M	114	60	−	Do.
430	M	112	60	+	Died 29 hrs.
423	M	112	30	−	Disch. 30 d.
424	M	110	80	−	Do.
425	M	112	80	+	Died 20 hrs.
426	M	110	80	−	Disch. 30 d.

Weight variation, 104 to 155 grams.
Average weight, 115 grams.
Variation in amount of fluid injected, 0.34 to 0.55 c. c.

Remarks.—A portion of the above solution was previously used (immediately after making) for the experiments on rats Nos. 411 to 419, inclusive (see Table 7). No discoloration of the fluid had occurred after standing for six hours, so that it was unnecessary to add alkali for the purpose of clearing the solution. Rats Nos. 431 to 434, inclusive, received the drug as a 1 per cent solution six hours after it was prepared; all others as a 2 per cent solution, about five hours after it was made.

It should be stated further that the above solution was kept in a glass-stoppered cylinder, which was only partially filled, so that a column of air remained above the fluid.

Table 26.—*Toxicity of salvarsan, German (1917 sample A28001), which was kept under ordinary conditions for one week after being made up as a 1 per cent alkaline aqueous solution. Given intravenously to rats (leg vein) as a 1 per cent solution.*

No. of animal.	Sex: M—male; F—female.	Weight in grams.	Dose per kilo.	Result: +dead; —living.	Time of death or discharge.
			Mgm.		
206	M	112	50	+	Died 10 d.
207	M	134	60	—	Died 25 d.
208	F	130	50		Escaped 25 d.
209	M	140	50	—	Disch. 31 d.
202	M	124	60	+	Died 12 d.
203	F	120	60	—	Died 25 d.
204	F	112	60	+	Died 3 hrs.
205	M	124	60	—	Disch. 31 d.
198	F	110	70	+	Died 15 hrs.
199	F	118	70	+	Do.
200	M	132	70	—	Disch. 32 d.
201	F	112	70	—	Died 27 d.
196	M	110	100	—	Escaped 25 d.
197	M	112	100	+	Died 15 hrs.

Weight variation, 110 to 140 grams.
Average weight, 121 grams.
Variation in amount of fluid injected, 0.56 to 1.12 c. c.

Remarks.—This solution became turbid upon standing and to redissolve the precipitate which had formed several drops of 15 per cent NaOH were added before injecting the solution.

Table 27.—*Toxicity of arsenobenzol (lot No. 257, Philadelphia Dermatological Research Laboratory) which was kept under ordinary conditions one month after being made up as a 1 per cent alkaline aqueous solution. Given intravenously to rats (leg vein).*

No. of animal.	Sex: M—male; F—female.	Weight in grams.	Dose per kilo.	Result: +dead; —living.	Time of death or discharge.
			Mgm.		
222	M	160	50	—	Disch. 31 d.
223	M	156	50	—	Do.
225	M	124	50	—	Do.
235	F	126	50	—	Do.
224	F	114	60	—	Died 22 d.
226	F	122	60	—	Disch. 31 d.
227	F	120	60	—	Do.
228	M	120	60	—	Do.
229	F	112	80	+	Died 6 hrs.
230	F	112	80	+	Do.
231	M	110	80	—	Disch. 31 d.
232	M	110	80	+	Died 6 hrs.
233	M	102	100	+	Died 1 hr.
234	F	102	100	+	Died 3 hrs.

Weight variation, 102 to 160 grams.
Average weight, 121 grams.
Variation in amount of fluid injected, 0.62 to 1.02 c. c.

Remarks.—This solution formed a heavy dark red precipitate upon standing, which was dissolved, before injecting the solution, by the addition of a small amount of 15 per cent NaOH.

It would seem from the above experiments that there was little if any change in the toxicity of these preparations. It can be safely stated that the change in toxicity, if any, after standing for several hours, under the conditions of these experiments was so slight that such a possible factor may be disregarded. The above conclusion, however, applies only to alkaline solutions of salvarsan.

SUMMARY AND DISCUSSION OF THE RESULTS OF EXPERIMENTS WITH SALVARSAN PREPARATIONS.

On account of the decided variation in the susceptibility of the test animals employed, the only general conclusion which may be drawn from the present experiments is that there is not a marked variation, if any, in the toxicity of the various preparations of salvarsan examined, and that their toxicity in animals, in a general way, runs parallel with their arsenic content.

However, when we consider the tables more in detail, we find that in Table 22, which gives the summary of the experiments in rabbits, there is a difference of 35 per cent or more in the minimal dose which is required to kill 75 per cent or more of the rabbits within two weeks; also somewhat greater differences in the maximal amounts which are tolerated by 75 per cent or more for the periods of 24 hours and two weeks. It may be concluded further that the 1917 sample of salvarsan (German lot No. A28001) and one sample of diarsenol (lot No. B72900–11) are somewhat less toxic than the other samples examined.

From Table 23, which summarizes the results of the administration of 1 per cent solutions to rats, we may likewise conclude that there is some variation in the toxicity of the various salvarsan preparations. In this group of experiments we again notice that the 1917 sample of salvarsan (German, lot No. A28001) and diarsenol (lot No. A32790–99) are somewhat less toxic than the other samples examined.

From Table 24, which contains the summary of the results of administering the preparations to rats as 2 per cent solutions, we find that diarsenol (lot No. B72900–11) is less toxic than the other samples, and that salvarsan (Metz Laboratory, lot No. A2) is somewhat more toxic than either arsenobenzol (lot No. 257) or diarsenol (lot No. B72900–11).[1]

Individual susceptibility is quite marked in both rabbits and rats. One of the most striking examples of this is to be found in rabbits. In Table 11 it is shown that rabbit 104 survived an intravenous dose of 175 milligrams of arsenobenzol and was discharged at the end of one month; yet 75 per cent of those which received the 100 milligram dose and 50 per cent of those on the 80 milligram dose died within two weeks.

Table 13 shows that there is also considerable individual variation in the susceptibility of rats. All of the rats which were given the 135 milligram dose of arsenobenzol died except one, the rat which was the exception being discharged at the end of one month. Furthermore, 25 per cent of those which received the 60 milligram dose and 50 per cent of those which received the 90 milligram dose died, their deaths occurring in a shorter time than was required for the 135 milligram dose to kill.

The marked individual susceptibility shown above makes it necessary to place more animals than were used in the present

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[1] The supply of certain of the samples was limited, and as it was impossible to obtain more material, parallel experiments could not be conducted with all the samples.

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SAMPLES OF NEOSALVARSAN EXAMINED.

One sample of neosalvarsan (German) and two samples of neodiarsenol (Synthetic Drug Co.) were examined. The sample of neosalvarsan (German) was obtained in July, 1917, from the American agent of the Farbwerke-Hoechst Co., and bore the lot number A25884, while the samples of neodiarsenol came directly from the Synthetic Drug Co. of Toronto, Canada. Lot number X180–189 was received in June, 1917, while lot number Z5800–11 was received in November, 1917.

COLOR, REACTION, AND SOLUBILITIES OF THE NEOSALVARSAN PREPARATIONS.

All of the samples which were examined were lemon yellow in color, neutral to litmus, and fully soluble in water at ordinary room temperatures.

MANNER OF MAKING THE SOLUTIONS OF NEOSALVARSAN.

Sterile glass-distilled water at room temperature was invariably used in making the solutions. After weighing the neosalvarsan it was put into a glass-stoppered cylinder containing a little less sterile glass-distilled water than was required to make the desired concentration and dissolved by shaking gently. It was then brought to the required concentration by the further addition of sterile distilled water.

LITERATURE RELATING TO THE TOXICITY OF NEOSALVARSAN.

An epitome of the literature relating to the toxicity of neosalvarsan in rabbits is given in Table 28 to facilitate the comparison of the present results with those of previous investigators. No literature on the toxicity of neosalvarsan for rats was available.

Table 28.—*Epitome of literature relating to the toxicity of neosalvarsan when given intravenously to rabbits as an aqueous neutral solution.*

Observer.	Where reported.	Preparation.	Dose per kilo.	Remarks.
Castelli	Ztschr. f. Chemotherap. (Orig.) 1912–13, p. 321.	Neosalvarsan (German).	Dosis tolerata 0.3 gm.	Observed 11 days.
Kersten	Centralbl. f. Bakt. 1912, vol. 65, p. 369 (orig.).	do	Dosis tolerata 0.2 gm. (average).	Given as a 2 per cent solution; animals observed 6 days.
Marschalko	Deutsch. Med. Wchnschr. 1912, vol. 38, p. 1585.	do	Dosis tolerata less than 0.15 gm.	0.2 gm. dose killed all. 0.15 gm. dose killed 67 per cent.
Pearce and Brown.	J. Pharmacol. & Exper. Therap. 1917, vol. 9, p. 354.	do	M. L. D.: 0.150–0.200 gm.	M. L. D. includes death either from acute or chronic poisoning (personal communication).
Spiethoff	Med. Klinik, 1914, vol. 10, p. 584.	do	Dosis tolerata 0.15 gm.	Observed that rabbits tolerate more neosalvarsan when dissolved in serum than in water.

LENGTH OF TIME ANIMALS WERE UNDER OBSERVATION.

The animals were all under observation for about one month, but for the purpose of this investigation a period of two weeks was chosen as the time limit in the compilation of the following tables. In these tables the minus sign (–) means that the animal has lived for two weeks or longer, while the plus sign (+) means that the animal has died within a two weeks' period.

ARSENIC CONTENT OF NEOSALVARSAN AND NEODIARSENOL.

The arsenic content of the neosalvarsan and neodiarsenol[1] examined was also determined by the method of Ewins (1916). The following table will show the values obtained:

Table 29.

Name of sample.	Manufacturer's number.	Arsenic content.
		Per cent.
Neosalvarsan (German)	A25884	17.6
Neodiarsenol (Synthetic Drug Co.)	X189	18.6
Do	Z-811	15.9

The above table shows that the average arsenic content of the three samples examined is about 17.4 per cent and that the two neodiarsenol samples show a difference in arsenic content of 2.7 per cent.

TABLE 30.—*Toxicity of neosalvarsan, German (lot No. A25884), when given intravenously to rabbits (ear vein) as a 2 per cent aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in kilos.	Dose per kilo.	Result: +dead; –living.	Time of death or discharge.
			Mgm.		
174	M	1.68	60	–	Disch. 30 d.
175	M	1.70	60	+	Died 7 d.
176	F	1.47	60	–	Disch. 30 d.
177	F	1.45	60	–	Do.
158	M	1.60	90	+	Died 5 d.
159	M	1.60	90	–	Died 21 d.
160	M	1.65	90	–	Disch. 31 d.
163	F	1.45	90	–	Do.
161	M	1.55	135	–	Do.
162	F	1.6	135	+	Died 6 d.
164	M	1.75	135	–	Disch. 31 d.
168	F	1.6	135	–	Died 19 d.
165	M	1.57	200	–	Disch. 31 d.
166	F	1.4	200	–	Do.
167	F	1.45	200	+	Died 6 d.
169	F	1.6	200	–	Died 15 d.
170	M	1.6	300	+	Died 5 d.
171	F	1.45	300	+	Died 4 d.
172	M	1.5	300	+	Died 9 d.
173	M	1.51	300	+	Died 4 d.

Weight variation, 1.4 to 1.75 kilos.
Average weight, 1.56 kilos.
Variation in amount of fluid injected, 4.3 to 24 c. c.

Remarks.—Rabbit No. 168 died of pulmonary disease; at necropsy No. 175 showed marked inflammation of the peritoneum and considerable excess of peritoneal fluid; death attributed to peritonitis.

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[1] Determination made by Dr. A. S. Seidell, of the Hygienic Laboratory.

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TABLE 31.—*Toxicity of neosalvarsan, German (lot No. A 25884), when given intravenously (leg vein) to rats as a 2 and 5 per cent aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
358	M	110	75	−	Disch. 30 d.
359	M	112	80	−	Do.
360	M	142	80	−	Do.
361	M	160	80	−	Do.
362	F	152	80	−	Do.
378	M	114	100	−	Do.
379	M	120	100	−	Do.
380	F	104	100	+	Died 4 d.
381	M	112	100	−	Disch. 30 d.
355	F	110	110	−	Do.
370	F	132	120	−	Do.
371	M	132	120	+	Died 4 d.
372	F	115	120	+	Died 20 hrs.
373	M	109	120	+	Died 20 min.
357	M	108	150	−	Disch. 30 d.
356	F	104	175	−	Do.
363	F	120	175	+	Died 6 d.
364	F	110	175	+	Died 20 hrs.
365	M	102	175	+	Died 2 d.
366	F	142	250	−	Disch. 30 d.
367	M	112	250	+	Died 4 d.
368	M	109	250	+	Died 5 d.
369	M	145	250	+	Died 20 hrs.
374	M	112	300	+	Died 14 hrs.
375	F	152	300	+	Died 16 hrs.
376	M	150	300	+	Died 1 d.
377	F	144	300	+	Died 16 hrs.

Weight variation, 102 to 160 grams.
Average weight, 127 grams.
Variation in amount of fluid injected, 0.4 to 1.5 c. c.

Remarks: Rats Nos. 366 to 369, inclusive, and Nos. 374 to 377, inclusive, received the drug as a 5 per cent solution; all others received the 2 per cent solution.

TABLE 32.—*Toxicity of neodiarsenol (lot No. X180–189, Synthetic Drug Co.) when given intravenously to rabbits (ear vein) as a 2 per cent aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in kilos.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
125	F	1.28	90	−	Disch. 31 d.
127	F	1.38	90	−	Do.
128	M	1.42	90	−	Do.
129	M	1.45	90	−	Do.
126	F	1.5	135	+	Died 10 d.
130	F	1.37	135	−	Disch. 31 d.
131	F	1.39	135	+	Died 6 d.
136	F	1.49	135	−	Disch. 31 d.
132	F	1.15	200	−	Do.
133	F	1.46	200	+	Died 2 d.
134	F	1.63	200	+	Died 5 d.
135	M	1.48	200	+	Died 1 d.
137	M	1.4	300	+	Died 16 hrs.

Weight variations, 1.15 to 1.63 kilos.
Average weight, 1.44 kilos.
Variation in amount of fluid injected, 6.2 to 21 c. c.

TABLE 33.—*Toxicity of neodiarsenol (Lot No. X180–189, Synthetic Drug Co.) when given intravenously to rats (leg vein) as a 2 per cent aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in grams.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
214	M	120	80	−	Disch. 31 d.
215	M	120	80	−	Do.
240	F	110	80	−	Do.
241	F	110	80	−	Do.
216	F	134	90	−	Do.
217	F	100	90	−	Do.
243	M	102	90	−	Do.
242	M	104	90	−	Died 20 d.
218	M	104	100	−	Disch. 31 d.
219	F	110	100	−	Do.
245	M	116	100	−	Do.
244	M	120	100	−	Died 18 d.
246	F	114	125	−	Disch. 31 d.
247	F	110	125	−	Do.
220	M	110	125	−	Do.
221	F	110	125	−	Do.
248	F	110	150	−	Died 18 d.
249	M	108	150	−	Do.
254	M	108	150	+	Died 6 d.
256	M	104	150	−	Disch. 31 d.
250	F	108	175	−	Died 20 d.
251	F	108	175	−	Disch. 31 d.
257	M	102	175	−	Do.
255	M	100	175	+	Died 5 d.
252	M	106	200	+	Do.
253	M	106	200	+	Do.
258	M	100	200	+	Died 6 d.
259	M	96	200	−	Disch. 31 d.
293	M	110	250	+	Died 18 hrs.
294	F	110	250	+	Do.
295	F	110	250	+	Died 3 d.
296	M	108	250	+	Died 4 d.
297	F	112	300	+	Died 19 hrs.
298	F	110	300	+	Died 17 hrs.
299	F	110	300	+	Do.
300	M	110	300	+	Do.

Weight variation, 96 to 130 grams.
Average weight, 111 grams.
Variation in amount of fluid injected, 0.44 to 1.68 c. c.

TABLE 34.—*Toxicity of neodiarsenol (Lot No. Z5800–11, Synthetic Drug Co.) when given intravenously to rabbits (ear vein) as a 2 per cent aqueous solution.*

No. of animal.	Sex: M=male; F=female.	Weight in kilos.	Dose per kilo.	Result: +dead; −living.	Time of death or discharge.
			Mgm.		
200	F	1.6	60	+	Died 10 d.
201	F	1.6	60	+	Died 3 d.
202	F	1.85	60	−	Disch. 30 d.
203	M	1.7	60	−	Do.
204	M	1.7	90	−	Died 20 d.
205	F	1.5	90	+	Died 19 d.
206	M	1.5	90	−	Disch. 30 d.
207	F	1.55	90	−	Do.
208	M	2.06	135	−	Do.
209	F	1.7	135	−	Died 24 d.
212	F	1.6	135	+	Died 5 d.
213	F	1.55	135	−	Disch. 30 d.
214	M	1.45	200	−	Died 20 d.
215	M	1.55	200	+	Died 5 d.
216	M	1.45	200	+	Died 8 d.
217	F	1.6	200	+	Died 3 d.
218	M	1.8	300	+	Died 2 d.
219	F	1.55	300	+	Do.
220	F	1.55	300	+	Do.
221	F	1.5	300	+	Died 3 d

Weight variation, 1.45 to 2.06 kilos.
Average weight, 1.6 kilos.
Variation in amount of fluid injected, 4.8 to 23.2 c. c.

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Table 35.—*Toxicity of neodiarsenol (Z5800-11, Synthetic Drug Co.), when given intravenously to rats (leg vein) as a 2 and 5 per cent aqueous solution.*

No. of animal.	Sex: M—male; F—female.	Weight in grams.	Dose per kilo.	Result: +dead; —living.	Time of death or discharge.
			Mgm.		
463	F	120	80	—	Disch. 30 d.
464	F	120	80	—	Do.
465	M	110	80	—	Do.
466	M	110	80	—	Do.
447	F	110	100	—	Disch. 31 d.
448	M	130	100	—	Do.
449	M	110	100	—	Do.
450	M	120	100	—	Do.
459	M	106	120	—	Disch. 30 d.
460	M	103	120	—	Do.
461	M	100	120	—	Do.
462	M	100	120	—	Do.
468	M	100	150	—	Disch. 26 d.
469	M	110	150	+	Died 2 d.
470	M	110	150	—	Disch. 26 d.
471	M	110	150	—	Died 20 d.
451	F	104	175	—	Disch. 31 d.
452	M	100	175	+	Died 2 d.
453	M	106	175	+	Died 4 d.
454	M	108	175	+	Do.
455	F	104	250	+	Died 16 hrs.
456	F	105	250	+	Died 4 d.
457	M	110	250	+	Died 14 hrs.
458	M	110	250	+	Died 3 d.

Weight variation, 100 to 130 grams.
Average weight, 109 grams.
Variation in amount of fluid injected, 0.44 to 0.95 c. c.

Remarks.—Rats Nos. 455 to 458, inclusive, received a 5 per cent solution; all others a 2 per cent solution.

In Tables 36 and 37 the results of the various series of experiments with the neosalvarsan preparations examined, are placed in parallel in four divisions, similar to the divisions made for the salvarsan preparations.

Table 36.—*Showing the comparative toxicity of neosalvarsan (German) and neodiarsenol when given intravenously to rabbits as a 2 per cent aqueous solution.*[1]

Preparation	Neosalvarsan (German).	Neodiarsenol.	
Manufacturer's No.	A25884.	X180-0.	Z5800-11.
Minimal dose which kills 75 per cent or more within 24 hours	300+	[2]200+	300+
Minimal dose which kills 75 per cent or more within 2 weeks	300	200	300
Maximal dose which is tolerated by 75 per cent or more for 24 hours	300+	200+	300+
Maximal dose which is tolerated by 75 per cent or more for 2 weeks	200	90	[3]38

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[1] Doses calculated in milligrams per kilogram of body weight.

[2] Dose of 300 milligrams given to one animal only; death in 16 hours.

[3] The dose of 60 milligrams killed 50 per cent, whereas the 90-milligram dose killed only 25 per cent of the animals.

LL8 36

TABLE 37.—*Showing the comparative toxicity of neosalvarsan (German) and neodiarsenol when given intravenously to rats as a 2 and 5 per cent aqueous solution.*[1]

Preparation	Neosalvarsan (German).	Neodiarsenol.	
Manufacturer's No.	A25884	X180-9	Z5800-11
Minimal dose which kills 75 per cent or more within 24 hours	300+	300	250+
Minimal dose which kills 75 per cent or more within 2 weeks	120	200	175
Maximal dose which is tolerated by 75 per cent or more for 24 hours	250	200	175
Maximal dose which is tolerated by 75 per cent or more for 2 weeks	100	175	150

[1] Doses calculated in milligrams per kilogram of body weight.

SUMMARY AND DISCUSSION OF THE RESULTS OF THE EXPERIMENTS WITH NEOSALVARSAN PREPARATIONS.

The results of the experiments in which the neosalvarsan preparations were used differed, depending upon whether rabbits or rats were employed as test animals. It is seen from Table 36, which relates to the experiments upon rabbits, that neosalvarsan (German) is distinctly less toxic than either sample of neodiarsenol. In this table only the minimal dose which kills 75 per cent or more within two weeks and the maximal dose which is tolerated by 75 per cent or more for two weeks should be considered, on account of the incompleteness of the figures obtained for the other two dosages. We find that in rabbits it requires 50 per cent more neosalvarsan (German) than either sample of neodiarsenol to kill within two weeks; also, that these animals will tolerate about 50 to 100 per cent more neosalvarsan (German) than neodiarsenol, the difference in percentages depending upon which sample of neodiarsenol is made the basis of comparison.

In Table 37, which relates to the toxicity for rats, the toxicity of neosalvarsan (German) when estimated by the minimal dose which kills 75 per cent or more within two weeks, and the maximal dose which is tolerated by 75 per cent or more for two weeks, is from 50 to 75 per cent greater than that of the neodiarsenol preparations examined.

The results, therefore, are inconclusive as regards the relative toxicity of the neosalvarsan preparations examined.

GENERAL CONCLUSIONS.[1]

1. No marked variation in toxicity was found in either German or American salvarsan, as shown by their intravenous administration to rabbits and rats.

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[1] The work reported in this paper was intended only as a preliminary study, leading to a more detailed examination of a larger number of samples. A consideration of some of the questions which this examination has brought up, is now being made in this laboratory. The later work, as yet incomplete, indicates that the toxicity of the preparations may possibly be changed by modifications of technique. 669-37

2. Individual variation in susceptibility to salvarsan is quite marked in both rabbits and rats.

3. The toxicity for rabbits and rats closely parallels the arsenic content of the salvarsan preparations examined.

4. Neosalvarsan preparations were found to be less toxic for rabbits and rats than the salvarsan preparations examined.

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PLAINTIFF'S EXHIBIT No. 669.

Sub-Committee on Synthetic Drugs
JULIUS STIEGLITZ, CHAIRMAN
University of Chicago

OFFICE OF THE
CHEMISTRY COMMITTEE

NATIONAL RESEARCH COUNCIL
ACTING AS THE
DEPARTMENT OF SCIENCE AND RESEARCH
OF THE
COUNCIL OF NATIONAL DEFENSE

January 25, 1918

Mr. H. A. Metz,
111 Hudson St.,
New York.

Dear Mr. Metz:

I am much obliged to you for your detailed letter of January 22d in regard to the problem of neoarsphenamine and sodium arsphenamine. I am glad to note the progress you are making in the output of arsphenamine.

I had an urgent inquiry from Mr. A. H. Johnson of the national headquarters of the American Red Cross, Washington, D. C. for guaiacol carbonate and sulfo guaiacolate of potassium. Since I had heard that you are interested in the former product I sent your address to Mr. Johnson and I hope you have heard from him.

Yours sincerely,
(Sgd.) JULIUS STIEGLITZ.

PLAINTIFF'S EXHIBIT No. 670.

Sub-Committee on Synthetic Drugs
JULIUS STIEGLITZ, CHAIRMAN
University of Chicago

NATIONAL RESEARCH COUNCIL
ACTING AS THE
DEPARTMENT OF SCIENCE AND RESEARCH
OF THE
COUNCIL OF NATIONAL DEFENSE

February 19, 1918

Mr. Herman Metz,
122 Hudson St.,
New York, New York.

Dear Mr. Metz:

What is the present situation in regard to your ability to supply procaine to physicians and hospitals? I am issuing a first report on the present situation in synthetic drugs in this week's number of the Journal of the American Medical Association. I hope that you have been able to speed up the manufacture in the interim since December.

Yours sincerely,

(Sgd.) J. STIEGLITZ.

PLAINTIFF'S EXHIBIT No. 671.

Sub-Committee on Synthetic Drugs
JULIUS STIEGLITZ, CHAIRMAN
University of Chicago

OFFICE OF THE
CHEMISTRY COMMITTEE

NATIONAL RESEARCH COUNCIL
ACTING AS THE
DEPARTMENT OF SCIENCE AND RESEARCH
OF THE
COUNCIL OF NATIONAL DEFENSE

February 25, 1918

Mr. H. A. Metz,
113 Hudson St.,
New York

Dear Mr. Metz:

I am glad to receive the information concerning the present status of your manufacture of arsphenamine and procaine.

I am suggesting to the Federal Trade Commission that they support your petition to have procaine accepted for transmission by mail. The decision of course will rest with the Commission but they are eminently practical and sensible men and I think that they will see the wisdom of a change in ruling.

Yours sincerely,

(Sgd.) J. STIFGLITZ.

PLAINTIFF'S EXHIBIT No. 672.

Sub-Committee on Synthetic Drugs
JULIUS STIEGLITZ, CHAIRMAN
University of Chicago

OFFICE OF THE
CHEMISTRY COMMITTEE

NATIONAL RESEARCH COUNCIL
ACTING AS THE
DEPARTMENT OF SCIENCE AND RESEARCH
OF THE
COUNCIL OF NATIONAL DEFENSE

March 7, 1918

Mr. H. Metz,
111 Hudson St.,
New York, New York.

Dear Mr. Metz:

The sample of novocaine hydrochloride which you were kind enough to send me was received yesterday. Thank you for this evidence that you are turning out the product in condition of purity, I am

Yours sincerely,
(Sgd.) J. STIEGLITZ.

PLAINTIFF'S EXHIBIT No. 673.

Sub-Committee on Synthetic Drugs
JULIUS STIEGLITZ, CHAIRMAN
University of Chicago

NATIONAL RESEARCH COUNCIL
ACTING AS THE
DEPARTMENT OF SCIENCE AND RESEARCH
OF THE
COUNCIL OF NATIONAL DEFENSE

June 1, 1918

Mr. Herman A. Metz,
111 Hudson St.,
New York, New York.

Dear Mr. Metz:

At the request of the Public Health Service we are beginning here a critical investigation of the preparation of arsphenamine with the idea of trying to find out how to prevent the occurrence of highly toxic preparations incidental to its manufacture. I expect to be in New York next week either Wednesday or Thursday and would ask the privilege of visiting your laboratory again for a close study of the methods that you are using successfully in the manufacture of arsphenamine on a large scale. As I understand it our results will be for the benefit of all manufacturers equally and I should prefer to start from the point reached successfully by you, Dr. Schamberg and others. It will be understood of course that anything which you would like to have kept confidential will be held so. When I reach New York I shall take the liberty of calling you up and shall try to make an appointment for the visit.

I am

Yours sincerely,

(Sgd.) J. STIEGLITZ.

My New York address will
be 60 E. 65th St.,
c/o Dr. L. Stieglitz.

PLAINTIFF'S EXHIBIT No. 674.

TREASURY DEPARTMENT
UNITED STATES
PUBLIC HEALTH SERVICE
WASHINGTON

August 15, 1918

Mr. H. A. Metz
122 Hudson Street
New York City, N. Y.

Dear Mr. Metz:

I have your letter of August 13th referring to your work on arsphenamine. It will be understood in case any arrangement is made to have one of my chemists work in your laboratory in order to be of assistance to you, that the work will be, of course, only with your consent and that everything done and learned in your laboratory will be held strictly confidential, except for the officers of the Public Health Service. None of the information gained will be used to help the work of the Dermatological Laboratories or any other manufacturer of arsphenamine. Our own results obtained here will, if I find them worth while, no doubt be issued for the information of all interested by the Public Health Service. Dr. Schamberg has not given you any assistance in your emergency and can, of course, expect no assistance from you in regard to any question connected with his product. For instance, his chief difficulty, the solubility of his arsphenamine hydrochloride would be a subject on which it would be quite possible for you to arrange to keep all the facts to yourself and not even make them known to anyone working in your laboratories for us, if we should make the arrangements indicated. I have offered Dr. Schamberg to work here on the problem of solubility, as I think it is one that should be quite easily subject to strictly scientific investigation, especially from the Physical Chemical side.

However, I am glad to say that I have had a most promising report from Dr. McCoy about the quality of your present product, and I want to congratulate you on the success with which you seem to have overcome your older difficulties without any assistance from the Philadelphia concern. I hope that this high quality will be maintained, and I see no reason why that should not be the case, as this is the most difficult season of the year in which to work.

With best regards, I am

JS/C Yours sincerely,

(Sgd.) JULIUS STIEGLITZ.

PLAINTIFF'S EXHIBIT No. 675.

Sub-Committee on Synthetic Drugs
JULIUS STIEGLITZ, CHAIRMAN
University of Chicago

NATIONAL RESEARCH COUNCIL
ACTING AS THE
DEPARTMENT OF SCIENCE AND RESEARCH
OF THE
COUNCIL OF NATIONAL DEFENSE

March 27, 1919.

Dr. Herman Metz,
122 Hudson St.,
New York, N. Y.

Dear Dr. Metz:

As you have probably read in the papers, the Government, through the Custodian of Alien Property, has sold all German patents to the Chemical Foundation, Inc. The President of the Foundation is Mr. Garvan, successor of Mr. Palmer as Custodian of Alien Property. The Foundation plans to issue licenses for the manufacture of patented articles on the basis of small royalties which ultimately will be used for advancing research.

It is open to question in what way the sale of the Arsphenamine patents would ultimately effect the present licensees. I am quite certain, however, that the arrangement of the Federal Trade Commission will be recognized by the new Foundation which was organized in a sense by a co-ordinate branch of the Government service. In addition to that I have personally recommended to Mr. Palmer, and through him to Mr. Garvan, that if licenses from the new Foundation are necessary for the manufacture of Arsphenamine and Neo-arsphenamine by present licensees, that the Foundation should issue such licenses to the present licensees. With this recommendation, the further recommendation was made that continued supervision as to toxicity by the Public Health Service should obtain and also continued control as to the price. These conditions seem to us of vital moment for the public interest in the case of these drugs which are of such vital importance in the combatting of venereal diseases by the Public Health Service.

I have also recommended as being highly desirable, but of less urgent importance, that licenses be not issued for these drugs to a large number of applicants, but be limited to present licensees with possibly two or three further manufacturing firms. The limiting in the number is recommended essentially on the basis of better control of the product.

I do not anticipate any difficulties, but am writing to suggest that you either inquire of Mr. Garvan, Custodian of Alien Property, and President of the Chemical Foundation, what steps, if any, you must take to protect your interests, and to indicate that if a new license is deemed necessary under the laws, you would be glad to be informed of the conditions of such a new license and to be considered as a presumable applicant for a license. You might do this without in any way giving up your present and future rights as a licensee of the Federal Trade Commission.

Yours sincerely,

(Sgd.) JULIUS STIEGLITZ.

PLAINTIFF'S EXHIBIT No. 676.

Sub-Committee on Synthetic Drugs
JULIUS STIEGLITZ, CHAIRMAN
University of Chicago

NATIONAL RESEARCH COUNCIL
ACTING AS THE
DEPARTMENT OF SCIENCE AND RESEARCH
OF THE
COUNCIL OF NATIONAL DEFENSE

April 10, 1919.

Mr. Herman Metz,
122 Hudson St.,
New York, N. Y.

Dear Mr. Metz:

I am assured by the Federal Trade Commission that Mr. Garvan of the Chemical Foundation has no intention of disturbing the control which has been exercised over the manufacture and sale of Arsphenamine, and that it has been practically, tho informally, agreed that the rights of the present licensees are to be taken care of. It may be that you will be invited to exchange the licenses from the Federal Trade Commission for licenses from the Chemical Foundation under as favorable terms as the ones you now hold.

Yours sincerely,

(Sgd.) JULIUS STIEGLITZ.

PLAINTIFF'S EXHIBIT No. 677.

TREASURY DEPARTMENT
UNITED STATES
PUBLIC HEALTH SERVICE

OFFICE OF
FIELD INVESTIGATIONS
RURAL SANITATION

May 2, 1919.

Mr. Herman Metz,
122 Hudson St.,
New York, N. Y.

Dear Mr. Metz:

I received a copy of your circular and special Government price list for Arsphenamine. I am glad to see this reduction in price. This would be the direction to follow to make it unnecessary for Municipal, State, and Federal Public Health Institutions to manufacture Arsphenamine for public use.

I am,
Yours sincerely,
(Sgd.) J. STIEGLITZ.

PLAINTIFF'S EXHIBIT No. 678.

NATIONAL RESEARCH COUNCIL
Established in 1916 under the Congressional Charter of the National Academy of Sciences and organized with the cooperation of the National Scientific and Technical Societies of the United States.

DIVISION OF CHEMISTRY
AND CHEMICAL
TECHNOLOGY
COMMITTEE ON SYNTHETIC DRUGS
Julius Stieglitz, Chairman
University of Chicago
Chicago, Ill.
Moses Gomberg
G. W. McCoy
Francis M. Phelps
W. A. Puckner
Edward S. Rogers

1201 Sixteenth Street,
Washington, D. C.

September 25, 1919.

Mr. H. A. Metz,
122 Hudson Street,
New York City.

Dear Mr. Metz:

On my return to Chicago I find your note of September 15. I had some telegraphic correspondence with Dr. Glattfeld in regard to the examination of suprarenin. It appeared that he was just about to leave on his vacation and he wired me that an examination of the drug would involve a serious change in his plans. As he has been a sufferer for some months I thought it would not be right to ask him to consider postponing his leaving, and I asked him to turn the sample over to another research man. I have heard nothing further of it but Dr. Glattfeld will be back by Monday, the 29th, and I will ask him to have the examination pushed then under his personal supervision.

Mr. Julius Kahn, who was my assistant, is now connected with the Mallinckrodt Chemical Company working on the manufacture of arsphenamine. The method he is using is one that has not been used by either your laboratories or Dr. Schamberg's laboratory. It is shorter than either of the processes mentioned. It is self-understood, further, that anything characteristic about your process of manufacture has not been imparted to any other firm and not to my assistants. We followed out here simply the patented processes in order to understand them and to improve them if possible and have given all firms freely the benefit of our findings. Among other things you will recall we advised you strongly to give up the longer oxalyl process, which we found the less desirable from the point of view of our experiments.

It will interest you to know also that from still another firm I have received the details of method which is quite unique. Of course under the pledge of confidence none of the details of his process or of any other process seen can be communicated to any other manufacturer.

I am making this explanation because your note seemed to imply that you feared that Mr. Kahn might divulge to Mallinckrodt trade secrets in connection with your own processes, but such is not the case.

Yours sincerely,
(Sgd.) JULIUS STIEGLITZ.

PLAINTIFF'S EXHIBIT No. 679.

TREASURY DEPARTMENT
UNITED STATES
PUBLIC HEALTH SERVICE
WASHINGTON

June 27, 1918.

Mr. Herman Metz,
Farbewerke-Hoechst Co.,
111-113 Hudson Street,
New York City.

Dear Mr. Metz:

In order to advance our studies on arsphenamine as rapidly as possible, it has been considered desirable to send one of our chemists to your establishment for the purpose of securing material, particularly intermediate and by-products, for toxicological study. We would like you, if practicable, to give him the privilege of working in your laboratory, following the manufacturing process through.

Doctor Myers understands thoroughly that any information he might secure is to be considered confidential and used only for the furtherance of our own studies on the subject.

Commending Doctor Myers to your kindly consideration, I remain

Sincerely yours,
(Sgd.) G. W. McCOY,
Director.

GB

PLAINTIFF'S EXHIBIT No. 680.

[Note: Exhibit stricken out.]

PLAINTIFF'S EXHIBIT No. 680.

Department of Agriculture,
bureau of chemistry,
Washington, D. C.

Report of Some Experiments on a Method for Synthesizing Salvarsan.

Dr. Gibbs:

On June 25, 1917, the writer undertook to continue the work of Dr. R. R. Williams on the synthesis of Salvarsan which he had been obliged to discontinue because of a press of work. Dr. Williams had performed a few experiments in an attempt to prepare para oxyphenylarsonic acid from phenol. His results were not encouraging. It appeared that this reaction, if it were to be employed, would have to be carefully studied.

A survey of the patent and scientific literature dealing with Salvarsan showed that there were two possible starting points—aniline or phenol. The first method involves five steps and appears to be the most generally favored; the phenol procedure involves only four steps. The following diagram shows the relation of the steps in each process:

$$\begin{tikzcd}
\text{(1) aniline} \arrow[r] & \text{atoxyl} \arrow[dr] & \\
\text{(2) phenol} \arrow[rr] & & \text{oxyphenylarsonic acid} \arrow[d] \\
& & \text{nitro oxyphenylarsonic acid} \arrow[d] \\
& & \text{diamino dioxyarsenobenzene} \\
& & \text{Salvarsan} \arrow[u]
\end{tikzcd}$$

Since the use of phenol as a starting point saves one step, it was thought worth while to spend some time in an investigation of this procedure. The results of that study, which occupied the greater part of two months, are reported in an appended statement in such form as to be available for publication if desired. This work, while only preliminary, showed that it was entirely feasible to synthesize oxyphenylarsonic acid in this way with yields superior to those supposed to be obtained by using the longer process starting with aniline.

The nitration of the oxyphenylarsonic acid or, to be exact, its sodium salt, apparently proceeded without difficulty when the patent specifications were followed. The purity of the product, however, was dependent on the purity of the sodium salt of the oxyphenylarsonic acid, as pointed out in the appended report.

The last two steps in the process of manufacture of Salvarsan were only briefly experimented with. The patent specifications were followed exactly and the expected products were obtained in apparently pure condition when pure nitro oxyphenylarsonic acid was employed as the starting point. Impurities of dinitro acid caused the final product to turn rapidly brown on exposure to air and even the use of indifferent gases like H_2 and CO_2 did not wholly alleviate this trouble. Only one run was made with the purest nitro compound but from this the diaminodioxyarsenobenzene was obtained as a fine yellow powder which did not change color on short exposure to the air or on washing with water. The dihydrochloride of this base was a yellow powder and after drying in nitrogen for some days appeared to be identical in color and form with the German product or that manufactured in Philadelphia. The yield was not entirely satisfactory, being only about 53 per cent. for the total of two steps, or an average of about 73 per cent. for each step; one should probably obtain a total of 65 per cent.

Thus, a small amount of Salvarsan has been synthesized several times in this laboratory and in the final case a very excellent looking product was obtained. There is every reason to suppose that better yields and as good or better product could be obtained in relatively large amounts if more study were put on the reduction step and the formation of the dihydrochloride. The work was, however, discontinued at this point as an investigation of the work of the Dermatological Laboratories showed that further work would be a needless duplication.

While from a chemical point of view the results of this preliminary research appear to be very encouraging it is only fair to state that the final product was never tested biologically. Small amounts of impurities in Salvarsan cause it to be extremely toxic. In the manufacture of it for clinical use, a biological control must be kept of the product. This side of the problem, perhaps the most difficult, would have been next considered if the work had been continued. It is problematical how much experimentation would have been necessary in order to produce a substance entirely satisfactory from a physiological standpoint.

On August 21, 1917, a vist to the Dermatological Research Laboratories and a conversation with Dr. Raiziss convinced the writer that no further work on Salvarsan was necessary. The Philadelphia laboratories were producing a sufficient amount of Salvarsan to meet the needs of the United States if the patent situation could be arranged and an adequate supply of sodium hydrosulphite could be obtained. Dr. Raiziss' process is the result of three years' study and his product is apparently, in some respects, superior to the German. The toxicity and therapeutic power of this preparation had, moreover, been extremely carefully studied and the method of manufacture standardized so as to always yield a substance best suited for clinical purposes. Dr. Raiziss expressed his desire to co-operate with the government. He was also desirous of obtaining a supply of sodium hydrosulphite from England or of starting some work with the hopes of synthesizing it in this country.

It is interesting to note that in the process used by Dr. Raiziss he employs aniline, not phenol, as his starting point. His method is thus one step longer than that used in this laboratory. The yield of oxyphenylarsonic acid was about 7 per cent. of the theoretical, calculated from the aniline and arsenic acid—contrasted with a 20 per cent. yield obtained from phenol in this laboratory. This comparison, however, is between a semi-technical process and a laboratory experiment and is thus somewhat uncertain.

The results of the experiments started June 25, 1917, and ending August 22, 1917, may be summarized as follows:

(1) The preparation of the sodium salt of oxyphenylarsonic acid from phenol and arsenic acid has been carefully studied. The optimum conditions for carrying out this reaction have been found. A new procedure has been evolved for isolating the product of the reaction in the form of its crystalline sodium salt. The yield is slightly greater than 20 per cent. of the theoretical.

(2) The nitration of the sodium salt has been investigated and the best conditions for obtaining a pure product has been noted.

(3) By following the patent specifications for the last three steps of the process, Salvarsan has been prepared. The material, while not tested physiologically, was of the right color and gave the appropriate chemical tests.

(4) An investigation of the Dermatological Research Laboratory revealed the fact that an excellent plant is at hand capable of meeting the entire United States' demands for Salvarsan. The co-operation of government officials, as regards both the patent situation and the supply of sodium hydrosulphite, is apparently all that is required to make the Philadelphia product of the greatest value to the country at this time.

Respectfully submitted,
(Sgd.) JAMES B. CONANT.

Attached:
Report of Work on Salvarsan.

THE PREPARATION OF SODIUM OXYPHENYLARSONATE.

By James B. Conant.

The importance of the aromatic arsonic acids is every day becoming more evident. Many of them have been found to be useful drugs. Their preparation is a necessary step in the synthesis of many other aromatic arsenic compounds which have the most valuable therapeutic properties, for example, the widely used "Salvarsan." The reaction by which the arylarsonic acids may be prepared are, thus, of considerable practical interest. About seven different methods have been employed with more or less success depending largely on the particular compound desired. Of these methods the most direct is the replacement of hydrogen by the arsonic acid group, a reaction which takes place when certain aromatic substances (phenols and amines) are heated with arsenic acid. Very little has been publish concerning this reaction, the only reference to the arsonation of phenols being a German patent. Because of this paucity of information about a rather important reaction it is perhaps worth while to record some preliminary experiments which were performed with phenol and arsenic acid.

This work was done in connection with a series of experiments undertaken for the purpose of studying the complete synthesis of Salvarsan from phenol and arsenic acid. Consequently it was particularly necessary to obtain the product of the reaction—para oxyphenylarsonic acid—in a form most suitable for carrying out the next step. This next stage is the preparation of nitro oxyphenylarsonic acid by nitration at low temperature with the equivalent amount of nitric acid. The procedure finally adopted involved the separation of the oxy acid as the sodium salt, contaminated with some sodium sulfate. This mixture was, however, well adapted for nitration and yielded the desired nitro oxy acid in a pure condition. It was necessary to know what portion of the crystalline material was the sodium salt of the organic acid, in order to determine the amounts of nitric and sulphuric acids used in the nitration. A method of analysis was evolved which was very rapid and gave sufficiently accurate results for this purpose.

The Interaction of Phenol and Arsenic Acid.

The patent specifications direct that equivalent amounts of phenol and crystalline arsenic acid be heated together for several hours at 150° C. It is further recommended that the reaction be carried out in an apparatus provided with a return condenser and a stirrer. Several difficulties were encountered when these directions were followed. The crystalline arsenic acid (the anhydrous ortho acid) is not appreciably soluble in phenol and it is very hard to prevent the solid from separating as a lump at the bottom of the flask. A great deal of tarry by-product was obtained and the yield of oxyphenylarsonic acid was small.

A number of experiments were performed in an effort to discover more favorable conditions for carrying out the reaction. The solid arsenic acid was discarded and the syrupy acid was employed. The substance as it comes on the market contains about 22% of H_2O; by distilling various amounts of water from it, a syrup of varying acid concentration was readily obtained. Besides varying the acid concentration in this way, different temperatures were also tried. Each experiment was continued for about 3 hours and at the end of that time the melt was dissolved in water. The amount of insoluble tarry material could then be roughly estimated and, after following the procedure described below, the oxyphenylarsonic acid was isolated as its sodium salt.

The results of this work may be summarized as follows: The best form of the acid to employ is a syrup containing an amount of water corresponding to H_3AsO_4; this is readily obtained by distilling 22 c.c. of water from 100 g. of the 78% acid. Less concentrated solutions give poorer yields of the final product, while more dehydrated forms of the acid cause the formation of a very large amount of tar. The liquid condition of this acid makes it very easy to obtain a through mixing of the substances during the reaction by the use of a high speed stirrer. The temperature of the reaction should be kept very near 150°; a thermometer immersed in the oil bath should not fall below 147° or rise above 157°. Lower temperatures cause the main reaction to go too slowly, while higher temperatures very quickly cause the whole mass to become a thick tar. When the best conditions are employed only a relatively small amount of water is vaporized during the reaction. It was found convenient to allow this vapor to distill away from the reaction and be condensed in the usual manner. In this way no reflux condenser was necessary. The small amount of phenol carried over by the steam was compensated for by starting with about a 10% excess of this substance. The maximum yield obtained in these experiments was 21.5%; by carefully controlling these conditions, it should always be possible to obtain a yield of at least 20%.

Isolation of Sodium Oxyphenylarsonate.

In the first experiments an attempt was made to isolate the oxyphenylarsonic acid in the way described in the patent. In this process the melt is dissolved in water, the aqueous solution is filtered and evaporated to dryness and the residue is extracted with acetone. The acetone solution on evaporating leaves the free acid which may then be recrystallized from glacial acetic acid. Only thick unworkable syrups were obtained by this method. A modification was tried next in which the final syrup (presumably the acid and impurities) was converted into the sodium salt with sodium hydroxide and the sodium salt crystallized from water and alcohol. While a crystalline salt could be readily isolated in this way, tests showed that it is very impure, being contaminated with large amounts of salts of arsenic acid. Besides this difficulty the process seemed needlessly complicated. An entirely different procedure was finally decided upon which is as follows:

The aqueous solution of the melt is filtered from any tarry material. Barium hydroxide is now stirred into the solution until the original brown color begins to show a pink tint. At this point the solution is filtered and extracted several times with ether, this removes a considerable amount of tarry impurity which is rather soluble in both acid and alkalies and can hence be extracted with success only when the acid concentration of the solution is suitable. The color change of this substance acts as an indicator for this point. More barium hydroxide is now added to the aqueous solution until a small portion after being made alkaline and filtered gives a test for barium ions. The entire solution is then made just alkaline to litmus with sodium hydroxide and filtered. The excess of barium is now removed by sodium sulphate and the solution filtered again. On evaporating to a small volume, a thick red syrup is obtained from which the sodium salt begins to crystallize. If the extraction with ether has been successful in eliminating the greater part of the impurities a large part of the sodium oxyphenylarsonate can now be obtained by the addition of alcohol. More or less impurity always escapes the extraction and is present at this later stage as a sodium salt which is very soluble in water and prevents the crystallization of the other material. This difficulty may be very readily overcome by acidifying the syrup with dilute sulphuric acid until the solution is yellow and the impurities have separated as a thick brown oil. This tarry material can then be readily separated from the solution which on again neutralizing and evaporating completely solidifies. The crystalline solid thus obtained is a mixture of sodium sulphate and sodium oxyphenylarsonate. The sodium sulphate seems to facilitate greatly the crystallization of the products from concentrated solutions. As will be shown later, the presence of sodium sulphate does not interfere with the nitration of the organic molecule. The mixture may be readily crystallized from dilute alcohol. One recrystallization of the mixture containing 33% of sodium sulphate gave a product containing less than 4% of sodium sulphate. The salt when it separates from an aqueous or dilute alcoholic solution crystallizes with varying amounts of water which it readily loses on heating to 80°-100° C.

Method of Analysis of Mixtures of Sodium Oxyphenylarsonate and Sodium Sulphate.

The chief objection to working with the sodium salt rather than the free acid is that there is no simple criterion of purity, such as a melting point determination. This objection is particularly significant when the product is known to be contaminated with other substances (as sodium sulphate) and an exact amount must be taken for a subsequent step (as in the nitration). To circumvent this difficulty a method of analysis was devised. The procedure adopted resembles the bromine titration method for phenol determinations. When an aqueous solution of oxyphenylarsonic acid or its salts is treated with an excess of bromine water a precipitate is at once formed. On adding potassium iodide the excess bromine liberates iodine and any tribromphenol bromide also liberates bromine; the organic substance is thus all present as tribromphenol. The method actually employed was as follows: About a tenth of a gram of the substance dried at 100° C.: was weighed into a small glass stoppered flask and dissolved in a little water. Fifteen cubic centimeters of an approximately normal solution of bromine and potassium bromide was now run in from a burette. The flask was stoppered and shaken iseveral minutes. An excess of potassium odide was now added, the flask shaken again and the solution titrated with $\frac{N}{10}$ sodium thiosulphate. The bromine solution was compared with the thiosulphate before each determination. This method was rapid and sufficiently accurate for the work at hand; it was checked by an analysis of pure phenol. Several determinations on the same substance usually varied from each other by two or three per cent.

Nitration of the Crude Salt.

The mixture of sodium sulphate and sodium oxyphenylarsonate obtained as the crude product of the process just described can be readily nitrated. From the analysis of the dried mixture the equivalent amount of nitric acid can be readily calculated. This amount of nitric acid is mixed with an equal amount of sulphuric acid and employed in the nitration as described in the literature. The crude salt is dried at 100° C., finely powdered and slowly stirred into sulphuric acid kept at 0° C. The amount of sulphuric acid should be about half the weight of the salt used. The nitrating acids are now slowly introduced into the mixture which is well stirred and kept at 0° C. The temperature is then allowed to slowly rise to 10° C. and the product diluted with five times its volume of water, the nitro oxyphenylarsonic acid separating out on standing 24 hours.

By this procedure a mixture containing 29 per cent. of sodium sulphate was readily nitrated and pure nitro oxyphenylarsonic acid obtained in a 75 per cent. yield.

Summary.

1. The reaction between phenol and arsenic acid has been studied and the optimum condition for the production of oxyphenylarsonic acid determined. A yield of 20 per cent. can be obtained.

2. A method has been devised for isolating the product of this reaction in the form of its crystalline sodium salt contaminated with some sodium sulphate. The tarry material formed in the reaction can be wholly eliminated.

3. A rapid method has been found for analyzing such a mixture of sodium sulphate and sodium oxyphenylarsonate.

4. The sodium oxyphenylarsonate may be readily obtained pure by recrystallizing the crude salt from dilute alcohol.

5. The crude salt may be directly nitrated with the production of nitro oxyphenylarsonic acid in good yields.

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The Relation between the Mode of Synthesis and Toxicity of Arsphenamine and Related Compounds

By Walter G. Christiansen

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[Contribution from the Department of Pharmacology, Harvard Medical School.]

THE RELATION BETWEEN THE MODE OF SYNTHESIS AND TOXICITY OF ARSPHENAMINE AND RELATED COMPOUNDS.[1]

By Walter G. Christiansen.

Received June 21, 1921.

In the oldest and probably the most widely used method of preparing arsphenamine, 3-nitro-4-hydroxy-phenylarsonic acid is reduced by sodium hydrosulfite directly to arsphenamine base which is then converted into the dihydrochloride by solution in methyl-alcoholic hydrochloric acid and precipitated with ether. This procedure has led to wide variations in the toxicity of the product; some preparations kill at doses as low as 60 mg./kg., whereas others do not kill at 130 or 140 mg./kg. Believing that some condition or set of conditions controlled the toxicity, a detailed investigation of the arsphenamine synthesis was undertaken. The toxicity discussed in this paper is that described under Type II in a paper by Dr. Reid Hunt[2] and is quite different from that due to the presence of 3-amino-4-hydroxyphenyl-arsenious oxide or to the physical nature of the solution.

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[1] This is the fourth of a series of studies on the properties contributing to the toxicity of arsphenamine being made under a grant from the United States Interdepartmental Social Hygiene Board to the Harvard Medical School; the work is under the general

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The nitrohydroxy acid is obtainable by three commercially feasible processes,[3] and it was found that relatively toxic and nontoxic arsphenamine could be obtained from crude or purified nitro acid regardless of the method by which the latter was made. Moreover, the replacement of as much as 5% of the nitro acid by substances which might be present as impurities, *e. g.*, 3,5-dinitro-4-hydroxy-phenylarsonic acid, *o*-nitro-*p*-cresolarsonic acid, or a mixture of 3-nitro- and 5-nitro-2-hydroxy-phenylarsonic acids, caused only slight variations in the toxicity of the resulting arsphenamine. In this connection attention should be called to the fact that the presence of the dinitro acid, as an impurity, would lead to the formation of a tri-amino and not a tetra-amino arseno compound as has been suggested. This is a consequence of the formation of an unsymmetrical arseno compound in preference to two symmetrical ones when a mixture of two different arsonic acids is reduced. Previous investigators[4] have mentioned this, and work done in this laboratory is entirely in agreement with that of the others.[5]

Investigation of methods available for the conversion of the base into the dihydrochloride[6] revealed nothing which caused distinct variations in toxicity. In fact, when a sample of the base was converted half into the dihydrochloride by the methyl-alcohol—ether method and half into the dihydrosulfate by precipitation of the latter from a dilute solution of the base in aqueous hydrochloric acid with dil. sulfuric acid the two substances had identical toxicities. In another experiment, the dihydrochloride was dissolved in methyl alcohol and reprecipitated with ether

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direction of Dr. Reid Hunt, who is also responsible for the biological tests reported in this paper. Additional aid has been received from the Committee of the Permanent Charity Fund, Incorp.

[2] Hunt, *J. Am. Med. Assoc.*, 76, 854 (1921).

[3] For an outline of these syntheses see Lythgoe, *Chem. Age* (N. Y.), 28, 390 (1920).

[4] Bertheim, *Chem. Ztg.*, 38, 756 (1914); Karrer, *Ber.*, 49, 1648 (1916); Fargher, *J. Chem. Soc.*, 118, 865 (1920).

[5] The reduction of equivalent quantities of *p*-hydroxy-phenylarsonic acid and its mononitro or mono-amino derivative gave no acid insoluble arseno compound; the only substance obtained gave a hydrochloride which analyzed for mono-amino-dihydroxy-arsenobenzene hydrochloride. Also, the reduction of equivalent quantities of 3-nitro- or 3-amino-4-methoxy-phenylarsonic acid and 3-amino- or 3,5-dinitro-4-hydroxy-phenylarsonic acid gave no alkali-insoluble arseno compound. These results could be obtained only by the formation of an unsymmetrical molecule.

[6] Ehrlich and Bertheim, *Ber.*, 45, 756 (1912); Kober, THIS JOURNAL, 41, 442 (1919).

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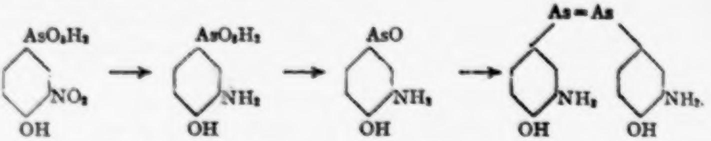
without any alteration in toxicity. Another portion was converted into the base by treating an aqueous solution with sodium carbonate and the toxicity of the base was equivalent to that of the original hydrochloride.

These results indicate that the toxicity of the arsphenamine is determined during the reduction of the nitrohydroxy acid to arsphenamine base and is not dependent upon the character or source of the nitro compound or upon the conversion of the base into the dihydrochloride.

Examination of the reaction by which arsphenamine base is obtained shows the presence of several known intermediates and the opportunities for undesired side reactions to occur.



At this point in the work the average tolerated dose of a large number of preparations made from the nitro compound by the standard method of reduction was 110 mg./kg.[7] and varied between 70 and 140 mg./kg. When the pure amino acid, from various sources, was reduced under the same set of conditions the arsphenamine consistently had a tolerated dose of 140–150 mg./kg. This figure agrees well with those obtained for arsphenamine prepared from the pure amino acid by other methods[8] and is probably as high as can be attained with any degree of regularity. Hydrosulfite reduction of the pure arsenious oxide gave a product tolerated in doses of approximately 130 mg./kg. It is evident from the wide variations encountered when the nitro acid is the starting material, from the consistency with which an excellent product may be secured by reducing the amino acid by the same method used for the nitro acid, and from the fact that the mechanism of the reaction is the same in both cases after the nitro group has been reduced, that the toxicity of the arsphenamine obtained by hydrosulfite reduction depends upon some variable process in the formation of the amino group. Later, when methods had been developed for the consistent production, from the nitro acid, of arsphenamine with a tolerated dose as low as 50–70 mg./kg., the application of these methods to the reduction of the pure amino acid gave a product with a tolerated dose of approximately 140 mg./kg.

That the toxicity of arsphenamine should be closely bound up with the reduction of the nitro group is not surprising when one considers the many intermediates and by-products encountered in the reduction of nitro compounds. When the quantities of reagents used in this reduction were varied no alterations were found in the toxicity of the resulting arsphenamine, but as soon as variations were made in the conditions under which the reaction took place marked variations in toxicity were obtained. Ultimately it was determined that the important factors are the degree to which high local concentrations of the nitro compound momentarily exist at the start of the reduction, the temperature at which the nitro group is reduced, and the speed at which the solution, after the reduction of the nitro group, is raised to 55°. When this point in the reaction is reached, the toxicity of the arsphenamine which will be produced has been settled. The procedure best suited for the development of low toxicity is very vigorous mechanical stirring while a cold solution of the nitro compound is slowly added to a cold solution of magnesium chloride and sodium hydrosulfite followed by rapid heating to 55°. Obviously the reverse conditions tend to develop high toxicity. That the degree of agitation affects the toxicity only at the time of reduction of the nitro group is shown by the fact that as soon as the color of the nitro group has been destroyed the rate of stirring can be increased to that used for the preparation of arsphenamine of low toxicity without decreasing the toxicity of the material.

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[7] The average tolerated dose of the arsphenamine of 6 manufacturers was found by Schamberg, Kolmer, and Raiziss, *Am. J. Med. Sci.*, **160,** 188 (1920), to be 105 mg./kg.

[8] Christiansen, This Journal, **42,** 2402 (1920); **43,** 370 (1921).

The influence of each of these conditions is shown in the following table. When nothing is specified it indicates that the importance of the condition had not been discovered and was only approximately constant in successive experiments. All experiments recorded here were conducted identically after 55° had been reached.

TABLE I.

INFLUENCE OF CONDITIONS OF PREPARATION UPON TOXICITY.

Rate of stirring.	Rate of addition of nitro solution.	Temp. of solutions.	Rate of heating.	Expt.	Average tol. dose.	Limit of tol. dose.	Average as content.
		°C.			Mg./kg.	Mg./kg.	%.
R[a]	..	..	..	10	110	100–120	30.27
S[b]	..	..	..	3	73	50–100	30.25
R	S	..	..	6	115	100–130	30.99
S	R	..	..	6	73	60–100	30.60
R	S	10	..	9	118	110–130[c]	30.96
S	R	30	..	9	79	60–90[c]	29.82
R	S	10	R	5	134	130–150[d]	31.15
S	R	30	S	2	55	50–60[d]	29.83

[a] R = Rapid.

[b] S = Slow.

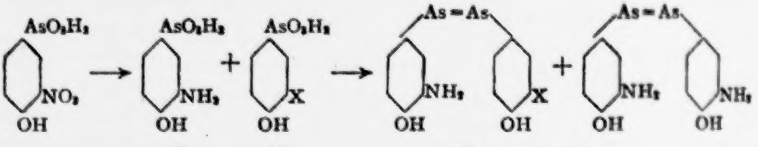
[c] This series includes preparations made: (a) from crude and recrystallized nitro acid made from phenol; (b) from recrystallized nitro acid made from aniline by the oxalyl method; (c) with different commercial brands of hydrosulfite; (d) by different methods of conversion of the base into the dihydrochloride.

[d] This series includes preparations made from crude nitro acid made from phenol and from aniline by the oxalyl method.

Since it has been established that the crucial part of the synthesis lies in the reduction of the nitro group, preliminary work has been done toward ascertaining what undesired secondary process takes place during this reaction. The nitro acid was reduced with hydrosulfite between −10° and 0, in order to slow down this very exothermic reaction and produce conditions similar to prolonged high local concentrations of the nitro compound in the presence of hydrosulfite. The crude amino acid, after isolation, was further reduced with hydrosulfite and yielded arsphenamine tolerated in doses of 120–130 mg./kg. However, when a small quantity of pure amino acid was added to the mother liquor from the crude amino acid separated above and the solution reduced with hydrosulfite, the arsphenamine obtained had a tolerated dose of about 53 mg./kg.; this is the average of 11 experiments in which the tolerated dose varied from 30 to 70. It is evident that the secondary reduction product remains for the most part in the solution when the crude amino acid is isolated. The small quantity of pure amino acid was added to the mother liquor in order that the secondary reduction product may unite, upon reduction, with a molecule of pure amino acid to form the unsymmetrical arseno compound since this is what must happen in the formation of arsphenamine where the ratio of the amino acid to the secondary product is large.

A number of experiments have been made with this solution apparently containing the secondary reduction product and work is now in progress toward the determination of the nature of this product.

The following explanation for the variations found in the toxicity of arsphenamine is suggested.



(I). (II). (III).

The toxicity of arsphenamine depends upon the quantity of (III) present, which in turn depends upon the amount of (II) formed at the beginning of the reaction and this is very variable. By regulation of the conditions as discussed above the formation of (II) can be accelerated or retarded but apparently not always entirely inhibited because the average of the best preparations from the nitro acid is below that of preparations from the amino acid. The success of the arsphenamine synthesis is due to the fact that (I) is the major and (II) the minor reduction product.

In order to verify this explanation and to see whether it could be applied to substances related to arsphenamine, mono-, tri-, and tetra- amino dihydroxy-arsenobenzenes were prepared from the nitro and amino acids.

In each case the products prepared by reduction of the amino aryl arsonic acids were less toxic than those prepared from the analogous nitro acids. Interesting biological observations on the effect of increasing the number of amino groups in the hydroxy-arsenobenzene have been made by Drs. Reid Hunt and G. P. Grabfield.[9]

In general the amino arseno compounds vary in toxicity according to the methods of preparation and are obtained in the purest form by reduction of amino arsonic acids. When the nitro acids serve as the starting material more toxic products result owing to the formation of secondary reduction products during the reduction of the nitro group.

The toxicity determinations were made by intravenous injection into white rats and the arsenic determinations by a modification of Lehmann's method.

Fargher and Pyman,[10] in a paper on the "Composition of Salvarsan," showed that arsphenamine contains two molecules of water of crystallization and small variable amounts of occluded methyl alcohol. In this laboratory 4 carefully prepared samples of arsphenamine base were found to contain the following percentages of arsenic: 37.33, 38.68, 37.78, 38.96; and one sample prepared by precipitation of an aqueous solution of the dihydrochloride with sodium carbonate contained 37.39%. The calculated percentage for $C_{12}H_{12}O_2N_2As_2$ is 40.98; for 1 H_2O, 39.06; for 2 H_2O, 37.32. Apparently water in variable amounts is firmly attached to the base when the latter forms and is not lost during the drying at room temperature or conversion into the dihydrochloride. If some phenomenon like this did not occur it would be hard to understand how a seemingly dry product when dissolved in anhydrous alcoholic solutions and precipitated with ether could obtain water of crystallization.

In the cases reported in this paper of compounds very closely related to arsphenamine the calculated and actual arsenic contents agree well if it is assumed that these substances also have 2 molecules of water of crystallization.

Experimental.

Reduction of 3-Nitro-4-hydroxy-phenylarsonic Acid to Arsphenamine.

A. To a solution of 5.3 g. of magnesium chloride hexahydrate in 130 cc. of water at 8°, 30 g. of sodium hydrosulfite is added and a cold (8°) solution of 2 g. of the nitro acid in 46 cc. of water containing 0.66 g. of sodium hydroxide is added gradually during 1–1.5 min. with very vigorous mechanical stirring. One g. of Superfiltchar[11] is added and the mixture is heated to 40° as rapidly as possible and then filtered.[12] The clear colorless filtrate is rapidly heated with stirring to 55° and maintained at 55–60° for 90 minutes. The base is removed by filtration and, after washing and drying *in vacuo* over caustic soda, is converted into the dihydrochloride by dissolving in 7.5 cc., of absolute methyl alcohol containing the calculated amount of dry hydrogen chloride filtering and pouring into 10 volumes of ether[13] cooled to 0–5°. The precipitate is washed with ether and dried *in vacuo* over caustic soda. Yield, 1.2 g. of yellow powder easily soluble in water. Five experiments gave a product which had an average tolerated dose of 130 mg./kg. and arsenic content of 31.15%; that calculated for $C_{12}H_{14}O_2N_2Cl_2As_2.2H_2O$ is 31.58%.

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[9] These observations will be published in a later paper.

[10] Fargher and Pyman, *J. Chem. Soc.*, **117**, 370 (1920).

[11] A high grade of vegetable decolorizing carbon, a supply of which was placed at our disposal by the Industrial Chemical Co., N. Y.

[12] Filtering at this point as suggested by Kober, Ref. 6, is of great assistance since it renders the subsequent conversion of the base into the hydrochloride much easier. The carbon helps to remove the more finely divided insoluble matter which often tends to pass through the filter but does not seem to have any bearing upon the toxicity of the arsphenamine.

B. The quantities are the same as in A., but the solutions are brought to 30° before mixing, the stirring is very slow when the hydrosulfite and nitro solution are added, and the latter is added in 5 seconds. As soon as the color due to the nitro group disappears the rate of stirring is increased to that used in A and as soon as the hydrosulfite has completely dissolved the material is filtered.[14] The filtrate is heated to 55° during 40 minutes with vigorous stirring and maintained at 55–60° for 1.5 hours. The remaining part of the experiment is like A. The product of 2 experiments gave an average tolerated dose of 55 mg./kg., and arsenic content of 29.82%.

Reduction of 3-Amino-4-hydroxy-phenylarsonic Acid.

In this process there is no particular need of careful attention to the details at the beginning as no reaction occurs until the solution has become hot.

To a solution of 5.3 g. of magnesium chloride hexahydrate in 130 cc. of water, 25 g. of sodium hydrosulfite is added with stirring and then a solution of 1.8 g. of the pure amino acid in 40 cc. of water and 5 cc. of saturated sodium carbonate[15] solution. The solution is heated to 30°, filtered, and the experiment is completed as in the other cases. Yield, 1.46 g. of yellow powder easily soluble in water. Four experiments gave a product having an average tolerated dose of 140–150 mg./kg. and arsenic content of 31.55%.

Reduction of the Nitro Acid to the Amino Acid.

A solution of 2 g. of the nitro-hydroxy-phenylarsonic acid in 15 cc. of water and 1.5 cc. of sodium hydroxide (sp. gr. 1.295) is cooled in a freezing mixture (−16°) with rapid stirring. At about −2° the sodium salt of the nitro acid separates as fine crystals, with the evolution of heat. When the mush is at about −3°, 5 g. of hydrosulfite is added, the heat generated is partly absorbed as the nitro compound redissolves and if the freezing mixture is efficient the temperature can be kept below 0°. After the color of the nitro group has disappeared the temperature falls to −10°, and the amino acid starts to separate. At the end of ½ hour 0.6 cc. of glacial acetic acid is added and the material is left in the ice box for 1 hour. After filtration, washing, and air-drying, 1.2 g. of the crude amino acid is obtained.

The mother liquor is treated with 1.5 cc. of sodium hydroxide, and a solution of 0.5 g. of pure amino acid in 10 cc. of water and 1.5 cc. of saturated sodium carbonate solution is added. This solution is added to one of 2.6 g. of magnesium chloride hexahydrate in 20 cc. of water to which 11 g. of hydrosulfite has been added. The reduction and conversion of the base into the dihydrochloride is carried out as in the case of the pure amino acid. The average of the products from 9 experiments is 0.2 g. of brownish-yellow powder which dissolves very readily in water and is tolerated in doses of 53 mg./kg.

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[13] Absolute ether is unnecessary.

[14] Carbon is not necessary as the fine particles coagulate rapidly at this temperature and are easily filtered out.

[15] Sodium carbonate is used in place of hydroxide as the aminohydroxy acid oxidizes much less rapidly in the carbonate solution.

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Reduction of the crude amino acid by the method used for the pure acid gives 1.3 g. of arsphenamine with a tolerated dose of 120 mg./kg. or above and an arsenic content of 31.05%.

3-Amino-4,4′-dihydroxy-arsenobenzene Hydrochloride.

I. A mixture of 0.9 g. of anhydrous monosodium *p*-hydroxy-phenylarsonate and 0.9 g. of 3-amino-4-hydroxy-phenylarsonic acid is reduced by the method used in preparing arsphenamine from the amino acid. One and one-tenth g. of base is obtained which is completely soluble in acids. When a filtered methyl-alcoholic solution of the hydrochloride is poured into ether an oily substance separates which after decantation of the ether is dissolved in water and precipitated by pouring into 1:1 hydrochloric acid. After filtering, washing with acid and drying *in vacuo* over caustic soda, 0.7 g. of reddish-orange powder is secured which is soluble in water and is tolerated in doses above 130 mg./kg.

Analysis. Calc. for $C_{12}H_{12}O_2NClAs_2.2H_2O$: As, 35.43. Found: 35.39.

II. A mixture of 0.9 g. of monosodium *p*-hydroxy-phenylarsonate and 1 g. of 3-nitro-4-hydroxy-phenylarsonic acid is reduced by Method A used to prepare arsphenamine from the nitro acid but without using carbon, without particularly rapid heating to 55°, and filtering at 30° instead of 40°.[16] One g. of tan colored base is obtained. By dissolving it in 30 cc. of water and 0.3 cc. hydrochloric acid (sp. gr. 1.19) and pouring the filtered and cooled solution into 60 cc. of cold 1:1 hydrochloric acid the hydrochloride is precipitated. Continuing as in Procedure I one obtains 0.9 g. of reddish-orange solid, the tolerated dose of which is 120 mg./kg., and whose arsenic content is 36.12%.

III. The mixture of nitrohydroxy and hydroxy acids is reduced by Method B for the preparation of arsphenamine from the nitro acid but the filtered solution is not heated particularly slowly to 55°. The hydrochloride is obtained as above. Yield: 0.8 g. of reddish-orange solid which is tolerated in doses of 80 mg./kg. and has an arsenic content of 35.98%.

In each of the following experiments the arseno base is converted into the hydrochloride by the methyl alcohol–ether method used for arsphenamine.

3,5,3′-Tri-amino-4,4′-dihydroxy-arsenobenzene Trihydrochloride.

I. A mixture of 0.9 g. of 3-amino-4-hydroxy-phenylarsonic acid and 0.95 g. of 3,5-diamino-4-hydroxy-phenylarsonic acid is reduced by the method used to reduce the mono-amino acid to arsphenamine. Yield, 1.5 g. of yellow powder which is very readily soluble in water and is tolerated in doses of 80 mg./kg.

Analysis. Calc. for $C_{12}H_{18}O_2N_3Cl_3As_2.2H_2O$: As, 28.49. Found: 28.68.

II. A mixture of 1 g. of 3-nitro-4-hydroxy-phenylarsonic acid and 1.17 g. of 3,5-dinitro-4-hydroxy-phenylarsonic acid is reduced as in Preparation II of the mono-amino dihydroxy-arsenobenzene. Yield, 1.2 g. having a tolerated dose of 80 mg./kg. and an arsenic content of 28.23%.

III. The above mixture of mono- and dinitro acids is reduced as in Preparation III of the mono-amino-dihydroxy-arsenobenzene. Yield, 1.15 g.; tolerated dose, 60 mg./kg.; arsenic content, 28.70%.

3,3′,5,5′-Tetra-amino-4,4′-dihydroxy-arsenobenzene Tetrahydrochloride.

In the following experiments only that portion of the base soluble in methyl alcoholic hydrochloric acid[17] was used.

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[16] This work was done before the influence of the rate of heating had been investigated.

[17] Raiziss and Gavron, This Journal, 43, 582 (1921).

I. One and nine-tenths g. of 3,5-diamino-4-hydroxy-phenylarsonic acid is reduced by the method used in reducing the mono-amino acid to arsphenamine. Yield, 0.6 g. yellow powder which is very easily soluble in water and which is tolerated in doses of 70 mg./kg.

Analysis. Calc. for $C_{12}H_{18}O_2N_4Cl_4As_2.1H_2O$: As, 26.78; calc. for $2H_2O$: 25.95. Found: 27.29.

II. Two and three-tenths g. of 3,5-dinitro-4-hydroxy-phenylarsonic acid is reduced as in Preparation II of the mono-amino analog. Yield, 0.4 g.; tolerated dose, questionable at 50 mg./kg.; arsenic content, 25.55%.

III. The dinitro acid is reduced as in Preparation III of the mono-amino analog. Yield, 0.4 g.; tolerated dose, 50 mg./kg.; arsenic content, 26.10%.

Summary.

1. It has been proved that the toxicity of arsphenamine prepared by hydrosulfite reduction of 3-nitro-4-hydroxy-phenylarsonic acid is determined during the reduction of the nitro group.

2. By altering the conditions under which the nitro group is reduced the toxicity of the arsphenamine can be made to fluctuate between wide limits. Two sets of conditions have been determined which enable one to produce arsphenamine of widely different toxicity; one set results in a tolerated dose of 130 mg./kg. and the other of 55 mg./kg.

3. For the consistent production of arsphenamine of the lowest toxicity it is advisable to use pure 3-amino-4-hydroxy-phenylarsonic acid as the starting material.

4. It appears to be general that the amino aryl arseno compounds vary in toxicity with the method of preparation and are obtained in the least toxic condition by the reduction of amino arsonic acids. Due to the formation of by-products during the reduction of the nitro group, more toxic products result if the nitro acids serve as the starting material. These secondary reduction products unite with the amino acid in the subsequent reduction of the arsonic acid group to form unsymmetrical arseno compounds.

I take this opportunity to thank Dr. Reid Hunt for his kindness in determining the toxicity of the large number of samples involved in this work, and Miss Helen A. Pratt for her careful work in preparing some of the intermediates used.

BOSTON, MASSACHUSETTS.

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PLAINTIFF'S EXHIBIT No. 682.

Offered and admitted in evidence during taking of testimony of Dr. George W. McCoy, a witness on behalf of United States, in Chambers, and annexed to his deposition so taken.

PLAINTIFF'S EXHIBIT No. 683.

Offered and admitted in evidence during taking of testimony of Dr. George W. McCoy, a witness on behalf of United States, in Chambers, and annexed to his deposition so taken.

UNITED STATES PUBLIC HEALTH SERVICE
RUPERT BLUE, SURGEON GENERAL

QUALITATIVE AND QUANTITATIVE TESTS FOR ARSPHENAMINE AND NEO-ARSPHENAMINE

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Some Qualitative and Quantitative Tests for Arsphenamine (3, 3'-Diamino-4, 4'-Dioxy-Arsenobenzene Dihydrochloride) and Neo-Arsphenamine (Sodium-3, 3'-Diamino-4, 4'-Dihydroxy-Arsenobenzene-Methanal-Sulphoxalate).[1]

By C. N. Myers, Organic Chemist, and A. G. DuMez, Technical Assistant, Hygienic Laboratory, United States Public Health Service.

Previous to the year 1914, all of the arsphenamine (salvarsan) and neo-arsphenamine (neosalvarsan) on the market was manufactured by a single German firm under the supervision of Paul Ehrlich, one of the patentees. Naturally the products were fairly uniform in their composition and properties.

As a result of the present war in Europe, the protection afforded these products in the allied countries, through licenses or patents, has been temporarily withdrawn, and they are now being manufactured in England, France, Japan, Canada, and the United States.

Examinations made by the authors, as well as evidence presented by clinicians (Martin and others, 1916), have revealed the fact that the products of different manufacturers appearing on the market in this country are not all uniform with respect to either their chemical or their physiological properties. Even the last of the German supplies received are stated to be more toxic than the products obtained before the beginning of hostilities in Europe (Ormsby and Mitchell, 1916).

Tentative standards for these preparations (arsphenamine and neo-arsphenamine) have been adopted by the Federal Trade Commission on the recommendation of the United States Public Health Service, but these do not appear to meet all exigencies. It is for this reason and for the purpose of better defining the properties of good preparations that the following qualitative and quantitative tests have been worked out and compiled.

Arsphenamine—Physical Properties.

Appearance: Arsphenamine is a pale yellow, microcrystalline, hygroscopic powder very unstable in the air. When properly dried, it is free from lumps.

Odor: The pure product is odorless.[2]

Taste: It has a sour astringent taste.

Solubility: Arsphenamine is soluble in water, 1 to 5 parts, methyl alcohol, 1 to 3 parts, and ethyl alcohol, 1 to 12 parts (Wilcox and

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[1] Reprint from the Public Health Reports, vol. 33, No. 25, June 21, 1918, pp. 1003-1018.

[2] Commercial samples frequently have the odor of ether due to the incomplete removal of this solvent which is used in precipitating and washing the product.

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Webster, 1916). It is readily soluble in ethylene glycol and glycerin, but only slightly soluble in glacial acetic acid, acetone, ether and concentrated hydrochloric acid (Ehrlich and Bertheim, 1912).

The aqueous solution is greenish-yellow[1] in color and reacts strongly acid to litmus.

Moisture content: When dried to constant weight in an atmosphere of dry hydrogen at 105° C., arsphenamine should lose not more than 7.6 per cent of its weight, which corresponds to the loss of 2 molecules of water of crystallization (Gaebel, 1911).

Arsphenamine—Chemical Properties.

Behavior toward acids: Dilute mineral acids, with the exception of dilute sulphuric acid, have no noticeable effect on aqueous solutions of arsphenamine[2] (distinction from *neo-arsphenamine*, which yields a precipitate with all dilute mineral acids).

The addition of dilute sulphuric acid, however, produces a yellowish-white precipitate.[3]

The addition of any of the concentrated mineral acids, with the exception of phosphoric, to an aqueous solution of arsphenamine causes the formation of a precipitate (distinction from *neo-arsphenamine*, which is precipitated by phosphoric acid).

In the case of concentrated nitric acid, the precipitate dissolves on the addition of an excess of acid, yielding a red solution.

Acetic acid (36 per cent) produces no noticeable effect when added to an aqueous solution of arsphenamine (distinction from *neo-arsphenamine*, which yields an orange-yellow precipitate on heating the liquid).

Carbon dioxide immediately precipitates arsphenamine from aqueous solutions.

Behavior toward alkalies: The addition of sodium hydroxide test solution to an aqueous solution of arsphenamine produces a precipitate which dissolves in an excess of the reagent.[4]

Solutions of barium and calcium hydroxides also yield precipitates.

The alkali carbonates produce precipitates which are not soluble in an excess of the reagent.

Behavior toward oxidizing agents: The addition of chlorine or bromine water, ferric chloride, or chromic acid to an aqueous solution of arsphenamine causes the liquid to become red or brownish red in color.

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[1] The brownish-yellow or brown color, sometimes observed in solutions prepared from commercial samples, is thought to be an indication of the presence of oxidation products or other impurities.

[2] For carrying out the above tests, or those which follow, a 1 in 1,000 aqueous solution of the product was used, unless otherwise mentioned.

All of the test solutions employed were made according to the U. S. P. IX, unless differently stated.

[3] Precipitation also occurs on the addition of sulphates.

[4] Precipitation first begins when 1 mol of sodium hydroxide has been added for each mol of arsphenamine in solution. If the addition of sodium hydroxide is continued until precipitation is complete, a further addition of alkali will cause the precipitate to go into solution as the phenolate (Ehrlich and Bertheim, 1912).

Behavior toward general alkaloidal reagents: An aqueous solution of arsphenamine slowly reduces gold and platinic chloride test solutions in the cold, yielding characteristic precipitates. Reduction is hastened by heating.

Mercuric chloride test solution produces a light-yellow colored precipitate which becomes white on heating.

Mayer's reagent gives a heavy, orange-yellow precipitate.

Picric acid test solution produces a copious yellow precipitate (distinction from *neo-arsphenamine*, aqueous solutions of which become only slightly turbid on the addition of picric acid test solution).

Phosphotungstic acid test solution [1] produces a dirty gray colored precipitate, insoluble in an excess of the reagent, but which dissolves upon the addition of sodium carbonate, or ammonia water, yielding a deep blue colored solution.

Phosphomolybdic acid test solution gives a similar color reaction if the liquid is made acid with hydrochloric acid after the addition of the alkali (Gaebel, 1911b).

Behavior toward other reagents: The addition of a freshly prepared solution of ferric chloride and potassium ferricyanide to an aqueous solution of arsphenamine immediately produces a copious precipitate of Prussian blue.

Nessler's reagent is instantly reduced.

The addition of silver nitrate test solution first causes a yellow color to appear, then the formation of a gelatinous precipitate which changes to a black powder on heating. The black precipitate is soluble in dilute nitric acid.

Millon's reagent gives a copious yellow precipitate.

If a drop of copper sulphate solution (4 in 100) be added to 5 cubic centimeters of an aqueous solution of salvarsan (1 in 1,000), to which has been added 0.5 cubic centimeter of hydrogen dioxide solution and 0.5 cubic centimeter of ammonia water, an intense bluish-green color will develop. If the blue solution is poured into alcohol (90 per cent), a blue precipitate, which can be separated by centrifugation, will be obtained (Denigès and Labat, 1911).

To 2 or 3 cubic centimeters of an aqueous solution of arsphenamine (1 in 1,000) add 3 or 4 drops of dilute hydrochloric acid (an amount sufficient to cause the disappearance of most of the yellow color), cool the solution by holding the test tube in ice water and add 3 or 4 drops of a solution of sodium nitrite (5 in 1,000). This results in the formation of a diazo compound having a greenish-yellow fluorescence (distinction from *neo-arsphenamine*, which forms a brown solution).

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[1] The phosphotungstic acid solution used in the above test was prepared according to the method of Folin and Denis (1912).

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If a small portion of the solution containing the diazo compound be added drop by drop to an alcoholic solution of α-naphthylamine hydrochloride, a beautiful violet color will develop (Gaebel, 1911b).

With an alcoholic solution of β-naphthylamine hydrochloride, a light-brown color develops (distinction from *atoxyl,* which yields a red-colored solution; Wilcox and Webster, 1916).

If some of the diazotized solution be added to a freshly prepared solution of resorcinol (1 part in 20 parts of a 10 per cent sodium hydroxide solution), a deep red color will develop (Abelin, 1911).

The direct addition of Ehrlich and Pauly's (1904) diazo reagent to an aqueous solution of arsphenamine produces a brownish-red color.

Tests for arsenic: A positive test for arsenic is obtained by applying the Reinsch test.

The Marsh test gives positive results if the arsphenamine is first decomposed by oxidation with nitric and sulphuric acids and the resulting solution reduced by the addition of potassium metabisulphite (Wilcox and Webster, 1916).

Under the foregoing conditions, the Gutzeit's test also gives positive results.

The biological test with *Penicillium brevicaule,* carried out according to the method of Abel and Buttenberg, gives the characteristic garlic odor (Gaebel, 1911b).

Tests for impurities: An aqueous solution of arsphenamine yields no precipitate with hydrogen sulphide, even after the addition of hydrochloric acid and warming (absence of *inorganic arsenic compounds*).

If 4 cubic centimeters of sodium acetate test solution are added to 5 cubic centimeters of an aqueous solution of arsphenamine (1 in 10), the mixture heated for a few minutes and the precipitate removed by filtration, the filtrate should not yield a precipitate within 12 hours on being made alkaline with 3 cubic centimeters of ammonia water and the addition of magnesia mixture (absence of *inorganic arsenic compounds,* Moeller and Thoms, 1914).

If about 0.1 gram of arsphenamine be placed in a test tube, a small quantity of zinc dust and some dilute hydrochloric acid added,[1] and the mouth of the tube covered with a piece of filter paper moistened with a 5 per cent solution of cadmium chloride, the paper should not be stained yellow within a few minutes (absence of *sulphur compounds*).[2]

Dissolve exactly 1.0 gram of arsphenamine in 10 cubic centimeters of methyl alcohol contained in a 100 cubic centimeter volumetric flask. Dilute the solution with 75 cubic centimeters of distilled water, add 1.5 grams of precipitated calcium carbonate, and shake to precipitate the salvarsan base. Dilute with distilled water to exactly 100 cubic centimeters and filter. To exactly 50 cubic centimeters of the filtrate add 75 cubic centimeters of water, 5 cubic centimeters of N/1 hydrochloric acid volumetric solution, and titrate with N/20 iodine volumetric solution. The amount of iodine volumetric solution consumed, expressed in cubic centimeters, represents the percentage of *amino-oxy-phenyl-arsenoxide* present in the material. The amount of the oxide present in good products varies from 0.5 to 0.8 per cent [1] (Ehrlich and Bertheim, 1912).

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[1] A drop of platinic chloride test solution may be added to start the reaction.

[2] Arsinsulphide and Arsinsesquisulphide have been suggested as possible impurities in arsphenamine (Schamberg, Kolmer, and Raizies, 1917).

Most of the commercial samples of arsphenamine examined in this laboratory gave a positive test for sulphur by the method described above.

Neo-Arsphenamine—Physical Properties.

Appearance: Neo-arsphenamine is an orange-yellow, microcrystalline powder which changes rapidly in the air, becoming dark brown in color.

Odor: The pure preparation is odorless.[2]

Taste: It has a taste somewhat resembling that of garlic.[3]

Solubility: Neo-arsphenamine is readily soluble in water or glycerin, but only slightly soluble in methyl alcohol, ethyl alcohol, acetone, and ether.

The aqueous solution, when freshly prepared, is yellow in color and reacts neutral toward litmus. The solution rapidly becomes brown on exposure to the air.

Neo-Arsphenamine—Chemical Properties.

Behavior toward acids: Dilute as well as concentrated mineral acids yield precipitates with an aqueous solution of neo-arsphenamine. Precipitation does not occur immediately, but is first noticeable after several minutes (distinction from *arsphenamine*, which is not precipitated by dilute mineral acids or concentrated phosphoric acid, but yields a precipitate immediately with concentrated hydrochloric, sulphuric, and nitric acids).

The addition of acetic acid (36 per cent) to an aqueous solution of neo-arsphenamine yields a yellow colored precipitate when the liquid is heated (distinction from *arsphenamine*, which is not precipitated).

Behavior toward alkalies: The addition of sodium hydroxide test solution to an aqueous solution of neo-arsphenamine produces no noticeable effect (distinction from *arsphenamine*, a solution of which yields a precipitate).

Solutions of barium and calcium hydroxides yield turbid solutions or faint precipitates.

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[1] The amount of oxide found in the commercial samples examined in this laboratory varied from 0.5 to 2.8 per cent.

[2] Commercial samples sometimes have an odor of garlic, due apparently to slight decomposition.

[3] Commercial samples frequently have a saline taste, probably due to the presence of sodium chloride which is said to be used as a diluent for products high in arsenic content.

Solutions of the alkali carbonates do not produce precipitates (distinction from *arsphenamine*).

Behavior toward oxidizing agents: Similar to the reactions with *arsphenamine*.

Behavior toward general alkaloidal reagents: Similar to the reactions with *arsphenamine*, except that the precipitate with picric acid test solution develops slowly and is relatively small in amount.

Mayer's reagent does not yield a precipitate until the solution has been made acid with dilute hydrochloric acid (distinction from a solution of *arsphenamine*, which yields a precipitate on the direct addition of the reagent).

Behavior toward other reagents: The behavior of an aqueous solution of neo-arsphenamine toward a freshly prepared solution of ferric chloride and potassium ferricyanide, silver nitrate test, and Nessler's reagent is similar to that described under *arsphenamine*.

Millon's reagent yields a copious brown-colored precipitate.

If 5 cubic centimeters of dilute hydrochloric acid be added to 10 cubic centimeters of an aqueous solution of neo-arsphenamine (1 in 100) and the mixture heated, the irritating odor of sulphur dioxide will be developed (New and Nonofficial Remedies, 1917).

If about 0.1 gram of neo-arsphenamine be placed in a test tube, a small quantity of zinc dust and some dilute hydrochloric acid added and the mouth of the tube covered with a piece of filter paper moistened with a 5 per cent solution of cadmium chloride, the paper will be stained yellow within a few minutes (distinction from *arsphenamine*).

If 5 cubic centimeters of an aqueous solution of neo-arsphenamine be boiled with 1 cubic centimeter of dilute hydrochloric acid, a violet color will develop on the addition of a few drops of Schiff's reagent [1] (distinction from *arsphenamine*, Denigès and Labat, 1913).

The diazotized solution [2] of neo-arsphenamine gives color reactions with α-naphthylamine hydrochloride and resorcinol similar to those described under *arsphenamine*. With β-naphthylamine hydrochloride, a brownish-red color develops.

Tests for arsenic: The reactions are similar to those noted under *arsphenamine*.

Tests for impurities: An aqueous solution of neo-arsphenamine [3] yields no precipitate on passing in hydrogen sulphide gas (absence of *inorganic arsenic compounds*).

If 5 cubic centimeters of acetic acid (36 per cent) be added to 5 cubic centimeters of an aqueous solution of neo-arsphenamine, the mixture heated a few minutes and the precipitate removed by filtration, the filtrate should not yield a precipitate within 12 hours on the addition of an excess of ammonia water and some magnesia mixture (absence of *inorganic arsenic compounds*).

---

[1] By boiling with hydrochloric acid, the methylene group of the neo-arsphenamine is detached and oxidized to formic aldehyde.

[2] In diazotizing the solution, add the sodium nitrite solution first, then the hydrochloric acid in order to avoid precipitation.

[3] Hydrochloric acid should not be added, as acids produce a precipitate.

Arsphenamine and Neo-Arsphenamine—Quantitative Determination of Arsenic.

The methods for the quantitative determination of arsenic in organic compounds, described in the literature, are both numerous and varied in their manner of execution. Most of them, however, are more or less complicated and are, therefore, not suitable for use in routine work where the number of samples of material to be analyzed is large. They involve, for example, such processes as fusion (methods of La Coste and Michaelis, 1880; of Pringsheim, 1904; of Little, Cahen, and Morgan, 1909; and of St. Warunis, 1912); or distillation (methods of Schneider and Fyfe, 1906; of Jannasch and Seidel, 1910; and of Bohrisch and Kürschner, 1911); and the subsequent estimation of the arsenic by gravimetric or volumetric methods.

Among the simpler and more practical procedures, which have received special mention in connection with the estimation of the arsenic in arsphenamine or neo-arsphenamine, are the methods of Gaebel (1911c) and Denigès and Labat (1911), in which an aqueous solution of the material is titrated directly with iodine or potassium permanganate volumetric solution. In this class are, likewise, the methods of Norton and Koch (1905), Lehmann (1912), and Ewins (1916). In these methods the arsenic is, first, either oxidized or reduced by digesting the material with suitable reagents and then estimated by titration in one of the usual ways.

For the purpose of determining which one of these simpler methods is the most accurate, and can be depended upon to give the best results in the hands of different operators, a few preliminary analyses were carried out. The results obtained indicated that the methods of Gaebel, Ewins, and Lehmann offered the greatest possibilities for fulfilling these conditions.[1] A large number of samples of both arsphenamine and neo-arsphenamine were, therefore, subjected to analysis by these methods. For comparison, a number of gravimetric determinations were also made. Detailed descriptions of these methods, together with the data obtained in the analyses, follow:

Gaebel's titration method: Weigh out accurately about 0.2 gram of arsphenamine and dissolve it in 100 cubic centimeters of distilled water contained in an Erlenmeyer flask. Add 1 cubic centimeter of starch test solution and titrate with N/20 iodine volumetric solution to a permanent blue color.[1] One cubic centimeter of N/20 iodine volumetric solution is equivalent to 0.001875 gram of arsenic.

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[1] The method of Denigès and Labat was eliminated from the field of possibilities, as the end point obtained in the titration is too indefinite to yield accurate results in the hands of different analysts.

The Ewins method was given preference over that of Norton and Koch, as it is essentially an improved modification of the latter.

Ewins's method: Weigh out accurately 0.1 to 0.2 gram of the substance and transfer it to a long-necked Kjeldahl flask of 300 cubic centimeters capacity. Add 10 grams of potassium sulphate and 0.2 to 0.3 gram of starch (after a little experience the amount can be sufficiently accurately estimated and need not be weighed). Wash in any solid adhering to the neck of the flask with a little water. Cautiously add 20 cubic centimeters of concentrated sulphuric acid and heat the mixture on wire gauze over a Bunsen flame. As soon as the contents of the flask begin to froth, lower the flame somewhat until the frothing diminishes, which generally takes place within 10 to 15 minutes from the commencement of heating. Again turn on the flame and continue heating until the liquid becomes colorless or of a very pale yellow tint. Shake the flask once or twice during digestion, in order to wash down any material adhering to the walls. The time required for the complete oxidation of the material is usually about 4 hours.

After the liquid has cooled, transfer it quantitatively to an Erlenmeyer flask of 350 cubic centimeters capacity and make it just distinctly alkaline by the addition of sodium hydroxide solution (10 to 12N). A small piece of litmus paper added to the contents of the flask serves as the most convenient indicator. Cool the flask and its contents to about 30° to 40° C. and add concentrated sulphuric acid, drop by drop, until the solution is again distinctly acid (care should be taken that no drops of sodium hydroxide solution remain on the inside of the neck of the flask, which should be well washed down with water, or the flask may be stoppered and shaken). Now add from a burette a saturated solution of sodium hydrogen carbonate, until the solution becomes distinctly alkaline and an excess of 5 to 10 cubic centimeters of the reagent is present.

To this solution, add 2 cubic centimeters of a 1 per cent solution of starch, and titrate the arsenious acid present with N/20 iodine volumetric solution. Toward the end of the reaction, the solution usually develops a reddish-violet tint, which fades on standing. The end-point, however, is reached when the solution acquires the characteristic deep blue color given by free iodine in the presence of starch. From the amount of iodine consumed, the percentage of arsenic present is easily calculated. One cubic centimeter of N/20 iodine volumetric solution is equivalent to 0.001875 gram of arsenic.

Gravimetric method: Weigh out accurately about 0.2 gram of the product and transfer it to a Kjeldahl flask of 300 cubic centimeters capacity. Add 1.5 grams of a mixture of equal parts of sodium nitrate and potassium nitrate, 200 cubic centimeters of distilled water and 5 cubic centimeters of concentrated sulphuric acid. Heat the mixture slowly under a hood to allow the escape of the nitric acid fumes. Add a small quantity of concentrated or fuming nitric acid from time to time, until oxidation is completed, which is generally indicated by the disappearance of the yellow color.[1] Continue the digestion until the volume of the liquid has been reduced to about 15 cubic centimeters,[2] cool, add 100 cubic centimeters of distilled water and again concentrate to about 15 cubic centimeters, in order to remove the last trace of nitric acid. If the product has been completely oxidized and all traces of nitric acid have been removed, the liquid will be water clear at this point. After cooling, cautiously neutralize the liquid with strong ammonia water and transfer it to a 300 cubic centimeter beaker, using a small quantity of distilled water for rinsing the flask.

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[1] As the greenish-yellow color of the arsphenamine solution becomes less and less pronounced and finally vanishes on the addition of iodine solution, the titration may also be carried out without the use of an indicator.

To the solution, which will now contain all of the arsenic in the form of arsenate, add 10 to 20 cubic centimeters of 2N ammonium chloride solution for every 50 cubic centimeters of the liquid, then 20 cubic centimeters of magnesia mixture, drop by drop, with constant stirring. Finally add an amount of strong ammonia water, equal to one-third the volume of the liquid, and 2 cubic centimeters of alcohol. After allowing the mixture to stand for 12 hours, collect the precipitate, with the aid of a suction pump, in a Gooch crucible, which has been prepared as follows:

Cover the bottom of the crucible with a thin layer of asbestos, which has previously been washed with ammonia water (2.5 per cent), and dry in an oven at 110° C. Remove the crucible from the oven and place it in a larger porcelain crucible, fitted with an asbestos ring so that the sides and bottom of the two will not touch, put on the cover and heat slowly over an open flame until there is a light red glow on the outer crucible (Treadwell-Hall, 1905). Remove the Gooch crucible, cool in a desiccator and weigh.

After the precipitate has been collected, dry the crucible as described above, but add a crystal of ammonium nitrate before heating over the open flame. Finally cool the crucible and weigh. The weight of the precipitate multiplied by 0.48275 represents the amount of arsenic present in the sample taken for analysis.

Lehmann's method: Weigh out accurately about 0.2 gram of the substance and transfer to a 200 cubic centimeter Erlenmeyer flask.[3] Add 1 gram of finely powdered potassium permanganate and 5 cubic centimeters of dilute sulphuric acid and allow the mixture to stand for about 10 minutes. Rotate the flask frequently during this time to insure the complete mixing of the materials. Now add 10 cubic centimeters of concentrated sulphuric acid, in portions of about 2 cubic centimeters, rotating the flask after each addition.

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[1] Sometimes the liquid may still have a pale yellow tint.

[2] Concentration should be effected in such a manner that the formation of sulphuric acid fumes in large quantities will be avoided.

[3] An Erlenmeyer flask, fitted with a glass stopper, is most suitable for this purpose.

When the reaction has ceased, add a quantity (about 5 to 7 cubic centimeters) of hydrogen dioxide solution sufficient to dissolve all of the brown precipitate. Toward the end, the hydrogen dioxide solution should be added, drop by drop, to avoid any great excess. Dilute the liquid with 25 cubic centimeters of distilled water and boil over wire gauze for about 10 minutes, or until the excess of hydrogen dioxide has been completely removed.[1]

After dilution with 50 cubic centimeters more of distilled water, cool the solution and add 2.5 grams of potassium iodide. Stopper the flask tightly and allow it to stand in a cool place for 1 hour. Finally titrate the liberated iodine with N/10 sodium thiosulphate volumetric solution without the use of starch test solution as an indicator.[2] One cubic centimeter of N/10 sodium thiosulphate solution is equivalent to 0.003748 gram of arsenic.

TABLE 1.—*Arsenic content of commercial samples of arsphenamine.*

Manufacturer.	Name of product.	Lot number.	Per cent of arsenic.			
			Direct titration with N/20 iodine V. S.	Ewins's method.	Gravimetric method.	Lehmann's method.
Dermatological Research Laboratories, Philadelphia, Pa.	Arsenobenzol	630	....	30.06	....	....
Do	do	652	....	29.61	....	....
Do	do	721	....	29.11	....	....
Do	do	740	29.92	30.33	31.58	31.32
Do	do	750	29.24	....	31.16	31.34
Do	do	755	29.34	29.26	31.13	30.94
Do	do	757	29.43	29.90	....	....
Do	do	767	29.53	29.20	....	....
Do	do	788	29.38	29.27	....	....
Do	do	791	29.19	29.26	....	....
Do	do	799	29.29	29.69	31.52	31.40
Do	do	809	29.95	29.59	30.87	30.46
Do	do	826	....	29.20	....	....
Do	do	841	29.28	29.19	31.54	31.38
Do	do	845	29.07	29.30	....	....
Do	do	862	29.52	29.91	....	....
Do	do	873	29.53	29.71	31.38	31.22
Do	do	875	....	29.74	....	....
Do	do	886	29.53	30.22	31.46	31.18
Do	do	890	29.23	....	31.35	31.22
Do	do	900	29.42	29.70	31.07	30.94
Do	do	914	....	28.71	....	....
Do	do	928	29.56	30.06	31.17	31.03
Do	do	952	29.62	30.33	31.07	31.03
Do	do	954	....	31.24	....	....
Do	do	966	....	29.45	....	....
Do	do	973	....	30.51	....	....
Do	do	980	....	....	....	30.46 30.52
Do	do	1008	....	....	....	30.56 30.63
Do	do	1013	....	....	....	30.44 30.72
Do	do	1017	....	....	....	31.16 31.00

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[1] Experience has shown that it is practically impossible to remove all of the hydrogen dioxide by boiling, unless the solution be evaporated to a very small volume, when it is very liable to become colored brown, due to the further action of the hot concentrated acid. In the analyses made by the authors the last trace of hydrogen dioxide was removed by the addition of a drop or two of permanganate solution (1 per cent) and the resulting pink color removed by the addition of oxalic acid solution in very slight excess.

[2] A blank test should be carried out under exactly the same conditions and the proper corrections made. The blank tests usually consume from 0.1 to 0.3 cubic centimeter of the iodine solution.

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TABLE 1.—*Arsenic content of commercial samples of arsphenamine*—Continued.

Manufacturer.	Name of product.	Lot number.	Per cent of arsenic.			
			Direct titration with N/20 iodine V. S.	Ewins's method.	Gravimetric method.	Lehmann's method.
Dermatological Research Laboratories, Philadelphia, Pa.	Arsenobenzol	1020				31.27 31.08
Do.	do.	1048				30.38 30.40
Do.	do.	1062				30.41 30.61
Do.	do.	1072				30.15 30.26
Do.	do.	1077				30.53
Do.	do.	1095				30.57
Do.	do.	1105				30.61
Do.	do.	1125				30.49
Do.	do.	1135				30.82 30.73
Do.	do.	1142				30.53
Farbwerke-Hoechst Co., at H. A. Metz Laboratories (Inc.), New York.	Salvarsan	BDB	29.29	31.10		
Do.	do.	BFB	30.60	31.30		
Do.	do.	BJB	29.02	31.38		
Do.	do.	BLB	29.40			
Do.	do.	BMB	29.88	29.98		
Do.	do.	BUB	29.34	30.88		
Do.	do.	BVB	29.60	31.44		
Do.	do.	BXB	29.43	30.35		
Do.	do.	DBB	28.87	29.69	31.16	31.23
Do.	do.	DFB	29.97	31.30	31.47	31.32
Do.	do.	DHB	30.05	30.76 31.22		
Do.	do.	DHB	30.24	30.76		
Do.	do.	DJB	29.60	31.05		
Do.	do.	DLB	30.63	31.95		
Do.	do.	DMB	29.07 29.62	30.72 29.57		31.50
Do.	do.	DUB	29.16	30.31		
Do.	do.	FBB	29.52	31.00 31.54	31.85	31.50
Do.	do.	HBB	30.74	31.64	31.65	31.28
Do.	do.	JBB		30.43		
Do.	do.	LBB			31.21	31.20
Do.	do.	MBB				32.21 32.24 32.06 32.24 32.06 32.19
Do.	do.	UBB				31.29 31.27
Do.	do.	XBB				30.92 30.85
Do.	do.	I75			31.15	30.63 30.72
Do.	do.	I76			31.15	31.52 31.58
Do.	do.	I77			31.80	31.58 31.64 31.58
Do.	do.	I78				30.82 30.83 30.91 30.94
Do.	do.	I79			31.56	31.36 31.58
Do.	do.	I81				32.15
Do.	do.	I82				31.97
Les Etablissements Poulenc Frères, Paris.	Arsenobenzol "Billon."	D632		29.93		30.71
The Diarsenol Co. (Ltd.), Toronto, Canada.	Diarsenol	B87520	28.89	29.92		
Do.	do.	B87521	29.05			30.18
Do.	do.	1255				30.73
Sankyo & Co., Tokyo.	Arsaminol	68	29.86	31.26		31.54
Do.	do.	54	29.80	31.20		32.21
Arsemin Co., Tokyo.	Neo Neo Arsemin (Salvarsan sod.)	DEIA		31.04		
Do.	do.	DEIS		20.73	20.47	20.50

TABLE 2.—*Arsenic content of commercial samples of neo-arsphenamine.*

Manufacturer.	Name of product.	Lot number.	Per cent of arsenic.		
			Ewins's method.	Gravimetric method.	Lehmann's method.
Farbwerke vorm. Meister Lucius & Bruning, Hoechst a. M.	Neosalvarsan	HV	18.38	19.82	20.12
Les Etablissements Poulenc Frères, Paris.	Novarsenobenzol "Billon"	B1539	17.80	20.34	19.93
Do	do	B2126	18.98	....	20.21
Do	do	B2137	18.06	19.96	19.74
Do	do	8750	18.19	20.35	19.93
Do	do	9651	18.24	20.05	20.12
Anglo-French Drug Co. (Ltd.), London.	Ampsalvs	....	18.28	....	19.81 19.65
Kokusan-Seiyakusho, Tokyo	Neotanvarsan	19	18.26	....	....
Do	do	20	18.15	18.27 18.34	18.40
Do	do	21	18.10	18.19	18.30
Banyu Co., Tokyo	Neoehramisol	CHA	18.82	....	[a] 17.93
Do	do	CHA	18.47	....	18.41
Sankyo & Co., Tokyo	Neoarsaminol	N139	16.56	16.96	17.04
Do	do	N153	16.81	....	16.70
Do	do	N183	....	....	17.21 17.44 17.27
Do	do	N185	16.80	16.96	16.89
Synthetic Drug Co., Toronto	Neodiarsenol	180	....	....	16.69
Do	do	181	....	....	15.50
Do	do	182	....	....	16.68
Do	do	183	....	....	17.55
Do	do	189	....	15.79 16.05	[b] 15.33
Do	do	262	....	....	16.35
Do	do	264	....	....	15.37 15.29
Do	do	267	....	....	15.46 15.30

[a] The tube had been opened for a considerable length of time previous to analysis and the product was oxidized to a considerable extent.

[b] The sample was not uniform.

A survey of the preceding tables shows that the results obtained by the Lehmann and the gravimetric methods are nearly identical, while those obtained by direct titration with iodine volumetric solution are relatively low in all cases. With the Ewins method, the results are occasionally of the same magnitude as those obtained by the gravimetric determination, but, as a rule, they are also relatively low.

With respect to the titration method, Gaebel (1911c) states that the reaction between arsphenamine and iodine is a reversible one, viz:

$$C_{12}H_{12}O_2N_2As_2.2HCl.2H_2O + 8I + 4H_2O \rightleftarrows 2C_6H_8O_4NAs.HCl + 8HI.$$

As a consequence a state of equilibrium is reached before all of the arsphenamine has been oxidized and the amount of iodine solution consumed is less than that required by theory. This investigator states further that the reagents (sodium bicarbonate, sodium acetate, borax, etc.) usually employed for overcoming this difficulty in iodometric titrations of arsenious compounds are of no value in this case, a condition which has also been observed by the authors. This method appears, therefore, to be of little value.

6×4..12

The low percentages obtained by the Ewins method are apparently the result of a loss of arsenic through volatilization. It was thought that this loss might be avoided by slowing the rate of digestion. A number of samples were, therefore, digested for some time in the cold and then slowly over a low flame. Samples from the same tubes were also digested rapidly in order to obtain data for comparison. The results obtained follow;

TABLE 3.—*Effect of rate of digestion on the results obtained by the Ewins method.*

Manufacturer.	Name of product.	Lot number.	Per cent of arsenic, Ewins's method.	
			Slow digestion.	Rapid digestion.
Dermatological Research Laboratories, Philadelphia	Arsenobenzol.	740	30.33	28.64
Do.	do.	750	....	28.73
Do.	do.	799	29.69	28.60
Do.	do.	873	28.71	28.69
Do.	do.	886	30.22	28.52
Do.	do.	890	....	28.65
Do.	do.	952	30.33	28.62

The above data indicate that the rate at which digestion is allowed to proceed is a factor which influences the final result to a very considerable extent. But they also show that the results are low even when digestion is carried out very slowly. It appears, therefore, that this method in its present form is objectionable. It is possible that greater accuracy might be attained by condensing the fumes which escape during digestion, reuniting the distillate with the contents of the Kjeldahl flask previous to neutralization, and finally titrating the mixture. Work along this line is, however, necessary before a positive statement can be made.

The method of Lehmann, with the slight modifications recommended in the footnotes, is accurate and reliable. It is simple, requires but small quantities of inexpensive reagents, and can be completed in about one and one-half hours. It, therefore, appears to be superior to any of the other methods mentioned for the routine analysis of these products.

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PLAINTIFF'S EXHIBIT No. 685.

Executive Order Fixing Salary of, and Vesting Certain Power and Authority in, the Alien Property Custodian Appointed Under Trading With the Enemy Act.

[No. 2744.]

By virtue of the authority vested in me by "an Act to define, regulate, and punish trading with the enemy" approved October 6, 1917, I hereby make and establish the following order:

1. I hereby fix the salary of the Alien Property Custodian heretofore appointed at the sum of $5,000 per annum. I direct that said Alien Property Custodian shall give a bond in the amount of $100,000.00, with security to be approved by the Attorney General, and which bond shall be conditioned to well and faithfully hold, administer, and account for all money and property in the United States due or belonging to an enemy or ally of enemy, or otherwise, which may be paid, conveyed, transferred, assigned, or delivered to said Custodian under the provisions of the Trading with the Enemy Act.

2. I hereby authorize and empower the Alien Property Custodian to employ and appoint in the manner provided in the Trading with the Enemy Act in the District of Columbia and elsewhere, and to fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the powers conferred on such Alien Property Custodian by law or by any order of the President heretofore or hereafter made.

3. I hereby vest in the Alien Property Custodian the executive administration of the provisions of Section 12 of the Trading with the Enemy Act pertaining

to the designation of a depositary, or depositaries, and requiring all such designated depositaries to execute and file bonds and prescribing the form, amount, and security thereof. And I authorize and empower the Alien Property Custodian to designate any bank, or banks, or trust company, or trust companies, or other suitable depositary or depositaries located and doing business in the United States, as the depositary or depositaries with which said Alien Property Custodian may deposit any stocks, bonds, notes, time drafts, time bills of exchange, or other securities or property (except money, or cheques, or drafts payable on demand) of an enemy or ally of enemy and to prescribe the bond or bonds and the form, amount, and security thereof which shall be given by said depositary or depositaries.

4. The following sums, or so much thereof as may be necessary, are hereby allotted out of the funds appropriated by the Trading with the Enemy Act to the following named officers:

To the Alien Property Custodian	$100,000.00
To the Federal Trade Commission	$ 25,000.00
To the Secretary of the Treasury	$ 15,000.00
To the War Trade Board	$ 25,000.00

to be expended in the administration of the powers vested respectively in them by law or by any order heretofore or hereafter made by me.

5. The powers and authority herein vested in said Alien Property Custodian are in addition to the powers and authority vested in said Alien Property Custodian by the Executive Order of October 12, 1917.

WOODROW WILSON.

THE WHITE HOUSE,
29 October, 1917.

PLAINTIFF'S EXHIBIT No. 686.

EXECUTIVE ORDER SUPPLEMENTAL TO EXECUTIVE ORDER OF OCTOBER 12, 1917, VESTING POWER AND AUTHORITY IN DESIGNATED OFFICERS AND MAKING RULES AND REGULATIONS UNDER TRADING WITH THE ENEMY ACT AND TITLE VII OF THE ACT APPROVED JUNE 15, 1917.

[No. 2770.]

By virtue of the authority vested in me by "An Act to Define, Regulate and Punish Trading with the Enemy and for Other Purposes," approved October 6, 1917, I hereby make the following orders, rules and regulations:

I. I hereby prohibit any and all foreign insurance companies from doing business within the United States after February 1, 1918, unless such companies shall first obtain from the Secretary of the Treasury licenses to do business.

II. I further hereby vest in the Secretary of the Treasury the power and authority to issue at any time, upon such terms and conditions as the Secretary of the Treasury may deem proper and as are not inconsistent with law, or to refuse, a license to any foreign insurance company to do business within the United States through agencies, branch offices or otherwise.

WOODROW WILSON.

THE WHITE HOUSE,
7 December, 1917.

PLAINTIFF'S EXHIBIT No. 687.

EXECUTIVE ORDER ALLOTTING APPROPRIATION UNDER TRADING WITH THE ENEMY ACT.

[No. 2790.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy," approved October 6, 1917, I hereby make and establish the following order:

The following sums or so much thereof as may be necessary are hereby allotted out of the funds appropriated by the Trading with the Enemy Act to the following named officers:

To the War Trade Board	$155,000.00
To the Alien Property Custodian	80,000.00
To the Secretary of the Treasury	10,000.00
To the Federal Trade Commission	5,000.00

to be expended in the administration of the powers vested respectively in them by law, or by any order heretofore or hereafter made by me.

WOODROW WILSON.

THE WHITE HOUSE,
22 January, 1918.

PLAINTIFF'S EXHIBIT No. 688.

EXECUTIVE ORDER PRESCRIBING RULES AND REGULATIONS UNDER SECTION 5 OF THE TRADING-WITH-THE-ENEMY ACT AND SUPPLEMENTING RULES AND REGULATIONS HERETOFORE PRESCRIBED UNDER TITLE 7 OF THE ESPIONAGE ACT.

[No. 2796.]

Whereas, by virtue of the authority vested in me by the act approved June 15, 1917, known as the Espionage Act, I directed by Executive order, dated September 7, 1917, that the regulations, orders, limitations, and exceptions prescribed by me in relation to the export of coin, bullion, and currency should be administered by the Secretary of the Treasury, and upon his recommendation prescribed certain regulations in relation thereto; and

Whereas, by Executive order, dated October 12, 1917, made under authority of the act aforesaid and of the act approved October 6, 1917, known as the Trading-with-the-Enemy Act, I vested in the Secretary of the Treasury the executive administration of any investigation, regulation, or prohibition of any transactions in foreign exchange, export, or earmarking of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States) and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country or between residents of one or more foreign countries by any person within the United States, and I further vested in the Secretary of the Treasury the authority and power to require any person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters, or other papers in connection therewith in the custody or control of such person, either before or after such transaction is completed; and

Whereas, by said Executive order, dated October 12, 1917, I authorized and directed the Secretary of the Treasury for the purpose of such executive administration to take such measures, adopt such administrative procedure, and use such agency or agencies as he may from time to time deem necessary and proper for that purpose; and

Whereas, the Secretary of the Treasury, with the approval of the President, by order dated November 23, 1917, adopted certain administrative procedure for the executive administration, authority and power vested in the Secretary of the Treasury by said Executive order, dated October 12, 1917, and designated the Federal Reserve Board to act as the agency of the Secretary of the Treasury, subject to the approval of the Secretary of the Treasury, to carry out such executive administration, authority and power vested in the Secretary of the Treasury as hereinbefore recited:

Now, therefore, upon the recommendation of the Secretary of the Treasury, and in order to vest all necessary authority in the Federal Reserve Board to act as the agency of the Secretary of the Treasury, in the performance of the duties hereby imposed upon it, I hereby prescribe the following orders, rules, and regulations in respect of such executive administration, authority and power, and I hereby amend the regulations heretofore prescribed by said Executive order dated September 7, 1917, as herein provided.

DEFINITIONS.

Person.—The term person as used herein shall be deemed to mean an individual, partnership, association, company or other unincorporated body of individuals, or corporation or body politic.

Dealer.—The term dealer as used herein shall be deemed to mean any person engaged primarily or incidentally in the business (1) of buying, selling, or dealing in foreign exchange, or (2) of buying, selling, or dealing in securities for or through foreign correspondents, or (3) any person who carries accounts or securities with or for foreign correspondents.

Dealers of Class A.—Dealers who engage in the business of buying, selling, or dealing in foreign exchange, or of buying, selling, or dealing in securities for or through foreign correspondents, and who may or may not carry accounts or securities with or for foreign correspondents shall be known as dealers of Class A.

Dealers of Class B.—Dealers who carry accounts or securities with foreign correspondents or who buy, sell or deal in securities through such correspondents but who do not carry accounts or securities for foreign correspondents and who do not engage in the business of buying, selling, or dealing in foreign exchange or of buying, selling, or dealing in securities for foreign correspondents shall be known as dealers of Class B.

Dealers of Class C.—Dealers who carry accounts or securities for foreign correspondents or who buy, sell, or deal in securities for such correspondents but who do not carry accounts or securities with foreign correspondents and who do not engage in the business of buying, selling, or dealing in foreign exchange or of buying, selling, or dealing in securities through foreign correspondents shall be known as dealers of Class C.

Foreign exchange.—The term foreign exchange as used herein shall be deemed to mean checks, drafts, bills of exchange, cable transfers, or any form of negotiable or assignable instrument, or order used (a) to transfer credit or to order the payment of funds in any foreign country, or (b) to transfer credit or to order the payment of funds within the United States for foreign account.

Securities.—The term securities as used herein shall be deemed to mean all evidences of ownership of property not included in the foregoing definition of foreign exchange.

Correspondent.—The term correspondent as used herein shall be deemed to mean any person who acts as the agent of, or for, or on behalf of, or as the depositary of, another person, or any person who is the principal for, or on behalf of, whom another person acts as agent.

Customer.—The term customer as used herein shall be deemed to mean any person other than a dealer who buys foreign exchange from a dealer or sells foreign exchange to a dealer.

TRANSACTIONS IN FOREIGN EXCHANGE AND CERTAIN OTHER TRANSACTIONS PROHIBITED EXCEPT AS HEREIN AUTHORIZED.

All transactions in foreign exchange, export or earmarking of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be extended wholly within the United States) and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy, or otherwise, or between residents of one or more foreign countries, by any person within the United States, except any such transactions or transfers conducted in conformity herewith, are hereby prohibited.

TRANSACTIONS IN FOREIGN EXCHANGE OR IN SECURITIES FOR OR THROUGH FOREIGN ACCOUNT.

Certain persons required to obtain registration certificates.—No person, other than a customer, shall, after February 10, 1918, engage in any transaction or make any transfer described in the next preceding subdivision hereof who shall not have obtained, on or before that date, a registration certificate, as hereinafter provided.

Every person who is a dealer upon the date hereof, as promptly as possible and in any event on or before January 31, 1918, shall file, with the Federal Reserve Board, through the Federal Reserve Bank of his district, an application for a registration certificate. Such application shall be in form approved by the Federal Reserve Board and shall show the character of business engaged in and whether or not an enemy or ally of enemy of the United States or any subject or citizen of an enemy or ally of enemy, wherever resident or domiciled, has any interest directly or indirectly in such business. Such application shall embody an agreement on the part of the applicant to comply with the regulations of the Federal Reserve Board, and to permit the inspection at any time of his books and accounts and to make reports as and when required on forms to be approved by the Federal Reserve Board.

The Federal Reserve Board may issue to such applicant the appropriate registration certificate in form approved by it, entitling the holder to engage in the class or classes of foreign exchange or other transactions specified in such certificate, subject to all applicable provisions of law and to such Executive orders of the President and administrative regulations as shall have been issued or may from time to time be issued by the Federal Reserve Board.

Any person who is not a dealer at the date hereof but who hereafter desires to become a dealer must first obtain a registration certificate.

Any person, other than a customer, who does not desire to become a dealer but who nevertheless desires to engage in one or several transactions or to make one or several transfers described in the next preceding subdivision hereof, may be permitted by the Federal Reserve Board, in its discretion, to engage in any such transaction or to make any such transfer without first obtaining a registration certificate, and the Federal Reserve Board may likewise waive any requirement thereof, other than any which relates to trading with an enemy or ally of enemy, whenever it is satisfied that such waiver is not incompatible with the best interests of the United States.

Nothing herein shall be construed to abrogate or modify any existing requirement that licenses shall be obtained from the War Trade Board in respect of any transaction with, or for account of, an enemy or ally of enemy, or any person acting for, or on behalf of, or for the benefit of, an enemy or ally of enemy.

Revocation of registration certificates.—Any or all such registration certificates may be revoked at any time by direction of the Secretary of the Treasury or of the Federal Reserve Board.

Books and accounts.—Each Federal Reserve Bank through which any such registration certificate shall be issued shall furnish, to the applicant, copies of all forms of reports required and the books and records of such applicant shall thereafter be kept in a manner which will make it possible to furnish information called for in such reports without delay.

General reports.—After obtaining a registration certificate, each holder thereof shall file with the Federal Reserve Bank through which such certificate shall be issued a report, on forms to be furnished by the Federal Reserve Board, showing all accounts or securities carried with or for foreign correspondents as of the close of business on January 30, 1918, or on such other date as the Federal Reserve Board may require, and such other information as may be called for on such forms and shall thereafter file with the Federal Reserve Board, through such Federal Reserve Bank, on dates specified by the Federal Reserve Board, reports showing all changes in such accounts and all purchases, sales, and other transactions in foreign exchange or securities for or through foreign correspondents.

Customer's statements.—A dealer shall require every customer purchasing foreign exchange from him or selling foreign exchange to him, to file a statement showing the purpose of such purchase or sale with such details as the Federal Reserve Board may require, including a declaration to the effect that no enemy or ally of enemy of the United States has any interest directly or indirectly in such purchase or sale. The Federal Reserve Board shall prescribe the form of such declaration. Copies of such statements shall be furnished by such dealer upon request to the Federal Reserve Board, through the several Federal Reserve Banks.

Reports made through domestic correspondents.—Dealers to whom registration certificates have been issued, and who buy, sell, or deal in foreign exchange through domestic correspondents, (for example banking or other institutions located in the United States) unless otherwise directed by the Federal Reserve Board, shall arrange with such correspondents to include such transactions in the reports of such correspondents.

Such dealers will be required to report to the Federal Reserve Board only those foreign exchange transactions which are not included in the reports of such correspondents but may be called upon for any information in regard thereto desired by the Federal Reserve Board, and shall keep all books and records in a manner which will make it possible to furnish such information.

Special reports.—Whenever any holder of a registration certificate shall have reason to believe that any transaction within his knowledge involves or may involve directly or indirectly the payment of funds or delivery of securites to or the transfer of credit or securities for the benefit of an enemy, or ally of enemy, or which may involve any other transaction with an enemy or ally of enemy, he shall immediately report the facts and circumstances to the Federal Reserve Board through a Federal Reserve Bank.

Filing and verification of reports.—All reports, statements, and declarations herein required, unless otherwise specified, shall be filed with the Federal Reserve Board through the Federal Reserve Banks.

Any or all such reports, statement, or declarations shall, in the discretion of the Federal Reserve Board, be verified by oath of the person making same.

Examinations.—The books and records of all dealers must at all times be open to inspection by examiners designated by the Federal Reserve Board.

DECLARATION OF FOREIGN CORRESPONDENT TO BE OBTAINED BY HOLDERS OF REGISTRATION CERTIFICATES.

After dates to be fixed by the Federal Reserve Board in respect of each foreign country, respectively, no holder of a registration certificate shall engage in transactions with, through, or for any foreign correspondent in such foreign country unless he shall have obtained from such correspondent a declaration to the following effect:

"Having arranged with............. to act as the
(Holder of registration certificate.)
agent or correspondent in the United States for, or on behalf of, the undersigned, under regulations issued by the appropriate authorities of the United States Government and/or the undersigned having agreed to act as the foreign correspondent of the said........ I/we do hereby declare that I/we we will not deal or attempt to deal, directly or indirectly, with said agent or correspondent in any transaction for or on account of, or for the benefit of, an enemy or ally of enemy of the United States, and will not make available for the use of an enemy or ally of enemy of the United States any funds or property received or credits established as a result of any transaction engaged in, with, or through said agent or correspondent, and will not

transmit to said agent or correspondent for collection or credit any negotiable instrument bearing the signature or indorsement of an enemy or ally of enemy of the United States.

"The words 'enemy' and 'ally of enemy' are used herein as now or hereafter defined by laws of the United States or by Proclamation of the President of the United States."

NOTE.—If foreign correspondent is incorporated this certificate must be executed by a duly authorized officer of such corporation.

SUSPENSION OF RELATIONS WITH FOREIGN CORRESPONDENTS.

If any foreign correspondent of a dealer in the United States or any person proposing to become the foreign correspondent of a dealer in the United States, shall refuse or fail to make the foregoing declaration as herein required, or if the Federal Reserve Board shall have reason to believe that any such foreign correspondent or any such person is dealing or trading with an enemy or ally of enemy of the United States, contrary to the provisions of the declaration of noninterest of enemies, herein required, or if in the judgment of the Federal Reserve Board the best interest of the United States requires such action, it may prohibit any dealer or dealers in the United States from engaging in any transaction with, through, for, or on behalf of such correspondent or such person.

SUSPENSION OF TRANSACTIONS.

Whenever the Federal Reserve Board shall have reason to believe that any transaction in foreign exchange or any transfer of securities carried with or for a foreign correspondent involves or may involve trading with an enemy, or ally of enemy, or in its judgment is incompatible with the best interest of the United States, it may cause notice to be served on the parties in interest to postpone the consummation of such transaction for a period of ninety days pending investigation of the facts, and upon investigation if the Federal Reserve Board is of the opinion that the best interests of the United States require such action it may prohibit the consummation of such transaction.

The Secretary of the Treasury may likewise prohibit the consummation of any such transaction by notice served on the parties in interest (either directly or through the Federal Reserve Board) in any case in which in his judgment the best interests of the United States require such action.

SPECIAL PROVISIONS AS TO COLLECTION OF DIVIDENDS, INTEREST, OR MATURING OBLIGATIONS FOR FOREIGN ACCOUNT.

Every person presenting for collection maturing obligations, or coupons, checks or drafts issued for dividends or interest, for account of any foreign Government or person resident in any foreign country, shall make a declaration in form approved by the Federal Reserve Board, to the effect that such collections are not made for, or on behalf of, or for the benefit of, any enemy or ally of enemy; that the proceeds of such collections will not be made available for any enemy or ally of enemy; and that the maturing obligations, or the obligations and stocks upon which dividends or interest are to be paid, are not the property of any enemy or ally of enemy; have not been owned by, or held for the account of, any enemy or ally of enemy, since January 26, 1918, and were not purchased by the present owner from any enemy or ally of enemy or from any person acting for or on behalf of or for the benefit of an enemy or ally of enemy since February 3, 1917.

Provided, however, that any holder of a Class A or Class C registration certificate may collect maturing obligations and coupons, checks, or drafts issued for dividends or interest for account of a person resident in a foreign country, without making such declaration, if such holder has filed with the Federal Reserve Board a similar declaration executed by the person for whom collection is made.

Interest or dividend checks payable for foreign account.—Every person issuing checks or drafts for interest or dividends after January 26, 1918, payable to any foreign Government or to any person resident in a foreign country shall attach to or shall print on the back of such check or draft the following statement:

"This check or draft will not be paid unless the following declaration is executed by the person to whom it is sent for collection by the payee, or his agent, or by the person who acts as the agent in the United States for the payee.

"From actual personal knowledge, or in reliance upon declarations or affidavits furnished the undersigned by the parties in interest, I/we do hereby expressly declare that no enemy or ally of enemy of the United States is directly or indirectly interested in the proceeds of this check or draft and that such proceeds will not be made available for the use of an enemy or ally of enemy of the United States; that the stock upon which this dividend is paid (or the obligation upon which this interest is paid) is not and has not been owned by or held for account of an enemy or ally of enemy of the United States since January 26, 1918, and has not been purchased by the present owner from an enemy or ally of enemy or from a person acting for or on behalf of or for the benefit of an enemy or ally of enemy since February 3, 1917."

DEALINGS IN SECURITIES FOR OR THROUGH FOREIGN ACCOUNT.

No person shall purchase, sell, or deliver any securities for account of any foreign Government, or for account of any person resident in a foreign country, unless such Government or such person, as the case may be, shall have made a declaration, in form approved by the Federal Reserve Board, similar in effect to that required in the case of the collection of maturing obligations, for account of a foreign Government or person resident in a foreign country.

PROCEDURE WHERE DECLARATION OF NONINTEREST OF ENEMY OR ALLY OF ENEMY CAN NOT BE MADE.

Any person who is unable to make a declaration of noninterest of enemy or ally of enemy required hereunder may apply to the Federal Reserve Board for a waiver of such declaration, submitting to such board all facts and circumstances relating to the transaction involved which are in the possession of the applicant. If upon investigation the Federal Reserve Board shall determine that there is no reason to believe that any enemy or ally of enemy is directly or indirectly interested in the transaction involved, and that its consummation will not be incompatible with the best interests of the United States, it may permit the transaction to be consummated without the declaration herein required. If the Federal Reserve Board shall have reason to believe that an enemy or ally of enemy is or may be directly or indirectly interested in the transaction, it shall transmit to the War Trade Board all records in the case for such action as that board may determine to be necessary.

EXPORT AND EARMARKING OF COIN, BULLION, OR CURRENCY.

The following regulations prescribed by Executive order, dated September 7, 1917, shall continue in force as herein amended.

Any person desiring to export from the United States or any of its territorial possessions to any foreign country named in the proclamation dated September 7, 1917, any coin, bullion, or currency, shall first file an application in triplicate with the Federal Reserve Bank of the district in which such person is located for a special or general license. Applications filed must contain statements under oath and showing in detail the nature of the transaction, the amount involved, the parties directly and indirectly interested, and such other information as may be of assistance to the proper authorities in determining whether the exportation for which a license is desired will be compatible with the public interest. All such applications should be made on the standard form prescribed by the Federal Reserve Board.

Each Federal Reserve Bank shall keep a record copy of each application filed with it under the provisions of this regulation and shall forward the original application and a duplicate to the Federal Reserve Board at Washington, together with such information or suggestions as it may believe proper in the circumstances, and shall in addition make a formal recommendation as to whether or not, in its opinion, the exportation should be permitted.

The Federal Reserve Board, subject to the approval of the Secretary of the Treasury, is hereby authorized and empowered, upon receipt of such application and the recommendation of the Federal Reserve Bank, to make such ruling as it may deem proper in the circumstances; and if, in its opinion, the exportation in question be compatible with the public interest, to permit said exportation to be made; otherwise to refuse it.

No gold or silver coin, or bullion, or currency shall be set aside and earmarked for safekeeping for any person without the written approval of the Federal Reserve Board.

LICENSES FROM WAR TRADE BOARD IN TRANSFORMATION INVOLVING TRADING WITH AN ENEMY OR ALLY OF ENEMY.

Applications to the Federal Reserve Board for permission to export or earmark gold or silver coin bullion or currency shall be accompanied by a certified copy of a license issued by the War Trade Board, whenever any such transactions involve or may involve trading directly or indirectly with an enemy or ally of enemy or with any person acting for, or on behalf of, or for the benefit of, an enemy or ally of enemy.

APPLICATIONS FOR REGISTRATION CERTIFICATES AND EXPORT LICENSES, PROVIDED FOR HEREUNDER, BY PERSONS RESIDING IN ANY DEPENDENCY OF THE UNITED STATES.

Applications to the Federal Reserve Board either for registration certificates or for licenses to export coin, bullion or currency may be made by persons residing in any dependency of the United States (including the Philippine Islands, Alaska, Guam, Hawaii, Porto Rico, Virgin Islands, and Canal Zone) through such agency located in any such dependency as may be hereafter designated by the Federal Reserve Board, instead of through a Federal Reserve Bank; but until an agency has been so designated in any such dependency, persons residing therein may make such applications through any Federal Reserve Bank. The

Federal Reserve Board may from time to time postpone, in respect of any one or more such dependencies, the date on and after which persons residing therein shall be prohibited from engaging in any of the transactions or making any transfer hereinbefore prohibited without having obtained registration certificates, in case such registration certificates can not be obtained on or before the date hereinbefore specified.

WOODROW WILSON.

The White House,
26 January, 1918.

PLAINTIFF'S EXHIBIT No. 689.

EXECUTIVE ORDER

[No. 2801.]

By virtue of the authority vested in me by an Act to define, regulate, and punish trading with the enemy, approved October 6, 1917, known as the Trading with the Enemy Act, I hereby make the following orders, rules and regulations:

1. Paragraph XXX of the Executive Order dated October 12, 1917, and made by me pursuant to said Act of Congress, is hereby revoked; and in place thereof it is hereby ordered:

XXX. Any person not an enemy, or ally of enemy, who owes to, or holds for or on account of, or on behalf of, or for the benefit of, an enemy or an ally of enemy, not holding a license granted by or in the exercise of the power and authority of the President under the provisions of said Trading with the Enemy Act any money or other property, or to whom any obligation or form of liability to such enemy, or ally of enemy, is presented for payment, may, having first obtained the consent of the Alien Property Custodian, pay, convey, transfer, assign, or deliver, to or upon the order of the Alien Property Custodian, said money or other property, with like effect as if such payment, conveyance, transfer, assignment or delivery were made in obedience to requirement pursuant to the provisions of Section 7, subsection (c), of said Trading with the Enemy Act.

2. Paragraph XXXI of said Executive Order dated October 12, 1917, is hereby revoked; and in place thereof it is hereby ordered:

XXXI. I hereby vest in the Alien Property Custodian the executive administration of all provisions of Section 8 (a) and Section 8 (b) of the Trading with the Enemy Act, including the power, authority and duty conferred or imposed upon the President by the provisions of said Section 8 (a), and the notice therein required to be given to the President shall be given to the Alien Property Custodian.

WOODROW WILSON.

THE WHITE HOUSE,
5 February, 1918.

PLAINTIFF'S EXHIBIT No. 690.

TRADING WITH THE ENEMY ACT—EXECUTIVE ORDER PRESCRIBING RULES AND REGULATIONS RESPECTING THE EXERCISE OF THE POWERS AND AUTHORITY AND THE PERFORMANCE OF THE DUTIES OF THE ALIEN PROPERTY CUSTODIAN UNDER THE "TRADING WITH THE ENEMY ACT" AND PRIOR EXECUTIVE ORDERS PURSUANT THERETO, AND RESPECTING THE DEPOSIT AND INVESTMENT OF MONEYS RECEIVED BY OR FOR THE ACCOUNT OF THE ALIEN PROPERTY CUSTODIAN.

[No. 2813.]

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy act," I hereby make the following orders, rules and regulations.

(1) DEFINITIONS.

(a) The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

(b) The word "enemy," as used herein (including subsequent definitions) shall be deemed to mean either an "enemy" or "ally of enemy," as the case may be.

(c) The words "right," "title," "interest," "estate," "power," and "authority" of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy.

(d) Any requirement made by the Alien Property Custodian pursuant to Section 7, subsection "c" of the "Trading with the enemy act" may be known as and called a demand and will be hereinafter referred to as a demand.

(2) DEMANDS PURSUANT TO SECTION 7 SUBSECTION "C."

(a) The Alien Property Custodian may make demand for the conveyance, transfer, assignment, delivery, and payment of any money or other property owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy not holding a license granted by me or in the exercise of my power and authority, which the Alien Property Custodian after investigation shall determine is so owing or so belongs or is so held, together with every right, title, interest, and estate of the enemy in and to such money or other property and every power and authority of the enemy thereover, including (but without limiting the generality of the foregoing) the power and authority to affirm, ratify, approve, revoke, repudiate or disapprove, in whole or in part and at any time or times, any power, agency, trust or other relation at the time existing, and also any act or omission theretofore done in the exercise of or pursuant to any power, agency, trust or other relation which the enemy could or might lawfully revoke, repudiate, disaffirm, affirm, ratify or approve, and also including (but without limiting the generality of the foregoing) the power and authority to direct, supervise, and control the future exercise of any power, agency, trust or other relation over such money or other property to the extent that the enemy could or might lawfuly direct, supervise, and control the same. Or the Alien Property Custodian may qualify or limit any such demand in such manner to such extent as he may in any case see fit and (without limiting the generality of the power to qualify and limit demands) he may in any case demand all or only such power and authority over the money or other property as he may see fit without demanding any conveyance, transfer, assignment, delivery or payment of such money or other property or any other right, title, interest, or estate therein or thereto except such as may be included within the power and authority demanded in the particular case over such money or other property.

A demand for the conveyance, transfer, assignment, delivery and payment of money or other property unless expressly qualified or limited shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover.

(b) Notice of any demand made by the Alien Property Custodian may be given to any person who, alone or jointly with others, may hold or have the custody or control of or may be exercising any right, power, or authority in or over or may be performing any duty concerning the money or other property mentioned in the demand; and, in any notice given, the Alien Property Custodian may require of the person notified the performance of any act or thing within the power of the person notified which may be necessary or proper to make the demand fully effective, or to establish proper acknowledgment, recognition, or evidence of the right, title, interest, and estate of the Alien Property Custodian in and to such money or other property and of the power and authority of the Alien Property Custodian thereover, and it shall be the duty of any person so notified to perform any act or thing so required. Such notice may be given in person or by mail.

(c) When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the "Trading with the enemy Act" and with any orders, rules, or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian.

(3) POWERS OF ADMINISTRATION.

(a) The Alien Property Custodian may appoint and clothe with necessary power and authority such agents, bailees, and attorneys in fact as he may find to be necessary or proper to carry out the provisions of the "Trading with the enemy act" and the Executive orders, rules, and regulations heretofore, hereby, or hereafter made, and prescribe the duties and fix the compensation of such agents, bailees, and attorneys in fact; and any depositary designated by the Alien Property Custodian may be appointed as such agent, bailee or attorney in fact. And the Alien Property Custodian may require bonds of such agents, bailees and attorneys in fact and fix the penalty and conditions thereof.

(b) The Alien Property Custodian may pay all reasonable and proper expenses which may be incurred in or about securing possession or control of money or other property and in or about collecting dividends, interest, and other income therefrom, and in otherwise protecting and administering the same. So far as may be, all such expenses shall be paid out of, and in any event recorded as a charge against, the estate to which such money or other property belongs.

(c) The Alien Property Custodian may authorize depositaries designated by him and agents, bailees, and attorneys in fact appointed by him to deduct all expenses authorized or approved by the Alien Property Custodian, including the compensation of such depositaries, agents, bailees, and attorneys in fact, from any moneys collected by them and the payment by them to the Alien Property Custodian or into the Treasury of the United States of the net amount remaining in their hands.

(d) The Alien Property Custodian may exercise any right, power, or authority of the enemy in, to and over corporate stock, shares or certificates representing beneficial interests owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, including (1) the right to receive all notices issued by the corporation, unincorporated association, company or trustee which issues such stock, shares or certificates, to the holders or owners of similar stock, shares or certificates, (2) the right to exercise all voting power appertaining to such stock, shares or certificates, and (3) the right to receive all subscription rights, dividends and other distributions and payments, whether of capital or income, declared or made on account of such stock, shares or certificates, regardless of whether or not such stock, shares or certificates be in the possession of the Alien Property Custodian and regardless of whether or not such stock, shares or certificates have been transferred to the Alien Property Custodian upon the books of the corporation, association, company or trustee issuing the same.

The Alien Property Custodian may nominate persons who may, when duly elected or appointed, serve as directors, officers or employees of any corporation whose corporate stock or shares, in whole or in part, are owing or belonging to, or are held for, by, on account of, or on behalf of or for the benefit of an enemy.

The Alien Property Custodian may demand the transfer of corporate stock, shares or certificates representing beneficial interests to be made upon the books of any corporation, unincorporated association, company or trustee, issuing the same, into the name of the Alien Property Custodian or into the name of any depositary designated by the Alien Property Custodian for the account of the Alien Property Custodian, or in the case of corporate stock or shares, into the name of any other person for the purpose of qualifying such person to serve as a director of the corporation issuing such corporate stock or shares; and it shall be the duty of any corporation, unincorporated association, company, or trustee to comply with such demand when accompanied by the presentation of the certificates which represent such corporate stock, shares or beneficial interest. Provided, that corporate stock or shares transferred into the name of any other person than the Alien Property Custodian or a designated depositary shall be indorsed by such person in blank and delivered to and held by the Alien Property Custodian or by a duly designated depositary.

(e) In respect of moneys, accounts payable, credits, notes or other obligations owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, whether the payment or delivery or the mere transfer and assignment thereof be demanded, the Alien Property Custodian may exercise discretion in enforcing payment, granting indulgence, making extension or accepting security, and in exercising any other right, power or authority of the enemy.

(f) The Alien Property Custodian may sell and deliver any commodity or other tangible property which may be perishable or which may in the preservation thereof involve expense. And the Alien Property Custodian may sell and deliver any rights appurtenant to the ownership of corporate stock, shares or certificates of beneficial interests in cases where such rights would lapse unless exercised within a limited time. The Alien Property Custodian may manage, conduct, and operate any business belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy in cases where the continuation of such business may seem to be necessary to prevent waste or to protect such business. And the Alien Property Custodian may sell or otherwise dispose of such business or any part thereof, or the assets or any part thereof, whenever such sale shall seem to be necessary to prevent waste or to protect such business. And in the management, operation, conduct, sale or other disposition of such business the Alien Property Custodian may exercise every right, power and authority of the enemy.

(g) In cases of liquidation of an estate belonging to a partnership, association or unincorporated company in which an enemy may have an interest, the Alien Property Custodian may exercise every right, power, and authority of the enemy, including the right, power, and authority to sell the interest of the enemy in the event such sale seems necessary to prevent waste or to protect such interest.

(h) All sales made by the Alien Property Custodian may be conducted privately or publicly, with or without advertisement, and on such terms and conditions as to the Alien Property Custodian may seem proper.

In all cases of sales made by the Alien Property Custodian, all reasonable expenses incurred in and about such sales shall be deducted from the proceeds and the net amount remaining paid into the Treasury of the United States.

(i) The Alien Property Custodian is authorized to exercise any power conferred upon him by any license issued by me or in the exercise of the power and authority conferred upon me under the "Trading with the enemy Act" wherever such license involves any act or thing concerning any money or

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other property owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy.

(4) STATUTORY POWERS OF THE ALIEN PROPERTY CUSTODIAN.

Nothing herein contained is intended, nor shall anything herein contained be construed, to limit the powers conferred upon the Alien Property Custodian by the "Trading with the enemy Act."

(5) DEPOSIT AND INVESTMENT OF MONEYS RECEIVED BY THE ALIEN PROPERTY CUSTODIAN.

There shall be deposited in the Treasury of the United States, through the office of the Secretary of the Treasury—

(a) Any and all moneys (including checks and drafts payable on demand) paid to or received by the Alien Property Custodian pursuant to the "Trading with the enemy Act."

(b) Any and all moneys (including checks and drafts payable on demand) collected or received by the Alien Property Custodian, as dividends or interest or income that may become due upon any stocks, bonds, notes, time drafts, time bills of exchange, or other securities or property held by the Alien Property Custodian or by any depositary or depositaries designated as provided in said Act for the account of the Alien Property Custodian.

(c) Any and all moneys collected as the proceeds of any and all maturing obligations held by the Alien Property Custodian or by any such depositary or depositaries for the account of the Alien Property Custodian; and

(d) Any and all moneys paid to or received by the Alien Property Custodian as the proceeds of any sale or sales, made at any time pursuant to such rules and regulations as the President shall prescribe, of any and all property or rights which shall come into the possession of the Alien Property Custodian in pursuance of the provisions of said act:

Provided, however, That the Alien Property Custodian may fix stated periods, not longer than quarter-yearly, for accounting by depositaries, agents, bailees, and attorneys in fact of all moneys received by them, and for the payment thereof by such depositaries, agents, bailees, and attorneys in fact to the Alien Property Custodian, who shall forthwith pay the same into the Treasury of the United States, as provided above, and that checks and drafts payable on demand received by the designated depositaries in payment of dividends, interest and income property held by or for the account of the Alien Property Custodian may be collected by such depositaries for the account of the Alien Property Custodian, but that all other checks and drafts payable on demand shall be forthwith deposited by the Alien Property Custodian in the Treasury of the United States, as provided above.

Any and all moneys so deposited in the Treasury of the United States, as herein provided, as well as all moneys, if any, which may be paid to the Treasurer of the United States, as provided in section 12 of said act, and all interest, dividends or other income, if any, in respect of any property conveyed, transferred, assigned or delivered to the Treasurer of the United States, as provided in said section 12, shall be credited by the Treasurer of the United States to the Secretary of the Treasury "for account of the Alien Property Custodian."

Any and all money so deposited in the Treasury of the United States, as herein provided, together with any interest or income received from the investment thereof, shall be subject to withdrawal by the Secretary of the Treasury for the purpose of making any payment or payments pursuant to the provisions of said act, and, until so withdrawn, may be invested and reinvested, from time to time, by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness. The bonds and certificates of indebtedness, in which such moneys shall be so invested, shall be held by the Secretary of the Treasury for account of the Alien Property Custodian, subject to the provisions hereof and of said act and to such further orders, rules or regulations as may, from time to time, be prescribed by me.

(6) AMENDMENTS AND MODIFICATIONS OF PRIOR EXECUTIVE ORDERS.

All other Executive orders heretofore made are hereby amended and modified to such extent as may be necessary to conform with the provisions hereof.

WOODROW WILSON.

The White House,
26 February, 1918.

PLAINTIFF'S EXHIBIT No. 691.

Executive Order Concerning Certain Sales to be Conducted by the Alien Property Custodian Pursuant to the "Trading with the Enemy Act" and Amendments Thereof.

[No. 2832.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the

enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918, I hereby, in the public interest, make the following determination, order, rule and regulation:

The Alien Property Custodian may sell at private sale, without public or other advertisement, any live stock, feed or food stuffs, hides and other animal products, agricultural products, fertilizers, chemicals, drugs, essential oils, lumber, cotton, tobacco, furniture, books, glass and china ware, wearing apparel, jewelry, precious stones, pictures, ornaments, bric-a-brac, objects of art, raw or finished textile materials, trunks, boxes, casks and containers of all kinds, partially or completely manufactured metals, fabrics or other articles, rubber and rubber products, and all kinds of merchandise, in lots having a market value at the time and place of sale not exceeding Ten Thousand Dollars ($10,000) per lot. Any such sale may be conducted at the place where such property, or the greater portion thereof, is situated, or elsewhere, and upon such terms and conditions as to the Alien Property Custodian, or his authorized agent, may seem proper.

My reasons for the foregoing determination, order, rule and regulation are:

(*a*) The properties described in the lots mentioned are not customarily sold and cannot usually be sold to advantage either at public sale after public or other advertisement, or at the place where such properties, or the greater portion thereof, are situated.

(*b*) The sales hereby authorized may be made at the time and place of favorable demand, and upon such terms and conditions as may be necessary to secure the market price.

(*c*) Unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
2 April, 1918.

PLAINTIFF'S EXHIBIT No. 692.

EXECUTIVE ORDER REVOKING POWER AND AUTHORITY IN DESIGNATED OFFICERS UNDER THE TRADING WITH THE ENEMY ACT.

[No. 2837.]

By virtue of the power and authority vested in me by "An Act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, I hereby make the following orders and rules and regulations:

SECRETARY OF THE TREASURY.

I. I hereby revoke the authority and power vested in the Secretary of the Treasury by Section XI of the Executive Order of October 12, 1917, to issue licenses to send, take or transmit out of the United States any letter or other writing, book, map, plan or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy, in any way relating to letters patent, or registration of trade-mark, print, label, or copyright, or to any applications therefor; and no such license shall be granted until further order.

FEDERAL TRADE COMMISSION.

II. I hereby revoke the power and authority vested in the Federal Trade Commission by Section XVII of the Executive Order of October 12, 1917, to issue licenses to any citizen of the United States or any corporation organized within the United States, to file or prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label or copyright, and to pay any fees or agents' fees in connection therewith; or to pay to any enemy or ally of enemy any tax, annuity or fee in relation to patents, trade-marks, prints, labels and copyrights; and no such license shall be granted until further order.

WOODROW WILSON.

THE WHITE HOUSE,
11 April, 1918.

PLAINTIFF'S EXHIBIT No. 693.

EXECUTIVE ORDER CONCERNING A SALE TO BE CONDUCTED BY THE ALIEN PROPERTY CUSTODIAN PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

[No. 2847.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918, I hereby, in the public interest, make the following determination, order, rule, and regulation:

The Alien Property Custodian is hereby authorized to sell at private sale, without public or other advertisement, the following property, to wit:

200 bales, more or less, of cotton: property of Paul Schmitz, Bremen, Germany; same now being stored in Warehouse 341 of the New York Dock Company, Brooklyn, New York.

Such sale may be made in one or more lots and may be conducted at the place where the property, or the major portion thereof, is situated, or elsewhere, and upon such terms and conditions as to the Alien Property Custodian, or his duly authorized agent may seem proper.

My reasons for the foregoing determination, order, rule, and regulation are:

(a) That the property described is not customarily sold and can not usually be sold to advantage either at public sale after public or other advertisement, or at the place where such property, or the greater portion thereof, is situated.

(b) That the United States Government having assumed jurisdiction and control over the docks at which it would be necessary to conduct the public sale of the property described, if public sale were required, and by reason of the congestion of the said docks and the immediate necessity for space thereon, further detention of the said property, which would be rendered necessary by the delays incident to public sale thereof is impracticable and inadvisable.

(c) That unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
24 April, 1918.

PLAINTIFF'S EXHIBIT No. 694.

EXECUTIVE ORDER CONCERNING A SALE TO BE CONDUCTED BY THE ALIEN PROPERTY CUSTODIAN PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

[No. 2845.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918, I hereby, in the public interest, make the following determination, order, rule and regulation:

The Alien Property Custodian is hereby authorized to sell at private sale, without public or other advertisement, the following property, to wit:

20 hogsheads, more or less, of tobacco: property of W. F. Fallenstein, Bremen, Germany: same having been taken off the German bark *Metador,* and now stored in General Stores, New York City, under the control of the United States Treasury Department.

Such sale may be made in one or more lots and may be conducted at the place where the property, or the major portion thereof, is situated, or elsewhere, and upon such terms and conditions as to the Alien Property Custodian, or his duly authorized agent may seem proper.

(c) That unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
24 April, 1918.

PLAINTIFF'S EXHIBIT No. 696.

EXECUTIVE ORDER CONCERNING A SALE TO BE CONDUCTED BY THE ALIEN PROPERTY CUSTODIAN PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

[No. 2843.]

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918, I hereby, in the public interest, make the following determination, order, rule and regulation:

The Alien Property Custodian is hereby authorized to sell at private sale without public or other advertisement, the following property, to wit:

50 hogsheads, more or less, of tobacco: property of Schilling and Burning, Bremen, Germany: same having been taken off the German Bark *Metador* and now stored in General Stores, New York City, under the control of the United States Treasury Department.

Such sale may be made in one or more lots and may be conducted at the place where the property, or the major portion thereof, is situated, or elsewhere, and upon such terms and conditions as to the Alien Property Custodian, or his duly authorized agent, may seem proper.

My reasons for the foregoing determination, order, rule and regulation are:

(a) That the property described is not customarily sold and cannot usually be sold to advantage either at public sale after public or other advertisement or at the place where such property, or the greater portion thereof, is situated.

(b) That the United States government having assumed jurisdiction and control over the docks at which it would be necessary to conduct the public sale of the property described, if public sale were required, and by reason of the congestion of the said docks and the immediate necessity for space thereon, further detention of the said property, which would be rendered necessary by the delays incident to public sale thereof, is impracticable and inadvisable.

(c) That unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
24 April, 1918.

PLAINTIFF'S EXHIBIT No. 697.

EXECUTIVE ORDER CONCERNING A SALE TO BE CONDUCTED BY THE ALIEN PROPERTY CUSTODIAN PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

[No. 2857.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918, I hereby, in the public interest, make the following determination, order, rule and regulation:

The Alien Property Custodian is hereby authorized to sell at private sale, without public or other advertisement, the following property, to wit:

100 hogsheads, more or less, of tobacco; property of Schilling and Bruning, Bremen, Germany; same having been taken off the German bark *Metador*, and now stored in General Stores, New York City, under the control of the United States Treasury Department.

Such sale may be made in one or more lots, and may be conducted at the place where the property, or the major portion thereof, is situated, or elsewhere, and upon such terms and conditions as to the Alien Property Custodian, or his duly authorized agent, may seem proper.

My reasons for the foregoing determination, order, rule and regulations are:

(a) That the property described is not customarily sold and cannot usually be sold to advantage either at public sale after public or other advertisement, or at the place where such property, or the greater portion thereof, is situated.

(b) That the United States Government having assumed jurisdiction and control over the docks at which it would be necessary to conduct the public sale of the property described, if public sale were required, and by reason of the congestion of the said docks and the immediate necessity for space thereon, further detention of the said property, which would be rendered necessary by the delays incident to public sale thereof, is impracticable and inadvisable.

(c) That unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
7 May, 1918.

PLAINTIFF'S EXHIBIT No. 698.

EXECUTIVE ORDER CONCERNING A SALE TO BE CONDUCTED BY THE ALIEN PROPERTY CUSTODIAN PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

[No. 2858.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918, I hereby, in the public interest, make the following determination, order, rule, and regulation:

The Alien Property Custodian is hereby authorized to sell at private sale, without public or other advertisement, the following property, to wit:

279,232 pounds, more or less, of nickel; property of Hammar and Company, Hamburg, Germany, Hammar and Company, Ltd., Stockholm, Sweden, and other enemies unknown; same now being in the possession of the American Dock Company, Tompkinsville, Staten Island, New York.

Such sale may be made in one or more lots and may be conducted at the place where the property, or the major portion thereof, is situated, or elsewhere, and upon such terms and conditions as to the Alien Property Custodian, or his duly authorized agent may seem proper.

My reasons for the foregoing determination, order, rule and regulation are:

(a) That the property described is not customarily sold and cannot usually be sold to advantage either at public sale after public or other advertisement, or at the place where such property, or the greater portion thereof, is situated.

(b) That the property described may be sold to such manufacturers as may be designated by the Ordnance Department of the War Department for war purposes, and therefore for direct utilization by the United States Government.

(c) That unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
9 May, 1918.

PLAINTIFF'S EXHIBIT No. 699.

EXECUTIVE ORDER.

[No. 2877.]

Whereas, in order to avoid confusion in policies, duplication of effort, and conflicting interpretations of the law, unity of control in the administration of the legal affairs of the Federal Government is obviously essential, and has been so recognized by the acts of Congress creating and regulating the Department of Justice;

Now, therefore, I, Woodrow Wilson, President of the United States, by virtue of the authority vested in me as Chief Executive and by the act "authorizing the President to coordinate or consolidate executive bureaus, agencies and offices, and for other purposes, in the interest of economy and the more efficient concentration of the Government," approved May 20, 1918, do hereby order that all law officers of the Government excepting those in the Philippine Islands, including all law officers attached to any executive bureau, agency or office specially created for the prosecution of the existing war, shall "exercise their functions under the supervision and control of the head of the Department of Justice," in like manner as is now provided by law with respect to the Solicitors for the principal Executive Departments and similar officers; that all litigation in which the United States or any Department, executive bureau, agency or office thereof, are engaged shall be conducted under the supervision and control of the head of the Department of Justice; and that any opinion or ruling by the Attorney General upon any question of law arising in any Department, executive bureau, agency or office shall be treated as binding upon all departments, bureaus, agencies or offices therewith concerned. This Order shall not be construed as affecting the jurisdiction exercised under authority of existing law by the Comptroller of the Treasury and the Judge Advocates General of the Army and Navy.

WOODROW WILSON.

THE WHITE HOUSE,
31 May, 1918.

PLAINTIFF'S EXHIBIT No. 700.

EXECUTIVE ORDER WITH RESPECT TO ORENSTEIN AND KOPPEL-ARTHUR KOPPEL ACTIENGESELLSCHAFT COMMONLY KNOWN AS ORENSTEIN-KOPPEL COMPANY.

[No. 2885.]

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," as amended by "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and prior fiscal years, on account of war expenses and for other purposes," approved March 28, 1918, I hereby make the following determination, and orders, rules, and regulations.

1. I do determine hereby, after investigation, that Orenstein and Koppel-Arthur Koppel Actiengesellschaft is an enemy not holding a license granted by the President within the purview of said "Trading with the enemy Act" as amended and the proclamations and Executive orders issued in pursuance thereof, and that all and singular the property and assets of every kind, character, and description held by or in the name of Koppel Land Company, Beaver Connecting Railroad Company, Koppel Water Company, Pennsylvania Car and Manufacturing Company, Orenstein-Arthur Koppel Company, a corporation of the Commonwealth of Pennsylvania, Universal Railway Products Company, and Koppel Sales Company belong to and are held for, by, on account of, on behalf of, and for the benefit of said Orenstein and Koppel-Arthur Koppel Actiengesellschaft.

2. The Alien Property Custodian, duly qualified and acting under the provisions of said "Trading with the enemy Act" as amended, and the proclamations

and Executive orders issued in pursuance thereof, shall have power and he is authorized and directed to hold, manage, administer, protect, preserve, control, and sell or otherwise dispose of in accordance with the following rules and regulations, any and all property, other than money, which has been or shall be conveyed, transferred, assigned, delivered, and/or paid over to him as the property of said Orenstein and Koppel-Arthur Koppel Actiengesellschaft, pursuant to the provisions of the "Trading with the enemy Act," as amended, and the proclamations and Executive orders issued pursuant thereto, or which has been or shall be required so to be.

(a) The Alien Property Custodian and depositaries for him under his direction and control and within the limits of the authority granted by him to them, shall have the power and authority to do any and all things reasonable and proper in or about or for the custody, management, administration, protection, preservation and control of any such property according to the nature and character of the property and the attendant circumstances including (but without limiting the generality of the foregoing) the power and authority to collect all bills, notes, accounts, dividends, interest, rents, royalties, annuities and other receivables, and income and profits and accumulations and distributions of principal or income; to pay rents, royalties, interest and other accounts and liens or charges; to make repairs, additions and alterations to property, whether real or personal; to rent, lease or otherwise grant the use or right to use or occupy property of any kind; to insure property against loss, and to cancel and surrender insurance policies and collect return premiums and surrender values, and to do any other act or thing in or about insurance or insurance policies; to grant by lease, license or otherwise, the right to use, or other rights, under or with respect of patents, copyrights, trade marks, trade secrets and other similar rights; to vote shares of stock or other beneficial interest in corporations, unincorporated associations, companies or trusts upon any questions at all times and upon all matters upon which any owner of such stock or other beneficial interest shall have the right to vote, and as the holder of such shares of stock or other beneficial interest to vote for or against and to take part in any sale, dissolution, consolidation, amalgamation or reorganization of any sort, of any such corporation, unincorporated association, company or trust, or of its assets or any part thereof, and to exercise any rights or privileges that may be or become appurtenant to the ownership of such stock or other beneficial interest with like force and effect and under like circumstances in all respects as though the absolute owner thereof; to give any notices and file any papers or writings of any kind proper or necessary for the creation, perfection, protection, liquidation or otherwise in respect of any claims, demands, choses in action or other rights of any kind and to settle, compromise and adjust claims, demands, choses in action or other rights; to intervene in any suit or proceeding before any court, board, Commission or other body and to file and maintain claims, demands and suits of all kinds in or before any court, board, commission or other body; to determine and pay all reasonable and proper expenses incurred in or about or with respect of the exercise of any of the powers and authority vested in the Alien Property Custodian or any depositary for him, including expenses that may be incurred in or about securing possession, custody or control of any such property, and including also taxes and other charges heretofore or hereafter lawfully assessed upon or against such property by any body politic; provided that this shall not be construed to authorize the payment of any stamp or other taxes upon or on account of conveyance, transfer, assignment or delivery of property to the Alien Property Custodian or any depositary or nominee for him; and provided further that this shall not in any way affect the power of the Commissioner of Internal Revenue or any regulations made by him or under his authority.

(b) Whenever such property or any part or parcel thereof is or shall be held or retained adversely to the Alien Property Custodian or to any requirement of or concerning such property made by the Alien Property Custodian, or under any claim of lien, charge or incumbrance, the Alien Property Custodian may compromise or settle such controversy or claim as though he were the absolute owner thereof, in any way he shall decide proper; and he shall have the power and authority to make any payment or payments necessary, and to execute and deliver any instrument or writings necessary or proper to effect or evidence the same.

(c) Whenever any such property or any part thereof shall be used or employed in the conduct or other operation of a mine, plant, factory, railroad or other transportation facility, warehouse, mercantile or trading establishment or any sort of a going business or undertaking, the Alien Property Custodian may continue the conduct or other operation of such business or undertaking; and for such purpose he shall have the right, power and authority to employ and discharge agents, attorneys, servants and other employees; to buy and sell supplies, materials and commodities required or necessary for the conduct of such business, or dealt in or handled thereby, or mined, produced, manufactured or created by it; to take out insurance; to require money owing by banks, trust companies or other depositaries on special or general deposit to be paid to the Alien Property Custodian or upon his order; to collect debts and other receivables owing to the said business or undertaking or to the former enemy owner or owners thereof and created out of or by the operation of such business or undertaking, and also debts, accounts and other receivables accruing or arising out of the conduct or other operation of such business or undertaking, by the Alien Property Custodian or under his direction or authority; to pay the wages and salaries of agents, attorneys, servants and other employees; and rents, royalties, and other current accounts and liabilities; to intervene in any suit or action pending in any court or before any board, commission or other body, in which such business or undertaking or any of the property or assets thereof shall be involved or concerned and to prosecute or defend, as the case may be; to file, prosecute and maintain any claim or suit in the name of the Alien Property Custodian or of any manager or managers appointed by him as hereinafter provided, or otherwise, arising out of or based upon transactions had prior or subsequent to the time when such property was conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian or was required so to be, growing out of the conduct or operation of such business or undertaking or any other use, custody, control or management of any property or assets thereof; and generally to manage, administer, preserve, conduct, operate and control such business or undertaking and any or all parts or parcels and assets thereof as though the absolute owner or owners thereof, either in the name of the Alien Property Custodian or otherwise as he shall determine.

(d) The Alien Property Custodian may appoint a manager or managers who, under his direction and control and within the limits of the authority conferred by him, shall be authorized and directed to hold, manage, administer, protect, preserve, and otherwise control such property or any part or parcel thereof; and any manager or managers thus appointed shall be authorized and directed to continue the conduct or other operation of any going business or other undertaking which the Alien Property Custodian himself, as provided elsewhere herein, could continue. Such manager or managers either generally or specially as the Alien Property Custodian shall from time to time determine and order or authorize, shall have and exercise the rights, powers and authority conferred upon him or them by the Alien Property Custodian; and such rights, powers, and authority may be enlarged, restricted or revoked by the Alien Property Custodian at any time and without giving any notice or reason therefor. The remuneration of all such managers shall be fixed by the Alien Property Custodian and may be increased or reduced at any time.

(e) The Alien Property Custodian shall have the right to sell or otherwise dispose of any or all of such property whenever in his opinion such sale or other disposition is in the public interest; and such property may be sold or otherwise disposed of in such parcel or parcels as he shall determine. Any property when sold, except when sold to the United States, shall be sold at public sale to the highest bidder, after public advertisement of the time and place of sale, which time shall be when the Custodian shall determine and which place shall be on the premises at the plant of said Orenstein and Koppel-Arthur Koppel Actiengesellschaft at Koppel, Beaver County, Pennsylvania. The Alien Property Custodian, upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct; but the Alien Property Custodian may at or before any sale, by public announcement or by publication fix a period after the expiration of which the right thus to reject all bids and to resell such property will not be exercised. Such property shall be sold only to American citizens, provided that any corporation incorporated within or under the authority of the laws of any State or Territory of the United States shall be considered for such purposes an American citizen; but the Alien Property Custodian shall have the right to exclude from such bidding any corporation which he shall, after investigation, determine to be controlled, managed or operated by, for, on account of, on behalf of or for the benefit of an enemy or enemies, and/or to exclude any such corporation from purchasing or otherwise acquiring any of such property from him.

(f) The Alien Property Custodian shall have full power and discretion with respect to the sale of such property and may sell the same as an entirety or may sell any and all parts thereof in such groups or parcels and at such time or times as he shall determine. He may sell any of such property used or employed in the conduct or operation of any mine, plant, factory, railroad or other transportation facility, mercantile establishment, or any sort of going business or undertaking as a going business or undertaking and may include not only the tangible property but any and all patents, trade marks, trade names, good will and other intangible rights and assets.

(g) The Alien Property Custodian may sell such property and any and all parts and parcels thereof for cash or upon credit; and in the latter event, such security for the payment of that portion of the purchase price remaining unpaid may be taken as he shall deem proper in the premises. He shall be authorized to set a minimum or upset price on any property offered for sale by him, and to fix and prescribe the terms and conditions upon which bids will be received, and to determine, generally or specially, qualifications to be met by persons offering to bid; to require deposits from prospective bidders; to determine, generally or specially, the nature and extent of information concerning any property or properties offered or to be offered for sale, which shall be given prospective bidders, and the inspection thereof which shall be allowed; to have made auditor's reports, and appraisals of property or properties offered or to be offered for sale, and generally to make and establish, generally or specially, terms and conditions to govern any or all sales to be made by him. Any property or properties thus sold may be sold subject to or free from any or all debts, claims and liabilities of all kinds created or arising out of or in respect of any such property or properties or the conduct or other operation of any such business or other undertaking; and subject to or free from liens, charges or incumbrances; and payment thereof and of all expenses of such sale or sales may be made out of the proceeds from such sales or sale, or may be required to be made or assumed by the purchaser, as the Alien Property Custodian shall determine.

(h) All costs and expenses, including repairs made, taxes or other charges paid, remuneration of any and all depositaries, agents, and managers and all payments of every kind made by the Alien Property Custodian or under his authority, and all claims, rights and demands of every kind, character and description, based upon or arising out of the custody, management, administration, preservation, control and sale or other disposition of property by the Alien Property Custodian or under his authority, shall be limited to and enforced against and paid or satisfied out of only the property or business or undertaking out of which, on account of which, or in respect of which said costs, charges, expenses, claim right or demand shall have arisen or been created; provided that whenever such property or the income therefrom shall be insufficient for such purpose, same may be paid out of other moneys or properties required or received from or on account of the said enemy, all of such payments, however, being charged against the property on account of which or in respect of which same shall be made. Insofar as possible, all such payments shall be made out of income from or profits arising from or out of such property or going business or undertaking before the corpus thereof shall be used for such purpose. Neither the Alien Property Custodian nor any agent or manager appointed by him shall be liable personally for any debt or other obligation of any kind or character owing, created, or growing out of or in any other way arising from any such property or the custody, management, administration, protection, preservation, control and/or sale or other disposition thereof and/or from the conduct or other operation of any going business or undertaking; and in no event and under no circumstances shall the Alien Property Custodian or any agent or manager appointed by him be liable to any one for, or on account of, anything done or omitted in or about or in respect of any such property or the control or other operation of any such going business or other undertaking except in cases of intentional injury or fraudulent misconduct by the person attempted to be charged with such liability.

(i) The Alien Property Custodian and depositaries, agents and managers for him, within the limits of the authority granted by him, shall have the power and authority to do any and all things reasonable or proper in or about or in respect of the exercise of any of the powers and authority specifically granted above, and in addition are hereby authorized and directed to manage all such property and to do any act or things in respect thereof or make any disposition thereof or any part thereof by sale or otherwise and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof, in like manner as though the Alien Property Custodian were the absolute owner thereof, subject to no limitation or restrictions other than those specifically set forth herein or in said "Trading with the enemy Act" as amended or any prior Executive orders issued pursuant thereto not in conflict herewith.

My reasons in the public interest for the foregoing determinations, and rules and regulations are that they are necessary to enable the Alien Property Custodian to perform the duties imposed upon him and to exercise the powers and authority granted to him with respect to said Orenstein and Koppel-Arthur Koppel Actiengesellschaft, and any and all properties belonging to or held by, for, on account of, on behalf of, or for the benefit of said enemy, properly and effectively.

WOODROW WILSON.

THE WHITE HOUSE,
15 June, 1918.

PLAINTIFF'S EXHIBIT No. 701.

EXECUTIVE ORDER AMENDING THE EXECUTIVE ORDER OF OCTOBER 12, 1917, TO PROVIDE FOR A REPRESENTATIVE OF THE WAR INDUSTRIES BOARD ON THE WAR TRADE BOARD.

[No. 2940.]

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, and by Title VII of the act approved June 15, 1917, entitled "An act to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States, to punish espionage and better to enforce the criminal laws of the United States and for other purposes," I do hereby amend the order of October 12, 1917, vesting power and authority in designated officers and establishing the War Trade Board, composed of representatives, respectively, of the Secretary of State, of the Secretary of the Treasury, of the Secretary of Agriculture, of the Secretary of Commerce, of the Food Administrator, and of the United States Shipping Board, by changing Paragraph I of said order to read as follows:

"I. I hereby establish a War Trade Board to be composed of representatives, respectively, of the Secretary of State, of the Secretary of the Treasury, of the Secretary of Agriculture, of the Secretary of Commerce, of the Food Administrator, of the United States Shipping Board, and of the War Industries Board."

The order of October 12, 1917, as so amended is hereby confirmed and continued, and all orders and proclamations heretofore issued vesting power and authority in the War Trade Board are hereby confirmed and made applicable to the War Trade Board constituted in accordance with this order.

WOODROW WILSON.

The White House,
20 August, 1918.

PLAINTIFF'S EXHIBIT No. 702.

Executive Order Concerning Certain Sales to be Conducted by the Alien Property Custodian Pursuant to the "Trading With the Enemy Act" and Amendments Thereof.

[No. 2949.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918, I hereby, in the public interest, make the following determination, order, rule and regulation:

The Alien Property Custodian may sell at private sale, without public or other advertisement, any seats upon or memberships in, any stock, cotton, grain, produce, or other exchanges incorporated or organized and existing anywhere within the United States as defined in the "Trading with the enemy Act;" and any such sale or sales may be made and conducted wherever and upon such terms and conditions as the Alien Property Custodian or his authorized agent shall determine.

My reasons, in the public interest, for the foregoing determination, order, rule and regulation are:

(a) The methods required by law and the character of said property to be pursued in the sale thereof are such that the power of sale vested in the Alien Property Custodian cannot be exercised effectively except at private sale; in that such seats upon or memberships in said exchanges can be purchased only by persons who are already members of said exchange or who are approved by said exchange according to its Constitution and By-Laws, and such seats upon or memberships in said exchanges can be sold and transferred therefore only to persons who are members of, or who are approved by the exchange the seat upon or membership in which is the subject matter of sale.

(b) The sales hereby authorized may be made at the time and place of most favorable demand and upon such terms and conditions as may be necessary to secure the best market price.

(c) Unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

The White House,
29 August, 1918.

PLAINTIFF'S EXHIBIT No. 703.

Executive Order Authorizing the Alien Property Custodian to Sell Certain Property at Private Sale.

[No. 2953.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918, I hereby, in the public interest, make the following determination, order, rule and regulation:

The Alien Property Custodian is hereby authorized to sell at private sale, without public or other advertisement, certain real estate now being held and administered by him as such Custodian, and heretofore, upon requirement by him, conveyed, transferred, assigned, and delivered to him as the property of Lilly Busch, whom he did after investigation determine to be an enemy, within the purview of the said Act as amended, described as follows, to wit:

Beginning at a point in the westerly line of Northern Avenue as the same is now legally established distant One Hundred and Seventy-eight (178) feet and twenty-four one-hundredths (.24) of a foot northwardly from the corner formed by the intersection of said westerly line of Northern Avenue with the northerly line of West 181st Street; running thence westerly in a straight line which on its southerly side makes an angle of 87 degrees 54 minutes and 52 seconds with said westerly line of Northern Avenue, One Hundred and Ninety-six (196) feet and fifty-three one-hundredths (.53) of a foot; thence in a straight line still running westwardly but bearing to the north and making an angle on its northerly side with said last mentioned straight line of 151 degrees 3 minutes and 30 seconds, One Hundred Sixty-one (161) feet and sixty-seven one-hundredths (.67) of a foot to the easterly line of Riverside Drive at a point therein distant Two Hundred and Three (203) feet and ninety one-hundredths (.90) of a foot northwardly measured along the easterly line of said Drive from the corner formed by the intersection of the said easterly line of Riverside Drive with the northerly line of W. 181st Street aforesaid; thence northwardly along the easterly line of Riverside Drive on a curve to the left having a radius of Three Hundred and Seventy-five (375) feet, Thirty-nine (39) feet and six hundred fifty-eight one-thousandths (.658) of a foot to a point of tangency in said easterly line of said Drive; thence still northwardly along the easterly line of said Drive on a line tangent to said curve of Three Hundred Seventy-five (375) feet radius, one Hundred Forty-seven (147) feet and two hundred thirty-eight one-thousandths (.238) of a foot to a point of curve in said easterly line of said Drive; thence still northwardly along the said easterly line of said Drive on a curve to the right having a radius of Three Hundred Ten (310) feet, Eighty-two (82) feet and Eight Hundred twenty-four one-thousandths (.824) of a foot to a point of tangency in said easterly line of said Drive; thence still northwardly along said easterly line of said Drive on a line tangent to said curve of Three Hundred Ten (310) feet radius Sixteen (16) feet and three hundred and two one-thousandths (.302) of a foot to a point in said easterly line of said Drive, said point being the intersection of the easterly line of said Riverside Drive with the northerly "record" line of the property described herein; thence easterwardly in a straight line which on its southerly side makes an angle of Eighty-seven (87) degrees thirty-seven (37) minutes and twenty-seven and six-tenths (27.6) seconds with said easterly line of Riverside Drive, Five (5) feet and three hundred twelve one-thousandths (.312) of a foot to an angle point in the aforesaid record line; thence in a straight line still running eastwardly but bearing to the north and making an angle on its southerly side with said last mentioned straight line of one hundred eighty-six (186) degrees thirty-eight (38) minutes and sixteen

(16) seconds, Two Hundred Ninety-two (292) feet and seventy-three one-hundredths (.73) of a foot to a point in the westerly line of Northern Avenue as the same is now legally established; said point being distant Four Hundred Twenty-one (421) feet and seven one-hundredths (.07) of a foot northwardly from the corner formed by the intersection of said westerly line of Northern Avenue with the northerly line of West 181st Street; running thence southwardly along the west line of said Northern Avenue Two Hundred Forty-two (242) feet and eighty-three one-hundredths (.83) of a foot to the point or place of beginning, (references hereinbefore made to Riverside Drive and 181st Street are intended to designate the same as existing on and before March 14, 1910); excepting therefrom Twenty-two Hundred and Four and three-tenths (2204.3) feet, more or less, the area of square feet taken by the City of New York in a condemnation proceeding, as more particularly described on the Damage Map approved by the Board of Estimate and Apportionment on or about July 2, 1914, and approved by the Commissioners of Assessment on or about April 13, 1915; together with (but without warranty with respect thereto) all strips or gores of land, if any, owned by party of the first part adjacent to said premises.

Subject to all and singular the covenants and restrictions contained in deeds recorded in Liber 370 of Conveyances at page 40, Liber 411 of Conveyances at page 332, Liber 369 of Conveyances at page 252, and Liber 531 of Conveyances at page 264, and variations between the fences and retaining walls and the record lines on south. (As shown on survey made by Earl B. Lovell, dated August 9, 1909.)

And including in the premises hereby conveyed all right, title and interest of party of the first part in and to any land lying in the bed of any street, road, or avenue opened or proposed in front of or adjoining said premises, and except as to the award for the excepted premises hereinabove referred to taken by the city in said condemnation proceedings, all of the right, title and interest of party of the first part in and to any award for damage to said premises by reason of change of grade of any street.

Situated in the City of New York and State of New York.

My reasons for the foregoing determination, order, rule, and regulation, are:

(a) The said Lilly Busch has filed with said Alien Property Custodian her petition pursuant to the provisions of section 9 of said "Trading with the enemy Act," asking that said property be returned to her, and because of the pendency of said petition said property can not be sold at public sale;

(b) An offer for the purchase of said real estate has been made heretofore, and is now pending, but said offer, if accepted, must be accepted at once;

(c) Said proposed sale is an advantageous one, and said Lilly Busch has consented in writing that said sale be made, and it is for the best interest of the United States, and of all persons who are or may be interested in said property, that the same be sold at once.

WOODROW WILSON.

THE WHITE HOUSE,
12 September, 1918.

PLAINTIFF'S EXHIBIT No. 704.

EXECUTIVE ORDER VESTING POWER AND AUTHORITY IN A DESIGNATED OFFICIAL OR HIS SUCCESSORS IN OFFICE, SUBJECT TO THE SUPERVISION OF THE ALIEN PROPERTY CUSTODIAN.

[No. 2959.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the

enemy, and for other purposes,'' approved October 6, 1917, known as the ''Trading with the enemy Act,'' and the amendments to such Act, embodied in ''An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes,'' approved March 28, 1918, I hereby, in the public interest make the following determination and order:

I hereby vest in the Managing Director of the Alien Property Custodian in the Philippine Islands, and his successors in office, to be hereafter appointed by the Alien Property Custodian, all of the rights, powers, and authorities with respect to property rights, titles, and interests in the Philippine Islands, heretofore or hereafter vested in or conferred upon the Alien Property Custodian by me under Executive Order dated October 12, 1917, and all other Executive Orders heretofore or hereafter signed by me, subject, however, to the control, supervision and direction of the Alien Property Custodian at all times.

WOODROW WILSON.

THE WHITE HOUSE,
13 September, 1918.

PLAINTIFF'S EXHIBIT No. 705.

EXECUTIVE ORDER CANCELLING SALE OF ''HELIOS'' CIGAR FACTORY, PART OF GERMANN & COMPANY, INC., MADE TO WALTER E. OLSEN AND COMPANY, BY THE ALIEN PROPERTY CUSTODIAN'S REPRESENTATIVE, PURSUANT TO THE ''TRADING WITH THE ENEMY ACT'' AND AMENDMENTS THEREOF.

[No. 2958.]

By virtue of the authority vested in me by ''An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendments thereto embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28th, 1918, and all other powers and authorities me hereto enabling, I hereby, in the public interest, make the following determination and order:

Whereas, A. Mitchell Palmer, Alien Property Custodian, has reported to me that a certain property known as the "Helios" Cigar Factory, part of Germann & Company, Inc., was offered for sale at Manila, in the Philippines, by Francis Burton Harrison, the Custodian's representative in the Philippines, on May 1st, 1918, and the said property was bid in by Walter E. Olsen & Company, on May 7th, 1918, and that the said sale was not advertised or conducted in accordance with rules and regulations prescribed by me, as required by the said "Trading with the enemy Act," as amended, nor in accordance with the instructions and policies of A. Mitchell Palmer, Alien Property Custodian, and that he has therefor disapproved the said sale;

Now, therefore, I hereby declare the said sale to be void and of no effect, and I hereby authorize and direct the Alien Property Custodian to reject all bids received at the said sale, including the bid of the said Walter E. Olsen & Company.

My reasons for the foregoing determination and order are:

(1) The short notice given of the sale, and inadequate opportunity for purchasers to inform and prepare themselves to bid.

(2) The exclusion of the public from the sale,

which deprived it of the public character required by the aforesaid Act of Congress as amended.

(3) The advertised conditions of the sale excluded American corporations who are legally entitled to bid, and contained several objectionable details.

(4) The sale was not made under the rules and regulations prescribed by me and as required by said Act as amended, and not in accordance with the instructions and policies of the Alien Property Custodian.

WOODROW WILSON.

THE WHITE HOUSE,
13 September, 1918.

PLAINTIFF'S EXHIBIT No. 706.

EXECUTIVE ORDER CANCELLING SALE OF PART OF A. RICHTER & COMPANY, KNOWN AS "EL SIGLO" MADE TO LORZA & LOZANO BY THE ALIEN PROPERTY CUSTODIAN'S REPRESENTATIVE PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

[No. 2956.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendments thereto embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28th, 1918, and all other powers and authorities me hereto enabling, I hereby, in the public interest, make the following determination and order:

Whereas, A Mitchell Palmer, Alien Property Custodian, has reported to me that a certain property known as "El Siglo" part of A. Richter & Company, was offered for sale at Manila, in the Philippines, by Francis Burton Harrison, the Custodian's representative in the Philippines, on March 21, 1918, and the said property was bid in by Lorza & Lozano, on April 1, 1918, and that the said sale was not advertised or conducted in accordance with rules and regulations prescribed by me, as required by the said "Trading with the enemy Act," as amended, nor in accordance with the instructions and policies of A. Mitchell Palmer, Alien Property Custodian, and that he has therefore disapproved the said sale;

Now, therefore, I hereby declare the said sale to be void and of no effect, and I hereby authorize and direct the Alien Property Custodian to reject all bids received at the said sale, including the bid of the said Lorza and Lozano.

My reasons for the foregoing determination and order are:

(1) That by the powers granted me under said Act of Congress, and by the Executive Order issued by me on October 12th, 1917, to the War Trade Board; and by the license granted by the said War Trade Board, "El Siglo" part of A. Richter & Company, should have been liquidated under said license and by the party designated in said license, and not sold by the Alien Property Custodian's representative.

(2) That on the date of the advertisement, even if the Alien Property Custodian had the power to take over the above mentioned property, there was no authority in law to sell the same either at public or private sale.

(3) The selling of the property by sealed bids.

(4) The advertised conditions of the sale excluded

American corporations who are legally entitled to bid, and contained several objectionable details.

(5) The sale was not made under the rules and regulations prescribed by me and as required by said Act as amended, and not in accordance with the instructions and policies of the Alien Property Custodian.

WOODROW WILSON.

THE WHITE HOUSE,
13 September, 1918.

PLAINTIFF'S EXHIBIT No. 707.

EXECUTIVE ORDER CANCELLING SALE OF PART OF GERMANN & COMPANY, LTD., INC., MADE TO THE OXY-ACETYLENE WELDING & CUTTING COMPANY, CHANGED TO PHILIPPINE ENGINEERING COMPANY, INC., BY THE ALIEN PROPERTY CUSTODIAN'S REPRESENTATIVE PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

[No. 2955.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendments thereto embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28th, 1918, and all other powers and authorities me hereto enabling, I hereby, in the public interest, make the following determination and order:

Whereas, A. Mitchell Palmer, Alien Property Custodian, has reported to me that a certain property known as the Engineering Department of Germann and

Company, Ltd., Inc., was offered for sale at Manila, in the Philippines, by Francis Burton Harrison, the Custodian's representative in the Philippines, on May 1st, 1918, and the said property was bid in by Oxy-Acetylene Welding and Cutting Company, changed to Philippine Engineering Company, Inc., on May 13th, 1918, and that the said sale was not advertised or conducted in accordance with rules and regulations prescribed by me, as required by the said "Trading with the enemy Act," as amended, nor in accordance with the instructions and policies of A. Mitchell Palmer, Alien Property Custodian, and that he has therefore disapproved the said sale;

Now, therefore, I hereby declare the said sale to be void and of no effect, and I hereby authorize and direct the Alien Property Custodian to reject all bids received at the said sale, including the bid of the said Oxy-Acetylene Welding and Cutting Company.

My reasons for the foregoing determination and order are:

(1) The short notice given of the sale and inadequate opportunity for purchasers to inform and prepare themselves to bid.

(2) The exclusion of the public from the sale, which deprived it of the public character required by the aforesaid Act of Congress as amended.

(3) The advertised conditions of the sale excluded American corporations who are legally entitled to bid, and contained several objectionable details.

(4) The sale was not made under the rules and regulations prescribed by me and as required by said Act as amended, and not in accordance with the instructions and policies of the Alien Property Custodian.

WOODROW WILSON.

THE WHITE HOUSE,
13 September, 1918.

PLAINTIFF'S EXHIBIT No. 708.

EXECUTIVE ORDER CANCELLING SALE OF FROEHLICH AND KUTTNER MADE TO COMPANIA MERCANTIL DE FILIPINAS BY THE ALIEN PROPERTY CUSTODIAN'S REPRESENTATIVE PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

[No. 2954.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendments thereto embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28th, 1918, and all other powers and authorities me hereto enabling, I hereby, in the public interest, make the following determination and order:

Whereas, A. Mitchell Palmer, Alien Property Custodian, has reported to me that a certain property known as Froehlich & Kuttner, was offered for sale at Manila, in the Philippines, by Francis Burton Harrison, the Custodian's representative in the Philippines, on May 1st, 1918, and the said property was bid in by Compania Mercantil de Filipinas, on May 10th, 1918, and that the said sale was not advertised or conducted in accordance with rules and regulations prescribed by me, as required by the said "Trading with the enemy Act," as amended, nor in accordance with the instructions and policies of A. Mitchell Palmer, Alien Property Custodian, and that he has therefore disapproved the said sale;

Now, therefore, I hereby declare the said sale to be void and of no effect, and I hereby authorize and direct the Alien Property Custodian to reject all bids received at the said sale, including the bid of the said Compania Mercantil de Filipinas.

My reasons for the foregoing determination and order are:

(1) That by the powers granted me under said Act of Congress, and by the Executive Order issued by me on October 12th, 1917, to the War Trade Board; and by the license granted by the said War Trade Board, the firm of Froehlich and Kuttner should have been liquidated under said license and by the party designated in said license, and not sold by the Alien Property Custodian's representative.

(2) That, even if the Alien Property Custodian's representative had had the power to sell and liquidate said firm, that not sufficient notice or adequate opportunity was granted to purchasers to inform and prepare themselves to bid.

(3) The exclusion of the public from the sale, which deprived it of the public character required by the aforesaid Act of Congress as amended.

(4) The advertised conditions of the sale excluded American corporations who are legally entitled to bid, and contained several objectionable details.

(5) The sale was not made under the rules and regulations prescribed by me and as required by said Act as amended, and not in accordance with the instructions and policies of the Alien Property Custodian.

WOODROW WILSON.

THE WHITE HOUSE,
13 September, 1918.

PLAINTIFF'S EXHIBIT No. 709.

AN EXECUTIVE ORDER CANCELLING SALE OF PART OF A. RICHTER & COMPANY, KNOWN AS "LA SOMBRERIA" MADE TO E. P. BRIAS Y ROXAS BY THE ALIEN PROPERTY CUSTODIAN'S REPRESENTATIVE PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

[No. 2957.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendments thereto embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28th, 1918, and all other powers and authorities me hereto enabling, I hereby, in the public interest, make the following determination and order:

Whereas, A. Mitchell Palmer, Alien Property Custodian, has reported to me that a certain property known as "La Sombreria" part of A. Richter & Company, was offered for sale at Manila, in the Philippines, by Francis Burton Harrison, the custodian's representative in the Philippines, on March 21, 1918, and the said property was bid in by E. P. Brias y Roxas, on April 1, 1918, and that the said sale was not advertised or conducted in accordance with rules and regulations prescribed by me, as required by the said "Trading with the enemy Act," as amended, nor in accordance with the instructions and policies of A. Mitchell Palmer, Alien Property Custodian, and that he has therefore disapproved the said sale;

Now, therefore. I hereby declare the said sale to be void and of no effect, and I hereby authorize and direct the Alien Property Custodian to reject all bids received at the said sale, including the bid of the said E. P. Brias y Roxas.

My reasons for the foregoing determination and order are:

(1) That by the powers granted me under said act of Congress, and by the Executive order issued by me on October 12, 1917, to the War Trade Board; and by the license granted by the said War Trade Board, the La Sombreria, part of A. Richter & Company, should have been liquidated under said license and by the party designated in said license, and not sold by the Alien Property Custodian's representative.

(2) That on the date of the advertisement, even if the Alien Property Custodian had the power to take over the above-mentioned property, there was no authority in law to sell the same either at public or private sale.

(3) The selling of the property by sealed bids.

(4) The advertised conditions of the sale excluded American corporations who are legally entitled to bid, and contained several objectionable details.

(5) The sale was not made under the rules and regulations prescribed by me and as required by said act as amended, and not in accordance with the instructions and policies of the Alien Property Custodian.

WOODROW WILSON.

THE WHITE HOUSE,
13 September, 1918.

PLAINTIFF'S EXHIBIT No. 710.

AN EXECUTIVE ORDER REJECTING THE BID OF THEODORE FRIEDEBURG OF $145,000 FOR THE PROPERTY OF THE PARTNERSHIP OF A. W. FABER, OFFERED FOR SALE AT PUBLIC AUCTION ON SEPTEMBER 17, 1918, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

[No. 2968.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendments thereto embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28th, 1918, and all other powers and authorities me hereto enabling, make the following determination and order:

Whereas, A. Mitchell Palmer, Alien Property Custodian, has reported to me that certain property formerly the property of A. W. Faber, a partnership heretofore doing business in the United States, with its main plant at Newark, New Jersey, and heretofore composed of Count Alexander von Faber-Castell and Countess Ottilie von Faber-Castell as copartners, was offered for sale to the highest bidder at public auction on September 17, 1918, at eleven o'clock a. m., at which sale the highest bid received for the said property was the sum of $145,000, made by Theodore Friedeburg, and that the said bid is not considered by the Alien Property Custodian an adequate price for the said property, and that he has therefore disapproved the said sale.

Now, therefore, I hereby authorize and direct the Alien Property Custodian to reject all bids received at the said sale, including the bid of the said Theodore Friedeburg, and to resell such property at public sale, as if said sale had not occurred.

My reasons for the foregoing determination and order are:

That the price bid for the said property by the said Theodore Friedeburg, to wit, the sum of $145,000, is inadequate, and not the fair market value of the property.

WOODROW WILSON.

THE WHITE HOUSE,
30 September, 1918.

PLAINTIFF'S EXHIBIT No. 711.

EXECUTIVE ORDER PRESCRIBING ADDITIONAL RULES AND REGULATIONS, AND MAKING CERTAIN DETERMINATIONS RESPECTING THE EXERCISE OF THE POWERS AND AUTHORITY AND THE PERFORMANCE OF THE DUTIES OF THE ALIEN PROPERTY CUSTODIAN.

[No. 2991.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," as amended, I hereby make the following orders, rules and regulations, and determinations.

DEFINITIONS.

1. The words "Insurance Company" as used herein shall be deemed to mean a Partnership, Association, Mutual Company, Branch, General Agency

whether incorporated or unincorporated, group of individual underwriters, corporation or body politic whose business in whole or in part consists of insurance or underwriting in any one or more of its branches.

2. The word "enemy" as used herein, shall be deemed to mean either an "enemy" or "ally of enemy" as the case may be.

POWERS OF MANAGEMENT AND ADMINISTRATION, INCLUDING SALE OR OTHER DISPOSITION.

The Alien Property Custodian shall have power, and he is authorized and directed, to hold, manage, administer, protect, preserve, control, and to re-insure or retrocede, and to sell or otherwise dispose of, in accordance with the following rules and regulations, any and all property, other than money, of any insurance company heretofore doing business within the United States which has been or shall be conveyed, transferred, assigned, delivered, and/or paid over to him pursuant to the provisions of the "Trading with the enemy Act" as amended, and the proclamations and Executive orders issued in pursuance thereof, or which has been or shall be required so to be conveyed, transferred, assigned, delivered, and/or paid over to him, or which shall be seized by him.

1. The Alien Property Custodian shall have the power and authority to do any and all things reasonable and proper in or about the taking over, custody, management, administration, protection, preservation and control of such business, property and assets, including (but without limiting the generality of the foregoing) the power and authority to collect all premiums, commissions, agency balances, bills, notes, accounts, dividends, interest, rents and other receivables, and income and profits and accumulations and distri-

bution of principal or income; to pay all leases, claims, premiums, adjustment charges, rents, interest and other accounts and liens or charges; to vote in person or by proxy shares of stock or other beneficial interest in corporations, unincorporated associations, companies or trusts upon any questions at all times and upon all matters upon which any owner of such stock or other beneficial interest shall have the right to vote, including the power and authority to vote for or against and to take part in any sale, dissolution, consolidation, amalgamation or reorganization of any sort, of any such corporation, unincorporated association, company or trust, or of its assets or any part thereof, and to exercise any rights or privileges that may be or become appurtenant to the ownership of such stock or other beneficial interest with like force and effect and under like circumstances in all respects as though the absolute owner thereof; to give any notices and file any papers or writings of any kind, proper or necessary for the creation, perfection, protection, liquidation or otherwise in respect of any claims, demands, choses in action or other rights of any kind, and to settle, compromise and adjust claims, demands and choses in action; to intervene in any suit or proceeding and to file and maintain claims, demands and suits of all kinds in or before, any court, board, commission or other body; to determine and pay all reasonable and proper expenses incurred in or about or with respect of the exercise of any of the powers and authority vested in the Alien Property Custodian or any depositary for him, including expenses that may be incurred in or about securing possession, custody or control of any such property, and including also taxes and other charges heretofore or hereafter lawfully assessed upon or against such property, by any body politic, provided that this shall not be construed to require the payment of any stamp or other taxes upon or on account of conveyance, transfer, assignment or delivery of property to the Alien Property Custodian or to any agent, attorney, bailee, nominee or depositary for him; and provided further that this shall not in any way affect the power of the Commissioner of Internal Revenue or any regulations made by him or under his authority.

2. Whenever any such property or any part or parcel thereof is or shall be subjected to any claim of lien, charge or incumbrance, or is or shall be held or retained adversely to the Alien Property Custodian or to any requirement with respect to such property made by him, the Alien Property Custodian may compromise or settle such controversy and pay any such claim in any way that he shall decide to be proper and as though he were the absolute owner of the property involved; and he shall have the power and authority to make any payment or payments necessary and to execute and deliver any instruments or writings necessary and proper to effect or evidence the same.

3. Whenever any such property or any part or parcel thereof shall constitute part of, or have been used in the conduct of, the business of any such insurance company, the Alien Property Custodian, in addition to the rights, powers and authority elsewhere herein conferred upon him in respect of such property, may continue the conduct or other operation of the business of such insurance company conducted anywhere within the United States prior thereto by, or for, such company; and for such purpose, the Alien Property Custodian shall have the right, power and authority to employ and discharge managers, agents, attorneys, servants and other employees, to effect insurance and reinsurance, to issue policies, certificates, or other contracts of insurance

or reinsurance; to adjust, compromise, settle and pay claims of every kind arising in connection with such business; to require money owing by insurance companies, banks, trustees, trust companies, state or municipal officers, or other depositaries on special or general deposit to be paid by him or upon his order; to collect debts, premiums, commissions, dues, assessments and other receivables owing to the said business or to the former enemy owner or owners thereof and created out of or by the operation of such business, and also debts, accounts and other receivables accruing or arising out of the conduct or other operation or such business or undertaking, by the Alien Property Custodian or under his direction or authority; to pay the wages and salaries of managers, agents, attorneys, servants and other employees, and rents, and current accounts and other liabilities; to intervene in any suit or action pending in any court or before any board, commission or other body, in which such business or any of the property or assets thereof shall be involved or concerned and to prosecute or defend, as the case may be; to file, prosecute and maintain in the name of the Alien Property Custodian or otherwise as may be proper, any claim or suit arising out of or based upon transactions had prior or subsequent to the time when such business or property was demanded or taken over by the Alien Property Custodian, but growing out of the conduct or operation of such business or any other use, custody, or management of any property or assets thereof; and generally, to manage, administer, preserve, conduct, operate and control such business and any or all parts or parcels and assets thereof as though the absolute owner, either in the name of the Alien Property Custodian or otherwise as he shall determine.

4. The Alien Property Custodian may appoint agents, attorneys, bailees, depositaries, liquidators and/or managers who under his direction and control within the limits of the authority conferred by him, shall be authorized and directed to hold, manage, administer, protect, preserve and otherwise control the business, property and assets demanded and taken over by him, or any part or parcel thereof; and they may be authorized and directed to continue the conduct of such business which the Alien Property Custodian himself as provided elsewhere herein, could continue. Such agents, attorneys, bailees, depositaries, liquidators and managers shall have and exercise the rights powers and authority which shall be from time to time conferred upon him or them by the Alien Property Custodian; and such rights, powers and authority may be enlarged, restricted or revoked by the Alien Property Custodian at any time and without giving any notice or reason therefor, and the remuneration of all such agents, attorneys, bailees, depositaries, liquidators and managers shall be fixed by the Alien Property Custodian and may be increased or reduced at any time.

5. The Alien Property Custodian shall have full power and discretion with respect to the business, property and assets of any insurance company which has been or shall be conveyed, transferred, assigned, delivered or paid over to him, or required so to be, or which has been or shall be seized by him, and may liquidate, reinsure or retrocede, or sell or otherwise dispose of in accordance with the provisions of said "Trading with the enemy Act" as amended, the said business in whole or in part at such times and upon such terms as he may determine, and may devote so much of the property and assets of such insurance company in his possession or under his control or subject to his demand as shall be necessary to effect such

reinsurance or retrocession. Where the business is reinsured in whole or in part, such reinsurance shall be effected only in insurance companies incorporated within and under the authority of the laws of the United States, or of any State or Territory of the United States.

6. The Alien Property Custodian shall have the power, in and about the conduct of such business and of its liquidation, retrocession and/or reinsurance to sell at private sale, without public or other advertisement any stocks, beneficial interests in stocks, including voting trust certificates and all other rights appurtenant to the ownership of stocks, bonds, negotiable instruments or evidences of indebtedness, and maps, in parcels, lots or quantities having a market value at the time of sale not exceeding ten thousand dollars ($10,000) for each parcel, lot, or quantity sold. Any such sale may be conducted at such place and upon such terms and conditions as to the Alien Property Custodian, or his authorized agent may seem proper. The reasons in the public interest for the foregoing determination, order, rule and regulation are:

(a) The properties above described can not usually be sold to the best advantage at public sale after public or other advertisement.

(b) The sales hereby authorized may be made at the time and place of most favorable demand, and upon such terms and conditions as may be necessary to secure the best market price.

(c) Unnecessary expense, delay and inconvenience may be avoided.

EFFECT UPON THE STATUTORY POWERS OF THE ALIEN PROPERTY CUSTODIAN AND UPON PRIOR EXECUTIVE ORDERS.

1. Nothing herein contained shall limit or shall be construed to limit, in any way, the rights, powers and

authority conferred upon the Alien Property Custodian by the "Trading with the enemy Act" and the amendments thereto and the Executive orders heretofore issued pursuant thereto.

2. All Executive orders heretofore made are amended and modified hereby to such an extent as may be necessary to conform with the provisions hereof; but with this exception, all of such orders in force and effect at the time this order is issued are expressly ratified and continued in full force and effect.

WOODROW WILSON.

The White House,
12 November, 1918.

PLAINTIFF'S EXHIBIT No. 712.

Executive Order.

I hereby vest in the Attorney General all power and authority conferred upon me by section 9 of the Act approved October 6, 1917, known as the "Trading with the Enemy Act," as amended by the Act entitled "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, and for other purposes," approved July 11, 1919.

WOODROW WILSON.

The White House,
15 July, 1919.

hundred and nineteen, and in the year of the independence of the United States, the one hundred forty-fourth.

WOODROW WILSON.

PLAINTIFF'S EXHIBIT No. 714.

EXECUTIVE ORDER REJECTING THE BID OF G. VINTSCHGER FOR CERTAIN SHARES OF THE CAPITAL STOCK OF EMIL GEBEL COMPANY, A NEW YORK CORPORATION, OFFERED FOR SALE AT PUBLIC AUCTION ON JUNE 20, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment thereto embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such Act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, and all other powers and authorities me hereto enabling, I do hereby make the following determination and order:

Whereas the Alien Property Custodian offered for sale at public sale to the highest bidder in the City of New York, State of New York at 3:00 p. m. on the 20th day of June, 1919, certain shares of the capital stock of Emil Gebel Company, a New York Corporation, said shares being described as follows:

Item I. 100 shares of Preferred Stock (out of a total of 300 shares outstanding, of the par value of $100 each), the same being evidenced by certificates A12 and A13, issued to the Alien Property Custodian.

Item II. 137 shares of Common Stock (out of a total of 300 shares outstanding, of the par value of $100 each) the same being evidenced by certificates 22, 23 and 24, issued to the Alien Property Custodian.

Whereas, the highest bid received for said stock was $237.00 for the entire 100 shares preferred and 137 shares common, which bid was made by G. Vintschger.

The Alien Property Custodian is hereby authorized and shall have the right to reject all bids made at the said sale, including the bid of the said G. Vintschger, and to re-sell such property at public sale.

My reason for the foregoing determination and order is that the above stated price bid for the said property is inadequate and not the fair value thereof.

Done in the District of Columbia this 18th day of July in the year of our Lord one thousand nine hundred and nineteen, and in the year of the independence of the United States, the one hundred forty-fourth.

WOODROW WILSON.

PLAINTIFF'S EXHIBIT No. 715.

EXECUTIVE ORDER REJECTING THE BID OF G. VINTSCHGER FOR CERTAIN SHARES OF THE CAPITAL STOCK OF MARKT AND SCHAEFER COMPANY, A NEW JERSEY CORPORATION, OFFERED FOR SALE AT PUBLIC AUCTION ON JUNE 20, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such Act embodied in "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, and all other powers and authorities me hereto enabling, I do hereby make the following determination and order:

Whereas, the Alien Property Custodian offered for sale at auction in the City of New York, State of New York at 2.30 p. m. on the 20th day of June, 1919, certain shares of the capital stock of Markt and Schaefer Company, a New Jersey Corporation, said shares being described as follows:

Item I. 460 shares of Preferred Stock (out of a total of 1,250 shares outstanding, of the par par value of $100 each), the same being evidenced by certificates 13 and 14, issued to the Alien Property Custodian.

Item II. 216 shares of Common Stock (out of a total of 1,250 shares outstanding, of the par value of $100 each), the same being evidenced by certificates 75 and 76, issued to the Alien Property Custodian.

And whereas, the highest bid received for said stock was $47,320.00, being $32,200.00 for Item I, and $15,120.00 for Item II, which bid was made by G. Vintschger.

The Alien Property Custodian is hereby authorized and shall have the right to reject all bids made at said sale, including the bid of the said G. Vintschger, and to re-sell such property at public sale.

My reason for the foregoing determination and order is that the above stated price bid for the said property is inadequate and not the fair value thereof.

Done in the District of Columbia this 18th day of July in the year of our Lord One thousand nine hundred and nineteen, and in the year of the independence of the United States, the one hundred forty-fourth.

WOODROW WILSON.

PLAINTIFF'S EXHIBIT No. 716.

Executive Order Rejecting the Bid of Paul Wenzel for Certain Shares of the Capital Stock of Chicago Carbonic Gas Company, an Illinois Corporation, Offered for Sale at Public Auction on June 23, 1919, Pursuant to the "Trading with the Enemy Act", and Amendments Thereof.

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the

Enemy, and for other purposes", approved October 6, 1917, known as the "Trading with the Enemy Act", and the amendment to such act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses and for other purposes", approved March 28, 1918, and the amendment to such act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes", approved November 4, 1918, to make certain orders such as that herein contained, and all other powers and authorities me hereto enabling, I do hereby make the following determination and order:

Whereas, the Alien Property Custodian offered for sale at auction in the City of Chicago, State of Illinois, at 11.30 o'clock a. m. on the 23rd day of June, 1919, certain shares of the capital stock of Chicago Carbonic Gas Company, an Illinois corporation, said shares being described as follows:

> 100 shares of the common capital stock of the Chicago Carbonic Gas Company, a corporation of the State of Illinois, out of a total issue of 300 shares of the par value of $100 each.

And whereas, the highest bid received for said stock was twenty thousand ($20,000) dollars for the entire one hundred shares offered, which bid was made by Paul Wenzel.

The Alien Property Custodian is hereby authorized and shall have the right to reject all bids made at said sale, including the bid of the said Paul Wenzel, and to re-sell such property at public sale.

My reason for the foregoing determination and order is that the above stated price bid for the said property is inadequate and not the fair value thereof.

Done in the District of Columbia this 19th day of July in the year of our Lord one thousand nine hundred and nineteen, and in the year of the independence of the United States, the one hundred and forty-fourth.

WOODROW WILSON.

PLAINTIFF'S EXHIBIT No. 717.

EXECUTIVE ORDER REJECTING THE BID OF MASON C. SHOUP, R. P. SHOUP, AND O. E. DIGAN FOR CERTAIN SHARES OF THE CAPITAL STOCK OF REGNIER AND SHOUP MERCANTILE COMPANY, A MISSOURI CORPORATION, OFFERED FOR SALE AT PUBLIC AUCTION ON JUNE 10, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in me by "An act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such act embodied in "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, and all other powers and authorities me hereto enabling, I do hereby make the following determination and order:

Whereas, the Alien Property Custodian offered for sale at auction in the City of St. Joseph, State of Missouri, at 11.00 o'clock A. M. on the 10th day of June, 1919, certain shares of the capital stock of Regnier and Shoup Mercantile Company, a Missouri corporation, said shares being described as follows:

> 230 shares of the common capital stock of the Regnier and Shoup Mercantile Company, a corporation of the State of Misouri, out of a total of 1,000 shares outstanding of the par value of $100 each.

And whereas, the highest bid received for said stock was ten thousand three-hundred and fifty ($10,350.00) dollars for the entire stock offered, which bid was made by Mason C. Shoup, R. P. Shoup, and O. E. Digan.

The Alien Property Custodian is hereby authorized and shall have the right to reject all bids made at said sale, including the bid of the said Mason C. Shoup, R. P. Shoup, and O. E. Digan, and to re-sell such property at public sale.

My reason for the foregoing determination and order is that the above stated price bid for the said property is inadequate and not the fair value thereof.

Done in the District of Columbia this 24th day of July in the year of our Lord one thousand nine hundred and nineteen, and in the year of the independence of the United States, the one hundred forty-fourth.

WOODROW WILSON.

PLAINTIFF'S EXHIBIT No. 718.

EXECUTIVE ORDER REJECTING THE BID OF BAUSCH AND LOMB OPTICAL COMPANY FOR CERTAIN SHARES OF THE CAPITAL STOCK OF C. P. GOERZ AMERICAN OPTICAL COMPANY, A NEW YORK CORPORATION, OFFERED FOR SALE AT PUBLIC AUCTION ON JUNE 25, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such act embodied in "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, and all other powers and authorities me hereto enabling, I do hereby make the following determination and order:

Whereas, the Alien Property Custodian offered for sale at auction in the City of New York, State of New York, at 3:00 o'clock P. M. on the 25th day of June, 1919, certain shares of the capital stock and other property of C. P. Goerz American Optical Company, a New York corporation, said shares and other property being described as follows:

1. 549 shares of the common capital stock of C. P. Goerz American Optical Company, a New York corporation, of the par value of $100 each, out of a total of 600 shares of the common capital stock of said corporation, all of which are issued and outstanding. The said 549 shares being identified as follows:

1 share standing in the name of A. Mitchell Palmer, as Alien Property Custodian, Trust No. 3480, and evidenced by certificate No. 14. Said share formerly stood in the name of Hans Tauscher and was evidenced by Certificate No. 7, which has been cancelled on the books of the Company.

548 shares standing in the name of A. Mitchell Palmer, as Alien Property Custodian, Trust No. 665, and evidenced by certificate No. 12. Said shares formerly stood in the name of Optische Anstalt C. P. Goerz Aktiengesellschaft, and were evidenced by certificates Nos. 8 and 9 for 2 shares and 546 shares respectively, which said certificates have been surrendered and cancelled.

2. Patents identified as follows:

Patent No.	Date of Issue		Title.
781,233	January	21, 1905	Prism support for use with optical instruments.
886,739	May	5, 1908	Device for focusing photographic cameras.
738,402	September	8, 1903	Shutter for photographic objectives.
745,550	December	1, 1903	Photographic objective.
777,320	December	13, 1904	Photographic objective.
784,487	March	7, 1905	Tangent-scale telescope for guns.
813,935	February	27, 1906	Automatic recording device.
829,121	August	21, 1906	Telescope for submarine and submergible boats.
831,350	September	18, 1906	Telescope with refracted optical axis.

Patent No.	Date of Issue		Title.
833,916	October	23, 1906	Roller blind for photographic cameras.
836,273	November	20, 1906	Prism telescope.
879,572	February	18, 1908	Telescope with displaceable reversing system.
881,127	March	10, 1908	Instrument for optically measuring distances.
881,590	March	10, 1908	Mounting of sighting telescopes.
882,762	March	24, 1908	Panoramic telescope.
886,722	May	5, 1908	Telescope.
892,781	July	7, 1908	Angle-measuring instrument with telescopes.
898,653	September	15, 1908	Prismatic double telescope.
902,822	November	3, 1908	Folding photographic camera.
904,066	November	17, 1908	Prism telescope and similar prism-carrying device and means for adjusting the prisms.
1,160,614	November	16, 1915	Distance-measuring instrument.
1,160,615	November	16, 1915	Aiming device.
1,236,722	August	14, 1917	Optical system of variable magnification.
1,247,185	November	20, 1917	Distance-measuring instrument.
1,196,116	August	29, 1916	Folding camera.
1,199,238	September	26, 1916	Photographic plate holder.
1,209,958	December	26, 1916	Panoramic telescope.
564,216	July	21, 1896	Photographic shutter.
648,123	April	24, 1900	Telescope tripod.
677,460	July	2, 1901	Photographic magazine camera.
687,373	November	26, 1901	Focal adjustment for binocular optical instruments.
695,638	March	18, 1902	Magazine plate-holder.
695,639	March	18, 1902	Photographic roll holder.
704,320	July	8, 1902	Folding camera with roll-film magazine.
706,650	August	12, 1902	Astigmatically corrected wide-angle objective.
706,651	August	12, 1902	Magazine plate holder.
709,480	September	23, 1902	Folding stereoscopic camera.
709,898	September	30, 1902	Binocular prism telescope.
877,499	January	28, 1908	Device for successively exposing sensitive sheets.
599,700	March	1, 1898	Combined lens for photographic purposes.
635,472	October	24, 1899	Photographic objective.
635,473	October	24, 1899	Three-lens system for photographic purposes.

Patent No.	Date of Issue.	Title.
1,060,902	May 6, 1913	Base-line telemeter.
1,066,906	July 8, 1913	Distance-measuring instrument.
1,066,955	July 8, 1913	Magazine plate holder and film pack therefor.
1,067,027	July 8, 1915	Telemeter.
1,085,611	February 3, 1914	Annular mirror periscope.
1,085,612	February 3, 1914	Adjusting device for optical instrument.
1,086,297	February 3, 1914	Prismatic device.
1,088,701	March 3, 1914	Distance-measuring instrument.
1,091,933	March 31, 1914	Telescope with variable magnification.
1,097,635	May 26, 1914	Telescope with variable magnification.
1,098,844	June 2, 1914	Package for light-sensitive films.
1,098,905	June 2, 1914	Periscope.
1,104,769	July 28, 1914	Optical system for prism-carrying devices.
1,108,180	August 25, 1914	Base-line telemeter.
1,108,307	August 25, 1914	Spherically chromatically, astigmatically, and comatically corrected double objective.
1,116,069	November 3, 1914	Telescope of unvariable length and progressively, variable magnification.
1,136,951	April 27, 1915	Surveying instrument.
1,146,428	July 13, 1915	Device for taking aim with quick-firing guns with protecting shields and telescopic sight.
1,147,990	July 27, 1915	Distance-measuring instrument.
1,151,978	August 31, 1915	Cinematographic apparatus.
907,366	December 22, 1908	Sighting telescope for arms and arm with sighting telescope.
909,459	January 12, 1909	Device for exposing light-sensitive layer carriers.
912,352	February 16, 1909	Objective.
913,353	February 23, 1909	Foldable reflex camera.
926,495	June 29, 1909	Photographic change box.
930,621	August 10, 1909	Packing for light-sensitive layer carriers.
934,440	September 21, 1909	Ocular prism for base-line telemeters.
941,126	November 23, 1909	Roller blind for photographic cameras.
941,503	November 30, 1909	Optical distance-measuring instrument.

Patent No.	Date of Issue.		Title.
944,595	December	28, 1909	Photographic camera.
972,622	October	11, 1910	Stereotelescope.
976,370	November	22, 1910	Periscope.
947,946	February	1, 1910	Device for exposing light-sensitive layer carriers and film structure therefor.
984,007	February	14, 1911	Device for exposing sensitive layer carriers.
986,420	March	7, 1911	Film pack and adapter therefor.
988,637	April	4, 1911	Level.
989,784	April	18, 1911	Photographic camera.
1,000,630	August	15, 1911	Packing for light-sensitive layer carriers.
1,001,958	August	29, 1911	Attaching device for optical instruments.
1,027,420	May	28, 1912	Angular mirror.
1,038,831	September	17, 1912	Distance-measuring instrument of the coincident-image type.

3. All of the rights, interests and benefits created in favor of or conferred upon said enemy, Optische Anstalt C. P. Goerz Atkiengessellschaft by a certain agreement dated on or about September 8th, 1906, between said enemy, Optische Anstalt C. P. Goerz Aktiengessellschaft and C. P. Goerz American Optical Company, whereby said enemy, Optische Anstalt C. P. Goerz Aktiengessellschaft granted to C. P. Goerz American Optical Company certain rights and license without payment of royalties or license fees by said C. P. Goerz American Optical Company to said Optische Anstalt C. P. Goerz Aktiengessellschaft, under all letters patent of the United States held by the said Optische Anstalt C. P. Goerz Aktiengesellschaft; and also, said letters patent of the United States, and all claims and demands whatsoever created or existing in favor of or conferred upon said enemy, Optische Anstalt C. P. Goerz Aktiengessellschaft against said C. P. Goerz American Optical Company under said agreement, including the right to terminate such rights and licenses or any of them, and including also

any and all reversionary rights and interests of said enemy, Optische Anstalt C. P. Goerz Aktiengesellschaft under and by virtue of said agreement.

And whereas, the highest bid received was fifty-seven ($57,000) dollars for the entire stock and other property offered, which bid was made by Bausch and Lomb Optical Company.

The Alien Property Custodian is hereby authorized and shall have the right to reject all bids made at said sale, including the bid of the said Bausch and Lomb Optical Company, and to re-sell such property at public sale.

My reason for the foregoing determination and order is that the above stated price bid for the said property is inadequate and not the fair value thereof.

Done in the District of Columbia this 24th day of July in the year of our Lord one thousand nine hundred and nineteen, and in the year of the independence of the United States, the one hundred forty-fourth.

WOODROW WILSON.

PLAINTIFF'S EXHIBIT No. 719.

EXECUTIVE ORDER REJECTING THE BID OF GEORGE W. STETSON, ROBERT T. MICKLE AND PAUL H. WALTHER FOR CERTAIN SHARES OF THE CAPITAL STOCK OF H. R. HEINICKE, INC., A NEW YORK CORPORATION, AND GLOBE CLAY COMPANY, INC., AN OHIO CORPORATION, OFFERED FOR SALE AT PUBLIC AUCTION ON JULY 14, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the

enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, and all other powers and authorities me hereto enabling, I do hereby, make the following determination and order:

Whereas, the Alien Property Custodian offered for sale at auction in the City of New York, State of New York at 3.00 o'clock p. m. on the 14th day of July, 1919, certain shares of the capital stock of H. R. Heinicke, Inc., a New York Corporation, and Globe Clay Company, Inc., an Ohio Corporation, said shares being described as follows:

Item I. 500 shares of the common capital stock of H. R. Heinicke, Inc., a corporation of the State of New York, out of a total issue of 500 shares of the par value of $100 each.

Item II. 39 shares of the common capital stock of the Globe Clay Company, Inc., a corporation of the State of Ohio, out of a total issue of 139 shares of the par value of $100 each.

And whereas, the highest bid received for said stock as enumerated in Items I and II above was $45,600.00, being the bid made by George W. Stetson, Robert T. Mickle and Paul H. Walther.

The Alien Property Custodian is hereby authorized and shall have the right to reject all bids made at said sale, including the bid of the said George W. Stetson, Robert T. Mickle and Paul H. Walther, and to resell such property at public sale.

My reason for the foregoing determination and order is that the above stated price bid for the said property is inadequate and not the fair value thereof.

Done in the District of Columbia this first day of August in the year of our Lord one thousand nine hundred and nineteen, and in the year of the independence of the United States, the one hundred forty-fourth.

WOODROW WILSON.

THE WHITE HOUSE,
1 August, 1919.

PLAINTIFF'S EXHIBIT No. 720.

ORDER AUTHORIZING THE SALE OF THIRTY-SEVEN AND ONE-HALF SHARES OF THE COMMON CAPITAL STOCK OF RICHARD MEYER COMPANY, A LOUISIANA CORPORATION, TO BE HELD IN NEW YORK.

By virtue of the authority vested in the President by an act of Congress entitled "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such act embodied in "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30th, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, and all other powers and authorities me hereto enabling, I do hereby make the following determination and order:

The Alien Property Custodian may sell at public auction at the home office of Gans Steamship Line, New York, N. Y., all the shares in the control of the Alien Property Custodian of the capital stock of Richard Meyer Company, a corporation organized under the laws of the State of Louisiana, having its principal office in the City of New Orleans, Louisiana.

My reasons for the foregoing determination and Order are:

(a) Richard Meyer Company is the New Orleans Branch of Gans Steamship Line separately incorporated merely for convenience. The stock of Richard Meyer Company in the control of the Alien Property Custodian can be sold most advantageously at the same time and place that the stock of Gans Steamship Line, in control of the Alien Property Custodian, is sold.

(b) Unnecessary expense and inconvenience may be thereby avoided.

Done in the District of Columbia this first day of August, in the year of our Lord One thousand nine hundred and nineteen and of the Independence of the United States the one hundred forty-fourth.

WOODROW WILSON.

THE WHITE HOUSE,
1 August, 1919.

PLAINTIFF'S EXHIBIT No. 721.

EXECUTIVE ORDER VESTING POWER AND AUTHORITY IN THE ALIEN PROPERTY CUSTODIAN TO SELL CERTAIN PROPERTIES FORMERLY BELONGING TO SCHILMANN & BENE AT A PLACE OTHER THAN THE LOCUS OF A MAJOR PORTION THEREOF.

By virtue of the authority vested in me by an Act of Congress entitled "An act to define, regulate and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such act embodied in "An act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30th, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, and all other powers and authorities me hereto enabling I hereby in the public interest, make the following determination and order:

The Alien Property Custodian is hereby authorized to sell at public auction at such place in the City of Spokane, Washington, as he or his authorized agent may select the following property:

Item 1. All rights, titles, interest, and liens acquired by virtue of payment of taxes upon certain real property situate in the County of Stevens, State of Washington, formerly belonging to American Tungsten Consolidated Corporation, evidenced by the following certificates of delinquency and tax receipts issued by the Treasurer of Stevens County, Washington, as follows:

Certificate No. 4050 for the sum of $55.00 issued to F. C. Allen on the 8th day of October 1915 and assigned by him on the 16th day of December 1915 to Charles S. Cullen for delinquent taxes against the following described property: the W. ½ of the NW. ¼ and the NE. ¼ of the NW. ¼ and the NW. ¼ of Sec. 13, Tp. 29, N. R. 37 for the years 1912 and 1913.

Tax receipt No. 6072 for $33.10 for taxes for the year 1914 paid on account of Certificate No. 4050 by F. C. Allen and assigned by him on the 16th day of December 1915 to Charles S. Cullen.

Tax receipt No. 5347 for $31.58 for taxes for the year 1915 paid by Charles S. Cullen on account of Certificate No. 4050.

Tax receipt No. 5346 for $28.00 for taxes for the year 1916 paid by Charles S. Cullen.

Tax receipt of Delinquency No. 4051 issued by the Treasurer of Stevens County, Washington, for the sum of $55.00 in the name of F. C. Allen and dated October 8, 1915, and assigned by F. C. Allen on the 16th day of December 1915, to Charles S. Cullen for taxes delinquent for the years 1912-13 assessed against the following described property; the SE. ¼ of the NW. ¼ and the N. ½ of the SW. ¼ and the SE. ¼ of Section 13, Township 29, N. R. 37.

Tax Receipt No. 6073 for $33.10 for taxes for the year 1914 paid on account of Certificate 4051 by F. C. Allen and assigned by him on December 16, 1915, to Charles S. Cullen.

Tax Receipt 5345 for $31.50 for taxes for the year 1915 paid on account of certificate No. 4051 by Charles S. Cullen.

Tax receipt No. 5748 for $28.00 for taxes for the year 1916 paid on account of Certificate No. 4051 by Charles S. Cullen.

Tax certificate of delinquency No. 4202 for the sum of $1313.45 issued to Charles S. Cullen on the 3rd day of January 1916 by the Treasurer of Stevens County, Washington, for delinquent taxes for the years 1912 and 1913 assessed against the following described property: the SW. ¼ of the SE. ¼ of the SW. ¼ of Sec. 13, Tp. 29, N. R. 27.

Tax receipt No. 915 for taxes for the year 1914 paid on account of Certificate 4202 for the sum of $107.05 dated Jan. 3, 1910, and issued to Charles S. Cullen.

Tax receipt No. 5346 for the sum of $98.33 for taxes for the year 1915 paid on account of Certificate No. 4202 and issued to Charles S. Cullen, dated June 15th, 1916.

Tax receipt No. 5749 for $67.40 being for taxes for the year 1916 paid by Charles S. Cullen on account of Certificate No. 4202; together with said certificates, receipts and muniments of said right, title and interest and,

Item II. 260 of a total issue of 300 first mortgage 8% bonds of Germania Mining Company due February 21, 1915, of the face value of $250 each dated February 21, 1910, and secured by property located in Stevens County, Washington, described in a trust deed dated February 21, 1910, from Germania Mining Company to Union Trust Company, Spokane, Washington, Trustee, with coupons #3 and all subsequent coupons thereon together with all rights hitherto insuring to Schilmann & Bene by virtue of said bonds and trust including the right to collect that indebtedness arising out of advance of money in the sum of, to wit, $3,538.66 to said Trustee from Charles S. Cullen, Agent, for the preservation and protection of said trust and

Item III. All right, title and interest in and to the following property:

1 U. S. bob-sled.
1 road grader.
1 book-keeper's desk, stool and cabinet.
1 office desk and chair.
1 filing cabinet.

formerly located on the property of American Tungsten Consolidated Corporation in Stevens County, State of Washington, heretofore seized by the Alien Property Custodian under the "Trading with the Enemy Act."

My reasons in the public interest for the foregoing determination and order are:

First, said property is located at a place difficult to access.

Second. It is advantageous that said property be offered for sale at the same time and place as certain shares of stock of American Tungsten Consolidated Corporation, which shares are to be offered for sale in the said City of Spokane by the Alien Property Custodian.

Third. Unnecessary expense may thereby be saved.

Done in the District of Columbia this first day of August, in the year of our Lord one Thousand nine hundred and nineteen, and of the independence of the United States of America the one hundred and forty-fourth.

WOODROW WILSON.

THE WHITE HOUSE,
1 August, 1919.

PLAINTIFF'S EXHIBIT No. 722.

EXECUTIVE ORDER REJECTING THE BID OF WILLIAM H. WRIGHT FOR CERTAIN REAL ESTATE, KNOWN AS THE MULLER PROPERTY, SITUATE IN THE CITY OF NEW ORLEANS, STATE OF LOUISIANA, OFFERED FOR SALE AT PUBLIC AUCTION ON JULY 24, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in me by "An act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendments to such act embodied in "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, and all other powers and authorities me hereto enabling, I do hereby make the following determination and order:

Whereas, the Alien Property Custodian offered for sale at auction in the City of New Orleans, State of Louisiana, at 12 o'clock noon on the 24th day of July, 1919, certain real estate, known as The Muller Property, situate in the City of New Orleans, State of Louisiana, said real estate being described as follows:

> A lot of ground on the corner of Camp and Common streets in the square bounded by St. Charles and Canal Streets, measuring forty-four feet two and one-half inches (44′ 2½″) front on Camp Street, eighty feet eight inches (80′ 8″) in depth and front on Common Street, seventy-four feet nine inches (74′ 9″) in depth on the line towards Canal Street, and thirty-eight feet eight inches (38′ 8″) in width in the rear—the square bounded by Camp, Common, St. Charles and Canal Streets is an irregular square, and accounts to a great extent for the lack of regularity in the measurements of the property. Together with the improvements thereon, which improvements consist of a three-story brick building now being used for mercantile purposes.

And whereas, the highest bid received for said real estate was forty-eight thousand five hundred ($48,500.00) dollars for the entire property offered, which bid was made by William H. Wright.

The Alien Property Custodian is hereby authorized and shall have the right to reject all bids made at said sale, including the bid of the said William H. Wright, and to re-sell such property at public sale.

My reason for the foregoing determination and order is that the above stated price bid for the said property is inadequate and not the fair value thereof.

Done in the District of Columbia this twelfth day of August in the year of our Lord one thousand nine hundred and nineteen, and in the year of the independence of the United States, the one hundred forty-fourth.

WOODROW WILSON.

PLAINTIFF'S EXHIBIT No. 723.

EXECUTIVE ORDER CONCERNING A SALE TO BE CONDUCTED BY THE ALIEN PROPERTY CUSTODIAN PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in the President by an "Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, I hereby in the public interest make the following determination, order, rule and regulation:

The Alien Property Custodian is hereby authorized to sell at private sale, without public or other advertisement, the following property, to-wit:

> "Lot 77 in Franz A. R. Jung's subdivision in Square 159, as per plat of said subdivision recorded in Book 26 at page 198, one of the Records of the Office of the Surveyor of the District of Columbia;"

said real estate formerly having been owned by Franz A. R. Jung and Sophie A. Nordhoff Jung, residents of Munich, Germany, the same having been required to be conveyed, transferred, assigned, and delivered to, and having been seized by, the Alien Property Custodian.

My reasons for the foregoing determination, order, rule and regulation are:

(a) That property such as that herein described cannot usually be sold to advantage at public sale after public or other advertisement.

(b) That an advantageous offer for the purchase of said property has been received by the Alien Property Custodian.

(c) That said Franz A. R. Jung and Sophie A. Nordhoff Jung have expressed their approval of the private sale of said property at the price offered.

Done in the District of Columbia this 16th day of August in the year of our Lord one thousand nine hundred and nineteen, and in the year of the independence of the United States, the one hundred forty-fourth.

WOODROW WILSON.

and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement thereof, subject to the rights, if any, of Atlantic Welding Corporation and Lincoln Rail Welding Company.

Item V. All right, title and interest in and to those certain letters patent of the United States identified as follows:

Patent No.	Date of issue.	Title.
1,132,052	March 16, 1915	Method of making welded rail joints.

and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement thereof, subject to the rights, if any, of Atlantic Welding Corporation and Lincoln Welding Company.

Item VI. All right, title and interest in and to those certain letters patent of the United States identified as follows:

Patent No.	Date of issue.	Title.
799,934	September 19, 1905	Process for electrically welding rail joints.
804,763	November 14, 1905	Process of electrically welding rails.

and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement thereof, subject to the rights, if any, of Atlantic Welding Corporation and Lincoln Rail Welding Company.

Item VII. All right, title and interest in and to those certain letters patent of the United States identified as follows:

Patent No.	Date of issue.	Title.
934,884	September 21, 1909..	Rail and manufacture thereof.
1,010,411	December 5, 1911....	Method of making welded rail joints.

and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation, or government for past infringement thereof, subject to the rights, if any of Atlantic Welding Corporation and Lincoln Rail Welding Company.

Item VIII. All that certain obligation and indebtedness appearing upon the books and records of Atlantic Welding Corporation as of November 13, 1918, in the name of and to the credit of Accumulatoren Fabrik Aktiengesellschaft in the amount of $16,703.65, together with any accretions thereto and any interest accrued on the said obligation and indebtedness and on the accretions thereto together with that certain right of the said Accumulatoren Fabrik Aktiengesellschaft to have issued at its option $16,703.65 in value of the preferred capital stock of the Atlantic Welding Corporation as payment of the indebtedness hereinbefore described.

And whereas, the highest bid received for said stock was $10,000, being $8,400 for Items I, II, III and VIII; $1,000 for Item IV; $200 for Item V; $200 for Item VI; and $200 for Item VII, which bid was made by John C. Lincoln.

The Alien Property Custodian is hereby authorized and shall have the right to reject all bids made at said sale, including the bid of the said John C. Lincoln, and to re-sell such property at public sale.

My reason for the foregoing determination and order is that the above stated price bid for the said property is inadequate and not the fair value thereof.

Done in the District of Columbia this 30th day of August, in the year of our Lord one thousand nine hundred and nineteen, and in the year of the independence of the United States, the one hundred forty-fourth.

WOODROW WILSON.

PLAINTIFF'S EXHIBIT No. 725.

EXECUTIVE ORDER AUTHORIZING THE ALIEN PROPERTY CUSTODIAN TO SELL CERTAIN PROPERTY AT PRIVATE SALE.

By virtue of the authority vested in me by an Act of Congress entitled "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such act embodied in "An act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such Act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses, and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, I hereby, in the public interest, make the following determination, order, rule and regulation:

The Alien Property Custodian is hereby authorized to sell at private sale, at such time and place as to him or to his authorized agent may seem advisable, without public or other advertisement, certain real estate now being held and administered by him as such Alien Property Custodian and heretofore, upon requirement conveyed, transferred, assigned, and delivered to him as the property of Johann Krannichfeldt and Nicholas Schmitt, doing business under the name of The Star Electric Fuze Works, which said persons he did after investigation determine to be enemies within the purview of said Act as amended, which property is described as follows, to wit:

The surface of all that lot of land situate in the Township of Wilkes-Barre, County of Luzerne and State of Pennsylvania, bounded and described as follows, to wit:

Beginning on line between the Dana and Metcalf tracts 925 feet southeast from Chase Street; thence along said line 47 degrees South 46 minutes East, 428 feet to a point on the northerly side of Shannon Street; thence along the line of the northerly side of Shannon Street; South 43 degrees 26 minutes West 40 feet to a corner; thence 46 degrees 34 minutes East 143.7/100 feet more or less to a corner in line of the right of way of Central R. R. Co. of New Jersey; thence along the line of said right of way of the Central Railroad Company of New Jersey in a southwesterly direction 558 feet more or less to lands of the Lehigh & Wilkes-Barre; thence along the same North

47 degrees 46 minutes West, 391 feet more or less to a corner; thence North 42 degrees 14 minutes East, 569-28/100 feet to the place of beginning. Being the same premises conveyed to Nicholas Schmitt and John Krannichfeldt, by two deeds dated the first of March, 1904, and the sixteenth of January, 1913, recorded respectively in the office for recording deeds in Luzerne County, in Deed Book No. 418, page 389 and 487, page 419; together with all buildings and improvements thereon; also

All the surface of all that certain lot of land in Wilkes-Barre Township, Luzerne County, Pennsylvania, being lot No. 48 on plot of lots of Frank P. Slattery and William Mayles as shown on allotment in Luzerne County in Map Book No. 1, page 356 and 357, bounded and described as follows, to wit:

Beginning at a corner on Pulaski Street 195 feet southeasterly from the intersection of said Street with Kearing Street; thence along Pulaski Street South 46 degrees, 34 minutes East 40 feet to a corner in line of lot No. 49; thence along the line of lot No. 49 South 43 degrees 26 minutes West about 134 4/10 feet more or less to the line of the Dana Estate; thence along the line of the Dana Estate North 46 degrees 34 minutes West 40 feet more or less to a corner in line of lot No. 47; thence along the line of lot No. 47 North 43 degrees 26 minutes East about 134.4/10 feet more or less to the place of beginning. Being part of a large tract of land conveyed to Frank P. Slattery and William Mayles by H. F. Metcalf, et al. by Deed dated April 12, 1911, and to John Krannichfeldt and Nicholas Schmitt dated September 29, 1913, recorded October 14, 1913, Deed Book 496, Page 126; together with all buildings and improvements thereon.

My reasons for the foregoing determination, order, rule and regulation are:

(a) The said real estate is subject to a lease between the Star Electric Fuze Works and the Atlas Powder Company made under a license granted by the War Trade Board and with the consent of the Alien Property Custodian, which lease contains an option in favor of the Atlas Powder Company to purchase the property. The validity of said option may be a matter of some doubt, but its existence constitutes a cloud upon the title to the property by reason whereof this property can not be sold advantageously at public sale.

(b) An attempted sale at auction would be a useless formality and would involve unnecessary expenses, delay and inconvenience which should be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
21 September, 1919.

PLAINTIFF'S EXHIBIT No. 726.

EXECUTIVE ORDER REJECTING THE BID OF RICHTER & COMPANY FOR CERTAIN SHARES OF THE CAPITAL STOCK OF THE FIRST REINSURANCE COMPANY OF HARTFORD, A CONNECTICUT CORPORATION, OFFERED FOR SALE AT PUBLIC AUCTION ON SEPTEMBER 17TH, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in me by "An Act to define, regulate and punish Trading with the Enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses and for other purposes,'' approved March 28, 1918, and the amendment to such act embodied in ''An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes,'' approved November 4, 1918, to make certain orders such as that herein contained, and all other powers and authorities me hereto enabling, I do hereby make the following determination and order:

Whereas, the Alien Property Custodian offered for sale at auction in the City of Hartford, State of Connecticut at twelve o'clock noon on the 17th day of September, 1919, certain shares of the capital stock of The First Reinsurance Company of Hartford, a Connecticut corporation, said shares being described as follows:

> 4,505 shares of the capital stock of the First Reinsurance Company of Hartford, a corporation of the State of Connecticut, out of a total issue of 5,000 shares of the par value of $100.00 each.

And whereas, the highest bid received for said stock was Six Hundred and Ten Thousand ($610,000) Dollars for the entire 4,505 shares offered, which bid was made by Richter & Company.

The Alien Property Custodian is hereby authorized and shall have the right to reject all bids made at said sale, including the bid of the said Richter & Company.

My reason for the foregoing determination and order is that the above stated price for the said property is inadequate and not the fair value thereof.

Done in the District of Columbia this 25th day of November, in the year of our Lord one thousand nine hundred and nineteen, and in the year of the independence of the United States, the one hundred forty-fourth.

WOODROW WILSON.

PLAINTIFF'S EXHIBIT No. 727.

RE-VESTING IN DESIGNATED OFFICERS CERTAIN POWERS UNDER THE TRADING WITH THE ENEMY ACT.

By virtue of the power and authority vested in me by "An Act to define, regulate and punish trading with the enemy and for other purposes," approved October 6, 1917, I hereby rescind, as of the 14th day of July, 1919, the Executive Order of April 11, 1918, which revoked (1) the power and authority vested in the Secretary of the Treasury by Section XI of the Executive Order of October 12, 1917, to issue licenses to send, take or transmit out of the United States any letter or other writing, book, map, plan or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an "enemy" or "ally of enemy," in any way relating to letters patent, or registration of trade-mark, print, label or copyright, or to any application therefor, and (2) the power and authority vested in the Federal Trade Commission by Section XVII of the Executive Order of October 12, 1917, to issue licenses to any citizens of the United States or any corporation organized within the United States, to file or prosecute applications in the country of an "enemy" or "ally of enemy" for letters patent or for registration of trade-mark, print, label or copyright, and to pay any fees or agents' fees in connection therewith; or to pay to any "enemy" or "ally of enemy" any tax, annuity or fee in relation to patents, trade-marks, prints, labels and copyrights; and I do hereby order that on and after July 14, 1919, licenses to perform the acts hereinabove described may be issued under Sections XI and XVII of the Executive Order of October 12, 1917, by the officials in whom the authority to issue such licenses was by said Order vested and I do hereby further order that any and all licenses issued on or after July 14, 1919, which, except for the above mentioned Order of April 11, 1918, would by their terms authorize any of the acts hereinabove described, are hereby confirmed and approved, and all such licenses shall be deemed to have full force and effect according to the terms thereof, in like manner as though said Order of April 11, 1918, had been rescinded prior to July 14, 1919.

WOODROW WILSON.

THE WHITE HOUSE,
25 November, 1919.

PLAINTIFF'S EXHIBIT No. 728.

ORDERS BY FRANK L. POLK, UNDER AUTHORITY OF EXECUTIVE ORDER OF DECEMBER 3, 1918.

ORDER CONCERNING THE SALE OF THE CAPITAL STOCK OF THE INTERNATIONAL INSURANCE COMPANY OF NEW YORK PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in the President by "An act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy act" and the amendment to such act embodied in "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive Order No. 3016 and signed by the President under the third day of December, 1918, I hereby, in the public interest, make the following determination and order:

The alien property custodian having offered at public sale in the city of New York, State of New York, at 10 o'clock a. m., on the 21st day of November, 1918, the following property, to wit, those 2,000 shares of the capital stock of the International Insurance Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York; held by him as alien property custodian and certain bids having been made for said stock, the alien property custodian be, and he is hereby, authorized to reject all bids made at such sale and to resell said property at private sale to an American citizen without public or other advertisement at not less than the highest sum bid therefor at such sale, to wit, the sum of $576,500.

My reasons for the foregoing determination and order are:

(*a*) That upon investigation by the alien property custodian it has developed that the highest bid made at said sale was for and account of persons whose names were not disclosed as provided by the law and said bid is therefore not in accordance with law and should not be accepted.

(*b*) That the said stock is sought to be acquired by said highest bidder and other persons for the purposes of liquidating the business of said International Insurance Company of New York, and it is the expressed opinion of State officials having supervision over insurance companies, in which I concur, that it will be to the best interests of the people of the United States to continue the said insurance company as a going concern under American ownership rather than to allow its liquidation and dissolution at the present time.

(*c*) Another public sale would entail useless delay and expense.

Done in the District of Columbia this fourth day of December in the year of our Lord one thousand nine hundred and eighteen, and of the independence of the United States of America the one hundred and forty-third.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-A.

ORDER CONCERNING THE SALE, TRANSFER, RELEASE, AND SURRENDER OF CERTAIN RIGHTS OF H. E. SCHNIEWIND, A COPARTNERSHIP, AND OF THE COPARTNERS THEREOF RESIDENT IN GERMANY, DETERMINED TO BE ENEMIES NOT HOLDING A LICENSE OR LICENSES GRANTED BY THE PRESIDENT, WITHIN THE PURVIEW OF THE "TRADING WITH THE ENEMY ACT" AND THE AMENDMENTS THERETO.

By virtue of the authority vested in the President by an act of Congress entitled "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the enemy act," and the amendment to such act embodied in "An act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30th, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive Order No. 3016, and signed by the President under the third day of December, 1918, I hereby, in the public interest make the following determination and order:

The Alien Property Custodian shall, without the formality of a public advertisement or public sale or auction sell, transfer, dispose of, release, surrender and quitclaim to Henry Schniewind, jr., of the Borough of Manhattan, city of New York, and in connection therewith execute and deliver to him, the said Henry Schniewind, jr., a proper instrument in writing duly transferring, disposing of, releasing, surrendering and quitclaiming to him, for such price or consideration as the Alien Property Custodian may deem adequate and proper, all the rights which H. E. Schniewind, a copartnership, of Elberfeld, Germany, has and also all the rights which Heinrich Schniewind, sr., Willy Schniewind, Hans Schniewind, and any other member or members of said copartnership, if any, resident in Germany, or any or either of them have, individually or as a member or members of said copartnership of H. E. Schniewind, under or by virtue of a certain option agreement between Henry Schniewind, jr., of New York City, and said copartnership of H. E. Schniewind, dated March 20th, 1917, and under or by virtue of a certain prior option agreement modified by said option agreement of March 20th, 1917, or under or by virtue of either of said option agreements, to terminate a certain agreement between the said Henry Schniewind, jr., and the said copartnership of H. E. Schniewind dated July 1st, 1915, whereby said Henry Schniewind, jr., acquired from said copartnership all the common and voting capital stock of Susquehanna Silk Mills, a New York corporation, so that each of said option agreements and all rights of said copartnership of H. E. Schniewind and of Heinrich Schniewind, sr., Willy Schniewind, Hans Schniewind, and any other member or members of said copartnership, if any, resident in Germany, and of each of them, thereunder, both individually and as a member or members of said copartnership, may be completely extinguished, terminated, cancelled, and ended; and in order, in accordance with the purpose and intent of said act of Congress and the amendments thereto, to guard against the said common or voting capital stock of Susquehanna Silk Mills passing into the ownership, possession, or control of enemies or allies of enemies as defined by said statute, the Alien Property Custodian may require said stock to be settled in trust for such time and in such manner and under such circumstances as to the Alien Property Custodian may seem proper.

My reasons in the public interest for the foregoing determination and order are:

First. That the aforesaid rights are not the subject of public sale to the highest bidder for the reason, *inter alia,* (*a*) that no one save the enemies, or one or more of them, is in a position to perform the conditions necessary to the exercise of said option rights, and (*b*) that such rights have no market value to any person or persons other than the parties to the said instruments hereinbefore mentioned.

Second. That the only effective method whereby said option rights can be extinguished is by disposing of, transferring, releasing, and surrendering said option rights to the persons who gave them and thereby cancelling the same.

Third. That the person against whom said option rights run, namely, Henry Schniewind, Jr., is willing to pay a substantial sum for the transfer, release, surrender and cancellation thereof.

Fourth. That an attempted sale at auction would be a useless formality and would involve unnecessary expense, delay, and inconvenience which should be avoided.

Done in the District of Columbia, this 11th day of January, in the year of our Lord one thousand nine hundred and nineteen and of the independence of the United States of America the one hundred and forty-third.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-B.

ORDER CONCERNING THE SALE, TRANSFER, AND RELEASE OF CERTAIN RIGHTS UNDER LETTERS PATENT, TRADE-MARKS, AND SIMILAR RIGHTS DETERMINED TO BELONG TO OR TO BE HELD FOR, BY, ON ACCOUNT OF, OR ON BEHALF OF OR FOR THE BENEFIT OF PERSONS DETERMINED TO BE ENEMIES NOT HOLDING A LICENSE OR LICENSES GRANTED BY THE PRESIDENT WITHIN THE PURVIEW OF THE TRADING WITH THE ENEMY ACT AND THE AMENDMENTS THERETO.

By virtue of the authority vested in the President by an act of Congress entitled "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the enemy act," and the amendment to such act embodied in "An act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30th, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive order No. 3016 and signed by the President under the third day of December, 1918, I hereby, in the public interest, make the following determination and order:

The Alien Property Custodian may release and discharge the United States of America and any department thereof upon such terms and conditions as to the Alien Property Custodian may seem proper, from any and all claims and demands arising from any alleged infringement of the letters patent, trade-marks, and rights under letters patent and trade-marks hereinafter referred to.

The Alien Property Custodian may sell at private sale without public or other advertisement to The Chemical Foundation (Inc.), a corporation organized and existing under and by virtue of the laws of the State of Delaware at such place and upon such terms and conditions as to the Alien Property Custodian or his authorized agent may seem proper, all of the letters patent, trade-marks, and rights under letters patent and trade-marks, including all profits and damages recoverable at law or in equity for the past infringement thereof which the 'Alien Property Custodian may seize or may have seized under the provisions of the said trading with the enemy act and the amendments thereto now or hereafter enacted and which he from time to time shall determine relate to the objects and purposes of said The Chemical Foundation (Inc.), as expressed and defined by its charter.

My reasons in the public interest for the foregoing determination, order, rule, and regulation, are:

First. Said letters patent, trade-marks, and similar rights can not be sold to the best advantage at public sale after public or other advertisement.

Second. The Chemical Foundation (Inc.) has been incorporated for the purpose of holding letters patent, trade-marks, and similar rights relating to the chemical and allied sciences as a trustee for American industry, for the purpose of the Americanization of such industries as may be affected thereby, of eliminating alien interests hostile to said American industries and of the advancement of chemical and allied industry in the United States. The Chemical Foundation (Inc.) is obligated to grant nonexclusive licenses upon equal terms at a uniform royalty to qualified American manufacturers and is empowered to grant free licenses to the United States for any use the United States may desire to make of the inventions covered by said letters patent and similar rights.

Third. The public interest will be best served by a wide use of the inventions covered by said letters patent and similar rights and such wide use can be most readily promoted by the licenses which the said The Chemical Foundation (Inc.) is by its charter obligated to grant.

Fourth. A private sale will prevent said letters patent, trade-marks, and similar rights from falling into the hands of purchasers who would be unwilling or unable to put the inventions covered thereby into use, or would use them for purely speculative purposes.

Fifth. It would be impossible to make a public sale of the said letters patent, trade-marks, and similar rights so as to secure the foregoing benefits to the public.

Sixth. Unnecessary expense, delay, and inconvenience may be avoided by a private sale.

Done in the District of Columbia this the 26th day of February, in the year of our Lord one thousand nine hundred and nineteen, and of the independence of the United States of America the one hundred and forty-third.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-C.

AN ORDER CONCERNING THE SALE AND CONVEYANCE OF CERTAIN LETTERS PATENT OF THE UNITED STATES, APPLICATIONS FOR LETTERS PATENT, AND RIGHTS, INTERESTS, AND BENEFITS UNDER CERTAIN AGREEMENTS MORE PARTICULARLY HEREINAFTER DESCRIBED, DETERMINED TO BELONG TO, OR TO BE HELD FOR, BY, ON ACCOUNT OF, OR ON BEHALF OF, OR FOR THE BENEFIT OF, PERSONS DETERMINED TO BE ENEMIES NOT HOLDING A LICENSE OR LICENSES GRANTED BY THE PRESIDENT WITHIN THE PURVIEW OF THE "TRADING WITH THE ENEMY ACT" AND THE AMENDMENTS THERETO.

By virtue of the authority vested in the President by an act of Congress entitled "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the enemy act," and the amendments to said act embodied in "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendments to said act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders, such as that herein contained, which authority has been delegated to me by the Executive Order No. 3016 and signed by the President on the 3d day of December, 1918, I hereby make the following rule, determination, and order:

The Alien Property Custodian may sell to Locomotive Superheater Company at private sale, without public or other advertisement, at such time and upon such terms and conditions as to the Alien Property Custodian or his authorized agent may seem proper, the following described property heretofore acquired by and now vested in the Alien Property Custodian by virtue of his requirements.

(*a*) All of the rights, interests, and benefits created in favor of or conferred upon Schmidt'sche Heissdampf Gesellschaft, m. b. H., by two certain agreements dated, respectively, the 10th day of November, 1910, and the 7th day of August, 1911, between said Schmidt'sche Heissdampf Gesellschaft, m. b. H., and Locomotive Superheater Company, together with all rights and interests created and existing in favor of or conferred upon said Schmidt'sche Heissdampf Gesellschaft, m. b. H., in and to any royalties or sum or sums of money hereafter accruing in favor of, or becoming due or payable to said Schmidt'sche Heissdampf Gesellschaft, m. b. H., under the terms of said agreements, and also all claims and demands whatsoever, created or existing in favor of or conferred upon said Schmidt'sche Heissdampf Gesellschaft, m. b. H., against Locomotive Superheater Company, all as more fully set forth in the requirements of the Alien Property Custodian relating to said rights, interests, and benefits.

(*b*) The following letters patent of the United

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States and applications for letters patent of the United States, subject to the rights of Locomotive Superheater Company, as more fully set forth in the requirements of the Alien Property Custodian relating thereto:

Patent No.	Date of Issue	Title.
946,466	January 11, 1910	Superheater for steam boilers.
1,106,734	August 11, 1914	Smoke-tube superheater.
1,074,783	October 7, 1913	Method of making U-shaped pipe-bends.
1,075,201	October 7, 1913	Method of making U-shaped pipe-bends.
1,114,812	October 27, 1914	Superheater for locomotive boilers.
1,120,764	December 15, 1914	Locomotive boilers with smoke-tube superheater.
1,129,915	March 2, 1915	Steam superheater.
1,133,017	March 23, 1915	Method of making U-shaped pipe-bends.
1,164,638	December 21, 1915	Die for U-shaped pipe bends.
1,049,155	December 31, 1912	Smoke-tube superheater.
1,063,394	June 3, 1913	Smoke-tube superheater.
1,072,174	September 2, 1913	Water tube boiler.
1,072,194	September 2, 1913	Apparatus for cooling superheater pipes.
1,073,305	September 16, 1913	Smoke-tube superheater.
1,073,934	September 23, 1913	Superheater for water-tube boilers.
1,074,300	September 30, 1913	Steam superheater.
1,112,868	October 6, 1914	Connecting member for superheater element ends.
1,116,646	November 10, 1914	Smoke-tube Superheater.
1,139,601	May 18, 1915	Superheater.
1,142,370	June 8, 1915	Arrangement in steam engines for taking working steam from the engine cylinders.
1,168,748	January 18, 1916	Water-tube boiler.
1,172,407	February 22, 1916	Cooling arrangement for flue-tube superheater elements.
1,181,863	May 2, 1916	Double-tube superheater.
1,208,405	December 12, 1916	Superheater elements for flue-tube boilers.
1,047,710	December 17, 1912	Device for removing water from heated pistons.
1,068,368	July 22, 1913	Quick-acting steam generator.
1,090,417	March 17, 1914	Engine governor.
1,092,543	April 7, 1914	Engine.

Patent No.	Date of Issue		Title.
1,107,204	August	11, 1914	Automatic engine governor.
1,166,007	December	28, 1915	Quick-acting steam generator.
1,167,527	January	11, 1916	Engine governor with automatic inlet valve.
1,182,863	May	9, 1916	Fan for induced draft.
1,183,417	May	16, 1916	Blower devices for cleaning tubes.
1,296,055	March	4, 1919	Superheater for marine fire or smoke tube boilers.
1,179,412	April	18, 1916	Marine water tube boiler.
989,812	April	18, 1911	High-pressure steam boilers.

APPLICATIONS.

Serial No.	Filing date.		Title.
4,458	January	26, 1915	Power engine plant.
72,741	January	18, 1916	Method for cooling the piston of an internal-combustion engine.
74,080	January	25, 1916	Cyclic working process for steam engines.
74,146	January	25, 1916	Cyclic working process for steam engines.
50,282	September	11, 1915	Field tube superheater element, etc.
113,090	August	4, 1916	Superheater for marine fire or smoke-tube boilers.
31,794	June	2, 1915	Piston packing rings.
79,632	August	4, 1916	Combined marine water tube boiler and superheater.

My reasons in the public interest for the foregoing determination, order, rule, and regulation are:

(*a*) The property described above is not customarily sold and can not usually be sold to advantage at public sale after public or other advertisement;

(*b*) Locomotive Superheater Company is a corporation the majority of the stock of which has been sold by the Alien Property Custodian to the Director General of the Railroads and is therefore controlled by the United States;

(*c*) The property above described is subject to such equitable rights in favor of Locomotive Superheater Company as to render it unsalable except to said Locomotive Superheater Company;

(*d*) The conveyance above described to the Locomotive Superheater Company is necessary to permit the said Locomotive Superheater Company to conduct its business, in which the United States is interested without interference from patent owners who are enemy nationals and enemies as defined by the common law and the "Trading with the enemy act."

(Signed) FRANK L. POLK.

Washington, D. C.,
March 24, 1919.

PLAINTIFF'S EXHIBIT No. 728-D.

An order Concerning the Conveyance and Transfer of Certain Rights, Privileges, and Interests in and to Certain Property More Particularly Hereinafter Described, Determined to Belong to, or to be Held for, by, on account of, or on Behalf of, or for the Benefit of Persons Determined to be Enemies not Holding a License or Licenses Granted by the President Within the Purview of the "Trading With the Enemy Act" and the Amendments Thereto.

By virtue of the authority vested in the President by an act of Congress entitled "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the enemy act," and the amendments to said act embodied in "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendments to said act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders, such as that herein contained, which authority has been delegated to me by the Executive order No. 3016 and signed by the President on the 3d day of December, 1918, I hereby make the following rule, determination, and order:

The Alien Property Custodian may transfer and convey to the American Radio Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, all the right, title and interest formerly of Hochfrequenz-Maschinen Aktiengesellschaft fur Drahtlose Telegraphie, a German corporation (hereinafter referred to as HOMAG) and/or of Rudolph Goldschmidt, in and to the following described property acquired by and now vested in the Alien Property Custodian by virtue of his requirements, upon such terms and conditions as to the Alien Property Custodian or his duly authorized agent shall seem proper.

Every right, title, and interest (formerly held by Hochfrequenz-Maschinen Aktiengesellschaft fur Drahtlose Telegraphie, a German corporation, and/or Rudolph Goldschmidt, of Charlottenberg, Germany) of which the Alien Property Custodian is seized and possessed by virtue of his requirements:

1. In and to the real estate situated in the State of New Jersey, bounded and described as follows:

Beginning at a stone standing on the east side of the road leading from Tuckerton to Osborns Island at the distance of 22 feet from the center thereof and at the distance of 2,050 feet from the center of the bridge over Big Creek and on a course of north 39 degrees and 45 minutes east, from said bridge over said creek and the northeast corner of McKeever's fish factory on Crab Island bears south 24 degrees 30 minutes east, and the center of the hummock below the mouth of Tuckerton Creek bears north 71 degrees 15 minutes east; and from said center stone so located on a due westerly course the distance of 1,650 feet to a point in the outer line of the circle herein described; thence extending along the line of said circle at a uniform distance of 1,650 feet from said center stone in a southerly, easterly, northerly, and westerly direction to the point in said circle first mentioned; thence extending on a due easterly course the distance of 1,650 feet to the said center stone and place of beginning, the said tract of land lying and being entirely within a circle of 1,650 feet from the said center stone and containing 197 35/100 acres;

Excepting all that part within said circle lying easterly of a line 5 feet distant from the westerly side of Willetts Thoroughfare and Headleys Creek; being a part of said George A. Mott's survey.

Also another tract of land outside the circle above described, beginning at the east edge of the bridge down the center of the road over Osborns Creek; thence (1) down the edge of the easterly side of the bank of said creek the several courses thereof to the mouth of Headleys Creek; thence (2) up said Headleys Creek the several courses thereof till it strikes the Parker line; thence (3) up the Parker line till it strikes the circle as above mentioned; thence (4) following the said circle to the center of the road above mentioned; thence (5) down the said road to the place of beginning.

2. In and to the wireless telegraph station and other buildings and structures erected upon the premises last before mentioned, together with all apparatus,

machinery, instruments, tools, equipment, material and supplies in, or connected with, or appurtenant to said station, buildings and structures, and all books, accounts, estimates, data, receipts, paper, documents, drawings, designs, plans, specifications, licenses, letters and other writings relating to the same.

3. In and to a contract dated May 24, 1912, between Hochfrequenz Maschinen Aktiengesellschaft fur Drahtlose Telegraphie, and the company C. Lorenz Aktiengesellschaft, of Berlin.

4. In and to any amount due or owing by Compagnie Universelle de Telegraphie et de Telephone sans Fil (hereinafter called Cutt) to Hochfrequenz Maschinen Aktiengesellschaft fur Drahtlose Telegraphie, arising out of the construction and installation of the aforesaid radio telegraphic station and other buildings and structures referred to, as well as all apparatus, machinery, instruments, tools, equipment, material and supplies in, or connected with, or appurtenant to such station, buildings and structures, and in respect of the maintenance, upkeep and operation thereof, to September 7, 1914.

5. In and to an agreement made September 30, 1912, between Hochfrequenz Maschinen Aktiengesellschaft fur Drahtlose Telegraphie and Cutt, in and to any claim or claims arising therefrom in favor of Hochfrequenz Maschinen Aktiengesellschaft fur Drahtlose Telegraphie or Rudolph Goldschmidt.

6. In and to the following letters patent of the United States:

Patent No.	*Date of Issue.*	*Title.*
999,987	August 8, 1911.....	Apparatus for producing high-frequency currents.
1,104,257	July 21, 1914......	High-frequency generator.

Patent No.	*Date of Issue.*	*Title.*
1,104,246	do	Apparatus for and method of receiving electric waves
1,043,047	October 29, 1912....	Rotor for electric machines.
1,043,923	November 12, 1912.	Strengthening electric alternating currents.
1,087,113	February 17, 1914..	Machine for receiving electric waves.
1,088,018	February 24, 1914..	Means for working microphones in parallel.
1,207,744	December 12, 1916..	Asynchronous motor.

7. And in and to all claims and demands at law or in equity for the past infringement thereof, except claims and demands against the Government of the United States or any of its departments.

My reasons for the foregoing determination, order, rule, and regulation are that evidence has been submitted to me

(*a*) That by virtue of a contract entered into between Homag and Cutt, dated September 30, 1912, and the payment of 2,500,000 francs recited therein, Cutt became the beneficial owner of the Tuckerton land and station, and the patents, patent rights, and other rights and property referred to above; that the legal effect of said contract was that of a present conveyance or bill of sale as of September 30, 1912, of the station (then incomplete) and the patents and other rights and property to Cutt, that thereafter the only rights of Homag and Goldschmidt in connection with said construction were the right to compensation for the construction and installation of the station under Article VII of said contract, which by its terms limited the amount of Cutt's maximum liability to 2,000,000 francs; that the sums heretofore paid by Cutt and Homag under said contract amount to 1,518,443.10 francs;

(*b*) That the only property of any substantial value taken over by the Alien Property Custodian by virtue of the requirement referred to above is the claim of Homag to the payment of an unascertained amount under Article VII of the said contract between Homag and Cutt, and as the amount due on this claim is an unascertained amount, it is impossible to sell the claim to the best advantage at public sale after public or other advertisement;

(*c*) That Cutt is a corporation organized under the laws of the Republic of France, and managed and controlled by officers and directors, none of whom are enemies of the United States; and that substantially all of its capital stock is owned by parties who are citizens of countries not at enmity with the United States;

(*d*) That the American Radio Company referred to herein is a corporation of the State of Delaware, incorporated at the instance of Cutt, and Cutt is the beneficial owner of all of the stock of said company and has approved of the transfer and conveyance to said American Radio Company of all the property now held by the Alien Property Custodian by virtue of his requirements aforesaid.

(Signed) FRANK L. POLK.

WASHINGTON, D. C.,
March 24, 1919.

PLAINTIFF'S EXHIBIT No. 728-E.

AN ORDER CONCERNING THE SALE, TRANSFER, AND RELEASE OF CERTAIN COPYRIGHTS, APPLICATIONS FOR LETTERS PATENT, AND APPLICATIONS FOR THE REGISTRATION OF TRADE-MARKS AND COPYRIGHTS DETERMINED TO BELONG TO OR TO BE HELD FOR, BY, ON ACCOUNT OF, OR FOR THE BENEFIT OF PERSONS DETERMINED TO BE ENEMIES NOT HOLDING A LICENSE OR LICENSES GRANTED BY THE PRESIDENT WITHIN THE PURVIEW OF THE TRADING WITH THE ENEMY ACT AND THE AMENDMENTS THERETO.

By virtue of the authority vested in the President by an act of Congress entitled "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the enemy act," and the amendment to such act embodied in "An act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive order No. 3016, and signed by the President under the 3d day of December, 1918, I hereby, in the public interest, make the following determination and order:

The Alien Property Custodian may release and discharge the United States of America and any department thereof upon such terms and conditions as to the Alien Property Custodian may seem proper from any and all claims and demands arising from any alleged infringement of the copyrights hereinafter referred to.

The Alien Property Custodian may sell at private sale without public or other advertisement to The Chemical Foundation (Inc.), a corporation organized and existing under and by virtue of the laws of the State of Delaware at such place and upon such terms and conditions as to the Alien Property Custodian or his authorized agent may seem proper, all of the copyrights, the certificates of registration thereof, and the publications upon which said registrations were granted, applications for letters patent and for the registration of trade-marks and copyrights and all rights thereunder which the Alien Property Custodian may seize or have seized under the provisions of the said "Trading with the enemy act" and the amendments thereto now or hereafter enacted and which he from time to time shall determine relate to the objects and purposes of said The Chemical Foundation (Inc.), as expressed and defined by its charter.

My reasons in the public interest for the foregoing determination, order, rule, and regulation are:

First. A similar order, rule and regulation relating to letters patent, trade-marks, and similar rights has been made by me the 26th day of February, 1919, and this order is supplemental thereto and necessary to fully carry out the objects and purposes of said order of February 26, 1919.

Second. Said copyrights, applications for letters patent, and for the registration of trade-marks and copyrights can not be sold to the best advantage at public sale after public or other advertisement.

Third. The Chemical Foundation (Inc.) has been incorporated for the purpose of holding letters patent, trade-marks, and similar rights relating to the chemical and allied sciences as a trustee for American industry, for the purpose of the Americanization of such industries as may be affected thereby, of eliminating alien interests hostile to said American industries, and of the advancement of chemical and allied industries in the United States.

Fourth. The public interest will be best served by the administration by The Chemical Foundation (Inc.), of the letters patent, trade-marks, copyrights, and applications therefor and similar rights permitted to be sold to it by this order and by my order of the 26th of February, 1919.

Fifth. A private sale will prevent said copyrights, applications for letters patent and for the registration of trade-marks and copyrights from falling into the hands of purchasers who would be unwilling or unable to carry out the purposes of The Chemical Foundation (Inc.), or would use the copyrights, applications for letters patent and for the registration of trade-marks and copyrights for purely speculative purposes.

Sixth. It would be impossible to make a public sale of the said copyrights, letters patent and applications for the registration of trade-marks and copyrights so as to secure the benefits to the public which a sale to The Chemical Foundation (Inc.) would secure to the public.

Seventh. Unnecessary expense, delay and inconvenience may be avoided by a private sale.

Done in the District of Columbia, this 5th day of April, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America, the one hundred and forty-third.

(Signed) FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-F.

AN ORDER REJECTING THE BID OF LUDWIG EISEMANN OF $98,595 FOR 939 SHARES OF THE CAPITAL STOCK OF K. & E. NEUMOND (INC.), OFFERED FOR SALE AT PUBLIC AUCTION ON MARCH 19, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in the President by "An act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy act," and the amendment to such act embodied in "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive order 3016 and signed by the President under the third day of December, 1918, I hereby, in the public interest, make the following determination and order:

The Alien Property Custodian having offered for sale at public auction at the principal office of the company, 501-511 Elysianfield Street, New Orleans, La., at 11 o'clock a. m., on the 19th day of March, 1919, the following property, to-wit:

Nine hundred and thirty-nine (939) shares of the capital stock of K. & E. Neumond (Inc.), a corporation organized under the laws of the State of Louisiana, of the par value of $100 each, out of a total authorized and outstanding issue of capital stock of 1,000 shares of said corporation which said property was held by the Alien Property Custodian, and at which sale Ludwig Eisemann having bid the sum of $98,595, which was the highest bid received for said property.

It is therefore ordered, that the Alien Property Custodian be, and he is authorized, and shall have the right to reject all bids at said sale including the bid of said Ludwig Eisemann, and to resell such property in accordance with the provisions of the said "Trading with the enemy act," as amended, and the Executive orders and proclamations issued pursuant thereto.

The reason for the foregoing order is that the price bid for said property by the said Ludwig Eisemann, to wit, the sum of $98,595, is inadequate and not the fair value of the property offered for sale.

Done in the District of Columbia, this 5th day of April, in the year of our Lord one thousand nine hundred and nineteen.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-G.

An Order Rejecting the Bid of A. Schaap & Sons, and Associate, S. Stemfeld Company, a New York Co-Partnership, Composed of U. Stemfeld and Fred Seligman of $154,000 for 2,000 Shares of the Common Capital Stock of Dr. Jaeger's Sanitary Woolen System Company, a New York Corporation, and Certain Trade-Marks and Labels Offered for Sale at Public Auction on February 28, 1919, Pursuant to the "Trading with the Enemy Act" and Amendments Thereof.

By virtue of the authority vested in the President by "An act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy act," and the amendment to such act embodied in "An act making appropriations to supply urgent deficiencies in appropriation for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive order 3016 and signed by the President under the 3d day of December, 1918, I hereby, in the public interest, make the following determination and order:

The Alien Property Custodian having offered for sale at public auction in the borough of Manhattan, New York City, at 11 o'clock a. m. on the 28th day of February, 1919, the following property, to wit:

1. Two thousand shares of the common capital stock of the par value of $100 per share, of Dr. Jaeger's Sanitary Woolen System Company, a corporation of the State of New York, all of which are issued and outstanding and which constitute the total outstanding capital sock of said company.

2. The following trade-marks, to wit:

Two concentric circles with anchor device in center and lettering, registered in United States Patent Office, July 27, 1909, No. 74621.

Double square, one inside the other, with lettering and Dr. Jaeger's picture, registered in United States Patent Office, September 14, 1919, No. 75245.

Anchor device in double heart, with the word "Columbia" above it, registered in United States Patent Office, February 28, 1893, No. 22520.

The word "Columbia," registered in United States Patent Office, October 10, 1893, No. 23684.

Anchor device in a double heart, registered in United States Patent Office, October 10, 1893, No. 23685.

The words "Prof. Dr. G. Jaeger" in script, registered in United States Patent Office, September 14, 1909, No. 75243.

Picture of Dr. Jaeger in two concentric circles, registered in United States Patent Office, September 14, 1909, No. 75244.

Anchor device with the words "Benger Sohne" registered in United States Patent Office, May 2, 1911, No. 81754.

Concentric circles in square, the word "Pallas" and other lettering, registered in United States Patent Office, December 12, 1899, No. 33866.

The word "Pallas" registered in United States Patent Office, December 12, 1899, No. 33866.

The word "Rabana" in script, registered in United States Patent Office, July 8, 1913, No. 92475.

The word "Rabana" in script with "W. B. S." in rectangle, registered in United States Patent Office, December 23, 1913, No. 94683.

Anchor device with the words "W. Benger Sons & Company," registered in United States Patent Office, October 28, 1890, No. 18555.

Anchor device with the word "Columbia" above it, registered in United States Patent Office, February 21, 1893, No. 22488.

3. The label reading as follows:

"W. Benger Sons & Company
New York.
Made in U. S. A."

which said property was held by the Alien Property Custodian and at which sale said A. Schaap & Sons, together with their associate, S. Stemfeld Company, a New York co-partnership, composed of U. Stemfeld and Fred Seligman, having bid the sum of $154,000 which was the highest bid received for said property,

It is therefore ordered, that the Alien Property Custodian be, and he is authorized, and shall have the right to reject all bids at said sale including the bid of said A. Schaap & Sons, together with their associate, S. Stemfeld Company, a New York copartnership, composed of U. Stemfeld and Fred Seligman, and to resell such property in accordance with the provisions of the said "Trading with the enemy act," as amended, and the Executive orders and proclamations issued pursuant thereto.

The reason for the foregoing order is that the price bid for said property by the said A. Schaap & Sons and their associate, S. Stemfeld Company, to wit, the sum of $154,000, is inadequate and not the fair value of the property offered for sale.

Done in the District of Columbia, this 8th day of April, in the year of our Lord one thousand nine hundred and nineteen.

(Signed) FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-H.

A DETERMINATION, ORDER AND DIRECTION CONCERNING THE TRANSFER, RELEASE AND SURRENDER OF CERTAIN RIGHTS IN AND TO 50,000 SHARES OF THE CAPITAL STOCK OF L. VOGELSTEIN & COMPANY, INC., TO LUDWIG VOGELSTEIN.

By virtue of the authority vested in the President by an Act of Congress entitled "An Act to define, regulate and punish trading with the enemy and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such Act in "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses, and for other purposes," approved March 28, 1918, and the amendment to such Act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by Executive Order No. 3016 and signed by the President on the third day of December, 1918, and

Whereas, evidence has been presented that Ludwig Vogelstein, being indebted for certain sums to Aron Hirsch & Sohn, of Halberstadt, Germany,—the amount of which cannot be stated with definiteness until an accounting between the said Ludwig Vogelstein and Aron Hirsch & Sohn after a treaty of peace between the United States and Germany, the said Aron Hirsch & Sohn, after investigation, having been hitherto determined by the Alien Property Custodian to be an enemy not holding a license issued by the President,—in order to secure the payment of such amount as on accounting should be found and determined to be due to the said Aron Hirsch & Sohn, did deposit in escrow 39,000 shares of stock of L. Vogelstein & Company, Inc., a New York corporation, belonging to him, the amount so found and determined to be due on such accounting to be paid and satisfied by dividing such stock between Ludwig Vogelstein and the said Aron Hirsch & Sohn in accordance with the amounts so found to be due to them from Ludwig Vogelstein and it not appearing that Aron Hirsch & Sohn had knowledge of the deposit of the said shares as security as aforesaid or that they ratified or accepted the terms of the said deposit; and it appearing that the said Ludwig Vogelstein also deposited with trustees 10,000 shares of stock of L. Vogelstein & Company, Inc., belonging to him to secure the performance of a certain agreement between the said Ludwig Vogelstein and one Ernest G. Hothron; and that the said Ludwig Vogelstein also deposited with trustees 1,000 shares of stock of L. Vogelstein & Company, Inc., belonging to him, subject to his own order, the total number of the shares so deposited aggregating 50,000 and being all the capital stock issued and outstanding of said L. Vogelstein & Company, Inc.; and the Alien Property Custodian having heretofore demanded of said trustees that they convey to the Alien Property Custodian such right, title and interest in the said 50,000 shares as belonged to the said Aron Hirsch & Sohn; and said L. Vogelstein & Company, Inc., having thereafter transferred the said 50,000 shares upon its books to the Alien Property Custodian and having issued new certificates therefor, which are now in the possession of the Alien Property Custodian, I hereby in the public interest, make the following determination, direction and order:

The Alien Property Custodian may, and he is hereby authorized and directed to transfer, dispose of, release, surrender, and quitclaim to **Ludwig Vogelstein**, of the Borough of Manhattan, City of New York, all the rights which the Alien Property Custodian and Aron Hirsch & Sohn, or either of them, have acquired or may acquire by reason of the deposit of the said shares and the transfer of the same to the Alien Property Custodian as aforesaid, in and to 50,000 shares of the capital stock of L. Vogelstein & Company, Inc., a corporation organized under the laws of the State of New York, upon such terms and conditions as the Alien Property Custodian, or his duly authorized agent, may deem proper; including but without limiting the generality of the foregoing, such terms and conditions as will secure the payment of Ludwig Vogelstein to the Alien Property Custodian of any indebtedness now owing, or hereafter determined to be owing by said Ludwig Vogelstein to the said Aron Hirsch & Sohn; and including the power to secure the aforesaid indebtedness of Ludwig Vogelstein to Aron Hirsch & Sohn, by causing the said 50,000 shares, or any part thereof so released to Ludwig Vogelstein, to be held as security for the payment of the said indebtedness under such form of trust agreement or otherwise as may seem proper to the Alien Property Custodian, or his duly authorized agent; and including the power to make such arrangements as the Alien Property Custodian deems expedient to prevent the said 50,000 shares of the capital stock of L. Vogelstein & Company, Inc., or any part thereof from passing into German hands or into German control for such period as may seem proper to the Alien Property Custodian.

My reasons in the public interest, for the foregoing determination, direction, order, rule and regulation are:

(a) The evidence presented shows that the sole interest of the Alien Property Custodian in said 50,000 shares of stock is the right to hold the same as collateral for the payment of said indebtedness of said Ludwig Vogelstein to Aron Hirsch & Sohn;

(b) That said Ludwig Vogelstein has offered to pay a portion of said indebtedness and secure the payment of the balance and has demanded the surrender and release to him of said 50,000 shares of stock and of all the right, title and interest therein of said Aron Hirsch & Sohn and of the Alien Property Custodian;

(c) That the only effective method whereby the indebtedness of said Ludwig Vogelstein to Aron Hirsch & Sohn, insofar as the same can now be determined, can be speedily liquidated is by the transfer, surrender, and release of said 50,000 shares of stock of L. Vogelstein & Company, Inc., and of the right, title and interest therein of said Aron Hirsch & Sohn and of the Alien Property Custodian, to said Ludwig Vogelstein, who will thereupon pay a portion of said indebtedness and secure the payment of the balance.

Done in the District of Columbia this 18th day of April, in the year of Our Lord One Thousand Nine Hundred and Nineteen, and of the Independence of the United States of America the One Hundred and Forty-third.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-I.

AN ORDER REJECTING THE BID OF CHARLES HAYDEN AND ASSOCIATES FOR VOTING TRUST CERTIFICATES REPRESENTING 34,644 SHARES OF THE CAPITAL STOCK OF THE AMERICAN METAL COMPANY, LIMITED, A NEW YORK CORPORATION OFFERED FOR SALE AT PUBLIC AUCTION ON APRIL 7, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THERETO.

By virtue of the authority vested in the President by "An act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment thereto embodied in "An act making appropriations to supply urgency deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive Order No. 3016 and signed by the President under the date of the third day of December, 1918, I hereby make the following determination and order:

Whereas, Francis P. Garvan, Alien Property Custodian, has reported to me that voting trust certificates issued under an agreement dated December 5, 1918, between owners of stock in The American Metal Company, Limited, of the first part, and Joseph F. Guffey, Henry Morgenthau and Berthold Hochschild, and others, of the second part, representing 34,644 shares, of the par value of One Hundred ($100) Dollars each, of the capital stock of The American Metal Company, Limited, a corporation organized and existing under the laws of the State of New York, were offered for sale to the highest bidder at public sale on April 7, 1919, at 10.30 o'clock a. m. at which sale the highest bid received for the said property was made by Charles Hayden, in behalf of himself and certain associates.

Now, therefore, I hereby authorize and direct the Alien Property Custodian to reject all bids received at the said sale, including the bid of the said Charles

Hayden and associates, and to resell such property in such manner and under such terms and conditions as I, or the President, may hereafter direct.

My reasons for the foregoing determination and order are:

(1) That the said Charles Hayden and associates have failed to furnish to the Alien Property Custodian evidence of the identity and of the qualification of all the persons interested in said bid under the provisions of the "Trading with the enemy Act";

(2) That it has been impossible for the Alien Property Custodian to complete his investigation as to the identity of, and the qualification of, the persons interested in said bid within the period of thirty days from the date of the sale of the said property, which is the period fixed by the terms of sale within which the said bid shall be accepted or rejected, the said Charles Hayden and associates, as such highest bidders, refusing to agree to any extension of the said period.

Done in the District of Columbia this the seventh day of May in the year of our Lord one thousand nine hundred and nineteen and of the independence of the United States of America the one hundred and forty-third.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-J.

AN ORDER REJECTING THE BID OF ELMER C. BINDER FOR 1,008 SHARES OF THE CAPITAL STOCK OF ERNST GIDEON BEK, INC., A CORPORATION OF THE STATE OF NEW YORK, AND EVERY RIGHT, PRIVILEGE AND BENEFIT GIVEN TO ERNST GIDEON BEK BY THAT CERTAIN CONTRACT MADE AND ENTERED INTO, BY AND BETWEEN HIM AND ERNST GIDEON BEK, INC., ON, TO WIT: THE SIXTEENTH DAY OF APRIL, 1913, ALL OF WHICH WAS OFFERED FOR SALE AT PUBLIC AUCTION ON THE SECOND DAY OF MAY, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THERETO.

By virtue of the authority vested in the President by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such Act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive Order No. 3016 signed by the President under the third day of December 1918, I hereby, in the public interest, make the following determination and order:

The Alien Property Custodian having offered at public sale in the office of the Company at 15-17-19 Maiden Lane, New York City, in the State of New York, at 11 o'clock a. m. on the second day of May, the following property to wit:

(1) 837 shares of the common capital stock of Ernst Gideon Bek, Inc., a corporation of the State of New York, of the par value of $100 each, out of 1,008 shares of the common capital stock of said corporation, all of which are issued and outstanding.

(2) Every right, privilege and benefit which was given to Ernst Gideon Bek by that certain contract made and entered into, by and between the said Ernst Gideon Bek and Ernst Gideon Bek, Inc., on, to wit: the 16th day of April, 1913, (which said contract is embodied in the minutes of the incorporators and in the minutes of a meeting of the directors of the said corporation bearing the said date), including the right to have issued to the said Ernst Gideon Bek eleven shares of the capital stock of the said corporation out of a total of 1,019 shares provided in said contract to be issued; and also all accretions, accumulations and additions thereto and the income and profits derived therefrom by and in the hands of said corporation and also every right, title and claim for damages or compensation, or otherwise against said corporation growing out of said contract or growing out of any income or interest or profits derived therefrom.

At the same time and place, and as a part of the same sale, Elmer C. Binder, having offered seventy shares, Lawrence O. Binder seventy shares, Otto Herman Klebsattel thirty shares, and Emil Feyler one share of the capital stock of said company, being together with those offered by the Alien Property Custodian, all the outstanding shares of the capital stock of said company, at which sale the highest bid received for said property, including the 171 shares offered by the private owners thereof, was the sum of $50,400 made by Elmer C. Binder.

It is therefore Ordered that the Alien Property Custodian be, and he is authorized, and shall have the right to reject all bids including the bid of the said Elmer C. Binder, and to resell such property, but only to American citizens at public sale to the highest bidder after public advertisement of the time and place of sale which shall be where the property or a major portion thereof is situated, as provided by the "Trading with the Enemy Act," as amended, and the executive orders and proclamations issued pursuant thereto.

The reason for the foregoing order is that the price bid for said property by the said Elmer C. Binder, to wit: the sum of $50,400 is inadequate and not the fair value of the property offered for sale.

Done in the District of Columbia, this, the 28th day of May, in the year of our Lord one thousand nine hundred and nineteen, and of the independence of the United States of America the one hundred and forty-third.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-K.

A DETERMINATION, ORDER AND DIRECTION CONCERNING THE TRANSFER, RELEASE AND SURRENDER OF CERTAIN RIGHTS IN AND TO CERTAIN SHARES OF THE CAPITAL STOCK OF NEW ENGLAND WASTE COMPANY, AND OTHER STOCKS, BONDS AND SECURITIES, TO ADOLF LEVE, ET ALS.

1. By virtue of the authority vested in the President by an act of Congress entitled "An Act to Define, Regulate and Punish Trading with the Enemy,

and for other Purposes," approved October 6, 1917, and known as the "Trading with the Enemy Act," and the amendment to such Act in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918, and the amendment to such Act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by Executive Order No. 3016, signed by the President on the third day of December, 1918;

2. Whereas, evidence has been presented that Adolf Leve of Boston, Suffolk County, Massachusets, and five certain corporations, viz., the New England Waste Company, W. Wolf and Sons, the American Linters Company, the American Products Company, ad the Oversea Trading Company, all corporations located and having an office for the transaction of business in said Boston, either, each or all of them, may be indebted to W. Wolf and Soehne, a German copartnership of Stuttgart, Germany, the fact and amount of which indebtedness cannot be definitely ascertained until a full and final accounting between the said Adolf Leve, the said five corporations, and the said W. Wolf and Soehne after the treaty of peace between the United States and Germany, and the said W. Wolf and Soehne after investigation having heretofore been determined by the Alien Property Custodian to be an enemy not holding a license issued by the President; and

3. Whereas, pursuant to a request of the Alien Property Custodian, said Adolf Leve, his wife Claudine H. Leve, and said five corporations, heretofore filed certain reports with the Alien Property Custodian, as from the records of his office will more fully appear, but under protest and subject to certain reservations stated in said reports; and

4. Whereas, pursuant to the demands of the Alien Property Custodian, but under protest and subject to the reservations stated in said reports, certain shares of stock of the said five corporations, and certain other stocks, bonds and securities, a full list of which immediately follow, were transferred and surrendered to the Alien Property Custodian, and are now in the possession or control of the Alien Property Custodian, viz.:

997 shares of common capital stock of W. Wolf & Sons in name of Claudine H. Leve.

1 share of common capital stock of W. Wolf & Sons in name of Adolf Leve.

463 shares of common capital stock of American Linters Co. in the name of Adolf Leve.

4,001 shares of common capital stock of New England Waste Co. in name Adolf Leve.

5,997 shares of common capital stock of New England Waste Co. in name of Claudine H. Leve.

$70,100 St. Louis, San Francisco Ry. Co. Prior Lien 4 per cent Bonds in name of Claudine H. Leve.

$79,450 St. Louis, San Francisco Ry. Co. Adj. mtg. 6 per cent Bonds in name of Claudine H. Leve.

$140,200 St. Louis, San Francisco Ry. Co. Inc. mtg. 6 per cent Bonds in name of Claudine H. Leve.

50 shares common stock of J. S. Young Co. in name of Claudine H. Leve.

300 shares preferred stock of S. A. L. in name of Adolf Leve.

100 shares Cleveland, Cinc. Ch. & St. Louis Ry. in name of Claudine H. Leve.

44 shares Savoy Oil Co. in name of Claudine H. Leve.

25 shares G. W. Helme Co. in name of Millicent Leve.

50 shares Continental Gas & Oil Co. in name of Felice Leve.

44 shares of Savoy Oil Co. in name of Claudine H. Leve.

50 shares Electric Property Corp. in name of Felice Leve.

3 shares Olympia Theatre in name of Claudine H. Leve.

25 shares Arlington Mills in name of Claudine H. Leve.

25 shares Arcadia Mills in name of Claudine H. Leve.

50 shares Sears Roebuck & Co. in name of Claudine H. Leve.

50 shares Goodyear Tire Co. in name of Claudine H. Leve.

97 shares common stock of Am. Products Co. in name of Claudine H. Leve.

1 share common stock of Am. Products Co. in name of Adolf Leve.

1 share common stock of Am. Products Co. in name of Lewis P. Sladen.

1 share common stock of Am. Products Co. in name of George E. Lund.

97 shares common stock Oversea Trading Co. in name of Claudine H. Leve.

1 share common stock Oversea Trading Co. in name of Adolf Leve.

1 share common stock Oversea Trading Co. in name of Lewis P. Sladen.

1 share common stock Oversea Trading Co. in name of George E. Lund.

And also a dividend of ten per cent (10%) in the sum of One Hundred Thousand ($100,000) Dollars, declared by the New England Waste Company at a meeting of its Board of Directors held April 7, 1919, payable on April 15, 1919, in United States 4¼% Liberty Bonds to stockholders of record on April 8, 1919, which said dividend has been paid to the Commonwealth Trust Company, of Boston, Massachusetts, as Depositary for the Alien Property Custodian, and is now in its possession.

5. I hereby in the public interest make the following

DETERMINATION, DIRECTION AND ORDER.

The Alien Property Custodian may, and he is hereby authorized and directed, to transfer, dispose of, release, surrender and quitclaim to said Adolf Leve, said Claudine H. Leve, Adolph Leve, as the duly appointed and qualified guardian for Millicent Leve and Felice Leve, the two minor children of said Adolf and Claudine H. Leve, and to Lewis P. Sladen and George E. Lund, all of said Boston, as their respective interests may appear on the foregoing list, all the right, title and interest which the Alien Property Custodian and said W. Wolf and Soehne, or either of them, have acquired, or may acquire, by reason of said demands for said stocks, bonds and securities, and the transfer and surrender of the same to the Alien Property Custodian, in and to 9998 shares of the capital stock of the New England Waste Company, 463 shares of the capital stock of the American Linters Company, 998 shares of the capital stock of W. Wolf and Sons, 100 shares of the capital stock of American Products Company, 100 shares of the capital stock of

Oversea Trading Company, and the remaining stocks, bonds and securities mentioned in said list, upon such terms and conditions as the Alien Property Custodian or his duly authorized agent, may deem proper, including, but without limiting the generality of the foregoing, such terms and conditions as will secure the payment by said Adolf Leve and said five corporations, or any of them, to the Alien Property Custodian, or his successor in office, of any indebtedness now owing, or hereafter, on such accounting, determined to be then owing, by said Adolf Leve, and said five corporations, or any of them, to said W. Wolf and Soehne; and including the power to secure the aforesaid indebtedness of Adolf Leve, if any, and said five corporations, or any of them, to W. Wolf and Soehne, by causing the said stocks, bonds and securities mentioned in the list aforesaid, or any part thereof, so released to said Adolf Leve, Claudine H. Leve, Adolf Leve as guardian of Millicent Leve and Felice Leve, Lewis P. Sladen, and George E. Lund, as aforesaid, to be held as security for the payment of the said indebtedness, if any, under such form of trust agreement, or otherwise, as may seem proper to the Alien Property Custodian, or his duly authorized agent; and including the power to make such arrangements as the Alien Property Custodian, or his successor in office, deems expedient, to prevent said shares of the capital stock of said five corporations, or any part thereof, from passing into German hands, or into German control, for such period as may seem proper to the Alien Property Custodian, or his successor in office.

6. My reasons in the public interest for the foregoing determination, direction, order, rule and regulation are: (a) The evidence presented shows that the interest of the Alien Property Custodian in said stocks, bonds and securities may be merely the right

to hold the same as collateral for the payment of such indebtedness, if any, of Adolf Leve and said five corporations, or any of them, to said W. Wolf and Soehne; (b) that said Adolf Leve has offered to pay, or cause to be paid, after accounting, whatever sum, if any, is found to be due from him and each of said five corporations, or any of them, to said W. Wolf and Soehne, and has offered to secure the payment of same; (c) that the most effective method whereby the indebtedness, if any, of said Adolf Leve and said five corporations, or any of them, to said W. Wolf and Soehne, in so far as the same can now be determined, can be speedily and safely liquidated is by the transfer, surrender and release of said stocks, bonds and securities, and the right, title and interest therein of said W. Wolf and Soehne, and of the Alien Property Custodian; said Adolf Leve thereupon agreeing to pay, or cause to be paid, said indebtedness, if any, and to secure the payment of the same.

Done at the District of Columbia this 28th day of May, in the year of our Lord One Thousand Nine Hundred and Nineteen, and of the independence of the United States of America the One Hundred and Forty-third.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-L.

A DETERMINATION, ORDER AND DIRECTION CONCERNING THE DISPOSITION OF A CERTAIN RETROCESSION ARRANGEMENT BETWEEN THE FIRST REINSURANCE COMPANY OF HARTFORD, CONNECTICUT, AND THE MUNICH REINSURANCE COMPANY OF MUNICH, BAVARIA.

By virtue of the authority vested in the President by an Act of Congress entitled "An Act to define, regulate and punish trading with the enemy and for other purposes, approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such Act in "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses, and for other purposes," approved March 28th, 1918, and the amendment to such Act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by Executive Order No. 3016 and signed by the President on the third day of December, 1918, and

Whereas, evidence has been presented that a retrocession arrangement for life insurance was entered into between the First Reinsurance Company of Hartford, Connecticut, and the Munich Reinsurance Company of Munich, Bavaria, under which arrangement there was automatically retroceded to the Munich Reinsurance Company a certain proportion of all insurance on lives assumed by the said First Reinsurance Company; and

Whereas, the Alien Property Custodian has determined the said Munich Reinsurance Company to be an enemy not holding a license granted by the President, and has seized all the right, title and interest of said Munich Reinsurance Company arising in favor of the said Munich Reinsurance Company by reason of the said arrangement;

I hereby make the following direction, order, rule and regulation:

The Alien Property Custodian may, and he is hereby ordered and directed to dispose of any and all rights accruing to the said Munich Reinsurance Company against the said First Reinsurance Company under the said general retrocession arrangement subsequent to April 6, 1917, by discharging the said First Reinsurance Company of all obligations to the said Munich Reinsurance Company thereunder, and receiving a similar discharge from the said First Reinsurance Company to the said Munich Reinsurance Company of all obligations accruing in favor of the said First Reinsurance Company thereunder, but without disposing of any rights and/or obligations of the Munich Reinsurance Company in respect to the individual insurance contracts retroceded by the said First Reinsurance Company to the said Munich Reinsurance Company prior to April 6, 1917, under the said general retrocession arrangement.

My reasons, in the public interest, for the foregoing direction, order, rule and regulation are:

(a) That the aforesaid general retrocession arrangement between the said First Reinsurance Company and the said Munich Reinsurance Company was terminated at and abrogated by the declaration of war between the United States and Germany except as to the respective rights and obligations of the said First Reinsurance Company and the said Munich Reinsurance Company as to the insurance on lives retroceded by the said First Reinsurance Company to the said Munich Reinsurance Company prior to April 6, 1917 under such retrocession arrangement.

(b) That the only property or claim of any value taken over by the Alien Property Custodian by virtue of the aforesaid requirement and seizure is the obligation in favor of the said Munich Reinsurance Company in respect to insurance on lives retroceded by the said First Reinsurance Company to the said Munich Reinsurance Company prior to April 6, 1917, under such retrocession arrangement.

Done in the District of Columbia this 28th day of May in the year of Our Lord One Thousand Nine Hundred and Nineteen, and of the Independence of the United States of America the One Hundred and Forty-third.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-M.

AN ORDER REJECTING THE BID OF WM. L. WALTHER, GEORGE ROSSEN, CLEMENT H. BETTS AND ROBERT H. GOODWIN FOR TWENTY SHARES OF THE CAPITAL STOCK OF THE ASSOCIATED OPERATING COMPANY OF NEW YORK OFFERED FOR SALE AT PUBLIC AUCTION ON MAY 13, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in the President by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendments to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1919, and prior fiscal years on account of war expenses and for other purposes" approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive Order 3016 and signed by the President under the third day of December, 1918, I hereby, in the public interest, make the following determination and order:

The Alien Property Custodian having offered for sale at public auction in the city of New York, State of New York, at 11 o'clock A. M. on the 13th day of May, 1919, 20 shares of the capital stock of the Associated Operating Company, a New York Corporation of the par value of $100 per share, out of a total authorized and issued capitalization of 50 shares of the par value of $100 per share, which said property was held by the Alien Property Custodian, at which sale Wm. L. Walther, George Rossen, Clement H. Betts and Robert H. Goodwin were the highest bidders, having bid the sum of $5,000 which was the highest bid received for said property.

It is therefore ordered, that the Alien Property Custodian be, and he is authorized, and shall have the right to reject all bids at said sale, including the bid of the said Wm. L. Walther, George Rossen, Clement H. Betts, and Robert H. Goodwin, and to resell such property in accordance with the provisions of the said "Trading with the Enemy Act," as amended, and the Executive Orders and proclamations issued pursuant thereto.

The reason for the foregoing order is that the price bid for said property by the said Wm. L. Walther, George Rossen, Clement H. Betts, and Robert H. Goodwin, to wit: $5,000 is inadequate and not the fair value of the property offered for sale.

Done in the District of Columbia, this 10th day of June, 1919.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-N.

An Order for the Sale of One Hundred and Twenty-Four (124) Shares of the Common Capital Stock of the La Salle Portland Cement Company, a Corporation of the State of Illinois, at Private Sale, Stating the Reasons Therefor in the Public Interest.

By virtue of the authority vested in the President by an Act to define, regulate and punish trading with the enemy and for other purposes, approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such Act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive Order No. 3016 and signed by the President on the 3rd day of December, 1918, I hereby, in the public interest, make the following determination and order:

The Alien Property Custodian is hereby authorized to sell at private sale without public or other advertisement, one hundred twenty-four (124) shares of the common capital stock of the La Salle Portland Cement Company, an Illinois Corporation, provided, however, that the price of two hundred eighty-six dollars ($286.00) per share can be obtained therefor.

My reasons for the foregoing determination, order, rule and regulation, are:

(1) Three thousand six hundred and thirty-seven (3,637) shares, being all but one hundred twenty-four (124) of the shares of this corporation held by the Alien Property Custodian, were by him offered for sale on the tenth day of March, 1919, at public sale to the highest bidder after public advertisement of the time and place of sale. The highest bid received for this stock was two hundred eighty-six (286) dollars per share. This bid, after careful investigation, has been held to be adequate and the sale has been consummated accordingly.

(2) In view of the circumstances, a public sale of the additional one hundred twenty-four shares, conducted pursuant to the terms of the "Trading with the Enemy Act" relevant to such sales, would result in unnecessary and wasteful expenditures being made and in payment of avoidable costs, thereby reducing the net amount to be paid into the Treasury of the United States of America.

Done in the District of Columbia, this 18th day of June in the year of our Lord One Thousand Nine Hundred and Nineteen, and of the independence of the United States of America the one hundred and forty-third.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-O.

ORDER PRESCRIBING ADDITIONAL RULES AND REGULATIONS AND MAKING CERTAIN DETERMINATIONS RESPECTING THE EXERCISE OF THE POWERS AND AUTHORITY OF THE ALIEN PROPERTY CUSTODIAN.

By virtue of the authority vested in the President by an Act of Congress entitled "An Act to define, regulate and punish trading with the enemy and for other purposes,'' approved October 6, 1917, known as the ''Trading with the Enemy Act'' and the amendment to such Act in ''An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses, and for other purposes,'' approved March 28, 1918, and the amendment to such Act embodied in ''An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses and for other purposes'' approved November 6, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by Executive Order No. 3016 and signed by the President on the third day of December, 1918.

I hereby make the following orders, rules, regulations and determinations:

The Alien Property Custodian shall have the power, in and about the conduct, management and liquidation of any insurance company, or in connection with any retrocession or reinsurance contract, which he holds, manages, administers, protects, preserves or controls under, pursuant to, or by virtue of the Act known as the ''Trading with the Enemy Act,'' as amended, and the Proclamations and Executive Orders issued in pursuance thereof, to sell at private sale, without public or other advertisement any stocks, beneficial interests in stocks, including voting trust certificates and all other rights appurtenant to the ownership of stocks, bonds, negotiable instruments or evidences of indebtedness, and maps, in parcels, lots or quantities having a market value at the time of sale not exceeding fifty thousand dollars ($50,000) for each parcel, lot, or quantity sold. Any such sale may be conducted at such place and upon such terms and conditions as to the Alien Property Custodian, or his authorized agent may seem proper.

The Executive Order of November 12, 1918, defined as "Executive Order prescribing additional rules and regulations and making certain determinations respecting the exercise of the powers and authority and the performance of the duties of the Alien Property Custodian," is not to be construed as modified or changed in any respect by this Executive Order, except that portion of paragraph six (6) of said Order which relates to the amount in which lots or parcels of stocks, bonds, negotiable instruments, or evidences of indebtedness, and maps can be sold.

The reason in the public interests for the foregoing determination, order, rule and regulation is that the properties above described cannot generally be sold to the best advantage in lots or parcels not in excess of ten thousand dollars ($10,000).

Done in the District of Columbia this 24th day of June in the year of our Lord, One Thousand Nine Hundred and Nineteen, and of the Independence of the United States of America the One Hundred and Forty-third.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-P.

AN ORDER REJECTING THE BID OF JOHANNES MEYER FOR TWO HUNDRED TWENTY-FIVE SHARES OF THE CAPITAL STOCK OF VIGILANT MILLS, A PENNSYLVANIA CORPORATION, OFFERED FOR SALE AT PUBLIC AUCTION ON JUNE 7, 1919, PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.

By virtue of the authority vested in the President by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved

October 6, 1917, known as the "Trading with the Enemy Act," and the amendments to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive Order 3016 and signed by the President under the third day of December, 1918, I hereby, in the public interest, make the following determination and order:

Whereas, the Alien Property Custodian offered for sale at auction in the city of Frankford, State of Pennsylvania, at 11:30 a. m. on the seventh day of June, 1919, two hundred and twenty-five shares of the capital stock of Vigilant Mills, a Pennsylvania corporation, of the par value of $100 per share, out of a total and issued capitalization of five hundred shares;

Whereas, said property was held by the Alien Property Custodian, and

Whereas, Johannes Meyer made the highest bid which was received for said property, having bid the sum of $60,000.

It is therefore, ordered, that the Alien Property Custodian be, and he is authorized and shall have the right to reject all bids at said sale, including the bid of said Johannes Meyer, and to resell said property in accordance with the provisions of the said "Trading with the Enemy Act" and the Executive Orders issued pursuant thereto.

The reason for the foregoing order is that the price bid for said property by the said Johannes Meyer, to wit, $60,000, is inadequate and not a fair value of the property offered for sale.

Done in the District of Columbia, this eighth day of July, in the year of our Lord one thousand nine hundred and nineteen, and of the independence of the United States of America, the one hundred forty-fourth.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 728-Q.

An Order Rejecting the Bid of Gustav Kremer for Seven Hundred Thirty-five Shares of the Capital Stock of Pass-Kremer Hatband Manufacturing Company, Inc., a New Jersey Corporation, Offered for Sale at Public Auction on May 29, 1919, Pursuant to the "Trading with the Enemy Act" and Amendments Thereof.

By virtue of the authority vested in the President by "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendments to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ended June 30, 1918, and prior fiscal years on account of war expenses and for other purposes," approved March 28, 1918, and the amendment to such act embodied in "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ended June 30, 1919, and prior fiscal years on account of war expenses and for other purposes," approved November 4, 1918, to make certain orders such as that herein contained, which authority has been delegated to me by the Executive Order 3016 and signed by the President under the third day of December, 1918, I hereby, in the public interest, make the following determination and order:

Whereas, the Alien Property Custodian offered for sale at auction in the City of Paterson, State of New Jersey, at 11.00 a. m. on the 29th day of May, 1919, seven hundred and thirty-five shares of the capital stock of Pass-Kremer Hatband Manufacturing Company, Inc., a New Jersey corporation, of the par value of $100 per share, out of a total and issued capitalization of fifteen hundred shares;

Whereas, said property was held by the Alien Property Custodian, and

Whereas, Gustav Kremer made the highest bid which was received for said property, having bid the sum of $73,500.

It is therefore, ordered, that the Alien Property Custodian be, and he is authorized and shall have the right to reject all bids at said sale, including the bid of Gustav Kremer, and to re-sell said property under the provisions of the "Trading with the Enemy Act," as amended, and the Executive Orders and Proclamations issued pursuant thereto.

The reason for the foregoing order is that the price bid for the said property by the said Gustav Kremer, to wit, $73,500, is inadequate and not the fair value of the property offered for sale.

Done in the District of Columbia this eighth day of July, in the year of our Lord one thousand nine hundred and nineteen, and of the independence of the United States of America, the one hundred and forty-fourth.

FRANK L. POLK.

PLAINTIFF'S EXHIBIT No. 729.

PROCLAMATIONS.

GERMANS AND AUSTRO-HUNGARIANS IN THE CUSTODY OF THE WAR DEPARTMENT INCLUDED WITHIN THE TERM "ENEMY" FOR THE PURPOSES OF THE TRADING WITH THE ENEMY ACT.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

[No. 1427.]

Whereas paragraph (c) of Section Two of the Act entitled "An Act To define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the Trading with the Enemy Act, provides that the word "enemy" as used therein shall be deemed to mean, for the purposes of such trading and of said Act, in addition to the individuals, partnerships or other bodies of individuals or corporations specified in paragraph (a), and in addition to the Government and political or municipal subdivisions, officers, officials, agents or agencies thereof specified in paragraph (b), of said Section Two, the following:

"Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy;'"

And whereas, under the provisions of and by virtue of the power and authority granted in Sections four thousand and sixty-seven, four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy, of the Revised Statutes, and in accordance with the proclamations and regulations which have been or may hereafter be made and established thereunder by the President of the United States, certain alien enemies have been, or may from time to time be, transferred after arrest into the custody of the War Department for detention during the war;

Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me, and in accordance with the provisions of the said Act of October 6, 1917, known as the Trading with the Enemy Act, do hereby find that the safety of the United States and the successful prosecution of the present war require that all natives, citizens or subjects of the German Empire or of the Austro-Hungarian Empire who, by virtue of the provisions of Sections four thousand and sixty-seven, four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy, of the Revised Statutes, and of the proclamations and regulations thereunder, have been heretofore or may be hereafter transferred after arrest into the custody of the War Department for detention during the war, shall be included within the meaning of the word "enemy" for the purposes of the Trading with the Enemy Act and of such trading; and I do hereby proclaim to all whom it may concern that every such alien enemy who is so transferred, after arrest, into the custody of the War Department for detention during the war, shall be and hereby is included within the meaning of the word "enemy" and shall be deemed to constitute an "enemy" for said purposes.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia, this 5th day of February, in the year of our Lord one thousand nine hundred and eighteen, and of the independence of the United States the one hundred and forty-second.

(Seal.) WOODROW WILSON.

By the President:
FRANK L. POLK,
Acting Secretary of State.

PLAINTIFF'S EXHIBIT No. 729-A.

CERTAIN CITIZENS OR SUBJECTS OF GERMANY OR AUSTRIA-HUNGARY INCLUDED AS "ENEMIES" FOR PURPOSES OF TRADING WITH THE ENEMY ACT; REPORTS REQUIRED AS TO THEIR PROPERTY.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

[No. 1454.]

Whereas paragraph (c) of Section Two of the Act entitled "An Act To define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the Trading with the enemy Act, provides that the word "enemy" as used therein shall be deemed to mean, for the purpose of such trading and of said Act, in addition to the individuals, partnerships, or other bodies of individuals or corporations specified in paragraph (a), and in addition to the Government and political or municipal subdivisions, officers, officials, agents or agencies thereof specified in paragraph (b), of said Section Two, the following:

"Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy' ";

Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me, and in accordance with the provisions of the said Act of October 6, 1917, known as the Trading with the enemy Act, do hereby find that the safety of the United States and the successful prosecution of the present war require that,

(1) Any woman, wherever resident outside of the United States, who is a citizen or subject of any nation with which the United States is at war and whose husband is either (a) an officer, official or agent of the government of any nation with which the United States is at war, or (b) resident within the territory (including that occupied by the military or naval forces) of any nation with which the United States is at war, or (c) resident outside of the United States and doing business within such territory; and

(2) All citizens or subjects of any nation with which the United States is at war (other than citizens of the United States) who have been or shall hereafter be detained as prisoners of war, or who have been or shall hereafter be interned by any nation which is at war with any nation with which the United States is also at war; and

(3) Such other individuals or body or class of individuals as may be citizens or subjects of any nation with which the United States is at war (other than citizens of the United States) wherever resident outside of the United States, or wherever doing business outside of the United States, who since the beginning of the war have disseminated, or shall hereafter disseminate propaganda calculated to aid the cause of any such nation in such war, or to injure the cause of the United States in such war, or who since the beginning

of the war has assisted or shall hereafter assist in plotting or intrigue against the United States, or against any nation which is at war with any nation which is at war also with the United States; and

(4) Such other individuals or body or class of individuals as may be citizens or subjects of any nation with which the United States is at war wherever resident outside of the United States, or wherever doing business outside of the United States, who are or may hereafter be included in a publication issued by the War Trade Board of the United States of America, entitled "Enemy Trading List;" and the term "body or class of individuals" as herein used shall include firms and co-partnerships contained in said enemy trading list of which one or more of the members or partners shall be citizens or subjects of any nation with which the United States is at war; and

(5) Any citizen or subject of any nation with which the United States is at war wherever resident outside of the United States, who has been at any time since August 4, 1914, resident within the territory (including that occupied by the military or naval forces) of any nation with which the United States is at war, shall all be included within the meaning of the word "enemy" for the purposes of the "Trading with the enemy Act" and of such trading; and I do hereby proclaim to all whom it may concern that every such individual or body or class of individuals herein referred to shall be and hereby is included within the meaning of the word "enemy" and shall be deemed to constitute an "enemy" for said purposes.

And by virtue of further authority vested in me by said Act entitled "An Act To define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, and known as the Trading with the enemy Act, I hereby make the following order, rule and regulation:

I hereby require that, pursuant to the provisions of subsection (a) of section seven of said "Trading with the enemy Act," every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall transmit to the Alien Property Custodian a full list of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company or trustee may have reasonable cause to believe to be, included by the above proclamation within the term "enemy," together with a statement of the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest; and any person in the United States who holds or has or shall hold or have custody or control of money or other property, beneficial or otherwise, alone or jointly with others, of, for, by, on account of or on behalf of, or for the benefit of, and any person within the United States, who is or shall be indebted in any way to, any person included by the above proclamation within the term "enemy," or any person whom he may have reasonable cause to believe to be so included, shall report the fact to the Alien Property Custodian.

Such lists, statements and reports shall be made and transmitted to the Alien Property Custodian, in such form and under such rules and regulations as he may prescribe within thirty days after the date of this order, or within thirty days after money or other property owing or belonging to or held for, by, on account of or on behalf of, or for the benefit of any such "enemy" shall come within the custody or control of the reporter, or within thirty days after any person shall become an "enemy" by virtue of the terms of the above proclamation.

In witness whereof, I have hereunto set my hand

and caused the seal of the United States to be affixed.

Done in the District of Columbia this 31st day of May, in the year of our Lord one thousand nine hundred and eighteen and of the independence of the United States the one hundred and forty-second.

(Seal.) WOODROW WILSON.

By the President:
ROBERT LANSING,
Secretary of State.

PLAINTIFF'S EXHIBIT No. 729-B.

TITLE TO AND POSSESSION OF PROPERTY ON THE HUDSON RIVER OWNED BY THE NORTH GERMAN LLOYD DOCK COMPANY AND THE HAMBURG-AMERICAN LINE TERMINAL AND NAVIGATION COMPANY.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

[No. 1464.]

Whereas the Act of Congress making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses and for other purposes, approved March 28, 1918 (Public—No. 109—65th Congress), contains the following provisions:

"The President is authorized to acquire the title to the docks, piers, warehouses, wharves, and terminal equipment and facilities on the Hudson River now owned by the North German Lloyd Dock Company and the Hamburg-American Line Terminal and Navigation Company, two corporations of the State of New Jersey, if he shall deem it necessary for the national security and defense: *Provided,* That if such property can not be procured by purchase, then the President is authorized and empowered to take over for the United States the immediate possession and title thereof. If any such property shall be taken over as aforesaid, the United States shall make just compensation therefor to be determined by the President. Upon the taking over of said property by the President, as aforesaid, the title to all such property so taken over shall immediately vest in the United States: *Provided further,* That section three hundred and fifty-five of the Revised Statutes of the United States shall not apply to any expenditures herein or hereafter authorized in connection with the property acquired."

Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me by the said Act of Congress approved March 28, 1918, do hereby determine and declare that the acquisition of title to the foregoing docks, piers, warehouses, wharves, and terminal equipment and facilities, is necessary for the National security and defense, and I do hereby take over for the United States of America the immediate possession and title thereof, including all leaseholds, easements, rights of way, riparian rights and other rights, estates and interests therein or appurtenant thereto.

Just compensation for the property hereby taken over will be hereafter determined and paid.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia, this twenty-eighth day of June, one thousand nine hundred and eighteen, and of the Independence of the United States, one hundred and forty-two.

(Seal.) WOODROW WILSON.

By the President:
ROBERT LANSING,
Secretary of State.

PLAINTIFF'S EXHIBIT No. 729-C.

MARINE AND WAR RISK INSURANCE BY GERMAN COMPANIES PROHIBITED.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

[No. 1386.]

Whereas, certain insurance companies, incorporated under the laws of the German Empire, have been admitted to transact the business of marine and war risk insurance in various States of the United States, by means of separate United States Branches established pursuant to the laws of such States, and are now engaged in such business under the supervision of the Insurance Departments thereof, with assets in the United States deposited with Insurance Departments or in the hands of resident trustees, citizens of the United States, for the protection of all policy-holders in the United States;

And whereas, the nature of marine and war risk insurance is such that those conducting it must of necessity be in touch with the movements of ships and cargoes, and it has been considered by the Government of great importance that this information should not be obtained by alien enemies;

Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers vested in me as such, hereby declare and proclaim that such branch establishments of German Insurance Companies now engaged in the transaction of business in the United States pursuant to the laws of the several States are hereby prohibited from continuing the transaction of the business of marine and war risk insurance either as direct insurers or re-insurers; and all individuals, firms, and insurance companies incorporated under the laws of any of the States or Territories of the United States, or of any foreign country, and established pursuant to the laws of such States and now engaged in the United States in the business of marine and war risk insurance either as direct insurers or re-insurers are hereby prohibited from re-insuring with companies incorporated under the laws of the German Empire, no matter where located; and all persons in the United States are prohibited from insuring against marine or war risks with insurance companies incorporated under the laws of the German Empire or with individuals, firms, and insurance companies incorporated under the laws of any of the States or Territories of the United States or of any foreign country and now engaged in the business of marine or war risk insurance in the United States, which re-insure business originating in the United States with companies incorporated under the laws of the German Empire, no matter where located.

The foregoing prohibitions shall extend and operate as to all existing contracts for insurance and re-insurance which are hereby suspended for the period of the war, except that they shall not operate to vitiate or prevent the insurance or re-insurance of, and the payment or receipt of, premiums on insurance or re-insurance under existing contracts on vessels or interest at risk on the date of this proclamation, and such insurance or re-insurance, if for a voyage, shall continue in force until arrival at destination, and if for time, until thirty days from the date of this proclamation, but if on a voyage at that time, until the arrival at destination..

Nothing herein shall be construed to operate to prevent the payment or receipt of any premium, return premium, or claim now due or which may become due on or in respect to insurances or re-insurances not prohibited by this proclamation.

That all funds of such German companies now in the possession of their managers or agents, or which shall hereafter come into their possession, shall be subject to such rules and regulations concerning the payment and disposition thereof as shall be prescribed by the insurance supervising officials of the State in which the principal office of such establishment in the United States is located, but in no event shall any funds belonging to or held for the benefit of such companies be transmitted outside of the United States, nor be used as the basis for the establishment, directly or indirectly, of any credit within or outside of the United States to or for the benefit or use of the enemy or any of his allies without the permission of this Government.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the District of Columbia this thirteenth day of July in the year of our Lord one thousand nine hundred and seventeen and of the Independence of the United States the one hundred and forty-second.

(Seal.) WOODROW WILSON.

By the President:
FRANK L. POLK,
Acting Secretary of State.

PLAINTIFF'S EXHIBIT No. 729-D.

CERTAIN INDIVIDUALS, AND BODIES AND CLASSES OF INDIVIDUALS INCLUDED WITHIN THE TERM "ENEMY" FOR THE PURPOSES OF THE TRADING WITH THE ENEMY ACT.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

[No. 1475.]

Whereas, section 2 of the Act of Congress entitled, "An Act To define, regulate, and punish trading with the enemy, and for other purposes'' approved October 6, 1917, known as the ''Trading with the enemy Act,'' provides that the word ''enemy'' as used therein shall be deemed to mean for the purposes of such trading and of said Act:

''Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy;' ''

Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me by said Act, and in accordance with the provisions thereof, do find hereby that the following named individuals, and bodies and classes of individuals, are natives, citizens, or subjects of a nation with which the United States is at war, and that the safety of the United States and the successful prosecution of the war require that said individuals, and bodies and classes of individuals, be included within the term ''enemy,'' as used in said Act; and therefore I do include hereby within said term ''enemy'' as used in said Act, the following individuals, and bodies and classes of individuals, to wit:

(1) George Benda, a partnership heretofore doing business in the United States, with its main plant at Boonton, New Jersey, and heretofore composed of Adolph Neubauer and Eugene Kirschbaum, as copartners;

(2) Adolph Neubauer, heretofore one of the members of the partnership of George Benda.

(3) Eugene Kirschbaum, heretofore one of the members of the partnership of George Benda.

(4) A. W. Faber, a partnership heretofore doing business in the United States with its main plant at

Newark, New Jersey, and heretofore composed of Count Alexander von Faber-Castell and Countess Ottilie von Faber-Castell, as co-partners.

(5) Count Alexander von Faber-Castell, heretofore one of the members of the partnership of A. W. Faber.

Countess Ottilie von Faber-Castell, heretofore one of the members of the partnership of A. W. Faber.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia, this 10th day of August, in the year of our Lord one thousand nine hundred and eighteen, and of the independence of the United States the one hundred and forty-third.

(Seal.) WOODROW WILSON.

By the President:
ROBERT LANSING,
Secretary of State.

PLAINTIFF'S EXHIBIT No. 729-E.

CERTAIN INDIVIDUALS, AND BODIES AND CLASSES OF INDIVIDUALS INCLUDED WITHIN THE TERM "ENEMY" FOR THE PURPOSES OF THE TRADING WITH THE ENEMY ACT.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

[No. 1477.]

Whereas, section 2 of the Act of Congress entitled, "An Act To define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," provides that the word "enemy" as used therein shall be deemed to mean for the purposes of such trading and of said Act:

"Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy';"

Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me by said Act, and in accordance with the provisions thereof, do find hereby that the following named individuals, and bodies and classes of individuals, are natives, citizens, or subjects of a nation with which the United States is at war, and that the safety of the United States and the successful prosecution of the war require that said individuals, and bodies and classes of individuals, be included within the term "enemy," as used in said Act; and therefore I do include hereby within said term "enemy" as used in said Act, the following individuals, and bodies and classes of individuals, to wit:

(1) Wilhelm Forstner, heretofore one of the members of the partnership of F. Speidel Company, heretofore doing business in Providence, Rhode Island, and elsewhere;

(2) Karl Bunz, heretofore one of the officials of the Hamburg-American Line, and now in the Federal penitentiary at Atlanta, Georgia.

In witness whereof, I have hereunto set my hand and caused the Seal of the United States to be affixed.

Done in the District of Columbia, this 14th day of August, in the year of our Lord one thousand nine hundred and eighteen, and of the independence of the United States the one hundred and forty-third.

(Seal.) WOODROW WILSON.

By the President:
Robert Lansing,
Secretary of State.

PLAINTIFF'S EXHIBIT No. 729-F.

Certain Individuals, and Bodies and Classes of Individuals Included Within the Term "Enemy" for the Purpose of the Trading with the Enemy Act.

By the President of the United States of America.

A Proclamation.

[No. 1503.]

Whereas, Section 2 of the Act of Congress entitled, "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," provides that the word "enemy" as used therein shall be deemed to mean for the purposes of such trading and of said Act:

"Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy';"

Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me by said Act, and in accordance with the provisions thereof, do find hereby that the following named individuals, and bodies and classes of individuals, are natives, citizens, or subjects of a nation with which the United States is at war, and that the safety of the United States and the successful prosecution of the war require that said individuals, and bodies and classes of individuals, be included within the term "enemy," as used in said Act; and therefore I do include hereby within said term "enemy" as used in said Act, the following individuals and bodies and classes of individuals, to wit:

(1) Lina Haberland, of Meerane, Saxony, Germany.
(2) Wm. Schmeider, of Meerane, Saxony, Germany.
(3) Moritz Jacoby, of Berlin, Germany.
(4) Edward Lehwess, of Berlin, Germany.
(5) Kurt Schmeider, of Meerane, Saxony, Germany.
(6) Lisette Zippel, of Germany.
(7) Carl Schmeider, of Meerane, Saxony, Germany.
(8) Paul Haberland, Officer in German Army.

The said individuals numbered (1) to (8) both inclusive, being the owners and/or holders of certain shares of the capital stock of Garfield Worsted Mills, a corporation, of Garfield, New Jersey.

(9) E. Ruckdeschel, Sr., of Gera, Germany.
(10) Gustav Weissflog, of Gera, Germany.
(11) Ernest F. Weissflog, of Gera, Germany.

The aforesaid individuals numbered (9) to (11) both inclusive, being the owners, and/or holders of certain shares of the capital stock of Gera Mills, a corporation, of Passaic, New Jersey.

(12) Ernst Fr. Weissflog, of Gera, Germany.
(13) Paul Leibinger, of Ulm, Germany.
(14) Marie Ruckdeschel, of Gera, Germany.
(15) A. Von Wencher, of Trier, Germany.
(16) Gustav Weissflog, of Gera, Germany.
(17) Ernst Hupfer, of Bockwa, Germany.
(18) E. Ruckdeschel, Sr., of Gera, Germany.
(19) E. Ruckdeschel, Jr., of Gera, Germany.
(20) Otto Magirus, of Ulm, Germany.
(21) A. V. Magirus, of Stuttgart, Germany.
(22) Rudolph Meier, of Gera, Germany.
(23) Ernst Meier, of Gera, Germany.
(24) Fritz Zschocke, of Chemnitz, Germany.

The aforesaid individuals numbered (12) to (24), both inclusive, being the owners and/or holders of certain shares of the capital stock of Passaic Worsted Spinning Company, a corporation of Passaic, New Jersey.

(25) Otto T. Schuller, of Dusseldorf, Germany.
(26) Edward Dressler, of Gotha, Germany.
(27) Gustav Leye, of Naumburg, a/d Salle, Germany.
(28) Kurt Heitzig, of Zwickau, Saxony, Germany.
(29) Hugo Albert, of Pfaffengrün, Treuen, Germany.
(30) Guido Dietel, of Wilkau, Saxony, Germany.
(31) Estate Richard Hiller, Zwickau, Saxony, Germany.
(32) Johannes Heitzig, Chemnitz, Saxony, Germany.
(33) Alfred Resch, of Karlsruhe, Germany.
(34) Emma Kleinjung, of Wilkau, Saxony, Germany.
(35) Laura Kleinjung, of Wilkau, Saxony, Germany.

(36) Ernst Fr. Weissflog, of Gera, Reuss, Germany.
(37) Martha Vogler, of Frankfort a/M Germany.
(38) Hugo Neithold, of Dresden, Germany.
(39) Liddy Leonhardt, of Crossen, a/d Mulde, Germany.
(40) Emil Kleinjung, of Wilkau, Saxony, Germany.
(41) Clara Ramminger, of Gera, Reuss, Germany.
(42) Estate Chas. Meyer, of Hanover, Germany.
(43) Estate Ernst Meyer, of Gera, Reuss, Germany.
(44) Marie Ruckdeschel, of Gera, Reuss, Germany.
(45) Louise Bauer, of Gera, Reuss, Germany.
(46) Gustav Weissflog, of Gera, Reuss, Germany.
(47) Alwine Dietel, of Wilkau, Saxony, Germany.
(48) Herbert Dietel, of Wilkau, Saxony, Germany.
(49) Eugen Ruckdeschel, of Gera, Reuss, Germany.
(50) George Hirsch, of Gera, Unternhaus, Germany.
(51) Rudolph Meyer, of Gera, Reuss, Germany.

The aforesaid individuals and classes or bodies of individuals numbered (25) to (51), both inclusive, being the owners and/or holders of certain shares of the capital stock of New Jersey Worsted Spinning Company, a corporation of Garfield, New Jersey.

(52) Friedrich Arnold, of Greiz, Germany.
(53) F. Arnold, of Greiz, Germany.
(54) C. Wolfrum, of Aussig, Austria.
(55) George Stoehr, of Leipzig, Germany.
(56) Hermann Arnold, of Greiz, Germany.
(57) S. Bleichroder, of Berlin, Germany.

(58) Paul Arnold, of Greiz, Germany.
(59) Eduard Stoehr, of Leipzig, Germany.
(60) Frieda Pauline von Keil, of Dresden, Germany.
(61) G. Weissflog, of Gera, Germany.
(62) Georg Hirsch, of Gera, Germany.
(63) Kammgarn Spinnerei Stoehr & Co., of Leipzig, Germany.
(64) George Thieme, of Leipzig, Germany.
(65) Hedwig Harseim, of Hamburg, Germany.
(66) Martha Hempel, of Lubeck, Germany.
(67) Allgemeine Deutsche Credit Anstalt, of Leipzig, Germany.
(68) Eugenie Krause, of Frankfurt, Germany.
(69) Deutsche Bank, of Leipzig, Germany.
(70) Ludwig Kick, of Lindau, Germany.
(71) Kati Thielman, of Scharfenberg, Post Gruben, Schlesien.
(72) Dr. Alfred Ackermann, of Leipzig, Germany.
(73) Marie Ackermann, of Leipzig, Germany.
(74) Max Beck, of Leipzig, Germany.
(75) Carl Beckman, Leipzig, Germany.
(76) Robert Blank, of Elberfeld, Germany.
(77) Leonie Doflein, of Freiburg, Germany.
(78) Victor Dubois, of Leipzig, Plagwitz, Germany.
(79) Ludwig Durbig, of Munich, Germany.
(80) Paul Eichenberg, of Gera, Reuss, Germany.
(81) G. Erben Franz, of Greiz, Germany.
(82) Wilhelm Friess, of Leipzig, Germany.
(83) Arno Gimm, of Leipzig, Germany.
(84) Marie Therese Gertrud Grosch, of Bautzen, Germany.
(85) Albert Gunnel, of Leipzig, Germany.
(86) Dr. Ernest C. Hartwig, of Gemunden, Germany.
(87) Gustav Harz, of Leipzig, Germany.

(88) Helene Hecker, of Leipzig, Germany.
(89) Carl Heyligenstaedt, of Leipzig, Germany.
(90) Elise Hass, of Greiz, Germany.
(91) Dera Meta Antoinie Hass, of Greiz, Germany.
(92) Emma Huth, of Leipzig, Germany.
(93) Otto Jager, of Gera, Reuss, Germany.
(94) Elisabeth Murschner, of Greiz, Germany.
(95) Dr. Kurt Kuntze, of Leipzig, Germany.
(96) Chas. de Liagre, of Leipzig, Germany.
(97) R. Liebeck, of Leipzig, Germany.
(98) R. Liebetrau, of Leipzig, Germany.
(99) Martina von Hoffman Limburger, of Leipzig, Germany.
(100) Dr. W. Limburger, of Leipzig, Germany.
(101) Hildegard Elizabeth Lohmann, of Dresden, Germany.
(102) Emil Muller, of Meerane, Germany.
(103) O. Moench, of Leipzig, Germany.
(104) Alice Moslinger, of Mannheim, Germany.
(105) Meyer & Company, of Leipzig, Germany.
(106) Emma Meinhardi, of Leer Ostfriesland, Germany.
(107) Friedr. Pfitzmann, of Loschwitz, Germany.
(108) Elizabeth Pfitzmann, of Loschwitz, Germany.
(109) Franz Edgar von Penzig, of Voslau, Austria.
(110) Julie Paulssen, of Leipzig, Germany.
(111) M. Pilgram, of Zehlendorf, Wannseebahn, Germany.
(112) Bertha Rossle, of Munich, Germany.
(113) Dr. R. Rossle, of Jena, Germany.
(114) G. Stadrat Ramdohr, of Leipzig, Germany.
(115) Jos. Rudolph, of Gera, Reuss, Germany.
(116) Martha Elizabeth Roeder, of Charlottenberg, Germany.
(117) Ella Stoehr, Leipzig, Germany.

(118) Kathe Stoehr, of Eisen Bach, Germany.
(119) Paul Stoehr, of Weimar, Germany.
(120) Carl Sieglitz, of Gera, Reuss, Germany.
(121) R. Schumann, of Steglitz, Berlin, Germany.
(122) Bruno Schulze, of Leipzig, Germany.
(123) Celestine Stroh, of Frankfurt a/M Germany.
(124) Anna Thieme, of Leipzig, Germany.
(125) Dr. Ulrich Thieme, of Leipzig, Germany.
(126) Baldwin Teichmann, of Dresden, Germany.
(127) Dr. Karl Uhlmann, Radebeul, Germany.
(128) Waldtraut Dora Uhlmann, of Radebeul, Germany.
(129) Gustav Ulrich, of Munich, Germany.
(130) Gabriele Wecker, of Munich, Germany.
(131) C. H. Wolfrum, of Aussig, Austria.
(132) E. B. Young, of Gera, Reuss, Germany.
(133) Walter Zenther, of Leipzig, Germany.
(134) Mrs. Cecelia Julie Ossenbeul, of Furstenwall 99, Dusseldorf, Germany.

The aforesaid individuals and classes or bodies of individuals, numbered 52 to 134, both inclusive, being the owners and/or holders of certain shares of the capital stock of Botany Worsted Mills, a corporation under the laws of the State of New Jersey, with its principal office at Passaic, New Jersey.

(135) George Marwitz, of Dresden, Germany;
(136) Dresdener Gardinen und Spitzen Manufactur Actien Gesellschaft, of Dresden, Germany;

The aforesaid individuals, and classes or bodies of individuals, numbered 135 to 136, being the owners and/or holders of certain shares of the capital stock of Dresden Lace Works, Inc., a corporation under the laws of the State of New York, with its principal office at 30 East 21st Street, New York, N. Y.

(137) Rudolph Plochman, of Frankfort, Germany;
(138) Bronze Farbenwerke Aktien Gesellschaft, of Barnsdorf, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 137 and 138, being the owners and/or holders of certain shares of the capital stock of Bronze Powder Works Company, formerly Carl Schlenk, a corporation under the laws of the State of New Jersey, with its principal office at 801 Magnolia Avenue, Elizabeth, New Jersey.

(139) Otto Falck, of Dresden, Germany;
(140) Richard Clauss, of Emleben, Germany;
(141) Ingeborg Stollwerck, of Cologne, Germany;
(142) Gebrueder Stollwerck, A. G., Cologne, Germany.

The aforesaid individuals and classes or bodies of individuals numbered 139 to 142, both inclusive, being the owners and/or holders of certain shares of the capital stock of Stollwerck Brothers, Inc., a corporation under the laws of the State of Connecticut, with its principal office at Stamford, Connecticut.

(143) W. Wolf & Sons, of Stuttgart, Germany.

The aforesaid individuals and classes or bodies of individuals, numbered 143, being the owners and/or holders of certain shares of the capital stock of New England Waste Company, American Linters Company, American Products Company, Overseas Trading Company, corporations under the laws of the State of Massachusetts, with their principal office in Boston, and of W. Wolf & Sons, a corporation under the laws of the State of Massachusetts, with its principal office in Boston, Mass.

(144) Mrs. Jennie Seeger, of Frankfurt, Germany;

(169) The heirs personal representatives and distributees of the Estate of Hirsh W. Fuchs, of Leipzig, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 169, being the owners and/or holders of certain shares of the capital stock of Fuchs & Company, a corporation under the laws of the State of New York, with its principal office at 144 West 27th Street, New York, N. Y.

(170) Leo Wreschner, of Frankfurt on the Main, Germany;
(171) Nathan Sondheimer, of Frankfurt on the Main, Germany;
(172) Albert Sondheimer, of Frankfurt on the Main, Germany;
(173) Ludwig Beers, of Frankfurt on the Main, Germany;
(174) Emil Beers, of Frankfurt on the Main, Germany;
(175) Beer-Sondheimer & Company, of Frankfurt on the Main, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 170 to 175, both inclusive, being the owners and/or holders of certain shares of the capital stock of Beer-Sondheimer & Company, Incorporated, a corporation under the laws of the State of New York, with its principal office at 61 Broadway, New York, N. Y.

(176) Bernhard Thurmauer, of Nuremburg, Germany;

The aforesaid individual, numbered 176, being the owner and/or holder of certain shares of the capital stock of American Lava Company, a corporation under the laws of the State of Tennessee, with its principal office at Chattanooga, Tenn.

(177) Carl Leverkus, Sr., of Cologne, Germany;

The aforesaid individual, numbered 177, being the owner and/or holder of certain shares of the capital stock of International Ultramarine Works, Limited, a corporation under the laws of the State of New Jersey, with its principal office at 113-115 Leonard Street, New York, N. Y.

(178) Lucia Senger, of Germany;
(179) Dr. Emil Majert, of Germany;
(180) Ottilie Krimler, of Germany
as executors of the will of
(181) W. Majert, deceased;

The aforesaid individuals and classes or bodies of individuals, numbered 178 to 181, both inclusive, being the owners and/or holders of certain shares of the capital stock of Emil Majert Company, a corporation under the laws of the State of New York, with its principal office at 9-11 East 37th Street, New York, N. Y.

(182) Moritz Neuberger, of Germany;

The aforesaid individual, numbered 182, being the owner and/or holder of certain shares of the capital stock of H. Neuberger Company, Incorporated, a corporation under the laws of the State of New York, with its principal office at 130 Water Street, New York, N. Y.

(183) Gebrueder Roechling, Ludwigshafen, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 183, being the owners and/or holders of certain shares of the capital stock of Roechling Electro-Steel Company, a corporation under the laws of the State of New York, with its principal office at 175 LaFayette Street, New York, N. Y.

(184) Adolf Messer, of Rebstoecker Strasse 57, Frankfurt a. Main, Germany;

The aforesaid individual, numbered 184, being the owner and/or holder of certain shares of the capital stock of Messer Manufacturing Company, a corporation under the laws of the State of Pennsylvania, with its principal office at 121 North 7th Street, Philadelphia, Pa.

(185) Hans Bredow, of Berlin, Germany;
(186) Gesellschaft fur Drahtlose Telegraphie m. b. H., of Berlin, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 185 and 186, being the owners and/or holders of certain shares of the capital stock of Atlantic Communication Company, a corporation under the laws of the State of New York, having its principal office at 47 West Street, New York, N. Y.

(187) George Hirsch, of Gera Russ, Germany;
(188) Ignatz Petschek, of Austria;

The aforesaid individuals, numbered 187 and 188, being the owners and/or holders of certain shares of the capital stock of Elly Coal Company, a corporation under the laws of the State of Illinois, with its principal office at Girard, Ill.

(189) Emanuel Mann, of Pforzheim, Germany;
(190) John A. Herr, of Pforzheim, Germany;
(191) John A. Heer, of Pforzheim, Germany;
(192) E. G. Bek, of Pforzheim, Germany;

The aforesaid individuals, numbered 189 to 192, both inclusive, being the owners and/or holders of certain shares of the capital stock of Ernst Gideon Bek Manufacturing Company, a corporation under the laws of the State of New Jersey, with its principal office at 77 Austin Street, Newark, N. J.

(193) Ernst Gideon Bek, of Pforzheim, Germany;

The aforesaid individual, numbered 193, being the owner and/or holder of certain shares of the capital stock of Ernst Gideon Bek, Incorporated, corporation under the laws of the State of New York, with its principal office at 15 Maiden Lane, New York, N. Y.

(194) Stettiner Chamotte Fabrik Aktien Gesellschaft, of Stetting, Germany;

The aforesaid class or body of individuals, numbered 194, being the owners and/or holders of certain shares of the capital stock of Didier-March Company, a corporation under the laws of the State of New Jersey, with its principal office at 15 Exchange Place, Jersey City, N. J.

(195) Charles Duisberg, of Leverkusen, Germany;
(196) Christian Hess, of Leverkusen, Germany;
(197) Rudolph Mann, of Leverkusen, Germany;

The aforesaid individuals, being numbered 195 to 197, both inclusive, and being the owners and/or holders of certain shares of the capital stock of the Synthetic Patent Company, a corporation under the laws of the State of New York, with its principal office at 117 Hudson Street, New York, N. Y., and of certain shares of the capital stock of The Bayer Company, Incorporated, a corporation under the laws of the State of New York, with its principal office at 117 Hudson Street, New York, N. Y.

(198) Bauer & Cie., of Berlin, Germany;

The aforesaid class or body of individuals, numbered 198, being the owners and/or holder of certain shares of the capital stock of The Bauer Chemical Company, a corporation under the laws of the State of New York, and having its principal office at 30 Irving Place, New York, N. Y.

(199) Curt & Walter Oelssner, of Leipzig, Germany;
(200) Gerhard & Hey, of Leipzig, Germany;

The aforesaid individuals and class of or body of individuals, being numbers 199 and 200, and being the owners and/or holders of certain shares of the capital stock of Gerhard & Hey, Incorporated, a copartnership, of Leipzig, Germany, with an office at 21-29 State Street, New York, N. Y.

(201) Adolf Richter, of Rudolstadt, Germany;
(202) Dr. Oskar Richter, of Vienna, Austria;
(203) Dr. Kurt Richter, of Rudolstadt, Germany;
(204) Dr. Walter Richter, of Rudolstadt, Germany;
(205) Dr. Johanna Richter, of Berlin, Germany;
(206) Mrs. Clara Zoeth, of Nurenburg, Germany;
(207) Mrs. Elsa Kempe, of Nurenburg, Germany;
(208) Mrs. Lina Balzer, of Rudolstadt, Germany;

The aforesaid individuals, numbered 201 to 208, both inclusive, being the owners and/or holders of certain shares of the capital stock of F. AD. Richter & Company, a corporation under the laws of the State of New York, with its principal office at 74 Washington Street, New York, N. Y.

(229) Richard Franck, of Ludwigsburg, Germany;
(230) Carl, Robert, Richard and Walter Franck, of Ludwigsburg, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 229 and 230, being owners and/or holders of certain shares of the capital stock of Heinr Franck, Sons, Inc., a corporation under the laws of the State of New York, with its principal office at Flushing, New York.

(231) Federico Stallforth (interned at Fort Oglethorpe, Ga.)

The aforesaid individual, numbered 231, being the owner and/or holder of certain shares of the capital stock of Stallforth & Company, Inc., a corporation under the laws of the State of New York, with its principal office at 120 Broadway, New York, N. Y.

(232) Kast & Ehinger, G. m. b. H., of Stuttgart, Germany;
(233) Dr. Charles A. Stickel, of Cannstatt-Stuttgart, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 232 and 233, being the owners and/or holders of certain shares of the capital stock of Charles Hellmuth, a corporation under the laws of the State of New York, with its principal office at 154 West 18th Street, New York.

(234) H. Rost & Company, of Hamburg, Germany;
(235) Dr. F. Lampert, of Hamburg, Germany;
(236) Mrs. Anna L. Lampert, of Hamburg, Germany;
(237) Mrs. Caroline Soltau, of Hamburg, Germany;

(238) Mrs. Olga J. C. Schrumpf, of Hamburg, Germany, individually and as members of the firm of Robert Soltau and Company, and the firm of F. Lampert Company;

The aforesaid individuals and classes or bodies of individuals, numbered 234 to 238, both inclusive, being the owners and/or holders of certain shares of the capital stock of Robert Soltau & Company, Inc., a corporation under the laws of the State of New York, with its principal office at 148 West 23rd Street, New York, N. Y.

(239) The Portland-Cement Fabrik Hemmoor, of Hamburg, Germany;
(240) Carl Jacobi, of Hamburg, Germany;
(241) Estate Carl Prussing, deceased, Hamburg, Germany;
(242) Dr. Otto Strebel, of Hemmoor, Germany;
(243) Estate H. A. Borcholte, deceased, Stade, Germany;
(244) Dr. W. Kiesselbach, of Hamburg, Germany;
(245) Ferb. Bruns, Estate;
(246) L. Kessal, of Hamburg, Germany;
(247) H. in der Stroth, Bentheim;
(248) Henning Franzen, of Hamburg, Germany;
(249) A. Steinmetz, of Hamburg, Germany;
(250) Dr. Luedemann, of Hamburg, Germany;
(251) Mrs. I. C. C. Moellendorf, of Hamburg, Germany;
(252) Otto Wilkers, of Hamburg, Germany;
(253) Herman Bartels, of Hanover, Germany;
(254) Dr. Otto Strebel, of Hamburg, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 239 to 254, both inclusive, being the owners and/or holders of certain shares of the capital stock of German American Portland Cement Works (now La Salle Portland Cement Company), a corporation under the laws of the State of Illinois, with its principal office at 140 South Dearborn Street, Chicago, Ill.

(255) Treibacher Chemische Werke, of Treibach, Austria;

The aforesaid individuals and classes or bodies of individuals, numbered 255, being the owners and/or holders of certain shares of the capital stock of American Pyrophor Company, a corporation under the laws of the State of New York, with its principal office at 317 East 34th Street, New York, N. Y.

(256) Richard Werner, of Cannstatt, Germany;
(257) Otto Werner, of Cannstatt, Germany;
(258) Gottlob Scholl, of Cannstatt, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 256 to 258, both inclusive, being the owners and/or holders of certain shares of the capital stock of Werner & Pfleiderer Company, a corporation under the laws of the State of Michigan, with its principal office at 1204 Niagara Street, Saginaw, Michigan.

(259) Carl Merck,
(260) George Merck,
(261) Wilhelm Merck, individually and trading as
(262) E. Merck, Darmstadt, Germany,

The aforesaid individuals and classes or bodies of individuals, numbered 259 to 262, both inclusive, being the owners and/or holders of certain shares of the capital stock of Merck & Company, a corporation under the laws of the State of New York, and having its principal office at 45 Park Place, New York, N. Y.

(263) Marc Fuchs F. Riedel, Berlin, Germany;
(264) Estate Fritz Riedel, Berlin, Germany;
(265) Estate Ludwig Friedrich Riedel, Berlin, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 263 to 265, both inclusive, being owners and/or holders of certain shares of the capital stock of Riedel & Company, Incorporated, a corporation under the laws of the State of New York, with its principal office at 35 West 32nd Street, New York, N. Y.

(266) Otto Rohm, of Darmstadt, Germany;

The aforesaid individual, numbered 266, being the owner and/or holder of certain shares of the capital stock of Rhom & Hass Company, a corporation under the laws of the State of Pennsylvania, with its principal office at 40 North Front Street, Philadelphia, Pa.

(267) Robert Bosch and associates, of Stuttgart, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 267, being owners and/or holders of certain shares of the capital stock of Boonton Rubber Manufacturing Company, a corporation under the laws of the State of New Jersey, with its principal office at Boonton, New Jersey, and of the capital stock of Eisemann Magneto Company, a corporation of the State of New York, with its principal office at 32 Bush Terminal Building, Brooklyn, N. Y.

(268) E. Eisemann Company, of Stuttgart, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 268, being the owners and/or holders of certain shares of the capital stock of Eisemann Magneto Company, a corporation of the State of New York, with its principal office at 32 Bush Terminal Building, Brooklyn, N. Y.

(269) R. Bernheim, of Augsburg, Germany;
(270) I. Bernheim, of Augsburg, Germany;
(271) Adolph Bernheim, of Augsburg, Germany;
(272) Seigfried Bernheim, of Augsburg, Germany.
(273) Rudolf Nathan, of Augsburg, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 269 to 273, both inclusive, being the owners and/or holders of certain shares of the capital stock of The New Brunswick Chemical Company, a corporation under the laws of the State of New Jersey, with its principal office at Allen Avenue, New Brunswick, New Jersey.

(274) Furstlich Schaumburg Lippische Hofkammer, of Bucksburg, Germany;
(275) Fr. Julius Schreyer, of Bremen, Germany.
(276) C. G. Hartwig, of Bremen, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 274 to 276, both inclusive, being the owners and/or holders of certain shares of the capital stock of German-American Lumber Company, a corporation under the laws of the State of Florida, with its principal office at Pensacola, Florida.

(277) Paul Schabert, address unknown;
(278) Emma von Plootz, address unknown;

The aforesaid individuals, numbered 277 and 278, being the owners and/or holders of certain shares of the capital stock of The Huntington Piano Company, a corporation under the laws of the State of Connecticut, with its principal office at Shelton, Conn., and

The Sterling Company, and The Blake Corporation, both incorporated under the laws of the State of Connecticut, with their principal offices at Derby, Conn.

(279) Louise Löew, of 2 Rochusgasse, Vienna, Austria;

The aforesaid individual, numbered 279, being the owner and/or holder of certain shares of the capital stock of John Rath Cooperage Company, a corporation under the laws of the State of Illinois, with its principal office at North Kilpatrick and West North Avenues, Chicago, Ill.

(280) H. von Thiele Winkler, of Taubenstrasse 46, Berlin, Germany;
(281) Ferdinand von Grumme, of Mittelweg 84, Hamburg, Germany;
(282) Angus von Douglas, of Taubenstrasse 46, Berlin, Germany;
(283) Eberhardt von Bodenhausen, of Brede, near Essen, Germany;
(284) Dittmar Finkler, of Bonn, Germany;
(285) Herman Dinklage, of Mulheim-on-Rhine, Germany;
(286) Christian Finkler, of Mulheim-on-Rhine, Germany;
(287) Estate of Count Douglas, Zimbenstrasse 46, Berlin, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 280 to 287, both inclusive, being the owners and/or holders of certain shares of the capital stock of Tropon Works, a corporation under the laws of the State of New York, with its principal office at 81 Fulton Street, New York, N. Y.

(288) Kaffee Patent Aktiengesellschaft, of Bremen, Germany;

The aforesaid class or body of individuals, numbered 288, being the owners and/or holders of certain shares of the capital stock of Kaffee Hag Corporation, incorporated under the laws of the State of New York, and having its principal office at 225 Fifth Avenue, New York, N. Y.

(289) Rudolph Chillingworth, of Nurnburg, Germany;

The aforesaid individual, numbered 289, being the owner and/or holder of certain shares of the capital stock of the Chillingworth Manufacturing Company, a corporation under the laws of the State of New Jersey, with its principal office at Carbon Place, Jersey City, N. J.

(290) Gustav Reis, of Furth, Bavaria, Germany;

The aforesaid individual, numbered 290, being the owner and/or holder of certain shares of the capital stock of G. Reis & Brothers, Incorporated, a corporation under the laws of the State of New York, with its principal office at 894-900 Broadway, New York, N. Y.

(291) Richard G. Blumenthal (Interned);
(292) Richard Heyder (Interned);

The aforesaid individuals, numbered 291 and 292, being the owners and/or holders of certain shares of the capital stock of Williamsburg Chemical Company, a corporation under the laws of the State of New York, with its principal office at 230 Morgan Avenue, Brooklyn, N. Y.

(293) Emma Crone, of Duisberg, Germany;
(294) Estate Anna Erbsloh, Deceased; Barmen, Germany;
(295) Millie Raffloer, Berlin, Germany;

The aforesaid individuals, and classes or bodies of individuals, numbered 293 to 295, both inclusive, being the owners and/or holders of certain shares of the capital stock of American Storage Company, a corporation under the laws of the State of New Jersey, with its principal office at 560 Broadway, New York, N. Y.

(296) Paul Mecke, of Unna, Germany;
(297) Leop. Heppe, of Unna, Germany;
(298) Estate of Von der Heide, of Unna, Germany;
(299) Wunnersche Bitumen, of Unna, Germany;

The aforesaid individuals, and classes or bodies of individuals, numbered 296 to 299, both inclusive, being the owners and/or holders of certain shares of the capital stock of Ceresit Waterproofing Company, a corporation under the laws of the State of Illinois with its principal office at 110 South Dearborn Street, Chicago, Ill.

(300) Friemann and Wolf, of Zwickau, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 300, being the owners and/or holders of certain shares of the capital stock of Wolf Safety Lamp Company of America, Inc., a corporation under the laws of the State of New York, with its principal office at 74-80 West Street, New York, N. Y.

(301) Fritz Dresel, of Magdeburg, Germany;
(302) Otto Arnold, of Magdeburg, Germany;

The aforesaid individuals, numbered 301 and 302, being the owners and/or holders of certain shares of the capital stock of The Schaeffer & Budenberg Manufacturing Company, a corporation under the laws of the State of New York, with its principal office at 338 Berry Street, New York, N. Y.

(303) E. Lutz (interned at Pensacola, Florida);

The aforesaid individual, numbered 303, being the owner and/or holder of certain shares of the capital stock of Lutz-Shipping Company of Pensacola, Florida, a corporation under the laws of the State of Florida, with its principal office at Pensacola, Florida.

(304) E. Dankelmann, of Dresden, Germany;
(305) Selas A. G., Berlin, Germany;
(305) Estate Leon Dankelmann, Berlin, Germany;
(306) George A. Schleber, of Griez, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 304 to 306, both inclusive, being the owners and/or holders of certain shares of the capital stock of The Selas Company, incorporated under the laws of the State of New York, and with its principal office at 521-525 West 23rd Street, New York, N. Y.

(307) Isaac Straus (Interned at Fort Oglethorpe, Ga.)

The aforesaid individual, numbered 307, being the owner and/or holder of certain shares of the capital stock of the Chromos Chemical Company, Inc., a corporation under the laws of the State of New York, with its principal office at Aeolian Hall, New York, N. Y.

(308) Friedrich Goetze, of Bruscheid, Germany;

The aforesaid individual, numbered 308, being the owner and/or holder of certain shares of the capital stock of The Goetze Gasket & Packing Company, a corporation under the laws of the State of New Jersey, with its principal office at Allen Avenue, New Brunswick, N. J.

(309) Norma Company G. m. b. H., of Cannstadt, Germany;

The aforesaid individuals and class or body of individuals, numbered 309, being the owners and/or holders of certain shares of the capital stock of The Norma Company of America, a corporation under the laws of the State of New York, with its principal office at 1790 Broadway, New York, N. Y.

(310) Julius Goldschmidt, of Hamburg, Germany;

The aforesaid individual, numbered 310, being the owner and/or holder of certain shares of the capital stock of the R & G Corset Company, Inc., a corporation under the laws of the State of New York, with its principal office at 880 Broadway, New York, N. Y.

(311) Deutsche Bank, Berlin, Germany;
(312) H. Tauscher, Friedenau, Berlin, Germany;
(313) Kom, Paul Goerz, Berlin, Germany,

The aforesaid individuals and classes or bodies of individuals, numbered 311 to 313, both inclusive, being the owners and/or holders of certain shares of the capital stock of C. P. Goerz American Optical Company, a corporation under the laws of the State of New York, with its principal office at 317 East 34th Street, New York, N. Y.

(314) Alsen'sche Portland Cement Fabriken, of Hamburg, Germany;
(315) W. Muller, of Hamburg, Germany;
(316) Lucien Alsen, of Hamburg, Germany;
(317) Estate of H. Wessel, of Hamburg, Germany;

(318) H. Wulf, of Altona, Germany;
(319) W. Willms, of Hamburg, Germany;

The aforesaid individuals, and classes or bodies of individuals, numbered 314 to 319, both inclusive, being the owners and/or holders of certain shares of the capital stock of Alsen's American Portland Cement Works, a corporation under the laws of the State of New York, with its principal office at 277 Broadway, New York, N. Y.

(320) Ludwig Pustet, of Regensburg, Germany;

The aforesaid individual, numbered 320, being the owner and/or holder of certain shares of the capital stock of Tapke Realty Company, a corporation under the laws of the State of New York, with its principal office at 52 Barclay Street, New York, N. Y.

(321) Hamburg Assurance Company, of Hamburg, Germany;
(322) Franz F. Mutzenbecher, of Hamburg, Germany;
(323) Hermann Mutzenbecher, of Hamburg, Germany;
(324) Ernest Behre, of Berlin, Germany;

The aforesaid individuals and classes or bodies of individuals, numbered 321 to 324, both inclusive, being the owners and/or holders of certain shares of the capital stock of the International Insurance Company, a corporation under the laws of the State of New York, with its principal office at 80 Maiden Lane, New York, N. Y.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia, this 29th day of November, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States the one hundred and forty-third.

[SEAL] WOODROW WILSON.

By the President:
ROBERT LANSING,
Secretary of State.

PLAINTIFF'S EXHIBIT No. 729-G.

PROCLAMATION.

Whereas the act of Congress making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses and for other purposes, approved March 28, 1918 (Public No. 109, Sixty-fifth Congress), contains the following provisions:

"The President is authorized to acquire the title to the docks, piers, warehouses, wharves, and terminal equipment and facilities on the Hudson River now owned by the North German Lloyd Dock Company and the Hamburg-American Line Terminal and Navigation Company, two corporations of the State of New Jersey, if he shall deem it necessary for the national security and defense: *Provided,* That if such property can not be procured by purchase, then the President is authorized and empowered to take over for the United States the immediate possession and title thereof. If any such property shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President. Upon the taking over of said property by the President, as aforesaid, the title to all such property so taken over shall immediately vest in the United States:

Provided further, That section three hundred and fifty-five of the Revised Statutes of the United States shall not apply to any expenditures herein or hereafter authorized in connection with the property acquired."

And whereas, pursuant to the authority vested in the President by said act of Congress approved March 28, 1918, the President by a proclamation duly made on the 28th day of June, 1918, determined and declared that the acquisition of title to the foregoing docks, piers, warehouses, wharves, and terminal equipment and facilities was necessary for the national security and defense, and did thereby take over for the United States of America the immediate possession and title thereof, including all leaseholds, easements, rights of way, riparian rights and other rights, estates and interests therein or appurtenant thereto; a more particular description of which said property is set forth in the schedule marked A hereto annexed;

And whereas, pursuant to the authority vested in the President by said act of Congress approved March 28, 1918, it was in and by said proclamation of June 28, 1918, expressed and declared that just compensation for the property thereby taken over would be thereafter determined and paid;

Now, therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me by the said act of Congress approved March 28, 1918, do hereby determine and declare that the just compensation for the property in and by said proclamation of June 28, 1918, expropriated for the United States of America in the sum of seven million, one hundred and forty-six thousand, five hundred eighty-three dollars ($7,146,583); and I do hereby order and direct that compensation for the same, aggregating said amount of $7,146,583, be made out of the money appropriated by the act approved December 15, 1917, entitled "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," continuing and making available until June thirtieth, nineteen hundred and eighteen, the appropriation of $100,000,000 "for the national security and defense, and for each and every purpose connected therewith, to be expended at the discretion of the President," contained in the general deficiency appropriation act approved April seventeenth, nineteen hundred and seventeen, to the parties and in the amounts set forth in the schedule marked A, hereto annexed; any part of this sum to be paid for which that appropriation does not suffice to be paid out of the similar appropriation for the fiscal year 1919;

And I do hereby further order, direct, and require under the authority delegated to me by section 6, subsection c, of the trading with the enemy act, approved October 6, 1917, that the sum of money specified in said schedule which I determined to be payable to the North German Lloyd, a corporation of the Free and Hanseatic City of Bremen in the German Empire, be paid over to the Alien Property Custodian appointed under the provisions of said trading with the enemy act, the same to be held by him subject to the provisions of said act.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia, this third day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States the one hundred and forty-third.

WOODROW WILSON.

By the President:

Robert Lansing, *Secretary of State.*

PLAINTIFF'S EXHIBIT No. 729-H.

SCHEDULE A.

SCHEDULE OF COMPENSATION FOR THE DOCKS, PIERS, WAREHOUSES, WHARVES, AND TERMINAL EQUIPMENT AND FACILITIES EXPROPRIATED BY THE PROCLAMATION OF THE PRESIDENT OF JUNE 28, 1918, PURSUANT TO THE ACT OF CONGRESS APPROVED MARCH 28, 1918.

I. In respect to the following property:

All those certain pieces, parcels, or tracts of land and premises, part of which lie under water and part of which have been filled in and reclaimed, together with the buildings and improvements thereon, situate, lying, and being in the city of Hoboken, county of Hudson, and State of New Jersey, and bounded and described as follows: Beginning at a point in the northerly line of Newark Street 100 feet easterly from the northeasterly corner of Newark and River Streets, and running thence northerly and parallel with River Street 150 feet; thence westerly and parallel with Newark Street 100 feet to the easterly line of River Street; thence northerly along the easterly line or side of River Street 475 feet to a jog in the said easterly line; thence westerly and at right angles 5 feet to the easterly line or side of River Street continued; thence northerly and along the said easterly line or side of River Street 100 feet to the southerly line of property of the North German Lloyd; thence easterly parallel with Newark Street as the same would be if extended and along the southerly line of property of the North German Lloyd 522.92 feet more or less to the exterior line for solid filling established by the commissioners appointed under the authority of an act of the legislature of the State of New Jersey, entitled "An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," approved April 11, A. D. 1864, and the supplements thereto; thence northeasterly along said exterior line for solid filling about 25.40 feet to a line distant 75.40 feet northerly at right angles from the northerly line of Second Street as the same would be if extended and to the southerly line of property conveyed by the party of the first part to the North German Lloyd by deed bearing date the 28th day of September, 1900, and recorded in the office of the register of Hudson County; thence southwesterly along said exterior line for solid filling about 779.55 feet more or less to a line parallel with and distant at right angles 25 feet southerly from the northerly line of Newark Street extended; thence westerly and parallel with Newark Street extended about 168.38 feet more or less to a point 348.20 feet easterly at right angles from the westerly line of River Street; thence northerly and parallel with River Street 25 feet to the northerly line or side of Newark Street and thence westerly along the northerly line or side of Newark Street 173.20 feet more or less to the point or place of beginning.

With the right, liberty, privilege, and franchise to exclude the tidewater from so much of the lands above described as lies under tidewater, by filling in or otherwise improving the same, and to appropriate the lands above described to exclusive use.

Also all the lands under water lying between the present exterior line for solid filling aforesaid and the exterior line for piers established by the authority of the State of New Jersey and bounded on the south by the southerly line of the above-described tract extended easterly to said exterior line for piers and on the north by a line 75.40 feet or thereabouts northerly of and parallel with the northerly line of Second Street extended easterly to said exterior line of piers, which northerly line is also the southerly line of lands conveyed to the North German Lloyd by deed dated September 28, 1900, recorded in the register's office in the County of Hudson.

With the right, liberty, privilege, and franchise of building piers only on so much of the land above described as lies between the exterior line for solid filling and the exterior line for piers as established by the authority of the State of New Jersey.

And if and when said exterior lines shall be fixed, or if said exterior lines have been heretofore fixed at any other points or places farther out into the Hudson River, also any and all lands under water lying between the present exterior line or lines above described and the new exterior line or lines that may be hereafter fixed, or that have been heretofore fixed, the same to be used for solid filling and for piers, respectively, agreeably to the terms of such extension.

To the Hamburg-American Line Terminal & Navigation Co., a corporation of the State of New Jersey, the sum of two million three hundred and fourteen thousand eight hundred and seventy-seven dollars ($2,314,877), to be paid to said Hamburg-American Line Terminal & Navigation Co., upon the satisfaction of record of all liens by way of mortgage, judgment, or otherwise existing on, and all taxes and assessments due and exigible upon the foregoing premises, or any part thereof, on the 28th day of June, 1918.

II. In respect of the following properties:

All those certain pieces, parcels, or tracts of land and premises, together with the buildings and improvements thereon, part of which lie under water, and part of which have been filled in and reclaimed, situate, lying, and being in the city of Hoboken, county of Hudson, and State of New Jersey, and bounded and described as follows:

Beginning at a point in the easterly line of River Street distant 50 feet northerly from the northerly line of Second Street extended, which point is the northwesterly corner of the property now owned or formerly belonging to the Hamburg-Americanische Packetfahrt Actien Gesellschaft, and running thence northerly along the easterly line of River Street 850.44 feet to the southerly line of Fourth Street; thence easterly along the southerly line of Fourth Street 850.44 feet to the southerly line of Fourth Street; thence northerly at right angles to Fourth Street extended about 6 feet to the face of a stone retaining wall; thence easterly and northeasterly along the face of said retaining wall about 130 feet to a point in the northerly line of Fourth Street extended about 230.75 feet easterly from the easterly line of River Street; thence easterly along the northerly line of Fourth Street if the same were extended to the exterior line for piers established February 17, 1913, by the commissioners or board thereunto authorized by the State of New Jersey; thence southerly along said exterior line for piers 876.54 feet and more to a line parallel to and distant 75.40 feet northerly from the northerly line of Second Street if the same were extended; thence westerly and parallel to Second Street if the same were extended to the exterior line for solid filling established by the commissioners appointed under the authority of an act of the legislature of the State of New Jersey, approved April 11, 1864, and the several supplements thereto and amendments thereof; thence southwesterly along said exterior line for solid filling, about 25.40 feet to a point distant 50 feet northerly at right angles from the northerly line of Second Street extended; thence westerly and parallel to the northerly line of Second Street extended 522.92 feet, more or less, to the point or place of beginning.

With the right, liberty, privilege, and franchise to exclude the tidewater from so much of the lands above described as lies under tidewater, by filling in, or otherwise improving the same, and to appropriate the land above described to exclusive use except as hereinafter stated, and

With the right, liberty, privilege and franchise of building piers only on so much of the land above described as lies between the exterior line for solid filling and the exterior line for piers as established by the authority of the State of New Jersey.

And if, when said exterior lines shall be fixed, or if said exterior lines have been heretofore fixed, at any other points or places farther out into the Hudson River, also any and all lands under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, or that have been heretofore fixed, the same to be used for solid filling and for piers, respectively, agreeably to the terms of such extension.

All the rights, title, claims, privileges, and interest of North German Lloyd Dock Co. and interest of North German Lloyd in and to a parcel of land and land under waters of Hudson River, in the city of Hoboken, County of Hudson, and State of New Jersey, particularly described as follows:

Beginning at a point in the northerly line of Fourth Street if the same were extended 259.55 feet easterly from the easterly line of River Street and running thence northerly and parallel to River Street extended 100 feet; thence easterly and parallel to

Fourth Street extended 988.37 feet, more or less, to the exterior line for piers established by the riparian commissioners of New Jersey on October 28, 1897; thence southerly along said exterior line for piers 100.17 feet to the northerly line of Fourth Street if the same were extended; thence westerly along the northerly line of Fourth Street if the same were extended 982.55 feet, more or less, to the place of beginning; with the rights and privileges and subject to the limitations and restrictions incident to and affecting the said premises, as conveyed, transferred, and assigned to said North German Lloyd Dock Co. by deed dated March 1, 1901, recorded April 22, 1901, in Book 775, page 404, Conveyance Records of Hudson County, New Jersey; and also the rights, title, privileges, franchises, claims, and interest in and to the premises as above described, as conveyed to North German Lloyd Dock Co. by deed and agreement of the mayor and city council of Hoboken, dated May 23, 1901, recorded June 11, 1901, in Liber 784, page 156, Conveyance Records of Hudson County, New Jersey.

All of the rights, title, claims, privileges, and interest of the North German Lloyd Dock Co. in and to the parcel of land and land under waters of Hudson River, in the city of Hoboken, County of Hudson, and State of New Jersey, particularly described as follows:

Beginning at a point in the original high water line of the westerly shore of the Hudson River as said high-water line existed according to the loss map in 1804, where the same is intersected by a line 100 feet to the north at right angles from the northerly line of Fourth Street, and from thence running easterly parallel with the northerly line of Fourth Street, if the same were extended, and distant 100 feet northerly at right angles therefrom, 1,141.25 feet, more or less, to the exterior line for piers adopted October 28, 1897, by the commissioners appointed under an act of New Jersey approved April 11, 1864, and supplements thereto; thence northerly along said exterior line for piers as adopted 50 feet, more or less, to a point 150 feet northerly at right angles to the northerly line of Fourth Street, if the same were extended; thence westerly parallel with northerly line of Fourth Street, if the same were extended, and distant 150 feet northerly at right angles therefrom 1,125.66 feet, more or less, to the high-water line of the westerly shore of the Hudson River as the same existed according to the loss map in 1804; thence southerly along said high-water line to the place of beginning; with the rights and privileges and subject to the limitations and restrictions incident to and affecting the said premises, as conveyed, transferred, and assigned to said North German Lloyd Dock Co. by deed dated November 11, 1908, recorded November 12, 1908, in Liber 1022, page 243, Conveyance Records of Hudson County, New Jersey; and rights, title, privileges, franchises, claims, and interest in and to a portion of the premises as conveyed to North German Lloyd Dock Co. by deed dated February 1, 1909, recorded February 3, 1909, Liber 1030, page 174, Conveyance Records of Hudson County, New Jersey.

To the North German Lloyd Dock Co., a corporation of the State of New Jersey, in respect of its reversion, the sum of one dollar ($1).

To the North German Lloyd, a corporation of the free and Hanseatic city of Bremen, in the German Empire, $4,831,705, less $47,500 interest, paid to the said Prudential Life Insurance Co. of America, on account of the obligation of said North German Lloyd, namely, four million seven hundred eighty-four thousand two hundred five dollars ($4,784,205), to be paid to A. Mitchell Palmer, Alien Property Custodian, appointed under the provisions of the "trading with the enemy act," the same to be held by him subject to provisions of said act, as directed in the foregoing and annexed proclamation, said sum of $4,784,205 to be chargeable with the payment and satisfaction of all liens, by way of mortgage, judgment, or otherwise, existing on, and all taxes and assessments due and exigible on, the foregoing premises or any part thereof, on the 28th day of June, 1918.

PLAINTIFF'S EXHIBIT No. 730.

MESSAGE OF THE PRESIDENT TO CONGRESS, APRIL 2, 1917.

ADDRESS.

GENTLEMEN OF THE CONGRESS:

I have called the Congress into extraordinary session because there are serious, very serious, choices of policy to be made, and made immediately, which it was neither right nor constitutionally permissible that I should assume the responsibility of making.

On the third of February last I officially laid before you the extraordinary announcement of the Imperial German Government that on and after the first day of February it was its purpose to put aside all restraints of law or of humanity and use its submarines to sink every vessel that sought to approach either the ports of Great Britain and Ireland or the western coasts of Europe or any of the ports controlled by the enemies of Germany within the Mediterranean. That had seemed to be the object of the German submarine warfare earlier in the war, but since April of last year the Imperial Government had somewhat restrained the commanders of its undersea craft in conformity with its promise then given to us that passenger boats should not be sunk and that due warning would be given to all other vessels which its submarines might seek to destroy, when no resistance was offered or escape attempted, and care taken that their crews were given at least a fair chance to save their lives in their open boats. The precautions taken were meagre and haphazard enough, as was proved in distressing instance after instance in the progress of the cruel and unmanly business, but a certain degree of restraint was observed. The new policy has swept every restriction aside. Vessels of every kind, whatever their flag, their character, their cargo, their destination, their errand, have been ruthlessly sent to the bottom without warning and without thought of help or mercy for those on board, the vessels of friendly neutrals along with those of belligerents. Even hospital ships and ships carrying relief to the sorely bereaved and stricken people of Belgium, though the latter were provided with safe conduct through the proscribed areas by the German Government itself and were distinguished by unmistakable marks of identity, have been sunk with the same reckless lack of compassion or of principle.

I was for a little while unable to believe that such things would in fact be done by any government that had hitherto subscribed to the humane practices of civilized nations. International law had its origin in the attempt to set up some law which would be respected and observed upon the seas, where no nation had right of dominion and where lay the free highways of the world. By painful stage after stage has that law been built up, with meagre enough results, indeed, after all was accomplished that could be accomplished, but always with a clear view, at least, of what the heart and conscience of mankind demanded. This minimum of right the German Government has swept aside under the plea of retaliation and necessity and because it had no weapons which it could use at sea except these which it is impossible to employ as it is employing them without throwing to the winds all scruples of humanity or of respect for the understandings that were supposed to underlie the intercourse of the world. I am not now thinking of the loss of property involved, immense and serious as that is, but only of the wanton and wholesale destruction of the lives of non-combatants, men, women, and children, engaged in pursuits which have always, even in the darkest periods of modern history, been deemed innocent and legitimate. Property can be paid for; the lives of peaceful and innocent people cannot be. The present German submarine warfare against commerce is a warfare against mankind.

It is a war against all nations. American ships have been sunk, American lives taken, in ways which it has stirred us very deeply to learn of, but the ships of people of other neutral and friendly nations have been sunk and overwhelmed in the waters in the same way. There has been no discrimination. The challenge is to all mankind. Each nation must decide for itself how it will meet it. The choice we make for ourselves must be made with a moderation of counsel and a temperateness of judgment befitting our character and our motives as a nation. We must put excited feeling away. Our motive will not be revenge or the victorious assertion of the physical might of the nation, but only the vindication of right, of human right, of which we are only a single champion.

When I addressed the Congress on the twenty-sixth of February last I thought that it would suffice to assert our neutral rights with arms, our right to use the seas against unlawful interference, our right

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to keep our people safe against unlawful violence. But armed neutrality, it now appears, is impracticable. Because submarines are in effect outlaws when used as the German submarines have been used against merchant shipping, it is impossible to defend ships against their attacks as the law of nations has assumed that merchantmen would defend themselves against privateers or cruisers, visible craft giving chase upon the open sea. It is common prudence in such circumstances, grim necessity indeed, to endeavour to destroy them before they have shown their own intention. They must be dealt with upon sight, if dealt with at all. The German Government denies the right of neutrals to use arms at all within the areas of the sea which it has proscribed, even in the defense of rights which no modern publicist has ever before questioned their right to defend. The intimation is conveyed that the armed guards which we have placed on our merchant ships will be treated as beyond the pale of law and subject to be dealt with as pirates would be. Armed neutrality is ineffectual enough at best; in such circumstances and in the face of such pretensions it is worse than ineffectual: it is likely only to produce what it was meant to prevent; it is practically certain to draw us into the war without either the rights or the effectiveness of belligerents. There is one choice we cannot make, we are incapable of making: we will not choose the path of submission and suffer the most sacred rights of our nation and our people to be ignored or violated. The wrongs against which we now array ourselves are no common wrongs; they cut to the very roots of human life.

With a profound sense of the solemn and even tragical character of the step I am taking and of the grave responsibilities which it involves, but in unhesitating obedience to what I deem my constitutional duty, I advise that the Congress declare the recent course of the Imperial German Government to be in fact nothing less than war against the government and people of the United States; that it formally accept the status of belligerent which has thus been thrust upon it; and that it take immediate steps not only to put the country in a more thorough state of defense but also to exert all its power and employ all its resources to bring the Government of the German Empire to terms and end the war.

What this will involve is clear. It will involve the utmost practicable cooperation in counsel and action with the governments now at war with Germany, and, as incident to that, the extension to those governments of the most liberal financial credits, in order that our resources may so far as possible be added to theirs. It will involve the organization and mobilization of all the material resources of the country to supply the materials of war and serve the incidental needs of the nation in the most abundant and yet the most economical and efficient way possible. It will involve the immediate full equipment of the navy in all respects but particularly in supplying it with the best means of dealing with the enemy's submarines. It will involve the immediate addition to the armed forces of the United States already provided for by law in case of war at least five hundred thousand men, who should, in my opinion, be chosen upon the principle of universal liability to service, and also the authorization of subsequent additional increments of equal force so soon as they may be needed and can be handled in training. It will involve also, of course, the granting of adequate credits to the Government, sustained, I hope, so far as they can equitably be sustained by the present generation, by well conceived taxation.

I say sustained so far as may be equitable by taxation because it seems to me that it would be most unwise to base the credits which will now be necessary entirely on money borrowed. It is our duty, I most respectfully urge, to protect our people so far as we may against the very serious hardships and evils which would be likely to arise out of the inflation which would be produced by vast loans.

In carrying out the measures by which these things are to be accomplished we should keep constantly in mind the wisdom of interfering as little as possible in our own preparation and in the equipment of our own military forces with the duty,—for it will be a very practical duty,—of supplying the nations already at war with Germany with the materials which they can obtain only from us or by our assistance. They are in the field and we should help them in every way to be effective there.

I shall take the liberty of suggesting, through the several executive departments of the Government, for the consideration of your committees, measures for the accomplishment of the several objects I have mentioned. I hope that it will be your pleasure to deal with them as having been framed after very careful thought by the branch of the Government upon which the responsibility of conducting the war and safeguarding the nation will most directly fall.

While we do these things, these deeply momentous things, let us be very clear, and make very clear to all the world what our motives and our objects are. My own thought has not been driven from its habitual and normal course by the unhappy events of the last two months, and I do not believe that the thought of the nation has been altered or clouded by them. I have exactly the same things in mind now that I had in mind when I addressed the Senate on the twenty-second of January last; the same that I had in mind when I addressed the Congress on the third of February and on the twenty-sixth of February. Our object now, as then, is to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world such a concert of purpose and of action as will henceforth ensure the observance of those principles. Neutrality is no longer feasible or desirable where the peace of the world is involved and the freedom of its peoples, and the menace to that peace and freedom lies in the existence of autocratic governments backed by organized force which is controlled wholly by their will, not by the will of their people. We have seen the last of neutrality in such circumstances. We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states.

We have no quarrel with the German people. We have no feeling towards them but one of sympathy and friendship. It was not upon their impulse that their government acted in entering this war. It was not with their previous knowledge or approval. It was a war determined upon as wars used to be determined upon in the old, unhappy days when peoples were nowhere consulted by their rulers and wars were provoked and waged in the interest of dynasties or of little groups of ambitious men who were accustomed to use their fellow men as pawns and tools. Self-governed nations do not fill their neighbour states with spies or set the course of intrigue to bring about some critical posture of affairs which will give them an opportunity to strike and make conquest. Such designs can be successfully worked out only under cover and where no one has the right to ask questions. Cunningly contrived plans of deception or aggression, carried, it may be, from generation to generation, can be worked out and kept from the light only within the privacy of courts or behind the carefully guarded confidences of a narrow and privileged class. They are happily impossible where public opinion commands and insists upon full information concerning all the nation's affairs.

A steadfast concert for peace can never be maintained except by a partnership of democratic nations. No autocratic government could be trusted to keep faith within it or observe its covenants. It must be a league of honour, a partnership of opinion. Intrigue would eat its vitals away; the plottings of inner circles who could plan what they would and render account to no one would be a corruption seated at its very heart. Only free peoples can hold their purpose and their honour steady to a common end and prefer the interests of mankind to any narrow interest of their own.

Does not every American feel that assurance has been added to our hope for the future peace of the world by the wonderful and heartening things that have been happening within the last few weeks in Russia? Russia was known by those who knew it best to have been always in fact democratic at heart, in all the vital habits of her thought, in all the intimate relationships of her people that spoke their natural instinct, their habitual attitude towards life. The autocracy that crowned the summit of her political structure, long as it had stood and terrible as was the reality of its power, was not in fact Russian in origin, character, or purpose; and now it has been shaken off and the great, generous Russian people have been added in all their naive majesty and might to the forces that are fighting for freedom in the world, for justice, and for peace. Here is a fit partner for a League of Honour.

One of the things that has served to convince us that the Prussian autocracy was not and could never be our friend is that from the very outset of the present war it has filled our unsuspecting communities and even our offices of government with spies and set criminal intrigues everywhere afoot against our national unity of counsel, our peace within and without, our industries and our commerce. Indeed it is now evident that its spies were here even before the war began; and it is unhappily not a matter of conjecture but a fact proved in our courts of justice that the intrigues which have more than once come perilously near to disturbing the peace and dislocating the industries of the country have been carried on at the instigation, with the support, and even under the personal direction of official agents of the Imperial Government accredited to the Government of the United States. Even in checking these things and trying to extirpate them we have sought to put the most generous interpretation possible upon them because we knew that their source lay, not in any hostile feeling or purpose of the German people towards us (who were, no doubt as ignorant of them as we ourselves were), but only in the selfish designs of a Government that did what it pleased and told its people nothing. But they have played their part in serving to convince us at last that that Government entertains no real friendship for us and means to act against our peace and security at its convenience. That it means to stir up enemies against us at our very doors the intercepted note to the German Minister at Mexico City is eloquent evidence.

We are accepting this challenge of hostile purpose because we know that in such a government, following such methods, we can never have a friend; and that in the presence of its organized power, always lying in wait to accomplish we know not what purpose, there can be no assured security for the democratic governments of the world. We are now about to accept gauge of battle with this natural foe to liberty and shall, if necessary, spend the whole force of the nation to check and nullify its pretensions and its power. We are glad, now that we see the facts with no veil of false pretence about them, to fight thus for the ultimate peace of the world and for the liberation of its peoples, the German peoples included: for the rights of nations great and small and the privilege of men everywhere to choose their way of life and of obedience. The world must be made safe for democracy. Its peace must be planted upon the tested foundations of political liberty. We have no selfish ends to serve. We desire no conquest, no dominion. We seek no indemnities for ourselves, no material compensation for the sacrifices we shall freely make. We are but one of the champions of the rights of mankind. We shall be satisfied when those rights have been made as secure as the faith and the freedom of nations can make them.

Just because we fight without rancour and without selfish object, seeking nothing for ourselves but what we shall wish to share with all free peoples, we shall, I feel confident, conduct our operations as belligerents without passion and ourselves observe with proud punctilio the principles of right and of fair play we profess to be fighting for.

I have said nothing of the governments allied with the Imperial Government of Germany because they have not made war upon us or challenged us to defend our right and our honour. The Austro-Hungarian Government has, indeed, avowed its unqualified endorsement and acceptance of the reckless and lawless submarine warfare adopted now without disguise by the Imperial German Government, and it has therefore not been possible for this Government to receive Count Tarnowski, the Ambassador recently accredited to this Government by the Imperial and Royal Government of Austria-Hungary; but that Government has not actually engaged in warfare against citizens of the United States on the seas, and I take the liberty, for the present at least, of postponing a discussion of our relations with the authorities at Vienna. We enter this war only where we are clearly forced into it because there are no other means of defending our rights.

It will be all the easier for us to conduct ourselves as belligerents in a high spirit of right and fairness because we act without animus, not in enmity towards a people or with the desire to bring any injury or disadvantage upon them, but only in armed opposition to an irresponsible government which has thrown aside all considerations of humanity and of right and is running amuck. We are, let me say again, the sincere friends of the German people, and shall desire nothing so much as the early re-establishment of intimate relations of mutual advantage between us,—however hard it may be for them, for the time being, to believe that this is spoken from our hearts. We have borne with their present government through all these bitter months because of that friendship,—exercising a patience and forbearance which would otherwise have been impossible. We shall, happily, still have an opportunity to prove that friendship in our daily attitude and actions towards the millions of men and women of German birth and native sympathy who live amongst us and share our life, and we shall be proud to prove it towards all who are in fact loyal to their neighbours and to the Government in the hour of test. They are, most of them, as true and loyal Americans as if they had never known any other fealty or allegiance. They will be prompt to stand with us in rebuking and restraining the few who may be of a different mind and purpose. If there should be disloyalty, it will be dealt with with a firm hand of stern repression; but, if it lifts its head at all, it will lift it only here and there and without countenance except from a lawless and malignant few.

It is a distressing and oppressive duty, Gentlemen of the Congress, which I have performed in thus addressing you. There are, it may be, many months of fiery trial and sacrifice ahead of us. It is a fearful thing to lead this great peaceful people into war, into the most terrible and disastrous of all wars, civilization itself seeming to be in the balance. But the right is more precious than peace, and we shall fight for the things which we have always carried nearest our hearts,—for democracy, for the right of those who submit to authority to have a voice in their own governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free. To such a task we can dedicate our lives and our fortunes, everything that we are and everything that we have, with the pride of those who know that the day has come when America is privileged to spend her blood and her might for the principles that gave her birth and happiness and the peace which she has treasured. God helping her, she can do no other.

PLAINTIFF'S EXHIBIT No. 730½.

ADDRESS

OF THE

PRESIDENT OF THE

UNITED STATES

DELIVERED AT A JOINT SESSION OF

THE TWO HOUSES OF CONGRESS

DECEMBER 4, 1917

ADDRESS.

DECEMBER 4, 1917.

GENTLEMEN OF THE CONGRESS: Eight months have elapsed since I last had the honour of addressing you. They have been months crowded with events of immense and grave significance for us. I shall not undertake to retail or even to summarize those events. The practical particulars of the part we have played in them will be laid before you in the reports of the Executive Departments. I shall discuss only our present outlook upon these vast affairs, our present duties, and the immediate means of accomplishing the objects we shall hold always in view.

I shall not go back to debate the causes of the war. The intolerable wrongs done and planned against us by the sinister masters of Germany have long since become too grossly obvious and odious to every true American to need to be rehearsed. But I shall ask you to consider again and with a very grave scrutiny our objectives and the measures by which we mean to attain them; for the purpose of discussion here in this place is action, and our action must move straight towards definite ends. Our object is, of course, to win the war; and we shall not slacken or suffer ourselves to be diverted until it is won. But it is worth while asking and answering the question. When shall we consider the war won?

From one point of view it is not necessary to broach this fundamental matter. I do not doubt that the American people know what the war is about and what sort of an outcome they will regard as a realization of their purpose in it. As a nation we are united in spirit and intention. I pay little heed to those who tell me otherwise. I hear the voices of dissent,—who does not? I hear the criticism and the clamor of the noisily thoughtless and troublesome. I also see men here and there fling themselves in impotent disloyalty against the calm, indomitable power of the nation. I hear men debate peace who understand neither its nature nor the way in which we may attain it with uplifted eyes and unbroken spirits. But I know that none of these speaks for the nation. They do not touch the heart of anything. They may safely be left to strut their uneasy hour and be forgotten.

But from another point of view I believe that it is necessary to say plainly what we here at the seat of action consider the war to be for and what part we mean to play in the settlement of its searching issues. We are the spokesmen of the American people and they have a right to know whether their purpose is ours. They desire peace by the overcoming of evil, by the defeat once for all of the sinister forces that interrupt peace and render it impossible, and they wish to know how closely our thought runs with theirs and what action we propose. They are impatient with those who desire peace by any sort of compromise,—deeply and indignantly impatient,—but they will be equally impatient with us if we do not make it plain to them what our objectives are and what we are planning for in seeking to make conquest of peace by arms.

I believe that I speak for them when I say two things: First, that this intolerable Thing of which the masters of Germany have shown us the ugly face, this menace of combined intrigue and force which we now see so clearly as the German power, a Thing without conscience or honour or capacity for covenanted peace, must be crushed and, if it be not utterly brought to an end, at least shut out from the friendly intercourse of the nations; and, second, that when this Thing and its power are indeed defeated and the time comes that we can discuss peace,—when the German people have spokesmen whose word we can believe and when those spokesmen are ready in the name of their people to accept the common judgment of the nations as to what shall henceforth be the bases of law and of covenant for the life of the world,—we shall be willing and glad to pay the full price for peace, and pay it ungrudgingly. We know what that price will be. It will be full, impartial justice,—justice done at every point and to every nation that the final settlement must affect, our enemies as well as our friends.

You catch, with me, the voices of humanity that are in the air. They grow daily more audible, more articulate, more persuasive, and they come from the hearts of men everywhere. They insist that the war shall not end in vindictive action of any kind; that no nation or people shall be robbed or punished because the irresponsible rulers of a single country have themselves done deep and abominable wrong. It is this thought that has been expresed in the formula 'No annexations, no contributions, no punitive indemnities.' Just because this crude formula expresses the instinctive judgment as to right of plain men everywhere it has been made diligent use of by the masters of German intrigue to lead the people of Russia astray —and the people of every other country their agents could reach, in order that a premature peace might be brought about before autocracy has been taught its final and convincing lesson, and the people of the world put in control of their own destinies.

But the fact that a wrong use has been made of a just idea is no reason why a right use should not be made of it. It ought to be brought under the patronage of its real friends. Let it be said again that autocracy must first be shown the utter futility of its claims to power or leadership in the modern world. It is impossible to apply any standard of justice so long as such forces are unchecked and undefeated as the present masters of Germany command. Not until that has been done can Right be set up as arbiter and peace-maker among the nations. But when that has been done,—as, God willing, it assuredly will be,—we shall at last be free to do an unprecedented thing, and this is the time to avow our purpose to do it. We shall be free to base peace on generosity and justice, to the exclusion of all selfish claims to advantage even on the part of the victors.

Let there be no misunderstanding. Our present and immediate task is to win the war, and nothing shall turn us aside from it until it is accomplished. Every power and resource we possess, whether of men, of money, or of materials, is being devoted and will continue to be devoted to that purpose until it is achieved. Those who desire to bring peace about before that purpose is achieved I counsel to carry their advice elsewhere. We will not entertain it. We shall regard the war as won only when the German people say to us, through properly accredited representatives, that they are ready to agree to a settlement based upon justice and the reparation of the wrongs their rulers have done. They have done a wrong to Belgium which must be repaired. They have established a power over other lands and peoples than their own,—over the great Empire of Austria-Hungary, over hitherto free Balkan states, over Turkey, and within Asia,—which must be relinquished.

Germany's success by skill, by industry, by knowledge, by enterprise we did not grudge or oppose, but admired, rather. She had built up for herself a real empire of trade and influence, secured by the peace of the world. We were content to abide the rivalries of manufacture, science, and commerce that were involved for us in her success and stand or fall as we had or did not have the brains and the initiative to surpass her. But at the moment when she had conspicuously won her triumphs of peace she threw them away, to establish in their stead what the world will no longer permit to be established, military and political domination by arms, by which to oust where she could not excel the rivals she most feared and hated. The peace we make must remedy that wrong. It must deliver the once fair lands and happy peoples of Belgium and northern France from the Prussian conquest and the Prussian menace, but it must also deliver the peoples of Austria-Hungary, the peoples of the Balkans, and the peoples of Turkey, alike in Europe and in Asia, from the impudent and alien dominion of the Prussian military and commercial autocracy.

We owe it, however, to ourselves to say that we do not wish in any way to impair or to rearrange the Austro-Hungarian Empire. It is no affair of ours what they do with their own life, either industrially or politically. We do not purpose or desire to dictate to them in any way. We only desire to see that their affairs are left in their own hands, in all matters, great or small. We shall hope to secure for the peoples of the Balkan peninsula and for the people of the Turkish Empire the right and opportunity to make their own lives safe, their own fortunes secure against oppression or injustice and from the dictation of foreign courts or parties.

And our attitude and purpose with regard to Germany herself are of a like kind. We intend no wrong against the German Empire, no interference with her internal affairs. We should deem either the one or the other absolutely unjustifiable, absolutely contrary to the principles we have professed to live by and to hold most sacred throughout our life as a nation.

The people of Germany are being told by the men whom they now permit to deceive them and to act as their masters that they are fighting for the very life and existence of their Empire, a war of desperate self-defense against deliberate aggression. Nothing could be more grossly or wantonly false, and we must seek by the utmost openness and candour as to our real aims to convince them of its falseness. We are in fact fighting for their emancipation from fear, along with our own,—from the fear as well as from the fact of unjust attack by neighbours or rivals or schemers after world empire. No one is threatening the existence or the independence or the peaceful enterprise of the German Empire.

The worst that can happen to the detriment of the German people is this, that if they should still, after the war is over, continue to be obliged to live under ambitious and intriguing masters interested to disturb the peace of the world, men or classes of men whom the other peoples of the world could not trust, it might be impossible to admit them to the partnership of nations which must henceforth guarantee the world's peace. That partnership must be a partnership of peoples, not a mere partnership of governments. It might be impossible, also, in such untoward circumstances, to admit Germany to the free economic intercourse which must inevitably spring out of the other partnerships of a real peace. But there would be no aggression in that; and such a situation, inevitable because of distrust, would in the very nature of things sooner or later cure itself, by processes which would assuredly set in.

The wrongs, the very deep wrongs, committed in this war will have to be righted. That of course. But they cannot and must not be righted by the commission of similar wrongs against Germany and her allies. The world will not permit the commission of similar wrongs as a means of reparation and settlement. Statesmen must by this time have learned that the opinion of the world is everywhere wide awake and fully comprehends the issues involved. No representative of any self-governed nation will dare disregard it by attempting any such covenants of selfishness and compromise as were entered into at the Congress of Vienna. The thought of the plain people here and everywhere throughout the world, the people who enjoy no privilege and have very simple and unsophisticated standards of right and wrong, is the air all governments must henceforth breathe if they would live. It is in the full disclosing light of that thought that all policies must be conceived and executed in this midday hour of the world's life. German rulers have been able to upset the peace of the world only because the German people were not suffered under their tutelage to share the comradeship of the other peoples of the world either in thought or in purpose. They were allowed to have no opinion of their own which might be set up as a rule of conduct for those who exercised authority over them. But the congress that concludes this war will feel the full strength of the tides that run now in the hearts and consciences of free men everywhere. Its conclusions will run with those tides.

All these things have been true from the very beginning of this stupendous war; and I can not help thinking that if they had been made plain at the very outset the sympathy and enthusiasm of the Russian people might have been once for all enlisted on the side of the Allies, suspicion and distrust swept away, and a real and lasting union of purpose effected. Had they believed these things at the very moment of their revolution and had they been confirmed in that belief since, the sad reverses which have recently marked the progress of their affairs towards an ordered and stable government of free men might have been avoided. The Russian people have been poisoned by the very same falsehoods that have kept the German people in the dark, and the poison has been administered by the very same hands. The only possible antidote is the truth. It can not be uttered too plainly or too often.

From every point of view, therefore, it has seemed to be my duty to speak these declarations of purpose, to add these specific interpretations to what I took the liberty of saying to the Senate in January. Our entrance into the war has not altered our attitude towards the settlement that must come when it is over. When I said in January that the nations of the world were entitled not only to free pathways upon the sea but also to assured and unmolested access to those pathways I was thinking, and I am thinking now, not of the smaller and weaker nations alone, which need our countenance and support, but also of the great and powerful nations, and of our present enemies as well as our present associates in the war. I was thinking, and am thinking now, of Austria herself, among the rest, as well as of Serbia and of Poland. Justice and equality of rights can be had only at a great price. We are seeking permanent, not temporary, foundations for the peace of the world and must seek them candidly and fearlessly. As always, the right will prove to be the expedient.

What shall we do, then, to push this great war of freedom and justice to its righteous conclusion? We must clear away with a thorough hand all impediments to success and we must make every adjustment of law that will facilitate the full and free use of our whole capacity and force as a fighting unit.

One very embarrassing obstacle that stands in our way is that we are at war with Germany but not with her allies. I therefore very earnestly recommend that the Congress immediately declare the United States in a state of war with Austria-Hungary. Does it seem strange to you that this should be the conclusion of the argument I have just addressed to you? It is not. It is in fact the inevitable logic of what I have said. Austria-Hungary is for the time being not her own mistress but simply the vassal of the German Government. We must face the facts as they are and act upon them without sentiment in this stern business. The government of Austria-Hungary is not acting upon its own initiative or in response to the wishes and feelings of its own peoples but as the instrument of another nation. We must meet its force with our own and regard the Central Powers as but one. The war can be successfully conducted in no other way. The same logic would lead also to a declaration of war against Turkey and Bulgaria. They also are the tools of Germany. But they are mere tools and do not yet stand in the direct path of our necessary action. We shall go wherever the necessities of this war carry us, but it seems to me that we should go only where immediate and practical considerations lead us and not heed any others.

The financial and military measures which must be adopted will suggest themselves as the war and its undertakings develop, but I will take the liberty of proposing to you certain other acts of legislation which seem to me to be needed for the support of the war and for the release of our whole force and energy.

It will be necessary to extend in certain particulars the legislation of the last session with regard to alien enemies; and also necessary, I believe, to create a very definite and particular control over the entrance and departure of all persons into and from the United States.

Legislation should be enacted defining as a criminal offense every wilful violation of the presidential proclamations relating to alien enemies promulgated under section 4067 of the Revised Statutes and providing appropriate punishments; and women as well as men should be included under the terms of the acts placing restraints upon alien enemies. It is likely that as time goes on many alien enemies will be willing to be fed and housed at the expense of the Government in the detention camps and it would be the purpose of the legislation I have suggested to confine offenders among them in penitentiaries and other similar institutions where they could be made to work as other criminals do.

Recent experience has convinced me that the Congress must go further in authorizing the Government to set limits to prices. The law of supply and demand, I am sorry to say, has been replaced by the law of unrestrained selfishness. While we have eliminated profiteering in several branches of industry it still runs impudently rampant in others. The farmers, for example, complain with a great deal of justice that, while the regulation of food prices restricts their incomes, no restraints are placed upon the prices of most of the things they must themselves purchase; and similar inequities obtain on all sides.

It is imperatively necessary that the consideration of the full use of the water power of the country and also the consideration of the systematic and yet economical development of such of the natural resources of the country as are still under the control of the federal government should be immediately resumed and affirmatively and constructively dealt with at the earliest possible moment. The pressing need of such legislation is daily becoming more obvious.

The legislation proposed at the last session with regard to regulated combinations among our exporters, in order to provide for our foreign trade a more effective organization and method of cooperation, ought by all means to be completed at this session.

And I beg that the members of the House of Representatives will permit me to express the opinion that it will be impossible to deal in any but a very wasteful and extravagant fashion with the enormous appropriations of the public moneys which must continue to be made, if the war is to be properly sustained, unless the House will consent to return to its former practice of initiating and preparing all appropriation bills through a single committee, in order that responsibility may be centered, expenditures standardized and made uniform, and waste and duplication as much as possible avoided.

Additional legislation may also become necessary before the present Congress again adjourns in order to effect the most efficient coordination and operation of the railway and other transportation systems of the country; but to that I shall, if circumstances should demand, call the attention of the Congress upon another occasion.

If I have overlooked anything that ought to be done for the more effective conduct of the war, your own counsels will supply the omission. What I am perfectly clear about is that in the present session of the Congress our whole attention and energy should be concentrated on the vigorous, rapid, and successful prosecution of the great task of winning the war.

We can do this with all the greater zeal and enthusiasm because we know that for us this is a war of high principle, debased by no selfish ambition of conquest or spoliation; because we know, and all the world knows, that we have been forced into it to save the very institutions we live under from corruption and destruction. The purposes of the Central Powers strike straight at the very heart of everything we believe in; their methods of warfare outrage every principle of humanity and of knightly honour; their intrigue has corrupted the very thought and spirit of many of our people; their sinister and secret diplomacy has sought to take our very territory away from us and disrupt the Union of the States. Our safety would be at an end, our honour forever sullied and brought into contempt were we to permit their triumph. They are striking at the very existence of democracy and liberty.

It is because it is for us a war of high, disinterested purpose, in which all the free peoples of the world are banded together for the vindication of right, a war for the preservation of our nation and of all that it has held dear of principle and of purpose, that we feel ourselves doubly constrained to propose for its outcome only that which is righteous and of irreproachable intention, for our foes as well as for our friends. The cause being just and holy, the settlement must be of like motive and quality. For this we can fight, but for nothing less noble or less worthy of our traditions. For this cause we entered the war and for this cause will we battle until the last gun is fired.

I have spoken plainly because this seems to me the time when it is most necessary to speak plainly, in order that all the world may know that even in the heat and ardour of the struggle and when our whole thought is of carrying the war through to its end we have not forgotten any ideal or principle for which the name of America has been held in honour among the nations and for which it has been our glory to contend in the great generations that went before us. A supreme moment of history has come. The eyes of the people have been opened and they see. The hand of God is laid upon the nations. He will show them favour, I devoutly believe, only if they rise to the clear heights of His own justice and mercy.

PLAINTIFF'S EXHIBIT No. 731.

No. 1795.

UNITED STATES OF AMERICA

(Cut, Coat of Arms.)

DEPARTMENT OF STATE.

To all to whom these presents shall come GREETING:

I CERTIFY That the document hereto annexed is a true copy from the files and records of this Department.

IN TESTIMONY WHEREOF I, Charles E. Hughes, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this twenty-ninth day of March, 1923.

(Seal)

CHARLES E. HUGHES,
Secretary of State.
By (Sgd.) BEN G. DAVIS,
Chief Clerk.

(Copy MEF/So)

To His Holiness,
Benedictus XV.,
Pope.

In acknowledgment of the communication of Your Holiness to the belligerent peoples, dated August 1, 1917, the President of the United States requests me to transmit the following reply:

Every heart that has not been blinded and hardened by this terrible war must be touched by this moving appeal of His Holiness the Pope, must feel the dignity and force of the humane and generous motives which prompted it, and must fervently wish that we might take the path of peace he so persuasively points out. But it would be folly to take it if it does not in fact lead to the goal he proposes. Our response must be based upon the stern facts and upon nothing else. It is not a mere cessation of arms he desires; it is a stable and enduring peace. This agony must not be gone through with again, and it must be a matter of very sober judgment what will insure us against it.

His Holiness in substance proposes that we return to the *status quo ante bellum*, and that then there be a general condonation, disarmament, and a concert of nations based upon an acceptance of the principle of arbitration; that by a similar concert freedom of the seas be established; and that the territorial claims of France and Italy, the perplexing problems of the Balkan states, and the restitution of Poland be left to such conciliatory adjustments as may be possible in the new temper of such a peace, due regard being paid to the aspirations of the peoples whose political fortunes and affiliations will be involved.

It is manifest that no part of this programme can be successfully carried out unless the restitution of the *status quo ante* furnishes a firm and satisfactory basis for it. The object of this war is to deliver the free peoples of the world from the menace and the actual power of a vast military establishment controlled by an irresponsible government which, having secretly planned to dominate the world, proceeded to carry the plan out without regard either to the sacred obligations of treaty or the long established practices and long cherished principles of international action and honor; which chose its own time for the war; delivered its blow fiercely and suddenly; stopped at no barrier either of law or of mercy; swept a whole continent within the tide of blood—not the blood of soldiers only, but the blood of innocent women and children also and of the helpless poor; and now stands balked but not defeated, the enemy of four-fifths of the world. This power is not the German people. It is the ruthless master of the German people. It is no business of ours how that great people came under its control or submitted with temporary zest to the domination of its purpose; but it is our business to see to it that the history of the rest of the world is no longer left to its handling.

To deal with such a power by way of peace upon the plan proposed by His Holiness the Pope would, so far as we can see, involve a recuperation of its strength and a renewal of its policy; would make it necessary to create a permanent hostile combination of nations against the German people, who are its instruments; and would result in abandoning the new-born Russia to the intrigue, the manifold subtle interference, and the certain counter-revolution which would be attempted by all the malign influences to which the German Government has of late accustomed the world. Can peace be based upon a restitution of its power or upon any word of honor it could pledge in a treaty of settlement and accommodation?

Responsible statesmen must now everywhere see, if they never saw before, that no peace can rest securely upon political or economic restrictions meant to benefit some nations and cripple or embarrass others, upon vindictive action of any sort, or any kind of revenge or deliberate injury. The American people have suffered intolerable wrongs at the hands of the Imperial German Government, but they desire no reprisal upon the German people, who have themselves suffered all things in this war, which they did not choose. They believe that peace should rest upon the rights of peoples, not the rights of governments—the rights of peoples great or small, weak or powerful—their *equal* right to freedom and security and self-government and to a participation upon fair terms in the economic opportunities of the world—the German people of course included, if they will accept equality and not seek domination.

The test, therefore, of every plan of peace is this: Is it based upon the faith of all the peoples involved or merely upon the word of an ambitious and intriguing government, on the one hand, and of a group of free peoples, on the other? This is a test which goes to the root of the matter; and it is the test which must be applied.

The purposes of the United States in this war are known to the whole world—to every people to whom the truth has been permitted to come. They do not need to be stated again. We seek no material advantage of any kind. We believe that the intolerable wrongs done in this war by the furious and brutal power of the Imperial German Government ought to be repaired, but not at the expense of the sovereignty of any people—rather in vindication of the sovereignty both of those that are weak and of those that are strong. Punitive damages, the dismemberment of empires, the establishment of selfish and exclusive economic leagues, we deem inexpedient and in the end worse than futile, no proper basis for a peace of any kind, least of all for an enduring peace. That must be based upon justice and fairness and the common rights of mankind.

We cannot take the word of the present rulers of Germany as a guarantee of anything that is to endure, unless explicitly supported by such conclusive evidences of the will and purpose of the German people themselves as the other peoples of the world would be justified in accepting. Without such guarantees treaties of settlement, agreements for disarmament, covenants to set up arbitration in the place of force, territorial adjustments, reconstitutions of small nations, if made with the German Government, no man, no nation could now depend on. We must await some new evidence of the purpose of the great peoples of the Central Empires. God grant it may be given soon and in a way to restore the confidence of all peoples everywhere in the faith of nations and the possibility of a covenanted peace.

R. L.

PLAINTIFF'S EXHIBIT No. 732.

November 20, 1919.

The Textile Alliance, Inc.,
45 East 17th Street,
New York, N. Y.

Dear Sirs:

The Chemical Foundation, Inc., being the owner of the letters patent enumerated in the attached schedule, hereby offers to license you to sell dyestuffs in the United States under said letters patent upon the following conditions:

1. The license shall extend only to the dyestuffs imported by you under the present State Department plan for the importation of a six months' supply of

vat dyes and only to dyestuffs imported under licenses from the War Trade Board Division of the State Department, or its sucessor.

2. You will report to The Chemical Foundation all importations of dyestuffs made by you, upon which dyestuffs The Chemical Foundation holds patents, as soon as such importations are made and shall report monthly to The Chemical Foundation all sales of such dyestuffs made under licenses and the net selling price received by you therefor.

3. You will within the first ten days of each month pay to The Chemical Foundation a royalty of ten per cent of the net selling price received by you for sales of dyestuffs under the license during the preceding month. The net selling price referred to herein includes freight, customs and handling charges and your commission, but does not include discounts.

4. The license may be terminated by thirty days' written notice in the event of a breach by either party of its terms.

Acceptance of this offer shall constitute a license according to its terms and no other or formal instrument will be necessary.

Very truly yours,
THE CHEMICAL FOUNDATION
INCORPORATED
By (Sgd.) DOUGLAS I. McKAY,
Vice-President.

Accepted November 20, 1919.
Textile Alliance, Inc.
By B. R. Priell.

PLAINTIFF'S EXHIBIT No. 732-A.

Number	Date	Title
955,105	April 12, 1910	Anthracene Dye and Process of making.
919,572	April 27, 1909	Blue Sulphur Dye and Process of Making.
931,598	August 17, 1909	Sulphur Dye and Process of Making same.
837,840	December 4, 1906	Anthracene Dye and Process of Making.
856,811	June 11, 1907	Dye of the Anthraquinone Series and Process of Making.
955,105	April 12, 1910	Anthracene Dye and Process of Making.
818,992	April 24, 1906	Anthracene Dye and Process of Making.
796,393	August 1, 1905	Anthracene Coloring-Matter and Process of producing the same.
906,367	December 8, 1908	Anthracene Dye and Process of Making.
922,282	May 18, 1909	Anthracene Dye and Process of Making.
925,917	June 22, 1909	Compound of the Anthracene Series and process of making
814,137	March 6, 1906	Anthraquinon Compound and Process of making same.
961,612	June 14, 1910	Anthracene Compound and Process of Making
863,397	August 13, 1907	Anthraquinone Compound and Process of Making same.
1,011,068	December 5, 1911	Vat Dye.
958,325	May 17, 1910	Urea of the Anthraquinone Series and Process of Making same.
682,523	Sept. 10, 1901	Blue Dye and Process of making same.
970,878	Sept. 20, 1910	Vat Dye and Process of Making same.
753,659	March 1, 1904	Anthracene Derivative and Process of Making same.
739,579	Sept. 22, 1903	Blue Coloring Matter
791,869	June 6, 1905	Brown Anthracene Dye
767,259	August 9, 1904	Anthracene Dye
739,145	Sept. 15, 1903	Anthracene Dye
876,190	Jan. 7, 1908	Anthracene Dye and Process of Making.
943,717	December 21, 1909	Brown Anthraquinone Dye and Process of Making Same.
957,683	May 10, 1910	Dichlor-dibrom-indigo and Process of Making same.
932,334	August 24, 1909	Brominated Beta-napthyl-indigo
999,439	August 1, 1911	Vat-dyeing Coloring matter.
1,025,174	May 7, 1912	Blue Vat Dyestuff and Process of making.
968,697	August 30, 1910	Vat Dye and Process of Making same.
892,897	July 7, 1908	Red Vat Dye
819,348	May 1, 1906	Red Sulfur Dye and Process of Making
850,827	April 16, 1907	Thio-indoxyl Derivative and Process of making same
887,305	October 1, 1907	Vat-Dyestuff

Number	Date		Title
872,585	December	3, 1907	Orange Vat-dye and Process of making same
963,813	July	12, 1910	Red Halogenized Dye & Process of Making.
867,305	October	9, 1907	Vat Dyestuff
916,029	March	23, 1909	Red Violet Dye and Process of Making.
1,025,138	May	7, 1912	Violet Blue Vat Dyestuffs.
959,617	May	31, 1910	Vat Dye and Process of Making.

PLAINTIFF'S EXHIBIT No. 732-B.

(Copy)

December 9, 1919.

The Textile Alliance, Inc.
45 East 17th Street,
New York City.

Dear Sirs:

Referring to our license issued to you on November 20, 1919, under certain patents covering Vat Dyes, we hereby offer to add to the list of dyes under which you are licensed by said license, the following patents:

No. 961,048, Issued June 7, 1910—Anthraquinon-di-Acridenes
No. 965,170, Issued July 26, 1910—Process of condensing reduction products of Acenapthene-quinone.

Upon your acceptance, the license of November 20th, 1919, shall extend to these patents under the same terms and conditions as stated in said license of November 20th.

Yours very truly,
THE CHEMICAL FOUNDATION
INCORPORATED
(Sgd.) By Douglas I. McKay,
Vice-President.

Accepted December 12, 1919.
The Textile Alliance, Inc.,
By Bayard R. Priell,
Actg. Secy.

PLAINTIFF'S EXHIBIT No. 732-C.

Copy

THE CHEMICAL FOUNDATION
81 Fulton Street
New York City

December 9th, 1919.

The Textile Alliance, Inc.,
45 E. 17th St.,
New York City.

Dear Sirs:

The Chemical Foundation, Inc., being the owner of the letters patent enumerated in the attached schedule, hereby offers to license you to sell dyestuffs in the United States under said letters patent upon the following conditions:

1. The license shall extend only to dyestuffs imported by you under licenses from the WAR TRADE BOARD, Division of the State Department, or its successor, issued prior to January 1, 1920.

2. You will report to The Chemical Foundation all importations of dyestuffs made by you, upon which dyestuffs The Chemical Foundation holds patents, as soon as such importations are made and shall report monthly to The Chemical Foundation all sales of such dyestuffs made under licenses and the net selling price received by you therefor.

3. You will within the first ten days of each month pay to The Chemical Foundation a royalty of ten per cent. of the net selling price received by you for sales of dyestuffs under the license during the preceding month. The net selling price referred to herein includes freight, customs and handling charges and your commission, but does not include discounts.

4. The license may be terminated by thirty days'

written notice in the event of a breach by either party of its terms.

Acceptance of this offer shall constitute a license according to its terms and no other or formal instrument will be necessary.

Yours very truly,
THE CHEMICAL FOUNDATION INC.
(Sgd.) By DOUGLAS I. MCKAY,
Vice-President.

Accepted December 12th, 1919
TEXTILE ALLIANCE, INC.,
(Sgd.) BAYARD R. PRIELL,
Act. Secy.

PLAINTIFF'S EXHIBIT No. 732-D.

Key to the NON-VAT DYES FOR WHICH CHEMICAL FOUNDATION HOLDS PATENTS.

Schultz No.	Patent No.	Name of Dye
8	763756	Pigment Chlorine G. G. paste
28	731670	Pigment Fast Yellow G
152	741029	Lithol Rubine B, BN powder
		Permanent Red 4B paste
		Permanent Red 4B extra powder
153	733280	Lake Red C paste
179	858065	Lake Bordeaux B paste
181	(770177)	Palatin Chrome Black 6B, 6BX
	(807422)	Salacine Black UL, U
		Eriochrome Blue Black R
		Acid Alizarine Blue Black A
		Diamond Blue Black EB
		Anthracene—Blue Black BE
		Chrome Fast Black PW, PWBL, conc, PWRR
		Blue au Chrome N
200	878964	Lake Red D paste
202	757109	Acid Alizarine Red B

Schultz No.	Patent No.	Name of Dye
		Palatine Chrome Red B
		Pigment Scarlet 3B
384)	888036	Chicago Blue 2R
420)		Benzo Blue 3R
		Diamine Blue C 2R
		Azidine Wool Blue R
462	717550	Erie Direct Black GX
		Renol Black R Extra
		Patent Dianil Black EB conc.
		Half Wool Black
		Direct Deep Black EW extra
		Cotton Black RW extra
542	886815	Agalma Green B
		Immedial Orange C
727	(764733))764734((764735)	Auronal Black B, 2B
731	778478	Thiophor Indigo
735	723154	Pyrogene Indigo (V. M)
		Immedial Naroon B
781	826509	Erweco Alizarine Acid Red BS
857	996487	Erweco Alizarine Acid Blue B
867	876190	Indanthrene Brown B

NON-VAT DYES FOR WHICH CHEMICAL FOUNDATION HOLDS PATENTS.

Patent No.	Date	Title
717550	Jan. 6, 1903	Process of making Black Polyaxo Dyes
723154	Mar. 17, 1903	Sulphogene Indigo-blue—valuable as covering product
731670	June 23, 1903	Yellow Monazo Dyestuff and process of making same
733280	July 7, 1903	Red Azo Dye and process of making same
741029	Oct. 13, 1903	Red Azo Lake
757109	Apr. 12, 1904	Blue-Red Lake and process of making same
763756	June 28, 1904	Process of reacting on Nitramins with Formaldehyde and a product thereof.
764733	July 12, 1904	Black Sulfur Dye and process of making same
764734	July 12, 1904	Direct Cotton Sulfur Dye and process of making same
764735	July 12, 1904	Process of making Sulfur Dyes stable
770177	Sept. 13, 1904	Azo Dye and process of making same

Patent No.	Date	Title
778478	Dec. 27, 1904	Blue Sulfur Dye and process of making same
807422	Dec. 12, 1905	Zinc Azonaphthol Dye and process of making same
826509	July 17, 1906	Alizarine Sulfo-Acid and process of making same
858065	June 25, 1907	Monoazo Dye for Lakes and process of making same
876190	Jan. 7, 1908	Anthracene Dye and process of making same
878964	Feb. 11, 1908	Red Color-Lake
886815	May 5, 1908	Green Dye and process of making same
888036	May 19, 1908	Blue Disazo Dye
996487	June 27, 1911	Process of making Acid Dyes of the Anthracene Series

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PLAINTIFF'S EXHIBIT No. 733.

LICENSE

THE CHEMICAL FOUNDATION, Inc.

to

ATMOSPHERIC NITROGEN CORPORATION,
Syracuse, New York.

Dated July 24, 1920 1920

Product Ammonia (N H_3 content), products and by-products therefrom.

Patents	739,920	754,474	758,775	792,379
	797,961	797,962	804,021	814,917
	850,392	884,919	884,920	895,313
	911,801	918,589	922,003	923,012
	941,768	957,843	964,415	965,482
	970,883	971,149	971,206	971,501
	981,727	984,605	984,925	990,191
	993,144	994,095	999,025	1000,732
	1006,206	1008,927	1011,014	1015,566
	1015,800	1018,990	1022,351	1028,366
	1029,528	1035,873	1039,851	1039,852
	1040,218	1043,798	1053,951	1053,952

1054,901	1055,331	1058,653	1059,817
1059,818	1061,725	1068,966	1089,185
1068,967	1068,968	1068,969	1070,138
1073,823	1073,870	1075,085	1077,034
1078,423	1078,686	1079,705	1083,585
1083,703	1090,874	1094,194	1096,392
1096,393	1098,139	1101,424	1102,716
1107,926	1109,447	1109,448	1113,096
1113,097	1115,249	1115,776	1118,595
1118,628	1119,534	1126,371	1128,804
1128,843	1129,559	1133,087	1134,416
1144,730	1148,570	1149,510	1152,196
1152,197	1152,930	1157,253	1158,167
1159,865	1169,817	1172,863	1172,908
1172,925	1173,532	1175,693	1178,440
1188,191	1200,805	1201,607	1202,995
1207,706	1207,707	1207,708	1211,181
1211,394	1212,504	1215,957	1216,059
1225,263	1225,264	1225,755	1243,382
1244,580	1256,875	1261,900	1278,580
1286,650	1301,151	1322,291	1330,772

And all other applications or patents for the production of ammonia, products, or by-products therefrom or materials or processes suitable for use therein, which may be owned or may hereafter be acquired by The Chemical Foundation. However, it is mutually understood and agreed that any product and/or by-product containing ammonia, which product and/or by-product is covered by a patent or pending application for a patent in the hands of The Foundation, is expressly excluded from the operation of this license, provided such product and/or by-product has a market value per unit of weight equivalent to or greater than double the market value of the same unit of weight of ammonia in the form of ammonia liquor on NH_3 basis. By excluding such product and/or by-product from the operation of this license, The Foundation waives none of its right, title, and interest therein.

OK DJW

License.

Agreement made this 24th day of July 1920, between The Chemical Foundation, Inc., a corporation organized under the laws of the State of Delaware (hereinafter called the Licensor) and Atmospheric Nitrogen Corporation, a corporation organized under the laws of New York (hereinafter called the Licensee).

Whereas, the Licensor is the owner of, or has the right to grant licenses under certain letters patent of the United States enumerated in Schedule A hereto attached (hereinafter called the Licensed Patents); and

Whereas, the Licensee is desirous of obtaining a non-exclusive license under the Licensed Patents upon the terms and conditions hereinafter set forth;

Now, Therefore, in consideration of the premises and the faithful performance of the covenants herein contained, It Is Agreed:

1.—The Licensor hereby grants to the Licensee upon the terms and conditions hereinafter specified, a personal, non-exclusive and (except as hereinafter provided) non-assignable license to make, use and sell throughout the United States, its territories and dependencies, Ammonia ($N H_3$ content), products and by-products therefrom (hereinafter called the Licensed Product) under the Licensed Patents to the full end of the terms for which the Licensed Patents are issued, unless sooner terminated as hereinafter provided.

2.—Where product patents are included in Schedule A the Licensee shall not, without the written permission of the LICENSOR, import into the United States, its territories or dependencies any product which is covered by any of said patents or sell in the United States, its territories or dependencies any such product made outside of the United States.

3.—The LICENSOR agrees to furnish, so far as is reasonably possible, upon request of the LICENSEE, such engineering data, copies of drawings, formulae, or other information as it now has or may hereafter acquire with respect to the LICENSED PATENTS for the assistance of the LICENSEE in making or using the inventions of the LICENSED PATENTS upon payment by the LICENSEE of the actual cost of furnishing such engineering data, copies of drawings, formulae, or other information. The LICENSOR shall not disclose confidential information which it has received from the LICENSEE or others and shall be in no way responsible or liable for the accuracy, correctness or sufficiency of any such data, drawings, formulae, or other information furnished hereunder. The LICENSOR shall upon request of the LICENSEE inform the LICENSEE of all licenses granted by it to other licensees under any of the patents of Schedule A.

4.—The LICENSOR will at its own expense bring and diligently prosecute such suits for infringement of the LICENSED PATENTS, as may be reasonably necessary and proper in the opinion of its counsel to enforce said patents and prevent unlicensed competition by manufacture, use or sale in the United States, and will at its own expense defend any suit brought against the LICENSEE by any person claiming title to the LICENSED PATENTS or any of them and hold the LICENSEE harmless in such suits to the extent of the royalties paid by the LICENSEE under this license.

5.—The LICENSOR agrees that should it hereafter establish any more favorable rate of royalty for the manufacture, use, and/or sale of the LICENSED PROD-

UCT than that charged herein it will give the LICENSEE the benefit of such more favorable rate from and after the date it is established.

6.—For the rights and licenses hereby granted the LICENSEE will pay to the LICENSOR, in the manner hereinafter provided $2500.—payable in advance on date of issue of license in lieu of royalties during a trial period of one year from date of completion of plant, plus an additional three months depending upon the time lost, if any, following completion of construction by reason of breakdowns and serious interruptions to initial operations; thereafter, the LICENSEE will pay to the LICENSOR, a royalty computed as follows: 2% of the net selling price received by the LICENSEE for concentrated ammonia liquors, and if ammonia produced under this license is sold in other forms than concentrated ammonia liquor or is used by the licensee in the manufacture of other products, the LICENSEE shall pay a royalty of 2% upon the ammonia content of such product or upon the ammonia used in the manufacture of such product, the value of said ammonia being computed on the average net selling price of ammonia as concentrated ammonia liquor in the trade at the time of such use. These royalties are to be paid to the end of the term of the Letters Patent enumerated in Schedule A.

7.—The LICENSEE will keep full, true and accurate books of account containing such particulars as may be required by the LICENSOR from time to time, of its operations under this license, which books and the premises where such licensed business is carried on, insofar as it may be necessary to determine the nature and extent of the LICENSEE's operations under this license, shall be open to the inspection of the LICENSOR or its representatives at all reasonable times.

8.—The LICENSEE within thirty days after January first, April first, July first and October first of each year, shall furnish the Licensor a true and accurate report, under oath if required, giving such particulars of the business conducted by the Licensee during the preceding three months under this license as may from time to time be required by the Licensor and as are pertinent to an accounting under this license and simultaneously with the making of each such report shall pay to the Licensor the royalty shown to be due thereby for the period covered by such report.

With specific reference to paragraph seven and eight of the license, the licensor expressly disclaims the right to solicit or secure information regarded by the license as confidential and relating to processes of manufacture or the use therein of secret ingredients, manufacturing agents, or apparatus, so long as the prescribed royalty is paid as stipulated in the license. But, in the event that during the life of this license payment of royalties when due is not made or is refused upon the claim that by reason of non-use of the patents, whether wholly or in part, such royalties are not payable, The Chemical Foundation reserves in that case only, the right of inspection to determine the accuracy of the claim.

9.—The Licensee by taking this license does not admit, except as between itself and the Licensor personally the patentability, novelty and utility of the inventions of the Licensed Patents and the right or title of the Licensor thereto and the respective rights of the Licensee and third parties as between themselves shall remain unaffected thereby.

10.—If required by the Licensor, the Licensee shall, whenever practicable, mark the Licensed Product, if subject to a product patent included in Schedule A and when intended for sale in the United States, its territories and dependencies with the words "Licensed by THE CHEMICAL FOUNDATION, INC., under the following United States Letters Patent" followed by a list of the date or dates of issue of said product patent or patents, and when advertising the same in the United States, its territories and dependencies shall, if required by the LICENSOR, state in such advertisement that said product is licensed by the LICENSOR.

11.—The LICENSEE shall upon request of the LICENSOR furnish to the LICENSOR whenever practicable, samples of its product made under this license and shall, if required by the LICENSOR, indicate upon the labels carried by said product or, when that is not practicable, in another appropriate way, the grade, concentration and/or color, which qualities shall be expressed in terms of a scale of standards to be established by the LICENSOR. Where the LICENSED PRODUCT is one which may affect the public health or safety the LICENSOR reserves the right to prescribe the limits of purity and strength of the product to be sold and to prescribe tests to which said product shall be subjected.

12.—The LICENSEE shall not be liable for contributory infringement of patents owned by the LICENSOR by reason of the use of the LICENSED PRODUCT by others, nor shall the LICENSEE be deemed to have violated any of the provisions of this license by such infringing use by others. Where Schedule A includes patents which may be infringed by the use of the LICENSED PRODUCT, the LICENSEE may authorize its customers to use the said product under the LICENSED PATENTS.

13.—This license may be cancelled and terminated in the following manner:

The LICENSOR shall give written notice to the Li-

CENSEE of the proposed cancellation and termination assigning in said notice the cause for which it is proposed to cancel and terminate. If the LICENSEE shall so require within five days after receipt of said notice, the trustees of THE CHEMICAL FOUNDATION, INC. under the deed of trust dated May 1, 1919 between said trustees and Francis P. Garvan, Douglas I. McKay and George C. Corbett shall set a date for a hearing and give the LICENSEE written notice thereof. After hearing the LICENSEE, or upon its failure to appear at the place and date set for such hearing, the trustees shall make a determination in writing, a copy of which shall be furnished to the LICENSEE and which shall be conclusive, final and binding upon the LICENSEE and shall not be reviewable by a Court. If the LICENSEE shall fail to require a hearing or if the trustees shall determine that this license should be cancelled and terminated the LICENSOR may give the LICENSEE ninety (90) days' notice of termination and cancellation and at the end of said ninety days, this license shall cease and terminate. The LICENSEE may surrender this license upon ninety (90) days' written notice to the LICENSOR. The surrender or termination of this license shall in no way affect the liability of the LICENSEE for any sums of money accruing or becoming due or payable prior to the date of surrender or termination. Upon surrender or termination of this license by the LICENSEE royalties at the rate last paid or payable by the LICENSEE upon the LICENSED PRODUCT shall accrue and become immediately due and payable for all of the product manufactured and on hand, or in course of manufacture, or sold and payment for which has not yet been received.

And upon such surrender all obligations or admissions of the licensee under paragraphs 6 to 11 thereof, shall immediately cease and terminate.

14.—This license may be assigned by the LICENSEE as a part of a sale of its entire business, but the LICENSEE shall give the LICENSOR immediate notice of such sale.

15.—All written notices or permissions referred to herein shall be given by registered mail addressed to the last known address of the respective parties.

16.—This agreement shall be interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have hereunto caused their respective corporate seals to be hereunto affixed and duly attested and these presents to be signed by their duly authorized officers, the day and year first above written.

THE CHEMICAL FOUNDATION, INC.
By (Sgd.) DOUGLAS I. MCKAY,
Vice President.

Attest:
(Seal) (Sgd.) GEO. J. CORBETT,
Secretary.

(Sgd.) ATMOSPHERIC NITROGEN CORP.
By E. L. PIERCE
President.

Attest:
(Seal) (Sgd.) E. L. JONES,
Secretary.

SCHEDULE A.

Patent No.	Date of Issue	Subject
739,920	Sept. 29, 1903	Apparatus for treating gases.
754,474	Mar. 15, 1904	Process of making Nitrogen compounds from Atmospheric Nitrogen.
758,775	May 3, 1904	Apparatus for treating gases.
792,379	June 13, 1905	Ammonia-still.
797,961	Aug. 22, 1905	Process of making Ammonia.
797,962	Aug. 22, 1905	Process of making Ammonia.

Patent No.	Date of Issue	Subject
804,021	Nov. 7, 1905	Means for producing oxids of nitrogen.
814,917	Mar. 13, 1906	Process of making Nitric Acid from air.
850,392	Apr. 16, 1907	Process of Oxidizing Atmospheric Nitrogen.
884,919	Apr. 14, 1908	Process for making Nitrogen Oxide from air.
884,920	Apr. 14, 1908	Process for making Nitrogen Oxide from air.
895,313	Aug. 4, 1908	Gas Purifier.
911,801	Feb. 9, 1909	Gas Generator.
918,589	Apr. 20, 1909	Apparatus for separating Nitrogen and Oxygen from Mixture containing them.
922,003	May 18, 1909	Process of making Ammonia.
923,012	May 25, 1909	Production of Cyanid and Cyanamid.
941,768	Nov. 30, 1909	Electric Furnace for Gas reactions.
957,843	May 10, 1910	Process of making Ammonia.
964,415	July 12, 1910	Method of producing Hydrogen from Watergas.
965,482	July 26, 1910	Process of manufacturing Gas for inflating Aerostats.
970,883	Sept. 20, 1910	Process of obtaining Ammonia.
971,149	Sept. 27, 1910	Catalytic body and method of making same.
971,206	Sept. 27, 1910	Process of producing Hydrogen.
971,501	Sept. 27, 1910	Production of Ammonia.
981,727	Jan. 17, 1911	Means for Electric-arc reactions on gases.
984,605	Feb. 21, 1911	Method of producing Nitrogen and Carbon Dioxid from Gaseous products of combustion.
984,925	Feb. 21, 1911	Process of Oxidizing Nitrogen of Air by means of electric discharges.
990,191	Apr. 18, 1911	Process of producing Ammonia.
993,144	May 23, 1911	Process of producing Ammonia.
994,095	May 30, 1911	Process of making Nitrogenous compounds.
999,025	July 25, 1911	Process of making Ammonia.
1,000,732	Aug. 15, 1911	Process of making Nitric Oxid.
1,006,206	Oct. 17, 1911	Production of Ammonia.
1,008,927	Nov. 14, 1911	Process of making Calcium Cyanamid.
1,011,014	Dec. 5, 1911	Process of manufacturing Oxids of Nitrogen.

Patent No.	Date of Issue	Subject
1,015,566	Jan. 23, 1912	Process of obtaining and separating Oxygen and Nitrogen from the Atmosphere.
1,015,800	Jan. 30, 1912	Process for the manufacture of the Fatty Acids from their Esters.
1,018,990	Feb. 27, 1912	Method of an apparatus for producing and utilizing disk-like Electric Arcs for effecting Gas reactions.
1,022,351	Apr. 2, 1912	Process for producing Cyanids & Cyanamids.
1,028,366	June 4, 1912	Apparatus for producing Hydrogen Gas.
1,029,528	June 11, 1912	Process of absorbing Oxids of Nitrogen.
1,035,873	Aug. 20, 1912	Process for producing Endothermic Gas reactions and apparatus therefor.
1,039,851	Oct. 1, 1912	Method and apparatus for the carrying out of Gas Reactions by means of an Electric Arc.
1,039,852	Oct. 1, 1912	Method and apparatus for carrying out Gas Reactions by the use of an Electric Arc.
1,040,218	Oct. 1, 1912	Process of purifying Crude Gas.
1,043,798	Nov. 12, 1912	Process of producing Ammonia and Aluminum compounds.
1,053,951	Feb. 18, 1913	Process of making Ammonia.
1,053,952	Feb. 18, 1913	Process of manufacturing Ammonia.
1,054,901	Mar. 4, 1913	Compounds containing Silicon and Nitrogen and process of producing such compounds.
1,055,331	Mar. 11, 1913	Apparatus for carrying out Gas reactions particularly for the production of Oxid of Nitrogen in the Electric Arc.
1,058,653	Apr. 8, 1913	Process for carrying through Chemical Gas reactions by means of an enlarged electrical discharge.
1,059,817	Apr. 22, 1913	Apparatus for the manufacture of Hydrogen.
1,059,818	Apr. 22, 1913	Process for the manufacture of Hydrogen from Metals and Water.
1,061,725	May 13, 1913	Process of producing Molybdenum Nitrid.
1,068,966	July 29, 1913	Production of Ammonia and Catalytic agents for use therein.

Patent No.	Date of Issue	Subject
1,068,967	July 29, 1913	Production of Ammonia and Catalytic agents for use therein.
1,068,968	July 29, 1913	Production of Ammonia and Catalytic agents for use therein.
1,068,969	July 29, 1913	Production of Ammonia and Catalytic agents for use therein.
1,070,138	Aug. 12, 1913	Process for the preparation of Catalytic substances in a minutely divided state.
1,073,823	Sept. 23, 1913	Device for Synthesizing gases.
1,073,870	Sept. 23, 1913	Device for Synthesizing gases.
1,075,085	Oct. 7, 1913	Working with Hydrogen under pressure.
1,077,034	Oct. 28, 1913	Process of working with Hydrogen under pressure.
1,078,423	Nov. 11, 1913	Apparatus for obtaining Nitrogen from the atmosphere.
1,078,686	Nov. 18, 1913	Process for the production of Hydrogen.
1,079,705	Nov. 25, 1913	Process for Synthetically preparing Ammonia and other compounds containing Nitrogen and Hydrogen.
1,083,585	Jan. 6, 1914	Catalytic production of Ammonia.
1,083,703	Jan. 6, 1914	Method of Producing Ammonia and Compounds of Ammonia.
1,089,185	Mar. 3, 1914	Producing Ammonia.
1,090,874	Mar. 24, 1914	Process of bringing Hydrogen or Hydrogen containing Gas mixtures to reaction and apparatus therefor.
1,094,194	Apr. 12, 1914	Production of Ammonia.
1,096,392	May 12, 1914	Process of producing Nitrogen simultaneously with Oxids of Nitrogen.
1,096,393	May 12, 1914	Process of producing Nitrogen simultaneously with Oxids of Nitrogen.
1,098,139	May 26, 1914	Production of mixtures of Nitrogen and Hydrogen suitable for the manufacture of Ammonia.
1,101,424	June 23, 1914	Process of making Nitrogen compounds.
1,102,716	July 7, 1914	Producing Hydrogen and apparatus therefor.
1,107,926	Aug. 18, 1914	Process of producing Hydrogen.
1,109,447	Sept. 1, 1914	Generation of Hydrogen by means of Iron.

Patent No.	Date of Issue	Subject
1,109,448	Sept. 1, 1914	Manufacture of Hydrogen.
1,113,096	Oct. 6, 1914	Process of producing Hydrogen.
1,113,097	Oct. 6, 1914	Process of producing Hydrogen.
1,115,249	Oct. 27, 1914	Means for the production of long continuous Electric arcs.
1,115,776	Nov. 3, 1914	Producing Hydrogen.
1,118,595	Nov. 24, 1914	Process of producing Hydrogen.
1,118,628	Nov. 24, 1914	Producing Ammonia.
1,119,534	Dec. 1, 1914	Method for the preparation of Ammonia from the elements.
1,126,371	Jan. 26, 1915	Process of purifying Hydrogen Gas.
1,128,804	Feb. 16, 1915	Process of producing Hydrogen.
1,128,843	Feb. 16, 1915	Production of Ammonia.
1,129,559	Feb. 23, 1915	Reducing and Oxidizing apparatus for generating Hydrogen from Iron ore and Steam.
1,133,087	Mar. 23, 1915	Purification of Hydrogen.
1,134,416	Apr. 6, 1915	Process of making Hydrogen.
1,144,730	June 29, 1915	Process of producing Hydrogen.
1,148,570	Aug. 3, 1915	Catalytic agent for use in producing ammonia.
1,149,510	Aug. 10, 1915	Producing Ammonia.
1,152,196	Aug. 13, 1915	Process of making Hydrogen.
1,152,197	Aug. 13, 1915	Process of an apparatus for making Hydrogen.
1,152,930	Sept. 7, 1915	Production of Ammonia.
1,157,253	Oct. 19, 1915	Process for the manufacture of Ammonia from its elements.
1,158,167	Oct. 26, 1915	Production of Ammonia.
1,159,865	Nov. 9, 1915	Apparatus for effecting reaction of Hydrogen under pressure.
1,169,817	Feb. 1, 1916	Method of carrying out gas reactions in an Electric Furnace.
1,172,863	Feb. 22, 1916	Process for producing Nitrogen compounds.
1,172,908	Feb. 22, 1916	Manufacture of Hydrogen.
1,172,925	Feb. 22, 1916	Process of producing Hydrogen or Illuminating and Heating Gas.
1,173,532	Feb. 29, 1916	Catalytic agents and process of making them.
1,175,693	Mar. 14, 1916	Process of producing Tungsten.
1,178,440	Apr. 4, 1916	Process for the manufacture of Nitric Acid or Nitrates from Nitrogen Oxids.
1,188,191	June 20, 1916	Process of Liquefying Gas Mixtures and for separating the constituents.

Patent No.	Date of Issue	Subject
1,200,805	Oct. 10, 1916	Process of producing Hydrogen.
1,201,607	Oct. 17, 1916	Electric Furnace.
1,202,995	Oct. 31, 1916	Production of Ammonia.
1,207,706	Dec. 12, 1916	Manufacture of Oxids of Nitrogen.
1,207,707	Dec. 12, 1916	Manufacture of Oxids of Nitrogen.
1,207,708	Dec. 12, 1916	Manufacture of Oxids of Nitrogen.
1,211,181	Jan. 2, 1917	Apparatus for the production of Nitrogen compounds.
1,211,394	Jan. 9, 1917	Catalyzer.
1,212,504	Jan. 16, 1917	Process of preparing Nitrogen compounds.
1,215,957	Feb. 13, 1917	Apparatus for liquefying and separating gases.
1,216,059	Feb. 13, 1917	Absorbing Ammonia & Apparatus therefor.
1,225,263	May 8, 1917	Apparatus for producing Hydrogen.
1,225,264	May 8, 1917	Process for producing Hydrogen.
1,225,755	May 15, 1917	Catalytic production of Ammonia.
1,243,382	Oct. 16, 1917	Producing Ammonia.
1,244,580	Oct. 30, 1917	Producing Ammonia.
1,256,875	Feb. 19, 1918	Process for producing Ammonia.
1,261,900	Apr. 9, 1918	Purifying Ammonia.
1,278,580	Sept. 10, 1918	Producing compounds containing Tungsten and Nitrogen.
1,286,650	Dec. 3, 1918	Producing Hydrogen.
1,301,151	Apr. 22, 1919	Producing Hydrogen.
1,322,291	Nov. 18, 1919	Method of oxidizing Ammonia.
1,330,772	Feb. 10, 1920	Producing Hydrogen.

And all other applications or patents for the production of ammonia, products, or by-products therefrom or materials or processes suitable for use therein, which may be owned or may hereafter be acquired by The Chemical Foundation.

PLAINTIFF'S EXHIBIT No. 734.

STATEMENT FROM CHENEY BROTHERS.
GERMAN COLORS USED DURING 1922.

Acid

Cyanole Extra	100
*Acid Blue OO	500
*Brilliant Acid Blue V	300
Silk Blue BT5BOO	389
*Rose Induline 2B	314
	1603

Alizarine

Alizarine Sky Blue B	834
" Uranole 2B	155
" Astrole B	97
" Cyanine Green 3G	691
Acid Aliz. Grey G	200
Aliz. Rubinole R	790
" " GW	100
" Irisole R	50
	2917

Basic

Nile Blue BX	425
Diphene Blue R	1728
Rhodamine 6GEX	22
	2175

Direct

*Diamine Fast Blue FFB	801
*Benzo Fast Blue 4GL	705
Napthamine Fast Brown BL	251
Diamine Fast Orange EG	171
Diamine Fast Orange ER	37
Zambesi Brown 4R	205
Diamine Scarlet 3B	448
	2618

Vat

Indigo MLB6B Powder	600
Helindone Blue 3GN Powd.	85
Ind. Blue GC Powder	27
Helindone Brown G Powd.	150
Hel. Green G Powder	44
Ind. Olive G Powder	4
*Helindone Grey GT Powder	200
Helindone Orange R Powder	258
Ind. Gold Orange G Paste	355
Ind. Gold Orange RRT Paste	100
Ind. Claret B Ex. Paste	185
Ind. Red BN Ex. Paste	4
Hel. Red 3B Powd.	25
Algol Brill. Violet 2B Powd.	170
Thio Indigo Violet R Powd.	50
Anthraflavone GC Paste	450
	2707

*—these colors are now being substituted by American-made colors

PLAINTIFF'S EXHIBIT No. 734-A.

STATEMENT FROM CHENEY BROTHERS.

CHIEF COLORS OF AMERICAN MANUFACTURE PURCHASED IN 1922.

American Name	Corresponding German Color in 1913	Price 1922	Price 1913
Acid Colors			
Induline NT	Induline #2	0.85	0.46
Indian Yellow	Azo Yellow	1.08	0.35
Orange Y	Orange #2	0.33	0.175
Fast Red S	Fast Red A	0.75	0.27
Acid Blue R	Acid Violet 5B Ex.	2.50	0.68
Basic Colors			
Victoria Blue B	Victoria Blue B	2.00	0.37
Brilliant Green Crys.	Brilliant Green Crys.	1.68	0.52
Vic. Green Crys.	Malachite Green Crys.	1.45	0.425
Rhodamine B Ex.	Rhodamine B Ex.	7.50	0.90
Methyl Violet 4B	Methyl Violet 4B	1.15	0.63
Direct Colors			
Erie Black GXOO	Direct Jet Black	0.35	0.22
Direct Sky Blue	Dianil Blue 7B	1.02	0.61
Erie Fast Brown GR	Diamine Brown 3G	0.81	0.50
Chrysophenine Extr	Chrysophenine ES	0.91	0.75
Direct Yellow G	Dianil Direct Yellow S	0.77	0.67

PLAINTIFF'S EXHIBIT No. 734-B.

STATEMENT FROM CHENEY BROTHERS.

Dyestuffs Purchased from Germany in 1921.

Color	*Average Price* 1921	*Average Price* 1913
Acid Alizarine Grey G	3.55	1.10
Alizarine Rubinole R	6.00	1.80
Alizarine Rubinole GW	5.47	1.70
Alizarine Sky Blue B	5.20	2.35
Anthraflavone GC Paste	2.80	. . .
Benzo Fast Black L	2.71	0.55
Benzo Fast Orange S.	2.76	0.50

Color	*Average*	*Price*
Benzo Fast Red 8BL	2.75	. . .
(Benzo Fast Blue 4GL	4.00	. . .
(Napthamine Fast Blue 4B	. . .	1.20
Chinoline Yellow KT Ex. Conc.	4.17	0.95
Cyanole Extra	3.07	1.00
Diamine Fast Blue FFB	2.36	0.75
Diamine Fast Orange EG	1.84	. . .
Diamine Fast Orange ER	1.84	. . .
Diamine Scarlet 3B	2.06	. . .
Diamine Scarlet HS	3.30	0.65
Diphene Blue R	3.32	0.65
Helindone Brown G Powder	16.63	4.85
Helindone Brown 2R Powder	20.41	6.75
Helindone Grey GT Powder	1.10	1.40
Helindone Pink BN Paste	2.82	0.80
Helindone Red 3B Powder	20.00	3.50
Indanthrene Gold Orange G Paste	1.30	0.62
Indigo MLB6B Powder	5.28	5.39
Napthamine Fast Brown BL	2.25	. . .
Nile Blue BX	7.45	. . .
Rhodamine 6G Ex.	12.32	1.95
Silk Blue BT5BOO	8.68	1.65
Thio Indigo Violet R Powder	22.05	. . .
Zambezi Brown 4R	2.56	. . .

PLAINTIFF'S EXHIBIT No. 734-C.

ADDITIONAL TESTIMONY FURNISHED BY
MR. FRANKLIN W. HOBBS, PRESIDENT,
ARLINGTON MILLS
78 Chauncy St.,
Boston, Mass.

CHROME BLUE BLACK GROUP, SCHULTZ, No. 181.

This dyestuff was not used by us before the war except in a mixture with other dyestuffs, namely, Salicine Alizarine Blue 2 B made by Kalle, the price of which in 1914 was 65 cents. We bought some in April 1915 at $1.10. This mixture, I believe to be about two-thirds Chrome Blue Black and one-third Sulphon Acid Blue R. The Sulphon Acid Blue R was being sold at that time by Bayer for 60 cents. The price of the Blue Black itself we therefore did not know at that time.

We first bought this color from the National Aniline & Chemical Co. in March 1919 at $1.65.

SULPHON CYANINE 5R—SCHULTZ No. 257.

Jan. 1913	Bayer	30¢
Jan. 1913	Badische	28¢
Apr. 1913	Rosentwist	60¢
June 1913	Klipstein	26¢
Aug. 1914	Badische	$1.00
Jan. 1917	National	2.50
Apr. 1917	National	2.75
May 1918	National	2.15

SULPHON ACID BLUE GROUP—SCHULTZ No. 188.

Jan. 1913	Bayer	65¢
Feb. 1913	Bayer	60¢
Mar. 1914	Bayer	45¢
Oct. 1916	National	$2.75
Jan. 1917	National	2.75
Mar. 1918	National	2.25
Apr. 1918	National	2.15
Apr. 1919	National	1.90

DIAZO BLACK GROUP—SCHULTZ No. 333.

Jan. 1913	Bayer	28¢
June 1913	Cassella	30¢
Dec. 1913	Cassella	28¢
Apr. 1914	Bayer	22¢
Apr. 1915	Cassella	40¢
Feb. 1918	National	$3.25
Dec. 1918	National	2.90

ALIZARINE YELLOW G G W TYPE—SCHULTZ No. 48

1913 Hoechst $2.25

This is the basis for all Khaki or O. D. colors and can be bought today from American manufacturers at 60 cents per pound.

(Sgd.) FRANKLIN W. HOBBS.

July 18, 1923.

TRANSCRIPT OF RECORD

DEFENDANT'S EXHIBIT No. 1.

Note: This exhibit afterwards stricken out by the Court.

DEFENDANT'S EXHIBIT No. 2.

Copy

February 28th, 1919.

Mr. H. E. Danner, Treas.,
American Dyes Institute,
320 Broadway,
New York City.

Dear Sir:

I submit to you herewith report of work done in connection with abstracting, reporting and demanding patents from February 5th to February 25th inclusive, together with statement of expenditures hereto attached, Schedule "B" with receipts attached being the amounts paid, *and Schedule "C" the amounts due.*

From February 5th to the 23rd inclusive, I had abstracted 3520 patents. Of this number 330 were found to be American owned, and 99 to be owned by Neutrals or Allies. Three thousand and eighty-six were found to be owned by persons, firms or corporations in Germany or Austria, for which reports and demands were prepared at the expense of the institute, with the exception of stamping the report and trust number on each, which is now being done at the Alien Property Custodian's office. In addition to this number 423 of the Badische patents previously reported were added. A summary of the patents abstracted is hereto attached, and marked Schedule "A".

I employed Mr. E. T. Brandenburg as Chief Abstractor with authority to employ other abstractors, one shift for day work and another shift for night work, the patent office being open by special permission nights, Sundays and Holidays for this work. I authorized Mr. Brandenburg to pay for the abstracting at the rate of $25.00 a day for day work, and $4.00 an hour for night and Sunday work, this being the same rates paid by Mr. Hoguet for similar work during the last two months.

I considered the appointment of Mr. Brandenburg as Chief Abstractor absolutely necessary in that it was a physical impossibility for me to personally stay in the patent office day and night, and at the same time direct the clerical work of four offices. I agree to pay Mr. Brandenburg $50.00 a day, as he worked both day and night, and I used his office as a main office for myself and typists.

The Alien Property Custodian's office supplied me with filing cases and folders, carbon paper, paper clips, memorandum pads, and one typewriter. The Dye Institute was charged with only such supplies as were not available from the Alien Property Custodian's office, such as rental of typewriters, printing of reports, etc.

The printing bill seems to me to be rather high, and I am enclosing you herewith copy of my letter to Mr. Barrows relative to same, which is self-explanatory.

Bill for typewriting is higher than I had expected because I did not realize the enormous amount of work involved, but considering that four sheets were necessary (original and duplicate) for every patent report made, and ten sheets were necessary for every demand written (original and four duplicates), it required a great deal of time, in fact about as much time in arranging and separating carbons and copies as in actual typewriting. Am enclosing blank copies of forms used.

I had from twenty-twenty-five stenographers in addition to the two brought down by Mr. Barrows from New York, and found it necessary to use four offices for the report and demand writing.

Good typists are very hard to get in Washington, as those few who have been released by the government departments have been immediately transferred to other departments. I had several whose advertisements I answered to refuse temporary work, and the typewriter companies could not supply me with typists. Therefore, I had to make it attractive for those I employed, most of whom were "off on sick leave" (?) from several departments, everyone of whom were experts, and Mr. Barrows, who understands from firsthand knowledge the scarcity of typists, agreed with me that $1.00 an hour for day work, and $1.50 an hour for night, Sunday and holiday work, was the best we could do under the circumstances, this being the smallest rate charged by public stenographers, and I could not use public stenographers with any degree of success because they would not work more than a few hours a day in order that they might continue the work of their regular customers.

It was necessary that an attorney be in charge of each of the four offices in order to interpret abstractors' reports of doubtful cases, and see that the checking and verifying was carefully done, and otherwise manage the force. This work was done by Mr. Everett from Mr. Hoguet's office, Mr. F. E. Haynes of Washington, M. C. D. Shreve of Wash. and myself in charge of the main office, Mr. Shreve using his own office and typewriters. Mr. Everett's services were loaned by Mr. Hoguet. The only expense to the Dye Institute was his hotel and traveling expenses. I agreed to pay Mr. Shreve $3.00 an hour for his time, and Mr. Haynes $2.00 an hour, Mr. Haynes being a younger man, and with less experience, and not using his own office and typewriters.

I have $16.14 left in bank, and owe $1891.04 as itemized in Schedule "C" attached. Please send me a check for $2000.00 to cover the amounts due, and to pay for the abstracting of 87 additional patents as follows: 20 Licenses by the Federal Trade Commission not heretofore included, 46 Cassella Co. patents, 17 Badische Co. patents, and four others. Mr. Hoguet having directed me this week to include the foregoing, I will remit to you whatever balance I have after paying for the foregoing.

I expect to move back to the Alien Property Custodian's office tomorrow, and the typewriting in connection with these reports and demands will be done by my stenographer there.

I trust that the foregoing report contains all the information you desire at present, but if not, I shall be very glad to go into further details of any branch of the work.

The expense is about twice as much as I thought it would be, but more than twice as much work has been done than I expected to do, as Mr. Hoguet, as well as other officers of the Alien Property Custodian's office, expected that 2000 patents, including the 423 Badische patents, would be about as many as it would be possible to abstract and report, but every single person engaged in this work has worked to the maximum of human endurance from nine o'clock in the morning until twelve and one every night, and though we may have made a few mistakes, I consider that some mistakes were inevitable on account of the enormous amounts of work involved, and the rush in which it was done.

Very truly yours,

WILL T. GORDON.

For Bureau of Investigation.

WTG/JL.

Copy to Mr. Ramsay Hoguet.

SCHEDULE A

Total number patents & applications abstracted..3515
American & Neutral owned........................429

Wholly or partially enemy owned..............3086
Badische Co. patents previously reported........423

Total on Sales List 3509

SCHEDULE B

	Paid by Check No.	*Name*	*Amount*
2-10-19	1	E. T. Brandenburg	$446.00
2-11-19	2	Underwood Typewriter Co.	3.50
2-15-19	3	Miss Josephine Lavinder	78.00
2-16-19	4	C. D. Shreve	129.00
2-15-19	5	Miss Edna P. Swanson	33.00
2-15-19	6	Miss Greta Hazelhurst	51.00
2-17-19	x	Notes Auction House	8.00
2-17-19	9	E. T. Brandenburg	1695.25
2-18-19	10	H. F. Clark, Jr.	28.65
2-18-19	11	Webster Electric Co.	2.50
2-18-19	12	Rebuilt Typewriter Co.	2.50
2-19-19	13	Underwood Typewriter Co.	8.00
2-24-19	14	Ringgold Hart Notary Fees for 169 reports	42.25
2-24-19	15	Jas. T. Wood	200.00
2-25-19	16	Horace F. Clark	11.65
2-[illegible]-19	17	Mrs. R. H. Cromwell	81.25
[illegible]-19	18	Miss Louise Faber	91.50
2-24-19	19	Miss Leona Faber	87.75
2-27-19	20	Mrs. B. B. Thompson	97.06
2-27-19	21	P. E. Everett	38.00
2-27-19	22	Miss Edna L. Fox	150.00
2-26-19	23	Miss Josephine Lavinder	37.50

	Paid by Check No.		*Amount*
2-26-19	24	Miss Greta Hazelhurst	$30.00
2-26-19	25	Miss Irma B. Rhodes	69.50
2-26-19	26	Miss Edna P. Swanson	63.00
2-26-19	27	Miss Dorothy V. Aplin	251.00
2-26-19	28	E. T. Brandenburg	633.25
2-28-19	29	Miss Pauline Cauthen	54.75
2-28-19	30	Miss Ruth Stewart	26.25
2-28-19	31	Miss Mary L. Morgan	33.75
			4483.86

Receipts showing foregoing hereto attached.

SCHEDULE C

C. D. Shreve & two typists, day, night & Sunday work	$585.00
F. E. Haynes, night & Sunday work	124.00
E. T. Brandenburg & 5 abstractors	947.00
Bal. on printing bill	228.04
Underwood Typewriter Co.	7.00
	$1891.04

DEFENDANT'S EXHIBIT No. 3.

ALIEN PROPERTY CUSTODIAN
SIXTEENTH AND P STREETS NW.
Washington, D. C.

A.P.C.
RE CHEMICAL INDUSTRIES MATTER

Bureau of Investigation
FRANCIS P. GARVAN
Director

February 3, 1919.

Mr. Ramsey Hoguet,
Singer Building,
New York City.

Dear Sir:

I am enclosing you herewith copy of my letter to Mr. Poucher, which I think covers the instructions you gave me Saturday as to the proper conduct of the work of abstracting, reporting, and demanding enemy patents.

I have arranged for at least one stenographer to be furnished by the Alien Property Custodian and I will devote my entire time in the Washington Loan & Trust Building parcelling out and directing the work.

I suggest that in the event the proposed meeting of the Institute is held Tuesday, which I understand Mr. Barrows will attend, that you may add whatever you see fit to my letter to Mr. Poucher with reference to the possible opposition occasioned by the discussion of the plan on the part of Mr. Barrows with the Federal Trade or its licensees, as it may be possible that Mr. Poucher will not receive my letter before attending this meeting.

Very truly yours,
(Sgd.) WILL T. GORDON,
For Director,
Bureau of Investigation.

WTG:LBF

DEFENDANT'S EXHIBIT No. 3-A.

February 3, 1919.

Mr. M. R. Poucher,
Chairman, Committee of American Dyes Institute,
% E. I. DuPont De Nemours Company,
Wilmington, Delaware.

Dear Sir:

As directed by Mr. Hoguet while in New York Saturday, I have instructed several patent abstractors to report to me at the Washington Loan & Trust Building Tuesday, February 4th, to begin work on Classes 8 and 23. The stenographic help and my services, of course, to be furnished by the Alien Property Custodian.

The abstractors expect their pay by the week, so I am drawing on you for $500.00 initial expense in accordance with your agreement with Mr. Hoguet. I shall deposit this fund in the Washington Loan & Trust Company, Will T. Gordon, Agent, and keep a strict account of expenditures and vouchers showing items paid, which will be subject to inspection at all times.

Mr. Barrows representing the American Analine & Chemical Company and Mr. Squares representing the DuPont Company are here now determining how many classes and sub-classes of patents shall be abstracted at the expense of the Institute. Mr. Barrows discussed with me Saturday the advisability of disclosing the plan of the proposed purchase to the Federal Trade Commission and also to the various parties holding license under the Federal Trade Commission, for the purpose of enlisting their cooperation.

I have advised Mr. Barrows positively against such action. Mr. Palmer, Mr. Hoguet, and myself are fully informed as to the Federal Trade Commission's attitude, and I am positive that any discussion between Mr. Barrows or other members of the Institute and the Federal Trade Commission or its licensees will not have a good effect.

Mr. Hoguet was very positive Saturday in instructing me as to the direction of this work, which is being done primarily for the Alien Property Custodian and after Mr. Barrows and Mr. Squares have determined the classes of patents to be searched at the expense of the Institute, the only further service I could suggest for them for the time being is the work of abstracting, should they see fit to engage in such work.

Very truly yours,
WILL T. GORDON,
For Director,
Bureau of Investigation.

WTG:LBF

DEFENDANT'S EXHIBIT No. 4.

Order by Frank L. Polk dated December 4, 1918.

(Note: Same as Plaintiff's Exhibit No. 728 and not reprinted here. See Record, Exhibits, Volume III, page 1874.)

DEFENDANT'S EXHIBIT No. 4-A.

Order by Frank L. Polk dated January 11, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-A and not reprinted here. See Record, Exhibits, Volume III, page 1876.)

DEFENDANT'S EXHIBIT No. 4-B.

Order by Frank L. Polk dated February 26, 1919.

(Note: Same as Plaintiff's Exhibit No. 91, Plaintiff's Exhibit No. 728-B and Defendant's Exhibit No. 3 to Answer, and not reprinted here. See Record, Volume I, page 551.)

DEFENDANT'S EXHIBIT No. 4-C.

Order by Frank L. Polk dated March 24, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-C and not reprinted here. See Record, Exhibits, Volume III, page 1882.)

DEFENDANT'S EXHIBIT No. 4-D.

Order by Frank L. Polk dated March 24, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-D and not reprinted here. See Record, Exhibits, Volume III, page 1886.)

DEFENDANT'S EXHIBIT No. 4-E.

Order by Frank L. Polk dated April 5, 1919.

(Note: Same as Plaintiff's Exhibits No. 94 and No. 728-E, and Exhibit 4 to Defendant's Answer, and not reprinted here. See Record, Volume I, page 554.)

DEFENDANT'S EXHIBIT No. 4-F.

Order by Frank L. Polk dated April 5, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-F and not reprinted here. See Record, Exhibits, Volume III, page 1895.)

DEFENDANT'S EXHIBIT No. 4-G.

Order by Frank L. Polk dated April 8, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-G and not reprinted here. See Record, Exhibits, Volume III, page 1896.)

DEFENDANT'S EXHIBIT No. 4-H.

Order by Frank L. Polk dated April 18, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-H and not reprinted here. See Record, Exhibits, Volume III, page 1899.)

DEFENDANT'S EXHIBIT No. 4-I.

Order by Frank L. Polk dated May 7, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-I and not reprinted here. See Record, Exhibits, Volume III, page 1903.)

DEFENDANT'S EXHIBIT No. 4-J.

Order by Frank L. Polk dated May 28, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-J and not reprinted here. See Record, Exhibits, Volume III, page 1906.)

DEFENDANT'S EXHIBIT No. 4-K.

Order by Frank L. Polk dated May 28, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-K and not reprinted here. See Record, Exhibits, Volume III, page 1908.)

DEFENDANT'S EXHIBIT No. 4-L.

Order by Frank L. Polk dated May 28, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-L and not reprinted here. See Record, Exhibits, Volume III, page 1914.)

DEFENDANT'S EXHIBIT No. 4-M.

Order by Frank L. Polk dated June 10, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-M and not reprinted here. See Record, Exhibits, Volume III, page 1917.)

DEFENDANT'S EXHIBIT No. 4-N.

Order by Frank L. Polk dated June 18, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-N and not reprinted here. See Record, Exhibits, Volume III, page 1919.)

DEFENDANT'S EXHIBIT No. 4-O.

Order by Frank L. Polk dated June 24, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-O and not reprinted here. See Record, Exhibits, Volume III, page 1920.)

DEFENDANT'S EXHIBIT No. 4-P.

Order by Frank L. Polk dated July 8, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-P and not reprinted here. See Record, Exhibits, Volume III, page 1922.)

DEFENDANT'S EXHIBIT No. 4-Q.

Order by Frank L. Polk dated July 8, 1919.

(Note: Same as Plaintiff's Exhibit No. 728-Q and not reprinted here. See Record, Exhibits, Volume III, page 1924.

DEFENDANT'S EXHIBIT No. 5.

COPY OF AGREEMENT OF SETTLEMENT—FARBWERKE-HOECHST CO. AND HERMAN A. METZ WITH DERMATOLOGICAL RESEARCH LABORATORIES, UNINCORPORATED; JAY FRANK SCHAMBERG, M. D.; GEORGE W. RAIZISS, PH. D.; AND JOHN A. KOLMER, M. D.

Whereas Dermatological Research Laboratories, unincorporated (hereinafter designated for convenience and easy reference "The Laboratories") did, without protest of Farbwerke-Hoechst Co. (hereinafter designated for convenience and easy reference "Hoechst Co."), compound and sell a drug known as arsenobenzol for remedy, cure, and protection of and against syphilis; and

Whereas Jay Frank Schamberg, M. D., because of his professional standing, his scientific contributions to medicine and his leadership in dermatological research work, was selected the director of The Laboratories; and

Whereas Farbwerke, vormals Meister Lucius and Brüning, Hoechst on the Main (hereinafter designated for convenience and easy reference "The Foreign Corporation") is a foreign corporation, duly organized and existing under the laws of Germany, Europe, and is the owner of, or the patentee named in, certain patents of the United States, issued March 7, 1911, and November 11, 1913, and numbered 986,148 and 1,078,135, respectively, for a specific for syphilic and process of making the same, which specific is known as diamino-dioxyarsenobenzol, and when manufactured by or under instruction by The Foreign Corporation is known by the trade-mark "Salvarsan" and "606" and "Neosalvarsan"; and

Whereas Herman A. Metz (hereinafter designated for convenience and easy reference "Mr. Metz") is the president of Hoechst Co. and represents that he is the sole owner of all the capital stock issued by Hoechst Co. and that Hoechst Co. is a domestic corporation, duly organized and existing under the laws of the State of New York, and is solvent and has no indebtedness, and that The Foreign Corporation has assigned to Hoechst Co. the sole and exclusive right of exploitation in the United States of America of salvarsan, and that Hoechst Co. is the sole licensee for the United States and Canada for salvarsan and for other modern medicinal preparations of The Foreign Corporation; and

Whereas Mr. Metz and Hoechst Co. have requested The Laboratories to discontinue the compounding and sale of arsenobenzol and to sell to their nominee about 12,000 ampouls of arsenobenzol now held in stock by The Laboratories; and

Whereas The Foreign Corporation and Hoechst Co. claim that the manufacture of arsenobenzol is an infringement of the said patents and other patents, recipes, and processes owned by them, and have demanded damages and an accounting of the profits arising from the sales of arsenobenzol, but which claim and the validity of which patents The Laboratories do not admit and which demand The Laboratories have refused; and

Whereas, at the request of Hoechst Co. and Mr. Metz, The Laboratories have dismantled that part of their laboratory which was constructed specially for the manufacture of arsenobenzol; and

Whereas Hoechst Co. and Mr. Metz have requested The Laboratories to disclose the names and furnish a list of the druggists and supply houses to whom The Laboratories have sold arsenobenzol and of the amount of such sales, which request The Laboratories has agreed to grant, provided said list be a part of, and not a prerequisite to, said settlement; and

Whereas the parties hereto are desirous of settling all and every the differences, claims, demands, and controversies between them, Hoechst Co. and the Foreign Corporation and Mr. Metz being represented in said settlement by Messrs. Gifford & Bull, their attorneys at law, and The Laboratories and Drs. Jay Frank Schamberg, George W. Raiziss, and John A. Kolmer being represented by Messrs. Ira Leo Bamberger and Sidney Lowenthal, their attorneys at law.

Now therefore, in consideration of the premises and of the sum of $1 to each of the parties hereto paid by the other of them, at and before the ensealing and delivery of this agreement, the receipt whereof is hereby acknowldged, Hoechst Co. for itself, its successors, and assigns, and Mr. Metz for himself, his legal representatives, and assigns, as parties of the first part, and The Laboratories for itself, its successors, and assigns, and Drs. Schamberg, Raiziss, and Kolmer for themselves, their and each of their legal representatives, and assigns, as parties of the second part, promise and agree to and with each other in manner following that is to say:

1. The Laboratories and Drs. Schamberg, Raiziss, and Kolmer shall not and will not, during the life, term, or nonsuspension of said patents or either of them, either jointly, severally, individually, or directly or indirectly, except as hereinafter provided in paragraph 2, continue the compounding, preparation, or sale in the United States of America of arsenobenzol.

2. The Laboratories shall have the right to compound arsenobenzol for the purposes of experiments in Dr. Schamberg's laboratory and also for use only on charity patients, without charge for medicine or

Laboratories and Drs. Schamberg, Raiziss, and Kolmer, or any or either of them, for an infringement of the said patents or for profits or damages or other causes arising out of the compounding and sale of Arsenobenzol and also all counsel fees, costs and expenses connected with or arising out of said claims, or in actions in which the said judgments are obtained, and hereby guarantees to hold The Laboratories, its successors and assigns, and Drs. Schamberg, Raiziss, and Kolmer and each of them, their and each of their representatives and assigns, free and harmless of and from all expenses and losses of every kind, by reason of claims which may be made by any person or persons having any interest in said patents, and by reason of the judgments which may be recovered by any person or persons having any interest in said patents, for an infringement of said patents or for damages sustained by them or otherwise.

In witness whereof Farbwerke-Hoechst Co. and Herman A. Metz, as parties of the first part, and Dermatological Research Laboratories, unincorporated, Drs. Jay Frank Schamberg, George W. Raiziss, and John A. Kolmer, as parties of the second part, have hereunto set their hands and seals at the city of New York, in the Borough of Manhattan, on the 5th day of December, 1916.

[Seal.] FARBWERKE HOECHST CO.,
By H. A. METZ, *President.*

Attest:
ALBERT H. HEIN, *Secretary.*

HERMAN A. METZ, [L. S.]

DERMATOLOGICAL RESEARCH LABORATORIES,
UNINCORPORATED. [L. S.]
By JAY FRANK SCHAMBERG, *Director.*
JAY FRANK SCHAMBERG, [L. S.]
JOHN A. KOLMER, [L. S.]
GEO. W. RAIZISS, [L. S.]

STATE OF NEW YORK,
City of New York, county of New York, ss:

On this 6th day of December, 1916, before me personally came Herman A. Metz, to me known, who, being by me duly sworn, did depose and say that he resides in the city of New York and county of New York; that he is the president of Farbwerke-Hoechst Co., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

[Seal.] H. IRVING GORDON,
Notary Public, Kings County.

COUNTY OF NEW YORK,
City of New York, State of New York, ss:

On this 6th day of December, 1916, before me personally came Herman A. Metz, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

[Seal.] H. IRVING GORDON,
Notary Public, Kings County.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, city of Philadelphia, ss:

On this 5th day of December, 1916, before me personally came Jay Frank Schamberg, to me known and known to me to be the director of Dermatological Research Laboratories, unincorporated, and the person who executed the foregoing instrument, and he duly acknowledged to me that he executed the same as director of said Dermatological Research Laboratories, unincorporated.

[Seal.] Robt. B. McConnell,
Notary Public.

Commonwealth of Pennsylvania,
County of Philadelphia, city of Philadelphia, ss:

On the 5th day of December, 1916, before me personally came Jay Frank Schamberg, George W. Raiziss, and John A. Kolmer, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they duly severally acknowledged to me that they executed the same.

[Seal.] Robt. B. McConnell,
Notary Public.

Prothonotary's certificate as to notary public. Prothonotary's seal.

DEFENDANT'S EXHIBIT No. 6.

Agreement Between Dermatological Research Laboratories, Dr. Jay Frank Schamberg and Dr. Geo. W. Raiziss, and Herman A. Metz, Dated June 8, 1918.

In view of the situation concerning arsphenamine (salvarsan and arsenobenzol) brought at the conference in the Hygienic Laboratory in Washington on June 7, 1918, the undersigned agree to draw up a contract for co-operation in the production of arsphenamine along the lines of the following preliminary agreement. In case of disagreement between the manufacturers concerned in regard to the terms of this agreement decision shall be rendered by the witness at the consultation with a representative of the two parties concerned.

1. The Dermatological Research Laboratories, through Drs. Schamberg, Kolmer and Raiziss and others, having expert knowledge and experience concerning the manufacture of arsphenamine of a minimum and safe degree of toxicity agree to place their knowledge and experience at the service of Mr. H. A. Metz and his laboratories without unnecessary delay and in a sincere effort to bring his product up to the standards demanded by the Government without delay, in such a way, however, that the manufacturing of arsphenamine of the Dermatological Research Laboratories shall not be crippled or interfered with. To accomplish this, Dr. Raiziss will, without delay, arrange his management of the manufacturing plant in such a way as to be in a position to give time and attention to the task of improving the product of the Metz Laboratories.

2. In return for this valuable assistance, rendered by the Dermatological Research Laboratories, Mr. Metz will agree for himself, that the companies in which he is interested and his assignees,

> (a) In the event that the Treaty of Peace should for any cause nullify the license of the Dermatological Laboratories to manufacture arsphenamine as at present, these laboratories under the trusteeship of Drs. Schamberg, Kolmer and Raiziss or their successors, will be permitted to continue to manufacture and sell arsphenamine to the extent of a minimum of 3,000 ampoules of 0.6 grams per week, and not to exceed 10,000 tubes per week or 10% of the needs of the country in arsphenamine (or its derivatives), in case Mr. Metz or any of his companies or assignees should

have control of the German rights in any way after the Treaty of Peace has been signed.

(b) In the event that the Treaty of Peace does not nullify the license of the Dermatological Research Laboratories to manufacture arsphenamine after the war or in the event that Mr. Metz is not in a position to guarantee to the Dermatological Research Laboratories the right to manufacture arsphenamine after the war to the extent indicated in paragraph a, Mr. Metz and his laboratories for the valuable services received will pay the Dermatological Research Laboratories a royalty on the manufacture of salvarsan under license from the Federal Trade Commission for the duration of the war.

(Sgd.) DERMATOLOGICAL RESEARCH LAB.
(Sgd.) JAY FRANK SCHAMBERG, *Directors,*
(Sgd.) DR. GEO. W. RAIZISS.
(Sgd.) HERMAN A. METZ.

Witnessed by
JULIUS STIEGLITZ.

Philadelphia, June 8, 1918.

*5 cents on all ampoules sold to Government at $1 or less during war, and 10 cents on ampoules sold over this amount.

DEFENDANT'S EXHIBIT No. 7.

Article in Journal of American Medical Association of March 30, 1918.

TOXICITY OF THE AMERICAN-MADE ARSPHENAMIN (SALVARSAN)

REPORT OF CASES

JAMES C. SARGENT, M.D.

MILWAUKEE

At the outbreak of the world war the original German-made salvarsan practically ceased being marketed in America as well as in France and England. The demand for the preparation had already assumed massive proportions. The natural result of this unsupplied demand was the manufacture of similar, if not identical, products by various concerns. Diarsenol, arsenobenzol, arsenobenzol "Billon" and other preparations were soon marketed as its substitute. Recently a preparation has appeared under the trade name of "Salvarsan," (arsphenamin) ostensibly manufactured in this country under the direction of the Farbwerke-Hoechst Company and by the process employed in the manufacture of the old German-made salvarsan.

Taking advantage of the large syphilitic clinic at the Marquette University School of Medicine, I have been attempting to arrive at some conclusions as to the relative therapeutic value and toxicity of these different preparations. A paper outlining this work is in the writing.

Recently the dispensary has been able to obtain some of the new arsphenamin now being made in New York by representatives of the Farbwerke-Hoechst Company of Germany. Having this new shipment at hand, I decided to give it a trial on five patients who had reported that day for an arsphenamin treatment. Three ampules, each containing 0.6 gm. of arsphenamin, were inspected and found not to be cracked. The contents of each was of the characteristic pale yellow color. The total of these ampules was dissolved in 225 c.c. of sterile water which had been distilled less than two hours before. After the arsphenamin was entirely dissolved, the solution was alkalized by the addition of a sufficient quantity of 15 per cent. sodium hydroxid to form and redissolve the precipitate. It might be said that this technic, together with that of the injection of the solution, was identical with that used in the administration of some 200 doses of salvarsan given in the past six months.

REPORT OF CASES

Case 1.—A young woman, with a recently suppressed secondary syphilis, had received five salvarsan treatments at intervals of two and three weeks without notable reactions. She was given 50 c.c. of the prepared solution (0.4 gm. of salvarsan) in one of the arm veins. As she was leaving the building she became cyanotic and fainted. She soon regained consciousness and began vomiting severely. When I saw her about fifteen minutes later she was very pale, had a fast, thready pulse, was still vomiting and was in a violent chill in spite of blankets. After an hour's rest she was sent home in an ambulance. She subsequently reported that she continued nauseated and chilled for about twelve hours.

Case 2.—A young man, suffering from an active hereditary syphilis, had received one injection of salvarsan the week before. No reaction followed. He was given 50 c.c. of the prepared solution (0.4 gm. of salvarsan). He walked to an adjoining room and was forced to sit down because of a sudden dizziness. He became cyanotic, was nauseated, and hungered for air. His pulse rose above a hundred and was of little volume. After resting an hour, he was allowed to return home. He subsequently reported that he had a severe headache, was nauseated, and remained very chilly for four hours despite going to bed.

Case 3.—A small colored boy, with an active hereditary syphilis, had received one salvarsan treatment the week before without reaction. He was given 25 c.c. of the solution (0.2 gm. of salvarsan) and left the dispensary. His guardian subsequently reported that he appeared to have suffered no reaction.

As I was about to give the fourth injection, I was informed of the condition of Patients 1 and 2. Becoming alarmed, I tested a part of the remaining solution with dilute hydrochloric acid and found that the precipitate reformed on acidulation. Being satisfied that the solution was properly alkalized, I diluted it with freshly distilled and sterilized water so that 50 c.c. contained a fraction less than 0.3 gm. of salvarsan.

Case 4.—A middle aged man, suffering a late syphiloderm, had received an injection of salvarsan the week before without reaction. He was given 50 c.c. of the remaining solution (0.3 gm. of salvarsan). Arising from the table, he complained of dizziness and faintness; but after resting a half hour he decided to return home. He subsequently stated that he suffered only a slight headache for the following twelve hours.

Case 5.—A young man in the late primary stage of syphilis had received no previous treatment. The needle was introduced into the vein, and the solution allowed to run. After 30 c.c. (0.18 gm. salvarsan) had been injected, he began coughing, became cyanotic, and complained of air hunger. The injection was stopped. The pulse became rapid and thin. In spite of blankets he continued in a violent chill for thirty minutes. After an hour his color returned and he was allowed to go home. He subsequently reported that he remained chilly, nauseated and with a bad headache for the following four hours. This patient had had a preliminary cathartic.

COMMENT

Having been convinced that these five cases alone were sufficient to give a very definite idea of the toxicity of the new American-made salvarsan (arsphenamin), I have abandoned its use. Realizing the wide reputation previously enjoyed by the old German-made product and the stimulus which that reputation is certain to give to the sale of the new American-made salvarsan, I have been constrained to make an early report of these cases, hoping to save others from my uncomfortable experience.

DEFENDANT'S EXHIBIT No. 8.

Hoechst a. Main, June 20, 1913.

Farbewerke vorm. Meister Lucius & Bruning,
Hoechst am Main.

My Dear Mr. Metz: I received your two letters of the 4th and 10th of this month.

As regards hydrosulfit, I can only explain to you once more that we invoice exactly according to the lowest market prices here, that we naturally deduct packing and freight from the duty invoice.

Your communications about Bayer interested us greatly. In the meantime I have also heard personally from Mr. von Boettinger, as you telegraphed to us, that Elberfeld have established a new Bayer Co., and apparently also a special company for the pharmacy department; for the erstwhile process this new establishment will certainly not be of much use to them. The handing over of the papers to Dr. Hess seems to have been a real joke.

It is very interesting, that you now receive the samples of the competing factories on the part of the dyers for examination. I can nevertheless imagine that an uncomfortable situation may sometime arise for you because of it.

We are naturally not interested that hydro-blue or carbazol colors should be placed on the free list; would not, however, on our part come forth directly against Cassella; you will therefore on your part omit any direct work against Cassella. I also repeat, as I have already informed you in my communication of June 9, my opinion, that the best for all of us would be, if certain dyestuffs, including the alizarin dyes, would pay about 15 per cent. duty, and only indigo remains on the free list. I should consider it a great success were you successful in leading up to such a change in the tariff.

Mr. Hinrichs wrote us on the 9th of this month, and gave us once more, in an inclosure, his drawn-up agreement, which, however, contains nothing new. I answered him today, according to inclosed summary, and hope that he will now be able to take requisite measures. Against a deposit of the shares for us in England (perhaps at Speyer Bros. in London) we have naturally no objection; on the contrary, it would be, as you yourself rightly say, still more convenient for us to have the deposit in England.

Mr. Widemann was here recently, and journeyed away yesterday. I did not find him looking well, and had the impression that he was truly in need of a rest. I really heard nothing new from him.

With best greetings,

Yours respectfully,

DR. HAEUSER.

DEFENDANT'S EXHIBIT No. 9.

Farbwerke vorm. Meister Lucius & Bruning,
Hoechst am Main.

Hoechst a/M; May 14, 1913.

My Dear Mr. Metz: I received your letters of the 1st and 5th instant and extend my best thanks for the interesting news contained therein. In the interim I wrote you two letters on the 8th instant, copies of which I inclose herewith, and from them you will see that we at least desire to accede to your wishes. Should extraordinary difficulties present themselves, we will quickly overcome them. A trip across the water right now I would not relish, but if it can not be otherwise arranged, I will have to decide to do so. I believe, however, that I can correctly judge the situation over here, and that it is possible for me to reach the same conclusion as you have. In this regard you are perfectly right, that attention has been attracted to the activities of the chemical industry concerns, and that the American Government secures information regarding them.

I beg you to have patience with Hinrichs; he is rather peculiar, but on the other hand he is capable and dependable.

The other firms here are also agitated over the situation. We must allow each of them, even Kalle & Co., to do that which from the nature of their peculiar circumstances, they find the proper course to pursue. What concerns you and ourselves, if we agree upon the changes you propose, we at least set aside any ground for complaint.

With reference to the drawback as to our correspondence with Hinrichs, it is so arranged that it can be presented to the Government in unrecognizable shape, being in the nature of a private code, the necessity of which I regret. Mr. Hinrichs writes us in his last letter of the 30th ultimo, if matters of interest are not received, that it is not necessary to produce such correspondence, but only receipts and such matters. Hinrichs, however, did not follow my wishes as to receipts, etc. Under these circumstances it appears to me that the most charitable and safest plan is not to induce Mr. Hinrichs to make use of the correspondence.

Your idea that Kuttroff remains with the native Elberfeld Co. in a certain clerical capacity does not meet with the approval of Messrs. Von Elberfeld and Von Ludwigshafen.

I can readily imagine that you are unusually busy in Washington now. The Congressional Record, which you were kind enough to send me, I will read with much interest. From it one can best picture the situation.

The Badische is naturally not much pleased that alizarin has to pay a duty of 10 per cent., whereas the indanthren and the remaining anthracenderivate must pay full duty. We trust, however, that you will be able to push through alizarins without any duty and have the duty on dyestuffs reduced. It would at any rate be very nice, though I can not really believe it possible, after we were so badly cut up by the revision of the tariff. I beg of you to forecast exactly the best results obtainable in delivering to your f. o. b. European ports.

For the kindness shown my wife by your sending her an invitation to attend the opening session of the House of Representatives, I thank you many times in her behalf.

With best wishes,

Yours sincerely,

DR. HAEUSER.

DEFENDANT'S EXHIBIT No. 10.

OFFICE OF
HERMAN A. METZ
122 HUDSON STREET
NEW YORK

May 9th, 1916.

Dr. H. F. Albert,
New York City.

My dear Dr. Albert:

Enclosed please find a clipping from the *Brooklyn Eagle* of May 6th, which may prove of interest to you.

Yours very truly,
(Sgd.) H. A. METZ.

DEFENDANT'S EXHIBIT No. 10-A.

Clipping From Brooklyn Eagle of May 6, 1916.

ONLY U. S. NEUTRALS ARE IN GREENWOOD, SAYS HERMAN METZ

EX-CONTROLLER IN PEPPERY TALK SAYS NO RED-BLOODED MAN CAN BE NEUTRAL.

SCORES THE WILSON REGIME.

"You're Dishonest If You Disagree With It," He Says—Russians in France?—"Bunk."

Herman A. Metz, former City Controller and former Congressman from Brooklyn, has become convinced that "the only neutrals in this country are in Greenwood Cemetery." Mr. Metz said this yesterday in the course of a discussion in which he paid his re spects to the Wilson Administration, discussed a few of the international situations confronting this country and declared that the Fourth avenue subway, now creating a $60,000 deficit monthly, was still to give more definite proof that the former Public Service Commission had weighted the city with an old man of the sea. Mr. Metz also indicated that he would accept a nomination for Congress from Tammany Hall this fall.

Outstanding in the observations of Mr. Metz was a note of contempt for the Wilson Administration, whose bitterness can be only half revealed by the written report of it:

"What can you expect of an administration that calls you a lobbyist and says you are running a propaganda the moment that you express an opinion contrary to its views? Support the Administration and you're a true citizen, a great patriot! They'll call you down to Washington and put you on a pedestal and let the whole world know that you're with the Administration!

"*You're Not Honest If You Disagree with the Administration.*"

"But you can't think differently from the Administration! That shows right away that you're not honest! My goodness, don't you know that the people at the head of the Administration are the only ones who know how to think right at the present moment? You're a lobbyist! You're not a true American! 'Gentlemen,' says the Administration to the world, 'just look at the horrible monster we have here. He doesn't agree with us at all. He dares to have an opinion of his own!' "

The former Controller had this to say as a sort of follow-up in voicing a mild objection to an Eagle editorial which had referred to his pro-German sympathies.

"Why do they keep on telling about my German sympathies?" he asked. "I'm not a German; I'm an American. I was born in America, and that's where my sympathies are. That my thoughts are with Germany in this war doesn't blot my Americanism. What's the use of cataloguing with a German tag the men who have the courage of their convictions? You don't go around putting a pro-English tag on a man who spouts his head off for England, do you?

"Let's all think as we want to in this war. A man can be for England and be respected for it; he can be for France and be respected for it, and he can be for Germany and be respected for it. But that's no reason why he should be classed as an Englishman, a Frenchman, or a German. It isn't right to identify him in the public mind in any such way.

"No Red-blooded Man Can Possibly Be a Neutral."

"But they'll tell you down at Washington that you ought to be neutral. Neutral? The only neutrals I know of in this country are in Greenwood Cemetery. No man with red blood in his veins can possibly be neutral—he's got to feel with his heart for one or other of the combatants. He's not a man if he doesn't. So why should they cast you into the realms of outer darkness if you have an opinion of your own and stand up for it?"

And Mr. Metz paid his compliments to the Administration in a way that indicated he had a very special grievance in this particular. He went on:

"It used to be, when I was in Congress, that I received letters and telegrams from scores of people, telling me what they thought on certain issues that were up for consideration. Sometimes people didn't agree with me and I was glad of it, because it made me stop and think and, occasionally, I'd find reason to change my views. But what are you going to do about it nowadays?

"Send a telegram or a letter down to Washington and right away they'll start an inquiry. They'll want to know who put you up to sending the message and, whose money paid for it and a lot of things like that. Join a couple of thousand people in sending telegrams of protest, and where do they put you? Why, you're a traitor! You've lent yourself to the machinations of some country's secret agents!

The Russians in France Were Men of Russia Living There, Assembled to "Fool the Reporters."

"Oh—what's the use I've still got an opinion of my own and I'm proud to express it. I've talked about this war several times, and everything I've said has turned out just as I predicted it. I said Italy would cut a sorry figure, and Italy has. Where in the war could you find anything less important than the part Italy has played? And Russia? Russia has the men, but she hasn't got the soldiers. Just imagine how foolish that stuff is that's coming over from France about the Russian troops at Marseilles! Can any sane man think that they were shipped to France from Russia? Why, they're Russian servants in France, assembled at Marseilles to fool the correspondents. Why under the sun would Russia transport troops away around and down into Marseilles? Bunk —all bunk—and most of the war news is still being written in the bar of the Savoy Hotel in London, as I told you months ago.

"The only thing that hasn't come out is that 'Paris in sixty days or defeat' thing. I didn't mean that Germany must actually take Paris. Paris was figurative, and I stand by every one of my predictions, including that.

"There's one thing. I guess that's more than ever clear now. That's about England being glad to let everybody else do her fighting for her. And, in that connection, if there's a lot of people here who want to fight Germany, why don't they take the first train up to Canada? Canada'll take 'em. She'll outfit 'em and refund their carfares, I guess, and put 'em aboard the very first ship for the other side.

Metz is a Firm Believer in Preparedness.

"Nobody who wants to fight Germany need be left out in the cold. England's got room for all of them. But let them keep this country out of it. There are some people here who don't want to fight Germany, and who don't want to fight at all.

"As for me, I believe in preparedness. I believe in putting this country in a condition where she can look the whole world in the face and be unafraid of anyone. I believe in upholding the honor of America in every way. We can all do our duty in that without looking with suspicion on the men who sympathize with Germany or England or any other country that is at war.

"I haven't anything against England, you know. England has treated me very favorably. I haven't made one request of England that hasn't been granted. But what has galled me is that I've had to make the requests. It didn't do any good to appeal to my own government. No, I had to go out and appeal on my own account. That's what hurt me.

"The only class I have anything against, I guess, is the professional German. Unfortunately, we have quite a number of them. They're about as useless and annoying as the professional Irishman or the professional Southerner, or the professional Westerner. It's easy enough to spot the professional German. As long as we know them and know what they are, why should we judge others by them? They don't count except as a bunch the country would be well rid of."

Says Fourth Avenue Subway Deficit Proves He Spoke the Truth

Turning from this Mr. Metz took up the Fourth avenue subway, the occasion being the attention recently called to it by Public Service Commissioner Whitney and his word that its operation was creating a deficit of $60,000 a month.

"I'm glad to see the opinions I expressed some years ago backed up now by such an authority," said the former City Controller. "The Fourth avenue subway should never have been built under the contract that controls its operation at present. I told the truth about it. It cost me a good deal. I said that it was a scheme of a lot of politicians, and that's what it was.

"The Fourth avenue subway should have been built under the Interborough offer. That offer called for the construction at the Interborough's expense, and provided for a connection with the present tube under the East River at South Ferry. It would have given a 5-cent fare from the Bronx to Bay Ridge. It was a real tri-borough route.

"And what did the old Public Service Commission do? They played a lot of politics, to discredit the McClellan administration—and let me tell you the policy of that administration was the most constructive the city has ever known—and we got this burden. And yet, they wonder that the tax rate is 2.08!

"It will be years and years before that Fourth avenue subway will pay. And remember the city has yet to meet the damages incurred in its construction. Goodness knows what they're going to be, either. More millions dumped into the hole the old Public Service Commission dug!

"A Lot of Fine Gentlemen, Those Former P. S. Commissioners.

"Oh, they were a lot of fine gentlemen, those former Commissioners! Let me repeat what I once said. Individually, they were as charming and intelligent a lot of politicians as you'd want to meet anywhere. Collectively, they were a calamity. They got together in solemn deliberation on this Fourth Avenue Subway and dug up a few things to win newspaper support. Then, supported by the newspapers, they went ahead and threw away the city's money. They have a lot of things to answer for, but the Fourth Avenue Subway is the worst."

DEFENDANT'S EXHIBIT No. 11.

New York, April 8, 1915.

Hon. Joseph P. Tumulty,
White House, Washington, D. C.

My Dear Mr. Tumulty: Referring to the visit of the committee that called on you Tuesday, I am inclosing herewith, as requested, extracts from some of the letters from textile manufacturers which I showed you.

I received all told about 450 replies in answer to about 1,000 circular letters which I sent out, mainly to the cotton, wool, and silk-mills, calico printers, job dye houses (that is, those dyeing for mills who do not do their own dyeing), and to some extent to the paper, wall paper, leather, paint and printing ink, and other branches. I received approximately 270 replies giving definitely the number of employees in each mill which would be directly affected; a further 160 did not specify the number that would be out of work, but said they would be compelled to shut down within 30 to 60 days and discontinue operation. Those who gave the number totaled 260,000 employees. Assuming the other 150 to employ the same number of people, this would give an aggregate of approximately 400,000 people directly affected in those mills that replied.

As there are probably 1,500 to 2,000 plants of the kind to which I wrote in the various industries throughout the United States, it is easy to assume that probably 2,000,000 operatives will be affected directly, without considering at all those occupations or trades to which the output of the factories goes, and for which it is really the raw material; in other words, the cutters, garment makers, etc., and the jobbers, wholesalers, and retailers who handle the product all along the line until it finally reaches the ultimate consumer. Then, furthermore, we must consider that when the cotton mill shuts down it is no longer using cotton, nor the woolen mill or carpet mill using wool. Their supplies of machinery, machinery oil, coal, belting, and the thousand and one other items that enter into manufacturing, must also suffer in proportion.

Besides this the woolen or cotton mill is in many instances the only support of the town or village in which it is located. Every employee has the immediate members of his family depending upon him, and the mill's success or failure is reflected in the business of the town, and when the mill is closed it does not take long for the mill population to scatter and seek new fields, which means disorganization immediately, and the necessity of reorganizing when operations are resumed. I know this is not a pleasant picture, but it is exactly what we are facing in the textile industry unless the supply of dyestuffs can be arranged for, and I fully realize how difficult it is to do anything definite promptly, even though conditions are so exceedingly serious.

After leaving you I had a talk with Mr. Secretary Redfield, who seems imbued with the idea that we are going to take up manufacturing in this country and has been "assured" by some people that they can do these things. I have no desire to reflect at all on Mr. Redfield's judgment, but these optimistic reports about what we are going to do here in regard to dyestuffs have caused enormous damage already. There have been practically no dyestuffs made in this country heretofore, excepting from raw materials or intermediate products imported from Germany. The basic raw material we have always had here, and after July 1 will have enough for all possible contingencies, viz., the benzol obtained from coke ovens. The next step is to treat the benzol with nitric acid, making nitrobenzol, which can also be done here, and that in turn yields the next step, aniline oil. Aniline oil is used for dyeing black and also for making certain very primitive and very fugitive colors in connection with betanaphthol and other intermediate products previously imported and which a number of people are "going to make," but so far nobody has made, except in a very crude form at one plant and for its use only. As a matter of fact, there are only three manufacturers of betanaphthol in the entire world, all in Germany. The product heretofore used here, a refined, pure product, containing no admixtures of other compounds, sold at about 9 cents per pound, including 5 per cent duty, before the war. None has been imported since, in fact, no raw material or intermediate products, excepting in very limited amounts for specific purposes, have been allowed to leave Germany, probably for the reason that Germany did not desire to encourage manufacturing of colors to her own detriment. Very limited quantities came from England.

A good betanaphthol today would be worth $1 per pound if we had it, because it is absolutely necessary to get it for use with certain combinations. The equipment for turning out a ton or two a week would cost about $15,000 to install, provided one knows how to make it and has got a plant, and it is safe to say that nobody in the United States ever made it on a large scale, or can turn out anything but an impure and crude product. There were probably a million pounds a year imported before the war, used chiefly for making paints and printing inks in connection with paranitraniline and other intermediate products, and only three or four plants in Germany make or know how to make a good paranitraniline.

Both products are also used somewhat in calico printing and for making anilines. What it would take to build a plant or plants enough to supply our needs here in these two products alone I leave it to you to judge from the figures here mentioned. And so it goes all along the line.

Secretary Redfield stated that Germany did not have certain fundamentals. This is true only to a slight extent. She is short of toluol, which is used for explosives. She also is short of nitric acid. This, however, has been overcome by processes discovered by the Germans and a plant constructed through Government cooperation, which is probably now in operation.

There are a great many other colors, however, such as indigo, alizarines, etc., and particularly the long line of fast "vat" colors, which are available, and if we could only get those that can be had, we need not bother much about those that can not be had.

Furthermore, the Secretary claimed that Germans would not allow stuff out. Every letter I have received so far indicates a willingness, if shipping facilities are offered, to make shipments. Letters received today, dated as late as March 18, from the plant I do most of my business with, at Hoechst a Main, state that they had received governmental permission to export goods ordered by us prior to March 1, including a great many medicinal preparations, such as about 100,000 tubes of salvarsan, 3,000 pounds antipyrine, and various other preparations, which we are very much in need of in this country, and on which there was an absolute embargo right along, and export permission granted only on special application in specific cases. Another firm, also large color manufacturers with whom I do business write me under date of March 18, that they had just received permission to send me 1,250 pounds of another pharmaceutical preparation which we are very short of, but they regret that there are no shipping opportunities, because the Holland-American Line has refused to take goods of German origin.

These goods having been made ready for delivery and permission for export having been obtained, I would try to have them sent from Bremen if it were not for the fact that most American vessels leaving Bremen and willing to take German goods, instead of coming over in ballast, insist upon being reimbursed under their time charter in case of detention in England. The Swedish steamers will not carry German goods, and apparently there is no other way of getting them out.

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Unfortunately, the shipping bill failed, and so we have no ships of our own on which we could take a chance. The Germans, of course, have no desire to allow their goods, whether dyestuffs or pharmaceutical products, to get into the hands of enemy countries, and if these goods should be seized by England and paid for in case of seizure that would be no satisfaction at all (even though I made a profit) to the mills here who are dependent upon the stuff I am bringing over. I can not consume it myself; I am not buying it for the sake of selling to England or any other country, but I am buying it for consumption in the United States by people who have been dealing with me for years, and any reparation or profit paid me for goods held on the way over would not reimburse those who have to do without them on this side or pay the wages of the help which is laid off for want of them. I am afraid that some one has been hypnotizing Secretary Redfield and others as to the simplicity and ease with which colors can be made in this country.

The plant I am interested in abroad cost about $50,000,000 to erect and is capitalized now for only $12,000,000. It employs about 8,500 people. There are two other plants of the same size, with a half-dozen smaller ones. It is fair to figure, therefore, that there are invested in the coal tar color and pharmaceutical plants in Germany three or four hundred million dollars, and probably 25,000 people are employed in all of the plants I refer to. But these plants supply the whole world with these products directly or indirectly. In the case of the branch factories erected by the Germans in Russia, England, and France, the intermediate products and raw materials to manufacture the finished products for use are obtained from the German plants.

It took the Germans 50 years to get to this point, and it will take us 20 years, with an exorbitant protective tariff, and then we would still be floundering, because it is more a matter of engineering and practice than it is of chemistry. It may be well to establish an industry, but while we are doing it what is going to become of the people working in the mills, which will simply be forced to shut down, because the German products are not available and can not be substituted? I know they are "discovering" things in the newspapers every day, but the people who do it have no conception of the quantities involved or what the requirements of this country are. It is safe to say that 3,000 tons a month of various colors, which is practically what we have been getting from Germany since the war started, and which has kept us going fairly well, would not be two-thirds enough to keep us running if our mills were busy and we were running full. This will give you some idea as to what the industries are up against.

I am not touching on medicines at all. Of most of these products we import there are probably three or four months' supplies here, but the same plants that are making dyestuffs and chemicals are the ones that are making most of these synthetic and highly organic products, which have practically replaced most of the old things in medicine. We can go back and do the same as we did before they were invented, but it is not hard to see what that means. Undoubtedly some steps should be taken later on to make us a little more independent in some matters, through legislation or otherwise, but those things are for the future. What we want now and what we have got to have is the stuff that is over there that can be had, if we have a right to get it, and so avoid the disaster that threatens us.

It may be all right for machinery men and others to feel safe in their ability to control the markets of the world, but it stands to reason that if we control the markets in some directions it is because others are weak in those directions and, therefore, strong in others, and this makes the balance which makes for international trade or exchange.

The Germans happen to be strong in chemistry and they control the world in that. We have nowhere else to go for such products until this condition changes.

Yours very truly,
HERMAN A. METZ.

MR. GARVAN. I would like also to call the attention of the committee to Mr. Tumulty's reply, and the two letters which follow:

THE WHITE HOUSE,
Washington, April 12, 1915.

MY DEAR MR. METZ. I have your letter of April 10 and thank you for sending me a copy of your letter to Secretary Redfield. I have noted it very carefully and shall bring it to the President's attention at the first opportunity.

Sincerely yours,
J. P. TUMULTY,
Secretary to the President.

Hon. HERMAN A. METZ,
New York City.

DEFENDANT'S EXHIBIT No. 12.

November 7,1914.

His Excellency, WOODROW WILSON,
President of the United States, Washington, D. C.

Sir: By advice of my counsel, A. C. Vandiver, Esq., of the firm O'Gorman, Battle & Vandiver, of this city, I am placing before you, as well as before the honorables, the Secretaries of State, Treasury, and Commerce, the existing conditions under which the manufacturers of textiles and other articles requiring dyestuffs and chemicals are being supplied with these products imported from Germany.

The manufacturers of the United States, as well as those of every other country in the world, are pratically dependent upon the German manufacturers for their supplies of dyestuffs and chemicals.

At the outbreak of the war, Germany placed an embargo upon the exportation of all products of this kind. The supply in the hands of importers in the United States was about sufficient to run our mills from six weeks to two months. In the meantime, through efforts of the Department of State and the German Ambassador, whose attention I called to this situation and the danger threatening American industries, the German Government was persuaded to raise the embargo and permit the exportation of these products to the United States.

After allowing two or three small shipments to come through a new embargo was declared by the German Government, which insisted, first, that vessels flying the American flag must be provided to transport these goods, and, second, that a guaranty must be provided by the United States that no goods would be exported to any country with which Germany was at war and that a bond be given guaranteeing against such exportation on the part of the importers, binding them and the consumers to whom they sold and at the same time prohibiting the resale of these goods to dealers who might in turn export or to manufacturers of similar products in the United States or elsewhere.

These were the conditions imposed by the German Government, and although the State Department, through the ambassador at Berlin, offered to obtain guaranties from the importers, the embassy advised the department that these guaranties would not be sufficient, and that a guaranty by the Government would be necessary.

After consultation with the Acting Secretary of State and the Solicitor of the State Department, and with their approval, I placed the matter before Count von Bernstorff, the German ambassador, whereupon he telegraphed to his Government that there was no basis under our law permitting the United States Government to give or enforce such a guaranty; but that it would obtain, through me, from all importers a written guaranty that they would use every legal means to prevent exportation and a statement that they would agree to furnish any bond that the Government might prescribe.

In reply to this telegram Count von Bernstorff received official information from Berlin that the German Government considered the guaranties to be filed with the State Department through me to be satisfactory, but nevertheless deemed it necessary to require a bond, and that such a bond should be given to me personally.

I communicated this decision to the Department of State, and in the meantime had arranged for the charter of the steamer *Matanzas,* flying the American flag, to proceed to Rotterdam under ballast to bring over such allotments of dyestuffs and chemicals as might be released for export.

The American steamer *Sun,* due to leave on the 7th of November, is bringing the balance of the allotments, amounting to nearly 1,500 tons of dyestuffs and large quantities of cyanide and potash salts required by other industries, all released on the same conditions, except that cyanide may be exported to Mexico for use in the mines of Mexico.

The *Matanzas* left Rotterdam on October 28 with about 3,000 tons of aniline colors, alizarines, and indigo aboard.

I have since obtained from each of the importers for whom dyestuffs and chemicals are coming by either vessel a bond in such sum as will practically cover the invoice value of the goods they are about to receive.

Realizing, however, that many importers have contracts with dealers and consumers here, to which the manufacturers in Europe are not parties, and also that sales by importers only under the restrictions placed upon them by the German Government, might probably, under ordinary circumstances, constitute violations of our statutes bearing on such restrictions, I, therefore, as above stated, by advice of counsel, place the matter before you so that you and the various departments interested may be fully informed as to the conditions under which these goods have been released for export, and to state that there is no desire or intention on the part of any of the importers to violate in the slightest degree any of our statutes.

The conditions were complied with, with the sanction of the State Department, for the purpose of relieving the situation that threatened our textile and other manufacturing industries if the dyestuffs and chemicals had not been obtained.

The situation is further complicated by the fact that not more than an average monthly consignment from each manufacturer is to be allowed to come forward. This restriction, however, will not be serious if the channels through which goods from Germany can be obtained remain open.

I beg to impress upon you the fact that it is not so much a question of the value of these particular products themselves, nor the money involved in their importation and sale, as the enormous importance of them to the industries in which they are used, running into thousands of millions annually in value and employing millions of men and women throughout the United States in the woolen, cotton, silk, leather paper, paint, printing ink, mining, agriculture, and every other industry requiring dyestuffs or chemicals.

Assuming that it were eventually possible to produce all these products in the United States, it would take several years to even prepare the plants necessary to produce the raw materials used in the making of them, so that even a temporary cutting off of the supplies from Germany for a few months would cause incalculable hardship and suffering throughout the United States.

It was for the purpose of obviating such a calamity that any condition within reason was acceded to which would insure obtaining the supplies needed.

I would not be justified, however, in continuing my efforts to relieve the situation, nor would any importers bringing goods over in the future, be justified in acceding to conditions that might at some future time be construed as a violation of our statutes, without apprising the various departments of the Government as to the reasons which made such action necessary under the existing extraordinary conditions now prevailing.

I have the honor to be, sir,

Yours respectfully,

HERMAN A. METZ.

DEFENDANT'S EXHIBIT No. 13.

Letter from Blank to Mr. Metz, dated Hoechst on the Main, August 5, 1915.

(Note: Included in Defendant's Exhibit No. 52 and not reprinted here. See Record, Exhibits, Vol. IV, page 2323.)

DEFENDANT'S EXHIBIT No. 14.

Letter from C. Blank to Mr. H. A. Metz, dated Hoechst on the Main, September 28, 1915.

(Note: Included in Defendant's Exhibit No. 52 and not reprinted here. See Record, Exhibits, Vol. IV, page 2351.)

DEFENDANT'S EXHIBIT No. 15.

Letter from C. Blank to Mr. H. A. Metz, dated Hoechst on the Main, November 12, 1915.

(Note: Included in Defendant's Exhibit No. 52 and not reprinted here. See Record, Exhibits, Vol. IV, page 2352.)

DEFENDANT'S EXHIBIT No. 16.

[TRANSLATION]

Höechst a/Main, March 30, 1914.

MY DEAR MR. METZ: I received your two favors of the 3d and 13th of this month and assume that in the meantime you received my letter of the 6th of this month. Your statements interest me greatly and have had my full attention in every detail.

The matter in regard to the fighting of the graft money conditions seems now, through the foundling of the Textile Alliance, to have found a certain ending, and it seems to me very proper that you immediately sign.

For also proper I consider your action in refusing the ideas of the United States Worsted Co. to bind yourself to a conventional penalty. Our position so far as the question of new organization you have in the meantime learned out of my writing of the 6th of this month. I must say that the more I think about the matter the less I can see that with such a re-(new) organization, so far as the Sherman law comes into consideration, can anything be materially changed. Even a new company would have to stand in the same relation to us as is the case of the F. H. Comp. There exists the fact that we paid you $200,000, and that this payment, exactly as the Farbwerke-Hoescht Comp., the new company would have to give us certain guaranties. Everything has been done to avoid any violation of the Sherman law, and if bill No. 13860, which you mention, is passed, then it will be clear that even so far as indigo is concerned no violation against the Sherman law will have taken place.

(This refers to the fact that indigo was a patented product, and therefore the fixing of prices would be justified.)

So far as "extras" are concerned, I am of the opinion that this practically amounts to simply a transition period and that the same will rapidly go backward. At any rate, all our endeavors must be in this direction. Your idea that the paying out of extras in future could be done through a third party in cash, as for instance through your carpet mill at Worcester, I do not find happy (sound). You give yourself through this into the hands of such third party, who could at any moment turn against you. To me it seems the idea of increasing the provisions (commissions) of Gagnebin, Widmann, etc., much more right. Perhaps it would be advisable to adopt a mixed system between the raising of the commission for Widmann and your former procedure.

It is not quite clear to me what difference there would be in the situation if you, instead of one-half the dividends on the business of the Farbwerke, as heretofore, in future only credit us with one-quarter. In reality at the present time you do not credit the half, but you credit (send) us only, after deducting the extras, the part remaining. This payment to us is purely your personal matter, has nothing whatever to do with the F. H. Co., and is nobody else's business. It is this, the compensation therefore we allowed a very considerable amount of about $300,000 for which you bought the shares back, to stand and that we let you privately participate in our business with a certain amount.

So far as our other agreements are concerned I have no objection to having you send these back; our entire relationship is really a confidential relationship, and it will be and must without agreements so continue in the future as in the past.

Regarding the charging of your account in your letter of March 3, page 5, I have to remark that it is not entirely clear, as in the past year, besides the $100,000 you also according to your letter of October 14, 1913, have kept back a further dividend of $50,000 for extras. As you do not mention these last $50,000 at all, so it seems to me that you already used this in the previous year for extras. Will you please confirm this? Your personal credit with the Farbwerke-Hoescht Co. has in the meantime also grown considerably, and it does seem necessary that you again bring this to a balance as soon as possible. I also wish very much that you might be saved against such losses like with the Finishing Co. in future.

From the correspondence I also see that the question of the payment of Hinrich's bill is not yet in order. It seems to me proper, as you at last suggest, that you pay the bill and charge it on extras.

I was glad to learn that the business is so far satisfactory. We will have to be satisfied that the profit on individual transactions will continue to get smaller and that the loss can only be equalized through energetic work. With kindest regards.

Yours, etc.,

DR. HAEUSER.

P. S.—To Mr. Heim please extend my best wishes for his jubilee.—H.

DEFENDANT'S EXHIBIT No. 17.

Letter from Dr. Haeuser to Mr. H. A. Metz, dated Hoechst on the Main, July 31, 1913.

(Note: Included in Defendant's Exhibit No. 52 and not reprinted here. See Record, Exhibits, Vol. IV, page 2344.)

DEFENDANT'S EXHIBIT No. 18.

October 23, 1914.

HON. ROBERT F. ROSE,
Foreign Trade Adviser, Washington, D. C.

MY DEAR MR. ROSE: I inclose herewith the guaranty from Walter F. Sykes & Co., which please have filed with the rest.

From Count Bernstorff I learned today that the German Government is satisfied with the filing of the guaranties you now have and the agreement to give bond that no goods will be exported. The letter states, however, that the German Government thinks such bond essential, and that it should be given to me. I will, therefore, arrange a formal bond and submit it to Count Bernstorff for his approval and get each importer to sign it.

I am glad that the German Government is satisfied with this disposition of the matter.

Yours very truly,

H. A. METZ.

DEFENDANT'S EXHIBIT No. 19.

OFFICE OF HERMAN A. METZ,
New York, June 16, 1915.

HON. WOODROW WILSON,
White House, Washington, D. C.

MY DEAR MR. PRESIDENT: I know that you are conversant with the serious situation that confronts the textile and other industries of this country through the failure to continue the receipt of dyestuffs and chemicals. Efforts are being made to have the recent "Order in Council," allowing two shipments to pass, modified somewhat so that shipments will be allowed through on a basis that Germany will agree to.

In this connection an extract from a letter received from Justizrath Dr. Adolph Haeuser, president of the Verein zur Waehrung der Interessen der chemischen Industrie Deutschlands, in Berlin, and which is composed of all the dyestuff and chemical manufacturers in the German Empire, dated May 26, will probably interest you. It is as follows:

"I note that you have carried out your plan to organize an American Dyestuff Consumers' Association. We here are gladly ready to send dyestuffs to America, but we rest on the standpoint that we can not accept this as a favor or gracious act on the part of England, but that we can only send dyestuffs when England recognizes the right of America to receive goods from us, and you send us cotton in exchange for such dyestuffs. This is also the standpoint of our Government.

"Any other standpoint would be unworthy of America or Germany. We are, of course, somewhat accustomed to seeing the American Government look at situations through two pairs of spectacles according to whether Germany or England is concerned in the question. England can simply deny American suggestions offhand and the American people yield with astonishing submission, although the entire carrying on of the war on the part of England and her allies depends entirely upon the good will of America. When Germany, however, does anything toward using her own good rights, the act is decried in America. I hope America will succeed in forcing England to stop interfering with commerce between Germany and America, and if so, you will find us only too glad to give you all the dyestuffs that you need."

I submit this to show you the situation as it is viewed by Doctor Haeuser, who at the present time represents officially the entire chemical industry, as president of the Berlin organization. This simply indicates that they have available goods in Germany which we need here, and which we can get if Germany is assured that the goods will not be taken off by England and that she will get cotton in return. I submit the extract to you for what it is worth, knowing that you appreciate the situation and assuring you that, so far as I am concerned, I fully appreciate the delicacy of the situation that confronts you.

Yours very truly,

H. A. METZ.

DEFENDANT'S EXHIBIT No. 20.

New York, March 6, 1915.

Hon. William J. Bryan,
Secretary of State, Washington, D. C.

My Dear Mr. Bryan: Referring to my letter of yesterday regarding the dyestuff situation, I beg to say that I received the following cable this morning from Germany via Milan: "Latest developments make further shipments dyestuffs impossible." The cable was sent to me by Dr. Adolph Haeuser.

The same man that, as I have shown before, wrote the letters directing what Germany wanted in a tariff policy. He has now been made the head of them all —"the president of the Verein zur Wahrung der Interressen der Chemischen Industrie, Deutchlands, which is composed of the various chemical and dyestuff manufacturers of Germany, with headquarters in Berlin, and shows the attitude of German manufacturers of dyestuffs in the present crisis.

"It is safe to assume that they will take every precaution and go to any length to prevent their products reaching consumers of enemy countries, and unless some agreement can be reached to have the present condition modified, the manufacturers of this country will suffer as much as those of belligerent countries.

"Yours very truly,
H. A. METZ."

DEFENDANT'S EXHIBIT No. 21.

[Telegram]

Washington, D. C.

Herman A. Metz, *New York:*

German Government informs department of willingness to permit first shipment of 150,000 ampules salvarsan subject to the following conditions: "Distribution to be effected by American representative of Farbwerke, Hoechst, under supervision of American Red Cross and American Government, to guarantee safe arrival. As soon as arrival and unobjectionable use of consignment is ascertained further exports will follow under similar conditions." British permit covers arrival in America but Red Cross supervision, and representative of Farbwerke Hoechst must be arranged. See or write me.

CHARLES A. HOLDER,
Foreign Trade Adviser.

DEFENDANT'S EXHIBIT No. 22.

H. A. Metz, President.
Farbwerke-Hoechst Company
PHARMACEUTICAL DEPARTMENT
Sole Licensees for the United States and Canada
FOR THE
Modern Medicinal Preparations
OF THE
Farbwerke, vormals Meister Lucius & Bruning
HOECHST-ON-MAIN GERMANY
111-113 Hudson Street
New York

April 26, 1917.

Drs. Brown & Jack,
Decatur, Ill.

Dear Sirs:

We are sending you by parcel post 4 ampules of Salvarsan 0.3 gram. We are sorry we cannot comply with your request of April 20th, as our supplies of this product for distribution are practically exhausted.

We beg to call your attention to Dr. Schamberg's preparation of Arsenobenzol, which we have made available at $2.20 per ampule for the 0.4 gram and $2.50 per ampule for the 0.6 gram. We would greatly appreciate your co-operation in the use of this preparation and in this way help us to tide over the interval until our laboratories for the production of Salvarsan are in operation. This we expect to be in about six weeks.

Thanking you very kindly for your order, we beg to remain,

Very truly yours,
FARBWERKE-HOECHST COMPANY,
PHARMACEUTICAL DEPARTMENT,
(Sgd.) J. H. MARTIN.

JHM/P

DEFENDANT'S EXHIBIT No. 23.

OFFICE OF HERMAN A. METZ,
New York, March 14, 1919.

Dr. G. W. McCoy,
Director Hygienic Laboratory, Public
Health Service, Washington, D. C.

MY DEAR DR. McCOY: I wrote to the Federal Trade Commission today in regard to the application of the Massachusetts State Department of Health for licenses. I also protested against a license being granted to the New York State Board of Health. I feel in doing this I am justified in the position I take and I would like to hear from you whether you favor the various State boards making their own product or not. Personally my experience with the New York City Board of Health when I was comptroller satisfied me that it was a very unfair competition against private enterprise.

Doctor Myers is now with us and I want you to feel that his services or any information he has or may gain while with us is at the disposal of your laboratory as heretofore, and that you need not hesitate to call upon him or us at any time it can be of any service to you, even if you may want him to come to Washington and remain for a while at your laboratory.

Yours very truly,

H. A. METZ.

DEFENDANT'S EXHIBIT No. 24.

320 McGill Building,
Washington, D. C.,
October 24, 1922.

My dear Colonel:

I am enclosing herewith a statement. You understand how I am situated financially. I explained to you that it is necessary for me to have the money at this time.

Taking over your work entailed great sacrifice on my part, and you, of course, are not willing that I should endure any further hardship.

It is absolutely necessary that I receive a check from you by return mail.

Very truly yours,

(Sgd.) EDWARD W. DEETERS.

EWD-GEB

DEFENDANT'S EXHIBIT No. 24-A.

Washington, D. C.,
October 23, 1922.

I, Edward W. Deeters hereby submit to Mr. H. A. Metz my bill for fees and expenses incurred by me in securing information and affidavits to be used by Senator George H. Moses of New Hampshire, in the case of the Dye Embargo as per agreement between Mr. Metz, Senator Moses and myself, made in New York City, N. Y. in October 1921.

To wit:

1. That all information, evidence, or affidavits secured by me should be used by Senator Moses and turned over to him or other persons designated by him.
2. That Mr. H. R. Metz take charge of the financial part of this agreement, defraying all fees and expenses incurred, by me.

EXPENSES

Personal fee for services rendered	$7,200.00
Traveling expenses	453.00
Clerical help	1,000.00
Special expenses (Securing affidavits; maintenance and traveling expenses of persons making affidavits.)	
Affidavit No. 1	1,429.00
Affidavit No. 2	1,163.00
Affidavit No. 3	447.00
Affidavit No. 4	942.00
Affidavit No. 5	1,319.00
Affidavit No. 6	812.00
Total	$14,765.00
Received on account	5,000.00
Balance due	9,765.00

DEFENDANT'S EXHIBIT No. 25.

(Cut) Cable Address
E. L. Weston, Manager "Raleigh, Washington"
The Raleigh
EUROPEAN PLAN
ABSOLUTELY FIREPROOF

Washington, D. C., Sept. 6th, 1921.

Mr. C. Cyril Bennett,
1133 Broadway, N. Y. C.

My Dear Bennett:

I saw Mrs. Gold today as you requested and she showed me your letter and a letter she wrote to Alien Property Custodian Miller asking for the information you desired. The letter to Miller she sent to Concord, N. H. for Senator Moses signature. She said there was nothing that could be done until she received a reply from the letter addressed to Miller. She asked me to remind you of the National Theatre and that you would know what she referred to.

I see by today's issue of the Daily News Record that there will be a meeting on Sept. 15th at the Hotel Pennsylvania of dye manufacturers to discuss some import restrictive plans as effective as a selective embargo. I am planning to be in New York to attend the meeting.

The situation here is exactly the same as it was last week.

With best wishes,

As ever,
(Sgd.) E. L. PICKERELL.

Will send you a set of the Hearings tomorrow.

DEFENDANT'S EXHIBIT No. 26.

302 McGill Building,
Washington, D. C.
March 22, 1923.

Colonel H. A. Metz,
122 Hudson Street,
New York City.

My dear Colonel:

Your friends from New York have been in Washington several days, made several persistent calls upon one of the parties who made affidavits and were rather persistent in getting the information from said party and were even so bold as to state that they would have said party subpoenaed to Wilmington to testify, if they did not get such information.

The duPonts have employed several members of the Chemical Warfare Service in the hope of gaining information which may be available to them. I am enclosing herewith copy of all information which I have in the hope that you may find use for same at Wilmington.

With kind regards,

Yours very truly,
(Sgd.) E. W. DEETERS.

EWD/AJK

DEFENDANT'S EXHIBIT No. 27.

Memorandum Enclosed With Letter From E. W. Deeters to H. A. Metz, Dated March 22, 1923. Defendant's Exhibit No. 26.)

MEMORANDUM:

During said conversation between Francis P. Garvan, Morris R. Poucher, statements were made by

Mr. Garvan that H. A. Metz bribed one of the Chemical Foundation chemists and gave this chemist a position for one month. During that period he tried to get information relating to Mr. Garvan and others who were connected with the Alien Property Custodian's Office at the time Mr. Garvan transferred the patents to himself.

Statements were made by the same gentlemen that H. A. Metz was a traitor to his country and that they had information in writing to prove that he was working with heart and soul for Germany and that he, Mr. Garvan, has stopped all shipments from Germany by order of the French Government.

Furthermore, that he, Mr. Garvan, had all information connected with the activities of C. C. Bennett and Mr. Means, relating to the information they were collecting for the Bosch Magneto Company and the Chemical Foundation, relating to the cases which the Department of Justice has now under investigation at Wilmington. They have copies of checks of C. C. Bennett for telephone calls and other expenditures in Senator Moses office. They did not state the nature of other expenditures.

They are trying to turn the machine gun on you. Do not let them catch you with your pants down.

DEFENDANT'S EXHIBIT No. 28.

Page 11,116 From Congressional Record of July 14, 1923. Enclosed With Letter From E. W. Deeters to H. A. Metz, Dated March 22, 1923. (Defendant's Exhibit No. 26.)

universities. How many reprints did you have made? Would it be possible for this bureau, without cost to it, to have 15,000 or 20,000 copies for distribution?

Yours sincerely,
P. P. CLAXTON, *Commissioner.*
E. I. DU PONT DE NEMOURS & CO.

DYESTUFFS SALES DEPARTMENT, TECHNICAL LABORATORY,
P. O. Box 518, Wilmington, Del., March 17, 1921.

MR. PHILANDER P. CLAXTON,
Commissioner of Education, Washington, D. C.

DEAR MR. COMMISSIONER: I was very much pleased to have your opinion of my little article on the "Education of the research chemist," and to know that you feel that it would be an advantage to have this given wider publicity.

I am looking into the matter of obtaining sufficient reprints to supply your needs, and will let you know if I can manage to obtain them. I could let you have 300 copies at once, if you could make use of them.

With kind regards, I am,
Yours sincerely,
R. E. ROSE.

DEPARTMENT OF THE INTERIOR
BUREAU OE EDUCATION,
Washington, March 21, 1921.

MR. R. E. ROSE,
P. O. Box 518, Wilmington, Del.

DEAR SIR: In the absence of Commissioner Claxton, who is in the Middle West, I am acknowledging your letter of March 17. Doctor Claxton will be back in Washington at the end of this week, and I will submit your letter to him at the first opportunity.

In the meantime I would suggest your sending the 300 copies of your article which you say you can spare, as I am sure he can make good use of them.

Yours sincerely,

THEO. HONOUR,

Secretary to the Commissioner.

E. I. du Pont de Nemours & Co.,
Dyestuffs Department,
Sales Division Technical Laboratory,
Post-office Box 518, Wilmington, Del., May 11, 1921.

Mr. Philander P. Claxton,
Commissioner of Education, Washington, D. C.

My Dear Commissioner: Under separate cover I forwarded to you 300 reprints of my article on the "Education of the research chemist" which you were kind enough to say you thought you could use to good advantage.

I have not yet been able to make arrangements to have a larger number printed, but I have not lost hope of being able to do so.

Yours very truly,

R. E. ROSE.

Department of the Interior,
Bureau of Education,
Washington, May 13, 1921.

Mr. R. E. Rose,
P. O. Box 518, Technical Laboratory,
E. I. du Pont de Nemours & Co., Wilmington, Del.

My Dear Mr. Rose: I wish to thank you for the 300 reprints of the article "Education of the research chemist." Have these been sent to the libraries of the better colleges and universities? If not, it occurs to me that this would be the best use to make of them.

Yours sincerely,
P. P. CLAXTON, *Commissioner.*

E. I. du Pont de Nemours & Co.,
Dyestuffs Department,
Sales Division, Technical Laboratory,
Post-office Box 518, Wilmington, Del., May 17, 1921.

Mr. Philander P. Claxton,
Commissioner of Education, Washington, D. C.

Dear Mr. Commissioner: With regard to the reprints of the article "The education of the research chemist," I have to inform you that these have not been sent to the libraries of the better colleges and universities. It seems to me that this would be a very excellent way of making use of them.

Yours sincerely,
R. E. ROSE.

Department of the Interior,
Bureau of Education,
Washington, May 28, 1921.

Mr. R. E. Rose,
Post-office box 518, Wilmington, Del.

Dear Mr. Rose: I take pleasure in advising you that we are now mailing the 300 copies of your article on "The education of the research chemist" to the libraries of the more important universities and colleges in the United States.

Yours sincerely,
L. A. KALBACH, *Chief Clerk.*

Mr. Moses. It is, perhaps, not without interest to note that of the eight letters written to the Bureau of Education by way of seducing it into this scheme five came from the Du Pont Co., one from the Chemical Foundation, one from the Alien Property Custodian, and one from Yale College.

Mr. King. Mr. President, I did not hear to whom those letters were sent.

Mr. Moses. These eight letters were addressed to the Bureau of Education.

FIVE DOLLARS FOR A SENATOR

As another example of the manner in which the dye makers have been able to hoodwink the public and to make use of governmental agencies for their private purpose, I desire to advert to the chemical industrial exhibit which occupied the boards at Rochester, N. Y.; Springfield, Mass.; Du Pont Hotel, Wilmington, Del.; Chicago; and Philadelphia, which found temporary shelter in both the Senate and House Office Buildings, which is now permanently installed at the National Museum, and which, in a condensed and highly idealized form, was paraded before the Shortridge committee. The exhibit as it appeared in this last-named place, Mr. President, constituted a demonstration of scientific processes such as never was on land or sea; and in one or more of the various forms in which this peripatetic pageant of plutocracy held sway in Washington its drawing power was so scant that professional pullers-in were employed to find sightseers at a price per head ranging as high as $5 apiece for a Senator—prices for Representatives and other public officials not quoted. I may add that I have in my possession an affidavit to this effect.

The origin of this exhibit, Mr. President, is shrouded in some mystery. The first authentic reference to it which I have been able to find is contained in a letter from O. E. Roberts, Jr., captain in the Chemical Warfare Service and head of the chemical relations section. Writing under date of January 16, 1920, to an officer of the National Aniline & Chemical Co., Captain Roberts refers to plans for an exhibit which he says are "rather up in the air," the Chief of Staff having refused to sanction the project as originally proposed. Captain Roberts, however, was hopeful, and promised to take the matter up again with a view to modifying his request for funds so that the general plan might be adopted. It appears, Mr. President, from the photostat copies of official correspondence which I have before me, that the higher ups in the War Department were wary in their use of public money for private propaganda; but, since no question of money has ever yet served to check the dye propagandists in their work, that obstacle was readily overcome. Funds were provided from various sources; and, in a later letter from Captain Roberts addressed to the chemical department of the Du Pont Co., he voiced his appreciation of "heartfelt cooperation," which he had received from that benevolent institution. Still later, writing to the secretary of the American Dyes Institute, Captain Roberts requested the approval of the institute and its authority—presumably meaning its funds—for the purpose of commencing the preparation of the second exhibit to be sent to Philadelphia; and on the same day, in order to emphasize the urgency of the situation, he telegraphed to Doctor Isermann, of the Chemical Co., of America, and to an official of the Du Pont Co., requesting like "authority." It is evident, Mr. President, that Captain Roberts is a resourceful person who believes in having more than one string to his bow.

Later, writing to an officer of the Calco Chemical Co., Captain Roberts expressed the workings of his mind in connection with this exhibit. Indicating that since he did not know what agency would "stage" it in Phiadelphia, he admitted a prejudice in the matter and a feeling—

that the Chemical Warfare Service is by all means fitted to stage such an exhibit.

He argued that—

the publicity thus gained is not considered in the light of propaganda and would be received by the general public in a better spirit than if it was staged as an exhibit of the Dyes Institute.

Five days after this artful suggestion, Captain Roberts again took his ready pen in hand once more to write to the secretary of the dyes institute, and said:

We have gone ahead with the preparation of this exhibit and have obligated ourselves for several thousand dollars. It is therefore requested that as soon as convenient you mail a check to cover the amount of the exhibit, as stated to your committee for our use—

And, of course, Mr. President, he thanked his correspondent for an early reply.

Mr. President, we thus see the Bureau of Education and the War Department, two great agents of the Government, victimized by the dye makers of the country, and our public agencies turned to use in private propaganda. Small wonder that many well-meaning and impulsive people, including Senators, have been duped by what they thought to be their own Government advocating this vicious legislation; though the proof is here clear that it was merely the work of a corrupt and unscrupulous group of monopolistic profiteers.

Mr. President, if we turn now to the Summary of Tariff Information, so well thumbed by Senators who have taken part in the debate on this bill, on page 79 we may read:

Previous to the war the domestic synthetic dye industry was restricted to assembling a limited number of dyes from intermediates imported from Germany. In 1914, 6,619,729 pounds of coal-tar dyes, valued at $2,470,096, were made from imported intermediates (aniline in part excepted).

During the war the failure of the foreign supply and the great needs of the domestic consumer, combined with great initiative on the part of the dye makers, gave rise to the rapid development of dye manufacturing. In 1917, 45,977,246 pounds were produced, increasing to 88,263,776 pounds in 1920.

DEFENDANT'S EXHIBIT No. 29.

Office of
Herman A. Metz
122 Hudson Street
New York

March 23rd, 1923

E. W. Deeters, Esq.,
#302 McGill Building,
Washington, D. C.

My dear Mr. Deeters:

Thanks for your favor of the 22nd with the enclosures, and also the memorandum which I received today.

Yours very truly,
(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 30.

(Note: This entire report offered in evidence by defendant. Portions thereof, as noted, were offered in evidence by plaintiff.)

(Certain portions of report not printed pursuant to stipulation of counsel.)

ALIEN PROPERTY CUSTODIAN REPORT

A DETAILED REPORT BY THE ALIEN PROPERTY CUSTODIAN OF ALL PROCEEDINGS HAD BY HIM UNDER THE TRADING WITH THE ENEMY ACT DURING THE CALENDAR YEAR 1918 AND TO THE CLOSE OF BUSINESS ON FEBRUARY 15, 1919

WASHINGTON
GOVERNMENT PRINTING OFFICE
1919

Note: This page, offered and admitted in evidence as

PLAINTIFF'S EXHIBIT No. 13.

REPORT OF ALIEN PROPERTY CUSTODIAN.

WASHINGTON, D. C., *February 22, 1919.*

DEAR MR. PRESIDENT: The trading with the enemy act, section 6, requires "that the President shall cause a detailed report to be made to Congress on the 1st day of January of each year of all proceedings had under this act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof."

I have the honor to submit a report of all proceedings had under said act during the year 1918 on the part of the Alien Property Custodian. I have deferred making the report beyond the time mentioned in the act in order to make it more nearly complete. At the end of the year 1918 I was in the middle of my selling program and many investigations of enemy property had not been completed. I think I am now able to say that practically all known enemy property in the United States has been taken over by me and is being administered according to the provisions of the trading with the enemy act. The more important of the properties which have been within the purview of our sales program have been disposed of. This report, therefore, is made as of the close of business on February 15, 1919. Full details with respect to all of the operations of this office appear in the following pages.

Respectfully submitted.

A. MITCHELL PALMER.

To the PRESIDENT,
The White House.

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CHAPTER I.

GENERAL.

The office of Alien Property Custodian was created by an act of Congress known as the trading-with-the-enemy act, approved October 6, 1917. Under this law and Executive orders issued in pursuance thereof, it became the duty of all persons in this country having the custody or control of any property of whatsoever nature belonging to, held for, or owing to an enemy person, to make report thereof to the Alien Property Custodian, by whom it was to be administered with all the powers of a common-law trustee. The act in defining enemy persons, following existing precedents, makes residence and not nationality the test of enemy character. All persons of whatever nationality, including partnerships and corporations, residing or doing business in the territory of enemy nations, or in the territory occupied by the armed forces of the enemy, are enemy persons. The act also puts allies of enemies in the same class with enemies, so that the Alien Property Custodian was empowered to demand and take over all property located or having its situs within this country which is owned by, held for, or owing to persons, partnerships or corporations resident or doing business in Germany, Austria-Hungary, Bulgaria, and Turkey, and in those portions of Belgium, France, Russia, and the Balkans which were occupied by the armed forces of the enemy at the time the property was reported to the Alien Property Custodian.

The right to demand and take over such enemy property is primarily vested in the President and need only be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian when the President, after investigation, shall determine it is enemy-owned, and then only "if the President shall so require"; thus giving to the Executive the fullest discretion as to what enemy property shall be taken and what shall be left in the hands of its private custodians. The power and discretion vested in the President by the section of the act just referred to were delegated by Executive order to the Alien Property Custodian, and he has exercised the discretion lodged in him through various general rules and regulations, rather than in individual cases. Thus, the property of subjects of Bulgaria and Turkey, which countries are in the class of allies of the enemy, has not been demanded at all, except in a few cases of Bulgarian property whose particular circumstances seemed to demand its sequestration.

It was felt that the likelihood of unfair and even barbarous reprisal upon American citizens and American property which would have been inflicted by Turkey, if we had interfered with the Turkish property in this country, was sufficient reason for not disturbing the small amount of such property here. The property of American citizens resident in enemy territory was demanded only when the American's residence there had been so long continued, or his social and business relations with Germany were such as to indicate a preference on his part for living in Germany, rather than in his home country. Generally speaking, none of the property of American citizens has been taken over where such Americans were detained in Germany by circumstances or conditions beyond their control, preventing a reasonable exercise of their duty to return to their home country upon the outbreak of the war.

The right to take property of persons resident or doing business in the territory of allied nations occupied by the enemy has been sparingly exercised, and, so far as possible, only in the case of persons whose loyalty to the allied nations has been doubted. Doubtless there will be found cases where the property of persons in occupied territory, whose loyalty to the allied cause can not be questioned, has been taken over because of our inability to determine the facts. But this will cause no loss or expense and very little inconvenience to the owner, for when a person has lost his enemy character by reason of the enemy forces evacuating the territory of his residence, he may file a claim under the act and have his property restored to him. Similarly, American citizens may divest themselves of their technical enemy character by removing from enemy territory into neutral countries, or into the United States, and thereupon the Department of Justice, to which has been delegated the right to pass upon claims of non enemy persons, will take jurisdiction of their claims and upon a proper showing order their property to be released.

No property belonging to persons who were adjudged to be enemies solely on account of residence has been sold or authorized to be sold. The property of American citizens taken over because they were residents of enemy territory or territory occupied by the enemy, and the property of allied citizens and subjects demanded and received because they were resident or doing business in occupied territory, is being conserved and administered without thought or intention of sale or other disposition thereof.

The office of Alien Property Custodian was filled by the appointment of the President on October 22, 1917, so that the office has been in operation about 16 months. At the close of business on February 15, 1919, 35,400 reports of enemy property had been received. The property of each enemy person is treated in the office as a trust and administered by an organization which is built upon the general lines of a trust company. The number of separate trusts now being administered amounts to 32,296, and have an aggregate value of

$502,945,724.75. About 9,000 of these cases are covered by reports in which the administration has not yet reached the stage of valuation. When the entire number of trusts reported shall have been finally opened on the books and the readjustment of values consequent upon appraisal shall have been completed, it is safe to say that the total value of the enemy property in the hands of the Alien Property Custodian will reach $700,000,000.

The total amount of Government funds expended by the office of the Alien Property Custodian from the time of its organization to February 15, 1919, is about $1,000,000. Thus, it will be seen that the cost to the Government of administering nearly 33,000 trust estates of a total value of $700,000,000, located in every State in the Union and in every insular possession, is only about one-seventh of 1 per cent of the principal of the trust estates for a period of 16 months; a record of economical administration which has never been approached by any trust company in the world. In one sense, indeed, this office has cost the Government less than nothing, for through the efforts of the Alien Property Custodian unreported and concealed income and excess profits taxes have been collected from corporations and other taxpayers controlled by the enemy during the same period to the amount of $1,604,539.76. Without the activities of this office and the careful scrutiny and examination made of the affairs of all corporations with which the enemy had any connection, it is most likely that none of these taxes would have been revealed to the Government or collected by it. The amount thus collected through the efforts of the Alien Property Custodian is over 60 per cent greater than the entire cost of operating the office.

And, furthermore, after taking over enemy-owned corporations the Alien Property Custodian has endeavored, wherever he could consistently do so, to make them a part of America's great fighting machine. He instructed his representatives to give the Government the first call on the products of these enemy-owned corporations with the result that he soon found himself supplying the Government with many of the most important things used in the war. It is indeed a suggestive thought that the principal German investments in this country were found to be in the production of the essentials of warfare.

When the armistice was signed the Alien Property Custodian was supplying the Government with magnetos for aeroplane and automobile motors, with cloth to make uniforms for the soldiers and the dyes with which the cloth was dyed, with medicines, surgical instruments and dressings, with musical instruments, with ball bearings, telescopes, optical instruments and engineering instruments, with coconut charcoal for the making of gas masks, with glycerin for the making of high explosives, and a large number of other and varied products. In some instances the enemy-owned corporations under the Alien Property Custodian's supervision were running 100 per cent of their capacity on Government business.

In addition to enemy-owned corporations, the Alien Property Custodian took over a large amount of enemy-owned commodities which were in warehouses and various other places in this country. Wherever possible these commodities were turned over to the Government. More than 1,500,000 pounds of nickel and several hundred thousand pounds of ferrovanadium were turned over to the Ordnance Department, 98,000 bags of coffee and 10,000 bags of rice were sent to the Food Administration, while chronometers, binoculars, and various astronomical instruments were turned over to the Navy Department.

A few of the things supplied to the Government by enemy-owned corporations under the Alien Property Custodian's supervision follow:

Bosch Magneto Co., magnetos to Army and Navy aeroplanes and autos	$2,561,492
Botany Worsted Mills, cloth, shirting, and yarn	5,950,669
New Jersey Worsted Spinning Co., yarn, etc.	8,651,130
Passaic Worsted Spinning Co.	1,851,114
Gera Mills	8,003,492
Norma Co., ball bearings	1,100,000
Bayer Co., aspirin tablets, dyes, etc.	1,160,000
Heyden Chemical Works, acids, etc.	753,423
Werner & Pfeiderer Co., machines for mixing powder, etc.	431,376
Kny-Scheerer Corporation, surgical instruments and supplies	2,107,155

The magnitude of the work in building up an organization and accumulating within a year's time a trust business of these proportions can hardly be appreciated by any other than experienced trust company officials. No trust company in the world handles so many trusts as the Alien Property Custodian, and none has been compelled to handle even a fraction of the number while in the process of building an organization to take care of the work. Starting without a single clerk or a foot of office space, only a little more than a year ago, the organization rapidly thrown together for the purpose of providing for the torrent of business which flowed into it, has grown until 549 persons are now upon its pay roll at its two offices in Washington and New York, and agents, representatives, and depositaries are serving it in every State in the Union and in every insular possession.

The most careful and painstaking investigation has been required to disclose the fact of enemy ownership in thousands of cases. The commonest device resorted to by the enemy owners was the transfer of their property to their friends or agents in this country without valid consideration or upon consideration to be fixed after the war, and payable out of the business itself at a time when the parties conceived that normal business conditions would be restored. Businesses individually owned were frequently transferred to hastily formed corporations; the transfer often being made by the American agent of the German owner under his general powers. Not infrequently the agent undertook to sell the property of his principal to corporations whose stock was held by himself or his friends, the corporation converting the enemy ownership into a liability to the enemy for a fraction of its value, payable after the war, or in 1920, and in one case as late as 1937.

In many cases shares of stock enemy owned, whose certificates were in the enemy country, were treated as lost and new certificates issued to the American friends of the enemy owner, thus making this stock record of the corporation bear the appearance of American ownership. In some instances enemy owners of stock, whose certificates had been sequestered by the public trustee of Great Britain, undertook to sell their intertest in the corporation to friends in America, to whom new certificates were issued, leaving the public trustee of Great Britain high and dry with only a piece of paper as the result of his operations under the British trading-with-the-enemy act. If we had permitted these fake transfers to stand, and if the American purchasers had been able after the war to maintain the validity of the transactions in a contest with the enemy owners, some Americans would have picked up bargains which would have yielded fabulous profits obviously never contemplated. Cases were not uncommon where American purchasers seriously contended they had bought stock at $100 per share whose book value ran into thousands of dollars.

Property, whose sale or exchange in times of peace would have required months of negotiation and reams of paper on which to write the instruments necessary to protect the parties in their contracts, was sold under stress of the imminent war conditions about the time Von Bernstorff received his passports, by the mere exchange of 10-word cablegrams. Conversations held years before in the beer gardens of Berlin, or in Fifth Avenue restaurants, when German owner and American friend casually discussed their American businesses, were suddenly resurrected to serve as foundation and justification for the most amazing transfers and alleged sales of enemy property in America. Great industrial institutions here, almost by word of mouth, traded their holdings in Germany for the property of Germans here, leaving balances to be adjusted when the war might permit either a confirmation of the transfer or a resumption of the former business status of the parties. Every device known to the law, as well as many unknown to the law, served the purpose of evading the consequences of the war between Germany and the United States, which German business men at least seemed to have foreseen from the time the world war started.

In working out their plans, the German owners frequently had the assistance of capable American counsel, who in most cases carried out the details of the transaction in entire good faith and without ulterior motive, being without knowledge of the underlying purposes of the parties. Most of these lawyers, feeling that the interest of their country was paramount to those of their clients, assisted us in developing the real facts from which we were able to draw conclusions as to the actual ownership of the property. In very few cases have we discovered American lawyers active parties to conspiracies to defeat the belligerent rights of the United States, or to hide the property of enemies from the governmental authorities.

In approaching all these cases we have been guided constantly by the standard set up by the Supreme

Court of the United States in similar cases, generally involving seizure and condemnation of vessels at sea in time of war. As stated in a recent case, referring to a transfer of enemy property during the Spanish war—

> The opportunities for fraud being great, the circumstances attending a sale are severely scrutinized and the transfer is not held to be good if it is subjected to any condition or even tacit understanding by which the vendor keeps an interest in the vessel or its profits and control over it, a power of revocation, or a right to its restoration at the close of the war.

Wherever the facts seem to justify the conclusion that the transfer of property has been made in contemplation of the war to defeat the belligerent rights of the United States, to avoid the effects of an anticipated trading-with-the-enemy act, or with a view of resuming the ante bellum status at some time in the future, we have not hesitated to cut through the contracts, conveyances, obligations, and trust agreements by which the parties have sought to conceal their real purposes and have declared the property to be enemy owned. In most cases, after our thorough investigation, confessions of the parties have verified our suspicions and fortified our conclusions. In other cases sturdy resistance has been met all along the line and delivery made to the Alien Property Custodian only under protest. In but one or two cases, however, did this protest reach the stage of litigation before the armistice was signed.

With the cessation of hostilities something of a new fighting spirit has developed, and lawyers who, while the war was on, would have been unwilling to play any part in resisting the just demands of the Government in the taking of enemy property, have not hesitated to throw all sorts of obstacles in the path of the Alien Property Custodian and to invoke the aid of the courts to sustain transactions, which as patriotic

Americans they would have been first to condemn while the war was being fought. It seems not improper for me to say that lawyers ought to be no less loath now than heretofore to involve themselves in the machinations of enemy persons seeking to prevent the agencies of the Government from carrying out the expressed will of the Congress.

The legislative intent was plainly that all enemy property, concealed as well as disclosed, should be placed entirely beyond the control or influence of its former owners, where it can not eventually yield aid or comfort to the enemy directly or indirectly. Until the peace terms are finally signed and the ultimate disposition of enemy property determined by the act of Congress, it shall be the firm purpose of the Alien Property Custodian to carry out the will of the Congress in respect thereto. Neither litigation nor threat of litigation ought to be interposed to stay that purpose. The trading-with-the-enemy act makes ample provision for the full protection of American citizens whose just claims or property rights may be affected by the administration of the Alien Property Custodian's office. Property in his hands is in custodia legis in a large sense, and the Government can be relied upon at the conclusion of the war to make adequate provision for the just disposition and distribution of all this property.

The enemy investments in America divide themselves into two classes. In the first class are the private investments of individual German subjects, who, attracted by the possibilities in America, invested their funds in a small way in this country in real estate, in mortgages, and in securities, chiefly of industrial and transportation companies. In the second class are the investments which have been made by combined capital in Germany having close affiliations with the great political and financial powers of the Empire.

These latter investments sought dominance and frequently secured control of great industrial and commercial establishments in the United States. It seemed to me from the beginning that these two classes of property should be treated differently when they all came into the possession of the Alien Property Custodian. Speaking in a general way, investments in the first class were friendly. And as to them the Alien Property Custodian is constituted a sort of trustee or guardian to see that they are conserved and protected as against the time when the treaty of peace or the act of Congress shall make final disposition thereof in kind. Investments in the second class were in a sense hostile. They constituted Germany's great industrial army on American soil. They were the far-flung lines of advance for her kultur, and so great had they become with the opening of the world war that it has now become perfectly plain that Germany lived in high hopes of the assistance which would come to her from the organization which she had built up on this side of the Atlantic. These investments were largely in industries, which, while accepting the hospitality of American laws to become American corporations, were never in fact Americanized. In many cases the factories, warehouses, and offices of these enemy-owned concerns were mere spy centers before America entered the world war, and would have been nests of sedition if the Alien Property Custodian had not acted promptly in their seizure. As to these no obligation is owed to their private owners to conserve or care for them with a view of ever returning them in kind. The purpose of Germany in maintaining many of them here was such as to justify their complete eradication as German enterprises and their thorough naturalization into an American character.

When the trading-with-the-enemy act was originally passed there was little accurate or definite knowledge as to the extent of the German investment in the United States. While it was known to be large it was not generally suspected as being either powerful or particularly unfriendly to American interests. Consequently, the original trading-with-the-enemy act made the Alien Property Custodian a mere conservator, restricting his powers of disposition of enemy property to cases where it was necessary to make sale in order to prevent waste and protect the property. If this situation had remained unchanged, we would have found ourselves in the anomalous position of carefully protecting for the enemy the great industrial and commercial army which Germany had planted here with hostile intent. More than that, we would have been forced to account at the end of the war for enormous profits made by many of these businesses; profits due almost wholly to the war conditions for which their owners and their owners' friends were responsible.

When the Congress passed the amendment giving to the Alien Property Custodian the general power of sale, it was with the purpose in mind that the German industrial army on American soil should be captured and destroyed. I have proceeded with all expedition possible to this end. Instead of permitting myself to become a mere conservator of enemy property, I have tried to make the trading-with-the-enemy act a fighting force in the war. Germany very promptly recognized the tremendous import of the new aspect of things when the sales amendment was adopted and a general program of sale of enemy-owned industries was announced. She bitterly protested through official channels that the plans of the Alien Property Custodian "were designed to destroy Germany's economic existence upon this continent."

When it is recalled that Germany's great hope for the future lay in the industrial conquest of this continent—a conquest which she believed in 1914 she was in a fair way to accomplish—it will readily be seen with what dismay her financial and commercial interests must have viewed the sudden and direct offensive which was designed to forever loosen the grip which she had obtained upon American industry and commerce.

Our selling program was accompanied by fair notice that, while we would after the war account for the proceeds of sales of enemy property, the properties themselves would be separated from their former enemy owners forever. The sale to the United States Government of the Hamburg-American and North German Lloyd docks on the Hudson River at New York and at St. Thomas in the Virgin Islands; the sale and liquidation of the enemy interests in the great American metal, textile, chemical, electrical, and other industries before the armistice was signed, helped to bring the German Government to a realization that, regardless of possible military victories, she had already lost the war. What effect this program had upon the general morale of Germany it is yet impossible to estimate. Its heartening effect upon our allies and our own people has been well recognized, and by the same token may be assumed to have had a contrary effect upon our enemies.

Great permanent good will result to this country from the Americanization of these enemy-owned concerns. A hybrid Americanization is no less dangerous in industry and commerce than in individuals. Foreign capital ought to be welcomed here, but only if it becomes promptly naturalized and remains loyal to the country of its adoption. In most of these German-owned industries in America there was not even divided allegiance. Their first love was the Fatherland and all their efforts here were in its interest. They spread the German propaganda before America was awake to its significance. They hoped to be powerful enough to make it effective when "the day" should come. This is now all in the past. Industrial, commercial, and scientific development which had been stifled or throttled here by reason of the selfish conduct of the German industrial interests should now have full play.

In subsequent chapters I attempt to show how the German influence became powerful in many lines of industry; how it strangled American effort in similar lines and how the Americanization of these industries will open wide the throttle for their speedy growth and development in American hands for the benefit of the American people. It has seemed to me that such a statement of the real conditions in the past; the efforts of this office in trying to change them and the outlook for the future of American industry by reason of such efforts, constitute the kind of report which I should make, rather than a mere accountant's list of the names, addresses, amounts, and description of property taken over in nearly 35,000 separate estates. Such a list would be meaningless for any other than accounting purposes. Such information is, of course, all available in this office for use at such time as the claims of enemy persons shall be disposed of according to the will of Congress. In the meantime, it is the large and broader view of the great industrial offensive which during the months of war this office has been privileged to wage against enemies abroad and enemies at home that I desire particularly to present.

I do not advovcate any trade boycott out of a spirit of revenge or in retaliation for injuries done to the United States. I do not want to continue the war after the war. I am for peace. I believe that the great overshadowing result which has come from this war is the assurance of peace almost everlasting amongst the peoples of the earth. I would help to make that an absolute certainty by refusing to permit Germany to prosecute a war after the war. The military arm of her war machine has been palsied by the tremendous hammering of the allied powers. But her territory was not invaded, and if she can get out of the war with her home territory intact, rebuild a stable government and still have her foreign markets subject to her exploitation, by means no less foul and unfair than those which she has employed on the field of battle, we shall not be safe from future onslaughts different in methods, but with the same purpose that moved her on that fateful day in July when she set out to conquer the world.

There can be no question either as to the legality or the wisdom of the announced policy of the Alien Property Custodian to continue the liquidation and sale of enemy-owned business in his hands. In the first place, Germany and the United States are still at war. The trading with the enemy act is still in force. Some fantastic arguments have been made to the effect that the war is really over because the President in his message to Congress, defining the terms of the armistice, added "thus the war comes to an end." The trading with the enemy act defines the end of the war with precision. It provides that it shall be "the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall by proclamation declare a prior date, in which case the date so proclaimed shall be deemed to be the 'end of the war.'" One interested party has filed a brief with the Alien Property Custodian seriously contending that the President's remark in his message to Congress constituted a proclamation declaring a date prior to the exchange of ratifications as the end of the war. But I can hardly believe that such a contention will be supported by the public generally, much less will it be agreed to by any court.

Again, enemy property which is now being sold was all demanded and taken over by the Alien Property Custodian many months before the armistice was signed, and the jurisdiction of the Alien Property Custodian having attached there can be no legal reason why the signing of the armistice should operate to prevent the change of character of that property which is the only effect of the sale. The proceeds, constituting the fair and adequate value of the property, are deposited in the Treasury of the United States and held for precisely the same uses as the property itself was held.

But the policy of the Alien Property Custodian in continuing these sales is based upon very much broader considerations than the technical right to hold the sales growing out of either office procedure or a continuance of a state of war. I have already referred to the importance and necessity of securing American industrial independence by dislodging the hostile Hun within our gates, whose methods are such as to unsettle the future peace of the world. Besides that, Germany has sequestered all of the American property within the bounds, and has liquidated or sold to German subjects a considerable portion thereof. It is not conceivable that this property will ever be returned to its American owners in kind. Under the conditions now prevailing in what was once the German Empire, American investors in Germany will neither expect nor desire to continue business where they left off when the war began. Certainly they will not be put by their own Government to the necessity of seeking redress from the German courts or the German Government in their claims for property taken during the war under German laws. They confidently rely upon their own Government, whose traditional policy has been to take care of the claims of its own nationals against a belligerent.

It is not necessary to forecast the treaty of peace to hazard the prophecy that all American citizens whose property has been taken in enemy countries will under some form of administrative law present their claims for allowance to this Government, which will see that they are properly reimbursed for their losses. The United States will hardly be expected to pay these losses out of its own funds when it has at hand more than sufficient property belonging to German subjects whose claims against us will doubtless be provided for by their own Government in the same manner. By a simple process of offsetting and adjusting these claims between the United States and the allied nations on the one hand, and the central powers on the other, each Government will have sufficient property belonging to the enemy to provide for the claims of its own nationals. Such a plan as this, which seems to me to be firmly grounded on the precedents, will require the liquidation, extending possibly over a long period of time, of all the enemy property in this country. There would be no actual confiscation of private property in such a plan, for each Government would pay the claims of its own people and have the property of its enemies with which to pay them.

To turn over the German property in this country to its former owners in kind would be in effect a confiscation of the property, for the bitter resentments accruing from this awful war are such that human nature would have to be reconstructed before the German would be welcome as a business man upon American soil, within the next decade at least. If an American corporation whose stock is owned by German subjects were turned back to-morrow to the control of its former owners, its business would melt away, its assets would shrink and its former good-will as a going business would become a distinct liability. The German investor would save little out of the resulting wreck. Foreseeing disaster, the German owners of American securities in all lines of industry would either dump them upon the American market with resultant disarrangement in finance and commerce, or conceal their ownership behind dummies who would seek to deceive the American public. Either result would be unfortunate and should be avoided.

I freely and gratefully acknowledge the debt which I owe to every member of my organization and to thousands of other persons throughout the country who volunteered information and assistance, without whose loyal and constant help the work of the office would have been impossible of accomplishment. The heads of all my bureaus, nearly all division chiefs, and many men occupying apparently minor positions in the organization have accepted those places at great personal sacrifice, anxious only for the opportunity to be of service to their country in the war. They have done splendid work. The meager salary which they have received is but a small part of their compensation. The rest will come from the satisfying knowledge of a patriotic service done cheerfully and well.

The entire organization will, I am sure, agree with me that it is no reflection upon the splendid work done by others for me to particularly refer to Francis P. Garvan, of the New York bar, who as managing director of the New York office and director of the Bureau of Investigation, by his splendid organizing and investigating abilities, is chiefly responsible for our securing millions of property which had been skillfully concealed by its enemy owners; Lee C. Bradley, of Birmingham, Ala., whose service as general counsel has been of enormous value in the interpretation and enforcement of the act, both in consultation and in court; Joseph H. Choate, jr., of the New York bar, who has devoted 16 months constantly to the work of unearthing and Americanizing the German-owned chemical industry in this country, with great possibilities of lasting benefit for our people; and Bradley W. Palmer, of Boston, who, in cooperation with all branches of the organization, successfully handled the largest and most difficult problems of the office; Walter D. Denegre, of New Orleans, who successfully worked out all of the intricate questions involved in the taking and Americanizing of enemy-owned properties in our insular possessions, and to Joseph F. Guffey, Director of the Bureau of Sales. All these men, sacrificing large personal interests to devote their entire time and energy to the affairs of the Alien Property Custodian, have served entirely without compensation and are entitled to the gratitude of the country.

I am also deeply indebted to the members of my advisory sales committee: Otto T. Bannard, Cleveland H. Dodge, and George L. Ingraham, of New York; Ralph Stone, of Detroit; and B. H. Griswold, jr., of Baltimore. All of them, busy men of large affairs, have gladly devoted a great amount of time and thought to the execution of our selling program; have examined with great care all of the proceedings leading up to and resulting in sales of enemy property, and, after full, patient, and painstaking investigation, have passed upon the adequacy of the price and the character of the purchasers. Their approval of these sales is in itself an unqualified guaranty of the fairness with which this office has dealt with enemy property in the important matter of its Americanization.

I also desire to express my deep appreciation of the services of Alton McCulloch, Benjamin Rush, Otho E. Lane, R. N. Bissell, and Jesse S. Phillips, members of the Fire and Marine Insurance Committee, and Thomas A. Buckner, Frederick H. Ecker, and Lincoln

Passmore, members of the Life Insurance Committee, for their generous and painstaking assistance in the handling and liquidation of enemy insurance companies.

The entire organization has been under the general supervision of the managing director, J. Lionberger Davis, of St. Louis, whose experience as a lawyer and trust company executive has made his assistance in organizing and directing the work of the office of the highest value.

ORGANIZATION.

To perform my duties under the trading with the enemy act, I continued the organization of my office, which was begun in the last two months of 1917, and completed that organization by adding new branches and creating new machinery when necessary, and by consolidating and eliminating all unnecessary machinery.

Obviously it is impossible for the Alien Property Custodian to perform personally the many administrative, judicial, and quasi-judicial duties imposed on him by the trading with the enemy act and delegated to him by the President. It was necessary, therefore, to distribute among the several bureaus the exercise of those functions which were appropriate to each.

General principles, involving the exercise of discretion, and rules of general policy are laid down by the Custodian, with the aid and advice of the managing director and the directors of the several bureaus, who meet with him daily at a noonday conference. Those principles and rules are applied by the several bureaus through their divisions, sections, and departments, and their acts are the official acts of the Custodian.

The managing director acts for the Custodian in all matters which may be lawfully delegated to him and supervises the relations among the several bureaus. All demands, except for property in the Philippine Islands, are executed by the Alien Property Custodian or in his name by the managing director. Under appointment by the President, the managing director executes acquittances and other instruments which may be necessary to give full acquittance and discharge for enemy property delivered to the Alien Property Custodian. Enemy property in the Philippine Islands is demanded in the name of the Alien Property Custodian by a managing director for the Philippine Islands, who executes acquittances for such property under authority of the President.

The Bureau of Administration has charge of quarters, supplies, personnel, mails and files, appropriation accounting, and disbursements.

The Bureau of Investigation is charged with the duty of discovering enemy property and all interests therein and the thorough investigation of unusual facts arising in connection with demands for enemy properties and the administration of trusts.

The Bureau of Trusts, in addition to its usual functions of preparing demands for and receiving, holding, administering, and accounting for enemy property, is called upon to apply principles of policy to the almost infinite variety of facts and questions arising in the course of administration of trusts.

The Bureau of Law advises the Custodian and the several bureaus on questions of law.

The Bureau of Sales performs the functions of the Custodian in respect of sales of enemy properties, accounting to the Custodian through the Bureau of Trusts.

The Bureau of Audits audits the records and accounts of the Bureau of Trusts and of the Bureau of

Sales, and the books of persons, partnerships, and corporations whose property or stock is demanded by the Custodian. On January 1, 1919, this bureau was discontinued and its duties assigned to other bureaus.

Early in the year it was necessary to open an office in New York City, where the great majority of enemy property in this country is located. In that office are representatives of the Bureaus of Investigation, Laws, Audits, and Administration, and substantially the entire Bureau of Sales. The director of the Bureau of Investigation is managing director of the New York office. The entire Bureau of Trusts, however, is in the main office at Washington.

During the year the Bureau of Investigation was largely expanded for the purpose of discovering and investigating enemy property and all interests therein.

The Bureau of Law was expanded not only in Washington and in New York, but State counsel were appointed in every State for the purpose of advising the custodian about legal matters in their respective States.

The Bureau of Trusts has expanded very materially, and upon it will rest the continuing responsibility of conserving, administering, and accounting for the properties of enemies as long as the office exists. Although the Bureau of Trusts is the largest bureau of the office it would have been many times its size had it not been for the depositaries which the Congress very wisely provided for in the act. Over 500 banks and trust companies have been designated throughout this country and in its territories and insular possessions.

Depositaries are designated for all enemy properties other than money and securities of the United States. Money and securities of the United States are deposited in the Treasury. Responsible banks and trust companies which report enemy property are designated, whenever possible, depositaries for such properties. Responsible banks or trust companies are designated depositaries for properties reported by others in those places, if practicable, where such properties are situated, preference being given to those banks or trust companies which are members of the Federal Reserve System. In unusual trusts an individual is designated codepositary with a bank or trust company, where his familiarity with the property makes such a course advisable. There are no local custodians and no exclusive depositaries. There may be, and frequently are, many depositaries in those places where large numbers of enemy properties (in several trusts) are located.

After the trading with the enemy act was amended on March 28, 1918, and the Custodian was thereby given the power to sell enemy property, as though he were the owner thereof, the Bureau of Sales was created to sell those businesses and interests therein which the Custodian determined should be sold.

There are five ways in which property is received by the Custodian:

1. In response to a formal demand.
2. By order or decree of a court.
3. In pursuance of a petition by the holder of such property, to be permitted to turn it over.
4. In pursuance of a license by the War Trade Board in connection with liquidation.
5. In pursuance of a license of the Treasury Department in connection with the supervision and liquidation of enemy insurance companies.

When a report, petition, copy of a decree or license is received in the office, it is given a report number by the Division of Mails and Files in the Bureau of Administration, and entered upon the Report Register.

It is then routed to the Bureau of Investigation, where it is examined for sufficiency of form and substance, and if there is doubt about the latter, advice is received from the Bureau of Law. If the enemy status is established, and the property should be demanded, the report is routed to the Bureau of Trusts, where it is given a trust number and assigned to the appropriate division.

Thereafter the Bureau of Trusts has complete jurisdiction over the property, calling upon the Bureau of Investigation for any further information which is necessary, and upon the Bureau of Law for legal advice. If a sale is authorized, the Bureau of Sales is charged with the duty of conducting such sale, and accounts to the Bureau of Trusts for the net proceeds realized. Litigation affecting such property or the interests of an enemy therein, and claims under section 9 of the act, for all or any part thereof, are referred to the Bureau of Law, and distribution is made by the Bureau of Trusts upon the advice of the Bureau of Law.

An analysis of the books in the Division of Accounts and the demands on file not yet complied with as of February 15, 1919, reveals the following facts regarding the nationality of the former owners of the property seized:

Nationality.	Number of trusts opened.	Estimated value of property.
German enemies	17,339	$326,855,090.39
Austrian enemies	7,580	39,555,557.34
Interned enemies	140	3,457,898.17
American enemies	648	91,866,053.40
Other enemies	1,567	40,371,354.63
Net income from Treasury investments..	....	839,770.82
Total	27,274	502,945,724.75

[Note: This chapter attached to defendant's answer as Exhibit 2.]

[50*]

(Offered and Admitted in Evidence as Plaintiff's Exhibit No. 12.)

(An excerpt from the report of A. Mitchell Palmer, as Alien Property Custodian, dated February 22, 1919.)

CHAPTER II.

THE CHEMICAL INDUSTRY.

The great field of chemical industry presented, at the outset, perhaps the most difficult of the many problems which the Alien Property Custodian was expected to solve. It was, or had been until importations ceased, saturated through and through with German influence. In regard to no branch of human endeavor was the myth of German invincibility more firmly fixed in the public mind. The country was flooded with German chemists; and those who were not German by origin, were mostly German, directly or indirectly, by training. A vast proportion of the persons engaged in the business bore German names. Connections more or less close between American and German houses were frequent and obvious. There was unquestionably a considerable German interest in such manufacturing as was being carried on. In view of the well-known and uniform policy of the great German government-aided combinations to embark in foreign manufacture only when export from Germany was not feasible, this interest seemed unlikely to be large; but, unless it could be discovered and rooted

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*Note: Numbers in brackets refer to pages of original printed answer.

out, no substantial Americanization of the industry was possible. The German chemical industry, which had so thoroughly penetrated and permeated our own, was gigantic, perhaps the strongest, and certainly the most remunerative of all Teutonic industries. The task of identifying and taking over its property in the United States was thus a direct attack upon a most formidable opponent; while the information on which the work had to be based, had to be derived, to an exceptional extent, from men hostile by birth or tradition.

[51] In order to give a fair understanding of the situation, it is necessary to sketch briefly the history of the German chemical industry. From about the middle of the nineteenth century, the practical application of chemical science began to occupy the attention of a constantly increasing number of the best scientific and industrial minds of Germany. A combination of natural advantages and national characteristics led to rapid advance. The industrial districts in which the necessary materials and other facilities were found or developed was exceptionally compact. Distances were short and transportation easy. Labor was cheap, docile, and stable. On the other hand, the national habit of mind was peculiarly fitted for chemical research work, and particularly for the interminable tasks presented by such research, in the way of exhausting the immensely numerous possible combinations available within a particular field. From the first, scientific attainment, and particularly accomplishment in the field of research, appealed strongly to the public mind. Men of science, and particularly research workers, were more highly regarded than in other countries. This tendency was strongly fostered by the Government, which, by conferring honors and titles, did everything possible to exalt the position of the successful scientist.

As a consequence of these conditions, the universities were at an early date provided with the most elaborate and advanced equipment for research work, and attracted to themselves an extraordinary proportion of the ablest young men of the nation. They accordingly proceeded to turn out a constantly increasing number of highly trained technical men, whose services were available to the rising chemical industry. The number of these men was such that the inevitable competition between them for places made the average salaries exceedingly small. Highly skilled service was, therefore, available to the German chemical manufacturer at an extraordinarily low cost. In this respect he had a marked advantage over the manufacturers of any and every other country in the world.

[52] These advantages were made use of to an extent nowhere else approached, because from a comparatively early date the importance of research work to practical industry was firmly grasped by both the industrial and governmental ruling classes. The alliance of the manufacturer and the university professor became constantly closer and more complete. To meet the needs pointed out by the industrial leaders, armies of plodding, but nevertheless skillful, chemists completed hundreds of thousands of separate researches. The results of these kept the German chemical manufacturers constantly in the van—always somewhat ahead of their competitors in other countries in the way of new processes and products.

While all that has been said above applies in a measure to every form of chemical activity, the German advantages were naturally less in the manufacture of the heavy chemicals than in the more difficult and complicated processes involved in other forms of the industry. Chemicals which are consumed in great quantities, like sulphuric acid or soda ash, are produced at prices so low that costs of transportation are often a controlling factor. Accordingly, in this branch of the trade the Germans never attained supremacy. The natural tendency was for each country to supply itself with these essential materials, and this natural tendency had not, at least so far as the United States was concerned, been overcome.

In two other great branches of chemical industry, however, the Germans had attained not only the first place, but to all intents and purposes a world monopoly—that is to say, in the practical application of organic chemistry to the manufacture of dyestuffs and medicinals. Although the first coal-tar dye was made in England by an English chemist and the next important step in the development of the industry—the production of Fuchsine, or Magenta—was the work of a Frenchman, the Germans almost immediately advanced beyond [53] the rest of the world in the development of this infinitely complex industry.

This complexity of the manufacture of dyestuffs as a business proposition is almost beyond belief. Tens of thousands of distinct dyes were produced in the German factories, and over 900 of these were actually sold in appreciable quantities, in the American market alone, before the war. Each of these nine hundred and odd products required a separate and distinct process of manufacture, one differing from the next, in many cases, as widely as if the products had been those of unrelated industries. While all these dyestuffs and a host of pharmaceuticals have a common source, in that they are derived originally from coal tar, they descend from this common ancestor by an enormous number of separate family lines. From the hundreds of distinct substances found in coal tar 10 so-called crudes form the starting points of substantially all the processes which result in dyes. From these more than 300 so-called intermediates are produced by a variety of more or less complex chemical reactions. Most of these reactions require the use of large quantities of acids and other chemicals not produced from coal tar. From the intermediates thus obtained an infinite number of possible dyestuffs can be produced. Many thousand such dyestuffs have been actually produced and marketed.

In carrying out the processes which result in the extraction of the crudes from coal tar, the conversion of crudes into intermediates, and of intermediates into dyes, the quantities of each substance produced depend not upon the will of the manufacturer, but upon the inexorable laws of chemistry. The proportion of the various substances obtained can be varied slightly by skillful manipulation, but only to a small extent. The manufacturer can not avoid producing large quantities of certain materials in order to secure perhaps smaller quantities of others. Again, at the very starting point of the industry, in extracting the crudes from the original coal tar, [54] an analogous situation arises. The tar's content of anthracene, from which the most valuable of all modern dyes are derived, is relatively small; that of naphthalene, for instance, is immensely larger. The tar distiller can not obtain anthracene without producing or wasting much greater quantities of naphthalene, benzol, and other crudes. The same truth holds good in every subsequent step of the immensely complex processes of dye manufacture. At each step by-products are produced in addition to the products sought. The obvious result is that, unless the final product can be sold at a colossal price, uses or markets must be found for most of these innumerable by-products. Many of them, fortunately, are useful in the manufacture of intermediates and dyes. Many have been found to have important medicinal effects and have taken permanent rank as pharmaceuticals. For others no use has been found, and the unavoidable production of these represents pure waste.

The most important feature, however, of this production of by-products is the relation which it bears to the explosive industry. All the most important explosives of the present day are either coal-tar products or the result of chemical processes requiring the use of coal-tar products. In a large dyestuff factory there is an unavoidable production of considerable quantities of substances which are directly available for conversion into explosives. Moreover, in addition to these by-products which can be used for manufacture of explosives, many of the materials which are not by-products but are directly useful for the production of dyes, can also, by slight alterations in the processes employed, be converted into explosives. For example, in the production of sulphur black, one of the most important black dyes, a slight variation in the final step of the long and complicated process of manufacture will transform the ultimate product into picric acid. A still more striking example is that of paramononitrotoluol. This is an intermediate necessarily made in quantities often beyond the needs of the [55] dye makers. To the end of the last century many thousand tons of this substance had accumulated in the German dye works, which were making frantic efforts to find uses for it in dye making. About 1904 these efforts suddenly ceased. Trinitrotoluol (T.N.T.) had been adopted as a military explosive, and every pound of the accumulation was directly available for easy conversion into this most formidable of high explosives. More important still, however, than this unavoidable production of materials for explosive manufacture, is the fact that the technical skill required for the manufacture of explosives is precisely that possessed by the chemical staff of a successful dye works and is to be found nowhere else.

Three things are apparent in regard to a business conducted under such conditions. One is that, unless limited to the manufacture of a very few carefully selected products, it must be carried out on a large scale with the aid of immense resources in the way of capital and technique. Another is that, if carried out on a large scale, one of its most important features will inevitably be the maintenance of large research laboratories to work out the infinite problems raised by the necessity of disposing of by-products. A third is that the connection with the explosive industry is so close that no Government which gave any serious consideration to the possibilities of war could fail to see the necessity of aiding and controlling the industry. The truth of each of these propositions was at once demonstrated in the history of the German dyestuff industry. From an early period, the manufacture became concentrated in a few important companies.

These companies, ultimately six in number, developed into enormous establishments producing practically complete lines of dyes and manufacturing most of their own crudes and intermediates, as well as many of their acids and heavy chemicals. Several of these establishments also became large producers of pharmaceuticals in order [56] to procure an outlet for their by-products. Outside of these very large houses, the industry was confined for the most part to small establishments producing only a limited number of carefully selected dyes, so chosen as to minimize the by-product difficulty, and so organized as to enable the owners to save most of the overhead expense by themselves furnishing the required technical skill and superintendence. These, indeed, were mostly little more than assembling plants. In the great establishments, the research laboratories became large and highly efficient institutions. In these laboratories hundreds of chemists were constantly employed. Their facilities were placed at the disposal of research chemists from universities—often men who had no connection with the dye industry whatever. Many of the manufacturers' own chemists were allowed and encouraged to proceed with researches which had no probable immediate commercial utility, but which tended to increase the existing supply of knowledge in those general regions of the world of organic chemistry in which the dyestuff concerns were operating. The result of all this inevitably was the accumulation of an immense mass of scientific data which usually afforded a quick and easy solution to each industrial problem as it arose. The results were sometimes startling. The most striking instance, perhaps, is the case of the Pfleger patent. The invention covered by this patent solved, by the use of sodium amide, of which an overproduction was available, the problem of producing indigo direct from aniline, and thus afforded a process far simpler than and at least as cheap as any theretofore known. As an instance of how closely such matters are followed by the German public, it may be noted that the announcement of the purchase of this patent by the great Hoechst works, one of the largest German dye manufacturers, advanced the company's stock 150 points on the stock exchange in a single day. The importance of this research branch of the industry is thus hard to overestimate. Finally, the connection [57] with the explosives industry resulted, as is well known, in constant governmental assistance to and control of the dye industry. Much was done by the German Government to insure the prosperity of the dye industry and its immediate convertibility to the production of munitions.

These conditions soon produced in the dye industry certain results similar to those which occurred in all the other important German industries during the great period of expansion at the end of the nineteenth century. The improvements in processes brought about by research laid heavy emphasis on the value of quantity production. Quantity production, carried on by competing houses, led to overproduction. Overproduction led to a determined effort to establish and maintain a large export trade. The natural advantages of the German industry, as compared to the industry in other countries, prevented serious competition in Germany itself. The Government's tariff and other policies enabled home prices to be kept up. It was then evidently to the advantage of any manufacturer to produce far more than he could sell in the home market, even if his export trade had to be carried on at a loss, when by doing so he could use a process so economical that his profits on home trade would be largely increased. Accordingly, German dyestuffs began to appear in every country at prices which domestic manufacturers could not meet. The inevitable result was that in country after country the domestic manufacturer was destroyed or stifled in its cradle. As soon as this had been accomplished, it was no longer necessary for the German exporters to sell at or below cost. Prices were immediately raised and handsome profits realized. The tendency to this result was recognized by the German Government from the first, and every facility was afforded to the growing export trade. It was fully realized by both the civil and military authorities that if a world monopoly in the dyestuff industry could be built up the military strength of Germany would [58] be colossally enhanced, since it alone of all the great powers would then be in a position to secure immediate supplies of the vast quantities of munitions likely to be needed in a modern war.

The methods under which this dumping policy was conducted, and its extent, may be illustrated by a few specific instances. Most of these occurred in branches of the chemical industry other than the manufacture of dyes, for the simple and sufficient reason that in this country, at least, the dyestuff industry never reached a point where it required much discouragement. When, however, in 1910 the first determined effort was made in this country to establish the manufacture of an important intermediate, when, that is to say, the Benzol Products Co. was organized by a group of men interested in the heavy chemical industry, to manufacture aniline oil on a large scale, the German hand was immediately shown. The price of aniline oil at the time of the establishment of this company averaged 11½ cents. As soon as its manufacture was fairly under way, the German exporters commenced to cut the price. Apparently, no definite prices were made by the Germans, but they adopted the simple policy of offering any customer of the new concern supplies at less than the price he was paying. For example, one of their most important customers refused an advantageous contract at 8½ cents, stating that he had assurance from the Germans that whatever price the Benzol Products Co. made would be met and bettered by them. Accordingly, the new company struggled on, conducting its operations without profit, and only because it was supported by a group of men of exceptional determination and insight was it able to survive until the war gave it an opportunity to establish its business on a firm foundation. Among other examples are the following: In 1903, there were in the United States five manufacturers of salicylic acid. By 1913, three of these had failed. Of the two survivors, one was the Heyden Chemical Co., a mere branch of a [59] German house, which, as such, I have since taken over. During the latter part of the decade referred to, salicylic acid was selling in Germany at from 26¼ to 30½ cents. During the same period, the German houses were selling it in this country, after paying a duty of 5 cents, at 25 cents, or from 6 to 10 cents below what they were getting at home.

A similar situation developed in the manufacture of oxalic acid. In 1901, when there was no American manufacture, it was sold by the Germans at 6 cents. In 1903, when the works of the American Acid & Alkali Co. were started, the price was immediately dropped to 4.7 cents, at about which figure it remained until 1907, when the American factory was shut down for a number of months. During this shutdown period the price was instantly raised to 9 cents. When the factory reopened the price was again dropped until 1908, when the company failed. It was then reorganized, and in 1909 secured the imposition of a 2-cent duty on the acid, from which time up to the beginning of the war the price ran at about 7½ cents a pound. The same process was carried on in regard to bicarbonate of potash. In 1900 there was no American manufacture and imports ran about 160,000 pounds. In 1901 American manufacture began. This succeeded so well that in 1906 imports had dropped to 45,000 pounds. At this time the American manufacturer's price was 6½ cents, while the import value was given at 4.9 cents. In the following year the Germans made a determined and successful onslaught. Their import value was lowered to 2.2 cents, with a result that, instead of 45,000 pounds, 310,000 pounds were imported. Accordingly, in 1908, the American manufacturer failed. The price was immediately raised to 7½ cents and remained thereabouts thereafter until the war. Many similar instances might be cited, but these sufficiently indicate the method and its results.

This determined onslaught upon the competing industries of other countries, this definite attempt to [60] secure world monopoly naturally created a strong tendency toward combination. As has been stated, by the end of the nineteenth century the real manufacture of dyes on a large scale was concentrated almost exclusively in six great firms. These were the following:

Badische Anilin und Soda Fabrik, Ludwigshafen on the Rhine, hereinafter known as Badische; Farbenfabriken vorm. Friedr. Bayer & Co. in Leverkusen, hereinafter referred to as Bayer; Achtien-Gesellschaft für Anilin-Fabrikation in Berlin, hereinafter referred to as Berlin; Farbwerke vorm. Meister Lucius & Brüning in Hoechst am Main, hereinafter referred to as Hoechst; Leopold Cassella G.m.b.H. in Frankfort, and Kalle & Co. Aktien-Gessellschaft in Biebrich.

Each of these six great companies had attained enormous proportions long before the war. Only two other concerns have carried on manufacture on a scale in any sense comparable. These are the following: Chemische Fabrik Griesheim Elektron of Frankfort A. M., a company which has absorbed a number of smaller manufacturers, and Chemische Fabriken vormals Weiler-ter-Meer, Uerdingen.

It will be noted that all of these establishments with the single exception of Berlin are concentrated in a narrow strip of territory near the Rhine and its tributaries. Their growth may be illustrated by a few figures as to two of the largest. Hoechst was organized in 1863 and started with five workmen. By 1880 it employed 1,860 workmen and 57 chemists, using 1,840 horsepower. It then produced 1,750 different colors. In 1912 it employed 7,680 workmen, 374 foremen, 307 chemists, and 74 engineers, and used 30,000 horsepower. The number of colors reached 11,000. The works of the Badische, which was organized in 1865, covered, in 1914, 500 acres, with a water front of a mile and a half on the Rhine. There were 100 acres of buildings, 42 miles of railway within the works, and the power plants comprised 368 steam engines and 472 motors; 11,000 workmen were [61] employed and the company was capitalized at 54,000,000 marks. The establishment of Bayer was on a scale entirely comparable with these two giants of the industry. The works of Cassella and Berlin were slightly smaller, while those of Kalle were the least important of the six. Weiler-ter-Meer was important largely because of its connection with the great Swiss house of Geigy & Co. Griesheim Elektron, prior to the war, had enormous works chiefly devoted to the manufacture of electrolytic chemicals, and became an important factor in the dyestuff business only within recent years, when by absorption of the Oehler Works and the Chemikalien Werke Griesheim its color production reached a scale approaching that of the larger houses. Of these eight great concerns each had active agent houses in the United States, which were among the most important factors in the American industry and accordingly in the work of the Alien Property Custodian in connection therewith.

The tendency toward combination, however, by no means exhausted itself in the creation of these giant enterprises. The same causes which produced the enormous concentrations of capital in other German industries in the form of cartels were also working in the chemical industry. By 1904 two such immense combinations had been formed in the dyestuff industry, each including three of the largest six houses. One of these comprised Bayer, Badische, and Berlin; the other Hoechst, Cassella, and Kalle. Indirectly, through their financial transactions with the great banks, and also directly, each of these cartels was aided and guided by the Imperial Government. By pooling profits, by so arranging capitalization that each company held stock in the other companies of its own cartel, and by other familiar means, the risks incident to the enormous expansion of the business and the immense increases of export trade were minimized. The centripetal tendency, however, did not stop here. In 1916 the two pre-existing cartels were combined with Griesheim Elektron, Weiler-ter-Meer, [62] and various smaller companies in one gigantic cartel, representing a nationalization of the entire German dye and pharmaceutical industry. The combination is extremely close. Profits of the companies are pooled, and after being ascertained each year on common principles are divided according to agreed percentages. Each factory maintains an independent administration, but they keep each other informed as to processes and experiences. To stimulate and keep up a spirit of competition between the factories it has been arranged that each product shall be manufactured by two or more factories. There is also an agreement that in order to circumvent tariff obstacles in other countries materials are to be produced outside of Germany by common action and at common expense whenever and wherever desirable.

At the time of the formation of this enormous organization the capitalization of each of the principal component companies was largely increased. Hoechst, Badische, and Bayer each increased their capitalization by 36,000,000 marks, bringing the capital of each up to 90,000,000 marks. The new stock was offered to the old stockholders at 107, which was a melon of some magnitude, since the last available quotations for the stock of one at least of these companies at the end of 1916 was 490. Berlin increased its capital from 19,800,000 to 33,000,000 marks. Other increases brought the total nominal capital of the group to over 383,000,000 marks. For many years a large part of the enormous profits of these concerns has been put back into the works, with the result indicated by the stock quotations. The real capitalization is thus much greater than this nominal figure. In fact, it is estimated that the actual investment in the works comprising the cartel is not less than $400,000,000. It can not be doubted that this enormous engine of commercial warfare has been created expressly for the expected war after the war, and that it is intended to undertake still more efficiently and on a larger scale the [63] various methods by which German attacks upon all competition were carried on.

In addition to the favorable effects of the foregoing factors, an important aid to the success of German export trade in dyes and pharmaceuticals was the advantage taken of the patent laws of the several countries. Owing to the immensely greater number of research chemists engaged in this work in Germany than in other countries, far more patentable inventions in organic chemistry were made by the Germans than by the chemists of any other nation. In the United States alone they took out patents by the thousand. For example, Bayer alone accumulated in the neighborhood of 1,200 such patents which were placed in the hands of one of its subsidiary companies. The Badische had approximately 500 such patents, while each of the other members of the cartel held patents by the score. As there was substantially no effort (with small exceptions) by any of the German concerns to manufacture in the United States, these patents were obviously obtained and held in order to prevent the formation of an American dye industry and to make impossible importation from other countries. The latter of these two purposes seems to have been the more important in the German mind. They seem to have had no fear that any American industry could be established on a competing basis. They had, however, some respect for the Swiss, French, and English industries, though at the time of the commencement of the European war Germany was supplying approximately nine-tenths of the world's needs in dyes. With the aid of the patents, especially the product patents, they could and did exclude all importations of competing dyes in the most important classes.

As if the legitimate advantages of the German industry, supplemented by the ruthless if legal tactics of dumping and destructive underselling, were not enough, the methods of the great German houses in carrying on their business in this country were from the first honeycombed [64] with corruption. Bribery of dyers was carried on almost universally and on a large scale. The head dyers of the various mills and other chief customers of the dye manufacturers were subsidized in many direct and indirect ways. These dyers frequently controlled the situation, since if any one of them wished to have his superiors cease using the dye of one manufacturer and buy instead the dye made by some other company, nothing was easier than to control the complicated process of dyeing in such a way that the dyes furnished by the house which was the least liberal to the dyer would produce wretched results. It would then be an easy matter for the dyer to get the manager of his mill to try the dyes offered by the more liberal briber, and with the exercise of a little care, the new dye would be sure to produce satisfactory results. So extensive was this corruption that I came across only one American consumer that had escaped its ill effects. This concern, the United Piece Dye-Works of Lodi, N. J., avoided the difficulty by having all its dyes purchased by the head of the company himself, under contracts providing that no barrel or package should show the name of the manufacturer. The company was thus able to designate the dyes which its dyers were to use solely by its own arbitrary numbers, and the dyers were thus unable to determine whose dyes they were using and to whom they should look for their graft. Against these illegitimate methods practiced by concerns having such resources and compelled by such an imperious necessity to seek largest German dye works, and since the outbreak of the war Mr. Metz has likewise become the controlling factor in the Central Dye Works. In addition to these four, a fifth plant was established a few years before the outbreak of the war, at Albany, by the American subsidiary of the great German house of Bayer.

These five concerns comprised the entire American industry, and it will readily be seen that operating as they did on German intermediates they existed purely on sufferance and were absolutely at the mercy of the German producers. They made neither alizarin nor anthracene colors nor synthetic indigo, which being the fastest known dyes are the most valuable product of the industry. The exclusive ability to provide these fast colors, [67] most of which were protected by patents, would have placed the entire trade in the hands of the Germans even if no other factors favorable to them had been present. These dyes were indispensable to the textile manufacturers, and by refusing to supply them except to houses which would buy their other supplies from the German manufacturers—that is, by the familiar process of "full-line forcing"—the latter could have retained complete control of our market, even if our manufacturers had been otherwise fully able to compete in the manufacture of the simpler colors. The 30 per cent duty payable on almost all of the coal-tar colors apparently afforded no real protection, nor, as will be shown, was it possible for the American industry to secure any relief under the Sherman Act.

The condition of the other branches of the American chemical industry was, as has been stated, not quite so bad. The manufacture of acids and heavy chemicals was well established on a profitable basis, though even in this manufacture the employment of numerous German chemists and processes gave a certain Teutonic color to the industry. In the manufacture of fertilizers there was, in a measure, a balance of power. The Germans had a complete monopoly of potash and its salts owing to their ownership of the only considerable known easily worked potash deposits. This was somewhat offset by our possession of phosphates, of which the Germans had no considerable supply. There was a certain amount of German ownership in companies operating in the phosphate field, most of which ownership has been unearthed and taken over. In nitrates, of course, the United States, like the rest of the world, was mostly dependent upon the Chilean supply.

In the manufacture of chemicals in which electrical processes, requiring large and cheap supplies of electric power, played an important part, the situation was such that the Germans had been induced to enter to some extent into the manufacture in this country. They had [68] organized and owned the Niagara Alkali Co., which, utilizing the cheap electric power of Niagara, became the largest domestic manufacturer of caustic potash, the latter produced from German raw materials. This company also supplied the chlorine gas which was the raw material used by the only considerable American manufacturer of liquid chlorine. In the same way the great Frankfurt chemical works known as the Deutsche Gold und Silber Scheide Anstalt, had through its American subsidiaries, the Roessler & Hasslacher Chemical Co., the Niagara Electric Chemical Co., and the Perth Amboy Chemical Works, established the only large American production of cyanides and the largest American production of formaldehyde and wood distillation products. The importance of these industries will be recognized when it is remembered that cyanides are indispensable to the mining and electrotyping industries, while formaldehyde is the basis of the only new and important chemical industry of American origin, the manufacture of synthetic resin products such as Bakelite, Condensite, and Redmanol.

In medicinals very little real American manufacture existed. A few of the coal-tar pharmaceutical products were produced by two American houses in St. Louis, the Mallinkrodt Chemical Works and the Monsanto Chemical Works. By far the most important factor in this field, however, was the New York house of Merck & Co., which was a branch of the world-famous firm of E. Merck of Darmstadt, and has accordingly as such been taken over. The enormous dispensing and distributing business of such firms as Parke Davis & Co., Lilly & Co., and Powers-Weightman-Rosengarten Co., successful and efficient as it was beyond comparison with similar businesses in any other country, seems to have involved very little real manufacture, and the materials used were largely imported. There seems to have been but little, if any, German interest in this branch of the industry, except among small brokers and dealers.

[69] From all the foregoing it will be seen that the all-important portion of the chemical industry, the branch in which the work of the Alien Property Custodian would necessarily be most arduous and in which its results might be most beneficial, was the dye industry. The vital character of that industry was due not to its financial importance, since the consumption of dyes in the United States at the time of the outbreak of the war did not exceed $25,000,000 a year in cost to the consuming industries, nor to the fact that these dyes were absolute essentials to industries producing perhaps $2,500,000,000 of goods annually, but most of all to the fact that the technical skill and equipment provided by a successful dye industry furnished the means, and almost the sole means, to which every nation must look for advances in the application of chemical science to practical undertakings. No other in-

dustry offers a livelihood to any such large numbers of highly-trained scientific chemists nor any such incentive to continuous and extended research.

As has been stated, the opening of the year 1914 found nine-tenths of the dyes used in our industries supplied by German houses and the great bulk of these by the largest six German houses. At this time each of these six giants was represented in this country by a subsidiary American corporation. The agent of Bayer was Bayer & Co. (Inc.), a New York corporation, while in the Synthetic Patents Co. (Inc.), another subsidiary, was vested the ownership of the 1,200 American patents taken out by the parent house. This New York company also owned other subsidiaries, including the Hudson River Aniline Works, through which it had established its Albany factory. Berlin was represented by the Berlin Aniline Works, also a New York corporation. Kalle & Co. were operating through a third New York corporation, also called Kalle & Co. In these three cases all of the stock of the American house was admittedly owned outright by the parent organization. All three were [70] accordingly taken over at the outset. The great Badische Co. acted through the Badische Co. of New York, the stock of which appeared on the books to be owned by Messrs. Adolph Kuttroff, Carl Pickhardt and their chief employes. Leopold Cassella & Co. were represented by the Cassella Co., also a New York corporation, the stock of which appeared to be owned by its president, Mr. William J. Matheson, and its vice-president, Mr. Shaw. Hoechst operated through a New York company known as Farbwerke Hoechst, of which the stock stood in the name of its president, Mr. Herman A. Metz. Of these gentlemen Messrs. Kuttroff and Pickhardt were Germans by birth and Americans by naturalization, Messrs. Matheson and Shaw American by birth and tradition, and Mr. Metz American by birth.

An extensive investigation was instituted by my bureau of investigation under the direction of Mr. Francis P. Garvan, and as the result of a long-continued and strenuous effort it was at last shown that the ostensible ownership of the stock of these three branches was not genuine, but that each remained in fact owned by its German progenitor. As will hereinafter appear in the detailed accounts of these proceedings, each of these three companies has also been taken over.

The outbreak of the war cut off the importation of dyes from Germany. There immediately sprang up a number of American companies, mostly small, organized to embark in the manufacturing business. By strenuous efforts these companies contrived to avert the threatened dye famine which the curtailment of the German supply apparently rendered inevitable. Commencing with those dyes which were easiest to produce, and gradually extending to a limited number of the more essential and well known of the non-patented colors, the production increased until at the time when I took office the requirements of the textile trade were being met and a considerable export business had sprung up. The quality of dyes produced was, except in the matter [71] of standardization, comparable with the German dyes of similar character, but the fast alizarin and anthracene colors were not being produced, nor was synthetic indigo, the consumption of which is larger than that of any other dye. The largest of the existing producers, that is to say, Schoellkopf Aniline & Chemical Works, W. Beckers Aniline Co. and the Standard Aniline Co. of Wappingers Falls, have been combined with the aniline oil works of the Benzol Products Co. and with the appropriate portions of the business of the General Chemical Co., the Semet Solvay Co., and the Barrett Co. into a single large corporation known as the National Aniline & Chemical

Co. This combination has since produced considerably more than half of the dyes consumed in America. During the same period the Dupont Co. had begun to construct an enormous plant at Deepwater, Del., established an immense laboratory employing approximately 200 chemists, and had bought the plant of the United Piece Dye Works, in which the latter company had succeeded in producing a number of the most valuable dyes applicable to silk. Among other important concerns the Dow Chemical Co., Messrs. Ault & Wiborg, the Sherwin-Williams Co., and the Newport Chemical Works were preparing for the production of colors on a large scale, while many other companies were turning out appreciable quantities. The prices, of course, rose enormously and the results for a time were correspondingly profitable.

In the meantime the German agencies had been making every effort to retain their organization and their customers. They had on hand, in 1914, a considerable stock of German materials. One or two of the companies, notably Bayer & Co. (Inc.), sold out at once at a colossal profit. The others, apparently determined to retain their customers and their German connection at whatever cost, peddled out what they had in limited quantities, allowing each customer only a small quantity per month. These concerns made their sales at slight advances in price, hoping by this treatment to retain their [72] customers' good will until the resumption of imports could be brought about. This process was assisted by the two voyages of the submarine *Deutschland,* each of which brought to the representatives of the six great houses a supply of the most essential dyes. Bayer & Co. (Inc.) increased its production somewhat, as did Mr. Metz (the American agent of Hoechst) in his Consolidated Color & Chemical plant, while the Cassella Co. organized a new subsidiary known as the Century Color Co. to commence manufacture under the familiar C. C. C. trade-mark, under which it had sold the goods of its parent German house.

At the time when I took office, therefore, the American dye industry was active and profitable and in almost undisturbed possession of the field; but it required only the slightest investigation to show that the new born industry's hold on life was of the most insecure description. The supply of crudes had been so expanded by the needs of the explosive industry and the consequent increase in the number of by-product coke plants and recovery installations in gas works that our supply of raw materials was unsurpassed. We were, however, producing only a few of the essential intermediates. We had a plentiful lack of even such technical knowledge as was required to produce dyes in the laboratory, to say nothing of the vastly greater amount of similar knowledge required to translate laboratory into commercial production. In the case of all the faster dyes Germany's patents had prevented every attempt at American production, and while the trading with the enemy act authorized issuance of licenses under these patents, the terms were such that no licensee could hope to continue the manufacture in competition with the Germans after the war. In the meantime the representatives of the great German houses were holding their organizations together and keeping their trade as best they could by doling out their remaining stocks and by selling under their own names American products, sometimes mixed [73] with their own German goods. These representatives were waiting for the end of hostilities and were ready at a moment's notice to re-embark in the importing business and assist their German parent houses to destroy the new American industry. It was, therefore, one of the most vital tasks before me to ascertain every trace of German ownership in the new industry and particularly in the American representatives of the German trust. Unless the Germans could be deprived of the benefit of these branch houses, their reentrance into the field would be all too easy.

This proved to be a hard task. Every variety of camouflage had been resorted to by the Germans to conceal their interests. A favorite method in this, as in other industries, was of course that of a fictitious transfer of stock. In a few cases such transfers were carried out after the severance of relations and before the declaration of war. In these cases the character of the transaction was fairly obvious and our course correspondingly simple. In other cases, however—and this was true of two of the three representatives of the great German houses which were ostensibly American owned—the apparent transfer took place at a period before the war was thought of, at least by anyone outside of Germany. In these cases the transfer was the result of an attack made by persons ostensibly interested in the textile business upon the representatives of the German houses under the Sherman law.

Up to about 1910 all the great German houses shipped their goods to their American representatives on a pure consignment basis. The compensation of the American representative was wholly by way of commission. The American company in these cases was a mere selling agency or branch. In 1912 a group of Philadelphia lawyers brought about the prosecution of an officer of Bayer & Co. (Inc.) (or its predecessor, Farben Fabriken of Elberfeld, another New York corporation) for some of the corrupt practices in the way of bribing buyers, which, [74] as has been stated, had become universal among the German houses. In the course of this prosecution the lawyers in question became familiar with the general history of the German industry and at once realized that it might be made the subject of an attack under the Sherman law, on the theory that each of the German companies was, through its agent, actually doing business in this country and that the two great cartels were conspiracies in restraint of trade. Acting on this theory, suits were commenced for triple damages against most of the American representatives. The institution of these suits, which were subsequently settled, resulted, in at least two cases, in a transfer by the Germans of their stock in the American company to the officers of that company. In the case of Badische Co., the stock of which was already in the names of the American representatives, it was only necessary to change the basis of the business from consignment to sale. This was done in all the cases, so that the German house might appear not to be doing business in this country through its representative, but to be merely selling to an apparently independent American corporation. There was on the surface no apparent reason why these transfers should not have been genuine. Each German house really controlled the situation with reference to its agent because it could instantly ruin its agent's business by withdrawing supplies. Accordingly, for a considerable period, these houses escaped more than mere general suspicion, and it was not until the Bureau of Investigation of my department had acquired considerable familiarity with German methods of camouflage that the true situation could be disclosed.

This investigation, of course, ran parallel with the similar investigations of several other departments of the Government and the Bureau of Investigation received valuable aid from the offices of Military Intelligence, Naval Intelligence, and War Trade Intelligence, as well as from the Department of Justice and from the British, [75] French, and other allied authorities. All these bodies worked in close co-operation and their mutual assistance was of inestimable value. Information derived from these sources demonstrated that the chemical industry was a natural center for espionage and that this had been true long before we entered the war—indeed, before the war began. The relation between the German Government and the great German chemical houses was so close that representatives of the industry were naturally most direct representatives of the Government, and their work in this country gave them unequaled opportunities for examining our industries from within. Customers of the German import houses were constantly in need of expert advice in regard to the processes in which their goods were used. The advising expert supplied by the German houses naturally saw everything there was to see, and what he learned was seldom concealed from his Government.

After the war began the industry became a center not only of espionage, but of propaganda and of direct governmental activity. The number of striking instances of this development is so great that only a few can be detailed, but these appear sufficiently striking. Among the early examples unearthed by the Bureau of Investigation was that of the by-product coke plant established by the Lehigh Coke Co. The latter was a corporation organized by a syndicate represented by the Deutsche Bank. At the time the war broke out it had been in operation for a number of years and was promising considerable success. It had not, however, gone extensively into the manufacture of coal tar and its derivatives. In 1915, however, it established a considerable plant for these purposes. Every ounce of toluol and benzol which was produced was sold under contracts binding the purchaser not to use or permit the use of the product for the manufacture of explosives or for the benefit of the allies. An examination of the correspondence between Hugo Schmidt, the agent of the Deutsche [76] Bank in this country, and the bank, shows that the entire undertaking represented by this by-product plant was a direct effort by the German Government to prevent the making of these valuable materials for explosive manufacture in the United States, or rather to prevent their use for the benefit of Germany's enemies. The undertaking was decided on because the Deutsche Bank had ascertained that the Bethlehem Steel Co., which had a contract with the Lehigh Coke Co. for the latter's coke and gas, had practically determined to build such a plant for its own purposes, but that this decision might be changed if forestalled by the erection of a plant by the Lehigh Coke Co. This actually occurred, with the result that large supplies of these invaluable coal-tar products were kept out of the munition industry, while the demand for them from other industries was prevented from having its natural effect in bringing into existence American plants which would have been free to supply the allies. This condition continued until just before we entered the war, when the Deutsche Bank, doubtless better informed than most as to the probabilities, sold out the Lehigh Coke Co. to a nominee of the H. Koppers Co., which in turn immediately resold to the Bethlehem Steel Co.

A still more striking instance, uncovered by the Bureau of Investigation under the direction of Mr. Garvan, with the important aid from the Department of Justice and the Secret Service, was that of the organization known as "The Chemical Exchange Association." The purpose, and for a time the effect, of this enterprise was to corner the supply in the United States of phenol, an essential of the explosive industry, and to prevent its use for the manufacture of high explosives (picric acid and trinitrotoluol, or T.N.T.). This undertaking was apparently initiated by Dr. Albert, the financial adviser of the German Government in this country, in direct collaboration with Von Bernstorff. Dr. Albert carried out the scheme through Dr. Hugo Schweitzer, the chemist [77] and leading spirit of Bayer & Co. (Inc.), the American agent of Bayer, of Leverkusen. The outbreak of the war had instantly stopped the importation of phenol, which was not manufactured to any extent in this country. Mr. Thomas A. Edison, who required large supplies of phenol for the manufacture of his phonograph records, which were made of a synthetic resin of which phenol and formaldehyde were the chief ingredients, immediately set to work to solve the difficulties involved in the manufacture of this substance. By the most strenuous work the problem was solved in his laboratories in a few weeks, and he commenced the manufacture of very considerable quantities, producing a large surplus beyond his own requirements. This surplus would normally have supplied the means for the manufacture of fairly large quantities of the most valuable explosives. To prevent this, Dr. Schweitzer, on June 22, 1915, entered into a contract with the American Oil & Supply Co., which was the selling agency of the Edison works, for practically the entire surplus of phenol available for sale. As security for the faithful performance of this contract, Dr. Schweitzer put up $100,000 in cash, which was furnished to him by Dr. Albert, and also a $25,000 surety company bond. A week later Dr. Schweitzer made a contract with the Heyden Chemical Works (a mere branch of the German house of Chemische Fabrik von Heyden, of Radebeul), of which George Simon, a German subject, was the manager, by which the entire supply of phenol thus purchased was to be taken by the Heyden company and converted into salicylic acid and other harmless medicinal and flavoring products. The arrangement was that the Heyden works were to return to Schweitzer 1 pound of salicylic acid for each pound of phenol and keep the surplus of the converted product. This involved a very large profit for both parties. In the meantime, to avoid doing business under his own name, Schweitzer registered as a trade name the "Chemical Exchange Association," which was described [78] as a copartnership consisting of himself and Richard Kny. Kny was the father-in-law of George Simon, of the Heyden Chemical Co., and was the ostensible proprietor of the Kny-Scheerer Co., one of the most important manufacturers in this country of surgical instruments. This company, like the Heyden Chemical Works, was a purely German-owned concern, and both have since been taken over by me.

The net result of all this was a profit to the Chemical Exchange Association of $816,000, which was apparently equally divided between Schweitzer and Kny. Schweitzer's share of the profits seems to have gone straight to the German Government, but for some unexplained reason Kny appears to have been allowed to keep his. The attempt to prevent the use in explosive manufacture of American phenol was completely successful for a time. The success of the venture was celebrated in the latter part of 1916 by a dinner given by Schweitzer and Kny at the Hotel Astor in honor of Dr. Albert. Among other guests were George Simon, F. A. Borgemeister, Norvin R. Lindheim, and Capt. Wolf von Igel, of the German Embassy—a typical gathering of the most active German propagandists in the country.

Less striking examples of the same sort of thing might be cited by the score. An interesting instance is the case of Dr. Isaac Strauss, organizer and president of the Chromos Chemical Co. Dr. Strauss arrived in this country in September, 1914, apparently with a direct mandate from the German Government for propaganda among the Jews. He proceeded to establish a periodical known as the "American Jewish Chronicle." Funds to the amount of $85,000 were supplied for his activities by Dr. Albert, and $15,000 by Von Bernstorff, and his chemical company, profiting by the enormous war demand and prices, rapidly began to supply further sinews of war. Shortly after the entry of the United States into the war his conduct attracted the attention of the military authorities, and the ensuing investigation led [79] to his internment, whereupon his Chromos Chemical Co. and the "American Jewish Chronicle" were taken over by me.

At the time when I took office it, of course, became the duty of all companies in which any alien enemies held stock to report such ownership. About half of those American chemical enterprises which are now known to be German owned, complied more or less promptly with this requirement. The rest, mostly relying upon pretended transfers by which the stock had ostensibly been put in the hand of American citizens, paid no attention to the act until the activities of the Bureau of Investigation had disclosed the true facts. In some cases, however, the camouflage which concealed the true ownership was of a much subtler and more effective description. In the case of more than one of the companies which promptly reported themselves as entirely German owned, measures had been taken to transfer, to companies which were presumably beyond the reach of the trading with the enemy act, the essential value of the German property and business.

The most conspicuous instance of this method was Bayer & Co. (Inc.). This company at an early date reported all its stock as held by one of the officers, Mr. Seebohm, for three trustees who in turn held for the benefit of the German parent house. It was, on the whole, the most important of all the German branches. Besides representing, as sales agent, one of the three equal giant concerns at the head of the German industry, it was the only German branch which had established any considerable manufacture in this country. Through the purchase of the stock of the Hudson River Aniline Works, it had acquired and greatly expanded a considerable plant near Albany, N. Y., in which it produced a few of the simpler coal-tar colors and considerable quantities of pharmaceuticals, especially the most valuable single product of the German house—the drug known throughout the world by its trade name of Aspirin. [80] This was a patented coal-tar product on which enormous profits had been made. Practically the entire management of this company was in the hands of German subjects. The leading spirit, Dr. Hugo Schweitzer, was, as has been stated, among the most ardent propagandist and German agents in the country. The Albany plant represented the expenditure of many hundred thousand dollars, and the enterprise was exceedingly flourishing.

To conceal the profits for the purpose of taxation another company was organized, known as the Synthetic Patents Co. (Inc.), all the stock of which was also held by the German concern, to which were conveyed all the American patents of the German house, approximately 1,200 in number, and all the real estate, including the plant. By contracts between Bayer & Co. (Inc.) and Synthetic Patents Co. (Inc.) almost all of the profits of the former were diverted to the latter in the form of rentals and royalties. The investigation also covered a number of less legitimate evasion of the tax laws, and resulted in the recovery of a large sum by the Treasury.

The militant German character of the men in control of this company was so obvious that the ease with which they surrendered its stock was a matter of some surprise. The explanation was not unearthed until the very thorough examination of the company's affairs by the Bureau of Investigation had proceeded to great lengths. It was then ascertained that on the entrance of the United States into the war the men in control of the company had foreseen the danger of sequestration of the property. In casting about for a means of meeting this emergency they hit upon a small company which had recently been organized in Connecticut to manufacture dyes. This was the Williams & Crowell Co., established by two gentlemen who had some knowledge but little capital. They had succeeded in producing two or three valuable sulphur colors, notably one highly suitable for khaki, of which enormous quantities were [81] obviously going to be required. The situation of these gentlemen was such that, although their company had been able to produce profits out of all proportion to its capitalization, they were not unwilling to sell, and accordingly the idea was conceived of buying this company with a view to the gradual transfer to it of such of the facilities of Bayer & Co. (Inc.) as could be turned over. The plan was laid before the counsel of the company, Mr. Charles J. Hardy, of New York, who was the chief adviser of most of the German houses in this line of business. He appears to have advised that the company itself could not safely make the purchase owing to the danger of its being taken over by the Government, and that for the same reason the stock of the Williams & Crowell Co. should not be bought by the Bayer directors themselves, since they were alien enemies. At his suggestion a new corporation, known as Williams & Crowell Color Co. (Inc.), was organized in New York and the stock taken in the names of American citizens. Williams & Crowell Co. was at this time making profits at the rate of $50,000 a month and, with the aid of the scientific and business knowledge which could be supplied by the Bayer staff, was in a fair way to immediate and immense success. Indeed, by this simple method, it would have been possible under our very noses to drain the life-blood out of

Bayer & Co. and to transfuse it into the new organization, which the Alien Property Custodian apparently could not touch. The purchase of Williams & Crowell Co., however, required a substantial sum in cash, approximately $100,000, and it was at last possible to prove that the $100,000 thus paid was money of Bayer & Co. (Inc.), and, therefore, of the German parent house.

This was ascertained only after the Bureau of Investigation had discovered that the treasury of Bayer & Co. (Inc.) was one of the great sources from which German propaganda funds in this country were derived. The parent German house had enormous business [82] connections all over the world. It supplied immense quantities of its products to the east, especially to China. After the outbreak of the war, in 1915, payments for these goods could not be transmitted directly to Germany. As many of the goods had been sold on long credit, very large sums still remained payable to the German house many months after deliveries had ceased. The eastern debtors of the German house were, therefore, directed to make their payments to Mr. Seebohm, of Bayer & Co. (Inc.), of New York. These funds, amounting to millions, were accordingly received by him and disposed of without being put through the books of Bayer & Co. (Inc.). What became of most of them can not now be ascertained, as all of such records as may have been kept were promptly destroyed. It was possible, however, to demonstrate that part of the payment for the Williams & Crowell stock came from this source. I accordingly insisted that the stock be turned over to Bayer & Co. (Inc.). This was done, and the Williams & Crowell Co. thus formed a part of the assets of Bayer & Co. (Inc.) at the time of the sale of the latter.

Among other interesting facts in regard to Bayer & Co. (Inc.) disclosed by the investigation was the great care exercised by the parent house to restrain the manufacture of dyes by its American subsidiary. The purpose apparently was to limit this manufacture absolutely to colors in which genuine American manufacture was already well established. The German house was very glad to increase in this manner the competition with which the American infant industry had to struggle, but it was determined that American manufacture in other lines should not be commenced, even under its own control. When the cessation of imports after 1914 threatened a dye famine in this country, Bayer & Co. (Inc.) commenced to manufacture a few new colors, or rather, colors which were new to the American industry. No sooner did this reach the ears of the German house than the most peremptory letters were written, [83] absolutely forbidding any further extension of the business in this line. The enormous profits possible from such manufacture had no weight with the Germans when compared with the risk that such manufacture might aid the development of a real American industry.

The stock of Bayer & Co. (Inc.) and of Synthetic Patents Co. was sold by me at public auction, the successful bidder being the Sterling Products Co., a West Virginia corporation dealing in proprietary medicines. This company had previously agreed to dispose of the dye plant and patents, in case it secured the property, to Grasselli Chemical Co., one of the largest makers of heavy chemicals in the country. The price paid was $5,310,000, plus back taxes and other obligations of many hundred thousands more. Both purchasing companies appear, on careful investigation, to be thoroughly American.

Two other of the American branches of the six great German dye companies were also taken over at the outset. These were the Berlin Aniline Works and Kalle & Co. These companies were, however, little more than shells, each consisting almost solely of a selling organization without plant or other valuable fixed capital. In the case of the Berlin Aniline Works, there was an attempt to duplicate on a small scale the Williams & Crowell episode, but the resources available were insufficient. Neither of these companies accordingly had anything of great value to sell, and it has therefore been deemed the wiser course to liquidate them. The patents of the German concerns were in each case held in its own name and not transferred to the American branch.

Having taken over these three of the six American representatives of the German giants, my activities in this direction seemed to have been brought to a halt. The other three did not report any German ownership and on a preliminary investigation seemed to be American owned. A very careful examination of all available materials, however, sufficed to raise sufficient doubt [84] in each case to force the company in question to offer to submit its entire books and records to our inspection, and to provide an audit at its own expense. An extremely thorough investigation was thus made possible, and in each case it has resulted in a demonstration that the stock of the branch was actually, in part at least, German owned.

In its relation to the American industry, the most important of these companies was the Cassella Color Co. This concern, the agent of Leopold Cassella & Co. G. m. b. H., was managed by W. J. Matheson and Robert A. Shaw. Both of these gentlemen are Americans by birth and tradition, but both of them had been for many years wholly or chiefly engaged in the business of marketing the products of the Cassella works. The stock stood on the books of the company in their name, and appeared to have been purchased for actual cash at par in 1913. The transcendant importance of this company was due to two facts: First, that it had apparently been absorbed by the National Aniline & Chemical Co., Inc., which up to the present has been by far the largest American manufacturer of dyes; and, secondly, that the headship of the new all-inclusive German cartel, including all the great companies, is vested in Mr. Carl von Weinberg, who was for many years president of Leopold Cassella & Co., and closely associated with Messrs. Matheson and Shaw. The importance of these facts was emphasized when the former Cassella organization became the selling department of the National Aniline & Chemical Co., and when Mr. Matheson assumed its presidency. A storm of rumor immediately arose, and it was suggested to me from every side that the National company was at least in part German owned. The facts, however, were found to be as follows: Prior to 1913 the majority of the stock of the Cassella Co. of New York was owned by the German house. In that year the anti-trust suits above referred to convinced all parties interested that it was unsafe to allow the New York agency to continue [85] even in part to be owned by a member of the German trust. Accordingly, the remaining stock was transferred to Messrs. Matheson and Shaw and paid for in cash. An option was, however, reserved. This was reduced to writing so far as it conferred upon the German house the right to take the stock at the book value on the death of either Matheson or Shaw. It was, however, orally agreed that the stock might be taken on the same basis at any time. In the meantime the contract between the German and American companies was so framed that the profits of the company continued to be divided as before, 57 per cent going to the German house and 43 per cent to the American house. The sale, therefore made substantially no difference in the relative rights of the parties. Messrs. Matheson and Shaw gained nothing which they did not already have in the way of theoretical control of the American house. The German company retained complete practical control of the American house because it could at any moment, by withdrawing supplies, render the American business worthless. The American patents owned by the German house had been assigned to the American company. In most cases, however, reassignments had been executed, but not recorded, so that the real, though not the ostensible, ownership of the patents was in fact still vested in the Germans. The correspondence shows an understanding, the legal effect of which seems to be to continue the German ownership to the extent of 57 per cent in the American company, and I have accordingly demanded and taken over 57 per cent of the stock.

When the dye famine began in 1914, Messrs. Matheson and Shaw determined to commence manufacturing, and for that purpose organized the Century Colors Corporation, this name being selected in order to retain the C. C. C. trade-mark of the Cassella goods. This company was organized with a capital of only $500, and Messrs. Matheson and Shaw took all the stock. The operations of the company were financed to a considerable [86] extent out of the funds of Cassella Co. of New York.

In August, 1917, Messrs. Matheson and Shaw, desiring to dissociate themselves from the Cassella name, caused the Century Colors Corporation to purchase from the Cassella Co. all its tangible assets. On the same date the capital stock was increased from $500 to $200,000, Messrs. Matheson and Shaw paying in the difference. The tangible assets represented everything owned by the Cassella corporation except its patents, good will, and the contract with Leopold Cassella, G. m. b. H., for the sale and purchase of the German products. On September 11, 1917, Messrs.

Matheson and Shaw sold to the National Aniline & Chemical Co., Inc., all of the stock of the Century Colors Corporation. Under this contract, Messrs. Matheson and Shaw agreed to subscribe for $200,000 worth of the National company's stock and to place their own services at the disposal of the National, in return for which the National company agreed to give them 4,000 full paid shares of preferred stock and 40,000 shares of common stock, having no par value. It was also agreed that the existence of the Century Colors Corporation should be continued for at least one year. At this time, in explaining the failure to convey the Cassella company's intangible assets, Messrs. Matheson and Shaw stated in a letter to the National company that they did not feel at liberty to dispose of the Cassella company's intangible assets without first consulting the German house.

After this sale to the National, the personnel taken over from the Cassella and Century Colors companies, rapidly became increasingly important in the National organization. When Mr. Matheson assumed the presidency, the Century staff became to all intents and purposes the National sales department. All this undoubtedly gave to the new organization a color which afforded considerable justification to the rumors of German ownership. Accordingly, the correspondence was examined [87] with the utmost care. This correspondence, including, as it does, many of the letters which passed between Messrs. Shaw and Matheson themselves at a time when neither could have imagined that their transactions would be under investigation, shows that at the time of the sale to the National, both desired not to sacrifice their German connection, and that neither believed with any great confidence in the success of the American manufacturing industry, though they may have believed that the formation of he National company offered an opportunity for sucess in America not theretofore available.

In October, 1917, the Cassella Color Co., in spite of he feeling previously expressed by Messrs. Matheson nd Shaw that they could not properly transfer any f its intangible assets without consulting the German ouse, transferred to the National company a number f important patents. This was done without regard o the existence of the unrecorded reassignments to the erman house. This transfer appeared to be invalid, nd these patents, together with all other patents nown to be the property of the German house, have ccordingly been demanded and are vested in the Alien roperty Custodian.

At the present time there appears to be no German wnership in the stock of the National Aniline & Chemical Co., Inc.; the great majority of the stock is eld by the following: Schoellkopf Aniline & Chemical Works (or its stockholders, chiefly members of the Schoellkopf family); General Chemical Co.; Barrett & Co.; Semet-Solvay Co.; W. Beckers Aniline Works; W. J. Matheson; Eugene Meyer, Jr.

A complete working majority of the stock has been placed in the voting trust of which the trustees are as follows: Wm. H. Nichols, president of the General Chemical Co.; H. S. Handy, of the Semet-Solvay Co.; Wm. H. Childs, president of the Barrett Co.; W. J. Matheson; Eugene Meyer, Jr.

[88] A contract has been entered into which will result in the gradual elimination by purchase of the Beckers interest, which has been thought desirable because of Dr. Beckers' German origin. The Cassella Color Co., of New York, has been partially liquidated and its stock has been reduced from $200,000 to $500. The taking over of 57 per cent of this stock will at least permit the elimination of the Cassella name.

The American branch of the great Hoechst Co. had

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for many years been conducted by Mr. Herman A. Metz. Prior to 1912, the New York corporation was known as H. A. Metz (Inc.), and a majority of its stock was always owned by the parent house. In that year the German company took over all but 10 shares of the minority stock which had previously stood in the name of Mr. Metz, leaving him the record owner of these 10, the only shares not held by them. At the same time the name of the New York Corporation was changed to Farbwerke-Hoechst, so that the value of the good will might be firmly fixed in the German name. At about this time the antitrust proceedings above referred to were commenced against these companies also. Mr. Metz settled for $40,000 the suit commenced against his company, and proceeded to make strong representations to the German house to the effect that the stock ought to be owned by him so that it could be asserted that the German house was no longer doing business in America. A prolonged negotiation ensued, the Germans being very reluctant to make any change. At last, in the summer of 1913, it was arranged that the 1,990 shares held by the German concern should be transferred on the books to Mr. Metz; that in return he should execute a demand promissory note without interest for the sum of $597,000; that the note should be delivered to the German company and the stock, together with a suitable transfer properly executed, should be deposited to the sole order of the German concern in a Montreal bank, as security for the note.

[89] At this time and for many years previous the American company had been operating under a contract by which the German house appointed it its sole American sales agent and agreed to furnish it with goods, in return for which the profits were to be divided according to an arbitrary scale, irrespective of stock ownership. Under this arrangement the Ger-

mans were to have one-half the profits of the color business and 75 per cent of the profits of the pharmaceutical business, which, owing to the development of salvarsan and novocaine, had become of great importance. In return, and as a check on possible overcharges by the German house, Mr. Metz was to receive a percentage of their profits on the sales to the American company. An irrevocable power of attorney was given to Mr. Metz to vote the stock owned by the German company in the New York house and an option was reserved to the German company to purchase the stock in the event of Mr. Metz's death or retirement.

This contract was continued unaltered after the stock transaction of 1913, and under it the profits were divided as long as it was possible to remit moneys to Germany. There was also an oral understanding between the parties that the note should not be payable except out of the stocks or its proceeds, and that it could not be demanded as long as Mr. Metz should remain president of the company. It will thus be seen that the whole stock dealing produced no change whatever in the rights of the parties. After it, as before, the share in the profits of each party remained the same; power to secure and pass title to the certificates remained as before in the hands of the German company alone; the voting power remained as before in Mr. Metz's hands; in fact none of the incident of ownership was in any way affected by the transaction.

At the outset Mr. Metz filed reports stating the existence of the note and the fact that certain stock was deposited as security for the same, but it was not until [90] the ascertainment of the entire history of the transaction that the proof could be obtained that the transfer was not and was not intended to be of any effect. At last, however, the investigation thoroughly demonstrated this, and the stock has accordingly been taken over by me.

During the course of the year 1916, Mr. Metz, finding that he could no longer secure from Germany supplies of pharmaceuticals, especially salvarsan and novocaine, which formed the most profitable part of his business, determined to enter upon their manufacture in this country. Correspondence with the German house proving unsatisfactory, he sent his brother, Dr. G. P. Metz, to Germany to secure the necessary permission. This permission was refused, but the latter came home with a sufficient knowledge to permit the commencement of the work. A new company was organized under the name of H. A. Metz Laboratories (Inc.), a New York corporation, and this company commenced the manufacture of these two invaluable medicinals, which has been continued since our entrance into the war under license from the Federal Trade Commission.

The agency of the largest of all the German houses, the great Badische Co. of Ludwigshaven, presents perhaps the most striking example of the German methods of camouflage as applied to stock ownership. For many years this company has been represented in this country by Mr. Adolf Kuttroff, who was born in Germany, but came to this country at a very early age, and was naturalized in 1867. In a succession of partnerships and incorporations with various members of the Pickhardt family this gentleman has always conducted the business of the Badische in the United States. In 1906, shortly after the formation of the first German dyestuff cartels, when the parent houses of Bayer and Badische became members of the same body, an attempt was made to combine their agencies in this country. A company called the Continental Color & Chemical Co. was [91] organized in New York and took over the Badische business of Kuttroff & Pickhardt, and the Bayer business of the Bayer Co.'s New York subsidiary, then known as

Farbenfabriken of Elberfeld. At the end of the year, dissensions led to the dissolution of this company and the Badische agency was then taken over by the Badische Co. of New York, a New York corporation. The stock of this company appeared to be entirely owned by Messrs. Kuttroff & Pickhardt, and on its books continued so down to its dissolution in 1917, except for small quantities of stock issued from time to time to the principal subsidiary officers of the company. All this stock, however, was held subject to an option permitting the German company to acquire it at par, and there was an oral understanding that no dividends exceeding 6 per cent should be paid. The balance of the profits, which were considerable, was distributed according to an arbitrary scale arranged by Mr. Kuttroff from time to time among the chief officers of the company. The company was dissolved in 1917 and a new corporation organized under the name of Kuttroff & Pickhardt (Inc.), which ostensibly took over only the physical stock in trade of the old company and its officers. The stock of this new company is held substantially in the same proportions by the same persons who held the stock of the Badische Co. of New York.

It will thus be seen that the ostensible stock ownership of this agency remained unchanged from 1909 until after our entrance into the war. It had thus been so arranged that no change was necessary in order to avoid the Sherman-law suits, nor in order to escape the attentions of the Alien Property Custodian on casual examination of the books. Indeed, the true facts were only ascertained after a most elaborate analysis of the books by highly skilled accountants, and of the available correspondence and intercepted cables by trained lawyers. Suspicion of the company was generally prevalent, but the first definite evidence was derived from correspondence [92] obtained by the British authorities, which demonstrated that the New York company had been in the habit of asking for the decision of the German house on even such intimate questions of domestic policy as the increase or decrease of minor salaries of the staff. This correspondence indicated a degree of control far beyond that which was attributable to the mere power to stop supplies. It was then ascertained by the accountants that the original $25,000 paid into the Treasury of the company for the first issue of $25,000 of stock came out of the moneys of the German house in the Continental Co. at the time of the liquidation of the latter concern. An intricate analysis also showed that at a time when the original capital stock of the New York Badische Co. was decreased the sums paid out went not to the ostensible stockholders but to the German house. Finally it appeared that on three separate classes of transactions very large sums out of the earnings of the New York house were transmitted to the German house when there was no possible obligation to do so and that this was done by the personal direction of Mr. Kuttroff without consultation with the directors or stockholders. For example: During the year 1915 and 1916 the sum of $701,944.34 was credited on the books of the German house and subsequently remitted under the head of indanthrene royalties. The company had been selling for the German house for years its high-grade indanthrene dyes which it received from the German house at fixed prices which did not include the sums described as royalties. As the goods were manufactured in Germany and nothing was done to them here, no royalty, properly speaking, could possibly be due. If any was payable, it must have been merely as an enhancement of the price. There was no understanding between the companies to any such effect.

Obviously, then, if the companies had been really independent, the president of the New York concern would never have dared to deprive his own stockholders of any [93] such sums without legal obligation and without even consulting them beforehand. In like manner, in 1914, the sum of $477,100 was credited and remitted ostensibly as a return of advances made years before by the German house for expenses of the New York concern. Here, again, there was no previous understanding or present authorization requiring or permitting anything of the kind. At the time the alleged advances were made by the German house the New York company was operating merely as an agency on commission. There was no conceivable reason why a part of the agency's expenses should not have been met by the principal in the usual way. Yet again, without consulting anyone, Mr. Kuttroff caused these large sums to be taken out of the hands of the ostensible stockholders and put in those of the real owners of the company. Finally, in the case of the goods received by the submarine *Deutschland*, the same process was carried on. These goods when originally received were entered on the books like all other shipments of the German house on a sales basis; that is to say, they were treated as the property of the New York house, and the German house was credited with the price, approximately $800,000. Settlements with the custom house appear to have been made on this basis. Some months afterward a profit of about $400,000 had been realized. The book entries were then reversed so as to bring the transaction back to a consignment basis in which the German house would be entitled to all these profits except a commission. This change was made by Mr. Kuttroff without the authority of the stockholders or directors, and accordingly a sum of nearly $400,000 was made available for a remittance to Germany, and was so remitted. These and kindred transactions have so clearly demonstrated that the German company was the real owner of the stock of the American Badische company that a demand which is to be issued forthwith will be immediately complied with. This demand, owing to the fact that the company has been [94] dissolved, with result in the taking over of only the assets of the company, which, however, are considerable, but these will include certain profits realized, since the dissolution, by the new corporation of Kuttroff & Pickhardt (Inc.).

From the foregoing it will be seen that the American agent companies bearing the names of each of the six great German dye companies have been taken over. This, it is to be hoped, may interpose some difficulties in the way of any attempt on the part of the latter to reestablish themselves in this country.

The situation presented by the agencies of the German dye companies of the second rank has been less satisfactory. The great Griesheim Elektron Co. was represented in this country by two concerns, Geisenheimer & Co., a partnership between American citizens now dissolved, and A. Klipstein, a corporation of which all the stock was held by two unrelated Klipstein families, all citizens. No trace of real German ownership could be discovered, after the most prolonged and laborious investigation both here and abroad, by all the departments interested, in either of these companies, though the business of both had been largely derived from German sources throughout their existence. The house of Weiler Termeer was represented in this country by the Geigy-Ter-Meer Co., now the Geigy Co., in which, prior to the beginning of 1917, the German house owned 20 per cent of the stock. This stock was, however, transferred before our entrance into the war to the Swiss house of J. R. Geigy & Co., a firm in good standing with the allied governments. It has been impossible to ascertain whether this transfer was in any respect for the benefit of the German house, but in any case the great majority of the stock of this company is in Swiss and not in German hands.

Among the chemical companies in which German interests existed outside of the dyestuff business, by far the most important was the Roessler & Hasslacher [95] Chemical Co. This was a branch of the great Frankfort gold and silver refining company known as the Deutsche Gold und Silber Scheide-Anstalt vormals Roessler, and was organized by Messrs. Roessler and Hasslacher, two old Scheide-Anstalt employees, who came to this country to introduce the goods of the parent house. From the first, the German concern and its officers and employees owned about three-quarters of the stock of the American house. The latter prospered enormously and built up a very large business. Besides selling the products of the Scheide-Anstalt, consisting chiefly of cyanide of sodium and cyanide of potassium, it built up a very large jobbing business. In 1895 the Niagara Electro Chemical Co. was founded to manufacture metallic sodium by means of the electric power available in Niagara Falls. The sodium thus produced was used for the manufacture of cyanide of sodium in this country, a business which immediately became exceedingly profitable. The stock of this company was divided so that one-third of it went to the Scheide-Anstalt, one-third to Roessler & Hasslacher, and one-third to English interests. This company had a capitalization of $100,000, made fabulous profits, and for the five years before our entrance into the war averaged over 900 per cent in dividends annually.

Meanwhile the Perth Amboy Chemical Works had been established with a capital of $400,000 to manufacture formaldehyde and wood distillation products; 1,960 of the 4,000 shares of this company were held by the Roessler & Hasslacher Co., a similar amount by another outside German corporation, the Holzverkohlungs Industrie A. G., and a casting vote was left in the remaining 80 shares with Roessler & Hasslacher. In the summer of 1916 the officers of the Roessler & Hasslacher Chemical Co. began to ask the authorities of their parent house to transfer to them more of the stock. The first request was made in a letter which contained a distinct intimation that this change in holdings need not be [96] permanent. In subsequent letters they insisted, as reasons for the proposed sales, that the political situation was very acute; that German-owned property in this country might be sequestered, and that if any of their goods were to be imported and were to get by the British they would have to be able to say that the company which did the importing was not German owned. This proposition met no response. On the contrary, the Scheide-Anstalt officers replied that they did not understand what Messrs. Roessler and Hasslacher wanted; that what they proposed must either be a real or a pretended sale; that if a pretended sale was what was suggested the idea was dangerous; and that if a real sale was meant a price would have to be charged which Messrs. Roessler & Hasslacher would, under no circumstances, be willing to pay. They then suggested that a confidential man should be sent over to explain just what was wanted. The letters of Mr. Hasslacher had, however, left no doubt on this score, as they had asked in the simplest possible language for a sale of the stock and had requested the Scheide-Anstalt to name their price.

In general the letters outlined the proposition as clearly as it could be stated, and the Scheide-Anstalt people can not have avoided fully understanding just what was wanted, except on the supposition that the letters didn't mean what they said and that the real proposition was one which it was dangerous to put on paper. Their refusal, at all events, even to name a price, was unequivocal. They said in substance, "rather than part with 'the best cow in the barn,' we ought to take every risk of the political situation and trust to fighting our rights in free America." Notwithstanding this discouraging statement, Messrs. Roessler & Hasslacher did send over a confidential man as was suggested. This emissary, Mr. Oscar R. Seitz, a New York lawyer of Swiss descent with some German connections, reached Frankfort on February 1. He brought no letters of introduction, power of attorney or means of identification. The [97] Scheide-Anstalt people did not know for certain that a confidential man was coming, or that if so, it was to be Mr. Seitz; yet he says that after a few brief interviews in which he offered no argument, other than those which had already been stated in the letters from Mr. Hasslacher to his German intimates, the Scheide-Anstalt people agreed to sell to the American representatives the following stock: 3,800 shares of Roessler & Hasslacher, at 200; 140 shares Niagara Chemical Electric Co., at 400; 80 shares Perth Amboy Chemical Works, at 200. No counter-offer was apparently made, and there seems to be no hesitation about the price, nor was there any suggestion of the purchase of the balance of the German holdings. A wireless was then, on February 6, 1917, sent to the New York office, and, upon this wireless, the stocks were transferred on the books of the companies and the necessary $860,000 was remitted to the German house. The stocks thus sold carried with them control of all three of the companies. The price paid represented a book value approximately twice as great, and the average annual dividends for the preceding five years on the three blocks of stock combined figured out at over 39 per cent on the purchase price. As regards the Niagara stock, the book value was nearly four times the purchase price, while the average dividends for five years figure out an annual return of 225 per cent on the purchase price.

These facts, and a host of additional circumstances likewise pointing inevitably to the conclusion that this sale was not genuine, were brought out in a prolonged proceeding conducted by my representative before the attorney general of the State of New York, who had the power to subpœna witnesses. In the meantime the 47 per cent of the stock of the Roessler & Hasslacher Chemical Co., which was admittedly still German owned, had already been taken over. I thereupon determined, by virtue of the authority conferred upon me by the trading-with-the-enemy act and by the presidential proclamations [98] thereunder, that the stock ostensibly transferred in February, 1917, was in fact still German owned; and accordingly I thereupon issued demands for it. This proceeding will result in the Americanization of the most important German-owned chemical companies outside of the dye industry.

Next to Roessler & Hasslacher in importance among companies of the same class is the Heyden Chemical Works; this was the subsidiary of the Chemische Fabrik von Heyden, of Radebeul, Germany, and manufactures salicylic acid and its derivatives, formaldehyde, saccharin, the medicines usually known by their proprietary names aspirin and urotropin, benzoate of soda, and many other valuable products. Of late years it has become enormously successful. Prior to the year 1917 all the stock was owned by the German company, and in addition the American concern was tied by a contract with its parent house under which all the earnings of the American concern over 8 per cent went to the German house in payment for processes and information. When my investigation commenced, all of the stock except three shares stood in the name of T. Ellett Hodgskin, a New York lawyer, who had for some time represented the firm. After considerable examination it was ascertained that this stock, which had been transferred just before our entrance into the war, had been paid at par with a sum of $149,000, borrowed by Mr. Hodgskin for the purpose from Richard Kny, father-in-law of George Simon, a German subject and the manager of the company, under an agreement contained in a letter from Mr. Hodgskin to the effect that he would thereafter retransfer it at cost. Richard Kny, it will be remembered, was the partner of Schweitzer in the Chemical Exchange Association, and he was also the ostensible owner of the Kny-Scheerer Chemical Co., which also turned out to be a purely German-owned concern and has been taken over as such. Thorough investigation resulted in the practical admission that this [99] transfer was mere camouflage, and accordingly the stock has been demanded and taken over. Mr. Hodgskin is now under indictment for his participation in similar proceedings in respect to another company. This stock and other rights of the German house in the American company have been sold at public auction to the Monsanto Chemical Works for $605,000 plus taxes and profits of 1917 and 1918, but the sale has not yet been confirmed by the sales committee.

An almost exactly similar situation was disclosed by the investigation of Bauer Chemical Co., a much smaller concern manufacturing pharmaceuticals, especially the widely advertised "Sanatogen" and "Formamint." In this company also the stock, which was really the property of the Berlin house of Bauer & Co., appeared by a fictitious transaction to have passed into the hands of Mr. Hodgskin. The fictitious character of the transaction in this company also has been admitted, and the stock has been taken over.

Another method of concealment was disclosed in the investigation of American Pyrophor Co. (Inc.).

This company was organized in December, 1917, by Charles Ganz, former agent of the Treibacher Chemische Werke, of Treibacher, Austria, and to it Ganz transferred, without authority, the entire business of the Treibacher company in this country, a business consisting of the manufacture of pyrophor, an alloy of iron and cerium, which, when struck or scratched, produces fire and is used for cigar lighters, etc. Here after investigation, the unauthorized character of the transfer was so clearly shown that it was admitted, and upon demand the stock of the company was turned over. In this, as in many other like cases, it was impossible to determine whether the ostensible new owner of the business meant to keep it for the alien enemies or to steal it for himself.

In pharmaceuticals, the most important concern in the world was that of E. Merck, of Darmstadt. This was represented in this country by Merck & Co., a New [100] York corporation which had an enormous and very profitable business in all kinds of medicinal preparations. The stock of this company appeared on the books to be owned exclusively by George Merck, a member of the family which owns the house of E. Merck, of Darmstadt. Investigation, however, showed that the profits of this company had always been remitted to the German house in a manner utterly inconsistent with the apparent stock ownership, and it now stands admitted that the stock was paid for with money of the German house and belongs to the latter. Mr. George Merck insists that he is the real owner of one-fifth of this stock by virtue of the fact that he owns 20 per cent interest in E. Merck, of Darmstadt. I am of the opinion, however, that indirect ownership of this kind can not be recognized under the trading with the enemy act, and I have therefore determined that the whole of this stock is enemy owned and it has accordingly been taken over.

In addition to the above, I have taken over all or part of the stock of the following less important companies engaged in various lines of chemical activity: Charles Helmuth & Co. (Inc.); International Ultramarine Works; G. Siegele & Co.; Williamsburgh Chemical Co.; New Brunswick Chemical Co.; Fahlberg Saccharine Co.; Philipp Bauer & Co. (Inc.); Amid-Duron Co.; Haarmann-de Laire-Schaefer Co.; Jarecki Chemical Works; Riedel & Co. (Inc.); Rohm & Haas; Somerset Chemical Co.; Tropon Works; Gerstendorfer Bros.; German Kali Works; F. Ad Richter Co. The liquidation of the German interests in these companies is proceeding in due course.

The amendment of November 4 to the trading with the enemy act presented for the first time an opportunity for what appears to me to be the most important piece of constructive work which has been possible in my department. Until the enactment of this amendment it had not been possible to take over German patents. These patents, as had been already indicated, formed a [101] colossal obstacle to the development of the American dyestuff industry. Evidently they had not been taken out with any intention of manufacturing in this country or from any fear of American manufacture, which the Germans apparently thought could not be successfully carried on under conditions prevailing in this country in regard to costs and to the supply of technicians and skilled labor. Upon consideration, however, it seemed that these patents offered a possible solution for the problem, hitherto unsolvable, of protecting the new American dye industry against German competition after the war. If they were not taken out in order to prevent American competition they must have been obtained as a weapon against competing imports. If they were sufficient to stop importation of competing Swiss, French, and English dyes, they would presumably serve, in American hands, to stop the importation of German dyes. This was particularly probable in the case of the product patents, since most of the coal-tar dyestuffs are definite chemical combinations to which a product patent is entirely applicable.

The idea was accordingly conceived that if the German chemical patents could be placed in the hands of any American institution strong enough to protect them, a real obstacle might be opposed to German importation after the war, and at the same time the American industry might be freed from the prohibition enforced by the patents against the manufacture of the most valuable dyestuffs. Accordingly, these considerations were laid before various associations of chemical manufacturers, notably the Dye Institute and the American Manufacturing Chemists Association. The suggestion was met with an instantaneous and enthusiastic approval, and as a result a corporation has been organized to be known as the Chemical Foundation (Inc.), in which practically every important American manufacturer will be a stockholder, the purpose of which is to acquire by purchase these German patents and to hold them as a [102] trustee for American industry, "for the Americanization of such institutions as may be affected thereby, for the exclusion or elimination of alien interests hostile or detrimental to the said industries and for the advancement of chemical and allied science and industry in the United States." The voting stock is to be placed in a voting trust of which the trustees are to be the five gentlemen who for months have been acting as the sales committee which passes upon sales made by my department, that is to say, George L. Ingraham (former presiding justice of the Appellate Division, First Department, New York Supreme Court); Otto T. Bannard (president, New York Trust Co.); Cleveland H. Dodge; B. Howell Griswold, Jr. (senior partner of

Brown Bros., bankers, Philadelphia); Ralph Stone (president, Detroit Trust Co.), and the charter is so framed that under the patents non-exclusive licenses only can be granted on equal terms to all proper applicants, and must be granted to the United States free of cost. The company is capitalized at $500,000 of which $400,000 is to be 6 per cent cumulative preferred stock and $100,000 common stock, also limited to 6 per cent dividends. The first president of the Chemical Foundation (Inc.) will be Francis P. Garvan, of the New York bar, to whose clear vision and indefatigable industry I am chiefly indebted in the working out of this plan. By Executive order obtained under the provisions of the act, I have sold to this company for the sum of $250,000 approximately 4,500 patents, the remaining $250,000 has been provided for working capital so that the company may be able to commence immediately and prosecute with the utmost vigor infringement proceedings whenever the first German attempt shall hereafter be made to import into this country. The charter of the corporation provides that surplus income is to be used for the retirement of the preferred stock and thereafter for the advancement of chemical and allied science and industry. The price thus paid was necessarily determined somewhat arbitrarily; [103] the great majority of the patents were presumably valueless. The value of the remainder was entirely problematical and impossible to estimate. Substantially the entire industry having combined for the purpose of this purchase, it would have been impossible on public sale to find as a bidder any legitimate manufacturer. No other bidder could, therefore, have been found on public sale except some speculative individual who might have bought them for purposes practically amounting to commercial blackmail. The combination was not objectionable to public policy since it was so organized that any genuine American, whether a stockholder of the company or not, could secure the benefits of the patents on fair and equal terms.

It is submitted that the organization of this institution constitutes the most important step that has been taken for the protection of the new industry. Tariff protection has proved utterly unavailing in the past. The German industry as hitherto organized, and still more as now organized, has had so much to gain by extending its foreign trade and by destroying the industry in other countries that it would undoubtedly give away its goods in this country for nothing in order to recover the American market. The Chemical Foundation, however, should prove a power sufficient to discourage in a most effective manner any German attempts in this direction. If, as their newspapers boast, the Germans have during the war worked out entirely new dyes superior to their past productions, the protection afforded by it will be invaluable. It has been the uniform experience of the industry that the introduction of new classes of dyestuffs follows only several years after the patenting of the original inventions on which their manufacture depends. Accordingly, the later dyes of today depend largely upon the patents of three or four years ago. The patents transferred to the Chemical Foundation include many German patents of 1917 and even of 1918, and also many applications still pending. These patents undoubtedly [104] include the results of the research upon which must be based the manufacture of any new dyes which the Germans are now able to produce and market. Accordingly, at the very least, the institution will be able to protect the American industry for a considerable period, and this should be all it needs. It appears to be the universal view of the more competent manufacturers in this country that, given five years of freedom from German competition, the American industry can hold its own. Probably only a measure such as the embargo which appears to have been imposed by the British and French against all foreign dye importations can furnish this protection to the degree necessary to insure the safety of the American industry; but short of such an embargo, the Chemical Foundation would seem to furnish all the aid that possibly can be given.

At the same time the new institution promises an incalculable benefit not only to the dye and chemical industries but to the whole American manufacturing world. The opportunities which it can offer and the rewards which it can hold out to competent research scientists should far exceed those of any institution unconnected with industry, and it may well, therefore, form the nucleus of the greatest research organization in the country.

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CHAPTER IV.

WIRELESS.

The development of the German marine coincident with German commercial penetration into foreign countries required that the best system of direct communication, especially between ship and shore, should be found and adopted. In the decade prior to the general war, inventors and scientists all over the world were seeking to develop wireless communication and so German science undertook to experiment with the art. The underlying ideas in wireless communication were the fruit of other than German minds, but, as in many other fields, the Germans experimented with and patiently developed these ideas.

The inherent difficulties in the art, the widely varying systems on which experiments were proceeding, the immense costs attending experimental work and the lack of certainty in the results achieved, had delayed the commercial use of wireless, and it was not until a few years before the European war that German enterprise undertook the construction of a trans-Atlantic station. About this time the English Marconi Co. undertook the ambitious scheme of linking up the British dominions throughout the world by wireless stations, including a trans-Atlantic station.

In the prewar period it must have been at once apparent to the Junkers that all communication with America would be cut upon England's entry into the war, unless some means independent of cable or ship was established. The danger of a severance of communication was obvious. In America was a great Nation whose reservoir of men, money, and munitions would decide the war against Germany if thrown into the scale against her. In America was the only great neutral to whose opinions the world would give heed. In America was a great body of German-born citizens upon whose attachment to their native country great dependence was placed for aid both in moulding American opinion and in giving to Germany the financial and material aid which she needed if the war lasted beyond a few months. In America Germany knew the allies would find a source of supply of goods, machinery, and munitions which would help them in ever increasing measure to overcome the handicap of unpreparedness under which they labored. From America, also, must proceed communication to all other neutrals in the Western Hemisphere.

The war plotters found in a trans-Atlantic wireless station the sole means of overcoming the British control of the seas and of maintaining their touch with

America, and from 1910 to 1914, there were begun and completed two high-powered wireless plants, one at Sayville, Long Island, and the other at Tuckerton, N. J.

The Tuckerton station was built by Hochfrequenz Maschinen Aktiengesellschaft fur Drahttose Telegraphie (commonly called Homag), a company organized in Berlin and managed by a retired admiral of the German navy, and by Rudolph Goldschmidt, who claimed to be the inventor of the transmitting system (Goldschmidt high-frequency generator) used in the plant. This plant was designed to connect with Eilvese on the German side.

The Sayville station was built by the Atlantic Communication Co., a New York corporation, and there was no ostensible connection with Germany. The system used in this station was the so-called "Telefunken" system, and the plant was designed to connect with the high-powered Telefunken plant at Nauen, near Berlin. Both Nauen and Eilvese were controlled and operated by the German post office.

Thus, practically side by side, there were being erected by German funds two stations intended to communicate with Germany and using different systems, thus insuring contact if either system was effective. It is a curious incident in the wireless situation that the Goldschmidt or Homag Co. entered into a contract to sell the Tuckerton plant to a French company known as Companie Universelle de Telegraphie et de Telephonie sans Fil (abbreviated to C. U. T. T.). After vast sums had been paid by the French company, the war broke and "Homag" on one pretext or another, withheld delivery of the plant and used it to communicate with Germany and this in spite of the fact that it was beneficially owned by the French. The litigation arising respecting this use of the plant and the complaints made by the French of this misuse of their property resulted in the United States, through the Navy Department, taking control of the plant in September, 1914. Our Government could not (in observance of neutrality) prevent the use of the plant to communicate with Germany, but it could and did prevent it being exclusively so used and secured to the French some rights in the property pending the termination of the litigation.

There is available information that the great electrical companies of Germany had a working understanding with the Homag Co. and did not resent the apparently serious competition of the Tuckerton plant with the Sayville plant, which they built. Their complacency can be explained if one accepts the thought that both plants were part of the German scheme of world domination. Sayville, as stated above, was a Telefunken plant. Telefunken was the popular name of the combination made only in the wireless field by the two great competitors in the electrical field in Germany. These were Allegemeine Elektrizitats Gesellschaft (commonly called A. E. G.) and Siemens & Halske. The combination organized two companies known as Deutsche Betriebsgesellschaft für Drahtlose Telegraphie (commonly called Debeg) and Gesellschaft für Drahtlose Telegraphie. The manager of Debeg was Hans Bredow.

When my office, through the Bureau of Investigation, inquired into the affairs of Atlantic Communication Co., it was learned that substantially all the stock stood in the names of Hans Bredow and Gesellschaft fur Drahtlose Telegraphie. A small allotment stood in the name of an American citizen who had large business relations with Germany. In due course, I seized the controlling stock of the Atlantic Communication Co. as enemy owned and installed directors and began a searching investigation into its affairs.

Prior to my seizure of the stock of the company the Government had taken over the operation of the physical plant. In 1915, on complaint of unneutral communications, the Navy had installed censors at the plant and had later made a lease of this plant, as it had of others, and installed its own operators. Of course, when the United States entered the war the Navy used the plant as an instrumentality of war, and entirely prevented the use of the plant for other than Government purposes.

The general investigation of the wireless field by my office and by other Government agencies disclosed that the Telefunken system had been installed on German shipping and on our own coastwise fleets, and had been operating with great success in conjunction with the Sayville plant. The English competition had been successfully met, and German stations had been installed in Cuba, Mexico, Central and South America. A high-powered plant had been erected at Togu, Africa, and China and Dutch East Indies and also the Pacific Islands had been sprinkled with Telefunken ship-to-shore stations.

An American appearance had been given to Telefunken in America by the organization of the Atlantic Communication Co. and the naming of a directorate of American citizens. The technical work, however, and the disbursement of moneys were in the hands of German agents. Telefunken engineers came over to install the plant and operate it, and the cost of construction was paid through Dr. Karl Georg Frank, agent in the United States for Siemens-Halske and Siemens-Schuckert Werke in the case of the Sayville station. Mr. Emil Mayer was the agent of the Homag Co. in the installation of the Tuckerton station. Mr. Mayer was interned in April, 1917. The importance and urgency of German wireless plants in America is evidenced by the expenditure of over half a million dollars on the Sayville plant at a time when its revenues from commercial use were comparatively negligible.

The farsightedness of the German wireless policy was evident on the outbreak of the general war. The vast expenditure on Sayville and Tuckerton and on the shore-to-ship stations was immediately justified. These instruments of warfare on the allies functioned efficiently. Despite the immediate cutting of the German cables and despite Great Britain's vast preponderance on the sea, Germany was able, while a ship floated, to keep in touch with it, and was able to begin at once the effort to influence American opinion.

Germany in fact made the widest governmental use of the Sayville plant prior to Von Bernstorff's departure. The German ambassador had kept in touch with the war office at Berlin constantly, and Dr. Albert and Hugo Schmidt and Richard Timmerscheidt were in receipt, through Sayville, of detailed orders governing their acts for the German Government and the German banks respectively. The file of radiograms kept by the Navy officials furnished a perfect mine of information to the Government, and to my office especially.

During the period between August, 1914, and March, 1917, the commercial use of Sayville and Tuckerton Stations was enormous. For the first time, it showed a return of the money invested. My Bureau of Investigation learned that during this period there had been sent and received thousands of messages relating to German-owned property in this country and the whole file was indexed and searched, and as a result of months of work, millions of dollars' worth of property not reported was discovered and seized by me. In cases of the most careful concealment, it was generally found that some radiograms had been received or sent which, when produced, nullified the whole scheme and put my office in possession of facts warranting action.

Other departments of the Government have learned that through the wireless propaganda and sabotage instructions were forwarded to German agents and spies; millions of German war loans were sold and the funds transmitted; and American public opinion for a long time influenced. It is asserted that the instructions to destroy the interned German ships were thus conveyed. As an instrument of politics and war the wireless stood out preeminent.

My Bureau of Investigation found that the Telefunken interests had pursued the usual German course in respect to the wireless patents. The ownership of the legal title remained in the German company. The Atlantic Communication Co. had only a license to use the devices and so the wireless development here was always under German control. In due course, I seized all the German interests in these patents and disposed of them concurrently with the rights of the Atlantic Communication Co. In three cases the legal title to the patent or license was in the Atlantic Communication Co. This was due to the fact that the rights had been acquired after the plan to give an American appearance to the wireless enterprise had been some time in operation. Two of these three rights were of substantial importance. One (the Seibt patent) covered an important unit of a wireless transmitter; another (the Vreeland license) a receiver of wireless impulses. The third was of minor value, but of interest because it was the invention of Reuthe, a Telefunken engineer, who had worked it out at Sayville. Reuthe afterwards went to Mexico and is said to have been in charge of German wireless interests there.

When war with the United States was imminent, some of the Telefunken representatives in Atlantic Communication Co. organized a new company under the laws of New York and called it the New York Patent Exploitation Corporation. They induced a number of persons to become stockholders, and thus had a company in their control which was one step further from Telefunken and Germany. To this new company there were transferred the three patent rights (and none other) which have been described as being in legal ownership of Atlantic Communication Co. The inclusion of the Reuthe patent with the other two which were of actual use indicated that the purpose of the transfer was to get into more clearly American hands all the patent rights that could not be controlled by reason of the German ownership of the legal title. The purpose was not "exploitation" (as the name suggests) but protection. This seems the more clearly shown by the failure of this new company to make any effort to acquire other devices which would permit the use of the three devices it owned.

There is evidence that the Telefunken interests had on foot a comprehensive scheme of consolidating all the wireless patents. They were dealing with De Forest, with Marconi, and with the National Electric Signaling Co. The consolidation was put forward as a means of putting an end to ruinous patent litigations, but in all the plans the Telefunken interests were to have a majority of the stock of the holding company.

After consideration of the facts respecting the New York Patent Exploitation Corporation, an offer was made to the stockholders to turn over their stock at the amount invested in it with 6 per cent interest. This offer was accepted. The New York Patents Exploitation Corporation then entered into negotiations with the United States Government to sell to it the three patent rights described. I had learned that the Navy Department had acquired a number of wireless patents and properties and was contemplating other purchases. The instant need of Government use and control of wireless shore communication seemed to have been demonstrated by this war and I offered the rights acquired by me simultaneously with the offer of the New York Patent Exploitation Corporation. The directors of the Atlantic Communication Co. also entered into the negotiations with the result that there was conveyed to the United States of America, through the Navy Department, the entire Sayville plant and all the patent rights of the Telefunken (German) company and also of the two American corporations.

The effect of the work of my department is that Germany has been wholly excluded from the wireless field in America; has been substantially hampered in communication by wireless to the south; and can only after long effort and at great expense and by development of a new system, recover (if she can recover at all) an independent position in the Western Hemisphere. Our Government in turn is free from the domination of any privately owned system.

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CHAPTER VII.

ENEMY INTERESTS IN AMERICAN MANUFACTURING CONCERNS.

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HAMBURG-AMERICAN AND NORTH GERMAN LLOYD DOCKS.

Shortly after the outbreak of war between the United States and Germany, the United States Government commandeered the docks at Hoboken formerly used by the two German government-controlled steamship lines—the Hamburg-American Line and the North German Lloyd Line. These enemy-owned docks have been used as embarkation points by the United States in the prosecution of the war.

These docks are the largest and best equipped docks for ocean liners not only in the port of New York but in the United States. As long as this strategic point remained in German control, the door was open to Germany the moment after the declaration of peace to renew its commercial warfare against the United States.

Therefore, the President, under the authority of an act of Congress approved March 28, 1918, took over the title and possession of these docks for the United States and by proclamation dated June 28, 1918, determined and declared the compensation for the docks of the North German Lloyd Line to be $4,831,705, and for the docks of the Hamburg-American Line $2,314,877. This compensation was based on a report made on a careful appraisal of the property by qualified persons.

Neither the North German Lloyd nor the Hamburg-American Line directly owned the fee to the docks, but controlled them through two subsidiary corporations, the North German Lloyd Dock Co. and the Hamburg-American Line Terminal & Navigation Co., respectively, both New Jersey corporations.

In the case of the North German Lloyd piers, however, the North German Lloyd Dock Co. had made a lease for 999 years back to the North German Lloyd Steamship Co. at a rental sufficient only to cover the carrying charges, including the taxes, insurance, and interest on an outstanding mortgage. For this reason the value of the property lay in the enemy lessee's interest in the lease, the reversionary interest in the dock company being only of nominal value. The compensation awarded by the President for the North German Lloyd piers has therefore been paid directly to the Alien Property Custodian and deposited by him in the Treasury to be invested in liberty bonds.

In the case of the Hamburg-American piers, however, not only the title but the real value of the piers was owned by the Hamburg-American Line Terminal & Navigation Co., the New Jersey corporation. The compensation awarded by the President for the Hamburg-American piers will, therefore, be paid directly to the dock company after the payment of all liens and other charges upon the property. As the Alien Property Custodian has taken into his possession, as the property of the Hamburg-American Line, all the outstanding capital stock of the dock company, the entire net proceeds of the enemy interest in the Hamburg-American piers will likewise come into the hands of the custodian and be invested in victory bonds.

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CHAPTER XII.

BUREAU OF TRUSTS.

Frederick J. Horne, *Director.*

The Bureau of Trusts performs three of the principal functions of the Alien Property Custodian.

First, To prepare demands for enemy property.

Second, To receive such property in pursuance of a demand, petition, order, or decree of court, or license, and to conserve, administer, and account for such property.

Third, To distribute such property in pursuance of the provisions of the trading with the enemy act, Executive orders of the President and acts of Congress.

The bureau was originally composed of nine divisions and seven departments. During the year the number of divisions and departments was reduced by consolidating those performing similar functions, and there are now seven divisions and four departments. Divisions and departments are subdivided into sections when necessary. It is proposed during the coming year to continue the consolidation of all branches of this bureau which perform similar functions, and to eliminate all unnecessary subdivisions in order that the business of the bureau may be more efficiently transacted.

The divisions are the instrumentalities through which the bureau performs the functions of preparing demands for and receiving, holding, administering, and distributing such property.

The departments serve as clearing houses for the several divisions, and as sources of information and advice about the different kinds of property.

The divisions were created for the purpose of dealing with properties in accordance with the sources from which they were reported, such as, for example, the Division of Insular Possessions, which has jurisdiction of properties in the insular possessions and Territories of the United States; the Division of Court and Private Trusts, which has jurisdiction of properties in the hands of trustees, executors, administrators, or under the control of the courts; the Division of Accounts, which keeps all books of account; the Division of Corporation and Individual Property, which has jurisdiction of the stock of American corporations whose stock is enemy owned, and of enemy partnership interests, and commodities, and all other properties not in the jurisdiction of the other divisions; the Division of Patents, which deals with royalties and patent rights, etc.; the Division of Neutral Countries, which has charge of properties reported by persons residing in neutral countries or in countries associated with the United States in the prosecution of the war; the Division of Insurance, which has jurisdiction of stock in American insurance companies, and over liquidations of enemy insurance companies.

The functions and methods of the several divisions and departments are described more particularly hereafter.

For convenience the word "Report" as used herein includes reports of enemy property, orders or decrees of court, petitions and licenses. The general procedure of the bureau may be stated briefly as follows:

REPORTS, COURSE TAKEN.

Reports of enemy property are received by this bureau after they have been examined and passed upon by the Bureau of Investigation for sufficiency, execution, and enemy status. A trust number is given for each enemy, and reports are then assigned to the appropriate division, according to the character of the property reported, and the source from which such report has been received.

The division chief then assigns the reports to the various referees (who are attorneys) in his division. The referees determine whether or not demands should issue for all or any part of the property reported. In making this determination, the referee applies to the facts in each trust the general policy of the custodian, and such rules as have been laid down to determine the form and substance of the demands.

If doubtful questions arise, the division chief is consulted, and if he in turn is in doubt, such questions are referred to the director of the bureau. If additional facts are required, the Bureau of Investigation is called upon, and if questions of law arise the advice of the Bureau of Law is obtained. Questions of general policy not covered by instructions and rules already laid down are presented by the director of the bureau to the noonday conference, which is held daily by the custodian, managing director, and directors of the several bureaus, and the decision made at the noonday conference is followed by the referee.

If it is determined that the property should be demanded, the referee prepares a demand, which is submitted for approval to the chief of the division. When approved by him, the demand is certified to the alien property custodian for execution by him or by the managing director. When executed, the demand is returned to the referee (if a depositary is not required) and the referee is charged with the service of the demand, the receipt of the property demanded, the certification of all receipts to the Division of Accounts, and the preparation and certification of an acquittance which is executed by the custodian or by the managing director and returned to the referee to forward to the person from whom the property was received. All money and securities of the United States are deposited with the Treasury, and depositaries are designated only for other properties.

When demands are prepared for property for which a depositary is required, a recommendation for the designation of a depositary is attached to the demand when it is sent to the Alien Property Custodian for execution. When the demand has been executed, it and the recommendation for a depositary are sent to the depositary and inventory department, where a notation is made showing whether or not a depositary has already been designated for other property of the same enemy. The recommendation is then sent to the managing director, who designates a depositary, and in pursuance of that designation the depositary and inventory department prepares a formal designation, which is sent to the depositary with the demand, and with full instructions to guide the depositary in the service of the demand, and the taking possession of the property demanded.

The depositaries serve such demands, receive the property demanded, forward all cash items to the Bureau of Trusts, and prepare and forward an inventory of all other property received in pursuance of the demand. When the inventories are received by the bureau, they are entered on the inventory record of the depositary and inventory department, and controlled from that department while they are being checked against the original reports by the divisions. When such inventories are approved by the divisions, they are sent to the appropriate departments, where the properties are entered on the records of such departments, and appraisals made of the values of such property, whereupon such inventories are sent to the Division of Accounts, and the description and appraised value of the properties entered in the books of account. The departments keep appropriate records, indicating the dividend and interest periods, and the maturity of securities, expiration of leases, etc.

All matters relating to the administration of such properties while in the possession and under the control of the Alien Property Custodian are in charge of the several divisions, which receive information and advice from the several departments.

All reports covering property of the same enemy are consolidated under one trust number, in one trust, and wherever possible, are placed in charge of one division and referred to one referee.

All formal matters relating to the administration of the trust, such as holding and conserving enemy properties and collecting the income and principal when due, matters of insurance, taxes, leases for not longer than one year, etc., are managed by the depositaries under rules and regulations made by the Alien Property Custodian, which have been summarized in a Manual of Instructions to Depositaries, a copy of which is appended to this report. (See Appendix 9.) All receipts of principal and income from properties held by the depositaries are reported and remitted quarterly. Quarterly reports of the depositaries are checked by the departments, and if there are errors therein, the departments co-operate with the divisions for the purpose of obtaining correct reports.

If unusual questions arise in the administration of properties in the custody of depositaries, such as renewals of leases, sales of property, reorganizations requiring the deposit of stock or defaulted bonds, the referee in charge of a trust receives from the appropriate department all necessary information, and thereupon submits such questions to the director of the Bureau of Trusts for final action.

Whenever the records of the Bureau of Trusts show that approximately 15 per cent or more of the capital stock of an American corporation has been demanded, and is held by the Bureau of Trusts, a statement of such holding is made by the Bureau of Trusts to the Bureau of Sales by furnishing such statement to the Corporation Management Division of that bureau.

The Alien Property Custodian has determined that as rapidly as possible all of the stock in all of these American corporations held by him, and thus reported to the Bureau of Sales, shall be sold by that bureau. Whenever such sales are effected, and the final payment of the purchase price is made, a request for the delivery of the certificates representing or evidencing the stock sold, is made by the Director of the Bureau of Sales upon the Director of the Bureau of Trusts, and upon approval of such request by the Alien Property Custodian, evidenced by his indorsement, an order upon the depositaries for the delivery of such certificates is executed by the Director of the Bureau of Trusts. This order directs that such certificates be delivered to the order of the Director of the Bureau of Sales, and is sent by the Director of the Bureau of Trusts to the Director of the Bureau of Sales, in order that he may complete the sale by delivery of the property sold. The net proceeds from such sale, after payment of the expenses of the sale, is then transmitted by the Bureau of Sales to the Bureau of Trusts, together with an accounting approved by the Director of the Bureau of Sales, and the Alien Property Custodian.

When an enemy interest in a copartnership has been reported, the enemy interest is demanded, whether license has been issued or not by the President to the nonenemy partners, but when such license has been issued, the demand is prepared in conformity with and subject to the terms of such license. After the demand has been served, the referee prepares a recommendation for the appointment of a manager, or supervisor, to be made by the custodian, and sends the recommendation, together with a warrant of authority, which enumerates the powers to be given such manager, or supervisor, and prescribes his limitations, to the Bureau of Law, to have the legal sufficiency of the warrant determined. If approved in the Bureau of Law, the recommendation and warrant are then forwarded to the Alien Property Custodian for execution. After the appointment of a manager or supervisor has been made, and his salary has been fixed by the custodian, and the warrant of authority executed, the referee requests the Bureau of Audits to make such audit of the partnership or enemy interest as the facts in the trust require, and he then sends to the manager or supervisor a copy of his appointment and of the warrant of authority, and furnishes both to the manager or supervisor, and to the Director of the Bureau of Sales, a full statement of the facts in the trust, including copies of all reports, demands, and other important papers. The Bureau of Sales, with the assistance of the manager or supervisor, then takes charge of the case until return of sale of the enemy interest is made to the Bureau of Trusts. The return of sale and accounting for net proceeds is handled in the Bureau of Trusts in like manner as described in the case of a sale of stock.

When commodities are reported, the referee handling the trust first ascertains from the reporter, if necessary, the kind or nature of the commodities, where located, their present market value, and invoice value, if any, and what liens exist against the same. After procuring this data, the facts are made known to the Director of the Bureau of Trusts, who passes upon the advisability of demanding the property. When a demand is executed for commodities for which warehouse receipts or other evidences of ownership are outstanding, a depositary is designated for such receipts. After service of the demand the Bureau of Trusts prepares and transmits to the Bureau of Sales a full statement of all information in the trust files about the commodities and requests that bureau to promptly sell such commodities. The Bureau of Sales thereupon sells such commodities and accounts for the proceeds to the Bureau of Trusts as in sales of other property.

If the commodities are not to be demanded, docket entry is made noting this fact, and the authorization by the Director of the Bureau of Trusts in this regard, is filed with the original report.

These three features of enemy-owned capital stock, enemy interests in copartnerships, and enemy-owned commodities are handled in the Bureau of Trusts by the Division of Corporation and Individual Property, the Division of Neutral Countries, Division of Insular Possessions, and the Division of Court and Private Trusts, under the procedure above described.

* * * * * * * *

DIVISION OF PATENTS.

The character of the business administered in matters relating to patents, also trademarks, prints, labels, and copyrights, all of which are to be understood as included under the general term "patents" wherever that term is employed herein.

No issue has been raised in instances where American users of patents are operating under contracts with or from enemy owners of United States patents as to whether such contracts are valid or were suspended or absolutely terminated or lapsed after war was declared by the United States. The policy has been to demand all royalties accumulated and accruing from time to time until license was obtained by such users from the War Trade Board or the Federal Trade Commission. As the best measure of the value of the use of the patent there has been taken the arrangements made before the war and when conditions were normal between the user and the owner as to royalties or consideration.

Reports monthly, quarterly, semiannually, or annually, depending upon the nature of the case and the convenience of the user of the patent and of this division, have been required on special form in the nature of a questionnaire eliciting the source of the royalty, method of its measurement, selling price of the commodity, its general character, and cost of production. This is subscribed under oath and is comprehensive in character and embraces questions bringing out full information in the manner desired by the division.

Prior to the revocation by the President, on April 11, 1918, of the power enabling persons in this country to communicate with enemies, as provided for in the act regarding patents, no money belonging to enemy representatives or correspondents of American attorneys in patent matters was demanded. Since such revocation, however, such money has been demanded.

No demand was made for a patent rights prior to the amendment of the act approved November 4, 1918. Since the passage of this amendment, however, the Division of Corporation and Individual Property has made demands for patent rights where such were among the assets of corporations whose majority stock was enemy-owned and has been demanded, the amendment empowering the Alien Property Custodian to demand the transfer and assignment of enemy-owned patents, or even to seize them outright.

The Federal Trade Commission is vested with the executive administration of subsection (*c*) of section 10 of the act and may grant licenses, either exclusive or nonexclusive, as they deem best, provided in their opinion to grant such is for the public welfare and that the applicant is able and intends to manufacture, etc., a machine, etc., the patent of which is owned by an enemy. Such licenses may be granted to any citizen of the United States or any corporation organized within it. Where the public welfare is involved, the Federal

Trade Commission prescribes the condition of the license, including the fixing of prices of productions necessary for the health of the military or naval forces of the United States or the successful prosecution of the war, and fixes the fees to be charged therefor. The licensee is required to pay, at such times as may be ordered, to the Alien Property Custodian a sum not to exceed 5 per cent of the gross sums received by him from the sale or use of the patent or 5 per cent of the value of the invention. This sum must be deposited by the Alien Property Custodian forthwith in the Treasury as a trust fund for the licensee and for the owner of the patent, out of which the claims of the owner may be wholly or partially satisfied under judicial proceedings, as provided in subsection (*f*) of section 10 of the act. The commission requires the licensee to file semiannually, on January 1 and July 1 of each year, and oftener if necessary, a full statement of the extent of the use and enjoyment of the license and of the prices received from the sale or use of the subject matter of it, and that within 30 days thereafter the licensee pay to the Alien Property Custodian the sums referred to above. Usually about 30 days in advance of the time the licensee is required to remit the commission advises the Alien Property Custodian of the date when remittance should be in hand. This advice is treated in the same respect as a formal report and given a trust number and administered as in the case of reports concerning other property belonging to enemies.

In certain cases where before the war persons were representing foreign owners of United States patents, later defined as enemies under the act, such persons, however, not manufacturing or operating under the patent, but representing the owner merely as agents, and sublicensing American users of the patents, the Federal Trade Commission, and/or the War Trade Board, for the convenience of the Alien Property Custodian, granted licenses for the American agent to continue such representation, generally under the same conditions in force before the war. In other respects such licenses were on the same terms and conditions as to the Alien Property Custodian as licenses granted in other instances by the Federal Trade Commission or the War Trade Board. This division has advised persons who operated under a prewar contract to obtain a license from the Federal Trade Commission or the War Trade Board.

In all cases where patents were producing royalties the division has systematically collected such royalties, and kept a careful account thereof. The public has been consistently advised against, and discouraged from, treating enemy-owned patents as legitimate prey.

The following is in agreement between the Alien Property Custodian and the Federal Trade Commission—since April 26, 1918:

(1) The Federal Trade Commission will issue no licenses covering patents which are owned or controlled by a citizen of the United States residing in the United States, either as an individual, partnership, or other body of individuals.

(2) Before proceeding to the sale of any patents, control of which has been taken by the Alien Property Custodian, he will notify the Federal Trade Commission so as to give the latter the opportunity of expressing its views as to the desirablity of the issuance of licenses.

(3) Should it be determined by the Federal Trade Commission and the Alien Property Custodian that it is desirable to issue licenses, such licenses shall be issued by the Alien Property Custodian directly or by him through his representatives in charge of the business to which the patents belong.

(4) The Federal Trade Commission will issue licenses covering the use and operation of enemy-owned patents, unless it appears upon investigation that rights under such patents are vested in citizens or residents of the United States, in which case the matter will be taken up in conference between the Alien Property Custodian and the Federal Trade Commission.

(5) That the Alien Property Custodian and the Federal Trade Commission will cooperate by exchanging information in relation to patents and licenses.

It is believed that a great many enemy-owned patents bearing royalties have not been reported here. Among licensees under prewar contracts, the impression seems more or less current that they are not required by the act to file reports or to secure licenses from the Federal Trade Commission or the War Trade Board. When it is borne in mind that there are granted annually by the United States, approximately 35,000 patents, and that a search in the Patent Office for undisclosed enemy patents would require going back a period of 17 years, and that the results of such a search, even if made, would not be conclusive, since a patent issued in the name of a person now an enemy under the act, may have been heretofore and previous to the war assigned in good faith to an American citizen or a nonenemy; and that, on the other hand, a patent issued in the name of a citizen of the United States might, by like subsequent transfer, have its beneficial interest or even its legal title now in an enemy, the difficulties and the magnitude of the task of trying to get in complete report and data on enemy-owned patents can be appreciated.

The relation of this division to other divisions and the method of making demands, keeping records, and general procedure, is the same as that obtaining in other divisions. It should be observed that demands, previous to the amendment of November 4, 1918, hereinafter referred to, being chiefly for royalties, were for cash items.

The activities of this division during the first few months of its existence were greatly restricted and considerably hampered by the very narrow powers given to the Alien Property Custodian under the act as it stood prior to its amendment. The custodian was by the act virtually confined to the collection of royalties accruing under licenses granted by the Federal Trade Commission, or existing by virtue of prewar contracts, and to exercising general supervision over the administration of the patent and similar properties owned by the several companies controlled by the custodian by virtue of his stock ownership as outlined above. In pursuing this line of activity the patent division, cooperating with the Bureau of Investigation, caused a large number of existing licenses to be reported and has collected considerable sums of money as royalties under existing licenses and under licenses issued by the Federal Trade Commission. The royalties collected under existing licenses established by prewar contracts form part of the general fund deposited by the custodian in the Treasury, but the sums collected under licenses issued by the Federal Trade Commission are subject to the provisions of section 10 of the act.

(Note: Portion of Chapter XII from here to end of third paragraph on page 2212 included in Exhibit 2 to answer.)

When the policy of Americanizing German-controlled industries in the United States was determined upon, and the amendment of March 28, 1918, permitting the sale of enemy property in the United States to American citizens was enacted, it became apparent that in the great majority of cases no thorough Americanization of [105] the several industries could be effected unless the custodian was placed in the position of being able to seize and sell to American purchasers the patents upon which the industries in this country were based.

The great majority of enemy-owned industries in the United States are chemical or manufacturing industries producing patented products under United States letters patent which cover inventions originated in Germany. It may be stated that of the approximately 200 corporations controlled by the Alien Property Custodian, at least 125 are manufacturing corporations, manufacturing patented articles, and that of these 125 at least 75 manufacture under patents owned or controlled by enemy aliens. Investigations showed that the usual course pursued by an enemy in establishing a business in this country was to incorporate an American company, the stock of which the enemy controlled, and to issue a license to the American company under patents owned by the enemy. In this way the enemy was enabled to control the American corporation, not only through his stock ownership but also through his ownership of the patents, and was enabled to collect a large part of the profits of the American corporation under the guise of royalties for the use of the patents, rather than as dividends upon its stock. This dual control of the American corporation had the advantage, from the point of view of the enemy, of permitting him to shut down the business of the American corporation in the event of his losing stock form of control and also permitted him to evade payment of income taxes by taking his profits under the guise of royalties, thus largely decreasing the apparent earnings of the American corporation.

In the case of the Bayer Co. (Inc.) and the Synthetic Patents Co. a series of license agreements was found to exist under which the American company was bound to pay upward of 75 per cent of its net earnings to the [106] enemy by way of royalties. In the case of the Heyden Chemical Works royalties consumed all of the profits of the American company, except sufficient to pay a dividend upon its preferred stock. In the case of the Bosch Magneto Co. practically the entire profits of the American company were taken from the corporation under the guise of the payment for the purchase of enemy-owned United States patents. The extent of this control may be further illustrated by the case of the C. P. Goerz American Optical Co., which operated under approximately 80 United States patents, all of which were owned by the enemy parent company, and under which the American company held a license revocable at the will of the German company. The German company was thus placed in a position of being able to at any time revoke the license and shut down the American manufacture should the American company get out of control.

It was thus seen that in the great majority of cases the American corporations would be absolutely unsalable under the provisions of section 12 of the act as amended, unless the custodian were in a position to relieve the American company from the burden of the German-owned patent monopoly. It was obviously impossible to sell the Bayer Co. to a purchaser burdened with the obligation of paying upward of 75 per cent of its earnings, or to sell the C. P. Goerz American Optical Co. to an American purchaser who would find himself operating under a license which might be revoked at any moment. The act as it then stood seemed to offer no solution to the difficulty, since applying to the Federal Trade Commission for a license under the provisions of section 10 of the act would not relieve the American company from the burden of prewar licenses, and would in any event subject the purchaser to the payment of a royalty to the German patent owner, which royalty would be under the terms of the act reviewable after the war. It was realized that the purchaser of an [107] American business must be free from the entanglements that the enemy created while the American corporation was in enemy control, and that the purchaser must in any event be certain of the extent of his obligations before purchasing a business from the Alien Property Custodian.

The Department of Justice was therefore requested to render an opinion as to whether under the terms of the act, patents were property seizable by the Alien Property Custodian, and upon the decision of the Department of Justice adversely to this contention, steps were immediately taken to amend the act to specifically include patents, trade-marks and similar rights, within the scope of the property which could be seized by the Alien Property Custodian. On account of the press of business before Congress at the time, this amendment was not finally enacted until November 4, 1918.

Acting under the provisions of the amendment of November 4, 1918, the Custodian has proceeded to Americanize thoroughly all of the industries sold by him, by relieving the industries of the burden of licenses entered into prior to the war, and by conveying to the purchaser the patents through which the enemy companies controlled their American subsidiaries. This procedure has the effect not only of cutting off the payment of tribute to the enemy companies under licenses, but also places in the hands of the American purchasers the weapon to protect the industries from enemy invasion after the war. The purchaser is thus placed in the position of being able to use against the enemy, to prevent importation by him after the war, the very means that the enemy was using to prevent competition by the American manufacturers with his American subsidiary.

It may be stated, by way of example, that in the case of the Bayer Co. (Inc.), approximately 550 enemy-owned patents were sold with the stock of the company to the American purchaser, in the case of the Bosch Magneto Co. approximately 130 patents were sold; and in the case [108] of C. P. Goerz American Optical Co. about 80 patents will be sold when the stock of this corporation is disposed of by the Custodian.

Whenever any American manufacturing business which is likely to be operating under patents is to be sold, an investigation is conducted to determine what, if any, license agreements exist between the American company and its enemy parent, whether the patents standing in the name of the corporation are fully vested in it and what enemy-owned patents exist which are owned or controlled by the enemy parent corporation or by its principal owners and which are related to the business carried on by the American company. Prior to the sale all of the rights and benefits accruing to the enemy under such license agreements, and all of the letters patent relating to the business standing in the names of enemies, are seized by the Custodian, and at the sale of the business such rights and patents are sold to the purchaser of the stock of the American company. The American purchaser thus in effect steps into the enemy's shoes, and can protect the American company against the patent monopoly theretofore exercised by the enemy, and exercise the former rights of the enemy under the patents to exclude the enemy from competition by importation.

An important branch of the work of the Patent Division of the Alien Property Custodian's office has been the transfer of enemy patent rights to the Government of the United States, thus enabling the carrying on of certain governmental activities without interference from enemy patent owners and releasing the Government from very substantial claims for damages for past infringement of such patents. The largest single transaction of this kind was the sale to the Navy Department of the wireless station at Sayville, Long Island, formerly owned by the Atlantic Communication Co., the American subsidiary of the Gesellschaft fur Drahtlose Telegraphie, m. b. H. (commonly called the Telefunken [109] company), and of all the United States patents covering the

Telefunken system of wireless telegraphy in this country, aggregating some 97 patents and 10 applications for letters patent. There were also transferred to the Navy Department at the same time all of the other enemy-owned patents relating to radiotelegraphy found in a search made in the United States Patent Office, and the patent rights of the New York Patent Exploitation Corporation, an enemy controlled company which was found to be holding certain valuable patent rights for the benefit of the Atlantic and Telefunken companies.

In connection with the sale of the Locomotives Superheater Co. stock to the United States Railway Administration the Government is given the beneficial use of approximately 105 patents of great value relating to superheaters, valves, steam boilers, and other apparatus relating to locomotive construction and equipment.

When the Bayer company was sold, the Alien Property Custodian reserved from the sale four patents and three applications relating to a composition used for airplane "dope" and sold the property subject to an agreement on the part of the purchaser to issue to the Bureau of Aircraft Production a license and release of all claims for damages for past infringement under such letters patent and applications, at a price to be agreed on between the Alien Property Custodian and the Aircraft Production Board. The Alien Property Custodian is now cooperating with the Ordnance Department and other departments of the Government to effect the conveyance to such departments of all enemy-owned patents which may be required for their future operations, and to release these departments from claims for past infringement of enemy-owned patents. As soon as these departments furnish the Alien Property Custodian with the necessary information, the patents desired by the departments will be immediately seized and conveyed to them, or licenses and releases will be issued, as the case may require. It is hoped that all of the departments of [110] the Government will take advantage of the possibility of extinguishing claims for infringement and securing immunity for further manufacture provided by the act.

As a further step toward the Americanization of industries in the United States, the Alien Property Custodian is now engaged in collaborating with representative bodies in the dye and chemical industries in an effort to relieve these industries in the United States from the burden of German patent monopoly. Further details of the incorporation and purposes of The Chemical Foundation, Inc., through which the plan will be worked out, are shown in another part of this report.

It is hoped that other industries which may be injuriously affected by enemy-owned patent monopolies in the same manner as the dye and chemical industries will endeavor to take similar action, and in this way assist in the Americanization of their industries and their relief from enemy-owned patent monopoly.

Other classes of property handled by the Division of Patents have also considerable importance and have produced substantial payments by way of royalties.

The trade-mark property of enemies in this country has been quite extensive, particularly in the drug industries, and the sums paid by Americans for the use of such enemy trade-marks in the United States has attained very substantial amounts. A notable case of this character is the trade-mark "Pebeco," under which royalties aggregating $157,033.50 have been collected up to the present time.

Copyrights, particularly plays and musical compositions, have also been a considerable source of revenue.

There are printed in the appendix certain schedules showing respectively patents conveyed to the Government either by direct sale or the sale of the stock of a corporation controlling such patents, and patents under which the Government has been released from claims; patents relating to businesses which have been sold to the American purchasers of such businesses; patents owned by corporations, the stock of which was enemy owned and has been seized by the Alien Property Custodian, but not yet sold; and license fees collected under prewar licenses given by owners of patents and under licenses granted by the Federal Trade Commission since the beginning of the war. The schedules do not, however, include upwards of 4,000 patents and trade-marks conveyed to The Chemical Foundation, Inc., it having been impossible to complete the listing of these patents and trade-marks up to the present.

CHAPTER XIII.

BUREAU OF SALES.

JOSEPH F. GUFFEY, *Director*.

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SELLING DIVISION.

The Selling Division, which has charge of all selling of merchandise, firms or corporations, is divided into six departments, viz:

Corporations and Firms Department.
Appraisal Department.

Publicity Department.

Mail and Files Department.

Docket Department.

Merchandise Department.

The functioning of the Selling Division will be fully described in the reports of the departments which make up this division.

SELLING DIVISION.

To this department are referred corporations and firms that have been recommended for sale by the Washington sales committee.

The duties of this department are all outlined in the organization plans of June 6, 1918, that has been made a part of this report.

Properties that have been sold by this department are as follows:

Orenstein-Arthur Koppel	$1,312,000
G. Siegle Co.	509,600
Berger & Wirth (Inc.)	41,025
H. Koppers Co.	302,250
A. W. Faber. (Bid rejected by order of the President.)	
Bosch Magneto Co.	4,150,000
F. Speidel Co.	313,000
Dresden Lace Works	125,000
Garfield Worsted Mills	1,661,476
Passaic Worsted Spinning Co.	859,908
Gera Mills	1,525,000
New Jersey Worsted Spinning Co.	2,005,000
The Bayer Co. (Inc.) and Synthetic Patents Co. (Inc.)	5,310,000
Stollwerck Bros. (Inc.)	1,503,390
International Ultramarine Works	255,000
American Lava Co.	80,000
Bronze Powder Works	217,500
Messer Manufacturing Co.	12,500
White Metal Manufacturing Co.	270,000
George Benda	135,000
G. Siegle Co. (patents)	100
Gerhard & Hey (Inc.)	100,500
New Brunswick Chemical Co.	22,100
Golde Patent Manufacturing Co.	33,750
Eisemann Magneto Co.	907,600

Heyden Chemical Works	605,000
International Textile (Inc.)	1,212,000
Becker Steel Co. of America[1]	20,000
American Pyrophor Co.[1]	85,000
Bauer Chemical Co.[1]	150,000
F. Ad. Richter & Co.[1]	155,000
	23,878,699

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[1] Sold since Feb. 15.

Besides the work of preparing and selling the above firms and companies, this department has completed an immense amount of preliminary work on other firms and companies, the dates of sale of which have already been announced or will be in the near future.

Companies that are being prepared for sale by this office.

Grosser Knitting Machine Co.
American La Dentelle Co.
Botany Worsted Mills.
Schutte & Koerting Co.
General Ceramics Co.
Didier March Co.
International Leather Co.
Ernst Gideon Bek Mfg. Co.
G. Reis & Bros.
Heinr. Franck & Sons (Inc.).
Williamsburg Chemical Co.
Anglo-American Cotton Co.
W. Wolf & Sons.
American Linters Co.
Richard Mayer Co.
Lutz Shipping Co.
Norma Company of America.
Traun Rubber Co.
Rohm & Haas Co.
Dr. Jaeger's Sanitary Woolen System Co.
Boonton Rubber Manufacturing Co.
Ernst Gideon Bek (Inc.)
Goetze Gasket & Packing Co.
Schaeffer & Budenberg Mfg. Co.
Reidel & Co.
New England Waste Co.
Oversea Trading Co.
American Products Co.
American Lumber Co.
LaSalle Portland Cement Works.
Wolf Safety Lamp Co.
C. P. Goerz Optical Co.
Tropon Works.
Sterling Co.
The Blake Corporation.
Huntington Piano Co.
Werner & Pfleiderer.
Rossie Velvet Co.
Chillingsworth Mfg. Co.
Elly Coal Co.
Ceresit Waterproofing Co.
John Rath Cooperage Co.
Audiger & Meyer Silk Co.
American Junkers Co.
Chromos Chemical Co.
J. P. Devine & Co.
American Press & Plate Co.
The Flexotype Co.
German Consolidated Newspaper Co.
K. & E. Neumond (Inc.).
Vogemann Shipping Co.
Locomotive Superheater Co.
International Hide & Skin Co.
General Bakelite Co.

Name	Date of Sale	Confirmed.	Shares sold.	Purchaser
	1918.	1918.		
Orenstein - Arthur Koppel Co.	Sept. 12	Sept. 25	Entire plant (special Executive order).	W. A. Chamberlain, for Pressed Steel Car Co. (2 and 5).
G. Siegle Co.	Sept. 19	...do...	2,500 shares, $125,000 bonds.	Coffin & Co., A. B. Leach Co., W. A. Wilbur (2 and 5).
Berger & Wirth (Inc.)	...do...	...do...	300 shares with bond of $30,000.	M. J. Averbeck, 10 Maiden Lane, New York City (2 and 5).
H. Koppers Co.	Sept. 13	...do...	3,000 shares	Hamilton Stewart, A. W. Mellon, R. B. Mellon, H. W. Croft (2 and 5).
A. W. Faber (partnership).	....	....	Bid rejected by order of President.	....
George Benda (partnership).	....	....	Sale adjourned	....
		1919.		
Bosch Magneto Co. ..	Dec. 7	Jan. 17	250 shares and patents.	H. C. Griffiths, agent for Martin E. Kern, Allentown, Pa., Hornblower & Weeks, Chase Securities Cop. 2 and 5).
		1918.		
F. Speidel Co.	...do...	Dec. 13	Copartnership assets, patents, etc.	Leach & Garner Co., J. F. Sturdy's Sons Co., Attleboro, Mass. (2 and 5).
	1918.	1919		
Dresden Lace Works (Inc.)	Dec. 7	Jan. 17	1,250 shares common.	Richard Muller (2 and 5)..
		1918.		
Garfield Worsted Mills.	Dec. 9	Dec. 13	5,834 common, 125 preferred, 6,027.2 second preferred.	John H. Love, L. H. Hall, A. Schmidt, W. Graupner, P. G. Ruprecht (2 and 5).
		1919.		
Passaic Worsted Spinning Co.	Dec. 10	Jan. 17	4,236 common	General Worsted Co. (2 and 5).
Gera Mills	...do...	...do...	11,142 shares common, 5,000 shares preferred.	Christian Bahnsen, Ladenburg, Thalman Co., Chase Securities Corp., F. B. Keech Co., Chas. M. Howe (2 and 4).
New Jersey Worsted Spinning Co.	...do...	...do...	1,129 common, 375 preferred.	Christian Bahnsen, Otto Pressler and associates (2 and 4).
The Bayer Co. (Inc.), and Synthetic Patents Co. (Inc.).	Dec. 12	...do...	2,250 shares preferred, 5,250 shares common, 500 of Synthetic Patents Co. and other property.	Sterling Products Co., Wheeling, W. Va., Grasselli Chemical Co., Cleveland, Ohio (2 and 4).
Stollwerck Bros. (Inc.).	Dec. 21	...do...	6,000 preferred, 6,165 common.	The Touraine Co., A. M. Duane, president (2 and 4).
International Ultramarine Works.	Dec. 20	Jan. 31	1,500 shares common.	Fletcher, M. Cook, Wm. P. Talbot, Frank A. Mayer (2 and 4).
American Lava Co. ..	Dec. 23	Jan. 17	800 shares	Paul J. Kruesi (2 and 4)
Bronze Powder Works Co.	Dec. 28	...do...	12,500 shares	W. C. Cabell, James A. Hanlon, Wm. A. O'Brien, Eric Windmuller (2 and 4).
Messer Mfg. Co.	Dec. 30	Jan 31	185 shares and patents.	Adolf P. Link (2 and 4)
	1919			
White Metal Mfg. Co.	Jan. 18	...do...	Asset sale	Chas. A. Fulle (2) ......
George Bonda	...do...	...do...	......do	Thomas Hillery (2) ......
G. Siegel Co., patents	Jan. 24	...do...	Patents	Coffin & Co. (2) ....

Name	Date of Sale	Con-firmed.	Shares sold.	Purchaser	Purchase price.
rd & Hey (Inc.).	Jan. 27	....	1,000 shares	Pyne, Kendall & Hollister (6).	$100,500
w Bruns- k Chemical Co.	Feb. 5	....	775 shares	Hugo Koblenzer (6)	22,100
Patent Manu- uring Co.	Feb. 6	....	750 shares common, 250 shares preferred.	G. W. Thurnauer (6)	33,750
ann Magneto	Feb. 11	....	1,500 shares	G. E. Matthies (3)	907,600
yden Chem- Works.	Feb. 14	....	747 shares	Monsanto Chemical Works.	605,000
national Textile .).	Feb. 15	....	2,298 shares	Frank Miller	1,212,000
r Steel Co. of erica.	Feb. 20	....	2,500 shares	W. R. Comfort	20,000
ican Pyrophor	Feb. 24	....	500 shares	Alexander Harris	85,000
Chemical Co. .).	Feb. 25	....	1,000 shares	Pfeiffer & Merner	150,000
d. Richter & Co.	...do...	....	1,000 shares	G. U. Tompers	155,000
				Total	23,878,699

KEY.

ose marked 1, no action taken by advisory committee pending investigation.
ose marked 2, approved as to price and purchasers by advisory committee.
ose marked 3, approved as to price by advisory committee. Investigation pending as to purchaser.
ose marked 4, action pending by Washington committee.
ose marked 5, approved by Washington committee.
ose marked 6, rejected by advisory committee as to price.

APPRAISAL DEPARTMENT.

The Appraisal Department was established in the latter part of August, 1918, primarily for the purpose of arranging for the appraisal of the fixed physical assets of the various properties to be sold. In general, these assets consist of land, buildings, manufacturing machinery and equipment, and the object of the appraisal is to check up the amount at which they are carried on the books of the company with the replacement value, for the purpose of determining the value of the property as a whole.

In order to standardize the valuation work, several engineering firms of recognized standing in this line were employed, and, after a series of conferences, a uniform method for making the appraisals was adopted. Without going into the details, it is sufficient to say that the appraisal reports include a summary of valuation by classifications, showing the reproduction cost new, less depreciation, based both in 1914 and 1918 prices.

Arrangements were made with the engineering firms whereby their charges for services were somewhat less than their standard fees for similar work.

The principal functions of the Appraisal Department consist briefly of the following:

First. To assign the appraisal of those properties where a valuation is necessary to such firm as seems best fitted to undertake the work.

Second. To ascertain which properties have not had an audit made of their books, and report same to our Bureau of Audits at Washington for their assignment to such firm of accountants as they may select, with whatever special instructions the circumstances require.

Third. After the audit and appraisal have been completed, to prepare the necessary statements therefrom, with such explanations as may be necessary, for publication in the prospectus.

Fourth. To determine immediately after the completion of the audit and appraisal the approximate value of the enemy interest and decide from that, after consideration of any special features of the case, the amount of the deposit to be required to qualify to bid and the amount of the deposit to be required to inspect the property. The object of the latter deposit is twofold: First, to show the number of prospective purchasers seriously interested, and, secondly, to prevent the inconvenience resulting from a large number of curiosity seekers and others not seriously interested overrunning the plants.

Fifth. It is frequently required of the Appraisal Department to make a special analysis of the audit and appraisal, in connection with what other information is available, in order to determine as closely as possible the value of the enemy interest, the object of this being either to show the adequacy of the high bid or to fix an upset price at the sale.

PUBLICITY DEPARTMENT.

The work of the Publicity Department of the Selling Division embraces: (*a*) Publication of advertisements in newspapers and trade journals announcing property sales; (*b*) publication of prospectus descriptive of each property to be sold by the Alien Property Custodian.

Upon receipt from the Washington office of an order of sale and terms and conditions of sale for certain property, an advertisement is prepared setting forth the enemy interest to be sold and the date of sale.

This advertisement is published in one or more New York newspapers and in newspapers in cities likely to produce the greatest number of prospective purchasers for the property to be sold.

Inquiries resulting from the publication of these advertisements indicate widespread interest in the sale of alien properties.

A general mailing list containing over 1,000 names of bankers, manufacturers, etc., has been established. Copies of all prospectuses published are mailed to this list.

Over 4,000 inquiries as to specific properties have been received.

Prospectuses published by the Publicity Department contain the following: (1) Order of sale, (2) terms and conditions of sale, (3) history of company, (4) description of its business, (5) description of its plant and realty, (6) description of patents, trademarks, and labels, (7) summary of appraisal, (8) balance sheet, (9) earnings statement for a period of years, and (10) photographs of plant.

Prospectuses have been issued on the following properties: H. Koppers Co., Berger & Wirth Co., G. Siegle Co., Dresden Lace Works (Inc.), F. Speidel Co., Bosch Magneto Co., Bronze Powder Works Co., Gera Mills, Passaic Worsted Spinning Co., New Jersey Worsted Spinning Co., Garfield Worsted Mills, the Bayer Co. (Inc.), Stollwerck Bros. (Inc.), Messer Manufacturing Co., American Lava Co., International Ultramarine Works (Ltd.), George Benda, White Metal Manufacturing Co., Schutte & Koerting Co., Eisemann Magneto Co., Gerhard & Hey (Inc.), New Brunswick Chemical Co., Golde Patent Manufacturing Co., Botany Worsted Mills, the Heyden Chemical Works, International Textile (Inc.), Didier-March Co., American Pyrophor Co., F. Ad. Richter & Co., Bauer Chemical Co., Becker Steel Company of America, A. W. Faber, Dr. Jaeger's Sanitary Woolen System Co., Goetze Gasket & Packing Co., M. Welte & Sons (Inc.), K. & E. Neumond (Inc.), American Storage Co., Raffloer, Erbsloh & Co., Pavenstedt Land Co., and Central Los Canos.

Prospectuses are being prepared on the following properties: Robert Soltau & Co., Traun Rubber Co., Audiger & Meyer Silk Co., American Metals Co., Rossie Velvet Co., General Ceramics Co., Boonton Rubber Manufacturing Co., Lutz Shipping Co., American Lumber Co., La Salle Portland Cement Co., Ernst Gideon Bek (Inc.), Ernst Gideon Bek Manufacturing Co., Sterling Piano Co., Huntington Piano Co., and the Blake Corporation.

CHAPTER XIV.

REPORT OF BUREAU OF LAW FOR THE YEAR 1918.

Lee C. Bradley, general counsel.
Mansfield Ferry, general counsel (Jan. 1, 1919).

* * * * * * * *

Other duties.—The other activities of the Bureau of Law may be classified in the following divisions:

1. *Acting as counsel for the various bureaus of the office of the Alien Property Custodian.*—Primarily the Bureau of Law acts as counsel to the Alien Property Custodian and the various bureaus of his office. This consists chiefly in rendering legal advice and assistance to the Bureau of Trusts in relation to the acquisition and management of the properties under its control.

2. *Drafting amendments to the act.*—When the original Trading with the Enemy act was passed a full realization of the German industrial menace had not dawned upon the lawmaking body. The design of Germany in planting an industrial and commercial army upon American soil was only vaguely felt, and Congress followed the custom of other war-time legislation in making provision for the conservation and safe-keeping of enemy-owned property in this country, without any attempt to employ the power of the Government as a war weapon to destroy the German hold upon American industry and commerce. By section 12 the Alien Property Custodian was given the powers of a common-law trustee to manage and operate the property within his control, and to dispose of the same only if, and when, necessary to prevent waste and protect the property. The administration of these enemy properties, and especially the management of the large industrial corporations, brought many advantages to the Government. Corporations enemy

owned which had refused during the world war to sell their products to the allies, and which upon our entrance into the war evaded the taking of contracts to produce articles necessary in prosecuting the war, were promptly put upon war work under the direction of the Alien Property Custodian. Many mills and factories which otherwise would have been idle onlookers, as far as prosecuting the war was concerned, and would have earned great profits from purely civilian work, were made to join the industrial corps of the American war machine. Minute and thoroughgoing examinations of the books of these companies disclosed in many cases failure to pay their part of the Federal taxation necessary to support the war, and under their operation by the Alien Property Custodian millions of dollars of income and excess-profits taxes, which might otherwise have been successfully hidden from the revenue-collecting authorities, have been disclosed and paid to the Government.

After a large bulk of this enemy property had come under one hand, and the Custodian was able to piece together the picture of Germany's industrial aggression during the last 40 years, there came not only a fuller realization of the hostile nature of Germany's industrial investment in America, but also of the powerful weapon against the foe which lay ready at our hands. The Congress then adopted the Americanization idea. On March 28, 1918, an amendment to section 12 of the Trading with the Enemy act was passed, giving to the Alien Property Custodian the general power of sale, providing only that enemy property should be sold at public auction to American citizens, except in cases where the public interest would best be served by private sale, to be determined by the President. Under this amendment it has been possible for the Alien Property Custodian to make a big start in the work of divorcing German capital from American industry.

When the Custodian came to carrying out his selling program, however, he met with two very serious obstacles. He found that some of the most important of the German-owned industries in this country were operating under patents issued by the United States Government to German subjects, which patents were being used and enjoyed by the American corporations owned by the enemy, and which had never been formally assigned and were still the property of the German subjects. He found, further, that Germany had taken out thousands of American patents upon articles produced under similar patents in Germany, for the sole purpose of preventing the manufacture of the patented article in this country, and thereby forcing the importation of the German product into the American markets.

The prevailing legal opinion was that patents were not included within the enemy property which under the Trading with the Enemy act as it was originally enacted and amended on March 28, 1918, were subject to seizure and sale by the Custodian. That opinion prevailed because of the specific treatment given to patents, copyrights, trade-marks, and other similar species of property by section 10 of the act. The only power in reference to these species of property was the power conferred upon the President to license their use within certain limits that were defined, and those licenses might be either for a fixed term or for the life of the patent, as the Federal Trade Commission, to which the President delegated the powers of section 10, might decide. But any license so granted became subject to judicial review after the end of the war as to the license fees paid thereunder; and the section went further to the extent of authorizing the court, if it thought proper so to do, to cancel the license in its entirety. Many of the corporations whose stock was entirely controlled by enemies during the period of their enemy control enjoyed the benefit, not merely of one American patent, but in some cases of as many as 80 or more American patents, which, however, were owned by enemies, who either by license or otherwise had permitted the American corporation to use these patents. But where a license was granted it was revocable at the will of the German owner, and gave no vested or enforceable right to the future use of the patents. Each license would subject the licensee to a separate suit after the war by the German owners for the purpose of determining the value of that license. Such a situation was intolerable, and limited the number of persons who would consider becoming the purchasers of the stock in such a corporation, and therefore made it impossible for the Custodian to obtain the real value of that plant. Furthermore, it was obviously impossible for any prospective American purchaser to have his patent attorney examine the title to some 80 patents and determine what the outcome of such a litigation might be with sufficient assurance for the prospective purchaser to determine the value of the business in advance of a decision in the after-the-war litigation. Consequently under the provisions of the original act the Custodian faced the possibility of being required to sell American corporations to American citizens, divested of their chief assets; and more than that, of subjecting the American purchaser to ruinous competition with the cartel-controlled industries of Germany in some lines where American markets have been closed to American producers by German patent monopoly here.

The other obstacle which the Custodian encountered was the difficulty in making title to American purchasers of stock, because the certificates representing the enemy ownership were beyond his reach, being in the strong boxes of the owners in the enemy countries.

By an amendment to section 7 (*c*) of the Trading with the Enemy act, contained in a deficiency appropriation act approved November 4, 1918, both these obstacles were removed. The Alien Property Custodian was thereby empowered to demand and take over enemy-owned patents and to require corporations to issue to him new certificates of stock in lieu of certificates which can not be produced for transfer by reason of their being in the enemy country.

This amendment in addition specifically included choses in action, and rights and claims of every character and description, as property which might be required to be conveyed to the Custodian under the act. This avoids any possible limitation on the meaning of the word "property" by construction and enables the Custodian to reach this situation. Just prior to the war, and particularly after the break of diplomatic relations, there were many transactions by which property then owned by Germans was pretended to be sold to American citizens. The larger part of it was, perhaps, first incorporated, and the stock in the resulting corporation was then pretended to be sold; but in many cases options and the right of repurchase were reserved to be exercised after the war. Where an outright sale was made without any evidence being available of an agreement for a resale the pretended buyers were cautious to make the purchase price payable in some other way after the end of the war or had fixed a date which would certainly be subsequent to the end of the war.

By this same amendment of November 4, 1918, the Alien Property Custodian was given authority to seize property so that the rights of the United States would not be defeated where for any reason the Custodian was unable to serve a demand. This amendment fully authorizes in general terms the recording of any information of the Custodian made pursuant to the act, or a duly certified copy thereof, and gives to the requirements the same effect when spread upon the record in any recording office as a conveyance, assignment, or transfer. While the patents are specifically mentioned, because under the patent statute a transfer of title is not complete until the transfer has been recorded, the assignment also results in the completion of the chain of record title in cases where enemy-owned real estate or mortgages are demanded by the Custodian. Until the enactment of this amendment county clerks and other recording offices were unable to record the requirements of the form of demand of the Custodian because of the limitations of the State recording statutes.

Section 9 of the act as originally passed provides that no money or other property in the hands of the Custodian shall be liable to any order or decree of any court. This provision, however, was scarcely broad enough to cover the purposes and the necessities of the Custodian in following his policy of an Americanization of enemy-owned enterprises by their sale to American citizens. Therefore Congress, by the final amendment to the act passed on November 4, 1918, provided that the sole relief and remedy of any person having any claim to any money or other property should be that provided by the terms of the act, and that in the event of sale or other disposition of such property the relief and remedy should be limited to an action against the net proceeds received therefrom. This provision follows the precedent of some similar legislation enactment after the Civil War, which was found effective at that time.

Doubt existed as to whether the Custodian under the act as originally passed was endowed with power to pay State and municipal taxes rightfully upon the property in the hands of the Custodian and thereafter in the possession of the United States Government. Because of the obvious desirability of paying such taxes, this power was specifically given to the Custodian by the sundry civil appropriation bill approved July 1, 1918.

The full text of the Trading with the Enemy act and the amendments thereto appears in the appendix.

DEFENDANT'S EXHIBIT No. 31.

Statement of A. Mitchell Palmer, Alien Property Custodian.

COUNT OF WAR EXPENSES AND OTHER PURPOSES
COUNT OF WAR EXPENSES AND OTHER PURPOSES

DOCKS, TERMINAL EQUIPMENT, AND TRANSPORTATION FACILITIES AT NEW YORK

SUPPLEMENTAL HEARING
Before a
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE
SIXTY-FIFTH CONGRESS
Second Session
on
H. R. 9867

A Bill Making Appropriations to Supply Urgent Deficiencies in Appropriations for the Fiscal Year 1918, and for Prior Fiscal Years, on Account of War Expenses, and for Other Purposes

Printed for the use of the Committee on Appropriations

Statement of
A. MITCHELL PALMER
ALIEN PROPERTY CUSTODIAN

SUBCOMMITTEE ON DEFICIENCIES.

UNITED STATES SENATE.

Thomas S. Martin, Virginia, *Chairman.*
John F. Shafroth, Colorado.
Oscar W. Underwood, Alabama.
Thomas W. Hardwick, Georgia.
Francis E. Warren, Wyoming.
Reed Smoot, Utah.
Kennedy F. Rea, *Clerk.*

URGENT DEFICIENCY APPROPRIATION BILL, 1918, ON ACCOUNT OF WAR EXPENSES AND OTHER PURPOSES

Thursday, March 7, 1918.

UNITED STATES SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D. C.

The committee met at 11 o'clock a. m.

Present: Senators Martin (chairman), Owen, Smith of Maryland, Shafroth, Tillman, Underwood, Smith of Arizona, Hardwick, Gallinger, Smoot, Dillingham, Jones of Washington, Curtis, Kenyon, and Sherman.

STATEMENT OF A. MITCHELL PALMER, ALIEN PROPERTY CUSTODIAN.

DOCKS, TERMINAL EQUIPMENT, AND TRANSPORTATION FACILITIES AT NEW YORK.

Senator Gallinger. Mr. Chairman, before Mr. Palmer makes his statement, may I ask that the provision that is on the table be read by the clerk?

(The provision referred to was read, as follows:)

The President is hereby authorized to acquire the title to the docks, piers, warehouses, wharves, and terminal equipment and facilities on the Hudson River now owned by the North German Lloyd Dock Company and the Hamburg-American Terminal and Navigation Company, two corporations of the State of New Jersey, if he shall deem it necessary for the national security and defense: *Provided,* That if such property can not be procured by purchase, then the President is authorized and empowered to take over for the United States the immediate possession and title thereof. That if any such property shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof, so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to the said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. Upon the taking over of said property by the President, as aforesaid, the title to all such property so taken over shall immediately vest in the United States: *Provided further,* That section three hundred and fifty-five of the Revised Statutes of the United States shall not apply to any expenditures herein or hereafter authorized in connection with the property acquired.

The Chairman. Mr. Palmer, we shall be glad to have any views that you can give for the enlightenment of the committee in respect to this matter.

Mr. Palmer. Mr. Chairman, these two companies —the North German Lloyd Dock Co. and the Hamburg-American Terminal & Navigation Co.—are New

Jersey corporations in which the stock is all enemy owned. That is to say, it is owned by German capital.

Senator Gallinger. Is it exclusively owned by German capital?

Mr. Palmer. Exclusively German owned; the Hamburg-American Terminal & Navigation Co. being owned by the Hamburg-American Line and the North German Lloyd Dock Co. being owned by the North German Lloyd.

Senator Curtis. They have some stockholders, have they not, in this country?

Mr. Palmer. Not these two companies.

Senator Smoot. Have you a list of the stockholders?

Mr. Palmer. Yes.

Senator Smoot. Who are the principal stockholders of both of the companies?

Mr. Palmer. In the case of the North German Lloyd Dock Co. the certificates of stock are as follows:

Certificate No. 4, in the name of the North German Lloyd, of Bremen, Germany, for 990 shares, par value $100 each.

Certificate No. 7, in the name of the North German Lloyd, for 7 shares, par value $100 each.

Certificate No. 2, in the name of Joseph D. Bedle, now deceased, for one share, par value $100.

Certificate No. 9, in the name of Charles von Helmolt, for one share, par value $100.

Certificate No. 10, in the name of Frederick Nordenhalt, for one share, par value $100.

Certificates Nos. 2, 9, and 10 were issued to the respective owners to qualify them to act as directors of the corporation. They are all indorsed in blank for transfer and are beneficially owned by the North German Lloyd. So that, with the exception of the qualifying shares, the stock is all owned by the North German Lloyd.

Senator Smoot. Have you the list of stockholders of the North German Lloyd?

Mr. Palmer. No; the North German Lloyd is a German company.

Mr. Smoot. Yes; I understood that; but I wondered whether you had the list of stockholders of that company.

Mr. Palmer. I have not, Senator.

Senator Smoot. Then it is organized with 1,000 shares of $100 each, or a total of $100,000?

Mr. Palmer. Yes; all owned by the North German Lloyd, an enemy corporation.

The Hamburg-American Terminal & Navigation Co. is a corporation incorporated under the laws of New Jersey. Only 11 shares of the capital stock have been issued, all the certificates for which are held in the same way by the Hamburg-American Line. This company owns the piers, warehouses, docks, and lighters at Hoboken. The assessed value of the property is $2,018,000. On the real estate of the company there is a mortgage of $1,000,000, held by the Mutual Benefit Life Insurance Co., of Newark, N. J., on which the interest has been paid to the 19th of November, 1919, the maturity date of the mortgage.

Senator Smith of Maryland. 1919, you say? It has been paid ahead, then—in advance?

Mr. Palmer. 1919. Before we got into the war, this company paid its interest through the life of the mortgage and paid its insurance and taxes for a couple of years ahead.

The Chairman. You gave the value of the wharves of one of the companies. That was not the value of the wharves of both, was it?

Mr. Palmer. I simply gave the assessed valuation of the Hamburg-American docks.

The Chairman. Have you the assessed value of the other?

Mr. Palmer. I have not the assessed valuation of the North German Lloyd docks.

Senator Tillman. Mr. Palmer, you made one observation that I did not exactly understand. You said they had paid the taxes and insurance in advance. I can understand how they paid the insurance in advance, but I do not see how they could pay the taxes in advance.

Mr. Palmer. They have deposited the money to pay them in a special fund.

Senator Gallinger. Is there any other property that these companies own that is not covered by your statement as made to the committee now, Mr. Palmer?

Mr. Palmer. The Hamburg-American Line owns other property in this country. It owns all the stock, for instance, in the Atlas Steamship Co., which in turn is the owner of the building at 45 Broadway, which is the home office of the Hamburg-American Line.

Senator Gallinger. What I meant was, in connection with these docks.

Mr. Palmer. Oh, there are a couple of barges and lighters.

Senator Gallinger. Nothing of importance?

Mr. Palmer. Nothing of any great importance. The chief property belonging to these companies is these wharves and docks and piers at Hoboken, which, of course, are of very large value. It is very difficult to determine their value. As some men have said, they are invaluable.

Senator Curtis. May I ask you, right there, whether it is not a fact that they are now being appraised?

Mr. Palmer. By the Alien Property Custodian, yes; for the purpose of fixing a value on the stock of these companies which has been taken over by the Alien Property Custodian.

Senator Curtis. How long will it be before that appraisal will be completed?

Mr. Palmer. It ought to be completed very soon.

The President has advised you, I take it, that he thinks it is wise that the Government should take over the possession and title of these properties. It is also believed that it would be helpful to the general plans and purposes of the Alien Property Custodian with respect to enemy property, in conjunction with this power which is to be granted if this rider on the appropriation bill is passed, if there could be at the same time an amendment to the trading with the enemy act which would give to the Alien Property Custodian the general power of sale of enemy property in this country. In other words, it is desired to bring the trading with the enemy act back to the terms which were written into the law by the Senate, and to strike out the change which was subsequently made, I think in conference, restricting the power of the Alien Property Custodian to sell enemy property in this country.

Under section 12 of the trading with the enemy act the Alien Property Custodian has all the powers of a common-law trustee with respect to enemy property. He may manage and conduct the properties which come into his hands, and as the bill formerly stood he could sell or dispose of the same as he may see fit, or as he could do if he were the actual owner thereof. That is the way the bill was reported to the Senate; but somewhere in its passage there was added, at that point, these words:

If and when necessary to prevent waste and for the protection of the property.

As we construe the act that amounts to a restriction upon the power of sale and prevents the Alien Property Custodian from selling any enemy property except where it is necessaray to prevent waste and to protect the property.

Senator Smoot. That is following the general rule of other countries; is it not?

Mr. Palmer. It is not following the English rule, Senator Smoot. Of course we can not conceive how it can protect the property to sell it; so that that clause, "for the protection of the property," practically drops out of the act, and restricts us entirely to the "prevention of waste" as a justification for a sale.

Since we have become acquainted with the enemy property in this country, since we have seen how the German Empire, through its financial operations, has put an industrial and commercial chain all the way across this country and through our insular possessions, we have become thoroughly convinced that it would be wise and proper and highly desirable at this time if the enemy ownership in some of those properties could be permanently taken away.

Senator Hardwick. Mr. Palmer, right there, does Germany do that with us now?

Mr. Palmer. Germany is doing with us exactly what we are doing with her. She is following along. She is making inquiry constantly to find out just how far we are going with German property.

Senator Hardwick. She will do, of course, whatever we do?

Mr. Palmer. She will do what we do; exactly.

Senator Hardwick. And she is now doing just what we are doing?

Mr. Palmer. She is now doing what we are doing; and she may take no step in advance of what we do because the balance is against her.

Senator Hardwick. Because they have so much more in this country than we have in Germany.

Mr. Palmer. American interests in Germany are negligible compared with German interests in this country.

In other words, we conceive that there ought to be a line drawn between the two kinds of German investments in this country. The ordinary investment of the plain German citizen ought to be taken over by the alien property custodian and held as against the time when the distribution of it will be made, probably in kind, to somebody under the act of Congress at the end of the war; but the investment in this country, which is so close to the German Empire's control that it amounts to a part of the German industrial and commercial hold upon America and American insular possessions, ought to be treated a little differently.

Senator Hardwick. What is the difference between those two classes? That is the point.

Mr. Palmer. The difference is well illustrated in the Hamburg-American Line, for instance.

Senator Hardwick. That is partly Government owned is it not?

Mr. Palmer. The Hamburg-American Line is a German Empire subsidized concern. It is not a case of private subjects of Germany owning property over here; it is a part of the German Empire's commercial grasp upon this continent. There are other concerns of a similar character in continental United States and in our insular possessions.

Senator Hardwick. Besides the steamship lines?

Mr. Palmer. Besides the steamship lines?

Senator Hardwick. What are they?

Mr. Palmer. Great industrial concerns.

Senator Hardwick. What kind of industrial concerns?

Mr. Palmer. If we are not going to get the power ernment. That used to be denied when I tried to get a subsidy for American ships.

Mr. Palmer. That is our understanding of it.

Senator Gallinger. Yes; and you are correct, undoubtedly.

Senator Jones of Washington. Mr. Palmer, did you find that the German Government has an actual part ownership in those companies?

Mr. Palmer. I have not got evidence which would go in court, Senator.

Senator Jones of Washington. If it has, it occurred to me that we should confiscate it and not pay for it at all.

Senator Smoot. Mr. Palmer, I want to ask you a question along that line. Did the Hamburg-American Terminal & Navigation Co., which owns the docks in New York, own the boats that the company ran between New York and Hamburg?

Mr. Palmer. They were owned by the Hamburg-American Line.

Senator Smoot. They were owned by the Hamburg-American Line?

Mr. Palmer. Yes; and the Hamburg-American Line owns this New Jersey corporation, and the Hamburg-American Line owned the ships.

Senator Smoot. Yes; that is as I understood it. Now, I think I have a list of the owners of those boats. I did have it once, when we were making a fight against the ship-purchase bill. The German Government did not own those boats. They were owned by individual citizens of Germany; and I think I have in my office a list, furnished me from a source in New York that I felt was absolutely correct, of the owners of the stock of the company that held those boats. It seems to me if we have the list of stockholders of the corporation that owned the boats, we could practically have that list apply to the company that owns the docks.

Mr. Palmer. I think it likely; but it does not particularly interest me as to who the stockholders of a German corporation are. I treat the German corporation as an enemy corporation. I do not care who the stockholders are.

Senator Smoot. But what I wanted to get at was the point you made there, that the German Government owned and controlled this company that controls the docks here in New York.

Mr. Palmer. I do not think I said "owned and controlled" by the German Government.

Senator Smoot. I understood you to say so.

Senator Owen. Mr. Chairman, I should like to say that I have heard that a large part of this stock is held in trust for the Kaiser himself by some of the individuals who appear as stockholders, but who in reality have a trust agreement with Wilhelm II.

Senator Smoot. All I know about it is that when the Republicans were fighting the bill——

Senator Gallinger. And some Democrats.

Senator Smoot. And some Democrats—when they were fighting the bill creating the Shipping Board, with the view of purchasing these German boats, I did have the list of every stockholder whose name appeared upon the company's books. I do not know whom they may represent, but I did have that list, and on the list are found the names of some very prominent bankers of Hamburg and Germany.

Senator Owen. I understood that Herr Ballin was representing in this company the Kaiser's interests in these boats.

Mr. Palmer. There is no earthly question about an intimate relation of some sort between the German Government and the Hamburg-American Line.

Senator Smoot. I do not think there is any doubt but that the German Government subsidized these boats. I have always thought so.

Mr. Palmer. And neither is there any doubt about the relations between the German Government and a large number of other great industrial enterprises in this country which have come within the control of the Alien Property Custodian.

Senator Smith of Maryland. The concerns of which you speak, which you are operating, are getting the benefit of the large profits brought about by this war, for which Germany is responsible?

Mr. Palmer. Yes. Under the kindly supervision of the Government the Alien Property Custodian is operating them profitably.

Senator Smith of Maryland. For them?

Mr. Palmer. Yes; so far as we know now.

Senator Hardwick. Mr. Palmer, let me ask you a question or two about this precise proposition. We are in exclusive possession and control of that property now, under one of the war acts, are we not?

Mr. Palmer. The Alien Property Custodian has the ownership.

Senator Hardwick. You have the stock?

Mr. Palmer. Yes. That is the ownership.

Senator Hardwick. But, I mean, the physical properties?

Mr. Palmer. Yes; and the Government is in possession of the docks and wharves, actually using them for the embarkation of troops now.

Senator Hardwick. Under the authority of Congress authorizing that to be done for the period of the war?

Mr. Palmer. I presume so.

Senator Hardwick. Yes; I think that is true. So that you, as Alien Property Custodian, have the stock of these companies, because it is enemy owned?

Mr. Palmer. Yes.

Senator Hardwick. And the Government itself has exclusive and complete control and possession of the physical property and can hold it during the war?

Mr. Palmer. But the purpose of these two amendments is that there shall be something more than simply taking it over during the war.

Senator Tillman. How would you get the title, Mr. Palmer?

Mr. Palmer. By an amendment to the trading-with-the-enemy act empowering the Alien Property Custodian to sell the stock of enemy corporations.

Senator Tillman. You would put it up at public sale and buy it in for the Government?

Mr. Palmer. I could sell the stock to American capital and sell the assets.

Senator Owen. And invest the proceeds in Government bonds.

Senator Hardwick. You do not mean the docks, do you?

Mr. Palmer. The same thing would be true about the docks.

Senator Hardwick. But the Government, as I understand this amendment, wants to buy the docks.

Mr. Palmer. This amendment proposes that the President may seek to purchase, and if he can not purchase he may take, these docks, wharves, and piers. They are the physical assets of these companies.

Senator Hardwick. Yes; but he already has them.

Mr. Palmer. He has them in his possession, for the purposes of the war, during the war.

Senator Hardwick. Exactly.

Mr. Palmer. This amendment proposes that he shall take title to them.

Senator Tillman. After the war.

Mr. Palmer. So that they will belong to the Government and be separated from the German Government forever.

Senator Gallinger. May I ask you, right there—

because it is a matter of concern to some of us—what is the urgent and imperative necessity of the Government holding those docks and wharves after the termination of the war?

Mr. Palmer. Of course, I can not speak for anybody except myself. The feeling is, I think, that the time has come when the ownership of some of these great German properties should be permanently separated from German capital, and that the enemy might as well know now that the connection which she has been able to maintain with American industry and commerce is broken, not simply during the war, but broken never to be resumed.

Senator Hardwick. That is a different proposition.

Senator Gallinger. Yes. There is one other practical question that occurs to me, because I am ignorant of the situation:

If these properties are purchased by the Government and an appropriation is made by Congress, and the money passes into the Treasury of the United States, where does it go for the time being—into your hands or into the hands of the German Government to be used to fight us?

Mr. Palmer. I take it that for the time being it would go to the Alien Property Custodian. It would be put into the Treasury of the United States and used to fight Germany.

Senator Owens. You could invest it in United States Government bonds to help fight this war with, could you not?

Mr. Palmer. I not only could but would. That is what it would be invested in.

Senator Kenyon. It would not go to the stockholders or to the German Government?

Mr. Palmer. Oh, clearly not.

Senator Gallinger. That is the point I wanted to make clear.

Mr. Palmer. Let me tell you what happened here. Perhaps many of you know about it.

The Hamburg-American Line had two ships in neutral ports, one in Mexico and one in a Central American port, which the Shipping Board desired to buy and agreed to buy for $1,900,000. The Hamburg-American Line imposed the condition upon that sale that the $1,900,000 should not be taken by the Alien Property Custodian. That seemed to be fair enough, because we could not expect to get the ships and keep the money both; so I agreed that the $1,900,000 would be deposited in a bank in New York, to be used by the Hamburg-American Line for the payment of pensioners and things of that sort in this country—they have a large number of employees here who have to be maintained—such payments to be made under the supervision of the Alien Property Custodian; but then the Hamburg-American Line imposed further conditions upon the sale. They said that as a further condition they would insist that a fund of about $600,000, which was acquired from the sale of another ship which was under the control of the Alien Property Custodian, should also be at their disposal for similar purposes; and they would impose the further condition that the Alien Property Custodian should not take over the control of these New Jersey corporations which owned the docks, wharves, and piers, and that he should not take over the control of the corporation which owns their home office, 45 Broadway, in New York. At that price we balked.

Their representatives in this country frankly said that their idea was that when the war was over they should have a capital fund of $2,500,000, their terminal facilities at Hoboken, and their home office in New York to immediately start to do business; and it looked like too big a price to pay for those two ships.

That is an indication, and I think a fair indication, of the hope and the purpose of enemy capital to try to keep it over here in such condition that not a day shall elapse when the war is over before they again put their grip upon the commerce and industry of America.

Senator Hardwick. No matter what we do during the war, whenever we make a treaty of peace with Germany, if we ever do make one, those things probably will be regulated by the terms of the peace treaty; will they not, Mr. Palmer?

Mr. Palmer. Yes; but if, in the meantime, they have been converted into cash, and the cash is in the Treasury, the cash is the only thing that can be considered in a peace treaty.

Senator Hardwick. Well, I do not know.

Mr. Palmer. If the title and possession of these properties has been put in American citizens, that is the only thing that can be done.

Senator Hardwick. There have been many instances in international diplomacy where they reversed action taken during the war.

Senator Smith of Maryland. Your idea is that, as far as possible, before the termination of the war the title to any property that they own in this country should be taken over by American citizens?

Mr. Palmer. Certainly.

Senator Gallinger. My attention was attracted by your suggestion a moment ago, in reference to those boats, that we can not expect to hold the property and the money, too. Is not that exactly the case in reference to these docks? I want to have a clear understanding about it.

Mr. Palmer. The difference is that those boats were in neutral ports, where we could not take them anyhow. We could not get them. The docks are on American soil. We could not get the boats without their consent. We have the docks.

Senator Gallinger. That is a question of power, then.

Senator Dillingham. Mr. Palmer, may I ask you one question to clear up a matter in my own mind? If the President is authorized to make this purchase, I understand it would be made through you as custodian. Am I right on that point?

Mr. Palmer. I have not discussed the details. If he buys the stock of these companies, the payment should be made to the Alien Property Custodian, I take it. If he buys the assets of the corporation, the purchase price would be paid to the Alien Property Custodian. But here is the trouble, Senator. This rider gives the President the power to purchase, but I have not the power to sell.

Senator Dillingham. That is what I was coming to. In order to have the power to sell, you would require an amendment to the act under which you are operating?

Mr. Palmer. Yes.

Senator Jones of Washington. That has not been framed?

Mr. Palmer. Yes; it has been framed, and I have it with me. The way this matter comes up is this:

We have felt for the three or four months we have been operating that we had to have some amendments to this law, and we have prepared with great care a number of amendments, but they all revolve around this extension of the power of sale. I have felt that the time has now arrived when, without further delay, if possible, this power should be given to us, and it can be done in conjunction with this proposition by a simple amendment to section 12 which cuts out the limitation which I have described, "if and when necessary to prevent waste."

Senator Smoot. Is it to be the policy of our Government hereafter to take action to impress upon the

German Government, and, perhaps, upon our allies as well, that after the war ceases Germany shall not have full and free intercourse in a business way with this country?

Mr. Palmer. Senator, I am sure you do not expect me to define the policy of this Government—now or after the war.

Senator Smoot. You virtually said so, and I thought perhaps it would be better to get it straight.

Mr. Palmer. No; I can not be quoted as stating the policy of the Government, either now or in the future.

Senator Hardwick. You are advocating that policy.

Mr. Palmer. That might be another thing.

Senator Underwood. Let me ask you a question there: The property of which you have control belongs to the richer classes, or what you might call the junker class, of Germany?

Mr. Palmer: Yes.

Senator Underwood. Who are the ones that are behind the Kaiser in carrying on this war?

Mr. Palmer. These larger properties do belong to that class of people.

Senator Underwood. And the effect of adopting your amendment would be to give you power to strike a blow at that class; at least, it would jeopardize their property to a certain extent, subject to what a treaty of peace might ultimately do, and aid the Government in its conduct of the war. Is not that the result of it?

Mr. Palmer. I think so; undoubtedly.

Senator Smoot. Mr. Palmer, would not this be the result: If we take these docks at this time, and the valuation is placed upon them at a time when the amount would be perhaps 50 per cent. or 100 per cent. more than they would be worth after the close of the war, are we not helping the owners of the docks rather than hurting them by taking their property?

Mr. Palmer. The value of these docks will never decrease, Senator.

Senator Smoot. Well, I do not know. After the war, everything is going to decrease in value.

Mr. Palmer. Not terminal facilities on the Hudson River at New York.

Senator Owens. If it were offered for sale on the open market, the patriotism of American citizens would preclude their putting the price up to 50 per cent. more than the real value.

Senator Smoot. It is not the patriotism of American citizens that would be appealed to; it is a question of what the actual value of the docks would be at the time.

Senator Owen. The actual value is what they will bring in the market.

Senator Smoot. They will bring more today than they will after the war.

Senator Owen. They will not, in my judgment.

Senator Smith of Arizona. They are not on trading ground with us today.

Senator Underwood. What you want to do is to go further than this act, is it not? Your proposal is to give you power to handle all this situation. Will you give the committee the benefit of your amendment?

Mr. Palmer. This proposition gives the President the right to take or to purchase these particular docks and terminal facilities.

Senator Hardwick. For the Government?

Mr. Palmer. Yes.

Senator Hardwick. Which, of course, is a different proposition from your general proposition to permanently extinguish German title.

Mr. Palmer. No; it is only a part of it.

Senator Hardwick. No; because if your general proposition were applied to this one, then anybody in the country could buy these docks, just so they were

American citizens, of course; and the question of whether the Government shall buy them or private individuals shall buy them is still involved.

Mr. Palmer. Certainly; but it ought not to be necessary to say that the Alien Property Custodian, in exercising the right to sell property which is necessary for war purposes, would of course prefer the Government in the purchase.

Senator Hardwick. That is not a question for the Alien Property Custodian at all; that is a question for Congress to decide.

Mr. Palmer. If the Congress gives to the President the right to buy the property, he applies to the Alien Property Custodian and desires to buy property necessary for war purposes, the custodian would accommodate the desire if possible.

Senator Hardwick. But the Government has the exclusive control and use of this property anyhow for war purposes, so that is not involved. I am interested in knowing what are the real reasons why this property should be acquired at all by the Government for use after the war, even if you do want to permanently extinguish German title of this character in the country after the war, and can do it.

Mr. Palmer. All I can say is that the desire is that the title, as well as possession, shall be permanently taken away from the German owners.

Senator Hardwick. There is no war purpose in that.

Mr. Palmer. I am not sure about that, Senator.

Senator Hardwick. I am absolutely sure.

Mr. Palmer. It seems to me, as Senator Underwood says, that you can not strike a heavier blow at the enemy today than to make him understand that he has lost his connection with the industry and commerce of the American Continent.

Senator Gallinger. Oh, but it will be restored after the war.

Senator Hardwick. Just as surely as we sign a peace treaty it will be put back.

Senator Gallinger. We will never have a peace treaty if that proposition is put up to a self-respecting government.

Mr. Palmer. That argument could apply to every blow at the enemy. We are at war, and we want to wage war as effectively as possible.

Senator Smith of Maryland. If you decrease the facilities of the Germans for doing business in this country after the war, you certainly decrease the opportunities and the chances they will get to do business in competition with other countries.

Senator Gallinger. We will want to do business with Germany.

Senator Smith of Maryland. Yes; but we do not want to have them favored as they now are. They are favored now with properties here that enable them to do business that possibly it would be well to eliminate.

Senator Smoot. I understand that no moneys for the rental of these docks are turned over to Germany now.

Senator Hardwick. Or to German citizens.

Senator Smoot. Or to German citizens?

Mr. Palmer. No; we did not agree to that. They asked us to agree to that, and we declined to do it.

Senator Smoot. Certainly; and you did well and right in not agreeing to it. So by running these docks you are not helping any German citizen during the war. His settlement will come after the war, and then you will have to pay him.

Senator Smith of Arizona. In the meantime, we stand as the beneficial trustee of a people with whom we are at war, in protection of their property, and hand it to them after the war is over.

Senator Smoot. We are doing that without any further legislation.

Senator Smith of Arizona. We hand it over to them after the war is over without any depletion of value or loss to them.

Senator Tillman. In other words, Americans suffer and pay taxes, while those whelps over there get all the benefits.

Mr. Palmer. The question is whether we will account for the value as of the time when we take it, or whether we will account for it as tremendously increased in value by reason of the profits which have been made out of the very conditions for which they are responsible.

Senator Smoot. Mr. Palmer, that is not involved in the amendment that we have before us today.

Mr. Palmer. That is involved in the general proposition.

Senator Hardwick. That may be.

Senator Jones of Washington. Will you not read that other amendment?

Senator Owen. Mr. Chairman, I want to make this suggestion: The Russian treaty which has just appeared in print shows that Germany has declared the principle that no indemnity or restoration is expected on the part of those from whom Germany has taken properties during the war with Russia. If that is a good thing for Germany it is a good thing for us. It will make a trading basis, at all events, when the war ends.

Senator Smoot. I hope the United States will not be in the position that Russia is in today, and have to accept any such humiliating terms as those.

Senator Owen. If Germany declares it to be a good doctrine for Russia, I think we might hold it up at the council table, when we come to treat with Germany, and say: "You have declared this doctrine in the case of Russia, and now you ask that it shall not apply to America."

Senator Tillman. "Take your own medicine."

Senator Owen. "Take your own medicine."

The Chairman. There are some treaties between this country and Germany. I do not know how far they will embarrass us; but, speaking for myself, except so far as we are controlled by treaties, they will not get back a nickel.

Senator Hardwick. We have no treaty with Germany now.

Senator Owen. We have no treaty with Germany. They have abrogated it by their own acts.

The Chairman. I think we have treaties that provide what shall be done in the event of war.

Senator Owen. But they have abrogated them, and treated them as "scraps of paper."

The Chairman. But we can not afford to do that.

Senator Owen. No; but I mean we can compel them to adopt their own doctrine.

The Chairman. If we are bound by treaty to do certain things, I expect the Government to do them, and only to that extent would I be embarrassed by the treaty. I would not return a nickel except as we are bound to do it by treaty; but I rather think we will be embarrassed by some treaties.

Senator Underwood. Mr. Chairman, I should like to have Mr. Palmer get a chance to present his amendment. He has not presented it yet.

Mr. Palmer. The suggested amendment rewrites section 12 of the trading-with-the-enemy act. Practically the only change, however, is to omit the following words:

> If and when necessary to prevent waste and protect such property, and to the end that the interests of the United States in such property and rights, or of such person as may ultimately become entitled there-

to, or to the proceeds thereof, may be preserved and safeguarded.

Senator Jones of Washington. As I understand, if we should adopt that, it would leave that section substantially as the Senate passed it.

Mr. Palmer. Substantially as the Senate passed it; so that the power of sale of the Alien Property Custodian would read:

The Alien Property Custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, delivered, or paid over to him—

I put in "has been or shall be" because of the fact that we had been taking over property—

In pursuance of the provisions of this act and in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof.

Senator Smoot. If we pass that, why need we insert this at all?

The Chairman. Because this does not give the President the right to buy it. It gives the Alien Property Custodian the right to sell it, but to buy it for the Government he needs some legislation.

Mr. Palmer. That is it. One of these amendments gives the President the right to buy. The other gives the Alien Property Custodian the right to sell.

Senator Smoot. Not only this property, but any other property.

Mr. Palmer. Of course, what that amendment means is just this: As the law stands to-day, I am simply a conservator.

Senator Hardwick. A stakeholder.

Mr. Palmer. I can not sell anything. I list this property; I sit up here and take it in by the millions and the hundreds of millions, and I see it grow day in and day out with enormous profits, which I have got to account for when the war is over.

The Chairman. You are doing business for the German people instead of for your own country?

Mr. Palmer. Absolutely.

Senator Tillman. You are engaged in making money for those whelps over there.

Senator Owen. He is.

Senator Jones of Washington. My recollection is—I am on the Commerce Committee, and was when that bill was considered—that we considered that phase of the matter very carefully; and we eliminated that limiting clause deliberately; and I can not understand why the conference committee put it back, or how it got back here in the bill.

Mr. Palmer. Well, it got there.

Senator Jones of Washington. Yes; I see it did.

Mr. Palmer. There is no question about that; and it has resulted, just as I say, in making us simply the safe-keepers of this property. That will continue to apply to everything which we ought to be a safe-deposit company for. Stocks and bonds, securities, and debts, and that sort of thing, will continue to be kept as they are now; but it is these great industrial and transportation enterprises, producing sugars and woolens and tobaccos and steel and valves and ship products, and all that sort of thing, that I want to provide for.

Senator Kenyon. What do you want to do with these profits? Are you just holding these profits?

Mr. Palmer. The dividends declared by these companies in cash go to the Treasury, and are invested in liberty bonds.

Senator Smoot. Just as Germany holds ours.

Senator Gallinger. Mr. Palmer, I presume you have not accurate knowledge on this point; but you suggested that our interests in Germany were negligible.

Mr. Palmer. Comparatively.

Senator Gallinger. Can you give us an approximate idea as to that matter? They are very much smaller than the German interests in this country?

Mr. Palmer. Very much smaller.

Senator Gallinger. Of course, they will retaliate, as far as they can, for any legislation that we adopt along the lines that you advocate?

Mr. Palmer. Yes. It is difficult for us to learn exactly what they have done. Some of the reports that come to us indicate that they have gone further than we have and some indicate that they are keeping abreast of us. I think the latter is the truth. Outside of the Standard Oil Co., the United Shoe Machinery Co., and two or three big concerns of that kind, we have almost nothing in Germany.

Senator Kenyon. Does that statement apply to what they are doing in Roumania and parts of Russia?

Mr. Palmer. They have gone further than that, according to the information that leaks to us, about Roumanian properties.

Senator Underwood. Have you got an amendment prepared to go with the amendment taking over these docks that will cover the whole situation?

Mr. Palmer. Yes.

Senator Underwood. I wish you would give the committee the benefit of it.

Senator Hardwick. He read it.

Senator Underwood. Did you read it as an amendment?

Mr. Palmer. I did not read it at all, because, as I say, it constitutes a rewriting of section 12. I thought that was the way to do it. That which is underscored is to be inserted, and which is stricken through is to be omitted; that is all.

The Chairman. Mr. Palmer, as I understood you, your suggestion was that the amendment which the President had sent here should be adopted, and the one you have prepared in addition?

Mr. Palmer. Both.

The Chairman. That they both should be adopted?

Mr. Palmer. Yes.

The Chairman. To make a complete treatment of this whole subject?

Mr. Palmer. That is it exactly, Senator.

Senator Owen. I think that is right, too.

Senator Shafroth. No dividends whatever are paid on the stocks that you hold, I presume, are they?

Mr. Palmer. Yes, indeed; dividends are paid.

Senator Shafroth. They do not go into German hands, however?

Mr. Palmer. Oh, no. The dividends are paid to the stockholder, and the stockholder now is the Alien Property Custodian.

Senator Smith of Maryland. The American Government is holding the money for them until after the war.

Mr. Palmer. The Alien Property Custodian's bank is the Treasury. The dividends that I get I put in the Treasury.

The Chairman. Your object is to be relieved from continuing to do business for the benefit of the Germans?

Mr. Palmer. That is very largely it, as far as these large enterprises are concerned that are closely affiliated with the German Government. Where a German subject has an investment over here of an individual, private character, we ought not to disturb it. We can account for that when the war is over; but these great industries, these great concerns financed by the Deutsche Bank, supported by the junker class, as Senator Underwood says, in Germany, are the kind we ought to Americanize. That is what we ought to do with them.

Senator Shafroth. What do you do in the case of an American minority stockholder where the German stockholders are in the majority? Do you pay the American his dividends or not?

Mr. Palmer. Oh, certainly.

Senator Shafroth. But you hold the other part in the custodian's fund?

Mr. Palmer. Exactly. We simply take the stock of the enemy, so that the corporation pays the dividends to the American stockholders, and pays the enemy stockholders' dividends to us.

Senator Dillingham. What do you do with the companies that have been very largely German owned in the past, but which have eventually gone very largely into the hands of American capitalists, so that they own the majority of the stock?

Mr. Palmer. If it is a good-faith transaction we take over the enemy interests, which in that case would be a minority only, and ask for representation on the company's board of directors.

Senator Dillingham. Under this amendment, would you be the judge as to whether or not that was done in good faith?

Mr. Palmer. I think we are now, Senator. We are investigating some of those transactions. They were very numerous early in 1917.

Senator Dillingham. I understand there were a large number of them.

Senator Jones of Washington. Your amendment does not change that phase of the matter?

Mr. Palmer. No.

Senator Underwood. Your amendment merely goes to the proposition of power to sell what you have. The power to take is not affected by this amendment at all?

Mr. Palmer. Not in the slightest. It is just a question as to how the Alien Property Custodian is going to operate this office and manage this property—whether he is simply going to take care of it in kind, and protect it as a trustee for the owner, or whether he is going to be permitted to convert it into cash and keep the money for the time being.

Senator Owen. And invest that money in Government bonds to help fight this war.

Mr. Palmer. Certainly.

There are two copies of these proposed amendments. As I say, while this one looks formidable, because it is large, there are just small changes.

Senator Hardwick. Mr. Palmer, of course the argument you have made as to extinguishing German title in this country as a permanent policy does not in any way touch the question as to whether the Government itself ought to own and operate these wharves after the war?

Mr. Palmer. No, sir.

Senator Hardwick. You have nothing to submit on that question?

Mr. Palmer. I have nothing to say about that. That is outside of my jurisdiction.

The Chairman. Mr. Palmer, you have given us very valuable information. We are very much obliged to you.

(The two amendments referred to by Mr. Palmer are as follows:)

FIRST AMENDMENT.

The President is hereby authorized to acquire the title to the docks, piers, warehouses, wharves, and terminal equipment and facilities on the Hudson River now owned by the North German Lloyd Dock Company and the Hamburg-American Terminal and Navigation Company, two corporations of the State of New Jersey, if he shall deem it necessary for the national security and defense: *Provided,* That if such property can not be procured by purchase, then the President is authorized and empowered to take over for the United States the immediate possession and title thereof. That if any such property shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to the said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. Upon the taking over of said property by the President as aforesaid the title to all such property so taken over shall immediately vest in the United States: *Provided further,* That section three hundred and fifty-five of the Revised Statutes of the United States shall not apply to any expenditures herein or hereafter authorized in connection with the property acquired.

SECOND AMENDMENT.

That section twelve of the "trading with the enemy act" be, and hereby is, amended so as to read as follows:

SEC. 12. That all moneys (including checks and drafts payable on demand) paid to or received by the Alien Property Custodian pursuant to this act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable such securities shall be sold and the proceeds deposited in the Treasury.

All other property of an enemy or ally of enemy conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depositary or depositaries of property of an enemy or ally of enemy any bank, or banks, or trust company, or trust companies, or other suitable depositary or depositaries located and doing business in the United States. The Alien Property Custodian may deposit with such designated depositary or depositaries, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities or property (except money or checks or drafts payable on demand, which are required to be deposited with the Secretary of the Treasury), and such depositary or depositaries shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depositary or by the Alien Property Custodian into the Treasury of the United States as hereinbefore provided.

The President shall require all such designated depositaries to execute and file bonds sufficient in his judgment to protect property on deposit, such bonds to be conditioned as he may direct.

The alien-property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be conveyed, transferred, delivered, or paid over to him in pursuance of the provisions of this act and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale, or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien-property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien-property custodian shall forthwith deposit in the Treasury of the United States,

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as hereinbefore provided, the proceeds of any such property or right so sold by him.

Any money or property required or authorized by the provisions of this act to be paid, conveyed, transferred, assigned, or delivered to the alien property custodian shall, if said custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the alien-property custodian.

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien-property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: *Provided, however,* That on order of the President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien-property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further,* That the Treasurer of the United States, on order of the alien-property custodian shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee.

(The committee thereupon went into executive session, after which it adjourned.)

DEFENDANT'S EXHIBIT No. 32.

Résumé of Extracts From Proceedings Before Congress, Showing History of Amendment of March, 1918.

H. R. 9867—Urgent Deficiency
Appropriation Bill.

Cong. Record
65th Cong. 2nd Session
Bound Vol. P. 3328
Unbound . . . P. 3598
March 11th, 1918.

On March 11th, 1918 on the floor of the Senate to the then pending sales amendment, the following amendment was offered by Senator Freylinghusen and adopted by the Senate:

> "And provided further, That any property, other than that sold to the United States, sold under this act shall be sold at public auction to citizens of the United States only and to the highest bidder."

Bound Vol. P. 3942
Unbound 4229
March 23, 1918.

After disagreement between House and Senate, referred to conference and Conference Report made to Senate (S. Doc. 204) shows that

> "Unless the President stating the reasons therefor, in the public interest shall otherwise determine."

was added in conference.

Bound Vol. P. 3944.
Unbound P. 4231
March 23, 1918.

On the same day, was debated in the Senate:

Mr. Gallinger: Did I understand that reading of the Conference report correctly that notwithstanding the provision for public sale the President may order the property sold otherwise? If so, I should like to know why that provision is modified to that extent.

Mr. Underwood: I was coming to that. The only modification in that respect is that it does not leave everything to the Alien Property Custodian. The proposed change is "when the President shall determine", not "prescribe". As I understand when we provide that the President shall "prescribe" he may make rules and regulations but the change here is that "when the President shall determine" which will require the personal act of the President. That change has been made because there may be conditions arise in the disposition of this property when it would be impossible to sell it at public auction without it possibly going into the hands or control of alien enemies or persons who are unfriendly. The Committee of Conference thought that was wise and that it was within the line of the original bill as it passed the Senate, because when the alien property act originally passed the Senate there was no limitation whatever. Now, this merely gives the right to the A. P. C. in an exceptional case to appeal to the President to allow a certain portion of such property to be sold not by public auction but by negotiation. Then the President must indicate in writing why he has done so. I think the situation is thoroughly guarded from the standpoint of the Senator from New Hampshire.

Bound Vol. P. 3945
Unbound 4231

Conference Report not then voted on.

Bound Vol. P. 4004
Unbound

Conference report adopted by Senate.

Bound Vol. P. 3967-3969
Unbound 4253-4257
March 23, 1918.

Conference report (405) made in House. Statement by House managers refers to above clause but does not state reasons for including same.

Bound Vol. P. 4082
Unbound 4398
March 26, 1918.

Debated in House

Bound Vol. P. 4083-4084
Unbound 4399-4405
March 26, 1918.

Mr. Sherley:

" . . . . . When it came to the second amendment, the provision as it had passed the Senate, while, doubtless intended to safeguard the disposition of this property, might have, and in many instances would have, resulted in transferring the property back into the hands of the very people that we desired to take it from, because by having an absolute requirement that the sale must be made to American citizens at public auction to the highest bidder, in many instances it meant that the minority interests, American in name only, would have been the actual purchasers, and the property would really be held in the future, as in the past, for Germany. No greater blow and no more legitimate blow can be struck in this country against our enemy, Germany, than by depriving her of the industrial control that she had through ownership of many corporations and many industries in America. (Applause) And we would be lacking in ordinary common sense, to say nothing of patriotism, if we did not provide for a separation of these German citizens from control in great industrial matters. A recital could be made, taking hours, showing instance after instance where the German control of industries in this country is great enough to have very far reaching influence upon the life and the trade of this country. Now, we all of us recognized the need of ending that commercial influence and control. We also recognized the desirability of safe-guarding, so far as it can be done, the disposition of this property, which runs into the hundreds of millions, having in mind the major purpose of the legislation, and that presented the real problem to the conference, a problem that was not entirely easy of solution. We present to you the report in the belief that it has been intelligently solved. We provide that when the property is sold it shall be sold at public sale, after public advertisement, where the property, or the major portion of it is situated, to the highest bidder, who shall be an American citizen. That is the broad rule that we lay down as being the policy that ought to be and shall be followed in all these cases where there is not some compelling reason otherwise. But, having laid down that general principle, we provide that the President, for reasons stated, shall have the right to order the disposition of this property by private sale or otherwise . . . . ."

Mr. Longworth: Will the gentleman yield?

Mr. Sherley: "In a moment. And we further provide that after the sale has been made the Alien Property Custodian may upon order of the President set aside such sale for reasons stated, and subsequently the property may be sold by public sale or otherwise, as the President may direct. In other words, we state as the judgment of the Congress that the property, unless there be special reasons to the contrary, when sold, shall be publicly sold, but we give to the President the power in the interest of the nation to declare that it shall be disposed of otherwise when in his judgment it is necessary so to do in order to protect national interests. Now, I yield to the gentleman."

Same pages as above

Mr. Walsh: Now, may I ask the gentleman under what conditions, if he feels it is proper to state, would it properly arise whereby the President might decide that in the public interest the property should not be sold at public sale?

Mr. Sherley: I will answer the gentleman without undertaking to name specific cases, though I think they could be named. Here is a certain industry owned 10 percent, or 20 percent, or 30 percent by naturalized American citizens, with 60 or 70 or 80 percent owned by German citizens, all of the capital in the first instance having been practically German. That minority interest might, and in many instances probably would, be in a position to bid most for the property, knowing both its value and also being practically bidding for the interests that were there in the first instance. He would be technically an American citizen, and yet his money come from and his heart be in Germany. We have scriptural warrant for the saying that where a man's treasure is there is his heart also. In such a case it would be in Germany, and not in the United States. It might be highly desirable that the sale should not be permitted to go to such minority interest.

There is even another case that is conceivable that is not related to the quesion of aliens and alien enemies. There might be a purchase of some of these corporations which represent great dominant influences in certain trades by their large rivals in business that would give to them, if they got possession of the property, a complete monoply, and it might not be desirable in the interest of the public that that should occur.

There is in this morning's paper a statement touching an alien enemy corporation owning large sugar properties in the Hawaiian Islands, and the statement—I do not know how accurate it may be—is to the effect that an effort had been made, which was circumvented by the A. P. C., for the transfer of that property to certain American citizens so as to prevent the taking over of the properties and subsequent sale by the Alien Property Custodian. Suppose that particular property, assuming the statements in the papers are true, should be put up for sale and the purchaser should be the minority American interest, which is American in name only.

It would be the height of folly to permit a sale to take place and that property to come back into the possession of the people who would be operating it simply until the time when they might again give to German citizens and the German Government the influence and control which such ownership carries with it.

Mr. Walsh: Now, just a further question. I agree with the statement of the gentleman, but I thought that an explanation ought to be part of the record. Of course, the second amendment which the gentleman has been discussing does not make it compulsory?

Mr. Sherley: It does not.

Mr. Walsh: And certain businesses which are manufacturing things necessary for the war—they can be carried on, I assume, by the Alien Property Custodian if he deems it advisable?

Mr. Sherley: That is true.

Mr. Walsh: Under the second amendment?

Mr. Sherley: That is true, and of course there is certain property coming into his hands where manifestly there is no reason for the sale. There have come into his hands, for example, stock in United States companies, in the aggregate representing millions in value. Some German owns certain shares of stock, we will say, in the Pennsylvania Railroad, or in the United States Steel Co., or in the Illinois Central Railroad, or any other of the great corporations of the Country. There is no reason in the world for the selling of that stock. It could be held, and the dividends as they accrue, if they should accrue, turned into the Treasury of the United States, and at the end of the war such disposition of that property could be made as will result from the final adjustment of the claims of the two Governments. But there are many going concerns that are German owned, either partially or entirely, many of them representing dominant influences in certain commercial lines. For this country to sit quiet and permit that control to continue; aye, even more than that, to have the government's own Custodian take charge of them have them expanded by virtue of the very war that Germany has forced upon us, and have these people safeguarded in their property, and at the end of the war that they have forced upon this country have that property turned back greatly enhanced in value and in size, would be so idiotic that it is not conceivable that any people would contemplate it for a moment of time. (Applause)

Bound Vol. P. 4090
Unbound 4405
March 26, 1918.

Conference report agreed to.

DEFENDANT'S EXHIBIT No. 32-A.

EXECUTIVE ORDER DATED FEBRUARY 26, 1918.

(Note: Same as Plaintiff's Exhibit No. 690 and not reprinted here. See Record, Exhibits, Volume III, page 1778.)

DEFENDANT'S EXHIBIT No. 32-B.

EXECUTIVE ORDER DATED APRIL 2, 1918.

(Note: Same as Plaintiff's Exhibit No. 691 and not reprinted here. See Record, Exhibits, Volume III, page 1788.)

DEFENDANT'S EXHIBIT No. 32-C.

EXECUTIVE ORDER CONCERNING CERTAIN SALES TO BE CONDUCTED BY THE ALIEN PROPERTY CUSTODIAN PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENT THEREOF.

[No. 2914.]

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918, I hereby, in the public interest, make the following determination, order, rule and regulation:

The Alien Property Custodian may sell at private sale, without public or other advertisement, any real property or any right, title, or interest therein of whatsoever kind; ground rents, leaseholds, options on real or personal property, stocks, beneficial interests in stocks, including voting trust certificates, and all other rights appurtenant to the ownership of stock, bonds, negotiable instruments or evidences of indebtedness, seats on stock or other exchanges; in parcels, lots, or quantities having a market value at the time of sale not exceeding Ten Thousand Dollars for each parcel, lot or quantity sold. Any such sale may be conducted at such place and upon such terms and conditions as to the Alien Property Custodian, or his authorized agent, may seem proper.

My reasons for the foregoing determination, order, rule and regulation are:

(a) The properties above classified cannot usually be sold to the best advantage at public sale after public or other advertisement.

(b) The sales hereby authorized may be made at the time and place of most favorable demand and upon such terms and conditions as may be necessary to secure the best market price.

(c) Unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
15 July, 1918.

DEFENDANT'S EXHIBIT No. 32-D.

EXECUTIVE ORDER OF JULY 16, 1918.

(Note: Same as Plaintiff's Exhibit No. 5, and not reprinted here. See Exhibits, Volume I, page 29.)

DEFENDANT'S EXHIBIT No. 33.

July 11, 1918.

Dear Mr. President: On April second last you issued an Executive Order (No. 2832) permitting the Alien Property Custodian to sell at private sale certain commodities therein named in lots not exceeding $10,000.00 in value. This did not cover real estate, stocks and bonds. At that time I thought I could best sell such property at public sale. I find, however, in some rather special cases it will be necessary to sell at private sale. For instance, I am installing some directors in an enemy trust company in New York, and, under the laws of the State, directors must be bona fide stockholders. I am obliged, therefore, to sell them some of the enemy stock. Obviously, I cannot do this at public sale because I do not want any but these proposed directors to purchase.

I am using this private sale power very sparingly, and only in cases where it is perfectly clear we cannot get results by public advertisement.

Very sincerely,
(Sgd.) A. MITCHELL PALMER.

To the President,
The White House.

DEFENDANT'S EXHIBIT No. 34.

July 11, 1918.

Dear Mr. President: I now have my selling organization complete and in good working order, and have given instructions for the immediate sale of nearly 40 enemy-owned corporations. I shall hope to sell 100 more within the next three months. Joseph F. Guffey, of Pittsburgh, will be sales manager, devoting all of his time to the work, and located in New York. The Advisory Sales Committee will be:

Otto T. Bannard, Chairman, New York,
Cleveland H. Dodge, New York,
George L. Ingraham, New York,
Ralph Stone, Detroit,
B. H. Griswold, Jr., Baltimore.

Before we actually put our program into effect, it is necessary to have a rather comprehensive executive order, fixing the powers and authorities of the Alien Property Custodian with respect to the management, operation and sale of the properties which we propose to "Americanise." I enclose draft of an executive order which we feel we must have before actually inaugurating our sales program. It is supplementary to the Executive Order of February twenty-sixth last, in which the powers and authorities of the Alien Property Custodian were defined.

Very sincerely,
(Sgd.) A. MITCHELL PALMER.

To the President,
The White House.

DEFENDANT'S EXHIBIT No. 35.

Statement by Senator Underwood at Page 3593 of Congressional Record of March 11, 1918.

Mr. Underwood. I do not either. I agree with the Senator about that, but in order that there might be no contention about it, I am applying the term property of merchants to every German who lives in the United States, and the time is up.

Now, why is this a blow to the German interests, and why is it necessary to protect our country that this provision should be passed? We are fighting the German peasant behind San Mihiel. We are attempting to destroy the lives of men who had nothing to do with bringing on this war, who probably have no desire to continue it, and who are doing it because they are hurled to the battlefield by an autocratic power. What we want to do is to wipe them out of the way so that we can win the victory. But this property is owned by the junker class of Germany, not the men on the battlefield but the millionaires, the titled class, lords of the manor, the Kaiser himself, and they have shown every hour and by every act their desire to protect this property, own it, and control it when the war is over. I would far rather fire a shot at Berlin and at the junker class of Berlin who brought on this war and keep it going, than I would fire a shot behind San Mihiel at the peasant of Germany.

It is necessary for us to take over this property, not only its control and possessions but absolutely to Americanize it, to protect American interests during the war. It is necessary for us to take it over and let the German junker class know that America has her back against the wall, that we are fighting this war in earnest, that we are willing to fight it all along the line, and that there is no surrender on our part until a victorious settlement of the issues involved. We are too slow already. We ought to move faster.

I can understand how there are some interests in America that are apprehensive against the passage of this legislation. There are some interests in America that own property in Germany. I understand from Mr. Palmer's testimony—he so states—the largest ownership of property in Germany is the Standard Oil Co. Most of the property that American citizens own in Germany is controlled by great corporations. Now, I do not desire to see their property confiscated in Germany, but Mr. Palmer said, and we know it to be a fact, that where there is one dollar's worth of American property invested in Germany there are more than a hundred dollars of Germany property in America. Where they strike one blow at us in confiscating American property we strike the blow a hundredfold in taking theirs.

DEFENDANT'S EXHIBIT No. 36.

Opinion of Ramsay Hoguet.

MEMORANDUM RELATING TO THE TAKING OVER OF PATENT RIGHTS AND TO THE SALE AND CONVEYANCE OF THE SAME BY THE CUSTODIAN.

The cases of *Stephens vs. Cady, 14 How. 528, Stevens vs. Gladding, 17 How. 447 and Agar vs. Murray, 105 U. S. 126* specify the obstacles in reaching patent rights by seizure. In the case of *Stephens vs. Cady* (which arose under a copyright) the Court held as follows:

> "But the incorporeal right, secured by the statute to the author, to multiply copies of the map, by use of the plate, being intangible, and resting altogether in grant, is not the subject of seizure or sale by means of this process—certainly not at common law. No doubt the property may be reached by a creditor's bill, and be applied to the payment of the debts of the author, the same as stock of the debtor is reached and applied, the court compelling a transfer and sale of the stock for the benefit of the creditors. (20 J. R. 554; 5 J. Ch., 280; S. C. 4 Id., 687; 1 Paige, 637) But in case of such remedy, we suppose, it would be necessary for the court to compel a transfer to the purchaser, in conformity with the requirements of the Copyright Act, in order to invest him with a complete title to the property."

In *Stevens vs. Gladding* which refers to the former case of *Stephens vs. Cady*, patent rights and copyrights are treated in the same category in respect to seizure and sale at common law. In *Agar vs. Murray*, after referring to both of the foregoing cases, it was held that a patent right might be reached by a creditor's bill, the latter being an action in personam; and that the patent owner, if within the jurisdiction of the court, might thus be compelled to make a legal conveyance which, if he should refuse to do so, might be made by a trustee appointed by the Court.

It thus appears that the difficulties involved in the seizure and sale of a patent right at common law arise from two causes; (1) the fact that these rights are intangible and ordinarily not subject to seizure and (2) the fact that the statute creating them makes a written conveyance by the owner necessary to a transfer of the legal title. The fact that these difficulties may be surmounted by a creditor's bill will not help the Custodian because enemy property, as defined by the Act, belongs in most cases to parties who can not be reached by a creditor's bill.

But in interpreting the foregoing cases, it should be kept in mind that the "seizure" there referred to means "judicial seizure", that is to say, a seizure capable of bringing the property within the custody and control of a court. With such a seizure we are obviously not concerned; for under the Act we are considering, the property does not have to come into the custody of a court. The distinction between a judicial seizure and one made under an act of Congress authorizing the Government to take enemy property is fully discussed in the case of *Miller vs. United States, 11 Wall. 268*.

That case arose under the condemnation acts of 1861 and 1862 which provided that enemy property should first be seized by the President and thereafter administered by a court in an action *in rem.* It was contended by a minority of the court that jurisdiction in an action *in rem* could not be obtained except in accordance with the procedure in admiralty and revenue cases, and that therefore intangible property could not be brought within the jurisdiction of a court in the absence of a special statute prescribing the manner and means of doing so. It was emphasized that the legality of all judicial actions depended upon notice to the party proceeded against, or whose property was taken into custody by the court, and that in the absence of some special statute which itself would constitute notice, the rules of judicial seizure must strictly apply. The majority of the court, however, held that the Acts of Congress authorized the President to take any and all enemy property within the United States, that such seizure was not a judicial seizure and that it might be made in a manner adapted to the nature of the property in question. The majority of the court also decided that, if they were to treat the President's seizure and the judicial seizure as one and the same act, it was sufficient to bring the property (shares of stock) within the jurisdiction of the court to serve a notice in the nature of an attachment upon the corporation in which the stocks were held, the theory being that the corporation was a quasi-trustee, and so held its stock, for its stockholders. For us, the chief point of interest in that case is, we think, the fact that a majority of the court distinguished between taking possession by executive order under an Act of Congress and taking possession under such rules and formalities as were necessary to bring property within the Jurisdiction of a court. In the one case, there were no formal rules or requisites to be complied with the executive simply taking possession of the property directed to be seized in the mode best adapted thereto, while in the other case, (that of judicial seizure) the procedure must be such as to give a court jurisdiction over the property. In the latter case, as was noted in the dissenting opinion of Mr. Justice Davis, there might be no way to reach incorporeal property in the absence of statutory provisions as to the mode of constructive seizure.

In our opinion, therefore, the cases cited at the beginning of this memorandum, and which regulate in general the seizure of patent rights at common law have at most only a limited application to present considerations because the Custodian is not concerned with bringing property under the jurisdiction of a court but is simply concerned in taking possession of property under the direction of Congress. Specifically, he is required to investigate the status of enemy owned property, to determine whether or not he will take it over and finally, if he determines to take it over, to require that it be "conveyed, transferred, assigned, delivered or paid over" to him Sec. 7, (c). The Custodian's requirement or demand should obviously be made by notice to those in possession of the property to be taken over; and in case nobody can be found to be in possession, then by a general notice or proclamation. (See the last paragraph hereof in regard to the situs of a patent right.)

In case of physical property, it is obviously necessary for the Custodian to obtain control and custody of the same after issuing his requirement for delivery to him. In the case of intangibles, however, we are of the opinion that upon the issuance of the requirement or demand, the Custodian by operation of law comes into constructive possession. We are not now speaking of title to such property because delivery of possession does not necessarily mean that title to the property vests at the same time; and particularly so, in the case of a patent title which the statue requires to be transferred by a writing signed by the legal owner. But insofar as concerns the taking of patent property into his control, it logically follows from the Act itself that the Custodian is in complete control thereof as soon as his requirement and demand has been made under Sec. 7 (c) and this conclusion is confirmed by the decision in *Miller vs. United States.*

That being so, the question is; may the Custodian, having thus taken possession of a patent right, sell and convey a good title thereto? We think unquestionably he can and that such conclusion must follow from the amended Act. As originally drawn, the Act required the Custodian to hold and administer as a common law trustee all of the property which should "come into his possession" and he might not dispose of the same by sale or otherwise except when necessary to prevent waste or in kindred cases. The amended Act, however, vests him with all the powers of the absolute owner of the property, and not only as to property which has actually come into his possession but as to any and all property which he shall have "required to be conveyed, transferred, assigned, delivered or paid to him"; and he may sell or dispose of the same on his discretion. In other words, the amended Act vests in him a complete legal title since the powers given him under the amended Act could not otherwise be exercised; and it is important to note that the change in the act indicates clearly the intent of Congress to vest title in the Custodian not only as to property which actually comes into his possession but as to all property which he requires to be delivered to him. It is obviously within the power of Congress to vest in the Custodian the titles to all enemy owned patents and that being the necessary effect of the amended Act insofar as he may determine to take over enemy patents, it must be held that the Act has superseded the provisions of the Patent Act to that extent under the well recognized rule that a later special statute supersedes an earlier general one which is inconsistent with it, at least to the extent of such inconsistency.

We see no difficulty therefore in taking over patent titles under the present Act, even though they can not be seized under a common law execution and even though the Custodian can not reach the enemy owners in an equitable action to compel a transfer in writing.

Some special cases now remain to be considered in connection with the taking over of enemy owned patent rights.

In the first place wherever an exclusive license has been granted under enemy patents, and particularly where such license is the subject of exercise and use in this country, we should regard the licensee in each such case as being in possession of the patent right. It is analogous to a building held under a lease in that the right to its use for the period of the lease is an exclusive right secured to the lessee even against the lessor. In such a case it seems obvious that the only thing which the Custodian can take over is the legal title. Exclusive licenses under patents almost invariably arise out of bi-lateral agreements between the patent owner and licensee; and in any such case we believe the patent owner's interest or property right in the agreement may be demanded by the Custodian in which event title to the patent will then automatically vest in the Custodian under the Act. Where an exclusive license is a mere grant from the patentee and the licensee is not bound to him under contract, then, in our opinion this amounts to a complete assignment of the patent. *Waterman vs. MacKenzie, 134 U. S. 252,* unless the grant is for a severable part of the patent right or runs for less than the entire term thereof. Where it is for the grant of a particular part of the patent right, then the remainder of the patent right may be required to be delivered to the Custodian with the same effect as to title as in the case of the demand of the whole patent right. Where, however, a grant of the whole monopoly is made for less than the entire term, we would suggest that the reversion be left in the enemy owner until the term of the grant expires (which may obviously be after the war) since this leaves no substantial property right (only a naked title) in the hands of the enemy.

In the second place, it follows as a corollary from what we have said in the foregoing paragraph that the Custodian can not take and sell the monoply itself if a bona fide exclusive lease thereof has been granted to a person not an enemy. Contracts of license made before the war and not in contemplation of the war are perfectly valid and an enemy's licensee thus in possession of the monoply can not be dispossessed. It results therefore that the Custodian is powerless to sell and transfer a patent monoply to a third party upon the theory that it is enemy owned if such a bona fide exclusive license exists thereunder.

Patent applications are not subject to the provision of statute that assignments thereof must be in writing. Enemy property in patent applications may therefore be taken over by the Custodian and conveyed without any serious question as to title.

Secret processes are, in respect to title, in the same category as patent application. They give rise, however, to some serious questions in connection with the taking of possession thereof. Since possession means custody and control, it is obvious that the Custodian can not take possession of a secret process unless a disclosure of the process is made to him or to somebody in his behalf. Title to a secret process may well be in somebody who is ignorant of the process itself; but possession certainly can not be. In taking over a secret process therefore the Custodian must demand a disclosure of the same.

Where an enemy owned secret process is subject to an exclusive license here, it is obvious that the same rule which applies in the case of enemy owned patents under which exclusive licenses exist, must apply to the secret process. Where for instance a concern in this country is licensed exclusively to practice an enemy owned secret process for a term of years, we doubt very much the propriety of an attempt upon the part of the Custodian to take over such process. Certainly, the Custodian can not take what by contract belongs to the exclusive licensee, and we believe that in all such cases the Custodian should not demand a disclosure of the process but should take over only what property rights the enemy has in the contract of license, if any, including the reversion of the process.

Section 10 of the Trading with the Enemy Act, in our opinion, does not interfere, in any way, with the taking over of enemy property in patents by the Custodian. That section simply applies, so far as it concerns enemy owned patents and applications therefor, to cases where the patents and applications continue to remain the property of the enemy. As soon as they are taken over by the Custodian, they are no longer enemy property. The obvious purport of Section 10, so far as it relates to enemy owned patents and applications therefor, is to permit the enemy to do certain acts and things in respect thereto and to permit certain things to be done in respect to the issuance of licenses thereunder, notwithstanding the general provisions of the Act. But the whole effect of this section, so far as it relates to enemy owned patents and applications therefor, depends upon the continuance of such property as enemy property. We might point out that section 10 is introduced by the following clause: "That nothing contained in this Act shall be held to make unlawful any of the following Acts:" which of course suggests at once that the section is not exclusive. We are of the opinion, therefore, that this section must be treated as non-exclusive.

We have not overlooked, in rendering the foregoing opinion, that the Custodian under Section 6 is empowered to receive such enemy property only as is located *in the United States,* a provision which may be said to raise the question of the situs of a patent right title to which exists in a person outside the United States. It is possible to argue, of course, that the situs of a patent right is where the owner of the legal title happens to be; but we are aware of no decision so holding. A more logical and reasonable view is to regard the situs of a patent right, like that of any other property, as the place where it may be enjoyed or exercised. A right which can only be exercised in Massachusetts is naturally thought of as existing in Massachusetts and not in some other state. Similarly, a right which can be exercised in and throughout the United States, but nowhere else, is thought of as existing in the United States and not outside of the United States; and the Supreme Court has expressly declared that "these incorporeal rights (patent rights and copyrights) do not *exist* in any particular state or district; they are coextensive with the United States." *Stevens vs. Gladding, 17 How. 647.* In the case of physical property, the situs of the property certainly does not follow the holder of the legal title for if it did the only way to maintain title to physical property would be to carry it around; and we see no more reason to consider the title and situs of a patent as co-existing and constituting an exception to the rule which applies to all other kinds of property. For the reason therefore that no case has ever held that the situs of a patent right necessarily follows the title, for the reason that it is less logical so to consider it and for the further reason that it would be an exception to the rule in the case of all other kinds of property, the title of a patent right should be regarded as separable from its situs which must exist where the property can be exercised and enjoyed, namely, within and throughout the United States and nowhere else. As was said in *Miller vs. United States, 11 Wall. 268*, referring to shares in a corporation, "This species of property does not require to be left in charge of any person for security and preservation and it is evidenced by certificates which are presumptively in the possession of the owner of the stock wherever he may be." Similarly, a patent right is evidenced by letters patent which are presumptively in the hands of the patent owner wherever he may be. That however does not determine the situs of a patent right any more than the location of the stock certificates determines the situs of a shareholder's interest in a corporation. The Commissioner of Patents who issues patents for the Government is in many respects analogous to the officer of a corporation who issues shares of stock for the corporation. The letters patent are merely evidence of the contractual relation between the Government and the patentee which resulted in the grant of the patent (a patent has oftentimes been held to be a contract) just as the certificates of stock are evidence of a similar relation between the corporation and its stockholders. There is thus more than one reason for considering the Commissioner of Patents as standing in the same relation to patentees as an officer of a corporation was held to stand in respect to its stockholders in *Miller vs. United States* for the purpose of serving a notice of the taking. But for the reason given in the foregoing part of this opinion, namely, the fact that the Custodian is not required to make a judicial seizure in order to take possession of patent property, we do not think a service of any notice is necessary, as we have already stated. Nevertheless, to exercise an abundance of precaution, the Custodian might well serve notice upon the Commissioner of Patents in every case where he takes over a patent right, which notice could be published in the Patent Office Gazette and which therefore, should notice to enemy patent owners ever be deemed a requisite, would furnish probably as effective a notice as could be had in any other way. The Commission might also record the notice which, when done in the case of mortgage of a patent right, "is equivalent to a delivery of possession, and makes the title of the mortgagee complete towards all other persons, as well as against the mortgagor." *Waterman v. Mackenzie, 138 U. S. 252.*

DEFENDANT'S EXHIBIT No. 37.

Opinion by Ramsay Hoguet.

September 25, 1918.

Lee C. Bradley, Esq.,
Office Alien Property Custodian,
Sixteenth & P Streets, N. W.
Washington, D. C.

Dear Mr. Bradley:

In connection with the question to be decided by the Solicitor-General relating to the seizure and sale of United States patents owned by alien enemies, I have, in accordance with your request, entirely reviewed the matter and believe that the following brief summary of points should be considered by the Solicitor-General before rendering his decision:

I

In approaching the question to be decided, it is important to consider the following facts:

(1) There are now in existence over 600,000 United States patents for inventions, many of which are owned by enemy-aliens; and at the beginning of the war many so owned were being exploited in this country under contract with the enemy owners. In a large number of cases the inventions covered by enemy-owned patents are the basis of important industries being conducted in this country.

There are at least 200,000 registered trade marks, labels, etc. on record in the United States Patent Office, many of which are registered under the names of enemy-aliens; and a large number of these enemy-owned trade marks are used in businesses in this country at the present time.

(2) There is an unknown number, undoubtedly a very large number, of pending applications for United States patents filed by enemy-aliens covering inventions belonging to them. The patent statutes prescribe that failure to prosecute such applications will result in their abandonment and in many cases abandonment of an application works an abandonment of the invention contained therein.

(3) At the time of the passage of the Act many United States citizens were prosecuting applications for patents in, and owned foreign patents granted by, enemy countries which patents in most cases are subject to the payment of an annual tax; and failure to prosecute said applications or pay the annual tax would result in the loss of such patent rights as were involved.

(4) At the time of the passage of the Act, many powers of attorney were in existence authorizing American representatives of enemy-aliens to prose-

cute patent applications and otherwise to act in respect of the preservation of patent property in this country owned by enemy-aliens.

In accordance with the general provisions of the Act, were it not for Sec. 10, it would be unlawful to do many of the acts and things which it is necessary to do under our laws and statutes (and which were being done when the Act was passed) to preserve and maintain valid property rights in enemy-owned patents etc. as tabulated above.

For instance, an enemy-owned invention could not have been made the subject of an application for patent during the war and accordingly the right so to do might be lost for all time; an enemy filed patent application could not have been prosecuted and would therefore have become abandoned; an American citizen owning a foreign patent granted by an enemy country would have been forbidden to pay the annual tax thereon and such patent would therefore have been lost to him; an American manufacturer engaged in exploiting any enemy-owned United States patent in accordance with an agreement made before the war could not have lawfully continued such business; the use of enemy-owned trade marks would have been virtually forbidden; in short, the general provisions of the Act made it unlawful to do the things which our statutes and laws required to prevent property in enemy-owned inventions, trade marks and patents from lapsing or becoming abandoned and also made it unlawful for American manufacturers to continue their exploitation of enemy-owned patents as heretofore.

The general provisions of the Act, therefore, standing alone, would have created a very serious situation so far as enemy-owned patent and trade mark property was concerned. Things would have been brought to a stand-still upon which the validity and continued existence of these rights depended; and that would have been equivalent to legislating them out of existence. Section 10 was therefore inserted. *But it didn't go in as an exception.* That is to say, it did not provide that patents, trademarks, etc. should not be subject to the general provisions of the Act. It provided that *the certain acts and things specified in the sub-sections* of Sec. 10 should not be unlawful.

The real question is, therefore, whether the making of these certain acts and things lawful (1) is the same thing as exempting patents, trade marks, etc. from the general provisions of the Act or (2) indicates a legislative intent so to do. Certain it is that without Sec. 10 this species of property falls within the terms defining the general provisions and should not be exempt from their operation any further than Sec. 10 specifies or clearly implies.

The acts and things authorized by Sec. 10 notwithstanding the general provisions, are the following:

(a) Sub-section (a) provides that an enemy may file applications for patents and trade marks and may also prosecute such applications. This sub-section therefore only permits such acts and things to be done (contrary to the general provisions) as are necessary under the patent statutes and trade mark laws to prevent enemy-owned inventions, trade marks and applications therefor from becoming abandoned and the inchoate rights of property therein from becoming forever lost.

(b) Sub-section (b) provides for the prosecution of applications for foreign patents in enemy countries and also that the current annuities on foreign patents granted by enemy countries and owned by citizens of the United States may be paid (contrary to the general provisions); and therefore takes care of a situation which if left to the general provisions of the Act would have adversely affected many United States citizens.

(c) Sub-section (c) provides a lawful means for the continued exploitation of enemy-owned patents, trade marks, etc. begun before the war under license agreements with enemy owners, and which exploitation was being carried on when the war commenced. It also, by its terms, authorizes the grant of licenses under enemy-owned patents, trade marks, etc. to American citizens or corporations, even though the latter have had no previous relations with the enemy patentees. Since however, both (a) and (b) deal principally with relations already established and in existence at the passage of the Act, it would seem that (c), which immediately follows (a) and (b) was also supposed to deal primarily with already established relations with the enemy. Thus (a) would legalize the prosecution of enemy-owned pending applications for United States patents, (b) the prosecution of pending applications of United States citizens for patents of foreign countries and (c) the right of United States citizens to continue working under enemy-owned patents *as licensees* thus preserving the continuity of industrial conditions established thereunder. And whatever the scope of these sub-sections in terms, it is to be presumed that the immediate necessities, that is, the existing relations were primarily in view in enacting these sub-sections.

(d), (e), (f) Sub-sections (d), (e) and (f) relate to Section (c) and describe the terms and conditions upon which the acts authorized by Section (c) shall be allowed.

(g) Sub-section (g) provides the legal sanction for enforcing the provisions of sub-sections (c), (d), (e) and (f). That is to say, there was to be no free use of enemy patents. Returns were to be made for the use of enemy-owned patents, just as debts owing to the enemy were to be reported, to the Custodian. Without such sanction, few would confess to the use of enemy-owned patents by accepting a license under sub-sections (c), (d), (e) and (f) and thereby make themselves liable to compensation suits; and the result would be that subsections (c), (d), (e) and (f) would be much less effective.

(h) Sub-section (h) refers specifically to the powers of attorney granted by enemy-aliens for the purposes mentioned in sub-section (a), that is, for the purpose of preparing and prosecuting applications and also for the purposes mentioned in sub-section (g).

(i) Sub-section (i) relates to withholding a patent application from issue where for war purposes it is best that the invention shall not be published. Our patent statutes prescribe that applications shall be prosecuted to allowance and issue *within six months thereafter.* This section provides for an indefinite suspension contrary to the patent statutes.

What the foregoing analysis shows then is this: That the provisions of Sec. 10 were essential primarily to the preservation of certain existing relations involving enemy-owned patent and trade marks property, if this species of property was included within the general provisions of the Act. It follows therefore that if Sec. 10 raises any presumption at all in regard to the scope of the general provisions, that presumption must be that the acts and things allowed by this section were so allowed because the species of property to which they relate was included in the general provisions.

II

Patents are property. If there were ever any doubt about this it has long been definitely settled (Consolidated Fruit Jar Co. v. James T. Wright, 94 U. S. 92, 97). Being property, patents are within the broad designation of Sec. 7 (c) unless, and to the extent, specifically excepted in some other part of the Act.

Besides the well understood intention and policy of Congress to gather up all enemy property and place it in the hands of the Custodian, there is the rule of statutory construction that general terms of an act include everything falling within them not clearly within or inconsistent with any stated exception. If it had been the intention of Congress to exempt patents from the general provisions of the Act and commit them exclusively to the provisions of Sec. 10, a simple and direct statement to that effect would have been employed. Sec. 10 for example, would have been introduced as follows: *Except as provided hereinafter in this section, patents, etc. shall not be subject to the provisions of this act.* That being the simple, obvious and direct way of excepting this species of property, it follows that the exception only of specific acts in respect thereof, as was actually done, indicates a legislative intent not to exempt the property itself but only the specific acts in relation to the property which are stated in the section. To extend an exemption of specific acts to include all acts in respect to the property to which the specifically exempted acts relate, is clearly contrary to the principles of statutory construction.

III

Moreover, there is an important practical consideration which explains why Congress exempted specific acts in relation to this species of property rather than the property itself. If Congress had exempted patents from the general provisions of the Act and left them exclusively to the provisions of Sec. 10 then all of this species of property would remain in the hands of the enemy except such as an American citizen or an American corporation might be willing to acquire by way of licenses in accordance with the provisions of Sec. 10. The President himself could take no initiative in acquiring even the slightest right in enemy property of this kind and would be entirely powerless in disturbing the status quo of enemy ownership, except and to the extent that some American citizen or corporation might apply for a license. This would manifestly mean that by far the greater number of enemy-owned United States patents would continue to be held and controlled by the enemy (the records of the Federal Trade Commission show that relatively a very small number of applications for licenses have thus far been received).

If such be the situation, there is no reason why an enemy owner cannot sell and convey to a neutral the legal title to this United States patent or create a valid lien upon it in favor of a neutral; for if the United States declares through Congress that it will not exercise its sovereign right to condemn the property of its enemies, this virtually guarantees, at least to a neutral, that he may take good title from the enemy. And if the enemy may realize money by selling or mortgaging his patent titles, then the purpose of the Act is, to this extent, defeated.

It is of course possible that Congress intended so to enact; but no consistent reason appears for the conclusion that Congress intended to obtain full control over every other conceivable species of enemy property and to allow the titles to enemy patent and trade mark property to remain in the hands of the enemy. Were patents expressly excepted from the general provisions of the Act, there would be no need of searching the legislative intent in this respect. But since patents are not excepted expressly, they must be held to be within the general provisions unless a legislative intent not so to leave them can be discerned. Practical considerations become of importance in establishing a legislative intent not specifically expressed in the language of an act. It follows therefore that since it would defeat the purpose of the Act to leave patent and trade mark titles in the hands of the enemy, a legislative intent to the contrary must be presumed.

IV

Any construction of the Act which exempts patent property from the general provision thereof and makes it subject exclusively to the provisions of Section 10 will lead to the utmost confusion and uncertainty in disposing of enemy-owned businesses and will be productive of many claims against the Government after the war. This much appears from facts already established in respect to various enemy-owned businesses taken over by the Custodian and now being prepared by him for sale under the amended act.

Take a typical case. A large color manufacturing concern was offered for sale by the Custodian during the week of September 15, 1918. All of the stock thereof was formerly owned by enemy aliens who also owned and held title to certain patents under which some of the colors were manufactured. These enemy-aliens also held title to all of the trade marks employed by the American company as well as to the good will of the business, since the American company was only the agent of the foreign owners, having been organized to conduct a business which these owners had originally commenced in this country and which was never assigned to the American company directly or indirectly and for which the foreign owners never received any consideration from the American company.

In such a situation, a purchaser of the stock of the American corporation must rely upon (1) either obtaining an exclusive license to use and enjoy all of the patent, trade mark and good will property used in the business of the American company and belonging to the enemy owners or (2) this property must be purchased outright together with the stock of the American company. Otherwise, the purchaser will secure nothing but the physical assets, plant, equipment, current accounts, etc. of the American corporation.

In the nature of things, the patents, trade marks and good will associated with the American business must go with the business, if the purchaser thereof is to carry on that business as heretofore and realize the profits which that business should bring to him. A purchaser who takes over a concern of this kind cannot be expected to bid and pay for anything but physical assets if that is all he gets; and the inevitable result of separating patents, trade marks and good will from the rest of the business will be that a concern of this kind cannot be sold for anything like what it should bring. And if Congress, in enacting the present Act, has made it impossible to take over and sell patents, trade marks, etc. which are essential to conduct a business as it has been conducted heretofore, and if for this reason much less is realized from the sale than the sale of the business as a whole would have brought, it seems clear that this may furnish a substantial claim on the part of the German owners after the war.

From the standpoint of a purchaser in such a case it *must* be known at the time of bidding what he is *ultimately* to get. He cannot depend upon the possibility of securing an exclusive license under the patents, trade marks, etc. of the business upon which he is bidding. There is no positive provision in the Act which would compel the President to grant such a license, though it is hard to conceive that the President would refuse one in such a case. Still it is possible. But by far the greater objection on the part of the purchaser is that if such a license is obtained it will require the deposit from time to time of a tentative royalty which may even be increased after the war by the courts, the whole arrangement being subject to an infringement suit, that is, to costly and difficult litigation at an indefinite future time. For the purchaser therefore the transaction involves uncertainties upon which no safe bid can be made.

In the example above referred to the enemy owners received no remuneration, other than dividends from their stock, for the use of such patents, trade marks, good will, etc. as the American corporation enjoyed; but if the purchaser of the stock of the American corporation, in order to enjoy the same rights, must accept an exclusive license and agree to pay whatever the value of the use of this property is later adjudged to be worth; then it is confessedly impossible to place the American purchaser in the same position as the original enemy owners, upon the sale of the property. And the purpose of the amended Act is defeated.

These are some of the considerations which suggest the confusion and uncertainties, not to say impossibilities, which will arise in disposing of enemy-owned businesses separately from the patents, trade marks and similar rights associated therewith. And the conclusion can only be that it is wholly impracticable to make such a separation and that if possible the Act must be construed to permit enemy-owned patents and trade marks used by a going concern may to be sold with that concern.

V

Now, it is entirely consistent with the *terms* of the Act that any enemy-owned patent property which it seems desirable to seize shall be taken over and sold by the Custodian.

There may be many cases where it will not be desirable or practicable to take over enemy-owned patents, etc. and those cases may be administered under Sec. 10. In fact, the practical impossibility of taking over all enemy-owned patents suggests another reason for the enactment of Sec. 10 (c); for without a complete investigation of patent titles in the United States Patent Office, no complete seizure of enemy-owned patents could be made, and even with a thorough investigation in the Patent Office, it would be impossible to determine definitely and finally all patent titles owned by the enemy.

Where therefore title to a patent of importance in an American industry, or in a business about to be sold by the Custodian, appears to be in any enemy-alien, such a patent should be taken over by the Custodian and administered by him in any manner which seems best so far as the interests of the United States and American purchasers are concerned. Such a taking over by the Custodian, is according to the Act, under the direction of the President; and the fact that the President under Sec. 10 (c) may also issue a license under such a patent does not and should not prevent the President from taking over the entire patent title if he deems it advisable.

That would of necessity still leave a large number of enemy-owned patents still subject to Sec. 10 (c) because it is inconceivable that the President could, or would if he could, take over all enemy-owned patent titles for the reason that many of such patents are probably of no importance and as to such there would be less need or reason for disturning the status quo.

Nevertheless, as to these patents not taken over, if an American citizen or corporation desires a license to exploit the same such citizen or corporation may apply to the President for a license. This leaves Sec. 10 (c) fully operative for any and every case which should properly come under it. But where a patent has been taken over by the Custodian it can no longer be subject to Sec. 10 because such a patent is no longer "owned or controlled by" an enemy. The Act seems perfectly plain in this respect and should so be enforced.

VI

It has been said that in accordance with the decision in re the claim of Marcuard (The Confiscation Cases, Fed. Cas. 3097) valid claims of neutrals may be prejudiced if enemy-owned patent rights are seized under the Trading with the Enemy Act. But, obviously, no *valid* lien held by a neutral could be destroyed in condemning an enemy-owned patent (Citizen's Bank of Louisiana v. United States, 20 Wall. 114). In that case it was held that in condemning enemy property in land, the United States took the land subject to any valid lien. The same rule would of course apply in condemning enemy patents under the present Act.

Moreover, if patent titles should not be taken over because of the possibility of such claims or liens being held by neutrals, then shares of stock should not be taken over for the same reason. It is more than likely that many shares of stock which have been taken over by the Custodian, will be found after the war to have been subject to valid liens held by neutrals on account of loans made prior to the war. This is much more likely to be the case in connection with shares of stock than in connection with patent titles; and therefore the objection urged in this behalf, if it be an objection, should apply to any and all property, shares of stock in particular, rather than being advanced merely in respect to patent titles.

The decision in Marcuard's case, as made by the Circuit Court (supra) expressly holds that no lien can be placed upon enemy property while it is subject to the control of the United States. The enemy may of course contract a valid debt with a neutral and that debt may be enforced in our courts, as was held in the Marcuard case; but such debt could not be secured by a lien upon enemy property while under the control of the United States. Said the Court on that point: "Every attempt to deal with property within the Union lines would have been abortive and void"; it "was forbidden by public proclamation of the President, and by usages of belligerents"; and "Marcuard, in taking a mortgage from Slidell on property within the Union lines took the risk of the exercise by the Government of the United States of its right as a sovereign power engaged in war, to confiscate the property of its enemies."

CONCLUSION

I sum up, therefore, my reason for concluding that patents, trade marks, etc. are included within the general provisions of the Trading with the Enemy Act and are not subject exclusively to the provisions of Sec. 10 of that Act, as follows:

First, because it appears that Sec. 10 was unnecessary to take care of existing or already established relations with the enemy in respect to this species of property, which relations arose either by operation or statutes governing such property or by contract with United States citizens; and that Sec. 10, by exempting certain acts and things in respect to this property, creates the presumption that the property itself was considered to be within the general provisions.

Second, because the exemption of certain acts and things in respect to patents, trade marks, etc. is not the same as the exemption of patents, trade marks, etc. themselves and that therefore any extension of the exemption to patents and trade marks themselves would be equivalent to exempting all acts and things in respect thereto instead of the specific acts and things referred to in the section, and would be contrary to the principles of statutory construction.

Third, because the exemption of patents, trade marks, etc. as a whole would defeat the purpose of the Act since it would permit patent and trade mark titles to be sold or mortgaged by the enemy to a neutral; and thus the enemy would be able to realize money or other things thereon which might assist in the prosecution of the war against the United States.

Fourth, because it would defeat the purposes of the amended Act in that many enemy-owned businesses could not be practically disposed of to American purchasers.

Fifth, because the *terms* of the Act do not forbid but actually permit this property to be demanded and seized by the Custodian without, preventing Sec. 10 from being fully operative, in practice, in a large number of cases.

Sixth, because all valid liens of neutrals would not be disturbed by the taking over of such property and by the sale thereof any more than by the grant of licenses under Sec. 10.

Respectfully submitted,

(Sgd.) RAMSAY HOGUET.

DEFENDANT'S EXHIBIT No. 38.

August 10, 1918.

Honorable Thos. W. Gregory,
Attorney General,
Washington, D. C.

My dear Mr. Attorney General:

Section 7 (c) of the "Trading with the enemy Act" provides:

> "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

The powers granted the President by this section were by Executive Order vested in the Alien Property Custodian.

The powers and duties of the Alien Property Custodian in respect of money and other property conveyed, transferred, assigned, delivered or paid over to him, or required so to be, are found in Section 12 of the "Trading with the enemy Act" as amended by the Act approved March 28, 1918.

I beg to request an official opinion whether patents, trade-marks, copyrights, etc., are included within the word "property" and are, as such, subject to demand under Section 7 (c) and to administration and disposition under Section 12.

The question is of grave importance to this office. Certain enemy persons are the owners of American patents which are being used and enjoyed by American citizens under more or less informal arrangements with the enemy owners which do not amount to a legal assignment of the patents, or to an express license to use the process covered thereby. Such is the case, perhaps, with the majority of those American corporations in which, prior to the demand of this office, an enemy or enemies owned the majority of the capital stock. In many of these cases the value of the assets and business depends very largely upon the continued right to use such patented processes. Having taken over the enemy stock in such corporations, I now propose to sell the same to American citizens, but the stock must have comparatively small value unless the corporation is vested with the legal right to continue the employment of the patented processes. In the meantime, the Federal Trade Commission is issuing licenses to competitors of these corporations and thereby diminishing or destroying the value of their business.

My view is that patents, trade-marks, copyrights, etc., are property within the meaning of Sections 7 (c) and 12 of the "Trading with the enemy Act" and subject to demand and administration as other property. For your information I submit herewith an opinion on the subject prepared by Ramsay Hoguet, Esq., a patent attorney of New York, who is acting as my counsel in patent matters. I have also taken the liberty of presenting the question informally to Mr. Solicitor General Davis.

May I suggest that if it be held that enemy owned patents are subject only to license under Section 10 of the "Trading with the enemy Act" and not to sale or other disposition by the Alien Property Custodian under Section 12 of the "Trading with the enemy

Act", the result will be to defeat the policy of the Administration to permanently and completely destroy the control of American commerce and industry by the enemies of the nation.

Certain departments of the Government, including the Navy Department, are anxious to purchase outright patents which are owned or controlled by enemies, and I have been taking steps to effect such sales, on the assumption that the power so to do was vested in this office after demand therefor under Section 7 (c) of the Act.

Yours very truly,

(Sgd.) A. MITCHELL PALMER.

DEFENDANT'S EXHIBIT No. 39.

FEDERAL TRADE COMMISSION
WASHINGTON

November 1, 1918.

JOHN FRANKLIN FORT,
Commissioner.

My dear Mr. Palmer:

I have carefully gone over all your suggestions and my own in the matter of an Executive Order under the amendment made to the Urgent Deficiency Appropriation Bill.

So far as agreement is concerned, I can only *consent* to an order such as I am enclosing herewith, striking out the whole of the private sale clause, and out of paragraph 2, as originally drawn by you, the five lines therein contained, reading: "provided that no power granted," etc., and ending with the word "issued." I can see no reason for this sentence which

I have stricken out. I can not understand why it was placed there.

I would not want to consent to changing the orders which the President had made under his original Executive Order without his approval *before* it was put in the order to be presented to him. I do not see why you should not continue to have such power as was given you under your original order, and I do not see why the amendment should be out of the limitations and restrictions which the President enjoined in the original order.

As the order (I am sending) now stands, it confers upon you all powers given the President by the amendment which has just passed. That is the intent of paragraph 1.

By paragraph 2 of the proposed order enclosed, all present Executive orders still apply and are left in force.

Paragraph 3 leaves the Federal Trade Commission exactly as it is, as to its power to grant licenses, but one condition is imposed by a proviso, marked "(1)," which is an additional restriction upon the power of granting applications made to it for licenses under Sub-section (c) of Section 10 of the original Act.

In order to protect your interests, it is provided that in case you desire, you may appear and object to the issuance of any license, and if you do not desire to appear in person, you may file objections with the Commission, and thereby, we restrict the power of this Commission to grant any license until after the expiration of fifteen days' notice to you of the application pending before us for such license. That will give you knowledge of everything that is going on here at all times, and opportunity to object, and to state your reasons why objection is made to the issuance of a license, and as you know, this Commission has always endeavored to respond to any just request on your part to prevent interference in operation under the Act.

It seems to me, that with the power you now have from the President, under the previous Executive Order of October 12, 1917, you are amply protected, and no one is injured (except possibly the Federal Trade Commission in connection with patents you may seize), but that is so unlikely to raise a conflict or work harm that I have decided that it is not worth while to raise that question. We have always gotten along so nicely, that I hope this proposed Executive Order will meet your views, and if it does, and the President shall approve, I, of course, have not the slightest objection to your applying to him without my presence.

Of course, I do not know the views of the President on this matter, and would, therefore, prefer if you apply for the order in my absence, that you should show this letter to him, but if larger power than this is asked, the Commission would like to be heard.

Very truly yours,
JOHN FRANKLIN FORT.

Hon. A. Mitchell Palmer,
Alien Property Custodian,
Washington, D. C.

DEFENDANT'S EXHIBIT No. 39-A.

Enclosure With ~~Plaintiff's~~ DEFENDANT'S Exhibit No. 39.

Executive Order

By virtue of the authority vested in me by "An act to define, regulate and punish trading with the enemy, and for other purposes," known as the "Trading with the enemy Act," approved October 6, 1917, I hereby make the following orders and rules and regulations:

I. I hereby vest in the Alien Property Custodian the executive administration of all of the provisions of Sub-section (c) of Section 7 of said "Trading with the enemy Act" as amended by an Act entitled "An act making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved October , 1918; and said Alien Property Custodian shall have the power and authority to prescribe forms and procedure for the exercise of the powers and authority vested in him.

II. In the executive administration of said Sub-section (c) of Section 7 of said "Trading with the enemy Act," the Executive Orders heretofore issued by me by virtue of the authority vested in me by said "Trading with the enemy Act" shall apply, and said Alien Property Custodian is hereby vested with all of the powers and authority heretofore granted to him or vested in him by any Executive Orders heretofore issued by me not inconsistent with this Order.

III. The power and authority heretofore vested in the Federal Trade Commission to issue, pursuant to the provisions of Sub-section (c) of Section 10 of the "Trading with the enemy Act," or to withhold or refuse a license to any citizen of the United States or any corporation organized within the United States, to manufacture or cause to be manufactured a machine, composition of matter or design, or to carry on or cause to be carried on a process under any patent, or to use any trade mark, print, label or copyrighted matter owned or controlled by an enemy or ally of enemy, is hereby continued in full force and effect provided:

(1) That said Federal Trade Commission shall notify the Alien Property Custodian of all applications made to it for licenses under said Sub-section (c) of Section 10 of the Trading with the enemy Act, so that he may, if he so desires, appear at any hearing and object to the issuance thereof. The Alien Property Custodian, in lieu of appearance, may file with the Federal Trade Commission objections to the issuance of any such license. In no event shall any license be issued until after the expiration of fifteen days after such notice of the application shall have been given to the Alien Property Custodian.

DEFENDANT'S EXHIBIT No. 40.

Report to John Franklin Fort by Edward S. Rogers.

ESR-Hn 1-16-18

MEMORANDUM FOR GOVERNOR FORT.

It is a matter of common knowledge that the manufacture of chemicals, dyes, intermediates, medicines, and the like, was one of the most important of German industries. The Germans, owing to the fact that our patent laws readily lend themselves to it, had what was practically a monopoly in this country. The United States is one of the few, if indeed it is not the only country, where product patents are granted. This permits not only the process of making, but the product itself, however made, to be patented and hence monopolized for seventeen years. Germany does not grant patents on any chemical compound however complex or new. There is no such thing as a product patent in Germany. Thus the laws of the United States secure to the German a monopoly which his own laws deny. Of the American chemical patents, 60% are granted to foreigners, of which the Germans have had over 70%.

Our patent laws, differing from most others, do not require domestic manufacture of patented articles or what is technically known as "working" as a condition to continuance of the patent monopoly. No manufacture by the German patent owners was carried on in this country but was confined to the subsidized chemical works of Germany which at the outbreak of the war, as was intended, were transformed into ammunition factories.

This resulted in a condition which discouraged any attempt on the part of American manufacturers to embark in this industry. In view of the subsidy they could not meet the German competition in price. They could never be free from the danger of expensive patent litigation because of the over liberality of our patent laws. The article itself however important, being patented, as well as the process of making it, discouraged attempts to devise new and non-infringing processes to get the same result. The fact that domestic manufacture was not required as a condition to continue patent protection prevented the building up in this country of groups of workmen skilled in the technique of the art and finally the disclosures of methods in the patent specifications were, as a rule, insufficient and not infrequently were deliberately uncandid so that lacking knowledge of the so-called trade secrets of the Germans, even at the expiration of the patents, American manufacturers were unable to go into the business.

Section 10 of the "Trading with the Enemy Act" permits licenses to be issued to American citizens under enemy-owned or controlled patents. The salvarsan situation was the most serious. The pre-war price was $4.50 an ampule. Speculatively it brought as high as $45 an ampule and there was none to be had. The need of a supply was great and immediate. Four groups of licenses were issued to make this drug.

On January 11, 1918, the Surgeon General of the Army reports, "The present supply of the salvarsan is sufficient, and it bids fair to be sufficient in the future. The present price charged for it to the Army seems to be reasonable." This price is $1 an ampule.

Other licenses have been issued to manufacture other drugs. All of these licenses have been granted, not for the duration of the war, but for the life of the patents, thus insuring permanency. Licenses to make and sell products, not heretofore made and sold in this country, have been non-exclusive and have been issued to a number of independent manufacturers, thus insuring competition and an adequate and uninterrupted supply at a reasonable price. Conditions have been inserted in all of these licenses requiring that the price charged be reasonable; that the product conform in quality to prescribed rules and standards, and while as yet there has been no actual fixing of prices by the Federal Trade Commission, the licenses are issued by the Commission and are accepted by the licensee without prejudice to and with full recognition of the right of the Commission to fix prices if and whenever the public interest requires.

The result of this work is beginning to be felt. Prof. Stieglitz, President of the American Chemical Society and head of the Department of Chemistry of the University of Chicago, on January 8, 1918, wrote, "I am preparing a summary of the present situation in regard to synthetic drugs and related products and we will then push a renewed inquiry in the wholesale drug houses, asking for information as to the present conditions. I believe they have been much improved through the work of your Commission."

In view of the present fairly satisfactory condition of the drug market, the Commission is turning its attention to dyes to the end that this important industry may be established in this country. There have been already filed applications to make dyes under sixteen separate German-owned patents.

These industries are of the utmost importance and their permanence is much to be desired.

I have been informed that work is now being done toward accumulating data for use in connection with peace negotiations at the conclusion of the war.

The restoration of the Germans to their chemical monopoly is a thing they will greatly desire. Its accomplishment would again place our people in the helpless position they were in in 1915 and 1916, when importations from Germany were cut off. A suggestion to restore the *status quo ante* with respect to industrial property and restore to German subjects in the United States and American citizens in Germany in patents, copyrights and trade marks all rights enjoyed before the war, would on its face be reasonable, but to grant it would work injury to our own people as a whole and hardship and loss on our manufacturers who have come to the rescue in a time of necessity.

The following is suggested:

(1) That a man or group of men be detailed to study the situation with reference to the adjustment of rights in industrial property in the treaty of peace and after the war.

(2) That it be ascertained what the countries associated with the United States in this war are doing in this respect.

(3) That a serious effort be made to ascertain what is being done by the German Government with American-owned patents in Germany. In this connection it is well to bear in mind that the complete destruction of American patent rights in Germany, valuable as they are, can be compensated for in money. American patents in Germany cover such things as typewriters, shoe machinery, reapers, binders, mowers, and the like. The German-owned patents in this country however enable their owners to monopolize drugs such as salvarsan, novocaine, verinol, a supply of which is indispensable to the public health.

(4) That steps be taken to amend our patent laws with a view of preventing a repetition of the abuses now possible. As a result of experience in the present war an act has recently been introduced into the English Parliament for this purpose.

DEFENDANT'S EXHIBIT No. 41.

THE WHITE HOUSE
WASHINGTON

22 Novembeı, 1918.

My dear Palmer:

It seems to me that it would not be wise to add just now to the list of alien names, in view of the virtual cessation of hostilities.

I am not now speaking of the merits of any particular case, but of the misapprehensions that would arise if we seemed to be taking advantage of the technical continuation of the war to get hold of this property. The misunderstandings which have arisen in connection with the taking over of the cables will illustrate the misinterpretations which can be put upon actions taken at this time, and I do not want to create the impression on the country that we are eager to get hold of these properties.

I hope that your judgment will coincide with mine, upon a reconsideration of this puzzling matter.

Cordially and faithfully yours,

(Sgd.) WOODROW WILSON.

Hon. A. Mitchell Palmer,
Alien Property Custodian.

DEFENDANT'S EXHIBIT No. 42.

(COPY)

THE WHITE HOUSE
WASHINGTON

27 November, 1918.

Dear Palmer:

I dare say you are right and I was wrong about the method of completing the sales you have already undertaken, and I will sign the proclamation I returned to you the other day, if you will return it to me. Your plan for the disposition of enemy property in the United States meets with my approval in principle, and I dare say will meet with it in detail when I have a chance to compare it with the proposals that will be made on the other side. I am going to take the document over with me as a basis for discussion.

In haste,

Cordially and sincerely yours,

(Sgd.) WOODROW WILSON.

Hon. A. Mitchell Palmer,
Alien Property Custodian.

Original in Mr. Palmer's file. He will produce at trial.

DEFENDANT'S EXHIBIT No. 43.

PROCLAMATION BY THE PRESIDENT DATED NOVEMBER 29, 1918.

(Note: Same as Plaintiff's Exhibit No. 729-F and not reprinted here. See Record, Exhibits, Vol. III, page 1940.)

DEFENDANT'S EXHIBIT No. 44.

Cablegram From Bradley W. Palmer Dated April 23, 1919.

From Ammission
Paris
Dated April 23, 1919

For GARVAN from PALMER.

"Have salvarsan and neosalvarsan patents been sold? Advise fully. Urgent. If not sold, we all urge immediate sale and transfer of ownership prior to signature of treaty, if necessary leaving adjustment of price until later. Important that transfer of title be made.

(Sgd.) PALMER.

DEFENDANT'S EXHIBIT No. 45.

Cablegram From Francis P. Garvan to Bradley W. Palmer, Paris.

April 24, 1919.

Copy.

AMMISSION,
Paris.

For Bradley W Palmer from GARVAN

QUOTE: Salvarsan and neosalvarsan patents sold to Chemical Foundation two weeks ago Stop Now Foundations exclusive property Stop Title transferred and money value paid to Alien Property Custodian Stop Five patents sold include method of preparation and of administration and container Stop Urgent you send all facts to me immediately

Acting

FPG
MSH

DEFENDANT'S EXHIBIT No. 46.

FEDERAL TRADE COMMISSION
WASHINGTON
JOHN FRANKLIN FORT
COMMISSIONER

March 4, 1919.

Hon. A. Mitchell Palmer,
Alien Property Custodian,
Washington, D. C.

My dear Mr. Palmer:

This letter will be presented to you by Professor Stieglitz of the University of Chicago. He desires to have an interview with you on several matters, as he advises me.

He is exceedingly anxious as to the alien enemy patents and as to their future operation, and I am very sure that you will be glad to talk with him about this, and get his ideas, because he is familiar with the whole subject, and his judgment is worthy of your careful attention.

I trust you will give him an interview, as he is entirely disinterested, and only anxious for the Government in the matter.

Yours very truly,
(Sgd.) JOHN FRANKLIN FORT.

DEFENDANT'S EXHIBIT No. 47.

National Research Council
acting as the
Department of Science and Research
of the
Council of National Defense

SUB-COMMITTEE ON SYNTHETIC DRUGS
JULIUS STIEGLITZ, CHAIRMAN
UNIVERSITY OF CHICAGO

March 14, 1919.

DEPARTMENT OF JUSTICE
MAR 18 1919
ATTORNEY GENERAL'S OFFICE

Attorney-General A. Mitchell Palmer
Washington, D. C.

My dear Mr. Palmer:

You will recall my visit to your office on March 4, when you kindly gave me a few minutes of your time to lay before you the situation in regard to the manufacture of arsphenamine (salvarsan or "606") and of neo arsphenamine (neo salvarsan) in this country under the German patent rights after the declaration of peace. In accordance with your suggestion, I am now submitting in writing in the inclosed memorandum my recommendations, which you kindly agreed to keep in mind and to urge upon Mr. Garvan's consideration in connection with the proposed sale of German patent rights to an American research corporation as a holding company. At the end of the memorandum you will find a short summary with the specific recommendations made.

You will recall that I emphasized the fact that there are some ten million people in this country suffering in one form or another from syphilis, and that these ten million people and the public at large, exposed to infection, are depending in this matter on you and Mr. Garvan for the protection of their health. I believe there is no problem of greater immediate moment to the public welfare, but it is with the utmost confidence that I am leaving the problem in your hands as a proved public benefactor.

In conclusion, may I say that I have been interested in this problem first as chairman of the Committee on Synthetic Drugs of the National Research Council, then as scientific advisor to the Federal Trade Commission in connection with the issuing of licenses for synthetic drugs, and finally as special expert on arsphenamine of the Public Health Service, which commanded my services as the result of fatal complications experienced with the drug. I have directed research in this laboratory on arsphenamine for the past nine months. I have no financial or other private interests in the problem, and have never had any. I am serving simply as a matter of public duty. I am

Yours respectfully,
(Sgd.) JULIUS STIEGLITZ,
Professor of Chemistry.

DEFENDANT'S EXHIBIT No. 47-A.

Memorandum Accompanying Plaintiff's Exhibit No. 47.

NATIONAL RESEARCH COUNCIL
ACTING AS THE
DEPARTMENT OF SCIENCE AND RESEARCH
OF THE
COUNCIL OF NATIONAL DEFENSE

SUB-COMMITTEE ON SYNTHETIC DRUGS
JULIUS STIEGLITZ, CHAIRMAN
UNIVERSITY OF CHICAGO

MEMORANDUM ON THE PATENTS FOR ARSPHENAMINE (SALVARSAN) AND NEO-ARSPHENAMINE (NEO-SALVARSAN) FOR ATTORNEY-GENERAL A. MITCHELL PALMER

According to the estimates of the Public Health Service, based on the examination of young men for army service, there are some ten million people in the United States suffering from syphilitic diseases in some form or other. The Public Health Service has instituted a great campaign to suppress or at any rate decidedly reduce the incidence of this disease, a campaign than which there is no more important movement in this country. One of the implements of much importance in this campaign is the drug arsphenamine (salvarsan or "606") and its derivative neo-arsphenamine (neo-salvarsan). These are the best *curative* agents known for the disease. Used early enough, they will indeed abort the disease and its desperate sequels, and that has been the basis of its very extended use in the army and navy, as I understand it. Even when used in later stages of the disease, it is the most valuable specific remedy known, according to the reports from the most expert and disinterested medical advisors.

Now, arsphenamine and neo-arsphenamine are at the same time *most dangerous drugs,* with very high contents of arsenic, and also most difficult to prepare. Consequently, the *elements of safety and cost* are of peculiar importance in connection with the drugs, and these are factors which I should like to dilate on for your special consideration in the matter of dealing with enemy-owned patents. The solution of the drug is injected directly into the veins of the patient, and most serious reactions, and even death occur in case after case when an impure preparation is used. I believe it would be no breach of confidence to say to you personally that there have been fatalities in the army and navy resulting from the use of the drug, as a result of which indeed I was called in as a special expert in the service of the Public Health Service. In order to safeguard the army, navy, and public, licenses under which arsphenamine is manufactured specify that samples of each lot should be submitted to the Hygienic Laboratory of the Public Health Service in Washington, and should be officially approved before the lot is released for use. In the Hygienic Laboratory of the Public Health Service, the drug is tested biologically as to its activity and purity (by injections into which rats, etc.). My *first* recommendation to you, as custodian of the health interest of the public in this connection, is that in the deed of transfer of the German arsphenamine and neo-arsphenamine patents, the specific condition be entered that the purchasing company and its licensees will submit to the same *regulations for supervision* by the Public Health Service of the manufacture and sale of the product that has been enforced by the Federal Trade Commission with the present licensees. It is quite obvious, I believe, that the public must be protected against the dangers of promiscuous uncontrolled manufacture of a product, the use of which can cause death in a few moments.

In the second place, we have the question of *cost*, Before 1914 the normal price per dose of 0.6 gram, or 9 grains, for the German article was $3.50. This price was raised to $4.50 in the early years of the war, and when the supply neared exhaustion, such fancy prices as $20 to $80 per dose were paid in this country, a measure of the high esteem in which the drug is held. For your personal information, I would add that when arrangements were being discussed for the issuing of licenses by the Federal Trade Commission, one of the best manufacturing houses interested in securing a license, proposed to market the product at a price of $6.00 per dose! This is a fair indication of what is quite likely to happen in the sale of this vital drug without control of the price by some Government agency. The Federal Trade Commission refused point blank to consider any such proposition as indicated, and finally an agreement was reached that the price should be $1.00 per dose to the Government for the army and navy, $1.25 to hospitals, and $1.50 to individual physicians.

At these prices the product has been manufactured successfully by American licensees, of a degree of purity equal to, and in part greater than, that of the original German article, and in quantities such that in a single month the manufacture equals the importations of a whole year of the German product before 1914.

Now, it is quite obvious that the question of the price is of fundamental importance to the public, especially with about ten percent of the population suffering from the disease for which it is used. It is clear that the campaign of the Public Health Service to suppress the disease would be most seriously handicapped, if not indeed rendered quite futile, if the remedy which destroys the disease germ and thus removes the primary source of infection, were to become too expensive for widest use in hospitals and other stations. Indeed, in my judgment the present price should be in time decidedly reduced ultimately perhaps to $0.75 or $0.50 a dose, when the price of capital, chemicals, and labor are reduced, and processes are put on a firmly established *going* basis in large scale operations.

In view of these facts, I should therefore like to urge upon you my second specific recommendation, namely, that in the transfer of the German patent rights, you insist upon such provisions as you may deem wise which would insure that there should continue to be *control of the price, as well as of the purity of these drugs, by some responsible agency, best by some Government agency.* I should suggest for your consideration control either by the *Federal Trade Commission,* which has already done such excellent work in the public interest in the matter of licenses for the manufacture of these drugs and other articles under enemy-owned patents; or in the control of the *Custodian of Alien Property,* if that office will indeed continue in existence in the years to come, in view of its own splendid record of service to the public; or, finally, in the *control of the Public Health Service,* which has the biological control. All these Government bodies have proved themselves disinterested and most efficient guardians of the interests of the public.

The last question I would bring to your attention is the problem of the proper number of licensees for the manufacture of arsphenamine. Although not in itself as vital a question as the two preceding ones, nevertheless it is in a very important way involved in these two questions.

The manufacture of so *dangerous* drugs as arsphenamine and neo-arsphenamine would be, in my judgment, best limited to a very few easily controlled expert manufacturers. The experience of the Public Health Service in controlling the manufacture of antitoxins and serums has shown that unlimited freedom of manufacture makes the scientific control exceedingly difficult and more expensive than it should be. It has also been our experience that the products first put out by present licensees have in most instances been at first of inferior quality and in part dangerous. These difficulties have now been overcome, and safe products are being produced on a large scale, based on going methods. The standard of the Public Health Service has been raised over fifty percent from the original standard adopted, and the products really measure up to one hundred percent better than they did originally. Unlimited licensing would expose the public to the dangers of wide-spread use of untried products. While the best and most reputable physicians no doubt would insist on using the wellknown standardized brands, thousands of less experienced doctors might easily be induced to try new untried brands of manufacturers attempting to force a market for their products.

In the next place, the concentration of manufacture reduces the cost, both overhead and working costs, and also the necessary margin of profit.

My specific recommendation would therefore be that you advise a purchasing holding company that the safety of the public and the public interest in the question of cost make desirable a *limited number of licensees* for the manufacture of arsphenamine and neo-arsphenamine. These should include, in my judgment, present licensees who have not only going methods and safe products, but who have rendered a signal service to the country in producing so important and withal so difficult a product under the conditions obtaining in this country during the war. Such action would also carry out the intentions of the Federal Trade Commission in granting licenses for the duration of the *life* of the patents, which was done in order to stimulate investment of capital in the preparation of these much needed articles. There might well be perhaps two or three further licensees if it is considered desirable to obviate all possibility of anything approaching a monopoly, but the fewer there are, the surer and the more efficient will be the control. Each licensee would be bound to *reduce the cost* to the public, on demand of a central authority, as suggested before, after a public hearing on the reasonableness of the price proposed.

Finally, State Boards of Health should *eo ipso* be allowed licenses for the manufacture and the use of the drugs free of charge in the public service. This plan is now being operated by the Board of Health of the State of Massachusetts, and a similar plan is being developed by the Board of Health of the State of New York.

SUMMARY

I should summarize my recommendations briefly as follows:

In the sale of the German patents controlling the manufacture and use of arsphenamine and neo-arsphenamine (salvarsan and neo-salvarsan) it is urged that the Custodian of Alien Property make the following specific conditions as part of the terms of sale:

(1) That in view of their exceedingly dangerous character, the manufacture and sale of arsphenamine and neo-arsphenamine under license be subject to the *control of their toxicity* by the United States Public Health Service as under present regulation.

(2) That the price per dose be subject to control by some Government department, such as the Federal

Trade Commission, the Alien Property Custodian, or the Public Health Service, and under no conditions be increased beyond the present price of $1.00 per dose, without permission of such Government authority.

(3) That the licenses of present licensees be continued or renewed, and that State Boards of Health be enabled to secure licenses for the manufacture and free use of the product.

(4) That the *number of licenses* for the manufacture of the drugs for public sale *be limited* on account of the unusually dangerous character of the articles and the method of administration by direct introduction into the veins of patients, which gives little opportunity to conteract the effects of a poor preparation.

Signed, respectfully,

(Sgd.) JULIUS STIEGLITZ.
Chairman, Committee on Synthetic Drugs of the National Research Council, and
Special Expert on Arsphenamine of the Public Health Service.

DEFENDANT'S EXHIBIT No. 48.

Book entitled "The German Great Banks and their Concentration," by Dr. J. Riesser, published by National Monetary Commission, Government Printing Office, 1911.

(Not Printed)

DEFENDANT'S EXHIBIT No. 49.

Book entitled "Germany's Commercial Grip on the World—Her Business Methods Explained," by Henri Hauser, a French economist, originally published in French in 1915.

(Not Printed)

DEFENDANT'S EXHIBIT No. 50.

Book entitled, "Science and the Nation." Essays by Cambridge graduates with an introduction by Rt. Hon. Lord Moulton, K. C. B., F. R. S.

(Not Printed)

DEFENDANT'S EXHIBIT No. 51.

Report on Dyestuffs for American Textile and other Industries, by Thomas H. Norton, Commercial Agent of Department of Commerce.

(Not Printed)

DEFENDANT'S EXHIBIT No. 52.

Extract From Hearings Before the Committee on Ways and Means, House of Representatives, on H. R. 2706 and H. R. 6495.

(The following documents referred to by Mr. Garvan in his testimony before the committee, are here printed in full as follows):

PRELIMINARY REPORT ON FARBWERKE-HOECHST CO. OF NEW YORK.

HISTORY.

In 1880 Mr. P. Schulze-Berge, who for a number of years previous to that time had been in the employ of William Pickhardt-Kuttroff Co., established an office in New York for the sale of dyestuffs made by Dahl & Co., of Barmen, Germany.

In 1881 Mr. Herman A. Metz entered the employ of P. Schulze-Berge as an office boy.

In January, 1884, Mr. Victor Koechl became a partner in this business and the name of the firm was changed to Schulze-Berge & Koechl. Previous to entering this partnership Mr. Koechl had been with the firm of Lutz & Movius who were the American agents for the Farbewerke vorm. Meister, Lucius & Bruning of Hochst, Germany.

After a few years Schulze-Berge & Koechl was consolidated with the firm of J. Movius & Son, successors to Lutz & Movius, and the name was changed to Schulze-Berge, Koechl & Movius. The firm continued in business for some years. However, both Mr. Movius and Mr. Schulze-Berge retired from business, and after the former's retirement the name was again changed to Schulze-Berge & Koechl.

In 1896 a corporation called Victor Koechl & Co. was organized under the laws of the State of Virginia, with an authorized capital of $500,000, $300,000 common and $200,000 preferred. The following were the officers of the company: President, Victor Koechl; vice president, and treasurer, Herman A. Metz; secretary, Charles Fuehrlein.

At this time all of the stock was owned by Mr. Koechl with the exception of one share each owned by Metz and Fuehrlein as qualifying shares. The firm of Victor Koechl & Co. were the agents in the United

States for the dyestuffs and pharmaceutical products of Farbwerke vorm. Meister, Lucius & Bruning. Mr. Metz had, in addition to his salary, a one-third interest in the profits of the business.

In 1900 business differences arose between Mr. Metz and Mr. Koechl, and Metz thereupon started the organization of the Consolidated Color & Chemical Co., with $50,000 authorized capital. Mr. Koechl, finding that his entire office and sales force was likely to leave him and go with Metz's new company, decided to retire from the business and sold all of his stock to Mr. Metz for $300,000.

Mr. Metz, after acquiring Victor Koechl & Co. proceeded with the establishment of the Consolidated Color & Chemical Co., but it was not a serious factor in the chemical business at that time.

In 1902 a contract was entered into between Herman A. Metz, Victor Koechl & Co., H. A. Metz & Co. (a corporation to be formed at a later date), the Consolidated Color & Chemical Co., together with the Farbwerke vorm. Meister, Lucius & Bruning, whereby the Farbwerke vorm., Meister, Lucius & Bruning, acquired stock in the other corporations in the following proportion: One-fourth of the stock of Victor Koechl & Co., the capital of which was to be reduced from $500,000 to $50,000, of which only $10,000 was to be issued, the balance remaining in the treasury; one-fourth of the stock of H. A. Metz & Co. and one-half of the stock of Consolidated Color & Chemical Co., whose stock was increased from $50,000 to $200,000 (with the exception of four qualifying shares).

All of the holdings of the Farbwerke vorm., Meister, Lucius & Bruning, in the stock of the various companies were to be in Metz's name and indorsed in blank and deposited with a trust company as trustee.

The active business of the company after that time was carried on under the name of H. A. Metz & Co. and the Consolidated Color & Chemical Co., the former being agents for the dyes and pharmaceutical preparations in this country of Farbwerke vorm., Meister, Lucius & Bruning, and the latter a manufacturing concern producing certain dyes, acids and intermediates in this country.

In 1905 the 1902 contract was amended and Metz transferred 60 additional shares of H. A. Metz & Co. to Farbwerke vorm., Meister, Lucius & Bruning, thus giving them control of 55 per cent. of the stock. Under the same agreement Metz sold to Farbwerke vorm., Meister, Lucius & Bruning 25 more shares of Victor Koechl & Co., thus bringing their interest in this concern up to 50 per cent. of the outstanding capital stock.

The agreement also provided that in case of Metz's death or withdrawal from the active management of the company, Farbwerke vorm., Meister, Lucius & Bruning should have the right to acquire from Metz's estate the remaining 900 shares of H. A. Metz & Co., at the price of $150,000. It also provided that the Consolidated Color & Chemical Co. and Victor Koechl & Co. should at any time at the demand of Farbwerke vorm., Meister, Lucius & Bruning transfer to H. A. Metz & Co. their entire business at book value.

It further provided that, irrespective of the stock ownership, Metz and Farbwerke vorm., Meister, Lucius & Bruning would each receive 50 per cent. of the profits of each corporation, but that Metz would have to pay to certain employees one-half of the profits so received by him. As an offset to this latter provision Metz was also to receive one-fourth of the profits which the Farbwerke vorm., Meister, Lucius & Bruning made on the sale of their products to the three corporations in which they were jointly interested.

This agreement also provided that at any time on the demand of Farbwerke vorm. Meister, Lucius & Bruning the name of H. A. Metz & Co. would be changed to Hoechst Color Co., but that the new company would in every respect take the place of H. A. Metz & Co.

The 1905 arrangement continued in force until 1912 with no change in either the names, ownership, or amount of the capital stock of the corporations, with the exception that at the end of 1907 a fire having occurred in the Consolidated Color & Chemical Co. plant which entirely wiped it out, and inasmuch as the Farbwerke vorm. Meister, Lucius & Bruning did not care to be interested in an American manufacturing plant, Metz with the proceeds of the insurance money purchased from them their share of the capital stock.

On July 22, 1912, another contract was entered into between Farbwerke vorm. Meister, Lucius & Bruning, H. A. Metz & Co., H. A. Metz, and Victor Koechl & Co., which provided as follows:

1. That the name of H. A. Metz & Co. was to be changed to "Farbwerke-Hoechst Co." of New York.

2. That Metz was to sell to the German company 890 shares of his remaining 900 shares of H. A. Metz & Co. for $150,000, thus giving the German company control of 1,990 shares out of the 2,000; and it was further agreed that all of the stock previously owned by the German company, namely, 1,100 shares which had been standing in the name of Herman A. Metz and which had been indorsed by blank and deposited with the trust company, together with the newly acquired 890 shares, should stand in the name of Farbwerke vorm. Meister, Lucius & Bruning. These were to be deposited with the Guardian Trust Co., subject to the exclusive control and order of the German company.

3. That the remaining 10 shares of stock owned by Metz were to stand in his own name.

4. That the board of directors was to be increased from three to five.

5. Victor Koechl & Co. was to liquidate its affairs

and the pharmaceutical business formerly carried on by Victor Koechl & Co. was to be established as the "pharmaceutical department" of H. A. Metz & Co., including the dealing in the article called "Salvarsan."

6. That separate books were to be kept by H. A. Metz & Co. for its general business and for the pharmaceutical department, and that Metz was to receive for his services as president and general manager of H. A. Metz & Co. 25 per cent. of the net profits earned by the German corporation in its dealings in pharmaceutical products with H. A. Metz & Co., and 25 per cent. of any sum distributed by H. A. Metz & Co. as dividends out of the profits of the pharmaceutical department.

7. That Metz was to be retained and agree to serve as president and general manager of H. A. Metz & Co. until at least the 31st day of December, 1916, the employment to be thereafter renewable for one-year periods unless six months' notice was previously given. As long as Metz remained president and general manager he was to receive one-half of the net profits (except the profits of the pharmaceutical department), which were distributed from time to time as dividends. Out of this 50 per cent., he was to retain 25 per cent. for his own use and to distribute the remaining balance personally to important employees of H. A. Metz & Co. as a bonus in addition to their salaries. The German corporation reserved the right, however, at any time upon written notice to Metz, to change the arrangement and to distribute the 25 per cent. direct to the employees themselves.

7-a. That Metz was given the same presidential powers as before; he was to determine the amount of the dividends and to fix the salaries and bonuses, but he was not to increase the salaries of certain of the important employees or himself without the consent of the German corporation.

8. That the dividends were to be paid to the stockholders of record, but in making the division between Metz and the German corporation the provisions of paragraphs 6 and 7 were to be taken into consideration, namely, that the German corporation was to receive 75 per cent. of the pharmaceutical dividends and 50 per cent. of the dividends from other business operations. Metz was to have no separate claims as to dividends on the 10 shares of the stock of which he was the owner, but was to put his dividends on this 10 shares in with all the other dividends for division between himself and the German house.

9. That in order to make more practicable the payment of dividends and the distribution of the bonuses, and also to carry on its affairs generally, the German corporation gave Metz its power of attorney authorizing him to receive and collect all dividends or other moneys of H. A. Metz & Co. payable to or belonging to the said German corporation, and the German corporation also gave Metz the power of attorney or proxy to enable him to vote in their behalf at any special or annual meeting of the stockholders of H. A. Metz & Co. Neither the power of attorney to receive dividends nor the proxy was revocable as long as Metz continued to be the president and general manager.

10. That Metz or his estate was to receive shares of the profits after employment ceased for the current half year.

11. That H. A. Metz & Co., so long as Metz remained president and general manager, was to have the exclusive sale of the products of the German corporation in the United States of America, and that the German corporation agreed not to sell any of its products directly or indirectly to anyone in the United States of America without the written consent of Metz. The German house also agreed to sell to H. A. Metz & Co. at their lowest market price so as to prevent the

underselling of H. A. Metz & Co. in the United States by any other person or corporation.

12. Metz agreed that, as long as he remained president and general manager, and in any event not until after the 1st day of July, 1917, he would not, without the permission of the German corporation, engage directly or indirectly as principal, agent, employee, partner, or director, or become interested in any way in any other business kindred to that of any of the corporations which were parties to the agreement, nor would he permit the use of his name in any such business except that he might continue his present connection with the Consolidated Color & Chemical Co. as long as the Consolidated Color & Chemical Co. did not compete with the German corporation in products other than those it was manufacturing and dealing in at the time of making the agreement. Metz agreed to furnish a list of the products of the Consolidated Color & Chemical Co. then being manufactured, and agreed further that irrespective of his remaining president this latter provision as to manufacturing by the Consolidated Color & Chemical Co. was to remain in force in any event until January 1, 1917.

13. That Metz as president and general manager was to furnish true copies of the minutes and of certain annual, semiannual, and monthly accounts and reports.

14. The German corporation agreed that if at any time before December 31, 1916, Metz ceased to be president and general manager, certain of the important employees were to be retained until December 31, 1916, on the same basis as prior to Metz's retirement; the employees, however, were to agree with Metz that they would not engage in a competing business for two years after January 1, 1917.

15. Provides the method of giving notice of any change or cancellation of the contract.

16. That as long as paragraph 11 of the agreement remained in force (paragraph 11 refers to the exclusive agency rights of H. A. Metz & Co.) H. A. Metz & Co. were not to buy or sell any products competing with those of the German corporation, without referring such transaction to the German corporation for its approval or disapproval, and H. A. Metz & Co. agreed to send every three months a report of all such competing products dealt in.

17. Provides for arbitration in case of dispute.

18. That this agreement superseded all other agreements.

19. That this agreement was to be binding upon the heirs, personal representatives, and successors of the parties to the agreement.

Under the provisions of the 1912 contract Victor Koechl & Co. was to be dissolved and go out of business. This has not actually been accomplished, as it was necessary for certain legal reasons to keep the corporation in existence. In 1914, however, they voted to reduce the capital stock of $1,000, five shares being in the name of Herman A. Metz and five shares being in his name, but indorsed in blank and deposited with the Guardian Trust Co. These latter shares have since been turned over to the Alien Property Custodian as belonging to the Farbwerke vorm. Meister, Lucius & Bruning.

1913 STOCK TRANSACTIONS.

It is evident from analyzing the aforementioned contract that the German corporation was in complete control of H. A. Metz & Co., whose name was changed to "Farbwerke-Hoechst Co." on September 1, 1912.

It is also evident that the ownership of the stock had no relation to the division of the profits, for it will be noted that the profits were divided in exactly the same manner in the 1902 and 1905 contracts as they were under the 1912 contract, thus indicating that the ownership of the American concern was of interest only to the Germans as providing the means for perpetuating their American agency. This desire on their part is further indicated by the changing of the name from H. A. Metz & Co. to Farbwerke-Hoechst Co.

Early in 1913 certain antitrust suits known as the "Dobson suits," were started in Pennsylvania against the Farbwerke-Hoechst Co. of New York, Farbwerke vorm. Meister, Lucius & Bruning, and other German dye houses and their American representatives. These suits charged the German concerns with violating the Sherman antitrust law through being in a combination in restraint of trade in Germany and in this country, and also charged the American houses with bribery of employees of the consumers of dyes in America.

At the time of bringing these suits Mr. Metz was a member of the United States Congress, having been elected to office in 1912. He immediately settled the suits against the Farbwerke-Hoechst Co. and Farbwerke vorm. Meister, Lucius & Bruning by the payment of $40,000 and agreeing with the attorneys of the other side to assist them in the prosecution of their suit against his competitors. He also immediately got in touch with the German house and demanded that they sell back to him all of the stock they owned in the Farbwerke-Hoechst Co., Mr. Metz arguing that the continued ownership of the New York corporation by the German corporation could only lead to trouble in the future in the nature of further antitrust suits, well realizing that due to the dye cartels in Germany the ownership of the stock in the American house by the German house would always give sufficient reason for the starting of the antitrust suits.

In connection with the resale of the stock of the New York company by the German corporation to Metz, voluminous correspondence was carried on, inheritance tax. The letter also stated that they did not consider the relations of the German corporation with Metz were in violation of the antitrust act.

On May 8, 1913, the German corporation wrote to Mr. Metz that they had decided to comply with his wishes in reselling the stock to him. Inasmuch as this is a very important letter, I am setting the same out in full.

Farbwerke vorm. Meister, Lucius & Bruning,

Hochst on the Main, May 8, 1913.

My Dear Mr. Metz: In accordance with your urgent wish, we declare ourselves ready to sell you the 1,990 shares of Farbwerke-Hoechst stock which we purchased some time past, but only under following conditions:

(1) The purchasing price is $300 for each share; the total, therefore, is $597,000.

(2) We are ready to give you credit for this purchasing price against your promissory note, payable on demand. Furthermore, for our security, these shares must be deposited to our sole disposition in Montreal or in another place to be determined by us, in a bank[1] to be determined by us.

(3) You pledge yourself to return the shares to us for the same price for which we sell them to you today, in case you cease to be president of the Farbwerke-Hoechst Co., on account of death or any other cause. As security for this condition of the retransfer you will already now attest on the certificates the retransfer specification, which is to be canceled again if we should forego our right of repurchasing, as in the case described above.

I beg you to carry out in legal form the preceding conditions with the concurrence of Mr. F. Hinrichs, to whom I am sending a copy of this letter. Inclosed we send you power of attorney to receive the certificates at the trust company, also our declaration concerning the transfer of our stock of the Farbwerke-Hoechst Co.

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[1] At the Bank of Montreal or the Royal Bank of Canada.

With friendly greetings,

Yours, truly,

Dr. Haeuser.

You will note that by paragraph (3) Metz is to pledge himself "to return the shares to us for the same price for which we sell them to you today, in case you cease to be president of the Farbwerke-Hoechst Co., on account of death, *or any other cause.*"

On the same day the German corporation wrote to Mr. Hinrichs, and I beg to quote from this letter. After stating that in their opinion their relations are not in violation of the antitrust law, the letter goes on as follows:

"At the same time we wish to comply with Mr. Metz's desire to reprocure the shares if this is possible without endangering our own interests. Our interests are known to be such as to prevent the shares of the Farbwerke-Hoechst Co. from falling into wrong hands or that the procuring of these shares is made difficult for us in the case of Mr. Metz's dying or retiring from business."

On June 9, 1913, Mr. Hinrichs, writing to the German corporation, stated as follows:

"In your letter of the 24th of May we stated that Mr. Metz promises to submit to our senior the form of note and accompanying letter which he proposed addressing to you. He has not submitted anything to us, but called the other day upon our Mr. Frederick W. Hinrichs and told him that he had obtained the certificates of stock from the trust company, had transferred them to himself upon the books of the New York corporation, and had deposited such certificates in an envelope, which envelope he had indorsed in substance: 'The property of Farbwerke vorm. Meister, Lucius & Bruning.' "

It is evident from a reading of this correspondence that Metz and Heinrichs were having considerable trouble in adjusting the ownership of this stock in such a way as to protect the German interests. Metz wished the stock merely to be in his name and to have an oral arrangement with the German house. To this Hinrichs would not consent.

On June 20, 1913, the German concern wrote a very important letter to Mr. Hinrichs, which I am quoting in full, as follows:

June 20, 1913.

Messrs. Fred W. and Alfred E. Hinrichs, New York.

Dear Sirs: I received your honored communication of the 9th of this month, which crossed my letter of the same date. I trust that this last reached you in the meantime.

In any case, I cabled you on the 18th of this month—

"Received letter of the ninth; arrange at once for the repurchase and security of the shares."

which I hereby confirm.

The inclosure in your letter we have carefully read and agree entirely with you in the view of the matter. Your point of view concurs substantially also with the views of Mr. Metz. We will do everything to prevent every possibility of a charge, because of a reopening of the affair against the antitrust law.

What now immediately concerns the question of the shares I notified you of our views in my communication of the 9th of June. We have sold the shares back to Mr. Metz. It is, however, quite conceivable, as you rightly emphasized, that in case of the death of Mr. Metz or in case of his retiring from the business we have the right to repurchase the shares. As Mr. Metz is not in a position to pay us the market price, so the simplest way is that we stand the market price for Mr. Metz and are placed thereby in the position, should this occur, to immediately reimburse ourselves for the full market price by taking possession of the shares, and that we are entitled to have the shares procured in this manner rewritten to our name in the book of stockholders. We ask you again to draw up a note, etc., according to these demands.

We are not of the opinion that it is right and necessary to insure Mr. Metz in this note against our claiming from him, or from his heirs, further payment, instead of declaring ourselves satisfied with the reprocuring of the shares. I mean that Mr. Metz can safely acquiesce to this matter as a trust, even without a legal binding agreement that the Farbwerke will not ask any such payment from him or from his heirs. I consider it better not to take strictly formal agreements in this matter, so that no objection can be made because of this, that the present sale of the shares to Mr. Metz was only a pretended sale (manipulation).

I have no objection if it is arranged by particular agreement that Mr. Metz delivers to us three-fourths of the profits from the pharmacy business, and half of the profits of the other business of the Farbwerke Hoechst Co., partly as interest for the amount of debt incurred by the repurchase of the shares, partly as return favor that we sell our products and also even the patented products to Mr. Metz at an especially reasonable price. The further relations between Mr. Metz and us are to be looked upon as personal trust relations and remain unchanged, as it was erstwhile agreed by us.

Yours, very truly,

Dr. Haeuser.

From an inspection of this letter you will note that Metz is unable to pay the purchase price for this stock, namely, $597,000, and it is the intention of the German house to "stand the market price for Mr. Metz." You will also note that they object to having an agreement to hold Mr. Metz's estate harmless from any deficiency resulting from the market value of the stock being less than the amount loaned in case of Mr. Metz's death.

Their real objection is stated in the following language:

> "I consider it better not to make strictly formal agreements in this matter, so that no objection can be made because of this, that the present sale of the shares to Mr. Metz was only a pretended sale."

On July 1, 1913, Mr. Metz, in writing to Mr. Hinrichs in adjusting the details of the transfer of the stock, wrote as follows:

> "If in your opinion the absolute control of the stock enabling Hoechst to transfer it to their own name on the books of the company whenever they like is not sufficient power to them to do what they please with the company and make the company do as they please in every way, I will be glad to have your suggestions as to how else that can be brought about."

After considerable correspondence between Mr. Metz, Mr. Hinrichs, and the German house, on July 17, 1913, Messrs. Hinrichs and Metz visited Canada and deposited in the Royal Bank of Canada in Montreal 1,990 shares of stock of Farbwerke-Hoechst Co. of New York made out in the name of Herman A. Metz.

I visited Montreal and was furnished by the Royal Bank of Canada with a copy of the irrevocable stock power which is attached to the 1,990 shares, and also obtained from the bank a copy of the letter in which the bank acknowledges to Farbwerke vorm.

Meister, Lucius and Bruning the receipt of the stock. Copies of the power and receipt are set out in full, viz:

IRREVOCABLE STOCK POWER.

Know all men by these presents, that I, Herman A. Metz, for value received, have bargained, sold, assigned, and transferred and by these presents do bargain, sell, assign, and transfer unto——1,990 shares of the capital stock of the Farbwerke-Hoechst Co., of New York, standing in my name on the books of the said corporation (said shares being represented by certificate No. 21, dated May 23, 1913), and do hereby constitute and appoint——my true and lawful attorney, irrevocable for me and in my name and stead, but to——use, to sell, assign, transfer, and set over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that my said attorney or——substitute or substitutes shall lawfully do by virtue thereof.

In witness whereof I have hereunto set my hand and seal the 17th day of July, 1913.

Herman A. Metz. [seal.]

Sealed and delivered in the presence of—
Fred W. Hinrichs.

The Royal Bank of Canada,
Montreal, July 17, 1913.

Farbwerke vorm. Meister, Lucius & Bruening,
Hochst on the Main, Germany.

Re Farbwerke vorm. Meister, Lucius & Bruening's deposit of certificates of stock of Farbwerke-Hoechst Co.

Dear Sirs: We hereby acknowledge having received from you this day, a certificate or certificates of stock, representing and aggregating 1,990 shares of Farbwerke-Hoechst Co. The certificate or certificates is or are to be held by us, subject at all times to the exclusive control and order of Farbwerke vorm. Meister, Lucuis & Bruening, a German corporation, whose principal office is at Hochst on the Main, near Frankfort, Germany. We understand that we are authorized to deliver any or all of said certificates of stock, upon the written order of any two of the directors of said German corporation, whose signatures may now or hereafter be deposited with us.

We hope hereafter to receive a letter direct from you to us, confirming the above arrangement and lodging with us such signatures of your directors as you may desire so to lodge—which letter we shall promptly answer.

Yours, very truly,

Manager.

You will note that in the letter from the Royal Bank of Canada nothing is said relative to a note for $597,000, nor do the records of the Royal Bank of Canada show that there is such a note in existence.

I obtained from Mr. Metz's files copy of a letter signed by him and Mr. Hinrichs jointly under date of July 17, 1913, written from Montreal, addressed to Farbwerke vorm. Meister Lucius & Bruening, reading as follows:

Ritz-Carlton Hotel,
Montreal, July 17, 1913.

In re Farbwerke vorm. M. L. & B.'s deposit of certificate of stock of Farbwerke-Hoechst Co.

Gentlemen: You have just deposited through us in the Royal Bank of Canada here in Montreal the following documents, subject to your exclusive control as stated in No. 3, the receipt of the manager of the bank:

1. Certificate of stock No. 21 for 1,990 shares of Farbwerke-Hoechst Co. (We inclose a copy.)

2. Irrevocable stock power. (We inclose a copy.)

3. Receipt of the manager of the Royal Bank of Canada. (We inclose original.)

4. Promissory note of Herman A. Metz for $597,000. (We inclose original.)

Kindly acknowledge receipt to each of us, and also write direct to the Royal Bank of Canada, ratifying what we have done on your behalf, in accordance with the terms of the said receipt. Please send to each of us a copy of your letter to the bank, and a copy of its answer, when received by you.

We are yours, very truly,

Fred W. Hinrichs.
Herman A. Metz.

Farbwerke vorm. Meister, Lucius & Bruening,
Hochst on the Main, Germany.

P. S.—The bank requests that the signatures of your directors which are to be filed with them, should be certified as correct by the Deutsche Bank of Frankfort.

I also obtained from Mr. Metz's files copies of the promissory note which, according to the joint letter of Metz and Hinrichs, was sent to Germany. A copy of this note is set out in full, viz:

New York, *July 17, 1913.*

On demand, for value received, I promise to pay to the German corporation, Farbwerke vormals Meister, Lucius & Bruning, Hochst on the Main, Germany, at the office of Farbwerke-Hochst Co., in the city of New York (should there be no office, or should the same be closed at the time of the attempted demand, such demand in that case is hereby expressly waived),

$597,000 in lawful money of the United States, having deposited with said corporation as collateral security for the payment of this note the following property on the conditions herein specified, to wit: Nineteen hundred and ninety shares of the capital stock of the Farbwerke-Hochst Co., a New York corporation, the value of which is now $597,000.

The undersigned hereby gives the said German corporation a lien for this note upon said stock; and does hereby authorize said corporation after the nonpayment of this note or any part thereof to sell the whole or any part of said collateral security, upon which said corporation is hereby given a lien, at any brokers' board or at public or private sale, at the option of the said corporation, without advertisement or notice of intention to sell or of the time or place of sale (such advertisement and notice being hereby expressly waived), to apply the proceeds to pay this note; and does hereby agree that at any such sale the said corporation may be a bidder and become a purchaser of any or all of said collateral security, and may hold the same thereafter in its own right absolutely, free from any claim of the undersigned; and does hereby agree that said corporation may transfer this note, and that upon such transfer said corporation may deliver all security held therefor, or any part thereof, to the transferee, who shall thereupon become vested with all the powers and rights therein given to said corporation in respect thereto; and said corporation shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter.

It is further agreed that if the undersigned shall become insolvent, or make a general assignment for the benefit of creditors, or file a petition in bankruptcy, or if a petition in bankruptcy shall be filed against him, or a receiver shall be appointed of his property or assets, then this note shall thereupon become due and payable forthwith.

It is further agreed that no delay on the part of the holder hereof, in exercising any rights hereunder, shall operate as a waiver of said rights.

HERMAN A. METZ.

I also obtained from the Royal Bank of Canada copy of the letter dated July 30, 1913, addressed to the bank by Farbwercke vorm. Meister, Lucius & Bruning acknowledging receipt of the bank's letter of July 17, reading as follows:

FARBWERKE VORM. MEISTER, LUCIUS & BRUNING,
Hochst on the Main, July 30, 1913.

To the ROYAL BANK OF CANADA,
Montreal.

Re Farbwerke vorm. Meister, Lucius & Bruning's deposit of certificates of stock of Farbwerke-Hochst Co.

DEAR SIR: We have your letter of the 17th instant and notice that you have received from us the 17th of July, 1913, a certificate or certificates of stock representing and aggregating 1,990 shares of Farbwerke-Hochst Co. The certificate or certificates is or are to be held by you, subject at all times to our exclusive control and order. You are authorized to deliver any or all of said certificates of stock upon written order of any two of our directors. The signatures of those directors we shall lodge with you from time to time.

Yours, very truly,
FARBWERKE VORM. MEISTER, LUCIUS & BRUNING.

You will note that the certificate or certificates of stock are to be held by the Royal Bank of Canada, subject at all times to the exclusive control and order of the German corporation.

I also obtained from the Royal Bank of Canada a letter dated "Hoechst on the Main, August 27, 1913," addressed to the Royal Bank of Canada, in which the German corporation confirms the letter of July 30 and gives the names of the directors of the German house on whose authority the stock could be delivered. A copy of the letter follows:

FARBWERKE VORM. MEISTER, LUCIUS & BRUNING.
Hochst on the Main, August 27, 1913.

The ROYAL BANK OF CANADA, *Montreal.*

DEAR SIR: Confirming our letter of 30th July, we beg to inclose a list showing the names of our present directors, with the desired attestation by the Deutsche Bank, Berlin, and request you to kindly acknowledge the receipt of it.

In case there will be later on a change in our board of directors, we shall let you have in due course a new list of it.

Yours, truly,
FARBWERKE VORM. MEISTER, LUCIUS BRUNING,
HAEUSER-RAQUE.

List of directors, certified by Deutsche Bank: Herbert von Meister, Adolf Haeuser, Conrad Blank, Dr. Adolf L. Raque, Max Erting, Dr. Hermann Reisenegger.

On July 21, 1913, Mr. Hinrichs, in a letter to Farbwerke vorm. Meister, Lucius & Bruning, confirms the action taken in Montreal. One of the paragraphs in this letter is of interest, and I quote therefrom as follows:

"Such letter also informs you that the signing and delivery of the demand note, and the giving of the security for its payment have been completed. The status of the 1,990 shares is provided that the title is complete in Mr. Metz, subject to your lien."

In the same letter he also says:

"I now come to a matter important to you especially. Mr. Metz hopes to receive from you an order upon the Royal Bank of Canada to obtain possession of the stock at any time during the period of his management and presidency of the New York corporation.

"The law upon the subject of collateral securities is simple enough. Possession of the stock certificates by the owner will enable him to give full legal title to any innocent purchaser for value."

Quoting from another portion of this letter:

"The absolutely only safe course to pursue in order to preserve your lien is to maintain your exclusive and unqualified possession and control of the same such as you now have, the Royal Bank of Canada being merely your depository and its possession being your possession."

He says further, in the same letter:

"Another important matter for you to remember is that a demand note (whether an actual demand or not is required prior to suit) is by our law due as soon as made and suit must be brought upon it within six years or a renewal note must be obtained.

"In other words, after six years from the delivery of such a note the same is outlawed in the courts of the State of New York."

It will be noted from this letter that on July 13, 1919, six years after the note was given, Metz's note for $597,000 will be void and that there is, therefore, nothing to stop the Farbwerke vorm. Meister, Lucius & Bruning from exercising their right to take over the stock.

Even though Farbwerke vorm. Meister, Lucius & Bruning was advised by Mr Hinrichs to enter into new contracts with Metz now that the stock transaction had been consummated, I can find that no new contract was ever entered into between these parties and that, therefore, the old contract of 1913 is still in force and binding.

A careful review of the entire stock transaction will indicate to you that the ownership of the stock had no value outside of a legal value in preventing suits under the Sherman antitrust law, and the perpetuation of the agency in this country. Under the 1912 contract the German corporation was entitled to 50 per cent of the profits from the dye end of the business and 75 per per cent of the profits from the pharmaceutical departments. These divisions of profits still continued after Metz became the owner of the stock and, in fact, several of the letters from Farbwerke vorm. Meister, Lucius & Bruning indicate that there will be no change in this situation.

It will also be apparent to you that there was no money involved in the transfer of the stock from the German corporation to Metz, and it must thus be seen that upon the retransfer of the stock to the German corporation no money will change hands.

A study of the contract of 1912 taken together with the stock transfer, shows conclusively that the value of the stock is dependent upon the Farbwerke-Hoechst Co., of New York, continuing to act as the sole agents of the German corporation and, inasmuch as Mr. Metz has started manufacturing on rather a large scale here in this country, the German house can, by giving him six months' notice, cancel the agency and upon presentation of the note, which under these circumstances Metz would naturally refuse to meet, could take over the stock and establish the German concern again in New York through other agents, but continuing to use the name of Farbwerke-Hoechst Co. and having possession of all the customers accounts together with the class and quantity of goods used.

TRANSACTIONS AFTER AUGUST 1, 1914.

After the outbreak of the European war considerable trouble was experienced by the German dye importers in this country in getting goods over from Germany. In November, 1914, Mr. Metz went to Europe, visited Hochst, and while there made arrangements with them that all goods sent to America should be shipped in his name. This would enable the German concern to certify before the American consul that the goods were purchased by an American, and both the German concern and Metz felt sure that by this arrangement the goods would be free from seizure by the British.

The 1912 contract, of course, provided that the German corporation could not sell to anybody other than the Farbwerke-Hoechst Co. without Metz's permission. He, therefore, when he was in Berlin, on his way home, wrote to Farbwerke vorm. Meister, Lucius & Bruning under date of December 4, 1914, as follows:

"Beg to confirm herewith arrangements made between us that I purchase outright, etc., all goods made by you which you may be permitted to export to the United States."

On December 5, 1915, the German corporation wrote to Metz as follows:

"It is agreed that you purchase outright for your own account and risk, etc., all goods made by us which you may be permitted to export to the United States."

This, according to Mr. Metz, was the only arrangement amending the contract of 1912. (See examination of Mr. Metz before Mr. Choate, September 26, 1918, pp. 2 and 3.) The question would natuarlly arise as to the necessity for this arrangement, if Mr. Metz was the bona fide owner of all of the stock of Farbwerke-Hoechst Co. In his testimony before Mr. Choate he explains the reason that the goods were sold to him directly, viz:

"Q. Why was that desirable or necessary if you owned all the stock of Farbwerke-Hoechst?—A. Because the question might be brought up, because the German name might be a barrier and I would have to go to all the trouble of proving it belonged to me."

It would have been, of course, impossible for Mr. Metz to prove the ownership of the stock, as he could not have exhibited the stock certificates, which were in Montreal under the control of the German house.

Accordingly, from that time on all goods were sold to Herman A. Metz personally, and he in turn resold them to Farbwerke-Hoechst Co. of New York upon the arrival of the goods in this country.

In order to keep up the fiction that these goods were being sold to an American citizen Mr. Metz opened a set of books called "H. A. Metz (color account)." At the same time there was opened on the books of the Farbwerke-Hoechst Co. a new account which was also known as the "H. A. Metz color account."

The procedure stated in its simplest terms would be about as follows: The goods would be received in New York consigned to Mr. Metz. Farbwerke-Hoechst would pay for the goods, debiting Metz's color account. Metz would debit his merchandise account and credit Farbwerke-vorm. Meister, Lucius & Bruning. Metz would then turn the goods over to Farbwerke-

Hoechst Co., debiting the Farbwerke-Hoechst and crediting his merchandise account.

At the beginning practically the only goods handled by the Metz color account were the goods received from Germany. Subsequently he bought in this country and in other places and handled them through his color account.

At the beginning the goods were turned over to Farbwerke-Hoechst Co. at actual cost to Metz. As time went along, however, Metz charged a small profit on the goods which were turned over. With the falling off of the shipments from Germany, Metz purchased more and more goods in this country and increased the manufacturing facilities of the Consolidated Color & Chemical Co. None of the profits made on the goods handled through the H. A. Metz color account were turned over to Farbwerke-Hoechst Co., but were retained by Metz as his personal property.

This would seem to be in violation of the 1912 contract, as that contract specifically provides that Metz will not engage in competing lines without Germany's permission.

I am setting out herewith in full three letters received from Farbwerke vorm. Meister, Lucius & Bruning by Metz relative to his activities in the manufacturing line, viz:

[Note: This letter also admitted in evidence as Defendant's Exhibit No. 13.]

[Translation.]

Hochst on the Main, *August 5, 1915.*

Confidential.

Dear Mr. Metz: Your friendly letter of the 14th ultimo received and I send my best thanks for your esteemed communication. I am still awaiting the receipt of the revised accounts sent by Mr. Spielhagen.

Regarding the Bethlehem Coal & Iron Co. and the Deutsche Bank, I have heard nothing, and I can hardly believe that under existing conditions the Deutsche Bank would support any such undertaking to the detriment of the German dyestuff industry.

That Bayer is in back of it, I believe even less, for I know from only recent reports that no German dye factory even considers during the present shortage of chemicals to manufacture anything new over there. Bayer would certainly not undertake, as far as one can see, to take up something new when the few articles (blue, Vesuvin, Bismark brown, fuchsin) have already been delivered by them over there.

We lay great stress upon the fact that you personally will not participate in any manufacturing enterprise.

The present condition can not last much longer. If our successful movement in Russia continues in the same ratio as during the past week, the Russians will finally get war weary and they will then be compelled to sue for a separate peace, which would quickly change the situation.

As soon as normal conditions return, those who took advantage of the present abnormal and uncertain conditions to build up new enterprises will later have to suffer heavily.

I thank you for your interesting report on indigo shipments from China.

With best wishes,

Blank.

[Note: This letter also admitted in evidence as Defendant's Exhibit No. 14.]

[Translation.]

Hochst on the Main, *September 28, 1915.*

Mr. H. A. Metz, *New York.*

From competitive circles we received the information that despite the fact that you have no dyestuff factory and are therefore not compelled to further the interests of your dyestuff customers by manufacturing some new product, you have begun the manufacture of tar products in a factory of Prochaska.

We refer to our previous correspondence, and beg you to inform us over here what and where you have, in your name or with your support, begun manufacturing.

Unfortunately, it appears to be true that Bayer's representative over there is viewed by all the factories as being, under the stress of circumstances, a matter of compulsion in manufacturing new products, against the agreement with Elberfeld.

With best wishes,

Yours,

C. BLANK.

[Note: This letter also admitted in evidence as Defendant's Exhibit No. 15.]

[Translation.]

HOCHST ON THE MAIN, *November 12, 1915.*

Mr. H. A. METZ, *New York.*

DEAR MR. METZ: Your detailed information, on October 20, per *Oscar II,* thankfully received and carefully noted. We have entered into an agreement with all other German dyestuff factories not to manufacture anything new overseas for the present, either directly or indirectly, and for this reason we are pained at the thought that you should, through your brother, be interested in the Prochaska in the manufacture of the new articles manufactured from orange, echtrot, ponceau, and chrysoidin. We must now await what we should tell the trade if we are again questioned.

With reference to the Consolidated Color & Chemical Co., in which you are interested in an official capacity, we will eventually give out the information, as you yourself instructed us: "Nothing new, only as before Appreturmittel, gum colors, etc."

You are perfectly right, Messrs. von Bayer over there should not have started anything under the present conditions, if they had acted in unison with your original house in Leverkusen. Because of this Leverkusen is placed in an embarrassing position with the other German dyestuff manufacturers.

The present prospects of sending a new shipment of dyestuffs to New York is unfortunately very slim. Have you heard anything definite and positive as to Klipstein's indigo production and what came out of it?

Dr. Baketel met up with Dr. Ammelburg in Rotterdam. He didn't seem to have accomplished much during his European sojourn. The difficulties were too great.

We are getting along quite well considering the present extraordinary conditions, and trust the same can be said by you.

With friendly greetings,

C. Blank.

You will note that the letter of August 5, 1915, states, in the fourth paragraph, as follows:

"We lay great stress upon the fact that you *personally* will not participate in any manufacturing enterprise."

Therefore, Metz can not claim, in view of these letters, that he has proceeded with the manufacturing with Germany's approval.

The "Prochaska" mentioned in the letters of September 28 and November 12, 1915, refers to Metz's activities in the Central Dyestuff & Chemical Co., "Prochaska" being the name of two brothers who own 50 per cent of the stock, and other 50 per cent being under Mr. Metz's control. Whether the profits of this concern should also go to Farbwerke-Hoechst Co. or not is a legal question which must be decided in the light of other things in this report.

The books of the H. A. Metz color account show that the net profits, after the payment of all expenses, were as follows:

Dec. 31, 1915 (which includes the 1914 transactions)	$420,430.80
Dec. 31, 1916	293,257.20
Dec. 31, 1917	27,441.48
Making a total for 4 years to Dec. 31, 1917, of	$741,129.48

In my opinion, all of the amount represented above belongs to Farbwerke-Hoechst Co., to which should be added the taxes for Mr. Metz's personal account which have all been paid out of the Metz color account. There will, of course, have to be an adjustment if this money is to be turned back to the Farbwerke-Hoechst Co., as in that case Mr. Metz would have overpaid his income tax and the Farbwerke-Hoechst Co. would have underpaid theirs. This adjustment has not yet been made and will not be until the ownership of this money is finally determined.

The operations of the Metz color account are further complicated by the fact that in March, 1915, H. A. Metz & Co. (Inc.) was organized. It did not begin active business operations, however, until March, 1916, at which time $40,000 of merchandise was purchased from H. A. Metz and $9,500 in cash was paid in by him in exchange for 495 shares ($49,500) out of the total capitalization of 500 shares. The merchandise which was transferred by Mr. Metz came out of the Metz color account; the $9,500 cash came from the H. A. Metz special account in the American Exchange

National Bank, which was the bank account of the Metz color account; the balance, $500, which was subscribed, was paid out of the same account at the time of the incorporation.

You will see, therefore, if my theory holds good, that the Metz color account was merely another name for the trading account of Farbwerke-Hoechst Co.; that all profits and merchandise on hand belonged to Farbwerke-Hoechst Co.; that these moneys and merchandise thus transferred from Metz color account to H. A. Metz & Co. (Inc.) were in reality transfers from Farbwerke-Hoechst to H. A. Metz & Co. (Inc.)

The exact idea in forming H. A. Metz & Co. (Inc.) and at the same time actively operating the H. A. Metz color account is not clear to me, as they were carrying on exactly the same kinds of business.

There have been no cash dividends paid out of H. A. Metz & Co. (Inc.), but two stock dividends have been declared, one on June 22, 1917 of $100,000, and one on May 28, 1918, of $100,000, thus making the capital stock $250,000. It is my understanding that all of the stock has been indorsed in blank and is in Mr. Metz's possession. I can find no agreement, however, relative to his reason for holding this stock, nor can I say whether the stockholders are mere dummy stockholders for Metz.

On March 6, 1917 the H. A. Metz Laboratories (Inc.) was organized to take over the manufacture of salvarsan and novocain in this country. The original capital stock was $100,000. This company was financed in the following manner:

Twenty-five thousand dollars of the capital stock was issued to Herman A. Metz in consideration of certain property in Brooklyn.

On the remaining stock, 744 shares were issued to Herman A. Metz, 3 shares to Gustav P. Metz and 3 shares to Charles Fuehrlein. All this stock was paid for by Metz in the following instalments: April 30, 1917, $25,000; June 6, 1917, $5,000; June 16, 1917, $10,000; July 26, 1917, $10,000; September 14, 1917, $10,000; November 13, 1917, $15,000; total, $75,000.

This money came from the H. A. Metz color account, the payment thereof being debited to the Metz personal account on the color books.

If my contention is correct that Metz, under his 1912 contract, could not engage in competing manufacturing, then any profits which may be made from either the H. A. Metz & Co. (Inc.) or from the H. A. Metz Laboratories (Inc.) would belong to the Farbwerke-Hoechst Co.

This idea is further strengthened in my mind by the fact that in 1916 Dr. Gustav P. Metz, a brother of Herman A. Metz, was sent to Hochst to learn how to manufacture salvarsan. He admitted in his testimony before Mr. Choate, that the method of manufacture was communicated to him, but that he was not allowed to take any written notes out of Germany; that he made notes of the process and memorized them, and as soon as he was out of Germany he rewrote them. Dr. Metz was also questioned as to what arrangements were made while he was over there as to the profits from salvarsan manufactured in this country, and he claims there was no discussion on the subject at all. This would tend to strengthen my belief that Farbwerke vorm. Meister, Lucius & Bruning expected to receive their share of the profits from this manufacture.

The original license granted by the Federal Trade Commission for the manufacture of salvarsan was granted to Farbwerke-Hoechst Co. upon Mr. Metz's representation that this was an entirely American-owned corporation. No mention was made by him of the fact that the stock was held as collateral against the loan of $597,000.

The salvarsan was manufactured by H. A. Metz Laboratories (Inc.) and sold to the Farbwerke-Hoechst Co. Finally a second license for the manufacture of salvarsan and novocain was granted to the H. A. Metz Laboratories (Inc.) and they are now engaged in the manufacture and sale of the products direct.

In November, 1918, the trial balance of H. A. Metz Laboratories (Inc.) showed that they were indebted to Farbwerke-Hoechst Co. to the amount of $261,646.70. This large balance is largely made up of open accounts and merchandise which the Farbwerke-Hoechst Co. transferred to the H. A. Metz Laboratories (Inc.) on July 1, 1918. There was no cash passed in the transaction, from the Laboratories Co. to the Farbwerke-Hoechst Co.

Due to these various complications it has been determined that the only possible way to ascertain whether the Farbwerke-Hoechst Co. and, incidentally, the Farbwerke-vorm. Meister, Lucius & Bruening through their lien on Mr. Metz's stock, are entitled to any of the proceeds or to any ownership in the capital stock of H. A. Metz & Co. (Inc.), and the H. A. Metz Laboratories (Inc.), is to establish a combination set of books. This is being proceeded with at the present time and it is hoped to complete the same shortly.

The make-up of this set of books has been an extremely difficult accounting proposition. Mr. Metz personally has kept no books. He has remitted to the other side out of his personal check book for merchandise and also for Germany's share of the dividends. In addition thereto he has paid his personal taxes out of the H. A. Metz color account, and some of the dividends of the Farbwerke-Hoechst Co. have been credited in total to Mr. Metz on the color account,

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and others have gone to him personally which he has handled through his own personal check book.

This is only a brief statement of the difficulties which confront us in the making of an accurate and correct statement of the condition of affairs in these companies. As far as we have been able to determine there are approximately 12 bank accounts involved. The bookkeeping methods of all of Mr. Metz's companies have been crude, to say the least, and to add to the complication the absolute lack of system and detail has hampered the work considerably. We are somewhat dependent upon Mr. Metz's personal recollection as to checks drawn three or four years ago, in order to determine what disposition to make of the same.

The following is a copy of the 1912 contract, constantly referred to in this report:

"Agreement made the 22d day of July, 1912, between Farbwerke vorm. Meister, Lucius & Bruening, a corporation organized and existing under the laws of Germany, having its principal place of business at Hochst, near Frankfort on the Main (hereinafter called the German corporation), Herman A. Metz, of the city of New York, H. A. Metz & Co., a corporation organized and existing under the laws of the State of New York, and Victor Koechl & Co., a corporation organized and existing under the laws of West Virginia, witnesseth:

"1. H. A. Metz & Co. has instituted, and shall carry through to completion with all practical dispatch, a proceeding under the statute in such case made and provided for the change of its corporate name from the present name, H. A. Metz & Co., to the name Farbwerke-Hoechst Co. As soon as such change of name shall take place, notice thereof shall be given by said company to all persons having business relations with H. A. Metz & Co., and the new name shall be employed upon the signs, labels, stationery, goods, and other places and things upon which the name H. A. Metz & Co., has customarily appeared; and said new name shall thenceforth be used to the exclusion of the name H. A. Metz & Co. But it shall be permissible to use in connection with the name Farbwerke-Hoechst Co. the phrase 'formerly H. A. Metz & Co.', or some other phrase of similar tenor; and such phrase shall be used so long and in such form as the German corporation may direct. Whenever in this contract H. A. Metz & Co. is referred to, it shall be understood that Farbwerke-Hoechst Co. is implied, if the context permits.

"2. Immediately upon the execution of this contract the said Herman A. Metz shall sell, assign, transfer, and set over to the said German corporation 890 shares of the capital stock of H. A. Metz & Co., and the said German corporation shall pay to the said Metz therefor the sum of $150,000 in cash in lawful money of the United States. The said German corporation having heretofore acquired 1,100 shares of the said capital stock, which 1,100 shares still stand, however, upon the stock book of the said H. A. Metz & Co. in the name of the said Herman A. Metz and (or) certain employees of H. A. Metz & Co., it is agreed that the said 1,100 shares heretofore acquired and the said 890 shares hereafter to be acquired by the said German corporation shall be forthwith transferred upon the books of H. A. Metz & Co. to the name of the said German corporation. Stock transfer stamps, as required by the laws of the State of New York, shall be duly affixed and canceled, at the expense of the vendor. The certificates of stock for said 1,990 shares issued, and to be issued, pursuant to this agreement to the said German corporation shall be deposited in the Guardian Trust Co. of New York subject to the exclusive control and order of the said German corporation, and the fees and charges of the Guardian Trust Co. for acting as custodian of said stock certificates shall be paid by the said German corporation.

"3. The remaining 10 shares of the issued and authorized capital stock of H. A. Metz & Co. shall remain the outright property of Herman A. Metz and shall stand in his name upon the books of the corporation.

"4. Proceedings have been instituted, and shall be promptly carried to a conclusion, pursuant to the statute in such case made and provided, for the increase of the number of directors of H. A. Metz & Co. from three (the present number) to five. Such amendments of the by-laws of H. A. Metz & Co. shall be promptly adopted as may be required by reason of the change of name of the company and the consequent change in the legend upon the seal of the company, and said by-laws shall be further amended to provide for the election of the two vice presidents, instead of one as heretofore, and to provide that directors or officers holding over or appointed to fill a vacancy or serve an unexpired term shall be subject to summary removal by the stockholders at any meeting duly called. Thereupon the directors now in office (except the said Metz) and those first appointed to bring the board to its increased membership of five shall, respectively, resign and shall be reappointed to fill the vacancies caused by such resignation; and the officers (except the said Metz) shall in like manner resign and be reappointed to fill the vacancies caused by such resignation.

"5. As soon as may be after the change of name and reorganization of H. A. Metz & Co., as heretofore provided, Victor Koechl & Co. shall liquidate its affairs, go out of business, and become dissolved, in manner following: Said H. A. Metz & Co. shall forthwith institute a new department, to be known as the pharmaceutical department, which shall take over and continue the business that has heretofore been conducted by Victor Koechl & Co., including dealing in the article known as "salvarsan" and which shall conduct all the future pharmaceutical business of H. A. Metz & Co. The German corporation will transfer its consignment account from Victor Koechl & Co. to said pharmaceutical department. Victor Koechl & Co. will then have no assets except cash and accounts receivable and no liabilities except an indebtedness to the German corporation. Victor Koechl & Co. will do no new business, but will collect said accounts receivable, pay off said indebtedness, and from time to time distribute all of the cash on hand and to be so collected (less necessary expense of collection and less expenses incidental to dissolution as hereinafter provided), one-half to the German corporation (owner of 50 per cent of the capital stock of Victor Koechl & Co.) and one-half to Herman A. Metz (owner of the remaining 50 per cent thereof). When the collection and distribution aforesaid are complete, the certificates of stock of Victor Koechl & Co. shall be surrendered to that company for cancellation, and thereupon the said company shall institute and carry to conclusion appropriate proceedings looking to a dissolution or other termination of its corporate existence. And the said Metz is hereby appointed attorney in fact of the German corporation, with power of substitution and revocation, in the name or on behalf of said corporation, to do and perform any act or thing, and to execute any writing that may be requisite or expedient for carrying out the provisions of this paragraph.

"6. Separate books of account shall be kept by H. A. Metz & Co., one set for the business and transactions of its general business (meaning all of its business except that of its pharmaceutical department) and one set for those of its pharmaceutical department; and the German corporation shall keep separate accounts of the pharmaceutical business transacted by it with H. A. Metz & Co. And the said Metz shall receive an account of compensation for his services as president and general manager, as hereinafter provided, 25 per cent of any net profits earned by the said German corporation in its dealings in pharmaceutical products with H. A. Metz & Co., and 25 per cent of any sums distributed as dividends by H. A. Metz & Co. out of the profits of its pharmaceutical department.

"7. Herman A. Metz shall be retained, and agrees to serve as president and general manager of H. A. Metz & Co., at least until the 31st day of December, 1916, and thereafter for one year, in the absence of written notice given at least six months in advance, by the said German corporation to said Metz, or by said Metz to the German corporation, that his term is to end on December 31, 1916. And if not sooner terminated as aforesaid, then after December 31, 1917, the term of said Metz as president and general manager shall continue from year to year in the absence of such notice, given at least six months in advance, that said term shall cease on the 31st day of December then next ensuing. So long as the said Metz remains president and general manager as aforesaid he shall receive one-half of the net profits (except profits of the pharmaceutical department already provided for) that may from time to time be distributed by H. A. Metz & Co. as dividends. Out of the 50 per cent of dividends thus paid to the said Metz he shall retain 25 per cent to his own use on account of his compensation, and shall personally distribute to certain of the other important employees of H. A. Metz & Co. the other 25 per cent as a bonus in addition to salaries. But the said German corporation reserves the right at any time, upon written notice to said Metz, to rearrange the distribution of such dividends, so that but one-fourth of such dividends thus distributed from time to time as aforesaid shall be paid to the said Metz, on account of his compensation, and so that an amount equal to one-fourth of such dividends shall be divided by the German corporation direct among said other employees. But if the German corporation so undertakes the payment of bonuses to employees at any time before December 31, 1916, it shall continue until such date and out of said amount equal to one-fourth of such dividends, to give to each of the said employees annually the same proportion of such dividends as the said Metz will be giving as of the time when the German corporation itself undertakes the distribution. Such proportion of dividends shall be paid as of the period in which they were earned. The shares of profits and dividends to be paid to the said Metz, as provided for in this and the preceding paragraph, shall be in full of his compensation.

"7a. The powers and duties of said Metz as president and general manager shall be such as he has heretofore enjoyed and performed. He is hereby expressly authorized to determine the amount to be paid from time to time as dividends out of profits; provided that in the future, as in the past, due regard shall be had in declaring dividends to the needs of the business for a surplus in addition to capital to provide sufficient working funds. And he is further expressly authorized (except as hereinbelow provided) to fix all regular salaries and compensation of employees of said H. A. Metz & Co., as well as the expenses of said company generally. Any bonus or premium paid to any of the employees in addition to salary, as hereinabove provided, must continue to be a charge upon the share of the said Metz personally in the profits or dividends, so long as the distribution of such bonus is left to him, and a charge upon the German corporation if it undertakes such distribution, and is not to be deemed as expense of the business of said H. A. Metz & Co. On the execution of this agreement the said Metz will furnish to the German corporation a schedule of the salaries of the principal employees of said H. A. Metz & Co., and he agrees that he will not increase nor allow to be increased the compensation of Gagnebin, Fuehrlein, Widmann, Hein, or himself, whether by way of salary or by way of bonus, without the consent of the German corporation first obtained.

"8. The dividends of H. A. Metz & Co. shall be paid in the usual manner to the holders of record of its stock; but in making division thereof between the German corporation and Herman A. Metz the entire sum paid as dividends to all stockholders out of the profits of the general business shall be regarded as one amount, and the entire sum so paid out of the profits of the pharmaceutical department shall be regarded as another amount; and said entire sums shall be the bases for calculating the above 50 per cent or the 25 per cent (as the case may be). And the said Metz shall have no separate claim to the dividends on the 10 shares of stock of which he is to remain owner. Those portions of the profits of the pharmaceutical business of the German corporation, and those portions of the dividends of H. A. Metz & Co., out of the profits of its general business and out of the profits of its pharmaceutical department, which are not to be paid to Metz as aforesaid, are to be the property of the German corporation, subject only to the bonuses payable to employees as aforesaid if the German corporation elects to undertake such distribution.

"9. In order that it may be practicable to pay dividends and make distribution of the amount thereof as above provided and to attend to the necessary details of the business in the United States, the said German corporation will give to the said Metz a power of attorney authorizing him to receive, collect, and give acquittance for all dividends or other moneys of H. A. Metz & Co. (Farbwerke-Hoechst Co.) payable or belonging to the said German corporation, and to deposit and draw against such dividends and moneys. And the said German corporation will also give to the said Metz a power of attorney or proxy to enable him to vote in its behalf at any special or annual meeting of stockholders of the said H. A. Metz & Co. Neither of the said powers of attorney shall be revocable so long as said Metz continues to be president and general manager.

"10. When the said Metz, whether pursuant to notice as aforesaid or by reason of death or resignation by reason of mental or physical incapacity, or for any other reason, except a willful breach of this contract on his part, ceases to be president and general manager as aforesaid, there shall be paid to him or his estate his above-specified proportions of the profits and dividends as above provided for the following periods: If he so ceases at a time on or after January 1 and before July 1, then he or his estate shall receive his above-specified proportions (so far as not already drawn by or paid to him) of the profits and dividends for the six months ending June 30; while if he so ceases at a date on or after July 1 and before January 1, he or his estate shall receive his above-specified proportions of the profits and dividends (so far as not already drawn by or paid to him) for the entire year ending December 31. The total amount of the dividends for any such period shall be in the same proportion to the actual profits of such period as the dividends of the previous year bore to the actual profits of such previous year, unless it shall hereafter be agreed that the said German corporation and the said Metz, in supplemental agreement in writing signed by them both that this paragraph shall be otherwise construed.

"11. And the said German corporation agrees that if the obligations under this agreement by the other parties to be performed are faithfully performed by them, the said H. A. Metz & Co., so long as the said Metz remains president and general manager as aforesaid, shall have the exclusive sale of the products of the said German corporation in the United States of America, and the said German corporation during the said term will not, directly or indirectly, sell any of its products to any other person, association, or corporation in the United States of America, without the written consent of the said Metz first obtained; and during the said period it will sell its products to the said H. A. Metz & Co., at their lowest market prices, and will not, directly or indirectly, sell any of its products to any persons, association, or corporation in any part of the world, except to European manufacturers of goods similar to the products of said German corporation, at a lower price or upon more favorable terms than those given to the said H. A. Metz & Co. This paragraph is understood to mean that the German corporation will, as to prices, in no event permit underselling of said H. A. Metz & Co. in the markets of the United States; but in case of extraordinary or special instances, arising in the sale of the products of the German corporation in other countries, when it is necessary to meet special competition in such other countries, the German corporation may, in order to meet such special competition, sell at prices below the 'lowest market price' above referred to, which 'lowest market price' means the general and ordinary lowest market price.

"12 The said Metz agrees that so long as he remains president and general manager as aforesaid, and in any event until the 1st day of January, 1917, he will not, without the written consent of the said German corporation first obtained, directly or indirectly, as principal, agent, employee, partner, or director, engage or become interested in any other business of a nature kindred to that of any of the corporations which are parties to this agreement, nor permit the use of his name in any such business, except that he may continue his present connection with the Consolidated Color & Chemical Co., a New Jersey corporation (in which company, or its stock, said German corporation is no longer interested), so long as said Consolidated Color & Chemical Co., does not compete in other kinds of products than those which it now manufactures and deals in. On the execution of this agreement said Metz shall furnish to said German corporation a list of the products of the Consolidated Color & Chemical Co., which enter into competition with those of any of the corporations which are parties to this agreement; and until said 1st day of January, 1917, the agreement in this paragraph contained shall remain in force even though the said Metz should cease to be president and general manager as aforesaid; but after the last mentioned date the agreement in this paragraph contained shall remain in force only so long as the said Metz shall remain president and general manager as aforesaid.

"13. The said Metz, as president and general manager, will, while he continues in such capacity, within three months next after January 1 and July 1, in each year, render to the said German corporation a full, just, true, and detailed account in writing of the assets and liabilities, profits and losses, earnings and expenses of the general business and (separately) of the pharmaceutical department of said H. A. Metz & Co., as of January 1 or July 1, as the case may be. For the purpose of the July account the value of assets on hand may be estimated; but account of stock shall be accurately taken for the purpose of the January statement. He further agrees that during each month while he continues in such capacity, he will make a written report to the said German corporation, containing a copy of the minutes of directors' and stockholders' meetings, certified by the secretary or assistant secretary of H. A. Metz & Co., and a general outline of the business of the said company for the month preceding such report; and the said minutes shall be a full and true record of all proceedings of such directors' and stockholders' meetings.

"14. In case for any reason the said Metz ceases before December 31, 1916, to be president and general manager as aforesaid, if Messrs. Gagnebin, Fuehrlein, Widmann, and Hein (who are amongst the important employees referred to in paragraph 7 of this agreement) or either of them, are or is, at the time still in the services of H. A. Metz & Co., the said German corporation will cause their or his employment to be continued by the said H. A. Metz & Co., until December 31, 1916, upon the same terms as to salary, bonus, and duties to be performed, as may be in force at the time between the said employees respectively on the one hand, and the said H. A. Metz & Co. and (or) said Metz on the other hand; upon the condition, however, that each of the employees in question shall at the time agree in writing with his employer and with the German corporation that he will not at any time within two years after January 1, 1917, engage, directly or indirectly, in any competing business.

"15. Any notice to be given by any of the parties to this agreement to any other party, shall be in writing, and may be delivered personally or by registered mail; but if given by registered mail, it must be sent in duplicate, each counterpart being inclosed in a separate envelope, one to be mailed on the day of its date, and the other not less than one week nor more than 10 days thereafter. A notice given by mail shall be deemed to have been given on the day of the mailing of the first counterpart. If the length of notice is not otherwise specified by this agreement, 30 days' notice shall be understood. Notice by mail should be addressed as follows:

"H. A. Metz, 122 Hudson Street, New York City.

"Farbwerke vorm. Meister, Lucius & Bruening, Hochst on the Main, Germany.

"H. A. Metz & Co. or Farbwerke-Hoechst Co., 122 Hudson Street, New York City.

"Victor Koechl & Co., 122 Hudson Street, New York City.

"16. So long as paragraph 11 of this agreement remains in force, the said H. A. Metz & Co. agrees not to buy or sell any products competing with those of the said German corporation, without referring each such transaction to the German corporation for its approval or disapproval. And said H. A. Metz & Co. agrees to send a report every three months to the German corporation of all such competing products purchased, whether with or without its permission, and to deliver samples of said products to the German corporation, if it shall so desire, and furthermore to send to the German corporation as often as it may so demand, a statement of the stock in trade on hand, and to give to the German corporation weekly, when requested, a statement of all goods and wares delivered, with the prices.

"17. Should any dispute arise between or among the parties to this agreement, under or concerning the terms thereof, such dispute shall be submitted to three arbitrators, of whom one shall be appointed by the said German corporation, its legal representatives or successors; one shall be appointed by the said Metz, or his legal representatives, and the third shall be appointed by the two thus chosen. And the award or determination of any two of the said three arbitrators shall be binding and conclusive upon all of the parties to this agreement.

"18. This agreement merges and supersedes all previous agreements between the parties in relation to the same subject matter, and especially the written agreement, dated November 12, 1902, between the said German corporation, Herman A. Metz, Victor Koechl & Co. and Consolidated Color & Chemical Co., also the written agreement signed and acknowledged by Herman A. Metz, in the presence of Charles Edgar Mills, on February 4, 1903; also the written agreement dated August 4, 1905, between the said German corporation, Herman A. Metz, Victor Koechl & Co., the Consolidated Color & Chemical Co., and H. A. Metz & Co., also a supplement or postscript subscribed by the said German corporation, and dated the 18th day of August, 1909.

"19. This agreement shall bind and accrue to the benefit of the several parties, and their respective heirs, personal representatives and successors.

"In witness whereof, the parties hereto have severally executed this instrument, the day and year first above written.

"FARBWERKE VORM. MEISTER, LUCIUS & BRUNING.
"In presence of—
"JOSEPH FLOED.
"By HERBERT V. MEISTER, *Director.* [Seal.]
"In presence of—
"CHAS. FUEHRLEIN.
"By ADOLF HAEUSER, *Director.* [Seal.]
"H. A. METZ & CO.
Attest: "H. A. METZ, *President.*
"A. H. HEIN, *Secretary.* [Seal.]
"VICTOR KOECHL & CO.
Attest: "H. A. METZ, *President.*
"CHAS. FUEHRLEIN, *Secretary.*" [Seal.]

United States Consulate at Frankfort on the Main,
Empire of Germany, ss.:

On this 1st day of August, 1912, before me personally came Herbert von Meister and Adolf Haeuser, to me personally known and known to me to be two of the directors of Farbwerke vorm. Meister, Lucius & Bruening, one of the corporations described in, and which, by the said directors, executed the foregoing agreement; and they severally acknowledged to me that they executed the same as the act and deed of said corporation.

[Seal.] Wm. Dawson, Jr.,
Vice and Deputy Consul General.

No. 799. Fee $2 received (equal to marks 8.50).

State of New York,
The City and County of New York, } *ss.:*

On this 22d day of July, 1912, before me personally came Albert H. Hein, assistant secretary of H. A. Metz & Co., with whom I am personally acquainted, who being by me duly sworn, said that he resided in the city of South Orange, N. J., that he was the assistant secretary of H. A. Metz & Co.; that he knew the corporate seal of the said company; that the seal affixed to the above instrument was such corporate seal; that it was so affixed by order of the board of directors of the said company, and that he signed his name thereto by the like order as assistant secretary of the said company. And the said Albert H. Hein further said that he was acquainted with Herman A. Metz, and knew him to be the president of said company, that the signature of the said Herman A. Metz, subscribed to the said instrument, was in the genuine handwriting of the said Herman A. Metz, and was thereto subscribed by the like order of the said board of directors, and in the presence of him, the said Albert H. Hein.

[Seal.] JACOB R. ROETHER,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
THE CITY AND COUNTY OF NEW YORK, } *ss.:*

On this 22d day of July, 1912, before me personally came Charles Fuehrlein, treasurer of Victor Koechl & Co., with whom I am personally acquainted, who being by me duly sworn, said that he resided in the city of Jersey City, N. J., that he was the treasurer of Victor Koechl & Co.; that he knew the corporate seal of the said company; that the seal affixed to the above instrument was such corporate seal; that it was so affixed by order of the board of directors of the said company; and that he signed his name thereto by the like order as treasurer of the said company. And that said Charles Fuehrlein further said that he was acquainted with Herman A. Metz, and knew him to be the president of said company; that the signature of the said Herman A. Metz subscribed to the said instrument, was in the genuine handwriting of the said Herman A. Metz, and was thereto subscribed by the like order of the said board of directors, and in the presence of him, the said Charles Fuehrlein.

[Seal.] JACOB R. ROETHER,
Notary Public, Kings County.

Certificate filed in New York County.

State of New York,
The City and County of New York, } *ss.:*

On this 22d day of July, 1912, before me personally came Herman A. Metz, to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

[Seal.] Jacob R. Roether,
Notary Public, Kings County.
Certificate filed in New York County.

(Indorsement.)

"Agreement between Farbwerke vorm. Meister, Lucius & Bruening, Herman A. Metz, Herman A. Metz & Co., and Victor Koechl & Co.

"Fred W. and Alfred E. Hinrichs, attorneys at law, 75 William Street, Manhattan, New York City."

MR. METZ'S ACCOUNTS WITH FARBWERKE VORM. MEISTER, LUCIUS & BRUENING.

Mr. Metz has stated that he does not know exactly how his account stands with Farbwerke vorm. Meister, Lucius & Bruening, nor does he know positively if he will have to give them a share of the profits from the Farbwerke-Hoechst Co. dividends declared after April, 1917. He claims that his contract with tnem expired January 1, 1917, but says that he will turn over to them their share of the profits, provided they will turn over to him certain profits, which he claims they have made on the other side, together with the amount they owe him for moneys remitted by him for anticipated shipments.

I have made a rough calculation of the status of Metz's accounts, both as to dividends declared before the United States went into the war, and considering the dividends accumulated since that time.

Considering first the statement of accounts up to the time when we went into the war: After applying all the moneys sent over there as direct dividend remittances or as anticipated shipments, and after allowing him deductions for certain moneys known in the dye trade as graft and called by Farbwerke vorm. Meister, Lucius & Bruening extras, but without any allowance to Mr. Metz for possible profits due to him on the other side, it has been determined that Metz is owed by the German house $84,600.72.

If, however, the dividends are taken into consideration since we have gone into the war, Metz is indebted to the German corporation in the amount of $370,399.28.

The set of books which we are preparing and which has been mentioned previously, will establish these figures more accurately.

SURPLUS.

There is another matter which can only be disposed of when the set of books which we are establishing is finally made up and the matter of ownership in the H. A. Metz color account finally determined; that is, the ownership of the surplus accumulated in the Farbwerke-Hoechst Co.

In 1912 Mr. Hinrichs, writing to Farbwerke vorm. Meister, Lucius & Bruening, and after the establishment of the 1912 contract, states as follows:

"Perhaps the most important of the matters of which we had no instructions from you is that of ultimate division of surplus profits of H. A. Metz & Co. (Farbwerke-Hoechst Co.) not distributed from time to time as dividends. The provisions in this regard as we have written them after consultation with Mr. Metz seem to us reasonable, inasmuch as Mr. Metz is reselling his stock at a price fixed years ago and not at a price which represents its present book value. We have expressly provided that none of the employees named, except Mr. Metz, shall share in such surplus profits. Mr. Metz thinks that they should and tells us that he has made a marginal note to that effect in a copy of the proposed agreement which he has already forwarded to you."

On June 30, 1918, the undivided profits of the Farbwerke-Hoecht Co. were $232,755.65. This, of course, includes the debit balance of amounts due from the H. A. Metz Laboratories (Inc.).

EXTRAS ACCOUNT (GRAFT).

As previously stated in this report, in 1912 and 1913 certain antitrust suits were started against the Farbwerke-Hoecht Co. and Farbwerke vorm. Meister, Lucius & Bruening et al. alleging the payment of bribes to employees of consumers. That this state of affairs actually existed is beyond question; and that it continued for a number of years after 1912, as far as the Farbwerke-Hoechst Co. is concerned, would also seem to be evidenced by certain letters which we have found in Mr. Metz's files.

On April 12, 1913, in one of the letters from Farbwerke vorm. Meister, Lucius & Bruening to Metz relative to the handling of the stock, the following paragraph appears:

"In order to make it possible for you to have the necessary money for particular expenses at your command, we declare ourselves ready, to remit an adequate amount to any bank account that you will indicate to us, in your favor, so that in this respect also, actually nothing has been changed in the whole state of affairs."

On July 31, 1913, the following letter was received by Mr. Metz from the German house:

[Note: This letter also admitted in evidence as Defendant's Exhibit No. 17.]

(Translation.)

Farbwerke vorm. Meister, Lucius & Bruening,
Hochst on the Main, July 31, 1913.

My Dear Mr. Metz: I confirm my letters of the 11th and 24th of this month, and received in the meantime your communications of the 16th and 22d of this month. Furthermore I acknowledge your and Mr. Hinrichs's letter to the firm regarding the deposit of the certificates in Montreal. According to this it appears that the affair of the shares progresses in proper order so far, and I share your opinion that it is probably better to refrain from further agreements. Hinrichs's letter of the 21st of this month, which you mention in your last communication, has not yet arrived here.

As for what concerns the paying of the dyers, I inform you confidentially about the development of matters as follows:

The proper assistance has been explained to the Elberfeld gentlemen, at the establishment of the new business over there, that they must unconditionally avoid in the future any graft, else the matter may become very bad for them. Elberfeld has then, the comprehensible endeavor, that not they alone, but also all other firms, should cease payments to dyers in future. They immediately came to an understanding on this score with Ludwigshafen and Berlin, and then also secured the consent of Cassella. After these four firms were agreed, there remained nothing for us to do, but to agree likewise, as Kalle had also to consent. It is also to be expected that still other factories will join, at all events all the factories have been asked to join (the Swiss, the English, a Poirrier) and if they refuse to join this shall be used against them among the customers. The purpose of the union is that every dealer (and as dealer the Farbwerke-Hoechst Co. is regarded just the same as B. Klipstein) is requested by means of the copy of the enclosed letter, to sign the likewise enclosed bond. Aside from the fact, that we were in a forced position, we had little cause to hesitate, as you wrote to me repeatedly, that the payments to the dyers must unconditionally stop.

We are of the opinion that it must be serious, at least for the six firms concerned, to discontinue all affairs with the dyers in the future, and we are furthermore of the opinion that the business will get along very well without the payments to the dyers, since substantially all large firms share the same point of view. A certain transition period is very likely necessary, and therefore the union should first go into effect on January 1 of next year. It will not be feasible then any more that you set expenses in the bill; you will have to arrange to get along without the expenses.

Your independence, as far as it is concerned, will not be affected by this agreement, and at all events, no one, even in America, will wish to reproach us for an agreement whose purpose it is to further the discontinuance of unlawful acts, on the part of our customers.

If you wish to come over here this year yet, which would please me very much, I would ask you not to arrive here in October, as I must go on my vacation in that month after having endured it here the whole summer long.

In case Mr. George Gordon Battle should come here, I will receive him with pleasure.

With best greetings,

Yours, respectfully,

Dr. Haeuser.

This letter would seem to indicate that the payment of graft to the employees of consumers would cease on January 1, 1914. But that this proposed discontinuance of the payment of graft to the dyehouse employees was not carried through is shown by the following excerpt from a letter received by Mr. Metz from the German house dated February 6, 1914:

"Now as far as extras are concerned, I hear with regret that according to your opinion not much will be changed. I agree with you that you will not be able with one stroke to wipe out all extras but the striving must be to abolish this unwholesome condition entirely. The propositions that you now make seem to me to indicate a practical way in this direction, and we are satisfied therewith. You would accordingly in future as profits only bring to distribution that which really has been earned, and accordingly deduct as business expenses in the manner agreed the shares of the gentlemen who participate in the profits. According to this Gagnebin and Widmann would receive each 2½ per cent of the entire turnover and Fuehrlein 1 per cent of the entire turnover, while Elmore would receive 5 per cent of the turnover of the Providence office as commission. Your salary would be increased from $15,000 to $30,000. Of course it is naturally to be borne in mind that as the extras are eliminated these amounts would be shortened in future."

From another letter received by Metz from the Farbwerke vorm. Meister, Lucius & Bruening dated March 30, 1914, I quote as follows:

"So far as extras are concerned, I am of the opinion that this practice amounts to simply a transition period and that same will rapidly go backward. At any rate all of our endeavors must be in this direction.

"Your idea that the paying out of extras in future can be done through a third party in cash, as, for instance, through your carpet mill at Worcester, I do not find sound. You give yourself through this into the hands of such third party, who could at any moment turn against you. To me it seems the idea of increasing the provisions (commissions) of Gagnebin, Widmann, etc., much more right. Perhaps it would be possible to adopt a mixed system between raising the commission for Widmann and your former procedure."

PATENTS.

The patents owned on this side by the Farbwerke vorm. Meister, Lucius & Bruening, I understand, have already been reported by Mr. Metz and turned over to Mr. Hoguet of your department.

This is only a preliminary report, and, as stated, as soon as the accounts are made up and the meaning of all the various letters referring to accounts and transactions can be allocated to their proper places, it will then be possible for me to give you a more comprehensive report on this situation.

Respectfully submitted,

LEE J. WOLFE.

DEFENDANT'S EXHIBIT No. 53.

SUPPLEMENTARY AND FINAL REPORT ON FARBWERKE-HOECHST CO., OF NEW YORK.

The following is a supplementary report on Farbwerke-Hoechst Co., of New York, and Mr. Metz's other companies:

The situation on the Farbwerke-Hoechst Co. is unchanged, and after an examination of the books and records of this company, I am setting out in full a trial balance of the Farbwerke-Hoechst Co. at the close of business December 31, 1918:

Trial Balance.

Dr.			
Cash account	$1,597.95	Capital stock account	$200,000.00
Merchandise account	129,502.81	Profit and loss account	187,389.13
Securities account	141,900.00	Unpaid bills account	7,988.68
H. A. Metz Laboratories (Inc.)	122,377.05		
	395,377.81		395,377.81

You will notice that there is an item of $122,377.05 due by the H. A. Metz Laboratories (Inc.), to this company, which is the only item due this company by any firm or person. It is therefore recommended that this item be collected as soon as possible.

A further examination has been made of Mr. Metz's personal check books, the H. A. Metz color account, the H. A. Metz Laboratories (Inc.), and H. A. Metz & Co. (Inc.). From an accounting point of view there is nothing to indicate that the H. A. Metz color account, the H. A. Metz Laboratories (Inc.), and H. A. Metz & Co. (Inc.) are in any way owned by the Farbwerke-vorm., Meister, Lucius & Bruening, of Hoechst a/Main, Germany, or by the Farbwerke-Hoechst Co. of New York.

This decision is arrived at from the fact that these three businesses were started by money belonging to Mr. Metz personally or by merchandise and fixtures belonging to Mr. Metz personally.

An audit of Mr. Metz's personal books from January 1, 1912, to December 31, 1918, has been made with a view to determine whether any money belonging to Farbwerke vorm. Meister, Lucius & Bruening was in his possession. In arriving at this I have credited

Farbwerke vorm. Meister, Lucius & Bruening, in accordance with the 1912 contract, with their percentage of dividends of the Farbwerke-Hoechst Co., the Farbwerke-Hoechst Pharmaceutical Department, and Victor Koechl & Co. I have charged them with remittances made by Mr. Metz to them in settlement of these dividends, and also have charged them with items deducted by Mr. Metz, known as "extras" account. I have not charged this account for "extras" for 1912, as I had no records to guide me as to how much should be charged. Therefore, the first charge on this account is made in 1914 for "extras" applicable to 1913.

After making these entries I find that on April 6, 1917, there was due Mr. Metz by Farbwerke vorm. Meister, Lucius & Bruening $222,776.75. By giving Farbwerke vorm. Meister, Lucius & Bruening credit for their proportion of dividends earned since we went to war with Germany, and by charging them with "extras" account for 1916 and 1917, it appears that Mr. Metz owes Farbwerke vorm. Meister, Lucius & Bruening $35,696.33.

As against this, however, in the H. A. Metz color account ledger there is due Mr. Metz by Farbwerke vorm. Meister, Lucius & Bruening, in three accounts, as follows:

Special account	$89,403.23
Indigo account	115.78
Allizarine account	2,997.21
Total	$92,516.22
Deducting from this amount the amount shown due him personally to Germany	35,696.33
Leaves a net balance due to Mr. Metz of	$56,819.89

This statement does not include deductions for Germany's share of taxes paid by Mr. Metz, nor is allowance made for Mr. Metz's share of profits due from Germany for 1915 and 1916. As the detailed statement covering this is long and complicated, I am not setting it forth in this report, but it is available for you at any time.

To arrive at all of these figures I have opened a set of books which has consolidated the Farbwerke-Hoechst Co., H. A. Metz & Co. (Inc.), H. A. Metz Laboratories (Inc.), and H. A. Metz color account. This set of books is not completed, for the reason that the books of H. A. Metz Laboratories (Inc.) and H. A. Metz & Co. (Inc.) have not been closed for December, 1918.

I have also opened a set of books for Mr. Metz personally, which has been built up from his check books and by other records furnished us by Mr. Metz.

I have not attempted to go into the history of Farbwerke-Hoechst Co. of New York, and allied companies, inasmuch as this was all covered in my previous report, nor have I gone into the legal aspect of the contract of 1912, as affecting Metz's right to do business in his own name, as this is a matter which can only be determined by your legal department.

Respectfully submitted,
LEE J. WOLFE.

February 13, 1919.

DEFENDANT'S EXHIBIT No. 54.

REPORT ON KUTTROFF, PICKHARDT & CO. (INC.).

January 11, 1919.

HON. FRANCIS P. GARVAN,
Director Bureau of Investigation, Alien Property Custodian,
New York City.

Dear Sir: On the following pages will be found the final report on the Badische Co., of New York, the Badische Anilin & Soda Fabrik, of Ludwigshafen, and Kuttruff, Pickhardt & Co. (Inc.), of New York. Throughout this report "Badische" will mean the Badische Co., of New York; "Ludwigshafen" will mean the Badische Anilin & Soda Fabrik, of Ludwigshafen.

Mr. Adolf Kuttroff, the president of the company, has been examined by Mr. Joseph H. Choate, Jr., and by yourself at various times and this final report will be divided into two parts: First, admissions by Mr. Kuttroff or his employees in their depositions before Mr. Choate and yourself, and facts as developed from their books and records; second, new discoveries since the examination of December 30, 1918.

In 1878 the firm of William Pickhardt & Kuttroff took as a special partner Ludwigshafen, and Ludwigshafen advanced $50,000 out of a total capital of $150,000. (Mr. Garvan's examination, Dec. 30, 1918, p. 2.)

After the formation of the firm of Kuttroff, Pickhardt & Co. (Inc.) Ludwigshafen had an interest in the profits, Mr. Kuttroff stating that the profits going to Ludwigshafen were 28 per cent. The ledgers, however, from 1900 to 1903 show that Ludwigshafen's profits were as follows: 1900, 73 per cent; 1901, 71 per cent; 1902, 71 per cent; 1903, 70 per cent. (Mr. Garvan's examination Dec. 30, pp. 2, 3, 4, and 5.) The ledgers for 1904, 1905, and 1906 of the Kuttroff, Pickhardt & Co. (Inc.) are missing. Mr. Kuttroff can give no explanation of where they are. (Mr. Garvan's examination, p. 5.)

The books of the Continental Color & Chemical Co. are missing. These books would be of considerable importance to us in establishing the ownership of the Badische Co. stock. (Mr. Garvan's examination, p. 5.)

The Badische Co., of New York, was organized in 1907, and took over the business of the Continental as far as it referred to Ludwigshafen. (Mr. Garvan's examination, p. 7.)

Original capital stock of the Badische Co. was $25,000, which, according to the entries made on the books, was paid for with furniture and fixtures of the Continental Color & Chemical Co. (Mr. Garvan's examination, p. 8.)

Stock issued in the Badische Co. to Mr. Kuttroff and Mr. Pickhardt and three or four other small stockholders. No evidence to show that Kuttroff or Pickhardt paid cash for the furniture and fixtures which were used to pay for the Badische Co. stock. Mr. Kuttroff was unable to explain what the entries on the books mean. (Mr. Garvan's examination, pp. 8, 9, 10, and 11.)

Mr. Kuttroff claims that he paid cash for 240 shares of stock. The stock records at the opening of the books of the company in 1907 show that 242 shares stood in his name and 2 shares stood in the name of Carl Pickhardt; the balance was distributed among small stockholders.

Among the October entries in the journal of the Badische Co. are the following:

Debit cash	$25,000.00	Credit capital	$25,000.00
Debit furniture and fixtures	25,000.00	Credit cash	25,000.00
Debit cash	91,104.60	Credit Badische Co. account	91,104.60

An inspection of the cash book of the company does not disclose that any cash was received or money disbursed covering the first four entries above. An inspection of the deposit portion of the check stub book, however, for that period would show that on October 1, 1907, there were three amounts received from the Continental Color & Chemical Co., one for $25,000 and two aggregating $66,104.60, making a total of $91,104.60, which appears on the cash book as the receipts for that day, and which agrees with the entries as above stated.

The capital account in the ledger shows on that day a credit entry reading as follows: October 1, 1907, by cash account, $25,000.

No cash, however, is shown on the cash book covering this entry The entire amount of $91,104.60, which was the actual cash received that day, passed to the credit of the Badische Co. account on their own books. The entry appearing on the Badische Co. account under date of October 1, 1907, reads as follows:

By cash account	$91,104.60

On the same day in the same account the following credit entries also appear:

By business expense account	$1,542.65
By sales account	281,554.19
By suspense account	1,797.71
	375,999.15

These were the entries whereby the Badische Co. took over the expense account, the cash account, the sales account, and the suspense account from the Continental Color & Chemical Co. to this amount. Whether these were the total amounts or not we do not know as the Continental's books, as stated before, are missing.

On the same day, namely, October 1, 1907, this account was debited with the following entries:

To balance Continental Color & Chemical Co. account	$374,589.64
To Badische Anilin & Soda Fabrik, old account	1,409.51
	375,999.15

The item of $1,409.51 is of no importance and is merely stated in order to show the balance of the account. The first debit entry above, namely, $374,589.64, was offset by a credit entry in the Badische Anilin & Soda Fabrik account for the same amount. It will thus be seen that all of the entries represented by the original credits of $375,999.15 passed to the credit of Ludwigshafen, with the exception of $1,409.51.

It is well to call your attention also to the fact that the debit entry on the Badische Co. account which reads, "To balance C. C. C. Co. account" is not a correct entry, as we can find no Continental Color & Chemical Co. account on the ledger nor any account which would correspond to these entries nor any account showing this amount other than the Badische Anilin & Soda Fabrik account mentioned above.

It is also well to call your attention to the fact that it is not a usual thing for a company to open an account with itself on its own books, and I therefore believe that the Badische Co. account in the Badische ledger was merely opened up in order to camouflage the opening entries so as not to show a direct credit to Ludwigshafen on the Badische Co.'s books.

To my mind these entries indicate that the Continental Color & Chemical Co. was owned by Ludwigshafen, other than the interest of the Bayer Co., and therefore in the absence of any evidence of purchase by Mr. Kuttroff of the furniture and fixtures the furniture and fixtures must have belonged to Ludwigshafen.

On December 22, 1909, the payment side of the Badische Co.'s cash book has the following entry: "Check to order Mr. Adolf Kuttroff for loan to Mr. Adolf Kuttroff against 240 shares Badische Co. stock as collateral. Check No. 6453, $24,000." The offsetting account on the ledger to this entry was the Adolf Kuttroff loan account, which was debited.

On December 22, 1909, the cash receipt book shows the following entry: "Check Mr Adolf Kuttroff for 240 shares Badische Co. stock, $24,000." This $24,000 was credited to the Badische Anilin & Soda Fabrik stock account.

The entries referred to on the ledger are made under date of December 31, 1909, while the cash-book entries are under date of December 22. This difference is explained by the fact that the cash book is journalized at the end of each month and the entries passed to the ledger from the journal under the date of journalization. Thus, at the close of the year, the loan account of Adolf Kuttroff stood debited with $24,000 and the Badische Anilin & Soda Fabrik stock account stood credited with $24,000, indicating the ownership of 240 shares of stock at that time by Ludwigshafen.

On January 1, 1910, by means of a journal entry the Badische Anilin & Soda Fabrik stock account was debited with $34,000 and Badische Anilin & Soda Fabrik regular account was credited with $24,000. On the same day the Adolf Kuttroff loan account was credited and the Badische Anilin & Soda Fabrik regular account was debited, thus Ludwigshafen paid off the Adolf Kuttroff loan by acquiring the stock although the stock still stood in the name of Kuttroff. It must be remembered in this connection that when the money was loaned to Kuttroff his loan account was debited. When he paid cash for the 240 shares of stock of the Badische Anilin & Soda Fabrik stock account was credited, and when the entire transaction was cleaned up no cash passed in the transaction either way.

You will note from the foregoing entries that this is the first money which has been paid for the Badische Co. stock; the $25,000 which was previously paid for the stock was represented by furniture and fixtures. The $25,000 cash which was paid in at the time of organization as previously explained went to the credit of Ludwigshafen, the net result of the transaction being that $24,000 of Ludwigshafen's money which was in the Continental was finally in 1910 paid out for the Badische Co. stock.

Mr. Kuttroff, in reply to questions put to him on December 30 relative to these transactions, answered as follows:

"Q. Can you give any explanation of that?

"A. All I can say is the Badische Co. never owned one share of the stock, never bought or paid for anything.

"Q. Can you tell who else paid for any?

"A. I don't know.

"Q. Can you show us where anyone else paid for it?

"A. I don't understand those entries.

"Q. Can you show us where you yourself paid any?

"A. I would have to look that up; I don't know anything about those entries."

It must be remembered in this connection that this information was not sprung on Mr. Kuttroff in the nature of a surprise at the examination that day. The entries, as soon as we discovered them, were pointed out to Mr. Kuttroff and his attorneys, and they had at least a month to give an explanation of those entries if any was possible.

To further show the control of Ludwigshafen over the Badische Co., your attention is called to the fact that from the organization of the company until June 30, 1913, the Badische Co. received its goods on a consignment basis. From 1907 to 1910, all expenses were paid by Ludwigshafen. After 1910, the expenses were paid by the Badische Co. direct, but during the years 1910, 1911, 1912, and the first six months of 1913, $414,000 of the expenses incurred by the Badische were borne by Ludwigshafen. (See pp. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, Mr. Garvan's examination Dec. 30, 1918.) These pages will also give you the reason for the change in 1910 from a branch house basis to an agency basis.

During the years 1912 and 1913 certain suits were started against the German dye houses alleging bribery of dye consumers' employees and the existence of a trust among the German dye houses to control prices in violation of the Sherman antitrust act. It will be remembered that up to June 30, 1913, the Badische Co. acted merely as the consignee of Ludwigshafen's goods. Due to these antitrust suits the Badische Co., in conjunction with the American representatives of most of the other German dye houses, changed from a consignment basis to a purchase basis. In order to handle the business on the latter basis it was necessary for the Badische Co. to increase its capital stock from $25,000 to $200,000. This increase of capital stock and the change from the consignee to the purchase basis was made after Mr. Nathan, of Cardozo & Nathan, had visited the home office of Ludwigshafen and brought back with him a series of memoranda as set out on pages 33 to 54, inclusive, of Mr. Garvan's examination of December 30. The important portion of the memorandum is set out on page 35, reading as follows:

"The various shareholders to buy the shares taken over by them at par or in so far as the payments are made for them by the Anilin Fabrik they are to pay the Anilin Fabrik back."

We have ascertained from the books of Messrs. Schultz & Ruckgaber that on the day after the increase of capital stock was paid in that the full amount, namely, $175,000, was remitted to Ludwigshafen by the Badische Co., the entries being a debit to Ludwigshafen and a credit to Badische's cash (see p. 55, Mr. Garvan's examination of Dec. 30), thus indicating clearly to my mind that the stockholders were dummy stockholders, having had the amount of the increase advanced to them by Ludwigshafen.

No explanation has been made as to why this money was remitted. It is perfectly true that at that time there was an open account beween the Badische Co. of New York and Ludwigshafen. But if the change of basis necessitated larger capital on this side, it is hard to understand why such a large amount of money identical with the amount of the increase should be remitted to Ludwigshafen directly after it was paid in by the stockholders.

In this connection also I might call your attention to the fact that the increase in capital stock was not apportioned among the stockholders in the same proportion as their holding were prior to July, 1913. Prior to July, 1913, Mr. Adolf Kuttroff had 239 shares out of a possible 250, while Mr. Carl Pickhardt had only 2 shares. On the increase, Mr. Kuttroff was allotted 1,205 shares and Mr. Pickhardt was allotted 600 shares, the balance was distributed among the other stockholders.

Just what the transactions were on Mr. Kuttroff's personal books at the time of the increase I am unable to state, as his check book for that period is missing and his voucher checks are also missing. The peculiar circumstance about the thing is that this check book which is missing is the check book which was in use from January 31, 1912, to August 1, 1914. Mr. Kuttroff claims that this check book was destroyed when he cleaned out his desk sometime in 1917. (See Mr. Garvan's examination, bottom of p. 57.)

The reason for the change from a consignment basis to a purchase basis is set out in letters on pages 58, 59, 60, 61, 62, and 63 of Mr. Garvan's examination of December 30.

About one year after the increase of the capital stock the European war was started and as a result of the sales of dyes from August 1, 1914, to the time the United States entered the war the German dye house representatives in this country made enormous profits, both on the goods which they had on hand at the time of the starting of the war and on the goods which were sent to them from time to time by the German houses.

In September, 1915, a credit was passed to Ludwigshafen's account for $559,861.95 and on December 31, 1915, a further credit was passed to Ludwigshafen of $97,235,64. In 1916 $44,846.75 was credited to Ludwigshafen. All of these amounts, totaling $701,944.34, were entered on the books as debits to merchandise and credits to Ludwigshafen with the explanatory notation that these amounts represented royalties on the indanthrene patents from 1907 to 1916, inclusive, together with 5 per cent interest thereon. (See Mr. Garvan's examination, pp. 63, 64, 65, and 66.)

It must be remembered in connection therewith that some of these royalties were on dyes received by the Badische Co. while they were on a consignment basis from 1907 to June 30, 1913, and it will be noted that Mr. Kuttroff admits that too much credit was given to Ludwigshafen and that the Badische Co.

should get rebates for the years 1908 and 1909. (See Mr. Garvan's examination of Dec. 30, pp. 65 and 66.) Just why the Badische Co. should not be credited with the profits on all of the years up to June 30, 1913, I can not say.

In this connection I would call your attention to the fact that this matter was called to Mr. Kuttroff's notice over a month before your examination took place and at no time did he give your examiner any information as to too large a credit having been passed. It will be noted from a reading of the testimony that there was no agreement for the repayment of these indanthrene royalties. Mr. Kuttroff claiming that it was merely a verbal understanding between Ludwigshafen and himself made in 1907.

On December 31, 1914, the Badische Co. credited to Ludwigshafen $330,000, and on September 1, 1915, credited them with $147,100, the debits in both cases being the merchandise account. These two amounts totaling $447,100, represent the expense allowance of $414,000 previously mentioned in this report, together with $63,100 interest at 5 per cent. No liability was maintained on the companies' books for the amount sent to Ludwigshafen on account of the indanthrene royalties amounting to $701,944.34 nor for the $477,100 on account of the expenses. (See Mr. Garvan's examination, pp. 67, 68, and 69.)

These remittances totaling $1,179,044.34 should not have been charged to merchandise, but should have been shown as a division of profits which they really were.

In 1916, the submarine *Deutschland* made two trips and landed goods in this country for the Badische Co. The money to pay for these goods was borrowed by the Badische Co. In order that you may have a brief understanding of how the merchandise account was handled on the *Deutschland's* goods, I beg to advise you that on the first lot of goods the merchandise account was debited with $601,202.20 and Ludwigshafen was credited with the same amount. On the same days the goods were paid for in cash and Ludwigshafen was debited. On December 31, 1916, the merchandise account was credited and Ludwigshafen was debited with $601,202.20, the memorandum on the ledger being "Merchandise Pu (submarine) cancel item of August 11, *Deutschland* goods."

By these entries it will be seen that the goods were removed from the Badische Co.'s merchandise account and subsequent entries show that the goods sold here on a consignment for Ludwigshafen. These entries had been made after most of the goods had been sold and enormous profits made on the same. The reasons given by Mr. Kuttroff in Mr. Garvan's examination, page 88, for changing this from a purchase basis to a consignment basis was that it was too risky for the Badische Co. to take the risk of buying the *Deutschland* goods on the other side in case the submarine should not make a safe journey. As an offset to this I wish to call your attention to the fact that the goods were not sold to the Badische Co. on the other side. They were sold to Schumacher & Co., of Baltimore, who in turn sold them to the Badische Co., so that the latter took no risk in buying the goods after they were once on this side.

No correspondence has been exhibited showing that Ludwigshafen notified the Badische Co. that the goods were being shipped to them, and it is common knowledge that the landing of the *Deutschland* here was a surprise to everybody concerned. Furthermore, it is my understanding also that the goods on the *Deutschland* were fully insured and therefore no risk was taken.

In addition to the $601,202.20 another shipment of *Deutschland* goods was received in this country in 1916 and the amount involved in this transaction, which was handled in exactly the same way, was $283,100.45. A calculation made by me would seem to point to the fact that the total profits up to December 31, 1916, on the *Deutschland* goods were $405,735.31.

On January 1, 1917, one month after the *Deutschland* goods were changed from a purchase basis to a consignment basis, the goods remaining on hand were put back on a purchase basis. By this means all of the profits on the submarine goods, with the exception of a small proportion, were given to Ludwigshafen. Even the goods just mentioned which were taken over in January, 1917, were on a sales price basis. (See Mr. Garvan's report, pp. 88, 89, 90, and 90½.)

In addition to the foregoing facts, it might be well to point out to you that when goods were previously sent on consignment Ludwigshafen was not paid for them until the goods were sold, while the submarine goods were paid for at the time of their delivery in this country, the Badische Co. having to borrow money to carry on this transaction.

There was another transaction in 1915 to which your attention should be directed, though it did not involve the passing of any profits to Ludwigshafen. On May 7, 1915, certain goods to the value of $302,139.71 were purchased by the Badische Co. from Ludwigshafen and were supposed to be sent to this country on the steamer *City of Memphis*. The invoices are in the Badische Co.'s hands but they claim that the goods were never received. They did, however, debit the merchandise account and credit Ludwigshafen at the time of the receipt of the invoices. On December 31, 1915, their inventory of their regular merchandise account (not submarine account) showed as follows:

Merchandise on hand in America	$7,256.86
Merchandise on hand in Europe	302,139.71

On April 19, 1916, Ludwigshafen was debited with $302,139.71 and merchandise account was credited, thus removing these goods from their merchandise account and from their books altogether. On December 31, 1916, their merchandise account was debited with $302,213.71 and Ludwigshafen was credited with the same amount. On December 31, 1916, their inventory of their regular merchandise account (not submarine) showed as follows:

Merchandise on hand in America	$756.42
Merchandise on hand in Europe	302,139.71

By this last entry the goods were placed back in the merchandise account and the liability to Ludwigshafen thus increased and helped to make the enormous remittances previously mentioned more plausible; the last entry was again reversed in January, 1917. Mr. Kuttroff's explanation of this transaction is contained on page 90½ and 91 of Mr. Garvan's examination of December 30. In addition thereto I wish to call your attention to the fact that the invoices for these goods indicate from the check marks that the goods had been received.

It will thus be seen that by the various transactions set out herein, $1,584,779.65 has been passed to Ludwigshafen's credit and actually remitted to them out of the profits of the years 1914, 1915, and 1916, entirely without any action or solicitation on their part demanding the money.

During the same period of time the stockholders of the Badishe Co. of New York received their regular dividends of 6 per cent on the stock of the company. This dividend, of course, was supplemented by a profit-sharing arrangement which added approximately $200,000 to the 6 per cent dividend.

In July, 1913, Adolf Kuttroff and Carl Pickhardt deposited the stock which stood in their names to Ludwigshafen's account in Title Guarantee & Trust Co. The stock was deposited under the agreement dated June 30, 1913, which reads as follows:

AGREEMENT WITH STOCKHOLDERS OF BADISCHE CO.

Agreement made this 30th day of June, 1913, between Adolf Kuttroff, of the city of New York, of the first part, and the Badische Anilin & Soda Fabrik, a corporation duly organized and existing under the laws of the Grand Duchy of Baden, Germany, of the second part, witnesseth:

Whereas the party of the first part is the holder of 1,205 shares of the capital stock of the Badische Co., a corporation organized under the laws of the State of New York; and

Whereas by an agreement between the party of the second part and the Badische Co., dated the 30th day of June, 1913, the said Badische Co. has, except as otherwise provided in said agreement, the conclusive right to purchase all dyestuffs, chemicals, and other articles manufactured by the party of the second part to be sold in the United States of America, and the British possessions in North America, for the period of five years from the 1st day of July, 1913, and for any further extensions of said period as provided in said agreement:

Now, therefore, in consideration of the premises and of $1 by each of the parties to the other in hand paid, receipt whereof is hereby acknowledged, it is agreed as follows:

The party of the first part hereby agrees to sell to the party of the second part or to such person, firm, or corporation as it may designate said 1,205 shares of the capital stock of said Badische Co. at any time on or after the 1st day of January, 1916, on payment of the par value thereof with interest at 6 per cent per annum from the first day of the current fiscal year.

And the party of the second part hereby agrees to purchase or cause to be purchased said 1,205 shares of the capital stock of said Badische Co. held by the party of the first part, on his demand at any time after said 1st day of January, 1916, and to pay or cause to be paid therefor the par value with interest at 6 per cent per annum from the first day of the current fiscal year.

It is further agreed that the party of the first part shall not sell or transfer his stock in said Badische Co., nor create or suffer to be created any lien, pledge, or encumbrance of or upon said stock or any part thereof.

This agreement shall apply to and cover any further shares of the Badische Co. the party of the first part shall get hold of by any increase of capital stock of said company or otherwise as well as to the shares now held by the party of the first part.

It is also understood and agreed that this agreement shall be binding upon the parties hereto and upon their respective executors, administrators, and legal representatives, and that the certificate of stock held by the party of the first part shall have indorsed thereon the fact that it is held subject to the conditions of this agreement.

In witness whereof the party of the first part has hereunto set his hand and seal and the party of the second part has caused its corporate seal to be hereto affixed and these presents to be signed by its directors the day and year first herein written.

ADOLF KUTTROFF.
[SEAL] BADISCHE ANILIN & SODA FABRIK.
HUTTENMULLER, MICHEL.

A similar agreement was entered into between Mr. Pickhardt and Ludwigshafen, except as to the number of shares. Further reference will be found to this matter in Mr. Garvan's examination of December 30, on pages 71, 79, 80½, 81, 82, 83, 84, 85, 85½.

In April, 1916, the capital stock of the company was reduced from $200,000 to $25,000, the reason given for the reduction to Ludwigshafen being contained in the following letter:

April 24, 1916.

Badische Anilin & Soda Fabrik.

In view of the fact that for some time we have had no use for a larger sum of money, and we also can only ask the low interest of 2 per cent from the bank, we have decided to reduce the capital of the Badische Co. from $200,000 to $25,000; that is, to reduce the par value of the shares from $100 to $12.50. We have the promise of the shareholders that, when business will again be normal, they will be willing to put in the necessary funds for increasing the capital again.

With friendly regards,

Badische Co.

(Letter did not arrive. We wrote again No. 266, 8-8-16.)

The fact remains, however, that at this time or shortly after this decrease in stock was made, the submarine goods came in and the Badische Co. was compelled to borrow considerable money in order to finance the transaction.

In 1916 about $40,000 was remitted to Ludwigshafen, the same being the profits received by the stockholders in addition to their dividends. The claim is made that Ludwigshafen suggested the stockholders making this remittance; that they would pay 5 per cent interest on the money, and that they would return the same to them in dollars, the stockholders profiting by the exchange rate. On March 20, 1917, $100,000 was remitted to Ludwigshafen of which $87,000 was for tantiemes accruing to the various stockholders.

Mr. Kuttroff explains that this is on the same basis. No evidence has ever been exhibited to us of this request from Ludwigshafen and it will be noted that the last remittance of $100,000 was made a few days before the United States went to war with Germany and many weeks after Ambassador von Bernstorff had left the country. This remittance, however, did not reach the other side but was returned to the Badische Co. by Schulz & Ruckgaber, through whom the money was originally remitted. The Badische Co., however, claimed that $87,000 of this money did not belong to them but to the stockholders and Schulz & Ruckgaber then remitted individually to each of the stockholders. The balance of the money, $13,000, was turned over to the Alien Property Custodian as belonging to Ludwigshafen. (See pp. 75, 76, 77, 78, and 78½ of Mr. Garvan's examination of Dec. 30.)

I also wish to call your attention to the fact that on December 31, 1914, the Ludwigshafen account on the Badische books was debited with $150,000. This amount represented money deposited in the American Exchange National Bank and in the German American Bank, which was marked "at the disposal of Ludwigshafen" in the journal and cash book.

In January, 1915, this entry was reversed.

On December 31, 1915, Ludwigshafen was debited with $227,144.14, which represented a balance in the American Exchange National Bank of $142,022.04 and a balance in the German American Bank of $85,122.10.

In January, 1916, these entries were reversed.

The only object that I can see for these transactions was that it improved the financial statement which the Badische Co. of New York was able to make at the end of the year by reduction of the liability to Ludwigshafen. The fact that the bank accounts were at the disposal of Ludwigshafen would not show on their statement.

In further proof that the bank accounts mentioned above were at the disposal of Ludwigshafen and were for their restricted use, your attention is called to the fact that the interest up to April, 1916, on these balances was credited to Ludwigshafen.

It is also interesting to note that these accounts were opened at the beginning of the European war in August, 1914, and that the following items were paid out of these accounts, namely, the amount paid out for the reduction of stock in 1916, and the $100,000 remittances of March 20, 1917, which were presumably for tantiemes of 1915 and 1916.

The ledger accounts controlling these bank accounts were orignally called "B S A F Special Account"; subsequently, however, the name changed to "Badische Co. Special Account."

I desire also to call your attention to the fact that on August 14, 1917, the following resolution was adopted by the board of directors of the Badische Co.:

"Whereas, since the declaration of war between the United States and the German Government, this company has not transacted any business directly or indirectly with any person or corporation in Germany; and

"Whereas the business since conducted by this company has been strictly and solely in behalf of its stockholders all of whom are citizens and residents of the United States:

"Now, therefore, it is resolved and declared that in the conduct of the business of this company since the declaration of war as aforesaid, any and all contracts and obligations with any enemy of the United

States or with any ally of any enemy of the United States, shall be and be deemed abrogated and annulled, and that no enemy of the United States, personal or corporate, and no ally of any enemy shall have or be deemed to have any right, interest, or control in or over the business or affairs of this company."

Just what purpose was to be served by this resolution is unknown. If the Badische Co. was an independent company and not purchasing any goods from Germany, there was no reason to pass a resolution of this kind. It may have referred, however, to the option to Ludwigshafen which is still existent or practically all of the stock of the Badische Co. It is interesting to note that the resolution was passed at the time when the trading with the enemy act was under consideration by Congress.

In October, 1917, after the trading with the enemy act was passed, Kuttroff, Pickhardt & Co. (Inc.), was organized with the same directors and four of the same stockholders as the Badische Co. Kuttroff, Pickhardt & Co. assumed the Badische contracts, both purchase and sales, and assumed the leases of the Badische Co. Among the peculiar transactions involved in this incorporation were the following:

The Badische Co. paid the Kuttroff, Pickhardt & Co. (Inc.) $44,899.27 for assuming their leases, though at the time that this transaction was made rents were increasing and not decreasing. In addition thereto they purchased $69,558.05 of goods from the Badische Co. Of this amount, $18,570.10 were goods which had come over on the *Deutschland* and which represented an average price of $4.12 a pound, while the goods had originally cost the Badische Co. $13 per pound. These goods, which cost the Kuttroff, Pickhardt & Co. $18,000, were subsequently sold at a profit of $79,118.75. This would seem to differ from the minutes of the Badische

Co. adopted at a special meeting of board of directors October 26, 1917:

"Adolph Kuttroff, president, and Fred'k Kuttroff, secretary, are authorized to sell the entire stock or any part thereof of dyestuffs, colors, and chemicals now owned by this company at not less than the market price; and also to sell the furniture, fixtures, and laboratory equipment at such prices as he may deem fair and reasonable. They are also authorized to sell, assign, and transfer 20 shares of the capital stock of Chemists Building Co., certificate No. 88, now standing in the name of this company, and to appoint one or more attorneys for this purpose."

In connection with the paying in of the stock of Kuttroff, Pickhardt & Co. it is interesting to note that Mr. Kuttroff drew in advance $20,000 of anticipated profits, though it was the usual custom of the Badische Co. to declare its profits on December 31 and to pay them the following year. (For further information relative to this see Mr. Garvan's examination, pp. 91, 92, 93, 94, 95, and 96.)

The files of the company show that certain important letters have been taken from the files. Mr. Kuttroff admits that his personal files have all been destroyed. (See pp. 97, 98, and 99 of Mr. Garvan's examination.)

To show the further control of Ludwigshafen, it was evident that Ludwigshafen was interested in the lease of the premises occupied by the Badische Co. In fact, they inquired from the Title Guarantee & Trust Co. before allowing the Badische Co. to sign the lease with Mr. Kuttroff, the owner of the building in 1914, and obtained from them a full and complete report on the same. Ludwigshafen also had an option to purchase the premises occupied by the

Badische Co. at 26 North Moore Street, for which $2,000 was paid. This option expired on the 31st day of December, 1918. Also an option on the premises 126 to 128 Duane Street, for which a nominal payment of $1 was given, and which expired on the 31st day of December, 1916. And also option on the premises at 20, 22, and 24 North Moore Street, for which a nominal consideration of a dollar was paid, and which option expired on December 31, 1918.

In addition to the control of the lease, it is evident from an intercepted letter under date of December 19, 1916, from Mr. Kuttroff to Ludwigshafen, that he was consulting them about salaries. The letter, which is a translation from the German, has been admitted by Mr. Kuttroff as correct, and reads as follows:

"With reference to my letters of the 17th and 15th instant, reference private U-7-12, I beg to state that on account of the enormous increases in the cost of living a 10 to 20 per cent rise of salary will be made to all business employees and to Government and municipal officials. In some cases business employees will receive a 25 per cent bonus on the year's salary instead of an increase. The wages of factory and other workers has risen from 35 to 60 per cent. In order to do justice to the case a rise of 15 per cent is recommended for persons of low salary and a bonus of 20 per cent for persons of medium salary. We await your decision by radio."

The reply came by wireless as follows:

"Agree increase salaries lower staff moderately amounts. Commission same as 1913, excepting yourself, Pickhardt, Poucher, Lendle. Consider Lendle's demand excessive. Agree total commission 180,000 instead of guaranties 4,800. If necessary concede 22,800. Await remittances."

From this it will be seen that Mr. Kuttroff was asking the approval of Ludwigshafen before he could increase salaries.

DISCOVERIES SINCE EXAMINATION OF DECEMBER 30, 1918, OR NOT BROUGHT OUT AT THAT TIME.

In order to show the ownership of Ludwigshafen in the stock of the Badische Co. and, therefore, consequently in the stock of Kuttroff, Pickhardt & Co., the following letter is set out in full. This letter was found in the files of Cardozo & Nathan:

[Translation of confidential letter to Mr. A. Kuttroff from Ludwigshafen.]

"Dated Sep. 13, 1912.

"We have at this moment again under consideration the question of including in our Officers Pension Fund the officers of our various branches and selling houses outside of Germany. Against a general admission of these gentlemen there are numerous serious scruples. To begin with, we have to figure with the law of the different countries in which insurance enterprises, especially foreign ones, can not carry on business without the permission of the state, and according to reports on hand it appears at least doubtful that in such countries, in case the gentlemen employed there are admitted, also our fund will not be subject to such permission and control. Further, with the officers of our foreign branches, etc., it is much more difficult and in many cases directly impossible, to examine on the base of the statute the question whether the conditions for the beginning and continuance of the pension are given. There are special scruples against the admission of employees of such foreign selling houses, which for tax-political reasons are organized as independent companies, and whose independence may be rightfully doubted by the tax authorities when it becomes known to them that the employees of such companies are members of our Pension Fund here.

"These scruples, though they do not seem invincible, are so weighty that we can consider the admission of the employees of our foreign branches, etc., only if it brings not only to them but also to our firm considerable advantage. This advantage we could see only in that such employees through admission in our Pension Fund would become more closely connected with the interests of our establishments, so that they regard their positions as life positions.

"Such an intimate attachment of the officers to the concern appears to be specially desirable for America, where the connections between principal and employees are so loose that often written employment contracts are not made at all, periods to give notice of intended separation are not agreed upon and where no one can be held legally to fulfill any obligations in regard to periods agreed upon.

"But just on acçount of the American conditions we have grave doubt, whether by admitting the gentlemen there to our Pension Fund we would attain the desired purpose, and we also doubt whether the gentlemen themselves take any special interest in the admission.

"Before we come to a decision in this matter we should like to hear your opinion. We therefore ask you to kindly write us in detail about the various questions mentioned above."

The letter bears no signature, but is marked at the top "Translation of confidential letter to Mr. A. Kuttroff from Ludwigshafen." The whole letter is of importance, indicating as it does that Ludwigshafen considers the independent organization of the branch houses merely from "tax-political reasons." (See first paragraph.)

It may be interesting to note in this regard that the following gentlemen, Dr. Ruppenthal, Dr. Meyer, Dr. Pfister, Dr. Lendle, and Mr. Hill, now in the employ of the Badische Co. and Kuttroff, Pickhardt & Co. (Inc.), but formerly in the employ of Ludwigshafen, continued the payment of their pension premiums to the parent house as long as possible.

Ludwigshafen received reports of the sales made and also a list of the customers who are unable to pay their bills. Also, according to the testimony of Mr. Kuttroff, given before Mr. Choate, Ludwigshafen fixed the prices at which the goods could be sold in this country, even after the Badische Co. became an apparently independent house. They continually sent to the other side copies of the ledger balances, journal, check, and cash accounts each month. On June 16, 1916, they sent their proposed contract with their customers to Ludwigshafen for their approval and advice.

In my preliminary report to you I pointed out that there had been established in this country a fund of $440,000. On December 31, 1914, the merchandise account was debited and the guaranty fund account was credited with $50,000. On December 31, 1915, the merchandise account was again debited and the guaranty account credited with $330,000. These amounts were set aside presumably to cover any law suits which might be brought against the Badische Co. for breaking off their contracts with their customers due to inability to make deliveries at the contract price. Upon investigation we find that the Badische Co. was not sued, and was only threatened with one suit, and that no reason exists for the setting aside of this enormous reserve fund. (Refer to Mr. Garvan's examination, pp. 70-71.)

In addition to the $380,000 mentioned above, the Badische Co. owns $80,000 of Liberty bonds which they carried in the United States securities account.

On Tuesday, January 7, 1919, the following entries were made in the journal and consequently in the ledgers, under date of November 26, 1918:

Debit—Adolf Kuttroff and Carl Pickhardt in safe deposit box No. 188, trustees for stockholders of the Badische Co.	$440,500
Credit—United States securities transferred United States Liberty bonds to Adolf Kuttroff and Carl Pickhardt, trustees	440,500

In this connection a resolution was adopted, apparently at a special meeting held on November 26, 1918, but of which your examiner had no knowledge until recently, and no mention was made by either Mr. Kuttroff or Mr. Nathan of the establishment of this trusteeship at the examination on December 30, 1918. The resolution adopted reads as follows:

"On motion duly made and seconded it was—

"*Resolved,* That the assets of this corporation to the extent of $440,500, consisting of United States Liberty loan bonds, be transferred to Adolf Kuttroff and Carl Pickhardt, to be held by them for stockholders of record on October 31, 1917, in accordance with their respective interests, and subject to deductions for any additional income and excess-profits tax, War Department, and for any claims heretofore presented against this company for and when established, to be distributed by said Adolf Kuttroff and said Carl Pickhardt when they deem it advisable.

"Unanimously adopted.

"Attest: FREDERICK KUTTROFF, *Secretary.*"

It will be noted that the entries on the ledgers were made after my preliminary report to you dated December 28, 1918, and after the examination conducted by you on December 30, in which you indicated the possibility of this money belonging to Ludwigshafen.

Mr. Nathan has stated to Mr. Choate that the reason for making these entries and passing this resolution was that he desired to distribute as much of the assets as possible, other than the capital assets of the company, in such a way that the creditors and stockholders would be fully secured and that having in mind Ludwigshafen's option he did not wish to make the stock of the Badische Co. any more valuable than necessary to them.

Among Mr. Nathan's papers we found the form of a contract between Ludwigshafen and Adolf Kuttroff, apparently bearing the date of October 30, 1909, and which would seem to expire on December 31, 1915. This contract, which is here set forth in full, would seem to be an absolute contract of employment between Ludwigshafen and Adolf Kuttroff. It provides for the payment of certain emoluments to Mr. Kuttroff by the Badische Co., of New York. It is not easy to understand how an apparently independent concern, the Badische Co. of New York, could have its finances disposed of by a party or parties who had no stock ownership.

Upon questioning Mr. Kuttroff as to whether he ever signed this contract, he informed one of my assistants that he did not remember whether the contract was signed or not, and when he was asked for the original contract my assistant was informed that the same had been destroyed.

The contract referred to reads as follows:

(Note.—Words in italics are inserted in pencil on original copy; words between parentheses have pencil mark drawn through them on original copy; words in solid capitals are underscored in pencil on original copy.)

"AGREEMENT made the *30th* day of *October*, 1909, between the Badische Anilin & Soda Fabrik, a corporation duly organized and existing under the laws of the Grand Duchy of Baden, Germany, located at the town of Ludwigshafen on the Rhine, party of the first part, and Adolf Kuttroff, of the Borough of Manhattan, City, County and State of New York, party of the second part, Witnesseth:

"Whereas, the party of the second part for some years has been and still is acting as the representative in the United States of the party of the first part, pursuant to the terms and conditions contained in two agreements between the parties hereto bearing date the 8th day of October, 1906, and the 4th day of August, 1908, respectively; and

"Whereas, the period of five years specified in the said agreements will expire on the 31st day of December, 1910, and the parties hereto have agreed to extend said period for the further term of five years from the 1st day of January, 1911, upon the same terms and conditions except as herein modified;

"Now, therefore, in consideration of the premises and of the mutual covenants herein contained, it is agreed as follows:

"The party of the first part hereby employs the party of the second part to act as its representative in connection with its business interests in the United States, for the period of five years from the 1st day of January, 1911, to the 31st day of December, 1915, in like manner as he is now acting under the existing agreements between the parties hereto, except that the compensation of the party of the second part shall be modified as hereinafter stated.

"The party of the second part hereby agrees to act as such representative for the period aforesaid in the conduct of the business of said party of the first part in the United States, through the Badische Company, a corporation organized and existing under the laws of the State of New York, or through such other party, firm or corporation as the party of the first part may hereafter otherwise arrange.

"It is understood and agreed that the party of the second part shall have and receive as a fixed annual salary from the Badische Company, or its successor in the business of the party of the first part, the sum of $10,000 during the period aforesaid, payable monthly.

"It is further understood and agreed that in addition to such annual salary the party of the second part shall have and receive from the party of the first part, through said Badische Company, or its successor in said business, during the period aforesaid, a commission on its total sales, based upon the net amount actually received therefor, at the same rate and upon the same commodities as is more particularly set forth in said agreement between the parties hereto bearing date the 4th day of August, 1908, together with a like percentage of the net profits on said sales, as is also in said agreement set forth.

"It is further understood and agreed that if the salary, commissions AND SHARE OF NET PROFITS (to be received by the party of the second part) for the year ending the 31st day of December, 1909, *as computed under the terms of the agreement of Aug. 4, 1908,* shall not aggregate the sum of $56,000, the various (commissions) *percentages of com. & share of net profit* to which the party of the second part shall be entitled in each of the five years following the 31st day of December, 1910, shall be proportionately increased to the extent necessary to aggregate, WITH SAID SALARY (and share of net profits,) the sum of $56,000 when computed upon the business for said year ending the 31st day of December, 1909; and that said increased *percentages of* commissions, *and share* *of net profits* so ascertained, shall be and be deemed the basis for computing the annual commissions *and share of net profits* to be allowed and paid to the party of the second part by the party of the first part during the portion of five years herein provided.

"It is further understood and agreed that the party of the first part shall not be required to pay the party of the second part, during said period of five years herein provided, any further compensation than the amount of annual salary, commissions and share of net profits herein specified.

"Out there are special compensations for sale of processes, etc.

"It is further understood and agreed that in all other respects the covenants and provisions contained in the existing agreements between the parties hereto shall be and remain in full force during the renewal period herein provided.

"It is further understood and agreed that the provisions of this agreement shall apply to and bind the successors and assigns of the said party of the first part.

"In witness whereof the party of the first part has caused its corporate seal to hereunto affixed and these presents to be signed by its and the party of the second part has hereunto set his hand and seal the day and year first above written.

"*(Acknowledgments)*."

In connection with the organization of Kutroff, Pickhardt & Co. (Inc.), and the guaranty fund account which was set aside, your attention is called to the following letters and contracts. The letters are from the attorneys of Messrs. Rosentwist & Goerner, the only concern which threatened suit against the Badische Co. for failure to deliver dyestuffs after the commencement of the European war. It will be noted that these letters object to the formation of Kuttroff, Pickhardt & Co. (Inc.), and the dissolving of the Badische Co., and in order that the same might be carried on the contracts set out herein were entered into by Kuttroff, Pickhardt & Co. (Inc.), but no record has been made of the contingent liability thereunder on their books. The letters and contracts referred to are as follows:

CLARENCE L. NEWTON,
60 STATE STREET,
Boston, June 20, 1918.

Messrs. CARDOZO & NATHAN,
128 Broadway, New York City, N. Y.

GENTLEMEN: Your favor of the 18th in re Rosentwist & Goerner matter received.

You have noted from my action in the past that we are inclined to do everything conducive to our client continuing friendly relations, and we have left the contract in abeyance up until it came to our attention that your people were dissolving the Badische Co., and the same individuals had organized a new one, and that the new company is carrying on business at the same places as the old, except that it has dropped the Canada office. Under the circumstances I felt that we ought to ascertain the present situation, in order that it might not turn out later that the Badische Co. had been dissolved and all rights lost.

I note your suggestion that the present company assume the obligation. Will you kindly indicate to me in what way you propose to accomplish this. I will then submit it to my clients, and I am sure that we can fix the matter along this line.

Yours, very truly,
CLARENCE L. NEWTON.
E. F.

September 5, 1918.

Clarence L. Newton, Esq.

Dear Sir: We have your favor of the 4th instant. The Badische Co. has abundant assets to pay all creditors, and in the liquidation of its assets it may be of practical importance that all claims and obligations should be asserted and established against it.

We fully appreciate the objection as to consideration; it is the desire and purpose of Kutroff, Pickhardt & Co. (Inc.) to continue business relations with Messrs. Rosentwist & Goerner, and that affords a real consideration for the guaranty of the claim against the Badische Co.; to meet your objection we have drafted a more formal guaranty to which we propose the consent of all stockholders, and we believe that the consideration stated is sufficient to make such guaranty valid. The company is a business corporation, and we agree with your contention that a guaranty solely for accommodation might be of questionable validity.

Even though you conclude there is slight doubt, we believe that your clients will approve the accompanying guaranty, as the Badische Co. is able to meet all its legal obligations.

Yours, very truly,

Cardozo & Nathan.

Clarence L. Newton,
60 State Street,
Boston, September 16, 1918.

Messrs. Cardozo & Nathan,
128 Broadway, New York City, N. Y.

Gentlemen: I have your favor of the 4th and have given some little time to the examination of your law in order to ascertain what protection Messrs.

Rosentwist & Goerner would have in event they entered into the stipulation proposed by you.

As I read your general corporation law, section 221, I do not find anything which seems to limit the time within which my clients must establish the indebtedness. In most jurisdictions whenever a corporation is dissolved a fixed time is given within which to prove claims or liquidate liabilities, and those not proven or liquidated within the fixed time are forever barred, and I very much fear that we will be put in a position of being called upon to take action to establish our claim against the Badische Co. at a time when it may be too late to do so, and then the guarantee will be of no value.

The upshot of it all is that I fear at some future time we will be left in a very chaotic, mixed-up situation and perhaps unable to do anything, all of which I am very desirous of avoiding.

What objection is there to the new corporation assuming such obligations as the Badische Co. had on these several contracts, so that we are left in precisely the same position against the new company as we would have been in against the Badische Co. had it not been dissolved, and your client, the new company, would have been under precisely the same obligation. We do not want by these negotiations to place any further liability upon your present company, nor do we want to be put in a place where we are left out entirely.

From the records and our investigation it would appear that the interests in the new company are practically identical with those of the Badische Co. I wish you would think this matter over along these lines and let me know if it can not be attended to in this way.

Yours, very truly,

Clarence L. Newton.

For and in consideration of $1 and of other valuable consideration, the receipt whereof is hereby acknowledged, Kuttroff, Pickhardt & Co. (Inc.), a corporation duly organized under the laws of the State of New York, does hereby guarantee the payment by the Badische Co., a corporation duly organized under the laws of the State of New York, of any damages with Rosentwist & Goerner, a copartnership carrying on business in Boston, Mass., may establish against said Badische Co., by reason of the alleged breach by said Badische Co. of four contracts between said mentioned company and said firm of Rosentwist & Goerner, dated respectively, October 18, 1913, November 20 and 28, 1913, and June 24, 1914, for the shipment of certain dyestuffs therein more particularly specified.

Dated New York, October 18, 1918.

[SEAL] KUTTROFF, PICKHARDT & CO. (INC.),
By ADOLF KUTTROFF, *President.*

City, County, and State of New York, ss:

On the 18th day of October, 1918, before me personally came Adolf Kutroff to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York, N. Y.; that at the time of the execution of the above instrument he was and still is the president of Kutroff, Pickhardt & Co. (Inc.) the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.

[SEAL] ERNEST BOENKE,
Notary Public, Kings Co. No. 12.

Certificate filed in New York County, 22.

We, the undersigned, being all the stockholders of Kuttroff, Pickhardt & Co. (Inc.) do hereby approve, ratify and confirm the foregoing guaranty by said company, and do hereby acknowledge and declare that the said guaranty was executed for good and sufficient legal consideration to the said corporation.

Dated, New York, October 18, 1918.

Adolf Kuttroff.
Carl Pickhardt.
Fred'k Kuttroff.
W. P. Pickhardt.

City, County and State of New York, ss:

Frederick Kuttroff, being duly sworn, says that he is the secretary of Kuttroff, Pickhardt & Co. (Inc.) and that the foregoing consent has been signed by the holders of all the stock of said corporation issued and outstanding.

Fred'k Kuttroff.

Sworn to before me this 18th day of October, 1918.
[seal] Ernest Boenke,
Notary Public, Kings County, No. 12.
Certificate filed New York County, 23.

Indorsement: Kutroff, Pickhardt & Co. (Inc.) to Rosentwist & Goerner. Copy. Guaranty. Dated, September 18, 1918. Cardozo & Nathan, counselors at law, No. 128 Broadway, New York City.

CONCLUSIONS.

To my mind, Kuttroff, Pickhardt & Co. and the Badische Co. are the most dangerous to American dye interests of all the German dyehouse agencies I have examined. They have attempted no manufacturing in this country and stand ready to-day with their organization intact to continue the sale of German dyes in this country as soon as they are able to procure them.

The complete dominance by Germany is shown from the very beginning of the firm's existence.

In the early years Ludwigshafen was a special partner of the partnership.

When it was changed to a corporation, Ludwigshafen received the larger percentage of the profits.

The books show that at the beginning of the Badische Co. the original money was invested by Ludwigshafen.

In the early years of the Badische Co. it was nothing more than a branch house of Ludwigshafen.

It then changed to a selling agency and finally, by purchasing the goods under very liberal terms, set themselves up as an independent house.

This, however, is contradicted by the fact that there was an option for the purchase of practically all of the stock of the Badische Co.

Ludwigshafen controlled the prices at which the goods were sold, and received full and complete reports of every detail from the Badische Co. and had to be consulted as to salaries, rents, and other details, which an independent house would never think of submitting to.

The contract of October 30, 1909, between Ludwigshafen and Adolf Kuttroff, which would seem to provide for him as an employee of Ludwigshafen at the expense of the Badische Co., and his refusal to advise us whether the same was ever entered into, constitute to my mind an important link in the chain of evidence of the control of the Badische Co. by Ludwigshafen.

And to cap the climax, the paying of over $1,500,000 out of the profits of 1914, 1915, and 1916, without the consent or approval of its stockholders or directors, to Ludwigshafen, and without the solicitation of Ludwigshafen, proves conclusively to mind that there is a secret agreement as to the profits either written or verbal betwen the Badische Co. and Ludwigshafen.

As to Kuttroff, Pickhardt & Co. (Inc.), from the methods of organization set out herein, the liberal rent arrangements as made with them, the absurd prices at which goods were transferred to them, the assumption of the liability of the Badische Co. to Rosentwist & Goerner, and the fact that the Badische Co.'s entire office, laboratory, and sales force were kept intact, would seem to prove conclusively that Kutroff, Pickhardt & Co.'s (Inc.) business object is merely to keep alive the Badische Co. under a name which they thought was not as German as the Badische Co. of New York. When in conjunction with these things, it is remembered that Kuttroff, Pickhardt & Co. (Inc.) was organized just after the passing of the trading with the enemy act, the intent and purpose of the organization becomes doubly clear.

All of which is respectfully submitted.

DEFENDANT'S EXHIBIT No. 55.

Letter from Hoechst Company Signed by Hauser to H. A. Metz.

Hoechst a/m, *September 20, 1919.*

Indigo convention.

Very confidential.

For the purpose of rendering more difficult any competition that might develop toward the business, the customers should now be notified that they should make their contracts for supplies now for a period of two years, and, of course, at prices with discount allowances which depend upon the two-year quantity amount.

Customers who get a 20 per cent discount on an order of 5,000 Ko. per year will get the benefit of the 10,000 Ko. prices, with a two-year contract, for 10,000 Ko. at 20 per cent off; also those whose order now amounts to 2,500 Ko. per year on which they get 20 per cent will get the 5,000 Ko. prices on a two-years' contract, less 20 per cent; and those firms whose yearly consumption only amounted to a few casks per year—if they sign a contract for at least 1,000 Ko. for two years, 20 per cent—will enjoy the 1,000 Ko. prices.

In the case of larger contracts, the advantage will lie in the granting of a larger discount—I am afraid that Mr. Metz was reminiscent—according to the quantities contracted for. For example, customers whose early needs amount to 15,000 Ko. at 20 per cent and who can now close a two-year contract for 30,000 Ko., 20 per cent, will enjoy the benefit of an extra 1 per cent, as well as those firms who will now close a 50,000 Ko. 20 per cent contract, instead of a 25,000 Ko. 20 per cent contract, will enjoy the benefit of an extra 2 per cent instead of 1 per cent, etc.

Furthermore, the following circumstances have been provided for:

1. The increase of a contract should now, as heretofore, only start six months from the date of the conclusion of the contract. The contingency of a two-year contract can, therefore, also be extended to cover a now existing contract in the case of those consumers whose six months' time period has not yet expired.

2. It is allowed, even if the amount of the contract has not been entirely taken up after the expiration of the first year's consumption of the quantities contracted for, in as far as they are entitled to a discount, to grant the discount due on them. Examples: A customer who up to date used 50,000 Ko. 20 per cent per year

closes a two-year contract for 100,000 Ko. 20 per cent, and has accordingly the right to a 3 per cent discount.

Consequently, after taking 50,000 Ko. 20 per cent he should be entitled to calculate a 2 per cent discount while he will enjoy 3 per cent upon the delivery of a further 50,000 Ko. 20 per cent, and upon the first half of the remainder 1 per cent.

It is understood that, even though he gets the discount accruing to the quantities already delivered before the settlement of the entire contract, he is not relieved from his obligation to take the remainder of the amount which he pledged himself to take.

3. Customers must close a contract for the whole quantity which comprises their normal consumption for two years; however, they are permitted to increase same within six months from the date of the contract in the event that they think that they will require a larger quantity than that for which they contracted.

4. On the other hand, it is not allowed that a customer who only arranged for a small quantity as his total consumption for two years, or only closed a contract for a one-year supply, should later be permitted to increase same.

5. The prolongation of the period of time for ordering provided for thus far being three months, it also remains in force for two-year contracts—therefore, as if the order period were actually two and one-quarter years.

* * * * * * * * *

6. The amounts contracted for must be accepted under all circumstances within the period of time arranged for their delivery, and an extension of the duration of the delivery time, with the exception of the above-mentioned three months, cannot be considered any more.

To provide for such customers whose two-year consumption will be larger than was provided for in the previously planned scale, and to encourage them to make such large contracts now for two years, the discount scale continues as follows:

To be discounted:

For contracts of 300,000 Ko. 20 c/c in 2 years 6.
For contracts of 450,000 Ko. 20 c/c in 2 years 6½.
For contracts of 600,000 Ko. 20 c/c in 2 years 7.
For contracts of 900,000 Ko. 20 c/c in 2 years 7½.

Very truly,

HAUSER.

Dealers and exporters are prohibited from enjoying the aforementioned advantages.

DEFENDANT'S EXHIBIT No. 56.

FARBWERKE VORM MEISTER LUCIUS & BRUNING,
Hoechst am Main, September 3, 1913.

[Confidential.]
Indigo Convention, America.

Taking into consideration our various verbal discussions of this affair we inform you that our patent lawyer in the United States has entirely changed his view of the whole situation after another thorough examination. He now believes that one can not exonerate the upholding of the common sales prices in the existing patent situation, that it has to do with a patented article. We are then in the same position regarding indigo, as toward the other conventions.

Unquestionably the conditions are not so advantageous in any convention as in the indigo convention, and in case of an attack, much could be said in favor of the same. Our lawyers have pointed out, after taking into consideration all the arguments which can be brought up, that the indigo convention also would fall under the Sherman law, because it is certain that the indigo prices over there would be cheaper than they are now, if no understanding between our two firms existed.

Since the indigo convention has already often been introduced, especially in the newspapers and in legal dealings, we are of the opinion that we should not hesitate to suspend the price agreement for America. Since, however, in this convention only our two firms come into consideration, we believe that it will be possible to take certain preventive measures, so that a sharp competitive struggle shall not ensue, which would surely be only to the disadvantage of our common interests.

We allow ourselves to offer you the following suggestions—

So to acquire a certain assurance in this direction we suggest that each firm shall place at the disposal of their sales houses that quantity that they delivered over there last year, with 5 per cent added, for this and for the coming year. Since 1912 was a good year, and a margin of still 5 per cent is planned, this quantity will not be too scant. Should the total sale, however, rise still more, it can always be raised, as we can exchange figures quarter yearly and control the stock.

In this manner it can be arranged that no salesman must refuse indigo to a customer whom he is serving at the time, and, on the other hand, that he does not control so much goods that by price swinging he can force possession of that of the others. Furthermore, it should be explained to the sales houses that we can not as yet book sales to them dating after 1916 and that they, should they once be able to do business for which they desire goods after this date, must notify us here beforehand; we would then have to reach an understanding among ourselves.

We are looking forward to your reply whether you agree to these suggestions.

Yours, truly,
BADISCHE ANILIN & SODA FABRIK
RUMPH.

DEFENDANT'S EXHIBIT No. 57.

LETTER FROM FARBWERKE VORM MEISTER LUCIUS & BRUNING TO H. A. METZ.

Hoechst A/M, June 8, 1914.

Strictly confidential.

My Dear Mr. Metz: Herewith I am notifying you, in strictest confidence, that we have decided upon a change in the price of indigo. An official letter to you from the Farbwerke, and from the Badische to Mr. Kuttroff, goes off by mail at once.

Both letters, the wording of which were not previously arranged, go off on the same steamer, so that every one will be informed simultaneously. I will wire the name of the steamer to you in plenty of time so that you can prepare yourself and so manage that you can go out and approach the indigo consumers immediately upon receipt of the letter and to try, on this occasion, to win over something from the Badische trade for our goods by means of a new settlement.

As per our arrangement with the Badische over here, the new price is only to be granted to those customers who make a new four-year contract.

This contract can be made with the present, or if the customer wishes to change, also with a new indigo contractor, and in the latter case the present contractor must deliver the rest of the old contract at the new price and may not make a new contract at a lower price, the condition for a concession on the price of the rest of the present contract.

Consequently, the new price is only granted to consumers after they have made a new four-year contract, either with the old or with a new purveyor. Whoever makes no new contract must continue to pay the old.

This information is strictly confidential and you must attempt nothing until the official letter is in your possession.

DEFENDANT'S EXHIBIT No. 58.

Ludwigshafen, June 13, 1914.

Kuttroff, Pickhardt & Co.,
New York City.

Dear Sirs:

Indigo price reduction.

We refer to our respects of even date to the Badische Co. regarding cost prices of indigo.

For your information we are sending you a German circular, together with the supplement, "Technik," etc., in order that you may conceive the idea how we carry into effect the price reduction in this country.

The Badische Co. advised us in memorandum of May 26 (I. 730) that Klipstein made trial deliveries of from 50 to 100 barrels to the Amoskeag Manufacturing Co., Bliss Fabyan & Co., and the American Printing Co. Such large quantities can hardly be called trial lots. It goes to show that these firms do not consider themselves obliged to take their entire requirements from us and from Höechst. It will, therefore, be necessary to watch these firms closely and we hope that in future you will succeed in keeping Klipstein away from these consumers.

The considerable reduction of the "R" sorts, especially of "R B," is thought of as a measure of competitive struggle against hydron blue. We refer to the German circular we are also sending you, which contains all the necessary information. We request an early report regarding the prospects with the new prices at the Amoskeag Manufacturing Co. (combination of ordinary indigo plus indigo R B), and it will also interest us to know if there are any prospects at the American Printing Co., of introducing indigo R B D in place of hydron blue 2 B.

We were unable to make arrangements with Höechst for the carrying out of the price reduction and the renewal of the contracts in the United States, as it is well known that this is not admissible. We only have come to the agreement that each firm should advise their respective American friends that it would be in the interest of the indigo business, if they also were to make the reduction in the selling prices; that is, corresponding to the reduction in the cost prices:

One cent on the selling price for the ordinary sort indigo.

Two cents on the selling price for the ordinary "R" sorts.

There is no change in the situation as talked over with you last January, viz. there is no intention to increase the sales by underselling at the expense of Metz.

Of course, you must also look out that Metz acts in the same manner and does not disturb our possessions. Our request at the time, not to make new contracts extending later than 1916, naturally is today invalid. We hope that this time the campaign of renewal of contracts will wind up without incidents, in order that you as well as Metz may retain each one's possessions.

Very truly yours,

BADISCHE ANILIN UND SODA FABRIK.

DEFENDANT'S EXHIBIT No. 59.

TELEGRAM FROM BADISCHE GERMANY TO ADOLF KUTTROFF.

"From Berlin.
"To Adolf Kuttroff, 128 Duane Street, New York.
"Agents will demand single duty.
"BADISCHE ANILINFABRIK."

DEFENDANT'S EXHIBIT No. 60.

TELEGRAM FROM BADISCHE GERMANY TO ADOLF KUTTROFF.

"From Berlin.
"To Adolf Kuttroff, 128 Duane Street, New York.
"Refrain from selling south.
"BADISCHE ANILINFABRIK."

DEFENDANT'S EXHIBIT No. 61.

NEW YORK, *November 16, 1914.*

MY DEAR BENEFACTORS AND FRIENDS,
Assembled in Hohen Hause, Wilhelmstrasse, 74:

Perhaps by the time when you receive these lines Herr H. A. Metz, of New York, will call with a letter of introduction. I wish earnestly to request you to take good care of him and treat him very nicely. Maybe you will take him to breakfast some time or show him other favors after the American fashion, in the event that Excellenz Richter or Dr. Muller do not do it. I am afraid they will be too busy.

At the same time I call your attention to something which you will have the kindness to bring before the proper authorities:

In considering all the favors to which Herr Metz is entitled it must not be forgotten that he is a competitor of the other dye works. For that reason I have just cabled you that the bonds covering reexport of dyestuffs are to be deposited with me. Also in allotting ship space for return freight it must be remembered that the other chemical works are to have a word to say. I earnestly recommend that this exportation of dyestuffs be somewhat more favored than has heretofore been the case, perhaps through my own suggestion, as otherwise there is danger that America itself will take up the production. Plans are already being prepared for a high protective tariff, which will be taken up by the Congress which meets in December. As Metz is a Member of the Congress, he is the right man to fight this measure.

On the other hand, the entire production of dyes should not be handed over to him, otherwise he might use the opportunity to eliminate his competitors. He is the real type of the "smart" American, who as a matter of course uses every situation for his own business purposes. Perhaps I may also to ask you specially to bring this to the attention of the proper authorities.

With hearty greetings.

Your respectful admirer,

ALBERT.

DEFENDANT'S EXHIBIT No. 62.

Telegram to Foreign Office in Berlin.

Serial No. 432 of March 13, 1915. It is reported to me by Hossenfelder,

Telegram No. 4, that the stock of dyes in this country is so small that by a German embargo about 4,000,000 American workmen might be thrown out of employment.

BERNSTORFF.

DEFENDANT'S EXHIBIT No. 63.

TELEGRAM.

MILLINGTON BEHREN,
Nine Berlin:

Hamilton Yerkes urgently request preventing all Hoechst and similar shipments. Inform immediately.

CHARLES SUCHARD.

DEFENDANT'S EXHIBIT No. 64.

New York, April 19, 1915.

DEAR MR. HOSSENFELDER (Hossenfelder was acting imperial consul general): Sunday night the following wireless message went to Berlin through the agency of the Deutsche Bank:

"'Hamilton associates Yerkes urgent requests to prevent all Hoechst and similar shipments. Inform immediately.'

"'Hamilton' means 'Embassy,' I am Yerkes. Unfortunately there was no code word for consulate general, so we had to designate you by the word 'associates.' In the stress of business I had no time to ask your assent, as you know we were agreed on the matter.

"The reference to 'Hoechst' is meant to convey at the same time a warning in regard to Mr. Metz. I assume that this is understood over there. I purposely refrained from direct mention of Mr. Metz as are not equal to the task under existing favorable conditions of making the country independent of Germany in the matter of aniline dyes, German enterprise, cut off at home by a destructive war, will be glad to do it for us.

DEFENDANT'S EXHIBIT No. 65-B.

LETTER FROM DR. ALBERT TO K. BOY-ED.

APRIL 28, 1915.

VERY HONORABLE CAPTAIN: . . . With regard to dyes, I got into touch with local experts in order to determine what truth there is in the news. According to my knowledge of things, the matter is a fake, inasmuch as our factories have bound themselves orally and by word of honor to do nothing in the present situation which might help the United States.

Many thanks for every suggestion. In case the news in paragraph 2 is confirmed, I will inform the State secretary of the interior.

With hearty greetings.

DEFENDANT'S EXHIBIT No. 66.

OFFICE OF HERMAN A. METZ,
New York, N. Y., April 8, 1915.

ROBERT F. ROSE, Esq.,
Foreign Trade Adviser, Department of State,
Washington, D. C.

MY DEAR MR. ROSE: Referring to our conversation over the telephone this morning, I beg to say that I received letters yesterday from one of my sources of supplies in Germany, the Farbwerke, vorm. Meister

Lucius and Bruening, dated Hoechst a/Main, March 18, in which they state that export permission had been granted by the Government for goods ordered by me before March 1, including approximately 85,000 ampules of salvarsan and neosalvarsan, 40,000 tubes of novocain tablets, approximately 500 pounds of novocain in bulk, 3,000 pounds antipyrin, and various other medicinal preparations, all of which are urgently needed in this country.

Naturally, these goods are not paid for, but they become my property the moment they leave the works or port, and travel at my risk, and I have got to pay for them within 30 or 90 days, after date of invoice according to the terms in each instance.

From Kalle & Co., Biebrich a/Rhine, another one of my sources of supplies, I have a letter dated March 18, also stating that they had received permission from the Government to export 1,250 pounds of dimethylaminophenyl-dimethylicum (a medicinal product known under the trade-mark name of "Pyramidon") which was ordered by me in January. Both concerns state that they regret that, owing to the British order in council stating that goods of "enemy origin" would be seized and the fact that the Dutch Steamship Lines refuse to carry goods of German origin, it will be impossible to ship those goods until some arrangement is made for their safe transportation to this country and that they hope it will be possible to take advantage of the export permit which has been granted to get these goods on the way soon.

This does not indicate any desire on the part of the German manufacturers or the German Government to withhold their products, and it was on the medicinal products that the embargo was made especially severe, so that in each instance special permission to export had to be obtained from Berlin. All letters I have so far received indicate a perfect willingness on the part of concerns I am in touch with abroad to send dyestuffs and other products if they were sure that we would get them. I know positively that the March quota was ready for shipment when the order in council was issued, and I know that the German manufacturers continued to ship chemical preparations and other products to Rotterdam after the order was issued and until the Holland-American Line refused to carry further cargoes of German origin. A "clean-up" was made on the steamship *Nieuw Amsterdam* of all goods that had arrived in Rotterdam by March 10, and further goods, other than dyes, I know are now stored in Rotterdam awaiting shipping facilities.

I understand that the American steamer *Navajo,* loaded with cotton reached Kirkwall to-day, and if permitted to continue to Bremen will leave Bremen about the 18th or 20th. Furthermore, I understand that the steamship *Carolyn* will sail for Rotterdam in a few days. Allowing about two weeks for her to get there, she ought to leave about May 1. It might be well to have Ambassador Gerard ascertain whether on arrival of these two steamers with cotton either one of them would be allowed to bring out the March quota of dyestuffs which was ready for shipment when the order in council was promulgated. Every pound of this stuff was ordered prior to March 1, and, as a matter of fact, most of the American importers of dyestuffs have got standing orders with the manufacturers abroad for all they can get that is available for shipment ever since the war began, and the orders that were placed are far in excess of what they have received so far or could possibly receive under the restrictions placed by the Germans upon the amount available for export, which was based upon our normal monthly consumption of 1913.

What proofs of American ownership would the allied Governments require to allow these products, which are so much needed on this side, to come forward? Of course, the guaranty of both Great Britain and France will be necessary to insure their safe passage. I want to point out to you the absolute futility of taking a chance of having the dyestuffs, in case their shipment was allowed by Germany, taken off by either allied power and paid for. The dyestuff dealers here do not need the money and do not want to sell their goods in England or France. They are under obligation to their customers in this country and must supply them, no matter what profit might be paid them for goods detained by Great Britain, and I have no doubt Great Britain would be very liberal in the matter. It would be no compensation for the mills here, however, whose employees would be forced into idleness if the goods were confiscated or even held temporarily to be passed upon by a prize court.

Yours very truly,
H. A. METZ.

DEFENDANT'S EXHIBIT No. 67.

Office of Herman A. Metz,
New York, N. Y., April 9, 1915.

Hon. William C. Redfield,
Secretary of Commerce, Washington, D. C.

My Dear Mr. Secretary: Referring to our conversation the other day and the various reports appearing in the newspapers, apparently emanating from your department, I beg to inclose herewith copies of a number of letters from manufacturers, which I sent to Mr. Tumulty at his request yesterday.

I have received all told over 450 answers to practically 1,000 inquiries sent out to the cotton, wool and silk manufacturers in this country, as well as to a few leather, paper, wall paper, color, paint, and printing-ink manufacturers. About 270 of those replying specified the number of employees that would be directly affected, and those totaled 260,000. The balance of those responding did not give any numbers, but said they would be compelled to shut down absolutely within 60 days. Assuming that they had at least as many employees as those that did respond, a total of 400,000 employees directly engaged in these 450 mills that have responded, together with their immediate families, will be affected. As there are between 1,500 to 2,000 such plants in the United States, a total of about 2,000,000 operatives are involved. If only 50 per cent of them are laid off through lack of work, it means a million people will be directly affected.

A number of mills asked me specifically not to mention their names, because they don't want the trade to know how badly off they are for colors; and the conditions arising from the claims of people who say that they have sufficient on hand to last them for a long time and from those who claim they are "going to manufacture" and supply the market, are most demoralizing to the mill men. Some of the mills themselves do not take the matter seriously. The commission houses to whom they sell think it is simply a ruse on their part to raise prices and keep paying those who are bluffing against those who are actually trying to do business and who are afraid of losing orders if they don't meet the buyer's views. The result is that a great many mills to-day are paying largely increased prices for supplies and can not advance their prices on the finished product in proportion. This holds good particularly for the dyers, calico printers, and color makers, to whom dyestuffs and chemicals are the main raw material.

Today's papers carry a statement, apparently emanating from your department, that six plants had invested $5,000,000 to make dyestuffs. I presume this refers to the steel companies who have changed their coke ovens so as to recover benzol. I am quite aware of the fact that between now and October 1 the various plants that will recover benzol will be able to produce at least 50 tons of benzol a day in excess of what was produced heretofore in this country and even with the small amounts previously produced we exported some to Europe.

Benzol, however, is the very first step toward obtaining aniline colors. The second step is producing nitro-benzol, and then aniline (aniline oil). This is used for making, in connection with betanaphthol and other intermediate products, some primitive colors, and used also largely for dyeing black on cotton, especially hosiery, but has been superseded of late years to a large extent by sulphur blacks. We can probably return to aniline black, however, to some extent, for hosiery. I understand the market price for aniline oil to-day is about $1.50 to $1.90 per pound, if it can be obtained. I understand that those who produce it here are offering "exclusive contracts," in other words, binding buyers not to buy anywhere else for from one to three years on a sliding scale at from 78 cents down to 35 cents and 25 cents a pound, subject to a minimum of a little over 10 cents if the market price falls to that figure. Aniline oil, including a duty of 10 per cent, sold here right along for about 10 cents per pound before the war and came largely from England and Germany. Since the war small quantities have come from England on special request for export permission, but none at all from Germany. As far as I know none of the producers of benzol or aniline oil intend taking up the manufacture of colors, but several concerns, claiming from one hundred thousand to one million dollars capital, are said to have started plants making aniline colors. Judging by the statements credited to your department, you are in touch with these parties and have assurances made by some manufacturers to you in person. Won't you please, for the benefit of the textile manufacturers who are relying on these statements and whose supplies won't last longer than the next four or six weeks, publish, or at least let the trade know, in some way the names and locations of those manufacturers, stating the products and in what quantities they propose to furnish them and how soon they will be ready, so that the mills can get in touch with them? I will be glad to advise the hundreds who appeal to me of the possibility of obtaining products from such parties whose names you furnish me with. It is something tangible that the textile mills need and not mere statements in the newspapers as to what some one is "going to do." It simply keeps the jobbers and the commission houses on the defensive and injures manufacturers all along the line through false hopes which these reports raise.

It may interest you to know that of the dyestuff manufacturers in this country before the war, the only one who "claims" to have made any progress toward making intermediate products is the one in Buffalo, but strange to say it is impossible for consumers to obtain supplies from him. The concern that really ought to be in a position through its foreign connection and knowledge of how to make these products, the one in Albany, is practically shut down entirely with no prospects of resuming. The two in Newark, besides my own, which, so far as dye making is concerned, is absolutely shut down, are also practically out of business. True, they are all experimenting and hope to be able to get somewhere eventually when they get aniline oil. Not a pound, however, can be bought for less than $1.50 to $1.90 before July, and then only when contracts over definite periods are made.

I give you these facts so you may verify them and give the textile interests a chance to know who the people are that are going to do those things and when. Telling a fellow he is going to have a good dinner and all kinds of dessert next Christmas, when he is starving on Decoration Day, is not much satisfaction, and this is about the position the textile manufacturers are in.

Yours very truly,
H. A. METZ.

DEFENDANT'S EXHIBIT No. 68.

THE CHEMISTS' WAR.

"We fear German efficiency." That is the reason assigned by the editor of the most prominent Anglo-American newspaper of New York for the anti-German attitude of his possibilites. The efficiency of the German nation is indeed wonderful, but instead of inciting our antagonism it should serve as a lesson; it should arouse our admiration, and above all should cause us to apply ourselves as industriously and as indefatigably as the Germans do, so that we should no longer fear them, but emulate and even surpass them. Our task, compared with that of the Germans, should be relatively simple, as we have natural resources superior to those possessed by any other nation; and, unlike the citizens of European countries, we inhabit a continent which is secure against all aggression.

In no other field has German efficiency proven its superiority more than in that of chemistry. While this was undisputed before the present war, it is no exaggeration to state today that the German chemist has so far contributed as much if not more to the success of the campaign than the strategist, the Army and the Navy, and that therefore the present holocaust may be justly called the chemists' war.

Germany, deprived of all imports by the sea power of England, has been transformed into a self-supporting country by the chemist. This necessitated a readjustment along the whole line. Food for the people and fodder for animals had to be provided within the confines of the Empire. Materials had to be manufactured which hitherto had been imported and substitutes had to be improvised for raw materials, the supplies of which had been cut off by the English blockade.

The most remarkable results have thus been achieved in agricultural chemistry, and nothing has been of greater consequence than the method by which Germany will render herself forever independent of the importation of fodder, for which she was obliged to expend annually $250,000,000. Most of this money went to the United States for so-called concentrated feed—cottonseed-oil cakes, corn oil-cakes and similar by-products—the export of which has contributed largely to the profits of the agricultural industries for our country and therefore to the prosperity of our farmers, especially those of the South and Middle West.

It will be of general interest to describe how this great deed was accomplished. It has been known for some time that in the process of fermentation, that is, the conversion of sugars into alcohol by means of certain lower orders of plants, such as yeast, albuminous substances are generated by the growth of the yeast. But the amount of such albumen was very small, in fact its formation during alcoholic fermentation was considered most undesirable, as owing to its presence fusel oil and other impurities were produced. About 1910 it was realized, however, that the albuminous matter contained in yeast might be of value as a food for human beings and as fodder. Experiments were at once undertaken in a most systematic and comprehensive way by the institute for the fermentation industry in Berlin, and soon two varieties, a pressed food yeast and a pressed fodder yeast, were obtained which were found to give highly satisfactory results in practical feeding experiments. The only trouble was the small yield of albumen which made the process unprofitable. During the last few months this difficulty has been overcome, and on April 3 public announcement was made of the complete success of this process. The favorable results were brought about by carrying out the fermentation in the presence of sulfate of ammonia as a source of nitrogen, which by the metabolism of the yeast is converted from its inorganic into its organic (albumen).

From 100 parts of sugar by the use of 52 parts of ammonium sulphate 270 parts of pressed yeast have been obtained; indeed experiments have been published according to which 100 parts of sugar furnish 100 parts of water-free dry yeast. Yet even these incredible yields, and the fact that Germany is the largest producer of sugar in the world, would have availed nothing if sulphate of ammonium, the nutrient of the yeast, could not be procured at an economical cost.

But chemical ingenuity also provided a source for this material which is likewise employed very largely as a nitrogen fertilizer. It has always been recovered as a by-product in the coking of coal, an industry in which Germany leads the world. But largely it has been produced on an extremely large scale by direct combination of hydrogen and nitrogen, as carried out exclusively in Germany. The nitrogen needed in the manufacture of sulphate of ammonium is obtained from the atmospheric air and in this form is converted into albumen by the yeast. We have here the most interesting and most direct transformation of nitrogen from the air into food albumen. Hitherto this conversion has been most complicated. The inorganic ammonium sulphate has served as a fertilizer for bread cereals and those grains and plants which are used as fodder; animals are raised on this, and when slaughtered their meat furnishes a large part of the albumen contained in our food. How complex and tedious this process is appears from the following fact: Cereals and plants required from 6 to 8 weeks for their development; they grow only during about one-third of the year, the months of May, June and July, while their production is restricted by the area on which crops can be raised; the animals require space for their keeping and they must be tended with extreme care.

On the other hand, yeast plants develop very quickly and attain their full growth within a few days. They thrive in any kind of receptacle independent of rain or shine, they need no light and can be grown all the year around.

The production of yeast is not a new departure; in fact large amounts are today produced in the distillery industry, in the brewing of beer, and the manufacture of wine. The yeast formed in these processes of fermentation is a by-product, which after compression is extensively employed in the baking of bread, cake, etc.

In the new fermentation processes, however, the main object is the production of yeast which is intended to be used as an albuminous food for human beings and animals.

Besides its value as an economical substitute for animal albumen, yeast will be preferred by many people who have an aversion to meat or who consider the slaughter of animals for food purposes cruel and disgusting. Its importance will be further realized by bearing in mind that it affords the vegetarian the required amount of an albumen, which as regards nutritive properties is even superior to meat albumen, since it contains 2 per cent of lecithin, which is of great value as a nerve food and tonic. Yeast also contains vitamines which are so necessary for nutrition and the absence of which in our dietary is the cause of much sickness. Take, for example, Beri beri, a disease which is caused by the eating of polished rice from which the vitamines, which are present in the hulls have been removed. Meat, on the other hand, is said to be the cause of various diseases, such as gout, arteriosclerosis, kidney affections, etc.

As far as the price of this yeast is concerned, it is stated that the amount purchasable with 1 mark (24 cents) yields 904 calories, while 1 mark's worth of beef gives only 623 calories, and that one pound of dry yeast is equivalent to 3.3 pounds of medium beef.

As mentioned above, the economic production of the new food yeast could not possibly have been of such enormous importance if the German chemists had not also provided [illegible] the nitrogen from the air a new and profitable source for the manufacture of sulphate of ammonium. Hitherto atmospheric nitrogen could be utilized only where cheap water power was available. This was solely the case in Norway, and consequently very large plants were established there in which nitrogen obtained from the air was converted into nitric acid and nitrates. The cost of power per certain units in Norway was about $4.50 compared with $18 in Niagara Falls. Owing to the existence of inexhaustible deposits of lignite coal in the neighborhood of Cologne and in Anhalt, the Germans are able to produce the same unit at $7.50. Although this price at first sight is higher than that of Norway, it means in reality greater cheapness all around. There is hardly any industrial development in Norway, and almost all chemicals and apparatus must be imported and the finished products exported. As this is not necessary in Germany, where in addition to a highly organized industry there exists the most perfect and cheapest inland water transportation system, the price of $7.50 compared with $4.50 in Norway is actually cheaper.

With this cheap power Germany utilizes the nitrogen from the air not only for the manufacture of nitric acids and nitrates, but also for the production of ammonia, ammonium sulphate, and calcium cyanamid.

Indeed, new nitrogen compounds have been lately discovered which threaten to revolutionize our present system of fertilization. This new industry, to which the war has given the impetus, has assumed such dimensions and has given such unexpected results that the Government requested the German Parliament to grant an imperial monopoly for all these nitrogenous materials. The chemical industries are fighting such measures because it is believed that they would interfere with the development of the new methods. From the documents published relative to this nitrogen monopoly it appears that chemical compounds have been discovered the efficiency of which as nitrogenous fertilizers allows the production of a material suitable as a universal fertilizer. Today nitrogenous fertilizers are employed mainly in two forms, namely, as saltpeter (Chile saltpeter), which is a nitric acid salt, and as sulphate of ammonium, which is an ammonium salt. It is the task of the intelligent farmer to decide at what time in the season and for what crops one or the other or mixtures of these two forms must be employed. The universal nitrogenous fertilizer which the German chemist has discovered is very likely a new synthetic substance which unites the nitric and ammonia forms in chemical combination and is perhaps more economically produced than nitrate of ammonium, which is already known as such a compound and has found great favor as artificial fertilizer.

That this new scientific achievement will prove of momentous importance appears from the fact that the great chemical works which supply the world with dyestuffs, synthetic remedies, photographic developers, artificial perfume, etc., have entered the field and have become important factors in the artificial fertilizer industry of Germany. The peace negotiations will undoubtedly culminate in the conclusion of commercial treaties between the nations. What an enormous power will be exercised by that nation which, possessing such a universal fertilizer and practically a world-wide monopoly of potash salts, will have something to sell that every farmer in the civilized world absolutely requires!

There will be a big rush for the Teutonic band wagon, and all the ideas of a nation boycott of the Germans or of an ostracism of Germany's traders and manufacturers will quickly vanish in thin air.

In the synthesis of ammonia either pure ammonia itself or ammonium carbonate is obtained, neither of which is suitable for direct employment as fertilizers or yeast nutrient. They must first be changed into sulphate of ammonium, and for this conversion sulphuric acid is necessary. This latter product is obtained in Germany very largely from Spanish ores or from sulphur imported from the United States.

On account of the war there has been a marked advance in the prices of sulphuric acid and the problem arose how to procure the acid necessary for ammonium sulphate at such low figures as to make the use of this material possible. This task was solved in the most ingenious manner. In Germany large quantities of minerals consisting of sulphate of calcium (gypsum) and sulphate of magnesium are found. It was always known that these chemicals in reaction with ammonium carbonate furnish directly ammonium sulphate, but no practical use has ever been made of this theoretical fact. The exigencies of the war, however, caused the testing of this reaction on a factory scale and today, without the use of foreign material and without the trouble of manufacturing sulphuric acid—by a simple chemical transportation—the desired object has been economically and successfully attained.

In their endeavor to free themselves forever from the importation of ores for the production of sulphuric acid the German chemists went one step farther and succeeded in substituting these domestic materials, namely sulphate of barium and magnesium, for the Spanish ores and our sulphur. Sulphate of barium and magnesium are reduced by means of coal to their sulphides, which are decomposed by carbonic acid into the carbonates and sulphuretted hydrogen. The latter furnishes sulfurous acid and sulphur, either of which may be employed for the manufacture of sulphuric acid. And so sulphuric acid is the most indispensable material in all chemical enterprises the war thus taught the German chemist how to render his country independent of foreign trade conditions in this most vital branch of his profession.

Bearing in mind these stupendous efforts expended in the manufacture of artificial foodstuffs, it is interesting to note how, even in Germany where economy is practiced to such an extent, valuable sources of natural food materials had been neglected in times of peace.

When the English blockade, however, threatened to starve the women and children of the Empire, a careful inventory of the natural resources was taken. It was ascertained that certain plants which had been regarded useless weeds possessed considerable food value. Fourteen wild growing vegetables were found which furnished substitutes for spinach, while five plants supplied excellent materials for salads. But of still greater significance is the fact that nature offered nine varieties of roots rich in starch and affording wholesome aliment for man and beast. These unexpected sources of nutritive material will in the future further threaten our export trade to Germany, which has so largely consisted of foodstuffs.

On the other hand, the following demonstration of efficiency is worthy of report:

Among the visitors to New York on the occasion of the International Congress of Applied Chemistry in 1912 were two professors of the Agricultural High School in Berlin, Doctor Foth and Doctor Parrow, who both are well remembered by their American colleagues.

Scarcely had the German army occupied Belgium and Northern France when Doctor Foth was called there to supervise the agricultural resources of the captured territory, and Doctor Parrow was appointed to the same office in Russian Poland. Both scientists at once took charge of the sugar-beet and potato crops and their utilization in the interests of the invading armies and the civilian population.

We are also exporting large quantities of oil and fats to Germany, especially animal fat from our slaughterhouse industries and cottonseed oil. By a treatment with hydrogen the German chemist transforms cheap grades of oils fatty wastes of all kinds and, most important of all, the fish oils of the Swedish and Norwegian fisheries into edible fats. Our business in these materials may also be threatened by the cultivation of the sunflower, the seed of which furnishes an excellent oil which is already largely used for food purposes in Russia. As sunflowers grow almost anywhere, sufficient seed might be raised from which oil could be obtained as substitute for our cottonseed oil. For Germany this oil would be of further advantage, as, when mixed with the distillation products of lignite coal, it affords excellent lubricating oils to replace our best cylinder oil, etc.

For this purpose Italian olive oil has already been imported during the war in large quantities, but this traffic is not interrupted owing to Italy's entrance into the war.

As curiosities in the search for foodstuffs we might further mention the attempt of the chemist to utilize the fresh blood of slaughtered animals which contains highly nutritious substances. Long before the war bread made with the addition of fresh blood to the dough was eaten in some parts of Europe, especially in Finland. This tastes like black rye bread, is very nutritious and very economical. It is interesting to note here that during certain religious festivals a confection consisting of chocolate and fresh blood is sold in Naples and eaten by the ladies with great relish.

The agricultural chemist has also undertaken the task of supplying Germany with a substitute for cotton, which can no longer be procured from us. Although it is realized that there are enormous difficulties in the way a great deal has already been accomplished. Paper spun into threads in special machines serves as substitute for cotton and jute in the manufacture of bags, etc., which need not stand heavy wear and tear. For the manufacture of guncotton, cellulose is employed which is produced from wood pulp by the various refining processes now known. By a preliminary treatment with acid and steam and subsequent solution in liquids, such as Schweitzer's reagent, in alkali-bisulfuric of carbon (viscose treatment) common wood pulp is converted into a highly purified cellulose, which for many nitration purposes is superior to cotton fiber. It has already been known for years that for the manufacture of celluloid certain tissue papers give better results than cotton.

Millions of bales of cotton which might have relieved the congested American market and might have yielded large profits to our Southern farmers, instead of lying in our warehouses or piers, might have gone up in smoke (?) as smokeless powder, if the Germans could have imported them and employed them for the manufacture of guncotton, etc.

Even in war time people must think of such frivolous thing as dresses and clothes, and the German chemists are hard put to improvise substitutes for the ordinary cotton fabrics. Curious to relate they have made marked progress in this respect. The nettle fiber, which was largely used in Europe as a textile material prior to the introduction of cotton, has again attracted much attention. Most interesting reports are being published and patents being taken out for the utilization of the bast fiber of willow bark. Willow boughs are valued as material for weaving baskets. A special school for the cultivation of willow trees—a remarkable demonstration of German efficiency—exists in Graudens West Prussia. Director Brickwedel of this school, about 10 years ago, suggested the use of the bast fiber of willow bark as a textile fiber, since he found it to be very strong and of fine structure. It surpasses hemp fiber and closely approaches cotton fiber in purity and textile strength. According to the patented processes the bark is first spread and dried either by exposure to the air and sun or to artificial heat in a drying room. It is then packed in small bales, which may be kept for years without injury or decomposition. The bark is then treated in an alkaline bath for about five to eight hours, dried and freed from tannins, and then mechanically freed from wooden fibers like hemp and flax. The fiber thus obtained furnishes an excellent substitute for cotton and is especially recommended for surgical purposes, as it possesses great power of absorption. It also furnished an excellent paper.

All these endeavors to substitute cotton may appear ridiculous to us who have been brought up with the idea that "Cotton is king" and that we have been destined by fate to supply this fiber to the civilized world. The farmers who cultivated the madder root and the planters who raised indigo were also inclined to jest when they were apprised of the fact that German chemists had succeeded in reproducing in the laboratories the dyes which their crops furnished, but when the manufactured materials drove the natural products from the markets and left the farmers and planters without a job hilarity ceased.

History may repeat itself and willow bark and nettle or some other substitute raised on German soil may in the near future depose King Cotton. The German chemist has a duty to perform, and with his perseverance and application he does not shrink from any problem however difficult it might appear to outsiders.

The raising of silkworms and the production of silk are also undertaken with great zeal. Mulberry trees, the leaves of which are fed to the caterpillars, thrive very well in south Germany and in the Rhine province. This industry is to be developed not so much to make Germany independent of the importation of raw silk but for the reason that this occupation offers easy and profitable work to war cripples and invalids, work which can be done in about six weeks of the year.

The chemist has also succeeded in replacing the product of the camphor tree, which before the war had been obtained from Japan and is of so great importance in medicine and in the manufacture of smokeless powders. It is now made artificially in the factory and it has been found that synthetic camphor not only surpasses the natural in medicinal efficiency but that it is of greater purity, a stronger disinfectant, and cheaper, at least as long as war prices prevail.

The German chemist, who has already solved the problem of manufacturing synthetic rubber, will perhaps also tackle the problem of making Germany independent of rubber imports in another direction. The milkweed plant, which belongs to the Asclepias family, furnishes a latex which resembles that of the cheaper grades of rubber. Although the amount of rubber is small and the quality poor, yet the chemist need not despair if he remembers that the sugar beet first used in sugar making contained only 4 per cent of a very superior grade of sugar, while today it furnishes 22 to 24 per cent of sugar of such high quality as to be indiscernible from the first cane sugar.

Great ingenuity is displayed by the metallurgical chemist in replacing copper by other metals. As a result, the consumption of copper for use for war purposes and for the arts is considerably reduced. With its inexhaustible supply of iron and steel and its wealth of zinc and a domestic supply of copper amounting to an annual production of 40,000 tons Germany is in an excellent position to manufacture substitutes for copper. Gun and rifle cartridges and the fuse heads of grenades are made of soft iron with a small percentage of copper and zinc. Buttons, button facings for helmets, belt buckles, which were formerly made of brass, are now made of alloys free from copper.

In the electrical industry iron and steel wire are used exclusively. Long-distance electric power transmissions are being conducted over steel cables, and cables are manufactured of aluminum.

In machinery construction and journal bearings brass is entirely replaced by steel and iron. Instead of massive bronze, hollow bronze castings, or iron or steel castings coated or covered with bronze are employed.

Next to steel and iron, aluminum and magnesium play a prominent part as substitutes for copper. It has been found that an aluminum-magnesium alloy possesses great advantages over the latter as an electric conductor. Magnesium is said to be useful for many purposes for which aluminum is being employed today. This is a very important discovery, because Germany has enormous supplies of magnesium chloride, a by-product of the potash industry, which has been considered worthless up to now. Two large factories, started during the war, are now producing magnesium.

While magnesium may thus be obtained from a domestic source, aluminum has been hitherto made from beauxite, a mineral imported from France. The necessities of the war forced the chemist to look for a domestic raw material for this important metal. He now uses a cheaper grade of beauxite found in Carinthia, Dalmatia, and Hungary. But more wonderful still, he has succeeded in extracting from cheap clays, which are found in great abundance throughout Germany, a pure aluminum which serves as an excellent raw material for the manufacture of aluminum. Two factories are working these processes, and Germany will remain forever independent of these foreign countries, Switzerland and the United States, upon which so far it has relied for supplies of this metal.

Long before the war varied uses were made of aluminum instead of copper, and in recent years the latter has successfully challenged the heavier metal in almost every branch of electrical engineering.

According to a statement in the London Times of January 15, 1915, aluminum has been employed on most of the more important power transmission lines of recent years, the two largest power plants in the world being equipped with aluminum conductors exclusively, one alone absorbing nearly 3000 tons of the metal. Aluminum is also used largely for short distance power distribution in central stations, railways, etc.; the whole of the feeder connections in the new Westminster (London) power station, for instance, consists of aluminum, while the entire insulated feeder system of the Paris tramways is made of the same metal, the latter absorbing several hundred tons.

It has been estimated that in America 20 per cent of the total output of aluminum is utilized for electrical conductors. The English War Office ranks among the principal consumers of the metal for this purpose. It is of interest to record that Captain Scott of Antarctic fame, employed aluminum wire for the portable telephone installation which he took with him to the South Pole.

Actual implements of war in the manufacture of which the chemist exhibits his remarkable ingenuity are the various kinds of gun powder, explosives and primers used in cartridges, grenades, shrapnels, bombs, torpedoes, etc. Each of these instruments of destruction requires special grades and mixtures of smokeless powder and of high explosives, such as picric acid, troty (T. N. T.), etc. All these materials are produced from nitric acid on the one hand and cotton, carbolic acid and toluol, on the other.

Nitric acid is generally prepared from Chile saltpeter and sulphuric acid, but in Norway, as described above, it is made from nitrogen of the air and in Germany from ammonia and calcium cyanamide, which themselves are obtained from the nitrogen of the air.

These recently developed sources assure to Germany an unlimited supply of nitric acid not only for all war purposes but for general industrial use.

Germany has also an inexhaustible supply of benzol and toluol owing to her vast coking industries, in which these materials are recovered as by-products. As regards cotton, however, there is a great deficiency and, as stated before, the various kinds of refined cellulose and paper must now serve for the production of smokeless powder.

In view of the fact that this country is furnishing vast amounts of ammunition to the Allies, it may be instructive to describe how this export has affected our legitimate chemical industries. How great the injury inflicted is the following instances will show: Nitric acid, which we make from Chile saltpeter and sulphuric acid, has advanced from 3½ cents per pound to 14 cents and at present cannot be bought at all.

The same is true of sulphuric acid. In fact, there is such a demand for this acid that one manufacturer of legitimate chemicals is compelled to ship it in tank cars from the Pacific Coast and pay for goods worth $15 a ton $30 in freight.

The havoc thus wrought in our industries is irreparable. Benzol and toluol, which are the most important starting materials for the production of dyestuffs and synthetic remedies are unfortunately also employed in the manufacture of high explosives, and therefore at present are not available for the needs of humanity.

Benzol, which cost about 25 cents per gallon before the war, now costs $1 per gallon, and toluol, which was always cheaper than benzol, is sold at present at the exorbitant price of $5 a gallon.

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Benzol furnishes phenol, which in turn is converted into picric acid by nitration; from toluol trinitrotoluol, which as an explosive is superior to picric acid, is derived in the same manner. Phenol, our most common, effective and cheapest disinfectant, has become well-nigh a luxury. While previous to the war it sold at about 9 cents a pound, it now fetches $1.50 per pound.

The prices of trinitrotoluol have been the subject of parliamentary inquiries in England, from which it appeared that the product was sold to the English Government at $1 per pound and to the French and Russians at $1.35 per pound. Even at the cost of $5 per gallon of toluol, meaning about 65 cents per pound from which 3 pounds of trinitrotoluol are produced, these prices afford enormous profits to the American war brokers, because 1 pound of trinitrotoluol only costs about 30 cents to produce. The poor Allies, France and Russia, thus paying him $1 clear profit for every pound of the much desired trinitrotoluol.

However gratifying such profits might be they become insignificant, and in fact turn into heavy losses, when we consider how our legitimate industries are suffering. For every working man profitably employed in the manufacture of arms and ammunition there are at least 100 idle laborers in the textile industries.

For the one firm of J. P. Morgan & Co., the huge war contract profits of which have been repeatedly and unfavorably criticized in the English Parliament, there are thousands of southern bankers whose money is tied up in unsalable cotton. The profits in our exports in arms and ammunition are wiped out by the vast loss of money due to our inability to import dyestuffs, potash salts, cyanide of potassium, sugar-beet seeds, etc., which he hitherto bought from Germany and of which our farmers, our textile industries, our miners are so badly in need.

How seriously our manufacturing and trade interests are threatened appears from an excellent editorial in the New York Times, of July 12, 1915, from which the following is quoted:

"Imports consist principally of goods which enter directly into manufacture, remanufacture or industrial consumption, all requiring labor in some form, so that when imports fall there must be a corresponding unemployment of labor.

"The United States has suffered a greater loss on account of the war than any other neutral nation. All that can be said of the profits arising from the trade in war munitions is that they somewhat offset the enormous loss directly owing to the same cause. The profits of the war trade are theatrical, and they fall into a few hands and are advertised more than they deserve to be. The greater loss falls upon trade and industry at large. There is probably not a wage earner in this country who has not at some point of contact adversely felt the war, either in what he earns or in the price of what he buys, or both. Investors feel it much. The rise in the rate of interest abroad is a direct hardship to them, because it affects the rate of interest here, and as that rises the market value of old securities fails. Credit by hundreds of millions is extended to the Allies, in order that they may buy here. This credit might otherwise be going into works of development at home, works which in their construction would create a big demand for labor and which, when finished, would be permanent additions to the wealth-producing machine of all the people.

"These things are so obvious that if it were put to a vote of commercial-minded people to continue or end the war, purely as a business matter, even the manufacturer of war munitions would undoubtedly vote with all the rest to end it. Why? Because the profits from war contracts are fickle, whereas just the normal growth of industry in time of peace is enough for the imagination and capital of the American people to cope with. To argue that the United States has a selfish interest in this war is to betray either ignorance or prejudice. We would much rather sell Europe the goods normally consumed in time of peace and take in payment therefor, not gold, which we do not need, nor credit, which we could use ourselves, but other goods."

What a strong argument for an embargo on all exports to all belligerent nations, which, as everybody concedes, would end the war more quickly than any other measure. The fearful unemployment of our labor and the great losses of our trade and industry at large can only be prevented by a quick end of the war.

No discussion of this subject would be complete without a mention of the most modern instruments of war evident by the chemists, namely, the poison-gas bombs, the fire liquid and the incendiary bombs.

At about the middle of last February the war correspondents reported that the French were using a material called turpinit, after its inventor, Turpin, which was described as a most deadly weapon. It was said to asphyxiate the soldiers in the trenches and its explosion near a herd of cows killed the animals so instantaneously that though dead they were found in a standing position presenting all the appearances of life. The dead soldiers in the trenches also remained in the attitudes which they had assumed at the very moment they were overwhelmed by the poison gas.

The gas used seems to have been a nitrous oxide compound similar to that employed in medicine as an anesthetic.

About the end of April, the Germans began to use poison gas which according to the journalistic reports appears to be liquified chlorine.

Nothing has as yet been published about the fiery liquids which the belligerents are using, but concerning the composition of the incendiary bombs dropped upon London, a coroner's inquest gives the following details:

"The bombs contained an explosive called thermit. It gave off enormous heat, as much as 5000, and set everything on fire that it touched. Thermit is a mixture of powdered aluminum and magnetic iron oxide used in welding iron and steel and in repairing broken steel castings. When this mixture is ignited, the oxygen leaves the iron and combines violently with the aluminum, producing a slag which rises to the surface, the molten steel sinking to the bottom. The heat evolved by the reaction is enormous and a temperature can be obtained second only to that of the electric arc."

DEFENDANT'S EXHIBIT No. 69.

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THE NEW CHEMICAL WARFARE.

By JULIUS STIEGLITZ

A striking feature of the great war is the prominent part played by the natural sciences in its inception and its progress. The major nations on each side are bringing to bear upon the problems of offense and defense, of supplies of foods and other necessities, upon the preparation and preservation of their man power, all the vast resources of scientific knowledge and research which the last hundred years have given to our civilization. Nearly all the sciences have been called upon to render important service, but it is not surprising that the leading rôles have fallen to the two fundamental natural sciences—physics, the science of the transformation of energy, and chemistry, the science of the transformation of matter.

The public was not unprepared for the great feats of the physicists: their mastery of gravity in the magnificent development of the aeroplane, their mastery of the buoyancy of the sea in the modern submarine, their masterful use of light in observation and range-finding methods of remarkable precision, and their impressive control of all forms of sound transmission in wireless telegraphy and wireless telephony and in submarine detectors. All these have been rapid developments of inventions with which men have been familiar in earlier, cruder forms and which were easily understood. But there is little question that the leading part played by chemistry in the war in an almost infinite variety of ways came with a shock of surprise to the public, and for the first time in history roused men to a realization of the power and resourcefulness of this fundamental science. Chemistry is a difficult science; its greatest triumphs are based on the application to given problems of its theories and laws concerning those invisible, sub-microscopic worlds, the atoms and molecules, of which matter is composed. The high powers of scientific imagination controlled by rigorous logic, which makes the intangible, ultimate particles realities to the chemist, appeal to comparatively few men who do not devote their whole lives to the science. Consequently, the achievements of chemistry are commonly accepted as completed results, while the processes by which they are obtained still have for the public much of the air of that mystery which shrouded the efforts of the alchemists in the Middle Ages.

It is no exaggeration to say that chemistry made this war possible in its very beginning and is now primarily responsible for the prolongation of its terrible ravages. There is no question that without the recent development by her great chemists, especially by Professor Haber, by Professor Ostwald, and by Dr. Caro, of methods of converting the atmospheric nitrogen on a large scale into ammonia and nitric acid, Germany would not have dared to open the war in 1914. It was these discoveries that insured to her ample and constant supplies both of explosives for the battlefields and of fertilizers for her farms for an indefinite length of time. The Haber process alone has been estimated to have produced in 1917 no less than 500,000 tons of ammonium sulphate as against a yield of 60,000 tons in 1914, and the total yield of nitrogen products obtained from the air in Germany in 1917 has been estimated at 1,600,000 metric tons! Without this aid, in the face of the possibility of Great Britain's control of the seas and the cutting off of supplies of nitre and food, Germany would have been compelled to stake all on the chance of a speedy conquest, such as she failed to achieve in 1914 as a result of the Battle of the Marne.

With chemistry thus a vital factor in the very inception and planning of the war, it is not a matter of surprise to find in its progress that the power and resourcefulness of the science of the transformation of matter should have been drawn into the conflict to an ever increasing degree, until at last we have chemists at the very battle front waging war on a scale never witnessed before in history. Twenty per cent of the shells now fired on the western front, it is estimated, are charged with chemical poison or irritant rather than with shrapnel. Besides this direct participation in the actual fighting, chemists behind the lines are the "key men" in huge industries, in part supplying the warring armies with munitions, in part meeting the more peaceful but pressing needs of the civic population for articles which before the war were imported from foreign and, especially, enemy countries. In addition to contributing thus directly to the demands of the war, chemistry has been called in a number of imperative ways to the aid of her sister sciences in the solution of war problems. Within the limits of this article, it will be possible only to touch upon the most striking of these activities in which chemists have been engaged, especially in our country's own relations to the war.

Medicine is doing wonders in protecting the millions of men in arms against disease in camp and trench, which in previous wars was prone to count more victims than did the battlefield. The science is writing an even more wonderful record in saving life and limb from the carnage of the long battle fronts. To medicine chemistry is giving its antiseptics and disinfectants, iodine, phenol and bichloride of mercury, chloride of lime and formaldehyde, as well as the modern preparations of Dr. Dakin, derivatives of hypochlorous acid, made to have a maximum disinfecting and antiseptic effect with a minimum of injury to the tissues. To medicine, too, chemistry must contribute on a scale never before demanded, the anaesthetics for the operating tables of the base hospitals, a shortage of which in the early stages of the war caused so much needless suffering.

Here we have an excellent instance of the great possibilities of the science. Cocaine, found in the leaves of erythroxylon coca, which was first used as a local anaesthetic, has the great disadvantage that it is dangerously poisonous, and its use led occasionally to fatal consequences. Moreover, the supply was limited and its cost often prohibitive for all but the wealthy. A profound study by chemists of the arrangement of the atoms in the molecule of cocaine gave the world the plan key for the preparation of similar, but simpler drugs, which can be made in any quantity from coal-tar products and which, above all, show far lower degrees of toxicity than cocaine. Thus, one of the best of these products, procaine (the new official name of the drug introduced as novocaine) is only one-sixth as toxic as cocaine and its use is practically devoid of danger. Again, chemistry must supply medicine with its anodynes and hypnotics, such as chloral, sulphonal, trional, and barbital—the official name of the drug introduced as veronal. These are all products of the ingenuity of chemists in devising means to an end; and in barbital, which is closely related to substances like uric acid to which our bodies are accustomed, we have perhaps the least harmful of the agencies for bringing sleep to the sufferer while nature exerts her healing powers.

In the face of the fast disappearing margin of safety in the food supplies of the world, final success or failure of the warring nations may rest with the botanist, under whose guidance should be placed the effort to produce a maximum yield of food despite a shortage of men. To this vital campaign chemistry is giving the lore of the composition of the soil, the recipes for fertilizing it properly with potash or phosphate, with nitrate, ammonia, or lime, in order to make possible intensive cultivation. There is no exaggeration in the statement that German chemists have saved their country from the alternative of starvation or surrender by the aid they have rendered agriculture in supplying it with the thousands of tons of ammonium sulphate and nitrate prepared from the atmosphere by the processes of their great chemists. When parasites threaten the growing crops or a blight attacks the garnered grain, fruit, or vegetable, it is again to the chemist that the botanist is wont to turn for his cyanides and arsenicals, copper salts and sulphur mixtures. Finally, the efforts of the botanist in control of agriculture must be supplemented by the chemist in perfecting methods of preservation, and especially of desiccation of foods, which in one operation could relieve difficulties of transportation, of storage, and of preservation.

To the physicists chemistry has supplied as needed, indispensable materials, without which their brilliant achievements would probably have been in large part impossible. The keenness and accuracy of vision of the modern range-finders, of telescopes, field-glasses and cameras—the eyes with which physics has equipped modern armies and fleets on the sea and in the air—depend on the preparation by the chemist of optical glasses of purest quality and fine adjustment in composition to a great variety of needs. It is well-known that this problem of optical glass was one of the most serious of the many confronting us when we entered the war, and a very brilliant and rapid solution was worked out by a staff of chemists under the able direction of Dr. Arthur L. Day, whose success is destined to be remembered as one of the great achievements of American scientists in this war.

Again, the modern aeroplane would collapse under its load of pilot and observer, of armor and ammunition, did not chemists supply those cunningly devised alloys which combine greatest strength and toughness with a minimum of weight. In fact, every single component of the aeroplane and its equipment has been made the subject of intensive chemical study, designed to meet the new conditions of strength and lightness, power and compactness, resistance to vibration and to the moisture of the clouds and the frigidity of the skies. The fuel of the engine, the lubricant of its parts, the metal of the engine and of the framework, the material of the wings and of their coating, all these are chemical problems, still engaging the attention of investigators who would improve this vital weapon of the air. No doubt, we all regret that the chemists by stored oxygen, by reagents absorbing carbon dioxide and producing oxygen, by the storage of energy in electric batteries, have kept the submarines, an invention of the physicists, from suffocating in their own foul gases in the depths; but there is comfort for us in the thought that our own submarines may profit by these discoveries.

If we turn now from the services of chemistry in support of the important war work of other sciences, to achievements wholly her own, we have, first, the more peaceful and beneficent duty of chemists to supply the people of this country with chemicals hitherto imported from abroad. Three typical and important illustrations of these tasks must suffice: the providing of drugs for the health of our people, the manufacture of coal-tar dyes for our textile, leather, and related industries, and finally the production of potash for farm and factory, the supplies of which were to a great extent cut off from us when commerce with Germany ceased. These three great tasks of chemistry have been selected because it is important for us to realize that it is our duty to free our country for all time, if possible, from dependence on foreign countries. We must have chemical independence in peace if we wish to have it in war, and if we wish to avoid any repetition of the grave perils to which the health of our people, the stability of our industries, and the productiveness of our farms were exposed by our situation at the outbreak of the war.

It is a pleasure to be able to summarize the situation in regard to drugs, and especially in regard to the so-called synthetic or artificially produced drugs, which as specifics are in many instances superior to any natural product, by saying that the worst is over. Almost all the essential drugs are now being manufactured in the United States, and in a very few weeks the shortage that has existed will be a matter of the past. Thus, Ehrlich's famous specific salvarsan, officially known as arsphenamine, is today being manufactured in Philadelphia, Brooklyn, and New York on a scale sufficient to supply the army, the navy, and the public with an article which is superior even to the original German brand. It is also cheaper today than before the war as the result of conditions imposed by the Federal Trade Commission in the issuance of licenses for its manufacture. The sufferer from gout may have his phenyl cinchoninic acid to clear his system of uric acid, the victim of insomnia his diethyl barbituric acid (barbital or veronal); and for the patient on the operating table or in the dentist's or oculist's chair, procaine (novocaine) is now being made and soon will be available in the quantities needed.

The situation has been acute, and "Bulgarian operations"—operations without an anaesthetic—had become all too common according to reports from hospitals. Why should we ever again expose ourselves to such unnecessary infliction of suffering upon the patient? The Federal Trade Commission is charged with the duty of issuing licenses for the manufacture of drugs under enemy owned patents, and it has taken hold of the problem in a broad and constructive spirit, with the object not only of encouraging manufacturers to meet present needs but also of helping them to build up an American industry that may continue after the war. Accordingly, licenses are being issued not merely for the period of the war but for the entire life of patents, and new official names are being given to important products, so that after the war the market may be open to all and the public may benefit by the existence of several sources of supply in place of an exclusive one.

A most encouraging sign of our future independence in this field, which must include freedom from foreign patents if it is to be a permanent and worthy independence, lies in the research that is going on to discover new and, if possible, better remedies than those made under foreign patents. Even in this short time, encouraging results have been obtained. One American house has invented a local anaesthetic, apothesin, which, according to the investigations of eminent surgeons, may be safely and effectively used in place of the toxic cocaine and as a substitute for procaine, and the Rockefeller Institute has reported most promising progress in the development of a less dangerous and much cheaper specific than arsphenamine.

In regard to the manufacture of coal-tar dyes to take the place of those formerly imported from Germany we find, according to the report of Secretary Lane, that at the outbreak of the war in 1914 we had five or six manufacturing houses producing dyes and that we now have over ninety such concerns, besides a hundred firms producing so-called "crudes" and "intermediates," from which the dyes are ultimately "built up." In a recent conversation, a former representative of one of the great German manufacturing establishments—an American of unusual ability and keenness of vision—told me that in his opinion Germany has lost forever the great bulk of her trade in dyes with us. We are now making the blues and the blacks and other plain colors in as good quality as they could be imported. It is especially in the field of the fancy dyes—for instance, the fluorescent dyes—that we have as yet done little more than make a beginning. Whether we can develop the production of these finer dyes, or indeed hold our own in the manufacture of the more common ones, involves a very important issue for the country.

The total value of the dyes is not so very great—a fact which has been too often over-emphasized by men who apparently would discourage dye manufacturing in this country—but the value of the fabrics on which dyes are used is enormous. There is little reason to doubt that after the war Germany will make a great effort, perhaps not to recover at once her commerce in dyes, but rather to gain a great initial advantage by selling fabrics colored with her best and finest dyes in the markets of the world. A wise and liberal policy on the part of Congress in encouraging capital investment in this field by protective duties until methods of manufacture on a large scale and outlets for the utilization of by-products have been properly developed, will be the decisive factor in making possible future American independence in dyes. Many of us remember the violent outcry against the duty on tin plate when this duty was first imposed—and yet this duty led to the development of the huge industry which has supplied us during the war with the tin plate we needed. No sensible individual would care to contemplate what our situation would have been if we had been obliged to start an infant tin plate industry at the outbreak of war. Let us at least have time to develop in the same way a great and independent coal-tar dye industry to supply us in peace or war with dyes as well as the synthetic drugs we need more urgently even than dyes; for the same plant that converts the benzene and the toluene, the anilin and the toluidin of the coal-tar into flaming colors or into pain-soothing or disease-curing medicinals, can also convert in war time these crude products into the all-powerful T. N. T., picric acid, and similar "high explosives."

The potash problem is perhaps the most important industrial problem which chemists must solve for our country. Germany has in the Stassfurt deposits the greatest easily mined potash supplies in the world. Some of her ardent patriots are already boasting that after the war Germany will be in a position to dictate to the rest of the world exactly how much of this invaluable fertilizer each country may have, or, in other words, exactly how productive the wheat, corn, and cotton fields of a country will be permitted to be. This is not altogether a vain boast. At the lowest estimate Germany would have in her hand a trump card by which all agreements on the part of her enemies as to after-the-war trade embargoes and all resolutions by our own chambers of commerce not to import goods from an imperialistic Germany might be set at nought. We must recall that even before the war, the German government regulated and limited the quantities of potash which could be exported. How much more readily will she now avail herself of her potash supplies to insist on liberal terms for trade after the war and for the materials she herself stands in sad need of! The value of such a controlling position in regard to this necessary fertilizer can only be destroyed if we and other nations succeed in making available other great potash supplies at before-the-war prices.

The United States has ample quantities of potash in its mineral resources, but most of it is locked up in silicates like feldspar, from which it cannot be leached by water—as can the potash in the Stassfurt deposits—and which is so resistant even to acid that at present the recovery of potash from feldspar is expensive and possible only as a war enterprise. We have potash in salt lakes like Searles Lake in southern California and the Nebraska Lakes in northwestern Nebraska, in the sea-weeds of the Pacific Coast, in the alundite deposits of Utah and the flue dust of cement mills; and we are now supplying from sixty to seventy per cent of the country's normal needs—but at war prices, prices which the farmer and manufacturer would refuse to pay if a trade agreement with Germany should bring in a cheaper product, for which she would try.

In the development of our own resources surely lies the greatest problem for the ingenuity and the scientific ability of the American chemist. Increased exploitation of our salt lakes, more scientific methods for the purification of their product—which in important instances is contaminated with borax, a poison for the soil—a careful survey, with the proper chemical analysis, of the potash content of waters of the United States and of Mexico, and attempts, with the aid of geologists, to locate the mother beds from which the potash is derived in these lakes, and, finally, continuous effort on that hardest of all the problems, the economic extraction of potash from our abundant feldspars, represent the most promising lines of work in this field. Chemists have a great classic precedent for bending their best energies to such problems, for van't Hoff, the great Dutch chemist, perhaps the greatest chemist of the generation that is now passing, devoted some of his last years and his fine command of the science to one of the most difficult of the Stassfurt problems. By his solution the potash in the mineral carnallite, a double salt of potassium and magnesium chlorides, became available as pure potash salt.

In chemistry "behind the lines," we find, in the first place, our great steel industries meeting a demand for steel for guns and shells, for ships and for armor, for the innumerable accessories in buildings, railway equipment, and machines, a demand greater than at any time in the history of the world; for the steel industry is simply our greatest chemical industry, consisting of a series of chemical operations carried out on a huge scale. From the assaying of the ore at the mouth of the mine and in the yards of the mills, from the regulation of the coking oven and the closest inquiry into the composition of every ingredient mixed with the ore in the furnaces or with the crude iron, through the supervision of manufacture by specimens drawn off and sent to the chemical laboratory for rapid tests, to the final stages of its purification, steel is the product of chemical control and investigation. The chemist's knowledge of how the properties of steel can be modified as to toughness or hardness, elasticity, temper, and resistance to heat and to cold through the cunning admixture of other components, has been used as never before to give a longer life to great guns, to add to the resistance of armor, to preserve the cutting edge of high-speed tools working without loss of efficiency at temperatures at which ordinary steel would melt like butter on a July day.

Side by side with steel stand the explosives for the millions of shells we are making. Thus the best of modern explosives, trinitrotoluene or T. N. T., is being manufactured from toluene with the aid of nitric and sulphuric acids at the rate of many tons per day. The power of this explosive was never shown in a more tragic and overwhelming manner than in the recent destruction of Halifax, which was brought about by the explosion of a cargo of T. N. T. in the harbor. Other high power explosives, picric acid or trinitrophenol, gun cotton or nitrocellulose, nitroglycerin, the explosive ingredient of dynamite, and nitrogelatin, are being manufactured on a colossal scale under the direction of expert chemists. Let the compounding go a bit too fast and temperature control be lost, then the giant powers inevitably pass from the control of man, whose only safety lies in flight from the approaching volcanic upheaval.

For the scientist all of these high explosives are substances whose ultimate molecules are extraordinarily unstable, because they contain in closest proximity within each molecule the combustible component represented in ordinary gunpowder by charcoal and sulphur, and the oxidizing component represented in black powder by the nitre. Or, in more modern terms, these explosives contain huge quantities of electricity, in the form of electrons ready to leap within each tiny world like a flash from atom to atom and, when they do let go, producing gases that can raze cities and remove hills by the energy of their quick expansion. But "that is another story," to which I have referred only to emphasize that it is through our knowledge and control of this ultimate structure of matter that chemistry can transform at will the same crude material toluene into a destructive giant like T. N. T. or into the fairies of modern realism—hypnotics, anaesthetics, and other curative agents.

Upon the chemist also falls the duty of insuring a constant stream of supply of the basic materials from which these high explosives are made. The manufacture of sulphuric acid is in itself a vast industry, working at its utmost capacity and seeking every available source of its own crude material, sulphur. For the production of nitric acid we are still dependent on the nitrates of Chile and Peru, but at the end of last August our government at length made a definite start on the erection of plants for the production of nitric acid from the atmosphere. Similar factories in Germany, as I have already said, have kept her supplied with this absolutely necessary material, without which she could not have faced the possibility of a prolonged war.

Along the Atlantic coast huge plants for the manufacture of alcohol from molasses and other cheap fermentable materials, have risen as war industries. From the alcohol acetic acid is obtained by oxidation on a scale which produces in a single plant a quantity approximately equal to the vinegar made in the world the year before the war; and the acetic acid in turn is converted into acetone for the munition manufacturer. Similarly, the needed production of toluene and benzene for the high explosives has led us under the guidance of chemists to begin to recover the by-products of our coke ovens, by-products which formerly went to waste in smoke to the amusement and hardly suppressed scorn of the European chemist. From the recent report of the Secretary of the Interior we find that this industry has doubled its capacity since 1914, but that half of our coke will still be made this year in the old beehive ovens, from which the coal-tar, the benzene, and toluene so urgently needed for increasing the output of high explosives, escape into the air. So precious are these products that our larger gas plants are introducing, with the aid of the government, expensive machinery for the collection of the three or four drops of benzene and toluene which are found in every cubic foot of gas, the total quantity thus to be recovered running into the millions of gallons. If the critical situation of the food supply of the world and the war weariness of the fighting nations do not bring the war to an early close, a decision probably can be forced only by the side that can hurl against the enemy the greater number of thousands of tons of high explosives. A maximum production to the limit of our capacity by a rapid extension of the modern coking oven to all of our coking plants would, therefore, prepare us for an attempt to duplicate on the western front in Europe some such tremendous effects of T. N. T. as were witnessed in the Halifax disaster.

In passing, we may ask what can be done with all these by-products of the gas and coking plants after the war. Benzene, toluene, and the other coal-tar ingredients will no doubt be a drug on the market; but chemists are continually discovering new uses for these materials. Moreover, for dyes and medicinals they are being used on an ever increasing scale in the manufacture of modern plastics, like Dr. Baekeland's bakelite, a condensation product of phenol and formaldehyde, like redmanol and condensite, which have found innumerable applications. These range from the preparation of finer articles, like the plates for phonograph records, to the manufacture of massive insulating blocks and the manifold other insulating devices needed by the electrician. With the great excess of supplies of coal-tar after the war we may also expect to see a rapid extension of the applications of these useful inventions of modern chemistry, possibly to articles of furniture, flooring, and similar household appliances.

The part which chemistry has in the battle-line itself is perhaps the most interesting and absorbing chapter in the history of the war so far as it is being written by chemists; it is also the most horrifying and depressing, and for very obvious reason it can be written in detail only after the war is over. When Germany let go the first wave of poison gas in contravention of all international agreements, it is said that the British general in command wired to London that if relief were not sent within three days the whole British line would be compelled to retire. This is a measure of the intolerable suffering of the first victims of this treacherous mode of attack, which has been justified in the eyes of the German public only by the claim that the French had first used chemical "stink-pots." To the credit of the co-ordination of science and government in England it is reported that within thirty-six hours a million and a half of the first crude but sufficiently effective gas masks were delivered at the front—simple gauze affairs saturated with absorbent (probably some alkaline liquid) for the dread chlorine gas of the enemy.

Since that day chemical warfare has developed rapidly on both sides, offensively and defensively. At first it was simply a matter of a "gas wave" propelled by the wind and rolling over the land from trench to trench; but this mode of attack was too dependent on the whims of the shifting winds, and chemical warfare very soon had recourse to the hurling of shells loaded either with a deadly poison or with irritants for the eyes and all exposed mucous membranes. It is estimated that on the western front every fifth shell now fired is loaded with chemicals, which are held in much greater fear by the men in the trenches than shrapnel or bomb. Most dreaded of all, however, is the last form of chemical attack, the attack by liquid fire, against which there is no defense except speedy flight or retirement and the species of defense which lies in the fact that the attackers in flame warfare are usually easily detected and rapidly "picked off."

It is best on the whole not to name the materials used in this savage business. Some of my readers may recall the incident in a London murder trial when a chemist was asked whether all poisons could be detected, and replied "all but one." When the question —"which one?"—was next put, the wise judge instantly forbade the chemist to reveal the dangerous secret. A few of the facts, nevertheless, concerning the materials used in chemical warfare have already received such wide dissemination that they may be mentioned here. Chlorine was the first gas used, a violent irritant for all mucous membranes and especially for the lungs, as every student in chemistry has experienced at some time or other. Chlorine is still much employed both for gas waves and in bombs charged with the liquefied gas under high pressure. Indeed, the manufacture of chlorine on a very large scale is becoming speedily one of the great munition industries of the United States. Even more terrible than chlorine is phosgene, a combination of chlorine with that other deadly gas, carbon monoxide, which is produced in a coal or charcoal stove when the glowing coal has an insufficient supply of air for complete combustion. The specific gravity of phosgene is greater than that of chlorine, and it has been largely used, often mixed with lighter and more poisonous gases, for the gas wave attack under the favor of the winds. Even a single whiff is oppressive to the lungs for a day. It will be better to say nothing about the nature of the ingredients carried by shells intended to scatter poison or irritant among the ranks of the enemy. Some of them are so deadly that two small whiffs are sufficient to cause death, others so irritating that they are blinding or cause such edema of the lungs that men are totally incapacitated.

Against this dread offensive chemical warfare, after the first surprise attack, effective defense has been developed on both sides by masks containing suitable absorbents for the purification of the air which is inhaled. The nature of the absorbents is known to many, but in war time it seems wiser not to be specific in these matters. It should suffice to say that the most important quality which a good mask must have is to absorb a great variety of poisons with a speed which will allow the strenuously working soldier to inhale at least thirty litres of air per minute. This represents a tremendous rate of flow, and only the best, most porous, and most active materials are of any value. Chemical officers in the camps are teaching our men, by object lessons with some of the materials they are likely to encounter at the front, that the gas mask, uncomfortable as it no doubt must be, is the very best friend a man in the trenches can have.

With the perfecting of the gas mask has come a great duel of skilled minds on both sides in the invention of new deviltries, with the hope of surprising the enemy by some ingredient which cannot be absorbed by the common reagents used in masks. Chemists are stationed at outposts and in the trenches to detect the first signs of a chemical attack, both for the issuing of a quick warning to their men to be ready for the attack and also, if possible, to make a speedy identification of the material used. Between this service at the front and the development of new poisons and the supervision of the manufacture of old ones behind the lines, the chemist's share in the war is both exciting and dangerous. Any scientist who has experienced the joy of discovery by arduous research can imagine the feverish intensity of the men engaged in the invention of the new deviltries, with the prospect of their gaining a victory by surprise, not only over one or two opponents, as in the aeroplane service, but rather over a long front of the enemy. Typical of the life of a chemist in war time is the report sent to me concerning one of my recent students, Lieutenant B——, who was one of the first chemists sent to France. Working with an eminent French professor, it was reported to me that Lieutenant B—— "is getting results," but "for the present is laid up on account of too intimate contact with some of his results."

It is worthy of record and illustrative of the humane spirit underlying our own entry into the war, that our government at first thought it would be possible for us to refrain from this savage method of attack, forbidden by international conventions, and so organized competent bodies of men to take charge of the problems involved primarily in defensive measures only. But it soon became apparent that we should be fighting on disastrously unequal terms with an unscrupulous enemy if we did not include in our offensive measures all the dread weapons which the foe had introduced into warfare in a desperate effort to win at any cost. Hence, we have now completely organized divisions of Gas Offense as well as of Gas Defense. The work of the former division includes supervision in the preparation of the chemicals required and in the training of men to use them, as well as intensive investigations for the discovery of new materials to be employed in attack. On the other hand, for gas defense, not only are continual efforts to perfect the mask necessary, but also investigations which aim to anticipate any chemical surprise the enemy may attempt to spring, and to prepare for the use of any needed absorbent in the mask to counter the stroke. Recently a new division, the Chemical Service Section, has been attached to the general staff of the army. Accordingly, a chemical unit under the command of Lieutenant-Colonel Raymond F. Bacon, director of the Mellon Institute, and including a long list of selected chemists, has now been dispatched to France to serve as adviser to General Pershing in all chemical matters of the war at the front.

With chemists thus needed everywhere for the battle-line itself as well as for the key positions in the vast industries behind the line which supply munitions to our army and to the armies of the Allies, with chemists in no less urgent demand to assist in the solution of the pressing war problems of fellow scientists than to meet the more peaceful needs of the country in the matter of supplies formerly imported from abroad, our country has cause to congratulate itself that there is one important article which some twenty to twenty-five years ago it was wont to import from Germany or have manufactured there, but which it fortunately learned in good time to produce for itself, both of excellent quality and in goodly quantity,—and that article is the American chemist himself. We owe this result in largest measure to the rapid growth of the graduate and other professional schools of our American universities, a development in which chemistry happily has been second to no other science.

The emphasis placed on scientific research with ever growing insistence for twenty-five years was a most fortunate element of unconscious preparation for the greatest test, the greatest strain, to which the skilled minds of our nation have ever been put. With a very few exceptions, found especially among the older chemists in the country, it is the American trained chemist that is guiding our great war industries; it is the American made chemist that is providing the medicinals, the fertilizers, the dyes, and other essentials of which our country first realized its need when its supplies were cut off; it is an American led corps of American trained experts that are serving under General Pershing at the front. At the same time the pick of our university staffs have been called upon, in the government laboratories and factories and in the research laboratories of the universities themselves, to organize at shortest notice the means for providing our nation with those new dread arms of poison gas and noxious liquid, of fluid flame and flaming bomb, which characterize what we all hope is the last desperate effort of a militaristic aristocracy to force its yoke on the necks of the peace-loving peoples of the world.

DEFENDANT'S EXHIBIT No. 70.

German Militarism and Its Influence Upon the Industries.

Militarism in its true sense is the defense of home and family which has been forced upon the continental nations for the reason that they live in such propinquity to one another. Germany, for instance, is surrounded on all sides by potential enemies. Its frontiers are contiguous to Austria, Russia, France, Switzerland, Belgium, Holland, Denmark, and it is separated by narrow bodies of water from Sweden, Norway and England. What such surroundings means is evident in our own case. We have only two neighbors, Canada and Mexico, and with each of them we have had wars and frequent disputes, such as the Alaskan boundary question, the sealing and fishing controversies, etc. Inasmuch as our comparative isolation has not saved us from trouble, it is most remarkable that Germany, bordering on 10 countries, has had so few wars.

German militarism is the application of arts and science as well as the most perfect organization and administration to the defense of the hearth.

The prominent features of German militarism are conscription and the standing army.

Conscription has made the defense of house and family everybody's business and not the affair of a few hired men. It has caused the uprising of this wonderfully united nation as one man during this war, and it is the reason for the boundless self-sacrifice of the people—men, women and children—who all feel that everything must be given up for the Fatherland and that individual wants and necessities, worries and pain do not count until victory and peace have been achieved.

The standing army has been pronounced by an American author to be the greatest democratic university of the world. Conscription and compulsory military service combine to make it the army of the German people, and not that of the Emperor and therefore German militarism is not the militarism of the Kaiser but of the German Nation. Everyone from the highest to the lowest is proud to be a member of the army and to be able to contribute to the defense of home and family. Here men of all types of education, the university man and the artist, mix with the laborer and the farmer. During the period of service they learn order and discipline. They are taught the value of punctuality, of exactness, of cleanliness and of obedience. They become aware of the fact that the individual is only a cog in the wheel of the big machinery. The illiterate few recruits from the most easterly parts of the country receive instructions in reading and writing; those recruits who have neglected to develop their bodies owing to lack of exercise improve in physique during their time of service, and in this respect the time spent in the army is of as much benefit as membership in an athletic club. The lessons learned are not forgotten by the soldier after his return to civil life, and order, discipline, and the necessity of physical exercise become indelibly impressed on his mind.

It thus follows that the workingman who has had the advantage of a training in the standing army must be of special value in the industries. An artisan who is clearly, orderly punctual, exact and disciplined, cannot fail to be an invaluable acquisition to a factory of any kind, and undoubtedly the success of the German industries in every branch of human endeavor is due to this class of well-trained laborers. This is a well-recognized fact in Germany and similar views were expressed as early as 1893 by Doctor Caro, one of the greatest technical chemists of all times, who, in his classical description of the development of the German coal-tar industry, published in the "Berichte der Berliner Chemische Gesellschaft," ascribed German superiority to the character of the workingman, who had served in the army.

Germany militarism early recognized the fact that the life and health of the laboring class are an important factor in the resources of the country, and consequently legislation for the protection of industrial workers has been evolved, which has become the pattern for all nations of the world. Even our own country, which we think so free from militarism, has benefited by this German legislation, and when Governor Glynn, of the State of New York, in becoming a candidate for re-election, reviewed what he had accomplished for the people during his term of office, he considered the workingmen's compensation law as the most important of the measures passed during his incumbency. These compensation laws, together with the old age, accident, sick and death insurance laws, safeguarding and improving the economic conditions of the workers, are directly due to German militarism in its endeavor to husband the strength and earning power of the individual members of the industrial army. Even Lloyd-George, the arch enemy of Germany, copied these legislative measures of German militarism for the benefit of the laborers of England. To this constant care for the individual health and betterment of the working class are also due the establishment all over the empire of government and provincial homes for convalescents, of homes in which persons suffering from incipient tuberculosis are treated, and of many other institutions with the object in view of promoting the recovery of those stricken with sickness.

These in a general way are the benefits which the industries of the country have derived from German militarism, specifically, we note its greatest influence in the agricultural conditions of the country, and influence which is perhaps best expressed by the phrase "the balancing of the interests of agriculture and industry."

German militarism soon realized that in time of war the nation cut of from all supplies will have to feed not only its army but also its population. For this reason special efforts were made to foster agriculture. On general principles, industry and agriculture are sworn enemies. Industry wants cheap food for its workers; agriculture wants high pay for its products, meat and cereals. It is one of the greatest achievements of modern Germany, and this is especially due to Emperor William II, that these ever-clashing interests were reconciled, and that they were made to see that for the common good compromise concerning taxes, duties, etc., must be adopted, under which both industry and agriculture, could prosper.

Hence, a give-and-take policy resulted, which has accomplished the greatest good for the greatest number, and has elevated agriculture to such a flourishing state that the feeding of the German people today is independent of foreign product—quite different from England, where agriculture was sacrificed at the altar of the industry and where the soil was so outrageously neglected that the nation depends for its food supply almost wholly upon the importation of meat, flour, eggs, cereals, etc.

In order to bring about this magnificent result, agriculture was forced to produce as much as the soil could possibly bear, and consequently farming became intense. Cultivation of the soil, the feeding of animals, etc., became a science. Other sciences, especially chemistry and botany, contributed to the culture of plants adapted for the varied conditions of the climate and soil of the Empire. Seeds were developed and improved to a marvelous extent. While the sugar beet at the beginning of the last century, when the manufacture of beet sugar was started, contained only about 4 per cent of sugar, the quality of the seed was gradually so highly improved that they now produce beets with over 22 per cent of saccharine content. This seed is exported all over the world from Germany, and during the present war one of our greatest worries is that we may not obtain this excellent material from Germany in time to prepare our next year's crop.

The cultivation of potatoes, which were originally introduced into Germany from the United States, has been brought to such a wonderful stage of development that two distinct classes of potatoes are raised, the one rich in carbohydrates but poor in nitrogenous matter for the fermentation industry, and the other rich in nitrogenous matter for eating purposes. Curiously enough seed potatoes are now imported into the United States from Germany because our farmers allowed this vegetable to degenerate to such a degree that it has substantially lost all value for seeding.

The science of fertilizing achieved the amazing result that Germany's soil, although cultivated for almost 2000 years, is today more productive than the virgin soil of the United States and Canada. Deserted farms like those of the New England States and the State of New York are unknown in the Empire. Chemistry is not only educating the farmer in scientific fertilizing but producing the requisite artificial fertilizers, and here again German militarism in its far-sightedness has brought about most astonishing revolutions.

Of greatest importance in agriculture are nitrogenous fertilizers; that is, artificial manure which introduces nitrogen into the soil. The chief material for this purpose is nitrate of soda, which, as saltpeter, is imported in large quantities from South America. Unfortunately this substance is also the sole raw material for the manufacture of nitric acid, and nitric acid is the chief material for the manufacture of all kinds of explosives. The French and English employ picric acid, which is tribitrophenol (lyddite, melinit), and is made by the action of nitric acid on carbolic acid. The Germans are using as their chief explosive trinitrotoluol (tritolyl), which is produced from toluol, a coal-tar hydrocarbon, and nitric acid.

German militarism realized that two great dangers might arise from these applications of saltpeter. In time of war the importation of saltpeter might be stopped by the navy of a foreign nation, and it might therefore become impossible to manufacture nitric acid and explosives. The feeding of the nation might be interfered with, inasmuch as the soil could not be properly fertilized, and hence could not produce sufficient foodstuffs. Therefore, it became imperative that the nation must become independent of the importation of saltpeter.

The problem was solved by the utilization of nitrogen from the air, and in this way nitric acid was produced without saltpeter as a starting material. Unfortunately, however, the available processes can be carried out economically only in localities whose cheap power is available, which today means countries where water power is abundant. Since Germany has hardly any waterfalls, and therefore is very poor in power created in this manner, the plants for the manufacture of nitric acid by utilizing the nitrogen from air were mostly established in Norway—a foreign country. The problem was therefore only half solved. But soon by the direct union of nitrogen and hydrogen, as accomplished by the ingenious synthetic of Haber, an absolutely independent source of nitrogenous fertilizers and nitric acid was created within the German Empire. The raw materials for the Haber synthesis—nitrogen from the atmospheric air and hydrogen from water gas—are obtainable in unlimited quantities in the country.

In the Habor synthesis ammonia is first produced which, in the form of the sulphate of ammonium, is as efficient a fertilizing material as saltpeter. This method, however, has the disadvantage that the ammonia must be converted into nitric acid by processes which are not yet completely worked out. Undoubtedly, however, the economical manufacture of nitric acid from ammonia will soon become an accomplished fact, as recent publications seem to indicate that the problem is almost solved. During the present war all the saltpeter in the German Empire has been requisitioned by the Government for the manufacture of nitric acid and the production of ammunition, while sulphate of ammonium obtained by the Habor synthesis and that recovered from the by-products of the coking industries takes its place for fertilizing purposes. The output of the existing Habor plant was doubled at the beginning of the war in order to provide sufficient sulphate of ammonium for the coming crops, and it is said that since that time another unit is in course of construction, which will definitely secure Germany's requirements for nitrogenous fertilizers.

Another great benefit which, while the war lasts, will accrue to German agriculture from scientific farming is that the large acreage devoted to the cultivation of the sugar beet—usually the most fertile soil—will be directly available, without the use of additional fertilizers, for the raising of rye, oats, potatoes, etc. During the war Germany will not be able to export beet sugar, which she does at other times on an extremely large scale, and will therefore not raise so many sugar beets. Utilizing this fertile soil for cereals, potatoes, etc., means an additional supply of foodstuffs for the nation.

The industry for the recovery of the by-products from the coking process, which we already mentioned as a source for sulphate of ammonium, has also been highly developed because German militarism needed some of the resulting coal-tar products for the manufacture of explosives. Benzol, toluol, carbolic acid, metacresol and diphenylamine are starting materials used in the manufacture of ammunition. Formerly, most of these substances were imported from England, where they were produced from coal tar obtained in the manufacture of illuminating gas by the distillation of coal, while in most other countries, for example, in the United States, illuminating gas is made from water gas. By developing the coking industry; that is, by suitably and economically heating coal, Germany has made herself independent of England, and now produces all the materials required for explosives and ammunition within her own borders.

Germany is also the only country which has made itself independent of England as far as its consumption of carbolic acid, one of the most important coal-tar products, is concerned. This substance, employed both for explosives and as a disinfectant in general hygiene and surgery, is a material of war of the highest value.

It was not considered wise nor profitable to remain dependent on foreign sources for such an indispensable article. Soon the ever watchful and resourceful chemist found artificial methods for its manufacture, employing exclusively domestic raw materials.

Today several German factories have installed plants to produce carbolic acid by the acting of sulphuric acid on benzol and subsequent treatment with alkali. Whenever the price of coal-tar carbolic acid arises beyond a point at which synthetic carbolic can be profitably manufactured, these plants are put into operation. They are promptly shut down when the price decreases.

German militarism, by initiating and promoting the everlasting battle between armor plates and armor-piercing projectiles, also conferred great benefits on the industry and on mankind in general. We all know that as soon as an improvement in the manufacture of steel was made which allowed the production of armor plate of great resistance, the chemists and engineers evolved a projectile driven by powder which would pierce such an armor. This fight is still on.

Instead of carbon, which originally was added to iron to produce the iron alloy called steel, we now use nickel chromium tungsten, molybdenum, vanadium, manganese and silicon, which enable us to manufacture refined steel possessing varied properties. Most of these additions in order to give the desired result must be in the state of highest purity. These substances which at first seemed of no use in any other industry were produced primarily to fill the requirements of the manufacturers of cannon, projectiles, and armor plate, and the largest maker of these elements in the pure state is the firm of Th. Goldschmidt, located in Essen, where it is able to work in close union with the Krupp works.

By these modern improvements wonderful materials were placed at the disposal of the industries. The hardness of steel has been so increased that for safety vaults and safes an alloy is made which can neither be drilled nor exploded nor cut by the oxy-hydrogen flame. The chemical industries have been supplied with refined steel which is not attacked by acids, not even by boiling, "Aqua regia," while other modifications are not affected by hot caustic soda. Some of them are nonmagnetic, others are unaffected by atmospheric influences, or exhibit great resistance to electricity, while some possess high tensile strength. They are thus of specific value in the manufacure of automobiles, of steam turbines, of electric appliances, of rails for electric tramways, of dynamos, motors and transformers.

Vanadium steel furnishes our modern tools which are distinguished by extreme hardness, and here a war on a small scale is going on between structural steel and steel for tools with which to work the former. Every improvement in the hardness of structural steel must of necessity bring about the manufacture of a still harder steel for tools, exactly as in the case of armor plates and armor piercing projectiles.

German militarism has also benefited the industries in a field where its activities could hardly have been expected. We refer to the manufacture of hydrogen and oxygen. Strange to say, these two gases which had never found any industrial application, although known since the birth of chemistry, have lately become of the greatest technical importance and are today manufactured on a tremendous scale. Hydrogen is used for military purposes in immense quantities for all lighter-than-air flying machines—the filling of Zeppelin balloonettes, the filling of captive balloons which have become of such great importance in modern warfare, being constantly employed by the staffs of the armies for observation of the battle field. By telephone and photography they are in constant communication with headquarters.

The cheap and practical methods which were evolved by the military authorities for the generation of hydrogen are now utilized in one of the industries which has recently become of the highest importance, namely, the manufacture of what is called "hardened oils and fats."

By treatment with hydrogen, oils and fats in the liquid state are converted into solid materials, which usually command a higher price for technical purposes, such as the manufacture of soap, etc.; and low-class fatty substances, which are not fit to be eaten on account of their appearance or odor, may be transferred into valuable food materials. By the economical manufacture of hydrogen, which makes it possible to utilize such inferior goods for alimentation, German militarism again deserves well of the nation. It must also be noted that the cheap production of hydrogen is one of the prominent features in the above-mentioned manufacture of sulphate of ammonium according to the Haber process. Thus the manufacture of hydrogen, while originated for military purposes, is helping to feed the nation by providing new edible substances, on the one hand, and a new source of fertilizers on the other.

The manufacture of oxygen likewise assumed gigantic proportions, after it was found that armor plates could be cut almost like butter by the heat of the flame from a burner fed with a mixture of hydrogen and oxygen and acetylene gas.

At present, not only the cutting but also the welding of iron and steel is accomplished by means of such a flame; every machine shop is provided with an oxygen apparatus, and soon every garage will be similarly equipped, as it has been observed that the carbon collected in the cylinders of gas engines for automobiles, etc., can be easily removed by burning it out with the oxygen flame.

The oxygen also plays an important part in the running of submarine boats where it is necessary to provide the crew with oxygen for breathing under particularly difficult circumstances. It is stated that nitrogen tetroxide, a gas which can be easily compressed to a liquid, and which, when approximately heated, decomposes with the liberation of oxygen, has been employed for this purpose with great success.

But for the necessity of supplying oxygen to the submarine boats, this substance—until now largely a chemical curiosity—would perhaps never have been thought of for any technical purpose. Undoubtedly many other industries will avail themselves of this new source of oxygen under conditions similar to those on submarines—for example, for driving operations, in mines, for caisson work, etc.

Militarism in the search for new explosives, discovered guncotton and thereby started the "nitrocellulose" industry. While guncotton made by the treatment of cotton with nitric acid proved to be an almost uncontrollable explosive, it was soon found that by a less energetic action of nitric acid on cotton, substances could be produced which were practically free from any danger of explosion. These lesser nitrated cotton products became the starting material for the celluloid industry in all its interesting and important branches. Besides furnishing various well-known household articles, billiard balls, etc., and substitutes for ivory and tortoise shell, celluloid became the base for a class of very valuable varnishes. It made amateur photography possible by the substitution of sensitized celluloid films for the breakable and heavy glass plates, and it provided humanity with its greatest agent of amusement and instruction—the moving picture show. But as the lesser nitrated cotton substances in celluloid, like all nitro derivatives, were not yet absolutely free from explosive risk under certain conditions, persistent efforts were made to find safe substitutes for them. Lately these experiments were carried to a successful termination, and acetylcellulose obtained by the action of acetic acid on cotton has replaced the dangerous nitro products, especially in the manufacture of noninflammable films for moving pictures—a material in which the absence of danger from fire is obviously of the highest importance.

This acetylcellulose is also of distinct value in the manufacture of a varnish which finds its largest application in the construction of flying machines where its particular properties are of signal service. What a brilliant record of achievement in the search of militarism for a new explosive.

Militarism has also solved the problem for the textile industry as to which colors are most conspicuous and which least visible. Exhaustive tests showed that uniforms of a peculiar grayish-green shade rendered the soldier practically invisible in the field. How correct these observations were was demonstrated at the start of the war when it was reported that the presence of the German troops was not noticed by the enemy at distances greater than 200 to 250 feet.

The most conspicuous color in all kinds of light was found to be red on white or white on red. This fact was made use of by the German advertising men who now paint their posters, etc., mostly in red and white, and also by the municipalities of German cities which are using red and white surfaces for signposts in their streets. How peculiarly unfortunate for the French soldiers with their red trousers that they could not avail themselves of the result of these tests.

These few instances, which could be multiplied indefinitely, will suffice to demonstrate the correctness of my contention as to the manifold benefits conferred upon industrial development by militarism.

Evidently, therefore, German militarism is not the horrible institution which the English try to make us believe it is. It suits the German people, and it has made Germany one of the most powerful and prosperous nations, and enabled her to compete successfully in commerce and industry with the richest countries in spite of the lack of almost all crude materials, the natural resources consisting only of coal, iron and potash salts. Compare this with our country, which abounds in gold, silver, copper and practically all other metals, besides furnishing cotton and petroleum to the whole world. Yet as the result of wise legislation, incredible thrift and economy, the cooperation of science and technique, and thanks to its militarism, the standing army and general conscription, Germany has reached a most enviable position among all industrial and commercial nations.

German militarism is not the arrogance of a military caste which intrigues lead to war. To its salient features—compulsory service and the standing army—Germany owes its organized industrialism, which has made possible not only the efficient defense of home and family, but the mighty victories gained by the nation in manufacture, commerce, the arts and sciences.

German militarism ultimately means progress along the whole line—law, order, and justice.

Just as little as the New York gangster, the crime of Policeman Becker, the public declaration of Senator

Owen that he would not sit in the Senate together with Roger Sullivan, the Democratic senatorial candidate, the snobbishness of the Daughters of the Revolution or the Holland Dames in admitting new members points to the downfall of the democratic institution of our Republic, just as little does the Zabern incident, the swaggering lieutenant of 20, the exclusiveness of the German aristocrat who may refuse to sit at the same table in a Berlin restaurant with a denizen of the East Side or with one of Hinky Dink or Bathhouse John's heelers, prove that German militarism is an evil thing that must be crushed.

I (VON IGEL).

DEFENDANT'S EXHIBIT No. 71.

The President's Protest to Great Britain, and Its Justification by the Perils to Our Trade and Industries.

For the sake of the economic welfare of our country it would have been preferable, because more impressive, if the following facts had been submitted by a citizen of American birth rather than one of German descent, whose attitude might be considered as not quite impartial. I wish, therefore, you would disregard my personality altogether and only bear in mind that the President of the United States, a Democrat, and the leader of the opposition in the House, Mr. Mann, a Republican, called the attention of the people and of Congress in general terms to the perils threatening our commerce and industry by the unwarranted interference of Great Britain, while I have endeavored to collect the technical data justifying the attitude of our national leaders.

It must be apparent even to the superficial observer of current events that Great Britain indeed "rules the sea," for her warships have put an effective end to all maritime commerce of the enemy. The German and Austrian merchant marines have disappeared from the seas, and as we have practically no merchant marine of our own, the United States is sustaining irretrievable losses. The cotton, copper, petroleum, etc., which supplied the German and Austrian factories with raw materials, as well as our foodstuffs, can not be carried to these countries, so that to-day our commerce and our industries are suffering as much as if we were at war ourselves.

As stated before, it is the object of this paper to show specifically some instances of the great losses which we are sustaining owing to interference with our trade, and to point out some of the perils which threaten our export trade with Germany and Austria in the future when necessity will compel these countries to depend upon their own resources and to so develop their industries that they will be able to dispense with many articles which up to the present time were supplied by us in large quantities.

Cotton.—Of the total amount of merchandise exported from here to Germany to the value of about $352,000,000, $175,000,000 consists of raw cotton. Germany has been making successful attempts to raise cotton in her colonies, and in 1913 she imported altogether 3,500,000 pounds from there, but this supply is of no use during war time, as it can not be transported into Germany. As cotton itself, on account of climatic conditions, does not grow in any parts of Germany and Austria-Hungary, substitute fibers which can be cultivated on domestic soil must be made available. Plants which give excellent fibers and grow in substantially every section of Germany and Austria-Hungary are flax, hemp, and the various species of nettle.

Up to now the substitution of these fibers for cotton has not made any great commercial progress, mainly for the reason that the method for the production of the fibers was defective. These plants to be utilized as vegetable fibers must undergo several operations before they are fit for spinning and weaving. In the present state of this art the farmer who raises the plant is expected also to attend to the subsequent treatment, which is partly chemical and partly mechanical. This is as unreasonable as it would be to rely upon the modern farmer to furnish flour instead of wheat or sugar instead of the sugar beet. Through the British interference with our exports Germany will be forced to seriously arrange for a permanent supply of fibers of which no one can ever deprive her. Then the cultivation of these will be carried out on an extensive scale, and factories equipped with proper machinery will be started, where the plants grown by the farmer will be treated according to the most modern methods which chemical and mechanical skill has devised to obtain the best results in the most economical manner.

Of the plants mentioned above, flax and hemp already furnish large quantities of a starting material for the manufacture of vegetable fibers. The flax plant —Linum usitatissimum--produces linen, but the linen industry, although well developed, has not made such progress in Germany of late, mainly for the above-stated reason that the farmer was compelled also to attend to the after-treatment of the plant. Among the vegetable fibers linen, however, ranks next to cotton in importance and is stronger and more durable, and possesses a peculiar luster; but being a better conductor of heat than cotton, it is not as suitable for wear during cold weather.

Hemp is the bast fiber of the hemp plant—Cannabis sativa—and undergoes the same aftertreatment as linen. It is, however, a coarse fiber which does not compare favorably with linen and is seldom bleached and dyed.

To show how difficult it must be for the average farmer who cultivates flax or hemp plants to carry out the aftertreatment necessary for the production of the fibers, a short description of these processes might be of interest.

Ripling.—After having been pulled from the ground the plants are drawn through coarse iron combs, which remove the seeds. These are used for the manufacture of valuable vegetable oils, linseed and hempseed oil.

Retting.—The bast fiber adheres very tenaciously to the woody part of the plant, which makes the separation difficult and complicated. It is accomplished by the "retting operation," a species of fermentation. Retting may be carried out in stagnant or running water or by dew setting, as well as by immersion in tepid or steam or acidulated water. These operations are followed by the mechanical process of "breaking," which facilitates the removal of the woody portion of the stem, this being accomplished by "scutching," by which the woody particles are beaten out either by hand or by machinery.

Finally the fibers are laid out parallel by "heckling," which means drawing the material in bundles first through coarse combs and then through finer combs until it is in a suitable condition for spinning.

It is obvious that these operations are too complicated to be carried out properly by the average farmer. If, in spite of such a handicap, the flax and hemp industry has reasonably prospered, it may rightly be inferred that it will be mightily developed by scientific processes executed in modern factories provided with the greatest chemical and technical skill.

Among the various species of nettle the one botanically known as *Urtica dioica* L. is the most useful as a vegetable fiber. Prior to the introduction of cotton, the bast fiber of this plant was largely used in Europe for the manufacture of nettle cloth and nettle thread. As late as the beginning of the eighteenth century, these fabrics were used all over the continent, in France, Spain, Sweden, Italy, and Switzerland, and the last nettle thread factory, that in Leipzig, was not closed until the year 1820. The nettle plant is still in use to-day, especially in Russia, where the young plant is esteemed as a vegetable and the matured is utilized as fodder for cattle.

The conditions for raising nettle in Germany have been studied at great detail, especially by Mr. O. Lindemann, of Lorrach-Baden. Sufficient is known to start the production of this fiber on any desired scale as soon as necessity arises. To replace the amount of cotton used in Germany and Austria-Hungary, it would be necessary to plant one German square mile (10,240 acres) with nettle. Such an area can be easily spared, for in spite of the careful exploitation of the soil there are still about 500 German square miles of unused but arable farm land at the disposal of the agriculturist for raising this group of vegetable fiber plants. It is known exactly what fertilizers, what condition of soil is necessary, how the seeds must be planted and when the crops must be harvested. The cultivation of nettle promises to be of especial importance, because the plant may be harvested twice a year; and, being perennial, annual seeding is unnecessary.

The fiber of nettle greatly resembles that of flax, and, if anything, is more durable than the latter. It can be easily treated chemically, that is, bleached and dyed. In conjunction with flax, hemp, and especially wool, it furnishes an absolute substitute for cotton in every branch of manufacture. Modern processes of refining textile fibers, such as, for example, mercerization, which consists of a treatment of the fiber with strong alkali, permit of the production of superior nettle fibers which might bring them nearer to cotton fiber and render them superior to it for many uses.

The success of the nettle fiber industry is to-day entirely a matter of organization. When this has been accomplished the farmer who cultivates the plant will deliver his crop to the factory just as sugar-beet growers are doing at the present time. In the factory, which will be run by scientifically trained chemists and engineers, the plant will undergo the necessary treatment to furnish the fiber. From this factory the fiber will be distributed to the various textile industries which will spin or weave it, or mix it with wool, hemp, or flax, and which will also mercerize it if desired. The thread, yarn, and cloth, etc., thus obtained can then be used instead of the corresponding cotton fabric for the manufacture of wearing apparel, hosiery, etc. These are in every respect equal to cotton goods and would be, if anything, cheaper if produced on a large scale and under proper economical conditions.

Besides the fiber, the nettle plant would also furnish a valuable feed, because the leaves, after being suitably dried and ground, contain in 100 parts dry substance 35 per cent albumen and 15 per cent nutritive salts, of which 4 per cent is phosphate of lime. A comparison with barley shows that the latter contains only 12 per cent albumen and 3 per cent nutritive salts.

The cultivation of the nettle plant would also increase the use of flax and hemp, as the mixing of their fibers with those of nettle would open up new avenues for the textile industry. A larger production of hemp and flax would have the additional advantage of augmenting Germany's supply of vegetable oils, as both the seeds of hemp and flax furnish very valuable members of this class which already enjoy great popularity in commerce and the industries. Moreover, the larger output of oils would give larger quantities of glycerine, which is produced from them by saponification and is in such great demand throughout the world.

Once started the prospects of the nettle industry would be almost boundless. Chemistry and botany would vie with each other to improve the plant and the fiber, and what possibilities are attainable in this respect appears from the fact that the sugar beet at the beginning of the industry contained barely 4 per cent of sugar, while to-day the seed is so improved that beets with 22 per cent sugar are harvested.

The fear is therefore justified that the present interference with our cotton trade may permanently injure our business in this commodity, not only with Germany but with the rest of the world.

What enormous losses our country suffers owing to the British disregard of our rights as neutrals is shown by the prices of cotton prevailing in Germany. According to a cablegram received at the Department of State from the American Embassy at Berlin on November 3, the supply of cotton was about sold out. Small quantities of good middling were being quoted at 18.352 cents per avoirdupois pound. How glad we would be if we could fill this demand at 12 cents per pound.

Perhaps our troubles in this regard may prove to be a blessing in disguise for the southern farmer. Perhaps he will now learn the lesson of cultivating diversified crops, especially cereals, and give up his steady devotion to cotton. The South may thus be forced into an involuntary era of prosperity just as the East Indian planters were, when the German chemist synthesized indigo and forced them to abandon the exclusive cultivation of this plant and to start raising cereals. This change, brought about by German science, seems to have almost abolished famines among the Indians, against which the British Government had been previously unable to take any effective measures.

Wheat.—Export to Germany in 1913, $12,500,000. Germany has always been our second best customer for this article. If we can not supply her demands owing to the British embargo upon the exportation of our wheat, Germany must make herself independent of our resources. As it will be impossible for her, while the war lasts, to obtain a supply from any continental country from which she might import merchandise, she will be obliged to find substitutes. Wheat is solely employed for flour making and baking purposes. It has been found that a mixture of 75 per cent or 80 per cent of its flour with 25 per cent or 20 per cent of potato meal lends itself well for bread making. This bread, now eaten everywhere in Germany is excellent, and as far as its taste is concerned is superior to that made from wheat flour alone. By the substitution of potato meal Germany will get along without the importation of wheat from the United States, and on account of the excellent taste of the new bread, it may be assumed that after the war it will retain its popularity and our German wheat business will be gone forever.

This new use of potatoes naturally will severely tax the supply. But we must remember that potatoes constitute the main crop of the German agriculturist and enough are raised to furnish about 4 pounds a day all the year around per head of German population. If their use for the above purpose, however, should create a deficiency, then a saving could be effected by restricting the manufacture of alcohol from this vegetable. It is a well-known fact that in Germany potatoes are largely used for fermentation and the production of grain alcohol.

In place of them, Germany might now use wood waste for the manufacture of alcohol according to modern process which have been recently perfected.

There are already several factories running in the United States where grain alcohol is made economically from sawdust and wood waste. By treatment with acids the wood fiber is hydrolyzed and converted into a sugar which can be easily fermented. This substitute process has also another advantage in that it provides a welcome source for fodder which can be made from the refuse remaining after fermentation and which will prove very valuable for the live-stock industries of Germany.

Edible fats.—Germany imported from us altogether $25,000,000 worth of fats for culinary purposes, principally lard. The interference with our seaborne commerce through the action of the British Navy has suspended our trade with Germany in this commodity.

Fortunately for Germany, but unfortunately for us, a modern development in the fat and oil industry has provided her with means to utilize materials which hitherto were unfit to eat.

By the so-called method of hardening fats and oils, that is, by treating them with hydrogen, they are not only converted from the cheaper liquid into the higher-priced solid form, but their taste and odor are so improved that they might serve for culinary purposes, while without being subjected to the hardening process, they could not possibly be thus employed.

Even the various grades of fish oil can thus be rendered available as food materials. Germany can not possibly be cut off from the supply of these oils. The fisheries of the Baltic and the North Sea, of Norway and Sweden would place an inexhaustible and cheap source of fats and oils at the disposal of the German people to whom an opportunity is thus afforded to remain forever independent of the import of edible fats from the United States.

By this hardening process even the waste fats (foots) obtained in refining can be utilized not only for soap making but also for foodstuffs. In short, by suitable treatment with hydrogen, all oleagnous matter may be converted into edible substances.

By arbitrarily declaring naval stores, that is, rosin and spirits of turpentine, contraband of war, Great Britain renders the export of $22,250,000 worth of merchandise impossible. That is such a ruinous blow at a flourishing industry of our South, especially of Georgia and of Florida, that the governors of these States protested in strongest terms to the Federal authorities against this wanton destruction of American trade and the chambers of commerce of the South addressed themselves to all trade organizations of the country in a call for aid in this emergency.

Acetate of lime.—We export $2,250,000 of this material to Germany. It is a very important article for us, as we practically monopolize the trade. It is used for the preparation of acetic acid and is produced as a by-product in the manufacture of charcoal. By heating wood above 230° C. distillation takes place, and the condensing vapors contain acetic acid together with a series of other organic substances. By collecting these compounds in milk of lime, more or less pure acetate of lime is formed, which is filtered, dried, etc.

From this impure article, pure acetic acid in its various degrees of strength is manufactured. The war has absolutely stopped the export trade in this country.

Acetic acid is of extreme importance in the chemical industries for the production of a very large group of chemicals, among them being the acetic acid derivatives of cellulose, which are employed for the manufacture of noninflammable films. Acetic ether, one of the conversion products, is also largely employed in the manufacture of smokeless powder, especially of that variety produced in small square scales. As vinegar acetic acid is found in every household.

It is therefore of the utmost importance for Germany to develop resources of her own to supply her requirements of acetic acid. A method to accomplish this object has been found in the oxidation of acetylene with the aid of an acid electrolyte or with peroxide compounds under the intermediate formation of acetaldehyde. Although perhaps not quite economical today, necessity might lead to the perfection of this method to such an extent that it might finally prove a cheaper way of producing acetic acid than the present one from important acetate of lime, which thus might be forever banished from our exportations.

As is well known, acetylene is generated from carbide of calcium, which could be obtained from Norway and Switzerland, and eventually might also be manufactured in Germany, where the raw materials for carbide—coal and lime—are found in great abundance. By such a new development Germany would remain safe from any future interruptions of the demands of her industries.

Phosphate rock.—In 1913 Germany imported $3,000,000 of phosphate rock, being by far the largest importer. This material is used as phosphoric-acid fertilizer and represents one of the most important items of export of some of our Southern States. The British molestation of neutral shipping has absolutely killed this trade.

To overcome the danger of having her supply of this material, so important for her agriculture, cut off, Germany will now develop the hitherto neglected resources of her own land. There are numerous places in the Valley of the Rhine and of the Lahn Rivers where phosphate-containing rocks occur. These are not as rich as the Florida phosphate, but may be relied upon to replace a goodly quantity of the imported material. To supplement the output of phosphate fertilizer, Germany can utilize the slag obtained in the production of Thomas steel, called Thomas slag, which is already well-known fertilizer and will necessarily enjoy still greater popularity while England prevents us from shipping our product.

Copper.—Of this metal $53,000,000 were exported in 1913 to Germany and Austria-Hungary. In her endeavor to monopolize the transoceanic commerce of the world, England declared copper contraband of war, and Germany and Austria-Hungary are unable to purchase the required amount from the United States, which is substantially the only exporter of this metal.

Aside from its employment in the manufacture of arms and ammunition, copper has innumerable uses in the arts. The largest part is used as wire for telegraph and telephones, for trolley lines and in general as conductor in long distance power transmission. During the war there will be hardly any news installations for commercial telegraph and telephone lines. If there should be, steel wire could be employed for these purposes since it is equal in every respect to copper wire, except that special provisions for hanging have to be made on account of the heavier weight of the steel. In this way about 30 per cent to 35 per cent of the copper consumption of former years could be saved and might be eventually utilized for purposes of war.

For long distance power transmission and also for trolley lines, aluminum cable could be utilized to great advantage. The copper thus replaced could again be employed for arms and ammunition, and altogether by substitution of steel and aluminum, upward of 50 per cent of the consumption of copper in times of peace could be made available for war purposes. We must also bear in mind that Germany herself is a producer of copper, and that the Mansfield mines furnish about 30,000 tons a year, which quantity can be easily increased by more intense working of the mines. In case of necessity, other deposits of copper in Germany might be utilized and this metal might also be imported from Norway, which produces a considerable quantity. In extreme need Germany might rip up her hundreds of miles of tramway lines, replace the copper by aluminum and employ the enormous tonnage thus recovered for arms and ammunition.

Concerning the substitutes which Germany will be forced to employ with its supply of American copper cut off, it is well known that the iron ore deposits of Germany and consequently the output of steel wire, are substantially inexhaustible. As far as aluminum is concerned, this can be imported from Switzerland or from Norway in sufficient quantities. Eventually aluminum might also be manufactured in Germany. Unfortunately, however, the starting material for its manufacture, the mineral bauxite, is at present found only in France and the United States. The importation of this mineral from France will probably stop during the war, while shipping from the United States might be interfered with by England. Fortunately, there exists a process which furnishes a material which can be produced in very large quantities. This substance, when used for the production of aluminum, would constitute an interesting and very profitable part in a series of manufacturing operations that without this outlet for aluminum would not be feasible economically. Such an opportunity is offered by the so-called Serpek process of utilizing nitrogen from the air. This process consists in heating bauxite—the impure mineral form of oxide of aluminum—and carbon in a nitrogen atmosphere. The result of this reaction is the formation of nitride of aluminum and of pure oxide of aluminum. The former furnishes ammonia.

The inventor of this ingenious process originally thought that the oxide of aluminum obtained as a by-product in his mean reaction could be used over again instead of the bauxite in the first step of his operation. However, it was found that this oxide of aluminum was unsuitable for the Serpek process, because, curiously to say, it was too pure, and thus offered great resistance to its conversion into nitride of aluminum. On the other hand, it was determined that it lent itself excellently to the manufacture of aluminum by the usual method. But such enormous quantities of this pure oxide of aluminum are obtained in the Serpek process that the correspondingly large quantities of aluminum which could be produced from it would surpass all the demands hitherto known for this metal. If, however, aluminum could be employed extensively as a substitute for copper, the Serpek process might become economical. Especially would this be the case if this process, which furnishes ammonia as the principal product, could be combined with the Birkeland-Eyde process or its modifications of utilizing nitrogen from the air with the formation of nitric acid. We would then have the following interesting operations:

We would first prepare pure nitrogen and pure oxygen from liquid air according to the well-known process of Linde, Hilldebrandt, or Claudet, etc. The nitrogen thus generated would be used for making the nitride of aluminum, which in turn would furnish ammonia, in which would be collected the nitric acid formed according to the Birkeland-Eyde process, furnishing as the end result nitrate of ammonia—the ideal nitrogen fertilizer. In the Birkeland-Eyde process, oxygen is necessary for the conversion of the nitrogen from the air into nitrous gases which is accomplished by combustion of the air. If this combustion is carried out by utilizing the pure oxygen which has been originally separated from the liquid air as described above, the reaction is very favorably influenced and large yields are obtained. The pure oxide of aluminum, as stated above, will serve for the manufacture of the metal aluminum. The finished products of this readjustment of manufacture necessitated by the substitution of aluminum for copper would, therefore, be nitrate of ammonium or nitric acid and ammonia and aluminum metal.

But this new development might be impossible, while the war lasts, if the Serpek process would depend on bauxite as a crude material. Fortunately, however, this process in its first step, the production of nitride of aluminum, is a refining process for oxide of aluminum, and it has been found that the pure French and American bauxites are not absolutely necessary for the reaction, but that less valuable deposits found, for example, in Dalmatia, in Austrian territory, may be employed. It is also expected that kaolin or ordinary clay, which chemically are silicates of aluminum, might be available as starting materials for the Serpek process, and if these hopes are realized and a larger outlet is found for metallic aluminum, the prospects for process this would become most excellent.

Nickel.—Of the total export of about $10,000,000 of metallic nickel obtained by refining Canadian ore in domestic plants, Germany takes the largest part. To satisfy the demands of their industries, Germany and Austria-Hungary will now be obliged to turn to the development of their native resources and to open up some mines in Hungary, where a rather poor nickel ore is found. Deposits of such ore have also been discovered in upper Italy and Norway.

In the case of nickel and many other minerals and manufactured articles it has up to now been easier and perhaps cheaper for Germany to import them than to go to the trouble and expense of developing domestic resources. But when necessity once enforces readjustments of this kind, there is great danger that the newly worked mines may develop into something better than originally anticipated and may thus lastingly injure our trade.

Petroleum. — Germany imports from us about $10,000,000 worth of illuminating oil, lubricants, and paraffin. Her supply of benzene apparently comes from the Roumanian, Galician, and Russian oil fields.

Large quantities of kerosene are used as motor-spirit, either in admixture with benzene or coal-tar benzol. To replace petroleum for illuminating purposes Germany has at her disposal grain alcohol, which in the form of denatured alcohol and used in especially constructed burners, offers a cheap illuminant of domestic production. Carbide of calcium and acetylene gas obtained therefrom may be largely utilized in addition to electric light, which, although the most expensive method, is always available and will ever be so on account of the vast wealth of coal which Germany possesses.

To replace petroleum as motorspirit Germany employs coal-tar benzol which is recovered in large quantities in the coking of coal, that is, suitable heating of coal. Denatured alcohol also serves this purpose in carburetters adapted for this substance.

To replace petroleum as lubricant there are available the paraffin oils, cylinder oils, etc., obtained by the distillation of lignite coal, an industry already established but hitherto kept down by the competition of the American petroleum products.

Deposits of lignite are very common all over Germany and this industry may be very largely expanded. It also furnishes benzol and illuminating oil which altogether with the supplies from Rumania and Galicia may make Germany herself entirely independent of our resources.

In this connection it must also be considered that the latest improvements in Diesel motors permit the use of even heavy coal-tar oil as fuel for these wonderful gas engines. This means a further reduction of the German consumption of our petroleum products.

As stated before, the available substitutes, coal-tar benzol, and distillation products of lignite can always be produced in large quantities in Germany.

Concerning the manufacture of denatured alcohol, there are many waste materials which might be profitably utilized for the preparation of grain alcohol. The fermentation of beet sugar, molasses, or of the refuse of fruits, vegetables, etc., in the preserving industries might furnish additional quantities of alcohol. The new method of making alcohol from sawdust and wood waste has already been mentioned as a further source.

Even the sugar beet itself might be largely submitted to fermentation processes instead of serving for the production of sugar, because it will be impossible for Germany to export much of this article while the war lasts.

Perhaps the inland sugar consumption may also decrease because the authorities have raised the restrictions against the use of saccharin in order to provide a cheap sweetener for the home preserving industry, which the Government has been so strongly urging for the conservation of the immense fruit crop with which Germany was blessed this year.

Saccharin is also to be made a part of the iron fund of necessities carried by the soldier in his knapsack. Experience in the field has shown that soldiers can not always procure sugar for their tea and coffee, and as these beverages are not enjoyed unsweetened, a small box containing saccharin tablets is to be provided.

All this proves again what has always been claimed, that the prohibition against saccharin was not a sanitary measure dictated by the necessity of guarding the health of the people, but had for its object the protection of beet sugar against the much cheaper chemical. The Government realized that from an economical point of view the beet sugar industry with its diversified interests was of greater importance to the State than the manufacture of saccharin which required only a few laborers, but produced an article of which 4 pounds equaled in sweetness 1 ton of sugar. Of course, everyone realizes that sugar, besides being a flavoring agent, is an important foodstuff, while saccharin is simply a sweetener and entirely devoid of nutritive properties.

The illustrations given above will show what new conditions have been imposed upon our commerce and industries and what readjustments will take place in Germany and Austria-Hungary owing to the interference with our trade on the part of Great Britain. Even in a country so highly developed industrially as Germany there are still resources locked and materials wasted and neglected which if properly utilized may make that nation independenct of importations from abroad and may thus considerably affect our own prosperity. Notwithstanding that this fact has been adequately demonstrated in this paper, permit me in conclusion to cite a very significant example of such waste.

The yeast of the fermentation industries, of which Austria-Hungary alone produces about 30,000 tons, has been allowed to run to waste, although it represents a nutrient of highest value. Compared with beef it possesses three times the caloric value calculated at the same price. Its composition compared with beef is as follows:

Yeast, 54 per cent albumen, 3 per cent fat, 28 per cent extractive substances free from nitrogen, and 8 per cent of water.

Beef, 21 per cent albumen, 5.5 per cent fat, 0 per cent extractive substances free from nitrogen, and 72 per cent of water.

The albumen contained in the yeast corresponds to meat albumen and not to the albumen contained in vegetables, and yeast albumen is therefore a direct substitute for meat

It may be employed as an addition to soups, sauces, and stews, and is altogether an excellent dietetic food for underfed and convalescent people. Excepting being used at present by the German military administration for soup conserves and as a strengthening addition to the soldier's bread, this valuable material produced in such immense quantities is totally discarded.

During the war the breweries of Austria-Hungary have decided to furnish their yeast gratis to the population. As the entire production of this yeast in the world is about 2,000,000 tons, we are wasting here a foodstuff equivalent in its caloric value to 6,000,000 tons of beef.

The thought occurs whether in these times of high cost of living we ourselves might not profitably utilize this waste material of our breweries and distilleries!

Besides interfering with our exportation of domestic merchandise England has succeeded in destroying our importation of such articles as potash salts, cyanide of potassium, seeds of sugar beet, dyestuffs, etc., of which our agriculture, our mining and textile industries are so badly in need and of which Germany is the only country producing quantities sufficient for the world's trade.

But our industries sustained the worst check by the proclamation of the wool embargoes on the part of the British Government. England placed such large orders here for supplying her armies with clothing as to practically clean out our woolen mills of certain grades of raw materials, while English and Canadian buyers at the same time bought out our raw wool supply.

Furthermore—and this shows the maritime power of Great Britain better than any other example—British vesels were forbidden by their Government to carry wool from Argentina and Uruguay to any country—nations at war or neutrals—excepting to England.

This accomplished, England placed an embargo on raw wool, excepting the short and fine sort from South Africa, which is unsuitable for military clothes.

By these ingenious methods England prevents our textile industries from getting certain grades of their most important raw material, wool. Our mills will be unable to manufacture certain classes of goods for the domestic trade, and they will also lose the chance which we hailed with so much joy, of supplying England and her allies with military goods, because she will own all the raw wool needed for their production.

On the other hand, the British magnanimously permit and encourage the exportation from their own country of manufactured articles, such as woolen yarns and clothes of all grades, excepting those suitable for military purposes. This results in the continuance of heavy exports of woolens from the Bradford district, and the American consumer will thus be forced to use English made goods thereby increasing the foreign trade of Great Britain, which has cunningly contrived to destroy our own manufacturing.

Even our charitable ladies who are engaged in knitting various articles for British soldiers which their own Government ought to buy for them pay in every stitch tribute to the wily trader of England who uses the war to strangle the business of his rival merchants and manufacturers and to monopolize forever the oversea commerce of the world.

In this connection think of the injury to the interests of our southern farmers which Mr. Colquitt, the Governor of Texas, a Democrat, in a recent article in the New York Times describes as follows:

"It has allowed England to dictate conditions as to cotton shipments to European countries that enables the English spinners to rob the American cotton growers of half the value of their crop.

"England stopped American shipments until the English spinners had bought their supply at 6½ cents a pound and stored it in Texas and other southern warehouses. Then England consented to declare cotton not contraband, and France followed suit a day or two later. Our Government weakly submitted to England's dictation, playing into the hands of the English spinners and betraying the American cotton growers as completely as if this country were an English vassal State."

These monopolistic tendencies of Great Britain are also cogently set forth in a speech by Senator Walsh, the chairman on Mines and Mining, before the Senate on December 31:

"Some degrees of circumspection might be expected in the exercise of her undoubted rights, some delicacy in asserting them, in view of the fact that the course that had been pursued is obviously to the advantage of her fabricators of copper as against those of competing neutral nations. If the shipment of copper to Italy and the Scandinavian countries can be shut off or seriously embarrassed, the English market, the only free untrammeled one to which our surplus can go in any quantity is continually glutted. The price of raw copper is continually depressed there, although it is unduly expensive in the rival countries. Her manufacturers enjoy a distinctive advantage in the purchase of their raw material. Then, the supply on the Continent being precarious, the English factories capture the market."

These remarks offer abundant food for thought. In the case of copper and cotton, we own all the raw material and are able to produce articles manufactured from them in our shops. Thus we are only injured in so far as a certain export of these materials to the neutrals is concerned.

But in Senator Walsh's remarks, substitute wool and rubber for copper and add the United States to the countries mentioned and you will realize what the British embargoes mean to our business.

What is going to become of our textile industries if there is a scarcity of wool in the mills, what of the laborers employed in the manufacturing of woolens?

What is going to be the fate of our rubber industries if they lack the needed raw materials? A report of the rubber trade association shows that the normal requirements of crude rubber in this country for next year will be 65,000 tons, including low-grade and bastard gums. So long as the British Government maintains the embargo there will be available only 35,000 tons of Brazilian rubber and 5,000 tons from other sources. Europe will take at least 7,500 tons of the Brazilian crop, regardless of price, which leaves the American supply at about 32,500 tons, or less than one-half of the demand of 65,000 tons.

To-day already 125,000 rubber workers of a total of 250,000 are out of work and in need. Nothing can be done for them, however, and if the embargo is to be maintained for any length of time, what is to become of those who are still employed today? Will the outcome of the rubber embargo be that tires or other goods will be brought from Great Britain into our country and sold at prices lower than those at which our manufacturers can produce them? As a remedy against this sad state of affairs the association proposes to agitate immediate action by Congress, with the end in view of prohibiting absolutely the importation into the United States of British rubbers or products thereof or of any kind of manufactured rubber goods.

Immense and irreparable damage to our industries must result from the tactics of Great Britain to accumulate by these embargoes all the important raw materials to the exclusion of American and foreign buyers, which means low prices to and monopoly by her own manufacturers, and for the molestation of our own and of neutral shipping. As emphasized in the President's protest, the moral effect of the latter is to deter shipowners by arbitrary detentions from lending their vessels to losing ventures, and thus to drive United States and neutral commerce from the seas.

The greatest of all wars means for Great Britain not only the smashing of German commerce and industries but the building up of a world of monoply of manufacturing and of the sea-carrying trade of the earth. She does "business as usual," keeps her navy intact and her soldiers at home, excepting her small regular army, reinforced by a few Indians, Canadians, Portuguese, Australians, etc., while she has firmly resolved to carry on this war until the last Frenchman has been killed.

DEFENDANT'S EXHIBIT No. 72.

REPORT OF CONSUL GENERAL HOSSENFELDER TO THE IMPERIAL CHANCELLOR, DR. VON BETHMANN-HOLLWEG.

New York, March 3, 1916.

The proceedings which have taken place here during the last weeks in the domain of domestic and foreign policies make it seem proper, in my opinion, to treat connectedly anew our economic-political relations to the United States.

The revolt, certainly without example, which has broken out in Congress against the President on account of his attitude in the submarine boat questions has not the least thing to do with the feeling in the country toward Germany. According to the explanations given by your excellency and by Under State Secretary Zimmermann the people were convinced that Germany had reached the limit of its compliance;

they saw themselves placed, through the President, before the danger of a war with Germany, and through their chosen representatives made him understand that they did not want war and would prevent it by every means. In this decision the determining factor was the consideration that a break with Germany would have incalculable consequence for the United States and that no sufficient reason was at hand to take a step fraught with such consequences.

Again, the conviction that a break with Germany is to be avoided in the interest of the United States is not based, as might be supposed, on the fear of the German Empire, but on the provision that the Americans, in case they take a hand in the conflict, would have to raise war costs for the Allies, and, most of all, that the country would be divided into two hostile camps by a participation in the European war, out of which, under increasing embitterment, severe internal conflicts could develop. Sober business sense and cool calculation between the stakes and the possible gain have guided the American peoples, not by any means a change in their sympathies for the individual nations waging war. This statement seems to me necessary in order to meet those who, in spite of all experience, stick to the illusion that a transformation of feeling in favor of Germany can be detected, and lay claim to every incident by which our interests are not directly injured as a proof of the correctness of their view.

Germany and the United States, even after the outbreak of the war, were willing to carry on commerce with each other. This commerce was tied up merely by England, which wants to prevent Germany from drawing necessary materials from abroad on the one hand and on the other of improving her finances by the sale of her own products. For this reason the relation between the United States and England is, for the duration of the war, of far-reaching significance also for our economic relations to the Union. Hitherto the United States has accepted the injury to its commerce by England, has borne the loss arising therefrom, and has taken no steps to force the abolition of the existing situation in its essentials contrary to international law. Does there exist now in reality any well-founded prospect that a change is taking place in this attitude? This question I must answer with an unconditional "No."

Among us the view has plainly hitherto found zealous advocates that the United States would proceed against England and the English aggressions as soon as we shall have yielded to American wishes in the *Lusitania* affair. As is well known to your excellency, I have always considered this view to be a grievous mistake. If my conviction hitherto was based merely on personal observations and inferences, I believe now I am justified in assuming that the incidents of the last few weeks have brought out the feeling of the Government here without concealment and (in a manner) recognizable by everybody. We meet in Washington only hostile feelings and conscious partisanship. However, the fact remains that the chief trend of the politics of the Federal Government is determined by internal political pressure and counterpressure.

So far as the feeling throughout the country is concerned, the English aggressions, especially the molestation of American travelers, the confiscation of mail, and the supervision of American business by British diplomatic and consular representatives has recently, beyond doubt, aroused strong dislike. But the bearers of this bad humor, which is openly expressed very often, are those in the main who have been directly or indirectly hit and who in their totality do not make up the whole of public opinion by a long shot. There exists only an invitation which makes the wish for a remedy become vocal in these special cases, but which is not in the remotest strong enough to break the bonds sealed by race, language, and views of life which bind this country to England or from the feeling of mortification to arouse sympathies for the enemies of England. The longer the war lasts the clearer it will become, even to the prepossessed American, that England is sorely fighting for her existence. His ethics allows the American regardlessly to exploit the embarrassing position of the fellow members of his race to his own advantage. Nothing lies farther away from him than to take the side of Germany in this struggle for Anglo-Saxon supremacy. He can not at all, therefore, wish in his heart that his country should hinder England from wounding Germany or that he should furnish Germany the means of being able to continue the battle against England. Ample provision is made there that the question whether the lack of certain raw materials will not finally force Germany to a peace is kept continually before the eyes of the American public. I am, therefore, not able to see upon what a justified hope for an "about face" in popular opinion in our favor could be based.

Economic considerations, i. e., their own advantage, for high finance here and the industry dependent upon it for the stock exchange and all those who live from the manufacture of arms, ammunition, and war material, point the way into the English camp as I have already explained in earlier reports. They have all the most urgent interests in the preservation of England and in following an American policy which takes account of English needs. In regard to the political influence lodged in these groups, I need not spread myself further here in view of former reports rendered.

On the other hand, a different relation exists with the producers of raw materials who are robbed by

England of the possibility of selling their products to the Central Powers and with those business circles and branches of industry which need German wares and German raw material. With both, the interest in the continuation of commerce with Germany stands in the foreground.

Among the producers of raw materials the cotton planters occupy the first place. I can only repeat here what I have already elucidated in another place, that the cotton planters are not suffering distress, that their pressure meets a stronger counter pressure, and that they, with their possible consideration, will find no hearing in Washington as long as the prices of cotton are maintained at a proper level. That is the case at the present time and, according to all reckoning, will be the case for an ample period to come. If later the prices for cotton should fall below a certain level, it not only lies within the realm of possibility to remedy the complaints of the planters by Government measures, but England also will be reminded of her promise previously given to be willing to support the cotton market if necessary.

On wheat, which is at a very much higher price than before the war, the farmers have made enormous profits. For the copper market other conditions hold, as the conditions of a whole fraction of the population does not depend on it. Incidentally, the prices are extraordinarily high. The consumption of a whole list of other articles has so increased as a result of the war, both here and in the foreign lands hostile to us, that the loss of the demand from the Central Powers is being more than equalized. From the group of producers of raw materials also no pressure promising results is to be expected. That the army of importers have not to-day the interest in the maintenance of unhindered commercial intercourse with Germany as at the beginning of the war, because their business energy has been applied to other ends, the business expert has already explained in his report No. 3, Part II, of the 14th of this month. The movement emanating from the importers has heretofore, with the lapse of time, lost very considerably in extent and significance.

Neither through money nor the granting of credit, nor by any other means, can that critical situation be relieved which has been called forth by the removal of certain articles which are obtainable only in Germany. These articles are chiefly potash, chemicals, and dyestuffs. Potash is desired by agriculture, inclusive of the cotton planters, all the more urgently since even last year sufficient fertilizer could not be brought to the soil. To enumerate the industries which are suffering from the scarcity of German chemicals would lead too far. I may, however, mention that the cry for help which comes from the world of physicians is becoming louder and louder and more and more insistent.

The country, however, is being hit hardest by the lack of dyestuffs, which makes itself felt more and more every day in regard to which I may refer to the report of the business expert No. 5, Part II, of the 15th of this month. What the United States is able to produce in dyestuffs is neither in quality nor in shades in the remotest sufficient to meet the existing demands. It is now acknowledged here on all sides that the reports to the contrary of Mr. Norton are not only too optimistic but directly untrue. With these, the assurance of Mr. Redfield, Secretary of Commerce, at whose suggestion Norton's reports were made, have lost their value. Of the agitation brought about by the Government there is left only the effort to carry through some legislation by which great hindrances are to be put in the way of the importation of dyestuffs in the future. In estimating the effect which will be produced by cutting off the importaton of potash, chemcals, and dyestuffs it should be taken into consideration that the circle of persons affected is very extraordinarily large. Through the lack of dyestuffs alone not only is a whole list of important industries (wool, cotton, leather, paper industry, etc.), gradually made lame but for the great public living becomes more expensive both through the rise in price as well as through the small durability of all products for whose production colors are used. We are here unquestionably face to face with conditions which are without a parallel in the past.

When I balance the pros and cons with each other I come to the following conclusions in regard to Germany. If we, at some calculable future time should be restricted to American articles in order to be able to carry on the war, something which would certainly not escape the official American representatives in Germany and which would not remain hidden from England, we would not get these articles because England would not permit it, and the dominant factors in the United States likewise do not wish it. If the Government here, on account of individual English aggressions, should screw itself up to inconsiderate language in its notes addressed to England, it is to be assumed that these notes are first and foremost intended for home consumption. That the United States should decide, in case of necessity, to give emphasis to its demands by measures of compulsion, I consider impossible before as well as after. Besides, for example, even a threat of an embargo on munitions and war materials would make little impression on England at present, since such an embargo would hit America much harder than the continuation of the suppression of commercial intercourse with the Central Powers.

If the idea of the possibility that the United States, in order to carry through its demands, could use measures of compulsion or of retaliation is dropped, the fact still remains that England in many important things is dependent upon the support and the good will of the Union to a far-reaching degree, and could, therefore, see itself forced voluntarily to yield to certain American wishes, even if the fulfillment of these wishes touched English interests. The situation created by the lack of potash, chemicals, and dyestuffs will make a decision necessary within a calculable period. I consider it, therefore, to be probable that the American Government, which can not escape its obligation in relation to its own country, will demand from England the unmolested exchange of the German articles mentioned for American products like wool, etc. If this should take place and England should show itself inclined to yield to the demands, which is very doubtful, the question still remains open whether a real gain is thereby achieved for Germany. I must answer this question in the negative.

In his report No. 3, Part II, of the 14th of this month, already mentioned, the business expert has treated the changes which have taken place in the economic domain here as the immediate consequences of the war. He has explained that not only a far-reaching dislike to Germany and German products has gained a footing here—and, indeed, in the influential business circles—but that zealous efforts are being made to render themselves independent of Germany in the industrial field; that especially the elevation of tariff barriers and the sharpening of procedure in collecting tariffs is favored by both great parties. On the basis of his searching investigations he has come to the conclusion that after the end of the war we will be compelled to build up our export business to the United States anew from the bottom up. I agree with his arguments in all points.

The conviction that the United States is chosen to draw permanent advantages without effort out of the economic exhaustion of the nations involved in war has become a sort of dogma to the American. We, on the other hand, upon whom war has inflicted deep wounds, will naturally not feel any inclination after the war to delay the healing of these wounds by allowing a neutral of strength in the economic domain to follow the grievous passage at arms just concluded. In the transaction with the United States (tariff navigation) for which we must make ourselves ready after the war, we shall have, therefore, an extraordinarily difficult situation. In these transactions the circumstance will be of such a great weight that Germany, victorious in all the theaters of war during the war, has been compelled to put up with a neutrality existing only in name, a neutrality of the mendacity of which people here are fully conscious. As I am acquainted with the quite ridiculous belief of the American in his own superiority and its consequences, I consider it extraordinarily important that a counterpoise be created here. The opportunity for it is at hand.

Without needing to run the risk which in the intercourse of the nations is bound up with every arrangement of war measures, we now have in our hand the means of showing the American by withholding potash, chemicals, and dyestuffs that he can not do without Germany; we can bring before his eyes what value appropriate commercial relations with Germany have for his own land. After the war the opportunity for a practical demonstration of our strength and his dependence will not exist unless we allow it to come to a trade war. If we allow the American to relieve the critical situation in which he is placed by pressure upon England we shall show ourselves in his eyes only as not equal to the situation and shall uselessly play our chief card. Since, as I have argued above, we shall not receive the articles which we unconditionally need for the continuation of the war, from America, the alleviation which, for example, the occasional exchange of a quantity of dyestuffs for a quantity of cotton may afford, is, in my opinion from the German viewpoint no equivalent for that which the American receives. Therefore we should, according to my conviction, hold ourselves absolutely passive in relation to the proposals for the exportation of potash, chemicals, and dyestuffs, and if the opportunity arises make the sanction for them not dependent upon the consent for an exchange of articles but upon the abolition en bloc of all the hindrances to intercourse contrary to international law which have been instituted by England. The impossibility of fulfilling this demand would merely contribute to give the effects of the lack of German articles a very intensive shape. In political regards we have nothing to hope from the United States during the war and the time following on the treaty of peace which will be dominated by the immediate recollection of the war. Experience has taught us that our willingness to meet half way has been answered by setting up new demands. As I have occupied this position from the beginning, I may indeed repeat it here once more after the events from the very beginning, I may indeed repeat it here once more after the events have spoken.

In conclusion I should like to refer still to a phenomenon which no one here can pass over. It concerns the attitude of the large German firms or large firms representing German interests. It is striking in what an increasing degree these firms, with a disregard of the cause of all Germany are concerned only about their own business welfare and their profits in money, since the danger that we might sacrifice our position as a great power in this war, appears to them to be averted. On this fact, the justification for the contradiction can be measured which might easily be raised directly or indirectly to the views of certain business circles represented here. The prospects for large profits are most weighty among the representatives of the dyestuffs industry. Therefore, in these circles the doctrine is most loudly championed that the resumption of exports even without a quid pro quo and an exchange of wares must be Germany's principal aim in commercial politics.

The chemists whose judgment as specialists is not determined by the commercial directors over them, unreservedly acknowledge that the building up of a chemical industry of equal rank in the United States will take years under the best circumstances; that it is, besides, hardly possible without the help of the talents trained in Germany. What can take place in years will take place whether we furnish dyestuffs now or not. For our national economy some millions of dollars which flow into the pockets of the dye industry are of small significance. As long as we buy in Scandinavia, Holland, and the Balkan countries, the rate of exchange of the Imperial mark will be unfavorably influenced in the United States also. The ideal means of supporting the rate of exchange is the sale of German securities; for the systematic working up of the field a large market is to be found here.

A copy of the report goes to the Imperial German Embassy.

HOSSENFELDER.

To his excellency the Imperial Chancellor, Doctor
von Bethmann-Hollweg.

made difficult in every way possible. As it was openly expressed, the Allies want to prevent the formation (establishment) of every new German credit abroad. As Germany in fact has large imports for which it cannot pay entirely by exports into neighboring countries, and as the sale of securities has been rendered difficult for various reasons, the German rate of exchange has, in fact, started on a downward path. The Allies take advantage of that very skillfully to show that Germany has reached the end of its resources. The declining rate of exchange, they argue, shows an exhaustion of German credit. With these arguments they reconcile to a certain extent that part of the public which considers the blockade illegal, but for humanitarian reasons long for a swift and, if possible, bloodless ending of the war. From this point of view every means which brings about a strengthening of the rate of exchange is of the greatest importance.

"It therefore appears especially desirable to acquire credit in America by the release of dyestuffs. This credit, on the basis of a quantity of 15,000 tons at today's prices might yield a sum of $20,000,000 to $30,000,000. If this sum is paid in an appropriate way and a correspondingly skillful use is made of it, it is easily possible to influence the rate of exchange thereby. It is not a question of bringing the exchange up to a definite point by this sum. But an upward movement can be effected. If such a movement sets in, other forces will work in the same direction. Most of all, bear speculation (short selling), which has been carried on to a considerable extent, will be discouraged. Besides, it is to be assumed that a rise in the rate of exchange will exert a favorable influence on the sale of the German war loans. A low rate of exchange certainly invites many a one to buy; a declining rate, however, discourages the owners of securities, deters them from new purchases, and leads to a certain depression in all circles coming into question.

"Different objections have been raised against this. It has been argued that the sum is not sufficient to bring about a lasting improvement in the rate of exchange. The rate would decline again, and with that the purpose of the Allies to show the weakness of Germany, in a falling rate of exchange would be attained. Of course, it cannot be told today whether the attempt will be successful or not. But the following can be assumed with certainty: If $30,000,000 with proper use can not hold up a decline in the rate of exchange, then the manipulations of the Allies without such a counter influence must bring about a far worse repression. A second objection is this: The submissiveness which we show in this field, it is asserted, plainly shows Germany's necessity to mobilize its last reserves. There is no doubt that this argument will be used by the allied press. But the fact must not be overlooked that a successful move by Germany in this field will be very unwelcome to the Allies. It will not be hard to prove that the sale of comparatively small lots is to be regarded as an accommodating attitude toward American consumers, and not as a sign of weakness.

"As a matter of principle we do not surrender our standpoint in relation to the Allies. By the creation of American credit we thwart the blockade of exports attempted by them, which, as a matter of principle, is certainly just as important as the attempt, and, moreover, the unsuccessful attempt, to thwart the blockade on imports by withholding dyestuffs.

"As far as the fear is concerned that Germany's compliance in relation to the Americans might be regarded as weakness, and might thereby render difficult our other negotiations, this argument is certainly without foundation. The expositions of principles with the United States in regard to the submarine boat question has reached such a stage that comparatively subordinate questions are without influence."

DEFENDANT'S EXHIBIT No. 74.

Berlin, May 21, 1916.

For Privy Councilor Albert.

His Excellency the Imperial Ambassador, COUNT V. BERNSTORFF,
Washington, D. C.:

In the New Yorker Staats-Zeitung of April 16 we find the note printed concerning aniline dyes, supposedly directed by your excellency to Lansing. Therein is stated:

"Under those conditions (?) the Imperial Government is, if necessary, even prepared to put forth every effort to have German chemical factories, in so far as circumstances will allow, to put aside all other work and manufacture such colors as are especially urgently needed in the American market."

In this especial attention should be given that unnecessary competition is not made against the American dyestuff industry. This announcement, which does not correspond to the facts, is likely to bring forth discord in the interested circles here, or will result in difficulties (inconveniences) to our industry. I shall look forward to a report by the next mail, if you please, which will be necessary in explanation of the information given out and which goes beyond the limits of the authority given you.

ZIMMERMAN.

DEFENDANT'S EXHIBIT No. 75.

Rye, N. Y., June 21, 1916.

Secret.

For Privy Councillor Albert, Imperial Germany Embassy.

A No. 322.

In reply to the official notice of 23 IV 16 No. 182 and of 21 V, '16—No. 11 20 2235.

On file (dyestuffs). In the envelop. Post code (cipher):

"Among the reasons which were determinative for the refusal to export dyestuffs without equivalent, the indirect effect of this refusal on the English blockade was not only the principal one, but also the reason in regard to which it would have been difficult for the Imperial Government to form a judgment of its own. On this account I expressly emphasized the fact in radiogram No. 695 of March 26, 1916, that agreement existed between the consulate general and myself in regard to the elimination of this reason, as had become clear in a thoroughgoing discussion with the consulate general, together with the consultation of persons interested.

"Regarding the remaining reasons contained in the memorandum of the consulate general of March 24, 1916—the shaping of the rate of exchange, reaction on the sale of the war loan, damage to our credit, the effect of a compliance on the politico-commercial negotiations after the war, the demands in the United States for sales to South America—I had no occasion to make a report to your excellency, wholly aside from the fact that I regarded the reasons as of secondary character and as not valid, since the arguments determinant in this case could be judged better in Berlin than here. I had, therefore, particularly in view of the brevity imposed by the radiogram and of the circumstances that the American Government will receive knowledge of the content of the telegram, no reason to go into these arguments or to mention the attitude of the consulate general.

"But in so far as the purely formal question whether the consulate general agreed with my proposal came into consideration, apart from the pertinent considerations, I felt that I might presuppose it as known to your excellency that the administrator of the consulate general at this time is accustomed to contradict in every case any suggestion offered by me, whether it is a question of political, politico-commercial, economic, or propagandist measure, and to give his expression to his differing opinion not only without delay in a report to your excellency but also with the extension of his criticism to the policy followed in general by the Imperial Government in reference to the United States publicly in the German Club in the presence of numerous members. I therefore assumed that your excellency would presuppose the opposition of Consul Hossenfelder as given in the present case also, and restricted myself for this reason to the establishment of the agreement on the most important point which was not to be assumed without further explanation.

"I might mention expressly only Consul Hossenfelder, because, to my sincere regret, in view of the state of his health I am no longer able to attribute any importance whatever to the opinion of Mr. Waetzoldt. Mr. Waetzholdt is so reduced in memory, in his judgment, and his ability to work that he is no longer able to cope with the present continual change of conditions and stands under the influence of the arguments occasionally delivered to him, which, according to the nature of things, leads him to share in the opinion of Consul Hossenfelder in regard to reports and memoranda in writing. The fact that he also signed the memorandum in regard to dyestuffs can not be taken into consideration. Characteristic in this regard is the reference to Mr. Waetzoldt's opinion in the report of the consulate general of April 26, 1916—Jr. No. 4612—concerning the reaction of the release of dyestuffs on public opinion here, since Mr. Waetzoldt a few days later, at a meeting of the committee on dyestuffs importers, representatives of the Republic Trading Corporation and their attorneys, agreed to the contrary (opposite) opinion.

"The German reproduction of the note anent the question of coal-tar dyes contained in the New York Staats-Zeitung of April 21, 1916, is a retranslation from the English text. The passage in question runs as follows in the original note:

" 'Under these conditions the Imperial Government if need be, is even ready to work to the end that the German chemical factories, in so far as it is at all compatible with the conditions, be relieved of other work and produce those colors which are needed with especial urgency in the American market.'

"For the comprehension of this declaration I may observe that the purpose of my proposal to sanction the exportation of dyestuffs was either to achieve the politico-financial effects bound up with it or—and this was from the outset the more probable case—to shove the blame for the nondelivery of dyestuffs upon England. The purpose of the measure was therefore in its essentials a political one in so far as the deep-rooted dissatisfaction, which embraced wide groups, on account of the refusal to release German dyestuffs should be done away with and a convenient means of agitation be snatched from the English. This succeeded in full measure. In order to attain the result, nevertheless, it was necessary in the next place to prevent our accommodating spirit at the time from being construed as a bluff. In explanation of the former German attitude it had been pleaded here from different sides that Germany was not in a position to deliver dyestuffs for the reason that the chemical factories were overwhelmed with orders for explosive materials. This defense of the German attitude, intelligible especially from the standpoint of importers here, had established itself so well here, it was held up to me among others, even in the State Department, that without a corresponding counterstatement every change of Germany in her attitude hitherto would have been construed as a disloyal deception.

"From the objective point of view there was no objection to the declaration in so far as, in consequence of its nonobligatory wording, its execution depended from the outset of the free discretion of the German Government. In what I, with such a declaration, went beyond the authority conferred upon me, I am not able to comprehend. I feel justified in regarding it as my task to bring a communication ordered by you before the American Government in that form which exerts the greatest possible influence in our favor on public opinion, presupposed that no inadmissible objective concessions are made thereby. It depends so much the more on a corresponding form since, as your Excellency knows, official notes on the part of the Germans are at this time the only effective means of influencing public opinion in this country. It is, therefore, of the greatest importance that such notes receive that wording which, according to a profound knowledge and appreciation of conditions here, appears necessary.

BERNSTORFF."

DEFENDANT'S EXHIBIT No. 76.

LETTER FROM MR. KUTTROFF TO MR. ALBERT.

New York, September 20, 1916.

Very honored Mr. Councillor: I am in possession of your honored communication of yesterday. I have not forgotten your wish to receive a memorandum on the anticipated influence, which the conditions brought about by the new tax law will have on the dyestuff business, and will take pleasure in sending it to you within a few days.

With regards,

Yours respectfully,

ADOLF KUTTROFF.

DEFENDANT'S EXHIBIT No. 77.

REPORT BY DR. SCHWEITZER TO COUNT VON BERNSTORFF.

To his excellency, the Imperial Ambassador, Count
von Bernstorff,
Washington, D. C.

(Translated by J. P. Hoskins.)

The influence of the new customs tariff and its prospective effect on German importation, and on the development of the American industry into an expert industry, and on the chances of the American dyestuff industry in the world market must be considered from two points of view:

1. *During a long war.*—Should the war still continue for years, then, of course, the industry here would be very much furthered and would have a great boom. The United States does not lack raw materials for the manufacture of dyestuffs of any kind what-

soever. The only product necessary for manufacture that must be imported is saltpeter. The question of price does not play any part in this either, for as long as dyestuffs can not be imported and must be produced here, the question, whether the price of manufacture is higher or lower makes no difference. A longer war will bring the further danger that the plants can be amortized from the great earnings which can be made, and that the factories after the peace can carry on competition with the German dyestuffs more easily.

The difficulties in manufacture, which are incomparably greater in the manufacture of intermediate products than in the manufacture of dyestuffs from imported derivatives, will be gradually overcome. The greatest lack is that of technically trained chemists. It seems that American industry is trying to emancipate itself in this respect, by importing chemists from Switzerland. One of the largest of the newly founded factories is said to have engaged, together with 30 chemists, Maurice Ceresole who was lately professor of technical chemistry at the University of Zurich, and formerly manager of the French branch of the Baden Aniline and Soda Factory, and had worked still earlier, together with myself, in the Badische Aniline-und Soda fabrik in Ludwigshafen, in order to help build up the American dyestuffs industry here. I have not yet succeeded in finding out which factory has employed these chemists.

How difficult the production of derivatives is, is apparent from a letter which was sent to an American manufacturer by the French branch of the Badische Aniline-und Soda fabrik, on September 13, 1915, i. e., over a year after the outbreak of the war, and which in the translation runs as follows:

"We are purchasers of beta-naphthel, beta-naph-rylamine, dyphenylamine, dimethyaniline. Will you please tell me whether you sell these products, and in case you do, please inform us of your conditions and the quantities you can offer us.

"At the same time we beg you to inform us of other raw materials of interest for the manufacture of dyestuffs which you may have to offer us, aside from those mentioned above.

"In case your answer should be negative, we should be obliged to you if you would kindly indicate to us the address of firms to whom we could address ourselves with prospect of success."

The contents of this letter proves that the branch of the Badische Anilin-und Soda fabrik, which has existed since that time, to be sure from derivatives which were delivered by the manufactory in Ludwigshafen, could not itself manufacture such simple intermediate products as beta-naphthel, beta-naphthylamine, diphenylamine, and dimethylaniline. This branch had, besides, the advantage that chemists stood at its disposal which had been trained in the German factory and had been sent by the same to France in order to produce as serviceable dyestuffs as those manufactured in Germany.

The manufacture of the derivatives offers much greater difficulties for an industry still in the process of development, for the reason that such an incredibly large variety of products is necessary. In a well-developed industry, like that of the Germans, a technical use is found in the end for all these products. In a less well-developed industry and in an industry which is only in the process of development, great hindrances stand in the way of the utilization of these derivatives; many can not be used at all, and thus become waste products. The price of these derivatives which can be utilized is thereby increased to an incredible degree. In order to make the manufacture and utilization of these derivatives more graphic I subjoin the inclosed table, which shows how many derivatives of a single anthracite coal tar raw product—namely, nathaline—are combined with a single basic substance, benzidine, in order to form dyestuffs. In a well-developed industry all these products are manufactured and ultimately find utilization. Those who names appear in quadrates are used directly for the manufacture of colors; those which are inclosed in ovals are at the present time not yet utilized but are subjects of scientific investigation and will ultimately find suitable utilization.

The manufacture of derivatives stands in Germany on such an incredibly high plane that the prices for the manufactured articles are very low. It would take American industry many, many years before the same, even if it will ever be possible at all, could produce these derivatives as shapely as German industry does. In order to show these differences of price, the following examples may be cited:

	It cost in 1908 in Germany per pound	Imported to America under the tariff at that time
Aniline oil	$9.28	$11.60
Paranitraniline	16.00	24.00
H-acid	23.29	34.80
Alpha-naphthylamine	6.20	7.75
R salt	9.68	14.50
Amido-G-salt	17.60	26.75
Freund acid	11.60	17.25
Cleve acid	11.60	17.25
Gamma	29.36	44.00
Salicylic acid	12.06	26.01
Tolidine	26.40	33.00
Benzidine	24.20	30.26

These are figures which American industry will never attain. It can be assumed with certainty that the most of these products can not be manufactured here at three to four times the price.

The wonderfully developed technique of derivatives will, therefore, for many years to come give German industry a preponderance over all other lands in which the derivative industry has first to be built up.

2. *After the peace.*—The question, what prospective effect the customs duties will have on German importation, on the development of American industry into an exporting industry, and upon its chances in the world market, can be answered by a single argument:

The new tariff divides the products used and manufactured in the dyestuffs industry into three groups—raw products, half products (derivatives), and dyes. While the raw products are imported free of duty, on the half products and the dyes, in addition to an ad valorem duty, a specific duty of 2½ cents per pound and 5 cents per pound for the dyestuffs is levied.

Happily, the following dyes are excluded from this specific duty: "Except natural and synthetic alizarin and dyes obtained from alizarin, anthracene, and carbazel, natural and synthetic indigo and all indigoids, whether or not obtained from indigo, and medicinals and flavors." This exception may well become the sheet anchor of the German industry. The dyestuffs which are excepted from this specific duty are the so-called vat dyes, and these vat dyes are a comparatively modern achievement of the German dye technique and are in general regarded as the most genuine dyes.

The preeminent enduring qualities of these products have already brought it about, and will do it even more so in the future than the older anthracite coal-tar dyes, which in many respects are inferior to the vat dyes, will be driven from the market. The manufacture of these vat dyes is very complicated and can be undertaken only in a very highly developed industry. It is wholly out of the question that a new industry like the American can take up the manufacture of these vat dyestuffs, and it may well take a very long time before the dyestuff industry outside of Germany can concern itself with the manufacture of these complicated products. Here the very greatest exertions will not make it possible to cope with the competition of Germany. In our considerations it is of still further importance that these vat dyes are much dearer than the ordinary anthracite coal-tar dyestuffs, which is readily explicable in view of the difficulties of manufacture. But in spite of this higher price, the vat dyestuffs, on account of superior tinctorial qualities, are finding a more and more widely extended sphere of application in all fields of the textile, leather, paper, etc., industry.

The history of American tariff legislation has shown that in general a protective tariff of 30 per cent ad valorem does not afford sufficient protection to create an American industry. If this was the case with the old anthracite coal-tar dyestuffs, of which only a few staple kinds were ever manufactured here, and these for the most part from derivatives which were imported from Germany, a protective tariff of 30 per cent is, of course, absolutely insufficient for the most complicated vat dyestuffs.

In recognition of this fact the new tariff provides the specific duties in order to provide a far greater protection for the American industry.

But the new tariff now specifies the following in regard to the specific duties:

"But, if at the expiration of five years from the date of the passage of this act, the President finds that there is not being manufactured or produced within the United States as much as 60 per cent in value of the domestic consumption of the articles mentioned in Group II and III of Section 500, he shall by proclamation so declare, whereupon the special duties imposed by this section on such articles shall no longer be assessed, levied or collected."

Here is where the German industry must apply the lever. It must, in any case, of these vat dyes which must be regarded as the "highest quality" goods of the industry, dispose of in the American market more than 40 per cent of the total consumption in derivatives and dyestuffs, in order that the President will be in the position to abolish the specific duties. If this is actually made possible, and the President must abolish these specfic duties, then the German industry will be in the same position as before the war, and has only to deal with the duty of 30 per cent ad valorem, which, as has already been elucidated above, was insufficient in the past to create an American industry.

That it should be as easy as child play for German industry to sell as much vat dyestuffs in the United States that the value of the same will amount to "60 per cent in value of the domestic consumption of the article mentioned in Group II and III of Section 500," is apparent from the following considerations.

1. The vat dyestuffs have in the past, and will even more so in the future, supplant the old anthracite coal-tar dyestuffs.

2. The money value of the vat dyestuffs is uncommonly higher than the money value of the old anthracite coal-tar dyestuffs.

3. The importation from Germany of these vat dyes amounnts to-day already to 27.63 per cent of the money value of the total dyestuffs importation.

From the statements of the Chemical Journal of the year 1914, we gather for the year 1913 the following figures for imports into the United States:

		Per cent of whole	
Indigo	$1,316,913	13.08	
Alizarian	178,587	1.77	
Antracene dyestuffs	1,207,037	12.78	27.63
Aniline dyestuffs	7,288,471	72.40	
Total	10,071,008	100.03	

In this connection, however, we must pay regard to the fact that Germany in the year 1913 exported to the United States derivatives to the value of $1,086,300. The foregoing percentage of 27.63 is somewhat lowered thereby. On the other hand, the production of the old aniline dyestuffs out of derivatives which have been imported from Germany would naturally decrease from the increased exportation of vat dyes, so that in our reckoning the value of the derivatives can, in fact, be entirely neglected.

The high price of vat dyes, which is, on the average, four or five times as much as that of the old aniline dyestuff consumption. From a recently published list it turns out that 511 dyes to the value of $7,500,000 have been imported into America; that is, the average import value of a dye amounts to $14,000. In this list four vat dyes are given which, altogether, were worth $214,000; so that the average price of $14,000 for dyestuffs, in the case of all dyestuffs rises to about $50,000 for the vat dyes, i. e., amount to about four times the average value.

When the time shall have come that the German industry will import more than 40 per cent of the vat dyes, and in America less than 80 per cent of the value of the domestic consumption will be manufactured, then great difficulties in the calculation of these figures will emerge, and it will depend on the party politics of the President at that time whether he will make an honest effort to abolish the specific duty or not. How is this "value of the domestic consumption" to be reckoned? How will the customs prices be taken into consideration in connection with the freight rates and with the expenses of insurance and of business? In the case of the domestic industry, how will the expenditures for amortization for general business expenses, trade-mark, and patent ownership be counted in the calculation?

From these arguments it is clear that the salvation of the German dyestuff industry is to be sought in the development of vat dyestuffs chemistry. The tendency to develop this field to the highest degree possible existed already before the outbreak of the war. The new tariff brings, then, no change in this line. For the industry after the war also no change would arise in this regard, since in any case Germany will be compelled to manufacture and to export high-grade goods in the entire industrial field in contrast to articles demanded in large quantities, which can, little by little, be produced in all countries.

In the competition in the field of goods demanded in quantities German industry will in the end not fare much worse under the new tariff, since by the manufacture of derivatives forced upon American industry the dyestuff manufactured thereof, will stand them at a much dearer price, so that the old tariff rate of 30 per cent ad valorem will mean a still smaller protection for the American industry. This will not, of course, come completely to light until the specific duties have been abolished; but even if these specific duties are not abolished, the higher prices of derivatives will tend more and more to eliminate the difference between the protection which the old percentage of 30 per cent plus specific duties afford.

DEFENDANT'S EXHIBIT No. 78.

The German Dye Factories.

(Lord Moulton on Their War-Time Transformation.)

"Speaking at the annual dinner of the Society of Dyers and Colourists at Bradford on Friday of last week, March 21, Lord Moulton said that in his capacity as director of explosives supply he had to nominate a commission to go out to see the great chemical factories of Germany which were situated in the occupied zones along the Rhine, and when the members came back he got their reports, and, what was much better, he discussed with them what they had seen; and he had a picture which filled him with dismay. He was told that those chemical factories had been working during the war solely for the purpose of the war.

"They had made explosives in enormous quantities, but what, to him, was much more serious, he found they had been making those devilish poison gasses in quantities as large as the Germans would ever want, and they had made them in the plant ordinarily used for chemical products often without changing one single item of plant. The operations which made the dyes, wonderful as the results were, could be classed under very few heads. The plant could be made on standard lines, and when they found that those plants intended to be used for peaceful purposes were capable of turning out the vilest of all offensive means without any change whatever, they realized what a terrible danger it was for England that these factories should exist on such an enormous scale, closely united one with another, ready at any moment, should the evil intention come to them, of being the very fountain of all that was needed for the most ferocious methods. This had entirely resulted from the success of the Germans in dealing with the dye industry during the last 20, 30, or 40 years.

"If equal factories had existed with us, we should have been able at a moment's call to turn out for the defense of our country and for repelling the insidious attacks made by Germany, more war material, and the period of the war would have been a trifle compared with what it had been. The consequence was that it was absolutely necessary that England should have a large and flourishing dye industry for the making of dyes. If there were a large and flourishing dye industry for the utilization of those dyes, it was through the work of dyers that our textile industries were freed from foreign control. It was idle to think that the mere production of those dyes would make us safe. If we wanted to back our textile industries, if we wanted to prevent Germany continuing to carry on the prosperity which our lack of enterprise and lack of competition had permitted them to have, we must certainly not be at their mercy in future years. We could only establish those industries if dyers took to heart this lesson, and if they, by their skill and by their mastery of the great color industry, made our textile industries in the point of dyeing which was vital to them, not only utterly independent of any foreign supplies, but to take the position they ought to take as the highest in quality and the lowest in price of all the world."

DEFENDANT'S EXHIBIT No. 79.

ARTICLE ENTITLED "GERMAN BUSINESS METHODS IN THE UNITED STATES" PRINTED IN THE "QUARTERLY REVIEW" OF JULY, 1919, WRITTEN BY C. H. BURR.

GERMAN BUSINESS METHODS IN THE UNITED STATES

The methods of German commerce in pre-war days are familiar in their general outline; the concrete details have not often come to the light. This article will endeavor to give the story of how the German dye combination operated in the United States. The account will be given as far as possible in the words of witnesses, taken under oath. These accounts, commented on only for the sake of clarity, should be allowed to speak for themselves.

During the war the dye industry in Germany was united into one great chemical verein, so that the gentle methods hitherto used might become universal and gain completeness of organization and efficiency after the war, when England and the United States should open again their hospitable doors. Before the war, however, there were six leading German dye houses, divided into two groups of three each. The first group consisted of the Badische Anilin und Soda Fabrik (called for short the Badische Co.); the Farbenfabriken vormals Friedrick Bayer & Co. (called the Elberfeld or Farbenfabriken Co.); and the Aktiengesellschaft fur Anilinfabrikation (known as the Berlin Co.) These three companies pooled their profits in the respective proportions of 43 per cent, 43 per cent, and 14 per cent. They were controlled by a cartel and met for fixing prices, determining policy, etc. The second group consisted of Farbwerke vormals Meister, Lucius und Brunner (known as the Hoechst Co.); Leopold Casselle & Co.; and Kalle & Co. These three concerns were knit together rather more loosely than the first combination and their unity of action depended mostly on interchange of share capital.

About two years before the war an internal difference manifested itself when the accounts for the preceding year were presented to the pool. The Elberfeld Co. claimed an allowance of something like $700,000 for "graft" payments made in the United States.

The other partners objected to the amount, not because they were ultraconscientious nor because the amount, if really expended, was excessive, but because vouchers were not presented with ideal German completeness; and the notion seems to have been suggested that foreign agents and managers might have made an error in the calculation, resulting in unintended personal benefit. However this may be, a little private investigation was made by one company in order to ascertain whether the dyers and ultimate recipients of the "graft" were really getting what they were entitled to. The investigation as will happen sometimes with the best-regulated inquiries, got a little out of bounds. The result was a series of suits and a general explosion of indignation. From the evidence collected under oath in the inquiry the following excerpts have been made. It should be noted, in order to reassure the British reader, that the convention called under the cartel entered on its minutes the following resolution:

"*Resolved,* That henceforth bribery shall be abolished except in the United States and in Russia.

The operations of the Dye Trust in the States can best be examined in the words of the witnesses themselves. In explanation it may, however, be added that these companies maintained their American agencies under their own control; that the Elberfeld Co., which had expended the $700,000, was extremely active among the mills in Philadelphia; and that Mr. Keppelman was its manager. For convenience, the evidence will be grouped, first, with reference to the bookkeeping methods of handling the matter adopted to secure, so far as possible, proper profits and proper accounting to the principals in Germany; second, the distribution of "graft"; and third, certain incidental activities, such as chemical means of dealing with rivals and persuasive invitations on board a yacht.

With respect to bookkeeping methods, the problem was a difficult one. It was desirable to secure large prices for the dyestuffs sold, so as to afford a margin for "graft" and allow of proper accounting in addition. It was obvious that this must be done not only by adulteration but by misbranding the goods so that comparisons in prices would be rendered impossible and awkward disclosures would be avoided. A system, therefore, based on selling the same thing to A by one name and to B, C, and D by different names, on allowances for different degrees of adulteration, and on keeping accurate accounts so that the dyers should receive the correct amounts of "graft," would necessarily be complicated, especially since care had to be taken that each party should see only what it was desirable he should see. The thoroughness of the German mind and the praiseworthy ingenuity and care with which it triumphed over these difficulties appear in the following evidence of Clarence C. Du Plaine, bookkeeper and order clerk in the Elberfeld Co.:

"My duties as order clerk, besides the making out of the orders for goods to be shipped, were to make out the 'new-thing sheets,' post the 'new-thing cards,' post the salesmen's price books and price lists, and also to keep my own set of price cards, from which I ascertained the prices to be charged as well as the character of the goods.

"The price books would show the limit selling price for the dyes of the Farbenfabriken. The price cards would show—a set of cards for each customer—the prices which the customer was paying for the colors he bought, the real or trade name of the color as distinguished from the name under which he may have been buying it, and also the extent to which the color was reduced or adulterated, if such reduction was being done.

"The 'new-thing sheets' were kept for the purpose of keeping track of all new colors that were bought by the various customers, also any change in the price of the goods they had been buying. These sheets were, I should say, as near as I can remember their size, about 8 inches square, and ruled with columns, first for the fictitious name, then the real name of the color, then a small column for the price charged, and a wider column at the extreme right-hand side. The name of the customer was not written on these sheets, but a small slip of paper with such customer's name on it was pinned to the sheet.

"Miss Gaul would do all the figuring out of the graft to be paid to the dyers in Mr. Keppelman's office, her desk being in the corner of said office toward Market Street. . . . After these 'new-thing sheets' were taken to Miss Gaul I never saw them again; so presumably they were destroyed after they had served their purposes of determining the amount of graft to be paid the dyer. The 'new-thing cards' were a permanent record of any change in the name of a color, a fictitious name substituted for the real or trade name of the color, or any reduction in strength. No price appeared on the 'new-thing cards.' A regular code form was used to designate the amount the color was reduced, so that to the ordinary observer the card would not convey the actual strength of the color sold.

"The method I pursued in making out the order was as follows: Upon the receipt of the order, either through the medium of the mails, or the telephone or brought in by the different salesmen, I would consult my price cards, which were kept in four or five drawers, a set for each customer. In many cases these orders would be for dyestuffs known to the customer under a fictitious name; that is, names not generally known to the trade. The price cards would show the fictitious name, the real or trade name of the color, and the price to be charged.

"A long blank or form was used on which to transcribe the orders so given, with columns for the fictitious name, the correct name, the price to be charged, the gross, tare, and net weights of the goods and the means of shipment to the customer. After filling in on the order blank, in the proper places, the fictitious name, the real name and the price to be charged for the goods ordered, I would give the order to the shipping department. The shipping clerk at that time was——; assistant, —— Schneider. They would know just what color to send the customer from the second column on the order blank, for that contained the real name of the color ordered by the customer.

"The shipper would erase from the packages (in cases where a keg or barrel had been ordered) by means of red paint, painting over the whole head of the keg or barrel as the case may be, thus erasing the correct name of the color (for all such packages had the trade name of the color painted on the head of the package in black stenciling ink), and substitute in its place the fictitious name of the color by which it was known to the customer. After weighing the packages to learn the gross, tare, and net weight, these would be inserted by the shipper or his assistant in the proper spaces on the order, and the means of shipment.

"After this the order was sent to the bill clerk, whose duty it was to bill and charge the goods sent to the various customers. . . . The method of billing and charging was as follows: Quadruplicate copies of all charges to customers were made the original being sales sheets, one of which was retained

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in the Philadelphia office for the matter of bookkeeping and record, the other two sent to the New York office, who in turn sent one of these copies to the home office at Elberfeld, Germany.

"In cases where fictitious names had been given to the dyestuffs that were to be billed, when it came to the billing the fictitious name was written by means of a typewriter of the billing variety on the invoice and the impression conveyed of such writing to the underlying three sales sheets by means of carbon sheets. Then a piece of paper would be laid over the invoice, the typewriter spaced on space and the real or trade name of the color written. No impression of this latter writing would be made on the invoice, as the paper intervened between the type and the invoice, but this writing of the real or trade name of the color would be conveyed by means of the carbon sheets to the three underlying sales sheets. In this manner no inkling of the true name and character of the dyestuff bought was given to the customer, but a record was made on the sales sheets of the true as well as the fictitious name of the goods. After this the piece of paper would be removed from the typewriter and destroyed. Then, after spacing the typewriter properly, the gross, tare, and net weights of the dyestuffs were inserted on the invoice, together with the price to be charged for the goods and the final extension. By way of illustration, note the following:

"One keg of fast yellow S. C. is chinoline yellow;
115-15-100 pounds, at $1.10 .... $110

"All of the above specimen charge except 'is chinoline yellow' would be written in the body of the invoice, for the paper inserted over the invoice, as stated before, would take the impression of 'is chinoline yellow,' which impression or writing could and would be destroyed after removal of the paper from the typewriter. This notation, however, would be conveyed to the three underlying sales sheets by means of the intervening carbon paper and kept as a matter of bookkeeping and record in the various offices of the Farbenfabriken Co., viz., the Philadelphia office, the New York office, and the home office at Elberfeld, Germany.

"The ledger cards were about 10 to 12 inches and were arranged as an ordinary ledger, a column for debits and one for credits. To them was clipped, by means of an ordinary paper clip, a separate card that was known as the 'Is card.' These latter were about 4 inches wide and as long as the ledger cards, and they were fastened to the ledger cards by no more premanent fastening than the paper clips. The object of this temporary means of fastening will be explained later. The lateral lines of the 'Is cards' corresponded exactly with those of the ledger cards, so that anything written, say, on the fifth line, for example, would be exactly opposite or in juxtaposition to writing on the fifth line of the ledger cards. The fictitious name of the dyestuff sold would be entered on the ledger card, together with the price charged and the extension as taken from the sales sheet; then on the 'Is cards' attached to the ledger card would be entered the correct or trade name of the color, so that the fictitious name on the ledger card and the real or trade name of the 'Is card' would be exactly opposite one another.

"The object of the 'is cards' was primarily for means of record, and they could be detached from the ledger card at will at any time. Also if a customer would come to the office and would wish to see how his account stood on the books of the Farbenfabriken Co., the 'is card' could be quickly detached from the ledger card and the latter shown to the customer, and he would be none the wiser as to the exact character and name of the goods he was buying.

"I remember one particular dyestuff of which the D——— firm bought a good deal. 'Brilliant black BB.' This was a fictitious name given to naphthylamine black 4BK. The market price of the latter color was 21 cents, yet, under its fictitious name D———, was paying 85 cents a pound, and they used a good deal of it, at least three to five hundred pounds each week. On my order blank I would insert on the first column one keg or barrel, as the case might be, of brilliant black BB, in the next column the correct or trade name of the color—that is, naphthylamine black 4BK—so that the shipper would know exactly what to send D———, though they would not know the exact nature of the color they were getting, thinking they were using a high-priced dye when in reality it was a cheap one.

"All these transactions, being typical, would be entered on the 'new thing' sheets, which in time would find their way to Miss Gaul or Mr. Keppelman, and the graft to be paid for such fraudulent dealings would be figured out accordingly and paid to the dyer, who was countenancing such transactions. I remember Mr. McNeil coming to the office on several occasions and the men about the place speculating on the amount of graft he would be paid.

"It was also one of my duties to telephone all orders for goods that we did not have in stock here in Philadelphia to the New York office, and, of course, any goods that were ordered that had to be reduced in strength and quality. Also it was customary to wire to the New York office some of the orders, and this was all done in code, odd and peculiar names being used to designate the various colors and the amount of reductions, so that to the outsider these wires would be absolutely unintelligible. Of course, this was done to keep their methods secret to the outside world."

John Cunning stated that he went first as errand boy to the Elberfeld Co. and gradually worked up until he "had charge of the sample room." He continued:

"In the sample room my duties were to tag the samples, send samples out, take care of samples and, whenever necessary, to retag samples. I would file these samples away in my room with the tag on them, showing their proper names, and whenever these samples would be sent to the mills buying those particular dyes, I would take off the tag showing the real name and substitute a tag showing the name and names under which these dyes were sold to this particular mill.

"I also sometimes saw the shipping orders under which the dyestuffs were sent out to the mills. I remember one of these orders was for the carpet mills of the D——s, and under this shipping order Congo-Corinth G was sold to the D——s for a direct red; in other words, everybody knows Congo colors in the dye trade, and they wanted to pretend that this was a direct pink or a direct red. A direct pink or a direct red is almost anything or is apt to be any color, and no one would know what it was in the trade, but Congo-Corinth they would. The price of Congo-Corinth was known and fixed, but for a direct red or pink they could give almost any price.

The foregoing extracts show how the bookkeeping was elaborated and perfected to meet the exigencies of "peaceful penetration." It will be of interest now to learn how the bribery payments were calculated and made. But first we may glance at the methods adopted by the Elberfeld Co. in order to supply proper vouchers to the New York office and to the home office in Germany. William Voris Gundy stated:

"The Farben people also had in their Philadelphia office, as part of their accounts, what is known as 'P' slips. These 'P' slips had on them the date the sale was made to a particular mill, the name of the dyestuffs under which the dye was sold, the quantity, and the amount due to the dyer as his graft or commission; and then there was a separate column in which the salesman, or whoever paid this graft, would fill in the date that this graft or commission was paid to the dyer.

"This 'P' slip was about 9 inches by 6 inches, white paper, and ruled by lines with different columns into which these things were placed. After the graft was paid to the dyer, this 'P' slip, which had previously been given to the salesman in order to pay the right amount of graft to the dyer would be returned or turned in by the salesman to the Philadelphia office. None of these papers would be seen by the dyers themselves, but (they) were only known to the employees of the Farben people. The only one of these papers which would come into the possession of the salesman would be the last paper named—the 'P' slip—and this only temporarily, when he would have to turn it in after payment had been made. Sometimes even the 'P' slip would not come into the salesman's possession, because Mr. Keppelman, the local manager, often made these payments himself to the dyers either at their houses or at a place which had been mutually agreed upon by appointment.

"In the list of firms which I have furnished, where I paid graft to the dyers in person by reason of money furnished me by Mr. Keppelman, is the firm of the Gass Dyeing & Finishing Works, which was located on Ontario Street, near F Street, Kensington. I mention this firm because this a most notorious example of the injury that can be accomplished by this system of paying graft to the dyers. This firm was finally pushed to the wall and failed a few years ago. The dyer for this firm was a man by the name of McClintock—I think his first name was Harry, but I am not sure. McClintock was not paid all the graft to which he was entitled, according to the prices charged this firm on the bills for dyestuffs furnished them. McClintock was actually paid never less than 10 and sometimes 15 cents or more a pound. According to the size of the bills for dyestuffs, sold (to) the Gass Dyeing & Finishing Works, however, McClintock really was entitled to 25 or 30 cents a pound; but on account of the firm being rather slow payers no more than 10 or 15 cents a pound was paid McClintock; and even the payments which were due him at this rate were withheld, according to my recollection, and McClintock never got these, although the firm was charged for the dyestuffs sold them the proper and market prices, plus the amount of graft which was supposed to be paid to the dyer.

"The custom and rule of the company for which I was the salesman—the Farbenfabriken or Elberfeld Co.—was that, in order to protect themselves, they would charge, as an additional price for the stuff, about the same as they would have to pay the dyer for graft. In other words, the amount paid the dyer for graft was just doubled, and this amount was added to the bill. This was done as a margin for protection for the firm selling the dyestuff, because the risk when it would have to pay the dyer graft, and they wanted an additional margin for contingencies. Some of the old dyers who were on to this insisted that this whole amount be paid to them; that is to say, they wanted the amount which was allowed on the bill for their graft and also the amount which was allowed the firm selling the dyestuffs as margin for their protection. Some of the old dyers demanded the whole amount and got it within a very few cents.

"Another firm which occurs to my mind now as being a glaring example of graft is that of X. Y. & Co.

The head of this firm was Mr. X., and the dyer was A. B., who made a great deal of money by graft, and has since left the firm. I never knew just how much B. got, but on several occasions I took sealed envelopes containing money from Mr. Keppelman to him. B. was a great hand at this graft business. He would order, for instance, 5 barrels of sulphur black, which is a cheap black, and 1 barrel of lizarine black or lizarine green; the sulphur blacks are very cheap and the lizarine colors are expensive. When the order would be filled, as was understood at the time B. would give the order, all the barrels of dyestuffs delivered would be sulphur colors, and B. would see that he got within a very few cents of the difference paid to himself."

Warren W. Hartford, employed for general office work, stated:

"I remember often seeing Miss Gaul, who was Mr. Keppelman's private stenographer and secretary, making out the envelopes to be paid the dyers at a desk at the south side of Mr. Keppelman's private room. She would have the money all spread out before her and would take different amounts and put them in envelopes. . . . Sometimes the dyers would come to the office and get these envelopes, sometimes the salesman would take the envelopes to the dyers. As a general rule, the salesmen would take the envelopes to the dyers. . . .

"Among the dyers whom I remember coming to the office interviewing Mr. Keppelman in his private office are A. B. (see preceding disclosure of Gundy), who was then a dyer of the X. Y. & Co.'s mill; C. D., who was a dyer at the mill of U. V. W. & Co., at Bristol, Pa.; and T. S., who was a dyer for O. P., at Norristown, Pa. I remember the last named, S., distinctly, because, when he would be there, Mr. Keppelman would phone down for the 'new-thing' sheets for

O. P.'s mill, and 'Is' card and ledger card besides. I remember the same thing with regard to C. B. & D. with regard to their mills, of X. Y. & Co. and U. V. W. & Co. When these dyers were in Mr. Keppelman's private office, and sometimes before he would call them up into his private office, Mr. Keppelman would phone down and have us send money up to his office, and I have no doubt this was money which he paid these particular dyers."

The following dyers, among others, confessed to having received bribes, and gave their evidence as follows: Alexander Macfoet, who worked at the P. Woolen Mills, stated:

"During the time I was there dyes were bought from ——, Cassella Colour Co., Farbenfabriken, Berlin Aniline Works, and ——. I do not remember the exact or even approximate amounts, but the books of the company will show this. During the time I was there the —— loaned me $1,500, and have loaned me $2,000 more since leaving the mills; the Cassella Colour Co. paid me 5, 10, and 15 cents a pound on all dyestuff I bought from them; the Farbenfabriken paid me 20 and 25 cents a pound on all dyestuff I bought from them; the Berlin Aniline Works, through Leander Riddle, their salesman, left envelopes twice at my house with $15 inclosed each time in payment of my purchasing 2 barrels of sulphur black from them; the —— paid me 10 cents a pound on all dyes obtained by me from them. They would have paid me 15 cents a pound. The reason I did not get the other 5 cents from the —— was because the Philadelphia manager told me that N. B., the salesman, was giving this 5 cents a pound to Mr. X. Y., the president and manager of the company. Since I have confessed my part in this affair, Mr. Y. denies this, I now believe that he never got this 5 cents, but that N. B. put it into his own pocket."

William Nolan stated:

"I went with the L. L. Hosiery Co. about 1897. During all of this time that I was with them, up to the year 1905, they purchased their dyestuffs from the firm Metz & Co. Some time in, I think 1905, I forget the exact month, a Mr. Edward Sheppard came to my house, No. 720 East Clearfield Street, Philadelphia, and represented to me that he was a salesman for the Farbenfabriken Co., and asked me if I could make a change in the dyeing department of the mill of L. L. Hosiery Co., where I was working, and, instead of buying my dyeing stuff from Metz & Co., buy it from the Farben Co. I did not do the buying of this dyeing stuff myself, but it was bought through the office, then sent to me, and I was in a position to say it could not be used. Mr. Sheppard said to me at this first meeting that if I could succeed in having their dyeing material used instead of that of Metz & Co., whose dyeing material we had been using, he would put the dyeing material in at a certain price, whereas the real and true price would be considerably lower, and the difference between the price at which he would bill it to the L. L. Hosiery Co., and the real price he would hand me in cash as my share of the transaction. I told him to go ahead and send a sample to the office so that I could use it and be in position to recommend its use in the dye shop.

"Within two or three days afterwards a can of, I think, 10 or 20 pounds of dyeing stuff came to the office of the L. L. Hosiery Co., and was sent to me in the dye shop. I tried it and found it to be good stuff, and I recommended to the head of the firm that they use this dyestuff instead of the kind that they had been getting from Metz & Co. This was an acid black dye. From that time on up to the time I left the service of the L. L. Hosiery Co. on my recommendation they used this acid black dye of the Farbenfabriken Co. They would use on an average about 50 pounds a week—perhaps a little more. I did not know at the time about how much the mill was paying for this a pound, but I have since learned that it was 56 cents a pound.

"About three months after Mr. Sheppard first saw me at my house, and about three months after we began using this dye, according to my agreement with Mr. Sheppard, he came to see me at my house and paid me cash, $50. He explained to me that this was not the whole amount to which I was entitled, but that his boss (meaning Mr. Alfred Keppelman, the Philadelphia manager of the Farbenfabriken Co.) had put up a kick and would only allow him to pay me this much. I afterwards learned that the truth of the matter was that Mr. Sheppard, as the salesman for the Farbenfabriken Co., had been given the entire difference, or nearly the entire difference, between the real price or value of the acid black and the price at which it had been billed to the L. L. Hosiery Co., so that he, Mr. Sheppard, could give the same to me according to his original agreement made with me; but that, instead of doing this, Mr. Sheppard had retained the balance himself and had actually paid me only about one-half the amount he should have paid me according to our agreement.

"From that time up to the time I left the L. L. Hosiery Co. some time in 1909, a period altogether of about three and one-half to four years, at stated intervals of about three months, Mr. Sheppard would call at my house, No. 720 East Clearfield Street, Philadelphia, and pay me in bank notes a sum of money which generally was about $50, claiming that this was my share of the money coming to me under our agreement. During all of this time, too, this sum of money only represented about a half of what I was entitled to get under the terms of our agreement, and I have been credibly informed since that it really represented only about a third of what I should have gotten."

Richard Pilson stated:

"I never used so very much of the dyestuff of the Farbenfabriken because I never thought very much of it, but at the different mills where I did use it this company paid me 5, 10, and 15 cents a pound for all of their dyestuffs I used. I recall an interesting incident with reference to the dyer employed by A. & Sons ahead of me and whom I succeeded as dyer. His name was Benjamin Rhodes. He had been employed by A. & Sons for about two years. Certain dyestuffs had been sent into the mill from the main office in Baltimore by Mr. A., to be used in the dyeing goods by Mr. Rhodes. Mr. Rhodes thought this dyestuff was not from the people that he wanted to buy from and who were protecting him. He sent it back to Mr. A. and told Mr. A. it was too inferior to be used. Mr. A. kept it at the office in Baltimore for a few weeks and then changed the tags on it. I think he changed the tags to show it was gotten from the Cassella Co., and then sent it back again to the mill and told Mr. Rhodes that it was a new dyestuff gotten from the Cassella Co., and asked him to try it. Mr. Rhodes used it and sent word to Mr. A. that it was the best dyestuff he had ever used. Mr. Rhodes wanted to get his dyestuff from the Cassella Co. Mr. A. himself came to the mill as soon as he got this word—I think it was Monday morning—and shut the door of the mill in the face of Mr. Rhodes, who was discharged from that moment."

Alfred Selmann stated as follows:

"The five companies that I got dyestuff from were as follows: The Farbenfabriken of Elberfeld Co., the Berlin Aniline Works, the Cassella Colour Co., the

——— Co., and the ——— Co. In return for my ordering dyestuff from these particular companies I would receive money or graft from their various agents as follows:

"My arrangement with the Farbenfabriken Co. was that I was to get 5 cents on every pound used from their company: This would amount in the average, in my opinion, to about 200 pounds a week. . . . I therefore received from them $10 on the average every week. This money would be paid me by James Gladfelter, the salesman from the Farbenfabriken of Elberfeld Co., who would come to my house or else send for me to come to a hotel in Reading, and would pay me the money every month. My arrangement with the Berlin Aniline Works was the same, viz., that I should get 5 cents on every pound used from this company. We would use at this works, in my opinion, about 200 pounds, on the average, a week from the Berlin Aniline Works. I received, therefore, from them about $10 each week, which would be paid me monthly by Mr. Feldman, the manager, and at other times by Mr. George Carmany a salesman for that company. This would be paid me also at my house or at a hotel. From the Cassella Colour Co. I do not remember ever receiving anything, as we used very little of their dyestuff."

Leonard K. Townson stated:

"My first personal contact with the dye-goods manufacturers and with their paying the dyers commissions, which are known among the dyers themselves as graft, was at the C. mill, in 1910. I have often been in positions, of course, before this where I have seen this graft handed out and paid but I had never been in a position of authority myself to receive it. I was head dyer at the C. mills. While I was there

I bought dyestuffs from the Cassella Colour Co., the Farbenfabriken of Elberfeld Co., and the Berlin Aniline Works. My business with the Cassella Co. would amount to about 500 pounds a month, and on this they paid me 5 cents a pound. This is considered the safe basis, which all houses are willing to deal under with the dyer. . . . The amount of dyestuff that I used altogether from the Farbenfabriken of Elberfeld Co. was about 200 pounds, upon which they paid me only on the straight basis of 5 cents a pound. . . . The amount of dyestuff I got from the Berlin Aniline Works was 600 pounds altogether, on which they paid me only on the straight basis of $10. The way that color was rated—it being sold as a fast color when it was a direct black—I should have gotten 30 cents a pound on this, according to all the rules of the dyers. Instead I was only paid $10."

Christopher Eisfeld stated:

"During all the time that I worked as boss dyer in the employ of the L. L. Hosiery Co., of Frankford, Philadelphia, I received graft from the Philadelphia office of the Farbenfabriken, of Elberfeld Co., amounting to from 10 to 12 cents per pound on all dyestuffs furnished by that company to my employers, the L. L. Hosiery Co. My employers used, I suppose, about a thousand pounds of black dye every two months and about 60 pounds of various other colors every week. My graft, therefore, which was paid to me by the Farbenfabriken Co., would amount to about $110 every two months on the black dyestuffs and about $6 or $7 each week on the other colors. This graft was paid to me personally by the manager of the Philadelphia office of the Farbenfabriken of Elberfeld Co., Mr. Alfred J. Keppelman. The graft was also sometimes paid to me by the salesmen of the Farbenfabriken of Elberfeld Co., Mr. Litchfield and Mr. Sheppard. It was always paid to me at my home by these men, at my address, 1906 East Venango Street, Philadelphia.

"From about the middle of July to the middle of October, 1910, Mr. Sheppard, the salesman instead of paying me the graft, which was due me, kept it, and then came around to my house at the above address and paid me only half that which was due me on the dyestuffs that he himself had sold me, keeping the other half for himself. In other words, he offered me $75 and kept $75 himself in his own pocket, whereas the whole $150 was due me on the dyestuffs that Mr. Sheppard had sold my employers.

"I immediately stopped giving any further orders for the dyestuffs to the Farbenfabriken of Elberfeld Co. Whereupon Mr. Litchfield, the other salesman, paid me a visit to find out why his company did not get any more orders, and I explained to him the treatment I had received from Mr. Sheppard, and I also told Mr. Litchfield that I was willing to go to Mr. Keppelman and explain to Mr. Keppelman the treatment Mr. Sheppard was giving me. Mr. Litchfield advised me not to do this, telling me he would fix the matter himself without Mr. Keppelman knowing anything about it. A few days later Mr. Litchfield came to my house and told me that Mr. Sheppard could not pay me all the money that was due to me from him (Sheppard), but asked me if I was willing to accept $5 a week each until I was paid off this graft money that was due me and which Mr. Sheppard had kept. This, of course, was in addition to the other graft money that was due me on the regular dyestuffs I was getting all the time for my employers, and which was being paid me regularly at my house by Mr. Litchfield and Mr. Keppelman. Thinking that Mr. Sheppard might have need of this money himself, I accepted this offer of $5 a week and was paid $5 for two weeks, which was sent me by mail—$5 bill in two envelopes for two weeks. No letter or writing was in these envelopes. After these two payments, the payments were discontinued, and I waited a few more weeks to give Mr. Sheppard a chance to do the right thing, and then I wrote to Mr. Keppelman a letter explaining my bad treatment by Mr. Sheppard.

"In the meantime I had given Mr. Litchfield an order for 500 pounds of wool black, to be used by my employers in dyeing, for which order Mr. Litchfield paid me $60 two weeks later. Mr. Sheppard, however, did not come up with any further money on account of what he owed, and I again wrote to Mr. Keppelman about it, and Mr. Keppelman wrote me a letter saying he would come up to see me the following Sunday at my house. In the meantime Mr. Litchfield came to my house and paid me $50 from Mr. Sheppard and told me he would bring the $10 balance owed by Mr. Sheppard the next week. I told Mr. Litchfield that I had informed Mr. Keppelman about the matter, and Mr. Litchfield told me I had no business to do this.

"On the following Sunday, about the middle of December, 1910, Mr. Keppelman came to my house and asked me not to give any orders to any other dye house other than the Farbenfabriken of Elberfeld Co., for which he was the manager. He promised me that if I would do this that I would have no further trouble in getting the graft which was due me on all the orders, but that he would bring me the graft due me on all orders himself, personally, to my house every month. This promise he kept; and after this time, every month, during week days, from 8 to 9 in the evening, two or three times each month, Mr. Keppelman came to my house and paid me the graft money which was due to me.

"In the meantime Mr. Litchfield had left the employ of the Farbenfabriken of Elberfeld Co.; and on the following occasion when Mr. Keppelman came to my house, on a Sunday, about the end of February, 1911, I asked Mr. Keppelman why he had let Mr. Litchfield go but still retained in his employ Mr. Sheppard. Mr. Keppelman told me that Mr. Litchfield was too old to train in the business; that Mr. Sheppard was still young and could be trained as he, Mr. Keppelman, wanted to train him. Mr. Keppelman also told me that he had another salesman who did the same thing as Mr. Sheppard—that is, he retained part of the graft money that was due dyers—but that he had succeeded in training him so that he was now one of the best men in his employ. Mr. Keppelman did not mention his name. On the Sunday that I had this conversation with Mr. Keppelman he did not pay me any graft money. He merely made a personal call to talk with me about matters. On this occasion Mr. Keppelman asked me if I knew a dyer named August Dady. I told him yes; I knew him; and that he had worked as a boss dyer for the P. O. Dyeing & Finishing Works. Then Mr. Keppelman told me that he had had the same trouble with Mr. Litchfield and Mr. Dady as he had had with Mr. Sheppard and myself, and that Mr. Litchfield had not paid over to Mr. Dady all the graft money that was due Mr. Dady for orders for dyestuffs that he had given for the P. O. Dyeing & Finishing Works. Mr. Keppelman also said that it was through trouble such as this that he had lost a great many orders, and that he had a great deal of worriment and unpleasantness over these things.

"While I was at K.'s, A. B. tried to introduce a new dye for another company into the mill, but I stopped this and made the dye streak all the hosiery dyed by it by secretly putting chlorate of potash in the double bottom of the tub. I did this while the chemist for this new company, A. B., and the manager of K.'s were looking on at the experiment, but they never suspected me. I felt I was justified in doing this not only because I was getting 10 cents a pound from the ——— company, which the new company never offered to pay me, but also because the new dye was not really so good as the old dye and much more expensive in the end. By doing this trick I saved K.'s at least $50 a week."

From Norristown this deponent moved to Utica, N. Y., where he worked for the R. S. Co. and received graft from Kalle & Co.

"I was paid (he states), by Ervin Smith, salesman for Kalle & Co. He paid me from 5 cents a pound to 25 cents a pound for all dyes sold by Kalle & Co. while I was there. When I first went there Smith was afraid to approach me about graft, and he got Albin Benedict, the former dyer for the R. S. Co., to write me three letters so that I would understand about it. Then Smith wrote me, inclosing a slip showing how much was due me for two stuffs sold me by Kalle & Co.—one a softener and the other a cotton yellow. After I was at the R. S. Co. about four months McAdams, the treasurer of the company, sent for me and wanted to know if graft was being paid to me. I said 'No,' and McAdams said he didn't believe me, and wanted me to explain how it was done. I refused, and the upshot was I resigned. After that I couldn't get a job for love or money in New York State, and I believe McAdams must have put me on a black list. I went to several mills in the neighborhood and couldn't get a job.

"After I lost my job at the R. S. Co., Benedict sent for me to come to see him at his hotel at Troy, N. Y., which he had bought out when he retired as a dyer. He sent me my railroad ticket. He was afraid I had betrayed him to the R. S. Co. When I got there he and Smith were waiting for me and demanded the letters they had written to me I said

I had burned them. They said they didn't believe it, and prepared an affidavit for me to sign, stating that I never received graft from Kalle & Co.; that I never received letters from Benedict, etc. All the time they kept giving me whisky until I was about half full. Then they brought in a man who they said was a notary public, but they couldn't find any Bible, and Smith finally said, 'Well, we don't need any Bible; just sign your name here anyway, Chris.' Then I signed it, because I knew it was no good; the man was not a notary, and I couldn't swear because they couldn't find a Bible."

The imagination of the manager of the Farbenfabriken Co. was stirred to activity when other dye competing companies (probably English) threatened to gain a footing. How this emergency was handled appears in the affidavit of William Voris Gundy (already mentioned), who says:

"In addition to the facts that I set forth in my previous affidavits, among other things I now recall that, after going to work for the Farbenfabriken of Elberfeld Co., some time after first working for them —possibly in the year 1904—while I was working as head chemist in the laboratory of the Farbenfabriken, Mr. Keppelman, the manager, sent for me to come up to his office (as he always did when he had instructions for me), and told me that they had been furnishing dyestuffs for a certain mill in Philadelphia—the name of which mill I do not recall— and that the dyer of this mill was working in the interests of the Farbenfabriken and had informed Mr. Keppelman that a competitor was trying to get into this mill and displace the Farbenfabriken's dyestuffs; and Mr. Keppelman asked me to experiment in the laboratory on different chemicals in order to find the right kind of a chemical, or combination of chemicals, that would successfully spoil and ruin the dyestuffs of this proposed rival. The idea was that this chemical would form a very small package and could be adroitly carried by the dyer, or his second man under his directions, and dropped into the dye tub while they would be casually passing by, and thereby ruin the dye bath.

"I named several chemicals to Mr. Keppelman as being the proper chemicals to do this, and among other things that I named I remember mentioning zinc dust. Mr. Keppelman said these chemicals were all right so far as spoiling the dye was concerned, but that it would go too far and destroy too much of the color, so that the game would be almost instantly detected. On the contrary, Mr. Keppelman said what they wanted was simply something to make it bronzy or streaked, which would be sufficient to affect the dye, ruin the goods dyed, and prevent the competitors from getting the business.

"I then went back to the laboratory and worked on different chemicals and combinations of chemicals; and, according to my present recollection, I worked at this for about a week before I succeeded in finding the right kind of a combination or chemical preparation that would do what Mr. Keppelman wanted. I finally succeeded in effecting and making this preparation, and gave it to Mr. Keppelman. I have no doubt it was sent by him in some way to the dyer and accomplished its proper purpose, as I never heard any objection to it afterwards.

"At other times after this I remember on various occasions, at Mr. Keppelman's request, I would either give him the names of different chemicals that would affect and spoil various dyes, or else I would work on chemical preparations that would accomplish this purpose. These chemicals and preparations would then be given to him by myself, and I would hear nothing more about them, but I am sure they must have gone out to the dyers as they were intended, and successfully accomplished the purpose for which they were intended.

"Even before I was asked to make this first preparation by Mr. Keppelman, and while I was working in the chemical laboratory, I knew from my predecessor there as head chemist, X. Y., who now lives at ———, that these chemical preparations were being constantly made by the Farbenfabriken in order to spoil the dyestuffs of rival and competing houses.

"Mr. Y. had been there quite a number of years, and was doing this work, among his other duties for the Farbenfabriken, during all the time I was there, and had been doing it before I was employed by them. I think it was about 1904, or thereabouts, that Mr. Y left. I remember that Mr. Y. was somewhat conscientious, and this was one of the duties that he was called upon to do for his employer that he rather balked at."

What happened to the chemicals invented by Mr. Gundy is shown in the evidence of Richard Meyer:

"On many occasions I recall that—although the exact dates do not occur to my mind—dyestuff was brought in and tried from other companies; but on each occasion I so managed that it would either spoil the goods or be so unsatisfactory in its result that the mill believed that the dyestuff from these other companies was no good, and therefore would not buy from them."

Mr. Keppelman kept several motor cars, and the evidence of his chauffeur, C. S. Kille, has interest:

"I remember on very many occasions taking Mr. Keppelman in his automobile to different houses of men whom I afterwards ascertained to be dyers. On some of these occasions, according to Mr. Keppelman's instructions to me, I would stop the car around the corner from the address where we were going, and Mr. Keppelman would get out and walk around the corner to the house. Mr. Keppelman would tell me on these occasions, if anyone asked whose car it was, not to tell. Among the addresses to which I often took Mr. Keppelman are the following: 1823 East Tioga Street (address of William Fischer, dyer); 1821 East Lippincott Street (address of August Dede, dyer); 1906 East Venango Street (address of Chris. Eisfeld, dyer); 615 Locust Avenue, Germantown (address of Tommy Driscoll, dyer at Bradford Mills); 1347 Hunting Park Avenue (address of Kirgeis, dyer, and William Zipper, chemist for Farbenfabriken); 1217 East Allegheny Avenue (address of E. F. and H. F.); also a lettered street in Olney (address of William Schumann, Jr., dyer for U. V. W.).

"Also I took him down to a beer saloon in Chester —I do not just remember the street—where he met them. On some occasions we would pick men up on the street, who looked to me to be dyers, by appointment, and after taking them around in the automobile for an hour or so would let them out again. I also went to many other addresses with Mr. Keppelman in the car, which addresses I can not just recall now, but will remember them later on, or when my attention is particularly called to them. I remember once taking Mr. Keppelman in the car on a Sunday afternoon out Broad Street, Miss Gaul accompanying him, and at Mr. Keppelman's instructions I stopped the car on Broad Street, and he gave me a long envelope which felt to me as if it was full of "dough," and at Mr. Keppelman's instructions I took this around the corner in Allegheny Avenue—I think it was 1912 Allegheny Avenue—and delivered it in person to Mr. H. F.

"Mr. Keppelman never told me directly what he was doing, but I had a good idea that he was doing something crooked with these dyes right along, and that these trips, conferences, and appointments were for this purpose. He always carried with him a portfolio bag, and sometimes a black grip, and sometimes had a revolver in the black grip for some purpose."

Mr. Keppelman, who has acquired more or less fame for the ingenuity and thoroughness of his methods, hired a yacht during the summer, whose cruises became popular in certain dye circles and whose career has since attracted, perhaps, undue interest. Modesty made it extremely difficult, except in the close confidence of conversation, to obtain detailed evidence of the courtesy and favors extended during these cruises. But one may gather that, invitations having been sent to certain of the dyers who had large orders in their gift, they would accept and find society which, if not congenial, was intended to be so, on board the yacht. If they objected, suggestion and reflection were sufficient to convince them of the wisdom of silence; if they found the program attractive, there was surely no reason for them to talk. In either case, Mr. Keppelman got the orders for dyes.

C. S. Kille gives us a glimpse of life on board the yacht:

"I also have a distinct recollection of Mr. Keppelman's yacht. He has had three yachts, each one of which has been called the *Ilsa* after his daughter. The yacht he now has is called *Ilsa III*. It has been all winter in winter quarters at Essington, and is now being refitted for the season of 1913. I believe Mr. Keppelman is a member of the Delaware River Yacht Club. I filled different positions on board this yacht, being sometimes chief engineer and purser and other times acting as brass polisher. Mr. Keppelman would take me along for company, and I remember one night late I was summoned to come on board his yacht in order to take the place of the engineer who had left and gone to Baltimore on a drunk. I have a complete log book which I kept myself for this yacht for 1909. Many parties have been held on board this yacht; and among these parties would sometimes be men who were the managers, superintendents, foremen, or owners of mills at different places and who were either customers of Mr. Keppelman or men whom he wanted to entertain.

"The boat was always well stocked and provided with wines, eatables, and every possible luxury. At these parties they drank whiskey, champagne, wine, and beer. Many times he would have Miss Gaul and her lady friends on board, never Mrs. Keppelman. I remember among these ladies was Miss Isabella Ennis, the manicurist over Fox's flower store, on South Broad Street, just below the Ritz-Carlton Hotel. I do not know whether the others were manicurists or not. They were pretty gay ladies, and altogether they would have quite jolly parties. I remember one time the mate, Albert Carlson, fell overboard and went to the bottom of the river and a man had to fish him out. Both Mr. Keppelman, his guests, and the crew had lively times on board this boat."

As will be gathered from these statements the testimony of Miss Gaul, the private secretary, would have been of the greatest value. Her clever lawyer appreciated this point of view. After a settlement of $100,000 on Mrs. Keppelman a divorce was arranged; and Miss Gaul, as Mr. Keppelman's present wife, can not, under American law, be a witness against him.

The foregoing evidence enables one to see, as on a stage, an excerpt from the busy and profitable life of German organization. Psychological lessons are not wanting—the degeneration caused among the employees of the German concern themselves, the suggestive complaints of Mr. Keppelman as to difficulties in "training" salesmen, together with the delightfully human picture of Chris Eisfeld, who was willing to make any affidavit because a Bible could not be found. But it is necessary, in closing to recognize the scale on which the German dye industry worked and its methods of adulteration and corruption. Statistics when cited at any length are apt to weary and fail to fix the attention. Let us content ourselves, therefore, with stating that the annual value of the dyes imported into the United States before the war amounted to about $10,000,000, and that, although the general rule was to add 10 per cent for the selling expenses and 10 per cent for the profits of the American distributing managers, the total prices paid by the American consuming mills were almost $25,000,000 yearly, which sum, of course, included the results of "graft" and adulteration. One of the six companies alone claimed credit for $700,000 in graft, and one American mill—the one where 85 cents was paid for a certain black instead of 21 cents—presented figures to the author of this article showing, after graft was eliminated, a yearly reduction of expenditure on dyestuffs from $265,000 to $125,000.

DEFENDANT'S EXHIBIT No. 80.

Extract From Letter of Dr. Albert to Dr. Schweitzer.

The breadth of high-mindedness with which you at that time immediately entered into the plan has borne fruit as follows: One and a half million pounds of carbolic acid have been kept from the Allies. Out of this one and a half million pounds of carbolic acid four and one-half million pounds of picric acid can be produced. This tremendous quantity of explosives stuffs has been withheld from the Allies by your contract. In order to give one an idea of this enormous quantity the following figures are of interest:

Four million five hundred thousand pounds equals 2,250 tons of explosives. A railroad freight car is loaded with 20 tons of explosives. The 2,250 tons would, therefore, fill 112 railway cars. A freight train with explosives consist chiefly of 40 freight cars, so that the 4,500,000 pounds of explosives would fill three railroad trains with 40 cars each.

Now, one should picture to himself what a military coup would be accomplished by an army leader if he should succeed in destroying three railroad trains of 40 cars, containing four and a half million pounds of explosives.

Of still greater and more beneficial effect is the support which you have afforded to the purchase of bromine. We have a well-founded hope that, with the exclusion of perhaps small quantities, we shall be in a position to buy up the total production of the country. Bromine, together with chloral, is used in making nitric gases, which are of such great importance in trench warfare. Without bromine these nitric gases are of slight effect; in connection with bromine, they are of terrible effect. Bromine is produced only in the United States and Germany. While, therefore, the material is on hand in satisfactory quantities for the Germans, the Allies are entirely dependent upon importation from America.

DEFENDANT'S EXHIBIT No. 81.

Sample Letter, Used in Soliciting Subscriptions.

Copy

July 16, 1919.

Augusta Drug Co.,
305 8th St.,
Augusta, Ga.

Gentlemen:

The Alien Property Custodian in the course of his investigations into German influences in American industry, made an exhaustive study of their methods in the Chemical Field. This culminated in the formation of The Chemical Foundation, Incorporated, which has taken over some 4500 German Patents relating to the chemical, dye, and allied industries.

Some days ago we mailed you some printed literature relating to The Chemical Foundation, Incorporated, and I am taking this means of again calling your attention to same. For your further information, I am enclosing a copy of the Prospectus, Certificate of Incorporation and a Voting Trust Agreement. A subscription blank is also enclosed.

In view of the importance of this newly formed Corporation, to the whole American Chemical Industry, I trust you will give these plans most careful consideration, and hope you will co-operate with us in our efforts to thoroughly Americanize the Chemical Field.

Very truly yours,

THE CHEMICAL FOUNDATION,
INCORPORATED.

Ass't. Secretary.

FAM/M
Enc.

DEFENDANT'S EXHIBIT No. 82.

STOCKHOLDERS OF THE CHEMICAL FOUNDATION AND WHAT THEY MANUFACTURE.

Alcohol	1
Aluminum & Aluminum Alloys	1
Carbon Products	1
Cellulose Products	1
Ceramic Products	1
Chemical Dealers	2
Chemical Engineers & Research	3
Dyes, Intermediates, Crude Coal Tar Products and Photographic chemicals	28
Electrical Apparatus	3
Explosives	2
Fertilizer	1
Food Products	2
Glassware	1
Heavy Chemicals	25
Metallurgical Products, Iron and Steel	6
Paints & Varnishes	3
Paper	3
Petroleum Oils	1
Pharmaceuticals	28
Plastic Products	2
Platinum, Gold & Silver Products	2
Printing & Lithographic Inks	1
Rare Earths	1
Rugs & Carpets	1
Rubber Products	2
Scientific Society	1
Silk, Silk Dyeing & Printing	2
Steel Products	1
Textile Goods	6

Textile Printers, Dyers & Bleachers	21
Therapeutic & Scientific Apparatus	3
Vegetable Oils & Fats	1
Water Softeners	1
Total	158

1.	Abbott Laboratories, The	Pharmaceuticals
2.	Althouse Chemical Co., The	Dyes & Intermediates
3.	Aluminum Company of America	Aluminum & Aluminum Alloys
4.	American Aniline Products, Inc.	Dyes & Intermediates
5.	American Cellulose & Chemical Manufacturing Co., Inc., The	Cellulose Products
6.	American Chemical Society	Scientific Society
7.	American Cotton Oil Company, The	Vegetable Oils, Fats
8.	American Platinum Works	Platinum, Gold & Silver Products
9.	American Printing Company	Textile Printers & Dyers
10.	Aniline Dyes & Chemicals, Inc.	Dyes & Intermediates
11.	Armour Fertlizer Works	Fertilizer
12.	Arnold Print Works	Textile Printers & Dyers
13.	Aspinook Company, The	Textile Printers & Dyers
14.	Atlantic Dyestuff Co.	Dyes & Intermediates
15.	Atteaux & Co., Inc., F. E.	Dyes & Intermediates
16.	Ault & Wiborg Company, The	Printing & Lithographic Inks
17.	Baker & Bro., H. J.	Chemical Dealers
18.	Baker & Co., Inc.	Platinum, Gold & Silver Products
19.	Ball, George A.	Glassware
20.	Bancroft & Sons Co., Joseph	Textile Dyers & Printers
21.	Barrett Company, The	Coal Tar Crudes & Intermediates, Tar Products
22.	Bayer & Company, Inc., The	Pharmaceuticals
23.	Bethlehem Steel Company	Steel Products
24.	Bischoff & Co., Inc., C.	Dyes, Chemical & Pharmaceutical Dealers
25.	Borne, Scrymser Company	Petroleum Oils
26.	Bower Chemical Manufacturing Co., Henry	Heavy Chemicals

27. Bronx Company	Textile Dyers & Printers
28. Brown Company	Paper
29. Butterworth-Judson Corporation	Dyes & Intermediates
30. Campbell & Co., John	Dyes & Intermediates
31. Capudine Chemical Co.	Pharmaceuticals
32. Central Dyestuff and Chemical Co.	Dyes & Intermediates
33. Chapal, Antonin	Dyes & Intermediates
34. Cheney Brothers	Silk, Dyers & Printers
35. Citro Chemical Company of America	Pharmaceuticals, Perfumes, Heavy Chemicals
36. Clapp Ammonia Company, B. P.	Heavy Chemicals
37. Comey Company, R. H.	Dyers & Bleachers
38. Commercial Research Company, The	Chemical Research
39. Commonwealth Chemical Corporation	Pharmaceuticals
40. Consolidated Color and Chemical Co.	Dyes & Intermediates
41. Contact Process Company	Heavy Chemicals
42. Crocker, Burbank & Co.	Paper
43. Crozer & Son, Samuel A.	Cotton Goods
44. Davison Chemical Company	Heavy Chemicals
45. Dehls, John C.	Heavy Chemicals
46. Dermatological Research Laboratories, The	Pharmaceuticals
47. Detroit Chemical Works, The	Heavy Chemicals
48. Diamond Alkali Company	Heavy Chemicals
49. Dicks, David Company, Inc.	Dyes & Intermediates
50. Digestive Ferments Co.	Food Products
51. Dorr, John V. M.	Chemical Engineer
52. Dow Chemical Company, The	Dyes, Intermediates, Heavy Chemicals
53. DuPont de Nemours & Company, Inc., E. I.	Explosives, Dyes, Intermediates, Plastics, Heavy Chemicals & Pharmaceuticals
54. Durex Chemical Corporation	Heavy Chemicals & Dyes
55. Durfee, Winthrop C.	Chemical Engineer
56. Dye Products and Chemical Co., Inc.	Dyes & Intermediates
57. Eastern Drug Company	Pharmaceuticals

58. Electric Boat Company	Electrical Boats & Apparatus
59. Electro Bleaching Gas Co.	Heavy Chemicals
60. Engelhard, Charles	Therapeutic & Scientific Apparatus
61. Essenkay Products Company	Rubber Goods
62. Essex Aniline Works, Inc.	Dyes
63. General Bakelite Company	Plastic Products
64. General Ceramics Company	Ceramic Products
65. General Chemical Company	Heavy Chemicals
66. General Electric Company	Electrical Equipment
67. Genesee Pure Food Company, The	Food Products
68. Gilmore, George L.	Textile Dyers & Printers
69. Grasselli Chemical Co., The	Dyes, Intermediates & Heavy Chemicals
70. Hanovia Chemical & Mfg. Co.	Therapeutic & Scientific Apparatus
71. Hardwick & Magee Company	Rugs & Carpets
72. Heller & Merz Co., The	Dyes & Intermediates
73. Hercules Powder Co.	Explosives
74. Herf & Frerichs Chemical Co.	Heavy chemicals
75. Hess, Goldsmith & Co., Inc.	Silk Goods
76. Heyden Chemical Works, The	Pharmaceuticals & Intermediates
77. Hooker Electrochemical Company	Heavy Chemicals
78. Irvington Smelting & Refining Works	Metallurgical Refiners.
79. Isco Chemical Co., Inc.	Heavy Chemicals
80. Johnson & Johnson	Surgical Supplies & Pharmaceuticals
81. Kelly-Springfield Tire Company	Automobile Tires & Rubber Products
82. Klipstein & Sons Co., E. C.	Dyes, Intermediates, Heavy Chemicals
83. Knipe & Sons, Walter E.	Textile Dyers & Printers
84. La Belle Iron Works	Metallurgical Products
85. Lackawanna Steel Company	Steel
86. Lehn & Fink, Inc.	Pharmaceutical & Toilet Articles
87. Lewiston Bleachery & Dye Works	Textile Printing

88. Lilly and Company, Eli	Pharmaceuticals
89. Lindsay Light Company	Intermediates, Rare earths
90. Lonsdale Co.	Window Shade Cloth
91. Lowell Bleachery	Textile Dyers & Printers
92. Lucas & Co., Inc., John	Paints, Varnishes
93. Mallinckrodt Chemical Works	Pharmaceuticals, Heavy Chemicals
94. Marden, Orth & Hastings Company, Inc.	Dyes, Intermediates & Heavy Chemicals
95. Maxwell, Francis T.	Textile Dyers & Printers
96. McKesson & Robbins	Pharmaceuticals
97. Merck & Co.	Pharmaceuticals
98. Merrill Co., The Wm. S.	Pharmaceuticals
99. Merrimac Chemical Co.	Intermediates & Heavy Chemicals
100. Metals Disintegrating Company, Inc.	Metallurgical Products
101. Metz Laboratories, Inc., H. A.	Pharmaceuticals
102. Millville Manufacturing Co., The	Cotton Goods
103. Monroe Drug Company	Dyes, Pharmaceuticals
104. Monsanto Chemical Works	Pharmaceuticals, Heavy Chemicals & Intermediates
105. Morrill, Geo. H.	Printing Inks
106. Mount Hope Finishing Company	Textile Printers & Dyers
107. Mutual Chemical Co. of America	Heavy Chemicals
108. National Ammonia Co.	Heavy Chemicals
109. National Aniline & Chemical Company, Inc.	Dyes, Intermediates, Heavy Chemicals
110. National Electrolytic Co., The	Heavy Chemicals
111. National Silk Dyeing Company	Textile Dyers & Printers
112. Naugatuck Chemical Company, The	Heavy Chemicals
113. New Bedford & Agawam Finishing Co.	Textile Dyers & Printers
114. Newport Chemical Works, Inc.	Dyes, Intermediates, Heavy Chemicals
115. Niagara Alkali Co.	Heavy Chemicals

116. Niagara Electro Chemical Co.	Heavy Chemicals
117. Ohio Chemical and Manufacturing Co., The	Heavy Chemicals
118. Pacific Mills	Cotton Goods
119. Parke, Davis & Company	Pharmaceuticals
120. Patchett Worsted Co.	Worsted Cloth
121. Peerless Color Company	Dyes & Intermediates
122. Pennsylvania Salt Manufacturing Co.	Heavy Chemicals
123. Permutit Company, The	Water Softeners
124. Perth Amboy Chemical Works	Heavy Chemicals
125. Pfizer & Co., Inc., Chas.	Pharmaceuticals
126. Philadelphia Tapestry Mills	Tapestry
127. Philadelphia Textile Machinery Co.	Textile Dyeing Machines
128. Powers-Weightman-Rosengarten Co.	Pharmaceuticals & Heavy Chemicals
129. Rector Chemical Company, Inc.	Pharmaceuticals
130. Republic Iron & Steel Company	Iron Products
131. Rhodia Chemical Company	Pharmaceuticals, Perfumes
132. Roessler & Hasslacher Chemical Company, The	Heavy Chemicals, Pharmaceuticals
133. Sayles Finishing Plants	Textile Dyers & Printers
134. Schieffelin & Co.	Pharmaceuticals
135. Semet-Solvay Company	Heavy Chemicals
136. Sherwin-Williams Co., The	Paints, Varnishes, Dyes
137. Solvay Process Company, The	Heavy Chemicals
138. Squibb & Sons, E. R.	Pharmaceuticals
139. Stearns & Co., Frederick	Pharmaceuticals
140. Stifel & Sons, J. L.	Textile Printers & Dyers
141. Tartar Chemical Works	Organic Chemicals
142. Toch Brothers	Paints, Varnishes
143. Union Bleaching and Finishing Co.	Textile Dyers & Printers
144. Union Carbide & Carbon Co.	Carbon Products
145. United Drug Company	Pharmaceuticals
146. United Piece Dye Works	Textile Dyers & Printers
147. United States Color & Chemical Co., Inc.	Dyes, Intermediates

148. United States Finishing Company, The	Textile Dyers & Printers
149. U. S. Industrial Alcohol Co.	Alcohol
150. Upjohn Company, The	Pharmaceuticals
151. Viscoloide Company, The	Plastic Products
152. Wallau, Inc., George J.	Pharmaceuticals
153. Wanskuck Company	Textile Dyers & Printers
154. Western Electric Company	Electrical equipment
155. West Virginia Pulp & Paper Company	Paper
156. Wolf & Co., Jacques	Dyes, Intermediates, Textile Chemicals
157. Youngstown Sheet and Tube Company, The	Iron Products
158. Zinsser & Co.,	Dyes & Photographic Chemicals

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DEFENDANT'S EXHIBIT No. 83.

to form of License Used.
"A"—Original form of License
"B"—New form of License
"C"—Special form of License
"D"—Trademark Agency Agreement.

THE CHEMICAL FOUNDATION, INCORPORATED

STATEMENT OF INCOME ON LICENSES FROM APRIL 10, 1919 TO DECEMBER 31, 1 OR PATENTS AND TRADEMARKS ASSIGNED TO CHEMICAL FOUNDATION, INC. BY ALIEN PROPERTY CUSTODIAN

mber ense	Name and Address	Product	Royalty Rate	Date of License
1	E. R. Squibb & Sons, 80 Beekman St., N. Y. C.	Neo-Arsphenamine	5% of gross sales	6/16/19
2	E. R. Squibb & Sons, 80 Beekman St., N. Y. C.	Arsphenamine	5% of gross sales	6/16/19
3	E. R. Squibb & Sons, 80 Beekman St., N. Y. C.	Derivatives of Oxyarylarsinic Acids and Process of Making Same	5% of gross sales .	6/16/19
4	E. R. Squibb & Sons, 80 Beekman St., N. Y. C.	Medicinal Preparations	5% of gross sales	6/16/19
5	E. R. Squibb & Sons, 80 Beekman St., N. Y. C.	Medicinal Preparations	5% of gross sales	6/16/19
6	Dye Products and Chemical Co., 200 5th Ave., N. Y. C.	Zinc Azonapthol Dye and process of making same. (Salicine Black)	4% of net selling price to 3/31/20 2% of net selling price thereafter	6/18/19
7	Calco Chemical Co., Boundbrook, N. J.	Cinchophen	2½% of net selling price	6/30/19
8-9	John Campbell & Co., 75 Hudson St., N. Y. C.	Hydron Blue Dye	5% of net selling price	7/1/19
10	Radium Luminous Material Corp., 55 Liberty St., N. Y. C.	Anticathode	5% of net selling price	8/1/19
11	Mansfield Co., Framingham, Mass.	Reinforced Paper	1¼% of net selling price	8/8/19
12	Gaskill Chemical Corp., 157 Spencer St., Bklyn., N. Y.	Process for Dyeing Furs, Hairs and the like	5% of net selling price	8/9/19
13	Gaskill Chemical Corp., 157 Spencer St., Bklyn., N. Y.	Process for Dyeing, Furs, Hairs and the like	5% of net selling price	8/9/19
14	Gaskill Chemical Corp., 157 Spencer St., Bklyn., N. Y.	Rodol Dyes	5% of net selling price	8/9/19
15	E. B. Badger & Sons Co., 63 Pitt St., Boston, Mass.	Filling Material for Columns	$200.00 per unit	8/9/19
16	E. C. Klipstein & Sons Co., 654 Greenwich St., N. Y. C.	Salicine Black	5% net selling price to 3/31/20 2% net selling price thereafter	8/9/19
17	E. C. Klipstein & Sons Co., 654 Greenwich St., N. Y. C.	Tanning Material	3% net selling price	8/9/19
18	Safepack Mills, 727 Atlantic Ave., Boston, Mass.	Reinforced Paper	1¾% of net selling price	1/6/20
19	Yocum Laboratories, 324 Academy St., Newark, N. J.	Tanning Material	3% of net selling price	7/30/19
20	Heyl Laboratories, Inc., 437 Barretta St., N. Y. C.	Acriflavine & Proflavine	5% of net selling price	9/9/19
21	The American Cellulose & Chemical Manufacturing Co., Ltd. 681 5th Ave., N. Y. C.	Acetic Anhydride	25% of net saving in cost of manufacture	7/30/19

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THE CHEMICAL FOUNDATION, INCORPORATED .
OF INCOME ON LICENSES FROM APRIL 10, 1919 TO DECEMBER 31, 1922
AND TRADEMARKS ASSIGNED TO CHEMICAL FOUNDATION, INC.
BY ALIEN PROPERTY CUSTODIAN

	Royalty Rate	Date of License	Patent Numbers	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31/22	Remarks
	5% of gross sales	6/16/19	Re. 13848	2/18/30	$ 116.70	$ 100.00	$ 216.70	
	5% of gross sales	6/16/19	1116398	11/10/31	2,145.91	100.00	2,245.91	
Acids and Process of	5% of gross sales .	6/16/19	986148	3/7/28		100.00	100.00	
	5% of gross sales	6/16/19	1081592	12/16/30		100.00	100.00	
	5% of gross sales	6/16/19	1081897	12/16/30		100.00	100.00	
process of making same.	4% of net selling price to 3/31/20	6/18/19	770177	9/13/21	1,492.07	100.00	1,592.07	Cancelled 6/16/21
			778476	12/27/21				
	2% of net selling price thereafter		807422	12/12/22				
	2½% of net selling price	6/30/19	1045759	11/26/29	6,452.64	100.00	6,552.64	
			1075171	10/7/30				
			1086881	2/10/31				
			1181485	5/2/33				
			1197462	9/5/33				
	5% of net selling price	7/1/19	931598	8/17/26		100.00	100.00	These two (2) licenses considered as one (1) license.
			919572	4/27/26				
	5% of net selling price	8/1/19	1170247	2/1/33		100.00	100.00	Cancelled 6/23/21
	1¼% of net selling price	8/8/19	1169895	2/1/33	6,731.85	100.00	6,831.85	Cancelled 6/9/21
			1197315	9/5/33				
rs and the like	5% of net selling price	8/9/19	1105447	7/28/31		100.00	100.00	
rs and the like	5% of net selling price	8/9/19	1183748	5/16/33	33.98	100.00	133.98	
	5% of net selling price	8/9/19	992947	5/23/28	869.03	100.00	969.03	Cancelled 5/3/21
			1105501	7/28/31				
			1144325	6/22/32				
			1144181	6/22/32				
	$200.00 per unit	8/9/19	1141266	6/1/32	600.00	100.00	700.00	
	5% net selling price to 3/31/20	8/9/19	770177	9/13/21		100.00	100.00	Cancelled 6/10/21
			778476	12/27/21				
	2% net selling price thereafter		807422	12/12/22				
	3% net selling price	8/9/19	1336759	4/13/37				Cancelled 7/11/21
			1191480	7/18/33				
			1216612	2/20/34				
			1237405	8/21/34				
			1278229	9/10/35				
	1¼% of net selling price	1/6/20	1169895	2/1/33	319.37	66.67	386.04	Cancelled 5/14/21. Does not include income on Mansfield Patent.
			1197315	9/5/33				
	3% of net selling price	7/30/19	1191480	7/18/33	6,709.89	100.00	6,809.89	Cancelled 6/6/21
			1216612	2/20/34				
			1237405	8/21/34				
			1278229	9/10/35				
			1336759	4/13/37				
	5% of net selling price	9/9/19	1005176	10/10/28	595.65	100.00	695.65	Cancelled 4/14/22
	25% of net saving in cost of manufacture	7/30/19	1152098	8/31/32		100.00	100.00	Cancelled 12/11/21
		(Carried Forward)			$26,067.09	$1,866.67	$27,933.76	

DEFENDANT'S EXHIBIT No. 83.

Income on Licenses (Cont'd)

License Number	Name and Address	Product	Royalty Rate	Dat Lic
				Brough
"A" 22	The American Cellulose & Chemical Manufacturing Co. Ltd 681 5th Ave., N. Y. C.	Artificial Textile Material	1% net selling price for 2 years. After that time to be agreed upon	11/
"A" 23	The American Cellulose & Chemical Manufacturing Co. Ltd 681 5th Ave., N. Y. C.	Cellulose Derivatives	1% net selling price for 2 years. After that time to be agreed upon	11/
"C" 24	Mallinckrodt Chemical Works, St. Louis, Mo.	Neo-Arsphenamine	5% net selling price	11/1
"C" 25	Mallinckrodt Chemical Works, St. Louis, Mo.	Arsphenamine	5% net selling price	11/1
"C" 26	Mallinckrodt Chemical Works, St. Louis, Mo.	For derivatives of Oxyarylarsinic	5% net selling price	11/1
"C" 27	Mallinckrodt Chemical Works, St. Louis, Mo.	Medicinal Preparations	5% net selling price	11/1
"C" 28	Mallinckrodt Chemical Works, St. Louis, Mo.	Medicinal Preparations	5% net selling price	11/1
"C" 29	Aluminum Company of America, Pittsburgh, Pa.	Duralumin	1¢ per lb. Minimum royalty of $5000 yearly	9/29
"C" 30	Upjohn & Co., Kalamazoo, Mich.	Digitalis Extract	5% gross sales	1/24
"A" 31	E. Leitz, Inc., 30 East 18th St., N. Y. C.	Color Measuring Device	10% net selling price	10/1
"A" 32	E. Machlett & Son, 153 East 84th St., N. Y. C.	X Ray Tube	10% net selling price	11/2
"A" 33	Eastman Kodak Co., Rochester, N. Y.	Blue Quinolin Dye Cyanin Dye	$1.00 per gram	12/3
"C" 34-35	Textile Alliance, 45 East 17th St., N. Y. C.	Reparation Dyes	10% net selling price	12/1
"A" 36	Dr. E. M. Sullivan, Woodbury, N. J.	Stable Dry Hydrosulphite	3% net selling price to 10/31/20 2% thereafter	12/11
"A" 37	Merck & Co., 45 Park Pl., N. Y. C.	Fibrolysin (2.3.c.c. tubes) Fibrolysin (Veterinary 11.5 cc tubes)	10% net selling price	12/9
"A" 38	Merck & Co., 45 Park Pl., N. Y. C.	Iodipin & Bromipin	1% net selling price	12/9
"A" 39	Merck & Co., 45 Park Pl., N. Y. C.	Diplosal	5% net selling price	12/9
"A" 40	Merck & Co., 45 Park Pl., N. Y. C.	Optochin (basic) Optochin Hydrochloride	10% net selling price	12/9
"A" 41	E. I. duPont de Nemours & Co., Inc., Wilmington, Del.	Salicine Black	1% net selling price to 3/31/20 2% thereafter	12/9/
"A" 42	The Shaw Association, Ltd., 616 South Michigan Ave., Chicago, Illinois	Tanning Material	3% net selling price	12/22
"A" 43	Jacques Wolf & Co., Passaic, N. J.	Aldehyde Sulfoxylates	3% net selling price to 10/31/20 2% thereafter	1/14/
"A" 44	The Newport Co. & The Newport Chemical Wks., Milwaukee, Wis.	Derivatives of Salicylic Acid	5% net selling price	1/9/2
"A" 45	The Newport Co. & The Newport Chemical Wks., Milwaukee, Wis.	Acridine	5% net selling price	1/9/2
"A" 46	The Newport Co. & The Newport Chemical Wks., Milwaukee, Wis.	Alizarine	5% net selling price	1/9/2
				Carried F

Sheet #2.

Income on Licenses (Cont'd)

uct	Royalty Rate	Date of License	Patent Numbers	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31, 1922.	Remarks
		Brought Forward			$26,067.09	$1,866.67	$27,933.76	
l	1% net selling price for 2 years. After that time to be agreed upon	11/3/19	1217028	2/20/34		100.00	100.00	Cancelled 12/1/21.
	1% net selling price for 2 years. After that time to be agreed upon	11/3/19	1188376 1217027	6/20/33 2/20/34		100.00	100.00	Cancelled 12/1/21.
	5% net selling price	11/18/19	Re. 13848	2/18/30		100.00	100.00	
	5% net selling price	11/18/19	1116398	11/10/31		100.00	100.00	
ylarsinic	5% net selling price	11/18/19	986148	3/7/28		100.00	100.00	
	5% net selling price	11/18/19	1081592	12/16/30		100.00	100.00	
	5% net selling price	11/18/19	1081897	12/16/30		100.00	100.00	
	1¢ per lb. Minimum royalty of $5000 yearly	9/29/19	868383 995113 1083903 1130785 1261987	10/15/24 6/13/28 6/6/31 3/9/32 4/9/35	2,500.00		2,500.00	½ royalties to American Duralumin Co. These royalties represent net royalties to the Foundation.
	5% gross sales	1/24/20	943578	12/14/26	94.76	100.00	194.76	
	10% net selling price	10/14/19	998091	7/18/28	1,323.48	100.00	1,423.48	
	10% net selling price	11/22/19	1122011 1218423	12/22/31 3/6/34		100.00	100.00	
	$1.00 per gram	12/3/19	805143 844804	11/21/22 2/19/24	227.45	100.00	327.45	
	10% net selling price	12/12/19	Reparation Dyes					This is imported product.
 e	3% net selling price to 10/31/20 2% thereafter	12/11/19	795755	7/25/22		100.00	100.00	Expires July 25, 1922.
	10% net selling price	12/9/19	868204	10/15/24		100.00	100.00	
1.5 cc tubes)	1% net selling price	12/9/19	774224	11/8/21		100.00	100.00	Expired Nov. 8, 1921.
	5% net selling price	12/9/19	922995	5/25/26	117.06	100.00	217.06	
	10% net selling price	12/9/19	1062203	5/20/30	62.66	100.00	162.66	
	1% net selling price to 3/31/20 2% thereafter	12/9/19	770177 778476 807422	9/13/21 12/27/21 12/12/22	2,501.99	100.00	2,601.99	Cancelled Sept. 1, 1921.
	3% net selling price	12/22/19	1191480 1216612 1237405 1278229 1336759	7/18/33 2/20/34 8/21/34 9/10/35 4/13/37	37.56	100.00	137.56	
	3% net selling price to 10/31/20 2% thereafter	1/14/20	793610 885566 885567	6/27/22 4/21/25 4/21/25	6,891.67	100.00	6,991.67	
Acid	5% net selling price	1/9/20	1217862	2/27/34		100.00	100.00	Cancelled Sept. 15, 1921.
	5% net selling price	1/9/20	1255739 1255740	2/5/35 2/5/35		100.00	100.00	Cancelled Sept. 15, 1921.
	5% net selling price	1/9/20	1150152	8/17/32		100.00	100.00	Cancelled Sept. 15, 1921.
		Carried Forward			$39,823.72	$4,066.67	$43,890.39	

Income on Licenses (Cont'd)

License Number	Name and Address	Product	Royalty Rate
"A" 47	The Newport Co. & The Newport Chemical Works, Inc., Milwaukee, Wis.	Anthracene Dyes	5% net selling price
"A" 48	The Newport Co. & The Newport Chemical Works, Inc., Milwaukee, Wis.	Intermediate Anthraquinone	5% net selling price
"A" 49	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Vat-Anthraquinon-Aldehyde	5% net selling price
"A" 50	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Vat-Anthraquinon-Acridones	5% net selling price
"A" 51	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Anthraquinon Dyes (Miscellaneous)	5% net selling price
"A" 52	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Azo Acid Dye	5% net selling price
"A" 53	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Azo Chrome	5% net selling price
"A" 54	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Non-Vat Azo Cotton	5% net selling price
"A" 55	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Azo Intermediates	5% net selling price
"A" 56	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Vat Dyes from Dibenzanthrone	5% net selling price
"A" 57	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Catalizers for production of Organic Compounds	5% net selling price
"A" 58	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Extracts	5% net selling price
"A" 59	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Ice Color—Non-Vat	5% net selling price
"A" 60	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Indanthrene	5% net selling price
"A" 61	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Phenylcinchoninic Acid Derivatives	2½% net selling price
"A" 62	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Pyrazalone	5% net selling price
"A" 63	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Quinoline	5% net selling price

Sheet #3.

Income on Licenses (Cont'd)

ct	Royalty Rate	Date of License	Patent Numbers	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31/22	Remarks
		(Brought Forward)			$39,823.72	$4,066.67	$43,890.39	
	5% net selling price	1/9/20	1216134	2/13/34		100.00	100.00	Cancelled 9/15/21
ne	5% net selling price	1/9/20	1119546	12/1/31		100.00	100.00	Cancelled 9/15/21
			1238932	9/4/34				
le	5% net selling price	1/9/20	1162496	11/30/32		100.00	100.00	Cancelled 9/15/21
			1285727	11/26/35				
es	5% net selling price	1/9/20	1207981	12/12/33		100.00	100.00	Cancelled 9/15/21
			1207982	12/12/33				
cellaneous)	5% net selling price	1/9/20	1131516	3/9/32		100.00	100.00	Cancelled 9/15/21
			1139540	5/18/32				
			1138670	5/11/32				
			1196127	8/29/33				
			1266896	5/21/35				
			1285726	11/26/35				
			1280648	10/8/35				
	5% net selling price	1/9/20	1123430	1/5/32		100.00	100.00	Cancelled 9/15/21
			1154826	9/28/32				
			1188421	6/27/33				
			1206232	11/28/33				
			1213075	1/16/34				
	5% net selling price	1/9/20	1155765	10/5/32		100.00	100.00	Cancelled 9/15/21
			1219954	3/20/34				
			1264604	4/30/35				
	5% net selling price	1/9/20	1113468	10/13/31		100.00	100.00	Cancelled 9/15/21
			1121026	12/15/31				
			1122564	12/29/31				
			1126656	1/26/32				
			1173077	2/22/33				
			1180985	4/25/33				
			1209154	12/19/33				
			1319852	10/28/36				
	5% net selling price	1/9/20	1188544	6/27/33		100.00	100.00	Cancelled 9/15/21
			1188545	6/27/33				
			1193566	8/8/33				
			1219166	3/13/34				
			1124776	1/12/32				
			1125311	1/19/32				
			1128369	2/16/32				
			1128370	2/16/32				
hrone	5% net selling price	1/9/20	1169404	1/25/33		100.00	100.00	Cancelled 9/15/21
			1201968	10/17/33				
			1202260	10/24/33				
			1207762	12/12/33				
f Organic Compounds	5% net selling price	1/9/20	1201850	10/17/33		100.00	100.00	Cancelled 9/15/21
			1207802	12/12/33				
			1239867	9/11/34				
	5% net selling price	1/9/20	1175091	3/14/33		100.00	100.00	Cancelled 9/15/21
			1175490	3/14/33				
	5% net selling price	1/9/20	1145072	7/6/32		100.00	100.00	Cancelled 9/15/21
			1193829	8/8/33				
			1197633	9/12/33				
	5% net selling price	1/9/20	1145934	7/13/32		100.00	100.00	Cancelled 9/15/21
			1150863	8/24/32				
rivatives	2½% net selling price	1/9/20	1181485	5/2/33		100.00	100.00	Cancelled 9/15/21
			1075171	10/7/30				
			1197462	9/5/33				
			1086881	2/10/31				
			1045759	11/26/29				
	5% net selling price	1/9/20	1149231	8/10/32		100.00	100.00	Cancelled 9/15/21
			1160471	11/16/32				
			1166346	12/28/32				
			1172061	2/15/33				
			1183831	5/16/33				
	5% net selling price	1/9/20	1197632	9/12/33		100.00	100.00	Cancelled 9/15/21

DEFENDANT'S EXHIBIT No. 83.

Income on Licenses

License Number		Name and Address	Product	Royalty Rate
"A"	64	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Sulphur-Non-Vat Dyes	5% net selling price
"A"	65	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Vat-Sulfur	5% net selling price
"A"	66	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Union Azo Dyes	5% net selling price
"A"	67	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Drugs—Pharmaceutical—Urea	5% net selling price
"C"	68	E. R. Squibb & Sons, 80 Beekman St., N. Y. C.	Procaine	5% gross sales
"A"	69	Lawrence Color & Chemical Wks., Lawrence, Mass.	Cinchophen	2½% net selling price
"A"	70	Rohm & Haas, Philadelphia, Pa.	Tanning Material	3% net selling price
"A"	71	Ultro Chemical Co., Inc., 41 Union Square, N. Y. C.	Color Lake	3½% net selling price
"C"	72	Carrie Gyroscopic Corp., 62 West 14th St., N. Y. C.	Gyroscopic Compasses	5% net selling price
"A"	73	Rosenthal Laboratories, Camden, N. J.	X Ray Tube	10% net selling price
"A"	74	The United States Finishing Co., 320 Broadway, N. Y. C.	Aldehyde Sulfoxylates	3% net selling price to 10/31/20 2% thereafter
"A"	75	G. Siegle Corp. of America, 80 5th Ave., N. Y. C.	Red Blue Lake	2% net selling price
"C"	76	United States Procaine Co., 2923 Atlantic Av., Bklyn, N. Y.	Procaine	5% gross selling price
"A"	77	The Dow Chemical Co., Midland, Michigan	Procaine	5% gross selling price
"A"	78	The Dow Chemical Co., Midland, Michigan	Magnesium Alloy	1½¢ per lb.
"A"	79	Emil Roetheli, Hawthorne, N. J.	Aldehyde Sulfoxylates	3% net selling price to 10/31/20 2% thereafter
"A"	80	Robert Gilchrist & Co., 82 Beaver St., N. Y. C.	Red Color Lake	3% net selling price to 5/11/21
"A"	81	Robert Gilchrist & Co., 82 Beaver St., N. Y. C.	Red Sulphur Dye & Thio-Indoxyl Derivative	3% net selling price to 5/11/21 4% thereafter
"A"	82	Angier Mechanical Laboratories, its subsidiaries and affiliated Companies, Framingham, Mass.	Reinforced Paper	1¾% net selling price
"D"	83	E. Bilhuber, Inc., 25 West Broadway, N. Y. C.	Trademark—Ichthalbin	1% net selling price
"D"	84	E. Bilhuber, Inc., 25 West Broadway, N. Y. C.	Trademark—Diuretin	1% net selling price
"D"	85	E. Bilhuber, Inc., 25 West Broadway, N. Y. C.	Trademark—Euresol	1% net selling price

Income on Licenses (Cont'd)

	Royalty Rate	Date of License	Patent Numbers	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31, 1922.	Remarks
		(Brought Forward)			$39,823.72	$5,766.67	$45,590.39	
	5% net selling price	1/9/20	1128371 1165531 1199697 1200055 1251368	2/16/32 12/28/32 9/26/33 10/3/33 12/25/34		100.00	100.00	Cancelled Sept. 15/21
	5% net selling price	1/9/20	1126475 1129574 1129575 1141148 1209580 1243171	1/26/32 2/23/32 2/23/32 6/1/32 12/19/33 10/16/34		100.00	100.00	Cancelled Sept. 15/21
	5% net selling price	1/9/20	1150825	8/17/32		100.00	100.00	Cancelled Sept. 15/21
	5% net selling price	1/9/20	1173550 1274503 1292019	2/28/33 8/6/35 1/21/36		100.00	100.00	Cancelled Sept. 15/21
	5% gross sales	12/20/19	812554	2/13/23	72.02	100.00	172.02	
	2½% net selling price	1/6/20	1045759 1075171 1086881 1197462 1181485	11/26/29 10/7/30 2/10/31 9/5/33 5/2/33		100.00	100.00	Cancelled as per memo. 1/9/22
	3% net selling price	1/14/20	1191480 1216612 1237405 1278229 1336759	7/18/33 2/20/34 8/21/34 9/10/35 4/13/37	609.89	100.00	709.89	Cancelled June 4/21
	3½% net selling price	1/23/20	1232551 1232552	7/10/34 7/10/34	770.63	100.00	870.63	
	5% net selling price	1/14/20	841612 877034 1019582 1180365 1180815 973611 1186339 1186686 1231933 1228061 794654 1173241	1/15/24 1/21/25 3/5/29 4/25/33 4/25/33 10/25/27 6/6/33 6/13/33 7/3/34 5/29/34 7/11/22 3/1/33		100.00	100.00	
	10% net selling price	1/30/20	1122011 1218423	12/22/31 3/6/34		100.00	100.00	
	3% net selling price to 10/31/20 2% thereafter	1/30/20	793610 885566 885567	6/27/22 4/21/25 4/21/25	3,442.95	100.00	3,542.95	
	2% net selling price	1/26/20	757109	4/12/21	722.54	100.00	822.54	Expired July 12/21
	5% gross selling price	1/27/20	812554	2/13/23	311.06	100.00	411.06	
	5% gross selling price	2/5/20	812554	2/13/23	186.50	100.00	286.50	
	1½¢ per lb.	1/30/20	965485 982022	7/26/27 1/17/28	348.25	100.00	448.25	
	3% net selling price to 10/31/20 2% thereafter	1/12/20	793610 885566 885567	6/27/22 4/21/25 4/21/25	37.86	100.00	137.86	Cancelled July 27/21
	3% net selling price to 5/11/21	2/11/20	878964	2/11/25		100.00	100.00	Cancelled—Bankrupt
yl Derivative	3% net selling price to 5/11/21 4% thereafter	2/11/20	819348 850827	5/1/23 4/16/24		100.00	100.00	Cancelled—Bankrupt
	1¾% net selling price .	12/22/19	1169895 1197315 1362066	2/1/33 9/5/33 12/14/37	633.28	66.67	699.95	Cancelled Sept. 30/22
	1% net selling price	2/6/20	T. M. 31114		91.98	100.00	191.98	
	1% net selling price	2/6/20	T. M. 55759		1,084.30	100.00	1,184.30	
	1% net selling prjce	2/6/20	T. M. 88894		461.62	100.00	561.62	

Income on Licenses (Con

License Number	Name and Address	Product	Royalty Rate	Dat Lic
				(Brough
"C" 86	The Stearns-Roger Mfg. Co., Denver, Colorado	Drying Apparatus	$37.50 for every Cubic-Meter-Contents of Drum—less 25% for commissions	12/1
"A" 87	William Melville, St. Marys, Pa.	Tanning Material	5% of net selling price	9/12
"A" 88	Electrosynth Chemical Co., Inc., 980 East 35th St., Bklyn, N. Y.	Phenylcinchoninic Acid	2½% net selling price	1/3/
"C" 89	V & L Chemical Co., Inc., 319 Palmetto St., Bklyn, N. Y.	Procaine	5% net selling price	2/27
"A" 90	Keystone Roofing Manufacturing Co., York, Pa.	Reinforced Paper	1¾% net selling price	3/2/
"D" 91	Merck & Co., 45 Park Pl., N. Y. C.	Trademark—Antithyroidin Moebius	1% net selling price	3/2/
"C" 92	Merck & Co., 45 Park Pl., N. Y. C.	Product—Diplosal —Fibrolysin —Iodipin —Bromipin —Optochin	10% net selling price	3/31
		Trademark—Diplosal —Iodipin —Bromipin —Fibrolysin —Optochin	1% net selling price	
"A" 93	Rohm & Haas Co., Philadelphia, Pa.	Stable Dry Hydrosulphite	3% net selling price to 10/31/20 2% thereafter	3/3/2
"A" 94	Rohm & Haas Co., Philadelphia, Pa.	Aldehyde Sulfoxylates	3% net selling price to 10/31/20 2% thereafter	3/2/2
"A" 95	Butterworth-Judson Corp., 30 Church St., N. Y. C.	Salicine Black	2¢ per pound if sold to 3/31/20 2% net selling price thereafter	3/10/
"A" 96	The Hydrosulphite Co., Inc., East Greenwich, Rhode Island	Aldehyde Sulfoxylates	3% net selling price to 10/31/20 2% thereafter	3/17/
"A" 97	Burdick Cabinet Co., Milton, Wisconsin	Therapeutic Apparatus	5% net selling price	3/17/
"A" 98	Butterworth-Judson Corp., 30 Church St., N. Y. C.	Nitro-Ortho-Oxy-Azo Color & process of making same	1% net selling price to 3/17/21 2% thereafter	3/17/
"A" 99	Merrimac Chemical Co. (Its subsidiary & affiliated companies), 148 State St., Boston, Mass.	Synthetic Camphor	5% net selling price	3/18/
A" 100	E. Bilhuber, Inc., 25 West Broadway, N. Y. C.	Insipid Sandalwood Oil Preparations (Santyl)	1% net selling price	3/31/
A" 101	E. Bilhuber, Inc., 25 West Broadway, N. Y. C.	Alpha-Halogen-Isovaleryl-Urea (Bromural)	1% net selling price	3/31/
D" 102	E. Bilhuber, Inc., 25 West Broadway, N. Y. C.	Trademark—Santyl	1% net selling price	3/31/
D" 103	E. Bilhuber, Inc.	Trademark—Bromural	1% net selling price	3/31/

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Income on Licenses (Cont'd)

duct	Royalty Rate	Date of License	Patent Numbers	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31, 1922.	Remarks
	(Brought Forward)				$48,596.60	$7,933.34	$56,529.94	
	$37.50 for every Cubic-Meter-Contents of Drum—less 25% for commissions	12/1/19	1078125	11/11/30	1,524.38		1,524.38	
	5% of net selling price	9/12/19	1232620	7/10/34				License never executed
			1237405	8/21/34				
d	2½% net selling price	1/3/20	1045759	11/26/29				License never executed
			1075171	10/7/30				
			1086881	2/10/31				
			1197462	9/5/33				
	5% net selling price	2/27/20	812554	2/13/23		100.00	100.00	Cancelled
	1¾% net selling price	3/2/20	1169895	2/1/33		66.67	66.67	Income Mansfield Patent not included
			1197315	9/5/33				
			1362066	12/14/37				
n Moebius	1% net selling price	3/2/20	T. M. 54995		44.30	100.00	144.30	
	10% net selling price	3/31/20	922995	5/25/26	49.36		49.36	Product imported, this is trademark only.
			868204	10/15/24				
			774224	11/8/21				
			774224	11/8/21				
			1062203	5/20/30				
	1% net selling price		T. M. 85549					
			T. M. 32003					
			T. M. 32002					
			T. M. 49160					
			T. M. 99822					
te	3% net selling price to 10/31/20	3/3/20	795755	7/25/22		100.00	100.00	
	2% thereafter		711377	10/14/19				
			861014	7/23/24				
	3% net selling price to 10/31/20	3/2/20	793610	6/27/22		100.00	100.00	
	2% thereafter		885566	4/21/25				
			885567	4/21/25				
	2¢ per pound if sold to 3/31/20	3/10/20	807422	12/12/22	777.27	100.00	877.27	Expired Dec. 12, 1922.
	2% net selling price thereafter		770177	9/13/21				
			778476	12/27/21				
	3% net selling price to 10/31/20	3/17/20	793610	6/27/22	8.25	100.00	108.25	
	2% thereafter		885566	4/21/25				
			885567	4/21/25				
	5% net selling price	3/17/20	834209	10/23/23		100.00	100.00	Cancelled June 21, 1921.
olor & process of making same	1% net selling price to 3/17/21	3/17/20	958912	5/24/27		100.00	100.00	
	2% thereafter							
	5% net selling price	3/18/20	725890	4/21/20		100.00	100.00	
			770940	9/27/21				
			790601	5/23/22				
			801483	10/10/22				
			801485	10/10/22				
			802793	10/24/22				
			903047	11/3/25				
			907941	12/29/25				
			989651	4/18/28				
			994437	6/6/28				
			1030334	6/25/29				
			1066758	7/8/30				
			1105378	7/28/31				
Preparations (Santyl)	1% net selling price	3/31/20	862858	8/6/24	59.32	100.00	159.32	
-Urea (Bromural)	1% net selling price	3/31/20	914518	3/9/26	209.26	100.00	309.26	
	1% net selling price	3/31/20	T. M. 61255		59.32		59.32	
	1% net selling price	3/31/20	T. M. 61165		209.26	100.00	309.26	
	Carried Forward—				$51,537.32	$9,200.01	$60,737.33	

Income on Licenses (Cont'

nse nber	Name and Address	Product	Royalty Rate	Date of License
				Brought For
104	Bausch Machine Tool Co., 40 State St., Boston, Mass.	Duralumin	1¢ per pound—Minimum yearly royalty $5000.00—Yearly minimum reduced to $2500.00—April 2, 1922	4/2/20
105	The Ault & Wiborg Co., Cincinnati, Ohio	Salicine Black	2% net selling price	3/31/20
106	Monsanto Chemical Works, St. Louis, Mo.	Producing Aromatic Amins & Catalysts therefor	1½¢ per pound	4/1/20
107	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Salicine Black	2% net selling price	3/31/20
108	Central Dyestuff & Chemical Co., Newark, N. J.	Salicine Black	2% net selling price	4/23/20
109	The Abbott Laboratories, Chicago, Illinois	Acriflavine & Proflavine	5% net selling price	4/27/20
110	The Barrett Co., 40 Rector St., N. Y. C.	Tanning Material	3% net selling price	5/3/20
111	The Sherwin-Williams Co., 115 Broadway, N. Y. C.	Red Azo Dye	2% net selling price to 4/29/21 3% thereafter	4/29/20
112	The Sherwin-Williams Co., 115 Broadway, N. Y. C.	Red Blue Lake	2% net selling price	4/29/20
113	The Sherwin-Williams Co., 115 Broadway, N. Y. C.	Salicine Black	2% net selling price	4/29/20
114	The Sherwin-Williams Co., 115 Broadway, N. Y. C.	Red Color Lake	3% net selling price to 7/29/21 4% thereafter	4/29/20
115	The Roessler & Hasslacher Chemical Co., 709-711 6th Ave., N. Y. C.	Gas Retorts, and Method of making Gas therewith	$400.00 per unit or 10% of the usage charge to customers—for 4 or less units—$1000.00 per unit for 5 or more units	5/11/20
116	The Ault & Wiborg Co., Cincinnati, Ohio	Lake Red C	2% net selling price	5/17/20
117	The Sherwin-Williams Co., 115 Broadway, N. Y. C.	Lake Red C	2% net selling price	5/26/20
118	John G. Marshall, 1752 Atlantic Ave., Bklyn, N. Y.	Flash Light Powder	8% net selling price	5/21/20
119	National Aniline & Chemical Co. Inc., 40 Rector St., N. Y. C.	Anthrarufin and Chrysazin	½% net selling price	6/16/20
120	The Abbott Laboratories, 4753 Ravenswood Av., Chicago, Ill.	Trademark—Anesthesin	1% net selling price	6/2/20 T.
121	Kilby Manufacturing Co., Cleveland, Ohio.	Gas Washers	5% net selling price	6/3/20
122	Diarsenol Laboratories, Inc., 902-4 Ellicott Sq., Buffalo, N. Y.	Sodium Arsphenamine	5% net selling price	6/2/20
123	Merck & Co., 45 Park Pl., N. Y. C.	Quinine Diethylbarbiturate	5% net selling price	6/4/20
124	McKesson & Robbins, 91 Fulton St., N. Y. C.	Euquinine (Trademark)	1% net selling price	6/11/20 T.
125	Upjohn Co., Kalamazoo, Michigan.	Trademark—Digipuratum	1% net selling price	6/16/20 T.
126	Harold M. Bennett	Lenses & Optical	10% net selling price	6/16/20
				Carried Forwar

Income on Licenses (Cont'd)

ct	Royalty Rate	Date of License	Patent Numbers	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31/22	Remarks
		Brought Forward			$51,537.32	$9,200.01	$60,737.33	
	1¢ per pound—Minimum yearly royalty $5000.00—Yearly minimum reduced to $2500.00—April 2, 1922	4/2/20	868383 995113 1083903 1130785 1261987	10/15/24 6/13/28 1/6/31 3/9/32 4/9/35	5,553.54	100.00	5,653.54	1/2 of Royalties to American Duralumin Co. These royalties represent net royalties to the Foundation.
	2% net selling price	3/31/20	770177 807422 778476	9/13/21 12/12/22 12/27/21	59.81	100.00	159.81	Cancelled Oct. 21, 1921
s & Catalysts therefor	1½¢ per pound	4/1/20	1207802	12/12/33		100.00	100.00	
	2% net selling price	3/31/20	770177 807422 778476	9/13/21 12/12/22 12/27/21	6,473.47	100.00	6,573.47	Cancelled Sept. 15, 1921.
	2% net selling price	4/23/20	770177 807422 778476	9/13/21 12/12/22 12/27/21	1,927.84	100.00	2,027.84	Cancelled Nov. 1, 1921
	5% net selling price	4/27/20	1005176	10/10/28	740.77	100.00	840.77	
	3% net selling price	5/3/20	1191480 1216612 1237405 1278229 1336759	7/18/33 2/20/34 8/21/34 9/10/35 4/13/37	142.45	100.00	242.45	Cancelled April 28, 1921.
	2% net selling price to 4/29/21 3% thereafter	4/29/20	752562	2/16/21	316.36	100.00	416.36	Expired February 16, 1921.
	2% net selling price	4/29/20	757109	4/12/21	46.45	100.00	146.45	Expired April 12, 1921.
	2% net selling price	4/29/20	770177 807422 778476	9/13/21 12/12/22 12/27/21	165.15	100.00	265.15	Expired Dec. 27, 1921—They operated under Patent 778476.
	3% net selling price to 7/29/21 4% thereafter	4/29/20	878964	2/11/25				License never executed.
f making Gas therewith	$400.00 per unit or 10% of the usage charge to customers—for 4 or less units—$1000.00 per unit for 5 or more units	5/11/20	904043 1228879 822246 928494 801268 819596 1208134 1281775 1181431 815438 926702 955970 782129 899503	11/17/25 6/5/34 6/5/21 7/20/26 10/10/22 5/1/23 12/12/33 10/15/35 5/2/33 3/20/23 6/29/26 4/26/27 2/7/22 9/29/25		100.00	100.00	
	2% net selling price	5/17/20	733280	7/7/20	157.78	100.00	257.78	Expired July 7, 1920
	2% net selling price	5/26/20	733280	7/7/20		100.00	100.00	Expired July 7, 1920
	8% net selling price	5/21/20	918818	4/20/26		100.00	100.00	Cancelled May 20, 1921.
	½% net selling price	6/16/20	778670	12/27/21	7,641.95	100.00	7,741.95	Expired Dec. 27, 1921.
	1% net selling price	6/2/20	T. M. 55744		176.23	100.00	276.23	
	5% net selling price	6/3/20	794201 807695 895313	7/11/22 12/19/22 8/4/25	210.50	100.00	310.50	Cancelled Mar. 22, 1922.
	5% net selling price	6/2/20	1059983 1078135	4/29/30 11/11/30	1,541.31	200.00	1,741.31	
	5% net selling price	6/4/20	1185637	6/6/33	1.86	100.00	101.86	
	1% net selling price	6/11/20	T. M. 54088		15.12	100.00	115.12	
	1% net selling price	6/16/20	T. M. 73012		18.95	100.00	118.95	
	10% net selling price	6/16/20						Pending
		Carried Forward—			$76,726.86	$11,400.01	$88,126.87	

Income on Licenses (Cont'd)

icense umber	Name and Address	Product	Royalty Rate	Date Lice
				(Brought
" 127	Toch Brothers, 320 Fifth Ave., N. Y. C.	Trademark—Metol	2½% net selling price	5/14/2
" 128	G. Siegle Corp. of America, Rosebank, Staten Island, N. Y.	Color Lake	3½% net selling price	7/2/20
" 129	Rhode Island Cardboard Co., Pawtucket, R. I.	Paper-Machines		
" 130	Magnetic Mfg. Co., Milwaukee, Wis.	Magnetic Separator	5% net selling price	7/7/20
" 131	Bausch & Lomb Optical Co., Rochester, N. Y.	Trademark—Planar	1% net selling price	7/15/2
" 132	Bausch & Lomb Optical Co., Rochester, N. Y.	Trademark—Protar	1% net selling price	7/15/2
" 133	Bausch & Lomb Optical Co., Rochester, N. Y.	Trademark—Amatar	1% net selling price	7/15/2
" 134	Bausch & Lomb Optical Co., Rochester, N. Y.	Trademark—Tessar	1% net selling price	7/15/2
" 135	Bausch & Lomb Optical Co., Rochester, N. Y.	Trademark—Katral	1% net selling price	7/15/2
" 136	Bausch & Lomb Optical Co., Rochester, N. Y.	Trademark—Triotar	1% net selling price	7/15/2
" 137	Bausch & Lomb Optical Co., Rochester, N. Y.			
" 138	Bausch & Lomb Optical Co., Rochester, N. Y.	Photographic Objective	2% net selling price	7/15/2
" 139	Bausch & Lomb Optical Co., Rochester, N. Y.	Photographic Lens to be placed before the objective	3% net selling price	7/15/20
" 140	Bausch & Lomb Optical Co., Rochester, N. Y.	Ramsden Ocular	3% net selling price	7/15/20
" 141	Bausch & Lomb Optical Co., Rochester, N. Y.	Projection System	3% net selling price	7/15/20
" 142	Bausch & Lomb Optical Co., Rochester, N. Y.	Magnifier	3% net selling price	7/15/20
" 143	Bausch & Lomb Optical Co., Rochester, N. Y.	Microscopic Condenser	3% net selling price	7/15/20
" 144	Bausch & Lomb Optical Co., Rochester, N. Y.	Theatre Glass—Galilean System	3% net selling price	7/15/20
" 145	The Pierce Co., Rochester, N. Y.			
" 146	Atmospheric Nitrogen Corp., Syracuse, N. Y.	Ammonia (N.H3 content) products and by-products therefrom	2% net selling price $2500.00 in lieu of royalties from 1 year from date of completion of plant	7/24/20

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Income on Licenses (Cont'd)

	Royalty Rate	Date of License	Patent Numbers	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31/22	Remarks
		(Brought Forward)			$76,726.86	$11,400.01	$88,126.87	
	2½% net selling price	5/14/20	T. M. 57145		31.48	100.00	131.48	
	3½% net selling price	7/2/20	1232551	7/10/34	788.30	100.00	888.30	
			1232552	7/10/34				
								License never executed.
	5% net selling price	7/7/20	1037563	9/3/29	96.35	100.00	196.35	
	1% net selling price	7/15/20	T. M. 68570			100.00	100.00	
	1% net selling price	7/15/20	T. M. 68571		1,410.87	100.00	1,510.87	
	1% net selling price	7/15/20	T. M. 85306			100.00	100.00	
	1% net selling price	7/15/20	T. M. 68572		3,304.13	100.00	3,404.13	
	1% net selling price	7/15/20	T. M. 93581		6.40	100.00	106.40	
	1% net selling price	7/15/20	T. M. 94409			100.00	100.00	
								License never executed.
	2% net selling price	7/15/20	895045	8/4/25	1,034.02	100.00	1,134.02	
			1025766	5/7/29				
			1073789	9/23/30				
placed before the objective	3% net selling price	7/15/20	1169731	1/25/33		100.00	100.00	
	3% net selling price	7/15/20	873870	12/17/24		100.00	100.00	
			873871	12/17/24				
			1159233	11/2/32				
	3% net selling price	7/15/20	873896	12/17/24		100.00	100.00	
			934579	9/21/26				
			988720	4/4/28				
	3% net selling price	7/15/20	940895	11/23/26		100.00	100.00	
	3% net selling price	7/15/20	1016369	2/6/29		100.00	100.00	
			1157257	10/19/32				
tem	3% net selling price	7/15/20	962920	6/28/27		100.00	100.00	
								License never executed
) products and by-products	2% net selling price	7/24/20	739920	9/29/20	2,500.00	100.00	2,600.00	
	$2500.00 in lieu of royalties from 1 year from date of completion of plant		754474	3/15/21				
			758775	5/3/21				
			792379	6/13/22				
			797961	8/22/22				
			797962	8/22/22				
			804021	11/7/22				
			814917	3/13/23				
			850392	4/16/24				
			884919	4/14/25				
			884920	4/14/25				
			895313	8/4/25				
			911801	2/9/26				
			918589	4/20/26				
			922003	5/18/26				
			923012	5/25/26				
			941768	11/30/26				
			957843	5/10/27				
			964415	7/12/27				
			965482	7/26/27				
			970883	9/20/27				
			971149	9/27/27				
			971206	9/27/27				
			971501	9/27/27				
			981727	1/17/28				
			984605	2/21/28				
		(Carried Forward)			$85,898.41	$13,100.01	$98,998.42	

License Number	Name and Address
146	Atmospheric Nitrogen Corp. (continued)

Income on Licenses (Con

Product	Royalty Rate	Date Licen
		Brought

Income on Licenses (Cont'd)

luct	Royalty Rate	Date of License	Patent Number	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31, 1922.	Remarks
		Brought Forward			$85,898.41	$13,100.01	$98,998.42	
			984925	2/21/28				
			990191	4/18/28				
			993144	5/23/28				
			994095	5/30/28				
			999025	7/25/28				
			1000732	8/15/28				
			1006206	10/17/28				
			1008927	11/14/28				
			1011014	12/5/28				
			1015566	1/23/29				
			1015800	1/30/29				
			1018990	2/27/29				
			1022351	4/2/29				
			1028366	6/4/29				
			1029528	6/11/29				
			1035873	8/20/29				
			1039851	10/1/29				
			1039852	10/1/29				
			1040218	10/1/29				
			1043798	11/12/29				
			1053951	2/18/30				
			1053952	2/18/30				
			1054901	3/4/30				
			1055331	3/11/30				
			1058653	4/8/30				
			1059817	4/22/30				
			1059818	4/22/20				
			1061725	5/13/30				
			1068966	7/29/30				
			1068967	7/29/30				
			1068968	7/29/30				
			1068969	7/29/30				
			1070138	8/12/30				
			1073823	9/23/30				
			1073870	9/23/30				
			1075085	10/7/30				
			1077034	10/28/30				
			1078423	11/11/30				
			1078686	11/18/30				
			1079705	11/25/30				
			1083585	1/6/31				
			1083703	1/6/31				
			1089185	3/3/31				
			1090874	3/24/31				
			1094194	4/12/31				
			1096392	5/12/31				
			1096393	5/12/31				
			1098139	5/26/31				
			1101424	6/23/31				
			1102716	7/7/31				
			1107926	8/18/31				
			1113096	10/6/31				
			1113097	10/6/31				
			1115249	10/27/31				
			1115776	11/3/31				
			1118595	11/24/31				
			1118628	11/24/31				
			1119534	12/1/31				
			1126371	1/26/32				
			1128804	2/16/32				
			1128843	2/16/32				
			1129559	2/23/32				
			1133087	3/23/32				
			1134416	4/6/32				
			1144730	6/29/32				

Income on Licenses (Co

License Number	Name and Address	Product	Royalty Rate	Da Li
				Brough
146	Atmospheric Nitrogen Corp. (continued)			
"D" 147	John G. Marshall, 1752 Atlantic Av., Bklyn, N. Y.	Trademark—Rodinal	1% net selling price	7/29/
"A" 148	The Sidio Co. of America, Inc., 37 Murray St., N. Y. C.	Quartz Bodies	2% net selling price	7/302
"A" 149	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Benzanthrone	2% net selling price to 3/31/21 5% thereafter	8/23/
"A" 150	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Indanthrene Green B	2% of the net selling price to 3/31/21 5% thereafter	8/23/
"A" 151	The Newport Co. & The Newport Chemical Wks., Inc., Milwaukee, Wis.	Indanthrene Dark Blue BO	2% net selling price to 3/31/21 5% thereafter	8/23/
"D" 152	Bausch & Lomb Optical Co., Rochester, N. Y.	Trademark—Distar	1% net selling price	9/7/20
"A" 153	Veritas Chemical Corp., P. O. Box 722, Albany, N. Y.	Stable Dry Hydrosulphite	3% net selling price to 6/30/21 2% thereafter	9/21/2
"A" 154	Sun Chemical & Color Co., Harrison, N. J.	Color Lake	3½% net selling price	9/27/2
"A" 155	Ultro Chemical Co., 41 Union Sq., N. Y. C.	Nitramines	4% net selling price	10/4/2
"A" 156	Dr. I. S. Hirsch, 11 E. 68th St., N. Y. C.	XRay Accessary		
"A" 157	Kuttroff Piackhardt & Co., Inc., 128 Duane St., N. Y. C.	Color Lakes	3½% net selling price	10/8/2
				Carried F

Income on Licenses (Cont'd)

duct	Royalty Rate	Date of License	Patent Number	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31, 1922.	Remarks
		Brought Forward			$85,898.41	$13,100.01	$98,998.42	
			1152930	9/7/32				
			1157253	10/19/32				
			1158167	10/26/32				
			1159865	11/9/32				
			1169817	2/1/33				
			1172863	2/22/33				
			1172908	2/22/33				
			1172925	2/22/33				
			1173532	3/1/33				
			1175693	3/14/33				
			1178440	4/4/33				
			1188191	6/20/33				
			1200805	10/10/33				
			1201607	10/17/33				
			1202995	10/31/33				
			1207706	12/12/33				
			1207707	12/12/33				
			1207708	12/12/33				
			1211181	1/2/34				
			1211394	1/9/34				
			1212504	1/16/34				
			1215957	2/13/34				
			1216059	2/13/34				
			1225755	5/15/34				
			1243382	10/16/34				
			1244580	10/30/34				
			1256875	2/19/35				
			1261900	4/19/35				
			1278580	9/10/35				
			1286650	12/3/35				
			1301151	4/22/36				
			1322291	11/18/36				
			1330772	2/10/37				
	1% net selling price	7/29/20				100.00	100.00	
	2% net selling price	7/3020	1031900	7/9/29				
			1051035	1/21/30				
			1107386	8/18/31				
			1107387	8/18/31				
			1051036	1/21/30				
			989671	4/18/28				
			1086716	7/29/30				
	2% net selling price to 3/31/21	8/23/20	787859	4/8/22		100.00	100.00	Cancelled Sept. 15/21
	5% thereafter							
	2% of the net selling price to 3/31/21	8/23/20	796393	8/1/22	235.93	100.00	335.93	Cancelled Sept. 15/21
	5% thereafter							
BO	2% net selling price to 3/31/21	8/23/20	818992	4/24/23	1,031.15	100.00	1,131.15	Cancelled Sept. 15/21
	5% thereafter							
	1% net selling price	9/7/20				100.00	100.00	
e	3% net selling price to 6/30/21	9/21/20	795755	7/25/22		100.00	100.00	
	2% thereafter		861014	7/23/24				
	3½% net selling price	9/27/20	1232551	7/10/34	13.15	100.00	113.15	Cancelled July 19/21
			1232552	7/10/34				
	4% net selling price	10/4/20	763756	6/28/21	192.77	100.00	292.77	Expired June 28/21
								License never executed
	3½% net selling price	10/8/20	1232551	7/10/34	17,392.39	100.00	17,492.39	
			1232552	7/10/34				
		Carried Forward			$104,763.80	$14,000.01	$118,763.81	

Income on Licenses (Cont'd)

License Number	Name and Address	Product	Royalty Rate
"A" 158	Ultro Chemical Corp., 41 Union Square, N. Y. C.	Red for Lake D	2% net selling price
"A" 159	Geo. W. Brady & Co., 809 So. Western Ave., Chicago, Ill.	X Ray Accessary	5% net selling price
"A" 160	The Carborundum Co., Niagara Falls, N. Y.	Zirconia Refractory	2% net selling price
"A" 161	Van Dyk & Co., 4-6 Platt St., N. Y. C.	Acriflavine & Proflavine	5% net selling price
"A" 162	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Ponsol Paper Blue	5% net selling price
"A" 163	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Ponsol Violet R	5% net selling price
"A" 164	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Ponsol Violet RR	5% net selling price
"A" 165	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Ponsol Dark Blue BR	5% net selling price
"A" 166	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Ponsol Green B	5% net selling price
"A" 167	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Ponsol Yellow G Paste	5% net selling price
"A" 168	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Ponsol Blue G Paste	5% net selling price
"A" 169	Dow Chemical Co.	Penta or Hexa Brominated Indigo	5% net selling price
"A" 170	Parke Davis & Co., Detroit, Michigan	Agar-Agar-Cascara	5% net selling price
"A" 171	Campbell Electric Co., Lynn, Massachusetts	X Ray Tube	
"A" 172	Roentgen Appliance Co., 693 Mission St., San Francisco, Cal.	X Ray Tube	5% net selling price
"A" 173	Victor X Ray Tube Co., 236 So. Robey St., Chicago, Ill.	X Ray Tube	5% net selling price
"A" 174	A. B. Ansbacher & Co., 527 5th Ave., N. Y. C.	Red Blue Lake	
"A" 175	H. A. Metz Laboratories, 122 Hudson St., N. Y. C.	Arseno-Metal Preparations and process of making same.	5% net selling price
"A" 176	Ultro Chemical Co., Inc., 41 Union Square, N. Y. C.	Pigment Scarlet G	5% net selling price
"A" 177	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Color Lakes Containing Phospho Tungstic Acid	5% net selling price
"A" 178	Newport Chemical Wks., Inc., Milwaukee, Wisconsin.		
"A" 179	Rohm & Haas, 40 North Front St., Phila., Pa.	Leukotrope	5% net selling price
"A" 180	American Vat Color Co., 3223 Southwestern Blvd., Chicago, Ill.	Indanthrene Green B	
"A" 181	American Vat Color Co., 3223 Southwestern Blvd., Chicago, Ill.	Indanthrene Red G	
"A" 182	American Vat Color Co., 3223 Southwestern Blvd., Chicago, Ill.	Indanthrene Bordeaux B	
"A" 183	American Vat Color Co., 3223 Southwestern Blvd., Chicago, Ill.	Indanthrene Violet R	
"A" 184	American Vat Color Co., 3223 Southwestern Blvd., Chicago, Ill.	Benzanthrone	
"A" 185	American Vat Color Co., 3223 Southwestern Blvd., Chicago, Ill.	Indanthrene Golden Orange C	
"A" 186	American Vat Color Co., 3223 Southwestern Blvd., Chicago, Ill.	Hydron Blues	

Income on Licenses (Cont'd)

uct	Royalty Rate	Date of License	Patent Numbers	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31/22	Remarks
		Brought Forward			$104,763.80	$14,000.01	$118,763.81	
	2% net selling price	10/8/20	878964	2/11/25	688.36	100.00	788.36	
	5% net selling price	10/19/20	1164987	12/21/32	402.31	100.00	502.31	
	2% net selling price	10/25/20	1159264	11/2/32				License never executed.
	5% net selling price	10/26/20	1005176	10/10/28	19.67	100.00	119.67	
	5% net selling price	9/1/20	1055701	3/11/30				Cancelled
	5% net selling price	9/1/20	787859	4/18/22				Cancelled
			818336	4/17/23				
			906367	12/8/25				
	5% net selling price	9/1/20	818336	4/17/23	4,823.25		4,823.25	Cancelled
			906367	12/8/25				
			1003268	9/12/28				
	5% net selling price	9/1/20	787659	4/18/22	789.84		789.84	Cancelled
			818992	4/24/23				
	5% net selling price	9/1/20	787859	4/18/22	2,975.49		2,975.49	Cancelled
			796393	8/1/22				
			818992	4/24/23				
			876679	1/14/25				
	5% net selling price	9/1/20	739145	9/15/20	8,354.86		8,354.86	Cancelled
			1063173	5/27/30				
			1104943	7/28/31				
	5% net selling price	9/1/20	739579	9/22/20	4,614.93		4,614.93	Cancelled
			753659	3/1/21				
			844914	2/19/24				
			1063173	5/27/30				
			1104943	7/28/31				
ed Indigo	5% net selling price	11/19/20	1043468	11/5/29	6,171.34	100.00	6,271.34	Cancelled
			1070541	8/19/30				
			1061781	5/13/30				
	5% net selling price	1/6/21	896807	8/25/25	1,383.71	100.00	1,483.71	
			943163	12/14/26				
								License Never Executed
	5% net selling price	12/28/20						License Never Executed
	5% net selling price	1/17/21	1164987	12/21/32	3,230.40	100.00	3,330.40	
								License never executed.
ns and process of making	5% net selling price	3/11/21	1091881	3/31/31	4,958.60	100.00	5,058.60	
			1127603	2/9/32				
	5% net selling price	1/26/21	837128	11/27/23	30.25	100.00	130.25	
Phospho Tungstic Acid	5% net selling price	2/25/21	1232551	7/10/34	927.52	66.66	994.18	Income Linz Patent not included.
			1232552	7/10/34				
			1378882	5/24/38				
					384.60		384.60	These royalties earned under license #269—credited to this number temporarily while licenses were being revised.
	5% net selling price	3/11/21	1036241	8/20/29	941.19	100.00	1,041.19	
			1106970	8/11/31				
								License never executed
								License never executed
								License never executed
								License never executed
								License never executed
nge C								License never executed
								License never executed
		(Carried Forward)			$145,460.12	$14,966.67	$160,426.79	

DEFENDANT'S EXHIBIT No. 83.

Income on Licenses (Cont'd)

License Number	Name and Address	Product	Royalty Rate	Da Li
				Brou
"A" 187	American Vat Color Co., 3223 Southwestern Blvd., Chicago, Ill.	Indanthrene Dark Blue BO	5% net selling price	3/2
"A" 188	American Cotton Oil Co., 65 Broadway, N. Y. C.	Nickel Catalyst	.0239¢ per pound	4/1
"A" 189	The Dermatological Research Labs., 1720 Lombard St., Phila., Pa.	Sodium Arsphenamine	5% net selling price	4/1
"A" 190	The Engeln Electric Co., 4601 Euclid Av., Cleveland, O.	X Ray Accessary	5% net selling price	4/
"A" 191	Tower Mfg. Co., 552 Pearl St., N. Y. C.	Hydron Blues	5% net selling price	4/
"A" 192	Tower Manufacturing Co., Inc., 552 Pearl St., N. Y. C.	Hydron Violet	5% net selling price	4/
"A" 193	Tower Manufacturing Co., Inc., 552 Pearl St., N. Y. C.	Hydron Yellow	5% net selling price	4/
"A" 194	Rochester Germicide Co., 16-24 Dowling Pl., Rochester, N. Y.	The use of Para-dichloro-benzene as an insecticide		
"A" 195	H. Kohnstamm & Co., 83 Park Pl., N. Y. C.	Color Lakes derived from Red for Lake D	2% of net selling price	4/
"A" 196	G. Siegle Corp. of America, 80 5th Ave., N. Y. C.	Color Lakes derived from Red for Lake D	2% net selling price	4/
"A" 197	Atlantic Chemical Works, Ltd. (its subsidiary & affiliated Co's), Bayway, Elizabeth, N. J.	Synthetic Tanning Materials derived from Naphthaline	3% net selling price	4/
"A" 198	Paul Uhlich & Co., Inc., 11 Cliff St., N. Y. C.	Color Lakes Derived from Red for Lake D		
"A" 199	Hooker Electrochemical Co., Inc., 25 Pine St., N. Y. C.	The use of Para-dichlorobenzene as an insecticide	5% net selling price	4/
"A" 200	Brooklyn Color Works, Inc., Stewart Ave. & Cherry St., Brooklyn, N. Y.	Color Lakes containing Phospho-Tungstic Acid	5% net selling price	4/
"A" 201	Brooklyn Color Works, Inc., Stewart Ave. & Cherry St., Bklyn, N. Y.	Color Lakes Derived from Red for Lake D		
"A" 202	The Barrett Co., 17 Battery Pl., N. Y. C.	Synthetic Tanning Materials produced from Phenolic Bodies	3% of net selling price	4/
"A" 203	The Barrett Co., 17 Battery Pl., N. Y. C.	Synthetic Tanning Materials of the Napthalene Group	3% net selling price	4/
"A" 204	E. C. Klipstein & Sons Co., 654 Greenwich St., N. Y. C.	The use of Para-dichlorobenzene as an insecticide	5% of the net selling price	4/
"A" 205	J. M. Huber, 65 West Houston St., N. Y. C.	Color Lakes containing Phospho-Tungstic Acid	5% net selling price	4/
"A" 206	The Ault & Wiborg Co., Cincinnati, Ohio	Color Lakes containing Phospho-Tungstic Acid	5% net selling price	3/
"A" 207	Albert Kennedy Child, 611 W. 156th St., N. Y. C.	Pivotal Jaw Device	3% net selling price	5/
"A" 208	Gaskill Chemical Corp., 157 Spencer St., Bklyn, N. Y.	Fur and Hair Dye and application of same	5% net selling price	5/
"D" 209	The Norma Co. of America, Anable Av., Long Island City, N. Y.	Trademark—Minimeter	$100.00 payment in full of license fee and royalty	5/
"A" 210	The Norma Co. of America, Anable Av., Long Island City, N. Y.	Micrometer Gage	5% of net selling price $100.—minimum royalty each year	5/
"A" 211	The Organic Laboratories Co., 279 Hosea Av., Cincinnati, Ohio	The use of Para-dichlorobenzene as an insecticide	5% net selling price	5/
"A" 212	Merck & Co., 45 Park Pl., N. Y. C.	A double salt of Morphin and Narcotin	5% net selling price	5/
"A" 213	Hanovia Chemical & Mfg. Co., Chestnut St. & New Jersey R. R. Ave., Newark, N. J.	Therapeutic Apparatus	$5.00 per lamp	6/
				Carried

Income on Licenses (Cont'd)

Product	Royalty Rate	Date of License	Patent Number	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31, 1922.	Remarks
		Brought Forward			$145,460.12	$14,966.67	$160,426.79	
Dark Blue BO	5% net selling price	3/28/21	818992	4/24/23	42.83	100.00	142.83	
st	.0239¢ per pound	4/1/21	1314642	9/2/36		100.00	100.00	
enamine	5% net selling price	4/1/21	1059983	4/29/30		300.00	300.00	
			1078135	11/11/30				
			1081592	12/16/30				
ary	5% net selling price	4/8/21	1164987	12/21/32	708.75	100.00	808.75	
	5% net selling price	4/8/21	919572	4/27/26		100.00	100.00	
			931598	8/17/26				
			956346	4/26/27				
			966092	8/2/27				
			1141148	6/1/32				
	5% net selling price	4/8/21	1129574	2/23/32		100.00	100.00	
	5% net selling price	4/8/21	1055287	3/4/30		100.00	100.00	
			1196127	8/29/33				
ra-dichloro-benzene as an insecticide								License never executed
erived from Red for Lake D	2% of net selling price	4/1/21	878964	2/11/25	160.95	100.00	260.95	
erived from Red for Lake D	2% net selling price	4/1/21	878964	2/11/25	718.52	100.00	818.52	
ing Materials derived from Naphthaline	3% net selling price	4/1/21	1191480	7/18/33	538.62	100.00	638.62	
			1216612	2/20/34				
			1278229	9/10/35				
			1336759	4/13/37				
erived from Red for Lake D								License never executed
ra-dichlorobenzene as an insecticide	5% net selling price	4/1/21	1097406	5/19/31	3,455.53	100.00	3,555.53	
ntaining Phospho-Tungstic Acid	5% net selling price	4/1/21	1232551	7/10/34	260.84	66.67	327.51	
			1232552	7/10/34				
rived from Red for Lake D								License never executed
ing Materials produced from Phenolic	3% of net selling price	4/1/21	1237405	8/21/34	146.97		146.97	
			1232620	7/10/34				
			1254364	1/22/35				
			1133108	3/23/32				
ng Materials of the Napthalene Group	3% net selling price	4/1/21	1191480	7/18/33	.15	100.00	100.15	
			1216612	2/20/34				
			1278229	9/10/35				
			1336759	4/13/37				
-dichlorobenzene as an insecticide	5% of the net selling price	4/27/21	1097406	5/19/31	403.32	100.00	503.32	
ntaining Phospho-Tungstic Acid	5% net selling price	4/1/21	1232551	7/10/34	423.46	66.67	490.13	
			1232552	7/10/34				
			1378882	5/24/38				
ntaining Phospho-Tungstic Acid	5% net selling price	3/30/21	1232551	7/10/34	190.06	66.66	256.72	
			1232552	7/10/34				
			1378882	5/24/38				
ice	3% net selling price	5/9/21	1059545	4/22/30				
ye and application of same	5% net selling price	5/4/21	992947	5/23/28	822.03		822.03	
			1105554	7/28/31				
imeter	$100.00 payment in full of license fee and royalty	5/11/21						
	5% of net selling price	5/9/21	1048073	12/24/29	100.00	100.00	200.00	
	$100.—minimum royalty each year		1049860	1/7/30				
-dichlorobenzene as an insecticide	5% net selling price	5/23/21	1097406	5/19/31	.18	100.00	100.18	
Morphin and Narcotin	5% net selling price	5/9/21	1061139	5/6/30		100.00	100.00	
aratus	$5.00 per lamp	6/1/21	834209	10/23/23	3,015.00	100.00	3,115.00	
		Carried Forward			$156,347.33	$17,166.67	$173,514.00	

DEFENDANT'S EXHIBIT No. 83.

Income on Licenses (Cont'd)

ber nse	Name and Address	Product	Royalty Rate	Date o Licens
				Brought F
214	Sepoy Dye Products Corp., 77 Pine St., N. Y. C.	Immedial Yellow GG		
215	Katode XRay Tube Co., 33 West 46th St., N. Y. C.	Tungsten Filaments	5% net selling price	6/1/21
216	Rohm & Haas, 40 North Front St., Philadelphia, Pa.	Synthetic Tanning Materials of the Naphthalene Group	3% net selling price	6/1/21
217	Rohm & Haas, 40 North Front St., Philadelphia, Pa.	Synthetic Tanning Materials produced from Phenolic Bodies	3% net selling price	6/1/21
218	Rohm & Haas, 40 North Front St., Phila., Pa.	Synthetic Tanning Materials derived from Phenol Sulfuric Acid and Grape Sugar	3% net selling price	6/1/21
219	Rohm & Haas, 40 North Front St., Phila., Pa.	Synthetic Tanning Materials derived from Carbazol	3% net selling price	6/1/21
220	Rohm & Haas, 40 North Front St., Phila., Pa.	Synthetic Tanning Materials derived from Anthracene Derivatives	3% net selling price	6/1/21
221	Maple Chemical Co., Inc., 122 Maple Avenue, Staten Island, N. Y.	Fur & Hair Dye and application of same	5% net selling price	6/3/21
222	Yocum Laboratories, 168 Coit St., Newark, N. J.	Synthetic Tanning Materials of the Naphthalene Group	3% net selling price	6/6/21
223	Yocum Laboratories, 168 Coit St., Newark, N. J.	Synthetic Tanning Materials produced from Phenolic Bodies	3% net selling price	6/6/21
224	Yocum Laboratories, 168 Coit St., Newark, N. J.	Synthetic Tanning Materials derived from Phenol Sulfuric Acid and Grape Sugar	3% net selling price	6/6/21
225	Yocum Laboratories, 168 Coit St., Newark, N. J.	Synthetic Tanning Materials derived from Carbazole	3% net selling price	6/6/21
226	Yocum Laboratories, 168 Coit St., Newark, N. J.	Synthetic Tanning Materials derived from Anthracene derivatives	3% net selling price	6/6/21
227	California Ink Co., Inc., West Berkely, California	Color Lakes Containing Phospho-Tungstic Acid	5% net selling price	6/6/21
228	E. R. Squibb & Sons, 80 Beekman St., N. Y. C.	Process for producing Aldehyde Sulfoxylates	2% net selling price	6/8/21
229	Powers-Weightman-Rosengarten Co., Philadelphia, Pa.	Arsphenamine—Salt thereof, container for same, and the injection Preparation	5% net selling price	6/8/21
230	Powers-Weightman-Rosengarten Co., Philadelphia, Pa.	Neo-Arsphenamine and container for same	5% net selling price	6/8/21
231	Powers-Weightman-Rosengarten Co., Philadelphia, Pa.	Metallic Salts of Arsphenamine and container for same	5% net selling price	6/8/21
232	Powers-Weightman-Rosengarten Co., Philadelphia, Pa.	Alkali Compounds of Dioxy-diamino-arsenobenzene and container for same	5% net selling price	6/8/21
233	E. C. Klipstein & Sons Co., 644 Greenwich St., N. Y. C.	Chrome Black	2% net selling price	6/10/21 7/1/21
234	Dow Chemical Co., Midland, Michigan	Penta Brom Indigo	3% net selling price	7/1/21
235	Dow Chemical Co., Midland, Michigan	Hexa Brom Indigo	3% net selling price	6/16/21
236	Tower Manufacturing Co., 326 Broadway, N. Y. C.	Fur and Hair Dye and application of same	5% net selling price	
237	Burdick Cabinet Co., Milton, Wisconsin	Therapeutic Apparatus	$5.00 per lamp	6/21/21
236	Jaenecke-Ault Co.	Color Lakes derived from Red	2% net selling price	6/25/21
				Carried Forw

Sheet #12.

Income on Licenses (Cont'd)

Product	Royalty Rate	Date of License	Patent Numbers	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31/22	Remarks
		Brought Forward—			$156,347.33	$17,166.67	$173,514.00	
GG								
s	5% net selling price	6/1/21	1256929 1256930	2/19/35 2/19/35		100.00	100.00	License never executed
Materials of the Naphthalene Group	3% net selling price	6/1/21	1191480 1216612 1278229 1336759	7/18/33 2/20/34 9/10/35 4/13/37				
Materials produced from Phenolic	3% net selling price	6/1/21	1237405 1232620 1133108 1254364	8/21/34 7/10/34 3/23/32 1/22/35	100.06	100.00	200.06	
Materials derived from Phenol Sul- Grape Sugar	3% net selling price	6/1/21	1107107	8/11/31		100.00	100.00	
Materials derived from Carbazol	3% net selling price	6/1/21	1289280	12/31/35		100.00	100.00	
Materials derived from Anthracene	3% net selling price	6/1/21	1281494	10/15/35		100.00	100.00	
nd application of same	5% net selling price	6/3/21	992947 1105554	5/23/28 7/28/31	188.43	100.00	288.43	
Materials of the Naphthalene Group	3% net selling price	6/6/21	1191480 1216612 1278229 1336759	7/18/33 2/20/34 9/10/35 4/13/37	643.35		643.35	
Materials produced from Phenolic	3% net selling price	6/6/21	1237405 1232620 1133108 1254364	8/21/34 7/10/34 3/23/32 1/22/35		100.00	100.00	
Materials derived from Phenol nd Grape Sugar	3% net selling price	6/6/21	1107107	8/11/31		100.00	100.00	
Materials derived from Carbazole	3% net selling price	6/6/21	1289280	12/31/35		100.00	100.00	
Materials derived from Anthracene	3% net selling price	6/6/21	1281494	10/15/35		100.00	100.00	
ining Phosphotungstic Acid	5% net selling price	6/6/21	1232551 1232552 1378882	7/10/34 7/10/34 5/24/38	102.94	66.67	169.61	
ng Aldehyde Sulfoxylates	2% net selling price	6/8/21	885567	4/21/25		100.00	100.00	
thereof, container for same, and reparation	5% net selling price	6/8/21	986148 1116398 1081592 1081897	5/7/28 11/10/31 12/16/30 12/16/30		400.00	400.00	
and container for same	5% net selling price	6/8/21	Re. 13848 1081592	2/18/30 12/16/30	1,223.93	100.00	1,323.93	
rsphenamine and container for same	5% net selling price	6/8/21	1127603 1091881 1081592	2/9/32 3/31/31 12/16/30		200.00	200.00	
of Dioxy-diamino-arsenobenzene and me	5% net selling price	6/8/21	1059983 1078135 1081592	4/29/30 11/11/30 12/16/30		200.00	200.00	
	2% net selling price	6/10/21	770177	9/13/21				Expired September 13, 1921
		7/1/21	1070541	8/19/30	1,725.63	100.00	1,825.63	
	3% net selling price	7/1/21	1061781	5/13/30	89.34		89.34	
	3% net selling price	6/16/21	992947	5/23/28	595.15	100.00	695.15	
and application of same	5% net selling price		1105554	7/28/31				
tus	$5.00 per lamp	6/21/21	834209	10/23/23	2,335.00		2,335.00	
l from Red	2% net selling price	6/25/21	878964	2/11/25		100.00	100.00	
		Carried Forward—			$163,351.16	$19,533.34	$182,884.50	

Income on Licenses (Cont'd)

License Number	Name and Address	Product	Royalty Rate
"A" 239	International X Ray Corp., 326 Broadway, N. Y. C.	X Ray Accessary	
"A" 240	H. Kohnstamm & Co., 83 Park Pl., N. Y. C.	Color Lakes Containing Phospho-Tungstic Acid	5% net selling price
"A" 241	Empire State Chemical Lab., Inc., 217 Broadway, N. Y. C.	Arsphenamine—Salt thereof, container for same and the injection preparation	5% net selling price
"A" 242	Jaenecke-Ault Co., Newark, N. J.	Color Lakes containing Phospho-Tungstic Acid	5% net selling price
"A" 243	The Senelith Ink Co., Inc., 32 Greene St., N. Y. C.	Color Lakes containing Phospho-Tungstic Acid	5% net selling price
"A" 244	Sigmund Ullman Co., Inc., 146th St. & Park Av., N. Y. C.	Color Lakes containing Phospho-Tungstic Acid	5% net selling price
"A" 245	Sun Chemical & Color Co., Harrison, N. J.	Color Lakes containing Phospho-Tungstic Acid	5% net selling price
"A" 246	Barnsdall Refining Co., 41 E. 42nd St., N. Y. C.	Conversion of Heavy Hydro-Carbons into light Hydro-carbons	1¢ per gallon—minimum yearly royalty $1000.00
"A" 247	Hawthorne Chemical Co., 1 Washington Avenue, Hawthorne, N. J.	Aldehyde Sulfoxylates	2% net selling price
"A" 248	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Hydron Blue	
"A" 249	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Sulphur Yellow GG	5% net selling price
"A" 250	Wappler Electric Co., Inc., 162 Harris Av., L. I. City, N. Y.	X Ray Accessary	5% net selling price
"A" 251	E. C. Klipstein & Sons Co., 644 Greenwich St., N. Y. C.	Synthetic Tanning Materials of the Napthalene Group	3% net selling price
"A" 252	E. C. Klipstein & Sons Co., 644 Greenwich St., N. Y. C.	Snythetic Tanning Materials produced from Phenolic Bodies	3% net selling price
"A" 253	E. C. Klipstein & Sons Co., 644 Greenwich St., N. Y. C.	Synthetic Tanning Materials derived from Phenol Sulfuric Acid and Grape Sugar	3% net selling price
"A" 254	E. C. Klipstein & Sons Co., 644 Greenwich St., N. Y. C.	Synthetic Tanning Material derived from Carbazole	3% net selling price
"A" 255	E. C. Klipstein & Sons Co., 644 Greenwich St., N. Y. C.	Synthetic Tanning Materials derived from Anthracene Derivatives	3% net selling price
"A" 256	Dermatological Research Labs., 1720 Lombard Street, Philadelphia, Pa.	Arsphenamine—Salt thereof, container for same and the injection preparation	5% net selling price
"A" 257	Dermatological Research Labs., 1720 Lombard Street, Phila., Pa.	Neo-Arsphenamine and container for same	5% net selling price
"A" 258	Dermatological Research Labs., 1720 Lombard Street, Phila., Pa.	Metallic salts of Arsphenamine and container for same	5% net selling price
"A" 259	The Wm. Meyer Co., 1644 No. Girard St., Chicago, Ill.	X Ray Accessary	5% net selling price
"A" 260	H. K. Mulford Co., Philadelphia, Pa.	Arsphenamine—Salt thereof, container for same and injection preparation	
"A" 261	H. K. Mulford Co., Philadelphia, Pa.	Neo-Arsphenamine and container for same.	
"A" 262	H. K. Mulford Co., Philadelphia, Pa.	Metallic Salts of Arsphenamine and container for same	
"A" 263	H. K. Mulford Co., Philadelphia, Pa.	Alkali Compounds of Dioxy-diamino-arseno-benzine and container for same	

Carri

Income on Licenses (Cont'd)

roduct	Royalty Rate	Date of License	Patent Number	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31/22	Remarks
		Brought Forward—			$163,351.16	$19,533.34	$182,884.50	
			1164987	12/21/32				License never executed
g Phospho-Tungstic Acid	5% net selling price	6/30/21	1232551	7/10/34	75.02	66.67	141.69	
			1232552	7/10/34				
			1378882	5/24/38				
hereof, container for same and	5% net selling price	7/8/21	986148	3/7/28		400.00	400.00	Bankrupt,—so considered cancelled.
ration			1081592	12/16/30				This product never approved by
			1081897	12/16/30				Public Health Commission
			1116398	11/10/31				
Phospho-Tungstic Acid	5% net selling price	7/8/21	1232551	7/10/34		66.66	66.66	
			1232552	7/10/34				
			1378882	5/24/38				
Phospho-Tungstic Acid	5% net selling price							License never executed
Phospho-Tungstic Acid	5% net selling price	7/12/21	1232551	7/10/34	55.50	66.67	122.17	
			1232552	7/10/34				
			1378882	5/24/38				
Phospho-Tungstic Acid	5% net selling price	7/19/21	1232551	7/10/34	111.42		111.42	
			1232552	7/10/34				
			1378882	5/24/38				
ydro-Carbons into light Hydro-	1¢ per gallon—minimum yearly royalty $1000.00	7/21/21	1205578	11/21/33	1,444.44	100.00	1,544.44	
	2% net selling price	7/27/21	793610	6/27/22				
			885566	4/21/25				
			885567	4/21/25				
								License never executed
	5% net selling price	7/8/21	892455	7/7/25	5,361.92	100.00	5,461.92	
	5% net selling price	8/1/21	1164987	12/21/32	12.50	100.00	112.50	
rials of the Napthalene Group	3% net selling price	7/12/21	1191480	7/18/33	929.78		929.78	
			1216612	2/20/34				
			1278229	9/10/35				
			1336759	4/13/37				
erials produced from Phenolic	3% net selling price	7/12/21	1232620	7/10/34	164.57		164.57	
			1237405	8/21/34				
			1254364	7/22/35				
			1133108	3/23/32				
terials derived from Phenol Grape Sugar	3% net selling price	7/12/21	1107107	8/11/31				
erial derived from Carbazole	3% net selling price	7/12/21	1289280	12/31/35				
rials derived from Anthracene	3% net selling price	7/12/21	1281494	10/15/35				
eof, container for same and tion	5% net selling price	6/1/21	986148	3/7/28	4,088.46	300.00	4,388.46	
			1116398	11/10/31				
			1081592	12/16/30				
			1081897	12/16/30				
container for same	5% net selling price	6/1/21	Re. 13848	2/18/30	26,978.14	100.00	27,078.14	
			1081592	12/16/30				
amine and container for same	5% net selling price	6/1/21	1081592	12/16/30		200.00	200.00	
			1091881	3/31/31				
			1127603	2/9/32				
	5% net selling price	8/10/21	1164987	12/21/32	700.01	100.00	800.01	
eof, container for same and on								License never executed
container for same.								License never executed
amine and container for same								License never executed
Dioxy-diamino-arseno-benzine ne								License never executed
		Carried Forward—			$203,272.92	$21,133.34	$224,406.26	

Income on Licenses (Cont'd)

License Number	Name and Address	Product	Royalty Rate
"B" 264	Claude Violi, 6 Temple St., Springfield, Mass.	X Ray Accessary	5% net selling price
"B" 265	Ultro Chemical Co., 41 Union Sq., N. Y. C.	Permanent Red	5% net selling price
"B" 266	The American Solder & Flux Co., 2910 No. 16th St., Phila., Pa.	Solder	3% net selling price
"D" 267	The American Solder & Flux Co., 2910 No. 16th St., Phila., Pa.	Trademark—Tinol	
"B" 268	Hammer Laboratories Co., Landsdowne, Pa.	Diacetyl-Amino-azo-toluene	
"B" 269	The Newport Chemical Wks., Inc., Milwaukee, Wisc.	Process for producing Amino-anthraquinones and derivatives thereof.	2½% net selling price
"B" 270	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Indanthrene Brown B	5% net selling price
"B" 271	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Indanthrene Blue BO, BGO, BOS and Intermediate Product	5% net selling price
"B" 272	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Olive Green Vat Dye	5% net selling price
"B" 273	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Olive Green Vat Dye	5% net selling price
"B" 274	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Indanthrene Green B or Indanthrene Black B and Intermediate Product Benzanthrone	5% net selling price
"B" 275	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Indanthrene Red BX	5% net selling price
"B" 276	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Anthraflavones	5% net selling price
"B" 277	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Dianthraquinonyl (Intermediate)	5% net selling price
"B" 278	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Indanthrene Golden Orange	5% net selling price
"B" 279	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Black Azo Dyestuffs	5% net selling price
"B" 280	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Quinoline Yellow	5% net selling price
"B" 281	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Chrome Black	2% net selling price
"B" 282	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Bordeaux Vat Dyes	5% net selling price
"B" 283	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Green Vat Dyes	5% net selling price
"B" 284	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Blue Tetrakisazo Dyes (Cotton Blue)	5% net selling price
"B" 285	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Blue Tetrakisazo Dyes (Cotton Blue)	5% net selling price
"B" 286	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Diazo Cotton Blue	5% net selling price
"B" 287	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Claret-Red Trisazo Dye	5% net selling price
"B" 288	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Yellow Vat Dyes—Hydron Yellow	5% net selling price
"B" 289	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Blue Gray to Green Gray Vat Dyes	5% net selling price
"B" 290	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Red Wool Dyestuff	5% net selling price
"B" 291	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Pastes of Sulfur Dyes	5% net selling price
"B" 292	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Azo Dyes for Cotton & Paper	5% net selling price
"B" 293	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Indanthrene Violet RX	5% net selling price
"B" 294	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Pigment Color and process for producing same from Blue Vat Dyes	5% net selling price
"B" 295	The Newport Chemical Wks., Inc., Milwaukee, Wis.	Green Cotton Dyes	5% net selling price

Income on Licenses (Cont'd)

	Royalty Rate	Date of License	Patent Number	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31, 1922.	Remarks
		Brought Forward			$203,272.92	$21,133.34	$224,406.26	
	5% net selling price	8/22/21	1164987	12/21/32	125.74	100.00	225.74	
	5% net selling price	9/1/21	955068	4/12/27	1,580.73	100.00	1,680.73	
	3% net selling price	9/6/21	736812	8/18/20	61.25		61.25	Expired 8/18/20—Royalties represent past activities. License Never executed.
			T. M. 68910					License Never executed
ne mino-anthraquinones and de-	2½% net selling price	9/15/21	1063173	5/27/30	10,111.96		10,111.96	
	5% net selling price	9/15/21	876190	1/7/25	387.54		387.54	
GO, BOS and Intermediate	5% net selling price	9/15/21	818992	4/24/23	1,958.48		1,958.48	
			787859	4/18/22				
	5% net selling price	9/15/21	1207762	12/12/33				
	5% net selling price	9/15/21	1093427	4/14/31				
danthrene Black B and In-	5% net selling price	9/15/21	796393	8/1/22	648.96		648.96	
zanthrone			787859	4/18/22				
	5% net selling price	9/15/21	1011068	12/5/28				
	5% net selling price	9/15/21	837840	12/4/23				
iate)	5% net selling price	9/15/21	828778	8/14/23				
ge	5% net selling price	9/15/21	856811	6/11/24				
	5% net selling price	9/15/21	1206232	11/28/33				
	5% net selling price	9/15/21	1197632	9/12/33				
	2% net selling price	9/15/21	807422	12/12/22	1,109.46		1,109.46	
	5% net selling price	9/15/21	1202260	10/24/33				
	5% net selling price	9/15/21	1201968	10/17/33				
tton Blue)	5% net selling price	9/15/21	1180985	4/25/33				
ton Blue)	5% net selling price	9/15/21	1319852	10/28/36				
	5% net selling price	9/15/21	1113468	10/13/31				
	5% net selling price	9/15/21	1150825	8/17/32				
Yellow	5% net selling price	9/15/21	1196127	8/29/33				
Vat Dyes	5% net selling price	9/15/21	1169404	1/25/33				
	5% net selling price	9/15/21	1123430	1/5/32				
	5% net selling price	9/15/21	1200055	10/3/33				
per	5% net selling price	9/15/21	1126656	1/26/32				
	5% net selling price	9/15/21	906367	12/8/25				
			787859	4/18/22				
for producing same from	5% net selling price	9/15/21	1150863	8/24/32				
	5% net selling price	9/15/21	1183831	5/16/33				
		Carried Forward			$219,257,04	$21,333.34	$240,590.38	

DEFENDANT'S EXHIBIT No. 83.

Income on Licenses (Cont'd)

License Number	Name and Address	Product	Royalty Rate	Date of Licen
				Brought Fo
"B" 296	Semet-Solvay Co., Syracuse, N. Y.	The Use of Para-dichlorobenzene as an Insecticide	5% net selling price	9/19/21
"B" 297	The Adams X Ray Corp., Maple & Rivard Sts., Detroit, Michigan	X Ray Accessary	5% net selling price	9/23/21
"B" 298	The Abbott Laboratories, Inc., 4753 Ravenswood Av., Chicago, Ill.	Cinchophen	2½% net selling price	11/23/21
"B" 299	The Abbott Laboratories, Inc., 4753 Ravenswood Ave., Chicago, Ill.	Procaine	5% net selling price	11/23/21
"B" 300	Novocol Chemical Mfg. Co., Inc., 2923 Atlantic Ave., Bklyn., N. Y.	Alpha-Halogen-Isoraleryl-Urea (Bromural)	1% net selling price	10/1/21
"D" 301	Novocol Chemical Mfg. Co., Inc., 2923 Atlantic Avenue, Bklyn., N. Y.	Trademark—Bromural	1% net selling price	10/1/21
"B" 302	American Vat Color Co., 3223 So. Western Blvd., Chicago, Ill.	Indanthrene Olive G	5% net selling price	10/1/21
"B" 303	Case Woodland Drug Co., 40th St. & Woodland Ave., Cleveland, Ohio.	Calcium Salt of Acetyl-Salicylic Acid	3% net selling price to 10/10/22 5% net selling price thereafter	10/10/2
"B" 304	Case Woodland Drug. Co., 40th St. & Woodland Ave., Cleveland, Ohio.	Stable compounds containing Hydrogen Peroxide	3% net selling price to 10/10/22 5% net selling price thereafter	10/10/21
"B" 305	Fine Colors Co., 21-29 McBride Ave., Paterson, N. J.	Color Lakes Containing Phospho-Tungstic Acid		
"D" 306	The American Lysoform Co., 408 W. 13th St., N. Y. C.	Trademark—Lysoform	1% net selling price	10/17/21
"B" 307	Metals Coating Co. of American, 495-7 No. 3rd St., Phila., Pa.	Method of Producing Metallic Coatings	5% net selling price	10/17/21
"B" 308	Waite & Bartlett Mfg. Co., 53 Jackson Av., L. I. City, N. Y.	X Ray Accessary	5% net selling price	10/20/21
"C" 309	Pacific Flush Tank Co., 4241 E. Ravenswood Ave., Chicago, Ill.	Imhoff Tanks	60% of fee	8/23/21
"D" 310	The American Solder & Flux Co., 2910 No. 16th St., Phila., Pa.	Trademark—Tinol	1% net selling price	11/1/21
"B" 311	Central Dyestuff & Chemical Co.. Newark, N. J.	Salicine Black	2% net selling price	11/1/21
"B" 312	Empire State Chemical Labs., Inc., 53 Hope St., Brooklyn, N. Y.	Neo-Arsphenamine and container for same	5% net selling price	11/7/21
"B" 313	The A. Wilhelm Co., Reading, Pa.	Color Lakes Containing Phospho-Tungstic Acid	5% net selling price	11/10/21
"B" 314	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Hydron Blue R	5% net selling price	11/16/21
"D" 315	Merck & Co., 45 Park Pl., N. Y. C.	Trademark—Stypticin	1% net selling price	11/21/21
"D" 316	Merck & Co., 45 Park Pl., N. Y. C.	Trademark—Dionin	1% net selling price	11/21/21
"B" 317	The Abbott Laboratories, Inc., 4753 Ravenswood Ave., Chicago, Ill.	Neo-Cinchophen	2½% net selling price	11/23/21
"D" 318	Carbic Color & Chemical Co., 451 Washington St., N. Y. C.	Trademark—Validol	1¢ per gram	11/15/21
"B" 319	H. S. B. W.-Cochrane Corp., 17th St. & Allegheny Ave., Philadelphia, Pa.	Precipitated Zeolite	1¢ per pound	11/29/21
"B" 320	H. A. Metz, 122 Hudson St., N. Y. C.	Intermediate for the production of Synthetic Epinephrine	2% net selling price	12/1/21
B" 321	John A. Larkin, 52 Vanderbilt Ave., N. Y. C.	Alkyl Ethers of Cellulose	2% net selling price	12/1/21
B" 322	John A. Larkin, 52 Vanderbilt Ave., N. Y. C.	Alkyl Ethers of Cellulose	1% net selling price	12/1/21
B" 323	John A. Larkin, 52 Vanderbilt Ave., N. Y. C.	Alkyl Ethers of Cellulose	1% net selling price	12/1/21
B" 324	National Aniline & Chemical Co., 40 Rector St., N. Y. C.	Arylamids of Beta-Oxy-Naphtolic Acid, derivatives of same & their application		

(Carried Fo

Income on Licenses (Cont'd)

ct	Royalty Rate	Date of License	Patent Numbers	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31/22	Remarks
		Brought Forward			$219,257.04	$21,333.34	$240,590.38	
benzene as an Insecticide	5% net selling price	9/19/21	1097406	5/19/31	618.12	100.00	718.12	
	5% net selling price	9/23/21	1164987	12/21/32		100.00	100.00	
	2½% net selling price	11/23/21	1075171	10/7/30	868.15	100.00	968.15	
	5% net selling price	11/23/21	812554	2/13/23	425.09	100.00	525.09	
Urea (Bromural)	1% net selling price	10/1/21	914518	3/9/26	8.68	100.00	108.68	
	1% net selling price	10/1/21	T. M. 61165		8.68	100.00	108.68	
	5% net selling price	10/1/21	922282	5/18/26		100.00	100.00	
licylic Acid	3% net selling price to 10/10/22 5% net selling price thereafter	10/10/21	1058904	4/15/30		100.00	100.00	
g Hydrogen Peroxide	3% net selling price to 10/10/22 5% net selling price thereafter	10/10/21	1035756	8/13/29		100.00	100.00	
hospho-Tungstic Acid			1232551 1232552 1378882	7/10/34 7/10/34 5/24/38				License never executed
	1% net selling price	10/17/21	T. M. 35979			100.00	100.00	
llic Coatings	5% net selling price	10/17/21	App. 251576					License out for signature
	5% net selling price	10/20/21	1164987	12/21/32		100.00	100.00	
	60% of fee	8/23/21	924664 978889 1056548 1057154 1053396	6/15/26 12/10/27 3/18/30 3/25/30 2/18/30	10,584.66		10,584.66	
	1% net selling price	11/1/21	T. M. 63910		96.86	100.00	196.86	
	2% net selling price	11/1/21	778476	12/27/21	106.85		106.85	License Expired 12/27/21
tainer for same	5% net selling price	11/7/21	Re.-13848 1081592	2/18/30 12/16/30		100.00	100.00	Bankrupt
hospho-Tungstic Acid	5% net selling price	11/10/21	1232551 1232552 1378882	12/16/30 7/10/34 5/24/38		66.67	66.67	Income Linz Product not included.
	5% net selling price	11/16/21	956348	4/26/27	62.69	100.00	162.69	
	1% net selling price	11/21/21	T. M. 27388		158.15	100.00	258.15	
	1% net selling price	11/21/21	T. M. 32737		214.59	100.00	314.59	
	2½% net selling price	11/23/21	1045759	11/26/29	18.19	100.00	118.19	
	1¢ per gram	11/15/21	T. M. 29457 T. M. 54087	5/1/22	645.65	100.00	745.65	Expired May 1, 1922
	1¢ per pound	11/29/21	1161200	11/23/32	25.00	100.00	125.00	
		12/1/21	815653	3/20/23	807.80	100.00	907.80	
ction of Synthetic Epine-	2% net selling price							
	2% net selling price	12/1/21	1217028	2/20/34				Cancelled Feb. 27, 1922
	1% net selling price	12/1/21	1217027	2/20/34				Cancelled Feb. 27, 1922
	1% net selling price	12/1/21	1188376	6/20/33				Cancelled Feb. 27, 1922
phtolic Acid, derivatives of on								License never executed
		(Carried Forward)			$233,906.20	$23,400.01	$257,306.21	

Income on Licenses (Cont'd)

ense mber	Name and Address	Product	Royalty Rate	Date o Licens
				Brought For
325	P. R. Mallory & Co., Inc., Portchester, N. Y.	Tungsten Filaments	5% net selling price	12/12/2
326	The Novocol Chemical Mfg. Co., Inc., 2923 Atlantic Av., Bklyn, N. Y.	Trademark—Validol	1% net selling price	12/13/2
327	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Process for producing Amino Anthraquinones and derivatives thereof.	2½% net selling price	9/1/20
328	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Intermediate Product (Benzanthrone) and derivatives thereof	5% net selling price	9/1/20
329	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Indanthrene Violet R	5% net selling price	9/1/20
330	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Indanthrene Violet 2R	5% net selling price	9/1/20
331	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Salicine Black U	2% net selling price	12/9/19
332	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Arylamids of Beta-Oxy-Naphthoic Acid, derivatives of same and their application	5% net selling price	12/19/2
333	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Indanthrene Paper Blues	5% net selling price	9/1/20
334	E. I. du Pont de Nemours & Co., Inc., Wilmington, Delaware	Sulphogene Bordeaux B & G	2½% net selling price	11/1/19
335	The Mason Drug & Chemical Co., Hancock, Maryland	The Use of Paradichlorobenzene as an Insecticide		
336	The Colloid Chemical Corp., 49 Charlton St., N. Y. C.	Indanthrene R and Violet R.	5% net selling price	12/27/21
337	The Colloid Chemical Corp., 49 Charlton St., N. Y. C.	Indanthrene Black B & Dark Blue BO	5% net selling price	12/27/21
338	Sinclair & Valentine Co., 11-21 St. Claire Pl., N. Y. C.	Color Lakes Containing Phospho-Tungstic Acid	5% net selling price	12/27/21
339	The B. F. Sturtevant Co., Hyde Park, Boston, Mass.	Propeller Blowers	5¢ for each inch of the diameter of the fan squared	1/24/22
340	The Roessler & Hasslacher Chem. Co., 709-717 6th Ave., N. Y. C.	Trademark—Trisalyt	$100.00 per year	2/1/22
341	E. C. Klipstein & Sons Co., 644 Greenwich St., N. Y. C.	Hydron Blue R & F. R.	5% net selling price	2/21/22
342	E. C. Klipstein & Sons Co., 644 Greenwich St., N. Y. C.	Hydron Blue G & Dark Blue G.	5% net selling price	2/21/22
343	American Ethers Corp., 44 Wall St., N. Y. C.	Alkyl Ethers of Cellulose	2% net selling price of Artificial Silk	2/27/22
344	American Ethers Corp., 44 Wall St., N. Y. C.	Alkyl Ethers of Cellulose	1% net selling price	2/27/22
345	American Ethers Corp., 44 Wall St., N. Y. C.	Alkyl Ethers of Cellulose	1% net selling price	2/27/22
346	The Sperry Gyroscope Co., Manhattan Bridge Plaza, Brooklyn, N. Y.	Gyroscopic Compasses	5% net selling price	2/27/22
347	The Sperry Gyroscope Co., Manhattan Bridge Plaza, Bklyn, N. Y.	Multiple Repeater	5% net selling price	2/27/22
348	National Aniline & Chemical Co., 40 Rector St., N. Y. C.	Acriflavine & Proflavine	5% net selling price	3/31/22
349	Siemon & Elting, 93 Nassau St., N. Y. C.	Color Lakes Containing Molybdic Acid	5% net selling price	5/1/22

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UNITED STATES V. CHEMICAL FOUNDATION, INC.

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Income on Licenses (Cont'd)

	Royalty Rate	Date of License	Patent Numbers	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31/22	Remarks
		Brought Forward—			$233,906.20	$23,400.01	$257,306.21	
	5% net selling price	12/12/21	1256929	2/19/35		200.00	200.00	
			1256930	2/19/35				
	1% net selling price	12/13/21	T. M. 29457		9.51	100.00	109.51	
			T. M. 54087					
Anthraquinones and de-	2½% net selling price	9/1/20	1063173	5/27/30	13,301.46	100.00	13,401.46	
nthrone) and derivatives	5% net selling price	9/1/20	787859	4/18/22	3,734.78	300.00	4,034.78	
			796393	8/1/22				
			818992	4/24/23				
	5% net selling price	9/1/20	906367	12/8/25	.03	100.00	100.03	
			787859	4/18/22				
	5% net selling price	9/1/20	906367	12/8/25	7,749.32	100.00	7,849.32	
			787859	4/18/22				
			1003268	9/12/28				
	2% net selling price	12/9/19	807422	12/12/22	2,759.02		2,759.02	
thoic Acid, derivatives of tion	5% net selling price	12/19/21	1034853	8/6/29	2,504.18	1,000.00	3,504.18	
			1042356	10/22/29				
			1122564	12/29/31				
			1127027	2/2/32				
			1206232	11/28/33				
			1101111	6/23/31				
			1121026	12/15/31				
			1099108	6/2/31				
			1193566	8/8/33				
			1169267	1/25/33				
	5% net selling price	9/1/20	1150863	8/24/32	259.38	100.00	359.38	
G	2½% net selling price	11/1/19	818980	4/24/23	8,308.37	100.00	8,408.37	
ene as an Insecticide			1097406	5/19/31				License never executed
	5% net selling price	12/27/21	787859	4/8/22		300.00	300.00	
			906367	12/8/25				
			1003268	9/12/28				
Blue BO	5% net selling price	12/27/21	787859	4/8/22		200.00	200.00	
			796393	8/1/22				
			818992	4/24/25				
pho-Tungstic Acid	5% net selling price	12/27/21	1232551	7/10/34	26.55	200.00	226.55	
			1232552	7/10/34				
			1378882	5/24/38				
	5¢ for each inch of the diameter of the fan squared	1/24/22	1062258	5/20/30		100.00	100.00	
	$100.00 per year	2/1/22	T. M. 81507		500.00		500.00	
	5% net selling price	2/21/22	919572	4/27/26				
			956348	4/26/27		200.00	200.00	
G.	5% net selling price	2/21/22	966092	8/2/27		100.00	100.00	
	2% net selling price of Artificial Silk	2/27/22	1217028	2/20/34				
	1% net selling price	2/27/22	1217027	2/20/34				
	1% net selling price	2/27/22	1188376	6/20/33				
	5% net selling price	2/27/22	1092816	4/14/31		400.00	400.00	
			1180815	4/25/33				
			1186339	6/6/33				
			1186686	6/13/33				
	5% net selling price	2/27/22	1092816	4/14/31				
	5% net selling price	3/31/22	1005176	10/10/28	298.55	100.00	398.55	
bdic Acid	5% net selling price	5/1/22	1232551	7/10/34	36.00	100.00	136.00	
		Carried Forward—			$273,393.35	$27,200.01	$300,593.36	

Income on Licenses (Cont'd)

License Number	Name and Address	Product	Royalty Rate
"B" 350	The Grasselli Chemical Company, 117 Hudson St., N. Y. C.	Salicine Black	2% net selling price
"B" 351	National Aniline & Chemical Co., 40 Rector St., N. Y. C.	Process of making Arylamids of 2.3. oxy-napthoic acid	5% net selling price
"B" 352	National Aniline & Chemical Co., 40 Rector St., N. Y. C.	Condensation products of arylamids of 2.3. oxy-napthoic acid and formaldehyde and azo dyestuffs therefrom	5% net selling price
"B" 353	National Aniline & Chemical Co., 40 Rector St., N. Y. C.	Azo dystuffs obtained by combining Diazo compounds of Benzene series with 2.3 oxy-napthoic acid arylamids.	5% net selling price
"B" 354	National Aniline & Chemical Co., 40 Rector St., N. Y. C.	Art of producing colors on cotton and impregnating with 2.3 oxy-napthoic acid arylamids and a non sulphonated dizazo compound.	5% net selling price
"B" 355	Abbott Laboratories, 4753 Ravenswood Av., Chicago, Ill.	Light Filter	2½% net selling price
"B" 356	Rohm & Haas, 40 No. Front St., Phila., Pa.	Monozinc Formaldehyde Sulphoxylate	
B" 357	The Calco Chemical Co., Bound Brook, N. J.	Procaine	
"B" 358	Martin Cantine Co., Saugerties, N. Y.	Process of preparing Printers overlays and Underlays	$500.00 per year
"B" 359	The Koppers Co., Union Arcade Bldg., Pittsburgh, Pa.	Regenerative Coke-Oven	$100.00 per Unit
"B" 360	Sperry Gyroscope Co., Manhattan Bridge Plaza, Brooklyn, N. Y.	Gyroscope Compass	5% net selling price
"B" 361	Riverside & Dan River Cotton Mills, Danville, Va.	Yellow Sulphur Dye	5% net selling price
"B" 362	Jaeger Research Laboratories, Inc., 68-70 Hudson St., Hoboken, N. J.	Tungsten filaments	5% net selling price
"B" 363	E. I. Dupont de Nemours & Co., Inc., Wilmington, Del.	Sulphogene Ochre D	5% net selling price
"B" 364	E. I. Dupont de Nemours & Co., Inc., Wilmington, Del.	Hydron Blue G	5% net selling price
"B" 365	E. I. Dupont de Nemours & Co., Inc., Wilmington, Del.	Sulphogene Brown R	5% net selling price
"B" 366	E. I. Dupont de Nemours & Co., Inc., Wilmington, Del.	Hydron Pink FF	5% net selling price
"B" 367	Liebel-Flarsheim Co., 410 Holmes St., Cincinnati, Ohio.	Busky Diaphragm	5% net selling price

Income on Licenses (Cont'd)

Product	Royalty Rate	Date of License	Patent Number	Expiration Date	Amount of Royalty	License Fee	Total Amount Received to Dec. 31, 1922.	Remarks
		Brought Forward			$273,393.35	$27,200.01	$300,593.36	
	2% net selling price	5/1/22	807422	12/12/22	118.35	100.00	218.35	
Arylamids of 2.3. oxy-napthoic acid	5% net selling price	5/8/22	1101111	6/23/31	717.00	100.00	817.00	
ts of arylamids of 2.3. oxy-napthoic aldehyde and azo dyestuffs there-	5% net selling price	5/8/22	1122564	12/29/31		100.00	100.00	
d by combining Diazo compounds s with 2.3 oxy-napthoic acid aryla-	5% net selling price	5/8/22	1034853	8/6/29		100.00	100.00	
olors on cotton and impregnating pthoic acid arylamids and a non azo compound.	5% net selling price	5/8/22	1099108	6/2/31		100.00	100.00	
yde Sulphoxylate	2½% net selling price	5/15/22	1099710	6/9/31		100.00	100.00	Cancelled
			812554	2/13/23				Out for signature
Printers overlays and Underlays	$500.00 per year	5/22/22	892166	6/30/25	321.24	100.00	421.34	
ven	$100.00 per Unit	6/5/22	1041457	10/15/29		100.00	100.00	
	5% net selling price	6/17/22	841612	1/15/24				
			877034	1/21/25				
			1019582	3/5/29				
			1180365	4/25/33				
			1228061	5/29/34				
			1231933	7/3/34				
	5% net selling price	7/21/22	892455	7/7/25		100.00	100.00	
	5% net selling price	7/24/22	1256929	2/19/35		200.00	200.00	
			1256930	2/19/35				
	5% net selling price	7/31/22	904809	11/24/25	110.85	100.00	210.85	
	5% net selling price	7/31/22	966092	8/2/27		100.00	100.00	
	5% net selling price	7/31/22	1165531	12/28/22		100.00	100.00	
	5% net selling price	7/31/22	1243171	10/16/34		100.00	100.00	
	5% net selling price	7/29/22	1164987	12/31/32		100.00	100.00	
		Carried Forward			$274,660.79	$28,800.01	$303.460.80	

DEFENDANT'S EXHIBIT No. 84.

Agency Agreement.

Whereas,

did adopt and use as a trademark for

and caused to be registered as a trademark for the same in the United States Patent Office the following mark on the following date and under the following number, to wit:

Trademark *Date of Registration.*

Registration Number.

and

Whereas, the Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto, and the executive orders and proclamations issued in pursuance thereof, did, by virtue of a requirement or demand, issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him said trademark, together with the business and good will pertaining thereto, and certificate of registration thereof, and also all damages and profits recoverable at law or in equity from any and every person for any and every infringement of said trademark, and did sell, assign and convey the same to The Chemical Foundation, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware; and

Whereas, said The Chemical Foundation, Inc., is desirous of continuing said business in the United

States and of preserving the good will thereof and of maintaining the use of said trademark in said business as a designation for the aforesaid product; and

WHEREAS,
a corporation organized and existing by virtue of the laws of the State of , (hereinafter called the APPLICANT) is desirous of carrying on said business in the United States and of using said trademark in said business and has applied to said THE CHEMICAL FOUNDATION, INC., for an agency therefor, and it appearing upon investigation by said THE CHEMICAL FOUNDATION, INC., that said APPLICANT is able to carry on said business satisfactorily and properly;

NOW, THEREFORE, in consideration of the premises and the faithful performance of the covenants herein contained, IT IS AGREED:

1.—The said THE CHEMICAL FOUNDATION, INC., hereby constitutes the said APPLICANT an agency for the manufacture and sale of the aforesaid product, under the aforesaid trademark, until surrendered or revoked as hereinafter provided.

2.—The APPLICANT will pay to THE CHEMICAL FOUNDATION, INC., as a consideration for the continuance of the agency, a commission of per centum (%) of the net selling price received by the APPLICANT for the aforesaid product, throughout the continuance of this agreement.

3.—The APPLICANT will keep full, true and accurate books of account containing such particulars as may be required by THE CHEMICAL FOUNDATION, INC., from time to time, of its operations under this agreement, which books and the premises where the business under this agreement is carried on shall be open to the inspection of The Chemical Foundation, Inc., or its representatives at all reasonable times.

4.—The Applicant within thirty days after January first, April first, July first and October first of each year, shall furnish The Chemical Foundation, Inc., a true and accurate report, under oath if required, giving such particulars of the business conducted by the Applicant during the preceding three months under this agreement as may from time to time be required by The Chemical Foundation, Inc., and simultaneously with the making of each such report shall pay to The Chemical Foundation, Inc., the commission shown to be due thereby for the period covered by such report.

5.—The Applicant covenants to maintain the standard for the aforesaid product sold by it under said trademark, to mark all of said product sold by it with said trademark and otherwise as required by The Chemical Foundation, Inc., to furnish to The Chemical Foundation, Inc., samples of its product, to indicate upon the labels carried by said product, or in another appropriate way, the grade, concentration and/or color, which qualities shall be expressed in terms of a scale of standards to be established by The Chemical Foundation, Inc., to manufacture such product only within the limits of purity and strength prescribed by The Chemical Foundation, Inc., and to submit to the general supervisory authority of The Chemical Foundation, Inc., in the manufacture and sale of such product.

6.—This agreement and the agency granted hereby may be canceled and terminated in the following manner:

The Chemical Foundation, Inc., shall give written notice to the Applicant of the proposed cancelation and termination assigning in said notice the cause for which it is proposed to cancel and terminate. If the APPLICANT shall so require within five days after receipt of said notice, the trustees of THE CHEMICAL FOUNDATION, INC., under the deed of trust dated May 1, 1919, between said trustees and Francis P. Garvan, Douglas I. McKay and George J. Corbett shall set a date for a hearing and give the APPLICANT written notice thereof. After hearing the APPLICANT, or upon its failure to appear at the place and date set for such hearing, the trustees shall make a determination in writing, a copy of which shall be furnished to the APPLICANT and which shall be conclusive, final and binding upon the APPLICANT and shall not be reviewable by a Court. If the APPLICANT shall fail to require a hearing or if the trustees shall determine that its agency should be canceled and terminated THE CHEMICAL FOUNDATION, INC., may give the APPLICANT ninety (90) days' notice of termination and cancelation and at the end of said ninety days, this agreement together with the agency aforesaid shall cease and terminate. The APPLICANT may surrender this agreement and the agency aforesaid upon ninety (90) days' notice to THE CHEMICAL FOUNDATION, INC. The surrender or termination of this agreement and said agency shall in no way affect the liability of the APPLICANT for any sums of money accruing or becoming due or payable prior to the date of surrender or termination. Upon surrender or termination of said agency by the APPLICANT commissions at the rate last paid or payable by the APPLICANT upon the aforesaid product shall accrue and become immediately due and payable for all of the product manufactured and/or on hand, or in course of manufacture, or sold and payment for which has not yet been received.

7.—All written notices or permissions referred to herein shall be given by registered mail addressed to the last known address of the respective parties.

8.—This agreement shall be interpreted in accordance with the laws of the State of New York.

In Witness Whereof, the parties hereto have hereunto caused their respective corporate seals to be hereunto affixed and duly attested and these presents to be signed by their duly authorized officers, this day of , 192 .

THE CHEMICAL FOUNDATION, Inc.,
By..................

Attest:

....
Secretary.

....
By..................

Attest:

....
Secretary.

DEFENDANT'S EXHIBIT No. 85.

RH-GM.

April 15, 1919.

Hon. A. Mitchell Palmer,
Attorney General,
Washington, D. C.

Dear Mr. Palmer:

I enclose herewith a release from the Alien Property Custodian to the United States under all patents which are to be transferred to the Chemical Foundation, Inc. I am delivering it to you since it affects patent suits which may be brought against any one of several of the Government Departments, and which would in the normal course be referred to the Department of Justice.

Respectfully,
(Sgd.) FRANCIS P. GARVAN.

DEFENDANT'S EXHIBIT No. 85-A.

WHEREAS, A. MITCHELL PALMER, formerly Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act", approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, did during his incumbency of said office of Alien Property Custodian by virtue of requirements or demands issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him certain letters patent of the United States and applications for letters patent of the United States which together with other letters patent and applications for letters patent are enumerated in Schedule A hereto attached, together with every right, title and interest with respect thereto including all damages and profits recoverable at law or in equity from any person, firm, corporation or government for past infringement of said letters patent, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent and applications for letters patent; and

WHEREAS, I, FRANCIS P. GARVAN, was on the fourth day of March, 1919, duly appointed and thereafter duly qualified as Alien Property Custodian in succession of the said A. MITCHELL PALMER; and

WHEREAS, I, FRANCIS P. GARVAN, as Alien Property Custodian as aforesaid by virtue of requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office and in the Office of the Register of Copyrights of the United States, have seized and required to be conveyed to me certain letters patent of the United States and applications for letters patent of the United States, certain trademarks and the registrations thereof and the business and good-will appurtenant thereto, and certain copyrights and the certificates of registration thereof and the works upon which said copyrights were issued, all of which are included in Schedules A, B and C hereto attached together with every right, title and interest with respect thereto including all damages and profits recoverable at law or in equity from any person, firm, corporation or government for the past infringement of said letters patent, trademarks and copyrights, subject to the rights of citizens of the United States or of friendly nations as stated in certain of the requirements or demands relating to said letters patent, applications for letters patent, trademarks, and registrations thereof, and copyrights; and

WHEREAS, by a certain order bearing date the 26th day of February, 1919, concerning the sale, transfer and release of certain rights under letters patent, trade-marks and similar rights, determined to belong to, or to be held for, or on account of, or on behalf of, or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the "Trading with the

Enemy Act'' and the amendments thereto and by another certain order bearing date the 5th day of April, 1919, concerning the sale, transfer and release of certain copyrights, applications for letters patent and applications for the registration of trademarks and copyrights determined to belong to or to be held for, by, on account of or for the benefit of persons determined to be enemies not holding a license or licenses granted by the President within the purview of the ''Trading with the Enemy Act'' and the amendments thereto, both made by Frank L. Polk under authority of executive order of December 3, 1918, I am empowered to sell such letters patent, applications for lettters patent, trademarks and registrations thereof, and copyrights to The Chemical Foundation, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as I determine relate to the objects and purposes of the said The Chemical Foundation, Inc., as expressed and defined in its charter and to release and discharge the United States of America and any department thereof from any and all claims and demands arising from any alleged infringement of said letters patent, trademarks and copyrights; and

WHEREAS, I have determined that the letters patent of the United States, applications for letters patent of the United States, trademarks and registrations thereof and copyrights enumerated in Schedules A, B and C hereto annexed relate to the objects and purposes of the said The Chemical Foundation, Inc., as expressed and defined in its charter.

NOW, THEREFORE, in consideration of the sum of Ten dollars ($10.00) to me in hand paid, receipt whereof is hereby acknowledged, I, FRANCIS P. GARVAN, as

Alien Property Custodian as aforesaid, do hereby release and forever discharge the United States of America and all of its departments, from any and all claims and demands for profits and damages recoverable at law or in equity for the past infringement of the letters patent, trademarks and copyrights enumerated in Schedules A, B and C hereto annexed, arising out of the manufacture, use or sale of the inventions of any or all of the said letters patent, or the sale of any article under any or all of said trademarks, or the printing, publication, distribution or sale of the works covered by any or all of said copyrights, by or for the United States of America or any of its departments, subject, however, to the rights of citizens of the United States or of friendly nations, as more fully set forth in the said requirements or demands issued by the said A. Mitchell Palmer as Alien Property Custodian, or by me, as Alien Property Custodian, relating to certain of said letters patent, trademarks and copyrights.

In Witness Whereof, I have hereunto set my hand and seal of office, this day of , 1919.

....
Alien Property Custodian.

Stipulation Concerning Defendant's Exhibits Nos. 86 and 87.

For the sole purpose of curtailing the record in this cause, it is stipulated between the parties hereto as follows:

1. The Schedules attached to Defendant's Exhibit No. 86 shall not be printed, but in lieu thereof there

shall be printed the following statement immediately following the Acknowledgment contained in Exhibit:

> "Attached as part of said Exhibit are schedules lettered A to E inclusive, identifying the properties intended to be covered by said instrument. Said schedules in the aggregate include substantially all of the patents, applications for patents, trademarks and copyrights theretofore covered in the several instruments of assignment from the Alien Property Custodian to the defendant herein as shown by Plaintiff's Exhibits Nos. 116A to 134A inclusive as corrected by Plaintiff's Exhibits Nos. 135 and 136 and as shown by Plaintiff's Exhibits Nos. 156A and 157A, less such properties as had been theretofore reconveyed by the defendant as shown by Plaintiff's Exhibit No. 487."

2. The schedule attached as a part of Defendant's Exhibit No. 87 consisting of numbered pages 1 to 228 inclusive shall not be printed, but in lieu thereof there shall be printed immediately following the text of the instrument dated the 20th day of December, 1920, the following statement:

> "Attached as a part of this instrument is a schedule consisting of 228 typewritten pages describing the patents covered by said instrument numbering approximately 5700 in all. Pages 1, 79 and 157 of said schedule are printed following this statement as illustrative of the scope of the titles of the patents covered in said schedule. In printing said pages all matter not typewritten shall be omitted."

3. This stipulation is made without prejudice to any objections heretofore made or reserved by the

plaintiff to the admissability of either of said exhibits in evidence; and shall not be used for or against either party hereto in any other proceeding.

Dated at Wilmington, Del.,
this 4th day of August,
1923.

(Sgd.) HERMAN J. GALLOWAY,
Solicitor for Plaintiff.

(Sgd.) LUCIEN H. BOGGS,
Solicitor for Defendant.

DEFENDANT'S EXHIBIT No. 86.

License by Chemical Foundation, Inc. to Navy Department

Release and License.

This instrument made this 17th day of November, 1921, by The Chemical Foundation, Incorporated, a corporation organized under the laws of the State of Delaware, hereinafter called The Foundation, to The Government of the United States of America, hereinafter called The Government,

Witnesseth:

Whereas, the Alien Property Custodian of the United States of America, acting under authority of law, sold to The Foundation, upon certain terms and conditions, certain Letters Patent of the United States, applications therefor, coyprights, certificates of registration thereof, publications upon which such registrations were granted, trade-marks and the good-will and business pertaining thereto, together with certain rights and benefits with respect to any and all of the foregoing, including certain damages and profits recoverable at law or in equity for the past infringement thereof; and

Whereas, The Foundation is empowered by the terms of its charter to grant a non-exclusive license to make, use, and sell the inventions covered by any Letters Patent owned or controlled by it to The Government, upon such terms as its Board of Directors may determine; and

Whereas, The Foundation, among other things, is obligated by the terms and conditions of the aforementioned sales to it by said Alien Property Custodian to release and forever discharge The Government from any and every claim or demand which The Foundation acquired by virtue of the aforementioned sales for profits and damages recoverable at law or in equity for any past infringement by The Government of any and all Letters Patent, applications therefor, copyrights and trade-marks owned or controlled by The Foundation, and to grant to The Government, free and without cost, a non-exclusive and non-assignable license to make, use and sell the inventions covered by any and all Letters Patent and applications therefor owned or controlled by it; and

Whereas, The Foundation did on or about the 26th day of February, 1921, issue a certain license upon the terms and conditions therein set forth to The Government, as represented by the Secretary of the Navy and his successors in office, under the certain Letters Patent specified in the Schedule attached to said license; and

Whereas, the said license last mentioned was issued in view of the desire of The Government for a license under the Letters Patent thereby covered prior to the time when a license under all of the Letters Patent and applications therefor owned or controlled by said THE FOUNDATION could be effectively prepared; and

WHEREAS, it is desired that THE FOUNDATION now perform and carry out its said obligation by releasing and discharging THE GOVERNMENT, as aforesaid, and by granting to THE GOVERNMENT a license under all of the Letters Patent and applications therefor now owned or controlled by it;

NOW, THEREFORE, In consideration of the premises and of other good and valuable considerations moving it (the receipt of which is hereby acknowledged), THE FOUNDATION hereby releases and forever discharges THE GOVERNMENT, upon the terms and conditions hereinafter set forth, from any and every claim or demand which THE FOUNDATION acquired by virtue of the aforementioned sales for profits and damages recoverable at law or in equity for any past infringement by THE GOVERNMENT of any and all Letters Patent, applications therefor, copyrights, and trade-marks now owned and controlled by THE FOUNDATION, and hereby grants to THE GOVERNMENT, upon the terms and conditions hereinafter set forth, without payment of any further consideration, royalty or license fee whatsoever, a non-exclusive and non-assignable license

(a) to make for its own use and/or to have made for its own use and to use throughout the United States and Territories and dependencies thereof, any and ever invention or discovery under any and all Letters Patent and applications therefor now owned or controlled by THE FOUNDATION, to the end of the several terms for which said Letters Patent and applications therefor have been or may be granted, and

(b) to dispose of, by sale or otherwise throughout the United States and the Territories and dependencies thereof, any and every instrument, machine, apparatus, article, manufacture, composition of matter or product which may have been made by or for it, for its own use, under the above mentioned license dated February 26, 1921, or which shall be made by or for it, for its own use, under the license herein granted, but which after such making it may desire to dispose of, to the end of the several terms for which said Letters Patent and applications therefor have been or may be granted; and any and every such instrument, machine, apparatus, article, manufacture, composition of matter or product so made and disposed of shall remain forever licensed.

TERMS AND CONDITIONS

(1) The acceptance of this release and license according to the terms and conditions hereof by the Secretary of the Navy shall constitute an acceptance of this release and license according to the terms and conditions hereof by THE GOVERNMENT. The Secretary of the Navy and his successors in office shall be considered as the representative of THE GOVERNMENT in any matters arising out of this instrument and any and all action taken by that official in such matters shall be considered as the action of THE GOVERNMENT.

(2) The above mentioned license dated February 26, 1921, issued by THE FOUNDATION to THE GOVERNMENT, as represented by the Secretary of the Navy and his successors in office, is hereby cancelled and terminated.

(3) For the purpose of making it appear in and by this instrument what the specific Letters Patent,

applications therefor, copyrights and trade-marks are under which this release and license is given and granted, schedules shall be prepared by The Foundation specifying the same, and when such schedules or any part thereof shall have been so prepared and shall have been signed by George J. Corbett, the Secretary of The Foundation, or his successor in office, the same shall be attached hereto and become and remain a part hereof as if incorporated herein.

(4) This release and license is subject to the terms and conditions of the above mentioned sales by the said Alien Property Custodian to The Foundation and to any existing right or license under the said Letters Patent and applications therefor with which the grant of this license would be inconsistent; provided, however, that The Foundation does not mean or imply by the foregoing that other rights or benefits inconsistent herewith do not exist.

(5) That neither The Foundation nor any officer, representative, agent or agency thereof shall be held or admitted to have made any representation by way of warranty, guaranty, or of other kind whatsoever, express or implied, concerning or in any way representing the Letters Patent and applications therefor licensed hereunder, nor concerning or in any way respecting any right, benefit, or privilege growing out of the same or out of this release and license; it being expressly provided that there shall be no recourse upon The Foundation or any officer, representative, agent or agency thereof, by way of, and that The Government will hold The Foundation and every officer, representative, agent or agency thereof, harmless from, any claim, demand, recoupment, action at law, suit in equity, or otherwise, by virtue of any matter, cause or thing in any way arising under this release and license.

(6) This instrument has been executed in duplicate, each to be treated as an original.

In Witness Whereof, The Foundation has caused its corporate seal to be hereunto affixed and duly attested and this instrument to be signed in its name by its duly authorized officers the day and year first above written.

THE CHEMICAL FOUNDATION,
INCORPORATED,
By (Sgd.) Francis P. Garvan,
President.

Attest: (Sgd.) Geo. J. Corbett,
(Seal) *Secretary.*

The above release and license is hereby accepted according to the terms and conditions thereof this 27th day of December, 1921.

THE GOVERNMENT OF THE UNITED
STATES OF AMERICA
(Seal) By (Sgd.) Theodore Roosevelt, Jr.,
The Acting Secretary of the Navy.

State of New York, } *ss.:*
County of New York. }

On this 17th day of November, 1921, before me came Francis P. Garvan, to me known, who being by me duly sworn, did depose and say: That he resides in the Borough of Manhattan, City of New York; that he is the President of The Chemical Foundation, Incorporated, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(Sgd.) THERESA A. KRAUS,
(Seal) *Notary Public.*
Notary Public, New York County
Clerk's No. 367, Register's No. 3350
Commission expires March 30th, 1923.

"Attached as part of said Exhibit are schedules lettered A to E inclusive, identifying the properties intended to be covered by said instrument. Said schedules in the aggregate include substantially all of the patents, applications for patents, trademarks and copyrights theretofore covered in the several instruments of assignment from the Alien Property Custodian to the defendant herein as shown by Plaintiff's Exhibits Nos. 116A to 134A inclusive as corrected by Plaintiff's Exhibits Nos. 135 and 136 and as shown by Plaintiff's Exhibits Nos. 156A and 157A, less such properties as had been theretofore reconveyed by the defendant as shown by Plaintiff's Exhibit No. 487."

DEFENDANT'S EXHIBIT No. 87.

License and Release From Alien Property Custodian December 20, 1919, to Navy.

The original license dated June 1, 1920, was not used because it named as licensee "The United States of America," instead of "The United States Government, as represented by the Secretary of the Navy." It was superceded by a license dated December 20, 1920.

(Sgd.) J. R. ZIMMERMANN,
Patent Section.

Washington, D. C., January 6, 1921.

Received, of Francis P. Gravan, as Alien Property Custodian of the United States, instrument duly executed by him, dated December 20, 1920, whereby the right and non-exclusive license to practice certain inventions and to use and manufacture, and have manufactured, devices, apparati and instruments covered by Letters Patent as enumerated in said instrument and the schedule annexed thereto, for the United States of America, the undersigned being duly authorized to acknowledge its receipt.

(Sgd.) CHAS. B. McVAY, Jr.,
Rear Admiral United States Navy.
Chief of Bureau of Ordnance,
Navy Department.

File 003560

January 6, 1921.

UNITED STATES OF AMERICA, NAVY DEPARTMENT, BUREAU OF ORDNANCE.

To Francis P. Garvan, as Alien Property Custodian of the United States, Dr.

For the right and license (non-exclusive) to practice any and every invention covered by Letters Patent seized by the Alien Property Custodian, including the right and license (non-exclusive) to use and manufacture and have manufactured for the use of the United States of America devices, apparati and instruments covered by Letters Patent included in instrument and enumerated in schedule annexed thereto, dated December 20, 1920, whereby said rights are granted to the United States of America by the Alien Property Custodian	$100,000.00

This amount is certified to be just and equitable, and payment not received.

....

As Alien Property Custodian.

A. P. C. Form 7

ALIEN PROPERTY CUSTODIAN
OFFICE MEMORANDUM

To Mr. Zimmermann.
From Mr. Caton.

Date 9/21/20.
In re Attached.

When reply wanted ....

Attached please find the assignment which I spoke to you about yesterday. I would be glad to have you get behind this matter so that the list referred to by Mr. Smith will be completed at the earliest possible date. When it is completed, will you forward it to me with the attached.

HBC:CK

A. P. C. Form 7

ALIEN PROPERTY CUSTODIAN
OFFICE MEMORANDUM

To Mr. Caton.
From Mr. Paul Smith.

Date September 3, 1920
In re Attached.

When reply wanted ....

Note attached memorandum from Mr. Brown. The one thing holding up the payment by the Pay Master General is the failure of the Patent Division to supply the required list of patents. This matter is primarily one for your attention inasmuch as the

Bureau of Sales will have nothing to do with the money when received. We were drawn into the matter when we negotiated for the sale of the rights to a gunsight patent to the Navy Department in connection with the C. P. Goertz American Optical Company.

In Reply Address
The Secretary of the Navy
and Refer to No.

NAVY DEPARTMENT
WASHINGTON

Sir:

Some six months ago the War and Navy Departments purchased from the Alien Property Custodian certain enemy owned patents then in your possession. The Bureau of Ordnance, Navy Department, deposited with the Paymaster General, subject to withdrawal by the Alien Property Custodian, the sum of one hundred thousand dollars ($100,000).

By agreement between the War and Navy Departments and the Alien Property Custodian a list of these patents to be delivered was to be furnished at once for the information of the two Departments concerned.

The Bureau of Ordnance, Navy Department, has made every effort to obtain this list of patents without result. At this time it is most important that this list of patents to be delivered should be furnished and it is earnestly requested that this list be furnished to the Chief of the Bureau of Ordnance for the information of the Navy and War Departments immediately.

Very truly yors,
(Sgd.) JOSEPHUS DANIELS.

Alien Property Custodian,
16th & P Sts., N. W.,
Washington, D. C.

MEMORANDUM.

To: Mr. Smith.
From: Mr. Brown.

Sept. 2, 1920.

Re: Blanket Assignment of Patents to U. S.

Last June when the matter of the blanket assignment of patents to the United States was pending, we were advised by Capt. Norton that no agreement could be made nor funds appropriated in payment of the consideration until the Custodian forwarded to the Navy Department a full schedule of all patents affected by the agreement and he further notified us that such schedule must be filed within three days, which at that time was impracticable. We compromised by checking a list of 200 patents of particular interest to the Navy and by certifying that these patents were to appear in the Assignment as finally drawn. The Secretary of the Navy was enabled to secure proper appropriation by the Paymaster General and the Paymaster General has been since holding this fund pending delivery of the Assignment.

We are this day advised that the Assignment when submitted must contain the full schedule of patents affected before the Secretaries of the Navy and Army can certify to the Assignment for the purpose of releasing the appropriation to the Alien Property Custodian. We have been since June holding the executed Assignment in question but the same is not acceptable to the Navy Department until made out in its final form by annexing the schedule of patents.

JWB/abc

WHEREAS A. MITCHELL PALMER, formerly Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, did, during his incumbency of said office of Alien Property Custodian by virtue of certain requirements or demands issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him numerous letters patent of the United States together with all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of said letters patent; and

Whereas I, Francis P. Garvan, was on the 4th day of March, 1919, duly appointed and thereafter qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer; and

Whereas I, Francis P. Garvan, as Alien Property Custodian as aforesaid, likewise acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, did, by virtue of certain requirements or demands issued under my hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me numerous letters patent of the United States together with all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of said letters patent; and

Whereas The United States Government, as represented by the Secretary of the Navy and his successors in office, is desirous of acquiring the right and license (non-exclusive) to practice any and every invention covered by any and every letters patent so seized by me and/or my predecessor in office, the said A. Mitchell Palmer, and still held by me as Alien Property Custodian, including the right and license (non-exclusive) to use and manufacture, and have manufactured, for its use any and every device, apparatus and instrument disclosed in and covered by said letters patent; and is also desirous of having assigned to it all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of said letters patent;

Now, Therefore, To All Whom It May Concern, Be It Known that I, the said Francis P. Garvan, as Alien Property Custodian as aforesaid, in consideration of the sum of One Dollar ($1.00) to me in hand paid by, and for other good and valuable consideration unto me moving from, The United States Government, as represented by the Secretary of the Navy and his successors in office, the receipt whereof is hereby acknowledged, have given and granted and by these presents do give and grant unto The United States Government, as represented by the Secretary of the Navy and his successors in office, without payment of any further consideration, royalty or license fee whatsoever, the right and license (non-exclusive) to practice any and every invention covered by any and every letters patent so seized by me and/or my predecessor in office, the said A. Mitchell Palmer, and still held by me as Alien Property Custodian, including the right and license (non-exclusive) to use and manufacture, and have manufactured, for its use any and every device, apparatus and instrument disclosed in and covered by said letters patent To Have and to Hold the said right and license to the full end of the terms for which said letters patent have been granted.

And for the consideration aforesaid, I, the said Francis P. Garvan, as Alien Property Custodian, as aforesaid, have given and granted and by these presents do give and grant unto The United States Government, as represented by the Secretary of the Navy and his successors in office, the right and license to dispose of by sale or otherwise any and every device, apparatus and instrument which have been or shall have been manufactured by or for it, for its own use under the right and license aforesaid but which after said manufacture or use, it is desired to dispose of.

And for the consideration aforesaid, I, the said Francis P. Garvan, as Alien Property Custodian, have sold, assigned and transferred and set over, and by these presents do sell, assign, transfer and set over unto the United States Government, as represented by the Secretary of the Navy, and his successors in office, all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of the said letters patent arising from the use or manufacture by or for the United States or by any foreign government of any of the inventions described in and covered by said letters patent to the full extent to which the rights to said damages and profits are still held by me as Alien Property Custodian, the same to be received, held and enjoyed by the United States Government, as represented by the Secretary of the Navy and his successors in office.

And for the purpose of making it appear in and by this deed what the specific letters patent are under which the aforesaid right and license is granted and for the past infringement of which the aforesaid damages and profits are assigned to the United States Government, as represented by the Secretary of the

Navy and his successors in office, and for the purpose of recording this deed in the United States Patent Office against said letters patent, a schedule shall be prepared specifying at least the numbers of said letters patent; and said schedule, when so prepared, shall be initialled by me or by the then Alien Property Custodian and shall be attached hereto and become and remain a part hereof as if incorporated herein.

Provided, However, that in all cases where an exclusive right or license now exists in favor of a citizen of the United States under any of said letters patent with which a grant of the aforesaid right and license to The United States Government, as represented by the Secretary of the Navy and his successors in office, under the same letters patent, would be inconsistent, then as to such letters patent no right or license to The United States Government, as represented by the Secretary of the Navy and his successors in office, is granted herein, and provided also that the aforesaid right and license to The United States Government, as represented by the Secretary of the Navy and his successors in office, shall be subject in all cases to the rights and claims, as the same may be adjudicated and determined, prosecuted under Section 9 of the "Trading with the Enemy Act," aforesaid; and

Further Provided that this grant and assignment is made without recourse upon the undersigned, Francis P. Garvan, personally, either by the grantee or assignee herein or by any other person or corporation; and neither the Alien Property Custodian, nor any representative or agent or agency thereof shall be held or admitted to have made any representation or guaranty, express or implied, concerning or in any way respecting the aforesaid letters patent, rights, licenses, damages and profits herein granted or assigned or intended so to be.

In Witness Whereof I, the said Francis P. Garvan, as Alien Property Custodian as aforesaid, have hereunto set my hand and seal of office this twentieth day of December, 1920.

....

Alien Property Custodian.

Witness:

....

District of Columbia, *ss.:*

On this twentieth day of December, 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act", approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof; and he duly acknowledged to me that he executed the foregoing instrument as the Alien Property Custodian, as aforesaid for the uses and purposes therein mentioned.

....

Whereas A. Mitchell Palmer, formerly Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act", approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, did, during his incumbency of said office of Alien Property Custodian by virtue of certain requirements or demands issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him numerous letters patent of the United States together with all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of said letters patent; and

WHEREAS I, FRANCIS P. GARVAN, was on the 4th day of March, 1919 duly appointed and thereafter qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer; and

WHEREAS I, FRANCIS P. GARVAN, as Alien Property Custodian as aforesaid, likewise acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act", and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, did, by virtue of certain requirements or demands issued under my hand or seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to me numerous letters patent of the United States together with all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of said letters patent; and

WHEREAS THE UNITED STATES OF AMERICA is desirous of acquiring the right and license (non-exclusive) to practice any and every invention covered by any and every letters patent so seized by me and/or my predecessor in office, the said A. Mitchell Palmer, and still held by me as Alien Property Custodian, including the right and license (non-exclusive) to use and manufacture, and have manufactured, for its use any and every device, apparatus and instrument disclosed in and covered by said letters patent; and is also desirous of having assigned to it all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of said letters patent;

Now, Therefore, to All Whom it May Concern, be it Known that I, the said Francis P. Garvan, as Alien Property Custodian as aforesaid, in consideration of the sum of One Dollar ($1.00) to me in hand paid by, and for other good and valuable considerations unto me moving from, The United States of America, the receipt whereof is hereby acknowledged, have given and granted and by these presents do give and grant unto The United States of America, without payment of any further consideration, royalty or license fee whatsoever, the right and license (non-exclusive) to practice any and every invention covered by any and every letters patent so seized by me and/or my predecessor in office, the said A. Mitchell Palmer, and still held by me as Alien Property Custodian, including the right and license (non-exclusive) to use and manufacture, and have manufactured, for its use any and every device, apparatus and instrument disclosed in and covered by said letters patent To Have And To Hold the said right and license to the full end of the terms for which said letters patent have been granted.

And for the consideration aforesaid, I, the said Francis P. Garvan, as Alien Property Custodian as aforesaid, have given and granted and by these presents do give and grant unto The United States of America the right and license to dispose of by sale or otherwise any and every device, apparatus and instrument which have been or shall have been manufactured by or for it for its own use under the right and license aforesaid but which, after said manufacture or use, it is desired to dispose of.

And for the consideration aforesaid, I, the said Francis P. Garvan as Alien Property Custodian, have sold, assigned and transferred and set over, and by these presents do sell, assign, transfer and set over unto the United States of America all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of the said letters patent arising from the use or manufacture by or for the United States or by any foreign government of any of the inventions described in and covered by said letters patent to the full extent to which the rights to said damages and profits are still held by me as Alien Property Custodian, the same to be received, held and enjoyed by the United States of America.

And for the purpose of making it appear in and by this deed what the specific letters patent are under which the aforesaid right and license is granted and for the past infringement of which the aforesaid damages and profits are assigned to The United States of America, and for the purpose of recording this deed in the United States Patent Office against said letters patent, a schedule shall be prepared specifying at least the numbers of said letters patent; and said schedule, when so prepared, shall be initialled by me or by the then Alien Property Custodian and shall be attached hereto and become and remain a part hereof as if incorporated herein.

Provided, However, that in all cases where an exclusive right or license now exists in favor of a citizen of the United States under any of said letters patent with which a grant of the aforesaid right and license to The United States of America, under the same letters patent, would be inconsistent, then as to such letters patent no right or license to The United States of America is granted herein; and provided also that the aforesaid right and license to The United States of America shall be subject in all cases to the rights and claims, as the same may be adjudicated and determined, prosecuted under Section 9 of the "Trading with the Enemy Act" aforesaid; and

Further Provided that this grant and assignment is made without recourse upon the undersigned, Francis P. Garvan, personally, either by the grantee or assignee herein or by any other person or corporation; and neither the Alien Property Custodian, nor any representative or agent or agency thereof shall be held or admitted to have made any representation or guaranty, express or implied, concerning or in any way respecting the aforesaid letters patent, rights, licenses, damages and profits herein granted or assigned or intended so to be.

In Witness Whereof I, the said Francis P. Garvan, as Alien Property Custodian as aforesaid, have hereunto set my hand and seal of office this first day of June, 1920.

~~FRANCIS P. GARVAN~~,
(Seal) *Alien Property Custodian.*

Witness:
~~SOPHIE HILLMAN~~

District of Columbia, *ss:*

On this first day of June, 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof; and he duly acknowledged to me that he executed the foregoing instrument as the Alien Property Custodian as aforesaid for the uses and purposes therein mentioned.

(Sgd.) ALVIN G. BELT,
(Seal) *Notary Public, D. C.*
Term expires Jan. 4th, 1921.

"Attached as a part of this instrument is a schedule consisting of 228 typewritten pages describing the patents covered by said instrument numbering approximately 5700 in all. Pages 1, 79 and 157 of said schedule are printed following this statement as illustrative of the scope of the titles of the patents covered in said schedule. In printing said pages all matter not typewritten shall be omitted."

(Page 1 of schedule.)

Moritz Mendel,	690,598,	1- 7-1902	Rosetts for forming crossed joints for metal bars.
Franz Quatram,	690,606,	1- 7-1902	Mantle holders for incandescent gas burners.
Joseph Freckmann,	690,646,	1- 7-1902	Ceilings.
Wilhelm Erny,	690,710,	1- 7-1902	Galvanic batteries.
Frederick W. Rogler,	690,879,	1- 7-1902	Arrangement of valves for pumps, etc.
Johann Ludwig,	690,908,	1-7-1902.	Vehicle-heel Tire.
Franz Josef Halbekam,	690,947,	1-14-1902.	Safety Razors.
Bernhard Mannfeld,	690,974,	1-14-1902.	Process for reproducing colored original etchings.
Gustav Tresenreuter,	691,019,	1-14-1902.	Regulating device for gas or vapor stoves.
Josef Zura,	691,041,	1-14-1902.	Mechanism for admitting or shutting off steam for rotary motors.
Wilhelm Nossian,	691,167,	1-14-1902.	Cart or car discharging device.
Heinrich Schickler,	691,184,	1-14-1902.	Coloring tools.

Inventor.	Patent No.	Date of Issue.	Title.
Swboda & Rothe,	691,205,	1-14-1902.	Machines for bending sheet metal plates.
Paul Lehmann,	691,280,	1-14-1902.	Automatic gas ignition device.
Arthur Abendroth,	691,343,	1-21-1902.	Steam pump.
Adolf Hoffmann,	691,379,	1-21-1902.	Devices moistening and applying gummed paper.
Appolinaris Hrebicek,	691,381,	1-21-1902.	Subterranean current transmission for electric railways.
Hubert Schmidt & Wilhelm Haensch,	691,411,	1-21-1902.	Cinematographs.
Emilie Wolffgang,	691,518,	1-21-1902.	Combined wardrobe and travelling trunk.
Arthur Abendroth,	702,903,	6-24-1902.	Proportionate - distribution valve system for pumps.

(Page 79 of schedule.)

Inventor.	Patent No.	Date of Issue.	Title.
Curt Handwerck,	782,500,	2-14-05.	Lash. devices for card punch. machines.
Robert Nass,	784,960,	3-14-05.	Rotary Engine.
Rudolf Klemm & Felix Reiss,	785,004,	3-14-05.	Elec. Motor.
Johannes Wilhelmi,	785,139,	3-21-05.	Elec. driven hoists or coal whips.
Friedrich August Haselwander,	785,166,	3-21-05.	Internal-Combustion Engine.
Louise Busch,	785,195,	3-21-05.	Procs. of and app. for saturat. paper rolls.
Carl Dietrich,	785,204,	3-21-05.	Snow Plows.
Arthur Korn,	785,221,	3-21-05.	Auto Telegraphy.
Raimund Zentner,	785,788,	3-28-05.	Dental Tools.
Hugo Kuhnert,	785,896,	3-28-05.	Candle holders and extinguishers.
Robert Fallnicht,	785,939.	3-28-05.	Device for lubricating rails.
Anton Hepnar,	786,215,	3-28-05.	Apparatus for treating animal colics or grippes.
Ludwig Brandau,	786,479,	4- 4-05.	Couplings for railway vehicles.
Hermann Eberhardt,	786,490,	4- 4-05.	Adding Machines.
Ludwig Neumann,	786,667,	4- 4-05.	Emergency Throttle-Valve.

Inventor.	**Patent No.**	**Date of Issue.**	**Title.**
Georg Zapf,	806,728,	12- 5-05.	Devices for preventing the overcharging of electric cables.
Friedrich Lux	786,823,	4-11-05.	Electricity meters.
Samuel Voss,	786,861,	4-11-05.	Device for setting Free-stones.
Alfred Bode and Karl Bottcher,	787,022,	4-11-05.	Turning shovel dredgers.
Michael von Dolivo-Dobrowolsky,	787,027,	4-11-05.	Monophase and polyphase alternating current machines.
Heinrich Gertsmann,	787,029,	4-11-05.	App. for preventing collision on railways.
Bruno Jackisch,	787,043,	4-11-05.	Elec. arc. lamps.
Johan Jakob Bourcart,	787,070,	4-11-05.	Support for Motor Cycles.
Carl Arnold,	787,140,	4-11-05.	Hand Rests for Note Books.

(Page 157 of Schedule.)

Friedrich Wiechard,	960,212,	5-31-10.	Vehicle wheel tires.
Edmund Steil,	961,040,	6- 7-10.	Inverted gas burners.
Max Martin & Hans Dahl,	961,107,	6-14-10.	Signaling devices for Dahl speed indicators.
Henry S. Hatfield,	961,124,	6-14-10.	Electrolytic app. with annular anode.
Elisabeth Schulte-Uechting,	961,166,	6-14-10.	Abdominal supporter.
Robert Brukenhaus,	961,402,	6-14-10.	Regulating app. for hot water pipes, etc.
Josef Muchka,	961,419,	6- 4-10.	Testing devices.
Carl Friedr. Droll,	961,588,	6-14-10.	Pyrophoric igniting devices for lamps of cycles, automobiles, etc.
Israel Schlossberg,	961,651,	6-14-10.	Method of producing acid and fire proof bodies.
Johann Mayr,	961,726,	6-14-10.	Double sliding sash windows.
Ludwig Horst,	961,859,	6-21-10.	Carbonic acid motors.
Otto von Bottenburg,	962,053,	6-21-10.	Fountain pen attachment.
Weise & Rieche,	962,108,	6-21-10.	Procs. of app. for utilizing the energy of waste gases.
Emil Witzenmann,	962,186,	6-21-10.	Winding-head for armoring cables and the like.
Ernst Johannes Paul Slotta,	962,171,	6-12-10.	Templets or gages.

Inventor.	Patent No.	Date of Issue.	Title.
Hermann Knopping,	962,643,	6-28-10.	Albums.
Hans Lorenz,	963,378,	7- 5-10.	Turbines or centrifugal pumps.
Ernst Weiler,	963,408,	7- 5-10.	Pencil sharpener.
Otto Brucke,	963,510,	7- 5-10.	App. for the purification of oils and similar bodies.
Otto Hajek,	963,547,	7- 5-10.	Lubricator.
Paul Schmahl,	963,655,	7- 5-10.	Locking means for doors and the like.
Johannes Gorner,	964,015,	7-12-10.	Electricity measuring instruments.
Hans Hirt,	964,021,	7-12-10.	Cash-box.
Hermann Uihlein,	964,341,	7-12-10.	Methods of utilizing spent fire gases from a furnace for firing other furnaces.
Emil Volkers,	964,343,	7-12-10.	Rotary field magnets.

DEFENDANT'S EXHIBIT No. 88.

Copy
NAVY DEPARTMENT,
WASHINGTON.

March 16, 1920.

Sir:

It is deemed advisable by the War and Navy Departments to acquire for the Government the right to manufacture, cause to be manufactured, use and sell under each of the German owned United States Patents seized by the Alien Property Custodian, under which you may have appropriate rights, which patents number it is understood 27,000 more or less, and in connection therewith the entire rights and interest in and to all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all such patents,

The sum of $100,000 is hereby offered you as compensation in full for the licenses and rights stated above, the licenses to include release and discharge f the United States of and from any and all claims nd demands arising from alleged infringement.

The favor of an early answer to this proposal ould be appreciated.

Very respectfully,

(Sgd.) FRANKLIN D. ROOSEVELT,
Acting Secretary.

lien Property Custodian,
Washington, D. C.

Alien Property Custodian
Washington, D. C.
INCLOSURE
No. 11854

DEFENDANT'S EXHIBIT No. 89.

December 31, 1922.

Licensees of The Chemical Foundation and What They Manufacture.

Summary

Industry	*No. of Licensees*
1. Cameras and films	1
2. Cellulose Products	1
3. Chemical Engineers	1
4. Coke and Coke Ovens	1
5. Dyes, Intermediates, Crude Coal Tar Products and Photographic Chemicals	20
6. Electrical Apparatus	3
7. Explosives	1
8. Gyroscopes	2
9. Heavy Chemicals	4
10. Industrial Factory Equipment	1
11. Insecticides	1

Industry	*No. of Licensee*
12. Magnetic Separators	1
13. Metallurgical Products	5
14. Paints and Varnishes	2
15. Perfume Chemicals	1
16. Petroleum Oils	1
17. Pharmaceuticals	18
18. Printing & Lithographic Inks and Printers Supplies	9
19. Quartz Products	1
20. Roofing Products	1
21. Sewage Disposal Apparatus	1
22. Solder and Flux	1
23. Tanning Materials	4
24. Textile Goods and chemicals	4
25. Textile Dyers, Printers and Bleachers	1
26. Therapeutic, Scientific and Optical Apparatus	15
27. Vegetable Oils and Fats	1
28. Water and Steam Apparatus	1
Total	103

LICENSEES OF THE CHEMICAL FOUNDATION, INC., AND THE NATURE OF THEIR BUSINESS.

December 31, 1922.

Licensee	**Business**
1. Abbott Laboratories, The	Pharmaceuticals
2. Adams X-Ray Company	Therapeutic Apparatus
3. Aluminum Company of America	Aluminum and Aluminum Allo
4. American Cotton Oil Company, The	Vegetable Oils, Fats
5. American Ethers Corporation	Cellulose Products
6. American Solder & Flux Co.	Solder and Flux

Licensee	**Business**
7. Atlantic Chemical Works,	Tanning Materials
8. Atmospheric Nitrogen Corporation	Heavy Chemicals
9. Ault & Wiborg Company, The	Printing and Lithographic Inks
10. Badger & Sons Co., E. B.	Chemical Engineers
11. Barnsdall Refining Company	Petroleum Oils
12. Barrett Company, The	Coal Tar Crudes and Intermediates, Tar Products
13. Bausch & Lomb Optical Co.	Optical Apparatus
14. Baush Machine Tool Co.	Metallurgical Products
15. Bilhuber, Inc., E.	Pharmaceuticals
16. Brady & Co., Geo. W.	Therapeutic Apparatus
17. Brooklyn Color Works, Inc.	Dyes
18. Burdick Cabinet Co.	Therapeutic Apparatus
19. Butterworth-Judson Corporation	Dyes and Intermediates
20. Calco Chemical Company, The	Dyes, Intermediates, Pharmaceuticals.
21. California Ink Company, Inc.	Printing and Lithographic Inks
22. Campbell & Co., John	Dyes and Intermediates
23. Carrie Gyroscopic Corporation, The	Gyroscopes
24. Case-Woodland Drug Co., The	Pharmaceuticals
25. Child, Albert Kennedy	Metallurgical Products
26. Cochrane Corporation, H. S. B. W.	Water and Steam Apparatus
27. Diarsenol Laboratories, Inc.	Pharmaceuticals
28. Dow Chemical Company, The	Dyes, Intermediates, Heavy Chemicals
29. Du Pont de Nemours & Company, Inc., E. I.	Pharmaceuticals, Explosives, Dyes, Intermediates, Plastics, Heavy Chemicals
30. Eastman Kodak Company	Cameras, Films and Organic Chemicals
31. Engeln Electric Company, The	Therapeutic Apparatus
32. Gaskill Chemical Corporation, The	Dyes and Intermediates
33. Hanovia Chemical & Mfg. Co.	Therapeutic and Scientific Apparatus

Licensee	Business
34. Hawthorne Chemical Company	Tanning and Textile Chemicals
35. Heller & Merz Co., The	Dyes and Intermediates
36. Hooker Electrochemical Company	Heavy Chemicals
37. Huber, J. M.	Printing and Lithographic Inks
38. Hydrosulphite Co., Inc., The	Textile Chemicals
39. Jaeger Research Laboratories, Inc.	Electrical Apparatus
40. Jaenecke-Ault Company	Printing and Lithographic Inks
41. Katode X-Ray Tube Co., Inc.	Therapeutic Apparatus
42. Keystone Roofing Mfg. Company	Roofing Products
43, Klipstein & Sons Co., E. C.	Dyes, Intermediates, Heavy Chemicals
44. Kohnstamm & Co., H.	Dyes
45. Koppers Company, The	Coke and Coke Ovens
46. Kuttroff, Pickhardt & Co., Inc.	Dyes and Chemicals
47. Leitz Inc., E.	Therapeutic and Scientific Apparatus
48. Liebel-Flarsheim Company, The	Therapeutic Apparatus
49. Lysoform Corporation	Pharmaceuticals
50. Machlett & Son, E.	Therapeutic and Scientific Apparatus
51. McKesson & Robbins	Pharmaceuticals
52. Magnetic Manufacturing Co.	Magnetic Separators
53. Mallinckrodt Chemical Works	Pharmaceuticals, Heavy Chemicals
54. Mallory & Co., Inc., P. R.	Electrical Apparatus
55. Maple Chemical Company, Inc.	Dyes and Intermediates
56. Marshall, John G.	Photographic Chemicals
57. Martin Cantine Company	Printers' Supplies
58. Merck & Co.	Pharmaceuticals
59. Merrimac Chemical Co.	Intermediates and Heavy Chemicals
60. Metz, H. A.	Pharmaceuticals
61. Metz Laboratories, Inc., H. A.	Pharmaceuticals
62. Meyer Co., The Wm.	Therapeutic Apparatus
63. Monsanto Chemical Works	Pharmaceuticals, Intermediates and Heavy Chemicals.

Licensee	**Business**
64. National Aniline & Chemical Company, Inc.	Dyes, Intermediates, Heavy Chemicals
65. Newport Chemical Works, Inc.	Dyes, Intermediates and Heavy Chemicals
66. Norma Company of America, The	Metallurgical Products
67. Novocol Chemical Mfg. Co., Inc.	Pharmaceuticals
68. Organic Laboratories Company, The	Insecticides and Pharmaceutical Preparations
69. Pacific Flush-Tank Company	Sewage Disposal Apparatus
70. Parke, Davis & Company	Pharmaceuticals
71. Powers - Weightman - Rosengarten Co.	Pharmaceuticals and Heavy Chemicals
72. Rhodia Inc.	Pharmaceuticals and Photographic Chemicals
73. Riverside & Dan River Cotton Mills, Inc.	Textile Goods
74. Roessler & Hasslacher Chemical Company, The	Heavy Chemicals and Pharmaceuticals
75. Rohm & Haas Company, Inc.	Textile and Tanning Chemicals
76. Rosenthal Electric Laboratory	Electrical Apparatus
77. Semet-Solvay Company	Heavy Chemicals
78. Shaw Association, Inc., The	Tanning Materials
79. Siegle Corporation of America, G.	Dyes
80. Sidio Company of America, Inc., The	Quartz ware.
81. Siemon & Elting	Printing and Lithographic Inks
82. Sigmund Ullman Company	Printing and Lithographic Inks
83. Sinclair & Valentine Co.	Printing and Lithographic Inks
84. Sperry Gyroscope Company, The	Gyroscopes
85. Squibb & Sons, E. R.	Pharmaceuticals
86. Stearns-Roger Manufacturing Co., The	Metallurgical Products
87. Sturtevant Company, Inc., B. F.	Industrial Factory Equipment
88. Sun Chemical & Color Co.	Printing and Lithographic Inks
89. Textile Alliance, Inc.	Dyes
90. Toch Brothers	Paints, Varnishes
91. Tower Manufacturing Co., Inc.	Dyes and Chemicals

Licensee	Business
92. United States Finishing Company, The	Textile Dyers and Printers
93. United States Procaine Company	Pharmaceuticals
94. Ultro Chemical Corporation	Dyes
95. Upjohn Company, The	Pharmaceuticals
96. Van Dyk & Co.	Perfume Chemicals and Organic Products
97. Victor X-Ray Corporation	Therapeutic Apparatus
98. Violi, Claude	Therapeutic Apparatus
99. Waite & Bartlett Manufacturing Company,	Therapeutic Apparatus
100. Wappler Electric Company	Therapeutic Apparatus
101. Wilhelm Company, The A.	Paints and Varnishes
102. Wolf & Co., Jacques	Dyes, Intermediates, Textile Chemicals
103. Yocum Laboratories, The	Tanning Materials.

DEFENDANT'S EXHIBIT No. 90.

THE CHEMICAL FOUNDATION, INC.

STATEMENT SHOWING NUMBER OF LICENSES ISSUED EACH YEAR AND NUMBER OF PATENTS INVOLVED.

Year	*No. of Licenses*	*No. of Patents & Trade-marks*	*Originally Licensed*	*Previously Licensed*
1919	46	53	53	none
1920	131	374	349	25
1921	161	121	59	62
1922	41	51	11	40
	379		472	

There is included in the above 30 licenses covering 32 trademarks. The total number of licenses issued on patents are 349 and covers 440 individual patents.

DEFENDANT'S EXHIBIT No. 91.

THE CHEMICAL FOUNDATION, INC.
STATEMENT OF INCOME AND EXPENSES
From Beginning of Operations to December 31, 1922.

Income		
Royalties and License Fees from Patents acquired from Alien Property Custodian, Schedule 1	$661,706.28	
Royalties and License Fees from Patents acquired from others	2,166.28	
Contracts Acquired	2,442.06	
Licensed Trademarks	11,196.76	
Contributions Received	11,500.00	
Interest and Discount Received	10,914.45	
Total Income		$699,925.83
Expenses		
Office and General Salaries	$205,466.68	
Legal Expense	74,915.35	
Literature and Pamphlets	39,197.98	
Patent Sundry Expense	62,562.08	
Rent	27,500.00	
Stationery, Office Supplies and Postage	10,443.61	
Traveling Expense	13,249.21	
Investigation	2,037.28	
Subscriptions and Periodicals	1,149.33	
Insurance	588.41	
Telephone and Telegraph	4,900.85	
Office Alterations	3,427.45	
Taxes	2,752.70	
Laboratory Expense	682.74	

Photostat Expense	$1,558.88	
Depreciation on Furniture and Fixtures	6,451.37	
Washington Office Expense	23,389.26	
Miscellaneous Expenses	12,448.79	
Light	306.46	
Organization Expense	11,574.84	
Lilienfeld Patent Expense	1,576.96	
Loss on Sale of Furniture and Fixtures	1,181.04	
		507,361.27
Net Income, before charging educational expense		$192,564.56
Educational Expense—Literature and Pamphlets, Exhibit B		340,245.76
Deficit at December 31, 1922, per books		$147,681.20

DEFENDANT'S EXHIBIT No. 91-A.

EXHIBIT "B."

THE CHEMICAL FOUNDATION, INC.

STATEMENT OF EDUCATIONAL EXPENSE FROM APRIL 10, 1919, TO DEC. 31, 1922.

Copies of Creative Chemistry	$60032.73
Postage and Express Charges	12904.01
Express charges on returns	384.86
Distributing letters in connection with Creative Chemistry	17184.45
Envelopes for Creative Chemistry	1534.94
Envelopes, letterheads and second sheets for letters	2607.37
Postage on Creative Chemistry letters	1088.92

Sundry items such as social registers, carting books to Post Office, etc.	$221.03	
		$95958.31
Copies of The Future Independence and Progress of American Medicine in the Age of Chemistry	$28573.42	
Distributing Literature—(Addressing Envelopes)	2832.26	
Envelopes	1880.00	
Postage	14853.88	
Sundry Items—such as carting books to Post Office, etc.	86.12	
		48225.68
Copies of An Exhibit—prepared under the auspices of The National Research Council	$9802.00	
Distributing Literature—(Addressing Envelopes)	579.22	
Envelopes	1737.66	
Postage	7240.00	
Sundry Items—Special plates, Art Work, Mailing list, etc.	414.55	
		19773.43
Copies of F. P. Garvan's Address at Columbia University—9/7/21	$5835.76	
Distributing Literature—Addressing Envelopes	579.21	
Envelopes	1027.66	
Postage	6133.74	
Sundry Items—Mailing list, expressage, etc.	224.03	
		13800.40

Aims & Purposes of The Chemical Foundation, Inc.	$11694.06	
Sundry Items—Cartage and express charges	98.14	
		$11792.20
Copies of Choate Brief before the Finance Committee of The United States Senate	$2688.37	
Distributing Literature—(Addressing & Mailing)	521.92	
Envelopes and signature cut	307.00	
Postage	4000.00	
		7517.29
Copies of What the Chemist Has Done and May Do for Them in War and Peace		2700.00
Copies of Testimony of the Army and Navy	$2300.00	
Postage	2330.00	
		4630.00
Carried Forward		$204397.31

Educational Literature to Dec. 31, 1922.

Brought Forward		$204397.31
Copies of Quick Article—What about Chemical Warfare	$1502.00	
Envelopes	700.00	
Postage	740.00	
		2942.00
Copies of F. P. Garvan's letter to President Harding	1784.00	
Envelopes	600.00	
Postage	2456.54	
		4840.54
Copies of Yale Alumni Chemical Number	1191.24	
Postage	280.00	
Sundry Items—Express charges on return of envelopes	25.25	
		1496.49

Copies of Riddle of the Rhine	$1473.59	
Postage and Express Charges	163.06	
Binding	900.00	
Sundry Items—Brokerage charges, duty, cartage, etc.	291.20	
		$2827.85
Copies of Choate's address at 21st Annual Meeting of the National Civic Federation		2406.00
Copies of Tariff Information Series #22		1500.00
Copies of Article—Hoover Considers Dye Industry Aid	142.00	
Postage	408.00	
		550.00
Copies of Statement of F. P. Garvan before the Subcommittee of the Senate Finance Committee on the Longworth Bill		2863.00
Copies of An Appeal	250.00	
Postage	408.00	
		658.00
Copies of Tariff Commission Report		1500.00
Copies of Reprint—Daily News Record	485.00	
Postage	650.00	
		1135.00
Copies of Why the Coal Tar Industry Must be Preserved and How to Accomplish it	470.00	
Postage	99.74	
Sundries—Linotype Metal	43.44	
		613.18
Copies of Atlantic Monthly	176.00	
Postage	21.08	
		197.08
	Carried Forward	$227926.45

EDUCATIONAL LITERATURE TO DEC. 31, 1922

Brought Forward		$227926.45
Copies of Ida Tarbell Article	$405.50	
Sundry items—folding and express charges	410.40	
		815.90
Copies of (Dr. Rose Pamphlet (Chemistry in Elementary Schools (Treasure Hunting		2190.00
Copies of Minnesota Tribune	200.00	
Express charges	101.88	
		301.88
Copies of Reprints—Manufacfacturers Record 1/13/21	304.33	
Addressing and mailing 96 copies	4.80	
		309.13
Copies of Reprint—Chemical Disarmament from Chemical and Metallurgical Engineering—1/5/21		120.00
Copies of Germany's Commercial Grip on the World		500.00
Copies of Germany and the Next War		809.25
Copies of Reprint of Tariff Article from Drug & Chemical Mkts.		300.00
Copies of Dye License Control		444.50
Copies of Layton's Speech		89.00
Copies of Coals to Newcastle		150.00
Copies of Lenroot Speech	67.66	
Postage	25.00	
		92.66
Copies of Allied Booklets		325.00
Copies of Morton Booklets		366.85
Copies of Literary Digest—Dec. 2, 1922 Issue		250.00
Industrial Survey & Research Service—Enlisting Aid of		

American Women in Chemical Research and making chemical survey of U. S.	$9139.25
Wilder D. Bancroft—Work in connection with writing a book on the theory of dyeing and a contribution to continue the publishing of "The Journal of Physical Chemistry"	5500.00
National Research Council—Development of Chemical Information useful to the Industries of National Defense and Chemical Medicine, Standardization of Biological Stains and Chemical Exhibits	11000.00
H. S. Kimberly—Co-operating with Chemical Warfare Service—filming the blowing up of battleships	1983.32
H. S. Kimberly—Co-operating with National Research Council with Chemical Exhibit at Boston and Wash., D. C.	3865.31
Larkin G. Mead—Traveling Expenses	1508.45
American Legion	1287.00
Transcript & Copy of Hearings before Senate & Finance Committees	328.20
American Chemical Society—A contribution to enable them to keep up their publications	5000.00
Rent	2626.00
Salaries	54295.20

Addressograph Expense	$2539.41
Expenses attending meetings for the purpose of writing the book "The Future Independence of American Medicine in the Age of Chemistry"	1134.56
Miscellaneous Literature, stationery, postage, cartage, etc.	5048.44
	$340245.76

DEFENDANT'S EXHIBIT No. 92.

THE CHEMICAL FOUNDATION, INC.

STATEMENT OF COSTS OF PROPERTIES ACQUIRED FROM ALIEN PROPERTY CUSTODIAN AS VERIFIED WITH ORIGINAL ASSIGNMENTS AND IN THE CASE OF APRIL 10th ASSIGNMENT WITH PHOTOSTATIC COPY OF ASSIGNMENT.

PROPERTIES ACQUIRED

Date of Assignment		Patents	Applications	Trademarks	Copyrights	Contracts	Cost
1919							
Apr.	10	3,854	243	850	492	46	$250,000.00
May	2			2		1	50.00
May	6	14					500.00
May	15	1					50.00
June	17	52	19			1	3,650.00
June	21	1	1	2		3	450.00
Oct.	17	21					1,050.00
Dec.	9		22				1,100.00
1920							
Mar.	9	26		20			2,300.00
May	4	32	1				1,750.00
May	15	401					5,000.00
Dec.	21	2					100.00
1921							
Feb.	19	351					5,000.00
Feb.	26					6	300.00
Apr.	27	9	2				550.00
*Nov.	5			—			—
		4,764	288	874	492	57	$271.850.00

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* Assignment of Nov. 5, 1921, for 136 Trademarks are included in assignment of April 10, 1919.

DEFENDANT'S EXHIBIT No. 93.

THE CHEMICAL FOUNDATION, INC.

SUMMARY STATEMENT OF INCOME AND OTHER RECEIPTS AND DISPOSITION THEREOF FROM APR. 10, 1919 TO DEC. 31, 1922 AND BALANCE NET ASSETS REMAINING AT DECEMBER 31, 1922.

RECEIPTS		
Proceeds from Sale of Capital Stock	$428,900.00	
Contributions EXHIBIT A	11,500.00	
Income from Properties acquired from A. P. C. EXHIBIT A	675,345.10	
All other income, Bank interest, etc. EXHIBIT A	13,080.73	
		$1,128,825.83
DISPOSITION		
Paid to A. P. C. for properties acquired EXHIBIT C	$271,850.00	
Expenses chargeable to conduct of company's affairs, being all expenditures exclusive of amortization, interest on investment, and expenditures for educational work EXHIBIT A	507,361.27	
Expenditures on educational work EXHIBIT B	340,245.76	1,119,457.03
Liquid Net Assets Remaining		$9,368.80
Properties Capitalized		271,850.00
Capital per Books		$281,218.80

This capital is made up of the following:

Patents, Trademarks, and Formulas		$271,850.00	
Furniture and Fixtures, less Depreciation		16,328.45	
Cash		1,862.67	
Royalties Accrued		51,569.79	
Prepaid Insurance		207.48	
		$341,818.39	
LESS:			
Royalties Received in Advance	$2,845.44		
Loan Payable	1,000.00		
Due Sundry Creditors	56,754.15	60,599.59	$ 281,218.80

DEFENDANT'S EXHIBIT No. 94.

THE CHEMICAL FOUNDATION, INC.

SUMMARY SHOWING YEARLY EXPIRATION OF INCOME PRODUCING PATENTS AND AMOUNTS EARNED THEREON, WITH PERCENTAGE FOR EACH YEAR TO THE TOTAL NUMBER OF INCOME PRODUCING PATENTS AND TOTAL AMOUNTS EARNED.

Year.	*Patent No.*	*Percent to total.*	*Amount of Royalty.*	*Percent of Total.*
1919 to 1922 inc.	46	9.37	$115,417.79	17.44
1923	15	3.05	34,306.00	5.18
1924	20	4.07	44,457.40	6.72
1925	26	5.30	62,732.86	9.50
1926	27	5.50	31,948.21	4.83
1927	30	6.11	93,851.51	14.18

Year.	*Patent No.*	*Percent to total.*	*Amount of Royalty.*	*Percent of Total.*
1928	27	5.50	$63,686.22	9.62
1929	37	7.53	28,755.03	4.34
1930	49	9.98	89,490.65	13.52
1931	42	8.55	23,797.92	3.60
1932	53	10.79	15,393.87	2.33
1933	61	12.43	17,551.11	2.65
1934	31	6.32	34,217.40	5.17
1935	20	4.07	5,155.79	.78
1936	5	1.02	185.51	.03
1937	2	.41	759.01	.11
Totals	491	100%	$661,706.28	100%

DEFENDANT'S EXHIBIT No. 95.

[No Exhibit. See Defendant's Exhibit No. 102.]

DEFENDANT'S EXHIBIT No. 96.

Book entitled "Creative Chemistry," by Edwin E. Slosson.

(Not Printed.)

DEFENDANT'S EXHIBIT No. 97.

Pamphlet entitled "The Future Independence and Progress of American Medicine in the Age of Chemistry."

(Not Printed.)

DEFENDANT'S EXHIBIT No. 98.

Book entitled "The Riddle of the Rhine," by Victor Lefebure.

(Not Printed.)

DEFENDANT'S EXHIBIT No. 99.

Pamphlet entitled "An Exhibit Prepared under the Auspices of the National Research Council with the cooperation of the Chemical War Service of the United States Army," now permanently installed at the Smithsonian Institute, Washington, D. C.

(Not Printed.)

DEFENDANT'S EXHIBIT No. 100.

Bulletin, 1920, No. 26, Bureau of Education, Department of the Interior entitled "Reorganization of Science in Secondary Schools."

(Not Printed.)

DEFENDANT'S EXHIBIT No. 101.

Pamphlet entitled "The Dyes Question."

(Not Printed.)

DEFENDANT'S EXHIBIT No. 102.

THE CHEMICAL FOUNDATION, INC.

STATEMENT SHOWING EARNINGS ON THE 874 TRADEMARKS ACQUIRED FROM THE ALIEN PROPERTY CUSTODIAN FROM APRIL 10, 1919, TO DEC. 31, 1922, WITH DATA AND RESULTS IN RESPECT TO SUCH EARNINGS AND EXPENSES IN CONNECTION THEREWITH.

Earning by Chemical Foundation, Inc. Direct		$11,196.76
Average annual gross income on the 874 Trademarks		$ 2,985.80
Average annual gross income for each of the 874 Trademarks acquired		$ 3.42
Deduct: Proportion of expenses applicable to Trademarks	$20.88	
6% interest on Investments	4.12	
Amortization Expense	3.74	28.74
Average annual net Loss for each Trademark, exclusive of Educational literature		$ 25.32

The above income, $11,196.76, was earned by 30 trademarks which is only 3-1/2% of the number of trademarks acquired from the Alien Property Custodian. The remaining 844 trademarks have never earned anything.

Number of trademarks acquired from A. P. C.		874
Number of trademarks expired to Dec. 31, 1922	41	
Number of trademarks Re-assigned	34	75
Number of trademarks at December 31, 1922		799

THE CHEMICAL FOUNDATION, INC.

STATEMENT OF INCOME EARNED ON TRADEMARKS ASSIGNED TO CHEMICAL FOUNDATION, INC., BY THE ALIEN PROPERTY CUSTODIAN FROM APRIL 10, 1919, TO DEC. 31, 1922.

License No.	Date of License	Name of Licensee	Name of Trademark	Trademark No.	Royalty	License Fees	Total
83	2/6/20	E. Bilhuber, Inc.	Ichthalbin	31114	$ 91.98	$ 100.00	$ 191.98
84	2/6/20	E. Bilhuber, Inc.	Diuretin	55759	1,084.30	100.00	1,184.30
85	2/6/20	E. Bilhuber, Inc.	Euresol	88894	461.62	100.00	561.62
91	3/2/20	Merck & Co.	Antithyroidin Moebius	54995	44.30	100.00	144.30
92	3/31/20	Merck & Co.	Diplosal	85549	49.36		49.36
			Iodipin	32003			
			Bromopin	32002			
			Fibrolysin	49160			
			Optochin	99822			
102	3/31/20	E. Bilhuber, Inc.	Santyl	61255	59.32		59.32
103	3/31/20	E. Bilhuber, Inc.	Bromural	61165	209.26	100.00	309.26
120	6/2/20	Abbott Laboratories	Anesthesin	55744	176.23	100.00	276.23
124	6/11/20	McKesson & Robbins	Euquinine	54088	15.12	100.00	115.12
125	6/16/20	Upjohn Co.	Digipuratum	73012	18.95	100.00	118.95
127	5/14/20	Toch Brothers	Metol	57145	31.48	100.00	131.48
131	7/15/20	Bausch & Lomb Optical Co.	Planar	68570		100.00	100.00
132	7/15/20	do. do.	Protar	68571	1,410.87	100.00	1,510.87
133	7/15/20	do. do.	Amatar	85306		100.00	100.00
134	7/15/20	do. do.	Tessar	68572	3,304.13	100.00	3,404.13
135	7/15/20	do. do.	Katral	93581	6.40	100.00	106.40

License No.	Date of License	Name of Licensee	Name of Trademark	Trademark No.	Royalty	License Fees	Total
136	7/15/20	do. do.	Triotar	94409		$100.00	$100.00
147	7/29/20	Bausch & Lomb Optical Co.	Rodinal	61920		100.00	100.00
152	9/7/20	do. do.	Distar	106131		100.00	100.00
267	Never Executed	Amer. Solder & Flux Co.	Tinol	63910	—	—	—
301	10/1/21	Novocol Chem. Mfg. Co.	Bromural	61165	8.68	100.00	108.68
306	10/17/21	Amer. Lysoform Co.	Lysoform	35979		100.00	100.00
310	11/1/21	Amer. Solder & Flux Co.	Tinol	63910	96.86	100.00	196.86
315	11/21/21	Merck & Co.	Stypticin	27388	158.15	100.00	258.15
316	11/21/21	do. do.	Dionin	32737	214.59	100.00	314.59
Carbic Color & Chem. Co.		318 11/15/21	Validol	(29457 (54087	645.65	100.00	745.65
326	12/13/21	Novocol Chem. Mfg. Co.	Validol	(29457 (54087	9.51	100.00	109.51
340	2/1/22	Roessler & Hasslacher Chem Co.	Trisalyt	81507	500.00	—	500.00
375	11/1/22	Lysoform Corp.	Lysoform	35979		100.00	100.00
378	11/28/22	Rhodia, Inc.	Metol	57145		100.00	100.00
					$8,596.76	$2,600.00	$11,196.76

DEFENDANT'S EXHIBIT No. 103.

Statement of Income Received on Arsphenamine Patents from April 10, 1919, to Dec. 31, 1922, Divided as Between Patents Formerly Licensed by the Federal Trade Commission and Patents Licensed by the Chemical Foundation, Inc.

Licensed by the Federal Trade Commission.

	Ars-phenamine	Neo Ars-phenamine	Total
Dermatological Research Labs., assigned to Abbott Labs., Inc.,	$4,388.46	$27,078.14	$31,466.60

Licensed by The Chemical Foundation, Inc.

	Ars-phenamine	Neo Ars-phenamine	Total
Abbott Labs., Inc.	$ 300.00	100.00	
E. R. Squibb & Son	2545.91	216.70	
Mallinckrodt Chemical Co.	400.00	100.00	
Powers-Weightman-Rosengarten Co.	400.00	1,323.93	
Empire State Chemical Co.	400.00	100.00	
F. J. Lackenback (infringement)	120.00	30.00	
	$4,165.91	$1,870.63	$6,036.54
Total	$8,554.37	$28,948.77	$37,503.14

		Percentage
From the above it will be seen that the amounts received for Arsphenamine and Neo-Arsphenamine from licensees formerly licensed by the Federal Trade Commission was:	$31,466.60	83.9%
and the income from the same products originally licensed by The Chemical Foundation, Incorporated, amounted to	6,036.54	16.1%
making a total of	$37,503.14	100. %

DEFENDANT'S EXHIBIT No. 104.

THE CHEMICAL FOUNDATION, INC.

STATEMENT SHOWING EARNINGS ON THE 57 PRE-WAR CONTRACTS ACQUIRED FROM THE A. P. C. FROM APRIL 10, 1919, TO DECEMBER 31, 1922, WITH DATA AND RESULTS IN RESPECT TO SUCH EARNING, AND EXPENSES IN CONNECTION THEREWITH.

Earning by Chemical Foundation Direct		$2442.06
Average annual gross earnings for the 57 contracts		651.22
Average annual gross income for each of the 57 contracts		11.42
Deduct:		
Proportion of expenses applicable to each contract	$20.88	
6% interest on investment	4.12	
Amortization	3.74	28.74
Average annual net *Loss* for each of the 57 contracts, exclusive of educational literature		17.32

The above income was earned on 8 of these contracts, and the remaining 49 or 86% of the contracts acquired have never earned anything.

There had expired 36 of these contracts prior to December 31, 1922.

DEFENDANT'S EXHIBIT No. 105.

THE CHEMICAL FOUNDATION, INC.

STATEMENT SHOWING EARNINGS ON THE 6475 PROPERTIES ACQUIRED FROM THE ALIEN PROPERTY CUSTODIAN FROM APRIL 10, 1919, TO DECEMBER 31, 1922, WITH DATA AND RESULTS IN RESPECT TO THE VARIOUS SOURCES OF INCOME AND EXPENSES THEREON.

Earnings by the Chemical Foundation Direct.

Patents:				
Domestic Manufactured Products	$296,213.41			
Imported Products	365,492.87			
		$661,706.28		
Contracts		2,442.06		
Trademarks		11,196.76		
Total Income from properties acquired from the Alien Property Custodian				$675,345.10
Average annual gross income on the 6475 properties acquired from A. P. C.				181,436.04
Average annual gross income for each of the 6475 properties amounts to				28.02
Deduct:				
Proportion of expenses applicable to properties acquired from A. P. C. being 99.9 per cent of total expense			20.88	
Interest on investment			4.12	
Amortization of Properties			3.74	
				28.74
Average annual net *Loss* for each property exclusive of educational expense				.72

DEFENDANT'S EXHIBIT No. 106.

EXHIBIT A, Schedule 3.

SUMMARY SHOWING THE DIVISION OF EARNINGS FROM PATENTS AS BETWEEN PRODUCT AND PROCESS PATENTS

APRIL 10, 1919, TO DECEMBER 31, 1922

Manufactured Product

Number of Patents		Royalties	License Fees	Imports	Mis-cellaneous	Total
	Product Patents					
140	Earnings from U. S. Licensees and from Imports	$194,059.01	$16,928.92	$131,449.39	$2,167.42	$344,604.74
120	License fees only; Product not manufactured		6,243.20			6,243.20
77	Imports on patents not licensed to U. S. Mfgrs.			233,694.42		233,694.42
337		$194,059.01	$23,172.12	$365,143.81	$2,167.42	$584,542.36
	Process Patents					
117	Earnings from U. S. Licensees and from Imports	$ 72,350.99	$ 2,697.60	$ 199.06	$ 285.98	$ 75,533.63
37	License Fees only		1,630.29			1,630.29
154		$ 72,350.99	$ 4,327.89	$ 199.06	$ 285.98	$ 77,163.92
491	Grand Total	$266,410.00	$27,500.01	$365,342.87	$2,453.40	$661,706.28

Note: In addition to above 4 product patents were licensed on which no income was received, the fee being waived in the case of one and substitution of patents made in the case of the other three.

Of the above income producing patents 46 had expired at Dec. 31, 1922, the earnings on which were $115,417.79, or approximately 18% of the entire income.

EXHIBIT A, Schedule 3, Part 1.

THE CHEMICAL FOUNDATION, INC.
DETAILED STATEMENT OF EARNINGS FROM PRODUCT PATENTS

Patent Number	Product	Manufactured Royalty	Manufactured License Fee	Imports	Miscellaneous	Total
711377	Chemical		$33.33			$33.3
715662	Dye			$306.96		306.9
731670	Dye			71.43		71.4
733280	Dye	$157.78	200.00	733.13		1,090.9
734866	Dye			1,378.83		1,378.8
736812	Apparatus	61.25				61.2
739145	Dye	2,784.96		12,190.03		14,974.9
739579	Dye	922.99		21,950.70		22,873.6
739920	Chemical	19.09	1.20			20.2
741029	Dye			83.12		83.1
749913	Dye			424.30		424.3
752562	Dye	316.36	100.00			416.3
753659	Dye	922.99		8,251.70		9,174.6
754768	Dye			496.08		496.0
757109	Dye	768.99	200.00	44.46	$81.84	1,095.2
758775	Chemical	19.09	.76			19.8
763756	Dye	192.77	100.00			292.7
767259	Dye			63.81		63.8
770177	Dye	4,465.84	266.68			4,732.5
774224	Drug		100.00	107.07		207.0
778476	Dye	4,572.72	266.66			4,839.3
778670	Chemical	7,641.95	100.00			7,741.9
782129	Chemical		7.14			7.14
787859	Dye	6,270.54	450.02	1,421.41	86.94	8,228.9
791869	Dye			.97		.97
792379	Chemical	19.09	.76			19.8
793610	Chemical	3,460.24	166.69	365.83	71.49	4,064.2
794201	Apparatus	70.16	33.34			103.5
794654	Apparatus		8.33			8.33
796393	Dye	2,549.21	266.66	19,809.45		22,625.3
801268	Chemical		7.14			7.14
804021	Chemical	19.09	.76			19.8
805143	Dye	113.72	50.00	199.92		363.6
806053	Dye			286.59		286.5
807422	Dye	8,452.72	366.66			8,819.3
807695	Apparatus	70.17	33.33			103.5
812554	Drug	994.67	500.00			1,494.6
814137	Dye			211.53		211.5
815438	Chemical		7.14			7.14
815653	Drug	807.80	100.00			907.8
818336	Dye	1,607.75				1,607.7
818980	Dye	8,308.37	100.00			8,408.3
818992	Dye	4,436.94	366.66	4,832.46		9,636.0
819348	Dye		50.00	726.83		776.8
819596	Apparatus		7.14			7.14
822246	Chemical		7.14			7.14
		$60,027.25	$3,897.54	$73,956.61	$240.27	$138,121.8

EXHIBIT A, Schedule 3, Part 1, Sheet 2.

Patent Number	Product	Manufactured Royalty	License Fee	Imports	Miscellaneous	Total
Brought forward		$60,027.25	$3,897.54	$73,956.61	$240.27	$138,121.67
834209	Apparatus	5,350.00	200.00			5,550.00
837128	Dye	30.25	100.00			130.25
837775	Dye			23.71		23.71
837840	Dye			5,517.76		5,517.76
844804	Dye	113.73	50.00	58.16		221.89
850827	Chemical		50.00			50.00
856811	Dye			25,798.52		25,798.52
860575	Dye			644.94		644.94
862858	Drug	59.32	100.00			159.32
863397	Dye			2,390.01		2,390.01
867305	Dye			8,288.11		8,288.11
868204	Drug		100.00	659.87		759.87
872585	Dye			218.64		218.64
872815	Dye			2,631.72		2,631.72
873798	Dye			1.71		1.71
873870	Optics		33.34			33.34
873871	Optics		33.33			33.33
873896	Optics		33.34			33.34
874649	Dye			455.96		455.96
876190	Dye	387.54		1,290.65		1,678.19
876679	Chemical	743.88				743.88
877034	Apparatus		8.34			8.34
878964	Dye	1,567.83	500.00		142.61	2,210.44
879552	Dye			4,129.31		4,129.31
880292	Dye			104.10		104.10
880293	Dye			20.99		20.99
884920	Chemical	19.09	.76			19.85
886985	Dye			92.31		92.31
888837	Dye			207.41		207.41
892166	Apparatus	321.24	100.00			421.24
892455	Dye	5,361.92	200.00			5.561.92
892897	Dye			29,616.45		29,616.45
895045	Optics	344.67	33.34			378.01
895313	Chemical	89.26	34.09			123.35
896807	Drug	691.85	50.00			741.85
899503	Apparatus		7.14			7.14
903284	Dye			4,326.96		4,326.96
904809	Dye	110.85	100.00			210.85
906367	Dye	4,190.88	183.33	216.85		4,591.06
911801	Chemical	19.09	.76			19.85
912182	Dye			125.74		125.74
914518	Drug	217.94	200.00			417.94
916029	Dye			13,346.97		13,346.97
916030	Dye			8,616.02		8,616.02
918589	Chemical	19.09	.76			19.85
918818	Chemical		100.00			100.00
918920	Dye			673.38		673.38
919572	Dye		120.00	13.20		133.20
		$79,665.68	$6,236.07	$183,426.06	$382.88	$269,710.69

EXHIBIT A, Schedule 3, Part 1, Sheet 1.

Patent Number	Product	Manufactured Royalty	License Fee	Imports	Miscellaneous	Total
Brought forward		$79,665.68	$6,236.07	$183,426.06	$382.88	$269,710.69
922282	Dye		100.00	1.50		101.50
922995	Drug	117.06	100.00	624.20		841.26
924664	Apparatus	2,116.94				2,116.94
925917	Dye			1,113.43		1,113.43
926702	Chemical		7.14			7.14
928494	Apparatus		7.14			7.14
931598	Dye		120.00			120.00
932266	Dye			156.50		156.50
932334	Dye			2,705.70		2,705.70
934579	Optics		33.33			33.33
940895	Optics		100.00			100.00
941088	Dye			162.60		162.60
941768	Chemical	19.09	.76			19.85
943163	Drug	691.86	50.00			741.86
943578	Drug	94.76	100.00			194.76
943717	Dye			33.55		33.55
948204	Dye			1.609.78		1.609.78
955068	Dye	1,580.73	100.00	291.62		1,972.35
955105	Dye			39,381.38		39,381.38
955410	Dye			115.20		115.20
956348	Dye	62.69	220.00	4,100.34		4,383.03
957683	Dye			340.94		340.94
958325	Dye			1,617.80		1,617.80
958912	Dye		100.00			100.00
959617	Dye			36.25		36.25
961048	Dye			28.78		28.78
961612	Dye			3,267.83		3,267.83
962920	Optics		100.00			100.00
963813	Dye			2,434.37		2,434.37
965170	Dye			2,777.94		2,777.94
965485	Apparatus	174.12	50.00			224.12
966092	Dye		220.00	7,836.85		8,056.85
968697	Dye			5,733.34		5,733.34
970340	Dye			14,945.67		14,945.67
970878	Dye			4,430.53		4,430.53
971149	Chemical	19.09	.76			19.85
973611	Apparatus		8.33			8.33
978865	Dye			24.00		24.00
981727	Chemical	19.09	.76			19.85
982022	Apparatus	174.13	50.00			224.13
982050	Dye			10.60		10.60
986148	Drugs	1,022.11	550.00		30.00	1,602.11
987362	Dye			17.61		17.61
988720	Optics		33.33			33.33
995113	Apparatus	1,610.71	20.00			1,630.71
998091	Optics	1,323.48	100.00			1,423.48
999230	Dye			500.68		500.68
999439	Dye			648.72		648.72
1003268	Dye	4,190.86	133.33	33,719.09		38,043.28
		$92,882.40	$8,540.95	$312,092.86	$412.88	$413,929.09

EXHIBIT A, Schedule 3, Part 1, Sheet 4.

Patent Number	Product	Manufactured				
		Royalty	License Fee	Imports	Miscellaneous	Total
Brought forward		$92,882.40	$8,540.95	$312,092.86	$412.88	$413,929.09
1005176	Drug	1,654.64	400.00			2,054.64
1008906	Dye			4,772.36		4,772.36
1011068	Dye			11,280.80		11,280.80
1014539	Dye				16.46	16.46
1016369	Optical		50.00			50.00
1018433	Dye			451.29		451.29
1018990	Chemical	19.09	.76			19.85
1019576	Dye			75.00		75.00
1019582	Apparatus		8.34			8.34
1020756	Dye			10.45		10.45
1024993	Drug		100.00			100.00
1025138	Dye			15,713.33		15,713.33
1025174	Dye			1,727.17		1,727.17
1025195	Dye			14.28		14.28
1025766	Optics	344.67	33.33			378.00
1028366	Chemical	19.09	.76			19.85
1031823	Dye			42.50		42.50
1034853	Dye	250.41	200.00	1,462.17		1,912.58
1034898	Dye			428.40		428.40
1035756	Drug		100.00			100.00
1035873	Chemical	19.09	.76			19.85
1036241	Chemical	470.59	50.00	2,113.50		2,634.09
1037563	Apparatus	96.35	100.00			196.35
1039851	Chemical	19.09	.76			19.85
1039852	Chemical	19.09	.76			19.85
1041457	Apparatus		100.00			100.00
1042356	Dye	250.41	100.00	32.82		383.23
1042679	Dye			22.05		22.05
1043468	Dye	2,057.11	33.34			2,090.45
1044673	Dye			73.42		73.42
1044674	Dye			432.89		432.89
1045759	Drug	1,308.71	160.00			1,468.71
1048073	Apparatus	50.00	50.00			100.00
1049860	Apparatus	50.00	50.00			100.00
1054888	Dye			212.11		212.11
1054901	Chemical	19.09	.76			19.85
1055287	Dye		50.00			50.00
1055331	Chemical	19.09	.76			19.85
1055701	Dye			2,003.76		2,003.76
1057154	Apparatus	2,116.93				2,116.93
1058653	Chemical	19.09	.76			19.85
1059817	Chemical	19.09	.76			19.85
1059983	Chemical	770.65	366.68			1,137.33
1061139	Drug		100.00			100.00
1061781	Dye	2,146.46	33.33	1,823.73		4,003.52
1062203	Drug	62.66	100.00	531.81		694.47
1062258	Apparatus		100.00			100.00
1063004	Chemical	245.97	100.00			345.97
1068966	Chemical	19.08	.76			19.84
		$104,948.85	$10,933.57	$355,316.70	$429.34	$471,628.46

EXHIBIT A, Schedule 3, Part 1, Sheet 5

Patent Number	Product	Manufactured Royalty	Manufactured License Fee	Imports	Miscellaneous	Total
Brought forward		$104,948.85	$10,933.57	$355,316.70	$429.34	$471,628.46
1068967	Chemical	19.08	.76			19.84
1068968	Chemical	19.08	.76			19.84
1068969	Chemical	19.08	.76			19.84
1070541	Dye	3,782.74	133.33	352.62		4,268.69
1073789	Optics	344.68	33.33			378.01
1073823	Chemical	19.08	.76			19.84
1073870	Chemical	19.08	.76			19.84
1073904	Dye			427.12		427.12
1073951	Dye			821.94		821.94
1076756	Dye			113.01		113.01
1078125	Apparatus	1,524.38			1,370.64	2,895.02
1078135	Drug	770.66	366.66			1,137.32
1078423	Chemical	19.08	.76			19.84
1079415	Dye			165.75		165.75
1081592	Drug	15,123.15	1,216.68		30.00	16,369.83
1081897	Drug	1,022.12	550.00		30.00	1,602.12
1082719	Dye			896.08	240.90	1,136.98
1086881	Drug	1,290.53	60.00			1,350.53
1090874	Chemical	19.08	.76			19.84
1091881	Drug	2,479.30	249.98			2,729.28
1092816	Apparatus		100.00			100.00
1095780	Dye			80.25		80.25
1099710	Apparatus		100.00			100.00
1100877	Dye			40.12		40.12
1102716	Chemical	19.08	.76			19.84
1105501	Dye	217.26	25.00			242.26
1105554	Dye	802.82	100.00	360.85		1,263.67
1106970	Dye	470.60	50.00			520.60
1107107	Tanning		200.00			200.00
1113468	Dye		12.50			12.50
1116398	Drug	3,168.03	550.00		30.00	3,748.03
1121026	Dye	250.42	112.50			362.92
RE13848	Drug	14,217.73	400.00		30.00	14,647.73
1122011	Apparatus		100.00			100.00
1122564	Dye	250.42	212.50			462.92
1123430	Dye		20.00			20.00
1125311	Chemical		12.50			12.50
1126475	Dye		16.67			16.67
1126656	Dye		12.50			12.50
1127603	Drug	2,479.30	250.00			2,729.30
1128369	Chemical		12.50			12.50
1128370	Chemical		12.50			12.50
1128371	Dye		20.00			20.00
1129559	Chemical	19.08	.76			19.84
1129574	Dye		116.67			116.67
1129575	Dye		16.67			16.67
1130785	Apparatus	1,610.71	20.00			1,630.71
1131516	Dye		14.29			14.29
1138670	Dye		14.29			14.29
		$154,925.42	$16,051.48	$358,574.44	$2,160.88	$531,712.22

EXHIBIT A, Schedule 3, Part 1, Sheet 6.

		Manufactured				
Patent Number	Product	Royalty	License Fees	Imports	Miscellaneous	Total
Brought forward		$154,925.42	$16,051.48	$358,574.44	$2,160.88	$531,712.22
1139540	Dye		14.29			14.29
1141148	Dye		36.67			36.67
1141266	Chemical	600.00	100.00			700.00
1144181	Dye	217.26	25.00			242.26
1144325	Dye	217.26	25.00			242.26
1145072	Dye		33.34			33.34
1145934	Dye		50.00			50.00
1148570	Chemical	19.08	.76			19.84
1149231	Dye		20.00			20.00
1150825	Dye		100.00	587.45		687.45
1150863	Dye	259.38	150.00	739.83		1,149.21
1152197	Chemical	19.08	.76			19.84
1154826	Dye		20.00			20.00
1155765	Dye		33.34			33.34
1157257	Optics		50.00			50.00
1159233	Optics		33.33			33.33
1159865	Chemical	19.08	.76			19.84
1160471	Dye		20.00			20.00
1161200	Chemical	25.00	100.00			125.00
1162496	Dye		50.00			50.00
1164987	Apparatus	5,179.71	900.00			6,079.71
1165531	Dye		120.00			120.00
1166346	Dye		20.00			20.00
1169404	Dye		25.00			25.00
1169731	Optics		100.00			100.00
1170247	Apparatus		100.00			100.00
1172061	Dye		20.00			20.00
1173077	Dye		12.50			12.50
1173241	Apparatus		8.33			8.33
1173532	Chemical	19.08	.76			19.84
1180365	Apparatus		8.34			8.34
1180815	Apparatus		108.33			108.33
1180985	Dye		12.50			12.50
1181485	Drug	1,290.53	60.00			1,350.53
1183831	Dye		20.00			20.00
1185637	Drug	1.86	100.00			101.86
1186339	Apparatus		108.33			108.33
1186686	Apparatus		108.33			108.33
1188376	Chemical		50.00			50.00
1188421	Dye		20.00			20.00
1188544	Chemical		12.50			12.50
1188545	Dye		12.50			12.50
1193566	Dye	250.42	112.50	1.60		364.52
1193829	Dye		33.33			33.33
1196127	Dye		64.28			64.28
1197315	Apparatus	3,842.26	150.00			3,992.26
1197462	Drug	1,290.53	60.00			1,350.53
1197632	Dye		100.00	87.27		187.27
1197633	Dye		33.33			33.33
		$168,175.95	$19,395.59	$359,990.59	$2,160.88	$549,723.01

EXHIBIT A, Schedule 3, Part 1, Sheet 7

Patent Number	Product	Manufactured Royalty	Manufactured License Fees	Imports	Miscellaneous	Total
Brought forward		$168,175.95	$19,395.59	$359,990.59	$2,160.88	$549,723.01
1199697	Dye		20.00			20.00
1200055	Dye		20.00			20.00
1201607	Apparatus	19.08	.76			19.84
1201968	Dye		25.00			25.00
1202260	Dye		25.00			25.00
1206232	Dye	250.42	120.00			370.42
1207762	Dye		25.00			25.00
1207981	Dye		50.00			50.00
1207982	Dye		50.00			50.00
1209154	Dye		12.50			12.50
1209580	Dye		16.66			16.66
1211181	Chemical	19.08	.76			19.84
1211394	Chemical	19.08	.76			19.84
1213075	Dye		20.00			20.00
1215957	Chemical	19.08	.76			19.84
1216059	Chemical	19.08	.76			19.84
1216134	Dye		100.00			100.00
1217027	Apparatus		50.00			50.00
1217028	Apparatus		100.00			100.00
1217862	Drug		100.00			100.00
1218423	Apparatus		100.00			100.00
1219166	Dye		12.50			12.50
1219954	Dye		33.33			33.33
1225263	Apparatus	19.08	.76			19.84
1228061	Apparatus		8.33			8.33
1231933	Apparatus		8.33			8.33
1232551	Dye	10,604.88	700.02		3.27	11,308.17
1232552	Dye	10,568.90	699.99		3.27	11,272.16
1237405	Tanning	1,577.78	148.33			1,726.11
1238932	Chemical		50.00			50.00
1243170	Dye			1,302.80		1,302.80
1243171	Dye		116.66	3,850.42		3,967.08
1251368	Dye		20.00			20.00
1254364	Tanning	102.92	75.00			177.92
1255739	Dye		50.00			50.00
1255740	Dye		50.00			50.00
1256930	Apparatus		250.00			250.00
1264604	Dye		33.33			33.33
1266896	Dye		14.28			14.28
1278229	Tanning	2,002.83	98.33			2,101.16
1280648	Dye		14.28			14.28
1281494	Tanning		200.00			200.00
1285726	Dye		14.28			14.28
1285727	Dye		50.00			50.00
1289280	Tanning		200.00			200.00
1319852	Dye		12.50			12.50
1336759	Tanning	660.85	78.32			739.17
		$194,059.01	$23,172.12	$365,143.81	$2,167.42	$584,542.36

EXHIBIT A, Schedule 3, Part 2

DETAILED STATEMENT OF EARNINGS FROM PROCESS PATENTS

Patent Number	Product	Manufactured		Imports	Miscellaneous	Total
		Royalty	License Fees			
725890	Chemical		$7.72			$7.72
754474	Chemical	$19.09	.76			19.85
770940	Chemical		7.69			7.69
790601	Chemical		7.69			7.69
795755	Chemical		183.34		$71.49	254.83
797961	Chemical	19.09	.76			19.85
797962	Chemical	19.09	.76			19.85
801483	Chemical		7.69			7.69
801485	Chemical		7.69			7.69
802793	Chemical		7.69			7.69
814917	Chemical	19.09	.76			19.85
841612	Apparatus		8.34			8.34
844914	Dye	922.99				922.99
850392	Chemical	19.09	.76			19.85
861014	Chemical		83.33		71.49	154.82
868383	Apparatus	1,610.70	20.00			1,630.70
884919	Chemical	19.09	.76			19.85
885566	Chemical	3,460.24	166.66		71.50	3,698.40
885567	Chemical	3,460.25	266.65		71.50	3,798.40
903047	Chemical		7.69			7.69
904043	Chemical		7.18			7.18
907941	Chemical		7.69			7.69
922003	Chemical	19.09	.76			19.85
923012	Chemical	19.09	.76			19.85
955970	Apparatus		7.14			7.14
957843	Chemical	19.09	.76			19.85
964415	Chemical	19.09	.76			19.85
965483	Apparatus	19.09	.76			19.85
970883	Chemical	19.09	.76			19.85
971206	Chemical	19.09	.76			19.85
971501	Chemical	19.09	.76			19.85
978889	Chemical	2,116.93				2,116.93
984605	Chemical	19.09	.76			19.85
984925	Chemical	19.09	.76			19.85
989651	Chemical		7.69			7.69
990191	Chemical	19.09	.76			19.85
992947	Dye	1,020.04	125.00	$65.00		1,210.04
993144	Chemical	19.09	.76			19.85
994095	Chemical	19.09	.76			19.85
994437	Chemical		7.69			7.69
999025	Chemical	19.09	.76			19.85
1000732	Chemical	19.09	.76			19.85
1006206	Chemical	19.09	.76			19.85
1008927	Chemical	19.09	.76			19.85
1011014	Chemical	19.09	.76			19.85
1015566	Chemical	19.09	.76			19.85
Carried forward		$13,068.40	$963.57	$65.00	$285.98	$14,382.95

EXHIBIT A, Schedule 3, Part 2, Sheet 2

Patent Number	Product	Manufactured				
		Royalty	License Fees	Imports	Miscellaneous	Total
Brought Forward		$13,068.40	$963.57	$65.00	$285.98	$14,382.95
1015800	Chemical	19.09	.76			19.85
1022351	Chemical	19.09	.76			19.85
1029528	Chemical	19.09	.76			19.85
1030334	Chemical		7.69			7.69
1040218	Chemical	19.09	.76			19.85
1043798	Chemical	19.09	.76			19.85
1053396	Chemical	2,116.93				2,116.93
1053951	Chemical	19.09	.76			19.85
1053952	Chemical	19.09	.76			19.85
1056548	Apparatus	2,116.93				2,116.93
1058904	Drug		100.00			100.00
1059818	Chemical	19.08	.76			19.84
1061725	Chemical	19.08	.76			19.84
1063173	Dye	27,505.95	100.00			27,605.95
1066758	Chemical		7.69			7.69
1070138	Chemical	19.08	.76			19.84
1075085	Chemical	19.08	.76			19.84
1075171	Drug	2,158.68	160.00			2,318.68
1077034	Chemical	19.08	.76			19.84
1078686	Chemical	19.08	.76			19.84
1079705	Chemical	19.08	.76			19.84
1083585	Chemical	19.08	.76			19.84
1083703	Chemical	19.08	.76			19.84
1083903	Chemical	1,610.71	20.00			1,630.71
1089185	Chemical	19.08	.76			19.84
1094194	Chemical	19.08	.76			19.84
1096392	Chemical	19.08	.76			19.84
1096393	Chemical	19.08	.76			19.84
1097406	Chemical	4,477.15	400.00			4,877.15
1098139	Chemical	19.08	.76			19.84
1099108	Dye	250.42	200.00			450.42
1101111	Chemical	967.42	200.00			1,167.42
1101424	Chemical	19.08	.76			19.84
1104943	Chemical	3,707.93				3,707.93
1105378	Chemical		7.69			7.69
1105447	Dye		100.00	116.56		216.56
1107926	Chemical	19.08	.76			19.84
1109447	Chemical	19.08	.76			19.84
1109448	Chemical	19.08	.76			19.84
1113096	Chemical	19.08	.76			19.84
1113097	Chemical	19.08	.76			19.84
1115776	Chemical	19.08	.76			19.84
1118595	Chemical	19.08	.76			19.84
1118628	Chemical	19.08	.76			19.84
1119534	Chemical	19.08	.76			19.84
1119546	Chemical		50.00			50.00
1124776	Chemical		12.50			12.50
1126371	Chemical	19.08	.76			19.84
1127027	Dye	250.42	100.00			350.42
Carried forward		$58,841.57	$2,453.46	$181.56	$285.98	$61,762.57

EXHIBIT A, Schedule 3, Part 2, Sheet 3

Patent Number	Product	Manufactured Royalty	License Fees	Imports	Miscellaneous	Total
Brought forward		$58,841.57	$2,453.46	$181.56	$285.98	$61,762.57
1128804	Chemical	19.08	.76			19.84
1128843	Chemical	19.08	.76			19.84
1133087	Chemical	19.08	.76			19.84
1133108	Tanning	102.89	75.00			177.89
1134416	Chemical	19.08	.76			19.84
1144730	Chemical	19.08	.76			19.84
1149510	Chemical	19.08	.76			19.84
1150152	Chemical		100.00			100.00
1152098	Chemical		100.00			100.00
1152196	Chemical	19.08	.76			19.84
1152930	Chemical	19.08	.76			19.84
1157253	Chemical	19.08	.76			19.84
1158167	Chemical	19.08	.76			19.84
1169267	Dye	250.42	100.00			350.42
1169817	Chemical	19.08	.76			19.84
1169895	Apparatus	3,842.24	150.01			3,992.25
1172863	Chemical	19.08	.76			19.84
1172908	Chemical	19.08	.76			19.84
1172925	Chemical	19.08	.76			19.84
1173550	Chemical		33.34			33.34
1175091	Chemical		50.00			50.00
1175490	Chemical		50.00			50.00
1175693	Chemical	19.08	.76			19.84
1178440	Chemical	19.08	.76			19.84
1181431	Chemical		7.14			7.14
1183748	Dye	33.98	100.00	17.50		151.48
1188191	Chemical	19.08	.76			19.84
1191480	Tanning	2,002.95	98.37			2,101.32
1200805	Chemical	19.08	.76			19.84
1201850	Chemical		33.34			33.34
1202995	Chemical	19.08	.76			19.84
1205578	Chemical	1,444.44	100.00			1,544.44
1207706	Chemical	19.08	.76			19.84
1207707	Chemical	19.08	.76			19.84
1207708	Chemical	19.08	.76			19.84
1207802	Chemical		133.33			133.33
1208134	Apparatus		7.14			7.14
1212504	Chemical	19.08	.76			19.84
1216612	Tanning	2,002.81	98.33			2,101.14
1225264	Chemical	19.08	.76			19.84
1225755	Chemical	19.08	.76			19.84
1228879	Chemical		7.14			7.14
1232620	Tanning	1,570.26	128.32			1,698.58
1239867	Chemical		33.33			33.33
1243382	Chemical	19.08	.76			19.84
Carried forward		$70,587.64	$3,878.01	$199.06	$285.98	$74,950.69

EXHIBIT A, Schedule 3, Part 2, Sheet 4

Patent Number	Product	Manufactured Royalty	License Fees	Imports	Miscellaneous	Total
Brought forward		$70,587.64	$3,878.01	$199.06	$285.98	$74,950.69
1244580	Chemical	19.08	.76			19.84
1256875	Chemical	19.08	.76			19.84
1256929	Chemical		250.00			250.00
1261900	Chemical	19.08	.76			19.84
1261987	Chemical	1,610.71	20.00			1,630.71
1274503	Chemical		33.33			33.33
1278580	Chemical	19.08	.76			19.84
1281775	Apparatus		7.14			7.14
1286650	Chemical	19.08	.76			19.84
1292019	Chemical		33.33			33.33
1301151	Chemical	19.08	.76			19.84
1314642	Chemical		100.00			100.00
1322291	Chemical	19.08	.76			19.84
1330772	Chemical	19.08	.76			19.84
		$72,350.99	$4,327.89	$199.06	$285.98	$77,163.92

DEFENDANT'S EXHIBIT No. 107.

EXHIBIT A, Schedule 1.

STATEMENT OF EARNINGS FROM ROYALTIES AND LICENSE FEES BY INDIVIDUAL PATENTS FROM APRIL 10, 1919, to December 31, 1922

Patent Number	Product	Manufactured Product Royalty	Manufactured Product License Fee	Imports—Textile Alliance Inc.	Imports—War Trade Board	Miscellaneous	Total
711377	Chemical		$ 33.33				$ 33
715662	Dye			$ 306.96			306
725890	Drug		7.72				7
731670	Dye			71.43			71
733280	Dye	$ 157.78	200.00	733.13			1,090
734866	Dye			1,378.83			1,378
736812	Apparatus	61.25					61
739145	Dye	2,784.96		12,119.43	$ 79.60		14,974
739579	Dye	922.99		21,941.95	8.75		22,873
739920	Chemical	19.09	1.20				20
741029	Dye			83.12			83
749913	Dye			12.80	411.50		424
752562	Dye	316.36	100.00				416
753659	Dye	922.99		2,898.70	5,353.00		9,174
754474	Chemical	19.09	.76				19
754768	Dye			354.18	141.90		496
757109	Dye	768.99	200.00	30.71	13.75	$ 81.84	1,095
758775	Chemical	19.09	.76				19
763756	Dye	192.77	100.00				292
767259	Dye			63.81			63
770177	Dye	4,465.84	266.68				4,732
770940	Chemical		7.69				7
774224	Chemical		100.00		107.07		207
778476	Dye	4,572.72	266.66				4,839
778670	Chemical	7,641.95	100.00				7,741
782129	Chemical		7.14				7.
787859	Dye	6,270.54	450.02		1,421.41	86.94	8,228.
790601	Chemical		7.69				7.
791869	Dye			.97			
792379	Chemical	19.09	.76				19.
793610	Chemical	3,460.24	166.69		365.83	71.49	4,064.
794201	Chemical	70.16	33.34				103.
794654	Apparatus		8.33				8.
795755	Chemical		183.34			71.49	254.
796393	Dye	2,549.21	266.66	9,888.43	9,921.02		22,625.
797961	Chemical	19.09	.76				19.
797962	Chemical	19.09	.76				19.
801268	Chemical		7.14,				7.
801483	Chemical		7.69				7.
801485	Chemical		7.69				7.
802793	Chemical		7.69				7.
804021	Chemical	19.09	.76				19.
805143	Dye	113.72	50.00		199.92		363.
806053	Dye			286.59			286.
807422	Dye	8,452.72	366.66				8,819.
807695	Chemical	70.17	33.33				103.
(Carried forward)		$43,928.99	$2,991.25	$50,162.04	$18,023.75	$311.76	$115,417.

EXHIBIT A, Schedule 1. —2.

INCOME RECEIVED ON PATENTS—(CONTINUED)

Patent Number	Product	Manufactured Product Royalty	Manufactured Product License Fee	Imports—Textile Alliance Inc.	Imports—War Trade Board	Miscellaneous	Total
(Brought forward)		$43,928.99	$2,991.25	$50,162.04	$18,023.75	$311.76	$115,417.79
812554	Chemical	994.67	500.00				1,494.67
814137	Dye			126.58	84.95		211.53
814917	Chemical	19.09	.76				19.85
815438	Chemical		7.14				7.14
815653	Chemical	807.80	100.00				907.80
818336	Dye	1,607.75					1,607.75
818980	Dye	8,308.37	100.00				8,408.37
818992	Dye	4,436.94	366.66	3,948.67	883.79		9,636.06
819348	Dye		50.00	280.78	446.05		776.83
819596	Apparatus		7.14				7.14
822246	Chemical		7.14				7.14
834209	Drug	5,350.00	200.00				5,550.00
837128	Dye	30.25	100.00				130.25
837775	Dye			23.71			23.71
837840	Dye			3,548.89	1,968.87		5,517.76
841612	Apparatus		8.34				8.34
844804	Dye	113.73	50.00		58.16		221.89
844914	Dye	922.99					922.99
850392	Chemical	19.09	.76				19.85
850827	Chemical		50.00				50.00
856811	Dye			17,584.44	8,214.08		25,798.52
860575	Dye			51.44	593.50		644.94
861014	Chemical		83.33			71.49	154.82
862858	Chemical	59.32	100.00				159.32
863397	Dye			533.63	1,856.38		2,390.01
867305	Dye			2,463.26	5,824.85		8,288.11
868204	Chemical		100.00		659.87		759.87
868383	Apparatus	1,610.70	20.00				1,630.70
872585	Dye			88.01	130.63		218.64
872815	Dye			633.72	1,998.00		2,631.72
873798	Dye			1.71			1.71
873870	Optics		33.34				33.34
873871	Optics		33.33				33.33
873896	Optics		33.34				33.34
874649	Dye			3.81	452.15		455.96
876190	Dye	387.54		533.93	756.72		1,678.19
876679	Chemical	743.88					743.88
877034	Apparatus		8.34				8.34
878964	Dye	1,567.83	500.00			142.61	2,210.44
879552	Dye			2,786.20	1,343.11		4,129.31
880292	Dye				104.10		104.10
880293	Dye			.99	20.00		20.99
884919	Chemical	19.09	.76				19.85
884920	Chemical	19.09	.76				19.85
885566	Chemical	3,460.24	166.66			71.50	3,698.40
885567	Chemical	3,460.25	266.65			71.50	3,798.40
886985	Dye			92.31			92.31
888837	Dye			172.41	35.00		207.41
892166	Apparatus	321.24	100.00				421.24
892455	Dye	5,361.92	200.00				5,561.92
892897	Dye			14,055.30	15,561.15		29,616.45
895045	Optics	344.67	33.34				378.01
(Carried forward)		$83,895.44	$6,219.04	$97,091.83	$59,015.11	$668.86	$246,890.28

EXHIBIT A, Schedule 1. —3.

INCOME RECEIVED ON PATENTS—(CONTINUED)

Patent Number	Product	Manufactured Product Royalty	License Fee	Imports—Textile Alliance Inc.	Imports—War Trade Board	Miscellaneous	Total
(Brought forward)		$83,895.44	$6,219.04	$97,091.83	$59,015.11	$668.86	$246,890.28
895313	Chemical	89.26	34.09				123.35
896807	Drug	691.85	50.00				741.85
899503	Apparatus		7.14				7.14
903047	Chemical		7.69				7.69
903284	Dye			3,377.11	949.85		4,326.96
904043	Chemical		7.18				7.18
904809	Dye	110.85	100.00				210.85
906367	Dye	4,190.88	183.33	167.85	49.00		4,591.06
907941	Chemical		7.69				7.69
911801	Chemical	19.09	.76				19.85
912182	Dye			125.74			125.74
914518	Chemical	217.94	200.00				417.94
916029	Dye			6,727.70	6,619.27		13,346.97
916030	Dye			512.31	8,103.71		8,616.02
918589	Chemical	19.09	.76				19.85
918818	Chemical		100.00				100.00
918920	Dye			427.98	245.40		673.38
919572	Dye		120.00		13.20		133.20
922003	Chemical	19.09	.76				19.85
922282	Dye		100.00	.30	1.20		101.50
922995	Chemical	117.06	100.00		624.20		841.26
923012	Chemical	19.09	.76				19.85
924664	Apparatus	2,116.94					2,116.94
925917	Dye			36.23	1,077.20		1,113.43
926702	Chemical		7.14				7.14
928494	Apparatus		7.14				7.14
931598	Dye		120.00				120.00
932266	Dye				156.50		156.50
932334	Dye			1,447.20	1,258.50		2,705.70
934579	Optics		33.33				33.33
940895	Optics		100.00				100.00
941088	Dye			125.00	37.60		162.60
941768	Chemical	19.09	.76				19.85
943163	Drug	691.86	50.00				741.86
943578	Drug	94.76	100.00				194.76
943717	Dye			30.66	2.89		33.55
948204	Dye			105.75	1,504.03		1,609.78
955068	Dye	1,580.73	100.00	52.74	238.88		1,972.35
955105	Dye			24,229.33	15,152.05		39,381.38
955410	Dye				115.20		115.20
955970	Apparatus		7.14				7.14
956348	Dye	62.69	220.00	2,529.64	1,570.70		4,383.03
957683	Dye			68.44	272.50		340.94
957843	Chemical	19.09	.76				19.85
958325	Dye			1,391.44	226.36		1,617.80
958912	Dye		100.00				100.00
959617	Dye			36.25			36.25
961048	Dye			15.03	13.75		28.78
961612	Dye			2,005.05	1,262.78		3,267.83
962920	Optics		100.00				100.00
963813	Dye			1,896.77	537.60		2,434.37
964415	Chemical	19.09	.76				19.85
(Carried forward)		$93,993.89	$8,186.23	$142,400.35	$99,047.48	$668.86	$344,296.81

EXHIBIT A, Schedule 1. —

INCOME RECEIVED ON PATENTS—(CONTINUED)

Patent Number	Product	Manufactured Product Royalty	License Fee	Imports—Textile Alliance Inc.	Imports—War Trade Board	Miscellaneous
(Brought forward)		$93,993.89	$8,186.23	$142,400.35	$99,047.48	$668.86
965170	Dye			2,759.01	18.93	
965482	Apparatus	19.09	.76			
965485	Apparatus	174.12	50.00			
966092	Dye		220.00	4,809.08	3,027.77	
968697	Dye			4,413.59	1,319.75	
970340	Dye			7,023.17	7,922.50	
970878	Dye			1,368.83	3,061.70	
970883	Chemical	19.09	.76			
971149	Chemical	19.09	.76			
971206	Chemical	19.09	.76			
971501	Chemical	19.09	.76			
973611	Apparatus		8.33			
978865	Dye				24.00	
978889	Chemical	2,116.93				
981727	Chemical	19.09	.76			
982022	Apparatus	174.13	50.00			
982050	Dye			10.60		
984605	Chemical	19.09	.76			
984925	Chemical	19.09	.76			
986148	Chemical	1,022.11	550.00			30.00
987362	Dye			17.61		
988720	Optics		33.33			
989651	Chemical		7.69			
990191	Chemical	19.09	.76			
992947	Dye	1,020.04	125.00		65.00	
993144	Chemical	19.09	.76			
994095	Chemical	19.09	.76			
994437	Chemical		7.69			
995113	Apparatus	1,610.71	20.00			
998091	Optics	1,323.48	100.00			
999025	Chemical	19.09	.76			
999230	Dye			202.99	297.69	
999439	Dye			364.32	234.40	
1000732	Chemical	19.09	.76			
1003268	Dye	4,190.86	133.33	17,623.61	16,095.40	
1005176	Chemical	1,654.64	400.00			
1006206	Chemical	19.09	.76			
1008906	Dye			3,417.25	1,355.11	
1008927	Chemical	19.09	.76			
1011014	Chemical	19.09	.76			
1011068	Dye			6,326.50	4,954.30	
1014539	Dye					16.46
1015566	Chemical	19.09	.76			
1015800	Chemical	19.09	.76			
1016369	Apparatus		50.00			
1018433	Dye			451.29		
1018990	Chemical	19.09	.76			
1019576	Dye				75.00	
1019582	Apparatus		8.34			
1020756	Dye				10.45	
1022351	Chemical	19.09	.76			
(Carried forward)		$107,662.71	$9,965.14	$191,188.20	$137,559.56	$715.32

EXHIBIT A, Schedule 1. —5.

INCOME RECEIVED ON PATENTS—(CONTINUED)

tent mber	Product	Manufactured Product Royalty	Manufactured Product License Fee	Imports—Textile Alliance Inc.	Imports—War Trade Board	Miscellaneous	Total
(Brought forward)		$107,662.71	$9,965.14	$191,188.20	$137,559.56	$715.32	$447,090.93
24993	Chemical		100.00				100.00
25138	Dye			8,299.20	7,414.13		15,713.33
25174	Dye			844.41	882.76		1,727.17
25195	Dye			14.28			14.28
25766	Optics	344.67	33.33				378.00
28366	Chemical	19.09	.76				19.85
29528	Chemical	19.09	.76				19.85
30334	Chemical		7.69				7.69
31823	Dye				42.50		42.50
34853	Dye	250.41	200.00	1,462.17			1,912.58
34898	Dye			97.30	331.10		428.40
35756	Chemical		100.00				100.00
35873	Chemical	19.09	.76				19.85
36241	Chemical	470.59	50.00		2,113.50		2,634.09
37563	Apparatus	96.35	100.00				196.35
39851	Chemical	19.09	.76				19.85
39852	Chemical	19.09	.76				19.85
40218	Chemical	19.09	.76				19.85
41457	Apparatus		100.00				100.00
42356	Dye	250.41	100.00		32.82		383.23
42679	Dye			22.05			22.05
43468	Dye	2,057.11	33.34				2,090.45
43798	Chemical	19.09	.76				19.85
44673	Dye			73.42			73.42
44674	Dye			414.26	18.63		432.89
45759	Chemical	1,308.71	160.00				1,468.71
48073	Apparatus	50.00	50.00				100.00
49860	Apparatus	50.00	50.00				100.00
53396	Chemical	2,116.93					2,116.93
53951	Chemical	19.09	.76				19.85
53952	Chemical	19.09	.76				19.85
54888	Dye			28.88	183.23		212.11
54901	Chemical	19.09	.76				19.85
55287	Dye		50.00				50.00
055331	Chemical	19.09	.76				19.85
055701	Dye			107.00	1,896.76		2,003.76
056548	Apparatus	2,116.93					2,116.93
057154	Apparatus	2,116.93					2,116.93
058653	Chemical	19.09	.76				19.85
058904	Chemical		100.00				100.00
059817	Chemical	19.09	.76				19.85
059818	Chemical	19.08	.76				19.84
059983	Chemical	770.65	366.68				1,137.33
061139	Chemical		100.00				100.00
061725	Chemical	19.08	.76				19.84
061781	Dye	2,146.46	33.33	1,017.78	805.95		4,003.52
062203	Chemical	62.66	100.00		531.81		694.47
062258	Apparatus		100.00				100.00
063004	Chemical	245.97	100.00				345.97
063173	Dye	27,505.95	100.00				27,605.95
066758	Chemical		7.69				7.69
068966	Chemical	19.08	.76				19.84
(Carried forward)		$149,928.85	$12,119.36	$203,568.95	$151,812.75	$715.32	$518,145.23

EXHIBIT A, Schedule 1. —

INCOME RECEIVED ON PATENTS—(CONTINUED)

Patent Number	Product	Manufactured Product		Imports—Textile Alliance Inc.	Imports—War Trade Board	Miscellaneous
		Royalty	License Fees			
(Brought forward)		$149,928.85	$12,119.36	$203,568.95	$151,812.75	$715.32
1068967	Chemical	19.08	.76			
1068968	Chemical	19.08	.76			
1068969	Chemical	19.08	.76			
1070138	Chemical	19.08	.76			
1070541	Dye	3,782.74	133.33		352.62	
1073789	Optics	344.68	33.33			
1073823	Chemical	19.08	.76			
1073870	Chemical	19.08	.76			
1073904	Dye				427.12	
1073951	Dye			390.84	431.10	
1075085	Chemical	19.08	.76			
1075171	Chemical	2,158.68	160.00			
1076756	Dye			.60	112.41	
1077034	Chemical	19.08	.76			
1078125	Apparatus	1,524.38				1,370.64
1078135	Chemical	770.66	366.66			
1078423	Chemical	19.08	.76			
1078686	Chemical	19.08	.76			
1079415	Dye			36.99	128.76	
1079705	Chemical	19.08	.76			
1081592	Chemical	15,123.15	1,216.68			30.00
1081897	Chemical	1,022.12	550.00			30.00
1082719	Dye				896.08	240.90
1083585	Chemical	19.08	.76			
1083703	Chemical	19.08	.76			
1083903	Apparatus	1,610.71	20.00			
1086881	Chemical	1,290.53	60.00			
1089185	Chemical	19.08	.76			
1090874	Chemical	19.08	.76			
1091881	Chemical	2,479.30	249.98			
1092816	Apparatus		100.00			
1094194	Chemical	19.08	.76			
1095780	Dye			80.25		
1096392	Chemical	19.08	.76			
1096393	Chemical	19.08	.76			
1097406	Chemical	4,477.15	400.00			
1098139	Chemical	19.08	.76			
1099108	Dye	250.42	200.00			
1099710	Optics		100.00			
1100877	Dye			5.47	34.65	
1101111	Chemical	967.42	200.00			
1101424	Chemical	19.08	.76			
1102716	Chemical	19.08	.76			
1104943	Chemical	3,707.93				
1105378	Chemical		7.69			
1105447	Dye		100.00		116.56	
1105501	Dye	217.26	25.00			
1105554	Dye	802.82	100.00		360.85	
1106970	Dye	470.60	50.00			
1107107	Chemical		200.00			
1107926	Chemical	19.08	.76			
1109447	Chemical	19.08	.76			
1109448	Chemical	19.08	.76			
(Carried forward)		$191,387.32	$16,410.27	$204,083.10	$154,672.90	$2,386.86

EXHIBIT A, Schedule 1. —7.

INCOME RECEIVED ON PATENTS—(CONTINUED)

tent mber	Product	Manufactured Product Royalty	Manufactured Product License Fees	Imports—Textile Alliance Inc.	Imports—War Trade Board	Miscellaneous	Total
(Brought forward)		$191,387.32	$16,410.27	$204,083.10	$154,672.90	$2,386.86	$568,940.45
3096	Chemical	19.08	.76				19.84
3097	Chemical	19.08	.76				19.84
3468	Dye		12.50				12.50
5776	Chemical	19.08	.76				19.84
6398	Chemical	3,168.03	550.00			30.00	3,748.03
8595	Chemical	19.08	.76				19.84
8628	Chemical	19.08	.76				19.84
9534	Chemical	19.08	.76				19.84
9546	Chemical		50.00				50.00
21026	Dye	250.42	112.50				362.92
13848	Chemical	14,217.73	400.00			30.00	14,647.73
22011	Apparatus		100.00				100.00
22564	Dye	250.42	212.50				462.92
23430	Dye		20.00				20.00
24776	Chemical		12.50				12.50
25311	Chemical		12.50				12.50
26371	Chemical	19.08	.76				19.84
26475	Dye		16.67				16.67
26656	Dye		12.50				12.50
27027	Dye	250.42	100.00				350.42
27603	Chemical	2,479.30	250.00				2,729.30
28369	Chemical		12.50				12.50
28370	Chemical		12.50				12.50
28371	Dye		20.00				20.00
28804	Chemical	19.08	.76				19.84
28843	Chemical	19.08	.76				19.84
29559	Chemical	19.08	.76				19.84
29574	Dye		116.67				116.67
29575	Dye		16.67				16.67
30785	Apparatus	1,610.71	20.00				1,630.71
31516	Dye		14.29				14.29
33087	Chemical	19.08	.76				19.84
33108	Chemical	102.89	75.00				177.89
34416	Chemical	19.08	.76				19.84
38670	Dye		14.29				14.29
39540	Dye		14.29				14.29
41148	Dye		36.67				36.67
41266	Chemical	600.00	100.00				700.00
44181	Dye	217.26	25.00				242.26
44325	Dye	217.26	25.00				242.26
44730	Chemical	19.08	.76				19.84
45072	Dye		33.34				33.34
45934	Dye		50.00				50.00
48570	Chemical	19.08	.76				19.84
49231	Dye		20.00				20.00
49510	Chemical	19.08	.76				19.84
50152	Chemical		100.00				100.00
50825	Dye		100.00	312.48	274.97		687.45
50863	Dye	259.38	150.00		739.83		1,149.21
52098	Chemical		100.00				100.00
(Carried forward)		$215,297.34	$19,339.56	$204,395.58	$155,687.70	$2,446.86	$597,167.04

EXHIBIT A, Schedule 1.

INCOME RECEIVED ON PATENTS—(CONTINUED)

Patent Number	Product	Manufactured Product Royalty	Manufactured Product License Fees	Imports—Textile Alliance Inc.	Imports—War Trade Board	Miscellaneous
(Brought forward)		$215,297.34	$19,339.56	$204,395.58	$155,687.70	$2,446.86
1152196	Chemical	19.08	.76			
1152197	Chemical	19.08	.76			
1152930	Chemical	19.08	.76			
1154826	Dye		20.00			
1155765	Dye		33.34			
1157253	Chemical	19.08	.76			
1157257	Optics		50.00			
1158167	Chemical	19.08	.76			
1159233	Optics		33.33			
1159865	Chemical	19.08	.76			
1160471	Dye		20.00			
1161200	Chemical	25.00	100.00			
1162496	Dye		50.00			
1164987	Apparatus	5,179.71	900.00			
1165531	Dye		120.00			
1166346	Dye		20.00			
1169267	Dye	250.42	100.00			
1169404	Dye		25.00			
1169731	Optics		100.00			
1169817	Chemical	19.08	.76			
1169895	Apparatus	3,842.24	150.01			
1170247	Apparatus		100.00			
1172061	Dye		20.00			
1172863	Chemical	19.08	.76			
1172908	Chemical	19.08	.76			
1172925	Chemical	19.08	.76			
1173077	Dye		12.50			
1173241	Apparatus		8.33			
1173532	Chemical	19.08	.76			
1173550	Chemical		33.34			
1175091	Chemical		50.00			
1175490	Chemical		50.00			
1175693	Chemical	19.08	.76			
1178440	Chemical	19.08	.76			
1180365	Apparatus		8.34			
1180815	Apparatus		108.33			
1180985	Dye		12.50			
1181431	Chemical		7.14			
1181485	Chemical	1,290.53	60.00			
1183748	Dye	33.98	100.00		17.50	
1183831	Dye		20.00			
1185637	Chemical	1.86	100.00			
1186339	Apparatus		108.33			
1186686	Apparatus		108.33			
1188191	Chemical	19.08	.76			
1188376	Chemical		50.00			
1188421	Dye		20.00			
1188544	Chemical		12.50			
1188545	Dye		12.50			
1191480	Chemical	2,002.95	98.37			
(Carried forward)		$228,191.15	$22,172.39	$204,395.58	$155,705.20	$2,446.86

EXHIBIT A, Schedule 1. —9.

INCOME RECEIVED ON PATENTS—(CONTINUED)

atent umber	Product	Manufactured Product Royalty	Manufactured Product License Fees	Imports—Textile Alliance Inc.	Imports—War Trade Board	Miscellaneous	Total
(Brought Forward)		$228,191.15	$22,172.39	$204,395.58	$155,705.20	$2,446.86	$612,911.18
93566	Dye	250.42	112.50		1.60		364.52
93829	Dye		33.33				33.33
96127	Dye		64.28				64.28
97315	Apparatus	3,842.26	150.00				3,992.26
97462	Chemical	1,290.53	60.00				1,350.53
97632	Dye		100.00	87.27			187.27
97633	Dye		33.33				33.33
99697	Dye		20.00				20.00
200055	Dye		20.00				20.00
200805	Chemical	19.08	.76				19.84
201607	Apparatus	19.08	.76				19.84
201850	Chemical		33.34				33.34
201968	Dye		25.00				25.00
202260	Dye		25.00				25.00
202995	Chemical	19.08	.76				19.84
205578	Chemical	1,444.44	100.00				1,544.44
206232	Dye	250.42	120.00				370.42
207706	Chemical	19.08	.76				19.84
207707	Chemical	19.08	.76				19.84
207708	Chemical	19.08	.76				19.84
207762	Dye		25.00				25.00
207802	Chemical		133.33				133.33
207981	Dye		50.00				50.00
207982	Dye		50.00				50.00
208134	Apparatus		7.14				7.14
209154	Dye		12.50				12.50
209580	Dye		16.66				16.66
211181	Chemical	19.08	.76				19.84
211394	Chemical	19.08	.76				19.84
212504	Chemical	19.08	.76				19.84
213075	Dye		20.00				20.00
215957	Chemical	19.08	.76				19.84
216059	Chemical	19.08	.76				19.84
216134	Dye		100.00				100.00
216612	Chemical	2,002.81	98.33				2,101.14
217027	Apparatus		50.00				50.00
217028	Apparatus		100.00				100.00
217862	Chemical		100.00				100.00
218423	Apparatus		100.00				100.00
219166	Dye		12.50				12.50
219954	Dye		33.33				33.33
225263	Apparatus	19.08	.76				19.84
225264	Apparatus	19.08	.76				19.84
225755	Chemical	19.08	.76				19.84
228061	Apparatus		8.33				8.33
228879	Chemical		7.14				7.14
231933	Apparatus		8.33				8.33
232551	Dye	10,604.88	700.02			3.27	11,308.17
232552	Dye	10,568.90	699.99			3.27	11,272.16
232620	Chemical	1,570.26	128.32				1,698.58
(Carried Forward)		$260,283.19	$25,540.73	$204,482.85	$155,706.80	$2,453.40	$648,466.97

EXHIBIT A, Schedule 1, —1

INCOME RECEIVED ON PATENTS—(CONTINUED)

Patent Number	Product	Manufactured Product Royalty	License Fees	Imports—Textile Alliance Inc.	Imports—War Trade Board	Miscellaneous	Tot
(Brought Forward)		$260,283.19	$25,540.73	$204,482.85	$155,706.80	$2,453.40	$648.46
1237405	Chemical	1,577.78	148.33				1,726
1238932	Chemical		50.00				50
1239867	Chemical		33.33				33
1243170	Dye			1,195.83	106.97		1,302
1243171	Dye		116.66	3,202.22	648.20		3,967
1243382	Chemical	19.08	.76				19
1244580	Chemical	19.08	.76				19
1251368	Dye		20.00				20
1254364	Chemical	102.92	75.00				177
1255739	Dye		50.00				50
1255740	Dye		50.00				50
1256875	Chemical	19.08	.76				19
1256929	Apparatus		250.00				250
1256930	Apparatus		250.00				250
1261900	Chemical	19.08	.76				19
1261987	Apparatus	1,610.71	20.00				1,630
1264604	Dye		33.33				33
1266896	Dye		14.28				14
1274503	Chemical		33.33				33
1278229	Chemical	2,002.83	98.33				2,101
1278580	Chemical	19.08	.76				19
1280648	Dye		14.28				14
1281494	Chemical		200.00				200
1281775	Apparatus		7.14				7
1285726	Dye		14.28				14
1285727	Dye		50.00				50
1286650	Chemical	19.08	.76				19
1289280	Chemical		200.00				200
1292019	Chemical		33.33				33
1301151	Chemical	19.08	.76				19
1314642	Chemical		100.00				100
1319852	Dye		12.50				12
1322291	Chemical	19.08	.76				19
1330772	Chemical	19.08	.76				19
1336759	Chemical	660.85	78.32				739
Total		$266,410.00	$27,500.01	$208,880.90	$156,461.97	$2,453.40	$661,706

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Patents Me

Patent No.	Date of Application	Date of Patent	Product	Incom Receive
1089797	1/21/1913	3/10/1914	Tanning Material	none
1107107	6/26/1914	8/11/1914	Compounds for tanning skins and process of making them	$ 200.0
1191480	12/4/1913	7/18/1916	Tanning	2,101.3
1203069	3/23/1914	10/31/1916	Tanning	none
1216612	7/2/1914	2/20/1917	Producing Soluble tanning agents.	2,101.1
1237405	8/20/1912	8/21/1917	Production of new tanning materials Neradol D	1,726.1
1254364	3/23/1914	1/22/1918	Compounds suitable for tanning	177.9
1278229	1/29/1917	9/10/1918	Production of water-soluble Products of the Naphthaline series	2,101.1
1281494	12/30/1916	10/15/1918	Tanning Ordaval G and GG	200.0
1289280	4/27/1917	12/31/1918	Tanning	200.0
1336759	12/4/1913	4/13/1920	Soluble Condensation Product & process of making it. Neradol ND	739.17
1414045	9/2/1916	4/25/1922	Tanning	none
1421722	9/2/1916	7/4/1922	Tanning	none
				$9,546.82

Other Badische Tanni

1133108		3/23/1915	Process of producing Soluble tanning agents	$ 177.89
1232620		7/10/1917	Tanning	1,698.58
1395733		11/1/1921	Tanning	none
				$ 1,876.47
				$11,423.29

DEFENDANT'S EXHIBIT No. 108.

The Chemical Foundation, Inc.
Statement Showing Data Re- Tanning Patents for
owned by Badische Anilin & Soda Fabrik.
Patents Mentioned in Testimony by Dr. Karl Holder

Product	Income Received	First Payment Date		Amount	Last Date	
Tanning Material	none					
Compounds for tanning skins and process of making them	$ 200.00	6/3/21	F	$100.00	June	1921
Tanning	2,101.32	9/9/19 1/20/20	F R	20.00 280.08	Dec.	1922
Tanning	none					
Producing Soluble tanning agents.	2,101.14	9/9/19 1/20/20	F R	20.00 280.08	Dec.	1922
Production of new tanning materials Neradol D	1,726.11	1/20/20 9/9/19	R F	280.08 20.00	Dec.	1922
Compounds suitable for tanning	177.92	6/3/21 7/15/21	F R	25.00 7.12	Dec.	1922
Production of water-soluble Products of the Naphthaline series	2,101.16	9/9/19 1/20/20	F R	20.00 280.08	Dec.	1922
Tanning Ordaval G and GG	200.00	6/3/21	F	100.00	June	1921
Tanning	200.00	6/3/21	F	100.00	June	1921
Soluble Condensation Product & process of making it. Neradol ND	739.17	1/8/20 4/19/20	F R	20.00 10.59	Dec.	1922
Tanning	none					
Tanning	none					
	$9,546.82					

Other Badische Tanning Patents Not Mentioned by Dr. Karl

Product	Income Received	First Payment Date		Amount	Last Date	
Process of producing Soluble tanning agents	$ 177.89	6/3/21 7/15/21	F R	$ 25.00 7.12	Dec.	1922
Tanning	1,698.58	9/9/19 1/20/20	F R	20.00 280.08	Dec.	1922
Tanning	none					
	$ 1,876.47					
	$11,423.29					

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formerly

EXHIBIT Q.

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ast Payment			
e		Amount	Other Comments
			Never licensed
1921	F	$100.00	Payment received for license fees only. Product never manufactured.
1922		57.08	There were 6 Licenses in effect at 12/31/22. Four of these were inactive at 12/31/22 and the other 2 paid royalties of $245.82 in year 1921, had decreased to $44.14 in year 1922.
			Never licensed.
1922		57.08	Same as Patent 1191480, (see note).
1922		9.95	Four licenses in effect at 12/31/22. Three of these inactive at 12/31/22.
1922		9.95	Four licenses in effect at 12/31/22. Three of these inactive at 12/31/22.
1922		57.08	Same as Patent 1191480, (see note).
921	F	100.00	Payment received for license fee only. Product never manufactured. Rohm & Haas stated their letter 8/23/21 that their efforts to produce a synthetic Tan under this patent were unsuccessful.
921	F	100.00	Payment received for license fees only. Never manufactured.
922		57.08	Same as Patent 1191480, (see note).
			Never licensed.
			Never licensed.

Karl Holderman

922		$ 9.95	Four licenses in effect at 12/31/22. Three of these inactive at 12/31/22.
922		9.95	Four licenses in effect at 12/31/22. Three of these inactive at 12/31/22.
			Never licensed.

TRANSCRIPT

OF

RECORD

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UNITED STATES V. CHEMICAL FOUNDATION, INC. NO. 127

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CARD 85

DEFENDANT'S EXHIBIT No. 109.

Report of U. S. Tariff Commission entitled "Tariff Information Series No. 23, Census of Dyes and Coal-Tar Chemicals 1920."

(Not Printed)

DEFENDANT'S EXHIBIT No. 110.

Report of U. S. Tariff Commission entiled "Tariff Information, Series No. 26, Census of Dyes and other Synthetic Organic Chemicals 1921."

(Not Printed)

DEFENDANT'S EXHIBIT No. 111.

Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 1922, Census of Dyes and Coal Tar Chemicals 1919."

(Not Printed)

DEFENDANT'S EXHIBIT No. 112.

Report of U. S. Tariff Commission entitled "Report on Dyes and Related Coal-Tar Chemicals, 1918, printed for use of the Committee on Ways and Means of the House of Representatives."

(Not Printed)

J50249

DEFENDANT'S EXHIBIT No. 113.

Report of U. S. Tariff Commission entitled "Tariff Information Series No. 15, Costs of Production in the Dyes Industry, 1918 and 1919, details of costs for a selected list of dyes and intermediates."

(Not Printed)

DEFENDANT'S EXHIBIT No. 114.

Report of U. S. Tariff Commission, entitled "Tariff Information Series No. 11, Census of Dyes and Coal-Tar Chemicals, 1918."

(Not Printed)

DEFENDANT'S EXHIBIT No. 115.

Report of U. S. Tariff Commission entitled "Tariff Information Series No. 6, Census of Dyes and Coal-Tar Chemicals, 1917."

(Not Printed)

DEFENDANT'S EXHIBIT No. 116.

Publication of Department of Commerce, Bureau of Foreign and Domestic Commerce, entitled "Special Agents, Series No. 121, Artificial Dye Stuffs used in the United States, quantity and value of foreign imports and of domestic production during the fiscal year 1913-1914."

(Not Printed)

DEFENDANT'S EXHIBIT No. 117.

COMPARISON OF VALUE OF DYES, DOMESTIC AND IMPORTED CONTROLLED BY THE PATENTS OWNED BY THE CHEMICAL FOUNDATION, INCORPORATED, FOR THE YEARS 1919, 1920, 1921 and 1922 WITH THE TARIFF COMMISSION REPORTS OF TOTAL SALES DOMESTIC AND IMPORTED.

1919, 1920, 1921

Tariff Commission Report	Sales of Domestic Producers	1919	$67,598,855.00
		1920	95,613,749.00
		1921	39,283,956.00
			$202,496,560.00
The Chemical Foundation, Inc.	Income from Domestic Production by years	1919	$9,478.91
		1920	64,871.20
		1921	93,293.41
		1922	102,636.17
			$270,279.69

Based on average royalty of 4%, the approximate value is $6,756,992.00 or 3.33% of Total Domestic sales.

* * * * * * * *

Tariff Commission Report	Value of Imports of Dyes by years	1919	$3,625,929.00
		1920	5,763,437.00
		1921	5,156,779.00
			$14,546,145.00
The Chemical Foundation, Inc.	Income from Imports by years	1919) 1920)	83,291.70
		1921	173,323.67
		1922	108,677.50
			365,292.87

Based on royalty of 10%—the value is $352,928.70 or 25.11% of total Import Sales.

* * * * * * * *

Tariff Commission Report	Total Sales of Domestic and Imported Products for three years	Domestic	$202,496,560.00
		Imported	14,546,145.00
			$217,042,705.00

The Chemical Foundation, Inc.	Value of Sales of Domestic and Imported Products under The Chemical Foundation, Inc. patents for four years.	Domestic	$6,756,992.00
		Imported	3,652,928.70
			10,[illegible]09,920.70

The Value of products sold for the four (4) years under The Chemical Foundation, Inc. patents represents 4.79% of total sales for three (3) years.

DEFENDANT'S EXHIBIT No. 118.

COMPARISON OF POUNDS OF DYES—DOMESTIC & IMPORTED CONTROLLED BY THE PATENTS OWNED BY THE CHEMICAL FOUNDATION, INCORPORATED,

FOR THE YEARS 1919, 1920, 1921 & 1922 WITH THE TARIFF COMMISSION REPORTS OF TOTAL SALES DOMESTIC & IMPORTED 1919, 1920 & 1921

Tariff Commission Report	Domestic Production	1919	63,402,194 lbs
		1920	88,263,776 "
		1921	47,513,762 "
			199,179,732 lbs
The Chemical Foundation, Inc.	Produced under Chemical Foundation patents 2/10/19 to 12/31/22		3,273,405 lbs or 1.64
Tariff Commission Report	Imports of Dyes	1919	3,043,150 lbs
		1920	3,402,582 "
		1921	3,914,036 "
			10,359,768 "
The Chemical Foundation, Inc.	Imports of Dyes Under Chemical Foundation, Inc. patents 2/10/19 to 12/31/22		1,346,834 lbs or 13

DEFENDANT'S EXHIBIT No. 119.

COPY

November 11, 1920.

G-37192
R-37698

F. M. Eugen Blass, Esq.,
209 Union Avenue,
Long Branch, New Jersey.

Dear Sir:—

In answer to your letter dated October 1, 1920 addressed to Mr. Francis P. Garvan, Alien Property Custodian, and previous correspondence on the subject of your application for letters patent of the United States No. 63231 and 63232, you are advised as follows:

Based upon the record of the Patent Office, that you were a resident at Mulheim-on-the-Rhine, Germany, your rights in these applications was demanded by the Alien Property Custodian under the terms of the Trading with the Enemy Act. By virtue of such demand the Alien Property Custodian conveyed such interest to the Chemical Foundation, Incorporated. Upon your showing that at the time of our demand you were a resident of the United States, we have secured from the Chemical Foundation, Incorporated, release and assignment conveying to you said applications, the effect of which would be to reinstate you in all of your rights thereunder as such rights existed at the time of our action. Sometime since Mr. Ramsay Hoguet sent to you a form of release for execution by you and stated that upon the delivery of such release, the assignment would be delivered to you. This office holds the assignment properly executed by the Chemical Foundation, Incorporated, and upon delivery of the release referred to will deliver to you the assignment. You will see from the above that the office is ready to satisfy you as to all of your rights upon your compliance with the proper request of the Alien Property Custodian in the matter.

Very truly yours,
BUREAU OF TRUSTS.
(Sgd.) By CHAS. B. CALVERT.

CBC/GMS

DEFENDANT'S EXHIBIT No. 120.

Publication entitled "Temporary list of Patents and Copyrights transferred to The Chemical Foundation, Inc."

(Not Printed)

DEFENDANT'S EXHIBIT No. 121.

Publication entitled "Patents Transferred to The Chemical Foundation, Inc.," dated June, 1921.

(Not Printed)

DEFENDANT'S EXHIBIT No. 122.

Booklet entitled "Vat Dye Patents, Owned by The Chemical Foundation, Inc."

(Not Printed)

DEFENDANT'S EXHIBIT No. 123.

Booklet entitled "Drug and Medicinal Patents, owned by The Chemical Foundation, Inc."

(Not Printed)

DEFENDANT'S EXHIBIT No. 124.

Book entitled "Electro-Chemical and Electro-Metallurgical Patents owned by The Chemical Foundation, Inc."

(Not Printed)

DEFENDANT'S EXHIBIT No. 125.

Book entitled "Paper Patents owned by The Chemical Foundation, Inc."

(Not Printed)

DEFENDANT'S EXHIBIT No. 126.

May 23, 1922.

Hon. Thomas W. Miller,
Alien Property Custodian,
Washington, D. C.

Sir:

As you are no doubt aware, Section 10 of the Trading with the Enemy Act provides that suit to recover compensation for use and enjoyment under licenses granted by the Federal Trade Commission may be brought within one year after the end of the war, which date has been fixed as July 2, 1922.

The Chemical Foundation, Inc., as owner of various properties under conveyances from the Alien Property Custodian, is now preparing and will file before said date suits to recover such compensation from the licensees of said properties. After careful consideration of the provisions of the Trading with the Enemy Act, The Foundation has determined to make claim only for such compensation as has accrued since the respective dates of the conveyances of such property by the Alien Property Custodian to The Foundation. It disclaims all rights to compensation under such licenses prior to such dates.

Yours truly,

THE CHEMICAL FOUNDATION, INC.

By

DEFENDANT'S EXHIBIT No. 127.

ALIEN PROPERTY CUSTODIAN
ARLINGTON BUILDING
VERMONT AVENUE AND H STREET
WASHINGTON

CJS/FH. May 25, 1922.

Chemical Foundation, Inc.,
81 Fulton Street,
New York, N.Y.

Gentlemen:—

I am in receipt of your letter of May 23rd, and note that it is your intention to file suit for the recovery of royalties accruing under patents sold to the

mic acid, cumidin, dehydrothiotoluidin, diaminostilbene, dianisidin, dichlorphthalic acid, dimethylanlin, dimethylamidophenol, dimethylphenylbenzylammoniumhydroxide, dimethylphenylenediamin, dinitrobenzol, dinitrochlorbenzol, dinitronaphthalene, dinitrophenol, dinitrotoluol, dioxynaphthalene, diphenylamin, ethylbenzyl aniline, hydroxyphenylarsinic acid, metanilic acid, methylanthraquinone, naphthylamin, naphthylenediamin, nitranilin, nitroanthraquinone, nitrobenzaldehyde, nitrobenzol, nitronaphthalene, nitrophenol, nitrophenylenediamin nitrosodimethylanilin, nitrotoluol, nitrotoluylenediamin, phenol, phenylenediamin, phenylhydrazine phenylnaphthylamin, phenylglycocoll, phenylglycocoll-orthocarboxylic acid, phthalic acid, phthalic anhydride, phthalimid, resorcin, not suitable for medicinal use, salicylic acid and its salts not suitable for medicinal use, sulphanilic acid, thiocarbanilid, thiosalicylic acid, tetrachlorphthalic acid, tetramethyldiaminobenzophenone, tetramethyldiaminodiphenylmethane, toluol sulphochloride, toluol sulphamid, tribromphenol, toluidin, tolidin, toluylenediamin, zylidin, or any sulphoacid of sulphoacid salt of any of the foregoing, or of any of the products provided for in Group I; all other products by whatever name known which are employed in the manufacture of any of the products provided for in Group II or III and which are obtained, derived, or manufactured in whole or in part from any of the foregoing or from any of the products provided for in Group I; anthracene having a purity of 30 per cent or more, carbazol having a purity of 65 per cent or more, metacresol having a purity of 90 per cent or more, naphthalene having a solidifying point of 79° centigrade or above, orthocresol having a purity of 90 per cent or more, paracresol having a purity of 90 per centum or more; all distillates of coal tar, blast-furnace tar, oil-gas tar, and water-gas tar, which on being subjected to distillation yield in the portion distilling below 190° centigrade a quantity of tar acids equal to or more than 5 per cent of the original distillate; all mixtures, including solutions, consisting in whole or in part of any of the foregoing except sheep dip and medicinal soaps, not otherwise specially provided for in this Act; all the foregoing not colors, dyes, or stains, color acids, color bases, color lakes, leuco-acids, leuco-bases, indoxyl, indoxyl compounds, ink powders, photographic chemicals, medicinals, flavors, synthetic resin-like products, synthetic tanning materials, or explosives, and not otherwise specially provided for in this title, 40 per cent ad valorem.

"Group III. All colors, dyes, or stains whether soluble or not in water, color acids, color bases, color lakes, leuco-acids and leuco-bases whether colorless or not, indoxyl and indoxyl compound; ink powders; photographic chemicals; acetanilid suitable for medicinal use, acetphenetidin, acetylsalicylic acid, antipyrine, benzaldehyde suitable for medicinal use, benzoic acid suitable for medicinal use, betanaphthol suitable for medicinal use, phenolphthalein, resorcin suitable for medicinal use, salicylic acid and its salts suitable for medicinal use, salol, and other medicinals; sodium benzoate; saccharin, methylsalicylate, coumarin, and other flavors; synthetic phenolic resin and all resinlike products prepared from phenol, cresol, phthalic anhydride, coumarone, indene, or from any other article or material provided for in Group I or II, all of these products whether in a solid, semisolid, or liquid condition; synthetic tanning materials; picric acid, trinitrotoluol, and other explosives except smokeless powders; all of the foregoing when obtained, derived, or manufactured in whole or in part from any of the products provided for in Group I or II; natural alizarin and natural indigo, and colors, dyes, stains, color acids, color bases, color lakes, leuco-acids, leuco-bases, indoxyl, and indoxyl compounds obtained, derived, or manufactured in whole or in part from natural alizarin or natural indigo; natural methyl salicylate or oil of wintergreen or oil of sweet birch; natural coumarin; and all mixtures, including solutions, consisting in whole or in part of any of the articles or materials provided for in this group, 45 per centum ad valorem.

"Sec. 501. That on and after the day following the passage of this act, in addition to the duties provided in section 500, there shall be levied, collected, and paid upon all articles contained in Group II a special duty of 6 cents per pound, and upon all articles contained in Group III a special duty of 7 cents per pound: *Provided*, That the special duties herein provided for on colors, dyes, or stains, whether soluble or not in water, color acids, color bases, color lakes, leuco-acids, leuco-bases, indoxyl and indoxyl compounds, shall be based on standards of strength which shall be established by the Secretary of the Treasury, and that upon all importations of such articles which exceed such standards of strength the special duty of 7 cents per pound shall be computed on the weight which the article would have if it were diluted to the standard strength, but in no case shall any such article of whatever strength pay a special duty of less than 7 cents per pound: *Provided further*, That beginning six months after the date of passage of this act no package containing any such color, dye, stain, color acid, color base, color lake, leuco-acid, leuco-base, indoxyl, or indoxyl compound shall be admitted to entry into the United States unless such package and the invoice shall bear a plain, conspicuous, and truly descriptive statement of the identity and percentage, exclusive of diluents, of such color, dye, stain, color acid, color base, color lake, leuco-acid, leuco-base, indoxyl, or indoxyl compound contained therein: *And provided further,* That beginning six months after the date of passage of this act, no packages containing any such article shall be admitted to entry into the United States if it or the invoice bears any statement, design, or device regarding such article or the ingredients of substances contained therein which is false, fraudulent, or misleading in any particular. In the enforcement of this section the Secretary of the Treasury shall adopt a standard of strength for each dye or other product which shall conform as nearly as practicable to the commercial strength in ordinary use in the United States prior to July 1, 1914.

"The Secretary of the Treasury is hereby authorized to make regulations for the enforcement of the provisions of this title.

"Sec. 502. That paragraphs 20, 21, 22, 23, 179, 394, 452, and 514; and the provision for salicylic acid in paragraph 1; and provisions for salol, phenolphthalein, acetanilid, acetphenetidin, antipyrine, acetylsalicylic acid, and aspirin in paragraph 18; and the provision for benzoate of soda in paragraph 67; and the provisions for carbolic and phthalic acids in paragraph 387 of an act entitled 'An act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' approved October 3, 1913, are hereby repealed: *Provided,* That all articles which may come within the terms of paragraphs 1, 5, 14, 29, 37, 46, 63, 501, and 538 of said act of October 3, 1913, as well as within the terms of Group I, II, or III of section 500 of this act, shall be assessed for duty or exempted from duty, as the case may be, under this act.

"Sec. 503. That on and after the day when this act shall go into effect all of the foregoing goods, wares, and merchandise previously imported, for which no entry has been made, and all of the foregoing goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subject to the duties imposed by this act, and to no other duty, upon the entry or the withdrawal thereof: *Provided,* That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse said duties shall be levied and collected upon the weight of such merchandise at the time of its entry.

"Sec. 503 (a). During the period of two years after the date of the approval of this act it shall be unlawful for any person or persons or corporation to import or bring into the United States, or any of its possessions, except under license previously obtained, as hereinafter provided, from the United States Tariff Commission, any of the products enumerated in section 500 of this act, or any product derived directly or indirectly from coal tar including crude products and intermediate products, as well as dyestuffs, medicinals, and other finished products, and including mixtures and compounds of such products and other products.

"To meet the reasonable expenses of the United States Tariff Commission in the execution of the duties imposed upon it by this act, the cost of maintenance of a suitable office at a place to be designated by the commission, the commission may charge a reasonable fee for the issue of each license. Should the moneys received from such fees in any year be less than the said expenses the deficiency shall be paid out of the appropriation for 'expenses of collecting the revenue from customs.'

"Sec. 503 (b). The said United States Tariff Commission shall issue licenses to import for domestic consumption such of the products covered by section 503 (a) of this act, as may be unobtainable from domestic sources and also such and such only of the said products as may, though obtainable from domestic sources, be unobtainable on reasonable terms as to price, quality, and delivery. The commission shall limit the issue of licenses to import any product as nearly as may be to the quantities required by the actual current needs of the consuming industries in the United States, having regard to the necessities of such industries as are unable to determine beforehand their requirements. Nothing herein contained shall authorize the commission to refuse a license to a manufacturer, person, or agent to import for actual use by the manufacturer a foreign dye when such domestic dye of equal quality is not immediately available for his use. The commission in passing upon applications for such licenses may regulate its own practice and procedure, but shall so regulate the same as to prevent all avoidable delay.

"Sec. 503 (c). Any product described in section 503 (a) of this act which shall be imported into the United States or any of its possession without license, as provided in said section 503 (a), shall be forfeited and shall be destroyed whenever and wherever found.

"Sec. 503 (d). Any person subject to the jurisdiction of the United States who shall, either as principal or as accessory, import or attempt to import or aid in importing any product described in section 503 (a) of this act without license as therein provided shall be fined not exceeding $5,000 or the value of such product at the time of importation, whichever shall be greater, or shall be imprisoned for not more than one year, or both.

"Sec. 504. Except as otherwise herein specially provided, this act shall take effect on the day following its passage."

DEFENDANT'S EXHIBIT No. 129.

House of Representatives.

66th Congress,
1st Session.

Report
No. 209.

Importation of Coal-Tar Products.

August 1, 1919.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Longworth, from the Committee on Ways and Means, submitted the following

Report.

[To accompany H. R. 8078.]

The Committee on Ways and Means, to whom was referred H. R. 8078, "A bill to regulate the importation of coal-tar products, to promote the establishment of the manufacture thereof in the United States, and, as incident thereto, to amend the act of September 8, 1916, entitled 'An act to increase the revenue, and for other purposes,'" having had the same under consideration, report it back to the House without amendment and recommend that the bill be passed.

This bill amends the present law in four important particulars. In its technical details it follows substantially the recommendations of the Tariff Commission in bringing the phraseology of the law up to date so as to prevent evasions of its provisions through undervaluation or false designation of articles sought to be imported. Experience in the administration of the existing law has made it clear that it is not so worded as to completely give effect to the intent of Congress, and it is believed that these technical changes will fulfill that purpose. In the second place, it repeals that provision under which the specific duties shall be reduced at the rate of 20 per cent a year for five years. It increases the rates of duty from 15 per cent ad valorem and 2½ cents a pound on the intermediates to 40 per cent ad valorem and 6 cents a pound, and upon the finished product from 30 per cent ad valorem and 5 cents a pound to 45 per cent ad valorem and 7 cents a pound. Expert chemical opinion was unanimous that the rates of duty on the intermediates should be substantially the same as those upon the finished product. In the fourth place, the bill provides that for two years no foreign dyes can be imported except under a license granted by a board created in the bill.

The bill subdivides, as does the present law, the materials used in the dye industry into three classes—the crudes, the intermediates, and the finished product. The process of producing the crudes is comparatively simple, they being actually present in coal tar and only an isolation. Any country which like this has an abundant supply of cheap coal and a great steel industry requiring much coke has an unlimited supply of the raw material, and the crudes therefore require no protection. But with regard to the intermediates the situation is entirely different. Their production requires the most elaborate chemical processes, which can be carried out without the waste of a large proportion of the raw materials used only by men of the most profound chemical knowledge and long experience, and such men are not yet available in sufficient numbers in this country. Under these circumstances, therefore, it is apparent that this industry requires for the present at least a very high degree of protection.

All this is still more true of the finished product, which may take one of six different forms. By further chemical processes, in some cases very simple, these intermediates may be converted into dyes, perfumes, pharmaceuticals, tanning materials, high explosives like T. N. T. and picric acid, or into poison gas. As a class these finished products, requiring as they do further labor and skill of a class plentiful in Germany but still very scarce in this country, need a greater though not much greater measure of protection than do the so-called intermediates.

The remarkable interdependence of the dye and the explosive industry is well illustrated by the fact that once having obtained by a long series of elaborate chemical operations a certain intermediate, that intermediate may be converted by one very simple chemical change into sulphur black, one of the most widely used dyes, or into picric acid, one of the most important of high explosives. The technical knowledge and skill, the materials and the apparatus necessary to make high explosives as well as poison gases and their antidotes are precisely what are to be found in any well-equipped dye works and nowhere else. A nation, therefore, which has a thoroughly complete dye industry capable of supplying its dye needs is always ready for a defensive or offensive war so far as the production of explosives and chemical gases are concerned. If, as seems likely, we are entering upon a period of international disarmament, the possession of such an industry becomes of infinite importance. In a world disarmed a nation possessing such a potential arsenal would be in a position to overwhelm any nation which had none and would be practically immune from attack.

An important, if not the most important, phase of this industry is its bearing upon the advancement of medical and industrial chemistry. It is the one industry which deals on a colossal scale with organic chemistry and it is upon organic chemistry that the progress of modern medicine rests. Salvarsan, for instance, was developed in a dye-works laboratory and is the first known certain cure for one of the most terrible scourges of humanity. It is confidently predicted that upon the further development of organic chemistry will rest the discovery of other cures for such devastating diseases as tuberculosis and even cancer.

This development rests upon the further development in this country of skilled research chemists and it is only in a dye laboratory that large numbers of such chemists can find a livelihood. Accordingly, a well-developed dye industry in this country will furnish a tremendous reservoir of technically trained men and of scientific knowledge upon which the most important industries of the country may draw in time of peace and the Nation itself in time of war or of threatened war.

The economic importance of the industrial side of this question is illustrated by the fact that industries in this country producing nearly $3,000,000,000 worth of goods each year are absolutely dependent upon coal-tar dyes, and industries producing as much more annually are indirectly dependent upon coal-tar dyes and kindred materials.

For many years before the war we had practically no dye industry in this country. Such dye works as we had were merely assembling plants for German materials and supplied only about one-tenth of the

American market. Accordingly, all the huge industries requiring dyestuffs were absolutely at the mercy of Germany and could have been dealt a crushing blow by Germany at any time the German trust saw fit. That Germany realized this is illustrated by a dispatch sent on March 13, 1915, by Count von Bernstorff to his own Government, as follows:

Serial No. 432 of March 13, 1915. It is reported to me by Hossenfelder, telegram No. 4, that the stock of dyes in this country is so small that by a German embargo about 4,000,000 American workmen might be thrown out of employment.

As a matter of fact, Germany early in 1915, by the withdrawal of her supplies of dyes, attempted to force this Government into hostile action against Great Britain, and if she had had the power to send her own textiles into this country she would have inflicted a blow upon our textile industry from which probably it would have never recovered.

The war forced upon America the building up of the dye industry, for a situation arose under which many industries came to a practical standstill and even the Government itself was in danger of having to cease to function in many important branches. For instance, the difficulty of securing printers' ink, which was entirely dependent upon dyes, brought about a situation under which the closing of the Government Printing Office seemed imminent and the Bureau of Printing and Engraving was in most serious embarrassment. The dyes necessary for even cheap and necessary clothing jumped in price in some cases 5000 per cent and in other cases were not procurable at all. Fortunately, we had in this country an unlimited supply of the raw materials and patriotic Americans in all branches of industry set to work to remedy the situation by making their own dyes.

Vast amounts of capital were risked without any assurance that it would not in the end be a total loss, as no one could guess how long the war would last, and as a result to-day we have in this country a dye industry which, although it is a mere baby, is able to supply the country's needs in most essentials and will undoubtedly be able to supply the missing colors if given a reasonable time to get surely on its feet.

Under such conditions it would seem impossible that any loyal American would not realize the absolute necessity of saving and fostering such an industry as this. Only three methods of legislative assistance have been suggested—a tariff, a tariff supplemented by an antidumping provision, and a tariff supplemented by a licensing system. Your committee believes that only the last of these methods would be effective, and has accordingly recommended its adoption.

The plan as provided in this bill is to form a licensing commission, its members to be designated by associations engaged in and representative of both the producing and consuming industries. This commission will have power to grant licenses for the importation of foreign dyes under certain conditions. It is positively commanded to grant licenses to any applicant to import any foreign dye which is not obtainable in this country from domestic sources, and any dye which, while made in this country, is not obtainable at a reasonable price, of good quality, and within a reasonable time. Thus absolute assurance is given any American consumer of dyes that he can at any time obtain the foreign product where the American industry is unable to supply on favorable terms. Conversely, it will absolutely exclude importation of dyes which are made in this country of satisfactory quality and at fair prices and insure the development and extension of the manufacture of those dyes. Furthermore, the applications for the importation of such dyes as are not made here will promptly stimulate our manufactures to make the same dyes by showing that a strong demand exists for them and will thus guide the industry into the development which is really required.

During the life of this system a substantial number of dyes not made in this country will no doubt be imported, and, as they will be subject to the rates of duty provided in this bill, will produce a very substantial revenue for the Government.

Your committee does not suggest a license system as a permanent governmental policy, but feels that nothing else can meet the present emergency. Accordingly your committee recommends the license plan, together with an increased tariff, because as soon as the peace treaty is ratified the new American dye industry will be exposed to competition from an adversary so powerful and so desperate that no practical rate of duty can offer any real defense. The whole huge German dye industry, capable at the time of supplying the entire demand of the world, was combined in 1916 into a single immense trust, organized on purpose to fight its way back to the former German world monopoly. The combination is even now enormously prosperous. Starting with assets of nearly half a billion dollars, invested in the Empire's most remunerative industry, plants of the trust have been busy throughout the war making all Germany's poison gases, many of her munitions, and at the same time enough dyes to accumulate a reserve capable of flooding the market of this or any other country. Recent observers report that the working forces have been held together complete and intact throughout the war and since its cessation, and that one at least of the component companies has made large additions to plants since the armistice.

The resources of the trust are therefore colossal its plants are so huge and organized for such vast production that unless it can regain most of its former world market half its equipment must lie idle and the other half run at low efficiency. It must then recover its world market or cease to exist as a profitable business. Even before the war, when its supremacy was uncontested, the German industry's competition was utterly unscrupulous. It practiced ruthlessly every form of corrupt and unfair competition known to commerce. What can be more certain, then, than that in the almost immediate future, when instead of a comfortable and safe supremacy it faces possible destruction, it will attack all competitors with reckless disregard of all considerations of business decency?

This attack, unless Congress acts very speedily, will be concentrated upon us. Great Britain, France, and Japan have protected their own Government-aided dye industries by license laws essentially similar to the one herein recommended. The market of the United States is therefore, except that of China, Germany's last opening. To penetrate it and destroy our domestic producers the trust will surely be glad to spend millions of its surplus. Not many millions would be needed. A very few adroitly used in practically giving away selected dyes would kill the business of even the strongest of our companies and leave us once more at the trust's mercy. Such an onslaught would be dangerous even if Germany's cost of production was as high as ours; but they are not. Even if the prices of labor and material are equal, an old dye industry can always undersell a new one. In making textiles or typewriters or paper or almost any other article that could be mentioned the maker gets practically all of his raw material back in finished product. In making dyes, however, some is lost in each of the many steps in the manufacture. How great each of these successive losses is depends on the experience of the manufacturer. The total of his successive losses when the work is done by an inexperienced man is enormous. We, new at the job, lose half our raw material as the work goes on. The Germans, who have been at it for 40 years, lose but a trifling proportion. Their costs are thus far below ours and are likely to remain so, though in a decreasing degree, for a long time. An attempt to meet under such conditions such an assault from such an adversary would require unheard of tariff rates and it is highly probable that by undervaluation, rebates, and concessions, coupled with the old German method of full-line forcing and bribery, the German trust could nullify their effect.

No antidumping law yet suggested seems at all likely to meet the conditions in this particular industry on account of its immense complexity and the ease with which imports can be camouflaged by the skilled and unscrupulous German chemist. It is apparent, then, that any tariff bill which could possibly become law might, and, indeed, probably would, fail to insure the development of this industry, which is so essential to our national defense and well-being. It is equally clear that the proposed license plan, faithfully administered, will certainly furnish the necessary protection and that, too, without sacrificing revenue. Your committee believes that the industry is too important to be risked, and therefore recommends the adoption of this certain though unusual means of defense. Your committee makes this recommendation also as the only suitable answer to the similar British, French, and Japanese license laws. Those laws keep the competition of our dyes out of Great Britain, France, and Japan. Your committee does not believe that we should aid in building up their new subsidized industries by giving them at the expense of our producers, unlimited access to our market. When by this simple expedient we can at the same time make sure of obtaining every foreign product we need and of building up our own vitally important industry, we feel that Congress ought not to hesitate or rest content with any doubtful remedy.

DEFENDANT'S EXHIBIT No. 130.

CALENDAR No. 380.
SENATE.

66th Congress, 2d Session.

Report No. 425.

IMPORTATION OF COAL-TAR PRODUCTS

February 13 (calendar day February 14), 1920.—Ordered to be printed.

Mr. Watson, from the Committee on Finance, submitted the following

REPORT.

[To accompany H. R. 8078.]

The Committee on Finance, to whom was referred the bill (H. R. 8078) to regulate the importation of coal-tar products, to promote the establishment of the manufacture thereof in the United States, and, as incident thereto, to amend the Act of September 8, 1916, entitled "An Act to increase the revenue, and for other purposes," having considered the same, report favorably thereon with the recommendation that the bill do pass with amendments.

Under the tariff act of September 8, 1916, the coal-tar chemicals are divided into three groups:

Group 1 comprises the crudes, which are on the free list;

Group 2 the intermediates, dutiable at 15 per cent and 2½ cents per pound; and

Group 3, finished products, dutiable in part at 30 per cent and part at 30 per cent and 5 cents per pound.

Before the Great War, Germany produced $68,300,000 worth of artificial dyes, which was three-fourths of the world's consumption. In 1914 there were seven establishments in the United States engaged in this industry. There was $3,000,000 capital invested and about 500 people employed, and the salaries and wages paid amounted to $500,000. The production was valued at $3,596,795.

The conditions brought about as a result of the war forced the people of this country to a full realization of their dependence upon Germany for dyes. They found that many industries needed these articles; that very little capital was invested in plants for the manufacture of either dyes or intermediates; and that prior to 1914, it had been deemed unwise by all manufacturers to engage in this industry, because it was universally believed to be impossible to compete with Germany in the manufacture of these products. But the war caused men in this country to engage in the industry for patriotic reasons. Old factories were enlarged; new companies were organized, and there was a great increase in the output as well as a steady improvement in the quality, uniformity, and variety of the dyes made in this country. The producers found many of the dyes covered by patents owned by citizens of Germany, which made it impossible to develop the industry here until the patents could be taken over by the Alien Custodian, which was done.

The consumption of dyes in the manufacturing establishments in the United States was about $25,000,000 a year, but these dyes were absolutely necessary in industries producing $3,000,000,000 worth of goods annually.

The Tariff Commission submitted a table of production of dyes in this country in 1918, and the amount produced by the 77 companies making finished dyes was 58,464,866 pounds of the value of $62,026,390. This was a clear gain over the production of 1917, which amounted to 45,977,246 pounds valued at $57,796,288; and when it is remembered that there was imported into this country in 1914 over 45,000,000 pounds, the change is wonderful, and it is the best evidence of what can be done in this country.

It is true that at this time there are many important dyes which are not produced in this country, but the men who have become interesed in the industry believe that, in time and with proper protection and regulation, they will be able to supply the demand. More than 300 different dyes were made in the United States in 1918, and many dyes which were not produced in 1917 were on the list of American products in the year 1918. One of the large producers informed the committee that he was now producing several vat dyes, but he was not ready to put them on the market, and did not intend to offer them to the public until he was satisfied that they were equal to the foreign product.

The total production of the 127 companies producing intermediates in 1918, was 357,662,251 pounds, valued at $25,382,892.

The development of the manufacture of synthetic drugs is of the greatest public importance. During the year 1918 there were 32 different drugs of coal-tar origin made by 31 firms in the United States, and the output was more than 3,500,000 pounds, valued at $8,000,000. Three of these synthetic drugs were in great demand during the recent influenza epidemic.

The coke industry in the United States in 1918 amounted to 25,900,000 net tons by-product coke, and 30,480,000 net tons beehive coke. The by-products obtained in the manufacture of coke in 1917 were of the value of $206,313,000. The total output of finished products of coal tar, exclusive of poison gases and explosives, was 75,494,000 pounds valued at $83,095,404. The research work in the coal-tar chemical industry gave employment to over 2000 chemists, or technically trained men, and fully 25,000 men without technical training, and they were paid from $10 to $75 per week. Only 15.4 per cent received less than $25 per week.

There are 11,037 establishments in the United States, employing 1,070,460 people, which are directly dependent on dyestuffs, and there are 56,949 establishments employing 1,037,183 people, which are indirectly dependent on dyestuffs, and there were various times in the early part of the war when 400,000 people might have been put out of work for want of dyestuffs.

In 1918 there were employed in the 187 different dye factories in the United States 27,000 people, and they produced 29,000 tons of dyes together with about 9000 tons of photographic chemicals, flavors, perfumes, etc., and the intermediates needful for dyes and for other purposes, largely military.

Dyestuffs are directly related to several of the gases used in war, and for that reason the Chemical Warfare Service is deeply interested in the development of the dye industry in the United States, for the same crudes, or intermediates, that are used in making dyes are also outlined in making gases.

Now that the war is over and the dye industry of Germany is seeking a market for its products in this country, the producers in the United States will have many serious difficulties to meet if proper protection is not given them. If legislation is not enacted to protect and encourage the dye industry in this country, Germany will do as she did before the Great War. She will have her factories produce more than they can sell at home, and the surplus will be exported to this country and sold at a price which home producers can not meet. And the result will be that Germany will destroy the domestic manufacture and secure a monopoly of the dye industry, as she did prior to the war. Thousands of distinct dyes were produced in German factories, and over 900 of these were actually sold in large quantities in American markets before the war.

There is another thing which the people of the United States must remember, and that is that all the most important explosives of the present day are either coal-tar products or the result of chemical processes requiring the use of coal tar, and in all dyestuff factories there is unavoidable production of large quantities of substances which are directly available for conversion into explosives, so that it is important that the Government aid the industry in every way possible.

When the importation of dyes from Germany was cut off by the war, it was encouraging to the people of this country to see the large number of people who went into the industry to serve the Government. There were large establishments and small ones, everyone doing its full part. They commenced with the dyes which were the easiest to produce, and gradually expanded the production until today they are producing about 90 per cent of the dyes needed in this country.

One who has read the story of the work of the German Government in the United States just prior to the war, knows that the chemical industry in this country which was under the control of the German Government was the center of espionage. German propaganda and direct Government activities. They prevented the use of coal-tar products in the munition industry. They undertook to corner the supply of phenol in the United States, and prevent its use in the manufacture of high explosives, and at the outbreak of the war they stopped its importation.

The United States is virtually independent of Germany so far as the dye industry is concerned, and it is our duty to keep it so. We know what Germany will do to regain her hold on the industry in this country. We know that she will resort to State aid, cartel, combinations, trade export premiums, dumping, bribery, espionage, and propaganda. She did this before, and she will do it again.

Your committee recommends that the sections of the House bill providing for the issuance of licenses to persons desiring to import foreign dyes for domestic consumption be stricken out, because we are opposed to a license system in the United States and do not desire to see the Government take the initial step in entering upon such a system. The reasons for this are as numerous as they are obvious, and we do not deem it necessary to enter upon any extended argument as to the merit of our contention.

Your committee further recommends that instead of the license system provided for in the House bill there shall be established an embargo on the admission of dyes to this country to be administered by the Tariff Commission in accordance with such rules and regulations as the commission may adopt within the limitations imposed by this act.

Section 504 provides that for three years after the approval of this act no dye or intermediate shall be admitted to entry into the United States, or any of its possessions, unless the Tariff Commission shall determine that such article or a satisfactory substitute therefor is not obtainable in the United States or any of its possessions on reasonable terms as to quality, price, and delivery; and, furthermore, that such article is required for use by an actual consumer.

Section 505 defines the term "reasonable quality"; section 506 defines the expression "reasonable terms as to price"; and section 507 defines "reasonable terms as to delivery," as used in section 504.

Section 508 provides that the Tariff Commission may make all rules and regulations necessary and proper for the accomplishment of the purposes of this act, provided that no article enumerated in either group 2 or group 3 of section 500 of the act shall be admitted to entry into the United States or any of its possessions in any case where the Tariff Commission shall determine that the actual consumer for whose use such article is intended has received or may obtain a six months supply of the article he seeks to import.

Section 508 further provides that no article enumerated in either of the above groups which may be useful both as a substitute for a domestic article and at the same time suitable for use for some other purpose for which the domestic article is not adapted shall be admitted to entry unless the Tariff Commission shall determine that such article is imported for such other purpose.

Section 509 provides that the Tariff Commission shall have exclusive jurisdiction of the distribution among the consumers in the United States of any of the articles which may be available under the treaty of peace with Germany.

Section 510 provides that notwithstanding the prior termination of the present war, the provisions of the trading-with-the-enemy act which prohibit or control the importation into the United States of dyes or intermediates are continued for a period of 90 days beginning with the date of taking effect of this act.

Sections 511 and 512 confer upon the Tariff Commission other powers deemed essential for the successful execution of this act, while sections 513 and 514 fix penalties for the violation of any of its provisions.

Section 518 declares it to be the intent of Congress in enacting this act to build up, develop, and protect the dyestuffs manufacturing industry in the United

States and also thereby practically lays the injunction upon the Tariff Commission to so construe and effectuate such intent.

Without going into the details of the operation of this system your committee believe that will at once protect the manufacture of all those dyes and intermediates that are now being produced in the United States, will enable those who desire to manufacture those dyes and intermediates that are not now being produced in the United States to embark with confidence upon their production, will enable all the dye users in the country to obtain on reasonable terms as to quality, price, and delivery all the dyes needed for their purpose whether produced here or abroad, and will within the time limit fixed by the bill establish a complete dye industry in this country that will fully meet the demands of the American consumer, and permanently establish this great industry on an enduring basis.

Your committee believe that, inasmuch as this bill provides for a system of embargoes that will protect the manufacturers of dyes in such imports alone—those provided by the existing law—and therefore recommend that the rates provided in the House bill shall be amended by the insertion of those provided by the law approved on September 8, 1916.

Your committee believe that some import duties are necessary in order to protect those domestic manufacturere who desire to enter upon the production of those dyes and intermediates that are not now being made in the United States, and therefore by a majority vote recommend that the existing rates be retained. We therefore recommend the passage of the bill with these amendments.

DEFENDANT'S EXHIBIT No. 131.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Sts. N.W.
Washington, D. C.

January 14, 1921.

Navy Department,
Bureau of Ordnance,
Washington, D. C.

Attention of Commander A. L. Norton

Dear Sir:—

Attached you will find a list of one hundred and sixty (160) Patents which have been assigned to The Chemical Foundation, Inc., and which Dr. Van Doren agreed to license to the Government. I have sent the original of this list to Dr. Van Doren at his request, but will suggest that you write The Chemical Foundation, Inc., 81 Fulton Street, New York, attention of Dr. Van Doren, and request him to execute an Assignment to the Government, covering this list or such a part of it as your Department may desire.

I will appreciate it if you will do this without awaiting the completion of the full list of Patents you desire, as the placing of this Assignment on record would materially assist us in the final adjustment of our records.

I received this morning the correspondence in regard to the gyroscope and other patents and will give this immediate attention.

Very truly yours,

(Sgd.) J. R. ZIMMERMAN,
Division of Records.

JRZ:MBJ

DEFENDANT'S EXHIBIT No. 132.

37649/2(S1)-O
ALB

NAVY DEPARTMENT
BUREAU OF ORDNANCE
WASHINGTON, D. C.

Jan. 19, 1921

Attention Dr. Van Doren.

Dear Sir:

Mr. J. N. Zimmerman, Office of the Alien Property Custodian, under date of January 14th submitted to this Bureau a list of one hundred and sixty patents which have been assigned to the Chemical Foundation, Inc., the original of which list was forwarded on the same date to Dr. Van Doren at his personal request.

It will be appreciated if you will have an assignment made to the Navy Department for the United States Government of these one hundred and sixty patents without waiting for the completion of the full list of patents promised by Dr. Van Doren in a recent interview with the Bureau of Ordnance.

Copy of Mr. J. N. Zimmerman's letter of January 14th is inclosed herewith.

Very truly yours,

(Sgd.) CHAS. B. McVAY, Jr.,
Rear Admiral, U. S. Navy
Chief of the Bureau of Ordnance.

1 inclos.

The Chemical Foundation, Inc.,
81 Fulton St.,
New York City.

DEFENDANT'S EXHIBIT No. 133.

The Chemical Foundation
81 Fulton Street,
New York City

January 20, 1921.

Rear Admiral Chas B. McVay, Jr.,
Chief of the Bureau of Ordnance,
Bureau of Ordnance,
Navy Department,
Washington, D. C.

In re: (S1)-O
ALB

Sir:

We beg to acknowledge receipt of your letter dated January 19, 1921 and in reply are pleased to inform you that an assignment covering the list of 160 patents forwarded to you by J. R. Zimmerman of the office of the Alien Property Custodian, will be immediately drawn up and placed in your hands at the earliest convenient date.

Yours very truly,
THE CHEMICAL FOUNDATION, INC.
By Lloyd Van Doren.

LVD:ACK

DEFENDANT'S EXHIBIT No. 134.

Navy Department,
Washington

8247-457:14

December 4, 1919.

This Department is advised by the Alien Property Custodian that there have been seized and transferred

Gentlemen:

to your organization the following described Anschutz patents, viz:

1170388	841612
1141099	794654
1069842	1186686
973611	1180815

with the understanding that the use by the Government of apparatus embodying the inventions covered by said patents was to be permitted without charge or for a nominal consideration.

Certain apparatus embodying those inventions are in use by the Navy Department and it is requested that license be granted the Government to manufacture and cause to be manufactured, and to use the inventions covered by the above enumerated patents, and forwarded to this Department.

Very respectfully,
(Sgd.) JOSEPHUS DANIELS,
Secretary of the Navy.

Chemical Foundation,
81 Fulton Street,
New York, N. Y.

DEFENDANT'S EXHIBIT No. 135.

December 8, 1919.

Navy Department,
Washington,
D. C.

Attention of Josephus Daniels, Esq.
Secretary of the Navy

Subject: Anschutz Patents

Gentlemen:

We are in receipt of your letter of December 4th and this matter will receive our immediate attention.

Yours very truly,
THE CHEMICAL FOUNDATION
INCORPORATED,
S. A. Tucker, *Chemist.*

SAT/S

[Note at bottom of letter:]
Taken up with Mr. Hoguet by phone

DEFENDANT'S EXHIBIT No. 136.

Bureau of Ordnance,
Navy Department.

27635/39 (L3-1)-O ZH

July 2, 1920.

Subject: Alien enemy owned patents.

Sirs:

The Department has been negotiating with the Alien Property Custodian concerning the acquisition of non-exclusive license under certain alien enemy owned patents of particular interest to the War and Navy Departments and the following is quoted from a recent letter from the Alien Property Custodian:

> "The following patents have been conveyed to the Chemical Foundation, Inc., 81 Fulton Street, New York, N. Y.:
>
> 794,654 C
> 841,612 C
> 877,034 C
> 940,166
> 942,393
> 947,971
> 973,611
> 1000,609
> 1062,166
> 1094,724
> 1101,081

"Your attention is directed to the Executive Order of February 26, 1919, which recites that the Chemical Foundation, Inc., is empowered to grant fee licenses to the United States for any use which the United States may desire to make of the inventions covered by letters patent, and the same rights which have been conveyed to it by the Alien Property Custodian."

These patents are as follows:

Number	*Patentee*	*Article*
794,654	H. Anschutz-Kaempfe	Gyroscope
841,612	H. Anschutz-Kaempfe	Gyro Support
877,034	" " "	Gyroscope
940,166	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Rangefinder
942,393	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Angle Measuring Apparatus
947,971	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Binocular
973,611	H. Anschutz-Kaempfe	Gyroscope
1,000,609	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Rangefinder
1,062,166	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Rangefinder
1,094,724	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Telescope
1,101,081	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Optical Square

Since these eleven patents are not involved in chemical industry, and cover material which is primarily of interest to the War and Navy Departments, it is requested that you inform the Bureau as to the willingness of the Chemical Foundation to assign to these two Government Departments, for a nominal consideration, a non-exclusive license to manufacture and use or have manufactured for their use the material described therein.

An early reply will be appreciated.

Very truly yours,

CHAS. B. McVAY, Jr.,
Chief of Bureau.

Chemical Foundation, Inc.,
81 Fulton St.,
New York City.

DEFENDANT'S EXHIBIT No. 137.

The
Chemical Foundation
81 Fulton Street,
New York City.

July 9, 1920.

Navy Department,
Bureau of Ordnance,
Washington, D. C.

Gentlemen:

Attention Rear Admiral Charles B. McVay, Jr., Chief of Bureau.

1. The Chemical Foundation begs to acknowledge receipt of your letter dated July 2, 1920 on the subject of alien enemy owned patents.

The patents cited pertain generally to gyroscopic and rangefinder apparatus. You request The Foundation to license the Navy Department to manufacture or use, or have manufactured for it, the apparatus covered by these patents, in consideration of a nominal royalty.

This matter could be easily determined were it not for the fact that certain licenses have already been issued to the Arma Engineering Company and the Sperry Gyroscope Company by the Federal Trade Commission, both of which licenses, as we understand it, require the payment of a royalty. If the Federal Trade Commission can be prevailed upon to cancel its outstanding licenses, this matter can be disposed of very promptly by the Chemical Foundation upon renewal of your request.

Yours very truly,

THE CHEMICAL FOUNDATION
INCORPORATED.
DOUGLAS I. MCKAY,
Vice President.

DIM:TAK.

DEFENDANT'S EXHIBIT No. 138.

BUREAU OF ORDNANCE,
NAVY DEPARTMENT.

27625/39(L3-1)-O DH

July 15th, 1920.

Subject: Alien enemy owned patents — Licenses granted to the Arma Engineering Company and the Sperry Gyroscope Company.

Sirs:

Receipt is acknowledged of your favor of the 9th inst., and the Bureau desires to express its appreciation for the information contained therein.

It is noted that certain licenses have been issued by the Federal Trade Commission to the Arma Engineering Company and the Sperry Gyroscope Company. This is a matter of considerable interest to the Navy Department, and the Bureau would be pleased to receive full information as to the numbers of the patents under which license has been granted to these two companies and as to the terms of these licenses.

Early receipt of this information would be appreciated in order that the Bureau may make a study of the patents in question at an early date.

Very truly yours,

CHAS. B. McVAY, Jr.,
Rear Admiral, U. S. Navy,
Chief of Bureau of Ordnance.

The Chemical Foundation,
81 Fulton Street,
New York City.

DEFENDANT'S EXHIBIT No. 139.

The
Chemical Foundation
81 Fulton Street,
New York City.

July 19, 1920.

Navy Department,
Bureau of Ordnance,
Washington, D. C.

Attention Chas. B. McVay, Jr., Chief of Bureau.

Subject: Alien enemy owned patents — licenses granted to the Arma Engineering Company and the Sperry Gyroscope Company.

Gentlemen:

This acknowledges the receipt of your letter of July 15th on the above subject.

The foundation regrets that it cannot furnish you with the information that you request; but the Federal Trade Commission will probably be glad to render you full information in regard to the licenses they have granted on the patents in question.

Very truly yours,
THE CHEMICAL FOUNDATION, INC.,
H. E. Baleman,
Assistant to Vice President.

HEB/EP

DEFENDANT'S EXHIBIT No 140.

Report prepared by Nitrate Division Ordnance Office, War Department, assisted by Fixed Nitrogen Research Laboratory, Department of Agriculture, entitled "Report on the Fixation and Utilization of Nitrogen."

(Not Printed)

DEFENDANT'S EXHIBIT No. 141.

Extracts from Statement of Joseph H. Choate, Jr. Before Committee on Ways and Means, House of Representatives, Hearings on H. R. 2706.

I am a life-long Republican and a Republican by inheritance for generations, as many generations as there are generations of the Republican Party.

Mr. Kitchin. Go ahead. We will not hold that against you.

Mr. Choate. I went into the office of the Alien Property Custodian as one of the volunteer assistants and was put in charge there of the chemical branch of the Bureau of Investigations. I had charge of the investigation of that industry. We did not go far into the work of investigating the German connection with the chemical industry in this country before we came to the conclusion that the industry itself was the most vital single-key industry in the country, and before we saw that the German menace in that industry was of incalculable importance. We found that outside of the dye industry the American chemical industry could hold its own. That was so with the heavy chemicals and in the electro-chemical industry, both of which did very well, but we found that these were of insignificant importance as regarded the future of the country, compared to the dye industry. I shall have to go into that a little length to enable you to understand what I am going to talk about hereafter.

In the first place, we found that the connection between the dye industry and the industrial progress of the country was infinitely close. We found that the dye industry was the most complicated industry, probably, in the world. It really consists of a thousand different industries, because it produces several thousand different chemical products, each produced by a separate process. To give you an example of the magnitude of the industry, I can hardly do better than quote the figures as to some of the German concerns. The Badische Co. employ 11,000 and have 42 miles of railways in connection with its works. The Hoechst concern employs 8,000 men and produced before the war 11,000 separate colors. Each of these colors involved, perhaps, six or eight separate chemical processes, all starting from the 10 crude substances contained in coal tar, which in turn are converted by the action of other chemicals and interaction among themselves into 300 separate intermediates, and these into these innumerable separate dyes, by processes involving separate steps, each of which destroys the raw materials and creates new materials entirely different. Each of these steps involves the production of by-products which nobody wants, for which uses have to be found. For many of them uses were found. Many of them could be used in the production of additional dyes and additional intermediates, but many new uses had to be created. We found that it was a peculiarity of the industry that it required a magnitude of research demanded by no other industry or 10 industries. As a consequence, we found that where any other industry employed one research chemist, the dye industry employs 100. As a consequence of that, the nation which has a real dye industry has at its disposal enormous research laboratories and an enormous number of research chemists who can, incidentally, be diverted to the service of any other form of industry which requires them, and who, therefore, offer a capacity for service which is developed by no other form of industry. This reacts in another direction, this demand for research chemists holding out a hope of livelihood to hundreds of young men in the universities who could not otherwise hope to devote their lives to this science. The net result of it is that in the country which has a complete, fully developed dye industry, reaching out into all products required for textiles and paper and leather and ink, there is an infinite supply of the knowledge required for the development of all the other industries, because every industry in the country requires chemical help and requires it more every day.

There is not an industry in this country that can not be made better, that can not be made more efficient, which can not produce its product in more satisfactory quality and more cheaply with the assistance of research chemists, than it does today.

And so we came to the conclusion that from the mere point of view of an industrial science, a dye industry, a complete dye industry, was absolutely essential, but we had not gone much further than that in our study before we ran into connection with the military problem, which has been pointed out here by Gen. Sibert and Gen. Fries. We found that a complete dye industry was interchangeable with explosive works and poison gas factories. All our modern military explosives are coal-tar products. All the gases are coal-tar products, and all of them require the use of the technic and trained personnel, which are obtained in the dye factories and nowhere else. Accordingly, we came to the conclusion that the nation which had a dye industry had in that industry a colossal military advantage over any other. That was proven by Germany because she, and she alone, was able from the first to supply the incredible quantities of munitions which proved to be needed in this war. The Allies struggled along two years behind and it was only by incalculable efforts that they ever did make up the deficiency, and it was imposed upon the dye industry to do it.

Mr Longworth. May I interrupt to mention a conversation which I had with a very distinguished American chemist who was graduated from Heidelberg 30 years ago and he told me that when he went to say good-bye to the head professor at Heidelberg, he asked him why it was that all the research work in chemistry in Germany seemed to be in the development of the coal-tar dyes. The professors were getting larger salaries and government bonuses in that industry, and the old professor said, "Young man, some day this will save the Fatherland." He was not a good prophet on the saving part of it, but they did not lose the war because they did not have abundant explosives.

Mr. Choate. Now, these aspects of the dye industry are of infinite importance. Of course, we immediately realized, long before we got far enough to realize the military importance of the industry, the industrial and scientific importance of the industry, and its economic importance. That seems to me a matter of infinitely less moment than the scientific and military importance, and we yet see how great it is. The industries in this country which can not get on without the use of coal-tar dyestuffs produce each year, according to the figures which will be submitted to you by the Dyes Institute representative, Dr. Matthews, from the census and official sources, produce each year $2,600,000,000 of goods, nearly three billion dollars annual product, which can not be produced without the use of coal-tar coloring materials. In addition to that, there are three billions more of things made up of these products which are indirectly but none the less really dependent upon coal-tar coloring material. In order to produce these six billions of dollars worth of goods, you have got to have the coal-tar dyes. We did not have them in this country. We were producing about three and a half million dollars in value in dyes. Our industry was a mere assembling industry operating in five or six small plants on German intermediates. We imported things almost finished from Germany and turned them into finished dyes here by final processes which are often very simple. In other words, our textile industry was an industry dependent upon coal-tar dyes, and we were absolutely enslaved to the producer, and the producer, and practically the sole producer, was Germany. I want to show you how complete that servitude was. You have been told by one or two of the witnesses who have already appeared here a little about how fearful the conditions were in the textile industry during the first years of the war, when the supply of

German dyes was cut off. That supply was not cut off instantaneously and on purpose; it was cut off gradually as the British blockade tightened. Large stocks were present in this country and two shiploads came in afterwards so that the German supply was gradually cut down. What do you think would have happened to the textile industries if it had not been gradual; if the Germans, having developed their own textile industry to the position where they could hope to monopolize the world demand, had attacked our textile industry by cutting off our dyestuffs? They could have done that instantaneously by shutting off the supply, and we would have had no recourse. By cutting it off bodily, in one moment our textile industry would have found itself helpless without the materials and without the stimulus of the war. That was the situation during the first two years of the war.

* * * * * * * * *

Mr. MOORE. In papers left in New York, Washington, and elsewhere?

Mr. CHOATE. That I can not answer. The precise place I can not tell you. They have them now. You see a very short time after this the German authorities here began to see that their plan was not as successful as it might be. By withholding their dyestuffs they were not in position to destroy our textile industry for the benefit of their own at that time. The plan was by withholding dyes to put a pressure on the British and so break down the British blockade. By July, 1916, it developed that the plan of withholding was a failure. I read again from this report:

I think its failure is better told in a report made to Ambassador von Bernstorff and the German foreign office, by Waetzold, the business expert of the German embassy, on July 21, 1916. Waetzold said: "The development of the dyestuff affair furnishes an unmistakable picture of the transformation of conditions which have taken place in regard to the will of American business circles to business with Germany. A year ago the attitude could be assumed with full right that the dyestuffs must be withheld in order to induce the Americans concerned and the public to raise energetic protest to the Government against the prevention of trade by England. To-day we must admit that we far overestimated the effect which we thought we should exert by withholding dyestuffs. The miscarriage of our plan did not lie in the fact that the evil economic conditions with which we reckoned did not arise, but solely in the fact that the feeling in the circles interested had in the wider sense so changed that they, in the last analysis, preferred to endure the evils rather than help Germany. It did not take much perspicuity on the part of the American to recognize that our sudden compliance even before the fruit, which the plan of withholding promised to bear could come to maturity, was dictated not by a spirit of friendliness and accommodation for suffering American industry, but sprang in part from an economic need of Germany (money revenue and the raising of the mark rate of exchange), and in the main from the desire to exert upon the public here a political influence favorable to Germany.

Mr. Moore. If that was so, Mr. Choate, somebody in official life in America must have known something about this.

Mr. Choate. Not necessarily, at that time.

Mr. Moore. Then what was the purpose of it, to induce us to urge a breaking of the British blockade?

Mr. Choate. Because when it became apparent that the dyes were scarce in this country, there would be complaints. Then it would be easy for the diplomatic representative of the Germans to go to the State Department and say, "You must make representations to the British to break down the blockade because your people are suffering."

Mr. Moore. Were there any such representations to the State Department as are made in this telegram and in that letter to our officials?

Mr. Choate. I understand they were constantly made. I have no first hand knowledge on that subject.

Mr. Moore. Then the substance of this telegram and the substance of that letter which you now use very effectively in this argument were really known to our American officials before the war?

Mr. Choate. By no means. The facts produced by the German refusals to supply their goods here were known, but the fact that the Germans were deliberately withholding their goods was not known.

Mr. Moore. Do you recall the arrival of the *Deutschland?*

Mr. Choate. Very well.

Mr. Moore. It was reported about that time that she was here delivering dyes.

Mr. Choate. July, 1916.

Mr. Moore. And American officials did not know about it.

Mr. Choate. No; and her arrival was a surprise, even to many of the German representatives.

Mr. Moore. But she did bring dyestuffs?

Mr. Choate. Because the dyestuffs were the most valuable compact cargo which could be brought.

Mr. Moore. How were they distributed, to American users?

Mr. Choate. To representatives of the German "big six." Our friend, Mr. Metz, got a lot of them, and representatives of the German big six. They were sent to Schumacher & Co., of Baltimore, under instructions that they were to be delivered pro rata to the representatives of the German big six.

Mr. Moore. This material you bring in now might be taken in the nature of a surprise. It is intensely interesting, at least, but I am trying to run your mind back to the arrival of that vessel, which was publicly heralded; the officials knew it as well as the Germans in this country knew it, and the material on that ship was distributed here to relieve the American situation.

Mr. Choate. I will tell you why.

Mr. Moore. It must have been done with the knowledge and the consent of the officials of the United States; that is the point I am making.

Mr. Choate. No; I think that is uncertain. During those months—that is, between January and July, 1916—it appears from the documents which I am now going to read you. The attempt to force the attitude of the United States was a failure, and in July, 1916, Waetzold, another of the commercial advisers, reports as follows:

The development of the dyestuff affair furnishes an unmistakable picture of the transformation of conditions which has taken place in regard to the will of American business circles to do business with Germany. A year ago the attitude could be assumed with full right that the dyestuffs must be withheld in order to induce the Americans concerned and the public to raise energetic protest to the Government against the prevention of trade by England. To-day we must admit that we far over-estimated the effect which we thought we should exert by withholding dyestuffs. The miscarriage of our plan did not lie in the fact that the evil economic conditions with which we reckoned did not arise, but solely in the fact that the feeling in the circles interested had in the wider sense so changed that they in the last analysis preferred to endure the evils rather than help Germany.

This condition existed until the dyestuffs came that were brought over on the *Deutschland.* There are a lot of things more on that line, but I am not going to take up your time. Suffice it to say, that the situation was such at that time, that if the war had not gone on, leaving Germany free to make her textiles and export them, she could at any moment have wrecked and ruined our textile, leather, paper, and ink industries, by withholding her supplies and fostering her own products.

Mr. MOORE. Did not that same condition prevail as to England?

Mr. CHOATE. By no means. You mean as to English industries?

Mr. MOORE. Yes.

Mr. CHOATE. Undoubtedly, I think it did.

Mr. MOORE. The effect on her of the withdrawal of dyes in England would have been as serious as with us.

Mr. CHOATE. I agree. The English dye industry had been almost smothered by Germany before the war.

Mr. MOORE. And they proceeded, as we did in the United States, to encourage the development of the dyestuffs industry.

Mr. CHOATE. With this difference, Mr. Moore. They were in the war from August, 1914, and they had nothing to spare for such outside work. They could produce only what was absolutely indispensable, and took a lot of material from us. As to the French, I must differ with the last witness. The French industry has never progressed and I think the Tariff Commission information is the same. Our information is that the French industry has not got anywhere.

Mr. Moore. The gentleman ran over the country so in his first statement that I assumed he had knowledge.

Mr. Choate. The British have gone further than we propose to in encouraging their industry. They have subsidized it to a large extent, much larger than the figures stated by the last witness—somewhere in the neighborhood of £8,000,000 sterling.

Mr. Moore. And they do there now. It is under the control or direction of the British Board of Trade.

Mr. Choate. They have not only half nationalized the industry and protected it by a licensing bill, but a tariff. I might say right there that Great Britain and France have had an absolute embargo, to all intents and purposes, for a number of months, but a tariff. I might say right there that Great mation from the French High Commission.

Mr. Treadway. What line of goods do you mean?

Mr. Choate. They are not able to do any more importing than they could possibly help, because of its effect upon foreign exchange and the value of the pound and franc.

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Mr. Choate. Gentlemen, I think I have perhaps said everything that need be said on the subject of the economic importance of the industry. Suffice it to say that at a very early stage in our investigation we were satisfied that nearly every industry in the country, except the metallic industries, were directly dependent on the dye industry and that almost everything we used and everything we ate needed colors. As you gentlemen sit there, everything that you deal with, from the nigrosine that colors the leather of your shoes black to the complexion of the ladies that you admire on the street, are coal-tar products. Nevertheless, when you have covered the economic side of it you have not scratched the surface.

Perhaps the most important of all the aspects of the coal-tar industry is that about which Dr. Stieglitz spoke to you. Organic chemistry is, of course, at the root of the whole science of medical chemistry, and medical chemistry is in its infancy. For a thousand years the physicians have been pouring into the unfortunate human system drugs of which they knew next to nothing. Until the relatively recent advance of science had begun to accumulate the enormous mass of data that was necessary, not even the physicians themselves understood the problem or had the slightest conception of its magnitude.

The human body consists of hundreds of little chemical factories pouring into the human system drugs of their own and upon the balance of those drugs depends human health. These drugs are organic chemicals, and until the process of studying out their effects has been completed and the innumerable millions of combinations of chemicals which they produce in the human inside have been reduced to scientific formulæ that can be known and studied, that science will remain in its infancy.

Now, the dye laboratories furnish the means and the only means for the furtherance of that science, and that science has but recently begun to grow. It has been held back by the immense development of bacteriological medicine with its serums and antitoxins, which has been so successful that the physicians of the world have only recently turned back from it to the study of drugs. Yet the results have been startling. Many of those results have been not only the product of industrial chemists at our laboratories of coal-tar research, but in many cases the discoveries have been made in the dye laboratories themselves. In Germany the cooperation between the academic and the coal-tar chemists was so complete that it was not an uncommon sight to see, in the dye works laboratory, dozens of academic chemists working side by side with the dye-works chemists on their own individual problems. Many of the greatest discoveries have been made in that way. Salvarsan itself was a dye-works product. Dr. Ehrlich had a theory that arsenic disseminated in the system in a particular way would kill the germs of the cruelest scourge of humanity and he had an idea that it could be done without injury by one of a particular group of compounds that number, say, 10,000. But how was he to get the facilities to make the experiments; where could he get the apparatus, materials, and assistants for the work? No university, no private laboratory could undertake it. He found the means at his hands in the dye-works laboratory of the great Cassella dye works, and the Cassella laboratories were placed at his disposal. And within a very few months that immense problem was worked out and that amazing triumph achieved.

So in like manner drugs for hundreds of other ailments have been developed. The most noted example is that of adrenalin, one of the most valuable and commonly used drugs. That was discovered in this country from an animal source. The German plants, as is possible with almost any of the drugs from an animal source, produced the substance synthetically from coal-tar products at a mere fraction of the cost of the animal product.

And so we say to you that the hope of the future in medical science lies in the great coal-tar industry; that there you find the promise and the only promise for the discovery of drugs to cure the cruel diseases which are the scourge of humanity. There and there only lies the hope of the permanent cure of such diseases as tuberculosis and even cancer. For that reason we say that however important the economic aspect of this subject may be, however important the industrial aspect of this industry may be, however important the connection with national defense may be, a still more important field lies in this purely scientific aspect.

Now convinced as we thus become of the colossal importance of the coal-tar industry we almost equally become convinced of the desperate situation of this country. Our own industry as you have already heard, amounted to nothing prior to the war. The German industry was simply gigantic. We found that they had forty years start of us; that they had immense advantages in the source of raw materials, and had a very compact industrial district, smaller than one of our small States, in which they found all the elements for the development that were needed. They had an enormous supply of trained labor fitted to do work of the sort, who were willing to work on the same job until they died. They had an enormous number of cheap chemists that were turned out by the universities by the thousands, and they made the services of those chemists worth while by giving them social position and rewards in the way of titles and other things that enabled them to hold these chemists at their jobs at nominal salaries, and to further the research in the dye-works laboratories. And there is nothing the German chemist likes better than to sit down to the elimination of two or three thousand possibilities until he has exhausted them all and found out which of the possibilities would or would not do the thing he had in mind. That gave them, gentlemen, an enormous lead.

Beyond that, however, they had an enormous number of advantages which we do not have. In the first place, they were allowed to combine to any extent. They rapidly drifted into six large companies each of which became perfectly enormous. The smallest of them employed before the war began, more than the largest three, certainly the largest two, American houses now employ or have ever employed. They employed together, before the beginning of the war, approximately 50,000 men. In 1910, about, they coalesced into two large trusts, one consisting of three of the big six, the Bayer, Badische, and Berlin, and the other consisting of the other three, the Hoechst, Casalla, and Kalle. There were two or three outlying companies and a dozen small ones. These companies were closely united and assisted each other in every possible way. They had joint funds for fighting foreign competition and dividing the expense of new things, and dividing the expense of campaigns against competing industries in other countries.

But it did not stop there. In 1916, finding the danger they were placed in as a result of the war, the two trusts were combined with all the other outlying companies into one gigantic trust.

Mr. LONGWORTH. Have you any information as to whether the German Emperor himself owns stock in that concern?

Mr. CHOATE. I have been informed, on information that I think is good authority, that he did. This enormous trust has a nominal capital, adding up the nominal capitals of the various companies of which it is composed, of about $100,000,000. But the stocks of these companies were, on the average, worth on the Berlin Stock Exchange, at the time of the combination, about 400. So you can see the actual assets of the company were valued by the German public at above $400,000,000. They had systematically pursued the policy of putting back into the works half of their enormous earnings, and still the average dividends of those companies, for a number of years, had been about 22 per cent. So that the industry was not only the most remunerative and most solidly intrenched industry in the German Empire, but was also one of the most remunerative and most solidly intrenched industries in the world. And here it was, combined in a single gigantic trust, organized expressly and admittedly to fight to get back the foreign trade which it had lost or which it was in danger of losing.

I have here, which I will not trouble you to read, but which I will ask to have inserted in the record, a report of the British Minister of Munitions on the subject of the Community of Interests, as it is called, with a diagram (which I might hand you to look at) showing the constitution of the trust.

* * * * * * * * *

Mr. Moore. It is stated in this very interesting publication of the Chemical Foundation (Inc.), which is evidently intended for this committee, that 4,500 of these patents which applied to chemistry Mr. Palmer has sold for the benefit of American industries to a quasi-trustee corporation, called the Chemical Foundation. This company is capitalized for $500,000—it is getting away from the Government now which had the patents in custody.

Mr. Choate. Precisely, and I will tell you why if you will let me.

Mr. Moore. This company is capitalized for $500,000—$400,000 being 6 per cent preferred stock and $100,000 common stock also limited to dividends of 6 per cent. Now, it makes no difference how patriotic the gentlemen constituting this foundation may be nor what is said about their desire to bar German material, they are seizing those patents which apparently belonged to German holders, through an arrangement with the Alien Property Custodian, and applying them to a purpose which unquestionably in the end is to make dyes and sell them and make money out of them in the United States.

Mr. Choate. By no means. The Chemical Foundation (Inc.) can never go into the dye-making business. If you will only let me tell you about it I will.

Mr. Moore. All right, then, come to that.

Mr. Choate. The Alien Property Custodian seized the patents. The question was what was he going to do with them. We might have asked Congress to do as the British did, and annul the patents, which would have gotten them out of the way of the American manufacturer, who could not then have made all of these dyes. And what we have taken the title for—they were never taken out with any intent to manufacture here, because it was very evident the intent of the Germans in taking out these patents was to absolutely discourage manufacture here by the Germans. One American branch of the Bayer Co. started to make a few needed dyes in 1916, and the head office immediately wrote to them, scolding them bitterly and insisting that no further new operations be undertaken. These patents had been taken out as an obstacle primarily to importing, and, secondarily, as an obstacle to American manufacture, and they stood as an immutable obstacle.

Mr. Moore: If that is true, leaving out the feelings of bitterness and hatred engendered by the war, the United States issued those patents, and if they were not taken out in good faith, we certainly accepted them in good faith.

Mr. Choate. I can not pass on the acts of the United States back for the last 17 years. It is not possible for me; I do not know why the United States issued the patents, and I doubt if any living man does.

Mr. Oldfield. I can explain that. The reason for that was that we have never had in our patent law a compulsory license or compulsory work clause as they had in other countries.

Mr. Moore. That is true, but the patents were applied for, and the United States granted the patents for—17 years, I believe, is the period—just as they did in thousands of other cases where people did not work the patents after they had their right. It may be absolutely true, as Mr. Choate states, that they were not taken out in good faith, but we certainly issued them with our eyes open.

Mr. Choate. To resume; something had to be done with those patents. The only thing the Alien Property Custodian had the power to do, without further help from Congress, was to sell them. Now the universal practice of the Alien Property Custodian's office was to Americanize the seized companies as far as he could by selling their securities when found in German hands, to first-rate competent American purchasers.

Now it was obvious that the wisest thing for us to do was to sell to a good American purchaser. And what could we do? In the first place, they had to be sold in large blocks, because, if only two or three patents were sold to any individual purchaser, they would not be worth his while protecting. The expense of protecting an individual patent would be colossal and the possible results from two or three only would be so problematical, that to make sure those patents would be protected (and if not protected they would be a dead letter and they would lose the protection which the industry could have, for the patents in the hands of Americans could be used as a means of keeping out German dyes which they covered) we had to sell to a good American purchaser and we had to sell in large blocks. Now who could we sell to; who was big enough to buy them? There were three or four concerns in the country. Any one of those concerns, if we sold all or half of those patents to it, would become a monopoly. We could not have that. You would have been among the first to disapprove it. On the other hand, we could not sell to a weak purchaser, because a weak purchaser could not protect them.

It was then that the fertile brain of Mr. Garvan, the present Alien Property Custodian, then in charge of the Bureau of Investigation, conceived the idea of getting an industrial organization to act as a trustee corporation to buy the patents. I was present at every detail of every one of the consultations that resulted in that organization, and I may say that from beginning to end the subject of politics was never raised. The organization was framed and every detail of it adopted without the slightest consideration by any man present of its political effect. It took the form it did for this reason; in the first place we had to get an organization that could never fall into the control of any one body, any one company, any one man, or any one group of men. For that purpose, we made the stock nontransferable without the consent of the company. It could not be controlled by any existing group of the industry, because if it was it could be used for the selfish purpose of some one group. For that purpose we provided that the whole stock must be placed in the hands of a voting trustee. Now we came to select the voting trustees. Who could we have? We had to have men who commanded the confidence of the community; we had to have men disassociated from either the producing or consuming industry. Where could we get them? Obviously they must come from the highest type of business men not connected with the industry. We had to have men familiar with the German methods, German machinations. Where could we find them?

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Mr. Choate. At all events, there was a board I think we all respected and who had the confidence of the community and certainly knew the Germans and their works. We placed the common stock, which alone has the vote, in their hands for 17 years to cover the life of the existing patents.

Mr. Moore. That was the reason for the 17 years?

Mr. Choate. That was the reason for the 17 years. We now provided for the usefulness of this concern and nobody has yet showed the slightest comprehension or touched it; but to us it was the vital part of it. It seemed to us likely that if these American industries got busy and began to manufacture under these patents, they would get very busy and we would have a large income coming into the Chemical Foundation. We saw in that possibility the chance of establishing an institute of research which would be in a position to coordinate the efforts of the universities and of the dye works in this country, as had been done in Germany. And we accordingly provided that after the retirement of the preferred stock, which is only $400,000, the whole income of this concern should be devoted to the advancement of science, and we have mapped out a comprehensive program for doing that which has met with the utmost enthusiasm all over the country, and we have received most enthusiastic offers of cooperation. Many of the largest works in the country have placed their laboratories at our disposal and, as I say, we have had offers of cooperation which seem to us to insure the certainty that this institution will go on and render the public a service such as no other body in the country is able to render.

Among other public service, think of this: The charter permits the company to buy more patents. Take the case of the chemists in a laboratory like the color laboratory of the Department of Agriculture, where able research chemists work hard all day and turn out the most useful things and receive very small salaries. Now, when it comes to taking out patents, the regulations of the department require that the patents must be dedicated to the public use, so that those chemists do not profit by that work. Any other private inventor is obliged to go to one of the chemical concerns to sell his invention. Where does he stand with them; what chance does he have to get the value of the invention he has made? And so we shall offer in the Chemical Foundation as a possible purchaser for patents one of the greatest stimuli ever offered to chemical invention in this country.

Now, what is the Chemical Foundation bound by charter to do with these patents? It is to license on even and reasonable terms every competent 100 per cent American manufacturer up to, of course, the capacity of the market. Every manufacturer whether he is a stockholder of the Chemical Foundation or not can get a license under these patents.

Mr. Moore. May I ask you what that means, that you are going to license only every 100 per cent American manufacturer? Suppose there is a manufacturer who is a Frenchman, or a Swiss, or a Bolivian, or a Canadian and he desires to start an industry in the United States; are you going to bar him and give him notice that he can not spend his money here?

Mr. Choate. Under our charter we can not license any corporation three-quarters of whose stock is not held by American citizens. I think that is a very wise provision. We do not want ever again to get in a position of having our industries controlled by foreign corporations.

DEFENDANT'S EXHIBIT No. 142.

EXTRACTS FROM STATEMENT OF JOSEPH H. CHOATE, JR., BEFORE COMMITTEE ON FINANCE, U. S. SENATE, HEARINGS ON H. R. 8078.

In the first place, the dye industry makes a greater number of different products, I suppose, than any other industry in the world. Before the war one German factory produced 11,000 different colors. For the most part—and entirely, except as they are mixtures and adulterations and mere differences in strength—these colors are different individual chemical substances, as definite in constitution as the salt you put on your baked potato at luncheon.

Senator Watson. You say one factory made 11,000 different colors?

Mr. Choate. Eleven thousand.

Senator Watson. Fast colors?

Mr. Choate. I do not suppose they were all fast. I should be quite surprised if more than a few of them were.

There is no necessity anywhere, of course, for any such number of colors as that, but nine hundred and sixty odd were actually imported into this country before the war began. Of those 960 probably a large number were superfluous, but a very great number of products is necessary, because you must not only be able to make every conceivable shade—which you can always do by mixing—but you must provide for 13 or 14 different kinds of fastness; that is, fastness under 13 or 14 different sets of conditions—washing, sunlight, chlorine, acids, perspiration, salt water, and many others. You must also be able to provide all your shades for every fabric, and each variety of fiber requires a different type of dye. A dye which will dye wool may not dye cotton at all. One that is suitable for either or both may fail altogether with silk. You must also be able to provide dyes which meet the requirements of mixed fibers. You must provide dyes for special purposes, such as printing, dyes which will take one fiber of a mixture and not the other, dyes on which a figure can be printed with a chemical which will drive out the dye—what is called "discharge printing," so as to produce a white or different colored pattern on the otherwise even shade of the material.

And so, to meet the requirements of those various degrees of fasteness and the various tints and different varieties of substance and for all the different varieties of manufacture, a vast number of different materials is required.

The process of making these dyes is exceedingly long and complicated, and it differs altogether from other manufacture in this respect—and this difference is one which I want you to store up in your minds and keep there throughout, if you will.

When you go to work to make automobiles, you buy so many tons of steel, so many tons of wood, so many tons of brass, and, with the exception of a certain fairly constant proportion of spoiled parts, you get back 100 per cent of your raw materials. That is the usual course of manufacturing, but when you start making dyes the situation is entirely different. You begin with your crudes, the 10 great products naturally present in coal tar. You mix one of those up, we will say, with an acid or two and various other reagents—I should not need to go into the technical phases of it, even if I knew them—and you start a tremendous chemical reaction. Every substance you put into that reaction is destroyed, and a new set of substances is produced. Only one of those new substances, as a rule, is what you want for the next step.

The proportions that you get of the new products can be varied by skill. The type of skill is mainly not in the books; it can be learned only by prolonged experience. It is the skill not of the head chemist, who may be highly trained at a university; it is the skill of the small chemist or foreman who looks into the receptacle and sees a particular kind of bubbling and knows from that that the reaction has gone far enough and ought to be stopped or that something else ought to be done. His skill results in your getting in the first step a yield, as it is called, of somewhere near the theoretical possibility. A man who has not had those years of experience will carry on the reaction less perfectly, and the resulting yield will be very small.

Now, then, you take the new product which you have got as the result of that first step, and you may carry it through another set of reactions, and the resulting product must be carried through a third set of reactions. Often before you get the so-called intermediate you have carried it through half a dozen such processes. The intermediates, gentlemen, are nearly as complicated in manufacture in many cases as any other manufactures that exist in the whole world of commerce, and the making of dyes does not start till the manufacture of the intermediates is complete.

I have described the business of manufacture in this detail, because it is necessary for you to understand it in order to comprehend the enormous advantage which the Germans have over us at the start. That advantage, I think I can show you, is so great that, without any knowledge as to present conditions, we can demonstrate that their costs must still be very much lower than our own. Consider the history of the German industry.

The German dye industry was started many years before ours. By 1880 the Hoechst factory, one of the largest three, employed 1800 men. That is within 63 men of as many as were employed by the largest American factory—that of the National Aniline Co., at Buffalo—in the month of October, 1919. That was in 1880. By the beginning of the war that concern was employing 8000 men and, as I say, making 11,000 colors.

But that was not the biggest one. Badische, sometimes referred to as Ludwigshafen, employed 11,000 men. It employs 16,000 men to-day. Bayer was as big as Badische; Berlin was nearly as big as Hoechst. Cassella and Kalle were smaller. Those were the big six.

The German industry started with an immense natural advantage of position. All the plants were developed within a district that you could almost put into a single one of our smaller States. All except Berlin are located along the Rhine and its tributaries, the Main and one other stream. There were to be found all the supplies that they needed close at hand with low transportation costs. There was to be found an extraordinary supply of cheap and docile labor, consisting largely of men who had no objection to spending their lives at one job and having their children brought up in it after them.

The German mind ran naturally to the sort of research which was required in the dye industry. The universities produced those men in great numbers. As Dr. Bogert told you, they reward research chemists not so much in salary—because their salaries were always low, so that their chemical service was cheap—but in social position, so that a man who has made dye chemistry his life work in Germany became a pretty important personage and enjoyed life correspondingly.

From a very early day the importance of research was realized there. When you make thousands of different materials and in the course of making those different materials you produce tens of thousands of by-products, as you must, you have got to find a use for those by-products or run them into the sewer, and to keep those by-products out of the sewer and put their proceeds into the treasury was the constant and insatiable ambition of the research chemists. They were employed by hundreds, and, by the same token were bred by hundreds in the universities because the dye works provided jobs for them. Constantly they were engaged in devising new means of disposing of these by-products, working out their pharmaceutical effects as well as their possible uses in the dye business and in every other business. And in the course of those investigations they incessantly ran out of the field of the dye industry and into that of pure science.

While all this was going on our industry was standing still. We had quite a flourishing little industry in 1880. Between 1879 and 1883 nine quite flourishing concerns were developed and appeared to be going strong. Up to that time, of course, the German industry was still new. Prices were still very high. It was not an unfamiliar thing in those days to pay $30 a pound for a German dye that was not abnormally scarce. We had a tariff, if I am not mistaken, at that time that started with a 50 cents a pound specific. That seemed to be enough in those days. The industry was fairly promising.

That tariff was withdrawn in 1883. Instantly, of the nine concerns four went out of business, and from that day on the American industry continued to be a mere assembling industry, putting together, often by the simplest processes, intermediates which were themselves often the product of extraordinarily complicated manufacturing processes, intermediates which had been imported from Germany.

In the meantime the German industry began a process of combination, so that by the beginning of the present century it had practically all been combined into the six great companies that I have named. There were quite a number of very small assembling plants, which made specialties of some one particular variety or line of colors, and there were one or two outlying concerns which made colors, mostly as a side line. But the bulk of the industry was in the Big Six.

About 1910 they were further combined into two separate cartels; one which I always think of as the "Three B's"—Badische, Bayer, and Berlin; the other containing the other three—Cassella, Hoechst, and Kalle. By that time the Big Six had gained a substantial world monopoly. Ninety per cent of the dye production of the world was in their hands. The only substantial industry outside that was not almost entirely an assembling industry was the Swiss, which was very limited in scope, because there were no raw materials in Switzerland.

Now, what kind of people were the Big Six? That is the real question you have got to face. What is our industry up against? You have heard from various witnesses. Mr. Wigglesworth, for instance, has told you how as soon as American chemical industry in the production of anilin showed its head the German trust struck at it. He did not tell you how successfully they struck at it in that case. The Benzol Products Co. was actually forced to close its doors for a time. That is true, is it not, Mr. Wigglesworth?

Mr. Wigglesworth. Yes, sir.

Mr. Choate. And was only revived because of the outbreak of the war. The same thing happened in the case of salicylic acid. As soon as a promising

American manufacturer started, the Germans cut the price, first to take care of the duty, and then beyond that, until the American company went out of business, when instantly the price went up again.

The same thing happened with bicarbonate of potash; the same thing happened with half a dozen different intermediates that Schoelkopf had started making.

Throughout, the method of the German chemical industry has been to destroy all competitors, by underselling and by what Mr. Wigglesworth very aptly termed "selective attack." With their colossal industry they could and can afford to take a loss on any one thing or things, and it is to their inestimable advantage if, by spending a few hundred thousand dollars here and a few hundred thousand dollars there, they can cull out and destroy the promising plants in other countries. They did it systematically. They never missed a chance.

They did not have to do it in the dye industry itself. Our dye industry was not a menace to them. It was satisfactory to them to sell their intermediates to such assembling plants as we had here, knowing that those assembling plants could not develop into real dye-making plants until they chose to let them do so.

How was the rest of their commercial morality? One of their favorite practices was "full-line forcing." They had all the most desirable dyes. Nothing was simpler for them than to refuse to supply anyone who bought from a competitor, where there was a competitor, until he ceased to buy from the competitor. It could be done by a nod of the head without a word spoken, and it was done and done systematically. The man who would not buy all his supplies from the American representative of the Big Six, whom he patronized in chief, would find that he would not get any supply at all of the particular things he felt he must have.

Beyond that—and here I do not want you to rely upon my investigation—the industry developed the most extraordinary mass of straight-out commercial corruption that I think was ever to be found in any industry in the country. The Germans practiced commercial bribery on an unparalleled scale.

Senator Watson. What do you mean by that, Mr. Choate?

Mr. Choate. I mean that in the case of almost every textile manufacturer in the country the dyers were subsidized by the German houses—actually paid to see that their dyes were used in preference to all others.

Senator Nugent. You mean the buyers or the textile manufacturers?

Mr. Choate. Not usually the buyers. It was ordinarily the dyer, the man who applies the dye to the goods. The dyer is the only man in the place, as a rule, who knows that branch of the business. All he has to do is to tell his boss that the dye he has got is no good, and the boss goes off and buys something else. If, by chance, the boss has faith in the dye and questions his statement, all that is necessary is for the dyer not to raise the temperature of the bath up to quite the proper point, or to put in a little bit too much of this, or not quite enough of that, and then go to the boss with the spoiled goods and say, "I told you so."

On this point—I am not going to ask you to rely on my authority—an extensive investigation was undertaken——

Senator Nugent. One moment. Do you mean to give us to understand that the confidential employees of the textile manufacturers were actually bribed to do those things by the Germans?

Mr. Choate. Actually bribed, and so much as a matter of course that it was almost without exception true. I came across only one mill where they had completely eradicated it, and in that case the owner of the mill bought all the dyes himself and removed all marks from the packages before they were turned over to the dyer.

An investigation was conducted in Philadelphia at the instance of a number of woolen manufacturers back in 1913. There was rather a curious situation. They developed this graft at considerable length. Counsel for the people doing the investigating were Mr. Deming, who sits here at the table, and Mr. C. H. Burr, who is, I think in the room. I have not the honor of his acquaintance, but I think he is here representing, strangely enough, the opponents of this bill. I want to read to you from an article of Mr. Burr's in the July (1919) number of the Quarterly Review.

Mr. Burr. I am Mr. Burr. I wish to say, Mr. Chairman, I do not appear here in any regard except my own general interest in the subject.

Mr. Choate. I am very glad to hear that, Mr. Burr. I desire to read briefly from this article [reading]:

GERMAN BUSINESS IN THE UNITED STATES

The methods of German commerce in prewar days are familiar in their general outline; the concrete details have not often come to light. This article will endeavor to give the story of how the German dye combination operated in the United States. The account will be given as far as possible in the words of witnesses taken under oath. These accounts, commented on only for the sake of clarity, should be allowed to speak for themselves.

During the war the dye industry in Germany was united into one great chemical verein, so that the gen-the methods hitherto used might become universal and gain completeness of organization and efficiency after the war, when England and the United States should open again their hospitable doors. Before the war, however, there were six leading German dye houses, divided into two groups of three each. The first group consisted of the Badische Anilin-und-Soda Fabrik (called for short the Badische Co.), the Farbenfabriken vormals Friedrick Bayer & Co. (called the Elberfeld or Farbenfabriken Co.), and the Aktiengesellschaft fur Anilin-Fabrikation (known as the Berlin Co.). These three companies pooled their profits in the respective proportions of 43 per cent, 43 per cent, and 14 per cent. They were controlled by a cartel and met for fixing prices, determining policy, etc. The second group consisted of Farbwerke vormals Meister, Lucius and Brunner (known as the Hoechst Co.); Leopold Cassella & Co.; and Kalle & Co. These three concerns were knit together rather more loosely than the first combination, and their unity of action depended mostly on interchange of share capital.

About two years before the war an internal difference manifested itself when the accounts for the preceding year were presented to the pool. The Elberfeld Co. claimed an allowance of something like $700,000 for "graft" payments made in the United States. The other partners objected to the amount, not because they were ultraconscientious, nor because the amount, if really expended, was excessive, but because vouchers were not presented with ideal German completeness; and the notion seems to have been suggested that foreign agents and managers might have made an error in the calculation, resulting in unintended personal benefit. However this may be, a little private investigation was made by one company in order to ascertain whether the dyers and ultimate recipients of the "graft" were really getting what they were entitled to. The investigation, as will happen sometimes with the best-regulated inquiries, got a little out of bounds. The result was a series of suits and a general explosion of indignation. From the evidence collected under oath in the inquiry, the following excerpts have been made. It should be noted, in order to reassure the British reader, that the convention called under the cartel entered on its minutes the following resolution:

"*Resolved,* That henceforth bribery shall be abolished, except in the United States and in Russia."

Senator Watson. Who was it that passed that resolution?

Mr. Choate. That was a resolution, according to Mr. Burr, of one of the two great German cartels which he was investigating.

Senator Watson. How did he happen to be investigating this?

Mr. Choate. He was retained by a group of woolen men in Philadelphia, who were determined to stamp out graft of this very kind in their industry. He was retained to investigate and attack the grafters, as was Mr. Deming with him. I have been informed, I believe correctly, that there was a very curious and interesting feature in connection with this retainer. I understand that 40 per cent of the expense of the investigation was met by the persons who originally started it, the textile men who wanted the graft driven out, and 60 per cent of it, I am informed, was met by Messrs. Kuttroff and Pickhardt, the American agents of the great German Badische Co.

That investigation took place immediately after the divorce which took place between the Badische Co. and the Bayer Co., which, in 1910, attempting to carry the German combination still further than it had theretofore been carried—there were still two cartels—had formed one agency, called the Continental Color & Chemical Co. of New York, but had quarreled through one year and then dissolved the joint undertaking. It was after that dissolution when they were again gunning for each other's business that these American agents of the Badische put up 60 per cent of the expense of this investigation, apparently in order to "get" their competitor, the Bayer Co., which was specially open to attack on this score.

Senator Watson. You say they put up 60 per cent of the money to investigate that question?

Mr. Choate. I am so informed. It is of no particular consequence. It is merely an interesting sidelight on it.

Senator Watson. When was this?

Mr. Choate. In 1913, I think. That is right, is it not, Mr. Deming?

Mr. Deming. About that, I think.

Mr. Choate (reading):

The operations of the Dye Trust in the States can best be examined in the words of the witnesses themselves. In explanation, it may, however, be added that these companies maintained their American agencies under their own control; that the Elberfeld Co., which had expended the $700,000, was extremely active among the mills in Philadelphia; and that Mr. Keppelman was its manager. For convenience, the evidence will be grouped, first, with reference to the bookkeeping methods of handling the matter, adopted to secure, so far as possible, proper profits and proper accounting to the principals in Germany; second, the distribution of "graft"; and thirdly, certain incidental activities, such as chemical means of dealing with rivals, and persuasive invitations on board a yacht.

With respect to bookkeeping methods, the problem was a difficult one. It was desirable to secure large prices for the dyestuffs sold, so as to afford a margin for "graft" and allow of proper accounting in addition. It was obvious that this must be done not only by adulteration but by misbranding the goods so that comparisons in prices would be rendered impossible and awkward disclosures would be avoided. A system, therefore, based on selling the same thing to A by one name and to B, C and D by different names, on allowances for different degrees of adulteration and on keeping accurate accounts so that the dyers should receive the correct amounts of "graft," would necessarily be complicated, especially since care had to be taken that each party should see only what it was desirable he should see.

Then he goes on with the affidavits, which are so detailed that I will not read them here, though I should like to have them inserted in the record. I will read, however, just briefly from one of them. He is speaking now of these substitutions, palming off substitutes on the unfortunate textile men by bribing their dyers. [Reading:]

I remember one particular dyestuff of which the D firm bought a good deal—"Brilliant black BB." This was a fictitious name given to naphthylamine black 4BK. The market price of the latter color was 21 cents, yet under its fictitious name D was paying 85 cents a pound, and they used a good deal of it; at least three to five hundred pounds each week. On my order blank I would insert on the first column one keg or barrel, as the case might be, of brilliant black BB; in the next column the correct or trade name of the color—that is, naphthylamine black 4BK—so that the shipper would know exactly what to send D, though they would not know the exact nature of the color they were getting, thinking they were using a high-priced dye when in reality it was a cheap one.

The essence of that system was just that. Whenever it was necessary to cover the graft and get the profits back all they did was to adulterate a product and call it by a new name and then they were able to sell for 85 cents what under its proper and well-known name they had only been able to sell for 21 cents.

Gentlemen, that is the kind of people the German dye trust were and are to this day.

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Mr. Choate. I am not willing to concede that for one minute.

Senator Watson. Well, we are not going to try that case.

Mr. Choate. You are not going to try that case. But it is material, because you are dealing here with the question of what the American industry can do against the German industry, and what that is depends largely on what kind of people the German dye trust consists of.

Since the war began the German Big Six and the two cartels composed out of that Big Six in 1910, have been combined into one gigantic whole, known as the I. G. That is practically a single corporation. The subsidiary corporations keep their corporate entity, but they are entirely in the hands of one man, the chief of the cartel for the time being, who happens to be for the present Herr von Weinberg, of the Cassella Co. The companies exchange information. They contribute to the expense of foreign campaigns against competitors. They share profits. They have recently doubled their capital. Mr. Wigglesworth has told you that, owing to the German method of finance, their capitalization conceals rather than exaggerates the actual amount of their assets. Their nominal capitalization is to-day over one billion marks. Their stock is sold on the Berlin Stock Exchange to-day at an average of 400, so that that capitalization represents real assets of half a billion dollars at least, probably more. They have got that at stake.

Until the outbreak of the war they had a world market. They were organized, and their plants were constructed to make things on a colossal scale. You know without my having to state it that when you are organized to make the entire consumption of the world in any given article you cannot cut your production down by even as much as one-quarter without gravely interfering with the efficiency of your production. Their industry was the most remunerative in the German Empire. The dividends of these companies for years before the war averaged 22 per cent. The Badische Co. held a meeting in July, 1919, and declared a 12 per cent dividend. They were the favorite war babies of the German Empire. They made all the poison gases. They have kept their staffs and labor together, and they have spent vast sums on plants since the armistice. Dr. Herty, who has just been there, and others will tell you about what they are doing now.

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Senator Watson. I want to ask you a question or two. We will take up that matter later on. I wish you would tell me about the organization of the Chemical Foundation.

Mr. Choate. I would be very glad to. I went into the office of the Alien Property Custodian to investigate the chemical industry in the very early spring of 1918. We had not been at it long before we discovered the importance of the dye industry, and we had not been studying the dye industry long before we discovered the importance of the patents there as an obstacle to American progress. We found that very large numbers of patents in the dye field had been taken out by the Germans and had never, I think, in any single instance, been used.

Senator Curtis. In this country?

Mr. Choate. Yes, sir. They had been taken out, in other words, simply and solely to prevent the existence of competition in the products of those patents. Many of the patents were product patents, and some process patents. They covered all the later and most desirable dyes. Most of the indigo patents had lapsed, but the production in all of the later varieties of anthracene colors, which were the most fashionable for the moment among the dye industry, were covered, as well as innumerable pharmaceuticals and other things useful in the industry. We came to the conclusion on studying the situation——

Senator Nugent (interposing). Who do you mean by "we"?

Mr. Choate. I mean I and the other people connected with the office of the Alien Property Custodian, and in all this thing I was very closely associated with Mr. F. P. Garvan and Mr. Ramsay Hoguet, who was also working with us handling patent matters for the Alien Property Custodian. I will state that both Mr. Ramsay Hoguet and myself are lifelong Republicans. We came to the conclusion that the patents had been taken out——

Senator Watson (interposing). You say there were a great number of patents taken out in this country, Mr. Choate, that were not used in the United States at all?

Mr. Choate. Had never been used at all; no use of them had been made.

Senator Watson. Had any dye manufacturer in this country attempted to use any of those patents?

Mr. Choate. No; because they were owned by the Germans, and it was assumed, I suppose, that no licenses could be obtained. I can not imagine anybody being so mad as to ask any of the Big Six for a license to make one of their dyes in this country.

Senator Watson. Were these patents owned by the Big Six altogether?

Mr. Choate. Almost exclusively. I do not mean to say that all of the patents taken over by the Chemical Foundation were owned by the Big Six, but the dye patents we are now interested in were owned practically exclusively by the I. G.—the German dye trust.

Senator Watson. How long have these patents been in existence?

Mr. Choate. Some were nearly expiring, some had just been taken out, and there were lots of applications that had not been granted.

Senator Watson. Had they covered every kind of dyes?

Mr. Choate. By no means; they covered about one-fifth of the annual import before the war in value.

Senator Watson. What was the import before the war?

Mr. Choate. I think something like 45,000,000 pounds, or about $12,000,000 worth in import value, and probably about $20,000,000 by the time it got to the consumer.

Senator Watson. Oh, no; you must be wrong about that.

Mr. Choate. 29,000 short tons, or 58,000,000 pounds as stated in the Norton census. That, however, is the total American consumption, which includes Swiss importation and the American production of 8,000,000 pounds.

Mr. Wigglesworth. Indigo and alizarin were included in that?

Mr. Choate. Yes.

Senator Watson. So that these patents covered, you say, about one-twelfth of that quantity—did you not make that statement.

Mr. Choate. No; I should think they covered—I should not like to say now—but it is not above one-fifth either in value or quantity, and I think it is not above one-fifth in value.

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It therefore seemed to me absolutely necessary that somebody should do something about it. No one in the country, except ourselves in the Alien Property Custodian's office, knew anything about the situation, outside of the persons whose business was directly affected. Accordingly, it seemed to us that it was up to us to do something about it as public-spirited citizens. We were the only impartial persons whose pockets were unaffected by anything that might be done, who were in a position to do anything. Accordingly we got busy. An amendment was secured to the trading-with-the-enemy law which permitted the taking over of the patents. Up to that time no conception of what was finally done had been arrived at; the idea had not been thought of.

The thing was to get the patents out of the German hands, and decide what should be done with them later. They had been partially available to the American industry under the trading-with-the-enemy act which permitted the Federal Trade Commission to license applicants under them, but the regulations were such that the man who took a license from the Federal Trade Commission bought a lawsuit with it, did not know how long his license would last, and had to pay an indeterminate rate of royalty, at first at 5 per cent and then at such rate as might be determined by a court. So that nothing was really done under those Federal Trade Commission licenses except the manufacture of certain pharmaceuticals which were peculiarly necessary. Then, the patents having been taken over, the question arose, what was to be done with them? And there we faced a most difficult problem. There was no department of the Government to which they could be turned over; there was no department of the Government that had power to take them in hand. We did not seem to be able to create any great amount of interest in anybody about creating any such department of the Government.

England and France had annulled the German patents—England had at any rate, and I think France had; and while thus opening the market to their own manufacturers had also opened the door to German competition after the war. It seemed to us that probably something better could be done with them than that. The alternative seemed to be to sell them to a good American purchaser. But how were we going to do that; how could it be done; could the Alien Property Custodian do it without doing more harm than good?

These patents could not be sold singly. Probably 90 per cent of them were absolutely worthless—I suppose 90 per cent of most patents are worthless. They had to be sold in groups to be worth anybody's while, and had to be sold in fairly large groups; for if they were not worth defending they would do more harm than good. If they were sold in groups of any size they would have to be bought by pretty strong purchasers, if they were to be of any use in keeping German products out in favor of American products. Accordingly, the type of purchaser who would have to buy them, if they were to do any good to the country, had to be pretty strong. If we sold these patents to an important American manufacturer in groups of any size, he would become a monopolist *ad hoc;* he would be able to dominate one considerable section of the dye industry, and his domination might readily extend far beyond the field of the particular number of colors, covered by his patents.

Before it was decided what should be done with these patents, it so happened that the Bayer Co., the American branch of the one German concern of the Big Six that had any considerable plant in this country—came up for sale and was sold, and with the property thus sold passed, by the sale of the stock, the Bayer patents, which were not held in the name of the German Bayer Co., but were owned by one of its American subsidiary corporations, so that they as patents had never been taken over. As soon as that had happened——

Senator Watson (interposing). How is that? I did not get that.

Mr. Choate. The Bayer patents, 1,200 in number, covering one very valuable group of vat dyes and many pharmaceuticals—among others, the aspirin patent, I think—were owned by an American subsidiary corporation of one of the German Big Six, of which the German company owned all of the stock. So that when the German-held stock of that American corporation was sold, the patents practically went with it to the new purchaser. The purchaser was the Graselli Chemical Co., a very large manufacturer of general and heavy chemicals. The Alien Property Custodian was immediately deluged with protests against the sale of such a mass of patents to an important manufacturer, who might become a monopolist to a mild extent by virtue of the possession of those patents. This brought it to the attention of everybody concerned that the sale of these patents was even a more difficult thing than we had thought it was. Accordingly, everybody set to thinking for all he was worth to see what could be done. The solution was finally found by Mr. Garvan.

Senator Watson. You said a while ago that in your judgment 90 per cent of the patents were absolutely worthless.

Mr. Choate. I made that statement about patents in general, and that was the opinion of Mr. Hoguet as to these paents.

Senator Watson. If those patents were 90 per cent worthless, what difference did it make what became of them?

Mr. Choate. Because nobody knew which were good and which were bad.

Senator Watson. Then, how did they know they were 90 per cent worthless?

Mr. Choate. Because in almost every large group of patents of that sort——

Senator Watson (interposing). You are just generalizing?

Mr. Choate. It is the experience that 90 per cent are worthless, and it is the judgment of the chemists and chemical engineers here that of these probably a very small proportion are of value. I do not think you will find that questioned by any one.

Senator Watson. I imagine that is true. We have been told while investigating the dye question that a given process sometimes falls down because of leaving out an important step.

Mr. Choate. I did not mean that. I mean that the patents covered products or processes which were no good when you got them.

Senator Watson. I was going to state, secondly, which were no good when you got them.

Mr. Choate. I am leaving out of account for the moment the question of defect in the patent as a description of the thing which is to be done.

* * * * * * * *

We felt if that could be done and that corporation could be so tied up by its charter provisions that the stockholders could never make any money and that its officers could never make any money, and that the patents would have to be licensed to American manufacturers on even terms, so that the whole industry could avail itself of them, whether members of the corporation or not, then we should have a purchaser that would do good and not harm.

Senator Watson. That is to say, take over all the German patents—4,000 of them, you say?

Mr. Choate. There were about 4,000.

Senator Watson. And after that to take over all American patents hereafter issued?

Mr. Choate. Oh, no.

* * * * * * * *

He (Mr. Garvan) took the office on condition that he serve without compensation, and he served entirely without compensation, as do the other executive officers. And the charter provides that except for a 6 per cent return on the preferred stock—which is to be retired as fast as it can be—and a dividend limited to 6 per cent on the common stock if earned, the entire funds produced by the Chemical Foundation must be used for purposes of the advancement of science and industry in the United States.

DEFENDANT'S EXHIBIT No. 143.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of an instrument of writing

Recorded April 10, 1919,
in
Liber G-107, page 48 of Transfers of Patents.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this 3rd day of July in the year of our Lord, one thousand nine hundred and twenty-three and of the Independence of the United States of America the one hundred and forty-seventh.

(Seal)

(Sgd.) WM. A. KINNAN,
Acting Commissioner of Patents.

G. 107. p. 48.

ASSIGNMENT.

WHEREAS, A. MITCHELL PALMER, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act" approved October 6, 1917 and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, under and by virtue of his authority as Alien Property Custodian, and in accordance with demands duly made, is now vested with all properties in the United States of America, of Gesellschaft fur Drahtlose Telegraphie, m.b.H. of Berlin, Germany; and

Whereas, said Gesellschaft fur Drahtlose Telegraphie, m.b.H. heretofore entered into an agreement with Atlantic Communication Company, a corporation duly organized and existing under the laws of the State of New York, and having a place of business in the Borough of Manhattan, City, County and State of New York, said agreement being evidenced by a certain instrument in writing dated February 21, 1913, and duly executed by the parties thereto on December 12, 1913 and also by certain instruments in writing supplemental thereto which are enumerated in Schedule A, hereto annexed and made a part hereof, whereby the said Gesellschaft fur Drahtlose Telegraphie, m.b.H. granted to said Atlantic Communication Company, certain rights under any and all letters patents of the United States which it then owned or controlled, and which it might thereafter own or control; and whereby said Atlantic Communication Company covenanted to do certain acts and things for the benefit of said Gesellschaft fur Drahtlose Telegraphie, m.b.H.; and

Whereas, said Gesellschaft fur Drahtlose Telegraphie, m.b.H., heretofore owned a certain trademark "Telefunken", certain letters patent of the United States and certain inventions and applications for letters patent of the United States therefor, including the letters patent, inventions and applications for letters patent enumerated in Schedule B hereto annexed and made a part hereof;

Now, Therefore, to All Whom it may Concern, be it Known, that for and in consideration of the sum of five hundred dollars ($500.00), to him in hand paid by the United States of America, represented by the

Secretary of the Navy, before the signing and delivery of these presents, receipt of which is hereby acknowledged, the said A. Mitchell Palmer, as Alien Property Custodian, agrees to and hereby does sell, assign, transfer and set over to the United States of America, represented by the Secretary of the Navy:—

First, the entire right, title and interest formerly held by Gesellschaft fur Drahtlose Telegraphie, m.b.H., in, to and under said agreement of February 21, 1913 and all agreements supplemental thereto enumerated in Schedule A hereto annexed, together with the entire

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beneficial interest formerly held by said Gesellschaft fur Drahtlose Telegraphie, m.b.H., in said agreements; the same being now vested in the said A. Mitchell Palmer, as Alien Property Custodian;

Second, the entire right, title and interest in and to said trademark "Telefunken" together with the good will and business appurtenant thereto; and

Third, the entire right, title and interest formerly held by said Gesellschaft fur Drahtlose Telegraphie, m.b.H., now vested in the said A. Mitchell Palmer, as Alien Property Custodian, in and to any and all letters patent of the United States inventions and applications for letters patent of the United States therefor; and all letters patent, inventions and applications for letters patent therefor which are or were subject to the provisions of said agreement with Atlantic Communication Company; including the letters patent, inventions and applications for letters patent, inventions and applications for letters patent therefor, enumerated in Schedule B hereto annexed; together with all damages and profits which said Gesellschaft fur Drahtlose Telegraphie, m.b.H. might have been entitled to recover at law or in equity from any person, firm, corporation or government for past infringement of said letters patent.

To Be Held and Enjoyed, by the United States of America, represented by the Secretary of the Navy, to the full end of the term of said agreement and to

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the full ends of the terms for which any and all letters patent have been or may be granted, as fully and completely as the same could have been held and enjoyed by said A. Mitchell Palmer, as Alien Property Custodian, or by said Gesellschaft fur Drahtlose Telegraphie, m.b.H. had no sale or assignment thereof or demand therefor, been made.

And said A. Mitchell Palmer, as Alien Property Custodian, hereby covenants for himself, and his successors in office, that he will execute without further consideration, any further lawful documents, any further assurances that may be deemed necessary by counsel for the United States of America, represented by the Secretary of the Navy, fully to secure to and vest in said United States of America, represented by the Secretary of the Navy, the rights, titles, privileges and advantages hereby sold, assigned, transferred and set over or intended so to be.

And said A. Mitchell Palmer, as Alien Property Custodian, hereby requests the Commissioner of Patents to issue any and all letters patent which may be granted upon the applications enumerated in Schedule B to the United States of America, represented by the Secretary of the Navy, in accordance with this assignment.

In Witness Whereof, said A. Mitchell Palmer, as Alien Property Custodian, has duly executed these presents and hereto affixed his seal of office this 6th day of February, 1919.

A. MITCHELL PALMER,
Alien Property Custodian.

Alien Property Custodian
United States of America
Approved for execution RH.

Witness:
T. S. Place

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District of Columbia) ss:

On this 6 day of Feby. 1919, before me came A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the Trading with the Enemy Act approved October 6, 1917 and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing release, as the Alien Property Custodian, as aforesaid.

Oden B. Gray,
Notary Public.

Oden B. Gray
Notary Public
District of Columbia

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Schedule "A"

List of License Agreements between Gesellschaft fur Drahtlose Telegraphie, m.b.h. and Atlantic Communication Company Supplemental to the Principal Agreement dated February 21, 1913, and executed December 12, 1913.

No. 1. Agreement dated, April 6, 1914, not recorded.

No. 2. Agreement dated April 6, 1914, not recorded.

No. 3. Agreement dated April 14, 1914, not recorded.

No. 4. Agreement dated, August 27, 1914, not recorded.

No. 5. Agreement dated, Dec. 14, 1915 and recorded in the United States Patent Office February 12, 1916, in Liber C99, page 306 of Transfers of Patents.

No. 6. Agreement dated Dec. 15, 1915, and recorded in the United States Patent Office February 12, 1916, in Liber H99, page 304 of Transfers of Patents.

No. 7. Agreement dated, Feb. 7, 1916, and recorded in the United States Patent Office June 10, 1916 in Liber K100, page 250 of Transfers of Patents.

No. 8. Agreement dated Jun. 29, 1916, and recorded in the United States Patent Office July 6, 1916, in Liber P100, page 324 of Transfers of Patents.

No. 9. Agreement dated, July 11, 1916, and recorded in the United States Patent Office, Sept. 7, 1916, in Liber M100, page 462 of Transfers of Patents.

No. 10. Agreement dated, July 11, 1916, and recorded in the United States Patent Office, Aug. 29, 1916, in Liber W100, page 478 of Transfers of Patents.

No. 11. Agreement dated Nov. 24, 1916, not recorded.

No. 12. Agreement dated Nov. 24, 1916, not recorded.

SCHEDULE "B"

LETTERS PATENT OF THE UNITED STATES

No.	Date of Issue	Inventor	Title
623,316	Apr. 18, 1899	Thomas B. Kinraide	Induction Apparatus
623,317	Apr. 18, 1899	Thomas B. Kinraide	Electrical Breaks
623,318	Apr. 18, 1899	Thomas B. Kinraide	Electrical Spark Gaps

No.	Date of Issue	Inventor	Title
783,992	Feb. 28, 1905	Andre Blondel	Wireless Telegraphy by Electric Waves
783,923	Feb. 28, 1905	Andre Blondel	Wireless Telegraphy by Electric Waves
824,682	June 26, 1906	Andre Blondel	Methods of Practicing Wireless Telegraphy
743,056	Nov. 3, 1903	Ferdinand Braun	Wireless Telegraphy.
744,897	Nov. 24, 1903	Ferdinand Braun	Means for Directing Electric Waves for Use in Wireless Telegraphy
750,429	Jan. 26, 1904	Ferdinand Braun	Wireless Electric Transmission of Signals Over Surfaces.
763,164	June 21, 1904	Johannes Donitz	Apparatus for Determining the Length of Waves and Observing the Oscillations in Electric Oscillation Systems.
763,345	June 21, 1904	Ferdinand Braun	Means for Tuning and Adjusting Electric Circuits.
776,337	Nov. 29, 1904	Leonid Mandelstam and Hermann Brandes	Wireless Signaling System
776,380	Nov. 29, 1904	Ferdinand Braun	Method of Producing Quick Electrical Oscillations of Different Phases
790,179	May 16, 1905	Ferdinand Braun	Wireless Telegraphy
790,250	May 16, 1905	Ferdinand Braun and Ragnar Rendahl	Apparatus for Increasing the Discharge Energy of Electrical - Vibration Systems
797,169	Aug. 15, 1905	Ferdinand Braun	Space Telegraphy
797,544	Aug. 15, 1905	Ferdinand Braun	Space Telegraphy

No.	Date of Issue	Inventor	Title
813,914	Feb. 27, 1906	Ragnar H. Rendahl	Wireless Electric Signaling System
820,169	May 8, 1906	Georg Von Arco	Resonance-Circuit
820,258	May 8, 1906	Ragnar H, Rendahl	Detector for Electromagnetic Waves or the Like
828,864	Aug. 14, 1906	Wilhelm Schloemilch	Receiver for Wireless Telegraphy
851,336	Apr. 23, 1907	Georg Von Arco	Transmitter for Wireless Telegraphy
883,437	Mar. 31, 1908	Leonard D. Wildman	Receiver for Space Signaling Systems
936,258	Oct. 5, 1909	Wilhelm Schloemilch	Receiver for Space Telegraphy
958,181	May 17, 1910	Wilhelm Schloemilch	Receiver for Wireless Telegraphy
958,209	May 17, 1910	Georg Von Arco	Portable Station for Wireless Telegraphy
959,100	May 24, 1910	Georg Von Arco	Aerial Conductor Arrangement for Wireless Telegraphy
962,262	June 21, 1910	Wilhelm Schloemilch and Paul Fernand Pichon	Wave-Detector for Wireless Telegraphy
994,426	June 6, 1911	Ragnar H. Rendahl	Receiver for Wireless Telegraphy
1,003,210	Sept. 12, 1911	Wilhelm Schloemilch and Paul Fernand Pichon	Wave Detector for Wireless Telegraphy
1,003,374	Sept. 12, 1911	Wilhelm Schloemilch and Paul Fernand Pichon	Wave-Detector for Wireless Telegraphy
1,003,375	Sept. 12, 1911	Wilhelm Schloemilch and Paul Fernand Pichon	Wave-Detector for Wireless Telegraphy
1,005,471	Oct. 10, 1911	Ragnar H. Rendahl	Antenna
1,014,722	Jan. 16, 1912	Ragnar H. Rendahl	Means for Varying the Period of Oscillation of Two Oscillatory Circuits

No.	Date of Issue	Inventor	Title
1,051,744	Jan. 28, 1913	Alexander Meissner	Spark-Gap for Impulse Excitation.
1,052,849	Feb. 11, 1913	Wilhelm Schloemilch and Paul Fernand Pichon	System of Radiotelephony
1,061,717	May 13, 1913	Georg Von Arco	Arrangement for Producing Electrical Oscillations
1,067,851	July 22, 1913	Adolf Wasmus	Means for Producing Rontgen Rays
1,077,733	Nov. 4, 1913	Alexander Meissner	Means for Producing Slightly-Damped Oscillations by Shock Excitation
1,082,221	Dec. 23, 1913	Georg Von Arco	Radiotelegraphic Station.
1,087,126	Feb. 17, 1914	Bedrich Macku Leonid Mandelstam and Nicolaus Papalexi	Arrangement for Producing Slightly Damped Electrical Oscillations.
1,087,892	Feb. 17, 1914	Wilhelm Schloemilch and Otto Von Bronk	Means for Receiving Electrical Oscillations
1,131,187	Mar. 9, 1915	Georg Von Arco	Self - Inductive Means for Electrical Oscillatory Circuits.
1,135,604	Apr. 13, 1915	Alexander Meissner	Process and Apparatus for Determining the Position of Radiotelegraphic Receivers.
1,148,279	July 27, 1915	Georg Von Arco and Ragnar H. Rendahl	Self Inductive Means for Electrical Oscillatory Circuits
1,151,824	Aug. 31, 1915	Gustav Reuthe	Electric Condenser
1,162,830	Dec. 7, 1915	Georg Von Arco and Alexander Meissner	System for Signaling by Wireless Telegraphy Under the Quenched-Spark Method.

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CARD 86

No.	Date of Issue	Inventor	Title
1,216,538	Feb. 20, 1917	Georg Von Arco and Ragnar H. Rendahl	Means for Producing Electrical Oscillations
1,267,018	May 21, 1918	Georg Von Arco and Alexander Meissner	Transmitting Apparatus for Wireless Telegraphy and Telephony

APPLICATIONS FOR LETTERS PATENT OF THE UNITED STATES.

Ser. No.	Filing Date	Inventor	Title
811,366 Renewed 242,891	Jan. 10, 1914 July 1, 1918	Georg Von Arco and Alexander Meissner	Connections for Electrical Relays Working with an Ionized Gas Gap
683,530	Mar. 13, 1912	Wilhelm Schloemilch	Wave Detectors.
99,792	May 25, 1916	Gustav Reuthe	Antenna Arrangements for Wireless Signaling or the Like
99,793	May 25, 1916	Gustav Reuthe	Method for Controlling Wireless Telegraph Transmitters.
738,864 Renewed 239,496	Dec. 27, 1912	Georg Von Arco and Alexander Meissner	Stations for Wireless Telegraphy and Telephony
76,328	Feb. 2, 1916	Walter Dornig	Generator for High-Frequency Currents for Wireless Telegraphy and Telephony
84,110	Mar. 14, 1916	Ferdinand Braun	Cathode-Ray Tube Receivers
156,894	Mar. 23, 1917	Georg Von Arco and Alexander Meissner	Transmitting Apparatus for Wireless Telegraphy and Telephony
156,895	Mar. 23, 1917	Georg Von Arco and Alexander Meissner	High-Frequency Generator for Telegraphy and Telephony

Ser. No.	Filing Date	Inventor	Title
825,188	Mar. 16, 1914	Altxander Meissner	Production of Waves by Cathode-Ray Tubes.

Recorded April 10, 1919. 2938.

DEFENDANT'S EXHIBIT No. 144.

Department of the Interior
United States Patent Office.

To all persons to whom these presents shall come, Greeting:

This is to Certify that the annexed is a true copy from the records of this office of an instrument of writing

Recorded April 10, 1919,
in
Liber U-106, page 395 of Transfers of Patents.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this 3rd day of July in the year of our Lord, one thousand nine hundred and twenty-three and of the Independence of the United States of America the one hundred and forty-seventh.

(Seal)

(Sgd.) WM. A. KINNAN,
Acting Commissioner of Patents.

U. 106. p. 395.

Assignment.

Whereas, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the

Trading with the Enemy Act, approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, under and by virtue of his authority as Alien Property Custodian, and in accordance with demands duly made, is now vested with all of the right, title and interest of certain letters patent of the United States, enumerated in Schedule A. hereto annexed and made a part hereof;

Now, Therefore, to All Whom it May Concern, be it Known, that for and in consideration of the sum of one thousand one hundred and ninety dollars ($1190.00) to him in hand paid by the United States of America, represented by the Secretary of the Navy, before the signing and delivery of these presents, receipt whereof is hereby acknowledged, said A. Mitchell Palmer, as Alien Property Custodian, agrees to, and hereby does, sell, assign, transfer and set over to the United States of America, represented by the Secretary of the Navy, the entire right, title and interest in and to said Letters Patent enumerated in Schedule A hereto attached, together with all damages and profits recoverable at law or in equity from any person, firm, corporation or government, other than that

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of the United States of America, for the past infringement thereof; and the said A. Mitchell Palmer, as Alien Property Custodian, hereby releases and forever discharges the United States of America of and from all claims and demands on account of infringements of said letters patent prior to the date hereof.

To be Held and Enjoyed by the United States of America, represented by the Secretary of the Navy, to the full end of the terms of said letters patents as fully and completely as the same could have been held and enjoyed by the said A. Mitchell Palmer had no sale or assignment thereof been made.

IN WITNESS WHEREOF, said A. Mitchell Palmer, as Alien Property Custodian, has duly executed these presents and hereto affixed his seal of office this 6th day of February, 1919.

A. MITCHELL PALMER,
Alien Property Custodian.

T. S. PLACE

* * * * * * * * * * * * * * * * * * * *
* Alien Property Custodian *
* United States of America *
* Approved for execution R. H. *
* * * * * * * * * * * * * * * * * * * *

DISTRICT OF COLUMBIA) ss:

On this 6 day of Feby. 1919, before me came A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing release, as the Alien Property Custodian, as aforesaid.

ODEN B. GRAY,
Notary Public.

* * * * * * * * * * * * * * *
* Oden B. Gray *
* Notary Public *
* District of Columbia *
* * * * * * * * * * * * * * *

SCHEDULE "A"

Name	Patent Number	Date of Issue
Otto Scheller	892,311	June 30, 1908
Otto Scheller	892,312	June 30, 1908
Josef Schiessler	1,092,294	April 7, 1914
Josef Schiessler	1,099.998	June 16, 1914
Josef Schiessler	1,101,148	June 23, 1914
Josef Schiessler	1,116,130	November 3, 1914
Hermann Heinicke	835,023	November 6, 1906
Werner Otto	1,103,822	July 14, 1914
Max Jasper	914,483	March 9, 1909
Dr. Erich F. Huth G. m. b. H.	1,064,325	June 10, 1913
Christian Emil Bichel	736,483	August 18, 1903
Signal Gesellschaft m. b. H.	1,197,366	September 5, 1916
Signal Gesellschaft m. b. H.	1,190,156	July 4, 1916
Christoph Wirth and Christoph Beck	930,588	August 10, 1909
Hans Boss	1,152,272	August 31, 1915
Eugen Reisz	1,142,625	June 8, 1915
Arthur Steinacker	970,850	September 20, 1910
Firm Wirth, Beck & Knauss	1,029,573	June 11, 1912
Egbert von Lepel	1,168,837	January 18, 1916
Egbert von Lepel	1,224,048	April 24, 1917
Robert Furstenau	1,229,740	June 12, 1917
Signal Gesellschaft m. b. H.	1,116,059	November 3, 1914
Signal Gesellschaft m. b. H.	1,219,550	March 20, 1917
Walther Burstyn	1,148,827	August 3, 1915
Gerhard Jahr	905,537	December 1, 1908
Sigmund Musits	777,216	December 13, 1904
Christian Hülsmeyer	810,150	January 16, 1906
Rudolf Goldschmidt	1,087,113	February 17, 1914
Rudolf Goldschmidt	1,104,256	July 21, 1914
Rudolf Goldschmidt	1,104,257	July 21, 1914
Christoph Wirth	1,012,496	December 19, 1911
Relais-Gesellschaft m. b. H.	1,169,082	January 18, 1916
Egbert von Lepel	1,043,117	November 5, 1912
Egbert von Lepel	1,204,720	November 14, 1916

Recorded April 10, 1919

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DEFENDANT'S EXHIBIT No. 145.

COPY

Cl 4665

Assignment

Whereas, by virtue of an assignment by A. Mitchell Palmer, Alien Property Custodian, said Custodian agreed to and thereby did assign to the United States of America, represented by Secretary of the Navy, the entire right, title and interest in the United States Letters Patent enumerated below with all damages and profits recoverable from any person, firm, corporation or Government, other than that of the United States, for past infringement thereof; and said Custodian thereby released and forever discharged said United States from all claims and demands for infringement of said Letters Patent prior to the date thereof, which assignment was executed February 6, 1919, and recorded in the United States Patent Office on April 10, 1919, in Liber U-106, Page 395 of Transfers of Patents, to wit:

No. 1,087,113, dated February 17, 1914, to Rudolf Goldschmidt, for Machine for Receiving Electric Waves;

No. 1,104,256, dated July 21, 1914, to Rudolf Goldschmidt, for Apparatus for and Method of Receiving Electric Waves; and

No. 1,104,257, dated July 21, 1914, to Rudolf Goldschmidt, for High Frequency Generator; and

Whereas, said assignment from said A. Mitchell Palmer to the United States of America, represented by the Secretary of the Navy, was inadvertently made through accident and mistake, and

Whereas Francis P. Garvan, now Alien Property Custodian, desires to acquire and have the entire right, title and interest in and to said United States Letters Patent returned to him as such Alien Property Custodian, and

Whereas, said United States of America, represented by the Secretary of the Navy, consents to the retransfer of said entire right, title and interest to said Alien Property Custodian,

Now Therefore, to all whom it may concern, be it known that for and in consideration of the sum of One Hundred and Five ($105.00) Dollars in hand paid to the said United States of America by said Francis P. Garvan, Alien Property Custodian, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said United States of America, represented by the Secretary of the Navy, has assigned, sold, transferred and set over, and by these presents does assign, sell, transfer and set over unto the said Francis P. Garvan, Alien Property Custodian, its entire right, title and interest in and to each and all of the said patents and inventions, and in and to any reissue or reissues or extension or extensions thereof, the same to be held and enjoyed by the said Alien Property Custodian, his successors and assigns or other legal representatives, for his own proper use and behoof, of his successors, assigns or other legal representatives to the end of the term or terms for which said Letters Patent are granted or issued or may be extended, renewed or reissued, as fully and entirely as the same would have been held and enjoyed by said A. Mitchell Palmer, Alien Property Custodian, had said sale and assignment to the United States of America not been made;

Together Will All Claims for damages and profits by reason of past infringements of said Letters Patent, by any person, firm, corporation, association or Government other than that of the United States, with the right to sue for and collect the same for his own use and behoof and for the use and behoof of his successors, assigns or other legal representatives.

In Witness Whereof, the United States of America, represented by the Secretary of the Navy, has caused this assignment to be signed and sealed this 11th day of November, 1919.

F. D. ROOSEVELT,
Acting Secretary of the Navy.

In Presence of:
Graham Edgerton,
Solicitor.

(Seal)

DEFENDANT'S EXHIBIT No. 146.

Assignment

Whereas A. Mitchell Palmer, formerly Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, did, during his incumbency of said office of Alien Property Custodian by virtue of certain requirements or demands issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him the several letters patent of the United States enumerated in Schedule A, which is annexed hereto and made a part hereof, and did also seize and require to be conveyed to him all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of the letters patent enumerated in said Schedule A and also of the letters patent hereinafter enumerated in Schedule B which is annexed hereto and made a part hereof; and

WHEREAS I, FRANCIS P. GARVAN, was on the 4th day of March, 1919, duly appointed and thereafter qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer; and

WHEREAS I, FRANCIS P. GARVAN, as Alien Property Custodian as aforesaid, by virtue of a requirement or demand issued under my hand and seal of office did seize and require to be conveyed to me all of the rights, interests and benefits created in favor of, or conferred upon, Optische Anstalt C. P. Goerz, also known as Optische Anstalt C. P. Goerz Optical Company, of Friedenau, Germany, an enemy, by a certain agreement dated April 20, 1909, between said enemy and The United States of America, whereby said enemy granted to The United States of America, certain rights and licenses under letters patent of the United States Nos. 784,487 and 784,852 and whereby The United States of America agreed to make certain payments to said enemy, and also all rights and interests created and existing in favor of, or conferred upon, said enemy in and to any royalties or sums of money hereinafter accruing in favor of, or becoming due or payable to, said enemy under the terms of said agreement, and also all claims and demands whatsoever created and existing in favor of, or conferred upon, said enemy against The United States of America; and

WHEREAS THE UNITED STATES OF AMERICA is desirous of acquiring the right to practice any and every invention covered by the letters patent enumerated in said Schedule A and to use and manufacture, and have manufactured, for its use any and every device, apparatus and instrument disclosed in and covered by said letters patent enumerated in said Schedule A; and is also desirous of having assigned to it all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of the letters patent enumerated in both said Schedules A and B and also all of the rights, interests and benefits created and existing in favor of, or conferred upon, said enemy by said agreement dated April 20, 1909;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, BE IT KNOWN that I, the said FRANCIS P. GARVAN, as Alien Property Custodian as aforesaid, in consideration of the sum of Two Thousand Dollars, ($2,000) to me in hand paid by, and for other good and valuable considerations unto me moving from, The United States of America, the receipt whereof is hereby acknowledged, have given and granted and by these presents do give and grant unto The United States of America, without payment of any further consideration or royalties whatsoever, the right and license to practice any and every invention covered by the letters patent enumerated in said Schedule A and to use and manufacture, and have maufactured, for its use any and every device, apparatus and instrument disclosed in and covered by said letters patent enumerated in said Schedule A, the said right and license to be held and enjoyed by the United States of America to the full end of the terms of said letters patent enumerated in said Schedule A.

And for the consideration aforesaid, I, the said Francis P. Garvan, as Alien Property Custodian as aforesaid, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto The United States of America all damages and profits recoverable at law or in equity from any and every person, firm corporation or government for every past infringement of each and all of the letters patent enumerated in both said Schedules A and B, the same to be received, held and enjoyed by The United States of America.

And for the consideration aforesaid, I the said Francis P. Garvan, as Alien Property Custodian as aforesaid, have sold, assigned, transferred and set over and by these presents do sell, assign, transfer and set over unto The United States of America, all of said rights, interests and benefits created in favor of, or conferred upon, said Optische Anstalt C. P. Goerz, also known as Optische Anstalt C. P. Goerz Optical Company, of Friedenau, Germany, an enemy, by said agreement dated April 20, 1909 between said enemy and The United States of America, whereby said enemy granted to The United States of America certain rights and licenses under letters patent of The United States Nos. 784,487 and 784,852, and whereby The United States of America agreed to make certain payments to said enemy, and also all rights and interests created and existing in favor of, or conferred upon, said enemy in and to any royalties or sums of money hereafter accruing in favor of, or becoming due or payable to, said enemy under the terms of said agreement, and also all claims and demands whatsoever created and existing in favor of, or conferred upon, said enemy against The United States of America.

This grant and assignment is made without recourse of any kind upon the undersigned, Francis P. Garvan, personally, either by the grantee or assignee herein or by any other person or corporation; and neither the Alien Property Custodian, nor any representative or agent or agency thereof shall be held or admitted to have made any representation or guaranty, express or implied, concerning or in any way respecting the aforesaid letters patent or other property dealt with herein.

In Witness Whereof I, the said Francis P. Garvan, as Alien Property Custodian as aforesaid, have hereunto set my hand and seal of office this third day of April, 1920.

(Sgd.) FRANCIS P. GARVAN,
Alien Property Custodian.

Witness:
(Sgd.) Paul Smith.

District of Columbia, *ss:*

On this third day of April, 1920, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as the Alien Property Custodian, as aforesaid.

(Sgd.) ALVIN G. BELT,
Notary Public,
D. C.

(Seal)

SCHEDULE A.

Patents relating to Binoculars and Like Devices.

Patent No.	Date of Issue	Title.
709,898	Sept. 30, 1902	Binocular Prism-Telescope.
781,233	Jan. 31, 1905	Prism-support for use with Optical Instruments.
836,273	Nov. 20, 1906	Prism-Telescope.
898,653	Sept. 15, 1908	Prismatic Double Telescope.
904,066	Nov. 17, 1908	Prism-Telescope and Similar Prism-carrying Device and means for Adjusting the Prisms.
1,136,951	Apr. 27, 1915	Surveying Instrument.

Patents relating to Lenses, Cameras and Photographic Apparatus Generally

Patent No.	Date of Issue	Title.
709,480	Sept. 23, 1902	Folding Stereoscopic Camera.
738,402	Sept. 8, 1903	Shutter for Photographic Objectives.
745,550	Dec. 1, 1903	Photographic Objective.
777,320	Dec. 13 1904	Phoyographic Objective.
833,916	Oct. 23, 1906	Roller-blind for Photographic Cameras.
877,499	Jan. 28, 1908	Device for successively exposing Sensitive Sheets.
886,739	May 5, 1908	Device for focusing Photographic Cameras.
902,822	Nov. 3, 1908	Folding Photographic Camera.
909,459	Jan. 12, 1909	Device for exposing Light-Sensitive Layer-carriers.
912,352	Feb. 16, 1909	Objective.
913,353	Feb. 23, 1909	Foldable Reflex-Camera.
926,495	June 29, 1909	Photographic Change Box.
930,621	Aug. 10, 1909	Packing for Light-Sensitive Layer-carriers.

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Patent No.	Date of Issue	Title.
941,126	Nov. 23, 1909	Roller-blind for Photographic Cameras.
944,595	Dec. 28, 1909	Photographic Camera.
947,946	Feb. 1, 1910	Device for exposing Light-Sensitive Layer-carriers and Film Structure therefor.
984,007	Feb. 14, 1911	Device for exposing Sensitive Layer-carriers.
986,420	Mar. 7, 1911	Film Pack and Adapter therefor.

Patent No.	Date of Issue	Title.
988,637	Apr. 4, 1911	Level.
989,784	Apr. 18, 1911	Photographic Camera.
1,000,630	Aug. 15, 1911	Packing for Light-Sensitive Layer-carriers.
1,066,955	July 8, 1913	Magazine Plate-holder and Film-pack therefor.
1,098,844	June 2, 1914	Package for Light-Sensitive Films.
1,108,307	Aug. 25, 1914	Spherically, chromatically, Astigmatically and Comatically Corrected Double Objective.
1,151,978	Aug. 31, 1915	Cinematographic Apparatus.
1,196,116	Aug. 29, 1916	Folding Camera.
1,199,238	Sept. 26, 1916	Photographic Plate-holder.

Patents relating to Gun Sights, Periscopes and Other Military and Naval Instruments.

Patent No.	Date of Issue	Title.
784,487	Mar. 7, 1905	Tangent-scale Telescope for Guns.
784,852	Mar. 14, 1905	Panorama-Telescope.
813,933	Feb. 27, 1906	Automatic Recording Device.
829,121	Aug. 21, 1906	Telescope for Submarine and Submergible Boats.
831,350	Sept. 18, 1906	Telescope with Refracted Optical Axis.

Schedule A—Page 3.

879,572	Feb. 18, 1908	Telescope with Displaceable Reversing System.
881,127	Mar. 10, 1908	Instrument for Optically Measuring Distances.
881,590	Mar. 10, 1908	Mounting of Sighting Telescopes.
882,762	Mar. 24, 1908	Panoramic Telescope.
886,722	May 5, 1908	Telescope.
892,731	July 7, 1908	Angle-measuring Instrument with Telescopes.
907,366	Dec. 22, 1908	Sighting Telescope for Arms and Arm with Sighting Telescope.
934,440	Sept. 21, 1909	Ocular Prism for Base-line Telemeters.
941,503	Nov. 30, 1909	Optical Distance-measuring Instrument.
972,622	Oct. 11, 1910	Stereotelescope.
976,370	Nov. 22, 1910	Periscope.
1,001,958	Aug. 29, 1911	Attaching Device for Optical Instruments.

Patent No.	Date of Issue	Title.
1,027,420	May 28, 1912	Angular Mirror.
1,038,831	Sept. 17, 1912	Distance-measuring Instrument of the Coincident-image Type.
1,060,902	May 6, 1913	Base-line Telemeter.
1,066,906	July 8, 1913	Distance-measuring Instrument.
1,067,027	July 8, 1913	Telemeter.
1,085,611	Feb. 3, 1914	Annular Mirror Periscope.
1,085,612	Feb. 3, 1914	Adjusting Device for Optical Instrument.
1,086,297	Feb. 3, 1914	Prismatic Device.
1,088,701	Mar. 3, 1914	Distance-measuring Instrument.
1,091,933	Mar. 31, 1914	Telescope with Variable Magnification.
1,097,635	May 26, 1914	Telescope with Variable Magnification.

Schedule A—Page 4.

Patent No.	Date of Issue	Title.
1,098,905	June 2, 1914	Periscope.
1,104,769	July 28, 1914	Optical System for Prism-carrying Devices.
1,108,180	Aug. 25, 1914	Base-line Telemeter.
1,116,069	Nov. 3, 1914	Telescope of unvariable Length and Progressively-Variable Magnification.
1,146,428	July 13, 1915	Device for taking Aim with Quick-firing Guns with Protecting Shields and Telescopic Sight.
1,147,990	July 27, 1915	Distance-measuring Instrument.
1,160,614	Nov. 16, 1915	Distance-measuring Instrument.
1,160,615	Nov. 16, 1915	Aiming Device.
1,209,958	Dec. 26, 1916	Panoramic Telescope.
1,236,722	Aug. 14, 1917	Optical System of Variable Magnification.
1,247,185	Nov. 20, 1917	Distance-measuring Instrument.

SCHEDULE B.

Patent No.	Date of Issue	Title.
564,216	July 21, 1896	Photographic Shutter.
599,700	Mar. 1, 1898	Combined Lens for Photographic Purposes.
635,472	Oct. 24, 1899	Photographic Objective.
635,473	Oct. 24, 1899	Three-lens System for Photographic Purposes.

Patent No.	Date of Issue	Title.
648,123	Apr. 24, 1900	Telescopic Tripod.
677,460	July 2, 1901	Photographic Magazine Camera.
687,373	Nov. 26, 1901	Focal Adjustment for Binocular Optical Instruments.
695,638	Mar. 18, 1902	Magazine Plate-Holder.
695,639	Mar. 18, 1902	Photographic Roll Holder.
704,320	July 8, 1902	Folding Camera with Roll-Film Magazine.
706,650	Aug. 12, 1902	Astigmatically Corrected Wide-Angle Objective.
706,651	Aug. 12, 1902	Magazine Plate-Holder.

Patents under Schedule B not licensed.
Rights only assigned.

DEFENDANT'S EXHIBIT No. 147.

Liber I 112,
Page 421.

License.

Whereas, The Chemical Foundation, Incorporated, a corporation organized and existing under and by virtue of the laws of the State of Delaware, is the owner of the legal title in and to the letters patent enumerated in Schedule A hereto attached, under and by virtue of an assignment to it by the Alien Property Custodian, dated the 21st day of December, 1920, and duly recorded in the United States Patent Office on the 21st day of December 1920, in Transfers of Patents; and

Whereas, The United States Government as represented by the Secretary of the Navy is desirous of acquiring the right and license, non-exclusive and non-assignable, to practice any and every invention covered by and every letters patents enumerated in Schedule A hereto attached, including the right and license, non-exclusive and non-assignable, to manufacture for its own use, any and every device, apparatus, and instrument disclosed in and covered by said letters patent.

Now, Therefore, to all Whom it may Concern, be it Known That The Chemical Foundation, Incorporated, in consideration of the sum of One Dollar ($1.00) lawful money of the United States, to it in hand paid, and for other good and valuable consideration, unto it moving from the United States Government as represented by the Secretary of the Navy (the receipt whereof is hereby acknowledged) has given and granted, and by these presents does give and grant unto the United States Government as represented by the Secretary of the Navy, and his successor in office, without payment of any further consideration, royalty or license fee whatsoever, the right and license, non-exclusive and non-assignable, to practice any and every invention covered by any and every of the letters patent enumerated in Schedule A hereto attached, and made part hereof, including the right and license, non-exclusive and non-asignable, to use and manufacture for its own use any and every device, apparatus and instrument disclosed in and covered by said letters patent To Have And To Hold the said right and license to the full end of the terms for which said letters patent have been granted.

And for the consideration aforesaid the said The Chemical Foundation, Incorporated, has given and granted, and by these presents does give and grant unto the United States Government as represented by the Secretary of the Navy, and his successor in office, the right and license to dispose of by sale or otherwise any and every device, apparatus and instrument which may have been or shall hereafter be manufactured by it for its own use under the right and license herein granted, but which, after said manufacture and use, it is desired to dispose of, and such device, apparatus or instrument shall remain forever licensed.

Provided, However, that in all cases where an exclusive or non-exclusive right or license has already been granted or now exists, in favor of a citizen of the United States of America under any of said letters patent, with which a grant of the right and license granted hereunder to the United States Government as represented by the Secretary of the Navy, and his successor in office, under the same letters patent would be inconsistent, then as to such letters patent no right or license is granted hereunder to the United States Government as represented by the Secretary of the Navy, and his successor in office; and Provided, Also, that the right or license granted to the United States Government as represented by the Secretary of the Navy, and his successor in office, hereunder shall also be subject to any and all licenses already granted or which may hereafter be granted by The Chemical Foundation, Incorporated, under any of the letters patent enumerated in Schedule A hereto attached and made part hereof; and Provided Further that such right and license granted hereunder to the United States Government as represented by the Secretary of the Navy, and his successor in office, shall be subject also, in all cases, to the rights and claims as the same may be prosecuted, adjudicated and determined under Section 9 of the "Trading with the Enemy Act," approved October 6, 1917 and the amendments thereto, and the executive orders and proclamations issued in pursuance thereof.

And It Is Further Provided, that neither the Chemical Foundation, Incorporated, nor any representative or agent or agency thereof, shall be held or admitted to have made any representation or guaranty, express or implied, concerning or in any way respecting the letters patent enumerated in Schedule A hereto attached and made part hereof.

In Witness Whereof, The Chemical Foundation, Incorporated, has caused its corporate seal to be hereunto affixed and duly attested and this license to be signed by its duly authorized officers this 26 day of February, 1921.

THE CHEMICAL FOUNDATION,
Incorporated,
By
Francis P. Garvin,

* * * * * * * * * *
* The Chemical *
* Foundation *
* Incorporated *
* Corporate Seal *
* 1919 *
* Delaware *
* * * * * * * * * *

Attest:
Geo. J. Corbutt,
Secretary.

State of New York,
County of New York, } *ss.:*

On this 26 day of February, 1921, before me came Francis P. Garvan, to me known, who being by me duly sworn, did depose and say: That he resides in the Borough of Manhattan, City of New York; that he is the President of The Chemical Foundation, Incorporated, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

LORETTO T. CONROY,
Notary Public.

LORETTO T. CONROY,
NOTARY PUBLIC
KINGS COUNTY,
N. Y.

Notary Public, Kings County
Clerk's No. 302, Register's No. 1098
New York Co. No. 239, Register's No. 1613
Commission expires March 30, 1921.

SCHEDULE A

Patent No.		
720,361	Inventor	Constantin & Rudolf Muller
	Date	Feb. 10, 1903
	Title	Regenerating platinum contact substances
	Seizure	Liber H-108, Pg. 369.
726,076	Inventor	Max LeBlanc and Constantin Krauss
	Date	April 21, 1903
	Title	Making Sulfuric Anhydrid
	Seizure	Liber C-108 Pg. 334
728,022	Inventor	Paul Schultz
	Date	May 12, 1903
	Title	Devices for automatically recording the amount of carbonic acid in products of combustion
	Seizure	Liber D-108 Pg. 482
748,424	Inventor	Arno Schmidt
	Date	Dec. 29, 1903
	Title	Hypodermic Syringe
	Seizure	Liber D-108 Pg. 456

Patent No.		
751,704	Inventor	Rudolf Weber
	Date	Feb. 9, 1904
	Title	Process for prod. paved tracks on macadamized roads, etc.
	Seizure	Liber I-108 Pg. 378
760, 361	Inventor	Louis Wolff
	Date	May 17, 1904
	Title	Steadying resistances for arc lamp
	Seizure	Liber H-108 Pg. 479
762,256	Inventor	Robert Schneider
	Date	June 7, 1904
	Title	Mixture for treating tuberculosis
	Seizure	Liber H-108 Pg. 445
762,847	Inventor	Max Schneider
	Date	June 14, 1904
	Title	Storage batteries
	Seizure	Liber G-108 Pg. 405
763,513	Inventor	Heinrich Schmidt
	Date	June 28, 1904
	Title	Fireproof ceiling
	Seizure	Liber J-108 Pg. 33
768,774	Inventor	Karl Schmidt
	Date	Aug. 30, 1904
	Title	Construction of frozen walls for shafts in mines.
	Seizure	Liber F-108 Pg. 128

F P G

Schedule A-2

Patent No.		
770,489	Inventor	Louis Wolff
	Date	Sept. 20, 1904
	Title	Electric arc lamps
	Seizure	Liber H-108 Pg. 479

Patent No.		
771,327	Inventor	August H. Schmidt
	Date	Oct. 4, 1904
	Title	Valve
	Seizure	Liber J-108 Pg. 32
771,669	Inventor	Adolf Schneegass
	Date	Oct. 4, 1904
	Title	Cold treatment of polished wood articles
	Seizure	Liber J-108 Pg. 20
774,607	Inventor	Rudolf G. Schmitt
	Date	Nov. 8, 1904
	Title	Mfg. of objects of paper mache
	Seizure	Liber H-108 Pg. 448
774,801	Inventor	Moritz Von Rohr
	Date	Nov. 15, 1904
	Title	Lens stereoscopes
	Seizure	Liber H-108 Pg. 470
780,670	Inventor	Rudolf Kron
	Date	Jan. 24, 1905
	Title	Methods of and applying sols, or fluids to traveling webs
	Seizure	Liber D-108 Pg. 152
781,338	Inventor	Albrecht Heil
	Date	Jan. 31, 1905
	Title	Methods of unit. the two components of a thermo elec. couple
	Seizure	Liber H-108 Pg. 363
783,662	Inventor	Louis Wolff
	Date	Feb. 28, 1905
	Title	Incandescent gas light lamps
	Seizure	Liber E-108 Pg. 191
793,237	Inventor	Eugen Schmid
	Date	June 27, 1905
	Title	Art of copying plastic products
	Seizure	Liber C-108 Pg. 51

Patent No.		
795,943	Inventor	Gustav Stern
	Date	Aug. 1, 1905
	Title	Moistening cloth for copying writings
	Seizure	Liber G-108 Pg. 126
805,235	Inventor	Paul Schmidt & Adolphe Desgraz
	Date	Nov. 21, 1905
	Title	Producer gas furnaces
	Seizure	Liber C-108 Pg. 113

F P G

SCHEDULE A-3

Patent No.		
807,553	Inventor	Alex Haase
	Date	Dec. 19, 1905
	Title	Treatment of wicks for increasing their inflammability
	Seizure	Liber H-108 Pg. 160
808,086	Inventor	Albrecht Heil
	Date	Dec. 28, 1905
	Title	Thermo electric batteries
	Seizure	Liber F-108 Pg. 303
811,971	Inventor	Szekely and Kovacs
	Date	Feb. 6, 1906
	Title	Process of mfg. milk preparations
	Seizure	Liber D-108 Pg. 495
817,640	Inventor	August B. Handschug
	Date	April 10, 1906
	Title	Auto. Gas Igniters
	Seizure	Liber E-108 Pg. 414
818,453	Inventor	Johannes Kruger
	Date	April 24, 1906
	Title	Machine for cutting up or mitering flanged metal means or girders
	Seizure	Liber B-108 Pg. 147

Patent No.		
819,144	Inventor	Simon Sigmund Konig
	Date	May 1, 1906
	Title	Wafer-Capsule Machine
	Seizure	Liber I-108 Pg. 90
822,270	Inventor	Arnst Haagn
	Date	June 5, 1906
	Title	Elec. Heated Hollow Bodies
	Seizure	Liber C-108 Pg. 478
829,664	Inventor	Hermann Mehner
	Date	Aug. 28, 1906
	Title	Process of solidfying earthy ground
	Seizure	Liber B-108 Pg. 313
830,225	Inventor	Fritz Haber
	Date	Sept. 4, 1906
	Title	Testing gaseous mixtures
	Seizure	Liber R-108 Pg. 305
832,322	Inventor	Johann Jurgens & August Westphal
	Date	Oct. 2, 1906
	Title	Process of impregnating roasted coffee
	Seizure	Liber D-108 Pg. 135
836,054	Inventor	Paul Schmidt
	Date	Nov. 13, 1906
	Title	Methods of manufacturing gas
	Seizure	Liber C-108 Pg. 44

F P G

SCHEDULE A-4

Patent No.		
842,012	Inventor	Emil Richter
	Date	Jan. 22, 1907
	Title	App. forcing fluids
	Seizure	Liber J-108 Pg. 3
842,730	Inventor	Hermann Viertel & Georg Egly

Patent No.		
	Date	Jan. 29, 1907
	Title	Making electrically conducting bodies for contacts
	Seizure	Liber G-108 Pg. 416
846,657	Inventor	Oscar Frolich
	Date	March 12, 1907
	Title	Process Extracting Copper
	Seizure	Liber D-108 Pg. 109
847,065	Inventor	Ernst Haagn
	Date	March 12, 1907
	Title	Body to be heated electrically
	Seizure	Liber I-108 Pg. 61
848,622	Inventor	Fritz Bauke
	Date	March 26, 1907
	Title	Gas Generators
	Seizure	Liber C-108 Pg. 252
849,429	Inventor	Walter Schumacher
	Date	April 9, 1907
	Title	Apparatus for separating and discharging Coke
	Seizure	Liber I-108 Pg. 345
850,397	Inventor	H. P. R. L. Porscke
	Date	April 16, 1907
	Title	Elastic Fluid turbines
	Seizure	Liber I-108 Pg. 328
857,247	Inventor	Adolph Ernst Menne
	Date	June 18, 1907
	Title	Apparatus for fusing metal
	Seizure	Liber J-108 Pg. 87
858,675	Inventor	Heinrich Schneider
	Date	July 2, 1907
	Title	Fireproof slabs
	Seizure	Liber F-108 Pg. 125
862,336	Inventor	Ferdinand V. Kallab
	Date	Aug. 6, 1907

Patent No.		
	Title	Color comparators
	Seizure	Liber G-108 Pg. 272
863,081	Inventor	Phillipp Muller, Jr.
	Date	Aug. 13, 1907
	Title	Mfg. of ailmentary products
	Seizure	Liber G-108 Pg. 88

F P G

SCHEDULE A-5

Patent No.		
864,139	Inventor	Walter Ruebel
	Date	Aug. 20, 1907
	Title	Mfg. of alloys
	Seizure	Liber F-108 Pg. 96
866,498	Inventor	Adolf Menne & Wilhelm Zollenkopf
	Date	Sept. 17, 1907
	Title	Methods of melting through masses of material
	Seizure	Liber J-108 Pg. 88
874,267	Inventor	Hubert Wagner
	Date	Dec. 17, 1907
	Title	Means for mounting stone lithographic rollers
	Seizure	Liber I-108 Pg. 179
874,432	Inventor	H. P. R. L. Porske
	Date	Dec. 24, 1907
	Title	Turbines
	Seizure	Liber I-108 Pg. 328
874,667	Inventor	Max Gehre
	Date	Dec. 4, 1907
	Title	App. for measuring supply of steam from boiler
	Seizure	Liber C-108 Pg. 418
875,813	Inventor	Carl Heinz
	Date	Jan. 7, 1908
	Title	Gas generators
	Seizure	Liber B-108 Pg. 50

Patent No.		
878,322	Inventor	Hubert Wagner
	Date	Feb. 4, 1908
	Title	Cemented lithographic stone
	Seizure	Liber C-108 Pg. 202
883,144	Inventor	Hans Mikorey
	Date	March 24, 1908
	Title	Color spraying apparatus
	Seizure	Liber F-108 Pg. 359
885,480	Inventor	Friedrich Jahns
	Date	April 21, 1908
	Title	Process of making producer gas
	Seizure	Liber B-108 Pg. 93
886,683	Inventor	Hugo Dicke
	Date	May 5, 1908
	Title	Process for balling together of pulverulent or dusty ores
	Seizure	Liber E-108 Pg. 319
887,058	Inventor	Fritz Bauke
	Date	May 12, 1908
	Title	Methods of producing gas
	Seizure	Liber C-108 Pg. 252
888,006	Inventor	Theodor Franke
	Date	May 19, 1908
	Title	Wall and Ceiling Covering
	Seizure	Liber G-108 Pg. 230

F P G

SCHEDULE A-6

Patent No.		
888,120	Inventor	Reinhold Scherfenberg
	Date	May 19, 1908
	Title	Structures made of bricks for reaction towers heat compensation apparatus and like
	Seizure	Liber D-108 Pg. 453
888,480	Inventor	Wilhelm Friess & Eduard Weingartner

Patent No.		
	Date	May 26, 1908
	Title	Bronzing machines
	Seizure	Liber G-108 Pg. 238
891,560	Inventor	Franz Eugen-Muller
	Date	June 23, 1908
	Title	Refrigerating apparatus employing carbonic acid
	Seizure	Liber D-108 Pg. 279
892,241	Inventor	Heinrich Freise
	Date	June 30, 1908
	Title	Methods of electrically detecting dangerous gases and apparatus therefor
	Seizure	Liber G-108 Pg. 24
895,628	Inventor	Goldschmidt & Weil
	Date	Aug. 11, 1908
	Title	Methods of Mfg. Metals
	Seizure	Liber C-108 Pg. 445
897,840	Inventor	Johann Friedrich Meyer, Jr., Ludwig Roselius, Karl Heinrich Wimmer
	Date	Sept. 1, 1908
	Title	Preparation of Coffee
	Seizure	Liber G-108 Pg. 95
898,607	Inventor	Jean Schmidt
	Date	Sept. 15, 1908
	Title	Illuminating apparatus
	Seizure	Liber H-108 Pg. 452
902,871	Inventor	Hans Goldschmidt
	Date	Nov. 3, 1908
	Title	Thermic Mixtures
	Seizure	Liber C-108 Pg. 445
903,112	Inventor	Paul Schmidt & Adolphe Desgraz
	Date	Nov. 3, 1908

Patent No.		
	Title	Gas producer
	Seizure	Liber C-108 Pg. 114
903,184	Inventor	Christian Eitle
	Date	Nov. 10, 1908
	Title	Gas retort feeding machines
	Seizure	Liber D-108 Pg. 69
904,886	Inventor	Otto Max Muller
	Date	Nov. 24, 1908
	Title	Self-igniting devices
	Seizure	Liber D-108 Pg. 281

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SCHEDULE A-7

Patent No.		
905,594	Inventor	Ferdinand Schultz
	Date	Dec. 1, 1908
	Title	Devices for locating a molten distributing fuse
	Seizure	Liber H-108 Pg. 251
905,598	Inventor	Heinrich Sohnlein
	Date	Dec. 1, 1908
	Title	Gas Engine
	Seizure	Liber C-108 Pg. 84
905,632	Inventor	Heinz Bauer
	Date	Dec. 1, 1908
	Title	Devices for admitting gas into vacuum tubes
	Seizure	Liber H-108 Pg. 495
906,812	Inventor	Josef Maly
	Date	Dec. 15, 1908
	Title	Gas Producer
	Seizure	Liber B-108 Pg. 264
909,172	Inventor	Rudolf Emmerich
	Date	Jan. 12, 1909
	Title	Process of Preserving Meat
	Seizure	Liber E-108 Pg. 339
911,745	Inventor	Otto Muller
	Date	Feb. 9, 1909

Patent No.		
	Title	Making albuminous bread
	Seizure	Liber G-108 Pg. 89
911,776	Inventor	Rudolf Straubel
	Date	Feb. 9, 1909
	Title	Binocular Telescope with double hinge
	Seizure	Liber Z-108 Pg. 260
912,509	Inventor	Bernhard Thiemich
	Date	Feb. 16, 1909
	Title	Process of mfg. gas from coal
	Seizure	Liber C-108 Pg. 134
914,233	Inventor	Max Breslauer
	Date	March 2, 1909
	Title	Frost Proof fire Extinguishing Liquids
	Seizure	Liber D-108 Pg. 46
918,752	Inventor	Albert Konig
	Date	April 20, 1909
	Title	Double telescope
	Seizure	Liber Z-108 Pg. 260
919,805	Inventor	Christian Albrecht
	Date	April 27, 1909
	Title	Linetype machines
	Seizure	Liber C-108 Pg. 370

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SCHEDULE A-8.

Patent No.		
920,756	Inventor	Albert Konig
	Date	May 4, 1909
	Title	Binocular telescope
	Seizure	Liber Z-108 Pg. 260
921,897	Inventor	Ludwig Schmidt & Herbert Schmidt
	Date	May 18, 1909
	Title	Automatic cutoffs for gas
	Seizure	Liber C-108 Pg. 111

Patent No.		
927,374	Inventor	Arthur Muller
	Date	July 6, 1909
	Title	Mfg. incandescent mantles
	Seizure	Liber F-108 Pg. 337
931,460	Inventor	Fritz Muller
	Date	Aug. 17, 1909
	Title	Gas Heating and illuminating
	Seizure	Liber B-108 Pg. 290
935,081	Inventor	August Wolfsholz
	Date	Sept. 28, 1909
	Title	Methods of consolidating loose soils, quicks, etc.
	Seizure	Liber H-108 Pg. 284
937,687	Inventor	Fritz Muller
	Date	Oct. 19, 1909
	Title	Gas Heating and illuminating
	Seizure	Liber B-108 Pg. 290
938,758	Inventor	Goldschmidt & Weil
	Date	Nov. 2, 1909
	Title	Methods of Mfg. Calcium Silicon Alloys, etc.
	Seizure	Liber C-108 Pg. 445
940,166	Inventor	Albert Konig
	Date	Nov. 16, 1909
	Title	Separating Prism Telemeter
	Seizure	Liber Z-108 Pg. 260
942,393	Inventor	Albert Konig
	Date	Dec. 7, 1909
	Title	Angle measuring appliance
	Seizure	Liber G-108 Pg. 284
947,971	Inventor	Albert Konig
	Date	Feb. 1, 1910
	Title	Binocular telescope
	Seizure	Liber E-108 Pg. 468

Patent No.		
949,501	Inventor	Moritz Von Rohr
	Date	Feb. 15, 1910
	Title	Spectacle glasses
	Seizure	Liber H-108 Pg. 470

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SCHEDULE A-9.

Patent No.		
956,775	Inventor	Heinrich Wilhelm Meyer
	Date	May 3, 1910
	Title	Receptacles for liquid weighing machines
	Seizure	Liber J-108 Pg. 90
959,521	Inventor	Konrad Hahn
	Date	May 31, 1910
	Title	Electrolytic App. with Liquid Anode
	Seizure	Liber F-108 Pg. 302
970,122	Inventor	Ludwig Schmidt & Herbert Schmidt
	Date	Sept. 13, 1910
	Title	Automatic gas cut-offs
	Seizure	Liber C-108 Pg. 111
970,932	Inventor	Otto Kruger
	Date	Sept. 20, 1910
	Title	Stamping and printing paper webs
	Seizure	Liber D-108 Pg. 147
977,607	Inventor	Georg Egly
	Date	Dec. 6, 1910
	Title	Ard Lamps electrodes
	Seizure	Liber D-108 Pg. 58
980,802	Inventor	Ignaz Kriedl
	Date	Jan. 3, 1911
	Title	Mfg. of incandescent gas mantles
	Seizure	Liber B-108 Pg. 184

Patent No.		
981,151	Inventor	Max Arndt
	Date	Jan. 10, 1911
	Title	Devices for making measurements by means of flowing liquids
	Seizure	Liber F-108 Pg. 237
983,586	Inventor	Reinhold Wagner
	Date	Feb. 7, 1911
	Title	Conveyers for incandescent materials
	Seizure	Liber E-108 Pg. 250
986,271	Inventor	Hugo Dicke
	Date	March 7, 1911
	Title	Process of refining and agglomerating ores and the like
	Seizure	Liber H-108 Pg. 320
994,447	Inventor	Georg Egly
	Date	June 6, 1911
	Title	Elec. Radiatory Stoves
	Seizure	Liber I-108 Pg. 222
995,601	Inventor	Edmund Hohmann
	Date	June 20, 1911
	Title	Gasometers
	Seizure	Liber B-108 Pg. 435

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SCHEDULE A-10.

Patent No.		
996,804	Inventor	Georg Schumacher
	Date	July 4, 1911
	Title	Alarm indicators for boiling purposes
	Seizure	Liber H-108 Pg. 55
1,000,346	Inventor	Moritz Von-Rohr
	Date	Aug. 8, 1911
	Title	Magnifying spectacle glasses
	Seizure	Liber E-108 172

Patent No.		
1,000,609	Inventor	Albert Konig
	Date	Telemeter
	Seizure	Liber Z 108 Pg. 260.
1,000,618	Inventor	Franz Meyer
	Date	Aug. 15, 1911
	Title	Tripods with Hinged legs
	Seizure	Liber D-108 Pg. 257
1,012,617	Inventor	Georg Egly
	Date	Dec. 26, 1911
	Title	Elec. Raditors.
	Seizure	Liber E-108 Pg. 333
1,014,690	Inventor	Heinrich Carl Buer
	Date	Jan. 16, 1912
	Title	Butter Flavoring
	Seizure	Liber D-108 Pg. 27
1,021,249	Inventor	Otto Grunewald & Max Gorich
	Date	March 26, 1912
	Title	Prop for mines
	Seizure	Liber C-108 Pg. 483
1,027,154	Inventor	Georg Richter & Hermann Broker
	Date	May 21, 1912
	Title	Gas Generating furnaces
	Seizure	Liber B-108 Pg. 435
1,028,281	Inventor	Moritz Von Rohr
	Date	June 4, 1912
	Title	Telescopic spectacle glasses
	Seizure	Liber H-108 Pg. 470
1,029,835	Inventor	Hubert Wagner
	Date	June 18, 1912
	Title	Lithographic Stones
	Seizure	Liber F-108 Pg. 180
1,030,128	Inventor	Moritz Von Rohr
	Date	June 18, 1912
	Title	Spectacle glasses
	Seizure	Liber E-108 Pg. 172

Schedule A-11.

Patent No.		
1,048,135	Inventor	Otto Cloetta & Fritz Muller
	Date	Dec. 24, 1912
	Title	Respiration apparatus
	Seizure	Liber E-108 Pg. 21
1,049,947	Inventor	Otto Uhde
	Date	Jan. 7, 1913
	Title	Apparatus for destroying refuse
	Seizure	Liber I-108 Pg. 159
1,050,280	Inventor	Carl A. F. Kruger
	Date	Jan. 14, 1913
	Title	Therapeutic Belts
	Seizure	Liber G-108 Pg. 290
1,054,598	Inventor	Edmund Mullner
	Date	Feb. 25, 1913
	Title	Photographic recordings app. for galvanosmeters oscillographs
	Seizure	Liber D-108 Pg. 285
1,060,868	Inventor	Leo Ubbelohde
	Date	May 6, 1913
	Title	Electric resistance furnaces
	Seizure	Liber G-108 Pg. 170
1,066,200	Inventor	Heinrichs W. A. T. Friedrichs
	Date	July 1, 1913
	Title	Treating ground nuts and prod. derived
	Seizure	Liber D-108 Pg. 99
1,066,651	Inventor	Heinrich Porscke & Julius Achenbach
	Date	July 8, 1913
	Title	Electrodes for secondary galvanic cells
	Seizure	Liber H-108 Pg. 28
1,069,047	Inventor	Franz Wagner

Patent No.		
	Date	1913
	Title	Gas lighters
	Seizure	Liber F-108 Pg. 179
1,075,720	Inventor	Philipp Muller
	Date	October 14, 1913
	Title	Mfg. of alimentary products
	Seizure	Liber D-108 Pg. 294
1,078,387	Inventor	Theuerkorn
	Date	Nov. 11, 1913
	Title	Apparatus for lining tubes with lead, tin, etc.
	Seizure	Liber G-108 Pg. 412
1,062,166	Inventor	Albert Konig
	Date	May 20, 1913
	Title	Sterescopic Telemeter
	Seizure	Liber Z-108 Pg. 260

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SCHEDULE A-12

Patent No.		
1,080,920	Inventor	Philipp Muller
	Date	Dec. 9, 1913
	Title	Mfg. of alimentary products
	Seizure	Liber D-108 Pg. 282
1,083,543	Inventor	Christian Friedrich Kroenert & Hans Jens Meyer
	Date	Jan. 6, 1914
	Title	Adjusting device for Pattern-Cylinders of Printing Machines
	Seizure	Liber E-108 Pg. 478
1,086,721	Inventor	Christian Friedrich Kroenert & Hans Jens Meyer
	Date	Feb. 10, 1914
	Seizure	Liber E-108 Pg. 478
1,089,805	Inventor	Georg Wolf
	Date	March 10, 1914

Patent No.		
	Title	Medical Appliance
	Seizure	Liber I-108 Pg. 168
1,099,595	Inventor	Franz Fischer
	Date	June 9, 1914
	Title	Process and App. for heating
	Seizure	Liber D-108 Pg. 104
1,100,694	Inventor	Frans M. Meyers
	Date	June 16, 1914
	Title	Method of Producing and Maintaining a High Vacuum
	Seizure	Liber D-108 Pg. 258
1,100,845	Inventor	Emil Richter
	Date	June 23, 1914
	Title	Mfg. of grinding app.
	Seizure	Liber H-108 Pg. 35
1,101,081	Inventor	Carl Zeiss
	Date	June 23, 1918
	Title	Optical square prisms
	Seizure	Liber F-108 Pg. 323
1,102,536	Inventor	Erwin Muller-Bralitz
	Date	Aug. 11, 1914
	Title	Containers for storing photographic plates
	Seizure	Liber G-108 Pg. 91
1,103,353	Inventor	Georg Egly
	Date	July 14, 1914
	Title	Elec. Heater
	Seizure	Liber I-108 Pg. 222
1,104,723	Inventor	Heinrich Weiss
	Date	July 21, 1914
	Title	Oil Transformers
	Seizure	Liber H-108 Pg. 88

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Schedule A-13

Patent No.		
1,108,402	Inventor	Paul Schmitz

Patent No.		
	Date	Aug. 25, 1914
	Title	Use of Rawhide
	Seizure	Liber A-108 Pg. 264
1,117,618	Inventor	Alwin Ach
	Date	Nov. 17, 1914
	Title	Surgical Appliance
	Seizure	Liber C-108 Pg. 372
1,126,027	Inventor	Max Jullig
	Date	Jan. 26, 1915
	Title	App. for detecting pipe leads, etc. embedded in masonry.
	Seizure	Liber H-108 Pg. 7
1,126,300	Inventor	Emil Schneider
	Date	Jan. 26, 1915
	Title	Centrifugal pump, blower, compressor, and the like.
	Seizure	Liber G-108 Pg. 391
1,126,877	Inventor	Bela Schaefer
	Date	Feb. 2, 1915
	Title	Vapor alternating rectifiers and similar app.
	Seizure	Liber D-108 Pg. 430
1,128,154	Inventor	Joseph Konig
	Date	Feb. 9, 1915
	Title	Making foodstuffs from sulfite cellulose waste liquors
	Seizure	Liber I-108 Pg. 288
1,130,588	Inventor	Hans Friedenthal
	Date	March 2, 1915
	Title	Fruit and vegetable dust and process of making
	Seizure	Liber G-108 Pg. 27
1,132,313	Inventor	Georg Egly
	Date	March 16, 1915
	Title	Flame arc lamps and electrodes therefor.
	Seizure	Liber G-108 Pg. 11

Patent No.		
1,140,289	Inventor	Wilhelm G. Schroder
	Date	May 18, 1915
	Title	App. for Homogenizing milk & other liquids
	Seizure	Liber J-108 Pg. 38
1,143,667	Inventor	Moritz Von Rohr
	Date	June 22, 1915
	Title	Optical systems
	Seizure	Liber E-108 Pg. 172
1,152,848	Inventor	Heinrich Schliggemann
	Date	Sept. 7, 1915
	Title	Plants for cooling, removing scale from chalking and drying wire delivered, by finishing rolls.
	Seizure	Liber C-108 Pg. 58

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SCHEDULE A-14

Patent No.		
1,155,024	Inventor	Carl Wolf
	Date	Sept. 28, 1915
	Title	Water-supply system
	Seizure	Liber J-108 Pg. 101
1,158,310	Inventor	Wilhelm H. Schulze
	Date	Oct. 26, 1915
	Title	App. for measuring the area of hides
	Seizure	Liber H-108 Pg. 253
1,160,908	Inventor	Philipp Koster
	Date	Nov. 16, 1915
	Title	Process for the production of gas from bituminous fuels in intermittent operations
	Seizure	Liber C-108 Pg. 333
1,169,942	Inventor	Georg Egly
	Date	Feb. 1, 1916

Patent No.		
	Title	Arc light electrode
	Seizure	Liber I-108 Pg. 374
1,172,568	Inventor	Fritz Schroter
	Date	Feb. 22, 1916
	Title	Methods of and app. for securing constancy in the light of vacuum tubes
	Seizure	Liber J 108 Pg. 39
1,178,858	Inventor	Emil Knoevenagel
	Date	April 11, 1916
	Title	Process of obtaining gases for heating purposes
	Seizure	Liber C-108 Pg. 332
1,187,282	Inventor	Michael Doetsch
	Date	June 13, 1916
	Title	Arc Lamp Electrodes
	Seizure	Liber H-108 Pg. 323
1,189,096	Inventor	Carl Grunwald
	Date	June 27, 1916
	Title	Pumping Apparatus
	Seizure	Liber B-108 Pg. 6
1,199,731	Inventor	Rudolf Ilgner
	Date	Sept. 26, 1916
	Title	Medical Appliance
	Seizure	Liber I-108 Pg. 54
1,204,779	Inventor	Hugo Junkers
	Date	Nov. 14, 1916
	Title	Water heating apparatus
	Seizure	Liber E-108 Pg. 443
1,209,102	Inventor	Hermann Anschutz-Kaempfe
	Date	Dec. 19, 1916
	Title	App. in determining deviation of bore holes from the vertical
	Seizure	Liber G-108 Pg. 193

SCHEDULE A-15.

Patent No.		
1,221,039	Inventor	Georg Egly
	Date	April 3, 1917
	Title	Flame arc lamps and electrodes therefor
	Seizure	Liber E-108 Pg. 332
1,227,836	Inventor	Karl Schmid
	Date	May 29, 1917
	Title	Single-acting, condensing, continuous-current steam-engine.
	Seizure	Liber G-108 Pg. 398
1,235,505	Inventor	Johann Stanzig & R. Konig & J. Rosenthal
	Date	July 31, 1917
	Title	Fire Extinguishers
	Seizure	Liber D-108 Pg. 492
1,237,222	Inventor	Wilhelm G. Schroder
	Date	Aug. 14, 1917
	Title	Arrangements for homogenizing liquids
	Seizure	Liber G-108 Pg. 386
1,253,548	Inventor	Hans Wagner
	Date	Jan. 15, 1918
	Title	Methods and apparatus for transporting incompressible fluids
	Seizure	Liber H-108 Pg. 271
1,257,561	Inventor	Wilhelm Weber
	Date	Feb. 26, 1918
	Title	Chambering devices for rock drills
	Seizure	Liber E-108 Pg. 242

Recorded March 26, 1921.

DEFENDANT'S EXHIBIT No. 148.

Licensees of The Chemical Foundation Who Are Not Stockholders Thereof.

December 31, 1922.

Licensee	Address	Business
1. Adams X-Ray Company	Maple & Livard Sts., Detroit, Mich.	Therapeutic Apparatus
2. American Ethers Corporation,	c/o John A. Larkin, 44 Wall St., New York City	Cellulose Products
3. American Solder & Flux Co.,	2910 No. 16th St., Phila., Pa.	Solder and Flux
4. Atlantic Chemical Works	Bayway, Elizabeth, New Jersey.	Tanning Materials
5. Atmospheric Nitrogen Corporation	Syracuse, New York	Heavy Chemicals
6. Badger & Sons Co., E. B.	63 Pitt Street, Boston, Mass.	Chemical Engineers
7. Barnsdall Refining Company,	41 East 42nd St., New York City	Petroleum Oils
8. Bausch & Lomb Optical Co.,	Rochester, New York	Optical Apparatus
9. Baush Machine Tool Co.,	40 State Street, Boston, Mass.	Metallurgical Products
10. Bilhuber, Inc., E.	25 W. Broadway, New York City.	Pharmaceuticals
11. Brady & Co., Geo. W.	809 So. W. Ave., Chicago, Ill.	Therapeutic Apparatus
12. Brooklyn Color Works, Inc.,	Stewart Ave., & Cherry St., Brooklyn, New York.	Dyes
13. Burdick Cabinet Co.,	Milton, Wis.	Therapeutic Apparatus
14. California Ink Company, Inc.	West Berkeley, California.	Printing and Lithographic Inks
15. Carrie Gyroscopic Corporation, The	62 West 14th St., New York City.	Gyroscopes
16. Case-Woodland Drug Co., The	40th St. & Woodland Ave., Cleveland, Ohio.	Pharmaceuticals
17. Child, Albert Kennedy	611 W. 156th Street, New York City.	Metallurgical Products

Licensee	Address	Business
18. Cochrane Corporation, H. S. B. W.,	17th St. & Allegheny Ave., Philadelphia, Pa.	Water and Steam Apparatus
19. Diarsenol Laboratories, Inc.	904 Ellicott Sq., Buffalo, N. Y.	Pharmaceuticals
20. Eastman Kodak Company	Rochester, New York	Cameras, Films and Organic Chemicals
21. Engeln Electric Company, The	4601 Euclid Ave., Cleveland, Ohio.	Therapeutic Apparatus
22. Gaskill Chemical Corporation, The	157 Spencer St., Brooklyn, N. Y.	Dyes and Intermediates
23. Hawthorne Chemical Company,	1 Washington Ave., Hawthorne, N. J.	Tanning and Textile Chemicals
24. Huber, J. M.	65 West Houston St., New York City.	Printing and Lithographic Inks
25. Hydrosulphite Co., Inc., The	East Greenwich, R. I.	Textile Chemicals
26. Jaeger Research Laboratories, Inc.	68 Hudson St., Hoboken, N. J.	Electrical Apparatus
27. Jaenecke-Ault Company	Newark, New Jersey.	Printing and Lithographic Inks
28. Katode X-Ray Tube Co., Inc.	33 West 46th St., New York City	Therapeutic Apparatus
29. Keystone Roofing Mfg. Company,	York, Pa.	Roofing Products
30. Kohnstamm & Co., H.	83 Park Place, New York City	Dyes
31, Koppers Company, The	Union Arcade Bldg., Pittsburg, Pa.	Coke and Coke Ovens
32. Kuttroff, Pickhardt & Co., Inc.	128 Duane St., New York City.	Dyes and Chemicals
33. Leitz Inc., E.	30 E. 18th St., New York City.	Therapeutic and Scientific Apparatus
34. Liebel-Flarsheim Company, The	410-416 Home St., Cincinnati, Ohio.	Therapeutic Apparatus
35. Lysoform Corporation	81 Fulton St., New York City.	Pharmaceuticals
36. Machlett & Son, E.	153 E. 84th St., New York City.	Therapeutic and Scientific Apparatus

37. Magnetic Manufacturing Co.,	Milwaukee, Wis.	Magnetic Separators
38. Mallory & Co., Inc., P. R.	Portchester, New York	Electrical Apparatus
39. Maple Chemical Company, Inc.	122 Maple Ave., Staten Island, N. Y.	Dyes and Intermediates
40. Marshall, John G.	1752 Atlantic Avenue, Bklyn, N. Y.	Photographic Chemicals

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41. Martin Cantine Company	Saugerties, New York	Printers Supplies
42. Metz, H. A.	122 Hudson Street, New York City.	Pharmaceuticals
43. Meyer Co., The Wm.	1644 No. Girard St., Chicago, Ill.	Therapeutic Apparatus
44. Norma Company of America, The	Anable Ave., Long Island City, N. Y.	Metallurgical Products
45. Novocol Chemical Mfg. Co., Inc.	2923 Atlantic Ave., Bklyn., N. Y.	Pharmaceuticals
46. Organic Laboratories Company, The	248 Senator Place, Cincinnati, O.	Insecticides and Pharmaceutical Preparations.
47. Pacific Flush-Tank Company,	4241 E. Ravenswood Ave., Chicago, Ill.	Sewage Disposal Apparatus
48. Rhodia Inc.	89 Fulton Street, New York City	Pharmaceuticals and Photographic Chemicals
49. Riverside & Dan River Cotton Mills, Inc.	Danville, Va.	Textile Goods
50. Rohm & Haas Company, Inc.	40 N. Front St., Philadelphia, Pa.	Textile and Tanning Chemicals
51. Rosenthal Electric Laboratory,	Camden, New Jersey	Electrical Apparatus
52. Shaw Association, Inc., The	2610 No. Western Ave., Chicago, Ill.	Tanning Materials
53. Siegle Corporation of America, G.	Rosebank, Staten Island, New York.	Dyes
54. Sidio Company of America, Inc., The	37 Murray Street, New York City.	Quartz Ware.
55. Siemon & Elting	93 Nassau Street, New York City.	Printing and Lithographic Inks
56. Sigmund Ullman Company,	146th St. & Park Ave., New York City.	Printing and Lithographic Inks

Licensee	Address	Business
57. Sinclair & Valentine Co.,	21 St. Clair Place, New York City.	Printing and Lithographic Inks
58. Sperry Gyroscope Company, The	Manhattan Bridge Plaza, Bklyn, N. Y.	Gyroscopes
59. Stearns-Roger Manufacturing Co., The	Denver, Colo.	Metallurgical Products
60. Sturtevant Company, Inc., B. F.	Hyde Park, Boston, Mass.	Industrial Factory Equipment
61. Sun Chemical & Color Co.,	Harrison, New Jersey.	Printing and Lithographic Inks
62. Textile Alliance, Inc.,	45 East 17th St., New York City.	Dyes
63. Tower Manufacturing Co., Inc.	552 Pearl St., New York City.	Dyes and Chemicals
64. United States Procaine Company,	2923 Atlantic Avenue, Bklyn, N. Y.	Pharmaceuticals
65. Ultro Chemical Corporation	41 Union Square, New York City	Dyes
66. Van Dyk & Co.,	4-6 Platt Street, New York City.	Perfume Chemicals and Organic Products
67. Victor X-Ray Corporation,	236 So. Robey St., Chicago, Ill.	Therapeutic Apparatus
68. Violi, Claude	6 Temple St., Springfield, Mass.	Therapeutic Apparatus
69. Waite & Bartlett Manufacturing Company	53 Jackson Ave., Long Island City, N. Y.	Therapeutic Apparatus
70. Wappler Electric Company	162 Harris Ave., Long Island City, N. Y.	Therapeutic Apparatus
71. Wilhelm Company, The A.	Reading, Pa.	Paints and Varnishes
72. Yocum Laboratories, The	168 Coit St., Newark, N. J.	Tanning Materials.

DEFENDANT'S EXHIBIT No. 149.

Licensees of The Chemical Foundation Who Are Also Stockholders Thereof.

December 31, 1922

Licensee	Address	Business
1. Abbott Laboratories, The	4753 Ravenswood Ave., Chicago, Ill.	Pharmaceuticals
2. Aluminum Company of America	Pittsburgh, Pa.	Aluminum and Aluminum Alloys
3. American Cotton Oil Company, The	65 Broadway, New York City.	Vegetable Oils, Fats
4. Ault & Wiborg Company, The	Cincinnati, Ohio	Printing and Lithographic Inks
5. Barrett Company, The	17 Battery Place, New York City	Coal Tar Crudes and Intermediates, Tar Products
6. Butterworth-Judson Corporation,	30 Church Street, New York City	Dyes and Intermediates
7. Calco Chemical Company, The	Bound Brook, New Jersey	Dyes, Intermediates, Pharmaceuticals
8. Campbell & Co., John	75 Hudson Street, New York City	Dyes and Intermediates
9. Dow Chemical Company, The	Midland, Mich.	Dyes, Intermediates, Heavy Chemicals
10. DuPont de Nemours & Company, Inc., E. I.	Wilmington, Del.	Pharmaceuticals, Explosives, Dyes, Intermediates, Plastics, Heavy Chemicals
11. Hanovia Chemical & Mfg. Co.	Chestnut St. & N. J. R. R. Ave., Newark, New Jersey.	Therapeutic and Scientific Apparatus.
12. Heller & Merz Co., The	Wilson Ave., Newark, N. J.	Dyes and Intermediates

Licensee	Address	Business
13. Hooker Electrochemical Company,	40 Wall Street, New York City.	Heavy Chemicals
14. Klipstein & Sons Co., E. C.	654 Greenwich St., New York City.	Dyes, Intermediates, Heavy Chemicals
15. McKesson & Robbins	91 Fulton Street, New York City	Pharmaceuticals
16. Mallinckrodt Chemical Works,	St. Louis, Missouri	Pharmaceuticals, Heavy Chemicals
17. Merck & Co.	45 Park Place, New York City	Pharmaceuticals
18. Merrimac Chemical Co.	48 State Street, Boston, Mass.	Intermediates and Heavy Chemicals
19. Metz Laboratories, Inc., H. A.	122 Hudson Street, New York City	Pharmaceuticals
20. Monsanto Chemical Works	St. Louis, Missouri	Pharmaceuticals, Intermediates and Heavy Chemicals
21. National Aniline & Chemical Company, Inc.	40 Rector Street, New York City	Dyes, Intermediates, Heavy Chemicals
22. Newport Chemical Works, Inc.	Passaic, New Jersey	Dyes, Intermediates and Heavy Chemicals
23. Parke, Davis & Company	Detroit, Mich.	Pharmaceuticals
24. Powers-Weightman-Rosengarten Co.	Philadelphia, Pa.	Pharmaceuticals and Heavy Chemicals
25. Roessler & Hasslacher Chemical Company, The	706 Sixth Avenue, New York City.	Heavy Chemicals and Pharmaceuticals.
26. Semet-Solvay Company	Syracuse, New York.	Heavy Chemicals
27. Squibb & Sons, E. R.	80 Beekman Street, New York City.	Pharmaceuticals
28. Toch Brothers	110 East 42nd St., New York City.	Paints, Varnishes
29. United States Finishing Company, The	320 Broadway, New York City.	Textile Dyers and Printers
30. Upjohn Company, The	Kalamazoo, Mich.	Pharmaceuticals
31. Wolf & Co., Jacques	Passaic, New Jersey	Dyes, Intermediates, Textile Chemicals

DEFENDANT'S EXHIBIT No. 150.

(Copy)

Office of the President of the United States

Paris, 17 April, 1919.

My dear Mr. Palmer:

Please allow me again to extend my heartiest congratulations on your appointment as Attorney General. I am delighted over your election, and I can truly say that I do not know of any appointment that has met with such universal approval. The echoes that I get over here are that you are certainly making good.

I read the report which you sent me with a great deal of interest. Unfortunately, the President did not get an opportunity to read it on the George Washington, as he was sick part of the time coming over, and he was confronted with such an accumulation of correspondence and official documents that it was impossible for him to examine your report. However, I told him in detail about the contents, and he agreed that it was a wonderful accomplishment.

If you could see what the President is doing and accomplishing over here, notwithstanding the heavy odds that he is facing on all sides, you would appreciate more than ever his bigness of brain and force and vision, and last but not least, his wonderful courage.

With kindest regards and best wishes,

Sincerely yours,
(Sgd.) CARY T. GRAYSON.

Hon. A. Mitchell Palmer,
Attorney General,
Washington, D. C.

DEFENDANT'S EXHIBIT No. 151.

U. S. Patent No. 1,260,289, dated March 26, 1918.

(For copy of patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 152.

U. S. Patent No. 1.075,171, dated October 7, 1913.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 153.

U. S. Patent No. 1,045,759, dated November 26, 1912.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 154.

U. S. Patent No. 1,005,176, dated October 10, 1911.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 155.

U. S. Patent No. 812,554, dated February 13, 1906.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 156.

U. S. Patent No. 986,148, dated March 7, 1911.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 157.

U. S. Patent Re-issue No. 13,848, dated December 15, 1914.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 158.

STATEMENT PREPARED BY FRANKLIN W. HOBBS SHOWING PRINCIPAL DYES USED BY ARLINGTON MILLS, AND FIRMS FROM WHOM PURCHASED.

CHROME BLUE BLACK

Alizarine Blue Black B. N	Calco Chemical Company
Omego Blue Black R	Sandoz Chemical Works Inc.
Kromeko Blue Black 6 B	John Campbell & Company
Chrome Black B	H. A. Metz & Company, Inc.
Anthranol Chrome Blue Black A R	U. S. Color & Chemical Co.
Diamond Blue Black R	Grasselli Chemical Co. of Mass.
Pontachrome Blue Black R	E. I. du Pont de Nemours & Co.
Superchrome Blue B Ex.	National Aniline & Chemical Co.
Newport Chrome Black V	Newport Chemical Works
Amaco Chrome Blue Black B	National Aniline & Chemical Co.
Pontachrome Black 6 B Ex.	E. I. du Pont de Nemours & Co.
Chrome Cyanine R	Standard Color Company

BLUE GROUP

Quotations received on Buffalo Fast Blue R. manufactured by the National Aniline & Chemical Company, and also prices obtained on corresponding colors from other manufacturers.

Buffalo Fast Blue R.	National Aniline & Chemical Co.
Sulphon Acid Blue R. A.	Grasselli Chemical Co.
Pontacyl Sulphon Blue R.	E. I. du Pont de Nemours & Co.
Sulphon Acid Blue R.	U. S. Color & Chemical Co.
Acko Fast Blue R. R. A.	John Campbell & Co.

SULPHON CYANINE GROUP

Cyanone Blue 3R—100%	National Aniline & Chemical Co.
Pontacyl Blue 5R-150%	Du Pont
Sulphon Cyanine 5R A-105%	Grasselli Chemical Co.

DIAMINE BLACK BH GROUP

Amidine Diazo Black BHSW	John Campbell & Co.
Amidine Diazo Black BHO	John Campbell & Co.
Diazine Black H	National Aniline & Chem. Co.
Diazo Black H	E. I. duPont de Nemours & Co.
Aminal Developed Black AML	American Aniline Products Co.
Terrazode Black BH	American Dyewood Co.
Diazo Black BH	Newport Chemical Works

Diazophenyl Black BH	Geigy Co., Inc.
Diazo Black BHN	Grasselli Chemical Co.
Developed Black BH Ex.	U. S. Color & Chem. Co.
Pontamine Diazo Black	E. I. duPont de Nemours & Co.
Developed Black BH Conc.	Dunker & Perkins
Diazo Fast Black BH	Special Products Co.
Chloramine Black BH	Sandoz Chem. Works Inc.
Melanthrene Black BHX	Ciba Co. Inc.

BROWN

Amaco Chrome Brown M N	Beckers (National Aniline & Chem. Co.)
Alizarole Brown R B	Beckers (National Aniline & Chem. Co.)
Alizarine Brown B	Calco Chemical Co.
Lanachrome Brown L B	Wm. T. Miller Aniline & Chem. Co.
Chrome Brown	Marden Orth & Hastings Corp.
Pontachrome Brown M W	E. I. du Pont de Nemours & Co., Inc.
Pontachrome Brown M N	E. I. du Pont de Nemours & Co., Inc.

DIAZO BLACK

Developed Black BH	Newport Chemical Co.
Diazo Black B H S W	John Campbell Co.
Pontamine Diazo Black B H	Du Pont
Diazo Black B H N Extra	Grasselli Chemical Co.
Developed Black B H N	U. S. Color

DEFENDANT'S EXHIBIT No. 159.

STATEMENT PREPARED BY FRANKLIN W. HOBBS.

ARLINGTON MILLS.

These five dyes cover 80% of the requirements:

Chrome Blue—Schultz No. 181
Sulphon Acid Blue R—Schultz No. 188.
Sulphon Cyanine 5 R—Schultz No. 257.
Diazine Black H Extra—Schultz No. 333.
Naphtylamine Black 10 B—Schultz No. 217.
Du Pont
U. S. Color Co.
John Campbell

Naphtylamine Black 10 B—Schultz No. 217.

1916—July—National Aniline
1918—February—Bayer Co.
1919—January—Aniline Dyes & Chemical Co.
1919—April—Du Pont
1919—May—H. A. Metz
1920—July—Standard Color Co.

Also now made by

Chemical Co. of America
A. Klipstein
Bachmeir & Co.
Read Halliday Co.
American Aniline Products Co.
Atlantic Dyestuff Corporation
Newport Chemical Works
Grasselli
Jennings & Co.
John Campbell
Ciba Co.

ARLINGTON MILLS

MEMO WITH REFERENCE TO DYES OFFERED

Gallocynanine. Schultz No. 626.

1915—July—W. Beckers.
1917—December—American Aniline Products Co.
1918—June—H. A. Metz.
1918—June—Marden, Orth & Hastings.

Alizarine Yellow 2 G. Schultz No. 48.

1917—June—W. Beckers
Soon after—U. S. Color & Chemical Co.
" " Bayer Co.
" " Farbwerke-Hoechst
" " Badische
" " John Campbell
Later—American Aniline Products Co.

Chrome Brown—Schultz No. 89.

1917—June—W. Beckers
1918—July—National Aniline
Later—Calco Chemical Co.
Du Pont
Several others

Chrome Blue or Black—Schultz No. 181.

1918—July—National Aniline
1919—March—Grasselli
1919—December—Du Pont
1920—March—Standard Color Co.
1920—October—Sandoz Chemical Works
1921—July—Calco Chemical Co.
1921—July—U. S. Color Co.
1921—September—H. A. Metz
1922—July—Ciba Co.
1923—March—Newport Chemical Co.
1923—March—John Campbell

Sulphon Acid Blue R—Schultz No. 188.

1917—December—National Aniline
1921—January—John Campbell
1921—February—Grasselli Chemical Co.
1921—July—U. S. Color Co.
1922—November—Du Pont

Sulphon Cyanine 5 R—Schultz No. 257.

1917—December—National Aniline
1921—June—Du Pont
1921—November—U. S. Color Co.
1923—June—John Campbell

Diazine Black H. Extra. Schultz No. 333.

1917— National Aniline
Grasselli

DEFENDANT'S EXHIBIT No. 160.

STATEMENT PREPARED BY FRANKLIN W. HOBBS OF ARLINGTON MILLS.

SULPHON CYANINE 5 R A

March 23, 1923	Grasselli	.70
" " "	National	.80
" " "	U. S. Color	.90
" " "	Du Pont	1.10
Feb. 9, 1923	National	.78
Feb. 6, 1923	Du Pont	1.10
Feb. 6, 1923	Grasselli	.70
Dec. 22, 1921	Grasselli	1.05
Nov. 19, 1921	National	1.10
Nov. 15, 1921	Grasselli	1.10
Nov. 4, 1921	Grasselli	1.20

Nov. 1, 1921	National	1.25
Oct. 23, 1921	Grasselli	1.25
Oct. 26, 1921	Grasselli	1.30
Oct. 14, 1921	National	1.25
Oct. 8, 1921	Ciba	1.62
Oct. 4, 1921	Levinstein	1.65
Oct. 3, 1921	Du Pont	2.00
Sept. 27, 1921	Grasselli	1.40
Sept. 19, 1921	Grasselli	1.35
Sept. 16, 1921	National	1.50
Sept. 15, 1921	Grasselli	1.40
Aug. 5, 1921	Ciba	1.50
June 14, 1921	Du Pont	2.30
June 2, 1921	National	1.85
May 2, 1921	Grasselli	1.80
March 23, 1921	Grasselli	1.80
Feb. 25, 1921	Ciba	1.65
Feb. 16, 1921	Grasselli	1.90
Jan. 25, 1921	National	2.15
Nov. 10, 1920	Levinstein	2.15
Sept, 28, 1920	Grasselli	2.00
May 1, 1919	National	2.25
May 21, 1918	National	2.15
Dec. 19, 1917	National	2.25

DEFENDANT'S EXHIBIT No. 161.

STATEMENT PREPARED BY FRANKLIN W. HOBBS OF ARLINGTON MILLS.

SULPHON ACID BLUE GROUP

July 9, 1923	Grasselli	.70
Dec. 29, 1922	Grasselli	.65
" " "	National	.85
" " "	Du Pont	.95

Nov. 9, 1922	National	.55
Oct. 19, 1922	U. S. Color	.70
“ 16, 1922	Campbell	.62-.65
Sept. 1922	Grasselli	.60
“ “	Du Pont	1.00
“ “	National	.55
“ “	Campbell	.62
Feb. 10, 1922	U. S. Color	.85
“ “ “	Grasselli	.90
“ “ “	National	.90
“ “ “	Campbell	.95
Dec. 5, 1921	Campbell	1.15
Nov. 18, 1921	Campbell	1.30
Nov. 1, 1921	Campbell	1.35
Sept. 22, 1921	Campbell	1.60
July 6, 1921	National	1.60
June 9, 1921	Campbell	1.75
Mar. 22, 1921	Campbell	1.90
Dec. 10, 1920	U. S. Color	1.95
Nov. 9, 1920	U. S. Color	2.10
Mar. 4, 1919	National	2.15

DEFENDANT'S EXHIBIT No. 162.

STATEMENT PREPARED BY FRANKLIN W. HOBBS OF ARLINGTON MILLS.

CHROME BLUE BLACK GROUP

March 15, 1923	Various, 9 firms	52-67¢
Jan. 1923	Grasselli	70¢
Nov. 1922	Calco Co.	45¢
Oct. 24, 1922	U. S. Color	55¢
Sept. 27, 1922	Grasselli	75¢
Sept. 12, 1922	Calco Co.	48¢

July 1922	Calco Co.	52¢
Nov. 1, 1921	U. S. Color	68¢
Aug. 4, 1921	U. S. Color	75¢
July 22, 1921	National	80¢
July 19, 1921	U. S. Color	75¢
July 12, 1921	National	80¢
July 11, 1921	Standard	70¢
Mar. 16, 1921	Standard	84¢
Sept. 11, 1920	Standard	75¢
July 19, 1920	U. S. Color	1.35
May 24, 1920	U. S. Color	1.30
Jan. 28, 1920	U. S. Color	1.40
Jan. 6, 1920	Grasselli	1.25
Mar. 18, 1919	Grasselli	1.65

DEFENDANT'S EXHIBIT No. 163.

STATEMENT PREPARED BY FRANKLIN W. HOBBS OF ARLINGTON MILLS.

DIAZO BLACK

Feb. 24, 1923	Grasselli	.73
" " "	National	.70
" " "	Du Pont	.65
" " "	Campbell	.61
Jan. 8, 1922	Campbell	1.10
Nov. 9, 1921	Newport	1.20
Sept. 6, 1921	Campbell	1.38
Aug. 19, 1921	Newport	1.40
Aug. 13, 1921	American Aniline	1.45
July 29, 1921	Du Pont	1.40
June 10, 1921	Newport	1.50
June 3, 1921	Ciba	1.50
Feb. 2, 1921	Du Pont	1.60
Jan. 21, 1921	Newport	1.60

Dec. 15, 1920	Du Pont	1.80
Oct. 4. 1920	Du Pont	1.80
May 27, 1920	U. S. Color	2.50
Feb. 6, 1920	Newport	2.40
Jan. 21, 1920	Du Pont	2.75
Dec. 30, 1919	Newport	2.40
Sept. 27, 1919	Campbell	2.90
July 30, 1919	Campbell	2.25

DEFENDANT'S EXHIBIT No. 164.

MESSAGE
OF THE
PRESIDENT OF THE UNITED STATES
Communicated to the Two Houses
of Congress at the Beginning of the
First Session of the Sixty-sixth
Congress

MESSAGE.

GENTLEMEN OF THE CONGRESS: I deeply regret my inability to be present at the opening of the extraordinary session of the Congress. It still seems to be my duty to take part in the counsels of the peace conference and contribute what I can to the solution of the innumerable questions to whose settlement it has had to address itself: for they are questions which affect the peace of the whole world and from them, therefore, the United States cannot stand apart. I deemed it my duty to call the Congress together at this time because it was not wise to postpone longer the provisions which must be made for the support of the government. Many of the appropriations which are absolutely necessary for the maintenance of the government and the fulfillment of its varied obligations for the fiscal year 1919-1920 have not yet been made; the end of the present fiscal year is at hand; and action upon these appropriations can no longer be prudently delayed. It is necessary, therefore, that I should immediately call your attention to this critical need. It is hardly necessary for me to urge that it may receive your prompt attention.

I shall take the liberty of addressing you on my return on the subjects which have most engrossed our attention and the attention of the world during these last anxious months, since the armistice of last November was signed, the international settlements which must form the subject matter of the present treaties of peace and of our national action in the immediate future. It would be premature to discuss them or to express a judgment about them before they are brought to their complete formulation by the agreements which are now being sought at the table of the conference. I shall hope to lay them before you in their many aspects so soon as arrangements have been reached.

I hesitate to venture any opinion or press any recommendation with regard to domestic legislation while absent from the United States and out of daily touch with intimate sources of information and counsel. I am conscious that I need, after so long an absence from Washington, to seek the advice of those who have remained in constant contact with domestic problems and who have known them close at hand from day to day; and I trust that it will very soon be possible for me to do so. But there are several questions pressing for consideration to which I feel that I may, and indeed must, even now direct your attention, if only in general terms. In speaking of them I shall, I dare say, be doing little more than speak your own thoughts. I hope that I shall speak your own judgment also.

The question which stands at the front of all others in every country amidst the present great awakening is the question of labour; and perhaps I can speak of it with as great advantage while engrossed in the consideration of interests which affect all countries alike as I could at home and amidst the interests which naturally most affect my thought, because they are the interests of our own people.

By the question of labour I do not mean the question of efficient industrial production, the question of how labour is to be obtained and made effective in the great process of sustaining populations and winning success amidst commercial and industrial rivalries. I mean that much greater and more vital question, how are the men and women who do the daily labour of the world to obtain progressive improvement in the conditions of their labour, to be made happier, and to be served better by the communities and the industries which their labour sustains and advances? How are they to be given their right advantage as citizens and human beings?

We cannot go any further in our present direction. We have already gone too far. We cannot live our right life as a nation or achieve our proper success as an industrial community if capital and labour are to continue to be antagonistic instead of being partners. If they are to continue to distrust one another and contrive how they can get the better of one another. Or, what perhaps amounts to the same thing, calculate by what form and degree of coercion they can manage to extort on the one hand work enough to make enterprise profitable, on the other justice and fair treatment enough to make life tolerable. That bad road has turned out a blind alley. It is no thoroughfare to real prosperity. We must find another, leading in another direction and to a very different destination. It must lead not merely to accommodation but also to a genuine cooperation and partnership based upon a real community of interest and participation in control.

There is now in fact a real community of interest between capital and labour, but it has never been made evident in action. It can be made operative and manifest only in a new organization of industry. The genius of our business men and the sound practical sense of our workers can certainly work such a partnership out when once they realize exactly what it is that they seek and sincerely adopt a common purpose with regard to it.

Labour legislation lies, of course, chiefly with the states; but the new spirit and method of organization which must be effected are not to be brought about by legislation so much as by the common counsel and voluntary cooperation of capitalist, manager, and workman. Legislation can go only a very little way in commanding what shall be done. The organization of industry is a matter of corporate and individual initiative and of practical business arrangement. Those who really desire a new relationship between capital and labour can readily find a way to bring it about; and perhaps Federal legislation can help more than state legislation could.

The object of all reform in this essential matter must be the genuine democratization of industry, based upon a full recognition of the right of those who work, in whatever rank, to participate in some organic way in every decision which directly affects their welfare or the part they are to play in industry. Some positive legislation is practicable. The Congress has already shown the way to one reform which should be worldwide, by establishing the eight hour day as the standard day in every field of labour over which it can exercise control. It has sought to find the way to prevent child labour, and will, I hope and believe, presently find it. It has served the whole country by leading the way in developing the means of preserving and safeguarding life and health in dangerous industries. It can now help in the difficult task of giving a new form and spirit to industrial organization by coordinating the several agencies of conciliation and adjustment which have been brought into existence by the difficulties and mistaken policies of the present management of industry, and by setting up and developing new Federal agencies of advice and information which may serve as a clearing house for the best experiments and the best thought on this great matter, upon which every thinking man must be aware that the future development of society directly depends. Agencies of international counsel and suggestion are presently to be created in connection with the League of Nations in this very field; but it is national action and the enlightened policy of individuals, corporations, and societies within each nation that must bring about the actual reforms. The members of the committees on labour in the two houses will hardly need suggestions from me as to what means they shall seek to make the Federal Government the agent of the whole nation in pointing out and, if need be, guiding the process of reorganization and reform.

I am sure that it is not necessary for me to remind you that there is one immediate and very practical question of labour that we should meet in the most liberal spirit. We must see to it that our returning soldiers are assisted in every practicable way to find the places for which they are fitted in the daily work of the country. This can be done by developing and maintaining upon an adequate scale the admirable organization created by the Department of Labor for placing men seeking work; and it can also be done, in at least one very great field, by creating new opportunities for individual enterprise. The Secretary of the Interior has pointed out the way by which returning soldiers may be helped to find and take up land in the hitherto undeveloped regions of the country which the Federal Government has already prepared or can readily prepare for cultivation and also on many of the cutover or neglected areas which lie within the limits of the older states; and I once more take the liberty of recommending very urgently that his plans shall receive the immediate and substantial support of the Congress.

Peculiar and very stimulating conditions await our commerce and industrial enterprise in the immediate future. Unusual opportunities will presently present themselves to our merchants and producers in foreign markets, and large fields for profitable investment will be opened to our free capital. But it is not only of that that I am thinking; it is not chiefly of that that I am thinking. Many great industries prostrated by the war wait to be rehabilitated, in many parts of the world where what will be lacking is not brains or willing hands or organizing capacity or experienced skill, but machinery and raw materials and capital. I believe that our business men, our merchants, our manufacturers, and our capitalists, will have the vision to see that prosperity in one part of the world ministers to prosperity everywhere: that there is in a very true sense a solidarity of interest throughout the world of enterprise, and that our dealings with the countries that have need of our products and our money will teach them to deem us more than ever friends whose necessities we seek in the right way to serve.

Our new merchant ships, which have in some quarters been feared as destructive rivals, may prove helpful rivals, rather, and common servants, very much needed and very welcome. Our great shipyards, new and old, will be so opened to the use of the world that they will prove immensely serviceable to every maritime people in restoring, much more rapidly than would otherwise have been possible, the tonnage wantonly destroyed in the war. I have only to suggest that there are many points at which we can facilitate American enterprise in foreign trade by opportune legislation and make it easy for American merchants to go where they will be welcomed as friends rather than as dreaded antagonists. America has a great and honorable service to perform in bringing the commercial and industrial undertakings of the world back to their old scope and swing again, and putting a solid structure of credit under them. All our legislation should be friendly to such plans and purposes.

And credit and enterprise alike will be quickened by timely and helpful legislation with regard to taxation. I hope that the Congress will find it possible to undertake an early reconsideration of Federal taxes, in order to make our system of taxation more simple and easy of administration and the taxes themselves as little burdensome as they can be made and yet suffice to support the Government and meet all its obligations. The figures to which those obligations have arisen are very great indeed, but they are not so great as to make it difficult for the nation to meet them, and meet them, perhaps, in a single generation, by taxes which will neither crush nor discourage. These are not so great as they seem, not so great as the immense sums we have had to borrow, added to the immense sums we have had to raise by taxation, would seem to indicate; for a very large proportion of those sums were raised in order that they might be loaned to the governments with which we were associated in the war, and those loans will, of course, constitute assets, not liabilities, and will not have to be taken care of by our taxpayers.

The main thing we shall have to care for is that our taxation shall rest as lightly as possible on the productive resources of the country, that its rates shall be stable, and that it shall be constant in its revenue yielding power. We have found the main sources from which it must be drawn. I take it for granted that its mainstays will henceforth be the income tax, the excess profits tax, and the estate tax. All these can so be adjusted to yield constant and adequate returns and yet not constitute a too grievous burden on the taxpayer. A revision of the income tax has already been provided for by the act of 1918, but I think you will find that further changes can be made to advantage both in the rates of the tax and in the method of its collection. The excess profits tax need not long be maintained at the rates which were necessary while the enormous expenses of the war had to be borne; but it should be made the basis of a permanent system which will reach undue profits without discouraging the enterprise and activity of our business men. The tax on inheritances ought, no doubt, to be reconsidered in its relation to the fiscal systems of the several states, but it certainly ought to remain a permanent part of the fiscal system of the Federal government also.

Many of the minor taxes provided for in the revenue legislation of 1917 and 1918, though no doubt made necessary by the pressing necessities of the war time, can hardly find sufficient justification under the easier circumstances of peace, and can now happily be got rid of. Among these, I hope you will agree, are the excises upon various manufacturers and the taxes upon retail sales. They are unequal in the incidence on different industries and on different individuals. Their collection is difficult and expensive.

Those which are levied upon articles sold at retail are largely evaded by the readjustment of retail prices. On the other hand, I should assume that it is expedient to maintain a considerable range of indirect taxes; and the fact that alcoholic liquors will presently no longer afford a source of revenue by taxation makes it the more necessary that the field should be carefully restudied in order that equivalent sources of revenue may be found which it will be legitimate, and not burdensome, to draw upon. But you have at hand in the Treasury Department many experts who can advise you upon the matters much better than I can. I can only suggest the lines of a permanent and workable system, and the placing of the taxes where they will least hamper the life of the people.

There is, fortunately, no occasion for undertaking in the immediate future any general revision of our system of import duties. No serious danger of foreign competition now threatens American industries. Our country has emerged from the war less disturbed and less weakened than any of the European countries which are our competitors in manufacture. Their industrial establishments have been subjected to greater strain than ours, their labour force to a more serious disorganization, and this is clearly not the time to seek an organized advantage. The work of mere reconstruction will, I am afraid, tax the capacity and the resources of their people for years to come. So far from there being any danger or need of accentuated foreign competition, it is likely that the conditions of the next few years will greatly facilitate the marketing of American manufactures abroad. Least of all should we depart from the policy adopted in the Tariff Act of 1913, of permitting the free entry into the United States of the raw materials needed to supplement and enrich our own abundant supplies.

Nevertheless, there are parts of our tariff system which need prompt attention. The experiences of the war have made it plain that in some cases too great reliance on foreign supply is dangerous, and that in determining certain parts of our tariff policy domestic considerations must be borne in mind which are poliitcal as well as economic. Among the industries to which special consideration should be given is that of the manufacture of dyestuffs and related chemicals. Our complete dependence upon German supplies before the war made the interruption of trade a cause of exceptional economic disturbance. The close relation between the manufacturer of dyestuffs, on the one hand, and of explosives and poisonous gases, on the other, moreover, has given the industry an exceptional significance and value. Although the United States will gladly and unhesitatingly join in the programme of international disarmament, it will, nevertheless, be a policy of obvious prudence to make certain of the successful maintenance of many strong and well equipped chemical plants. The German chemical industry, with which we will be brought into competition, was and may well be again, a thoroughly knit monopoly capable of exercising a competition of a peculiarly insidious and dangerous kind.

The United States should, moreover, have the means of properly protecting itself whenever our trade is discriminated against by foreign nations, in order that we may be assured of that equality of treatment which we hope to accord and to promote the world over. Our tariff laws as they now stand provide no weapon of retaliation in case other governments should enact legislation unequal in its bearing on our products as compared with the products of other countries. Though we are as far as possible from desiring to enter upon any course of retaliation, we must frankly face the fact that hostile legislation by other nations is not beyond the range of possibility, and that it may have to be met by counter legislation. This subject, has, fortunately, been exhaustively investigated by the United States Tariff Commission. A recent report of that Commission has shown very clearly that we lack and that we ought to have the instruments necessary for the assurance of equal and equitable treatment. The attention of the Congress has been called to this matter on past occasions, and the past measures which are now recommended by the Tariff Commission are substantially the same that have been suggested by previous administrations. I recommend that this phase of the tariff question receive the early attention of the Congress.

Will you not permit me, turning from these matters, to speak once more and very earnestly of the proposed amendment to the Constitution which would extend the suffrage to women and which passed the House of Representatives at the last session of the Congress? It seems to me that every consideration of justice and of public advantage calls for the immediate adoption of that amendment and its submission forthwith to the legislatures of the several states. Throughout all the world this long delayed extension of the suffrage is looked for; in the United States, longer, I believe, than anywhere else, the necessity for it, and the immense advantage of it to the national life, has been urged and debated, by women and men who saw the need for it and urged the policy of it when it required steadfast courage to be so much beforehand with the common conviction; and I, for one, covet for our country the distinction of being among the first to act in a great reform.

The telegraph and telephone lines will of course be returned to their owners so soon as the retransfer can be effected without administrative confusion, so soon, that is, as the change can be made with least possible inconvenience to the public and to the owners themselves. The railroads will be handed over to their owners at the end of the calendar year; if I were in immediate contact with the administrative questions which must govern the retransfer of the telegraph and telephone lines, I could name the exact date for their return also. Until I am in direct contact with the practical questions involved I can only suggest that in the case of the telegraphs and telephones, as in the case of the railways, it is clearly desirable in the public interest that some legislation should be considered which may tend to make of these indispensable instrumentalities of our modern life a uniform and coordinated system which will afford those who use them as complete and certain means of communication with all parts of the country as has so long been afforded by the postal system of the Government, and at rates as uniform and intelligible. Expert advice is, of course, available in this very practical matter, and the public interest is manifest. Neither the telegraph nor the telephone service of the country can be said to be in any sense a national system. There are many confusions and inconsistencies of rates. The scientific means by which communication by such instrumentalities could be rendered more thorough and satisfactory has not been made full use of. An exhaustive study of the whole question of electrical communication and of the means by which the central authority of the nation can be used to unify and improve it, if undertaken, by the appropriate committees of the Congress, would certainly result, indirectly even if not directly, in a great public benefit.

The demobilization of the military forces of the country has progressed to such a point that it seems to me entirely safe now to remove the ban upon the manufacture and sale of wines and beers, but I am advised that without further legislation I have not the legal authority to remove the present restrictions.

I therefore recommend that the Act approved November 21, 1918, entitled, "An Act to enable the Secretary of Agriculture to carry out, during the fiscal year ending June 30, 1919, the purposes of the Act entitled 'An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products,' and for other purposes," be amended or repealed in so far as it applies to wines and beers.

I sincerely trust that I shall very soon be at my post in Washington again to report upon the matters which made my presence at the peace table apparently imperative, and to put myself at the service of the Congress in every matter of administration or counsel that may seem to demand executive action or advice.

WOODROW WILSON.

20 May, 1919.

DEFENDANT'S EXHIBIT No. 165.

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES
COMMUNICATED TO THE TWO HOUSES
OF CONGRESS AT THE BEGINNING OF
THE SECOND SESSION OF THE SIXTY-SIXTH CONGRESS.

DECEMBER 2, 1919.

MESSAGE.

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

I sincerely regret that I cannot be present at the opening of this session of the Congress. I am thus prevented from presenting in as direct a way as I could wish the many questions that are pressing for solution at this time. Happily, I have had the advantage of the advice of the heads of the several executive departments who have kept in close touch with affairs in their detail and whose thoughtful recommendations I earnestly second.

In the matter of the railroads and the readjustment of their affairs growing out of federal control, I shall take the liberty at a later date of addressing you.

I hope that Congress will bring to a conclusion at this session legislation looking to the establishment of a budget system. That there should be one single authority responsible for the making of all appropriations and that appropriations should be made not independently of each other, but with reference to one single comprehensive plan of expenditure properly related to the nation's income there can be no doubt. I believe the burden of preparing the budget must, in the nature of the case, if the work is to be properly done and responsibility concentrated instead of divided, rest upon the executive. The budget so prepared should be submitted to and approved or amended by a single committee of each House of Congress and no single appropriation should be made by the Congress, except such as may have been included in the budget prepared by the executive or added by the particular committee of Congress charged with the budget legislation.

Another and not less important aspect of the problem is the ascertainment of the economy and efficiency with which the moneys appropriated are expended. Under existing law the only audit is for the purpose of ascertaining whether expenditures have been lawfully made within the appropriations. No one is authorized or equipped to ascertain whether the money has been spent wisely, economically and effectively. The auditors should be highly trained officials with permanent tenure in the Treasury Department, free of obligations to or motives of consideration for this or any subsequent administration, and authorized and empowered to examine into and make report upon the methods employed and the results obtained by the executive departments of the Government. Their reports should be made to the Congress and to the Secretary of the Treasury.

I trust that the Congress will give its immediate consideration to the problem of future taxation. Simplification of the income and profits taxes has become an immediate necessity. These taxes performed indispensable service during the war. They must, however, be simplified, not only to save the taxpayer inconvenience and expense, but in order that his liability may be made certain and definite.

With reference to the details of the Revenue Law, the Secretary of the Treasury and the Commissioner of Internal Revenue will lay before you for your consideration certain amendments necessary or desirable in connection with the administration of the law—recommendations which have my approval and support. It is of the utmost importance that in dealing with this matter the present law should not be disturbed so far as regards taxes for the calendar year 1920, payable in the calendar year 1921. The Congress might well consider whether the higher rates of income and profits taxes can in peace times be effectively productive of revenue, and whether they may not, on the contrary, be destructive of business activity and productive of waste and inefficiency. There is a point at which in peace times high rates of income and profits taxes discourage energy, remove the incentive to new enterprise, encourage extravagant expenditures and produce industrial stagnation with consequent unemployment and other attendant evils.

The problem is not an easy one. A fundamental change has taken place with reference to the position of America in the world's affairs. The prejudice and passions engendered by decades of controversy between two schools of political and economic thought,—the one believers in protection of American industries, the other believers in tariff for revenue only,—must be subordinated to the single consideration of the public interest in the light of utterly changed conditions. Before the war America was heavily the debtor of the rest of the world and the interest payments she had to make to foreign countries on American securities held abroad, the expenditures of American travelers abroad and the ocean freight charges she had to pay to others, about balanced the value of her pre-war favorable balance of trade. During the war America's exports have been greatly stimulated, and increased prices have increased their value. On the other hand, she has purchased a large proportion of the American securities previously held abroad, has loaned some $9,000,000,000 to foreign governments, and has built her own ships. Our favorable balance of trade has thus been greatly increased and Europe has been deprived of the means of meeting it heretofore existing. Europe can have only three ways of meeting the favorable balance of trade in peace times: by imports into this country of gold or of goods, or by establishing new credits. Europe is in no position at the present time to ship gold to us nor could we contemplate large further imports of gold into this country without concern. The time has nearly passed for international governmental loans and it will take time to develop in this country a market for foreign securities. Anything, therefore, which would tend to prevent foreign countries from settling for our exports by shipments of goods into this country could only have the effect of preventing them from paying for our exports and therefore of preventing the exports from being made. The productivity of the country greatly stimulated by the war must find an outlet by exports to foreign countries and any measures taken to prevent imports will inevitably curtail exports, force curtailment of production, load the banking machinery of the country with credits to carry unsold products and produce industrial stagnation and unemployment. If we want to sell, we must be prepared to buy. Whatever, therefore, may have been our views during the period of growth of American business concerning tariff legislation, we must now adjust our own economic life to a changed condition growing out of the fact that American business is full grown and that America is the greatest capitalist in the world.

No policy of isolation will satisfy the growing needs and opportunities of America. The provincial standards and policies of the past, which have held American business as if in a strait-jacket, must yield and give way to the needs and exigencies of the new day in which we live, a day full of hope and promise for American business, if we will but take advantage of the opportunities that are ours for the asking. The recent war has ended our isolation and thrown upon us a great duty and responsibility. The United States must share the expanding world market. The United States desires for itself only equal opportunity with the other nations of the world, and that through the process of friendly cooperation and fair competition the legitimate interests of the nations concerned may be successfully and equitably adjusted.

There are other matters of importance upon which I urged action at the last session of Congress which are still pressing for solution. I am sure it is not necessary for me again to remind you that there is one immediate and very practicable question resulting from the war which we should meet in the most liberal spirit. It is a matter of recognition and relief to our soldiers. I can do no better than to quote from my last message urging this very action:

"We must see to it that our returning soldiers are assisted in every practicable way to find the places for which they are fitted in the daily work of the country. This can be done by developing and maintaining upon an adequate scale the admirable organization created by the Department of Labor for placing men seeking work; and it can also be done, in at least one very great field, by creating new opportunities for individual enterprise. The Secretary of the Interior has pointed out the way by which returning soldiers may be helped to find and take up land in the hitherto undeveloped regions of the country which the Federal Government has already prepared or can readily prepare for cultivation and also on many of the cutover or neglected areas which lie within the limits of the older states; and I once more take the liberty of recommending very urgently that his plans shall receive the immediate and substantial support of the Congress."

In the matter of tariff legislation, I beg to call your attention to the statements contained in my last message urging legislation with reference to the establishment of the chemical and dyestuffs industry in America:

"Among the industries to which special consideration should be given is that of the manufacture of dyestuffs and related chemicals. Our complete dependence upon German supplies before the war made the interruption of trade a cause of exceptional economic disturbance. The close relation between the manufacture of dyestuffs, on the one hand, and of explosives and poisonous gases, on the other, moreover, has given the industry an exceptional significance and value. Although the United States will gladly and unhesitatingly join in the programme of international disarmament, it will, nevertheless, be a policy of obvious prudence to make certain of the successful maintenance of many strong and well-equipped chemical plants. The German chemical industry, with which we will be brought into competition, was and may well be again, a thoroughly knit monopoly capable of exercising a competition of a peculiarly insidious and dangerous kind."

During the war the farmer performed a vital and willing service to the nation. By materially increasing the production of his land, he supplied America and the Allies with the increased amounts of food necessary to keep their immense armies in the field. He indispensably helped to win the war. But there is now scarcely less need of increasing the production in food and the necessaries of life. I ask the Congress to consider means of encouraging effort along these lines. The importance of doing everything possible to promote production along economical lines, to improve marketing, and to make rural life more attractive and healthful, is obvious. I would urge approval of the plans already proposed to the Congress by the Secretary of Agriculture, to secure the essential facts required for the proper study of this question, through the proposed enlarged programmes for farm management studies and crop estimates. I would urge, also the continuance of federal participation in the building of good roads, under the terms of existing law and under the direction of present agencies; the need of further action on the part of the States and the Federal Government to preserve and develop our forest resources, especially through the practice of better forestry methods on private holdings and the extension of the publicly owned forests; better support for country schools and the more definite direction of their courses of study along lines related to rural problems; and fuller provision for sanitation in rural districts and the building up of needed hospital and medical facilities in these localities. Perhaps the way might be cleared for many of these desirable reforms by a fresh, comprehensive survey made of rural conditions by a conference composed of representatives of the farmers and of the agricultural agencies responsible for leadership.

I would call your attention to the widespread condition of political restlessness in our body politic. The causes of this unrest, while various and complicated, are superficial rather than deep seated. Broadly, they arise from or are connected with the failure on the part of our Government to arrive speedily at a just and permanent peace permitting return to normal conditions, from the transfusion of radical theories from seething European centers pending such delay, from heartless profiteering resulting in the increase of the cost of living, and lastly from the machinations of passionate and malevolent agitators. With the return to normal conditions, this unrest will rapidly disappear. In the meantime, it does much evil. It seems to me that in dealing with this situation Congress should not be impatient or drastic but should seek rather to remove the causes. It should endeavor to bring our country back speedily to a peace basis, with ameliorated living conditions under the minimum of restrictions upon personal liberty that is consistent with our reconstruction problems. And it should arm the Federal Government with power to deal in its criminal courts with those persons who by violent methods would abrogate our time-tested institutions. With the free expression of opinion and with the advocacy of orderly political change, however fundamental, there must be no interference, but towards passion and malevolence tending to incite crime and insurrection under guise of political evolution there should be no leniency. Legislation to this end has been recommended by the Attorney General and should be enacted. In this direct connection, I would call your attention to my recommendations on August 8th, pointing out legislative measures which would be effective in controlling and bringing down the present cost of living, which contributes so largely to this unrest. On only one of these recommendations has the Congress acted. If the Government's campaign is to be effective, it is necessary that the other steps suggested should be acted on at once.

I renew and strongly urge the necessity of the extension of the present Food Control Act as to the period of time in which it shall remain in operation. The Attorney General has submitted a bill providing for an extension of this Act for a period of six months. As it now stands it is limited in operation to the period of the war and becomes inoperative upon the formal proclamation of peace. It is imperative that it should be extended at once. The Department of Justice has built up extensive machinery for the purpose of enforcing its provisions; all of which must be abandoned upon the conclusion of peace unless the provisions of this Act are extended.

During this period the Congress will have an opportunity to make similar, permanent provisons and regulations with regard to all goods destined for interstate commerce and to exclude them from interstate shipment, if the requirements of the law are not complied with. Some such regulation is imperatively necessary. The abuses that have grown up in the manipulation of prices by the withholding of foodstuffs and other necessaries of life cannot otherwise be effectively prevented. There can be no doubt of either the necessity or the legitimacy of such measures.

As I pointed out in my last message, publicity can accomplish a great deal in this campaign. The aims of the Government must be clearly brought to the attention of the consuming public, civic organizations and state officials, who are in a position to lend their assistance to our efforts. You have made available funds with which to carrry on this campaign, but there is no provision in the law authorizing their expenditure for the purpose of making the public fully informed about the efforts of the Government. Specific recommendation has been made by the Attorney General in this regard. I would strongly urge upon you its immediate adoption, as it constitutes one of the preliminary steps to this campaign.

I also renew my recommendation that the Congress pass a law regulating cold storage as it is regulated, for example, by the laws of the State of New Jersey, which limit the time during which goods may be kept in storage, prescribe the method of disposing of them if kept beyond the permitted period, and require that goods released from storage shall in all cases bear the date of their receipt. It would materially add to the serviceability of the law, for the purpose we now have in view, if it were also prescribed that all goods released from storage for interstate shipment should have plainly marked upon each package the selling or market price at which they went into storage. By this means the purchaser would always be able to learn what profits stood between him and the producer or the wholesale dealer.

I would also renew my recommendation that all goods destined for interstate commerce should in every case, where their form or package makes it possible, be plainly marked with the price at which they left the hands of the producer.

We should formulate a law requiring a federal license of all corporations engaged in interstate commerce and embodying in the license, or in the conditions under which it is to be issued, specific regulations designed to secure competitive selling and prevent unconscionable profits in the method of marketing. Such a law would afford a welcome opportunity to effect other much needed reforms in the business of interstate shipment and in the methods of corporations which are engaged in it; but for the moment I confine my recommendations to the object immediately in hand, which is to lower the cost of living.

No one who has observed the march of events in the last year can fail to note the absolute need of a definite programme to bring about an improvement in the conditions of labor. There can be no settled conditions leading to increased production and a reduction in the cost of living if labor and capital are to be antagonists instead of partners. Sound thinking and an honest desire to serve the interests of the whole nation, as distinguished from the interests of a class, must be applied to the solution of this great and pressing problem. The failure of other nations to consider this matter in a vigorous way has produced bitterness and jealousies and antagonisms, the food of radicalism. The only way to keep men from agitating against grievances is to remove the grievances. An unwillingness even to discuss these matters produces only dissatisfaction and gives comfort to the extreme elements in our country which endeavor to stir up disturbances in order to provoke governments to embark upon a course of retaliation and repression. The seed of revolution is repression. The remedy for these things must not be negative in character. It must be constructive. It must comprehend the general interest. The real antidote for the unrest which manifests itself is not suppression, but a deep consideration of the wrongs that beset our national life and the application of a remedy.

Congress has already shown its willingness to deal with these industrial wrongs by establishing the eight-hour day as the standard in every field of labor. It has sought to find a way to prevent child labor. It has served the whole country by leading the way in developing the means of preserving and safeguarding lives and health in dangerous industries. It must now help in the difficult task of finding a method that will bring about a genuine democratization of industry, based upon the full recognition of the right of those who work, in whatever rank, to participate in some organic way in every decision which directly affects their welfare. It is with this purpose in mind that I called a conference to meet in Washington on December 1st, to consider these problems in all their broad aspects, with the idea of bringing about a better understanding between these two interests.

The great unrest throughout the world, out of which has emerged a demand for an immediate consideration of the difficulties between capital and labor, bids us put our own house in order. Frankly, there can be no permanent and lasting settlements between capital and labor which do not recognize the fundamental concepts for which labor has been struggling through the years. The whole world gave its recognition and endorsement to these fundamental purposes in the League of Nations. The statesmen gathered at Versailles recognized the fact that world stability could not be had by reverting to industrial standards and conditions against which the average workman of the world had revolted. It is, therefore, the task of the statesmen of this new day of change and readjustment to recognize world conditions and to seek to bring about, through legislation, conditions that will mean the ending of age-long antagonisms between capital and labor and that will hopefully lead to the buiding up of a comradeship which will result not only in greater contentment among the mass of workmen but also bring about a greater production and a greater prosperity to business itself.

To analyze the particulars in the demands of labor is to admit the justice of their complaint in many matters that lie at their basis. The workman demands an adequate wage, sufficient to permit him to live in comfort, unhampered by the fear of poverty and want in his old age. He demands the right to live and the right to work amidst sanitary surroundings, both in home and in workshop, surroundings that develop and do not retard his own health and well-being; and the right to provide for his children's wants in the matter of health and education. In other words, it is his desire to make the conditions of his life and the lives of those dear to him tolerable and easy to bear.

The establishment of the principles regarding labor laid down in the covenant of the League of Nations offers us the way to industrial peace and conciliation. No other road lies open to us. Not to pursue this one is longer to invite enmities, bitterness, and antagonisms which in the end only lead to industrial and social disaster. The unwilling workman is not a profitable servant. An employee whose industrial life is hedged about by hard and unjust conditions, which he did not create and over which he has no control, lacks that fine spirit of enthusiasm and volunteer effort which are the necessary ingredients of a great producing entity. Let us be frank about this solemn matter. The evidences of world-wide unrest which manifest themselves in violence throughout the world bid us pause and consider the means to be found to stop the spread of this contagious thing before it saps the very vitality of the nation itself. Do we gain strength by withholding the remedy? Or is it not the business of statesmen to treat these manifestations of unrest which meet us on every hand as evidences of an economic disorder and to apply constructive remedies wherever necessary, being sure that in the application of the remedy we touch not the vital tissues of our industrial and economic life? There can be no recession of the tide of unrest until constructive instrumentalities are set up to stem that tide.

Governments must recognize the right of men collectively to bargain for humane objects that have at their base the mutual protection and welfare of those engaged in all industries. Labor must not be longer treated as a commodity. It must be regarded as the activity of human beings, posessed of deep yearnings and desires. The business man gives his best thought to the repair and replenishment of his machinery, so that its usefulness will not be impaired and its power to produce may always be at its height and kept in full vigor and motion. No less regard ought to be paid to the human machine, which after all propels the machinery of the world and is the great dynamic force that lies back of all industry and progress. Return to the old standards of wage and industry in employment are unthinkable. The terrible tragedy of war which has just ended and which has brought the world to the verge of chaos and disaster would be in vain if there should ensue a return to the conditions of the past. Europe itself, whence has come the unrest which now holds the world at bay, is an example of standpatism in these vital human matters which America might well accept as an example, not to be followed but studiously to be avoided. Europe made labor the differential, and the price of it all is enmity and antagonism and prostrated industry. The right of labor to live in peace and comfort must be recognized by governments and America should be the first to lay the foundation stones upon which industrial peace shall be built.

Labor not only is entitled to an adequate wage, but capital should receive a reasonable return upon its investment and is entitled to protection at the hands of the government in every emergency. No government worthy of the name can "play" these elements against each other, for there is a mutuality of interest between them which the government must seek to express and to safeguard at all cost.

The right of individuals to strike is inviolate and ought not to be interfered with by any process of government, but there is a predominant right and that is the right of the government to protect all of its people and to assert its power and majesty against the challenge of any class. The government, when it asserts that right, seeks not to antagonize a class but simply to defend the right of the whole people as against the irreparable harm and injury that might be done by the attempt by any class to usurp a power that only government itself has a right to exercise as a protection to all.

In the matter of international disputes which have led to war, statesmen have sought to set up as a remedy arbitration for war. Does this not point the way for the settlement of industrial disputes, by the establishment of a tribunal, fair and just alike to all, which will settle industrial disputes which in the past have led to war and disaster? America, witnessing the evil consequences which have followed out of such disputes between these contending forces, must not admit itself impotent to deal with these matters by means of peaceful processes. Surely, there must be some method of bringing together in a council of peace and amity these two great interests, out of which will come a happier day of peace and cooperation, a day that will make men more hopeful and enthusiastic in their various tasks, that will make for more comfort and happiness in living and a more tolerable condition among all classes of men. Certainly human intelligence can devise some acceptable tribunal for adjusting the differences between capital and labor.

This is the hour of test and trial for America.

By her prowess and strength, and the indomitable courage of her soldiers, she demonstrated her power to vindicate on foreign battlefields her conceptions of liberty and justice. Let not her influence as a mediator between capital and labor be weakened and her own failure to settle matters of purely domestic concern be proclaimed to the world. There are those in this country who threaten direct action to force their will upon a majority. Russia today, with its blood and terror, is a painful object lesson of the power of minorities. It makes little difference what minority it is; whether capital or labor, or any other class; no sort of privilege will ever be permitted to dominate this country. We are a partnership or nothing that is worth while. We are a democracy, where the majority are the masters, or all the hopes and purposes of the men who founded this government have been defeated and forgotten. In America there is but one way by which great reforms can be accomplished and the relief sought by classes obtained and that is through the orderly processes of representative government. Those who would propose any other method of reform are enemies of this country. America will not be daunted by threats nor lose her composure or calmness in these distressing times. We can afford, in the midst of this day of passion and unrest, to be self-contained and sure. The instrument of all reform in America is the ballot. The road to economic and social reform in America is the straight road of justice to all classes and conditions of men. Men have but to follow this road to realize the full fruition of their objects and purposes. Let those beware who would take the shorter road of disorder and revolution. The right road is the road of justice and orderly process.

WOODROW WILSON.

THE WHITE HOUSE,
2 December, 1919.

DEFENDANT'S EXHIBIT No. 166.

COPY

THE UNITED STATES FINISHING COMPANY
320 BROADWAY

New York, N. Y.
March 6th, 1916

(Copy of memo to be handed to
the President after interview—A. C. I.)

My dear Mr. President:

I attach a brief statement of the dyestuff situation which the Hill Bill (H. R. 702) is expected to meet. This statement may be useful to you as a memorandum of our talk on March 8th.

I thank you very cordially for the opportunity to present the facts.

Yours faithfully,
(Sgd.) ANDREW C. IMBRIE.

The President
Washington

DEFENDANT'S EXHIBIT No. 166-A.

STATEMENT REFERRED TO IN DEFENDANT'S EXHIBIT No. 166.

Dyestuffs are necessary to make salable many of our manufactures. Germany has provided 90% of all the dyestuffs used in America. Since March 1915 no color has been received from Germany. Their color factories are making high explosives, not colors. Finished color is as scarce there as it is here. We are face to face with a color famine.

The hopefulness expressed in the reports of the Department of Commerce is not justified by the facts.

Remnants of German dyes in the hands of speculators, would not readily command prices ten to fifty times their normal value, if American makers of dyes were able to supply anything approximating the quantity of color officially estimated to be manufactured here.

The intensity and duration of this famine we can modify even if we cannot prevent it. The consensus of opinion of those best qualified to know is that the Hill Bill (H. R. 702) if enacted, will enable us to develop an adequate dyestuff industry of our own. The users of dyes, satisfied that this bill will impose no more burden than is absolutely necessary to establish in America a dyestuff industry sufficient to take care of their needs. They regard the slight additional expense as "insurance" against a repetition of the present crisis.

The imports for 1913 of aniline dyes were 44,000,000 pounds (value about $13,000,000). If Bill H. R. 702 is enacted, the new rates would mean approximately a 40% increase over the present existing rates. If the American manufacturers got the full benefit of the added duty the increased annual cost to the consumer would be about $5,000,000.

But the total yearly value of the woolen, silk, cotton, leather (tanned or dyed only) and hosiery industries is nearly *two billion dollars*, of which it is estimated that 85% is dyed, or over a billion and a half dollars of business annually.

The $5,000,000 added by Bill H. R. 702 would not make more than 1/10 of 1 cent per yard on all the yards manufactured in these great industries with a combined yearly value of $1,860,000,000. Even if we should figure it as ½ of 1 cent per yard, such an insignificant increase per yard would never reach the consuming public, much less be felt by them. Yet the lack of this $5,000,000 increase of duties will prevent the proper establishment of the Aniline Dye Industry in the United States, the lack of which may paralyze industries that produce $1,500,000,000 of dyed fabrics a year and throw out of employment, directly and indirectly, millions of workers.

The testimony given at the hearing before the Ways and Means Committee January 14th and 15th, 1916, made it clear that American capital will be instantly available to meet this situation if prompt action is taken by Congress.

A dyestuff industry, necessary to our industrial independence, will also give us the chemists, plants and materials adaptable at short notice to the manufacture of high explosives.

DEFENDANT'S EXHIBIT No. 166-B.

COPY

From Congressional Record
of February 23, 1916

WAR DEPARTMENT
Washington, Feb. 16th, 1916

Hon. E. J. Hill,
House of Representatives

My dear Mr. Hill:—

(1) In reply to your letter of Feb. 9th, 1916, addressed to the Hon. Lindley M. Garrison, Secretary of War, and requesting the opinion of the War Department of the value to the United States Government of plants producing dye-stuffs in time of peace and capable of producing explosives in time of war, I may state that such plants would be of unquestionable value to any government, and that their maintenance in time of peace, with the complete equipment would enable their output to be changed from dyestuffs to explosives in a week's time, as claimed by

Dr. Schoellkopf, would remove to a great extent the necessity for the erection and maintenance of special large plants for explosives for war purposes.

(2) The War Department is not sufficiently familiar with the dystuff industry to form an opinion as to the terms under which a private manufacturer of dyestuffs would be willing to equip and maintain his plant as outlined above. It is understood, however, that many of these plants have all the apparatus necessary for the manufacture of explosives. In addition, their existence in time of peace would create a demand for practically all the raw materials required for the manufacture of the standard explosives, thereby insuring greater supplies of raw materials in time of war.

(3) The War Department has appreciated the value of private plants producing, or capable of producing, war munitions, or the essential materials therefor, and is of the opinion that the coordination of these plants with the government in such manner as to insure without waiting for special legislation after development of the necessity, would be advantageous.

Very respectfully,

H. L. SCOTT,
Secretary of War ad Interim.

DEFENDANT'S EXHIBIT No. 167.

Extracts from Statement of Col. Thomas W. Miller, Alien Property Custodian, Hearings Before Committee on Interstate and Foreign Commerce, House of Representatives, on H. R. 13496.

Mr. Miller. And at this point, gentlemen, I want to call your attention to the fact that the alien property I am talking about does not include 126 ships seized by the United States Shipping Board, or by the Navy Department, that were of German or Austrian origin. I do not know whether you want a list of those ships put into the hearing at this point, but I brought that along with me, because when you are considering the lump sum of all the property of any character held by this Government, taken from the enemy governments, I venture the personal opinion that we should take some cognizance of those 126 ships which are now held by your Government to-day, and which we all must admit, while not under the alien property act, were seized and are in the hands of this Government, which we should consider when we are considering the total amount of property holdings.

Now, if you want me to, I will put it in the hearings at this point. If you do not want it, I will merely refer to it.

The CHAIRMAN. Without objection, it may go in.

(The list of ships referred to is as follows:)

Defendant's Exhibit No. 167

STATUS OF SEIZED ENEMY VESSELS AS OF NOVEMBER 15, 1922.

Name.	Former name.	Gross tonnage.	Type.	When built.	Former owner.	Disposition.
Actaeon	Adamsturm	5,000	Cargo	1909	The Hansa Line	LostNov. 24, 1917.
Agamemnon	Kaiser Wilhelm II	19,361	Cargo and passenger	1902	North German Lloyd	Control of U. S. Shipping Board.
America	Amerika	21,144	do	1905	Hamburg-American Line	Do.
Amphion	Koln	7,409	do	1899	North German Lloyd	Do.
Andalusia	Andalusia	5,509	Cargo	1896	Hamburg-American Line	Do.
Arapahoe	Steinbeck	2,163	Steel ship	1892	Knohr & Burchard	Sold Feb. 28, 1922.
Arcadia	Arcadia	5,454	Cargo	1896	Hamburg-American Line	Sold Aug. 22, 1922.
Armenia	Armenia	5,463	do	1896	do	Control of U. S. Shipping Board.
Artemis	Bohemia	8,413	do	1902	do	Do.
Ascutney	Pisa	4,966	do	1896	do	Do.
*Astoria	Frieda Leonhardt	2,822	do	1902	Leonhardt & Blumberg	Control of Navy.
Bath	Andromeda	2,554	Navy transport	1913	Argos Steamship Co	Do.
Beaufort	Rudolf Blumberg	1,769	do	1909	Leonhardt & Blumberg	Do.
Black Arrow	Black Hawk ex Rhaetia	6,022	Cargo and passenger	1904	Hamburg-American Line	Control of U. S. Shipping Board.
Bridgeport	Breslau	7,524	Navy transport	1901	North German Line	Control of Navy.
Camden	Kiel	4,494	do	1900	German Australian Line	Do.
Casco	Elmshorn	4,594	Cargo	1910	do	Sold Aug. 22, 1922.
Chattahoochie	Sachsen	8,007	do	1911	Hamburg-American Line	Lost Mar. 23, 1918.
Chillicothe	Arnoldus Vinnen	1,862	Steel ship	1892	F. A. Vinnen & Co	Sold May 13, 1920.
City of Honolulu	Huron, ex Friedrich der Grosse	10,688	Cargo and passenger	1896	North German Lloyd	Lost Oct. 17, 1922.
City of Los Angeles	Aeolus, ex Grosser Kurfurst	12,642	do	1899	do	Control of U. S. Shipping Board.
Coca	Arni	286	Scow			Sold Jan. 19, 1920.
Commercial Pathfinder	Osage, ex Seraphis	4,789	Cargo	1906	Deutsche Dampfahrts-Kosmos	Sold Feb. 14, 1920.
Commercial Scout	Gulfport, ex Locksun	1,682	do	1902	North German Lloyd	Sold July 25, 1922, by Navy.
Commercial Trader	Honolulu, ex Itasco, ex Setos	4,740	do	1905	Deutsche Dampfahrts-Kosmos	Sold Jan. 26, 1920.
Coosa	Loongmoon	1,969	do	1896	Hamburg-American Line	Control of U. S. Shipping Board.
Covington	Cincinnati	16,339	Cargo and passenger	1908	do	Lost July 1, 1918.
Cuba	Sachem, ex Coblens	3,168	Cargo	1897	North German Lloyd	Sold Feb. 19, 1920.
Freedom	Iroquois, ex Wittekind	5,640	Cargo and passenger	1894	do	Control of U. S. Shipping Board.
General G. W. Goethals	Grunewald	4,418	do	1911	Hamburg-American Line	Sold Jan. 20, 1920.
General H. F. Hodges	Savoia	2,732	do	1889	do	Do.
General O. H. Ernst	Sachsenwald	3,564	do	1904	do	Do.
General W. C. Gorgas	Prinz Sigismund	4,636	do	1902	do	Do.
*Atlas	Atlas	206	Wood auxiliary	1911	Jaluit Co	Returned to American owner after title had been established.
George Washington	George Washington	23,788	Cargo and passenger	1908	North German Lloyd	Control of U. S. Shipping Board.
Hermes	Hermes	149	Auxiliary wood schooner.			Control of Navy.
Houston	Liebenfels	4,525	Cargo and passenger	1903	The Hansa Line	Do.
Iosco	Johanne	1,531	Cargo	1903	M. Jobsen	Sold May 10, 1920.
Isonomia	Nassovia	3,902	do	1901	Hamburg-American Line	Sold Sept. 11, 1922.
Jamaica	Tacony ex Staatssekretar Kraetke ex Verdum.	2,009	do	1905	do	Sold Dec. 24, 1919.
Kermit	Appeles ex Elsass	6,646	do	1912	North German Lloyd	Sold Mar. 6, 1920.

Kittery	President	1,849	do.	1905	Hamburg-American Line	Control of Navy.
Leviathan	Vaterland	54,282	Cargo and passenger	1914	do.	Control of U. S. Shipping Board.
Long Beach	Hohenfelde	3,128	do.	1892	Fuhrmann, Nisle & Gunther	Sold by Navy May 24, 1922.
Madawaska	Koenig Wilhelm II	9,410	do.	1907	Hamburg-American Line	Control of Navy.
Martha Washington	Martha Washington	7,412	do.	1908	Unione Austriaca di Nav	Control of U. S. Shipping Board.
Mercury	Barbarossa	10,984	do.	1896	North German Lloyd	Do.
Midget	Wiegand	499	Cargo	1902	Deutsche Sudseephosphat	Do.
Monongahela	Red Jacket ex Dalbek	2,782	Steel bark	1892	Knohr & Burchard	Sold June 23, 1920.
Montauk	Matador	1,468	Wood bark	1884	Carl J. Klingenberg & Co	Lost Aug. 4, 1920.
Monticello	O. U. D. Ahlers	7,533	Cargo	1911	The Hansa Line	Sold May 8, 1920.
Montpelier	Bochum	4,711	do.	1912	German Australian Line	Sold June 17, 1920.
Moshulu	Dreadnaught ex Kurt	3,116	Steel bark	1904	G. J. H. Siemers & Co	Sold May 13, 1920.
Mount Clay	DeKalb ex Prinz Eitel Friedrich	8,170	Cargo and passenger	1904	North German Lloyd	Sold July 13, 1920.
Mount Vernon	Kronprinzessin Cecillie	18,372	do.	1906	do.	Control of U. S. Shipping Board.
Muscoota	Flying Cloud ex Ottawa	2,660	Steel bark	1888	Rhederei Akt. Ges	Sold July 10, 1920.
Nansemond	Pennsylvania	13,332	Cargo and passenger	1896	Hamburg-American Line	Control of U. S. Shipping Board
Neuse	Magdeburg	4,496	Cargo	1900	German-Australian Line	Do.
Newport News	Odenwald	3,537	Cargo and passenger	1904	Hamburg-American Line	Control of Navy.
Nipsic	Borneo	2,168	Cargo	1902	North German Lloyd	Sold July 16, 1920.
Nyanza	Esslingen	4,762	do.	1911	German-Australian Line	Sold May 25, 1920.
Oconee	Maia	2,555	do.	1906	Holm & Molzen	Sold Apr. 28, 1920; sunk.
Orion	Prinz Oskar	6,026	do.	1902	Hamburg-American Line	Control of U. S. Shipping Board.
Otsego	Prinz Eitel Friedrich	4,638	do.	1901	do.	Do.
Owasco	Allemannia	4,630	do.	1893	do.	Lost Dec. 10, 1917.
Paul Luckenbach	Posnam ex Suwanee ex Mark	6,609	do.	1913	North German Lloyd	Sold Feb. 27, 1920.
Pawnee	Harburg	4,472	do.	1899	German-Australian Line	Sold Aug. 29, 1922.
Pensacola	Nicaria	3,974	Cargo and passenger	1901	Hamburg-American Line	Control of Navy.
Pequot	Ockenfels	5,621	Cargo	1910	The Hansa Line	Sold Aug. 22, 1922.
Philippines	Bulgaria, ex Hercules	11,440	do.	1898	Hamburg-American Line	Control of U. S. Shipping Board.
Pisa	Aros	474	Scow			Sold Jan. 19, 1920.
Pocahontas	Prinzess Irene	10,893	Cargo and passenger	1900	North German Lloyd	Sold Aug. 5, 1922.
Pollux		86	Tug	1893		Sold Mar. 3, 1920.
Porto Rico	Moccarin, ex Prinz Joachim	4,301	Cargo and passenger	1903	Hamburg-American Line	Sold July 15, 1922.
Potomac	Antigone, ex-Neckar	9,709	do.	1900	North German Lloyd	Control of U. S. Shipping Board.
President Arthur	Princess Matoika, ex-Princess Alice.	10,421	do.	1900	do.	Do.
President Fillmore, ex-Hudson.	New Rochelle, ex-Powhatan, ex-Hamburg.	9,699	do.	1899	Hamburg-American Line	Do.
President Grant	President Grant	18,072	do.	1907	do.	Do.
President Lincoln	President Lincoln	18,168	do.	1907	do.	Lost May 31, 1918.
Quantico	Lyeemoon	1,925	Cargo	1890	do.	Lost Dec. 25, 1918.
Quincy	Vogesen	3,716	Cargo and passenger	1909	H. Vogemann	Control of Navy.
Quinnebaug	Pongtong	1,631	Cargo	1903	North German Lloyd	Sold Apr. 1, 1922.
Rajah	Rajah	2,264	do.	1902	do.	Sold Feb. 1, 1922.
Rappahannock	Pommern	6,478	do.	1913	do.	Control of Navy.
Raritan	Carl Diederichsen	1,243	do.	1901	M. Jebsen	Sold June 7, 1920.
Samoa	Staatssekretar Solf	304	Wood	1913	D. H. & P. Sudseeinseln	Sold by Navy Nov. 23, 1920.
Savannah	Saxonia	4,424	Cargo and passenger	1899	Hamburg-American Line	Control of Navy.
Susquehanna	Rhein	9,959	do.	1899	North German Lloyd	Control of U. S. Shipping Board.
[illegible]	Ex-Neptun, ex-Minnow	197	Wood auxiliary	1909	Jaluit Co. (title passed April, 1917, to purchasers).	
[illegible]	Argus	486	Barge			Sold Jan. 19, 1920.
Ticonderoga	Camilla Rickmers	5,130	Cargo	1914	Rickmers Reismuhle Reed Co.	Lost Sept. 30, 1918.

Mr. MILLER. Referring to the figures on November 29, 1922, we have approximately $347,000,000 of property on hand, representing all these various business trusts that I have outlined, stretching from the Philippine Islands to New England. But we must make certain deductions from that $347,000,000. We must deduct the unadjusted and uncomplied demands of property not actually reduced to possession, of over $4,000,000. We must deduct the interest received on cash deposited in the Treasury, or in Treasury investments, held in the Treasury Department, which these funds have earned, amounting to $24,000,000 and over, which leaves, in round figures, $318,000,000 remaining to be credited to the trust accounts. The amount required under this bill is approximately $44,000,000 which, if you return it, will leave a balance remaining of about $273,000,000.

I have a statement of that here, Mr. Chairman, which I can insert in the record, giving the exact figures, if it meets with your approval.

The CHAIRMAN. It may be inserted.

(The statement referred to is as follows:)

This bill will affect 30,368 trusts and $44,362,002.80 under the two classifications:

28,144 trusts less than $10,000	$22,122,002.80
2,224 trusts over $10,000	22,240,000.00
Total	44,362,002.80

STATUS OF PROPERTY ON TRUSTS LEDGERS AS OF NOVEMBER 30, 1922.

Amount as shown in statement	$347,310,776.22
Deduct unadjusted and uncomplied demands as property not actually reduced to possession	4,390,640.06
	342,920,136.16

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Deduct interest received on cash deposited in Treasury or in Treasury investments (this may be considered in computing the total amount of alien property, but is not pro-rated among the 30,000 trusts)	$24,591,234.26
Total amount of property credited to trust accounts	318,328,901.90
Estimated amount required under Winslow bill	44,362,002.80
Balance remaining	273,966,899.10

Mr. MILLER. Now, gentlemen, if you pass this legislation it will leave in the hands of the Alien Property Custodian approximately $273,000,000. But bearing in mind the amount of money necessary when you were considering amendments to the trading with the enemy act in the previous Congress, and the amount afterwards drawn, I think I should call your attention to these facts here. The amendments to the trading with the enemy act, dated June 5, 1920, and January 26, 1921, I gather from the hearings which I read, at that time it was thought it would amount to $30,000,000 or $40,000,000—pardon me for juggling millions around in that way, but that is the way it stretches. In reality, it has resulted in withdrawing almost $125,000,000. So I am calling this detail to your attention, because the other departments of the Government who are interested in this legislation, and from whom you will undoubtedly hear, may ask the committee to consider very seriously what amount of property this is going to release, and whether it will impair the guarantee which we hold to such an extent as to make it approach a line where it would be unwise to return so much. I am here to tell the committee to-day, as a Government official who is charged with the responsibility of administering this act, and who, therefore, must know many details about it, that in my opinion you can pass the provisions of this bill and do a just, and righteous and proper act, and still have enough money held by your Alien Property Office to guarantee the total of American claims that may finally be adjudicated. And I want to reiterate again that when we say guarantee we do not mean, that we are to eventually confiscate a dollar of this property to pay claims. I am speaking here as one—and my office is made up of a lot of them—who had the privilege of going to France and meeting these people at the front, and I am not leaning in any way backwards in favor of the citizens of countries who were at war with us.

I do think that some legislation of this character should be passed by the present Congress in order to alleviate the hardships of thousands of people whose paltry property is being held by us, and which in the end will undoubtedly be returned to them, especially the small ones. I am not going to take the time of the committee to-day, unless they want to bring it out in questions, to describe to you the letters that we receive and the pathetic appeals that come to us. And if you saw some of the property we are holding belonging to these former enemy subjects you would wonder why the Government ever wanted to hold it a day longer and why we are put to the expense of administering it; because the smaller the property is the more trouble it is to administer, and it is not good business.

Now, I have referred to the $10,000 return. That is included in the committee print which you hold before you, in the provisions, on page 6, shown there as (5-a), (5-b), and (6-a). Those few paragraphs there, in our opinion, will accomplish the $10,000 return. All the italics in this committee print is the new legislation, and the bold type is the old legislation.

The CHAIRMAN. An interruption there.

Mr. MILLER. Certainly.

The CHAIRMAN. You will find in your books, members of the committee, two copies of this bill. One is the regular bill, and the other bill is italicized to show the new legislation which it is proposed to insert into section 9 of the trading with the enemy act. The italicized sections are not in the hands of any but members of the committee and perhaps Mr. Miller.

Mr. MILLER. If I may refer generally to some of the sections of this bill, and to certain provisions. On the bottom of page 3, the italicized language has been suggested as under the law at present, for this reason: The appropriations of Congress only cover the office force of the Alien Property Custodian in Washington. Under the provisions of the trading with the enemy act and all precedents in connection therewith, in comptroller's decisions, and Attorney General decisions, past and present, the Alien Property Custodian is authorized, in the administration of these trusts, to use the money in these trusts for administrative purposes. In other words, if we have a piece of real estate and the taxes are due and the real estate at the present time is not earning enough money to pay the taxes, or to pay for improvements that municipal authorities direct and authorize, we can, if the trust has any money in the treasury, use the money for that purpose. If a suit is brought against the United States and the Alien Property Custodian, under the present law the funds are automatically frozen tight. In the meantime, if any taxes come due, the Alien Property Custodian is absolutely prevented from getting any money to attend to that property, or to handle it, and in a number of cases some properties have given us considerable thought and trouble and worry in order to handle the situation.

I have in mind a big proposition that was to be put up at auction, and probably knocked down for a song, because the funds were tied up in litigation. I had to do some hustling to get the money to take care of the property, as under the law of a guardian and common law trustee it was my duty to do, to protect the property. These are some of the reasons we have that provision in there.

On page 10 is another new provision, paragraph (dd). That refers to assignments. Since the armistice hundreds of Americans have come to us and asked us whether we would permit them to send some money over to their relatives or friends in Germany to see that they did not suffer from starvation and want, and that they will be protected in getting that money back out of the property of their relative or friend when it was returned to them. We have endeavored to tell them that if they want to go ahead and send money over to those friends we will endeavor to see that any assignment that is made from those people will be honored and recognized when this property is returned to them. That, broadly speaking, is the reason for (dd), and is to take care of those who provide for their friend.

Section 2, at the top of page 12, is self-explanatory. If refers to attorney's fees; attorneys for these claimants under this legislation, if it passes.

Section 3 on page 12 refers to those claimants, described briefly as follows: Any number of people came over from the former enemy countries to America and took out their naturalization papers, and were American citizens here and owned property. A number of them went back to their country for temporary sojourns, and when the great curtain of the European war fell on the Old World in 1914, if they happened to be in Germany or any of the other enemy countries, they had no means whatever of getting out. They were caught in a great human trap. Many of them neglected to comply with the law which required a registration every two years with the American consul in order to retain their citizenship.

Some of them have told us there was no American consul where they were, and they did not know they were to go to the Spanish consul, who was the official representative of America during the time when no American consul was at that place. And this class of claims arouse more resentment and questions from you Members of Congress, than any other. The question is, Why are we still holding the property belonging to American citizens? That is the reason for this section, and it will enable the Alien Property office and the Department of Justice to clear up a number of claims that are now in the twilight zone when it comes to differentiating between American citizens, or an American citizen and his claim.

I will ask that I be allowed to insert in the record a detailed explanation of the various citizens of enemy countries, and citizens of other parts of the globe that are included in the property that has been taken over, as well as German, Austrian, and Hungarian property. I could read this list, but it is something you perhaps all know. It is something I would like to have in the hearings, and if I may be permitted, I will place it in the record.

The CHAIRMAN. It may be placed in the record. Just hand it to the reporter.

(The statement referred to is as follows:)

"NATIONALITIES FROM WHOM PROPERTY WAS SEIZED.

"(A) German property also includes (1) citizens of Alsace and Lorraine, formerly a portion of the German Empire; (2) citizens of Poland, formerly a part of the German Empire; (3) citizens of Denmark residing in that portion of Schleswig Holstein formerly a portion of the German Empire.

"(B) Austria-Hungary also includes (1) citizens of the present Republic of Austria; (2) citizens of the present Republic of Hungary; (3) citizens of the Kingdom of the Serbs, Croats, and Slovenes residing in territory formerly a part of the Austria-Hungary Empire; (4) citizens of the Kingdom of Italy residing in the territory formerly a part of the Austria-Hungary Empire; (5) citizens of Poland in parts of Galicia and Silesia; (6) citizens of Czechoslovakia, practically all of whom resided in territory formerly a part of the Austria-Hungary Empire; (7) citizens of Rumania residing in territory formerly a part of the Austria-Hungary Empire.

"(C) Others include citizens of Turkey, Bulgaria, and those Russians living in occupied territory taken over by the Germans or Austria-Hungary and property of citizens whose citizenship or nationality was never determined.

"(D) Interned enemies includes those interned enemies who after their release from custody departed for their homes in Europe and did not remain here to take advantage of that provision of the trading with the enemy act which provides for the return of property when upon their release they continued to reside in the United States.

"(E) America includes the property reported as that of American citizens residing in enemy territory or in territory occupied by the enemy who are eligible as claimants upon proof of citizenship but whose property at that time had not been returned to them.

"Figures showing division of the property among the various nationals is difficult for accurate determination because the decision rests principally on a matter of residence, and until a claim is filed for the return of property it is impossible to determine the nationality of the enemy in whose name the property is held."

Mr. Miller. Now, gentlemen, I thank you for your forbearance. I have endeavored in a few minutes, and briefly, to portray this act to you and give you an insight of how we are endeavoring to conduct the office and at the same time to show you why we are advocating the passage of the principles of this bill in this Congress if possible.

The Chairman. You have evidently, I think, overlooked subsection (g), on page 11. This provision, as you know and I know, has been put in the bill in consequence of the interest of some of the other departments of the Government, and perhaps, while you are on that subject now, you might state to the committee what the purpose of that provision is and what it means, although there will be a representative of the War Department, and perhaps some other departments, who may speak on that provision later. This is, I realize, a matter which pertains particularly to the interests of departments other than your own.

Mr. Miller. I passed that over, Mr. Chairman, in my discussion here on this measure, because I was only discussing that portion of your bill that had been suggested by the Alien Property Office. Since you have asked me the question I will state that subsection (g), on page 11—may I ask the chairman, did he refer to the fact that other Government departments had suggested legislation of that character?

The Chairman. That section was put in at the behest of other Government departments.

Mr. Miller. Yes.

The Chairman. And for the purpose of protecting them in respect of the matters which are set forth in that paragraph.

Mr. Miller. There were thousands of patents, trade-marks, prints, labels, and copyrights seized by the Alien Property Custodian under the trading with the enemy act. A great number of them, as you know, were utilized by the War and Navy Departments during the war under a license or outright purchase. If the committee desires, I can obtain from my office and put into the record at this point the number of those patents and the sales prices, or the terms under which they were licensed.

The Chairman. You might withhold that for a moment.

Mr. Miller. Very well.

The Chairman. I have an amendment which the chair had in mind to suggest to the committee in due time which would affect that paragraph to the extent of adding the words "or seized by him," in addition to the words "conveyed, transferred, assigned, or delivered to the Alien Property Custodian," making it read "conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him."

Mr. Miller. That would be perfectly proper.

The Chairman. That would be following the language of the act and should be in that paragraph.

Mr. Miller. Is it understood, Mr. Chairman, that the provisions of paragraph (g) on page 11 relates only to the $10,000 return?

The Chairman. I will ask the committee to consider as a further suggestion of amendment of that paragraph this statement:

Subsection (g) on page 11 is too broad. It provides that this section shall not apply to patents, trade-marks, etc., conveyed or delivered to the Alien Property Custodian. The effect of this would be to make the whole of section 9 of the trading with the enemy act inapplicable to such patents and trademarks, and hence to deprive non-enemy claimants of the right to make claims for patents and trade-marks held by the Custodian. The provision was only intended to apply to the new matters contained in the bill—that is, the provisions of subsections (5-a), (5-b), and (6-a) on page 6 of the bill, granting enemy aliens the right to have returned property not in excess of $10,000. The bill should be appropriately amended to cure this defect.

And that will be suggested as a second amendment to that paragraph, in addition to the words "or seized by him." Perhaps we can get information about that more directly from some other representatives of the Government, representing some other department, in due time.

Mr. Miller. Then you do not want me to dwell any longer on that?

The Chairman. Not particularly. Only I want to ask if you appreciate what that was driving at as affecting your holdings.

Mr. Hawes. Do I understand that Mr. Miller is to insert into the record a list of those patents, and their value?

Mr. Miller. I can get from my office and insert in these hearings, Mr. Hawes, information relative to the patents, that the War Department and Navy Department took over. In Senate Document 181, in a report made by me last April, to the Senate, is a detailed description of every patent seized, and its disposition.

Mr. Hawes. I would be glad if you would put it in the record.

The Chairman. How large a record is that,

Mr. Miller. Does the gentleman mean extracts from Senate Document 181, with reference to the War and Navy Department patents?

Mr. Hawes. I understood you to suggest that you had a list of those patents which you would insert, and were interrupted by the chairman, and it seems to me decision was not reached whether it should be inserted, or not.

Mr. MILLER. I can put in the record at that point some useful information for the committee, with reference to these War and Navy Department patents, which the Alien Property Custodian had assigned to them. But I really think it would make a very voluminous record, and would duplicate printing. That document is available, and I can give you the pages where it is available in that document. It is a matter of whether you want to put it in or not.

Mr. HAWES. How many pages would it occupy?

The CHAIRMAN. Mr. Hawes, will you be satisfied with a reference to it at this point?

Mr. HAWES. Not entirely, Mr. Chairman. This whole evidence will be reviewed by Members of the House.

Mr. MILLER. Mr. Hawes, it consists of 82 pages in my report of April 10, 1922, Senate Document 181.

Mr. HAWES. That is too long. Could you not make some sort of digest, Mr. Miller?

Mr. MILLER. Yes, sir; I should be glad to do that, and will put it in here.

The CHAIRMAN. Put that in the record.

(The matter referred to was subsequently furnished by the witness, and is here printed in full, as follows:)

List of patents licensed or sold to the United States Government by the Alien Property Custodian, found on the following pages of Senate Document 181, Sixty-seventh Congress, dated April 20, 1922, being the report of the Alien Property Custodian, in response to Senate Resolution 191:

Pages 812 to 884, inclusive.

Pages 1007, 1031 to 1034, inclusive.

An abstract of all licenses and sales to the United States Government, covering patents which have been seized by the Alien Property Custodian, is herewith given:

Nonexclusive licenses.—Number of patents, 5,785; date of license, December 20, 1920; consideration, $100,000.

Sales.—Number of patents, 105; date of sale, February 6, 1919; consideration, $1,690.

The United States Government, represented by the Secretary of the Navy, reassigned three of these patents to the Alien Property Custodian, consideration being $105.

This sale now covers 102 patents, with a consideration of $1,585.

Number of patents, 12 sold, 72 licensed; date of sale and license, April 3, 1920; consideration, $2,000.

In addition thereto, abstracts from the records show that the Atlantic Communication Co., under date of February 5, 1919, assigned to the United States Government, as represented by the Secretary of the Navy, one contract dated February 21, 1913, including four patents and two applications.

The New York Patents Exploration Corporation assigned to the United States Government, as represented by the Secretary of the Navy, two patents, one of which does not appear to have been seized by the Alien Property Custodian.

In addition thereto, under date of February 26, 1921, the Chemical Foundation (Inc.), granted a nonexclusive license to the United States Government, as represented by the Secretary of the Navy, covering 160 patents, for the consideration of $1.

Mr. Newton. Mr. Miller, you were referring to, and have inserted in the record, the names of something like 120 ships that were seized, but of course not seized under the trading with the enemy act. Under just what law were they seized by the Government?

Mr. MILLER. They were seized, Mr. Newton, under presidential proclamations between the time war was declared, April 6, 1917, and the time the trading with the enemy act was passed, October 8, 1917.

Mr. NEWTON. Anticipating action by Congress later in the trading with the enemy act?

Mr. MILLER. Yes. I am reminded that that matter was covered by a joint resolution of May 12, 1917.

Mr. NEWTON. Then just what is the status of those ships to-day? Do we account for them in any way, as we are now compelled to account for the property seized by the Alien Property Custodian?

Mr. MILLER. I am just giving you my personal opinion, Mr. Newton——

Mr. NEWTON. I just wanted to get the general idea.

Mr. MILLER. In my opinion I should suppose our former enemies would bring up the question of our having those ships when it came to settling up finally, because they represent millions of dollars worth of property. I merely called attention to the fact so that it may answer any inquiries made by other departments.

Mr. NEWTON. And that list includes the *Leviathan* and all those other very large ocean-going vessels?

Mr. MILLER. Yes, sir; every one of them.

Mr. NEWTON. You mentioned that there was a sufficient amount of property on hand to take care of the American claims, in your judgment, after the provisions of this proposed act had been complied with?

Mr. MILLER. Yes, sir.

Mr. NEWTON. In estimating that did you take into consideration the value of these ships, or is that outside of the question of the ships?

Mr. Miller. That is outside of that, sir. But they will amount to such an enormous sum that I thought it was only just and proper to call the attention of the committee to it, even though I have nothing to do with it officially.

Mr. Denison. Mr. Miller, you have mentioned the reasons which impelled you to recommend the return of these claims that are in value below $10,000. Just what reason do you give for the recommendation for the repayment of $10,000 on the claims which are above that amount in value?

Mr. Miller. Why, Mr. Denison, it occurred to us that the holders of property of the value of $10,000 and over could probably attack the act on the ground that the Act of Congress was discriminatory if we did not also include them in some of the benefits of it. It is a very hard proposition to draw a deadline and say that you, with $9,990, should get your property and that the other man with $10,100, should get nothing.

Mr. Denison. It was just to meet a legal objection?

Mr. Miller. Yes; and I think it is only proper and just that the larger trusts should be permitted to participate up to that limit. You know $10,000 is a lot of money over on the other side of the water right now.

Mr. Denison. You spoke of certain assignments of interest by parties in Germany. Those assignments were not absolute assignments, were they, but merely conditional assignments?

Mr. Miller. Merely conditional, because under the law to-day, Mr. Denison, none of these people in theory have any right to receive anything or to assent or dissent to anything that we do.

Mr. Denison. They are merely conditioned upon final determination of the legal rights of the parties?

Mr. Miller. Yes, sir. It will not mean that a lot of people will buy up claims, because the administration of that provision rests with our office, under such rules and regulations as the President shall prescribe.

Mr. Rayburn. Mr. Miller, many Members and other people have asked me why it is that we continue to hold all this foreign property when we are not at war with anybody? We have not been at war with anybody for four years. Why is not this thing wound up?

Mr. Miller. Mr. Rayburn, all I can say to that is that it is a general question. It is absolutely up to the United States Government, represented by the legislative branch down here and the executive departments up at the other end of the Avenue.

Mr. Rayburn. Absolutely, but you are here as an expert witness. You are the custodian of this property. Why do you put it at $10,000 instead of the limit?

Mr. Miller. Because, as I said in my preliminary statement——

Mr. Rayburn. This bill is your recommendation, as I understand it?

Mr. Miller. Yes; the portions that I have referred to are my recommendations, worked out by Mr. Winslow.

Mr. Rayburn. Yes. Well, why not all of it?

Mr. Miller. That is absolutely, Mr. Rayburn, a matter of policy to be determined by Congress and higher authority. I would not attempt, as the custodian and administrator——

Mr. Rayburn. Well, why didn't you say $25,000 instead of $10,000? Why didn't you say $100,000?

Mr. Miller. Because, Mr. Rayburn, I understand that that would depreciate the fund to such an extent that other governmental departments that are interested in other phases of this question probably would not be favorably inclined to it.

Mr. RAYBURN. What other governmental department is interested in holding this property. What value is it to the United States to hold this property?

Mr. MILLER. Just to answer the first part of your question, the Department of State is charged with the negotiation of these American claims. The Mixed Claims Commission is directly under the Secretary of State.

Mr. RAYBURN. I understand, but this is a matter for the Government, is it not? It is not a matter that individuals are responsible for, is it?

Mr. MILLER. The whole subject matter of the question is a matter of determination of policy.

Mr. RAYBURN. Yes; and I want to get the objection to it, if there is any. You have recommended that this money be paid, to the amount of $10,000. I do not understand why it can not all be paid to them so that we can get out of this business.

The CHAIRMAN. I would suggest, Mr. Rayburn, that you let the witness answer the questions as you go along. You have piled up half a dozen of them.

Mr. RAYBURN. I have not been able to get the witness to give me an answer to any question yet.

The CHAIRMAN. Well he has not had time to do so. If you will ask him one question at a time——

Mr. RAYBURN. Well, I will do my own questioning in my own way.

The CHAIRMAN. You will have to give the witness a chance to answer.

Mr. MILLER. Mr. Rayburn, I am not appearing here from the standpoint of an objector to any policy that this Congress wants to enact into law with reference to this alien property; I am merely here to-day in a positive way to recommend something that I think will go through quickly so that we can at least begin to make a preliminary step in the right direction. I have tried to show you that, both personally and officially—and I am not the only Government officer to be considered—that I do not favor the confiscation of private property to pay debts. I have endeavored to answer your question.

Mr. Rayburn. Well, Mr. Miller, you have not answered me. I want your opinion as to why this property should not all be returned in the immediate future.

Mr. Miller. My personal opinion is that the Government does not at this time favor the immediate return of all of it, because of the very provisions that your Congress put in the Knox-Porter peace resolution, to which I have referred. That contains the last official instructions that any of us have had from Congress—and Congress makes the laws—namely, that this shall be retained by the Government until such time as the former enemy governments shall respectively have made suitable provision for the satisfaction of all claims against these governments. That is the last instruction we have in any law on the subject.

Mr. Lea. Mr. Miller, suppose that Congress should now definitely determine that it will not take private property for the satisfaction of claims. Would you then know of any reason why Congress should any longer hold this property?

Mr. Miller. No; if that policy is arrived at there would not be any further reason why we should.

Mr. Lea. Do you think the fact that you were holding this property would help in any way toward securing an early settlement of the claims of American citizens?

Mr. Miller. I know unofficially, Mr. Lea, that the German Government authorities are intensely interested in the settlement of these American claims against Germany, because they realize that until these things are cleared up the United States and Germany can not get back into their old stride of friendly commercial and economic relations, and it was largely as a step in the direction of reestablishing friendly commercial and economic relations that we thought out this $10,000 return proposition.

Mr. Lea. What has been done toward the satisfaction of the claims of American citizens for property held by the German alien property custodian?

Mr. Miller. The German custodian operates a little differently than we do. They do not have to wait for laws to be passed by their Reichstag or legislative assembly; they can be released upon orders in council by the President, and they have returned a good part of the property they seized. But there is a class of property that they can not return, and that is American amounts figured in gold dollars that were taken over at the time the war started. The only way they can return that is in the depreciated value of the mark. That represents an important part of the claims that the mixed claims commission is considering. Do you catch the point?

Mr. Lea. Yes. Has any agreement been made between the United States and Germany as to what shall be considered the value of the mark in the settlement of these American claims?

Mr. Miller. I was told informally the other night that they had not, but in my negotiations in the matter I have to make the best deal that I can. Court decisions are along the line that the value of the mark is as of the time the suit is filed, and if suits have been filed in the last year or so I am sure the value is well under 1 cent a mark. I have made settlements myself since I have been in office at the rate of 7 cents.

Mr. Lea. I have gathered from statements in the newspapers that an agreement was made between the United States and Germany by which American citizens were to be paid the full value of the mark as of the day the United States entered the war. Do you know whether or not there is any such agreement?

Mr. Miller. I was informed by an attorney of the mixed claims commission that they had either arrived at such a decision or were about to arrive at a decision which would settle the value of the mark at the average cable value 30 days preceding our entry into the war. That was 18 cents, as I understand it, Mr. Lea.

Mr. Lea. Do you know about the total value of the claims of American citizens for property in the hands of the German alien property custodian?

Mr. Miller. I do not. This is merely a guess, Mr. Lea, but I understand that at no time did the German custodian have over $100,000,000 of property over there; and the Austria-Hungarian Government, as I am informed, never had an alien property custodian, and did not seize property belonging to American citizens.

Mr. Lea. I want to ask one question about those assignments that Mr. Denison inquired about a moment ago. At the present time do you recognize the legal right of one of these claimants to assign his claim against the Government?

Mr. Miller. No, sir; we are not permitted to do that under the law, Mr. Lea. The only right that we give them now is when the question of a sale comes up. I have always endeavored to obtain their unofficial assent, and have so done in all sales that have been consummated. It is not binding, it is not mandatory, but I usually have their assent.

Mr. Lea. Referring to the provision on page 11, exempting property from attachment and execution, as I understand it, do you know whether or not any right of American creditors against the German claims is involved under that section? Have you notice of any claims against this property that is in the hands of the custodian that would be affected by this exemption?

Mr. Miller. No, sir. That is, as you say, the old law, and in my opinion it would not be affected.

Mr. Huddleston. Mr. Miller, I understood you to say that you thought this matter should be dealt with according to a consistent policy of our Government. That is correct, isn't it?

Mr. Miller. Yes, sir; generally speaking.

Mr. Huddleston. Then I assume that this bill represents, as far as it goes, the present policy of our Government?

Mr. Miller. I should say it represents the desire of the present administration, surrounded as they are by the provisions in the peace resolution.

Mr. Huddleston. In other words, you are not pressing this bill merely upon your own responsibility, but it meets the approval of the present administration?

Mr. Miller. You are correct, Mr. Huddleston.

Mr. Huddleston. What part of this property remains in specie, or in the form in which it was when seized?

Mr. Miller. I can best illustrate by stating that to-day in the Treasury there is a total of $174,000,000 invested in Liberty bonds or in cash. That represents either property that has been liquidated or cash seized or stocks, bonds, and securities that have been seized and then liquidated.

Mr. Huddleston. What part of it is cash seized?

Mr. Miller. I regret, sir, it is impossible for me to answer that in detail. It would take a detailed audit, Mr. Huddleston, for me to give you that. I do not know whether I catch your question, but to-day——

Mr. Huddleston. What I want to know is, what part of this property remains in the same form in which it was taken over? Of course, cash does not change its form.

Mr. Miller. I should say, roughly speaking, only a half of it, because when I answer your question I have in mind a number of sales of industrial plants that were disposed of under my predecessor's tenure of office. To-day I am operating very few industrial plants.

Mr. Huddleston. Would the cash credit to the Alien Property administration be sufficient, in your opinion, to discharge claims that might be properly made against the German Government.

Mr. Miller. Oh, yes. As I have said informally before to-day, that amount of money, $174,000,000, would eventually guarantee all American claims. But that is my personal opinion.

Mr. Huddleston. What would you think of returning all the property which may be held that remains in specie?

Mr. Miller. That would be perfectly proper, sir; but there are a whole lot of people who would come in under the terms of this $10,000 return bill whose property is not represented in cash in the Treasury.

Mr. Huddleston. But there is no expense connected with administering that property—the cash?

Mr. Miller. No, sir.

Mr. Huddleston. And the other is expensive; in some instances it is pretty evident that the expense of administering it will consume it, and in every case it depreciates?

Mr. Miller. Let me say, Mr. Huddleston, that I do not see how you can pass discriminatory legislation, because if you say that the property that the Alien Property Custodian holds to-day intact in some form—stocks, bonds, real estate, and industrial plants

—shall go back, you still hold property that has been turned into cash.

Mr. HUDDLESTON. I was going to ask why you think Congress may not discriminate among the claimants?

Mr. MILLER. Oh, it is up to the Congress, sir, to pass any legislation that you want.

Mr. HUDDLESTON. Have you in mind any constitutional provision that would prevent Congress from returning all of it except for instance, a single specific item?

Mr. MILLER. No, sir; the Congress could pass legislation of that character if they wanted to, and I can not conceive that it would be unconstitutional.

Mr. HUDDLESTON. So that there is not any question of legality raised in a discrimination by Congress among the claimants?

Mr. MILLER. No, sir; merely I would submit, Mr. Huddleston, it is largely a matter of fairness.

Mr. HUDDLESTON. Of policy and fairness?

Mr. MILLER. Yes.

Mr. HUDDLESTON. I understood you to say, in reply to Mr. Denison, that there was some question of legality in it.

Mr. MILLER. It was more as a matter of fairness that the bill was drawn to include claims above $10,000; although I have been told—I have not had a chance to examine into it—that they might attack the law if the parties above $10,000 were barred.

Mr. HUDDLESTON. On what ground might they attack it

Mr. MILLER. Mr. Hudleston, I am not discussing this from a constitutional lawyer's point of view.

Mr. HUDDLESTON. Well, I had in mind that you probably had taken legal advice.

Mr. MILLER. I really am not prepared, nor am I equipped here to-day, to discuss the legal situation.

Mr. **Huddleston.** The retention of this property in excess of the proposed $10,000 limit is in itself a discrimination, even if it were implied that it would at some future time be returned. But the implication in the retention is that we intend to do something with this property in the future; the implication is that we expect to confiscate it and apply it to the payment of claims, and I can not think of anything more discriminatory than to take the property of one man to discharge a claim against his Government and to release the property of another man.

Mr. **Miller.** That may be the implication, Mr. Huddleston, in the laws which the Congress has heretofore passed, but I know it is not the desire nor the policy of this administration to resort to confiscation of this private property to pay American claims. It is merely held as a guaranty.

Mr. **Huddleston.** Well, what is a guaranty worth if you do not intend to enforce it? If the administration has decided definitely upon a policy of not applying in any event this property to the payment of claims, it has no effect as a guaranty and has no effect of any kind. Are you able to advise us that that is the policy of the administration?

Mr. **Miller.** Not to resort to confiscation?

Mr. **Huddleston.** Yes.

Mr. **Miller.** Yes; I am safe in making that statement here to-day.

Mr. **Huddleston.** Then, if that is correct, there would seem to be no reason for not returning all the property?

Mr. **Miller.** That is absolutely so; but as I told Mr. Rayburn, the last instruction we have from the Congress is in this peace resolution that I referred to.

Mr. **Huddleston.** Well, we are now changing that, so if we have definitely decided not to use any of this property for that purpose of applying it to the payment of claims we had better get rid of it and get it back to the people who own it?

Mr. Miller. I want to say, Mr. Huddleston, that I brought up this claim situation, because you can not discuss this alien property situation without it. If I had adopted the attitude of simply limiting my discussion to my own office, I would not have mentioned it. I want to say here that I do not want the Mixed Claims Commission or the Department of State to think that I am encroaching on their prerogatives. Any remarks that I have made on that are merely personal.

Mr. Huddleston. You have used the expression that it was proper and "righteous," I think that was the word you used, to return this property of $10,000 and less. I did not misunderstand you in that?

Mr. Miller. You did not.

Mr. Huddleston. Well it is just as proper and righteous to return all the other property, is it not?

Mr. Miller. In theory it is absolutely just as right and proper to return it, but unfortunately we are dealing here to-day with practical present-day matters and the legislation that I have referred to.

Mr. Huddleston: I was wondering just what practical present-day matter it is that would prevent us from doing a thing which we have already decided that we are going to do.

Mr. Miller. The most practical present-day situation—and I do not want to wear it threadbare—is that provision in the peace resolution which a number of you gentlemen voted on last year.

Mr. Huddleston. Legislators as well as executives are timid and very fearful of public opinion. I am wondering whether there is any feeling of that kind that causes you to be hesitant about going full length with regard to this property, or a lack of courage on the part of Congress or the administration which leads us to deal with this matter in a way which is not according to traditional American policy and then and are trying to collect a lot of claims. I have that thought in my mind, and I was anxious to have you explain anything to the contrary.

Mr. MILLER. It is my personal opinion, Mr. Huddleston, that the great majority of the American people and a great majority of their Representatives here in Congress favor a return of all this property right now. On the other hand, as long as you have brought the subject up, it is quite proper that an active minority are talking about the *Lusitania* and other claims, and they have the right to talk about it, because the peace resolution specifically recognizes that state of affairs.

Mr. HUDDLESTON. There is one more question I want to ask: You think it is proper to recognize transfers and assignments of this property and of claims for the property, and that such recognition be provided for in a section of this amendment?

Mr. MILLER. I think it is really necessary, Mr. Huddleston, for the proper administration of the act, when it comes to carrying out the provisions of this bill, if it is enacted into law.

Mr. HUDDLESTON. Do you think that transfers made to speculators or which have been made upon an unconscionable basis ought to be recognized?

Mr. MILLER. Absolutely not. I do not know whether I have said so here to-day, but you can rest assured that if we are called upon to administer those provisions we will establish rules and regulations that will absolutely prevent any of that. You can not draw any statute but what somebody will try to get around it; you have got to trust to the honesty of your Government officials to see that it is done right.

Mr. HUDDLESTON. You think we should not attempt, in writing the statute, to guard against claims made by transferees who have taken advantage of the necessities of the true owners to acquire their rights upon extortionate terms?

Mr. MILLER. I would welcome any addition to that section (dd) that would stamp that policy more plainly on the legislation, because you and I are both aware of a lot of people that have overrun Europe since the armistice—they were not over there when there was any fighting, but have gone there since then and are trying to collect a lot of claims. I understand that if this goes through we are going to have the active and earnest cooperation of the legations and embassies here in seeing to it that no frauds of that kind are put over.

Mr. HUDDLESTON. With reference to the ships, are they held by the Shipping Board?

Mr. MILLER. One hundred and five of them are held by the Shipping Board, and are so noted on this memorandum; 21 of them are still held by the Navy, and are so noted on this memorandum that I have put in the record.

Mr. HUDDLESTON. What part of those ships, if any, are in the class of "lawful war prizes?"

Mr. MILLER. That is very difficult to say. Those ships that were seized at Hoboken were all German auxiliary cruisers, and as you know, were all used to transport our men to France. I do not think that any of these are prizes of war taken on the high seas.

Mr. HUDDLESTON. Have we none such?

Mr. MILLER. I do not think so, sir; I do not think that any of these vessels were captured on the high seas as prizes of war. They were at their docks in American ports all over the world.

Mr. HUDDLESTON. Would legislation be required in order to deal with that aspect of the situation?

Mr. MILLER. I only brought up the ship situation because I conceived that, from the German standpoint, they would certainly remind us of these ships when it came to settle our final accounts on all these matters. They are certainly property taken from the enemy or subjects of the enemy, and might be in the same category as this alien property when we are considering all that property as a whole.

Mr. Huddleston. You think they should be dealt with by Congress in any legislation?

Mr. Miller. Well, I would not want to venture even a personal opinion there, Mr. Huddleston, because these ships were never in my possession; they are in the possession of the Navy Department and the Shipping Board. I certainly hope that the *Leviathan* —which represents more to the average American doughboy than any other ship on the water—stays under the American flag as long as it is afloat.

Mr. Huddleston. Well, we are about to sell that ship now for less than it is costing us to recondition it, are we not?

Mr. Miller. No; I understand the Shipping Board is conditioning that vessel, and the chairman told me a day or so ago that they expected to put it in the Southampton service, commencing this spring.

Mr. Huddleston. Of course those ships were all taken over under this resolution that you referred to, of——

Mr. Miller. May 12, 1917.

Mr. Huddleston. And there was considerable discussion over the propriety of that act, in view of our treaty with Germany which was in effect at the time the war began.

Mr. Miller. You mean the seizing of these ships?

Mr. Huddleston. Yes. You have not heard that question raised?

Mr. Miller. No, sir; I have not, Mr. Huddleston. I merely brought the ship situation up here to-day to endeavor to lay every possible card on the table in discussing this subject.

Mr. Hawes. Mr. Miller, I understand it is your official view that all of this property should be returned as quickly as possible?

Mr. Miller. My official view?

Mr. Hawes. Yes.

Mr. Miller. As I told Mr. Rayburn a while ago, Mr. Hawes, that is a determination of policy that is absolutely up to Congress and the President or the State Department. I am the administrative officer and custodian. Personally I have not hesitated to say here to-day that the sooner we are divorced from this alien-property business and it is cleaned up and out of the way the better it will be. Nobody will be better satisfied than I, but it will take longer than the time I can spare to do it.

Mr. Hawes. Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible?

Mr. Miller. Yes, sir.

Mr. Hawes. And that you would pursue that policy excepting for the belief that some action of Congress is necessary to authorize you so to proceed?

Mr. Miller. Yes, sir; and bearing in mind this American claims situation, which we can not ignore, Mr. Hawes, in our discussions, and should not ignore.

Mr. Hawes. I understand that we originally had or seized from Germany $600,000,000, in round numbers. That has gradually been reduced to approximately $347,000,000. Now, your bill proposes to return only $22,000,000 of claims amounting to less than $10,000, and approximately $22,000,000 coming out of the classification above the $10,000,000 limitation, making a total of about $44,000,000 to be returned?

Mr. Miller. Yes, sir.

Mr. Hawes. And I understand, Mr. Miller, that you do not believe the United States Government should take the position that property seized by the

Alien Property Custodian from private individuals should be used by the American Government in the enforcement of its claims against Germany?

Mr. Miller. I have stated here to-day a number of times that personally I would be opposed to the confiscation of private property to pay claims against an enemy government.

Mr. Hawes. Do you know of any instance in history, or any precedent, that would justify such a course by any government?

Mr. Miller. Well the governments on the other side of the water have adopted a different policy, which is practically confiscation, although it was done with the consent of the German Government. They pooled all their property and liquidated it and paid their claims through a clearing house; so that if a German did not get his property back that was in England he has to look to the German Government to get it, and if a Britisher does not get back his property that was seized and liquidated in Germany he has got to look to his own Government for it. The trading with the enemy act is a peculiar piece of wartime legislation.

Mr. Hawes. The situation you have just described is a Government refunding agreement between England and Germany?

Mr. Miller. Yes.

Mr. Hawes. And an entirely different situation from this. Do you know of any objection to returning all of this property, excepting some reasons of State which have not yet been brought to the attention of the committee, or for the reason of using it as a security for the collection of American claims against Germany?

Mr. Miller. Those would be the only two reasons, sir, for holding it a day longer.

Mr. Hawes. I believe it was Robin Hood that took from the rich and did not rob the poor, and I believe Jesse James, of my State, showed some discrimination in deciding whom he would rob——

Mr. Newton. He did not when he got up into my State.

Mr. Sweet. He didn't get out of your State.

Mr. Hawes. You didn't get Jesse up there; it was Younger that you got. But I want to understand how, either in equity or in justice, or upon what rule the United States can draw the distinction as to the value of the property. If a man owning 1 horse comes under a certain rule, does not a man owning 100 horses come under the same rule?

Mr. Miller. Yes, sir.

Mr. Hawes. And should not a man that has $5 held by the Government come under the same rule as a man owning $5,000,000?

Mr. Miller. That is not debatable, Mr. Hawes.

Mr. Hawes. There is no question about it. Have you discussed the legal right—the moral right and the equitable right of course can not be questioned by any man, and no distinction should be drawn as to the value of the property held, but have you looked into the legal right of the United States Government to draw such a distinction?

Mr. Miller. Well, the legal right of the Government to do any of these things in connection with alien property is clearly because of the law that Congress passed. It is a piece of war-time legislation, and the minute that is repealed the legal obstacles are out of the way. There is a distinction, as I have said here to-day, in the theory of this discussion that we are indulging in and the practical situation to-day which we want to meet.

Mr. Hawes. In case this bill is passed it will release approximately $44,000,000 held under the deadline classification of the bill, which would leave in your possession some $347,000,000 of property? Is that correct?

Mr. Miller. That is the total amount to-day, Mr. Hawes. As I said before, if the provisions of this bill are carried out there will be approximately $273,000,000 left.

Mr. Hawes. If this bill is carried out?

Mr. Miller. Yes, sir.

Mr. Hawes. In addition to that the United States Government has, as security for German debts, 126 ships. What would you say the approximate value of those ships is now?

Mr. Miller: I can not answer that question, because I have been unable to get such an answer from the Government departments that hold those ships. I wanted to have it for you here today, anticipating just such a question, but I was not able to get it.

Mr. Hawes. It would reasonably exceed $300,000,000?

Mr. Miller. I should say it would reasonably be $300,000,000. As to whether you could go out and get that on the market today is debatable, but they ought to be appraised at that amount.

Mr. Hawes. Is there someone that can give us an estimated value on those ships?

Mr. Miller. I think so.

Mr. Hawes. None of those ships were seized on the high seas, as I understand it; they are ships seized after internment?

Mr. Miller. Yes, sir.

Mr. Hawes. And all of them were mercantile ships; that is, they were not part of the navy of Germany, excepting so far as the German Government retained the right to use them in time of war.

Mr. Miller. They were not on the active list although many ocean liners were convertible into auxiliary cruisers. Most of them were commercial vessels.

Mr. Hawes. So that we have, in ships alone, an approximate security exceeding $300,000,000?

Mr. Miller. Yes, if you want to consider those ships together with this alien property; although I have made it plain that I only brought it up because I thought it was worthy of consideration in connection with this subject.

Mr. Hawes. Contrasting our conduct in relation to the holding of alien property with that of Germany, as I understand you, the German Government has released a large amount of the American property originally taken over by them? Is that correct?

Mr. Miller. Yes, sir.

Mr. Hawes. How much is now retained by the Government of Germany?

Mr. Miller. I am reliably informed that no property is actually held today by the German Government. But, Mr. Hawes, there were a number of cash accounts and securities held by Americans that were liquidated that are now being offered to them at the depreciated value of the mark. That should be mentioned, in all fairness, because if an American is made to accept his cash in the depreciated value of the mark, it amounts practically to confiscation. His interest is practically obliterated.

Mr. Hawes. There are some 31,000 of these accounts in the United States. What is the cost of administration? What do you allow the administrator? What commission?

Mr. Miller. The Congress has appropriated, Mr. Hawes, $280,000—that is, I understand the appropriations committee recommend $280,000 for the fiscal year commencing next July. It was $370,000 last year, which was $90,000 less than my predecessor Mr. Garvan had. It has come down considerably. But in connection with that let me say that out of this we are piling up a good many millions of dollars of interest.

We have $24,000,000 of interest on deposit in the Treasury which we can not as yet allocate to any one trust; it is Uncle Sam's property.

Mr. Hawes. Which interest belongs to some 31,000 claimants?

Mr. Miller. Yes, sir.

Mr. Hawes. The cost of administration that I had in mind was where a bank or trust company or a manager was operating a business.

Mr. Miller. Our depositaries, which hold a large amount of our securities and administer them, have in the Depositary's Manual, under an arrangement that my predecessor made, a sliding scale of commissions. I will say, in justice to them, that most of the depositaries are endeavoring to get out of the business of handling these accounts of ours, because it is not a matter of profit for them; they took it on as a matter of duty during the war.

Mr. Hawes. What do they charge for this administration, only approximately?

Mr. Miller. Well, it is approximately 5 per cent. on income collected, and a sliding scale of from 1 per cent. down on principal collected. It is a fair proposition all around.

Mr. Hawes. So that every year that the Government holds these 31,000 claims someone other than the Government or the owner of this property is drawing from the property itself a commission of some sort?

Mr. Miller. Yes, sir.

Mr. Hawes. There is some intermediary, not the Government and not the owner of the property, who is drawing today from 1 to 5 per cent. for handling these claims?

Mr. Miller. But, Mr. Hawes, I submit that it is not impairing these funds, because if a mortgage was given to a bank in this country by a German to handle, the real estate department of banks charged for that service. We have, I think, made as fair a deal with them as could be made. A lot of this property had to be administered anyhow, and we took it over from the banks on this basis.

Mr. Hawes. Of course, Mr. Miller, you would not want somebody to come and take your property and hand it over to somebody else and, without your consent, pay him so much for handling it?

Mr. Miller. No. But I want to say, in all fairness, that a good many of these accounts, Mr. Hawes, are in far better shape than when we took them over —that is, when my predecessors took them over. And we are always on the lookout for advantageous deals where we can get rid of the property or improve it.

Mr. Hawes. That is the theory of the new progressive party, organized recently, that if the Government takes over the management of private affairs those private affairs will be very much improved.

Mr. Huddleston. Would it not be best for somebody to discuss that matter that knows something about it.

Mr. Hawes. Nobody connected with it ever having given the public any intelligent reason for its existence, I suppose an average Congressman can guess.

Mr. Huddleston. But not the gentleman.

Mr. Hawes. So that this $347,000,000 now held by the Government is producing for someone, not connected with the Government, and not the original owner of the property, an income, or a cost of some kind?

Mr. Miller. Yes, sir.

Mr. Hawes. Approximately how much does that amount to?

Mr. Miller. Mr. Hawes, I regret my inability to give you that, and practically speaking it is impossible to give such information unless I set out to get it through——

Mr. Hawes. Would it average 4 per cent. on $350,000,000?

Mr. Miller. Oh, no. Pardon me, but I do not want any such thought as that to go into the record.

Mr. Hawes. You said, I believe, from 1 per cent. to 5 per cent.?

Mr. Miller. I am talking about a bank or trust company; that is, a depositary of stocks, bonds and securities. In many of these industrial plants they are making a great deal more money than before, and it has been mighty fortunate for them that they were operated by the Government during the war. I know of companies that have made millions of dollars out of uniforms for our soldiers, and when their property goes back it will go back in a far better shape and with more money in the treasury than when we took them over.

Mr. Hawes. That is on the theory that a government can handle a man's business better than the man himself can handle it?

Mr. Miller. No; I do not adhere to that principle, but I do maintain that we have endeavored in this alien property situation to act as administrator or trustee just the same as if we were administering it for our own children.

Mr. Hawes. Do you know what the total amount of American holdings is remaining in the hands of the German Government?

Mr. Miller. As I said before, Mr. Hawes, all of that property, I understand, has been released. But there are a number of Americans who have refused to take back their liquidated assets in money at the depreciated value of the mark, and are expecting to go to the Claims Commission for that adjudication.

Mr. Hawes. Well, approximately how much?

Mr. Miller. I regret, sir, there is no way of knowing—and when I addressed the inquiry to somebody who should know officially I received the same answer.

Mr. Hawes. Neither the Alien Property Custodian nor the State Department knows? Is that it?

Mr. Miller. I addressed my inquiry to a gentleman who is connected with the German Embassy. The Claims Commission, which has stipulated that all claims must be in by December 31, will undoubtedly have that information right up to date.

Mr. Hawes. Well, if the Claims Commission finds that private citizens of America have sequestered by the German Government, say, $100,000,000, are we holding back $347,000,000 for that?

Mr. Miller. No; pardon me. The American claims do not consist alone, Mr. Hawes, of alien property that has not been returned or cleared up. Most of the American claims are for loss of life and property at sea in sinkings prior to April 6, 1917. That is what constitutes the great bulk of the American claims against Germany.

Mr. Hawes. Well, nobody contends that if a man has a deposit in a bank in St. Louis that money should be taken away from him, or held from him, because of sinkings at sea by the German Government.

Mr. Miller. That goes back to the general discussion, in which you and I arrived at a conclusion a few moments ago.

Mr. Hawes. So that the great volume of claims, so far as you know, are for loss of life at sea and damage to American property? In other words, the German Government is not holding money belonging to American citizens in great volume in Germany?

Mr. Miller. No, sir; absolutely not. The only question is as to the value of the mark when it is offered to them in return.

Mr. Hawes. So then the delay in returning all this property is not on account of a balancing of the retention of property by Germany belonging to American citizens as against the retention by the United States of German property in the United States? There is no balancing there?

Mr. Miller. No; we are not attempting to balance that.

Mr. Hawes. Aside from the matter of bookkeeping and the pressing needs of those persons who have claims under $10,000, is there any equity or justice in drawing a deadline anywhere?

Mr. Miller. Oh, no. In theory, as I told you, if a man who owns $1 is to get it back, the man who owns $1,000,000 should get it back. It is only because of the present day situation. I am not here as an objector; I am here in a positive way, to try to accellerate a preliminary step in the right direction. You know that legislation is a compromise, and I am here to try to get the best possible legislation from you gentlemen that I can.

Mr. Hawes. I sympathize with your position, Mr. Miller, entirely. But in asking us to legislate either you or some other Government official did draw the deadline between $10,000 and a sum above that. In other words, you drew a deadline on $44,000,000 out of $347,000,000.

Mr. Miller. If you are looking for the culprit, I am the man that suggested the general principles of this bill, and I will plead guilty to that.

Mr. Hawes. Why can not that be extended further? There is nothing here to show that Germany is holding anything of ours.

Mr. Miller. It can be extended further, if your committee really believes that it should be, under the situation existing today. As I have said very plainly, the Department of State has to do with the question of claims and negotiations with Germany, under this peace resolution which your Congress adopted last year, the terms of which I have read. I presume that if I should propose legislation here that would wipe out this guaranty, I would run afoul of their ideas and recommendations.

Mr. Hawes. This charge of from 1 to 5 per cent. for administering these accounts, is that an annual charge or is it the total charge for administration?

Mr. Miller. I think, sir, that I have not made myself plain to you. I have not my "Depositary Manual" here, but I could read to you, and will put in the record, if you wish, the rules and regulations under which these depositaries operate. They were promulgated by my predecessor, Mr. Palmer. I have not changed them.

(The witness subsequently submitted a memorandum with reference to the matter here under discussion, which was directed to be incorporated in the record, and which is here printed in full, as follows):

"Extract from Depositary's Manual Office of the

Alien Property Custodian.

"Rules and regulations effective November 27, 1918, showing the depositary fees paid banks and trust companies in the administration of alien property trust accounts:

"compensation.

"Depositaries are authorized to retain from the income received from properties deposited with (except in special instances) the following commissions, on gross income received, on a per annum basis in each trust; 5 per cent. on the first $5,000 or any part thereof, 3 per cent. on the next $20,000 or any part thereof, 1 per cent. on amounts in excess of $25,000.

"No commissions in excess of $1,200 will be allowed without specific authority from the Alien Property Custodian.

"For example, if $3,000 gross income is received during the next quarter, 5 per cent. should be deducted on $2,000 and 3 per cent. on $1,000 as commissions for that quarter, etc.

"If the annual income in a trust is less than $300 a minimum commission of $15 per annum may be deducted, at the rate of $3.75 quarterly.

"Please make calculations for the year September 1 to August 31.

"In addition to the commissions allowed on the gross income received, the following percentages may be retained on principal collected from property deposited with the depositaries; 1 per cent. on the first $5,000 or any part thereof, one-half of 1 per cent. on the next $5,000 or any part thereof, one-quarter of 1 per cent. on the next $15,000 or any part thereof, one-eighth of 1 per cent. on all amounts in excess of $25,000. The maximum commission, however, not to exceed $200 in any one trust.

"The above schedule applies only to principal collected from property held by a depositary and not to cash items received by the depositary at the time of the service of demands.

"CONTINUING TRUSTS.

"In certain continuing trusts the depositary takes over no property, but receives from the fiduciary payments at regular periods of distribution. This money in turn is forwarded to this office at the time of the quarterly reports. In such cases the fiduciary continues to administer the trust, but the depositary should obtain an inventory and check the accounting filed by the fiduciary. The compensation for such services is 1 per cent. on the gross income, not to exceed, however, $1,200 per annum in any one trust.

"NONINCOME-PRODUCING PROPERTY.

"In the case of any trust having only nonincome-producing property the depositary should make the proper charge for administering the same on its books. If property constituting such a trust should be sold by the Alien Property Custodian such charges may be deducted from the proceeds of sale, and if not sold by the end of the war, such charges will be considered when Congress determines what disposition shall be made of enemy properties.

"REAL ESTATE.

"The Alien Property Custodian reserves the right, at all times, to increase or reduce commissions of depositaries where the service rendered is of an unusual character. In some instances large collections are made with little or no work, and in such instances the usual commissions may be reduced. In other instances depositaries are called upon to perform an unusual amount of work and the commission should be correspondingly increased.

"COMPENSATION WHEN PROPERTY IS RETURNED TO FORMER OWNER ON ALLOWANCE OF CLAIM UNDER SECTION 9.

"1. Depositaries are authorized to charge commissions on income on basis set forth on page 30, as amended November 27, 1918.

"2. Depositaries are authorized to charge commissions on principal, figured on the market value thereof on the date of delivery to claimant on basis set forth on page 30, as amended November 27, 1918, the maximum commission not to exceed $200 in any one trust.

"3. Where only the right, title, and interest in securities is held, the actual certificates being elsewhere for the purpose of computing commissions, such right, title, and interest shall be deemed to be principal and commissions may be deducted in accordance with paragraph 2.

"4. In a case where there is not sufficient cash in the trust to pay the commissions authorized the depositary should collect the difference from the person to whom delivery is to be made before making such delivery."

Mr. Miller. Under that, the charges that you refer to are in the cases of banks and trust companies acting as depositaries, as they would have to do anyhow, Mr. Hawes, because in a number of these cases the securities and the mortgages are right where we found them and they are being administered and held in custody by the very bank or trust company that the Germans put them in before the war. We have adopted a very reasonable scale of compensation, and I really do not want it to go out here today that the great bulk of this property is being operated at a cost of 5 per cent. to the property; it is not.

Mr. Sweet. If I may make the suggestion, does not that 5 per cent. apply simply to the income and not to the principal?

Mr. Miller. If we have some security on which there is an annual $100 dividend, for the collection of that dividend they get $5, which includes their overhead and administrative expense. If by negotiation they take down a principal for the sale of a house and we approve the deal in my office, they get 1 per cent. on the sale of the house, or less, according to the value.

Mr. Hawes. And that applies only to——

Mr. Miller. To that particular transaction. I want to reiterate that a whole lot of these trusts are in much better shape than when they were taken over, and from private views expressed to me by many of the Germans, especially those who have the larger amounts here, I believe they would rather they stayed here than to take them back to Germany at the present time.

Mr. Hawes. The reason they are glad to leave some of them in the hands of the custodian is because if they were returned to Germany they would be subject to taxes?

Mr. MILLER. To taxes, yes; and they would probably have to get a bathtub to carry their marks around with them.

Mr. HAWES. So that there are certain German moneys in the United States which the Germans themselves are very happy to leave in the condition in which they are now until the value of the mark goes up?

Mr. MILLER. I presume so. I will refer you to House Document 322, 67th Congress, a copy of which I mailed to each member of the committee. It contains what I consider some very interesting remarks on that particular point.

Mr. HAWES. So far as your department is concerned, for reasons of policy in your own department, you would not oppose an act of Congress permitting you to return all this property.

Mr. MILLER. I want to say again that the question of the return of all this property at the present time is a matter of policy in which you and the executive departments concerned are joined together in the responsibility therefor. Personally, as I have said here to-day, I sincerely hope we can clean up this whole situation, get rid of it and divorce ourselves from it, as soon as possible. I do not adhere to the principle that private property should be confiscated and be used to pay the debts of enemy countries. I do adhere to the principle, and I do not mind saying so, that something ought to be done by this Government to see that the American claimants do receive satisfaction from some source or other. Nobody will deny that.

Mr. HAWES. Certainly no. But the objection to a clean-cut liquidation and settlement does not come primarily from your department? It comes from other departments?

Mr. Miller. I have not come here in the position of an objector. Other departments can answer for themselves. I am glad you asked the question, because I have heard that I, in my humble capacity, have been able to exert enough influence to keep this matter from being brought up. That is not so.

Mr. Hawes. That is not my information, Mr. Miller.

The Chairman. After one more question we will have some general matters to consider.

Following your last statement, the Chair would like to have you state to the Committee your judgment as to any unnecessary delay on the part of this committee in bringing out a bill for the consideration of the Committee, and maybe of Congress.

Mr. Miller. I am glad the chairman asked that question, because I see a great number of your colleagues that are not members of this hard working and very important committee, and I have always told them that the chairman and the members of this committee have been exceedingly anxious at all times to proceed with the consideration of this subject which we have discussed here to-day and that any delays have been outside of your jurisdiction.

(After discussion as to future hearings:)

(Whereupon, at 12.10 o'clock p. m., the committee adjourned, to meet at 10 o'clock a. m. tomorrow, Friday, December 22, 1922.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

HOUSE OF REPRESENTATIVES,
Friday, December 22, 1922.

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The Chairman. We will proceed with the further consideration of H. R. 13496. Colonel Miller, will you kindly resume?

STATEMENT OF HON. THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN—Resumed.

Mr. MERRITT. Colonel Miller, I want to call your attention to one aspect of this matter. I agree that it is not right or equitable for a country to take private property for the sake of public claims, but I fancy there are classes of cases—I know of one and that is the reason I am asking this question—where the Germans absolutely stripped a very extensive manufactory in Belgium, took the contents to Germany, which they have never returned, and they are not in position now to settle on any proper basis of exchange, and perhaps not at all; I do not know. It seems to me those people are entitled to have their loss made good. Of course, in war times it is not unusual to take hostages and people who are perfectly innocent and to say, "If you shoot a certain number of our nationals, we will shoot these hostages." Now, the query is, is there not some equity if Germany has taken our private property, and if she is going into a general system of destruction as she did in France and destroy orchards and trees and smash up mines just for the sake of the damage, is there not some law of reciprocity or retaliation, or whatever you may call it, which in war time would make it proper for us to keep private property until those claims of our citizens are paid?

Mr. MILLER. Your question, Mr. Merritt, touches on the American claims situation. No one denies the fact—at least I do not think they do—that American citizens who have claims for loss of life or property against Germany or any of the other former enemy powers, have a perfect right to expect from some source reimbursement for their claims after they are adjudicated by the Mixed Claims Commission, which is now sitting in Washington. No one will deny that. I should think our own citizens should have every protection.

Mr. Merritt. No; that is not my point exactly.

Mr. Miller. I was coming to that. As to the method of paying those claims when they are adjudicated or as to what funds to get the money to pay them from, that, of course, will have to be up to the German Government and the United States Government, and any legislation that your Congress enacts. I said very plainly yesterday that this administration makes no secret of the fact that while at the same time they are going to be very zealous in looking after the rights of their own citizens, they adhere to the time-honored principle that private property seized during stress of war is not ultimately to be confiscated for the payment of national debts.

Mr. Merritt. Perhaps not, but that would not be a good reason for precipitately legislating to return all German private property, would it?

Mr. Miller. I discussed that yesterday rather fully and I must again——

Mr. Merritt. I heard you and I thought I understood you, but while it seems to me the general principle may be right, and while we may hope that ultimately we can return all the property, it seems to me there may be some equity in saying to Germany, "You must give us some sort of guaranty that we are going to get the money from some other source before we give up the property of your nationals which is in our possession."

Mr. Miller. As I said yesterday, that is one side of the question. The other side is the unconditional return, and this bill is a middle of the road proposition for the consideration of this Congress, and the very Congress that is sitting gave us our last legislative instructions in the peace resolution as to the retention of this property. That is the last legislative instruction any department of the Government has received on this property, and that was, to retain it until such time as these claims were satisfied. Of course, it is within the province of Congress to change that at any time.

Mr. Merritt. That is all. I simply wanted to make sure that that particular angle was made clear, because I do not feel it would be doing justice to our own nationals if we, out of an excess of justice, perhaps, if there is such a thing as an excess of justice, let go some sort of a hold on Germany to at least make her hurry the settlement. Everybody knows that if we give up all the property, we could talk until doomsday and we would never get a cent out of them.

Mr. Hawes. Mr. Miller, I assume you are familiar with the case of Hirshman *v.* United States, in which the Chief Justice of the United States, Judge Marshall at that time, states that the seizing of private property to pay enemy debts is unthinkable in the United States. You are familiar with that?

Mr. Miller. I am familiar with that.

Mr. Hawes. I assume your department and others will be guided largely by the opinion of the most distinguished Chief Justice America has ever had?

Mr. Miller. It is very proper at this time to call attention to that decision, and about that time, as you recall, the treaty of 1799 with the then Kingdom of Prussia was negotiated between our infant Republic and Prussia, which provided, in the words of a layman, that the merchants of each country would have nine months within which to depart from the countries in case of war, with their goods, merchandise, etc. I am not attempting to discuss with your committee the details of the international negotiations covering the period of the last 125 years. That is within the province of the State Department and I am frankly here before you dealing with a practical, present-day problem, in this situation.

Mr. Hoch. Mr. Miller, if this property is being held as a guaranty or security, it is for one or two purposes, or both, I take it; either to secure the payment of the claims of the United States against Germany or the claims of American nationals against Germany. Now, in a general way, what are the claims of the United States Government against Germany?

Mr. Miller. As I understand it, Mr. Hoch, the claims of the Government as a government against Germany are inconsequential. These claims are the claims of American citizens, private American citizens, against the Imperial German Government, largely, for the loss of life and property at sea previous to April 6, 1917, and as I said yesterday, for the depreciated value of the funds seized or taken from Americans by the German custodian, and since peace offered at the depreciated value of the mark in return. As I understand it, the former administration made it plain in the Paris peace negotiations that they had no claim against Germany for reparations. You will remember that.

Mr. Hoch. Yes. Are the claims of the Government growing out of the expenses of the army of occupation involved here?

Mr. Miller. I understand that last spring the question of that $241,000,000 that was due for the army of occupation was considered a Government claim against the present German Government, under the treaty.

Mr. Hoch. Do you think that that claim is involved in holding this property as security?

Mr. Miller. I have understood, sir, that that was considered in the total amount of claims against Germany.

Mr. Hoch. Then the Government's claim is not inconsequential, if that is involved.

Mr. Miller. That is a mooted question, and I do not want to pass an inquiry back to another department, but that subject of the $241,000,000 for the army of occupation is so clearly a matter that the War and State Departments are interested in, that I think it would be fatuous for me to try to discuss it, except personally.

Mr. Hoch. Let me go to another question.

Mr. Miller. A document known as Treaty Series No. 665, shows the agreement between the United States and Germany for the Mixed Claims Commission, and shows you the character of claims they are considering. I will not insert it in the record here, but I will put the reference in the record in case anybody wants to refer to it.

Mr. Hoch. Going on to an entirely different question, I would like for you to make a general statement as to the powers that are exercised by the Alien Property Custodian over this property; for instance, with reference to the sales of the property that you have spoken of, and also with reference to the question of whether, in cases of going businesses, the Alien Property Custodian conducts those businesses as going concerns and under what general authority that is done.

Mr. Miller. I am very glad to do that, sir, because I think there are very few people who thoroughly understand the kind of a Government shop we are running. The power of the Alien Property Custodian under the original trading with the enemy act is as powerful, perhaps, as any Government official created by law. The President, of course, under the act was given these authorities and, in turn, was permitted to delegate certain portions of them to an officer known as the Alien Property Custodian, and also to the Attorney General, some to the Secretary of the Treasury, and some to the Secretary of State. The Alien Property Custodian to-day, in all these industrial plants and corporations that he is operating, stands in the shoes of a stockholder. He has seized and is holding that stock as a common law trustee or guardian. I would like that made plain, because there has been some discussion that we were not common law trustees, but that we could use this property to carry on commercial warfare, so to speak. That was said before the Cummins committee by one of my predecessors, but to-day we stand in the position of a trustee. If we hold a majority of the stock of a corporation, 50 and a fraction per cent, of course, we control——

Mr. Hoch. You stand in the position of a majority stockholder.

Mr. Merritt. Yes, sir; and with all the stock you stand in the position of all the stockholders.

Mr. Miller. Yes. If we have seized 51 or more per cent of the stock of a corporation, we control it. We are the majority stockholder, and as a majority stockholder we, of course, elect a board of directors to carry on those corporations. If we stand in the position of a minority stockholder, in many cases we have no representation whatsoever on the board, and in some cases we have been given representation as a minority interest on the boards.

Mr. Hoch. You simply hold the stock belonging to the alien whose property was seized?

Mr. Miller. Yes, sir. These directors in the corporations in which we control a majority, of course, are our directors. It has been my policy to give every consideration possible, when we were the majority stockholder, to the minority interests if they were American stockholders. The largest plant that we have, for instance, is a woolen mill in Passaic, N. J. We own the majority of the stock in that corporation, and we are operating it to-day. We have retained in the personnel practically all the men who were employed by that corporation before it was seized.

It is a highly technical, important business, and we have kept largely the personnel that was in there when it was taken over. There are a good many people of German extraction, who have come over here and have been naturalized and are American citizens, who are to-day occupying the same positions in that mill that they were occupying when we took it over. I have in mind, also, a shipping line where we hold 100 per cent of the stock, and we are doing so well with it that the Shipping Board, a number of times, has asked us to please be a little careful, because we are operating our ships at a good profit and are sometimes taking their trade away from them, to which we replied that they are ships flying the American flag, and they are just as much American ships as any ship the Shipping Board operates; and, as I outlined in my opening statement yesterday, there are a number of other businesses we are conducting.

Mr. Hoch. You pay the operating expenses out of the receipts of the concern?

Mr. Miller. Yes, sir; they are run just as a corporation in which you might hold some stock, and the dividends are paid on the enemy stock and are put in the Treasury of the United States and held.

Mr. Hoch. You have power to make sales of property without the consent of the owners?

Mr. Miller. Yes, sir. Under the act we can sell any piece of property that we want to of any character. Those sales that amount to over $10,000, if they are to be a private sale, can not be consummated unless the President issues an Executive order, and sales have been conducted by the Alien Property office by private negotiation, by public sale, and under executive order. During my administration of the office, very few sales have been made. I have a list of them here, and I will put it in the record, if you want, and in each case we have endeavored to get the assent of the so-called enemy interests; not that it is mandatory or binding upon us but so there will not be any question in the matter when this property situation is cleared up.

Mr. Hoch. Under the law could you absolutely sell all of the property which you have?

Mr. Miller. Yes, sir; under the law to-day, the title is vested in the United States Government through the Alien Property Custodian and we can sell any or all of the property.

Mr. Hoch. You have much broader powers than the ordinary powers of a trustee.

Mr. Miller. I think they are very broad powers and our official actions are very scrupulously considered before we take any such actions. If you want, I can put in the record the few sales we have made.

Mr. Hoch. I personally would not be particularly interested in that.

Mr. Miller. All right. Senate Document 181, Sixty-seventh Congress which I submitted to the Senate last April, contains a list of all sales. There is the record of every transaction of our office since it was started.

Mr. Hoch. You spoke earlier in your testimony with reference to going carefully into the matter of any transfers that might be made of the rights of any of these owners, and you said that if this bill becomes a law and you carry out its provisions, you will be very careful to see that no advantage is taken of any one with reference to securing transfer of the rights that these alien property owners may have in this property. I was curious to know what sort of procedure you would apply, in a general way, in determining the bona fides of any transfer of the rights of those owners. It seems to me it would be a rather difficult matter to go into a determination of that matter to see whether in buying the rights of these owners the purchaser had taken advantage of the owners.

Mr. Miller. I understand there are two different classes. The first class, as I explained yesterday, are the people who have friends or relatives in Germany and whose property is held by this office. They have suffered privations in the last few years and have needed money, and they have had money advanced to them, either by money order or cable or other means, and I have told them, informally, I would make every endeavor to see to it that when this property was returned we would be able to accept assignments from their friends of their interest in this property to the extent of the money they had advanced. That is one class. Another class, I understand, are a good many American soldiers who bought from people in Germany certificates of stock in American corporations. Of course, when the American soldier bought a certificate of stock he did not know that that certificate of stock represented nothing, because if we had seized the right, title, and interest in that stock and had served a demand on the corporation we could force them, under court decisions, to issue us a new certificate which canceled the old one. Another class are what we term "ambulance chasers," who went into Germany and Austria and Hungary and signed up a lot of claims. While I am discussing that I want to say that I am reliably informed that a great number of the claims of Americans against Germany for damages are signed up by attorneys at very excessive fees; and I am informed that the bill can further be reduced of the American claims against Germany if you take into consideration excessive attorneys' contracts that the American claimants have made.

Mr. Hoch. I was interested in that phase to know how thoroughly you would go into it and how practicable it would be to go into that matter——

Mr. Miller. Here is the way I would do it.

Mr. Hoch (continuing). To determine whether they were cases of ambulance chasers or not.

Mr. Miller. Here is the way I would go into that: Let us suppose the assignment has come to us for $1,000 for money that was sent back. I would want to see proof that this money had gone to them; and if it had gone, we would require a money-order receipt or a canceled draft or cable authorizing the payment of it. We have plenty of power under the act to insist on proper affidavits and evidence.

Mr. Hoch. Just one other question: I notice on the statement that you submitted here yesterday, it gives something over $200,000,000 of claims that have been paid. In a general way, what were those claims and under what circumstances was that property returned?

Mr. Miller. That has been returned, in a large measure, Mr. Hoch, under the amendments of the act of June 20, 1920, and February 27, 1921. There are some eight classes of people to whom the property was returned under those amendments and they are the old part of House bill 13496, which is not in italics, in section 1.

Mr. Hoch. Were those mainly claims of American citizens?

Mr. Miller. No, sir; I will tell you just what they are. They are the claims of citizens of Alsace and Lorraine, formerly a portion of the German Empire; citizens of Poland, formerly a part of the German Empire. They are also the citizens of the Kingdom of Denmark, residing in that portion of Schleswig-Holstein, formerly a portion of the German Empire. They are also citizens of the Kingdom of the Serbs, Croats, and Slovens residing in territory formerly a part of the Austria-Hungary Empire; citizens of the Kingdom of Italy residing in the territory formerly a part of the Austria-Hungary Empire; citizens of

Poland in parts of Galicia and Silesia; citizens of Czecho-Slovakia and citizens of Rumania; also citizens of Bulgaria and Turkey, and those Russians living in occupied territory taken over by Germany or Austria. There are also interned enemies. Every interned enemy at Fort Douglas, Ariz., and Oglethorpe, Ga., who, upon their release, signified their intention of residing in this country, had his property returned to him. It also includes Americans whose property was reported as that of an American citizen residing in enemy territory or in territory occupied by the enemy, and they were eligible for return under proof of citizenship. It also includes those American women who married a German, Austrian or Hungarian, or other enemy previous to April 6, 1917, and who could give proper proof of marriage, and so forth.

Mr. Hoch. I want to ask you now about just one other matter. On page 11 I want to ask you a question or two with reference to paragraph (g). I note that it says "this section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof," nor to some other cases. In a general way, what is the money paid to the Alien Property Custodian under section 10?

Mr. Miller. Under section 10 we were authorized to license patents and in return therefor receive a consideration, either a lump-sum consideration or a consideration paid out of royalties; and section 10 further provided that within one year after a state of peace the licensee could bring a suit for the recovery of those royalties. That time was up July last.

Mr. Hoch. This provides that the provisions for this return provided in this present bill shall not apply to those royalties nor to any patent, trade-mark, print, label, or copyright, conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or to the net proceeds received from the sale of any such patent, trade-mark, print, label, or copyright. I take it that if this bill becomes a law, you have two general classes of property to which this $10,000 provision is not to apply, namely, the money that already may be paid under section 10 and then that covered by this additional language. What reason is there for making these exceptions as provided in paragraph (g)?

Mr. MILLER. As brought out in the hearings yesterday, this section (g) was not initiated by the office of the Alien Property Custodian. I understand that the War and Navy Departments are interested in it, but as long as you have asked me the question I will give you my version, as the language is included herein. You will remember yesterday the chairman asked if one or two additional words could go in, and I replied that it was up to your committee to change it as you saw fit, but this would in effect, I understand, protect the present patent situation, as created by the Chemical Foundation suit. There were some 5,000 patents, trade-marks, and copyrights sold to the Chemical Foundation by my predecessors in office for $250,000. If the principles of this bill you are considering should become the law, I understand that it will be rather difficult to subdivide the return of the $250,000 to the people who originally owned all those 5,000 patents; and at the present time, as you know, the Government is bringing an action in the district court in Delaware for a decision as to the ownership of these patents; that is the Chemical Foundation suit. On the other hand, I understand the Navy Department and the War Department, who are represented here to-day, have their views on the subject, and I shall not, of course, attempt to discuss that because I do not know what they are.

Mr. HOCH. Even leaving out the part that is in italics, there is an exception provided with reference to section 10.

Mr. **Miller.** That is the old law, Mr. Hoch.

Mr. **Hoch.** Yes; but it becomes a new law when you make it a part of this new section, because the old law did not carry 5-a and 5-b, on page 6, and it now carries it, and when you write it again it provides that the provisions of 5-a and 5-b shall not apply to the money received under section 10.

Mr. **Miller.** The words "this section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof" is the law to-day, and I presume it was put in there because paragraph (f) of section 10 deals with the patent situation under the present law existing to-day.

Mr. **Hoch.** But it becomes an entirely new law. It changes the law, because it says "this section"; now, what section?

Mr. **Miller.** That means section 9.

Mr. **Hoch.** Section 9; yes.

Mr. **Miller.** Because the patent situation under the present law existing to-day is taken care of in section 10, paragraph (f). Would you like to glance at that?

Mr. **Hoch.** I perhaps do not make clear my question. In (g) it says this section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof. Now, it is true that that language is in the present law, but when you change this section and put in new provisions you effectively change the meaning of that language, although it is the same language that is in the law at present.

Mr. **Sanders.** The same as if it read, "this section as amended."

Mr. **Hoch.** Yes; certainly. What is the reason that the money paid under section 10 should not have applied to it the rule you seek to apply in 5 a and 5 b.

Mr. MILLER. Section 10 (f), Mr. Hoch, is in the law to-day and was put in the law, as I understand it——

Mr. HOCH. Section 9 (f)?

Mr. MILLER. No; I am talking about Section 10. Section 10 of the trading with the enemy act to-day, paragraph (f), provides for the return of royalties that have been paid into my office during the licensing of these patents and I am merely in the position of a stakeholder, and Congress provided in the trading with the enemy act that within one year after the war closed the former enemy owner and the American licensee could, if they wanted to, enter into court action to determine what was to become of these royalties. I merely am a stakeholder, and last June, previous to July 2, 1922, as trustee for the enemy, I brought a great number of suits to protect their rights, and they are now pending in the courts to-day, to decide what becomes of these royalties, whether they go back to the Americans to whom the patents were licensed or whether they go into the trust account of the enemy from whom the patent was taken. It is a provision of the existing law to-day.

Mr. HOCH. So there is ample law for the return of the money under section 10 without any provisions set out in this bill?

Mr. MILLER. Oh, yes. The return of royalties is taken care of in the law to-day. I understand this italicized part of (g) is for the protection of certain patents that the Navy and War Departments have.

Mr. HOCH. Well, I will defer any questions on that until other witnesses appear before the committee.

Mr. NEWTON. I have just this question which I neglected to ask yesterday and it is somewhat along the line of the questions Mr. Hoch has been asking. There has been a good deal of talk in the newspapers in reference to the sale of the dye patents and also some others—the Bosch magneto, and so on—for wholly inadequate sums.

Mr. MILLER. Yes.

Mr. NEWTON. Now, I have no opinion in reference to the merits of any of those contentions and know nothing about them, but is there anything in this bill that would in any way affect those suits or the bringing of those suits or the protecting of the rights of the enemies whose property was taken and whose property it is claimed has been sold for wholly inadequate considerations?

Mr. MILLER. There is nothing, Mr. Newton, in this bill that will in any way destroy the rights of anyone to bring suit to open up those transactions. As you have seen by the papers, one is before the district court in Delaware and the other is before the grand jury in New York, and we were very careful in drawing our legislation to see that nobody's rights were in any way destroyed.

Mr. DENISON. Mr. Miller, in that connection, the two morning papers, the Herald and the Post, in referring to that subject, said that there is a joker in the bill in reference to the alien property. You have no doubt seen that?

Mr. MILLER. Yes, sir; I read it.

Mr. DENISON. Is there any foundation whatever, in fact, for that conclusion, that there is any joker in here and if so I would like to get a little light on it.

Mr. MILLER. I was a little bit chagrined that our three hours of discussion here yesterday resulted in no more press copy than those two articles, because I think we discussed this section (g) for only about a minute on yesterday, and gave the rest of the time to the principles of the legislation that the Alien Property Custodian has been asked to recommend. As to my opinion as to whether it is a joker or not, I should not think that an executive department like the War Department or the Navy Department would try to put a joker over on a congressional committee.

Mr. Hoch. They couldn't do it on this committee.

Mr. Denison. The statement goes out to the country in these papers that there is a joker and I was just wondering what would justify that sort of conclusion.

The Chairman. Mr. Denison, do you know of any way of controlling the press from putting out statements about so-called "jokers"?

Mr. Denison. No; I do not, Mr. Chairman.

Mr. Miller. Unfortunately, I did not prepare any press copy for the newspapers yesterday, and did not think it was my business to do so, but I am very sorry that that is the only point that was gleaned from our hearing yesterday.

Mr. Mapes. The story in the Post seems to convey the impression, at least, that you were opposed to this provision relative to patents.

Mr. Miller. I said nothing yesterday that would indicate any opposition or sponsorship. As I have said before, and as the chairman said, I think, this matter was put in as a result of a Navy and War department communication.

The Chairman. The chairman assumes all responsibility for that provision.

Mr. Mapes. Yes; but have you any opposition to it or objection to it?

Mr. Miller. Why, as a trustee for the aliens, I want, of course, to see all their rights preserved. As I said, a moment ago, personally I could very well see how, with the big suit of the Government against the Chemical Foundation, in which most of these patents are involved, or at least the ones that are worth anything whatsoever, the Department of Justice might be interested in seeing that the Government's rights were properly protected.

Mr. Mapes. In your opinion, would it affect the proceedings that the Department of Justice is requested by the President to take against the Chemical Foundation?

Mr. Miller. I think it has a bearing on that suit; yes, sir. As I said a few minutes ago, we hold a quarter of a million dollars from the sale of those 5,000 patents and trade-marks, and it is going to be a rather difficult matter for us to divide that up among the claimants, if they come in, especially when the property in question is tied up in the United States courts as to who really owns it to-day.

Mr. Mapes. Do you think the enactment of this paragraph in the law might embarrass that proceeding?

Mr. Miller. I should think your committee would have to enact some provision in this bill, whether it is similar to section (g) or not I am not prepared to say, that would take cognizance of the existing patent situation to-day.

Mr. Mapes. You mean by that the suit?

Mr. Miller. The suit, largely, because most of the patents that are worth anything are tied up in that suit.

Mr. Mapes. And do you feel this might embarrass that suit; that is, the enactment of this provision in the bill.

Mr. Miller. No; I do not say that, Mr. Mapes; that this particular language would embarrass that. I said I think you ought to take cognizance of the patent situation that exists to-day and some legislation should be carried in this bill.

Mr. Mapes. Just what would be the provision you have in mind?

Mr. Miller. Here is the trouble: Every patent, as you know, is inventoried at $1 and carried on my books at $1. That is just a nominal valuation. Now, a man comes along and says, "You passed a $10,000 law and you say that my patent is worth $1. Give it back to me," and we would have to say, "We can not give it back to you. It is tied up just now in a suit between the United States Government and some people who claim they own it." That is simply putting it broadly.

Mr. Mapes. As one member of the committee, I would be glad to know what your views are, from your study and knowledge of the situation, as to what the provision ought to be in regard to that, and also what the answer is to the story in the paper this morning.

The Chairman. If the gentleman will permit me to interrupt, I would like to make this suggestion: If there is any opportunity for concealing a "joker" in this bill it would not lie in the direction of this provision having been put in the bill but rather than by virtue of its omission, if such were the case.

Mr. Mapes. Let me say that my questions are not prompted by any thought the provision is a joker.

The Chairman. Then I may have uttered my statement at the wrong time. I wanted it in the record, however, at some time.

Mr. Mapes. The bill comes before us in a perfectly legitimate way and we are here to discuss the provisions of it.

The Chairman. By all means.

Mr. Mapes. And as one member of the committee, I would like a little expert information about it, as to what the provision ought to be and as to what action the committee ought to take in the matter.

Mr. Miller. If that is a direct question, I have no hesitancy in saying, I think it will be necessary for your committee to provide some legislation; whether this particular language or not I do not say, that will take care of the views of the War and Navy Departments; but it is absolutely up to your committee and those two departments to thrash out the verbiage.

Mr. MAPES. I take it that the Alien Property Custodian has probably given this subject as much consideration as anybody, and for one I would be glad to know just what you think about that.

Mr. MILLER. That is what I have to say about the War and Navy Departments' interest. I have already indicated to you my personal view as to the situation that might be existing in connection with the Government's suit against the Chemical Foundation, but as I have said I am a trustee for these people and the guardian of their property, and if you tell me to give back $10,000 out of each trust, and a party comes in that has a patent worth less than $10,000, and it will take some trouble to prove it, I would give it back to him unless I was on the contrary prevented by some legislation.

Mr. MAPES. Before the legislation is passed, I think the committee would be glad to have your notion as to whether you should be directed one way or the other.

Mr. MILLER. I should think, unless you did say something in the legislation, I would find myself up against some difficulties right away that would have to be probably determined in the courts. I am sure I would not attempt to rule on them.

Mr. MAPES. I take it from your answers you do not care to express your judgment as to whether this is a good or bad provision.

Mr. MILLER. Well, I think the language of paragraph (g) will have to be altered. I should think it would, and the chairman yesterday suggested one or two words, and I have had a number of people call me up and talk to me about it since the hearing yesterday.

Mr. Mapes. Would you care to say in what way you think it ought to be altered?

Mr. Miller. As it exists there to-day it is too broad. If it is amended at all it should be amended so as to cover the principles of this particular bill, namely, the $10,000 return, and also the American claimants of patents, the ownership of which is now in litigation.

Mr. Mapes. If it is amended in those two particulars, you think it would cover the situation as far as your office is concerned?

Mr. Miller. I do; but I want you to hear from the War and Navy Departments; that is, I should want you to hear from them if I was running it.

Mr. Mapes. Do you care to say just what the interests of the War and Navy departments are in this matter?

Mr. Miller. I am not prepared to say, Mr. Mapes. I understand that the departments involved have communicated officially with your committee.

Mr. Mapes. I was interested to know, during the discussion, whether Germany has an officer who holds a position analogous to yours?

Mr. Miller. Yes, sir; I do not know what his official name is, but we call him the German custodian.

Mr. Mapes. And as you say, they are prepared to pay back all the American claims in present German marks. Have they passed legislation discontinuing the office?

Mr. Miller. No; as I said yesterday, they do not operate under the same rules we do here. They do not have to get a bill through their Reichstag, but by their orders in council or their President they can return classes of seized enemy property, and they have returned to Americans most of the real estate and industrial plants and properties like that, but a good part of the American property seized by the Germans was in gilt-edged securities and cash, and of course, they liquidated them, and now the Americans I understand are offered it back at the depreciated value of the mark which, as you know, is practically nothing, and those are the classes of claims that the Mixed Claims Commission is considering to-day.

Mr. Mapes. Have the going concerns or the going businesses owned by Americans very largely been turned back?

Mr. Miller. That is what I have been reliably informed; yes, sir. And pardon me, while you are on that question, the Austria-Hungary Government did not have an alien property custodian and they did not, so far as I can find, of all the nations involved in this war, seize property.

Mr. Mapes. Does existing law authorize you to turn back property that you hold of all people except alien enemies?

Mr. Miller. Except the Germans, Austrians, and Hungarians, and those people from whom the bar of expatriation has not been removed.

Mr. Mapes. I notice in the statement you gave us yesterday that the totals have increased from time to time, even between your last two statements. Is that due to the profits of the property or are you still taking over property.

Mr. Miller. First, it is largely due to the profits of these big businesses that we are running and the dividends that are coming in; and, secondly, a number of uncomplied demands have been reduced to possession. I am glad you asked the question. The only property this office has seized under the present administration is the property belonging to the arch slacker of all, Grover Cleveland Bergdoll. We seized that property because he was in a country with which we were technically at war before July 2, 1921, and the peace resolution also contained a provision that the alien property custodian was still empowered to enforce demands issued before peace was declared, for this reason: There were a number of people who had defied the law, and if such a provision had not been put in the law, it would have discriminated against those people who had obeyed the law and surrendered their property in favor of these people who had been opposing us, but since then we have cleared up almost all those outstanding demands and to-day we do not persecute people and try to take properties from them. It has been said in the Senate we were, but we are not.

Mr. Graham. I would like to ask just a question or two. Colonel Miller, I assume you are conversant somewhat with the treaties that existed between this country and the German Empire at the time we went into the war. The treaty under which we were in diplomatic relations with them was the treaty with the Kingdom of Prussia, was it not?

Mr. Miller. Yes, sir; the treaty of 1799, as further changed by the treaty of 1828.

Mr. Graham. That was still held to be in force and effect?

Mr. Miller. Oh, yes.

Mr. Graham. That treaty had a provision in it, did it not, that the property of private citizens in the two countries should be held to be private property and not subject to the vicissitudes of war?

Mr. Miller. I can not quote you the exact provision but generally speaking, yes. As I said a moment ago, it contained a provision something like this, in the event of war the merchants of each country should be permitted to depart from the respective countries with their goods, wares, and merchandise. I am sorry I have not got the data with me to answer that more specifically, but generally speaking, yes.

But, on the other hand, some people say that treaties are abrogated by war.

Mr. Graham. Well, that may be true, and yet when peace is resumed, the question in my mind is whether the rights secured by the treaty ought not to automatically return also. Do you know whether any construction of that treaty has been given by the State Department

Mr. Miller. No, sir; I do not.

Mr. Graham. I wish, in connection with your remarks here, you would insert in the record a copy of that treaty with the Kingdom of Prussia. It is short, as I remember it, and ought to be in the record.

Mr. Miller. I have right here, Mr. Graham, Article 23 of the treaty entered into between the United States and Prussia in 1799. It is very brief. Do you want me to read it?

Mr. Graham. Yes; if it is about property rights, I do.

Mr. Miller. "Art. 23. If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance; and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price."

Mr. GRAHAM. Nobody ever questioned the binding force or effect of those provisions, did they, in this country up to the time we went into war with Germany?

Mr. MILLER. Oh, no. I should say you were quite correct.

Mr. GRAHAM. Now, in your search for precedents in this matter, did you ever know of any nation that ever before in the history of modern times took the property of private persons and applied them to national debts?

Mr. MILLER. No; Mr. Graham. This great war that came upon the world in 1914 has brought about a condition of affairs that seems to have smashed all precedents and all international law, and the trading with the enemy act is a peculiar creature, in modern civilized times, of the present war, and all nations on both sides seem to have had a trading with the enemy act except, as I said a while ago, Austria-Hungary; that is, all the big nations.

Mr. GRAHAM. In the relations between France and Great Britain and Germany, have the two nations first above named seized any private property of enemy nationals and held it for reparations?

Mr. MILLER. Oh, yes; all private property seized by those respective governments is being liquidated and the claims of the respective nationals are being adjusted by their governments through a clearing house association, and yesterday I briefly described that.

Mr. GRAHAM. Unfortunately I was detained yesterday and did not get to hear all of your testimony.

Mr. MILLER. Do you want me to tell you briefly about that?

Mr. GRAHAM. You need not repeat it because these gentlemen have heard it and I will get it from the record. I do not want to travel over anything that you have already gone over, but tell me briefly how much is the probable aggregate of the claims of our people against the German Empire?

Mr. MILLER. I was informed informally that the dead line set for the filing of these claims would be December 31, 1922, next week, and might find as much as $1,000,000,000 in claims filed, but all experiences of the past show that war claims of that character have universally been settled on a basis of 7 or 8 per cent, so do not be alarmed by a billion-dollar claim against Germany; and as I said a while ago, and this is merely informal, if they would scrutinize some of the contracts that some of these American claimants have with lawyers, they would find very excessive fees for the recovery of this property, because the average American claimant thinks that the claim is nebulous and somewhat up in the air anyhow, and he is just taking a long shot at it.

Mr. GRAHAM. Now, let me ask you something else, and I do not know whether I am getting on too delicate ground here or not, but what is the chance of American claimants to get their claims from the German Empire in the ordinary process of events if they do not have this fund to draw upon?

Mr. MILLER. Well, I should think that with the claims around $100,000,000, as finally adjudicated, that some way could be found to pay these claims. I understand that the mixed claims commission, operating under the State Department, has some ideas along that line, and I want to say that I do not like to intrude on the prerogatives of an executive department, but I am willing to discuss it on the basis of my personal views, because of the study I have made. If the worst came to the worst, some arrangement could be made whereby the claims could be paid by the Government and some arrangement made with Germany to issue bonds over a period of years, which could be paid to us as conditions improved. You know we are still fighting over French spoliation claims 125 years old.

Mr. Merritt. That is encouraging.

Mr. Miller. It is to be hoped that the backwash of this war will be cleaned up much sooner.

Mr. Graham. The thought that was in my mind was that possibly if there was no chance to collect these American claims in any other way—and it has been commonly stated, you know, that the German financial condition is very bad and probably will not be better soon—that it might be justifiable to hold some part of this fund as a security for the American claims.

Mr. Miller. It has been suggested, Mr. Graham, that a number of the large German interests whose property we hold would be only too glad to leave a portion of their funds over here to be invested in some way in a fiscal corporation under Government supervision which in turn would earn the money to pay back these claims, and they have made no secret to me whenever they have talked with me that the worst thing that could happen to them in their own opinion would be for their millions to go back to Germany today.

Mr. Graham. How did you arrive at this arbitrary limitation of $10,000?

Mr. Miller. Purely because some deadline had to be drawn and the other governmental authorities with whom I have to deal asked me, in suggesting this legislation, not to reduce the fund over a certain amount because of the instructions that you have given them in the peace resolution.

Mr. Graham. That peace resolution and treaty with Germany, by which you are practically directed to keep this money——

Mr. Miller. This very Congress directed us to retain it.

Mr. Graham. Yes; I know we did. I read it last night and I was rather surprised at the firmness of the language. I had not recalled that it was that strong, but it is a positive direction almost to keep it.

Mr. Miller. And they are the last instructions.

Mr. Graham. Now, this bill will lift the limitation in that treaty a little bit.

Mr. Miller. Yes, sir.

Mr. Graham. Now, then, why should we not lift it a little bit more? If the probable approximate amount of our claims is $100,000,000, and I concede it is a pretty good plan to hold on to some of that money as a matter of security, why not say claims of not less than $20,000 or in some other way permit the loosening up of these funds so that they can go back to the place where they ought to go and still retain a sufficient amount; but if you are going to keep $340,000,000, what is the necessity for that?

Mr. Miller. That is perfectly proper and I would be only too happy to see the deadline increased; but in all fairness, I must say that the Department of State would have to be heard on that matter, because that is the department that I referred to as having been interested in carrying out the provisions of your treaty.

Mr. Graham. Suppose we put a limitation of $20,000, how much difference would that make on this proposition?

Mr. Miller. That would drive it up considerably, Mr. Graham; and I have had in mind, Mr. Graham, that a bill carrying approximately a return of $50,000,000 at this time was what we were trying to accomplish; but that is up to the Congress to decide.

Mr. Graham. Is there any executive policy of that kind outside of your department that you know of?

Mr. MILLER. Needless to say, I am not down here unless higher authority has been consulted, and I have endeavored to draw this bill in accordance with what I understood my instructions to be.

Mr. GRAHAM. How much of this bill did your department draw?

Mr. MILLER. All of it in italics, with the exception of section (g) on page 11.

Mr. GRAHAM. Do you know who drew that?

The CHAIRMAN. I did.

Mr. MILLER. The chairman has answered that this morning.

Mr. GRAHAM. I am not criticizing it at all.

The CHAIRMAN. Apparently I did not do it very well, because there ought to be at least two amendments made thereto.

Mr. BARKLEY. Mr. Miller, I have just one question. You have perhaps indicated your attitude in the matter, but it strikes me as a matter of justice and equity that the size of a claim ought not to determine whether it is to be held as surety for some debt that the citizens of this country may hold against Germany. What is the basis for this legislation as a matter of strict justice between the people who own the property held by the Government?

Mr. MILLER. That question, sir, was asked and very fully discussed pro and con yesterday, Mr. Barkley; and all I have to say is that I reiterate my views expressed at that time. In theory there is no answer. It is not debatable. If a man has $1 or $1,000,000, if $1 goes back in theory all of it should go back; but unfortunately I have to deal with present-day conditions, and have explained that this is a middle-of-the-road bill.

Mr. BARKLEY. I do not care to have you go over your statement. I could not be here yesterday and I did not hear your discussion of that point.

Mr. HAWES. Mr. Miller, Mr. Graham asked you about the treaty with Prussia, and you hastily read a portion of it. I do not want you to be put in the position of having omitted a very important portion of that treaty, which reads as follows:

"And it is declared, that neither the pretense that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but, on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature and nations."

Mr. MILLER. Have you the same document that I have before me?

Mr. HAWES. I do not know.

Mr. MILLER. I have that right here.

Mr. HAWES. Mr. Miller, is it not a fact that the property which Germany is now holding is only that money which is on deposit. All other character of American property has been returned to American citizens.

Mr. MILLER. Yes; I am informed that that is the case.

Mr. HAWES. And is it not also a fact that the money that has been received has been held in the form of marks, in the same form in which it was deposited and that the only remaining dispute as between civilians of Germany and civilians of the United States is the question of settlement in dollars or in marks.

Mr. MILLER. Yes, sir; it is a matter of the valuation of the mark.

Mr. HAWES. That is the only controversy between the civil populations, we might call it, of Germany, and the civil population of the United States.

Mr. MILLER. I should say that was a controversy between the American private citizens and the German Government because it is the German Government that is holding the money.

Mr. HAWES. Mr. Miller, we have been talking so far about that section of the bill which relates to Germany. This bill also covers the matter of Austria-Hungary. When the United States entered into the war, the Austrian-Hungarian nation had a population of 52,000,000 people. It has now been reduced by the treaty of Versailles to a population of only 6,500,000, and out of the old Dominion of Austria-Hungary has been carved six different nations, Czecoslovakia, Yugoslavia, Poland, part of Italy, Rumania, and the Republic of Austria-Hungary. Now, some of the property of the countries which have been carved out of Austria has been returned, has it not?

Mr. MILLER. Yes, sir; that is what the large portions of our returns were for.

Mr. HAWES. So that if any property is held to-day on the theory that it was enemy property, it can only be on the theory that the United States is holding a nation which now consists of six and a half million people responsible for a nation that formerly was composed of 52,000,000 people. Is that a correct statement of facts?

Mr. MILLER. Yes, sir; and I am glad you brought it out.

Mr. HAWES. In other words, unless all of this property is released, it is on its face a manifest injustice.

Mr. MILLER. May I be perfectly frank with the committee?

Mr. HAWES. Yes.

Mr. MILLER. I have recommended in conferences and in communications for a period of a year—as soon as I was able to master the situation—the divorcement of the Austrian-Hungarian situation from the German situation, if the present government of Austria and Hungary were to suffer because of a long time retention of the German property. I have not hesitated to recommend it. I know the chairman of the committee has had some correspondence with me on the subject, and I understand that until very recently, it looked as if the Austrian-Hungarian situation would be divorced from the German situation, until they discovered that there had been some claims filed by American citizens against the Imperial and Royal Austrian-Hungarian Government. I submit, in fairness, to those two infant nations to-day, which were created by the treaty, should not be expected to bear the brunt of the old Austria-Hungary Empire. To-day, we hold approximately $2,000,000 of Hungarian property, and I have yet been unable to estimate the accurate valuation of the Austrian property, but it is not over eight or nine million dollars, and I was very disappointed when I found that because of some claims, filed, I could not include in my recommendations on this general legislation an unconditional release of Austrian-Hungarian property to-day.

Mr. Hawes. What is the character of those claims, Mr. Miller, in a general way.

Mr. Miller. I understand there were some Austrian submarines in the Mediterranean and Adriatic. I understand it applies to some of those operations, but they are all mixed up in the general mass of claims filed with the Mixed Claims Commission, and without running counter to other departmental recommendations, I, myself, would favor the unconditional return to-day of Austrian-Hungarian property.

Mr. Hawes. And Austria-Hungary is the only nation in Europe that did not seize American property during the war.

Mr. Miller. They are. Now, I do not want to get into conflict with the Department of State, which may come back and say, "Here is something they did do"; I have it informally from the representatives of those governments here, and they are the ones that should know.

Mr. Hawes. So the status of the Austria-Hungary portion of this bill is this: In the first place, they did not seize the property of Americans during the war, and in the second place, what was Austria-Hungary is now six different republics or monarchies, and we are trying to hold the Austrian Government responsible, in an indirect way, for the conduct of five other governments over which they have no control.

Mr. Miller. Yes, sir; that is the situation, and I have recommended to the Chairman in response to his letters to me, as chairman, action on the Austrian-Hungarian property as I have outlined.

Mr. Hawes. And you would recommend an amendment in this bill which would now release all property of the former Empire of Austria-Hungary that is held?

Mr. Miller. I do; and a number of those cases are pathetic cases. We hold hundreds of death benefits which we have collected on account of their nationals who were killed out in the steel mills and in the mines of the West, and we would like to give that back to them.

Mr. Hawes. So we are violating the traditions of international law, the opinion of Marshall and the dictates of humanity and all spirit of equity in holding these claims.

Mr. Miller. May I put in there, so anyone reading this testimony will understand my position: I am willing to recommend this, but, on the other hand, if the State Department comes to the hearings and through their representatives say there are claims against Austria, I do not want to be criticized for suggesting this, but I have done it personally.

Mr. Hawes. Is there any doubt in your mind, Mr. Miller, or ought there to be in the mind of any man, any doubt that, if the United States Government presents a claim to Germany for loss of life, there would be only one question open, and that would be the amount to be paid, and that Germany would pay it promptly?

Mr. Miller. I understand that the Germans themselves are very anxious to find a way to work out this claim situation so that we can proceed again on a peace-time basis.

Mr. Hawes. And so they could pay any just claim they owe to this country.

Mr. Miller. You mean are they able to pay it to-day?

Mr. Hawes. I mean as soon as the claims are established they are willing to pay.

Mr. Miller. They are willing to pay, yes. As to their ability to pay, I am not prepared to say.

The Chairman. Colonel Miller, is there anything further to be said in differentiation or in the matter of contrasting the Austria-Hungary situation with that of Germany proper?

Mr. Miller. I can not speak, Mr. Chairman, more plainly than I have in my discussions with the gentleman from Missouri, and I am willing to place portions of our correspondence in the record at this point if you care to have me do so.

The Chairman. There is nothing there except what you have stated. There is no objection, but it will simply lumber up the record.

Mr. Hawes. As to the character of those claims against the Austrian Government, are not nearly all of them made by insurance companies?

Mr. Miller. I think they are, sir, but I am not certain.

Mr. Newton. Colonel Miller, just what is the value of the mark that the German Government plans to use with which to pay these American claims?

Mr. Miller. That is a question that is right up now to the Mixed Claims Commission, upon which is a representative of Germany and America.

Mr. Newton. The German Government made the proposal to pay back these American claimants in German marks. That was before it went to the Mixed Claims Commission?

Mr. Miller. Yes.

Mr. Newton. What was the value of the mark at the time when they proposed to pay back these American claimants in marks?

Mr. Miller. It was then about one-third of a cent a mark.

Mr. Newton. And the value at the time when they seized it was what?

Mr. Miller. About 22.3 cents.

Mr. Newton. So the only difference which has been emphasized between the American claimants and the German Government is the difference between 22 cents in American money and one-third of a cent. That is not much difference.

Mr. Miller. Between 22 cents and a third of a cent in that class of claims growing out of seized property in Germany.

Mr. Newton. So it is pretty near time, is it not, that this Government should at least retard a settlement upon these larger claims until American citizens have some opportunity of getting 22 cents instead of one-third of a cent?

Mr. Miller. That is a very strong argument for

American claims, and I have said here time and again this administration is not unmindful of the rights of its own citizens in these American claims.

Mr. SANDERS. Mr. Miller, it is not an improper or an unusual thing for a government to take an interest in its own citizens, is it?

Mr. MILLER. That is what the governments are for.

Mr. SANDERS. As a matter of fact, under international law, alien enemy property is subject to confiscation if need be by the Government?

Mr. MILLER. A government, in time of war, can confiscate the property of its own people.

Mr. SANDERS. And when you talk about this property that was owned by the aliens, you are talking about a former ownership and not the present ownership?

Mr. MILLER. Yes, sir; the title now is in the United States.

Mr. SANDERS. The title now has been taken by the United States Government, and it was taken by the United States when that alien was making war against this country; is not that true?

Mr. MILLER. When his nation was; yes.

Mr. SANDERS. And it is not an improper thing, since we seized that property during the war, in the hands of aliens who were fighting us, for us to use any leverage that we may have by the withholding of the property of their nationals in order to take care of our own nationals, whose property our former enemy held.

Mr. MILLER. I think it is perfectly proper, using your language, to use it as a leverage, but I have tried to make it plain we do not want to hold it and ultimately confiscate it.

Mr. SANDERS. No; but the State Department or some other department may have reason to know that this Government that was formerly our enemy will be more active and energetic in taking care of our claims if some of their people who are here and in whom that Government has an interest, still have some rights to be asserted against our Government.

Mr. MILLER. And that is the reason you wrote the peace resolution as you did, I presume.

Mr. SANDERS. Now, when you talk about a treaty we had with Prussia, which provided that when we got into war it should not be abrogated, of course that is a good deal like writing a contract for two parties and providing in the contract that a subsequent oral agreement shall not vary the contract, and the courts have always held that when there is a subsequent oral agreement that does vitiate the contract; that it is a later agreement and, as a matter of fact, wipes out the former contract.

Mr. MILLER. Well, one of the principles of international law is that a declaration of war abrogates all treaties in spite of any language of that sort.

Mr. SANDERS. When you create a situation where two nations are fighting each other and are at war, and have the right under international law to invade the territory and destroy all the people, that act of war destroys all former treaties, does it not? At least during such war?

Mr. MILLER. It has been held, as I have said, that a declaration of war abrogates treaties, and a law by Congress such as the trading with the enemy act of course can abrogate the provisions of any treaty.

Mr. SANDERS. Of course, your department is exceedingly anxious not to do an injustice to an alien who happened to reside here during the war and whose property we have taken in carrying on the war.

Mr. MILLER. Pardon me, we did not take the property of an alien who was residing in the United

States during the war unless he was a dangerous alien and interned. There were thousands of Germans and Austrians and Hungarians who were here during the war and went on about their business unmolested.

Mr. SANDERS. Although we had a right to take all the property.

Mr. MILLER. Yes; but the trading with the enemy act exempted them.

Mr. SANDERS. I am talking about the right under international law. Of course, our specific right to take it depended upon our statutes.

Mr. MILLER. A government has a right, if it wants to, to do a lot of things during a war. In answering your question, I do not want to commit myself to the doctrine, but a government can do pretty much as it pleases about anything during a war. There is nobody to stop them unless the other party is stronger.

Mr. SANDERS. I presume it is the purpose of the department in any legislation it recommends to deal just as fairly and just as liberally with the aliens whose property we hold as our own citizens' rights will justify; is not that true?

Mr. MILLER. Yes, sir.

Mr. SANDERS. And that is what you are trying to do?

Mr. MILLER. Yes, sir.

Mr. HAWES. Mr. Miller, returning to the questions of Mr. Newton a while ago, these claims about which a dispute has arisen as to the relative value of the mark and the dollar, are largely a result of deposits in German banks by American banks prior to our entrance into the war. They are bank claims for bank deposits?

Mr. MILLER. Bank balances in favor of the American banks at the time war was declared.

Mr. HAWES. And the American banks had approximately an equal amount of German money which they held and are now holding and have never even turned over to the Alien Property Custodian.

Mr. Miller. Oh, yes; if any bank has not turned over the alien property to us, they have violated the trading with the enemy act.

Mr. Hawes. But they still have on deposit those sums in the nature of liens.

Mr. Miller. No, sir. We issue a demand for those funds, and if they were cash we put them in the United States Treasury, and that is where they are now. If they were securities, we either liquidated them and put the money into the Treasury or else they are being held.

Mr. Hawes. Did the Guaranty Trust Co. of New York turn over its balances?

Mr. Miller. I am not prepared and I can not discuss in detail any one particular trust, Mr. Hawes. I would like to.

Mr. Hawes. As a matter of fact, it is the balancing of these claims of American money in German banks when the war broke out against German money in American banks when the war broke out, and the dispute is as to the fall of the mark and the matter of payment.

Mr. Miller. Yes; but when we take into consideration what the German banks had over here in American banks we take into consideration that amount at the full value of the dollar.

Mr. Hawes. Absolutely.

Mr. Miller. And I also want you to know that some of these liquid assets being offered back to Americans were also the private property of American citizens.

Mr. Hawes. Very few.

Mr. Miller. I know that. I will tell you my own experience. There is the friendliest feeling between the American and German bankers on this question.

Mr. Hawes. Absolutely.

Mr. Miller. It is just a matter of decision and how the exchange is to be brought about now.

Mr. Hawes. So that the great proportion of the civilian claims do not consist of a series of small claims requiring the protection of American citizens, but it is an adjustment of balances between banking institutions of this country and banking institutions of Germany.

Mr. Miller. No; I do not say, Mr. Hawes, that the majority of these claims held against Germany are of that character. That is the character of claims growing out of the alien property seizure in Germany. The great bulk of the American claims against Germany are for loss of life and property in sinkings at sea before the United States entered the war.

Mr. Hawes. Germany has never attempted to make payment of those claims for loss of life and property with the depreciated mark because they never have been adjusted.

Mr. Miller. No; they have never been adjusted and no consideration has been offered.

Mr. Hawes. And it is a matter of determining the amount of these claims and that is the thing that is blocking settlement now—arriving at a decision as to the amount of the damages.

Mr. Miller. If we knew to-day how much the claims would amount to when adjudicated, and barring the retention clause in the Knox-Porter peace resolution, we are prepared to give back, in accordance with the terms of that resolution, much more property.

Mr. Lea. Mr. Miller, can you tell us the approximate amount of property of American citizens seized by Germany which was converted into money?

Mr. Miller. I have before me the report of the

German alien property custodian for 1921, in which it is shown that the total value of property taken under the administration of the alien property custodian of Germany amounted to 453,178,630 marks. That is, in round numbers, a little over $100,000,000 when you consider gold marks.

Mr. LEA. That is the valuation of the property. What I was getting at is how much of that was tangible property and how much in the form of money, and what, if any, amount was converted from tangible property into money, for which they now offer us marks.

Mr. MILLER. Why can I not insert here Appendix I of this report? It is a rather full detailed report of the various classifications of property. I notice, "Cash accounts, in banks, 149,000,000 marks."

Mr. LEA. That would leave property valued at approximately 250,000,000 in marks that was evidently tangible property.

Mr. MILLER. Taking roughly the valuation of 4 marks to the dollar, that would be $39,000,000 in cash accounts in banks.

Mr. LEA. What I was really trying to get at was what amount, if any, of American property was converted from tangible property into money and for which they now offer us marks.

Mr. MILLER. I can not tell you, sir; but if you want me to endeavor to find out from this report, I will do so and try to get it in the record.

Mr. LEA. I would like to know if that information can be conveniently supplied.

The CHAIRMAN. You will file that information with the clerk of the committee.

Mr. LEA. I would like to ask another question in reference to the circumstances that would justify us in abrogating a treaty under the terms of this original treaty with Prussia. Is there not a distinction between war as being a cause to justify the abrogation of a treaty and acts of the enemy in the war? For instance, under the terms of this treaty the mere fact of a war does not justify us in violating its terms. But a treaty is only a contract which is mutual, and when we enter into a war, assuming that the war itself did not abrogate the treaty, if the enemy country violates the terms of the treaty, which are mutual, why have they any right to insist upon our complying with the terms which they have violated?

Mr. Miller. That is a perfectly good argument. The Congress or any legislative assembly can abrogate the terms of a treaty, whether there is war or not war, by subsequent legislation. Of course, if that is between two countries and Congress abrogates the treaty by legislation, there is likely to be trouble which may grow into a war. Take the Spanish-American war—that was a "gentlemen's" war, so to speak, where very little was done by either side outside the so-called rules of civilized warfare. In this war everybody got mixed up in the conflagration, and there were things done in this war that were never thought of when these treaties were negotiated.

Mr. Lea. Yes. In other words, the point I was trying to make is that war itself might not justify the abrogation of a treaty, but the violation of the specific terms of the treaty would justify the abrogation of the treaty.

Mr. Miller. Suppose we had gone to war with Germany and there had been no trading with the enemy act and we had a gentlemen's war, so called, as we had with Spain, then this situation would have arisen, but the Congress did see fit in this war with Germany to pass a trading with the enemy act which superseded the treaty. I am informed that Germany did take over bank accounts in Germany before the trading with the enemy act in this country was passed.

Mr. Newton. As I gathered from your statement just a moment ago, with reference to a question from Mr. Lea, there was something like $140,000,000 worth of marks.

Mr. Miller. The total value of property taken under the German alien property custodian was 453,117,630 marks, which, on the gold basis, is around $100,000,000.

Mr. Newton. There was about 140,000,000 marks that was cash seized or property that was thereupon immediately converted into cash.

Mr. Miller. Yes

Mr. Newton. That is correct.

Mr. Miller. Yes; according to this report.

Mr. Newton. So that would mean approximately 140,000,000 marks in American valuation at the time of seizure, or $40,000,000.

Mr. Miller. About that.

Mr. Newton. The American claimants now want, of course, that $40,000,000 paid back to them, and the German Government proposes to pay it back in marks at a value of one-third of one cent.

Mr. Miller. It had been offered to them.

Mr. Newton. That was their proposal. That is the way they propose to settle. So that we have the American claimants requesting what was taken, $40,000,000, and we have the German Government proposing to pay on the basis of one-third of one cent as a settlement.

Mr. Merritt. Yes.

Mr. Newton. The difference then is the difference between $40,000,000 and $133,000.

Mr. Miller. That is putting it in figures; yes, sir, and I understand that this class of American claims are the ones that are going to receive the first consideration.

Mr. Newton. I do not know that I understand you about that.

Mr. Miller. Our Government wants to see that particular class of claims cleared up first, if possible—the ones we have just been discussing.

Mr. Newton. That is, by the German Government.

Mr. Miller. Yes, sir.

Mr. Newton. They want to have them cleared up first?

Mr. Miller. Yes; this cash of Americans for which is now being offered the depreciated value of the mark.

Mr. Newton. And it is that proposition put forth in that way that accounts for the proposal upon the part of the executive branch of our Government to retain in part this trust fund and retard its payment so as to insure to the Americans payment of what was taken away from them and not have them paid back $133,000 for $40,000,000.

Mr. Miller. That was one of the purposes of the retention clause in the peace resolution, and one of the reasons why, bearing those instructions in mind, I am not recommending that a larger amount be returned at this time.

Mr. Hawes. Just as a matter of history, our trading with the enemy act was passed in this country prior to similar action being taken in Germany, was it not?

Mr. Miller. I understand, Mr. Hawes, that Germany took over some American property prior to the passage of our trading with the enemy act. Our trading with the enemy act was based on the trading with the enemy act of Great Britain and France, and all nations then at war or all nations at war when we entered the war had trading with the enemy acts except Austria-Hungary.

Mr. Hawes. But we did pass our act before any enemy property was taken over by the Germans except possibly some industrial plants.

Mr. Miller. American property in Germany had been taken over prior to the passage of our trading with the enemy act. As to whether all of it was taken over, I am not prepared to say.

Mr. Webster. Colonel Miller, following Mr. Newton's idea expressed a moment ago, that same disparity would exist as to all property now held by the Government custodian unless it was returned to its American owner in kind?

Mr. Miller. Yes, sir; if it had ever been liquidated.

The Chairman. Colonel Miller, there appears to be nothing further. We are obliged to you for your testimony and will excuse you subject to call, if necessary.

Mr. Miller. Thank you, sir.

(The committee thereupon adjourned until Wednesday, January 3, 1923, at 10 o'clock a. m.)

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Mr. Hoch. May I ask whether there will be a witness here who is familiar with the negotiations as to the compensation paid to the Alien Property Custodian by the Navy Department for the license?

The Chairman. Nobody has been arranged for except such witness as they saw fit to send here, who is Mr. Neagle, but perhaps we can get the information, if you want it.

Mr. Neagle. I can probably give you a partial answer to that question. The negotiations on the part of the Navy Department were carried on by Commander Norton, who has since died, and I do not know that any record was made of it, so that it is very likely that so far as the Navy Department is concerned it is not practicable to get that information.

The CHAIRMAN. Perhaps the Alien Property Custodian might, at a later time, furnish that.

Mr. MILLER. Just at that point, Mr. Chairman, it might be interesting for me to say to the committee that as the common law trustee for the enemy interests in all this property I have, since I took over the office, contemplated bringing a friendly action in the courts, as trustee for these people, to determine whether the compensation of $100,000 and other considerations paid for these patents, was really a sufficient sum of money, but due to the whole patent situation I have not done so. To my mind it would be found that the compensation paid at the time was inadequate, but we must bear in mind that at that time we were at war and were seizing everything we had within our power to make war with, and I am considering this proposition on the assumption we are trying to clear up this matter on a peace-time basis.

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Mr. MERRITT. Do you know—and perhaps the Alien Property Custodian can tell me if you do not—whether each patent has a trust number?

Mr. MILLER. Yes, sir; each piece of property seized from an individual or a corporation is given a separate trust number in the office.

Mr. MERRITT. And you consider each patent a special piece of property?

Mr. MILLER. I consider each patent or group of patents seized from an individual or corporation as a separate piece of property, and it is given a separate trust number.

Mr. MERRITT. But not a special valuation?

Mr. MILLER. No, sir; they are carried on our books, generally speaking, at $1; and right at that point, if I may be permitted, that is the great difficulty in considering this situation in reference to the $10,000 return proposition, namely, if you pass the $10,000 return proposition, how are you going to differentiate between the owners of all those patents that were sold, in one case to the Navy Department for $100,000, and in another case to the Chemical Foundation for $250,000?

Mr. Merritt. Aside from any special legislation, then, you would feel at liberty to return any one patent under this $10,000 limitation because it is only valued at $1?

Mr. Miller. Yes, sir; unless I had legislative instructions to the contrary, in your proposed act.

Mr. Hawes. You could not release under this bill any patents that exceeded $10,000 in value, if this bill was passed in its present form?

Mr. Miller. I could, if you passed a further provision that those trusts of the value of $10,000 and over can have returned to them an amount equal to $10,000.

Mr. Hawes. So that if a patentee had a patent and wanted it released, he would have to fix a fictitious value of $10,000 upon it, or he could not have it released under this bill.

Mr. Miller. It would entail a great amount of trouble and perhaps the retention of patent attorneys, in some cases, to appraise and determine the value of a patent, and while I do not want to intrude on the committee, if I may while you are questioning me along that line, I should just like to illustrate that briefly. The patents that were sold to the Chemical Foundation for $250,000 and the patents which the Navy Department took over constitute practically two-thirds of the patents seized by the Alien Property Custodian. If you pass this proposed legislation, I should think the office would have to have some legislative instructions because you have seen to-day the situation with regard to the Navy Department, and you also know that the Chemical Foundation patents are tied up in a suit; there are approximately 33 per cent of the remaining patents seized by the Alien Property Custodian which are not tied up in either of those ways and which could rightfully come under the provisions of any return bill which you passed, without any specific legislative provision. Do you see the point?

Mr. Hawes. I got it, but in the matter of patents, the owner of a patent in order to secure the benefit of this law would be compelled to accept a valuation of $10,000 in order to have it released.

Mr. Miller. No, sir. If, without any restricting clause, the owner of a patent applied for the return of that patent, which is property, I would have to determine, unless I was instructed to the contrary in legislation, whether this patent was $10,000 or above $10,000. If it was above $10,000 I would have to sell it or liquidate it and give him $10,000 and keep the remainder; or if I found that it was under $10,000 in valuation I would return it to him in whole.

Mr. Hawes. So you would have to convert yourself into a Court of Claims and a Patent Office in order to determine any one of these questions.

Mr. Miller. I very much fear, unless you have some specific legislation in here, it would cause great difficulty when we come to considering claims for the return of patent property.

Mr. Mapes. I hate to prolong the hearing, but I would like to ask Colonel Miller one more question. A patent being a more or less intangible sort of thing, what difference would it make either to the Government or to the patentee, if it was turned back to him and he gave you a receipt that would clear the Government?

Mr. Miller. Yes, it would; but let us suppose a man whose patent is tied up in this Chemical Foundation suit comes to our office and says, "I want my patent back." We can not give him his property back because it has been sold and we can not differentiate as to how much of that $250,000 each one of these 4,500 patentees are to receive.

Mr. Mapes. I can see how that would apply to those patents which have been taken over by the Chemical Foundation.

Mr. Miller. And also, Mr. Mapes, to the patents that we sold outright to the Navy Department. The same question of a division would ensue.

Mr. Mapes. But that would not apply to those which you hold exclusively, would it?

Mr. Miller. I would very much like to divorce ourselves of them as soon as possible.

Mr. Sweet. Mr. Miller, with reference to the 33 per cent you now have that have not been sold or transferred in any way, it would be necessary to value them if we put a restricting clause in the act providing for returning property simply to the extent of $10,000.

Mr. Miller. It would, in a way, sir, but I submit that this 33 per cent, broadly speaking, that we still retain outright, are probably those patents that are of very little, if any value.

Mr. Denison. Has the Alien Property Custodian been bothered with any infringements of any of these patents while in your possession? Have any infringements been called to your attention; and if so, have you been called upon to prosecute any such cases?

Mr. Miller. There have been a few cases lately, Mr. Denison, where people who licensed patents from us are in infringement suits, and they are endeavoring to make me a party to those suits, and I have so far adopted the policy of not becoming a party on the part of the Government to any individual litigation of that character.

Mr. DENISON. Is it your duty under the law to watch these patents and see if they are infringed by anybody else?

Mr. MILLER. Yes, sir; I consider it my duty and am now contemplating a suit to defend a copyright that we have seized from an enemy and which we hold and which I think is being infringed upon by some Americans.

The CHAIRMAN. When this hearing adjourns, as it will shortly, it will be for the purpose of reassembling at 10 o'clock to-morrow morning. I think unless some of the committee object, we will consider the hearing on this bill as at an end for to-day. In the meanwhile, before adjourning, the Chair would like to ask all persons present to remain after the adjournment for consultation with the chairman for the purpose of making a matter of record their desire to have their presence indicated and an arrangement made for their appearance.

Mr. MILLER. May I say in that connection, Mr. Chairman, that I must go to Wilmington, Del., to-morrow, in connection with the Government's suit against the Chemical Foundation, and while I must be absent, unless you have some intention of calling me——

The CHAIRMAN. If any points arise we can make note of them and take them up with you later.

Mr. HUDDLESTON. May I ask Colonel Miller at this juncture, when do you think it possible that tnat suit will be disposed of?

Mr. MILLER. I think, Mr. Huddleston, that question can be answered to-morrow afternoon, after consultation between the Government's representatives, the defendant's representatives, and the district judge in that jurisdiction.

The CHAIRMAN. We will call the hearing now adjourned until to-morrow at 10 o'clock a. m.

(The committee thereupon adjourned until Friday, January 5, 1923, at 10 o'clock a. m.)

* * * * * * * *

ADDITIONAL STATEMENT OF HON. THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN.

Mr. MILLER. Mr. Chairman and members of the committee: I saw the American claims agent of the Mixed Claims Commission, Robert C. Morris, this morning, anticipating I might be asked some questions about the present status of this matter. I was told that when the Mixed Claims Commission took over this work the last of September, there were 4,000 claims on file in the State Department. Within the past week, 4,200 claims have been filed with the commission, making a total, up to last night, of between 8,200 and 9,000 claims. Because of the obvious difficulty in compiling this information quickly without going over each claim, I was told that it would be some weeks before the claims agent, Mr. Morris, would know the approximate number of claims, the classification of them, and the amount claimed.

The 4,000 claims which the Mixed Claims Commission took over from the State Department, according to Senate Document 419 of the Sixty-sixth Congress, totaled about $500,000,000.

The reason that the time was extended to January 15 was due to the fact that a clause had been inserted in the arrangement between Ambassador Houghton, at Berlin, and former Chancellor Wirth, of the then German Government, to the effect that 60 days after the signing of the agreement, which was in August, all claims would be considered filed and no more would be received, but the 60 days has been construed to run from the time when the commission actually got down to business—namely, on or about the middle of November.

The claims commission itself is an agency of the State Department and the money out of which they are operating is in the emergency appropriation of the State Department, and Robert C. Morris, the claims agent, is in the position of the solicitor for the American claimants. After he and his office have passed on the claims they forward them to the American representative, Judge Parker, and the German representative, Doctor Kisselbach, and then if they do not agree on an award it is passed on to former Justice Day, as the umpire.

I did not want to intrude, but I thought that statement might well follow Mr. Betts's statement, because it is the last information that I was able to get of any authentic nature this morning.

Mr. SWEET. These claims are to be filed before this Mixed Claims Commission rather than before the State Department.

Mr. MILLER. Yes, sir.

Mr. LEA. Are all these claims American claims, or are part of them German claims?

Mr. MILLER. All these claims are the claims of American citizens against the German Government. The question of whatever claims there may or may not be against the Austrian Government, or the Hungarian Government, is not within the jurisdiction of the present Mixed Claims Commission unless a further arrangement is made with Austria and Hungary.

With reference to the statement about the former Solicitor of the State Department, and I presume you refer to Mr. Nielsen——

(Mr. Betts had been referring to Mr. Morgan and misunderstood Mr. Miller when he mentioned Mr. Neilsen.)

These three companies, against the advice of their local agents in San Francisco, who were naturalized German-Americans, proceeded in a way highly unsatisfactory to the claimants. There were some 2,000 claimants who, through various means, were induced to take or accept settlements far below what their premiums called for. Be it said to the credit of other German insurance companies, British insurance companies, Bulgarian insurance companies, Swiss insurance companies, and domestic companies, that they settled their claims in a manner satisfactory to the people who were insured with them.

I found that the two thousand and odd claimants, many of whom were poor people, did everything they could, collectively and individually, to bring these three insurance companies to time. It is obviously impossible for people of small means, unless they go to great expense or band themselves together, to protect themselves. It is a long road that has no turning. Some years later, after you passed the trading with the enemy act, your Alien Property Custodian's office, found itself in possession of all of the assets of these three companies within the United States. They are three of the 23 enemy insurance companies which we are operating and liquidating to-day. I am going to insert in the record the assets of these three insurance companies as of to-day, or as of November 30, 1922, and the estimated amount of claims filed with my office for the San Francisco fire losses.

(The statement referred to follows:)

San Francisco fire claims.

Aachen & Munich Fire Insurance Co.:		
Assets Nov. 30, 1922	$2,047,002.80	
Liabilities	None.	
November interest	177.27	
Total assets		$2,047,180.07

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UNITED STATES V. CHEMICAL FOUNDATION, INC. NO. 127

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Estimated amount due on San Francisco fire claim.	$400,000.00	
Indebtedness		$400,000.00
Balance		1,647,180.07
Hamburg-Bremen Fire Insurance Co.:		
Assets Nov. 30, 1922	833,282.75	
Liabilities	None.	
Total assets		833,282.75
Estimated amount due on San Francisco Fire claim.	500,000.00	
Indebtedness		500,000.00
Balance		333,282.75
Prussian National Insurance Co.:		
Assets Nov. 30, 1922	1,552,272.91	
Liabilities	None.	
Total assets		1,552,272.91
Estimated amount due on San Francisco fire claim.	200,000.00	
Indebtedness Nov. 30, 1922		200,000.00
Balance		1,352,272.91

RECAPITULATION.

Total assets of three companies held by the custodian Nov. 30, 1922	$4,432,735.73
Amount of basic claims against combined companies	1,100,000.00

Mr. MILLER. Briefly stated, the claims total $1,100,000 as filed with my office, and the total assets are $4,300,000 to-day.

This proposition was originally brought to the attention of your committee and my office by bills introduced by Congressman Julius Kahn, of California, and Senator Hiram W. Johnson, of the same State.

They are the only types of what we might call individual claims that I felt impelled upon to come before your committee and recommend favorable consideration.

Under the law to-day, we can not, of course, entertain the claims of American citizens against these insurance funds. Neither can those American citizens present their claims to the Mixed Claims Commission, because that character of claim is not within the purview of the Mixed Claims Commission. As you have heard from the previous witness in his detailed statement, all that this proposed amendment is asking is that the claimant be permitted to have the statute of limitations waived and be permitted to present these claims in the usual course. That does not mean that if the statute of limitations is waived that these claims are necessarily going to be paid in whole or in part, but it permits the reopening of the situation before either the Alien Property Custodian or, if you would prefer it, before a court or other tribunal.

I am firmly of the opinion, in view of all the circumstances connected with this situation, that these 2,000 American citizens should be given an opportunity to plead their cases, and if they prove them receive remuneration.

In the files of the enemy insurance companies involved, of which we have possession, information rests which will enable me as the trustee representing them to defend these claims, if they are improper or excessive.

I have not been asked the question, but if I were, I would, in my individual, official capacity, oppose individual amendments to this act which would take care of individual claims. You have heard a number of eminent attorneys on their particular clients, but I have no hesitancy in telling the committee, after reviewing this matter for the period of a year, that I would favor the general principles embodied in Congressman Kahn's proposition, and I have arrived at that conclusion after a personal investigation. As to the legal aspect of it, I think you have thoroughly examined the previous witness, although I have a similar brief to his, which I have gone over.

Congressman Kahn's bill is a very lengthy bill. If the proposition meets with the favor of your committee, the proper amendment to H. R. 13496 can be made by the inclusion of a few lines. Further than that, I have no more statement to make on this point unless the committee wants to examine me.

Mr. HAWES. Mr. Miller, I would like to ask you one question. These companies have issued insurance policies in the United States during recent years, have they not?

Mr. MILLER. Yes, sir; they were operating as agencies up until the time we took them over; that is, up until the time the war started in August, 1914.

Mr. HAWES. Do you know how much insurance had been issued in that way to the American public?

Mr. MILLER. I do not know, sir. I know that these enemy insurance companies we are operating were some of the largest agencies operating in this country and did a big insurance business.

Mr. HAWES. The thought I have in my mind is, if you would wipe out these assets by handing them over to these old claimants, would not that jeopardize the value of the insurance now carried in this country?

Mr. MILLER. No, sir; we are not writing insurance now, Mr. Hawes, in any of these companies. Our job now is that of liquidator, endeavoring to pay and settle the thousands of claims that were against those companies for legitimate fire insurance losses when they ceased to do business because of the war. We would not wipe out any assets that would jeopardize other claims because the Aachen & Munich and the Hamburg-Bremen and the Prussian National are practically at that point of liquidation where the only unsettled claims are these California fire claims.

Mr. DENISON. They have no existing fire contracts outstanding?

Mr. MILLER. No, sir.

Mr. HUDDLESTON. Colonel Miller, under the existing law any creditor of the owner of any of this German property has the right to bring suit to establish his lien on the property?

Mr. MILLER. Yes.

Mr. HUDDLESTON. Or to collect his money?

Mr. MILLER. Yes.

Mr. HUDDLESTON. Have such suits been brought?

Mr. MILLER. No, sir; they have filed their claims.

Mr. HUDDLESTON. I mean, have any such suits been brought?

Mr. MILLER. No, sir.

Mr. HUDDLESTON. Not upon the part of these particular claimants, but others.

Mr. MILLER. Yes, sir; a number of debt claims have been filed with my office and a number of them are in suit right now.

Mr. HUDDLESTON. So that the claimants represented by Mr. Vogelsang could have filed their suits heretofore had they desired to do so.

Mr. MILLER. But if they had filed them against the funds in my office the statute of limitations would have barred them. But these other cases, Mr. Huddleston——

Mr. HUDDLESTON. Just a moment. You refer to the statute of limitations of the State of California?

Mr. MILLER. Yes, sir.

Mr. Huddleston. What is the California statute to which you refer—what is the period of it?

Mr. Miller. May I ask Mr. Vogelsang.

Mr. Vogelsang. I have not that here.

Mr. Graham. Mr. Lea may know that.

Mr. Miller. My knowledge of this matter is to the effect that I had no way to consider these claims under the act I am administering.

Mr. Huddleston. You did have a way, just the same as in the case of any other claims, unless the statute was influential with you.

Mr. Miller. These other claims are debts that arose before the war started.

Mr. Huddleston. You mean for fire losses?

Mr. Miller. No; debts against this fund or any other fund in my office. I am authorized under the law to consider a debt claim that arose previous to the entry of the United States into the war. Of course, when we entered the war the statutes were not running. Debts that were contracted during the war, under the law, I have no right to allow because the people had no right to contract any debts against the property which we held.

Mr. Huddleston. What you are saying, though has no reference to these California claims.

Mr. Miller. But even when the war started, the statutes had run against the particular funds of these three companies.

Mr. Huddleston. You do not know that as an official, do you? Has the matter been considered and have you decided they are barred by the statute?

Mr. Miller. I have every reason to believe they have been because the people who have been to see me on the matter, and especially the attorneys who are local attorneys from California, and my office also has reported to me. If I did not make the examination myself, it was certainly made by some of my subordinates, and it was stated that their suits were barred under the statute of limitations.

Mr. Huddleston. They had the right, upon your adverse decision or upon the circumstances mentioned in the existing law, to resort to a court to test out their claims and to see whether or not the statute had barred them?

Mr. Miller. Oh, yes; but as I understand it, before we entered the war they had already tried to recover in the courts of the United States, or of the several States, and had failed.

Mr. Huddleston. Upon what ground, the statute of limitations?

Mr. Vogelsang. I do not know that any of these claims that I have were ever in suit at all anywhere.

Mr. Lea. Mr. Chairman, under the California law a suit to recover on a contract such as an insurance policy would have to be filed within four years, and the statute of frauds would also operate in a period not more than four years. I have forgotten the exact time, but I know it is not more than four years.

Mr. Vogelsang. I presume that you mean within that period after the discovery of the fraud.

Mr. Lea. After the discovery of the fraud; yes.

Mr. Vogelsang. So that if it is four years, it would be very uncertain——

Mr. Huddleston (interposing). Let me proceed further with my examination. You gentlemen are discussing something I have not asked about.

These California claimants had the right under existing law to resort to the courts to decide whether they had a good cause of action or whether it was barred by the statute of limitations.

Mr. Miller. And it is my understanding——

Mr. Huddleston (interposing). Is not that the fact?

Mr. Miller. Yes; and it is my understanding they did so. I frankly state that I have not that information here to-day in detail. I thought the attorney representing them would have it, but my general investigation showed me that they had exhausted every means within their power long previous to the time we entered the war.

Mr. Huddleston. The particular right or claim which they seek to assert is the right to set aside the contract of settlement.

Mr. Miller. Some of them——

Mr. Huddleston (interposing). That is the nature of their proceeding, and to obtain incidental relief therefrom, which is to collect their debt. What they are seeking to set aside is a contract procured by fraud. Their right to take that action dates from the discovery of the fraud or when by the exercise of reasonable diligence they might have discovered it. That is a common principle of law. So that in view of the statement that has been made, that they did not discover this fraud until this property was seized by the Alien Property Custodian, the courts have been open to them ever since that time in which to set up that right, have they not?

Mr. Miller. Yes; they have.

Mr. Huddleston. They have not done so, however.

Mr. Miller. Yes; they have, Mr. Huddleston.

Mr. Huddleston. Since the Alien Property Custodian took this property they have not gone into the courts, as provided by the trading with the enemy act.

Mr. Miller. No; they have not.

Mr. Huddleston. That is all.

The Chairman. If there are no further questions, we are obliged to you, Mr. Miller.

Mr. Newton, we will now hear you.

* * * * * * * *

ADDITIONAL STATEMENT OF MR. THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN.

Mr. MILLER. Mr. Chairman and members of the committee, as the head of the department initiating this legislation through this committee, we stand on the testimony and facts given here to you on the first two days of the hearings last month.

Yesterday I was before a subcommittee of the Senate Committee on the Judiciary, presided over by Senator Cummins, and was heard on a bill similar to the one that you are considering here. No one will deny the fact that in the few remaining weeks of this Congress it is going to be exceedingly difficult to bring together the ideas of the House and Senate and individual Members on this legislation.

I am not going to rehearse the two angles that I discussed in detail at the beginning. I can only reiterate that I think it is only fair and just that your committee should launch on its way in the very near future legislation embodying the ideas proposed in the bill that you are considering. From the queries in the Senate yesterday there will probably have to be serious questions and differences thrashed out between the conferees if the bill ever reaches that stage.

We have a few suggested amendments in my office, which I am not going to burden you with here to-day, because I will be at your instant call should you be in executive session and grant me the privilege of making any concrete legislative suggestion on one or two points that have been brought up.

We rest our case on the grounds that I have just given you, and on our initial testimony which opened these hearings. I feel that the committee before whom we are appearing is eminently qualified to decide this question between them. They certainly know more about this intricate problem than any other set of men in Congress, and it is a problem that can not be considered offhand and discussed intelligently by the average Member on the floor of the House or Senate, unless he has either attended the hearings or has taken pains to read the testimony that has been presented to you. I say that with no reflection upon the other Members, but this is the most intricate problem, that you have growing out of war-time legislation, and unless you take some step in the right direction in this Congress, it is going to be several years, I fear, before these intricate problems are cleared up.

I rest my case on those statements.

The CHAIRMAN. Gentlemen, we will consider the hearing ended as of to-day. I will say that there are some phases of this matter which members of the committee have asked to have considered at one time or another, and it will probably be very desirable that we should hear more witnesses. Now the query is when the committee would choose to have a session. We want to expedite this just as much as we can.

Mr. GRAHAM. Mr. Chairman, is the hearing finished?

The CHAIRMAN. The hearing for this morning is finished.

Mr. GRAHAM. I think we ought to get at this just as soon as we can, but I believe we ought to have the hearings printed before we go to considering the bill for amendments.

The CHAIRMAN. Quite so. We are not talking about that at all yet. The printing of the testimony has been held back, due to the fact that some members of the committee have not yet made whatever corrections they may care to, and the only thing we can do is to hereafter disregard them if they do not get around in reasonable time, and that is not desirable.

By the way, Colonel Miller, you are going out of town. Will you authorize the chairman to make corrections in your morning testimony?

Mr. MILLER. Yes, sir.

The CHAIRMAN. I will accept it under those circumstances.

Mr. NEWTON of Minnesota. It seems to me, Mr. Chairman, there are some little matters that possibly we can not take up here in open session, but I am wondering if some of those matters can be considered to-morrow morning.

The CHAIRMAN. The Chairman was leading up to a conclusion by the committee as to when they wanted to sit again. They have had four days solid now this week. To-morrow will help by so much. Monday would be two days later. Now if it is agreeable to the committee we will sit to-morrow and have witnesses here whom I am sure the committee wants to hear. So if there is no objection we will adjourn the hearing until 10 o'clock to-morrow morning.

(Whereupon, at 12.50 o'clock p. m. the committee adjourned until 10 o'clock a. m., Saturday, January 13, 1923.)

DEFENDANT'S EXHIBIT No. 168.

Office of
HERMAN A. METZ,
122 Hudson Street,
New York.

June 11th, 1918.

Dr. Julius Stieglitz,
University of Chicago,
Chicago, Ill.

My dear Dr. Stieglitz:

Colonel Vedder and Dr. Lake were here today and spent most of the day with me at the Laboratory.

It turned out that practically all the stuff complained of, and that caused trouble, as well as the lots which the Rockefeller Institute made the tests with, were among the batches we first turned out which were passed on the then existing standard of 50 mgms. All those passed at 60 mgms. as a standard, and many of the recent lots which not only passed 60 mgms. but which Dr. Lake found would pass at 70 and Professor Gies at 80 mgms., were not used in these tests or these complaints at all.

We believe at the Laboratory that we have located the trouble. The use of the darker Nitro Amino product which we obtained in the beginning and which we have been gradually improving and purifying until now we have the very light product used in the recent batches, seems to have caused the trouble and seems to solve our problem. At any rate Professor Gies is now starting to test these recent batches at 80 mgms. and Dr. Lake will start them all at from 70 to 80 mgms. immediately. In going over our records, apparently there is a relationship between the batches complained of and the dark Nitro Amino batches which were being used at that time.

I am very much pleased by the exchange of opinions so far had and if what we now believe to be so is carried out by comparative tests made with the newer product, we will probably have our product entirely satisfactory as to toxicity and still retain its solubility without any further changing. I shall, of course, keep you closely informed.

It might be a very simple matter to get the exact status if we could send Dr. Raizies one to five pounds of our Nitro Amino and let him reduce it and precipitate it by his process and we take one to five pounds of his Nitro Amino and reduce and precipitate it by our process. The respective results obtained would easily prove whether the trouble is in the Nitro Amino or in the reducing and precipitating, and this result could be arrived at within a very few days if Dr. Schamberg will let us have his product and let us send him ours.

I hope you got home safely. With kind regards,

Yours very truly,

(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 169.

Office of
Herman A. Metz,
122 Hudson Street,
New York.

June 21st, 1918.

Dr. Julius Stieglitz,
University of Chicago,
Chicago, Ill.

My dear Dr. Stieglitz:

I assume you have heard from the Hygienic Laboratory the results of their tests of lots I-90 to I-97. These were all tested at from 70 to 90 mgms. and all passed above 80. Two passed at 90 and I-93 would have probably passed at 100. These tests bear out those by Professor Gies.

I enclose copy of a further report received from my brother today which, no doubt, will prove of interest.

With kindest regards,

Yours very truly,

(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 169-A.

H. A. Metz Laboratories, Inc.,
Medicinal and Pharmaceutical Preparations,
122 Hudson Street,
New York, N. Y.

June 20, 1918.

Mr. Herman A. Metz,
122 Hudson Street,
New York, N. Y.

My dear Herman:

We have very carefully gone over all of our Salvarsan manufacturing records and compared them with the record of complaints and from the information thus obtained it seems that the trouble with some of our earlier batches was in all probality due to varying raw materials, especially differences in solubility and stability of Hydrosulphite. The exact reasons for this, however, we have not as yet been able to definitely determine. In connection with this investigation we are endeavoring to obtain from physicians who have complained of reactions, complete data in regard to control numbers of lots, the preparation of the solution, preparation and condition of the patients and technique. Far more valuable, of course, would be a record of such information from the various army cantonments, where the great bulk of our product has gone, and we believe it would aid our work very materially if such records could be made available to us by Dr. McCoy. We have laid out a plan of rearranging and compiling of such data from which we will undoubtedly learn much that will tend to show the causes of most reactions.

Biological tests made by the Hygienic Laboratories at Washington and by Professor Gies indicate, that our recent batches, with the possible exception of one, pass a much higher standard than that set by the Government up to the present time. This fact is in line with mechanical improvements we have made in our equipment which tend materially to shorten the time required in manufacturing.

Our chemical investigation is progressing along the lines originally laid out. We also proposed to isolate various by-products and decomposition products with a view of determining their relative toxicity and to what extent they may tend to increase the toxicity of Salvarsan.

In regard to the possibility of our Nitro-oxy-arsinic acid containing a certain amount of di-nitro compound, we have prepared pure 3, 5 di-nitro-osy-phenyl arsinic acid and investigated its properties, but cannot find that this product appears as an impurity in our 3-mono-nitro-oxy-phenyl-arsinic acid as used in making our reductions. We believe that our entire method of manufacture is correct in principle, and that with some slight modifications, we shall be able to make a final product (Arsphenamine) at least as good as any on the market. We feel confident that we can produce these results and are by no means averse to having the standard raised up to whatever limit the Public Service may deem it advisable.

Yours truly,

(Sgd.) G. P. METZ.

DEFENDANT'S EXHIBIT No. 170.

Office of
Herman A. Metz
122 Hudson Street
New York

June 24th, 1918.

Dr. Julius Stieglitz,
University of Chicago.
Chicago, Ill.

My dear Dr. Stieglitz:

I have your favor of the 22nd and note that Dr. Schamberg says he cannot accede to our suggestion regarding the reduction of his and our product.

As a matter of business, I have no doubt Dr. Schamberg is justified in this stand, but considering the fact that he has disclaimed all business interests in the proposition and is taking up the entire question from the humanitarian standpoint only, I am rather disappointed at his decision. However, in view of the progress we have already made, and I am sure we will continue to make, I believe we can solve the problem alone without any trouble.

I certainly thank you for your efforts and endeavors in this matter.

Yours very truly,
(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 171.

H. A. Metz Laboratories, Inc.
Medicinal and Pharmaceutical Preparations
122 Hudson Street
New York, N. Y.

August 20, 1918.

Dr. Julius Stieglitz,
University of Chicago,
Chicago, Ill.

My dear Dr. Stieglitz:

I have both your letters of the 15th. Thanks for forwarding the one to Surgeon-General Gorgas which was enclosed in your letter by mistake.

It will interest you to know that our new and enlarged Novocain plant is now installed and working. We will have from 100 to 120 pounds of Novocain a week, ready for distribution from this time on.

In our last batches of Salvarsan we have turned out 7500 ampules of 0.6 in each operation with perfect success. We can, as soon as the enlarged plant at Newark for Arsenilic Acid is going full swing, do this every day and with the new building that is just being completed where the old shed stood, in which I am going to do the distilling of Ether, and to which the Salvarsan precipitating room will be moved, I will be able to double this output by the addition of one more precipitating tank, if it becomes necessary.

I also appreciate what you say regarding the cooperation which we may render to each other. I certainly am anxious to do all I can to place at the disposal of the Public Health Service all the information I can, and do what I can to improve the quality of Arsphenamine and further the studies of its chemical and clinical properties but you must agree with me, and undoubtedly do, that through giving such assistance to the Public Health Service, the information so conveyed should not be used for the benefit of my competitors and to my own disadvantage. This entire proposition of manufacturing Novocain and Salvarsan especially has been a very costly and expensive one and it will be a long time, at the price at which I have been holding it for the public good, before I will have a return upon my investment let alone a profit, but I feel that we are now in a position to take care of the requirements, not only of the Army and Navy, but the country at large, and have a good deal for export so that the encouragement of competition under these circumstances at my expense and my disadvantage, would be far from fair.

With kindest regards,

Yours very truly,

(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 172.

August 22, 1918,

Mr. H. A. Metz,
122 Hudson Street,
New York, N. Y.

Dear Mr. Metz:

I have your letter of August 20, and am glad to hear that you are doing so well with propane and arsphenamine.

Dr. McCoy expects to be in the city in a few days, and I shall take up in a conference with him the question of our further plans. I think it should be understood that any information obtained from you should not be used for the benefit of your competitors and to your disadvantage—certainly not without the formal contract covering any such relations.

With best regards, I am

Yours sincerely,

(Sgd.) JULIUS STIEGLITZ.

JS/ES

DEFENDANT'S EXHIBIT No. 173.

Chicago, Ill.
January 3, 1919.

Mr. Herman Metz,
122 Hudson St., New York.

Dear Mr. Metz:

With the introduction of the Takamine product on the market there is every probability that the standard of purity for Arsphenamine will have to be raised within a short time and I believe that we will have every reason to raise it to 120 mg. Your process is the longest and leads to the least pure product, in my judgment. You have more inter-mediates than any other manufacturer and this, of course, increases the expense most decidedly and also seems to increase the difficulty of securing a finally pure product. This conclusion is not only based on the experience with your product, but it is also based on the work done both with your materials and with your process from beginning to end under my direction here. The conclusion also agrees with the conclusion reached in the Chemical Laboratories of the Massachusetts State Board of Health. I would urge, therefore, that you consider very carefully whether you should not change your process, provided, of course that your licenses make this possible. In the long run I believe such a change would be economical and also give you the satisfaction of having a product causing less annoyance to you than has been the case heretofore. If the standard is raised to 120, and this could not be done at the price now obtained, I am sure that the Federal Trade Commission would consider a request to have the higher standard sold at a somewhat higher rate. I am sure that Dr. McCoy and I agree that we should not sacrifice purity to a moderate difference in cost.

I am making these suggestions not officially but merely as personal recommendations based on my judgment of what the future will probably bring about

With best regards, I am

Yours sincerely,

(Sgd.) JULIUS STIEGLITZ.

DEFENDANT'S EXHIBIT No. 174.

Herman A. Metz
President

Gustave P. Metz, Ph. D.
Vice-President

Charles Fuehrlein
Secretary
and
Treasurer

H. A. Metz Laboratories, Inc.
Modern Medicinal Preparations
122 Hudson Street

Laboratories,
642-646 Pacific Street,
Brooklyn, N. Y.

January 7th, 1919.

Dr. Julius Stieglitz,
University of Chicago,
Chicago, Ill.

My dear Dr. Stieglitz:

I have yours of the 3rd and note contents. I appreciate what you say and have been making tests along the lines indicated for some time. In the meantime, however, we are getting a much better grade of Nitro Oxy than we ever had before and I am carrying out the recrystalization with a view of determining just how far this influences the toxicity. I will be glad to keep in touch with you on our results.

Yours very truly,

(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 175.

(For release
July 9)

(Confidential)

UNITED STATES TARIFF COMMISSION—PRESS NOTICE
Washington, D. C.

REPORT OF THE DYE AND SYNTHETIC ORGANIC CHEMICAL INDUSTRY.

The United States Tariff Commission has just sent to press the annual "Census of Dyes and other Synthetic Organic Chemicals" for the calendar year 1922. This report will be printed and ready for distribution in the early part of July. The report shows that during the year 1922 the domestic dye and organic chemical industry made notable progress. Many products were manufactured for the first time in this country and there were large increases in the quantity of production with conspicuous reductions in prices.

Production of Dyes Increases 66 per cent.

The domestic production of dyes in 1922 by 87 firms was 64,632,187 pounds, an increase of 66 per cent. over that of 1921. The sales for 1922 totaled 69,107,105 pounds valued at $41,463,790. The size of the industry in 1922 is in sharp contrast with that of 1914 when only 7 firms manufactured a total of 6,619,729 pounds valued at $2,470,096. The dye industry in that period was in no sense a self-contained one, as the dyes produced were made almost entirely of intermediates imported chiefly from Germany. The increase in dye production during 1922 was largely due to an increase in general business activity. Beginning about June the textile and other dye-consuming industries became more active after the business depression and during the remaining months of the year the demand for dyes steadily increased.

Large Price Reductions.

The average sales price of all domestic dyes for 1922 was 60 cents per pound compared with 83 cents in 1921 and $1.26 per pound in 1917. The 1922 figures represent a 28 per cent decline from that of 1921. There were price reductions for both the bulk colors and dyes consumed in smaller quantities. The average price of indigo in 1921 was 45 cents per pound compared with 24 cents in 1922, a 47 per cent decrease. Direct Black EW declined 47 per cent; Acid Black, 28 per cent; Salicine Black U, 27 per cent; Alizarin, 20 per cent; Alizarin Saphirol B, 34 per cent; Wool Green S, 41 per cent; Indanthrene Blue GCD, 30 per cent and Eosine, 24 per cent.

Vat and Alizarin Dyes Show Large Increase.

One of the conspicuous developments of the year 1922 was the increased production of vat and alizarin dyes. The vat dyes are used in cotton dyeing and printing for the production of shades of remarkable fastness which are not destroyed by the modern laundry treatment. These colors are of great complexity and have presented serious difficulties in their commercial production. Their use is on the increase, as the public is beginning to recognize that fast shades are obtainable on cotton goods. The alizarin dyes are of great value in wool dyeing and the addition to this field of new dyes and the increased production of other dyes is a significant step in the development of a self-contained dye industry. The total production of vat dyes (not including indigo) was 1,075,992 pounds in 1922 compared with 345,152 pounds in 1921. The production of the anthraquinone dyes which includes alizarin dyes and a large part of the vat dyes, was 1,234,963 pounds.

Many New Dyes Produced.

Many important dyes were produced for the first time on a commercial scale in 1922. These comprise colors of great value for the dyeing of either silk, cotton, or wool, such as vat dyes, alizarin, developed cotton dyes, mordant and acid dyes. The increased production of these colors is reflected in a reduction of these imports. The production of these dyes in the United States has resulted only after large expenditures on research and most painstaking investigations. There are still gaps in our manufacturing program which should be filled to make a self-contained dye industry. · These comprise certain of the vat dyes, together with certain of the mordant, acid and direct dyes.

Quality and Standardization of American Dyes.

The satisfactory quality and the uniform standardization of the American dyes is one of the striking evidences of the commendable progress made by the industry. Dye for dye, with relatively few exceptions, the domestic products are found equal to the pre-war German dyes. In the early stages of the domestic dye industry, after the outbreak of the Great War, many of our dyes were lacking in uniformity of strength and quality. This condition, however, no longer prevails as our domestic manufacturers are marketing dyes which are uniformly standardized as to strength and quality. Statements of the largest silk and woolen manufacturers and also from cotton printers and dyers agree as to the satisfactory results obtained from American dyes.

Production and Consumption.

The United States produces about 93.5 per cent of the dyes actually consumed. The imports of dyes in 1922 totaled 3,982,631 pounds, the production was

64,632,187 pounds, and the exports totaled 6,956,593 pounds. Consumption is assumed to equal production, plus imports, minus exports, or 61,658,225 pounds. The imports in 1922 were 6.2 per cent of our total production and 6.5 per cent of our consumption. In 1914 the imports were nearly 90 per cent of our consumption.

Production of Dyes by Classes.

Production of dyes in 1922 grouped by classes according to their method of application on fibers were as follows:

Acid	9,880,014	pounds.
Basic dyes	2,937,585	"
Direct cotton dyes	11,931,737	"
Lake and spirit-soluble dyes	1,009,512	"
Mordant and chrome dyes	3,749,701	"
Sulfur dyes	16,913,767	"
Vat dyes (not including indigo)	1,075,992	"
Indigo	15,850,752	"
Unclassified dyes	1,283,127	"

Dye Imports.

Total imports of dyes during the calendar year 1922 were 3,982,631 pounds valued at $5,243,258 compared with 4,252,911 pounds for 1921 and 45,950,895 pounds during 1914. Of the total imports for 1922, 44.58 per cent came from Germany; 43.72 per cent from Switzerland; 5.25 per cent from England; 4.18 per cent from Italy, and 2.27 per cent from all other countries. The 1922 figures show a decline of dye imports from Germany, since during the year 1921, 48.34 per cent came from Germany; in 1920, 51 per cent. The dyes imported represent for the most part dyes that are not manufactured in this country or not manufactured in an adequate quantity for domestic requirements. Vat dyes led in quantity of imports totaling 1,549,024 pounds (single strength); mordant and chrome dyes totaled 716,790 pounds, direct cotton dyes, 671,621 pounds; acid dyes, 601,395 pounds; sulfur dyes, 194,883 pounds; basic dyes, 155,084 pounds and spirit-soluble dyes and color lakes, 76,853 pounds.

Large Expenditures for Research.

The coal-tar dye and chemical industry has expended over $21,000,000 during the last five years, 1917-1922. In probably no other field have there been such extensive investigations as in the manufacture of dyes. The accomplishments of that period and the progress and development of the dye industry may be attributed in no small part to the enormous expenditures in research. New dyes and other chemicals of great economic value have been developed and the costs of production have been reduced as is revealed in the conspicuous reduction in the prices of dyes.

1922 Dye Exports Declined 52 Per Cent.

The exports of dyes for 1922 show a large decrease from that of 1921 receding from $6,270,155 in 1921 to $3,023,127 in 1922. The 1922 figure is a 90 per cent decline from that of 1920 when exports reached the maximum value of $29,823,591. The large export during 1920 was during the boom year before German dyes made their appearance in the large dye markets of the world. Official imports of China, India, and Japan show that large quantities of German dyes were exported to these countries after 1920 and in addition Swiss, French and British dyes have been notable factors in the Far East markets.

1923 Dye Exports Increase.

Exports of dyes for the first four months of 1923 show an increase in value and quantity. This increased demand for American dyes, largely by the Far East markets, may be attributed in part to the reduced imports of German dyes on account of the occupation of the Ruhr by the French in 1923.

International Dye Trade.

Prior to the war Germany dominated the world's dye markets producing about three-fourths of all synthetic dyes. Of the remaining fourth about one-half were made of German intermediates and consequently the production of these dyes was dependent upon Germany. Switzerland, although without raw materials, ranked second with about 7 per cent of the world's dye production. Practically all of the raw materials used by the Swiss were of German origin. Great Britain prior to the war produced about one-tenth of her requirements and France manufactured in French owned and operated plants about one-tenth of the consumption of that country. In both France and Great Britain dye plants were operated by German dye makers where final assembling operations were completed in the manufacture of dyes from intermediates of German production in order to meet the patent requirements of those countries. In the United States a small dye industry existed before the war, operating almost exclusively on imported intermediates, chiefly from Germany.

Soon after the declaration of war the supply of German dyes was cut off from the world's markets. An acute dye famine developed, threatening the activities of the vast textile and other industries dependent upon dyes for their operation. Prices increased to previously unheard of levels and certain dyes were not to be had at any price. During and since the war the United States, Great Britain and France have made extensive developments in the manufacture of dyes and each of these countries now produce from 80 odd to 90 odd per cent of their requirements and have in addition exported dyes in significant quantities since the signing of the Armistice. The complete German monopoly of the world's dye production has been broken, at least temporarily, if not permanently. Extensive developments in dye manufacture in the various countries have resulted in an approximate doubling of the world's capacity to produce synthetic dyes and sharp competition may be expected in the world's dye markets.

The German dye industry offers a united front to the world in a combination known as the I. G. (Interessen Gemeinschaft). It possesses the advantage of cumulated experience, lower manufacturing costs and a unified organization for buying and selling. The three Swiss dye manufacturers have formed an amalgamation. Evidence of a severe competition is already at hand in the Far East markets. The United States lost a large part of this trade in 1921 and 1922 compared with her portion during the boom year, 1920. China leads the world as a consumer of dyes with a consumption estimated at about 70,000,000 pounds a year; the United States ranks second with an average consumption of about 55,000,000 pounds followed by Great Britain with consumption of nearly 50,000,000 pounds per year. It is expected that Germany will make every endeavor to recover a part of her former trade with these three dye consuming nations. In case protective measures are retained by the new dye producing countries Germany may resort to the establishment of factories or seek affiliations, as has already been done by the Swiss manufacturers in establishing plants in both the United States and Great Britain.

Other Finished Coal-Tar Products.

The total output of dyes and other finished coal-tar chemicals in 1922 by 164 firms was 88,368,131 pounds compared with 51,457,565 pounds by 147 firms in 1921. The 1922 figure represents a 72 per cent increase over that of the previous year.

Color Lakes.—A total production of color lakes by 43 firms in 1922 was 10,578,664 pounds compared with 6,152,187 pounds in 1921.

Photographic Chemicals.—The production by 7 firms of those coal-tar products used as photographic developers totaled in 1922, 345,798 pounds as compared with 183,798 pounds in 1921.

Medicinals Show Large Increase.—This class of coal-tar products may be considered one of the most important as they are essential to the nation's welfare. The total production of synthetic medicinals of coal-tar origin for 1922 was 2,946,347 pounds compared with 1,545,917 pounds in 1921.

Perfumes and Flavors.—The total production of flavors of 20 firms for 1922 was 1,215,668 pounds and the total output of 17 firms making perfumes for 1922 was 793,148 pounds compared with 119,335 pounds.

Synthetic Phenolic Resins.—These products are used as substitutes for amber in the making of pipe stems and similiar articles, and in the manufacture of varnishes and lacquers. They also find a large consumption in the manufacture of electric insulators. The production for 1922 by 5 firms was 5,944,133 pounds.

Synthetic Tanning Materials.—The production of these products in 1922 by 4 firms amounted to 1,910,519 pounds, a slight increase over that of 1921. These products are of interest as our domestic supply of tanning barks is rapidly decreasing and we are largely dependent upon imported natural tanning materials for our tanning industry. Synthetic tanning materials are of comparatively recent origin and these products have considerable promise for further development.

Camphor Substitutes Increase.

There was a large increase in the production of tricresyl phosphate, which is used as a substitute for camphor in the manufacture of pyroxylin plastics. Although these products are not used to replace camphor for all purposes in this industry, their future development by the coal-tar industry will overcome, at least to some extent, the monopoly on camphor which Japan has held in the past.

Coal Tar Production Highest in History.

Preliminary figures of the Geological Survey indicate that the production of coal tar and by-products from the by-product coke industry during the year 1922, was the greatest in the history of the industry. Production of the by-product coke was about 28½ million tons, which exceeded the production of both beehive and by-product coke during the previous year. The replacement of beehive ovens by the by-product coke ovens, which recover the tar, ammonia and gas products, entirely lost in the old type of beehive ovens, is of great economic significance in the conservation of our natural resources for (1) the by-product ovens increase the production of ammonia for fertilizer and other uses; (2) the gas produced in these ovens is used for lighting and industrial heating; and (3) the tar serves as a basis for the domestic coal-tar dye and chemical industry, and yields motor fuel, solvents and road pitches.

The production of tar is greatly in excess of the requirements of the dye and coal tar chemical industries. A large amount of the tar is burned and, of the remaining portion refined, only a part is purified to such final products as benzene, toluene, naphthalene and anthracene, owing to the strong demand for partly refined products, motor fuel, solvents, soft pitches and the like.

Synthetic Organic Chemicals of Non-Coal Tar Origin Shows Large Increase.

Conspicuous progress has been made within the past few years in the development and manufacture of synthetic organic chemicals of non-coal tar origin. This includes acids, alcohols, esters, ketones, aldehydes, etc., which are used as medicinals, solvents, perfumes, flavors and in many industrial and other processes. This field holds high promise of further expansion and it is expected that many new products of great economic value will be manufactured and placed on the market. The production of synthetic organic chemicals other than those derived from coal tar, during 1922 was 79,202,155 pounds; the production in 1921 totaled 21,545,186 pounds.

DEFENDANT'S EXHIBIT No. 176.

REPORT OF U. S. TARIFF COMMISSION FOR THE YEAR 1922.

(Not printed.)

DEFENDANT'S EXHIBIT No. 177.

A STATEMENT

OF THE ACTION TAKEN AND CONTEMPLATED
LOOKING TO

THE FIXATION OF NITROGEN

PURSUANT TO SECTION 124, "NITRATE SUPPLY," OF THE ACT OF CONGRESS APPROVED JUNE 3, 1916, GENERALLY KNOWN AS THE NATIONAL DEFENSE ACT : : : : :

DIVISION T, ORDNANCE OFFICE
WAR DEPARTMENT AUGUST 21, 1917

PUBLISHED BY AUTHORITY OF THE SECRETARY OF WAR

(W. D. O. O., T-1422)

WASHINGTON
GOVERNMENT PRINTING OFFICE
1917

STATEMENT OF ACTION TAKEN AND CONTEMPLATED LOOKING TO THE FIXATION OF NITROGEN.

PURSUANT TO SECTION 124, "NITRATE SUPPLY" OF THE ACT OF CONGRESS APPROVED JUNE 3, 1916, GENERALLY KNOWN AS "THE NATIONAL DEFENSE ACT."

DIVISION T, ORDNANCE OFFICE, WAR DEPARTMENT,
August 21, 1917.

The national defense act, in its section 124, provided for a supply of nitrogenous material by authorizing and empowering the President to make or cause to be made such investigation as, in his judgment, might be necessary to determine the best, cheapest and most available means for the production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers and other useful products this by water power or any other power as might be best and cheapest—to designate for the exclusive use of the United States such water power sites as in his opinion might be necessary to construct and operate dams, etc., or other means than water power as in his judgment might be best and cheapest for the generation of power, and for the production of nitrates as above; also to procure by condemnation or otherwise any lands, rights of way, materials, minerals, and processes, patented or otherwise. It was provided by this act that "the products of such plants shall be used by the President for military and naval purposes to the extent that he may deem necessary, and any surplus which he shall determine is not required shall be sold and disposed of by him under such regulations as he may prescribe."

The primary step required under these provisions of law was, therefore, an investigation to determine the best, cheapest, and most available means for the production of the desired nitrogenous materials, or "nitrates."

With this purpose in view, the president of the National Academy of Sciences in cooperation with the

American Chemical Society, and at the request of the Secretary of War, appointed a committee consisting of the following scientists and engineers:

Arthur A. Noyes, Chairman.
Leo H. Baekeland.
Gano Dunn.
Charles H. Herty.
Warren K. Lewis.
Michael I. Pupin.
Theodore W. Richards.
Elihu Thompson.
Willis R. Whitney.

In addition to this committee's investigations, special agents were appointed to acquire all possible further information. These agents had access to some quite unusual sources of information, and collected data, including detailed records of the costs of various processes employed at home and abroad, which have been most instructive, but which, on account of the sources from which they were obtained and the conditions under which they were given, can not be made public.

One of these agents was Mr. Eysten Berg, who visited Europe and submitted a report. Another of these agents was Dr. Charles L. Parsons, chief chemist of the Bureau of Mines, Interior Department, who, in the course of his investigations, visited the noted plants of Italy, France, England, Norway, and Sweden during the fall of 1916, and was able to give in his reports a most valuable summary and comparison of recent progress and conditions in the nitrogen-fixation industry at home and abroad, elaborated by extensive statistics of a confidential nature.

In his reports Dr. Parsons laid special emphasis upon the rapid development in the United States of processes for the direct synthesis of ammonia from nitrogen and hydrogen, for its synthesis through the formation of cyanides as an intermediate product, and for the oxidation of ammonia to nitric acid. He called attention to the process developed by the General Chemical Co. for the synthesis of ammonia by the direct combination of nitrogen and hydrogen at lower pressures than those previously deemed necessary and contemplated by the Haber patents, and to the facts that this process had been in successful use on a large experimental scale and that, indeed, one unit thus in use was larger than those supposed to be in use in Germany. He showed that this American company had also developed and brought to a commercial basis a method of producing the mixture of nitrogen and hydrogen required for the synthesis to ammonia at a cost lower than any theretofore attained in this country or probably even in Germany, and that this company had progressed so far that it had already made plans for a commercial plant using this process. Dr. Parsons also obtained from the General Chemical Co. a tentative proposal of an agreement whereby that company would grant to the Government of the United States the use of its processes and designs for apparatus for the synthesis of ammonia and for the oxidation of ammonia to nitric acid, upon the following very liberal terms—without compensation of any kind for products to be used exclusively for munitions of war, and with a royalty upon products to be used for fertilizers.

Dr. Parson's reports also contained a summary of recent developments in the cyanide process and a confidential statement from the Nitrogen Products Co. of their estimated costs by that process, together with an offer of unrestricted use of their patents upon such processes, without any compensation for use in the manufacture of munitions of war, and subject to a royalty of $5 per ton of fixed nitrogen for use of their processes for the production of fertilizer.

He was also able to report that under a cooperative arrangement between the Bureau of Mines and the Semet-Solvay Co. a small plant for the oxidation of ammonia to nitric acid had been constructed and was progressing successfully; also that an experimental plant for the same purpose was being operated by the General Chemical Co. and had developed some new features, thus showing that satisfactory progress was being made in this country toward the solution of the difficulties involved in the construction and operation of such a plant upon a large scale.

Finally, Dr. Parsons stated his belief that the processes using large quantities of power would be in this country displaced by these newer processes which require comparatively little power, and he recommended that the Government build a moderate sized plant for production of ammonia by synthesis, and undertake active experimentation with the cyanide process.

With the object of securing an opinion, based upon a comprehensive view of all the facts collected by the several agencies, the Secretary of War appointed the following Committee on Nitrate Supply:

Brig. Gen. William Crozier, Chief of Ordnance, United States Army, War Department.

Rear Admiral Ralph Earle, Chief of Bureau of Ordnance, Navy Department.

Brig. Gen. William M. Black, Chief of Engineers, United States Army, War Department.

Mr. F. W. Brown, Bureau of Soils, Department of Agriculture.

Dr. Leo H. Baekeland, Yonkers, N. Y.

Mr. Gano Dunn, 43 Exchange Place, New York.
Dr. Charles H. Herty, 35 East Forty-first Street, New York.
Dr. William F. Hillebrand, Bureau of Standards, Department of Commerce.
Dr. Arthur A. Noyes, Institute of Technology, Boston, Mass.
Dr. Charles L. Parsons, Bureau of Mines, Interior Department.
Dr. Willis R. Whitney, Schenectady, N. Y.

This committee gave careful consideration to all the information available, and duly weighed the several purposes stated by the language of the act, recommending the following action:

I. That the Government negotiate with the General Chemical Co. for the right to use its synthetic ammonia processes.

II. That contingent upon satisfactory result of such negotiations, there be set aside from the $20,000,000 appropriated, such sum, estimated as about $3,000,000 as should be necessary to build a plant to produce by that process about 60,000 pounds of ammonia per 24-hour day; location, southwest Virginia preferably.

III. That out of the same apropriation, $600,000, or as much more as needed, be set aside for building a plant for producing by oxidation of ammonia about the equivalent of 24,000 pounds of 100 per cent nitric acid per 24-hour day.

IV. That the War Department proceed at the earliest practical date with the construction of the oxidation plant and contingent upon satisfactory arrangements with the General Chemical Co. with the construction of the synthetic ammonia plant also.

V. That the Government negotiate with the Nitrogen Products Co. with the view to a contract for the right to use that company's patents and proceed with experimentation looking toward the industrial development of the Bucher process for production of ammonia through cyanide; and that contingent upon satisfactory arrangement as above a sum not over $200,000 be allotted out of the nitrate supply appropriation.

VI. That out of the $20,000,000 nitrate supply appropriation $100,000 be allotted for active investigation of processes for the industrial production of nitrogen compounds useful in the manufacture of explosives or fertilizers—this under supervision of the War Department.

VII. That in order to increase the production of ammonia and toluol the Government promote the installation of by-product coke ovens by directing priority in production and transportation of materials and parts.

VIII. That the decision as to more extensive installation of nitrogen fixation processes and water-power development in connection with them be postponed until the plants above recommended are in operation or until further need arises.

IX. That while the preceding recommendations include all the measures that can now judiciously be taken for the fixation of ammonia it is the opinion of the committee that the immediate accumulation and the permanent maintenance of an ample reserve not less than 500,000 tons of Chile saltpeter is the measure most urgently necessary.

The foregoing report having met with general approval, the Secretary of War has directed the Chief of Ordnance of the Army to proceed to carry out the first six of the recommendations of the Nitrate Supply Committee and has announced that for the present the consideration of development of large water-power installations which had been begun by the interdepartmental board (Secretaries Baker, Lane, and Houston) appointed by the President would be suspended.

The outstanding feature of this program for action is the construction of the synthetic ammonia plant, using the General Chemical Co.'s process which was largely developed by their engineer, Mr. Frederick de Jahn. As has been indicated, this process has already had trial upon a sufficient scale to demonstrate its practicability and to indicate as most probable its ability to produce ammonia at a very favorable price. In fact, in the search of the Nitrate Supply Committee for the best, cheapest, and most available means for the production of nitrates and other products that would be of use in the manufacture of munitions and in the manufacture of fertilizers, this process appeared to give more promise of affording relief from dependence upon foreign nitrates for the defense of the country and more promise of a reduction in the cost of the nitrogenous constituent of fertilizer than others. Furthermore, this process is one which can be put into operation in a much less time than would be required to develop such a large water power as would be needed for other prominent processes available. This process gives as its primary product ammonia which may be used directly as a constituent of fertilizer or which can be converted into ammonium sulphate or ammonium phosphate in the same manner as ammonia from any other source may be so converted. Processes for such conversion are known and appear to require no special development under this particular act. The cost of ammonia is expected to be quite low by this process, and will not be increased when the ammonia is used for munitions manufacture by any payments whatever for the rights to the processes, a satisfactory agreement to this effect having been made with the General Chemical Co. That same agreement provides that in so far as the General Chemical Co.'s processes shall be used in the manufacture of products for fertilizers a royalty of $5 per ton of 2,000 pounds of fixed nitrogen in any form shall be paid. This extremely liberal arrangement will add but a very small amount to the cost of producing the nitrogenous portion of the fertilizer, amounting to a charge of something less than 25 cents per ton of the usual mixed fertilizer. From the tentative offer of the Nitrogen Products Co. it is expected that there will be formally ratified a like liberal agreement for the use by the Government of that company's processes. There thus appears at this time to be no necessity for the President to exercise the rights granted by the act for the acquisition of necessary processes by condemnation, all that it has been considered necessary to use having been freely granted upon liberal terms.

The Ordnance Department of the Army is proceeding as energetically as possible with the work entrusted to it, has made arrangements for taking over orders at cost which the General Chemical Co. had placed for apparatus for a considerable size plant for their own use and thus gains considerable headway upon much of the apparatus, as well favorable prices; the prominent engineering and construction firm, the J. G. White Engineering Corporation, has been engaged for the remaining engineering work and the actual construction; the plans for apparatus are essentially complete, and designs for all of the buildings are very nearly completed as a result of work done by the engineers of the General Chemical Co. There is thus at the present time every reason to expect that notwithstanding the extreme difficulty and expense involved in any large construction work at this time the plant will be not unduly delayed.

The construction of the oxidation plant is a less extensive work, and its commencement is being postponed for a short time in order to reap the full advantage of the important experimental work being carried on by the General Chemical Co., the Semet-Solvay Co., and the Bureau of Mines.

PROCEEDINGS OF THE NITRATE SUPPLY COMMITTEE.

WASHINGTON, D. C., *May 11, 1917.*

The Nitrate Supply Committee, constituted as follows:

- Brig. Gen. William Crozier, Chief of Ordnance, United States Army, War Department;
- Rear Admiral Ralph Earle, Chief of Bureau of Ordnance, Navy Department;
- Brig. Gen. William M. Black, Chief of Engineers, United States Army, War Department;
- Mr. F. W. Brown, Bureau of Soils, Department of Agriculture;
- Dr. Leo H. Baekeland, Yonkers, N. Y.;
- Mr. Gano Dunn, 43 Exchange Place, New York;
- Dr. Charles H. Herty, 35 East Forty-first Street, New York;
- Dr. William F. Hillebrand, Bureau of Standards, Department of Commerce;
- Dr. Arthur A. Noyes, Institute of Technology, Boston, Mass.;
- Dr. Charles L. Parsons, Bureau of Mines, Interior Department;
- Dr. Willis R. Whitney, Schenectady, N. Y.;

and appointed by the Secretary of War to succeed and continue the work of a former committee which was appointed by the National Academy of Sciences at the request of the War Department, met at 10 o'clock a. m., at the call of Gen. Crozier.

All of the members were present excepting Gen. Black, who was represented on the committee by Col. Charles Keller of the Corps of Engineers. Col. C. B. Wheeler, Ordnance Department, also sat with the committee and took part in its proceedings, Gen. Crozier presiding at the meeting but not voting. The authority for Gen. Crozier to call the committee together and the object of the meeting is indicated by the following letter of the Secretary of War.

WAR DEPARTMENT, *Washington, April 14, 1917*

Brig. Gen. WILLIAM CROZIER,
Chief of Ordnance, United States Army,
Member Nitrate Supply Committee.

SIR: Referring to my letter of March 9 last appointing you a member of the Nitrate Supply Committee, I desire that you shall act in calling the committee together at appropriate times, for necessary action, and that you shall convey to it such communications as I may have to make.

The committee should now be called together as soon as practicable for the purpose of considering the reports and recommendations concerning the process which should be adopted for the manufacture of nitrates, with reference to the possibility of harmonizing the various views and reaching a common conclusion in regard to as many of the recommendations as possible.

Respectfully,

NEWTON D. BAKER, *Secretary of War.*

After a preliminary statement by the chairman, the committee proceeded to the matter in hand and considered previous reports and recommendations concerning the process which should be adopted for the manufacture of nitrates, which included the following papers:

I. Report on nitrate supply presented to the Secretary of War by the Committee on Nitrate Supply of the National Academy of Sciences and of the National Research Council, dated January 20, 1917.

II. Preliminary report to the Ordnance Department of the War Department on the nitrogen industry with recommendations regarding the methods to be used by the United States Government in procuring the necessary nitric acid required for munitions by the War and Navy Departments by Charles L. Parsons, chief chemist, Bureau of Mines, Department of the Interior, January 27, 1917. (See p. 833, this issue.)

III. Report on the nitrogen industry by Eysten Berg, C. E., dated January 15, 1917.

IV. Report on the nitrogen industry by Charles L. Parsons, chief chemist, Bureau of Mines, Department of the Interior, dated April 30, 1917. This latter report included an offer of the General Chemical Co., granting to the Government under certain conditions the right to use its synthetic process for the production of ammonia, etc., and also an offer of the Nitrogen Products Co., granting to the Government under certain conditions the right to use the so-called Bucher process for the production of sodium cyanide and ammonia. (See p. 839, this issue.)

After a deliberate and careful consideration of all the matter and information at the disposal of the committee, it submits the following as its action.

The committee, appreciating the offer of the General Chemical Co., recommends:

1. That the Government enter into negotiations to acquire the rights to use the synthetic ammonia process of that company.

2. That contingent upon satisfactory arrangements with the General Chemical Co., out of the $20,000,000 nitrate supply appropriation, such sum as may be needed, now estimated at $3,000,000, be placed at the disposal of the War Department to be used in building a synthetic ammonia plant, employing the said process of the General Chemical Co. and of a capacity of 60,000 pounds of ammonia per 24-hour day, said plant to be located in a region where land, water, coal, and sulphuric acid are cheaply available, where good transportation facilities exist, and where the proposed new powder plant of the Government can be properly located. In the opinion of this committee all of these conditions just enumerated are best fulfilled by a location in southwest Virginia or contiguous region.

3. That out of the $20,000,000 nitrate supply appropriation an amount now estimated at $600,000, or as much as may be needed, be placed at the disposal of the War Department to be used in building a plant for the oxidation of ammonia to nitric acid and the concentration of nitric acid, of a capacity equivalent to 24,000 pounds of 100 per cent nitric acid in a 24-hour day, said plant to be located in the neighborhood of the aforesaid synthetic ammonia plant and the proposed new powder plant of the Government.

4. That the War Department proceed at the earliest practical date with the construction of the oxidation plant and contingent upon a satisfactory arrange-

ment with the General Chemical Co., also with the synthetic ammonia plant, and that the Government give such priority orders as will secure from contractors prompt delivery of the materials and rapid construction of the structure and machinery needed for these plants.

The committee appreciating the offer of the Nitrogen Products Co. granting, in this country, to the Government under certain conditions the right to use the so-called Bucher process for the production of sodium cyanide and ammonia recommends:

5. That a form of contract, drawn with the advice of the legal authorities of the Government, such as to give that company no guaranty or exclusive rights in the process, or in its future development, beyond those which the company's own patents give to it, be entered into with the Nitrogen Products Co., and that experimentation looking toward the industrial development of the Bucher process for the production of ammonia be at once proceeded with. And further that, contingent upon a satisfactory arrangement with the Nitrogen Products Co., a sum not to exceed $200,000 be allotted for this purpose out of the $20,000,000 nitrate supply appropriation.

6. That out of the $20,000,000 nitrate supply appropriation $100,000 be made available for the active prosecution of investigations of processes for the industrial production of nitrogen compounds useful in the manufacture of explosives and of fertilizers, and that these investigations be planned and supervised by the War Department.

7. That, in order to increase the production of ammonia and toluol, the Government promote the installation of by-product coke ovens by directing that

priority be given in the production, delivery and transportation of the materials and parts needed in their construction.

8. That the decision as to more extensive installation of nitrogen-fixation processes and water-power development in connection with them be postponed until the plants above recommended are in operation or until further need arises.

9. While the preceding recommendations include all the measures that can now judiciously be taken for the fixation of nitrogen and the oxidation of ammonia, it is the opinion of the committee that the immediate accumulation and the permanent maintenance of an ample reserve, not less than 500,000 tons of Chile saltpeter, is the measure most urgently necessary.

There being no further business before it, the committee then, at 6.15 p. m., adjourned to meet at the call of the chairman.

William Crozier, *Chairman,*
Brigadier General, Chief of Ordnance, United States Army

Ralph Earle,
Rear Admiral, Chief of Ordnance, United States Navy.

Charles Keller,
Colonel, Corps of Engineers, United States Army.

F. W. Brown.
Leo H. Baekeland.
Gano Dunn.
Charles H. Herty.
Wm. F. Hillebrand.
Arthur A. Noyes.
Charles L. Parsons.
Willis R. Whitney.

PRELIMINARY REPORT TO THE ORDNANCE DEPARTMENT OF THE WAR DEPARTMENT ON THE NITROGEN INDUSTRY WITH RECOMMENDATIONS REGARDING THE METHODS TO BE USED BY THE UNITED STATES GOVERNMENT IN PROCURING THE NECESSARY NITRIC ACID REQUIRED FOR MUNITIONS BY THE WAR AND NAVY DEPARTMENTS.

[All confidential data including detailed costs omitted.]

By CHARLES L. PARSONS, Chief Chemist.

BUREAU OF MINES, DEPARTMENT OF THE INTERIOR,

January 27, 1917.

Brig. Gen. WILLIAM CROZIER,
Chief of Ordnance, War Department.

SIR: Since giving you in a letter bearing date of June 6, 1916, my personal opinion on the nitrate situation, based at that time on an incomplete study, I have made a very careful study of the processes used throughout the world for the production of nitric acid, and, in the employ of the War Department, I have made a trip to Italy, France, England, Norway, and Sweden, visiting many plants producing nitric acid. I have had conferences with leading engineers in those countries on the situation. It will require some weeks still to make my complete report, with full detailed estimates and costs, on the various processes employed as applied to American conditions, but the details of these processes are now sufficiently in hand to warrant formulating my conclusions as to the proper procedure to be followed.

The conclusions are based, by your instructions, on the maximum requirements for munitions purposes of the United States Government of:

Nitric acid:	Tons.
In time of peace	20,000
In time of war	180,000

With these quantities as a maximum and a sufficient supply of sodium nitrate in storage to meet the requirements of the Government for a period of six months to one year, no serious emergency problem confronts the Government. The increase in the output of ammonia from by-product coal since 1915, if oxidized to nitric acid, is alone more than sufficient to meet this requirement. The oxidization of ammonia, including that produced from the destructive distillation of coal, presents no serious difficulties, and the necessary plants using the emergency procedure adopted in Germany could, in case of need, be quickly installed to meet the Government requirements. Such installation would involve much cruder procedure, such as lower efficiency of oxidation and absorption of the nitrous oxide in soda lye, than would be adopted after careful experimentation and experience in the operation of the most efficient plants, but it would nevertheless furnish the country with the nitric acid required.

In my opinion the following methods include the only ones which need to be considered in the final choice of the procedure to be employed by the Government in providing a source of nitrate supply. There are many other proposed methods, modification of methods, and investigations under way, but they have proved either inapplicable when tried industrially or they have not been sufficiently tried on a practical scale to warrant the Government in considering them in this first analysis. Some of them may later be successfully developed and research on the fixation of nitrogen should be continuously carried on under Government auspices.

Following are the methods considered herein:

I. Nitric acid may be obtaned directly from the air, with no raw material except that contained therein by directly burning the nitrogen and oxygen of the atmosphere by means of the electric arc.

II. Nitric acid may be obtained from the oxidation of ammonia.

The processes to be considered are:

(A) Arc process, in which nitrogen and oxygen are directly burned to nitric oxide under the influence of the electric arc.

(B) Haber process, in which nitrogen and hydrogen are directly combined to form ammonia.

(C) Cyanamid process, in which carbon and lime are first heated in an electric furnace to form calcium carbide. The carbide is then treated with pure nitrogen to form cyanamid, and, in turn, the cyanamid is hydrolyzed by steam in special autoclaves to produce ammonia.

(D) By-product ammonia, obtained as a by-product in so-called by-product coke ovens by the destructive distillation of bituminous coal.

(E) Cyanide process, not yet commercially developed, but carrying great promise of cheap combined nitrogen. This process embraces the direct combination of nitrogen, carbon, and sodium to form sodium cyanide by heating together an intimate mixture of carbon, soda ash, and nitrogen in the presence of finely divided iron.

All of the processes producing ammonia involve the further oxidation of that ammonia to nitric acid. The ammonia may be oxidized by means of heated (electrically, or otherwise) platinum by presenting as large a surface as possible of glowing platinum to the proper mixture of ammonia and air, under which conditions the nitrogen in the ammonia burns to nitric oxide. The methods to be considered for the oxidation of ammonia are:

(*a*) Ostwald-Barton method, now used in France and England; and probably also in Germany.

(*b*) Frank Caro method, now used to produce 100,000 tons of concentrated nitric acid in Germany, and experimentally installed with modifications in two small plants in this country.

(*c*) The oxidation in solution of ammonia or dicyanamid to ammonium nitrate, as yet carried out only in an experimental installation in Sweden, and being installed in two plants now in process of erection—one near Goteborg, Sweden, and the other and larger plant near Berlin, Germany.

The Arc Process.

The arc process was the first commercial process to be developed for the fixation of nitrogen. It is now installed in southern Norway, employing 250,000 kilowatts of electricity developed from the cheapest large installation of hydroelectric power in the world. This is the only large installation of the arc process, but small installations of an experimental nature have been made in other countries.

By the arc process nitric acid is produced by the direct combination of the oxygen and the nitrogen of the air to form a dilute gaseous mixture of nitric oxides with air. The nitric oxide is converted into nitric dioxide and is absorbed in water in immense granite towers to form nitric acid. The method is one of the most inefficient known as regards production in relation to power consumed. Nevertheless, on account of the very cheap horsepower available in Norway and the fact that the raw materials cost nothing and are always at hand, nitric acid can there be produced by the arc process at a cost less than by any other commercial process.

Incidental to the production of nitric acid, a large excess of heat is developed, which can be, and is in part, converted into steam, which may be, and is, used for concentrating the weak nitric acid obtained in the absorption towers to the strong acid required for munition works. The excess of steam is so large that many other methods for its application have also been devised. As the labor costs also are low, when once under way the operation goes on almost automatically. As the formation of nitric acid is direct and involves only the nitrogen and oxygen of the air and water as raw materials, no complicated processes involving intermediate products are necessary, as is more or less the case with all other processes.

In spite of these manifest advantages, however, it appears to be the general opinion of the European engineers with whom I came in contact that even with the cheap horsepower enjoyed by the Norwegian plants, they might have had to discontinue their operations except for the stimulus given by the present European war. Even as it is, the Norsk Hydro Co., operating the arc plants at Notodden and Rjukan, has been obliged to install large ammonia-producing plants in order that they might convert their nitric acid to ammonium nitrate and thus render it transportable to markets where it was needed.

The cost of horsepower used for the production of nitric acid in Norway is less than $5 per horsepower-year. The best estimates in my possession indicate that with horsepower at $10 per horsepower-year, the cost of finished strong nitric acid at the plant would be as cheap as by any other process now in operation. However, the low cost of producing nitric acid by the arc process is outweighed by so many other disadvantages that, in my opinion, the process is entirely inapplicable to the uses of the United States Government, and this opinion appears to be shared by all who have given careful thought to the subject. The cost of installing the arc process is high and it involves the use of an amount of horsepower that seemingly is not available on the American continent within reach of the points where the nitric acid would have to be used.

Nitric acid is not economically transportable. As strong nitric acid it can be transported only if tank cars made of aluminum can be obtained, and aluminum is a metal that, for this purpose, has many disadvantages besides cost. The nitric acid might be transported mixed with sulfuric acid in iron tank cars, but this involves the erection of large sulphuric-acid factories near to the nitric-acid plant and a large addition in freight rates. Freight rates on such nitric acid as is transported are very high and must always remain high on account of the dangers involved.

Nitric acid does not readily lend itself to the production of fertilizer material, although it may be neutralized with lime to form calcium nitrate or with ammonia to form ammonium nitrate—both of which may be transported and either of which might be used as a fertilizer. However, calcium nitrate and ammonium nitrate are not applicable to the manufacture of the mixed fertilizers that are demanded by the American farmers.

The great difficulty that has faced the Norwegian plants from the beginning, namely, a market for their products, would in peace times be a serious obstacle to the operation of a large arc plant in the United States. An arc plant at its best involves the use of 2.33 horsepower-years per ton of weak nitric acid. This means that a water-power development of at least 50,000 horsepower would be necessary for the peace requirements of the Government, and a development of 440,000 horsepower would be required for war purposes. These figures are minimum figures on the basis of the relatively high efficiency reached in Norway. No installation should be considered by the Government of less than 75,000 horsepower for peace requirements or 550,000 horsepower for war requirements. If the arc process is to be used it would also be advisable to arrange for the production of explosives at the point where the arc plant was located. This would of course involve the transportation of all other raw materials needed, such as benzol, toluol, alcohol, acetone, glycerine, sulphuric acid, cotton, and other materials too numerous to mention, to the plant and the transportation of the finished explosives therefrom to the place of consumption. As these materials are highly combustible and for the most part carry high freight rates, it has been found necessary the world over to locate the plants intended for the production of munitions near to the point where the munitions are likely to be consumed.

An arc plant of sufficient size to meet the requirements of the Government in time of war would probably have to remain idle for the main part during times of peace, owing to the difficulty of disposing of the nitric acid that the plant would produce if in operation. On account of the large amount of horsepower required and the consequent extent of the necessary plant and power-absorption capacity, the cost of installing an arc plant to meet the war-time requirements of the Government would be several times the total appropriation made for the purpose by Congress.

ADVANTAGES.

1. Cheapest cost of nitric acid[1] if power can be obtained at $10 per horsepower-year or less, and if the power is efficiently utilized in a large plant run continuously to capacity.

2. Large amount of waste heat available for producing steam for the concentration of nitric acid and for other purposes.

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[1] This does not mean that it is the cheapest form of combined nitrogen for fertilizer purposes.

3. Free raw material.

4. Direct production of nitric acid without intermediate products.

5. Small amount of labor involved.

DISADVANTAGES.

1. Large amount of horsepower required per ton of nitric acid—at least 500,000 horsepower for the Government requirements.

2. Greater dilution of nitric acid when first produced—30 to 35 per cent acid as against 50 to 55 per cent acid by other processes.

3. Large cost of installation both for horsepower and for plant—probably four times the present Government appropriation to meet the Government's wartime requirements.

4. Three-fourths of plant probably idle in time of peace, with consequent large idle investment involved.

5. Nontransportability of the nitric acid produced.

6. Difficulties of disposing of the nitric acid not needed for munitions.

Haber Process.

The Haber process is the chief process now used in Germany for the production of ammonia. Ammonia may be oxidized to nitric acid. The process has grown very rapidly in the last three years. It was first commercially installed in Germany in 1913 with a plant capacity of 30,000 tons of ammonium sulphate. Seemingly, it actually produced in that year some 20,000 tons of ammonium sulphate. This grew to 60,000 tons in 1914, 150,000 tons in 1915, and 300,000 tons in 1916, and it is authoritatively stated that with new works now under construction by the Badische Co., the 1917 output of ammonia by the Haber process will be equivalent to over 500,000 tons of ammonium sulphate.

The Badische Co., which owns the Haber plants and process, has developed the industry without Government aid other than the sale of its product, and appears to be very certain as to the ability of this process to compete, when the war is over, with all other processes for the fixation of nitrogen and also with Chile saltpeter in the fertilizer markets. On the other hand, the cyanamid industry in Germany has been developed during the war with the aid of Government subsidies. The Badische Co. had developed in Germany an arc process known as the Schoenherr process, which is a close competitor of the Birkeland-Eyde process developed in Norway. The Badische Co. and the Norsk Hydro Co. pooled their interests and the Schoenherr process was installed, together with the Birkeland-Eyde process, at Rjukan Norway. The two are now working together side by side in Rjukan, and are owned by the Norsk Hydro Co.—the Badische Co. having sold their interests in the arc process as soon as they had developed the Haber process.

By the Haber process, nitrogen from the air and hydrogen obtained from water are directly combined to form ammonia under the influence of finely divided iron. The production and purification of hydrogen made either by the reducing action of coal or iron upon steam involves one of the chief items of cost in the Haber process. The fact that the combination of nitrogen and hydrogen takes place at temperatures above 500° C. and at pressures of 125 to 150 atmospheres involves some danger and many other technical difficulties which have, however, seemingly been overcome in Germany. The technical control of the Haber process is of such great importance and requires so high a degree of training and skill that it is reported if the Badische people were to lose their present technical staff of experts, familiar with the process, many months would be required to train another staff capable of applying the process in practice.

The Haber process is not at present in use outside of Germany on account of the lack of detailed information regarding plant construction and operation and also owing to the very large royalty demanded by the Badische Co. for its use by other concerns. It is, however, more than probable that the Badische Co. will itself install and develop the process outside of Germany when the war is ended.

Trustworthy information regarding the costs of production of ammonia by the Haber process indicates that pure anhydrous ammonia can be produced in liquid condition for a cost slightly less than 4 cents per pound. It is improbable that any arangement could be made for the United States Government to use the Haber process pending the conclusion of the European war. It is probable that when the war is ended the Haber process will be installed or will be available for installation in the United States. It is the cheapest process for the production of synthetic ammonia. It is independent of cheap power—the power being a small fraction of its cost. If desirable, it could be readily installed in moderate sized units in connection with ammonia oxidizing plants at any munitions plant.

ADVANTAGES.

1. Cheap ammonia.
2. Ammonia in water-free liquid condition ready for immediate oxidation without purification.
3. Availability of raw material (air, water, and coal).

4. Possibility of erecting comparatively small plants wherever needed.

5. Easy availability of product for transportation and for fertilizer.

DISADVANTAGES.

1. Inability to procure technical details, use of method, and trained technical force without the assistance of the Badische Co., except as the result of many months and probably years of experimentation. This is largely owing to the difficult engineering problems involved in the use of pressures as high as 150 atmospheres and temperatures of 500° to 600° C.

2. High repair and renewal costs.

3. Undoubtedly high royalty that would be demanded if the Government were to install and operate this process itself. Inability to come to terms with the Badische Co. as to the use of its patents is reported to have been the sole reason for the non-adoption of this method by two large American corporations and one Norwegian corporation.

4. Patents and processes controlled in America by one corporation.

Cyanamid Process.

The cyanamid process has been developed in many parts of Europe, but in the Western Hemisphere only at Niagara Falls, Ontario, Canada. It requires cheap power for its successful operation and has obtained its greatest development owing to the fact that it requires only about one-fifth the horsepower per ton of fixed nitrogen per year that is required by the arc process. In other words, from a definite horsepower installation the cyanamid process produces about five times the amount of combined nitrogen that is produced by means of the arc process.

The raw materials required are coal for lime burning, anthracite coal or coke for the production of calcium carbide, limestone essentially free from magnesia, fluorspar, and nitrogen obtained from liquid air. The process involves:

First, the production of calcium carbide in a large electric furnace from lime and coke or anthracite coal.

Second, the fine grinding of this calcium carbide out of contact with air, and the heating of a portion of the ground mass to a red heat to start the absorption of the nitrogen which is then added, as long as it is taken up by the carbide, to form cyanamid. The cyanamid is in turn ground and given a special treatment to remove acetylene gas in order to avoid explosions later. The cyanamid, mixed with sodium carbonate and lime, is then treated with steam in large autoclaves to convert the nitrogen of the cyanamid into ammonia gas. The process will thus be seen to involve a number of steps and to be somewhat complicated.

$$CaO+3C=CaC_2+CO$$
$$CaC_2+N_2=CaCN_2+C$$
$$CaCN_2+3H_2O=2NH_3+CaCO_3$$

The cost of ammonia from cyanamid, with power at $8 per horsepower-year in a plant to be constructed by the Government, would cost 1 to 2 cents per pound more than by the Haber process. On the other hand, royalties for using the cyanamid process would undoubtedly be less. The technical problems involved are understood by many engineers both in this country and abroad, the manufacture of calcium carbide and cyanamid being established in many plants, and the basic patents having only some four years more to run. Peculiarly favorable conditions exist for its installation in certain sections of the South. If a hydroelectric plant is to be installed by the United States Government, and the electrical power so developed must be used for the fixation of nitrogen, the cyanamid process has advantages over all other processes now developed and should be adopted as the best means of utilizing hydroelectric power for the fixation of nitrogen.

In Germany in 1913 there were produced 30,000 tons of cyanamid. The growth has not been so rapid as in the case of the Haber process, although the process has been subsidized by the German Government to assist in its development. However, the 1917 German production will be not far from 400,000 tons. The cyanamid interests in Germany have also endeavored to induce the German Government to establish a nitrogen monopoly which will insure the continuation of the cyanamid industry in Germany in competition with the Haber process and ammonium sulphate from coke ovens after the war. The German nitrate monopoly has not been established by the Reichstag chiefly owing to the opposition of the owners of the Haber patents.

Ground cyanamid is a very dusty, disagreeable product and in order to be used for fertilizer has to be treated with oil or by a special granulating process that controls the dust and enables the material to be more successfully used as a fertilizer. Cyanamid should be, and probably is, an excellent fertilizer if applied directly to the soil. It has not, however, found favor with American fertilizer manufacturers and is not well suited as an addition to the mixed fertilizer demanded by American farmers. It is, however, successfully used in Europe, where much cheaper labor enables the farmer to spread his fertilizer, if desirable, one constituent at a time. To meet the Government's requirements of 20,000 tons and 180,000 tons of nitric acid, through the medium of cyanamid, would require the continuous use of 11,000 horsepower and 99,000 horsepower, respectively.

If cyanamid is to be converted into the most popular form of fertilizer material, namely, ammonium sulphate, it would cost, approximately, 1 cent per pound to convert the nitrogen present into the form of ammonia before it could be absorbed to form sulphate. It is the necessity of converting the combined nitrogen into ammonia, if the cyanamid process is used as a source of nitric acid, that makes up a considerable portion of the difference in cost between cyanamid ammonia and Haber ammonia.

ADVANTAGES.

1. Most available method if hydroelectric power is to be used.
2. Moderate horsepower requirements.
3. Ready transportability.
4. Product salable in time of peace for fertilizer.

DISADVANTAGES.

1. Number of operations and plant installations required to produce nitric acid, viz, carbide, cyanamid, ammonia from cyanamid, ammonia oxidation, and nitric acid concentration.
2. Patents and processes controlled in America by one corporation.
3. Process an extremely dusty and disagreeable one, involving unpleasant conditions, if not hardships, on the labor.
4. Large labor factor involved.
5. Comparatively high cost.

By-Product Ammonia.

The nitrogen stored up through the medium of plant life of past ages as a constituent of bituminous coal is in part recovered as ammonia when bituminous coal is converted in by-product ovens into coke. This source of ammonia is to-day the chief source of combined nitrogen in all countries, including Germany. Ammonia produced by the destructive distillation of coal when pure is the same as any other ammonia and can be readily oxidized to nitric acid.

The recovery and utilization of ammonia in by-product coal has been recognized by economists for decades to be one of the most important developments for conserving the wealth of the Nation. In Germany two-fifths of the coal used is carbonized in by-product coke ovens, and all of the coke produced is produced in plants fitted for the recovery of by-products, including ammonia. In this country less than one-tenth of the bituminous coal burned is coked in by-product ovens. Of the coke produced in America, over one-half is still produced in bee-hive ovens in which the gas, ammonia, and all other by-products are ruthlessly destroyed. There has been nevertheless a rapid increase in the installation and operation of by-product ovens and an increase in ammonia production that would not have been thought possible two years ago. By the end of the present year we will be producing at least 115,000 tons of ammonia per annum—an equivalent of 450,000 tons of ammonium sulphate. Six thousand tons of this ammonia in time of peace, or 55,000 tons in time of war, would meet the Nations' requirements of nitric acid for military purposes, as estimated by the War Department. The growth of our ammonia production from by-product coke has been extremely rapid and is still on the increase. More than fifty million dollars worth of by-product coke ovens have been contracted for within the past 12 or 13 months and are now completed or in process of erection.

The installation of the by-product coke process means a larger supply not only of ammonia but also of benzoltoluol, phenol, naphthalene, and other products absolutely essential for munitions purposes and required in time of peace for our present and future dyestuffs industry. Benzol, toluol, and phenol are only secondary in importance to an ample supply of nitric acid for war purposes.

The use of the by-product coke process also means the production of large quantities of gas for power purposes. Indeed, if the destructive distillation of coal is conducted in special producer-gas ovens the output of ammonia can be increased five to six fold, and power comparable with cheap hydroelectric power can be obtained at the same time. This method is now utilized in Germany on an immense scale for producing cheap power and increased ammonia output.

That bituminus coal used should be treated in by-product ovens is recognized the world over. It is becoming increasingly practicable to do this, and the consumption of coke for domestic purposes as well as for the production of iron and steel is rapidly increasing. The general use of coke instead of coal throughout the country would do away with the smoke nuisance and all of its concomitant loss to property. It would produce, besides other by-products, approximately 1,000,000 tons of ammonia in this country alone. The day is far off before this highly desirable result will be reached, but it should none the less be striven for. Already legislation abroad requires the use of coke instead of bituminous coal for certain industrial purposes. By-product coke ovens, however, can not be installed by the United States Government for the purpose of producing ammonia. The ammonia should be simply a by-product incidental to the production of coke for industrial purposes. Under war conditions, however, the output of ammonia from by-product coke ovens could, by Government regulation, be greatly increased. This has been accomplished in Germany, the by-product coke ovens furnishing Germany to-day with over one-third of the nitrogen consumed in that country. Germany has had an increase from 100,000 tons to 154,000 tons of nitrogen from this source since the war began. The possibilities for an increase in America are much greater than in Germany.

Ammonia from by-product ovens has to be purified before it can be oxidized for nitric acid. The cost of purification is, however, very small and, where purification apparatus is installed at the original ammonia absorption plant, adds but a small fraction of a cent a pound to the cost of crude ammonia liquor.

The use of by-product ammonia for the production of nitric acid for munitions purposes has the great advantage that it is already available and that the plants, being situated in numerous parts of the country, could furnish ammonia to several small oxidizing plants. Accordingly, the country's source of munitions supply would not be at any one place and subject to capture and destruction.

The use of by-product ammonia has the great disadvantage that the present selling price of ammonia from by-product coke is high and, unless considerable price concessions could be obtained by the Government, it could not afford to utilize this source of raw material for nitric acid. The actual cost of pure ammonia, considered as a by-product from the coking of bituminous coal, is much less than by any other method now producing this substance.

CYANIDE PROCESS.

The cyanide process is not yet a commercial success and for that reason alone perhaps should not be included here. It has, however, such possibilities that I feel called upon to discuss it.

From a chemist's standpoint the process is to-day a success. There is no difficulty whatever in the chemical reactions. When sodium carbonate, ground coke, or carbon in any form in contact with finely divided iron are heated to redness and nitrogen or even air passed through the mass, nitrogen in quantity is fixed as sodium cyanide. The reaction takes place readily. No power factor of any consequence is involved and it appears certain that if the mechanical difficulties are solved, nitrogen will be fixed in this form cheaper than by any other known synthetic process.

There are also large quantities of waste nitrogen available in connection with the sodium carbonate plants of the country where the sodium carbonate required would also be available, and there are large amounts of nitrogen that could be obtained without cost in a sufficiently pure condition at the wood-pulp plants using the sulfite process.

When the sodium cyanide is once formed it can be readily converted into ammonia as is the case with cyanamid, but the process has the advantage that in the conversion the sodium carbonate can be recovered to be used over again. The iron can also be repeatedly used in the process. Small installations are now working successfully in the country, but the mechanical difficulties of production on a large scale are yet to be solved. Four large American corporations are engaged on the problem with ample funds for its solution.

The process has the further advantage that it would also make cheaply available cyanide which is so greatly needed by our mining industries.

NITRIC ACID FROM AMMONIA.

All processes for the synthetic production of nitric acid, except the arc process, involve the oxidation of ammonia. The processes commercially in use involve the direct oxidation of ammonia gas in the presence of air in contact with metallic platinum. In Germany, according to the latest published figures, approximately 100,000 tons of nitric acid are annually produced through the Frank Caro process, which involves passing mixtures of ammonia and air through electrically heated platinum nets of 80 to 100 mesh. The platinum is heated to a dull red heat and serves as a catalytic agent under whose influence the ammonia, instead of burning to nitrogen and water, as normally would be the case, causes the nitrogen to form nitric oxide.

In the Kaiser process, also used in Germany, the air is heated before its mixture with the ammonia, and under these conditions it is claimed that no electric heating of the platinum net is necessary. The Kaiser process does not appear to have reached any large commercial development.

The Landis process, installed in a small experimental plant at Warners, N. J., passes the gas downward through the net instead of upward, as is customary in the Frank Caro process, and, according to the Landis patents, cools the gases before they are allowed to come in contact with the net instead of heating them as is done in the Kaiser process. The platinum net process is also understood to be installed in a small plant in Long Island City and is being installed in Syracuse, N. Y., by the Semet-Solvay Co., in cooperation with the Bureau of Mines.

The Ostwald-Barton process first developed at Villevord, Belgium, and brought there to a commercial success at the time of the opening of the war, is now installed in two large plants—one at Angouleme, France, and the other at Dagenham, England.

The principle of the process is essentially that originally patented by Ostwald, but the catalyzer is disinctly different from that used by him although it consists of metallic platinum. The details of the preparation of this catalyzer are kept secret, but it is known to have a very small cross section and is placed at the end of a 60-millimeter tube so that the products of combustion passing through the tube heat the mixed ammonia and air by radiation as they approach the catalyzer. By this means no external heat is necessary.

The reaction when once started continues without interruption for weeks. It is simply necessary, by means of blowers, to force the mixture of ammonia and air through the catalyzer.

The present commercial efficiency and output by the Ostwald-Barton process is higher than by any other concerning which exact figures have been obtained. It is higher than the published figures for the Frank Caro process, but as figures for that process have been published only on a minimum basis, it is impossible to state whether as high an efficiency of conversion and capacity of catalyzer has been reached by that process as by the Ostwald-Barton.

The processes for the oxidation of ammonia are seemingly free from any complicated patent situation. The Europeans engaged in ammonia oxidation admit freely that they have no important patent rights to sell, but they claim that they have plans, specifications, and details of processes, the purchase of which would be cheaper than the necessary experimentation to work out the details.

By the oxidation of ammonia, nitric oxide gases are obtained of much higher concentration than those produced by the arc process. Accordingly, much less tower space is necessary for their absorption and much stronger acids can be directly obtained by concentration. Although in the arc process the concentration of 30 to 35 per cent nitric acid to strong acid is required, in the oxidation process on acid of 50 to 55 per cent strength is easily obtained directly from the towers, and the concentration thereof is accordingly a simpler matter.

OXIDATION OF AMMONIA IN SOLUTION.

A method has been developed in Sweden, details of which are unknown, for the oxidation of ammonia or cyanamid direct to ammonium nitrate in solution. The ammonium nitrate can then be easily concentrated by evaporation and can be converted to nitric acid if desired. The process seems worthy of very careful consideration and will be in commercial operation this coming summer—a plant being now in process of erection near Gothenburg, Sweden. A second and much larger plant is also being erected near Berlin, Germany.

As cyanamid is not necessarily converted into ammonia, as any form of ammonia, such as Haber or coal-tar ammonia, can be directly used, and as no heating of any kind is required, it is claimed that this process will produce ammonium nitrate much cheaper than any other. It is particularly important because nitrate itself is becoming one of the most important of all explosives, and the many complicated reactions necessary for its manufacture would be avoided if this process becomes a commercial success, as the engineers engaged in its exploitation confidently expect. The fact that the German engineers have seen fit to install a large plant near Berlin speaks well for the probability of its successful application.

The Nitrogen Situation.

Without going into full details of the nitrogen situation in this preliminary report, a short summary of some of its most important features appears to be desirable. The subject will be treated at greater length and with definite data in the final report.

The present conditions are, of course, abnormal. Importations of sodium nitrate into Germany have been entirely cut off, and Germany consumed a large fraction of the output of the Chile mines before the war. The importations of sodium nitrate into the United States have doubled, owing to the tremendous amount of munitions being manufactured for export. The importations of sodium nitrate into the allied countries have also greatly increased, owing to war demands. The production of synthetic nitrogen in Germany and the increase in the production of by-product nitrogen in Germany have much more than offset the lack of Chilean importations. The following summary of conditions in Germany, taken from the Frankfurter Handelsblatt of May 29, 1916, is significant.

German consumption of nitrogen, 1915.

	Metric tons.	
Sulphate of ammonia, 460,000 tons, equals	92,000	Nitrogen.
Norwegian nitrate of lime, 35,000 tons, equals	4,500	
Cyanamid, 30,000 tons, equals	6,000	
Ammonia—Haber process, 20,000 tons, equals	4,000	
Total	106,500	

	Metric tons
Plus nitrate of soda, 750,000 tons	116,000
Grand total	222,500
Grand total in tons of 2,000 pounds	245,000

German production of nitrogen, 1917.

	Metric tons
Sulphate of ammonia, 700,000 tons	140,000
Norwegian nitrate of lime	None.
Cyanamid, 400,000 tons	80,000
Ammonia—Haber process, 500,000 tons	100,000
Total	320,000
Total in tons of 2,000 pounds	352,000
Nitrate of soda	None.

In spite of having more than half of her nitrogen supplies cut off by the war, Germany has greatly increased her nitrogen output, increasing her own production of nitrate resources from 116,000 short tons to 352,000 short tons of nitrogen. This has been made necessary not simply or chiefly for war munitions but largely for agricultural needs, Germany's population being dependent now on its own food supplies which in turn are greatly increased by nitrogenous fertilizer.

Conditions in the United States in case of a war which cuts us off from foreign countries would be far different. We are a food-exporting country and the larger part of our fertilizer is used on the cotton crop, the growth and exportation of which would be greatly curtailed. A comparatively small part of our fertilizer requirements are used on food crops, and being a food and cotton exporting Nation our nitrogen requirements for agricultural purposes would largely decrease instead of increase. Even in the case of the present war, which has increased foodstuffs exportation but decreased cotton production, the fertilizer consumption of the country has decreased rather than increased. This would be much more the case if our people were cut off entirely from food and cotton exportation.

In view of the fact that Germany has invested millions of dollars in synthetic nitrogen plants which will continue to produce synthetic nitrogen after the war; that Germany is producing more than twice the amount of combined nitrogen that she formerly imported in the form of Chilean saltpeter; that accordingly the German market for Chilean saltpeter will be essentially nonexistent after the war; that the present large American and allied consumption for munitions will cease; and that during the war the American production of ammonia from by-product coke ovens has increased to a point in excess of our apparent normal consumption, it seems certain that the price of combined nitrogen for industrial and agricultural purposes must greatly decrease when the war is over. This, I think, is recognized and expected by all of those engaged in the production of combined nitrogen.

In view of the facts above enumerated, it is evident at once that the peace-time requirements of the

Government for nitric acid could be supplied from coal-tar ammonia with little effect on the market for the material and practically no effect on the country's nitrogen resources. It seems equally certain that in the case of such a war by-product ammonia could furnish 180,000 tons of nitric acid per year for at least one or two years without seriously affecting the Nation's agriculture. This is particularly important when it is remembered that over 60 per cent of the nitrogenous material used in fertilizer, consisting of organic nitrogen from cottonseed meal, tankage, dried blood, etc., would not be decreased at all but would rather be increased through the cutting off of exports of cottonseed meal.

Furthermore, it is well known that several of our largest corporations are engaged in active plans for installing synthetic nitrogen plants of various kinds to meet their own industrial requirements and that in all probability the Haber process will enter into active industrial competition for our ammonia markets in American plants as soon as the war is over. Plants for the oxidation of ammonia can be quickly erected in crude form as they were erected and utilized in Germany, should the need arise.

I accordingly feel that no serious emergency problem confronts the United States that could not be met with reasonable celerity in time of war, and that our first problem, after securing a reasonable reserve of Chilean saltpeter, is to familiarize ourselves with the most efficient method for the oxidation of ammonia and to train the necessary men to construct and operate ammonia oxidation plants.

COST OF NITRIC ACID.

The cost of nitric acid, per se, whether as weak nitric acid or as concentrated nitric acid, is lowest by the arc process with hydroelectric power delivered to the furnace at a cost of $10 per horsepower-year, or less. The difficulties of its transportation, the large amount of power required, and other economic reasons, as already explained, make the arc process inapplicable to American conditions.

The cost of nitric acid obtained by the oxidation of pure ammonia is independent of the source of the ammonia and must therefore depend upon the cost of ammonia gas in the gas holders ready to be passed to the oxidizing apparatus.

COST OF AMMONIA.

The cost of ammonia has at the present time no relation to its selling price. The actual cost of collecting, absorbing, and purifying ammonia from the gases developed by the destructive distillation of bituminous coal—in other words, the cost of ammonia considered as a by-product is less than by any other process. The selling price of by-product ammonia is entirely a question of competition with other nitrogenous products and has been fixed in the past almost wholly by the market price of sodium nitrate with which it enters into competition. Even should ammonia be placed on the market by the Haber process at a price as low as 4 cents per pound, by-product ammonia will still be sold in competition therewith at a profit to the producer. Its cost price is largely a matter of bookkeeping. Its selling price will in the future as in the past depend upon the competition of other sources of combined nitrogen. The Haber process can produce and is producing ammonia synthetically cheaper than any other synthetic process now industrially applied. The cyanamid process stands next in order.

If mechanical difficulties now confronting the cyanide process are solved, it will produce ammonia cheaper than either the Haber or the cyanamid process and in close competition with the actual costs of saving by-product ammonia. The details of costs by all of the above methods will be considered in the final report.

SUMMARY OF CONCLUSIONS.

I. The Government should obtain its nitric acid by the oxidation of ammonia. It should begin the erection of an ammonia-oxidation plant of moderate capacity at an early date in order to train men and obtain experience in the most efficient method of procedure.

II. The Government should proceed slowly in the matter of the erection of plants for the production of ammonia, as developments in the cyanide process and the availability of the Haber process may render valueless within a short time any large expenditure for the production of cyanamid. This is doubly true in view of the fact that present appropriations are not nearly sufficient to install water power and erect the nitrogen fixation plants necessary to meet the Government requirements as estimated by the Ordnance Department.

The adoption of the above procedure involves:

1. Purchase by the Government of a reserve supply of sodium nitrate of at least 200,000 tons.

2. The purchase of ammonia on the open market.

3. The reservation of a supply of platinum. As platinum is an essential for the oxidation of ammonia and of the utmost importance in the production of sulfuric acid and other supplies required for munitions; as there are no platinum reserves in the United States save a small amount obtained in the electrolytic purification of copper, gold, and silver ores; and as platinum is one of the precious metals with a value above that of gold, I especially recommend that legislation be asked which will conserve the platinum obtained each year by the United States mints, putting

it in the vaults if necessary and issuing Treasury notes against it as in the case of gold. Platinum would then be available for immediate use in case of need for the production of nitric acid by the oxidation of ammonia and for the production of sulfuric acid so important in case of war. This platinum would be available without cost to the Government and could, if desired, be used as a reserve for circulation, because even if applied to the purposes above mentioned there would be comparatively little actual loss of the metal itself.

4. The construction of a hydroelectric plant only if the arc or cyanamid process is to be used. The oxidation of ammonia requires very little power and the Haber, cyanide, and by-product ammonia processes are all independent of cheap power cost. The development of water power, however, can not but be of benefit to the country even if it is not used for the fixation of nitrogen.

I seriously doubt whether hydroelectric power will be necessary or desirable three years from now for the most efficient process of fixing nitrogen, and accordingly I deem it unwise to install such hydroelectric power at great cost with the sole purpose of producing nitrogen. If, however, such water power can be utilized by the Government in the production of certain ferro alloys absolutely essential for ordnance and other munitions; can be sold to commercial companies who will take upon themselves the financial risk involved in the erection of plants for nitrogen fixation, under guarantee of cheap ammonia to the Government; or can be sold during peace times to companies requiring power for purposes which would allow instant requisition of the power by the Government in time of war without handicapping the supplies of other needed war material, the development of such hydroelectric power would be highly desirable.

REPORT ON THE NITROGEN INDUSTRY.

By CHARLES L. PARSONS, Chief Chemist.

BUREAU OF MINES, DEPARTMENT OF THE INTERIOR,
April 30, 1917.

Brig. Gen. WILLIAM CROZIER,
Chief of Ordnance, War Department.

SIR: In my preliminary report of January 27 I recommended:

I. That the Government should obtain its nitric acid by the oxidation of ammonia and should shortly begin the erection of an ammonia oxidation plant of moderate capacity to train men and to obtain experience in the most efficient method of procedure.

II. That the Government should proceed slowly in the matter of the erection of plants for the production of ammonia, as "development in the cyanide process and the availability of the Haber process may render valueless within a short time any large expenditure for the production of cyanamid."

In connection with these recommendations, I further recommended that the Government purchase a reserve supply of sodium nitrate of at least 200,000 tons, and that arrangements be made for the reservation of a supply of platinum. These last two recommendations have already been adopted and are progressing toward fulfillment.

A small plant for the oxidation of ammonia erected at Syracuse, N. Y., is progressing successfully; another experimental oxidation plant at Laurel Hill, L. I., has developed other new features. At Syracuse, two new forms of apparatus for the oxidation of ammonia are now being tried out—one of which, if successful, will do away entirely with the use of platinum in the production of nitric acid. Whether or not this will be accomplished is doubtful, but desirable.

The main point is that the preliminary arrangement for the plant for the exidation of ammonia is progressing rapidly and satisfactorily.

At the time my preliminary report was written, I felt even more confidently than I was willing to express that the Haber process and cyanide process would be shortly available for the use of this country and would largely, if not entirely, displace the arc and cyanamid processes, which require large electrical development and a correspondingly large expenditure.

Development has been rapid during the last two months. A synthetic ammonia process and a cyanide process have now reached a state of development where I am prepared to recommend definite action by the Government.

General Chemical Company Process.

During the past four years, the General Chemical Co., working on the basis that it should be possible to develop conditions under which the synthetic production of ammonia by the direct combination of nitrogen and hydrogen should take place at lower pressures than those deemed necessary by the Haber patents has achieved success. This process has been in successful operation on a large experimental scale with several small units for ammonia production and one unit larger than those supposed to be used in Germany.

The General Chemical Co. has also developed and brought to a commercial basis the production of a mixture of nitrogen and hydrogen from coke, air, and water which will yield hydrogen at a cost lower than heretofore obtained in this country and probably lower than that obtained in Germany.

Complete engineering plans have been prepared and bids obtained on the main items of construction so that the erection of a plant for the synthetic production of ammonia can be proceeded with without delay. The company itself would have already had a plant in operation save for the present high construction costs and other difficulties incident to operations at the present time.

The General Chemical Co. feels that, so far as its own relations to the nitrogen industry are concerned, sound business policy would call for delay in the construction of a plant until the war is over. Many of the difficulties facing the General Chemical Co., however, do not apply to the Government, such as inability to secure the raw material and quick mechanical construction.

For some months I have known that the General Chemical Co. was working on this synthetic ammonia process, but only recently has it been possible to obtain detailed information. The outbreak of the war convinced the officials of the General Chemical Co., headed by Dr. William H. Nichols, chairman of the board of directors, that they should place at the disposal of the Government the results of their investigations. Accordingly, when the Bureau of Mines requested information regarding the present status of their operations, a preliminary conference was arranged in Washington on April 4. As a result of the information then obtained, arrangements were made for a meeting in your office with representatives of the General Chemical Co. on April 14.

After this conference Dr. Nichols offered the free use of the process devised by the General Chemical Co. to the Government and the full help of the General Chemical Co. in installing and operating the process. Arrangements were made for a visit to the experimental plant of the General Chemical Co. and for a further conference in New York.

On April 20 Col. C. B. Wheeler, Col. C. C. Keller, Dr. A. A. Noyes, and myself visited the plant and saw it in operation. On the same day a meeting was held at the office of the General Chemical Co., at which the plans for the proposed plant were exhibited and a proposed agreement between the General Chemical Co. and the Government handed to me for delivery to you. The original of this offer is now in your hands and a copy is attached hereto. Estimates on construction and on operation were also submitted.

These estimates are presented in detail under the promise, however, that they would be carefully guarded. Detailed estimates are attached both for a plant of 60,000 pounds of ammonia per day and for a smaller plant of 15,000 pounds per day.

It is estimated—I believe conservatively—that even under present conditions a 30 ton per day plant can be built for an expenditure of $3,000,000 and can be operated at a cost of not to exceed 4 cents per pound of ammonia produced, allowing $5 per ton of product for repairs and 12½ per cent of the cost of the plant for interest and depreciation. It is believed that the charges for repairs, interest, and depreciation are excessive as, together, they comprise more than 50 per cent of the total cost of the ammonia production. In the estimates $3 per ton of product is allowed for general expenses and overhead charges.

It is estimated that a smaller plant of at least 7½ tons per day capacity can be built at the present time for approximately $1,100,000, including land and buildings. Such a plant would yield 2,700 tons of ammonia per year—equivalent to 8,700 tons of 96 per cent nitric acid, assuming 85 per cent recovery. Such a plant would require about 500 horsepower.

After examining the process in some detail and giving great weight to the standing of the General Chemical Co. and to the statements of its officers and engineers—than whom there are none better fitted to judge of the situation—I recommend the following:

That an initial plant to produce 60,000 pounds of ammonia per day be immediately constructed.

To this end I recommend:

1. That the War Department set aside the sum of $3,500,000.

2. That an agreement with the General Chemical Co. be consummated whereby the process be accepted by the Government for its own use, together with the services of the requisite engineers already trained by the General Chemical Co. for use in construction; and

3. That an agreement be reached whereby a definite, or at least a maximum, royalty per ton of fixed nitrogen produced be paid to the General Chemical Co. if sold for nongovernment use.

4. That this initial plant be constructed at some point to be selected by the War Department in southwest Virginia, or adjoining territory in West Virginia, reasonably near to the sulphur, sulphuric acid, and coal supplies of that region and so situated near to plenty of good water that an ammonia oxidation plant and a powder plant may later be erected near-by.

CYANIDE PROCESS.

The cyanide process, too, has greatly developed in the last few months as anticipated in my preliminary report.

Since that report appeared the scientific details of the process have been published by Prof. J. E. Bucher in the Journal of Industrial and Engineering Chemistry, 9 (1917), 233. The president of the Nitrogen Products Co., Mr. Edward E. Arnold, who six months ago declined to go on record as to the future of the process, now unequivocally states that he considers the process a certain commercial success and a probable competitor with any other process for the production of fixed nitrogen.

The Nitrogen Products Co. is operating two experimental plants by the cyanide process—one at Saltville, Va., in a coal-fired furnace, and one at Niagara Falls in an electric furnace. Col. Wheeler, of the Ordnance Department, and Dr. J. K. Clement (on my behalf for the Bureau of Mines), visited the Saltville plant on April 6. Col. C. B. Wheeler, Col. C. C. Keller, Dr. A. A. Noyes, and myself visited the plant at Niagara in company with Mr. Arnold on Saturday, April 21.

Estimates of the cost of fixed nitrogen by the cyanide process presented for the use of the committee by the Nitrogen Products Co. are attached. At my request, Mr. Arnold, president of the company, also submitted a proposal for the use of the cyanide process by the Government. The offer made by the Nitrogen Products Co. is essentially the same as that made by the General Chemical Co.

The process is offered free to the Government for its own use to any extent, both in time of peace and in time of war.

After careful examination of this process, I am not convinced that it has yet reached a point where plant installation should begin, as I believe a few months experimentation will add greatly to the efficiency of the furnace proposed.

It is my belief, however, that the process will become an important factor in the world's nitrogen market; that it may become a strong competitor even of other processes on account of the simplicity of its operations and the low cost of plant construction; and that a furnace which I believe I see in embryo can be developed which will be much more efficient than either of those now used.

The process is so promising that I recommend:

1. That active experimentation on a large scale be conducted.

2. That a sum not to exceed $200,000 be set aside for this purpose.

With this amount available I feel confident that this process can be put upon a commercial basis; that it will become a real competitor in the production of ammonia for nitric acid and of nitrogenous material for fertilizer.

I believe this investigation should begin without delay and that as soon as practicable a small experimental plant be erected at Saltville, Va., where a large supply of nitrogen, soda, and coal is available. The present plant of the Nitrogen Products Co. can probably be utilized in connection therewith.

SUMMARY OF RECOMMENDATIONS.

I. That $3,500,000 be made available to build an initial plant which will produce 60,000 pounds of ammonia per day by the synthetic ammonia process, as offered by the General Chemical Co.

II. That the offer of the General Chemical Co. be accepted with some subsidiary arrangement whereby a maximum royalty per ton of nitrogen, when the product is to be used for commercial purposes, shall be inserted.

III. That the construction of the initial plant be started at once at some point to be selected by the War Department in southwest Virginia or adjoining territory in West Virginia, reasonably near to the sulphur, sulphuric acid, and coal supplies of that region. The plant should be so situated that it is near to plenty of good water and that the land is available for the later erection of an ammonia oxidation and nitric acid concentration plant. It should be so located that a powder plant may be later erected near-by.

IV. That a sum not to exceed $200,000 be set aside for active experimentation on a large scale on the cyanide process.

V. That experimentation on the cyanide process be conducted at Saltville, Va., where nitrogen, soda, and coal are available and where the present plant of the Nitrogen Products Co. may be studied and utilized.

ESTIMATES ON CONSTRUCTION AND OPERATING COSTS.

In order that the recomemndations made above may be considered in comparison with the older processes now operating on a large scale, I beg to submit herewith a table summarizing confidential data obtained from books of many companies bearing upon the cost of nitrogen production.

Data per ton of nitrogen by the arc, cyanamid, Haber, and General Chemical Co. processes.

	Arc.	Cyanamid.	Haber.	General Chemical.[1]
Product	35 per cent HNO_3.	NH_3	NH_3	NH_3
Power required	10.5	2.2	0.2	0.2.
Investment	[5] $1,410	[5] $440	$340	$300.
Operating costs [2]	$170	[6] 150	$119	$97.
Product	96 per cent HNO_3.	96 per cent HNO_3.	96 per cent HNO_3.	96 per cent HNO_3.
Power	10.8	2.3	0.3	0.3.
Investment [3]	$1,550	$670	$570	$530.
Operating costs [4]	$220	$270	$239	$217.

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[1] Estimates on General Chemical Co. process are based on present war time construction costs. All others on normal prices.

[2] Amortization for cyanamid as charged by operating companies. Amortization for Haber 20 per cent of plant cost for repairs, interest, depreciation. Amortization for arc and modified Haber 12½ per cent interest and depreciation. $5 per ton of product for repairs.

[3] Except for arc process, includes ammonia plant as given A, power additional, $10; oxidation and absorption, $140; concentration, $40; steam plant, $40.

[4] Except for arc process, includes ammonia costs as given; oxidation, $50; concentration, $70. No allowance made for unoxidized ammonia.

[5] Power plant investment reckoned at $100 per horsepower.

[6] Cyanamid production $122, ammonia from cyanamid $28, total $150.

DEFENDANT'S EXHIBIT No. 178.

General Chemical Co.,
New York, N. Y., June 5, 1917.

To the President:

The Committee on Nitrate Supply, under section 124 of the "Act for making a further and more effectual provision for national defense and for other purposes," has requested the General Chemical Co. to state the terms upon which said company would grant to the Government the right to use its processes, which have been exhibited to said committee, in the "production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers."

In compliance with said request the General Chemical Co. begs to submit the following tender:

The General Chemical Co. hereby places at the disposal of the President, for the purposes aforesaid, and grants to the Government of the United States the use of its nitrogen and hydrogen to form ammonia, and exemplified in one or more of its United States patents, Nos. 1,141,947 and 1,141,948, both of June 8, 1915; 1,143,363, of June 15, 1915; 1,151,537, of August 24, 1915, and 1,159,364, and 1,159,365, both of November 9, 1915; and such other patents as may hereafter be granted; and the recovery of such ammonia as liquefied ammonia or as a salt, such as ammonium chloride, sulphate, or nitrate, and, further, its process of catalytically converting ammonia and oxygen into nitric acid and of recovering such nitric acid as a strong acid or as a nitrate such as ammonium or sodium nitrate and on whose patentable features final action has not yet been taken, in so far only as the Government shall desire to use the same in its own works for the production of munitions of war and products useful in the manufacture of fertilizers, upon the following terms and conditions:

1. In so far as the Government shall see fit to employ said processes or apparatus, or any of them, in the manufacture of products to be used exclusively for munitions of war, no compensation by way of royalty or otherwise will be asked or received by the General Chemical Co.

2. In so far as the Government shall see fit to employ the said processes or apparatus, or any of them, in the manufacture of products to be used for fertilizers, the Government shall pay to the General Chemical Co. a royalty for such use. The royalty so to be paid shall be based upon the nitrogen contents of the material produced for fertilizer purposes and shall be at the rate of $5 for each ton of 2,000 pounds of fixed nitrogen in whatever form combined, and shall be payable quarterly, until the 9th day of November, 1932, and thereafter until the expiration of all patents involving any substantial feature of the process or apparatus.

3. The General Chemical Co. hereby places at the disposal of the President the entire services of those members of its staff under whose immediate supervision its said processes have been brought to the present stage of development, upon the sole condition that the Government shall assume and discharge all obligations which the company is now under with respect to the compensation of said employees, together with the necessary increase of their expense, so long as the Government shall avail itself of their services.

4. If this tender shall be accepted, the General Chemical Co. hereby undertakes forthwith to communicate to the designated experts for the Government all of its knowledge and discoveries pertaining to the said processes and apparatus, whether or not the same

shall be the subject of patents, and from time to time thereafter, so long as the Government shall continue the use of said processes, to communicate all further improvements promptly as they shall come to the knowledge of the company and without further charge for the use thereof, within and subject to the limitations before expressed. And reciprocally, it is understood that all modifications and improvements in the processes or apparatus, which the Government shall discover or employ, shall be at the disposal of the General Chemical Co. and its licensees, if any, for use in its or their own works, and that all such modifications and improvements shall be freely exhibited upon request to the representatives of the General Chemical Co.

5. It is understood that for all purposes of this agreement and generally so far as concerns the use of said processes, or any part thereof, by the Government, its agents or other parties claiming under it, it and they shall at all times acknowledge and recognize the General Chemical Co. as the sole owner of said processes and of the exclusive right to use the same subject only to the rights granted to the Government pursuant to this tender, and shall, so far as practicable, exclude the public from all works in which said processes shall be employed, and generally, shall use all reasonable means to preserve said rights unimpaired.

Respectfully submitted by the General Chemical Co.

W. H. NICHOLLS,
Chairman of the Board.
JNO. A. MARTIN,
Secretary.

Accepted on behalf of the President, July 14, 1917.

NEWTON D. BAKER.

DEFENDANT'S EXHIBITS Nos. 179 to 237, Inclusive.

U. S. Patents Produced by Dr. Charles L. Parsons.
(For copies of patents see Patent Exhibit Book.)

Group 1.

Manufacture and Purification of Hydrogen.

Exhibit No.	*Patent No.*	*Date*
179	1,196,101	Aug. 29, 1916
180	1,102,716	July 7, 1914
181	1,113,096	Oct. 6, 1914
182	1,113,097	Oct. 6. 1914
183	1,115,776	Nov. 3, 1914
184	1,126,371	Jan. 26, 1915
185	1,128,804	Feb. 16, 1915
186	1,133,087	Mar. 23, 1915
187	1,157,669	Oct. 26, 1915
188	1,200,805	Oct. 10, 1916
189	1,207,968	Dec. 12, 1916
190	1,286,650	Dec. 3, 1918
191	1,301,151	Apr. 22, 1919
192	1,330,772	Feb. 10, 1920

Group 2.

Catalysts for Ammonia Synthesis.

193	971,501	Sep. 27, 1910
194	999,025	July 25, 1911
195	1,053,951	Feb. 18, 1913
196	1,053,952	Feb 18, 1913
197	1,068,966	July 29, 1913
198	1,068,967	July 29, 1913
199	1,068,968	July 29, 1913
200	1,068,969	July 29, 1913
201	1,083,585	Jan. 6, 1914

Exhibit No.	*Patent No.*	*Date*
202	1,094,194	Apr. 21, 1914
203	1,118,628	Nov. 24, 1914
204	1,128,843	Feb. 16, 1915
205	1,148,570	Aug. 3, 1915
206	1,149,510	Aug. 10, 1915
207	1,152,930	Sept. 7, 1915
208	1,158,167	Oct. 26, 1915
209	1,225,755	May 15, 1917

GROUP 3.

PROCESSES FOR SYNTHESIS OF AMMONIA.

210	1,006,206	Oct. 17, 1911
211	1,202,995	Oct. 31, 1916
212	1,216,059	Feb. 13, 1917
213	1,243,382	Oct. 16, 1917
214	1,244,580	Oct. 30, 1917
215	1,386,760	Aug. 9, 1921

GROUP 4.

PATENTS ON ENGINEERING FEATURES OF PROCESS FOR SYNTHESIS OF AMMONIA.

216	1,075,085	Oct. 7, 1913
217	1,077,034	Oct. 28, 1913
218	1,086,130	Feb. 3, 1914
219	1,188,530	June 27, 1916

GROUP 5.

PATENTS ON OXYDATION OF AMMONIA.

220	1,094,182	Apr. 21, 1914
221	1,207,706	Dec. 12, 1916
222	1,207,707	Dec. 12, 1916
223	1,207,708	Dec 12, 1916
224	1,211,394	Jan. 9, 1917
225	1,379,387	May 24, 1921

GROUP 6.

PATENTS ON FERTILIZER AND OTHER METHODS OF UTILIZING AMMONIA.

Exhibit No.	*Patent No.*	*Date*
226	1,063,007	May 27, 1913
227	1,091,234	Mar. 24, 1914
228	1,106,919	Aug. 11, 1914
229	1,133,086	Mar. 23, 1915
230	1,173,550	Feb. 29, 1916
231	1,200,806	Oct. 10, 1916
232	1,211,393	Jan. 9, 1917
233	1,261,900	Apr. 9, 1918
234	1,274,503	Aug. 6, 1918
235	1,292,019	Jan. 21, 1919
236	1,369,383	Feb. 22, 1921
237	1,344,673	June 29 1920

DEFENDANT'S EXHIBIT No. 238.

French Text of Report to Chamber of Deputies, Twelfth Legislature Extraordinary Session, 1922, Re, Bill relating to the Approval and powers for granting an agreement for the purpose of manufacturing Synthetic Ammonia.

[French text not printed.]

DEFENDANT'S EXHIBIT No. 238-A.

Translation of Defendant's Exhibit No. 238.

No. 5203

CHAMBER OF DEPUTIES

TWELFTH LEGISLATURE

EXTRAORDINARY SESSION 1922.

Supplement to report of the first meeting on Dec. 6, 1922.

REPORT

MADE

IN THE NAME OF THE COMMISSION OF FINANCES* CHARGED WITH EXAMINING THE BILL RELATING TO THE APPROVAL AND POWERS FOR GRANTING AN AGREEMENT FOR THE PURPOSE OF MANUFACTURING SYNTHETIC AMMONIA.

By: Mr. Charles Leboucq,
Deputy.

Gentlemen:

Before approaching the study of the serious problem which is submitted to us it is necessary to consider several general principles and certain statistics.

In agriculture two kinds of fertilizer are used:

Organic fertilizer;
Mineral fertilizer.

The organic fertilizers are divided into vegetable, animal and mixed.

Mineral fertilizers into nitrogenous, phosphate, potassium and compounds.

The characteristic of nitrogenous fertilizers—the only ones with which we are concerned here—is that they are very soluble and very rapidly assimilated by plants. We will discuss them more fully later on.

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*This Commission is composed of Messrs. Adrien Dariac, President; Renard, Vincent Auriol, Georges Ancel, Emmanuel Brouse, Vice-presidents; Noblemaire, Calary de Lamaziere, Pierre Rameil, d'Aubigny, Pierre Robert, de Tinguy du Pouet, secretaries; Leon Archimbaud, Leon Barety, de Baudry d'Asson, Leon Blum, Boissard, Bokanowski, Bonnevay, Boilloux-Lafont, Georges Burea, Paul de Cassagnac, de Chassaigne-Goyon, Victor Constant (Haute-Loire), Defos du Rau, Charles Dumont, Dutreil, Even (Cotes-du-Nord), Edouard Eumond (Gironde), Andre Fallieres, Herriot, Isaac, Klotz, Ernest Lafont (Loire), Landry Lebas, Charles Leboucq, Lugol, Louis Marin, Prevet, Queuille, de Rodez Benzvent, Robert Serot, Alexandre Varenne.

Consumption of Nitrogenous Fertilizers before the War

What was the *annual consumption* of nitrogenous fertilizers in France before the war?

	Total Tonnage	*Tonnage of Nitrogen*
Sodium Nitrate	300,000	45,000
Ammonium Sulphate	100,000	20,000
Crude) Cyanamide) Calcium nitrate)	30,000	3,500
Various organic fertilizers	100,000	4,500
Total		73,000

73,000 tons of nitrogen, the greater part of which (90%), is used in the form of sodium nitrate and ammonium sulphate.

Source of these fertilizers

1.—French Production.

	Tons	*Corresponding Nitrogen Tons*
Sodium Nitrate	None	0
Ammonium sulphate	75,000	15,000
Crude) Cyanamide) Calcium nitrate)	15,000	1,750
Organic fertilizer	50,000	2,250
Total		19,000

II.—Importation.

	Tons		Corresponding Nitrogen Tons
Sodium Nitrate	300,000	(Chile)	45,000
Ammonium sulphate	25,000	(England)	5,000
Crude) Cyanamide) Calcium nitrate)	15,000		1,750
Organic Fertilizers	50,000		2,250
Total			54,000

VALUE OF IMPORTATIONS

	In 1913		Now
Sodium Nitrate (Chile):			
300,000 tons at 250 francs	75,000,000 fr.	@ 750 fr.	225,000,000 fr.
Ammonium sulphate (England):			
25,000 tons at 330 francs	8,000,000 fr.	@ 950 fr.	23,000,000 fr.
Total	83,000,000 fr.		248,000,000 fr.

French production of ammonium sulphate was consumed as follows:

Coke ovens	37,500	tons
Gas plants	22,500	"
Night soil	12,500	"
Sundries	2,500	"
Total	75,000	tons, or nitrogen: 15,000 tons.

This production fell at the time of the treaty of peace to 45,000 tons, wherefore the clause imposing on Germany the duty of delivering 30,000 tons for three years in compensation; these deliveries will cease in May 1923. At present, French production has increased again to 55,000 tons, or 11,000 tons of nitrogen.

Plan for Re-stocking with Nitrogenous Fertilizers (without Importation)

We have just seen that the consumption of nitrogen was 73,000 tons before the war.

We must now face the question of consumption in Alsace and Lorraine. It is also indispensable, as we shall see, for us to instruct our cultivators in the more extensive use of nitrogenous fertilizers. It is necessary for these reasons to arrange for an increase of about 50% in consumption which will bring the consumption of the future up to 110,000 tons of nitrogen. A definite policy, methodical propaganda entrusted to professional organizations can increase this amount by 15,000 to 20,000 tons or 100,000 to 200,000 tons in ten years.

Now, our present production is:

	Nitrogen
Ammonium sulphate (coke ovens, gas plants, night soil, etc.) 55,000 tons 75,000 with German deliveries, or	15,000 tons
Crude, Cyanamide, calcium nitrate, 15,000 tons, or	1,800
Organic materials, 50,000 tons, or	2,200
Total	19,000 tons Nitrogen

The problem therefore consists in achieving without delay an annual production of:

110,000—19,000—91,000 tons of Nitrogen

The Solution?

The program *in course of execution* promises us for a future not far distant:

1. *In cyanamide.*—140,000 tons, or 28,000 tons of Nitrogen used as follows:

	Tons	*Or Nitrogen Tons*
Plants of the Societe des produits azotes	40,000	8,000
" " " Compagnie d' electricite industrielle	30,000	6,000
" " " Societe des Usines Fredet	30,000	6,000
" " Lannemezan (rented to the Societe des produits azotes)	40,000	8,000
	140,000	28,000

The first three plants are running, the fourth (Lannemezan) is in course of construction.

2. *Arc processes and others.*—2,000 tons (estimated figure), at the Toulouse plant, now shut down, belonging to the Societe norvegienne de l'azote.

Or in all, 30,000 tons, which, added to the 15,000 tons of ammonium sulphate which we are already producing (together with the deliveries of the German supplies), will yield us 45,000 kilos of Nitrogen.

65,000 tons still remain to be manufactured.

If the plant of Toulouse, which we will discuss later, furnishes us anually with 36,000 tons, there still remain 30,000 tons in round numbers to distribute among the other manufacturing plants.

These 30,000 tons will have to be requested:

Either from the plants producing ammonium sulphate or ammonium nitrate by one of the Claude, Casale, etc. processes;

Or from the coke ovens which will have to be constructed in sufficient number to distil a large quantity of oil (12 kilogs of ammonium sulphate per ton);

Or from the cyanamide, nitrate, etc. plants constructed or to be constructed.

But we have stated only the needs of peace times. In times of war we would need 100,000 tons more for the manufacture of powder.

Furthermore, it is probable that by the time the Toulouse plant is running, the propaganda of the professional organizations will have increased the amount of our annual needs to about 110,000 tons.

From these figures and before any examination of the problem we are going to study, we see that there is need for all our initiative in the market for nitrogen. Let us hope that our concerted efforts stimulated by competition will soon permit us to make up our enormous deficiency and release us from the burdensome importations of both sodium nitrate from Chile and German suphate[1].

How shall we attain this end?

The bill which is submitted to you, with the amendments of your Commission, will help us to approach our goal very nearly, we hope.

CHAPTER I

GENERAL CONSIDERATIONS

NITROGEN

For a long time Nitrogen has been considered an inert element and without chemical affinities; hence its name of azoe.

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[1] At present Germany does not export ammonium sulphate beyond 30,000 tons which she delivers to us (Part VIII, Reparations, supplement V, paragraph 8, Treaty of Peace). But it will not be long before she exceeds this production; for at present her plants are producing 375,000 tons of nitrogen per year; the needs of German agriculture are, therefore, sure to be supplied from now on.

The world market for nitrogen, dominated until now by the market for sodium nitrate in London, will soon be ruled by that of German sulphate.

Who could possibly have foreseen the role which it would play in the life of a nation?

It is an element forming a constituent of albuminous substances, we know, it is true, which enters into the composition of all organic tissues, animal and vegetable; it is subject to incessant and important exchanges between living matter, animal or vegetable, and the inorganic medium in which this matter is born, develops and dies.

But the reactions of the atmosphere—that inexhaustible reservoir of at least four-fifths of free nitrogen—how shall we grasp them and learn about them?

For a long time we were ignorant of them; and for a long time we believed in two kinds of nitrogen: one, indifferent to life and serving only to dilute the oxygen of the air; the other, a vehicle and agent of all vital transformations.

A day came when some scientific investigations due to a large extent to our French scholars (Schloesing and Muntz, Berthelot), determined how the nitrogen of the air passes into inorganic compounds, then into living matter, and inversely, in infinite cycles: the fact of its reputation for passivity and inertness was justified.

The Cycle of Nitrogen in Nature

Man and animals make no exchange of nitrogen with the atmosphere; oxygen alone enters into the phenomena of respiration; it is by the intermediary agency of the vegetables on which they live, either directly or through the agency of the substance of other animals, that they assimilate nitrogen.

The question goes back, therefore, to the assimilation of nitrogen by vegetables.

Now, it is from the soil that plants draw the nitrogen, in the form of very dilute solutions of nitrates, which is necessary to the formation of the albuminous substances which enter into the constitution of their tissues.

By what miracle is vegetation able to perpetuate itself? Nitrogen compounds exist in the soil only in the smallest proportions. How will the soil re-stock itself with the nitrogen which the vegetation has exhausted.

There are the putrefaction products of animals and their waste products, as well as the putrefaction of vegetables which play their part in supplying the soil with nitrogen. Decay due to bacteria furnishes the soil with nitrogen principally in the form of ammonia. Ammonia is transformed into nitrites then into nitrates by the oxidizing action of special bacteria which exists in the soil. Then the cycle begins over again.

In the course of this cycle there are produced losses of different origin, especially as a result of the return of free nitrogen to the atmosphere in accordance with certain reactions. To compensate these losses nature works other phenomena.

Certain bacteria which live on the roots of certain plants (leguminous) fix atmospheric nitrogen directly. Furthermore, the electric phenomena which take place in the atmosphere cause the combination of nitrogen and oxygen in the form of nitrites which we find in rain water.

The action of electric phenomena presents, as we shall see later on, considerable interest in connection with the synthesis of nitrogenous products; but it is the bacterial fixation of atmospheric nitrogen which permits nature when left to itself to equalize its budget of nitrogen.

tons of amonium sulphate. (It is not believed possible to exceed this quantity except after a long period of time).

It is not lacking in interest to recall that Germany at present obtains 100,000 tons of nitrogen per year from the distillation of oil, or 500,000 tons of ammonium sulphate.

The Nitrogen Needs of French Agriculture.

We have seen that in 1913 France consumed in the form of nitrogenous fertilizers 73,000 tons of nitrogen, the largest part of which (90%) was in the form of the nitrogen of sodium nitrate and ammonium sulphate.

During the same period Germany used in the form of fertilizers, 215,000 tons of nitrogen for a cultivated area of the same extent, or about three times more per hectar (10,000 sq. meters or 2.471 acres); the use per cultivated hectar was much greater still in Belgium and in the Netherlands.

This slight use of nitrogenous fertilizers in France is one of the principal causes of the insufficiency of yields obtained, compared with those which have been quoted in other countries for lands of even inferior agricultural value.

We have, therefore, a strong economic interest in developing the use of nitrogenous fertilizers in France. Nitrogen has been called appropriately "the bread of agriculture." Even if we rise only very little above the present parsimony, we would have to take into account the consumption of Alsace and Lorraine, and expect an increase of at least 50% over the pre-war figure, or a consumption of at least 110,000 tons of nitrogen. These calculations are very low if we consider the tonnage of nitrogen actually consumed by Germany in the form of fertilizers:

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500,000 tons per year; and the amount probably should be greatly increased!

Considering only present statistics, the means for the production of nitrogenous fertilizers are very much below the consumption, however, it may be scrimped, but it would be a very short-sighted policy to limit ourselves to the satisfaction of present needs. If we wish to see the consumption increase, we must first of all multiply the means of production. In that way only can be put at the disposal of agriculture an abundance of nitrogenous fertilizers at normal prices.

And the duty of making such an effort falls upon the Government.

Nitrogen and National Defense

But nitrogen is an essential element in life, not only because of its use in agriculture. It is also an essential factor in national safety; it is the fundamental element of powder and war explosives.

Bread and powder! The paradox of our evolution insists that we are still so little civilized as to have as much need of one as of the other!

Nitrogen is indispensable, in the form of nitric acid or nitrates, to the production of all war powders (with a base of nitrocellulose or nitroglycerine) and of nitrogenous explosives[1]: the chlorate and perchlorate explosives, the only explosives other than the nitrogenous explosives, which were extensively used during the war, represent only one-tenth of the tonnage of explosives, and it does not seem expedient to develop the production of these explosives very much since they require a consumption of national resources (electrical power and coal especially) much greater than do the nitrogenous explosives.

We admit that an average of 1500 kilos of nitric acid monohydrate (or 300 kilos of nitric nitrogen) are necessary to make one ton of powder or explosives. With the formidable consumption which modern warfare requires, it is necessary to provide for almost 1,000 tons of powder and explosives per day, corresponding to a consumption of more than 300 tons of nitric nitrogen a day or more than 100,000 tons a year.

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[1] Smokeless powders contain from 11.5 to 12 per cent.; nitroglycerine 18.5 per cent.; Melinite 18.34 per cent.; Trinitrotoluene 18.5 per cent.; ammonium nitrate 35 per cent.

The possibility of obtaining this tonnage from national resources alone is no longer in this case a question of financial prosperity only: it is a question of life or death.

It is well for us to recall: in the course of the last war, only the support of the British fleet, which preserved for us the freedom of the seas, allowed us to be assured, and with what difficulties of our continued supply of Chilean nitrates. What would happen in case of new hostilities!

The Total Nitrogen Needs of France

The Necessity of Making Use of the Synthetic Process

Let us remember, also, that agriculture had to be strictly rationed during the war in nitrogenous fertilizers.

Results: the impoverishment of the soil, the decline in agricultural yields, and an increase in the importation of food products. We can then no longer permit that in the event of a world conflict agriculture should be deprived of any fraction of its normal share of nitrogen fertilizers.

It is necessary, as we have already said, if we wish to be prudent, to decide on the French nitrogen budget *for the years immediately to follow*:

For agriculture	110,000 tons a year
For national defense[1]	100,000 tons a year

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[1] In war times only. The nitrogen consumption in times of peace for the production of war powder and explosives and mine explosives is practically negligible.

Let us consider our future agriculture consumption, 110,000 tons. Where will we get them?

Present production (statistics of 1912) gives us, we have seen:

Ammonium sulphate (coking plants, gas, night soils, etc.), 75,000 tons, or
15,000 tons of Nitrogen

Crude, cyanamide, 15,000 tons or
1,800 " " "

Organic matter, 50,000 tons or
2,200 " " "

19,000 tons of Nitrogen

There remain to be obtained
91,000 " " "

to make up 110,000 tons of Nitrogen

How can the problem be solved?

Two ways are open to us:—

(a). Either to remain dependent on Chile. In 1913 we were importing annually from Chile 300,000 tons of sodium nitrate at 250 francs=75,000,000 francs.

Now these 300,000 tons at 750 francs represent 225,000,000 francs.

We imported also from England:

25,000 tons of ammonium sulphate at 330 francs= 8,000,000 francs, which would represent today, at 950 francs, 23,000,000 francs.

(b). Or, freeing ourselves from this ruinous policy, to demand the balance of our consumption:

From the synthetic processes which we have just been discussing;

From the distillation of oil;

From cyanamide, nitrates, etc.

Let us recall that we have considered a plan of campaign divided as follows:

Toulouse plant (Haber or other process), ammonium sluphate or ammonium nitrate	36,000 tons of Nitrogen
Various plants (Claude process Casale or other processes), ammonium sulphate or ammonium nitrate	45,000 " " "
Coking plants to be built to distill 10,000,000 tons of oil (at 12 kilos of ammonium sulphate a ton)	Report
Arc and other processes	2,000 " " "
Cyanamide, nitrates, etc. (new plants to be considered)	28,000 " " "
	111,000 tons of Nitrogen

These are the synthetic processes for the production of nitrogen which the present bill considers.

We have found in recent years the means of drawing from the immense reservior of nitrogen which constitutes the air, resources necessary for the nourishment of the earth.

Far seeing nations are hereafter assured of being able, with their own resources, to accomplish the restocking of their nitrogen supplies and provide for their agricultural requirements as well as their needs for national defense.

CHAPTER II

THE DIFFERENT PROCESSES FOR THE SYNTHETIC MANUFACTURE OF NITROGEN COMPOUNDS AND THEIR PRESENT DEVELOPMENT.

The processes for the fixation of nitrogen can be classified into three groups, according to the form more or less advanced, as compared with nitric acid considered as the final state in which it is possible to obtain nitrogen.

a. A first group of processes makes it possible to obtain nitric acid and nitrates by the direct union of nitrogen and the oxygen of the air and the absorption of the nitrogen oxides, which are formed, by water or by alkalies (the arc and Hauser processes).

b. Other processes make it possible to obtain directly by catalytic combination, of the nitrogen of the air and hydrogen, under pressure and at high temperatures.

M. H. Le Chatelier pointed out the principles of this synthesis in 1903 and Haber has studied their industrial applications.

These processes differ, in the first place, in the method of preparation of the hydrogen. This is the most important, the most difficult and the most expensive operation in actual practice. The second point of difference is the pressure (varying, according to the processes, from 100 to 900 atmospheres) under which the catalysis is carried out (the Haber-Bosch process in operation since 1913 in the German plants of the Badische Anilin und Soda Fabrik—the French process of Georges Claude, the Italian process of Casale, the English process of the Synthetic Ammonia and Nitrates Limited, the American process of the General Chemical Company).

Finally, certain processes yield nitrogen in the form of compounds easily converted into ammonia by water or steam; these processes include calcium cyanamide (Frank-Caro process), sodium cyanide (Bucher process) aluminium nitride (Serpek process).

* * *

All these processes yield nitric acid or nitrates (for the manufacture of powder and explosives, for example) since the products obtained by the processes of the third group can be without great difficulty transformed into ammonia; and, the ammonia once obtained, either from its compounds or directly, by the processes of the second group, it can be oxidized to nitric acid by a catalytic oxidation using activated platinum or iron as a catalyzer.

In the case of nitrogen fertilizer production it is possible to furnish the product directly obtained (cyanamide) or to transform it into other compounds (ammonium sulphate and chloride, urea nitrates, starting with ammonia or products which yield ammonia) according to the exigencies of agriculture for which it is an advantage to have a fertilizer having a variable composition and a more or less rapid action.

SECTION I

DIRECT SYNTHESIS OF NITRIC ACID.

The combination of the nitrogen of the air with the oxygen which accompanies it is obtained by bringing the air to a very high temperature, then chilling it rapidly in order to avoid the decomposition and intermediate temperatures of the oxide formed.

The method most widely distributed is that of the

ARC PROCESSES.

It consists in passing a current of air through an expanded electric arc; this is the systematic reproduction of the phenomenon already pointed out, of the production of nitrogen oxide in the atmosphere under the influence of electric discharges.

By this means there is obtained a gas containing scarcely more than 2% of nitrogen oxides. These oxides are condensed by water in enormous scrubbing towers and yield a nitric acid diluted to about 30% which must be concentrated if it is desired to use it in the manufacture of powders and explosives.

For the manufacture of fertilizers one can just as well absorb the nitrous gases directly with quick lime, or neutralize the condensed acid with limestone and thus obtain calcium nitrate.

This process is carried out on a large scale in Norway at the plants at Notoden and Rjuken (Birkland and Eyde furnace) constructed in 1904 near waterfalls which furnish the necessary electrical energy. The process requires indeed about 60 kilowatt hours per kilogram of fixed nitrogen which is to say that one or several plants fixing 100 tons of nitrogen per day would require a constant power of nearly 250,000 kilowatts.

The plants of the Norwegian Nitrogen Company at Notoden utilize 75,000 kilowatts. This company owns, at Soulom, (Hautes-Pyrenees) a plant erected during the war to utilize 12,000 kilowatts. There is another similiar plant at Roche de Rame (Briacon region) and other small plants in Switzerland, in Italy, in the Tyrol, and in the Baden region. All these plants use types of furnaces different from that of the Norwegian Company, but based on the principle which has just been explained.

HAUSER PROCESS

Founded on the fact that the explosive combustion of liquid or gaseous combustibles raises the temperature sufficiently to permit the combination of nitrogen and oxygen, the process consists essentially in recovering the nitrogen oxides in the waste gases from gas engines provided with special means for chilling the gases. This process was in the experimental stage in Germany before the war; these experiments were interrupted.

Bender Process

Here, one is not contented with the heat given off by combustion under ordinary pressure to affect the combination of the nitrogen and oxygen. This process also has no industrial history.

II

Direct Synthesis of Ammonia

The two substances of which ammonia is composed, nitrogen and hydrogen, seem to have between them a powerful affinity, since the destruction of ammonia requires at least 12 calories per gram molecule which represents a heat of combination capable of raising the reacting gases to the neighborhood of 1000°.

It may be concluded from this that when the two substances are put together they rush toward one another to unite. Nothing of the sort!

Their mutual affinity is hindered by a resistance which can be compared to friction and just as mechanical friction can be overcome by lubricants, so the friction with which we have to deal here gives way to action of a third substance, the catalyzer acting merely by its presence, the tertius gaudens, presiding over the union of the reluctant parties.

It was a French scientist, Tellier, who, in 1868, in his work on "Ammonia," proposed iron as a catalyzer at a time when others had successively proposed uranium, osmium, molybdenum, etc.

In 1901, another of our scientists, Le Chatelier, formulated finally the theory of the synthesis of ammonia enunciating his law of the displacement of the equilibrium. The combination of three volumes of hydrogen and one volume of nitrogen results in the formation of only two columes of ammonia. The volume of the gas produced, therefore, is 1/2 the volume of the reacting gases: the law of the displacement of equilibrium predicts that the reaction will be facilitated by an increase in pressure.

At that time, 1901, Le Chatelier took out a patent in which he mentioned the use of iron as a catalyst.

Unfortunately, Le Chatelier used his iron absolutely pure and it has since been demonstrated that iron, in order to become an effective catalyzer, must be adulterated with certain "impurities" such as scientists decorate with the name "activators." Besides, an experimental error, which Le Chatelier, has explained since, deprive our compatriot of the practical profits of his discovery; he produced only traces of ammonia.

The Germans have the habit of lying in ambush for the discoveries of others, and often, being more patient, they develop them practically.

In 1904 Professor Nernst, inspired by the law of Le Chatelier, worked under a pressure of 50 to 75 atmospheres and was the first to describe an apparatus capable of operating under simultaneous action of a high temperature and of a considerable pressure.

Nernst did not take out a patent: thus it is in the public domain that Haber found his process and if improvements are later brought about in the Haber process, it is not in the Haber patent but in the public domain that they will have their source.

A—The Haber Process

The celebrated controversy between Haber and Nernst led Haber to convince himself that the higher the pressure is raised and the lower the temperature the greater is the proportion of ammonia formed from the mixture of nitrogen and hydrogen in the presence of the catalyzer.

But, on the contrary, Haber had observed that the speed of the attainment of the chemical equilibrium increases in proportion as the temperature is raised.

Now as Georges Claude has pointed out, the industrial problem "is to obtain as high a content of ammonia as possible in a current of gas passing through the apparatus." At 200 atmospheres, and below 500°, the formation of ammonia is very slow: Haber, therefore operates at temperatures of 500 to 600°.

Industrially the operation as it is carried out at the Badische Anilin und Soda Fabrik Aktiengesellschaft is developed thus:

First step—There is prepared first water gas and producer gas (or lean gas).

The water gas is obtained by playing a jet of steam on incandescent coke. The gas thus obtained consists essentially of *hydrogen* and of carbon monoxide, and besides of some insignificant fractions of carbon dioxide and nitrogen.

H_2 —— 51 parts
CO —— 41 "
CO_2 —— 4 "
N_2 —— 4 "

Producer gas has no hydrogen, but to make up for that 67% of *nitrogen* with, besides, 30% of carbon monoxide and a little carbon dioxide.

N_2 —— 67 parts
CO —— 30 "
CO_2 —— 3 "

The problem to be solved consists in mixing the two gases so that the nitrogen and hydrogen can be united in the desired proportions, one volume of nitrogen and three of hydrogen, and so that the carbon monoxide and carbon dioxide can be eliminated.

This is accomplished by causing the water gas to react in the presence of a catalyzer at ordinary pressure. The carbon monoxide of the mixture, and the water, give hydrogen and carbon dioxide. The new mixture is freed from its carbon dioxide by absorption in water under pressure; treated with sodium formate and caustic soda, which eliminate the last residues of carbon monoxide and of carbon dioxide. Then there is added a little extra nitrogen, which is obtained by the distillation of liquid air and which adjusts the nitrogen content so that the gas corresponds exactly to the composition of ammonia.

The carbon dioxide is carried off to a second factory, a unit in the large plant, and is used for the manufacture of Solvay Sodium Carbonate.

Second Step—The two reacting substances, nitrogen and hydrogen, are face to face with one another. It is now necessary to make them combine. For that purpose they are compressed to 200 atmospheres, and, in the presence of a second catalyzer, at about 550°, ammonia gas forms.

Third Step—The ammonia content thus obtained does not exceed 6%. It is important not to lose the gases not yet combined and with them the energy expended in compressing them. They are therefore compressed anew to bring up the pressure to 200 atmospheres and they are made to repass indefinitely over the catalyzer. Between each passage the ammonia produced is collected. Circulating pumps bring the entire gaseous mixture into contact with water, which absorbs the ammonia. The product is a twenty-five per cent aqueous solution. This aqueous ammonia will serve later either for the preparation of gaseous ammonia for the manufacture of nitric acid by oxidation, likewise catalytic, or for the manufacture of ammonium salts for fertilizer.

The process has one drawback: it requires tricks so that neither we nor the English who were in possession of all of the patents, were able to get a kilogram of nitrogen out of it; a mechanism and a discipline on the part of the technicians who have required a long and methodical preparation in order to adapt themselves to it. But the production is regular and sure, and Germany counted on it to assure her of an agricultural hegemony which would render Europe tributary to her industry for its fertilizer requirements:

"Our one limit," says the Memoire sent to the Reichstag by the Badische, May, 1915, *"will be the absorption capacity of the World Market."*

B—The Georges Claude Process

At the very moment, 1919, when our administration was drawing up with the Germans the contract which we shall examine in a moment, a French scientist, Mr. Georges Claude, vouched for by his previous works, announced and demonstrated that he had just discovered a process for the synthesis of ammonia which, according to certain authoritative advices, was capable of competing with the Haber process.

French industry has watched for a long time the development of a synthetic process for the fixation of the nitrogen of the air. Even before the War, the Sociètè de Saint-Gobain had entertained proposals for the acquisition of the Haber process; they had, unfortunately for the conduct of our operations during the war, come to nothing. In March 1917 the company "Air Liquide" a "Sociètè Anonyme" (joint stock company) for the exploitation of Georges Claude's processes, took out a series of patents on modifications of the preparation by the Haber process.

On May 19, 1919 Mr. Georges Claude presented a communication to the Acaaemie des Sciences. He showed that Synthetic Ammonia can be transformed into transportable fertilizers, but he replaced the quite expensive sulfuric acid by the chlorine of common salt which is a waste product in the soda industry.

On October 13, 1913 he explained, in another communication, the advantages of the use of very high pressures.

Finally, on December 1, 1919 and January 19, 1920, he emphasized the *advantages of the Synthesis of Ammonia under very high pressures.*

Georges Claude's contribution to this subject was the recourse to *very high pressures.* The Badische had always taken glory to itself for having compressed such enormous quantities of gas at such enormous pressures as 200 atmospheres. Mr. Claude did not worry himelf with the question of the strength of the metal when he considered increasing the pressure. A single difficulty presented itself to his mind: the tightness of the joints. But reflection indicates that tightness is more easily realized at 1,000 atmospheres than at 100, since for equal amounts of gas treated the joint is very much smaller in the first case. As for the hyper-compressor, Mr. Claude made it out of a simple piston passing through a leather packing into a thick cylinder. All this mechanical part is so simple that Mr. Claude was able to operate his hyper-compressor on a small scale before the Sociètè d' encouragement and the Societe chimique jointly, and to carry out the synthesis of ammonia under the eyes of the audience.

The result of Claude's improvement is that operating in a very much reduced volume a much larger fraction of the gas combines and that there results a development of heat per unit volume twenty-five or fifty times as great as for the Haber process. The auto-reaction possible by the German method only with enormous apparatus, is accomplished here for very small installations treating, for example, twenty cubic meters of mixture per hour. On the other hand, the Ammonia content increases approximately proportionally with the pressure. The partial pressure of Ammonia is 250 atmospheres; it is at the most 12 atmospheres in the six per cent mixture under 200 atmospheres obtained by the Badische. Now the maximum pressure of ammonia at the boiling point, that is to say, the pressure down to which it is possible to strip the mixture of its ammonia by chilling it to this temperature, is seven to eight atmospheres. Negligible in comparison with 250 atmospheres which Claude used, this is very important in comparison with the 12 atmospheres of the Badische. Thus, by Claude's method it is sufficient to pass the gases charged with ammonia through a worm immersed in water at ordinary temperature in order to liquify practically all the ammonia, a procedure which is not possible to the Germans since out of 12 there remain 8 uncondensed. So, as we have seen, in the absence of refrigeration to 50° or—60° which is too expensive, they have had to inject water under pressure to remove the ammonia at each cycle; this consumes a great deal of energy, requires complicated apparatus and delivers the ammonia gas in the form of solution from which it is necessary in many cases to remove it by distillation.

The plan of the two processes can be seen at once.

The German process: enormous factories where hydrogen has to be produced with elaborate specialized equipment to meet the requirements of the synthesis.

The French process: thanks to the simplicity and to the limited volume of the apparatus, the production can be carried out in small factories wherever cheap hydrogen may be found, notably wherever there are coke ovens. Thus ammonia becomes a by-product of metallurgy, and as soda is a by-product of ammonia it is seen "if these hopes are justified, what a tie may exist, thanks to hyper-pressures, between three of the most impressive branches of human activity."[1]

This process operates in an experimental plant set up at Montereau by the Sociètè chimique de la Grande-Paroisse where there is a unit with a capacity of five tons of nitrogen per day. The hydrogen is obtained from water gas.[2]

The Claude process has not properly speaking any industrial history; but it does not seem as though serious difficulties should be met when plants for industrial production are started up; the apparatus will be identical with those which operate at Montereau. The process has never operated with coke oven gas as a source of hydrogen, but the use of these gases, it would seem, should offer no serious hazard in comparison with the use of water gas.

C—The Casale Process

The Casale process for the manufacture of Synthetic Ammonia is—like the Claude process—only an application of processes found in the public domain by Haber and the firm Badische Anilin und Soda Fabrik. The installation at Terni (Italy) differs from that at Oppau only by the two following characteristics:

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[1] Georges Claude.—High pressures and the ammonia synthesis Revue Scientifique, May 28, 1921, a study from which I have borrowed the outlines of the above anlysis of the Claude process.

[2] Another plant has just been established at Bèthune under the auspices of the Sociètè chimique de la Grande-Paroisse. I have asked for information on the state of the operations of this plant; they have not felt obliged to give it to me.

The pressure of the gases in the catalysis circuit is from 500 to 700 kilograms per square centimeter instead of 200 kilograms at Oppau, and the elimination of the ammonia is accomplished in the worm of liquified gas by simple refrigeration (instead of being accomplished by solution in water).

On these two points the process is more like Claude's process than the Badische's. But it differs essentially from the former in this sense that as in the second, the gases circulate indefinitely under the pressure established, until transformation is complete so that there is a single circuit closed by a circulating pump (the circuit comprising only a single catalysis apparatus); while in the Claude process they are expanded after having transversed three or four catalysis apparatus in series. There have been installed successively at Terni catalysis apparatus capable of producing one, three, five, and seven tons of ammonia per day. The hydrogen is produced by the electrolytic decomposition of water and the mixture of nitrogen and hydrogen by combustion of an excess of hydrogen in air with elimination of the oxygen in the form of condensed water.

The company which exploits this process "Casale Ammoniac Company" has, besides its installation at Terni, other plants under way in France (Alais, Froges and the Camargue), in Spain, in Switzerland, and in Japan.

ELECTROLYTIC HYDROGEN

It would evidently be possible in carrying out the catalysis either by the Haber-Bosch process or by the Claude process to produce the necessary hydrogen by the electrolysis of water. This process would furnish the hydrogen very simply in a very high degree of purity. This process seems to have a certain future under particular conditions.

D—THE PROCESS OF THE SYNTHETIC AMMONIA AND NITRATES LTD.

During the war, the British Administration in accordance with suggestions of the "Nitrogen Products Committee" had begun at Billingham in the county of Durham, the erection of a plant devoted to the operation of the Haber process slightly modified, but the work was suspended at the time of the armistice. In the first months of the year 1920, after a serious study of the Nitrogen situation, the British government asked the firm "Brunner Mond & Co." to take up and continue the work which had been sketched out. This firm formed for this purpose a special corporation: "Synthetic Ammonia and Nitrates Limited" with a capital of £5,000,000 for the exploitation of the plants granted by the government, and the fixation of a quantity of 100 tons of nitrogen per day, which was to be brought up to 300 tons with the least possible delay.

The process considered was to be the modified Haber process, the operating pressure being lowered to about 120 to 150 kilos instead of 200 kilos.

According to the indications given the general assembly of the English Ammonium Sulphate Federation which was held November 16th last, the plant at Billingham would begin to operate in about six months.

E—THE PROCESS OF THE GENERAL CHEMICAL COMPANY

This Company even before the war had carried out experiments of a semi-industrial sort on the synthetic manufacture of ammonia by a process analogous to the Haber-Bosch process but differing from it in that the operating pressure was maintained at about 100 kilograms; and in that the nature of the catalyzer was much more active than the Badische's but required the use of absolutely dry gases.

In 1917 with the aid of this Company, the government of the United States constructed at Sheffield, Ala. a plant with a daily production capacity which was fixed at 30 tons of ammonia.

This plant was started in June 1918, but the results were considered as so unsatisfactory that the experiments on an industrial scale were discontinued and an official commission was sent to Europe (June 1919) to study the installation already carried out, and in particular those of the Badische, in Germany.

As for the General Chemical Company, it is proceeding in collaboration with the Atmospheric Nitrogen Corporation in the construction of a plant at Syracuse (New York State). This plant should produce regularly 14 tons of ammonia per day which would be delivered almost exclusively in the form of liquid ammonia to the refrigerating industry.

SECTION—3 PRODUCTS WHICH MAY BE TRANSFORMED INTO AMMONIA BY THE ACTION OF WATER OR STEAM

I.—CYANAMIDE

This process consists in first making calcium carbide, then fixing nitrogen with it.

The carbide results from the reaction of carbon (coke) on quick lime in the electric furnace. The fused carbide after cooling is crushed, reduced to a powder by powerful crushes and ball mills, and subjected at about 1,000° in special crucibles to a current of nitrogen supplied by liquid air machines. The nitrogen is absorbed giving off heat sufficient to maintain the reaction which is started by electrically heating to a convenient temperature the center of the mass of carbide; from there the absorption spreads through the entire mass.

Cyanamide analyzes practically from 17 to 21% nitrogen. It can be supplied as such for fertilizer or it can be oiled or granulated which avoids the inconveniences resulting from powders. It can also be transformed directly into urea, or again into ammonia by treating it with steam in autoclaves under pressure (8 to 10 kilos); this transformation takes place with a nitrogen loss of about 5%.

The Cyanamide industry in France dates from 1907. The plants are generally situated in mountainous regions where they draw from the waterfalls the electrical energy which they consume in large quantities, especially for the manufacture of the calcium carbide. However, certain German plants produce their energy from lignite, an inexpensive combustible.

The French plants (belonging to the Societe des produits azotés) delivered before the war about 15,000 tons of cyanamide per year, corresponding to 3,000 tons of nitrogen. To avoid the danger which the submarine warfare threatened in curtailing the supply of nitrate, the Service des Poudres in 1917 decided on a program in accordance with which the production of cyanamide in France was to reach 250,000 tons per year and would permit supplying plants for the manufacture of 630 tons of nitric acid per day (corresponding to 50,000 tons of nitrogen per year).

Of these 250,000 tons, 180,000 tons would be manufactured in plants belonging to the State. The realization of this program not having been completed at the cessation of hostilities, the construction of a certain number of these plants was abandoned. Certain of the plants which were preserved are on the road to completion, (in particular the plant at Lannemezan, leased to the Société des produits Azotés, in accordance with law of December 17, 1921); when these are finished the production of cyanamide in France for all the plants, private or owned by the State, will amount to 140,000 tons per year, corresponding to 28,000 tons of nitrogen approximately.

Germany developed considerably during the hostilities simultaneously with the synthetic ammonia plants, the production of its cyanamide plants, particularly in view of supplying its agriculture with nitrogen fertilizers. At present these plants can manufacture annually, 500,000 tons of cyanamide, corresponding to 100,000 tons of nitrogen.

The manufacture of cyanamide is likewise highly developed in Austria, in Hungary (plant at Dichio Saint-Martin, now in Roumanian territory), in Switzerland and in Italy.

2—THE BUCHER (CYANIDES) AND SERPEK (NITRIDES) PROCESSES.

These processes have not entered the industrial phase and do not appear likely to have an interesting future.

SECTION 4

THE OXIDATION OF AMMONIA INTO NITRIC ACID AND NITRATES

Ammonia produced either by direct synthesis or from cyanamide or otherwise can be transformed into nitric acid by catalytic oxidation.

A mixture of air and ammonia containing 8 to 10% of ammonia gas is passed over a catalyzer at about 700° (platinum or activated iron). In contact with the catalyzer, the oxygen of the air destroys the molecule of ammonia and transforms the nitrogen into nitrogen dioxide and the hydrogen into water. From that moment the operations are carried out in a manner analogous to those which have been described previously for the condensation of nitric acid in the arc processes (condensation towers). Only here, the condensation is easier, for the gases passing into the towers have a content of about ten percent oxide of nitrogen instead of two percent.

There is obtained by this process nitric acid of 50% concentration which can be used without further concentration for the manufacture of melinite. For the manufacture of tolite or gun cotton, on the contrary, it is necessary to concentrate it.

The oxidation of ammonia is practiced in France by the Ostwald process, characterized by the use of a catalyzer formed of a spiral roll of platinum, and by the use of a heat exchanger so that the reaction can be carried out without the application of external heat, the temperature being maintained at about 700° by the heat given off by the reaction.

The program of 1917, which has just been discussed in connection with cyanamide, contemplated the construction in the powder plants (in order to avoid transportation of nitric acid) of 6 factories for the oxidation of the ammonia obtained from cyanamide (produced in plants situated in the Alps or the Pyrenees in the proximity of water falls) permitting a daily output of 630 tons of nitric acid corresponding to 50,000 tons of nitrogen per year.

As for the cyanamide plants the construction of the oxidation plants was not finished at the cessation of hostilities. It was decided to preserve or finish only three of the six plants which would be able to manufacture (with the ammonia provided either by cyanamide plants or by synthetic ammonia plants) 330 tons of nitric acid per day which would be 26,000 tons of nitrogen per year.

The material corresponding to the three plants whose construction has been abandoned has been preserved and in case of need they could be erected fairly rapidly.

SECTION 5

THE TRANSFORMATION INTO FERTILIZER OF THE SYNTHETIC PRODUCTS OBTAINED

The nitric acid obtained by the arc process is generally delivered to agriculture in the form of calcium nitrate of which a word was said above. It can equally well be transformed into sodium nitrate or ammonia.

Ammonia is more generally delivered to agriculture in the form of ammonium sulfate obtained by saturating sulfuric acid with ammonia gas.

The Germans, deprived during the war of the pyrites necessary for the manufacture of sulfuric acid, have prepared and still prepare ammonium sulfate by causing ammonia and carbonic acid to react with calcium sulfate (gypsum) reduced to a powder and suspended in water: calcium carbonate is precipitated and there is obtained "sulfate of carbonate" (!) (ammonium sulfate?) which remains dissolved and can be crystallized by concentrating this solution after filtration. This method may be economical in certain cases. It consumes gypsum coal (for the concentration) instead of pyrites.

Ammonia can equally well be delivered in the form of ammonium chloride. The production of which may be connected favorably with that of soda by the ammonia process: in this manufacture there is obtained normally, by acting on ammoniacal brine with carbon dioxide, sodium carbonate and ammonium chloride from which ammonia is regenerated by treatment with lime. Instead of regenerating the ammonia there can be delivered to agriculture the ammonium chloride which is formed. But the use of ammonium chloride as a fertilizer has not yet reached the stage of common practice and it has not been proved that it will not present some inconvenience.

Ammonia can also be transformed into ammonium nitrate by oxidizing into nitric acid a part of the ammonia and causing the nitric acid thus obtained to react with a new fraction of the unoxydized ammonia. There is thus obtained a fertilizer which does not contain any inert material (sulphur or chlorine in the two preceding fertilizers) and which contains simultaneously nitric nitrogen and ammoniacal nitrogen, amounting in total to 33%, which is particularly advantageous for transportation and distribution.

These circumstances make ammonium nitrate an extremely interesting fertilizer. The Germans have used it mixed in equal parts with ammonium sulfate. The catastrophe at Oppau interrupted the manufacture of this double salt, but it appears that merely the method of storing is to be incriminated by this catastrophe.

Finally, from ammonia can be obtained one more fertilizer little known yet but which appears to be destined to a sure success as soon as the practicability of its rather delicate manufacture can be realized: that is **urea.**

As for cyanamide, it may be used directly as a fertilizer after having been subjected to oiling or to granulation. It can equally well be transformed directly into salts of urea. As it can be (at the expense of steam consumption and a loss of nitrogen) transformed into ammonia, it can be used for the manufacture of all the fertilizers which have just been enumerated.

CHAPTER III

PROGRAM OF THE DEVELOPMENT OF THE NITROGEN INDUSTRY

Comparison of Different Processes

The importance of the Development in Providing for the Nitrogen Industry

From all that we have shown in the preceding chapters there results the evidence that a plan providing for the installation of a factory capable of fixing 100 tons of nitrogen a day, or 36,000 tons a year, is modest enough!

We can see in it only a first step toward freeing the country from foreign importation.

Far from menacing the nitrogen industries, such a program leaves a vast field for their development and for the development of new industries.

As for the inequality of war-time needs compared with those of peace times, we note that the development of the use of nitrogenous fertilizers will be advantageous, not only from an agricultural point of view, but also from the point of view of national defense. In the present state of affairs, it would be impossible to make sure from one day to the next, that the production of nitrogen required for the intensive manufacture of powder and explosives would be forthcoming from our national resources. If, on the contrary, agricultural use is developed and at the same time national production, it will be possible to insure at a day's notice, the supply of 100,000 tons of nitrogen per year to the factories producing powder and explosives, by making use of the temporary rationing of agriculture.

This rationing can cease on the day when the production shall have been increased by 100,000 tons per year.

COMPARISON OF PROCESSES EXAMINED

In order to appreciate under what conditions it will be advisable to run a factory producing 100 tons of nitrogen a day (36,000 tons a year) it is well to compare the different processes that we have examined.

We shall confine ourselves to those which are really accepted in industrial practices or can be considered such:

The synthesis of nitric acid by the arc process;
Manufacture of cyanamide;
The synthesis of ammonia (Haber-Bosch and Claude processes).

The question has been looked into with the greatest care by a commission composed of seven members of the l'Academie des sciences, presided over by Mr. Th. Schloesing and of whom the Government, anxious to be enlightened and to support its line of conduct by advice that is indisputably competent, has asked the following question:

"Do there exist at the present time any processes for the manufacture of synthetic ammonia and the necessary hydrogen which offer from the point of view of trade security as well as cost price, advantages over the processes which are the subject of the agreement covered by bill No. 1127, filed June 22, 1920?"

The above mentioned Commission believed it was its duty to carry on its studies further: without limiting itself to the comparison of the principal processes for the synthesis of ammonia (Haber-Bosch and Claude processes), it has extended its investigation to the arc and cyanamide processes for the production of nitric acid.

We ought to point out that, desirous to avoid the revealing of information which had been communicated to it in the course of its inquiry in strict confidence and to protect the special interests in question, the Schloesing Commission has expressed in a very earnest manner its desire that the text of its report should not be made public.

We submit to this desire and limit ourselves to mentioning the conclusions of this report which are necessary to support our conviction. We shall compare first the processes for the manufacture of synthetic ammonia (Haber-Bosch or Claude without distinction) with the other processes which we are considering, and we shall then compare the two remaining processes for the production of synthetic ammonia to each other.

I—Nitric Acid by the Arc Process

The characteristic of these processes is the enormous consumption of electric energy that they demand (60 kilowatt hours per kilogram of fixed nitrogen, which for a production of 100 tons per day would necessitate the production and use of a constant power of about 250,000 kilowatts).

It is true that the whole expense of coal would be avoided; the nitrogen could be obtained directly in the form suitable for the production of powder and explosives.

Nevertheless we should find advantages (even for the production of nitric acid) over the processes for the production of synthetic ammonia and ammonia oxidation, only if electric energy could be obtained at an extremely low price, which is the case in the powerful works of the Societe norvegienne de l'Azote, whose prosperity is well known.

With the waterfalls which could be used in France, and the very costly generating stations which they would require, we could not count on such a result.

The advocates of the arc process estimate, it is true, that the cheapness could be expected, if they utilized for nitrogen production, the energy lost in hydroelectric stations, which are subject to great variations in demand, either daily or seasonal.

It would amount to adding to each central hydroelectric station certain apparatus for the production of nitric acid, in a relatively limited quantity. It is not a bad idea: the fact remains, nevertheless, that the present methods and installations do not lend themselves to this sort of use of the peak supply in sufficient proportions. Now the program for the production of 100 tons a day cannot be expected to work out.

We may add that the production of synthetic ammonia with the production of hydrogen by electrolysis might be managed with the use of peak supplies: this is a point, the more interesting because there would result a consumption of energy per kilogram of fixed nitrogen which would be only one-third more than that estimated in the Arc process.

II—Manufacture of Cyanamide.

The cost of electric energy for the manufacture of cyanamide is much less per kilogram of fixed nitrogen than in the manufacture of nitric acid by the Arc process: it is only from 17-18 kilowatt hours per kilogram of fixed nitrogen instead of 60.

On the contrary, the cost of the fuel which is nothing in the Arc process is in the neighborhood of 3.5 to 4 kilos per kilogram of fixed nitrogen, including the coke for the manufacture of the carbide and the fuel for the manufacture of the calcium necessary for the manufacture of the carbide:

Now in the different processes for the synthetic manufacture of ammonia the mechanical energy required per kilogram of fixed nitrogen (of hydro-electric or thermal origin) corresponds only to one-fifth or one-sixth of what is used for the cyanamide (17-18 kilowatt hours per kilogram of nitrogen). The quantity of fuel used for operations other than the production of mechanical energy is less than the figure of 3.5 to 4 kilos representing for the cyanamide the consumption per kilogram of fixed nitrogen.

On the contrary, if we are considering the production of fertilizers, cyanamide can be used as it is, while ammonia has to be transformed into a solid product (sulphate, chloride, or nitrate), which makes necessary some costs for changing it over, which are added to the cost of the ammonia.

Also, provided that the electric energy is produced at a relatively low price, which is the case in the existing cyanamide factories, the development of an industry of synthetic ammonia fertilizers does not appear to be fatal to the existing cyanamide fertilizer industry.

The problem has a different aspect if we consider, on the contrary, the manufacture of explosives which necessitates the transformation of cyanamide into ammonia, a process which does not enter into the cost of the synthetic ammonia obtained directly. The process for synthetic ammonia has a very obvious advantage over the cyanamide process. The installation of new cyanamide works with the view to the manufacture of ammonia and nitric acid or nitrates is then not to be considered. The result is in absolute agreement with the conclusions of the Commission.

The objection may be raised that the installations for the synthetic production of nitric acid were constructed in France during the war, and that they made use of the cyanamide processes. Although they believed in 1917 that they ought to stop the cyanamide process, the fact was that they thought they had only insufficient data on the process for the synthetic production of ammonia, then in industrial use (Haber-Bosch process), and could not hope to succeed without serious mistakes. The difficulties met in other countries (the United States, for instance, where the manufacture is not yet perfected) in carrying out the synthetic manufacture of ammonia without sufficiently exact data, show that the attitude which has prevailed in France is not devoid of clear-sightedness. The situation is quite different now since we have on the one hand the most exact instructions on the Haber-Bosch process and since, on the other hand, the Claude process, first appearing in 1917, can now be considered perfectly known.

Let us add then that if one considers the production of ammonia with the production of hydrogen electrolytically, the consumption of energy per kilogram of fixed nitrogen is very obviously in the same class as the cyanamide process; on the other hand, the consumption of fuel is 0.

III—Comparison of the Haber-Bosch and Claude Processes

From the preceding it follows that the processes for the production of ammonia by direct synthesis are the ones advisable for us to consider. There remains for us to consider which of these two processes will be used.

As has been explained, the Claude process permits the use either of water gas from gas producers, as in the Haber-Bosch process, or of the gas from coke furnaces, which is especially advantageous, according to the inventor. If we compare the two processes using water gas and if we assume, in addition, that the power produced in the Claude process by what is left of the water gas when hydrogen has been extracted from it, is produced in the Haber process in a like manner by means of producer gas (du gas pauvre) we reach the following conclusions:

1. The expenses of the initial installation of a plant fixing 100 tons of nitrogen a day would be in the same class for both processes.

2. We may consider that in spite of a consumption of mechanical energy of about 50% more than that which is used in the Haber-Bosch process, the Claude process will furnish a kilogram of fixed nitrogen at pretty nearly the same price as the Haber-Bosch process.

3. In the case of the Haber-Bosch process which has no fuel gas residues to use (the characteristic of the process is, in fact, the transformation of the carbon oxide contained in the water gas was into hydrogen and carbon anhydride), and which can without difficulty use an outside source of electric power, the substitution of electric motors for gas motors appears to permit, everything else being equal, the realization of a noticeable decrease in expenses of installation; and if the kilowatt-hour is reckoned at a price such as can be expected for electric power coming from waterfalls, a noticeable decrease in cost is also made possible.

4. On the other hand, the Claude process, if coke furnace gas is used instead of water gas will involve a conspicuously lower cost for the initial installation than the Haber-Bosch process (in consequence of the absence of gas producers replaced in this case by coke furnaces supposed to be installed). As for the cost, it will evidently be a function of the value of the coke furnace gas which it is not possible to determine a priori and which may be subject to the greatest variations of price according to circumstances, according to local needs, according to negotiations between the parties concerned.

This cost can be brought below the cost of the Haber-Bosch process only in case the manufacturers shall be able to obtain their coke furnace gas at the low price that they look forward to.

These results are entirely in agreement with those given out by the Technical Commission in its report;

5. As for the use of coke furnace gas, there enters a very important consideration other than the consideration of a technical order.

This use supposing that it might be advantageous from point of view of cost would require the construction of plants in the immediate neighborhood of coke furnaces, that is, on the north and east frontiers.

Now we must not lose sight of the fact that the plan under consideration has for its special object the increase of resources in war times for the production of powder and explosives. The powder works, which in war times, will use the ammonia produced, were erected for purposes of security in the west and south of France. If coke furnace gas is used, then the ammonia plants will be situated very far away from the plants which will use it, which would necessitate transportation for a long distance, which is very inconvenient in time of war, particularly in the case of a special material. The distribution of these plants as a consequence of the use of coke furnace gas will increase the difficulty of transportation still more. Finally, and this is the most serious objection, it would be an unpardonable imprudence to build in the north and east regions, where they would be most exposed to destructive raids, plants of vital importance to the supplying of our armies in war times.

Considering these facts, the use of coke furnace gas is not to be considered in the first plan for realizing the installation in which the government has taken the initiative for the sake of national defense. There remains before you for the realization of the military program, the two processes, Haber-Bosch and Claude, both using the same sources of hydrogen (water gas or eventually electrolysis) and to be considered therefore as practically equivalent.

CHAPTER IV

THE AGREEMENT OF NOVEMBER 11, 1919

Now that we know the reciprocal merits of several processes for the manufacture of Ammonia, we will be able to examine the advantages of the agreement passed on November 11, 1919, between the State of France and the Badische Anilin.

"About June, 1919, immediately after signing the treaty with Germany, having learned that the latter had been able to continue the war thanks to the Haber process and thanks to the possibility of producing Synthetic Ammonia, we have negotiated for the purchase of this process for France. I had requested and have obtained an option. My honorable successor, Mr. André Léfévre, has taken up this option and I congratulate him on it".

In these terms, Mr. Laucheur recalled to the Chamber, during the course of the first meeting on July 3, 1920, under what circumstances the Ministry of Industrial Reconstruction has been led to consider the production of the Badische. Article 297 of the Treaty of Versailles reserves for the Allied Powers, the right to sequester and liquidate all the property, rights and interests belonging to the Germans. The Badische had taken out several patents in France to protect its processes; the State of France then had the right to liquidate these patents and processes.

England and the United States, who during the war had attempted in vain to develop the processes other than the German process, have hastened since the Armistice, to get possession of the Haber patents and cede them to private companies.

France was not content to get possession of them. Estimating that the very delicate and special technique developed at Oppau and Mersebourg could not be acquired by the French engineers, France attempted to treat with the Badische to obtain its technical co-operation for the purpose of exploiting the Haber patents.

The contract passed on November 11, 1919, bears on behalf of the Germans, the signature of Mr. Bosch, Director of the plant, who participated in the negotiations at the Treaty of Versailles, and on behalf of the French, the signature of Mr. Patart.

Article 13 provides that France "can within a period of three months from the date of the contract, renounce the rights and obligations resulting therefrom. After this period of time has expired, the contract will be carried out in full." The period of refusal expired, therefore, on February 11, 1920. On the 22nd of June following, the question of the legality of approving the agreement was filed. In the interval a prorogation had been obtained until April 1, 1920.

This is the text of the contract:

CONTRACT BETWEEN THE STATE OF FRANCE AND THE BADISCHE ANILINE AND SODA FABRIK, A. G.

The Transfer of a Process for the Manufacture of Synthetic Ammonia.

Between the Ministry of Industrial Reconstruction, acting in the name of and in behalf of the State of France and designated in the following as "the State of France", and represented by Mr. Patart, Director of Powder, party of the first part, and the Badische Aniline and Soda Fabrik Aktiengessellschaft, joint stock company of Germany, with a capital of Ninety Million Marks (90,000,000 M.), which is located at Ludwigshafen on the Rhein, designated in the following by the four initials B. A. S. F., represented by Messrs. Professor Bosch, President of the Council of Administration, and Allbrecht, Attorney for the Company, duly appointed in conformance with the

German law; it has been declared and agreed as follows:

DECLARATION

The B. A. S. F. possesses for the production of Synthetic Ammonia, certain processes used in the plants at Oppau and Mersebourg. In order to protect these processes, the B. A. S. F. has taken out certain patents in France. The State of France, desiring to apply and exploit in France the above mentioned patents and processes, has judged it to be to their advantage to obtain the voluntary cooperation of the B. A. S. F., to this end, in matters regarding the application of the above patents and processes, such as the technique, the technical secrets necessary or useful in the manufacture or exploitation, and the use of recent improvements and investigations without in any way impairing the rights which the French State obtained on patents and processes examined under the Treaty of Peace signed June 22, 1919 and without making the State of France in any way abandon all or any part of these rights.

In consequence, the State of France and the B. A. S. F. has agreed as follows:

ARTICLE I

The B. A. S. F. agrees in a general way to provide the French State, under the forms and conditions which will be stipulated hereinafter in the present contract, all the explanations and detailed information necessary or useful for operating all the processes used in the plants at Oppau and Mersebourg, for the production of Synthetic Ammonia and for the transformation of this product into Ammonia Sulphate and Nitrates of Ammonia, as well as all the details for the installations necessary to their production, the results obtained and the improvements under investigation.

ARTICLE II

The B. A. S. F. agrees for the duration of the present contract, to exploit neither directly nor indirectly nor by way of authorizing or ceding licenses, not in any other way, the processes and products mentioned in Article I, in France, in the French Colonies and the countries under French protectorate.

Reciprocally, the French State agrees under the same conditions, to exploit neither the processes nor the products mentioned in Article I, in any other countries except France, the French Colonies and the countries under French protectorate.

On the other hand, by virtue of the present contract, the French State can exploit the products of Article I in France, in the French Colonies or in the countries under French protectorate, either directly or by any other individual or company, and can use or sell the products obtained by these processes in the same countries.

ARTICLE III.

The present contract implies the total and exclusive ceding to the State of France, of all the French patents taken out in France and bearing on the manufacture of the products enumerated in Article I. The ceding will be legalized at the request of the French State and at its expense, and will comprise the exclusive license for using the above patents.

The two contracting parties agree to let each other have the benefit of any improvements which they make during the duration of the contract for the above processes.

In particular, the B. A. S. F. will give to the French State, the French Colonies and the countries under the protectorate of France, exclusive license for all additional patents or improvements which they are able to take out in the future relating to the processes mentioned in the first article.

But, the B. A. S. F. alone will retain ownership of the patents for articles other than those which are made the object of the present contract; she will not take up, however, any question on the validity of these patents or on their duration.

ARTICLE IV.

The B. A. S. F. will give over to the French State as quickly as they will be needed, the plans in general and in detail, for a plant capable of fixing in the form of Ammonia solution, 100 tons of Nitrogen per day of twenty-four hours, as well as all the necessary information concerning the construction, operation and maintenance. In addition it will place at the disposal of the State of France, all the installation and organization pertaining directly or indirectly to the manufacture of the products enumerated in Article I, or anything which is indispensable to the preparation of the raw materials or intermediate products used in obtaining them. This information will comprise especially, process books and detailed lists of pieces of apparatus; plans of foundations, the system of piping, means of communication, all installation and apparatus for control, measurement and safety, necessary or useful for the perfect operation of the complete plant.

The B. A. S. F. will inform the State of France in every particular concerning detailed measurements, precautions to be taken to avoid accidents, to obtain the best yields and the best quality, and it will also give information on the most advantageous method of operation.

From the time that the present contract takes effect under the conditions specified in Article 13, the French State must proceed, either directly or indirectly (through individuals or companies), with the construction of a plant capable of producing as indicated above.

ARTICLE V.

The B. A. S. F. will make known in a precise and detailed way, the results to be expected at each stage of the operation, including the thermal, chemical and mechanical yields of each operation and of each machine and piece of apparatus and of every operation which is concerned in the manufacture. It guarantees positively, the results obtained in its own plants under continuous operation, such as are set forth in the figures contained in Supplement No. 13, and it is expressly stipulated that the present contract is passed on the basis of this guarantee.

The B. A. S. F. also guarantees the authenticity of a detailed and complete diagram for the installations to be made; this diagram constitutes Supplement No. 2, included in the present contract.

ARTICLE VI.

The State of France agrees expressly, not to divulge the processes which are the object of this contract. It will bind all the employes to the strictest secrecy by obtaining the signature of these employes, including all delegates and representatives who have any knowledge of the process as a whole or in part, and who before being employed, will be obliged, under penalty of the law, to keep secret all the manufacturing proceses of which they have any knowledge, and in case of dismissal, will be obliged not to give their cooperation, either directly or indirectly to any similar industry carried on in France or abroad for the length of time determined upon.

This condition will remain in force during the duration of the present contract and fifteen years after its expiration.

Article VII.

The B. A. S. F. agrees to give to the State of France, in every possible way, its advice and its aid in the setting up of all construction and installation for a plant capable of fixing 100 tons of Nitrogen per day, under the conditions specified in the above article, as well as aid in the control of the construction and putting into operation. To this end it will send the necessary personnel to supervise construction and operation during construction, until the production and yields indicated in the present contract and supplements have been attained during a period of fifteen consecutive days. The State of France will reimburse the B. A. S. F. for the traveling and living expenses of the above mentioned personnel while in France, but the salaries of this personnel will remain in charge of the B. A. S. F., since it may be considered that they are included in the sum paid to the B. A. S. F. in remuneration for its cooperation.

Article VIII.

Until the previously announced results have been attained in continuous operation, the employes or agents of the State of France will have free access at all times to the plants of the B. A. S. F. where the processes of the present agreement are carried on; all facilities will be given to these employes or agents to learn in the plants of the B. A. S. F. all details for operating the above processes, for operating the apparatus and for applying the methods of analysis, control, measuring and safety.

The same will hold throughout the duration of the contract whenever certain improvements are made on the process, or in case of necessity, by agreement between the contracting parties.

ARTICLE IX.

The B. A. S. F. will furnish directly without profit to itself, all machines and all apparatus which it will be advantageous to keep secret in the interest of both parties or, all such apparatus as cannot conveniently be constructed by any other place than the shops or sources of supply of the B. A. S. F. In both cases the B. A. S. F. will bill the French State for the apparatus specified above, either at the cost price or purchase price. It is agreed that the cost price will be established by adding to the cost of materials and labor an additional charge of 10% for general expenses and amortization and it is agreed that the purchase price will be determined by adding to the sum actually paid to the Supply House, an additional charge of 5% to cover expenses of administration. In case the B. A. S. F. is not able to furnish the apparatus in question, it will indicate the source of supply to the State of France and will act as intermediary, if so desired, in order that the purchase will be concluded under the best conditions.

It is agreed that for the apparatus which the State of France will order for the French plants, either for the first installation planned or in case of further enlargement, it will oblige its constructors not to divulge any of the secrets of construction which the B. A. S. F. has given them and not to deliver this apparatus except to the State of France, unless by agreement with the B. A. S. F.

The B. A. S. F. will guarantee good quality and will give assurance for perfect operation of all the apparatus which it will supply or the construction of which it has controlled or which has been bought in accordance with its diagrams and specifications. It will bear no responsibility for those which do not satisfy these last conditions.

ARTICLE X.

In remuneration for the voluntary cooperation furnished by the B. A. S. F., under the conditions specified in the present contract, for putting into operation its processes, the B. A. S. F. will receive from the State of France:

1. A fixed sum of Five Million Francs (5,000,000 Fr.) payable as follows:

> Two Million Five Hundred Thousand Francs (2,500,000 Fr.) as soon as the present agreement becomes effective, in accordance with the stipulations of Article 13, and—
>
> Two Million Five Hundred Thousand Francs (2,500,000 Fr.) when the plant or plants installed in France are producing in continuous operation per day of twenty-four hours for a period of two weeks, a minimum of twenty tons of Nitrogen in the form of Ammonia solution.

2. A royalty per kilo of Nitrogen contained in Ammonia solution produced in the high pressure plant, this royalty being fixed at twelve centimes (12 c.) if the average price for the unit of Nitrogen (a kilo) contained in Chilean Nitrate of Soda delivered c.i.f. at a French Port, remains equal to or above six francs during the period under consideration (one-half year); it will be lowered to ten centimes (10 c.) if the average price of the unit of Nitrogen is between six francs and three francs or will become eight centimes if this average price is between three francs and two francs, and five centimes, if the average price is below two francs. This royalty will be due from the time that the first plant is put into operation and

from that moment on when the production of thirty tons of Nitrogen in the form of Ammonia, per day of twenty-four hours, will have been attained. The annual royalty will not be less than 500,000 francs, whatever the production, even if it is nothing; this minimum will be increased to One Million Francs, from the time that a production of sixty tons per day of twenty-four hours has been attained. This royalty will cease to be paid upon expiration of the fifteenth year, counting from the day when the production of thirty tons will have been obtained.

The State of France will make payment of the royalty semi-annually during the month which follows the expiration of each half year. The bill will be calculated as we have said above, according to the average selling price of Chilean Nitrate delivered c.i.f., French Ports, during the course of the expired half year; this average price is established on the bases fixed by common agreement between contracting parties. The royalty will be based on the quantity of Ammonia solution produced during the half year under consideration, in both the initial installation and any enlargements or any other installations effected later. The production of Ammonia solution will be computed in the business books, which will be daily recorded under the exclusive supervision of the State of France. These books will be held at the disposal of representatives of the B. A. S. F. who will be able to audit them.

In cases where, on account of enlarging the initial installation or on account of creating and operating new installations, the capacity of all the plants together exceeds one hundred tons per day of twenty-four hours, the B. A. S. F. has the right to an extra payment of a sum calculated on the daily capacity, amounting to 35,000 francs per ton of Nitrogen, for production between 100 and 200 tons of Nitrogen in the form of

Ammonia solution, per day of twenty-four hours, and for production above 200 tons per day to the amount of 30,000 francs for each extra ton.

These sums will be paid by the State of France to the B. A. S. F. dating from the day that the enlargements or new installations corresponding to the increase in capacity have been put into operation.

To make clear what has been said above, take for example the following case: By certain enlargements or new installations the total capacity has been carried to 190 tons of Nitrogen, the B. A. S. F. would then have the right to a supplementary sum in addition to the sum of Five Million specified above, calculated as follows:

35,000 x 90 = 3,150,000 francs (Three Million One Fifty Thousand Fr.)

And if the capacity of production should be carried to 320 tons of Nitrogen per day, the B. A. S. F. would have the right to:

35,000 x 100 = 3,500,000 francs (Three Million Five Hundred Thousand Fr.)

for the part 100 to 200 tons—

30,000 x 120 = 3,600,000 francs (Three Million Six Hundred Thousand Fr.)

for the part 200 to 320 tons—namely, a total of 7,100,000 francs (Seven Million One Hundred Thousand Fr.)

If the B. A. S. F. grants to a third party for any other country than France, the French Colonies or countries under French protectorate, certain conditions considered more advantageous by the French State than those of the present contract, the latter will have the right to require that these latter conditions should be made to apply in place of those specified in the present contract. The B. A. S. F. must report without any delay to the State of France, the contracts which it desires to make with the third party for the exploitation of the processes mentioned and which might be considered by the State of France as more advantageous to it than the present contract; the State of France should make known its decision within a period of six months from the date of the communication received by her.

Article XI.

The payment specified above will be made to the B. A. S. F. and in the absence of agreements to the contrary, they will be made in French money, having legal currency in France, and not as compensation for the war indemnity, as per the Treaty of Peace signed June 2, 1919.

Article XII.

The present contract expires after a period of fifteen years from the date when the production of thirty tons per day shall have been attained. If certain delays in the setting up of the first plant have been due to the fault of the B. A. S. F., the duration of the payment of the royalties will be reduced by a period equal to the time of the delays, as stated in the legal forms in France.

Article XIII.

The French State can, during a period of three months after the signing of the present contract, refuse all rights and obligations resulting from it, and in this case the date of the notification of the B. A. S. F. will be considered the date of the cancellation of this contract without indemnity on either side. After this period has expired and if this refusal is not made, the contract will take full effect.

ARTICLE XIV.

The State of France reserves exclusively the right, recognized by the B. A. S. F. as here, to substitute any third person or company designated by her in the rights and obligations of the present contract as a whole or in part, and with the one proviso that in every case the French State will guarantee the B. A. S. F. the execution of all obligations of the present contract.

ARTICLE XV.

At the expiration of the contract the State of France will remain in possession of the rights, licenses and powers ceded to it by the present agreement without payment of any royalty to the B. A. S. F.

Made in Paris in duplicate, November 11, 1919.

Signed—PATART.

BADISCHE ANILIN & SODA
FABRIK,
(Sgd.) BOSCH,
ALLBRECHT.

Copy attested:
GENERAL MILITARY INSPECTOR, DIRECTOR.
(Sgd.) G. PATART.

ASSUMING THE NON-RATIFICATION BY PARLIAMENT OF THE AGREEMENT OF NOVEMBER 11, 1920.

Have we still free hands?

In accordance with Article 13 of the agreement, the agreements signed between the Ministry of Industrial Reconstruction and continued by the Minister of War, party of the first part, and the Badische Anilin, party of the second part, are definitive. In pursuance of these agreements certain damages could be claimed from the party who caused a cancellation, the collection of which the Badische would have to contest at law in the courts in the home of the defense, namely in France.

The Powder Department estimates that these damages could not amount to a large sum, the Badische having maintained from the start (particularly in a letter of November 11, 1919, the day of signing the contract), that it was "in consequence of particular circumstances that the contract was concluded with the State of France under conditions extremely favorable to the latter."

The only damages which the German Company could claim would be the communication of certain technique, in the manufacture to representatives of the French State (there are no secrets): yet the Gerans are the first to declare that this technique is attainable only by the engineers in their own plants.

Moreover, the Badische has received on April 1, 1920, in accordance with article 10 of the agreement, a sum of 2,500,000 francs, which she could not be forced to return, although this sum was only paid on account on the first installation constructed by the French State, and for the cooperation of the German Company during the construction, setting up, and operation of the first installation (first project of the contract dated October 31, 1919). If this first installation should now not be recognized, the amount paid would remain in the hands of the German Company without legal redress.

However that may be, if it could be shown that the installation planned for execution by the agreement is not of a nature to serve the general interests of the country, and that we were balancing the risks of cancellation against the greater sums due in case of ratification, the duty of Parliament would be to refuse to vote approval of the agreement and allow the responsibility for this refusal rest with those who had prematurely made use of the signature of the state.

But, we are going to see that as Mr. Loucheur has declared, we have the right of taking advantage of the conditions which the contract of November 11, 1919, will procure for us.

THE MAIN POINTS IN THE AGREEMENT.

Let us recall the main points of the contract passed with the "Badische Anilin and Soda Fabrik."

In this contract all risks have necessarily been avoided; the German company has been interested in the complete success of the French enterprise, and at the same time, all German competition on French territory is precluded.

It is clear from the preamble of the contract that the German company is to bring its "voluntary cooperation," independently of all the rights conceded to the French State by the Treaty of Peace and without impairing these rights.

The first article provides that the German Company should furnish all explanations and necessary details for operating certain processes, the patents and licenses for which it ceded wholly and exclusively to the French State (Art.); all plans of the whole and in detail (Article 4), the technique and control measures, to insure the best results (Article 5); Germany is also to lend its personnel when necessary, and is to help when requested, in the production of the material (Article 6, 7, & 8).

Germany is to give complete and free access into its plants to the French technologists (Article 8) and is to inform the latter during the period of the contract of all improvements which it makes in regard to these processes (Article 3). Besides, all direct or indirect competition is prohibited in connection with products manufactured by these processes in all territory belonging to France, its colonies and countries

WE ARE THEREFORE GUARANTEED—AND THE RESULT

On the other hand, in recognition of the "voluntary cooperation" which the "Badische Anilin" has agreed to supply, the French State agrees (Article 10) to pay in fees for building the sum of Five Million Francs, half of which is payable when the agreement becomes final and the other half when the plant is producing one-fifth of its total capacity. The fees will represent about five per cent of the cost of construcfion, which is the official fee recognized by all architects in France. In addition, the German company has the right to a variable royalty per kilogram of fixed Nitrogen, reckoned on the average price of the unit of Nitrogen (kilogram) contained in Chilean Nitrate of Soda, delivered c. i. f. at French ports. This amount will vary between 2% (when the price per kilo of Nitrogen is above or equal to five francs) and 4% (when the price per kilo of Nitrogen is above or equal to two francs). Let us suppose that the price per kilogram of nitrogen in nitrate of soda delivered at Dunkerque was not lower than seven francs during 1920 and that in 1913 to 1914 it was about 1.65 francs. This royalty is payable only from the time when the plant constructed fixes a minimum of thirty tons of Nitrogen per day. The French State agrees to keep secret all of the processes conceded (Article 6), to let the German Company profit equally from all the improvements which they make in the processes during the duration of the contract (Article 3); but it reserves for itself the right to substitute a private concern in all the rights and obligations of the agreement (Article 14). Finally, in the agreement which assures to the French State the most advantageous conditions, it is specified (Article 10) that the French State would have the right to claim any more profitable agreements which the Badische might conclude in other contracts of the same kind.

The duration of the agreement is fixed at fifteen years (Article 12), dating from the time when production has reached thirty tons per day.

In conclusion, the French State has reserved for itself (Article 13), a period of three months for the final approval of the contract in order to be able to submit it for examinatioin to either certain Government or Parliamentary Commissions.

Advantages of the Agreement.

The industrial value of the Haber Process has been proved. In 1917 the Badische produced 75,000 tons of Nitrogen; in 1918 it furnished 100,000 tons. In fact, in the two plants at Oppau and Mersebourg, it has more than doubled these figures. Besides, the manufacture should proceed without interruption; the recent catastrophe at Oppau cannot be imputed to the Haber tubes themselves, according to the opinion of Mr. Georges Claude himself. Mr. Claude attributes it to the explosion of a stock of explosives which consisted of certain accumulated nitrated salts.

One of the capital articles of the agreement is Article 2, by which the Badische agrees for the duration of the contract, to exploit its processes neither directly nor indirectly, neither in France nor her colonies.

Is Not of Slight Interest—Against German Competition.

The policy of the French State was to assure itself of a production of Nitrogen amounting to 100 tons per day in a plant removed from the whole war zone. In this respect, the power plant at Toulouse already operating, lends itself admirably to the role designed for it. In no other way could it accomplish these dreamed of results with the same security and the same rapidity of organization; in no other way could it operate to such good account, a plant producing 100 tons.

Finally, in the explanation of the reasons behind the plan which is submitted to us, the general facilities of the Toulouse Powder Plant are enumerated, which could be advantageously used for the new manufacture; railroads, repair shops, storehouses for machinery and raw materials, heating plant, central station, plumbing, etc. We have here a group of installations which cost us very dear during the war and which up until now we have not been able to use during times of peace.

CALCULATION OF ROYALTIES PER KILO OF NITROGEN PAYABLE TO THE B. A. S. F.

The figures of two francs, three francs and six francs per unit of Nitrogen, which are calculated as royalty for the B. A. S. F. (Article 10 of the agreement of November 21, 1919) correspond respectively to 100 kilograms of Nitrate at: 31 francs, 46.50 francs, 93 francs.

In 1921, Nitrate of Soda which was worth 105 francs per 100 kilograms on January 1st, went up to 116 francs in March—April, and was maintained above 100 francs until May; from this time on it fell regularly down to 75 francs, which was the price in November and which remained without appreciable change until the end of the year.

The average price of Nitrate was above 93 francs during the first half year and below 93 francs during the second half of the year. Thus, if a plant producing 100 tons per day had functioned in 1921, the royalty would have been:

0.12 x 18,000,000 plus 0.10 x 18,000,000 = 3,960,000 francs supposing that the plant ran at full production throughout the whole year.

If the price of Nitrate of Soda returned to the pre-war price (27 francs per 100 kilos in 1913), the royalty would not be more than:

0.05 x 36,000,000 = 1,800,000 francs

supposing that the plant was running at full production. The minimum of 1,000,000 francs fixed as royalty is based in this case on the production of the plant at half its possible capacity. Until new conditions are met with, the royalty must obviously be determined at the rate of 0.10 francs corresponding to Nitrate worth between 46.50 francs to 93 francs per 100 kilos, which gives: 3,600,000 francs per year for a plant running at full production, or a selling price of One Hundred Fifty to One Hundred Eighty Millions of francs.

The royalties, therefore, correspond to about 2% of the sales.

CHAPTER V

THE POWDER WORKS AT TOULOUSE DURING THE WAR

Measures devised since the Armistice for its use.

The Powder Works Proper at Toulouse.

At the time of mobilization, the powder works at Toulouse occupied:

1. The southern part of the Island of Ramier in la Garonne (21 hectares, 57 ares), the northern part, the nearest to the city being occupied by the Toulouse Park.

2. In the Island of Empalot (south of Ramier), the part situated north of the railway from Toulouse to Bayonne, (18 hectares, 41 ares).

One Black Powder plant has operated for a long time in the Island of Ramier. Recently they have replaced one part of the Black Powder Plant situated in the extreme southern part of Ramier, by plants for the manufacture of Powder B and then the manufacture of Powder B was extended into Empalot.

In the midst of the Black Powder plants is found also a plant for the manufacture of detonating fuse.

According to the mobilization plans, the Powder Works at Toulouse was calculated to deliver daily, one ton of Powder B after the 31st day.

As in the other powder works, this program was greatly surpassed and the deliveries were increased at once regularly in consequence of improvements and supplementary installations without any actual extension.

Beginning with 1915, it seemed to be necessary to increase the production of Nitrocellulose, localized up to that time at Angouleme and Moulin-Blanc and they decided to add to the factory for the manufacture of Powder B at Toulouse, a factory for Nitrocellulose.

The fact that the Garonne was nearby was an important factor because they could without any trouble empty the residual acids into this stream.

The new factory for Nitrocellulose was built in the southern part of the Island of Empalot, acquired by the State before the war, separated from the factory for the manufacture of Powder B, already established in the northern part, by the embankment of the railroad from Toulouse to Bayonne. Care was taken, moreover, to place the acid factories at the extreme southern end of the island. In other words, as far as possible from the factory for the manufacture of Powder B.

From the very first they could manufacture daily, 20 tons of Nitrocellulose alone in this new plant. A little later the amount was increased to 60 tons.

Then this quantity no longer sufficed, but after the different sites in the region capable of being used for the erection of a new plant for Nitrocellulose and Powder B were investigated, they decided in October, 1915, in spite of disadvantages which an establishment of such great importance might offer, to erect a new factory on the left bank of the Garonne between this river and the road to Nuret, on the land known as Braqueville, which is made up of the alluvium of the Garonne, sand and gravel, thus lending itself perfectly to the purpose. The nitrocellulose plant was constructed opposite this plant at Empalot; the Powder B plant a little further on, that is to say, to the south; the Powder B plant was then in no danger of receiving the vapors from the Nitrocellulose plant, the prevailing wind in this region being a south wind which almost always blows in the direction of the current of the Garonne.

The new Powder Works called Braqueville, was designed to manufacture daily, 60 tons of Nitrocellulose and as much Powder B.

At the same time, the part of the Island of Ramier which remained for the manufacture of Black Powder underwent great modifications. In one part they maintained a factory for the manufacture of Black Powder, principally a special powder for fuse tubes, which were brought over at the end of August, 1914, from the Powder Works at Bouchet, but at the same time they installed a fuse tube plant themselves (3,600 large tubes per day) and developed the manufacture of detonating fuse from melinite (13 kilometers per day) and even installed a plant capable of producing daily, 60 tons of schneiderite, for use either in existing battle ships or in new ones.

Then at the beginning of 1916, the construction of a Sulphuric Acid plant, lead chamber process, was undertaken, with Gaillard concentration apparatus, which could produce per day, 120 tons of 98% acid. In the month of September following, they decided to double the capacity of this factory which, however, was not carried out on account of the decrease in the need for Sulphuric Acid resulting from the production of Synthetic Nitric Acid.

The total production of the Sulphuric Acid plant at Toulouse was 22,385 tons.

In the early part of 1917, the construction of a Synthetic Nitric Acid plant was undertaken, designed to produce 150 tons per day of monohydrate. This construction was not entirely finished at the time of the Armistice but the production of Nitric Acid had commenced and had reached 25 tons per day. In all, they produced 2,275 tons.

Let us recall finally that the Nitrocellulose plant at Empalot had been provided with a plant capable of producing 12 tons at least of cotton to be nitrated per day.

To facilitate the service, a bridge for pedestrians and cars had been constructed, first of all over the upper Garonne to connect Empalot to the city of Toulouse. Then in 1918, a large bridge was constructed on the lower Garonne, immediately above the railroad bridge, or in other words, in addition to the Normandy Railroad, joining the two banks to the Midi Road, there was now a highway, which forms the extension of the bridge road, built over the upper Garonne, thus making an indispensable artery joining the different parts of the plant.

In conclusion, the Toulouse Powder Works proper, included within its own territory, several camps for colonial workers, mobilized men and workmen, and outside its territory included several annexations, namely:

An infirmary of 600 beds (the St. Agnes Infirmary) built in the suburb Toulouse, nearest the powder works.

The powder magazines at Chapitre separated from the Powder B plant at Braqueville by the road to Nurat.

A depot for explosives at Miremont on the plain between the Garonne and the Ariege about a dozen kilometers away from the Powder Works.

The Toulouse Powder Works during the course of the war has organized between Bordeaux and Toulouse, several transportation lines by boats navigating on the canal lateral to the Garonne; to better this mode of transportation they have constructed a certain number of reinforced concrete boats.

For the transportation of the personnel they organized between the station at Toulouse—Matabiau and the Powder Works, a system of work trains and they extended two lines of electric cars, one on the right bank going to the entrance of the powder works at Empalot, the other on the left bank going to the powder works at Braqueville.

USING THE INSTALLATIONS AT THE TOULOUSE POWDER WORKS.

1. Program of 1919.

(a) Let there be reserved for the needs of the Powder Service the following plants:

The Black Powder plant at Ramier (formerly a powder works).

The Powder B plant at Empalot (formerly a powder works).

The Nitrocellulose plant at Empalot.

The Synthetic Nitric Acid Plant.

The Sulphuric Acid Plant.

Supply Magazines of the Nitrocellulose factory at Braqueville to be used in construction of a superphosphate factory.

The production of super-phosphate should at first reach 200 tons per day, using thus one-third of the maximum capacity of the Sulphuric Acid plants. Then it should be increased to 600 tons per day.

This project was abandoned, credits demanded, not having been granted.

(b) Let there be allotted and sites chosen conforming to the decisions of the Reorganization Commission for plants of the Powder Service, the parts of the Toulouse Powder Works, designated below:

The Powder B factory at Braqueville.

The Nitrocellulose Factory at Braqueville.

A preliminary competition, announced with a great amount of publicity, was closed on July 15, 1919 but all the offers received showed only a mild interest.

The location was then left open but no industrial concern has submitted any acceptable offers.

2. Program of 1920 in course of execution.

(a) The principal point is for all powder works to keep in operation, all the plants capable of insuring the production of powder and explosives of war for which they have been established, except such parts of the plants which are perhaps operated under unsatisfactory conditions from the point of view of expenditures for labor, as well as for raw materials, transportation between shops, etc.

(b) All accessory installations should be sold, such as barracks, laundries designed for the temporary use of the workmen imported there during the year (mobilized men and colonials), and such installations which could be rebuilt within a short time.

(c) All materials and supplies indispensable to manufacture during a period of three months should be kept and everything that could not be procured or replaced quickly by purchase or requisition, with the exception of such substances as are susceptible to deterioration during storage.

These general regulations should be modified by the following exceptions in the case of the Toulouse Powder Works.

(d) Manufacture of Synthetic Nitrogen Products at the Toulouse Powder Works—Part of the Toulouse Powder Works which it is planned to use in the project now submitted to us comprises:

1. The Nitrocellulose factory at Braqueville (about 45 hectares).
2. The Sulphuric Acid plant (17 hectares, 58 ares).
3. The Synthetic Nitric Acid plant (26 hectares, 81 ares).

I. THE NITROCELLULOSE FACTORY AT BRAQUEVILLE.

The special apparatus for the manufacture of Nitrocellulose has been put out for sale but all the installations for general services should be retained (steam, water, electricity, repair shops, railroads, rolling stock, etc.) as well as all the materials of construction which can be used in any way.

On the site of the Nitrocellulose factory it has been planned to construct an Ammonia plant proper.

Among the buildings and installations of this factory already existing, the following should be used:

> The usual railroads having a total length of 15 kilometers.
>
> The Receiving Station for 55,000 volts and the transformers for 13,000 volts of electricity and most of the distributing cables for the latter current.
>
> The Pumping Station in the Garonne and the Filtration Plant which is able to supply 2,000 cubic meters per hour, the general distributing reservoir and the water plants.

The heating plant (10 furnaces with 500 square meters of heating surface can produce a total of 80,000 cubic meters of steam per hour).

The building for the use of the personnel, (dressing-rooms, garages and bicycle sheds).

General storehouses (20,000 square meters of covered surface).

Repair shops and work shops (45 x 70 meters).

In conclusion, the metal framework of a certain number of Nitrocellulose factories could be taken over for the construction of the new Ammonia plants.

II. THE SULPHURIC ACID PLANT.

This plant comprises 24 pyrites furnaces and six lead chambers. The Sulphuric Acid produced in this plant (200 to 250 tons per day) will be utilized for the transformation of a part of the Ammonia produced into Sulphate of Ammonia (fertilizer).

III. THE SYNTHETIC NITRIC ACID PLANT.

This factory was designed for the transformation of cyanamide into Ammonia and the oxidation of this Ammonia into Nitric Acid. It should produce 150 tons of Nitric Acid Monohydrate per day (corresponding to about 35 tons of Nitrogen).

A third of this installation has been put up, but the material for the complete installation is on hand and will be utilized for this purpose, with the exception of the plants for the transformation of cyanamide into Ammonia, which will be useless since Nitrogen will be fixed directly in the form of Ammonia.

Temporary Dispositions.

Because no agreement could be reached regarding the location, and while the confirmation of the program of 1920 explained above was awaited, the allocation of the Toulouse Powder Works described above was provisionally put in the hands of the Ministry of War and of certain foreign departments who were looking for storehouses for certain material.

I. Artillery Service.

Three refectories of the Sulphuric Acid Plant at Bracqueville.

Three Nitrating Plant Four Cotton Plants	Of the Nitrocellulose Plant at Empalot

This occupation was made subject to a temporary and revocable agreement.

II. Postal Telegraphic and Telephone Service.

A locker room of the Powder B plant at Bracqueville, rented at 5,000 francs per year.

III. Service of the Bureau of Industrial Reconstruction.

Four Cotton Plants for the manufacture of guncotton at Bracqueville, rented at 12.50 francs per day per plant.

Three buildings have been vacated by the occupant and the fourth will be so shortly.

Chapter VI.

Approval of the Agreement of November 11, 1919.

The Objections—The Battle for the Acquisition of the Haber Process.

An agreement, the text of which we have reproduced above, was passed on November 11, 1919, between the Ministry of Industrial Reconstruction and the "Badische Anilin and Soda Fabrik" for the purpose of manufacturing Synthetic Ammonia.

Should Parliament approve this agreement?

Should it authorize its execution by the Ministries interested?

Such is the first question which is placed before us, as raised by the first article of the case filed by the Government.

It seems that there should be no possible doubt: We have shown the great advantages of the contract obtained from the "Badische" through the diplomacy of M. Loucheur.

If yields from German soil are compared with the production of French soil, one is stupefied to see that the poorest soil of the Germans produces 1.920 kilos of wheat per hectar, 10.350 kilos of potatoes per hectar, while the other, ours,—and our richest!—yields only 1.380 kilos of wheat and 7.240 kilos of potatoes per hectar!

The author of "Pour Renaitre" (To be born again) an excellent little popular book the reading of which we recommend to those who wish to gain some idea of the vital problems of our country, quotes this passage from a report made to the Dresdner Bank a short time before the war:

"From the point of view of intensive cultivation of the soil, Germany stands at the head of agricultural countries. This position is the more remarkable, since the quality of her soil is inferior in several respects to that of other countries. The good yields of the harvests in Germany must be attributed to the encouragement of scientific methods in agriculture, the education of the farmer, and to the extensive use of chemical fertilizers."

Here are the figures which speak for themselves:

"With a considerably smaller cultivated territory (48% against 59% of the total area, which is about the same in our two countries), Germany consumes 485 millions of francs worth of chemical fertilizers, and we only 208 millions. While Germany uses 2.070 kilos of sodium nitrate per square kilometer of cultivated earth, and England 1.900 kilos, France uses only 1.030 kilos."

Let us generalize and replace the words "nitrate of soda" with the words "nitrogenous fertilizers." Let us recall that the figures cited above agree with those that were furnished us as official statistics: we will then have the key to our inferiority, due at once to our farmers' excess of confidence in the intrinsic virtues of the soil which they have inherited, and to the backwardness of our industry.

We have noted, and our colleague, M. Victor Boret has noted the same in his eloquent pamphlet "Pour et par la terre" (For and by the Soil):

"The Germans launched the war only when their industry was able to guarantee them a production of synthetic ammonia sufficient to care for military and agricultural needs."

Dr. Bosch, Director of the Badische, told only a short time ago of the difficulties which he had to surmount to operate the Haber process:

"It is only by separate experiences, in infinite number, that we were able to carry out this process of manufacture. It is necessary to learn how to handle enormous quantities of gases; any derangement in any place whatever affects the whole apparatus. If in the first place the handling of combustible gases under ordinary pressure does not work out at all, the difficulties and dangers of using gases under pressures of 200 atmospheres, increase to an enormous extent.

"At times, it was necessary for us to spend hours of hard work before we had conquered the forces of nature and made them work our will."

It can be affirmed—and there is no protest against this fact—that the plants at Oppau have been an essential factor in the German resistance—as much on account of their war production as for the feeding of the German population.

Would we not have been criminals if we had not profited by these circumstances which permitted us to treat with Germany and to acquire the secrets of the manufacturing processes of the Badische?

We could indeed have gained possession during the war of the patents and descriptions of the Haber process; but no scientist, either in France, or in England, or in the United States, would have known how to use them industrially or how to design a plan of manufacture comparable to that which the Germans had been able to work out.

The tour de main ("know-how") would have been lacking to us.

It is this tour de main which we have bought by the contract of November 11, 1919. The plant producing synthetic ammonia according to the terms of the agreement will be installed by German engineers, by German workmen, who have the secret of setting up and operating the plants at Oppau and Mersebourg. We will be certain of being able to realize *in a single plant* a daily production of 100 tons of Nitrogen. Finally, thanks to the prohibitory clause provided in the contract, we will be protected against German competition, against which we could not hope to struggle because she is favored by the low price of labor and raw materials, by the advantage of her acquired speed, by the size of her production, etc.

There should, therefore, be no hesitation: We ought to approve the agreement of November 11, 1919, advantageous to us in every respect; and conforming to Article I of the project which is submitted to us, we ought to authorize the proper Ministries, the Ministry of War, the Ministry of Finance and the Ministry of Agriculture (and not only the Ministry of War as the text of the government demands), to execute this agreement.

* * *

But how should we carry out the industrial and financial application?

Here the difficulties commence.

"1. You have acquired the German process—some tell us—that is good. But it is necessary to guard against appearing to let the German process stifle French processes by according it to the exclusive patronage of the State, or indeed any other processes—however capable of competing with it to advantage—and you must guard against seeming to furnish German science and industry with a patent of world-wide superiority.

"2. The agreement of November 11, 1919 is a conquest of war. You have obtained it in the course of parleys which have followed the Armistice. It is, therefore, the fruit of the sacrifices of the nation. It would be unjust for a private firm to receive all the profits, especially if you permit the latter to use for its exploitation this powder works at Toulouse, which has been so burdensome for us to install during the War and which is national property.

"3. Finally, we have reason to fear that this concession granted to a private firm gives rise to a *trust* by law and deed, thanks to the great advantage which the support of the state would give it, and it would soon have control of prices, of the market and of production."

These objections could not fail to arrest the attention of your commission.

A work such as that of M. Georges Claude ought not to be under estimated. M. Georges Claude is a man of whom French science is justly proud. We would be extremely ungrateful if we sacrificed him in the struggle which he has undertaken against what he called during the course of our visit to Montereau, "a German tank, the tank which wants to swallow up everything, the tank of ammonia synthesis." Other processes such as the Casale process also give interesting results. It would not enter anyone's mind to deny this, neither at the present nor in time to come.

On the other hand, if the state supports a company exploiting the benefits of the agreement of November 11, 1919, and using, moreover, the powder works at Toulouse, it is right that the state should share to a large extent in the gains which this company shall realize.

Finally the fear of a possible trust among the groups interested in the production of nitrogen is justified by a glance at the negotiations entered into since 1919 between the officials of the Powder Direction and the representatives of these groups; our report would be incomplete if it did not include all of the these phases of the question.

Upon the cessation of hostilities, French industries interested in the production of nitrogen had decided to unite their efforts for the acquisition of the Badische processes, in order not to make a burdensome competition among themselves; they had decided to constitute themselves a company called "Societe d' etudes de l'azote," the administrative council of which would comprise:

La Societes des produits chimiques de Saint-Gobain;

La Compagnie des produits chimiques d' Alais et de la Camargue;

La Societe des produits azotes;

La Societe des mines de Lens;

La Societe anonyme "L'Air liquide";

La Societie d'electrochimie;

La Societe generale des nitrures;

MM. Gillet et fils, de Lyon;

Les Etablissements Kuhlmann;

La Compagnie nationale des matieres colorantes;

M. Emile Lambert;

MM. Schneider et Cie.

La Societe chimique des usines du Rhone;

La Compagnie des mines de Bethune.

The company had for its principal object: "The purchase and ownership of all patents and licenses for the manufacture of synthetic ammonia, the operation of these patents and licenses, the conclusion of all treaties and agreements for the purpose of their exploitation or utilization."

According to its constitution the company opened negotiations with the Badische for the acquisition of its processes: it received for this purpose the official support of M. Loucheur, then the Minister of Industrial Reconstruction, charged with the control of economic conditions according to the Treaty of Peace, who, for this reason, enjoyed great influence among the German industries. The intervention of the French state in this case was all the more useful and even necessary because the terms of Article 297 of the Peace Treaty reserved to the Allied Powers or their associates, the right of retaining or liquidating all property, rights and interests belonging to German aliens. The patent relating to the processes of the Badische including certain property rights and interests of the Germans could be retained by the French state or liquidated by it at will; with the result that no license of these patents could be valid without the consent of the French State.

The Government estimated morever that it was in its interest to encourage as far as possible the creation of a nitrogen industry on French territory. That is what M. Clemenceau, President of the council specified in the discourse which he held at Strasbourg on November 4, 1919 and in which he recognized as one of the aims which should be followed out the development of our production of atmospheric nitrogen and the creation of plants operating along perfected lines assuring us ammonia and nitrates at prices below those for natural nitrates, so that we can stop all payments in gold from this department.

It was then agreed between the Ministry of Industrial Reconstruction and the Administrator of the company charged with entering upon the negotiations that the contract to be made with the Badische should be made in the name of the French State, and this latter contract superseded the one made with the company and in it was inserted the clause that the state should share in the profits accruing to the owner of the patents.

The conferences held for this purpose with the Badische being about to end, the Ministry of Industrial Reconstruction charged the Director of Powder, assisted by Comptroller General Mauclare, to pass the final contract in his name.

The text of this contract was attested in the presence of M. Mauclare, the administrator of the Societe d' etudes de l'azote, M. Bletry, engineering counsel in the matter of patents, and signed by the Director of Powder, November 11, 1919.

After the contract had been signed, the Ministry of Industrial Reconstruction, not wishing to favor a single group, appealed to all who might be interested to exploit this contract. As a result there was inserted in the Journal Officiel, for November 26th, a notice which reads as follows:

NOTICE.

Manufacture of Synthetic Ammonia.

"The Ministry of Industrial Reconstruction is disposing of certain processes relating to the manufacture of synthetic ammonia and its derivatives. The license of these processes is capable of being ceded in accordance with terms determined upon, to French industrial concerns interested in these products.

The companies or industrial men interested should inquire of the Direction of Powder, 147 rue de Courcelles (office of the Director), from December 1st to 12th."

Many requests for information were received: But the only definite propositions received came from a group formed by the Societe d' etudes de l'azote, which we mentioned above, but from which a certain number of members had withdrawn.

Let us notice especially in this connection (for we will have occasion to return to it), the two letters received from the Societe chimique de la Grande —Paroisse, owner of the patents of M. Georges Claude.

Paris, December 2, 1919.

The Director.

Dear Sir:

Following the visit which I made with you we would be greatly obliged to you for any information you may be willing to give us, as soon as possible, regarding the conditions under which the license for the manufacture of synthetic ammonia and its derivities could be ceded to French industries or companies. Our comapny would indeed be interested in this question.

Please accept, dear sir, the assurance of our esteem.

Le President du Consul d' Administration,
(Signed) Oliver.
Paris, December 12, 1919.

The Minister of Industrial Reconstruction,
(Direction of Powder)

Dear Sir:

We have examined with the greatest interest the "notice regarding the conditions for ceding a process for the manufacture of synthetic ammonia," which you were kind enough to send us by telegram #22501 on the fifth of this month.

We ought to state that our company which already possesses the Georges Claude patents could not accept the conditions of this ceding of the processes for evidently they remove every possibility for allowing us to exploit the aforesaid Claude processes as we should.

In consequence, we have the honor of informing you that we are obliged to decline to put ourselves in the ranks for the acquisition of a license of a German process for the manufacture of synthetic ammonia. Please be assured, dear sir, of our esteem.

Le President du Consul d' Administration,
(Signed) A. Olivier.

At the same time the two companies at St. Gobain and the l'Air Liquide, the founders of the Societe Chimique de la Grande—Paroisse, withdrew from the Societe d'etudes de l'azote, making it known that after the publication of the above notice in the Journal Officiel, the purpose which they had in mind, when entering the latter company, could no longer be attained.

The Societe d'etudes de l'azote, which in its letter of December 8, 1919, had made it known that it was disposed to enter in the combination to exploit the contract, thus found itself disorganized. But a certain number of its members formed a more limited group; and on January 3, 1920 the Etablissements Kuhlmann informed the Minister of War, as follows:

"A group of commercial companies comprises the Etablissements Kuhlmann, the Societe des mines de Lens[1] and the Societe Solvay et Cie was ready to study with this help, the conditions for ceding processes relating to the manufacture of synthetic ammonia and its derivatives." To this group on February 3rd following were added the Societe des produits and Societe d' electrochimie."

The Director of Powder was forced to create an alliance between this group on the one hand and the group which operated the Claude processes. The Director of Powder brought together in his office on March 6, and March 12, 1920, the representatives of the two opposed groups for the purpose of finding common grounds for an alliance. This alliance was necessary; for the cession to the first group of exclusive rights to the patents of the Badische would have placed it in position to attack the second group in the civil courts, if as may be supposed they thought that the Claude processes were included in the processes covered by the patents of the Badische.

A complete alliance could not be brought about; the Kuhlmann group proposed that the Badische and Claude processes should be considered together, or that an exchange of licenses should be made.

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[1] The Societe des mines de Lens had entered into the combination with the idea of constructing a new plant which would consume large quantities of coke, in the neighborhood of the new coke plant which the Societe de Lens proposed to construct with the pecuniary resources furnished by the war damages.

But the Claude group under the leadership of M. Mahoursier, Commercial Director General of the Societe de St. Gobain, saw as the only common basis for an alliance, a commercial agreement by which the Claude group would have the right to furnish one-half of the Ammonia fertilizers used in France; if it was not furnished in this proportion, it would have the right to cancel the whole quantity delivered by the other group. The latter objected that they could not grant seeming rights to owners of a process which still rested "only upon hopes" and had not yet been operated industrially.

In the meeting on the 6th of March, the Claude group presented the following declaration:

"The Claude Processes group, speaking as much in its own name as in that of other future inventors, declares that it is not possible for it at present to know whether in the development of the processes being studied, it will be led to make use of certain details covered by the patents of the Badische, and it declares that if such is the case, an exclusive license of patents owned by the State and ceded to another company would have the effect of hindering the development of new processes of the greatest interest to the nation."

In the meeting of March 12th, the same group made the following declaration:

"The Claude Processes group calls attention to the fact that the Badische patents appear to be concerned very much more with the purpose of forming a threat of attack against all inventors who approach the question of Snythetic Ammonia than with the purpose of informing the technologist of an industrial process clearly and definitely. Professor Matingnon has elsewhere confirmed this clause in his address of March 16, 1918, to the Societe de chimie industrielle.

"However, the Claude group will raise no objection whatever against granting of an exclusive license to another group upon the condition that it be assured that the realization and development of its processes will in no way be impeded through opposition from the or against the cession by the State to this latter group

patents which are the object of this license.''

The Director of Powder then demanded of the Kuhlmann group if he should agree to sign the following condition which could be inserted in the grant:

> ''Relative to what specially concerns the patents held by the Badische Company in France for the manufacture of Synthetic Ammonia, the exclusive license of which the State granted to the Kuhlmann group, the latter declares that in no case will it protest either against the indifference of the State to the exploitation of the aforesaid patents by the Claude Processes group or against the cession by the State to this latter group of a license to exploit said patents.''

The Kuhlmann group replied that for purposes of conciliation it was disposed to accept this ruling in principle, provided a more careful examination of the question was made at the time when the final contract of the cession should be drawn up; but that in any case it would insist on the cession of an exclusive license by the contract in regard to everything which did not touch directly upon the patents alone.

We will see later on how the discussions were subsequently continued with this latter group.

But on January 29, 1923, M. Andreau Lefevre, Minister of War, decided that: ''There was reason to obtain, if possible a prolongation of the time for consideration until April 1, 1920, and in the interval a company should be found which would agree to construct its plants on territory less exposed than the neighborhood of Lens, on account of the possibility of a new war.'' At every stage of the case, the Minister gave his opinion that it would be opportune to continue the case of the contract, provided the Parliamentary Commissions would take hold of it.

This decision in regard to the location of the plant caused a new delay in the negotiations with the interested industrial groups; for the Societe des mines de Lens, whose entry into the combination was subordinate to the interest which that company had in seeing the new plant erected in the Lens region with the payments received by the French State as war damages, immediately withdrew from the group as soon as the decision of the Minister of War had been made known.

Nevertheless, the two other participants (Kuhlmann and Solvay) with whom had now joined the Societe des produits azotes and the Societe d' electrochemie, showed themselves disposed to pursue the enterprise alone, the more so because the prospect of installing the operating plant in a part of the Powder Works at Toulouse, which the State proposed to put at their disposal, seemed to them to compensate for the disadvantages which the arrangement might have involved from an economic point of view.

Such was the state of affairs on March 13th, when the Societe Solvay made known that, following negotiations in America, it was no longer interested in the Badische processes, for it proposed to enter a group which would compete with the latter in the whole world and which was using the processes of the General Chemical Company. When the Solvay Company had taken this stand and had entered into the manufacture of Synthetic Ammonia with a competing group, cost what it might, and considering moreover, the existence of the St.-Gobain group, and the fact that l'Air Liquide was following out the same purpose with the Claude processes, the Etablissements Kuhlmann, isolated as they were between two groups having at their disposal considerable resources in money, refused to assume the financial responsibility for gathering together the large amounts of capital necessary to the exploitation of the contract passed by the State with the Badische; they feared, they said to set up the name of Etablissements Kuhlmann with Economy for the partner upon whom it would be necessary to call, against all the hazards of competition with two important groups.

However, after an interview between their representative with M. Andre Lefevre, Minister of War, they declared that they realized the great importance of the rapid creation of an industry for the manufacture of nitrogenous products from the point of view of general defense, and at the same time, they realized that the process should be used which alone had shown practical and industrial proof of its value, and that they were, therefore, ready to aid the state in exploiting the contract with the Badische, giving all their technical help, either in the form of direct or interested management.

In the interval the Societe l'Air Liquide, owner of the Claude processes had estimated for the first third of the year 1919, that the "expense of the attempts to put these processes into operation was too heavy for its resources alone[1] and it therefore had called upon the Societe de Saint Gobain for help." With the aid of the latter they had formed the Societe Chimique de la Grande Paroisse, nitrogen and chemical products, with a capital of 14,000,000.[2] To this Societe, l'Air Liquide bought for a sum of about 8,000,-

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[1] Report to the General Assembly of Stockholders, June 28, 1920.

[2] Increased to 34,000,000 francs in 1920. The Administrative Council of the Societe was composed of M. M. Alivier Armand, Administrator of the Plant for chemical Products at Saint Gobain, Pres.; A. Brocq, Administrator of the Societe l'Air Liquide; G. Claude, Administrator of the Societe l'Air Liquide; L. Roland l'Estape, Administrator of the Society l'Air Liquide and of the Gas Company of Marsielle; B. de Verges, Administrator of the Plant for Chemical Products at Saint Gobain; Delage, Technical Director of the Plant for Chemical Products at Saint Gobain; F. Mahoussier, Business Director of the Plant for Chemical Products at Saint Gobain.

000 francs, its plants at Montereau, as well as its investigations, works and French patents relating to the synthesis of ammonia. The foreign patents corresponding to these French patents remained the property of l'Air Liquide, with the facility of disposing of them by sharing with the Societe Chimique de la Grande-Paroisse the profits obtained, either by exploitation direct or by ceding the licenses, or by ceding the patents themselves.

Let us say immediately that the foreign patents (1) have been ceded for a remuneration of 50,000 shares at 100 francs, or 5,000,000 francs, at nominal value. (These shares bear certain special rights of voting by which entire control of the Societe Centrale through the Societe l'Air Liquide is assured to a new special company "Societe Centrale des Industries de l'air Liquide et de l'Azote", founded with a capital of 5,000,000 brought in a short time to 25,000,000 francs.)

The Claude processes were then exploited by two companies having at their disposal capital raised to a total of 59,000,000 francs, supported by the two companies, l'Air Liquide and Saint Gobain, the resources of which are considerable.

On June 25, 1920 M. Claude came to see the (2) Director of Powder, and after having referred his recent communications and publications he demanded of the latter why the Powder Service persisted in supporting the agreement signed with the Germans instead of promoting a French process, the superiority of which had been demonstrated. The Director of Powder answered him that his personal opinion based on exact figures did not permit him to agree conclusively; a discussion followed between the two representatives on the different elements entering into the cost price. M. Claude laid stress on the fact that in the case of selling his processes abroad he found himself in a false position due to the fact that the French

State had entered into negotiations with a German Company and seemed in this way to proclaim the superiority of the latter's processes, to the great damage of French capital engaged in the other process. He asked the Director of Powder if it was not possible to demonstrate in one of the plants belonging to the Service, in order that he might be able to say that the French State had made a comparison of the two systems.

The Director of Powder answered that he was entirely ready to go about things in this way, so that he might lend whatever aid possible to French capital which was engaged in the Claude processes; if reasonable proposals were made to him from a pecuniary standpoint, he would hasten to propose to the Ministry to set up a Claude plant for the production of 5,000 tons per day at the Powder Works at Angouleme, which was capable of utilizing the ammonia thus obtained.

M. Claude declared himself satisfied with this proposition. But the Director General and the Administrative Council of his Company (de la Grande-Paroisse) refused to follow up this proposal; and the Director of Powder never received the proposition which he had declared himself ready to consider seriously.

Finally, let us note that at the time when the agreement was concluded with the French State, the Badische was entering negotiations with the Solvay group for the cession of its processes under a contract which included a sharing of profits. If these conferences had been finished there would, without doubt, have been formed a combination between the Societe Solvay and the Badische for the installation of an ammonia plant at Dombasle (Meurthe & Moselle), where the Societe Solvay possesses the largest French soda plant; this is the more likely because the combination of the manufacture of soda and ammonia makes possible a considerable reduction in the price of the former and of the ammonia salts. If, therefore, the manufacture of ammonia had been installed in France without the intervention of the French State, it is probable that it would have been done at Dombasle (Meurthe & Moselle), with the aid of the Societe Solvay. This result would have assured the supply of nitrogenous fertilizer to the Northern and Eastern regions; from the economic point of view, it had the terrible disadvantage of making this industry subject to a Belgian company, which already holds a monopoly in the soda industry of France.

* * * *

It was necessary to recall all the phases of the struggle engaged in by the groups concerned with the acquisition of the Haber patent, to show the disturbances which could arise in the possible alliance of former competitors. There have been too many negotiations, too many fluctuations from one camp to the other, for us not to be atonished at the sudden calm on the field of battle, at the silence of the belligerents. Are they preparing for concerted action? Have they passed any treaties? Can they not conceive that certain diplomatic forces are at work? And, if a pact is formed by all those who formerly demanded a concession, is it not to be feared that the public will not pay the price demanded in the market? Is it necessary to allow a private firm to become master of the market for a commodity, the price of which we wish to see diminish in order to obtain the greatest advantage for our agricultural development?

Such are the questions which your commission was duty bound to consider when it undertook the examination of the financial combinations capable of exploiting the agreement passed with the Badische.

Before examining the combinations proposed it seemed interesting to us to cast a glance over the financial statement of the Badische Anilin.

The latest statement we were able to procure is that of 1921.

CHAPTER VII

THE FINANCIAL STATEMENT OF THE BADISCHE ANILIN UND SODA FABRIK FOR 1921

Accounts for the Fiscal Year 1921 of the Badische Anilin und Soda Fabrik

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Report of the Management Council and Administrative Council

49th General Assembly held Wednesday, May 24, 1922
at 11 o'clock in the offices of the Banque Rhenane
de Credit at Mannheim.

ORDER OF THE DAY

1. Presentation of the report on management by the Committee on Management, accompanied by the statement and account of profits and losses as of December 31, 1921 and the report of verification by the Administrative Council;
2. Vote on the approval of the statement and the distribution of profits;
3. Assignment of indemnity to the Management Council and the administrative Council;
4. Election to the Administrative Council.

REPORT OF THE ADMINISTRATIVE COUNCIL.

In the course of the business year 1921 our enterprise was struck by a terrible catastrophe. On

September 21, at 7:30 in the morning, in the Oppau plant which was running at full capacity, an explosion occurred which reduced to ruins a large part of this establishment.

In regard to the large extent of the uncovered damages outside the plant, we have decided upon agreement with friendly firms to put certain supplementary subsidies at the disposal of the State Department, which is done especially for the purpose of covering those damages to installment and workmen, the payment of which requires outside cooperation.

Thanks to the initiative energy of those who are cooperating with us, it has been possible since the month of December 1921, to put into operation the factory for the manufacture of ammonia at Oppau, which the explosion had undoubtedly affected very much but to a lesser extent than the other parts of the plant; and since the month of February of this year, we have put it in full running capacity. It is for us an imperious necessity to express our thanks and gratitude to all the employes and workmen who took part in this energetic and common work. On this account we have been in position to keep our very numerous workmen continuously at the work of reconstruction, and have been enabled to reduce to a minimum the deficit in our production of Nitrogen, as well as the financial losses in that connection.

The construction of the Merseburg plant during the course of this same year has made satisfactory progress. The plants here have also attained their full production capacity, up to the present time. Allowing for the fact that the transfer of the ammonia plants at Merseburg-Oppeau (A company of limited responsibility) to the rental book of the factory at Merseburg has been delayed, this plant has again been entered on our account at the time of this report.

The cost price of nitrogenous fertilizer products remained unchanged with us from March 1, 1920, to the end of May 1921. From this time on, the progressive increase in salaries and in the price of materials necessitated several increases in price. However, at the beginning of April, 1922, the price of ammonia sulfate delivered free at the place of consumption consequently included the cost of transportation which had considerably increased, and still reached only 31 times the price of peace times, whereas the price of oil at the mine including the tax had risen to about 60 times the pre-war price. At least the considerable advantage which German agriculture and with it the whole of German economic life derived from the enormous domestic production of nitrogenous fertilizer which we put on the market can be measured *if it is realized that agriculture would actually have had to pay for foreign nitrogen about 2 1-2 times the German domestic price.*

The gain from the exploitation of our nitrogen product is unfortunately liquidated by a loss from the explosion at Oppau.

In the domain of dyestuffs, the sale which toward the middle of the year was somewhat arrested in all countries, is now getting steadily better; in the last quarter of the year, exportation especially developed in a very satisfactory way, so that the financial statement shows up more favorably than had been expected.

On account of the lack of coal and coke necessarily affected by the deliveries on reparations, we have suffered very greatly during this fiscal year. The deficit resulting from this cause especially as it concerns the ammonia industries, is the more regrettable since the demand for nitrogen at the present season cannot be entirely satisfied. The consequence of this has been that farmers' organizations have been required to import nitrogen at the high foreign prices.

By virtue of an agreement passed between the owners of parts of Leopold Cassella & Company (A company of limited responsibility), at Frankford on the Main, with the other I. G. firms, the latter have taken back the greater part of the principal capital of the Cassella firm in exchange for shares of their own stock.

The increases in our common capital stock which were stopped by the extraordinary general assemblies of May 1, 1921 and January 10, 1922, have been executed and signed at the Register of Commerce. Our common capital stock amounts actually to 440,000,000 marks; preferred shares to 30,000,000 marks.

In the course of the fiscal year, 86,000,000 marks in round numbers were expended for the assistance of workmen and employes. Of this sum 10,400,000 marks were voluntarily disbursed and 75,600,000 marks in compliance with the laws.

The capital of the pension reserve for employes amounted at the end of 1921 to 33,476,987 marks. The new regulation of the situation for members of the Pension fund was based on the recommendation in the preceding annual record. After the compensation operated by virtue of the I. G. contract we are in a position to enter for the year 1921 a deduction made on the necessary amortizations, a net

profit of		165,261,933 33 marks
By adding the amount of the 1920 profits to this;	3,483,145 25	
the General Assembly disposed thus of a profit which amounted to	168,745,079 78	

In interpreting these figures it is necessary to take into account the important decrease in value of the mark.

Translated into gold marks the balance remains far behind the figures for the years before the war. Whereas for each of the years 1912 & 1913 10.08 million gold marks could be distributed, the dividend proposed for 1921—converted on the basis of a market value in dollars of only 200—amounts to 2.5 million gold marks, that is to say only one quarter. In this calculation the interest has not been counted which accrued on payments on capital that had come due in the meantime to the stockholders, payments which were necessary in the years 1914-21 on account of the great extension of our nitrogen enterprises.

The common stock capital was raised from 36 million gold marks to 400 million gold marks. If the increase in capital is represented in terms based on the market value of the dollar on the day of the payments in gold marks, the result would show an increase of capital amounting to 65 million gold marks.

The capital expressed in gold marks has therefore been tripled since 1914, speaking in round numbers, while the dividend has fallen to one-quarter. On the common stock capital of 100 million gold marks paid up to the end of 1921 the dividend therefore amounts to 2½%.

If, on the contrary, we compare the dividend with the salary index the result would actually show that salaries are 42 times as great as compared to the latest pre-war figures; the sum of the dividends, on the contrary, was only 12 times as great, it being understood here also that no account has been taken of any kind of interest on the 364,000,000 marks for supplementary payments on capital made by the stockholders.

These comparisons show how erroneous certain deductions are which are constantly being told abroad, and even inside our own country relative to the raising of taxes on dividends.

In the face of the continuous devaluation of the mark, especially since the end of the fiscal year, there has occurred an increase in the salaries, in fees, and in prices of materials, which has gone in such leaps and bounds that industry and the general economic life have had to struggle against serious dangers in every respect. If we do not succeed in reducing the liabilities of Germany to an amount which can be paid off through the economy of the German people, and which is not harmful to the economy of the world, and if we do not succeed at the same time in making it possible in this same connection to stabilize the changes, the most serious disturbances are bound to result in an economic as well as a social sense.[1]

REPORT OF THE ADMINISTRATIVE COUNCIL.

We invite your attention on every point in the report of the Management Council. The financial statement and the account of profits and losses have been verified by two of our members as to their agreement with the books and have been found correct.

We propose to distribute as follows, the net profit which was made	165,261,933 33	marks
First of all there will be deducted:		
An allocation of 5% of the net profit to the ordinary reserve fund	8,263,096 69	
An allocation of a new complementary fund established for employes pensions	20,000,000	marks

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[1] We are publishing this report without commentary and we are not entering into the discussions which it can be expected to raise.

Ludwigshafen a/Rhin—April 1922
The Management Council.

An allocation to the completary fund for workmen's pensions	10,000,000
3½% of the dividend on 30,000,000 marks worth of preferred stock	1,050,000
4% of the first dividend (Vordividend) on 4,000,000 marks —Founders' shares	16,000,000
Profit remaining	109,948.837 14 marks
Interest conforming to paragraph 13, figure 5 of the statutes	4,397,953 48
Remaining profits	105,550,883 66

There should be paid on this amount a superdividend of 26% on 400,000,000 marks. Founders' shares equal 114,000,000 marks, or in all a dividend of 30% or 180 gold marks per share at 600 marks, and 360 marks per share at 1200 marks.

The remainder of	1,550,883 66 marks
forms with the amount of the profits for 1920	3,483,145 95
Total of	5,034,029 61

To be carried without interest to the new account. Ludwigshafen a/Rhin, April 1922.

The Administrative Council

(Signed) DOCTOR MULLER, *President*

ACCOUNT OF PROFITS AND LOSSES

Debit		Marks	**Credit**	
General Expenses		90,994,577 66	Profit carried over from 1920	3,483,145 95
Interest		2,947,455	Net income in 1921	404,733,311 18
Amortization		145,529,344 69		
Profit carried over from 1920	3,483,145 95			
Net profits in 1920	165,261,933 83			
		168,745,079 78		
		408,216,457 13		408,216,457 13

BALANCE FOR THE YEAR 1921 AND AN ACCOUNT OF PROFIT AND LOSSES—BALANCE TO DECEMBER 31, 1921

Assets	Marks	**Liabilities**		Marks
Property, Bldg. utensils	202,751,756 87	Original capital stock		400,000,000
Participation in other enterprises	253,462,431 37	Preferred capital Stock		30,000,000
Goods in storage	331,454,542 18	Ordinary reserve		19,720,476 92
Debtors	1,273,319,684 31	Extraordinary reserve		36,340,000
Cash on hand, letters of exchange, holdings in banks, effects	329,392,272 48	Workmen's aid		10,463,135 70
		War invalids' fund		4,408,042 61
		Complementary fund for workmen's pensions		13,960,320 29
		Loans or obligations—		
		Series A	2,230,000 marks	
		Series B	13,022,000	
		Series C	50,000,000	
				65,259,000
		Dividends not touched by beneficiaries		2,002,272
		Obligations drawn but not touched		321,000
		Interest on loans not touched		1,823,225 25

Assets	Marks	**Liabilities**		Marks
		Creditors:		
		Long term contract		350,000,000
		Short term contract		1,251,562,769
		Provision for the pension fund for employes, and expenditure on absences		35,739,365 18
		Profits carried over	Marks	
		1920 —	3,483,145 95	
		Profit for 1921	165,261,933 83	
				168,745,079 73
	2,390,344,687 21			2,390,344,687 21

CHAPTER VIII

THE FINANCIAL COMBINATION PROPOSED BY THE GOVERNMENT.

Articles 2 and 3 of the Government plan offer a two part procedure.

A. The Minister of Finance and the Minister of War, through required publicity, will make an appeal to those who have a right in the grant, French commercial companies or private individuals.

It is announced that the part of the powder mill of Toulouse which can be used and the equipment suitable for powder service will be put at the disposition of the grantee.

These assignments are arranged under definite conditions by a book of regulations drawn up by a consulting commission comprising an equal number of representatives for the Minister of War as for the Minister of Finance.

B. If the required publicity is not given, if no grantee appears who accepts the conditions of the book of regulations, then, as the agreement must be carried out and the program for the daily production of one hundred tons must be realized at any cost, a corporation of interested parties is arranged.

But for this it is necessary to go before Parliament to ask its authorization for the payment of funds by the State.

The first disadvantage of this procedure is immediately seen. The appeal to the claimants will take a certain time; if it fails, the Assemblies must be called again. Reports of commissions. Deliberations in the two Assemblies. A considerable loss of time. And during this time agriculture waits; national defense—who can foresee the events—does not receive its appropriations. There has been too much hesitation up to this time.

Let us examine the system more closely.

How will the Government arrange the proposed conditions What management will it offer the granters? How will its interest be paid. What guarantees will it offer the bondholders of the company if there are any. What benefit will the Treasury receive from the operation? What expenses will be incurred?

At the request of the Commission, the Administration has submitted to us the plan of the following regulations it has prepared.

The Regulations

Article I

The ceding of the exploitation by the contract passed November 11, 1919 by the Minister of Industrial Reconstruction, acting in the name of the French State, with the "Badische Anilin und Soda Fabrik" for the use of methods for the manufacture of synthetic ammonia and its by-products will be directed by the regulations presented herewith, which will remain attached to the said grant.

The grantee must choose a legal residence. He will be depended on to form in the period of six months from date of the publication of the aforementioned decree, a joint stock company with a minimum capital of 10,000,000 francs all paid in, having for its principal object the carrying out of the contract provided for in the conditions fixed by these regulations and which will be called in the following by the name of "the Company."

Article II

The company will have its headquarters in France.

In agreement with these statutory conditions the President of the council of administration, as well as the manager elected or the director general, as the case may be, will be French.

At least two-thirds of the members of the council of administration will be French.

The normal term will be from January 1st to December 31st; the first term which will end on December 31st, will not be of less than nine months or more than twenty-one months.

Article III

The assignee entirely and completely supersedes the French State in all the rights and obligations of the contract of November 11th, toward the signatories of the contract as well as toward all third persons and he guarantees its execution. He shall reimburse the State within fifteen days from the organization of the Corporation mentioned in the last paragraph of Article 1, the sum of 2,500,000 francs, paid by the State to its co-contractor. From the time that this payment is effected the State shall notify all interested parties that the assignee entirely supersedes the State in the execution of the said contract.

ARTICLE IV

The installations and equipment placed by the State at the disposal of the assignee comprise:

1. The land and buildings of the National Powder Mill of Toulouse as shown on the chart attached to this statement. This property is bounded by the Garonne, the National Highway No. 20 and the boundaries shown in red. Included are buildings, railways, machinery, tools, materials and furniture present there at the date of publication of the signed Article 1, with the exception of those movable and immovable properties mentioned above, for which the assignee would have no use and which he would not desire to acquire;

2. The machinery, tools, materials and furniture which the assignee shall declare useful in his enterprise and all those articles which he shall designate among the saleable objects remaining in the different powder plants at the time the signed Article 1 is published.

ARTICLE V

The cession to the assignee of the property of the State designated in the preceding article shall be preceded by an examination, and an estimation of their value by experts proceeding as follows:

Upon the publication of the signed Article 1, the assignee shall delegate one or more properly accredited representatives to the Director of the Powder Mill of Toulouse and there shall be no exits from, or entrances to, the property at Toulouse defined in the second paragraph of Article 4, without a preliminary agreement between the Director of the establishment and the representative, or representatives of the assignee.

Three experts shall be immediately nominated, one by the Director of the Powder Mill of Toulouse, the second by the assignee; and a third expert who shall be named by common accord, or lacking that, by the President of the Civil Tribunal of Toulouse to act as arbitrator between the two first named.

These three experts shall proceed, in the presence of representatives named by the Director of the Powder Mill and by the assignee, as well as by the Minister of Finance (Under Secretary for the liquidation of stock) without interruption and with the shortest delay possible to the following operations:

1. They shall make up an inventory of the real estate and immovable property with brief descriptions and provisory estimates.

2. They shall make up a preliminary inventory provisory estimate of all movables on the land, or in the immovables mentioned above.

In case of disagreement between the two experts, the third expert shall adopt the view of one or the other and the opinion of the third expert only shall be inscribed on the inventory sheet.

The Director of the Powder Mill and the assignee shall supply these experts with technicians, accountants, clerks or stenographers, as they are needed to accelerate the work of the experts.

As each article in the inventory is described, the representative of the assignee shall declare whether the latter considers it useful for the purposes of his enterprise and desires to acquire it; in the affirmative case the value of the article in question shall be written in a first column, in the negative case where the property is immovable the representative of the Minister of Finance (liquidation of stocks) shall declare whether his department wishes that any parts or certain materials shall be turned over to it after demolition for liquidation, or whether he prefers to abandon the property to the assignee; In keeping account of these declarations, the experts shall inscribe in the first column the actual marketable value of the materials or of the products of demolition abandoned to the assignee, in a second column that of the materials applied to the liquidation of stocks and finally the third column showing the expense of demolition and of removal of the materials.

Regarding the easily movables, their value shall be written in the first column when they are claimed by the assignee as useful to his industry; in the conrary case the value shall be written in the second column and the cost of carrying them away in the third column.

Within 15 days after the appointment of the third expert the provisional inventory must be completed. Three copies are to be sent to each of the representatives of the Director of the Powder Mill, of the assignee, and of the Minister of Finance (Liquidation of Stocks).

Within three days from the date when the signed document is submitted to the Director of the Powder Mill, and at the invitation of the latter, the assignee must take over all the movables and immovables included in the inventory and from this moment he must be entirely responsible to the State; the articles to be turned over for liquidation shall be furnished on demand in the shortest possible time by direction of the assignee. The cars carrying these articles shall be delivered to the agents of the director of the Powder Mill at Toulouse, who shall give the assignee a receipt for articles thus delivered.

Within three months from the date of the preliminary inventory the experts shall make up a definitive inventory in which they shall modify the values set down in the preliminary inventory. These modifications may be made after consultation of any documents which they consider necessary (the Director of the Powder Mill must give them information, or furnish such documents on demand). The definitive inventory shall state the charges imposed on the assignee for the use of the other parts of the establishment.

The values given in the inventory are the inherent or acquired values of such real estate, buildings, machinery, materials and tools which the assignee shall have declared useful in his business and which he desires to acquire. This inherent value, or value resulting from construction is subject, as the case may be, to a proportional deduction for charges imposed on the land or improvements either for depreciation through wear or deterioration, but without other amortization. In the case of all articles declared by the assignee to be not useful in his enterprise, the values shall be the actual marketable value of the articles or of the products of demolition loaded on a car in the plant. Both for the definitive and preliminary valuations, in all cases where the two first experts disagree, the third expert shall judge between them, taking the opinion of the one or of the other, and the value approved by him shall appear in the inventories.

The expense of the work of these experts shall be subject to the tax of the Président of the Civil Tribunal of Toulouse and entirely supported by the assignees.

In the case of equipment, materials and furniture in the other Powder Mills, declared to be useful by the assignee, there shall be made up a special inventory, article by article, under the superintendence of the Director of the Powder Mill of Toulouse, by agreements to this effect with the Directors of the other establishments. The value to be written in for each article appearing in the general list of equipment shall be the value given it in this list. For all other articles, their value in use shall be decided between the representatives of the assignee and of the Director of the Powder Mill of Toulouse and definitely fixed by the Under Secretary of State, for the liquidation of stocks.

The objects included in this inventory shall be furnished to the assignee on demand in a car from the original establishment, the expenses of transportation being charged to the assignee.

Article VI.

From the moment when the definitive inventory shall have been completed, the Director of Powder shall notify the assignee the precise amount represented by the property, movable and immovable, which is ceded to him by the State. This sum shall be obtained by deducting from the total value written in the first column of the definitive inventory, the amount of the expense of demolition and loading on cars written in the third column and adding to this the amount of the special inventory of objects and materials furnished by other plants.

In the three months following this notification, the corporation formed by the assignee in execution of the provisions of the article, shall deliver to the State (Department of Public Property) mortgage bonds of a special series A, of a nominal value of 500 francs bearing interest at 5% from the date of the signed notification of the first paragraph of the present article for a total amount nominally equal to the value of the property, movable and immovable, ceded by the State to the assignee, who shall have been duly notified as mentioned in the preceding paragraph. In case the assignee fails to deliver these bonds in the period given, or to reimburse the State the sum specified in article three and, on expiration of this period, the State will be authorized to take immediate possession of the said property, movable and immovable, without loss or damage and interest which it may reclaim from the assignee and the company.

The security for the bonds, series A, consists of a general mortgage on all the immovables of the company, but the interest of 5% levied on these bonds shall be due at each settlement date only in proportion to the amount of the net products of exploitation (defined and distributed as given in Article 8 below).

On delivery to the State (Department of Public Property) of the said obligations (Series A) the corporation shall definitely become owner of the total property carried on the inventory, except that property, the value of which shall have been written in the second column and for which the corporation shall remain responsible toward the State until the day of delivery to the Department of liquidation stocks mentioned above.

The State shall always have the right to dispose of its mortgage bonds, Series A, in any way that it pleases. The bonds thus transferred shall retain all the privileges and guarantees conferred on them in the above article, with the exception of the right of conversion into shares specified below. In the 15 days following their transfer, the State must notify the Corporation as to the numbers of the transferred bonds.

At all times the State shall have the right of conversion of the bonds, Series A, which have not been amortized or transferred, into capital stock. The shares put out for this purpose by the Society shall be delivered to the State in such number that their total amount shall be equal to the total nominal amount of the bonds exchanged for them. These bonds shall be delivered to the Corporation and immediately cancelled as amortized. If at the time there are shares in the Corporation which have different privileges and different guarantees, the shares delivered to the State shall be split up among the various classes in the same proportion as the total outstanding shares.

ARTICLE 7.

In order to meet the charges imposed on the assignee by Article 3 of the present statement, the Corporation may put out bonds (Series B) amortizable in 50 years at the maximum, beginning with the fourth year inclusive following the issuance of the bond. These bonds are to be subject to the provisions of the present article and are callable at all times. The total amount of the interest and sum for amortization on these bonds must never exceed an annual disbursement of 8% of the sum which they have provided for the Corporation. If the net products of exploitation do not furnish a sufficient amount to meet the interest and the amortization of these obligations, the State shall pay the Corporation the necessary sum up to an annuity of 7,000,000 francs, beginning with the third fiscal year of the Society and up to the 53 fiscal year.

In the course of the first three years, the necessary sums to meet the interest and amortization charges of these bonds, (Series B) shall be deducted from the bonds as they are issued.

At all times the State shall have the right to purchase non-amortized bonds on conditions described when they are issued.

ARTICLE 8.

The distribution of the profits of exploitation for each fiscal year after the deduction of the cost of exploitation and general expenses, shall be made by deducting from these products in the order given below sufficient sums to satisfy the following obligations.

1. Interest of 5% on mortgage bonds (Series A) non-amortized.

would be necessary to have recourse to an administration by shareholders.

Let us suppress from this plan all that which has to do with the guarantee of the State and the participation in supplementary profits: We shall have a combination applicable to the case where one who asked for grant either an individual or a company would agree to act as substitute for the State, in the exploitation, rights and duties of the 1919 convention. To tell the truth, the contingency was not very probable. The expenses of organization are estimated at 120 millions; what company would want to take such a risk of losing capital, without guarantee of interest? The contingency was not, moreover, desirable; the State brought the benefit of the transfer, the real estate and the material at Toulouse, but it received in exchange only the mortgages of Series A.

Let us then consider the hypothesis provided for by the Article 4 of the bill. One may see the economy of conditions of the contract. It authorizes a combination of administration by parties interested at the foundation of the system, there is the construction by the grantee. There is also this principle, that the plant granted will make ammonia by the Haber process only.

The idea of the Administration is this: the agreement made with Badische obliges the State to pay the royalty provided for by Article 10 (2) upon all the production of the factory to the amount of 100 tons. It will not be possible then, it is believed, to divide the manufacturing half and half with Haber and Claude for instance, without having to pay to Badische the royalty on the 2 productions. It being granted that it would be necessary to turn over to the holders of the Claude process, important rights of license, the final result would be to superpose, on the payments made to Badische, the taxes due to the Claude firm.

Moreover, by Article 3, paragraph 2 of the agree-

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ment of November 11, the contracting parties agreed to "share with each other reciprocally and without royalties the improvements made in the aforesaid processes, during all the duration of the contract. Therefore, the Administration worries if the State itself constructed some factories using the Claude process, would it not have to share with Badische the profits from this process, considered an improvement on the Haber process?

It is not hard to calm judicially the apprehensions of the Administration The royalty per kilo due to Badische would be due—we are sure from reading the text—only on what was made in the compression works, erected by the Badische engineers. Now, it is self-evident that it is not there, but in another part of the works, that there could be used the Claude process, the Casale or some other, which would require equipment quite different from the Badische process.

Besides, there might be a question (there are explicit opinions on this subject) of priority for the Haber process, and consequently to consider legally the Claude process as an improvement on the German process, the profits of which the French government or its grantees would have to allow the Badische to share Professor Matignon is explicit in this regard (1)

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(1) Conference of the Societe de Chimie Industrielle, Revue Scientifique, 18-25 Mai 1918.

It results from this exposition that the problem of the synthesis of ammonia beginning with its elements had been clearly foreseen before Haber, that several patents claimed already for the realisation of this synthesis, the use of pressure combined with the use of suitable metallic catalysts and that a goodly number of these catalysts, patented afterwards by the Societe Badoise, had been patented already.

The new documents which I bring here will allow a jurist familiar with patent legislation to form an exact opinion on the validity of the patents of the Societe Badoise patents; at this time, judging things exclusively from the scientific point of view, the value of most of these patents seems to me to be seriously compromised by former patents that a thorough search has enabled me to bring to light. It seems possible to annul the monopoly of the manufacture of synthetic ammonia that the Societe Badoise believed it possessed throughout the whole world. The bringing to light of previous patents may have the most important economic consequences, because of the large amounts of capital which

However this may be the plant prepared by the government excludes from the factory. At Toulouse all processes other than the Haber process, and by that very fact, gives a kind of official investiture, with the help of public capital, to the German process.

Articles 6, 7, 8, 9, 10 of the plan of grant provide for the financial combination of the exploitation:—

1. In exchange for the installations and the material put by the State at the disposition of the grantee company, there is paid to it, for an amount equal to the value of this material and its installations (about 18 million francs, expert valuation) mortgages of series A, bearing interest at 5% (Article 6) the payment of which is previously deducted in the first place on the amount of net proceeds of the exploitation (Article 8);

(2) The State guarantees to the amount of an annuity of 7 million francs, from the 3rd to the 53rd year, a loan to be floated by the company according to the conditions given in Article 7. As a counterpart of this guarantee, Article 8 provides first for the repayment of money advanced by the State as soon as profits will allow, before any dividend is distributed to the shareholders and for the division between the State and the shareholders of the profits in excess of the sums necessary to pay the interest and the liquidation of bonds and to distribute at 7% to the stockholders.

The total of the Class B bonds issued for loan would be eventually 70 millions.

This is an outline of the plan of administration

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will be involved at the moment of the introduction of this new industry into all the civilized lands.

It is important, as a practical conclusion, that government and private companies makers of synthetic ammonia, join in a powerful consortium, in order better to defend their interests, and, depending on the preceding patents which bring back into the characteristics public property of this reaction, do not allow themselves to impose afterwards royalties which are unjustified.

by shareholders proposed in article 4 of the project. By the terms of this article the plan must be first submitted to Parliament for approval. We must realize it, this plan does away with none of the objections raised before the Commission.

We have shown, first that the State, if it translated it into action would be subsidizing the German process. As for the works of 5 or 10 ton capacity like those of M. Claudes for instance, could they struggle against the colossal exploitation of the 100 ton factory, installed in the suitable country of Toulouse, having at its disposal material to begin with, State patronage, State orders, and associated with the State, in the current hypothesis by a contract in due form of shareholder management.

And then, what advantage would the State get from the convention of November 11, a national conquest?

(a) Or else, the State purely and simply gives up the profit. It receives in exchange for its property at Toulouse some series A mortgage bonds. These bonds may at any moment transform into stock,—at least those which, not amortized, have not been transferred. Thus it will participate, pro parte, in the profits. But it will have been able to make the transformation only if the prosperity of the company makes it hope for a sure advantage from this combination. Is the outcome so easy to predict in the case of private management?

(b) Or else—it is granted to a management of shareholders. Then it supports the plant at Toulouse, it guarantees 7 millions of interest on bonds B. It undertakes then certain obligations. Is it also sure of making a profit? When it shall have withdrawn the sums it has advanced; when the interest and amortization=Bonds B and when the 7% on the capital has been paid is there any assurance that there will remain, especially in the first years, a profit to divide between the State and the shareholders? Of this hypothetical profit, the State will only take one-half, the shareholders the other. How will the undertaking turn out for the State? And, in any event what will be the result for the commonwealth?

Finally, when the concession is once made the State will no longer have control of the affair no representative in the administrative council. An auditing committee, it is true (Art. II), but what can an auditing committee amount to? It audits the books and investigates the operations of the company; every six months the company puts at its disposal a brief statement of its conditions, active and passive. If it has reasons for anxiety it can sound the alarm and call the general Assembly. That is all, no power of action. The State, therefore, is absent from this industry, which should become an industry of the community.

And if a trust is formed what will become of prices?

Will they be restricted?

Would there be any means of checking the appetite of the sharehoders?

It might come about that from this convention, one of the rare fruits of victory, the community would derive nothing.

Even worse, that a trust guaranteed, by the agreement itself from German competition would maintain prices at an unsatisfactory level.

Is this what the signatures of the agreement had in mind? And is it not our duty to seek for a financial arrangement which respects simultaneously the interests of French inventors those of the Treasury and those of the community?

CHAPTER 9.

THE FINANCIAL COMBINATION SUGGESTED BY THE COMMISSION

The disadvantages attending the plan of the Government was not overlooked by the more cautious spirits: since last March a certain number of our colleagues, Messrs. Loucheur, Ambroise Rendu and others had suggested a series of changes by which they hoped to overcome these obstacles.

They showed us (Amendment #5) how very regrettable it would be to adopt the procedure twice proposed by the Administration and to run the risk of losing precious time proceeding first to list the offers provided for in Article 3, then—after who knows what stage in the portfolios of the Commission?—to come again before the Parliament only to be met by Article 4.

In a word they demanded that the credits voted by the Chambers—30 millions for the first year—should be employed one-half for the installation of the Badische Process, one-half for the installation of the Claude process.

Acting on these suggestions your Commission has retained a part: the necessity of making up for the time lost in avoiding the double organization called for by Articles 3 and 4. The necessity also that the new company should not be confined to the exploitation of the Convention of 1919, and of being authorized if it seemed expedient, to make use of the process of those processes, French or otherwise, which might be as fruitful. The Commission has avoided the mentioning of such and such a process as the authors of the Amendment had done in order to avoid a premature publicity; it is not our place to take sides regarding the various current processes and so limit the initiative of the company which we are about to create.

After long discussions we were struck by a counter-project of Messrs. Vincent Auriol and Leon Blum on the one hand, and some suggestions of Mr. Isaac on the other hand.

Messrs. Auriol and Blum proposed the creation of an autonomous National Bureau, charged with the exploitation of the patent, more generally with the manufacture of the nitrogenous fertilizer and which would make use of a part of the powder mill of Toulouse for this purpose.

The function of the Bureau would be much like that of stock companies with certain differences: the rules would be fixed by Governmental authority; the Council of the Administration would be composed of thirteen members of whom three would be appointed by the State, four elected by the personnel of the Bureau, the six others chosen from the representatives of the agricultural, commercial and industrial interests. The powers of the Council would be very extensive, the State only holding the position of the Accounting Department in a stock company. The rights of the Administrative Council would be very generous: they would only be subject to general limitations made once for all in advance and without consideration of any ulterior circumstances by an ordinance of the Government. The methods chosen would naturally be entirely at the discretion of the Bureau. The selling price would be fixed by the Council, except for later changes by the Minister of Agriculture. Lastly, the controllers appointed by the Administration would not interfere except for the annual examination of the balance sheet. The financial aid of the State was however, requisitioned to furnish the Bureau not only with the patent and the installations, but also with running expenses: this aid would be increased in case of a deficit due to competition.

Below we give the text itself of the counter-project.

Article 1

The Minister of War is authorized to execute the agreement made on November 11, 1919 between the Minister of Industrial reconstruction and the Badische Anilin & Soda Fabrik—having in view the manufacture of synthetic ammonia.

Article 2

The expenses and profits of the agreement above referred to, as well as the license for the patents relative to the process which was the object of this agreement, are by the present law given over to the National Bureau, provided in Article 3. Likewise the part of the National Powder Mill at Toulouse which is capable of being used for this purpose, as well as the equipment which is not in use in making powder, is placed at the disposition of the said Bureau for the purpose of executing the said agreement.

Article 3

An autonomous National Bureau to be called the "National Nitrogen Bureau" is created by the present law. This Bureau is to manufacture nitrogenous fertilizer and especially to execute the provisions of the agreement mentioned in the preceding articles.

This Bureau will have a civil personnel, and be financially autonomous. It will be governed by an Administrative Council with full powers according to the methods in general use in corporations.

This Council will be composed of:

1.—Two representatives of Agricultural Associations from those regions principally interested in the production and consumption of nitrogenous fertlizer;

2.—Three representatives of Engineering Societies, chosen from nitrogen experts of which one will be elected by the engineers of the Bureau.

3.—Three delegates elected from the personnel of the Bureau.

4.—One representative elected by the Chambers of Commerce and a delegate from the Superior Council of Railways.

5.—Three delegates from the Government.

The period of office of the members of the Council will be two years. They may be reappointed or reelected.

The Council will have all the executive powers generally accorded to the Board of Directors of corporations, especialiy the power of appointing and dismissing the executives; of deciding on recruiting methods, discipline, advancement and remuneration of the personnel within the limit of certain general rules fixed by the Public Administration and relative to the duration of the work, to the application of social laws, of hygienic conditions and of a pension system.

It would be able to float loans with the authorization and guarantee of the State, they would establish an accounting system which would provide for an annual balance sheet according to the current practice in the industrial and commercial circle. Each year after the inventory this balance would have a preliminary examination by three State comptrollers who would have all the power of Accounting Departments in corporations, and would be examined and ratified by the Parliament, which would be in session at the time the balance was filed.

The net profits of the National Bureau, that is to say, the profits after deduction of the necessary sums for the general expenses, sociological expenses, interest on capital loaned by the State, interest and annuities for the amortization of loans, funds for reserve and depreciation, will be distributed as follows:

One-third to the Treasurer; one-third to be distributed according to a percentage determined by decree, part to the directing personnel and to the Administrative Council and part to the operating personnel for any individual, collective or sociological work which it may decide upon.

One-third to the Syndicate or group of purchasers in the form of annual loans, proportional to the purchases made by them during the previous year.

The selling price of the products will be fixed on advice of the Administrative Council by decree of the Minister of Agriculture.

Article 4

An ordinance of the Government made up by the interested Ministries within one month from the date of the promulgation of the present law will define the status of the office and the rules for the nomination and election of members of the Administrative Council as is done by general assemblies for the corporation. The functions of the Council and of the controlling Committees and, if there are any, those decisions which may not be made without Ministerial approval, all in the execution of which the Minister must obtain the sanction of Parliament will be there defined. The Administrative Council is to be named within the fortnight following the publication of the ordinance.

Article 5.

A credit of 30 millions is opened in a budget scheduled for the office as a fund for organization.

It will be placed at the disposition of the Administrative Council as soon as the latter is formed.

The interest and amortization annuities from this sum will be noted on the balance sheet of the Bureau as owing to the State and will be regularly turned over to the Treasurer at the date of the first inventory.

Article 6.

The Bureau will be empowered by Act of Parliament to conduct business in such places as are suitable and in accordance with the principles set forth above, and to exploit all other processes for synthetic ammonia by agreement with the inventors or owners of the patents, and also carry on all other similar industries, (super-phosphates, potashes, etc.)

* * * * *

The Auriol-Blum conception might be classed with State Ownership.

State Ownership by definition has for its end the State control of all social means of production, but if there is any criticism to be made of our colleagues' plan, it is that it creates an organization which entirely escapes Governmental authority. The operation had been in their opinion, almost entirely subject to the control of the laborers; it had escaped entirely from the control of Parliament; as for the State, it was only recognized on pay-day as a paying teller without authority.

We wished on the contrary, to form a National organization, in which the State might, through wisely chosen delegates, play an eminent role with very few modifications the plan proposed by Messrs. Auriol and Blum might serve as the foundation for the edifice which should be created. It was framed in an ingenious idea: that of a corporation in a form very much like that of the law of 1867, where the Administrative Council was formed from various interested groups in place of being elected by an assembly of stockholders.

Mr. Isaac on his side, proposed a counter-project using this formula: a corporation supported by the State, which would make full use of all the prerogatives appertaining to it in consequence of this support and would retain at every instant, full control of the organization thus created.

The Finance Commission having considered the Auriol-Blum Amendment, instructed a sub-committee to make up a text combining this Amendment with that of Mr. Isaac, and with ideas which came to light in the course of the long discussions held before it.

To reassure those who are skeptical regarding dangerous innovations—let us recall that the sub-committee comprised men of all parties: Messrs. Isaac, Blum, Auriol, Queuille, Boissard, de Tinguy du Pouet and the author of this report—members of the Finance Commission. We have requested that Messrs. Loucheur and Ambroise Rendu be added to our Committee.

It would be absurd to affirm that a sub-committee thus composed could be impregnated with a Revolutionary spirit.

We have been reproached, however, with bowing to the tendencies of the believers in State ownership.

It will be easy to acquit us of such a crime just as of that of having dared to introduce into our Council of Administration representatives of the labor syndicates, and to prove the corporation to be the most flexible, the most popular in the literal sense of the word, the most faithful to the interest of the collectivity of any organization possible.

The Committee's Plan—Name, Form, Object of the Corporation.

In the first place, we gave up the word Bureau which calls to mind the idea of Bureaucratic concentration, but not of an active force. Neither have we retained the adjective "National" which would seem to exclude from the effective management of the enterprise that which was only due to private initiative.

The corporation will be a stock company created for 99 years on the model of the law of 1867.

Its object? Execution of the agreement of November 11, 1919, a work in which it is subsidized by the State in its obligations and rights. *But also for the manufacture of all nitrogenous fertilizers and products, or of substances directly connected with their manufacture.* A more widely extended horizon consequently, than the corporation planned by the Government which limited itself to the exploitation of the Haber Process.

The corporation will first make use of the powder mill at Toulouse. Rent is to be paid to the State, 500,000 francs annually, as also a share in the profits, which will be ten percent of the surplus according to Article X of our plan.

CAPITALIZATION

The corporation would have a capital of 50,000,000 represented by 500,000 shares of 100 francs each: in order to insure the financial support of the largest number of capitalists, even the most modest, it seemed wise to fix a low par value.

DISTRIBUTION

200,000 preferred shares (cumulative) as shown below:

(a) 50,000 by the syndicates, cooperatives and agricultural associations of France.

(b) 50,000 of which:

  20,000 by the Chambers of Commerce

  30,000 by the Syndicates of the Manufacturers of Chemical Products.

(c) 50,000 by public subscription

No subscription in this category may exceed 100 shares per subscriber.

(d) 50,000 by the Syndicates of working men, cooperatives and other labor associations.
300,000 to the State—

of which 50,000 represents the payment of 5,000,000 mentioned in article X of the agreement and taken on that condition.

And 250,000 subscribed by the State itself.

It is evident from this table, that it is the State in our corporation which becomes the principal supporter and the principal subscriber.

It furnishes:—

1. All the installation of the powder mill at Toulouse:
2. The 5,000,000 of article X of the agreement.

It subscribes to:—

1. 250,000 shares, that is to say, 25,000,000;
2. Finally all those shares which are not taken up by the groups, A, B, C, D, or, in case they fail to absorb them, by public subscription.

As for the public itself, what a role might it not assume in such a corporation.

The general public the man in the street, will take the shares in class C and besides all which are not subscribed to in classes A, B, and D.

The agricultural interests who have most at stake, their syndicates, cooperatives and associations will subscribe to the 50,000 shares of class A.

The syndicates of manufacturing chemists will, for their part, subscribe to 50,000 shares of class B.

Finally, the labor syndicates, cooperatives and other labor organizations will take 50,000 shares of class D.

It scarcely seems possible to realize more perfectly the proportional representation of interests: The public, the agricultural interests, labor, and the State: certainly a new idea, or at least very nearly new, (we will show that it has precedents) but it is inspiring, both as an equitable, economic plan and as a step in the evolution toward a better understanding, and a fairer industrial system.

Let us dwell a little on the priority given to the 200,000 shares of the first group. Not only do they bear 6% cumulative interest; but as we shall see in article X, these interests are to be taken care of before the 6% on the shares of the second group, that is of the common shares. Let us not say "the State shares" for the State may carry not only common stock, but also preferred stock in case it takes up the right to subscription not entirely used by some class of the first group.

Administrative Council—Let us suppose the capital subscribed and a quarter of the capital paid in. A general assembly is called, thanks to the promoters, that is to say, the Ministers designated in the law and particularly the Minister of Agriculture, who is responsible for the execution of the terms of our Article XIII.

Normally this assembly should name its first executives and committees. The law of 1867 expressly stipulates (Article XXV) that these executives may be designated by statute. In this case, if we are to read the text of the law closely they could be named for three years only: We have decided—and it is Parliament that makes the law—that in this case the provisions of Article XXV will undergo some stretching: In the interest of greater stability of organization the executives will be named for six years (to be replaced at different periods and to be eligible for re-election).

By whom and how are these executives to be named?

First our project stipulates twenty in number.

Fourteen (14) to be appointed by the Ministers of Agriculture, Finance and War as follows:

3 Representatives of Agricultural Associations.
2 Experts on Nitrogen Fixation
1 Representing the Chambers of Commerce
1 Delegate from the Superior Council of Railways
1 Representing the Minister of Finance
1 Representing the Minister of Agriculture
2 Representing the Minister of War
2 Delegates from the personnel of the Corporation
1 Delegate from the Engineers and Chemists of the Corporation.
—
14

Six named by the holders of preferred stock as follows:

1 Member nominated by class A
1 Member nominated by class B
1 Member nominated by class C
1 Member nominated by class D
2 Members nominated by classes A, B, C and D together.
—
6

The Minister of Finance who has charge of executing the statute (article 6 of the bill) since it is appropriate to the functions of his office, will combine the decrees, countersigned by his colleagues, the Ministers of Agriculture and of War, naming the fourteen (14) executives of the first group. The choice of the Ministers will not be arbitrary: They may only choose executives whose names are on the lists prepared for them by the groups, or organizations interested. These lists must always contain three times as many names as there are candidates to be named from that class.

As for the President of the Administrative Council, he will be selected from among the twenty executives by the Ministers interested.

In the terms of Article XXVI of the law of 1867, the executives of a corporation must own a certain number of shares determined by statute. The executives from the second group would have to conform to the provisions of the statute; as for those of the first group, the State will delegate that each one will carry his share for himself to the General Assemblies. This is the significance of the phrase in Article III "These fourteen (14) members who are delegated by the State to carry their shares."

General Assemblies and Powers of Administrative Council.

The General Assemblies will be enabled, according to the statutes prepared by the Minister of Finance, to apply all the modifications which are not contrary to the dispositions of the present law, and this shows that our project does not place the means of production of the Company in subjection to the State. Consider next the Administrative Council: It comprises, all in all, four active members, namely:

The representative of the Minister of Finance.

The representative of the Minister of Agriculture.

The two representatives of the Minister of War.

Of the sixteen other members, six are named by the priority shareholders, then entirely freed, if they wish it, of all immediate administrative ties, ten are the representatives of groups, either committees or associations, who choose them in all freedom, in all independence of mind. The Minister cannot choose them outside the lists established by the shareholders.

And who is directly responsible for the management of the Company? The Minister? No: the administrators (Article XXXIV of the law of 1867)—the responsible administrators, not only of the infringements of the law, but for all mistakes of management. Can one say that this is a State-Ownership idea? And is not our Company obedient to all the impartial rules of corporations, identically the opposite of an organization obedient to the authority of the State? It is the Council of Administration and it alone, who names the Director and the Administrators. It is the body which names and discharges if it chooses; the chosen Administrator. It is the body which organizes the recruiting, the discipline and the pay of the personnel. It is this body which fixes the selling prices, contrary to the advice of those who would like to see the market controlled at the will of the Ministers. Is there any thing here but a protection carried out by pecuniary aid and not by meddling of the State, however feeble in the affairs and the technicalities of the Company.

Members of the Commission.

Two are named by the Minister of Finance, and among those above all, an expert accountant; the third, by the General Assembly. Here it is a question only of observers whose powers are defined by the Articles XXXII and XXXIII of the law of 1867; whether they are named by the Government or not, they are total strangers to the management of affairs of which they only control the situation and the accounts to be given to the Assemblies—

Their accounts, before being submitted to the annual general assembly, are presented to the interested Ministers. If the Ministers accept them, there are no difficulties. If they reject them it is incumbent upon the Administrative Council to take measures to put them in order—the responsibility of each of the Administrators is engaged, remember—

Obligations.

The Company can issue obligations to the amount of 70,000,000 francs, with the guarantee of the State. No issue beyond this figure without the authority of Parliament.

With the capital stock of 50,000,000 it is, in all, an initial asset of 120,000,000, without counting the installation of the powder plant of Toulouse valued at 15 to 20,000,000 for the disposal of which the company will be responsible.

The technical men estimate that this asset will be *necessary* and *sufficient* to attain the production of 100 tons of nitrogen per day which the governmental program has assigned to it. They think also that, with this capital, they will not be able to exceed this quantity of production; the point is to call this fact to their attention in answer to these apprehensions which have manifested themselves and of which we will speak later.

Profits.

The starting point of the Commission's plan has been, as we have repeated several times, the consideration that the convention of November 11, 1919, was an acquisition from the preliminary negotiations of the treaty of Versailles, and that consequently the profits which may be derived from it should enter the national patrimony. To leave to one private firm the profit of an operation which, in a few years, will become very profitable, would be to frustrate the collection of a certain revenue to which it has a right.

For these reasons we have formed the corporation whose characteristics we have just discussed and whose capital is derived from two sources:

A.—Twenty million Preferred Shares, subscribed by groups, syndicates, associations, cooperatives.

B. Thirty Million Common Shares assigned to the State or subscribed by it.

To establish the *net profits,* a balance will be struck between the *gross receipts,* on the one hand, and on the other hand, a quantity including the general expenses and Common stock charges, the interest and amortization of the obligations and the amortizations which the Council shall judge useful.

The *net profits* shall then be divided according to this plan:

1. One-*twentieth* to the formation of a reserve fund imposed by Article XXXVI of the law of 1867.

2. 6% interest to the A preferred shares (20 million), it being intended that this interest will be *cumulative,* that is to say, that the interest which cannot be paid wholly for one or several years shall be made up on the following:

The State will come next with its B Common shares, which will receive 6% interest.

The residue—may we call it, if you please, superprofits—will be divided in the following order, after there shall have been deducted a new levy of one-tenth for a special reserve for the purpose of guarding against all emergencies:

10% to the Treasury, which, added to the 500,000 forfeiture provided by Article III of our project, represents the rental paid by the corporation to the State;

3% to the stockholders—all stockholders whether of preferred or common stock;

5% to the Administrative Council;

15% to works of foresight, of solidarity, of hygiene, of housing, etc., as designed by the personnel;

40% to be carried over to the next year's account, which will serve to lower so much the more the price of the products.

100%

It may be noted in the first place that the *reserves will not possibly under any pretext, be used to accomplish the dispositions made in Article 8* (increase of the capital).

As to the 40% to be carried over, it represents a bonus to the consumers, thus interested in the exploitation. We had thought of distributing it in the form of a cancellation. The mortgage, under this form, would have been difficult, nearly impossible to negotiate. It is just as valuable to recompense the consumer for his purchases, passed on to his future purchases; he is thus party to the fortune of the corporation and he is permitted to cast his weight on the side of the market, the low water mark of which he knows will be lowered mathematically by each one of his purchases.

Here again the project carries out an interesting innovation: in place of making the fortune of individual stock owners, as would be the case with a private corporation, each consumer works for the common good. He is interested in the profits of the corporation and becomes the artisan, at the same time of his own prosperity and of the general welfare.

If the corporation which we create is well managed and nothing allows us to doubt that it will be, with the collaboration of the highly competent persons of which the Administrative Council is composed—it should realize considerable profits. We have given above by way of indication, the balance sheet for 1921, of the Badische Anilin which was for it a very poor year. Evidently the conditions of exploitation would be different with us: the price of installation, of raw materials, of labor, etc., will be higher with us than with our German contemporaries. Nevertheless, and on condition of taking precaution to make corrections relative to these modifying factors one can get a fairly exact idea of the possible profits of the future corporation. Its exploitation would contribute, we may hope, to increasing by considerable proportions the productive patrimony of our country.

The Field of Exploitation of the Corporation—When the papers had announced that the Financial Commission was beginning the study of the bill drawn up by the Government, and thereupon it was asked that the Chambers approve the agreement made with the "Badische Anilin und Soda Fabrik," there was among certain members a concert of imprecations.

"Well! they cried, we have French inventors, French processes, yea, even inventions and processes of allied countries. And is it with Germany that we are going to treat in order to introduce at home her method of manufacture, prepared by her engineers and workmen and designated as such in the sight of all the world!"

To tell the truth, the benefits of the agreement were soon realized and were they not just these two: 1st, to learn the tricks of the Badische's method of manufacture of which we are ignorant; 2nd, to rid ourselves of the German competition which would submerge us, for it would fix the price otherwise than favorable to us.

The apprehensions then localize.

One begins by fearing that by granting an official patronage to a corporation installed at the powder works of Toulouse; a corporation able to exploit only the Haber process in the terms of the law which the

Government proposes to vote upon; and according to the charges, Parliament would create a veritable state industry by which all the other industries of Nitrogen production would be suffocated. The State, with the money of taxable firms would perpetrate on these taxable firms a murderous competition.

These fears are manifest particularly in two letters which it is interesting to reproduce, of which one has been addressed to us by M. Claude; the other by the manufacturers of Cyanamide.

PROTEST BY M. GEORGES CLAUDE.

January 19, 1922.

I recall, in the first place, our pressing need of knowing if the State wishes to make of the Haber process a State industry or to favor the exploiters of this process under any form whatever.

As long as this menace weighs on us, we shall not be able to start off on a large scale, anxious as we are to do so: the present doubling of our experimental installation at Montereau by a five ton industrial unit being merely a beginning which is entirely insufficient.

I hope, besides, that it might be considered that any official measure which would be for the Haber process a mark of superiority, unjustified according to us from every point of view, would ruin our efforts in France and throughout the world.

The least that we can claim is equality of treatment: something for Haber and something for us. If it is desired to subsidize the German process, an equal subsidy for the French process.

The solution which I would prefer would be:

A Haber plant at Toulouse, Claude plants at the coke ovens, each at the risk and peril of the exploiter for the comparison would show better than anything else the advantages of the French process from the point of view of the rapidity of installation of the plants, of their simplicity, of their cost, of their operation, of the cheapness of the ammonia.

However, if it is decided to make a state installation at the powder plant at Toulouse and to spend there the number of millions which would be necessary for one hundred tons a day, it would be easy, as we will see, to adapt our process there so that it would benefit from the advantage of the existing central stations without being limited to an expensive material for the gas motors.

In a normal Claude installation for water gas, it is necessary to obtain in the gases, the highest content of Carbon Monoxide according to the reaction

$$C+H_2)=CO+H_2$$

since there is just enough of it and even, according to the Schloesing Commission, not quite enough to produce the necessary power. In the case of Toulouse, on the contrary, (power being available), it is necessary to obtain the most hydrogen possible and the least Carbon Monoxide by means of the reactions

$$C+2H_2O=CO_2+H4$$

and $$CO+H_2O=CO_2+H_2$$

which furnish, per kilo of coke, twice as much hydrogen.

It is certainly easy to obtain a gas running 60% hydrogen, 20% CO, 18% of CO_2, and 2% of nitrogen at the rate of 2.5 cubic meters of this gas per kilo of coke from which it would be possible to obtain 1.3 cubic meters of hydrogen, in place of 0.9 cubic meters in our normal practice.

Instead of producing one volume of carbon monoxide equal to that of the useful hydrogen, there would be produced only two-fifths of that amount. The use of a rather small quantity of a product which is at once an excellent combustible and a veritable chemical product would always be possible, if it was not desired to use it in gas engines which would no longer have this time to furnish more than a small part of the energy of the cycle.

In these conditions, and with reference to the conclusions which the Schloesing Commission must have established for the case of our proces at Toulouse:

1st. The installation of gas producers to furnish the necessary hydrogen is reduced in the ratio of 1.8 to 0.9 and even from (1.3 plus 20%) to 0.9 since the Schloesing Commission admits a supplement of 20% for insufficiency of power. The reduction of this installation comes, therefore, to 40%.

2nd. The gas engine plant which, in the conclusions of Schloesing Commission, counts very heavily in the installation cost and in the price per kilo of nitrogen in our process, is annulled and should be replaced by the cost of the corresponding electric motor;

3rd. Such a cycle would reduce greatly the energy expended in the manufacture of the hydrogen by liquefaction. Indeed, the gaseous volumes to be treated in consequence of the increased hydrogen content are reduced in the ratio 60 to 50 and are to be compressed to a lower pressure because of the greater proportion of hydrogen effecting the expansion.

In total, the reduction of energy is more than 25%.

Utilizing these data in the application of our process at Toulouse, one may be convinced that even the pride of the coke oven gases, the Claude process thus modified would furnish a solution more rational, more economical, and more in conformity with French interests.

PROTEST OF THE CYANAMIDE MANUFACTURERS.

Paris, November 30, 1922.

We have just learned, from the communications in the press, that your Commission has undertaken the study of a bill relative to the manufacture of synthetic ammonia.

We know under what a great obligation your Commission has been in considering new sacrifices of the State in order to facilitate what it considers an industry absolutely essential to agriculture as well as to the national defense.

Representing ourselves as one of the branches of the synthetic nitrogen industry, it would hardly become us to appear to be actuated by selfish sentiments in essaying to oppose the measures on which the Commission has resolved doubtless only in the presence of considerations of a very high order.

It seems to us, however, to be true according to the public documents that the attention of the Commission cannot have been called to the importance of the results already obtained in one of the methods of manufacturing synthetic nitrogen which was developed in Germany in the same degree as the Haber process and which in France is at present the object of the efforts of the industrial groups to which we ourselves belong.

Certainly, the manufacture of Cyanamide, which is the case in point, has had some difficulty in starting in our country, and although it has existed here since 1907, it is only in these later years, that it has been able to diminish by certain artifices in manufacture, the inconveniences which the farmers experienced at first in its use.

The present results are beyond question, and the product put at the disposal of agriculture in the form of Granulated Cyanamide gives satisfaction.

Cyanamide, lime nitrogen, rivals Ammonium Sulphate. German agriculture consumes more than 250,000 tons of it per year. Besides, new methods permit the industrial transformation of Cyanamide into Urea under favorable conditions and thus to bring nitrogen to the soil in a form which it has not yet been possible to realize practically by the other processes.

In the presence of these results, the undersigned firms are devoted to developing their manufacture.

Their present factories, erected during the course of the war, were not all exploited during the hostilities; one of them, however, the factory at Bellegarde, is equipped for 24,000 tons and the Société des produits azotés, to which this plant belongs has delivered 32,000 tons to the Minister of War in a single year.

The Compagnie d'electricite industrielle has made at Marignac (Haute-Garonne) installations of considerable magnitude and it is in a position to produce 30,000 tons.

1. The Fradet Plants at Brignaud (Isere) which have been operating for one year are also equipped for a production of 30,000 tons.

Finally, without speaking of other installations constructed by the State during the war and not used at the present time, the Commission has, perhaps, lost view of the fact that a special law has assigned the completion of the factories at Lannemezan to the Société des produits azotés, which after having been almost paralyzed by the consequence of the economic prices has marshalled all its resources to put these plants in condition by the beginning of 1923.

It is therefore our duty, Mr. President, to bring to your attention the fact that the undersigned manufacturers believe they can assure the State of the production, on French territory, beginning with 1923, of a quantity of Cyanamide or equivalent nitrogen fertilizer (urea-phosphate nitrogen) reaching easily the amount of 100,000 tons per year. The magnitude of their manufacture being limited only by difficulties of a financial order against which they are struggling courageously (the building up of stocks, etc.), they beseech you, Mr. President, to be so kind as to have examined, by the Commission, the state of their industry.

Knowing the competence and the sense of justice which animates the Financial Commission, its preoccupation with avoiding expenses and immobilizations of capital without immediate necessity, they are persuaded that the Commission would be glad to take into consideration the following statements:

1st. The fixation of nitrogen as cyanide, which uses white oil, is a method which has been tested. It has given rise on the part of the State to the creation of important factories which should before all else be brought to completion.

The State, besides, has reserved to itself a participation amounting to 40% in the profits from the exploitation of one of these factories. It collects large taxes from another and finally has subsidized the third;

2nd. A considerable production of Ammonia is realized at the present hour in French factories by the use of Cyanamide. Other Ammonia plants, by other processes, are in erection by private industry.

3rd. There exists, particularly in the Pyrenees, a quantity of available hydroelectric power which can be rapidly applied to the development of the Cyanamide industry, using plants already erected;

4th. The manufacturers of Cyanamide are ready to give all the guarantees that agriculture can desire in regard to the price of the products of its manufacture.

They have never been guilty of abuses in the past, having on the contrary made great sacrifices for the creation of their industry and are ready to confer with the Government for the fixing of the price of nitrogen in the relation to the price of coke, of labor and of the kilowatt.

We hope, Mr. President, that the Commission will be so kind as to proceed to the inquiry which we are asking of them and for which we naturally place ourselves at its disposition fully and completely.

In this expectation, we beg you to receive, Mr. President, the assurance of our highest consideration.

Compagnie d'electricité industrielle:	Société des produits azotés
President of the Administrative Council.	President of the Administrative Council.
Signed: illegible	Signed: illegible

Société des usines Fredet:
The Deputy Manager
Signed: illegible.

Société des axotés: 2 Rue Blanche, Paris.
Compagnie d'electricité industrielle: 41, Boulevard Haussmann, Paris.
Société des usines Fredet: 25, Rue de la Pepiniere, Paris.

Article II of our project is of a nature to reassure all the manufacturers of nitrogen products, without exception.

We do not wish to establish a state industry in favor of the Haber process.

We do not wish to grant to German manufacture a patent of a superiority which would ruin French trade.

We do not wish to tie our hands for the present or for the future by tying ourselves to a single method of manufacture.

We wish, on the contrary, to be able eventually by the parallel progress of *all* the industries producing nitrogen, to which the councils of the Corporation will decide to have recourse, to bring about the larger manufacture of nitrogen fertilizers, to stimulate competition, to lower the price.

To this end it was necessary to commit our Corporation to exploit, at Toulouse or elsewhere, all the processes of manufacture of nitrogen products or similar products for which it may be able to acquire the patents; processes for the direct synthesis of nitric acid, processes for the direct synthesis of ammonia, processes for the transformation of products into ammonia by the action of water or of steam. The Corporation will be able, at the same time or later, at Toulouse or thoughout France, to embrace all the methods of manufacture; Article II stipulates it expressly, adding that the manufacturers will have no kind of monopoly other than that which is conferred on them by the patents exploited.

Thus are dissipated the apprehension of those who were disquieted by seeing the State prepare, by purchasing and leasing the Haber patents, to recognize a monopoly in a process of manufacture from German industry, this industry which counselled and supported the war of 1914.

Is it necessary to limit the production of the Corporation?—Tinguy's amendment.

Our colleague M. de Tinguy has proposed to the Commission the following amendment:

"To complete as follows Article II:

"On the other hand, in the case where the total production realized as well by the exploitation by the Badische process as by the exploitation of other processes, should attain an annual total exceeding at one time, 36,000 tons of nitrogen and the one-third of the annual French consumption, as established by the official statistics, a legislative authorization must take place to authorize this increase in production."

Your Commission has not thought it necessary to retain this amendment.

M. de Tinguy's thought was this:

"We have wished to leave free play to competition. The text which is submitted to us gives a beginning towards satisfaction, but insufficient."

Are the fears of M. de Tinguy justified?

In our plan the capital of the Corporation is 120,000,000. According to the advice of engineers, this capital will hardly be sufficient to assure the production of 36,000 tons. It is well understood that the reserves will not be invested in new factories. If it is desired to increase the capital, the plan specifies that it will be necessary to come again before Parliament: and Parliament will be free to take exception to the increase. In fact, therefore, M. de Tinguy has satisfaction. One does not make, one cannot make, more than 36,000 tons of nitrogen in the factories of the Corporation.

But when has one seen it necesary to limit the field of an infant industry? The amendment proposed would lead to one certain result: and increased cost for fertilizer. This is absolutely contrary to what we want. Practically—and during a temporary period—it is possible that we may have at one moment three sources of production: Chile nitrate at six or seven francs, nitrate from the Powder Works at Toulouse at three francs, from other plants at four francs. Farmers never would understand these differences in price: there would inevitably take place an equalization.

Finally, M. de Tinguy has another reason for being reassured. Factories such as those of M. Claude are already operating. During the two years at least of the management of the exploitation at Toulouse, they will operate without competition, with considerable capital. How can they not utilize in the future the advantage both of being the first to arrive and of advancing with increased speed?

CONCLUSION.

Such is the financial arrangement which we submit to the vote of Parliament.

We propose to approve the Convention of November 11, 1919, passed with the "Badische Anilin," because we deem it useful for the French interest to utilize a Process which has made in part Germany's fortune and allowed Germany to resist for four years the pressure of the blockade.

But we consider that it would be at once unjust, anti-French, and uneconomical to sacrifice the future of our inventors to the popularization of an enemy process of manufacture. So, let us leave to the exploitation which we are planning perfect freedom to put into operation, at whatever place it deems useful, whatever process it regards as fruitful.

The principal seat of the company will be at the gunpowder plant at Toulouse; its business office shall be wherever the Minister of Finance, author of the future decrees, and then the stockholders shall decide.

The Company's form will be that of a Sociétés Anonymes (Joint Stock Co.) of the type provided by the law of 1867, with the modifications defined by our bill.

The administrative council will be the creation simultaneously of the State and of groups or of individual stockholders. The profits instead of going to a privileged, private firm, shall go to the categories of enumerated subscribers, public, association, groups, etc., at the same time as to the Treasury: in short, to the community.

Through the organization of the administrative council itself, we are certain that the Government will preserve a right to look into prices so as to adapt them to the needs of agriculture.

It is sufficient to have read attentively, the analysis which we have made of the project in the preceding chapter, to become convinced that we did not attempt anything which resembles a State owned enterprise. But, while remaining hostile to any system consisting in placing of the social means of production under the dependence of the State, cannot one escape, when superior interests demand it, antiquated rules and extreme ideas of a selfish individualism?

If we fear that one day the immense agricultural interests may be sacrificed to the appetite of a Trust, should we not take precautionary measures? And if we have discovered among the fruits fallen from Victory, something which may be interpreted as a National profit, have we not the right to give to the community rather than to the capitalists, who we are not sure will always place the common interest above the opportunity for dividends?

A dangerous experiment, certain people say. Not an experiment: we have precedents. And if it is necessary to take examples, we would name (a) L'Office cherifien des Phosphates du maroc'', la Societe pour l'amenagement du Rhone and more to the point, la Societe nationale pour l'exploitation des potasses d'Alsace. (b) L'Office cherifien des Phosphate'' represents a State Administration with an administrative council comprising, besides the Government representatives, representatives of agriculture, of industry and of commerce.

The expenses of exploration and installations are covered:

First: By a donation from the budget of the Protectorate Loan.

Second: By a special reserve fund drawn from the profits;

Third: By bonds issued by the Bureau with the Government guarantee.

The exploitation receipts are covered:

First: By the receipts of the Bureau.

Second: By levying on the reserve fund.

The Bureau carries out its own Administration and its own financial operation according to rule fixed by the Vizier's decree.

On the profits there are levied:

1. A part for the Staff and Executive personnel, based on the useful production and the profits realized:
2. A part applicable to the reserve fund.

The Bureau can, with the authorization of the Government, take part in Moraccan enterprises having for their object the utilization of phosphates in the territory of the protectorate.

As for the Societes pour l'amenagement du Rhone, organized by the law of May 27, (Official Journal, May 28, 1921), the capital stock is to be covered by communities or interested public establishments, local industries, or individuals. The bonds are to be obligations whose interest and amortization are guaranteed by the State, under certain conditions.

The excess profits (surplus after subtracting interest and the annual amortization of the bonds and the stock dividends) are distributed in the proportion of 20% to the capital stock and 80% to the reimbursement, without interest, of the sums which the State has expended in guaranteeing the interest on the bonds, whatever that may be.

After total reimbursement of the guaranty debt, the excess profits shall be divided in half between the State and the concessionary firms.

The statutes, by the terms of the law, are to fix the composition of the Administrative Council of the single firm or firms which shall have been appointed to the concessionaires after authorization, and in particular are to fix, the method of representation of the State, that of the communities or of interested public establishments, the methods of financial cooperation of these latter, etc.

The representatives of the State, of Departments, and of Communes should comprise together at least two-thirds of the members of the Administrative Council, and those of the State alone two-fifths. The President of the Administrative Council shall be designated by the State from among its representatives.

The Departments, the Communes, and all other communities or public establishments, authorized for this purpose by deliverative decree of the Council of State, may be admitted, either grouped or individually, as concessionaires, or as participants in the firms established, by virtue of the acts of concession.

The public service corporations or the companies consuming electricity or water power can be admitted to participation in one or more of the companies.

The representation of each in the Adminstrative Councils and the conditions of its participation in the expenses and profits of the firms shall be determined by the statutes of these firms.

All of the work shall be subject to the decrees made in the Council of State declaring these works to be of public utility.

The definite projects will be approved by the Minister of Public Works in collaboration with the Minister of Agriculture.

Finally the Societe nationale pour l'exploitation des potasses d'Alsace is conceived on the following plan which will be submitted tomorrow to the vote of the Chamber.

The property, rights and interests in the concession and exploitation of the potash mines located on the Haut-Rhin, will be rented for a period of 75 years to a single corporation found in accordance with the French laws covering the subject.

The initial capital of the firm shall be subscribed in the form stock by the groups enumerated below:

(a)—Agricultural groups to the extent of 50%.
(b)—Chemical industries to the extent of 10%.
(c)—Casualties to the extent of 5%
(d)—Communities of Alsace Lorraine to the extent of 15%
(e)—Carries of "Kuses" to the extent of 15%
(f)—Personnel of the Potash mines to the extent of 5%.

It is not necessary to compare at length these texts with ours to perceive that they include intimately all the principles which we have emphasized in our Bill: collaboration of the State and of the interested parties to form the capital; participation of the Communities in the composition of the Administrative Council; designation of Administrators by each Community; choice by the State, from among the Administrators of the President of the Administrative Council; division of the profits according to assignments between the State and the lists of share holders; official control of the operations of the firm, etc. Is anyone indignant in certain spheres to see adopted formulas breaking away from the belated conservatism of some, with the narrow subjectivism of others? In the firms considered,—as much owned by the State as ours, if there is ownership by the State,—has there not been noted room for all initiative, for all good will, either industrial or financial, for any professional collaboration?

It is necessary to evolve with one's century. State Socialism has not given results which can tempt us—and yet this is not the place to discuss them. But if it sees enterprises strongly concentrated encompass with their tentacles the public property, mines, etc., water-falls, is not the State under obligations to interfere and protect the individual against the menacing Trust? It is no longer then a question of State Socialism, nor of Social Socialism; it is on the contrary, a case of reinstating in groups of individuals all their force and all their independence; of preventing them from being frustrated by coalition or monopoly. As to the apprehensions which some have manifested at seeing introduced into the Administrative Council, representatives of the workmen's unions, will they not pause awkwardly on the modern conception which is to encourage syndicalism, the well-ordered working man's association, and the cordial collaboration of capital and labor? What can the two delegates of the personnel which we introduce among the twenty members of the Adminstrative Council be suspected of? That they become conversant with the affairs of the firm? But the accounts are public; the report of the commissioners is to be submitted to the Ministers and I imagine that these will not be hidden from Parliament! That they will come to the meetings of the Council with a spirit of opposition and disorganization? Why not have confidence in the working man's conscience and decree it inferior to the patronal good will? In any case, it is only a question of two members among twenty and there is a chance at least within reason that they will go with the majority. Once more, considered without bias by men who do not fear innovations, when they are judged good, the financial arrangement which we propose gives the maximum satisfaction to those who were disquited by a convention such as that of November 11, 1919:

1.—It does not preserve the monopoly of the German patent. It leaves on the same plain manufacture by the Haber process and all the methods of manufacture, French or otherwise, to which it would be expedient to have recourse;

2.—It leaves to the community the profits from a convention which was passed in its name and for it;

3.—It protects the public against a coalition which would ruin the market.

A last word. When the Bill shall be voted, when the exploitation of the new firm shall be started, let us not think that the past is finished.

It will be necessary for everyone who is interested in the *necessary* development of our agriculture to carry on a stubborn propaganda for the use of fertilizer in general, of fertilizer made in France in particular. So far as the nitrogen fertilizers are concerned to the slow peasant, it will suffice to employ the fertilizer as nearly as possible. In any case it is possible in order to conciliate everyone, to make nitrite rather than ammonium sulfate. But in this period of monetary crisis, we no longer ask from abroad what can be found even in the air of the Country.

With these observations your commission proposes for your vote the following text, which seems to it to conform most closely to the desires expressed before it.

THE BILL.

ARTICLE 1.

The Ministers of War, of Finance and of Agriculture are authorized to execute the agreement passed on November 11, 1919 between the Minister of Industrial Reconstruction and the "Badische Anilin und Soda Fabrik" for the purpose of manufacturing Synthetic Ammonia.

ARTICLE 2.

For the purpose of executing the said agreement, there will be created under the guidance of the Minister of Finance during the six-month period following the promulgation of the present law, a corporation will function according to the provisions hereinafter made, in conformance with the rulings already in force by the law of July 24, 1867, August 1, 1893, July 9, 1902, November 16, 1903, November 22, 1913.

ARTICLE 3.

The duration of company will be 99 years from the day of its formation. Its object will be exclusively to manufacture fertilizer and nitrogenous products or the compounds directly connected therewith. The company will take in charge all obligations of the rights resulting from the agreement of November 11, 1919, for the execution of which it is responsible to the French State in the terms of Article 14 of the said convention. It will take for the duration of its exploitation in place of the State that part of the National Powder Works at Toulouse which is capable of being utilized for the execution of the agreement of November 11, 1919 and which will be defined in the statutes as well as the equipment which is there and the delivery of which the company will demand.

In payment for this site and without regard to the share in profits hereinafter specified, there will be paid to the State by the company an annual rental of 500,000 francs.

ARTICLE 4.

The company will have a capital of 50 million francs represented by 500,000 shares at a nominal value of 100 francs which will be distributed as follows:

1.—200,000 preferred shares with cumulative interest which will be subscribed:

(a)—For 50,000 by the syndicates, co-operatives and Farmer's Associations of France;

(b)—For 20,000 by the Chambers of Commerce, and for 30,000 by the syndicates of chemical manufacturers;

(c)—For 50,000 by public subscription;

(d)—For 50,000 by Workmen's syndicates, co-operatives, and other workmen's associations.

For Class C reserved for the public, no one subscription can exceed 100 shares for one subscriber.

In case the shares reserved for one class of subscribers are not all subscribed for by those who have the right, the shares thus left will be distributable either for subscription by the State or by the public, without opposing to the subscribers the expressed limitation of the preceding paragraph.

2.—300,000 ordinary shares of which 250,000 shall be assigned to it in representation of the aforemen- be asigned to it in representation of the aforementioned payment in the first paragraph of Article 10 of the agreement of November 11, 1919, payments which shall be made to its account.

ARTICLE 5.

The concern shall be managed by an administrative Council of 20 members, which will be obliged to be composed as follows:

Three representatives from the Agricultural Associations who will be proposed under the conditions fixed by an order of the Minister of Agriculture.

Two specialists on the question of Nitrogen fixation who will be proposed: one by the consulting committee of arts and manufactures, the other by the Civil Engineers' Society of France;

One representative of the Chamber of Commerce

One delegate of the Superior Council of the Railroads

One representative of the Minister of Finance

One representative of the Minister of Agriculture

Two representatives of the Minister of War

Two delegates from the personnel of the Company

One delegate from the engineers and chemists of the company.

These fourteen members, who shall be by delegation, from the State Carriers of these shares, shall be named by a decree countersigned by the Ministers of Agriculture, of Finance and of War, who shall appoint them upon sight of lists presented by the groups or administrations concerned, those lists including triple the number of names, representatives or delegates to which they are entitled.

Six other members of the administrative council shall be named by the preferred stockholders and accordingly:

(a)—One member appointed by each of the classes of preferred stockholders;

(b)—Two members by all the shareholders together.

The President of the Administrative Council shall be appointed by a decree countersigned by the three Ministers concerned. The members shall be appointed for a duration of six years renewable by half and re-eligible.

Article 6.

The statutes of the company fixed by the Minister of Finance in view of the Constitution of the company may be modified by the general assembly of stockholders in everything which is not contrary to the legislative texts in force for the joint stock companies.

The powers of the Administrative Council will be those which are provided by the laws of July 24, 1867, July 9, 1902, November 16, 1903, November 22, 1913.

It will name and be able to dismiss the director and the directing personnel, it will designate and be able to discharge the deputy administrator, determine the rules of recruiting, of discipline, advancement and remuneration of the personnel within the limits of certain rules fixed by a ruling of the public administration and relative to the duration of work and to the application of the social laws in force, to conditions of hygiene, to regulations of pensions.

The business year will commence January 1, and December 31.

Article 7.

The accounts of the company will be controlled by three commissioners two of whom named by the Minister of Finance (and among these one will be chosen from a list of three presented by the Association of expert accountants) and the third by the general meeting of stockholders.

The accounts and the report of the commissioners to the general meeting of stockholders will be submitted to them each year only after being presented for the approval of the interested ministers. They will be considered as approved by the latter if they have not been rejected by them conjointly at the end of a month after presentation.

Article 8.

Each increase or reduction of capital, each decision relative to the dissolution or to the prolongation of the company will not be accomplished without the consent of Parliament.

Article 9.

The company will be able upon the decision of the administrative council to issue bonds up to 70 million francs at the rate of interest and on conditions approved by the Minister of Finance—These bonds carry the guarantee of the State. Any issue exceeding the figure of 70 millions cannot be decided upon without the authorization of the Parliament.

Article 10.

The net profits of the company are found after taking out of the gross receipts the general expenses all company charges of interest and liquidation of obligations and all liquidations which the council judges useful. They will be assigned as follows:

5% to the legal reserve conforming to the law.

6% as interest on preferred stock. (This interest being cumulative, that is to say, that the interest which will not have been paid entirely during one or more years, will be carried forward on the following years;

6% interest to common stock.

The surplus after setting aside 10% for a special reserve will be divided as follows:

10% to the Treasurer for supplementing wages as provided in Article 3—

30% to stockholders

5% to adminstrative council and 15% to group and social work as designated by the personnel.

40% employed to lower by so much more the normal selling price in the year which followed.

ARTICLE 11.

The company will be able to manage or utilize, at the works of Toulouse or in such place as the administrative council judges suitable in conformance with the dispositions of the present law, all other methods for production of nitrogenous products or similar products of which it will be able to acquire the patents.

ARTICLE 12.

All suits against the company and the State will be within the province of the administrative courts. All disputes with a third party will be within the province of the Civil courts.

ARTICLE 13.

The Minister of Agriculture is especially charged with watching the execution of the present law. It will appertain to him along with the other Ministerial Departments to cause the execution of the measures which are incumbent on these latter in the shortest possible time.

The necessary credits will be demanded by the Minister of Agriculture and inscribed on his budget.

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STATEMENT OF COL. J. W. JOYES, ORDNANCE DEPARTMENT, UNITED STATES ARMY, AT HEARING BEFORE THE COMMITTEE ON MILITARY AFFAIRS, HOUSE OF REPRESENTATIVES ON H. R. 10329-S. 3390.

This statement is intended briefly to present some of the information obtained and opinions formed by me during an official visit to Europe in the summer of 1919, especially bearing upon the plant development and costs of production of the cyanamid process and of the Haber synthetic ammonia process.

This visit to Europe was made as chairman and member of the United States fixed nitrogen commission appointed by the United States fixed nitrogen administrator with the approval of the Secretary of War, to ascertain the state of the art of nitrogen fixation in Europe and especially in the occupied German territory. The commission spent about two months abroad visiting several cyanamid and ammonia oxidizing plants in France and Germany and the noted Haber plant of the Badische Co. at Oppau for the synthetic manufacture of ammonia. The large arc plant in Norway was also visited and many well-informed persons were interviewed.

In the need for nitrogen for the war Germany was pressed hardest, because all importation of Chile saltpeter was stopped by the blockade, and munitions could not be made without a substitute material from which nitric acid could be produced.

The German Government nitrogen administrator required the gas works and coke works to deliver all possible by-product ammonia, but no great increase could thus be made.

The Government further increased ammonia production by requiring increases of existing cyanamid plants and construction of new ones, the Government assisting by large loans, etc., and even building out of public funds two large cyanamid plants.

The Haber synthetic ammonia plant which the Badische Co. had started to build at Oppau in 1912 had brought into successful operation just before the war its first installment, some 7,000 tons per year. Later this plant was increased to 100,000 tons per year; and another plant for 200,000 tons per year was built at Merseberg, some three-quarters of its capacity having been developed when the armistice was signed.

Germany has a total present nitrogen capacity of about 300,000 tons by the Haber process, 120,000 by the cyanamid process, and 150,000 by coke ovens and gas works.

France undertook the establishment of plants to produce by fixation at home nitrogen substitutes for Chile nitrate sufficient in amount for all her home munitions manufacture.

The process selected as the backbone of this program was the cyanamid process and the plans contemplated adding to the prewar capacity (which was about 8,000 tons of nitrogen per annum), an aggregate annual production of over 50,000 tons of contained nitrogen, giving in all some 60,000 tons of nitrogen—to be available a small part before 1918, part in 1918, and all by May, 1919.

This program was largely financed by public funds, two of the nine plants being Government-owned, three being Government-controlled, and the others having probably some assistance in their financing.

Where possible these plants (or at least the carbide department) used water power, but from necessity some used steam power.

To utilize the ammonia produced by the cyanamid processes, six large oxidizing plants were started for producing nitric acid—the last to be completed early in 1919. A large part of these were Government-owned.

Great Britain was gravely concerned over the insecurity of her nitrogen supplies and early appointed a committee of prominent business men and eminent scientists to investigate and advise.

In its final report in May, 1919, the committee—after a complete analysis of all comparative data as to costs, yields, etc., and recognition of the scarcity of water powers in Britain, recommended: "As a minimum provision for safeguarding the future and for meeting a portion of the growing home demand for various nitrogen products" the establishment in Great Britain without delay, "either by private enterprise (supported if necessary by the Government) or as a public work," of the calcium cyanamid process upon a scale of 60,000 tons per annum (which would mean about 12,000 tons) of nitrogen fixed.

Italy had before the war capacity for some 7,000 tons of nitrogen by the cyanamid process. The present capacity is probably about 20,000 tons nitrogen.

In Switzerland, Norway, Sweden, and other neutral countries increase during the war period was a mere matter of business enterprise.

Cyanamid-production capacity in these countries was increased by about 6,000 tons nitrogen in Norway and Sweden (with much more planned) and a small increase, not definitely known, in Switzerland.

Japan fully doubled her capacity and the United States planned for about 80,000 tons nitrogen and completed one plant for 40,000 tons—the Muscle Shoals plant, now under discussion.

Norway, having cheap water power, doubled her arc-process plants.

Throughout the world, therefore, the period of the war has seen large increases in the capacity for fixing nitrogen in useful forms. This has been most marked in Germany, where the necessity was vital, and next among the Allies, where the motive was mainly the national security.

In Germany and in France the need was so great that some of the plants were placed where conditions were so unfavorable that it was never expected that they could live after the war, but as far as possible they were placed and built with a view to future use in production for the needs of agriculture and the arts.

Deducting for plants so unfavorably placed as to be of use only during the war, and for plants under construction but not completed at the close of hostilities, I have formed, upon information from many sources, the following opinion as to present capacity (exclusive of coke ovens) probably available for commercial production:

	Metric tons of nitrogen	
Germany:		
Haber	300,000	
Cyanamid	93,000	
		393,000
France:		
Cyanamid	40,000	
Arc	1,000	
		41,000

Italy:		
Cyanamid	12,000	
Arc	1,000	
		13,000
Scandinavia:		
Cyanamid	28,000	
Arc	30,000	
		58,000
Austria, cyanamid		22,000
Switzerland, cyanamid		7,500
Japan, cyanamid		12,000
Canada, cyanamid		12,000
United States (N. P. No. 2), cyanamid		40,000

Aggregate about 600,000 tons, of which some 270,000 tons is by cyanamid process and some 300,000 tons by Haber process.

The arc process has been used on a large scale only in Scandinavia where water-power development and operative expense were very low. There are no reasons to expect early radical changes in its technique or economics, although these may come in time.

The cyanamid process has been growing in many countries for 15 years or so, and the apparatus and procedure have been so long studied that they are well stabilized and revolutionary changes are not probable.

It is the one fixation process existing which, because it is not prohibitive in its power demands and is fully developed, was indicated as most advisable for prompt, reliable production at assured moderate cost. With reasonable power cost it fixes nitrogen in the cheapest usable form for agriculture—lime-nitrogen—and with cheap water power can compete in ammonia cost with the Haber process.

The Haber process is a new proces, and large scale use brought many troubles, which under the war pressure the large and efficient staff of the B. A. S.

F. succeeded in overcoming, so that the process is now a continuously operating and fairly efficient plant to which the German company has linked up many auxiliary processes for adapting its ammonia to fertilizer uses. But our inspection indicated to us that up to the close of operation of the Oppau plant there had been constant modification and improvement of apparatus. Only a single ammonia converter at Oppau had all the latest improvements that we saw. It seemed clear to us that the Oppau plant showed need of still further improvement for entirely satisfactory operation.

At a good many points quite careful regulation of pressures, quantities, temperatures and compositon of the gas mixture, and a great number of gauges, meters, indicators, thermometers, etc., were provided to show the need for control by manipulation of a correspondingly large number of valves, switches, and the like.

It is said that fewer operatives are required than would be indicated by these controls, but making every allowance therefor, our commission was convinced that the labor and supervision forces must be quite large. In the estimates which have come from a number of sources the expense of this item was not exorbitant, because of the very low salaries and wages paid in Germany up to 1914, and it is upon such low rates, now no longer existent even in Germany, that the production of ammonia at quite low figures had been asserted.

Repairs and upkeep must be expensive.

It has been said that ammonia was made in this plant when it first started operation (1914-15) for about 4 cents per pound, exclusive of interest and with a small item of depreciation only, but it must be remembered that at that time lignite for fuel was available at about $2 per ton and coke at about $4; that common labor received about 75 cents to $1 per day, and skilled labor between $1.40 and $1.50. These conditions have gone, and are not expected to return.

It was our firm conviction that under present conditions the production cost must be fully two and a half times as much.

If we assume this same plant set down in perfect condition in a favorable location in the United States, the costs of production under present price conditions would be, in my opinion, based upon our careful studies, as follows:

	Cost of Ammonia	
	Per short ton.	*Per pound.*
Plant cost of production, including cost of upkeep	$209-$163	$0.105-$0.082
Amortization, depreciation and obsolescence	75- 50	.038- .025
Interest at 6 per cent on $750	45- 45	.022- .022
Sales expense	2- 1	....
Aggregate cost	331- 259	.165- .129

The larger figures for production assume some excess of personnel over what the Germans probably require, because of need for the personnel to learn a process new to them and very complex in its essence The lower figures represent what might be attained after some years of familiarity with the process.

In course of time; that is, in some years of operation, it would be expected that American ideas would develop recording gauges, automatic controls, and other cost-reducing devices.

The first cost of the hypothetical plant is assumed as $750 per ton per year, which is much more than is stated for the German work done before, or early in, the war, but is not much more than recent work in Germany must be estimated. It is not too high for present American prices, considering the special nature of the equipment. It affects the upkeep item of production cost, the amortization, and the interest.

Upkeep is taken at 10 per cent of the cost of the plant for repair, materials, parts, etc., and for replacements. Upkeep labor is included in the general labor item above. Considering the exacting conditions of the process and the newness of the process, this is not too much.

Amortization is taken at 10 per cent of cost of plant on the assumption that in 10 years there will be large obsolescence loss due to improvement in this new process.

The interest rate is assumed at 6 per cent on the assumed $750 cost of plant. This is probably too low.

We were told in Germany, by a German official of a firm using ammonia, that he did not believe Oppau could produce ammonia after the war for a total cost of less than 10 cents.

We have no basis for absolute comparison in the United States, since the Government's plant, experimentally built to use a similar but only partly developed process, promptly developed troubles and the close of the war coming just at that time prevented the expenditure of the money necessary to overcome those troubles and make the plant operate. If the war had continued that would undoubtedly have been done, and the plant would have been made to make ammonia. But the experience showed conclusively that there would have had to be much development at much expense before the new American process could have equaled or nearly equaled the German or Haber process, which had had already eight years or so of intensive study in commercial, if small-scale, apparatus, and several years of large-scale operation.

There is nothing to indicate that the Haber or similar process in its present state of development can, under present business conditions in America, produce ammonia for as low a price as 10 cents per pound, exclusive of interest.

As I have already stated the matter of nitrogen supply was, during the war, energetically fostered by the German Government and specific control over all matters in that connection was exercised by an imperial commissioner or commissary for nitrogen control under the war department, who was given authority to issue regulations for the production and use of nitrogen products and for all traffic therein. In several publications the establishment of this control is mentioned in terms of high praise, and Walter Rathenau, in general charge of raw materials supplies, was given great praise for having initiated it.

In order to know the conditions affecting production by the several groups there were associated with this Government administrator, Prof. Caro as representative of the cyanamid producers; Dr. Bueb, representing the Badische Anilin and Soda Works; and Geheimrath Bruckner, representing the by-product coke ovens. That was a strictly war control organization, but even before the war closed, Germany, with her usual foresight, was giving consideration to the future commercial aspects of her nitrogen works, and in August, 1919, there was definitely formed an association of the producers which was called the Stickstoff Syndakat G. m. b. H. or nitrogen syndicate.

This designation is a commercial one and the organization is along commercial lines, but it is reliably stated that the establishment of this syndicate was largely due to governmental influence. This will be more easily understood if it be realized that the German Government had given financial assistance to many of the new plants and plant increases which the war had necessitated, and that it had also built, out of public funds, two of the largest cyanamid plants in Germany.

The capital stock of this syndicate is held by the Badische Co., which makes synthetic ammonia; by the group of industrial companies and capitalists who manufacture cyanamid; and by the German Ammonia Sales Co. and the affiliated organizations of the coke works and gas works. Each of these three groups has one member on the board of directors, and the fourth member of that board is named by the Government. There will also be a board of managers of the company, the chairman of which will be named by the Government. Membership on this board, which will handle most of the business of the syndicate, is divided between the Government and the Badische Co., the by-product coke and coal industries, and the lime-nitrogen, or cyanamid industry.

The management of this syndicate will from time to time determine the limits within which the several groups may produce nitrogenous compounds, having made a preliminary allotment of production to the Badische Co. of 300,000 tons; the lime-nitrogen, or cyanamid industry 93,000 tons; the by-product industry 120,000 tons; and have, as a fundamental basis, decreed that prices of any of these products shall be on the basis of nitrogen content as affected by a factor which is for lime-nitrogen 8; for ammonia sulphate 9; and for saltpeter 10. That is, a given amount of nitrogen in those forms would be valued for sale purposes in the ratio of 8, 9, and 10. All output is to be pooled, the sale of any one product depending upon its individual merits and popularity; but all plants manufacturing the same product will receive the same price. Exportation to be allowed only after all domestic demands have been met.

In order to safeguard other interests than those of the producer and to insure economy in distribution, there has at the instigation of the Government finance ministry been organized a joint body consisting of representatives of producers and consumers known as the nitrogen commission. That commission will consist of 22 members; the nitrogen syndicate just mentioned, the Government, and representatives of the agriculturalists of Germany will have 5 members each, and fertilizer manufacturers, fertilizer dealers, the bureau of industry, and the bureau of agriculture, and three of the associate States will have 1 member each.

This information, which comes from most reliable sources and is not to be disputed, shows that beyond question anyone outside of Germany producing or desiring to purchase nitrogenous fertilizers or similar compounds will have to deal with a single organization, essentially a branch of the German Government, which will have an absolute monopolistic control of all such products produced in Germany or whatever surplus there may be for export.

In France the Government found itself in somewhat similar position as to actual governmental investment in fixation plants, although on a much smaller scale. During the war the Government became interested financially in nearly all of the expansion of nitrogen fixation, and it owned completely two of the cyanamid plants.

At the time of the commission's visit to France, the subject of utilization of the large cyanamid-producing capacity created during the war, and especially of that part of it which was owned by the Government, was being discussed in the Chamber of Deputies and in the press. The urgent need for more use than previously of nitrogenous fertilizers by French agriculturalists on the one hand and on the other hand the advisability of some measures to assure the continued operation of the war-created manufacturing facilities were being urged by men of such prominence as M. Pottevin, M. Roux, and M. Tisserand. There seemed to be very strong public opinion in favor of some arrangements which would insure the operation of the cyanamid plants. At the time of our visit no decision appeared to have been arrived at as to a definite plan of operation, but it appeared very probable that there would be some action by the Government, perhaps not as systematic and comprehensive as the German arrangement above described, but nevertheless one that would provide some basis of organization of the industry to meet the commercial outlook, possible German competition, etc.

Our commission saw installations in French Government plants for making ammonium sulphate out of cyanamid, and at one there was a very large scale installation of apparatus then (July, 1919) in process of erection for this same purpose. The French Government is, therefore, unquestionably in the market to some extent as a producer of ammonium sulphate.

Directly after the war the French Government had made temporary provision for the marketing of cyanamid as such by the appointment of an administrator.

The situation in Italy is not known, but rumors reached the commission that the Italian Government was to some extent interested in the cyanamid producing capacity with which that country emerged from the war period.

England, as intimated above, gave much attention to the nitrogen problem by way of study, but did not actually take any positive steps of consequence. England has been a producer of ammonium sulphate of which she exported a large quantity, while on the other hand there was some importation of other forms of combined nitrogen aside from Chile nitrate. There was a strong recommendation from the nitrogen products committee, made at the close of the war, that the Government actually build a fair-sized cyanamid plant in England or Scotland, but it has not been learned that any definite steps had been taken toward the carrying out of that recommendation.

It is well known that although the Chile nitrate workings are operated by private capital, the Government of Chile levies an export tax upon every ton of nitrate which leaves the country and that this tax is the predominating source of the Chilean Government's revenues. The Chilean producers are associated in quite a strong organization, which has the sympathetic and more or less active backing of the Government.

J. W. JOYES,
Colonel, Ordnance Department,
United States Army.

DEFENDANT'S EXHIBITS Nos. 240 to 245, INCLUSIVE.

PATENTS PRODUCED BY DR. CHARLES L. PARSONS.
(For Copies of Patents See Patent Exhibit Book.)

Exhibit No.	*Patent No.*	*Date*
240	1,141,947	June 8, 1915.
241	1,141,948	June 8, 1915.
242	1,151,537	Aug. 24, 1915
243	1,159,364	Nov. 9, 1915.
244	1,159,365	Nov. 9, 1915.
245	1,143,363	June 15, 1915.

DEFENDANT'S EXHIBIT No. 246.

Statement From Books and Records of Abbott Laboratories.

Cinchophan.

Factory and Laboratory Cost of research work.

Work Order or Serial No.	*Yield Lbs. Oz.*	*Material*	*Direct Labor*	*Dept. Cost*	*Factory Adm. Expense*	*Total Mfg. Cost*	*Amount Charged to Research and Expense*
A 714	133.14	4,505.51	868.89	3,921.30	1,572.23	10,867.93	
A 928	282.11	3,264.59	223.83	1,010.15	406.43	4,905.00	
A 934	911.15	4,921.86	493.35	2,226.49	827.62	8,469.32	
Laboratory work						2,660.00	
	1328.8	12,691.96	1,586.07	7,157.94	2,806.28		26,902.25
Additional Expense for packaging, selling and shipping, including royalties paid							3,152.97
							30,055.22
Net amount realized from sales of 1328 pounds 8 oz.,							14,601.92
Net cost of [illegible]rch and experiments,							15,453.30

The first factory work order No. A 714 was issued July 1917.
The last factory work order No. A 934 was completed in March 1920.

DEFENDANT'S EXHIBIT No. 247.

STATEMENT FROM BOOKS AND RECORDS OF ABBOTT LABORATORIES.

NEOCINCHOPHAN.

Work Order No.	*Yield lb. oz.*	*Material*	*Direct Labor*	*Dept. Expense*	*Adm.*	*Total.*	
3438	263 - 6½	$3,180.62	684.34	2,566.34	819.34	7,250.64	
4886	464 - 3	2,970.43	307.64	1,153.56	365.30	4,796.93	
Laboratory work						437.50	
Total	727 - 9½	6,151.05	991.98	3,719.90	1,184.64		$12,485.07
Additional expenses of packaging, selling and shipping, including royalties paid,							1,752.16
							$14,237.23
Approximate net amount that will be realized from sale of 727 lbs. 9½oz.							$ 7,324.75
Net cost of research and experiments							6,912.48

The first factory work order for neocinchophan No. 3438 was completed September, 1922.
The second No. 4886 was completed April, 1923.
Factory experimental work on this product is still proceeding.

DEFENDANT'S EXHIBIT No. 248.

STATEMENT FROM BOOKS AND RECORDS OF ABBOTT LABORATORIES.

PROCAINE.

Factory and Laboratory Costs of Research Work.

Work Order Serial No.	*Yield Lbs. Oz.*	*Material*	*Direct Labor*	*Dept. Expense*	*Genl. Adm. Expense*	*Total*
A 806-831	149. 6	12,281.18	1,973.86	8,908.03	3,633.01	26,796.08
A 874	238.10	10,379.81	1,402.92	6,331.38	2,244.96	20,359.07
Laboratory work,						1,520.00
Total,	388.	22,660.99	3,376.78	15,239.41	5,877.97	48,675.15
Additional expense of packaging, selling and shipping including royalties paid						5,708.71
						54,383.86
Net amount realized from sales of 388 pounds.						24,081.09
Net cost of research and experiments,						30,302.77

The first factory work order A 806 was issued March 11, 1918.
The last factory work order A 874 was completed in March, 1920.

DEFENDANT'S EXHIBIT No. 249.

STATEMENT FROM BOOKS AND RECORDS OF ABBOTT LABORATORIES.

ACRIFLAVINE AND PROFLAVINE.

Work Order No.	*Yield lbs. oz.*	*Material*	*Direct, Labor*	*Dept. Expense.*	*Adm.*	*Total.*	
575		73.78	439.32	1,194.93	408.56	2,116.59	
743		128.23	94.80	232.07	59.82	514.92	
845	14 - 9	100.64	427.99	1,343.22	442.80	2,214.65	
1116		25.33				25.33	
1759	23	642.25	70.59	172.80	60.85	946.49	
3924			686.73	2,575.24	815.49	4,077.46	
Laboratory work						4,197.50	
	37 - 9	970.23	1,719.42	5,420.26	1,787.52		$14,094.94

Additional expense of packaging, selling and shipping, including royalties paid,	539.53
	$14,634.47
Net amount realized from sale of 37 lbs., 9 oz.,	2,495.91
Net cost of research and experiments,	$12,138.56

The first factory work order No. 575 was issued July 24, 1920, it was completed September 30, 1920. Work order No. 3924 was completed January 30th, 1923.

DEFENDANT'S EXHIBITS Nos. 250 to 261, INCLUSIVE.

PATENTS PRODUCED BY ELMER K. BOLTON.
(For Copies of Patents See Patent Exhibit Book.)

Exhibit No.	*Patent No.*	*Date*
250	724,789	Apr. 7, 1903.
251	1,063,173	May 27, 1913.
252	1,104,943	July 28, 1914.
253	739,145	Sept. 15, 1903.
254	876,810	Jan. 14, 1908.
255	856,811	June 11, 1907.
256	919,572	Apr. 27, 1909.
257	956,348	Apr. 26, 1910.
258	966,092	Aug. 2, 1910.
259	1,004,433	Sept. 26, 1911.
260	828,778	Aug. 14, 1906.
261	845,129	Feb. 26, 1907.

DEFENDANT'S EXHIBIT No. 262.

LICENSES ISSUED TO E. I. DUPONT DE NEMOURS & CO.
BY THE CHEMICAL FOUNDATION, INC.

License	*Patents*	*Products*
41	770,177 778,476	Pontachrome Black 6BX
	807,422	Pontachrome Blue Black R
replaced by 331	807,422 expired Dec. 12, 1922	same products
162	1,055,701	Ponsol Paper Blue
replaced by 333	1,150,863	Ponsol Paper Blue

Licenses	*Patents*	*Products*
163	787,859	Ponsol Violet R
	818,336	
	906,367	
replaced by		
329	787,859**	Ponsol Violet R
	906,367	
164	818,336	Ponsol Violet RR
	906,367	
	1,003,268	
replaced by	787,859**	Ponsol Violet RR
330	906,367	
	1,003,268	
(165	787,859**	Ponsol Dark Blue BR
(	818,992***	
(166	787,859**	Ponsol Green B and Blacks
	796,393	
	818,992***	
	876,679	
replaced by	787,859**	Ponsol Dark Blue BR
328	796,393*	
Expired	818,992***	Green B and Black
381	1,149,231	Pontacyl Fast Light Yellow 2G and 3G
382	970,878	Ponsol Blue 3G
387	1,014,539	Lithosol Bordeaux B
388	961,047	
	1,008,906	Ponsol Red Violet 2RN
389	856,811	Ponsol Golden Oranges
	876,810	
398	865,587	Lithosol Vermilion G
399	903,284	Orange or Brown Stilbene Dye

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* Expired Aug. 1, 1922

** “ Apr. 18, 1922

*** “ Apr. 24, 1923

Licenses	*Patents*	*Products*
400	961,612	Ponsol Claret
401	1,054,888	Ponsol Blue Green B
402	961,048	Ponsol Violet RN
403	1,011,068	Ponsol Red BN
404	1,133,081	Ponsol Pink B
(167	739,145	Ponsol Yellow G
(	1,063,173	
(	1,104,943	
(		
(168	739,145	Ponsol Blue G
(	753,659	
(	844,914	
(	1,063,173	
(	1,104,943	
replaced by		
327	1,063,173	Ponsol Yellow G and Blue G
177	1,232,551	Tungstic Lake (Heliopont Colors)
	1,232,552	
	Application 438,449	
249	892,455	Sulphogene Yellow GG
314	956,348	Hydron Blue R
332	1,034,853	DuPont Napthanil AS
	1,042,356	DuPont Napthanil BS
	1,099,108	
	1,101,111	
	1,121,026	
	1,122,564	
	1,127,027	
	1,169,267	
	1,193,566	
	1,206,232	
334 Expired	818,980***	Sulphogene Bordeaux G, B and 5B

*** Expired 4-24-23

Licenses	*Patents*	*Products*
363	904,809	Sulphogene Ochre G
364	966,092	Hydron Blue G
365	1,165,531	Sulphogene Brown R
366	1,243,171	Sulphanthrene Pink FF
368	1,243,170	Hydron, Orange, Bordeaux, Violet, Brown, Crimson.

DEFENDANT'S EXHIBITS Nos. 263 to 277, INCLUSIVE.

U. S. PATENTS PRODUCED BY ERNEST H. KLIPSTEIN.
(For copies of patents see Patent Exhibit Book.)

Exhibit No.	*Patent No.*	*Date*
263	1,336,759	April 13, 1920.
264	1,237,405	Aug. 21, 1917.
265	1,191,480	July 18, 1916.
266	1,216,612	Feb. 20, 1917.
267	1,278,229	Sept. 10, 1918.
268	1,232,620	July 10, 1917.
269	1,254,364	Jan. 22, 1918.
270	1,133,108	Mar. 23, 1915.
271	1,289,280	Dec. 31, 1918.
272	1,281,494	Oct. 15, 1918.
273	1,107,107	Aug. 11, 1914.
274	1,203,069	Oct. 31, 1916.
275	1,089,797	Mar. 10, 1914.
276	1,421,722	July 4, 1922.
277	1,414,045	April 25, 1922.

DEFENDANT'S EXHIBIT No. 278.

U. S. PATENT No. 919,572, DATED APRIL 27, 1909.
(For copy of patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 279.

U. S. Patent No. 956,348, dated April 26, 1910.
(For copy of patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 280.

U. S. Patent No. 966,092, dated August 2, 1910.
(For copy of patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBITS Nos. 281 to 285, INCLUSIVE.

U. S. Patents produced by Moses L. Crossley.
(For copies of patents see Patent Exhibit Book.)

Exhibit No.	*No. of Patent*	*Date*
281	733,280	July 7, 1903.
282	1,063,173	May 27, 1913.
283	682,523	Sept. 10, 1901
284	724,789	April 7, 1903.
285	739,145	Sept. 15, 1903.

DEFENDANT'S EXHIBIT No. 286.

E. I. Du Pont De Nemours & Company
Expense incurred for Chemical Research
upon Dyes and Dye Intermediates to
June 30th, 1921.

Benzene Intermediates	$893,054.16
Naphthalene Intermediates	837,218.13

Sulphur Colors	$327,631.62
Alizarine Colors	103,417.94
Ponsol Colors	426,967.35
Indigo	250,545.61
Other Colors	700,621.43
Hydrosulphite	74,665.97
Miscellaneous	251,436.81
Total	$3,865,559.02

NOTE: Above figures do not include Administrative Expense of the Central Chemical Department.

DEFENDANT'S EXHIBIT No. 287.

STIPULATION

Section 10 (f) litigation
and Schedules.

DISTRICT COURT OF THE UNITED STATES,
DISTRICT OF DELAWARE.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
THE CHEMICAL FOUNDATION,
INCORPORATED,
Defendant.

STIPULATION.

IT IS HEREBY STIPULATED between the parties to this cause, as follows:

(1) The schedule hereto attached marked Schedule "A" comprises a full and correct list of all suits purporting to be brought under Section 10F of the Trading with the Enemy Act for the purpose of col-

lecting compensation from licensees under all Federal Trade Commission licenses affecting or involving patents, trade marks and other rights involved in this action, classified according to the numbers of the respective Federal Trade Commission licenses to which they appertain.

(2) All of the suits listed in said Schedule "A" are now pending and undisposed of.

(3) Said Schedule "A" together with this stipulation may be offered by defendant as evidence of the facts therein set forth without production of primary documentary evidence in support thereof; but the plaintiff waives no proper or valid objection to the admissibility in this action of proof of such facts and reserves to itself the right to object to the admissibility of such evidence upon any ground which might be or might have been urged against the admissibility of primary documentary evidence thereof.

(4) A true copy of the bill of complaint filed by the Alien Property Custodian as plaintiff in the suit so listed under the caption "License No. 47" in said Schedule "A" is hereto attached, marked Schedule "B". For the purposes of this cause only it is agreed that the bills of complaint filed by said Custodian in the other suits filed by him as set forth in Schedule "A" are in substantially the same form as said Schedule "B".

(5) A true copy of the bill of complaint as filed by Badische Anilin & Soda Fabrik as plaintiff, in the suit brought in the United States District Court for the Southern District of New York, as listed under the caption "License No. 38" in said Schedule "A" is hereto attached, marked Schedule "C". For the

purposes of this cause only it is agreed that the bills of complaint filed by plaintiffs other than The Chemical Foundation, Incorporated and the Alien Property Custodian, in the suits so listed in Schedule "A" are in substantially the same form as said Schedule "C".

(6) Each of the said copies of bills of complaint, Schedules "B" and "C" may be offered in evidence by the defendant as a type of the bills of complaint filed by the Alien Property Custodian and by such other plaintiffs respectively, with the like force and effect as though such copy were duly certified; but the plaintiff in so stipulating reserves to itself the right to object to the admissibility thereof upon any ground which might be urged against the admissibility of such duly certified copy.

Dated, at Wilmington, Delaware,
this 19 day of July, 1923.

UNITED STATES OF AMERICA,
Plaintiff,
By (Sgd.) Herman J. Galloway,
Solicitor.

THE CHEMICAL FOUNDATION, INC.,
Defendant.
By (Sgd.) Lucien H. Boggs,
Solicitor.

SCHEDULE "*A.*"

List of suits purporting to be brought under Section 10(f) of the Trading with the Enemy Act for the purpose of collecting compensation from licensees under all Federal Trade Commission licenses affecting or involving patents, trade marks, and other rights involved in the suit of the United States of America v. The Chemical Foundation, Incorporated, classified according to the numbers of the respective Federal Trade Commission licenses to which each of said suits respectively appertain.

(Note 1) In cases where a bill of complaint has been filed by the same plaintiff against the same defendants under the same license or licenses in two or more different Districts, such bills of complaint for the purposes of this suit are identical in all respects except as to venue.

(Note 2) Where the same suit relates to two or more licenses bearing different Arabic numerals, such suit is listed separately under each of the licenses which it affects.

(Note 3) In all cases where two or more plaintiffs (exclusive of both the Chemical Foundation, Incorporated, and the Alien Property Custodian) have filed suit under the same license, the respective bills of complaint show that the claims of the plaintiffs are based upon the alleged ownership of rights under different patents or trade-marks covered by such license. In other words, it does not appear that in any case in said suits ownership of the same rights under the same patents or trade-marks is asserted by more than one plaintiff claiming to be the owner thereof prior to seizure by the Alien Property Custodian.

LICENSES Nos. 1 1-A 1-B 1-C 1-D

No suit by Alien Property Custodian

Chemical Foundation, Inc. vs. Jay Frank Schamberg, George W. Raiziss and John A. Kolmer, individually, and as constituent members of the unincorporated, voluntary association, known as the Dermatological Research Labs. and Frank White, as Treas. of U. S.	Eastern Dist. of Pa. Equity No. 2567
Farbwerke vorm. Meister Lucius & Bruning vs. Dermatological Research Labs. unincorporated; Jay Frank Schamberg, Geo. W. Raiziss and John A. Kolmer and its successor, Dermatological Research Institute, and Frank White, as Treas. of U. S.	East. Dist. of Pa. Equity No. 2573

LICENSE No. 2, 2-A, 2-B, 2-C, 2-D

No suit by Alien Property Custodian

Chemical Foundation, Inc. vs. Takamine Laboratory, Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-132

Chemical Foundation, Inc. vs. Takamine Laboratory, Inc. (a corp.) and Frank White, as Treas. of U. S.	Dist. of New Jersey Equity No. 3668
Farbwerke vorm. Meister Lucius & Bruning vs. Takamine Laboratory, Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Eq. No. 24-170
Farbwerke vorm. Meister Lucius & Bruning vs. Takamine Laboratory, Inc., (a corp.) and Frank White, as Treas. of U. S.	Dist. of New Jersey Eq. No. 3695

LICENSE No. 3

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian
License cancelled 7/1/18

Farbwerke vorm. Meister Lucius & Bruning vs. Farbwerke Hoechst Company and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-150

(This suit involves licenses Nos. 3, 3d and 4).

License No. Trademark 3

No suit by Chemical Foundation, Inc.

Thomas W. Miller, as A. P. C. vs. Drager Oxygen Apparatus Co. and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Eq. No. 24-167

(This suit involves Licenses Nos. 42, 43, 44, 46 and T. M. 3)

Alexander Bernard Draeger, vs. American Atmos Corporation formerly Draeger Oxygen Apparatus Company and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Eq. No. 24-164

(This suit involves licenses Nos. 42, 43, 44, 46 and T. M. 3)

License No. 3-A

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian
License cancelled 7/1/18

Farbwerke vorm. Meister Lucius & Bruning vs. Farbwerke Hoechst Company and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Eq. No. 24-150

(This suit involves Licenses Nos. 3, 3a and 4)

License No. 4.

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian
License cancelled 7/1/18

Farbwerke vorm. Meister Lucius & Bruning vs. Farbwerke Hoechst Company and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Eq. No. 24-150

(This suit involves licenses Nos. 3, 3A and 4).

License No. 5

No suit by Alien Property Custodian

Chemical Foundation, Inc. vs. Rector Chemical Company, Inc., (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Eq. No. 24-129

Farbwerke vorm. Meister Lucius & Bruning vs. Rector Chemical Company, Inc., (a corp.) and Frank White, as Treas of U. S.	So. Dist. of N. Y. Eq. No. 24-149

LICENSE No. 7.

No suit by former enemy owners of patents involved.

Chemical Foundation, Inc., vs. Pacific Flush Tank Company (a corporation) and Frank White, as Treas. of U. S.	No. Dist. of Ill. Equity No. 2786

Thomas W. Miller, as A. P. C. vs. Pacific Flush Tank Company (a corporation) and Frank White, as Treas. of U. S.	No. Dist. of Ill. Equity No. 2820

LICENSE No. 8 8-A 8-B 8-C 8-D

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Diarsenol Company, Inc. (a corporation) and Frank White, as Treas. of U. S.	West Dist. of N. Y. Equity No. 392-C

Farbwerke vorm. Meister Lucius & Bruning vs. Diarsenol Company, Inc. (a corporation) and Frank White, as Treas. of U. S.	West Dist. of N. Y. Equity No. 395-C

LICENSE No. 9.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Abbott Laboratories, (a corporation) and Frank White, as Treas. of U. S.	Northern Dist. of Ill. Equity No. 2787
Farbwerke vorm. Meister Lucius & Bruning vs. Abbott Laboratories, (a corporation) and Frank White, as Treas. of U. S.	Northern Dist. of Ill. Equity No. 2818

LICENSE No. 10.

No suit by former enemy owners of patents involved.

Chemical Foundation, Inc., vs. Bermuth Lemcke, Inc. (a corporation) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-133
Thomas W. Miller, as A. P. C. vs. Bermuth Lemcke Company, and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-158

LICENSE No. 12.

No suit by Chemical Foundation, Inc.

No suit by Alien Property Custodian.

Farbwerke vorm. Meister Lucius & Bruning **vs.** Calco Chemical Co., Inc., and Frank White, as Treas. of U. S.	Dist. of New Jersey Equity No. 3694

LICENSE No. 15

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Abbott Laboratories, (a corporation) and Frank White, as Treas. of U. S.	Northern Dist. Illinois Equity No. 2788
Chemische Fabrik auf Aktien (vorm E. Schering) vs. Abbott Laboratories, Inc., and Frank White, as Treas. of U. S. of America.	Northern Dist. Illinois Equity No. 2817

LICENSE No. 18.

No suit by Alien Property Custodian

Chemical Foundation, Incorporated vs. E. I. duPont de Nemours & Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of Delaware Equity No. 486

Badische Anilin & Soda Fabrik
vs.
E. I. duPont de Nemours & Co. (a corp.) — Dist. of Delaware Equity No. 495
and
Frank White, as Treas. of U. S.

(This suit involves Licenses Nos. 18, 18-A, 19 and 20).

LICENSE No. 18-A

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian.

Badische Anilin & Soda Fabrik
vs.
E. I. duPont de Nemours & Co. (a corp.) — Dist. of Delaware Equity No. 495
and
Frank White, as Treas. of U. S.

(This suit involves Licenses No. 18, 18-A, 19 and 20)

LICENSE No. 19.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
E. I. duPont de Nemours & Co. (a corp.) — Dist. of Delaware Equity No. 487
and
Frank White, as Treas. of U. S.

Farbwerke vorm. Meister Lucius & Bruning
vs.
E. I. duPont de Nemours & Co. (a corp.) — Dist. of Delaware Equity No. 492
and
Frank White, as Treas. of U. S.

Deutsche Gold & Silver Scheide Anstalt vorm Roessler
vs.
E. I. duPont de Nemours & Co. (a corp.)
and
Frank White, as Treas. of U. S.

Dist. of Delaware
Equity No. 494

Badische Anilin & Soda Fabrik
vs.
E. I. duPont de Nemours & Co. (a corp.)
and
Frank White, as Treas. of U. S.

Dist. of Delaware
Equity No. 495

(This suit involves Licenses Nos. 18, 18-A, 19 and 20.)

License No. 20

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian.

Badische Anilin & Soda Fabrik
vs.
E. I. duPont de Nemours & Co. (a corp.)
and
Frank White, as Treas. of U. S.

Dist. of Delaware
Equity No. 495

(This suit involves Licenses No. 18, 18-A, 19 and 20).

License No. 21

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian.

Chemische Fabrik Griesheim Elektron
vs.
E. I. duPont de Nemours & Co. (a corp.)
and
Frank White, as Treas. of U. S.

Dist. of Delaware
Equity No. 493

License No. 24

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian.

Badische Anilin & Soda Fabrik
vs.
E. C. Klipstein & Sons Co. Southern Dist. of N.Y.
and Equity No. 24-155
Frank White, as Treas. of
U. S.

(This suit involves Licenses Nos. 24 and 38)

Badische Anilin & Soda Fabrik
vs.
E. C. Klipstein & Sons Co. District of New Jersey
and Equity No. 3691
Frank White, as Treas. of
U. S.

(This suit involves Licenses Nos. 24 and 38)

License No. 27.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. So. Dist. of N. Y.
Co. Inc. (a corp.) Equity No. 24-119
and
Frank White, as Treas.
of U. S.

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. West. Dist. of N. Y.
Co. Inc. (a corp.) Equity No. 391-C
and
Frank White, as Treas.
of U. S.

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.

East. Dist. of Pa.
Equity No. 2559

Aktiengessellschaft fur anilin Fabrikation
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-151

(This suit involves Licenses Nos. 27 and 30)

Farbwerke vorm. Meister Lucius & Bruning
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-146

(This suit involves Licenses Nos. 27, 28 and 30)

Badische Anilin & Soda Fabrik
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-154

(This suit involves Licenses Nos. 27, 28, 29 and 30)

LICENSE No. 28.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.

National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-120

Chemical Foundation, Inc.,
vs.

National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	West. Dist. of N. Y. Equity No. 388-C

Chemical Foundation, Inc.,
vs.

National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	East. Dist. of Pa. Equity No. 2561

Kalle & Co. Aktiengesellschaft
vs.

National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-152

(This suit involves Licenses Nos. 28 and 30)

Farbwerke vorm. Meister Lucius & Bruning vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-146

(This suit involves Licenses Nos. 27, 28 and 30)

Badische Anilin & Soda Fabrik vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Eq. No. 24-154

(This suit involves Licenses Nos. 27, 28, 29 and 30)

License No. 29.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-121

Chemical Foundation, Inc., vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	West. Dist. of N. Y. Equity No. 390-C

Chemical Foundation, Inc., vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	East. Dist. of Pa. Equity No. 2563

Badische Anilin & Soda Fabrik vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-154

(This suit involves Licenses Nos. 27, 28, 29 and 30).

LICENSE No. 30.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-122

Chemical Foundation, Inc., vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	West. Dist. of N. Y. Equity No. 389-C

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.

East. Dist. of Pa.
Equity No. 2565

Aktiengesellschaft fur Anilin Fabrikation
vs.
National Aniline & Chemical Co. Inc. (corp.)
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-151

(This suit involves Licenses Nos. 27 and 30)

Farbwerke vorm. Meister Lucius & Bruning
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-146

(This suit involves Licenses Nos. 27, 28 and 30)

Badische Anilin & Soda Fabrik
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-154

(This suit involves Licenses Nos. 27, 28, 29 and 30)

License No. 30

Kalle & Company, Aktiengesellschaft, vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-152

(This suit involves Licenses Nos. 28 and 30)

License No. 33

No suit by Chemical Foundation, Inc.,

No suit by Alien Property Custodian.

Badische Anilin & Soda Fabrik vs. Merrimac Chemical Company and Frank White, as Treas. of U. S.	District of Mass. Equity No. 1741

License No. 34

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. H. A. Metz Laboratories, Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-123

Chemical Foundation, Inc., vs. H. A. Metz Laboratories, Inc. (a corp.) and Frank White, as Treas. of U. S.	East. Dist. of N. Y. Equity No. 1084

Farbwerke vorm. Meister Lucius & Bruning
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-147

(This suit involves licenses Nos. 34, 34-A and 35).

LICENSE No. 34-A

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-124

Chemical Foundation, Inc.,
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White as Treas. of U. S.

East. Dist. of N. Y.
Equity No. 1085

Farbwerke vorm. Meister Lucius & Bruning
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-147

(This suit involves licenses Nos. 34, 34-A and 35)

LICENSE No. 35

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
H. A. Metz Laboratories, Inc. (a corp.) — So. Dist. of N. Y. Equity No. 24-125
and
Frank White as Treas. of U. S.

Chemical Foundation, Inc.,
vs.
H. A. Metz Laboratories, Inc. (a corp.) — East. Dist. of N. Y. Equity No. 1086
and
Frank White as Treas. of U. S.

Farbwerke vorm. Meister Lucius & Bruning
vs.
H. A. Metz Laboratories, Inc. (a corp.) — So. Dist. of N. Y. Equity No. 24-147
and
Frank White as Treas. of U. S.

(This suit involves licenses Nos. 34, 34-A and 35).

LICENSE No. 36

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
General Ceremics Company (a corp.) — So. Dist. of N. Y. Equity No. 24-131
and
Frank White as Treas. of U. S.

Chemical Foundation, Inc., vs. General Ceremics Company (a corp.) and Frank White as Treas. of U. S.	District of N. J. Equity No. 3669

Fritz Raschig, vs. General Ceremics Company (a corp.) and Frank White as Treas. of U. S.	Dist. of N. J. Equity No. 3692

LICENSE No. 38

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. E. C. Klipstein & Sons Co., and Frank White as Treas. of U. S.	Southern Dist. of N. Y. Equity No. 24-127

Chemical Foundation, Inc., vs. E. C. Klipstein & Sons Co., and Frank White as Treas. of U. S.	Dist. of New Jersey Equity No. 3670

Badische Anilin & Soda Fabrik vs. E. C. Klipstein & Sons Co., and Frank White, as Treas. of U. S.	So. Dist. of New York Equity No. 24-155

(This suit involves Licenses Nos. 24 and 38)

Badische Anilin & Soda Fabrik vs. E. C. Klipstein & Sons Co., and Frank White, as Treas. of U. S.	District of New Jersey Equity No. 3691

(This suit involves Licenses Nos. 24 and 38)

LICENSE No. 39

Chemical Foundation, Inc., vs. Merck & Company, (a corporation) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-130
Thomas W. Miller, as A. P. C. vs. Merck & Company, a corporation organized and existing under the Laws of the State of New York, and Frank White, as Treas. of U. S.	So. Dist. of New York Equity No. 24-168
Hans Knoll, Albert Knoll & Max Daege, constituting the firm of Knoll & Co. vs. Merck & Company and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-143

LICENSE No. 42

Chemical Foundation, Inc., vs. American Atmos Corporation (a corp.) and Frank White, as Treas. of U. S.	Southern Dist. of N. Y. Equity No. 24-115
Chemical Foundation, Inc., vs. American Atmos Corporation (a corp.) and Frank White, as Treas. of U. S.	Western Dist. of Pa. Equity No. 724
Thomas W. Miller, as A. P. C. vs. Draeger Oxygen Apparatus Co. and Frank White, as Treas. of U. S.	Southern Dist. of N. Y. Equity No. 24-117

(This suit involves Licenses Nos. 42, 43, 44 and 46 and Trademark 3).

Alexander Bernard Draeger, vs. American Atmos Corporation, formerly known as the Draeger Oxygen Apparatus Company and Frank White, as Treas. of U. S.	Southern Dist. of N. Y. Equity No. 24-164

(This suit involves Licenses Nos. 42, 43, 44, 46 and Trademark 3).

NOTE: Licenses Nos. 42, 43, 44 and 46 were originally issued to "Draeger Oxygen Apparatus Company," a corporation. Thereafter, and prior to the institution of any of the suits concerned with said licenses the corporate name of the licensee was changed to American Atmos Corporation.

LICENSE No. 43

Chemical Foundation, Inc., vs. American Atmos Corporation (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of New York Equity No. 24-116

Chemical Foundation, Inc., vs. American Atmos Corporation (a corp.) and Frank White, as Treas. of U. S.	West. Dist. of Pa. Equity No. 725

Thomas W. Miller, as A. P. C. vs. Draeger Oxygen Apparatus Company and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-167

(This suit involves Licenses Nos. 42, 43, 44 and 46 and Trademark 3).

Alexander Bernard Draeger, vs. American Atmos Corporation, formerly known as the Draeger Oxygen Apparatus Company and Frank White, as Treas. of U. S.	Southern Dist. of N. Y. Equity No. 24-164

(This suit involves Licenses Nos. 42, 43, 44, 46 and Trademark 3).

LICENSE No. 47

Chemical Foundation, Inc., vs. Reinschild Chemical Company, (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-128
Thomas W. Miller, as A. P. C. vs. Reinschild Chemical Company, (a corp.) organized and existing under the laws of the State of New York and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-159
Chemische Fabrik Helfenberg A. G. vs. Reinschild Chemical Company, Inc. and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-153

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UNITED STATES V. CHEMICAL FOUNDATION, INC.

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Chemische Fabrik Helfenberg
a foreign corporation,
vs.
Reinschild Chemical Corporation, an American corporation,
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-157

Chemische Fabrik Helfenberg A. G. formerly Eugene Dieterich, a corporation of Germany
vs.
Reinschild Chemical Co.
and
Frank White, as Treas. of U. S.
and
Thomas W. Miller, as A. P. C.
and
Chemical Foundation, Inc.,

So. Dist. of N. Y.
Equity No. 24-165

LICENSE No. 50

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
Ault & Wiborg Co. (a corp.)
and
Cincinnati Chemical Works, Inc. (a corporation)
and
Frank White, as Treas. of U. S.

Dist. of Delaware
Equity No. 484

The Chemical Foundation, Inc., vs. Ault & Wiborg Co. (a corp.) and Cincinnati Chemical Works, Inc. (a corporation) and Frank White, as Treas. of U. S.	So. Dist. of Ohio Equity No. 266
Aktiengesellschaft fur Anilin Fabrikation vs. Ault & Wiborg Co. (a corporation) and Cincinnati Chemical Works, Inc. and Frank White, as Treas. of U. S.	Dist. of Delaware Equity No. 491
Aktiengesellschaft fur Anilin Fabrikation vs. Ault & Wiborg Co. (a corporation) and Cincinnati Chemical Works, Inc. and Frank White, as Treas. of U. S.	So. Dist. of Ohio Equity No. 268

LICENSE No. 52

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Ultro Chemical Corporation (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-126

Chemical Foundation, Inc., vs. Ultro Chemical Corporation (a corp.) and Frank White, as Treas. of U. S.	Eastern Dist. of N. Y Equity No. 1087
Farbwerke vorm. Meister Lucius & Bruning vs. Ultro Chemical Corporation (a corp.) and Frank White, as Treas. of U. S.	Southern Dist. of N. Y. Equity No. 24-148

LICENSE No. 53.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-112
Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of N. J. Equity No. 3671

Farbwerke vorm. Meister Lucius & Bruning vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of New Jersey Equity No. 3696

(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

License No. 54

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of New York Equity No. 24-113

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	District of New Jersey Equity No. 3676

Farbwerke vorm. Meister Lucius & Bruning vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	District of N. J. Equity No. 3696

(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

LICENSE No. 56.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.) — So. Dist. of New York, Equity No. 24-114
and
Frank White, as Treas. of U. S.

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.) — District of New Jersey, Equity No. 3673
and
Frank White, as Treas. of U. S.

Farbwerke vorm. Meister Lucius & Bruning
vs.
Consolidated Color & Chemical Co. (a corp.) — Dist. of New Jersey, Equity No. 3696
and
Frank White, as Treas. of U. S.

(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

LICENSE No. 56.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.) — So. Dist. of N. Y., Equity No. 24-110
and
Frank White, as Treas. of U. S.

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of N. J. Equity No. 3672

Farbwerke vorm. Meister Lucius & Bruning vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of N. J. Equity No. 3696

(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

LICENSE No. 57

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-111

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of New Jersey Equity No. 3674

Farbwerke vorm. Meister Lucius & Bruning
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.

Dist. of New Jersey
Equity No. 3696

(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

LICENSE No. 58.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-108

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.

Dist. of N. J.
Equity No. 3677

Farbwerke vorm. Meister Lucius & Bruning
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.

Dist. of N. J.
Equity No. 3696

(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

LICENSE No. 59.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-109

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of New Jersey Equity No. 3675

Kalle & Company Aktiengesellschaft vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of New Jersey Equity No. 3693

LICENSE No. 61.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Semet-Solvay Company (a corporation) and Frank White, as Treas. of U. S.	Northern Dist of N. Y. Equity No. 370

Badische Anilin & Soda Fabrik vs. Semet-Solvay Company (a corporation) and Frank White, as Treas. of U. S.	Northern Dist of N. Y. Equity No. 371

LICENSE No. 63.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Horatio Nelson Fraser, and Chemical Refining Syndicate and Frank White, as Treas. of U. S.	Eastern Dist. of New York Equity No. 1091
Chemical Foundation, Inc., vs. Horatio Nelson Fraser, and Chemical Refining Syndicate and Frank White, as Treas. of U. S.	District of Delaware Equity No. 485
Chemische Fabrik auf Aktien (vorm E. Shering) vs. Horatio Nelson Fraser, and Chemical Refining Syndicate and Frank White, as Treas. of U. S.	Eastern Dist. of N. Y. Equity No. 1096

SCHEDULE "*B.*"

IN THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK.

THOMAS W. MILLER, as Alien Property Custodian, Plaintiff, against REINSCHILD CHEMICAL COMPANY, a corporation organized and existing under the laws of the State of New York, and FRANK WHITE, as Treasurer of the United States, Defendants.	In Equity No. 24-159

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

Thomas W. Miller, as Alien Property Custodian, having his official residence and place of business in the City of Washington, in the District of Columbia, and his personal residence and citizenship in the City of Wilmington, in the State and District of Delaware, plaintiff, brings this bill of complaint against Reinschild Chemical Company, a corporation organized and existing under the laws of the State of New York and having its residence and principal place of business in the Borough of Manhattan, in the City and State of New York, Southern District of New York, and Frank White, as Treasurer of the United States, who is made a party hereto in conformity with paragraph (f) of Section 10 of the Act of Congress, approved October 6, 1917, and known as the "Trading with the enemy Act," defendants, and plaintiff complains and upon information and belief states:

First.—That this suit is brought under the provisions of the Act of Congress, known as the "Trading with the enemy Act," approved October 6, 1917, and Acts amendatory thereof and supplemental thereto, and the Proclamations and Executive Orders of the President issued in pursuance thereof.

Second.—That defendant, Reinschild Chemical Company is a corporation organized and existing under the laws of the State of New York, and has its principal place of business in the Borough of Manhattan, City, County and State of New York, and within the Southern District of New York.

Third.—That Karl Dieterich, of Helfenberg, Germany, and Adolph Schmidt, of Dresden, Germany, prior to August 25, 1908, were the joint original, and first inventors of an invention, Agar-Agar-Cascara Product and Process of making same, lawfully filed and prosecuted an application for United States patent therefor, and having complied in all respects with the statutes and rules of the Patent Office, United States Patent No. 896,807 was lawfully granted and issued pursuant to said application, on August 25, 1908, to the said Karl Dieterich and Adolph Schmidt. Profert is made of said patent or a certified copy thereof.

The said invention of the said Karl Dieterich and Adolph Schmidt was new, useful and not known or used by others in this country before their invention thereof, and not patented or described in any printed publication anywhere before their invention thereof for more than two years prior to said application for United States patent, and not in public use or on sale in the United States for more than two years prior to the application and not patented in any foreign country on an application filed more than one year before their said application in the United States, and not abandoned.

Fourth.—That said Karl Dieterich and Adolph Schmidt, being prior to December 14, 1909, the joint original, first and sole inventor of an invention, Agar-Agar-Cascara Product and Process of making same, lawfully filed and prosecuted an application for United States Patent therefor, and having complied in all respects with the statutes and rules of the Patent Office, United States Patent No. 943,163 was lawfully granted and issued pursuant to the said application on December 14, 1909, to the said Karl Dieterich and Adolph Schmidt. Profert is made of said patent No. 943,163 or a certified copy thereof.

The said invention of said Karl Dieterich and Adolph Schmidt was new, useful and not known or used by others in this country before their invention thereof, and not patented or described in any printed publication anywhere before their invention thereof, for more than two years prior to said application for United States patent and not in public use or on sale in the United States for more than two years prior to the application, and not patented in any foreign country on an application filed more than one year before their said application in the United States, and not abandoned.

Fifth.—That by assignments duly recorded in the United States Patent Office, the said Karl Dieterich and Adolph Schmidt, assigned and conveyed the entire right, title and interest into the several letters patent Nos. 896,807 and 943,163 respectively, to Chemische Fabrik, of Helfenberg, Germany.

Sixth.—That A. Mitchell Palmer, then Alien Property Custodian of the United States and acting under the provisions of the said "Trading with the enemy Act," the amendments thereto and the Executive Orders and Proclamations issued in pursuance thereof, did on the 1st day of March, 1919, as such official, determine after investigation the said Chemische Fabrik to be an enemy not holding a license granted by the President within the purview of said Act as amended and said Orders and Proclamations, and did further determine after investigation that said United States Patents Nos. 896,807 and 943,163 and every right, title and interest with respect thereto including all damages and profits recoverable at law or in equity from any person, firm, corporation or government for past infringements thereof, subject to the rights, if any, of the said Reinschild Chemical Company, belonged to or were held for, or on account of, or on behalf of, or for the benefit of said enemy, and did require the same to be conveyed, transferred, assigned and delivered to him as Alien Property Custodian of the United States, and the said A. Mitchell Palmer, then Alien Property Custodian of the United States, did on the 24th day of March, 1919, file with the Commissioner of Patents at Washington in the District of Columbia, a copy of said determination and requirement, to be recorded in the proper office for filing, registering or recording conveyances, transfers or assignments of patents, or any rights therein, or any other rights, and said requirement made pursuant to said Act was duly recorded on the 24th day of March, 1919, in Liber Z106 Page 194 of Transfers of Patents in the United States Patent Office, and the said A. Mitchell Palmer, as such Alien Property Custodian, did on the 24th day of March, 1919, seize said letters patent, and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government for past infringement thereof, subject to the rights, if any, of said Reinschild Chemical Company, which seizure was effectual to convey to the Alien Property Custodian, every right, title and interest and estate of the said enemy in and to the property seized, as well as every power and authority of the said enemy thereunder.

Seventh.—That on or about the 10th day of April, 1919, the Alien Property Custodian, sold, assigned, and conveyed to The Chemical Foundation, Inc., a corporation of the State of Delaware, the entire right, title and interest in and to the said several letters patent.

Eighth.—That in accordance with Section 10 of the said "Trading with the Enemy Act," the Federal Trade Commission on or about the 31st day of December, 1918, issued to the defendant, Reinschild Chemical Company, License No. 47 under the said several letters patent, Nos. 896,807 and 943,163, imposing upon said licensee therein, certain terms and conditions among which was the requirement that the said licensee shall pay to the Alien Property Custodian on February 1st, 1919, as royalty under said license No. 47, a sum equal to 5% of the gross amounts received by said licensee during the period between August 15, 1918 and December 31, 1918, from the sale of a product described and claimed in said letters patent, Nos. 896,807 and 943,163, and in addition to the amount to be paid February 1, 1919, shall thereafter pay to the Alien Property Custodian within thirty days after the semi-annually periods ending June 1st and December 1st of each year, a royalty of 5% of the gross amounts received from such sales during the respective period stated, which said license No. 47 is still in full force and effect, unrevoked and uncancelled, and said defendant, Reinschild Chemical Company is operating thereunder, and has manufactured and caused to be manufactured in accordance with the processes, methods and inventions set forth in said letters patent, and has paid to the Alien Property Custodian certain sums of money purporting to be the amounts required to be paid under the terms of said license No. 47.

Ninth.—Plaintiff was prior to the transfer of said letters patent to The Chemical Foundation, Inc., and after the seizure thereof, the owner of said patents and the rights therein and thereunder, theretofore, belonging to the aforesaid enemy, and under paragraph (f) of Section 10 of said "Trading with the enemy Act," is within one year from the end of the war entitled to file a bill in equity against the said licensee in the District Court of the United States for the District in which the said licensee resides or has its principal place of business, for recovery from the said licensee for all use and enjoyment of said patented invention, to recover from the said licensee a reasonable royalty, to terminate said license, and to obtain an injunction to restrain the licensee from infringement hereafter.

Plaintiff therefore files this bill of complaint and prays that this court may decree that the plaintiff recover from the said licensee for all use and enjoyment of the said patented inventions, and that the court fix the amount of said payment as a reasonable royalty, that this court require the defendant Reinschild Chemical Company to account to the plaintiff for such reasonable royalty for the use and enjoyment of the said patented inventions and that the amount thereof shall be decreed by the court to be paid to the plaintiff from the fund deposited by said licensee so far as such deposit will satisfy such judgment and decree, and that if after the payment from said fund an amount is still due the plaintiff, the plantiff have judgment against the defendant, Reinschild Chemical Company, for such further amount, and that the court terminate the said license and issue an injunction to restrain the defendant, Reinschild Chemical Company, from infringement hereafter, and for such other and further relief as to the court may seem just and equitable.

Plaintiff prays for the usual process of this court directed to the said defendants, Reinschild Chemical Company and Frank White, as Treasurer of the United States, directing them to appear and answer this bill of complaint.

THOMAS W. MILLER,
Alien Property Custodian.

District of Columbia,
City of Washington, *ss.:*

Thomas W. Miller, being duly sworn, deposes and says that he is the Alien Property Custodian of the United States, plaintiff in the above-entitled action, and that he has read the foregoing bill of complaint and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

....
Alien Property Custodian.

Sworn to before me this day of June, 1922.

....
Notary Public.

SCHEDULE "*C.*"

File 223

IN THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

BADISCHE ANILIN & SODA FABRIK,
Plaintiff,
vs.
E. C. KLIPSTEIN & SONS COMPANY, and FRANK WHITE, as Treasurer of the United States,
Defendants.

In Equity
No. 24-155

BILL OF COMPLAINT.

The plaintiff for its bill of complaint alleges:

I. That plaintiff Badische Anilin & Soda Fabrik, is and was during all the times hereinafter mentioned, a corporation organized under the laws of Germany, and having its principal place of business at Ludwigshafen on the Rhine, Germany.

II. On information and belief, that E. C. Klipstein & Sons Company hereinafter referred to as the licensee, is and was during all the times hereinafter mentioned, a corporation organized under the laws of the State of New Jersey, and having its principal place of business in the City of New York, State of New York, and that the defendant, Frank White, is Treasurer of the United States.

III. That this Court has jurisdiction under Section 10 of the Act of Congress known as the "Trading with the Enemy Act," approved Oct. 6, 1917, and also because the controversy is between a citizen of Germany and a corporation having its principal place of business in the City of New York and State of New York.

IV. That the following United States Letters Patent were duly granted to plaintiff as assignee of the respective inventors, under and in accordance with the provisions of the then existing statutes of the United States and Rules of Practice of the United States Patent Office, and that plaintiff has been ever since the grant of the said Letters Patent, and is now, the owner thereof, to wit:

(1) No. 711,377, for Solid Alkaline Hydrosulfites and Process of Making Same, dated Oct. 14, 1902, to Max Bazlen of Ludwigshafen on the Rhine, Germany, assignor to the Badische Anilin & Soda Fabrik of Ludwigshafen on the Rhine Germany, a corporation of Germany.

(2) No. 795,755, for Process of Making Stable Dry Hydrosulfites, dated July 25, 1905, to Max Bazlen of Ludwigshafen on the Rhine, Germany, assignor to the Badische Anilin & Soda Fabrik of Ludwigshafen on the Rhine, Germany, a corporation of Germany.

(3) No. 1,191,480, for Tanning, dated July 18, 1916, to Otto Schmidt of Ludwigshafen on the Rhine, Germany, assignor to the Badische Anilin & Soda Fabrik of Ludwigshafen on the Rhine, Germany, a corporation of Germany.

(4) No. 1,216,612, for Producing Soluble Tanning agents, dated February 20, 1917, to Otto Schmidt of Ludwigshafen on the Rhine, Germany, assignor to the Badische Anilin & Soda Fabrik of Ludwigshafen on the Rhine, Germany, a corporation of Germany.

V. On information and belief, that the Federal Trade Commission, under the authority vested in it by the president of the United States, pursuant to the "Trading with the Enemy Act," granted licenses to the licensee on April 8, 1918, numbered 24, and on August 15, 1918, numbered 38, to make, use and vend within the United States the inventions described in the said United States Letters Patent, and each of them; that said licenses are still in force; that said licenses required the licensee to pay to the Alien Property Custodian royalties under said licenses and derived from the sale of the products included in the said licenses; that the sums so paid were to be deposited by the Alien Property Custodian in the Treasury of the United States, as a trust fund for the licensee and for the owner of the said patents, as by said licenses, or duly authenticated copies thereof, ready in Court to be produced, will appear.

VI. On information and belief, that the licensee thereupon entered upon the use and enjoyment of said licenses, and that substantial sums have been paid by the licensee to the Alien Property Custodian, and deposited by the Alien Property Custodian in the Treasury of the United States, the exact amount being unknown to the plaintiff, and that the licensee has, under said licenses, made large gains and profits from the manufacture, use and sale of the inventions patented by said patents, and each of them.

VII. That this suit is brought for the recovery from the said licensee for all use and enjoyment of the said patented inventions, and to have determined the amount of reasonable license fees or royalties to be paid by the licensee for the use of said patented inventions, and each of them, and to have an accounting of the same and judgment therefor, and to have an order of the Court directing the Treasurer of the

United States to pay to the plaintiff the fund deposited as aforesaid or by the licensee so far as such deposit will satisfy the said judgment and decree.

Wherefore, plaintiff demands that it be adjudged and decreed that the plaintiff is entitled to and do recover from the licensee reasonable license fees or royalties for the use of the said patented inventions, and each of them, to be determined by the Court, and that the treasurer of the United States be directed to pay to the plaintiff the fund or moneys deposited with him as aforesaid or by the licensee so far as such deposit will satisfy the said judgment, and that plaintiff have judgment against the licensee for any amount of said reasonable license fees or royalties in excess of the fund so deposited; that the defendants be decreed to pay the costs of this suit, and that the plaintiff may have such other and further relief as to this Honorable Court may seem meet.

BADISCHE ANILIN & SODA FABRIK,
(Sgd.) Hanns Wagner,
" Karl Holdermann.

By ....
Attorneys in Fact.

(Sgd.) Gifford & Bull,
Solicitor.

(Sgd.) Livingston Gifford,
of Counsel.

DEFENDANT'S EXHIBIT No. 288.

MINUTES OF MEETING.
AMERICAN DYES INSTITUTE.
JANUARY 8, 1919.

The annual Meeting of the American Dyes Institute was held at the Hotel Biltmore on Wednesday, January 8th, 1919, at 2 P. M.

Meeting was called to order by Chairman W. H. Cottingham.

As a mark of respect to the late Col. Roosevelt meeting suspended for five minutes by request of W. H. Cottingham, President.

2:05 P. M. Reading of Minutes of Previous Annual Meeting unanimously dispensed with.

Treasurer's report unanimously accepted.

Mr. Charles K. Weston of the E. I. du Pont de Nemours & Co. handed in a letter containing an outline for publicity campaign, which Mr. C. C. Bennett read. The matter was referred to the Publicity Committee, Mr. M. R. Poucher, Chairman.

The Publicity Committee was authorized to print and send out the pamphlet prepared by Mr. Eddy.

Mr. M. R. Poucher was instructed to consider the subject of a trade-mark or stamp to be used by the American Dyes Institute.

Secretary's report was read and adopted. Letters from E. I. du Pont de Nemours & Co., Frank Hemingway, Inc., and National Anline & Chemical Co., Inc., read. Secretary was instructed to report at next meeting firms who are reporting to Barrow, Wade & Guthrie, and those who are not.

Mr. Metz agreed to report on bulk intermediates and some bulk dyes.

Mr. A. J. Eddy's letter of January 3rd, 1919

"Price fixing stops with U. S. Control" to be embodied in the Minutes of this Meeting.

"To Members:

I wish to call the attention of members to the Washington dispatch reprinted below.

It is a definite announcement of the policy to be pursued by the Attorney General after the first of the year. There is no doubt about the correctness of his interpretation of the Law, and the fact that during the war the Government found it necessary to control and more or less fix prices cannot be considered any excuse for the continuation of the same policy by the different industries affected.

It is needless to say that no Open Price association is permitted to control or fix prices; any such attempt is diametrically opposed to not only the letter but the spirit of the Open Price Plan. An Open Price association is essentially a price-recording institution. In fact, the plan is effective only when there are price variations. If prices are absolutely fixed and known to everybody, then there is no particular need for an Open Price association; such an association is most useful and most effective when competition is freest.

It is apparent from the dispatch reprinted below that the Department of Justice, and no doubt the Federal Trade Commission, will scrutinize more closely than ever the activities of industrial and commercial associations. Therefore, it is important that your association adhere strictly to the letter and spirit of the plan of your organization so that in the future, as in the past, your work will be not only above criticism, but such as to secure the commendation of competitors, customers, and any public official who may have occasion to investigate what you are doing.

Yours very truly,

ARTHUR J. EDDY,

General Counsel.

PRICE FIXING STOPS WITH U. S. CONTROL.

Concerted Action in Any Industry Not to Be Allowed, Gregory Announces.

TO ENFORCE TRUST LAWS.

(By the Associated Press.)

Washington, D. C., Dec. 30.—Concerted price fixing by any industry after the government ceases to exercise price control Jan. 1, will be regarded by the department of justice as in restrain of free competition, it was stated to-day. The explanation was made officially in answer to what happens to wartime price fixing when the war industries board ceases to function at midnight to-morrow.

Anti-Trust Law to Be Enforced.

The attitude of the department of justice, as outlined by Attorney-General Gregory, is that the anti-trust laws, still effective, will be enforced vigorously by the department. They have been in full effect throughout the war, but the department has not regarded the action of industry in maintaining prices fixed by the government as contrary to law. In making this explanation, the attorney-general did not refer to any industry or specific situation in explaining that no violation of anti-trust laws would be permitted.

Other department of justice officials who heretofore have had charge of prosecutions under the anti-trust laws declared that when the war industries board ceases to exercise control of prices Jan. 1 any act of a group of business men tending to prevent free play of competition will be examined in the light of the law.

"Benevolent" Effect Not Considered.

It is felt that although an immediate effect of price agreements might be temporarily to keep prices down and thereby benefit consumers, this result might soon change and that consequently the situation is full of danger There is no provision in the Law for consideration of whether the effect of the suppression of competition might be "benevolent."

It was said that so far the department had not given particular attention to the steel industry, which submitted to the war industries board a revised list of prices to be effective after Jan. 1. The board did not pass upon the prices and declined to continue its supervision."

Amendments and changes in By-Laws and Constitution read and approved.

On motion unanimously carried, Sections 2, 3 and 4 of the new amendments are to be sent out to members.

National Aniline & Chemical Co.'s., Inc., resolution to Alien Property Custodian regarding patents presented, and after discussion withdrawn for further consideration.

The election of officers for the coming year to be postponed to Thursday, January 16th, 1 P. M. at the Hotel Biltmore, and Chairman was authorized to name Nominating Committee. He named the following:

Mr. Frank Hemingway, Chairman
Mr. M. R. Poucher
Mr. W. T. Miller

Secretary was requested to note when quotations are for export when possible on orders, contracts and quotations. Secretary was instructed to show on his daily bulletin quantity on each quotation

It was understood that the daily bulletin goes to all members of the Institute until further instructions.

On motion of Mr. Miller, Mr. Reeser's proposed new paper was referred to Publicity Committee.

Meeting adjourned at 4 P. M.

(Sgd.) (C. C. BENNETT.)
Secretary.

DEFENDANT'S EXHIBIT No. 289.

MINUTES OF MEETING.
OF AMERICAN DYES INSTITUTE.

April 4th, 1919.

A regular monthly meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Friday, April 4th, 1919.

Luncheon was served at 1:00 P. M., after which the meeting was called to order by Mr. F. M. Fargo, of the Marden, Orth & Hastings Corp.

The following firms were present and represented as follows:

American Aniline Products, Inc.	Mr. Paul Nobbe
Chemical Company of America	Mr. C. Kendall Dr. S. Iserman
Consolidated Color & Chem. Co.	Mr. H. A. Metz
Dicks, David Co., Inc.	Mr. David Major B. F. Welton
The Dow Chemical Company	Mr. Dow James T. Pardee
E. I. duPont de Nemours & Co.	Mr. M. R. Poucher Mr. Protto Mr. Stephenson
Dye Products & Chemical Co.	Mr. C. K. Simon Mr. L. M. Loewenthal
Essex Aniline Works, Inc.	Mr. Kent
Grasselli Chemical Co.	Dr. Wallach
The Heller & Merz Company	Mr. August Merz
Hydrocarbon Chem. Products Co.	Mr. J. R. Brimmer Mr. F. E. Brimmer
Holland Aniline Company	Mr. B. P. Donnelly
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo Mr. G. A. Berry
Merrimac Chem. Co.	Mr. S. W. Wilder Mr. Phil Wilder
National Aniline & Chem. Co.	Mr. Bishop Mr. Serrell Mr. W. T. Miller
Transatlantic Chem. Corp.	Mr. Ed. B. Clary

The following were also present:

Mr. Joseph H. Coate, Jr., representing the Chemical Foundation, Inc., Counsel, Arthur J. Eddy, Esq., and Secretaries, Mr. C. C. Bennett, and Mr. H. E. Danner.

Inasmuch as a copy of the minutes of the previous meeting had been sent to each member, and there were no corrections, on motion, the reading of same was omitted.

The Chairman then introduced Mr. Choate, representing the Chemical Foundation, Inc., who was requested to outline to the members the possibility of a licensing plan governing imports of foreign dyes.

Mr. Choate stated that cablegrams had been received from Europe suggesting importation of dyestuffs from Germany in exchange for food. He stated that the Department of Commerce had suggested that importations of such Dyestuffs should be placed in the hands of the Chemical Foundation, Inc., who would act as agents for the distribution of same, and while the Chemical Foundation, Inc., did not wish to act in this capacity, they had advised the Department of Commerce that they might do so if it were necessary; however, it had been suggested and favorably received by the Department of Commerce that a representative committee should be appointed to co-operate with and help the Department in its investigations as to what dyestuffs should be admitted for importation. Mr. Choate then stated that he and Mr. Miller, of the National Aniline & Chemical Company had been appointed as a committee of two to make recommendations or nominations as to the personnel of such a committee, it being understood that the committee would consist of representatives of Trade Associations covering activities among the Chemical Fraternity, the Consuming Interests, and the Producers or Manufacturers of Dyestuffs.

Therefore, Mr. Choate requested that the members of the American Dyes Institute, representing the Producing or Manufacturing interests, should give Mr. Miller and himself the benefit of their suggestions as to the personnel of the committee who should represent the manufacturing interests.

On motion duly seconded it was

RESOLVED—

> That the American Dyes Institute indorses the suggestion that a representative committee, as outlined by Mr. Choate, should be appointed by the Department of Commerce to assist the Department in their work in passing upon the issuing of import licenses for dyestuffs.

There followed a discussion during which a number of names were suggested, following which it was decided that each firm present would there and then indicate on a ballot, its selection for three parties to represent the manufacturing interests as a part of the above mentioned Advisory committee.

Thereupon the member firms present voted, and the result of the ballot was as follows:

Mr. M. R. Poucher, E. I. duPont de Nemours & Company
Dr. Watkins, National Aniline & Chem. Co.
Mr. August Merz, The Heller & Merz Co.,

received respectively the largest vote.

Thereupon, on motion duly seconded, it was unanimously

RESOLVED—

> That the American Dyes Institute recommend to Mr. Choate and Mr. Miller that they nominate for the consideration of the Department of Commerce, Mr. Poucher, Dr. Watkins, and Mr. Merz, as representatives of the manufacturing interests in the committee to be appointed by the Department of Commerce as an Advisory Committee in respect to the importation of foreign dyes.

The Treasurer reported as follows:

March 1st 1919 balance		$13,950.51
Received during March		4,259.12
		18,209.63
Expenditures		5,261.99
Balance April 1st 1919		12,947.64
Accounts payable	$10,833.32	
Accounts receivable	36,800.00	

On motion, duly seconded, the above report was accepted as read, and ordered to be filed.

The Secretary reported as follows:

The following members are reporting price information covering Contracts, Orders and Quotations, and the information filed since the Secretary's last report is as follows:

	Contracts	*Orders*	*Quotations*	*T'tl*
Marden, Orth & Hastings	8	367	277	652
The Sherwin-Williams Co.	0	18	35	53
E. I. Du Pont De Nemours & Co.	0	437	214	651
Dicks, David Co. Inc.	0	182	0	182
Dow Chemical Company	1	19	21	41
National Aniline & Chem. Co.	0	1	8	9
	9	1024	555	1588

The total number filed to date is 10,384, as indicated below:

Marden, Orth & Hastings	103	3594	2104	5801
Sherwin-Williams Co.	74	384	374	832
Hydrocarbon Chem. Prod. Co.	0	1	27	28
E. I. Du Pont De Nemours & Co.	105	1302	970	2377
Frank Hemingway, Inc.	0	1	9	10

Dicks, David Co. Inc.	0	621	290	911
Dow Chem. Co.	14	114	286	414
Certified Chem. Company	1	1	0	2
Natl. Aniline & Chem. Co.	0	1	8	9
	297	6019	4068	10,384

The total number of reports filed covers approximately 2,606 customers, of whom 554 have business relations with two or more of the members reporting.

Since the Secretary's last report there have been 15 direct exchanges covering similar products quoted to the same customer, and 6 direct exchanges covering similar products sold to the same customer.

Four (4) of the above quotations resulted in an order.

In reference to the distribution of Pamphlet No. 1, Secretary announces that 2800 of the small pamphlets have been sent to the members of the Institute for their own distribution.

In addition, there have been distributed from the Secretary's office, 2200 pamphlets, as follows:

To members of the Finishers Association	68
To members of the Garment Association	500
To Wholesale Dry Goods Dealers	1160
To The Sweater & Knit Goods Assn.	300
To the Natl. Association of Clothiers	125
To the National Cloak, Suit & Skirt Assn.	50

As per direction at the last meeting, the Secretary circularized each member regarding the resolution adopted in reference to terms. He requested the members to advise whether or not they would be willing to report to the Secretary's office any variations they, the members, made to the terms outlined in the resolution. Up to the present time three (3) members have replied stating their willingness to report this information.

Secretary also requested the members to file a revised list of all Dyes and Intermediates now being manufactured or intended to be manufactured. To date seven (7) members have replied.

On motion, duly seconded, the above report was accepted as read and ordered to be filed:

The Secretary reported that there had been distributed by the members and his office, a total of 5,000 pamphlets (no. 1), and he, the Secretary, stated that among these 5,000 pamphlets distributed there was included a distribution among the members of the following Associations:

National Association of Finishers of Cotton Fabrics
National Assn. of Garment Manufacturers
National Assn. of Sweater & Knitted Textile Mfrs.
National Assn. of Clothiers
National Cloak, Suit & Skirt Mnfrs. Assn.

On discussion the Secretary was instructed to distribute the above mentioned pamphlets to the members of

The Paint & Varnish Association
The Paper Trade Association
The Leather Goods Association
The Silk Association

As to a further distribution among the Consumers of Textiles, the Secretary announced that in order to distribute these pamphlets among the Retail Dry Goods Stores, it would mean a distribution of some 30 odd thousand pamphlets.

There followed a discussion, and it appeared that all or certain parts of this pamphlet might be circularized through the newspapers.

Thereupon, Mr. Bennett was requested to obtain and report to the next Executive Committee an estimate of what it would cost to give publicity to the story included in the pamphlet through representative newspapers and periodicals issued in the trade.

CONDITIONS IN TRADE:

Mr. Poucher stated that there were more inquiries for Dyestuffs and thought this was reflected by an increase in business among the Textile Trades.

Mr. Wilder stated that there was an improvement in business in the past two weeks. He said that the Woolen Goods Trade was brisk and that the Cotton Mills had noted an improvement.

The above seemed to be the feeling of most of the members present.

Mr. Metz stated that his orders and the volume involved was increasing.

Mr. Nobbe suggested that it would be valuable information if the Institute could accumulate knowledge as to what was being manufactured in France, England and other continental countries, and on discussion, Mr. Bennett was instructed to write to the Department of Commerce asking if such information could be obtained.

In connection with the above discussion Mr. Metz said that the members received from time to time circulars covering offerings of foreign Dyes, and he suggested that a compilation of these offerings be made.

Thereupon, on motion of Mr. Metz, duly seconded, it was

RESOLVED:

> *That all members file with the Secretary a copy of all circulars and offers to sell foreign dyes, same to be tabulated and distributed among the members so that a more or less complete knowledge of foreign activities may be had.*

Mr. Donnelly expressed the opinion that inasmuch as the members of the American Dyes Institute were interested in promoting the manufacture and sale of American Dyes, it was not consistent for any of these members, who were also jobbers, to import and sell any foreign Dyes, which are now made in the United States.

The question was asked if any member present was doing this, and it appeared that no one present was importing foreign Dyes, which are now made in the United States.

This led to reminding the members that they had all been requested to file with the Secretary a complete list of all dyes which they now manufacture or intend to manufacture, and that in answer to an inquiry from the Secretary only seven members had replied. Therefore, the members were again urged to reply to the Secretary's inquiry of March 24th.

Mr. Metz stated that it was his intention to participate in the reporting plan covering several staple products, and that he would notify the Secretary upon what products he would report.

Mr. Miller announced that up to the present time the National Aniline & Chemical Company were reporting on a selected line of fabrics, and that it was now their intention to increase the number of products upon which they would report information, as called for in the reporting plan. Mr. Kent also stated that he believed the Essex Aniline Works, Inc., would shortly participate in the reporting plan.

Mr. Poucher, replying to Mr. Dow, stated that the form of contract of the E. I. duPont de Nemours Company, covering Indigo, guaranteed customers against a decline. There seemed to be some confusion in Mr. Dow's mind as to the extent of this guarantee, and Mr. Poucher stated he would furnish Mr. Dow with a copy of his contract form.

Mr. Miller replied to Mr. Pardee, stating that at the present time his firm was producing 3,000 lbs. per day of Indigo, and that in a short while this production would be increased.

Mr. Dow replied to Mr. Metz and to Mr. Nobbe that he was willing to sell Indigo direct.

Mr. Nobbe stated that he had been quoted 20¢ per pound for Aniline Oil and it developed on inquiry that such a quotation had not been made by any member of the Institute. Mr. Bishop was asked by Mr. Fargo if he was producing and selling Aniline Oil, to which Mr. Bishop replied, "yes."

Mr. Poucher, answering Mr. Kent, advised him that he was quoting Chrysophenine at $3.00 per pound. Mr. Kent stated that his price has been $4.00 per pound.

The next meeting of the Institute was set for Friday, May 2nd, to be held at the Hotel Biltmore, New York City, at 1:00 P. M.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF.

DEFENDANT'S EXHIBIT No. 290.

AMERICAN DYES INSTITUTE
ROOM 511 320 BROADWAY
NEW YORK

MINUTES OF JOINT MEETING
BOARD OF GOVERNORS
AND
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE
April 8th, 1920.

Following a luncheon at the Arkwright Club, a joint meeting of the Executive Committee and the Board of Governors of the American Dyes Institute was held in the office of the Treasurer, 320 Broadway, New York City, on Thursday, April 8th, 1920.

The following firms were present and represented as follows:

Atlantic Dyestuff Co.,	Mr. A. C. Burrage, Jr.
The Calco Chemical Co., Inc.,	Mr. F. M. Fargo, Jr.
Chemical Co. of America,	Mr. Chas. Kendall.
E. I. du Pont de Nemours & Co.,	Mr. E. V. Patterson.
Grasselli Chemical Co.,	Dr. J. M. Matthews.
The Heller & Merz Co.,	Mr. August Merz.
Merrimac Chemical Co.,	Mr. S. W. Wilder.
National Aniline & Chemical Co.,	Mr. H. H. Replogle.
Newport Chemical Works, Inc.,	Dr. E. H. Killheffer.

Mr. E. V. Patterson was elected Chairman.

In the absence of Mr. Corwine the Treasurer acted as Secretary.

Mr. Danner announced he had received a 'phone message saying Mr. McCartney of the Monsanto Chemical Works had been unavoidably detained and regretted his inability to be present at the meeting.

The Chairman stated that the meeting had been called pursuant to action at the meeting of the Executive Committee in March and the Board of Governors had been requested to meet with the Executive Committee for the purpose of discussing a possible budget for 1920 and providing the Treasury with funds for current needs.

It was pointed out that at the present time it was not possible to say what would be the probable expenses of the Institute for 1920. It was anticipated that it would be considerably in excess of 1919.

Bills for legal fees for the Washington expenses have not yet been received, and other activities of the Institute after the legislative work in Washington has been completed have not yet been taken up, although a Committee on Education is now considering a program.

There followed a general discussion and it was decided that in the absence of having a definite budget to propose at this time the meeting would make up a schedule, indicating what percentage of the total budget each member would be asked to assume; it being understood that the amount of the budget would be decided later.

Some of the members expressed the opinion that the proportion each member should be assessed should bear some direct relation to a member's turn over on dyestuff and intermediates either in volume or value, or in any event be based on some definite and scientific method of distribution. All agreed that this was correct, but at this time it seemed to be impracticable to apply such a method owing to some of the members of the Institute being unwilling to disclose their tonnage or sales to either a Committee or Public Accountant. It was therefore thought that the combined judgment of those present would estimate with fair accuracy the relative proportion each member should bear. Thereupon, with this in mind, there was placed opposite the name of each member that figure which those present considered fair and equitable. A great deal of time and consideration was given to this work, and the figures were revised several times.

Below is given the result of their work:—

STATEMENT OF PERCENTAGE OF TOTAL BUDGET TO BE LEVIED AGAINST EACH MEMBER FOR 1920.

(As arrived at in Joint Meeting of Executive Committee and Board of Governors, April 8, 1920.)

Member	*Percentage*
Althouse Chemical Co.,	.004
American Aniline Products Co.,	.02
Atlantic Dyestuff Co.,	.02
Atlas Color Works,	.002
The Ault & Wiborg Co.,	.05
The Barrett Co.,	.025
Butterworth-Judson Corp.,	.02
John Campbell & Co.,	.012
Calco Chemical Co., Inc.,	.04
Certified Chemical Corp.,	.002
Chemical Company of America,	.006
Commonwealth Chemical Co.,	.002
Consolidated Color & Chemical Co.,	.04
Dicks, David Co., Inc.,	.012
The Dow Chemical Co.,	.03
E. I. du Pont de Nemours & Co.,	.205
Dye Products & Chemical Corp.,	.004
Essex Aniline Works,	.02
Grasselli Chemical Co.,	.061
Gaskill Chemical Corp.,	.004
Heller & Merz,	.03
Holland Aniline Co.,	.004
Holliday Kemp Co.,	.008
Hydrocarbon Chemical Co.,	.002
Merrimac Chemical Co.,	.01
Metals Disintegrating Co.,	.002
Monsanto Chemical Co.,	.012
Geo. H. Morrill Co.,	.004
National Aniline & Chemical Co.,	.210
Naugatuck Chemical Co.,	.004
Newport Chemical Works, Inc.,	.08
Peerless Color Co.,	.004
The Sherwin-Williams Co.,	.035
Transatlantic Chemical Co.,	.002
Tower Mfg. Co.,	.006
U. S. Color & Chemical Co.,	.008
	1.000

On Motion the above table was approved and ordered to be reported to the next meeting of the Institute.

In addition the Secretary was instructed to send a copy of this memorandum to each member with a letter of transmittal.

Dr. Matthews then brought up the matter of the Open Price Section of the Institute, and invited a discussion as to the value to the industry of this activity. Speaking for the Grasselli Chemical Co., he stated that his firm did not feel it derived any benefit and therefore no portion of its assessment should be used, toward the expenses of this section. Attention was called to Article 4, Section 4 of the Constitution, wherein it was provided that the expenses of this section were to be assumed by those members who elected to participate. Accordingly as provided in the Constitution, the following Committee of four—

Mr. F. M. Fargo, Jr.,	Dr. J. M. Matthews,
Mr. H. H. Replogle,	Dr. E. H. Killheffer.

was appointed to determine what, if any, expense should be incurred for Open Price work, and to ascertain which of the members would participate.

The Secretary reported that practically no manufacturers were filing any price or production information of any kind, and as shown by the minutes, the Sectional Meetings were not attended.

There followed a discussion as to providing funds to meet current expenses. Consideration was given as to the advisability of increasing the annual dues, and after considerable discussion this was not considered advisable.

On motion of Mr. Kendall, duly seconded, it was unanimously

Resolved:—

that a tentative budget of $75,000 be levied, same to be paid in quarterly payments in advance, each member to be assessed as per table of percentages reported above, and if this assessment be not sufficient to meet requirements for special work, an additional assessment shall be made at such time as special funds are required, and such special amount shall be payable on call.

This resolution does not include expenses for the Open Price Section, which will be provided for by special assessment to those members participating in same.

In view of the discussion with reference to the method of apportioning assessments among members, and with a view to establishing a more scientific method for the future, on motion of Mr. Burrage it was

Resolved:—

that the President appoint a Committee of three to study and prepare a method of levying assessments which would provide an equitable division of expenses based on a scientific method.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Treasurer.

HED:AM.

DEFENDANT'S EXHIBIT No. 291.

American Dyes Institute
Room 511 320 Broadway

New York

Minutes of Meeting
American Dyes Institute
April 9th, 1920.
1:30 P. M.

A regular monthly meeting of the American Dyes

Institute was held at the Hotel Biltmore, New York City, on Friday, April 9th, 1920.

Luncheon was served at 12.30 P. M., after which the meeting was called to order at 1.30 P. M., by Mr. Frank Hemingway, who was unanimously chosen Chairman.

The following members were present and represented as follows:—

American Aniline Products, Inc.,	Mr. Paul Nobbe,
Atlantic Dyestuff Co.,	Mr. A. C. Burrage, Jr.,
The Ault & Wiborg Co.,	(Mr. Wiborg,
	(Mr. R. W. Hilton,
The Barrett Co., Inc.,	(Mr. D. W. Jayne,
	(Mr. R. P. Dunning,
The Calco Chemical Co., Inc.,	(Mr. Berry,
	(Mr. F. M. Fargo, Jr.,
John Campbell & Co.,	Mr. E. J. Quinn,
Chemical Co. of America,	(Mr. C. Kendall,
	(Dr. S. Iserman,
E. I. duPont deNemours & Co.,	(Mr. Stevenson,
	(Mr. Kendall,
	(Mr. Cesare Protto,
	(Dr. A. D. Chambers,
	(Mr. E. V. Patterson,
Dye Products & Chemical Co.,	(Mr. L. M. Loewenthal,
	(Mr. S. Simon,
Essex Aniline Works, Inc.	Mr. Phineas Kent, Jr.,
Grasselli Chemical Co.,	Dr. J. M. Matthews,
The Heller & Merz Co.,	(Mr. A. Merz,
	(Mr. Robertson,
Merrimac Chemical Co.,	Mr. S. W. Wilder,
Metals Disintegrating Co.,	Mr. S. G. Schatzberg,
Monsanto Chemical Works,	Mr. F. L. McCartney,

Newport Chemical Works, Inc.,	Mr. J. R. M. Klotz,
Peerless Color Co.,	(Dr. R. W. Cornelison, (Mr. A. L. Benkert,
The Sherwin-Williams Co.,	(Mr. Frank Hemingway, (Mr. R. B. Brown, (Mr. M. Steudel,
Tower Mfg. Co.,	Mr. D. H. Jonas,
Transatlantic Chemical Corp.,	Mr. W. M. Stevenson,

Counsel, Mr. Arthur J. Eddy, and Treasurer, Mr. H. E. Danner, also attended.

In the absence of Mr. Corwine, the Treasurer, Mr. H. E. Danner, acted as Secretary.

Following the "calling of the roll," Mr. Klotz called attention to the fact that a number of member firms were not represented at the meeting, and it was much regretted, as the monthly meetings were called for the industry and matters of interest to all are discussed, and in the interest of better attendance in the future he offered the following motion, which was unanimously adopted—

RESOLVED

that the Secretary be directed to record in all future minutes a list of the members who are not represented at the meeting and in the case of a member not being represented for a second and third consecutive time, to make special note of same in the minutes.

In acordance with the above resolution the following member firms are recorded as not being represented:

Althouse Chemical Co.,
Atlas Color Works, Inc.,
Butterworth-Judson Corp.,

Certified Chemical Corp.,
Commonwealth Chemical Corp.,
Consolidated Color & Chemical Co.,
Dicks, David Co., Inc.,
Dow Chemical Co.,
Gaskill Chemical Corp.,
Holland Aniline Co.,
Holliday-Kemp Co., Inc.,
Hydrocarbon Chemical Products, Inc.,
Geo. H. Morrill Co.,
National Aniline & Chemical Co.,
Naugatuck Chemical Co.,
Organic Salt & Acid Co.,
United States Color & Chemical Co.,

The Treasurer reported as follows:—

TREASURER'S REPORT

Balance, March 1, 1920	$3,160.07
Received during March	5,014.04
	8,174.11
Expenditures during March	4,199.58
Balance, April 1, 1920	$3,974.53

ACCOUNTS PAYABLE—	$7,500.00—
ACCOUNTS RECEIVABLE	$18,591.36

* * * * * * * * * * *

REPORT OF EXECUTIVE COMMITTEE

The Treasurer reporting for the Executive Committe stated that:—

1.—The Committee had met on the previous day. The resignation of the MONROE COLOR & CHEMICAL CO. of Quincy, Ill., had been received at a previous meeting and had been referred to Dr. J. M. Matthews, who had communicated with the Monroe

Color & Chemical Co. in the hope that this firm might reconsider its resignation. He had been advised that the resignation should stand, and therefore the Executive Committee recommends that the resignation be accepted.

On motion it was resolved that the resignation of the Monroe Color & Chemical Co. be accepted with regret.

2.—As per resolution adopted at the meeting of the Institute in March, the Executive Committee had appointed the following as a permanent Committee on "Sanitization and Safety"—

A representative of The Barrett Co., Inc., Chairman,
A representative of The Calco Chemical Co.,
A representative of National Aniline & Chemical Co.,

The first work of this Committee would be to co-operate with the National Code Committee of the Department of Labor and Industry in Pennsylvania in the matter of preparing a National Code on Nitro and Amido Compounds, and accordingly the executive Committee requested the firms named on this important Committee to select such party from their own organization as was best fitted to represent the Institute in this work.

The above completed the report of the Executive Committee, and on motion this report was accepted and approved.

REPORT OF JOINT MEETING OF EXECUTIVE COMMITTEE AND BOARD OF GOVERNORS.

The Treasurer read the minutes of this meeting, a copy of which is given below and forms part of these minutes:—

MINUTES OF JOINT MEETING
BOARD OF GOVERNORS
and
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE

April 8th, 1920.

Following a luncheon at the Arkwright Club, a joint meeting of the Executive Committee and the Board of Governors of the American Dyes Institute was held in the office of the Treasurer, 320 Broadway, New York City, on Thursday, April 8th, 1920.

The following firms were present and represented as follows:

Atlantic Dyestuff Co.,	Mr. A. C. Burrage, Jr.,
The Calco Chemical Co.,	Mr. F. M. Fargo, Jr.,
Chemical Co. of America,	Mr. Chas. Kendall,
E. I. duPont deNemours & Co.,	Mr. E. V. Patterson
Grasselli Chemical Co.,	Dr. J. M. Matthews,
The Heller & Merz Co.,	Mr. August Merz,
Merrimac Chemical Co.,	Mr. S. W. Wilder,
National Aniline & Chem. Co.,	Mr. H. H. Replogle.
Newport Chemical Works, Inc.,	Dr. E. H. Kiliheffer,

Mr. E. V. Patterson was elected Chairman.

In the absence of Mr. Corwine the Treasurer acted as Secretary.

Mr. Danner announced he had received a 'phone message saying that Mr. McCartney of the Monsanto Chemical Works had been unavoidably detained and regretted his inability to be present at the meeting.

The Chairman stated that the meeting had been called pursuant to action at the meeting of the Executive Committee in March and the Board of Governors had been requested to meet with the Executive Committee for the purpose of discussing a possible budget for 1920 and providing the Treasury with funds for current needs.

It was pointed out that at the present time it was not possible to say what would be the probable expenses of the Institute for 1920. It was anticipated that it would be considerably in excess of 1919.

Bills for legal fees for the Washington expenses have not yet been received, and other activities of the Institute after the legislative work in Washington has been completed have not yet been taken up, although a Committee on Education is now considering a program.

There followed a general discussion and it was decided that in the absence of having a definite budget to propose at this time, the meeting would make up a schedule indicating what percentage of the total budget each member would be asked to assume; it being understood that the amount of the budget would be decided later.

Some of the members expressed the opinion that the proportion each member should be assessed should bear some direct relation to a member's turnover on dyestuff and intermediates either in volume or value, or in any event be based on some definite and scientific method of distribution. All agreed that this was correct, but at this time it seemed to be impracticable to apply such a method owing to some of the members of the Institute being unwilling to disclose their tonnage or sales to either a Committee or Public Accountant. It was therefore thought that the combined judgment of those present would estimate with fair accuracy the relative proportion each member should bear. Thereupon, with this in mind, there was placed opposite the name of each member that figure which those present considered fair and equitable. A great deal of time and consideration was given to this work, and the figures were revised several times.

Below is given the result of their work:——

STATEMENT OF PERCENTAGE OF TOTAL BUDGET TO BE LEVIED AGAINST EACH MEMBER FOR 1920.

(As arrived at in Joint Meeting of Executive Committee and Board of Governors, April 8th, 1920.)

Member	*Percentage*
Althouse Chemical Co.,	.004
American Aniline Products Co.,	.02
Atlantic Dyestuff Co.,	.02
Atlas Color Works,	.002
The Ault & Wiborg Co.,	.05
The Barrett Co.,	.025
Butterworth-Judson Corp.,	.02
John Campbell & Co.,	.012
Calco Chemical Co., Inc.,	.04
Certified Chemical Corp.,	.002
Chemical Company of America,	.006
Commonwealth Chemical Co.,	.002
Consolidated Color & Chemical Co.,	.04
Dicks, David Co., Inc.,	.012
The Dow Chemical Co.,	.03
E. I. duPont deNemours & Co.,	.205
Dye Products & Chemical Corp.,	.004
Essex Aniline Works,	.02
Grasselli Chemical Co.,	.061
Gaskill Chemical Corp.,	.004
The Heller & Merz Co.,	.03
Holland Aniline Co.,	.004
Holliday Kemp Co.,	.008
Hydrocarbon Chemical Products,	.002
Merrimac Chemical Co.,	.01
Metals Disintegrating Co.,	.002
Monsanto Chemical Co.,	.012

Member	*Percentage*
Geo. H. Morrill Co.,	.004
National Aniline & Chemical Co.,	.210
Naugatuck Chemical Co.,	.004
Newport Chemical Works, Inc.,	.08
Peerless Color Co.,	.004
The Sherwin-Williams Co.,	.035
Transatlantic Chemical Co.,	.002
Tower Mfg. Co.,	.006
U. S. Color & Chemical Co.,	.008
	1.000

On motion the above table was approved and ordered to be reported to the next meeting of the Institute.

In addition the Secretary was instructed to send a copy of this memorandum to each member with a letter of transmittal.

Dr. Matthews then brought up the matter of the Open Price Section of the Institute, and invited a discussion as to the value to the industry of this activity. Speaking for the Grasselli Chemical Co., he stated that his firm did not feel it derived any benefit and therefore no portion of its assessments should be used toward the expenses of this Section. Attention was called to Article 4, Section 4, of the Constitution, wherein it was provided that the expenses of this Section were to be assumed by those members who elected to participate. Accordingly as provided in the Constitution, the following Committee of four——

Mr. F. M. Fargo, Jr.,
Mr. H. H. Replogle,
Dr. J. M. Matthews,
Dr. E. H. Killheffer,

was appointed to determine what, if any, expense should be incurred for Open Price Work, and to ascertain which of the members would participate.

The Secretary reported that practically no manufacturers were filing any price or production information of any kind, and as shown by the minutes, the Sectional Meetings were not attended.

There followed a discussion as to providing funds to meet current expenses. Consideration was given as to the advisability of increasing the annual dues, and after considerable discussion this was not considered advisable.

On motion of Mr. Kendall, duly seconded, it was unanimously

RESOLVED

that a tentative budget of $75,000. be levied, same to be paid in quarterly payments in advance, each member to be assessed as per table of percentages reported above, and if this assessment be not sufficient to meet requirements for special work, an additional assessment shall be made at such time as special funds are required, and such special amount shall be payable on call.

This resolution does not include expenses for the Open Price Section, which will be provided for by special assessment to those members participating in same.

In view of the discussion with reference to the method of apportioning assessments among members, and with a view to establishing a more scientific method for the future, on motion of Mr. Burrage it was

RESOLVED

that the President appoint a Committee of three to study and prepare a method of levying assessments which would provide an equitable division of expenses based on a scientific method.

There being no further business, on motion the meeting adjourned.

There followed a general discussion and the members expressed a hesitancy to approve a rate of allocation for an indeterminate amount of total assessment. Others expressed the opinion that in their own case they were set down for a percentage which in their opinion was not proportionate with their conception of some of their competitors' business. It was readily agreed that the rates established did not represent the result of any scientific method of distribution, but it was explained that this was the combined effort of the Executive Committee and the Board of Governors to be fair to all.

It was pointed out that provision had been made for a Committee to prepare and recommend for the future a plan of allocation of expenses which would be based on some scientific method.

On motion of Mr. Klotz seconded by Mr. Jayne, it was unanimously

RESOLVED

that up to the extent of levying an assessment of $75,000 the action of the Committee be approved as read, and it was further

RESOLVED

that if any further assessment be made, the allocation of same shall be submitted to the Institute for approval.

The Chairman then announced that Dr. Herty, who had just arrived, had a message to communicate and if there was no objection, he would set aside the regular order of business and request Dr. Herty to speak to the members. This was agreeable to all present, and Dr. Herty then stated that he had come direct to the meeting after having been told by a large consumer and one who had been very much in sympathy with an American Dye industry and who desired to see a self-contained American Dye industry established, that another large consumer who had likewise given his support to the present legislation had that morning called at his office and complained that the dye manufacturers were engaged in profiteering, and he therefore expressed the thought that the present proposed legislation should be defeated.

Dr. Herty stated that he placed this before the members of the Dyes Institute knowing that they would be most anxious to controvert such a feeling among the consumers.

Dr. Herty was unable to remain through any discussion, as he was obliged to leave town and he stated he knew nothing of the merits of the case and simply placed the matter before the Institute for such action as they might desire to take.

There followed a general discussion and it was the opinion of those present that this was unfortunate, in view of the fact that such statements were not matters of fact. Some of the members stated that while it was true some particular dyes had been advanced rapidly, it was due to the extreme shortage of raw materials and the extremely high prices for same, For instance, Methylene Blue was cited as a particular case, and Mr. Fargo expressed the opinion that until recently Methylene Blue had been sold below cost, and he thought that with the present prices for raw materials, such as Methyl Alcohol, which is now being exported, it would be impossible to maintain even the present price for Methylene Blue.

On the other hand, it was pointed out that a number of the other dyestuffs had reduced materially in price since the 1st of January.

On motion of Mr. Kendall, seconded by Mr. Fargo, it was unanimously

RESOLVED

that the Executive Committee should meet immediately following this meeting and discuss the subject with a view to providing the Legislative Committee in Washington with up to date facts covering the situation as regards prices. It was further unanimously

RESOLVED

that inasmuch as this matter likewise affected the manufacturers of intermediates and crudes, that representatives from these manufacturers be invited to attend any meeting which the Executive Committee might decide upon.

REPORT OF THE COMMITTEE ON EXPOSITION

Inasmuch as Dr. Killheffer, Chairman of this Committe, was not present there was no report, although the Treasurer stated he understood Dr. Killheffer had the matter in charge and would shortly be able to make a report to the Institute, perhaps through a communication.

REPORT OF COST COMMITTEE

Mr. Danner, reporting for this Committee, stated that the Committee had submitted its typewritten report and that 500 copies of same had been ordered printed, and it was hoped that these copies would be available within a short while.

REPORT OF COMMITTEE ON EDUCATION

Mr. E. V. Paterson reported that the Committee was not prepared to make a final report, but that he and Mr. Merz had had interviews with several of the large moving picture firms, and were considering ways and means of producing an educational film devoted to the dyes industry. He stated a full report would be made at a later date, and accordingly Mr. Patterson's report was accepted as one of progress.

Mr. Loewenthal referred to the meeting held on March 7, 1919, at which meeting the Trade Committee had reported with reference to uniform terms of discount. He stated that at that time the duPont Co. had reported their terms as 1%—10 days, but that he had recently been advised by his customers that the discount of the duPont Co. was 2%—10 days

It was pointed out that the March, 1919 meeting there was no agreement that the members would maintain any stated terms. In fact at that time the members were asked to file with the Secretary what their actual terms were, and if they varied from these terms to likewise file this information. This had been done by only a very few members, and Mr. Danner reported that in the case of the duPont Co. all reports of their orders contracts or quotations, giving full information as to prices, terms, etc. had been filed.

Mr. Patterson replied to Mr. Loewenthal and stated that they had been obliged to meet competition in several instances and quote terms of 2%—10 days, and inasmuch as his company treated all customers on precisely the same basis they then made their terms to every customer in their Dyestuff Department 2%—10 days.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Treasurer.

HED/AM

DEFENDANT'S EXHIBIT No. 292.

STATEMENT OF MR. HARRY E. DANNER, 320 BROADWAY, NEW YORK CITY, TREASURER OF AMERICAN DYES INSTITUTE, AND FORMERLY SECRETARY OF THE OPEN-PRICE SECTION BEFORE SUB-COMMITTEE OF COMMITTEE ON JUDICIARY, U. S. SENATE, ON SENATE RESOLUTION No. 77.

Mr. DANNER. I will state, Mr. Chairman, that I am at the present time treasurer and up until the time the activities of the open-price section of the American Dyes Institute were suspended I was the secretary of that section.

Obviously, Mr. Chairman, I can only speak of those activities of the institute with which I am individually familiar. I am not familiar with the details of the dye industry or the members' personal affairs.

Senator STERLING. You are not connected with any dye manufacturing company?

Mr. DANNER. I am not. I am entirely independent of them.

Senator STERLING. You may proceed with your statement.

Mr. DANNER. That part of the activities of the American Dyes Institute which provided for the operation of an open-price section was adopted in April, 1918. It provided:

(1) For the collection and interchange of price information in respect to current orders, contracts, and quotations.

(2) For a scientific system of cost accounting. There was never any complete plan devised for such a system which the institute adopted or urged upon its members. There was one pamphlet which set forth a number of the general principles of sound account-

ing in the chemical industry and which was distributed to the institute members.

(3) For a weekly report of production and work ahead. This part of the plan was never put into operation. Participation in the reporting plan was optional.

Senator STERLING. Will you permit an interruption just there?

Mr. DANNER. Certainly.

Senator STERLING. Of whom was this open-price section, as you term it, composed?

Mr. DANNER. Of American manufacturers engaged in the production of American dyes. I will set forth that a little further on in my statement, Mr. Chairman.

There was one pamphlet which set forth a number of general principles of sound accounting in the chemical industry, and it was distributed to the institute members.

Senator STERLING. The institute members, as I understand it, was of various dye industries?

Mr. DANNER. Yes. Mr. Chairman, I will now quote an extract from the report of the organization committee:

"It should be made plain to prospective members who are not familiar with the open-price plan that they can join the proposed institute as members in good standing and file nothing if they see fit, or they can file as little or as much as they please and they can cease filing any time they please. There is nothing compulsory in the organization and no penalties of any kind connected with it. The only requirement is that if a member does file any reports or statistics whatever he files must be true and accurate."

It was provided that the interchange of price information should be made by the secretary among only those members who reported in respect to the same customer on the same or practically the same dye or intermediate.

The number of such exchanges which were made during the period from April, 1918, to May, 1919, follows:

1918: April, none; May, none; June, 3; July, 5; August, 2; September, 1; October, 4; November, 3; December, 5. 1919: January, 6; February, 30; March, 21; April, 32; May, 63. Total, 175.

The above total of 175 exchanges resulted from the members having filed with the secretary during that same period a total of something over 14,000 reports.

It might be stated at this point that the very limited number of exchanges which might have been of any benefit to those members who received the information thus exchanged was due to the limited number of members who participated in the open-price section of the institute and filed a record of their contracts, orders, and quotations. It was further due to the fact that those members who did participate did not all file all their records on all their products and to the fact that the reporting plan limited the secretary to making exchanges only among those members who reported in respect to the same customer on the same or practically the same product. It is conceivable that had all the members of the Institute participated in the open-price plan, and had filed all their reports covering all their quotations, orders, or contracts on each and every one of their products, the total number of reports filed and exchanges made covering a period of more than one year as set forth above might have been exceeded in any one day.

At the outset the institute had 16 members, of which number 5 (The Calco Chemical Co., E. I. du Pont de Nemours & Co., Marden, Orth & Hastings Corporation, Sherwin-Williams Co., and United Piece Dye Works) reported their orders, contracts, and quotations, some on all the products they manufactured and others on only a limited number of their products.

The greatest number who from time to time, but not at any one time, participated in the open-price plan was 12 members, and the total number of reports which they filed during the year and a half of the existence of the open-price plan was as follows:

Marden, Orth & Hastings Corporation (later the Calco Chemical Co.)	7,242
Sherwin-Williams Co.	1,032
Hydro Carbon Chemical Products Co.	28
E. I. du Pont de Nemours & Co.	3,818
Frank Hemingway & Co.	10
Dicks David & Co.	1,573
Dow Chemical Co.	447
Certified Chemical Corporation	2
National Aniline Co.	97
Rector Chemical Co.	3
Naugatuck Chemical Co.	9
United Piece Dye Works	115
Total	14,376

The Calco Chemical Co. and the United Piece Dye Works, during the time that the latter company was manufacturing dyes were the only members who claimed to have reported a complete record of all their quotations, orders, and contracts on all the products which they manufactured.

Senator STERLING. What companies were those?

Mr. DANNER. The Calco Chemical Co. and the United Piece Dye Works.

On the contrary, for example, the Sherwin-Williams Co. reported only a limited number of products, while the National Aniline Co. reported but 97 transactions covering some intermediates only.

Efforts to have members report production statistics met with no response and even a suggestion for a report on the percentage of plant capacity operated by each company was not considered practicable because of the impossibility of members estimating their own normal average capacity in respect to different kinds and types of products. Therefore there were never any production statistics collected or distributed.

On or about June, 1919, or within a little more than a year after the inception of the plan, because so many members of the institute did not participate in the open-price section, there was considerable objection raised to devoting any of the time of the regular institute meetings to any reports of the secretary of that section. In view of the general lack of active reporting by members of the open-price section, due to some members excepting certain products, from the reports and other members reporting only intermittently, because, as they asserted, of the general complex nature of the dyestuff industry, it was concluded to invite members interested in particular dyes or intermediates to file their reports for those products only. Accordingly, thereafter members interested in certain products—selected because it was thought it would be more simple to file price reports, as they were comparatively standardized products—were asked to meet in groups as follows: (a) Aniline oil; (b) h. acid; (e) beta naphthol; (d) sulphur colors.

Meetings of those respective groups were held as follows:

(a) Aniline oil: July, August, September, December, 1919; March and April, 1920. During the other months there were no meetings because no one attended, although meetings were regularly called.

(b) H. acid: July, August, September, November, December, 1919; April, 1920. As in the case of aniline oil, no meetings were held during the other months because of no attendance.

(c) Beta naphthol: July, August, September, October, 1919. No meetings were held during the other months because of no attendance.

(d) Sulphur colors: October and November, 1919; January, 1920. No meetings were held during the other months because of no attendance.

All the meetings of these groups were poorly attended and members did not file complete reports. By far the largest number of reports were filed by Marden, Orth & Hastings Corporation or the Calco Chemical Co. The next largest number was filed by the Sherwin-Williams Co. In some months there were no reports filed by those companies, and in other months the number ran as high as 19.

Mr. CHOATE. Did you say the meetings were "fully" attended, or what did you say?

Mr. DANNER. I said they were poorly attended.

During the 10 months these group meetings were being tried out as a modification of the original reporting plan——

Senator STERLING. That is, the original reporting plan of the open-price section?

Mr. DANNER. Yes; you see the original plan embraced all the products of the members. They were invited to report on everything that they produced; but it failed, and they did not do it. Then we endeavored to hold these group meetings, covering certain standardized products, thinking it would be a more simple thing to do. We called that the modified plan. The original and broader field was entirely suspended.

Senator STERLING. You may proceed with your statement.

Mr. DANNER. During the 10 months these group meetings were being tried out as a modification of the original reporting plan, which plan had in fact failed for want of support among the members, there were in the aniline-oil group—the most active one—a total of 121 reports filed, as follows:

1919: July 44; August, 39; September, 20; October, 15; November, 1; December, 2. 1920: January, none; February, none; March, none; April, none. Total, 121.

There were probably not over 10 or 15 exchange reports made between members quoting or selling the same customer. Exchanges were made on the same plan, I might add, that the original plan provided.

In the sulphur-colors group members had not undertaken to file any price reports. An effort was made to endeavor to ascertain the total average normal production of sulphur colors, but no success was attained.

The foregoing statement also applies to the h. acid group.

At none of the group meetings was there any general discussion of prices or the reports. This fact induced counsel in April, 1920, to cause the following to be written into the record of the meeting of the aniline-oil group held April 9, 1920:

"While the section has been called an open-price section, no open-price reports have ever been filed and prices have never been discussed. Under the circumstances he thought it in order for those present and others to consider whether in the future they wished to hold sectional meetings for any purpose and any way not to refer to them as open-price sections or meetings so long as no open-price work was done and no price information filed or exchanged or discussed."

A similar record was made in the minutes of the meeting of the h. acid group held on the same day.

Mr. Choate. Who was that counsel?

Mr. Danner. Mr. Arthur J. Eddy, counsel for the open-price section of the institute.

Repeating, I will say a similar record was made in the minutes of the meeting of the h. acid group held on the same day. There were not any members present at the meeting of the beta naphthol group called for the same day, and there was only one member present at the meeting of the sulphur-colors group also called for the same day.

At a joint meeting of the executive committee and the board of governors of the American Dyes Institute, held April 8, 1920, a special committee was appointed to consider the question of continuing an open-price section in the institute. That committee consisted of F. M. Fargo, of the Calco Chemical Co.; H. H. Replogle, of the National Aniline & Chemical Co.; Dr. J. Merritt Matthews, of the Grasselli Chemical Co.; and Dr. E. H. Killheffer, of the Newport Chemical Works.

At a meeting of the institute itself held the next day, April 9, 1920, the secretary of the open-price section reported as follows:

"The secretary reported that practically no manufacturers were filing any price or production information of any kind and, as shown by the minutes, the sectional meetings were not attended."

[Minutes of meeting of American Dyes Institute, April 9, 1920.]

At a meeting of the institute held June 11, 1920, the special committee appointed April 8 reported as follows:

Report of special committee appointed at joint meeting of the board of governors and executive committee to report on open-price plan:

GENTLEMEN: Your committee has met and discussed the question of whether the open-price section of the institute should be continued, or just what action should be taken with respect to same. At this meeting we had before us advice from our counsel, Mr. Arthur J. Eddy, to the effect that in his opinion it would never be practicable for the American Dyes Institute as such to follow the open-price plan. That it would be much better for particular groups, manufacturing the same or similar products, to organize themselves entirely independently of the institute. Mr. Eddy has, therefore, recommended that the open-price section be abandoned, and that, if we follow his advice, that his services be dispensed with.

Your committee, having carefully considered this, believes that advice of our counsel as above should be followed, and so recommends to the institute.

Respectfully submitted.

F. M. Fargo, Jr.
E. H. Killheffer.
H. H. Replogle.
J. M. Matthews

Senator Sterling. Now, how long had the open-price section been in existence at that time?

Mr. Danner. Well, this was in June, 1920, and the open-price section was organized in April, 1918.

Senator Sterling. Was Mr. Eddy counsel for the open-price section of the institute or was he counsel for the institute?

Mr. Danner. He was counsel for the open-price section of the institute.

Senator Sterling. Why the need of special counsel for the open-price section of the American Dyes Institute?

Mr. Danner. Well I think all open-price work has been handled that way. Mr. Chairman: that it has been customary to employ counsel to guard you in discussions and so on in all open-price work.

Dr. S. Isermann. Mr. Chairman perhaps I can give you some information on that.

Senator Sterling. What is the name?

Doctor Isermann. My name is S. Isermann, of the Chemical Co. of America. I am a member of the American Dyes Institute, and was a member at the time when this open-price section was in force, or rather was being used by some of the members. The reason that there was counsel for the open-price section was because those who did not believe in the open-price work, or those who did not participate in it, felt that they did not want to pay counsel for work that probably would benefit somebody else. Does that clarify your mind on that question?

Senator Sterling. Well partly.

Mr. Danner. That was not the line you were addressing your thought to.

Senator Sterling. Not quite.

Mr. Danner. Did I answer your question?

Senator Sterling. You may proceed with your statement.

Mr. Danner. Following the presentation of the report above quoted, the minutes of the meeting which was held June 11, 1920, read as follows:

"The institute indorsed the action which had been taken by the executive committee in approving and accepting the report.

"As it was apparent that it would be necessary to change the by-laws because of the abolition of the open-price section, the secretary was instructed to note the changes which would be required and to take the necessary steps to have them adopted."

At the meeting of the executive committee of the American Dyes Institute held July 15, 1920, the secretary reported that Mr. A. J. Eddy had been paid his fee; that he had acknowledged receipt thereof; and that therefore the account was closed.

Thus Mr. Eddy ceased to be counsel for the open-price section of the American Dyes Institute or for the institute itself, and there was no longer any open-price work done or attempted to be done by the institute, or by any group or groups of the members.

Senator STERLING. Did Mr. Eddy have any further connection with the American Dyes Institute after the abolition of the open-price section?

Mr. DANNER. In no way whatever.

Senator STERLING. He is an attorney in New York?

Mr. DANNER. Mr. Eddy is deceased now. He died a month or two following his resignation. But perhaps I did not answer your question directly, and I would say that his offices were in Chicago.

Senator STERLING. You may continue your statement.

Mr. DANNER. Thereafter the secretary, Mr. W. R. Corwine, and the treasurer, Mr. H. E. Danner, prepared some tentative drafts of the changes in the constitution and by-laws incident to the abolition of the open-price section, and they were to be submitted to Judge J. Harry Covington, of counsel for the institute. In the meantime, however, with no one interested in the matter and with the work of the institute primarily that of preparing and presenting a case for protection of the industry, nothing was done to put the changes into any final form; that is, changes in the by-laws.

To summarize, therefore, the greatest number of institute members who ever did participate in the open-price plan was 12, and those 12 did not report at any one period of time. The greatest number who did report at any one period of time was 6 or 7, and that at a time when the total membership of the institute was approximately 40.

When the open-price section was abandoned in June, 1920, there were 34 members of the institute, with only 2 members actively reporting price information, namely, the Calco Chemical Co. and the Sherwin-Williams Co., all the other members having some time before ceased to file.

In the absence of any definite statistics of the gross production of each member of the institute so as to form an estimate of the percentage of the production represented by those participating in the open-price plan it is difficult to make any positive statement based on actual figures, but when it is considered that in only two instances was it claimed by members —the Calco Chemical Co. and United Piece Dye Works, while that company was making dyes—that all reports for all products were filed; that in the case of the two larger companies the Du Pont Co. did not report on intermediates and the National Aniline & Chemical Co. did not report on dyes and filed only 97 reports on a few intermediates, and, further, that out of approximately 14,000 reports filed there were less than 200 reports interchanged—it is self-evident that the percentage of the industry which was included in the open-price plan was inconsiderable.

There is a printed copy of the constitution and by-laws of the American Dyes Institute already in the record, I understand.

Senator STERLING. Mr. Danner, what was the purpose of the organization of the American Dyes Institute—that is the official name, is it?

Mr. DANNER. Yes, sir. It was a trade organization, Mr. Chairman. Originally the American Dyes Institute was organized to operate an open-price plan: that was the original conception of the American Dyes Institute under that name.

Senator STERLING. It was incorporated?

Mr. DANNER. No, sir; it was never incorporated.

Senator STERLING. Just a voluntary organization?

Mr. DANNER. Yes, sir.

Senator STERLING. Were any profits derived by the members of the Institute?

Mr. Danner. No profits inured to any member of the institute. There was a paid secretary, for instance.

Senator Sterling. On whose suggestion was the open-piece section organized?

Mr. Danner. Well, I will have to go back and think for a while. I do not know just who conceived the idea of organizing an open-price section. Anyhow, some of those engaged in the dye industry became acquainted with Mr. Arthur J. Eddy, who was counsel for several open-price organizations, and they became interested in the subject.

Senator Sterling. What do you mean by "open-price organizations"—outside of the American Dyes Institute or outside of this section?

Mr. Danner. Mr. Eddy was a lawyer, and he had under his direction a number of open-price associations or sections in different industries. He was very well known as counsel for such organizations, and some members—though I am afraid I can not say who, because at that time I was not in it—but some of those engaged in the dye industry met Mr. Eddy and concluded to organize some institute having an open-price plan provided.

Senator Sterling. I understod you to say that other industries had their associations analogous to the American Dyes Institute.

Mr. Danner. Yes, sir.

Senator Sterling. And they also had their open-price sections?

Mr. Danner. Yes, sir.

Senator Sterling. What was the purpose of the open-price section?

Mr. Danner. The primary purpose of the open-price section is to permit those engaged in the industry to conduct their business with full knowledge of all the facts and factors in that industry.

Senator STERLING. And through the open-price section one industry is given knowledge of the business and prices as fixed by other industries?

Mr. DANNER. Not by other industries but right within their own industry.

Senator STERLING. I meant within their own industry; all other companies in the same industry.

Mr. DANNER. Yes, sir; in the same industry.

Senator STERLING. When these various companies, who were members of the open-price section to begin with, failed to make reports, or made only partial reports, what, if anything, was done by Mr. Eddy, counsel, or the American Dyes Institute in regard to it?

Mr. DANNER. There were no penalties of any sort or kind. A man reported when and as he saw fit. When he reported he received information in exchange; if he did not report, he received no information in exchange.

Senator STERLING. As those reports failed to come in, or as they were only partial reports, the inference would be that the members thought they derived no benefit from them; is that it?

Mr. DANNER. Yes.

Senator STERLING. What is your opinion in regard to that? If the members had reported as originally contemplated they would—or else the open-price section would not have been organized—what, if any, benefits would they have derived?

Mr. DANNER. I think they would have had some benefits. I think they would have been able to conduct their business in full light of all the facts in the industry.

Senator STERLING. Is it to be supposed that their failure to report, or to participate in the open-price section in the meetings of that section, or to make reports to that section, meant that they were thereby gaining some advantage in keeping concealed prices that they had fixed?

Mr. Danner. Well, Mr. Chairman, that is pretty hard to answer. I do not know just how the minds of the individual members worked. But I think in the dye industry men were not prepared, were not so situated as to give us information about their own individual business. It was somewhat revolutionary to them, to the members of the American Dyes Institute, and it just simply did not take with them; that is all; it did not operate.

Senator Sterling. Would you think that the purpose of the open-price section itself was somewhat antagonistic to the general business idea, to begin with, that idea being for each man to keep his own business to himself, and the price he charges to himself, rather than to have it known to his competitors?

Mr. Danner. Yes; that is rather true. It was revolutionary to them. In an open-price section all buyers and sellers alike know the facts. It prevents misunderstandings, and misconceptions and untrue statements, and so on.

Senator Sterling. What do you think is the effect of the abandonment of the open-price section upon the dye industry as a whole?

Mr. Danner. I think it had no effect because the open-price section had had no effect upon the industry as a matter of fact. Speaking of the American Dyes Institute, it just did not work. It did not function, * * *

Senator Sterling. What was the largest membership at any one time in the institute?

Mr. Danner. The entire institute, I think, was composed of 40 members as the largest number at any one time. The membership came and went, you know.

Senator Sterling. And from how many did the open-price section receive reports?

Mr. DANNER. The largest number, I think, was 12, as my statement shows. But at no time did they all report at one and the same time, all of them participating at one and the same time; a man would report and then he would drop out. He would try it for a while and think he did not get sufficient information in return, and he would simply fail to continue reporting.

Senator STERLING. You say you had counsel for the open-price section?

Mr. DANNER. Yes, sir.

Senator STERLING. How was he paid?

Mr. DANNER: He was paid an annual retainer.

Senator STERLING. By whom?

Mr. DANNER. By the American Dyes Institute.

Senator STERLING. What was that retainer?

Mr. DANNER. $10,000 a year, I think.

Senator STERLING. He made a very good fee out of something that did not serve any particularly beneficial purpose, did he not?

(Witness simply smiled.)

Senator STERLING. And he was attorney for other like sections in other associations?

Mr. DANNER. Yes.

Senator STERLING. He was the promoter of open-price sections in various associations, was he?

Mr. DANNER. Well, I do not know that I would call him a promoter. The fact is that he was the one who conceived the idea of reporting all business deals in the open.

Senator STERLING. Was it not the purpose really of the open-price section, Mr. Danner, to regulate or stabilize prices in the dye industry?

Mr. DANNER. No; I think I can answer that honestly and say that that was not the purpose; that it was not the purpose to regulate prices at any rate. I am frank to say that I think an open-price plan, properly operating, has a tendency to stabilize prices and prevent violent fluctuations.

Senator STERLING. I think that is all I wish to ask.

Mr. CHOATE. I would like to suggest two questions to be asked—one as to whether or not all those reports were not furnished immediately to the Federal Trade Commission.

Mr. DANNER. Yes; they were sent to the Federal Trade Commission——

Mr. CHOATE (interposing). And the other question was as to whether one of the chief purposes——

Mr. DANNER (continuing). Just let me finish my answer. The minutes of the meetings were all sent to the Federal Trade Commission. The individual reports submitted by the members, they were filed with me, and they were locked reports, and never went out of my office until the man unlocked it or had business dealings with some party. He only unlocked it with those having business with the same party. No reports ever went out of my office. Those records were never available to any member of the institute, either officer or otherwise.

Senator STERLING. Then your reports did not go to the Federal Trade Commission?

Mr. DANNER. No, sir; the reports of individual transactions did not go to the Federal Trade Commission. But the minutes of meetings and so on did go to the Federal Trade Commission.

Senator STERLING. Would the minutes of the open-price section contain the report made by any company belonging to the institute?

Mr. DANNER. Not the details, Mr. Chairman. The secretary made a report each month as to the number of reports he had received, and from whom he had received them. For instance, that he had received 12 reports from the Sherwin-Williams Co., and that he had made four or five or six exchanges that month, whatever the number might be.

Senator STERLING. Were they ever called for by the Federal Trade Commission?

Mr. DANNER. They were sent automatically to the Federal Trade Commission—well now, do you mean the individual reports?

Senator STERLING. Yes.

Mr. DANNER. Oh, no; they were not sent to the Federal Trade Commission.

Senator STERLING. But the minutes were sent to the Federal Trade Commission?

Mr. DANNER. The minutes of the meetings were sent automatically to the Federal Trade Commission.

Mr. CHOATE. Another question I want to ask, with the chairman's permission——

Senator STERLING (interposing). Any gentleman present may ask questions if he desires.

Mr. CHOATE. One of the chief purposes of the plan was, was it not, to relieve manufacturers from having to rely upon their customers for information as to what competitors were charging?

Mr. DANNER. Oh, yes; of course, that was the prime purpose anyway. But I did not think you wanted me to go into a very elaborate discussion of the open-price plan as such. I did not think that was the purpose of this discussion. I brought out that, as it was conceived by Mr. Eddy, it was to promote frankness and openness; to have everything laid on the table to buyer and seller alike.

Senator STERLING. You say these reports were made under oath?

Mr. DANNER. No; they were not made to me under oath. The way it was operated, Mr. Chairman, was that if you took an order from John Jones, when you confirmed that order to your customer a carbon copy was sent to the office of the open-price section of the

American Dyes Institute. It was supposed to be a bona fide copy of the order. The only requirement we had in the open-price section at all was that whatever report was made should be the truth and accurate

Senator **Sterling.** You are still the treasurer?

Mr. **Danner.** Yes, sir; of the institute.

Senator **Sterling.** And the membership of the institute is now what?

Mr. **Danner.** I think the membership is 34. I am not the secretary of the American Dyes Institute and do not keep track of the roll very intimately.

Senator **Sterling.** Do you solicit further memberships?

Mr. **Danner.** Why, I think the institute would be very glad to receive additional members.

Senator **Sterling.** Why is it that the larger proportion of those engaged in the dye industry have not joined the American Dyes Institute?

Mr. **Danner.** I am not intimately enough acquainted with the details of dyestuff manufacturers to be able to answer that question.

Senator **Sterling.** I understood, from a rather subrosa remark made behind you there, that it was because of the money cost. How much does it cost an individual manufacturer or company to become a member of the American Dyes Institute? In other words, what is the membership fee?

Mr. **Danner.** The membership fee was $250 a year, or they were the dues. And then there were assessments.

Senator **Sterling.** There were the dues and then assessments besides?

Mr. **Danner.** Yes, sir; assessments in addition.

Senator **Sterling.** What is the occasion for making assessments?

Mr. **Danner.** The expenses of the institute have to be met.

Senator STERLING. Do not the dues meet them?

Mr. DANNER. No. Forty members at $250 a year each is about $10,000 per annum.

Senator STERLING. That brings the income up to $10,000 a year?

Mr. DANNER. Yes, sir.

Senator STERLING. How is that income expended?

Mr. DANNER. Well, they have a paid secretary, and counsel, and treasurer; and they have the expenses that all other organizations have in the work that they are doing.

Senator STERLING. What else in the way of organization work have they done, or do they do, than this open-price section, which has been abandoned—work that will be of benefit to the trade, I mean?

Mr. DANNER. Now, their principal work is legislative work. I understand the treasurer's statements have been put into the record, which statements give full details of all the expenses of the American Dyes Institute since it was organized.

Senator STERLING. And the expenses then are largely for the purpose of looking after legislation that will be of benefit to the trade or the dye industry or preventing hostile legislation?

Mr. DANNER. That has been the chief item of expense.

Senator STERLING. Have you any expense in the printing of circulars, etc.?

Mr. DANNER. We did issue one pamphlet explaining the Dyes Institute and its purposes shortly after it was organized, and that is approximately all the expense there. For a while the secretary got out some weekly bulletins, I think.

Mr. CHOATE. Those were all put in the record yesterday, Senator, a statement of the entire activities, a statement showing the entire expenses.

Senator STERLING. Very well, I do not want to repeat that. It may have all gone into the record. Who testified yesterday about that?

Mr. CHOATE. The president of the institute, Mr. R. C. Jeffcott.

Senator STERLING. Yes. I had to leave just as Mr. Jeffcott took the stand.

Mr. CHOATE. May I not state there, Senator, that the chairman asked for certified copies of the statements of expenses and receipts which were put in. We are furnishing in response to that demand photostat copies of the original, which will be certified by the treasurer.

Senator STERLING. Very well. Well, you can see that the chairman's mind and mine run along the same lines, if he asked for this information to be filed. Of course, I supposed it was here, and ready to be filed.

Mr. CHOATE. We offered it before he asked.

Mr. DANNER. Mr. Chairman, I have another statement I would like to read in connection with an activity which I was engaged in for the American Dyes Institute, if I may be permitted to do so.

Senator STERLING. Yes.

Mr. DANNER. The statement is as follows:

DEFENDANT'S EXHIBIT No. 293.

ASSIGNMENT

WHEREAS Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provision of the Act of Congress, known as the "Trading with the Enemy Act", approved October 6, 1917, and the amendments thereto, and the Executive Orders and Proclamations issued in pursuance thereof, is vested with all right, title and interest in certain Letters Patent of the United States of America enumerated below, together with the right to recover all damages and profits by reason of past infringements thereof by any person, firm, corporation or government other than that of the United States of America, to wit:

No. 1,087,113 dated February 17, 1914, to Rudolf Goldschmidt, for Machine for Receiving Electric Waves:

No. 1,104,256, dated July 21, 1914, to Rudolf Goldschmidt, for Apparatus and Method of Receiving Electric Waves; and

No. 1,104,257, dated July 21, 1914, For High Frequency Generator; and

Whereas the American Radio Company, a corporation organized under the laws of the State of Delaware, and having an office and place of business at No. 49 Wall Street, in the Borough of Manhattan, City and State of New York, is desirous of acquiring the entire right, title and interest in, to and under said United States Letters Patent:

Now, Therefore, to all whom it may concern, be it known that for and in consideration of the sum of One Dollar ($1.00) in hand paid to said Francis P. Garvan, Alien Property Custodian, by said American Radio Company, and other good and valuable considerations, the receipt of which is hereby acknowledged, said Alien Property Custodian has assigned, sold, transferred and set over, and by these presents does assign, sell, transfer and set over unto the said American Radio Company his entire right, title and interest in, to and under each and all of said patents and the inventions thereof, and in, to and under any reissue or reissues, extension or extensions thereof, the same to be held and enjoyed by said American Radio Company, its successors and assigns or other legal representatives, for its own proper use and behoof, and for the use and behoof of its successors, assigns, or other legal representatives to the end of the term or terms for which said Letters Patent are granted or issued, or may be extended, renewed or reissued, as fully and entirely as the same would have been held and enjoyed by said Alien Property Custodian had this sale and assignment not been made:

Together With All Claims for damages and profits by reason of past infringements of said Letters Patent by any person, firm, corporation, association or government other than that of the United States of America, with the right to sue and collect the same for its own use and behoof and for the use and behoof of its successors, assigns or other legal representatives,

In Witness Whereof said Alien Property Custodian has signed these presents and hereunto affixed his seal of office, this 20th day of November, 1919.

(Sgd.) FRANCIS P. GARVAN,
As Alien Property Custodian.

City of Washington, D. C.,
District of Columbia, } *ss.:*

On this 26th day of November, 1919, before me came Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provisions of an Act of Congress known as the "Trading with the Enemy Act" approved Oct. 6, 1917, and amendments thereof, and the Executive Orders and Proclamations issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

(Sgd.) ODEN B. GRAY,
(Seal) *Notary Public.*

My commission expires October 12, 1920.

DEFENDANT'S EXHIBIT No. 294.

ASSIGNMENT FROM UNITED STATES GOVERNMENT, BY F. D. ROOSEVELT, ACTING SECRETARY OF NAVY, DATED NOVEMBER 11, 1919, RE-CONVEYING TO ALIEN PROPERTY CUSTODIAN THREE PATENTS THERETOFORE CONVEYED TO HIM BY DEFENDANT'S EXHIBIT NO. 144.

Note: Same as Defendant's Exhibit No. 145 and not reprinted here. *(See Record, Exhibits, Vol. V, page 2801.)*

DEFENDANT'S EXHIBIT No. 295.

EXTRACT FROM CONGRESSIONAL RECORD, PAGE 12540, AUGUST 17, 1922.

WAR DEPARTMENT,
Washington, August 15, 1922.

CHAIRMAN UNITED STATES SENATE FINANCE COMMITTEE,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR MCCUMBER: On July 26, 1921 I wrote your committee, calling attention to the fact that the Fordney tariff bill would not protect the American organic chemical industry from destruction by German competition. Allow me to reiterate the importance of the preservation of this industry to the country from the standpoint of national defense.

The dye industry is the backbone of the organic chemical industry, on which all Governments are dependent for their high explosives, their medicines and other materials. Inasmuch as the coal-tar industry, which is the basis of all dyes, is also the basis of all high explosives and of synthetic medicines, it is of vital importance to prepardness that the dye industry be developed to the fullest possible extent in this country. The use of explosives will be far greater in any future struggle than in the World War.

Notwithstanding that from 1914 to 1917 our great steel industries and our rapidly developing chemical industries had been working feverishly to increase their facilities to supply ammunition, guns, and rifles to the Allies, it was more than a year after we entered the war before those industries were able to supply ammunition, guns, rifles, etc., to meet the American needs. Even then our chemical industry was so undeveloped in 1917 that it was necessary for the Government to build large high-explosive plants and powder factories.

Germany realizes the importance of predominance in organic chemical industries as a most valuable means of preparedness and has formed of them one great trust. The German trust can produce dyes and similar material so much cheaper than the Americans produce them that no ordinary tariff can prevent the destruction of the American industry, which will thereby cripple the whole organic chemical industry.

It is, therefore, urged that the dye-control provisions of the emergency tariff act of 1921 be extended another year to give the industry a chance to stabilize and to enable conditions in the dye industry to be carefully observed and the products determined which should be protected in order to firmly establish that industry in the United States.

Very truly yours,

JOHN W. WEEKS,
Secretary of War.

DEFENDANT'S EXHIBIT No. 296.

THE SECRETARY OF THE NAVY
WASHINGTON

July 27, 1921.

My Dear Senator:

Understanding that the recommendation of the Ways and Means Committee of the House placing a limited embargo on the importation of coal-tar products (HR7456 General Tariff Revision Page 6) was rejected by the House, I am earnestly requesting that your Committee give special attention to this feature.

The Longworth Bill (HR8078 66th Congress) included a selective embargo regulating the importation of organic chemicals particularly those useful in the preparation of explosives and toxic gases used in chemical warfare.

The Fordney Bill as reported from the Committee included a modified clause to the same effect. It is of great value to the Navy to encourage the development of chemical activities in the manufacture of all products connected with the above mentioned articles, especially those manufacturers whose establishments can easily be diverted to the manufacture of war materials when needed. The restoration of the embargo clause will be of material help and I will greatly appreciate your assistance to this effect.

Sincerely yours,

(Sgd.) EDWIN DENBY.

Hon. Boies Penrose,
United States Senate,
Washington, D. C.

DEFENDANT'S EXHIBIT No. 297.

67TH CONGRESS,
1st Session.

HOUSE OF REPRESENTATIVES.

REPT. 248,
Part 1.

GENERAL TARIFF REVISION.

JULY 6, 1921—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

MR. FORDNEY, from the Committee on Ways and Means, submitted the following

REPORT.

[To accompany H. R. 7456.]

The Committee on Ways and Means to whom was referred H. R. 7456, a bill to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, and for other purposes having had the same under consideration, report it back to the House without amendment and recommend that the bill do pass.

The reason for tariff revision at this time is well known. The present law is wholly inadequate. Its failure is recognized beyond dispute. The prophecies of its proponents have proven false. The framers of the act of 1913 contended that lower rates would reduce production costs and enable Americans to capture foreign trade, with resulting industrial activity and general prosperity. From the date of the enactment of the low rates, however, until the outbreak of the war in Europe, exports not only did not increase but declined with rapidity and alarming regularity, while imports increased. America did not capture foreign markets but foreigners captured American markets. Industry languished and unemployment prevailed.

The war checked the flood of foreign goods and created a demand for supplies of every description and the adverse conditions of the fall and winter of 1913 and the spring and early summer of 1914 were to a large extent forgotten during the continuation of hostilities.

With the ending of the war and the resumption of production in Europe, foreign competition is once more being keenly felt. Industry and trade in the United States is at low ebb. This industrial depression is the inevitable result of the offering of foreign goods upon the American market at less than the American cost of production.

The enactment of the bill herein recommended will do much to relieve the present situation. Rates of duties are proposed which will permit the products of American labor to compete with foreign goods in the American markets without sacrificing the American standards of living.

The committee has worked diligently to secure information on which to base its conclusions. Under authority of House resolution 63, passed May 27, 1919, the committee directed the preparation of a publication, Summary of Tariff Information. The Tariff Commission contributed largely to this work. The Summary contains a comparison of existing law with the preceding law and gives a resumé of pertinent court and Treasury decisions thereunder. The Summary also contains definitions and other tariff data in condensed form under each paragraph. At the request of the Ways and Means Committee, the United States Tariff Commission at the same time prepared a publication entitled "Statistics of Imports and Duties, 1908 to 1918, Inclusive."

Beginning on June 10, 1919, hearings were conducted by the committee on the subject of dyestuffs and other war industries, and much valuable information was furnished the committee. On December 8, 1920, general tariff hearings were announced. These hearings opened January 6 and continued daily until February 16, 1921. During the hearings 1,486 witnesses were assigned time on the committee calendar.

Following the close of the hearings the testimony and briefs of the various witnesses were arranged under the several schedules and printed in convenient indexed volumes for the use of the committee. In addition, all references to wages by various witnesses were segregated in a committee document entitled "Recapitulation of Wages in Industries, Domestic and Foreign."

The disparity between wages paid in America and abroad was very striking, but inasmuch as the information was in the most part furnished by interested parties, it was deemed desirable to secure additional information from official sources. At the request of the committee, the Department of Commerce cabled instructions to its foreign representatives directing the submission of latest available information in regard to wages in foreign countries. The response was prompt and generous and the data thus secured has been assembled by the committee in a committee docuent entitled "Wages in the United States and Foreign Countries."

The majority members of the committee took up the work of framing a bill on March 21, and the work has continued without interruption until June 29, on which date the bill was introduced in the House of Representatives. During the consideration of rates as well as during the hearings and previous thereto, the Tariff Commission has supplied the committee, in the form of tariff surveys, concise and comprehensive information on various subjects. In addition to this. the staff of the Tariff Commission was placed at the disposal of the committee and has been called upon to work with the committee in the drafting of the various tariff schedules. Through these efforts the bill herein recommended proposes many desirable changes in arrangement and classification.

In addition to the Tariff Commission, the committee is indebted to the Treasury Department, the Department of Commerce, the Department of Agriculture, the Department of Labor, the Bureau of Standards, the Geological Survey, the Bureau of Mines, and other Government agencies for valuable and willing cooperation.

TITLE I.

DUTIABLE LIST.

SCHEDULE 1.

CHEMICALS, OILS AND PAINTS.

The Committee on Ways and Means, in the preparation of Schedule 1 of the present tariff bill (H. R. 7456), was furnished with detailed information on all the articles in the chemical schedule by the United States Tariff Commission in the form of so-called Tariff Information Surveys. This detailed information was supplemented by a report of the Tariff Commission on a Suggested Reclassification of Chemicals Oils and Paints. This report was prepared after a careful study of the phraseology of the act of 1913, and of the litigation and decisions arising during the period of its operation. It also involved a careful survey of the trade and commerce in such products. This investigation has revealed many provisions in which the names or descriptions of commodities or the specification of different grades or varieties of an article could be modified so as to make the tariff law clearer, less liable to give rise to litigation, easier to administer, and more in accord with commercial practice and nomenclature. The committee adopted this reclassification as the basis for the Schedule 1 of H. R. 7456. It is believed, with such information at hand the committee has been able to present a chemical schedule which is more scientific and corresponds more nearly to the exact commercial usage than any chemical schedule of previous tariff acts.

The chemical industries of the United States since the passage of the tariff act of October 3, 1913, have undergone marked developments, and many fundamental changes have occurred that have influenced conditions of international trade in these products. Since then, many commodities have become of commercial importance, and it was necessary to give these commodities specific enumeration or special tariff treatment. In Schedule 1 approximately 100 chemicals have been given specific enumeration for the first time in tariff history. Many of these are the direct outgrowth of war conditions. On the other hand, many commodities, purely as a matter of custom, have been carried from one tariff to another, and have become obsolete in the commerce in chemicals. Such articles were dropped from the chemical schedule.

The general rate of duty throughout the schedule —chemicals, oils, and paints—have been established at a uniform level of 25 per cent ad valorem, with a few exceptions, where the committee thought that particular products which represented infant industries or materials essential to national preparedness, have been given slightly increased rates. In the case of specific rates, they were all converted to equivalent ad valorem rates on the basis of the present domestic prices, so that all specific rates in general are equivalent to about 25 per cent of the prevailing domestic prices. In the case of raw materials of foreign origin, which were essential to the domestic industries, the committee left these on the free list, with the exception of a few commodities used as raw materials in the manufacture of luxuries, which were assessed a duty for revenue purposes. One of the outstanding examples in this latter case is that of chicle, the rates on which are the same as in the act of 1913. This product will yield between a million and a million and a half dollars revenue, annually.

DERIVATIVES OF HYDROCARBON GASES.

Paragraph 2 covers a group of chemicals which are derived from hydrocarbon gases obtained from natural gas or as waste products of petroleum cracking processes. These are of comparatively recent development in the United States and are closely allied to the production of explosives and poison gases. For example, ethylenecholorohydrin may be converted by a simple chemical process into mustard gas, one of the most important war gases, whereas ethyeleneglycol is very similar to glycerin and may be nitrated to form a high explosive. In order to encourage the manufacture of these products in the United States, they have been given special tariff treatment at a rate of duty slightly higher than the general scale of rates throughout the schedule.

CRUDE BOTANICAL DRUGS.

The rates (the same as in the act of 1913) in paragraph 34 are levied on several crude drug products which are large revenue producers. In addition, special consideration is given to several crude botanical drugs whose cultivation was introduced into the United States during the war perod. In previous tariff acts little consideration, from a protective standpoint, has ever been given to crude botanical drugs.

The complete cutting off of imported supplies at the outbreak of the war caused the prices of crude drugs to rise to unprecedented heights, and drug cultivation in the United States attracted considerable interest. Efforts were made to cultivate several indispensable drugs which appeared suited to American climatic conditions, and considerable success was obtained with the two important medicinals, bella donna and digitalis, and, to a lesser extent, with henbane and stramonium. These products have been given a rate somewhat higher than the rate (10 per cent ad valorem) generally applied to other crude botanical drugs, so as to stimulate continued cultivation in this country.

HYDROGENATED OILS.

Within the last 10 years the process of hardening vegetable or animal oils by chemical combination of the oil with hydrogen has become of great industrial importance in the United States. By this process the oils are usually changed from liquid condition to a solid, thus becoming of more beneficial use in the manufacture of lard substitutes, oleomargarine, and in the manufacture of soap. There was no provision in the act of 1913 for these important products, and their classification has been the subject of much dispute and litigation. These hydrogenated oils, together with other chemically treated oils, have been given a separate paragraph and the general rate of 25 per cent ad valorem levied.

ESSENTIAL OILS.

In the case of essential oils, they have been given treatment very similar to that in the act of 1909, when the more important oils in this class were free of duty. These products are necessary and essential raw materials in the manufacture of perfume materials, flavors, and perfumes. However, a few of the important oils have been made dutiable at 20 and 25 per cent ad valorem. These include the oils produced in the United States, either directly or distilled from imported raw materials. The two most important in this class are lemon and orange oil, which have in the past accounted for about one-half the revenue raised under the act of 1913 in crude or essential oils. Therefore, the duty of 20 per cent on these two oils will serve as a means of protection to the domestic industry and at the same time will return about $400,000 annually in revenue.

PERFUME MATERIALS AND PERFUMES.

The present tariff bill carries for the first time a logical arrangement and gradation of duties on perfume materials and finished perfumes. The simpler products and raw materials, such as animal perfume materials (civet, musk, castoreum and ambergris,) essential oils and floral products, such as pomades, concretes and essences, have been placed on the free list. The natural or synthetic aromatic chemicals, an industry which was created and developed in the United States during the period of the war, have been given a duty of 35 per cent ad valorem in paragraph 56, as they represent a separate industry, utilizing many of the essential oils as raw materials. The compounds and mixtures of essentials oils, natural or synthetic aromatic chemicals and floral products, which require only the addition of alcohol to make them into finished perfumes, are given a rate of duty slightly less than that of finished perfumes. It is in this group of products that the classification of 1913 was particularly weak and many hundreds of thousands of dollars in revenue were lost to the Government on these nearly finished perfumes. On the finished perfume ready for ultimate consumption, the rate of duty imposed is the same as that levied in the act of 1913, which, however, is only slightly higher than the rate in the act of 1909.

FERTILIZER MATERIALS.

The crude potash salts used primarily as fertilizer materials have been free of duty since the act of 1890. Prior to the war Germany held an almost complete monopoly of the world's trade in potash, which was made possible by the possession of the only known large deposits of soluble potash salts, located at Stassfurt, Germany, and near Hulhausen, Alsace. During the war the domestic production of potash was developed to a point where it supplied about 20 per cent of our prewar consumption. The two chief producing centers, Searles Lake, Calif., and the Brine Lakes of Nebraska, are located at a great distance from the general consuming districts of the United States, namely, the South Atlantic Seaboard States.

The committee was not convinced of the advisability of putting a permanent tariff on potash salts, but has recommended that a duty be placed on this material for a period of five years, so that domestic manufacturers may have an opportunity to demonstrate whether or not a potash industry can be developed in the United States which will be able to compete with the European deposits. This duty is on a sliding scale, and will diminish from 50 cents per unit of actual potash for the first two years, to 20 cents per unit in the fifth year, and after that period all crude potash salts are to be free of duty. During this five-year period it was necessary to assess a compensatory duty of 15 per cent ad valorem in addition to the duties levied in paragraph 75 on manufactured potassium salts, which are used only for chemical purposes and not as fertilizer raw material.

The committee has recomended a duty of three-fifths of 1 cent per pound on ammonium sulphate, another important fertilizer material. The production of ammonium sulphate in the United States was greatly expanded during the war, and the production at the present time is capable of supplying the entire domestic consumption. The production of this commodity in Germany was also greatly increased during this period, primarily by synthetic processes of atmospheric nitrogen fixation. These plants, subsidized and erected by the German Government during the war as an essential part of their plan for making explosives, are now available for the production of this commercial fertilizer material. The output of these plants is far in excess of the German consumption of nitrogenous fertilizer materials and a large exportable surplus is available. The committee believes that it is essential that the domestic production of this material be adequately protected, so that there will be no danger of stifling the American industry. It believes also that the duty on sulphate of ammonia will not cause any increase in the price of this material, as it competes directly with the Chilean nitrate of soda, which has been left on the free list. A study of price quotations for these two commodities over a period of years shows that the prices parallel each other very closely.

COAL-TAR PRODUCTS.

A new and most important provision of the chemical schedule, involving as it does a change of policy from the present and former tariff laws, is that which places a limited embargo for a period of three years on the importation of coal-tar products. Though differing substantially in its administrative features it provides for the enactment of legislation similar to that contained in House bill 8078, which passed the

House in the last Congress by a large majority but failed of action in the Senate. As in that bill, it divides coal-tar products into three classes—crudes, intermediates, and finished products—leaving the crudes on the free list, and the intermediates and finished products with a substantial tariff protection of 30 per cent ad valorem and 7 cents a pound in the case of intermediates and 35 per cent ad valorem and 7 cents a pound in the case of the finished products, as against 40 per cent ad valorem and 6 cents a pound on the intermediates and 45 per cent ad valorem and 7 cents a pound on the finished products in House bill 8078.

The process of producing the crudes is comparatively simple and inexpensive, they being actually present in coal tar and only requiring isolation. Any country which, like this, has an abundant supply of coal and a great industry like the steel industry requiring much coke has an unlimited supply of the raw material, and the crudes require, therefore, no protection; but with regard to the intermediates the situation is entirely different. Their production requires the most elaborate chemical processes, which can be carried out only by men of profound chemical knowledge and long experience, and such men are not yet available in this country in sufficient numbers. This is still more true in the case of the finished product, which may take any one of six different forms by further chemical processes. Thus intermediates may be converted into perfumes, pharmaceuticals, tanning materials, high explosives, poison gases, or into dyes. These finished products, therefore, requiring as they do further labor and chemical skill of a class very plentiful in Germany but still limited in this country, need at least a somewhat greater measure of protection than the intermediates.

The processes of manufacture of dyes, explosives, and chemical gases are absolutely interdependent. Once having obtained, for instance, a certain intermediate by a long series of elaborate and complicated chemical processes it may be converted into sulphur black, one of the most widely used dyes, or into picric acid, one of the most important and necessary high explosives. The technical knowledge and skill, the materials, and the apparatus necessary to make high explosives and poison gases and their antidotes are precisely what are to be found in any well-equipped dye works and nowhere else. A nation, therefore, which has a thoroughly complete dye industry capable of supplying its dye needs is always prepared for defensive or offensive war so far as the production of explosives and chemical gases is concerned, and the experiences of the late war have proved that without these chemical essentials any nation under modern conditions is impotent either in attack or defense.

If, therefore, as seems likely, we are entering upon a period of international disarmament, possession of such an industry becomes of infinite importance. During such a period a nation possessing such a potential arsenal would be in a position to overwhelm any nation less well endowed and would be practically immune from attack.

Of perhaps equal importance from another point of view in the case of this industry is its bearing upon the advancement of medical and industrial chemistry. It is the one industry which deals on a gigantic scale with organic chemistry, and it is upon organic chemistry that progress of modern medicine rests. Salvarsan, for instance, was developed in a dye works laboratory and is the first known certain cure for one of the most terrible scourges of humanity. Scientists confidently predict that upon further development of organic chemistry will rest the discovery of cures for tuberculosis and other devastating diseases, even such as cancer. This development must rest upon a further development in this country of skilled chemists, and it is only in a dye laboratory that large numbers of such chemists can find a livelihood.

A well-developed dye industry here will furnish a great reservoir of technically trained men and of scientific knowledge upon which the most important industries of the country may draw in time of peace and the Nation itself in time of war or threatened war.

The present dye industry in this country is absolutely a product of the late war. Up to that time Germany controlled the market of the world in dyestuffs, and such dye works as we had here were mere assembling plants for German materials and supplied only about one-tenth of the American market. To-day more than 200 different concerns are supplying something like 90 per cent of the American market for coal-tar products in quantity, though not in value. The absolute necessity of saving and fostering such an industry as this would seem to be beyond argument, and the only question that should arise is by what legislative method can its permanent continuance be assured?

Your committee is of the opinion that no tariff duties, no matter how high, can meet the conditions that would arise when Germany is again in a position to force her dyes and dyestuffs upon the American market. However other German industries may have suffered as a result of the war the German dye syndicate is as rich and powerful as ever. The great dye factories during the war were turned over to the production of explosives and poison gases and the chemists and laborers in these factories were immune from the draft. A vast amount of dyes and dyestuffs has been accumulated in recent years and their factories are now running at full time in the production of others and the whole huge German dye industry, capable before the war of supplying the entire demand of the world, is now combined in a single immense trust organized on purpose to fight its way back to the former German world monopoly.

Utterly unscrupulous as the German syndicate was before the war when its supremacy was uncontested, practicing ruthlessly every form of corrupt and unfair competition known to commerce it is inevitable that in the almost immediate future, when instead of safe supremacy it faces possible destruction, it will attack all competitors with reckless disregard of business decency.

That attack inevitably will be concentrated upon us. France and Japan some time ago in the interest of their Government-aided dye industries placed more or less complete embargoes upon the importation of dyestuffs. Only recently Great Britain and Italy have placed a complete embargo upon dyestuffs—in the case of Great Britain for a period of 10 years. Russia is out of business. The market of the United States, therefore, is, except that of China, Germany's last opening. To penetrate it and destroy our domestic industry she will stop at nothing.

Under such conditions your committee is of the opinion that nothing short of a limited embargo will enable the American dye industry to continue in existence. The provisions contained in this bill have been very carefully drafted not only in the interests of the producer but particularly in the interest of the consumer of dyes. Against the so-called licensing system as contained in House bill 8078 strong objections were advanced by some of the consumers of dyes. The license system, therefore, has been entirely discarded. The restriction on the importation of dyes is confined in this bill only to such dyes as are now obtained in the United States on reasonable terms as to quality, appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses, and for other purposes'', approved November 4, 1918, to make certain orders such as that herein contained, I hereby, in the public interest, make the following determination and order:

The Alien Property Custodian is hereby authorized to sell at private sale, at such time and place as to him or to his authorized agent may seem advisable, without public or other advertisement, Nine Hundred Eighty-Nine (989) shares of the common capital stock of the Busch-Sulzer Brothers-Diesel Engine Company, a corporation organized under the laws of the State of Missouri, out of a total issue of Twelve Thousand Five Hundred (12,500) shares of the par value of One Hundred Dollars ($100.00) each, which said Nine Hundred Eighty-Nine (989) shares were heretofore seized by the Alien Property Custodian under the provisions of the said Act, as the property of Rudolph Diesel, Jr., of Munich, Germany.

My reasons for the foregoing determination and order are:

(a) That property such as that herein described cannot usually be sold to advantage at public sale after public or other advertisement.

(b) That advantageous offers, all of Forty Dollars ($40.00) a share, have been received by the Alien Property Custodian for the purchase of the said Nine Hundred Eighty-Nine (989) shares.

(c) That the said Rudolph Diesel, Jr., has expressed his assent to the sale of the said Nine Hundred Eighty-Nine (989) shares at the price offered.

(d) That an attempted sale at auction would be a useless formality and would involve unnecessary expense, delay and inconvenience, which should be avoided.

WARREN G. HARDING.

THE WHITE HOUSE,
Dec. 11th, 1922.

[No. 3764.]

DEFENDANT'S EXHIBIT No. 300.

PAMPHLET ENTITLED "THE FUTURE INDEPENDENCE AND PROGRESS OF AMERICAN MEDICINE IN THE AGE OF CHEMISTRY."

Note: Same as Defendant's Exhibit No. 97.

[Not printed.]

DEFENDANT'S EXHIBIT No. 301.

PAMPHLET ENTITLED "AIMS AND PURPOSES OF THE CHEMICAL FOUNDATION, INCORPORATED, AND THE REASONS FOR ITS ORGANIZATION."

[Not printed.]

DEFENDANT'S EXHIBIT No. 302.

UNITED STATES *vs.* CHEMICAL FOUNDATION INC.,

LIST OF ORIGINAL SUBSCRIBERS TO THE UNDERWRITING OF THE STOCK OF THE CHEMICAL FOUNDATION INCORPORATED.

MEMBERS OF THE AMERICAN DYES INSTITUTE

Althouse Chemical Company	$500.
American Aniline Products	1,000.
Ault and Wiborg Company	5,000.

Butterworth Judson Corp.,	$10,000.
John Campbell Co. Inc.,	5,000.
Commonwealth Chemical Corporation	500.
Dicks, Davis Co., Inc.	500.
E. I. duPont de Nemours & Co.	125,000.
Dye Products & Chemical Co.	500.
Consolidated Color & Chemical Co.	10,000.
Dow Chemical Company	500.
Essex Aniline Works	600.
Grasselli Chemical Co.	30,000.
Heller & Merz Co.	20,000.
Marden, Orth & Hastings Corp (Calco Chemical Co.)	50,000.
Merrimac Chemical Co.	20,000.
Metals Disintegrating Co. Inc.,	500.
Monroe Color & Chemical Co.	500.
Geo. H. Morrill Co.	500.
National Aniline & Chemical Co.	37,500.
Naugatuck Chemical Co.	500.
Sherwin Williams Co.,	5,000.
U. S. Color and Chemical Co.	3,000.
Monsanto Chemical Works	500.

Total Number — 24. Total Amt. $327,100. 24 $327,100.

Original Subscribers who were not
Members of the Institute at that time
but who Subsequently Joined it.

Atlantic Dye Stuffs & Chemical Co.	500.
Barrett & Company	10,000.
The Newport Company	20,000.

Total Number— 3. Total Amt. $30,500. 3 30,500.

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Original Subscribers who were not Members and who never Joined the Institute

Central Dye Stuff & Chemical Co.	$10,000.		
General Chemical Company	50,000.		
General Electric Company	1,000.		
Hooker Electro Chemical Co.	10,000.		
H. A. Metz Laboratories Inc.,	10,000.		
The Rector Chemical Co.	500.		
Roessler & Hasslacher Chemical Co.	1,000.		
Semet Solvay Company	10,000.		
Tartar Chemical Works.	500.		
Total Number— 9. Total Amt.	$93,000	9	$93,000.
		36	$450,600

There were ultimately 158 stockholders, the total number of those who were members of the American Dyes Institute being 31. The remaining 127 stockholders were divided among numerous trades such for instance as heavy oils and chemicals, textiles, steel, aluminum, cotton oil, importers, electric, ceramics, food products, tires, iron, bleachers, pharmaceuticals, finishers, salt, machinery, industrial alcohol, pulp and paper, etc.,

NOTE

Later when the stock subscription was extended there were four subscribers who subsequently became members of the Institute.

Abbott Laboratories	$1,000.
Hayden Chemical Works	1,000.
Peerless Color Co. Inc.,	1,000.
Zinsser & Co.,	1,000.

Neither at the time when the stock was underwritten nor afterwards did any of the following members of the American Dyes Institute subscribe:

Atlas Color Works
Beacon Color & Chemical Co.,
Certified Chemical Corp.,
Frank Hemingway Inc.,
Holland Aniline Co.
Chemical Company of America.
Holliday Kemp Co.,
Hydrocarbon Chemical Products Co.
H. Kohnstann & Company
Organic Salt & Acid Co.,
Transatlantic Chemical Corp.,
Zobel Colors Works Inc.

DEFENDANT'S EXHIBIT No. 303.

Constitution and By-Laws of American Dyes Institute as Amended.

American Dyes Institute

Constitution

Article I.

NAME.

The name shall be American Dyes Institute.

Article II.

OBJECTS.

A. To promote and encourage the manufacture and use of American dyes; to co-operate with Congress, the Tariff Commission, the Federal Trade Commission and all governmental agencies to secure protection against unfair competitive methods by foreign producers who at the conclusion of the war may seek to destroy a new and necessary industry and to again monopolize the American market, not only in dye stuffs but in chemicals essential to national protection.

B. Publicity in the transaction of business, and cordial and friendly relations among members, by means of monthly and other stated meetings, thereby removing, so far as possible, misunderstandings and ill feelings due to the spreading of false reports and baseless charges and ignorance of conditions prevailing in the industry.

C. To collect and disseminate accurate information relating to the manufacture and sale of dyes and chemicals and kindred products, to the end that each manufacturer, whatever his output, may be on equal footing with other manufacturers with respect to the data necessary for the intelligent conduct of his business, on the belief that a policy of publicity in trade is better than one of secrecy, and in the hope that through the distribution of authentic and statistical information, manufacturers may be enabled more accurately to gauge the flow of supply and demand, and thereby keep their works in more constant operation and give labor more steady employment.

D. To co-operate with the Federal Trade Commission to expose and suppress unfair methods of competition.

E. To devise a scientific system of cost accounting, to the end that every one engaged in the industry may accurately know the cost of his output. In this connection, it is not the purpose of the Institute to impose upon any member any cost items or to use in any manner the cost system as a means for controlling prices.

F. The bringing out into the open of all competitive conditions and the introduction of the open-price policy, to the end that whatever price information is distributed will be absolutely accurate and confined to sales and prices that have been actually made. Nothing herein stated permits any member of the Institute to file any information regarding any price he expects to make or would like to obtain.

G. The standardization so far as practical of Dyes to the end that wasteful duplications and wasteful production of many shades differing very slightly one from the other may be eliminated or minimized and also to the end that the manufacturer best situated and best equipped to produce certain dyes may confine his attention as far as possible to the dyes he can most economically produce.

It is a fact at the present time that with the rapid growth of the industry due to war conditions manufacturers are attempting to produce a variety of dyes much larger in number than they can possibly hope to produce and sell under normal peace conditions; therefore, the conservation of resources and the firm establishment of the industry demand that the most careful consideration be given to the particular advantages each manufacturer may have for making a particular product. Without attempting any arbitrary allotment or apportionment of the business, the development of accurate cost and price statistics will enable each manufacturer to determine for himself wherein he can supply the public at the lowest cost.

NO PENALTIES.—There are no penalties of any kind or character connected with the operation of the Institute. Members may or may not file information called for by the Reporting Plan hereinafter set forth; if they do not file they get no information; if they do file, they get like information in return.

NO SECRECY.—There is nothing secret about either the meetings or the operations of the Institute. All its proceedings are reduced to writing and carefully preserved in the minutes. Customers may attend meetings and become familiar with the operations of the organization. Members are free to invite competitors, who are not members, to attend meetings.

No Restraint.—Nothing in the plan or operation of the Institute shall be understood or construed as directly or indirectly restraining the freedom of any member to at all times quote such prices and terms as he pleases, each member being free to compete for business as he would be if the Institute did not exist.

Article III.

OFFICERS.

Section 1. The officers shall be a President, a Treasurer, and one Secretary for the Open Price Division of the Institute, and one Secretary for the General Work of the Institute.

The election of the Secretaries, together with their compensation, shall be named by the Executive Committee, subject to the approval of the Institute; the Executive Committee may in its discretion combine the work of the two Secretaries in the office of one Secretary.

Section 2. There shall be an Executive Committee consisting of the President and seven members.

The Executive Committee shall have power to increase its number.

The Executive Committee shall have the selection of the Secretary or Secretaries, the fixing of their compensation, and also the retaining of counsel at such compensation as may be agreed upon—all subject to the approval of the Institute.

Section 3. A Board of Governors which will include the members of the Executive Committee, and will represent as nearly as possible as many different states, and as many different branches of the industry as possible. The Board of Governors will name the members of the Executive Committee and unless otherwise provided by resolution of the Institute, or of the

Board of Governors, the members of the Executive Committee and the members of the Board of Governors will hold office for one year or until their successors are appointed.

ARTICLE IV.

MEMBERS.

Section 1. Any corporation, firm or individual engaged in the manufacture of Dyes and intermediates and kindred products in the United States is eligible to membership and may become a member by being proposed by any member of the Institute and approved by the Executive Committee and duly elected by a majority of the members present at any regular industry meeting.

Section 2. Application for membership and resignations must be transmitted in writing to the Secretary.

Section 3. The annual dues shall be $250 for each member, payable on January 1st, or at such other times as the Executive Committee may fix.

Section 4. No member need become a member of the Open Price Section unless he expresses in writing his desire to be so included.

All expenses occasioned by and properly chargeable to the Open Price Plan shall be borne by those members who signify their desire to be members of the Open Price Section.

The expenses incidental to maintain the Open Price Section shall be ascertained by a Committee of four, made up of two members who are not members of the Open Price Section, and when the budget of the Open Price Section is so determined same will be raised by assessments upon members of said Section, said assessments to be made in accordance with the judgment and discretion of the Executive Committee.

ARTICLE V.

MEETINGS.

Section 1. The regular meetings of the Institute shall be held on the first Tuesday of each month, or at such dates and places as the Executive Committee shall name.

Due notice of meetings shall be sent by the Secretary to each member at least ten days in advance of such meetings.

Section 2. A majority of the members, when present at any meeting, shall constitute a quorum.

Section 3. The meeting held in the month of January of each year shall be the annual meeting of the Institute.

All meetings of the Institute shall be open to members, competitors and customers.

ARTICLE VI.

ELECTION OF OFFICERS.

The election of officers shall take place at the regular annual meeting in January. Those having a majority of the votes of those present shall be declared elected.

ARTICLE VII.

AMENDMENTS.

Amendments to these articles may be proposed at any regular or special meeting. Due notice of such amendments shall be sent by the Secretary in writing to each member at least ten days in advance of the meeting at which such amendments are to be voted upon, and an amendment to be adopted must receive at least a two-thirds vote of the members present.

ARTICLE VIII.

FREEDOM OF TRADE.

No member shall enter into any agreement or understanding of any nature or kind whatsoever, the object of which is to restrain trade, limit competition, regulate prices, or do any act which is contrary to the spirit and letter of the law, or which is contrary to the objects of the Institute, as set forth in this constitution.

BY-LAWS.

Section 1. PRESIDENT. It shall be the duty of the President to preside at all meetings of the Institute and of the Executive Committee, to appoint all committees not otherwise provided for, and in case of the equal division of the members on any question, to cast the deciding vote. He shall also have power to call the Executive Committee together at such time and place as he may select and, upon the written request of five members, he shall be required to call a special meeting of the Institute.

Section 2. BOARD OF GOVERNORS. It shall be the duty of the Board of Governors to name the members of the Executive Committee, and perform such other duties as may be assigned to them by the Institute.

Section 3. TREASURER. It shall be the duty of the Treasurer to collect and receive all moneys of the Institute, to pay all orders for money, when countersigned by the Secretary, and to keep a correct record of the receipts and disbursements, an abstract of which, together with the necessary vouchers, he shall exhibit at the regular January meeting, or whenever called upon by the Executive Committee.

Section 4. SECRETARY. It shall be the duty of the Secretary to keep a careful record of the transactions of the Institute and of the Executive Committee, to notify all members at least five days in advance of the times and places of all meetings, to examine all bills and countersign all orders on the Treasurer, to conduct correspondence, to collect information contemplated in the Constitution and Reporting Plan, and to perform such other duties as may be assigned to his office.

In the event two Secretaries are named by the Executive Committee it shall be the duty of one Secretary to perform such duties in connection with the Open Price Division as may be assigned to his office by the Executive Committee or the Institute, and it shall be the duty of the second Secretary to perform such general and other duties as may be assigned to his office by the Executive Committee or the Institute.

Section 5. EXECUTIVE COMMITTEE. The Executive Committee shall have the management of the affairs of the Institute and, subject to the approval of the Institute, fix the dates and amounts of assessments. They shall also, subject to the approval of the Institute, fix the compensation and terms of employment of the Secretary or Secretaries, employ counsel, and provide for such other expenditures as may be necessary.

Section 6. MEMBERSHIP. Applications for membership may be acted upon at each monthly meeting, due notice of application having been given to the Secretary at least ten days before the meeting at which action shall be taken, so that the Secretary can notify the members of such application.

Section 7. VOTING POWER. Members may be represented at any meeting by authorized delegates, who shall be entitled to full rights and privileges of the members they represent, but only one vote shall be cast on behalf of each member.

Section 8. DROPPING OF MEMBERS. By a two-thirds vote of the members present at any meeting, a member, providing he has been given ten days' notice of the proposed action and an opportunity to be heard, may be dropped for failure to pay any assessments within thirty days after same are made, or for failure to conform to the constitution and the by-laws, or for filing false or misleading information.

Section 9. REGULAR COMMITTEES. The following committees will be appointed by the Executive Committee:

Committee on Standardization.
Committee on Cost Accounting.
Committee on Trade Promotion.

Section 10. ORDER OF BUSINESS. The order of business shall be as follows:

1. Calling the roll.
2. Reading of the minutes.
3. Reports from members of conditions affecting the industry.
4. Election of new members.
5. Reports of officers.
6. Reports of committees.
7. Receiving of communications.
8. Unfinished business.
9. New business.
10. Election of officers.

Section 11. AMENDMENTS TO BY-LAWS. Amendments to by-laws may be proposed at any regular or special meeting. A copy of such proposed amendment must be sent to each member by the Secretary, in writing, at least ten days in advance of such meeting. To adopt any amendment it must receive a two-thirds vote of the members present.

REPORTING PLAN.

The following plan is suggested for the gathering and distribution of accurate production and price information:

For the time being the Reporting Plan *covers only Dyes and Intermediates.*

1. CONTRACTS. Each member will file with the Secretary on April 1st, 1918, copies of, or full particulars

regarding, all his contracts then outstanding for Dyes and Intermediates.

This information will be immediately interchanged by the Secretary among members filing contracts with the same customer, covering substantially the same materials.

2. On and After April 1st, 1918, each member will file *daily* a copy of every contract which he may make and this information will be immediately interchanged among members who have on file, or who make contracts with the same customer for substantially the same Dyes or Intermediates.

3. ORDERS. Each member will file from day to day a copy of every order he books for Dyes or Intermediates beginning with April 1st, 1918.

If any special terms, concessions or inducements of any kind or nature are given to secure the order same must be reported in detail with the order.

This information will be interchanged among members.

(a) who have contracts in effect with, or

(b) who file orders from the same customer for substantially the same materials.

4. QUOTATIONS. On and after April 1st, 1918, each member will report to the Secretary each day full particulars regarding every quotation, verbal or written, he or any of his representatives may make on Dyes or Intermediates. If quotations are made verbally, members are earnestly urged as a matter of sound business practice to confirm such quotations in writing and send a copy of such confirmation to the Secretary.

This information will be interchanged among members.

(a) Who quote the same customer upon substantially the same Dyes or Intermediates;

(b) Also, with members who have on file contracts with the same customer covering substantially the same materials;

(c) Also, among members who have on file unfilled orders from the same customer covering substantially the same materials.

(But to simplify the exchange at the outset and until further directed, the Secretary will *not* exchange

(b) Contracts

(c) Orders

on file with quotations; that is to say, orders and contracts with the same customer covering substantially the same materials will be interchanged, but at the outset a quotation to a customer will not entitle the party quoting to information regarding actual orders and contracts on file with that customer even though they cover substantially the same materials.)

It will thus be seen from the paragraphs providing for interchanges of information regarding contracts, orders and quotations that no information regarding any contract, order or quotation filed by a member is sent to any other member unless such other member has on file a contract, order or quotation to the same customer covering substantially the same Dyes and Intermediates.

The complete filing and prompt distribution of the information covered in paragraphs 1 to 4, inclusive, will not only make a valuable statistical price record in the Secretary's office, which will be available at all times to the Federal Trade Commission, the Tariff Commission and any Committee of Congress interested in fostering the American dye industry, but it will also tend to minimize speculative and overbuying, which is one of the evils of the industry at the present moment, and unless eliminated no accurate statistics regarding the real requirements of the industry can be compiled.

It is important that each member in filing his reports of contracts, orders and quotations so describe his product that the Secretary can identify same correctly, and make the proper interchanges. If the Secretary is in doubt regarding the substantial identity of the products covered by any two or more contracts, orders or quotations, he will not make the interchange but will ask the members to describe more particularly the products intended to be covered.

There is nothing in the plan or workings of the Institute to directly or indirectly deter members from making such prices, and such terms, and such changes in same as each sees fit. After a member receives, through the operation of the Reporting Plan, information regarding another member's prices, or terms, and finds same are lower than his own, he is at liberty to change his own prices and terms as many times as he sees fit, precisely as if the Institute did not exist.

In the event any member revises his own prices and terms, after receiving information through the open price plan regarding the prices and terms of other members he will, in all fairness, immediately file his changes and revisions, to the end that such other members may have opportunities to revise their prices, and still further compete for the particular business.

In the event that any member sees fit to withhold any information regarding his quotations or orders, he is at full liberty to do so, but if he does do so he will notify the Secretary to that effect, and notice will be sent to the other members, and there will be no price information interchangeable with that member until he notifies the Secretary that he resumes.

Note: No information regarding prices or revisions thereof, are sent to the Secretary in *advance* of the actual making or mailing of same to customer.

On Government orders, and contracts let by states, cities and public corporations generally, the bids, if filed, will be held by the Secretary, and no information interchanged or given out until after the day and hour fixed by the public body for opening and letting.

Inasmuch as it is the object of the Institute to induce private parties to adopt the open policy pursued by the Government, it is provided, that where any buyer or purchasing agent pursues the Government policy, namely, asks for bids in good faith, naming the date and hour when same will be opened, in the presence of bidders and the order then and there given to the lowest bidder, the Institute will not interchange any information regarding bids and prices until after the date and hour fixed. But where the private buyer pursues the policy of asking for bids with no intention of letting the contracts in good faith to the lowest bidder, but with the intention of using the bids to play one bidder against another by making perhaps misleading statements regarding the bids he has received with the result that very often the lowest bidder is induced to cut his own bid under the impression the purchaser has a lower price when he has not, the Institute interchanges the information, as above described, in order that all bidders may be on a footing of equality with the purchaser in all negotiations.

PRODUCTION STATISTICS.

(*The following are suggestions for future consideration. At the start these reports will not be called for.*)

1. Each member will file on blanks to be specially

prepared, a weekly report of his production of each Dye and Intermediate.

This information the Secretary will combine in a statistical summary which will show the *total* production of each Dye and each Intermediate, without disclosing the data filed by each member. This weekly summary will be sent to each member.

2. A weekly report of Work Ahead expressed in days, weeks or months on each class of products.

The object of this report is to show in a general way, but also as accurately as possible, about how many days', weeks' or months' work ahead each member has for a particular Dye or Intermediate or a particular class of Dyes or Intermediates as may be most convenient. Suitable blanks will be worked out and distributed to the members.

This information the Secretary will compile on a sheet which will give the name of each member with the work ahead such member has for each particular class of Dyes and Intermediates, and copies of said sheets will be mailed to all members.

At the outset it cannot be too often repeated that members may or may not file the information covered by the Reporting Plan and all arguments against filing information are best answered by the simple statement, "If you do not wish to file, there is no obligation to do so." But each member will state of record on the minutes to what extent he does or does not file, so there may be no misapprehension regarding the attitude of his company.

DAILY BULLETIN.

(When the Daily Bulletin will commence will be decided at a future meeting.)

The Secretary will compile at the close of each day a brief bulletin which will show all quotations, orders and contracts filed in his office during the twenty-four hours previous and a copy of this bulletin will be sent to each member whether such member is filing any information or not. The bulletin will *not* give the name of either the members who file the price information or customers to whom prices are made. It will simply show under the head of *Quotations* all the different quotations made during the twenty-four hours previous on all the Dyes and Intermediates covered and under the head of *Closed Business* all prices obtained in orders and contracts filed.

If all manufacturers contribute to the Reporting Plan, it is obvious that this bulletin will be very much like the reports of the New York Stock Exchange, showing simply so many closed transactions with the amounts and the prices but without the names of either sellers or buyers. It would go one step farther than the Stock Exchange report in that it would also show all quotations—offers to sell—without the name of the manufacturer quoting or the customer to whom the quotation is made.

In short, the bulletin is a daily price current made up from *actual* prices.

DEFENDANT'S EXHIBIT No. 304.

Ramsay Hoguet
149 Broadway,
New York City.

New York, February 25, 1919.

Capt. W. H. Swenarton,
Office of the Chief of Ordnance,
Nitrate Division,
Washington, D. C.

Dear Sir:

Referring to your letter No. 108570 enclosing list of Badische Aniline & Soda Fabrik patents in which the Nitrate Division is interested, I believe that all of these patents have already been demanded and are therefore in the possession of the Alien Property Custodian and that the United States can therefore be released from claims under such patents.

I will have the list in your letter checked against the demands issued, to ascertain whether all of the patents have been demanded, and as soon as this is done will take up the matter of releasing the Government.

Will you kindly advise whether a title search has been made on each of the patents contained in your list to ascertain whether they are now owned by the Badische Company, as this office is informed that a large number of patents relating to the fixation of nitrogen formerly owned by the Badische Company were assigned to a Norwegian Company some time prior to the war.

Will you please convey to Major Holcombe my regrets at being unable to see him when I was in Washington last week. I was unfortunately recalled to New York by a matter of some urgency on Friday. I shall probably be in Washington towards the end of this week and will endeavor to call upon Major Holcombe at that time.

Yours very truly,
(Sgd.) RAMSAY HOGUET.

RH:P

DEFENDANT'S EXHIBIT No. 305.

P. S. & T.—072-15. M.P.B. 072/25 (Enemy Owned)

WAR DEPARTMENT
Chemical Warfare Service, U. S. A.
Unit F, Floor 3
Seventh and B Streets NW.
Washington, D. C.

MTB/BEH
April 21, 1919.

From: Marston T. Bogert, Colonel, C. W. S., U. S. Army.
To Major A. C. Holcombe, Room 237, State, War and Navy Building, Washington, D. C.
Subject: Ownership of Alien Enemy Patents.

1. Replying to your inquiry as to the attitude of the Chemical Warfare Service towards the question of whether enemy alien patents should be transferred to the Chemical Foundation, Inc., or to be taken over by the Government, the Director of the Chemical Warfare Service is out of town and, as I have no authority to speak for the Chemical Warfare Service, I can but express my own personal viewpoint.

2. The most important desideratum is that these patents should be so handled as to result in the greatest good to the greatest number of our people; that is they should be made of some real use. It is believed that this can be realized by vesting the ownership of these patents in the hands of those who are in the best position to make use of the same in the development of our own American chemical industry, and that the Chemical Foundation, Inc., represents such a group.

3. Under the impetus, opportunities, and necessities of war conditions, American chemical industry

has expanded and developed most inspiringly and we are in a position not only to take care of our own domestic needs in most directions, but are also ready to compete in the world's markets for trade in commodities hitherto largely controlled by Europe.

4. For the protection of our own domestic markets, and to secure our fair share of the world's post-war international commerce, it is essential that these enemy alien patents be made actually *available* for our chemical manufacturers.

5. Government ownership, while theoretically attractive, unfortunately is apt to involve such difficulties, complications and impediments of administration, such delays in getting definite action, and such possibilities of blighting political influences, that the patient may die before the remedy is finally and officially released. The results to date of Government ownership of our railroads, telephones, cables, etc., are not such as to arouse any great enthusiasm for further experiments along that line.

6. It is the understanding of the writer that, in the event of the ownership of these patents passing to the Chemical Foundation, the latter executes whatever licenses may be requested by the Government to enable the latter to itself manufacture or to contract with manufacturers without payment of royalties or to make whatever other arrangements the Government may deem necessary to safeguard its rights.

7. As a considerable number of patents already have been transferred to the Chemical Foundation, the point is raised whether a change of policy now may not introduce difficulties in the event that any of the patents taken over by the Government bear vitally upon those already held by the Chemical Foundation.

8. In the war experience of the writer as a member of the National Research Council, of the War Industies Board, and of the Army, he has encountered

no more patriotic group of citizens than our chemical manufacturers. Almost without exception they have done everything in their power to help their country. Many of them are thousands of dollars poorer as the result. A few, I understand, have been financially ruined through delays in securing from the Government money justly due them. In the contracts of the Chemical Warfare Service for gas masks, the Goodrich Rubber Company was the only one making certain of these parts at first. When later it became necessary to make a greatly increased number, and in order that the Government should not be dependent upon a single source of supply, the Goodrich Rubber Company voluntarily communicated to its competitors, the Goodyear Tire and Rubber Company and the U. S. Rubber Company, the results of its experience and experiments, as well as cost data, to enable the latter to bid intelligently for portions of the contract. Other similar cases might be cited.

9. On the whole, my feeling is that if the alternatives are (1) extensive use by a "chemical trust" or (2) restricted use because of Government ownership, that the former alternative is preferable.

10. While what is written above refers particularly to chemical patents, if other patents of interest to the Chemical Warfare Service are to be taken over by any group of Civilians, it would appear that the Chemical Foundation, Inc., is the appropriate one for the purpose.

(Sgd.) MARSTON T. BOGERT,
Colonel, Chemical Warfare Service,
U. S. Army.

DEFENDANT'S EXHIBIT No. 306.

P. S. & T. 072-15 M. P. B. 072/23 (Enemy Owned)

Room 2541,
Munitions Bldg.

WAR DEPARTMENT
PURCHASE, STORAGE, AND TRAFFIC DIVISION
GENERAL STAFF
WASHINGTON

April 21, 1919.

From: Chief, Patents Section, Purchase Branch, Purchase, Storage, & Traffic Division.
To: Munitions Patents Board.
Subject: Seizure of Patents by the Alien Property Custodian Covering Inventions of Value to the War Department.

1. With reference to a communication from this office to the Munitions Patents Board, dated April 18, 1919, with reference to the above matter, there is transmitted herewith for the consideration of the Board letter of even date herewith from Colonel Marston T. Bogert, Chemical Warfare Service, dealing particularly with the disposition to be made of chemical patents.

2. This communication also should be considered in connection with the other papers bearing upon this matter in determining the policy of the War Department with reference to chemical patents and other patents seized by the Alien Property Custodian.

By authority of the Chief, Purchase, Storage & Traffic Div.

(Sgd.) A. M. HOLCOMBE,
Major, Ordnance, U. S. A.
Chief, Patents Section, Purchase Branch,
P. S. & T. Div.

1 Inc.
P. S. & T. 072-15

DEFENDANT'S EXHIBIT No. 307.

Munitions Bldg. AMH/ljl
Room 2541

May 1, 1919.

MEMORANDUM FOR COL. HILTON.

Subject: Alien Enemy Patents.

1. I have considered your query with reference to Major McMeekin's memorandum of April 28, 1919, enclosing communication from the Chief Metallurgist of the Bureau of Mines with reference to chemical, mill and metallurgical patents submitted to him for recommendation as to their value to the Government.

2. An examination of these patents with a view to ascertaining their real value, both from the standpoint of the subject matter shown and described and from the standpoint of the protection afforded by the claims of the patents, would, of course, be a very laborious undertaking, and the Bureau would hardly be warranted in undertaking it.

3. Judging from the titles of the patents listed, the greater number appear to relate to commercial activities, and are not peculiar to the needs of the Government. The principal effect of the United States securing these patents would seem to be to release private owners from any liability they may be under by reason of past use of the inventions, and to permit the unrestricted use of them in the future.

4. There is no machinery existing in the Government at the present time for administering patents—that is, for granting licenses to manufacturers and filing suits against unlicensed users. The Attorney General would have to conduct any litigation which might be desirable for enforcing the rights of the United

States under the patents, and probably an Act of Congress would be required to secure the necessary funds.

5. In other words, it would be impracticable for the United States to attempt to enforce these patents, even against the former German owners if they should desire to import the patented articles into this country in competition with the United States or its licensees. Moreover, it is doubtful if the United States is authorized to grant exclusive licenses or to refuse to grant licenses to citizens requesting them.

6. If the Peace Conference should authorize the Alien Property Custodian to take over enemy-owned patents for the benefit of the United States, then the question will arise—What can we do with these patents? But unless the Peace Conference does specifically authorize the taking over of these patents, I doubt if it is good policy to secure them wholesale under the provisions of the Trading With the Enemy Act and have them transferred to the various Departments of the Government.

7. Such few patents as may be peculiar to the military needs of the War Department may be secured under the Trading With the Enemy Act without criticism, as the commercial value of such patents, outside of the use the Government has made or will make, would probably be practically nil, and the nominal consideration proposed would be sufficient to validate the transfer as a sale.

(A. M. HOLCOMBE)
Major, Ord., U. S. A.

DEFENDANT'S EXHIBIT No. 308.

Patents
McMullenOek
JMG 072

The Chairman,
Committee on Patents,
United States Senate.

Sir:

I have been directed by the President to bring to your attention the question of revising our patent laws prior to a revival of the Patent Treaty of 1909 with Germany.

Senate Bill 1838, which was reported out of the Committee some time last summer and later recommitted for public hearings, is thought to contain the legislation necessary to protect the American industrial interests incident to the revival of the above mentioned treaty.

This bill is understood to have been recommitted for public hearings because of objection having been expressed that its provisions as reported by the Committee, were discriminatory. To meet this objection an amendment to that bill was, at the request of Senator Stanley of your Committee, furnished him under date of July 19, 1921, a copy of which amendment is transmitted herewith.

At about the time the United States entered the war, and in some respects two years prior to that time, it was developed that many of the major enemy investments in this country were a far-reaching and effective plan designed to control our basic industries. It is unnecessary here to detail the facts as they were found to exist in the metal, textile, wireless, magneto, fur, optical, chemical and other industries, but it is sufficient to state that as a result of those investments and the restricted status of German owned and controlled American patents, the United States found itself in a serious situation looking to the immediate production of a great many of the important items falling under the above classifications, which were absolutely essential to the conduct of the war. Indeed the situation was so serious that the War Department found it necessary to join in an effort to secure legislation authorizing the seizure of enemy owned patents, which was later realized in the form of the Trading with the Eenemy Act and its amendments.

The War Department has a large amount of data which I think if presented will show that the situation was largely due to the concentrated efforts of the Germans covering a period of a number of years before the war in the securing of United States patents, which were unworked and unlicensed in the United States, and many of which patents were found not to fully disclose the invention as required by statute when our technical experts attempted to practice them and attain the benefits for the United States in the conduct of the war.

I realize that there may be a great deal of objection to establishing a working clause in our patent laws, and I fully appreciate that there are many angles to the situation, however, it is my view that the main object in the mind of every inventor is that he will some day during the life of his patent receive some reward for the product of his brain, and if we now provide a statute which will insure the working of a patent which the public interests demand and for which the patentee is assured of reasonable compensation, such action cannot be considered as detrimental to the property rights of our citizens or a just cause for complaint by foreign patentees.

I am inclined to think that the fundamental principle of our patent law is not so much to create property for the benefit of the individual only, but is rather for the purpose of encouraging individuals to disclose their ideas for the benefit of the country as a whole, and if in the course of events the public interest demands the use of that property, created by the granting of the monopoly embodied in a patent, the public has the right to the use of the new discovery, provided of course that reasonable and just compensation is awarded the patentee therefor.

I understand that there are incidents where some of our large industries and individuals purchased patent rights for the sole purpose of preventing their introduction to public use. There may be occasions when it might be argued that such action is reasonable and just, in the interest of vested capital, but on the whole I am inclined to think that it is selfish and not in the public interest.

The War Department is conversant with the industrial situation as it existed at the beginning of the war, and the fact that it had to go into the market and purchase unprecedented quantities of supplies of the most varied character, and that the situation with respect to the monopoly of the various classes of supplies was brought to the attention of the War Department in a very marked degree, emphasizes the necessity for legislation looking to the prevention of such a condition again arising.

National defense, as viewed in the prospective, is largely a matter of a highly developed, well balanced industry, and it was to attain this situation that the War Department found it necessary to delay as long as it did in really effectively getting into the war. There was no great difficulty in gathering together the men and training them in a comparatively short time, but the difficulty of establishing new industries to supply the munitions of war was a most stupendous task, and the various monopolies in the various classes of industries heretofore pointed out were one of the principal contributing causes to the United States not being until practically the end of the war in a position to furnish all the necessary supplies and munitions essential to the conduct of a successful, modern war.

It is my view which I cannot urge too strongly that the highest duty of a country is to maintain itself in a condition to insure its continued existence as a state, and while it is the primary duty of the War Department to foresee the requirements for national defense and to present to Congress information as it may arise from time to time touching upon that subject, I feel also that it is not inconsistent with my duties to also point out when occasion arises and the circumstances touch the national defense, the question as it affects our national industries.

Having in view this broader vision of national defense, and realizing that tariffs alone can never protect our industries under the present condition of our patent laws whereby such industries may be monopolized by foreign states through the medium of foreign owned patents, which remain unworked and unlicensed in the United States, I take this occasion under instructions from the President to urge upon you the necessity for the legislation embodied in Senate Bill 1838, as suggested in the amendment forwarded with my letter to Senator Stanley under date of August 19, 1921.

To summarize, I think it may be said that foreign patentees should be put upon notice that the United States does not propose to allow foreign inventors to come here and acquire monopolies in certain branches of industries which will force this country, when it has occasion to go to war in defense of established principles of a free and untrammeled government, to at that late date start the development of industries necessary to its defense.

Sincerely yours,
J. M. WAINWRIGHT,
The Acting Secretary of War.

Encs.—
Copy letter to Sen. Stanley, 8/19/21,
Copy amendment to Sen. Bill 1838.

DEFENDANT'S EXHIBIT No. 309.

(Copy)
WAR DEPARTMENT
PURCHASE, STORAGE AND TRAFFIC DIVISION
GENERAL STAFF
WASHINGTON

January 30th, 1920.

Mr. Robert C. Goldstein,
Chief Division of Patents,
Alien Property Custodian,
16th & P Sts., N. W.,
Washington, D. C.

My dear Mr. Goldstein:

It occurred to the writer that you might be interested to learn informally that Ordnance has made use of patents No. 12,927 improvements on hand fire arms, owned by the Deutsche Waffen and Munitionsfabriken, of Berlin, Germany, to such an extent as to have incurred a liability for royalties of something like $800,000 which somewhat substantial amount will be saved to the United States Government because of the seizure of the above mentioned patent by the Alien Property Custodian.

Yours very truly,
(Sgd.) CHARLES E. YEKMAN,
Patent Section
Purchase, Storage & Traffic
War Department.

DEFENDANT'S EXHIBIT No. 310.

(Copy of a Copy)
WAR DEPARTMENT

In reply refer
to S D 7624 March 19, 1921

From: The Secretary of War
To: The Secretary of the Navy
Subject: Patents and Copyrights—License assigned to Navy from Alien Property Custodian

1. In reply to your letter of January 21, 1921, on the above subject, you are advised that the list enclosed therewith was sent to the Chiefs of the several Supply Branches of the Army with directions to prepare and submit lists of such patents as should be included in a license to be issued to the War Department.

2. The Supply Branches were all agreed that any or all of the patents listed might be valuable to them in their work, and that it is impossible to determine in advance just which of them might be desired.

3. It is therefore requested that the entire list of patents cited be included in a license to the War Department.

4. It is also requested that one hundred copies of the list be furnished the War Department in order that they may be distributed to the sub-divisions of the Supply Branches engaged in development and research work.

P. C. MARCH,
Acting Secretary of War.

DEFENDANT'S EXHIBIT No. 311.

(Copy of a Copy)

In reply address
Bureau of Ordnance, Navy Department,
and refer to No. 37649/6 (S1)-O
ALB

NAVY DEPARTMENT
BUREAU OF ORDNANCE
WASHINGTON, D. C.

March 24, 1921

Attention—Dr. Van Doren

Subject: Patents and Copyrights—License from Chemical Foundation, Inc.

Reference (a) Letter of Chemical Foundation, Inc. to Bureau of Ord. dated Jan. 17, 1921.

Inclosure (herewith): (A) Copy of letter of March 19 from War Dept. to Secretary of Navy.

Sir:

The Bureau is forwarding herewith copy of a letter this date received from the War Department.

You will please note that the War Department desires a complete blanket license of all patents held by the Chemical Foundation, Inc.

The Navy Department has endeavored to select from the list of patents forwarded with your letter, reference (a), those which at the present time it seemed advisable to hold a license under. However, in view of the request made by the War Department, the Navy Department believes that, if practicable, a license covering all of the patents held by the Chemical Foundation, Inc. should be given to the Government of the United States as represented by the Secretary of the Navy and his successors in office.

This Bureau would be pleased to receive from the Chemical Foundation, Inc. such a license.

Your attention is invited to the 4th paragraph of Inclosure (A), letter of the Secretary of War.

Very truly yours,
(Sgd.) CHAS. B. McVAY, Jr.

Chemical Foundation, Inc.
81 Fulton Street,
New York, N. Y.

Chas. B. McVay, Jr.,
Rear Admiral, U. S. Navy,
Chief of the Bureau of Ordnance.

DEFENDANT'S EXHIBIT No. 312.

(Copy of a Copy)

In reply address
Bureau of Ordnance, Navy Department
and refer to No.
37649/8 (S1)-O
ALB

Navy Department
Bureau of Ordnance
Washington, D. C.

March 30, 1921.

Subject: Patents and Copyrights—License from Chemical Foundation, Inc.

Reference: (a) Letter of Chemical Foundation to Bureau of Ord. dated March 28, 1921.

Sir:

Receipt of your letter of March 28 in reply to the communication of this Bureau of March 24th is acknowledged.

A copy of your communication has been forwarded to the War Department for its information.

The Bureau appreciates the amount of work and time involved in the preparation of the license referred to and thanks the Chemical Foundation for its consideration in the preparation of this schedule.

In regard to the hundred copies requested by the War Department, it will be quite convenient to receive these when the new list has been completed.

The Chief of Bureau will be pleased to confer with Mr. Van Doren at such time as he may visit Washington,

Very truly yours,
(Sgd.) CHAS. B. McVAY, Jr.,
Chas. B. McVay, Jr.,
Rear Admiral, U. S. Navy,
Chief of the Bureau of Ordnance.

The Chemical Foundation Incorporated,
81 Fulton Street,
New York, N. Y.

DEFENDANT'S EXHIBIT No. 313.

Minutes of Meeting of
December 17, 1918.

A special meeting of the Munitions Patents Board was held Tuesday, December 17, 1918, 2:30 p. m. o'clock State, War & Navy Bldg., Mr. Thomas Ewing, Chairman, presided, Major A. M. Holcombe and Mr. Pickens Neagle were present.

Mr. Ewing reported the receipt of the affidavits from the Signode System, Inc.

Contract form for development work submitted by Lieut. O. W. Kennedy, Engineer Corps, Searchlight

Investigation Section, was considered. Changes were made as set forth in letter dated December 18th, 1918, to Lieut. Kennedy (M. P. B. 072.31/15).

Major R. H. Young, Bureau of Aircraft Production, Mr. J. W. Rich, Bureau of Aircraft Production, and Mr. Warden, Federal Trade Commission, took part in a discussion as to whether either of the Departments should confer with the Alien Property Custodian respecting licenses under patents that he may be selling, or the Federal Trade Commission respecting the granting of licenses to enemy owned patents. It was concluded that nothing could be done by either the Alien Property Custodian or the Federal Trade Commission that would advantageously alter the position which the Government now occupies respecting enemy owned patents, and in the opinion of the Board the taking of a license under Section 10 of the Trading With The Enemy Act would operate to take the matter from under the terms of the Act of July 1, 1918, No. 182, 65th Congress. This would be disadvantageous to the Government.

Meeting adjourned at 5:00 o'clock.

(Sgd.) K. S. EBERLE,
Secretary to the Board.

Approved:
(Sgd.) THOMAS EWING,
Chairman.

DEFENDANT'S EXHIBIT No. 314.

April 23, 1919.

Major Holcombe stated the result of a conference between Hon. Thomas Ewing, Chairman of the Munitions Patents Board, Lieut. S. R. Graves of the Ordnance Dept., Mr. Ramsey Hoguet, Patent Counsel to the Alien Property Custodian and himself at 160 Broadway, New York City, April 22, 1919 as follows:

"The following papers were submitted to Mr. Ewing in advance of the conference for his information:

Capt. Swenarton's letter of April 16, 1919 to Lieut. Sheldon H. Graves.

Major Holcombe's letter to Mr. Dorr, April 18, 1919.

Mr. Dorr's reply thereto, April 18, 1919.

Lieut. Grave's 1st Ind. on Capt. Swenarton's letter.

Letter from Col. Bogert to Major Holcombe, April 21, 1919.

Mr. Ewing stated that, in the absence of some express provision of the Peace Treaty, it is his opinion that the Alien Property Custodian can not dispossess Germans of their rights under U. S. patents except by a bona fide sale conformable to the provisions of the Federal Trading with the Enemy Act. Mr. Ewing stated that no transfer to a bureau of the Government or to a corporation organized by officers of the Government for the purpose of holding title for the benefit of the Government would be conformable to that Act. In order that a sale may be conformable to the Act, it must appear that the price was approved by disinterested persons competent to judge of the value of the patents, and that the price must represent a fair value.

Mr. Ewing stated that he sees no reason why the United States should acquire full title to enemy-owned patents, as it is only interested in extinguishing such liability as it may be under. In some cases it may be desirable to procure a license, in order to continue manufacture for the future, particularly with reference to patents which relate exclusively to war materials and have little commercial value. As to the greater number of enemy-owned patents, the commercial value is probably greater than the military value, and the effect of the United States acquiring title to such patents would be, principally, to release private concerns from liability for past infringement and future use. Mr. Ewing thinks there is no reason why the United States should assume to protect private concerns, and that it is preferable to leave such concerns to look out for themselves.

Mr. Ewing seemed inclined to favor the War Department taking advantage of any provisions which may have been or may be put into the Peace Treaty authorizing the Alien Property Custodian to dispossess Germans of their patent property; although he stated it to be his personal opinion that it would be bad policy to put a provision in the Peace Treaty authorizing such action. His view is that the War Department should keep clear of the matter, and that the Alien Property Custodian should assume the entire responsibility for whatever action is taken.

Mr. Hoguet stated that the Alien Property Custodian has no particular interest, one way or the other, in the disposition made of German-owned patents of interest to the War Department. He stated, further, that the Chemical Foundation had no desire to take over patents generally outside of those relating to chemical matters, but that it would take over other patents if the War Department or the Navy Department should urge it strongly to do so. He stated that the directors had not adopted any policy with reference to licensing the United States, although it is expected that a free license will be given to the United States, but not to contractors manufacturing for the United States.

Mr. Hoguet further stated that he would await a request from the War Department before taking further action with reference to patents already seized relating to war inventions.

Major Holcombe requested Mr. Ewing to formulate his ideas in a communication which can be presented to the Secretary of War along with the other papers bearing on the matter, for consideration, in order that some policy may be adopted with reference to the disposition to be made of enemy-owned patents relating to war materials.

The organization of a corporation similar to the Chemical Foundation for the purpose of taking over munitions patents and other patents non-chemical in nature of interest to the War Department was not discussed in detail, because of Mr. Ewing's opinion that a transfer to such a corporation would (if controlled by the War Department) be open to the same objections as a transfer to the War Department itself."

After further consideration, the Board is of opinion that the War and Navy Departments should cooperate with the Alien Property Custodian in the selection of patents; and that the Alien Property Custodian should continue, conformably with law, the seizure and disposal of patents of interest to the two Departments; and further, that such patents should not be transferred to either of the Departments unless provision can not be made by the Alien Property Custodian for transfer to private parties at whose hands the interests of the Government would receive proper consideration.

Meeting adjourned at 5:00 p. m. o'clock.

(Sgd.) K. S. EBERLE,
Secretary to the Board.

Approved:
(Sgd.) Pickens Neagle,
Acting Chairman.

DEFENDANT'S EXHIBIT No. 315.

Minutes of Meeting of
February 10, 1919.

At a regular meeting of the Munitions Patents Board, held Monday, February 10, 1919, at 2:30 p.m. o'clock, State, War, & Navy Bldg., Mr. Thomas Ewing, Chairman, presided and Major A. M. Holcombe and Mr. Pickens Neagle were present.

* * * *

The Board considered the reply of the Judge Advocate General to its recommendation dated January 28, 1919 (M.P.B.072.3/2—Grant & Morse) that authority be given the Bureau of Aircraft Production to furnish certain information stated to be in that Bureau's possession asked for by Mr. Vernon M. Dorsey in his letter of January 15, 1919 (M.P.B. 072.3/1—Grant & Morse). The Judge Advocate General was of the opinion that the information asked for has a bearing on a claim and in view of the policy of the Department should be withheld. The policy referred to is based on Army Regulations, Par. 824.

As it is purely a matter of policy, the information asked for not coming within any statutory restrictions known to the Board upon furnishing information to claimants, the policy indicated by the Judge Advocate General seemed to be unwise.

The Board recommended that the information asked for be transmitted to Mr. Dorsey by the Bureau of Aircraft Production, and a letter to this effect was written to the Secretary of War for approval (M.P.B. 072.3/3—Grant & Morse).

* * * *

Mr. W. T. Gordon, of the office of the Alien Property Custodian, called and the Board discussed the questions arising in connection with the sale by the Alien Property Custodian of enemy owned patents and the right to collect for existing claims against the United States Government under the patents. The suggestion was made that Section 3477 of the Revised Statutes prohibits the assignment or sale of unliquidated claims against the United States. (See Act of July 29, 1846, Chap. 66, 9 Stats., 41; Act of Feb. 26, 1853, Chap. 81, Section 1, 10 Stats., 170, Prohibiting transfer or assignment of any claim upon the United States, Etc.)

Mr. Gordon stated that he would report the suggestion to Mr. Palmer, the Alien Property Custodian.

A communication dated February 7, 1919 (M.P.B. 072.6/8—Enemy Owned) from the Chief of Ordnance to the Assistant Secretary of War with reference to the sale of enemy owned patents forwarded to the Board for action and report by Mr. Dorr was read by Major Holcombe.

The Board was of the opinion that no sufficient reason had been shown to cause it to change its recommendation of Dec. 17, 1918 with reference to the policy of the War and Navy Departments to be followed in connection with the sale of enemy owned patents.

The letter was referred to Major Holcombe for investigation and report.

* * * *

The reply of the Scovill Mfg. Company dated Feb. 6, 1919 to the proposal of the Board dated January 28, 1919 suggesting the payment of \$168,750.00 in full settlement of all claims under the two Goss patents and the three Lissak patents and for the assignment of all of these patents to the Government was considered. The Scovill Company stated the amount of their offer of January 20, 1919 of \$218,420.09 was a small portion of the saving to the Government through infringement of the Goss patent and furthermore the infringement permitted the Government to secure a volume of production which was necessitated by its requirements and which would have been hardly possible under non-automatic methods and requested that their proposal be reconsidered.

It was noted that no reply was made to the suggestion of the Board that the item of \$30,420.09 for machinery was not proper to be included as the Government is not interested in acquiring the machinery. No reason was seen by the Board for departing from the royalty of \$.25 per thousand clips. Major Holcombe reported, however, that the figures upon which the royalty was based were being checked. As the amount of \$25,000.00 allowed by the Board for the assignment of the patents is more or less an arbitrary figure, the Board was willing to consider any reasons that might be submitted for changing it. A letter to this effect was written the Scovill Mfg. Co. (See M.P.B. 072.3/11 Scovill Mfg. Co.)

* * * *

Major Holcombe presented a confidential communication from the Chief of Ordnance dated February 7, 1919 relative to the Pedersen patent rights.

In view of the uncertainty of the possibility of maintaining secrecy on account of disclosures already made, the Board was of the opinion it was desirable to have a statement of the present status of the matter, especially the extent to which disclosure of the invention had been made by the filing of patent applications in this country and abroad and by the issue of patents thereon and suggested if no disclosure of the invention had been made outside of the United States Patent Office, the Board would, if requested, recommend to the Secretary of War that steps be taken to maintain the United States patent application in secrecy and acquire foreign rights and withhold the filing of applications for foreign patents. A letter stating the above was written to the Chief of Ordnance (M.P.B. 072.1/2—Pedersen Patent Rights).

* * * *

Mr. Neagle reported to the Board that the question as to whether the owners of the patents are entitled to compensation from the Government on account of submarine signalling on German vessels taken over by the Government or whether the licenses in Germany of the American Company are the proper parties through whom the matter of compensation must be settled is before the Navy Department and will be brought to the attention of the Board at the next meeting.

* * * *

Mr. Neagle reported that the question as to whether Jones-Motroler Company is entitled to royalty on tachometers for flying machines is under consideration by the Bureau of Steam Engineering and will be presented to the Board later. The Company claims $5.00 royalty, the cost of the tachometers being about $16.00 but Steam Engineering is inclined to think the owners of the patents are not, under the circumstances of the case, entitled to royalty.

* * * *

The matter of the allotment of funds for payment of fees in overseas countries was presented by Major Holcombe (M.P.B. 072/8—Overseas), together with decision of the Comptroller of the Treasury dated January 20, 1918 and the indorsement of the Assistant and Chief Clerk of the War Department thereon.

It was decided by the Board to ask for an allotment of $1200.00 from the appropriation "Contingencies of the Army 1919" to be used for the payment of fees required for obtaining patents abroad upon inventions made by officers and employees of the United States and actually used overseas, where the filing of such applications is necessary to protect the interests of the United States.

The Board decided to recommend that Major Delbert H. Decker be designated to act for the Munitions Patents Board as its Assistant and representative overseas in matters within the jurisdiction of the Board.

A letter was written to the Secretary of War asking his approval of the allotment. (M.P.B. 072/9—Overseas).

If the allotment recommended is approved by the Secretary, Major Holcombe was requested to notify the proper parties of the approval, and cable Major Decker that the funds are available.

* * * *

The meeting adjourned at 4.30 p.m. o'clock.

(Sgd.) K. S. EBERLE,
Secretary to the Board.

Approved:
(Sgd.) THOMAS EWING.
Chairman.

DEFENDANT'S EXHIBIT No. 316.

E. I. DU PONT DE NEMOURS & COMPANY

EXPENDITURES FOR RESEARCH WORK ON PRODUCTS LICENSED FROM THE FEDERAL TRADE COMMISSION

1916 to Jan. 1, 1923

LICENSE NO. 19

PHENYLGLYCINE AND INDIGO INTERMEDIATES

J-15-31-11	Phenylglycine	$10,980.92	
J-25-14	Study of Analytical Methods—Formaldehyde	608.05	
J-26-1	Plant Investigation — Chloracetic and Phenylglycine Plant	1,182.29	
J-30-1	Chloracetic Acid—Partial Chlorination	25,482.32	
J-30-9 -	Chloracetic Acid—Distillation	644.27	
J-31-11	Phenylglycine	44,884.94	
J-31-11-A	Phenylglycine — Chloracetic Acid Method	9,784.12	
J-31-11-1	Phenylglycine—Testing Ex'l. Sta. Cyanide	116.85	
J-31-11-3	Phenylglycine—Recovery of By-Products	123.99	
J-31-17	Phenylglycine Trichlorethylene—Synthesis	2,255.36	
J-31-11-B	Phenylglycine—Alcohol Method	1,512.63	
E-391-S	Organic Research—Phenylglycine	10,352.73	
R-128-F-7	Phenylglycine—O-Carboxylic Acid	10,583.91	118,512.38

INDIGO

J-54	Indigo and Derivatives—Plant Process	67,387.96	
J-54-1	Indigo and Derivatives—Synthesis	10,187.89	
J-54-2	Indigo—Oxyethylaniline Method	2,154.82	
J-54-2-SW	do Semi-Works	2,371.40	
J-54-4	do Sodamide	1,211.23	
J-54-8	Indigo—Study of Melt	7,167.08	
J-54-9	do Powder	764.02	
J-54-10	do Caustic Recovery	1,321.76	
J-15-54	Indigo and Derivatives — Plant Process	9,376.20	
J-25-20	Study of Analytical Methods—Indigo	2,493.95	
E-391-F-14	Organic Research—Dyes—Indigo	9,630.60	$114,066.91

LICENSE NO. 18-A

SODIUM HYDROSULPHITE

R-128-B	Manufacture of Sodium Hydrosulphite	$43,039.61	
R-128-B-2	Manufacture of Sodium Hydrosulphite	487.37	
J-15-65-2	Sodium Hydrosulphite	13,797.71	
J-65-2	do	1,752.01	$59,076.70

Expenditures for Research Work on Products Licensed from the Federal Trade Commission	$291,655.99

DEFENDANT'S EXHIBIT No. 317.

E. I. DU PONT DE NEMOURS & COMPANY

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 327

ANTHRACENE

J-15-33-3	Anthracene	2 814 57	
J-33	Intermediates—anthracene series	267 30	
J-33-3	Anthracene	29 617 91	
J-33-3-A	Anthracene residues	1 303 29	
J-33-3-B	Anthracene purification—hydraulic pressing	169 66	
J-33-3-C	Anthracene—grinding	112 62	
R-128-G	Derivatives of anthracene—general	1 410 88	35 696 23

ANTHRAQUINONE

J-15-33-4	Anthraquinone	2 847 75	
J-25-15	Study of Analytical methods Anthracene & Anthraquinone	2 044 41	
J-33-4	Anthraquinone	26 713 39	
J-33-4-A	Anthraquinone—Sublimation	79 49	
J-33-4-B	" —Sodium Nitrate process	402 74	
J-33-8	Anthraquinone—Air Oxidation	8 860 93	
J-33-9	" —Chromium Recovery	9 701 58	
J-33-11	" —Liquid Condensation	17 980 60	
R-128-G-1	"	5 614 62	74 245 51

ANTHRAQUINONE BETA SULPHONIC ACID

J-15-33-1	Silver Salt	5 333 06	
J-33-1	Silver Salt	33 615 33	
J-33-7	Anthraquinone Sulphonic Acid—Separation	3 698 00	42 646 39

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 327 (Continued)

BETA AMINO ANTHRAQUINONE

J-33-10	Beta Amino	8 814 67	
J-33-10-A	Beta Amino Anthraquinone—New Process	4 249 06	
J-33-10-B	Betamine	765 74	
J-15-33-10	b-Amino anthraquinone	872 67	14 702 14

PONSOL BLUE R

J-15-53-1	Ponsol Blue-R	6 914 46	
J-53-1	Ponsul Blue-R	16 821 04	
J-53-1-A	Ponsul Blue—Pressure and Oil Fusions	10 180 37	
J-28-18	Melting Points of Caustic potash sodium acetate mixtures	405 26	
J-53-1-B	Ponsul Blue-R—New Process	940 87	
J-53-2-A	" " R—Solubility Studies	1 163 47	
J-53-34	" " -RS	7 810 87	
J-53-A	Pasting Ponsul Dyes	1 643 54	45 879 88

PONSUL BLUE G

J-15-53-2	Ponsul Blue G	8 179 07	
J-15-53-3	Ponsul Blue BCS	1 536 14	
J-53-2	Ponsul Blue G	2 078 16	
J-53-2-SW	" " "—Semi Works	5 94	
J-53-2-P	Pasting Ponsul Blue G	18 726 21	30 525 52

PONSUL YELLOW G

J-15-53-5	Ponsul Yellow G	12 122 51	
J-53-5	Ponsul Yellow G	15 789 31	
J-53-5-P	Pasting Ponsul Yellow G	1 429 58	29 341 40

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 328

BENZANTHRONE

J-15-33-12	Benzanthrone	1 565 45	
J-33-12	Benzanthrone	6 377 49	
J-33-12-A	Benzanthrone — Preparation of Anthranol	1 072 03	9 014 97

PONSOL DARK BLUE BR

J-15-53-4	Ponsol Dark Blue BR	5 771 43	
J-53-4	Ponsol Dark Blue BR	7 479 13	
J-53-4-A	Ponsol Dark Blue BR—Pressure and Oil Fusions	10 231 22	
J-28-19	Stability of Benzanthrone colors	469 26	23 951 04

PONSOL GREEN B

J-15-53-10	Ponsol Green B	5 585 44	
J-53-10	Ponsol Green B	17 627 95	
J-53-10-P	Pasting Ponsol Green B	1 041 70	24 255 09

LICENSE NO. 329

PONSOL VIOLET R

J-15-53-8	Ponsol Violet R Extra	1 968 97	
J-53-8-A	Ponsol Violet R Caustic Potash Recovery	641 99	
J-53-8	Ponsol Violet R	7 905 43	
J-53-8-B	Ponsol Violet R Oil Fusions	4 935 78	15 452 17

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 330

PONSOL VIOLET RR

J-15-53-9	Ponsol Violet RR Extra	5 314 61	
J-53-9	Ponsol Violet RR	8 219 46	
J-53-9-P	Pasting Ponsol Violet RR Extra	1 998 08	15 532 15

LICENSE NO. 333

PONSOL BLUE RP

J-15-53-34	Ponsol Blue RP	799 09

LICENSE NO. 400

PONSOL CLARET B

J-53-11	Ponsol Bordeaux B	10 779 52

LICENSE NO. 402.

PONSOL VIOLET RN

J-53-30	Ponsol Violet RN	1 430 48

LICENSE NO. 404

PONSOL PINK B

J-53-32	Ponsol Pink B.	185 05

LICENSE NO. 382

PONSOL BLUE 3G

J-53-36	Ponsol Blue 3G	993 80

LICENSE NO. 383

PONSOL RED VIOLET 2RN

J-53-31	Ponsol Red Violet 2 RN	4 125 56

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 389

PONSOL GOLDEN ORANGE G and 2RT

J-53-6	Ponsol Golden Orange R	4 816 88	
J-53-7	Ponsol Golden Orange RRT	6 326 04	11 142 92

LICENSE NO. 398

ORTHO CHLOR PARANITRANILINE

J-31-78	Ortho-chlor-para-nitraniline	1 224 96

LITHOSOL VERMILLION G

No expenditure prior to Jan. 1, 1923	0 00

LICENSE NO. 399

DINITRO STILBENE DISULPHONIC ACID

J-41-3-A	Diamino stilbene-dinitro-stilbene method	9 526 59

ORANGE OR BROWN STILBENE DYE

No expenditure prior to Jan. 1, 1923	0 00

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 249

SULPHOGENE YELLOW GG

J-15-52-13	Sulphogene Yellow GG	8 102 12	
J-52-13	Sulphogene Yellow G	5 849 38	13 951 50

LICENSE NO. 365

SULPHOGENE BROWN R

J-52-16	Sulphogene Brown RB	21 186 74	
J-52-47	Sulphogene Brown RBNNX	1 871 23	23 057 97

LICENSE NO. 334

SULPHOGENE BORDEAUX B

J-15-52-20	Sulphogene Bordeaux B	4 108 10	
J-25-26	Study .of .Analytical .Methods—Sulphogene Bordeaux	1 637 73	
J-52-20	Bordeaux B	9 053 27	
J-52-20-A	Bordeaux B-Nitrosophenol Process	2 810 45	
J-52-25	Sulphogene Brilliant Bordeaux RR	641 04	18 250 59

LICENSE NO. 366

SULPHANTHRENE PINK FF

J-52-53	Sulphogene Hydron pink		3 221 87

LICENSE NO. 368

HYDRON ORANGE, VIOLET, CRIMSON, BROWN

J-52-54	Sulphogene Hydron Brown	1 259 95	
J-52-55	Hydron Bordeaux	402 92	1 662 87

LICENSE NO. 387

LITHOSOL BORDEAUX B

J-43-108	Lithosol Bordeaux B		1 215 18

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 314

CARBAZOL

J-25-28	Study of Analytical Methods—Carbazol	$1,725,38	
J-32-2	Carbazol	12,192.20	
J-33-2-1	do —Sublimation	720.72	
J-33-2-2	do —Distillation	636.46	$15,274.76

HYDRON BLUE R

J-52-12-A	Hydron Blue R	47,188.04	

LICENSE NO. 364

HYDRON BLUE G

J-52-12-B	Hydron Blue G (New)	25,374.91	

LICENSE NO. 332

BETA HYDROXY NAPHTHOIC ACID

J-15-32-24	Beta Hydroxy Naphthoic Acid	5,874.08	
J-32-24	do	21,869.12	27,743.20

DUPONT NAPHTHANIL AS AND BS

J-16-32-A-22	Dupont Naphthanil for Printing	1,085.51	
J-32-29	Naphthol AS	6,902.25	
J-32-34	Naphthol AN	740.77	8,728.53

LICENSE 381

PONTACYL FAST LIGHT YELLOW 2G AND 3G

J-31-26	Phenylhydrazine Sulphonic Acid	1,452.21	
J-34-1	1-Sulpho Phenyl 3-Methyl 5-Pyrazolone	5,943.67	
J-31-76	Phenylhydrazine — B-Chlor-M-Sulphonic Acid	527.67	
J-31-77	1-Ortho-Chlor-Meta-Sulpho-Phenyl 3-Methyl 5-Pyrazolone	562.84	
J-31-A-29	1-Meta - Sulpho - Ortho - Tolyl 3-Methyl 5-Pyrazolone	411.65	
J-43-286	Pontacyl Light Yellow 3G	553.16	9,451.20

LICENSE NO. 331

PONTACHROME BLACK 6BX

J-15-43-103	Pontachrome Black 6BX	$1,858.43	
J-43-103	Pontachrome Black 6BX	21,744.78	$23,603.21

1-AMIDO—2-NAPHTHOL 4-SULPHONIC ACID

J-15-32-19	1-2-4 Acid	5,251.23	
J-32-19	1-2-4 Acid	14,439.04	
R-128-F-22	1-Amino 2-Oxy 4 Sulphonic Acid	792.32	$20,482.59

TOTAL EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION $568,093.93

(8)

DEFENDANT'S EXHIBIT No. 318.

Literature Distributed
by
The Chemical Foundation, Inc.

Deft's Ex. No.	Sent	Name of Article	To Whom Sent	Amount
	—1—			
301	8/7/19	Aims and Purposes of The Chemical Foundation:	Agricultural Agents	1,959
			Chambers of Commerce	937
			City Engineers	3,750
			City Mayors	2,750
			Congressmen	431
			Consumers and Business Men	56,068
			Drug and Chemical Mfrs.	6,365
			Educators	9,453
			Government Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Libraries and Librarians	1,452
			Lime Mfrs.	129
			Members of American Legion	329
			Newspaper Editors	2,275

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Paint and Oil Mfrs.	1,609
			Paper Mills	1,051
			Prominent Men	4,831
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	15,065
			Senators	96
			Stock Holders and Licensees	271
			Students	10,130
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	17,681
			Womens Clubs	2,608
				144,372
	—2—			
324	3/31/20	Dyes and Defense	Consumers and Business Men	8,237
			Textile Mfrs.	1,685
				9,922
	—3—			
235	11/—/20	Statements of Henry B. Thompson and Albert M. Patterson	Consumers and Business Men	1,654
				1,654
	—4—			
326	11/—/20	The Statements of Mr. Francis P. Garvan, Alien Property Custodian	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	18,237
			Forward	22,310
			(Brought Forward	22,310
			Doctors	113
			Drug Mfrs.	1,365
			Educators	6,423
			Foreign	154
			Gov't. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Lawyers	153

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Senators	96
			Stock Holders and Licensees	271
			Students	2,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	8,488
			Womens Clubs	2,608
				59,215
	—5—			
96	11/10/20	Creative Chemistry	Agricultural Agents	1,203
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	16,068
			Drug & Chemical Mfrs.	1,365
			Educators	6,448
			Gov't. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Libraries and Librarians	1,452
			Lime Mfrs.	129
			Members of American Legion	329
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,128
			Senators	96
			Stock Holders and Licensees	271

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Students	7,533
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	7,681
			Womens Clubs	2,608
				73,867
	—6—			
100	12/7/20	Reorganization of Science in Secondary Schools	Consumers and Business Men	2,000
				2,000
	—7—			
327	12/9/20	Books I Have Met.	Consumers and Business Men	3,347
			Educators	2,543
			Prominent Women	1,202
			Students	465
			Womens Clubs	2,401
				9,958
	—8—			
328	12/14/20	Molecules and Man.	Consumers and Business Men	1,408
			Educators	2,113
			Students	1,304
				4,825
	—9—			
111	12/23/20	Census of Dyes and Coal-Tar Chemicals, 1919	Chambers of Commerce	937
			Consumers and Business Men	19,595
			Newspaper Editors	2,275
				22,807
	—10—			
329	12/31/20	The Chemical Industries of German Rhineland	Consumers and Business Men	343
				343
	—11—			
330	1/19/21	The Truth About American Dyes	Consumers and Business Men	1,948
				1,948
	—12—			
331	2/3/21	Has America No Answer For This German Threat?	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	8,237
			Doctors	113
			Drug Mfrs.	1,365
			Educators	4,423
			Foreign	154
			Gov't. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Forward	23,763
			(Brought Forward)	23,763
			Paper Mills	804
			Prominent Men	2,942
			Prominent Women	2,475
			Rotary Clubs	769
			Stock Holders and Licensees	271
			Students	2,643
			Tanners	196
			Textile Mfrs.	8,488
			Womens Clubs	2,608
				44,959
	—13—			
332	2/31/21	Says Longworth Dye Bill Offers Best Solution.	Consumers and Business men	4,893
				4,893
	—14—			
333	3/4/21	Shall America Remain The Only Important Country At The Mercy Of The German Chemists?	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	17,267
			Doctors	113

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Drug Mfrs.	1,365
			Educators	16,423
			Foreign	154
			Gov't. Employees	113
			Ink Mfrs	43
			Kiwanis Clubs	318
			Lawyers	153
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,279
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,848
			Senators	96
			Stock Holders and Licensees	271
			Students	10,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	17,488
			Womens Clubs	2,608
				100,093
	—15—			
334	3/11/21	Chemical Disarmament	Consumers and Business Men	5,879
				5,879
	—16—			
335	3/19/21	Hearings before the Committee on Finance	Consumers, Lawyers, Educators and Business Men	252
				252
	—17—			
336	3/19/21	Hearings Before The Committee on Ways and Means	Consumers, Lawyers, Educators and Business Men	346
				346

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—18—			
337	3/31/21	German Dyestuffs This Year Will Top Big Pre-War Output	Consumers and Business Men	468
				468
	—19—			
338	3/31/21	Will The Chemist Compete With Farmers?	Agricultural Agents	1,216
			Consumers	3,973
			Editors	2,275
			Educators	1,662
			Libraries and Librarians	847
				9,973
	—20—			
339	3/31/21	Dye Makers Must Be Given Chance	Consumers and Business Men	367
				367
	—21—			
340	3/31/21	Treasure Hunting of Today and Chemistry In Our Schools.	Authors	1,433
			Chambers of Commerce	937
			Consumers and Business Men	8,237
			Drug & Chemical Mfrs.	1,365
			Educators	39,421
			Foreign	154
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Libraries and Librarians	847
			Lime Mfrs.	129
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,848
			Stock Holders and Licensees	271
			Students	2,943
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	8,488
			Womens Clubs	2,608
				94,756

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—22—			
49	4/15/21	Germany's Commercial Grip on the World.	Educators, Editors and Business Men	175
				175
	—23—			
341	4/30/21	Future of United States In Hands of Chemists, Slosson Warning.	Prominent Men	4,731
			Prominent Women	1,004
			Scout Masters	14,848
			Students	1,894
				22,477
	—24—			
342	5/18/21	British Dye Licensing Bill.	Consumers and Business Men	3,997
				3,997
	—25—			
343	5/27/21.	Hoover Considers Dye Industry Aid	Chambers of Commerce	937
			Consumers and Business Men	8,237
			Drug Mfrs.	1,365
			Ink Mfrs.	43
			Lime Mfrs.	129
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Tanners	196
			Textile Mfrs.	8,488
				28,451
	—26—			
344	5/31/21	World Mastery Lies In "Dew of Death."	Boston Textile Exposition	5,000
			Newspaper Editors	2,117
			Prominent Men	4,731
				11,848
	—27—			
345	5/31/21	Embargo Is Urged On German Dyes.	Chambers of Commerce	868
			Consumers and Business Men	862
			Newspaper Editors	2,275
				4,005

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—28—			
346	5/31/21	The Next War.	Colleges and Educators	253
			Consumers and Business Men	167
			Prominent Women	340
				760
	—29—			
347	6/1/21	Those Unreliable American Dyes	Consumers and Business Men	487
				487
	—30—			
348	6/20/21	An Appeal	Agricultural Agents	1,216
			Authors	1,433
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	3,153
			Educators	6,423
			Newspaper Editors	2,275
			Senators	96
				15,964
	—31—			
349	6/22/21	What About Chemical Warfare?	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	18,237
			Doctors	113
			Drug Mfrs.	1,365
			Educators	20,846
			Foreign	154
			Govt. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Lawyers	153
			Libraries and Librarians	2,046
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	2,075
			Scout Masters	14,846
			Senators	96
			Stock Holders and Licensees	271
			Students	3,548
			Tanners	196
			Teachers Assn.	1,923
			Textile Mfrs.	11,634
			Womens Clubs	2,608
				96,747
	—32—			
350	7/7/21	Reprint and Circular Series of The National Research Council.	Deans of Colleges	23
				23
	—33—			
109	7/9/21	Census of Dyes and Coal-Tar Chemicals, 1920	Consumers and Business Men	1,973
				1,973
	—34—			
351	7/11/21	Why Tariff Duties Alone Will Not Now Protect The American Dye Industry	Consumers and Business Men	5,063
				5,063
	—35—			
352	7/14/21	Speech of Hon. Caleb R. Layton	Consumers and Business Men	423
				423
	—36—			
353	8/5/21.	The Yale Alumni Weekly;	Deans of Colleges	102
				102
	—37—			
354	8/8/21.	Dye Tariff and License Control	Consumers and Business Men	4,982
				4,982

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—38—			
99	8/15/21	An Exhibit	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Colleges, Educators, and Clergymen	126,423
			Congressmen	431
			Consumers and Business Men	7,237
			Dentists & Doctors	164,419
			Druggists	39,371
			Engineers	32,346
			Foreign	154
			Govt. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Lawyers	122,158
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mfrs.	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,848
			Senators	96
			Students	5,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	6,815
			Utah Citizens	39,458
			Womens Clubs	2,608
				580,240
	—39—			
355	8/17/21.	Testimony of The Army and Navy.	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	18,829

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Doctors	113
			Drug Mfrs.	1,365
			Educators	6,423
			Foreign	154
			Govt. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Lawyers	153
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Senators	96
			Stock Holders and Licensees	271
			Students	2,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	8,488
			Womens Clubs	2,608
				59,807
	—40—			
356	9/6/21	Hearings on the Tariff Bill.	Lawyers	96,561
				96,561
	—41—			
357	9/14/21.	Mr. Francis P. Garvan's Speech of Sept. 7, '21. Delivered before the Joint Session of the Society of Chemical Industry and the American Chemical Society at Columbia University.	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Clergymen and Educators	146,423
			Congressmen	431
			Consumers and Business Men	8,237
			Doctors & Dentists	172,113
			Druggists	41,583
			Engineers	37,346
			Foreign	154

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Govt. Employees	113
			Ink Mfrs.	43
			Forward	410,085
			(Brought Forward)	410,085
			Kiwanis Clubs	318
			Lawyers	127,153
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mfrs.	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,848
			Senators	96
			Students	8,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	8,488
			Utah Citizens	62,073
			Womens Clubs	2,608
				648,429
	—42—			
358	9/23/21.	Coals to Newcastle.	Agricultural Agents	1,216
			Authors	433
			Chambers of Commerce	937
			Consumers and Business Men	8,237
			Educators	6,423
				17,246
	—43—			
359	9/26/21.	The Relation of Our Chemical Industry To Our National Defense	Authors	690
			Congressmen	431
			Newspaper Editors	2,275
			Senators	96
				3,492

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—44—			
360	9/26/21	Why Dyestuff Imports Should be Licensed.	Colleges & Educators	150
			Consumers and Business Men	450
				600
	—45—			
361	10/7/21.	Why the Coal Tar Chemical Industry Must Be Preserved and How To Accomplish It.	Textile Mfrs.	4,984
				4,984
	—46—			
98	11/23/21.	The Riddle of The Rhine.	Agricultural Agents	35
			Authors	19
			Commercial Clubs	68
			Congressmen	403
			Consumers and Business Men	231
			Forward	756
			(Brought Forward)	756
			Editors	396
			Educators	118
			Ex-Service Men	15
			Libraries	2
			Prominent Men	31
			Prominent Women	82
			Scout Masters	39
			Senators	95
				1,534
	—47—			
300	12/21/21.	The Future Independence and Progress of American Medicine In The Age of Chemistry	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Colleges, Educators and Clergymen	146,423
			Congressmen	431
			Consumers and Business Men	14,620
			Doctors and Dentists	168,669
			Druggists	41,583
			Engineers	37,346

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Foreign	154
			Govt. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Lawyers	123,430
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,273
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,848
			Senators	96
			Students	8,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	8,488
			Utah Citizens	34,609
			Womens Clubs	2,608
				620,181
	—48—			
362	12/29/21.	Daily News Record.	Consumers and Business Men	8,237
			Drug Mfrs.	1,365
			Ink Mfrs.	43
			Lime Mfrs.	129
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Tanners	196
			Textile Mfrs.	3,642
				15,662
	—49—			
363	3/4/22	Allied Booklets	Senators	500
			Miscellaneous	150
				650
	—50—			
364	6/19/22	Atlantic Monthly, June, 1922	Senators	96
			Congressmen	431
				527

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—51—			
101	7/7/22.	The Dye Question.	Newspapers & Editors	2,275
				2,275
	—52—			
365	7/17/22	Chemical Number of Yale Alumni, May 12, 1922	Doctors	15,000
				15,000
	—53—			
367	7/29/22	Testimony of Francis P. Garvan	Miscellaneous	2,000
				2,000
	—54—			
366	7/31/22	Francis P. Garvan's Letter to President Harding.	Agricultural Agents	1,959
			Chambers of Commerce	937
			City Engineers	3,750
			City Mayors	2,750
			Congressmen	431
			Consumers and Business Men	56,068
			Drug and Chemical Mfrs.	6,365
			Doctors	102,878
			Educators	9,453
			Government Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Libraries and Librarians	1,452
			Lime Mfrs.	129
			Members of American Legion	329
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,609
			Paper Mills,	1,051
			Prominent Men	4,831
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	15,065
			Senators	96
			Stockholders and Licensees	271
			Students	10,130
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	17,681
			Womens Clubs	2,608
			John Benkart, Hollywood, Cal.	2,500
				249,750

DEFENDANT'S EXHIBIT No. 319.

MEMORANDUM FROM MR. CATON TO COL. THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN, RE, SEIZURE OF BLASS PATENT.

Note: Same as Plaintiff's Exhibit No. 481, and not reprinted here. (*See Record, Exhibits, Vol. II, page 893.*)

DEFENDANT'S EXHIBIT No. 320.

SECOND PROSPECTUS OF THE CHEMICAL FOUNDATION, INC.

Note: Same as Exhibit 8 to defendant's answer and not reprinted here. (*See Record, Vol. I, page 583.*)

DEFENDANT'S EXHIBIT No. 321.

REPORT OF THE BRITISH MISSION APPOINTED TO VISIT ENEMY CHEMICAL FACTORIES IN THE OCCUPIED ZONE ENGAGED IN THE PRODUCTION OF MUNITIONS OF WAR.

Members of the British Mission:

Brig. Gen. H. Hartley, C. O. W. D.
Mr. F. H. Carr.
Capt. A. C. G. Egerton.
Lieut. H. G. Greenwood.
Dr. H. Levenstein.
Mr. W. Macnab.
Mr. A. W. Tangye.
Mr. S. I. Levy, secretary.

Delegates of allied Governments who accompanied the mission in the British zone:

American—
- Lieut. Col. C. W. Steese, O. D., U. S. Army.
- Lieut. Col. J. P. Norris, C. W. S., U. S. Army.
- Maj. T. W. Sill, C. W. S., U. S. Army.
- Capt. R. D. McGrath, C. W. S., U. S. Army.
- Capt. J. W. Martin, Ord., U. S. Army.
- Lieut. H. J. Himmelein, R. D., U. S. Army.

French—
- Col. M. Marqueyrol (direction des Poudres).
- Comm. M. Chaud.
- Mons. T. Sordes.
- Mons. N. Simon.

Italian—
- Capt. C. Mazetti.
- Lieut. I. Cardoso.
- Lieut. M. Malvano.
- Sig. M. Bonelli.
- Sig. M. Piersel.

Belgian—
- Capt. M. Janlet.

The usual procedure was first to have a general view of a factory in order to get an idea of its layout and prewar capacity, and of the way in which this had been utilized and extended for war purposes. Afterwards the mission divided into three sections in order to get details of the war productions, as follows:

Initial products (e. g., sulphuric acid, nitric acid, ammonia, chlorine, caustic soda): Mr. Tange, Lieut. Greenwood, Capt. Egerton.

Explosives: Mr. Macnab, Mr. Levy.

Poison gas: Mr. Levinstein, Mr. Carr.

The information obtained by each section has been embodied in the present report.

In some cases considerable difficulty was experienced in obtaining accurate details of manufacture, especially as regards substances which have a peace value, and the information must be accepted with some reserve on this account, although it was checked by cross-examination of the officials concerned and by a careful examination of the plant admittedly employed for war purposes.

As a result of its visit, the mission had obtained valuable information as to the methods of manufacture of explosives and poison gases employed by the enemy, and of the initial products necessary for their production. It was also able to form a clear impression of the military value of the German chemical industry.

Some years before the war a combination was formed by the Bayer, Badische, and A. G. P. A. companies and somewhat later a second group was formed which included Meister, Lucius & Bruning, Casella & Kalle. During the war, these two groups amalgamated, and the Griesheim Elektren, Weiler ter Meer, Leonhardt, and other smaller companies entered the combination, which is known as the I. G. It was largely owing to the efforts of this combination that Germany was enabled to continue the war in spite of the blockade. The I. G. works produced the bulk of the synthetic ammonia and nitric acid needed for the production of fertilizers and explosives, all the poison gas (with the exception of some chlorine and phosgene), and a large proportion of the high explosives.

The following are the more important works of the I. G. which were not visited, as they are outside the occupied zone:

Factories of the Aktien Gesellschaft fur Anilinfabrikation.

Factories of the Griesheim Elektron Gesellschaft.

Factory of the Bayer Co. at Elberfeld.

Factory of the Badische Co. at Merseburg.

Factory of Casella & Co. Mainkur, near Frankfurt.

Factory of Leonhardt & Co. Mulheim, near Frankfurt.

A summary of the information obtained as to the war production of the factories visited is given under the headings of "Initial products," "Explosives and poison gases."

INITIAL PRODUCTS FOR MANUFACTURE OF EXPLOSIVES AND POISON GAS.

The principal materials concerned are ammonia, nitric acid, sulphuric acid, and chlorine, and it was on the output of these that the war production of chemical munitions depended. The expansion of output by the factories of the I. G. combination during the war is shown by the following tables:

Ammonia (metric tons NH_3 per day).

	1914	1918
Oppau	25	250
Merseburg	(1)	400
Total	25	650

[1] Nil.

Nitric acid (metric tons 100 per cent acid per day).

	1914	1918
Leverkusen	56	180
Hoechst	150	375
Oppau	?	100
Ludwigshafen	(?) 40	40
Weiler ter Meor	12	24
Total	258	719

Oppau has the power to produce now 500 tons HNO_3 daily, still retaining sufficient ammonia to supply the output at Hochst.

Sulphuric acid (metric tons 100 per cent. acid per day.)

	1914	1918
Leverkuson	340	470
Hochst	224	280
Ludwigshafen	275	410
Weiler ter Meer	48	60
Total	887	1,220

Meister Lucius & Bruning have also erected a large new plant at Hochst which has not yet started and was not examined.

The Bayer Co. has erected at Dormagen a large vitriol plant equal to 250 tons per day.

Chlorine (metric tons per day).

	1914	1918
Leverkuson	7	20
Hochst	4	8
Ludwigshafen	13	35
Total	37	63

Explosives.—No arrangements appear to have been made prior to the outbreak of war to utilize the resources of any of the dye factories for war purposes, and on mobilization their chemists were called up for military service. After the battle of the Marne the Government realized the need for expanding the output of explosives and most of the chemical works were producing small quantities by the end of 1914. The demands made on them increased during 1915, but it was not until 1916 that plant was laid down to assist in the enormous production of explosives required by the Hindenburg program. Most of the big extensions of the synthetic ammonia and of the nitric and sulphuric acid plants date from this time, many chemists being released from the army and the scientific staff of some of the works being augmented. Standarized plant used for the manufacture of dyes was converted for the production of explosives with remarkable speed; for instance, at Leverkusen a T. N. T. plant producing 250 tons per month was put into operation in six weeks.

The following table shows the amounts produced in the factories visited:

High explosives and intermediates.

Quantities of intermediates are shown only where these were not converted to finished explosives in the producing works.

[Metric tons per week.]

Factory	Ammonium nitrate.	Dinitrobenzene.	Dinitrotoluene.	Trinitrotoluene.	Mononitronaphthalene.	Dinitronaphthalene.	Dinitrochlorbenzene.	Dinitrophenol.	Picric acid.	Trinitroanisole.	Dinitrodiphenylamine.	Hexanitrodiphenamine.
Leverkusen	...	250	...	250	...	150	40	...	...	[1] 3	...	...
Domagen	...	...	...	...	...	...	...	...	600	...	...	...
Urdingen	...	60	...	75	([2])	...	...	...	...	...	...	...
Hochst	500	140	...	200	...	...	...	...	...	30	...	[1] 1½
Ludwigshafen ..	...	25	50	...	...	15	300	35	...	...	[3] 25	...
Oppau	200	...	...	...	...	...	...	...	...	...	...	...
Merseburg	(?)	...	...	...	...	...	...	...	...	...	...	...
Wiesdorf	...	...	120	...	...	...	...	...	...	...	...	...
Schlebusch	100	...	...	150	...	...	...	...	...	...	...	...

[1] For 3 months only. [2] Small. [3] For 1 year.

Other intermediates—Ludwigshafen, sodium benzene sulphonate, 100 tons per week.
Other explosives—Schlebusch, hexanitrodiphenylsulphide, 15 tons per week.

Poison gas.—At first chlorine and phosgene were the main requirements, but afterwards a variety of organic substances were employed, all of which were made by the factories of the I. G. combination. Many of these substances were new and difficult to prepare, and rapid production was only possible owing to the speed with which the peace organization of the dye factories could be utilized for this purpose. When the Government wished to introduce a new gas, a conference of the various firms was held at Berlin to determine how the manufacture should be subdivided in order to use existing plants to the best advantage. For instance, the initial stages of the manufacture of mustard gas were carried out at Ludwigshafen and the final stage at Leverkusen.

The following table shows the production of gas and intermediate products in the various factories visited:

Propellant explosives, detonating substances, etc.

[Metric tons per week.]

Factory.	Nitro-cellulose powder.	Diethyl diphenyl-urea.	Diphen-ylamine.	Nitro-glycer-ine.	Cordite paste.	Dyna-mite.	Tetryl.	Fulmi-nate.	Lead azide.
Urdingen	...	35	7	...	...	...	...	...	...
Kuppersteg	...	...	...	...	...	...	...	...	0.7
Troisdorf	250	...	...	21	40	...	6	7	.7
Schlebusch	...	...	...	...	...	...	...	...	...
Opladen	...	...	...	35	75	...	...	...	...
Wiesdorf	...	...	...	(?) 50	40	...	...	...	...

Output of finished poison gases from various works.

	Factory.	Monthly output (metric tons). Average.	Monthly output (metric tons). Maximum.	Total production (if known).	Date of commencement.
				Tons.	
1. Chlorine	Leverkusen	600	...	...	Prior to war.
	Hochst	240	...	...	Do.
	Ludwigshaften.	860	1,261	38,600	Do.
2. Phosgene	Leverkusen	...	30	...	Do.
	Ludwigshaften.	288	621	10,682	Do.
3. Diphosgene	Leverkusen	...	300	...	June, 1915.
	Hochst	139	266	3,616	September, 1916.
4. Chlorpicrin	Leverkusen	...	200	...	July, 1916.
	Hochst	45	101	1,127	August, 1916.
5. Eylyl bromide	Leverkusen	...	60	...	March, 1915.
6. Bromacetone	do	...	20	...	July, 1916.
7. Brom acetone, bromethyl, methylketone	Hochst	19	45	685	April, 1915.
8. Phenyl carbylamine chloride	do	65	124	721	March, 1917.
9. Mustard gas	Leverkusen	...	300	[1]4,500	Before July, 1917.
10. Diphenylchlor arsine	Hochst	150	300	3,000	May, 1917.
Diphenylcyano arsine	do	...	...	...	February, 1918.
11. Ethyldichlor arsine	do	78	150	1,092	August, 1917.
12. Dichlormethyl	do	26	51	233	September, 1917.
13. Dibrom methyl ether	do	7	29	69	April, 1917.

[1] Estimated from capacity of plant. Probably the same quantity was produced at some other factory as the output of thiodiglycol from Ludwigshafen would suffice for this.

Output of Intermediate Products for Poison Gas Manufacture.

Finished gas.	Intermediate Products.	Total output (metric tons).	Place of production.	Destination of intermediate products.
Phenyl carbylamine	Phenyl mustard oil	([1])	Kalle	Hochst.
Mustard gas	Thiodiglycol	7,026	Ludwigshafen	Leverkusen and 1 other factory.
Diphenylchlorarsine	Phenyl oarsinic acid	1,600	do	Unknown.
		1,200	Kalle	Do.
	Diphenylarsenic acid	4,800	Leverkusen	Probably A. G. F. A., Berlin.
Ethyldichlorarsine	Ethyl arsenious oxide	840	Ludwigshafen	Hochst.

[1] Not obtained.

Note.—In addition Hochst produced 3,000 tons of diphenyl chlor- and cyanarsines from own intermediates.

MILITARY IMPORTANCE OF THE GERMAN CHEMICAL INDUSTRY.

The above figures for the output of explosives and gas show the great military value of the factories of the I. G. combination. Although no arrangements had been made to mobilize them at the outbreak of hostilities, they were rapidly converted to war purposes, thanks to their highly trained personnel and the great technical resources of their peace organization. In the future it is clear that every chemical factory must be regarded as a potential arsenal, and other nations can not therefore submit to the domination of certain sections of chemical industry which Germany exercised before the war. For military security it is essential that each country should have its chemical industry firmly established, and this must be secured as one of the conditions of peace, as otherwise we are leaving Germany in possession of a weapon which will be a permanent menace to the peace of the world.

The key to Germany's war production of explosives was the Haber process for the production of ammonia from atmospheric nitrogen. It is significant that large scale production by this process only began at the end of 1912, and that in the early part of 1914 great pressure was put on the Badische Co. to increase its output. During the war, owing to the extension of the Haber plants at Oppau and Merseburg, Germany has become independent of foreign countries for her supplies of ammonia and nitric acid, substances indispensable for the manufacture not only of high explosives but also of fertilizers for food production. Without such a process Germany could not have made the nitric acid required for her explosives programme, nor obtained fertilizers for food production after the supply of Chile saltpeter had been stopped by our blockade, and it is probable that she could not have continued the war after 1916. In the event of another war we might be cut off from supplies of saltpeter.

The resources of the German dye industry are of no less military importance. Most of the gases employed toward the end of the war were complex organic substances, none of which had been made previously except in small quantities, and some of which were prepared for the first time during the war. Gas warfare will undoubtedly continue to develop in this direction, and in the future organic substances will be employed which we do not know today. The use of gas will always offer great opportunities for suprise in military operations, and the experiences of the present war has shown that rapid production of a new gas is essential if the surprise is to be effective. Any country without a well-developed organic chemical industry will be severely handicapped in this respect.

H. HARTLEY,
Brigadier General,
On Behalf of the Members of the Mission.

London, February 26, 1919.

DEFENDANT'S EXHIBIT No. 322.

[Journal of Industrial and Engineering Chemistry, June, 1919.]

AMERICAN OFFICERS IN GERMAN CHEMICAL PLANTS.

THE DYESTUFF PLANTS AND THEIR WAR ACTIVITIES.

[By Theodore W. Sill, major, C. W. S., U. S. A.]

During the month of February, 1919, I had the opportunity, as a member of the interallied commission, of visiting most of the principal plants in the various occupied areas of Germany which were devoted to the manufacture of dyestuffs, medicinal products, and standard chemicals.

Before going through these various plants one has many ideas, developed from newspaper reports and other sources of information, concerning Germany's war-time conditions, which are considerably changed after observing actual conditions. We had often heard of the great destruction resulting from air raids, of the lack of workers and great labor unrest, of the run-down conditions of the plants, and, in short, one was quite prepared to find them in a disordered state through the lack of operating personnel. However, one discovers very soon that the contrary is quite true. To-day finds these great German plants, probably the greatest of the potential possibilities for war material production, in splendid condition, with a large, highly trained force of employees, and, moreover, with additional opportunities for increasing their production by utilizing the extra equipment added for war materials production.

Owing to the great foresight and efficiency of the German prewar system, that, is efficiency from a military standpoint in particular, all of their man power was registered and so classified that when the call to battle came they kept a large proportion of their trained workmen within these plants. Consequently, they still have the majority of them ready to take part in a new battle for commercial supremacy.

At the present time the plants are operating at about 10 per cent of their productive capacity for peace-time products, but nevertheless they are keeping most of their labor to avoid their becoming mixed up in agitation or possible Bolshevism which may be nourished by lack of employment. Most of these men are utilized in cleaning up the plants every day. Consequently, one finds the plants in quite perfect condition. The only apparent handicap they have at present is the lack of oil and greases for lubrication of machinery, which, however, they have partially overcome by using artificial substitutes.

The important point is that the American people, in particular, should realize that this important portion of Germany's industries is not crippled but intact and ready to operate, and is consequently a dangerous factor in the struggle for commercial supremacy, and also as a potential source of war material production unless properly controlled. Moreover, I do not think the German people as a whole realize completely the magnitude of their defeat: they count upon the Americans in particular very soon forgetting the horrors of the war, resuming their trade with them, utilizing their products, and allowing their industry to thrive once more. At present the only things they lack are raw materials and coal for the operation of the plants, which fortunately the Allies can control, unless the peace terms are lenient enough to allow them to operate on full scale as before. Let us hope that the American people and consumers of chemicals and dyestuffs will back up the American manufacturer so that this previous condition can not be restored.

It was our good fortune to pass through the devastated sections of France and some in Belgium on our way to Germany. One can not see this terrible destruction of land, factories, and cities, so complete and terrible that neither word nor picture can describe adequately without being impressed by the contrast you see upon entering Germany, where all is serene, quiet, clean, and orderly, and scarcely any sign of destruction such as has been visited on the French.

Arriving in Cologne, we made our headquarters there while making a tour of investigation through the plant of the Farbenfabriken vorm. Friedrich Bayer

& Co., at Leverkusen, and also the plant of Weiler-ter Meer, at Uerdingen on the Rhine.

The plant of the Bayer Co. stands out preeminently as the best and most modern of German chemical plants. It is a veritable city in itself, well laid out with excellently constructed streets and brick buildings. Their office building and recreation buildings for the employees are luxurious palaces. This plant has expanded considerably during the war, and, despite the contrary assertions of its directors, was widely engaged in the manufacture of war products, particularly poison gases. We had the opportunity of meeting Dr. Duisberg, the chief director, and, incidentally, one of the ex-Kaiser's right-hand men in the development of the war. Many will remember him from his visit to this country at the time of the chemical Congress in 1912. Incidentally, he hopes to be over here again very soon to see his "old-time friends."

The plant of Weiler-ter-Meer at Uerdingen is also an excellent development, kept up in very good condition. Despite the high cost of living in war times, this concern was able to erect within the last year a large, expensively equipped recreation building for their men, and is apparently in good condition, just marking time while awaiting resumption of activities and thankful that the Belgians are there to protect them from the Bolsheviki across the river.

Of all the men whom we met in the various plants in Germany the head of this plant was the most cordial and open in all his dealings with us. It was, of course, a difficult and humiliating position for men to be in, and in many cases we encountered sullen indifference, particularly among the plant directors, but among the lower classes of foremen and workmen there does seem to be a general recognition of the fact that the war has been lost and also that the cause was wrong to start with. Of course, a good deal of this is propaganda and an effort to pass responsibility on to a government which has been discredited and broken up, but I believe that there is really a large number of the poorer class of Germans who have now come to realize the wrong done by Germany in this war.

After spending a few days in Coblenz, the American headquarters, where we had the opportunity of seeing the American flag proudly waving over the great German fortress of Ehrenbreitstein, we journeyed up the Rhine to Mayence, the headquarters of the French area. Within this area we were privileged to visit the Kalle plant at Biebrich. Very little war work had been done at this place, and the plant was probably the poorest of all we saw, being old, dirty, and in a run-down condition.

At Hoechst-on-the-Main we went through the great plant of Meister, Lucius und Brüning, who were pioneers in the development of German poison gases, and had done considerable work in all kinds of war materials. They, too, had a large, very fine plant, well laid out, and in good operating condition, extending for many acres along the river. They are quite progresive and have developed on a large scale.

A little later we went up to the greatest of all plants, the Badische Anilin und Soda Fabrik, at Ludwigshafen. This plant employs about 16,000 men and covers many acres of ground. They have the plant for dyestuffs, intermediates, etc., at Ludwigshafen, and a little farther up the river, at Oppau, is located the plant for the Haber process. Considerable work on war products was done at Ludwigshafen, but they also were able to make dyestuffs on an appreciable scale during the war. At the present time they have a large stock on hand ready to turn loose on the markets when permission is granted. They, too, had done considerable work on poison gases and explosive intermediates, but not to an extent which would at all interfere with their resumption of dyestuff manufacture on a large scale.

At Oppau we saw what is probably the most phenomenal scientific development up to date, namely, the practical realization on an operating basis of the Haber process for ammonia production. The buildings are all quite new and well constructed, and the vast amount of detail has been studiously and carefully worked out on a practical operating basis, producing upward of 100,000 tons of ammonia per year. This plant was a large factor in enabling Germany to stay in the war as long as she did, by means of producing large quantities of nitrates. The Germans have also another plant, a duplicate of this, which they are operating in the unoccupied area of Germany, so that it is really a great practical possibility at the present time.

Incidentally, it came to our attention that Haber, to whom Germany owes so much of her development in chemical products in warfare, had never attained a higher rank than captain in the German chemical warfare service, despite the responsibility and immensity of his job.

Looking at our inspection of the German plants from a general viewpoint, it is my opinion that, considering the advantage gained in America by the last four years of experience in chemical manufacturing and the lessons learned by our equipment manufacturers, the German plants at the present time from an equipment standpoint and general layout are not superior to the existing American development, their advantage being that they have had experienced and long-trained personnel schooled and willing to carry on the laborious details; but if our people here at home will encourage our new, rapidly growing industries, there is no reason why our own personnel can not equal or, in fact, surpass that of the Germans.

There are but few distinctive features to be observed which might advantageously be adopted in some American plants. For instance, (1) the Germans have a very clever method of building their water towers around the power-house chimneys or stacks, thus utilizing the waste heat and keeping their water from freezing; (2) they have a method of distributing the pressure in the filter presses so that it is not only applied at the center by a large screw, as in most of our presses, but also horizontally along the sides of the press; (3) at one place we saw an excellent automatic nitration system based upon the alternate filling and refilling of a small tank with a measured quantity of water, which in turn was connected with valves releasing definite amounts of acid and benzol; (4) the Germans have in practically all their plants a very high grade of lead fittings, in which art they have advanced remarkably well; (5) in many cases it was also noted they used square flanges on the elbows for their high-pressure piping connections.

On the other hand, one notices considerable lack of conveying equipment, such as bucket elevators and belt conveyors through these plants, the probability being that they utilize man power much more than we do, and do not rely upon mechanical equipment so much. Moreover, despite the aggravated condition of transport during war times there were several instances where they made products in these various plants in successive steps, making one part at this plant, conveying it perhaps to a considerable distance up the Rhine to another plant, where it would be converted into an intermediate, and, perhaps bring it back almost to its original starting point to be finished, and then carrying it over as far as Berlin, perhaps, to be put into shells. Despite the much-vaunted efficiency of Geman operations this seemed to be a glaring refutation of their claim, particularly in view of the fact that the type of apparatus was very simple and practically the same for all steps of the operation.

Although in most cases, particularly in connection with war problems the Germans were quite liberal with information in anwer to our questions, they did on many occasions fall back on Berlin as an alibi, emphasizing the fact that all plants were controlled by the war minister in Berlin, that all papers were there, and that they were but pawns to do as he directed—the old government, now discredited, being to blame for all their war production.

Among the developments to be noted during the war in Germany, which are of special interest, was the production of synthetic rubber on a large scale and a practical basis. This was done at the Bayer plant in Leverkusen, and the production, though very expensive, was of material assistance in meeting their great shortage of rubber.

[MAP]

Another interesting phenomenon was their practical manufacture of washable paper cloth. This was utilized in the manufacture of shirts and of various articles of clothing, as well as towels, tablecloths, etc. It was very successful, and was a considerable factor in meeting their shortage of linen, cotton, and such materials, aside from being exceptionally cheap.

At the present time in the occupied areas of Germany conditions are quiet and orderly, and the people are really thankful to have the allied armies there to occupy those areas of Germany, as it means order and quiet in considerable contrast with what transpires in other portions of Germany. The inhabitants have a fear that the allies, particularly the French, are going to occupy the land permanently, but otherwise are quite satisfied. One sees store windows well filled with luxuries—optical goods, cameras, etc.—but the grocery stores are practically empty, and the quality of food is quite inferior. However, there are very few signs of any suffering, which has been so widely exaggerated in the press reports, but there is, of course, much inconvenience.

At the present time it is my understanding that the allies occupying the various areas plan to keep a qualified corps of representatives to participate in the control of operations of the factories in their area. They will thus have command over the raw materials utilized and required, the methods of operation, and the export of the materials produced. It is my strong conviction that America, too, despite the fact that there are no particularly large chemical plants in the area which the American army occupies, should, in consideration of being an ally and a much needed and valuable participant in the victory gained, also have representatives in each of these factories for a long period of time, to gain the valuable information which our allies are obtaining. This information should be utilized by our Government for the disposal of the requirements of American manufacturers, so that our industries now just getting on their feet may have equal chance in competing in the world market.

DEFENDANT'S EXHIBIT No. 323.

Extract From Annual Report of Federal Trade Fiscal Year Ended June 30, 1918.

Licenses under enemy patents, trade-marks, and copyrights.—When the Commission received its authority to grant licenses under enemy patents in the fall of 1917, it found an acute condition as to certain synthetic drugs which had formerly been entirely of German manufacture and importation. The drug which presented the gravest and most pressing problem was that introduced as "salvarsan," or "606," for the available supply in this country was almost exhausted, and the demand from the Army, the Navy and the medical profession at large was very extensive, so that in many instances the price demanded for this product rendered its use prohibitive. The situation was carefully studied in conference with the Surgeon Generals of the Army, the Navy and public Health Service and with the representatives of the subcommittee on synthetic drugs of the National Research Council, and of the American Medical Association. As one result of this conference and of further investigation following it, it was determined to prescribe new names in licenses, not only for "salvarsan," but for other synthetic drugs, because the German patent owners or their American agents generally possessed trade-mark rights for the only names by which the drugs had heretofore been known. On November 27, 1917, licenses to manufacture and sell "arsphenamine," which is the new name prescribed by the Commission in its licenses for "salvarsan," were granted to the Dermatological Research Laboratories, the Takamine Laboratory (Inc.), and the Farbwerke-Hoeschst Co.—subsequently canceled and reissued to S. A. Metz Laboratories (Inc.)—and on January 12, 1918, a fourth license was issued to the Diarsenol Co. (Inc.). On March 4, 1918, licenses were issued to each of these concerns to manufacture and sell "neo-arsphenamine," which is a related and substitute drug introduced under the trade name "neosalvarsan." Difficulty was encountered in the determination of the patents under which these licenses should be granted, but they were finally issued under five patents, covering respectively the product "arsphenamine," the product "neorsphenamine," the process for making these products, the packaging of the products in glass ampules in an atmosphere of inert gas, and the method of administration by the physician.

Each of the licenses for "arsphenamine" and "neo-arsphenamine" is obliged to submit a specimen from each lot of its product to the Hygienic Laboratory of the United States Public Health Service, by whom it must be approved before the lot is released for sale.

The result of the issuance of these licenses has been a very decided alleviation of the distressing condition which previously existed, and the market now seems to be fairly supplied at a reasonable price.

After the apparent solution of the "salvarsan" problem, the Commission considered the situation involving the drug introduced as "novocain," a local anaesthetic extensively used as a substitute for cocaine, and after investigation and consideration with the subcommittee on synthetic drugs of the National Research Council, licenses were issued on December 17, 1917, to the Farbwerke-Hoechst Co.—subsequently canceled and reissued to H. A. Metz Laboratories (Inc.)—and the Rector Chemical Co. (Inc.), and further licenses were issued to the Abbott Laboratories on January 10, 1918, and to the Calco Chemical Co., on February 18, 1918. These licenses prescribed the name "procaine" for this drug introduced as "novocain."

A third drug in great demand was a widely used hypnotic known under the trade name "veronal" and the manufacture and sale of this drug under the name "barbital" was licensed to the Abbott Laboratories on December 17, 1917, and to Antoine Chiris Co. on March 11, 1918.

The only other drug for the manufacture of which a license has been issued is phenyl cinchoninic acid, formerly sold under the name "atophan." This drug is valuable in the treatment of rheumatism and gout, but the demand for it is not nearly so pressing as for the other licensed drugs, and a license has been issued only to the Abbott Laboratories, on March 23, 1918.

While each drug licensee must use the new name prescribed by the Commission, it may also use its own trade name under certain restrictions. The Commission retains control over the licensees to the extent necessary to assure the production of drugs in sufficient quantities and of satisfactory quality at reasonable prices.

The licensees for the manufacture of these various drugs were very seriously handicapped by lack of knowledge in the United States of the manufacturing processes and by the difficulty of securing the necessary equipment and materials, but they have attacked these obstacles willingly and successfully. The Army, the Navy, and the Red Cross in addition to the medical profession are calling for vast quantities of these and other drugs and the manufacture of those quantities within the requisite time necessitates the installation of equipment which will be useless after these quantitities have been supplied and normal conditions are again approached. It seems to be the fact that where the selling price of these drugs is undesirably high, it is due to enhanced cost of materials and equipment and to difficulties in unfamiliar processes rather than to any undue profit charged by the licensee, but reductions in prices may be expected as manufacturing processes become more nearly standardized. The Commission is inclined to be patient with its licensees, in view of the difficulties which they have encountered, and not only to stimulate production for the fulfillment of current needs, but also be develop a sound and enduring industry.

While the drug licenses have been the most important issued from a humanitarian viewpoint, the licenses for the production of coal-tar dyes have been the most important from the industrial viewpoint, and vast sums are being invested in the United States for the carrying on of this peculiarly German industry. E. I. du Pont de Nemours & Co. and the National Aniline & Chemical Co. (Inc.), as well as certain other concerns, are developing and carrying on the coal-tar dye industry in the United States on a very large scale, but they have not been free to produce many of the colors covered by unexpired patents owned by German companies. Both the E. I. du Pont de Nemours & Co. and the National Aniline & Chemical Co. have quickly accepted the present opportunity to commence the manufacture of German-controlled colors, and have recognized the expediency of obtaining legal protection for such activity by license from the Commission.

The research work in identifying the processes of manufacturing these various colors, and their production in commercial quantities, was not materially aided by the disclosures of the patents, and it was an especially difficult task both for the applicants and for the Commission to determine under what patents these dye licenses should be granted to protect the licensees in what they desired to do. In many instances it was found that the disclosure in the patent was entirely inadequate. In other instances the disclosure was sufficient for laboratory practice, but entirely impracticable for commercial production. Again, one patent might disclose an incomplete process, while an essential step in the complete process would be covered by another patent, the title to which was in a different owner. Persistent investigation and experimentation by the applicants for license, together with extensive consideration by the Commission, finally resulted in a fairly satisfactory grouping of the necessary patents under which licenses were issued.

Four licenses have been issued to the E. I. du

Under copyrights, one license has been issued to Houghton Mifflin Co. to publish a German officer's description of submarine warfare; another to David McKay, of Philadelphia, to publish an English and Greek dictionary; and a third to the John Crearar Library, of Chicago, to reproduce certain pages of a German treatise on dyes. The remaining licenses under copyrights have been for the production of grand operas. The San Carlo Grand Opera Co. is licensed to produce "The Jewels of the Madonna," "The Secret of Suzanne," "Salome," and "Hansel and Gretel." The Philadelphia Operatic Society is licensed to produce "The Secret of Suzanne," and the Ravinia Co., of Chicago, is licensed to perform "The Secret of Suzanne" and the second act of "The Jewels of the Madonna."

In all of the licenses issued by the Commission, a royalty is stipulated which is payable periodically to the Alien Property Custodian and the right is reserved in the Commission to investigate the licensee's business and to cancel a license at any time in its discretion, if in its opinion the licensee has failed to satisfy the reasonable requirements of the public with satisfactory articles at reasonable prices, or under any circumstances which in the opinion of the Commission make it advisable that the license be canceled in whole or in part.

Despite the complete control which the Commission thus retains over the licensee, in order to protect the interests of the public, the licensee is subject under the "trading with the enemy act" to a contingent liability which seems inadvisable and unnecessary. The act provides that the licensee shall be required to deposit with the Alien Property Custodian not to exceed 5 per cent of the gross sums received by the licensee, or not to exceed 5 per cent of the value of the use of the licensee. The act further provides that within one year after the war the enemy owner may bring suit against the Commission's licensee for recovery for all use and enjoyment of the subject matter and that the court may decree to the owner payment of a reasonable royalty, and may terminate the license and enjoin the licensee from infringement thereafter, or continue the license for such period and upon such terms as it may find to be reasonable.

These provisions as to royalty and termination of the license have caused a decided feeling of uneasiness and uncertainty among the Commission's licensees, and many competent counsel are advising clients not to apply for licenses of such inconclusive character, but to take their chances of being sued for infringement after the war in the ordinary course.

Every license issued by the Commission has been granted, not for the duration of the war, but for the life of the right under which it is granted, and the Commission is firmly of the opinion that equity demands that the royalty prescribed in the license be fixed with more definiteness, and that the power of the courts to terminate the licenses be abrogated. In some instances 5 per cent of the gross sums received by the licensee is not a sufficiently high royalty to be reasonable and in other instances it is entirely too high, and the other provision as to the deposit of 5 per cent of the value of the use of the licensed subject matter apparently has no relation to what may be a reasonable royalty. Futhermore, after the war a court may establish what it considers a reasonable royalty without any relation to the investigation by the Commission or the rate established by it in the license. Finally, in view of the fact that these licenses are designed to protect the United States concerns in establishing and carrying on industries which heretofore have been monopolized unfairly by German and Austrian interests to the very great disadvantage of the

American public, it seems inequitable in high degree to have the Commission's licenses terminable by the courts at the suit of the enemy owners.

It is earnestly urged that these serious defects of the present act should be cured, to the end that the business licensed by the Commission may rest on a firm foundation. Senate Bill No. 3523, which was introduced on January 16, 1918, at the request of the Commission, and another bill which was recently transmitted with a request for its introduction, together will remedy the present uncertainties. In substance they provide that the Commission in its license may prescribe a reasonable royalty and that at the suit of the enemy owner after the war, the court, although it may also establish a reasonable royalty, shall accept that prescribed in the license as prima facie reasonable, while the powers of the courts to terminate the licenses is entirely cut off. The enactment of these bills will certainly enable the Commission to do much more effective work in the establishment of industries which have heretofore been monopolized by our present enemies.

DEFENDANT'S EXHIBITS Nos. 324 to 367, INCLUSIVE.

Literature Distributed by the Chemical Foundation, Inc.

Note: Above Articles of Literature listed on Defendant's Exhibit No. 318. (*See Record, Exhibits, Vol. V, page 3421.*)

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 327 (This License dated Sept. 1, 1920 replaced Federal Trade Comm. License #18 cancelled September 1, 1920)									
NTHRACENE									
J-15-33-3	Anthracene	2 814.57				652.97	1 389.78	347.26	424.56
J-33-	Intermediates—anthracene series	267.30				267.30			
J-33-3	Anthracene	29 617.91				6 622.97	15 617.77	3 775.53	3 601.64
J-33-3-A	Anthracene residues	1 303.29					1 131.51	171.78	
J-33-3-B	Anthracene purification—hydraulic pressing	169.66					169.66		
J-33-3-C	Anthracene—grinding	112.62						58.53	54.09
R-128-G	Derivatives of anthracene—general	1 410.88		1 413.06	31.30	29.12			
		35 696.23		1 413.06	31.30	7 572.36	18 308.72	4 353.10	4 080.29
NTHRAQUINONE									
J-15-33-4	Anthraquinone	2 847.75				686.74	1 876.08	284.93	
J-25-15	Study of Analytical methods Anthracene & Anthraquinone	2 044.41					1 171.08	873.33	
J-33-4	Anthraquinone	26 713.39				3 820.73	21 661.65	590.85	640.16
J-33-4-A	Anthraquinone—Sublimation	79.49					79.49		
J-33-4-B	" —Sodium Nitrate process	402.74					367.14	35.60	
J-33-8	Anthraquinone—Air Oxidation	8 860.93					7 320.42	1 540.51	
J-33-9	" —Chromium Recovery	9 701.58					8 407.47		1 294.11
J-33-11	" —Liquid Condensation	17 980.60					12 523.75	5 456.85	
R-128-G-1	"	5 614.62				5 614.62			
		74 245.51				10 122.09	53 407.07	8 782.07	1 934.27
NTHRAQUINONE BETA SULPHONIC ACID									
J-15-33-1	Silver Salt	5 333.06				2 469.58	1 448.35	607.32	807.81
J-33-1	Silver Salt	33 615.33				17 049.32	9 793.29	2 272.62	4 500.10
J-33-7	Anthraquinone Sulphonic Acid—Separation	3 698.00					3 207.28	490.72	
		42 646.39				19 518.90	14 448.92	3 370.66	5 307.91

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UNITED STATES V. CHEMICAL FOUNDATION, INC. NO. 127

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CARD 93

DEFENDANT'S EXHIBIT No. 373.

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 327 (Cont'd.)									
ETA AMINO ANTHRAQUINONE									
J-33-10	Beta Amino	8 814.67					4 429.35	4 385.32	
J-33-10-A	Beta Amino Anthraquinone—New Process	4 249.06					4 244.77	4.29	
J-33-10-B	Betamine	765.74							765.74
J-15-33-10	b-Amino anthraquinone	872.67					872.67		
		14 702.14					9 546.79	4 389.61	765.74
ONSOL BLUE R									
J-15-53-1	Ponsol Blue—R	6 914.46				717.47	1 617.90	530.65	4 048.44
J-53-1	Ponsul Blue—R	16 821.04			6 777.28	5 003.78	2 543.99	—	2 495.99
J-53-1-A	Ponsul Blue—Pressure and Oil Fusions	10 180.37					1 694.10	7 839.01	647.26
J-28-18	Melting Points of Caustic potash-sodium acetate mixtures	405.26							405.26
J-53-1-B	Ponsul Blue—R—New Process	940.87						1 089.29	148.42
J-53-2-A	" " R—Solubility Studies	1 163.47							1 163.47
J-53-34	" " RS	7 810.87						3 917.44	3 893.43
J-53-A	Pasting Ponsul Dyes	1 643.54				1 643.54			
		45 879.88			6 777.28	7 364.79	5 855.99	13 376.39	12 505.43
ONSUL BLUE G									
J-15-53-2	Ponsul Blue G	8 179.07				490.02	1 751.89	3 645.81	2 291.35
J-15-53-3	Ponsul Blue BCS	1 536.14				233.02	237.80		1 065.32
J-53-2	Ponsul Blue G	2 078.16			286.65	1 700.09	91.42		
J-53-2-SW	" " "—Semi Works	5.94					5.94		
J-53-2-P	Pasting Ponsul Blue G	18 726.21					7 694.87	9 993.20	1 038.14
		30 525.52			286.65	2 423.13	9 781.92	13 639.01	4 394.81
ONSUL YELLOW G									
J-15-53-5	Ponsul Yellow G	12 122.51				1 415.57	7 719.22		2 987.72
J-53-5	Ponsul Yellow G	15 789.31			84.24	1 124.24	2 726.15	14 757.23	2 902.55
J-53-5-P	Pasting Ponsul Yellow G	1 429.58					1 529.58		
		29 341.40			84.24	2 539.81	11 874.95	14 757.23	85.17

DEFENDANT'S EXHIBIT No. 373.

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 328 **(This license dated Sept. 1, 1920 replaced Federal Trade Comm. License #18, cancelled Sept. 1, 1920)**									
NZANTHRONE									
J-15-33-12	Benzanthrone	1 565.45					1 563.05	2.40	
J-33-12	Benzanthrone	6 377.49					2 015.43	4 362.06	
J-33-12-A	Benzanthrone—Preparation of Anthranol	1 072.03						600.52	471.51
		9 014.97					3 578.48	4 964.98	471.51
NSOL DARK BLUE BR									
J-15-53-4	Ponsol Dark Blue BR	5 771.43				717.68	5 053.75		
J-53-4	Ponsol Dark Blue BR	7 479.13			2 099.34	4 832.65	547.14		
J-53-4-A	Ponsol Dark Blue BR—Pressure and Oil Fusions	10 231.22					3 877.13	6 354.09	
J-28-19	Stability of Benzanthrone colors	469.26							469.26
		23 951.04			2 099.34	5 550.33	9 478.02	6 354.09	469.26
NSOL GREEN B									
J-15-53-10	Ponsol Green B	5 585.44				737.35	4 640.98		207.11
J-53-10	Ponsol Green B	17 627.95			1 855.96	2 628.45	5 750.76	5 547.94	1 844.84
J-53-10-P	Pasting Ponsol Green B	1 041.70					511.33	530.37	
		24 255.09			1 855.96	3 365.80	10 903.07	6 078.31	2 051.95
LICENSE NO. 329 **(This license dated Sept. 1, 1920 replaced Federal Trade Comm. License #18, cancelled Sept. 1, 1920)**									
NSOL VIOLET R									
J-15-53-8	Ponsol Violet R Extra	1 968.97				673.89	1 295.08		
J-53-8-A	Ponsol Violet R Caustic Potash Recovery	641.99					294.25	347.74	
J-53-8	Ponsol Violet R	7 905.43			2 551.68	5 295.39	58.36		
J-53-8-B	Ponsol Violet R Oil Fusions	4 935.78					4 935.78		
		15 452.17			2 551.68	5 969.28	6 583.47	347.74	

DEFENDANT'S EXHIBIT No. 373.

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.
1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 330									
(This license dated Sept. 1, 1920 replaced Federal Trade Comm. License #18, cancelled Sept. 1, 1920)									
PONSOL VIOLET RR									
J-15-53-9	Ponsol Violet RR Extra	5 314.61				380.58	1 810.82	464.28	2 658.93
J-53-9	Ponsol Violet RR	8 219.46			1 123.57	1 984.88	1 597.70	217.37	3 295.94
J-53-9-P	Pasting Ponsol Violet RR Extra	1 998.08					1 146.22	851.86	
		15 532.15			1 123.57	2 365.46	4 554.74	1 533.51	5 954.87
LICENSE NO. 333									
(This license dated Sept. 1, 1920 replaced Federal Trade Comm. License #18, cancelled Sept. 1, 1920)									
PONSOL BLUE RP									
J-[illegible]-53-34	Ponsol Blue RP	799.09							799.09
LICENSE NO. 400									
(This license dated May 15, 1923 replaced Federal Trade Comm. License #18, cancelled Sept. 1, 1920)									
PONSOL CLARET B									
J-53-11	Ponsol Bordeaux B	10 779.52			5 878.45	4 900.93	.14		
LICENSE NO. 402									
PONSOL VIOLET RN									
J-53-30	Ponsol Violet RN	1 430.48				1 390.12	40.36		
LICENSE NO. 404									
PONSOL PINK B									
J-53-32	Ponsol Pink B	185.05				185.05			
LICENSE NO. 382									
PONSOL BLUE 3G									
J-53-36	Ponsol Blue 3G	993.80							993.80
LICENSE NO. 383									
PONSOL RED VIOLET 2RN									
J-53-31	Ponsol Red Violet 2 RN	4 125.56				820.29	88.31	3 216.96	

DEFENDANT'S EXHIBIT No. 373.

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.
1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 389									
ONSOL GOLDEN ORANGE G and 2RT									
J-53-6	Ponsol Golden Orange R	4 816.88			2 017.70	2 794.93	4.25		
J-53-7	Ponsol Golden Orange RRT	6 326.04			3 806.37	2 404.28	115.39		
		11 142.92			5 824.07	5 199.21	119.64		
LICENSE NO. 398									
RTHO CHLOR PARANITRANILINE									
J-31-78	Ortho-chlor-para-nitraniline	1 224.96							1 224.96
ITHOSOL VERMILLION G									
	No expenditure prior to Jan. 1, 1923	0 00							
LICENSE NO. 399									
INITRO STILBENE DISULPHONIC ACID									
J-41-3-A	Diamino stilbene—dinitro-stilbene method	9 526.59					5 577.85	2 022.34	1 926.40
RANGE OR BROWN STILBENE DYE									
	No expenditure prior to Jan. 1, 1923	0 00							

DEFENDANT'S EXHIBIT No. 373.

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 249									
ULPHOGENE YELLOW GG									
J-15-52-13	Sulphogene Yellow GG	8 102.12					6 310.07	330.78	1 461.27
J-52-13	Sulphogene Yellow G	5 849.38			1 331.72	143.24	2 538.63	957.70	878.09
		13 951.50			1,331.72	143.24	8 848.70	1 288.48	2 339.36
LICENSE NO. 365									
ULPHOGENE BROWN R									
J-52-16	Sulphogene Brown RB	21 186 74			2 546.39	11 447.84	7 102.83	89.68	
J-52-47	Sulphogene Brown RBNNX	1 871 23						316.36	1 554.87
		23 057.97			2 546.39	11 447.84	7 102.83	406.04	1 554.87
LICENSE NO. 334									
ULPHOGENE BORDEAUX B									
J-15-52-20	Sulphogene Bordeaux B	4 108 10				1 773.63	1 710.58	488.47	135.42
J-25-26	Study of Analytical Methods—Sulphogene Bordeaux	1 637.73						951.27	686.46
J-52-20	Bordeaux B	9 053.27				4 394.33	4 134.59	524.35	
J-52-20-A	Bordeaux B—Nitrosophenol Process	2 810 45					396.02	2 408.77	5.66
J-52-25	Sulphogene Brilliant Bordeaux RR	641 04					594.72	46.32	
		18 250.59				6 167.96	6 835.91	4 419.18	827.54
LICENSE NO. 366									
ULPHANTHRENE PINK FF									
J-52-53	Sulphogene Hydron Pink	3 221.87							3 221.87
LICENSE NO. 368									
YDRON ORANGE, VIOLET, CRIMSON, BROWN									
J-52-54	Sulphogene Hydron Brown	1 259 95							1 259.95
J-52-55	Hydron Bordeaux	402.92							402.92
		1 662.87							1 662.87
LICENSE NO. 387									
THOSOL BORDEAUX B									
J-43-108	Lithosol Bordeaux B	1 215.18						405.17	810.01

DEFENDANT'S EXHIBIT No. 373.

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 314									
ARABAZOL									
J-25-28	Study of Analytical Methods—Carbazol	1 725.38						1 725.38	
J-33-2	Carbazol	12 192.20				3 671.08	4 777.19	604.83	3 139.10
J-33-2-1	do —Sublimation	720.72					720.72		
J-33-2-2	do —Distillation	636.46						634.94	1.52
		15 274.76				3 671.08	5 497.91	2 965.15	3 140.62
YDRON BLUE R									
J-52-12-A	Hydron Blue R	47 188.04					29 121.63	17 895.29	171.12
LICENSE NO. 364									
YDRON BLUE G									
J-52-12-B	Hydron Blue G (New)	25 374.91					3 168.97	13 863.34	8 342.60
LICENSE NO. 332 **(This License dated Dec. 19, 1920 replaced Federal Trade Comm. License #21 cancelled Sept. 1, 1920)**									
ETA HYDROXY NAPHTHOIC ACID									
J-15-32-24	Beta Hydroxy Naphthoic Acid	5 874.08					589.96	5 282.29	1.83
J-32-24	do	21 869.12				6 016.33	5 584.56	10 115.70	152.53
		27 743.20				6 016.33	6 174.52	15 397.99	154.36
UPONT NAPHTHANIL AS AND BS									
J-16-31-A-22	DuPont Naphthanil for Printing	1 085.51							1 085.51
J-32-29	Naphthol AS	6 902.25					4 026.42	1 995.62	219.96
J-32-34	Naphthol AN	740.77				660.25	4 026.42	1 995.62	219.96
		8 728.53				660.25	4 090.84	2 671.97	1 305.47
LICENSE 381									
ONTACYL FAST LIGHT YELLOW 2G AND 3G									
J-31-26	Phenylhydrazine Sulphonic Acid	1 452.21				1 410.33	41.88		
J-34-1	1-Sulpho Phenyl 3-Methyl 5-Pyrazolone	5 943.67					2 324.43	3 619.24	
J-31-76	Phenylhydrazine—B-Chlor-M-Sulphonic Acid	527.67							527.67
J-31-77	1-Ortho-Clor-Meta-Sulpho-Phenyl 3-Methyl 5-Pyrazolone	562.84							562.84
J-31-A-29	1-Meta-Sulpho-Ortho-Toylyl 3-Methyl 5-Pyrazolone	411.65							411.65
J-43-286	Pontacyl Light Yellow 3G	553.16							553.16
		9 451.20				1 410.33	2 366.31	3 619.24	2 055.32

DEFENDANT'S EXHIBIT No. 373.

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

	Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 331								
ONTACHROME BLACK 6BX								
J-15-43-103 Pontachrome Black 6BX	1 858.43				396.95	1 075.36	386.12	
J-43-103 Pontachrome Black 6BX	21 744.78				6 010.39	9 513.27	5 538.03	683.09
	23 603.21				6 407.34	10 588.63	5 924.15	683.09
AMIDO—2-NAPTHOL 4-SULPHONIC ACID								
J-15-32-19 1-2-4 Acid	5 251.23				916.51	1 509.30	2 825.42	
J-32-19 1-2-4 Acid	14 439.04			1 978.04	6 475.02	1 438.28	1 388.09	3 159.61
R-128-F-22 1-Amino 2-Oxy 4 Sulphonic Acid	792.32			792.32				
	20 482.59			2 770.36	7 391.53	2 947.58	4 213.51	3 159.61
otal Expenditures for Products Licensed from the Chemical Foundation	640 656.88		1 413.06	33 098.41	122 603.45	250 892.28	160 255.51	72 394.17

DEFENDANT'S EXHIBIT No. 373.

EXPENDITURES FOR RESEARCH WORK ON PRODUCTS LICENSED FROM THE FEDERAL TRADE COMMISSION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 19									
HENYLGLYCINE AND INDIGO INTERMEDIATES									
J-15-31-11	Phenylglycine	10 980.92				2 900.91	4 081.26	1 687.16	2 311.59
J-25-14	Study of Analytical Methods—Formaldehyde	608.05					608.05		
J-26-1	Plant Investigation—Chloracetic and Phenylglycine Plant	1 182.29			1 182.29				
J-30-1	Chloracetic Acid—Partial Chlorination	25 482.32				9 513.09	6 108.69	9 860.54	
J-30-9	Chloracetic Acid—Distillation	644.27					647 28	3.01	
J-31-11	Phenylglycine	44 884.94			5 609.13	24 553.60	4 686.18	6 199.48	3 836.55
J-31-11-A	Phenylglycine—Chloracetic Acid Method	9 784.12					6 332.72	3 478.37	26.97
J-31-11-1	Phenylglycine—Testing Ex'l. Sta. Cyanide	116.85						116.85	
J-31-11-3	Phenylglycine—Recovery of By-Products	123.99						123.99	
J-31-17	Phenylglycine Trichlorethylene—Synthesis	2 225.36			1 348.06	907.30			
J-31-11-B	Phenylglycine—Alcohol Method	1 512.63						1 215.04	297.59
E-391-S	Organic Research—Phenylglycine	10 352.73	566.84	4 733.04	5 071.51	18.66			
R-128-F-7	Phenylglycine—O-Carboxylic Acid	10 583.91		10 145.01	438.90				
		118 512.38	566.84	14 878.05	13 649.89	37 856.24	22 464.18	22 678.42	6 418.76
NDIGO									
J-54	Indigo and Derivatives—Plant Process	67 387.96		85 59	10 480.48	41 874.97	3 114.34	11 778.99	53.59
J-54-1	Indigo and Derivatives—Synthesis	10 187.89				10 187.89			
J-54-2	Indigo—Oxyethylaniline Method	2 154.82					2 154.82		
J-54-2-SW	do Semi Works	2 371.40					2 371.40		
J-54-4	do Sodamide	1 211.23						884.16	327.07
J-54-8	Indigo—Study of Melt	7 167.08						3 228.15	3 938.93
J-54-9	do Powder	764.02							764.02
J-54-10	do Caustic Recovery	1 321.76							1 321.76
J-15-54	Indigo and Derivatives—Plant Process	9 376.20				1 941.87	5 755.58	660.79	1 017.96

DEFENDANT'S EXHIBIT No. 373.

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE FEDERAL TRADE COMMISSION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 19 CONT'D.									
J-25-20	Study of Analytical Methods—Indigo	2 493.95						1 113.51	1 380.44
J-391-F-14	Organic Research—Dyes—Indigo	9 630.60		683.40	4 448.53	4 498.67			
		114 066.91		768.99	14 929.01	58 503.40	13 396.14	17 665.60	8 803.77
LICENSE NO. 18-A									
ODIUM HYDROSULPHITE									
R-128-B	Manufacture of Sodium Hydrosulphite	43 039.61	95.31	15 970.16	25 770.84	1 203.30			
R-128-B-2	Manufacture of Sodium Hydrosulphite	487.37				487.37			
J-15-65-2	Sodium Hydrosulphite	12 769.68					10 050.49	2 305.47	413.72
J-65-2	do	2 391.91					752.26	861.24	778.41
		58 688.57	95.31	15 970.16	25 770.84	1 690.67	10 802.75	3 166.71	1 192.13
xpenditures for Research Work on Products Licensed from the Federal Trade Commission		291 267.86	662.15	31 617.20	54 349.74	98 050.31	46 663.07	43,510.73	16 414.66

DEFENDANT'S EXHIBIT No. 374.

H. A. Metz Laboratories, Inc.
Medicinal and Pharmaceutical Preparations
122 Hudson Street

New York, N. Y.,
August 13, 1918.

Laboratories:
644-646 Pacific Street
Brooklyn, N. Y.

Dr. Julius Stieglitz,
University of Chicago,
Chicago, Ill.

My dear Dr. Stieglitz:

In reply to your favor of August 6th, I beg to say that we are interested in your reference to using a catalyzer, which is along the lines of some work we had laid out for ourselves in the same connection, but as yet have not been able to do anything with it. We have found several references in the literature in regard to the use of catalyzers in making various arsinic acid compounds as follows:

> Morgan on Organic Arsenical Compounds, Page 210-11 German Patent 264924 by Heyden, using copper nitrate.
>
> German Patent 254092 by Bart, in which he uses copper powder, cuprous oxide, cuprous salts, silver powder and similar products.
>
> German Patent 268172 by Bart.

The patents referred to may be found in Vol. II of "Friedlaender", pages 1030-31. We are using the Acetyl derivative of Paraphenylenediamine.

I, of course, appreciate your offer to be of service to us in case of need and shall be very glad to call upon you, but at the same time, with Dr. Myers at our laboratory here going through our entire processes for the Public Health Service, and making a number of experiments at our plant, I feel that such information as we have worked out ourselves, and such improvements as we have been able to make, should not go for the benefit of competitors from whom, to say the least, I did not get fair treatment. I am willing, as you know, to go the limit to give the Government the best there is, and am hoping that the standard will be placed at 80 mgms. instead of 70 in the near future and am satisfied that a very large part of my product will pass at 80 mgms. or above. While, as I have always stated, I am anxious and willing to place anything we have at your disposal personally, or at the disposal of the Public Health Service, I can hardly be expected to place it at the service of my competitors, and I am assured by Dr. McCoy, and Dr. Myers personally that whatever I show him, or any facilities placed at his disposal, are to be treated entirely confidential and for the benefit of the Public Health Service and not to be disclosed to competitors. I am quite sure you understand my position in regard to this.

With kindest regards,

Yours very truly,

(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 375.

July 17/23.

My dear Mr. Kresel:

I have been in rather bad health recently, so much so, in fact, that I have been advised to leave business altogether and at once for a considerable period.

In view of this I trust that it will be unnecessary for me to testify in the Chemical Foundation suit, particularly as it seems evident that the ground has already been so thoroughly covered that I can add nothing to what has already been said.

Please accept my best wishes for your success and believe me

Sincerely yours,
RAMSAY HOGUET.

[Face of Envelope]
Mr. Isidore J. Kresel
Hotel Du Pont
Wilmington, Del.

DEFENDANT'S EXHIBIT No. 376.

[On Western Union Telegraph Blank]

Received at 820 Market Street, Wilmington, Del.
B24P Q 15 1 Extra
UD New York NY 144P July 18 1923
Isadore J Kresel
220
Hotel DuPont Wilmington Del
Mr Ramsey Hoguet Unfit to be Witness Have Ordered Complete Rest and no Excitement
J A McCreery
MD
234P

Mr. Hughes: If the Court please, we are here for the hearing of Mr. Holdermann, one of the witnesses for the Government, I believe, in the case of the United States against the Chemical Foundation.

Mr. Galloway: If the Court please, in accordance with the arrangement which was made on last Friday, when counsel for the Government, as well as counsel for the defendant were present, the United States produced a witness here, Karl Holdermann, of Ludwigshafen, Germany. This we understand is in accordance with the plan which the Court then made of advancing the trial and arranging for the adjournment after the examination of this witness; and it is also our understanding that no opening statements are to be made at this time, but are to be deferred until June 4th, when the trial itself begins.

This witness, of course, is produced out of the order in which we ordinarily would proceed, and we ask to proceed at this time.

The Court: You may proceed according to that plan, Mr. Galloway, and you may take your testimony substantially as if before an examiner; and the defendant may reserve its exceptions and protect its rights in the same manner as if before an examiner, and after I have gotten to understand the case, I will pass upon those applications, but not now; that is, it will be impossible for me, without an opening statement, and without a preliminary study of the case, to make satisfactory rulings, either to one side or the other or to myself.

Mr. Galloway: I understand then, your Honor, that the objections should be interposed at this time, but the Court will reserve its rulings, until after it has become more familiar with the case.

The Court: Correct, unless there is some objection.

Mr. Kresel: That is, all objections, both as to form, materiality, and irrelevancy.

The Court: No, there is no reason why a matter of form cannot be ruled on now as well as later, but matters of substance will have to go over until the case is really opened, and the testimony of this witness may be taken up some time during the regular trial of the case and the objections then ruled upon, probably before the Government closes, so that it may have an opportunity of putting in other evidence in case some matter of substance be stricken out.

Mr. Kresel: Very good.

Mr. Anderson: I shall call Dr. Karl Holdermann.

KARL HOLDERMANN.

Karl Holdermann was called as a witness on behalf of the Government, and having been duly sworn, testified as follows:

The Witness: Your Honor, I am not very well acquainted with the English language and perhaps it will be necessary for me to ask you to repeat the questions.

The Court: If you have any doubt at any time about what the meaning of the question is, you may make such inquiry as will make it clear to you.

Direct Examination.

By Mr. Anderson:

Q. 1. Your name is Karl Holdermann, is it?

A. Yes.

Q. 2. Where do you reside?

A. I am residing in Ludwigshafen on the Rhine.

Q. 3. Ludwigshafen on the Rhine?

A. Ludwigshafen on the Rhine.

Q. 4. That is in the territory of Germany, is it not?

A. Yes.

Q. 5. You are a citizen of Germany, are you not?

A. Yes, I am.

Q. 6. How old are you?

A. I am forty.

Q. 7. What is your business or profession?

A. Chemist is my profession.

Q. 8. Have you any degrees, college degrees, or other degrees as a chemist?

A. Yes, I am a diplomated engineer and Doctor of Engineering, both of the Technical High School, that is a sort of University of Carlsrusch in the Grand Duchy of Baden, or what was the Grand Duchy of Baden before the Revolution.

Mr. Anderson: If your Honor please, I will state that if the Reporter does not clearly understand Dr. Holdermann's utterances, I hope he will stop him, because of his difficulty with the language.

Q. 9. In what year did you graduate or receive your doctor's degree as engineer and chemist from the school you mentioned?

A. It was in 1904.

Q. 10. 1904?

A. Yes, 1904.

Q. 11. What is your present position, and with what institution or company?

A. I am a member of the firm of the Badische Aniline & Soda Fabrik. I entered the factory in 1906, when I left the university; after I was graduated there I was two years assistant with various professors, organic and physical and chemical, and from there I went immediately to the Badische Aniline & Soda Fabrik in the spring of 1906, and I was there continuously up till now, and in 1920, I became assistant manager of this firm.

Q. 12. What is the general character of the business of this company which I will call for convenience the Badische Company?

A. We were generally manufacturing dye stuffs of most various kinds, and mineral acids and some salts, and in the recent times, a few years ago, we had started to manufacture ammonia in the synthetic way, you know, by the so-called Haber-Bosch process.

Q. 13. You say that you became assistant man-

A. Yes.

ager of this concern in 1920?

Q. 14. Before that time you had been employed as an employee of the concern, had you not?

A. As a chemist.

Q. 15. As a chemist of the concern, Dr. Holdermann, in your position with the Badische Company, prior to and since 1920, have you had anything to do with its patent department, or the handling or dealing with its patents?

A. Yes, I was with the patent department nearly all the time. I was in the Badische Aniline & Soda Fabrik already in 1906.

Q. 16. Does this company own or control any considerable number of patents?

A. Yes, we have quite a number of patents. We are taking out more than one hundred patents in Germany every year, and the more important of them are also applied for in the foreign countries. We have hundreds of patents in the foreign countries.

Q. 17. You take out those patents in Germany, and then in foreign countries; does that include the United States?

A. Yes. First in Germany, then in the foreign countries.

Q. 18. In connection with the patent department, do your duties require you to familiarize yourself with the character of these patents, their use and values and other incidents in connection with them?

A. Yes.

Q. 19. Do you know how many such patents the Badische Company owned in the United States in 1917?

A. There were about between 450 and 500 patents which were owned by the firm at the beginning of the war.

Q. 20. This is the case of the United States against The Chemical Foundation, Inc., involving questions as to the seizure and transfer of certain formerly German owned patents to The Chemical Foundation. Have you examined the list of patents accompanying the bill of complaint in this case, to ascertain if it includes patents of the Badische Company?

A. Yes, it includes all our patents.

Q. 21. It does?

A. Yes, that we had at the time.

Q. 22. All the patents that you had in the United States?

A. All the patents we had in this country.

Q. 23. Does it include any applications for patents then pending, which have since been granted?

A. Yes, all the applications which were then pending, and most of them have matured into patents since then.

Q. 24. When I say pending, I mean 1917, when the United States and Germany went into the war?

A. Yes.

Q. 25. Did it also include any trade marks or applications for trade marks by the Badische Company?

A. This list of The Chemical Foundation?

Q. 26. I mean the seizure and conveyance to The Chemical Foundation, which is described in this bill of complaint?

A. All the trade marks.

Q. 27. Will you please state whether or not you have familiarized yourself with the situation sufficiently to say how many of the patents, applications for patents, trade marks and applications for trade marks which were then owned or claimed by the Badische Company, were seized by the United States and transferred to The Chemical Foundation?

A. Everything, all of them have been seized.

Q. 28. About how many?

A. About how many? About between 450 and 500 patents, and some few dozen of trade marks.

Q. 29. Can you give me any classification of the patents so seized by the United States and transferred to The Chemical Foundation as to their character; have you any means of classifying them in classes?

A. Yes, of course in rough lines, these patents cover nearly every field of chemistry, but most of them are for dye stuffs, wool dye stuffs, and vat dye stuffs, pigments and everything, and auxiliaries for dyeing processes, that is one group, and the other group for fixed nitrogen and the most important of them are those for the Haber-Bosch process and auxiliary processes therefor, and there is another field for synthetic tanning materials. That is a new art.

Q. 30. Have you a complete list of the patents of the Badische Company and applications for patents and trade marks, etc., which were so transferred?

A. Yes, we have.

Q. 31. Seized by the United States for The Chemical Foundation?

A. Yes.

Q. 32. Can you file that list as part of your deposition; have you it so made out separately that you can file it?

A. Yes.

Q. 33. Will you produce it?

A. It agrees with that which has been filed by The Chemical Foundation, and which is contained in the bill of complaint of the United States Government. I do not think there is any difference, no essential difference.

Q. 34. No essential difference?

A. No.

Q. 35. Then the patents as described in the exhibit with the bill of the United States Government, are the patents to which you refer, the patents and applications for patents to which you refer, to the Badische Company?

A. I think with a few exceptions.

Q. 36. That is substantially correct, is that true?

A. Yes, substantially correct.

Q. 37. Described as Badische patents in that exhibit?

A. Yes.

Mr. Anderson: Have you got that exhibit here?

The Witness: To be stated correctly, there are a few patents among them which have been taken out by our firm for the electric light process of fixing nitrogen. These patents have been transferred to the Norak Hydro Elektrisk Kdaelstof Aktienselskab.

Mr. Kresel: I am sorry I did not get that. Will you please repeat that?

The Witness: Norak Hydro Elektrisk Kdaelstof Aktienselskab.

Mr. Warfield: Do you intend to prove title by this witness to anything?

Mr. Anderson: No, I have to identify the patents, because his evidence would only come after proof of title. Therefore, I have to identify them.

Mr. Warfield: So long as it is understood that this is not offered to prove title.

Mr. Anderson: Of course, if your Honor please, we will introduce the evidence in its order showing the seizure by the Government and the transfer to the Alien Property Custodian. I do not assume that they will question the title of the Government. If they do, they will question their own; but I have to identify these patents at this time, in order that I may ask as to what the patents are and what value.

The Court: Are you going to rely at all upon the evidence of this witness with respect to title?

Mr. Anderson: Not with respect to title, unless it might be some evidence of this witness would be pertinent to title; but I am not introducing it for that purpose, because we are going to show seizure by the Government of the United States, that is the only title we are interested in, and we are not undertaking to recover the patents for the Badische Company. Therefore, the title is not involved.

Q. 38. Turning to the printed bill of complaint——

Mr. Kresel: May I interrupt you for a moment? The witness was telling us of some of the patents that had been transferred to this Norwegian company. He said some of them, and I would like to have him identify, if he will, at this time, which were so transferred.

Mr. Anderson: Certainly.

Mr. Kresel: If it is not interfering with your line of examination.

Mr. Anderson: As soon as I get identification of the whole, I will ask him to identify, by eliminating those that were transferred.

Q. 39. Turning to the bill of complaint in this case, the printed bill, and exhibit thereto, I find on page 133 to 140, the following patents and applications were demanded under report No. 33,051, trust No. 734 of the Badische Aniline & Soda Fabrik Co. Is that the list of patents to which you refer?

A. Yes, these are the applications and patents of our firm that have been seized; yes, that is the list.

Q. 40. Now, Dr. Holdermann, you spoke a moment ago of some of those patents having been transferred to a Swedish company. Can you take the list and state just which patents, by number, were so transferred?

A. They have not been seized because they did not belong to our firm, but to a firm of a neutral country. It was a Norwegian company, and a few others. Here are three, 1,095,425——

Q. 41. 1,095,425?

Mr. Kresel: On what page of this bill of complaint do you find that, please?

Mr. Anderson: Page 138.

The Witness: 1,095,425, that is on page 138.

Mr. Kresel: And what is the number again?

The Witness: 1,095,425, 1,095,426, 1,095,427, those three.

By Mr. Kresel:

Q. 42. Have you got that, the number is 1,095,425, 1,095,426 and 1,095,427, is that right, Doctor?

A. Yes, that is it. I think that is all.

Mr. Kresel: Just those three?

A. Here is another one, No. 884,919. Is it in the list? No, that is not in. No. 884,920; no—they are not in. I think that is all. That is all. I cannot find any others but these three.

By Mr. Anderson:

Q. 43. Doctor, you spoke of several classes of patents included in the list so seized; among others, the Haber-Bosch patents as you described them?

A. Yes.

Q. 44. Will you state briefly what is the general character of those patents; that is, what they are intended to cover and what they did cover?

A. These patents for the Haber-Bosch process are a process for fixed nitrogen. Nitrogen, which you know, is about four-fifths of the air, and nitrogen is valueless when in this form. It must be chemically combined in some form or other- and then it is converted into a very valuable fertilizer, and the demand for fertilizers has increased every year and it has heavily increased every year.

Many attempts have been made to combine the nitrogen of the air to form fixed nitrogen, as it is called, and this Haber process is one of these processes which is for such a fixation of nitrogen; and I can say that the process has proved the most efficient of all the processes which have hitherto been invented. It is the only one that has come to stay, and it is based on the fact that the nitrogen is combined with hydrogen. It is the gas which is contained in illuminating gas, and by the influence on certain solid masses, so-called contact masses, and thereby ammonia is formed, which is a gas which is dissolved in acids, sulphuric acid or hydrochloric acid, and is traded as ammonium sulphate, ammonium chloride, and so on, and forms a very valuable fertilizer.

Q. 45. How many of those patents covering what are known as the Haber-Bosch process were included among the patents which you have identified as having been seized, which you claim to be the property of the Badische Company?

A. Taking all the patents that belong here too, not only those which have been registered by Professor Haber, but those for machinery, for apparatus, and for the conversion of gaseous ammonia into the salts I have spoken of just now, and for converting ammonia into nitrate, another form of fixed nitrogen, and for preparing the hydrogen which is necessary for its preparation in the whole class of patents which belong thereto, there are about 58.

Q. 46. 58 patents?

A. 58.

Q. 47. Are all these patents in commercial use at the present time?

A. Not all of these.

MR. KRESEL: In Germany, did you say?

MR. ANDERSON: I will come to that.

MR. KRESEL: At the present time?

MR. ANDERSON: I will say 1917?

MR. WARFIELD: Do you mean patents?

A. (Continued.) For more than ten years.

MR. ANDERSON: If you gentlemen will wait a little while, I will bring out what you want. If I do not, you can bring it out on cross-examination.

Q. 48. Were those patents in use in Germany, commercial use in Germany in 1917?

A. Yes, they were in use in 1911 and 1912.

Q. 49. Are they in commercial use in Germany today?

A. Yes.

Q. 50. Do you know whether they had been used in America in 1917?

A. I do not know. Some hints are given somewhere in the periodicals that American firms made experiments along the same lines.

Q. 51. Doctor, do you know how much ammonia, or whatever the product is, that is produced from these patents, is now being produced in Germany annually under these patents?

A. The amount of ammonia, ammonia salts, that is being manufactured now in Germany corresponds about to 300,000 metric tons.

Q. 52. Each year.

A. 1,000 kilograms each.

Q. 53. Each year?

A. Each year, yes. Apart from strikes and so on, the capacity of the plant is about 300,000 tons or more.

Q. 54. Are you informed as to the commercial value of patents of this character?

A. Yes, I am informed.

Q. 55. In your position as assistant manager and formerly chemist, still chemist of the Badische Company, have you had to deal with the question of the commercial value of patents?

A. Yes, in our patent department we did not only deal with applying for patents and following them through, but also with acquiring inventions and granting licenses and everything which belongs to the utilization of patents; and we are often discussing the value of patents.

Q. 56. What was the fair commercial value of these so-called Haber-Bosch patents, the 58 you mentioned, in the year 1917-1918?

Mr. Kresel: Just one minute, please, Doctor. Your Honor will entertain an objection to this question at this time, because of course, that goes to the entire substance of this man's testimony. We object to that on the ground that this witness has not been qualified to give testimony as to the value of the patents.

The Court: I will hear you, Mr. Anderson.

Mr. Anderson: He has stated that for ten years he has been in the patent department of the

Badische Company; that he has been the assistant manager since 1920; that he has charge of the matters relating to the licensing and dealing with these patents and their production and knows their commercial value; has had to deal with the question of their commercial value. The question of the value of his testimony or the weight of his testimony is all a question for argument before the Court; but that undoubtedly, I should say, qualifies him to express an intelligent opinion as to their commercial value. If they wish to test that opinion, the basis of it, break it down, I suppose they are at entire liberty to do so. But he may express an opinion as to the fair commercial value of these patents as a man informed on that subject.

Mr. Kresel: If your Honor will permit me, this witness has so far testified that he has no knowledge of these Haber patents having been used in America. Certainly, what the value of these patents was in Germany in 1917 is not going to help us in this case. The question here is going to be as to the value of the patents here in the United States, in 1917—in 1919 rather, when they were sold. This witness has not shown any familiarity with the situation in the United States with the position of the art, with the use of these patents here in the Unted States. On the contrary, he has said that he simply heard in some periodical that some attempt had been made to use a similar process. He has not stated even that the Haber process was used here.

We therefore contend that the witness is not qualified to give any opinion as to the commercial value of the patents in the United States, and we contend that the value thereof in Germany, under conditions which do not prevail here, and to people who have peculiar means of making use thereof, is not a test by which we can arrive at a conclusion as to whether a price paid here was or was not adequate.

The Court: It seems to me, Mr. Anderson, that the question lacks a proper foundation at the present time, for two reasons. I make this statement, not on a thorough consideration of the issues involved by the pleadings in this case, but from a general impression that I gather from the issues in this case, from the various matters that have come up pertaining to it. But upon that slight knowledge, my impression is this: That you are asking for an abstract value of the patents; that you are asking for an abstract value with regard to the patents in Germany; that you are asking for an abstract value with regard to the patents in Germany in 1917.

My thought is, on the information that I now have, that the only value that will be of interest or vital in this suit is the value in America, the value in America at the time of the sale, whenever it occurred; 1919, Mr. Kresel?

Mr. Kresel: 1919, sir.

The Court: That value in America in 1919 of these patents would not be an abstract value, but would be the fair market value of these patents.

For those reasons, I am under the impression, Mr. Anderson, that the answer as given would not be relevant, material or helpful in the final determination of the case. If you want to lay further foundation, you may. If not, I shall overrule the objection and allow you to take the testimony; overruling the objection solely on the theory that I am not wholly informed, but allowing the testimony to go in so that you may press your objection at a later stage of this case, Mr. Kresel.

Mr. Anderson: I rather concur in your Honor's view. You were probably reversing the order. I was going to ask the questions to bring it up to 1919 in America; but probably in the view that your Honor takes, I should have laid that foundation further.

The Court: You withdraw the question, Mr. Anderson?

Mr. Anderson: I withdraw the question for the present.

Q. 57. Dr. Holdermann, under these patents so-called Haber patents, would it have been practicable for a competent chemist to have manufactured the products which you have described as being produced thereunder, in the United States, by use of the patents?

A. Of course, it must have been.

Q. 58. All these patents disclose the full process, the methods of manufacture, both chemical and physical in connection therewith?

A. Each of the patents discloses fully and frankly the invention for which it is; which it claims. There are, of course, in the manufacture of ammonia some steps which are of public dominion, and they are not disclosed in the patent; some steps in the manufacture of ammonia belonging to the old art, in the prior art, and that is not disclosed in the patent, of course. The patents relate to new inventions simply.

Q. 59. In other words, the patents covered the methods of the new invention of producing the elements out of which the ammonia was produced by well-known processes when you had those elements; is that true?

A. Yes.

Q. 60. With those patents, then the products which you have mentioned, ammonia and the other products described, and the sulphates, could have been produced in each case without any difficulty by competent chemists; is that true?

A. Yes.

Q. 61. Are you familiar with the extent of the use of those products in the United States?

A. I already mentioned that they had been used to a certain extent.

Q. 62. I mean ammonia and the other products?

A. (Continuing.) By an American firm, but Mr. Kresel was wrong in assuming that this was the only knowledge of mine of the state of the art in America.

THE COURT: I did not quite hear. Were you trying to get the witness to answer as to the use now or prior?

MR. ANDERSON: I said 1919.

THE COURT: Will you repeat the question?

(Question repeated by the stenographer.)

A. It relates to the state of the art before 1919.

Q. 63. Now, are such products as ammonia, as produced under these patents, in common use in the United States for commercial and fertilizer purposes?

A. Now?

Q. 64. Yes, and were they in 1917 and 1919?

MR. KRESEL: I do not quite understand the question. Are you asking him whether products produced under the Haber patents were in use?

MR. ANDERSON: No, I am asking him whether ammonia, such as may be produced under the Haber patents, is an article of general commerce in the United States, used for commercial and fertilizer purposes, if he knows of it, and was it so used in 1917 and 1919. Your Honor will understand, I am not putting this evidence in the regular order; I will prove that by other witnesses.

THE COURT: Yes, I understand you are embarrassed by that.

Mr. Anderson: I will prove all that by other witnesses. I am trying to do the best I can.

The Court: At the same time, Mr. Anderson, I shall have difficulty with getting the value out of this and probably the other side will, unless they know, unless they are informed by you, from time to time as you go along, of just what point you are directing this testimony to.

Mr. Anderson: I will be very glad to do that.

The Court: I think that is your difficulty, Mr. Kresel.

Mr. Kresel: Entirely so.

A. Yes, they are being used to a very large extent.

Q. 65. And were they in 1919 and 1917?

A. Yes, and long before.

Mr. Anderson: Without putting this on the record, I will, of course, at the proper time, by American witnesses, prove the commercial uses and values of all the products produced of this character. I only want to lay a foundation for him to express an opinion as to that.

Q. 66. Now, Doctor Holdermann, taking into consideration the character of these products, their commercial use or capacity for commercial use in the United States, which you have mentioned in the year 1919, and your knowledge of the subject, as derived from your handling of these patents for your company, will you say what was or what would have been the fair commercial value of the so-called Haber patents in the year 1919, at which time the alleged sale in this case took place?

Mr. Kresel: Just a minute, Doctor, please. If your Honor please, we do not yet consider that the proper foundation has been laid for this witness to express an opinion as to the commercial value of these patents; but, understanding your

Honor's ruling heretofore made, that you will take the testimony subject to our right to move to cross it out later, of course, I cannot urge anything further.

The Court: Did you want to address yourself in reply to Mr. Kresel, Mr. Anderson?

Mr. Anderson: I did not, further than to state that of course at the proper time we will prove more clearly the extent and character of this use. My purpose now is only to show that the witness has a knowledge of the commercial use of these products, and that his position as a patent expert in charge of the office of his company in Germany dealing with these patents, and their commercial uses in both Germany and here, enables him to speak with reasonable accuracy as to their commercial value. I might say that I will follow that up by asking the direct question what his company would have paid for these patents at that time.

Mr. Kresel: Yes, but Colonel Anderson, it seems to us that the value of these patents should be determined in relation to our situation here in the United States and not in relation to the ability of the Germans to make use thereof. Now, it seems to me that no foundation has been laid as to the conditions here in the United States in April, 1919, when this sale was made, as to the ability of our manufacturers to make use of these patents.

This witness has not yet stated that anybody used these Haber patents here. At least I have not so understood him to say.

The Witness: Yes, I said so.

Mr. Kresel: I have understood him to say that he has known of some one firm here attempting to manufacture nitrogen or get nitrogen out of the air, but I have not understood him to say that that was done under this Haber patent. Colonel Anderson, if that is the fact, if I may suggest, I wish you would develop that end of it; but until it is made to appear what the conditions were in the United States as to our ability to use these patents or as to the results of any attempts to use them theretofore, it seems to me that this witness has not anything upon which to base an opinion as to the value of these patents to anybody in the United States.

At the proper time we shall show your Honor of course that the Germans have greater facilities to make use of these patents than people in the United States have.

Moreover, may I also point out, if your Honor please, that there is at least in my mind some confusion as to which patents the witness is now testifying about, whether it is the German Haber patents or whether it is the Haber patents that were filed here in the United States. I think, Colonel, if you make inquiry, you will find that these patents were not similar. At all events, I am only pointing that out as indicating that there is some confusion.

The Court: Shall we clear that up first, Mr. Anderson?

Mr. Anderson: I will, if your Honor please; and I would like to say further, as this is going on the record apparently, and I do not want to leave it without answering, the value of these patents arises from two sources, at least, to say nothing about others. One is the right to manufacture the goods under the patent and the second is the right to control the sale of the goods under the patent. Therefore there might never have been a product manufactured in the United States; it might never have been licensed in the United

States. But the ownership of the patent in the United States, if the market for the product was large, would be enormously valuable, either to manufacture or to control the importation. Therefore, the market being here and the patent presenting a condition under which the stuff can be manufactured or its importation or sale controlled, which is the same thing, because you can license the control, the value arises from those sources. Now Mr. Kresel is addressing himself to the weight of the testimony and not to its admissibility. It may be that unless we develop additional facts showing the application of this testimony to conditions in the United States in 1919, that the weight of the testimony may be or may not be affected. That will be a question of argument before your Honor when you come to consider the testimony. But it is admissible for what it is worth, the man having shown a knowledge of these conditions. I will clear up the question I asked the witness. I do not always understand his answer very clearly. I asked the witness this question, whether or not under these patents as filed in the United States—I have not said anything about the German patents—any person in the United States could manufacture these articles which he described as being produced under these patents; and he said that any competent chemist could do so.

Now therefore that being the case, it is not material whether the German patent or the other patent maybe identical in terms, provided the product could be produced under the patent as filed in the United States by a competent chemist. Then comes the question whether there is a commercial market or whether that market can be controlled through the use of this patent.

The Court: I believe I understand you, Mr. Anderson.

Mr. Kresel: Your Honor, would you pardon me a minute?

The Court: Yes, I will hear each side.

Mr. Kresel: Colonel Anderson has spoken of the right to control the sale of imported articles made under this patent. It has not yet been made to appear that this was a product patent. On the contrary we think it is only a process patent; so that importations of the article would not come under the patent here.

Mr. Anderson: I understood him to testify that it covered both product and process.

Mr. Kresel: No, the witness was not asked and did not testify to anything like that.

Mr. Anderson: I certainly understood him so to say in describing the patent.

The Court: I did not get his answer. Apart from that, is there this difficulty? It probably does not apply now, but the arguments of counsel would seem to bring this question to my mind, particularly your statement that you propose to follow it up by ascertaining from this witness what his company would be willing to pay therefor. You understand that I am practically in complete ignorance of the situation, so I will ask you to bear with me and help me on it if you will just a moment.

Could his company—I am asking now purely as a matter of law—have been a competitive bidder in the sale of these patents in 1919?

Mr. Anderson: I do not think so, sir.

The Court: Then does that present a question as to whether his answer to that inquiry could be of any value here?

Mr. Anderson: I do not think it does. If the company could have been a competitive bidder, it would have gladly paid this price. Therefore, it regarded the commercial value as that amount. That is one of the evidences. It may not be conclusive evidence. It may have been barred by certain conditions then existing by the war—I do not recall how far—because there were a lot of licenses issued and things of that sort.

The Court: I am wondering this, Mr. Anderson, if you will help me just a bit there.

Mr. Anderson: Yes, sir.

The Court: As I understood you a moment ago, you are going to develop eventually the market value, a market value.

Mr. Anderson: Yes, sir.

The Court: As I understood you.

Mr. Anderson: So far as I can do it, sir.

The Court: So far as you can. Now, if the German bidders were barred by operation of the law upon bidding in that market, then might not what the German corporations might be willing to pay or might be willing to have paid for those patents, mislead us rather than guide us in a determination of the market value? Because, if what the Germans would have been willing to pay, if they could have been bidders, would have produced a higher price, it seems to me at the moment that possibly having them tell us what they would have been willing to pay, could they have been a bidder, rather confuses than clarifies.

Mr. Anderson: If your Honor please, I will undertake to answer your Honor's question. This is of course dealing with a subject that I confess entire igorance of, that is patents. I do not know anything about patents in chemistry. Here, the elements of value, however, are well understood. They are derived from various sources, all of which must be considered. What one person is willing to pay is evidence of value. What one person might be willing to pay would be evidence of value. Another is, what are the commercial advantages that can be derived from the use of the patent? That is an element of value. That arises from two sources: experience, and the estimate of experts as to what use can be made and what the value of that use is.

In the last analysis, evidence of value of a thing of this kind is largely a matter of the judgment of the experts, in which they may differ unquestionably. Therefore the various elements may be developed.

Now I want this witness to state what in his judgment the patents here, sold in the United States, taken in connection with the market of the United States, their capacity for production and their capacity for control,—what in his judgment, as a man dealing constantly with this subject, and familiar with these patents and their capacities, would be worth, would have been worth in 1919. I do not care to whom they are worth it. If there was any person in the world who would have given that price, we have that value.

The Court: Any person in the world who could have been a bidder.

Mr. Anderson: I do not think it is necessarily confined to a bidder, if it was a bona fide desire to get them at that price. He might have bid through some one else. If he is willing to give that price, that is evidence it may be worth that price. It may not be conclusive evidence, but it is evidence.

The Court: You understand I am going to take your testimony.

Mr. Anderson: Yes, I think we have argued more the value of the testimony than its admissibility.

The Court: I am not sure, and the reason I am asking you these questions——

Mr. Anderson: I am very glad to have you do it, if your Honor please.

The Court: (continuing) is for my personal benefit, my official benefit, but mainly so that if this objection is pressed eventually, and I should decide to rule against you on any of these grounds I should be sorry if I had not presented these grounds to you now, so that you can meet them at this time rather than after the witness is gone.

Mr. Anderson: I think your Honor is under a great handicap in not having the case presented in a proper way, and I hope you will not hesitate to ask me any questions. I find myself handicapped in examining this witness, because I will prove these things by somebody else.

The Court: But the difficulty there is that even if you had proved this very evidence by as many witnesses as you could put on the stand, the testimony of those witnesses would not in itself enable this witness to answer your present question. That is, the testimony of the other witnesses might be valuable, but they would not establish any value of the right of this witness to answer that question. I have my doubts about his being in a position at the present time, from the testimony given by this witness, to answer this question. I think I have indicated the grounds of those doubts and you may take the answer.

Mr. Kresel: Your Honor will pardon me just a minute? May I make the suggestion that Colonel Anderson develop from this witness as to whether he was present in the United States during 1917, 1918, and 1919.

The Court: You may, if you desire.

Mr. Kresel: I do not want to interrupt Colonel Anderson's examination of this witness.

The Court: You may if you desire, Mr. Kresel, prior to that answer being taken, cross-examine him as to that particular point.

Mr. Kresel: If you will permit me. May I, Colonel?

Mr. Anderson: You may, yes, sir.

By Mr. Kresel:

Q. 67. Dr. Holdermann, in 1917 were you in the United States?

A. No, there was a war between Germany and the United States. But that is not the only way of getting information.

Q. 68. Won't you just please answer my question?

A. Yes.

Q. 69. In 1918 were you in the United States?

A. No.

Q. 70. Or in 1919?

A. No.

Q. 71. When did you first come to the United States subsequent to 1919?

A. Last year, 1922.

Q. 72. Prior to 1922, had you ever been in the United States?

A. No.

Mr. Kresel: That is all I desire to ask him at this time.

By Mr. Anderson:

Q. 73. Dr. Holdermann, I understood you to describe the character of these patents, what they covered. I would ask you whether they covered, the 58 patents, production of products and processes of production? Explain that, please, to the Court, just what they did cover, if you can do so. I do not mean to go into technical details. I just want you to say what they covered in a general way.

A. These patents covered certain improvements, first, for the starting material, hydrogen and nitrogen, and for the art of combining these two, to form ammonia; conditions which are necessary to effect this combination; then means for separating the ammonia from the mixture which is formed, transforming the ammonia into tradeable form, in which it can be sold or treated, into salts.

Mr. Kresel: May I interrupt you, Doctor. Will you permit me, Colonel Anderson?

Mr. Anderson: Yes.

By Mr. Kresel:

Q. 74. What we want to find out, Doctor, is this. Do you claim that under those Haber patents no one could manufacture ammonia unless he had a license from you?

A. Yes, of course.

Q. 75. Is that your claim under the patent?

A. Every patent creates a monopoly and nobody can manufacture under these patents unless they get a license. Otherwise, he infringes the patent.

Q. 76. You did not understand. We understand your claim to be, that no one could manufacture ammonia by the Haber practice without getting a license. But my question is, do you contend that no one in the United States was permitted to make ammonia or sell it here unless he got a license from your company, no matter how it was made? You do not claim that, do you?

A. I do not think there is another commercial way of making ammonia synthetically. No process has been known so far.

The Court: Will you repeat the question and see if he can answer it directly.

(Q. 76. repeated.)

A. No, we do not claim that. Ammonia can be prepared by coke-ovens. It has been manufactured that way for a hundred years. Of course, that depends on the production of coke.

THE COURT: Then is it clear that none of these patents were product patents; that they were all process patents?

MR. ANDERSON: No, sir; it is not clear. This particular patent did not cover the sale of ammonia. I will ask this question.

By MR. ANDERSON:

Q. 77. Was there any other commercial method of making synthetic fixed nitrogen and ammonia in quantities at the time these patents were sold in 1919, so far as your knowledge goes?

A. No.

MR. KRESEL: Where?

MR. ANDERSON: Any where.

Q. 78. Was there in America, so far as your knowledge goes?

A. Not in America, and not in other countries.

MR. KRESEL: That does not answer the question, I submit. That does not make it a product patent by any means.

THE COURT: If the product could not be manufactured save by this process, if there was no other known process——

MR. ANDERSON: If you could not use the process, you could not make it. All that enters into value. It is argumentative as to what it is. But that is all I want.

Q. 79. Dr. Holdermann (subject, of course, to objection), I wish you would state from the knowledge which you have already indicated, what, in your judgment was the fair value of these 58 so-called Haber patents?

Mr. Kresel: The fair market value?

Q. 79. (continuing)—The fair market value, yes, of these 58 so-called Haber patents in America, that were issued in America in the year 1919, when they were seized and transferred to The Chemical Foundation?

Mr. Kresel: If your Honor please, we object to that question upon the ground that this witness has not been qualified to give testimony as to the market value of these patents in the United States.

The Court: I think I understand your grounds; unless you care to discuss it further on either side.

Mr. Kresel: No, your Honor.

The Court: Because I have indicated the doubts I have about the admissibility of this testimony on the foundation that has been laid by this witness. I have indicated that so as to establish a better foundation, if that is available, from this witness. I will overrule the objection solely on the ground that all objections going to substance are to be overruled and disposed of at a subsequent stage of this case.

Mr. Anderson: I am going to ask a good many questions that will probably come under the same line.

The Court: I understand.

Mr. Anderson: Of course, we will discuss that at the proper time.

The Court: If you prefer, Colonel Anderson, that I make inquiries as you go along and express doubts, I will be very glad to do so.

Mr. Anderson: I will be very much obliged to your Honor if you would, because we are proceeding in such a way here, that it is almost impossible for me to keep in mind what are the issues.

The Court: Then there will be no objection to discussing any question of substance on either side.

Mr. Anderson: Certainly not. I would be very much obliged if you would.

Q. 80. You can answer that question now, subject to the objection?

A. After careful consideration of all the circumstances that I could get, not from personal presence here in the United States, but from all sources, periodicals, and all other sources, I think a very conservative estimation of the market value of these United States patents for the Haber ammonia processes, and no others, is about seventeen millions of dollars, for these fifty-eight.

Q. 81. Are you speaking now as of the year 1919?

A. 1919, at the date of transfer.

Q. 82. Do you have to deal with the purchase of patents by your firm?

A. Yes, that is all in the charge of our patent department, purchase and selling, licenses, and everything which is connected with patents.

Q. 83. If your firm had not had any interest in or owned these patents in the United States in the year 1919, would you have been willing to pay that price for them?

A. I think I would have paid this.

Q. 84. You are speaking now entirely of the United States patents, are you?

A. Of course, nothing else.

Q. 85. You spoke of the synthetic tanning materials. Approximately how many of the patents of your company which were seized by the United States, covered synthetic tanning materials?

A. There are not so very many for synthetic tanning materials, but they are very important. I think they will be about ten patents for this field, ten to fifteen.

Q. 86. Were those patents in commercial use in 1919?

Mr. Kresel: Where?

Mr. Anderson: In Germany.

A. They have been to a certain extent, but to a very small extent. They have been developed just before the war. Then the war broke out and the connections with your country have been interrupted and patents could not be developed. It was just in the beginning.

Q. 87. Were these patents as filed and granted in the United States, substantially the same as the patents covering the same processes or products granted in Germany?

A. Yes, practically the same.

Mr. Kresel: How can this witness say? It does not appear that this witness has any knowledge upon the subject. I do not think we should take his conclusions.

Mr. Anderson: But he is the man who handled them.

Mr. Kresel: He is the man in Germany who knew about the German patents; but whether the United States patents filed here—it does not appear even when they were filed—were the same as the German patents, has not yet been made to appear.

Mr. Anderson: If he does not know, he can say so. If he does know, he can say so.

The Court: My difficulty is this, whether the best evidence of that is not the copy of the German patents themselves.

Mr. Kresel: Both patents.

Mr. Anderson: I think it is very probable, if we were proving title, that would be true; but if he handled, if he secured both, he can say if they are substantially the same.

The Court: Are you not asking him for a conclusion, not a fact?

Mr. Anderson: No, sir; if I may submit to your Honor. It seems to me that this witness has testified that he handled the procuring of these patents in foreign countries as well as in his own country. Now, if he handled the procuring of those patents, he can say whether they were substantially the same in the United States as in Germany. I can, at the proper time, if necessary, produce all these patents or extracts from them. I do not assume anybody would want them. But if he handled both, he can testify they are substantially the same. As to what they contain, as to what the patents contained in terms, it is quite probable that the patent itself would be the best evidence, but that they are similar in terms, and similar in character and cover certain rights, I think his testimony would be entirely admissible because he handled them. He said that clearly before, and I am going to have him say that over again.

Mr. Kresel: Of course, your Honor knows vastly more about patents than I hope to know; but your Honor certainly knows—that much I learned from my brother Warfield last night—that the value of a patent may very largely depend upon the claim contained in the patent and the claim in the American patent may be vastly different from the claim in the German patent.

How does it help us to have this witness conclude, without documents before him, that the two patents were substantially alike? It does not lead us anywhere. Wherein is the difference, if they are only substantially alike? Where is the difference? How is the Court going to judge whether that difference is material, upon the question of value? I think your Honor has well indicated that if this is material at all, the two patents ought to be presented.

Mr. Anderson: I think, sir, that we are discussing—if I may submit, your Honor,—we have been discussing all the morning the value of evidence as distinguished from evidence, the admissibility of evidence.

The Court: We will take a recess today, Colonel Anderson, at about twenty-five minutes after ten by that clock, by reason of a noon-day luncheon engagement I have, and then we will begin again approximately at 2 o'clock.

Mr. Anderson: Yes, sir.

The Court: We cannot tell just exactly when that luncheon comes.

Mr. Anderson: I would like to go back and find out what was the question which I asked the witness. I believe I was arguing the question before your Honor when we stopped.

The Court: Yes.

Mr. Anderson: What I want to say is this—I want to add to what I did say—that while I do not have to say because it has been perfectly obvious that I know nothing of the chemical side of patents, and do not intend to, yet the fact is that this witness is an expert in handling patents, and was the man who represented this company who acquired these patents in Germany and in the United States. He has testified to that, and will testify so again. Now, what the value of his evidence will be when we get through with producing chemical evidence of this stuff in the United

States, will be a question of argument; but for what it is worth, it is admissible, as one of the many factors that will be presented here tending to show or not to show, the value of these patents at the time they were sold by the United States to The Chemical Foundation. I do not want at this time to argue any question of the weight or importance of this evidence.

The Court: No.

Mr. Anderson: Only that it is admissible on the record. I am perfectly willing, and it will save the time of the Court, and save the time of Counsel, to have your Honor reserve your ruling on any of these questions. I think I am entitled to have the witness answer the questions.

The Court: I will rule on questions of substance, but the only reason I am making inquiry is so that if you have overlooked something, you may show it in your testimony.

Mr. Anderson: I cannot recall this witness. He will be in Germany. Your Honor is quite right. You want to get at the facts, and the Government wants to get at the facts, whatever they are.

The Court: On that ground, the objection will be overruled. My thought is that in the absence of those patents, the other side had no opportunity to show that this witness may be mistaken in his conclusions; but upon the grounds under which the testimony of this witness—under the arrangement by which the testimony of this witness is taken, the objection is overruled.

A Voice: Do you want that question, Colonel Anderson?

Colonel Anderson: Yes.

A Voice: "Q. Were those patents as filed and granted in the United States, substantially the same as the patents covering the same processes or products granted in Germany?"

Mr. Kresel: Pardon me a minute. I do not understand this arrangement of stenographers. I had understood that the stenographers at this table, were the stenographers appointed by the Court to report this proceeding.

The Court: Is not the stenographer who read the question, one of your gentlemen, Mr. Smart?

The Official Stenographer: No.

Mr. Anderson: Then I will ask Mr. Smart.

The question was repeated by the stenographer as follows:

"Q. Were these patents as filed and granted in the United States substantially the same as the patents covering the same processes or products granted in Germany?"

The Court: I have not any objection, Mr. Anderson. You may have as many men taking down the testimony as you like. They have no standing in this Court, and the testimony and the notes so taken will be only for your personal use and will not constitute the record.

Mr. Anderson: That is understood. The record will be made by the stenographer your Honor has appointed under the conditions which we have already discussed.

Q. 88. Now, will you answer that question?

A. Yes. Perhaps I may answer at length, so that it can be understood.

Q. 89. Go ahead and answer any way as you please.

Mr. Kresel: Not as broad as that.

Mr. Anderson: If he goes off the track, you can stop it.

A. So far as it will help the case; I can tell you when an invention is made in our factories, the invention goes to the Patent Office, and the inventors come to our patent department, and there discuss the inventions, and I and my assistants are drafting the specification for the German applications, and I was personally in all of these German applications for these tanning substances, and after a while, we were filing the applications abroad, and I took the German texts, and I make up the foreign texts in pretty nearly the same language. There are only changes which are required by the difference in the patent laws, and apart from these strictly technical differences, there is no change in the material part of the application, and I have drafted a good part of these tanning, or nearly all of these American patents for tanning, and I cannot find that there is a substance which is claimed the process, on the technical part of it, which is quite the same as that in Germany. Is that sufficient? I think that is clear.

Q. 90. Could a competent chemist or manufacturer check the patent, as filed in the United States, or granted by the United States and manufacture the product which is manufactured under the same patent in Germany?

Mr. Kresel: One minute again, if your Honor please. That is calling for this witness's conclusion, and it is merely speculative. It all depends upon the ability of the chemist.

The Court: Is not the test really whether the patents make such disclosure as to enable one skilled in the art to produce the result?

Mr. Kresel: Exactly, that depends upon the patents and upon the state of the art here.

The Witness: No, upon the chemist.

Mr. Kresel: In other words, how does it aid the Court to have this witness say that assuming

Q. 91. Can you give the numbers. I asked him, Mr. Kresel, to make out a list of the numbers and save calling them off as it is very difficult for the stenographer, and I will hand him this list.

MR. KRESEL: Yes.

Q. 92. Have you checked over the so-called Badische patents included in the list in the bill, and identified the numbers included in your list, included as tanning patents; have you checked them over?

A. I have checked them over.

Q. 93. Will you hand to the stenographer a list showing the serial numbers of those patents to which you now refer. Just hand him this list.

A. (Witness handing list as follows):

1,421,722,
1,414,045,
1,336,759,
1,289,280,
1,281,494,
1,278,229,
1,254,364,
1,237,405,—$5000 in 1913.
1,216,612,
1,203,069,
1,191,480,
1,107,107,
1,089,797,

THE COURT: Any objection, Mr. Kresel?

MR. KRESEL: None at all.

Q. 94. You include that as part of your answer, as identification of the patents; you can just put that on the record?

A. Yes.

MR. ANDERSON: There is no objection.

Q. 95. Are these so-called tanning patents, patents covering product, as well as process?

A. Yes, as well for new products as processes in manufacturing them, as for processes for application from the tanning of the products.

Q. 96. How many of these patents were in actual use, commercial use, for manufacture, prior to 1907, do you recall?

Mr. Kresel: Where?

Mr. Anderson: In Germany.

Mr. Kresel: In Germany?

Mr. Anderson: Yes.

A. Prior to 1917, I think we used about—we produced about two new products.

Q. 97. Two new products?

A. Two new products, and now there are three or four products which are made.

Q. 98. In 1919, how many were in use in Germany?

A. I think three, three.

Mr. Kresel: The question is—how many patents were in use?

The Witness: That is another question.

Q. 98. How many of those three patents, these patents you have listed?

A. Thirteen products.

Q. 99. Three products manufactured under these tanning patents?

A. Yes, and of course, the use of these products was covered by other patents, so that more than three patents may have been involved.

Q. 100. Yes.

A. Than those for the production, and those for the use as tanning product.

Q. 101. The products that you refer to as manufactured under this patent, were all manufactured under the thirteen patents that you mention?

A. Yes, all of them.

Q. 102. They cover the whole situation as to these three products?

A. Yes.

Q. 103. Were any of these products exported to the United States prior to the time that we went into war?

A. Yes, some of these products were imported before the war, but the export did not amount to much, because the whole field was just in the stage of development, I think the field of invention originated in 1911, or about so, and of course, before the war, it could not be fully developed.

Q. 104. Did your company export any of this product to the United States in 1913, before the World War began?

A. Yes.

MR. KRESEL: Will you identify the product for us, what is the name of it?

Q. 105. State the name of the product?

A. I do not know under which name it is traded here, but the trade name in Germany is Neradol D.

Q. 106. Did your company sell that product in the United States?

A. Yes, we imported it.

Q. 107. How much did you realize and profit from the sale of the product under that patent, or that particular product in the United States in the year 1913?

A. The net profits?

Q. 108. Yes?

A. In the importation of this product into the United States?

Q. 109. Yes.

A. It amounted to 21,478 marks, that is, about five thousand dollars.

Q. 110. When you refer to Marks, you refer to gold marks?

A. Yes, gold marks in 1913.

Q. 111. Was that one of the more valuable products that has been developed under these products?

A. It is a valuable product. As to these properties, on the products we have brought into the sale afterwards, they are much cheaper, and they are sold in much bigger quantities than the first product, owing to the lower price. The properties of this product are excellent.

Q. 112. Dr. Holdermann, assuming for the present that the patents granted or filed in the United States covering these tanning products are for all practical purposes and commercial purposes the same as those filed in Germany, and taking the facts which you have indicated and testified to, as a basis, what would you say was a fair commercial value of those thirteen patents in 1913, to your company?

> Mr. Kresel: One minute, please. I object to the question as to form of inquiry. We object to it on the ground that the value in 1913 is immaterial.
>
> Mr. Anderson: Did I say 1913. I meant to say 1919.
>
> Mr. Kresel: We object to the question further upon the ground that the witness has not been sufficiently qualified to express an opinion upon that question. It is assumed in the question that the basis has been established. As far as I can see, the only basis testified to by the witness was that in 1913, they exported a product, which he has described, from which his company made a profit of five thousand dollars.
>
> Mr. Anderson: To the United States.
>
> Mr. Kresel: To the United States. Now, I claim that is not a sufficient basis upon which the witness can be permitted to give an estimate of the value of the patents in 1919 and the value in the United States under the conditions which he

has not described. It seems to me it is purely speculative.

The Court: I will hear Mr. Anderson.

Mr. Anderson: Just a word. I had assumed the condition of the patents to be substantially the same, without further proof. I must assume that as a hypothetical question. I will assume, if desired, that the market exists in the United States, but I think the testimony is sufficient for that. If it is an essential fact and is not subsequently proved, of course, the question goes out. Whatever may be the value of this testimony upon the facts as stated is a question for discussion later, but it seems to me that this is one of the facts going to show, an essential fact going to show the value of these patents, tending to show their value; and if it does, why then, of course, we will introduce a great deal of evidence on this subject to fit up with this evidence. But at the present time, in anticipation, we can only take what this witness knows.

The Court: As I understand Mr. Kresel's objection is that the basis is so remote that the answer would be without any value and consequently inadmissible.

Mr. Kresel: If I may suggest, your Honor; if the Colonel desires simply the fact, the one fact that this witness can testify to, namely this $5,000 profit that they made in 1913, he now has that; and if he desires to use that as a partial basis for a question as to value to some other witness, he can use it. But as your Honor has expressed it much better than I have, the basis is so remote that any estimate that this witness may place upon the value of these patents would be absolutely valueless.

Mr. Anderson: Is that not a question of the value of the evidence rather than its admissibility?

The Court: My impression is it is not, Mr. Anderson. It does not furnish us sufficient facts as a basis to enable us to place any value, any official value upon any conclusion that this witness could draw. However, I will overrule the objection on the understanding that we have, that all objections are to be overruled and finally passed upon at a later stage of the case, after we have more fully understood the merits.

Mr. Anderson: I think, if I may suggest, to get along, while I want Mr. Kresel's objection for the benefit of giving me notice of the objection, if he will just make the objection, stating briefly his grounds, I do not desire to argue it if your Honor is not going to pass upon it now. There is no use of my arguing upon it at this time.

The Court: Then, in order to expedite the matter, shall we just have the objections formally stated and then, if that suggests anything to you, you may amend your question or proceed as you deem proper.

Mr. Anderson: Certainly.

The Court: And there will be a formal ruling upon each objection?

Mr. Anderson: Yes, sir.

Q. 113. Will you answer now the question. What is your estimate of the fair value of these thirteen Tanning patents, the fair market value of these thirteen Tanning patents as of 1919 in the United States? A. Considering that this is only for one product?

Mr. Kresel: Doctor, just answer the question. You have been arguing enough.

Q. 114. Let me put the question again. You have testified that there were three products made under these patents?

A. Yes.

Q. 115. One of them was imported in 1913 before the war?

A. Yes, sir, where we made the $5,000.

Q. 116. That there were two other products developed under the patents that were valuable prior to 1919. Now I will ask you one other question. Are those products products of general commercial use in connection with tanning?

A. Yes.

Q. 117. And for the purposes for which this kind of stuff is used?

A. Yes.

MR. KRESEL: May we know what the products are?

Q. 118. All right, you can state the products, What were the products that were so developed under these patents?

A. The trade names, or what is your intention?

MR. KRESEL: I cannot hear you.

THE WITNESS: What is your question? What shall I state?

Q. 119. He wants to know what the products are, the trade names?

A. Neradol Ende and Ordoval, G. & G. G., two brands, not much different. These are the products.

By MR. KRESEL:

Q. 120. Yes, but what are they? Those are just names. What are they, shoe leather or silks?

A. These are chemical condensation products; sulphonic acids, so to say, and products which are covered by these patents.

By Mr. Anderson:

Q. 121. Are they synthetic tanning solutions?

A. Synthetic tanning materials; yes.

Q. 122. Taking the experience that your company had before the war interrupted this export, and your knowledge of the character of these patents, state to the best of your information and belief their fair market value in 1919 at the time they were seized by the Government and transferred to The Chemical Foundation?

Mr. Kresel: I must object to the question as to its form. This witness cannot testify as to his information and belief, if he is testifying as an expert.

Mr. Anderson: I said "to the best of his knowledge."

Mr. Kresel: You said to the best of his information and belief.

Mr. Anderson: I substitute "knowledge" for "information."

The Court: You are asking him now as an expert?

Mr. Anderson: I am, as to what he thinks these patents were commercially worth.

Mr. Kresel: We raise the same question that we did before, and I assume the disposition is as before.

The Court: There will be a formal ruling, overruling the objection.

A. After my knowledge, the market value of these patents at the time of transfer was as a minimum $300,000. I doubt if my company would have sold it for that price.

Mr. Kresel: I move that the latter part of the answer be stricken out. He has given his estimate as to the value.

The Court: Any opposition to the motion to strike out?

Mr. Anderson: No.

The Court: The latter portion of the answer may be stricken out.

Q. 123. If your company had been offered $300,000 for these patents in 1919, would you as a patent expert, as you have testified, advise its acceptance?

A. I doubt whether——

Mr. Kresel: One minute, Doctor. I object to that upon the ground that it is a hypothetical question. There is no foundation laid for it and it is immaterial and irrelevant as to what this witness' company might have done. It certainly is no basis for an estimate as to value.

Mr. Anderson: It is what this witness will advise his own company. He is familiar with the whole business, as to what it would pay or would take for these patents.

The Court: I think that the answer called for by that question would be irrelevant and immaterial. I grant the motion to strike it out and you may take your answer under Rule No. 46, if you so desire.

Q. 124. I would be glad if you would answer the question subject to objection. The question was whether or not you as the officer in charge of the patent department of your company would have advised it to accept for these patents a price of $300,000 in 1919?

A. We should have regarded it as the ultimate minimum price and I doubt whether they would have sold it for that price.

Q. 125. Now, Dr. Holdermann, there are various other patents included in the list which you identified this morning, which you described generally as dye and dye process patents; that is, chemicals used in dyes. Are those patents both product and process patents also?

A. They include most various things, products and process for manufacturing the products, processes for dyeing the manufactured products and auxiliaries for dyeing some intermediates which are used for the reduction of the dye stuffs and related things.

Q. 126. Then they cover both the product and the process for manufacturing the product; is that true?

A. Yes.

Q. 127. Can you state how many of these dye and dye process patents were in use in the United States in 1919?

> Mr. Kresel: I submit, your Honor, that this witness, having already testified that he was not in this country prior to 1922, cannot have any knowledge as to how many of these patents were used in the United States.
>
> Mr. Anderson: Prior to the transfer?
>
> Mr. Kresel: Yes, prior to the transfer.
>
> Mr. Anderson: He was the patent expert of the company that owned the patents. He ought to know.
>
> Mr. Kresel: There was a state of war between this country and Germany for two years prior to this sale, and this witness certainly cannot have had any information during those two years as to what patents were or were not used.
>
> The Court: The ruling on that question, I think, comes under our general plan. The objection is formally overruled.

Q. 127. (Continuing.) Go ahead.

A. I cannot say how many of these patents were in actual use in the United States right prior to 1919, but I can say that 65 of these patents are for products which have been imported by our firm into the United States. Does that answer your question?

Q. 128. Yes. But the exportation by your firm into the United States stopped with the beginning of the war in 1917, did it not?

A. Or before, yes.

Q. 129. I did not catch the number. How many did you say?

A. 65.

Q. 130. Are you exporting any of that product into the United States today, do you recall?

A. Yes, we are.

Q. 131. Could you say whether there was any increase in the use of these products during the period in which you were exporting into the United States prior to the war, from the time the patents were taken out? Those that were in use?

A. That is a general rule, that the use of a dyestuff or of a patented product grows or is subject to an increase during the life of the patent.

Mr. Kresel: That is simply a general rule, your Honor, and I think that ought to go out.

The Court: Any objection, Mr. Anderson?

Mr. Anderson: No.

The Court: That may be stricken out. Will you repeat the question, Mr. Stenographer, and let him answer the question?

A. Yes, there was an increase.

Q. 132. As the assistant manager, the chemist in charge of the patent department of your company, have you had occasion to know or to ascertain the commercial value of these various patents which were developed by your company during the period under discussion now, prior to the war?

A. Yes, I had an ample opportunity to get this information. I am often conferring with the heads of the several departments and also, reports are laid before me, and I got special information about the sales in the United States of the products that we have patented there.

Q. 133. I think you testified this morning that you had charge of applications for patents in the United States?

A. Yes, I have.

Q. 134. I would like for you to say, for what it is worth, what you regard as the fair market value of the patents which relate to dye stuffs and dye processes which you have described, in 1919; patents which were seized belonging to your company and sold to The Chemical Foundation?

Mr. Kresel: Is this question only as to the 65 patents?

Mr. Anderson: No, it is as to all of the dye process patents.

(Further colloquy off the record.)

Mr. Kresel: I am simply trying to get my own understanding straight here. This witness testified first that there were three Haber patents; then that there were thirteen tanning dye patents. Do I understand that you are now asking him as to the value of all of the other patents?

Mr. Anderson: Of the patents other than the 58 Haber patents. He has testified to 58 Haber-Bosch patents and to 13 Tanning patents.

Mr. Kresel: And this present question is as to all the other patents?

Mr. Anderson: As to all the other patents, that is dye stuffs and industry. I covered it that way, because there is no use of going into it in detail.

Mr. Kresel: As long as we understand it. Now, if your Honor please, I object to the question upon the ground that the witness has not testified to anything which can form a sufficient or proper basis upon which he can give testimony as to the market value of these patents. I have taken note of just what he has said about it. He said that they are both product and process patents. He said that as to 65 of them, the products under those, had been imported into the United States. He said that during the time of the importations, there was an increase in the amount imported. And lastly, he said that he conferred with heads of departments and had reports before him.

I say, your Honor, that that is not a sufficient basis upon which anyone should be permitted to undertake to give testimony as to the value of these patents; and, according to this witness, if there were 450, if you take out 58 and 13, you have almost 400 patents, without the slightest specification of what patents he is referring to, which are valuable and which are more valuable, or which are less valuable. Upon this mere skeleton that he has given, for him to undertake to place a value, it seems to me, would be absolutely worthless to the Court to form any opinion.

Mr. Anderson: I will just withdraw the question then. I will just take that much longer. I was trying to cut the examination short, but I will go back.

Q. 135. Will you make a list of the patents by issue numbers from the exhibit in the bill, a list of those patents which were in use and under which exportations to the United States were made prior to the war?

A. I can furnish such a list.

Q. 136. How long would it take you to do it now?

A. Half an hour, quarter of an hour, in between.

Mr. Kresel: I trust that Colonel Anderson is not misunderstanding me.

The Court: I think he is. Will you state your objection again?

Mr. Anderson: He said we have not identified the patents. We are attempting to now.

Mr. Kresel: Not at all. That is the reason I asked you to state whether you meant all the other patents. That sufficiently identifies them, in a group.

The Court: I think you misunderstood Mr. Kresel entirely.

Mr. Kresel: That sufficiently identifies the group. But my point is that this witness is about to give the value of this large group of patents without undertaking to say now, as to patent 1,000,002, I think it is worth so much; 1,000,003 is not worth as much as that, and for this reason; he has not given any figures at all. He has not even said what their profits were in Germany on these importations under the 65 patents. We have nothing upon which a person can base any opinion.

Mr. Anderson: You can test that knowledge, if you wish, on cross-examination.

The Court: Mr. Kresel's objection is that his appraisement would not be a real appraisement of the value of these patents, because an appraisement must be in detail to be of any value at all.

Mr. Anderson: If your Honor please, it will appear later in this case that The Chemical Foundation bought these patents for a lump sum of $250,000 and did not appraise any of them. Now they ask us to appraise them.

Q. 137. I will ask you to state, if you can state, what your profits were for the year 1913 from the patents that you said you exported to the United States under.

Mr. Kresel: That I object to upon the ground that it is immaterial and irrelevant as to what the profits were in 1913. These patents were sold in 1919. Besides, the profits cannot be from a patent. The profits are from manufacturing articles and selling them.

Mr. Anderson: I think, if your Honor please, that if you manufacture an article and sell it in the United States, and it is covered by a patent process, that the net profits which you derive from the manufacture of that article, is one of the evidences of value in that patent, because you could not manufacture otherwise.

The Court: I do not understand that.

Mr. Anderson: After deducting all the cost of manufacture.

The Court: There are so many elements. Is it not the Westinghouse case, Mr. Warfield, which goes into that?

Mr. Warfield: Yes. If that were an accounting, it would be different, but unfortunately for counsel here, it is very different.

The Court: I do not understand, Colonel Anderson, that you can get the profits in that way. I may be mistaken, but that is my opinion.

Mr. Anderson: I would like for the evidence to go on the record, subject to objection, if your Honor please, and then we will take up the question.

The Court: Objection overruled then under our working arrangement.

Mr. Anderson: I do not want to argue on this question all this afternoon. It may take us a week. You will hear us later.

Q. 138. Go ahead and tell us what your profits were from these particular patents which you exported in 1913, your net profits, after deducting all expenses?

A. To make it clear, I wish to state that this answer simply concerns the United States patents.

Q. 139. Yes.

A. Mr. Kresel just now asked for the value in Germany. I do not think it is of any value. This morning he complains that we are confusing the value in Germany and in the United States, but I think the only issue here is the United States patents' value.

Mr. Kresel: I am glad to see that the witness is now trying the case instead of being just a witness, but I do not think that is called for.

The Court: Any objection?

Mr. Anderson: Not the slightest, it may be stricken out.

The Court: Strike it out. Will you read the question?

Q. 140. What we want is what were your profits, if you can state, what they were from manufacture of articles exported in the United States under these particular patents during the year 1913?

A. Those profits?

Q. 141. Yes.

A. They amounted to 1,367,668 marks, gold marks, then.

Q. 142. That was for the year 1913?

A. It was the profits in 1913, from exports into the United States.

Mr. Anderson: This is all objected to, of course, I understand.

Q. 143. You say the profits in the United States?

A. In the United States.

Q. 144. Did your company manufacture and sell direct to the United States?

A. No, that was a misapprehension, it is profits which our company earned in Germany, from exports into the United States.

Q. 145. That is, net profits, after deducting all expenses of every kind?

A. All expenses and manufacturing costs.

Q. 146. In the particular patents which you have described, that is those other than the synthetic tanning and the nitrogen processes?

A. Yes, the sixty-five patents.

Q. 147. Are there any more than sixty-five patents of that lot, in use at the present time?

A. Yes, there are.

Mr. Kresel: In the United States or in Germany?

Mr. Anderson: In Germany.

The Witness: No, in the United States.

Q. 148. Well, you can take it the United States. Do you know of your own knowledge in the United States?

A. I think it is better to confine it to the United States. (Laughter.)

Q. 149. All right, but what I want to get at is, if you do not know the thing in the United States, you cannot testify to it. I will prove that from some other source. Now, what I want to get at is the number of those patents in use today, if you know it, do you know in the United States?

A. I know the number of the United States patents which are now being in use in Germany, and the products of which may come over here, or are coming over here.

Q. 150. How many?

Mr. Kresel: That was not the question.

Q. 151. That was the question as far as I could make out, because I told him he could not testify otherwise than in the United States.

Mr. Kresel: I understood the question to be whether he knew how many patents are being used in the United States. If the Colonel wants to re-cast his question, there will be no objection.

Q. 152. No. How many of those patents which were taken out in the United States are now being used for the manufacture of products which might be shipped to the United States from Germany? This witness cannot testify as to what is being done in the United States.

The Court: Won't you read that question. Have the question re-read to you, and see whether it expresses your thought.

(Question repeated by the stenographer as recorded.)

Mr. Kresel: Do I understand the question is what United States patents are being used in Germany?

Mr. Anderson: No. Here is the situation. Certainly not. You cannot use United States patents in Germany, I assume everybody knows that. Here is what I want to get at, Doctor——

Mr. Kresel: I assumed that.

Mr. Anderson: These patents are taken out first in Germany, and then in the United States?

The Witness: Yes, sir.

Q. 153. Now, you have described all your German patents you have taken out in the United States, a certain number covering dye stuffs and dye processes. You are now engaged in the manufacture of products under those patents in Germany, which could be shipped to the United States?

A. Yes.

Q. 154. How many of those patents are you commercially using at the present time?

A. It is eight additional.

Q. 155. How many in total?

A. It is sixty-five before, it is 211 dye stuff patents and related patents which are now being used.

Q. 156. 65 and 88—you are mistaken?

A. No, it is 153.

Q. 157. 153?

A. Yes.

Q. 158. Your 211 patents included your tanning and nitrogen patents which we are not considering?

A. Nitrogen patents; yes.

Q. 159. Now, I wish to go back to the nitrogen patents for a moment and ask you a question, and I know that it will be objected to, but that does not matter: Assuming that the patents taken out in the United States are substantially the same in terms as the patents taken out in Germany, what would be a fair royalty basis, in your opinion, for the right to use this patent in the United States, in the manufacture of nitrogen products?

Mr. Kresel: Does this refer to the 58 patents?

Mr. Anderson: The nitrogen patents.

A. The 58 patents.

Q. 160. I mean, what would be a fair royalty basis?

Mr. Kresel: We object to that, if your Honor please, upon the ground that that is immaterial; that the question of what is a fair royalty is not an issue in this case.

Mr. Anderson: It is one of the elements, and I am going to follow that up with other questions, and I want to lay the basis for another question.

Mr. Warfield: Based on a legal impossibility.

Mr. Kresel: I assume that counsel is going to ask additional questions, but that is hardly an answer to the objection.

Mr. Anderson: I do not desire to argue.

The Court: Objection is overruled on the same ground.

A. I think a fair royalty, a very moderate royalty, is about one cent a pound on fixed nitrogen.

Q. 161. A cent a pound on fixed nitrogen?

A. Yes, manufactured under those 58 patents, or part of them.

Q. 162. Yes. Do you refer now to the Haber-Bosch patents?

A. Yes.

Q. 163. Assuming that the patents are the same, in terms substantially as in Germany, and the consumption of nitrogen in the United States in 1919, exclusive of production from coke ovens, was 100,000 tons, and that the average life of these patents were ten years——

Mr. Kresel: Is there a question?

Mr. Anderson: No——

Q. 163. (continued.) ——what would you then say would be the royalty value of those patents?

Mr. Kresel: That calls, if your Honor please, assuming that it is material and relevant, it calls simply for a mathematical calculation, which, of course, the Court would be still able to make.

Mr. Anderson: I only want to get the question on the record. I could not make it, so I would like to have it.

Mr. Kresel: I am afraid that this witness is not better qualified to make that calculation than anybody. It is not a subject of expert testimony. We object to it upon that ground.

The Court: Objection sustained.

Mr. Anderson: I do not think there is anything else that I will ask——

Q. 164. Then, I will ask this question: Assuming that the patents are substantially the same, and that the consumption of nitrogen in the United States in 1919, for chemical purposes, exclusive of the production from coke ovens, was 100,000 tons, and the average life of the patent was ten years, what would be the value of the patents?

Mr. Kresel: I object to that on the ground that this witness has already given the value of these patents at seventeen million dollars. It is not the intention of the Government now to change that?

Mr. Anderson: Not at all. If your Honor please, the evidence was objected to because we have not laid proper foundation. We cannot lay a proper foundation at this stage of this case, by proving these assumed facts, because this witness cannot testify as to the consumption of nitrogen in the United States, except from records. We have to prove that later by the evidence. Now, I would like to have his judgment, as an expert on that subject, based upon these assumptions, of course, if these assumptions are not testified to later and not proved, the evidence goes out.

The Court: The difficulty, I understand from Mr. Kresel, in ruling on Mr. Kresel's objections, is this, and if I properly understand the questions which you now ask, were in the assumption that you must make, that they will not furnish proper foundation for the testimony of this witness. If I understand this objection, it is that this man, having no familiarity, and not being in America, and not being familiar with American markets for these patents, and being only distantly familiar with the sale of a certain amount of material in America, is not qualified as an expert to place values, American values, upon the patents which were sold. Does that indicate your idea?

Mr. Kresel: Yes, your Honor has summarized it excellently. I could not have expressed it as well.

The Court: Then, if that is true, then the assumption of fact will not supply the basis, the objection going to the incapacity of the witness to testify with respect to the matters asked on. The objection therefore is overruled on the same basis.

Mr. Anderson: I do not care to say anything. I was going to reply on that subject, but I will not reply.

Q. 165. Will you answer that question on the basis of that 100,000 tons of nitrogen produced a year, what would be the value of these patents?

A. On the basis of 100,000 tons, it would be about twenty millions of tons—of dollars—twenty millions of dollars, of course.

By Mr. Kresel:

Q. 166. Twenty million tons or dollars?

A. Dollars, well, it is counted in dollars.

By Mr. Anderson:

Q. 167. Based on one hundred thousand tons, outside of coke production. Now, Dr. Holdermann, you testified that you had charge of procuring these patents in the United States. Can you state what is the cost to your company of securing the patents in the United States?

Mr. Kresel: We object to that upon the ground that that is immaterial and irrelevant.

This really cannot show the value of the patents as to what it cost to get them.

Mr. Anderson: There is an allegation in the bill in this case, if your Honor please, which is to the effect that the price paid for these patents was less than the actual cost fees of getting them. I do not care to go into an argument as to the relevancy of that, because you cannot develop it until you develop this entire case; but at the present time I would like for this witness to testify to that. If it is not relevant, it can be stricken out at the proper time. I do not want to argue at all.

A. You mean the legal fees that are paid for taking out the patents?

Mr. Anderson: The legal fees; what he has paid, the attorneys fees, and everything else, what every patent cost you, for the United States. If it is immaterial, it can be stricken out, but unless it is necessary, I do not want to go into a lengthy argument on this question unless I have to.

Mr. Kresel: Does this refer to every one of the five hundred patents?

Mr. Anderson: Every one of the five hundred patents.

Mr. Kresel: I have taken particular objection. I assume your Honor will dispose of it in the same way as the others.

The Court: Objection overruled.

A. The legal fees are $35 for every patent, and foreigners have to employ a patent attorney, and he will charge $50 a patent, and there may be additional costs for appeal and interference cases in more difficult matters.

Q. 168. The minimum charge to your company itself for every patent was $85, then?

A. Yes, legal fees included.

Q. 169. And extra charges they have for special service?

A. Yes, sir.

Mr. Anderson: That is all.

Cross-Examination.

By Mr. Kresel:

XQ. 170. Now, Dr. Holdermann, if you will give me your attention, I would like to ask you a few questions?

A. Yes, sir.

The Court: Suspend just for a moment.

(After a short recess.)

XQ. 171. Doctor, did you give us your age this morning?

A. Yes.

XQ. 172. How old are you—I have forgotten.

A. Forty.

XQ. 173. And you did say that you graduated in 1904, I think, was it not?

A. Yes.

(No Q. 174.)

XQ. 175. And then you joined the staff of the Badische Company in 1906?

A. Yes, that is it.

XQ. 176. Now, has your work been of a technical nature or has it been administrative mostly—you understand what I say?

A. Yes, more administrating.

XQ. 177. More administrative?

A. Yes.

XQ. 178. That is, you are by profession a chemist, but since you have been with the Badische Company you have been one of the executives of the company?

A. Yes.

XQ. 179. What title do you hold with the company; what is your title?

A. First, I was a chemist, and then I became an assistant manager, as a prokurist in Germany.

XQ. 180. A prokurist. Now, what is a prokurist, you say; an assistant manager, what particular power as a prokurist have you?

A. He has the power of signing the company, together with another assistant manager or a director.

XQ. 181. That is, you are authorized in conjunction with another official of the company to sign the company's name to contracts and documents?

A. Yes.

XQ. 182. And you have had that power ever since you became assistant manager?

A. Yes, that is inherent to that——

XQ. 183. To that office?

A. To that office, that is the title.

XQ. 184. And how long have you been assistant manager?

A. Since the fall of 1920.

XQ. 185. The fall of 1920. Now, prior to 1920, did you have any office in the company, or were you just an employee?

A. I was just an employee in the patent department.

XQ. 186. In what department?

A. In the patent department.

XQ. 187. Well, have you been in the patent department ever since 1906?

A. Yes, with a few exceptions in the war, where I had occupation in the ammonia laboratory, practically.

XQ. 188. When was that, during the war, did you say?

A. During the war I did experimental work.

XQ. 189. You did not serve in the army?

A. No.

XQ. 190. Were you under military rule at all while you were doing this experimental work?

A. Of a sort, yes.

XQ. 191. A sort of military rule?

A. Yes.

XQ. 192. Indeed, many men while not actually with the armies in the field, were working for the Fatherland in ways which you were working?

A. Yes, that is it.

XQ. 193. And as a result of that service, did you get any rank?

A. No.

XQ. 194. Any army rank?

A. No.

XQ. 195. None at all?

A. No.

XQ. 196. Now, how long a time did you do this military or war work, during the entire period of the war?

A. Yes.

XQ. 197. What experiments that you were carrying out, were they carried out in the factories of the Badische Company?

A. Yes.

XQ. 198. In—what is the name—Ludwigshafen?

A. Ludwigshafen and Oppau, which is near Ludwigshafen.

XQ. 199. Ludwigshafen and Oppau are only two of the factories of your company; there is another one at Mersenberg, is not there?

A. There is a third one.

XQ. 200. Yes?

A. Mersenberg.

XQ. 201. Are those the only three?

A. Yes.

XQ. 202. Now, the Oppau factory was built prior to the war, or during the war?

A. No, it was built prior to the war.

XQ. 203. How long?

A. It was started about 1911 or 1912.

XQ. 204. 1911?

A. Or 1912; I am not sure about.

XQ. 205. Well, during the war, was it enlarged?

A. It was enlarged.

XQ. 206. Considerably enlarged?

A. Yes.

XQ. 207. For the purpose of doing war work?

A. Yes.

XQ. 208. And this Mersenberg plant, was that built during the war?

A. Yes, it was started in 1916—in the fall of 1916.

XQ. 209. And was it completed before the war ended?

A. Yes, in a very short time.

XQ. 210. And that likewise was devoted to war work?

A. War and fertilizers for the agriculture.

XQ. 211. Well then, that was war work to an extent, was it not?

A. Yes, in a broad sense.

XQ. 212. It was all done under supervision?

A. Yes.

XQ. 213. To help along the armies in the field?

A. Yes.

XQ. 214. Now, I do not mean to pry into your private affairs, any more than is absolutely necessary, but I would like to know what arrangement for compensation you have, as a procurateur of the Badische Company?

A. I get a monthly salary, and an additional sum at the end of the year, but it does not depend on any production or so; it is simply at the discretion of the managing directorate.

XQ. 215. Yes. That is, you get a stipulated sum, and in addition to that, you get a bonus, so to speak?

A. Yes.

XQ. 216. Now, the first time that you came here was in 1922?

A. Yes.

XQ. 217. That was your first trip to the United States?

A. Yes.

XQ. 218. And what month in 1922, did you come here?

A. It was June of 1922.

XQ. 219. And have you been here ever since?

A. No. I left after a few weeks.

XQ. 220. You stayed here a few weeks and went back to Germany?

A. Yes.

XQ. 221. And when did you return?

A. In the middle of April, this year.

XQ. 222. And you have been here since then?

A. Since that date.

XQ. 223. And you are about to depart again for Germany?

A. Yes.

XQ. 224. Now, when you came here in June, 1922, did you come here on the business of your company, the Badische Company?

A. Yes.

XQ. 225. Were there others that came with you?

A. Yes.

XQ. 226. Was there a Dr. Oppenheim that came with you?

A. Yes, but he was not a member of our firm.

XQ. 227. I am coming to that. And who else came with you?

A. A lawyer called Wagner.

XQ. 228. And who else?

A. What?

XQ. 229. Did you say there was somebody else?

A. I said Mr. Oppenheim.

XQ. 230. That is, there were three of you?

Mr. Anderson: I do not want to object to this witness because we want the facts to come out, whatever they are; but I cannot see the relevancy of all of this inquiry.

Mr. Kresel: I am perfectly willing to state for the record, and for the information of counsel, that we deem this to be relevant. We desire to show the interest of this witness. We desire to show his connection with this litigation. It is our understanding of the rule that a person who undertakes to qualify as an expert, must be without interest in the outcome of the litigation. We propose to show that this witness has an interest, and that these questions are directed toward developing that fact.

Mr. Anderson: But the question of who should have come over here with him, if you want to investigate his attitude—but we are not engaged in the general trial of the question of who is interested in this litigation. The Government of the United States is the only party now, and this gentleman is an officer of the Badische Company, and it is stated here that the Badische Company claims those patents, or was the owner; to those facts I have no objection in the world, and if they can show that he had any personal interest, I have no objection, but this inquiry generally into who came over here, to the United

States, certainly cannot have anything to do with this litigation.

The Court: I did not see the relevancy myself at the time, Mr. Kresel. Do you care to state that definitely?

Mr. Kresel: Yes, your Honor. I have the information that I have solicited. I was going on to another point.

Mr. Anderson: I make a motion to strike out all the evidence as to who came over here, excepting the witness himself.

Mr. Kresel: No. I am perfectly willing to state the connection between the witness and the other two men. Our information is that they were a committee who were designated — they were a committee who were designated by those German dye interests to come here and seek to obtain possession of these patents, that they are——

The Witness: That is wrong.

Mr. Kresel: Mr. Witness, if you will just deal with this, I think we will get along very well. Do not address the Court without direction. Of course, I have made the disclosure now. I do not know how the witness is going to handle the proposition, but I have no objection to the statement. I think your Honor will see that that is relevant——

The Court: The objection will be overruled on the same basis as before.

XQ. 231. Now you and these other two men represented not only the Badische Company, but some other chemical companies in Germany, did not they?

Mr. Anderson: I object on the ground that anybody that this witness represented—I have no objection in the world to getting the interests of this witness in this instance, but I do object to his asking whether they represent any other company.

THE COURT: I am wondering this, Colonel Anderson, and I am stating this so that you can have an opportunity of helping me, that whether the interest of this man may not be two-fold; whether he might not have a personal interest in the Badische Company, and he might not be one of a number of delegates representing, for instance, the dye interests of Germany. Now then, if I correctly understand Mr. Kresel, this witness has already disclosed, even in his direct testimony, his direct interest in the Badische Company; but as I understand Mr. Kresel further, there has not been as yet a full disclosure what interest that was delegated to him by the German interests; is that so?

MR. KRESEL: That is correct. That is entirely so.

MR. ANDERSON: You mean a year ago. He is here now in that capacity.

THE COURT: No. That is what I presume. I am not ruling on anything you understand, but I presume that the questions which are being asked by Mr. Kresel are to be followed up, and as a means of getting at the full interest of this man in this litigation at any time. Am I correct, Mr. Kresel?

MR. KRESEL: Yes, your Honor.

MR. ANDERSON: I will just note an objection.

THE COURT: I will make merely a formal ruling instead of an absolute ruling. The objection is overruled on the same basis as understood at the beginning of this testimony.

XQ. 232. Doctor, you heard Colonel Anderson state just now that you were here now in your capacity as representing the Badische Company, whose interests in these patents you represent?

A. Yes.

XQ. 233. You know, don't you, that your company has brought a suit based upon these very patents, and that that suit is pending in this Court, and that in that suit, your company is the plaintiff, and The Chemical Foundation is the defendant?

A. Yes. It does not have relation whatever to the Government suit. It is quite another thing.

XQ. 234. Now, you see you have not answered my question; you are not working with me. I am asking you whether——

A. I answered yes.

XQ. 235. Well now, if you will just say yes and stop, we will get along. Now, which one of these three men was the lawyer, Oppenheim?

A. Oppenheim was a lawyer and Wagner was a lawyer.

XQ. 236. Which company did Wagner belong to?

A. The Badische Company.

XQ. 237. And which did Oppenheim belong to?

A. The Achefa a/c Aniline Fabriken, Berlin.

XQ. 238. And whatever your purpose was, and I am coming to that in a minute, three of you came here for the same purpose, did not you?

A. Yes.

XQ. 239. All right. Now, when you came here, you were in New York, were you not?

A. Yes, I was in New York.

XQ. 240. And did you have a meeting with any lawyers?

A. Yes, I did.

XQ. 241. Yes, and will you state the name of the lawyers?

A. I do not see any objection. It was in all the newspapers. It was the firm of Gordon, Battle & Vandiver.

Mr. Anderson: I would like to ask again what possible bearing this may have between this suit, and the Government of the United States and The Chemical Foundation. It is not a matter concerning this suit in the slightest whether this gentleman employed lawyers or did anything else to conduct suits for the Badische Company. If it is a question of disclosing an interest, that interest is disclosed, and I did not say what Mr. Kresel says—I say I do not think I did—but in any event there has not been any question as to this gentleman being was an officer of the Badische Company. Now he was put on the stand purely to testify on the question of value. If these gentlemen want to make him their own witness, they can do it at their own risk, but it is purely immaterial to any possible interest in this case.

Mr. Kresel: What I am trying to develop, your Honor, has a direct bearing and direct connection between the mission of these gentlemen and the other two mentioned when they came here last year to the United States, and the present suit which your Honor has before you.

The Court: Have you finished?

Mr. Kresel: Yes, your Honor.

Mr. Anderson: There is no such connection. It is the first I ever heard of this man coming to the United States last year, and I drew this bill. There is no connection, but suppose he did, the sole question here is whether this is a valid transfer of these patents or not. It does not make any difference who brought the suit. The Government of the United States brought the suit under the direction of the President of the United States. The bill shows that.

The Court: Does not that jump one point with respect to this man's interest?

Now, unless the cross-examination now being developed is intended to show the full measure of the witness's interest in this litigation, I do not see its relevancy myself. Now then, if, however, this cross-examination is tending to link this witness's interest in this case up, we will say, to his interest in some other case, then, would it not have a material bearing upon the weight to be given this witness's testimony, even though the connection between this suit and other suits is wholly unknown to you, because we are not developing here, as I understand the trend of the cross-examination, whether this suit was properly or improperly brought; but if I understand it, Mr. Kresel is trying to develop the full measure of this witness's interests, and the steps that he has taken looking to this interest, in order that his testimony in this suit may be properly weighed. I may be wholly wrong.

Mr. Kresel: No, your Honor is entirely right and I thought I had made it plain when I answered the Colonel's last objection.

Mr. Anderson: I would say that even developing that, could have, in my humble judgment, to overcome the objection, nothing to do with the situation. His interest in the subject matter of this suit would have a bearing. In any event, I do not want to argue the question. I will merely make the objection and submit it.

The Court: The same formal ruling then, Colonel.

Mr. Anderson: Yes; I understand all the rulings are formal.

By Mr. Kresel:

XQ. 242. Doctor, I ask you whether you were not aware of the bringing of a suit by your company against The Chemical Foundation Company, and also the DuPont Company, and the United States Treasurer, which is based upon the very patents as to which you testified today?

A. We have not brought any suit against The Chemical Foundation.

XQ. 243. Did you bring a suit against the DuPont Company and Frank White as Treasurer of the United States, in this Court right here?

A. Yes, we did.

XQ. 244. And you signed the complaint in that suit, didn't you?

A. Yes.

XQ. 245. And in that suit, you on behalf of your company are asserting rights to these very patents about which you testified today, are you not?

A. These suits are concerning license fees under these patents.

XQ. 246. Under these very patents?

A. Under these very patents.

XQ. 247. And down in New York, you on behalf of your company brought another suit against The National Aniline & Chemical Company and Frank White as Treasurer of the United States in which suit also you are asserting rights under these very patents about which you testified today; is that not so?

A. Yes, we brought a number of such suits to recover license fees under our patents.

By The Court:

Q. 248. Can you answer the question yes or no?

A. Yes.

By Mr. Kresel:

XQ. 249. Of these very patents?

A. Yes.

XQ. 250. And in those suits you claimed to be the owner of these very patents, didn't you?

A. Yes.

XQ. 251. I mean, your company?

A. Yes.

XQ. 252. And as you sit there, you claim now, do you not, that your company is the owner of these very patents, do you not?

A. Yes.

XQ. 253. And there is no doubt about it, and I do not mean to criticise you at all, that you are doing everything that you can legitimately do to get those patents back for your company, are you not?

A. Yes.

XQ. 254. Now to return to our visit to New York. You stated that you and Mr. Oppenheimer and Mr. Wagner——

A. Mr. Oppenheim, please.

XQ. 254. (continued) that you and Mr. Oppenheim and Mr. Wagner had an interview in the office of O'Gorman, Battle & Vardiver, is that right?

A. Yes.

XQ. 255. At that meeting—I am not asking you to tell me what was said—was the question concerning these very patents discussed?

A. Yes.

XQ. 256. And after that meeting, didn't you and your two associates go to Washington and have an interview with someone in the Department of Justice?

A. No, I was not there.

XQ. 257. You were not there personally?

A. No.

Mr. Anderson: I object to that, if your Honor please. If he was not there, he cannot testify to what took place.

Mr. Kresel: Just let me finish the question.

The Court: And do not answer until Colonel Anderson has an opportunity to make his objection.

XQ. 258. Don't you know that your associates, Mr. Oppenheim and Mr. Wagner did, subsequent to

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that meeting in Mr. Vandiver's office, go to the Department of Justice in Washington and there had an interview with someone; don't you know that?

A. I don't know how it concerns the value of the patents here.

The Court: Colonel, shall you or shall I explain to this witness what his function is while on the stand?

Mr. Anderson: I think your Honor should do it.

The Court: I think it will come with better grace from you.

Mr. Anderson: I state to Dr. Holdermann that his sole province is to answer the question that is asked by counsel. If you can answer yes or no, answer yes or no. If you cannot answer yes or no, then make as short an answer as you can, that is fair and accurate, to the question. If the question is in any way illegal, I might say that is my duty.

The Court: Outside of a pure question of personal privilege which he is not likely to be led into.

Mr. Anderson: Of course, your Honor will understand that the witness is entirely unfamiliar with the procedure of the Courts in the United States and I tried to explain that to him last night.

The Court: Upon that assumption, I asked you to say that to him rather than myself, because he might take that from me as a criticism.

Mr. Anderson: I explained to him last night our procedure, but of course it is very difficult for him.

I want to note an objection as to what took place in Washington, all questions subsequent to the statement where he said he did not go to Washington.

The Court: I think there is no answer to that question. Will you repeat the question?

The Witness: Just a moment. Unless Colonel Anderson objects, I have to answer?

The Court: You have to answer.

XQ. 259. Now Doctor, don't you know that after that interview in New York in Mr. Vandiver's office, your associates, Mr. Oppenheim and Mr. Wagner, did go to Washington and had an interview with a representative of the Department of Justice?

A. At least one of them.

Mr. Anderson: One moment. The witness has already testified that he did not go to Washington and did not know. Therefore he cannot know, except from hearsay, what took place and I therefore move to strike it out, or rather I object to the question and any answer thereto.

Mr. Kresel: Upon cross-examination, your Honor, I am entitled, if I want, to even this man's hearsay. As Colonel Anderson has pointed out, that may not bind him, the hearsay may not, and yet it may be very important to us in our case.

Mr. Anderson: In the first place, I wish to reply to Mr. Kresel that this is not cross-examination. There was nothing in the world that related to it in the original examination. It is a pure inquiry of his own, and therefore not cross-examination in the true sense of the word.

Mr. Kresel: It seems to me, your Honor, that the Government ought not to try to stop us to develop fully this man's interest in the litigation.

Mr. Anderson: If your Honor please, we have no objection. I want to state now, and I am going to state again when the trial is resumed, the

Government wants all the facts in connection with this matter brought out. But they want it brought out by witnesses who know something about it and not mere hearsay.

THE COURT: You may renew the motion at a subsequent period, if you want. Your motion was to strike out?

MR. ANDERSON: Yes, sir.

THE COURT: It is denied, the same as the objections are overruled.

MR. ANDERSON: Yes, subject to raising it again.

XQ. 260. You knew before this one of the three of this commission went to Washington, that he was going to Washington; you agreed with him on that, did you not?

A. I knew, but I did not agree. He did not ask me for my agreement.

XQ. 261. You knew he was going?

A. Yes.

XQ. 262. And you knew that he was going to the Department of Justice with reference to these very patents as to which you testified today?

A. No, I did not know.

XQ. 263. Well, he went there with reference to patents, did he not?

A. I do not know.

MR. ANDERSON: To each of these questions I would like to note an objection, if the Court please.

XQ. 264. You three gentlemen, you have already told us, came here in connection with the patents that were seized by the Alien Property Custodian, did you not?

A. Yes, chiefly for that.

XQ. 265. And do you say now, Doctor, that you really do not know that this one of the three gentlemen had an interview with the Department of Justice about the patents that were sold by the Alien Property Custodian?

A. No, I do not know. They may have discussed other things. They may have discussed the German claims in general.

XQ. 266. Well, they may have, of course. I do not want to speculate with you. But your main purpose in coming here was with reference to these patents that were seized by the Alien Property Custodian, was it not?

A. Yes, that was.

XQ. 267. And was it not shortly after the visit of this one of your commission to the Department of Justice that this suit which we are now trying was instituted?

Mr. Anderson: If your Honor please, he cannot testify that he knew about anything when he was not in Washington himself. The question of when this suit was instituted is a matter of record in this suit.

Mr. Kresel: I am not asking for the exact date. Your Honor sees the relation between the questions.

Mr. Anderson: We want to have a showdown right now. If these gentlemen want to impugn the motives of the Government in this case, let them say so.

The Court: I think you are acting entirely on inference.

Mr. Kresel: Will your Honor permit me to answer the question, because I think it calls for an answer from me?

The Court: I should be very glad to have you do so.

Mr. Kresel: We do not impugn the motives of the Government. We impugn the motives of the

XQ. 272. Well, I will take your answer. Now, the Badische Aniline & Soda Fabrik—that is the full name of your company, is it not?

A. Yes.

XQ. 273. And it manufactures dyes, intermediates, pharmaceuticals?

A. No pharmaceuticals.

XQ. 274. No pharmaceuticals?

A. No pharmaceuticals.

XQ. 275. What else does it do besides manufacturing dyes and intermediates for dyes?

A. Acids, sulphuric acid, chrome alum and ammonia; nitrates; fertilizers.

XQ. 276. And it does a very large business, does it not?

A. Yes.

XQ. 277. Its capital is how many million marks?

A. It is now 880,000,000.

XQ. 278. 880,000,000 gold marks?

A. No; paper marks.

XQ. 279. That is unfortunate. In 1919, what was its capitalization?

A. I cannot tell that from memory. It may have been 90,000,000 of marks.

XQ. 280. Was it not 430,000,000?

A. I think that was after 1919, when it was increased.

XQ. 281. To 430,000,000?

A. No, I am quite sure about it. This was two years ago when it was 430.

XQ. 282. Two years ago?

A. Two years ago, yes.

XQ. 283. 1921, then?

A. 1921, yes; about so.

XQ. 284. And it employs a great many employees, does it not?

A. Yes.

XQ. 285. Just to give the Court an idea of the extent of your works, it employs some 30,000 laborers, does it not?

A. Yes.

XQ. 286. About how many chemists does it employ?

A. About 300 graduate chemists.

XQ. 287. And how many engineers are there employed?

A. About 200.

XQ. 288. And then in addition there is the administrative force; that is about 2,500?

A. About so, yes.

XQ. 289. And your concern has been in business since 1865, has it not?

A. Yes.

XQ. 290. Yours is not the only large chemical concern in Germany, is it?

A. No.

XQ. 291. What is the next largest to yours?

A. Farbenfabriken, vorm. Friedr. Bayer & Company and Farbwerke vorm. Meister Lucius & Bruning in Hoechst am Main.

XQ. 292. In order that we may not get involved in long German names, we will call one the "Bayer Company" and the other the "Hoechst Company"?

A. Yes.

> Mr. Anderson: I do not like to object, your Honor. I do not think it has any possible bearing upon this suit. But I do object because it certainly has no bearing upon the original examination, and on the further ground that it is utterly immaterial as to how many companies there are in Germany and what their business is. If we were going into an investigation of the entire dye stuffs and chemical industry of Germany, then this might be relevant evidence. Otherwise it cer-

tainly is not, and there is nothing in the pleadings in this case to call for any such examination as this, that I know of. That is why I object.

MR. KRESEL: As far as this question being in the pleadings is concerned, Colonel Anderson could not have overlooked our defense wherein we plead just that, namely, the hold which the German chemical industry had upon the United States market. But further than that, the basis upon which I am introducing this evidence directly bears upon the witness' direct testimony, namely, as to the value of these patents, the value of these patents, as he testified this morning, to his own company. Now, that value can be judged only in the light of the situation in Germany, the chemical situation in Germany, what it was, how many were in the field, what they controlled. Your Honor can well see that the value of a patent to a well organized, tremendously rich organization is one thing, and the value of a patent in the United States, where there is no chemical industry to speak of, is an entirely different thing; and I want to develop the situation in Germany as to which this witness has testified on his direct.

THE COURT: Objection overruled, under our working arrangement.

XQ. 293. Now, then, the Bayer Company and the Hoechst Company, without going into much detail, are about as large concerns as your company, are they not, and are engaged in the same line of business?

A. Yes.

XQ. 294. Those three companies were in a cartel, were they not, prior to 1904?

A. No, that is wrong.

XQ. 295. When did they go into a cartel?

A. During the war, about 1916.

XQ. 296. The capital of each of these other two, namely, the Bayer and the Hoechst, was about equal to that of the Badische Company?

A. Yes.

Mr. Anderson: I do not want to interrupt counsel. Therefore I would like to note on the record that this entire examination is subject to the objection which I have already made, if I may do so without interrupting to object to each question.

Mr. Kresel: That is all right.

Mr. Anderson: And the same ruling and exception in each case; and also, I want to give notice on the record that counsel takes the witness as his own witness on this examination.

Mr. Kresel: As to that, of course, the Court will rule at the proper time.

Mr. Anderson: Yes, but I have to give proper notice.

Mr. Kresel: That is all right. The notice is duly received. Perhaps that is for the Court to say.

The Court: The suggestion of Colonel Anderson is satisfactory to counsel?

Mr. Kresel: Yes, your Honor, so far as not interrupting the questions.

XQ. 297. Prior to 1916 there was a cartel in which there were the Badische Company, the Bayer, and a concern called the Berlin, were there not?

A. Yes.

XQ. 298. The full name of the Berlin concern was what? What was the full name of that?

A. I am not concerned with that business. I only know it from hearsay. I think it was Interessen Gemeinschaft.

XQ. 299. You are now giving me the name of the cartel. I am trying to get you to give me the name of the Berlin concern. Was not the name of it the Actien Gesellschaft fur Anilin Fabrikation?

A. Of Berlin.

XQ. 300. The name of the cartel was the Interessen Gemeinschaft?

A. Yes.

XQ. 301. Translated into Good United States, that means what?

A. Community of interests.

XQ. 302. Community of interests is perfect English. Now, that cartel lasted, you say, until 1916, is that right?

A. Yes, sir.

XQ. 303. Side by side of that, there was another cartel, was there not, in which there were the Hoechst, Griesheim, Cacella and Kalle?

A. I don't think you are right.

XQ. 304. We will omit Griesheim?

A. I don't know whether it is correctly designated as a cartel. As I told you, I am not a witness for that. I am not such an organizer for the firms.

XQ. 305. I know, but Doctor you know I am asking you about things right in your home surroundings. You could not have been connected with the Badische Company for so many years without knowing that there was a cartel. You have already told us that.

A. Yes.

XQ. 306. But don't you know about the other cartel?

A. From hearsay; nothing else.

XQ. 307. Well, of course, that is your best knowledge, your best information?

A. This morning you rejected this hearsay as knowledge.

XQ. 308. In 1916 those two cartels came together and formed the present Interessen Gemeinschaft, did they not?

A. Without admitting that there were two cartels. I do not know whether it is a correct expression.

XQ. 309. Well, if that is not correct, this is correct certainly that the cartel of which the Badische was a member took in the others; that is right, is it not?

A. No, that is not right. They did not take in the others. They all combined on the same line.

XQ. 310. All right, they all combined. I will take that. So that today there is a combination of the following chemical concerns in Germany, namely——

A. Firms.

XQ. 311. Namely, the Badische Company, Bayer & Company, The Berlin, Hoechst, Casella, Weiler-ter-Meer, Kalle & Company, and the Chemische Fabrik Griesheim?

A. Yes.

MR. ANDERSON: In addition to my objection already made, I wish to object to that evidence on the ground that if there is any such existing organization, the written agreement between the companies is the best evidence and must be produced. I know nothing about it, and therefore I cannot examine him.

THE COURT: I think this is proper on cross-examination.

MR. ANDERSON: We contend this is not cross-examination. We contend he has made this man his own witness. I do not want to argue, but just to make the point.

THE COURT: Objection overruled.

XQ. 312. And that has been the situation since 1916?

A. Yes.

XQ. 313. One more question on that, Doctor. In 1920, was there not a resolution passed at a general meeting of all the firms in this cartel, whereby the life of the arrangement was extended until 1999?

A. I do not know.

Mr. Anderson: I call for the production of the resolution. I object, your Honor.

Mr. Kresel: The answer is already in and the witness says that he does not know. May I go on to the next question then?

The Court: I shall assume, Mr. Kresel, that the answer was interposed rather quickly and before Mr. Anderson had an opportunity to make his objection.

Mr. Kresel: Then let us strike it out.

The Court: I assume that his objection stands as a motion to strike out. Have you anything to say?

Mr. Kresel: I will consent, your Honor, that the answer be stricken out.

Mr. Anderson: The whole thing should go out.

The Court: You withdraw the question?

Mr. Kresel: I withdraw the question.

XQ. 314. For how long a time, as far as you know, is this combination which you have described, to last?

Mr. Anderson: I object on the ground that the resolution, if any exists, or the written document, is the best evidence; and it is not cross-examination.

Mr. Kresel: I think if this witness knows, he is competent to testify to it.

The Court: Let me see whether there is still a divergence between the views of counsel. Is it your position, Mr. Kresel, that you have made this witness your witness or that you have him under cross-examination?

Mr. Kresel: I consider, your Honor, that I have so far proceeded in a strictly proper cross-examination.

The Court: I wanted your view. The objection, then, is overruled.

A. I am not an expert for the organization of our firms, as I told you. I cannot answer it properly. I am not an expert for that.

XQ. 315. Well, answer it the best way you can.

A. I am not sure. I cannot answer what I am not sure of.

XQ. 316. It is not, Doctor, that you do not want to give us the information, is it?

A. No, I am not sure about it.

XQ. 317. Will you not tell us; this is a combination of the largest chemical concerns in Germany, is it not?

A. A combination or an understanding or how you will call it.

XQ. 318. Well, we will call it an understanding. I will use your language.

A. You will call it so, but I don't know whether it is correct. I will not stick to the word.

XQ. 319. What is that?

A. You will call it a combination. I don't know whether it is correct. It is an understanding.

XQ. 320. Well, I am using your language, Doctor. You called it a combination. Do you want to change that?

A. No; community of interests.

XQ. 321. Subsequently you said it was a combination. Do you want to change that?

A. I don't want to stick to the word. I am not so very familiar with the language, as I told you.

XQ. 322. Very well. We will take your present language, then, an "understanding." Is that what you call it?

A. Yes.

XQ. 323. Now we will stick to that, won't we?

A. Yes.

XQ. 324. Now, how long, as far as you know, is that understanding to last?

Mr. Anderson: Same objection, and I understand that an exception is noted in each case.

The Court: The objections are reserved and no exception is needed, but in order to preserve all rights, we will assume that an exception is entered on each ruling.

A. As I told you, I have no ground for abstaining from an answer. I am not sure about it. It is all published in the newspapers, so I can't tell.

XQ. 325. It is published, you say?

A. It is published. It must be somewhere, and I do not know anything what is not published about this matter.

XQ. 326. Now, Doctor, I have here a book which is entitled "Handbuch der Deutschen Atkien Gesellschaft." You know that publication?

A. Yes, I know it.

XQ. 327. It is a reliable publication, is it not?

A. I do not know whether any word of it is reliable, but generally it is a good book. I am not responsible for the contents.

XQ. 328. What is that?

A. I am not responsible for the contents of it.

XQ. 329. Of course not. You did not write it. But it is a book that you use for general reference in Germany?

A. Yes, for superficial reference.

XQ. 330. Now, do you not know, and I direct your attention to the page in this book which refers to the Badische Company, beginning at page 1806——

Mr. Kresel: May I approach the witness?

The Court: Is there objection to it?

Mr. Anderson: Certainly.

The Court: Before doing that, let us see if that is not a step beyond cross-examination, assuming that all other questions have been in cross-examination. If your cross-examination has been for the purpose of laying a ground for showing the interest of this man in this suit, then does the length, the precise length of this community of interest to which you now refer, if unknown to this man, form any groundwork or basis by which you may further interrogate him with respect to his interest or which would show his interest in any event? If he finds out now, after his examination is given, "Here is a more inuring interest than I realized," it would not affect his testimony.

Mr. Kresel: I am not questioning him on this line as to his interest. I have passed that. These questions are directed to the question of value. I am trying to develop that in Germany there was a combination, a trust, of all of the large chemical concerns; and your Honor can see that the value of patents to such a combination is entirely different from that of the value of the same patents to the American consumer or the American public.

The Court: Then I wonder, Mr. Kresel, if this would not be as far as you would need to go, assuming that your questions are otherwise proper, as to whether the duration of that joint venture is long or short. Whether it terminates in 1999 or 1989 would be immaterial for the purposes of this suit.

Mr. Kresel: All right, your Honor. I think your Honor is quite correct. Let me put another question to the Doctor.

XQ. 331. Doctor, that community of interest or agreement still exists, does it not?

A. Still exists; yes.

XQ. 332. And existed in 1919?

A. Yes.

Mr. Kresel: I will abandon any further attempt to get the correct time.

XQ. 333. Now, Doctor, under this arrangement, all of these companies pooled their profits, did they not?

A. I am not an expert for this, I told you.

XQ. 334. I am not asking you as an expert. I am asking you as to what you know about it and I want you, Doctor, to give us the information. Now, you know. You are an officer of this company, and you know, don't you, that all of these concerns in the arrangement or the community of interest pool their profits, and that then they are divided according to agreed percentages?

Mr. Anderson: One moment, if your Honor please. I want to object. I cannot conceive on what possible theory, with all deference to counsel, the question of whether the Badische Company has pooled its profits with some other company can have anything to do with the patents owned by the Badische Company or with the interest of this witness as an officer of the Badische Company in the patents of the Badische Company.

The Court: As I understand, Mr. Kresel has passed the interest stage of this witness and he has gone to the basis on which he gave his testimony with respect to values. I do not see myself, Mr. Kresel, how that will help me in determining as to whether he laid a proper foundation for this evidence with respect to values or not.

Mr. Kresel: Your Honor will recall the witness undertook to give testimony as to profits, as to profits which his company realized on 65 certain patents, and as to profits, I think, with reference to some of the tanning patents.

It seems to me that this is directly in line with that direct testimony. I want to show that the profits that he speaks of are profits which do not accrue directly to his company, but that they are pooled with the profits of other companies, and that then the profits are distributed among all of the companies, according to agreed percentage. It seems to me that is proper cross-examination.

THE COURT: Tending to what ultimate result, Mr. Kresel? I miss it, I am frank to say. I miss the relevancy. It may be very patent, but I do not see it.

MR. KRESEL: Tending to this, your Honor; that if the profits which the Badische Company makes on exports of products manufactured under these patents do not belong to it directly, but may be used for the purposes of making up losses of some other concerns in the combine, it cannot be made the proper basis for determining the value of the patents to this one company. It may be a proper basis for determining the value of the patents to the combination and that is the reason I want to develop the combination.

Of course, as we shall contend in this case, the value of these patents to the German combination was very large. It does not follow that they were at all large to an American who starts in from the groundwork to work up his factory. I want to show the power of this combination. I want to show what it can do with patents; I want to show what it did with the patents. I think that is well in line with the direct examination.

MR. ANDERSON: If your Honor will permit me, Mr. Kresel in his last sentence has stated a reason for his examination. I do not mean to say he has not been frank before. But their theory, as set up in the answer in this case, which we moved to strike out, is that because the German interests used these patents for the purpose of producing large profits to Germany, that, therefore, the transaction and sale was justified. That is a very crude statement of the position, but that is in substance it.

We moved to strike that out because it is utterly immaterial and we regard it as utterly immaterial to this examination. If the Badische Company made a profit, it may have given all the profits to some other company. It was not a matter of any concern as affecting the value of these patents, what it did with these profits. That is not the question. It is a question of what you can realize on the patents. Therefore, it seems to me that this is entirely aside from the line of original examination. Unfortunately, before we argue that proposition before your Honor, we are taking evidence. It is very embarrassing. I really do not know that we are not losing more than we gain.

Mr. Kresel: But Colonel, don't you see that the fact that a combination of interests can make a certain profit does not indicate that a concern standing alone would make that profit?

The Court: But does not your question go beyond that? I can follow you, without passing on it. I can see your point of view up to that point; but my difficulty is that your question is directed to something beyond that. You have shown your community of interest which goes as a basis for the valuation or the interest of this witness.

Mr. Kresel: I think as to that it applies to both. But certainly it applies as to the value.

The Court: Will you read me the last question, Mr. Stenographer?

(Question repeated.)

The Court: They pooled their interests. You have it there. Now, then, whether they are divided according to agreed percentages, for purposes of this cross-examination, seems to be immaterial.

Mr. Kresel: Let me take your Honor's suggestion. I will strike out of my question the latter portion of it which speaks of dividing the profits according to agreed percentages.

Now, then, may I have the question read?

(Question repeated as follows): "XQ. 334. I am not asking you as an expert. I am asking you as to what you know about it, and I want you, Doctor, to give us the information. Now, you know. You are an officer of this company, and you know, don't you, that all of these concerns in the arrangement or the community of interest pool their profits?"

Mr. Anderson: May I just say, in addition to what I have already said, that it cannot apply to interest, because that is the point we have been following, and he says he is still following, for the reason that these profits are owned by the Badische Company and therefore the interest of the witness is the primary interest of the owner; and the fact that somebody else may be in a pooling interest with the Badische Company, however indirect an interest in the earnings, does not increase his interest in the Badische Company in any way.

The Court: I understand your point, but as I understand Mr. Kresel, he is asking now for information to get a basis for the witness' valuation of these patents. That is, the witness has placed a valuation on them in the light of the German situation, as I understand it. Now, then, whether that will be proper when we come to weigh it on the scales of justice, I do not know. The objection is overruled in the usual way.

Mr. Anderson: All objections are overruled in the usual way, unless otherwise stated, I understand.

XQ. 334. (Continued). Will you answer the question.

A. I know what concerns my department, that is, the patent department. I know the patents, the profits that are obtained under the Badische patents for the goods that we sell and manufacture. But I am not sure about what is ultimately made out of these profits. I told you what profits we have made, but what is done with the profits, that is not my business.

XQ. 335. You say that as an officer of this company you do not know whether its profits are pooled with the profits of the other concerns in this community of interest; is that your testimony?

A. No. You must understand in so big a concern the business is divided up, and one man cannot know everything.

XQ. 336. Is that your testimony, that you do not know?

A. Yes; that is my testimony.

XQ. 337. Well, do you know that the concerns in this cartel interchange patents?

A. Yes, I know that they do not interchange patents.

XQ. 338. You know they do not interchange patents?

A. No.

XQ. 339. And have never done it?

A. No. Patents are reserved to each firm.

XQ. 340. Pardon me.

A. The patents are reserved to the firm which produces them.

XQ. 341. Well, what is this community of interest then?

> Mr. Anderson: I renew my request, if this is going to be a definition of community of interest, that we ought to have the documents. This was not in the original examination.
>
> Mr. Kresel: It does not appear there are any documents.
>
> The Court: I think that goes to value. I will overrule the objection formally.

XQ. 342. You have told us there is a cartel or a community of interest?

A. Yes.

XQ. 343. Interessen Gemeinschaft?

A. Yes.

XQ. 344. You say that you do not know whether they pool profits?

A. Yes.

XQ. 345. You say they do not interchange patents?

A. Yes.

XQ. 346. What is the community of interest?

A. I am not quite sure about this, whether it chiefly consists in certain exchange of experience, the arranging of selling conditions by avoiding underselling and unfair competition between our firm. I don't want to say "unfair", but unsound competition.

XQ. 347. You mean they arrange how much each should sell in a certain territory; is that what you mean?

A. No. I think it is more related to the prices.

XQ. 348. That is, they agree upon what prices they should sell at?

A. Yes, or the minimum prices.

XQ. 349. And that refers to exports as well as domestic?

A. I think so. As I told you, I am not concerned with that business.

XQ. 350. You say you did not interchange patents. Do they issue licenses one to the other?

A. In certain cases, yes. Not general. In such cases where it is in the interest of the community. That is the community of interest.

XQ. 351. During the war, Doctor, these chemical concerns in Germany worked mostly on war work, did they not?

A. I do not know whether it was mostly.

XQ. 352. Very largely?

A. Largely, yes; of course.

XQ. 353. They made poison gas, for instance?

A. Some of them, yes.

XQ. 354. Did not your company make poison gas?

A. Which company?

XQ. 355. Your company.

A. No.

Mr. Anderson: What can this add to the situation? We are not at war.

Mr. Kresel: I will answer that. We plead in our answer and our separate defense, that one of the considerations moving to the Government for the conveyance of these patents was that the Foundation gave to the Government a perpetual license to use all of them free of charge.

The Court: I missed that entirely, Mr. Kresel. It may be my fault, but won't you say it again?

Mr. Kresel: I say, we claim in our separate defense that one of the considerations moving to the Government——

The Court: This Government?

Mr. Kresel: Yes, your Honor—for the conveyance of these patents was a perpetual license given to the Government, the Navy and the War Departments, to use free of charge during the entire life of the patents any of them for war purposes, the making of explosives.

The Court: Is this question then directed to value?

Mr. Kresel: Yes, your Honor.

The Court: As showing what?

Mr. Kresel: As showing the value of these patents for the purpose of making explosives, war purposes.

The Court: And the ultimate showing being that the value placed by this witness upon those patents is from the German standpoint and not from the standpoint of the sale made by the Alien Custodian in this case?

Mr. Kresel: Yes, your Honor; and not only that. I want to follow that up later with showing that in the manufacture of the products that he spoke of, there were others that he did not mention, namely, products used for war purposes.

The Witness: Your Honor will permit me a remark?

The Court: No. Mr. Anderson, I have his contention. Do you want to be heard?

Mr. Anderson: I think it would probably be better if I state my position at greater length there. In the first place, in reply to Mr. Kresel's suggestion that this relates to his affirmative defense, he is making the witness his own witness, of course.

The Court: I do not understand it that way. I will be very glad to hear you on that, Colonel Anderson.

Mr. Anderson: If your Honor will permit me, the claim as now stated—I won't take the time to go to the answer—is that one of the considerations to the Government of the United States for the sale of these patents to the Chemical Foundation for $250,000 was the benefit accruing to the United States by having the right to use these patents for war purposes; that is, without paying license fees —for strictly war purposes.

In the first place, I do not concede that such right is reserved in this case. That will involve an argument on the assignments and I am not going into that now. But as a matter of law, since the Government of the United States had seized these patents and had a perfect right under the law to confiscate them, and held them in its possession by Act of Congress, what possible consideration could it be to the Government of the United States, if it wanted to take them from the enemy at a nominal price, to turn them over to some corporation which might allow it to exercise the rights which the United States under the law could exercise without consulting the corporation. Therefore, there could be no such consideration running to the United States, because the United States got nothing by turning the patents over to somebody else, assuming that it reserved to itself the right which it had under the law absolutely without turning them over and before it turned them over.

The Court: In order to help me there, Colonel, would it follow or not that if the United States is selling something, but is not selling it all, the part sold may be of less value than if it had sold all. We are assuming that the title was in the United States, that the whole title to the patents was in the United States the day before the sale. If I understand Mr. Kresel, it is that the

United States did not sell to this purchaser the entire interest, but it held back and reserved a certain right that would not go with the title, but which was reserved; and which right, I assume Mr. Kresel intends to contend, was one of the valuable rights under the patent.

Mr. Anderson: Yes, your Honor, but this transaction took place after the war and the sole question of value here involved is the commercial value of these patents. I asked only for the earnings derived from importations into the United States at a time when the war was not in progress; and therefore it was purely commercial importation. Therefore, the question of whether these patents could be used by the German Government or might be used for any purpose in time of war or could be used by the United States Government in time of extraordinary emergency such as war, cannot have any bearing upon the commercial value of these patents for commercial purposes. My question was in every instance this morning limited to the commercial fair market value for commercial purposes.

I did that for the reason, among other things, first, that it had nothing to do with Government use; and second, I did not want to get into an argument in advance on a question which goes to one of the main legal propositions in this case. I wanted to get by this deposition, if I could, without doing it. At the proper time I will raise the question.

The Court: Then your contention, Colonel Anderson, is that the evidence which you adduced from this witness was only the commercial value and not the full value of the patent?

Mr. Anderson: Yes, related to the commercial value, strictly on the commercial value. Now, whether there was any value in the patent for some other purpose than its commercial value, I have not inquired and do not propose to inquire, because the commercial value in my judgment is sufficient to meet the point that I have to make; and I do not think the United States Goverment has any concern with that question when we come to it.

I do not care to go into the question now except not to leave the question unanswered.

I would like, with your Honor's permission, to make this additional statement for the witness. I told him he must answer the questions of counsel, of course. I should have said, which I assume the witness of course would know, that if he did not know of his own knowledge, he had a right, if he did not know actually, to say he did not know because in some instances, after saying he did not know, he has undertaken to state certain matters as to agreements, etc., as to which he cannot testify.

THE COURT: Of course, that ought to be modified, Colonel, just a bit. I have got to assume at this point that this is cross-examination. Of course, one of the very difficulties of counsel in cross-examining a witness sometimes is the answer "I do not know"; and in cross-examining, counsel has a right, by any number of questions he desires, to show that he does know.

MR. ANDERSON: Undoubtedly so. What I meant was that if he absolutely did not know, he was under no compulsion of trying to answer something he did not know about. I thought probably the witness, being unfamiliar with our procedure might do that. I know Mr. Kresel would not want him to do that, but it seemed to me, he might.

The Court: Do you want a formal ruling at this point or do you want to say anything in reply, Mr. Kresel?

Mr. Kresel: I simply want to point out, your Honor, that quite aside from any consideration remaining with the Government, I am entitled to inquire on this line for this reason also; that the witness this morning undertook to describe certain products which were manufactured under these patents. He said nothing about any products that were manufactured for military purposes.

I think I have a right to develop all of the products that were being manufactured under these patents in Germany and to show, if I can, that the witness' judgment as to the value of the patents is based not only upon the products that he mentioned this morning, but upon all the other products.

The Court: The objection is overruled.

By **Mr. Kresel:**

XQ. 356. During the war, the chemical concerns who were in this community of interest manufactured, to a very large extent, explosives for the Government, did they not?

A. Yes.

XQ. 357. Indeed, the Haber patents that you testified about this morning were the patents under which the German chemical factories were enabled to extract the nitrogen from the air to combine it with hydrogen and produce ammonia, which is an essential in the making of explosives, is it not?

A. Yes, it is.

XQ. 358. But for the fact that the chemical concerns in Germany were enabled by this Haber process to supply the German Government with the essentials for the making of explosives and poison gases, the

German Government could not have continued with the war, because the Chilean Nitrates, from which explosives had theretofore been made had been cut off; is that right?

A. Ammonia patents have nothing to do with poison gases.

XQ. 359. Well, I will take your answer as to that, but I am not confining my question simply as to poison gases?

A. But you mentioned them.

XQ. 360. Also as to explosives, is it not the fact?

A. I think so.

XQ. 361. That before the processes under the Haber patents were perfected, explosives were made from Chilean nitrates which were imported from Chile?

A. Before the patents were perfected?

XQ. 362. Yes, before you could get this atmospheric nitrogen by the Haber patent?

A. Yes.

XQ. 363. And of course, very shortly after the war started, the British blockade cut off the importations from Chile?

A. Yes, sir.

XQ. 364. The value, therefore, of the Haber patents to the German cartel included the value of being able to supply the Government with the essentials for explosives, did it not?

A. No, that is entirely wrong.

XQ. 365. You spoke of about 450 to 500 patents that had been seized here, belonging to your company?

A. Yes.

XQ. 366. Did your company at any time since taking out any of those patents and up to the time that they were seized, manufacture under any of them in the United States?

A. I think not.

XQ. 367. So that these patents stood here and were taken out by your company, not with the purpose of manufacturing under them in the United States, but for the purpose of making it impossible for any Americans to produce either the article which was covered by a product patent or use the process, if it was simply a process?

A. No, that is not the purpose.

XQ. 368. What was the purpose in taking out these patents, if during all these years, your company did not turn a wheel in making anything under them in the United States?

A. The purpose was to secure us the right of importing dye stuffs and stopping German firms from maufacturing products and importing them; and on the second hand, Swiss firms and British firms from manufacturing them and importing them; and only slightly may it have been to stop American manufacturers from manufacturing them. But I do not think this was the idea, because there were no American manufacturers that we had to fear.

XQ. 369. You are quite right. There were none. Now, Doctor, the product patents gave you the right to prevent any other manufacturers from importing into the United States the article covered by such a patent, did it not?

A. That is it.

XQ. 370. In other words, with these patents taken from the United States Government, you sought to have a monopoly here with reference to such articles as were covered by the product patents, not only a monopoly against Americans but also against any other nationals from any other Government that might desire to import?

A. That is the real nature of a patent, yes.

XQ. 371. Again, Doctor, these chemical concerns in Germany——

A. Firms. You mean firms.

XQ. 372. Well, we use the term interchangeably. Still I will use the name "firms".

A. We use the term, simply for illustration—we use the term "concern" for a trust.

XQ. 373. Oh, I do not mean that. I mean firms. These firms that were in the community of interest, in the development of many chemical products, were able at very short notice to turn their plants into producing explosives and poison gas, were they not?

Mr. Anderson: If your Honor please, I object to that. We are not fighting the war.

The Court: No, we are not, Colonel. I will hear you as to the relevancy, Mr. Kresel. I do not see it at the moment.

Mr. Kresel: If your Honor please, that is in line with the other questions that we have had upon the additional production of articles, going to the value of the patents, which the witness did not mention this morning.

The Court: This is still addressed to value?

Mr. Kresel: Yes, sir.

The Court: The contention being that in the value that he placed upon these patents, he was looking at it from the German standpoint.

Mr. Kresel: Yes, your Honor.

Mr. Anderson: May I suggest, if your Honor please, the question of value this morning related to the United States patents exclusively; that is, to the value of the right of importation which they controlled and manufacture. The testimony as to the amount of income related exclusively to the income derived from products imported into the United States.

Mr. Kresel: Under the German patents.

Mr. Anderson: Suppose they have in Germany an enormous value. Suppose they can convert their goods into war products. What has that got to do with the value of the United States patents that does not help him.

Mr. Kresel: You miss my point, Colonel. It is my fault. I did not make myself clear. What I am trying to say is, your Honor, that by reason of the peculiar facilities of these large German chemical concerns that have been in the field for generations, the value of these patents, because of the number of products that they can make under them is something upon which a value of the same patents in the United States cannot be based.

The Court: Colonel Anderson's answer to that is that he did not attempt to base it on that, but that the only use theretofore of those patents in the United States was of German patents sold in the United States from which a commercial profit of so many dollars was derived at a certain time; and that the valuation of this witness having been predicated upon that premise or that fact, that necessarily, in reaching that conclusion, he excluded the basis which you are now attempting to show. That, as I understand is the difference between you. You, as I understand, were suggesting that you have a right to inquire as to all these facts and let the Court draw its own conclusion as to whether it was possible, from his standpoint, to base a valuation, his valuation, on precisely what he said, without taking into consideration other things.

Mr. Kresel: In other words, I am not concluded by this witness' statement.

The Court: Not at all, but is that your view?

Mr. Kresel: Exactly. Your Honor has that

The Court: Is there anything you want to

perfectly in mind.

put on the record, Mr. Anderson, before the ruling?

Mr.. Anderson: I just wish to make this statement for the record, that the direct examination of this witness on values was confined to the value of patents issued by the Government of the United States, seized and sold to the Chemical Foundation in the United States and that the sole inquiry was directed to the value of those patents in the United States to the owner in Germany.

The Court: To the German owners.

Mr. Anderson: Yes, to the German owners. True, the various elements are under the control of those owners, the control of importation, the control of manufacture, which the patent law gives to a patentee; and therefore, what use can be made of those patents in Germany, what use may have been made of them in Germany, and what the German manufacturer can do with his plant, not only including the owner of this but all other German manufacturers, is entirely outside of the direct examination or of any appropriate or proper cross-examination thereon, as relating to elements that were in any way involved in the inquiry on direct examination.

The Court: The issue is very clear. A formal ruling is made overruling the objection.

Mr. Anderson: I understand all this examination is to be subject to objection and the usual ruling.

Mr. Kresel: That is my understanding, your Honor.

XQ. 374. Will you answer the question.

A. None of the plants for these patented products here could be converted into a plant for poison gas. They do not relate to poison gas and do not relate to ammunition.

XQ. 375. And you mean that the plant which manufactures dye stuffs was not, in point of fact, during the war, used for the making of essentials that went in as ingredients of explosives?

A. No plants for these patented dye stuffs. Perhaps a plant for some intermediate which is very old and can be made everywhere, but not the plants for the patented products. That is what I mean.

XQ. 376. But the dye stuffs are made from intermediates, are they not?

A. The patents are not for the intermediates.

XQ. 377. But dye stuffs are made from intermediates?

A. Yes, of course.

XQ. 378. You mean that among the 450 patents that you testified about this morning, there are no patents covering intermediates; do you really say that?

A. Maybe some of the others, but none of them are related to ammunition or explosives. I am not quite sure about this.

XQ. 379. I did not ask you about patents covering explosives. Do you mean to say that none of your patents cover intermediates?

A. Yes, they do, some of them.

XQ. 380. What I had in mind specifically, for instance, just to illustrate the point that I am asking you about in making a dye called "sulphur black"——

A. That is not patented.

XQ. 381. Won't you let me finish my question?

A. Pardon me.

XQ. 382. In making a dye called "sulphur black" —that is a black dye, is it not?

A. Yes, I know.

XQ. 383. A slight variation in the final state of that manufacture would turn the product into picric acid, would it not?

A. Yes.

XQ. 384. And picric acid is one of the essentials used in the manufacture of explosives, is it not? It is an explosive, in fact?

A. It is, but it is not much used. It is not used to a large extent, I do not think.

By Mr. Kresel:

XQ. 385. All right, I will take T. N. T. One intermediate which is produced in the maufacture of coal tar dyes is a substance called paramonatoluol?

A. Yes.

XQ. 386. And from that T. N. T. is made, is it not?

A. It may be.

XQ. 387. It can be made?

A. In a similar way, yes.

XQ. 388. But it can be made?

A. But, permit me to say, it has nothing to do with these patents.

XQ. 389. It has to do with intermediates?

A. Nothing with these patents.

XQ. 390. It has to do with intermediates?

A. The patents are all intermediates.

XQ. 391. However, for some intermediates, you have just said so?

A. Yes, but not for these.

XQ. 392. Let me go on please, do not argue with me. Now, in Germany, the Government assists the dye works, does it not?

A. No, that is entirely wrong.

XQ. 393. Has it ever?

A. No, never. That is propaganda. I saw it in your defense, but it is quite untrue.

XQ. 394. Did it during the war?

A. No.

XQ. 395. You mean——

A. The dye stuff industry has not been backed by the Government.

XQ. 396. Now, listen to me. Let me put my questions clearly to you, and then you can answer. Do you say that during the war none of these chemical concerns who were working for the Government were financially assisted by the Government?

A. Yes, they were, but not the dye industry.

XQ. 397. Well, did not you tell us that some of these chemical concerns that were engaged in the manufacture of dyes in peace times were converted into war-producing material during the war, did not you tell me that?

A. They took up additional work for war.

XQ. 398. Additional war work?

A. And were converted.

XQ. 399. Now, at the outbreak of the war, Doctor, how much of the world's supply of dyes did Germany supply?

A. I am not sure about that.

Mr. Anderson: Is this—can this have any bearing upon the direct examination of this witness?

Mr. Kresel: May I answer that, your Honor?

The Court: Yes.

Mr. Kresel: Yes. My point is that the amount of dyes which were supplied by this combination in Germany indicates the strength of that combination. It indicates the monopoly that it had of producing and supplying dye stuffs, and it indicates what the value of such a monopoly of these patents would be.

Mr. Anderson: If your Honor please——

Mr. Kresel: It is actually the same point that we have been arguing.

Mr. Anderson: If your Honor please, suppose the dye industry in the United States is a Trust—I mean in Germany it is a Trust—suppose the dye industry in Germany have enormous power. Suppose it is combined to get that power. If one of the members of that organization, or whatever you call it, I do not know whatever it is, or any other member has secured patents from the Patent Office of the United States in accord with the laws of the United States, and we are inquiring into the distribution of those patents and their value, what can the power of that industry in Germany, or its organization, or conduct of its business have to do with the value of the patents in the United States, located in the United States, and which can not have any bearing upon that power?

Mr. Kresel: May I make one further observation, your Honor?

The Court: Yes.

Mr. Kresel: If, as we claim, there was this combination, which had this tremendous power, would not that affect the value of the patents to an American here, who would buy them, and try to start up in business?

Mr. Anderson: Allow me for a moment——

The Court: I was wondering, what Mr. Kresel was leading to in this situation. If the Germans prior to the war had a world-monopoly on dyes—whether the value to them on these patents which would not only tend to preserve intact that monopoly, but which, so far as I am now advised, would have kept the monopoly absolutely intact—whether the value of these patents in such a world-wide monopoly would not be far in excess of their value to any other person, because the minute a competitor got into the field, whether the mere keeping out of a competitor in a field as large as the United States, would not such a world-monopoly—would that not give to these patents a value far in excess of what it would have been to A, B or C. That is the thing that I have been wondering about, as to whether he was not coming to sooner or later.

Mr. Kresel: That is what I have been directing this examination to.

Mr. Anderson: If your Honor please——

The Court: I cannot decide that now, Colonel, and if that element is in it, anything tending to show the German monopoly, which so far as I now see it in the cross-examination, is equivalent to world-monopoly—anything tending to show that monopoly — would on that theory, if that theory is plausible—I do not know whether it is or not now—would it not be relevant to the valuation placed upon the patents by this man. I assume it would, at least, I would not be prepared now to negative it.

Mr. Anderson: If your Honor will permit me to put this on the record in view of your Honor's statement, that I do submit that for a Court or any one else to undertake to draw a distinction between the value of patents for commercial purposes which give an exclusive right of manufacture, owing to importation to an individual or corporation of fifty million dollars as distinguished from a combination or corporation of two hundred million dollars, or two billion dollars is drawing a bow a little fine on the matter of distinctions, and seems to me so remote that it would be going into the realm of speculation, as to values, far beyond anything the Courts have ever gone into. I merely put that on the record, as, of course, I will not ask your Honor to consider questions which involve a serious question at this time, and I renew my motion.

The Court: Is there such a question, will such a question ultimately be involved in this case?

Mr. Kresel: It will certainly be, your Honor, and it is raised by our separate defense.

The Court: I have no authority——

Mr. Kresel: Your Honor has not had time to study it.

The Court: I have not read particularly the bill, nor have I seen your answer at all, I am sorry to say. Objection overruled on the same basis.

The Witness: What was the question.

XQ. 400. The question, Doctor, is for you to tell us what percentage of the world's supply of dye stuffs was supplied by Germany, prior to the war, just before the outbreak of the war?

A. I am not quite sure about the statistics, but I am quite sure about the fact that the dye stuffs which have been manufactured under these 470 patents also represented only a very small percentage of the world's supply of dye stuffs.

XQ. 401. But, Doctor, did not you say—I do not want to be offensive, but you are dodging the question and not answering it—I am not confining you to these patents, I am speaking broadly; but is it not a fact that Germany had a practical monopoly of manufacturing and producing dye stuffs all over the world?

A. No, that is no fact. I told you before that there are large manufacturers in Switzerland, and in England, and this Society for chemical industry, in Berlin and Elbenstein, and Brussells, and Holliday in England, and a lot of other firms.

XQ. 402. You seem to be much better informed of outside of Germany than in; but let me put that question to you: Is it not a fact that at the outbreak of the war, Germany produced nine-tenths of the dye stuffs that were consumed in the whole world?

A. I am not certain about percentage.

XQ. 403. Whether you are certain or not, give us your best estimate; you have been giving us estimates on it; give us an estimate of that?

A. I can not give any estimate.

XQ. 404. You won't undertake to do that?

A. No, I can not. I wish I could, but I can not.

XQ. 405. And don't you know, Doctor, that when the war broke out, and the United States could not get the German dyes, that the textile industry of the United States was absolutely paralyzed?

A. I have also heard that in the United States, that there was no dye stuff industry at all, but that is no evidence that Germany had a monopoly. There was a monopoly in England and Switzerland.

XQ. 406. Surely, so far as the United States was concerned, Germany had a monopoly of dye stuffs before the war, had not they?

A. No.

XQ. 407. Have you answered it?

A. There was export from Great Britain and Switzerland, and that export was cut off because those countries needed their home production.

XQ. 408. Did you tell me that your patents covered—your product patents did not permit importations from England, Switzerland and France?

A. But I told you that was only a small percentage of patented dye stuffs, and you reversed the question and asked for all the dye stuffs, that is the difference.

XQ. 409. And that is your idea?

Mr. Anderson: I object to some of this argument between counsel and witness. It is not cross-examination.

Mr. Kresel: I am through with that.

Mr. Anderson: Let the witness answer the question.

XQ. 410. Now, you undertook to give us the fair market value of patents, did not you?

A. Yes.

XQ. 411. Just what do you mean by the market value of a patent; do you mean that there is a place somewhere, where you can go and buy patents; is there an exchange where you can buy patents?

A. You know yourself that there is no such place.

XQ. 412. Then, what do you mean by a market value of patents; I want your meaning of it, so that we can see what your testimony is worth?

A. I think the market value of the patent is the value which the patent had for the inventor or the owner of the patents, and for which he probably would have been willing to sell them.

XQ. 413. Well, of course, if that is the witness's understanding, and that is what you understood by—that is what you mean by your testimony when you gave the market value of these patents, was it?

A. Yes, I think that is a possibility.

XQ. 414. All right. I am quite content with your answer. Now, the value of the patent depends upon the person that owns it, being able to prevent others from using it, does it not?

A. No. The person is quite immaterial. The value of the patent is defined by the value of the product which is manufactured by it. The owner is of no importance whatever.

XQ. 415. Apparently you did not understand the question. I say the value of a patent lies in the fact that the person that holds the patent can prevent anybody that he pleases from manufacturing an article covered by that; is not that right?

A. No, that is negative, positively stating it. It is the profits which he makes out by virtue of the patent.

XQ. 416. Of course he makes the profits because nobody else can manufacture without his permission?

A. Of course.

XQ. 417. We agree on that, don't we?

A. The patent gives the right of preventing others.

XQ. 418. Let me see if you will go along with me this far—a patent is valuable to a person who possesses it because he can either let somebody manufacture under it or refuse to let anybody manufacture under it; is not that right?

A. On the one hand, yes.

XQ. 419. Yes, take your concern, for instance, before these patents were seized, when you owned them—

> **The Court:** Pardon me, may I make this inquiry, Mr. Kresel; is not that the matter of law; and cannot we——

> **Mr. Kresel:** It is just a preliminary question, your Honor, to the question that follows:

XQ. 420. Would it make any difference in your opinion, as to the value of a patent, the fact that the person who owns it was compelled to give licenses to use that patent to anybody and everybody that applied.

A. Yes, of course, that raises——

XQ. 421. You have answered my question, "yes". Of course, that is all I want.

> **Mr. Anderson:** That is subject to objections your Honor understands.

> **The Court:** Yes.

XQ. 422. When you gave us this morning——

> **Mr. Anderson:** I wish to state on the record in addition, the fact does not appear in this case, that any person was compelled to give licenses, or that the owners at the time of the sale of these

patents, whoever they were, were required to give licenses; and therefore the question is entirely outside of the facts as disclosed in this case.

XQ. 423. When you assumed to give us this morning your estimated value of these patents, did you assume that there was a clear title to all those patents?

A. Of course, yes.

XQ. 424. And did you assume that when they were sold, they were not subject to any outstanding licenses?

A. It depends on the number of licenses; when there are only very few, they may not alter much the value of the patent.

XQ. 425. But you are not answering my question, if you will pardon me for saying so. I am asking you directly whether when you gave to the Court this morning your opinion as to the value of the patents, that opinion was based upon the assumption that no licenses affecting the patents were outstanding, just yes or no?

A. Yes.

XQ. 426. Now, Doctor, I understood you to say this morning, that you had repeatedly bought patents, so that you are familiar with methods of buying and selling patents; am I correct in that?

A. Yes.

XQ. 427. Well, ordinarily, when you buy a patent from an inventor, you get from him all the information that he possesses as to the manner of operating under the patent, don't you?

A. Yes, ordinarily.

XQ. 428. Certain; and you get from him the result of his experience in operating, commercially operating under the patent, don't you?

A. Not commercially, mostly only——

XQ. 429. Strike out "commercially"—experience in operating under the patent, don't you?

A. Not "operating", that goes too far.

XQ. 430. Experience in producing under the patent?

A. Experience—but "using" goes too far, it tends to a commercial extent.

XQ. 431. I will let you use your own language, experience in doing what with the patent?

A. Simply to show its practicability.

XQ. 432. All right, and ordinarily, when you buy a patent, you obtain from the inventor or the manufacturer for whom you buy information as to the kind of plant that is necessary in order to work the patent, don't you?

A. No.

XQ. 433. You mean you buy a patent, and then invent your own plant?

A. The plant in those cases is very simple and can be shortly erected by our engineers. What we need is a sample, a sample how to carry it out.

XQ. 434. Yes. But if it is a patent that had already been commercially worked, of course the plant would have been there when you buy the patent, you buy whatever experience as to the plant, likewise, don't you?

A. I do not think that we agree over that——

XQ. 435. Whether you agree with it or no, that would not ordinarily accompany the sale of the patent, is it not so?

A. I did not get that.

XQ. 436. I say, ordinarily, if a manufacturer has operated under a patent, has built a plant for instance, and he sells that patent, the purchaser would get any information that the vendor has as to the kind of plant that is necessary?

A. That is very seldom, very rare cases.

XQ. 437. That is rare, is it not?

By The Court:

Q. 438. If the purchaser needs it, or that the inventor will furnish that disclosure, which do you mean?

A. Simply an example how to carry it out in the laboratory, that is sufficient for us.

By Mr. Kresel:

XQ. 439. Now, you said this morning, two or three times, that your patents were so drawn that an incompetent chemist can operate them?

A. Yes.

XQ. 440. Of course, you know, don't you, that before 1919, there was practically no chemical industry in this country?

A. Yes.

XQ. 441. And of course that America was not as rich in skilled chemists, as Germany was?

A. Of course.

XQ. 442. And do you really say, Doctor, that these patents that you have been testifying about, are so drawn that any patent chemist can take them and work them commercially?

A. In this country?

XQ. 443. In this country?

A. Yes, that does not require technical skill, but simply the scientific skill, and such chemists were in your country. I do not mean that it requires extraordinary skill also, but simply it requires more than a student has, of course, we know.

XQ. 444. You take your Haber-Bosch patents, for instance. You took out those patents not only in the United States but in other countries?

A. Yes, nearly everywhere.

XQ. 445. Belgium, for instance?

A. Belgium too.

XQ. 446. In France?

A. Yes.

XQ. 447. And I assume that your patents and theirs were equally as full in disclosure as those that you took out here in the United States?

A. Yes.

XQ. 448. And I think you will go along with me to this extent, won't you; you will say that France had at least as good chemists as we did in America?

A. Of course, yes, she has.

XQ. 449. And well, don't you know that notwithstanding that France had your patents, as we had your patents here, that the French Government is paying two and a half million francs to the German Chemical Cartel, for information as to how to manufacture under these Haber-Bosch patents?

A. They are not paying two and a half million francs. They are paying fifty-nine million francs, but not for the information—for the patents and for the information.

XQ. 450. For what?

A. For the patents, and for the information.

XQ. 451. But they had your patents; they had seized them, did not they?

A. They gave them back.

XQ. 452. Well, they had them before?

A. They had them before.

XQ. 453. And if the patents disclosed the process, they did not have to pay anything for any information, did they?

A. They did not pay for the information. They paid for the patents and for the information.

XQ. 454. But that is what you said—patents and information?

A. Yes, sir.

XQ. 455. Now, there were patents here on Salvarsan, were there not, you know that?

A. I know, but I am not acquainted with the Salvarsan business. It is not our firm.

XQ. 456. Now, to establish a chemical industry in a country like America, which did not have any, would require a large amount of capital, would it not?

A. Yes, I see it has been found, that capital.

XQ. 457. Would it require a large amount of capital?

A. Not so extraordinary large.

XQ. 458. And do you think, Doctor, that you are frank in making these answers?

A. Yes.

XQ. 459. And it would require, would it not, the building of a plant?

A. Of course.

XQ. 460. A large amount of plant?

A. It depends on the amount of dye stuff which is to be produced.

XQ. 461. If it was to take the place of the German dye stuffs that were being imported before the war, there would have to be quite a large commercial industry, carried on here, would not there?

A. I do not know. I do not think the amount of dye stuffs imported was extraordinarily immense.

XQ. 462. Now, your dye patents covered what are known as vat dyes, did not they?

A. Yes.

XQ. 463. Were there other sorts of dyes that could be used in the place of vat dyes?

A. Yes.

XQ. 464. Was there a form of dye called the Algo dye?

A. Yes, but it did not belong to our firm——

XQ. 465. I am asking you now as an expert, do you see?

A. Yes.

XQ. 466. You are a chemist, an expert?

A. It was simply to avoid confusion, if you wish to hear this, because we are concerned here with partnership credits.

THE COURT: Mr. Kresel, do you care——

MR. KRESEL: I will be through, if your Honor will indulge me, I shall finish with this witness in about half an hour.

THE COURT: I was going to inquire as to whether you care to finish now, or take a recess until say half past seven; if you are going to finish in half an hour, you can finish now if you prefer.

MR. KRESEL: I shall finish in half an hour. How about you, Colonel?

MR. ANDERSON: I think that if Mr. Kresel finishes in half an hour, I certainly will not take over half an hour for any re-direct and we will get through.

THE COURT: I shall take a recess at the end of an hour in any event.

MR. ANDERSON: If you will reserve me half an hour to finish the re-direct, I think we shall finish.

THE COURT: You may proceed.

XQ. 467. Now Doctor, I wish you would tell us what patents you bought in 1919, giving the name of the person from whom you bought them, and describing the patents?

A. I did not get it, pardon me.

(Question repeated.) I cannot tell whether we bought any in 1919—I cannot tell.

XQ. 468. I ask you the same question as to the year 1918?

A. I cannot tell it, any year.

XQ. 469. Is your answer the same as to 1918, as 1919?

A. Yes.

XQ. 470. I ask you the same question as to 1917. is your answer the same as in reply to my question with reference to 1919?

A. Yes.

XQ. 471. Now, you assigned this morning, as the value of the 58 so-called Haber patents—you said that it was seventeen million dollars?

A. Yes.

XQ. 472. Did you arrive at that figure by assigning a separte value to each of the fifty-eight?

A. No. They can not be separated as a whole.

XQ. 473. "No" was the answer?

A. No—yes.

XQ. 474. Well, will you enlighten us as to how you came to the conclusion that it was seventeen million dollars?

A. Yes, I can. I arrived at this figure in that way, first, Germany is now producing three hundred thousand tons of fixed nitrogen by the Haber-Bosch process. The conditions in Germany and in the United States of America, as to the consumption of nitrogen fertilizers were about the same before the war. I always refer to the time before the war, because the conditions are so directly different since then.

XQ. 475. I did not get that last?

A. The conditions are different. For that purpose I refer to the time before the war—excuse me.

XQ. 476. Then you are talking about 1913?

A. 1913.

XQ. 477. Go ahead.

A. The conditions are not much far different now as I understand from your magazines, and official reports. The United States is about producing one hundred thousand tons of nitrogen in coke ovens and has a big demand for salt petre, which amounts to about the same quantity, one hundred thousand tons of nitrogen, and those were the conditions in Germany, about so, and we constructed in Germany, the Oppau plant which is now producing one hundred thousand tons of nitrogen, and the Mersenburg plant, which is producing two hundred thousand tons; and the production of these two plants, is gladly taken up by the agriculture and I suppose—not I suppose—I am sure that the United States would be ready at any time to take up a supply of as little as seventy-five thousand tons of fixed nitrogen yearly, and this, at the rate of one cent royalty per pound of nitrogen, and the average term of ten years for the outstanding life of the patents gives seventeen millions of dollars, and another basis is the contract you have mentioned that we have had to make with the French Government and this provides for the establishment of a plant for thirty-six thousand tons, and I understand the thirty-six thousand tons is a rather small figure; and if my concern assumes that seventy-five thousand tons would be likely to be consumed in the United States, which has a much bigger area than France has, that is a very moderate basis.

XQ. 478. Is that all?

A. That is it.

XQ. 479. Do I understand then, that you assume that if the United States—or if somebody in the United States could not produce nitrates under these Haber patents——

A. Or ammonia.

XQ. 479 (continuing)—and if the demands of the country were such as to absorb a supply of three hundred thousand tons a year——

A. No, not so much.

XQ. 479 (continuing)—that then the profits that would be realized from that, would be such as to make patents worth seventeen million dollars?

A. Yes, but it is a misunderstanding. I did not suppose that the demand must be increased to three hundred thousand tons, this ammonia production may substitute a part of the imports from Chili. It may substitute the whole production of the United States and create a national industry.

XQ. 480. You realize, don't you, Doctor, that you are asked to give the value of these patents to the American industry, not to Germany?

A. Of course, yes.

XQ. 481. And that is your testimony, is it?

A. Yes.

XQ. 482. Well, have you in all your reading of magazines and official documents which you mention informed yourself as to the actual result of the working in the United States under the Haber patents since 1919; without theorizing now, do you know what the actual results were?

A. Yes, I know thereabouts.

XQ. 483. Will you tell the Court what you have learned as to the actual results?

A. I have learned that a plant in Syracuse is producing three thousand tons a year, but I have also learned that the Nitrogen Committee which was instituted in 1916, recommended that the United States Government should build a plant for a capacity of about thirty thousand tons, an initial plant.

XQ. 484. Then, your information is that the progress of the art here, in so far as working under the Haber patents since 1919, is that a plant in Syracuse has been built which produces three thousand tons a year?

A. Yes, sir.

XQ. 485. Now, you say that you can not separate these fifty-eight patents and assign a value to each of them. What is there extraordinary about that that makes it impossible to do that?

A. They belong together. They cover the various steps of the process which follow after the other, one for the nitrogen and one for the combining of ammonia, and the third for the separating of the ammonia, and all for the same subject.

XQ. 486. In other words, you mean that ammonia can not be producel under these Haber patents without using all fifty-eight of them?

A. No, I do not mean that, not all the fifty-eight must be used.

XQ. 487. Well, which ones may be used?

A. I can not state it from memory. It depends on the local conditions, other circumstances. Some must be used, at any rate.

XQ. 488. Have you familiarized yourself with the purposes to which the production of this Syracuse plant have been used?

A. For which the products are used?

XQ. 489. Yes.

A. No, I do not know.

XQ. 490. Don't you know it is being used only for refrigeration and not for fertilizer?

A. I do not know, but it may be right. The products of the Oppau Mill are also used for other purposes, also for refrigerators.

XQ. 491. You make fertilizer in Germany, don't you?

A. Yes, and liquid ammonia for refrigeration and other purposes.

XQ. 492. And Germany now produces three hundred thousand metric tons a year?

A. Of nitrogen, yes, including nitrogen.

XQ. 493. By those Haber patents?

A. Yes.

XQ. 494. Now, what was it that increased the value of these Haber patents in your mind, from the seventeen million dollar figure this morning to twenty million dollars this afternoon?

A. That was—it was supposed the consumption or production of the United States would be one hundred thousand instead of seventy-five thousand, that is the difference, a rather small difference.

XQ. 495. And of course, if you assume that the consumption would be five hundred thousand tons, the value would thereby be increased?

A. I would not assume that. That is too much, perhaps. I wish to give a minimum and a moderate estimation, which can surely be fulfilled.

XQ. 496. Yes, but the result is that only three thousand tons a year have been produced?

A. That is no evidence.

XQ. 497. Now, the value of the process under the Haber patents, would depend somewhat upon whether or not Chilian Nitrates could be bought in the market at a cheap rate, would it not?

A. It never can be bought as cheap as synthetic ammonia.

XQ. 498. And yet you know that Chilian nitrates are being very largely used in the United States at this time?

A. Yes, I know they have also been very largely used in Germany before the war, and, nevertheless, synthetic ammonia has superseded it, or shut it off.

XQ. 499. Well, from such investigation as you have made, would you say that the United States is continuing to use more expensive Chilian nitrates instead of ammonia produced under the Haber patents, because they can not produce it?

A. No, I do not think that. They can. Perhaps there was not proper management, or other circumstances. I think it ought not to have been impossible to institute——

XQ. 500. Of course, there is no difficulty in Germany in getting the proper management. You have not found any difficulty?

A. No.

XQ. 501. You have found no difficulty in Germany in installing the proper plant?

A. No.

XQ. 502. You have found no difficulty in Germany in getting the skilled scientific men to work these patents?

A. No, we had no difficulty.

XQ. 503. You found no difficulty in getting all the information that is necessary in order to know how to work these patents?

A. We need not get it. We have it. This is ourselves.

XQ. 504. Now, you were telling us about three tanning products that were made under the tanning patents. Would you mind indicating under which patents those were made?

A. I can.

XQ. 505. You mean, of course, by these product patents, don't you?

A. I don't know whether they are product patents. One is a product patent, 12367405.

XQ. 506. That is a product patent?

A. That is a product patent, 1237405 and 1336759. That is a product patent, and there are patents for tanning, 1216612, 1281494 and 1289280. I think there is one important patent still missing. That is 191480 for tanning.

XQ. 507. You have spoken of Oppau, the factory there manufactures nitrogen?

A. Oppau has not to do with tanning.

XQ. 508. No, I am speaking of nitrogen?

A. Nitrogen, yes, fixed nitrogen.

XQ. 509. And under these Haber patents?

A. Yes.

XQ. 510. Is that a very dangerous process?

A. No, it is not dangerous at all.

XQ. 511. There was a very serious explosion at that plant, was not there—killed a great many people were not there recently?

A. Yes. There were five hundred killed, but that has nothing to do with the manufacture of ammonia. It was a kind of nitrate which was produced, and it exploded.

XQ. 512. Well now, do you mean to testify that all of your patents, all your dye patents, are both product and process patents?

A. Yes, each single of them, no, not each single some——

XQ. 513. You testified that way this afternoon?

A. That was a misunderstanding, not each single of them, but as a whole.

XQ. 514. Some are product patents, and some process?

A. And some are product and process as well.

XQ. 515. You said this morning that your patents in the United States were substantially like the patents that you had in Germany, did not you?

A. Except for the differences which are——

XQ. 516. Required by law?

A. There is a difference in the laws, yes.

XQ. 517. That is right. Don't you know that there is no such thing as a product patent in Germany?

A. Of course, I know. That is one of these technical differences.

XQ. 518. Well then, none of your German patents was a product patent?

A. Yes, it is, in a certain sense. The German patent law provides that the product is patented by a process claimed for in manufacture, according to the process claimed. The immediate process of the product claimed, is protected with a particular claim.

XQ. 519. Now, you will see, Doctor, that you are not answering my question. This product patent is a patent which makes it possible for the owner of the patent to prevent anybody from making any article like the one covered by the patent, by whatever method it is made, is not that right?

A. Yes, that is right.

XQ. 520. Now, in that sense, do you mean that in Germany, you could get any such patent?

A. Not technically, but perhaps practically. It is very seldom that another way for making the same product is discovered——

XQ. 521. But if a man does find a different method of making the thing, you can not prevent him from making it?

A. When it is quite a different way—no.

XQ. 522. But not a product patent of the United States—if you get a product patent, to make a certain kind of dye, then, no matter by whatever other method anybody else may make that kind of dye, you can prevent him from doing that?

A. Yes, sir.

Mr. Anderson: Is not that a question of law?

XQ. 523. You have been here you say since the middle of April?

A. Yes, sir.

XQ. 524. Who is paying your expenses?

A. My company, the Badische Aniline, to make it quite clear.

XQ. 525. I did not get that?

A. The Badische Aniline, to make it quite clear, the Badische Aniline & Soda Fabrik.

Mr. Kresel: The Badische Company. Now then, your Honor, I have a motion to direct to the Court with reference to this witness's testimony, and I will make it now, or I will wait until Colonel Anderson is through, with his re-direct.

The Court: It is your pleasure.

Mr. Kresel: I think perhaps it would be better to let Colonel Anderson finish his re-direct.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 526. Doctor, you were asked by Mr. Kresel about the arrangement between your company and the French Government for the use of these nitrogen patents, for a plant which you say had a capacity of thirty-six thousand tons a year?

A. Metric tons.

RDQ. 527. I beg your pardon; metric tons; when was that arrangement made, what year?

A. It was made in November, 1919, but it got the consent of the French Chamber, just now, in December.

RDQ. 528. What return or compensation or value does that yield for the use of these patents in France?

A. As a whole, I stated fifty-nine million French francs.

RDQ. 529. Fifty-nine million French francs?

A. Five million as cash payment, and fifty-four million as royalties for the production.

RDQ. 530. And that covered a plant with a production of only thirty-six thousand metric tons; is that true?

A. Yes, full capacity.

RDQ. 531. Mr. Kresel in one of his questions said that you, in estimating the value in the United States, estimated the value of the profits on the production of nitrogen, at a plant such as you indicated. I understood you to make your value based upon a royalty of one cent per pound?

A. Yes, that is so, one pound of fixed nitrogen.

RDQ. 532. And you only estimated the value of seventeen million dollars arrived at in the method you described, based upon a royalty, for a license?

A. Yes.

RDQ. 533. Which was a charge of one cent per pound for the use of these patents and processes?

A. Yes, under the royalty.

RDQ. 534. You did not take into consideration at all the profits which might be realized by the manufacturer under that royalty?

A. No, that is not for the whole profit. It is only for a royalty, supposing that a license would have been given to an American firm, and an American firm would have made a larger part of the profits, and only gave us a part, one cent a pound as royalty.

RDQ. 535. You were asked as to the ability of the chemist in the United States to manufacture fixed nitrogen under these patents, as filed in the United States. There are chemists of high capacity in the United States, are there not?

A. Certainly, yes.

RDQ. 536. Is there any practical or technical or scientific difficulty about the manufacture of fixed nitrogen in accordance with the Haber process, from the patent granted by the Patent Office in Washington for the fifty-eight you mentioned?

A. Of course it requires some technical skill, but there is no extraordinary difficulty.

RDQ. 537. You were asked something about the war production in Germany, and the conversion of plants into war products for the manufacture of war products. Did you consider in giving your testimony, as to the value of the various patents as to which you testified this morning in the United States, that is, United States patents—did you consider in any way the war production in Germany, or the use of these patents during the war, as an element entering into the value of patents in the United States?

A. Dye stuff patents for the dye stuff, have nothing to do with war, as I have already stated.

RDQ. 538. Yes.

A. And as to the nitrogen patents, I have said it is counted on a basis of seventy-five thousand tons of fertilizer, that is a very moderate figure, and would not be sufficient for a war production.

RDQ. 539. But the war production in Germany, or the use of these plants for war purposes, have nothing to do with your answer, according to the value of the United States patents, either on direct or cross-examination?

A. Nothing at all.

RDQ. 540. Was it considered in any way in arriving at the figures which you have given to the Court?

A. No, in no way.

RDQ. 541. Have you read the assignments in this case of the patents as to which you have testified, from the Government to The Chemical Foundation?

A. Yes, I read them.

RDQ. 542. It appears by reference to those assignments, that these rights are assigned by the Government of the United States of the patents or rights to The Chemical Foundation, without any reservation or qualification whatsoever?

A. Pardon me, what page?

RDQ. 543. I am reading page 416 of the original bill of complaint, from Exhibit No. H-1, which covers the greater part of each patent. The assignment is made by the Alien Property Custodian to The Chemical Foundation,——

> "without any reservation or qualification whatsoever, whether by reason of anything contained in the Charter or By-Laws of the said The Chemical Foundation, Inc., or otherwise, and subject only to the provision of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or friendly nations as set forth in the requirements or demands for certain of the said Letters Patent of the United States, applications

for letters patent, trade marks and registration thereof, copyrights and rights, interests and benefits under agreements."

I will now ask this in a hypothetical way, because it will come in after. If it should appear that the agreements referred to in that assignment are merely a release to the United States of any claim on account of past infringement, and is a reservation of the rights and interests of citizens of the United States and friendly nations, in and to those patents, if those rights and interests should be established, would the terms of that assignment to The Chemical Foundation as to patents in which the citizens of the United States or friendly nations had no interest or developed no interest, affect in any way the value of the patents as you have estimated it in your judgment? That is a very difficult question, but I want to get it, because I have got to prove all these things later on.

THE COURT: I do not understand it myself. It is my fault, not yours, but I will hear you first, Mr. Kresel.

MR. KRESEL: We object to it on the ground that it calls from this witness for the construction of a legal document. He is not qualified to give any such construction, and if he were, it is not the subject of expert testimony. We object to it upon the ground that it is immaterial and irrelevant. The document speaks for itself, and if certain facts should later be developed, as Mr. Anderson intimates they will be, the Court can attend to that question without any opinion from this witness.

THE COURT: May I hazard a guess as to what the question is——

MR. ANDERSON: That probably requires very great hazard.

THE COURT: Is that a limitation upon the title or right transferred to The Chemical Foundation, and are you asking this witness in substance, whether such a reservation makes any difference in his opinion?

MR. ANDERSON: That is the substance of it.

THE COURT: That is what I thought.

MR. ANDERSON: In other words, if your Honor please, the witness was asked on cross-examination whether the extension of licenses and experience in producing would affect his judgment on the value of these patents.

THE COURT: The concluding part of your question is what?

MR. ANDERSON: The concluding part of my question is—I do not want to repeat this, and I will ask it not be put on the record. I will try and explain it. The concluding part of my question is this: That eliminating any patents in which the citizens of the United States or citizens of a friendly country might have an interest, which interest is reserved, you see,—and I propose to prove later as to this, to which this provision would apply, eliminating that condition, would an assignment of all the right, title and interest in this patent, without reservation or qualification whatsoever, whether by reason of anything in the By-Laws of The Chemical Foundation or not—would such an assignment impose—would that assignment of that before you affect his value, as that he gave this morning? It does not involve a question of law or fact.

THE COURT: Does it not come down to this—if you establish as a fact that that reservation was not a reservation in fact, and he may have the complete title, we do not need any testimony from him to say——

Mr. Anderson: Possibly. I think probably your Honor's position on that is correct, and I think it is correct in the second place, the question would be so hypothetical that it would be of very little value, and that we will have to prove by these facts anyhow. I wanted to get this witness' judgment free from that embarrassment, so I find it will be difficult to do it. I won't take up the time. I want to get through. It is not material.

RDQ. 544. Doctor, you were asked if you assigned a value of each of the fifty-eight nitrogen patents, so-called, or Haver patents, and as I understood, you could not, because they must be taken together. I want to ask if you can identify the product patents, and the process patents in the remaining processes other than the dye processes and products?

A. Yes, they can be identified.

RDQ. 545. How long would it take you to make up a list including the product patents and the process patents, separating the two, indicating the separation?

A. There are five hundred patents.

RDQ. 546. Yes.

A. It would take a few hours.

Mr. Anderson: Mr. Kresel, would it be possible, to save time, for the witness to make that list which I would like to have, and I think you would like to have a separation of the product patents, as he identifies them—do not put this on the record.

The Court: I suggest the stenographer take it, and it can be stricken out.

Mr. Anderson: Would you object to this witness having this in New York, taking a record, and submitting a copy of it, and we can submit it to all parties, and I think we could save time?

MR. KRESEL: I have no objection.

RDQ. 547. Then, I will ask you, Doctor, to please make up, tomorrow, if possible, and furnish under the oath administered to you as a witness, as you are now, making a list, a list first of the nitrogen patents to which you have referred, or Haber patents second, a list of the tanning patents?

A. Yes.

RDQ. 548. A list of the tanning patents, and then, third, a list of the patents relating to the dye and different processes which you have classified, although not included in the other two classes, and have two copies of that made, and shall we stipulate it, or file it with the stenographer.

MR. KRESEL: He has to divide them into product and processes.

RDQ. 549. And then divide it, each class, into product and process patents, as far as you can do it?

A. Yes.

RDQ. 550. And furnish a file copy?

MR. KRESEL: Send them to you, and you can send us a copy.

RDQ. 551. Or send them to me. Send three copies to me, one of which I will file with your answer, with the stenographer, and one I will furnish to Mr. Kresel, and one to the Court. Will that be satisfactory? I think that will save a lot of time.

THE COURT: Then those go on the record as given to the stenographer?

List produced at trial and offered and admitted in evidence as "Plaintiff's Exhibit No. 606." *(See Exhibits, Vol. II, page 1438.)*

MR. ANDERSON: Yes. If your Honor please, I think that is all.

Mr. Kresel: Now, if your Honor will hear me.

The Court: No further questions?

Mr. Kresel: No further questions at all.

We now move that the testimony of this witness given by him upon the direct as to the value of these patents be stricken from the record in its entirety upon the following grounds: first, upon the grounds that were urged in the course of his examination, namely, that he was not qualified upon the basis of facts that he assumes, to make an estimate, and that the testimony was, therefore, immaterial and irrelevant.

More particularly, we now move to strike it out upon the ground that it is apparent from his testimony that he has a direct interest in the outcome of this litigation and is therefore disqualified to give testimony as an expert. Furthermore upon the ground that, according to his testimony, he was testifying, not as to the fair market value of these patents, but as to what his company or a company similarly situated would be willing to sell the patents for, which is far from being a basis for forming an opinion as to the market value of these patents.

We further move to strike out his testimony upon the ground that the testimony is based, according to the witness' statement, upon the situation as it existed in 1913, six years before this sale was made here in the United States, and that it is based upon the condition as it existed in Germany, and not in the United States; that the witness has stated that he did not have information as to the conditions in 1919 in the United States and has testified that he was not in the United States at any time prior to 1922.

Upon all those grounds, we move that his testimony as to the value of these patents be stricken from the record.

The Court: That concludes your statement?

Mr. Kresel: Yes.

The Court: May I ask this, Mr. Kresel: was the valuation of $17,000,000 the witness' value for all the patents in suit or only the value for a particular group?

Mr. Kresel: Only for the 58 Haber patents; and he subsequently changed that valuation to $20,000,000.

The Court: I recall distinctly his answer to your questions in cross-examination with respect to how he ascertained or how he arrived at the value of $17,000,000 and $20,000,000 for this particular group. I do not recall his testimony, if there was any, in cross-examination as to how he arrived at the value of patents other than the group which he appraised at $17,000,000.

Mr. Kresel: I did not, upon cross-examination, ask him specifically about any other patents. But I did ask him to tell us what he meant or understood by "fair market value."

The Court: As to all patents?

Mr. Kresel: As to all patents.

Mr. Anderson: I did not understand his answer to be what you stated, Mr. Kresel. I could not hear it.

Mr. Kresel: He distinctly stated that what he meant was that that was the value which his company would have been willing to pay for these patents or his company would have been willing to sell them for.

The Witness: No, not this. That is a misapprehension. I stated——

Mr. Kresel: No, Mr. Witness, please; you are through.

The Court: Will you take a seat?

Mr. Anderson: I can recall him.

The Court: Unless you want to recall him, will you take a seat behind your counsel.

Mr. Anderson: If he made the statement that his market value was solely what they would sell, what they were willing to sell for, which I did not hear—I was over here and could not hear and came over here for that reason—then I would like to have him recalled on that question, because I did not know it, I am frank to say.

The Court: You may recall him.

Mr. Kresel: If there is any doubt as to what the witness said on this subject, you can refer to the record.

Mr. Anderson: I do not want to go over the record. I will just recall him.

The Court: Do not make your questions leading under these circumstances.

Mr. Anderson: No, I will not.

Karl Holdermann, recalled for further examination, having been previously duly sworn, testified as follows:

Direct Examination.

By **Mr. Anderson**:

Q. 552. On cross-examination it appears in the record that you stated, in speaking of market value that you understood market value to be what the owner would sell for, or words to that effect. Will you please state whether there were any elements in arriving at the value of these patents other than the value at which you thought the owner could afford to sell?

Mr. Anderson: Is that leading?

Mr. Kresel: I submit, your Honor, that that ought not to be the question.

Mr. Anderson: I did not want to lead. I did not even want to indicate what the answer was.

Mr. Kresel: Of course, you did not. But that does not meet the testimony that he has already given. His testimony was distinctly this. I asked him what he meant by market value, and he said that he meant by "market value" what the owner of a patent would be willing to sell it for.

The Witness: That is wrong.

Mr. Anderson: One minute. Don't you interrupt.

The Court: Don't you say a word until you are asked a question. You are not in this discussion.

The Witness: Excuse me.

Mr. Kresel: I think that the question which is now propounded to the witness is not calculated to meet that testimony because the question is whether there was anything else in the witness's mind. Do I get the question right, Colonel?

Mr. Anderson: As constituting market value, yes; what were the elements that he considered in taking market value. You undertook to define as I understand, market value. That is a question of law. It is not a question of the witness' opinion.

The Court: If the witness put his appraisement upon one theory, which is an erroneous theory——

Mr. Anderson: The valuation or market value goes out, and you would only consider his testimony on other facts to reach a conclusion. I want to ask him then if he considered any other elements, or what elements he considered.

THE COURT: I think your question should not be put, Colonel Anderson, in the form it is now in. It should be more general, and if you want to ask him generally again, so far as I am concerned, in the absence of objection by Mr. Kresel, who may or may not make an objection, I should be very glad to take it.

Q. 553. I will ask you, then, this question: this morning I asked you to tell me what, in your opinion, was the fair market value of these patents. I will ask you now to state to the Court how you arrived at the fair market value of those patents?

MR. KRESEL: I doubt, your Honor, whether even that is the question. We have already upon cross-examination and upon direct——

THE COURT: I am wondering whether the mistake is not in recalling this witness, because he did testify in chief and he testified very fully and clearly on cross-examination what elements he considered in arriving at this valuation.

MR. ANDERSON: I think so. I will let him stand aside, because his opinion may be one thing or another. As long as he has given those elements in arriving at his conclusion, his opinion of market value may be one thing or another, but the elements are the thing that controls.

THE COURT: And the record discloses those elements?

MR. ANDERSON: The record discloses those elements very fully; and, therefore, in order not to delay your Honor, I do not want to go over the same ground. He has given the various elements.

(Witness excused.)

MR. KRESEL: Your Honor understands, I hope, that the motion is directed alike to each group of the three groups of patents that the witness undertook to testify as to the value of.

The Court: My difficulty with that, Mr. Kresel, is this. I have a clear recollection of the $17,000,000 group. I have a clear impression with respect to that group. I do not as to the others.

Mr. Kresel: May I refresh your Honor's recollection?

The Court: Yes.

Mr. Kresel: The witness testified, as to the Haber patents, that the value was $17,000,000, and then he raised it to $20,000,000. He testified as to the tanning patents that they were worth $300,000. As to the dye patents, he was not asked and did not give any value. I do not know why the Colonel did not ask him.

Mr. Anderson: He gave an earning value of $1,500,000.

Mr. Kresel: No, you are mistaken. He gave no value. You did not ask him, and he did not give any testimony as to the value of the dye patents. Of course, I was not going to ask him. But I want to be frank with your Honor. Your Honor asked me what the situation was and that is the situation.

Mr. Choate, Jr.: He gave the earnings in marks, the total profits in marks for 1913, as 1,367,668 marks.

Mr. Kresel: He was not asked to assign any value for these patents.

Mr. Anderson: I am perfectly willing to stand on that.

The Court: Then the grounds of your objection, apart from his being put upon the stand as an expert and then having been shown to have a strong and moving and active interest in the outcome of this suit, raise a question of law with which I am not familiar. I am not familiar with the principle you stated a moment ago, that an expert may not have any interest in the suit. As I understood you, such interest, if it appears, disqualifies the witness as an expert and does not go to the weight of his testimony. I am not disputing that principle. I am simply unfamiliar with it either way.

Mr. Kresel: May I make a suggestion, your Honor, that you reserve decision on this motion until we return here for the trial?

The Court: Yes, I am going to.

Mr. Kresel: And by that time we will take the liberty of submitting to your Honor some authorities on the proposition.

Mr. Anderson: That raises a question, if your Honor pleases, if Mr. Kresel has concluded, in connection with various motions that have been made in this case. Counsel in their answer include a motion to dismiss the bill for want of equity. That goes, of course, to the whole case, like a demurrer. We have filed a motion to strike out a considerable part of their defense, which, if stricken out, would have excluded what has gone in today as immaterial and irrelevant, for the reasons stated in the motion.

The Court: You mean it would have excluded matters that have gone in today?

Mr. Anderson: Much of what has gone in today on their cross-examination would have been excluded, in my opinion, if that motion were sustained; because counsel referred in a number of cases to their affirmative defense, and this motion goes to that defense, to strike that out.

There also is a formal motion to amend by striking a sentence or more out of the bill which is largely a legal conclusion. That is a matter of form.

In addition to the motion to dismiss the bill for want of equity, there is a motion to strike out the charges of conspiracy in the bill.

Those motions, if your Honor please, of course, all go practically to the foundations of this case and certainly they go very largely to the character and scope of the testimony. It would be an enormous waste, and, of course, improvident for us to have to summon a large number of witnesses, or for the defendant to summon a large number of witnesses here to deal with questions which your Honor may conclude to strike out.

Therefore, we moved the Court recently, or rather gave notice of a motion, that we would ask the Court to hear argument on the motions, to call them up and dispose of them a week or ten days possibly in advance of the trial, and in that way so clear the ground as to enable us to summon our witnesses with reference to the disposition of the matter finally and limit the evidence in accordance with your Honor's rulings; and we now renew the motions.

Mr. Guthrie: It seems to us that these motions ought to be disposed of when the case is opened fully to the Court. It would simply double the labor of the Court and counsel. The answer has been filed now for seven months. The trial will go on in a little over three weeks, and it seems to us that these motions, which it has been candidly stated go to the very fundamentals of the suit, ought to be disposed of after the case is fully opened by both sides in all its aspects.

We are confident that it will be imposing upon your Honor, as it will be imposing upon counsel, double labor, to come here and interrupt the preparation of this very important case to argue these motions, when we are profoundly convinced that your Honor would not dispose of them until you had considered the whole case.

THE COURT: Your thought, then, Mr. Guthrie, is that at the beginning of the suit, on June 4, after the case is started, that these motions will come on for argument and they need not be followed by a ruling but by the taking of the testimony, and these motions decided and the case decided on its merits, if it reaches that, at the same time; so that all the questions can go up to the Court of Appeals or the Supreme Court, or wherever it may go, with the whole record before it.

MR. GUTHRIE: I think that will be the ultimate result even if we argued the case a week before and divided it up. I think the suggestion involves great duplication of labor and unnecessary labor. Practically everything contained, in our judgment, in our affirmative defenses would have to be gone into in answer to the plaintiff's case.

They charge conspiracy. They charge, by implication, a fraud. It is absolutely necessary to show the situation which made the action of the President of the United States in the public interest. They allege that there was a suppression of facts from the President and from the President's representative, the Assistant Secretary of State. So that, in our judgment, it would be simply duplicating the labor of the Court, as it certainly would be duplicating the labor of counsel.

We are entitled, I think, to urge upon your Honor's consideration that our answer was filed seven months ago, and that this motion should have been made promptly and not delayed until the eve of the trial.

I think as to the witnesses, the same witnesses will have to be called in any event, so far as we are concerned, if you strike out the part of our affirmative defense regarding the condition of the United States and the facts bearing upon the judgment of the President in authorizing and directing this sale.

As to our defense that it would be inequitable because there cannot be now a complete decision. So far as we are concerned, all the witnesses would have to be called even if this defense should be stricken out.

We are convinced that the same is true of the plaintiff's case unless the bill is going to be fundamentally amended and all charges of fraud, or suppression, of conspiracy, restraint of trade, and conspiracy to deceive the President of the United States are to be eliminated from the bill and the case rest on the simple, naked charge that the patents were sold for less than what the Government conceives to have been their market value.

I therefore submit that the ends of justice and the convenience of Court and counsel would be served by following the course suggested by your Honor; and after there has been a full opening on both sides, if counsel then want to press their motion to strike out any part of their answer, that can be argued; and also your Honor might want us to argue then the motion to dismiss the bill for want of equity. But in this important case it is highly probable that if these motions were argued, you would reserve decision and call upon the parties for their proofs.

THE COURT: I shall not defer the taking of proofs whatever happens, Mr. Guthrie. That is, whether we hear the arguments before or after, the evidence will go on on June 4th. That is, the suit will begin for the taking of testimony, too, with or without the decision on those motions, immediately on the closing of the arguments, without awaiting a decision; unless a decision is so patent that there is no possibility of error by a decision from the Bench.

MR. KRESEL: That is our understanding.

THE COURT: Because the case has been set for hearing. As to that, I am clear that the taking of the testimony in this case of witnesses must not be deferred.

MR. ANDERSON: I understood that to be the case, sir. But of course, a motion to dismiss a bill for want of equity is a demurrer, and you cannot in ordinary practice go into a hearing on the merits of long weeks of taking evidence, with a demurrer pending undisposed of. It must be disposed of, I think, one way or the other; and while, by agreement, we could go ahead and take the testimony and hear the whole case, we think that these motions and also the motion to strike out, which is practically a motion to limit the evidence in this case—and that is very important because it comes up right at the beginning—should be ruled on. Your Honor will have to rule on it one way or another. Why not rule on it in advance?

I quite agree with distinguished counsel for the defendant that wherever you can consolidate the action and argument, to save time, it should always be done. I should very much prefer it myself, but it seems to me these questions have got to be disposed of preliminarily.

The reason we have not made this motion before is that counsel himself has been out of the country during practically the entire spring, and illness in the family of one of the other counsel has made it imposible to take any proceeding in the last four months without inconveniencing counsel; and therefore we have waited until counsel could be heard. The case was continued on their motion so that the matter of this discussion could come up. I think these motions should be disposed of, but whatever your Honor rules, of course, will be satisfactory.

THE COURT: My difficulty is this, Colonel Anderson. I agree with you that if there are any motions the decisions of which would limit the evidence, would narrow the issues, of course, it would be well and wise and practicable to have those disposed of beforehand. But it seems to me that we have gotten so near to the trial of the case that, I will assume, I might err in a decision, and suppose I decided to strike it out or not to strike it out, it might prejudice the whole case. Suppose I should strike out some of the affirmative defense and then the case should be heard on the narrowed issues and should go to the Court of Appeals, and the Court of Appeals said there was error in striking out that defense, it would have to come back for re-trial for the taking of that testimony. Suppose I should reach a conclusion that the demurrer is sound.

MR. ANDERSON: I would want your Honor to sustain it at once and we could go right up.

THE COURT: So that I will not set the motions for argument until the fourth day of June. I will hear you that day.

MR. ANDERSON: If your Honor please, I want to make it quite clear that a number of times we wanted to make these motions, but we could not do it in the absence of counsel.

The Court: We will hear you on the 4th of June, and we will do the best we can with the motions at that time. If we can decide them offhand, possibly we will.

Mr. Anderson: The only one that is important is the demurer. I hope your Honor will sustain it, if you think it is good.

The Court: Now, then, with respect to Mr. Kresel's motion, may I get you both to help me on this point? How can the testimony with respect to value of patents, when sold to Americans or to American organizations be ascertained by a witness who tells me what the value of these patents would be to a German organization which cannot buy?

If you assume that testimony to be based on a royalty basis, that is one thing. But we are not working on a royalty basis. I am having difficulty in seeing how it is practical to apply this testimony to this situation. I am not asking for argument. I am only asking for you both to help me on that because it seems to me that we are trying to find out about something in this spot, and I am told that a certain condition exists over here, and there is no way to link them up as far as I can see. That is my very serious difficulty, and I will ask you to help me as much as you can on that, because it seems to me that it is not pertinent to the issue here.

Mr. Anderson: I will, at the proper time, attempt to give you argument on that. I understand your Honor's position as you have indicated it during the trial; and unless I can convince your Honor that the evidence when taken on the record, so that we can examine it, is properly connected with this subject, or sufficiently connected with it to make it at least admissible, why, of course, I assume that your Honor will strike it out, we will take an exception and the question will be disposed of. I am not going to make an elaborate argument on it.

The Court: No. I only called it to your attention here so that in the memorandum that you file on this motion, you will not overlook that particular phase of it.

Mr. Anderson: That particular question. I understand, sir. Your Honor indicated it this morning.

The Court: June 4, at what time shall we say?

Mr. Hershkopf: You said 10 o'clock. Do you mean Eastern Standard time or daylight saving?

Mr. Mahaffy: I think the order fixes 9 o'clock, Eastern Standard time.

The Court: Very well, 9 o'clock, Eastern Standard time.

(Whereupon an adjournment was taken until Monday, June 4, 1923, at 9 o'clock, Eastern Standard time.)

In the [illegible] United States

[illegible]

[illegible], Appellant,

The [illegible]

On Appeal from the [illegible] Circuit Court of
Appeals for the [illegible] Circuit

Testimony of Joseph H. Choate, Jr.

A. Yes.

Q. 290. In a case of that sort did you use the funds of the property itself to pay these expenses as they were incurred?

MR. ANDERSON: I will have to object to this examination as leading, sir.

THE COURT: The question is leading in form.

Q. 291. Mr. Palmer, did you have your general appropriation for the payment of expenses in the sale of property?

A. No, no appropriation at all.

MR. KRESEL: I think that is all.

MR. ANDERSON: You can stand aside, Mr. Palmer.

MR. KRESEL: No questions?

MR. ANDERSON: No.

THE WITNESS: Does that mean I am excused?

MR. KRESEL: Is the witness excused?

MR. ANDERSON: As far as I am concerned.

(Witness excused.)

MR. KRESEL: I will call Mr. Garvan.

FRANCIS P. GARVAN.

FRANCIS P. GARVAN, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Did you give your name?

A. Francis P. Garvan.

Q. 2. And your residence?

A. 903 Park Avenue, New York City.

Q. 3. Your occupation?

A. Lawyer.

Q. 4. How long have you been admitted to the Bar?

A. Since 1899.

Q. 5. Have you held any public office?

A. Yes, I was Assistant District Attorney of the County of New York.

Q. 6. From what year to what year?

A. First a Deputy and then an Assistant; I do not know the division; I think from the 1st of January, 1900, to the 1st of January, 1911. That is to the best of my recollection.

Q. 7. Have you held any other public office?

A. I was Alien Property Custodian.

Q. 8. From what date to what date?

A. From March 4, 1919, to March 10th, 11th or 12th, 1921; I am not sure of the exact date.

Q. 9. Prior to your becoming Alien Property Custodian, had you been associated in the work of that office?

A. I had.

Q. 10. In what capacity?

A. As manager of the Bureau of Investigation.

Q. 11. And during what period?

A. From about November, 1917, up to March 4, 1919.

Q. 12. Are you the President of the Chemical Foundation, which is the defendant here?

A. I am.

Q. 13. How long have you held that office?

A. Since the incorporation of the Chemical Foundation.

Q. 14. Do you remember the date of that?

A. It was incorporated February 19, 1919. I think there were the regular incorporators of the Trust Company here in Delaware. How long they held office, for two or three days until the first meeting, I am not positive as to those dates. When I say the first President, there may have been one of those incorporators who were the employees of the Trust Company here, who were the original people.

Q. 15. Since you have been president of The Chemical Foundation have you received any salary?

A. I have not.

Q. 16. Or any compensation whatsoever?

A. None whatsoever.

Mr. Anderson: I object to that, if your Honor please. Compensation is a conclusion. If he did not receive any salary, that is a fact. "Compensation" is a very indefinite term. There are many compensations other than money.

The Court: That is very broad, is it not?

Mr. Anderson: It is.

The Court: That is the reason, possibly, that Mr. Kresel wanted it.

Mr. Anderson: It is a conclusion. He can say whether he received any specific thing, but the question of compensation or compensating benefits or compensating results is a conclusion to be drawn from facts and not a question as to which the witness can testify and give his conclusions.

Mr. Kresel: I submit, your Honor, that the question is perfectly proper. It does not call for this witness's conclusion.

The Court: Whether the term compensation is used or not, he can say whether he has received anything.

Mr. Anderson: He can say whether he received any money; he can say whether he received any salary or he can say whether he received any other material or direct benefit, specifying, and he can give the facts; but whether that is compensation or what are the conditions that are compensation is one of the most intangible things and calls for a conclusion.

The Court: I think it is open to possibly another construction, Colonel Anderson. If I were asking the question, I should probably use some other term, but it may be that the term used is better than the one I would use. In order that there may be no doubt about it, I will sustain the objection and allow the question to be reframed.

Q. 17. Have you received from the Chemical Foundation any money consideration whatsoever, whether a salary or in any other way?

A. I have not.

Q. 18. Have they paid your expenses as president?

A. They have not.

Q. 19. Have you paid them yourself?

A. I have.

Q. 20. When you used the facilities of the office of The Chemical Foundation, such as to use the telephone for your private affairs, did they pay that?

A. They have not.

Q. 21. Did you pay it?

A. I did.

Q. 22. Have you ever had any stock in The Chemical Foundation?

A. I have not.

Q. 23. Have you ever had any stock in this corporation, directly or indirectly, whether it was registered in your name or in somebody else's name?

A. I have not.

Q. 24. It appears from the minutes of The Chemical Foundation that upon its organization the three representatives whose names were used as incorporators here made subscriptions to, I think, fifteen shares of stock of the company and that when they resigned in favor of the directors of the company, one of those subscriptions was assigned to you in your name for, I think, thirteen shares of stock. Did you ever exercise that subscription?

A. I think you are wrong. I think it was not a subscription, but a right to subscribe.

Q. 25. Well, right to subscribe then. Did you ever exercise that right?

A. No.

Q. 26. In fact, did you know that that right to subscribe had been assigned to you?

Mr. Anderson: One moment, Mr. Garvan.

In the examination of this witness, if your Honor please, I would respectfully ask counsel to avoid leading. I do not want to object.

The Court: The objection is sustained.

Mr. Kresel: Would your Honor like to have the question re-read? I do not believe it is leading. I asked him whether he asked anybody for the right of the assignment. I do not know of any other way that I can bring out the fact.

The Court: Won't you repeat it, Mr. Stenographer.

(Q. 26 repeated as above recorded.)

The Court: So far as leading questions are concerned, try to frame the question so that it will not indicate whether the answer expected is yes or no. The form usually has been, "Did you or did you not."

Mr. Kresel: Very well, your Honor. I thank you for the suggestion.

Q. 27. Mr. Garvan, did you or did you not know that that right to subscribe had been assigned in your name?

A. Not until years afterwards.

Q. 28. And when did you discover it?

A. Some time, I think, about a year ago.

Q. 29. Did you ever exercise that right?

A. I did not.

Q. 30. Did you ever have any interest in the business of any of the chemical concerns or pharmaceutical concerns that have been and are the stockholders of The Chemical Foundation?

A. I did not.

Q. 31. Have you now any such interest?

A. I have not.

Q. 32. Were you in any way, either directly or indirectly interested in any subscription to any stock of The Chemical Foundation made in the name of anybody?

A. I was not.

Q. 33. As director of the Bureau of Investigation in the Alien Property Custodian's office where did you make your office principally?

A. At first in Washington; later in New York.

Q. 34. For how long a period did you make your office in Washington, approximately?

A. I think it was about the first six months while the reports were coming in in the largest volume.

Q. 35. And thereafter your principal office was in the City of New York?

A. City of New York.

Q. 36. Please state whether you had in the Bureau of Investigation any other persons who were assisting in that work?

A. Quite a large number.

Q. 37. Could you approximately state the number?

A. They varied so that I do not believe I could. I suppose about eight or nine lawyers and—it would be impossible for me to state that.

Q. 38. Did you in the course of your management of this bureau assign particular lines of work to particular people?

A. I did.

Q. 39. Were you personally active in the investigating work?

A. I was.

Q. 40. I shall try to inquire of you particularly with reference to what, if any, investigation was made by you or under your supervision of German holdings in chemical interests in this country; you understand?

A. Yes, sir.

Q. 41. Did you undertake such an investigation?

A. I did.

Q. 42. And did you take part therein personally?

A. I did.

Q. 43. Who assisted you therein?

A. Mr. Joseph H. Choate, Jr.

Q. 44. Will you please state when Mr. Choate first became connected with the Alien Property Custodian's office?

A. I could not exactly, Mr. Kresel.

Q. 45. Approximately?

A. I should say the early part of 1918.

Q. 46. Was Mr. Choate a volunteer, or was he paid for his services?

A. A volunteer.

Q. 47. What part of the work in the Alien Property Custodian's office did Mr. Choate have charge of?

A. The chemical investigations.

Q. 48. And to your knowledge did Mr. Choate devote all of his time while he was in the Bureau of which you were the head, to that work?

A. He did.

The Court: Your questions are taking a leading form again, Mr. Kresel.

Mr. Kresel: I will try to correct that, your Honor.

Q. 49. I wish you would state what information you had derived by you as a result of the investigation into German interests in the chemical industry in the

United States on or about the nineteenth day of February, 1919? I mentioned that date as the date when The Chemical Foundation was incorporated.

Mr. Anderson: In addition to the general objections reserved to all this evidence, I wish to object to the question as too general and indefinite and one that calls for an answer of such a general and indefinite character that counsel for the plaintiff is not in a position to properly object thereto. Therefore, I think the question should be specific and directed to specific matter.

The Court: May I have that question?

(Q. 49 repeated as above recorded.)

Mr. Anderson: Of course, the specific objection is in addition to the general objection of immateriality and irrelevancy, and so forth, which is reserved to all of this.

The Court: The general rule would cover that, of course.

Mr. Kresel: If your Honor desires me to state——

The Court: No, I do not, unless you have a desire to do it. My difficulty is this, Colonel Anderson: It goes back to those charges in the Bill again of lack of information. He is asked to say what information he has. The question does allow the witness to cover a broader or narrower field, depending upon the information and knowledge that he has, and so I do not see how I can exclude it in view of the allegation of the Bill. Do you?

Mr. Anderson: I would not venture to suggest to distinguish counsel for the defendant, if your Honor please, the method of asking his questions. I will, however, be glad to answer your Honor's question. Your Honor will recall that when we began this investigation, during the testimony of Mr. Metz and Colonel Miller, I was compelled to withdraw a number of questions by which I could readily have shortened the investigation, because of their generality and indefiniteness. I recognized his objection was good, and I think in this particular case of the witness now on the stand, who is not only himself a lawyer, but is president of the defendant corporation and was Alien Property Custodian (I do not use the word in any unpleasant sense), to release the witness to make a general speech or statement on the question of the conditions in the United States prior to the war would, if properly followed up, perhaps, with cross-examination, keep us here a week because there is no limit to the wrongs which we feel we suffered from the Germans or the German activities in this country from 1914 to 1916, and therefore, I think if there are any specific facts desired on that subject, the question should be framed in such a way and the foundation laid in such a way, how the information was derived, and so forth, as to enable me to test that evidence without having to go into the history of the war. Therefore, aside from my other objections, I think the question is clearly objectionable on that ground.

Mr. Kresel: I quite recognize, your Honor, and I recall very clearly that Colonel Anderson did have to reframe general questions that he put to Mr. Metz, but the cases are not at all similar. Mr. Metz was not charged with anything in this case by the Bill of Complaint of the plaintiff. His motives are not here in question, except as they were developed upon cross-examination. It is not charged that he was induced by conspirators to take an official action which it is now claimed was unlawful and I do not desire only certain specific facts that this gentleman had before him when he took his official action, but I want him to state to the Court all information that he had which is material here, so that the Court may determine whether his motives were or were not proper. We are entitled to it under the terms and the allegations of this Bill. They can not, on one hand, charge us with having violated the law—though fraud in fact is denied, they still claim it is at least fraud in law—they cannot make that charge against us and then stop us from showing upon what information we were acting. That is our position.

THE COURT: We will now take a ten-minute recess. At its conclusion, Colonel Anderson, I shall appreciate it very much if you will cite to me the objections to the questions put to Colonel Metz and to Colonel Miller which were overruled by the Court, which will establish a precedent for the ruling in this case.

(A short recess was then taken by direction of the Court.)

MR. ANDERSON: In the few moments during recess I have only been able to look at a very small portion of the direct testimony of Mr. Metz and did not at all refer to the re-direct, where the controversy was greatest. At page 1753 of the record the question is asked: "Q. 55. I will ask you to take these licenses which you have identified, both the original issue and the subsequent issue, and state what you did under those licenses of the Federal Trade Commission and each of them?

"MR. KRESEL: I have to object to such an indefinite question."

There was some discussion, and then I said:

"I will ask him a specific question, if your Honor please, but if I should ask him a specific question, from my experience, I am afraid counsel will object. I therefore ask him to state what he did."

Mr. Kresel on the next page, 1754——

The Court: You are going now ahead of the ruling.

Mr. Anderson: I have not yet come to the ruling. Mr. Kresel on the next page says:

"Of course, Colonel, if that is the purpose, I have no objection. I do not want to hamper you by keeping you down to any particular frame of question, but I simply wanted to be sure that we were not giving Mr. Metz the entire field; that is all."

That is exactly my objection here.

"Mr. Anderson: No, all I wanted Mr. Metz to do was to say what he did under these licenses."

Then I further stated: "Whether he operated under them has been suggested is a conclusion. So I asked him what he did." Mr. Kresel says: "I have no objection to putting the question in that form." The Court says: "You say you have no objection. Does that go to substance as well as form?"

Mr. Kresel: So that disposed of that. There was no ruling of the Court on that.

Mr. Anderson: No ruling by the Court on it, but I had to reframe it twice.

The Court: Does the record sustain that conclusion, sir?

Mr. Anderson: I think so, sir. I stated the question twice.

The Court: Very well.

Mr. Anderson: Then the statement which I read, by Mr. Kresel, was that his purpose was to prevent giving Mr. Metz the whole field, which is exactly what is in my mind now, and I reframed it then in order to limit it.

On page 1767:

"Q. 126. When you got those products in the United States, what did you do with them?

"A. Sold them to the——

"MR. KRESEL: One minute, please. I have no objections—he sold them."

Then the witness went on to say, "Sold them in the regular course of business to the Government; sold to the Government, to hospitals and to physicians."

At page 1768, on the same subject of sales, the witness was asked, did it extend throughout the United States, and his answer was "Throughout the United States and I exported to Germany within the last month or two 160,000 ampules.

"MR. KRESEL: I ask that that part be stricken out.

"THE COURT: Let the answer be stricken out and the question repeated."

THE COURT: You do not contend that that ruling has anything to do with the form of the question?

MR. ANDERSON: I do contend that the ruling was an express limitation to a specific question and a specific answer, which is all I ask for here. I am not making the objection in this case to the specific form of the question. My objection is to the opening up of an unlimited discussion on the subject.

THE COURT: Won't you read me then once more, please, what you have just read about the question found on page 1767, because if I understood you correctly, Colonel Anderson, the ruling there was that when the witness had answered the question, he must stop.

Mr. Anderson: Yes, sir. May I suggest this to your Honor. If you put the question in an indefinite form so that the witness can make any statement under it that he chooses, you cannot stop him because anything he may say is responsive to the question.

The Court: That may be sound reasoning or not, that I will not pass on. What I wanted to get and what I wanted to get you to get—and I will take another recess if you desire it and at such length as you desire and await your notifying me that you are ready, to find a ruling in connection with the testimony of Colonel Miller or Colonel Metz which will serve as a precedent and warrant a ruling in your favor on the question now before the Court. That is the thing that I want to get.

Mr. Anderson: Yes, sir. I want to come to that. Mr. Metz's testimony is hundreds of pages long and I have been able to go through very few.

The Court: I will wait for you when we will take an adjournment.

Mr. Anderson: If your Honor will permit me, I only wish to point out a few of these questions. I do not want to point them all out.

At page 2114, in Colonel Miller's testimony:

> "Had you any personal knowledge of the character of the corporation known as The Chemical Foundation, Incorporated?
>
> "Mr. Kresel: Pardon me a minute. I object to that question as being indefinite. I do not know what is meant by 'the character of the Chemical Foundation.'

"The Court: I think your objection is well taken.

"Mr. Anderson: I will withdraw the question. I was trying to shorten it."

Next question:

"Will you state all the facts within your own knowledge as to your execution of that order for the assignment of the patents mentioned therein, which are commonly called the Norma Company of America?

"Mr. Kresel: I am sorry, Colonel Anderson. But I must object to the indefinite character of that question. This is direct examination.

"The Court: I think the objection is well taken."

Then I said, "Colonel Miller has got to leave on a train at 10:50 and I am trying to shorten it. Of course, if there is an objection, I withdraw the question."

Your Honor had already ruled and the withdrawal was unnecessary. At page 2120;

"Q. 33. As to the one of the fifth day of November, 1921, which is in evidence, which undertakes to confirm certain sales theretofore made of patents, trademarks, etc.; do you know how this matter first came to your attention?

"A. It came in the usual routine way.

"Mr. Kresel: Please answer just yes or no.

"A. Why, I know, yes.

"Q. 34. Please state how it came to you and by whom it was brought to your attention?

"Mr. Kresel: I do not object to the question in so far as it asks by whom it was brought to his attention. I do object to the question as to how it came to his attention, as being too indefinite.

"The Witness: Can I tell the individual?

"The Court: Just a minute, Colonel.

"Will you divide your question then, Colonel Anderson, or do you press it as it stands?"

Then I said, "It will probably simplify it if I divide it, so as to save time."

Then I go on and divide the question into two questions and ask the specific questions. Down lower on page 2121:

"Do you recall what, if anything, was stated to you at the time you signed or authorized this order?

"A. I directed it——

"Mr. Kresel: Pardon me a moment. Do you mean authorized or signed?"

I withdrew the word "authorized" and asked the following question:

"At the time you signed this order or when it was brought to you?

"A. This order came to me——

"Mr. Kresel: Please answer yes or no.

"A. State that question again, please."

The question was repeated and the answer was, "Yes, I recall it."

"Can you please state what was said to you on the subject by Mr. Zimmerman?

"Mr. Kresel: I object to the question upon the ground that the defendant cannot be bound by any conversations," and so forth.

On page 2122:

"Please answer the question, Colonel Miller?

"A. I had given instructions to have these records brought up to date, it really being a routine arrangement, in order to clear the titles and to enable American users of these trademarks to obtain them from The Chemical Foundation properly.

"Mr. Kresel: Just a minute, please. I did not interrupt Colonel Miller because I felt that perhaps he would get on to the conversation. He had been asked about a conversation. The answer up to the present has not stated a word about the conversation.

"The Court: Let the answer be stricken out and the question repeated.

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"Q. 40. What were the representations made to you as to the situation that brought about this order?

"Mr. Kresel: I object to the question in that form.

"The Court: The objection is sustained. Let the prior question be repeated, unless it is withdrawn, Colonel Anderson."

I submit, if your Honor please, just running through those questions, that the statement which I made, that we were held to a very strict direct examination—as to which I am not complaining in the slightest; do not understand that I am complaining and I only refer to it to state what I understood to be the rule under which this examination was proceeding—is a fair statement. I objected during Mr. Palmer's examination on the same ground; and as we are evidently in for a long examination of this witness, he being president of the defendant corporation, I felt and now feel and submit to the Court for its ruling, to which I, of course, will immediately bow, that this witness should not be asked general questions which would open up a whole field of inquiry and discussion and allow him—and I do not mean to suggest that the witness will abuse that privilege—to make a general speech — I am not using it in any offensive form—on the subject of the relations of the Germans and the United States.

Of course, we claim that all this is immaterial and I think for that reason this question is clearly an objectionable question. I have pointed out such cases as your Honor referred to. If I am mistaken as to your Honor's ruling, then I am perfectly willing to accept any ruling that your Honor may make.

But even if your Honor thinks that in the exercise of your discretion this should be allowed, I merely make the point on the record and let it go ahead, of course, without further discussion. But at this time I want to make that observation.

THE COURT: In the first place, I think the rulings cited by you are not precedents for the ruling now asked by you. Nevertheless, I am going to sustain your contention in this respect, although I have grave doubts indeed as to its being well founded or well taken. You may take such action in view of the ruling as you desire, Mr. Kresel.

MR. KRESEL: If your Honor please, may I ask the Court's indulgence to adjourn a little earlier today?

THE COURT: At this time?

MR. KRESEL: If that is not putting your Honor to any trouble. I want to take the three o'clock train. I live far away from home and always go home on Fridays. Is there any objection?

MR. ANDERSON: Entirely agreeable to me, sir? Any arrangement convenient to Mr. Kresel is convenient to me.

THE COURT: This case is suspended until 8:30 Monday morning. We will have no session on the Fourth of July, nor on Saturday, nor on the following Monday, July 9th. There is a patent case set for argument on that day.

(Whereupon at 2:30 o'clock P. M. Standard time, an adjournment was taken until Monday, July 2, 1923, at 8:30 o'clock A. M., Standard time.)

NINETEENTH DAY.

Wilmington, Delaware, July 2nd, 1923, at 8:30 o'clock a. m. Standard Time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

TRIAL RESUMED BEFORE THE COURT.

FRANCIS P. GARVAN resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. KRESEL:

Q. 50. Mr. Garvan, did or did not the Bureau of Investigation of which you were the director, conduct an inquiry into the nature and extent of enemy-holdings in the organic chemical industry of the United States and the relation thereto of United States patents issued to Germans?

A. It did.

Q. 51. Will you briefly indicate how that investigation was conducted and the sources of information that came to you?

A. In the first place, we went through the Bayer Company, which was the largest of the agencies here, in respect to the property which it had on this side of the water. We searched through their files and records and their correspondence with Germany and correspondence with the other representatives of the German industries here. We went through all of the Big Six representatives in the same way.

We went through all that the Military Intelligence, the Naval Intelligence, the Department of Justice, the Secret Service, the War Trade Board, and several other agencies of the Government who were working on confidential information at that time, had.

We searched the literature of the subject which was very extensive, both in England and France and here, particularly in England, where Lord Moulton had published several articles, and who was the biggest patent lawyer in England, and was also in control of the production of munitions on behalf of England throughout the war and was knighted for that. He was a great source of our information.

We received information from the British Intelligence and from the French Intelligence; from British Who's Who, which was a publication of enormous extent, which gave the history of every one connected with international trade in Germany.

We had access to the cablegrams which passed between here and abroad, both through the diplomatic corps, both through Bernstorff and his home office, and through the agents here of the Cartel. Those cables were seized by the Navy when they took over the Sayville plant.

We talked with every one whom we could hope to have any knowledge on the subject. Agents here, the German agents, were submitted to examination and their clerks and employees, leading physicians, leading chemists, professors in colleges who had studied in Germany.

That in general shows the scope of the investigation.

Q. 52. About when did you begin this inquiry?

A. Almost immediately upon being appointed; at least by the Ist of January or February of 1918, because I think one of the first companies we investigated of any kind was the Bayer Company. One other source of information which I forgot was the propaganda centers. The propaganda societies of the Germans were taken possession of by the Government and their libraries of propaganda were taken over by us and gone through and all the correspondence in connection with those.

Mr. Anderson: I assume that it is unnecessary for me to renew the general objections. They are considered as being made, if your Honor please?

The Court: I understand that all objections other than objections of form are made to this and every question asked by the defense, not only of this witness but of all other witnesses, in the same way that the defendant's objections were understood to lie to each and every question asked by you.

Mr. Kresel: Yes, your Honor.

Q. 53. Mr. Garvan, have you prepared a list of books and papers that were used in that investigation?

A. A partial list.

Q. 54. Have you it before you?

A. Yes.

Q. 55. I am going to let you refresh your recollection.

A. This, of course, does not include all.

Q. 56. I understand. Just state the first source of information that you went to?

A. By date, one of the earliest sources of information was a book translated and made part of a Senate document, a book translated on the resolution of Senator Aldrich. It was called "The Great German Banks and their Concentration in Connection with the Economic Development of Germany." That was a Senate document of the Sixty-First Congress and was translated from the German in order to be printed as a Senate document.

Mr. Kresel: Of course, I do not want to burden the record with an immense book like this, but I should like to have it appear on the record, that this book called "The German Great Banks and their Concentration—National Monetary Commission," which is document 593 of the Sixty-first Congress, Second Session, may be referred to by either side upon the argument.

The Court: Is it so understood, Colonel Anderson?

Mr. Anderson: It is a large order, if your Honor please. I have never seen the book, but I——

Mr. Kresel: That is the reason I am not asking that it be marked in evidence.

Mr. Anderson: I am just thinking what I am letting into the record. Subject to the general objections I shall agree that either side may refer to that as a public document. I am not going to object to it particularly.

The Court: In this or in the Appellate Court they may refer to it?

Mr. Anderson: Yes.

Mr. Kresel: Thank you. I read one paragraph from page 724 of this book:

> "It is self-evident that this development has not reached its final goal."

The author is discussing the development of the chemical industry in Germany.

> "There is even now an agreement between the Badische Anilin-und Sodafabrik and the Hochst Dye Works by which they act in common in fixing the selling price of artificial indigo manufactured by both. It is quite likely that the Hochst-Cassella-Kalle and Co. combination and the other triple alliance (Badische Anilin Fabrik, Bayer, and the Aktiengesellschaft fur Anilin Fabrikation) will gradually get together in one way or another and at some more or less distant future time form a consolidation of all aniline dye works or some looser union."

specific objection to the admission of the book or any part thereof as evidence in this case.

Mr. Kresel: I think Colonel Anderson's distinction is well taken, and while I recognize that a book of this sort has not the same probative force as the official report which went in in the preceding exhibit, I do not quite agree that its only value is to show that Mr. Garvan had that before him.

As your Honor well stated on Friday, Executive officers, administrative officers, must act upon information that is before them, without waiting for judicial determination as to facts or law. And I think that this piece of evidence, as well as others that I am about to offer, is entitled to more than the value of showing that it was information that Mr. Garvan had before him. It is not only information that he had before him, but information that he acted upon, information that he was entitled to act upon.

With that statement, I am offering that in evidence and am willing to stipulate as to that the same as I did as to the preceding exhibit, namely, that while it is marked in evidence, it may be referred to by both sides but need not be printed in full.

The Court: Mr. Kresel, may I ask now whether it is your purpose at some time to ask what the facts were, as proved by someone who knew the facts apart from sources of information of that character, about the German dye and chemical situation in this country.

Mr. Kresel: Your Honor, we already have in evidence the chemical section of Mr. Palmer's report, which states the facts, and which, being an official report, your Honor will see is probative of the facts; but we are not going to stop there.

We shall produce evidence to show what the present status of the industry is since the war.

The Court: I was thinking of the status at the time of the seizure rather than now. I am wondering whether in the category referred to by the witness there were included encyclopedias, dictionaries and things of that sort.

Mr. Kresel: The basis upon which we offer this, your Honor, is that here was a publication which was available to the Government upon a subject that the Government was investigating. It contained certain information. That information together with other information was what the Government in this instance acted upon. We are trying to show what that information was.

The Court: That is a question of some moment. There has been no similar question in my experience and I doubt whether the question is not entirely new. Consequently, Colonel Anderson, the only thing that I can do is to admit it subject to such objections as you have made and determine eventually the value it has, if any, if it becomes necessary to consider this book at all.

Mr. Anderson: Your Honor please, I recognize your Honor's position and difficulties and in order to make my position clear, in view of the suggestion of counsel as to a stipulation, I will just state it specifically that your Honor may rule. We object to the introduction or other use of the book in question as evidence in this case or in connection with this case upon the following grounds:

(1) Upon the general and specific grounds which have already been set forth in the record in the opening statements and discussion of counsel which are reserved as to all questions, by agreement.

THE COURT: On both sides.

MR. ANDERSON: On both sides.

(2) On the specific ground that this evidence is entirely immaterial for reasons which are obvious and may not be applicable to much other evidence objected to on that ground.

(3) On the ground that it is not an official document of the Government of the United States and is not competent or admissible as evidence in any case in the courts of the United States as proof of any facts contained therein.

To make that clear, the full extent to which the witness could go would be to say that among other sources of information he had certain books and publications. There was available to the witness the entire chemical library of Congress and we could not put all that in evidence. Therefore, I object to this evidence, even for the purpose for which it is offered, as showing or tending to show that there was any information contained in this book available to the witness when he was discharging the duties to which he refers, for the reason that it does not appear and cannot be made to appear, except by direct testimony, that the information contained in that book is information at all. I have never seen the book, but proof must be submitted that those are facts, and facts are the sole basis of action.

Therefore, I want to make my objections to this book as specific as possible; and without repeating them as to other similar books, I will refer to these objections as covering the ground of my objection to those books.

THE COURT: Your last statement, I assume, would really come under the hearsay rule.

MR. ANDERSON: Yes, of course. I did not explain in detail because it is perfectly obvious what it refers to.

The Court: It is admitted subject to the plaintiff's objection.

Mr. Anderson: I might add that if the book is admitted in evidence, I am willing to stipulate with counsel that it shall not be printed in the record and that either side may refer to it as if printed, but without waiving any objections to its admissibility.

Received in evidence and marked "Defendant's Exhibit No. 49." (*Not printed.*)

Q. 58. Mr. Garvan, will you give me the next piece of literature that you had before you?

A. "Science and the Nation," a series of essays by the Professors of Cambridge University, England, with an introduction by Lord Moulton.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: Same objection, if your Honor please, general and specific, as made to the preceding exhibit.

The Court: I understand that all documents of the character of the preceding one are all admitted subject to the same objection.

Received in evidence and marked "Defendant's Exhibit No. 50." (*Not printed.*)

Q. 59. And the next one?

A. "Report on Dyestuffs for American Textile and other Industries," by Thomas H. Norton, Commercial Agent of the Department of Commerce.

Mr. Kresel: We offer that in evidence. It is an official report and we offer it not only as a basis of information but as proof of the facts therein contained.

The Court: Admitted under the same conditions as Exhibit 48.

Received in evidence and marked "Defendant's Exhibit No. 51." (*Not printed.*)

Mr. Kresel: I call attention in connection with this exhibit to the fact that it appears therefrom that it is a report which was made pursuant to a resolution of the Senate under date of January 26, 1915.

Mr. Anderson: Your Honor will understand, of course, that even as to that report, a report of that particular character, we reserve the question as to whether it is proof of the facts contained in it, because we have not had a chance to examine it and we do not know anything about the report. It may be that when we come to argue, we will admit that it is proof of facts, but we will reserve the question.

The Court: All questions are reserved for argument.

Mr. Anderson: I want to reserve it. I do not want to waive that question.

Mr. Kresel: I do not think, your Honor, that the Government is in any position in this case to question the rule that this report and other similar official reports are proof of the facts therein contained.

Again I remind your Honor and counsel that that was the position taken by Colonel Anderson here with reference to a report of the Federal Trade Commission, from which he read a portion; and I was careful at that time to inquire whether that was being offered upon the theory that such an official report was proof of the facts. Colonel Anderson stated that it was, and that is the law. There is no question about that. Therefore, I say that it is not a question of reserving anything. It is in.

Mr. Anderson: Possibly that is true, but I want to reserve the right to argue as to certain specific reports to the contrary. I do not admit they all come in the same class.

Q. 60. Mr. Garvan, what is the next one?

A. "Preliminary Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, of the Alien Property Custodian's staff, which was introduced in the hearings of the House, at pages 658 to 678.

Mr. Anderson: May I ask if you have that report?

Mr. Kresel: Yes, it is printed right here.

Mr. Anderson: I mean the original, because if you have the original, I would like to see it.

Mr. Kresel: I do not know where the original is. It is probably in the A. P. C.'s office.

Mr. Anderson: We cannot find it.

Mr. Kresel: But it is one of the exhibits that is printed in the minutes of the hearing before the Committee on Ways and Means, and in accordance with our stipulation we have a right to use the secondary evidence.

I therefore offer in evidence the "Preliminary Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, which is printed at pages 658 to 678 of this Hearing before the Committee on Ways and Means on H. R. 2706.

If it is agreable to your Honor and Colonel Anderson, we will mark this and I may have the right to substitute a typewritten copy of that. I will have a copy drawn up.

The Court: Mr. Kresel, do you offer that as proof of the facts, as you did exhibits 48 and 51, or do you offer it as you did the French document?

Mr. Kresel: I offer that as proof of the facts, your Honor. It is an official report.

Mr. Anderson: I not only make the objections heretofore made, but reserve the objection that this particular report is not proof of the facts and cannot be so received.

Mr. Kresel: When we come to argue the case before your Honor, we may argue that also.

Mr. Anderson: May I state my position so that Mr. Kresel may understand it. That is a report, as I understand it, by a public accountant, just a report to his employer, say Mr. Garvan——

Mr. Kresel: No, not Mr. Garvan.

Mr. Anderson: Well, whoever it was.

Mr. Kresel: The Alien Property Custodian.

Mr. Anderson: The Alien Property Custodian; same thing. That public accountant is available to testify, presumably, and certainly he can be called, and while it might show, assuming it to be evidence at all in this case, that Mr. Garvan had that report before him or available at that time, whatever that report contained, I respectfully contend that it is not proof of any fact contained therein, because better evidence is available in the person of the man himself who drew the report. The only point I waive as to that report is the production of the original signed copy.

Mr. Kresel: I do not need to argue that at the present time.

The Court: Admitted, subject to the objections.

Received in evidence and marked "Defendant's Exhibit No. 52." (*See Exhibits, Vol. IV, page 2323.*)

Mr. Kresel: I also offer in evidence the "Supplementary and Final Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, which is printed in the same volume of proceedings before the Committee on Ways and Means at page 678 and 679.

Mr. Anderson: The same objections, if your Honor pleases.

The Court: Admitted subject to the objections.

Received in evidence and marked "Defendant's Exhibit No. 53." (*See Exhibits, Vol. IV, page 2379.*)

Q. 61. Mr. Garvan, will you give me the next document?

A. "Report on Kuttroff, Pickhardt & Company, Incorporated," by Lee J. Wolfe, of the Alien Property Custodian's staff, House Hearings 2706, pages 679 to 692. Kuttroff, Pickhardt & Company were the agents of the Badische Company,

Q. 62. In the United States?

A. Yes.

Mr. Kresel: I offer in evidence the report on Kuttroff, Pickhardt & Company, Inc., dated January 11, 1919, made by Mr. Wolfe of the A. P. C. staff.

Mr. Anderson: Same objection, of course, as made to the preceding exhibit.

The Court: Admitted, subject to the objection.

Received in evidence and marked "Defendant's Exhibit No. 54." (*See Exhibits, Vol. IV, page 2382.*)

Mr. Anderson: I would like to ask Mr. Garvan if he has a copy or original of that complete report, or any of these complete reports, for the reason that I would like to check the question of whether they are complete in their publication. Have you any of those reports? I do not want to interrupt examination.

Mr. Kresel: We have not. At least, I do not know of any.

The Witness: Not that I know of. Wolfe can give you a copy.

Mr. Kresel: If there is any question about it, Colonel Anderson, I will communicate with Mr. Wolfe and see if he has copies in his office, and if he has, we will produce them.

Mr. Anderson: I would very much like to have them, because I do not know anything about them.

The Court: You may discuss that with counsel.

Mr. Anderson: Yes, sir.

The Witness: Wolfe must have his original working papers, any way. They always keep them.

Q. 63. Now, what is the next one, Mr. Garvan?

A. Letter of Hauser, who was head of the Hoechst concern in Germany, to Mr. Metz's firm in America, who were their agents here, dated September 20th, 1909, House Resolution 8078, page 513.

Mr. Kresel: I offer in evidence a letter from the Hoechst Company signed by Hauser, which is printed at page 513 of the Hearings before the Committee on Finance of the United States Senate on H. R. 8078.

Mr. Anderson: Same objection, sir.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 55." (*See Exhibits, Vol. IV, page 2418.*)

Mr. Anderson: Of course, I might add that a letter from Dr. Hauser to Mr. Metz certainly could not have any relation to the Government of the United States.

I understand your Honor's ruling and I merely want to show that on the record.

Q. 64. Mr. Garvan, Nos. 9, 10 and 11 are in, so you need not mention those, they are already in evidence. What is your next one?

A. Letter of the Badische Company of Germany to Kuttroff, Pickhardt, dated September 3, 1913, House Resolution 8078, Page 514.

Mr. Kresel: I offer in evidence a letter from the Farbwerke-Hoechst Company, dated September 3, 1913, printed at pages 514 and 515 of the hearing before the Committee on Finance of the United States Senate.

The Court: Admitted.

Mr. Anderson: Pages 514 to 515?

Mr. Kresel: Yes.

The Witness: It is there printed by "Hoescht." I think there is a mistake there.

Mr. Kresel: Yes. I have it here at page 514 (indicating to counsel).

Received in evidence and marked "Defendant's Exhibit No. 56." (*See Exhibits, Vol. IV, page 2421.*)

Q. 65. What is the next one, Mr. Garvan?

A. Letter to Hauser to Metz, dated July 31, 1913.

Q. 66. That is already in; and so is 14 and 15. What is the next one?

A. Letter Hoechst to Metz, dated June 8, 1914.

Mr. Kresel: I offer in evidence letter from the Hoechst Company to Metz, printed at page 516 of this volume, "Hearings before the Committee on Finance."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 57." (*See Exhibits, Vol. IV, page 2423.*)

Mr. Anderson: Without repeating the specific objection——

The Court: The same objection to all of them, Colonel Anderson, will be considered as made by you.

Mr. Anderson: Yes, sir.

Q. 67. What is the next one?

A. Letter from the Badische Company to Kuttroff, Pickhardt, dated June 13, 1914, page 515.

Mr. Kresel: I offer in evidence letter from the Badische Company to Kuttroff, Pickhardt & Co., dated June 13, 1914, printed at page 515 of the Hearings before the Committee on Finance.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 58." (See *Exhibits, Vol. IV, page 2424.*)

Q. 68. What is the next one?

A. Two telegrams from the Badische to Kuttroff-Pickhardt, one dealing with the tariff and the other with order not to sell, Senate Hearings, page 253. I think that is Senate Resolution 77. I think that is the Shortridge hearing. That is in the Shortridge hearing.

Q. 69. Page 253?

A. Yes, sir, 253 and 256. They appear at page 76 of the Shortridge testimony.

Mr. Kresel: It is page 253. I offer in evidence the two telegrams from the Badische Company to Adolph Kuttroff, both of them being printed at page 253 of the Hearings before subcommittee of the Committee on Judiciary. I ask that each of them be marked separately.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibits 59 and 60." (*See Exhibits, Vol. IV, page 2426.*)

Q. 70. What is the next one, Mr. Garvan?
A. Albert's letter of introduction to H. A. Metz.

Mr. Anderson: I would like to see that letter.

Mr. Kresel: I have it here. It is page 494 of the Senate Hearings.

Mr. Anderson: If your Honor please, I object to the introduction of that letter on the same ground that I urged on the cross-examination of Mr. Metz. It is a letter appearing to be addressed to "My dear Benefactors and Friends" and signed "Albert". Immediately following it in the Hearings before the Senate appears the following:

"Senator Watson. Do you know whether or not that letter was ever brought to the attention of Mr. Metz?" Mr. Garvan was being examined here. "Mr. Garvan: He carried it with him. Mr. Metz. Just want to say that I never saw such a letter, and if I carried it the contents were not known to me personally. I carried dozens of letters.

"Mr. Garvan. This letter was a letter which Mr. Metz carried with him. He probably never read it.

"Mr. Metz. I never saw a letter like that. Senator Watson. Did it not state that Mr. Metz would appear with a letter of introduction? Mr. Garvan. There were a half dozen letters"——

The Court: That is the same letter, Colonel Anderson——

Mr. Anderson: The same letter that your Honor struck out on the cross-examination.

The Court: Yes.

Mr. Anderson: I object to the letter, it being purely a personal letter between Dr. Albert, or whoever was the signer—it is just "Albert"—and his friends and benefactors, whoever they were. I do not know anything about it. Certainly it cannot be evidence in this case.

Mr. Kresel: But this is a different situation entirely. Of course, with Colonel Metz it was not admissible, because I did not show and could not show he had knowledge of it. Now it is admissible upon the ground that that was a piece of information before Mr. Garvan—an entirely different situation.

The Court: As I understand, Colonel Anderson, that letter is not now offered in any sense as an impeachment of the witness Colonel Metz, but is offered for the same purposes as the other documents offered this morning, and the same ruling will be made.

Received in evidence and marked "Defendant's Exhibit No. 61." (*See Exhibits, Vol. IV, page 2426.*)

Q. 71. What is the next one?

A. Letter of Metz to Secretary of State Bryan.

Q. 72. That is already in evidence.

A. Telegram Ambassador Bernstorff to the German Foreign Office.

Mr. Kresel: I offer in evidence telegram signed Bernstorff, dated March 13, 1915, printed at page 491 of the Hearings of the Committee on Finance.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 62." (*See Exhibits, Vol. IV, page 2427.*)

Q. 73. What is the next one, Mr. Garvan?

A. Telegram Charles Suchard to Millington Behren, Nine Berlin, April 17, 1915, House Hearings page 256 and Senate Hearings page 491.

Mr. Kresel: I offer in evidence the telegram signed Charles Suchard, dated April 17, 1915, printed at page 491 of the Hearings before the Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 63." (*See Exhibits, Vol. IV, page 2428.*)

Q. 74. What is the next one?

A. Letter of Dr. Albert to Hossenfelder, dated April 19, 1915, House Resolution, page 492.

MR. KRESEL: I offer in evidence a letter from Dr. Albert to Mr. Hossenfelder, dated April 19, 1915, printed at page 492 of the Hearings before the Senate Committee on Finance.

THE WITNESS: Hossenfelder was the German Consul General.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 64." (*See Exhibits, Vol. IV, page 2428.*)

Q. 75. What is the next one?

A. The next one is an editorial in the New York World, April 28, 1915, House Resolution 8078, Senate Hearings page 492.

Q. 76. While you are on that, what is the next document, so as to connect that up?

A. Letter of Boy-Ed to Albert — Naval Attache Boy-Ed of the German Embassy.

Q. 77. Does that refer to this editorial of which you have just spoken?

A. Yes, sir. Well, there is another one.

MR. ANDERSON: If your Honor please, I do not object to this evidence because I do not suppose any court in Christendom would pay the slightest attention to it, and therefore we are only burdening the record. Certainly it is a novel experience so far as my limited practice of the law goes to put into evidence correspondence of this kind, editorials from newspapers, libraries on subjects upon which I suppose there are 20,000 books, and if they can put in evidence three or four or a hundred, we can put in an equal number on the other side. It would make the administration of justice impossible if this thing goes on.

Mr. Kresel: I did not comment on the things that Colonel Anderson put in, as to which I might have made even more pointed remarks. But we are not here to discuss that. It is for your Honor to say whether this is admissible or no. I doubt whether Colonel Anderson ought to state that no court in Christendom would pay any attention to evidence which your Honor has already been admitting.

Mr. Anderson: It was admitted without a ruling.

Mr. Kresel: It has not been admitted without a ruling. We offer this evidence, if your Honor please, not only believing that it is admissible but that it is material and relevant; that when the motives of these officials are attacked and they are charged with having been duped by conspirators, we have a right to show what information they had upon which they acted, whether that information was contained in editorials or books or records or examinations or letter or what not. They cannot stop us from showing that. That is the justification that we are entitled to show in this Court.

The Court: And then as a consequence of that the burden would be on the Government to show that the information upon which they acted was erroneous?

Mr. Kresel: No, your Honor, I do not claim that. I claim that it would then be for the Court to say, if there is no proof to the contrary offered by the Government, whether that was such information, assuming now that the general question that we have been urging, that the Court cannot inquire at all——

THE COURT: I understand.

MR. KRESEL: Assuming that that has passed by, then the Court may say whether that information and all the other proof in the case makes out such a case as justified the action by these officials.

THE COURT: Assume for a moment, if you will, please, that there did exist a power; that is, that the Trading with the Enemy Act conferred a power upon persons, we will say, in the Executive Department, to make a bona fide sale, either in public or, under the authority of the President, a private sale. Then from your point of view would such a sale if made be invalid if brought about by a conspiracy such as has been alleged in the bill of complaint?

MR. KRESEL: I think, your Honor, I should need another element before I could answer the question.

THE COURT: You may qualify it as you like.

MR. KRESEL: If there was a conspiracy as to which the officials acting knew nothing at all, then I do not think that the sale, if they had the power to make it, could be invalidated by reason of the fact that somebody else had entered into a conspiracy.

But if the facts were such as to justify a Court in holding that the officials either knew or had reason to believe or were put upon inquiry as to facts which would indicate a conspiracy, I think then they would not be acting in such a way as to be able to sustain that sale. It is the same question that your Honor had up with us in argument as to the seizure here.

The Court: The same underlying principles.

Mr. Kresel: The same underlying principles. You see, your Honor, in some respects they do not charge in the bill direct fraud against Mr. Palmer and Mr. Garvan and Mr. Polk and the President. There are allegations that are very broad. For instance, as to the Chemical Foundation, it is alleged that it was being used as a tool of the conspirators. The Chemical Foundation, it is our contention, was the creature of the Alien Property Custodian. It comes pretty near making a charge that the Alien Property Custodian was being used in that way.

The Court: That is, that he either did it knowingly or was duped into doing it.

Mr. Kresel: Exactly.

The Court: So that he might be called either one of two things.

Mr. Kresel: Of course, your Honor must by this time have seen how indefinite in particulars the bill is as to conspiracy and as to who was in it and as to how it was effected; and just because of its indefiniteness we are somewhat groping in the dark here. There is the charge, and Colonel Anderson has very frankly stated that he reserves the right upon the argument to claim, actual fraud against everybody. And if that is, it seems to us that we should not be confined to a narrow sphere in showing what information we had before us and what actuated us in doing this.

The Court: I do not know the contents of the editorial.

Mr. Kresel: I brought that to your Honor's attention upon my opening. Your Honor has perhaps forgotten about it. It is not a comment on this situation. It simply calls attention to the fact that it is reported that somebody was about to establish dye factories over in Jersey and then Albert is asked about that and he comes back with the information that there is nothing in it.

The Court: That is just a link in the chain of events?

Mr. Kresel: That is all, your Honor. I was not trying to prove here an editorial comment on something.

The Court: I will admit it subject to such objection as was heretofore made or may hereafter be taken to it.

Mr. Kresel: Since the question has been raised, I want to read to your Honor this editorial. It is only half a dozen lines.

The Witness: There are two letters that go with it, Mr. Kresel. You only offered one.

Mr. Kresel: I will offer both of them in just a minute. The editorial is headed "Helping Us Out". (Reading.)

I read the letter dated April 28th, 1915 from K. Boy-Ed.

Q. 78. Who was K. Boy-Ed?

A. Naval Attache of the German Legation, German Embassy.

Q. 79. Here in the United States?

A. Yes.

Mr. Kresel: To His Honor Privy Counsellor Albert, 45 Broadway, (reading).

On the same day Albert answers K. Boy-Ed as follows: (Reading.)

The Court: I recall all those letters, so that you need not repeat them.

Mr. Kresel: I now offer therefore, the editorial, the letter from Boy-Ed to Albert and the letter from Albert to Boy-Ed.

Mr. Anderson: If your Honor please, I made up my mind not to interrupt this examination this morning, but to the end that my position on the record may be perfectly clear when I get up to the argument of this case, I want to renew at this point the objection to all this evidence, especially the last three exhibits just offered by counsel and not formally admitted.

In the first place, they are not only hearsay, but they are hearsay of hearsay. They say, it is reported by somebody that somebody else has reported to somebody else that something is going to be done.

In the next place, they are not evidence against the Government of the United States, even if they were direct testimony and offered in the most formal, legal way.

In the third place, they would not be evidence in this case because the Government of the United States has not only repudiated all these transactions by sending the man who wrote the letter home for doing those very things, which is a matter of which the Court will take judicial notice; but the Government has been so outraged by these very things, that it went into a great war and fought the war to success, because of the very wrongs done by these people.

Now, to come up here and undertake to introduce evidence of the wrongs which we have undertaken to right in war, and spent the blood and treasure of this country in repudiating and overthrowing, as evidence against the United States, is an unheard of proceeding. I do not mean to comment on Mr. Kresel's remarks. I quite realize that is not my function; nor upon the rulings of the Court.

I understand, the way this matter is proceeding, that your Honor is not at all ruling; but I submit that even under the broad rules which have been laid down, there are some limits to the introduction of documents here. So far as this case is concerned, all this stuff cannot affect this case in one way or another; but there are limits to which we can go in the introduction of evidence of this character; and certainly that limit has been reached when the evidence is not only, as I have said, hearsay, but hearsay founded upon hearsay plus hearsay, and in addition to that, is evidence which the plaintiff in this case has repudiated at the cost of a great war.

Mr. Kresel: Will your Honor hear me on that?

The Court: It is your privilege, sir, if you desire to take the time.

Mr. Kresel: I do not desire to take the time.

The Court: Your remarks raise two questions in my mind, Colonel Anderson, if you will be good enough to help me out without discussion.

Mr. Anderson: Yes, I will.

The Court: The first is in regard to the act of repudiation, of which I can take judicial notice and which I happen to recall. Instead of detracting from the value of this evidence, my immediate reaction is that it makes what might have seemed unimportant possibly of some moment. The second is, assuming that you have a charge of conspiracy here, which, as I understand you, you do not deny, what is the method of meeting it by the persons of the Executive Department, if it cannot be met by showing the various acts and facts, as well as information, which came to the attention of the Executive Department.

Mr. Anderson: As to the first inquiry which your Honor makes, I think that any reply that I would have to make would necessarily be argumentative because I could not do more than to say that in my view the acts of these people were undoubtedly prejudicial in some aspects to the interests of the United States at that time, and its people, and were a justification for war. If we were trying to decide whether we were going to declare war, that would be all right, and I will agree to an affirmative verdict on that question without any more evidence, but on what possible theory can it affect the right of an officer of the United States to dispose of alien property during that war?

THE COURT: I am not going to pass upon the relevancy or irrelevancy, Colonel Anderson; but when you charge conspiracy you charge improper motives. I have not been able to see so far how you can completely disconnect and exonerate the officials, namely, Mr. Garvan, Mr. Palmer, and others directly interested in the transaction from the conspiracy, if it be established (you may; I do not care to have you go into that line); but is not one method of meeting that charge of conspiracy just the method that is being here pursued?

MR. ANDERSON: Your Honor asks me a question. I say I do not think so, sir, and possibly I may make my point clear by a suggestion, which is not intended as a suggestion either to counsel or to the Court.

It is charged that the persons interested in the American Dyes Institute and other affiliated associations desiring to obtain these patents for their own use, entered into a scheme to get them by having them seized and sold. That, in effect, is the charge.

Now, if it appears that the Alien Property Custodian knew the facts in regard to all this scheme, which has not appeared yet, then it might be that the evidence would show that he was a part of that scheme or conspiracy, if it be established, which I am not now arguing. Suppose he knew everything that has been said here, suppose he had it in writing before him, or a report on his desk, how does that change the legal status in any way whatever?

If he acted in accordance with the law and carried out the laws of the United States, then the question of all this past stuff that he knew would not be important; but if he acted with full knowledge or without knowledge (it does not make a bit of difference what knowledge he had),——

The Court: But in accordance with the law.

Mr. Anderson: I am coming to that point. But if he acted with knowledge or without knowledge, for the purpose of transferring this property to private industry from the United States, either contrary to law or for a purpose not approved by the law, then the more he knew, the worse off he was. Therefore, the knowledge of these facts prior to the war cannot have any bearing whatever upon what he did at that time after the war was over.

Now, your Honor asked a question, and to make the point clear, I am going to answer it, if you will allow me, just now. I said that if the Alien Property Custodian did not know a thing about what these dyestuffs people were doing, assuming they have been guilty of the acts charged here, which is not now a question for argument, and assuming, without meaning anything unpleasant, that they entered into a conspiracy to get control of this property, and assuming that we have proved that, that the Alien Property Custodian might have been active in the sale, with the best of motives, and not a party to the conspiracy, why, there is nothing more familiar in the law than setting aside a sale of this sort, because it was developed as a secret combination of bidders to prevent someone else from bidding. The Custodian in making the sale might have acted in the best of faith. I did not mean to get into an argument. I was merely undertaking to answer your Honor's question. It is possible that this matter has not anything to do with it. I do not know that it is material. Possibly we are taking up unnecessary time, because I do not think that it can have any bearing.

THE COURT: I understand your contentions with respect to that point, Colonel Anderson. You may proceed, Mr. Kresel.

Letter from Albert to Hossenfelder, of April 19, 1915, received in evidence and marked "Defendant's Exhibit No. 64." (*See Exhibits, Vol. IV, page 2428.*)

Letter from Boy-Ed to Albert of April 28, 1915, received in evidence and marked "Defendant's Exhibit No. 65." (*See Exhibits, Vol. IV, page 2429.*)

Editorial from New York World received in evidence and marked "Defendant's Exhibit No. 65-A." (*See Exhibits, Vol. IV, page 2430.*)

Letter from Albert to Boy-Ed of April 28, 1915, received in evidence and marked "Defendant's Exhibit No. 65-B." (*See Exhibits, Vol. IV, page 2431.*)

Q. 80. Will you proceed, Mr. Garvan, to mention the next document?

A. The next one is letter to Joseph P. Tumulty, private secretary to the President of the United States, April, 1915.

Q. 81. That is already in evidence.

A. The next one is a letter of Herman A. Metz to Mr. Rose, who was the Foreign Trade Adviser of the State Department, April 6, 1915, Senate resolution 271.

Mr. Kresel: I offer in evidence a letter from Mr. Metz to Robert F. Rose, Foreign Trade Adviser, Department of State, dated April 8, 1915, printed at page 271 of the Hearings before the Committee on the Judiciary.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 66." (*See Exhibits, Vol. IV, page page 2431.*)

Q. 82. What is the next one?

A. The next one is a letter of Herman A. Metz to Secretary Redfield, who was the Secretary of the Interior.

Q. 82 (continued) Secretary of Commerce.

A. Secretary of Commerce, April 9, 1915.

Mr. Kresel: I offer in evidence a letter from Mr. Metz to Secretary Redfield, April 9, 1915, printed at page 272 of this same Hearing before the Committee on the Judiciary.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 67." (*See Exhibits, Vol. IV, page 2434.*)

Q. 83. The next one?

A. The next one is Mr. Metz's pamphlet of April 22, 1915.

Q. 84. That is in, and the next two are in, Mr. Garvan.

Mr. Kresel: You do not mind, Colonel, if I straighten that out? My information is that they are all in down through 36.

Q. 85. Will you give me No. 37?

A. 37 is an article I took from the desk of Mr. Hugo Schweitzer, after his death.

Q. 86. Who was Hugo Schweitzer?

A. Hugo Schweitzer was the former president of the Bayer Company in this country, the American Bayer Company. That is the American corporation which was the agency of the German corporation.

MR. ANDERSON: That refers to an article. Would you get the witness to describe it, please?

THE WITNESS: Called "Chemists' War."

MR. KRESEL: It is printed at page 226 of that volume you have before you, Colonel. I offer that in evidence.

MR. ANDERSON: I would like to have made as clear as possible, sir, that this evidence is not being introduced for the purpose of proof of any facts contained therein, but is just merely for information, that these particular papers were before this witness, as I understand there is a limit to this evidence. I do not know that it does appear clearly on the record, I would like that to apply to all this evidence, and, of course, I am not making my objections to each question under that understanding.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: I have already, your Honor, indicated my position.

THE COURT: That the admission of the Government reports and the offer that you are now making are limited to——

MR. KRESEL: Showing what information the witness had before him.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 68." (*See Exhibits, Vol. IV, page 2438.*)

Q. 87. The next one?

A. "The New Chemical Warfare," an article by Julius Stieglitz, in the Yale Review.

Mr. Kresel: I offer that article in evidence, beginning at page 493 of the Yale Review of April, 1918.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 69." (*See Exhibits, Vol. IV, page 2457.*)

Q. 88. The next one, Mr. Garvan?

A. "German Militarism and its Influence upon the Industries," another article by Hugo Schweitzer, which was taken from his effects after his death.

Mr. Kresel: I offer in evidence the article just described by Mr. Garvan, which is printed in the Hearings before the Sub-Committee on the Judiciary, beginning at page 241 thereof.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 70." (*See Exhibits, Vol. IV, page 2477.*)

Q. 89. The next one?

A. "The President's Protest to Great Britain and its Justification by the Perils to our Trade and Industries," a third article by Hugo Schweitzer, which was taken from his effects after his death.

Mr. Kresel: I offer in evidence the article just described by the witness, which is printed in the Hearings before the Sub-Committee of the Committee on the Judiciary, beginning at page 233 thereof.

The Court: Admitted.

Received in evidence and marked "Defend-

ant's Exhibit No. 71." (*See Exhibits, Vol. IV, page 2491.*)

Q. 90. The next one?

A. Consul-General Hossenfelder's Report to Bethmann-Hollweg, March 3, 1916, House Hearings, page 495, Senate Hearings, page 261.

Mr. Kresel: I offer in evidence the report described by the witness, which is printed at page 261 of the Hearings before the Sub-Committee on the Judiciary.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 72." (*See Exhibits, Vol. IV, page 2514.*)

Q. 91. The next one?

A. Albert's report to the German Government on the dyestuffs situation, April 26, 1916.

Mr. Kresel: I offer in evidence the report just described by the witness, which is printed in the Hearings before the Sub-Committee on the Judiciary, beginning at page 259.

The Court: As evidence of the facts therein stated, or as information that was before this witness?

Mr. Kresel: As information before this witness.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 73." (*See Exhibits, Vol. IV, page 2525.*)

Q. 92. The next?

A. Letter to Foreign Secretary Zimmerman, of Germany, by Ambassador Bernstoff, May 21, 1916.

Mr. Kresel: I offer in evidence the letter just described from Zimmerman to Bernstoff, dated May 21, 1916, printed at page 265 of the Hearings before Sub-Committee on the Judiciary.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 74." (*See Exhibits, Vol. IV, page 2529.*)

Q. 93. Next?

A. Bernstoff's explanatory report in answer thereto.

Mr. Kresel: I offer in evidence the report of Bernstoff to the German Foreign Office, dated June 21, 1916, printed at page 265 of that same volume.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 75." (*See Exhibits, Vol. IV, page 2530.*)

Q. 94. Next?

A. Letter of Kuttroff to Dr. Albert, September 20, 1916, Senate Hearings, page 225.

Mr. Kresel: I offer in evidence a letter from Mr. Kuttroff to Mr. Albert printed at page 225 of the Hearing before the Sub-Committee on the Judiciary.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 76." (*See Exhibits, Vol. IV, page 2534.*)

Q. 95. The next one?

A. Dr. Schweitzer's report to Bernstorff, January 26, 1917, page 526.

Mr. Kresel: I offer in evidence report of Dr. Schweitzer to Mr. Bernstoff, which is printed at page 526 of the Hearings before Committee on Finance.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 77." (*See Exhibits, Vol. IV, page 2534.*)

Q. 96. The next one?

A. I think 49 and 50 are in, aren't they?

Q. 97. Yes.

A. Letter of Dr. Stieglitz to Mr. Palmer, and Dr. Stieglitz's report on Salvarsan enclosed.

Q. 98. That is in. What is the next one?

A. The next one is the report of the Allied Commission on German dye factories by Lord Moulton.

Mr. Kresel: I offer in evidence the report just described by the witness, which is printed at page 286 of the Hearings before the Sub-Committee on the Judiciary.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 78." (*See Exhibits, Vol. IV, page 2543.*)

Mr. Kresel: I offer in evidence a report by Mr. C. H. Burr on German business in the United States, which is printed at page 476 of the Hearings before the Sub-Committee on the Judiciary.

The Court: That has been identified by him or are you offering it apart from the identification?

Mr. Kresel: That has been identified by him, your Honor.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 79." (*See Exhibits, Vol. IV, page 2544.*)

Q. 99. Mr. Garvan, I wish you would state briefly what, if any, information you had on April 10, 1919, concerning the relations, if any, of Germany to the organic chemical industry of the United States prior to the outbreak of the war in 1914?

Mr. Anderson: I note the same objection that I noted on Friday, your Honor, to the generality and indefiniteness of this question.

The Court: Is this the same question?

Mr. Kresel: No, your Honor, it is a different question. I have made it as nearly not leading as it could possibly be done. Would your Honor desire to have it read?

The Court: Yes.

(Q. 99 repeated as above recorded.)

Mr. Anderson: In order to make the record clear, sir, I will make the objection specifically to that question: First, on the ground that it is too general and indefinite, and therefore is objectionable as to form. Second, because the witness has testified that his connection with this matter began in November, 1917, and, therefore, his knowledge on the subject is necessarily hearsay and not facts. Third, the general and specific objections which I have already urged and which I understand your Honor does not wish repeated as to all this testimony.

The Court: Apart from the general objection, I think the objections of the Government are not well taken. I think this is much more limited than the question of Friday. You may take the answer.

A. The information that I had was to the effect that prior to 1914 Germany had five or six agencies here, which represented the five or six companies commonly called the Big Six, which had control of the chemical industry of Germany. My information was that those six companies had been combined into a coalition or agreement, three each in two combines, and that together they controlled practically the entire organic chemical industry of Germany; that the agencies here had no independent existence of their own, but were the merest agents and servants of the German industry; that the German industry had monopoly of the American organic chemical industry, particularly as to dyes; that there were here nothing but three or four assembling plants who were dependent entirely upon the intermediates which they, in turn, got from the six German companies in Germany.

My information was that this industry in Germany had been built up carefully and slowly since about 1856, when it was founded upon the discovery of William N. Perkins, of the Color Mauve. He was an Englishman working in a German's laboratory in London, named Hoffman, and the English were not sympathetic to his development, and he took the English Perkins discovery back to Germany, and there Germany began to develop it.

My information showed that whereas in America we had absolutely no understanding of the relation of organic chemistry to industry or to national defense, or to the progress in medicine, that each and every one of the Germans with whom I came in contact had an absolutely complete understanding that it was the life blood of modern industry and that it was the foundation of modern war, and that it was the hope of future medical development; that they were brought up to regard that as the special province and the special asset of Germany; that each boy and girl in Germany was compelled from the time they were twelve years old until the time they were eighteen——

The Court: It seems to me this is rather far afield, Mr. Kresel. Do you not think so?

Mr. Kresel: Well, I want to be entirely frank with your Honor. I do not think that it is. I think that to judge what these people did your Honor must know what they had in mind, your Honor must know what they had before them. Your Honor must realize what they were trying to accomplish. What he is now doing is contrasting the situation in Germany with that in the United States, what he learned. He is showing how Germany regarded the organic chemical industry and the education connected with it and how we neglected it here. It naturally leads up to the reasons which actuated them in disposing of this property in the way that they did. I will ask Mr. Garvan to be as brief on this historical feature as possible.

THE COURT: If there is doubt about its materiality it may be taken, because that is the question that we have reserved; although at the moment it seemed to me he had probably gone farther afield than would be of service.

THE WITNESS: All I meant to say was——

MR. ANDERSON: May I make one brief statement to your Honor. I do not know that I have made it clear to the Court that in this case it seems to me obvious under the statute that the only reasons actuating these people in this sale are the reasons stated in writing by the President, or by the person issuing the order upon which the sale was made. The only evidence which can have any bearing here is evidence in connection with those particular matters, and whether that is admissible or has any bearing, I am not now undertaking to argue.

The Congress has declared that in the case of a private sale the reasons therefor in the public interest must be stated in writing. If they had stated no reasons in writing the order would be void ab initio. The sole question is, What were the reasons stated in writing in the order? I do not think I have heretofore made that clear to the Court—at least it is suggested by one of my associates that I have not. That is all I have to say.

THE COURT: It seems to me that you did not confine your position to that, Colonel Anderson.

You said it was within the judicial province to test the sufficiency of the reasons stated, but it seemed to me that you took a further step and said not only was it within the province of the judiciary to determine the sufficiency of the reasons stated, but also as to whether those reasons were justified by the facts underlying their statement. If that is your position, then I do not see where the limit is to the inquiry into the underlying facts, do you?

Mr. Anderson: It depends on what you would call reasons for underlying facts.

The Court: No, not what I call it.

Mr. Anderson: When I say you, of course I mean what one would call it in disposing of the question. I did not mean it to be personal to your Honor. I confined my inquiry to a large degree in this case, if I did not entirely, though the case is so confused that I cannot say I did now, to the reasons stated in the order——

The Court: Would you care to limit them at this time, to abandon at this time your prior contentions of your right and purpose to go behind the reasons stated in the Presidential orders and Mr. Polk's orders?

Mr. Anderson: No, not to that extent I do not. But I do say this: that beyond that question the sole inquiry, as I can now think of it, would be what facts were represented as a basis for those reasons and not what this witness knew or what he may have known. But if the reason assigned is founded upon a mistake of fact or a misconstruction of the law, I think it would be a subject of inquiry. All this is something that this gentleman heard from somebody else about conditions existing prior to 1914, and I am a little puzzled to know its connection. But I did not intend to get into that argument, if your Honor please. I merely wanted to make clear my view on that point which I was told by one of my associates I did not make clear.

THE COURT: I think you did make it quite clear. Then I cannot ignore or forget, in respect to this testimony, the allegation of conspiracy which seems to me, possibly, to prevent my being able to say at this time that it is clearly and wholly irrelevant.

You may proceed, Mr. Garvan.

A. (continuing) My information was that the system of education in schools and colleges and universities had been aided and fostered by the Government as an aid and feeding to this organic chemical industry; for instance, of the graduates of the universities, any one who desired was permitted to go to the dye factories and spend two years in research at the dye factories' expense.

The Government, the University, the schools and the High Schools and the factories all worked with a single unity of purpose and more or less with a single unity of Governmental control, with the intent and object of attaining what they had practically attained at the beginning of 1914, that is, a world monopoly in the organic chemical field; and that they had done this deliberately and with an intention, as shown by Senator Aldrich's book that he introduced in 1910, of eventually combining into one cartel with a singleness of purpose; and that as soon as that monopoly of the organic chemical industry had been attained, to use that monopoly to the aid of its other industries which are dependent upon dyes and pharmaceuticals, such as the textile and leather industry, and so forth.

This was shown further by the fact that all the dye salesmen practically were all educated with that singleness of purpose. They were sent to the Government in Berlin and instructed in reporting on conditions in foreign countries. They were then sent to the dye factory and drilled, and they came here as salesmen. We found the trunks of thirty of them in the basement of the Bayer Company filled with their reports back to the German Government on trade conditions in each trade and industry here. They were the men who taught the industries how to apply the dyes either to the leather or to the cloth. That made the element of saleability on the leather or the cloth, and therefore they had the full run of, say, a carpet factory. They would report back every invention of machinery, the design, style, cost and so forth and so on; every detail that a German manufacturer attempting to rival or compete with an American manufacturer of carpets wanted was reported to Berlin by the dye salesmen. That information was usually card indexed—I have forgotten the name of it—so that they could go to that card index, ascertain the report of the dye salesman and get a report, for instance, on how the people of Wilmington like their carpets, the design and the cost here, and so forth and so on. So that he was able to sit there in Berlin and compete with each section of the world under the most favorable circumstances and with a full knowledge and with full information of what the report showed.

> **Mr. Anderson**: If he is going to testify to the contents of reports, I ask that they be produced. We have to have some opportunity to see the sources of this gentleman's information.
>
> **Mr. Kresel**: You mean that you ask——
>
> **Mr. Anderson**: I ask you to produce the contents of all reports as to which he testifies. If we are going into this matter, we will get into

it. I object to any evidence as to reports or written documents that are not produced in court.

The Witness: Your office is full of them.

Mr. Kresel: Wait a minute. Whatever reports this gentleman had in his official capacity are not now in his possession. They are in the possession of the Government, and it is not up to us to produce them.

The Court: Do you want to make any demand now for their production?

Mr. Kresel: If counsel presses the objection or suggestion that we have got to produce these reports, I now ask that the Government produce them.

Mr. Anderson: If your Honor please, if this evidence has any materiality whatever, there must be some opportunity to test it. This gentleman has testified as to reports to the German Government found at the Bayer Company, and reports to other people, I do not know who they were. If it has any materiality at all, to test the evidence, we must have the report. He cannot testify to the contents of reports without producing them. Therefore, I will ask that he do not give evidence as to the contents of written documents unless the documents are here to be examined.

Mr. Kresel: Colonel, you say that you must have. I say that you have. You have them in your possession.

Mr. Anderson: I am informed, Mr. Kresel, that we have no such reports as those described by the witness.

Mr. Kresel: I am sorry that you cannot locate them. We are not chargeable with that.

I think, your Honor, that perhaps this is as good a time as any to settle this question of the necessity of producing written documents. My understanding of the rule is that upon collateral matters, the best evidence rule does not apply.

THE COURT: Do you disagree with that, Colonel Anderson?

MR. ANDERSON: That is the general rule, but there are so many exceptions to it. I think in this case this witness cannot testify to the contents of documents without producing them.

MR. KRESEL: Then this is one of the exceptions, if you are going to call it an exception? I rather regard it as a general rule.

THE COURT: Colonel Anderson, may I make this inquiry? It is unquestioned that a contract or statute which is in doubt may be placed back in its original setting to ascertain its intent, meaning and purpose, is it not?

MR. ANDERSON: Yes, sir.

THE COURT: That is the general rule.

MR. ANDERSON: The general rule, I admit, sir.

THE COURT: Do counsel in this case disagree as to the meaning, interpretation, aim and purpose of the amendments to the Trading with the Enemy Act of 1918, as I understand you?

MR. ANDERSON: I do not think we disagree, sir. I do not think we disagree as to the amendment of March. We might as to the construction of the clause as to the President and private sale. But the act gave general power to the Alien Property Custodian to sell. I do not think anybody questions that.

THE COURT: As I understood you, I rather got the impression that the interpretation of that act was the basic question in this case.

MR. KRESEL: That was my understanding throughout. I have understood Colonel Anderson to argue and to contend that under that amendment of the act the Alien Property Custodian still remained a trustee, with the absolute duties of a trustee to sell for no less than the property was actually worth.

He contends that notwithstanding the provision that the President, in the public interest, might otherwise direct, all that means is that the President can direct that it be a private sale and not a public sale, but that it still had to be, as he called it, a fair sale and that a fair sale meant full value and that a fair sale meant that there could not be, as he claims, what he terms here a combination of bidders.

He denies that that amendment gave any broader powers than had theretofore been had except that it amended the act so as to provide the method of disposition.

I understood him to decline to give any force to the sentence in that act giving to the Custodian the same power over the property as if he were the absolute owner. Of course, it must follow that if he is but a trustee, he cannot do anything with the property but if he sells it, to sell it for every cent that it is worth. That certainly is not consistent with the provision that he may do with it as an absolute owner may do with it.

The Court: The purpose of my inquiry was this. Under the interpretation of that act, unless its meaning is clear and fully disclosed by the language used in the act, must we not inquire as to the full conditions surrounding its passage and the evil that it was intended to remedy, or not? Or, is that too broad a field?

In other words, must we not remember, in the interpretation of that act, that it was a war act, that it was intended to cure evils which had been demonstrated to exist during the war, or not? Or, must we interpret the act as if it were passed yesterday instead of in 1918?

Mr. Anderson: I think we have to interpret the act at the time it was passed. If there be any doubt as to the meaning of the act—and in view of the fact that the distinguished counsel for the defendant seems to take issue with me on its interpretation on every point, there seems to be some doubt—if there be any doubt as to its meaning, then, of course, the Court may, to a very limited extent, and with great caution, look to the immediate surrounding facts and circumstances. But if the conditions of education in Germany prior to 1914 and going back to 1902 will aid the Court in arriving at that interpretation, I will not object to that.

The Court: I have indicated my doubt about that, but in view of the issues, particularly of conspiracy, and the construction of this act, I doubt if I am able to say at this time with absolute certainty that it is fully without weight.

Now, then, we have departed from the primary objection, namely, the production of these documents. But before going into that, I want to ask this. Can I get you to help me, if you will, Colonel Anderson?

Mr. Anderson: I will with great pleasure, if your Honor please.

The Court: Assuming that it is true, notwithstanding the broad powers conferred upon the officers in the Executive Department or on the President to make a sale and to make a private sale, that, as I understood you to say, they were still not authorized to make sales so as to create a monopoly—that is, even a public sale—the public sale would have been invalid if such sale resulted in a monopoly; is that your contention?

Mr. Anderson: Undoubtedly, sir. Speaking in a broad way, that is true.

The Court: Now, then, do I understand you to say—I do not believe I have asked you this question—that the sale in question resulted in a monopoly or produced a monopoly?

Mr. Anderson: Perhaps it would be more accurate to say that the object and purpose was to create a monopoly and control over foreign and interstate commerce. In other words, restraint of trade, using that term in its broad sense, of foreign and interstate commerce is an essential step in a monopoly. There can be no monopoly without restraint of trade, but there may be restraint of trade without a monopoly.

The Court: I have missed what you said.

Mr. Anderson: I say that restraint of trade —and by that I mean foreign and interstate commerce in the Federal sense—is an essential element in a monopoly.

The Court: Is that not a necessary incident of process and product patents?

Mr. Anderson: Necessarily, it is incident, but you cannot combine them all under one control without seeking to accomplish thereby a purpose which is forbidden by the laws of the United States.

Any individual can go to the Patent Office and get any number of patents in pursuance of the law. But if those individuals, say a dozen individuals, holding patents controlling a certain industry, combine those patents for their common use, and thus create a restraint upon production, or combine those patents into a holding company for their common use, for the purpose of restraining foreign or interstate commerce or creating a monopoly, which is the next step beyond, then their act in that regard is illegal under the Sherman Act.

THE COURT: Won't you help me just a step further, Colonel Anderson? If these patents were taken out of the hands of Germany, and if there were enough to go around to every inhabitant of the United States, if there were distributed one to each inhabitant of the United States, under the powers conferred by those patents, if they were valid, they would have a restraining influence and effect upon importations and consequently upon foreign commerce, and would have made a monopoly as complete as were the patents with respect to foreign commerce; is that not so?

MR. ANDERSON: Yes, sir. Possibly that would be true if they were distributed; yes sir.

THE COURT: There can not be any doubt about it, Colonel.

MR. ANDERSON: That is right. Each man who owned a patent would have been able to put a tax on importation as to his patent.

THE COURT: As to his patent. Consequently the extent of the restraint upon importations would have been precisely what it would have been if you had bought them all.

MR. ANDERSON: That would depend upon what importation license each individual would impose. It might or might not be.

THE COURT: Now then, Colonel, we are departing from the sale into actions later on.

MR. ANDERSON: That is exactly what the Sherman Act contemplates. I may own a patent and put an importation license on one element of trade. These were both product and process patents, your Honor will recall. I may put an importation license on one element of trade—I have the right to do it under the patent law. I may own a group of patents and put an import license upon the importation from England, Germany, Switzerland, Italy, and so on, on the products covered by the group of patents. But that is a right given to me by the laws of the United States.

But, if I and a dozen other people have each a group of patents which control a certain part of a certain commercial product in the United Seates, and we get together and say, "Here, we will control all these importations and impose at the port such restrictions as will practically make importation impossible from any foreign country—and we also have the process patents and will manufacture in the United States," then by that combination for the purpose of restraining interstate and foreign commerce, and for the purpose of creating a monopoly in the United States, they would be guilty of a wrong of which each individual, limiting himself to his particular act, would not have been guilty. That is the ordinary interpretation of the Sherman Act.

THE COURT: Does your evidence offered in this case show that the defendant here has been guilty of such acts?

MR. ANDERSON: Of course, I am not undertaking to review it and the Government does not expect me to, but the evidence in this case shows that whereas on the manufacture in the United States under the process patents they imposed royalties of from two to three to five per cent. on all importations they imposed a royalty of ten per cent., whether from England, Germany, Italy or anywhere else, and that, among other royalties, they imposed ten per cent. upon the reparation dyes owned by the Government of the United States and brought into this country from Germany for the purpose of maintaining its industries amounting to $215,000, according to the present testimony; and this defendant is the only one that collected a cent of profit, so far as this record discloses, or that I know of, upon reparation dyes.

Therefore, if they combined and made a contract of sale for the purpose of putting into the hands of this agency, which was nothing in the world but an agency of the dye manufacturers of the United States, and the evidence here discloses it all these patents for the purpose of preventing importations into the United States, and the other facts and circumstances show that purpose conclusively or establish it to the satisfaction of the Court, then this contract of sale was a part of a scheme which is forbidden by the laws of the United States and absolutely void *ab initio* under the Sherman Act. That is my position.

The Court: Then that discloses more fully your purpose in introducing the minutes of the Dyes Institute?

Mr. Anderson: Yes, sir. We are going to contend that the minutes of the Dyes Institute, when your Honor comes to read them, are the most important evidence in this case, because they show what was going on from the time this was conceived until it ended.

The Court: Assuming that the defendant was a separate instrumentality and agency created at the request of the Executive Department of the Government, that it was established on lines and plans that were deemed as far as possible to prevent a monopoly, and yet that agency or instrumentality, or defendant here, did after it was created do certain acts which were forbidden by the

Sherman Act, is the redress the setting aside of the sale, or is it direct action under the Sherman Act?

Mr. Anderson: Your Honor has assumed a premise and I submit that the premise is not complete. Although it may not be a material difference, I cannot answer a question predicated upon the idea that this thing was conceived by an officer of the Government of the United States. I think the contemporaneous documentary evidence is abformerly given by these very witnesses is conclussive to the contrary, as showing that this thing was built up and developed in all its phases on the suggestion of the dye industry of the United States.

If the officers of the United States, mistaking their legal duties and obligations, entered into an arrangement with the dye industry, a contract or arrangement for the consolidation of these patents in the hands of an agency composed of all the manufacturers in this business, for the combine of those manufacturers into a group, organizing this hand to hold all these patents, not only the control of the manufacture to the extent that the patents controlled it, but to control the importation—I say that from the very inception the thing was illegal and that this contract of sale was illegal from the very time it was conceived and on the day it was executed, no matter who authorized it, because nobody could do a bigger thing than an Act of Congress might do. That is my position.

Mr. Kresel: I wish, your Honor, that Colonel Anderson had directly answered your Honor's inquiry. I should have been interested to hear it.

Mr. Anderson: I want to say something on that point.

Mr. Kresel: Your Honor's inquiry was

whether it was his contention that the act of the officers here resulted in creating a monopoly. Colonel Anderson has not answered that question. And while we are on this proposition, your Honor, I had it in mind at the first opportunity to point out that Colonel Anderson has been arguing right along that the very fact that Congress permitted the taking out of patents, it was the intent of Congress to give the holder of the patent the monopoly.

Colonel Anderson loses sight of the fact that the latest pronouncement from Congress upon the subject with reference to German or enemy-owned patents was to destroy that monopoly, since by the very Trading with the Enemy Act Congress gave to the Federal Trade Commission the power to issue non-exclusive licenses to any American citizen on those patents.

In other words, Congress by its act destroyed the monopoly that had theretofore been given to the Germans. So that if we are to judge the situation as it appeared to these officers when they put this transaction through, the fiat of Congress at that time was that the monopoly that had been given to the Germans should be taken away from them, and it is going to be our contention that it was with that purpose this corporation was organized, upon the very lines indicated by Congress in the Trading with the Enemy Act, which, at the very basis, was the issue of non-exclusive licenses on these patents so that nobody would have a monopoly.

I say I would have been interested in hearing what answer Colonel Anderson would make to your Honor's direct question. Because I cannot conceive that he would argue that The Chemical

Foundation maintained any monopoly. The Chemical Foundation is not in the manufacturing business, it has never manufactured anything. It has never turned a wheel. It is simply a holder of these patents, and deals with them, as we shall show, as it has been outlined in our certificate of incorporation.

Indeed, your Honor will find when this case closes that so far from there being a monopoly here, there is the keenest competition in this country, not only in the matter of dyes but in the matter of pharmaceuticals, in the matter of anything that pertains to the organic chemical industry in the United States.

I can well understand why Colonel Anderson did not feel that he desired to answer the direct question.

Mr. Anderson: I would like to respond to this.

Mr. Kresel: What brought about this very interesting discussion was the question whether we were compelled to produce writings as to which this witness is testifying.

The Court: Yes, but I was more interested in the underlying question of the relevancy of these facts, which seems so far afield, and I could only form an impression about the relevancy if I could have it——

Mr. Kresel: Crystallized.

The Court: Crystallize—crystallize it and get a comprehensive idea of the issues, as I have been trying to do from day to day.

Mr. Kresel: Yes.

The Court: And, Colonel Anderson, I do not understand now whether it is your contention that The Chemical Foundation is a monopoly, or by its creation, in taking over the German patents, a monopoly was created, and if it is your thought that thereby a monopoly was created, I have been trying to determine for myself as we go along, tentatively, what sort of an organization, what sort of disposition, or in what manner the Government of the United States now says the German patents should have been disposed of so as to avoid a monopoly. In answering that question, if you will—and I should appreciate it if you would answer it—tell me whether if you bought one patent and I bought another, we each would not have had a monopoly, and a complete monopoly with respect to the matters embodied in or covered by such patent. If so, what is the thought of the Government now with respect as to what should have been the disposition of these patents?

I do not ask that to inquire into the Government's purposes or plans, but in order that I may weigh that plan, and by so doing determine whether or not a monopoly is created or was created by the sale of the Alien Property Custodian.

Mr. Anderson: I will answer your Honor's question to the best of my ability. As your Honor's inquiry involves the suggestion of distinguished counsel for the defendant that I have not replied directly, I will say that in my view of the evidence in this case it shows that the purpose of the organization of The Chemical Foundation, certainly in so far as those who financed it and brought about its organization are concerned, was to control and monopolize the dye industry of the United States, both in production and distribution, first through the control of the process patents to the extent that they did control them, and, second, through the control of importations from foreign countries; that therefore the object and moving purpose in this entire transaction was to restrain the foreign and interstate commerce, to control manufacture and distribution as a step in the monopolization of the dye stuffs and chemical industry of the United States.

Now, I think I have answered your Honor's question in a perfectly plain way. Control of those elements is a process or step in the monopolization; and the monopolization may never be accomplished, yet every step in the scheme to accomplish that result is expressly forbidden by the laws of the United States.

THE COURT: Even the seizure of the patents?

MR. ANDERSON: I am coming to the patents. If the seizure of these patents was conceived and carried out for the purpose of creating that result, as your Honor has suggested that thought, I will say it may be that primarily if it could have been a sale to a proper person, as against the United States, it may have affected the seizure; but there is no person who can contest the right of the United States to seize these patents under the Alien Property Act, because the German cannot sue the United States to recover them, he being the original owner, nor can he, under the terms of the Treaties of Peace question the acts of the United States in that regard. Therefore, the act of the United States in making the seizure, even though it may have been infected, if I may use the word, by this purpose, and if it had been the act of a private person, might have been void *ad initio,* but cannot be assailed as to the United States, because nobody can sell it. It is just like a case where the United States commits a tort, nobody can sue the United States. It may be wrong as to a private person, but not as to the United States, because you have no redress. It may be a wrong, but there is no remedy.

Therefore, there is nobody here questioning the title of the United States, and there is nobody here can question the title of the United States; because the defendant claims through that title, and there is nobody outside, even if your Honor could consider that, who could question the title of the United States.

So the question of the validity of the seizure, even if done for a wrongful purpose, and assuming it might have been so done, which I am not claiming here and not discussing—because it is not before the Court and cannot be before the Court, the question of the validity of this seizure as a matter of law—it may be interesting as showing a development of facts dealing with the ultimate conspiracy and only interesting in that aspect, but if proved here to be absolutely invalid the Court could not enter a decree based on that between these two parties.

If I have made that clear I will come to your Honor's second question. Before I do that and as an incident to it, I wish to refer to the suggestion of counsel as to the Federal Trade license. Congress authorized the President and he in turn with authority of the act vested in the Federal Trade Commission the power to issue licenses under enemy patents during the war, either exclusive or non-exclusive in the discretion of that Commission. So far as I know they issued non-exclusive licenses. That was during the period of the war, but they issued them and issued them for the life of the patent. Probably they had that right, but, as so often stated, that right had been subject to the review of the Court at the end of the war by suit within one year, by the owner, for revision, for cancellation of the license, or for such re-adjustment thereof as the Court might determine to be just and equitable. Therefore, the right of the owner was absolutely preserved as against the United States, the purpose, and the entire legitimate purpose, being to make these patent rights available during the period of the war, if it were deemed desirable by the Federal Trade Commission to issue licenses. But the whole matter was left in the hands of the Courts of the United States, which have never yet failed to respond to their duty in that regard, to do justice to the enemy at the end of the war.

They had to charge reasonable royalties, and those royalties went into the Treasury of the United States, held as a fund, to be paid ultimately to the owner, whoever that owner might be determined to be. If that royalty was not reasonable it was revised by a Court of Equity, and there at last the owner, although he was the enemy whom we have heard so much about, might come into the courts of this country and have his rights protected when peace was once more restored.

But what is the situation here? Entirely different. I will not go over that. But now I come to your Honor's question as to an individual patent. If I have not made myself clear I want to make it clear that I agree with one thing that Mr. Palmer said while he was on the stand, and possibly with a good many others, but the one is that the whole value of the patent is in the monopoly right. That is all it is. You take that away and there is nothing left—except if you grant nonexclusive licenses to anybody and reserve title to the patent, you still have the right to collect the royalties that people will be willing to pay, and therefore, it does not necessarily follow, though it may and I think does follow in these cases, that it is largely destructive of the value of the patent, if the patent be of such character that non-exclusive licenses will increase the production, and even at the low rate which would thus be obtained, give quantity production in the place of small production, and thus make a small royalty greater than the profit on a small production—in that case it might be that the value of the patent to the owner would still be very great. But those are questions of fact in each particular case.

As to the monopoly situation, we will assume I own a patent and, as your Honor suggested, you buy a patent. We will assume that it was a patent on an essential dye product, that is, an importation product. I would have the right, if it were a product patent, to levy royalty at the port on all importations of that patent. If it were a process patent, I would have a right to charge a royalty for the manufacture in the United States, and, assuming it to be broad enough, nobody could either manufacture or import except by paying me a reasonable royalty. As a matter of fact, I might even make it an unreasonable royalty, because Congress gives such patentees large rights in the interests of the developing of industry. You do not have to use the patent; there is no obligation to use it, if you do not want to. The benefit to the public is that there is full use after seventeen years, and Congress has determined that seventeen years is a reasonable time, so we cannot inquire behind that.

But there I have the right to control a certain product. That principle might be carried possibly to the point that if I got patents individually, was so brilliant that I could invent and devise every known element in a certain large and valuable part of the business of this country, I might grow enormously wealthy, just like Henry Ford has done by inventing the one ignition system such as he has controlled, and so might others who have not allowed anybody else to use their patents. But that is the law. However, if I own forty-five hundred and another owns forty-five hundred, or a thousand of us own together groups of patents which combined make up forty-five hundred and control, as alleged in this report of Mr. Palmer, practically control and hold by the throat the dye and chemical industry of the United States through those patents, and as five hundred or a thousand of us own them we say, "Here, there is no use of one of us trying to levy one toll on one of these products and another levy another toll, which will drive the royalty down, the thing for us to do is to have a uniform royalty among us all and a uniform price in the country, and also inside, in its manufacture, and therefore we will combine all these into a corporation which we will call a corporation greatly beneficial to American industry."

I know of no place where terms of patriotism and public spirit are more extravagantly used than in these minutes of these great corporations, always as a reason for actual and improved public service. Possibly it may be true. But we combine them all and we control the importation of those essential products into the United States, we fix a uniform royalty, we eliminate competition, we cannot cut under each other, one cannot bring it in at 5 per cent. and the other charge ten, and thus produce competition which reduces the royalty charge, but all fix the rate at 10 per cent., and if that does not cut it all out we charge fifteen—as Richelieu says, it is like glass, the sun shines through it, the purpose is too obvious to discuss, and it becomes a restraint upon foreign commerce from its very inception and, actuated by that purpose, it is therefore illegal.

THE COURT: Isn't that the purpose of Congress in the Trading with the Enemy Act requiring the Americanization of the chemical and dye industry?

MR. ANDERSON: I am perfectly willing to concede that Congress did not require but authorized There is not a requirement in this act for the sale of a piece of property. These patents could be held by the United States until Congress acted. They were in its hands and were not ready to substitute some other agency in the place of our Government to fix our policies and exercise its functions. They had these patents, they had complete control of them. They have reserved control of them in the act. Why did Congress have to get rid of them?

THE COURT: I beg your pardon?

MR. ANDERSON: Why was it necessary to get rid of them? I do not mean to ask your Honor a question, but that is merely argumentative.

THE COURT: No, you have disclosed your thought. But unless it was the purpose or thought of Congress that some of them, or all of them should be disposed, why authorize either a public or private sale?

MR. ANDERSON: We are getting now to the act and I will answer your Honor's question very briefly. It was urged in Congress, in the very parts of the record introduced here by counsel, and as to which others will be introduced by us since they have started it, and your Honor will find when you come to read it, that originally until this act went to conference it did not have any provision for private sale, it was purely public sale until it went to conference——

Mr. Kresel: It did not have any provision at all.

Mr. Anderson: Originally did not have any provision except to prevent waste. Then when the amendment asked by Mr. Palmer for the purpose of Americanization of American industry, whatever that may mean, and I think I understand what it means, it was simply to sell this property as your Honor would foreclose a mortgage on a railroad, and turn it over to another purchaser who could develop it free from the restraint of Courts and substitute in its place its value. The record shows that. That is a perfectly legitimate thing.

The Court: Do you mean in the construction of a statute a Court should be restricted by what Mr. Palmer said?

Mr. Anderson: No, sir; I do not. I think it was absolutely illegal testimony on the subject, and I objected to it on that ground. But I am arguing now from my construction. I said I agreed with his view on that one point there.

The Court: I thought you were giving me that as an answer to my inquiry.

Mr. Anderson: No, sir.

The Court: If Congress intended that the patent should be seized and not sold, why insert in the Trading with the Enemy Act authority to sell at public or private sale, or either?

Mr. Anderson: Now, sir, I will answer your question. It was represented to Congress, and appears in this record, that when the Act of March 28, 1918, was passed there was no more talk about patents than if there was no such thing. I would ask that your Honor keep in mind that the question of patents never arose until after the war was over in the real sense. This whole thing was after the war was over. All this very eloquent discussion by the distinguished gentleman who was on the stand, in March, 1918, about the Germans marching to the channel ports, was just one year before this took place, and at the time this transaction under review by this Court took place the Germans had surrendered and we were in control, the enemy on the run.

THE COURT: But won't you answer the question——

MR. ANDERSON: I am coming to the question. It was represented to Congress and stated by Mr. Underwood on the floor, which statement has been read here, and I will introduce another one to the same effect, that the Conference Committee put on this provision, that the President might direct a private sale for the reason that conditions might arise in which it would be advisable to make a private sale, where the expense would be too great for a public sale, where there was some particular circumstance so that you could make a sale for better terms in a private sale than you could in a public sale, and that since the amendment putting it in conference, and which was being earnestly fought, required the President personally to state his reasons for the private as distinguished from a public sale in writing, that it would be an adequate protection to the owners of this property. That was it in substance.

Your Honor will find we have introduced, and we will further introduce since the change of agreement on the record, Executive orders in which the President has ordered the sale of a few cases of tobacco or some bales of cotton, things of that kind, stating specific reasons why a private sale would be better than a public sale, and Mr. Palmer urged in one of his letters to the President that it was very desirable, and it is in the record here, to have the power at least to make a private sale in some instances, because in qualifying directors in these various 30,000 corporations that he had, he would transfer a few shares of stock to the directors and sell it to them, and he could not sell it at public sale. Those are the reasons for the provisions in the act.

THE COURT: I am not concerned with the provisions for the private sale at this moment, because as I understand you, Colonel Anderson, you say that if this Chemical Foundation had been chartered under the exact terms and conditions under which it was chartered, and these patents had been put up singly by the Alien Property Custodian and bid in by The Chemical Foundation, there would be no difference in the nature of the monopoly thereby created, and therefore no difference in the voidability——

MR. ANDERSON: On that particular point, as to the anti-trust law, it may be that the purchase of any number of patents might have had that effect, but I do not mean to say that that would be analogous to the facts disclosed by this case in any sense. In that event the act provided that the Alien Property Custodian, with the approval of the President, could reject any sales, and if he saw a condition being brought about which he thought was dangerous to the welfare of the country, or in violation to its laws, he could have rejected the sale, just as he could have done in the Bayer case.

THE COURT: Then Congress did give to the President and the Alien Property Custodian the right to exercise some judgment for the protection, in the public interest and welfare of the country.

Mr. Anderson: The next clause of the act after the one we have had under discussion says that the President may, stating his reasons therefor in the public interest, in writing, authorize the Alien Property Custodian to reject a sale and resell. Why? Because the purchaser may not be a satisfactory person, or because the price may not be satisfactory. There are any number of orders in which the President did authorize the rejection of a bid and a re-sale. Therefore, there was abundant protection against monopolistic condition, and the sale individually of these patents could have been adequately protected there, aside from the fact that the purchase individually from the Alien Property Custodian would have meant the absence of that combination, which is a largely essential element in the restraints of trade forbidden by the Sherman Act.

The Court: Then as I understand you, Colonel Anderson—I do not want to prolong this discussion, but want to get back to the testimony——

Mr. Anderson: I am only too glad to answer your Honor's question the best I can.

The Court: Yes. But if I understand your answer to my inquiry as to what in your judgment would have been a better plan or a plan that would have prevented the monopoly, your answer is the non-sale of the patents. Am I right?

Mr. Anderson: That is my primary answer, and my secondary answer is that if the Alien Property Custodian wanted to sell these patents, to have put them up at public auction in the manner that the law prescribed primarily and contemplated, at the proper proceedings to ascertain their value, and then, if they were bid in all by one person or in such a way as in his judgment was prejudicial to the public interest, he could remedy that condition by having the bid rejected in the manner prescribed by the act, in whole or in part. He had absolute control over the bid, as much as your Honor has in the sale of a piece of real estate by a commissioner, which is nothing but an offer and not a sale until your Honor confirms it.

The Court: Then you would have him substitute his judgment in a private sale for the judgment of the President?

Mr. Anderson: No, sir; if the President wanted a private sale and decided to authorize it, stating adequate reasons in writing, with knowledge of the facts, and conformed otherwise to the terms of the act, then that was a question for him to decide within the limitations of the act; and when he decided it, he must make a private sale and not destroy the property and give it away. He had nothing to do with the sale, he only had the power to authorize the Alien Property Custodian to sell, that is all. The President had no control whatever over the sale, except to do two things; one was to enter an order authorizing a private sale, by the Alien Property Custodian and not by himself, for he had nothing to do with it, and second, if the Alien Property Custodian presented to him facts to show that the bid ought to be rejected, authorize him to reject the bid and sell it again. But the sale is the act of the Alien Property Custodian in every instance; the President has nothing to do with that.

Congress vested in the Alien Property Custodian direct the power of sale, not the President, and not through the President. The President's powers and duties are very limited under that section of the act—very.

If I have answered your Honor's question to the best of my ability, I want to thank you for your patience, for I have probably been longer than necessary. But what plan might have been followed is not for me to say. All I am arguing is that this plan was not the right one and was not a legal plan.

The Court: If I could use that as a check in determining whether the present conditions under which the patents were sold was a violation of the act——

Mr. Anderson: Of course it is a side-light, I recognize that, and that is the reason I tried to answer your Honor as well as I could.

The Court: I am prepared to rule on the question.

Mr. Kresel: I have nothing further to say.

The Court: You may continue your answer, Mr. Garvan.

Mr. Kresel: Just to remind you, Mr. Garvan, my recollection is that you were testifying—well, I have not any recollection just exactly what you were testifying about.

The Court: He was testifying about the information——

A. (Continuing.) Yes, the activities of the German agents here as part of the espionage system of the German Empire. The point I had not got to is that from my information there were many evidences that this combination in Germany into the one cartel which was in progress as shown by the book of the Senate of 1910, was intended to and aimed, after it obtained a monopoly of the dye industry, to use that monopoly to assist each other competing industry of Germany with the manufacturers of the world, by refraining from giving the latest dyes, and so forth, to the carpet manufacturers of this country, they would be in a position to offer advantages to the manufacturers of Germany.

Q. 100. May I stop you there a minute? You spoke of espionage? Did you have before you at this time any examples of such espionage, and if so, will you now mention them?

A. Yes, we had many. The principal one was the head of the chemical agents in this country.

Q. 101. Who was that?

A. The late Dr. Schweitzer, Dr. Hugo Schweitzer, who was an American citizen, and we found in his papers directions from the German Empire that he become an American citizen for their purposes here. We found that he had his number from the German Secret Service. I have forgotten it—nine hundred and something odd thousand. For the three years from 1914 to 1917 we found many evidences of his intense activity.

Q. 102. For example?

A. For instance, he was the first man to meet Dr. Albert when he came to this country, and he was the last man to bid him good-bye, and Dr. Albert left about two million dollars of the propaganda fund of the German Embassy in Schweitzer's hands to continue the disposition of. Dr. Schweitzer was the head of the German Publication Society for the purpose of putting out the literature of Germany. Dr. Schweitzer, at the request of the German Government, attempted to corner the phenol of this country. Phenol is carbolic acid, and it turns either to the right or left into aspirin or into picric acid, which is the base of the explosives.

Q. 103. Stop there a minute, please. Upon that last transaction, did you have any writing before you?

A. I did.

Q. 104. What was it?

A. I had the praise of Dr. Albert for the great accomplishment for the Fatherland which Dr. Schweitzer had accomplished in this country.

Q. 105. Now please look at page 511 of the Finance Committee report, and state whether or no that is an extract from the letter that you speak of?

A. It is.

Mr. Anderson: Where is the entire letter, do you know?

Mr. Kresel: There again, Colonel, that letter is in the Alien Property Custodian's office, or in the Department of Justice. We do not know. We did not take these records, but they were introduced before this Congressional Committee.

Mr. Anderson: By whom, Mr. Kresel? By whom were they introduced?

Mr. Kresel: It was introduced by Mr. Garvan when he was being examined, at page 511 of this hearing. Do you find it?

Mr. Anderson: Yes.

Mr. Kresel: I now offer in evidence this extract from Dr. Albert's letter, at page 511.

Mr. Anderson: I object to it upon the grounds stated already, and upon the further ground that it is only part of the letter, and the whole letter should be produced or all rejected.

Mr. Kresel: We state, your Honor, that we have not the possession of that letter. It is an official document in the possession of the Government.

Mr. Anderson: To which I respectfully reply that the record as stated now shows that it was introduced by Mr. Garvan before this committee and must have been in his possession.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 80." (*See Exhibits, Vol. IV, page 2573.*)

Mr. Kresel: I read the extract, as follows. This is from Dr. Albert. (Reads letter.)

Q. 106. Now, Mr. Garvan, please proceed, but very briefly, if you have anything further to say as to the information you have with reference to espionage?

A. Dr. Schweitzer was the head of the group that purchased the Evening Mail as an organ of the German Government, and there were many, many activities.

By Mr. Anderson:

Q. 107. Do you know that of your own knowledge, Mr. Garvan?

A. Yes, certainly, it is in the evidence in the case of Rumeley—the prosecution of Rumeley by the Department of Justice. All you have to do is look at the record of the trial, the testimony there.

By Mr. Kresel:

Q. 108. That is all right, if you are answering the Colonel's question. Now, will you proceed?

A. There was Dr. Scheele, another chemist.

Mr. Anderson: I want to make this suggestion. If he is testifying as to the record in another lawsuit, I call for the production of that record.

Mr. Kresel: I thought I would like a ruling from your Honor on this. Our contention is that upon matters of this nature the best evidence rule does not apply. It is only where the question is directed directly to the issue involved in the case.

The Court: I ruled on that on the prior objection.

Mr. Kresel: I am sorry. I still understand Colonel Anderson to argue the contrary.

The Court: He is stating his objections; but I have ruled on it and made the same ruling here.

Q. 109. Will you proceed, Mr. Garvan, but be brief about it.

A. The activity of the other chemists in connection with the dye interests here. Dr. Scheele, of Bogota, New Jersey, was arrested as the manufacturer of the bombs which were attempted to be attached to our ships in the harbor of New York.

Dr. Strauss, the head of the—the name has escaped me now—under the guise of a chemical company in New Jersey, ran the German-Jewish propaganda, the propaganda among the German-Jewish people of this country.

There were many of those activities that were all rehearsed, or most of them, before the Overman Committee in the Senate of the United States.

Q. 110. What, if anything, did your investigation disclose as to whether or no the Germans had taken out United States patents covering dyes, chemicals and pharmaceuticals?

A. It showed that they had; that they maintained a very extensive organization, not only to patent their own inventions in Germany, but to observe the progress of science anywhere in the world and, if possible, anticipate that discovery of science by the taking out of what we call anticipatory patents.

Q. 111. What did your investigation disclose as to whether or no the Germans worked their United States patents in the United States?

A. They did not.

Mr. Anderson: Now, one moment, I object. If the question is as to what the investigation disclosed, I presume this evidence is intended to be a statement of fact, and if that is the case, the question of whether the Germans worked their patents in the United States cannot be proved by this witness. If it is intended to prove information that he had derived from sources that he has indicated, why, your Honor has already ruled on it and covered my objection. If this is intended to prove what was a fact at that time, then it must be proved by people who know the facts.

Mr. Kresel: It is intended to prove, sir, primarily, what information this witness had before him. It may also be valuable upon the question of proving the fact, because, as I am going to proceed with this witness, I shall show that his information as to whether or no they worked these patents came from official sources, reports made by the Tariff Commission, for instance, to the Government, which is prima facie proof of the facts. But I have got to go step by step. Has the question been answered?

The Court: If it is a source of information, the evidence cannot be rejected. Whether you may use it for any other purpose would depend on whether you can show that you are entitled to use it for any other purpose. You may proceed.

Mr. Kresel: Very well; I will undertake that. Has the question been answered?

(Q. 111 and answer thereto repeated as above recorded.)

Q. 112. Did you or did you not convey to Mr. Palmer, as Alien Property Custodian, the results of the investigation that your bureau had been making?

A. I did.

Mr. Anderson: One moment. I move to strike out that answer until I have had a chance to object.

Mr. Kresel: Yes, I consent to strike it out.

Mr. Anderson: I object on the ground that if they want to show what they conveyed to Mr. Palmer, he must say what facts he reported and not the conclusion that he conveyed information that his bureau had collected. That is a pure conclusion, and may cover twenty volumes of stuff. It may cover one volume; it may cover one fact; it may cover a million facts. If he wants to show that, he must show what facts this gentleman reported to Mr. Palmer, and how he reported them.

THE COURT: I think the objection is well taken and the witness should state the facts that he disclosed to Mr. Palmer.

Q. 113. Mr. Garvan, will you please state what, if any, facts you reported to Mr. Palmer with reference to the information that you had obtained in these investigations? Be as brief as is possible under the circumstances.

A. I reported to Mr. Palmer probably twice a week; at least once a week. I would go to Washington and report what I had learned in the meantime.

I reported to him that the Germans had a monopoly, before the war, of the German industry—of the dye industry; that they had taken out this great number of patents and had not worked them; that they used these patents as a club, not only to prevent the development of American manufacture, but to make our consumers buy goods from them alone and to crush out the competition of Switzerland or of any possible competition by any other country that might attempt to make them.

MR. ANDERSON: I move to strike out the evidence on the ground that it is a conclusion of the witness and not facts. Whether they used the patents in a certain way is not competent testimony, and was objected to very earnestly when I was undertaking to prove some similar facts, and probably soundly. As to the Germans' undertaking to create a monopoly is a conclusion. As to whether they were excluded from Switzerland is a conclusion. If he reported any specific fact to Mr. Palmer, then it would come within the question; but the facts and not his conclusion from the facts is the thing that must have been reported.

The Court: Is there a dispute between counsel as to the situation with respect to the German dye and chemical industry in America, in February, 1919, and April, 1919, and for five years preceding? It seems to me that this case is getting long enough without differing on facts as to which there can be no dispute. It ought to be well known to the Government of the United States and to this defendant precisely what that German chemical and dye situation was in this country ending with the date of the last assignment of these patents, whenever that was. If that is in dispute, let us have it on both sides. If there is no dispute, why add thousands of pages to this record to determine it. Cannot counsel agree upon it?

Mr. Kresel: I am very glad that your Honor has made the suggestion. I should not think that there would be any dispute. The Tariff Commission reports and the Norton report which I put in this morning, which are official reports, state the situation exactly.

The Court: I do not know what the situation was, and I am not suggesting that you agree; but if there is no reason for disagreeing, then why take up the time of all of us for a week and add thousands of pages of testimony for the Appellate Courts to review?

Mr. Kresel: I think your Honor is entirely correct. I thought that Colonel Anderson would not object to my simply asking the question whether he passed the information on, because that would have avoided this long answer. But if Colonel Anderson insists, then I have got to go on.

Mr. Anderson: If your Honor please, if this evidence has any materiality whatever, which I cannot see, but which I recognize others may see, then it is of sufficient importance to investigate it. If it has no materiality, if we are just going to deal with conclusions and have argument from gentlemen on the witness stand, then it is a waste of time. Therefore, I submit that we must either take the evidence legally or not take it at all. The case ought not to proceed that way. I frankly say, in answer to your Honor's question as to what was known by the Government of the United States, I cannot say, because it is too large an institution.

So far as I am concerned, I have regarded all this as utterly immaterial in this case, and have not wasted my time studying it. I do not know a thing about it. I assume the Germans did all they could to protect their interests and develop their position, just as the English and the Swiss and the Americans did; and that is all I know about it.

The Court: It seems to me, Colonel Anderson, that the people making the sale of these patents had to do it either with intelligence or mechanically, if they were sold, and the Trading with the Enemy Act authorized their sale. If this was a purely mechanical proposition and the Alien Property Custodian in making the sale, or the President in authorizing a private sale, did not intend to use any judgment or wisdom or consider the welfare of America, not only the immediate welfare, but the future and military welfare and possible independence of America, that is another thing.

If they were entitled to consider (and I am not saying that they were. I understand that your contention is that no such power was authorized by Congress when it passed the Trading with the Enemy Act or the amendments thereto), inasmuch as we have admitted all evidence under the general rule, it seems to me this evidence will have to go in. I do not mean the conclusion of what he stated to Mr. Palmer, because he will have to state the facts; but I cannot see how I can now say that the matters which were necessary to be considered for the preservation or protection of America (not any specific American industry, possibly, but the American Government) with respect to the German chemical and dye patents and industry, might not be material.

I do not want to get into a discussion of all those questions. I will make a specific ruling that this witness, in stating what he told Mr. Palmer, his superior, will have to make a statement of fact and not a conclusion of fact.

Q. 114. Mr. Garvan, you have heard the Court's ruling. Will you now state what facts you told Mr. Palmer with reference to the investigation made by you and your department of the German relation to the chemical industry of the United States? I will put it that way. And please do it as briefly as possible.

A. I told him that the German Big Six had a monopoly of the organic chemical industry of the world.

MR. ANDERSON: I object and move to strike out the answer.

Mr. Kresel: Your Honor, I do not think that is a conclusion.

The Court: That is not in the ruling. I am not concerned here as to whether he detailed his own conclusions to Mr. Palmer; but the thing that this witness has now been asked to state, and which I have ruled that he can state, is what he told Mr. Palmer. If those were conclusions, then he may show in summing up that they are unimportant; but it is the same ruling that I made with respect to Mr. Palmer and what he told the President.

Q. 115. Will you proceed?

A. I told him that through that monopoly the progress in German business had been made which placed her in the economic position that she had in the world before the war; that her economic structure was based on the strengthening and developing of all her industries by that organic chemical industry.

I told him that her bringing the war was based upon that organic chemical industry; that it was not until the fall of 1913, when her dye plants had perfected their Haber process plants and made them independent of the Chilean nitrates, so that England's blockade would not be feared, that she began to seriously prepare for the final steps before the declaration of war; that she could not have carried on the war for but a few months had it not been for the developments of the German dye factories; that the poison gas of the war had been prepared and worked out in the German dye factories; that the greatest proportion of her ammunitions during the war, with which she fought the war, had been made along the Rhine and the Ruhr in the organic chemical industries of Germany; that it was the power with which she was waging the war; and that the next war would begin where this war left off, and would be to an even greater extent a chemical war than the past war had been.

I told him that we had for forty years neglected the organic chemical industry in this country, both in our schools and in our colleges, and that public opinion had no realization of the great and overwhelming relation of this question to our life.

I told him of the history of salvarsan and what the suffering had been in this country because of our dependence upon Germany for that drug, and the same as to luminon, which was the only known alleviative for epilepsy that we had. I told him that our doctors were insisting that we be freed from the domination of another country; that I had interviewed many of them in the Government service, and the men who had had to do with our troops, and so forth, and so on, and they had described to me conditions which they insisted should never exist again. I talked to him again and again.

Mr. Anderson: Will you state about what time?

Mr. Kresel: I am coming to that.

Mr. Anderson: Before you ask the next question, in order to get the record absolutely straight, I move to strike out each statement in the foregoing answer and each sentence thereof as pure hearsay and being otherwise incompetent, for the reasons which have been stated already in the objections to the question and which will not be repeated. I understand your Honor's ruling. I merely want to note an exception.

The Court: Motion denied.

Q. 116. Will you state, Mr. Garvan, please, the earliest date that you can recall, when you discussed with Mr. Palmer these German patents covering the dye and pharmaceutical industry?

A. My recollection would be that it was about January, 1918. In the investigation of the Bayer Company we found that all their patents were not held by the Bayer Company, but that they were in another separate company, the Synthetic Patents Company; and that was our first introduction, as I remember it, to the general discussion of the patents held by the Germans in the organic chemical industry particularly and the dye industry.

Q. 117. Do you remember the date of the sale of the Bayer plant?

A. Yes, sir.

Q. 118. Do you remember what date it was?

A. Yes, sir; December 12, 1918.

Q. 119. What happened that day with reference to that sale?

A. On that afternoon I was in New York in my office at Forty-second street; that is, in the A. P. C. office at Forty-second street. The name of the purchaser was telephoned to me from Rensselaer, where the sale took place at the plant of the Bayer Company. I took out the corporation directory to look up who the Sterling Products Company were, as they had never disclosed themselves as a possible bidder before the sale. We knew nothing of them.

Q. 120. Was the Sterling Products Company the successful bidder?

A. The successful bidder. I looked them up and found that the Board of Directors were all German names.

Q. 121. You need not mention the names unless counsel insists.

A. As a matter of fact, in justice to them, I should say that they were the finest type of Americans down on the border line of West Virginia and Ohio for over a hundred years. But their names were German. They were unknown to me. That started a discussion between Mr. Choate and myself and others at the possibility of having sold that chemical plant to people who might turn it back to the Germans or people who might then go on and buy the properties of the other five agencies who had no real estate, no assets at all except some Liberty bonds, which would not be sold, and furniture and so forth of sales agents.

Q. 122. You spoke of agencies. What agencies are you now referring to?

A. The Kalle, the Badische, the Cassella and the Berlin, the Big Six.

Q. 123. The United States agencies?

A. Their United States agencies here. That was the inception of the idea of The Chemical Foundation that afternoon, the shock that it gave us when we saw that we had sold that company to a bunch of stockholders whose directors all had German names. It was an alarm which was unjustified, but it started us to look into the general situation.

Q. 124. Well, did you discuss the matter with Mr. Palmer?

A. I did, immediately. I went to Washington either the same or the next day.

Q. 125. Please state briefly what discussion there was between yourself and Mr. Palmer with reference to the Bayer sale and the relation of that to the outstanding German-owned United States patents to the organic chemical industry?

Mr. Anderson: Please have him state the time, place, and persons present.

Q. 125 (continuing). Yes, give the time, the place, and the persons who were present?

A. My recollection is that it was within forty-eight hours after the Bayer sale, on December 13th, 14th or 15th, possibly, after the sale.

Q. 126. 1918?

A. 1918.

By The Court:

Q. 127. Where, and who was present?

A. In Washington, and, as far as I recall, there was no one present but ourselves.

By Mr. Kresel:

Q. 128. Please give us the conversation?

A. I told him of my experience of the afternoon and the line of thought which it had developed in me. I told him of the fact that the Badische agency had changed hands, that is, that they had formed a New York corporation to take over the office furniture; that they had liquidated the old Badische Company, so that when we came to sell the Badische Company there would be nothing there to sell except the cash in the treasury, Liberty bonds, and the patents.

I told him that the same thing was true as to the Berlin; to a lesser extent, I think, of the Kalle. I think they had a few goods on hand. But none of them had any plants. I said that heretofore we had looked up the patent situation with the idea that it would be cleaned up by selling the Big Six agencies over here, but it was perfectly apparent that the situation had changed now and that the purchaser of the Bayer Company, having paid $5,000,000 for that property, which was a great real estate property, a great growing factory with its great product aspirin, was in a position where, for a very moderate expenditure of money, he could come along and buy the patents which were put up on the five or six German agencies that were coming on for sale, which he would have, together with the 1200 patents which had gone with the Bayer Company, without any assurance on our part that there would ever be any development, that they would not be transferred to the Germans after the war, and that possibly all our work, as far as the creation of a chemical industry and assurance of it in this country was concerned, might be in danger. But there certainly would be that danger if we ran the risk of having the one purchaser of the Bayer Company, where there were real assets, in a position to come right along at our sales and buy up the patents as they were sold, with the remaining agencies and become the sole owner of Germany's hold on America with no power of the Government to control the use of it by that purchase.

He said to me that he had been thinking the same thing or along similar lines. He told me to go and see Mr. Choate, who was our expert on those things, and told me to consult Hoguet, who was a patent man; that neither Choate nor I knew anything about patent law; and to go and see what we could do to formulate some plan; that we must avoid a monopoly.

Q. 129. Is that what he said?

A. Yes, that we must avoid the monopoly; that the President had insisted that in the sale of this property we should be careful to not tend toward intensifying even any apparent monopoly that there existed in the country or to create any monopoly. That was the policy of the office.

He said that we must make sure that any big company in the dye business did not get a chance to crush out the growth of a general and broad industry by getting possession of the patents which might control the development.

He told us to go off and work out something and come back and report.

Q. 130. Did you then consult with others about the situation?

A. I did.

Q. 131. With whom did you consult?

A. I consulted with Mr. Choate. I consulted with Mr. Hoguet. I sent for Dr. Herty who was at that time the editor of the Mechanical & Chemical Engineering Magazine. I consulted with many in the industry. I consulted with Dr. Matheson who had been the Cassella agent for some thirty odd years but at that time had become an American manufacturer and was, I think, one of the largest if not the principal owner in the National Aniline. I consulted with Mr. Poucher who was the representative of the duPont Company. I consulted with Mr. Merz of Heller & Merz. I consulted with Mr. Jeffcott of the Calco Chemical Company. I consulted with Mr. Wigglesworth of the General Chemical Company. I consulted with every one—I think Dr. Bogart of Columbia—I am not sure as to whether I did on this specific point—but every one I could think of that could give us any light on the subject.

Q. 132. Please state whether, after these conferences with the representatives whom you have mentioned, you had further talks with Mr. Palmer upon this subject?

A. I did. I went back to him and told him that we talked over some kind of a trustee corporation. First we discussed the Government buying the patents, but that did not seem to us to promise any progress, that is, to make these dyes under these patents; that they only represented some five per cent of the dye production and to make them meant millions of dollars of research and large investments of capital; and that the industry said that they would absolutely refuse to invest their millions in research or development with the patents in a condition where, if there came a wave of sympathy after the war, they could be given back to Germany, and they be left with their investment and their plant and the control of them back in German hands.

I told him that the industry said that they already had licenses from the Federal Trade Commission; that both of the biggest companies had taken out almost a blanket license for these vat dyes, which are the only ones that are of moment in the patents, and that they were loathe to go ahead with any scheme as they felt themselves protected by that license. Both the duPonts and the National Aniline had licenses from the Federal Trade Commission.

I told Mr. Palmer also that Mr. Matheson told me that he had been a bidder for the Bayer Company and that he had his experts value the patents.

Mr. Anderson: I object to this, if your Honor please. If they are going to try to prove this as a fact, I want to object to it because it is going into valuation of property and I do not think hearsay evidence is admissible on that subject.

Mr. Kresel: Why not, Colonel?

Mr. Anderson: Of course, I am taking the position that none of this evidence is admissible on that ground, that is, hearsay. But when you go into the question of value, which is a question on which there apparently seems to be some difference, it does seem that if Mr. Matheson had any knowledge of value, he could be called. Before determining the value of the Bayer patents, you would have to have some idea of what they were; and what Mr. Matheson may have told Mr. Garvan and Mr. Matheson's relations with the property are not known, and what Mr. Garvan told Mr. Palmer is certainly no evidence of value.

Mr. Kresel: But, your Honor, when you come to consider the question of value, we have a right to say what information Mr. Garvan and Mr. Palmer had upon that; and if Mr. Matheson went to Mr. Palmer and said, "Mr. Palmer, these patents are worth a million dollars", that is material to the issues here. We do not have to call Mr. Palmer or Mr. Matheson. And, if Mr. Matheson said, "They are not worth a cent," we have a right to show that.

If you want to call Mr. Matheson to show that he did not say that, you are at liberty to do it. All we are showing is what information we had. We are entitled to do that.

Mr. Anderson: I have noted my objection.

The Court: The same ruling as I made in the case of Mr. Palmer that the information which he gave to the President was admissible. I will likewise admit any information that was given to Mr. Palmer with respect to the patents.

This brings us to the recess hour. We will take a recess until one o'clock standard time.

(Recess until one o'clock Standard time.)

After Recess.

Q. 133. At the time we took the recess, Mr. Garvan, you were telling of a conference with Mr. Palmer, and you had reached the point where you were telling him about Mr. Matheson and what he had said with reference to the value of the patents. Now, have I given you sufficient connection with the other?

A. Yes.

Q. 134. Will you proceed now?

A. Mr. Matheson told me about the license that they had taken out from the Federal Trade Commission, and then I talked with him about the Cassella patents, which he knew about.

The Court: Just a minute. The witness is now saying he talked with Mr. Matheson. Your inquiry was as to what he told Mr. Palmer?

Mr. Kresel: Exactly.

A. (Continued.) I told Mr. Palmer as to what Mr. Matheson had said. He said that he had been a bidder, or his concern had been a bidder for the Bayer Company, where 1200 patents had been sold with the plant. He had had his chemical experts value those patents before he bid, and they had valued those patents at $10,000. He did not see why they should pay a large sum for the remaining patents; that there was nobody who knew how to work them; that they would have to spend millions of dollars in research to rediscover how to work them, and the most they would give them would be freedom to develop without interference after the war by the Germans, but if I could induce all the industry to go into the thing, why, they would go along as a patriotic duty and put up whatever was their share, whatever they all decided between them was their share of the underwriting.

Q. 135. Have you stated substantially all your conversation with Mr. Palmer on this occasion?

A. I told him also that I had talked with all the different representatives of the industry.

Mr. Anderson: Just state when that appeared, will you?

A. (Continuing.) I should think that that probably was somewhere along after the middle of January.

Q. 136. What year?

A. Of 1919. I told him that I thought the industry would go along with his ideas, and he then stated to me the conditions that we would have to exact from any corporation that was to be formed to take them over.

Q. 137. What did he say about that?

A. He said that there would have to be non-exclusive licenses open to everybody, either at present in the chemical business or who might go into it in the future; that it must be absolutely iron-clad against any possibility of combination or monopoly on anybody's part.

He said that a free license would have to be given to the Government, both releasing them for past infringement, and to allow them to either manufacture themselves in case of war, or for use in peace, or have manufactured for their own use.

He stated that it must be a non-profit-making institution; it must be so organized that no individual got any profit out of it, except what they earned by developing the industry and selling the products which the patent would allow them to sell.

He said the stock would have to be trusteed and would have to be trusteed in the name of the sales committee who had been with him throughout the war and who fully understood the necessity of guarding against the return of these properties to the Germans.

Q. 138. After this talk, did you again have conferences with the representatives of the industry?

A. I did.

Q. 139. Can you place the date? How soon after this talk with Mr. Palmer?

A. That was after they had been down and talked to Mr. Palmer. It was some time in February, the early part.

> Mr. Anderson: Now that the subject has been changed may I interrupt just a moment. I know your Honor's ruling. I merely want to move to strike out the evidence of this witness as to any statements by Mr. Matheson as to value, and also to strike out the alleged conversation between himself and Mr. Palmer, and Mr. Palmer's conditions.
>
> As to the first part of the motion, it is, I

think, covered by my objections already made. As to the second part, these negotiations, whatever they are, have been merged into agreements which are in writing and which speak for themselves. This motion is based upon these grounds, as well as the general and specific objections heretofore taken. I understand the situation. I merely want to make the record clear.

The Court: I understand that the allegations might conceivably make a conspiracy. I do not say that they do, or will, but it is possible to conceive that they might. For that reason the objection is overruled and the evidence will be received.

Mr. Anderson: It was not so intended, sir. I will say that.

The Court: I mean, Colonel Anderson, the reasons leading up to this transaction; not your reasons.

Mr. Anderson: Oh, I misunderstood your Honor.

Q. 140. Will you state now what conference you had with the representatives of the industry early in 1919, as you say?

A. At one of the next meetings——

Mr. Anderson: Mr. Kresel, when you say "representatives of the industry", will you have him say who was present, when and where, and who spoke?

Q. 140. (Continuing.) Please state as near as you can recall who was present and where the conference took place and when?

A. It was sometime along the middle of February. We had a very large meeting at my office.

Q. 141. Where?

A. At 42nd Street, New York.

Q. 142. Please state as near as you can recall who was present?

A. It would be impossible for me to state them all.

Q. 143. State as many as you recall?

A. As to who was present, I have only my recollection. I have a recollection of Mr. Poucher and Judge Laffey, two or three representatives of the National Aniline—which ones they were I would not be able to state because I saw a great many of each company. I think Mr. Jeffcott of the Calco Chemical Company was there, some representatives of the Newport Chemical Company, some representatives I think of Sherwin-Williams; I think Mr. Merz; I think Mr. Wigglesworth; I think Mr. Henry Howard, secretary of the General Chemical Company. There was quite a large group of them at that meeting. Mr. Choate was there, I think. I am positive Mr. Choate was and I think Mr. Hoguet was. I am not positive.

Q. 144. You say that this meeting took place in your office on 42nd Street?

A. Yes; the Alien Property Custodian's New York office.

Q. 145. Will you now state briefly but substantially what took place?

A. I told them the terms that Mr. Palmer had laid down.

Q. 146. Please state just what you said to them?

A. I told them that there must be non-exclusive licenses and that the stock must be trusteed for the life of the longest patent in the hands of the Sales Committee; that it must be a non-profit making proposition; that they must give the Government a free license. In the discussion they proposed that the license fee be so adjusted that when the preferred and common stock was paid back there be no license fee. I said, "No," that Mr. Palmer exacted that they always pay a license fee but that when the stock was paid back, the balance would be devoted to the general development of chemical education and the general development of chemistry in the war. They had one or two other proposals. What they were I am not sure. And we discussed the price.

Q. 147. What was said about that?

A. They discussed the elements that went in to make it uncertain what their value was in view of the conditions that were being imposed.

Q. 148. What was said about that and by whom if you can state?

A. They said that of course any one of them individually would not buy patents under any such condition as that; but if the Government made this proposal to them and urged them to do it, as a spirit of the war was still on, they would carry on for as much as their proportion called for, as they all agreed each should do; but that individually, of course, with that form of a conveyance, it offered no business attraction to any one of them individually, and they agreed that they would give $250,000 and supply $250,000 of working capital.

Q. 149. Could you state who it was that made the statements on behalf of the conferees?

A. No, I could not. It was a general discussion by everybody.

Q. 150. Do you remember any particular persons making any statement?

A. No.

MR. ANDERSON: Has he fixed the date?

MR. KRESEL: Yes, about the middle of February, 1919, as I recall it.

THE WITNESS: About the middle of February.

Q. 151. What did you say or what did Mr. Choate say about the price, or anything else?

A. Well, Mr. Choate after the discussion went on agreed that that would be a fair and reasonable price.

Q. 152. Did he say that?

A. He did.

Q. 153. What did you say?

A. Well, I agreed that it would, too. It was apparently the most we could get, too.

Q. 154. Then did you after that conference have another talk with Mr. Palmer?

A. I did.

Q. 155. What did you say to him then and how long after this conference about the middle of February?

A. Within a day or two.

Q. 156. Where was it that you saw Mr. Palmer on that occasion?

A. In Washington.

Q. 157. Please state what you said to him about this subject?

A. I told him we had had a conference, there had been many of the manufacturers there, both from the Dyes Institute and from the manufacturing chemists, which were the chemical concerns outside, and that they had accepted his terms, his conditions, and that they had made the proposal of the price of $250,000, and Mr. Choate, Mr. Hoguet and myself thought it was a fair price, and he said, all right, he would accept it.

Q. 158. After that conference did you have another talk with the representatives of the industry?

A. Yes, I reported back to them.

Q. 159. What did you say to them?

A. I told them that Mr. Palmer had accepted their offer.

Q. 160. Can you fix about the date when you conveyed that information?

A. No, it was within a few days of that time.

Q. 161. Do you remember when the charter of The Chemical Foundation was filed?

A. Filed, I think, February 19th, if I am not mistaken.

Q. 162. What year?

A. 1919.

Q. 163. You spoke of these gentlemen who were present at the conference saying they would underwrite the amount of money necessary. Was there an underwriting necessary?

A. Mr. Palmer stated to me that he wanted the stock as widely distributed as possible, and in our conversation we decided that nobody could hold more than two shares of common stock, and our aim was that they would hold eight shares of preferred stock, that is $1,000, and that it would be divided into 500 concerns holding it. So that in my talks with them they agreed that they would attempt to distribute the stock as widely as possible in conformity to that expressed idea of Mr. Palmer, but that they would get together the industry and would underwrite the $500,000.

Q. 164. Do you know what steps were taken to distribute the stock as widely as possible?

A. Yes.

Q. 165. What was done?

A. We circularized the 3,000 firms throughout the United States in whom we thought it would excite any interest.

Q. 166. Will you stop there a minute. Have you a list of the firms which were asked to become stockholders?

A. I have.

> **Mr. Kresel**: Colonel, I have this list here. I do not want to burden the record with a list of 3,000 names and addresses, but it is available to you if you desire to examine it. I will mark it for

identification, if you like, or I will put it in the record, if you like, just as you say.

Mr. Anderson: I would like to know when this circularization took place.

Mr. Kresel: Yes, I will inquire.

Q. 167. Mr. Garvan, will you state how soon after the organization of The Chemical Foundation the industry was circularized to endeavor to distribute the stock as widely as possible?

A. From recollection I would say early in March after we got started. But the circular itself bears the date. I could find out from our own records.

Q. 168. Look at this (handing witness paper). Is it a copy of the circular that went to each?

A. Yes, that is right. Then it must have been much later. According to that, it is July.

Mr. Kresel: This I will offer in evidence—a copy of the circular.

The Witness: There was a prospectus went with that.

Q. 169. Yes, but that is already in evidence, however.

A. Yes.

Mr. Kresel: I would like to have this marked.

Received in evidence and marked "Defendant's Exhibit No. 81." (*See Exhibits, Vol. IV, page 2575.*)

Mr. Kresel: Colonel Anderson agrees with me that it is not necessary to put this long list of names and addresses into the record, but I think I shall have it marked for identification.

(Marked for identification "Defendant's Exhibit H.")

Mr. Anderson: I assume it is not necessary for me to state that all this preliminary negotiation which the witness has described is not only subject to the general objection, but the specific objection which I stated heretofore.

THE COURT: Or subject to all applicable objections, general and specific, heretofore made.

Q. 170. Mr. Garvan, have you had prepared a list of the stockholders of The Chemical Foundation showing the businesses that they are in?

A. I have.

Q. 171. As of what date is this?

A. Down to the present date. I do not think there has been any change, hardly, since the beginning.

Q. 172. Will you produce that?

A. I do. (Handing counsel.)

MR. KRESEL: I will offer this in evidence.

MR. ANDERSON: It does not state the number of shares preferred and common.

MR. KRESEL: You have that in your list which is already in evidence. Isn't that right, Mr. Galloway?

MR. GALLOWAY: Yes, I have that.

MR. KRESEL: May this be marked in evidence?

Received in evidence and marked "Defendant's Exhibit No. 82." (*See Exhibits, Vol. IV, page 2576.*)

Q. 173. Mr. Garvan, do you know whether or not the stockholders of The Chemical Foundation are members of the Dyes Institute?

A. Some are and some are not.

MR. ANDERSON: The stockholders of what date, Mr. Kresel, please? Would you make it a little more specific?

MR. KRESEL: I will try to, Colonel.

Q. 174. Mr. Garvan, this Exhibit 82, as I understand your testimony, is a list of the present stockholders?

A. Yes.

Q. 175. Has there been any material change in the stockholders or the amount they hold since the organization of the company down to date?

Mr. Anderson: I must object to the form. If there is any change it can be pointed out.

Q. 176. To your knowledge, has there been any change in the stock holdings of the various stockholders?

A. I think there was a change right after we were organized, before the distribution took place, but since July, 1919, I would say there was no material change. I will verify it and give you every change by tomorrow morning, after looking at the books. But as a result of this circularization we spread our holdings among 158 and diminished the larger holdings by so much as we were able to sell to the others, but nobody ever had any more than two shares of stock, common stock, there never was any deviation from that rule.

Q. 177. Do you know how many of the concerns underwrote that?

A. I do not remember, no.

Q. 178. The exhibit is in and that will show?

A. If it is material, I can get it for you by tomorrow morning.

Q. 179. It is in. What was the total amount of capital that was actually paid in by the stockholders?

A. $428,900.

Q. 180. In other words, no more than that has ever been paid in?

A. No, sir.

Q. 181. Can you state whether all of the preferred stock has been issued or all of the common stock?

A. All of the preferred, but only as much of the common as double the number of stockholders.

Q. 182. In other words, there has been $400,000 of preferred stock issued?

A. $400,000 preferred.

Q. 183. And only $28,900 of common?

A. Yes, among 156 stockholders. So some must have only one share of common.

Q. 184. In whose name is the common stock on record in your company?

Mr. Kresel: We will produce the books if you like, Colonel; but I do not believe there is any dispute about that.

A. The names of the five trustees.

Mr. Anderson: Name them, please.

Q. 185. Will you give the names, please?

A. At the present time, Cleveland H. Dodge, Judge Ingraham——

Q. 186. George L. Ingraham?

A. George L. Ingraham; Benjamin Griswold, of Baltimore; Otto H. Bannard, of New York City; and Bradley W. Palmer, of Boston, Mass., of Story, Palmer, Thorndike & Dodge.

Q. 187. You state "at present." Had there been any change in the voting trustees?

A. Mr. Ralph Stone, of the Detroit Trust Company, was originally a trustee, but he could not make the trip from Detroit to New York, and so asked to be relieved.

Q. 188. And Mr. Bradley W. Palmer took his place?

A. Yes.

Mr. Anderson: Could you state the date of the change?

Q. 189. Can you give us that, Mr. Garvan?

A. I cannot. I will in the morning.

Mr. Anderson: If you have got the record here, let him give it to us now.

A. (Continued.) About a year ago; a year and a half ago. I would say it was a year ago last January. That would be my recollection.

Q. 190. Mr. Garvan, there has been read into the record here an extract from the minutes of the Ad-

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visory Sales Committee of the Alien Property Custodian, from a meeting held by that committee on the 14th of February, 1919, which is to the effect (I am not quoting the exact words) that you appeared before the committee and explained the plan for the disposition of the German patents, and that the plan was approved in principle. I think that is the substance of the statement in the minutes. Do you recall appearing before the committee?

A. I do.

Q. 191. Do you recall who was present there? I mean, what members of the committee?

A. Mr. Ingraham—Judge Ingraham, Mr. Bannard, Mr. Dodge, and Mr. Griswold, as I recollect it. I do not think Mr. Stone came on for that meeting.

> Mr. Kresel: Yes, that is right, according to the minutes, Colonel.

Q. 192. And you were present?

A. Yes.

Q. 193. Who else? Do you remember anybody else being present?

A. The first part of the hearing, whether he stayed through or not, Mr. Palmer himself was present. He had another case on there on the calendar that day.

> Mr. Kresel: I desire to read in, if your Honor please, from these minutes from which the Government has already put in a portion, the following:
>
> "Minutes of meeting of Advisory Committee on Sales, held at the New York office of the Alien Property Custodian, 110 West 42nd Street, New York City, on Friday, February 14, 1919, at ten o'clock A. M.
>
> "Present: Messrs. Otto T. Bannard, George L. Ingraham, Cleveland H. Dodge, Benjamin H. Griswold, Jr.; Ralph Stone, excused.
>
> "By invitation: Honorable A. Mitchel Pal-

mer, Alien Property Custodian; Messrs. F. P. Garvan, Director Bureau of Investigations; Ralph J. Baker, Assistant General Counsel; Joseph F. Guffy, Director Bureau of Sales; F. X. Anglin, Assistant Director Bureau of Sales; H. D. Green, Assistant Chief Division of Insular Possessions; George P. Wagner, Secretary to the Committee."

Q. 194. Now please state, Mr. Garvan, what, if any, statement you made to the committee at this meeting with reference to the disposition of the German-owned patents?

A. I made a general statement of the whole situation.

Q. 195. State as briefly as you can——

A. I would have to go right over the same ground again.

Mr. Kresel: Perhaps there will be no objection to my asking specific questions about it.

Q. 196. Did you tell the committee of your conferences with Mr. Palmer and with the representatives of the industry with a view of selling these patents?

A. I did.

Q. 197. Did you tell the committee what plan Mr. Palmer had proposed and which you and Mr. Choate and Mr. Hoguet had perfected?

A. I did.

Q. 198. What did you say to the committee upon that particular subject? I mean, what the plan was?

A. I told them that Mr. Palmer wanted to trustee these patents so that there would be no danger of their ever going back to Germany; that there would be no danger of the substitution of an American monopoly for the German monopoly; that everybody would get a fair deal, little fellows and big fellows alike; that the license fees would be equal on any product to one and all, whether they had put up money or not; and that we wanted them to become trustees to insure those terms of Mr. Palmer being carried out beyond peradventure of doubt. I knew that they had had two years of war work and most of them were old men, but asked them to accept that additional burden of becoming trustees of that institution.

Q. 199. By the way, may I stop you there to inquire whether any of these gentlemen ever received a penny for their services?

A. Certainly not.

Q. 200. Either from The Chemical Foundation for acting in this capacity or from the Government acting on the Advisory Sales Committee?

A. Absolutely no, either by way of expense account or any possible way under the sun. They were men of very mature years whose lives had already been rounded out, and had no interest whatsoever in anything connected with these German properties. Judge Ingraham was the leader of our Bar for thirty years and the arbiter of the ethics of New York lawyers and judges for the last twenty years.

Q. 201. While I am on this point, I omitted to ask you on Friday whether in your capacity as director of the Bureau of Investigation of the Alien Property Custodian you received any compensation?

A. A dollar a year.

Q. 202. I am sorry to have interrupted you. Will you proceed now to state more fully what you told the Advisory Sales Committee as to the plan and whether you told them about the price and whether you told them the condition?

A. Of course, it is impossible for me to say with what detail I went into the story at that time.

Q. 203. I understand.

A. I know at that time I told them that I was to be one of the directors; that I had consented to go that far; and that was in urging upon them to take up those additional burdens. I told them of the conditions that necessitated it. Of course, they had sat there for two years and heard the Bayer case and all these other cases and it was not necessary to tell them a whole lot.

Q. 204. What did you tell them about the conditions that Mr. Palmer insisted upon that would surround the sale?

A. I thought I told you that.

Q. 205. You did not, fully.

A. I told them we would have to give the Government a free license; that we would have to give everybody else a license; that it could not be a money-making proposition for anybody; that six per cent. on their money was the most that anybody could get who put money into it and that its future depended entirely upon the progress which American industry might make, upon the amount of money that they were willing to put into their plants and into their research to develop it. I undoubtedly told them about salvarsan. I did to most everybody. I told the story of salvarsan to them. What other details I went into I do not know at this time.

I do remember that they asked at that time that Judge Ingraham, who was the only lawyer among them, take charge of looking after the trust agreement under which they were to serve and see to it that it lived up to the desires of Mr. Palmer and that it was just to the Government and to all concerned.

Q. 206. You mean the voting trust agreement?

A. The voting trust agreement.

Q. 207. And do you know whether Judge Ingraham did take or examine into (I will put it that way) the form of the voting trust agreement that was finally adopted?

A. Judge Ingraham in connection with Gray, of Delaware, as I understand it. I know I had nothing to do with it.

Q. 208. Who were the directors of The Chemical Foundation when it was first organized?

A. Three young men in the Delaware Trust Company. I don't remember their names.

Q. 209. And after they had resigned, who succeeded them?

A. Myself, Mr. Corbett and Mr. McKay, Colonel Douglas I. McKay.

Q. 210. Who was Colonel McKay?

A. Douglas I. McKay was a member of the general staff of the United States Army during the war and had retired and returned. He was a civil engineer, as I understand it with J. G. White & Company. He had been a man of means and a man of considerable position.

Q. 211. Has there been any change in the directorate?

A. Mr. McKay served without pay during the entire time he was there. Mr. Corbett was the Secretary and Treasurer. He at that time was Vice President of the Central Trust Company and for about a year and a half, up to the time that the work became so much that he had to resign his position from the Central Trust Company he received no pay. And, of course, I received no pay.

Q. 212. Has there been any change in the Board of Directors?

A. Yes, sir.

Q. 213. What change?

A. Mr. McKay resigned and we elected Mr. Polk, but then thought better of it; thought that he would not be willing to serve; and we then elected a young lawyer who worked for us who was there on the job all the time, a young man named Haaren. Otherwise there has been no change. He was made secretary, Mr. Corbett remaining as treasurer.

When Mr. Corbett resigned from the Central

Trust Company, he served at a salary, I think, of either $10,000 or $15,000 a year for a certain time and since then, for a year and a half, I think, has again given his services for nothing.

Mr. Kresel: If you would like the exact dates of that, Colonel, I will furnish them.

Q. 214. I want to make sure that I have all the changes in the officers. There has been no change of the office of president?

A. No, sir.

Q. 215. You have been president right along?

A. Yes, sir.

Q. 216. Mr. Corbett has been Treasurer right along, is that right?

A. Yes. I missed one change there. We elected Mr. Miller a director at one time.

Q. 217. You mean Mr. Thomas W. Miller?

A. Yes, I think he succeeded Mr. McKay. Yes, he succeeded Mr. McKay.

Q. 218. And did he serve?

A. He did not.

Q. 219. Among the officers, Mr. Corbett was secretary and treasurer and then resigned as secretary and was succeeded by Mr. Terry, did you say.

A. Haaren.

Q. 220. And are those the officers now?

A. Yes.

Q. 221. You president, Mr. Corbett treasurer and Mr. Haaren secretary?

A. Yes.

Q. 222. Is there a vice-president?

A. I do not know. I wouldn't want to swear to that unless I looked it up. Mr. Corbett may be. I do not know.

Q. 223. To your knowledge, has any of the directors of this company, either past or present, had any interest in any dye concern?

Mr. Anderson: They filed a formal paper releasing any right to that subscription. As I recall, those are substantially the facts, and if the witnes wants to testify to these facts, or if counsel wishes to agree to those facts, then I will waive any claim to have the stock books produced and the formal proof on that subject.

Mr. Kresel: There is no necessity either for the witness to admit that or for counsel to concede that. That is the record that you have put in here, and, of course, it speaks for itself.

Mr. Anderson: That is all. My only objection was to the witness testifying to the conclusion that he was never a stockholder.

Mr. Kresel: Now that Colonel Anderson has reviewed to your Honor the state of the record, I will repeat my question as to whether the Government claims upon that record that either Mr. Garvan or Mr. Corbett or Mr. McKay were stockholders of the company.

Mr. Anderson: My answer is the Government reserves the right to make any claim upon that record they can do in law.

The Court: One of the difficulties that I am having, Colonel Anderson, and I am not stating this in the way of criticism at all, is in finding your major premise for any of your propositions. I am finding it difficult to draw any conclusions from a minor premise alone. It seems to me that you are leaving me, during the taking of the testimony, wholly without a major premise for any syllogism, and reserving the right to lay down any major premise that you please at the time of the final argument. Am I right about that, Colonel Anderson?

Mr. Anderson: I do not think so, sir. I think

I have been somewhat laboriously, and certainly very extensively, frank in stating to your Honor my positions on the law, my understanding of the facts, and my conclusions as to what they show.

THE COURT: Then let us take this immediate one. Do you care to state what your major premise is on that conclusion? You agree as to facts as disclosed by the record. If it is conceded that they are useless or that they do not establish that the witness was a stockholder, then we can, I assume, go on without paying any more attention to that. If, on the other hand, you are going to state that that brings it within the principle that they are stockholders, then we have another minor issue in the case.

MR. ANDERSON: The only question there is whether any other evidence can be introduced. If they can, why, counsel is quite at liberty to introduce it. We have concluded our evidence on the subject.

THE COURT: I know; but you are leaving me without a major premise. So we will have to go on on that basis.

MR. ANDERSON: I will state this: that the Government will contend in that situation that the position taken by counsel here that they had no stock interest in this company of any kind is not sound; that the right to subscribe for stock and receive stock is a valuable right, and that it was an interest. I have put in the evidence its obvious application, and if my position is sound or unsound, it is for counsel to meet the evidence. If they can prove any different facts from those on the record, they are at perfect liberty to do so.

THE COURT: That is true, Colonel Anderson. No doubt about that. But if the Government can state what use it proposes to make or use it can make, if any, out of a particular bit of evidence, it seems to me it probably narrows and shortens the issues.

Mr. Anderson: I am only too glad to answer your Honor's question in that regard. I have already stated the evidence could have but one relationship, and that is, to show who were stockholders of the company, or who had a right to beholders of the company. Now, who were stockcome stockholders of the company, is a question affecting the relations of these gentlemen to the transaction. What that is and whether it has any legal effect is for your Honor to decide on final argument.

Mr. Kresel: It is all right, your Honor; I will produce tomorrow the stock certificate book, and I will ask your Honor to let me put it in for the purpose of showing who the stockholders were.

Mr. Anderson: If the counsel will produce the stock certificate book and it does not appear these gentlemen were ever registered owners of stock, I am perfectly willing to admit whatever the facts are, without putting the books in evidence.

Mr. Kresel: Do you mean to say, Colonel Anderson, that you do not now know what our stock certificate book shows?

Mr. Anderson: I personally do not.

Mr. Kresel: With your accountants having been over our books for a period of six weeks?

Mr. Anderson: Mr. Kresel——

Mr. Kresel: You have been misinformed, Colonel.

Mr. Anderson: I did not say that these gentlemen were registered stockholders, your Honor. I said if he would let me see the books or it appeared they were not registered stockholders, I would not require him to burden the record with the formal evidence, but would admit whatever the facts were. Now, I have not had a chance to examine those books personally. I do not know what the facts are, and the facts in this case are too voluminous for me to undertake to be familiar with them all.

MR. KRESEL: All right, Colonel, I will produce the book in the morning. May I proceed your Honor?

THE COURT: Yes.

Q. 227. Mr. Garvan, it is in evidence here that you executed the first or so-called big assignment of these patents to The Chemical Foundation, which is dated April 10, 1919. That instrument is Exhibit H-1 annexed to the bill. From that instrument I read the following language from page 415 of the bill:

> "All of the rights, interests, and benefits under the agreements enumerated in Schedule C hereto annexed:
>
> "All as more specifically described and set forth in the requirements or demands relating to said letters patent of the United States, applications for letters patent of the United States, trademarks and registrations thereof, copyrights and rights, interests and benefits under agreements issued by said A. Mitchell Palmer, as Alien Property Custodian, or by me as Alien Property Custodian without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws of the said The Chemical Foundation (Inc.), or otherwise, and subject only to the provisions of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or of friendly nations", etc.

I direct your particular attention to the clause which says this conveyance is made without any reservation or qualification whatsoever, "Whether by reason of anything contained in the charter or by-laws of the said The Chemical Foundation (Inc.), or otherwise". Before I put the question to you I direct your attention to the fact that in an assignment which is Exhibit H-6 annexed to the bill of complaint likewise signed by you, dated June 21, 1919, there is similar language. I read from page 435 of the bill, your Honor, the language as follows: "without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws of the said The Chemical Foundation (Inc.), or otherwise."

Also in Exhibit H-19, which is another assignment executed by you on the 19th of February, 1921, I find this language: "and to the full extent to which I am or may become entitled to the same, including all claims and demands for profits and damages recoverable", etc.

Will you please state the reason for the language that I have read, namely, that these conveyances are made without any reservation whatsoever, whether by reason of anything contained in the charter or by-laws of The Chemical Foundation or otherwise?

> Mr. Anderson: If your Honor please, we of course object to that question, first as an effort to construe a written agreement, second, as an effort to vary a written agreement and to show by parol what the meaning is and the reason for the execution of the written agreement, all of which is merged in the agreement.
>
> Mr. Kresel: I disclaim any desire either to vary the instrument or to construe the instrument. I am simply inquiring for the reason——
>
> The Court: I had assumed before you finished your question you were going to ask for the particular circumstances under which those agreements were executed. Unless your question calls for those circumstances, although your use of the word "reason"——

Mr. Kresel: Will your Honor permit me to withdraw the question. I will recast it and perhaps avoid the objection.

Q. 228. Mr. Garvan, I have directed your attention to these three assignments. I now ask you to state, if you will, the circumstances under which these assignments were executed, with particular reference to the language I have read?

Mr. Anderson: I make the same objection to the circumstances and the negotiations leading up to these agreements. There is not the slightest doubt about what it says or what it means. It is nothing more than coming in the back door to construe the agreement. Therefore, I object to the question and any answer thereto, or any other question relating to these agreements or to the facts and circumstances preceding these agreements, with reference to the matters covered thereby, upon the ground that the agreements speak for themselves and it is not competent for the witness to testify or to undertake to testify or construe or explain the same.

Mr. Kresel: Will your Honor hear me a minute. In view of the charge of conspiracy here, in view of the charge that these officials were duped into making these assignments, in view of the emphasis that has been laid by counsel for the Government upon this particular language both in his opening statement and when he put them in as exhibits, we claim the right that this official has to explain why that language was used and the circumstances that gave rise to its use. I repeat what I said this morning, your Honor. If this man's motives are imputed, if it is charged that he had ulterior designs in this matter, as it is charged, and we can not wink at it, he has a right to explain.

The Court: The same question arose with respect to reasons given by Mr. Palmer and I——

Mr. Anderson: If your Honor please, here is an agreement executed by this witness, a deed. I confess that my knowledge of the law and practise is limited, but this is the first suggestion I have ever heard in court that a man can make a deed and then come in and say why he used certain language in the deed. I never heard such a thing suggested before; and while the charge of conspiracy opens up the evidence to some extent, it does not abolish all the rules of evidence as to what a witness can testify about a written instrument. I do not want to argue it; it seems useless for me to argue it, and I make my objection, and therefore your Honor will rule as you deem best.

The Court: What is the question that you have put?

(Q. 228. repeated as recorded above.)

The Court: The answer may be taken.

Mr. Anderson: I note an exception if your Honor please.

A. The assignments were drawn by our patent counsel, Mr. Hoguet. Mr. Hoguet informed me that it was necessary from the patent lawyer's standpoint that there be absolutely no reservations upon the transfer of patents if we were to be able to meet the German after the war or to meet any infringer; and he said that this in no way relieved the obligations, our obligations under the charter, but that the conveyance to the Foundation should be unrestricted and unlimited if we expected to be able to bring infringement suits, and so forth, and that nothing should remain in the German or in the A. P. C. I knowing nothing of patent law——

Q. 229. What is that last statement?

A. I knowing nothing of patent law or what constituted a valid transfer of a patent, agreed to it.

Mr. Anderson: Now that the answer has been made I move to strike it out for the reasons already stated, and for the further reason that Mr. Hoguet's expression of the meaning of a written instrument is certainly not evidence here.

The Court: I deny the motion, although I do not now see any pertinency the statement embodied in the last answer has with respect to the issues in this case. It will remain in under the general rule.

Mr. Anderson: I note an exception.

Q. 230. Mr. Garvan, since the conveyance of these patents to The Chemical Foundation, made by the Alien Property Custodian, has the Chemical Foundation issued any licenses?

A. It has.

Q. 231. Have you prepared a list of all such licenses issued?

A. I have. Under my direction. I have not prepared it. It was prepared under my authority.

Q. 232. I show you this document (handing witness paper). Is that the list of all the licenses that have been issued by The Chemical Foundation from its inception to December 31, 1922?

A. It is.

Mr. Kresel: I offer this in evidence. I think the Government has already seen this.

Mr. Anderson: One moment. If your Honor please, I do not object to the introduction of this statement, as I understand it is made up from the original licenses, reserving the right, as was agreed by counsel, to check the same and call attention to any errors therein.

Mr. Kresel: Certainly.

Mr. Anderson: In the absence of such knowledge, I will assume that this statement is correct and I will not require the production of the original licenses in court.

Mr. Kresel: The licenses have just arrived now and you may have access to them, Colonel, at your leisure.

Same received in evidence and marked "Defendant's Exhibit No. 83." (*See Exhibits, Vol. IV, page 2583.*)

Mr. Kresel: This exhibit, your Honor, I shall take only a moment to explain to you. The information contained thereon is the following: The number of the license is given, the name of the person to whom the license was issued, the product that is covers, the royalty rate, the date when the license was issued, the number of the patent which it covers, the expiration date of the patent, the amount of royalty received, the amount of license fee received and the total amount received. That runs down to December 31, 1922, showing that during that period 379 licenses had been issued and that the total amount collected by The Chemical Foundation on those licenses was $305,106.77.

Mr. Anderson: May I ask a question? It was suggested this morning that they insert after the name of the licensee the form on which the license was issued. As I understand, there are three forms.

Mr. Kresel: Two I know of.

Mr. Anderson: Two for patents and one for trademarks.

Mr. Kresel: Oh, two for patents.

Mr. Anderson: The two for patents have been put in evidence and can be identified by the exhibit number, and the trademark form can be put in, and then if they would put on the exhibit, I would like it to be understood that they would be on the exhibit at the appropriate place the form on which that license is issued, in order that we may identify the license.

Mr. Kresel: I will be very glad to do that.

Mr. Anderson: With that understanding I will not object to this in its present form.

Mr. Kresel: Then I will now offer, pursuant to that understanding, a form of trademark license.

Received in evidence and marked "Defendant's Exhibit No. 84." (*See Exhibits, Vol. IV, page 2619.*)

Q. 233. Without putting in evidence, Mr. Garvan, all of the licenses that have been issued, I am going to ask you, with Colonel Anderson's permission, whether it is a fact that The Chemical Foundation has never issued an exclusive license?

A. It is.

Q. 234. All licenses have been non-exclusive licenses?

A. Certainly.

Q. 235. Has The Chemical Foundation ever declined to issue a license to anybody?

A. Twice.

Q. 236. When?

A. Twice.

Q. 237. Will you state the circumstances of each case?

A. One was a young man who wanted a license on salvarsan.

Q. 238. Do you remember his name?

A. I do not. We will get it. We told him that we did not think he was equipped, salvarsan being a dangerous drug, but if he would go to the United States Health Department and satisfy himself that he had the training and ability to make it and get a certificate from them we would issue a license. He studied a year and a half or some time like that, got the certificate, and came back and got the license.

Q. 239. That is one case.

A. That is one case.

Q. 240. What is the other one?

A. The other is a case where some people issued stock on something and stated in their prospectus before they ever came near us that they had licenses from The Chemical Foundation. Investigation showed that it was a fly-by-night stock-jobbing game, that they had no factory, and no intention of manufacturing. It was a stock-selling scheme and we declined to issue the license.

Q. 241. With those two exceptions have you issued licenses to all American citizens that wanted them?

A. We have.

Q. 242. Have you made any distinction in the royalties that you charged upon the same kind of license as between different licensees?

A. We have not.

Mr. Anderson: One moment. I think that is going a little bit far. The statement speaks for itself as to licenses and royalties charged, and I do not think the witness ought to interpret his licenses. You may let the evidence go in to that extent.

Mr. Kresel: There can be no harm, Colonel. I am not going to pursue the subject. Of course, we could dig that out of a long exhibit I put in, but I am sure there is no harm in his making the statement.

The Court: Is the objection withdrawn?

Mr. Anderson: I think that statement ought to be stricken out. I think that is a question of argument from the statement itself.

The Court: Does your statement show the terms under which the licenses were issued?

Mr. Kresel: Yes, your Honor.

The Court: You may show what from your point of view that statement does show with respect to this matter and I shall sustain the objection because it is documentary and the objection is made on that. Any time you desire, I will be very glad to hear your statement.

Mr. Kresel: I will not stop to do that now.

Q. 243. Has The Chemical Foundation given to the United States Government a license covering all of the patents that were ever conveyed to it?

Mr. Anderson: Of course, I object to that question. The license can be produced.

The Court: The license has been offered, has it not?

Mr. Kresel: No, your Honor. I am just about to put it in. I will re-cast the question.

Q. 244. Has The Chemical Foundation given to the United States Government a license?

A. It has.

Q. 245. I show you this instrument and ask you to state whether that is the first license that was given by The Chemical Foundation to the United States Government?

A. It was.

Q. 246. Please give me the date?

A. February 26, 1921.

Mr. Kresel: If your Honor please, the original is in the possession of the Government, but by stipulation between Mr. Galloway and ourselves we are permitted to use a copy.

Mr. Galloway: Subject to correction.

Mr. Kresel: Subject to correction, certainly. I should have much preferred to have the original in court, but I understand they cannot locate it. May this be marked?

Mr. Anderson: Before that is offered, if your

Honor please, I wish to note an objection to the introduction of that document, not on the ground that it is a copy—that we are agreed upon—but because there is no evidence here that any officer of the Government of the United States authorized to accept such a paper has accepted it; and, therefore, it is not a license or contract between The Chemical Foundation, whatever it may be, and the Government of the United States unless it is accepted by some officer or entered into by some officer who is authorized to discharge the function of accepting that license.

MR. KRESEL: Will your Honor permit me for the moment to withdraw that because I have made an error. That was not the first one and I want to put them in in their chronological order.

THE WITNESS: Then I want to withdraw my answer.

MR. KRESEL: Yes. May the answer to the last question be stricken out.

Q. 247. Mr. Garvan, I show this instrument and ask you whether that is a copy of a release given by the Alien Property Custodian to the United States Government on the tenth day of April, 1919?

MR. ANDERSON: I shall object to that question and any answer thereto on the ground that while the witness can identify a certain instrument as executed by the Alien Property Custodian and prove delivery to the United States Government, he cannot prove that it is a release and it is not delivered to the United States Government until proof is made that it was accepted by an officer of the Government authorized to accept it in accordance with its terms. I have not read the paper. I do not know what it is. But that must be proved.

MR. KRESEL: One step at a time, please.

MR. ANDERSON: Very good, sir. I object to that question and answer because the question embodies several statements, that it was a release given to the United States Government, which implies the character of the paper and the act of delivery, all of which must be proved.

THE COURT: I think the objection is well taken, so far as the question embodies the term "release." I will dispose of that first and if you have anything to say I will hear you on the other.

MR. KRESEL: No, your Honor. I understand that the objection is sustained?

THE COURT: The objection to that question is sustained.

Q. 248. Look at this instrument that I now show you and state whether it is a copy of an instrument that you signed as Alien Property Custodian on the 10th of April, 1919?

A. It is. I have looked at it.

Q. 249. I show you a copy of a letter dated April 15, 1919, and ask you whether you wrote that letter to Honorable A. Mitchell Palmer, Attorney General?

A. I did. That is my signature.

Q. 250. Is the instrument that I first showed you as having been signed by you on the 10th of April, 1919, a copy of the instrument that was enclosed with that letter?

A. Yes.

MR. KRESEL: I now offer in evidence the letter and the copy of the instrument; and as to those, I state that counsel for the Government say that they cannot locate the original. I understand you had it and then lost it again, or something like that.

MR. GALLOWAY: I have seen it. I do not know where it is now. I have seen it, but I do not say I have lost it.

Mr. Kresel: May the letter be marked as Exhibit No. 85 and the instrument No. 85-A?

Mr. Anderson: I object to the introduction of that letter and instrument, not on the formal grounds of copies, but on the ground that it does not appear that the Honorable A. Mitchell Palmer, Attorney General of the United States, was authorized to accept any license from the Alien Property Custodian to the United States or to accept the document introduced in evidence, and there is nothing in his position as Attorney General, so far as I know, that authorizes any such act.

Mr. Kresel: I do not understand that it is incumbent on us to prove the authority of the official to accept. But if it were, we say that the Attorney General of the United States has authority on behalf of the United States Government to accept documents for it. He has as much authority under the Executive Acts as the Secretary of War or the Secretary of Navy may have and under these circumstances we say that this evidence is admissible. It is the delivery of an instrument pursuant to what we claim to be a contract made here. It is an instrument that is referred to in the exhibit which the Government has put in, namely, the original assignment of April 10, 1919, and your Honor will recall, as I read from page 416 of the bill, the conveyance is subject only to the provisions of a certain release to the United States of America bearing even date therewith. That is the release that I am now offering.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibits Nos. 85 and 85-A." (*See Exhibits, Vol. IV, pages 2623 and 2624.*)

Mr. Kresel: I desire to read two paragraphs of this, with your Honor's permission. (Reading.)

Now, the Schedules A, B and C which are referred to in that instrument are not annexed, and we are privileged to annex them hereafter.

Mr. Anderson: There is no objection to that, of course. Now, I wish to add to my former objection, and in order to make it in proper form, to move to strike out this document and letter for the reasons already stated in my objection to the introduction thereof; for the further reason that it appears, according to the testimony of Mr. Palmer, that he negotiated the sale of this property and its release on the other side. He could not act on both sides and, therefore, could not affect the rights of the United States, acting by the Attorney General; and, in the third place, for the reason that there is no provision of the Alien Property Act or the laws of the United States which confers upon the Alien Property Custodian the power to execute any such release, whether to the United States or anybody else, or to convey or undertake to convey, or to release, or undertake to release, any such rights as therein provided.

Mr. Kresel: Does your Honor desire to hear me on that proposition?

Mr. Anderson: I should have added, without adequate consideration, which is embraced in my general statement as to the character of the paper.

The Court: I am somewhat hazy with respect to this particular transaction. I was under the impression that the release had been signed by The Chemical Foundation.

Mr. Kresel: No, your Honor. I withdrew that.

The Court: That is the license that you withdrew.

Mr. Kresel: Yes.

The Court: But this pertains to the accumulated royalties or license fees, as I understand it, does it not?

Mr. Kresel: The one that has just come in?

The Court: Yes.

Mr. Kresel: No, sir, that is a release.

The Court: Of what?

Mr. Kresel: From the Alien Property Custodian to the United States of all damages that might have run against the Government for using these copyrights and trademarks prior thereto.

The Court: It has nothing to do with the accumulated license fees?

Mr. Kresel: No, your Honor, not at all. That is only one of the instruments. I have several that I am going to put in.

The Court: I wanted to place this one, and I do not for the moment.

Mr. Kresel: Your Honor will see this is the same date that the first assignment to The Chemical Foundation was made, and the assignment is made expressly subject to this release.

The Court: We have to have that paper to see what The Chemical Foundation got. If valid, The Chemical Foundation acquired the rights in the patents and trademarks without right to relief against the United States for anything that it has done. That is your contention?

Mr. Kresel: Yes, sir.

The Court: The contention of the Government, I assume, is that that release is invalid for one or more reasons, and consequently, The Chemical Foundation is now in a position, if this transaction is not set aside, to maintain an action against the United States, although there is no authority for its suing the United States, as I understand it.

MR. ANDERSON: I do not say that The Chemical Foundation would be in a position to do it, because The Chemical Foundation may have estopped itself to bring an action against the United States; but the release in itself is an act entirely outside of the authority of an officer of the Government who undertook to execute it, and does not constitute evidence of any kind.

THE COURT: Did you put in evidence the assignment which was made subject to that?

MR. ANDERSON: Yes, sir, that is all in evidence.

THE COURT: Would not that offer in itself make that release admissible for whatever it is worth?

MR. ANDERSON: I do not know, if your Honor please; but I feel I ought to object to that as nothing but a blank piece of paper.

THE COURT: Yes, I understand it.

MR. ANDERSON: Of course, I do not ask your Honor to decide it now. I am just making the objection and your Honor may let it go in under the objection, as far as I am concerned.

THE COURT: But the reason for not deciding it is possibly that you are going to introduce the next one. However, we will leave that open.

MR. ANDERSON: I merely want to preserve the record.

THE COURT: I was trying to find out where we were. I understand you now.

Q. 251. Now, Mr. Garvan, I return to this instrument of February 26, 1921. Please examine it again and state whether The Chemical Foundation gave that instrument to the United States Government?

Mr. Anderson: I wish you would frame your question, whether The Chemical Foundation executed that instrument.

Q. 251. (Continued.) Whether The Chemical Foundation executed that instrument.

Mr. Kresel: I will accept the suggestion.

A. This is not the original.

Q. 252. This is a copy?

A. I am sure of it. I am sure of the girl that signed the certificate.

Mr. Kresel: I ask that this be marked for identification.

(Marked "Defendant's Exhibit K" for identification.)

Q. 253. I show you a photostat copy of an original instrument signed by The Chemical Foundation, Incorporated, by Francis P. Garvan as president, and ask you to state whether that was signed by you as president of The Chemical Foundation?

A. It was. It is my signature.

Mr. Kresel: I offer this instrument in evidence and I direct counsel's attention to the fact that on the face of it it bears an acceptance on behalf of the Government, by Theodore Roosevelt, Jr., acting Secretary of the Navy.

Mr. Anderson: I assume that is the signature of Mr. Roosevelt. I do not know it myself. But even then, I object to the admission of this instrument on the ground that it does not appear that Colonel Roosevelt had any authority whatever from the Government of the United States to accept this instrument, whatever it is, or to deal with the subject matter involved. I recognize that that is a question that would require a great deal of argument, and I merely make the objection to preserve the record.

Mr. Kresel: I do not believe, your Honor,

that it would require a great deal of argument at all. Our position is that it is not incumbent upon us to prove the authority. Moreover, if it were the signature of this gentleman who holds this office, it is *prima facie* proof of his authority. He is an officer of the Government and if he had not the authority, they can prove that he had not.

I offer this instrument in evidence.

Mr. Anderson: If your Honor please, of course, that is in addition to all my general objections that it is immaterial and irrelevant.

The Court: I understand. But I do not know what this is.

Mr. Kresel: Of course. I could not state it in my question. Your Honor will realize that. The question would have been objected to. This, your Honor, is a license and release from The Chemical Foundation to the United States Government covering all of the patents that were ever conveyed to The Chemical Foundation.

The Court: A release of what?

Mr. Kresel: A release of all claims for infringement by the Government.

The Court: It is another release?

Mr. Kresel: It is another release.

The Court: In the same language?

Mr. Kresel: If your Honor will let me read the one that is now going in evidence, you will see that the one that I have had marked for identification was set aside by the larger one that is now going in evidence. That is the reason I have not pressed putting it in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 86." (*See Exhibits, Vol. IV, page 2629.*)

Mr. Kresel: If your Honor will indulge me for a few minutes while I read a few paragraphs of this instrument. (Reading.)

There are attached to the instrument various schedules. They are quite numerous and of course I shall not read them.

Gentlemen, may I have a stipulation that this instrument has been or is now being recorded by the Government of the United States in the Patent Office?

Mr. Anderson: If you state the date, and it is a fact. Do you know, Mr. Galloway?

Mr. Galloway: My information is that it has been filed.

Mr. Kresel: Your information is that it has been recorded.

Mr. Galloway: That is the information which we received.

Mr. Anderson: In the second place, I do not know who put it there and by what authority it was put there. We are making inquiry and we will try to find out the facts. We have got a man down there now trying to get the facts, but I do not know anything about them and have not enough facts to agree upon it.

Q. 254. Mr. Garvan, while you were Alien Property Custodian did you execute an instrument of which I show you a copy, which has been produced from the office of the Alien Property Custodian by the Government?

A. Is this the fifty-seven hundred patent license?

Q. 255. That is my understanding.

A. Yes, I executed this.

Mr. Kresel: I offer in evidence, if your Honor please, instrument executed by the Alien Property Custodian on December 20, 1920, together with the schedules thereto attached. With your

Honor's permission, we will substitute a copy instead of the original.

The Court: This is which one?

Mr. Kresel: If I may state, this is a license and release from the Alien Property Custodian to the Government of the United States as represented by the Scretary of the Navy covering 5,700 German patents; the license and release being made by the Alien Property Custodian to the Navy Department for a consideration, as I shall show, of $100,000. This was made on the 20th of December, 1920, by Mr. Garvan as Alien Property Custodian. The original instrument, I understand, is in the possession of the Government. What is here being produced is the copy which is on file in the office of the Alien Property Custodian. Is that right?

Mr. Anderson: I think so.

The Court: Is there objection?

Mr. Anderson: If your Honor please, from a hurried examination of this document which while produced by the Government I confess not to have before seen, I merely want in addition to my general objection on the ground of immateriality and irrelevancy and so on, to note the additional objection that it does not appear that the Alien Property Custodian had any authority to execute any such document or that the Secretary of the Navy had any authority to accept any such document or to make any such contract with respect to the same.

The Court: It is not an assignment, but a license?

Mr. Kresel: A license and release, your Honor.

The Court: Where is the title to those patents now?

Mr. Kresel: I assume that the title remains in the Alien Property Custodian.

The Court: Can the Alien Property Custodian, as agent of the United State, license these patents to the United States?

Mr. Kresel: There is no question about that, your Honor. Under the Act he has the right to deal with the property as if he were the absolute owner. He, therefore, has a right to license.

The Court: I can understand how he can do that without passing upon the construction of the act. I can understand how that might possibly happen with any person except the United States. It is admitted.

Mr. Kresel: I shall be very glad to give your Honor my views, but I think nothing is going to be gained by it at this time.

Received in evidence and marked "Defendant's Exhibit No. 87." (*See Exhibits, Vol. IV, page 2635.*)

Q. 256. Before you executed this instrument which I have just put in evidence, some of which I shall read in a little while, did you receive a letter from Mr. Franklin D. Roosevelt, Acting Secretary of the Navy, of which I show you a copy?

A. I did.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: Objected to on the same grounds as the preceding documents.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 88." (*See Exhibits, Vol. IV, page 2652.*)

Mr. Kresel: I shall first read the letter. It is dated at the Navy Department in Washington, March 16, 1920. (Reading.) Now I read from Defendant's Exhibit No. 87. It is dated December 20, 1920. After reciting the appointment of Mr. Palmer as Alien Property Custodian and Mr. Garvan as his successor, and reciting the seizure of a large number of patents, the instrument proceeds as follows (reading).

MR. KRESEL: That is all I desire to read of that.

THE COURT: That is the release executed by the Alien Property Custodian to the United States?

MR. KRESEL: To the United States. You see, your Honor, you now have before you two instruments, one covering a release and license to the Government, covering all of the patents conveyed to The Chemical Foundation.

THE COURT: And accepted by the Secretary of the Navy.

MR. KRESEL: By the acting Secretary of the Navy. Then you have this license and release.

THE COURT: For 5,700 patents?

MR. KRESEL: For 5,700 additional patents, German patents held by the Alien Property Custodian.

THE COURT: For $100,000?

MR. KRESEL: For $100,000,

THE COURT: What is the nature of those patents, Mr. Kresel?

MR. KRESEL: Oh, your Honor, I am going to put in several classifications of those. Briefly speaking, let me tell your Honor. They were the most important patents, covering patents on munitions, gun carriages——

THE COURT: You call them munition patents, then, just for convenience.

MR. KRESEL: Mostly munition patents; but then there were also surgical patents, chemical patents. They were of all sorts. There is a printed list of those contained in the report of the Alien Property Custodian made to Congress in 1922, and when I come to the examination of a witness, I am going to bring out some of that and your Honor will learn about it.

Q. 257. Mr. Garvan, I show you this folder, and ask you to examine it. It is produced by the Government from the files of the Alien Property Custodian.

Mr. Kresel: Is that right, Mr. Galloway?

Mr. Galloway: Yes, that is right. That is only an abstract, however.

Q. 257. (Continued.) I wish you would examine that.

Mr. Kresel: May I lead him in this question? I think it will save time.

Mr. Anderson: I would like to know what it is about before I agree to that. If it is immaterial I do not care anything about it.

Mr. Kresel: Listen to my question then and you will get it.

Q. 258. I ask you to state whether that is an instrument showing that the Alien Property Custodian on the sixth day of February, 1919, assigned to the United States Government, as represented by the Secretary of the Navy, a number of patents, a list of which is attached hereto, for a consideration of $1,190.

Mr. Kresel: I will show it to Colonel Anderson. Perhaps we could agree, Mr. Galloway, without putting a question to the witness. If you will permit me I will dictate the stipulation and you may see if it is correct. May I do that, your Honor?

The Court: Yes.

Mr. Kresel: It is stipulated and agreed that on the sixth day of February, 1919, A. Mitchell Palmer, as Alien Property Custodian, conveyed to the United States of America——

Mr. Anderson: You are wrong, just stop right there. I am not going to agree that anything was executed and assigned. You can say that he executed a certain instrument.

Mr. Kresel: Executed an assignment.

Mr. Anderson: No. If there is going to be any legal effect I will not agree upon it. I do not mind agreeing to the fact, but not to the legal effect. If your Honor please, I do not want to appear unaccommodating.

Mr. Kresel: No, I am not charging you with that.

Mr. Anderson: Our view is that these papers are not only immaterial because two wrongs cannot make a right, but, in the second place, they have not anything to do with this case. If they are going to be proved, it is important that the facts should be shown, just what the instrument was.

Mr. Kresel: The question is what the instrument was. We asked you to produce it and you have not. You have it and we have not.

Mr. Anderson: I think I ought to state to your Honor that your Honor may not misunderstand, we have sent men to Washington nearly every day to get papers counsel has asked for. Whenever he asked for them we sent immediately to Washington. I just had a telephone message from the State Department saying they would not let their records go out of their Department except in charge of one of their officers. I can subpoena them and let that officer come up here with the papers wanted by Mr. Kresel and he will be here tomorrow. I cannot produce all of the records of that office when Mr. Kresel calls for them.

Mr. Kresel: What I have here, your Honor, is an abstract.

The Court: Do you want to put that into the evidence?

Mr. Kresel: I want to get from the witness the facts instead of putting this in evidence. I thought we could agree on it, but apparently we cannot.

Q. 259. I wish you would take this, Mr. Garvan, and state whether or no on or about the sixth day of February, 1919, an assignment of the patents mentioned in Schedule A, which is here, was made by the Alien Property Custodian to the United States of America, represented by the Secretary of the Navy.

Mr. Anderson: If your Honor please, I have to object because I cannot conceive that the question as asked, whether an assignment was made, is other than a legal conclusion to be drawn only from the written instrument, and I will do my best to help get the written instrument. It is not in the Alien Property Custodian's records, and we will try to get it if we can, but if this matter is important at all, which I do not think it is, it is quite important, and, therefore, it is important that it should be proved in the proper way. Therefore, I have to object to this.

Mr. Kresel: If your Honor please, we have asked the other side to produce these instruments for us. They have had considerable time and yesterday they produced what I have now in court. Now, pardon me a minute, Colonel, I do not mean to pick any quarrel with you at all. I withdraw that for the present and I am going to request the Government again to be good enough to make a search and try to produce these documents for me before the case closes. If they do not produce them, I shall ask your Honor to permit me to re-offer this.

The Court: This case will go on until all the documents as well as all the evidence desired by either side is put upon the record.

Mr. Anderson: Will your Honor permit me to explain. This document, I assume, is recorded in the Patent Office, and these gentlemen have just as much access to it as we have.

The Court: That statement is not in criticism of you, Colonel Anderson. It means if we have to wait for documents, we will have to wait for them. I realize there are numerous documents and it takes time to get them. All I have been attempting to indicate is that we will go on until the documents that you desire from the defendant are produced for you and that the documents that the defendant desires from the plaintiff are produced by you. There is no criticism expressed or implied.

Mr. Kresel: Not at all; I am not criticizing.

Mr. Anderson: I would like to have it understood, however, that all of these documents are just as available to counsel as they are to us. They are not in the office of the Alien Property Custodian; a careful search has been made.

The Court: You are the Government of the United States, you are not Alien Property Custodian.

Mr. Anderson: But the Patent Office is an office of public record, and they are available to the defendant as well as they are to us. We do not have to make copies of public records for him.

Mr. Kresel: If that is the position of Colonel Anderson, I am glad to understand it. If it is that he will not go to the trouble of having a copy obtained from the Patent Office, very well, I shall take that matter up and get it. Colonel Anderson, you are relieved from that.

Mr. Anderson: That is the main point. If I can find it in the records of the Government I will produce it here, and that search is now going on. But if we do not find it in the records of the Government, I do not think it is up to the Government to go to the Patent Office and have a copy made.

The Court: That is a matter that I have not been asked to get into so far.

Q. 260. Mr. Garvan, have you had prepared and and do you now produce the statement giving the names of firms and corporations who have taken licenses from The Chemical Foundation since its inception, showing the business that those licensees are in?

A. I have.

Mr. Kresel: I offer this in evidence.

Mr. Anderson: I do not know what it relates to, sir, so I will just let it go in under the general objection. I do not know what it means.

Received in evidence and marked "Defendant's Exhibit No. 89." (*See Exhibits, Vol. IV, page 2653.*)

Mr. Kresel: This instrument, your Honor, shows that 103 firms and corporations have taken out licenses from The Chemical Foundation. Your Honor will recall that I gave you the number of licenses taken out, something over 300, but those were taken out by 103 firms and corporations, and the business of each of those is given in this exhibit. They run from pharmaceuticals to therapeutic apparatus, aluminum alloys, vegetable oils, flux, tanning materials, etc.

Mr. Anderson: Mr. Kresel, may I ask if that is the list of licenses that you put out, and whether all the licenses are now outstanding?

Mr. Kresel: Do you mean the first exhibit, the big one?

Mr. Anderson: Does it include the Federal Trade Commission licenses?

Mr. Kresel: Oh, no.

Mr. Anderson: Or contracts?

Mr. Kresel: Oh, No.

Mr. Anderson: It is just licenses actually issued by The Chemical Foundation?

Mr. Kresel: Yes. Is there anything else?

Mr. Anderson: No. I merely wanted to get that straight for my own information.

Q. 261. Mr. Garvan, have you had prepared a list showing the number of licenses each year and the number of patents involved?

A. Yes. (Handing counsel.)

Mr. Kresel: I offer that in evidence.

The Court: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 90." (*See Exhibits, Vol. IV, page 2658.*)

Q. 262. Mr. Garvan, how many patents altogether were assigned by the Alien Property Custodian to The Chemical Foundation?

A. 4,919.

Mr. Anderson: May I ask if that is just patents, or trade marks?

Mr. Kresel: That is patents and applications which matured into patents.

Mr. Anderson: But not trademarks?

Mr. Kresel: No, that does not include trademarks.

Q. 263. At the time of the assignment of these patents to the Foundation, was it subsequently found that any had in fact expired before the assignment?

A. Yes, just 54.

Q. 264. And did it also transpire that there had been duplications in the assignments?

A. Yes, sir, 20.

Q. 265. Up to December 31, 1922, had any of the patents so assigned to The Chemical Foundation expired?

A. Yes, sir.

Q. 266. How many?

A. 858.

Mr. Anderson: Have you not got a list of those expired patents that you put in?

Mr. Kresel: No.

Q. 267. In addition to the 858 that had expired, had The Chemical Foundation reassigned any of the patents that it had received, either to the Alien Property Custodian or to others?

A. Yes, sir, 45.

Q. 268. So at the end of 1922 how many patents remained in the possession of The Chemical Foundation out of the total of 4,919 that had been assigned to it originally?

A. 4,016.

Q. 269. I am going to ask you to state how many patents were licensed by The Chemical Foundation from the inception of its existence to the end of 1922?

A. United States manufacturers, 440.

Q. 270. In other words, of all the 4,919 patents that had been assigned to The Chemical Foundation, licenses covering only 440 were ever issued?

A. Down to December 31, 1922.

Q. 271. Except the licenses to the United States Government that you have in mind?

A. Yes, sir.

Q. 272. Up to December 31, 1922, how many licenses were cancelled or expired of those that had already been issued?

A. 116.

Q. 273. So that on December 31, 1922, how many patents remained out under license?

A. 324; and there were four patents included in licenses out for signature.

Q. 274. Of the 4,919 patents that were assigned to The Chemical Foundation, how many ever produced any income to The Chemical Foundation?

A. 491.

Q. 275. Of the 491 patents that produced any income, how many, if any, expired by December 31, 1922?

A. 46, which produced $115,417.79.

Q. 276. And can you give the percentage of that amount of $115,417.79 to the total income that The Chemical Foundation received from all patents?

A. 17½ per cent.

Q. 277. On December 31, 1922, of the 4,016 patents that still remained unexpired, how many were producing any income?

A. 445, or about 11 per cent.

Q. 278. Then during the three years and nine months, which is the period between April, 1919, and December 31, 1922, is it the fact that 89 per cent. of the patents assigned to you earned nothing?

A. That is the fact.

> The Court: Do you mean by that, by way of materials imported or licensed?

> Mr. Kresel: In every way, your Honor, both ways.

Q. 279. Mr. Garvan, what were the total earnings of The Chemical Foundation for the period of three years and nine months from April, 1919, to December 31, 1922, upon all patents?

A. 661,706.28.

Q. 280. Have you had calculated the gross return per patent; using 4,919 patents as the number that had been assigned to The Chemical Foundation, what does that show as the gross return per patent for the period of three years and nine months?

A. $134.52.

Q. 281. And per year?

A. $35.87.

Q. 282. Per patent?

A. Per patent.

Q. 283. Please look at this paper and state whether that is a correct statement of the income and expenses of The Chemical Foundation from its inception to December 31, 1922?

A. It is.

Mr. Kresel: I offer this in evidence.

The Court: Admitted

Received in evidence and marked "Defendant's Exhibit No. 91." (*See Exhibits, Vol. IV, page 2659.*)

Mr. Kresel: The statement shows that between April 10, 1919 and December 31, 1922, the total income from royalties and licenses, contracts acquired, trademarks, contributions received, interest and discount received, was a total of $699,925.83; that the total expenses for the period were $507,361.27, not including, however, any educational expense as to which we shall introduce evidence in a little while.

Deducting those expenses from the total income leave a net income before charging educational expense of $192,564.56. The educational expense during the period amounted to $340,245.76. That created a deficit as of December 31, 1922, of $147,681.20. In other words, according to our figures of the capital that had been paid in, the corporation had lost $147,681.20.

The Court: Does your statement show how the total of $507,000 was made up?

Mr. Kresel: Yes, your Honor. May I hand you a copy? (Handing paper.)

Mr. Anderson: Mr. Kresel, you have reference there to Schedule 1 and Exhibit B. Are you going to introduce those?

Mr. Kresel: Yes, I am going to.

Mr. Anderson: Because I would like to have the details.

Mr. Kresel: Certainly. You shall have it. I will put it in now.

I now offer in evidence Exhibit B referred to in this statement.

The Court: That is the educational expense item?

Mr. Kresel: That is the educational expense item.

The Court: Admitted

Received in evidence and marked "Defendant's Exhibit No. 91-A." (*See Exhibits, Vol. IV, page 2660.*)

Q. 284. Have you another copy, Mr. Garvan?
A. No, I have not another copy, apparently.

Mr. Kresel: This exhibit, your Honor, shows a statement of educational expense from April 18, 1919, to December 31, 1922. May I read a few items? Copies of "Creative Chemistry, $60,032.73. Postage and Express Charges, $12,904.01. Distributing letters in connection with "Creative Chemistry," $17,184. Copies of the "Future Independence and Progress of American Medicine in the Age of Chemistry, $28,573. Copies of an exhibit prepared under the auspices of the National Research Council, $9,802. "Aims and Purposes of The Chemical Foundation, Inc.," $11,694.

Copies of testimony of the Army and Navy, $2,300. Copies of "What the Chemist Has Done and May Do for Them in War and Peace, $2,700.

Before I put a question to the witness, I read from the third page of this Exhibit B, Colonel:

> "Industrial Survey and Research Service Enlisting Aid of American Women in Chemical Research and making Chemical Survey of U. S., 9,139. Wilder D. Bancroft, work in connection with writing a book on the theory of dyeing, and a contribution to continue the publishing of the Journal of Physical Chemistry, $5,500. National Research Council, Development of Chemical Information useful to the industries of National Defense and Chemical Medicine, Standardization of Biological Stains and Chemical Exhibits," $11,000. And so I could go on.

The Court: Are the figures for the gross income different from those shown by the plaintiff?

Mr. Kresel: No, your Honor.

The Court: They are the same?

Mr. Kresel: Exactly the same. The total of this Exhibit B of educational expense is $340,245.76.

Q. 285. Mr. Garvan, I wish you would, in a very few words, state to the Court the extent of the expenditures made by the Foundation in what you call, or what appears upon your books as educational work. Would you like this to refresh your recollection (handing paper)?

A. Yes. In the first place, we became obligated for $10,000 on which we have paid, up to December 31, 1922, $7,500 for the National Research Council.

Q. 286. Tell us, please, what the National Research Council is?

A. The National Research Council is a continuation of the National Warfare Council. It is a Government-controlled institution in Washington for the encouragement of research throughout the country. It is endowed by a gift from the Carnegie Foundation of some $5,000,000. It encourages research in any branch.

It is an outgrowth of the war. We promised them $10,000, and gave them $7,500 on it for the development of a survey of the chemical equipment and chemical capacity of the country, and in men, universities, schools, laboratories, and so forth, for the use of the Army and Navy, for the use in case of war, for the use of the Government in case of need, for the use of industries, for the use of the country in general, and that survey was taken of the country, and the results of it are in the National Research Council, available to the different Government departments, and anybody in the country who wants to find out anything about the personnel or equipment or capacity along any line of American chemistry.

American Chemists' Society. We became obligated for $25,000; paid them, up to December 31, 1922, $5,000 on that. During the years 1921 and 1922, during the slump in all industry, the American Chemists' Society felt they were unable to keep up their circulation of scientific literature, and it being in our development period, the Foundation contributed to them in order to prevent the lowering of the standard of the distribution. They distribute what are called abstracts of the progress of chemical science throughout the world, and that was given to them in order that the standard might be kept up.

The National Research Council were given $1,000 to help complete the work in connection with the compilation and publication of chemical and physical constants. That is a work that has been going on under the supervision or co-operation of the Government, and chemical and physical constants are the working mathematics of chemists, and it was for the purpose of finishing that publication, to be made available to the whole country, that that was done.

The chemical survey was instituted and has not been completed, but will be resumed when we have funds, of surveying the country to find out in each district what researches needed chemical development, as to metals or agriculture or soil. It was done by states.

Q. 287. Who had charge of that?

A. Miss Obemauer. Through the ;departments down in Washington. It was a gathering together of all the Government information in the different departments, to be placed before the authorities of each state or group of states, with an endeavor to show them what the chemist could do for them if he was given a chance.

The National Research Council, we were obligated for $2,000, and gave $1,000 for the standardization of biological stains.

Q. 288. Will you explain that?

A. Before the war we were entirely dependent on Germany for biological stains, and that caused tremendous distress in this country. Diphtheria and pneumonia, all those diseases are now detected by means of biological stains. You take a smear of the throat and they cannot detect it, they cannot decide on the germ without having a piece of dye to put on the slide, which brings it out, so that the biologist can detect it. And they are used in botany, by all the botanists, by the bacteriologists, by the pathologists, by all our hospitals and all our research and educational institutions. . We are entirely dependent on Germany for them, for the Griebler stains. That was the name in Germany.

We organized a committee on which was Dr. Kahn, who was the United States agricultural chemist in Northern New York, at the station there, and he got the different societies together, the Bacteriological Society, the Botany Societies, and so forth. They each appointed representatives and they, as a committee working with the industry, have developed these things until American stains are superior to anything that ever came out of Germany. It is a small business. It is only $60,000 worth of business. But every hospital and medical place in the country is absolutely dependent upon it. And we financed the standardization and the expenses of this committee, representing the scientists, to work with the industry to produce these stains, which is now accomplished.

Wilder D. Bancroft was the head Professor of Cornell and was, during the war, the Chief of the Chemical Warfare Service of the Government, and we contributed $3,000 to keep alive the Journal of Physical Chemistry, and became obligated for $50,000. more, $10,000 for the next five years. We formed an alliance with the London and English Chemical Societies, and in order to free English-speaking people from dependence upon German chemical literature, both nations have combined to bring out this magazine, which will offer the opportunity to English and American chemists to produce their discoveries without producing them in Germany; and the Foundation, on behalf of America, has promised to contribute $10,000 a year for five years to bring about that combination and develop that magazine to its fullest extent.

Three thousand five hundred and forty-four dollars and eighty-two cents; we co-operated with The Chemical Warfare Service through Mr. H. S. Kimberly in creating the exhibit——

Q. 289. Who is The Chemical Warfare Service?

A. It is the United States Government Chemical Warfare Service.

Q. 290. A branch of the Army?

A. A branch of the Army. We did this also through the National Research Council. This was for the getting up of an exhibit of the relation between the development of the chemical industries and our national defense. It was a physical exhibit which was exhibited before both branches of Congress and is now in the Smithsonian Institute in Washington.

Also for the expenses of taking moving pictures of the tests upon the different battleships of the new arm of aeroplane and chemical warfare. The United States Government allowed two vessels to be bombarded through the Air Service and the Chemical Warfare Service, and they had no money and we contributed the money to make the films of those two demonstrations to show that the day of the battleship was over and that the air and chemistry were the menaces of the next war.

Then there is $5,364.31 which is also part of that same expense, and they should have been combined, in this exhibit, and worked through the Chemical Warfare Service and Chemical Research Council.

Q. 291. Will you state something about the literature that The Chemical Foundation distributed?

A. Dr. Slosson was the editor of The Independent, and while there he had published articles which were taken up by the Century Company and published in their scientific series. His book was called "Creative Chemistry." We had nothing whatever to do with the publication of the book, and never saw the book until it was on the shelves of the book-stores. The book, if you have it there, is written in popular language to show the dependence of a country upon its chemical development, both in peace and in war, and written for the person who has had no opportunity to study chemistry, or no one to explain its importance to him.

We found that the basis of the German chemical success was its educated public opinion, which found expression in its support of the development of the industry through schools, through the universities, through the research institutions, through government protection and aid and through the sustenance of the different industries. We started out to instill such an understanding in this country.

We circulated 73,867 copies of this "Creative Chemistry," sending them to the agricultural agents, Chambers of Commerce, Congressmen, 16,000 to consumers and business men, 1,365 to educators and to Government employees, Kiwanis Clubs, libraries and librarians, newspaper editors, paint and oil manufacturers, Scout Masters of the country working in conjunction with the Boy Scouts under their Executive Council. We sent those to the Boy Scout Masters with directions to the Scout Masters to gather their boys together and read this book to them.

Mr. Kresel: I commend that to your Honor as one of the finest works that has ever been written, in language that a layman can understand.

The Court: Do you want to give this book a number for identification?

Mr. Kresel: I think, your Honor, that would be a good idea.

(Marked "Defendant's Exhibit L" for Identification.)

A. (Continuing.) That was sent to all the schools and colleges and all the professors, not only the chemical professors, but other professors as well, because we found that the development of classical education in this country had been entirely neglectful of a pandemic understanding of the sciences. So we sent them to the Trustees of the Universities and to all of the professors and members of the faculties and then to the students.

It is now the textbook in many of the colleges and schools. For instance, the State of Ohio requires it in every public school in the State and the publication of the book led Mr. Scripps of Scripps,-McCrea & Company to endow Mr. Slosson of the National Research Council with a gift of $500,000, the income of which is to be devoted to the spread of scientific literature in popular language throughout the country.

Q. 292. Will you proceed to the next step?

A. The next most important one is "The Future Independence and Progress of American Medicine in the Age of Chemistry."

We went to the American Chemical Society and asked them if their Committe on the relation of chemistry to medicine would work with us. They appointed a sub-committee consisting of Professor Stieglitz of Chicago, Reid Hunt of Harvard, Theat Johnson of Yale, F. R. Eldred of Eli Lilly & Company, Professor John J. Abel of Johns Hopkins, Professor Alsberg, the President of the Food Research Institute, Stanford University, then chief chemist of the Bureau of Agriculture, Raymond F. Bacon, Director of the Mellon Institute for Industrial Research at Pittsburgh, Mr. F. O. Taylor and Dr. Herty.

These gentlemen spent a year and a half reducing to popular expression the true relation and hope of medicine worked out in connection with chemistry for the future and we then sent out 620,000 copies of this report to the physicians and surgeons asking for the consideration of the report by physicians and surgeons, by mothers and fathers, by educators, hospital directors and trustees and by others whose hearts are interested in the welfare of the future generation of American children. This was sent to every doctor in the country; it was sent to all the libraries, to all the clergymen, to 620,000 leading persons and if I may say so has worked a revolution in the study of medicine in this country.

MR. KRESEL: May I have that marked in the same way for identification?

(Marked "Defendant's Exhibit M" for Identification, 7/2/23.)

THE COURT: Is it the purpose to go through each of those?

MR. KRESEL: No, your Honor, there are only two or three.

A. (Continuing.) The next is "The Riddle of the Rhine." As, "Creative Chemistry" was intended to show to the country the necessity for the development of chemistry in reference to our industries and as the report of those famous scientists was supposed to demonstrate to the country its necessity of developing organic chemistry as a basis for the future development of medicine; so we took the best book known on the effect of gas warfare on the future of National Defense and chemistry. This book was written by Victor LeFevre who was a member of the English General staff and was really written under the supervision and direction of the British General staff with an introduction by Brig. General Henry Wilson who you remember was shot in the streets of London.

It was translated into French. I should have a copy of that. The introduction there was written by Marshal Foch and circulated through France. It is called "The Riddle of the Rhine" and gives the history of the use of chemical warfare and an explanation of it, written upon the theory that the peace resolution and such pacifist stuff as that will never tend to end war; that a truthful understanding of the facts of what the next war will be is a better basis and a better hope for peace than idle swashbuckling gestures.

Q. 293. Mr. Garvan, without going into any further details of books——

A. I think the rest almost show themselves what they were.

THE COURT: Do you want this last book marked?

MR. KRESEL: Yes, your Honor.

(Book entitled "Riddle of the Rhine" marked "Defendant's Exhibit N for Identification, 7/2/23.")

Q. 294. Mr. Garvan, I wish you would return to the statement of income and expenses that we were discussing, which is Defendant's Exhibit No. 91.

A. Yes, sir.

Q. 295. The total of expenses not including the educational expense were $507,361.27, according to this Exhibit No. 91?

A. Yes, sir.

Q. 296. That, however, covers all your expenses not only on patents but also on trademarks, contracts, and so forth?

A. Yes, sir.

Q. 297. By the way, before you get away from it, did The Chemical Foundation ever realize anything on copyrights?

A. Not a dollar.

Q. 298. How much has The Chemical Foundation realized on the trademarks that were conveyed to it by the Alien Property Custodian?

A. Eleven thousand dollars.

Q. 299. Exactly? You will find it on that exhibit that you have before you. How much is the amount?

A. Eleven thousand one hundred and ninety-six dollars and seventy-six cents.

Q. 300. The proportionate amount of the total expenses not including educational work that is applicable to patents, was how much?

A. Two hundred and eighty-five thousand four hundred and thirty-four dollars and eight cents.

A. $285,434.08.

Q. 301. What period does that cover?

A. Up to December 31, 1922, from April 10th, 1919.

Q. 302. If you divide the gross expense of $285,438.08 over the 4919 patents, what would be the gross expense per patent for the period?

A. Seventy-eight dollars and thirty-six cents for the period; $20.90 per year.

Q. 303. You have already told us that the gross income per patent per year, was $35.87; is that right?

A. Yes, sir.

Q. 304. If you will deduct the gross expense per patent per year which you say is $20.90, that leaves you a net return per patent per year of how much?

A. Fourteen dollars and ninety-seven cents.

Q. 305. That does not, however, include the educational expense?

A. It does not.

Q. 306. The educational expense of $340,245.76, added to the proportionate general expense on patents of $385,438.08 gives you a gross expense of how much?

A. Seven hundred and twenty-five thousand six hundred and eighty-three dollars and eighty-four cents.

Q. 307. And divided over 4,919 patents, that would give you for the period a gross expense on each patent of how much?

A. One hundred and forty-seven dollars and fifty-two cents for the period and $39.34 for the year.

Q. 308. And the gross income per patent per year was $35.87. Now, if you deduct the gross income from the gross expense, it leaves you a deficit per patent per year of how much?

A. Three dollars and forty-seven cents is the deficit.

Q. 309. And your books do show that your deficit has run up into——

A. One hundred and forty-seven thousand six hundred and eighty-one dollars and twenty cents.

Q. 310. In compiling your figures have you made any allowance for the amortization of the patents?

A. We have not.

Q. 311. Have you allowed any interest on the investment?

A. We have not. We have never paid any interest on our capital.

Q. 312. Have you paid any dividends on your stock?

A. No, not a cent.

Q. 313. Either common or preferred?

A. No, sir.

Q. 314. Can you state how much is the total income which The Chemical Foundation has received upon licenses covering the so-called nitrogen patents?

A. Yes, sir.

Q. 315. Please state it.

A. Total up to date, up to December 31, 1922, on all nitrogen and allied patents, numbering 131, and including all those formerly owned by the Badische Company, was $2,600.

The Court: Those are the Haber patents?

The Witness: The Haber patents.

Mr. Kresel: Yes, sir, $2,600. I now offer in evidence a statement showing the cost to The Chemical Foundation of all patents and other properties acquired by it from the Alien Property Custodian, which shows the total of $271,850. This shows the date when paid and what it was paid for.

The Court: A summary?

Mr. Kresel: A summary, yes.

The Court: It is admitted.

Mr. Kresel: I ask that it be marked.

Received in evidence and marked "Defendant's Exhibit No. 92." (*See Exhibits, Vol. IV, page 2666.*)

Mr. Kresel: I now offer in evidence a summary statement of income and other receipts and disposition thereof, from April 10, 1919, to December 31, 1922.

Q. 316. Mr. Garvan, I had omitted to ask you whether that last exhibit was correct. I show you Defendant's Exhibit 92. Was that made up from your books and is that a correct statement?

A. It is.

Q. 317. I now show you this summary statement of the income and other receipts from the beginning to December 31, 1922. Is that a correct statement from your books?

A. It is.

Mr. Kresel: I will ask that they be marked.

Received in evidence and marked "Defendant's Exhibit No. 93." (*See Exhibits, Vol. IV, page 2667.*)

Mr. Kresel: From this exhibit, your Honor, it appears that the total income, total receipts of The Chemical Foundation, up to December 31, 1922, from all sources, including the proceeds from the sale of its capital stock, was $1,128,825.-83. Then the statement shows the disposition thereof, namely, payment to the Alien Property

Custodian $271,850, expenses chargeable to the conduct of the company's affairs, not including educational work, $507,361.27, educational work, $340,245.76, making a total of $1,119,457.03 expended. That leaves liquid net assets $9,368.80 as of December 31, 1922.

I now offer in evidence a summary showing the yearly expiration of income producing patents and amounts earned thereon, with percentage for each year, to the total number of income producing patents, and total amounts earned.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 94." (*See Exhibits, Vol. IV, page 2668.*)

Mr. Kresel: I now offer in evidence a statement showing the earnings on the 874 trademarks acquired from the Alien Property Custodian, from April 10, 1919, to December 31, 1922. That is both a summary and a detailed statement.

Mr. Anderson: If your Honor please, on the question of this statement here, the summary showing the expiration of income producing patents and the amounts earned thereon, just introduced as Defendant's Exhibit No. 94, I have not had a chance to look at it, so I move to strike it out on the ground that it is no evidence of any conditions in the future, that the only and the best evidence of the dates of expiration of patents is the record of the date of the patent itself.

Mr. Kresel: Which is in evidence by your own exhibit.

Mr. Anderson: It is in evidence. This summary does not mean a single thing as to the future. I do not know what is to be argued from it.

Mr. Kresel: I do not think, Colonel, you quite understand the exhibit. Please let me explain it.

Mr. Anderson: I certainly do not understand it. If it has anything to do with this case I do not know it.

Mr. Kresel: Then you cannot really argue about it. Let me explain it. This exhibit takes up the 491 patents on which licenses were outstanding, shows how many of those patents will expire each year, and how the income thereon will thereby be reduced. That is what it shows.

Mr. Anderson: Then there is another objection still. That is a pure estimate.

Mr. Kresel: Now you have your objection.

Mr. Anderson: Yes, I thought it was for the past. Of course I notice that ran up to 1937, and it is an estimate pure and simple how the income will be reduced; because *non constat* they might have greatly increased income from those patents, or the income from the patents, on account of decreased use of the stuff produced under them or the introduction of some other substitute, might be greatly reduced in the meantime, so that they would be of no value two years from now. What can it prove?

The Court: All of which goes to show the very difficult task of attempting to place any value upon patents.

Mr. Anderson: Undoubtedly, and we have had that difficult task before us. But this is not evidence.

The Court: This goes to make up evidence with respect to the future based upon the facts in the past.

Mr. Kresel: Based upon what we know of it now.

The Court: Based upon actual facts.

Mr. Kresel: Exactly.

The Court: I will receive it, Colonel Anderson.

Mr. Anderson: In other words, here we start out with the statement that for the years 1919 to 1922 inclusive there was 9.67 per cent of the patents terminated and $115,470.77 in those years was the revenue derived from these patents that have terminated. Of course, the number of patents that would terminate during the years given is well known, because that is a matter of calculation merely from the dates of the patents. Then we calculate the revenue to be lost by those patents. We have had the past, present, and now we have the future of every known human activity to deal with in this evidence. Here is something that is a pure guess. If the Court is going to decide this case on evidence of that kind we might just as well not put in any evidence.

The Court: It seems to me that is the best evidence of value that we have had, Colonel.

Mr. Anderson: Then I say it is pretty weak evidence of value all along the line, if your Honor please. If that is the ground on which we are going to decide value in the case, we need not put in any evidence, let us guess at it.

The Court: No, I do not think it is a guess. If we cannot determine the future yield of a patent from what it has done in the past I do not see how you can reach any conclusion as to its value, and it seems to me the very best possible evidence and the evidence I had rather been expecting would be shown by you, and which you did show so far as the Trade Commission was concerned, is what they had yielded. This is only a summary and I could work out for myself, taking the date that the patent had expired, how much would be the expected yield, taking the life of those patents, and how much it would diminish if there was no change in the situation. It seems to me you have done the same thing generally, except that you have not carried it to the same conclusion with respect to the Trade Commission patents. These patents will yield so much money if nothing happens to vary its income during its life.

Mr. Anderson: The patents that have been licensed will yield so much money provided the present ratio is continued and there is no increase or decrease in the amount of production under those patents. When they expire, of course, assuming the same ratio of production is maintained at that time as today, there will be an added loss of revenue.

The Court: With one provision, namely, that there is no change in the situation, this shows the future income.

Mr. Anderson: Of course I do not want to argue the question, I just want to note my objection.

The Court: It goes to the weight of the testimony in any event.

Mr. Anderson: Very well, sir.

The Court: And it seems to me it has some merit as a compilation by counsel or the witness.

Mr. Anderson: It may help us in arguing the case, but that is all it can do.

The Court: Do you want to go on, Mr. Kresel?

Mr. Kresel: There is a question left unanswered. I will do anything your Honor desires.

The Court: I have been hoping that you

would take up the extra hour. I wonder if we could take this additional hour in the future.

Mr. Kresel: I would be very glad to do it.

The Court: I do not want to place a burden on the defendant any more than I did on the plaintiff, but if you find that the additional hour does place too much of a burden on you I will take it off. Unless you do find it a burden I hope we may sit until four o'clock instead of three o'clock Eastern Standard time. We will adjourn court now until 8:30 o'clock tomorrow, Eastern Standard time.

(Whereupon, at 4:00 o'clock Eastern Standard time, adjournment was taken until tomorrow, July 3, 1923, at 8:30 o'clock A. M., Eastern Standard Time.)

Wilmington, Delaware,
July 3rd, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Francis P. Garvan, resumed the stand.

Direct Examination (Continued).

By Mr. Kresel:

Mr. Kresel: Your Honor please, yesterday Colonel Anderson made the suggestion that on Defendant's Exhibit 83, which your Honor will recall was a statement of what licenses have been issued, there be added a column showing the form of license that was used in each case. I have had that done, Colonel Anderson; I have had a new column put in showing the form of license that was used in each case. We should like to substitute another copy for the Defendant's Exhibit 83 now in the case, this other copy having the necessary detail. Therefore I would like to have this copy I have here now marked in place of the other.

The Court: Let the substitution be made, without objection.

The same was so marked, Defendant's Exhibit No. 83. (*See Exhibits, Vol. IV, page 2583.*)

Mr. Kresel: Your Honor will recall that yesterday a question arose in connection with Mr. Garvan's testimony that he was not a stockholder of the Chemical Foundation. I have produced here the original voting trust certificate books and the voting trust certificate books for the preferred and common stock, also the transfer sheets, and I have submitted those to Colonel Anderson. I state that these records show that neither Mr. Garvan, nor Mr. Corbett nor Mr. McKay at any time held any of the stock or any voting trust certificate representing any stock in this Chemical Foundation. I understand Colonel Anderson is satisfied as to that.

Mr. Anderson: I have examined these books this morning and do not find that Mr. Garvan or Mr. Corbett or Colonel McKay were ever registered owners of any of the common or preferred stock or voting trust certificates of the Chemical Foundation, as stated by counsel. I tried to make it clear yesterday that my point merely went to the question of the subscription right and I did not want that foreclosed.

The Court: Is Mr. McKay still a director?

Mr. Kresel: He is no longer a director.

The Court: There is no contention that his successor had any of the stock?

Mr. Anderson: No, I do not think there is any question about that. He did not have any of the common stock.

Mr. Kresel: The Court's inquiry is as to whether there is any claim that Colonel McKay's successor as director had any stock holdings. I understand there is no such claim.

Mr. Anderson: I do not make any such claim.

The Court: What was his name?

The Witness: Haaren.

Mr. Kresel: If your Honor please, I am going to ask the privilege of having Defendant's Exhibits L, M and N for Identification, marked in evidence, with the understanding that they are not to be printed, but that each side may refer to those in the same way that we marked two or three that were introduced yesterday. Is there any objection, Colonel?

Mr. Anderson: No.

The Court: The same as 49 and 50, 48 and 51 being Government exhibits. Let them be so marked.

Defendant's Exhibit L for Identification received in evidence and marked "Defendant's Exhibit No. 96." (*Not printed.*)

Defendant's Exhibit M for Identification received in evidence and marked "Defendant's Exhibit No. 97." (*Not printed.*)

Defendant's Exhibit N for Identification received in evidence and marked "Defendant's Exhibit No. 98." (*Not printed.*)

Mr. Kresel: And in this same connection I am going to ask your Honor to indulge me a little further.

Q. 318. Mr. Garvan, I show you a pamphlet entitled "An exhibit prepared under the auspices of the National Research Council with the co-operation of the Chemical War Service of the United States Army", and ask you whether The Chemical Foundation distributed that pamphlet? And if so, please state the extent of the distribution.

A. They published and distributed to the extent——

Q. 319. Published at its own expense?

A. At the Foundation's expense.

Q. 320. Yes?

A.—to the extent of 580,240 copies, that going to soldiers and colleges and Chambers of Commerce, much the same list as Scout Masters—much the same list. That was a chemical exhibit to show the relation between the organic chemical industry and our national defense, which exhibit is now in the Smithsonian Institute that I referred to yesterday.

Mr. Anderson: Now just ask him to stick to the question, because the contents of that exhibit I do not know anything about, and I would rather have it stricken out.

Mr. Kresel: I am going to introduce it anyhow. I doubt if it does any harm. But if Colonel Anderson insists, I will consent that that part be stricken out.

I offer that exhibit in evidence.

Mr. Anderson: I note an objection to the introduction of this paper on the grounds of the general objection and on the further ground that it is not evidence of any facts as against the plaintiff here. I do not know the contents of the paper, but a paper issued under the circumstances stated certainly would not be evidence against the plaintiff. I am perfectly willing, subject to my objections already taken, to have the paper identified as one of the papers distributed by the Chemical Foundation, but I do not think it is evidence in this case.

The Court: As I understand it, that is all it amounts to. I do not understand that the contents are introduced for the purpose of supporting any facts, but merely as indicating the character of the work being done by this organization.

Mr. Kresel: Quite right, your Honor.

Mr. Anderson: To make it clear, I did not make the objection because I thought it was understood as to the books, etc., formerly introduced.

Received in evidence and marked "Defendant's Exhibit No. 99." (*Not printed.*)

Q. 321. Mr. Garvan, please state with reference to this pamphlet that I now show you, entitled "Department of the Interior, Bureau of Education" as to whether the Chemical Foundation had anything to do with the publication or distribution of that?

A. It was gotten out by the Department of Education and we had to do with the extent of the circulation. I would have to look up those figures to see just how we cooperated. We either paid for the printing or the clerical work or something of that kind. That was distributed to every teacher in the United States, in High Schools, and I think the list was something like 75,000 of the teachers of the country. It has to do with what chemistry should be taught in High Schools.

Mr. Kresel: The pamphlet is entitled, "Department of the Interior, Bureau of Education, Bulletin 1920, No. 26, reorganization of science in secondary schools. A report of the Commission on the reorganization of secondary education, appointed by the National Educational Association" and appears to have been printed at the Government printing office. I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 100." (*Not printed.*)

Q. 322. This is the last one, Mr. Garvan. Please state with reference to this pamphlet entitled, "The Dyes Question," what connection if any the Chemical Foundation had with its publication or distribution, or both?

A. This is a reprint of an article by James Morton, Chairman of Scottish Dyes, Ltd. It shows——

Q. 323. Do not state what it shows. Simply state what the Foundation did with reference to it.

A. We reprinted it and distributed it to all the newspapers and editors of the country.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: The same objections and limitations apply to all these papers, I understand.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 101." (*Not printed.*)

Q. 324. Mr. Garvan, with reference to Defendant's Exhibit No. 87, which is the big license to the Government covering the 5700 patents, I omitted to ask you yesterday—at least I think I omitted to ask—what consideration the Government paid the Alien Property Custodian for that license and release.

A. $100,000.

Q. 325. Mr. Garvan, did you have prepared and do you now produce a statement showing the earnings on the 874 trademarks acquired from the Alien Property Custodian by the Chemical Foundation covering the entire period from April 10, 1919 to December 31, 1922?

A. I did.

Q. 326. And is this the statement (handing paper to witness)?

A. It is.

Mr. Kresel: Colonel, this is a summary and a detail sheet attached to it. I offer that in evidence.

The Court: With the same force and effect as if testified to in detail by the witness?

Mr. Kresel: Yes, your Honor.

The Court: So admitted.

Received in evidence and marked "Defendant's Exhibit No. 102." *(See Exhibits, Vol. IV, page 2671.)*

Q. 327. Using that exhibit, Mr. Garvan, please state the total earnings by the Chemical Foundation from these trademarks for the period beginning April 10, 1919 and ending December 31, 1922.

A. $11,196.76.

Q. 328. And the average annual gross income thereon was what?

A. $2,985.80.

Q. 329. For each trademark what was the average annual gross income?

A. Three dollars and forty-two cents.

Q. 330. Have you had calculated the proportion of the expenses of the company applicable to the trademarks?

A. I have.

Q. 331. What proportion to each trademark?

A. Twenty dollars and eighty-eight cents.

Q. 332. Per year?

A. Per year.

Q. 333. Have you added thereto the interest on the investment, proportionately?

A. At six per cent., $4.12.

Q. 334. How much?

A. Four dollars and twelve cents.

Q. 335. Have you had calculated the amortization thereon?

A. I have.

Q. 336. How much does that amount to?

A. Three dollars and seventy-four cents.

Q. 337. If you add the proportion of expense, the interest on the investment and the amortization, that gives you a total outlay of how much?

A. Twenty-eight dollars seventy-four cents.

Q. 338. Per year?

A. Per year.

Q. 339. Per trademark?

A. Per trademark.

Q. 340. And the gross income per year per trademark is how much?

A. Three dollars forty-two cents.

Q. 341. What is the difference?

A. What difference do you mean?

Q. 342. The difference between the gross expense and the gross income per trademark per year?

A. Twenty-five dollars thirty-two cents is the deficit.

Q. 343. That is a loss of that amount?

A. Yes.

Q. 344. Have you had prepared a statement of income received by The Chemical Foundation on the salvarsan and neosalvarsan patents?

A. I have.

Q. 345. Please state first how many licenses the Chemical Foundation has issued covering those patents, giving the names of the licensees.

A. Five.

Q. 346. Will you give the names?

A. Abbott Laboratories, Incorporated, who succeeded to the Schamberg license in Philadelphia; E. R. Squibb & Sons, Malinckredt Chemical Company; Powers Weightman Rosengarten & Company; Empire State Chemical Company. Then there was an infringer from whom we collected $150.

(No Q. 347)

(No Q. 348)

Q. 349. Who was that?

A. E. J. Lukenback.

Q. 350. Please state the total amount that was collected by The Chemical Foundation between April 10, 1919 and December 31, 1922, on these salvarsan and neosalvarsan patents, on licenses issued by The Foundation.

A. Do you mean to include the Dermatological after it came to us?

Q. 351. Yes.

A. $37,503.14.

Q. 352. That is the total collected by The Chemical Foundation?

A. Yes, sir.

Q. 353. In that amount is there any amount included that was paid under a license that was made by the Federal Trade Commission?

A. Oh, no. No, it is paid by a licensee of The Federal Trade Commission.

Q. 354. That is what I mean.

A. But after he had surrendered his license to The Federal Trade Commission and taken out a license from us.

Q. 355. Who was that?

A. That was the Dermatological of Philadelphia, the successor of whom is the Abbott Laboratories of Chicago.

Q. 356. Dermatological Research Laboratories?

A. Yes.

Q. 357. I wish you would sub-divide, if you will, the total amount collected, which you say was $37,503.14, as between the amount paid by the Dermatological Research Laboratories, which had been a licensee of The Federal Trade Commission, and those licenses that were originally issued by The Chemical Foundation.

A. The Dermatological people, who formerly held the license from The Federal Trade Commission have paid us $31,466.60.

Q. 358. $31,466.60?

A. Yes sir, or 83-9/10 per cent. of our entire collections on arsphenamine and neoarsphenamine.

Q. 359. And when you say arsphenamine and neoarsphenamine, you are talking about the same patents that I have described as the salvarsan and neosalvarsan patents?

A. Yes, arsphenamine is the American name.

Q. 360. The total amount collected by The Chemical Foundation on licenses issued direct by it was how much?

A. $6,036.54, or 16-1/10 per cent. of our total.

Q. 361. And in this statement that you have had prepared and as to which you are now testifying, have you given in detail the amount received from each of your licensees?

A. I have.

Mr. Kresel: I offer that in evidence.

The Court: For the same purpose as the preceding licenses?

Mr. Kresel: Yes, your Honor.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 103." (*See Exhibits, Vol. IV, page 2674.*)

Q. 362. Mr. Garvan, it has been testified here that 57 so-called pre-war contracts had been assigned to The Chemical Foundation by the Alien Property Custodian. Has the Chemical Foundation received any return on those pre-war contracts?

A. It has.

Q. 363. Have you had prepared a statement showing the amount so received?

A. Yes, I have.

Q. 364. And do you produce the statement and is this it (handing paper)?

A. It is.

Mr. Kresel: We offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Deant's Exhibit No. 104." (*See Exhibits, Vol. IV, page 2675.*)

Q. 365. Please state the total amount that The Chemical Foundation received on those pre-war contracts between April 10, 1919 and December 31, 1922.

A. Two thousand four hundred forty-two dollars six cents.

Q. 366. Can you tell us, Mr. Garvan, how many patents were assigned by the Alien Property Custodian to The Chemical Foundation? Have you a statement there?

A. A statement of what?

Q. 367. How many patents were assigned to The Chemical Foundation?

The Court: Was that not given yesterday?

Mr. Kresel: Yes, your Honor; but your Honor will recall that the number given, 4,919, included some applications that had matured into patents.

The Court: Yes.

Mr. Kresel: I want to get the number of patents as such and then take up the applications.

A. They marked those papers of mine in evidence, the copies I had. They are not here.

Q. 368. Will you use this, then, please? (Handing paper) Just state how many patents.

A. Four thousand seven hundred sixty-four patents.

Q. 369. And how many applications?

A. Two hundred eighty-eight.

Q. 370. And how many trademarks?

A. Eight hundred seventy-four.

Q. 371. And how many copyrights?

A. Four hundred ninety-two.

Q. 372. And how many pre-war contracts?

A. Fifty-seven.

Q. 373. So that giving to these things the general term of "properties", how many properties were assigned?

A. Six thousand four hundred seventy-five.

Q. 374. Have you had prepared a statement showing the earnings on these 6,475 properties so acquired from The Alien Property Custodian between April 10, 1919 and December 31, 1922, with data and results in respect to the various sources of income and expense thereon?

A. I have.

Q. 375. And is this the statement? (Handing paper.)

A. It is.

Mr. Kresel: I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 105." *(See Exhibits, Vol. IV, page 2676.)*

Q. 376. As I understood your testimony yesterday, it was to the effect that your income on patents was of two sources?

A. Yes, sir.

Q. 377. Income on manufactures and income on imports?

A. Yes, sir.

Q. 378. Have you divided the total income on patents, which you testified yesterday was $661,706.28, into those two classes?

A. I have.

Q. 379. Will you state how much was collected by The Chemical Foundation under its licenses covering manufactured products?

A. Two hundred ninety-six thousand two hundred thirteen dollars forty-one cents.

Q. 380. And what period does that cover?

A. That covers from April 10, 1919 to December 31, 1922.

Q. 381. How much was collected by The Chemical Foundation during that same period on imports?

A. Three hundred sixty-five thousand four hundred ninety-two dollars eighty-seven cents.

Q. 382. And that gives you a total of how much?

A. Six hundred sixty-one thousand seven hundred six dollars twenty-eight cents.

Q. 383. Now please add thereto, if you will, the amount collected on contracts?

A. Two thousand four hundred forty-two dollars six cents.

Q. 384. And the amount collected on trademarks?

A. Eleven thousand one hundred ninety-six dollars seventy-six cents.

Q. 385. Please state whether those three items constitute the total income received by The Chemical Foundation during this period on all the properties assigned to it by The Alien Property Custodian.

A. Yes, sir.

Q. 386. What is the grand total?

A. Six hundred seventy-five thousand three hundred forty-five dollars ten cents.

Q. 387. Will you state whether you have had calculated the annual return?

A. Annual gross return?

Q. 387 (continued). Annual gross return on those 6,475 properties?

A. I have.

Q. 388. And how much annually does it amount to?

A. $181,436.04.

Q. 389. Have you had that dividend so as to determine what the annual gross return was on each property?

A. I have.

Q. 390. And how much does that show?

A. $28.02.

Q. 391. Have you had calculated the amount of the expense applicable to each property acquired from The Alien Property Custodian?

A. I have.

Q. 392. And what does that show per year?

A. $20.88.

Q. 393. And have you added thereto interest on your investment at 6 per cent?

A. We have.

Q. 394. And what does that amount to per property?

A. $4.12.

Q. 395. Each year?

A. Each year.

Q. 396. And have you allowed for amortization of these properties per year?

A. We have.

Q. 397. And how much does that amount to per property?

A. $3.74.

Q. 398. What is the total of the expense, interest on investment and amortization of properties per year, per property?

A. $28.74.

Q. 399. And what does that show comparing it with the gross income per property?

A. It shows a net loss of 72 cents per property, per year.

Q. 400. Have you had prepared, Mr. Garvan, a statement showing the division of earnings from patents as between product and process patents?

A. We have.

Q. 401. Covering what period?

A. April 10, 1919 to December 31, 1922.

Q. 402. And have you had prepared a summary and a detail schedule for each patent?

A. We have.

MR. KRESEL: We offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 106." (*See Exhibits, Vol. IV, page 2677.*)

Q. 403. Have you had prepared and do you now produce a statement of earnings from royalties and license fees by individual patents, showing what each patent earned?

A. We have.

Q. 404. Covering what period?

A. April 10, 1919 to December 31, 1922.

MR. KRESEL: I offer that in evidence.

Received in evidence and marked "Defendant's Exhibit No. 107." (*See Exhibits, Vol. IV, page 2689.*)

Q. 405. Have you had prepared a statement showing the income received by the Chemical Foundation on the tanning patents which had been assigned by the Alien Property Custodian to the Chemical Foundation?

A. We have.

Q. 406. Were you present in court when Dr. Holdermann testified with reference to these tanning patents?

A. I was.

Q. 407. Have you had the statement that we are now discussing so prepared as to cover all of the tanning patents that Dr. Holdermann testified about?

A. We have.

Q. 408. And have you included in the statement any other tanning patents?

A. First, all that he testified about; second, our other tanning patents; then the total; each group totalled and then the two groups totalled.

MR. KRESEL: We offer this in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 108." (*See Exhibits, Vol. IV, page 2699.*)

Q. 409. Will you please state what was the total amount of income received by the Chemical Foundation, for the period from April 10, 1919 to December 31, 1922, upon the tanning patents testified to by Dr. Holdermann?

A. $9546.82.

Q. 410. And that included how many of these tanning patents?

A. Thirteen.

Q. 411. Has the Chemical Foundation received any income on other tanning patents?

A. It has.

Q. 412. On how many additional ones?

A. Three.

Q. 413. And what is the total amount received on those three for the period mentioned?

A. $1,876.47.

Q. 414. What is the total amount of income received by the Chemical Foundation during the period stated on all the tanning patents?

A. $11,423.29.

Q. 415. Can you state from this last exhibit the date when the first of those tanning patents was issued?

A. Yes, sir.

Q. 416. What is the date?

A. The 9th day of September, 1919.

Q. 417. I think you are in error about that. The date when it was issued—the patent and not the license.

A. I beg your pardon, I thought you said the license.

Q. 418. No, I mean the date of the patent.

A. The 10th day of March, 1914.

Mr. Kresel: Perhaps your Honor would like to know the reason I asked that question, and I think it is well your Honor should know. Your Honor will recall that Dr. Holdermann undertook to testify to the value of these patents as if the patents were in existence in 1913, and it is as of that date that he gave the German income on these patents. I am reminded that he also testified that in that year 1913 the Germans received $5,000 as income from imports under these patents, when in point of fact the patents had not even been issued.

Mr. Anderson: Had application been filed?

Mr. Kresel: Yes, the application had been filed, but they do not receive income on a patent that is not in existence, even though an application is filed, do they?

Q. 419. Have you prepared a statement, Mr. Garvan, showing a comparison of the values of the domestic and imported dyes covered by the patents owned by the Chemical Foundation, as against domestic and imported dyes used in the United States that were not so covered?

A. I have.

Q. 420. For what years have you had that done?

A. 1919, 1920, 1921. The figures of the Tariff Commission are not out for 1922.

Q. 421. The figures as to dyes covered by your patents of course you took from your records?

A. Yes, sir.

Q. 422. The figures as to the country's use you took from the Tariff Commission reports?

A. Yes, sir. The figures for ourselves include 1922.

Q. 423. I understand. Is this the statement that you have had prepared upon the subject (handing witness)?

A. Yes, sir.

Mr. Kresel: I offer that in evidence.

Mr. Anderson: If your Honor please, I have not objected to these statements because, of course, I can test the witness's knowledge of them and then make such motion as the situation may require, instead of objecting at this time. But I do object to a statement not only made up from the witness's books, but from various documents and records not produced here and which we know nothing about.

Mr. Kresel: We have the Tariff Commission reports.

Mr. Anderson: (continuing) And which we have had no chance to examine; because we have never seen these statements, never saw them until they were offered in evidence, and had no opportunity to check them. These statements come from a witness who I do not think could qualify to speak on that subject of his own knowledge. Therefore I will have to object to the introduction of this statement, and if it be introduced of course I shall reserve the right to test his knowledge to the fullest extent.

The Court: Do you propose to offer the records from which this statement or tabulation is prepared?

Mr. Kresel: I am just about to offer the Tariff Commission reports. I did not think it would be necessary to do it at this time, but I quite recognize Colonel Anderson desires me to do it. I shall now offer in evidence the report of the United States Tariff Commission for the year 1920. The pamphlet is entitled "Tariff Information Series No. 23 Census of Dyes and Coal-Tar Chemicals 1920."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 109." (*Not printed.*)

Mr. Anderson: I have not seen that report. Do you think it is necessary to print that entire report?

Mr. Kresel: I doubt it very much. I think we can agree upon what portions should be printed; of course, with the understanding that each side may refer to any other portion.

The Court: When you have some leisure after this trial ends, if you can agree upon a tabulation of the facts that you want, taken from those records, if the Government sees fit to agree —I do not know whether it will and I do not suggest that it will or should agree. But the Government and the defendant might agree that the tabulation is correct and then these can in effect be withdrawn.

Mr. Kresel: Yes. I offer in evidence the report of the United States Tariff Commission for the year 1921. It is entitled "Tariff Information, Series 26, Census of Dyes and other Synthetic Organic Chemicals for 1921."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 110." (*Not printed.*)

Mr. Kresel: I offer in evidence a report of the United States Tariff Commission for the year 1919 entitled "Tariff Information, Series 1922, Census of Dyes and Coal Tar Chemicals for the year 1919."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 111." (*Not printed.*)

Mr. Anderson: If the Court please I am perfectly willing to agree with counsel now, assuming that there are available copies of that report, that none of those reports be printed in the record of this case, but, being official publications of the Government, either side may refer to them in argument and use such portions thereof as they may desire in their briefs without printing them in the record; because I have no doubt they are available, and if that is the case, it would be quite a useless expense on either side to print all that statistical data, nine-tenths of which has no application to this case.

MR. KRESEL: We are both trying to arrive at exactly the same result and we will cooperate with the Government in any way that will be necessary.

THE COURT: It may be all right to do that for one or two exhibits. As far as I am concerned, I am not particularly interested. As far as the Appellate Courts are concerned, it might be well to consider whether it is practical to leave out very many from the record.

MR. ANDERSON: I do not think it could be done to any extent, but as to these official reports of the Tariff Commission which have just been introduced, I have no doubt a number of copies are available and could be furnished to the Appellate Court if desired. By agreement of counsel, they could be eliminated from the printed record, this being always in this Court for verification of the correctness of the copy used. That would save an enormous expense.

THE COURT: I think it is well to leave out as much as you can, but I do not want to be a party to an understanding——

MR. ANDERSON: I merely make that suggestion to counsel at this time, because he might overlook it after the trial.

MR. KRESEL: I offer in evidence a report of the United States Tariff Commission entitled

"Report on Dyes and Related Coal Tar Chemicals, 1918, printed for use of the Committee on Ways and Means of the House of Representatives."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 112." (*Not printed.*)

Mr. Kresel: I offer in evidence a report of the United States Tariff Commission entitled "Tariff Information, Series No. 15, Costs of Production in the Dye Industry, 1918 and 1919, details of costs for a selected list of dyes and intermediates."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 113." (*Not printed.*)

Mr. Kresel: I offer in evidence a report of The United States Tariff Commission, entitled "Tariff Information, Series No. 11, Census of Dyes and Coal Tar Chemicals, 1918."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 114." (*Not printed.*)

Mr. Kresel: I offer in evidence a report of the United States Tariff Commission for 1917 which is entitled, "Tariff Information, Series No. 6, Census of Dyes and Coal Tar Chemicals, 1917."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 115." (*Not printed.*)

Mr. Kresel: I offer in evidence a publication of the Department of Commerce, Bureau of Foreign and Domestic Commerce, entitled "Special Agent, Series No. 121, on Artificial Dye Stuffs used in the United States, quantity and value of foreign imports and of domestic production during the fiscal year 1913-1914."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 116." (*Not printed.*)

Q. 424. Mr. Garvan, we will return to the question last asked you, the statement that you say you had prepared with reference to the comparison of dyes covered by your patents and the total dyes used in the United States. Is this the statement that you speak of?

A. It is.

By THE COURT:

Q. 425. Was that prepared by this witness?

A. Under my direction, yes.

Q. 426. Did you check it up?

A. I did not add it up.

THE COURT: I was wondering whether that statement should not better come from the person who did the work rather than from this witness. It could be embodied in your brief as a tabulation, but I do not see how it can be given any strength by the fact that this witness asked to have it done, when he did not do it. Do you? I have no objection——

MR. KRESEL: No, your Honor; I do not want it put in if your Honor is not going to give it the weight that I want your Honor to give it.

THE COURT: I shall be glad to have a tabulation of course. It would be convenient and useful, but I understood one of Colonel Anderson's objections to this was that it was not prepared by this witness.

MR. KRESEL: I was trying to avoid the necessity of calling another witness, but I quite recognize that Colonel Anderson has a right to insist that I call the man who made the actual tabulation; and I shall do it. I withdraw the question.

The Court: Am I correct, Colonel Anderson?

Mr. Anderson: You are correct. In order that Mr. Kresel may understand my point at this time, I might say that when we were trying to put in evidence on this subject, we furnished statements in advance to counsel. I am not saying that he is not acting well within his rights. I am not implying any criticism because these are very difficult things to prepare. When we introduced our statements, they were checked, but even then we had to produce original records.

If I knew the actual facts were as set forth in this statement, I would just as soon agree to them on the record as to have the statement proved by the witness. I am practical in these things. But these are very voluminous statements and cover an enormous range of territory. We have never seen them until they were handed to us in Court. I will facilitate the introduction of the evidence in every way I can, but I must protect the question of its accuracy.

The Court: So far as I am concerned, it is immaterial whether that appears as an exhibit in the exhibit books or whether it appears in an appendix to your brief, showing your understanding of what the Tariff Commission reports purport to show; and then if there is a difference between you, you can each do the same thing. It is immaterial to me whether it is in the exhibit book or in the appendix to the brief. It would have the same value either way unless put in by the person who actually made it.

Mr. Anderson: Mr. Kresel, suppose you let

Mr. Garvan put it in and it will be understood that it will be subject to our checking. If I find it is correct, I will not move to strike out that particular statement, reserving the right as to the others. In other words, I want the facts to appear.

Mr. Kresel: I am very much obliged. Colonel Anderson states I may put it in by Mr. Garvan subject to correction, which of course is all right.

Mr. Anderson: That applies to the particular statement that you are now referring to.

Mr. Kresel: Yes. I therefore offer this statement in evidence subject to correction.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 117." (*See Exhibits, Vol. V, page 2703.*)

Mr. Anderson: I just want to note on the record as to Defendant's Exhibit No. 117, in connection with the statement made by counsel as to its going in subject to checking, I also reserve the right to object to the notes of the compiler on this statement purporting to be explanatory thereof.

Mr. Kresel: That is perfectly all right.

By **Mr. Kresel:**

Q. 425. Mr. Garvan, looking at Defendant's Exhibit No. 117 that has just been introduced, will you state the total amount of sales of domestic dyes, according to the Tariff Commission reports, you understand, in 1919?

A. $67,598,855.

Q. 426. And in 1920?

A. $95,613,749.

Q. 427. And in 1921?

A. $39,283,956.

Q. 428. The total is what?

A. $202,496,560.

Q. 429. Looking at the figures covered by the patents of The Chemical Foundation, what was the income from domestic manufactured dyes in 1919?

A. $9,478.91.

Q. 430. Have you the total of such income for the years 1919 to 1922, inclusive?

A. Yes, sir.

Q. 431. And what is that?

A. $270,279.69.

Mr. Anderson: If your Honor please, as to so much of this statement as is a compilation from those records, I am perfectly willing, subject to verification, to have the compilation go in for convenience of reference to the records that have been introduced.

As to so much of this statement as contains matter taken from the books of the Chemical Foundation, or as to the income of the Chemical Foundation, and the annotations of calculations and applications of percentages, and so forth, thereto, I reserve all rights, and I think I will be compelled to make a motion to strike out that part of it.

I am a little embarrassed, because I have not time to study these statements, and I do not want to embarrass counsel beyond the necessities of the situation.

Mr. Kresel: Colonel, I would not ask you to do anything which would foreclose your rights.

Mr. Anderson: Yes.

Mr. Kresel: I am perfectly willing that you shall reserve the right at any time before the end of the trial to move or strike this out, after examination.

Mr. Anderson: And of course, if that goes out, the examination of the witness on the record will also apply to the same thing.

Mr. Kresel: If there is any question in connection with what the Court grants your motion to strike out, then of course the testimony goes out.

Mr. Anderson: With that understanding I will let the matter stand as it is, preserving all rights in that regard.

The Court: Do I understand that these other statements are made up from the books of the Chemical Foundation?

Mr. Kresel: Those that have already gone in, your Honor, or this last one?

The Court: The one to which Colonel Anderson just referred.

Mr. Kresel: Made up from both sources, the books of the Chemical Foundation and the Tariff Commission reports.

The Court: But Colonel Anderson does not object to the Tariff Commission reports. His last objection was directed to the tabulation from the books of the defendant, as I understood it.

Mr. Kresel: No, I think your Honor misunderstood Colonel Anderson. Your Honor will be better able to understand his objection if you have this before you (handing paper).

Your Honor will see the first two columns there show the amounts of sales of domestic producers as per the Tariff Commission reports and the income of the Chemical Foundation on domestic products. We had then put on the following calculation: "Based on average royalty of four per cent. the approximate value is $6,000,000"—it is really six million odd—"or 3.33 per cent. of the total domestic sales." It is that portion which I understand Colonel Anderson is challenging. He says he has not had time to examine——

The Court: That is a mathematical calculation.

Mr. Kresel: Yes, which I can make in my brief as well as I can have it made here.

Mr. Anderson: No, I do not think Mr. Kresel understood me. I want to get it clear, I do not want any mistake. At the proper time on cross-examination it is my purpose to test the knowledge of this witness as to all statements which he has put in here, and when that time comes I will make such appropriate motion as I feel is necessary, striving not to be over-technical.

As to the Chemical Foundation income, that is a statement from the books of the Chemical Foundation, I have not tested the knowledge of this witness on that subject at all. As to the compilation from the official records of the Government, that is a mere matter of mathematics, and we can check it. If it is right I have no objection to its going in in this form; if it is wrong we can call attention it—following each of the statements taken from the Government reports for 1919, 1920 and 1921, which are compilations of official figures, official figures and argumentative statements, if I might so call them, taken from the records presumably of the Chemical Foundation. I did not wish my statement on the record that subject to verification this compilation might go in, and subject to first testing his knowledge, to apply, for the reason that I want to reserve if I am so advised the right to strike out all this evidence as to the statistics of the Chemical Foundation unless it be shown to have a proper foundation. Do I make myself clear now?

The Court: Do you mean by proper foundation that this witness has no personal——

Mr. Anderson: Yes, sir; I want to know who did make these statements, where they came from, their source and everything else when I come to examine this witness. Therefore I do not want to waive any rights in that regard. But as to these official compilations, if they are right I am perfectly willing to stipulate them on the record.

Mr. Kresel: I simply desire at this time to direct the Court's attention to the fact and to remind Colonel Anderson that there is a stipulation between the parties with reference to the use of the books of the Chemical Foundation. I think it was read into the record by Mr. Galloway at the opening of the trial. That is to the effect that either side may put in computations from the books of the Chemical Foundation without being required to produce those books; the Chemical Foundation, however, agreeing to produce any books at any time that the Government may desire to have produced.

Mr. Anderson: I do not understand the stipulation to go to that extent, Mr. Kresel, and I think it is well to get it.

Mr. Kresel: I will find the stipulation.

Mr. Anderson: Certainly I never intended to stipulate anything of that kind.

Mr. Kresel: I say now that if Colonel Anderson desires our books produced here they will be here just as soon as the train can bring them. Haven't you the original stipulation, Mr. Galloway?

Mr. Galloway: I have it, but I have not it here.

Mr. Kresel: I do not know whether this that I have here is a true copy or not.

Mr. Galloway: I think you will find that the only reference to the books of account of the Chemical Foundation is back here on the schedule (indicating).

Mr. Kresel: No.

Mr. Galloway: That is the only reference I recall.

Mr. Kresel: Your Honor will grant me just a minute until I find what I have reference to.

I read from page 878 of the record. This is a part of the stipulation which was read in by Mr. Galloway, headed "Books of Accounts":

> "It is further stipulated and agreed that the defendant need not produce its books of account upon the trial unless the plaintiff specifically requests the production of some particular book or books; that either side may use transcripts or extracts from said books subject to the right of either party to call attention to and have corrected any errors in such transcript, extract or compilation at any time during the trial and that in connection with the testimony of any witness as to compilations based on entries in said books, it shall not be necessary as a basis for such testimony to put said books in evidence."

I thought my recollection was correct.

Mr. Anderson: I agree to that, but I do not think that removes the necessity for putting a witness on the stand to say that he himself made these statements and as an accountant is capable of testifying to them.

Mr. Kresel: Let me understand that. Do I understand Colonel Anderson now to claim that these compilations that we have spent half a day putting in are not competent because the accountant who made them is not put on? If so, counsel should have called attention to that before we spent half a day thereon. Of course, Mr. Garvan did not make them personally.

Mr. Anderson: One minute now. If your

Honor please, as he says counsel should have called attention to that, I will say that I am following the exact procedure he has followed in putting in the other evidence. I put in various statements which had been checked by the accountants of the other side, by Mr. Storck.

The original records were not here, and counsel, on cross-examination of Mr. Storck, tested whether he personally had made up every one of those figures. He said they were made up by him or made up under his direction and he then called for the production of the original documents.

Mr. Kresel: I beg your pardon——

Mr. Anderson: And we had to send to Washington and bring them and introduce the original records of the Federal Trade Commisson and the licenses.

Mr. Kresel: Colonel Anderson, please—you do me an injustice, and I will not——

The Court: I will give you all the time you want, Mr. Kresel.

Mr. Anderson: When this witness was on the stand, I was perfectly willing to have this witness put in these statements to the end that he might say what he had to say about them, subject to my general objections to the evidence. I assumed that counsel would call then the man who made up the statements, and that is the reason this morning it occurred to me that I had probably better say so to test the knowledge of this witness as to the basis of these statements. Then in the event that counsel could cure that defect by producing the persons who actually made up the statements, the evidence of this witness as to the statements might be in the record, instead of recalling him and putting another witness on.

I thought it was serving the convenience and not inconvenience of this case. That is the reason I let the evidence go on in, although it has seemed to me that the witness had not been properly qualified. I did not want to have to break this evidence up by putting one witness on and then another witness, which embarrassment I suffered myself in the introduction of my evidence owing to such objections.

Mr. Kresel: The only objection that I have to Colonel Anderson's statement is an objection to that portion of it wherein he says that I insisted upon the production of original records. Your Honor will recall that I specifically stated more than once that I waived all questions of form.

Colonel Anderson produced the original records because I showed that the compilations that were made by Mr. Storck were valueless because he had not seen and had not put in the necessary detail into his compilations. It was not because I demanded the production of the original records at all, and you will read the record in this case from beginning to end and you will find that I made no such demand.

Now, I say that if any objection is to be taken as to the competency of putting in these compilations by Mr. Garvan, I think it might have been raised at the outset. However, I quite concede that Colonel Anderson has the right to insist on that, and if he does, I shall call the accountant who made them, so as to testify as to them. I have one more compilation and then I am through with that branch of it.

The Court: It seems to me, Mr. Kresel, that while you differ as to what transpired when Colonel Anderson was putting in his case, your recollection with respect to calling for the books corresponds with my recollection, that he showed that Mr. Storck did not have from the books sufficient information to make up the statement which was made. But it seems to me that you are right, Colonel Anderson, in this particular: that you would be unable to ascertain from this witness that which Mr. Kresel ascertained from Mr. Storck; that is, if Mr. Kresel offers to prove the compilation by somebody who did not make it, then it is impossible to gather any information. So that I think in that particular Colonel Anderson's objection is well taken.

Mr. Kresel: I concede, your Honor, that it is entirely within his rights.

The Court: He is entitled to ascertain from the witness, as you did from his witness, as to whether this gives a correct tabulation or not, and that he can not ascertain from this witness on the statements now made. So that I think the objection is well taken.

Mr. Kresel: I want to say that the accountant who made this up is in town and I shall call him, so that Colonel Anderson may have the opportunity to examine him. May I proceed?

The Court: Yes.

Q. 432. Mr. Garvan, did you have prepared a comparison acording to the weight of dyes, domestic and imported, as between those covered by patents owned by The Chemical Foundation and the entire amount of dyes consumed in the United States according to the report of the Tariff Commission?

A. I did.

Mr. Kresel: Subject, your Honor, to the same reservation that Colonel Anderson made to the preceding exhibit, No. 117, we offer in evidence this statement.

Mr. Anderson: I have not had a chance to study it. I will let it go in subject to my reservation.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 118." (*See Exhibits, Vol. V, page 2704.*)

MR. KRESEL: I offer in evidence a copy of a letter from the Bureau of Trusts of the Alien Property Custodian signed by Charles B. Calvert, dated November 11, 1920, addressed to F. M. Eugen Blass.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 119." (*See Exhibits, Vol. V, page 2705.*)

MR. KRESEL: Your Honor will recall that there was a long line of correspondence put in by the Government with reference to a patent claimed by a man named Blass; that it was claimed we had not re-assigned to him. This letter is one of the series.

THE COURT: That patent covered what?

MR. KRESEL: I do not recall what it covered.

THE COURT: Was that the New Jersey incident?

MR. KRESEL: I do not think that was, and I do not recall what it covered; but that is the patent, you will recall.

THE COURT: If this is further correspondence in connection with the same matter, it is pertinent.

MR. KRESEL: Yes. I am not going to stop to read it now.

THE COURT: Very well.

Q. 433. Mr. Garvan, has the Chemical Foundation had occasion to bring any infringement suits against persons infringing the patents owned by The Foundation?

A. Yes.

Q. 434. How many of those suits have been instituted?

A. There were some on the trademarks. I am not sure how far they went. I am not positive as to the actual filing. They were settled either just before filing or just after. I am not positive whether the lawyers filed——

> Mr. Anderson: I am afraid I will have to object to that record, sir, as to the question of a number of suits. While I think, of course, that the best evidence of any suit would be the record, I would not object, except for my general objections, to the number of suits, if he knows. But as to what the suits were about, whether they were infringement suits, or things of that kind, I do not think with my present knowledge I could let the evidence go in.
>
> Mr. Kresel: I think the witness has a right to say whether they were infringement suits, and how many. That he has a right to do without producing the written record. I do not propose to go into a trial of those law suits. I am only trying to show what The Foundation had to do with it, and how much money it has spent thereon.
>
> The Court: Your purpose being to show the reasons for the infringement suits?
>
> Mr. Kresel: No, your Honor. I simply want to show how many infringement suits there were, and what it cost The Foundation to defend them, because your Honor will recall that one of the purposes and one of the duties set forth in the charter of the corporation is to defend these patents. Now I want to show that The Chemical Foundation did observe that injunction placed

upon it by its charter. I am not even going to ask the names of the persons against whom the suits were brought. I am not interested in that. If the Government desires to go into that on cross-examination, of course, the information is available.

THE COURT: I have not passed finally upon the question; but you may take your answer.

Q. 435. Just say how many of those suits.

A. One.

Q. 436. And how much has it cost?

A. Between twelve and fourteen thousand dollars.

Q. 437. It was testified yesterday that only 491 of the entire number of patents had ever brought in any income, had ever been licensed. What efforts, if any, did The Chemical Foundation make to get people to take out licenses on these patents?

MR. ANDERSON: I object to that question, in the first place, as too indefinite and general; and in the second place, because it calls for a conclusion as to the efforts to get these people to take out patents. I think the counsel can prove what is within the knowledge of this witness, if it be subject to our general and other specific objections. What was the effect or purpose of any specific acts of The Chemical Foundation, I do not think is evidence.

MR. KRESEL: I will withdraw the question.

Q. 438. What acts did the Chemical Foundation do, what steps did it take, to have people get licenses on these patents?

A. It sent out agents to all the industries to explain and interest concerns in the patents. It made analyses of the patents and issued booklets or books on the patents, and sent them to the various members of the industry who might be interested in the development of the patents.

Q. 439. Stop there, please. I show you first a booklet entitled "Temporary List of Patents and Copyrights transferred to The Chemical Foundation, Incorporated." Will you state whether that was compiled by The Chemical Foundation?

A. It was.

Q. 440. Will you state whether that was circulated?

A. It was.

Q. 441. Can you state the extent of the circulation?

A. I cannot.

Q. 442. In connection with that, I show you another publication entitled "Vat Dye Patents owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 443. Here is another pamphlet entitled, "Patents transferred to the Chemical Foundation, New York City, June, 1921." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 444. I show you another publication entitled "Drug and Medicinal Patents owned by the Chemical Foundation, Inc." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 445. I show you another pamphlet entitled, "Electro-Chemical and Electro-Metallurgical Patents owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 446. I show you another pamphlet entitled, "Paper Patents Owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 447. Were these all of the pamphlets, circulars and letters that were circulated by the Chemical Foundation in this connection?

A. Probably all the books and pamphlets, but it is not all the letters.

Mr. Kresel: Have you copies of these, Colonel Anderson?

Mr. Anderson: No, we have not.

Mr. Kresel: Of course, these are now available, but we will try to get you copies. We had always understood that there were copies in your possession.

Mr. Anderson: We have tried to find them. We have been told there were, tried to find them, but have not been able to.

Mr. Kresel: I am going to offer in evidence each of these publications.

Publication entitled "Temporary list of Patents" received in evidence and marked "Defendant's Exhibit No. 120." (*Not printed.*)

Publication entitled "Patents Transferred to the Chemical Foundation, Inc., June, 1921," received in evidence and marked "Defendant's Exhibit No. 121." (*Not printed.*)

Booklet entitled, "Vat Dye Patents" received in evidence and marked "Defendant's Exhibit No. 122." (*Not printed.*)

Booklet marked, "Drug and Medicinal Patents" received in evidence and marked "Defendant's Exhibit No. 123." (*Not printed.*)

Book entitled "Electro-Chemical and Electro-Metallurgical Patents" received in evidence and marked "Defendant's Exhibit No. 124." (*Not printed.*)

Book entitled "Paper Patents" received in

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evidence and marked "Defendant's Exhibit No. 125." (*Not printed.*)

Mr. Anderson: Mr. Kresel, you have no objection to withdrawing those from the Clerk, have you?

Mr. Kresel: Not at all, if the Court will permit it; I have no objection.

Mr. Anderson: You will try to get us copies, because we need them?

Mr. Kresel: Yes.

The Court: Is that all of that group?

Mr. Kresel: Yes.

The Court: They are all admitted.

Q. 448. Mr. Garvan, I show you a copy of a letter addressed to Honorable Thomas W. Miller, dated May 23, 1922, and ask you whether that is a copy of a letter that you wrote to him as president of the Chemical Foundation?

A. It is.

Mr. Kresel: I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 126." (*See Exhibits, Vol. V, page 2707.*)

Mr. Kresel: This letter, your Honor, is dated May 23, 1922, and is addressed to Honorable Thomas W. Miller, Alien Property Custodian (reading).

Q. 449. Is this a copy of the reply that you had from Colonel Miller?

A. A photostat copy, yes.

Mr. Krsel: I offer that in evidence.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 127." (*See Exhibits, Vol. V, page 2708.*)

Mr. Kresel: This letter, your Honor, is dated

May 25, 1922, addressed to the Chemical Foundation and signed by Colonel Miller as Alien Property Custodian (reading).

I offer in evidence Article 167 of the Regulations of the Treasury Department with reference to the valuation of patents. I assume, your Honor, that you would take judicial cognizance of the Regulations of the Department; however, it is a short paragraph and I thought it better to specifically offer it.

Mr. Anderson: Are those the Income Tax Regulations?

Mr. Kresel: Those are the Regulations on Income Tax.

Mr. Anderson: Taken from the official publication?

Mr. Kresel: Taken from the publication of the—well, this is Income and other Federal taxes as affected by patents, trade-marks, copyrights and good will.

Mr. Anderson: I do not know that that is correct. That is a textbook.

Mr. Kresel: Is there any objection to my putting it in subject to correction?

Mr. Anderson: If your Honor please, if we are going to put in those regulations, which I do not think have any bearing whatever on this case because they relate to income tax, and the question of what values are to be considered in this case is a matter for this Court and not for the Treasury Department—I object to it on those grounds, and of course on the special grounds reserved to all this evidence. But if we are going to introduce the regulations of the Tax Department on any issue in this case, then I would want the official regulations, to the end that we may have them complete. I do not know whether the text writer has undertaken to support his position by the extract or not.

Mr. Kresel: Very well, I have asked Mr. Mahaffy to see if he can get it from the library, the original, and for the moment I will put it aside. You are not willing to let me put it in subject to correction?

Mr. Anderson: I do not want to take the burden of correction, Mr. Kresel. I think the whole regulation dealing with the subject should go in.

Q. 450. Mr. Garvan, what was the average life of the patents that were transferred to the Chemical Foundation on the date of the transfer?

Mr. Anderson: I will just make my general objection.

A. Eight and a quarter years.

Q. 451. Prior to the receipt by the Chemical Foundation of the letter of demand signed by Colonel Miller as Alien Property Custodian, which has been put in evidence here, demanding the return by the Chemical Foundation of all the properties that had been transferred to it by the Alien Property Custodian, had any demand of any kind for the return of those patents been made upon the Chemical Foundation?

A. It had not.

Q. 452. Prior to July 1, 1922, which is the date of the President's letter to Colonel Miller, had you appeared before any committees of Congress and had you been questioned before any committees of Congress concerning the transfer of these patents to the Chemical Foundation?

A. I had.

Q. 453. Before how many such committees of Congress had you appeared and testified upon the subject, giving the dates when?

A. In about—I think the first one is about June, 1919, before the House Ways and Means Committee on

Mr. Anderson: What is that?

The Witness: It did not make a report.

Mr. Anderson: It did not make a report?

Mr. Kresel: It made no report at all.

Mr. Anderson: I move to strike out any of the evidence of the witness on this subject, and to preserve the record and state my position I think the following is the sound position on that point: The Resolution of Congress or the Senate is an official document of which the Court will take judicial notice in any event, and therefore it is not material whether it is put in evidence or not. But as to any matter with relation to the action of the Committee, in the first place it is not competent for this witness to testify with respect thereto; in the second place, it is not evidence before this Court. If the Court desires to examine the record of that Committee it will find it proceeded as a sub-committee without counsel, making its own investigation, and therefore if it has any bearing on this situation at all it would be for the purpose of giving to this Court the benefit of its conclusions, if it had reached any, or the benefit of the failure to reach the conclusions on an issue now tried before this Court. Therefore it would not be competent evidence and it would not be competent to put into evidence and utterly immaterial and irrelevant to the trial here, because this Court must determine these issues for itself upon the pleadings in this case.

I think that it is proper that I should make that reservation to that question, although I conceive, of course, that for certain purposes recognized by all lawyers in the Courts, the evidence before the Committee can be used.

Mr. Kresel: Is there a question pending? I thought it had been answered.

THE COURT: I suppose it is rather a motion to strike out the answer of this witness.

MR. ANDERSON: I think I did make the motion, sir.

THE COURT: Do you desire to be heard on the motion?

MR. KRESEL: No, your Honor; I think it is a perfectly proper inquiry. If there had been a report made, of course the report would have to be produced. But the question that I put to the witness was whether he knew that any report had been made or no. He said that he did not know and I asked him whether any report was made and he said no. There is no better evidence than that. Even assuming that there had been a collateral matter of this sort, we would not be bound by the rule as to the best evidence.

THE COURT: You press your motion, I assume, because the negative answer of the witness is prejudicial. It seems to me that ends the matter. Had it been in the affirmative, it would have ended the matter so far as this witness is concerned, because then there would have been evidence of the nature of that report which it seems to me possibly would be relevant or advisory or persuasive, in the same way that an opinion of a Court elsewhere would be helpful, or the action of either of the other departments of the Government with respect to a particular matter, although not at all controlling; no more than the decision of a Court in another Circuit would be controlling in the District of Delaware. We take into consideration the views of other Courts on a particular matter.

But, there is no such report here, so I do not see that it is material whether the answer remains or goes out.

Mr. Anderson: Will your Honor permit me to make the suggestion, as this matter may come up subsequently and we might as well dispose of it?

I submit, with deference, that there is a very wide difference between the decision of a Court, where counsel appear on both sides and argue questions of law and fact and the Court reaches a conclusion, even though it be not binding upon another Court of another jurisdiction, and a hearing before a sub-committee of the Senate, where there are no counsel present, where the proceeding is conductd in the informal way so commonly known, with arguments and hearsay and everything else that can be thrown into a record of that kind. It not only is not evidence of any fact, but their finding would not have any effect whatever upon any Court under such circumstances, not even as persuasive authority. It could not be used in any Court—a hearing conducted in that way.

An adjudication of a Court upon a matter before it on the pleadings is *res adjudicata* as to the parties. A hearing before the sub-committee does not affect anybody's rights. Anybody concerned can go right on and litigate their rights contrary to the conclusions of that committee without being affected in the slightest by its conclusions.

The Court: No doubt about it.

Mr. Anderson: It is merely a matter of information for Congress for the purpose of fixing a general policy but has no effect whatever in a Court of justice and we respectfully submit it cannot be considered by a Court of justice as having any bearing on its conclusions. Therefore, it is irrelevant and immaterial and it is improper to bring before a Court, since it cannot be intended to have any other effect than to affect the judgment of the Court; and it should not, I respectfully submit, have the slightest effect upon the judgment of the Court.

Mr. Kresel: I am about to introduce reports of the Committees on the other two investigations and I shall be glad at that time, when I offer those, to argue the question as to whether they are material.

So far as this present question is concerned, there was no report, so there is nothing really to be said about it.

The Court: It is a moot question now and I shall therefore grant the motion of the plaintiff to strike out the answer.

Q. 461. Mr. Garvan, as to the proceeding before the Committee on Finance of the United States Senate, what was pending before that Committee?

A. The Tariff Bill.

Mr. Anderson: The best evidence of what was pending before the Committee is the record itself, is it not? It was not only tariff but embargo, as I understand it.

Mr. Kresel: I offer in evidence the proposed Act which the Committee had before it, known as H. R. 8078, 66th Congress, First Session, which is printed at pages 3 to 6 in the volume entitled "Hearings Before the Committee on Finance of the United States Senate."

The Court: What was the time?

Mr. Kresel: The hearings before the Committee were in December, 1919, and January, 1920. The exact dates were December 8th, 9th, 10 and 11th.

The Court: That gives me all I want.

Mr. Anderson: That is subject to the general and specific objections and the special objections which I have just indicated to evidence of this character.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 128." (*See Exhibits, Vol. V, page 2709.*)

MR. KRESEL: I now offer in evidence the report from the Committee on Ways and Means of the House of Representatives made by Congressman Longworth upon this Bill, an official publication.

MR. ANDERSON: Subject to the same objection.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 129." (*See Exhibits, Vol. V, page 2717.*)

MR. KRESEL: I am going to ask your Honor's indulgence while I read a portion of this report. (Reading).

MR. ANDERSON: May I ask counsel if that report is offered as evidence of the facts therein contained?

MR. KRESEL: Yes, sir. It is offered as evidence of the contents therein contained.

MR. ANDERSON: Then I wish to add the further objection to the general and specific objections already made, that a report of a Committee or sub-committee of Congress is not evidence in the Courts of any facts contained in that report. Even the statement of a Court in a judicial proceeding is not evidence of the facts contained therein unless the printed record upon which the Court was acting is produced and introduced in evidence.

The Committee of Congress, for whom I have the greatest respect, of course, and of whom I wish to speak with the greatest deference, are quasi-political bodies and they are largely influenced by considerations which cannot come into a courtroom at all; and therefore, what may be the views of a majority report of a Committee dealing with an economic question, what it may believe to be the facts in its arguments, is certainly not a proper subject for consideration by the Court and is not evidence of the facts stated in the report.

I therefore want to make a motion to strike out that report. I might add that it differs from the reports made by requirement of law by officials of the Government to either the President or Congress.

Mr. Kresel: There is no such distinction as Colonel Anderson has just intimated. At the proper time, when your Honor comes to consider this question for a final ruling, I shall be glad to call to your Honor's attention the authorities upon the subject. For the time being it is simply necessary for me to say to your Honor that there is no distinction drawn by the authorities as to the efficacy of a report made by a Committee of Congress or Congress itself and a report made by a Bureau or Department of the Government, either pursuant to a request of the Congress or pursuant to a general statute requiring the making of annual reports.

Your Honor will recall that Colonel Anderson offered a portion of a Federal Trade Comimssion report and read therefrom, and stated at the time that he was contending that whatever was contained in an official report such as he was reading from was proof of the facts therein contained. If there is any question about what Colonel Anderson said, I have the record here and I will read it.

Mr. Anderson: I admit that you have stated correctly what I said.

Mr. Kresel: Very well. Now then, here is a report from a committee of Congress that had charge of this Bill, that made an investigation of the subject that was under discussion and about to be treated in legislation, and having made such an investigation, they make a report to Congress and state what their conclusions were and what the conclusions were based on. We say that that is evidence of the facts, by which the Government is bound, bound in any suit, bound in this suit, and we are offering this not only to show that such a report was made, but offering to show that those were the facts that were found by Congress and that they were facts.

We have heard here in argument and in opening statement of the sanctity and inviolability of acts of Congress. The Government can not, on the one hand, claim that Congress is supreme and that even by the act of March, 1918, it did not give to the President power to dispose of this property, and on the other hand claim that the action of Congress upon cognate matters is not to be considered by the Court. I do not think that that is a consistent position for the Government to take. We offer this as proof of the facts contained in the report.

Mr. Anderson: Just a word in reply, sir. In the first place, this is not an act of Congress. If it were, it would not have to be offered in evidence.

Mr. Kresel: Pardon me; may I add another statement?

Mr. Anderson: Yes.

Mr. Kresel: We offer it also, if your Honor please, as proof of the fact and our contention that when the Alien Property Custodian and the President did with this property was not an arbitrary disposition thereof, as is charged, and to show what Congress by this legislation, affecting the same industry, did for the protection of the industry. It goes directly to bear out the defense that we urge, that not only had the President the power under the Act to dispose of the property in the way he did, but that the purpose of the disposition of the property was in consonance with the Act of Congress, and upon that ground we say it is material and relevant.

MR. ANDERSON: *Ex post facto* laws are not favored in any event, and are forbidden in many instances; but it would be a most remarkable situation if the acts of the Alien Property Custodian in selling this property in March or April, 1919, could be affected by a report of a Committee of Congress made in December, 1919, the act of sale having taken place under an act passed in March, 1918, or nearly two years prior thereto, and the act itself having taken place at least six or eight months prior to the consideration of this matter by the House of Representatives at all. So that on the last point it seems to me that counsel are taking a position which is a little far-fetched.

As to the introduction of this evidence and the other matters, to come up, we might just as well state our positions fully. In addition to what I have said, which I shall not repeat, the position of the Government has been that an official report, made as required by law or to a superior officer, which I have outlined in full, is evidence of facts prima facie. But the committees of Congress do not come within that scope.

In the second place, an act of Congress is, of course, to be considered by the courts for whatever bearing it may have, because that does not have to be introduced in evidence. That is the law of the land. But a report of a committee occupies a different position for so many reasons that I would be trespassing upon your Honor's time and somewhat reflecting upon the knowledge of the Court even to undertake to detail these reasons.

Now, in this particular case, as the record discloses, and I presume counsel will show, the Committee on Ways and Means, or a majority thereof (I do not remember which) made a report, part of which has been read to the Court. The House of Representatives, as I now recall, and I am subject to correction if I do not state it accurately, did pass a bill, with what amendments I do not recall, with what modifications from the report I do not recall; but as I understand, it was a bill, a part of the Tariff Act, which imposed an embargo or licensing system as to dyes for a limited period.

That went over to the Senate and the Senate refused to pass that bill, and therefore it never became a law; but to the contrary, the Congress of the United States, as represented in the Senate and the House of Representatives, expressly declared that they did not favor the policy outlined in that bill, and did not accept, so far as their action has been given any force, these statements or reasons upon which that action was predicated in the House as a basis for their action.

In those circumstances to ask a Court of Justice to accept as proof of facts the statements of a chairman of a committee, however distinguished, in advocacy of a proposition for which he may be quite enthusiastic, would be, it seems to me, going a little far in the administration of justice.

If the facts are relevant here, they can be proved by primary evidence, and the Court certainly cannot try this case upon the views expressed by Mr. Longworth or anyone else, or his committee, either as to the facts or the reasons. If it could, it would certainly greatly simplify the introduction of evidence in litigation which might be affected by such proceedings in Congress, but would certainly greatly confuse the results to be arrived at. And that is particularly true unless it be shown that those views and facts were adopted by the Congress and moulded into law, in which event the facts presented by the committee are no longer material or relevant, but merely the action of Congress as speaking for the views of Congress in their final form.

Whether this report was ever considered, whether it was ever adopted, whether it ever even beame a part of the Bill of the House of Representatives, is a question that does not appear. For that reason, your Honor, I submit that all this matter is clearly incompetent, immaterial and irrelevant and should not be put into this record.

Mr. Kresel: Colonel Anderson is misinformed as to the final action upon this report and the bill to which it relates. My information is, and if necessary we will introduce the legislation, that the bill to which the report related was passed by the House, that the bill went to the Senate and never came to a vote in the Senate. That is the situation about it.

As to the effect of the final result as to whether the legislation was or was not passed, it seems to me that is absolutely immaterial, because if it be true that a report made by a department is proof of the facts, it does not always follow that the report is adopted or that the recommendations therein contained are acted upon. By what method of reasoning is it claimed that simply because the report of this committee was not approved, assuming that it was not, and I say that it was, that therefore it cannot be admitted with the same effect as a report of an underling in some official capacity in an administrative department, as to which the Government admits it is proof of the facts therein contained?

I propose, after this report, to show your Honor the report of the Senate Committee that had this bill in charge, upon the same subject, and I think we have a right to show.

Mr. Anderson: You admit that that is all hearsay, Mr. Kresel?

Mr. Kresel: Not at all, and the question of hearsay does not enter into it.

The Court: It will be received as indicating the action of the sub-committee of the House of Representatives upon a hearing had. As to whether it has any value as evidence is a matter that we have been reserving with respect to all matters and will be reserved here; I can well see how there might be a difference between counsel as to the relevancy of the dye and chemical situation and condition in America, both with respect to dyes as such and with respect to the military effect and value of the by-products; but I fail to see how there can be any difference or where there should be a dispute with respect to a fact which ought to be as well-known to the Government as to anybody else.

I do not pretend to say at this stage of the case what those facts are or were, but I do say that this case should not have to be drawn out day after day and week after week for the purpose of ascertaining what should be a matter that could be agreed upon by counsel *in toto* or specific differences pointed out, not with a view of counsel saying that such testimony is or is not relevant, but if found relevant eventually under our general rule, that this case may not needlessly be prolonged for determining facts which undoubtedly the Government has been in possession of for a great many years.

The motion to strike is denied. You may proceed.

Mr. Kresel: I now offer in evidence the report made by Senator Watson, from the Committee on Finance, on the Bill described as H. R. 8078, this report being made to the Senate of the United States February 13, 1920.

Mr. Anderson: That is subject to the same objections, if your Honor please.

The Court: Yes.

Received in evidence and marked "Defendant's Exhibit No. 130." (*See Exhibits, Vol. V, page 2726.*)

Mr. Kresel: I read from the report.

The Court: Is this on the same Bill

Mr. Kresel: The same Bill, your Honor.

The Court: Report of the Senate Committee?

Mr. Kresel: Report of the Senate Committee, made by Senator Watson as Chairman of this Committee. (Reads from exhibit.) I skip a portion of this giving a lot of figures relating to production. (Continues reading.)

Your Honor, I have not read the full report. I do not think it is necessary for me to read more than I have.

Mr. Anderson: If your Honor please, in order to make the record clear, I simply wish to make a motion to strike out this report in so far as it is introduced as evidence or proof of the facts stated therein. In that connection, your Honor made a statement which I probably did not quite catch the import of; that is, that counsel should agree on certain facts in this case of which the Government obviously had knowledge.

I do not assume, of course, that the Court intended any criticism of counsel for the Government in that regard, but in the first place, your Honor will recall that we made a motion to strike out that portion of the answer upon which this evidence was based and asked for an argument of that motion in advance of the trial. The defendant made a motion to dismiss this Bill and did not set the motion down for hearing on account of the absence of counsel in Europe and illness in the family of one other counsel. We could not set it down for a hearing until the time we moved to set it down, some three or four weeks in advance of the trial, and asked that it be set down in advance of the trial so that the questions of law might be resolved in this case and that we might have some guide in putting in this evidence.

Four-fifths of the evidence that has been produced here as matter of record to my view is as immaterial as a work on astronomy in this case, and therefore the Government is simply objecting. But there is no way we can agree with counsel, because we had no possible idea of the limits to which this case was going to go. I do not say that in any sense meaning that aftersight is better than foresight, but as I urged on the Court at that time, and as the record will show, and urge now, this case is purely a question of law, it can be decided upon the allegations of the Bill as admitted by the Answer on several of its most material questions, which we think are conclusive. We are taking this evidence as best we know how and presenting it as best we know how under such rules as the Court has laid down.

I am quite frank to say in that regard we have had under the rule which has been followed, to which I have no objection whatever, to go further than under ordinary conditions we would go. But I assumed the Court desired all the facts presented to the end that this matter be decided once and for all.

If there was suggested in your Honor's statement any criticism of counsel for the Government, I wish to make the statement that in my humble judgment at the time and from which I have never changed in any regard, the argument of the preliminary motions in this case would have cut this trial to about one week. It was objected to by counsel of the other side and the Court overruled our motion to set those matters down for hearing.

Mr. Kresel: Will your Honor hear me?

The Court: Yes, but I desire to state now that there was no application for a preliminary hearing of any of these motions until after the case had been set for trial on the merits; and in order that there should not be a delay in the trial of this case, the preliminary questions raised by the motion then brought forward were deferred so that if this case was to be tried, it would be tried now and not later.

I will hear you, Mr. Kresel.

Mr. Kresel: I was going to speak on the same point, your Honor. This Bill was filed in September, 1922. Our Answer was promptly filed in October 1922. If the Government desired to argue a motion to strike our Answer or any portion thereof, they had six months before this trial commenced within which to do it. I say six months even before we took the first testimony of Dr. Holdermann; and it was not until two or three weeks before the trial actually commenced that the Government gave notice of this motion to strike any portion of our Answer. That is as to the first point.

I understand your Honor's statement with reference to counsel agreeing to apply particularly to the question of the control that the Germans had of the dye industry of the United States before the war. That is a matter that is well known. That is a matter that the Government might well have agreed with us upon and not have put up to the proof, so that we have had to spend days and days to do it. And even now, when I offer a report of a Committee of Congress that finds those facts, they object to it when they know well that it is the fact and always has been the fact, recognized by the Government in publications; the Tariff Commission says it; Congress has said it; and yet we have counsel for the Government here trying to keep out the truth about it.

Mr. Anderson: Now, if your Honor please, as to the somewhat remarkable statement of counsel, I did not want to get into a controversy with counsel in this case and I have tried to avoid it and I am going to avoid it as far as I can. But counsel has criticized our conduct of this case a number of times. I have not criticized the conduct of counsel. I do not believe that that is within our province. Each side must conduct the case under the regulations prescribed by the Court as it sees fit. I have not said a word in criticism of counsel at any time in the conduct of this case and I do not desire counsel to criticize our conduct of this case.

So far as this Court is concerned, the Court has a right to tell us how it thinks the case should be conducted and to guide us and direct us in its conduct, within the rules of practice prescribed by law. But so far as counsel are concerned, I do not recognize their right to criticize the conduct of this case by the Government, nor am I going, with all deference to your Honor and to the extent that your Honor requires, to submit to their criticism of our conduct of the case. I am tired of that kind of thing.

In the second place, there has never been a suggestion of an agreed state of facts in this case. There has never been any request that we agree upon a state of facts in this case. We ourselves suggested a stipulation and went as far as we could go in the stipulation, but it was not signed until after we got to Wilmington to try this case.

In so far as the facts are concerned, I have no objection to the proof of facts in this case and have stated upon the record time and again, if it was demonstrated to be a fact, I will admit it to save the trouble of proving it. But when it is undertaken to be proved by what I consider to be illegal evidence and arguments, it is not only my right but my duty to object and to put my objections upon the record; and with the consent of this Court and the leave of this Court, I propose to continue to object where I think the evidence is illegal.

As far as a stipulation or agreement of facts as to the control of the dye industry by the Germans in this country prior to the war, the evidence has been cumulative upon cumulative here as to matters going back to 1858. We have objected to that evidence but we have not controverted a particle of it and we do not propose to.

As far as that is concerned, I stated in my opening statement, and I repeat now, that the conduct by the Germans prior to this war has absolutely nothing to do with this case, in my view; but of course, if counsel want to put in that evidence under the leave of the Court, subject to my objection as to its materiality, relevancy, and the other objections stated, then it can go on in. But counsel must conduct his case his way, and I will not complain, and I will undertake with the aid of my associates and the leave of this Court to conduct the Government's case as I think it ought to be conducted.

THE COURT: There is no objection to your doing that and making such objections as you see fit and proper. It did seem to me and still seems to me that the status of the chemical and dye industry in this country at the time of the passage of the Trading with the Enemy Act and the amendments thereto would be a fact that would be clearly within the knowledge of the Government.

My purpose is not now to indicate that such matters are material or relevant in any way. I do not know whether they are or not. I will determine that in the final determination of the cause, if necessary. But it did seem to me that unless those facts were actually in dispute, an agreement could have been reached. I can understand counsel not being willing to agree where the clients are other than the Government of the United States itself and the defendant, that have not the interest in public welfare or the experience in litigation that this defendant has. I fail to see, unless the facts are in dispute, the reason for taking day after day in producing them. I do not know that that is criticism. If it is, it is. If it isn't, it isn't. You may proceed.

By Mr. Kresel:

Q. 462. Mr. Garvan, what day was it that you say you resigned as Alien Property Custodian?

A. March 11th or 12th.

Q. 463. What year?

A. Nineteen hundred and twenty-one.

Q. 464. Subsequent to that date, did you have any conference with Colonel Thomas W. Miller, your successor in that office?

A. I did.

Q. 465. Can you fix about the time?

A. I should say within two weeks or three weeks after I got out. Just about that time I went to Charleston for a few days' rest and then when I came back, I saw him.

Q. 466. And where did you talk to Colonel Miller?

A. In his office.

Q. 467. In Washington?

A. Yes.

Q. 468. Who was present?

A. I have no recollection of anyone being present but himself and myself.

Q. 469. Will you please state the conversation?

A. I called and told him that my children were in school in Washington and I therefore could not leave Washington until the schools were out; and that I would have a good deal of time and I would be perfectly willing and glad to place any experience that I had had in the office at his disposal during the time that I was in Washington.

I then spoke of The Chemical Foundation. I told him that it was a Government-created institution, that I was tired and did not think it was fair that I should be asked, being out, to go on with the thing.

Q. 470. To go on with what?

A. To go on with carrying on The Chemical Foundation; that its main usefulness was in conjunction with all departments of the Government and in assisting all the other necessities for the protection of the organic chemical industry.

I told him that there would be legislation in Congress, work to do with the Army and Navy, with the Bureau of Education, with the Department of the Interior and the Bureau of Standards, and that it was only if the whole power of the Government was brought together to bear upon the question of education in the colleges and the schools and in the industries, etc., that anything could be accomplished.

I explained to him that it was not as a dye industry that we were interested in it. It was only because the dye industry was the post-graduate school of organic chemistry. I told him that there was no politics in it, that both Republicans and Democrats throughout the war had worked shoulder to shoulder. I told him that the Republican Ways and Means Committee had favorably reported on protecting the industry and had passed a temporary embargo and that the Finance Committee of the Senate and Mr. Longworth of the House and Senator Knox of the Senate had been our stalwart friends and that the only people who seemed to be against the industry were people whose motives would not bear the full light of day.

I asked him to become a director and asked him if, after six or eight months, when he had studied the subject, he would not then take over the burden from me and continue it as I had continued it while I was Alien Property Custodian.

I gave him all our literature and then I saw him again in New York at the Bar Association.

Q. 471. What did Colonel Miller say?

A. Colonel Miller agreed to become a director.

My impression is that he agreed to become president. I am not positive as to that. But he agreed to become a director and said he would study and look into the matter and let me know later as to how it developed. That was left to await developments and his getting more facts about it.

Q. 472. Was he actually elected a director?

A. He was.

Q. 473. Subsequently did you have another conversation with him with respect to this subject?

A. I did.

Q. 474. Will you state the time when, who was present and what was said?

A. Well, that was at the Bar Association.

Q. 475. In New York City you mean?

A. Yes. Mr. Corbett was present also at that conversation and that was along the same lines. I do not know whether that was before he was a director or not, but I know we had gathered together all our literature and we gave him everything. The conversation was along the same general lines. I cannot tell whether that was before he was a director or afterwards.

Q. 476. What literature was it that you say you gave him?

A. Our prospectus, that yellow book which we published.

Q. 477. Is this the book, a copy of that?

A. Yes, that is the book.

Mr. Kresel: Please mark this for identification.

Marked "Defendant's Exhibit O for Identification 7/3/23."

Q. 478. What else do you recall that you gave him?

A. I could not tell what else; whatever we had gotten out prior to that date. I could not tell you.

Q. 479. You cannot identify any more than that now?

A. No.

Q. 480. When was it that Colonel Miller informed you that he could not serve?

A. I could not tell.

Q. 481. How long after this talk?

A. I could not tell you how long after it was. I know we put his name on the door and it was some time after.

Q. 482. What door?

A. On the door of The Chemical Foundation. I think he notified us by letter.

Q. 483. About what?

A. About his resignation, that he could not serve. I may be mistaken.

Q. 484. I want to ask you, Mr. Garvan, whether any of the patents that were assigned by the Alien Property Custodian to the Chemical Foundation were so assigned at the request of any department of the Government?

A. Yes, sir.

Q. 485. Will you please now state what patents assigned by the Alien Property Custodian to the Chemical Foundation were assigned at the request of any department of the Government, stating what department, what official of the department, describing the patents, what consideration was paid, and all about it?

Mr. Anderson: Is it in writing?

Mr. Kresel: Yes, I have some writing I will put in.

Mr. Anderson: I would like to have it. If you are going into the assignments and the request for them, I think the writing is the best evidence of what took place.

Mr. Kresel: I will call attention to it. The assignments are already in evidence.

The Court: Do you mean what patents were assigned to the defendant at the request of various departments?

Mr. Kresel: That is right.

The Court: Are those requests in writing?

Mr. Kresel: No; there is some correspondence, but very little, which I will put in. The requests were not in writing.

Q. 486. Mr. Garvan, I direct your attention first, in connection with this question that I have put to you, to the assignment attached to the Bill of Complaint and marked Exhibit H-3, which you will find at page 423 of the Bill. (Handing witness book.)

Mr. Kresel: That has been put in evidence, and it is Plaintiff's Exhibit No. 118.

Q. 486. (Continued.) Please state how that assignment to the Chemical Foundation came to be made.

A. That was made at the request of the Navy. Those gyroscopes are for use on battleships and all ships, particularly for their compasses, and Captain Norton or Commander Norton, I am not sure of his rank at that time, came to me and asked to have those assigned to the Foundation and had the Foundation then issue them a license.

Q. 487. How many of those patents are there?

A. Some fourteen, I think. Yes, fourteen.

Q. 488. How much did the Chemical Foundation pay to the Alien Property Custodian for that assignment?

A. $500.

Q. 489. Did the Chemical Foundation take this assignment and thereafter issue a license to the Government?

A. It did.

The Court: Your license, I suppose, is in evidence.

Mr. Kresel: The license is in evidence, your Honor. That is the big license of November——

The Court: Oh, the license was subsequent to this assignment, I see.

Mr. Kresel: Subsequent to this assignment, of course.

Q. 490. While we are on that, Mr. Garvan, will you state whether the Government paid anything to the Chemical Foundation for this license?

A. It did not.

Q. 491. Now I direct your attention to an assignment which is marked Exhibit H-13 attached to the Bill of Complaint, at page 447, being Plaintiff's Exhibit No. 128, and ask you to state the circumstances as to those 160 patents that are covered by that assignment.

Mr. Anderson: I wish to note an objection, first that the question is too general and indefinite, second that the circumstances under which the assignments were made cannot affect the rights of the parties under the assignment, which is in writing and speaks for itself and merges all the conditions precedent in it.

The Court: The question of good faith is involved, I take it, and I will admit the circumstances under which it was made.

Mr. Anderson: Then I would ask, if your Honor please, reserving my objection, that the witness state specifically who had these negotiations with them, when, what was his position, what was said, and not the general circumstances.

The Court: Including the time, place, persons present, the names of the persons making the request, and their official connection with the Government. The objection with respect to the generality of the question I will need to have the question read in order to determine. (Q. 491 read as recorded.)

If the witness goes afield, you may stop him. You may take the answer.

A. A short time prior to the fifteenth day of May, 1920, the Navy requested me to assign——

Mr. Anderson: I object, sir.

A. (Continued.) ——or, Captain Norton representing the Navy. Captain Norton was the man who always represented the Navy with us in these assignments, and he came to me and asked me to assign those to the Chemical Foundation.

By Mr. Anderson:

Q. 492. What was Captain Norton?

A. He was a Commander. I think he had charge of the Patent Division of the Navy. At any rate, he represented the Navy in its dealings on patents with the Alien Property Custodian.

Q. 493. He is dead now, is he not?

A. I was so informed.

Mr. Kresel: Well, we did not kill him, you know.

Mr. Anderson: I did not suggest that you did.

Mr. Kresel: I do not see the reason for making such a remark.

Mr. Anderson: I asked if he was dead as bearing upon the admissibility of his evidence. I did not suggest you killed him.

The Court: You may proceed.

By Mr. Kresel:

Q. 494. Go on, Mr. Garvan?

A. Those 160 were then assigned as contained in the assignment.

Q. 495. How much did the Chemical Foundation pay the Government for that assignment?

Mr. Anderson: I object to this preliminary evidence now on the ground that the agent who conducted the transaction is dead.

The Court: I think the objection is not well taken. Have you any authority to support that objection, Colonel Anderson?

Mr. Anderson: No, sir.

The Court: The objection is overruled and the answer will be taken.

Q. 495. (Continued.) Will you give the answer?

A. $5,000.

Q. 496. And did the Foundation thereafter give to the Navy Department of the Government a free license on these patents?

Mr. Anderson: I object on the ground that the question of what is in a license is a question of the construction of a written instrument, and that the only evidence of that is the instrument itself.

Mr. Kresel: And it is in evidence.

Mr. Anderson: I object to the construction of it.

The Court: The objection is sustained.

Mr. Kresel: The instrument will speak for itself, your Honor.

Q. 497. How much, if anything, has the Chemical Foundation received as income on these 160 patents which you have testified were taken over at the request of the Navy Department and for which the Foundation paid the Government $5,000?

A. $100.

Q. 498. I direct your attention to assignment which is marked Exhibit H-19, Plaintiff's Exhibit No. 134, page 467 of the Bill, and ask you to state whether you had any talk with Commander Norton of the Navy Department with reference to that assignment?

A. Yes, sir, to the best of my recollection.

Q. 499. And what was the conversation, giving as near as you can recall, the date when?

A. Some time shortly prior to the nineteenth day of February, 1921, when he again came to me and told me that they had discovered further patents that they would like to have transferred to the Foundation, so that the Government could get a license from them.

Q. 500. And how much did the Chemical Foundation pay the Government for that assignment?

> Mr. Anderson: I do not suppose that you mean to ask how much you paid the Government; how much you paid the Alien Property Custodian, I presume.

Q. 500. (Continued.) All right; paid the Alien Property Custodian.

> Mr. Kresel: I will accept that correction.

A. $5,000.

Q. 501. And how much, if anything, has the Chemical Foundation collected as income on any of the patents covered by this assignment of February 19, 1921?

A. One license fee of $100.

> Mr. Kresel: I now offer in evidence Article 167 of the Income Tax Regulations, and this time I produce the official print entitled "Treasury Department, United States Internal Revenue, Regulations 62, 1922 Edition, relating to the Income Tax and War Profits and Excess Profits, Taxes," and so on. I ask to read in Article 167, which appears at page 77 of this publication. I read as follows. It is entitled "Depreciation of patent or copyright."
>
> "In computing a depreciation allowance in the case of a patent or copyright, the capital sum to be replaced is the cost (not already deducted as current expense) of the patent or copyright or its fair market value as of March 1, 1913, if acquired prior thereto. The allowance should be

computed by an apportionment of the cost of the patent or copyright or of its fair market value as of March 1, 1913, over the life of the patent or copyright since its grant or since its acquisition by the taxpayer or since March 1, 1913, as the case may be. If the patent or copyright was acquired from the Government, its cost consists of the various Government fees, cost of drawings, experimental models, attorneys' fees, etc., actually paid."

MR. ANDERSON: I have not seen that paper before being read, and I wish to make a formal motion to strike out on the ground that it is in no way binding upon this Court and is not evidence in this Court. The question of arriving at the value of patents in this case is a question solely for this Court.

THE COURT: It may be taken under our general rule.

MR. KRESEL: I offer in evidence a letter from the Alien Property Custodian, January 14, 1921, directed to the Navy Department, attention of Commander A. L. Norton.

Received in evidence and marked "Defendant's Exhibit No. 131." (*See Exhibits, Vol. V, page 2734.*)

MR. KRESEL: I offer in evidence a letter from the Navy Department, signed by Charles B. McVay, Jr., Rear-Admiral, United States Navy, to the Chemical Foundation, dated January 19, 1921.

Received in evidence and marked "Defendant's Exhibit No. 132." (*See Exhibits, Vol. V, page 2735.*)

MR. KRÉSEL: I offer in evidence a letter dated January 20, 1921, from the Chemical Foundation to Rear Admiral Charles B. McVay, Jr., of the Navy Department.

Received in evidence and marked "Defend-

ant's Exhibit No. 133." (*See Exhibits, Vol. V, page 2736.*)

THE COURT: Is that all of that group?

MR. KRESEL: All of this group.

THE COURT: They are admitted.

MR. KRESEL: I shall not stop to read these three letters, your Honor. They all refer to one of these assignments that Mr. Garvan has testified about, to wit, the 160 patents, and the Navy requests that the Chemical Foundation grant a license, and the Chemical Foundation says it would do so.

I now offer in evidence with reference to the gyroscope patents, those fourteen that the witness has testified followed, a letter from Josephus Daniels, Secretary of the Navy, to the Chemical Foundation, dated December 4, 1919.

Received in evidence and marked "Defendant's Exhibit No. 134." (*See Exhibits, Vol. V, page 2736.*)

MR. KRESEL: I desire to read that letter. It is short, your Honor. (Reads letter.)

I now offer in evidence the answer to this letter by the Chemical Foundation, dated December 8, 1919.

Received in evidence and marked "Defendant's Exhibit No. 135." (*See Exhibits, Vol. V, page 2737.*)

MR. KRESEL: I now offer in evidence the following additional correspondence with reference to the same subject, to wit.: Letter from Charles B. McVay, Jr., Bureau of Ordnance, Chief of that Bureau, of the Navy Department, to the Chemical Foundation, dated July 2nd, 1920; letter from the Chemical Foundation to the Navy Department, dated July 9, 1920; letter from Charles B. McVay, Jr., Rear Admiral of the United States

Navy, to The Chemical Foundation, dated July 15th, 1920; and letter from The Chemical Foundation to the Navy Department, dated July 19th, 1920.

The Court: Each is admitted.

Received in evidence and marked respectively, "Defendant's Exhibits Nos. 136, 137, 138 and 139." (*See Exhibits, Vol. V, pages 2738, 2740, 2741, 2742.*)

Mr. Kresel: I desire to read, if your Honor please, certain portions of testimony by Mr. Garvan before the Committees of Congress in connection with certain portions that have been read in by Colonel Anderson.

Mr. Anderson: To which I wish to note an objection, if the Court please, on the ground that the admission of statements formerly made by a witness who is an officer of or represents a corporation, or himself is a party, are admissible without calling the witness, as admissions against his position in this case. Not necessarily admissions against interest when made, but admissions against his position in this case, as taken under the pleadings.

I do not know of any rule of law or evidence, though my knowledge is limited, that permits the reading into the record of evidence of a party, of an officer of a corporation which is a party or representative of a party, made on a former occasion, as testimony in this case. The witness is on the witness stand and he can testify to anything he pleases—that is anything he knows.

The Court: Mr. Kresel, what is the purpose of it?

Mr. Kresel: The purpose is, your Honor, to show that the disconnected portion of testimony read in by Colonel Anderson, made by Mr. Garvan—and I say that without criticism of the

Colonel—even going to the extent of reading a portion of a paragraph and not the entire paragraph, is not a full and a fair reflection of the statement of the witness. I am offering this under the familiar rule that where one party to a proceeding offers in evidence a portion of an instrument or a portion of a proceeding, the other party has the right to offer the balance of it. I do not propose to read Mr. Garvan's whole testimony, I propose to read only such portions as are relevant to the matter that was read in by Colonel Anderson.

THE COURT: If your purpose is to use the testimony given by this witness before the Congressional Committee as primary evidence in this case, there is no doubt in my mind at the moment but what Colonel Anderson's objection is well taken. The purpose of my inquiry was to ascertain whether that was your purpose or whether it was your purpose to negative the effect of a partial reading of that testimony; that is, whether it is your contention the paragraphs, portions or sentences which you now intend to read are in negation or modification of that which was read by the Government.

MR. KRESEL: The latter is my purpose, your Honor.

THE COURT: Objection overruled.

We will take a recess until 1 o'clock Standard Time.

AFTER RECESS.

MR. KRESEL: I read from page 244 of the Hearings before the Committee on Ways and Means; Question by Mr. Moore:

"MR. MOORE: Having put these things in the record, I thought you probably would care to make a statement, because you are familiar with what has been said and done. If you care to make a statement, I will not interrupt you

"Mr. Garvan: I thought Mr. Choate had covered our purpose very well; but I can, in addition, just state this:

"The foundation of the Chemical Foundation was an effort to form an organization to represent as nearly as posible at that time the public interests. Judge Ingraham, of New York, and Judge Gray, of Delaware, had charge of drawing our charter and our trust agreement, and our certificate of incorporation. We have endeavored to make it as nearly a public institution as our laws allow, and at the same time have it an official organization. We wanted to sell these patents to the Government, and if there had been any method by which we could make them a working force, and still have them owned and controlled by the Government, it would have relieved us from a great deal of responsibility, and if there is at this time, any suggestion for modification or amendment of our plan which will insure in the minds of the committee a more definite and certain fulfillment of the intention and purpose of our organization, I am certain that the Chemical Foundation and all its stockholders and all who are interested in it, would be glad to conform to the wishes of the committee, because, in so far as we have the public recognition and public support, and Government recognition and Government support, we become more efficient and become more able to cary out the intentions which are in our hearts and minds."

Question by Mr. Kitchin. It will be conceded that was Congressman Kitchin?

Mr. Anderson: Yes.

Mr. Kresel: (Reading.)

"Mr. Kitchin: Suppose that the Government would think it wise to take over the Chemical Foundation and operate it; would your officers be willing to turn it over to the Government?

"Mr. Garvan: Provided anyone could draw a bill which promised in the opinion of this committee efficiency in carrying out the purposes of the organization, we will be very glad to do so. For a month or six weeks, Mr. Palmer and myself and Mr. Bradley Palmer and others sought in every way possible to find some way by which we could turn the idea over to the Government and make it efficient in the use and protection of the patents.

"Mr. Green:" ——

Mr. Kresel: That is another Congressman.

Mr. Anderson: Yes.

Mr. Kresel: "Mr. Green: What do you mean by 'efficiency' in that connection?

"Mr. Garvan: I will explain that. The employees of the Agricultural Department, for instance, invent a number of processes every year. By the rules of the Department of Agriculture they are compelled to dedicate them to the public. The result is throwing them into the waste basket because an invention when it is first patented has not been developed to the point of commercial manufacture. Nobody is going to do that if it is owned by the Government."

I read from page 360 of the same proceedings:

"Mr. Garvan: I will agree to do this: If there is question about it I will agree to have the charter amended, and in the terms and under the suggestion which you may dictate, in any way which you think will safeguard that. We must, of course, do two or three things; we must consider cases of the patents like salvarsan, and we must consider cases where one has invested, say, on the

> strength of his patents, two or three million dollars, and some man applies whose character shows his application to be nothing but an attempt to blackmail a man to buy him out, but if you can draw any proposition which will safeguard your contention, I promise you that within forty-eight hours the charter will be amended to contain your proposition. I would not have it thought for one moment that there is any intention on the part of those trustees or those officers ever to put themselves in a position where they could be seeking or attempting to use any arbitrary power. I can do no more."

Q. 502. Mr. Garvan, I direct your attention to a statement read in by Colonel Anderson at pages 272 and 273 of these hearings before the Ways and Means Committee. You were being asked there about the Executive order which had been signed by Mr. Polk, the one of February 26, 1919, and the question asked by Mr. Moore was:

> "Do you know who drafted that Executive order signed by Frank L. Polk?
>
> "MR. GARVAN: I can give you my best belief, based upon the course of business in the office, that it was drafted by Mr. Mitchell Palmer after consultation with Mr. Bradley Palmer and, undoubtedly, after consultation with Mr. Hoguet, who was the principal adviser on patents."

Then after two or three more questions and answers, you said this:

> "Of the Chemical Foundation, Inc., yes. And, furthermore, I think you will find that order received the consulting advice of every big patent lawyer in the country representing these big manufacturers."

I want to ask you what you meant by that statement as to the order having received the consulting advice of every big patent lawyer in the country representing these big manufacturers.

Mr. Anderson: I object.

The Court: I do not understand. Is it ambiguous—the statement?

Mr. Kresel: The statement is not only ambiguous, your Honor, ambiguous as to who the big patent lawyers were, but who the big manufacturers were that they represented, what time it was when they gave their advice. As to all of those I would like to have Mr. Garvan state what the fact was and what he was talking about here when he gave that answer. I think he has a right to explain that.

The Court: You may ask him if you desire the time and circumstances under which it was done. But what he meant by that statement I do not think is——

Mr. Kresel: I will reframe the question, your Honor.

Q. 503. I will ask you, Mr. Garvan, to state the names of the patent lawyers that you mentioned here, where you say "every big patent lawyer in the country," and the circumstances under which that order received, as you say, the consulting advice of such lawyers?

Mr. Anderson: To the first part of the question I have no objection, except the general objection. As to the second part, I object on the ground that of course the statement speaks for itself, that counsel cannot read the testimony into the record and then have him explain it by cross-examining his own witness.

Mr. Kresel: I am not reading it. You read it in. I am reading something that you read in.

Mr. Anderson: All right. If that is true, I had overlooked that fact, that I read it in.

Mr. Kresel: Yes, you did.

The Court: You may take the answer.

A. Pennie, Davis & Marvin, Mr. Townsend, of whatever it is, Byrnes, Townsend and Brickenstein, some name like that, and Mr. Rogers of Chicago passed upon that when they advised the people who took out licenses, their clients, that the title based on this order was good.

Q. 504. Was this advice that you speak of as having been given by these patent lawyers with reference to the order given prior to the making of the order by Mr. Polk or thereafter, if you can state?

A. No, I know nothing of their having given any advice before. I gave there on the other page the people I thought had been consulted about the drawing of the order. What I meant was that these men had subsequently passed upon our title, which was based on the order, and on their advice these people had taken out licenses and gone ahead to manufacture.

Mr. Anderson: I object to and move to strike out the last part of the answer as to what he meant.

The Court: Motion granted.

Mr. Kresel: Is it granted, your Honor?

The Court: The motion is granted. The answer was not responsive and he was volunteering some information which was really the information asked for by your original question. It is not responsive and may be stricken out.

Mr. Kresel: That part of the answer which was to the effect that the advice by these lawyers was given after the order was made—may that stand?

The Court: Yes. The motion did not go to that, I understand, Colonel Anderson, but to the last part.

Mr. Anderson: I did not understand.

Mr. Kresel: My question is whether that part of Mr. Garvan's answer which is to the effect that the advice by these lawyers was given after the Executive order had been drawn could stand. The Court says he did not understand you directed your motion to that part of the question.

Mr. Anderson: I did not direct that particular motion to that part of the question, but it is subject to my general objection.

Mr. Kresel: Yes, I understand it is subject to your objection, but you are not moving to strike that out?

Mr. Anderson: Not on the grounds stated in that motion, no.

The Court: The portion of the answer with respect to which the motion is granted begins with the words "what I meant."

Q. 505. In what connection, Mr. Garvan, was the advice given by these patent lawyers representing the manufacturers that you mention in this answer that I read to you from the record?

A. In connection with their clients' taking out licenses based on our title.

Q. 506. I read to you, Mr. Garvan, one answer that was read in by Colonel Anderson at page 394 of the Hearings before the Committee on the judiciary. Speaking of licenses, you say:

> "Our rates vary on different patents, of course; some licenses are only for one-half of one per cent. royalty or one per cent. royalty, but all are based on the idea of encouraging manufacturing. For instance, as I pointed out, our nitrate patents included a process of making nitrate from the air, which was another reason for getting those patents out of Government ownership. The possibility of developing Muscle Shoals is within those patents. The Muscle Shoals project could not go ahead without our nitrate pat-

ents. If those patents had been given back to Germany after the war, Muscle Shoals would be on your hands to a very great extent, for one of the large elements of value in those patents is the making of nitrates from the air, the so-called Haber process. Those were the patents the completion of which made the European war possible."

That was your statement. Now, do you know how many Government plants there are at Muscle Shoals?

A. I know there are at least two.

Q. 507. And do you know how they are designated?

A. Plant No. 1 and Plant No. 2.

Q. 508. As to which of the plants were you giving these answers that I have just read to you?

A. Plant No. 1.

Mr. Anderson: Just a minute. I object. There is no reference to any particular plant; it is the Muscle Shoals project; and it is nothing but explaining or undertaking to explain an answer in evidence.

Mr. Kresel: I would say that the witness has a right to state, quite irrespective of his statement, even which of the plants he was referring to when he was giving this testimony. The statement is ambiguous as to that.

The Court: I do not see that the witness can change by his testimony the fact with regard to the Muscle Shoals plants. If the facts are that there was one which came under that process, or if there were two which came under that process, it seems to me that is a fact which is more or less discussed and made a part of the statement. I do not know that he can now explain the statement, because that is a past event. His statement is made. If the facts are that there is only one Muscle Shoals plant which was operated in a way so that it required the Haber process, I do not see why that fact cannot be shown; but I do not see that the modification at this time of that statement is proper.

Mr. Kresel: I am not seeking to have it modified. I will ask the fact, your Honor.

The Court: Question withdrawn?

Mr. Kresel: Yes, I will withdraw the question, though it has been answered. I assume that both the question and answer, then, will go out.

(Q. 508 and answer repeated as above recorded.)

The Court: That question, I think, is objectionable, and I think the objection to it is to be sustained and the answer stricken out.

Q. 509. Do you know, Mr. Garvan, whether one or both or either of these plants at Muscle Shoals was constructed for production of nitrates by what is known as the Haber process?

Mr. Anderson: Does he know of his own knowledge?

A. No.

Mr. Kresel: The answer is "No."

Mr. Anderson: Then it is all right. I did not think he knew.

Mr. Kresel: I now offer in evidence a report prepared by the Nitrate Division, Ordnance Office, War Department, assisted by the Fixed Nitrogen Research Laboratory, Department of Agriculture, entitled "Report on the Fixation and Utilization of Nitrogen."

Mr. Anderson: We will note an objection to that. I have not had a chance to examine it, but I note the objection, of course, that as to proof of facts stated therein it is not a report required by law, or any high officer.

The Court: By whom was the report made, Mr. Kresel?

Mr. Kresel: This report was made by the Nitrate Division, Ordnance Office, War Department, assisted by the Fixed Nitrogen Research Laboratory of the Department of Agriculture. It is accompanied by a letter of transmittal dated March 29, 1922, from C. C. Williams, Major General, Chief of Ordnance to the Secretary of War. There is attached thereto a certificate reading as follows: (Reading.)

In the letter of transmittal by Major General Williams to the Secretary of War, the following statement is made (reading).

The Court: The objection is overruled. The document is admitted.

Received in evidence and marked "Defendant's Exhibit No. 140." (*Not printed.*)

Mr. Kresel: I will read from this report two or three paragraphs, your Honor. It is under the heading, "Nitrogen Fixation Activities of the United States Government," page 8 of this report (reading).

That is all, Mr. Garvan.

Mr. Anderson: If your Honor please, I have not been able to look at the large number of statements of figures introduced here today and therefore I am compelled to ask leave to reserve cross-examination on those statements until I can look at them, because I have not seen them. They were not furnished until they were presented in Court. I understand counsel does not object. On the other part of the evidence, I will ask the witness a few questions.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 509-a. Mr. Garvan, is that your signature to this letter?

A. Yes, sir.

MR. ANDERSON: I offer in evidence photostatic copy of the oath of office of Francis P. Garvan which the witness has just identified, as an attorney in the office of the Alien Property Custodian, showing the date of entrance on duty as November 12, 1917, and ask that it be identified as Plaintiff's Exhibit No. 609. Counsel agree that we put them in now instead of waiting for the rebuttal.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 609." (*See Exhibits, Vol. II, page 1446.*)

XQ. 510. Is this your signature, Mr. Garvan?

A. Yes.

MR. ANDERSON: I offer in evidence the oath of office of Francis P. Garvan as Alien Property Custodian just identified by the witness, sworn and subscribed to on the fourth day of March 1919, showing the date of entrance upon duty as March 4, 1919.

XQ. 511. You did enter upon and begin the discharge of your duties on that day, did you not?

A. I did.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 610." (*See Exhibits, Vol. II, page 1447.*)

XQ. 512. You continued to serve in the position of Alien Property Custodian for which you thus qualified from the 4th of March, 1919, until what date? I think you stated it, but I want to get it right.

A. I think it was the 12th of March.

XQ. 513. The 12th of March, 1921?

A. 1921, somewhere along in there. It was a few days after the 4th.

Mr. Anderson: I offer in evidence minute of the Noon Conference of May 16, 1918, at which there were present: The Alien Property Custodian, Messrs. Horne, Bradley, Dunn, Garvan, Dreher and Ferry. I ask that the same be read in evidence as Plaintiff's Exhibit No. 611.

Received in evidence and marked "Plaintiff's Exhibit No. 611." (*See Exhibits, Vol. II, page 1448.*)

The Court: That is of what organization?

Mr. Anderson: The Alien Property Custodian. I am going to identify it just as soon as it is handed to me after marking.

XQ. 514. You knew who the gentlemen named there as being present were, do you not?

A. I am not quite sure.

XQ. 515. Messrs. Horne——

A. Yes, sir.

XQ. 516. Bradley?

A. Yes, sir.

XQ. 517. Dunn?

A. Yes, sir.

XQ. 518. Garvan—that is yourself?

A. Yes, sir.

XQ. 519. Dreher and Ferry?

A. Yes, sir.

XQ. 520. They were all officers in the office of the Alien Property Custodian, were they not?

A. Yes, sir.

XQ. 521. This is dated May 16, 1918, and the Alien Property Custodian at that time was Mr. A. Mitchell Palmer?

A. Yes, sir.

XQ. 522. To the best of your knowledge and information that conference was held as shown by these minutes (handing witness)?

A. I had not seen it (examines paper). Yes, sir.

XQ. 523. Mr. Garvan, you were nominated for the position of Assistant Attorney General of the United States also, were you not?

A. Yes, sir.

> MR. ANDERSON: The minute I need not take the time to read. It merely shows Mr. Garvan's appointment as head of the New York office of the Alien Property Custodian in charge of the Bureau of Investigation.

XQ. 524. At what date were you nominated for that position, do you recall?

A. I do not remember.

XQ. 525. About what date?

A. I beg your pardon?

XQ. 526. About what date?

A. I think it was about the time that Mr. Palmer's house was blown up. Now, that was I think the summer of 1919.

XQ. 527. The summer of 1919 or about that time?

A. Yes.

XQ. 528. In fact your nomination was confirmed by the Senate was it not?

A. Yes, sir.

XQ. 529. I do not believe you ever took the oath of office as Assistant Attorney General, did you?

A. No, sir. I worked on three or four special matters.

XQ. 530. You had an office in the Department of Justice, however?

A. Yes, sir.

XQ. 531. Were you really in charge of the Criminal Division?

A. No, in charge of the Bolshevism and the Packers decree and two or three other things of that kind.

XQ. 532. From about the summer of 1919 on to

March, 1920 you were connected with the Department of Justice, although you never took the oath of office as Assistant?

A. I did volunteer work there, yes. I did not get any salary. I could not serve under both.

XQ. 533. I am very glad you stated that, because I know it is a fact that you did not. Mr. Garvan, when did you agree to become President of the Chemical Foundation?

A. To the best of my recollection from anything that I can inform myself from, it was some time after February 16th. You put in a letter from Mr. Hoguet saying on February 16th they induced me to become a director.

MR. KRESEL: What year was this, please?

THE WITNESS: 1919.

XQ. 534. It was in 1919?

A. Yes, sir.

XQ. 535. I read to you from your testimony before the sub-committee of the Committee on the Judiciary in the United States Senate, in the hearings on the Senate Resolution 77 which has been referred to. You know what I mean, do you not?

A. Yes.

XQ. 536. You were asked by the Chairman—who I believe was Senator Shortridge, was it not?

A. Yes, sir.

XQ. 536. (continued) At page 392:

> "THE CHAIRMAN. In order to fix it in the record, when did you become Alien Property Custodian?
>
> "MR. GARVAN. March 4, 1919.
>
> "THE CHAIRMAN. When was the sale made to the Chemical Foundation?
>
> "MR. GARVAN. The order directing the sale was made February 26, 1919 and the sale was actually consummated April 10, 1919.

> "THE CHAIRMAN. And you became the President of the Chemical Foundation when?
>
> "MR. GARVAN. I was the President from the beginning. The date of the recordation of our certificate is the 19th of February, 1919. So that I was President of the Chemical Foundation at a time when I was a dollar-a-year man in the employ of the Government, but when I had no expectation of doing anything but step out and go back and devote myself to my private practice and thus build up, if possible, the chemical industry in this country."

You did testify to that, did you not?

A. Oh, yes, certainly.

XQ. 537. Does it correctly state the facts?

A. Well, it depends upon whether—I became President but I was not formally elected by the incorporators until March 8th. I had consented to become President of the corporation to be formed.

XQ. 538. It had been understood really throughout the transaction that you were to be President, had it not, Mr. Garvan?

A. Not until quite late in the transaction; it was not even suggested at first.

XQ. 539. How late, would you say, in the transaction? You say here from the first.

A. The only thing that I can recollect—that I can place it by is that it must have been after the 16th of February, because on that date Mr. Hoguet wrote to Mr. Palmer, "We have induced Mr. Garvan to become a director", and therefore at that time it had not been suggested that I become President.

XQ. 540. As a matter of fact, you know it was agreed around that time that you should be President of The Chemical Foundation?

A. Yes.

MR. KRESEL: Around what time?

MR. ANDERSON: Around the 15th of February.

A. Somewhere around that time. I would not be able to place the date.

XQ. 541. Now, Mr. Garvan, you continued, as I understood you to say, as President of The Chemical Foundation from the time of your original election down to the present time?

A. Yes, sir.

XQ. 542. This morning some evidence was introduced as to a certain Bill pending in Congress before the Ways and Means Committee of the House, and afterwards before the Senate, for a dye embargo, among other things?

A. Yes, sir.

XQ. 543. You took quite an active part as President of the Chemical Foundation in undertaking to secure a dye embargo, did you not?

A. Very active.

XQ. 544. You did?

A. Very active.

XQ. 545. You and the officers of The Chemical Foundation earnestly urged the adoption of a dye embargo?

A. We did.

XQ. 546. You were at that time Alien Property Custodian?

A. Yes, sir.

XQ. 547. You were at that time discharging duties in connection with the Attorney General's office such as you have described?

A. Yes, sir.

XQ.548. And had been confirmed by the Senate as Assistant Attorney General, but had not qualified for the position?

A. Yes, sir.

XQ. 549. Mr. Garvan, have you ever been in Germany?

A. Yes, sir.

XQ. 550. When?

A. I was there—now let me see—I think I have made two trips through Germany. In 1908 or 1909, along there.

XQ. 551. And those trips were about that same time?

A. One summer following another summer.

XQ. 552. You were over there as a——

A. Tourist.

XQ. 552. (continued)—tourist?

A. Pure and simple.

XQ. 553. Approximately how long were you in Germany?

A. Well, I suppose a month each time; possibly less.

XQ. 554. Then the information which you testified yesterday as being in your possession as to the educational system in Germany and the economic system of Germany and the organization of industry in Germany was all derived from other sources than any personal knowledge on your part, was it not?

A. Oh, yes.

XQ. 555. You spoke of the fact that the dye industry in Germany maintains schools for the education of the people in the conduct of that business. Do you not know as a fact that the United States Steel Corporation does the same thing in the United States?

A. I do not, no.

XQ. 556. You do not know that?

A. No.

XQ. 557. Do you not know as a fact that a great many industrial concerns in the United States, like Westinghouse and General Electric do maintain schools for the education of youths in their particular branches of business?

A. I do not know.

XQ. 558. You also spoke on yesterday of the fact that Germany had a large fund for propaganda in the United States. In connection with your investigations, did you not find that England and France also had a large fund for propaganda in the United States?

A. I did not.

XQ. 559. You did not find that?

A. I did not.

XQ. 560. You know, as a matter of fact, that the United States had quite a large propaganda fund during the war, do you not?

A. You mean selling Liberty bonds?

XQ. 561. No, no, I mean for the maintenance of propaganda, publicity?

The Court: You mean in America?

Mr. Anderson: Or in foreign countries as well.

A. I had no knowledge of any such thing. It never came within my labors.

XQ. 562. Never came within your knowledge?

A. No.

XQ. 563. I would like you to define a little more definitely for me, if you can, just what your duties were as Chief of the Bureau of Investigation through which position you got the information you described.

A. Yes. For the first two or three months it was what I would call absolutely clerical work. It was receiving this tremendous number of reports on property that poured in, arranging a system for the verification of the oaths and arranging a system of dividing them so that those that looked suspicious and those that fitted in with information that might come in, might be further investigated as well as those who reported no property and who we had reason to believe might have property; in other words, to sift those that were apparently all right from those that should require more investigation, and so forth. That was the first thing that was done, to try and see what was to be done.

Then we wrote letters to everybody that we could think of in the country who might have any knowledge of German property; banks, trust companies, tax assessors, county agents, mortgage companies, everybody that touched money or property who might have any record of German ownership. That was our next step.

Then, of course, patriotic citizens sent in an enormous amount of information, and then we began to gather it from the seven or eight other information bureaus of the Government, Military Intelligence, Naval Intelligence, War Trade Board Intelligence, Secret Service of the State Department, Secret Service of the Treasury Department, the Department of Justice, and these National Defense organizations, everywhere that we could get information. Then we began to send out the individual men to the individual places to examine the individual suspected ones, and so forth. Then we found that most of this material was in New York City; so we established a New York office to be nearer the source.

XQ. 564. In your New York office, did you have charge of the examination of such concerns as the Kuttroff, Pickhardt & Company, the Cassella Color Company and the H. A. Metz Company and the Farbwerke-Hoechst Company that are referred to in Mr. Palmer's report?

A. Yes, sir.

XQ. 565. You had charge of that?

A. With the assistance of Mr. Choate.

XQ. 566. You were in charge of that work?

A. I was in charge.

XQ. 567. You were in constant charge of that work I assume?

A. Yes. Mr. Choate had the next room to me. There was just a door in between.

XQ. 568. I want to ask you about some of these concerns to clear up certain points, some of which you have mentioned like the Bayer Company. We will take the Bayer Company first. Do you recall when the investigation of the Bayer Company was made? You said it was on the 12th of December, 1918, if I recall?

A. My recollection is that that was quite early, that that was one of the first. I think that was the first one we appointed the directors in. I am not sure about that.

XQ. 569. The actual auction took place on the 12th of December, 1918, did it not?

A. Yes, sir.

XQ. 570. What was the proceeding after the auction, do you know? I mean, how long before the property was transferred. What did you do then?

A. The proceeding then would be for the price and purchaser to go before the Sales Committee which consisted of the five men who are now Trustees of the Foundation; and the Washington office would help clear the title and the lawyers for the purchasers would go down there and look over their necessary muniments of title; and then upon the approval of the Advisory Committee on Sales as to price and as to purchaser, the deed would be put through. Does that answer the question?

XQ. 571. That is pretty good. Now, do you know when the actual transfer of the property of the Bayer Company took place?

A. No, that I do not know. I could find out I suppose.

XQ. 572. After the sale, these various proceedings which you indicate usually took some little time, did they not?

A. Sometimes some time and sometimes not, more or less.

XQ. 573. In property the size of the Bayer Company, it would naturally take some weeks?

A. Well, there are just as nasty questions that come up with small companies as with large companies.

XQ. 574. If I were to show you the record that the old directors of the Alien Property Custodian did not resign until late in January, what would you say?

A. I would say that was pretty quick.

XQ. 575. You would say that was pretty quick for turning it over?

A. Yes, sir.

XQ. 576. Do you not know that as a matter of fact the terms of sale gave only thirty days to approve the sale to the purchaser?

A. I remember it now that you remind me.

XQ. 577. So that they had thirty days from the 12th of January to decide whether they would approve the purchase at all?

A. From the 12th of December.

XQ. 578. From the 12th of December to the 12th of January?

A. Yes.

XQ. 579. Thirty days?

A. Yes, and we could get an adjournment of that date.

XQ. 580. Then the turning over the property?

A. I think that had to be the turning over.

XQ. 581. They had thirty days in which to reject bids?

A. That is right. We had to decide if we were going to reject.

XQ. 582. Within thirty days?

A. Yes.

XQ. 583. Mr. Garvan, you are familiar with the provisions of the Trading with the Enemy Act that gave to the Alien Property Custodian the power to reject any bid upon the Executive order of the President, stating the reasons therefor in writing and to re-sell the property?

A. Yes, sir.

XQ. 584. Did you as chief of the Bureau of Investigation ever suggest the rejection of the bid for the Bayer property?

A. For the Bayer property?

XQ. 585. Yes.

A. No.

XQ. 586. You testified on direct examination that you were greatly alarmed or concerned by the fact that one company——

A. (interposing). You misunderstood me. I was only alarmed at the fact that the directors bore German names. The moment I knew the personality of the men who bore German names, that they had been American citizens for a hundred years as far as that company was concerned——

XQ. 587. That is not quite the point I was getting at. But you were greatly alarmed at the prospect of one company controlling as many as 1200 patents?

A. No, that was not the thing that alarmed us. They were entitled to control those because they went with that plant.

XQ. 588. Well, I haven't your testimony in the record before me. I have not been able to go through it.

A. I was alarmed at the prospect or possibility of men with German tendencies going on and buying up them all. Of course, if we had known that they had been actual Germans, they never would have gotten that property.

XQ. 589. If there had been any reason for any uneasiness on your part as to the interests of the country being protected, would you not have recommended to the President a rejection of the bid and a re-sale

A. Oh, certainly.

XQ. 590. And that could be done in any property?

A. That was only my first flash at the fact of their being German names.

XQ. 591. That could be done in any property?

A. Oh, yes.

XQ. 592. And that was sometimes done, was it not?

A. Oh, quite frequently.

XQ. 593. As a matter of fact, you knew at the time this sale was made or before it was actually consummated, that the purchaser, the Sterling Products Corporation, had an arrangement and understanding at the time of the sale with the Grasselli Chemical Company?

A. Yes, sir.

XQ. 594. That the Grasselli would buy its patents and part of its property?

A. One to take the dye side of the business with all its appurtenances, building, patents, etc., and the other to take the drug side with all its appurtenances.

XQ. 595. The drug side being chiefly aspirin?

A. Yes, sir.

XQ. 596. That was practically all they made, as far as you know

A. I do not know if it was all they made. I know that the chief product was aspirin.

XQ. 597. The dye side of that plant was sold to the Grasselli Chemical Company?

A. Grasselli Chemical Company.

XQ. 598. Do you know what they gave for it?

A. I do not know.

XQ. 599. Did they not have to disclose the arrangement between them to the Alien Property Custodian?

A. I don't think they did. They were two splendid American concerns. What their business was was between themselves.

XQ. 600. Was the Sterling Products Company an old company?

A. Yes.

XQ. 601. Had they been in business long?

A. Yes, they made syrup of figs for fifty years.

XQ. 602. The Grasselli Company took over about 500 of those patents, did they not?

A. I don't know how many they took over.

XQ. 603. Dye patents?

A. I don't know.

XQ. 604. Any how they were to take the dye pattents?

A. They were to take the dye side of that business.

XQ. 605. And the price paid for that property was about $5,250,000, something like that, was it not?

A. It was.

XQ. 606. Mr. Garvan, did not Mr. Wigglesworth of the National Aniline Company go up and make an inspection of this property and report to you on it or state to you the result of his inspection?

A. I don't think Mr. Wigglesworth did. I think Mr. Matheson of his company was the only one I saw.

XQ. 607. Matheson was the only one you saw?

A. That I remember.

XQ. 608. Did Mr. Matheson ever tell you what he thought the physical property was worth, that is, the manufacturing plant?

A. He did not, because he was a prospective bidder. He did not tell me. He told me how much the patents were worth.

XQ. 609. Yes, you testified to that. Now, the

Farbwerke-Hoechst Company was what has been talked of here as one of the Metz Companies?

A. Yes.

XQ. 610. That was a New York Corporation?

A. Yes, sir.

XQ. 611. You had a very exhaustive audit and examination made of that property, did you not?

A. Very.

XQ. 612. Who paid for it, Mr. Garvan?

A. Mr. Metz.

XQ. 613. As a matter of fact, the Alien Property Custodian did not have any appropriation for the purpose of making these audits and investigations in advance of the seizure of properties, did he?

A. No, he did not.

XQ. 614. You always made their owner pay that?

A. Yes, I think we did.

XQ. 615. You charged that up to him and made him pay?

A. Well, if his books were straight, it did not cost much.

XQ. 616. I know, but in the case of Mr. Metz it cost $40,000?

A. Yes, that was because of the condition of his books, disguising the relations with Germany.

Mr. Anderson: I do not want to move to strike out the witness's answer, your Honor. I said "It cost $40,000"? And he said "Yes." Now he goes on to explain. I know the witness does not want to embarrass me, and therefore I just want to ask him not to do that.

The Court: Let the non-responsive part of his answer be stricken out.

XQ. 617. That examination showed the earnings and profits of the Farbwerke-Hoechst Company for a period of five years, did it not?

A. I assume that to be true.

XQ. 618. It was a very exhaustive examination made by Wolfe & Company, was it not?

A. Very.

XQ. 619. That report was made to you, was it not?

A. Yes, sir.

XQ. 620. Did you familiarize yourself with the report?

A. I did at the time.

XQ. 621. According to the report of Mr. Palmer, which is in evidence, as is also this portion of it, filed as an exhibit with the answer I think it shows that the earnings of that business were very large.

Mr. Kresel: Which business?

Mr. Anderson: Of the Farbwerke-Hoechst or Metz Company.

Mr. Kresel: I doubt whether there is anything in the report about that.

Mr. Anderson: I think it shows that. I can not remember all of them.

XQ. 621. (Continued.) Anyhow whatever the earnings were, they were shown by that report, were they not?

A. Undoubtedly. He made up a whole new set of books and set of everything.

XQ. 622. Take the Badische Company. Who represented that in New York—in America?

A. Kuttroff, Pickardt & Company. You do not mean the lawyers?

XQ. 623. No, the agents.

A. Kuttroff, Pickardt & Company.

XQ. 624. They had been for a number of years the representatives of the Badische Compony, had they not?

A. They had.

XQ. 625. You had a very exhaustive examination made of their records and ther accounts?

A. Very.

XQ. 626. They did not have any plant in the United States, did they?

A. No, an assembling and mixing plant; down on Broadway, a warehouse.

XQ. 627. Just a warehouse?

A. Yes.

XQ. 628. They were merely distributing agents in the United States, and importers?

A. Yes, sir.

XQ. 629. That is all?

A. Yes, sir.

XQ. 630. They exported to a large extent dyestuffs, did they not?

A. Yes, sir, mainly, I think.

XQ. 631. Mr. Palmer in his report states that the company had been selling for the German house for years high grade indanthrene dyes which it received from the German house at fixed prices and he did not include the sums described as royalties. Their business was largely in that class of dyes as I understand it, like indanthrene dyes?

A. I think a general business.

XQ. 632. They handled all the Badische business in this country?

A. Yes, they had a full line.

XQ. 633. They were very large importers of dyestuffs?

A. Oh yes.

XQ. 634. Do you know whether they were largely patented dyes, or can you say?

A. Not a great proportion of them were patented, probably. The indigo is the largest, and then sulphur colors, and they were not patented.

XQ. 635. They were at that time, were they not?

A. No.

XQ. 636. The indigo had expired?

A. I think the indigo had expired, but I would not be certain of that.

XQ. 637. Had the indanthrene patents expired?

A. No.

XQ. 638. They were still in existence?

A. They were, I think. I know they were.

XQ. 639. As a matter of fact, they were assigned to the Chemical Foundation?

A. Yes.

XQ. 640. And you have licensed them today?

A. Yes.

XQ. 641. Did not the reports in that instance show there were very large earnings which in fact had been charged up, whether rightly or wrongly, to royalties?

A. I would have to refer to that report.

XQ. 642. I refresh your memory by reading from Mr. Palmer's report: "During the years 1915 and 1916 the sum of $701,944.34 was credited on the books of the German house and subsequently remitted under the head of indanthrene royalties." As far as you know that was true, was it not?

A. I do not think it was true. I think it was the means of getting the profits of this concern back——

XQ. 643. Well, I mean it was credited.

Mr. Kresel: The witness had not finished his answer.

XQ. 644. All right, but you do think it was true, as a way of getting the money back to Germany?

A. Yes, sir.

XQ. 645. But the statement that it was credited to indanthrene royalties on the books is a correct statement in Mr. Palmer's report, is it not?

A. If it is in Mr. Palmer's report, it is correct.

XQ. 646. You believe everything that is stated in that report as true, don't you?

A. I think everything is correctly stated.

XQ. 647. "In like manner, in 1914, the sum of $477,100 was credited and remitted ostensibly as a return of advances made years before by the German house for expenses of the New York concern." Do you recall that element

A. I remember that those charges were made there on the books, sending all the earnings of the New York house back to Germany, and were urged by us as a demonstration that this was a part of the Home Office and not an independent American concern.

XQ. 648. I am not questioning that that was the fact at all. All I am trying to get at is that these figures did show on the books, as you had them investigated, as part of the profits of the business?

A. In one place on the books. Whether the rest of the books contradicted it or not I do not know. The whole of the statement of Kuttroff, Pickardt & Company is published in full in one of those hearings.

XQ. 649. The report also shows there were very large profits on importations in the Deutschland?

A. The submarine, yes.

XQ. 650. All of that report was made to you, was it not?

A. Yes, sir.

XQ. 651. And by you transmitted to Mr. Palmer?

A. Yes, sir.

XQ. 652. The report on the Cassella Color Company was also made to you, was it?

A. Yes, sir.

XQ. 653. The report in the Roessler & Hasslacher Company and subsidiaries?

A. Made to Mr. Choate.

XQ. 654. I mean you were the Chief of that division?

A. Yes. I mean I did not pay the close personal attention to that one that I did the other three. But I did go over it, of course.

Mr. Kresel: May I say that I am told the Roessler and Hasslacher concern is not a dye concern?

XQ. 655. I know it is not a dye concern, but it is one of the concerns mentioned in Mr. Palmer's report here, that is what I am getting at.

A. Yes.

XQ. 656. Do you know what became of their patents?

A. Why, I think—no, I do not.

XQ. 657. The Hasslacher concern had plants in this country, did it not?

A. Yes.

XQ. 658. And you do not know what became of their patents?

A. No, I do not.

XQ. 659. Merck & Company. There was a report made on Merck & Company to you?

A. Yes, sir.

XQ. 660. Was the property of Merck & Company ever sold, do you know?

A. I think it was.

XQ. 661. Do you know what became of the patents?

A. I do not think they had many patents. I don't know.

XQ. 662. The Kalle Color & Chemical Company—I supose that is it, though I do not know how to pronounce these names——

A. Yes, that is right.

XQ. 663. Do you recall that one?

A. Yes, sir.

XQ. 664. According to the figures which I have before me, which I will ask you if you recall, this company paid royalties amounting to $16,750 a year for three and a half years, aggregating $58,625, for the use of certain German patents. Do you recall that?

Mr. Kresel: Paid to whom, Colonel?

Mr. Anderson: Paid to the German owners of these patents.

A. No, I do not recall that. Before the war, you mean?

XQ. 665. Yes.

A. No, I do not.

XQ. 666. You do not recall it?

A. No, sir.

XQ. 667. And that they showed earnings of something like 200 per cent. in 1915 and 1916 on a $300,000 capital; do you recall that?

A. On imports?

XQ. 668. No, on their business.

A. They were solely imports.

XQ. 669. No, they had property in this country?

A. I do not know.

XQ. 670. Do you know what became of those patents?

A. The Kalle patents? I think they were with us. I am not positive.

XQ. 671. You think they were assigned to you?

A. I think so.

XQ. 672. To sum the matter up, as I understand it, you as Chief of the Bureau of Investigation, where you felt there was doubt as to the ownership of a property or the stock therein or an interest therein, would have a careful investigation made of that property?

A. I would have to have more than doubt. I would have to have something to go on when I went into a man's place.

XQ. 673. Then you would have an audit made to show the status of his books, his reports, and the conditions of his business. Is that true?

A. Not always. Sometimes I would go over the books myself—sometimes I would go through them myself.

XQ. 674. But you would satisfy yourself as to the situation?

A. Certainly.

XQ. 675. And where you thought there was any German interest, or before you seized a property, you would make a careful audit and investigation, isn't that true?

A. Where they denied German ownership, as they did in this case.

XQ. 676. Speaking not only of that particular period, but later as Alien Property Custodian, when you handled the whole matter, in the event that property was seized, before you sold it, a complete audit for five years was made, was it not?

A. It was in some cases generally, before we sold it.

XQ. 677. Yes?

A. Oh, yes, a complete audit was made.

XQ. 678. A complete audit for five years was made?

A. Yes, sir.

XQ. 679. And then you also had an appraisal of the property made?

A. Yes, sir.

XQ. 680. And then you got out a prospectus showing the results of the audit for five years, and the values of the appraisals, would you not?

A. Yes, sir; that is, we would have an appraisal of physical property.

XQ. 681. Did you not have an appraisal of the whole property?

A. We could not appraise intangibles. We would have one of those appraisal companies go through a factory or anything of that kind.

XQ. 682. Would you not appraise good-will as one of the items of the business?

A. I do not think we ever appraised good-will.

XQ. 683. Would you not appraise the going concern value?

A. The what?

XQ. 684. The going concern value?

A. I do not think we did. I am not sure. I think it was a physical appraisal.

XQ. 685. You think it was just a physical appraisal?

A. I think so, with the balance sheet showing the profits.

XQ. 686. What was the reason for showing the profits for five years if you do not want to show the going concern value?

A. Then the purchaser could make up his own mind as to the good-will.

XQ. 687. You haven't any of those appraisals with you, have you?

A. I have got them with me. I haven't got them all. Oh, no—the appraisals.

Mr. Kresel: We have got the prospectus.

A. (continued) The prospectuses we have.

Mr. Kresel: Here is one, Colonel. (Handing paper.)

XQ. 688. Now take the Cassella Color Company. You seized the patents in that case, did you not, or rather, the Alien Property Custodian seized them?

A. Yes, sir.

XQ. 689. What became of them?

A. They were sold to us.

XQ. 690. They were sold to you?

A. Yes, sir.

XQ. 691. Did you have a full report made on that company before their patents were seized?

A. The company was gone.

XQ. 692. It was?

A. Yes there was nothing left but the signs.

XQ. 693. But you seized the patents?

A. Yes, sir.

XQ. 694. And sold them to The Chemical Foundation?

A. Yes, sir.

XQ. 695. At page 100 of the Answer, from Mr. Palmer's report, I read the following, speaking of the enactment of the amendment of November 4th to the Trading with the Enemy Act:

> "Until the enactment of this amendment it had not been possible to take over German patents. These patents, as had been already indicated formed a collossal obstacle to the development of the American dyestuff industry."

Mr. Garvan, do you agree to that statement that they formed a colossal obstacle in the development of the dyestuffs industry?

A. Certainly.

XQ. 696. What proportion of the dye business in the United States did those patents cover?

A. Between four and five per cent.

XQ. 697. Was it an essential portion of the business?

A. The essential portion.

XQ. 698. It was the essential portion of the business?

A. Yes, sir, if you mean the complete dye industry.

XQ. 699. It furnished the key to the business, did it?

A. Well, if you are not able to furnish the whole line, you won't very shortly be allowed to furnish any.

XQ. 700. Now hold on. I know you do not want to argue with me.

A. No, no.

XQ. 701. You want to answer. I asked you if the patent-controlled dyestuffs furnished the key to the business.

A. I would like to ask you what you mean by "furnished the key to the business."

XQ. 702. Then we will leave it right there. Your answer is all right. Now, at the time that these patents were taken over, as you described on yesterday, that is, the patents now sold to The Chemical Foundation, you were familiar with the system of the Federal Trade Commission of licensing patents, were you not?

A. Fairly so.

XQ. 703. You knew that a considerable number of these patents had been licensed by the Federal Trade Commission under Section 10, did you not?

A. Yes, sir.

XQ. 704. You knew that the Federal Trade Commission issued licenses to all substantial manufacturers in the country that desired to use those patents, did you not?

A. Yes, sir.

XQ. 705. You knew that their license fee was a flat royalty of 5 per cent. on gross sales, and afterwards had been changed in some instances to 2 per cent., did you not, in a general way?

A. In a general way. I did not know exactly whether that was always their fee.

XQ. 706. And you were familiar with the provisions of the Trading with the Enemy Act with respect to the power of the Courts of the United States to deal with these licenses after the war, were you not?

A. Yes, sir.

XQ. 707. Had you ever heard it suggested that any American manufacturer could not get a license from the Federal Trade Commission to use any alien-owned patent in the United States?

A. I had not.

XQ. 708. After you became Alien Property Custodian and seized German patents, did you not grant licenses yourself to certain persons in the United States to manufacture or use them?

A. The Government. I do not remember any other cases.

XQ. 709. Did you not grant licenses to some manufacturers?

A. I have no recollection of it. I would have to be refreshed on that.

XQ. 710. But did you have any doubt as to your power to grant licenses when you had seized the patent, just as much to a manufacturer as you could to the Government?

A. I do not think I did. I do not remember that that question came up at that time.

XQ. 711. Mr. Palmer testified that the Federal Trade Commission desired to continue licenses under these patents after they were seized by him, and he objected on the ground that he was then the owner of the patent. Do you recall that testimony?

A. I was not in the room all the time.

XQ. 712. Did you ever discuss that matter with Mr. Palmer at all before or after you became Alien Property Custodian?

A. No, I do not think so.

XQ. 713. Mr. Garvan, do you know of any obstacle that existed to any manufacturer in the United States obtaining a license on reasonable terms to use alien-owned patents during the war, through the Federal Trade Commission or otherwise?

A. Any obstacle?

XQ. 716. Any obstacle to their obtaining it?

A. To their obtaining it?

XQ. 717. Obtaining the licenses.

A. No.

XQ. 718. None whatever?

A. No.

XQ. 719. Mr. Garvan, I read into the record the other day from the Hearings before the Finance Committee of the Senate on Bill H. R. 8078, pamphlet entitled "Dyestuffs," with which you are familiar, I know.

A. Yes.

XQ. 720. At page 520 after reciting the sale of the Bayer Company and the incidents connected with that sale, you said, speaking of prospective purchasers or possible purchasers of these patents if they were sold:

> "They could go ahead and buy these other patents for very little and have a monopoly for sure, and then they could just sit back and collect a royalty from the Germans after the war. They did not have to manufacture anything; they did not have to go into business."

That would apply only to the product patents, would it not? In other words, royalties at the port can only be collected on product patents; isn't that true?

A. They could be collected on process patents if we could prove the process; but you can not prove the process.

XQ. 721. Then you go on to say:

> "So I conceived the idea of forming the Chemical Foundation and putting all these patents into a quasipublic corporation, which would develop them and give them to chemical companies throughout the country. The way the salvarsan had worked out encouraged us. Mr. Metz was in fear of a monopoly here, he was not afraid of I. G. in Germany. The best answer is the Chemical Foundation. We have licensed six people

to make salvarsan. Mr. Metz is the most successful one. We have given it to Squibbs, and three, I think, altogether."

Now I am a little curious to know who did conceive the idea of The Chemical Foundation. Were you right in that statement or not?

A. I think as it exists now, as to the form of the company, I think I am to blame.

XQ. 722. You claim to be the parent?

A. I do not claim. Mr. Palmer told me to go ahead and get up a scheme which would accomplish what he wanted to accomplish, and between Mr. Choate and myself we worked it out. He says I am to blame.

Mr. Kresel: I did not get that last. He says what?

The Witness: He says I am the one that originally thought of it.

XQ. 723. Who says that?

A. Mr. Choate. But between us it was worked out under Mr. Palmer's direction.

XQ. 724. You, then, are the person who conceived the Chemical Foundation, the defendant here, as we have it?

A. Well, I have explained it. You can——

XQ. 725. I want the answer.

A. The way it happened was that Mr. Palmer told us to get up some plan——

XQ. 726. Hold on; would you mind just answering

A. You can answer it the way—you can say "the scheme of The Chemical Foundation." I invented the name "Chemical Foundation." Mr. Palmer directed Mr. Choate and me to work on the idea.

XQ. 727. Put it this way, then: "So I conceived the idea of forming the Chemical Foundation." Did you conceive it or did somebody else conceive it?

A. Well, I have told you the way it was. I will admit I conceived it, if you will allow the circumstances under which it happened.

XQ. 728. All right. Mr. Garvan, about what time did this idea develop in your mind?

A. You will have to tell me, Colonel, what you mean by "this idea."

XQ. 729. I mean when did it become a definite idea in your mind?

A. The first conversation about it was one or two days after the Bayer sale, between myself and Mr. Palmer. From that time it was an evolution until the time it took its final, present form.

XQ. 730. Your first conversation, you say, was between you and Mr. Palmer. Whom else did you talk to about it?

A. Mr. Choate, Mr. Hoguet, each and every one in the industry that I met from day to day.

XQ. 731. Can you not name some of them?

A. Yes, Mr. Poucher; I know Mr. Wigglesworth, Mr. Merz, Mr. Jeffcott.

XQ. 732. Who was Mr. Jeffcott?

A. Jeffcott was the Calco.

XQ. 733. Calco Chemical Company?

A. Yes. Merz of Heller & Merz.

XQ. 734. What were Mr. Poucher's connections at that time?

A. Poucher was with the duPont Company.

XQ. 735. Yes?

A. Mr. Matheson.

XQ. 736. Whom was he representing?

A. I think we talked it over with Metz. Metz was in and out all the time. Any one of them that was around in New York or that was available. Mr. Cashman of the Grasselli. I do not know who else. Mr. Howard, I think, of the Merrimac, was quite active.

XQ. 737. When did these conversations with the gentlemen you mention, that you speak of as the industry, begin, and about when did they take place? I know you can not state the exact date, but as near as you can locate it?

A. I would assume not many of them took place before Christmas. That was December 12th, and I went down to Washington shortly after that, and by the time I got back was probably the 20th. So I assume it was not much before Christmas.

XQ. 738. Then that was during January?

A. I would say yes.

XQ. 739. These conversations were going on in regard to the organization of a company to take over all German dye and chemical patents; is that the idea?

A. Yes.

XQ. 740. That was the general idea, to take them all over?

A. Yes.

XQ. 741. Were you present at the conference in Washington on the 27th of January, 1919?

A. I was not.

XQ. 742. Did you read the minutes of that conference?

A. I have.

XQ. 743. Did you read them at that time?

A. I assume so. I have no recollection.

XQ. 744. You were really working on the matter, so you assume you read the minutes; is that right?

A. I assume so.

XQ. 745. Now I am going to get you to identify for me the persons present at that conference as having been down there. Mr. Mansfield Ferry; just say who he was?

A. He was a lawyer connected with the Alien Property Custodian.

XQ. 746. He was general counsel of the Alien Property Custodian, was he not?

A. Whether he was at that time or a little later, I do not know.

XQ. 747. Mr. F. J. Horne?

A. He was Director of the Bureau of Trusts.

By Mr. Kresel:

XQ. 748. Of the Alien Property Custodian?

A. Of the Alien Property Custodian.

By Mr. Anderson:

XQ. 749. Mr. W. T. Gordon?

A. He was the young man in the Patent Division; seen here.

XQ. 750. He was a lawyer?

A. Yes, sir.

XQ. 751. Mr. Joseph H. Choate, Jr.?

A. Mr. Joseph H. Choate, Jr., was the gentleman in the Bureau of Investigation who had charge of the investigation of chemical matters.

XQ. 752. He was associated with your office?

A. Associated with our office.

XQ. 753. Ramsay Hoguet?

A. Ramsay Hoguet was the patent counsel of the Alien Property Custodian's office.

XQ. 754. On the minutes of that meeting, which I hold before me, is the heading: "Committee of American Dyes Institute."

A. Yes.

XQ. 755. Mr. M. R. Poucher. He was the representative of the duPont Company, you said, was he not?

A. One of the representatives of the duPont Company.

XQ. 756. Mr. Henry Wigglesworth. Who was he?

A. One of the representatives of the General Chemical Company.

XQ. 757. The General Chemical Company is a subsidiary of the National Aniline, is it not?

A. No, it is a subsidiary of the Allied.

XQ. 757. (Continued.) Allied Chemical Company?

A. An associate company with the General Chemical.

XQ. 758. August Merz?

A. Heller & Merz.

XQ. 759. They are chemical people?

A. Yes, sir; dye people.

XQ. 760. Dye people, yes. R. C. Jeffcott?

A. Calco Chemical Company.

XQ. 761. B. C Hesse?

A. B. C. Hesse is of the General Chemical Company; chemist.

XQ. 762. F. E. Barrows?

A. F. E. Barrows was a patent lawyer with one of those companies.

XQ. 763. It appears in evidence that he was a patent lawyer of the National Aniline; is that right?

A. That is right.

XQ. 764. C. Protto?

A. He is the technical man for the duPont Production.

XQ. 765. And Judge Laffey?

A. Judge Laffey is the counsel of the duPonts.

XQ. 766. There has been introduced in evidence here a letter from Mr. Hoguet, I think, to Mr. Palmer (I can not put my hand on it), referring to the charter of the Chemical Foundation in course of preparation, which I think was dated the 3d of February, 1919. Do you know anything about the preparation of that charter?

A. No. You mean whether I worked on the charter?

XQ. 767. No; I mean do you know anything about it?

A. I know something in general.

XQ. 768. I mean of your own knowledge, Mr. Garvan, speaking as a witness now.

A. No.

XQ. 769. When you stated this morning that Judge Gray and Judge Ingraham had something to do with it, you were speaking from hearsay?

A. No; I knew Judge Ingraham had something to do with it.

XQ. 770. How did you know that?

A. Because I was in daily touch with him in the New York office.

XQ. 771. So you do know that Judge Ingraham had something to do with the preparation of the charter?

A. But I did not know that he had so much to do with the charter as with the trust agreement.

XQ. 772. The trust agreement was prepared much later, was it not?

A. Not much later.

XQ. 773. Mr. Garvan, do you not know as a matter of fact that that charter was drawn by Mr. Prindle, counsel of the duPont Company?

A. I do not.

XQ. 774. You do not know that?

A. No.

XQ. 775. Had you had any conferences with anybody about the seizure of German patents prior to the sale of the Bayer Company?

A. Yes.

XQ. 776. State with whom?

A. Mr. Choate.

XQ. 777. Anybody else?

A. Not that I remember now. I know I did constantly discuss it with chemical men and with the dye men.

XQ. 778. You did constantly discuss it with the dye men?

A. Yes.

XQ. 779. In one of these books in evidence, to which I will refer if counsel desires, but I can not remember it, either you or Mr. Choate testified and Mr. Palmer states in his report, that when the matter was suggested, it was enthusiastically received by the dye industry.

Mr. Kresel: What was suggested?

Mr. Anderson: The matter of seizing and selling these patents, the plan. Well, I better get the information.

Mr. Kresel: I think you better read what you refer to. I do not recall that statement.

Mr. Anderson: It will take a little time to find it; there are so many of these papers.

Mr. Kresel: I think I can locate what you have in mind. I think this is what you have reference to, Colonel, page 101. You better read the whole paragraph.

XQ. 779 (Continued.) I will read the whole paragraph as counsel suggests, from the answer, page 101, report of Mr. Palmer:

> "The idea was accordingly conceived that if the German chemical patents could be placed in the hands of any American institution strong enough to protect them, a real obstacle might be opposed to German importation after the war, and at the same time the American industry might be freed from the prohibition enforced by the patents against the manufacture of the most valuable dyestuffs. Accordingly, these considerations were laid before various associations of chemical manufacturers, notably the Dye Institute and the American Manufacturing Chemists' Association. The suggestion was met with an instantaneous and enthusiastic approval, and as a result a corporation has been organized to be known as The Chemical Foundation (Inc.)," and so forth.

That is in accordance with your understanding of the situation, is it?

A. It was always enthusiastically received by the associations, because the little men did not have to pay anything and the patents were there waiting for them.

MR. ANDERSON: I will ask to strike that out.

THE COURT: Let the answer be stricken out and the question repeated.

THE WITNESS: In general, that is true.

XQ. 779. (Continued.) That is your understanding?

A. Yes.

XQ. 780. You said you had discussions constantly prior to the sale of the Bayer Company, with various representatives of the industry, about seizing these German patents. Could you name some of those?

A. No, I could not, because I cannot remember specific discussions. All I can remember is that Mr. Choate was constantly discussing the importance of these patents to our work for developing a general organic industry.

XQ. 781. You speak of your work for developing a general organic industry.

A. Yes.

XQ. 782. Would you define more definitely what you mean by that?

A. Why, we very early realized that organic chemistry in general depends for its progress upon having a complete dye industry, because that is the graduating school for organic chemists. They learn more organic chemistry in a dye factory in one year than they would learn in any other business in their natural lives, because it is so much more used.

After seeing the power and the position that these Germans held over us here, we were enthusiastic for freeing this country from that dependence which it had been suffering under. No one could help being, to read the literature and the correspondence and go through daily what we were going through in our experience with them.

XQ. 783. And the thing that you were working for was the development of an organic chemical industry in this country?

A. No, that was only the means to the end. The end was to free this country from the yoke of the Germans.

XQ. 784. First you wanted to free the country from the yoke of the Germans, and then what followed that as your next step?

A. Then freedom for all of us and safety for our people and the development of medicine under a civilized people.

XQ. 785. And you wanted to develop the organic chemistry in the hands of the civilized people?

A. I did.

XQ. 786. And your idea of the way to do that—I want to get your outlook on the situation——

A. Certainly.

XQ. 786. (Continuing.)—was to seize these German patents and turn them over to such a corporation as the Chemical Foundation, Inc.; is that the idea?

A. To seize these German patents and to put them in such a position that every American would get a chance to develop them free from the power of constraint or restraint by Germany.

XQ. 787. And that was the subject matter and aim and object of your conferences with the dyestuffs people in January and preceding that, the time you have spoken of, your various talks and so forth?

A. Absolutely.

XQ. 788. That was your object?

A. Absolutely.

XQ. 789. And that was your object in conceiving and directing, in co-operation with Mr. Palmer, of course, the organization of the Chemical Foundation, Inc.?

A. Yes, sir.

XQ. 790. And that was your object in seizing and selling these patents to the Chemical Foundation, Inc.?

A. Yes, sir.

XQ. 791. Now, Mr. Garvan, I read you from your testimony awhile since, and I will not repeat it unless you desire it—if you do, I will—the statement that the sale of these patents was consummated on the 10th day of April, 1919. Was that statement correct?

A. The sale was completed before I went in there. If you call the signing of the assignment the consummation, it is. But I regarded the contract as made before I became Alien Property Custodian.

XQ. 792. Mr. Garvan, you are a lawyer, are you not?

A. Yes.

XQ. 793. Don't you know that the Government of the United States can not, and no officer of the United States can, make a verbal contract binding upon the Government?

A. No, I do not know that.

XQ. 794. You did not know that?

A. No.

XQ. 795. Who made the contract for the sale of these patents?

A. A. Mitchell Palmer.

XQ. 796. Who represented the Chemical Foundation in the negotiation?

A. The committee of the Dyes Institute and the other chemical companies that were then in New York.

XQ. 797. Name them, please.

A. I would say Mr. Merz, Mr. Poucher, Mr. Jeffcott, Mr. Wigglesworth—I don't know—and whoever they represented.

XQ. 798. You have identified these gentlemen, as to who they represented. They are the same gentlemen that you identified just now as representing certain dyestuff companies?

A. No, no, no. They were the committee acting for the American chemical industry and——

XQ. 799. A committee of what organization?

Mr. Kresel: You both talk at the same time. Won't you please let him finish, Colonel?

Mr. Anderson: I will with the greatest pleasure if he will do me the equal favor of just stopping when he has responded to my question. I know he wants to.

XQ. 800. I am not being unpleasant about it, Mr. Garvan; I am trying to be as pleasant as I can. They were a committee of what organization?

A. Of both the manufacturing chemists' organization and of the Dyes Institute and of any other chemical industries that wished to join with them.

XQ. 801. I believe you testified this morning that you had a conference with these gentlemen in your office in New York, did you not?

A. Well, there were fifteen or twenty at that conference. Those I can not remember.

XQ. 802. You can not remember all of them?

A. No.

XQ. 803. And you said at that conference they made a proposition to buy all these patents at $250,000?

A. There was general discussion about Mr. Palmer's proposition. I do not say they. I did not say they made the proposition.

XQ. 804. I beg your pardon.

A. If they made the proposition, it was a counter-proposition to ours. We were the ones who called them there and put the proposition to them.

XQ. 805. Will you watch my question and just answer it?

A. Certainly.

XQ. 806. Because I do not want to move to strike out. You testified this morning that you had this conference with these gentlemen?

A. Which conference are you talking about?

XQ. 807. I am speaking of a conference at Forty-second Street, New York.

A. Yes.

XQ. 808. And that they made a proposition of $250,000, and you went down to Mr. Palmer and communicated it to him, and that he said it was satisfactory, and you went back and advised them that it was satisfactory?

A. That is true.

XQ. 809. Was that right?

A. Yes.

XQ. 810. Who were the "they" that made that proposition?

A. All this whole group.

XQ. 811. Who specifically spoke for them in making the proposition?

A. I can not tell you that.

XQ. 812. Whom did you represent in that deal?

A. I represented the Alien Property Custodian.

XQ. 813. That was before the organization of the Chemical Foundation, was it?

A. I think so. I think it was.

XQ. 814. Was it prior to the fifteenth day of February, 1919?

A. It was about that time. I would not be able to say.

XQ. 815. Have you any minutes of that meeting?

A. No.

XQ. 816. Or any letters or memoranda on the subject?

A. No.

XQ. 817. Nothing at all?

A. No.

XQ. 818. Mr. Garvan, you have testified in this matter and been asked about the organization of the Chemical Foundation and the sale of these patents no less than four or five times, I think you said, have you not?

A. Three times.

XQ. 819. Three times?

A. I think that is all.

XQ. 820. You have been very closely questioned about the whole transaction, have you not?

A. Yes, sir.

XQ. 821. Can you now or can you before the close of this case go through your testimony and point to any place where you have ever mentioned that there was any such conference, any such proposition made or any such transaction as you have indicated in your evidence this morning?

A. My testimony is there.

XQ. 822. Well, are you willing to admit that there is no reference to any such thing?

A. No, I am not any such thing.

XQ. 823. Then will you look up and see if you can find any such reference, and let me have it?

A. I certainly will.

XQ. 824. Then you regarded this sale as completely consummated prior to the 16th day of February, 1919?

A. If you will tell me what you mean by "consummated."

XQ. 825. I am asking you. You have used the expression.

A. The facts are there. The bargain was made and closed before I became Alien Property Custodian.

XQ. 826. How many patents did you sell?

A. Whatever there were; whatever the search would reveal in the Patent Office, relating to the upbuilding of an organic chemical industry.

XQ. 827. No matter what there were?

A. No matter what there were.

XQ. 828. At that time the search had just been begun, really, had it not?

A. I did not have charge of the search. I could not tell you just how far it had progressed.

XQ. 829. You did not know how far it had progressed?

A. No.

XQ. 830. You had no idea how many patents would be involved in the sale?

A. Well, we had a general idea.

XQ. 831. How did you get the general idea if you had not made a search?

A. I think from the list of the Federal Trade Commission.

XQ. 832. You had a list of the Federal Trade Commission?

A. Yes, I think so.

XQ. 833. But you used whatever there was?

A. Whatever there was.

XQ. 834. And whatever the search might develop?

A. Yes.

XQ. 835. As relating to the chemical and dyestuffs industry of the United States, you sold in a lump sum, for the sum of $250,000 at that time?

A. Yes.

XQ. 836. And you agreed to do it at a private sale?

A. Yes, sir.

XQ. 837. And that was agreed to at this conference in New York?

A. Yes, sir.

XQ. 838. How did you arrive at the price of $250,000?

A. By discussion of all the elements involved.

XQ. 839. Tell us some of them.

A. Well, in the first place there was the fact that none of these patents carried any know-how with them, that unless——

XQ. 840. Let us take up that one. That is the first one.

A. Wait a minute.

XQ. 841. No, hold on, I want you to tell one at a time, and then you can take the next one.

A. Can I not finish the answer?

THE COURT: Has he finished the answer to your question?

MR. ANDERSON: No. I will withdraw the question and put it this way:

XQ. 842. Tell us one of the considerations that was discussed?

A. The fact that the patents were worthless unless some business concerns put up the money to build a plant and make the research to find out how to work them.

XQ. 843. I see.

A. That of themselves they would not help you —but very little.

XQ. 844. Who suggested that idea?

A. I think we all recognized that idea—our own reading and studying and experience.

XQ. 845. You are not a patent expert, are you?

A. No.

XQ. 846. Mr. Choate had never been a patent expert before he studied this subject?

A. No.

XQ. 847. Can't you suggest who raised the question of their being in that situation—the patents?

A. I think we all raised that.

XQ. 848. You all raised it?

A. Yes, everybody knew that.

XQ. 849. Well, that is one thing that you all agreed on?

A. Yes.

XQ. 850. How about those licenses by the Federal Trade Commission?

A. None of them had been worked, except that they had been re-discovered.

XQ. 851. As a matter of fact, were they not then yielding royalties?

A. Yes, but there had been hundreds and hundreds of thousands of dollars spent on finding out how to work them. Look up how much the Government spent on salvarsan, take how much the Schambergs spent, take Metz going to Europe for four months and getting the know-how and could not do it when he came back.

XQ. 852. Yet the fact was there were 128 of those patents, of the most important of them, or more important of them, licensed, and then producing revenue under the Federal Trade Commission licenses, and being used in the United States; is that not true?

A. I do not know how many were being used or how many were being licensed.

XQ. 853. Did you take any trouble to find out how many were being licensed?

A. I knew there were a number of them licensed, and I know nine out of ten of those licenses were not——

XQ. 854. You knew a number of them were licensed?

A. Yes.

XQ. 855. Then just stop there. Did you take the trouble to find out what was the revenue being yielded by those licenses under the Federal Trade Commission?

A. No, I did not.

XQ. 856. You did not?

A. No, I did not.

XQ. 857. You did not refer to it. Was it not true also that some considerable number of those patents were then being employed in industry in the United States under contracts which had been seized by the Alien Property Custodian and were then in his possession?

A. I think there were some of those.

XQ. 858. Did you take the trouble to find out what these contracts were yielding in the way of payments, licenses or revenues?

A. I did not. I was not in charge of the Alien Property Custodian's office in Washington.

XQ. 859. I know, but did you take the trouble to find out?

A. No.

XQ. 860. So much for the know-how. Tell us what was the next consideration you discussed; just take one.

A. The next one was that we had to give non-exclusive licenses to everybody, whether he was a stockholder or not in the corporation.

XQ. 861. You had to give non-exclusive licenses?

A. To everybody. That is, every American citizen.

XQ. 862. You had to give non-exclusive licenses to every American citizen?

A. Yes, sir.

XQ. 863. I will ask you was this point discussed, that under non-exclusive licenses at a reasonable royalty the license income from the patents might be increased instead of decreased; was that considered?

A. No, sir.

XQ. 864. That was not considered at all?

A. No, sir.

XQ. 865. Nobody made that suggestion?

A. No, sir. It would have been talked down if they had, certainly. There was a very limited consumption of dyes in the country. Now, just as quick as you make non-exclusive licenses you divide up a limited market. You are talking about an unlimited market where you can increase the consumption, but you can only increase the consumption in America practically in proportion as the population increases.

XQ. 866. Has not America a very considerable export trade?

A. Since Germany got free she had none until the occupation of the Ruhr. Germany cut it off like that (gesturing).

XQ. 867. Do you mean to say America had no export textile trade at the time?

A. I thought you meant dye and chemical trade.

XQ. 868. Does not dye go into the textile business?

A. Oh, yes.

XQ. 869. And therefore the export trade would be considered as well as the domestic trade as affecting the market for dyes in America, would it not?

A. No, not the export of textiles.

XQ. 870. It would not be at all?

A. No. Our export of textiles is very small.

XQ. 871. Do you know what our export of textiles is in value per annum?

A. No, but I do not believe it is very large.

XQ. 872. But you did not consider that element at all, did you?

A. No, no.

XQ. 873. What is the next element you considered in arriving at the value of these patents?

A. That nobody who was going to put their money in could get more than six per cent. on it.

XQ. 874. I understood that the main purpose here was the development of American industry?

A. It was.

XQ. 875. For patriotic purposes?

A. It was.

XQ. 876. And the people who underwrote this scheme were all interested in that industry, were they not?

A. No, sir. Who underwrote it? Yes, sir.

XQ. 877. That is what I thought.

A. I beg your pardon. I thought you meant stockholders.

XQ. 878. They all underwrote it and they were interested in the development of the industry and that was the purpose you all had in view, was it not?

A. Yes, sir.

XQ. 879. So that they would not invest their money in the development of their own industry on a a six per cent. basis; you thought that was a very serious handicap to this business?

A. Why, certainly; nobody goes into business on that basis.

XQ. 880. What was the next consideration that influenced you in fixing the value?

A. Well, that you had to give a license to the Government.

XQ. 881. Did you have to give a license to the Government?

A. We did.

XQ. 882. Absolutely obligated to give a license to the Government?

A. Absolutely obligated to give a license to the Government.

XQ. 883. And you agreed to this price?

A. There were other elements, I think.

XQ. 884. Well, take up the next one. Let us take the next one.

A. They had to trustee their stock for seventeen years.

XQ. 885. All their stock?

A. Yes.

XQ. 886. Or only their common stock?

A. Well, common stock.

XQ. 887. Now, is there any other consideration that entered into fixing this price?

A. Those are the main ones.

XQ. 888. Those are all that you can now recall?

A. Yes.

XQ. 889. And the Chemical Foundation was incorporated in accordance with the agreement thus made, was it?

A. Yes, sir.

XQ. 890. And you embodied the agreement that you made in the charter of the Chemical Foundation to the end that it would be a contract binding on the company and on everybody, was that the idea?

A. Yes, sir.

XQ. 891. And the price that you fixed, or that you and Mr. Palmer fixed for these patents, was founded upon the ideas and the purposes and the provisions which were then embodied in this charter; is that not true?

Mr. Kresel: Colonel, please don't say that he fixed it.

A. I don't know whether all those things are specifically embodied in the charter. The charter speaks for itself. I can not right now carry in my mind everything that is in the charter.

XQ. 892. Very good. I will let it speak for itself. That charter was in course of preparation by Mr. Hoguet; don't you know that?

A. No, I think Mr. Choate had more to do with that charter than anybody.

XQ. 893. Mr. Choate?

A. I think so.

XQ. 894. Mr. Garvan, do you not recall that Mr.

Choate testified before one of the committees in your presence that he had nothing to do with it?

A. No, I don't remember that. I don't think he testified to that.

XQ. 895. I will not stop to get it now, because I do not think it is material. After you had these negotiations that you have described to sell all these patents and you reported to Mr. Palmer and reported back to them that it was agreeable to everybody, what was your next connection with this matter?

A. I do not understand what you mean.

XQ. 896. I mean, what did you do next about it after that conference about the 15th of February that you state was held and when you say there was an agreement made; what did you do then?

A. I do not know what I did then.

XQ. 897. You do not remember what you did then? Well, you remember that you were elected a director of the corporation on the third day of March, 1919, do you not?

A. Yes, I think so.

XQ. 898. That was the day before you became Alien Property Custodian?

A. Yes, the incorporators met here that day.

XQ. 899. You do remember that the corporation was incorporated on the 19th day of February, 1919?

A. Yes, sir.

XQ. 900. You do remember that you became Alien Property Custodian on the 4th. You have testified to that?

A. Yes.

XQ. 901. And that on the 8th you became president of the Chemical Foundation by a formal election, did you not?

A. I knew we were elected directors on the 8th and I guess they did have a meeting on the same day and elected the officers. I think so.

XQ. 902. And you do remember that on t 8th——

A. I meant that we qualified as directors. W were elected on the 3d.

XQ. 903. You do remember that at the same ti Mr. Choate was appointed general counsel of this co pany, do you not?

A. Well, it was at that meeting or very shor after. I don't know.

XQ. 904. If the minutes show at that meetin that is correct?

A. Whatever it is.

XQ. 905. And that Mr. Hoguet was appoint patent counsel for the Chemical Foundation?

A. Yes, sir.

XQ. 906. That Mr. Corbett became the secreta at that time?

A. Secretary and treasurer, I think.

XQ. 907. Mr. Corbett had been vice-president the Central Union Trust Company?

A. Was then.

XQ. 908. And Colonel Douglas I. McKay becan the vice-president of the Chemical Foundation?

A. Yes, sir.

XQ. 909. And you do remember that on the 10 day of April you conveyed the patents described the first and large assignment here and other righ to the Chemical Foundation and at that time you wer president, were you not?

A. Yes, sir.

The Court: Do counsel want to go on f another hour, or do you want to stop now?

Mr. Anderson: If your Honor please, if it agreeable to counsel, I would like to stop becaus I have been suffering intensely with a headach all day.

MR. KRESEL: I have no objection, your Honor. I am quite willing.

THE COURT: We will renew the proceedings in this case on Thursday morning at 8.30 Standard time.

(Whereupon, at 3.00 o'clock P. M., an adjournment was taken until Thursday, July 5, 1923, at 8.30 o'clock A. M. Eastern Standard time.)

TWENTY-FIRST DAY.

Wilmington, Delaware,
July 5, 1923, at 8.30 o'clock A. M.
Standard Time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

FRANCIS P. GARVAN resumed the stand.

CROSS-EXAMINATION (Continued).

By MR. ANDERSON:

XQ. 910. Mr. Garvan, at the time of adjournment on Tuesday, I had been asking you as to the circumstances surrounding the original sale of patents and the organization of The Chemical Foundation. There are one or two questions that I would like to ask this morning as to another phase which I had practically covered. You recall that I asked you as to the investigations and reports on the properties of the Badische Company, the Farbwerke-Hoechst Company, Cassella Color Company, and various other companies which I named and are mentioned in the part of Mr. Palmer's report filed as an exhibit with the answer in this case?

A. Yes, sir.

XQ. 911. I do not recall whether you testified or not as to whether all these properties were seized by the Alien Property Custodian prior to his report in February, 1919. Do you recall

A. Badische, Hoechst?

XQ. 912. Cassella?

A. Cassella.

XQ. 913. Kalle Color Company?

A. It would be my impression that they were.

XQ. 914. They were all seized. As I understood, none of these companies had any property or plant in the United States with the exception of the Bayer and possibly the Roessler-Hasslacher Company.

A. Oh, the Roessler-Hasslacher Company had big plants.

XQ. 915. I mean, the Bayer Company and the Roessler-Hasslacher Company had plants; the others were merely selling agencies?

A. Selling agencies.

XQ. 916. And distributing agencies for the German manufacturers?

A. Of course, Mr. Metz had some other companies in which he was interested.

XQ. 917. Yes; but the Farbwerke-Hoechst was merely making salvarsan?

A. There were four or five of those companies, Colonel. That company, I think, was making salvarsan.

XQ. 918. Yes; I want to get that straight.

A. I think that is so. I am not sure whether it was being made under that name or the Metz Laboratories. I am not positive.

XQ. 919. Subject to the possible modification as to Mr. Metz's plants, as to which I think he testified, with the exception of Bayer and Roessler-Hasslacher, those institutions were merely agencies, either individuals, partnerships, or domestic corporations, acting as agencies for the German firms in the selling of their products; is that true?

A. Yes.

XQ. 920. The Kuttroff-Pickhardt Company was the agent of the Badische Company, was it not?

A. Yes, sir.

XQ. 921. And they were large importers of dyestuffs, were they not?

A. Very large, yes.

XQ. 922. And also of medicinal and pharmaceutical properties, were they not?

A. I am not sure how far the Badische Company went into the medicinals. Not very far, I don't think. They may have, but I don't think so. The Bayer was the principal medicinal concern.

XQ. 923. But they were not manufacturers in any sense in this country?

A. No, sir.

XQ. 924. On Tuesday, I also asked you in regard to the method of making up reports, appraisals, advertisements and sales of these properties seized by the Alien Property Custodian and you referred to the prospectus of the Bayer Company as an illustration of the method of sale. Can you identify that as one of the prospectuses of the Bayer Company?

A. Yes.

XQ. 925. And that, with such changes as were necessary to suit the individual case, was the usual method of selling these German properties?

A. Yes, sir.

Mr. Anderson: I would like to offer in evidence a paper which the witness has identified, being a prospectus for the sale of the stock of the

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1926 FO
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Bayer Company, Inc., and the Synthetic Patents Company, omitting from the document the photographs contained in the center thereof, to be identified as Plaintiff's Exhibit 612.

Mr. Kresel: No objection to that.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 612." (*See Exhibits, Vol. III, page 1449.*)

XQ. 926. Mr. Garvan, you stated that you personally appeared before the Advisory Sales Committee, as the record shows here, on the 14th of February, 1919, and presented to them the matter of the proposed sale of the German patents and trademarks through the organization of the Chemical Foundation, as described in this record?

A. Yes, sir.

XQ. 927. I would like you to state as clearly as you can just what you said to the Advisory Sales Committee?

A. Of course, it is very difficult for me. I will give you the substance of it. I have no record of what I said.

XQ. 928. As far as you can?

A. My recollection is that I told them—just preliminary to that, Colonel, I probably did not tell them so much about the Bayer. They were already familiar with it. The Bayer had passed through their hands, don't you see; had been sold and passed upon by them. The same may have been true of other companies, so I can not tell to what extent I went into the past history.

But I did explain our situation in the country in reference to organic chemistry and I did explain to them that the taking over of these patents was essential to insure freedom of that industry, which had been created by the war, of developing it to the extent where it would be able to protect itself in case of war.

XQ. 929. Would you mind me interrupting you? What do you mean by taking over?

A. I did not mean to say in case of war. I will strike that out.

XQ. 930. Do you mind my interrupting you to ask what you mean by "taking over"?

A. Of selling these patents, getting them into American hands, taking them from the Germans and putting them into American possession.

XQ. 931. All right, proceed.

A. I explained to them what it meant to our industries, what it meant to our National Defense and what it meant to our progress in medicine, and I stated to them that we had gone to the industry and asked the industry if they would get all elements together and become the purchaser of these patents under the terms and conditions which Mr. Palmer felt it necessary to lay down for the protection of the country; that I had done so and that they were willing to work along with us. I told them that we had discussed price with them, and I am not positive whether we had definitely come to our agreement as to the price, but that $250,000 seemed to be the price which was the nearest we could get at, what they were worth sold under those conditions and what the industry in view of the fact that they would have to put up more capital and defend them would be willing to raise.

I said the whole thing was dependent upon their willingness to become trustees, that the responsibility would be with them, there would have to be a nonprofit making thing and a thing of which they would assume the responsibility. That is as near as I can remember. You must remember I was in daily conference with this committee.

XQ. 932. What committee?

A. The Advisory Sales Committee, Judge Ingraham and Mr. Bannard and Mr. Dodge, but more Judge Ingraham than Mr. Bannard, were in constant communication. They gave up practically their whole time, particularly Mr. Bannard, to that war work. So that whether all the conversation was in the committee or afterwards, I do not know that they recommended that Judge Ingraham be asked to take care of the Trust Agreement and the responsibilities which they were to assume, and from that time on with us, they have of course been working.

XQ. 933. Then you had discussed the price of $250,000 prior to your meeting with the representatives of the industry on the 15th or 16th which you described on Tuesday?

A. Oh, yes, the price was discussed at all times.

XQ. 934. Can you remember when the price was first discussed?

A. No, I can not.

XQ. 935. Do you recall the minutes of the Executive Committee of the Dyes Institute, held on the 7th of February?

A. I read them before this trial started, but I have not read them since.

XQ. 936. Do you recall that in that report it was stated that Mr. Hoguet had suggested the price of $250,000?

A. I don't remember that, no. I would want to refresh my recollection on that.

XQ. 936a. Mr. Garvan, could you say who first suggested a price for these patents?

A. No, I could not.

XQ. 937. Could you say when the price was first suggested?

A. No, I could not say that.

A. But I have not answered your prior question as to all the elements that went into that.

XQ. 953. I thought you said you had.

A. No, sir.

XQ. 954. Then go ahead.

A. Then the element, as I have said before, the element of the non-exclusive character of the licenses. The dye business of the country in 1913 had only been $10,000,000 in imports; probably sold in this country for $25,000,000. With the increase of prices in the war and the increased consumption by our soldiers of the uniform colors, the solid colors, it perhaps had grown to $60,000,000. But the most you could figure on as the normal gross dye business in the country was forty millions of dollars; and that if you granted non-exclusive licenses and it reached the point where two or three could make these dyes, why, the profit in it would be very small.

If it was an exclusive license and they would have control of all that America used of that patented product yes, you could discuss a price, but——

XQ. 955. Then the profit in it would be very large?

A. It would be large as long as they were able to—whatever they could force out of the people, don't you see?

Then there was the feature of the license to the Government, and then there was the feature that these patented dyes were in direct competition with the Swiss vat dyes. They were in direct competition with the algol colors that we had sold under the Bayer; and that none of the business would be of any value unless Congress looked favorably upon legislation to protect us from imports. England was developing a big dye industry protected by her own Government and the money put in by her Government, and unless we had a tariff in the future, Switzerland or England or the Bayer Company were three possible rivals of the production under the vat colors. So that all those things were gone into by the hour.

XQ. 956. But prior to that time that you had gone into it by the hour, you had discussed the price of $250,000?

A. Well, simultaneously, at our meetings.

XQ. 957. I thought prior to the 14th you discussed——

A. Oh, yes, but we discussed also all these other things, Mr. Choate and I, for a year probably.

XQ. 958. For a year?

A. For a year, since the early part of 1918. Mr. Choate fully realized the relation of the patents to the industry.

XQ. 959. I see.

A. And had been trying to induce me to get Mr. Palmer to do something about it.

XQ. 960. So that, did you consider at all the cost to the persons who took out these patents of the patents?

A. How do you mean, the cost?

XQ. 961. I mean the cost of getting the patents.

A. You mean their research or their cost under the Revenue Act?

XQ. 962. Their research or other cost of getting out the patents; did you consider that?

A. You mean their revenue cost, or how much it cost—yes, we did. We considered that in line with the fact of how they had obtained the passage of the——

XQ. 963. I asked you the simple question: did you consider that question?

A. Certainly.

XQ. 964. Did you ascertain what the cost was of getting these patents out from the Patent Office?

A. We knew generally about what a patent cost, $30 or $40.

XQ. 965. Did you not know that at the conference on the 27th with the Alien Property Custodian's representatives in Washington, Mr. Barrows of the National Aniline had stated that the average cost was about $100?

A. No. I probably did at the time. I mean, I do not recall it now.

XQ. 966. And you estimated the cost at about thirty or forty dollars?

A. No, that is the filing fee.

XQ. 967. Did you not know that the filing fees and expenses in the Patent Office itself were around thirty-five dollars?

A. That is what I said. That is what I thought was about the cost. I only know that from the merest hearsay.

XQ. 968. Was that not discussed at this conference?

A. I assume it was. Mr. Hoguet was the man who was familiar with those details. That was my impression, that it was thirty-five dollars. I must have gotten it from Mr. Hoguet or from somebody who knew.

XQ. 969. Did you not know as a matter of fact that usually there were attorney's fees, printing expenses and other expenses in addition to fees in connection with getting these patents out?

A. Oh, yes.

XQ. 970. You did know that?

A. Oh, yes.

XQ. 971. I believe you put in some figures here which showed that the cost of these patents, trademarks, and so forth, which you called "properties," which you took over, was an average of about——

A. I think it was $40 or $41.35.

XQ. 972. You subsequently sold a number of other patents and you fixed in your assignments a regular price of $50 each, did you not?

A. In the assignments?

XQ. 973. In the subsequent assignments.

A. Yes, sir. Not all of them were fixed that way, Colonel.

XQ. 974. I am talking about the sales to the Foundation.

A. Yes. I do not think all of them were. Some of them will bear that rate. Those that were sold at the request of the Navy, I think some of them bear less.

XQ. 975. How did you arrive at the price of $50 each for the subsequent patents that were sold?

A. That was arrived at by averaging in our head generally what we had paid for the first ones. As a matter of fact, we should not have given any consideration for those subsequent ones because the original price was supposed to have included all of the patents that were essential for the purposes of the creation of the Foundation.

XQ. 976. And you did seize and sell all the dye and chemical patents enemy-owned so far as you could discover them up to the time of your retirement from office?

A. Yes, sir.

XQ. 977. I believe you stated on your direct testimony that you had testified three times before Committees of Congress?

A. Yes, sir.

XQ. 978. You testified once before the House Committee?

A. The House Ways and Means Committee.

XQ. 979. Considering the tariff bill for import duties and dye embargo?

A. Yes, sir.

XQ. 980. You testified once before the Senate Committee considering substantially the same legislation?

A. Yes, sir.

XQ. 981. In 1919, did you not?

A. Yes, sir.

XQ. 982. You testified again before the sub-committee of the Judiciary investigating the alleged dye monopoly n 1922?

A. Yes, sir.

XQ. 983. In all of those hearings you were very closely questioned as to this transaction, were you not?

A. I think so. I think that is a fair statement.

XQ. 984. You were also questioned in those hearings as to the negotiations and the method of arriving at the price, were you not?

A. No, I was not.

XQ. 985. Did they not ask you a good many times about that?

A. They asked me in general to state how the Foundation was formed.

XQ. 986. Did they not ask you how you arrived at the price?

A. I am not sure as to that. I think Mr. Choate was the one who testified mainly about the formation of the Foundation

XQ. 987. I asked you on Tuesday if you would go over your evidence at those hearings and point out to me any place where you have ever mentioned the conference between yourself and the Dyestuffs representatives, as to which you have testified as having taken place on or about February 15th or 16th, 1919. Have you been able to find any such evidence?

A. I don't think that was quite your question. As I remembered it—I did not have the testimony away with me over the 4th of July—I understood your question was whether I testified about this transaction having taken place before I went out as Alien Property Custodian.

XQ. 988. Before you went in as Alien Property Custodian?

A. That is what I mean, yes. I find that I did so state.

XQ. 989. Where?

A. I find that Mr. Choate so stated.

XQ. 990. I am not asking you about Mr. Choate's evidence, I am asking about yours.

A. In the first place, I so stated——

XQ. 991. Will you state where you gave that testimony?

A. I can not look it up now; I will look it up during the day and point it out to you.

XQ. 992. I would very much like to see it. But you can not point now to any place where you testified with reference to the conference that you mentioned as having taken place about February 15th or 16th, 1919?

A. That I would have to look up. If I was asked, I certainly did. I do not know that I was asked.

XQ. 993. In your testimony before the sub-committee of the Committee on the Judiciary, on Senate Resolution No. 77, you gave the following evidence, which was taken under oath——

Mr. Kresel: What page was this?

Mr. Anderson: At page 392.

XQ. 993. (Continued.) "In order to fix it in the record, when did you become Alien Property Custodian?

> "Mr. Garvan. March 4, 1919.
>
> "The Chairman. When was the sale made to the Chemical Foundation?
>
> "Mr. Garvan. The order directing the sale was made February 26, 1919, and the sale was actually consummated April 10, 1919.

"The Chairman. And you became the President of the Chemical Foundation when?

"Mr. Garvan. I was the President from the beginning. The date of the recordation of our certificate is the 19th of February, 1919. So that I was President of the Chemical Foundation at a time when I was a dollar-a-year man in the employ of the Government, but when I had no expectation of doing anything but step out and go back and devote myself to my private practice and thus build up, if possible, the chemical industry in this country.

"The Chairman. You may go on with your statement.

"Mr. Garvan. The question of the compensation to be paid for those patents to the Chemical Foundation was, of course, the arbitrary fixing of a sum or sums. We had to take into consideration the fact that the patents were valueless as they stood, with the single possible exception of one or two, and even those were valueless unless capital should be invested in them. Furthermore, we must understand that the condition was made that they were sold to the Chemical Foundation only in trust; that is, that they must license each and every American manufacturer who cared to use a license for any of them, and that no exclusive license should be granted. In other words, we have to grant 10 licenses on each patent if there are 10 applicants, which, of course, is a simple proposition. If you were to put that proposition in a patent and then put that patent up and offer it for sale you could not get five cents for it."

You testified under oath to that effect, did you not?

A. Yes, sir.

XQ. 994. You stated on Tuesday on direct, I think, that a proposition and counter-proposition were made at this conference—that Mr. Palmer made a proposition and the industry made you a counter-proposition. What was Mr. Palmer's proposition and what was the counter-proposition?

A. Mr. Palmer's proposition was that the—I stated it so many times—it stated that the patents should be sold under the condition that everybody should get a license, a non-exclusive license, with equal rights; that a license should be given to the Government; that the stock should be trusteed for the longest life of the patent, and so forth and so on.

Their first counter-proposition, as I remember it now, was that some one of their people or someone whom they should name should be the trustee and that when the license fees had repaid the purchase price, their licenses then should be free. Those are the two or three last things that I remember were discussed between us.

XQ. 995. There was no proposition or counter-proposition as to price?

A. Well, no, the price was a development of the conversation between us from the beginning. I do not know when the price was settled.

XQ. 996. You also took over a number of pending applications for patents, did you not?

A. Yes, sir.

XQ. 997. Do you remember how many?

A. No, I do not. I can look it up and tell you.

Mr. Kresel: That is all in evidence, Colonel.

Mr. Anderson: It is already in evidence.

XQ. 998. Have you since perfected those applications into patents?

A. Some have been perfected, some abandoned, and some still pending.

XQ. 999. Do the statments put in show the number which have been perfected into patents?

Mr. Kresel: Yes.

A. I am certain it does. If it does not we will put it in. We had it here. They are included in the total number quoted by me in my testimony—those which have been perfected.

XQ. 1000. Mr. Garvan, was it your view that the Alien Property Custodian, representing the Government, had the right to seize these patents and turn them over to the industry of the United States at approximately the Patent Office fees for obtaining the patents?

A. I beg your pardon. I did not understand.

(XQ. 1000 repeated as above recorded.)

A. If the President so determined.

XQ. 1001. That was your view?

A. Certainly. I always felt he had a right to seize long before the amendment of 1918.

XQ. 1002. On your direct testimony your counsel read from the Hearings on Bill H. R. 2706, page 360, certain parts of your testimony. Further down on the same page I find this question asked by Mr. Green of the Committee:

> "And you consider it entirely ethical that having obtained information through their connection with the Alien Property Custodian's office that they shall then sell to an institution controlled by themselves?
>
> "MR. GARVAN. Why, Mr. Green, it was by virtue of our connection with the Alien Property Custodian's office that we saw it as our public duty not to let this thing revert to where it was, and everything we have done since has been because of what all of us saw was threatening America and because we saw the situation which had been hanging over America before the war, and it was in our endeavor to use that information for the benefit of the American people that we assumed the burden of carrying on this fight."

You did so testify, did you not?

A. I did.

XQ. 1003. You did testify to that?

A. Yes.

XQ. 1004. In the hearing before the Senate Committee on Finance, on H. R. 8078, page 521, the record discloses the following testimony:

> "Senator Calder. How many patents did they take over?
>
> "Mr. Garvan. Four thousand.
>
> "Senator Calder. The Alien Property Custodian sold them these patents?
>
> "Mr. Garvan. It was by private sale by the President.
>
> "Senator Calder. For how much money?
>
> "Mr. Garvan: Two hundred fifty thousand dollars.
>
> "Senator Calder. Will these patents be of any great value some day?
>
> "Mr Garvan. They may or may not. They would be to any person who was going to try to make money out of them. For instance, anybody who owned these patents and wanted to make money out of them would not be urging you to pass this licensing bill. He would be sitting back asking for as large an amount of German goods to come in as possible, because then he could collect the highest kind of royalty from their coming in. It is a great loss of royalty to the Chemical Foundation to urge the licensing system, but that is not the reason for the Foundation. It is to assist, encourage, and promote American industry. Take salvarsan, and that is the most valuable one——
>
> "Senator Calder (interposing). The most valuable patent?
>
> "Mr. Garvan. Yes, sir. That patent in the hands of a private individual who wanted to confine the manufacture to one man and maintain the price of $3.50, would be worth any amount of money, because 10,000,000 syphilitics would want it. We gave it free to the New York State Board of Health, to Massachusetts State Board of Health, and will give it free to any State Board of Health which will equip itself to manufacture

it safely. The Foundation will never get anything from them. We want, by experimentation, to help cure disease. Of course, that patent is not worth anything; I mean, as far as income is concerned, because we want it to help the public and not to make money out of it.

Take the Badische patent on vat dyes; that is susceptible of income, but there is no income possible until somebody in America successfully manufactures the dyes—except upon importation, like this one here. It was suggested that 10 per cent. was put upon it—Mr. Metz suggested as a license fee on that, coming in. That was fixed when the allocation right was given to the German agents here. It has been the policy of the executive committee of the Foundation to charge to any manufacturer whatever was needed to encourage him, 2 per cent., 3 per cent., or 5 per cent., just whatever was necessary to encourage him to manufacture. But when a German agent wanted to import it we thought it proper to impose the 10 per cent. royalty."

You so testified, did you not?

A. I did.

XQ. 1005. As I understand, you do impose at this time a 10 per cent. royalty on importations?

A. Yes, sir.

XQ. 1006. That covers any importations to which these patents apply, either from Germany, France, England, or any other country, does it not?

A. None come from any other country.

XQ. 1007. Do they not import from Switzerland?

A. No, they have got their own patents.

XQ. 1008. Now, Mr. Garvan, I asked you a direct question if that does not cover any importations from those countries?

A. No.

XQ. 1009. Do you mean to say that you allow free importation if anybody wanted to import from

Switzerland the same products as are covered by the Badische dye patents?

A. There are no dyes under our patents.

XQ. 1010. Mr. Garvan, will you answer my question?

A. I do not get it, Colonel.

XQ. 1011. My question is this: do you not under the patents which you own charge a 10 per cent. import license on all dyes imported into the United States covered by those patents?

A. Yes, sir.

XQ. 1012. And do you not charge or undertake to charge 10 per cent. on any dyes, wherever they may come from, covered by those patents?

A. If they should come from any country covered by our patents, yes, sir.

XQ. 1013. Now, you say that the Chemical Foundation is not undertaking to make income; it is not an income-making concern; isn't that your testimony?

A. No, I do not think that is a correct statement of the testimony.

XQ. 1014. I will read your testimony:

> "For instance, anybody who owned these patents and wanted to make money out of them would not be urging you to pass this licensing bill."

As I understand, the Chemical Foundation is not in that category?

A. They are not trying to make the most money they can out of them. Of course we must make some money.

XQ. 1015. You also say that you charged two or three or five per cent., just what is necessary to encourage him to manufacture; is that the case?

A. Yes, sir.

XQ. 1016. Your purpose is the encouragement of manufacture, is it?

A. Yes.

XQ. 1017. And the development of the American industry?

A. Yes, sir.

XQ. 1018. You are not a money-making corporation?

A. Not primarily.

XQ. 1019. And you grant licenses free to State boards of health for the use of products like salvarsan whenever they need it?

A. We offered to, to those two boards of health, but that is a little over-statement of mine. They maintained their Federal Trade Commission license and felt it safer to keep that than to take ours. We offered it to them free.

XQ. 1020. And you make the statement:

> "And will give it free to any State board of health which will equip itself to manufacture it safely."

Is that true?

A. That is true.

XQ. 1021. You make the further statement that the Foundation will never get anything from them; is that true?

A. From the State Board of Health; yes, sir.

XQ. 1022. You make the further statement:

> "Of course, that patent (speaking of salvarsan) is not worth anything—I mean as far as income is concerned—because we want it to help the public and not make money out of it."

Is that true?

A. That is true. It was true at that time. At that time we had not received, I don't think, a nickel on salvarsan.

XQ. 1023. You make the statement in reply to the question as to whether they are of great value that they would be to any person who was going to try to make money out of them; is that true?

A. In the sense that I stated it there in that connection, certainly.

XQ. 1024. At page 288 of the testimony before the sub-committee on the Judiciary, Senate Resolution No. 77, at the bottom of the page, you testify as follows:

> "THE CHAIRMAN: Very well. You may proceed.
>
> "MR. GARVAN: That is the company of which Dr. Schweitzer was the president. We then saw that the balance of the patents which were owned by the other five companies of the German Cartel stood naked without any tangible property back of them, and that their purchase at public auction was a dangerous thing, because this company that had been bought was in the best position to buy them, because they had a factory to work them; that some speculator in the patents might come in and get them and hold them just to get the royalties on them from either Germany or whichever was the economic value. You see what I mean. Perhaps I do not make myself very clear. If an individual purchaser came in he would just buy the patents; there would be no obligation on him to work them or to develop them, or to start any business. He might say to himself, 'Oh, well, I will wait until after the war and see how much I can get from the Germans for the re-establishment of them,' or he could give an exclusive license to one person to manufacture one drug or one dye, and that was inconsistent with our developing an industry here which would free us from the conditions which I have outlined. Do I make that clear?"

You so testified, did you not?

A. Yes, sir.

XQ. 1025. Did you not know at that time and at the time that the sale was made that if you sold these patents or any of them to a speculator or a company which would have the power to create a monoply of them, that you had the power, with the approval of the President, to reject the bid and re-sell?

A. I did not get that question.

Mr. Anderson: Read the question, please. I want a direct answer.

(XQ. 1025 repeated as above recorded.)

A. Certainly.

XQ. 1026. As a matter of fact, was it not proposed in the beginning of these negotiations by the representatives of the dyestuffs industry that the patents should be sold in groups to the end that those directly interested in those groups might buy them?

A. It might have been. I don't remember.

XQ. 1027. Did you undertake to ascertain, before making the sale, whether there were any persons in the United States engaged in manufacture who would desire to buy these patents or specific group of these patents?

A. I don't remember.

XQ. 1028. Did you not in fact know at that time that there were persons engaged in the manufacture of products covered by certain of these patents who would gladly have bought the patents applying to their specific business at a price far in excess of $250,000?

A. I did not.

XQ. 1029. You did not know that?

A. I did not. There might be one possible exception, of whether I knew Mr. Metz would buy the salvarsan patent. That would be the only one.

XQ. 1030. You knew he would buy the salvarsan patent?

A. I certainly did; if he could get our approval.

XQ. 1031. And the same thing applies to novocain and neosalvarsan?

A. We always considered salvarsan and neosalvarsan together. Novocain I did not consider. I do not remember it being discussed. That had a very short time to run.

XQ. 1032. At that time was it not a fact that the duPont Company had expended very large sums of money in the development of the dye business and was in fact manufacturing and selling very large amounts of dyes?

A. Yes, sir.

XQ. 1033. Some of which were manufactured under Federal Trade Commission licenses?

A. I think that is a fact.

XQ. 1034. At that time was it not a fact that the National Aniline Company, calling it by the short name —you know what I mean?

A. I do, surely.

XQ. 1035. Had also expended large sums of money in the development of the dye business in the United States and was in fact manufacturing and selling large quantities of dyes, some of which were under the Federal Trade Commission licenses?

A. I think their development had reached very little of the patented things. The rest of the question is true. They were a very large manufacturer of dyes.

XQ. 1036. Was it not a fact that the Newport Chemical Company at that time had developed a large business in this country?

A. I think that is true.

XQ. 1037. And they were manufacturers of indanthrene dyes, were they not?

A. I don't think they had accomplished it at that time. I don't think anybody had.

XQ. 1038. They held Federal Trade Commission licenses, did they not?

A. I think so. I would have to refresh my memory.

XQ. 1039. You did not inquire into these matters?

A. Oh, certainly I did. Mr. Mathewson—I detailed my conversation with him. He was the National.

XQ. 1040. That was the extent of your inquiry?

Mr. Anderson: Read the question, please. I talked it over with the duPonts and I talked it over with the Newport.

XQ. 1041. Let me ask you this: did you at the time you made this sale know how many Federal Trade Commission licenses were outstanding?

A. Individual numbers, no. I knew that——

XQ. 1042. That is all, Mr. Garvan. I just asked you if you knew how many were outstanding.

A. Excuse me. I beg your pardon.

XQ. 1043. At page 394 of the Hearings before the sub-committee on the Judiciary of the Senate, Senate Resolution 77, at the bottom of the page, you testify as follows:

> "The Chairman: Is it your present deliberate opinion that the price fixed was, under all the circumstances and in view of all the facts and conditions, a fair and reasonable one?
>
> Mr. Garvan. Oh, yes; it is. I certainly think so, at least. I mean under these conditions you could not have gotten anybody, except people trying to build up the industry to take that proposition."

Did you so testify?

A. I did.

XQ. 1044. Would you mind stating to me exactly what facts and conditions you referred to?

A. I will endeavor to do it once more. The conditions were that everyone in America who wished to go into the business of making dyes or chemicals or any products covered by these patents would be permitted to at the same royalty at which any of the stockholders or any other person in the country was permitted to take out a license; in other words, that the licenses would be non-exclusive; that they would be at a fair and reasonable royalty; that they did not contain any information or sufficient information to enable anybody to go into the business without a large expenditure on research and a large expenditure on extensive plant; that the future of the industry was dependent upon the whim of Congress; that unless Congress protected us from the flood of German goods after the war, the patents would have been worthless; that we had to give a license to the Government; that there could not be anything but 6 per cent. made on the stock; that the rest of it had to be spent in the development of general chemical education; that no stockholder would have any control over his common stock; that the entire management of the company was to be in the hands of these five splendid men who had no connection with the industry and whose sole purpose it was to accomplish the purposes of the Government at that time. Those, generally, were the conditions.

XQ. 1045. Those were the conditions that you represented to the prospective purchaser would be imposed?

A. Certainly.

XQ. 1046. And those were the conditions which made it impossible in your opinion, as you state here, to get anybody except the people interested in building up the industry to take up the proposition?

A. Certainly.

XQ. 1047. And Mr. Garvan, was it not true that at that time the Dyes Institute membership represented 90 per cent. of the production of dyes in this country?

A. I do not know. It has been so stated.

XQ. 1048. You knew of the American Dyes Institute at that time?

A. Oh, yes.

XQ. 1049. You were dealing with a committee of the Dyes Institute, were you not?

A. Yes, but that committee was not to represent the Dyes Institute alone. It represented the entire chemical industry or anybody who in the future wanted to get into it.

XQ. 1050. They could not represent people in the future very well, could they?

A. Oh, yes; they could.

XQ. 1051. I see. Then not only the Dyes Institute people but the entire chemical industy was represented by that Committee?

A. Yes, certainly; and the Manufacturing Chemists' Association was distinctly and separately consulted and Mr. Choate and Mr. Hoguet appeared before them and their members subscribed to the stock.

XQ. 1052. I asked you if they were represented?

A. Yes.

XQ. 1053. Was the Manufacturing Chemists' Association represented at that conference that you speak of?

A. Certainly.

XQ. 1054. It was?

A. Yes.

XQ. 1055. And the Dyes Institute Committee was at that conference?

A. Yes. I don't know——

XQ. 1056. Hold on.

A. Excuse me.

XQ. 1057. So far as you know, both the Dyestuffs industry and the chemical industry were represented in that conference?

A. Oh, yes.

XQ. 1058. In dealing with these patents?

A. Oh, yes.

XQ. 1059. At page 292 of the Hearing before the Senate sub-Committee on the Judiciary, you were speaking of the salvarsan patent and you testified as follows:

> "The Chairman. Who owns this patent?
>
> "Mr. Garvan. The Chemical Foundation. That is the patent on which the allegations are mainly based as to the great value of the patents sold to the Chemical Foundation. This patent is a valuable patent, but what faced us in reference to this patent was, if we sold this patent and one person could buy it, we were not in much better position, or there was no guarantee that we were in any better position than we were before the war, because the purchaser need not have made it. He might have sat back and said, I cannot make it, and therefore we must go back and import it from Germany; and he could have asked his own royalty from the German concern and he could have licensed one of those factories, and there would have been a monoply. In other words, you see the whole principle on which the thing was founded was to prevent a monoply, either American or German."

You so testified?

A. Certainly.

XQ. 1060. Now I will ask you, were there not at that time four concerns engaged in the manufacture of salvarsan in the United States?

A. There were.

XQ. 1061. And they were engaged in the manufacture of salvarsan under Federal Trade Commission licenses?

A. They were.

XQ. 1062. And they were making all the salvarsan that the United States needed at that time, were they not?

A. They were.

XQ. 1063. And you knew at that time that the Federal Trade Commission licenses were granted for the life of the patent, did you not?

A. I think that was within the future consideration of the Court.

XQ. 1064. And you knew at that time that under the Act, Section 10 of the Act, if any person had expended money in the development of his business under a Federal Trade Commission license, the Courts of the United States had a right to confirm that license at a reasonable royalty for the life of the patent, did you not?

A. I did.

XQ. 1065. And when I speak of "at that time," I mean both at the time of the sale and the time of your testimony; you understand that?

A. I think so. I think at the time of my testimony one of the licensees had seen the danger of the Federal Trade Commission license and had surrendered it and taken out ours.

XQ. 1066. But at the time of the sale the conditions that you speak of strictly applied?

A. Yes, sir.

XQ. 1067. Mr. Garvan, at page 417 of your testimony before the sub-committee of the Committee on the Judiciary of the United States Senate, Resolution 77, after statement by you as follows:

> "So that the $250,000 was an arbitrary price."

You were asked by the Chairman:

> "How was that reached? You explained that a moment ago, but give that to us again.
>
> "MR GARVAN. It was reached by consultation between everybody. There were two branches of it. There were 5700 patents that the Army and Navy had infringed, or might have infringed, etc., in war stuff—guns and airplanes, etc., and so on. On those we gave a general license to the Government, with the discharge of all possible infringements or claims for infringement, for $100,000. Again an arbitrary sum. If it should be decided in negotiations that those were worth more to the United States Government than

the $100,000, why, then the outcome of negotiations will be—or Congress has it within its power to grant more to Germany. But we do not feel that Germany, having brought on the war and compelled our Government to spend the money that we did spend in the war, that our developments should be left at the question of individual owners of patents. And therefore we closed that book as far as the situation of the Navy and the War Department was concerned by giving them a general license.

"Then we gave the Government a general license on all those that the Chemical Foundation took over, including a license for all time to have manufactured for its use or to sell its surplus products, etc., and so on.

"Under our charter the stock was $400,000 preferred and $100,00 common. The preferred is six per cent. cumulative and the common is limited to six per cent. So that no one who ever put a dollar into the Foundation can ever get back anything more than that dollar and six per cent. interest. All over and above that, if the happy day ever comes, will be spent for the benefit of chemical education in America. And we have begun to spend it before we got over that."

You testified to all that?

A. I did.

XQ. 1068. Did you or did you not regard the release to the Government from infringement and the licensing to the Government, as you state, for $100,000, of 5700 patents, as conclusive on that matter?

A. I do not get what you mean there.

Mr. Kresel: Conclusive on what matter, Colonel?

Mr. Anderson: Conclusive on that transaction; that is, conclusive against the owners of the patent.

The Witness: I do not quite see what you mean. I am trying to.

THE COURT: I do not understand the question, Colonel Anderson. Will you not restate it?

MR. ANDERSON: I will reframe it.

XQ. 1069. Did you regard the license to the Government for these patents and the release from infringement under these patents as you have there described, as conclusive so far as the owner of the patent was concerned, and cut off all his rights in that regard?

A. Do I get you: did I regard that the $100,000 which our Government paid for those 5700 patents——

XQ. 1070. Not for the patents, but for the license.

A.—for the license under the 5700 patents which they had used during our war with Germany, did I regard that as conclusive?

XQ. 1071. Yes.

A. I certainly did.

XQ. 1072. Then you further regarded the granting of that license for the life of the patent as conclusive?

A. I certainly—which license?

XQ. 1073. The license granted to the Government of the United States to use the 5700 patents.

A. I certainly never expected our country would ever pay Germany any more than that.

XQ. 1074. Then your statement as to the outcome of negotiations and the power of Congress to grant more to Germany was merely a statement as to the power of Congress and not an expression of your view as to any obligation on Congress?

A. I never anticipated or felt that Congress had any obligation to give Germany anything more.

XQ. 1075. The present stockholders of the Chemical Foundation embrace or represent substantially the entire dyestuffs and chemical industry in this country, do they not?

A. And textile people and steel people, 151 of the leading firms of the chemical industry and industries which are affiliated and allied with it. It does not represent all, by any means, in the stockholders.

XQ. 1076. You spoke a moment ago of the sum of $250,000 as being the lowest price that the Alien Property Custodian would accept. How did you arrive at that conclusion, or was there any statement to that effect by Mr. Palmer or by yourself?

A. Mr. Palmer said to get the largest price we could consistent with the purposes we were aiming to accomplish.

XQ. 1077. Did you discuss the basis by which you arrived at $250,000 with Mr. Palmer?

A. I discussed all these things I have recited, several times.

XQ. 1078. I am speaking not of the conditions surrounding the sale, but of the actual amounts fixed. That is what I am talking about.

A. I do not get you at all on that, Colonel.

XQ. 1079. If you are going to fix a price for something, assuming now all the conditions you have described, you would either fix $100,000 or $150,000, or some amount under those conditions. Now, did you and Mr. Palmer discuss the amount?

A. Mr. Palmer definitely—finally made the decision as to price. I gave him all the information which I had from conversations with the industry, and what other sources he had—Mr. Hoguet; he had his own bureaus; and whatever other sources he had that were open to him.

XQ. 1080. Well, he fixed the conditions as to price?

A. He was the Alien Property Custodian; I was not.

XQ. 1081. Did you ever discuss with the representatives of the industry to whom you have referred any other price than $250,000? Was that ever mentioned?

A. Oh, I assume so. I do not know.

XQ. 1082. You do not remember discussing any other price?

A. We did not just take $250,000 out of the air and discuss it. I think we asked them how much they could raise and how much they were willing to give and we discussed how much capital they would have to have to maintain this battle.

XQ. 1083. Can you remember any other sum than $250,000 being mentioned as a price?

A. It is very difficult for me to swear to anything like that. My impression is we started with 500 and then we had to concede them that they had to keep 250 for capital.

XQ. 1084. When did you start with the five hundred?

A. What?

XQ. 1085. When did you start with the five hundred?

A. I do not say that I did. I do not remember, I can not tell you.

XQ. 1086. Was it prior to the 27th of January, 1919?

A. That I can not tell you. I can not even say that we did do that.

XQ. 1087. You can not say that you did do that?

A. No. That would be my impression.

XQ. 1088. Can you say now whether any other sum than $250,000 was ever discussed between you and the industry?

A. If you ask me to say whether any other exact figure was discussed, I can not, no.

XQ. 1089. Mr. Garvan, on Tuesday I inadvertently made a statement that Mr. Choate had testified before one of the committees that he had nothing to do with the preparation of this charter. Upon re-examining his testimony I found he was referring to the order signed by Mr. Polk.

A. Yes, sir.

Mr. Anderson: I want to correct that on the record.

XQ. 1090. Mr. Garvan, you said you thought you had read the minutes of the meeting of the Dyes Institute, the Executive Committee of the Dyes Institute, on February 7, 1919?

Mr. Kresel: No.

A. I did in preparation for this trial, but I mean not recently.

XQ. 1091. It appears in those minutes that a draft of the charter was presented and read to the meeting by Mr. Gregg? Do you know who Mr. Gregg is?

A. Gregg?

XQ. 1092. Yes.

A. Do not the minutes show? I do not know.

XQ. 1093. I do not think they show.

A. I will find out for you.

Mr. Kresel: That is a new name to me, Colonel. I do not recall it.

XQ. 1094. It is G-r-e-g-g.

A. I do not know. I do not know who he is. I can find out.

XQ. 1095. The statement in the minutes is as follows——

Mr. Kresel: Pardon me. These are the minutes of the Dyes Institute you are reading from?

Mr. Anderson: The Executive Committee of the Dyes Institute, of February 17, 1919.

Mr. Kresel: Are those in evidence?

Mr. Anderson: They are in evidence.

A. I beg your pardon. I thought you were asking me if I had read the minutes of the Washington conference.

XQ. 1096. No, I am talking about something else.

A. Then I beg your pardon. I do not believe I have read those minutes.

XQ. 1097. The minutes show the chief matter under discussion was the formation of the Chemical Foundation, Incorporated. Mr. Poucher briefly outlined the facts concerning the stock subscriptions, etc. Mr. Gregg read the draft of the certificate of incorporation. What I wanted to ask you was whether you knew who Mr. Gregg was?

A. I do not, no.

XQ. 1098. At the time that you had the negotiations and made the first assignment, you knew, of course, that the entire capital stock of the Chemical Foundation was underwritten by members of the Dyes Institute?

A. Yes, sir. The Dyes Institute and the Manufacturing Chemists. It was not all underwritten by one.

XQ. 1099. Do you know whether any of it was underwritten by the Manufacturing Chemists?

A. Yes. The General Chemical was not a member of the Dyes Institute.

XQ. 1100. It is now a part of the Allied Chemical, is it not?

A. If you can give me the list I will tell you which is which.

XQ. 1101. It is not important; apparently they are working together.

A. Lots of Mr. Metz's concerns were there, too.

XQ. 1102. You stated at page 2810 of your testimony on direct:

> "Q. 199 (By Mr. Kresel). By the way, may I stop you there to inquire whether any of these gentlemen ever received a penny for their services?
>
> A. Certainly not."

A. That is to whom?

XQ. 1103. To whom were you referring at that time?

A. I can not tell you unless you let me see the record.

XQ. 1104. Well, it is a little indefinite and I thought you could tell me.

A. No.

MR. KRESEL: Just a minute and I will give it to you, Mr. Garvan. (Hands witness paper.)

THE WITNESS: Oh, the trustees.

XQ. 1105. The trustees?

A. Yes.

MR. KRESEL: What trustees?

THE WITNESS: That is Mr. Bannard, Mr. Dodge, Mr. Ingraham, Mr. Griswold and Mr. Stone.

XQ. 1106. At page 2812 you also testified that Colonel McKay served without pay during the entire time he was there.

A. That is true.

XQ. 1107. Colonel McKay was elected early in March, 1919?

A. I think so. I think he was, at the same time we were.

XQ. 1108. I read you from the report of the Alien Property Custodian, submitted as Document 181, Sixty-Seventh Congress, and printed by the Senate, which report was made under Resolution of January 5, 1922, at page 44.

MR. KRESEL: You mean Colonel Miller's report?

MR. ANDERSON: Yes, that is the official report.

XQ. 1108. (Continued) Under the heading "American Transatlantic Company." The directors get a fee per meeting of $50. There appears the name of Douglas I. McKay, 30 Church Street, New York, elected March 28, 1919, total fees received $2,800. You were on March 28, 1919, the Alien Property Custodian, were you not?

A. Yes, sir.

XQ. 1109. The Alien Property Custodian was then in charge of the American Transatlantic Company, was he not?

A. Yes, sir.

XQ. 1110. And I believe Mr. Palmer testified that the Alien Property Custodian, as he said, appointed or nominated the directors to represent him on these Boards, did he not?

A. Do you mean to insinuate that Mr. McKay was getting money for the Foundation indirectly in that way?

XQ. 1111. No, I am not insinuating anything, Mr. Garvan.

A. Those were services he rendered to that company, for which the company paid him their regular fee.

XQ. 1112. You said these gentlemen had no interest.

A. He had none.

XQ. 1113. You said that?

A. He had none.

Mr. Anderson: It is entirely legitimate for me to show their interests and the source of their interests in this connection.

Mr. Kresel: I did not object, your Honor but inasmuch as the question has arisen, is it the claim of the Government that because Colonel McKay was paid a fee as a director in some other company, that showed his interest, and that showed Mr. Garvan told an untruth when he said Mr. McKay had no interest in the Chemical Foundation? That can be the only purpose of it.

Mr. Anderson: No, it is merely this. I will say nothing more than the facts themselves disclose. I desire to reflect upon no one, but since it has been urged here in the testimony time after time that these gentlemen connected with the Chemical Foundation were serving purely for patriotic purposes, that they had no interest and received no compensation for their connection, I think it is entirely legitimate for the Government to show just what compensations they did receive in connection with this service.

Mr. Kresel: What service?

Mr. Anderson: Any service connected with the Alien Property Custodian. Mr. Garvan was Alien Property Custodian, as Mr. Garvan was president of the Chemical Foundation. Mr. Garvan was Acting Assistant Attorney General of the United States. It is too well recognized to be subject to discussion or open to debate that interest is a very intangible thing. Where a man acts in various capacities at the same time, the association and connection, and the compensation accorded to the various gentlemen concerned from one source represents an obligation to serve in other connections.

To make it perfectly clear, I think it is a duty, though an unpleasant duty and though I hate to go into it, in view of the evidence which has been presented, to show that not only Colonel McKay but the other gentlemen who were officers of the Chemical Foundation were immediately following their selection for those positions elected to various positions on directorships of various corporations from which they received very considerable compensation. I do not want to reflect upon their character in so doing, or upon Mr. Garvan's, but I think it entirely appropriate, though unpleasant, to show whatever interest they had in that connection and whatever benefits they derived from their transactions with the Chemical Foundation or the Alien Property Custodian's office, not only as showing an interest, but as showing how these things were interwoven with each other as affecting the character and validity of this transaction. It is for that purpose that I offer this evidence.

Mr. Kresel: If your Honor please, you must have noticed that I have not raised a single objection during the entire cross-examination of Mr. Garvan. I have purposely refrained from raising objections because I never want the Government to be in the position of saying they did not have absolute freedom to ask Mr. Garvan any question that they wished. Therefore I shall not object to this. When we come to argue this case before your Honor I shall take occasion to comment upon the testimony that is now brought out.

I do think, however, that inasmuch as the point is being made, the least that the Government can do is to bring out the dates when these gentlemen were appointed to these lucrative positions, so that at least your Honor may be able to say whether, as intimated by Colonel Anderson, the appointments to these directorships followed their services to the Chemical Foundation.

Mr. Anderson: It is my purpose to show, and I state it in this instance—that Colonel McKay was elected as a director of the American Transatlantic Company on the 28th of March, 1919. I carefully read that. The record shows that he was elected a director and vice-president of the Chemical Foundation on the 8th of March, 1919. The record shows, therefore, that at the time this sale took place Colonel McKay was an officer of the Alien Property Custodian, or rather a representative of the Alien Property Custodian, as well as a representative of the Chemical Foundation, and that relationship, as applying to the various parties to this transaction, we regard as one of the essential elements of this case.

MR. KRESEL: I also assume that Colonel Anderson will show what services were performed by these gentlemen for which they got directors' fees.

MR. ANDERSON: I will show what positions they occupied. I can not show the services. I am not undertaking to say whether the fees were excessive or not excessive; I am not discussing that question. I am not engaged in discussing the question of the amounts of the fees. I am not undertaking to attack anybody here; I am merely stating the facts which I think establish an essential relationship, in order that this case may be properly adjudicated. Whether I am mistaken or not is a question for argument, when that time arrives. I invite the fullest comment by counsel in the argument.

MR. KRESEL: It makes very little difference, Colonel Anderson, whether you say you are attempting to attack or no. The fact is you are attacking. You are here insinuating that Colonel McKay sold himself to the Chemical Foundation because he was paid $50 a meeting for attending as a director in another corporation. That is what you are insinuating. And you are also insinuating that Mr. Garvan lied when he said that Colonel McKay had no interest and did not get anything from the Chemical Foundation. You can say that you are not insinuating. You are welcome to it all; I shall not object; you go right ahead.

MR. ANDERSON: I have not insinuated anything, and I am merely bringing out the facts. Whatever the facts show is a matter that I am not in any way undertaking to discuss now. I am not indicating Mr. Garvan was guilty of a falsehood when he stated this, because I read his testimony as to the Chemical Foundation and then introduced the evidence.

THE COURT: Let me ask one or two questions to find out just where we are, because I find it a little difficult to follow the several contentions at all times, you differ on so many points. In fact you differ on all, not only with respect to the facts, their relevancy and materiality, but you differ in a basic way and in detail. Consequently it is very difficult at times for me to apply the various facts that are brought out and it is difficult to follow the issues. There are days when they seem quite clear; there are days when I think I have not the contention of counsel at all and that I must be all wrong.

I do not mean to invite discussion, but only want a clarification, in other words, of the issues leading up to this. If I understand you, Colonel Anderson—and most of my inquiries are directed to you because you have the laboring oar and are the person seeking to pass from one point to another, seeking to get a decree nullifying this sale, and using the sword, and hence, of course, the shield—the main problems occurring to my mind are those as to whether you have made out a complete case. If I understand you, the Government's position is that the amount received for the patents sold was grossly unjust and inadequate, and if the question is justiciable that would give a ground for setting the sale aside. I assume that is one of your primary contentions, is it not?

MR. ANDERSON: Yes, sir. Your Honor has not quite stated it, primarily. The first contention is that owing to the relationships of the parties the sale or alleged sale, regardless of consideration, was void *ab initio*.

THE COURT: There is a difficulty. I can understand that is a legal question, and one that could be raised and properly could be raised ordinarily and, I presume, proper to be raised here. But I have some difficulty on that point and I wondered if I had misunderstood you. If the purchase price was adequate, then I just wondered whether I had misunderstood you or had understood you, that the United States was pressing to set aside the sale although the purchase price was adequate.

MR. ANDERSON: I was undertaking to state my legal position, as your Honor asked me for my legal premise. First, as a matter of law the sale was void on account of the relationships of the parties and their interests on both sides; second, the purchase price, leaving out the question of the relationship of the parties, was wholly and grossly inadequate, and therefore the Government of the United States—though its policy in that regard is something I have not anything to do with, since it has been directed by people above me—deems it its duty to set aside this sale, providing the Court so adjudicates, and recover these patents, and put them into the custody of the United States, to be held by the United States and disposed of as Congress may direct, in that event to be sold for an adequate consideration.

THE COURT: If I understood you, the plaintiff desires that this sale be set aside on any grounds which may be available, without regard to whether the price received was adequate or inadequate.

MR. ANDERSON: Undoubtedly. The reasons behind the institution of this suit do not concern me, but the plaintiff is here asking the decree on any legal ground upon which it can get that decree; because, as stated by the Supreme Court in the Beebe case, it deems itself charged with the duties and obligations which, whether it be right or wrong, it deems to have been violated. Second, because this property is of a value very far in excess of the value paid, and therefore it is entitled to that for the purposes contemplated by the treaties. That is the first.

So that involves two questions—the relationships of the parties, their interest in the subject matter in their various relationships, and the second question of whether the consideration was adequate. May I just make this suggestion, to make it clearer to your Honor? There are any number of suits in the United States which have been sustained by the Supreme Court of the United States, among them United States v. Beebe, which is the leading case, in which the Government has brought suit to cancel a patent fraudulently obtained, to the public lands, although it had granted and patented the lands to another patentee, and in the event of the success of the suit the lands would go to the second patentee. It has been sustained by the Supreme Court upon the ground that the Government is trustee of all the people and owes a public duty with respect to public lands, and if that duty be violated it is its duty to maintain a suit, even if it receives no material benefit from the suit. But this is a question going to jurisdiction only, and does not concern me as long as the Court has jurisdiction.

THE COURT: Nor me either.

MR. ANDERSON: But, in the second place, the Government not only contends that its duties and its position as trustee for this property have been violated and therefore it must assert its rights and obligations as trustee, but it claims that the property was disposed of for a grossly inadequate consideration, and therefore the Government, as the primary party in interest, or the people, have a very large interest here, of a material character.

THE COURT: I do not suppose you can help me much so far as the viewpoint of the price is concerned; but is there anything in the Trading with the Enemy Act—I have not re-read it—requiring the Americanization of the chemical industry or the sale of the patents to Americans?

MR. ANDERSON: There is nothing in the world requiring the Americanization of the chemical industry. There is the use of no such language. But if the sale takes place, then the terms of that act do require (I can turn to them if your Honor desires) that it shall be sold to certain persons that are qualified to buy, and that is, to American citizens. Perhaps it is as well to get that clear. Section 12 is the section providing for the sale.

Section 12 provides that the sale shall be a public sale, and so forth, "provided that any property sold under this act, except when sold to the United States, shall be sold only to American citizens."

THE COURT: That is what I had reference to.

MR. ANDERSON: "At public sale to the highest bidder unless the President in the public interest otherwise directs." Now, it may be that that is not in this case. It may be that the President might have been able to authorize the sale to a neutral or one of the allies of the United States. I do not know. That is not involved in this case, and I have not considered it.

THE COURT: No, that is not involved. Have you read this book that was put in evidence, entitled "The Riddle of the Rhine"?

Mr. Anderson: No, sir.

The Court: There is a paragraph here which interests me, because it seems to me it is important to the consideration of the purchase price. It is by the author of the book in the preface:

> "Further, my association with the dye industry, since commencing this book, leaves me with a deep conviction of the critical importance for disarmament, of a world redistribution of organic chemical production. It is inevitable that such a step should benefit the growing organic chemical industries of countries other than Germany, but this issue need not be shirked. The importance of the matter is so vital that it eclipses all reproach that the disarmament argument for the maintenance of the dye industry is used on selfish grounds. Such reproach cannot, in fairness, be heard unless it destroys the case which we have established. We are faced with the following alternatives. Safety demands strong organic chemical industries or cumbersome and burdensome chemical warfare establishments. The stability of future peace depends upon the former, and the extent to which we must establish, or can abandon, the latter depends entirely on the activity and success of those whose special duty it is to organize against war."

That is either right or wrong.

Mr. Anderson: That is an opinion. I do not know who the gentleman is that wrote that book.

The Court: It advances a theory; I do not think of it as a fact. Now, whether in the sale of these patents that theory had a place or had a right to have a place in the minds of those selling, is it your contention that the stability of future peace and the protection of American welfare had no place in the terms or the conditions under which the patents were sold by the Alien Property Custodian?

Mr. Anderson: Yes, sir. I will answer your question directly, first. I want to refer to that. I do not want to interrupt your Honor.

That gentleman's opinion may be valuable or not; but I concur that the development of the chemical and dyestuffs industry in the United States—my personal opinion, now—is a very desirable thing, and I would do any legitimate thing to that end if I were in Congress.

But upon what possible theory—and this is answering your Honor's question—it can be contended, or even suggested, that the Alien Property Custodian can have the power or the right to consider a question of that kind and put his judgment in the place of Congress is beyond my conception. Now I have answered your Honor's question. I do contend that it has absolutely nothing to do with it, and if he considered it, he was engaged in an illegal thing.

The Court: Then the Government's position is that it denies that those authorized to make the sale of alien property during the war could take into consideration the future welfare, commercial or military, of the United States?

Mr. Anderson: They could take it into consideration in selecting the purchaser, they could take it into consideration in refusing to accept a bid, in the personnel; but when it came to selling property, they were handling a trust fund, the highest trust known to the law, that of property in charge of a government, of an alien, and it was their duty to handle it in accordance with the laws of trusts and leave the policy on the question to be fixed by Congress. Their duties were fixed by the terms of the Trading with the Enemy Act and they could not go outside of it or consider anything outside of it.

The Court: No doubt about that.

Mr. Anderson: That being the case, what have they got to do with fixing the policy of the United States? I do not mean to ask your Honor that question.

The Court: That is going just a little farther than I had in mind. I assume both sides contend that there is no power vested in the Alien Property Custodian or in any other Government officials, with respect to these patents, save that vested by the Trading with the Enemy Act. I assume that is agreed on both sides. That is probably about the only place you agree.

Now, in determining whether the value is the price received, assuming for the purposes of this discussion, that it is subject to judicial review, or in determining whether the value was shockingly inadequate, it seems to me at the moment that it depends in large measure upon whether the future or the military welfare of the United States could be considered at all in the terms and conditions of sale of those patents, because it seems to me that has a direct bearing on whether the sale was adequate or inadequate.

Mr. Anderson: I quite agree with your Honor.

The Court: I can readily see that, viewed from the German standpoint, the price of these patents was shockingly inadequate.

Mr. Anderson: The German standpoint hasn't anything to do with it.

The Court: You put on Dr. Holdermann, however, who was a witness, and who was a German,——

Mr. Anderson: Yes.

The Court: And I say I can readily see that, viewed from his standoint, the price was shockingly inadequate. But my difficulty is in viewing it from an American standpoint. If the sole power given was to obtain the highest dollar for those patents, without considering the welfare of America, military or commercial, I concede that is one thing; and if there was no power given by this Act for the Alien Property Custodian or the President to consider at all, although a war was then going on,——

Mr. Anderson: May I suggest the war was over, sir.

Mr. Kresel: It was not over.

Mr. Anderson: Not technically; but the President had announced it was over.

Mr. Kresel: On the contrary, there was no assurance but that the war might be renewed the next day.

Mr. Anderson: All right, I did not intend to start a discussion about that.

The Court: Well, the war was not over; and if so, there was no certainty that a new war might not begin at any time between us and some other people; and if I understand the theory of this book, which I did not read wholly, but I glanced through it yesterday in large part, it advances some theories which it seems to me make very clear the great and immediate importance of manufacturing plants—I want to get away from the words chemical or dye industry, because they are open to a double meaning in this case—make very clear the necessity for the development of the chemical sciences for the future preservation and protection of America. Now, if that can be considered at all in the selling price or selling conditions, because price is an instrument of conditions, then I can understand that we pretty nearly do not need any testimony.

Mr. Anderson: Your Honor has reached exactly the view that I reached in this case. In the first place, with reference to that book, if your Honor please, I shall very earnestly contend, as I contended when these books were introduced, that they do not prove any facts at all.

The Court: I agree with you absolutely.

Mr. Anderson: Now, then, if they do not establish any facts, what they contain in there is nothing except the fact that the Chemical Foundation sent them out. That is all they show.

The Court: They contain——

Mr. Anderson: They either show facts or not facts.

The Court: As to the Alien Property Custodian's report, you admit the facts stated in there to be facts.

Mr. Anderson: In the Alien Property Custodian's report, yes, sir. I will stand on that.

The Court: And as I understand it, many of the theories here start from the Alien Property Custodian's report as a premise.

Mr. Anderson: Whatever is in the Alien Property Custodian's report, I am perfectly willing to argue this case on. I am not going outside of that.

The Court: The strongest facts I found in this book were taken from the Alien Property Custodian's report.

Mr. Anderson: That is exactly what I want. Your Honor has got exactly to the meat in this case. Counsel and I have run on parallel lines in introducing evidence to prove something which I think we could probably have sat down at a table and agreed on, as your Honor stated the other day.

The meat of this case, as I have undertaken to make clear a number of times, is in the principles of law to be applied to it. In my judgment, this case can be decided on the bill and answer, the admissions of the answer. I stated before the trial that that could be done and I so stated during the trial. But we have gone to trial and we have put in all the evidence we had in our possession—it is not all, because there are tons of it—that we thought would throw any light on this situation.

It is my opinion that a very large proportion of the evidence on both sides, your Honor will reach the conclusion, has no material bearing on the decision of the essential and controlling points in this case. But we can not anticipate that. We have to prove every kind of a theory.

Counsel and I differ absolutely on this point. I take the position—and I might as well make it clear. They know it and I want to make it clear to the Court—that while the Alien Property Custodian had the power of sale, it was his duty to sell so as to get the fair value of the property. Not the last dollar, perhaps; because no trustee is required to get the last dollar. He has to use reasonable judgment and discretion to get the fair value of the property. He could not be in the position of buyer and seller at the same time nor could the relation of the parties be so involved that there would not be a clear-cut arms-length dealing. He could not impose conditions upon the property before it was sold, which, though they may have been in the public interest——

THE COURT: And even though the future independence of America may have depended on it?

Mr. Anderson: Absolutely. That is in the hands of Congress and not the Alien Property Custodian.

The Court: Unless Congress delegated that power to the Alien Property Custodian.

Mr. Anderson: Then you get back to another question. I will put it this way. If the contention as to the construction of this Act and the powers of the Alien Property Custodian, contended for by the distinguished counsel for the defendant, are sound and will be sustained by the Court, then the Alien Property Custodian has taken over all the functions of the Government including the general staff, Congress, and everybody else, and has not only determined the policy and the future welfare of the United States but has taken control of the preparation for future wars; and if there is anything of that kind in the Alien Property Act, I can not find it, or any suggestion of it. So we differ fundamentally on that.

The Court: I will hear you, Mr. Kresel, in a minute.

Mr. Kresel: I only want a few words.

The Court: If I understand the issues between you, the basic issue between you is here that the defendant contends that in the performance of the duties of the offices created under the Trading with the Enemy Act, and the exercise of the powers of the President and the Alien Property Custodian under that act, they had a right to take into consideration the future military welfare of the United States of America in the sale of the patents.

The position of the Government of the United States now is that in such a sale all the Alien Property Custodian had to do was to hold the patents or sell them for their full value.

Mr. Anderson: Fair value.

The Court: From what standpoint? To whom? Because I can not conceive that there could be an American purchaser of those patents who would pay or could pay an amount equal to the value that they had for their German owners prior to the war. Can you?

Mr. Anderson: I doubt if an American would have paid that. In so far as they controlled imports, they would be enormously valuable. But in so far as manufacture is concerned, they had less value perhaps to the American manufacturer than to the German manufacturers, because the Germans had the plants.

The Court: If these were sold just to control imports and that is established, that would be a fact of interest.

Mr. Anderson: If your Honor please, my position is perfectly simple. If these gentlemen could have sold these patents as they sold them, they could have sold the whole business for one dollar, although they might have been worth two hundred million dollars.

The Court: To whom?

Mr. Anderson: To anybody in America.

The Court: If used wholly without regard to, or sold under conditions which would have given a patent monopoly.

Mr. Anderson: That is right; although we are not discussing the monopoly phase now.

The Court: But you have to consider the monopoly phase in connection with value.

Mr. Anderson: I will. But my contention is this: If the contention of counsel is sound, that they had a right to take into consideration the commercial welfare of the United States—and I will say that in the order of Mr. Polk stating the reasons in the public interest, there is no reference to that—if they had a right to take into consideration the commercial welfare of the United States or the industry so-called affected by these patents, then they could consider it to its full extent. That would mean that they could confiscate these patents and turn them over to the industry, because it would benefit America. My contention is that they had to make a fair sale of these patents and that they had no power of confiscation. That is where we differ.

THE COURT: If I understand the contention of the defendant, it is that the commercial welfare of the country, with respect to the chemical and dye industry, is inevitably connected with the military welfare of the country and that the commercial welfare is an underlying factor and the greatest possible protection from a military standpoint. That is their contention.

MR. ANDERSON: I did not know that the Alien Property Custodian was conducting either. But that may be. It may be I was wrong.

THE COURT: I think I see more clearly than possibly heretofore where you differ. I will hear you, Mr. Kresel.

MR. KRESEL: I have only a few words, your Honor. I am groping as much as your Honor is groping to see just what the contention of the Government is and I now understand it to be this: That it was the duty of the President and the Alien Property Custodian to sell this property at a fair price; and while the Government does not define the word "fair," I understand it to mean the full price. And, that the Government, that is, the President and the Alien Property Custodian, in making such sale had no right to consider the military safety of the country.

That leads to this conclusion: that if the President could get only ten dollars for them and protect the country from a military standpoint, he had to decline that because somebody stood ready to pay one hundred dollars for them and the military dependence of the country again be on Germany. I understand that to be the Government's contention.

Mr. Anderson: As usual, Mr. Kresel misunderstands my contention.

The Court: Won't you re-state it, because I got that impression, Colonel Anderson.

Mr. Kresel: You see, even the Court misunderstood you.

Mr. Anderson: I am a little surprised at the Court's misunderstanding. I am not at all surprised at Mr. Kresel's misunderstanding, because counsel on one side usually view the language of counsel on the other side in the light of their own views.

The Court: Mr. Kresel gives an extreme illustration of it, but I do not see how you can avoid that conclusion.

Mr. Anderson: I thought I had stated it a good many times, but I may not have been clear. I will try to state it this way:

The Government's contention is that the President had nothing to do with the sale of this property or the price obtained. That is at the outset. We differ entirely. We contend that the power of sale was vested in the Alien Property Custodian and not in the President; that the only power of the President in connection with it was that of modifying, by his personal acts, in his judgment, for reasons stated in writing, and those reasons only, which must be stated, such as the method of sale and the other matters which are set forth in the Act. That is the sole power of the President.

If, for any reason, the sale being made, the conclusion was reached that the bid should not be accepted,—and when I say "sale being made," I mean the offer being made, before confirmation—then the President had the further power, by stating his reasons in the public interest in writing, to set aside that sale. But there he stops. Then the Alien Property Custodian had the power to re-sell or not to re-sell as he saw fit.

There is no obligation in this Act to sell this property at all. It was in the control of the Government of the United States. The Government had a right to use it any way they saw fit and settle that at the Peace Conference and never pay a cent for it if it wanted to. It had the right, by Act of Congress, to confiscate it. It would have been violating a practice of 200 years to have done it.

Since there was no obligation to sell, the public welfare and safety of the United States was not involved. It was not in any risk, because the Government of the United States had these things in its hands and it is just as capable of dealing with the public welfare of the United States as a private business corporation. At least, it must be conclusively presumed to be so by a Court. Then, why sell? That is the first point.

But if the Alien Property Custodian did undertake to sell, as to which there was no obligation whatever, and did undertake to remove this stuff from the control of the Government itself, and put it in the hands of a private owner, however good his motives and however broad the purposes of the private owner, then he must consider his trust and get the fair value for the property.

If he undertook to sell, reached the conclusion that it was wise to sell and undertook to sell, then it must be a sale and not a gift.

If he felt that the acceptance of the offer of the purchaser or the character of the purchaser or the conditions surrounding the proposed purchase were such as to endanger the welfare of the United States, he still had a position which by analogy may be called *locus penitentiae;* to go back and have the offer rejected and still keep the property in the hands of the United States.

But I do not know anything in the law of the United States or in the history of the United States that justifies or authorizes the officers of the Government to turn over to a private concern the property in the possession of the United States in consideration of the undertaking by that concern to promote the welfare of the United States. That is vested in Congress by the Constitution.

That is my position and that is not what Mr. Kresel stated, by a lot.

THE COURT: It seems to me you differ from him on one particular; and that is that you substitute the Alien Property Custodian for the President. What is the other point?

MR. ANDERSON: The other is simply this: that I contend there was no obligation to sell at all; but if he did sell, he had to make a fair sale. You could not consider the turning over of this property in the possession of the United States in the public interest, because the protection of the public interest could not be a consideration, because the protection of the public interest is primarily vested in the United States already and can not be a consideration for a sale by the United States.

If I have something, how can it be a consideration to me that somebody else will undertake to give me that benefit? I have got it already. The United States Government has complete power to protect the interests of the United States, commercial and military.

THE COURT: No, it has not, Colonel Anderson. Unless it is elaborated in the Alien Property Custodian's report, which I have not read—I have heard you and Mr. Kresel read portions of it and portions of it are quoted in the book which I did read—one of the theories there advanced is that in order that there may be full military protection, the chemical science must be developed through the commercial agencies so that there will be potential arsenals in time for a future war. If that theory is sound, and if I recall it, that is one of the theories of the Alien Property Custodian's report, then does that inject a new phase into the situation?

MR. ANDERSON: I would like to answer your Honor's question on that. I would like very much to do it because you have gotten me to one of the points that interest me in this case.

If that theory is sound—and for the purpose of this discussion I am willing to concede that it is sound, although obviously the Government of the United States can build up its own armament plants—Congress could put an embargo at the ports and prevent the importation of a single thing in competition with American manufacture. It could subsidize these plants in that interest. It could confiscate these patents and turn them over, every last one, to American industry and to anybody that wanted to use them. It could repeal every right under these patents, by virtue of the power of confiscation and settle it at the Peace table.

But to say that an officer of the Government of the United States because of the interests of the United States can ruthlessly confiscate property is to make exactly the same argument that the Germans made at Belgium, the argument of necessity. And if the United States fought this war for that, then we would like to know it.

THE COURT: Do you contend that the amount that was received for these patents fixed absolutely the amount which the Executive and legislative departments of the United States may pay Germany at the Peace table or reparations conference?

MR. ANDERSON: I suppose they could give Germany, as they did Spain for the Philippines, most anything they pleased. But it fixes the obligation of the United States.

THE COURT: Regardless of the fact that the United States has acquired a substantial interest in those patents?

MR. ANDERSON: Undoubtedly. If it is a valid transaction, then Germany can not challenge one particle of it. Nor can it anyhow. This is a question between the United States and its own officers and agents and its citizens. Germany has nothing to do with this thing, because it has agreed that it will not challenge it.

THE COURT: We have gotten somewhat away from the question except that the discussion has disclosed that the Government takes the position that it desires these patents set aside on any legal ground which the Bill of Complaint may support.

MR. KRESEL: Whether the price is adequate or inadequate?

MR. ANDERSON: Absolutely.

THE COURT: Whether the price is inadequate, or on any ground where there may be found to be some technical flaw. Consequently, your objection is overruled.

Mr. Kresel: I raise no objection. I want the record to be clear that I raise no objection.

The Court: What was the question?

Mr. Kresel: I think the question was answered.

Mr. Anderson: Before this discussion I had just introduced or read from the report of the Alien Property Custodian, submitted under Resolution of the Senate, January 25, 1922, showing that on March 28, 1919, Colonel McKay was elected a director of the American Trans-Atlantic Company and that the fees he received as such aggregated twenty-eight hundred dollars.

The Witness: Over what period of time, Colonel?

XQ. 1114. Until the date of this report——

A. Part of it he received under Colonel Miller as Alien Property Custodian. Is that right?

XQ. 1115. That is right. So far as this report shows, the date of service began on the 28th of March, 1919, and the date of termination is blank.

A. The date of the report is what?

Mr. Anderson: It can be assumed to be up to that date.

I next read from page 141 of the same report, under the heading "Botany Worsted Mills", which contains the following statement:

> "Board of directors (fee $5,000 per year and expenses):
>
> "Douglas I. McKay, 30 Church Street, New York, elected Mar. 27, 1919. Resigned Mar. 29, 1921," serving for two years.

I next read from the same report, page 227, under the head of "Foreign Transport and Mercantile Corporation":

> "Board of directors (fee per meeting $50):
>
> "Douglas I. McKay, 30 Church Street, New York City, elected member of the board March

28th, 1919; resigned October 11th, 1921; total fees received $2,950."

I next read from page 543 of the same report under the heading of "Stoehr & Sons (Inc.)":

> "Board of directors (no fee from Mar. 20, 1918, to Sept. 27, 1921; from Sept. 28, 1921, $20 per meeting)."

THE WITNESS: That is under Mr. Miller, though.

MR. ANDERSON: Yes, I know. I am reading the whole thing. I want to do it all.

"Douglas I. McKay, 30 Church Street, New York City, elected President at $750 per year on September 27, 1921." His fees appear to have been $187.50 and for extra services $250. The total of those amounts is $16,187.50.

XQ. 1116. Mr. Garvan, so far as you know, the election of Mr. McKay as stated in the report in March, 1919, to these several corporations is as stated, is it not? You know he was elected a director?

A. I would assume so.

XQ. 1117. You believed that to be true?

A. Certainly.

XQ. 1118. You stated, I believe, that Mr. George Corbett was Vice President of the Central Union Trust Company at the time that he was elected Secretary and Treasurer of this company?

A. I think I was wrong. I think he was Assistant Secretary, later Vice President. I am not exactly sure of the date.

XQ. 1119. And the Central Union Trust Company was one of the depositories of the Alien Property Custodian, was it not?

A. Practically all the banks and trust companies of the country were:

XQ. 1120. No. Answer the question.

A. Yes.

XQ. 1121. He is now your law partner, is he not?

A. He is.

XQ. 1122. When did he become a member of your firm?

A. I could not tell you the date. I think about a year and a half ago.

XQ. 1123. I think you stated yesterday that he continued as Vice President of the Central Union Trust Company after his election as Secretary and Treasurer and director of the Chemical Foundation for about a year?

A. Yes, I think so.

XQ. 1124. You stated that he did not receive any compensation from the Chemical Foundation during that period as I recall it?

A. Yes, until he resigned and had to give his whole time to the Foundation.

> Mr. Anderson: I now read from the report of the Alien Property Custodian submitted to the Senate in response to Senate Resolution of January 25, 1922, referred to the Committee on Printing on April 10th, 1922, at page 94, under the heading of "Beer, Sondheimer & Co., Inc.," a corporation having $1,250,000, all of which was enemy-owned. It appears on page 94 that the fee per meeting for members of the Board of Directors was $100. In that list of officers appears the following:
>
> "George J. Corbett, Comptroller, at $15,000 per annum." The date of his election is apparently up higher.

The Witness: He was elected long before this.

XQ. 1125. November 18, 1919, was it not?

A. Oh, no. I think it was long before. 1918 it was.

XQ. 1126. In 1918 he was elected Comptroller at a salary of $15,000 per annum?

A. He was elected at Mr. Palmer's request. That is how I became acquainted with him.

XQ. 1127. He was then a Comptroller of this company at the time of the organization of the Chemical Foundation and the sale of these patents in April?

A. That is how I became acquainted with him.

Mr. Anderson: The same report at the same page, shows that his total fees or compensation as Comptroller of that company amounted to $25,564.50.

The Witness: That is for how long a period?

Mr. Anderson: It does not appear.

The Witness: That was fixed by the Board of Directors of that company, was it not?

Mr. Anderson: The report does not show.

At page 423 of the same report, under the heading of "National Zinc Co.," whose authorized stock was $400,000 and the enemy-held stock was $5000, appears the folowing entry:

"George J. Corbett, Treasurer ($1,500 per annum, paid by Company)——$2,830.46."

At page 44 of the same report, under the heading of "American Transatlantic Company":

"Board of directors (fee per meeting, $50.)"

It appears that George J. Corbett was electe a director on December 21st, 1920, and resign on May 10th, 1921; fees $200.

At page 218 of the same report, under the heading of "Farbwerke-Hoechst Co.:"

"Board of Directors (fees per meeting, $20.):

"George J. Corbett, Central Union Trust Co., New York, elected Director March 11, 1919."

Date of resignation not stated. Fees $60.

At page 227 of the same report, under the heading of "Foreign Transport and Mercantile Corporation," it appears that the directors' fee per meeting was $50; that George J. Corbett was elected a director December 21st, 1920, and resigned April 26, 1921; fees $250.

The total of the amounts so stated was $28,904.96.

XQ. 1128. Can you turn to your books and show what was the compensation received by Mr. Corbett from the Chemical Foundation and the date on which his compensation began and the date on which his compensation terminated?

A. I cannot put it in now. I will put a slip in.

Mr. Kresel: We will get that for you, Colonel.

XQ. 1129. In order to get the statement complete, from your accounts as you presented them here yesterday, I have caused to be made up a summary or total and it appears that his compensation as an officer of the Chemical Foundation began about July 1921, and ended when he resigned as Vice President, which was about what date, do you recall?

A. I cannot recall.

XQ. 1130. And that the total compensation he received as an officer of the Chemical Foundation was $23,125?

A. Yes, sir.

XQ. 1131. I state that on the record subject to your correction.

A. He must have served about a year and three months under salary, because he served at the rate of $15,000 a year. For the first two years, he got nothing.

XQ. 1132. Then he got $15,000 a year?

A. Then, when he devoted his entire time to it and resigned his $18,000 position with the trust company to do it, he got $15,000 a year for a year and a quarter. When he first came he got nothing and he has given his evenings and time since for nothing.

> Mr. Anderson: It apears that his compensation was from October 1st, 1920, to some date in 1922 and that it was $23,125, or a total from the Alien Property Custodian's office and the Chemical Foundation of $55,029.96.

XQ. 1133. When Mr. Corbett resigned, you elected Mr. Haaren or the Board elected Mr. Haaren Secretary-Treasurer in his place?

A. Not the Treasurer. Mr. Corbett is still treasurer. Mr. Haaren was elected secretary.

XQ. 1134. Mr. Haaren received a compensation of $5000 a year?

A. Either four or five. Mr. Corbett is still treasurer; does all that work for nothing.

XQ. 1135. Mr. Bannard was chairman of the board of the New York Trust Company, was he not?

A. He was.

XQ. 1136. I read from page 640 of the report of the Alien Property Custodian, 1922, to which I have already referred, the following:

> "From January 11, 1919, when the New York Trust Co. was appointed liquidator, the enemy insurance companies handled to July, 1919, approximately $10,000,000 in securities and $4,000,000 in cash were on deposit to the credit of the 23 enemy insurance companies. For these services during the first six months of 1919, the New York Trust Co. was allowed $30,000 by the then Alien Property Custodian, although correspondence on file in this office indicates that they originally asked for $7,500 per month. The records of this office show that up to March, 1921, the New York Trust Co. have been paid a grand total of $42,070.87 for services as liquidator for the 23 enemy insurance companies and in addition a further sum of $58,670.87 was paid them for services as depositary.

> During the two and one-half years as liquidator of the enemy insurance companies, the New York Trust Co. had on daily deposit for the 23 enemy insurance companies an average of $1,465,455 in cash and securities of a value of approximately $20,000,000."

A. Colonel, won't you show what every other trust company in New York had before you argue that Mr. Bannard is corrupt in that?

Mr. Anderson: I am not going to argue that Mr. Bannard is corrupt, and I do not propose to be put in the position of arguing that anybody was corrupt; but I do insist, since the statement has been made that these gentlemen had no interest, that it is perfectly legitimate for me to show their interest.

The Witness: You think because the trust company had——

The Court: Do not argue with Colonel Anderson.

Mr. Anderson: I am not charging anybody with corruption. I am merely showing that they had an interest. It may have been an entirely legitimate interest. I do not deny that they might have been working in a legitimate manner, so far as their interest was concerned; but I do want to show their interest for what it is worth.

XQ. 1137. The New York Trust Company was one of the chief depositaries of the Alien Property Custodian, was it not?

A. One of the depositaries. I think the others were all bigger than the New York.

XQ. 1138. I next read from page 157 of the report of the Alien Property Custodian, the bill of Judge George L. Ingraham to the Alien Property Custodian, dated January 12, 1921, which, in view of the circumstances, I shall read in full, that it may show the amount of service rendered:

"Matter of Stoehr v. A. Mitchell Palmer, as Alien Property Custodian and individually, Francis P. Garvan, as Alien Property Custodian and individually, James N. Wallace *et al.* To professional services in the above-entitled cause since the commencement thereof on Dec. 2, 1918, to date, including among other services the following: Examination of the first bill of complaint, the bill of complaint in action No. 2, the action which superseded action No. 1, the supplemental bill and the demand annexed thereto; conferences with the Alien Property Custodian and his associates; conferences regarding the cause generally; conferences with Mr. Larue Brown, Assistant Attorney General, with Col. Francis G. Caffey and Mr. Earl Barnes, of the office of the District Attorney for the Southern District of New York, regarding the motion for an injunction; attendance before Judge Knox and argument of motion in opposition to plaintiff's motion for a preliminary injunction; services in connection with the order of the court entered thereon; stipulating on behalf of the Alien Property Custodian that there would be no sale pending the disposition of the suit, no injunction being entered by the court; services in connection with the plaintiff's motion to file supplemental bill; services in preparation of answer of A. Mitchell Palmer as Alien Property Custodian and Francis P. Garvan as Alien Property Custodian; conferences with Mr. Lee Bradley as counsel for A. Mitchell Palmer, as Alien Property Custodian and Francis P. Garvan as Alien Property Custodian; many conferences with Mr. John Quinn and his associates as solicitor and counsel for the defendant Stoehr & Sons (Inc.) and its directors and the defendant Botany Worsted Mills and its directors; examination of authorities in connection with the merits of the case; many conferences in regard to the setting of the case for trial; repeated appearances in court with other counsel in efforts to have the case set for early trial; conferences extending over many days with Mr. Lee Bradley, Mr. Quinn and his associates, counsel for all the other defendants, United States Attorney Caffey and Mr. Barnes, of Mr. Caffey's office, on the facts and the law, as part of the preparation of the trial of the case; attendance at and participation in the trial of the case and services thereon covering most of two weeks; preparation of brief on behalf of Alien Property Custodian and reply brief; consultations regarding opposition to motion for a stay; attendance in court and argument on behalf of the Alien Property Custodian in opposition to motion for a stay; and services in connection with the furnishing of a bond pending the appeal. Conferences in regard to the the advancement of the cause by the Supreme Court; conferences with Mr. Quinn and his associates regarding the filing of the transcript in the Supreme Court; conferences with Mr. Quinn and his associates regarding the brief and the facts to be presented in the Supreme Court; preparation of the brief on behalf of the Alien Property Custodian in the Supreme Court; examination of the brief for counsel for the appellant in the Supreme Court; re-examination of the law and the authorities in the light of the facts developed on the trial, and preparation for the brief in the Supreme Court; conferences with Solicitor General Frierson in Washington preceding the argument; attendance in Washington on the argument and final submission of the case in the Supreme Court; the work on the brief, examination of the law and facts necessary therefor, conferences with Mr. Quinn and his associates, attendance in Washington, occupying the larger part of a month of counsel's time; and for all other services in the above cause down to and including the argument and final submission of the case in the Supreme Court, in full to date $30,000.00

Disbursements:

1920.		
June 17.	Paid Sidney C. Ormsby Co. for stenographic minutes of the trial, as per detailed receipted voucher annexed, including a daily copy of the minutes of the trial and one-third of the cost of the Court's copy in accordance with the practice	190.40
Nov. 8.	Paid Sidney C. Ormsby Co. for transcript of the arguments of counsel, 1,027 folios at the customary rate, as per receipted voucher of Sidney C. Ormsby Co., hereto annexed	308.10
	Stenographic work and petty disbursements to date	333.23
	Total	30,831.73"

Mr. Anderson: And I wish at this point to state again on the record that I am not attacking the motives or propriety of the actions of these gentlemen in any way, but I am merely showing interest in response to the question raised by counsel.

XQ. 1138. (Continued.) Now, Mr. Joseph H. Choate was general counsel of the Chemical Foundation on the eighth day of March, 1919, was he not?

A. Yes, sir.

XQ. 1139. I see in the accounts which you submitted in evidence on Tuesday an item of $11,574.84 of organization expenses. Do you know of what that item was made up?

A. No. I will get it for you and put it in in detail.

XQ. 1140. Will you get your counsel to show it to you now and put it in at this point?

(Paper produced by counsel for the defendant.)

XQ. 1141. Will you kindly file in evidence a statement showing in detail the items making up this item of organization expenses?

A. Certainly.

Mr. Kresel: We have it here, your Honor, and we have no objection to its going in.

The Witness: Do not tear it out.

Mr. Kresel: No, I will not tear it out.

The Witness: That is the only copy we have left.

Mr. Kresel: Of course, your people, Colonel Anderson, have had it right along.

Mr. Anderson: I know; but I just want an answer to the question.

The Court: Why not give it to the stenographer and have him copy it into the record right at this point?

XQ. 1142. You have presented in detail the statement which you have referred to, and I will therefore ask the stenographer to copy it on the record as your reply to this question. Is that satisfactory to you?

A. Certainly.

(The statement presented by the witness is as follows):

"EXHIBIT A.—SCHEDULE 6."

Sheet No. 1.

ORGANIZATION EXPENSE.

Date.	Name.	Detail.	Amount.	Total.
1919.				
Mar. 20.	Secretary of State	State Tax	$50.00	
		Indexing	2.00	
		Certifying Cert. of Inc.	4.50	$56.50
	Recorder of Deeds	Recording Cert. of Inc.	5.50	
		Notary Fees	.50	
		Revenue Stamps	.30	
		Messenger to Dover, Del.	4.30	
		Telephone & Telegraph	.70	
		Stock Ledger, Stock Transfer Book	7.00	
		Corporate Seal	3.00	
		Minute Book	10.00	31.30
Apr. 5.	Brown, Green Co.	8 Books of Preferred & Common Stock Certificates		271.00
Dec. 31.	Joseph H. Choate, Jr.	Legal Services		10000.00
1920.				
Apr. 29.	Brown, Green Co.	Printing 1000 Trust Certificates		168.00
June 15.	Central Union Trust Co.	Imprinting 1 line on 250 Stock Certificates	5.00	
		Federal Tax Stamps on 840 shares preferred stock at 5¢ each	42.00	
		292 shares common stock at 5¢ each	14.60	61.60
June 25.	Geo. M. Fisher, State Treas.	Annual Franchise Tax for 1919		43.19
July 7.	Evarts, Choate, Sherman & Leon	Application fee for authority to Corp. to do business in State of New York		11.00
15.	Kalamazoo Loose Leaf Binder Co.	2 Full Latigo Current binders with R. M. lettered four lines gold and indexes		55.80

Date.	Name.	Detail.	Amount.	Total.
23.	Evarts, Choate, Sherman & Leon	Balance of application fee to do business in New York State—Total Fee $52.00		41.00
Aug. 11.	Central Union Trust Co.	Federal Tax Stamps on 2371 Shares Preferred stock at 5¢ each		118.55
26.	Comptroller of State of New York	Capital Stock Foreign License Fee		536.13
		Carried Forward		11394.07
		Brought Forward		$11394.07
Oct. 22.	Albert Hepp & Co.	1—200 Page Cash Book	$3.00	
		250—Triplicate Sets Transfer Sheets—Voting Trust Certificates **Common Stock**—#1 to 250 and Preferred Stock #1-250	60.00	
		100 Sheets Carbon Paper	4.00	
		4 Permanent Binders for Transfer sheets of which 2—Common—2 Preferred	22.00	
		2 Temporary Binders for Transfer sheets of which 2—Common—2 Preferred	8.00	
		1000 Ledger Sheets each Voting Trust Certificates for Common and Preferred Stock	45.25	
				142.25
Dec. 21.	Lloyd Van Doren	R. R. tickets to Wash., D. C.		38.52
				$11574.84

XQ. 1143. Mr. Garvan, what has been Mr. Choate's compensation as general counsel of the Chemical Foundation?

A. I think in the four years and a quarter it has been $10,000.

Mr. Kresel: A year?

The Witness: No, no, the entire compensation.

XQ. 1144. In addition to his compensation in the organization of the company?

A. I think that is all he has ever received.

XQ. 1145. Haven't you proved other compensations on your books?

A. I will make positive before the recess, but my impression is that all he has ever had from the beginning is $10,000.

XQ. 1146. I believe you testified that Mr. Ramsay Hoguet was patent counsel of the Alien Property Custodian and was also appointed or elected patent counsel of the Chemical Foundation on March 8th; is that right?

A. Yes, sir.

XQ. 1147. Mr. Garvan, do you know what compensations Mr. Hoguet received from the Alien Property Custodian and from the Chemical Foundation during his service to each?

A. I do not. I think for the services of his firm, anyway.

XQ. 1147-a. Well, he was a member of what firm?

A. Emery, Varney, Blair & Hoguet.

Mr. Anderson: In order to shorten the examination, I offer in evidence a paper consisting of four sheets, entitled "Statement of Fees and Compensations paid to the firm of Emery, Varney, Blair & Hoguet by A. P. C. for dates stated, as shown by A. P. C. Report of 1922." It has the headings showing name of company, page of Miller Report, date and amount. I offer it subject to examination and verification by counsel, as Plaintiff's Exhibit No. 613.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 613." (*See Exhibits, Vol. III, page 1480.*)

XQ. 1148. Mr. Garvan, can you from your books and with the assistance of your accountant now tell me the aggregate amount of legal fees paid to the firm of Emery, Varney, Blair & Hoguet by the Chemical Foundation, showing the first date and the last date of such payments?

A. I can put in an itemized statement before we resume this afternoon.

XQ. 1149. Will you hand the statement to the stenographer and insert it on the record as your answer?

A. Yes, sir. (Statement to be furnished by witness.)

XQ. 1150. Who was Mr. W. F. Keohan?

A. Mr. W. F. Keohan was a newspaper man who worked in Washington. At the time I took him he was working on the Liberty Loan drives.

XQ. 1151. He was publicity agent of the Alien Property Custodian in the Bureau of Investigation from January 1, 1919, was he not?

A. Yes, sir.

XQ. 1152. Do you recall what salary he received?

A. I do not know. I think $4,000 or something like that.

XQ. 1153. The report shows that he——

A. Whatever the report shows.

XQ. 1154. The report shows that he first received $3000 and afterwards $4000. Would you say that that was right?

A. Why, certainly.

XQ. 1155. Mr. Garvan, after you assumed certain duties in connection with the Department of Justice, as to which you testified on Tuesday, Mr. Keohan was appointed a special agent of the Department of Justice, was he not?

A. I don't think so. I would not be clear as to that.

XQ. 1156. How long did he continue as the publicity agent——

A. He helped do the publicity work in relation to the Bolshevik fight that the Department of Justice carried on. Now, I am not sure how his compensation was.

XQ. 1157. Did he continue as publicity agent of the Alien Property Custodian?

A. I would have to look that up, Colonel. I would not be able to tell you.

XQ. 1158. By reference to the minutes of the Chemical Foundation for October 2, 1921, it appears that at that meeting Colonel McKay resigned as vice-president, Mr. Corbett's salary was fixed at $15,000, and Mr. Keohan was appointed as a representative of the Foundation in Washington, the statement contained in the minutes being: "Mr. Keohan has represented the Chemical Foundation at Washington for the past year and a half and has done valuable work for the Chemical Foundation in the past." Is that a correct statement of the situation, so far as you know?

A. Well, his business when he came to the Foundation was in relation to our relations with the different departments. We were working with the Agricultural——

XQ. 1159. I mean he had been representing the Chemical Foundation for a year and a half when he was elected to the head of the Washington office.

A. I can get the date. I do not remember whether it was a year or a year and five months, but that is approximately correct.

XQ. 1160. He was then appointed head of the Washington office or Washington representative of the

Chemical Foundation at a salary of six thousand a year, as stated in these minutes?

A. Yes, sir.

XQ. 1161. Does that accord with your recollection?

A. Yes. He was the liaison officer between the Foundation and the Government.

XQ. 1162. He is still manager of the Washington office, is he not?

A. Yes, sir. We have no office; he has desk room in an office there.

XQ. 1163. He is the representative of the Chemical Foundation in Washington?

A. No, he is not the representative. He represents the Foundation in particular work.

XQ. 1164. What is the particular work

A. He has no authority to represent them. In working with the Chemical Warfare Service, National Research Council, Department of Education, Tariff Commission, Department of Commerce—in fact every department of the Government except the Department of Justice.

XQ. 1165. Have you a statement in your accounts that you have presented here, showing the expenses and detail of the Washington office?

A. Certainly.

XQ. 1166. Would you present it?

A. I can get it for you just as rapidly as it can be separated out.

XQ. 1167. I just want that report; I do not call for the original book.

Mr. Kresel: We produce three reports, and the fourth one is now in the possession of the stenographer, who has just taken it out to make a copy of what was put in.

XQ. 1168. Can you by reference to those reports show me the details of the expenses of the Washington office?

A. It will take some time. Those reports are made up for different periods, the first is for a year and a half, I think, the next for six months, and then the next six months up to January first. But I can make you up a detailed account in an hour.

XQ. 1169. I would like very much to have that made up, if you can do it, showing the details.

A. Certainly.

MR. KRESEL: We will do it.

MR. ANDERSON: I will take it up later in connection with the accounts.

XQ. 1170. Who is Mr. W. W. Buffum?

A. He was an accountant in the Alien Property Custodian's office.

XQ. 1171. Do you remember the period of his service?

A. I do not.

XQ. 1172. Did he serve as long as you were there?

A. I think so.

XQ. 1173. He was there during the entire period you were Alien Property Custodian?

A. I think he was there before I was there.

XQ. 1174. Before you were there?

A. I think so.

XQ. 1175. And served after you left?

A. Yes, sir.

XQ. 1176. Is he now connected with the Chemical Foundation?

A. He is.

XQ. 1177. When did that connection begin?

A. That I could not tell you. I can get the exact date.

XQ. 1178. Could you give me the date that he resigned from the Alien Property Custodian's office and the date that he became connected with the Chemical Foundation?

A. I will get it, certainly.

Mr. Kresel: We will give you the date now. Mr. Buffum is right here.

Mr. Buffum: July 15, 1921.

Mr. Anderson: And he became connected with the Foundation when?

The Witness: I should say the next day.

XQ. 1179. Who is Mr. J. R. Zimmerman, who was in the office of the Alien Property Custodian?

A. I think he was—

XQ. 1180. Head of the Bureau of Trusts?

A. Head of the Bureau of Filing.

XQ. 1181. Was he not afterwards head of the Bureau of Trusts under you?

A. No.

XQ. 1182. Are you sure of that?

A. Positive.

XQ. 1183. He was in charge of files, then; is that it?

A. The files, yes.

XQ. 1184. Do you know when he resigned?

A. No.

XQ. 1185. Is he now connected with the Chemical Foundation?

A. He is working for us during the preparation of this case.

XQ. 1186. Will you tell us the date when he became connected with the Chemical Foundation and the date of his resignation from the Alien Property Custodian's office?

A. Yes, I think it was three or four months ago when we began to prepare for this case.

Mr. Kresel: Colonel, I understand all that information is in Colonel Miller's report.

Mr. Anderson: Could you give it to me—because this report is not indexed.

Mr. Kresel: We would be very glad, Colonel, to stipulate all of this matter.

Mr. Anderson: I know you would.

Mr. Kresel: If you would only ask us to do it.

Mr. Anderson: Until after the evidence the other day I had not expected to put it in, but after going over the evidence the other day the testimony there would seem to me to require this information.

Mr. Kresel: We will give you that information in a minute.

XQ. 1187. It is stated here that Mr. Zimmerman resigned from the Alien Property Custodian's office June 1st, 1922.

A. Yes.

XQ. 1188. Is it about that time he became connected with the Chemical Foundation?

A. No.

XQ. 1189. When was it?

A. Months later. I think he went into business in Philadelphia. It was when we began to prepare for this case. It is only a few months.

XQ. 1190. When you began to prepare for this case he became an employee of your company?

A. (None).

XQ. 1191. What was the connection of Mr. L. H. Boggs with the Alien Property Custodian?

A. Boggs was a lawyer.

XQ. 1192. Was he not general counsel?

A. I think toward the end Mr. Boggs was head of the Law—yes, I know he was.

XQ. 1193. General counsel for you as Alien Property Custodian?

A. Yes, sir.

XQ. 1194. He is now one of the counsel in this case, is he not?

A. Yes, sir.

XQ. 1195. He has been counsel for the Chemical Foundation in Washington since what date?

A. I think about July first of last year.

XQ. 1196. Was he not general counsel in 1921?

A. I do not think so.

Mr. Kresel: Colonel, we will get you that. Mr. Boggs is right here. Mr. Boggs, Colonel Anderson wants to know when you became counsel for the Chemical Foundation?

Mr. Boggs: October, 1921.

Mr. Kresel: October, 1921.

Mr. Anderson: I accept that. Thank you very much, Mr. Boggs.

XQ. 1197. With what firm is Mr. S. M. Stellwagen connected?

A. Palmer, Davis & Scott.

XQ. 1198. Is that Mr. A. Mitchell Palmer?

A. Yes.

XQ. 1199. Mr. Stellwagen was once an attorney in the office of the Alien Property Custodian, was he not?

A. He was. He was the expert on legislation.

XQ. 1200. On legislation?

A. Yes.

XQ. 1201. Do you know about what time he left the office of the Alien Property Custodian?

A. No.

XQ. 1202. Do you know what time he became connected with the law firm of Mr. A. Mitchell Palmer?

A. I would assume about March 4, 1921.

XQ. 1203. Certainly very soon after the retirement of Mr. Palmer from the office of Attorney General?

A. I think Mr. Palmer began to practice almost immediately.

XQ. 1204. Mr. Stellwagen is one of your counsel in this case, is he not?

A. Yes, sir.

XQ. 1205. The firm of Palmer, Davis & Scott has represented the Alien Property Custodian in Washington since 1921, have they not?

A. Represented the Alien Property Custodian?

XQ. 1206. I mean the Chemical Foundation.

A. In certain matters.

XQ. 1207. They have been the attorneys for the Chemical Foundation, in certain matters?

A. Certainly. Mr. Stellwagen has, and I assume that carried the name of the firm. He has done the work.

XQ. 1208. He has done the work?

A. Yes.

XQ. 1209. As a matter of fact, they represented the Chemical Foundation in connection with the license to the Navy Department of these patents which you spoke of?

A. He worked with the Navy in the drawing of it. That is, as to the technical details, getting the license numbers, the numbers of the patents and all those things correct.

XQ. 1210. Who is Mr. F. E. Haynes?

A. Mr. F. E. Haynes is a young lawyer.

XQ. 1211. Was he once attorney for the Alien Property Custodian?

A. I am not sure whether he was admitted to the Bar while he was there. He was admitted to the Bar while he was there, I understand.

XQ. 1212. He was in the office of the Alien Property Custodian?

A. Yes.

XQ. 1213. While you were Alien Property Custodian?

A. Yes, sir.

XQ. 1214. He was then connected with the Department of Justice, was he not?

A. He was what?

XQ. 1215. He was for a while connected with the Department of Justice?

A. Yes, sir.

XQ. 1216. That is while you were discharging certain duties in connection with the Department

A. Yes, sir.

XQ. 1217. And he is now one of the attorneys in this case, is he not?

A. No. He is an attorney in my office.

XQ. 1218. He is an attorney in your office?

A. Yes, sir.

XQ. 1219. But he is engaged actively in this case?

A. No, sir. He is in my employ—my personal employ.

XQ. 1220. But he is one of the attorneys in the room in this case and helped in the preparation of this case; is that so?

A. Oh, yes.

XQ. 1221. On Monday Mr. Kresel introduced a report which was made by a man named Edward S. Rogers.

Mr. Anderson: Am I right about that?

Mr. Kresel: Rogers is the name. I do not recall the initials.

XQ. 1221. (Continued) Claimed to be connected with the Federal Trade Commission, which on the facts before us we admitted he was, at the time—connected with the Federal Trade Commission. Was not Mr. Rogers subsequently employed by the Chemical Foundation, about January, 1922?

A. I am not sure that there was not some one trade-mark matter. I will look that up and find out.

XQ. 1222. You think as far as you can remember he was?

A. I think he charged us only his disbursements, that is all, in some matter that he attended to.

THE COURT: We will take a recess now until one o'clock Eastern Standard Time.

(Recess until 1.00 o'clock P. M. Eastern Standard Time.)

AFTER RECESS.

XQ. 1223. Mr. Garvan, defendant put in evidence on Tuesday a report by Mr. Norton, formerly agent of the Department of Commerce? You recall that, do you not?

A. Yes, sir.

XQ. 1224. In the question on Tuesday, either I in my question or you in your answer, inadvertently referred to him as an agent of the Department of Justice. There was no such person who was an agent of the Department of Justice?

A. No, sir.

XQ. 1225. Do you know where Mr. Norton is now?

A. No, I do not.

XQ. 1226. Do you not know he is employed by the duPonts?

A. I understand he is not and has not been for some years.

XQ. 1227. There was also some evidence put in here as to Captain Dix, of the War Department, in connection with negotiations as to the nitrogen patents. Do you know where Captain Dix is now?

A. I do not.

XQ. 1228. There was also a good deal of evidence of Major A. M. Holcomb, of the War Department. Do you know where Major Holcomb is?

A. I do not.

XQ. 1229. Have you been able to get up a statement from your books of the amounts of fees paid Messrs. Emery, Varney, Blair & Hoguet by the Chemical Foundation?

A. No, I have not.

XQ. 1230. The Alien Property Custodian approved the various payments to counsel and others representing these matters, did he not, during the period of the Alien Property Custodian's office?

A. They were first fixed by the Boards of Directors and then approved by us.

XQ. 1231. Approved by the Alien Property Custodian?

A. Yes, sir.

XQ. 1232. Or, where the service was rendered to the Alien Property Custodian direct, they were of course approved by him?

A. Certainly.

XQ. 1233. You spoke of Mr. Bradley Palmer's connection with this matter. Do you know when he became connected with the A. P. C.'s office?

A. Very shortly after it was organized.

XQ. 1234. My records show March 26th, 1918. That would be about the time, would it not?

A. Yes.

XQ. 1235. And they further show that he was connected with the office as an attorney; is that in accordance with your recollection?

A. Yes, sir, general adviser.

XQ. 1236. Mr. Bradley Palmer was actively associated with you and Mr. A. Mitchell Palmer in connection with the plans for the organization of the Chemical Foundation and the sale of these patents, was he not?

A. I do not know how much part he played in it. I was in New York and he was in Washington. I assume we advised with Mr. Palmer on every important thing.

XQ. 1237. In your evidence before the Committee on Ways and Means, to which reference has frequently been made, at page 244 you say:

"For a month or six weeks Mr. Palmer and myself and Mr. Bradley Palmer and others sought in every way possible to find some way by which we could turn the idea over to the Government and make it efficient in the use and protection of the patents."

Was that true?

A. Undoubtedly.

XQ. 1238. In the same book, at page 272, you testified as follows:

"MR. MOORE: Do you know who drafted that Executive order signed by Frank L. Polk?

"MR. GARVAN: I can give you my best belief, based upon the course of business in the office, that it was drafted by Mr. Mitchell Palmer after consultation with Mr. Bradley Palmer, and, undoubtedly, after consultation with Mr. Hoguet, who was the principal adviser on patents.

"Mr. Moore: Mr. Ramsay Hoguet?

"Mr. Garvan: Yes.

"Mr. Moore: Who is associated with Mr. Choate as counsel of the Chemical Foundation, Inc., of which you are President?

"Mr. Garvan: He is not associated with Mr. Choate, but he is our patent counsel.

"Mr. Moore: And Mr. Ramsay Hoguet, with whom Mr. Palmer probably conferred, as you say, over the drafting of this Executive order by Frank L. Polk, was named as associate counsel with Mr. Joseph H. Choate, Jr.?

"Mr. Garvan: Yes.

"Mr. Moore: Of the Chemical Foundation, Inc., of which you are President?

"Mr. Garvan: Of the Chemical Foundation, Inc., yes. And, furthermore, I think you will find that order received the consulting advice of every big patent lawyer in the country representing these big manufacturers."

Then further on, there was another question:

"Do you still say you do not know who prepared that Executive order signed by Frank L. Polk?

> "Mr. Garvan: I have given you my best impression, that it was Mr. Mitchell Palmer, Mr. Bradley Palmer, and Mr. Hoguet."

Is that your testimony?

A. Yes, sir.

XQ. 1239. Do you know who paid the expense of Mr. Bradley Palmer to Paris?

A. Probably the State Department.

XQ. 1240. You do not know?

A. I do not know. He was appointed at the request of the President or appointed by the President.

XQ. 1241. Hold on. I just asked you whether you knew.

A. No.

XQ. 1242. You don't know anything about the request of the President; you did not see the President?

A. I know that the President appointed him.

XQ. 1243. Did you see the President yourself?

A. Did I see the President—what?

XQ. 1244. At that time?

A. No.

XQ. 1245. Anything that you know on that is what people told you?

A. No, I know it from my communications with him while at the Peace Conference, under the official seal of the State Department, through the State Department.

XQ. 1246. With whom?

A. Bradley Palmer.

XQ. 1247. You communicated with Bradley Palmer?

A. Certainly. All communications at the Peace Conference were made through the State Department.

XQ. 1248. No matter who it was?

A. No matter who it was, it had to go through the State Department. If I wanted to cable to the Peace Conference, I had to send my cablegram to the State Department, have it vised there and forwarded to Paris and then the Paris Peace Conference would send the cable here and the part of it that was for my attention would be de-coded by the State Department and sent to me.

XQ. 1249. You also sent some cables to Dr. Herty over there, did you not?

A. Yes, sir.

XQ. 1250. Who paid his expenses?

A. The Chemical Foundation, at the request of the State Department and the Peace Mission.

XQ. 1251. Mr. Garvan, I asked you who paid his expenses; I did not ask you at whose request or how.

THE COURT: Do you want the latter part of the answer stricken out?

MR. ANDERSON: Yes, sir.

THE COURT: Let it be stricken out.

XQ. 1252. Can you state now when he became a member of the voting trust of the Chemical Foundation?

A. Who—Mr. Bradley Palmer?

XQ. 1253. Yes.

A. I had that date yesterday.

XQ. 1254. The minutes of the Chemical Foundation show——

A. Wait a minute.

MR. KRESEL: April 4th, 1921, Colonel.

THE WITNESS: April 4th, 1921.

MR. ANDERSON: April 4th, 1919, according to our records.

THE WITNESS: No, you are wrong.

MR. KRESEL: It is 1921.

XQ. 1255. Mr. Garvan, do you recall whether you communicated with Mr. Bradley Palmer a request to get a provision in the Peace Treaty expressly ratifying the sale of these patents?

A. No, I do not think I did.

XQ. 1256. You do not recall whether you did or not?

A. No, my communication with him was to get a ratification at the Peace Conference of all our acts, and I do not think it mentioned the Foundation at all.

XQ. 1257. Would you mind just answering this question: do you recall whether you communicated with him requesting him to get a ratification of the particular sale of these patents?

A. The best of my recollection is I did not. I have all my cables. I will look it up.

XQ. 1258. After your appointment as Alien Property Custodian on the 4th of March you continued to seize these chemical and dyestuff patents and transfer them to the Chemical Foundation on the various dates named in the assignments in the record in this case, did you not?

A. Yes, sir.

XQ. 1259. At that time you were familiar with the provisions of the Trading with the Enemy Act, Section 12, as to the holding and disposition of property by the Alien Property Custodian?

A. I was generally familiar with the Act; yes, sir.

XQ. 1260. Were you at that time familar with the provisions of the report of Mr. A. Mitchell Palmer, dated February 22, 1919, with respect to the manner of holding property by the Alien Property Custodian?

A. Yes, sir.

XQ. 1261. At the time you made the several conveyances here involved, were you familiar with the bylaws of the Chemical Foundation which gave to the survivors of the Voting Trustees the power to fill vacancies and created in them a self-perpetuating body for seventeen years?

A. Yes, sir.

XQ. 1262. As a lawyer you were then and you are now familiar with the duties, obligations and limitations of trustees?

A. Of what trustees?

XQ. 1263. Of any kind of trustees.

A. There are so many different kinds I won't swear I am familiar with all of them.

XQ. 1264. On April 10th, 1919, at the time the principal conveyance was made, and at the time of the subsequent conveyances shown by the record, were you familiar with the provisions of Section 1783 of the Revised Statutes of the United States, which provides as follows:

> "No officer or agent of any banking or other commercial corporation, and no member of any mercantile or trading firm or person directly or indirectly interested in the pecuniary profits of contracts of such corporation or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation or firm, and every such officer, agent or member or person so interested who so acts, shall be imprisoned for not more than three years and fined not more than two thousand dollars."

A. No, I do not think I was. I never heard of it until this minute.

XQ. 1265. Never heard of it until this minute?

A. No.

XQ. 1266. On April 10th, 1919, were you familiar with the plan of sales organization and the rules and regulations of the Alien Property Custodian's office, promulgated by the Alien Property Custodian on June 6th, 1918?

A. Yes, sir.

XQ. 1267. You were, then, familiar with the following provision contained in the order entitled "Plan of Sales Organization and Rules and Regulations," dated Washington, June 6, 1918, as contained in the report of A. Mitchell Palmer, Alien Property Custodian, at page 206:

> "It is necessary that every precaution should be taken to enable properties to be sold fairly and for a proper price, without any possibility of favoritism or undue advantage in favor of any particular purchaser."

You were familiar with that, were you?

A. Certainly.

XQ. 1268. You were also familiar with the provision in those Regulations, Page 209, Section 2, which reads as follows: "Under no circumstances will any person in the employ of or connected with the organization of the Alien Property Custodian be permitted to bid for or purchase any property, or be interested directly or indirectly in any such purchase, or in any corporation or syndicate interested therein. This provision also applies to local representatives and local attorneys in the sales of properties in respect of which they have represented or acted for the Alien Property Custodian."

A. Yes, I was familiar with that.

XQ. 1268a. Do you not know as a matter of fact that on May 2d, 1919, the Advisory Sales Committee refused to approve the sale of the Hackfeldt property at Honolulu, on the ground that one person interested in the purchase had formerly been connected with the Alien Property Custodian's organization?

A. No, that is all gone from my mind at this time.

XQ. 1269. You are familiar with the Bosch Magneto sale, are you not?

A. Very.

XQ. 1270. Do you not know that after the property was bid in by the purchaser, the Liberty Securities Corporation was required to retire fom the syndicate because Mr. Bowers, the vice-president of that company, had been an officer of the Bosch Magneto Company appointed by the Alien Property Custodian?

A. I think it was before the bid was made he retired.

XQ. 1271. He was not allowed to participate in the sale, isn't that true?

A. No; he had a money interest in it.

XQ. 1272. Did you not at the time these conveyances were made know that all contracts made by the Government of the United States during the war contained an express provision, as required by law, prohibiting any officer of the United States, or member of Congress, or agent of the United States, from having any interest in said contract or the provisions thereof or the benefits thereof?

A. I did not know that was a specific statute, but I assumed it was the law, naturally.

XQ. 1273. Did you not know that at the time this sale was made and subsequently the laws of the United States prohibited any person from aiding any contractor in making out his bid, advising any contractor, or in any way being interested with any contractor or the person contracting with the Government of the United States, in the transaction of business between the Government and such contractor?

A. I did not know the statute. I assumed it was the law. I knew it was ethics.

XQ. 1274. Were you not at that time familiar with the provisions of Section 6 of the Trading with the Enemy Act, providing as follows:

> "That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report

> shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof."

You were familiar with that provision, were you not?

A. Yes.

XQ. 1275. Did you ever submit to the President of the United States or to Congress any report during the term of your office as Alien Property Custodian, which you have testified covered a period of more than two years from March 4, 1919, to March 12, 1921?

A. No.

XQ. 1276. Did you ever make any report to the President or Congress showing a list of persons appointed or employed by the Alien Property Custodian during your term of office, with the salary and compensation of each, and a statement of the kinds of property taken into custody and the disposition made thereof, as provided by Section 6 of said Act?

A. In great part I did. I prepared that whole thing for the Committee on Appropriations.

XQ. 1277. What committee on appropriations?

A. The House Committee on Appropriations.

XQ. 1278. When?

A. Before the date of my testimony there. They were awaiting legislation, and we made the report to Congress showing everything up to Mr. Palmer's time, and it was not considered policy to put the Government to any expense until Congress was ready to take it up, with continuous repetition of printing, and so forth, of what had already been done and what would eventually have to be done properly at the time that Congress was ready to legislate. It was all there, and I said there, we notified every Congressman and Senator that they could get any information in five minutes from our books; they were up-to-date.

XQ. 1279. Did you ever make to the President or to Congress any report giving a list of the patents, trade-marks, copyrights and other property assigned to the Chemical Foundation, or showing the sale thereof or the disposition thereof, or any report showing the seizure thereof, in any way?

A. No.

XQ. 1280. You are, of course, familiar with the provisions of Section 1780 of the Statutes of the United States, providing that "Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any act of Congress, within the time prescribed by law or by regulations, shall be fined," and so forth, are you not?

A. It was the President's duty to report, not mine.

XQ. 1281. You are familiar with the fact that the President delegated or vested in the Alien Property Custodian certain duties under this Act, are you not?

A. Yes. If he would have wanted me to report, he would have notified me.

XQ. 1282. Including the seizure of property and the execution of the provisions of Section 12?

A. Yes. The report had to be made to him. If he wanted it, he could have gotten it in five minutes.

XQ. 1283. You have testified that you were familiar with the fact that the Federal Trade Commission issued from time to time and was issuing licenses to American manufacturers to manufacture, vend and use products and processes provided by patents and also trade-marks owned by alien enemies, is that true?

A. Yes.

XQ. 1284. You were aware that payments under such licenses were made to the Alien Property Custodian under the terms of said Act and in fact were collected by you as Alien Property Custodian during your term of office; were you not?

A. Yes, sir.

XQ. 1285. You were aware that the Alien Property Custodian had seized a number of contracts in favor of alien enemies made with American citizens by alien enemies providing for the payment of royalties or other compensation for the use of patents in the United States, owned by such alien enemies, were you not?

A. Yes.

XQ. 1286. You were aware that you as Alien Property Custodian were collecting compensations or royalties provided for by said contracts and payable thereunder from time to time during your term of office, were you not?

A. I was.

XQ. 1287. You were of course aware that under Section 10 of the Trading with the Enemy Act, the maximum royalty allowed to be charged under such license by the Federal Trade Commission was 5 per cent.?

A. I did not know that.

XQ. 1288. And further, that United States Courts were given jurisdiction within one year, upon suit of the owner of the patent, to fix a reasonable license fee and to confirm said license for the life of the patent where expenditures had been made in the development of the processes or in connection with the use thereof; you knew that?

A. Yes, sir.

XQ. 1289. You of course knew at the time of these various assignments that in the event no expenditures had been made under such licenses, and the same should be for any reason terminated at the end of the war, though granted for the life of the patent, and the same had been seized by the Alien Property Custodian, that the title to such patent with the right to use the same was vested in the Alien Property Custodian subject to such final disposition as Congress might direct under the Trading with the Enemy Act; were you not?

A. I do not know. I would like to have you read that again.

XQ. 1290. I will read it over to you. You were of course aware that in the event no expenditures had been made under such licenses of the Federal Trade Commission and the same should be for any reason terminated at the end of the war, though granted for the life of the patent, and the patent had been seized by the Alien Property Custodian, that the title to such patent, with the right to use the same, was vested in the Alien Property Custodian subject to such final disposition as Congress might direct, under the Trading with the Enemy Act?

A. Yes, sir. I mean, provided it had not been sold by the Alien Property Custodian.

XQ. 1291. Yes. Did you not while Alien Property Custodian and as President of the Chemical Foundation, subsequent to the assignment of these patents to the Chemical Foundation, urge the licensees of the Federal Trade Commission to surrender their licenses and take out licenses under the Chemical Foundation?

A. Yes, sir.

XQ. 1292. Did you not have your patent counsel, Mr. Hoguet, appear before the Federal Trade Commission on behalf of the Chemical Foundation and urge that Commission to accept such surrender?

A. Yes, sir.

XQ. 1293. You were aware, were you not, that the Attorney General of the United States was by law the legal adviser of the Alien Property Custodian?

A. Yes, sir.

XQ. 1294. Did you ever obtain from the Attorney General of the United States an opinion as to the right of the Alien Property Custodian to sell property at private sale or as to the legality of the several sales and assignments made by you to the Chemical Foundation?

A. No, sir.

XQ. 1295. Did you ever obtain from the Attorney General of the United States an opinion as to the right of the Alien Property Custodian to sell alien property seized by him at less than its fair value?

A. I don't think I did.

XQ. 1296. I just asked you if you obtained such an opinion?

A. I don't think so.

XQ. 1297. Did you not know that the trade-marks sought to be conveyed by you under the assignments in evidence in this case, with which you are familiar, were trade-marks upon products manufactured by German concerns in Germany?

A. I would have to examine to find out whether that was universally true. I would say it was generally true.

XQ. 1298. Did you not know that the business with which the said trade-marks were associated was in fact conducted in Germany and the products sold under such trade-marks were produced in Germany?

A. In general, I should say that was true.

XQ. 1299. Did you not know that you had not seized and could not seize or convey a business with which said trade-marks were associated or the plants in which the products under said trade-marks were in fact manufactured, since they were outside the territorial limits of the United States?

A. That is a big legal question on which there are two sides. You mean that the trade-mark won't go with anything except a going business?

XQ. 1300. Yes. I believe you testified Tuesday that you did not make any inquiry as to the amount of accrued license fees or the monthly or annual income under licenses issued by the Federal Trade Commission?

A. I did not.

XQ. 1301. And the same applies to income on contracts held by the Alien Property Custodian?

A. Yes.

XQ. 1302. Did you make any inquiry as to the reasonableness of the Federal Trade Commission license fees provided in the various licenses issued by that Commission?

A. No.

XQ. 1303. I again read from page 360 of your evidence on H. R. 2706, already referred to, in which you replied to a question by Mr. Green, as follows:

> "Why, Mr. Green, it was by virtue of our connection with the Alien Property Custodian's office that we saw it as our public duty not to let this thing revert to where it was, and everything we have done since has been because of what all of us saw was threatening America and because we saw the situation which had been hanging over America before the war, and it was in our endeavor to use that information for the benefit of the American people that we assumed the burden of carrying on this fight."

I think you said that was your tesitmony?

A. It was.

XQ. 1304. Now, Mr. Garvan, do you mean to tell me that your purpose in making the assignment of April 10, 1919, and the assignments thereafter made by you were with a view of promoting and developing American industry by making these patents available to American industry on the best terms possible?

A. That was only a means to the end, to our aim.

XQ. 1305. That was a means to an end?

A. To our aim.

XQ. 1306. What was your real aim?

A. Our real aim was to make this country safe, to win this war. Without the building up of this industry, the war was lost and is lost today. And furthermore, to lay a foundation for the future development of American medicine. And only upon the basis of a developed organic chemical industry can either of those two things be accomplished and if it is not accomplished, the Germans have still won the war. France finds it out today. England has found it out and America found it out.

XQ. 1307. I don't mind about America, but as to England and France, you were not undertaking to develop their industry, too, were you?

A. No, they are taking care of themselves.

XQ. 1308. I thought so.

A. They are doing the same thing over there.

MR. ANDERSON: That I move to strike out. He cannot know what they are doing in England and France.

THE COURT: Motion granted.

XQ. 1309. Were you on April 10, 1919, and on the dates of your subsequent conveyances to the Chemical Foundation familiar with the provisions of Section 3, sub-section B, of the charter of the Chemical Foundation, which is as follows:

> "In furtherance of the above objects and purposes the Corporation may grant non-exclusive licenses only, to make, use, and sell the inventions covered by any patents owned or controlled by it to the United States of America, upon such terms as the Board of Directors may determine, and also upon reasonable and equal terms and without advantage, as between licensees, to the following: (1) Natural persons, citizens of the United States; (2) Copartnerships, all the members of which are citizens of the United States; and (3) Corporations organized under the laws of the United States or of any state, territory, or dependency of the United States, of which not less than three-fourths of the capital stock and the beneficial in-

> terest therein is owned by stockholders who are citizens of the United States and who were not, prior to the 'end of the war,' as used in the 'Trading with the Enemy Act,' enemies or allies of enemies, as defined by said Act, and the amendments thereto.
>
> "The Board of Directors may refuse to issue any license or may revoke any license granted by the Corporation and may prescribe the terms and conditions of said licenses."

A. Yes, sir.

XQ. 1310. You were familiar with that?

A. Certainly.

XQ. 1311. And you were familiar with all the other provisions of the charter, I assume?

A. I think so.

XQ. 1312. I will read to you your evidence before the Committee on Ways and Means referred to here as the Hearing on H. R. 2706, page 245, in which the following takes place:

> "Mr. Green. I asked the gentleman what he meant by efficiency in this connection. Instead of answering that directly he was drifting off into some other matter.
>
> "Mr. Garvan. I was illustrating. There is no efficiency in a Government-owned patent which is open to everyone, because no one will spend the money to develop an invention under such circumstances and fit up plants for the purpose of manufacture when a neighbor can put up another plant next door to him the next day. If these patents had been thrown open to the public we would have been in the same position and had no protection against a German project——
>
> "Mr. Green (Interposing). Let me show you how utterly irrelevant that is. You are proposing by this Chemical Foundation to permit non-exclusive licenses to be issued. That is, one man can put up a factory, and another man can get a license and may put up another factory, and by that same

argument the Chemical Foundation would not know what the situation was.

"Mr. Garvan. To the capacity of the industry, you will find in the charter."

Mr. Garvan, as you are familiar with the charter, can you point out any provision in it that limits your duty to license to the capacity of the industry?

A. No, not in that language?

XQ. 1313. Not in that language?

A. It does in spirit and does in intent and purpose.

XQ. 1314. And you have so acted under it?

A. No one but a German has ever complained of that proposition.

XQ. 1315. You have so acted under it, have you?

A. Absolutely.

XQ. 1316. Who determines the capacity of the industry?

A. We have never had to determine the capacity of the industry, because we have not reached it yet.

XQ. 1317. You say you acted under it in that spirit. I will ask you again to answer my question. Assuming you had to exercise that judgment, who determined the capacity of the industry, in your understanding?

A. I will explain it to you. We called together all the stockholders of the industry and asked them what should be our general rule on that and it was decided some two or three years ago that no license would ever be refused.

XQ. 1318. Is there a matter of any record on that?

A. Yes, sir. That is a matter of record in one of the first meetings, on the minutes of the Foundation, of the Advisory Committee. You will find it there.

XQ. 1319. Now, suppose an application came up—

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A. No, you will find it provided that they had to come back and get the licenses issued by us; but they have a right to go out and drum up business for us.

XQ. 1333. Then it is an exclusive agency, whatever it is?

A. Yes, it is an exclusive agency to go out and push that one patent, to get as many licensees as possible.

XQ. 1334. At page 359 of your testimony before the House Committee on Ways and Means, you were testifying as to the licenses and you make this statement in reply to a question of Mr. Green:

> "That charter in reference to license was approved—drawn, practically drawn, but approved—by every dye manufacturer in the country. Now, if they thought that their ability to get license was to be limited, they never made a suggestion of it. They had their lawyers, Mr. Kalish—they had at least 15 or 20 of their lawyers who went over the charter and the license provision was drawn in accordance with their wishes. The Dye Institute, which is an open institution now, composed of every dye manufacturer in the country who cares to join, and with an open invitation to every manufacturer who manufactures a pound of dye in the country to join, the license is as the industry requested it, and that language is their language, so that they are not alarmed by it."

Is that your testimony?

A. Yes, sir.

XQ. 1335. In your testimony before the Committee on Finance of the United States Senate, on H. R. 8078, at page 550, you testified as follows; question by Mr. Demming:

> "MR. DEMMING: With regard to the Chemical Foundation and the patents which the Chemical Foundation owns, isn't it the privilege of the Chemical Foundation to decline or to allow the

privilege to ayone whom they may select to make products under any patent?

"Mr. Garvan: No; I do not believe it would be considered by any court. We would have to show some reason for doing it, for not issuing it to some American. We never shut out anybody or refuse a license. A German can not come over here and take out a license from the Chemical Foundation. Those patents are for the purpose of educating American chemists, and the Germans cannot send their chemists over here and evade our plan or rules, but any American who wants to develop the industry in America can take out any license he wants.

"Mr. Demming: Then it is the policy of the Chemical Foundation to apply the same principles for the stocks of the Chemical Foundation for the privilege of the right to manufacture under any patent which they hold if they will grant him a license.

"Mr. Garvan: That is our policy.

"Mr. Demming: No matter who he is?

"Mr. Garvan. 'No matter who he is' is pretty broad.

"Mr. Demming: Then you do retain the privilege or the right to exercise a choice?

"Mr. Garvan: Suppose a man wanted a thing for the purpose of blackmail, or for a wrongful purpose, or for the purpose of forcing fake stock upon the people and to advertise he had valuable patents?

"Mr. Demming: You are judges of that.

"Mr. Garvan: First, under the constitution, the stockholders themselves who own the business and the trade, make their recommendations to us, and we follow their recommendations.

"Senator Curtis: In short, it is the purpose to grant the request of any reliable applicant?

"Mr. Garvan: Certainly. First, the application goes—for instance, for dye patents, to the dye trade for recommendation as to the man. For instance, as to the Badische patents, dye patents,

> we have already granted five or six licenses; and anyone can come in and get a license who will help on with this general cause."

Is that your testimony?

A. Yes, sir. Does it appear who Mr. Demming was?

XQ. 1336. He was a member of Congress, I think.

A. No, no, no; he was an employee of Mr. Metz.

XQ. 1337. Very good. I have no objection to that appearing on the record. But you did so testify, did you not?

A. Yes, sir.

XQ. 1338. You spoke there of referring it to the stockholders. Do you refer in that connection to the Advisory Committee?

A. That is what I referred to. We referred that general question to them and they passed on it and said it was better to have a regulation leaving no restrictions on granting a license.

XQ. 1339. There is included in this record, as Exhibit F with the Bill of Complaint, and as being introduced in evidence as an exhibit, a paper entitled "Constitution and By-laws, Chemical Foundation, Advisory Committee." Is that the committee to which you refer?

A. Yes, sir.

XQ. 1340. Is that the constitution which you referred to in your evidence, where you said, "under our constitution"?

A. I suppose so; I do not know exactly.

XQ. 1341. You have no other constitution have you?

A. No, no.

XQ. 1342. This Advisory Committee consists, as appears from the constitution, of the President and the Vice President of the Chemical Foundation, a representative of the American Dyes Institute and a representative of the Manufacturing Chemists' Association of the United States, to be respectively chosen by each association, the chairman of the Section Committee, and not to exceed five committeemen at large, to be chosen by the Chemical Foundation. Is that the organization of it now?

A. Yes, sir.

XQ. 1343. Can you tell me who that Advisory Committee is today, and who they represent?

A. Well, I can get it for you.

XQ. 1344. I would like very much to know the names of the members of the Advisory Committee and what institutions they represent.

A. I can name some of them for you.

XQ. 1345. Name what you can of them. Will you put in an answer to this question giving a complete list of the Advisory Committee, showing the organizations which they represent, commercial organizations?

A. Yes, sir.

Mr. Kresel: That appears from the minutes of that committee, which are in, Colonel. But we will give it just the same.

Mr. Anderson: It does appear from the minutes.

Mr. Kresel: Yes, the minutes are in. You put all of them in.

Mr. Anderson: I will get the witness to identify some of these gentlemen who appear to have attended these meetings.

Mr. Kresel: What date is this?

Mr. Anderson: The meeting of October 18th, 1922.

XQ. 1346. At that meeting there were present Francis P. Garvan, Mr. James T. Pardee, of Section 1. What section was that?

A. I do not know which section he came under. He is of the Dow Chemical Company, but they have several different lines. They are heavy chemical people, dye people and drug people. I do not know which section he was in.

XQ. 1347. Dr. W. J. Schieffelin?

A. That is the Schieffelin Drug Company.

XQ. 1348. That is drugs?

A. Yes.

XQ. 1349. Mr. George P. Adamson?

A. I do not remember which company he is in.

XQ. 1350. That is Section 3. Mr. E. A. Colby, Section 5. Do you know him?

A. No. I mean I cannot identify his company.

XQ. 1351. Mr. Henry Howard?

A. Mr. Howard is Secretary of the Manufacturing Chemists' Association. He was with the Merrimac Chemical Company at that time, now with the Grasselli.

XQ. 1352. At the meeting on October 26, 1921, there were present Mr. Henry Wigglesworth—whom did he represent?

A. General Chemical Company, heavy chemicals.

XQ. 1353. Who was Mr. S. S. Norton?

A. Of the Permutit Company, a resuscitation company, which has that machine for resuscitating people overcome.

XQ. 1354. At the meeting of April 20th, 1921, I find present Mr. Pardee, Mr. Schieffelin, Mr. Wigglesworth, Mr. Norton and Mr. Howard, whom you have identified, and Mr. J. Merritt Matthews, representing the American Dyes Institute. Was that Dr. Matthews?

A. Yes, that is Dr. Matthews. He is the editor of a color journal, a dye journal.

XQ. 1355. I find at another meeting on November 18, 1920, the additional name of Dr. W. T. Cashman

He represented the Grasselli Chemical Company, did he not?

A. The Grasselli Chemical Company.

Mr. Kresel: Colonel, do you still want us to furnish a list to date? We will do it, if you say so.

Mr. Anderson: You might give me the list, and if it adds any names I will put it in; if it does not, I will not.

Mr. Kresel: All right.

Mr. Anderson: Because the committee as provided by the constitution is much larger than that and I want to see if it was ever filled.

XQ. 1356. I note in the provisions of the charter which I read you a while since there is contained the statement that the board of directors may fix the terms of all licenses and may cancel licenses. Have you ever cancelled any licenses?

A. Not except on request, I do not think.

XQ. 1357. Are you sure about that?

A. Before swearing positively I would like to make an examination. I have no recollection of a license that we have cancelled except at the peoples' request. But I would like to see Mr. Buffum there, who might tell me. Mr. Buffum informs me we have not.

XQ. 1358. All of your licenses issued by you to domestic manufacturers or dealers contain a provision to the effect that the licensee is not permitted to import under that license, do they not?

A. I think so.

XQ. 1359. You think so?

A. I think so.

XQ. 1360. Of course, the license form is in evidence. I will show it to you if you wish.

A. That is so, to my recollection

XQ. 1361. Your license fee on all importations I think you said was 10 per cent?

A. Yes, sir.

XQ. 1362. I mean a royalty.

A. A royalty. We have no license fee.

XQ. 1363. Your royalty on all importations is 10 per cent.?

A. Yes, sir.

XQ. 1364. But you do have a license fee for issuing the license of $100?

A. Not on importations. On domestic manufacture.

XQ. 1365. Is not that 10 per cent. based upon the American price, which includes 60 per cent. import duty now imposed on dyestuffs?

A. Yes, sir.

XQ. 1366. It is?

A. Yes, sir.

XQ. 1367. Then the 10 per cent. which you levy is on the gross American selling price?

A. Yes, sir.

XQ. 1368. Do you know of any provision in your charter limiting the power of the Board of Directors to prescribe such import license royalty as they may see fit?

A. No, sir.

XQ. 1369. Mr. Garvan, much has been said here about the so-called Haber nitrogen patents. At the time that these patents were transferred by you to the Chemical Foundation did you know the production of synthetic ammonia in Germany under those patents? I mean the amount of production of synthetic ammonia per annum.

A. No. I knew it was large during the war.

XQ. 1370. Did you know the amount of synthetic ammonia consumed in the United States at that time?

I am not speaking of the present, but did you know it at that time?

A. I knew at that time, in the spring of 1919, that there was an enormous surplus here.

XQ. 1371. No, I asked you if you knew the annual consumption of synthetic ammonia here.

A. No, I beg your pardon, I did not. I probably did at that time, but I do not know now.

XQ. 1372. And you cannot now recall whether you knew at that time?

A. I cannot definitely recall.

XQ. 1373. You made no investigation of the subject yourself?

A. Oh, it was discussed all the time.

XQ. 1374. But I mean you made no personal investigation of the subject of synthetic ammonia in the United States, did you?

A. I do not know what you mean by an investigation. All of our war literature was full of it and all of our departments were full of it, and we knew it was why Germany had been allowed to keep on with the war and all that.

XQ. 1375. I ask you if you had made any personal investigation. We need not go into that.

A. Oh, I could not. I am not a chemist.

XQ. 1376. Your counsel showed the other day from a card of the Federal Trade Commission that that card showed no income under the license issued under the Haber patent to the Semet-Solvay Company, that I recall.

A. No, it showed some income there.

XQ. 1377. No, I am speaking now of the Federal Trade Commission license.

A. Oh, no.

XQ. 1378. The Chemical Foundation did in fact license the use of the Haber patents after it took them over, did it not?

A. Yes, sir.

XQ. 1379. To the General Chemical or to the Atmospheric Nitrogen Company?

A. Semet-Solvay. I think that that read to the Semet-Solvay.

XQ. 1380. The Semet-Solvay?

A. Yes.

XQ. 1381. The General Chemical and the Semet-Solvay are now constituents of the Allied Chemical, anyway.

A. I think the license read to the Semet-Solvay. But it is in evidence, that license. I won't be certain.

XQ. 1382. Do you or do you not know that the business of producing synthetic ammonia at Syracuse, which has been referred to here, is carried on in the name of the Atmospheric Nitrogen Company—or is it?

A. I would not be able to swear to that here. I know it is a subsidiary or part of the Allied Chemical Company.

XQ. 1383. Mr. Garvan, could you produce a copy of that particular license?

A. Certainly. I think it is in evidence.

XQ. 1384. I do not think any of the licenses have gone in, just the forms; but I would like to see that particular license.

A. We have it here.

MR. KRESEL: We will show it to you.

XQ. 1385. How many licenses have you issued to persons or corporations not stockholders of the Chemical Foundation, do you know?

A. I think it is about half and half.

MR. KRESEL: What do you mean by that? That does not mean anything.

THE WITNESS: Out of the four hundred odd I think half of them are to non-stockholders.

XQ. 1386. Any of the statements you put in show the licenses issued to stockholders?

A. We have it here.

XQ. 1387. We can check that then, from the record, can we not?

A. We had it here the other day. We can get it over night.

XQ. 1388. If it appears from the record already put in where we can get it I do not want to bother you and have to put it in again.

A. It is either in or can be checked.

MR. ANDERSON: If we can figure it out from the record I will not have the witness put it in again.

MR. KRESEL: Here is the license that you asked for, Colonel. (Handing counsel.)

THE WITNESS: That includes more than the Badische. There are more than those relating to the Badische patents; all we had was put into that.

XQ. 1389. At page 296 of your evidence before the Ways and Means Committee already referred to, you were asked by Mr. Longworth:

> "That is what I wanted to get at now. Of the 4500 patents at least the ones that are of real value here, practically, relate to the vat dyes?
>
> "Mr. Garvan. The vat dyes.
>
> "Mr. Longworth. And which are not made in this country?
>
> "Mr. Garvan. Not made in this country.
>
> "Mr. Longworth. And are of great value to the American manufacturers?
>
> "Mr. Garvan. Tremendous; that is the first aim.
>
> "Mr. Longworth. Almost a necessity for certain kinds of cloth, are they not?
>
> "Mr. Garvan. They certainly are."

That is your testimony, is it not?

A. Yes, sir.

XQ. 1390. You said yes?

A. Yes, sir.

XQ. 1391. Mr. Garvan, are not the indanthrene dyes among the most valuable?

A. Yes, sir.

XQ. 1392. Of the present patented dyes. Is it not true that all of the licenses issued by you for indanthrene dyes are held by the Newport Chemical Company and the duPont Chemical Company, or both?

A. No, sir. I do not think so. I think other companies hold them.

XQ. 1393. Are you sure about that?

A. I can verify it.

XQ. 1394. The record that you put in the other day, that large exhibit, from my study of it shows they were the holders of the patents on indanthrene dyes.

Mr. Kresel: Holders of the patents?

Mr. Anderson: I mean of the licenses.

A. I think there are other licensees on specific dyes. You see, the National has the Federal Trade Commission license on those dyes. They have never surrendered those.

XQ. 1395. Who is that?

A. The National Aniline.

XQ. 1396. They had the Federal Trade Commission license?

A. Yes.

XQ. 1397. But the only licenses you have issued so far as your statement shows are to the Newport Chemical Company and the duPont Chemical Company on indanthrene dyes?

A. I think there are other licenses there.

XQ. 1398. You would be guided by your statement, would you not? Whatever that statement shows you would say was right?

A. Yes. I will look it up.

XQ. 1399. You put in that statement, and that statement is correct, is it not—that large statement showing the patents and the revenues?

A. Oh, yes. But sometimes you cannot tell by the name of a dye whether it is an indanthrene or not. I would have to look that over. Those two companies have made the most progress in making vat dyes, I want to be frank about that. They are the two that are farthest ahead in that matter.

XQ. 1400. Do you know anything about the selling price of indanthrene dyes and colors in 1914 and the present selling price?

A. No, the Tariff Commission could tell you that; I could not.

XQ. 1401. You cannot testify as to that at all?

A. Oh, I could look it up and get it from the royalty paid to us on the selling price, and then I can get it from--I can get it for you if you want it.

XQ. 1402. I would like it very much if either you or some other witness, one of your accountants or witnesses as your counsel may find most convenient--it matters not which to me—would give me from your records, if it can be done, the selling price on these indanthrene colors in 1914 and at the present time.

A. We have not the records of 1914.

Mr. Kresel: Colonel, if you will be good enough to give us a list of just what colors you are interested in, we will try to get you the information.

The Witness: That would come from the Tariff Commission.

Mr. Kresel: We will get it in some way.

Mr. Anderson: Here is a statement which I have had made up showing the patent number, the color covered by it, and the sales for the fiscal year, the selling price for 1914, the present selling price, and the present manufacturers, domestic manufacturers, and the date of the expiration of the patent. If you will check that and find out whether it is right, I will put that information in as evidence, so as to save us both trouble.

Mr. Kresel: We will do that. Colonel, as long as you are resting now from a question, I want to hand you a list of the licensees of the Chemical Foundation who are stockholders and a list of the licensees who are not stockholders (handing counsel).

The Court: Do you want those marked?

Mr. Anderson: All right, sir, but I want a chance to study that list and I cannot stop now.

XQ. 1403. You have only one license outstanding under the Haber process patents?

A. Prior to January 1st, 1923.

XQ. 1404. Mr. Garvan, you have put in evidence here a paper which purports to be a release to the United States of all claims for infringement on all enemy-owned patents seized by the Alien Property Custodian, which you said you delivered to Mr. A. Mitchell Palmer as Attorney General. Can you hand me that paper? You recall that release, do you not? There is no use waiting for it. There was no consideration named in that instrument at all for the release, was there?

A. Do you want me to weaken the Government's title to that release?

XQ. 1405. No, I am not doing that.

A. I would rather not testify against the Government on that.

XQ. 1406. Mr. Garvan, I am not asking you to testify against the Government.

Mr. Kresel: The instrument speaks for itself to begin with.

A. The instrument speaks for itself.

XQ. 1407. All right. Did you, then, investigate to ascertain how many patents had been infringed by the United States during the war?

A. I listened to the Army and Navy on the subject.

XQ. 1408. Did they tell you how many?

A. They told me it would amount to probably hundreds of millions of dollars, if they had to pay it.

XQ. 1409. Do you know whether or not the Peace Treaty provided protection to the United States in that regard?

A. That was later. That had not been drawn at that time.

XQ. 1410. It had not been drawn at that time?

A. No.

XQ. 1411. May I ask what was your idea of your authority to execute a release to the United States of all claims for infringements of patents; where did that authority come from? I just want your idea, the idea on which you acted?

A. Why, I don't like to testify to what I have done, which may be used against the Government in hundreds of millions of dollars of suits. I don't think I ought to be called upon to do it. I have not the paper before me. I would want to study up that transaction before I testified.

The Court: The Government of the United States is now asking for that information, so I will have to ask you to answer, Mr. Garvan.

The Witness: Then repeat the question.

XQ. 1412. I ask what was your idea of your authority to execute such a release?

A. I cannot remember at this time.

XQ. 1413. You also put in evidence here a license and release purporting to cover approximately 5700 patents and other rights, which you executed and delivered to the United States in consideration of $100,000. I think you delivered it to the Navy Department?

A. Yes, sir.

XQ. 1414. Did you make any investigation of the subject before you executed that instrument?

A. I had numerous conferences with the Army and the Navy.

XQ. 1415. And your answer as to authority in that instance is the same as to the preceding question, is it?

A. No, I do not think so. I considered that the consideration there was the fair value under the circumstances.

XQ. 1416. That release took the place of the former one, did it not?

A. No, no, no, you have got that wrong, Colonel. The 5700 were on gun carriages and ammunition and surgical instruments and everything. The release was on what we were selling to the Chemical Foundation; it was on the chemical patents.

XQ. 1417. The chemical patents alone?

A. The 5700 were on the actual implements used in waging war.

XQ. 1418. Mr. Garvan, as to the license you have put in here, executed by the Chemical Foundation to the Navy Department——

A. You mean the big license, what we call the big license?

XQ. 1419. Yes. Do you not know that the negotiations in that regard began as early as January, 1920?

A. I would not be at all surprised.

XQ. 1420. While I am waiting for the correspondence, I call your attention to your evidence on Tuesday to the effect that you seized the gyroscope patents at the suggestion of Commander Norton. Do you not know that months after these patents had been seized by you the Secretary of the Navy asked you to advise him how he could get an assignment of these patents to the Navy Department?

A. No, I don't know that.

XQ. 1421. Or four of them at least?

A. No, I don't know that.

Mr. Anderson: In order to complete the record on this subject for whatever value it may have, I would like to ask leave to introduce additional correspondence in addition to what counsel introduced on Tuesday. Have you any objection to its going in at this point?

Mr. Kresel: No; as to the order of the matter I do not object at all. I would just like to see what it is you are offering.

Mr. Anderson: Here it is (handing papers). While you are looking it over I will go ahead with other questions, and when you finish looking it over, I will offer it.

XQ. 1422. Mr. Garvan, a gyroscope is an instrument used in the navigation of ships, is it not?

A. Yes, sir.

XQ. 1423. Can you state what relation such an instrument has to the objects and purposes of the Chemical Foundation as expressed and defined in its charter?

A. Only to help the Government.

XQ. 1424. To help the Government?

A. Yes.

XQ. 1425. Is there any such provision in the charter?

A. No. That is its purpose. The Navy asked us to take them over for their purposes, and we took them over—paid our money.

XQ. 1426. Then you cannot state that they have any relation to the objects and purposes of the Chemical Foundation as expressed in the charter?

A. I cannot tell you. I cannot tell a gyroscope from the back of a house. They told us it was necessary for the navigation of our Navy and our ships; that it was some balancing apparatus which—I don't know—helped their compasses, or something.

XQ. 1427. You do not really know anything about it.

A. (To XQ. 1426 continued.) ——that they were owned by the Germans, and they wanted to be saved from the Germans having control of our ships.

MR. ANDERSON: I offer in evidence a letter to the Chief of the Bureau of Ordnance of the Navy, signed by P. A. Blair, dated January 23, 1920, subject: "Alien Enemy Patents."

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 614." (*See Exhibits, Vol. III, page 1483.*)

MR. ANDERSON: I offer in evidence copy of a letter dated February 11, 1920, addressed to Alien Property Custodian, signed by Josephus Daniels.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibt No. 615." (*See Exhibits, Vol. III, page 1487.*)

MR. ANDERSON: I offer in evidence letter dated July 28, 1920, by Charles B. McVay, Jr., Rear Admiral of the United States Navy, addressed to Alien Property Custodian, subject : "Ownership of Patents."

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 616." (*See Exhibits, Vol. III, page 1490.*)

MR. ANDERSON: I offer in evidence a memorandum of the Chief of the Bureau of Ordnance, dated July 18, 1920, signed G. B. Wright, subject "Patents held by Alien Property Custodian, acquisition thereof."

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 617." (*See Exhibits, Vol. III, page 1491.*)

MR. ANDERSON: I offer in evidence copy of letter dated January 14, 1921, addressed to the

Navy Department, attention of Commander A. L. Norton, signed J. R. Zimmerman, Division of Records of the Alien Property Custodian.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 618." (*See Exhibits, Vol. III, page 1492.*)

MR. ANDERSON: I offer in evidence letter dated January 17, 1921, addressed to Commander A. L. Norton, General Inspector of Ordnance, signed Chemical Foundation, by Lloyd VanDoren.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 619." (*See Exhibits, Vol. III, page 1493.*)

MR. ANDERSON: I offer in evidence memorandum dated January 19, 1921, "To: All Desks," signed "Charles B. McVay, Jr.," Chief of Bureau, subject, Purchase of license under patents from the Alien Property Custodian.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 620." (*See Exhibits, Vol. III, page 1494.*)

MR. ANDERSON: I offer in evidence copy of a letter dated January 19, 1921, signed Charles B. McVay, Jr., Rear Admiral of United States Navy, to the Chemical Foundation, Inc., attention of Mr. VanDoren.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 621." (*See Exhibits, Vol. III, page 1495.*)

MR. ANDERSON: I offer in evidence copy of a letter dated January 20, 1921, to Rear Admiral Charles B. McVay, Jr., signed by Chemical Foundation, Inc., by Lloyd VanDoren.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 622." (*See Exhibits, Vol. III, page 1496.*)

Mr. Anderson: I offer in evidence memorandum dated 17th of February, 1921, to Bureau of Medicine and Surgery, signed Charles B. McVay, Jr., Chief of Bureau.

Received in evidence and marked "Plaintiff's Exhibit No. 623." (*See Exhibits, Vol. III, page 1496.*)

Mr. Anderson: With the first endorsement, dated February 25, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-A." (*See Exhibits, Vol. III, page 1498.*)

Mr. Anderson: And second endorsement dated March 9, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-B." (*See Exhibits, Vol. III, page 1499.*)

Mr. Anderson: And the third endorsement dated March 11, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-C." (*See Exhibits, Vol. III, page 1500.*)

The Court: Admitted.

Mr. Anderson: I offer in evidence letter dated March 28, 1921, from the Chemical Foundation by Lloyd Van Doren addressed to Mr. Charles B. McVay, Jr., Rear Admiral, United States Navy, as Plaintiff's Exhibit 624.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibt No. 624." (*See Exhibits, Vol. III, page 1501.*)

Mr. Anderson: I offer in evidence letter dated July 19, 1921, from the Chemical Foundation, Inc., by Lloyd Van Doren, to Commander A. L. Norton, as Plaintiff's Exhibit 625.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 625." (*See Exhibits, Vol. 111, page 1502.*)

Mr. Anderson: I offer in evidence letter dated December 15, 1921, to the Chief, Bureau of Ordnance, signed "Palmer, Davis & Scott," as Plaintiff's Exhibit No. 626.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 626." (*See Exhibits, Vol. 111, page 1504.*)

XQ. 1428. The firm of Palmer, Davis & Scott was the law firm of A. Mitchell Palmer, was it not?

A. Yes, sir.

Mr. Anderson: I offer in evidence a letter signed by Charles B. McVay and A. L. Norton to Palmer, Davis & Scott, dated January 19, 1922, subject: Acceptance by Department of License from the Chemical Foundation, Inc., covering letters patent owned by it.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 627." (*See Exhibits, Vol. III, page 1505.*)

Mr. Anderson: I offer in evidence letter dated January 21, 1922, addressed to Honorable Charles B. McVay, Rear Admiral, U. S. Navy, signed "Palmer, Davis & Scott," as Plaintiff's Exhibit 628.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 628." (*See Exhibits, Vol. III, page 1506.*)

Mr. Anderson: I offer in evidence letter dated June 3, 1922, to Rear Admiral Charles B. McVay, Jr., signed "Palmer, Davis & Scott," as Plaintiff's Exhibit No. 629.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 629." (*See Exhibits, Vol. III, page 1506.*)

XQ. 1429. Mr. Garvan, I now read to you from your evidence before the Ways and Means Committee on H. R. 2706, page 342, as follows:

> By Mr. Kitchin: "Mr. Garvan, I ask you this, owing to the insinuations of the questions heretofore asked you. Why was it that men interested in this chemical foundation desired your connection with it as President and Director, and why was it that you were induced to accept it?
>
> "Mr. Garvan. Because for the last eighteen months, or ever since the war began, I have been engaged in uncovering these German corporations which were camouflaged under alleged American ownership, and this forced me to spend my entire time on the study of German business forces in this country.
>
> "Mr. Kitchin. You are in a position to know more about it than anybody else?
>
> "Mr. Garvan. I know all about it. I have had all the Albert stuff, and all that other thing has been passing through my hands, and they felt that it would be essential that I was there, so that if anything was attempted to be put over on the American industry I would be able to have the knowledge at my hand of their past so as to connect it with their present or future activities. It was only to allow the American industry to utilize the information which the war had collected in my hands."

Is that your testimony?

A. Yes, sir.

XQ. 1430. Mr. Garvan, your counsel put in evidence a few days ago, in the cross-examination of Mr. Metz, an original letter of Dr. Albert?

A. No, an original letter of Mr. Metz.

XQ. 1431. That Mr. Metz addressed to Dr. Albert. Where did you get that letter?

A. I don't know. I assume that I had it in New

York at the time that we were trying the Metz case. I suppose that is where it came from.

XQ. 1432. Have you any other of the Albert correspondence at this time?

A. I don't know.

XQ. 1433. If so, I would like to ask you to produce it.

A. If I have anything. I will look through anything that I have. I have nothing of any originals.

XQ. 1434. Have you copies of the Albert correspondence in your possession?

A. Oh, I have got a good many copies.

Mr. Kresel: You mean all correspondence signed by Mr. Albert?

XQ. 1435. As a matter of fact, the Albert papers were seized in New York, were they not?

A. No, not altogether. I never seized the Albert papers.

XQ. 1436. You did not?

A. No, no.

XQ. 1437. How did they come into your possession?

A. Why, they came into my possession through the Secret Service. People brought me copies of it. Most of it was published in the *New York World*. They seized part of the papers off Dr. Albert.

XQ. 1438. I mean, how did the originals come into your possession, the originals you produced the other day?

A. I could not tell you whether the Secret Service gave me that or whether it was gotten—no, it would not be Metz's files—or whether it was produced at the time of the trial and was a useless paper apparently that was not used at that time. I could not tell you.

Mr. Kresel: Colonel, I am sorry, but I do not remember what letter you are referring to.

The Witness: Enclosing the newspaper clipping.

Mr. Kresel: Oh, I see. I remember it now. I had forgotten it.

XQ. 1439. How did you get hold of the papers of Dr. Schweitzer introduced in evidence?

A. Those papers of Dr. Schweitzer I took from his house after he was dead.

XQ. 1440. What was your position at that time?

A. Head of the Bureau of Investigation, New York.

XQ. 1441. Dr. Schweitzer was an American citizen, was he not?

A. On the surface.

XQ. 1442. Well, he was an American citizen?

A. He would not have been if he had been alive. We found his directions from the German Government to become an American citizen, to camouflage his action.

XQ. 1443. I did not ask you what you found. I asked you whether he was an American citizen or not?

A. Yes. Are you complaining of my taking Dr. Schweitzer's papers?

XQ. 1444. No, I only want to know the facts.

A. (No answer.)

XQ. 1445. There was used in the evidence here either an original or copy—I did not see it—of the testimony of Mr. Metz on a hearing before one of the officers of the Alien Property Custodian?

A. Oh, that is a copy.

XQ. 1446. Have you that?

A. That is one of five or six copies that have been around everywhere.

Mr. Kresel: I have it right here. There it is (handing papers to Mr. Anderson).

XQ. 1447. Your counsel has handed me a paper entitled "Office of the Alien Property Custodian, 110 West 42nd Street, New York City, in the matter of the General Drug Company, before Joseph H. Choate, Esq., Examiner, September 23, 1918." Do you know where that document came from?

A. I don't.

XQ. 1448. You don't?

A. It might have come from me. It might have come from Choate. It might have come from Kresel. I don't know where it came from. We made lots of copies.

XQ. 1449. Another document with the same title headed "Statement of Herman A. Metz." Do you know where that came from?

A. No.

XQ. 1450. Another document with the same title headed "Deposition of Herman A. Metz," dated September 26, 1918. Do you know where that came from?

A. No.

Mr. Kresel: Will you have those either put in evidence or marked for identification, Colonel?

Mr. Anderson: Yes, they can be marked for identification. I do not want them in evidence. You read from them.

Mr. Kresel: They are not signed documents. You will admit that. They are not originals.

The Court: What is the pleasure of counsel with respect to that? Do they want it in evidence?

Mr. Anderson: I am through with them. They may be put in or not, as far as counsel may desire. I only wanted to know what the fact was.

The Court: The Clerk will then return them to Colonel Anderson.

XQ. 1451. Mr. Garvan, under the order issued by Mr. Polk of February 26th and the subsequent order of April 5th, the Alien Property Custodian is authorized to sell to the Chemical Foundation, upon such terms and conditions as the Alien Property Custodian or his authorized agent may deem proper, all letters patent, trade-marks and rights under letters patent and trade-marks, including all profits and damages recoverable at law or in equity for the past infringement thereof, which the Alien Property Custodian may seize or may have seized under the provisions of said Trading with the Enemy Act and amendments thereto now or hereafter enacted, and which he from time to time shall determine to relate to the objects and purposes of said Chemical Foundation, Inc., expressed and defined in its charter.

Among the patents so assigned to the Chemical Foundation, I find the following, and I will ask you in what respect they relate to the objects and purposes of the Chemical Foundation as expressed and defined in its charter: First, under Patent No. 13,085, dated March 8, 1915, cigar mouthpieces?

A. Those are abandoned. Those were never issued.

XQ. 1452. That is not the question I asked you. I asked you what was the relation, how they related to the purposes and objects of the Chemical Foundation as described in its charter.

A. I could not tell you. It may have been a cigar mouthpiece for a man smoking a cigar with a gas mask, I don't know.

XQ. 1453. I won't take the time to call the numbers and dates of the patents because they can be identified in Exhibit G, but I will only call out the subject and ask you how it relates to the purposes and objects of the Chemical Foundation. Methods of making mouthpiece oval cigarettes?

A. I don't know.

XQ. 1454. Flexible metal hose?

A. I don't know.

XQ. 1455. Boarding machines?

A. I don't know.

XQ. 1456. Optical reversing system?

A. That certainly refers.

XQ. 1457. In what respect?

A. They are all chemical, optical lenses, and also, it is the highest development of the chemical art.

XQ. 1458. An optical lens is a part of the chemical art, is it?

A. Why, certainly.

XQ. 1459. Photographic projections?

A. Certainly.

XQ. 1460. You think they refer?

A. Surely.

XQ. 1461. Galilean telescope lens system?

A. Certainly that would be the same.

XQ. 1462. Acromatic spectacle glass?

A. Yes.

XQ. 1463. Magnifying glass?

A. Yes, sir.

XQ. 1464. Would you say that that referred to it?

A. Oh, yes. That is the highest development of the chemical art, the manufacture of those high-grade glasses.

XQ. 1465. Telescopes?

A. Surely.

XQ. 1466. You would say that related to the chemical business?

A. Surely.

XQ. 1467. Calculating machines?

A. I don't know what they are for calculating. They may have been for measuring chemicals. I don't know.

XQ. 1468. You don't know what they relate to?

A. No.

XQ. 1469. Optical instruments and certain specified scientific appliances?

A. Certainly.

XQ. 1470. Dental drilling machines. Would they refer to the chemical business?

A. I don't know, sir.

XQ. 1471. Field glasses?

A. Yes, sir; certainly.

XQ. 1472. Calculating and adding machines?

A. It might.

XQ. 1473. They might?

A. Might.

XQ. 1474. You cannot say that they do?

A. No, I cannot.

XQ. 1475. Surveying, photographic and optical apparatus. Does surveying apparatus relate to the chemical industry?

A. If it was glass.

XQ. 1476. Compass for ships and the like. Does a compass relate to the chemical industry?

A. I don't know.

XQ. 1477. Again, compasses for ships?

A. There may have been some chemical part of it. I don't know.

Mr. Kresel: Those were taken over on account of the Navy's request?

Mr. Anderson: No, sir.

XQ. 1478. Gyroscopic compass?

A. Those are all the Navy.

XQ. 1479. Taken over on the 28th of March, 1919, and assigned in April, 1919?

A. Assigned when?

XQ. 1480. April, 1919. Gyroscopic compasses?

A. I don't know. I could not tell you.

XQ. 1481. Suspension and rotating apparatus and magnetic compasses?

A. I could not tell you.

XQ. 1482. Artificial horizon; method of gyroscopic control?

A. Is that part of the Navy's gyroscopic apparatus?

XQ. 1483. I don't know. Does that relate to the purposes and objects of the Chemical Foundation?

A. I think so.

XQ. 1484. You would say it related to the purposes and objects. In what respect? A gyroscopic control you would say was used on Navy ships, would you not?

A. The Navy reported to me that they thought it would be expeditious for the Chemical Foundation to take it over; and I did so. That is up to the Navy.

XQ. 1485. Do you know whether that was in the list in G-3 or not?

A. Whether that was what?

XQ. 1486. Do you know whether that was included in the list of assignment G-3 or not?

A. I do not know what assignment G-3 is.

Mr. Kresel: What is G-3?

Mr. Anderson: That is the schedule with the assignment that you had up in June or July, 1919.

XQ. 1487. Balloon envelope material?

A. Yes, that certainly is.

XQ. 1488. That is certainly chemical business, is it?

A. Probably covered with dope which was all chemical to make it water-tight and fire-tight and all that.

XQ. 1489. Apparatus for cutting plate glass?

A. I don't know. They may have had plate glass used in chemical manufacture; I do not know.

XQ. 1490. Ice cutting machine?

A. I don't know. That is probably for ships of the Navy. I don't know.

XQ. 1491. Process and apparatus for construction of slabs of artificial stone?

A. Surely, that would be chemical.

XQ. 1492. That would?

A. Certainly. It would be a chemical process.

XQ. 1493. Press for making briquettes and the like?

A. Surely, that is all chemical.

XQ. 1494. That is a piece of machinery, isn't it?

A. What?

XQ. 1495. Press for making briquettes?

A. I suppose part of a process for making briquettes.

XQ. 1496. Prop for mines?

A. I don't know. I assume that was the Government's.

XQ. 1497. You assume?

A. Yes, I don't know.

XQ. 1498. Making fish sausage?

A. I don't know. I should think it would be chemical.

MR. KRESEL: Probably a fertilizer.

XQ. 1499. Apparatus for moistening and warming rooms or apartments?

A. I don't know. I suppose that is for the apartments of ships.

XQ. 1500. Why do you suppose that is for apartments of ships, Mr. Garvan?

A. Because I don't think we would be looking for it as a chemical patent. You can't tell from that description. You can't tell a thing from that description.

XQ. 1501. How about a centrifugal machine?

A. You can't tell.

XQ. 1502. What?

A. It may be a centrifugal machine for stirring vat colors, to make the vat colors. You can't tell. I can't tell.

XQ. 1503. That is part of the machinery of a plant, is it?

A. Undoubtedly, it would be. Mr. Holdermann testified as to lots of apparatus and machinery. I can't tell from what you read off. I would have to get the patent and then I would have to get an expert.

XQ. 1504. I see. What did you have before you when you executed that assignment?

Mr. Kresel: Which assignment?

Mr. Anderson: The assignment of April 10th, in which most of these things I have read were embraced.

A. Gyroscopes, all those things, were not in there. I had a list of the patents made up by the people under me.

XQ. 1505. But this is taken from a schedule in the exhibit introduced in evidence here and that is a copy of the schedule that accompanied that list?

A. I don't know whether it is or not. I don't know anything about it.

XQ. 1506. Did you ever examine any of these patents personally?

A. Oh, yes.

XQ. 1507. How many of them?

A. Oh, I can't tell. As they were applied for and it became a matter of the business of the Foundation, I would look at them.

XQ. 1508. That was after they were assigned?

A. Then we would keep a chemist there.

XQ. 1509. I am talking now of the time that the assignment was made.

A. Did I personally pass on the chemical application of these things? Of course not. In the first place, I am not a patent lawyer. In the second place, I am not a chemist.

XQ. 1510. You signed these assignments with these large lists attached as they were brought to you, did you not?

A. Certainly, after consultation with the men of my force.

XQ. 1511. I will call attention to one or two more and shorten it: Construction of frozen walls for shafts of mines. What would be the connection of that?

A. That would undoubtedly be an ammonia proposition, a frozen proposition. That would be a chemical proposition.

XQ. 1512. A self-propelled airship?

A. I think that would be purely chemical.

XQ. 1513. An airship is purely chemical business?

A. Self-propelled——

XQ. 1514. An airship is purley chemical business?

A. Probably propelled by some chemical.

XQ. 1515. A patent for a self-propelled airship you would regard as part of the business of the Chemical Foundation?

A. Why, a most essential part. If they had a self-propelled airship, where would we be in our safety?

XQ. 1516. Screw propellers?

A. What about them?

XQ. 1517. Would you say that those related to the Chemical Foundation?

A. It would depend upon what they were used in connection with. If they were used in connection with a self-propelled airship propelled by some chemical, I certainly think so. I don't know.

XQ. 1518. Propelling and steering apparatus for baloons?

A. Surely.

XQ. 1519. Armoured aerial machine?

A. Surely.

XQ. 1520. A toy airship?

A. I do not suppose that means an airship for a child to play with. I suppose it means one of these airships that the Government has been working on so many years and spending so much money on that will go by themselves.

XQ. 1521. Safety anchors for airships and the like?

A. There probably is something chemical about them.

XQ. 1522. Mr. Garvan, do you know anything about them at all?

A. No, but I trust my own Government; I trust the people that picked them out, and I do not criticize them at the behest of foreigners.

XQ. 1523. I see. I will ask you this question before I take up the next point: How did you determine that these matters related to the purposes and objects of the Chemical Foundation? What procedure did you follow?

A. I relied upon the advice of my assistants and consulted with the chemists and people in the industry, and so forth, and so on, who were patent lawyers, who examined the patents.

XQ. 1524. It appears in the evidence here that copies of the patents were consulted by Messrs. Barrows and Squair, and then that the papers for seizure and examination of title was made by Mr. Gordon. Are those the gentlemen to whom you refer as having relied upon?

A. No, sir, not altogether.

XQ. 1525. Whom else did you rely upon?

A. Mr. Hoguet.

XQ. 1526. Relied upon Mr. Hoguet. Mr. Hoguet went over the patents. The testimony is that he eliminated what he wanted to eliminate. I think that is Mr. Gordon's testimony.

XQ. 1527. I am asking you now what you did?

A. They got the list, in the first place, from the

Federal Trade Commission, who had had I do not know what amount of work done to pick out the chemical patents.

XQ. 1528. But you do not know——

A. They were in consultation with everybody who was fighting the war. The Army was in there——

XQ. 1529. Hold on; one minute; I am not asking you what they did.

A. Oh, I did not.

XQ. 1530. I am asking you what you did.

A. I can not determine what a patent covers, nor am I a chemist.

XQ. 1531. Whom did you rely upon; name the specific persons in reaching that determination?

A. Mr. Hoguet and Mr. Gordon and the Navy and the Army, and the other things where they definitely came to me.

XQ. 1532. I call your attention to Defendant's Exhibit No. 91, entitled "Statement of Income and Expenses of the Chemical Foundation."

A. Exhibit 91, yes, sir.

XQ. 1533. Did you make that statement?

A. It was made under my direction.

XQ. 1534. Did you yourself check it with your books of account?

A. No, sir.

XQ. 1535. Are you an accountant?

A. Yes, sir.

XQ. 1536. Did you check it with the original records?

A. I beg your pardon?

XQ. 1537. Did you check it with any original records?

A. With the original records of the Foundation?

(No. Q.'s 1538-1557, inc.)

XQ. 1558. Yes.

A. No, sir.

XQ. 1559. Your testimony on that statement was based entirely upon what was told you by your accountants, was it not?

A. Practically. I have been over each of those items in the management from time to time. That don't mean I can swear that they are correct to the penny, or anything of that kind. They were made up under my direction from our books.

XQ. 1560. Mr. Garvan, do you know anything about that statement except what was told you by your accountants?

A. I know in general that it would be correct, but I cannot know that it is definitely accurate.

XQ. 1561. You can not know that it is definitely accurate?

A. Mr. Buffum could testify to that.

XQ. 1562. I now refer you to statement Defendant's Exhibit 91-A.

A. Yes, sir.

XQ. 1563. Do you make the same statement as to that as you made to Defendant's Exhibit No. 91?

A. No, I have a good deal more acquaintance with that. I know most of the number of copies and what they cost; but at the same time I am not equipped to swear that that is a definite and accurate statement.

XQ. 1564. You are not equipped to swear to that?

A. No.

Mr. Kresel: Colonel, that was brought out on his direct, you will recall, and I said that I had the gentleman who made them up in Court and would call him.

Mr. Anderson: The evidence has gone in, however, and I have got to develop that, and then I am going to make a motion, Mr. Kresel. It is just to develop that.

Mr. Kresel: In other words, you do not need to waste time on it.

XQ. 1565. I will ask you if you are prepared to make the same general statement as to each of these statements.

A. Certainly. They were prepared under my direction. I went over them after they were prepared, and in some instances checked up the calculations which would appear upon the face of them; but as to their bookkeeping accuracy, of course, I cannot testify.

XQ. 1566. As a matter of fact, these statements are taken from a report of your expert accountants, are they not?

A. No, they are taken from our books.

XQ. 1567. I mean, these particular statements are part of a report of your expert accountants in that large manuscript form we had here, are they not?

A. Not all of them. You did not have all those calculations.

Mr. Anderson: If your Honor please, I do not want to take up time to cross-examine Mr. Garvan as to these statements and matters appearing therein in view of his statement, because naturally he would have to answer that he did not know as to the accuracy of those various statements, and it would be a waste of time, in my judgment. Therefore, I shall make a motion to strike out each and all of these exhibits and all of the evidence of the witness relating thereto, unless counsel for the defendant produces a witness who can testify to their accuracy from the records, in which event I have no objection to their remaining in the record to be properly supported by other evidence, and then reserving the right to cross-examine as to them.

Mr. Kresel: I have already stated, and I repeat again, that I shall call the accountant who made them up.

The Court: This was all gone over at the time the papers were put in evidence during the examination-in-chief, and notice then given of such motion if the defendant failed to call the accountant. Defendant now says that it will call the accountant.

Mr. Anderson: I do not want to insist upon the motion at this time. I merely want to make it to make my record right, to the end that the situation may stand, and I do not want it stricken out if it is going to be supported.

The Court: Very well.

XQ. 1568. Mr. Garvan, you stated I believe, you had only had one infringement suit on the part of the Chemical Foundation?

A. One that came to court. We have had lots of them that were infringers.

XQ. 1569. Your accounts will show, when the accountant goes on the stand, all of those facts, will they not?

A. Surely.

XQ. 1570. And what they settled for, and everything?

A. Everything, yes, sir.

XQ. 1571. If that is the case, I will not bother to ask you about it. What arrangement have you for checking up the business of the licensees, and what check have you made upon their business to see if they report their earnings under the licenses, or whether they are infringing the patents covered by the licenses?

A. They allow our accountants to go over their books each quarter. We have full access to all their books.

XQ. 1572. And your accountants do that checking, do they?

A. Yes, sir. They render the account at the end of the quarter. For instance, at the end of this quarter, which ends July 1st, they have until August 1st to account, and then we are permitted after August 1st, after they have rendered their account, to go to their books and check up the accuracy of it, if we have any doubt about it. We have no trouble with that.

XQ. 1573. Did not some of the licensees refuse to pay for licenses to the Chemical Foundation, licensees of the Federal Trade Commission?

Mr. Kresel: When?

Mr. Anderson: After the transfer of these patents.

A. I do not think so.

XQ. 1574. You do not recall whether they did or not?

A. It may have taken some education—I do not remember any trouble. We had some trouble at the beginning of this suit, but only for a little while. I might. You may refresh my recollection on that.

XQ. 1575. Your accountants do not undertake to check the processes of manufacture, of course?

A. Oh, we could not do that, no.

XQ. 1576. You have never undertaken to check that at all, have you?

A. Oh, it would be impossible for us to do that. Most of them have processes, have them sealed, you know; you couldn't.

XQ. 1577. In your answer, clause XLII, paragraph (i), you say:

> "That the principal means whereby said German cartel, trust, or monopoly and the German Government accomplished their said control, domination and oppression, and the principal barrier which stood in the way of the development of an independent and self-sufficient organic chemical industry in the United States, consisted of the

> United States patents and patent rights then owned and possessed by German nationals."

Is that true?

A. Certainly.

XQ. 1578. You swore to that answer, did you not?

A. Yes, sir; I think so.

XQ. 1579. Again, in clause LII, pages 40-41 of your Answer, you say:

> "In order effectively to carry out the intent and terms of said sale and the objects of its charter, the defendant at great expense catalogued and circulated among manufacturers and others who might be interested therein, lists of the patents and other rights so sold to it by the Alien Property Custodian as aforesaid, together with information concerning their availability and usefulness. In cases of inventions which it seemed especially important to have rapidly and thoroughly developed, from the standpoint of the industry, public welfare, or common defense, it caused special study and research to be conducted in order to determine the availability thereof and caused its findings to be made known to the industry, and urged American concerns to manufacture under such patents. As a result thereof, to this date licenses under 422 of the patents so sold, assigned and transferred to it have been issued, non-exclusively, to a large number of American manufacturers, who have operated and continue to operate thereunder, and who, in the course of said operations, have expended millions of dollars in research and experimentation and the erection of necessary plants for the exploitation of the patents so licensed to them. Many of the chemical products which are now abundantly manufactured in the United States under such licenses were not heretofore produced in the United States, or were produced only in quantities wholly insufficient for domestic consumption and the needs of the common defense. Largely as a result of the licensing and other activities of the defendant, American

> manufacturers are now able to provide for approximately ninety per cent. of the needs of the people of the United States for colors and dyes, as to which, prior to said war and the sale, assignment and transfer of said patents to the defendant, the American people were entirely dependent upon importations from Germany. Many of the products now abundantly produced under said licenses are chemicals which during the late war demonstrated their importance as basic elements of explosives and of modern defensive or offensive warfare, and others are of great value as therapeutic agents, and the ability to produce such chemicals abundantly and quickly is essential to the common defense and general safety of the United States and its people."

Is that true?

A. Yes, sir.

XQ. 1580. You were asked as to the clauses in the original assignment and subsequent assignments, to the effect that the assignments were absolute without reservation on account of anything in the charter or by-laws of the Chemical Foundation or otherwise; but your attention was not drawn to your general assignment, or attempted confirmatory assignment, dated the first day of March, 1921, which is in the record as Exhibit I of the bill of complaint, and has been introduced in evidence. I note that this clause is not in this assignment.

A. No, sir.

XQ. 1581. Do you not know that it was stricken out on the express objection of the then general counsel of the Alien Property Custodian, Mr. Boggs?

A. Yes, Mr. Boggs said he thought the fears of the patent lawyers were unfounded.

Mr. Anderson: I move to strike that out, if your Honor please. What Mr. Boggs said is a matter of record.

The Court: Motion granted.

THE WITNESS: I beg your pardon.

XQ. 1582. It was stricken out on the express objection of Mr. Boggs?

A. My own lawyer, Mr. Boggs.

(No Q.'s 1583-92, inc.)

XQ. 1593. He was your counsel as Alien Property Custodian at that time?

A. Yes, sir. It was put in on the advice of my counsel in the first place, and taken out at the advice of later counsel.

MR. ANDERSON: I think that is all I want to ask the witness.

MR. KRESEL: I have only two or three questions, your Honor, if I may finish with the witness.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 1594. Mr. Garvan, something was said, I think, in your cross-examination about the bills that were pending before Congress in the matter of protecting this chemical industry. I think you said that there was a dye embargo.

A. Called a selective dye embargo.

RDQ. 1595. I would like to ask you for how long a period that remained?

A. It took different forms in the wording of the bill; but the idea of selective embargo remained until September 10th, 1922, the date that the present tariff bill went into effect.

RDQ. 1596. You were asked this morning whether the Chemical Foundation——

MR. ANDERSON: Mr. Kresel, I did not hear what you just asked the witness. Would you mind repeating it to me off the record?

(Statement by Mr. Kresel off the record.)

MR. KRESEL: Suppose you explain it, Mr. Garvan.

THE WITNESS: After the war was over the President abolished the War Trade Board, preserving the Chemical Section, and transferred it to the Secretary of State's office in order to protect this industry, and the Secretary of State's office, under the President's directions at that time, allowed in what dyes and chemicals we did not make. Then Congress continued appropriations for that work and then passed a three months' temporary selective embargo of this kind while they were dickering about a permanent bill——

MR. KRESEL: Permanent tariff?

THE WITNESS: —and then at the end of that three months the joint resolution was again extended until the passage and going into effect of the big tariff bill.

MR. ANDERSON: The contents of those things are all acts of Congress, are they not?

MR. KRESEL: Yes.

THE WITNESS: Well, of course, they were acts of the President. The President did it under the war power of continuing the War Trade Board and sending it over under the Secretary of State to enforce until such time as Congress put it into the—I think it is called the Emergency Tariff Bill, the first one.

RDQ. 1596. (Continued.) You were asked this morning as to whether the Chemical Foundation charged an import royalty on the importation from countries other than Germany of chemicals and dyes manufactured under the patents conveyed by the Alien Property Custodian to the Chemical Foundation?

A. Yes, sir.

RDQ. 1597. My question is whether, in point of fact, any such chemicals or dyes have been imported from any other country; either England or Switzerland, I think were the two that were mentioned. In other words, does England or Switzerland manufacture any of those dyes under these patents?

A. No, sir. The only possible modification of that might be that some of the reparations dyes which Italy got, for instance, they have re-sold into this country; but none of the goods manufactured in countries other than Germany have come in here which come under our patents.

RDQ. 1598. You were asked this morning whether you did not know at the time of the sale of these patents to the Chemical Foundation that several manufacturers were operating under Federal Trade Commission licenses and actually making salvarsan, and you stated that you did know that. Do you recall that?

A. Yes, sir.

RDQ. 1599. Did you know at that time that by reason of the imposition of a five per cent. royalty under the Federal Trade Commission license any manufacturer operating under such a license, should the Germans be permitted to import here, would have a differential of twice the amount of the royalty that he was paid?

Mr. Anderson: If your Honor please, I object to that question as purely leading, and not only that, but it is an argument that counsel can make from the record. The record is all here, the Federal Trade Commission licenses. It is a leading question so framed that the witness can answer yes to a long argument, to confirm an argument on the record. I object to it.

Mr. Kresel: I admit that it is leading, your Honor, and I think I have a right on re-direct to lead him on questions that were brought out on cross-examination. However, I did not intend to make it leading, because the witness does not need to be led on this matter.

THE COURT: Read the first few words of the question.

(First few words of question repeated as above recorded.)

THE COURT: Is it a matter of argument?

MR. ANDERSON: No, sir.

THE COURT: Then it is a question of fact.

MR. ANDERSON: "Did you know at that time"——

THE COURT: Yes.

MR. ANDERSON: But if he says "yes," then all the balance of it is argument.

THE COURT: You said two things; first, it is leading. On that ground your objection is well taken. Second, you stated it was a matter of argument.

MR. ANDERSON: What I mean is it is a matter of argument from the existing records.

THE COURT: But it is not a matter of argument as to whether this witness knows it.

MR. ANDERSON: I meant the subject matter of the question was a matter of argument.

MR. KRESEL: Do you press the objection that the question is leading?

MR. ANDERSON: Yes.

MR. KRESEL: All right.

RDQ. 1600. Did you or did you not know at that time of the effect of the imposition of this royalty fee with respect to the ability of the American manufacturer to compete with the German importer?

A. I certainly did.

RDQ. 1601. And what did you know about it?

A. I knew that the German importer would have a tremendous advantage, of course.

RDQ. 1602. You were questioned this morning

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No. 112 /127

In the Supreme Court of the United States

October Term, 1925

United States of America, appellant

v.

The Chemical Foundation, Incorporated,

appellee

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

TESTIMONY OF FRANCIS P. GARVAN

about fees paid to lawyers, especially a fee paid to Judge Ingraham. Who fixed that fee originally?

A. I think I did. I think he rendered his bill to me and I think I approved of it.

RDQ. 1603. What was the case?

A. I am not sure whether that went before the Board of Directors first or not.

RDQ. 1604. The board of directors of what company?

A. The Botany Worsted Company.

RDQ. 1605. What was the nature of the action in which this bill for services was rendered?

A. That was a bill which involved the whole question of the title of the Alien Property Custodian to a nine million dollar corporation.

RDQ. 1606. Was the case tried and appealed and did it go to the United States Supreme Court?

A. It went to the United States Supreme Court and Judge Ingraham there argued it, arguing it also in the Court of Appeals, as I remember. I know he did. I was present in the Supreme Court.

Mr. Kresel: That is all. Colonel, here is this list of the Advisory Committee. It appears in the minutes, so we do not need to supply it.

(Witness excused.)

JOSEPH H. CHOATE, Jr.

Joseph H. Choate, Jr., called as a witness in behalf of the defendant, being duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Please give your full name and address?

A. Joseph H. Choate, Jr. My business address is 60 Wall Street, New York City.

Q. 2. And you are by profession a lawyer?

A. Yes.

Q. 3. How long have you been admitted to the Bar?

A. Since 1902.

Q. 4. Were you at any time connected with the Alien Property Custodian's office?

A. I was, unofficially.

Q. 5. Beginning when?

A. Beginning in the early part of 1918. I can not place the exact date; but I think it was somewhere between the end of February and the middle of March.

Q. 6. And for how long a period did you continue to be associated with that office?

A. Until the spring of 1919, again at an indefinite date, because I gradually wound up my work there and began to take up my ordinary law practice again.

Q. 7. You say "unofficially" you were connected. Were you under a salary?

A. No.

Q. 8. Did you receive any compensation for your work?

A. None whatever.

Q. 9. How did you come to be connected with the office? Were you asked to?

A. I was asked by Mr. Garvan to undertake the work of the Bureau of Investigation as far as it concerned the chemical industry in the United States.

Q. 10. What was the nature of the work that you performed during this period that you were connected with the Custodian's office?

A. The object of the work was to discover as far as possible all German ownership in American chemical enterprises and the nature of the work was the carrying out of every form of investigation which suggested itself and was possible looking toward that end.

Q. 11. Will you briefly describe the nature of the investigation, just what you did, briefly?

A. When I came there, the Bureau of Investigation had already been going for several months and there was already a considerable mass of information in the office. My first task was to acquaint myself with that information.

For example, I found that three of the representatives of the "Big Six," the Kalle Company, the Berlin Company and the Bayer Company, had all been taken over, and the papers relating to them were in the office. There was also a considerable mass of other material which could be studied and which gave leads in various directions.

These papers suggested various informants who could give further information on general subjects and also suggested literature from which information could be derived; and I proceeded to read that literature and consult those informants.

As leads were gradually developed suggesting the existence of German ownership in various American companies, I would communicate with those companies and ask them to send a representative to the office with his books. Those requests were almost always complied with; and an examination of the representative and of the books would reveal further information which, spreading like a wave, suggested in turn new leads and new possibilities from which information could be derived.

Q. 12. And were you engaged in the work exclusively during the whole period that you were with the Alien Property Custodian?

A. In nothing else from the time I went in until certainly the first of March, 1919.

Q. 13. Did you embody the result of your investigations in a report?

A. I did.

Q. 14. Is that report of yours contained in Defendant's Exhibit No. 30?

A. I think that is the number.

Q. 15. You are familiar with Mr. Palmer's report?

A. Yes. The chemical chapter of that report is substantially the report I made to Mr. Palmer for the purpose; and it includes not only the results of my investigations, but also the results of the investigations by the Bureau of Investigation before I had a part in it.

Q. 16. And is the report a true and correct report of the results of your investigations?

A. It is. It was as accurate as I could make it. I have not given you by any means the full sources of information which we had, if you want a fuller statement of them.

Q. 17. I quite understand, but I think it is sufficient; and if the Government desires any further information, of course, you will give it. It has been testified here that you took part in certain conferences preceding the sale of the patents by the Alien Property Custodian to the Chemical Foundation. You have been in court and heard the testimony?

A. I have.

Q. 18. Did you take part in such conferences?

A. I did.

Q. 19. At such conferences do you recall whether the question of the price to be paid for these patents was discussed?

Mr. Anderson: Mr. Kresel, would you make it specific as to date, time, and so forth?

Mr. Kresel: Yes, I will withdraw the question.

Mr. Anderson: Without having us go all over it again. It will save us time.

Q. 20. Were you or were you not present at any conferences at which the question of the amount to be paid for these patents was discussed?

A. I should say I was present at several such conferences.

Q. 21. Will you be good enough to give us your best recollection of the first conference when the question was discussed, giving the date?

A. I could not possibly give the date.

Q. 22. Approximately?

A. I should say it must have been between the 27th of January, when the conference was held in the Washington office of the Alien Property Custodian, and the 4th of February, when the meeting of the Manufacturing Chemists' Association was held to consider the plan.

Q. 23. Before I ask you about those conferences, did you or did you not appear at a meeting of the Manufacturing Chemists' Association with reference to the disposition of these patents?

A. I did.

Q. 24. Can you give the date when you so appeared?

A. I could not, from my own unaided recollection. But I believe that the minutes of the association show that it was on February 4th, 1919.

Mr. Kresel: Are these minutes in?

Mr. Anderson: Yes, sir.

A. (Continuing.) I have a definite recollection that it was about that time, but I could not give it precisely.

Mr. Anderson: I think the date is correct, but it will be verified by the minutes.

Mr. Kresel: Very well then.

Q. 25. Directing your attention particularly to the question of price, please state whether or not you expressed any opinion at any of these conferences as to whether the price of $250,000 was or was not a fair and reasonable consideration for the patents?

A. I undoubtedly did.

Q. 26. Will you state what you said upon the subject?

A. I expressed the opinion that the price of $250,000 was a fair and reasonable price under the circumstances.

Q. 27. Now I ask you to state what were the circumstances and what were the considerations that weighed with you in stating that in your opinion $250,000 was a fair and reasonable price for these patents?

A. Those considerations were of two general classes. The first class related to the precise conditions of the sale which was being undertaken. Those, of course, included the fact that the sale was to be made subject to an obligation to issue non-exclusive licenses and on reasonable, equal terms to all qualified American manufacturers; and the obligation to license the Government under all the patents; and a limitation of the profits, of the use of the profits, I may say, so that all over six per cent. on all the stock of the proposed corporation should be used for the advancement of science. Those three considerations went to this particular sale.

But there were a number of other considerations relating to the value of these patents that made me feel the value of them, outside of the question of this sale altogether, was very low—the fair value was very low. In the first place, my understanding was, and it had been confirmed from some experiences I have had in my own professional work, that all chemical patents were particularly open to two defects or two difficulties, one was the exceeding difficulty of making a description which would hold water when the patent came to be tested, the other was the extreme ease with which chemical patents are superseded, the rapidity of the advance of chemical science, and the frequency with which a valuable chemical disovery is improved upon so that it ceases to be of any value whatever.

Those considerations applied both to product patents and to process patents. Then in the next place I realized very strongly that these were group patents which had not been used in the United States, I think with the exception of some of the pharmaceuticals, and even those pharmaceuticals I think were chiefly among the Bayer patents which had been sold to the Grasselli Company. I knew of none which had actually been used in this country.

My understanding was that the value of a patent depends absolutely upon the place where it is to be used. You may have a patent of enormous value in one place which is utterly worthless in another. For example, the arc patents for nitrogen fixation were of vast value in Norway where cheap water power was available, were of no value whatever in Spain, and were probably of no value in this country. Where none of the patents had been used, I knew that every purchaser would be confronted with the certainty that he would have to guess as to the adaptability of the patent to our conditions, whether we had the facilities, the power supply, the labor habits, the manufacturing habits, and above all the supply of technical skill to work it.

The next great consideration and the last of these factors I have just named was that all these chemical patents relating to the organic chemical industry dealt with one of the most difficult commercial undertakings that I knew anything about. They required a kind of manufacturing skill which my investigation led me to believe was not present at all in the United States, and I found that such members of the industry as I consulted with held the same view. They required for successful exploitation a supply of highly trained chemists, not only laboratory chemists but manufacturing chemists and trained laborers and foremen, who simply were not to be had here. It was my view that the value of these patents depended entirely upon the possibility of making money out of them, but you could not make money out of them unless you could manufacture cheaply, and that you could not manufacture cheaply unless you knew the job. That emphasizes the importance of the fact that these patents did not carry with them what has been described as the know-how.

On that I want to elaborate a little. In the ordinary case where anyone is buying a patent—and supposing now he is not buying it merely to get rid of a nuisance—he buys with the patent the experience of the previous owner, who is usually the inventor.

Mr. Anderson: One minute, Mr. Choate. If your Honor please, I do not wish to interrupt this gentleman, but I do not think Mr. Choate has qualified as an expert, and I do not think he would claim to be an expert on patents. He is obviously speaking from hearsay and, in the next place, he is arguing this case from the witness stand. I do not think the question called for any such extended reply as this, and if I thought so I certainly would have objected.

These matters are matters of technical knowledge, and if we are going to have them testified to I think we should bring somebody here who has the technical knowledge, that we may get the foundation of the information on the subject. I do not want to interrupt Mr. Choate because his statement is a very interesting one to me; but I do think this is outside the testimony in the case.

The Court: I do not want to hear you, Mr. Kresel. I think not. As I understand your allegation of the bill, Mr. Choate is one of those persons charged with conspiracy.

Mr. Anderson: Yes.

The Court: He is now asked for his reasons and the facts upon which he based or reached the conclusion that $250,000 was a fair value, and he has told why he has thought it was the fair value under the circumstances and conditions imposed upon the purchaser. He is now proceeding to tell why he reached the conclusion it was a fair value apart from those conditions. You may proceed, Mr. Choate. Objection overruled.

A. (continued) Not only that, but he usually takes care to insert in the contract a provision entitling him to the free possession of improvements, since such improvements frequently destroy the entire value of the invention purchased.

Now, in this case the purchaser will be buying not merely the bare patent, without such assistance from the inventor, but he will be buying the extreme hostility of the inventor; that is, the extreme hostility of the mind most likely to produce the next invention, the next step in the art, which might render the patent purchased utterly valueless.

This again led to another consideration which to my mind led us to value the patents adversely. That is the certainty of litigation. No man could possibly buy these patents without being entirely certain that after the war he would meet a litigation to test the title to the patents which he purchased. I do not say that for a moment it entered into my mind that he would meet the particular sort of litigation which has arisen in this case, but I felt sure that the Germans would some day bring a suit.

Referring again to the reasons why I considered the absence of the know-how of such vital importance, my understanding of the manufacturing which had to be carried out under these patents was this—and I think it is a matter of considerable consequence: The manufacture of organic chemicals is entirely different from ordinary mechanical manufacture. When a man makes plow-shares or chairs or any other manufacture requiring merely mechanical processes, he knows to a certainty that barring a small proportion of spoiled parts he will get 100 per cent. of his raw material in the form of finished goods. The manufacture of organic chemicals, particularly dyes, is something quite different. It consists in a series of consecutive processes in each of which a chemical reaction destroys all of the preceding raw materials, the materials which were raw materials for the preceding steps, and substitutes a new lot. Each of those processes is controllable by skill, the skill of those who have the knowledge of such manufacture. So that the yield of each step may run anywhere from 10 to 100 per cent. of the theoretical.

My understanding was that it was frequently the case in the manufacture of dyes that 9 to 12 of such consecutive processes had to take place and that unless you had a high degree of technical training among your workmen and your foremen, as well as your chemists, you might and probably would lose 90 per cent. in each step, so that by the time you had got 10 per cent. of 10 per cent. of 10 per cent. of 10 per cent., carrying it through nine steps, you would have almost nothing left; that this technical training did not exist in this country, did exist in great quantity in Germany, would have to be built up here by slow and gradual steps, and that until it was built up there was no possibility of effective competition with Germany and, for that matter, with Switzerland, where such skill also existed.

In addition to this my attention was directed to the fact that patents on chemical products or processes are frequently valueless unless effectively grouped, that any one of these patents, any one patent covering a given process or a given product, unless protected by what might be called flank patents covering the obvious and less obvious probabilities of invention on the same line, would become absolutely worthless. We had no means with which to make the extremely exhaustive and expensive survey which would have been necessary of this vast mass of patents to determine whether they contain such groups, groups which would furnish adequate defense or the means of adequate defense.

In addition to all this, considering the patents from the point of view of something which might be sold at public auction or public sale, I had in mind the fact that the Alien Property Custodian was determined not to sell to anyone who could possibly become by the purchase a monopolist to any extent, and that this cut out from among the possible purchasers most of the strong chemical manufacturers in the country who would have been most interested in the possible purchase. He was also determined not to sell to a speculator, and while I knew it was almost impossible to detect a speculator, it also made it extremely probable that some possible bidders would be excluded.

I think that covers most of the grounds that I had in mind at that time. There was one more—or two more, really. One may be illustrated best by the case of Haber process patents. That was the fact that the entire value of these patents to any purchaser depended on the legislation of the United States; the very enactment of the Trading with the Enemy Act had in a sense cut out the monoply value of these patents and set up a bunch of possible competitors for any purchaser. In the case of all the process patents the termination of the war would let loose the whole of the German competition upon the purchaser of the patent.

In the case even of the product patents the purchaser would have to face the results of German research, which were totally unknown, during the war. So that unless strong protection of some sort by way of tariff, selective embargo or otherwise were enacted, I felt that no purchaser would feel he was getting much of any value in any one of these patents.

In the case of the vat dye patents there was the further fact that one whole group of such patents had already been sold to one purchaser, the Grasselli Chemical Company. I should say each of the Big Six in Germany developed its own line of those dye patents, each in a sense capable of filling the whole field of the work required from those dyes. It so happened that the indanthrene dyes of the Badische Company had become the most important. They were the first on the market, and as long as all the six German companies were in one combination it did not matter to them which was pushed with the greatest success in our markets. They were perfectly content, I assume, to have the chief value of the industry concentrated in the indanthrene colors of the Badische Company. But six separate sets of those vat dyes existed, each covered by a set of patents taken out by each of the six companies. My understanding was that the so-called algol vat colors of the Bayer Company could be developed to do all the work of the Badische dyes, the indanthrene dyes. These algol dyes had become separated from the mass and were in the hands of a strong company. They afterward went to the Chemical Foundation. Accordingly, I assumed those patents were less valuable to any purchaser by reason of the fact he had to compete not only with the possibilities of import from Germany and Switzerland, but also with manufacture under the algol patents by the Grasselli Company. I think that covers the ground.

Q. 28. You stated that you did appear before the

Manufacturing Chemists Association. Will you state whether or no you also were in communication with the American Dyes Institute?

A. Yes.

Q. 29. You know Mr. Hoguet?

A. I do.

Q. 30. Did or did not Mr. Hoguet participate in these conferences?

A. At the meeting of the Manufacturing Chemists Association on February 4th and at the meeting of the American Dyes Institute on February 7th Mr. Hoguet was present in each case and both he and I spoke explaining the plan for the Chemical Foundation. That was in 1919.

Q. 31. Do you know whether the suggestion for the sale of these patents, which was subsequently made to the Chemical Foundation, was first made by you and Mr. Hoguet, representing the Alien Property Custodian, or by representatives of the industry?

A. Do you mean for the specific sale, or for any sale?

Q. 32. For any sale.

A. I think it was made by the Alien Property Custodian representatives. I never heard a suggestion of it from outside until after it had been very completely discussed inside the office.

Q. 33. Mr. Choate, have you any interest in any chemical concerns?

A. I think not.

Q. 34. Did you at the time of this sale?

A. I did not. Wait a moment, I may have had a part ownership in some stock of the American Agricultural Chemical Company. That is purely a fertilizer concern which has nothing whatever to do with chemistry proper or organic chemistry in particular.

Q. 35. Did that concern have anything to do with the Chemical Foundation?

A. Nothing whatever.

Mr. Kresel: Colonel Anderson, you may examine Mr. Choate. And I say now I shall raise no objection to your examining him on cross on any subject, even though I did not cover it in my direct.

Mr. Anderson: I do not think this would take me more than half an hour. I have my notes over at the office. I did not expect to reach Mr. Choate today for cross-examination. I will send for them.

The Court: Can we meet an hour earlier in the morning? Would that be agreeable to counsel?

Mr. Kresel: Anything that is agreeable to your Honor and to Colonel Anderson. Of course, I am very anxious to get along.

Mr. Anderson: So am I, as anxious as I can be to get through. But I have not been well for a week and have been working under great difficulty.

The Court: Then the desire of the Government is that the session be adjourned until tomorrow morning at 8:30?

Mr. Anderson: I would like it so, because it will take me about fifteen minutes to get my notes over here, and I do not think it will take very long in the morning to cross-examine.

The Court: We will adjourn now until 8:30 o'clock Standard time.

(Whereupon, at 3:45 P. M. Eastern Standard Time, adjournment was taken until tomorrow, July 6, 1923, at 8:30 o'clock A. M. Eastern Standard Time.)

TWENTY-SECOND DAY.

Wilmington, Delaware, July 6, 1923, at 8.30 o'clock A. M. Standard time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

JOSEPH H. CHOATE, JR., resumed the stand.

THE WITNESS: If your Honor please, I note in reading the minutes two mistakes, one of which I am conscious was the use of a wrong word by me. The other, I think, is the stenographer's error. I would like to correct them if I may.

THE COURT: You may.

3151, the third line of the second paragraph at the middle of the page, where I say, "One may be illustrated best by the case of salvarsan." I meant to say there "by the case of the Haber process patents," as will appear by the rest of the passage. I was speaking of the fact that the value of these particular patents was adversely affected by the possibility of foreign competition, particularly German competition; and what I had in mind was the fact that the Haber process patents, being process patents, the purchaser would be exposed to the full brunt of the competition of the German Haber Air Nitrogen Works, as well as the German coke oven and by-product gas plant production of ammonia.

The other error is on page 3152, the eighth line from the bottom, where I am represented as saying, "They afterward went to the Chemical Foundation," referring to the algol vat dye patents purchased by the Grasselli Company. Of course, what I said was that they did not pass to the Chemical Foundation.

Mr. Anderson: If your Honor please, my attention has been called to my answers to the inquiries of the Court on yesterday at pages 3047, and following; that one of my answers was possibly capable of a misconstruction. There was some interruption, and I changed the line of thought.

I wish to make it clear this morning that what I was intending to say at the time, to follow up what I did say, without going back over the discussion was this: Your Honor asked in effect whether the interests of the United States, commercial or possibly military (I may not state your Honor's language) could be considered as a consideration for this conveyance or as a part of the consideration of this conveyance. I was answering that question and there was another question asked and I diverted my thought to something else.

I wish to say that in my view and I shall contend here that the Alien Property Custodian had no right to consider the commercial or military interests of the United States, which was purely a question for Congress, and to the extent that that was treated as a consideration and reduced the price below the fair value of the property, it was confiscation and therefore illegal.

Mr. Kresel: Will your Honor pardon me, because I want to understand Colonel Anderson's position also. I wonder whether Colonel Anderson is drawing a distinction between the Alien Property Custodian and the President. Of course, our contention is and will be that this sale was a sale authorized by the President and whatever was done was done under the directions of the President. Is it Colonel Anderson's position that the President had no right to consider the safety of the nation in making this sale? I wonder if Colonel Anderson would be willing to answer that question.

Mr. Anderson: I am perfectly willing to answer it except that I do not want to get into an argument this morning, but merely wanted to finish up my statement of yesterday. I think I have developed the position of the plaintiff day by day here in elaborate arguments. The defendant has not developed its position in similar arguments. I might ask questions of counsel the same way, but I wish to say this in reply, as long as the Court has inquired on the subject.

In the first place, the Government contends that this transaction was not authorized by the President. That gets to the root of that inquiry. In the second place, the Government contends that the President of the United States has no more power to confiscate property than the Alien Property Custodian or any other officer and that the Constitution of the United States as to citizens of the United States is clear on that subject; and as to alien property, the law is well settled, that it can only be done, if at all, by Congress.

I may add to that, to make my position perfectly clear, that the question of what is the welfare of the United States, commercial or military, and what is necessary for the defense of the United States, is by the Constitution expressly vested in the Congress of the United States and that question is not one to be considered by an officer of the Executive Department like the Alien

Property Custodian; nor is it a question that can be considered by the courts.

THE COURT: Your last statement brings to mind a matter that I have had under consideration and that I have been trying to puzzle out in this case. I was just wondering why this suit was instituted at all in the name of the United States instead of the Alien Property Custodian if the title to these patents was in the Alien Property Custodian.

MR. ANDERSON: I will be very glad to answer that question, sir. The matter was carefully considered. Under the decisions of the Supreme Court of the United States and the line of cases illustrated perhaps by the United States v. Beebe, the Supreme Court has held that wherever a suit involved a public obligation or duty of the United States, whether it had a direct financial interest or not, or wherever it involved the interests of the United States, it was the duty of the United States to institute and maintain the suit; or at least that it had the authority to do so.

The view of the Government was that the Alien Property Custodian was only the hand of the United States to hold this property and therefore the United States was really charged with the obligations arising under this act and that it was its duty, it involved its public duty, its public obligations and its interests in a material way as representing the people of the United States, and it was the proper party to sue. That question was very carefully considered and that conclusion was reached after a most careful consideration of the authorities and the authorities, in our view fully sustained that conclusion. It is a very natural question because at first impulse, the same question arose in our minds.

The Court: In discussing the 5700 patents in which the Navy was given some interest I remember I remarked it seemed to me that was a transfer to itself. Then when you denied that I wondered how that was to be reconciled with the fact that this plaintiff is the United States. It was just a puzzle in my mind.

Mr. Anderson: I did not intend to deny that it was a transfer to itself in the sense that your Honor is now discussing it.

The Court: No, I did not mean to lead you into that, Colonel Anderson. I have asked you numerous questions, because the plaintiff is seeking to change the status, you are seeking to set aside the sale. Until your pathway is marked out clearly and I get the bridge completed and understand your theories, it seems to me the burden is yours of marking out that pathway.

I shall have one or two questions to ask Mr. Kresel. For instance, some time when he has an opportunity of telling me I shall be very glad to have him tell me just how the chemical industry in the United States will be jeopardized by granting the prayer of your bill, assuming that you have made or will make out a title or a right in this case. I do not want that gone into now, and you understand fully that that question, no more than the preceding questions, indicates no conclusion in this case.

Mr. Anderson: I quite understand, sir.

The Court: I desire to state that I have arrived at no conclusion on this case, because the fundamental question at the very threshold of this case is a construction of that statute and I have not re-read that statute and do not propose to reach a conclusion on that statute until after the argument may be had, on the 9th of October.

Mr. Anderson: Your Honor will quite understand that whatever I have said did not apply to anything of that kind. I want to answer as far as I can, but for the past week I have not been at all well, and to answer offhand at the bar is sometimes difficult when your mind is on something else.

The Court: Yes, and when your mind is directed to one point rather than to a two-fold point. It seems to me the case is unique, and it has seemed to me if I am to thoroughly understand this case I must be helped during the time it is put in.

Mr. Anderson: I appreciate that and am always glad to answer the questions.

The Court: I appreciate the patience you have displayed in view of the many questions that have been asked you.

Mr. Anderson: I may say we quite agree the case is unique, and I may add that the Government regards it as a matter affecting its national and international rights and duties, and one of the most important litigations instituted for some time. It is my duty to help the Court in arriving at a sound conclusion.

The Court: I do not think any criticism can be laid to you for failure to do that.

Cross-Examination.

By **Mr. Anderson**:

XQ. 36. Mr. Choate you have never been connected in any way with the dye and chemical business, prior to your association with the Alien Property Custodian's office?

A. No.

XQ. 37. You are not a patent lawyer in the sense that that title is usually used in the profession, are you?

A. No.

XQ. 38. You had never been connected with the manufacture of dyestuffs or chemicals in any way?

A. No.

XQ. 39. Mr. Choate, I am going to ask you certain questions about your testimony and I hope you will understand that there is not implied any criticism of you whatever.

A. Certainly.

XQ. 40. I know you will understand that, but I want to state that for the benefit of everyone else, that I have not the slightest disposition to do it. You appeared before the Ways and Means Committee of the House of Representatives in the hearing which has been referred to here as the Hearing on H. R. 2706, did you not?

A. Yes.

XQ. 41. In that hearing the record states that you appeared as counsel for the Chemical Foundation and American Dyes Institute?

A. I did.

XQ. 42. At page 88 of that record I read you an answer to a question by the Chairman.

A. May I have a copy of it?

XQ. 43. If you wish to have that record before you.

> "THE CHAIRMAN: Give the name of the company you represent to the stenographer.
>
> "MR. CHOATE: I appear here as counsel for the Chemical Foundation, into which I shall go in a moment, and also I have been asked to represent the American Dyes Institute, which is an association of all the dye makers, or substantially all the important dye makers in the country, because they have exactly the same point of view presented by

> the Chemical Foundation today and are therefore properly represented by the same counsel. I came into this case, gentlemen, through my service in the office of the Alien Property Custodian, as has been pointed out by Judge Covington."

That is your testimony, isn't it?

A. It was.

XQ. 44. And that was a fact at that time?

A. Yes.

XQ. 46. I believe you have been the general counsel of the Chemical Foundation since it was organized in 1919?

A. Since the day which appears by the minutes on which I was designated in that capacity.

XQ. 47. You also appeared in the hearings before the sub-committee of the Committee on the Judiciary of the United States Senate on what is known as Senate Resolution 77, I believe, and testified at that hearing?

A. Yes.

XQ. 48. Will you turn to page 528 of that hearing?

A. Yes.

XQ. 49. (Reading):

> "THE CHAIRMAN: Yes; you may proceed.
>
> "MR. CHOATE: Of course, Mr. Chairman, I have been familiar with almost all of the activities of the Chemical Foundation from the beginning, because I had a part in its organization and also in the action of the Alien Property Custodian with reference to it. That matter has been so fully covered by Mr. Garvan that I assume, except possibly in the way of cross-examination, you will not wish to ask me any questions in regard to it. Everything has been stated accurately by Mr. Garvan and the others, and documents relative to the subject have been produced. I shall not, therefore, go into that except in answer to questions.

"In regard to the activities of the American Dyes Institute, I also conceive that the entire ground has been covered, with the exception of the references made by Senator King to the trip to Paris which I undertook for the American Dyes Institute in the autumn of 1920. I do not know that Senator King made any definite statements in regard to that trip, but I felt that what he said makes it appropriate that that trip should be explained.

"THE CHAIRMAN: You went as the representative of what company or association?

"MR. CHOATE: Of the American Dyes Institute. I had been counsel for the American Dyes Institute since the spring of 1919; retained by them to present to the Congress and the appropriate committees the case for special protection for the American dye industry, and in that capacity I had a part in all of the legislative activities; and I shall be very glad, of course, to answer any questions which may occur to you as to any of those activities. I think, however, they have been sufficiently explained to date."

That is your testimony, is it not?

A. It was.

XQ. 50. And that is a fair statement of the facts as stated there, is it not?

A. I think so.

XQ. 51. It was in September, 1920, that you went to Paris as a representative of the American Dyes Institute, was it not?

A. I think the end of September of that year. Wait a moment. I think it was in October of that year that I went to Paris.

XQ. 52. Yes, about that time. Can you recall about when you first became counsel of the American Dyes Institute?

A. A short time before the hearing before the Ways and Means Committee in 1919. That would make it either in April or May of that year; April, I think. It was after the conveyance of April 10th to the Foundation.

XQ. 53. I will next read to you from your testimony before the Ways and Means Committee on H. R. 2706. I believe you have the book. Will you turn to page 106?

A. Yes.

XQ. 54. (Reading):

> "Now, as we came to a knowledge and realization of those conditions in the Alien Property Custodian's office, it began to seem to us that it was up to us to do something about it. We came to the conclusion that we were in a unique position; that we were probably the only people in the country who, without having the slightest interest in the making or consuming of dyes, had in reality some knowledge of the business and of its importance. And so, although it was none of our business, as members of the Alien Property Custodian's staff, but purely for what we conceived to be reasons of publiq spirit, all of us who had the knowledge thus derived there, very early began to scratch our heads to see if we could not find some way of helping this industry here and, if possible, saving it. For a long time we were very much discouraged in the existing condition of legislation and saw no help for it. The tariff, as I said, we were satisfied would have absolutely no effect whatsoever on the German trust. I am coming to that in more detail later. Without legislation, which we could see it would be very difficult to get, it seemed to us that almost nothing could be done.
>
> "On further consideration, we began to study the patents. At that time the Trading with the Enemy Act did not enable the Alien Property Custodian to take over patents, and there they stood, 5000 of them, an impassable obstacle to the American manufacturer. As long as those patents existed, we could not manufacture the vital dyes on which every kind of industry depended. Accordingly we bestirred ourselves and repre-

sentations were made before Congress which resulted in the amendment of November 4, 1918, permitting the Alien Property Custodian to seize patents. Then the question arose what to do with them.

"MR. MOORE: I will ask you if there is anything in that law authorizing you to do anything with those patents to be seized?

"MR. CHOATE: In that law coupled with the existing law, the references from one to another give the power of sale.

"MR. MOORE: The Alien Property Custodian had a right, under the law as amended, to sell?

"MR. CHOATE: He undoubtedly did.

"MR. MOORE: I remember at the time of the passage of the act that was discussed, and I have since wondered just how he came to have that right and just how it was exercised.

"MR. HAWLEY: Did that transfer the property in the patent finally?

"MR. CHOATE: Finally, and once for all; just like any other piece of personal property.

"MR. HAWLEY: So the original German owner lost the patent?

"MR. CHOATE: The original German owner lost the patent absolutely, but received the right to get back whatever Congress saw fit to give him."

That is your testimony, is it not?

A. It is; that is to say, I suppose that question means that was my testimony given at that hearing.

XQ. 55. Yes, Mr. Choate, you understood this situation thoroughly at that time, I think you said yesterday.

A. Certainly. The only qualification I had to suggest was that it represents my conclusions and my beliefs at that time.

XQ. 56. Just after the original sale took place?

A. Oh, yes; and they are my beliefs at the present time, but as to a good deal of it, it is conclusion.

XQ. 57. On page 108, you were asked a question by Mr. Moore, about the middle of the page:

> "Mr. Moore: These patents were the private property of our alien enemies?
>
> "Mr. Choate: Surely.
>
> "Mr. Moore: They did not belong to the German Government except as it might be that the Kaiser personally had some interest in the patents; and being private property or corporate property as the case might be. What return can we make at the close of hostilities, in the peace settlement, for the property we have just taken and appropriated to ourselves or appropriated for the purposes of the Chemical Foundation, Inc.?
>
> "Mr. Choate: Gentlemen, that is for you gentlemen of Congress to say. We have nothing to say about it. It is a matter of legislative policy to say what form of justice shall be meted out to the Germans.
>
> "Mr. Moore: But you have just stated that the idea originated with the Alien Property Custodian, who desired an amendment to the law in order that he might cover this very point for the purpose of seizure and sale.
>
> "Mr. Choate: In order that patents might be placed on precisely the same footing as other personal property.
>
> "Mr. Moore: He is in position to make an accounting now, as Congress expected?
>
> "Mr. Choate: Yes; because the law requires that he shall make an accounting."

That is your testimony, is it not?

A. That was.

XQ. 58. And so far as you know, the facts stated there are the facts, are they not?

A. They represented my beliefs then and now.

XQ. 59. And further down at the bottom of the same page, I would read to you as follows. You were speaking of the Chemical Foundation.

"Mr. Moore: It is an American corporation effected under the auspices of a Government official, the Alien Property Custodian, and presided over by the present Alien Property Custodian, who has been placed in possession of these German rights, subject to such legislation as we may have enacted, which they propose to turn to their own use. That is the reason I bring the question up and I think it is very pertinent.

"Mr. Choate: The patents have been sold precisely as necklaces, horses, and pictures, stocks, and bonds belonging to the Germans in this country have been sold.

"Mr. Moore: But they were not perishable like horses and cattle.

"Mr. Choate: Some were extremely perishable; some had about expired.

"Mr. Moore: So far as stocks and bonds seized and sold is concerned you certainly have the proceeds somewhere.

"Mr. Choate: We have the proceeds of the patents.

"Mr. Moore: And you are to account to Congress in due course of time.

"Mr. Choate: The proceeds of the patents are in the hands of the Alien Property Custodian for the patents sold.

"Mr. Moore: What was paid for those patents?

"Mr. Choate: $250,000.

"Mr. Moore: By an arrangement with the Alien Property Custodian, they were sold to the Chemical Foundation, Inc.?

"Mr. Choate: Yes.

"Mr. Moore: He suggested this law in order to take them over?

"Mr. Choate: Precisely.

"Mr. Moore: May I ask how the terms were fixed?

"Mr. Choate: Those terms were fixed by guess-work in the same manner as an individual would value patents by guess-work."

That is your testimony in this hearing?

A. It was.

XQ. 60. If you will turn to page 110 of the same book, I will read your statement without going into the question, unless you desire it. In reply to a question by Mr. Moore you made the following statement:

> "To resume; something had to be done with those patents. The only thing the Alien Property Custodian had the power to do, without further help from Congress, was to sell them. Now the universal practice of the Alien Property Custodian's office was to Americanize the seized companies as far as he could by selling their securities, when found in German hands, to first rate competent American purchasers."

Was that your testimony?

A. Yes. When you say, "was that your testimony", perhaps it conveys the idea that it was the whole of my testimony on that subject. I so testified.

XQ. 61. I will put it that way. Did you so testify?

A. Yes, sir.

XQ. 62. I think probably your suggestion is a good one, because I have not read your entire testimony.

A. (No answer.)

XQ. 63. At page 506 of the same book, Mr. Choate, where the testimony related to the question of the character of the Chemical Foundation, Incorporated, I wish to read just two questions and answers at the middle of the page.

Question by Mr. Moore:

> "The Chemical Foundation (Inc.) was still a private corporation and is now?
>
> "Mr. Choate: It is still a private corporation technically, but as nearly public as could be organized.
>
> "Mr. Moore: And we have gone into it suf-

ficiently to show that the only relationship it has with the Government is that Government officials are connected with it?

"MR. CHOATE: That is all."

You so testified, did you not?

A. I did.

XQ. 64. You stated I think that that hearing, and it may appear of record, was in June and July of 1919?

A. That is right.

XQ. 65. Will you now get the book entitled "Dyestuffs Hearing, before the Committee on Finance of the United States, on H. R. 8078" frequently referred to in this case? I will ask you to refer to page 116, beginning about the middle of the page.

Question by Senator Watson:

> "You did not limit it to German patents. You said all other chemical patents, and I wondered whether you included all those hereafter taken out.
>
> "MR. CHOATE: Oh, no. The idea was suggested to a gathering of as many of the representative men in the industries as we could get together, and they went out and organized their corporation, the Chemical Foundation. Then there came up the question of how we were going to sell to it. The Alien Property Custodian, Mr. Palmer, and Mr. Garvan, were insistent that the sale should be by public auction. That was the ordinary way of disposing of German property, and it was the natural way, the generally desirable way.
>
> "We found the representatives of the industries unanimously opposed to that course for reasons stated by them which finally convinced me and convinced Mr. Garvan and convinced Mr. Palmer; and those reasons were these: Having interested in the Chemical Foundation substantially all the principal manufacturers whose business was affected by these patents, it included nearly

all the possible manufacturers who might have been found at a public sale at auction as proper purchasers for the patents. Outside this group a legitimate purchaser, therefore, could hardly be found. But even if that had not been the case, had the patents been put up at auction, either the same thing would have happened as happened in the case of the Bayer patents, and they would have been bought in in one block or in a half dozen blocks or 40 blocks by manufacturers, and thus closed to the rest of the American industry, or else—and this we feared still more—they would have been bought in by speculators, who would have bought them for their nuisance value, out of which a speculator might well have made a handsome figure. It would have been impossible to detect and reject a speculator as purchaser, because he could easily have hidden under a perfectly respectable dummy or nominee.

"Accordingly, it was determined that it would be impossible and unsafe to put those patents up for public sale, and it was agreed that the matter should be presented to the President of the United States, with a request for an Executive order authorizing the private sale to the Chemical Foundation; and that was the course which was followed. The price of $250,000 that was fixed for the patents was, as you may well suppose, a guess. No human being could put a value on that block of patents; none of them had been used in this country, a very large proportion of them had not been used anywhere else. They were held for their nuisance value only, and no man could say what that nuisance value was. No one was disposed, I think, to lean backward in the way of overvaluing the nuisance value of a patent owned by an enemy, a nuisance value which reacted against an industry which we believed to be so important.

"Therefore, the figure of $250,000 was arrived at as the best obtainable guess on the part of anybody and the transaction was put through on that basis."

Was that your testimony?

A. I so testified.

XQ. 66. Mr. Choate, are you not mistaken there in saying that none of these patents were being used in this country, and is it not a fact that a number of them had been licensed by the Federal Trade Commission and were then being used under those licenses and in a number of cases there were contracts outstanding for the use of those patents which had been seized by the Alien Property Custodian?

A. I think there were exceptions. I think you are right. Federal Trade Commission licenses do not by any means represent the actual use in the country, because a great majority of these Federal Trade Commission licenses at that time represented hopes rather than existing practices. But in the case of salvarsan and the patents covered by the pre-war contracts, there had been some use made in the country.

Q. 67. I only wanted to make that perfectly accurate to conform with the record.

A. (No answer.)

Q. 68. I think you testified elsewhere and I will try to find the testimony if you desire, but it is merely to get the facts, that there had been invested by American manufacturers very large sums of money at that time in the development of the dye industry largely during the war under some of these patents and Federal Trade Commission licenses?

A. My opinion was that in research carried out in the endeavor to produce under the vat dye patents there had been very large sums expended by at least two manufacturers.

XQ. 69. And at that time the production of dyes in the United States was quite large, was it not?

A. Of dyes generally, yes.

XQ. 70. That is what I mean.

A. Not of the patented dyes.

XQ. 71. The record put in here of the Federal

Trade Commission income shows that considerable sums had been paid on account of the royalty of five per cent. on the production under those patents which were licensed. You are familiar with that evidence, are you not?

A. I have heard the evidence that has gone in here, but I do not recall evidence of any payments indicating receipts by anybody on patented dyes before the date of the conveyance.

XQ. 72. That, of course, would be a question of examining the evidence. I am not very sure on that question at all.

A. Certainly it would surprise me if I found now that anyone had made any money out of any patented dye before the first conveyance to the Chemical Foundation. I think the money was confined to pharmaceuticals.

XQ. 73. You spoke of arriving at the price of $250,000. Did you ever hear any other sum than $250,000 suggested?

A. Yes.

XQ. 74. What was it?

A. A figure of $500,000 was discussed with someone at some time before the final fixing of the price. Do you want my recollection in that regard?

XQ. 75. That replies to my question. If there is any other fact in connection with it that you feel should be given to make your answer complete, I have no objection whatever.

A. I recall a discussion with someone, I rather think it was Mr. Wigglesworth, who suggested that the sum of $500,000 had been suggested as the price, and he then informed me that that price was quite impossible, that the industry never could or would raise that price together with the necessary funds which would be required to protect the patents; and I think I received the same information from several other persons whose names I can not now recall.

XQ. 76. You still have the book H.R. 2706 before you, have you not?

A. I have.

XQ. 77. At the bottom of page 117, in speaking of these German patents taken over by the Chemical Foundation, you were asked this question:

> "MR. GREEN: These companies, by virtue of their operation, whether in connection with these patents or not, and although while holding these patents have made immense profits in this country?"
>
> He is referring to the German companies.
>
> "MR. CHOATE: Large profits, I should say.
>
> "MR. GREEN: And profits that both you and Mr. Garvan were aware of?
>
> "MR. CHOATE: Yes."

You so testified, did you not?

A. I did.

XQ. 78. Have you before you the hearings on the Tariff Act of 1921, H.R. 7456?

A. I have.

XQ. 79. Will you turn to page 518, please? Question by Senator Smoot:

> "SENATOR SMOOT: If I asked you, as my attorney, and you were not the attorney of the Chemical Foundation, whether I would be safe in buying all of the patents held by the foundation for $250,000 today, what would you tell me?
>
> "MR. CHOATE: I should tell you, in the first place, that the Chemical Foundation was incapable of selling the patents under its charter.
>
> "SENATOR SMOOT: As an attorney of the Chemical Foundation, do you think that $250,000 was all that those patents were worth?
>
> "MR. CHOATE: I think it was not all they would have been worth to a private purchaser, unlimited

in the use of them. A private purchaser unlimited in the use of these patents could have made very large sums by holding up the industry with them. Their nuisance value was very large.

"SENATOR SMOOT: There are patents there, outside of the nuisance value, that are worth a great deal more than $250,000.

"MR. CHOATE: To a private purchaser, undoubtedly, outside of the nuisance value; but you forget that the Chemical Foundation, both by the terms of its charter and by the terms of the Foundation, is absolutely limited in the use of these patents, so that it can not profit beyond the necessary sum to pay a six per cent. dividend on its very small stock; so that all the rest of the money that is received has got to be used for the advancement of science; and, furthermore, it is so limited that it can not use the patents in the way in which an individual would, by the issue of exclusive licenses. It can only issue nonexclusive licenses, which must be issued on equal and reasonable terms to all American citizens, partnerships, and corporations.

"SENATOR MOSES: These licensees have profited, have they not?

"MR. CHOATE: I hope they have."

You so testified, did you not?

A. I so stated, yes.

XQ. 80. That hearing took place in 1921, in August, did it not?

A. It did.

XQ. 81. And I believe, Mr. Choate, you represented the Chemical Foundation at that hearing?

A. No.

XQ. 82. Was it the American Dyes Institute?

A. American Dyes Institute only.

XQ. 83. Now I will ask you to turn to the book containing the hearings before the Ways and Means Committee on H.R. 2706, page 122. I read the following from your evidence. Question by Mr. Kitchin, who

I think it appears here was a member of the committee and a member of Congress.

"I just wanted it to appear on the record. Now, your company, after the purchase by this chemical company of these 1200 patents, was organized, and then the other patents were put on sale at public auction?

"Mr. Choate: They were not sold by public sale by the Custodian, because it would have been impossible to do that for a variety of reasons. All the possible available bidders who could have bid in good faith for these patents as real manufacturers were already in the enterprise, because they were members of the American Dyes Institute. The only other kind of bidder there could have been would be a hold-up artist who would buy the patents either for the benefit of his own pocket or who would buy them to hold them up from use. It required an Executive order from the President to effect that transfer.

"Mr. Kitchin: I simply desire to get the facts on the record. Now, were these patents offered separately or were they en bloc?

"Mr. Choate: Were they what?

"Mr. Kitchin: Offered separately, or were all the patents covering dyestuffs offered en bloc?

"Mr. Choate: They were sold in one transaction to the Chemical Foundation.

"Mr. Kitchin: What was the actual amount of cash that was paid for them?

"Mr. Choate: $250,000.

"Mr. Kitchin: You stated it before, but I want to get it in this connection. Now, did your patents cover any other part of the chemical products except dyestuffs?

"Mr. Choate: Yes, sir; all chemical products we could lay our hands on, but it is only in the dyestuffs that the patents are of great importance —dye and pharmaceutical goods—because it is only there that the patent is especially important. They covered salvarsan and other products and all the rest that we could get our hands on.

> "Mr. Kitchin: Did any of the manufacturers of this country have the advantage of these patents, or were they allowed to make without protest on the part of the Government or anyone dyestuffs under these patents during the war?
>
> "Mr. Choate: No, sir; but there was a provision in the 'Trading with the Enemy Act' that enabled them to get a license from the Federal Trade Commission, but under that provision they were required to pay a 5 per cent. royalty to be held by the Alien Property Custodian for the benefit of the German competitor after the war, and also to buy a lawsuit, because the act provided that there should be a determination by a court of how much more than 5 per cent. they should pay.
>
> "Mr. Moore: Would the United States have suffered in the war if we had continued to hold those patents in the hands of the Alien Property Custodian until the close of the war?
>
> "Mr. Choate: In this war, I doubt it.
>
> "Mr. Moore: They were of no avail to us during the war?
>
> "Mr. Choate: I think not
>
> "Mr. Moore: And of course the Germans could not use them here?
>
> "Mr. Choate: It is a very difficult question, but I suppose that the patents on the dyestuffs products themselves would have little bearing on the war. It is their bearing on the dyestuff industry that gives them a colossal importance. We might have held all the property and given it back to the Germans."

Did you so testify?

A. I did.

XQ. 84. I will now ask you to turn to the Hearings on the Tariff Act of 1921, H. R. 7456, page 519, question by Senator Moses:

> "Senator Moses: Was there ever any intimation that a license would be refused?
>
> "Mr. Choate: At the outset the policy of the Foundation was not fully determined. It was real-

ized that it would be very unfortunate for the industry if a large number of licenses should be simultaneously issued covering the production of some product not previously made in this country, inasmuch as the issue of such a large number of licenses would discourage any of the licensees from actually putting money into the business and going to work; but it was very soon determined by a vote of the stockholders' advisory committee, consisting of all the stockholders, that the policy was unwise and improper and that there must be no limit to the number of licenses under any patent."

Did you so testify?

A. Yes.

XQ. 85. I believe you stated on yesterday that you wrote that chapter 2 of Mr. Palmer's report?

A. I did, substantially, as it was afterward transmitted to the President.

XQ. 86. And as it appears in Defendant's Exhibit 30 here?

A. Yes.

MR. ANDERSON: I have no further questions, if your Honor please.

THE COURT: Any re-direct, Mr. Kresel?

MR. KRESEL: No, your Honor. In view of the many extracts from Mr. Choate's testimony before all these committees that have been read by Colonel Anderson, I now desire to offer Mr. Choate's entire testimony before these committee's. It manifestly gives an imperfect picture of this witnesses's testimony before these committees, to take out a paragraph here and a sentence there. So I now offer as part of this witness's examination the testimony given by him before the Committee on Ways and Means of the House of Representatives. I shall indicate the pages. It commences at page 87 of this report, and runs to—I will supply the pages in a minute, your Honor, as I understand Colonel Anderson has an objection to offer at this point.

Mr. Anderson: If your Honor please, of course I object. I venture to say that in the whole range of the law no instance can be found in which a witness can be put on the stand and his testimony on a former occasion be offered by the party who put him on the stand.

I have tried to fairly question Mr. Choate on his testimony and have read a good deal from his testimony that was not pertinent to the questions I desired to ask, to the end that his statement might be as full on the point as I could make it. But to put in his entire testimony at a hearing before the Committee, as to some of which he was under oath and as to some of which he was not—not that I mean to imply that would make the slightest difference in his statement—and to put those statements in without cross-examination before the Committee, I think a matter that needs no argument. Therefore I make the objection without further argument on the subject.

Mr. Kresel: If we were to enforce the strict rules on the subject, your Honor I think will bear me out in the statement that the only purpose for which a witness' testimony in another proceeding or statement in another proceeding may be used against him on cross-examination, is for the purpose of contradiction, for the purpose of affecting his credibility, for the purpose of showing that upon another proceeding he made a statement contrary to what he states at the time he is being examined.

If I had wanted to enforce any strict rule here, there is much of what Colonel Anderson has read in from Mr. Choate's statement and testimony that is in no wise contradictory of what he has stated here and would therefore have been inadmissible. But I did not raise the objection; I did not propose to raise any objection. It is quite evident that the portions read by Colonel Anderson do give a distorted and an imperfect picture of what Mr. Choate stated upon the subject, and I think that there ought to be no objection raised by the Government to having appear before the Court what Mr. Choate stated fully upon the subject.

Your Honor will recall when Colonel Anderson read in passages from Mr. Choate's statements upon his case, we objected thereto, and I stated then that I should avail myself of the right, upon my case, to read in other portions of Mr. Choate's statement and testimony before these commitees, which portions had a connection to the matter read in by Colonel Anderson. I am prepared to read such portions. I have made notes of the pages wherein they appear. But I thought that in view of the very large number of passages that Colonel Anderson read this morning from this witness's testimony and statement, it would serve the Court's purpose better if the Court had before it this witness's entire statement. I think it is only fair that it should go in and I offer it.

Mr. Anderson: I think it has no relation to the issues in this case, your Honor. I have read from those portions which I thought related directly to Mr. Choate's testimony of yesterday, and so far as I recall every one of them did relate to his testimony of yesterday. I put in other portions of the testimony in the case on direct under the rule of admissions, and your Honor permitted Mr. Kresel to read in other portions of

Mr. Garvan's statement on the same principle—over our objections, of course.

If Mr. Kresel wants to examine Mr. Choate on any of the questions which I read to him or any extracts which I read to him, supplement them by his examination, that comes within the rules of evidence. Otherwise, of course, I will object. But certainly I most earnestly object to putting in this testimony en bloc. I will not say that the whole business relates to foreign matters, but a large part of it relates to foreign matters, and my examination related strictly to the issues in this case and to the points testified by Mr. Choate on direct.

Mr. Kresel: I do not think there will be any difference between Colonel Anderson and myself on the point that Mr. Choate's entire testimony before these committees had reference to the transfer of these patents to the Chemical Foundation and to the importance of the dye industry to the country. Those are the issues in this case, and I do not see where there is any ground for saying that what Mr. Choate stated or testified before these Committees or any part thereof, has no reference to this case. That was the matter that was being investigated by those committees.

Mr. Anderson: I do not concede that the question of the importance of the dye industry to the United States has anything to do with this case.

Mr. Kresel: Whether you concede it or no.

Mr. Anderson: It is utterly immaterial, we contend, and cannot be considered by this court.

Mr. Kresel: It is an issue raised by our Answer.

The Court: Are you through on both sides?

Mr. Kresel: Yes, your Honor, I am through.

The Court: What is the purpose of your offer, Mr. Kresel?

Mr. Kresel: The purpose of my offer, your Honor, is to show that the portions of this witness's testimony read in are distorted—I do not mean that in any offensive way to Colonel Anderson at all—fragments of this witness's whole statement and testimony which, if left without the other portions of his testimony, would be misleading and not helpful to the Court:

The Court: The purpose of my question, Mr. Kresel, was to find whether your offer of the evidence of Mr. Choate taken before these several committees is based upon the ground that such testimony shall be here received as if given by Mr. Choate on the witness stand, or whether your purpose in offering it is to have the portions of that testimony admitted fully reflect the views as expressed by Mr. Choate before those several committees, so that his statements there made and views there expressed will be reflected by the full testimony rather than be misunderstood, perhaps, by a portion of the testimony.

Mr. Kresel: Your Honor, the latter is my purpose.

The Court: That is said, Colonel Anderson, without knowing anything about the full testimony of Mr. Choate except what has appeared before and what has been read; because I have not had any of those copies in my hand. Whether the attitude of Mr. Choate at that time is fully and completely, fairly and properly reflected by the portions you read I cannot now determine.

Mr. Anderson: May I make this suggestion. Under your Honor's rules heretofore made in this case, which I simply reserve on——

The Court: Yes.

Mr. Anderson: I would recognize that Mr. Kresel has the right, and probably had the right any how—I mean as a matter of general law—to read other portions of Mr. Choate's testimony and ask Mr. Choate if he did not so testify, to the end that he might make his views complete if he thought they were not complete in the portion read. Mr. Choate, now being on the stand, there is a different question presented, not one of merely reading it into the evidence. The original objection I made was on the ground of admissions. He can ask Mr. Choate if he so testified this or so testified that, specifically, but I earnestly submit that he has not the right to put in the entire testimony without giving me a chance to raise the question whether it is hearsay, whether it is—

The Court: That would be true, Colonel Anderson, if he was offering it as primary evidence; but as I understand him, he is not so offering it, and if he were so offering it I should let it go in under the general rule, though I have no hesitation in saying so far as I am concerned it would be useless. The purpose of the portions which you read was necessarily that of reducing the weight or nullifying the value of the testimony given in chief. If you have read portions which will best serve the plaintiff's purpose in that particular, and if the defendant contends those portions cannot be read separate and apart from the whole testimony, then it seems to me there is no difference between you, because you say that Mr. Kresel may read certain other portions and ask him if he so testified. Mr. Kresel says those other portions embrace all the rest of his testimony.

Mr. Anderson: If your Honor please, I think I have the right to call your attention to the fact that Mr. Kresel has inadvertently made a mistake. A very large portion of this testimony relates to the dye embargo, tariff rates, a trip to Europe, things of that kind which have nothing whatever to do with the issues in this case as I see them. Of course, I recognize that as to some of them counsel may take a different view. I am objecting to this testimony on the general and specific grounds reserved to all of it, which goes to the materiality and relevancy, but I cannot point out the immateriality and irrelevancy of it unless it is read.

However, I object to the form and the method of putting this evidence in. The only possible way the former testimony can be used except for the purpose of impeaching a witness on cross-examination or as an admission, as I now recall, is to ask the witness if he did not so testify, in redirect. The position of counsel who puts the witness on the stand is that he must get his case from the witness on the stand, and no matter what he has testified to before he must get it from the stand in any case.

THE COURT: There is no doubt about that.

MR. ANDERSON: Therefore, he can ask Mr. Choate, in view of the fact that I have asked him as to his former testimony, if he did not also testify to the following effect. I think that would be fair, and my view of the rules of evidence is that they are rules of fairness and common sense. True, some of them are so mixed up by exceptions that it is like spelling in the English language, you cannot tell just which it should be.

Reserving our general objections on the subject, I do object to dumping into this record hundreds of pages wholesale, as to which I cannot carry in my mind what it is and I do not know what it is. I have not time to examine it while this witness is on the stand. It may relate to matters I have not seen, because of the thousands of pages in this matter I have not been able to read all and I could not if I would. I am discussing chiefly now, outside of our general objections, a question of the method of putting Mr. Choate's former statements in the record. If the counsel wants to ask Mr. Choate if he so testified, in order to get his testimony accurate, and read it to him, as long as it is relevant to my cross-examination and the issue here I would not on that ground object to it.

The Court: Does it not come down to this which is stated by Wigmore on page 199 of the pocket code:

"Where the purpose is to impeach a witness by prior statements of his in writing,"
it does not happen to deal at this page with prior testimony—"the rule for production applies subject to the following qualifications: (a) The writing need not be shown or read to him before asking him as to its contents. (b) But the tenor and circumstances of the supposed statement must be sufficiently specified to him orally in a question, pursuant to Rule 108 (ante §579). (c) If he admits, in replying to such question, that he did make the statement asked about, the writing need not be produced by the impeaching party, unless the trial Court deems it fair to do so."

Mr. Anderson: I went to the extent of showing him the evidence every time before I asked him the question. I think that is a fair thing to do, because no man can carry all that matter in his mind.

The Court: But I think "produce" does not mean merely exhibit it to the witness, does it?

Mr. Anderson: The rule says that you need not show it to him in advance. I went to the extent of showing their evidence to both Mr. Garvan and Mr. Choate every time in advance.

THE COURT: I appreciate that. But my interpretation was not the same as yours. I thought Mr. Wigmore meant by production that the writing itself need not be placed in evidence.

MR. KRESEL: May I say, your Honor that what Colonel Anderson is mentioning is just what I am trying to avoid. I am trying to avoid standing up and reading to this witness long passages from his testimony which will take an hour or two, and simply asking him, "Did you so testify?" That is a thing I am trying to avoid.

As for Colonel Anderson not knowing the record, I say now that of course, if your Honor will permit me to put in the statements made by Mr. Choate, he has an absolute right, and I recognize it, to examine Mr. Choate upon any of those statements. It is not going to serve anybody's purpose if I take up these records and stand up for an hour and ask the witness, "You said so and so. Did you say so?"

MR. ANDERSON: If your Honor please, that is exactly the point. I am perfectly willing to save time, but I am not willing to save time by a suspension of the rules of law and evidence. If Counsel want to put in any additional statements of this witness, I must, with an earnest desire to close this case, ask that it be done in a regular and formal and proper way to the end that I may know the testimony he is putting in and relying upon. Hundreds of pages of evidence put in here without having counsel point out what he is relying on or its pertinency to this case, would not be fair to the plaintiff.

THE COURT: The only purpose for which it can be offered is not as primary evidence of the statements therein contained. but to qualify, in so far as it will do so, the impeaching effect of the portions which you have referred to.

Mr. Anderson: May I say that I regard this as very important and a matter of great consequence in this case. In the first place, may I suggest to your Honor that when you get up in a Court above or even in this Court with a record of this size, it is perfectly impossible to distinguish between evidence which is put in as proof and evidence which is put in for some other purpose than proof. I know of no practice that is more destructive.

We of course are trying the case before a Court, but we consider it as being tried before a jury. Nothing can be more destructive of the rights of litigants than to put in evidence for a limited purpose of this kind and let it all be read. You can not get it out of your mind. The human mind is so constituted that it believes what it sees. When we see a thing in print, we believe it is so. You usually believe what the newspapers say. I do not mean to reflect upon the newspapers in that regard, but we do know that the effect of what we see in a newspaper is much stronger than if somebody told us so.

In my view, the full limit to which counsel can go in this case in connection with the statements read is to read the connection in which those statements are made; and therefore I must earnestly urge that this offer be rejected.

The Court: Colonel Anderson, are you not placing me in this position, although I am not complaining, that there is scarcely a document that was put in by you that was not with equal earnestness opposed by the defendant? In order that this case may be tried this time for the last time, that the issues here raised may be determined by the Appellate Court or by the Supreme Court on the record here presented, there was no rule of evidence barring the putting in by you of any record, writing or document that you believe you could make use of in a determination of the issues in this case, Are we not both estopped by that?

Mr. Anderson: I will answer your question in the negative, sir. There are any number of documents that Mr. Kresel might desire to put in here as to which I think your Honor's ruling might apply. There might be a limit. I do not know whether you could put in a discussion of Einstein's astronomical theory here. I think the Court would impose some limit.

But here is a matter of form in the putting in of evidence. Your Honor has ruled a number of times on the form or presentation of evidence. For instance, suppose when Mr. Metz was on the stand, after he was cross-examined, without showing him the evidence, I had gotten up here and offered these three books in which he testified to these thousands of pages of stuff. I assume that your Honor would rule, of course that the witness while on the witness stand must have his attention called to his former testimony. You can bring out any of his former evidence that has relation to the questions asked him, but you can not admit into this record the evidence given in hearings before committees, even to show that he made a more complete statement, without pointing out that it relates to something asked on cross-examination.

While your Honor has opened the door wide, there are certain rules under which the evidence must be put in, even if the doors are wide open. I object to the method by which counsel proposes to put this evidence in.

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The Court: I will sustain your objection to that and you may take such time as you need, Mr. Kresel.

The Witness: If your Honor please may I make a suggeston? Is there not a stipulation that the witnesses will be deemed to have testified as set forth in those volumes?

Mr. Anderson: The stipulation, as I recall it, is to this effect: that any of these documents containing this evidence may be used without formal proof that the evidence was so taken. In other words, ordinarily, we would have to call the stenographer to prove that the witnesses so testified at such a time. We waived the formality of that proof, just as we waived formality in the proof of a letter. But it was not to be put in evidence as if it were testimony given on a former occasion, as proof of facts contained therein.

Mr. Kresel: That was my understanding, as Colonel Anderson states. I do not believe it was intended to bind either party to a situation where the other might put in testimony without any further proof.

Mr. Anderson: If we had, we would not have called these witnesses at all.

The Court: All I am restricting you now to, Mr. Kresel, is to proving such portions as you deem relevant for the purpose of negativing or modifying the impeaching effect, if any, upon the testimony of this witness as the result of the portions of the testimony of Mr. Choate before the Committee, read by Mr. Anderson.

Re-Direct Examination.

By Mr. Kresel:

RDQ. 87. Mr. Choate, will you now take up this volume containing the minutes of the hearing of the

Committee of Ways and Means and turn to page 88 thereof?

A. Yes, sir.

Mr. Kresel: Colonel Anderson read a portion of the second paragraph on that page ending with the words "Judge Covington." I desire to offer in evidence now the balance of that paragraph together with the statement following that paragraph on page 88, page 89 and page 90, to the end of the first paragraph on that page.

The Court: Now then, in order that I may understand, is there any question that the witness so testified, or do you want to ask him a specific question?

RDQ. 88. Did you so testify as is reported there?

A. I did.

The Court: Is it your purpose that the stenographer shall take those books and copy them at large?

Mr. Kresel: No, your Honor; I simply want the record to give the pages and I will identify them sufficiently so that there will be no difficulty.

The Court: Then are you offering that as a separate exhibit to be numbered? If so, the Clerk had better give it a number. It must either be copied at length by the stenographer or be given a number by the clerk. The clerk suggests that all the portions which you indicate may be given one exhibit number.

Mr. Kresel: All the portions in one book be given one number?

The Court: Yes.

Mr. Kresel: I think that is a very good suggestion.

RDQ. 89. Now, Mr. Choate, please turn to page 92, beginning with the question by Mr. Moore which reads as follows: "Mr. Moore. In papers left in New with the sentence "Where could we find them?" Did you so testify as reported at the pages to which I have called your attention?

Mr. Anderson: I make the same objection as that made to the preceding question, and to all this evidence, as already stated, the objection applying to so much thereof as was not read by me on the cross-examination, because it includes a part of what I read, or to so much thereof as is not directly related to the subjects discussed in the portion which I read on cross-examination.

A. I did.

RDQ. 92. I also direct your attention to the statement at page 111, bottom of the page, beginning with a statement reading as follows: "Mr. Choate. At all events, there was a board I think we all respected and who had the confidence of the community and certainly knew the Germans and their works." Going from that point to the last but one paragraph at the bottom of page 112, which reads as follows: "Mr. Choate. Under our charter we can not license any corporation three-quarters of whose stock is not held by American citizens. I think that is a very wise provision. We do not want ever again to get in a position of having our industries controlled by foreign corporations." Did you make the statement as appears at the pages that I have just indicated?

Mr. Anderson: Same objections as stated above, which will be considered as made in each case without being repeated, and subject to the limitations therein stated.

A. I did.

Mr. Kresel: I am sorry to take all this time, your Honor, but I can not avoid it.

The Court: Are you through with that volume?

Mr. Kresel: I am through with this one volume.

The Court: Then let it be marked as an exhibit.

Mr. Kresel: In other words, the passages that I have indicated will receive one number.

The Court: Yes.

Received in evidence and marked "Defendant's Exhibit 141," being passages indicated from volume entitled "Hearings before the Committee on Ways and Means on H. R. 2706." (*See Exhibits, Vol. V, page 2743.*)

RDQ. 93. I read from page 92 of the hearings before the Committee on Finance on H. R. 8078. Will you please turn to that, Mr. Choate? Question by Senator Watson:

> "Senator Watson. And who is president of the Chemical Foundation?
>
> "Mr. Wigglesworth. Mr. Garvan was, I understand, president.
>
> "Senator Watson. And who is Mr. Garvan?
>
> "Mr. Wigglesworth. The Alien Property Custodian.
>
> "Senator Watson. So that he is the Alien Property Custodian and at the same time he is president of the Chemical Foundation.
>
> "Mr. Choate. But he is not the Alien Property Custodian who sold the patents.
>
> "Senator Watson. I understand that.
>
> "Mr. Choate. His predecessor sold the patents."

Did you give that testimony?

Mr. Anderson: That is the testimony of Mr. Wigglesworth, if your Honor please. There is no testimony there by Mr. Choate; not a word.

Mr. Kresel: Mr. Choate made the statement.

Mr. Anderson: But the preceding statement, questions by Senator Watson and replies by Mr.

Wigglesworth. Certainly we can not read Mr. Wigglesworth's evidence in this case.

Mr. Kresel: I did not ask him about Mr. Wigglesworth. I asked him if he so testified. I read the Wigglesworth portion because otherwise it would not be understood at all; simply for introductory purposes.

Mr. Anderson: Let us get that clear. Mr. Wigglesworth was on the stand; Mr. Choate sitting by as counsel for either the Chemical Foundation or the Dyes Institute, I think he testified there, put the statement in the form of a question to Mr. Wigglesworth or to Senator Watson, and then makes a statement himself in Mr. Wigglesworth's testimony.

The Court: Where did you begin reading, Mr. Kresel?

Mr. Kresel: I began reading with the question by Senator Watson reading as follows: "And who is president of the Chemical Foundation?" Mr. Wigglesworth answers: "Mr. Garvan was, I understand, President." "Senator Watson. And who is Mr. Garvan?" "Mr. Wigglesworth. The Alien Property Custodian."

Mr. Anderson: How can that go into the record?

Mr. Kresel: Simply as introductory to the statement made by Mr. Choate.

Mr. Anderson: I object to Mr. Wigglesworth's testimony going into the recod, sir, without calling Mr. Wigglesworth.

Mr. Kresel: All right, I will omit those two answers by Mr. Wiggesworth. I read the question by Senator Watson:

"Senator Watson. So that he is the Alien Property Custodian and at the same time he is president of the Chemical Foundation."

I assume you will concede that Senator Watson was talking there about Mr. Garvan?

Mr. Anderson: I will.

Mr. Kresel: All right.

"Mr. Choate. But he is not the Alien Property Custodian who sold the patents?

"Senator Watson. I understand that.

"Mr. Choate. His predecessor sold the patents.

"Senator Watson. But he is the Alien Property Custodian at this time?"

Those are the three or four paragraphs that I am now asking the witness as to whether he made the statement on those occasions as read.

The Court: The statements there credited to him?

Mr. Kresel: To him.

Mr. Anderson: In addition to the objections already raised, I object on the ground that the record discloses that Mr. Wigglesworth was under examination. The record discloses that Mr. Choate was there as Counsel for the American Dyes Institute.

The Court: May I ask: Is this the case where Mr. Choate was stating facts and not testifying to facts?

Mr. Anderson: This is the case where he asked Senator Watson——

The Court: No; I gathered the impression from your remarks and some statements that have gone before in the trial of this case that before one of these committees Mr. Choate was not on the stand but did make certain statements to the committee not under oath. I was wondering whether this was the one or not.

The Witness: Did your Honor ask me to answer that?

The Court: Yes.

The Witness: If your Honor please, none of the testimony in any of these hearings except that before the committee referred to here as hearings before the sub-committee of the Committee on the Judiciary of the United States Senate, in 1922, were under oath. The testimony before the Congressional committees is not, as a rule, taken under oath. So that all my statements made to the Senate Finance Committee and the House Ways and Means Committee were on a par. None of them were under oath, and in many cases questions were asked of me casually in the midst of the examination of other witnesses, and were then answered.

Mr. Anderson: Then I object on the further ground that the witness is undertaking to testify as to when the patents were sold and by whom, when that is a question of law to be drawn from the facts and not testified; and on the further ground that it has no relation to the cross-examination.

The Court: My views have been stated. I will not repeat them. It will be admitted under our general rule.

RDQ. 94. I direct your attention, Mr. Choate, to page 94 of this volume of hearings before the Committee on Finance on H. R. 8078, beginning with the paragraph which reads as follows: "In the first place, the dye industry makes a greater number of different products, I suppose, than any other industry in the world." That is as much of that paragraph as I shall read, to and including the end of the first paragraph on page 102 thereof; and I ask you whether you made the statements that are set forth on the pages that I have indicated.

Mr. Anderson: If your Honor please, this statement is simply a re-statement of some of the things contained in the Palmer report about the conditions in the dye industry prior to the war, about which I did not ask the witness a single question. It is not explanatory of them. It contains no limitations upon them. It has no connection with anything that I have asked him about. It contains in it an article by Mr. Burr from the quarterly review of July, 1919 on the German business in the United States, and the last two pages of it are a statement by Mr. John P. Wood, or a considerable part thereof, of the American Association of Woolen and Worsted Manufacturers.

If that can go into the record under the idea of explaining or enlarging or completing what I read, when it has no more connection with it than the history of the Peloponnesian War, is going pretty far, and I want to object very earnestly on all the grounds stated and those now stated to putting that into the record.

The Court: Mr. Kresel, what in your view is the relation of the matter now offered to that read from Mr. Choate's statements by Colonel Anderson on cross-examination?

Mr. Kresel: Your Honor will recall that a number of the statements read from Mr. Choate's testimony and statements by Colonel Anderson, referred to the question of price. You remember he read the statement about the price being a guess, and so on.

The Court: Yes, I recall that.

Mr. Kresel: Now on the pages that I have indicated, Mr. Choate sets forth a statement of the different colors that were manufactured. He sets forth the nature of the various dyes and gives an account of the difficulty in producing them.

The Court: The purpose being to show that the use of the word "guess" was not in its ordinary significance, but as indicating that——

Mr. Kresel: There was no direct way of arriving at the value.

The Court: —that an estimate of value of patents can not be as accurate as one on tangible property; is that the purpose?

Mr. Kresel: Yes, your Honor: And then may I further point out that in these extracts that I am now offering Mr. Choate is showing the large extent of the business of the Badische Company and the Bayer Company in Germany, which, of course, has a direct bearing upon the question of value, inasmuch as Mr. Choate pointed out that any industry which would be built up here would have to be in direct competition with the German industry abroad.

The Court: You have indicated you differ.

Mr. Anderson: I differ entirely, sir; but I also want to call attention, in addition, to page 101, which is included, where the following appears:

"Mr. Wood. Mr. Chairman, in order that it may come in at the appropriate place in the record, may I make a statement about this condition of affairs that I think will be very important to the committee as bearing directly on this subject you are considering?

"Mr. Choate. If it will not take too long.

"Mr. Wood. It will only be momentary.

"Mr. Choate. All right.

"Senator Watson. Please state your name?

"Mr. Wood. John P. Wood, of Philadelphia; woolen manufacturer. I represent this committee of the American Association of Woolen and Worsted Manufacturers. For some 30 years" and so forth. Mr. Wood goes on to make a statement.

Mr. Kresel: If your Honor please, it is so set forth in the statement here that it was not easily distinguishable that Mr. Wood interrupted here; but it is only one paragraph and I am perfectly willing to have it cut out.

Mr. Anderson: Then he goes on to say that what Mr. Choate said is true; so we are backing it up with somebody else's statement.

Mr. Kresel: Mr. Choate resumes his statement.

The Court: We are not going to discuss it. I am going to admit it under the general rule for the purposes as indicated at the beginning of the re-direct examination of Mr. Choate.

Mr. Kresel: The portion beginning with the second paragraph on page 101, reading: "Mr. Wood. Mr. Chairman, in order that it may come in at the appropriate place in the record," etc., down to the paragraph on that page ending with the words "as it did the foreign business" are not to be considered as a portion of what I have offered.

The Court: All the objections stated with respect to this and preceding statements of Mr. Choate before the committees are noted here and the questions are taken under the general rule.

The Witness: Have I answered the question?

RDQ. 95. I am asking you Mr. Choate, whether you made the statement as appears on those pages?

A. I did.

RDQ. 96. I now direct your attention to page 113 of this record, beginning with the paragraph which was read in by Colonel Anderson, reading as follows:

> "We came to the conclusion that the patents could not have been held idle like that for any purpose, except to prevent, on the one hand, American manufacture and, on the other, imports from possible competitors abroad."

And going from there to page 117, ending with the paragraph the last sentence of which reads as follows:

> "And the charter provides that except for a six per cent. return on the preferred stock—which is to be retired as fast as it can be—and a dividend limited to six per cent. on the common stock if earned, the entire funds produced by the Chemical Foundation must be used for purposes of the advancement of science and industry in the United States."

And I ask you whether you testified as is reported on those pages?

Mr. Anderson: Objected to for the reasons already stated, except so much thereof as was read on cross-examination, which includes a part of what I read.

The Court: The same ruling.

RDQ. 96. (continued) You may answer.

A. I did.

RDQ. 97. I direct your attention to page 124 of this record. Colonel Anderson read in beginning with the first question on that page down to and including the second question and answer thereof. I now ask whether you gave this testimony and I read the immediately succeeding question and answer, succeeding that which Colonel Anderson read in, to wit:

By Senator Watson:

> "Do you contend it is necessary that your institution should survive in order to perpetuate the dye industry in this country?
>
> "Mr. Choate. I do not. But I do imagine it is a very valuable institution, for this reason, among others. If it is desirable that the vat dyes shall be manufactured in this country, for instance —I mean the whole group of patented dyes—the Chemical Foundation can render some assistance in that line, because by demanding the payment of royalty on foreign goods, or if necessary seeking to enjoin their sale, it can to some extent af-

ford protection. That will eventually be possible after the patents are adjudicated, if they are any good. But unless the patents are protected, are fought, litigated and enforced they are absolutely worthless to anybody. The owner has got to protect them, and for that purpose must have and spend money."

Did you make that statement?

A. I did.

THE COURT: This is all subject to your objection and exception, Colonel Anderson.

Extracts from Hearings before the Committee on Finance of the United State Senate received in evidence and marked "Defendant's Exhibit No. 142." (*See Exhibits, Vol. V, page 2764.*)

RDQ. 98. Colonel Anderson read to you from page 528 of the hearings before the sub-committee on the Judiciary, with reference to your trip to Paris as representative of the American Dyes Institute. Was that the capacity in which you went?

A. It was.

RDQ. 99. You say, "The information which the legislative committee had received was included in a report made by Mr. Edward S. Chapin, the Paris representative of the Textile Alliance, to the Advisory Committee of the Department of State. This report was printed and bears date September 29, 1920, and I offer this copy of the printed copy of the report for the consideration of the Committee."

"The Chairman. It will be received and marked as an exhibit."

Then the next sentence reads as follows:

"The report referred to was marked 'Choate Exhibit No. 2, not copied'."

Have you a copy of that report available?

A. I haven't it here. I think I probably have it in the office. If not, I can doubtless secure a copy for you.

Mr. Kresel: At this time, if your Honor please, I offer in evidence a copy of that report. I haven't it here. I should like to reserve the privilege of producing it as soon as I can get it.

The Court: The report is what?

Mr. Kresel: It was a report made by Mr. Chapin, the Paris representative of the Textile Alliance to the Advisory Committee of the Department of State.

RDQ. 100. It was with reference to these reparation dyes, was it?

A. Yes.

Mr. Kresel: As to which Mr. Choate made this trip to Paris about which he was questioned by Colonel Anderson.

The Court: How is that relevant, Mr. Kresel? I do not follow you.

Mr. Kresel: If Mr. Choate's trip to Paris on this matter is at all relevant, then the report embracing the results of the trip is material.

The Witness: Mr. Kresel, I think you are mistaken in your understanding of this situation.

RDQ. 101. If I am, I wish you would correct me.

A. The Chapin report was a report to the Advisory Committee of the State Department, which stated the conditions that existed in regard to the treatment by the Reparation Commission of the dye question. That report was what alarmed the Dyes Institute in regard to the situation and led them to ask me to go.

Mr. Kresel: Now, there you are. Apparently Colonel Anderson puts some importance on the fact that Mr. Choate made this trip to Paris for the American Dyes Institute. I want to have before the Court the situation that called forth the request that Mr. Choate make this trip. If one is material, the other certainly is material.

Mr. Anderson: Under the ruling of the Court, under which we are now proceeding, I can see the relevancy, although I do not concede it and I raise my objection to it, of the paragraph read, from the standpoint of Mr. Kresel. I would be perfectly willing to admit that Mr. Choate went——

Mr. Kresel: You read it in, Colonel.

Mr. Anderson: I am talking of the paragraph you read. Went over to Paris as representative of the American Dyes Institute in connection with the reparation dyes. But now the question is on the offering of a report by Mr. Chapin of the Textile Alliance on the conditions in Paris and the paper is not even here. I would waive that if it had any standing as evidence and reserve the right to examine it later when presented and offer additional evidence. If we are going into a history of the operation of the Textile Alliance in Paris, we will go into it fully, but Mr. Chapin's report as a representative of the Textile Alliance is certainly not evidence.

The Court: Was Mr. Chapin a representative of the Textile Alliance?

Mr. Kresel: Paris representative of the Textile Alliance and the report was made to the Advisory Committee of the Department of State.

The Court: I do not see that Mr. Choate's trip to Paris has any relevancy and it seems to me this has even less.

Mr. Anderson: I might say that my reason for introducing this statement was—and there is no mystery about it—to show the connection between these two corporations and the activities of those corporations. I regarded it as one of the various incidents in that connection, without implying the slightest suggestion or criticism of Mr. Choate as a lawyer or personally. These various things I pointed out show that connection. What its legal effect is will be a question for argument afterwards.

I am not raising any question that Mr. Choate did not have a perfect right to go to Paris, that he was performing service in going to Paris and that he had a right to serve the Dyes Institute as counsel. I am not raising any question like that. Nor am I raising any question in connection with his trip to Paris. There is a whole lot more about his trip to Paris, telegrams and correspondence that I did not put in. I expressly did not go into his trip to Paris. How he can put in a report by Mr. Chapin of the Textile Alliance is beyond my comprehension.

Mr. Kresel: Your Honor has already indicated your view as to the materiality of Mr. Choate's trip; and of course, if that is your Honor's view, I do not think I shall insist upon putting in the report.

The Court: You understand, Mr. Kresel, that is my immediate reaction. If Colonel Anderson can at the argument or at any time prior to decision establish that that is a link of importance in showing the conspiracy, it will be given that value regardless of any statement just made by me. I understand you do not press your offer of Mr. Chapin's report.

Mr. Kresel: I do not, your Honor.

If your Honor please, I am going to ask the Court to let me mark for identification the statements made by Mr. Choate beginning with the paragraph on page 528 of this book containing the Hearings before the Committee on the Judiciary of the Senate which reads, "In September, 1919, the Legislative Committee of the American Dyes Institute communicated with me and stated that they were alarmed by reports" and so on, to and including the paragraph on page 548:

By the Chairman:

"It is only fair to add that the statements made by Senator King were upon information."

The matter just offered for identification contains the statements made by Mr. Choate and the entire line of correspondence with reference to this Paris trip. It may well be that before the close of this case I may renew my offer to have that portion of Mr. Choate's statement and the correspondence that accompanies it put in evidence. All I want to ask the witness now is whether he made the statements on the pages indicated and whether the correspondence which is there printed is correct.

The Witness: I did make the statements and the copies are to the best of my knowledge and belief correct and complete.

Let it be so marked.

Marked Defendant's Exhibit P for Identification, 7/6/23.

Mr. Anderson: Since I do not know whether counsel is going to introduce it in evidence, of course, I reserve all rights as to that.

The Court: You may make the objection at the time it is offered.

Mr. Kresel: That is all.

RE-CROSS-EXAMINATION.

Mr. Anderson: There is one statement I could not find when I was reading from the testimony, which has been brought to my attention by counsel's reading of the page, that I would like to ask Mr. Choate about and put in evidence.

I will read a portion of the statement from the Hearings before the Finance Committee on H. R. 8078, beginning at the bottom of page 122.

Question by Senator Watson:

"Are you one of these gentlemen?

"Mr. Choate. I am not a director, but I am of counsel, and I think nothing has yet been done, and nothing will be done that is not concurred in by me."

By Mr. Anderson:

RXQ. 102. You were referring there to the Chemical Foundation, I think it will be conceded?

A. Yes.

Mr. Anderson (Reading):

"Senator Watson. I am not questioning anybody's motives, but looking at it as an outsider, if you thought somebody was coming in to manufacture a particular kind of dye would produce an excess of that particular product in the country, you would shut him out?

"Mr. Choate. I, personally, would not, and I think the decision of the Foundation will be that under no circumstances will any license be refused except when the applicant turns out not to be really un-American, or when he is not qualified to make the product in question.

"Senator Watson. I understood you to say a while ago that if there should be an excess of any one particular product there might be power used to prevent that by your Chemical Foundation.

"Mr. Choate. What I said was that under the charter of the Foundation the directors would have the power to refuse a license to additional applicants under those conditions. We have placed that question before the assembled stockholders who represent 140 leading concerns in the dye industry and in the textile and other industries, and I understand the almost unanimous opinion of those industries to be that the issuance of licenses ought never to be limited in that manner.

"Senator Watson. No; but the power remains.

"Mr. Choate. The power remains; we could do all sorts of things if we were rascals.

"Senator Watson. That is not the question. Has the Chemical Foundation as such assumed any authority over imports; that is to say, if imports are to come into the country, have they taken any steps to get control of those imports coming into the country in any way?

"Mr. Choate. No; we can not. None of these patents that cover the dyes have been adjudicated, and until a patent has been adjudicated you can not get an injunction.

"Senator Watson. Has any effort been made on the part of anybody connected with the Chemical Foundation to enter into any sort of arrangement so that they can control imports or so that imports come into the hands of men who control on this side?

"Mr. Choate. No, sir. Royalties will be charged against the importer precisely as they will be charged against an American manufacturer in order to provide funds for the purpose for which the Foundation was organized, which are public and altruistic, purely and simply."

My purpose in introducing that was for the earlier part of it, but in order to make the statement complete I have read it all. I think that it all refers to that subject.

The Court: Do you want to ask the witness about that?

RXQ. 103. Is that your testimony given at the hearings of this committee held December, 1919 and January, 1920?

A. I gave the testimony which you have read.

Mr. Kresel: In that same connection I offer in evidence the following, which appears at page

122. I begin at the top of the page; but in order to make it intelligible I will have to read the question and answer at the bottom of page 121:

"Senator Watson. But it makes impossible, does it not, the entrance of a new man into the dye business without getting a license from that company?

"Mr. Choate. By no means.

"Senator Watson. On account of the fellows who are in and having the license shutting him out?

"Mr. Choate. Certainly not. The only things patented it has which affect the dye industry are the vat-dye patents.

"Senator Watson. Are these patents all vat-dye patents?

"Mr. Choate. Oh, no. But the only patents that have any material effect on the dye industry are the vat dye patents.

"Senator Watson. Do you say this corporation reserves to itself the right to acquire patents in the future; that is, patents taken out in this country?

"Mr. Choate. It could do it; but it is not the intention of anybody to do it, except to stimulate chemical invention; to offer some kind of a reward to employees in the public institutions who make inventions and who can not benefit thereby, and, on the other hand, by rendering those inventions useful by backing up the inventor.

"Senator Watson. What do you mean by 'backing up the inventor?'

"Mr. Choate. By buying his invention from him, developing it, and protecting it.

"Senator Watson. By buying the patent, and then nobody would be able to manufacture under the terms of that patent except somebody that gets a license from the Chemical Foundation?

"Mr. Choate. Yes. But anybody, practically speaking, can get a license.

Senator Watson. That depends on the will of the trustees, does it not?

"Mr. Choate. I think not.

"Senator Sutherland. Do you grant several patents (licenses) to one party?"

I think that it should read "licenses" under several patents. May the correction be made?

The Witness: I think he probably meant licenses under several patents.

Mr. Anderson: I think that is probably what he meant.

Mr. Kresel: Then I am going to insert "licenses under" so it will read, "Do you grant licenses under several patents to one party?"

Mr. Anderson: I am willing to agree that that is probably what he meant.

Mr. Kresel: All right, then, I will strike out the correction. (Continuing reading)

"Mr. Choate. Yes. We have granted several licenses under one of the product patents.

"Senator Curtis. No one can get an exclusive license from you?

"Mr. Choate. He can not.

"Senator Nugent. And no monopoly can be built up?

"Mr. Choate. No monoply could be built up, unless the Foundation was managed by criminals. If they ever get us out and get criminals in it might happen.

"Senator Nugent. And if a man desires to go into the dye manufacturing business all that is required of him is to procure a license?

"Mr. Choate. Whether he is an outsider or an insider he gets a license just the same. We have practically put up now to the stockholders of the Foundation the question of whether it will ever be advisable to limit the number of licenses, in case we find the number has become so great that the market for any patented product is in danger of being completely flooded. In certain cases that question might arise, also, in cases like arsphenamine, where the product is dangerous if made under bad conditions. Their deliberate decision seems to be that no limitation is preferable and that everybody must receive a license."

Did you so testify?

THE WITNESS: I did.

MR. ANDERSON: In order to make the record clear, I will ask if it is understood that my objections to the reading in of the testimony of Mr. Choate, as already indicated by the defendant, apply to the exhibit as well as to the answer of the witness. I wanted to make that very clear.

THE COURT: Yes. Have you had a number assigned to your last extract?

MR. KRESEL: To what I have just read, your Honor?

THE COURT: Yes.

MR. KRESEL: I do not think it is necessary. I have read it into the record.

THE COURT: But you read from three books.

MR. KRESEL: Yes, the third one was only for identification, and that was so marked.

THE COURT: And the remaining portions of it that you are interested in were read in?

MR. KRESEL: Yes, sir. Is that all for Mr. Choate?

MR. ANDERSON: Yes, that is all.

THE WITNESS: One second. There is one passage here which I think was incomplete. (Indicates to Mr. Kresel.)

MR. KRESEL: I did overlook that, your Honor. Colonel Anderson read in from page 518 of the Hearings before the Committee on Finance, Tariff Act of 1921. I desire to read in three or four questions preceding the portion that Colonel Anderson read in. It is the first question on page 518 of this book:

"Senator McLean. Is this Mr. Garvan related to the Garvan that was subsequently Alien Property Custodian?

"Mr. Choate. It is the same Mr. Garvan. I shall ask leave of the committee hereafter to state the circumstances under which he became president of the Chemical Foundation.

"Senator LaFollette. How long after this transaction—I refer, now, to the purchase of these patents from the Alien Property Custodian in whose office he was then established and a part of your organization—how long after that did he become Alien Property Custodian?

"Mr. Choate. March 4, 1919, when Mr. Palmer was appointed Attorney General.

"Senator LaFollette. How long was that, if you please? Do you have the other date in your mind?

"Mr. Choate. Approximately seven weeks."

The Court: Do you want to make an inquiry of the witness about that?

Mr. Kresel: Did you so testify, Mr. Choate?

The Witness: I did so testify. I may say there is an obvious error there, that the period seven weeks is more than actually elapsed. The period was four or five weeks.

The Court: All of the objections heretofore made are considered as made to this evidence.

Mr. Anderson: Yes. I did not make them, but I considered they would be applied to this evidence and the answer thereto.

The Witness: Am I excused now? I believe I am still under subpoena of the Government.

Mr. Anderson: So far as I am concerned you might have been excused some time ago. I thought you had understood you were released some time ago.

The Court: Are you through with Mr. Choate —both sides?

Mr. Kresel: Yes, your Honor.

The Court: Then you are discharged from the subpoena.

(Witness excused.)

Mr. Kresel: Your Honor will recall that upon the examination of Mr. Garvan I sought to offer in evidence proof of certain sales of patents made by the Alien Property Custodian to the Government, and the objection was made that we did not have the assignments here. I have since obtained certified copies of the assignments or bills of sale of these patents to the Government, and I now offer an instrument of assignment from the Alien Property Custodian to United States of America, represented by the Secretary of the Navy, dated the 6th day of February, 1919, recorded in the Patent Office on the 10th day of April, 1919, and after it is marked I will state to your Honor briefly what the instrument is.

The Court: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 143." (*See Exhibits, Vol. V, page 2786.*)

Mr. Kresel: By that instrument, your Honor, the Alien Property Custodian conveyed to the United States Government as represented by the Secretary of the Navy, seventy-two patents and twelve agreements relating to patents, all embracing what are known as the wireless patents, covering the wireless stations that were taken over by the Government—all those seventy-two patents and twelve agreements for $500.

Mr. Anderson: Of course, this evidence is being taken subject to the general objections.

The Court: This is an assignment or license?

Mr. Kresel: This is an assignment.

The Court: Of the patents?

Mr. Kresel: Yes, sir.

The Court: By private sale?

Mr. Kresel: By the Alien Property Custodian. You see, your Honor, under the act sales to the Government did not have to be even under Executive order, they could be made direct. Your Honor will recall the statute says sales except to the United States shall be made at public auction, or, if the President directs, at private sale. So these sales, your Honor, were just made without anything further being done—of course, not at public auction and even without an Executive order. May I read the conveyance part?

Mr. Anderson: To get the record straight, I note the general and specific objections already made to this evidence, and point out that aside from the question of authority, which is a question of law, this matter does not relate in any way to the Chemical Foundation or the sale to the Chemical Foundation, and has no connection therewith.

Mr. Kresel: I will read this briefly. (Reads from Exhibit 143 of Defendant.)

The list which is attached, your Honor, contains, as I have stated, a list of seventy-two patents and a large number of these contracts which cover the patents.

The Court: Won't you tell me what the purpose of the offer is? I am afraid I am missing it.

Mr. Kresel: Your Honor, the purpose of the offer is to show that at practically the same time that the sale which is here being attacked by the Government as having been made for an inadequate consideration was consummated, the Government was taking over from the Alien Property Custodian properties which are described in this instrument at the valuation that is there described. It is in line, your Honor, with the testimony of Mr. Palmer and Mr. Garvan that these transfers made to the Chemical Foundation were made under the direction of the President pursuant to a public policy, pursuant to the purposes which the President had in mind, thereby to place these patents in a position where, instead of being a hindrance to the Government, they would be a help to the Government. It is in line with our argument, as we shall contend when we come to argue this case, that the question of consideration, the money consideration here, is of minor importance.

Mr. Anderson: May I just say a word in reply to that, to enlarge my objection?

The Court: Yes, but I would like to ask Mr. Kresel one further question.

Mr. Kresel: Certainly.

The Court: Then you may have an opportunity to reply to all that is said, Colonel Anderson. How do I know but what five hundred dollars was the full value of all those patents? I mean was the full commercial value for that assignment.

Mr. Kresel: Well, of course up to the present there is no evidence as to that.

Mr. Anderson: I simply want to say that, of course, it is conceded that this has nothing to do with the Chemical Foundation. It took place on February 6th when the President was in Paris. Let us suppose that the Alien Property Custodian and the officer of the Navy with whom he dealt in this matter did undertake to establish a policy, to take over alien property for a nominal consideration, for the Government of the United States. Let us suppose that they did do it, thè Alien Property Custodian with the best of motive made the conveyance seeking to serve the interests of the country, that the Navy officer who took the conveyance believed he was serving the interests of the country. We have yet to be referred to any act or any authority of the Alien Property Custodian to confiscate property for the benefit of the United States.

I doubt if any act in the history of the United States appealed more to the people, perhaps, than the taking of Arlington. Is there an instance of a single public service corporation case that goes to the United States Supreme Court, when it can not be demonstrated in the opinion of the public officers who fix a rate below a fair return upon property, that such rate is in the public interest? Has anybody ever questioned in the Courts of the United States the fact that it matters not how great the public interest is or how vital the public interest is, the United States has never adopted the principle that necessity knows no law. I hope it never will. If it does, then the spirit of the invasion of Belgium won this war.

Let us suppose that the United States needed these wireless patents or chemical patents, or any others, that its industry needed them for development. What argument is that that necessity justifies confiscation? That is all it is. And the courts of this country have never listened to that argument for a minute, except in a few isolated cases in the Civil War, which stand upon a peculiar footing of rebellion.

The title of the Government of the United States to these patents and rights, so far as the Germans are concerned, can not be questioned. That question has been settled in a treaty which was dictated by the sword. But as between the officers of the United States, its citizens and its Government, I am standing here in the humble capacity representing the Government of the United

States to say that this Government is too great to claim that its necessities, whatever they may be in war or in peace, permit the violation of the fundamental laws of this country and the principles of justice as between itself and those who have sought its protection and relied upon its protection.

And I quote the President of the United States on that question in every speech he made from the very day we broke relations with Germany down to the day he returned from Paris and was taken ill later. If the Constitution of the United States puts in Congress by express terms the power to legislate for the public welfare and the national defense, even the power of Congress is subject to the limitations of the Constitution, and, as the Supreme Court has so often said, while it may have the technical power to confiscate alien property seized on land, it has always stood against the exercise of that power which for two hundred years no civilized nation has dared to exercise in the face of public opinion, and which this Supreme Court declared in Brown against the United States and in Ware against Hilton was not recognized by international law as a custom today, and that this country adopted international law in its most approved and advanced form.

The idea of standing in a court of the United States and citing as an authority for the sale of property without consideration, in view of the decisions of the courts of this country and of the Supreme Court of the United States, the fact that the officers of the Government themselves took property without consideration. If they did such a thing, it was an absolutely invalid act, so far as their acts were concerned. Whether as between this Government and the Germans the German can raise it is not material to this issue. But as to anybody that could raise it, if they could, I hope the courts of this country will never be closed to their rights to come into them, and I know they never will be, to question an act of that kind, which has not the slightest element of justice and has for its foundation every principle that Germany asserted in its effort to overthrow the civilization of the world.

If this corporation is going to take that position in the courts, I am ready to challenge it in the name of the United States; for this Government, although it may be powerful, is not above the law and I hope will never be above morality. I object to the introduction of this document.

Mr. Kresel: I have listened very attentively, your Honor, to Colonel Anderson's very impassioned remarks, but I must confess that, interesting as they were, they do not touch the question that your Honor now immediately has before you. The question is as to the propriety of introducing these documents. We urge that they are admissible not only upon the ground that I have already assigned, but also upon the ground that the transaction your Honor has before you is being attacked as the result of a conspiracy. The motives of the officers of the Government responsible for the transaction have been attacked. The consideration is claimed to have been shockingly inadequate.

It certainly is material to show that at the same time the same officials, dealing with similar property, conveyed this property—I do not care to whom, whether it is to the United States Government or anybody else—at prices which the

Government claims are shockingly inadequate and as to which transactions it is not stated that their motives were in any way subject to attack nor any conspiracy charged in connection therewith.

It seems to us that upon that ground alone that evidence is admissible. When we come to argue this case we shall be prepared to meet Colonel Anderson upon the broad principles that are involved, of whether this was or was not confiscation, and, if it was confiscation, whether the power lay in the officers who exercised it to confiscate it. This is not the time to argue that, and your Honor can not decide this question of evidence upon that consideration.

We already have in evidence the conveyance by the Alien Property Custodian or the license by the Alien Property Custodian to the Government on 5700 of these German patents, and a release of the Government from all damages for infringement during the war, all for a consideration of $100,000. That is already in evidence. This is only in line with that other evidence—transactions occurring at or about the time when this transaction that is here being attacked was made, and by the same officials.

What position does the Government take with reference to these transactions? Does it take the position that these were unauthorized, that the Government now has not the title to these properties? Does it take the position that the Government can come in now and set aside these sales? Is it claimed that the license given to the Government on 5700 patents, which cover some of the most valuable inventions with reference to munitions, is invalid and that the Government has not that license now? Or that the Government has not been released of the hundreds of millions of dollars of damages that the Germans might have claimed for infringement of these very patents during the war? Can they blow hot and cold here; can they say on the one hand that the conveyance to us is invalid because not an adequate consideration has been paid, and yet that the conveyance to the Goverment is valid although not an adequate consideration has been paid? Somewhere, somehow, the Government has got to take a position in this case.

Your Honor has been endeavoring to get the Government to define its position as we have been going on. I confess that I am unable to learn what its position is on most important matters. But they will have to define their position sometime or other, and I shall wait with a great deal of interest to find out what position the Government is going to take with reference to the transactions between the Alien Property Custodian and the Government itself with respect to these German patents.

Mr. Anderson: I can answer that.

Mr. Kresel: But I say now that these documents that I am now offering are admissible upon the grounds that I have urged, quite irrespective of what position the Government may take as to the validity of the transactions that they represent. If Colonel Anderson is ready to answer my inquiry, I shall be very glad to have him do so now.

Mr. Anderson: My answer to that can be put in one sentence, that the whole business has got nothing whatever to do with this case. We are trying a lawsuit and not investigating the Government of the United States. The issues of this lawsuit are as to whether this was a valid transaction or not and when we get to the question of licenses and patents issued by the United States, we will deal with that question. Counsel has asked me a number of questions here and I have tried to answer them. I would like to ask counsel a question. Does he take the position that a sale of this property at a nominal consideration is or is not confiscation? Does he take the position under the Act of Congress that the Alien Property Custodian had a right to confiscate?

MR. KRESEL: I was very clear in defining our position in my opening——

MR. ANDERSON: So was I.

MR. KRESEL: And I will repeat it.

I say, under the act as it stood at the time that this transaction was made, the Alien Property Custodian, acting under the direction of the President, could have sold this property for a consideration whether it was adequate or inadequate.

I further say that the sale made to this Chemical Foundation was for an adequate consideration, as the Court will be asked to find when the evidence is in. I trust that that answers your question.

MR. ANDERSON: I understand counsel therefore to take the position that if he could sell it for an inadequate consideration, he had the power of confiscation. That necessarily follows, because inadequate consideration is necessarily confiscation.

THE COURT: What do you mean by "confiscation," Colonel Anderson? My problem is this. You have used the term "confiscation" and I am not criticizing it. I am only trying to find out just where we are. Yet in the same argument you have told me that Germany has nothing to do with this because that has all been settled by a treaty. And if I understand you, you are suggesting an impropriety in certain acts because in pressing that attitude we are saying, or it is being said, that the United States is not keeping the faith, that it is acting in violation of international law, that the United States is doing precisely what it accused Germany of dong when it marched into Belgium, ignoring the treaty. Those several positions it may be possible to reconcile without difficulty. My lack of familiarity with this case, notwithstanding I have listened to it with much interest and during a month, has prevented my being able to reconcile those several contentions. I wonder if it would trouble you too much to help me.

Mr. Anderson: Not at all. I am perfectly willing to do all I can to help out. But, as Mr. Kresel said, your Honor can not carry in mind my opening statement. I thought at that time I had made clear my contentions, but I am perfectly willing to repeat them.

In the first place, you asked me what I mean by confiscation. Confiscation is the taking of property by the Government for public use, or private use if it had the power to so apply it, without compensation to the owner or without fair compensation to the owner.

The Court: Compensation to the owner is a matter with which this court is not concerned.

Mr. Anderson: Let us see if this court is not concerned. The Government of the United States seized this property and held it in its custody and stated in the act of seizure that it should be held in the interest of the United States, I think are the words used, or such other person as Congress might thereafter designate. That is the effect of it in any event. Therefore, the primary interest in this property, when it was seized and passed into the hands of this Custodian, was in the United States, with the power in Congress either to perfect that into a complete interest or to return the property to its owners subject to such conditions as Congress might impose, if any, or none at all.

Therefore, the primary interest was in the people of the United States after the seizure. But what that interest was, the extent of that interest, or whether there should ever be a common interest in esse or present as distinguished from contingent, to use another expression, was dependent upon such action as Congress might in the future take. That was the status of this property when it was seized.

The interest of the United States, including whatever title it had or right to perfect title, was sought to be transferred to a private owner in the United States for, we will assume, a nominal consideration or at a guess. That was trust property. It was in the hands of the Custodian who was a trustee, whether you call him a trustee or not; because wherever a man holds property outstanding in the name of another, he is a fiduciary.

When the Alien Property Custodian—and I insist again that the President has nothing to do with that phase of it—undertook to divest the contingent interest of the United States and to divest the contingent interest of the owner, which was an actual beneficial interest, in that he had a property interest involved, the title to which had merely been seized and was held subject to whether Congress would in the future return it to him; and all that interest, that property right, divided as I say in this intangible way between the United States and the original owner, was sought to be conveyed to a private owner, or sought to be conveyed to the United States, either—it does not make any difference in principle here; in the other aspects of the case it does—what was the effect?

The United States had seized this property for custody for the reasons stated in the law, recognized as one of the legitimate things to do in time of war. It never intended to deprive the owner of his property. We will assume that for the sake of argument now. That is an open question here. But by this act of sale at an inadequate consideration or nominal consideration, or if you could do as counsel suggests for no consideration except the general public interest, there was perfected an act of confiscation of the property as against the original owner.

The Government of the United States was charged with the duty and an obligation in that regard, a sacred duty and trust; and therefore it has a right to come into court, although the Germans may not have the right because the United States may stand between them and this transaction so that they can not get by—the United States has a right and a duty to come into court and say, Congress has never determined to confiscate this property and therefore, when you undertook to convey and divest any contingent right of the owner to its return and not return its value in the place of it, in money; or when you undertook to convey it and divest the interest of the people of the United States, and this property is now subject to be held as security for the payment of the debts by Germany, you have in effect completed an act of confiscation which you were not authorized to do by any law.

Therefore, your act is void and the United States, whether it has a financial interest or not, or whether the enemy can enforce its rights against that act of confiscation or not, as a Government and trustee for all the people and charged not only with its beneficial interests but its honor and its welfare, has the duty to come into court and set aside the unauthorized act of its officers, take this property back into the custody of the United States, and let Congress do what it reserved the power to do and alone has the power to do under the Constitution, to determine what should be the final disposition thereof.

Is that clear, sir? If not, I shall be glad to answer your Honor further.

Mr. Kresel: I do not think it is clear at all, your Honor.

The Court: Have you finished, Colonel Anderson?

Mr. Anderson: I am finished unless your Honor desires to ask me any further questions.

Mr. Kresel: The Government certainly can not confiscate its own property, can it? We can start with that proposition. It is not charged that the Government has confiscated this property, if the Government owned it.

Now, in so far as the Germans' interest is concerned, that is settled by the Treaty. The Government so claims. It can not be confiscation under that treaty. Every act that the Government took in the seizure of this property, if not in its disposition, is claimed by the Government to have been ratified by the treaty. Therefore, it can not be confiscation of the Germans' interest, assuming even that they had an interest after the seizure; although the courts have held, interpreting this very act, the Trading with the Enemy Act, that the full title, legal and beneficial, passed to the Alien Property Custodian the minute he filed his demand. But assuming that the alien had an equitable right, that has been taken care of by the treaty. How then can it be said that there is any confiscation?

Therefore, I say that Colonel Anderson's argument does not clearly answer the question that your Honor has put.

Mr. Anderson: It may not satisfy counsel. But if it does not satisfy your Honor, I will try to put it more clearly. The courts have not held that the full title, beneficial and legal, passed, because the courts have held without exception that when the Alien Property Custodian seized this property, he held it as trustee. The full legal and beneficial interest can not be vested in a trustee. In this case, he was a trustee with a *cestui qui* trust unnamed to be determined by Congress when it finally determined its policy as to this property and its return; and therefore the beneficial interest was outstanding continually; the legal title being held in trust for the final beneficiary named by Congress.

Mr. Kresel: I direct your Honor's attention to the decision of Judge Augustus Hand in the case of Junkers against the Chemical Foundation, which as I read the decision expressly holds what I say, that the German has no interest and can not be heard to question the disposition of the property by the Alien Property Custodian; and if he had a beneficial interest, as Colonel Anderson says, the courts of the United States would not grant him relief.

The Court: Could the United States have

seized and kept these patents, had there been no sale? And if the United States Government had that power, would the exercise of that power have been confiscation?

Mr. Anderson: Absolutely, sir.

The Court: It would?

Mr. Anderson: If the United States had seized and kept these patents, which an act of Congress alone could have given it the right to do, it would have been an absolute confiscation of private property if seized on land.

The Court: Then the ultimate conclusion from that is that the question of the ownership of these patents and any other property has been settled as between Germany and the United States by the treaty?

Mr. Anderson: I think the right of Germany to intervene, to come in here and contest that right, has been waived in the treaty. But that does not affect a right as between the United States and its officers and citizens.

The Court: That brings me to another question which I have had difficulty with and your last statement gives me even more difficulty; and that is how is the keeping of the faith of the United States internationally involved in this question?

Mr. Anderson: I will answer that right now.

If this transaction is valid and Congress determines to return all of this property to the Germans, which it must do, unless it is going to confiscate, some time or other, but subject to such conditions as it wants to impose, what can it return? Let us follow it through.

If this transaction is valid—and a sale for one dollar would have been just as valid——

Mr. Kresel: Will your Honor permit me to answer that question?

Mr. Anderson: I am leaving out the question of consideration, whether it is valid or invalid. On the theory that they had a right to sell it for any price they saw fit, they could sell it for one dollar as well as $250,000 and in my view that is no more consideration than one dollar.

Congress had not determined whether it would return this property or not. Let us suppose Congress determined to return this property, and in the Winslow Bill it did determine to return all under $10,000 in value. What would it return? $40 a patent, less the cost of seizure charged up against it, when those patents are said to control an important branch of the industry of the United States and some of them are proved to have been of enormous value and were then earning an income which would have obtained more than the entire purchase price? Now, what can it return? That amount of money? That can not even be allocated. A patent that was not worth a cent and would expire within a year gets exactly the same as a patent worth a million dollars. Then if Congress perfects the contingent right of the Germans which was left open in the Trading with the Enemy Act into an absolute right to this property, when his property was seized he had something worth a million dollars and when it was returned he had something worth $40—and if that is not confiscation, then we have to wipe out all of the decisions of the Supreme Court of the United States.

The Court: Let me ask you this, Colonel Anderson, because you are dealing with a question that causes me much trouble. It has been charged here that the Haber patents did not make such disclosures as would enable the art or those skilled in the art in the United States to operate them and that it would require a period of development and experiment in order to enable American chemists to use those patents or the processes therein described on a commercial scale.

Let us assume for a moment that that allegation or charge is true. Let us assume for a moment that Dr. Holdermann's testimony from the German's standpoint was true, that those patents were worth to the Germans $17,000,000. And let us assume, in the face of the non-disclosure of the Haber patents and even in the face of scientific knowledge and skill on the part of American chemists, if you will, if such be the fact, that they lack commercial value to an American purchaser; and yet that Congress had vested the Alien Property Custodian with power to sell these patents at public sale to an American purchaser; and let us assume, for the purpose of this inquiry, that the full value of those Haber patents to an American, whoever he was, however rich or well financed he may have been, was the sum of $1000, and that such a sale were made; was or was not such a sale confiscation from the international point of view?

MR. ANDERSON: Your Honor is assuming so many predicates that I find it a little difficult to answer your question. It would depend upon a very great many conditions. For instance, your Honor has limited your inquiry to what it would be worth to an American purchaser. Of course, I do not agree to any of the premises that you laid down.

THE COURT: Don't you agree to this, that Congress did give an unlimited power to sell for full and fair value to an American purchaser? I thought you indicated that the full and fair value under those statutory provisions was to be ascertained from the American purchaser's standpoint and not from the German owner's standpoint. Am I right or wrong?

MR. ANDERSON: I do not know that your Honor is right on that proposition. I will concede that at the time the sale took place, a German could not be a purchaser, because we had no treaty with Germany; and he was excluded. I do not know whether that sale was limited to American citizens, if the President so determined. That is entirely another question.

THE COURT: I do not follow you there.

MR. ANDERSON: It says that it must be at public auction, except when sold to the United States. I would like to get the exact language of the act.

MR. KRESEL: To the highest bidder, at the place of sale, to an American citizen. Those are the four elements.

MR. ANDERSON: (Reading.) "That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine."

There is not a word said about private sale there, but we have been going on the theory that presumably he could authorize a private sale. If he could authorize a private sale, he could authorize it to be sold to other than American citizens except perhaps there may be limitations in the law. I have not looked at it. He could not have sold it to Germans, although he had a very broad power to license.

Mr. Kresel: But the Court has assumed a public sale.

Mr. Anderson: He could have authorized a sale to an English or French purchaser, let us assume.

The Court: I will be glad to hear you, Mr. Kresel, on that.

Mr. Anderson: Your Honor asked me if I would not concede that predicate and I said no.

Mr. Kresel: The Court's question was, assuming it was a public sale.

Mr. Anderson: I think the Court and I can probably agree on the question. I am trying to do it.

In the second place, the record discloses here that the United States by virtue of the act of the President himself was authorized to purchase these patents for $10,000 and to expend $350,000 in their development, and the testimony is that the development of one of the plants was dependent upon the acquisition or use of these patents.

Therefore I can not reach any conclusion predicated upon such conditions as your Honor has described. I will only answer your Honor's question generally and it is the best I can do at this time, because I can not analyze a long question like that and reach a conclusion by which I would like to be even temporarily bound. I will say this, that any sale of the Haber patents or any other patents which did not bring a fair value——

The Court: Ascertained from what standpoint?

Mr. Anderson: Ascertained from all the surrounding facts and circumstances at that time, like other value is ascertained, and that means thousands of surrounding facts and circumstances to be considered. What is the fair value is a conclusion which the Court has got to reach, or a jury, or Commissioners, from all the testimony they can get.

The Court: Is it your contention that that fair value is the same whether ascertained from the German standpoint or American standpoint?

Mr. Anderson: I think that the position of this industry in Germany is one of the important facts to be borne in mind in connection with this fair value; yes, sir. And I further take the position that the mere fact that a German could not bid at this time, since there was no obligation to sell these patents, does not necessarily exclude what a German would have been willing to give if he could bid, because we were negotiating the treaty at that time.

The Court: Then if there was a wide gap between the German value, and the American value, the statute, notwithstanding it authorized a sale, by the same token denied the right which it expressly gave.

Mr. Anderson: No, sir.

The Court: Is that not an inevitable conclusion?

Mr. Anderson: No, sir; it is not. I say that the German value and the value in Germany and the condition of the industry under these patents in Germany are essential facts to be considered in arriving at what was the fair value of those patents. Other facts will also be considered.

When I come to argue this case, I expect—I hope to be able to if I can live through it—to collate and present to your Honor the facts on which I think the value should be predicated. Your Honor may consider some others. I do not know. But your Honor is practically sitting in the position of a commissioner in condemnation. You have got to find out what was the fair value. You may make a mistake as those commissioners do and the courts may make a mistake.

But the test of this sale is fair value and whenever you get below what the courts ascertain to be fair value, just as in a rate case very often mistakes are made, then it is confiscation.

THE COURT: I do not want to press you, but I miss your conclusion, Colonel Anderson, and in this connection I am going to make an inquiry of you, if you do not mind.

MR. ANDERSON: Not at all.

THE COURT: Because it is a difficult problem to me, though probably to you it may seem very clear. There are numerous complications. If I understand you, the United States could seize these patents and hold them and either give them back to Germany, or it need not.

MR. ANDERSON: It could by confiscating them, yes, sir; provided Congress authorized it.

THE COURT: But could it not seize them and hold them and adjust the price that Germany should be allowed for them at the reparations table?

MR. ANDERSON: I should think it might have done that, and if it gave a fair price, it was not confiscation; but if it did not give a fair price, it would have been to that extent confiscation, the exercise of a power instead of a right.

THE COURT: What I am trying to get at is this: I am not trying to mislead; I am trying to present the situation fully before I ask my question, and if there is any doubt about what I am trying to get at, I would be very glad to have you tell me. But it seems to me if the United States were to keep the patents, then the question as to what compensation should be paid to the German owners would be a question for determination at the reparations table.

Mr. Anderson: Not at all, sir. When we negotiated the Treaty of Peace, the Trading with the Enemy Act was in force, and it was presumed by the negotiators, I think, that Congress would exercise its power under that act. Now, the treaty provided that this property might be held as security for the compliance by Germany with certain conditions, obviously indicating that it never intended to confiscate the property and never thought of confiscating the property. It assumed that Congress had the power at any time to waive that provision, and has waived it, as to all property under $10,000, and returned it.

That being true, suppose Congress passed an act that they return all German property; and suppose they had sold this property or had sold a piece of land for ten per cent. of its value, and found the title gone and only ten per cent. in its treasury; and Congress ordered all the property returned; would not the original owner of that property, who, by the final act of Congress, had always been entitled to receive the property and whose right was confirmed. He has turned over $100,000 worth of property. Congress says: "I am going to hold this property, and I reserve the right to determine to whom it goes at the end of the war." He says, "That is all right. I cannot help that. You have got title to it." Congress says, "Now, I am going to give it back to you or I am not going to give it back to you. I have got that power."

Then the war goes on and is over, and peace is made. In the meantime Congress, in the exercise of its discretion, says, "I am not going to hold all this property here. Here are manufacturing plants that are useful and ought to be freely operated. Instead of holding that property in the custody of the law in kind, I will sell that property; I will authorize my agents to sell that property, and substitute the proceeds for the property,"—exactly like a foreclosure sale, nothing more or less, or a sheriff's sale; that is all.

Now, where are we? The property has gone from the owner and its proceeds are substituted. Now suppose the agent of Congress, instead of selling this $100,000 worth of property, clearly worth $100,000, sells it for $5000, and puts $5000 in the treasury, and Congress comes along after the war is over and says, "We are going to return all this property to the owners. We only intended to keep it to prevent its being used improperly during the war. We are going to return it," so any owner can come in and get his property; and this man who turned over $100,000 worth of property comes in and finds that he has got a right to receive $5000 worth of property, $95,000 worth of property having been confiscated, of course, there is no other answer to it.

Now, he may have no redress; but the Government of the United States would be in a nice fix if it did not have redress through the courts, because there is where the law of the United States is enforced, and the law never gave the Alien Property Custodian any power to confiscate.

There is your case as clearly as I can see it, and there is where confiscation comes in. It was all inchoate to a certain extent. There were certain undefined conditions surrounding this property until Congress acted; but Congress had the duty, not only to the people of the United States, but to the international honor of the United States to keep this property where it could return that property in kind, or its full value if it elected to return at all; and nobody has a right to decide that question but Congress.

The Court: But the Trading with the Enemy Act did give to the Alien Property Custodian the power of sale, did it not?

Mr. Anderson: Yes, sir, and the law gives to your Honor the power to sell a railroad in your hands; but you cannot give it away.

The Court: Where are we?

Mr. Kresel: I was offering a document, your Honor, when this argument took place.

I now offer in evidence certified copy of an instrument dated the 6th day of February, 1919, which is a conveyance by the Alien Property Custodian to the United States of America, represented by the Secretary of the Navy, of thirty-four patents, for a consideration of $1190.

Mr. Anderson: Objected to on the grounds previously stated.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 144." *(See Exhibits, Vol. V, page 2797.)*

Mr. Kresel: I now offer in evidence an instrument of assignment from the United States Government by F. D. Roosevelt, Acting Secretary of the Navy, dated the eleventh day of November, 1919, re-conveying to the Alien Property Custodian three of the patents that had theretofore been conveyed by the last Exhibit No. 144, for a consideration of $105.

The Court: Admitted, subject to the same objections stated by Colonel Anderson.

Received in evidence and marked "Defendant's Exhibit 145." *(Se Exhibits, Vol. V, page 2801.)*

Mr. Kresel: I now offer in evidence a license and conveyance dated the third day of April, 1920, from the Alien Property Custodian to the United States of America, whereby, for a consideration of $2000, the Alien Property Custodian gives a license to the United States of America on the 72 patents enumerated in the instrument, and also conveys to the Government all rights for damages for infringement of 84 additional patents therein included, and conveys to the United States two patent contracts therein especially enumerated. I want to state that the schedule which is attached to this instrument shows that the patents covered gun sights, periscopes, lenses, and so on, used by the War Department.

Mr. Anderson: I make the same objections.

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 146." *(See Exhibits, Vol. V, page 2803.)*

Mr. Kresel: In connection with the license issued by the Chemical Foundation to the Government under date of November 17, 1921, your Honor will recall that a preceding license, the one dated February 26th, 1921, is therein mentioned and thereby cancelled. In order that the record may be complete, I now offer in evidence that instrument of February 26th, 1921, which is now marked "Defendant's Exhibit K for Identification."

The Court: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 147." *(See Exhibits, Vol. V, page 2811.)*

The Court: We will now take the usual recess.

(Recess until 1 o'clock P. M. Standard time.)

AFTER RECESS.

MR. KRESEL: Before I call a witness, your Honor, I have two more exhibits I would like to offer at this time. Your Honor will recall that Colonel Anderson asked Mr. Garvan yesterday whether there were any licensees of the Chemical Foundation that were not stockholders.

THE COURT: Yes.

MR. KRESEL: I offer in evidence a list of licensees of the Chemical Foundation who are not stockholders thereof. Colonel Anderson, you have examined that.

MR. ANDERSON: Yes, I have seen it. I have not examined it, but I have seen it.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 148." *(See Exhibits, Vol. V, page 2837.)*

MR. KRESEL: I also offer a list of those licensees who are stockholders, just to make it complete.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 149." *(See Exhibits, Vol. V, page 2841.)*

MR. KRESEL: Colonel Anderson, I want to put in this letter from Admiral Grayson. Your Honor will recall that upon the examination of Mr. Palmer I desired to put in evidence a letter received by Mr. Palmer from Admiral Grayson, but upon objection that was not permitted. I understand that Colonel Anderson is now willing to concede that if Admiral Cary T. Grayson were called as a witness here, he would testify that upon the trip to Europe made by President Wilson, on which trip Admiral Grayson accompanied the President, leaving New York, March 4, 1919, Admiral Grayson had with him a copy of the report which is now Defendant's Exhibit 30, which is Mr. Palmer's report, which had been given to him by Mr. Palmer; and that he would testify further with reference to that report as follows: That he read the report; that the President did not get an opportunity to read it on the *George Washington,* as he was sick part of the time going over and was confronted with such an accumulation of correspondence and official documents that it was impossible for him to examine the report, but that Admiral Grayson read the report and told the President in detail about the contents, and that the President agreed that it was a wonderful accomplishment.

I have paraphrased the statement contained in Admiral Grayson's letter which Colonel Anderson has, and I now ask to introduce the copy of the letter from Admiral Grayson to Mr. Palmer upon this subject.

MR. ANDERSON: In order to save the necessity for calling Admiral Grayson, and in convenience to him, the Government does not object to the introduction of the letter with the same force and effect as if Admiral Grayson testified to its contents, but subject to the general and specific objections which would apply to Admiral Grayson's letter if he testified to the contents. It agreees also that the reference to the report, as contained in the second paragraph, first line, of the letter is the report of Honorable A. Mitchell Palmer as Custodian, introduced in evidence as Defendant's Exhibit No. 30.

THE COURT: Admitted under those circumstances.

Received in evidence and marked "Defendant's Exhibit No. 150." *(See Exhibits, Vol. V, page 2843.)*

The Court: Does your agreement go so far as to indicate to whom this letter is addressed?

Mr. Kresel: Yes, the letter is addressed to Mr. Palmer.

Mr. Anderson: Of course, the letter speaks for itself, and the agreement is that he would testify to the contents of that letter.

The Court: That he sent the letter and the facts therein stated are as stated there.

Mr. Anderson: That he would testify to the facts therein stated; but subject to the general and specific objections.

Mr. Kresel: I just read this one paragraph:

"Unfortunately, the President did not get an opportunity to read it on the *George Washington*, as he was sick part of the time coming over, and he was confronted with such an accumulation of correspondence and official documents that it was impossible for him to examine your report. However, I told him in detail about the contents, and he agreed that it was a wonderful accomplishment."

The Court: And the date of the letter is what?

Mr. Kresel: April 17, 1919, dated in Paris. Now, Dr. Volwiler, will you take the stand, please?

ERNEST H. VOLWILER.

Ernest H. Wolwiler, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kresel:

Q. 1. Will you please state your full name and your residence and your profession?

A. Ernest H. Volwiler, chemist, of Chicago, Illinois.

Q. 2. By whom are you now employed?

A. The Abbott Laboratories of Chicago.

Q. 3. Have you received any degrees from any universities?

A. I have. I received a degree of Bachelor of Arts at Miami University which is in Ohio and a degree of Doctor of Philosophy from the University of Illinois.

Q. 4. Since your graduation from the university and before you became employed by the Abbott Laboratories, what did you do?

A. For a period of about three or four months I was instructor in Miami University in chemistry and during the period from 1914 to 1917 I was instructor in organic chemistry at the University of Illinois.

Q. 5. How long have you been with the Abbott Laboratories?

A. Something over five years.

Q. 6. What is the business of the Abbott Laboratories?

A. The manufacture of pharmaceuticals and intermediates for the production of pharmaceuticals.

Q. 7. Has it a large business in that field?

A. It is one of the largest in the country and it is very near the top in the manufacture of synthetic organic medicinals.

Q. 8. Will you please, in a few words, define to us what is meant by synthetic medicinals?

A. I will do that by differentiating between those and the other classes of medicinal products. On the one hand we have naturally occurring products like the alkaloids, morphine and so on, cocaine, and on the other hand we have the synthetic products which are made from materials the same or similar to those used in the manufacture of dyes. In that class there are

End

ing, and that he did represent the American Dyes Institute at that hearing.

Mr. Kresel: Without repeating the grounds of our objection, your Honor, may it be noted we object to this reading upon the same grounds as urged to the other.

The Court: And all statements made before this or any other committee I assume to be objected to on the same ground?

Mr. Kresel: Yes, your Honor.

The Court: The same ruling.

At page 528:

> "The Chairman: Yes, you may proceed.
>
> "Mr. Choate: Of course, Mr. Chairman, I have been familiar with almost all of the activities of The Chemical Foundation from the beginning, because I had a part in its organization, and also in the action of the Alien Property Custodian with reference to it. That matter has been so fully covered by Mr. Garvan that I assume, except possibly in the way of cross-examination, you will not wish to ask me any questions in regard to it. Everything has been stated accurately by Mr. Garvan and the others, and documents relative to the subject have been produced. I shall not, therefore, go into that except in answer to questions.
>
> "In regard to the activities of the American Dyes Institute, I also conceive that the entire ground has been covered, with the exception of the references made by Senator King to the trip to Paris which I undertook for the American Dyes Institute in the Autumn of 1920. I do not know that Senator King made any definite statements in regard to that trip, but I felt that what he said makes it appropriate that that trip should be explained.
>
> "The Chairman: You went as the representative of what company or association?
>
> "Mr. Choate: Of the American Dyes Institute. I had been counsel for the American Dyes Institute since the spring of 1919; retained by

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them to present to the Congress and the appropriate committees the case for special protection for the American Dye Industry, and in that capacity I had a part in all of the legislative activities; and I shall be very glad, of course, to answer any questions which may occur to you as to any of those activities. I think, however, they have been sufficiently explained to date.

"In September, 1919, the Legislative Committee of the American Dyes Institute communicated with me and stated that they were alarmed by reports which they had received as to the activities of the Reparation Commission under those sections of the Versailles Treaty which gave the Reparation Commission certain powers in the matter of dyes. The information which the Legislative Committee had received was included in a report made by Mr. Edward S. Chapin, the Paris representative of the Textile Alliance, to the advisory committee of the Department of State. This report was printed and bears date September 29, 1920, and I offer this copy of the printed copy of the report for the consideration of the committee."

It was received and marked as an exhibit.

In the absence of my memorandum, I will not read further at this time from these hearings. I may find something else that I want to put in later.

I will ask to call Colonel Herman A. Metz.

HERMAN A. METZ.

Herman A. Metz, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

Q. 1. Will you please state your name, age, residence and occupation?

A. My name is Herman A. Metz; age, going on 56; New York City, Borough of Manhattan. I am President of H. A. Metz Laboratories and other corporations.

Q. 2. You say you are President of H. A. Metz Laboratories and other corporations. Will you state more fully what other corporations and the business generally of those corporations?

A. H. A. Metz Laboratories are manufacturers of pharmaceutical products. The Consolidated Color & Chemical Company, of which I am President, manufactures dyestuffs and intermediates, and other incidental compounds for textile purposes.

Q. 3. Out of consideration for the stenographer, I will ask you to talk as slowly as you can, without interrupting your thoughts.

A. The Central Dyestuff & Chemical Company, Newark, New Jersey, of which I am Vice-President and Treasurer, manufactures dyestuffs and intermediates. The Textile Leather Company, of which I am President, makes artificial substitutes for leather. There are several others, Colonel, if you want me to give them to you.

Q. 3. (Continuing.) Go ahead.

A. H. A. Metz & Company, Incorporated, dealers in dyestuffs and chemicals.

I am a director in the Interborough Rapid Transit Company, New York City, representing the public, I might say incidentally, not as a stockholder. There are a number of others, not allied with dyestuffs and chemicals.

Q. 4. Have you held any public office?

A. Yes, sir.

Q. 5. By election or otherwise; if so, state what?

A. I was elected Comptroller of the City of New York. I was a member of Congress and was appointed on various Commissions and Boards.

Q. 6. How long did you serve as Comptroller of the City of New York?

A. Four years.

Q. 7. During what time?

A. 1906 to 1910.

Q. 8. Where were you born?

A. New York City.

Q. 9. How long did you serve in Congress, and at what time?

A. Sixty-third Congress, 1913 to 1915.

Q. 10. How long have you been engaged in or connected with the business of the manufacture of pharmaceuticals and other similar products to which you refer?

A. The manufacture, only since 1916; but the handling and importing and selling for about forty years.

Q. 11. You have been handling, importing and selling these products for about forty years?

A. Over forty years connected with the firms doing it.

Mr. Kresel: I did not get that last statement.

The Witness: Connected with the firms doing it. I started as office boy in the firm originally.

Q. 12. Your whole life, then, has been devoted to this business?

A. Yes, sir.

Q. 13. Have you ever studied chemistry?

A. Yes, sir.

Q. 14. Are you a chemist?

A. I am not a chemist, but I studied chemistry.

Q. 15. State what your experience has been as a student of chemistry?

A. I was a student at Cooper Union about four years. I was assistant in the laboratory for at least two years and I worked in the laboratories and plants after that right along until a few years ago. I got out a number of chemical patents.

Q. 16. What training other than you have stated have you had in practical chemistry, and in connection with pharmaceuticals, the manufacture and sale thereof?

A. Well, seeing the processes carried out, helping to carry them out, devising methods, and running the business successfully.

Q. 17. Have you engaged as a merchant in selling these supplies?

A. Yes, sir.

Q. 18. How have you sold the supplies? I mean do you sell wholesale, retail, or what?

A. Any way people want to buy.

MR. KRESEL: Which supplies are these, Colonel?

MR. ANDERSON: I referred to pharmaceutical supplies which he has imported or manufactured.

MR. KRESEL: Pharmaceuticals only, you are talking about?

MR. ANDERSON: I am talking about pharmaceuticals and supplies which he has described in an earlier answer as being manufactured by him —medical supplies and pharmaceuticals.

THE WITNESS: Pharmaceuticals that were sold—

MR. KRESEL: Pardon me a minute, I want to get this straight. The witness has stated, as I understand it, that he has dealt not only in pharmaceuticals, but also in dyestuffs.

MR. ANDERSON: Yes.

MR. KRESEL: I simply want to know what it is he is now talking about.

Q. 19. Having heard the suggestion of counsel, Colonel Metz, I would ask you to state to the Court briefly but comprehensively the character of your practical experience in handling the dyestuffs or chemicals or pharmaceuticals, indicating which as far as you can, the sale and disposition thereof. I want to get your practical experience, a general view of it.

A. The pharmaceuticals are sold to the Government, State Boards, hospitals, wholesale druggists, retail druggists and physicians direct.

Q. 20. For how long a period?

A. Ever since I have been in business practically. Even since we first took up the handling of pharmaceuticals.

Q. 21. When you speak of pharmaceuticals you include medical supplies and chemicals used in medical supplies, do you.

A. Yes, sir.

Q. 22. You spoke of having connection with the dyestuff industry?

A. Yes, sir.

Q. 23. To what extent, practically, have you dealt with or had dealings with that?

A. I travelled for ten or fifteen years among the mills selling direct to the consumers, manufacturers of woolen, cotton, silk, paper, leather and other goods that use dyestuffs. I sold myself in the mills, demonstrated the use of them in the mills, and supervised the selling by a corps of salesmen in the branch houses.

Q. 24. By those mills you are now referring to dyes and dyestuffs mills?

A. Dyestuffs and mill products.

Q. 25. Did you, prior to the war, import and distribute or sell in this country products disposed of under the trade names of salvarsan, neo-salvarsan, and novocaine, or any of them?

A. All three of them.

Q. 26. All three of them?

A. Yes.

Q. 27. For approximately how long a period did you engage in the importation, sale and disposition of these articles?

A. I believe they appeared in the market first about 1911 or 1912, these products.

Q. 28. How long did that period of importation continue; was it stopped by the war?

A. Well, it was not stopped until 1916, November, 1916, I obtained the last shipments from Germany on British permits allowing them to pass the blockade.

Q. 29. After the United States went into the war, did you or any of your companies, and if so, state which, apply to the Federal Trade Commission for license to use the patents or trade-marks, under Section 10, of the Trading with the Enemy Act?

A. After the Trading with the Enemy Act was passed my companies applied for licenses to manufacture the three products.

Q. 30. Could you state the numbers of the licenses issued to you by the Federal Trade Commission? I will state that all these documents are in evidence and I will have you identify them as soon as I can get them.

A. I was granted license No. 3 for making salvarsan, No. 3-A for making neo-salvarsan, and No. 4 for making novocaine, granted to the Farbwerke-Hoechst Company, the name under which I was doing business at that time.

Q. 31. When, approximately, was that. We will identify the actual date.

A. That was, I think, the beginning of 1918 when they issued the licenses. They were all cancelled and new ones taken by H. A. Metz Laboratories, Inc.

Q. 32. Do you recall the dates that the transfer was made from the first company that you mentioned to the second?

A. No, but the record will show. I obtained licenses 34, 34-A and 35 in lieu of the original licenses.

Q. 33. Do you know the numbers of the licenses last issued to the—

A. Yes, sir, 34, 34-A and 35.

Q. 34. Those were issued to whom?

A. H. A. Metz Laboratories, Inc.

MR. ANDERSON: I will have to wait until I get those.

THE WITNESS: I have certified copies, Colonel, of the licenses. The originals were here yesterday. I saw them here yesterday.

THE COURT: The witness says he has certified copies.

MR. ANDERSON: They are not full licenses. I have looked at them. They do not carry the patents and the exhibits, and they are the ones that we wanted.

THE WITNESS: The originals do.

MR. ANDERSON: I have sent for the originals, and I will use them as soon as I get them.

Q. 35. While waiting for those papers, I wanted to ask you, whether in addition to the pharmaceuticals you spoke of and your importing business prior to 1916, did you manufacture dyestuffs, and if so, to what extent, generally?

A. I manufactured dyestuffs in the Consolidated Color & Chemical Company and in the Central to more or less large extent before 1916, but not prior to 1914.

Q. 36. Between 1914 and 1916, you manufactured?

A. We increased daily our manufacture in our line of colors.

Q. 37. How long did you continue that business?

A. Up to date.

Q. 38. You still continue that business?

A. Oh, yes.

Q. 39. And are you president of that company?

A. I am president of the Consolidated, and vice-president and treasurer of the Central, and I am interested in others, but not as an officer.

Q. 40. I believe you said, Colonel Metz, that the original licenses issued by the Trade Commission to one of your companies, the name of which I do not recall—

A. Farbwerke-Hoechst Company.

Q. 41. Were?

A. Surrendered.

Q. 42. —were surrendered by you?

A. By me, and the new ones taken; that is, the new corporation which started just before we went into the war.

Q. 43. And the new licenses were taken out as a re-issue by the H. A. Metz Laboratories, Inc.?

A. Yes, sir, and now manufacturing.

Q. 44. You still hold those licenses, do you?

A. Yes, sir.

Q. 45. There was introduced in evidence on yesterday an original, and substituted a photostat copy of Federal Trade Commission license No. 34-A, issued to H. A. Metz Laboratories, Inc., under patent No. 13,848 re-issue?

A. That is neo-salvarsan.

Q. 46. The re-issue patent being dated December 15, 1914, the date of the license being July 1, 1918. I will ask you if you would examine that and see if that is one of the licenses to which you refer as having been issued to the H. A. Metz Laboratories, Inc., upon the surrender of your original license?

A. That is a certified copy of the license.

Q. 47. And you still hold that license?

A. Yes, sir.

Q. 48. That is, the H. A. Metz, Inc.?

A. I am working under it. That is the neo-salvarsan. H. A. Metz & Company.

Mr. Anderson: H. A. Metz Laboratories, Inc. Thank you very much.

The Witness: Mr. Choate knows more about my affairs than I do.

Q. 49. Now, there was another license introduced in evidence of yesterday, No. 34, under patent No. 986,148, dated March 7, 1911, date of the license July 1, 1918. Is this No. 34 the license issued to your Company in lieu of the original license of 1918 issued to your former company and which you surrendered for transfer?

A. Yes, sir. This was for salvarsan.

Q. 50. There was also introduced in evidence on yesterday a license by the Federal Trade Commission, No. 35, under patent No. 812,554, dated February 13, 1906, date of the license July 1, 1918. Is that one of the licenses issued to the H. A. Metz Laboratories, Inc., to which you referred in lieu of the original license issued to another corporation you described, and surrendered?

A. Yes, sir. That is for novocaine.

Q. 51. The three licenses which I have just had you identify are the three licenses of the Federal Trade Commission under which you now operate?

A. Yes, sir.

Q. 52. There were introduced in evidence on yesterday the original exhibits of three licenses issued by the Federal Trade Commission to Farbwerke-Hoechst Company, which licenses were issued under the following patents, that is to say: No. 3 under patent No. 986,146, dated March 7, 1911, date of license, November 26, 1917; No. 3 (a) under patent No. 13,848, re-issue, dated December 15, 1914; and No. 4, under patent No. 812,554, dated February 13, 1906, date of license, December 17, 1917; these three licenses being identified in evidence respectively as follows:

No. 3 as Plaintiff's Exhibit No. 220; No. 3 (a) as Plaintiff's Exhibit No. 221; and No. 4 as Plaintiff's Exhibit No. 222.

Will you take those three papers and state whether they were the three licenses oiginally issued to that company as you have testified?

A. They are the copies of the licenses originally issued and are similar to those later issued, except that I believe the conditions for testing were somewhat changed later on in the later licenses by the Public Health Service; and made a little more stringent.

Q. 53-54. And such changes will appear on the faces of the licenses?

A. In the faces of the licenses. I think they were changed before the new ones were issued.

Q. 55. I will ask you to take these licenses which you have identified, both the original issue and the subsequent issue, and state what you did under those licenses of the Federal Trade Commission and each of them?

Mr. Kresel: I have to object to such an indefinite question.

Q. 56. State what you did when you got the license. I will put it that way.

Mr. Kresel: He may have gone around the corner and bought something, but that is not material. It seems to me you ought to ask him some specific question.

Mr. Anderson: I will ask him a specific question, if your Honor please, but if I should ask him a specific question, from my experience, I am afraid counsel will object. I therefore ask him to state what he did.

The Court: Would you mind telling me, Colonel Anderson, what you propose to bring out by this group of questions.

Mr. Anderson: I propose to bring out that this witness proceeded to exercise his rights under these licenses by doing the things therein authorized to be done and as a manufacturer or seller of this material, he carried on certain business. It has been objected to and I recognize that this kind of an examination is necessarily very technical. To ask him for his conclusion is one thing. To ask him what he did is another.

Mr. Kresel: Of course, Colonel, if that is the purpose, I have no objection. I do not want to hamper you by keeping you down to any particular frame of question, but I simply wanted to be sure that we were not giving Mr. Metz the entire field; that is all.

Mr. Anderson: No, all I wanted Mr. Metz to do was to say what he did under these licenses.

The Court: Whether he operated under these licenses or not.

Mr. Anderson: Whether he operated under them has been suggested is a conclusion. So I asked him what he did.

Mr. Kresel: I have no objection to putting the question in that form.

The Court: You say you have no objection. Does that go to substance as well as form?

Mr. Kresel: Yes.

A. I continued to operate; I was operating prior to the licenses and continued the manufacture of the goods described in the licenses and to sell them.

Q. 57. Take each license and tell what you did as a licensee under that license?

A. Under license 3, I manufactured salvarsan. Under 3-A and 34-A I manufactured neo-salvarsan. Under 4 and 34 I manufactued novocaine—or rather 35. No. 4 was neo and 35 was novocaine—4 and 35.

Q. 58. What did you do with the product so manufactured?

A. Sold them to the consumers, to the Government, physicians, hospitals.

Q. 59. Did you sell it under any trade name or trade-mark?

A. Yes, sir; under the conditions of the license I was allowed to use my trade names in addition to the one prescribed by the license.

Q. 60. What trade name or trade-mark did you use in each case?

A. Under licenses 3 and 34 I used salvarsan and the generic name "arsphenamine" which was prescribed by the Public Health Service. Under license No. 3-A and 34-A I manufactured neo-salvarsan and neoarsphenamine.

Q. 61. Under what trade name did you sell it?

A. As neosalvarsan.

Q. 62. Under the other licenses which you have described, Nos. 4 and 35, what did you do?

A. I manufactured and sold novocaine and added the generic name of frocaine, which was prescribed by the Public Health Service.

Q. 53. Where did you manufacture these products which you have mentioned under these licenses?

A. In the plant and the laboratories of H. A. Metz Laboratories, Inc., in Brooklyn, 644 Pacific Street.

Q. 64. Can you state of your knowledge the amounts of royalties paid by you to the Alien Property Custodian under the licenses of the Federal Trade Commission by years?

A. Yes, sir.

Q. 65. Will you state it?

A. I have to refer to memoranda.

Q. 66. If you made the memoranda, yes; it is all right.

A. I saw it made and made it myself to some extent.

Q. 67. By year?

A. The salvarsan and neosalvarsan were grouped. orandum, but I have the receipts of the Custodian.

Q. 68. How much? State the years, beginning with the earliest year and on down.

A. Under licenses 34 and 34-A in 1919 we paid the Alien Property Custodian, on those licenses, $34,711.16.
The payments, the amounts, are grouped in this mem-

Q. 69. You say the year 1919; for what period of that year?

A. The year 1919, the full period.

Q. 70. That is for the full period of the year 1919. Proceed.

A. In 1920 we paid $51,485.79; in 1921, $37,145.56; in 1922 $16,512.67.

Mr. Kresel: I did not get that last figure.

The Witness: In 1922,, $16,000; it only ran up to July 1, 1922.

Mr. Kresel: How much?

The Witness: $16,512.67.

Q. 71. That was up to July 1, 1922?

A. Including July 1, 1922. Up to July 2nd, practically. July 1st was included as a separate day. I know in novocaine we paid in 1919 $4,863.74, in 1920, $4,750.14, in 1921, $5,025.37, and in 1922, $2,800.29, being five per cent of the gross sales.

Q. 72. That last was up to the 2nd of July?

A. July 2nd, the same way. Making a total of royalties—if you want that.

Q. 73. Yes.

A. Of $139,855.18 on the salvarsan and neosalvarsan and $17,259.54 on the novocaine.

Q. 74. Mr. Metz, do you know of your own knowledge whether there were any other concerns licensed by the Federal Trade Commission?

A. Yes, sir.

Q. 75. To use these same patents and trademarks?

A. Yes, sir.

Q. 76. Could you state how many and what they were?

A. There were three licenses for salvarsan and neosalvarsan and, I think, four, including myself, for novocaine.

MR. KRESEL: Will you fix the time of that, please?

THE WITNESS: I do not know. The records will show that.

Q. 77. You do not know the date?

A. No.

MR. ANDERSON: I will state to counsel that the original licenses showing that patent issue and date are in the record. I only want to connect them up. They are all in the evidence.

Q. 78. Mr. Metz, are you personally familiar and can you speak of your own knowledge of the amounts of your receipts, your gross receipts and net profits from the sale of salvarsan, neosalvarsan and novocaine prior to the issuance to you of Federal Trade Commission licenses—that is, on your importations?

A. I can get it by referring to my notes, taken from my accountant's records handed to me, and which I saw made up.

Q. 79. Those notes were made up under your direction and for your use?

A. Yes. I supervised them.

MR. KRESEL: Is the question that he should tell you the figures now?

MR. ANDERSON: If he knows. He has said yes, of his own knowledge.

Mr. Kresel: I am assuming that he knows it. Do you now ask him for the figures?

Q. 80. Will you now please state the amount of your gross receipts and the amount of your net profits from the sale of salvarsan, neosalvarsan and novocaine, respectively, during the years in which you imported them, prior to your license by the Federal Trade Commission?

Mr. Kresel: To that we object, if your Honor please, upon the ground it is immaterial and irrelevant, not binding upon the defendant, and can in no way have any bearing upon the value of the patent. I assume that this evidence is being offered as some evidence of value.

Mr. Anderson: You are quite right.

Mr. Kresel: Any figures that Mr. Metz may present with reference to his business prior to the war, which was business of his own and private, and not known to anybody else, the Alien Property Custodian or the Government or The Chemical Foundation, which was not in existence at that time, is immaterial and irrelevant.

The Witness: It was known to the Alien Property Custodian.

The Court: Just a moment, Mr. Metz.

The Witness: It is in the books.

Mr. Anderson: My idea was, if your Honor please—and I think it is sound—that in considering the very intangible thing whch we call value any facts showing the earnings on a property of this kind under a patent, at any period during the use of the patent, would be relevant evidence. Its value might be to some extent affected by the circumstances, intervening conditions and various other things; but it is one of the facts to be considered in arriving at the inquiry here—which is not a queston of establishing an actual value, but a question of establishing whether the price paid in this case had any relation to value.

Now, in that particular case, I think this evidence might be considered. I recognize that there are certain limitations that may be argued with reference to it and certain matters which may go to its weight, as to which I do not wish to discuss, but I think the evidence is relevant and material on this question, on which the Courts allow very great latitude on account of the various elements entering into it.

The Court: Colonel Anderson, I gather that the information that you are now trying to obtain from this witness is as to any source of information from which the purchaser or seller of these patents in the year 1919—

Mr. Anderson: I think I know what your Honor's inquiry is. Of course, I would not suggest it, but I think it is a very natural one.

The Alien Property Custodian, I take it, in view of the facts disclosed in this case, would have had opportunity to gather that information without difficulty if he wanted to.

The Witness: He had it, Colonel.

Mr. Anderson: Beg your pardon.

The Court: Do not answer again until you are interrogated. Do not forget that.

The Witness: All right, sir.

Mr. Anderson: The situation is this: I take it, if your Honor please, that the question of value is a question largely of fact. Now, the fact that the purchaser may not have had information as to value might affect what he was willing to bid, but would not affect the value. It is a duty of the person occupying the position of a Trustee—

The Court: I understand your theory. It is only an answer to the direct question that I wanted.

Mr. Anderson: I do not know further than this: That I think under the law this information will be clearly available to the Alien Property Custodian.

The Court: I will express no final view as to either the admissibility or inadmissibility or weight of the testimony, but will reserve that until the ultimate finding.

Mr. Anderson: I recognize the questions that may arise.

The Court: You may put it in under the general rule.

Mr. Anderson: Now, will you read the question, please. (Q. 80 repeated as recorded).

Mr. Kresel: Before the witness answers the question, I suggest to the Court and counsel that it might be well to develop with the witness as to the basis upon which he was dealing with these products at that time.

Mr. Anderson: I thought he testified to that.

Mr. Kresel: Whether he was agent or principal in the transaction, so that we might be able to judge the value of that.

Mr. Anderson: I am quite willing.

Q. 81. Mr. Metz, I understood you to say that you imported salvarsan, neo-salvarsan and novocaine for certain years which you stated prior to the war and into the early period of the war, from abroad; is that true?

A. Yes, sir.

Q. 82. Now, I will ask you to state, taking up first salvarsan, what were your gross receipts and net profits by years, if you can state it, from the sale of salvarsan which you imported during the period that you have described?

A. I can not give you salvarsan separately. I have them both together, both salvarsan and neo-salvarsan.

Q. 83. All right. Give them both together.

A. They went together always on our books. I have the figures from 1913 to 1917. The Farbwerke-Hoechst Company, at that time the agents and manufacturers of the product made in Germany.

Mr. Kresel: I ask that the statement that the Company was the agent be stricken out as the conclusion of this witness.

Mr. Anderson: I have no objection, sir. We will stop discussion on that.

The Court: So ordered.

Q. 84. Now, this Farbwerke-Hoechst Company, was the same Company which is described in the original licenses issued by the Federal Trade Commission?

A. Yes, sir.

Q. 85-86. It was an American corporation, was it not?

A. Yes, sir.

Q. 87. And you were the head of that corporation?

A. And owned all the stock, yes, sir.

Q. 88. It was practically your corporation?

A. Yes, sir, and is still.

Q. 89. State then, by years, what you made through importations by that corporation, that is, your receipts and net profits on salvarsan and neo-salvarsan, for the period of importation?

Mr. Kresel: I understand that he is about to give gross receipts and net profits; is that it?

Mr. Anderson: That is what I have asked for.

A. The sales in 1913 of salvarsan and neo-salvarsan were $383,818.74.

Mr. Kresel: May I interrupt you a moment? Do you understand that those are the gross receipts that you are talking about. When you say sales, you mean gross receipts received from sales?

The Witness: Gross sales, the amount received from sales.

Mr. Kresel: All right.

Q. 90. Your gross receipts from the sales of salvarsan and neo-salvarsan imported by you and sold in the United States during that period?

A. 1913.

Q. 91. 1913, amounted to how much?

A. $383,818.74.

Q. 91-a. What were your net profits during that year from those sales?

A. The net profits that year were $153,124.32.

Q. 92. Now, take the next year and give the same information of gross receipts and net profits?

A. In 1914, $502,986.77; net income $244,279.35.

Q. 93. Would you mind calling those figures over again?

A. $502,986.77; net income, $244,279.35.

Q. 94. That was for the year 1914?

A. 1914.

Q. 95. Now, take the year 1915?

A. 1915, $601,151.94.

Q. 96. What were your—

A. Sales?

Q. 97. Gross sales or receipts?

A. Receipts from sales?

Q. 98. From sales of this imported product which you have described?

A. Yes, sir; and the net income was $361,470.40. 1916, $969,176.41; net income $434,723.08.

Q. 99. And your importations were discontinued in 1916, as I understand it?

A. The end of 1916. We got the last shipment, November 1916, on permits.

Q. 100. Now, Mr. Metz, in order to follow that subject through, I will ask you to go on with salvarsan and neo-salvarsan and state your—you have already stated your sales and net profits under the license?

A. You have not got 1917 yet. I want to give you 1917, Colonel.

Q. 101. All right, 1917.

A. In 1917, we sold the stock we had on hand and some of the manufactured stuff.

> Mr. Kresel: One minute, please. That has not been asked. All you have been asked for are figures. Please give that.

A. (Continuing) The figures are $628,753.80. The net income was $289,742.86.

Q. 102. Did you import any of this material, salvarsan or neosalvarsan in the year 1917?

A. No, sir. That was the stock that we had from 1916 and what we made here at that time.

> Mr. Kresel: I ask that everything but "No, sir" be stricken out.
>
> The Court: Motion granted.

Q. 103. Did you have any stock on hand at the end of your importations in 1916?

A. Yes, sir.

Q. 104. Did you sell that stock during 1917?

A. Yes, sir.

Q. 105. Now take novocaine by years and in the same manner, give the same information?

A. I ought to have qualified, Colonel, that some of these sales included product bought in the United States, made in Philadelphia, which we handled when the importations were scarce.

Q. 106. You mean 1917 sales?

A. I mean in 1917, yes; 1916 and 1917; some that we manufactured in 1916 and 1917.

Q. 107. The figures you have given represent the gross receipts and net profits of your business.

A. On those products.

Q. 108. Explained in the manner just indicated between importations in the United States in the later period?

A. On those two products.

Q. 109. Now, take novocaine and give the same information for the same periods, if you can do so?

A. Novocaine was very small. Here they are. The novocaine sales began in 1906.

Q. 110. Give such information as you can give, giving the gross receipts and net profits in each year for the period.

Mr. Kresel: Do I understand that he is about to give the figures with reference to novocaine imported?

Q. 110. (continuing) I asked you about novocaine imported.

A. That was all imported at that time. I have not the figures in dollars, but I have the amounts. I can not give you the figures in dollars. I have not got them. I have simply got the amounts, because those books—

Mr. Kresel: That is an answer; you have not got the figures.

A. (continued) Not the dollars. I can give you totals and the amounts and quantity for each year.

Q. 111. Give us the totals and quantity, and then I will ask another question.

A. I will give you the quantities in detail.

Q. 112. All right, give us the quantities.

A. In 1906, the first year, we sold in five-gram bottles 210 bottles of five grams each, that is, 17 ounces. In 1907 we sold 128 five-gram bottles, in 59 ounces and 14 pounds, single pound packages. In 1908, 370 five-gram bottles, and 84 ounces and 47 pounds. In 1909, 760 five-gram packages, 234 ounces and 51 pounds. In 1910, 1133 five-gram bottles, 368 ounces and 67 pounds. In 1911, 1503 five-gram bottles, 552 ounces and 48 pounds. In 1912, 2580 five-gram bottles, 867 ounces and 74 pounds. In 1913, 5746 five-gram bottles, 1798 ounces and 144 pounds. In 1914, 8562 five-grams, 3275 ounces and 242 pounds. 1915 and 1916 I have not got, except the importation in 1915 was 675 pounds—in 1916. That was after the war, we had trouble getting it.

Mr. Kresel: I do not want to interrupt Colonel Anderson's examination of this witness any more than I have to. It is understood, as I gather, that this testimony which refers to the period prior to April 10, 1919, is taken subject to our objection that it is immaterial, irrelevant, and not binding upon this defendant.

The Court: That is correct, Mr. Kresel.

Q. 113. Mr. Metz, what is salvarsan generally used for?

A. It is used almost entirely in the treatment of syphilis.

Q. 114. Neosalvarsan the same?

A. The same.

Q. 115. What is the general use of novocaine?

A. Novocaine is a local anaesthetic used largely by dentists and physicians in surgical operations.

Q. 116. After the beginning of the great war in 1914 were salvarsan and neosalvarsan manufactured in the United Etates?

A. In 1916, I think it was, a concern in Philadelphia started putting out a product that answered the requirements, and which I sold for them—or rather, I obtained it from them and sold it to the trade under an agreement with them.

Mr. Kresel: May that be stricken out, your Honor. It is volunteered and it is not responsive to the question.

Mr. Anderson: No objection, sir.

The Court: Let the entire answer be stricken out from the record.

Mr. Anderson: Read the question, please.

(Q. 116 repeated by the stenographer as above recorded.)

A. Yes.

Q. 117. Can you state approximately to what extent?

A. Enough to supply the demand; practically enough to supply the demand.

Q. 118. You stated in your answer to a former question that in 1917 you sold some of this product which you bought from a manufacturer in the United States at Philadelphia. Did you handle any of the United States product?

A. Yes, sir.

Q. 119. Could you state approximately how much of the stuff manufactured in the United States you sold?

A. Oh, several hundred thousand ampules, at least.

By Mr. Kresel:

Q. 120. When was this? In 1917?

A. This was—I will give you the exact date under the agreement under which I handled it, in just a moment.

By Mr. Anderson:

Q. 121. If you can state approximately, I would rather you would state—

A. I just want to get the date, Colonel. This was in December, 1916, or last part of 1916.

Q. 122. And you sold this product during 1917 of the American manufacture?

A. Until I began to make my own, yes, sir.

Mr. Kresel: May the latter part of the answer be stricken out?

The Court: Let the answer be stricken out and the question repeated.

(Q. 122 repeated by the stenographer as above recorded.)

A. Yes.

Q. 123. Did you manufacture any of this stuff prior to the time of the licenses that you received here?

A. Yes.

Q. 123-A. During the year 1917?

A. Yes.

Mr. Kresel: May I suggest that you inquire which of the products he so manufactured?

Q. 124. I will ask, in reply to that question of counsel.

A. Salvarsan and novocaine.

Q. 125. How did you import salvarsan during the years 1915 and 1916, with the blockade existing?

A. The blockade went into effect April 1, 1915. Prior to that time it came in regular shipments. After that I had to get permits from the British Government through the State Department to allow me to pass the blockade.

Q. 126. When you got those products in the United States, what did you do with them?

A. Sold them to the—

Mr. Kresel: One minute, please. I have no objection—he sold them.

A. (continued) Sold them in the regular course of business to the Government; sold to the Government, to hospitals and to physicians.

Q. 127. I believe you said that the sale of salvarsan and neosalvarsan in this country began about 1911 to 1912. Did I understand you correctly?

A. Yes, sir.

Q. 128. Mr. Metz, since the beginning of the sale of this product of salvarsan and neosalvarsan, and novocaine, too, have you been familiar with the market conditions and prices of these goods in the American market?

A. Yes, sir.

Q. 129. Does your business in the handling of these three articles which you have described, first, as importer, and second, as licensee and manufacturer, extend throughout the United States, or is it local?

A. I beg your pardon?

Q. 130. Does it extend throughout the United States, or is it local?

A. The sale?

Q. 131. Yes.

A. Throughout the United States and export—I exported to Germany within the last month or two 150,000 ampules.

Mr. Kresel: I ask that that part be stricken out.

The Court: Let the entire answer be stricken out and the question repeated.

(Q. 129 repeated by stenographer as above recorded.)

A. Throughout the United States.

Q. 132. Do you export any of the three articles named, since you became a manufacturer under license?

A. I have exported neosalvarsan to various countries.

Q. 133. Neosalvarsan?

A. Yes, sir.

Q. 134. You have not exported salvarsan or novocain?

A. Not recently. I have exported it, but not recently.

Q. 135. Approximately what quantity of salvarsan and neosalvarsan has your corporation sold under the licenses issued by the Federal Trade Commission, by years if you can state it?

A. Well, I can give the amounts to you, but the dollars and cents I gave you.

Q. 136. I meant the amounts.

A. I should say approximately a million ampules a year.

Q. 137. Do you mean salvarsan and neosalvarsan?

A. Yes, combined; both of them combined.

Q. 138. Can you say approximately how much of novocaine you sold?

A. I have not those figures exactly on novocaine. I have the amounts, but not the pounds.

Q. 139. The amounts, I mean, as licensee of the Federal Trade Commission.

A. From 1919 on I can give you the amounts on novocaine.

Q. 140. All right.

A. In 1919 the sales were $246,295.67, in 1920 $292,739.47, in 1921 $294,304.46, and in 1922 $302,283.40. Those were the gross sales.

Q. 141. But you cannot tell the exact amount sold, I mean, by quantity?

A. I have got them in the records, of course.

Q. 142. The quantities?

A. I have not them here.

Q. 143. If you cannot tell we will pass on.

A. I can get them for you. I have not my hands on that now.

Q. 144. I understood you to say that during the period that you have been licensed there were three other licensees for these same products?

A. On novocaine, yes.

Q. 145. And salvarsan and neosalvarsan?

A. There were three by the Federal Trade Commission and some afterwards by The Chemical Foundation.

Q. 146. Do you know what your profits were from the sale of salvarsan and neosalvarsan and novocaine during the period of the licenses by the Federal Trade Commission that you have described?

A. I have given you the salvarsan and neosalvarsan; I can give you the novocaine also.

Q. 147. You do know those amounts?

A. Yes.

Q. 148. I will ask you this question: Basing your knowledge upon your experience as an importer and as a merchant in this business and other knowledge which you have described, and your manufacturing experience, your knowledge of the profits of this business, including the profits of sale and manufacture, and from your familiarity with market conditions which you have described up to April 10, 1919, what in your opinion was the fair market value of Patent No. 986,148, which you have described as covering salvarsan, and reissue Patent No. 13,848, which you have described as covering neosalvarsan, on April 10, 1919?

> Mr. Kresel: Before the witness is permitted to answer the question, we object to the question upon the ground that the witness has not been qualified as an expert on the value of patents or of these particular patents; that no sufficient foundation for such a question as is now propounded to the witness has been laid; that there is no evidence that this witness has given or intimated which would lay a proper basis for any estimate of value of these patents to be given by hm. We object to it upon the ground that it is immaterial and irrelevant. We object to it upon the ground that we originally urged that this evidence is an attempt to get the Court to substitute its judgment for that of the action of the Executive in a discretionary matter that was given to the Executive by Congress. Upon all those grounds, we object to the question.
>
> The Court: The answer may be received subject to the objections, under our general rule.

A. Repeat the question, please.

(Q. 148 repeated as recorded above.)

A. It is hard to tell the value. I should have been very glad to pay a million dollars for the patents as they stood then.

Mr. Kresel: I ask that the answer be stricken out.

Q. 149. The question calls for your opinion of the fair value at that time.

Mr. Kresel: I suggest that the witness be first asked whether he can give an opinion.

Q. 150. Very good. I will ask you if you feel that you can give an opinion as to the fair value of those patents I have described at that time?

A. Yes, based on my knowledge of the profits of the business.

Mr. Kresel: I ask that everything but the word "yes" be stricken out.

Mr. Anderson: All right, I do not object, sir.

Q. 151. Since you have said that you can give an opinion and have testified as to your experience, you need not review that, but I only want to ask you what in your opinion would have been the fair value of these two patents on April 10, 1919, under the conditions you have outlined in your testimony?

Mr. Kresel: I object to the testimony if it calls for what would have been the fair value. The question should be, what was the fair value.

The Court: Your general objection is withdrawn to this question?

Mr. Kresel: Oh, no, your Honor. I urge all my objections, but I simply urge that to the form of the question.

Q. 152. Well, what was the fair value? I will correct my English.

A. At least a million dollars.

Q. 153. At least a million dollars?

A. Easily.

Q. 154. If these two patents had been put up for auction with the licenses outstanding which you have described, as shown here by the record, would you have bid as much as a million dollars for them?

Mr. Kresel: I object to the question upon the ground that it is hypothetical and upon the other grounds that we urged to the preceding question as to value.

The Court: I do not understand, Colonel Anderson, that this question can be disproved. You are really calling for the witness's present mental attitude with respect to a transaction four years ago. I do not see how that can possibly add anything to what you already have.

Mr. Anderson: I should have said, "Would you then have bid." That would be a fact of a desire at that time and a willingness to pay. In asking that question, if your Honor please, I am proceeding on a line of examination which has been admitted in many cases where questions of property values of real estate in condemnation and things of that kind have arisen.

The Court: I will permit you to take the answer.

Mr. Anderson: There may be a debatable question as to whether that adds anything to what has been said, but I would like to get it on the record.

Q. 155. If these two patents had been put up for sale at public auction, subject to the licenses which you have indicated, would you then have bid on the same and would you have been willing to bid?

Mr. Kresel: The same objections, your Honor, that I urged to the other questions.

A. I would have bid at least a million dollars and possibly more if I had the chance.

Q. 156. Now I will ask you with regard to novocaine, Patent No. 812,564. Basing your opinion upon the general facts outlined in the preceding questions, in which your opinion was asked, and not repeating it, and your knowledge upon this subject of market conditions, what in your opinion was the fair value of Patent No. 812,554 on April 10, 1919, if sold under the conditions outlined in your testimony, or subject to the conditions outlined in your testimony?

Mr. Kresel: I do not understand that, Colonel.

Q. 156. (Continuing) All right. If sold subject to the licenses which you have described.

Mr. Kresel: That is different. We object to the question upon the grounds that we urged to the preceding question as to the value of the salvarsan patent.

The Court: Same ruling.

A. At least $200,000.

Q. 157. If the novocaine patent No. 812,554 had been offered at public auction by the Alien Property Custodian subject to the licenses which you have indicated then existed, as issued by the Federal Trade Commission, would you have bid for the same; and if so, how much would you have bid as a minimum?

Mr. Kresel: Same objection, your Honor.

Mr. Anderson: That is understood.

A. At least $200,000.

Q. 158. Have you or the corporations which you have mentioned, with which you are connected, or which you control, ever registered any trade-marks covering salvarsan, neosalvarsan or novocaine?

A. Yes, sir. I had the trade-mark registered; transferred and registered.

Q. 159. Have you certified copies of those trademarks or copies of them in this courtroom?

A. They are here.

Mr. Anderson: I now offer in evidence the following documents to be read and identified by the following numbers:

A certified copy of an instrument, trade-mark No. 53,072, called "Novocaine," dated May 22, 1906, to be read as "Plaintiff's Exhibit 403." Do you want to see those, Mr. Kresel?

Mr. Kresel: I would like to see them. If you are going to offer them one by one, I want to register my objection to them. I understood you were going to offer them all together and I was waiting until you were through. May I see them, please? (Papers handed to counsel).

Colonel, my recollection of the question to the witness which brought forward these papers was whether he or his concerns had registered these. This paper that you hand me appears to have been registered in the name of a German concern.

Mr. Anderson: But I am going to offer the assignment. I will follow that with the assignment in each case.

Mr. Kresel: You now offer this paper.

Mr. Anderson: I offer that.

Mr. Kresel: We object to it upon the ground that it is immaterial and irrelevant.

The Court: You may put it of record under our general rule.

Received in evidence and marked "Plaintiff's Exhibit No. 403." (*See Exhibits, Vol. II, Page 741.*)

Mr. Kresel: What was the date of that, Colonel?

Mr. Anderson: 8th day of January, 1915. Right under that same offer, Assignment from the German Farbwerke, whose name appears as the original Registrar of the Trade-mark, to Farbwerke-Hoechst Company, dated the 8th day of

January, 1915, and shown by the certificate of the Patent Office to have been recorded on February 26, 1917, in the record as therein stated, to be identified and read as "Plaintiff's Exhibit 403-A."

The Court: Admitted under our general rule, subject to the general and specific objections.

Received in evidence and marked "Plaintiff's Exhibit No. 403-A." (*See Exhibits, Vol. II, page 745.*)

Mr. Anderson: Patent Office copy of Trademark 79,969, registered October 25th, 1910, called "Salvarsan," identified and read as "Plaintiff's Exhibit No. 404." (*See Exhibits, Vol. II, page 748.*)

The Court: Admitted under the same conditions as the preceding document.

Received in evidence and marked "Plaintiff's Exhibit No. 404." (*See Exhibits, Vol. II, page 748.*)

Mr. Anderson: Instrument called "Assignment of Trade-mark, No. 79,969," dated the 5th day of March, 1914, recorded May 6th, 1914, as stated in the certificate of the Patent Office, to be identified and read as "Plaintiff's Exhibit No. 404-A."

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit 404-A." (*See Exhibits, Vol. II, page 750.*)

Mr. Anderson: Trade-mark issued by the United States Patent Office, No. 88,862, registered October 29th, 1912, the name being "neosalvarsan," to be identified and read in evidence as "Plaintiff's Exhibit No. 405."

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 405." (*See Exhibits, Vol. II, page 755.*)

Mr. Anderson: An instrument called "Assignment of Trademark No. 88,862, dated October 25, 1912," which instrument of assignment is dated the 5th day of March, 1914, and recorded in the Patent Office May 6, 1914, as shown by certificate thereto annexed to be identified and read in evidence as "Plaintiff's Exhibit No. 405-A."

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 405-A." (*See Exhibits, Vol. II, page 757.*)

Q. 160. Colonel Metz, have you sold and distributed any products under the names indicated in the trade-marks which I have just introduced in evidence since the assignment to you on the dates named in said assignments?

A. Yes, sir.

Q. 161. Have those trade names or trade-marks and each of them been in constant use by you?

A. Yes, sir.

Q. 162. Could you state of your own knowledge what you have expended in advertising these three trade-marks and each of them in the United States since they were assigned to you?

MR. KRESEL: Can you separate them?

Q. 162. (Continued) Yes, can you separate them?

MR. KRESEL: I object to the question upon the ground that that is immaterial and irrelevant; that it is no basis for arriving at any value of the trade-marks; furthermore upon the ground that it has not been made to appear, and I do not under stand that it is charged, that these trade-marks were either seized by the Custodian or conveyed to the Chemical Foundation; is it?

MR. ANDERSON: I think they are included; yes.

MR. KRESEL: Is it? I did not know that that was your charge.

Mr. Anderson: That is in the list in Exhibit G.

Mr. Kresel: I did not understand that that was your charge. I withdraw the last ground, then, if that is the fact.

The Court: I am confused about that, Colonel Anderson. These assignments were made of the three products?

Mr. Anderson: Yes, sir.

The Court: I mean assignments of the trademarks of each of the three products were made to some corporation in which Mr. Metz was interested.

Mr. Anderson: Yes.

The Court: And they were made after the war began?

Mr. Anderson: Before the war, that is before we went into the war.

The Court: After the conflict abroad began, but before we entered?

Mr. Anderson: Yes, sir.

The Witness: Prior to the conflict abroad.

Mr. Anderson: One moment.

The Witness: I beg pardon.

Mr. Anderson: I understand that the assignments were made prior to the beginning of the war; at least the dates are stated on the face of the assignments.

The Court: Do these assignments appear to be absolute on their face?

Mr. Anderson: Yes, sir. They are in evidence.

The Court: And you have shown by the exhibits attached to your Bill, which have been introduced in evidence, that these three trademarks were seized and sold by the Alien Property Custodian?

Mr. Anderson: Yes, sir. The Bill in this case, if your Honor please, Exhibit G and the various schedules—just exactly which this is I do not recall, but that shows that these three trademarks were seized by the Alien Property Custodian and two days after seizure were transferred to the Chemical Foundation, that so far as the record of the Alien Property Custodian shows or we know, they were still held by or claimed by the Chemical Foundation. I am going to bring that out later. I wanted first to get this evidence in if it were appropriate, but I am perfectly willing to lay the foundation by bringing that out later.

The Court: I will take the answer.

Mr. Anderson: The question was how much he had expended in advertising these trade-marks.

The Court: I thought it was the value. You may take that answer, but I think I have indicated before how I feel, as to what weight there may be to it. I will take the answer.

Mr. Anderson: Yes, sir, I quite agree it is debatable.

Q. 163. That was for all these three trademarks together?

A. Approximately it was between $150,000 and $200,000 a year.

A. Practically, yes. I should say for the three. More than that probably, but at least that.

Q. 164. I will ask you to base your answer to the question I am now going to put on the general facts which I outlined in preceding questions when I asked your opinion as to the values of the patents, and say whether you can give an opinion as to the value of each of these three trademarks on April 10, 1919?

The Court: The answer to that is yes or no, whether you can.

A. I can; yes, sir.

Q. 165. Will you state in your opinion, basing it on the evidence you have given of your knowledge, etc., what was the fair value at that time of the two trade-marks salvarsan and neosolvarsan, which I understood you to say were used together; or, if you can give them separately, all right.

Mr. Kresel: The same objection, your Honor.

The Court: I understand that the objection goes to all this testimony.

Mr. Anderson: Yes.

A. Well, do you mean for some one to acquire them or what they are worth to me?

Q. 166. I mean what would be the fair value if they were put up at auction and sold?

A. Oh, a million dollars easily.

Q. 167. Do you mean for both of them or one?

A. I mean for the two.

Q. 168. The two together?

A. The two together.

Q. 169. Could you separate their value, approximately.

A. Yes, I should say 75 per cent. and 25 per cent.

Q. 170. For what?

A. 75 for the neosalvarsan and 25 for the salvarsan. That is based on the proportion of sales, of course.

Q. 171. Then approximately you would put the fair value of the trade-mark neosalvarsan on April 10, 1919, at not less than $750,000?

A. Easily.

Q. 172. And of salvarsan at not less than $250,000?

A. Yes.

Q. 173. Take novocaine, and say what in your opinion was the fair value of that trade-mark in April 1919, if it had been put up and sold to the trade?

A. At least $250,000.

Q. 174. Was any demand ever made upon you by the Alien Property Custodian for the three trademarks salvarsan, neosalvarsan and novocaine, which you have described, either or any of them?

Mr. Kresel: Objected to as immaterial and irrelevant.

Mr. Anderson: This goes to the inquiry as to seizure and sale.

Mr. Kresel: But it does not make any difference. If he had a right to seize he did not have to ask his permission.

Mr. Anderson: I asked if any demand was ever served on him.

A. I think so, along with all other trademarks. The Companies had been seized in whose name they stood.

Mr. Kresel: I ask that everything except "I think so" be stricken out.

The Court: Let the whole answer be stricken out and the question repeated. The answer will be taken, Mr. Kresel, under the general rule.

Mr. Kresel: Yes, your Honor.

The Court: Read the question.

Q. 175. (Q. 174 repeated as recorded above).

A. I think there was.

Q. 176. Are you the Metz who was a party to the suit of Metz against Garvan, which I think was decided about June 2nd, 1922?

Mr. Kresel: One minute, please. I object to that on the ground that it is immaterial, and I would like to ask Colonel Anderson in what respect he considers that to be material.

Mr. Anderson: I consider it material as showing the course of conduct of the Alien Property Custodian and the Chemical Foundation in dealing with these properties of this gentleman,

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at the meeting at which subscriptions were taken for these companies.

Q. 182. Your companies still hold that stock, do they?

A. Yes, sir.

Q. 183. Now, I will ask you if you had any correspondence with the Alien Property Custodian or with the Chemical Foundation, or both, in relation to the seizure and sale of the three patents which have been here under discussion and the trade-marks which have been here under discussion, or any of them?

A. My counsel had with regard to the trade-marks.

Q. 184. Have you personally had any correspondence?

A. My counsel for me, as to their return.

Q. 185. Have you that correspondence in your possession?

A. Copies are here.

Mr. Anderson: I would like to look at it. (Handed to counsel).

Q. 186. The plaintiff here introduced in evidence yesterday, three bills of complaint, identified as Plaintiff's Exhibits Nos. 345, 346, and 347, being in each case suits in equity, filed in the United States District Court for the Southern District of New York, by the Chemical Foundation, Inc., against H. A. Metz Laboratories, Inc., a corporation, and Frank White, as Treasurer of the United States. Do you know whether the H. A. Metz Laboratories, Inc. is the company which you have described, of which you are the head and owner?

A. Yes, sir.

Q. 187. If so, state whether that is the case.

A. It is.

Q. 188. There also were introduced yesterday, bills of complaint in three suits which were instituted in the Eastern District of New York by the Chemical Foundation, Inc., against H. A. Metz Laboratories, and Frank White, Treasurer of the United States, identified as Plaintiff's Exhibits Nos. 363, 364 and 365. Is the H. A. Metz Laboratories, Inc., the company to which you have referred, of which you are the head?

A. I assume so; one of them.

Q. 189. You know that those suits have been brought against you?

A. I have been so informed by my counsel, yes, sir. I was in Europe when they were first brought. I was so advised.

MR. ANDERSON: With the reservation stated, the witness may be cross-examined, sir.

MR. KRESEL: Just one minute.

THE COURT: Suppose we take the morning recess which we spoke of.

(After short recess.)

Q. 190. Colonel Metz, you are here testifying under subpoena issued by this court, are you not?

A. Yes, sir.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 191. Mr. Metz, I have noticed that throughout your testimony this morning you never once mentioned the fact that prior to the outbreak of the European War you were the representative of the German House of Hoechst. That is the fact, isn't it?

A. Not in that way. I was the agent for the sale of their goods; bought on my own account from them.

XQ. 192. I say, the fact that you were their agent or representative or had anything to do with them at all was not mentioned by you upon your direct examination?

A. It was not asked in the question.

XQ. 193. There is nothing in that relationship that you desire to disclose, is there?

A. On the contrary, I would be very glad of it.

XQ. 194. The fact is that for many years before the outbreak of the European War you had relationships with the Hoechst Company of Germany?

A. Yes, sir; for 30 years at least.

XQ. 195. And for many years before the outbreak of the European War you had the exclusive agency in the United States for the sale and disposition of products manufactured by the Hoechst Company?

A. Yes, sir.

XQ. 196. Such arrangements as there were between you and the Hoechst Company were in writing, weren't they?

A. Yes, sir.

XQ. 197. Have you those contracts with you?

A. I have, and they were all published in the hearings referred to by Mr. Anderson.

XQ. 198. Now, if you will just answer my questions, Colonel, we will get along very well.

A. I have them, Mr. Kresel.

XQ. 199. Please do not volunteer anything that is not asked.

> Mr. Anderson: If your Honor please, to save interruption as far as I can, I wish to state on the record now that I object to any evidence in the cross-examination outside of matters covered by the direct; and that counsel makes the witness his own if he does it. I am not objecting to this examination because I think it relates to the general subject.
>
> The Court: It would be well for you to call my attention specifically to any questions that you think are not in cross-examination.

Mr. Anderson: I will, sir.

The Court: Because it is not my purpose to let the cross-examination go beyond the proper bounds of cross-examination.

Mr. Anderson: I will endeavor to do so, but I did not want to interrupt counsel.

XQ. 200. You say that you have your contracts with the Farbwerke Hoechst Company of Germany here. Will you please produce them?

A. They are in my bag there. I will have them in a moment, Mr. Kresel. Here are copies of them—and the originals, I think.

XQ. 201. The last contract between you and the Hoechst Company was dated in 1912, was it not?

A. The last was in 1913.

XQ. 202. Let me see that one first, please, if you will.

A. There was one in 1912 and one in 1913. I have the 1912 one here, but not the 1913. It is in the record. I can point it out to you in the record, where Mr. Garvan put it in. I have the other ones from 1902, 1905 and 1912.

XQ. 203. Let me have what you can produce.

A. The 1913 one is the last one. That is in the record.

Mr. Kresel: All I ask is that these be marked for identification.

The Court: Let them so be marked.

Mr. Kresel: The first one I ask be marked as an agreement dated the 12th day of November, 1902, between Farbwerke vorm. Meister Lucius & Bruening, Herman A. Metz and others.

Marked Defendant's Exhibit C for identification 6-23-23.

The Witness: Those are prior to 1913, are they not, Mr. Kresel?

Mr. Kresel: The next one is an agreement dated August 4th, 1915, between the same parties.

Marked "Defendant's Exhibit D for Identification."

Mr. Kresel: The next is an agreement dated the 26th day of September, 1904, which is described as a Supplemental Agreement, made between the same parties.

Marked "Defendant's Exhibit E for Identification."

Mr. Kresel: The next is an agreement dated July 22nd, 1912, between the same parties.

Marked "Defendant's Exhibit F for Identification."

Mr. Anderson: It is not your intention to introduce those at the present time?

Mr. Kresel: Not at the present time.

The Witness: The 1913, may I put that one in? It is not fair to put in the others without the 1913 contract, which is the one on which the whole thing hinges.

Mr. Kresel: I would ask your Honor to instruct the witness that it is his duty to answer questions and not argue with me, or to suggest that anything that counsel does is either fair or unfair.

The Court: What was the statement made by the witness? Will you read that, please? (Record repeated).

Colonel Anderson, do you care to do what has been requested of the Court? I should be very glad to have it come from you rather than from me.

Mr. Anderson: I will, if your Honor prefers. I think very often witnesses who are not familiar with Court proceedings do not realize that they must confine themselves strictly to response to the question.

THE COURT: Colonel Anderson, I shall be very glad to have you inform this witness as to what a witness's functions are.

MR. ANDERSON: I will. Colonel, in answering Mr. Kresel's questions under cross-examination, the rules of evidence require that you should confine your answers to what is fairly responsive to the question, and not go beyond his question. If there are any matters that are not brought out by that answer, my duty is to bring them out, if they are material, on Re-direct.

THE WITNESS: Yes, sir.

MR. ANDERSON: And in the next place, I would suggest that you have the right to make a complete answer to the question; that is an answer, if "yes" or "no" would not be true, you have a right to make a sufficient answer to make your reply the truth and the whole truth, but, of course, not to argue with counsel or to go beyond a fair, truthful statement in reply to his question. I think that covers it.

THE COURT: With this modification, Colonel Anderson: That if a question is asked him which calls for a yes or no answer, he must first answer "yes" or "no," and then qualify it and not attempt to reason it out, without the yes or no answer.

MR. ANDERSON: I am glad your Honor made that suggestion. First answer "yes" or "no," and then explain or qualify as may be necessary, and only to the extent necessary to make your answer a truthful response to the question.

XQ. 204. Now, one of the products of the Farbwerke Company of Germany was salvarsan?

A. Yes, sir.

XQ. 205. At first there was only salvarsan and later they put out the product called Neo salvarsan?

A. Yes, sir.

XQ. 206. And subsequent thereto a third product called Silver Salvarsan?

A. Yes, sir.

XQ. 207. And up to the outbreak of the European War, you were the sole selling agent in the United States for those products?

A. Yes, sir.

XQ. 208. And except through you, no one in the United States could obtain those products?

A. They did.

XQ. 209. Except you, there was no one that sold those products for the Farbwerke Hoechst Company?

A. Not directly for them.

XQ. 210. You have stated in your direct examination that salvarsan is a drug, I think you said, was a specific for syphilis; indeed it is the most effective for that disease?

A. So held.

XQ. 211. And you were marketing that product and its subsequent development from the time when the formula for its production was first discovered, were you not?

A. From the time it first came on this market.

XQ. 212. And that, you say, was in 1911?

A. 1911 or 1912.

XQ. 213. Up to the time of the outbreak of the European War, was that product manufactured here in the United States?

A. No, sir.

XQ. 213-A. When was it first produced here in the United States by anybody, to your knowledge?

A. Early in 1916, I think. 1915, or early in 1916.

XQ. 214. Now, it is that product—salvarsan, that is covered by one of the patents as to which you undertook to give an opinion as to value?

A. Salvarsan was the trade-mark name which I had.

XQ. 215. I did not ask you about the trade-mark. I am speaking now about the patent. Salvarsan, Neo Salvarsan and Silver Salvarsan were all covered by the patent as to which you undertook to give value this morning?

A. No, sir.

XQ. 216. Which one was?

A. Salvarsan and Neo Salvarsan. Silver came later, after the War, after the Armistice.

XQ. 217. You have sold Silver Salvarsan?

A. Under license from The Chemical Foundation.

XQ. 218. You have given us the figures of the amount of your sales, have you not?

A. Not of silver salvarsan, no, sir. Only salvarsan and neo salvarsan.

XQ. 219. You did not include your sales of silver salvarsan?

A. No. They are separate.

XQ. 220. Nor include your profits in silver salvarsan?

A. No, sir.

XQ. 221. So you have given us today no figures as to silver salvarsan?

A. No, sir.

XQ. 222. Now, salvarsan and neo salvarsan were covered by the patents as to which you undertook to give value this morning?

A. Yes, sir.

XQ. 223. And those patents were owned prior to the outbreak of the European war by whom?

A. Farbwerke Vorm. Meister Lucius & Bruening of Hochst-on-the-Main, Germany.

XQ. 234. The question of duties on importations of dyestuffs and pharmaceuticals was one in which you were interested as representative of this German concern, were you not?

A. Yes, sir, as an importer and as a dealer here.

XQ. 235. In both capacities?

A. Yes, sir.

XQ. 236. And, of course, the Farbwerke-Hoechst Company of Germany was interested in what duties were imposed by our Government upon importations of their products?

A. Yes, sir.

MR. ANDERSON: If your Honor please, I wish to make my objection to this matter on the ground that it is not proper cross-examination, entirely outside of the direct, relating to matters not touched upon in direct. I object upon that ground.

MR. KRESEL: I say to your Honor that it is strictly cross-examination for the purpose of showing the interest and the bias of this witness, as I shall show by my further questions.

THE COURT: To show his interest in the transactions to which he has testified?

MR. KRESEL: Yes, your Honor; and affecting his credibility.

THE COURT: That objection, as not being proper cross-examination, will be overruled, if that is the purpose, because I think a very wide scope is given on cross-examination.

MR. ANDERSON: I recognize that, sir, but I thought counsel was going into the question of import duties.

THE COURT: I think this is within the proper bounds of cross-examination and I will overrule the objection.

XQ. 237. While you were in Congress, did you receive instructions from the Farbwerke Company in

Germany as to what you should do with reference to duties to be placed upon products that they were manufacturing and importing into the United States?

A. No, sir. Emphatically not. Suggestions, but not instructions.

XQ. 238. Oh, you got suggestions?

A. Suggestions. Any manufacturer makes suggestions, naturally.

XQ. 239. There were suggestions made to you, who were then a member of Congress, as to what you should do with reference to import duties on products manufactured by the Hoechst Company?

A. No, sir; not as to what I should do for a moment; what they would like to have done.

XQ. 240. What they would like to have done?

A. Possibly. They expressed their opinion. That is all. It did not affect me any.

XQ. 241. Now, I read to you the following letter.

> MR. KRESEL: Colonel, I am reading from page 499 of the proceedings before the Committee on Finance in the United States Senate, from which you read this morning.

XQ. 241 (continuing). Did you receive the following letter from the Farbwerke Company in Germany:

> "Hoechst A. Main, June 20, 1913.
>
> "My dear Mr. Metz:
>
> "I received your two letters of the 4th and 10th of this month.
>
> "As regards hydrosulfit, I can only explain to you once more that we invoice exactly according to the lowest market prices here, that we naturally deduct packing and freight from the duty invoice." * * * *
>
> "It is very interesting, that you now receive the samples of the competing factories on the part of the dyers for examination. I can nevertheless imagine that an uncomfortable situation may some time arise for you because of it."

I will return to that paragraph in a minute. This is the paragraph that I have reference to:

> "We are naturally not interested that hydroblue or carbazol colors should be placed on the free list; would not, however, on our part come forth directly against Cassella; you will therefore on your part omit any direct work against Cassella. I also repeat, as I have already informed you in my communication of June 9, my opinion, that the best for all of us would be, if certain dyestuffs, including the alizarin dyes, would pay about 15 per cent duty, and only indigo remains on the free list. I should consider it a great success were you successful in leading up to such a change in the tariff."

Did you receive that letter?

A. Yes, sir, I did.

XQ. 242. This letter is dated June 20th, 1913?

A. Yes, sir.

XQ. 243. At that time you were a member of Congress?

A. Yes, sir.

XQ. 244. Now I want to call your attention to another letter and ask you whether you received that one, from the Farbwerke Company in Germany. This one is dated May 14th, 1913. I am not going to read the whole letter, I am going to read only that portion of it which refers to the question I have directed to you.

Mr. Anderson: What is the page?

Mr. Kresel: Page 500.

Mr. Anderson: Of what volume?

Mr. Kresel: Of the same publication.

XQ. 244 (continuing). "The Badische"—that refers to the Badische Aniline Company, does it not?

A. Yes, competitors of the concern I represented.

Mr. Kresel: I ask that the latter part be stricken out.

The Court: It is stricken out.

XQ. 244 (continuing).

> "I can readily imagine that you are unusually busy in Washington now. The Congressional Record, which you were kind enough to send me, I will read with much interest. From it one can best picture the situation.
>
> "The Badische is naturally not much pleased that alizarin has to pay a duty of 10 per cent, whereas the indanthrene and the remaining anthracene derivative must pay full duty. We trust, however, that you will be able to push through alizarins without any duty and have the duty on dyestuffs reduced. It would at any rate be very nice, though I can not really believe it possible, after we were so badly cut up by the revision of the tariff. I beg of you to forecast exactly the best results obtainable in delivering to your f. o. b. European ports."

Did you receive that letter?

A. I assume so. It is in the record.

XQ. 245. And at that time you were a member of Congress?

A. Yes, sir.

XQ. 246. Pursuant to the suggestions you say you got from these letters you did as a member of Congress undertake to put indigo on the free list, did you not?

A. Not pursuant to the suggestion in those letters; no, sir.

XQ. 247. I did not ask you that.

A. No, sir; I did not. That is the answer, then.

XQ. 248. Did you try as a member of Congress to have indigo placed on the free list?

A. Yes, sir.

XQ. 249. And you succeeded?

A. Yes, sir.

XQ. 250. Did you tell on the floor of the House of Congress that you were representing a German concern that was writing to you and making suggestions to you as to what you should do?

A. I don't know whether I did or not. There was no occasion for discussing it.

XQ. 251. Before we entered the war, Mr. Metz, you were violently pro-German, were you not?

A. No, sir; at no stage was I pro-German.

XQ. 252. That is an answer.

Mr. Anderson: I do not think that is a fair question, if your Honor please.

The Court: Absolutely no.

Mr. Anderson: What is pro-German is absolutely a question of——

Mr. Kresel: I am going to follow it up, Colonel. The question is answered.

The Court: I take it, Colonel Anderson, that the attitude of a witness with respect to such matters is a fact that might be considered and would be proper to be considered in weighing the testimony of a witness, might it not?

Mr. Anderson: I do not think, sir, that I could be questioned as to whether I was pro-German or pro-English. I could be questioned as to what I did and said, and from what I did and said——

The Court: I agree with you.

Mr. Kresel: I am coming to that. I am coming to the specific portions. Just give me a chance.

The Court: I think you are right on that, Colonel Anderson.

Mr. Anderson: I move to strike out that question as an offensive question, and I think it ought to be stricken out.

Mr. Kresel: Oh, Mr. Metz does not consider it an offensive question.

The Witness: I have heard it so often I do not like it, Mr. Kresel.

The Court: What is your application, Colonel Anderson?

Mr. Anderson: My application is to strike out that question and any answer thereto, because I do not think it is a fair question in the first place; in the next place, it is asking the witness for an opinion on a matter. Counsel has a perfect right to examine him on anything he did or said and your Honor can draw the conclusion.

Mr. Kresel: I have a right, your Honor, to ask him on cross-examination any question that goes to his credibility and his interest, and I offer this testimony on that ground and for that purpose.

Mr. Anderson: I concede that there can be broad examination going to credibility, but there is a limit even to evidence going to credibility, and that is admissible evidence of facts. The witness expressed the opinion and his answer is that he was not pro-German. Upon the facts your Honor might reach a different conclusion. The fact whether he was pro-German or pro-something else before the War, might be for you. In the second place, the matter is of no materiality here, and can not be, for the reason that the term has since the War acquired a significance which in friendliness between nations before the War it did not have, and therefore the use of that expression in the period before the War conveys an impression upon the record which was not and could not have been the fact prior to the War. Therefore, the witness can be asked as to what he did and what he said and your Honor can then draw your conclusion as to his attitude toward any question affecting this case.

The Court: The question has been answered, and I am not making any ruling. I will let the answer stand under the general rule with such exception as you desire.

Mr. Anderson: Will your Honor permit me an exception to that ruling.

XQ. 253. In addition to being the exclusive selling agent of this German concern you had other interests here of a German character before the War, did you not?

A. I had some stock in the wireless—Sayville Wireless Company. I was President of that corporation; that was all.

XQ. 254. That is, you were President of the Atlantic Communication Company?

A. A short time, yes.

XQ. 255. Which was controlled by the Allgemeine Electricitats Gesellschaft of Berlin?

A. Yes, sir, the Telefunken Company.

XQ. 256. You were also part owner of the Evening Mail, were you not?

A. No, sir, I loaned some money——

XQ. 257. Did you have any interest in the Evening Mail?

A. Not until long after we were in the war.

XQ. 258. You knew Mr. Rumley, did you not?

A. Certainly.

XQ. 259. Didn't you own stock in the Evening Mail before we entered the war?

A. I do not think I did. I had some stock as collateral on some money I loaned Mr. Rumley.

XQ. 260. And that money was loaned by you to enable Mr. Rumley to buy the Evening Mail, was it not?

A. I so understood at the time, yes.

XQ. 261. And you did it at the request of Count von Bernstorff, the German Ambassador, did you not?

A. No, sir. I beg your pardon, I did not. It was after von Bernstorff went home, that I loaned him the money.

XQ. 262. I read to you from a letter that you wrote to J. A. Lyons, Esq., Room 746, Custom House, New York City. Do you remember writing to him?

A. Yes, sir.

XQ. 263. He was a Government agent that was investigating your connection with the Evening Mail, was he not?

A. I told him all I knew of it, yes, sir.

XQ. 264. I read the following passage:

> "My first acquaintance with Rumley came about through a telephone message from Count Bernstorff some time early in 1915 on my return from Europe."

That was true, was it not?

A. Yes, sir.

XQ. 265. So your first connection with Rumley was through Count von Bernstorff?

A. It was no connection. It was acquaintance.

XQ. 266. What?

A. Just an acquaintance with him; no connection.

XQ. 267. An acquaintance. And then you made this loan, as you call it?

A. Not until a long time afterwards.

XQ. 268. When did you make the loan?

A. I do not recall. Some time in 1917, I guess after the war started, I think I loaned Rumley some money.

XQ. 269. How much did you lend him?

A. I can not recall the figures. They are probably in there. I think it was—I do not remember. They were different amounts.

XQ. 270. What did you get for that loan?

A. I got his note and stock as collateral.

XQ. 271. Didn't you get a portion of the stock outright?

A. I do not think so. If I did, I did not want it. I do not remember the details.

XQ. 272. You do not remember that?

A. No, sir; simply a collateral proposition.

XQ. 273. I read again from this letter to Mr. Lyons: "According to my check book I gave Dr. Rumley a check on May 12, 1917, for $10,000, for which he gave me as collateral 250 shares of S. S. McClure newspaper stock, one-half of which was to belong to me and the other half he was to have the privilege of buying back."

A. I guess that is right.

XQ. 274. That refreshes your recollection?

A. Yes, after the war started.

XQ. 275. Besides your interest in the Atlantic Communication Company, and part owner of the Evening Mail, what other German interests did you have here?

A. None that I recall.

XQ. 276. Now, just think.

Mr. Anderson: One moment. I object, if your Honor please. The witness has not stated that he was a part owner of the Evening Mail. He expressly said he was not a part owner of the Evening Mail.

Mr. Kresel: I will amend that, your Honor.

Mr. Anderson: And if he is going to quote his testimony, I will ask him to quote it correctly.

Mr. Kresel: All right, I will correct that.

XQ. 276. Such interest as you had at all was——

A. Collateral interest.

XQ. 277. You did not misunderstand me?

A. I did.

XQ. 278. Oh, you did misunderstand me?

A. I knew what you were getting at.

XQ. 279. I am sorry.

A. I did not misunderstand you.

XQ. 280. You were part owner of the Atlantic Communication Company, were you not?

A. I had $10,000 worth of stock that I bought in that company.

XQ. 281. Well, you had connection with the Republic Trading Corporation, did you not?

A. That was a corporation——

XQ. 282. Didn't you, yes or no?

A. Yes.

XQ. 283. You were vice-president of that?

A. I do not recall that.

XQ. 284. You had some office?

A. Probably; they were all dyestuff people.

XQ. 285. And that corporation was organized to import German goods after the outbreak of the European War?

A. Yes, sir, German dyes.

XQ. 286. You were quite an intimate of Count von Bernstorff?

A. I don't think I was intimate.

XQ. 287. Well, you breakfasted with him?

A. So did others.

XQ. 288. Well, you breakfasted with him?

A. Certainly, I had a perfect right.

XQ. 289. That is all I wanted to know. You knew Dr. Albert, did you not?

A. Yes, naturally.

XQ. 290. Dr. Albert was a privy-counsellor of the German Empire?

A. I understood so.

XQ. 291. And you know that he was over here in the United States prior to our going into the war——

A. Handling commercial affairs.

XQ. 292. ——for two or three years?

A. Handling commercial affairs.

XQ. 293. You were very intimate with him?

A. Not intimate, no. I knew him and did business with him; had to.

XQ. 294. Conferred with him?

A. Had to, to get goods.

XQ. 295. You went abroad early in 1915, do you remember?

A. I went abroad late in 1914, at the request of the State Department.

Mr. Kresel: I ask that the latter part be stricken out.

The Court: Let the whole answer be stricken out and the question repeated.

XQ. 296. You went abroad the latter part of 1914 or the early part of 1915?

A. The latter part of 1914, and came back the same year, Christmas Day.

XQ. 297. And when you went abroad you carried a letter of introduction from Dr. Albert to the German officials?

A. Yes, sir.

XQ. 298. You went into Germany, did you not?

A. Yes, sir.

XQ. 299. I want to know whether this is the letter of introduction that you got from Dr. Albert? It is dated November 16, 1914.

Mr. Anderson: Will you state what you are reading from, Mr. Kresel?

Mr. Kresel: Page 494 of the Hearings before the Committee on Finance of the United States Senate.

XQ. 299 (continuing).

> "My dear Benefactors and Friends. Assembled in Hohen Hause, Wilhelmstrasse, 74:
>
> "Perhaps by the time when you receive these lines Herr H. A. Metz, of New York, will call with a letter of introduction. I wish earnestly to re-

quest you to take good care of him and treat him very nicely. Maybe you will take him to breakfast some time or show him other favors after the American fashion, in the event that Excellenz Richter or Dr. Muller do not do it. I am afraid they will be too busy.

"At the same time I call your attention to something which you will have the kindness to bring before the proper authorities:

"In considering all the favors to which Herr Metz is entitled it must not be forgotten that he is a competitor of the other dye works. For that reason I have just cabled you that the bonds covering re-export of dyestuffs are to be deposited with me. Also in alloting ship space for return freight it must be remembered that the other chemical works are to have a word to say. I earnestly recommend that this exportation of dyestuffs be somewhat more favored than has heretofore been the case, perhaps through my own suggestion, as otherwise there is danger that America itself will take up the production. Plans are already being prepared for a high protective tariff, which will be taken up by the Congress which meets in December. As Metz is a Member of the Congress, he is the right man to fight this measure."

That is the letter of introduction?

A. No, sir; I did not carry that letter.

MR. ANDERSON: Then I move to strike the letter from the record. It is a communication from Dr. Albert to the German Government and Mr. Metz did not have it.

THE WITNESS: I never saw it.

MR. ANDERSON: And he says he has never seen it. Of course it goes out of the record, I assume.

MR. KRESEL: Just a minute, please. Not quite so fast about it going out of the record.

THE COURT: Just a moment, Mr. Kresel. It is embodied in a question and he denies having had it. I do not see how I can strike his question out of the record.

Mr. Kresel: He said at first, your Honor——

The Court: You will pardon me a moment, Mr. Kresel. But it necessarily is without value, although I do not see how I can strike out the question.

Mr. Anderson: May I suggest this. This letter is not addressed to the witness in any way. Therefore, while I did not wish to object to it not knowing what counsel's purpose was, I respectfully suggest that the question and any answer thereto be stricken from the record because it is a communication between a German who is claimed here to be an official of the German Government and his friends, whoever they may be, at some place in Wilhelmstrasse. The witness has never seen it and had nothing to do with it. I might have written a similar letter to the English Government.

The Court: I did not know that until after the witness answered.

Mr. Anderson: Neither did I. Therefore I submit that the question should be stricken. He was asked whether he had this letter of introduction.

The Court: But Colonel Anderson, you are advancing a proposition that is entirely new to me and I will get you to give me your authorities. I do not know of any authority of a Court to strike out a question. If counsel have used the privilege of asking questions—and I assume no suggestion is thought of by you at this stage, in view of the general rule which we have laid down in this case—there is one method of redress. The Court has power under such circumstances to protect itself, but I do not understand in an equity case that a question asked by counsel is ever stricken from the record, I have never known it, have you?

Mr. Anderson: I have known it, sir, where the question itself undertook to put on the record matter which was absolutely immaterial and which is improper in the record. I have known of it being done, but of course those things are largely in the discretion of the Court.

The Court: I can not conceive of any possible harm that it can do you, that is, that the question can do you.

Mr. Anderson: I might state, if your Honor please, that in the Appellate Court, if I may refer to the Appellate Court, when we come to the argument of this case on briefs, this record is going to be a good many thousand pages. That Court will never find time to examine this record carefully, never will read it, I assume, because I do not imagine they could ever take the time and do their other duties. Matters of this kind can be referred to and pointed out on the record, and unless elaborate briefs are filed calling attention to it—and even then it is very difficult—it is extremely prejudicial in a case of this kind to inject into the record matters which have absolutely nothing to do with the case and allow them to stay on the record.

I take it that the record in this case is absolutely under your Honor's control, subject of course, to the use of judicial discretion. This letter was never shown to this witness and he was not asked whether he ever saw it, but it was read on the record. Therefore, I respectfully suggest, and submit to your Honor's judgment of course, that it be stricken from the record, and that counsel be required—I do not use the word in an unpleasant sense, but I know he will—to ask his questions without putting on the record matter of this kind without first finding out from the witness whether or not the witness has any knowledge of it, so that we can make our objection at the proper time.

THE COURT: I will be glad to hear you, Mr. Kresel.

MR. KRESEL: I have nothing to add, your Honor. I asked this witness whether he carried a letter of introduction from Dr. Albert. He said he did. Then I read him the letter and asked him whether that was the letter and he said "No." That is where the record stands.

MR. ANDERSON: I suggest that that letter should have been shown the witness and not read into the record. If it had nothing to do with the record, it should be stricken from the record.

THE COURT: Colonel Anderson, the best I can do to protect you, as I see it, without laying down one broad rule for you and a narrower rule for the defendant, is to state here that that letter as it now stands is wholly without value in this record. The method of identifying the letter was not challenged prior to its being read. What the ruling would have been then, I shall not attempt to say because that is a past event. But as it now stands, I do not see how I can strike it from the record, the method of identifying it not having been objected to at the time. You may have such exception as you desire.

MR. ANDERSON: I will ask leave to note an exception.

XQ. 300 Let me have the letter of introduction that Dr. Albert gave you?

A. I haven't got it. It was left over there in all probability, unless it is in the record here.

XQ. 301. You did go to Europe, and on the way over, did you go to England?

A. No, I went to Holland. I went via Holland.

XQ. 302. You did not go to England at all?

A. No, I took a Dutch steamer to Holland, to Rotterdam. I passed through Dover.

XQ. 303. You remember giving an interview to the Brooklyn Eagle May 6th?

A. I do not recall, unless I see it.

XQ. 304. Look at it and also at the same time look at this letter that you wrote to Dr. Albert sending him the clipping?

A. Yes, that is right, substantially correct, an interview such as reporters usually get.

XQ. 305. Of course.

A. Without a chance of looking it over. They put in what you say and what they think you ought to say.

Mr. Anderson: Are you going to offer that in evidence?

Mr. Kresel: Just a minute.

XQ. 306. This letter is dated May 9, 1916, and speaks of the clipping as being from the Brooklyn Eagle of May 6, 1916.

A. Yes; before we entered the war.

Mr. Kresel: I did not even hear what he said, your Honor, but after the word "yes," I ask that it be stricken out.

The Court: Let it be stricken out.

XQ. 307. You were not neutral in the war, were you?

A. Yes, sir; I was neutral.

Mr. Anderson: I object. This gentleman has testified that he was a citizen of the United States and born in the United States; and a citizen of the United States is a neutral. What might be his conclusions as to a mental attitude is not evidence in this case.

XQ. 308. Didn't you say that you were not neutral?

THE COURT: Just a minute, Mr. Kresel. This is cross-examination, Colonel Anderson. What is the test of neutrality?

MR. ANDERSON: The test of legal neutrality is the status in the country, by International Law.

THE COURT: What is the test of individual neutrality?

MR. ANDERSON: I have no idea, sir. I do not know of any such thing as individual neutrality. Neutrality is a status in International Law; and while we were enjoined to think neutrally, I suppose that would be the real test of personal neutrality. I am frank to say that I do not think that it is a test, that there are any such things as neutrals. Any man who has red blood in his veins is not a neutral on any subject. Therefore the sole meaning of a neutral in law is the status of a citizen of a country and that status is fixed by law and by the Government.

THE COURT: We are not concerned with that.

MR. ANDERSON: Certainly not. That being the case, it is perfectly competent, if it has any relevancy here—and I can not see any relevancy in any of this examination—but if it has any relevancy here, he can ask him what he did and what he said. But as to his mental attitude, whether he thought neutrally or whether he was a neutral, that involves a question of fact and law which is a conclusion and as to which nobody can speak except a most adroit lawyer. I can not. I am frank to say I can not state what a neutral is.

THE COURT: I shall permit the answer under the general rule.

MR. ANDERSON: May I note an exception, please.

The Court: Certainly.

XQ. 309. Did you say in this interview published in the Brooklyn Daily Eagle that "the only neutrals I know of in this country are in Greenwood Cemetery?"

Mr. Anderson: I object on the ground that the evidence of what he said in that interview, it having been published, is the paper itself, which is the best evidence; and if they are going to examine him on it, I ask that it be introduced in evidence.

The Court: I do not see how you can reach that conclusion, Colonel Anderson. I think you must have overlooked the fact that he did not write the interview, so far as I know. Now then, he had an interview which was reported, I suppose, by the persons with whom he had it. There were two persons at least present at that interview. One was the person speaking. The other was the person spoken to. He is asking the person doing the speaking as to whether he made certain statements and I do not know of any better evidence than that, unless the interview was in writing.

XQ. 310. I think you answered just before Colonel Anderson had a chance to object.

A. What was the question?

XQ. 311. I will repeat it. Did you say in this interview that "the only neutrals I know of in this country are in Greenwood Cemetery?"

A. I may have expressed such a sentiment.

XQ. 312. Did you say in the interview as follows: "That my thoughts are with Germany in this war does not blot my Americanism?"

A. I do not know as I said that. I probably felt that way.

XQ. 313. Prior to the outbreak of the European

War, is it a fact to your knowledge that Germany had a monopoly of the dyes and pharmaceuticals?

A. Yes, sir.

XQ. 314. As you expressed it before the Shortride Committee, and I assume it was true, Germany had the whole world in their hands.

A. Practically.

XQ. 315. Practically?

A. Yes.

XQ. 316. And as you again expressed it before that Committee, Germany had the world by the throat——

A. Practically.

XQ. 317. ——with referenec to dyes and pharmaceuticals?

A. That is true.

XQ. 318. And it is true is it not that manufacturers in this and other countries that were using dyes were absolutely dependent on Germany for their supplies?

A. To a large extent, yes, sir.

Mr. Anderson: Your Honor please, I wish to make the objection, not to the line of examination, although I think it is subject to technical objection, but to the fact that this matter is entirely outside of the original examination.

I wish to make the objection at this time because I gave notice in my opening statement and I wish to repeat that notice now, that I am going to object to any evidence relating to Germany's position before the War or Germany's attitude prior to our entrance into the War, on this subject, on the ground that it is utterly immaterial and irrelevant to the issues in this case; that that was not a question for either the Alien Property Custodian or this corporation to consider, but one for Congress.

I want to make that objection now both on the ground that it is not cross-examination and that it is utterly immaterial and irrelevant in the second place. I am not going to renew the objection except where it is necessary apparently to make the record clear.

The Court: Colonel Anderson, may I make one inquiry before I hear from Mr. Kresel? Does not the soundness of your contention depend upon the ultimate construction of the Act of Congress, not in the way you stated it, but in this way? If the power of seizure and sale was vested by Congress in the Alien Property Custodian, and the power to sell at private sale was authorized by the President or some officer designated by him, is not one possible construction of that Act that the power originally vested in Congress was transferred by it to the Alien Property Custodian with or without the order of the President?

Mr. Anderson: I am going to try to answer that. I am just trying to get my answer direct to your Honor's question. If your Honor should hold that Congress had the power to delegate its legislative functions and discretion to the Executive Officer of the Government, then possibly there may be some contention of that kind.

The Court: I am not going to hold that.

Mr. Anderson: But you have to cross that bridge before you get to any such possible construction.

The Court: Is there any merit in this thought —and I am not trying to confuse the matter of construction of the Act.

Mr. Anderson: I understand, sir.

The Court: I am keeping away from the construction of the act. I will consider the act ultimately but not now. May not Congress be considered to have exercised that legislative function, and not to delegate its legislative power to an Executive officer, but to have conferred upon the Executive officer or have made him the agent or the instrumentality for carrying out the provisions of the Act, by which Congress exercised its own power. I do not know whether that is sound at all or whether there is any merit in it, I can make no suggestion as to that; but without going into that, it seems to me in view of the wide scope we have given to the admission of testimony, the testimony must be admitted on any theory that may with any soundness be advanced as a possible construction of the Trading with the Enemy Act, and that we must either construe that act now or admit testimony which may be relevant under any possible construction of the act.

Mr. Anderson: Your Honor, may I just say a word in reply? I bow to your Honor's decision without the slightest hesitation, but I wanted to get your Honor's consideration on this thought. I quite agree it is not only law but a fact that counsel should have the right in a case of this character, especially, to introduce any evidence which they think tends to support any reasonable theory of their case that they can advance, to the end that that theory may be properly argument to come before the Court. I quite agree with that. But in the second place, there is a limitation, of course, upon that principle, and of course it is for your Honor to determine how far now you are going to decide that limitation should go or where you are going to place it. Therefore, in making my objection I felt I ought to state that I can see—and I will make it deliberate—no possible construction of this act which can make the action of the German citizens or Government prior to 1919 of the slightest bearing upon the questions presented by this Bill and Answer for decision. I do not say that it is not a reasonable limitation.

THE COURT: I understand.

MR. ANDERSON: But I mean to say that no possible construction of the act can give that any bearing. Because if it can be considered, it involves the question of the highest policy which is vested in Congress exclusively and as to which Congress only can legislate or act, and it can not give that power to anybody else.

I have said this that your Honor might understand my position. I quite understand what your Honor's ruling is, that this evidence will go in, but I wish to note that I am objecting to all of this examination, without renewing the objection each time and taking exception, as has been done heretofore; and I further object to this examination as not being within the scope of the direct examination.

MR. KRESEL: The latter part is the only portion on which I would like your Honor to hear me. I consider this evidence directly bears on this witness's testimony as to value. Any history that we can present to your Honor with reference to this industry and the German control here prior to the war, as to which this witness has given your Honor figures as to his profits and as to his sales, I consider to be most material upon the question of value.

THE COURT: The immediate question before me now is what?

MR. KRESEL: Your Honor has ruled, as I understand, that the witness may answer the question.

THE COURT: I have forgotten what the question is and I do not know whether I have ruled on it.

Mr. Kresel: The last question was answered.

The Court: Then as to the scope of the cross-examination, we had that question with the first witness that was produced here, Colonel Anderson, and the same questions that are now arising arose there, substantially. So that I am not prepared to hold that this line is not in cross-examination. If you can at final argument throw doubt upon its value or show to me that the witness is answering questions that are not in cross-examination and that Mr. Kresel necessarily makes him his own witness as to them, I will hear you then; but I think at the present time they are not outside the scope of the cross-examination.

XQ. 319. Before the sub-committee of the Committee on the Judiciary of the United States Senate on Senate Resolution 77, at page 744, you testified as follows:

> "Germany had a practical monopoly in the production of dyes and pharmaceuticals."

That was true, was it not?

A. Yes, sir.

XQ. 320. And at page 745 on that same occasion you testified:

> "Germany had the monopoly; there is no question about that. They had the world in their hands. That is conceded, absolutely. There is no question about that. They had the whole world in their hands."

That was true, was it not?

A. Yes, sir.

XQ. 321. And at page 894 of the same record, the same proceeding, you testified as follows:

> "Germany had the world by the throat absolutely."

That was true, was it not?

A. Yes, sir.

THE COURT: We will take a recess until 1 o'clock, Standard time.

AFTER RECESS

MR. ANDERSON: Without, I hope, appearing insistent, if your Honor please, during recess I have had an opportunity to look at this record from which a letter was read this morning purporting to have been signed by Albert, which I move to strike out in view of the fact that the record from which counsel read contained, immediately following the letter, the statement by the witness, Mr. Metz, who was before the Committee, as follows:

> "Just want to say that I never saw such a letter, and if I carried it the contents were not known to me personally. I carried dozens of letters."

In view of that fact appearing on the record in connection with a letter as introduced before the Committee, I respectfully suggest that that letter should be stricken from the record. In saying that I do not wish to impute to counsel any ulterior purpose in reading that letter. Frequently during an examination counsel do it thoughtlessly, and I did not wish to interrupt. But I do think, in view of the record accompanying the letter at the time it was brought to the attention of the Committee, that it should be stricken from the record.

MR. KRESEL: If your Honor please, I do not object to your Honor's granting the motion, in view of what Colonel Anderson has just shown.

Personally, I was not aware of the statement that Colonel Anderson now speaks of, except that I may say this: that your Honor will recall that when I asked the witness whether he had a letter of introduction from Albert, he said he had, and then I read this letter, and when he said that was not the letter, why, that settled it. So if your Honor desires to grant the motion, I raise no objection.

THE COURT: The motion is granted by consent.

XQ. 322. Mr. Metz, after the European war broke out, Germany placed an embargo upon the exportation from Germany of dyestuffs, did it not?

A. I was so informed.

XQ. 323. And not only dyestuffs, but also pharmaceuticals?

A. Everything, practically.

XQ. 324. You were instrumental, if I may put it that way, in trying to get dyestuffs from Germany for the American market?

A. Yes, sir.

XQ. 325. And in connection with that effort you wrote a letter to Mr. Tumulty, the Secretary of President Wilson, did you not?

A. Yes, sir, quite a number of letters.

MR. ANDERSON: Your Honor will understand, of course, this is subject to objection, which I made this morning, as being outside the direct examination.

THE COURT: Yes.

MR. ANDERSON: But I do not want to renew it, as I understand this is all taken under that objection, except that your Honor wanted me to call your attention to it.

THE COURT: I think so, yes. My impression at the moment, Colonel Anderson, is that this is not outside the scope of cross-examination. So I overrule your objection to this question on that ground.

Mr. Anderson: Exception.

XQ. 326. Before I direct your attention to this letter that you wrote to Mr. Tumulty I want to ask you whether before writing that letter you did not organize a committee of dye users and call with them upon Mr. Tumulty in reference to these German importations of dyestuffs?

A. I did not organize a committee.

XQ. 327. Did you call with the Committee?

A. The Committee called on me and I went with them to see Mr. Redfield and Mr. Tumulty.

Mr. Kresel: That is all I wanted to know. Colonel Anderson, I am looking now at page 268.

Mr. Anderson: Of the same book?

Mr. Kresel: No, of the Hearings before the Sub-Committee of the Committee on the Judiciary of the United States Senate.

XQ. 328. Please look at this, Mr. Metz, beginning at the bottom of page 268 and running over onto page 270, and state whether that is a copy of the letter that you sent to the President's Secretary? (Handing witness book.)

A. I assume that is a copy.

XQ. 329. May I have it, please.

A. Certainly. (Handing counsel.)

XQ. 330. This letter is dated April 8, 1915. Up to that time had you succeeded in obtaining from Germany any dyestuffs or pharmaceuticals?

A. Yes, sir.

XQ. 331. Since the outbreak of the war?

A. Yes, sir, regularly.

XQ. 332. Up to April, 1915?

A. Up to the time of the Order in council which stopped further shipments.

XQ. 333. In other words, up to April, 1915, the American market had all the dyes it wanted?

A. It had sufficient dyes.

XQ. 334. You think it had sufficient dyes?

A. I think it had. We kept them supplied.

XQ. 335. But in April, 1915, there was this shortage, was there?

A. April 1st there was an order in council stopping all the importations.

XQ. 336. And a shortage occurred?

A. It gradually became short, naturally.

XQ. 337. And it was in connection with that that you wrote this letter to the President's Secretary?

A. Yes.

XQ. 338. You say in this letter: "My dear Mr. Tumulty"——This is addressed to Honorable Joseph P. Tumulty, White House, Washington, D. C.

> "My dear Mr. Tumulty: Referring to the visit of the committee that called on you Tuesday, I am enclosing herewith, as requested, extracts from some of the letters from textile manufacturers which I showed you.
>
> "I received all told about 450 replies in answer to about 1,000 circular letters which I sent out, mainly to the cotton, wool and silk mills, calico printers, job dye houses (that is, those dyeing for mills who do not do their own dyeing), and to some extent to the paper, wall-paper, leather, paint and printing ink, and other branches."

Prior to sending that letter then, you had sent circular letters to these various industries, had you?

A. I wrote to the industries inquiring of their needs.

XQ. 339. "I received approximately 270 replies giving definitely the number of employees in each mill which would be directly affected; a further 160 did not specify the number that would be out of work, but said they would be compelled to shut down within 30 to 60 days and discontinue operation." That is true?

A. Yes, sir.

XQ. 340. "Those who gave the number totaled 260,000 employees. Assuming the other 150 to employ the same number of people, this would give an aggregate of approximately 400,000 people directly affected in those mills that replied."

A. Yes, sir.

XQ. 341. "As there are probably 1,500 to 2,000 plants of the kind to which I wrote in the various industries throughout the United States, it is easy to assume that probably 2,000,000 operatives will be affected directly, without considering at all those occupations or trades to which the output of the factories goes, and for which it is really the raw material. In other words, the cutters, garment makers, etc., and the jobbers, wholesalers, and retailers who handle the product all along the line until it finally reaches the ultimate consumer. Then, furthermore, we must consider that when the cotton mill shuts down it is no longer using cotton, nor the woolen mill or carpet mill using wool. Their supplies of machinery, machinery oil, coal, belting, and the thousand and one other items that enter into manufacturing must also suffer in proportion."

Now, when you wrote as I have just read and you speak of "suffering in proportion," do you mean suffering because of the lack of dyestuffs?

A. Certainly.

XQ. 342. That is what you meant?

A. Certainly.

XQ. 343. Now I skip a paragraph, Colonel, because I do not want to take any more time than is necessary, and I read as follows from this same letter:

> "After leaving you I had a talk with Mr. Secretary Redfield,"

Mr. Secretary Redfield was the Secretary of Commerce at that time?

Mr. Anderson: That is agreed.

XQ. 343 (continued). ——"who seems imbued with the idea that we are going to take up manufacturing in this country and has been 'assured' by some people that they can do these things. I have no desire to reflect at all on Mr. Redfield's judgment, but these optimistic reports about what we are going to do here in regard to dyestuffs have caused enormous damage already. There have been practically no dyestuffs made in this country heretofore, excepting from raw materials or intermediate products imported from Germany." Was that true?

A. That is true.

XQ. 344. "The basic raw material we have we have always had here, and after July 1 will have enough for all possible contingencies, viz., the benzol obtained from coke ovens. The next step is to treat the benzol with nitric acid, making nitro-benzol, which can also be done here, and that in turn yields the next step, aniline oil. Aniline oil is used for dyeing black and also for making certain very primitive and very fugitve colors in connecton with beta-naphthol and other intermediate products previously imported and which a number of people are 'going to make'."

And you put quotations around the words "going to make."

"But so far nobody has made except in a very crude form at one plant, and for its use only."

That stated the facts as they existed at that time?

A. Yes, sir, entirely.

XQ. 345. As a matter of fact, you go on to say in this letter: "There are only three manufacturers of beta-naphthol in the entire world, all in Germany." That was true?

A. Yes, sir, to the best of my knowledge that was true.

XQ. 346. "The product heretofore used here, a refined, pure product containing no admixtures of other compounds, sold at about nine cents per pound including five per cent duty before the war. None has been imported since; in fact, no raw material or intermediate products, excepting in very limited amounts for specific purposes, have been allowed to leave Germany, probably for the reason that Germany did not desire to encourage manufacturing of colors to her own detriment." And that was true?

A. Certainly.

XQ. 347. I skip the next two or three paragraphs and I turn over to the next page, Colonel. You say as follows:

> "The plant I am interested in abroad cost about $50,000,000 to erect and is capitalized now for only $12,000,000."

I want to stop there. What plant is it that you are speaking of in that letter?

A. The Hoechst plant which I was agent for, whose products I imported.

XQ. 348. "It employs about 8,500 people. There are two other plants of the same size, with a half-dozen smaller ones. It is fair to figure, therefore, that there are invested in the coal tar color and pharmaceutical plants in Germany three or four hundred million dollars, and probably 25,000 people are employed in all of the plants I refer to. But these plants supply the whole world with these products directly or indirectly."

Those statements were true?

A. Practically true; cover the situation.

XQ. 349. In the next paragraph you say as follows:

> "It took the Germans 50 years to get to this point, and it will take us 20 years, with an exorbitant protective tariff, and then we would still be floundering, because it is more a matter of engineering and practice than it is of chemistry."

That was true?

A. I still maintain that opinion.

XQ. 350. You go on and say:

> "It may be well to establish an industry, but while we are doing it what is going to become of the people working in the mills, which will simply be forced to shut down, because the German products are not available and can not be substituted?"

That is what was bothering you, is it not?

A. It was bothering me for the sake of my business, yes, sir.

XQ. 351. You go on and say:

> "I know they are 'discovering' things"——

And again you put the word "discovering" in quotation marks.

A. Yes, sir.

XQ. 352.

> ——"in the newspapers every day, but the people who do it have no conception of the quantities involved or what the requirements of this country are. It is safe to say that 3,000 tons a month of various colors, which is practically what we have been getting from Germany since the war started, and which has kept us going fairly well, would not be two-thirds enough to keep us running if our mills were busy and we were running full."

That was a fair estimate, was it?

A. That is right.

XQ. 353. Now then, the fact is, is it not, that the same plants that were producing dyestuffs also produced pharmaceuticals?

A. Yes, sir. Some of them produced pharmaceuticals.

XQ. 354. Well, you say in this letter to the President's Secretary as follows:

> "I am not touching on medicines at all. Of most of these products we import there are probably three or four months' supplies here."

In other words, at the time you were writing there were three or four months' supplies of medicines here, medicines such as could be gotten only in Germany; is that right?

A. Shows that I was interested.

XQ. 355. Yes, that is what I am talking about.

A. Yes, sir.

XQ. 355-A. And then you say:

> "But the same plants that are making dyestuffs and chemicals are the ones that are making most of the synthetic and highly organic prodducts, which have practically replaced most of the old things in medicine. We can go back and do the same as we did before they were invented, but it is not hard to see what that means. Undoubtedly some steps should be taken later on to make us a little more independent in some matters, through legislation or otherwise, but those things are for the future."

Mr. Anderson: Have you finished?

Mr. Kresel: I have finished as much of it as I care to read.

Mr. Anderson: If your Honor please, to save interruption of counsel, I would like to object specifically to the matter read from this letter, and to the questions and answers with respect thereto, on the ground that it is immaterial and irrelevant; on the grounds stated in my opening statement, and which need not be repeated; and on the further ground it is not within the direct examination and does not relate thereto. And I would suggest, if agreeable to counsel, that that objection be considered as applying to each specific question and answer thereto, and that, if overruled, an exception taken; provided your Honor should so decide. That would save me the necessity of interrupting.

Mr. Kresel: I have no objection to that at all.

Mr. Anderson: That is agreed.

The Court: I think Mr. Kresel has not yet gone beyond the bounds of cross-examination.

Mr. Anderson: I just want to get my record straight.

The Court: I understand that your exception will be general, and that you may avail yourself of that at any time during this case, and you can make specific objection to any question that Mr. Kresel brings out.

XQ. 355-A (continued). At the time of the outbreak of the European War, were there any factories in the United States producing dyestuffs or colors?

A Yes, sir.

XQ. 356. How many were there?

A. About half a dozen.

XQ. 357. Were there not only four?

A. Well, there were four larger ones?

XQ. 358. What were they?

A. The Schoelkopf plant in Buffalo, Heller & Merz in Newark, the Bayer plant in Albany.

XQ. 359. Yes?

A. My plant.

XQ. 360. When did that start?

A. That started back in '2 or '3 or even before that.

XQ. 361. When did the Central start?

A. That is quite a number of years back. It must have been twenty years before that.

XQ. 362. Before the war?

A. Yes.

XQ. 363. Were any of these factories that you have just mentioned manufacturing from intermediates that came from any other place than Germany?

A. Germany and England. Mostly Germany.

XQ. 364. All imported?

A. All imported.

XQ. 365. In other words, as you said as I have it here, before the Shortridge Committee, these four or six plants were what you would call assembling plants?

A. They were more than that because they imported much of their intermediates.

XQ. 366. Didn't you say they were assembling plants?

A. Well, practically, if you call it that.

XQ. 367. The Germans to your knowledge were seeking before the war to prevent any manufacturing of dyestuffs in this country; is that not right?

A. One of the German plants had a plant here.

XQ. 368. Will you answer my question?

Mr. Anderson: I will have to add to my general objection that the question here not only asks for a conclusion, but, of course, is entirely outside of what I went into. It asks the conclusion of the witness as to preventing something being done. Under your Honor's ruling and subject to the objections which I have indicated we recognize that the counsel can ask the witness as to any facts he knows as to what was done, but as to the purpose and intent thereof, they must be drawn by the Court from the facts so proved. Therefore, I think the examination is improper on that ground in addition to the general objection stated.

Mr. Kresel: Upon cross-examination, your

Honor, it seems to me in view of the manner in which the Government has been permitted to put in its case on the direct, that I should be permitted to put to this witness the question that I just put to him.

THE COURT: I think it goes to value on cross-examination. If it is admissible at all it is particularly admissible here by reason of the relation of this witness to the German industry which he has disclosed.

MR. ANDERSON: I have no objection other than the general objection before stated. I am not renewing that objection because that is understood to apply to all this line of examination. The objection here was to the form of the inquiry which called for a conclusion of the witness and his judgment as to what the legal effect of a thing was.

THE COURT: This is cross-examination and that is given a very broad scope. You may take the answer.

MR. KRESEL: I think that question was answered, so I shall proceed to the next.

XQ. 369. Not only is it a fact that the Germans tried to keep anybody from manufacturing dyestuffs and pharmaceuticals here in the United States, but is it not a fact that they wrote to you and protested against your manufacturing here?

A. Yes, sir.

XQ. 370. I read to you a letter from page 668 of the Hearings before the Committee on Ways and Means, from Mr. Blank to the Farbwerke-Hoechst Company of Germany, dated August 5, 1915. I am going to ask you whether you received this letter. Suppose you look at it before I read it?

A. It is like a copy of one I received.

XQ. 371. Who is Mr. Blank?

A. Mr. Blank was a director of the Farbwerke-Hoechst.

XQ. 372. This letter is dated August 5, 1915, marked "confidential," and reads as follows:

"Dear Mr. Metz:

> "Your friendly letter of the 14th ultimo received and I send my best thanks for your esteemed communication. I am still awaiting the receipt of the revised accounts sent by Mr. Spielhagen."

I want to stop there a minute. Have you a copy of your esteemed letter of the 14th that he is talking about here?

A. Not now; not with me.

XQ. 373. "Regarding the Bethlehem Coal and Iron Company and the Deutsche Bank, I have heard nothing, and I can hardly believe that under existing conditions the Deutsche Bank would support any such undertaking to the detriment of the German dyestuff industry.

"That Bayer is in back of it"—

Bayer refers to the Bayer Company, does it not?

A. The Farbenfabriken of Leverkusen, formerly Frederick Bayer & Company.

XQ. 373. (continuing) "That Bayer is in back of it, I believe even less, for I know from only recent reports that no German dye factory even considers during the present shortage of chemicals to manufacture anything new over there."

"Over there" refers to the United States, does it not?

A. Yes, sir.

XQ. 374. "Bayer would certainly not undertake, as far as one can see, to take up something new when the few articles (blue, Vesuvin, Bismark, brown, fuchsin) have already been delivered by them over there."

"We lay great stress upon the fact that you personally will not participate in any manufacturing enterprise.

"The present condition can not last much longer. If our successful movement in Russia continues in the same ratio as during the last week, the Russians will finally get war weary and they will then be compelled to sue for a separate peace which would quickly change the situation.

"As soon as normal conditions return, those who took advantage of the present abnormal and uncertain conditions to build up new enterprises will later have to suffer heavily."

You got that letter, did you not?

A. Yes.

XQ. 375. I show you another letter from Mr. Blank dated September 28, 1915, and ask you if you received that; and while you are looking at it, please look at the one following that, because I would like to to know, also, whether you received that?

A. Yes, both of them.

XQ. 376. I am now reading from page 668 of this same volume. This letter is dated September 28, 1915, Hochst on the Main, addressed to Mr. H. A. Metz, New york:

"Dear Mr. Metz:

"From competitive circles we received the information that despite the fact that you have no dyestuff factory and are therefore not compelled to further the interests of your dyestuffs customers by manufacturing some new product, you have begun the manufacture of tar products in a factory of Prochaska.

"We refer to our previous correspondence, and beg you to inform us over here what and where you have, in your name or with your support, begun manufacturing.

"Unfortunately, it appears to be true that Bayer's representatives over there is viewed by all the factories as being, under the stress of cir-

> cumstances, a matter of compulsion in manufacturing new products, against the agreement with Elberfeld."

What did you understand the agreement to be with Elberfeld?

A. I didn't know what agreement they had except they were controlled by Elberfeld, and apparently did not care what Elberfeld thought. They went ahead and made colors for this country.

XQ. 377. And the letter of November 12, 1915, from Mr. Blank:

"Dear Mr. Metz:

> "Your detailed information, on October 20, per Oscar II, thankfully received and carefully noted."

Have you that letter?

A. No, I sent it abroad.

XQ. 378. Have you a copy?

A. I do not believe I have. If I had, the record would have shown it. Mr. Garvan put the record in.

XQ. 379. You have not a copy that you can produce?

A. I have not a copy now.

XQ. 380. Have you a copy of any correspondence with your German firm abroad?

A. They were all given to the Alien Property Custodian, every one I had.

XQ. 381. Have you or have you not, that is my question?

A. I haven't with me today.

XQ. 382. Well, have you it so that you can produce it on Monday?

A. The Alien Property Custodian had them all; all I had.

XQ. 383. I am asking you whether you have?

A. I should say no, in general principles. I have some. I can't say which ones.

XQ. 384. I will ask you specifically now to produce next Monday the letter of the 14th of July, 1915, written by you to the Hoechst people abroad and also the letter of the 20th of October, written by you to the same people?

A. If it is not in the record, I haven't got it.

XQ. 385. I continue reading. This is what Mr. Blank writes to you:

> "We have entered into an agreement with all other German dyestuff factories not to manufacture anything new over-seas for the present, either directly or indirectly, and for this reason we are pained at the thought that you should, through your brother, be interested in the Prochaska in the manufacture of the new articles manufactured from orange, echtrot, ponceau, and chrysoidin. We must now await what we should tell the trade if we are again questioned."

A. Yes, sir.

XQ. 386. What did you reply to that letter? Have you that copy?

A. No, but I know what I replied.

XQ. 387. Where is the copy of your letter?

A. I did not keep it in all probability. I sent it abroad. I did not keep this personal correspondence.

XQ. 388. You kept no copies?

A. Not of those things. Letters on matters of business I kept. These are personal matters.

XQ. 389. You not only wrote to the President's private secretary about these dyestuffs, but you wrote to the President himself, did you not?

A. On various occasions.

XQ. 390. I mean President Wilson?

A. Yes, and he wrote me.

XQ. 391. I show you copy of your letter to President Wilson under date of November 7, 1914, which is reproduced at page 775 of these Hearings before the Sub-Committee of the Committee on the Judiciary of the Senate beginning there (indicating). Please glance over it?

A. That is right. That looks like a copy.

XQ. 392. In this letter—I shall read only portions thereof—you say to the President of the United States:

> "The manufacturers of the United States as well as those of every other country in the world are practically dependent upon the German manufacturers for their supplies of dyestuffs and chemicals."

A. Yes, sir.

XQ. 393. When you spoke of the manufacturers, did you include among those the textile industry?

A. Yes, sir.

XQ. 394. The cotton industry?

A. All consumers.

XQ. 395. I am trying to have you enumerate them. That is what I am after. The textile industry?

A. Yes, sir.

XQ. 396. The cotton industry?

A. Yes, sir.

XQ. 397. The wool industry?

A. Yes, sir.

XQ. 398. The silk mills?

A. Yes, sir.

XQ. 399. The calico printers?

A. Yes, sir.

XQ. 400. The leather manufacturers?

A. Yes, sir.

XQ. 401. Paper manufacturers?

A. Yes, sir.

XQ. 402. Wall paper?

A. Yes, sir.

XQ. 403. Paint?

A. Yes, sir.

XQ. 404. Ink?

A. Ink.

XQ. 405. Any other that I have omitted?

A. Some food products; every one that used color was interested.

XQ. 405-a. You say in this letter to the President:

> "At the outbreak of the war, Germany placed an embargo upon the exportation of all products of this kind. The supply in the hands of importers in the United States was about sufficient to run our mills from six weeks to two months."

That was the fact?

A. Substantially correct.

XQ. 406. You say that after allowing two or three small shipments to come through a new embargo was declared by the German Government, which insisted first that vessels flying the American flag must be provided to transport these goods and, second, that a guarantee must be provided by the United States that no goods would be exported to any country with which Germany was at war?

A. Yes, sir.

XQ. 407. That was true?

A. That was true.

XQ. 408. In connection with your efforts to get importations of dyestuffs from Germany during this critical period you not only wrote to the President and to his private secretary, but you also wrote to the Secretary of State Mr. Bryan at that time, did you not?

A. Yes, sir.

XQ. 409. And on the other side you were in communication with Mr. von Bernstorff?

A. Through the State Department and for the State Department.

XQ. 410. You were in communication with Mr. von Bernstorff?

A. Yes, sir.

XQ. 411. Who was the Ambassador of Germany to the United States at that time?

A. Yes, sir.

XQ. 412. Without going into great detail about it, is this what you accomplished: You arranged with von Bernstorff that Germany would allow two shipments by two vessels, one named the Matanzas and the other named the Sun, shipments of dyestuffs to come through, provided the persons to whom the shipment was to be distributed in the United States would give a bond that they would not export what was given to them and that the United States would guarantee them?

A. That request came from the State Department.

XQ. 413. I did not ask you where it came from.

A. I could not make the arrangements myself without the State Department.

XQ. 414. I asked you if that was the result of your efforts?

A. I can not say of my efforts. The State Department's efforts. I became the medium for the State Department.

XQ. 415. I tried to shorten this, Mr. Metz, but if you will insist on that I will read to you the documents.

A. Well, go ahead; I can not answer yes or no to that.

XQ. 416. Very well, I will take it up in another way. I read to you from this letter to the President, at page 776. Listen to this: "After consultation with the Acting Secretary of State and the Solicitor of the State Department"—this is what you are writing to the President.

A. Yes, sir.

XQ. 417. "And with their approval, I placed the matter before Count von Bernstorff, the German Am-basador, whereupon he telegraphed to his Government that there was no basis under our law permitting the United States Government to give or enforce such a guaranty; but that it would obtain, through me, from all importers a written guaranty that they would use every legal means to prevent exportation and a statement that they would agree to furnish any bond that the Government might prescribe.'' Now, that was the fact?

A. Those are the facts exactly.

XQ. 418. You say that in reply to this telegram Count von Bernstorff received official information from Berlin. How do you know that?

A. He told me.

XQ. 419. ''That the German Government considered the guarantees to be filed with the State Department through me to be satisfactory, but nevertheless deemed it necessary to require a bond, and that such a bond should be given to me personally.'' Was that so?

A. Yes, sir; the letter is in the record stating that.

XQ. 420. In other words, Count von Bernstorff told you that his Government required as a condition of allowing dyestuffs to come through that a bond be delivered to you?

A. Yes, against re-exportation.

XQ. 421. Now, Mr. Metz.

A. I beg your pardon.

XQ. 422. Please. You have been very good, now please continue.

A. I will try to stay so.

XQ. 423. Were bonds subsequently delivered to you?

A. Yes, sir.

XQ. 424. And you held them for the German Government?

A. I held them against re-exportation, as directed by the Department of State.

XQ. 425. You held them for the German Government?

A. I held them for the importers—that they would not export.

THE COURT: Strike out the answer, Mr. Stenographer.

XQ. 426. Mr. Metz, did you not hold these bonds for the German Government?

A. I did not so consider myself. I considered I was doing it for the interests here.

XQ. 427. I read to you from page 746 of this record.

MR. ANDERSON: The same record?

MR. KRESEL: Yes.

XQ. 427. (continued) Perhaps this will refresh your recollection: "Mr. Metz. They would give a bond that they would not export these goods; that is, the people who receive these goods or these dyes from abroad, they could not export them.

"THE CHAIRMAN: Just a moment there: I want to follow that. Dyes imported or shipped to you?

"MR. METZ: No, no; not to me.

"THE CHAIRMAN: To whom?

"MR. METZ: To the consignees, who received these dyes from abroad.

"THE CHAIRMAN: Binding them to you—

"MR. METZ (interposing): The Government could not take the bond. I was to hold the bond for the German Government."

Did you testify that way?

A. I testified that way, yes.

XQ. 428. Was it true?

A. Certainly it is true.

XQ. 429. Then why did you fence with me a little while ago when I asked you a dozen times whether you hold them for the German Government?

A. Why didn't you ask the full question, Mr. Kresel?

XQ. 430. Do you mean that you will testify here only what I can read to you from books?

A. I will testify to facts as they exist.

XQ. 431. Well, you did take the bonds, did you not?

A. Yes, sir.

XQ. 432. And after you got through those two shipments Germany shut down again, did she not?

A. No, sir; she did not shut down.

XQ. 433. How many shipments did you get through?

A. I got no more. I was not interested further; but they came through, half a dozen more came.

XQ. 434. After those two shipments is it not a fact that no more dyes or pharmaceuticals came in from Germany until the submarine Deutschland got here?

A. No, sir; it is not true.

XQ. 435. How many more shipments came in?

A. There were two more on the Matanzas and two or three boats, I think, until April 30th, when the order in council went into effect, and some arrived after that.

XQ. 436. What year was that?

A. 1915, when the British order in council went into effect.

XQ. 437. Between April 30, 1915, and the time when the submarine Deutschland got here did any dyes or pharmaceuticals come here from Germany?

A. Not to my knowledge.

XQ. 438. When did the Deutschland come?

A. I guess it was in—1916, was it?

XQ. 439. July, 1916?

A. On the first trip. She made two trips.

XQ. 440. The next one was in November, 1916?

A. I think that is in the record.

XQ. 441. You were one of the consignees of the dyes that came on the Deutschland, were you not?

A. Yes, sir.

XQ. 442. Were you not the one that was placed in charge by the Germans of distributing their dyes that came on the Deutschland?

A. I was not.

XQ. 443. Who was?

A. I don't know as anyone was. I think Mr. Albert had charge of it.

XQ. 444. Doctor Albert?

A. I think so, yes.

XQ. 445. Is this letter that I have been reading from, your letter to the President, the only letter that you wrote him in connection with this dyestuff importation?

A. I do not recall it. It is in the record. There were others, I presume.

XQ. 446. Don't you remember writing another letter to him?

A. Yes.

XQ. 447. You were quite interested in this situation, were you not?

A. Naturally.

XQ. 448. You went to the trouble of having printed your correspondence with the President, the Secretary of State and the other officials about this matter?

A. For the use of the consumers; yes, sir.

XQ. 449. And you distributed it among consumers?

A. Yes, sir.

XQ. 450. Look at this photostat of one of your pamphlets and state whether that is a copy of another letter that you wrote to the President (handing witness)?

A. I assume so, yes, sir.

XQ. 451. What?

A. I assume so.

XQ. 452. I want to read this letter to you. It is dated June 16, 1915. As I get your testimony, it is that after April, 1915, and up to July, 1916, no dyes came from Germany?

A. July, 1916?

XQ. 453. Between April, 1915, and July, 1916?

A. Not until the submarine got here.

XQ. 454. On June 16th, 1915, you wrote to the President of the United States as follows:

"Hon. Woodrow Wilson, White House, Washington, D. C.

"My dear Mr. President: I know that you are conversant with the serious situation that confronts the textile and other industries of this country through the failure to continue the receipt of dyestuffs and chemicals."

May I stop there a minute to inquire what your interest was in this thing. Was it that you were missing the revenue that you had been obtaining from selling these goods?

A. I was in the dyestuff business. Naturally, I wanted to take care of my customers.

XQ. 455. That is all I wanted to know.

A. And I was a consumer.

XQ. 456. "Efforts are being made to have the recent 'Order in Council,' allowing two shipments to pass, modified somewhat so that shipments will be allowed through on a basis that Germany will agree to."

Were you speaking for Germany?

A. No, I knew the facts.

XQ. 457. You had no relation to Germany whatsoever?

A. None whatever. No interest.

XQ. 458. Your communications with Count von Bernstorff you could consider simply friendly intercourses?

A. For the purpose of getting dyestuffs to this country.

XQ. 459. Yes.

A. Absolutely, and no other reason.

XQ. 460. In this connection you go on to say to the President of the United States: "An extract from a letter received from Justizrath Dr. Adolph Haeuser, president of the 'Verein zur Waehrung der Interessen der Chemischen Industrie Deutschlands' in Berlin"—which I will translate in a minute—"and which is composed of all the dyestuff and chemical manufacturers in the German Empire, dated May 26th, will probably interest you." Before I read the quotation which you have here of this letter from Dr. Haeuser, I want to know where that letter is.

A. I gave it to the representative of the Alien Property Custodian who examined my books in my office, I assume. If it was there he got it.

XQ. 461. Where is it now?

A. I don't know. I did not get half of the stuff back.

XQ. 462. You got some back, did you not?

A. Some of it I got back, yes.

XQ. 463. Did you get that back?

A. That I do not know. That is where they got it, though.

XQ. 463-A. Will you look among your papers and produce here next Monday morning this letter of Dr. Haeuser a quotation of which you are sending to the President of the United States?

A. I do not think I can find it, because I got most of the stuff here now, and that was not amongst them. That was eight years ago.

XQ. 464. This is what you say Dr. Haeuser wrote to you: "I note that you have carried out your plan to organize 'an American Dyestuff Consumers' Association.' We here are gladly ready to send dyestuffs to America, but we rest on the standpoint that we can not accept this as a favor or gracious act on the part of England, but that we can only send dyestuffs when England recognizes the right of America to receive goods from us, and you send us cotton in exchange for such dyestuffs. This is also the standpoint of our Government.

"Any other standpoint would be unworthy of America or Germany. We are, of course, somewhat accustomed to seeing the American Government look at situations through two pairs of spectacles according to whether Germany or England is concerned in the question."

May I stop here a minute. Were those your sentiments?

A. Yes, and I think it was quite true. The general sentiments.

XQ. 465. "England might simply deny American suggestions off-hand and the American people yield with astonishing submission, although the entire carrying on of the war on the part of England and her allies depends entirely upon the good will of America. When Germany, however, does anything towards using her own good rights, the act is decried in America. I hope America will succeed in forcing England to stop interfering with commerce between Germany and America, and if so, you will find us only too glad to gi you all the dyestuffs that you need."

That is what Haeuser wrote to you?

A. Yes, sir.

XQ. 466. And that is what you transmitted to the President of the United States?

A. Yes, sir

XQ. 467. In other words, you transmitted to the

President of the United States a statement by Haeuser who says that was also the sentiment of the German Government, that only if America would compel England to lift her blockade, could America get dyestuffs or pharmaceuticals from Germany?

A. He did not say that. He said if we gave them cotton, they would give us dyestuffs.

XQ. 468. I will read you again:

> "I hope America will succeed in forcing England to stop interfering with commerce between Germany and America."

A. Yes, sir.

XQ. 469. "And if so, you will find us only too glad to give you all the dyestuffs that you need."

Then you go on, writing to the President:

"I submit this was the situation as it is developed by Dr. Haeuser, who at the present represents officially the entire chemical industry as President of the Berlin organization. This simply indicates that they have available goods in Germany which we need here and which we can get if Germany is assured that the goods will not be taken back by England and that she will get cotton in return. I submit this extract to you for what it is worth, knowing that you appreciate the situation, and assuring you that so far as I am concerned I fully appreciate the delicacy of the situation that confronts us."

A. Exactly so, and I discussed it personally with the President.

XQ. 470. Now, Mr. Metz, you testified before the Senate Committee, page 298:

> Mr. Anderson: Which volume is that?
>
> Mr. Kresel: That is the Committee on Finance.

XQ. 470. (continued) "The Germans took out patents here for everything. They took advantage of our patent laws, which gave them a right to patent anything here, and we could do the same thing in Germany. Now, if the patent laws were at fault, you can not blame them for taking advantage of them. They patented everything in sight, which was perfectly right, so as to protect themselves. The patent laws gave them that advantage, and they said, 'Why should we build plants in America? We are all scattered now and America does not use ten per cent of our output.' "

Did you so testify?

A. That is the substance of what I had in mind, whether I testified or not.

Mr. Anderson: One minute. As this is apparently a new subject, I wish to renew the objection which I made at an earlier stage. Both the general objection of immateriality, irrelevancy and incompetency of this evidence, and that it is outside of any matter in the direct examination.

The Court: Will you tell me, please Colonel Anderson, just what, in your theory, is the limit to the testing of the credibility and the interest and possible bias of the witness?

Mr. Anderson: I think it is extremely difficult to lay down any rule on that question. That is a matter in which the discretion of the Court is necessarily broad. But I do not think that it is quite competent to show the relationship of the witness to any of the matters referred to in the testimony. That is not quite competent. But if a question of this kind, and I think the examination which has preceded it, had any relevancy here whatever, I should not object in the slightest. My chief objection is that I do not think we can fight the war over in this case. That has been settled on the field of battle. And the question just asked as to the fact that the Germans took out patents, what the Germans did in 1915 or before the war, certainly can not be relevant and can not have any possible bearing upon the decision of this case, or indeed, the testimony of this witness on direct examination, which went purely to the question of values.

THE COURT: Succinctly, what do you say is the specific objection to this inquiry taking into consideration that there are two fields that Mr. Kresel has a right to go into fully, namely, credibility, and the substance of his testimony, namely, values. May this not apply to either? If not, why not?

MR. ANDERSON: On the question of credibility you can show that a witness has made conflicting statements with those which he now makes. You can show any matter which tends to show mental prejudice against any factor in the case.

As I have said, the question of credibility is a very broad one, and I would not undertake to lay down, and I do not know of any authority that does lay down, any hard and fast rule on that subject. Every case must be decided by itself by the Court in the exercise of a sound judicial discretion.

I recognize that your Honor has a very broad discretion in allowing examination of this kind. I do not wish to interrupt it. I recognize that counsel should be given in this case rather unusually broad scope, on account of the character of the case. But I can not (it may be my own mental deficiency)—but I can not see the possible relationship to the issues in this case of the acts of the Germans in the effort either to gain an international advantage, in war or otherwise, before the war, when it has been fought out, or the fact that they did or did not import dyes, or any of the issues which were settled by this war.

In so far as they effect the credibility of this witness, if any connection between the two things can be pointed out, I recognize that your Honor's discretion will apply there. The only thing I can say under those circumstances when it seems to me to be not only absolutely immaterial and irrelevant upon any possible issue in the case, but also without any relevancy to the question of credibility or interest of this witness, that having been disclosed, is that it is not legitimate evidence

Therefore, I merely want to renew my objection, a new subject having been taken up, so that the record may be complete. Of course, I shall not attempt to argue against a ruling.

MR. KRESEL: If your Honor please,—

THE COURT: I was going to ask you if you would be good enough to state to me, Mr. Kresel, upon what issues the facts intended to be elicited by your question bear.

MR. KRESEL: As your Honor will see, the particular question to which objection has now been made refers to German patents. In other words, this question considers the very patents that are in issue here, as to which this witness undertook to give testimony. Furthermore, the passage that I have quoted here shows that the Germans did not work their patents here in the United States, and the reasons why the Germans did not do it, is given.

Now, upon the question of value, it is certainly material to show that the patents were not worked here, and not having been worked here, there was not the information necessary to make them valuable. This is of the utmost importance upon the question of value.

But quite aside from that, your Honor, I am glad of the opportunity that Colonel Anderson has given me, with a challenge that I am seeking here to re-fight the war. I am not. My examination of this witness is directed solely to showing his interest, to showing his German connection, to showing that he is the one behind this litigation—as I shall show.

When I said in my opening that there was an invisible plaintiff here, he is no longer invisible, sir. And when the Government comes here and asks your Honor to upset the solemn act of the President of the United States, upon the testimony of a witness like that, can we be estopped from showing to the Court every German act and every German connection that this man has? to show that he is today the representative of the Germans? to show that he is here; so that if your Honor should enter a decree that these patents should go back to the Germans, am I to be estopped from showing that within a year he has been in consultation with the Germans, telling them that he will get these patents back, and discussing with them what should become of them?

Mr. Anderson: Are you through?

Mr. Kresel: Yes.

Mr. Anderson: If your Honor please, I think counsel has gotten abnormally excited—

Mr. Kresel: Abnormally what?

Mr. Anderson: —upon the question. If he had asked a question which had any relation whatever to showing the things which he has suggested, outside of the pre-war association, I should not have objected, except for this reason:

I shall object here in the Court in the performance of my duties as I object now to the suggestion of counsel. I read to your Honor at the opening of this case a direction by the President of the United States to bring this suit, and it is brought by the Attorney-General of the United States, its highest law officer, in the name of the Government of the United States. I first deny in the most emphatic terms that I can put upon the record, that there is an invisible plaintiff in this case, or any other kind of plaintiff, except the Government of the United States—and I am not sure that in making that statement, I am not, to some extent, adding a certain quality of dignity to an attack upon the good faith of the President and Government of the United States which I should not give.

Now, I deny every statement with respect to any relationship of this witness to the bringing of this suit.

The Court: May I, Colonel Anderson, make this inquiry?

Mr. Anderson: Yes, sir.

The Court: I take it that there is no suggestion or intimation on the part of Mr. Kresel towards questioning the bonafides of the act of the President of the United States. If so, and it is discovered, I will take care of that situation.

Mr. Anderson: I feel sure that is true, but—

The Court: But I fail to see just the basis for your apparent criticism of the act, because, as I understand your position, you are here to challenge the acts of the President of the United States on the ground, not that he was acting in bonafides—

Mr. Anderson: Certainly not.

The Court: —but on the ground that he was misinformed, and that he acted without sufficient information, or under misinformation or erroneous information. Do I state your position correctly, Colonel Anderson?

Mr. Anderson: I think substantially you state the position; that is, part of it.

The Court: Then as I understand Mr. Kresel, his argument is to the effect that one President of the United States has possibly acted in the same manner in which you charge another President of the United States acted. Am I correct, Mr. Kresel?

Mr. Kresel: Yes, your Honor. I want to say here, because—

Mr. Anderson: Allow me your, Honor—This is quite a delicate matter and I do not want to take up the time—

Mr. Kresel: May I answer the Court's question, Colonel, and then you shall be heard?

Mr. Anderson: Certainly.

Mr. Kresel: I do not want to be understood as in the slightest degree either directly or indirectly reflecting upon the good faith or the proper motives of the President, the Attorney General, or any of the gentlemen here concerned, who are trying this case.

But I do say—and I say we shall prove it—that this litigation was instigated by this witness and those whom he represents, and that such representations were made to the Government as to have led the Government to take this step which it has taken. In that respect, as your Honor has very well pointed out, the situation is no different from what the Government claims was the situation when President Wilson confirmed the act which they are now here attacking, or when the Alien Property Custodian conveyed the properties, which conveyance they are now here attacking.

I do not want to be understood as in any way reflecting upon the Government. I made that statement at the outset of the case. I recall upon the first occasion when we appeared before your Honor, when Dr. Holderman was being examined here, the Government counsel thought that there was claim being made that this action was not being prosecuted in good faith by the Government, and we disclaimed any such claim. But we do say that we have a right to show, as we shall show, who it is that is responsible for getting the Government to bring this suit, and what their motives are—not what the Government's motives are.

MR. ANDERSON: Now, may I reply, if your Honor please?

I regard this matter as one of great delicacy.

If it were regarding myself as member of this Bar, I should not take up your Honor's time to make any statement at all. But in view of the fact that it is in regard to the actions of two Presidents of the United States and of the high officers of the Government, I think it is proper —and I may be mistaken, but I deem it almost essential—that I should make a brief statement in reply to what counsel has said, if your Honor will indulge me.

I am very glad to have the statement of counsel that he does not for a moment question either the purpose or the good faith of the Government of the United States at any stage, or of the President or Attorney General. So far as the counsel in this case are concerned, they are obeying the orders of their superiors and conducting the case in accordance with those instructions.

But, in the first place, the question asked had absolutely no relation to the subject under discussion here. It was brought in by counsel, and the very able counsel for the defendant here, with his ability in the choice and use of language, certainly was most unfortunate in the choice of such language if he did not intend his former statement to this Court, made with some excitement, to be a reflection upon the motives and purposes of the Government.

THE COURT: Colonel Anderson, I shall not let you proceed on that theory or on that discussion, because that has been developed by counsel openly and fully, and that is a closed matter.

MR. ANDERSON: Certainly, I recognize that; but I am explaining why I brought the challenge.

I accept his statement fully on behalf of the Government; but I want to say, in the first place, that we are attacking here the legality of an act. We are attacking it with a respect for the hight officers concerned in that act, which, if I have not made clear, I desire to make clear.

But the right to attack the legality of an act is not only a right, but a duty of the Government of the United States, representing all the people, no matter how high the officer is, in the Courts, in an orderly and in a proper way. On the other hand, the legality of the act of bringing this suit can not be asailed except on one ground of improper motive.

THE COURT: There is no question about that, Colonel Anderson.

MR. ANDERSON: Therefore, what possible relation can that have to the bringing of this suit, except by that method? It can not affect the issues in this case. It can not affect the legality, except in the effort to prove what counsel have already stated that there was an invisible plaintiff. Therefore, the position of the Government here in raising a strictly legal question—an absolutely legal question—as to an act of the officers of the Government, and on legal grounds, declaring that confidence in good faith and motive at the very out set and throughout this Bill, carefully drawn with that end in view, is one thing; but an attack on the legality of the President's action in directing this suit, or that of any one else, is another thing and, therefore, it can have no bearing upon this issue.

THE COURT: The testimony is not offered on that ground, and the only reason for the discussion of that point, Colonel Anderson, as I understand it, was your remark challenging the propriety of any person questioning the act of the President when directing the bringing of this suit; and that involved, it seemed to me, an understanding on my part of just what was being discussed by counsel for the respective sides, and I asked you each if I stated correctly your views, approximately, and you said yes.

MR. ANDERSON: I said, as far as you went.

THE COURT: Yes. Now then, we have come back to a legal basis, if I understand you, and that is a closed transaction—a closed incident.

MR. ANDERSON: Certainly.

THE COURT: Now we are back to the question, are we not? Let us have the question read.

(XQ. 470 repeated as above recorded.)

THE COURT: I think, Colonel Anderson that the limitation of discretion is exceedingly broad in cross-examination with respect to the prior activities and views of the witness pertaining to the chemical or dye industry in any way, because we cannot stop with one factor or factors and get a clear and comprehensive idea of the witness's mental attitude towards the matters with respect to which he is testifying. He has placed values upon the patents and trademarks. What the value really is, I should assume, in the absence of information to the contrary, depends in large measure upon the situation and condition and status of the chemical science and the dye science of this country at the time of the sale in 1919. So that I take it that this question is not without its bearing or relevancy to both of those reasons for inquiry. I therefore overrule your objection and note for you an exception.

Mr. Anderson: All right, sir. I will call your Honor's attention only to the fact that this question relates to what happened long before 1919.

The Court: But is that not disclosing a condition of fact which has not been shown? I do not see how all these facts can be obtained or disclosed of record save by an inquiry covering a reasonable period of time prior to May, 1919.

Now, then, is there a thought in your mind, Colonel Anderson, that this inquiry is entirely wrong under any circumstances, regardless of the date?

Mr. Anderson: This is with regard to the taking out of patents prior to the war. Now, if your Honor will permit me to read this paragraph:

> "They took advantage of our patent laws, which gave them a right to patent anything here, and we could do the same thing in Germany. Now, if the patent laws were at fault, you cannot blame them for taking advantage of them. They patented every thing in sight, which was perfectly right, so as to protect themselves."

The Court: I wonder if there is not this difficulty in the way of your considering that matter in the way that it seems to me it should be considered. We are not dealing with facts as facts independently of this witness. We will assume his testimony goes to the value of the patents.

Now, must not those matters all be brought to the mind of the witness in order to determine whether, in view of all those facts which existed prior to 1919, were taken into consideration by him in placing his estimate of value on the patents?

MR. ANDERSON: If your Honor asks the question, I will answer in just a few words that if any one can possibly connect the question of the value of these patents, all of which have been seized by the Alien Property Custodian in 1919, with the fact that the Germans took out the patents freely as provided by the Patent Law in 1913 or 1914—if there can be any connection between that value and the fact that these patents have been taken out freely, I would admit that there might be very intangible connection that might be established.

But I am frank to say that I probably can not understand it and therefore I did not want to get into a discussion of the matter. Your Honor will of course relieve me of that position. I only got up to renew my objection because it was a new subject, but we unfortunately got into a rather extended discussion.

THE COURT: I thank you, Colonel Anderson. I think the question is admissible. The weight of the answer is purely another matter.

MR. ANDERSON: I wanted to make the statement that I would like to have that objection considered as made to each question and answer on this line of examination, as before, with an exception.

THE COURT: Very well. All questions are objected to with an exception noted to the taking of the answer.

XQ. 471. The question is, Mr. Metz, whether you testified as I read to you?

A. I do not recall what you read, Mr. Kresel. Will you repeat it?

XQ. 472. I do not want to repeat it over again, but it is this paragraph that I show you.

A. Yes, sir, that is correct.

XQ. 473. And that was true?

A. That was true.

XQ. 474. And with the exception of the Bayer plant up in Rensselaer, near Albany, N. Y., the Germans did not manufacture here?

A. Not so far as I know at that time.

XQ. 475. And even that plant manufactured with imported raw materials from Germany?

A. Some things.

XQ. 476. I read to you from page 865 of your testimony before this Committee on the Judiciary, as follows:

> "MR. GARVAN: Just assume for a moment that Germany wanted to sacrifice some money to regain control of the world market.
>
> "THE CHAIRMAN: (Interrupting) That is what I was asking Mr. Metz a moment ago, and he, I think, answered it: They could depress the price so as to defeat the object we have in view.
>
> "MR. METZ: Yes.
>
> "MR. GARVAN: They would only have to raise their price in countries that do not manufacture it.
>
> "MR. METZ: Yes, certainly."

That was true, was it not?

A. That was true, undoubtedly.

XQ. 477. Prior to the war, did not the Germans to your knowledge use what is known and what you have described in your testimony, as I shall read in a minute, "full line forcing"?

A. Not the concern I was—

XQ. 478. Wait a minute. I had not finished my question.

A. All right.

XQ. 479. —by means of which to maintain their dye and pharmaceutical monopoly in the United States?

A. Never to my knowledge.

XQ. 480. Well, do you mean by that that they never tried it on you?

A. I never tried it with my customers.

XQ. 481. I didn't ask you that.

A. That is all I can answer. They didn't sell them. I sold them.

XQ. 482. Don't you know that the German factories that were represented here did that?

A. Not to my knowledge.

XQ. 483. What is full line forcing?

A. I understand it to be a system of pressure that you must buy of them to get a thing you want, probably.

XQ. 484. In other words, that the Germans declined to sell to a consumer any particular dye or color that he wanted unless he would buy all the colors and all the dyes that he needed; was that your understanding?

A. There was no German selling here, Mr. Metz—

Mr. Anderson: One moment. The witness did not testify to that.

Mr. Kresel: I was asking him.

Mr. Anderson: You did not summarize the witness's testimony. The witness has testified that he did not know of any such practice of his knowledge, and therefore when Mr. Kresel says the Germans did this, he is putting in the mouth of the witness something he did not say.

Mr. Kresel: I beg your pardon, Colonel. I think if you will bear in mind what I asked him before, you will see that the question is proper.

The Court: Will you repeat the last two or three questions, Mr. Stenographer.

(Repeated as recorded above).

The Court: There is injected into that question, I think, Mr. Kresel, an inference or implication, should he answer it, that the Germans did engage in that practice. I thought the question was the abstract one as to whether that was his understanding of full line forcing.

Mr. Kresel: May I withdraw the question?

The Court: Yes.

Mr. Kresel: I do not think it has been answered; so no harm has been done.

XQ. 485. Your understanding of the practice was that the Germans would decline to sell any particular color unless the customer would buy all of its colors from them?

A. I did not say so.

XQ. 486. I am asking you whether that is your understanding?

A. My understanding of full line forcing; not what the Germans did.

The Court: I will protect you, Mr. Metz, if you will take care of yourself.

The Witness: I thank your Honor.

Mr. Anderson: I submit, if your Honor please, that even with the particular latitude on cross-examination when you undertake to summarize the testimony of the witness, you can not put words in his mouth.

The Court: I understand your contention and I think your objection is well taken to this question.

Mr. Kresel: Well, I will try again.

XQ. 487. Will you tell me again what your understanding was of full line forcing?

A. My understanding of full line forcing is that a concern would compel a competitor or consumer or customer to buy everything from him in order to let him have a certain thing that he wanted, a certain product that he really needed. That would be full line forcing in my opinion.

XQ. 488. And did the Germans indulge in the practice called "dumping"?

A. I never heard of it.

XQ. 489. Never heard of that either?

A. No, sir. My people never did and I didn't.

XQ. 490. Tell us, please, what you understand by the word "dumping"?

A. By the word "dumping," I understand, selling goods below the cost of production for the sake of getting a market somewheres as against home manufacturers.

XQ. 491. And did the Germans resort to the bribery of dyers?

A. Not to my knowledge. The Germans never did. Their agents here may have.

XQ. 492. Did you?

A. No, sir; I did not.

XQ. 493. You were sued, were you not, in the State of Pennsylvania under the Sherman Anti-Trust Act and the allegation was made against you that you had indulged in bribing the dyers of the plaintiff to use your colors in preference to anybody else's?

A. That did not make it so.

XQ. 494. I did not ask you whether it made it so. You were sued, were you not.

A. There was such a suit.

XQ. 495. And you settled that suit by paying $40,000, did you not?

A. Settled the suit on the basis of a compromise with the people who sued.

XQ. 496. $40,000?

A. I can explain the reason for it. It is in the record.

XQ. 497. $40,000?

A. Yes, sir.

XQ. 498. I show you a letter printed at page 509 of the Committee on Finance of the United States Senate, dated at Hochst-am-Main, March 30, 1914 from Dr. Haeuser to you and ask you whether that is a copy of the letter you received.

A. Yes, sir, it is.

XQ. 499. I also show you a letter printed at page 677 of the hearings before the Committee on Ways and Means, a letter from Dr. Haeuser to Mr. Metz, dated July 31, 1913 and ask you whether that is a copy of a letter you received?

A. Which date is this, Mr. Kresel?

XQ. 500. July 31, 1913?

A. Yes, that is the letter.

> Mr. Kresel: I am simply having the witness identify these, your Honor, and when I am through with him, I will offer them in bulk and not stop here to offer them.

XQ. 501. Salvarsan was discovered by Professor Ehrlich in Germany, was it not?

A. Yes, sir.

XQ. 502. And he discovered it in the dye factory of the Farbwerke-Hoechst people?

A. No, sir; he did not discover it in the dye factory. He discovered it in his own laboratory in the Speyer House in Frankfort. He worked in connection with the dye factory. They furnished the materials.

XQ. 503. The technical name of the drug is arsphenamine?

A. No, sir; that is a name coined here. The technical name is diaminodioxyareenobenzol—or benzene.

XQ. 504. Do you mean that the word arsphenamine is an American designation?

A. It is an American designation adopted here after the license was granted.

XQ. 505. The product is sometimes known as 606?

A. That was the original name before they gave it a trade name.

XQ. 506. And in 1911, the German Farbwerke-Hoechst Company took out United States letters patent covering that product?

A. I think that is the date.

XQ. 507. The date will be shown on the patent?

A. It will be shown by the patent, yes.

XQ. 508. When the war came on did you have any of that preparation on hand?

A. I had some stock.

XQ. 509. I mean when the European War broke out?

A. Yes.

XQ. 510. In August, 1914?

A. Yes, I had some.

XQ. 511. The United States Army was a very large user of that drug, was it not?

A. Not at that time.

XQ. 512. I mean when we went into the war?

A. Oh, yes, supplied in very large quantities.

XQ. 513. Indeed, as early as September, 1915, long before we went into the war, do you not recall that the United States Government was seeking to obtain salvarsan from you?

A. Yes, certainly.

XQ. 514. And that you could not supply it?

A. I didn't have any of it to give them any more and they had to get it from abroad and got it.

XQ. 515. You told them you could not supply it?

A. I did not have any stock probably at the time: I do not remember the details of how much I had.

XQ. 516. And is it not the fact that Germany in

1915. and 1916 refused to ship any salvarsan to the United States unless you distributed it?

A. I do not know as that is true. Possibly that is so, but I always did distribute when they were willing to ship. I know that.

XQ. 517. I mean, they insisted that you should be the only one to distribute?

A. I had a contract. They could not do anything else. I would hold them to it.

XQ. 518. I am asking you whether that is a fact that they insisted that as a condition of their shipping salvarsan to the United States, you must do the distributing?

A. If I recall, there was a condition that the Red Cross should have a hand in distributing it, so it would not be exported; only for our own use here. I think that was the condition in 1915 or '16, Mr. Kresel. The records will show that.

XQ. 517. I show you a letter from Charles A. Holder, the foreign trade adviser of the State Department directed to you. Did you receive that?

A. I assume so. Let me read it.

XQ. 518. Page 779 of the Shortridge Committee report?

A. That is right. That is the letter with the Red Cross. That is right.

XQ. 519. Now I will read this letter to you. This is directed to you, Herman A. Metz:

> "German Government informs Department of willingness to permit first shipment of 150,000 ampules salvarsan subject to the following conditions: 'Distribution to be effected by American representatives of Farbwerke-Hoechst' "—

That was you?

A. Yes, that is right.

XQ. 520. "Under supervision of American Red

Cross and American Government, to guarantee safe arrival." That is correct?

A. Yes, sir; that is correct.

XQ. 521. Did you not cable the Farbwerke-Hoechst Company in February 9, 1916 as follows: "State Department informs me permit for export of 150,000 ampules subject to guarantee safe arrival and Red Cross supervision distribution. American Red Cross entirely unofficial body; supervision unnecessary and impossible. Will personally guarantee proper distribution. The permit now in Rotterdam; absolute guarantee of safe arrival. Spurious and infringing products simply flooding this market during delay. Inform American Embassy, Berlin."

Did you so cable?

A. Yes, if it is there I did.

XQ. 522. The American Red Cross had nothing to do with the distribution?

A. No.

XQ. 523. It did not?

A. The American Red Cross refused to have anything to do with it.

XQ. 524. So you did the distribution?

A. Naturally, I was the agent for it.

XQ. 525. You were the distributor?

A. Yes.

XQ. 526. What did you sell salvarsan at in August, 1914, before the European War broke out?

A. I think the best wholesale price was $2.50 to the wholesaler and about $3.50 to the physician. As I remember the figures, that is about what it was, in large quantities.

XQ. 527. You came here to testify as an expert on values. You must certainly have armed yourself with your figures. You cannot tell me without guessing what you were selling that product for just before the outbreak of the war?

A. I told you $2.50 to the wholesaler.

XQ. 528. And how much to the retailer?

A. The retailer, I don't know what he sold it for. He sold it to the physicians. I did not sell it to the physicians at that time, only to the wholesaler.

XQ. 529. In other words, your testimony is that prior to the outbreak of the European War in August, 1914, you never sold to physicians direct, you sold only to wholesalers?

A. Oh, I won't say that, Mr. Kresel. There might have been an odd lot that a man came in to get; but that was not the usual course of business.

XQ. 530. I will amend my question, then. You said you did not as a rule sell to physicians direct, you sold only to wholesalers?

A. Mostly to wholesalers.

XQ. And the price you charged wholesalers was $2.50?

A. Yes, sir.

XQ. 532. An ampule?

A. Six-tenths of a grain.

XQ. 533. What were you paying the Germans for it?

A. I was paying 10 marks less 40 per cent. The German price was 10 marks to the consumer. It is $2.40 approximately to the individual.

XQ. 534. You were paying 10 marks less 40 per cent.

A. 6 marks net, and paid duty on that and charges.

XQ. 535. Did you pay the duty?

A. Certainly.

XQ. 536. That is, you paid the duty in addition to the 6 marks?

A. Certainly, and the charges, the insurance and the expense.

XQ. 537. How much was the duty?

A. I think it was either 25 or 30 per cent at that time. The record will show. I do not recall, under the tariff.

XQ. 538. 25 per cent?

A. 25 or 30 per cent.

XQ. 539. Ad valorem?

A. Yes, that was the duty, I am quite sure, 25 or 30.

XQ. 540. How much did an ampule cost you net after paying the duty and such other expenses as you have mentioned?

A. It cost me $1.50 plus 30 per cent., which would be about 50 cents, we will call it offhand. About $2, I should say.

XQ. 541. So you say now that you made a net profit of fifty cents on each ampule that you sold prior to August 1, 1914?

A. Approximately, yes, that is true. About 20 per cent of the selling price.

XQ. 542. In other words, after charging up all expenses, the cost of the product, your overhead, the duties, freight, insurance, everything that you can think of, it still left you a net profit of fifty cents an ampule?

A. With this proviso, that I believe at that time the overhead was charged back to the other side, that they allowed us for overhead and for advertising at that time. I think in 1914 they did that, or before 1914. Later on we paid it all ourselves.

XQ. 543. I want you to try and think a little more closely and tell me definitely whether prior to August 1, 1914, you had to pay the overhead here?

A. I cannot say that definitely. I paid part of it, I think, as I recall it. We charged some expense back to the other side. They had made us a certain allowance for advertising purposes.

XQ. 544. How much of an allowance?

A. That I do not recall exactly. My attention is called to that by the fact that our expenses jumped suddenly in one year over a previous year. The books showed all that. The Custodian had all that when he examined my books.

Mr. Kresel: I ask that the statement that the books showed all that and that somebody, whose name I did not catch, examined the books, go out.

The Court: Let the answer be read and the part of it you object to be stricken out. Read the answer.

(Answer to XQ. 544 read as above recorded).

The Court: The last sentence, Mr. Kresel, was the one you wanted out, or what portion?

Mr. Kresel: I want out what he said about the Custodian examining his books.

The Court: Strike out that last statement.

XQ. 545. Between August 1, 1914, and April, 1915, during which you testified you were still getting some salvarsan from Germany, did you have to pay any more for that product to the Germans?

A. I think so. They raised it from time to time, ten per cent. at a time, I think.

XQ. 546. Your books are available?

A. The old books? I don't know. That was the Farbwerke-Hoechst at that time. That was—

XQ. 547. No, no, you have answered my question. You undertook to give us figures this morning—

A. I will give them to you.

XQ. 547. (Continued) Way back to 1913, do you remember?

A. I have got them right here.

XQ. 548. I want to see the books from which you got those figures.

A. All right.

XQ. 549. Will you produce them on Monday?

A. I think the ledgers are in town now.

XQ. 550. All right, those books will show whether you had to pay more to the Germans for that product between August, 1914, and April, 1915, than you paid before August?

A. I know I did, whether the books show it or not.

XQ. 551. You do not mean to say that your books will not truthfully—

A. I do not.

XQ. 552. Let me finish my question, please.

A. Go ahead.

XQ. 553. You do not mean to say that your books will not truthfully reflect the situation?

A. I do not know whether those books, the ledgers, show that. The purchase books would and I have not those.

XQ. 554. You have some books that will show it?

A. I may have; I don't know.

XQ. 555. Those are the books I want to see.

A. I may have them. They are ten years old and I have not kept some of them, but some of them are in the files. But I know the facts.

XQ. 556. Where did you get the figures from that you quoted this morning in your testimony, wherein you showed what profits you had?

A. From my records, compiled from the books which I keep.

XQ. 557. How can you get your profits if you do not know your cost?

A. Because I kept them all the time, kept those records all the time.

XQ. 558. Those are the records I want.

A. All right, you can get those. They are on balance sheets and things of that sort.

XQ. 559. But I do not want the sheets, I want the books.

A. I have not got the books, but I have the sheets that I took from the books.

XQ. 560. We have it, then, that your books of account showing your transactions with the Germans between August, 1914, and April, 1915, are no longer in existence?

A. I won't say that. They may be; I do not know.

XQ. 561. Will you produce them on Monday?

A. I will try to have them here by Monday. I don't know, how can I get them here Monday. I can not get into the office Sunday and the office is closed today. I will have them here Tuesday. There is no physical way of getting them here Monday, Mr. Kresel.

XQ. 562. I am going to take your recollection until you produce the books, and I want your recollection as to how much more you had to pay the Germans for salvarsan after August, 1914, than you did pay prior to that date?

A. If I remember correctly it was 10 per cent. increase in price, with an increase in insurance and freight rates.

XQ. 563. You see, that does not tell me what I want to know. I want to know the amount of money.

A. I have to get that from the books, Mr. Kresel.

XQ. 564. Can't you tell me?

A. I do not keep with me a record of my books for thirteen years.

XQ. 565. Approximately?

A. No, I could not tell you within any amount. I can tell you by my records what the stuff cost at that time, and ten per cent could be added, and then you would have the figures.

XQ. 566. You said that the stuff cost you two dollars, approximately.

A. I got that right here.

XQ. 567. Then you add ten per cent and that would make it $2.20?

A. Yes, $2.20 later on.

XQ. 568. How much did you charge the War Department for salvarsan?

A. I think I charged them the cost price, $2.50, something of that kind, or $2.20, and offered them the plant when I started working it.

XQ. 569. Did you not charge them $4.50 an ampule?

A. I do not think I did, except possibly towards the end, when they had none at all and everybody paid that.

XQ. 570. You see, I did not ask you as to what the condition was; I asked you how much you charged the War Department. Now, did you not charge them $4.50?

A. I do not know, unless you give me the dates and the invoice. I will tell you then.

XQ. 571. Now I read to you a letter from W. C. Gorgas, Surgeon General of the United States, dated April 25, 1917—which you see was shortly after we went into the war.

A. What date?

XQ. 572. April 25, 1917. This will be found in the Congressional Record at page 4849, under date of July 9, 1917.

Mr. Anderson: One moment, Mr. Kresel. Let me get that clear, will you? You mean in the Congressional Record of debates in Congress?

Mr. Kresel: Yes.

Mr. Anderson: Have you got the record here?

Mr. Kresel: We probably have it. I have a photostat of it. Do you want me to produce the original?

Mr. Anderson: No, the only thing is that I want to be sure where it is so that I can follow it.

Mr. Kresel: I am giving it to you.

Mr. Anderson: You see, I have not got the Congressional Record.

Mr. Kresel: I will produce to you the original. I think we have it.

Mr. Anderson: I am perfectly willing to take your photostat or a copy, but I wanted to get something that I could compare with myself, look at it.

Mr. Kresel: This letter is headed "War Department, Washington, April 25, 1917," and it is addressed to Honorable Henry W. Wilson, House of Representatives, Washington, D. C.

Mr. Anderson: I do not think that would be admissible.

The Court: No, Colonel Anderson wants to know where in the Congressional Record he may find it, the proceedings of what date or what volume.

Mr. Kresel: I have given him the date, your Honor, July 9, 1917, page 4849 of the Congressional Record.

Mr. Anderson: Then I would note the further objection, if your Honor please, that it does not appear that this letter was addressed to the witness or that he ever heard of it, and therefore the counsel can ask him any question as to any matter contained in the letter but I do not know quite on what principle the letter can be put into the record, and therefore I shall have to object to the letter going into the record as not being a matter with which this witness has any concern.

Mr. Kresel: I shall connect it, your Honor, with this witness, and if the Colonel wants me to ask him about it preliminarily, I will.

The Court: But I do not recall at the moment what your question is. Will you state it, please?

Mr. Kresel: I asked him how much he had charged the Government for this arsphenamine or whatever it was.

The Court: There having been an objection by Colonel Anderson to the reading of the letter, at this stage of the inquiry I think the objection is well taken.

Mr. Anderson: I make that objection because I have never seen the letter and therefore I could not consent to it going into the record.

Mr. Kresel: I am not offering it in the record. Perhaps Colonel Anderson misunderstands me. I do not think he would want to object to this. I am reading it to ask this witness whether that does not refresh his recollection as to the date when he charged the Government $4.50 for his property.

Mr. Anderson: If counsel reads it, it necessarily goes into the record. I object to the letter being read into the record because, if the witness had written the letter or it was addressed to him, it would be a subject for refreshing his recollection, but a letter between General Gorgas and a member of a committee of Congress certainly has nothing to do with the recollection of this witness.

Mr. Kresel: I will offer it in a minute again. Let me ask him another question.

XQ. 573. You appeared before a committee of Congress which was headed by Honorable Henry W. Watson, that was considering the enactment of the Trading with the Enemy Act?

A. I did. The Trading with the Enemy Act?

XQ. 574. Yes.

A. I do not think Watson headed that.

XQ. 575. Then what was it?

A. Watson headed the Finance Committee on the tariff hearings.

XQ. 576. When?

A. You can go to the hearings of Congress. You have the records.

XQ. 577. 1917.

A. That was not Watson, to my knowledge, who was the Chairman of that meeting. I remember that committee. The Committee on Judiciary, I think it was, of the Senate.

XQ. 578. But you appeared before Mr. Watson's Committee, did you not?

A. I do not think Watson was Chairman of that Committee.

XQ. 579. Did you not write a letter to Mr. Watson?

A. I do not recall, unless you have it in the record. I wrote several on dyestuffs.

XQ. 580. You do not recall anything but what I show you here, do you?

A. I do. I recall everything that I know without your showing it to me.

XQ. 581. Do you not recall writing to Representative Watson protesting——

A. Oh, Representative Watson? I thought you said Senator Watson.

XQ. 582. I did not say Senator Watson; I purposely refrained from saying that. Now we will get it straight.

A. You mean Watson of Pennsylvania?

XQ. 583. That I am not aware of—where he comes from. Henry W. Watson, in the House of Representatives.

A. Not the Senate.

XQ. 584. You remember writing Watson?

A. Yes, I had a communication with him.

XQ. 585. You remember writing him in connection with these salvarsan patents?

A. Regarding a bill he had about the abrogation of the patents.

XQ. 586. You wrote him?

A. I did, sure.

XQ. 587. And you appeared before his committee, did you not?

A. I do not think so.

XQ. 588. Did you not testify before his committee?

A. I testified before the Senate Committee, not before the House Committee, as I remember it.

XQ. 589. But it was with reference to this legislation?

A. No, I appeared before the Senate Committee on the Alien Enemy Act. I do not believe the House had any hearing at that time.

XQ. 590. Do you not remember appearing before the Committee on Interstate and Foreign Commerce of the House of Representatives May 11, 1917?

A. I do not recall, but I would be glad to look at the record and see. I appeared so many times before Congress.

XQ. 591. And did you not address a letter to Honorable Charles Warren in the matter of the German patents (handing witness paper)?

A. I should not be at all surprised. I do not know that I appeared there, though. I do not know that I appeared. Let me see. (Examines paper). Yes, I recall that. Mr. Warren was in charge of the hearings on the Trading with the Enemy Act. I recall that.

XQ. 592. And did you not appear before the subcommittee of the Committee on Commerce of the Senate?

A. Yes, certainly, that is what I am talking about.

XQ. 593. With reference to this same legislation?

A. Yes, but not the House.

XQ. 594. At the time when Congress had under investigation the question of what to do with these German patents you were interested in the salvarsan patent?

A. Certainly.

XQ. 595. And do you not remember that you were questioned as to the price at which you were selling the product?

A. Yes, I would assume so, naturally.

XQ. 596. And do you not remember that it was made to appear there that you were charging the Army of the United States $4.50 an ampule for this?

A. I was charging everybody $4.50 after the war started, because of the increased cost of getting it. Everybody paid $4.50, the highest ever charged.

Mr. Kresel: I ask your Honor to strike out after the words "I charged everybody $4.50."

The Court: Let it be stricken out. Mr. Kresel does not want your reasons.

The Witness: I beg your pardon.

The Court: If he does he will ask you for them. Just answer his question as directly as you can.

The Witness: I will keep within bounds.

XQ. 597. You had access to these salvarsan patents from the day they were taken out, did you not?

A. Certainly. Every chemist had.

XQ. 598. You had?

A. I had.

XQ. 599. You could read them; they were in English?

A. Yes.

XQ. 600. You had a brother who was a chemist?

A. Yes.

XQ. 601. I assume a very good chemist?

A. Yes, I admit it.

XQ. 602. And he was in charge of your factory?

A. Yes.

XQ. 603. What is his name?

A. Gustav P., Ph.D.

XQ. 604. You sent him abroad in 1916, did you not?

A. Yes, sir; early in 1916.

XQ. 605. You sent him abroad to the Farbwerke-Hoechst Company at Hoechst am. Main to learn how to make salvarsan?

A. To see the process they were using so that we could manufacture it here; yes, sir.

XQ. 608. And he spent four months there, did he not?

A. About that.

XQ. 607. And when did he return?

A. About four months after he left. I think some time in May or June of the same year.

XQ. 608. May or June of 1917?

A. 1916.

XQ. 609. When did you first produce any salvarsan here in the United States?

A. At the end of 1916, I should say.

XQ. 610. Not what you should say; I want to know exactly.

A. To the best of my knowldge at the end of 1916 in the laboratory we produced it.

XQ. 611. I want to know the date when you first produced any salvarsan in the United States.

A. I have no doubt at the end of 1916 we were making sample lots right along and testing them out.

Mr. Kresel: May I have that stricken out, your Honor?

The Court: Yes.

Mr. Kresel: I am asking simply for a date.

The Court: Strike out the answer and the stenographer will read the question.

XQ. 612. (XQ. 611 repeated as recorded above).

A. I do not know the exact date.

The Court: Answer that as nearly as you can.

The Witness: Towards the end of 1916 we had the product finished and ready for the market. I can not give the exact date, your Honor.

The Court: Is that what you want, Mr. Kresel?

Mr. Kresel: Yes, I will take that.

XQ. 613. Did you sell any salvarsan that you made in the United States, in 1916?

A. No, not until June, 1917.

XQ. 614. When did you first sell any salvarsan
do not know offhand. Early in 1917.
that you made in the United States?

A. I can give you the records from my books. I

XQ. 615. Will you on Monday—

A. Not Monday.

XQ. 616. When you return here—please wait until I finish my question—be prepared to state from your books the date when you first sold any salvarsan that you made in the United States?

A. I can not on Monday, Mr. Kresel. I can not get the books. Tomorrow is Sunday and I do not know how to get at them. I will do it on Tuesday, if you will give until Tuesday.

XQ. 617. Before you sold or produced any salvarsan in the United States there was somebody else that produced it?

A. Yes, sir.

XQ. 618. Who was that?

A. That was the Dermatological Research Laboratories in Philadelphia, whose product I sold—bought and sold.

Mr. Kresel: I ask that the words "whose product I bought and sold" be stricken out.

The Court: It will be stricken out.

XQ. 619. When to your knowledge did the Dermatological Institute first produce and sell this product in the United States?

A. The latter part of 1915 or the beginning of 1916. The latter part of 1915, I should say.

XQ. 620. When you learned that they were producing this product did you not notify them that they were infringing your patents?

A. Probably—in 1915.

XQ. 621. Are you guessing at that?

A. No, I am quite sure I told them.

XQ. 622. All right, then please do not say probably. And did you not threaten them with prosecution for infringing your patent?

A. I do not think I did, no. I made an agreement with them by which I sold their product.

MR. KRESEL: I ask that everything after "I do not think I did" be stricken out.

THE COURT: He said no. Let that stay, but strike out the remainder.

XQ. 623. Did you not finally say to them that you will permit them to go on and manufacture the product only so long as you could not get it from Germany?

A. They agreed to do that.

THE COURT: Mr. Metz, you will have to answer those questions. I do not believe that you are intentionally evading.

THE WITNESS: I am not, your Honor.

THE COURT: No, I do not think you are.

THE WTNESS: I can not recall the exact conversations.

THE COURT: Let the answer be stricken out, and repeat the question.

XQ. 624. (XQ. 623 repeated as above recorded).

A. There was an agreement made to that effect.

THE COURT: Strike out the answer. You will have to answer that, Mr. Metz.

THE WITNESS: Well, I suppose I did, yes. Probably, yes.

THE COURT: Now, Mr. Metz, you are not supposing, understand.

THE WITNESS: Well, I did, then, your Honor —put it that way—because I got the agreement here.

THE COURT: Answer these questions as directly and specifically as you can, and I am going to watch your answers. Proceed, Mr. Kresel.

MR. KRESEL: I should like to proceed, your Honor, but I am anxious to catch a train at 3:30 if your Honor will so far indulge me.

THE COURT: The time is up, I did not realize it. We will adjourn court until Monday morning at 8:30 o'clock Standard time.

(Whereupon at 3:05 o'clock P. M. Standard time, adjournment was taken until Monday, June 25, 1923, at 8:30 o'clock A. M. Standard time.)

(CONTINUATION OF TESTIMONY ON JUNE 25, 1923)

HERMAN A. METZ resumes the stand.

CROSS-EXAMINATION.

By MR. KRESEL (Continued):

XQ. 625: You said, among other things on Saturday last, that while you were the sole agent for the distribution and sale of salvarsan prior to 1914 in the United States, some did come in not through you. What did you mean by that—smuggled in?

A. Not necessarily smuggled, but infringing; that is, dealers bought it and brought it in, sold it here, infringing the patent, infringing my rights.

XQ. 626. At all events, since the last shipment by the Deutschland in November, 1916, you have not imported any salvarsan?

A. Since when?

XQ. 627. November, 1916.

A. Oh, I have imported since the Armistice, yes, one or two lots.

XQ. 628. What year?

A. I presume in 1922 some came in. I am not certain. I would have to go to my records—1921 or 1922.

XQ. 629. And those you imported having obtained them from the manufacturer, the Farbwerke-Hoechst Company in Germany?

A. Those that we imported came from there direct under the condition of the Public Health Service.

XQ. 630. Have you been importing any dyes recently?

A. Yes, sir.

XQ. 631. You are importing considerable, are you not?

A. Not just now. We had all we could get orders for.

XQ. 632. When was the last importation that you received of dyes?

A. They are coming right along from unoccupied Germany.

XQ. 633. You are importing right now?

A. If I can get orders and they can be shipped, yes. I have orders there now.

XQ. 634. In 1919 were you importing any dyes or salvarsan?

A. 1919? No, that was—we probably were at peace; could not.

XQ. 635. At that time the importing business was dead, was it not?

A. Practically, except from Switzerland and other countries. From Germany it was dead.

XQ. 636. Prior to the outbreak of the European war there were six large dye factories in Germany, weren't there?

A. There were six plants known as "The Big Six." There were other plants, but there were six large ones. There were several smaller ones.

XQ. 637. You have always, when you have testified about them, called those the "Big Six"?

A. They were known as the Big Six.

XQ. 638. And those were the Badische, and the Bayer, and the Berlin; that was one group?

A. Yes, sir.

XQ. 639. And then there was another group of Hoechst and Cassella, and Kalle?

A. Yes, sir.

> MR. ANDERSON: I simply want to make the statement on the record that if counsel takes the witness outside of the direct examination he makes him his own witness.

> THE COURT: As I indicated on Saturday, I think any testimony with respect to the German dye or chemical industry is relevant to the question of value.

XQ. 640. And as you have stated, in 1916 there was a combination in Germany of these six and several others into what is known as the Interessen Gemeinschaft?

A. I have no personal knowledge of such fact, except through the matters in the record put there by Mr. Choate mainly. I have no personal knowledge of such matters—at that time.

XQ. 641. Have you now?

A. Yes, I have been over there and found out since 1920.

XQ. 642. That that is a fact?

A. That it is a fact today, the Interessen Gemeinschaft is a combination of all the plants, which includes The Big Six.

XQ. 643. The Big Six and others?

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arrangement would be written; and I will have to object to any testimony of an oral character as to an arrangement between the corporations or as to their organization, consolidation, or otherwise.

THE COURT: I think that objection is not well taken. You may take the answer, and an exception may be noted.

XQ. 649. You said "no, sir."

A. I said "no, sir," there was no such restriction.

XQ. 650. What was the restriction.

A. The restriction, as I understood it, that they exchanged abroad and my firm was allowed a certain percentage of the total sales, and Mr. Poucher's firm, the Badische, the other—the other two-thirds, and the thing was regulated abroad.

XQ. 651. Wasn't it that if you made a certain amount of sales over and above the amount allowed that your German principals had to make an allowance therefor to the Badische?

A. Yes, sir, that is what I said. I was not restricted. I could sell the whole business if I could; had no influence upon me personally, or my company.

XQ. 652. And your return on the sales of indigo, as an example here, were either increased or diminished in accordance with whether you sold more or less than the amount agreed upon between your principal and the others?

A. Mine were not, because I claim—

XQ. 653. Whose were?

A. I do not know. I had a profit on all I made by an arrangement with abroad.

XQ. 654. Did you not deduct from your returns that you made to your principals abroad, an allowance for an excess of sales made by you here?

A. I got it back from them over there.

XQ. 655. You got it back from them?

A. Yes, sir; that was a sort of extra account, part of the extra account that is mentioned in the agreement.

XQ. 656. I will come to the extras.

A. All right; that is the way it was.

XQ. 657. These dye factories abroad, in addition to turning out dyes, also turned out pharmaceuticals?

A. Some of them. The Hoechst people did.

XQ. 658. Among such pharmaceuticals you have testified were salvarsan and novocain. How about luminal?

A. That was the Bayer preparation. I know that.

XQ. 659. That is a dye factory?

A. That is a dye factory.

XQ. 660. And how about aspirin?

A. That is being made here by the Bayer plant in Albany, of which I have no personal knowledge except from the market reports.

XQ. 661. Last Saturday you testified that the Dermatological Institute late in 1915 started manufacturing this product which you are selling under the name of salvarsan?

A. A product which was sold for the same purpose.

XQ. 662. And a product that was just as efficacious?

A. Was said to be. I have no knowledge as to that. It was so considered by physicians in general. It differed somewhat from salvarsan.

XQ. 663. And when they started to manufacture it, you testified that you told them they were infringing your patents?

A. Probably.

XQ. 664. And when you speak of your patents, you mean these patents covering salvarsan as to which you undertook to give an estimate of the value last Saturday?

A. I didn't say my patents. I said *the* patents; the same patents under which I was a beneficiary in this country.

XQ. 665. You were the beneficiary of the patents in this country?

A. Yes.

By Mr. Anderson:

Q. 666. May I ask whether that arrangement was in writing?

A. I was the general agent for all their product.

Q. 667. I mean the arrangement between you and the Dermatological?

A. Yes, it was a signed contract and that is in the record.

The Court: Is it your understanding, Colonel Anderson, that cross-examination is limited to the disclosure of facts in writing and that the witness can not be asked to orally testify?

Mr. Anderson: As to any facts which are in a written document, the rule of the best evidence is exactly the same on cross that it is on direct. It must be the best evidence. The witness can not answer a question of knowledge without putting in the best evidence, if objection is made to the secondary.

Mr. Kresel: I am not asking him for the contents of the document or what the arrangement was. I am simply asking him what he said to the other people.

The Court: My understanding of that rule differs from yours, Colonel Anderson. You may be right. But I think cross-examination is not so restricted and the objection is also overruled on the ground that the contents of those documents is not now called for. Exception noted.

By Mr. Kresel:

XQ. 668. After telling them that they were infringing the patents of which you were the beneficiary in the United States, you told them that you would not interfere with their manufacture of this product as long as you could not get a supply from Germany?

A. Certainly, for the benefit of the physicians.

XQ. 669. Certainly. Please do not go on. Then you got a supply from Germany by the Deutschland?

A. No, sir. None came on the Deutschland.

XQ. 670. Well, in some other way?

A. Yes, some other way.

XQ. 671. And when you got a supply from Germany, did you not demand that the Dermatological Institute cease manufacturing it?

A. Under the agreement, probably, yes.

Mr. Kresel: May I have that answer stricken out, sir?

The Court: Let the answer be stricken out and the stenographer will repeat the question.

(XQ. 671 repeated as above recorded).

A. I notified them that I had a supply.

The Court: Let the answer be stricken out and the stenographer repeat the question.

A. Yes, sir.

The Court: You remember the caution of Saturday, Mr. Metz?

The Witness: Yes, sir.

The Court: I am not going to caution you any more.

XQ. 672. Did you also demand from them damages and an accounting for infringing the patents?

A. I do not recall that. I would have to refresh my memory.

XQ. 673. And did you not call upon them to dismantle their factory so that they could not make any more of that product?

A. I do not recall that either.

XQ. 674. On the 5th day of December, 1916, you made a written agreement with the Dermatological Institute, did you not?

A. I have the date.

XQ. 675. Have you that agreement?

A. I have a printed copy of it.

XQ. 676. Well, you introduced a copy of it before the Committee on Interstate and Foreign Commerce of the House of Representatives, 65th Congress. I now show you that copy beginning there (indicating) and ask you to state—

A. I want to get the date on this first.

XQ. 677. The date is on the following page, 5th day of December, 1916.

A. Is it the same one?

XQ. 678. Yes. Let me use my copy and you can follow me on your copy.

A. Yes, sir.

XQ. 679. I read from this agreement:

"Whereas Farbwerke, vormals Meister Lucius and Bruning, Hoechst on the Main (hereinafter designated for convenience and easy reference "The Foreign Corporation") is a foreign corporation duly organized and existing under the laws of Germany, Europe, and is the owner of, or the patentee, named in, certain patents of the United States, issued March 7, 1911, and November 11, 1913, and numbered 986,148 and 1,078,135, respectively, for a specific for syphilis, and process of making the same, which specific is known as diaminodioxyarsenobenzol, and when manufactured by or under instruction by The Foreign Corporation is known by the trade-mark 'Salvarsan' and '606' and 'Neosalvarsan;' and whereas Herman A. Metz"—that is yourself, is that right?

A. Yes, sir.

XQ. 680. "(hereinafter designated for convenience and easy reference 'Mr. Metz') is the President of Hoechst Company." Now, I will stop there. The Hoechst Company was the Farbwerke-Hoechst Company?

A. A New York corporation.

XQ. 681. "and represents that he is the sole owner of all of the capital stock issued by Hoechst Co. and that Hoechst Co. is a domestic corporation, duly organized and existing under the laws of the State of New York, and is solvent and has no indebtedness, and that The Foreign Corporation (that is the Farbwerke-Hoechst Company abroad) has assigned to Hoechst Company"—that is the New York corporation, is that right?

A. Yes, sir.

XQ. 682. "the sole and exclusive right of exploitation in the United States of America of salvarsan, and that Hoechst Co. is the sole licensee for the United States and Canada for salvarsan and for other modern medicinal preparations of The Foreign Corporation." Is that right? I want to stop there. That recital is true, is it not?

A. Yes, sir.

XQ. 683. The Farbwerke-Hoechst Company, a New York corporation, of which you were President, and all of whose stock you claimed to own, had therefore the sole and exclusive right of exploitation in the United States of America of salvarsan?

A. Yes, sir.

XQ. 684. And it continues to have that right to this very day?

A. Yes, sir.

XQ. 685. And this Hoechst Company was the sole licensee for the United States and Canada for salvarsan and for other modern medicinal preparations of

The Foreign Corporation; that was true when this contract was drawn?

A. Yes, sir.

XQ. 686. And is true to this day?

A. It is true as far as they control those products; yes.

XQ. 687. It was true in 1918?

A. Not after the seizure of the patents.

XQ. 688. It was true in 1918, was it not?

A. 1918, during the war?

XQ. 689. Yes?

A. All connections were broken at that time——

XQ. 690. I am not asking you about the legal construction. Did you and the Farbwerke-Hoechst Company abroad make any agreement in writing or otherwise which changed between you the status that you had occupied?

A. Not from 1914 on, after the World War started.

XQ. 691. That is all I ask.

A. Yes, sir.

XQ. 692. Now, you go on to recite in this agreement, "Whereas Mr. Metz and Hoechst Co. have requested The Laboratories"—that is the Dermatological Institute, is it not?

A. Yes, sir.

XQ. 693. "to discontinue the compounding and sale of arsenobenzol and to sell to their nominee about 12,000 ampules of arsenobenzol now held in stock by The Laboratories." That was true?

A. Yes, sir.

XQ. 694. In other words, on the 5th of December, 1916, you requested the Dermatological Institute to discontinue making that drug, and to sell whatever stock of it they had on hand?

A. Right; according to the agreement, yes. That was the arrangement arrived at.

XQ. 695. "And whereas," you say, "The Foreign Corporation and Hoechst Co. claim that the manufacture of arsenobenzol is an infringement of the said patents and other patents, recipes, and processes owned by them, and had demanded damages and an accounting of the profits arising from the sales of arsenobenzol, but which claim and the validity of which patents The Laboratories do not admit and which demand The Laboratories have refused." Was this true, that before making this agreement you did demand damages for infringement of the patents from The Laboratories?

A. Yes, sir.

XQ. 696. And I read on: "Whereas, at the request of Hoechst Co. and Mr. Metz, The Laboratories have dismantled that part of their laboratory which was constructed specially for the manufacture of arsenobenzol." Does that refresh your recollection as to your demanding that they dismantle their factory?

A. The matter was in agreement between their counsel and my counsel.

XQ. 697. Did you make that demand?

A. I would say yes, under the agreement, naturally, without anything specifically.

XQ. 698. I now read the paragraph marked 1, which says: "The Laboratories and Drs. Schamberg, Raiziss, and Kolmer shall not and will not, during the life, term, or non-suspension of said patents or either of them, either jointly, severally, individually, or directly or indirectly, except as hereinafter provided in paragraph 2, continue the compounding, preparation, or sale in the United States of America of arsenobenzol."

A. Yes, sir.

XQ. 699. That was the demand that you made upon the Dermatological Institute, namely, that they must cease to make this product because your principal in Germany owned the patents and you were the beneficial owner thereof in the United States; is that true?

A. That is practically true, except as provided in paragraph 2.

XQ. 700. And then the exception. I am coming to that.

A. Thank you.

XQ. 701. The exception is contained in paragraph 2, and is as follows: "The Laboratories shall have the right to compound arsenobenzol for the purposes of experiments in Dr. Schamberg's laboratory, and also for use only on charity patients, without charge for medicine or service in the hospital clinic of Dr. Schamberg, as long as said Dr. Schamberg is in charge of said hospital clinic. But the provisions of this paragraph are limited to one laboratory and one hospital clinic at a time."

A. Yes, sir.

XQ. 702. In other words, as long as Dr. Schamberg was willing to treat poor people who could not pay, you were not going to interfere with him in making enough to supply the poor people, is that it?

A. I presume that was the intent of this paragraph; certainly.

XQ. 703. But you provided in this agreement, did you not, that you had the right to call on Dr. Schamberg and his laboratory to manufacture for your use any amount of this stuff that they could manufacture?

A. I think that was provided.

XQ. 704. And you were buying it from them at $1.20 per ampule, were you not?

A. In 50,000 ampule lots.

XQ. 705. I did not ask you in how many lots.

A. No, sir; $1.50 for the 06, which was the average size.

XQ. 706. Didn't you buy it at $1.20 for the four-ounce size?

A. For the 04, yes, the smaller size.

XQ. 707. And for the six-ounce you paid $1.50?

A. Not six-ounce; six-tenths of a gram.

XQ. 708. $1.50.

A. $1.50 I paid.

XQ. 709. And you were selling it at $4.50?

A. No, sir; I was selling it for $2.50 to the physicians in small quantities.

XQ. 710. $2.50?

A. In small quantities. I had to repack it and everything else.

XQ. 711. And wasn't the reason that you sold it only at $2.50 because Dr. Schamberg insisted——

A. No, sir.

XQ. 712. Wait a minute. ——insisted that the only condition upon which he would give you any of this stuff was that you would charge no more than $2.50?

A. I don't say that is so. I agreed to that price. That was quite ample to cover my expense and profit.

XQ. 713. Didn't Dr. Schamberg insist that you should place a maximum on the sales price at $2.50?

A. I probably agreed with him on that.

XQ. 714. What?

A. I probably agreed with him as to that.

XQ. 715. He asked you and you agreed with him?

A. I don't know. I may have made the suggestion myself.

XQ. 716. Did you volunteer it?

A. Possibly, yes.

XQ. 717. At all events that was an agreement between you?

A. It was an agreement, certainly, and was carried out.

XQ. 718. You say here that you were the sole beneficiary in the United States of these patents and in the agreement you described yourself as having the sole and exclusive right of exploitation in the United States of America, as the sole licensee for the United States and Canada for salvarsan?

A. Where is that, Mr. Kresel?

XQ. 719. You will find it in the recital to the agreement that we have just been discussing. Would you like me to read it to you again?

A. I would like to be sure of the wording; that is all.

XQ. 720. Well, I will read it to you. Will you follow me?

A. Yes.

XQ. 721. The language is: "That The Foreign Corporation has assigned to Hoechst Co. the sole and exclusive right of exploitation in the United States of America of salvarsan, and that Hoechst Co. is the sole licensee for the United States and Canada for salvarsan."

A. Yes, sir.

XQ. 722. That is what you say in the agreement?

A. Yes, sir.

XQ. 723. Did you get that sole license in writing?

A. Yes, I had it for years.

XQ. 724. Have you got it here?

A. I put it in the contracts, all up to the last one, which I haven't got a copy of with me.

XQ. 725. I do not know what contracts you are talking about.

A. The contracts with the people abroad.

XQ. 726. Show me in your contracts here what you are referring to.

A. I will take the original contract. That was always continued. 1902 is the original agreement. Here is one paragraph in the contract of 1902.

XQ. 727. Wait a minute, please, so that we will identify the instrument.

A. That is the original contract.

XQ. 728. You are reading from the instrument which is marked Defendant's Exhibit C for Identification. Now go on and give me the page, please.

A. On page 8.

XQ. 729. Now, go on.

A. (Reading.) "And the said Farbwerke agrees that if the said Metz faithfully performs his obligations under this agreement, the said H. A. Metz & Co.,"—this covered dyestuffs and the same holds good for chemical and other products.

XQ. 730. I did not ask you about dyestuffs. I am talking about salvarsan.

A. That is all their products.

XQ. 731. If that refers to salvarsan, of course, you will read it.

A. Salvarsan was not made in 1902. My agreement is to handle their products. That continued to date, practically.

XQ. 732. Is there anything in that portion of the agreement that you want to read about salvarsan?

A. No specific reference. Their products are mentioned.

XQ. 733. Please tell me what you have in writing——

A. A contract.

XQ. 734. Wait until I finish. ——on which you base the claim in this agreement with Dr. Schamberg that you had the exclusive license in the United States for salvarsan?

A. I had no specific—I had a contract for all their products in the United States, everything they made.

XQ. 735. I will broaden my question. I will let you read anything that you have in any agreement, which you say sustains that claim. Now go on and read anything that you want.

A. (Reading.) "For the term of five years from said January 1st, 1903, shall have the exclusive sale of the products of the said Farbwerke in the United States of America; and the said Farbwerke during the said term, will not directly or indirectly sell any of its products to any other person, association or corporation in the United States of America, without the written consent of the said Metz first obtained." That was continued in each contract, as a renewal of the contract from the original contract of 1902.

XQ. 736. What is the date of the last contract you had with your principals?

A. The last was some time in 1913.

XQ. 737. Which you say you have not here?

A. Which is probably in the Court records in New York.

XQ. 738. You haven't it here?

A. No, I haven't it here.

XQ. 739. You had the contract of 1912 here?

A. I have all the previous ones here.

XQ. 740. Look at the 1912 contract and read me what there is there about it?

A. Here is a paragraph in here.

XQ. 741. Page what?

A. Page No. 11.

XQ. 742. What is the number of the exhibit?

A. It is the agreement of 1912; 22nd day of July, 1912 (Defendant's Exhibit F for Identification), paragraph 11.

XQ. 743. Go on.

A. (Reading.) "And the said German corporation agrees that if the obligations under this agreement by the other parties to be performed are faithfully performed by them, the said H. A. Metz & Co., so long as the said Metz remains President and General

Manager as aforesaid, shall have the exclusive sale of the products of the said German corporation in the United States of America; and the said German corporation during the said term will not, directly or indirectly, sell any of its products to any other person, association or corporation in the United States of America, without the written consent of the said Metz first obtained," and so forth.

"And during the said period it will sell its products to the said H. A. Metz & Co. at their lowest market prices, and will not, directly or indirectly, sell any of its products to any person, association or corporation in any part of the world, except to European manufacturers of goods similar to the products of said German corporation, at a lower price or upon more favorable terms than those given to the said H. A. Metz & Co."

XQ. 744. Is that all you want to read?

A. (Reading.) "This paragraph is understood to mean that the German corporation will, as to prices, in no event permit underselling of said H. A. Metz & Co. in the markets of the United States; but in case of extraordinary or special instances, arising in the sale of the products of the German corporation in other countries, when it is necessary to meet special competition in such other countries, the German corporation may, in order to meet such special competition, sell at prices below the 'lowest market price' above referred to, which 'lowest market price' means the general and ordinary lowest market price."

XQ. 745. Now, is that all?

A. Well, that is the agreement I had with them; that I had the sole right to sell all their products.

XQ. 746. Now please put the contract away if you are through with it.

A. Here is the pharmaceutical end, if you want that.

XQ. 747. I want you to read whatever you want to read in answer to that question.

A. Well, the question was, did I have the exclusive rights to the sale of their goods in this country.

XQ. 748. You misunderstood the question then.

A. What is the question?

XQ. 749. I will read it to you again. Were you, as you recited in this agreement with Mr. Schamberg, the sole licensee for the United States and Canada for salvarsan?

A. Yes, including their other products; sole licensee.

XQ. 750. Or were you simply an exclusive agent to sell that product? Now, which was it?

A. I had the license to sell under the agreement and was the exclusive agent, both. Nobody else had a right to sell it. I think that answers the question.

XQ. 751. You claim to have had a license, do you?

A. Will you define "license?"

XQ. 752. I would like you to do that. You were the one who made this agreement, were you not?

A. The counsel; my counsel and his counsel.

XQ. 753. Did you have a license or didn't you?

A. I had an agreement to sell, which is a license to sell, certainly.

XQ. 754. Did you have a license to make?

A. Not at that time. In 1916—yes, I had a license to make in 1916. 1916, yes.

XQ. 755. When did you get that?

A. I got that when my brother went to Europe in January to May, in 1916.

XQ. 756. And you had the exclusive license to manufacture in the United States, did you?

A. I had their permission under the patent to work those——

XQ. 757. Answer my question. Did you have an exclusive license to manufacture salvarsan in the United States?

A. Nobody else had to my knowledge.

XQ. 758. And that is what you were referring to in this recital that I have read to you?

A. Undoubtedly.

XQ. 759. Was that license in writing?

A. That license was in writing in Europe.

XQ. 760. Have you the writing?

A. No. I can explain why, if you will let me.

XQ. 761. And you say it was made when?

A. Early in 1916, while my brother was in Europe.

XQ. 762. And was it to be for the life of the patent?

A. There was no stipulation. I was allowed to make salvarsan for use in this country.

XQ. 763. Was it for the life of the patent?

A. I so assume.

XQ. 764. You understood that to be so?

A. I understood they could stop me if they wanted to later on, but I had a license to make it and did make it.

XQ. 765. I do not want your assumptions. Did you not claim to have the exclusive license for the life of the salvarsan patent to manufacture the product in the United States?

A. I do not know as I claim the life of the patent.

XQ. 766. How long did you claim?

A. It did not occur to me. I had a right to make it; that is all.

XQ. 767. Exclusive right?

A. The exclusive right from the patentees.

XQ. 768. You had that right in 1916, did you not?

A. Yes, sir.

XQ. 769. And in 1917?

A. Yes, sir.

XQ. 770. And in 1918?

A. Yes, sir.

XQ. 771. And in 1919?

A. Yes, sir.

XQ. 772. And in 1920?

A. Yes, sir.

XQ. 773. And up to this very day?

A. Up to date. And I am still doing it.

XQ. 774. And so when the Alien Property Custodian sold this patent to The Chemical Foundation, it was subject to that exclusive license of yours, was it not?

A. I so assume.

XQ. 775. You not only claimed that you had the exclusive license to manufacture salvarsan here, but you claimed that you owned the patents, did you not?

A. No, sir; I did not.

XQ. 776. Never?

A. I owned the trade-marks, not the patents.

XQ. 777. Did you never claim you owned the patents?

A. Never claimed I owned the patents. If I did, I was mistaken and didn't know what that meant.

XQ. 778. Well, you would not have made a mistake like that, would you, Colonel Metz?

A. I do not assume so.

XQ. 779. No, of course not.

A. The trade-marks I owned.

XQ. 780. So that, as you sit there, you do not recall any occasion when you ever made the claim that you owned the patents?

A. I do not recall such a claim. If I did, it was a mistake.

XQ. 781. I show you a letter to Dr. Sidney R. Miller dated May 9th, 1918, addressed to Sidney R. Miller, 11 East Chase Street, Baltimore, Maryland, signed by you. I just want to know whether you wrote it? Is that your signature?

A. It looks like it. It is a photostat of what may be my signature.

XQ. 782. I will read to you from this letter: "In the meantime, Dr. Schamberg here had begun to place his articles on the market. After conference with him I agreed on humanitarian grounds not to interfere with his product if I had all the patent rights and powers to sue and recover from him." Did you write that?

A. I had power to——

XQ. 783. Did you write that?

A. I did, yes, undoubtedly, and had the right.

XQ. 784. That is, you had all the patent rights, did you?

A. To sue and recover.

XQ. 785. Did you have all the patent rights?

A. No, but I had a power of attorney to sue and recover.

XQ. 786. You say you had a power of attorney?

A. Yes, sir, to sue.

XQ. 787. Is that what you mean by saying that you had all the patent rights and powers to sue and recover?

A. Yes, sir, that is what I meant, exactly.

XQ. 788. Where is your power of attorney?

A. It is in the file. I had a suit in Detroit, and it is in the record.

XQ. 789. Where is it? I do not care anything about your suit.

A. I do not have it here. It is in the record.

XQ. 790. What record?

A. One of the Congressional hearings.

XQ. 791. Well, find it during the lunch hour.

A. Yes, I will try to find it, if it is here. If not, I will endeavor to have a copy.

XQ. 792. Now, I have read that to you. Does it refresh your recollection that there were other occasions when you claimed to own the patents?

A. I sued on one occasion.

XQ. 793. What?

A. I sued on one occasion.

XQ. 794. I did not ask you about that?

A. Well, that is an occasion.

XQ. 795. You mean you brought a suit as owner of the patent?

A. No, as attorney to bring under the patent—to sue under the patent, to stop importation from Canada.

XQ. 796. You brought a suit, anyway?

A. Yes, sir, my attorneys did.

XQ. 797. Where was the suit brought?

A. Detroit, as I recall.

XQ. 798. When?

A. I do not recall the date; some time——

XQ. 799. What is the name of the party whom you sued?

A. I think it was A. C. Smith. It is all in the record. You can find it.

XQ. 800. "A. C. Smith?"

A. I think it was; in Canada, who sent goods to this country, to Detroit.

XQ. 801. Whatever rights you had or claimed, you have had up to this very day, have you not?

A. I assume so, yes, sir, certainly.

XQ. 802. And had them in 1919?

A. Yes, sir.

XQ. 803. And these are substantial claims by you, are they not?

A. What do you mean "substantial claims?"

XQ. 804. That is English, is it not?

A. The claims——

XQ. 805. Don't you understand the word "substantial?"

A. Yes, but in that connection is it substantial?

XQ. 806. They are not trumped up by you, are they?

A. No, sir, if that is what you mean.

XQ. 807. So anybody that bought these patents bought them subject to your claims, didn't they?

A. To allow me to continue, certainly.

XQ. 808. Didn't they?

A. Yes, certainly.

XQ. 808 (continued). Subject to whatever claims you had. Now, weren't there other occasions when you claimed to own these patents. Think, now.

A. I do not recall until we entered the war what claims I made. After that I made no claims.

XQ. 809. You may have made them, without knowing?

A. No. I could refresh my memory. I have got records, undoubtedly—may have.

Mr. Anderson: I do not care to interrupt the examination here, but the witness has expressly said that all he claimed to have was a right to sue in order to protect his rights under those patents; but counsel has, I think, inadvertently said a number of times that the witness claimed to own the patents. The witness has expressly stated he did not make any such claim.

The Court: What is your specific objection?

Mr. Anderson: My objection was to the form of the question, in which he recited the evidence of the witness incorrectly. He has put upon the record a statement as coming from the witness which the witness's evidence does not support, and I am objecting to the form of framing the question.

Mr. Kresel: Do you want to strike out the answer, Colonel?

Mr. Anderson: With that statement on the record, I would not go back to strike the question out.

Mr. Kresel: All right, let us leave it.

Mr. Anderson: That will be all right.

XQ. 810. Do you now say, Colonel, that you did not own these patents?

A. I never owned the patents.

XQ. 811. Did you ever have any interest in them whatsoever except such as you have now disclosed?

A. None, except the right to manufacture under them, and to handle——

XQ. 812. The exclusive right?

A. The exclusive right from the people abroad.

XQ. 813. Did you not have an agreement with the Germans who owned the patents that they should convey them to you?

A. No, sir, I tried to get them, but did not——

XQ. 814. Didn't you have such an agreement? You said, "No, sir," didn't you?

A. No, sir, I did not have.

XQ. 815. You appeared as a witness before the sub-committee of the Committee on Commerce of the Sixty-fifth Congress and there testified, and I shall read a portion of your testimony.

Mr. Anderson: At what time?

Mr. Kresel: Do you mean the date?

Mr. Anderson: Can you give it to me?

Mr. Kresel: October, 1917.

XQ. 815 (continued). I read to you the following: "I went over to Germany toward the end of 1914 and the beginning of 1915 and took up this question of transferring the patents. They had to consult with Professor Ehrlich and others. It was finally agreed that the patents should be transferred so that I could hold them." Is that true?

A. There was such an understanding——

XQ. 816. Is that true?

A. That is true, yes.

XQ. 817. And that agreement was made at the end of 1914 or at the beginning of 1915, was it?

A. At the end of 1914 when I was over there after the war started. It was a verbal agreement, to be carried out later on.

Mr. Kresel: May I, if your Honor please, have this witness not volunteer statements? I ask to strike out everything after "The end of 1914" as not responsive.

The Court: Read the question, please.

(XQ. 817 repeated as above recorded.)

The Court: What portion do you want stricken out, Mr. Kresel?

Mr. Kresel: The part in which he says that it was a verbal agreement to be carried out later on.

The Court: Let it be stricken out.

XQ. 818. You said on the same occasion: "I had our attorney some years before bring one suit against the infringer who bought the genuine German product and sold it in this country from Canada. I sued and enforced my sole rights in the patents against him." Is that true?

A. It should be "under the patents" instead of "in."

XQ. 819. Is that true?

A. I suppose I said that, yes. I said that undoubtedly.

XQ. 820. So you said before Congress that you had the sole rights in the patents, did you?

A. Under the patents is what I meant, no matter what I said.

XQ. 821. You testified before this committee also as follows: "After I got back from Europe I sent my brother over early in 1916, who is a trained chemist, for the patents, to have them finally transferred." Is that true?

A. Yes, sir; I intended to have it transferred.

XQ. 822. With your recollection now refreshed, do you recall any other occasion when you made the claim that you had the sole rights in the patents or that you owned them?

A. I never claimed to own the patents. I had the sole rights under them at all times. I made no secret of it but asserted it very often.

XQ. 823. And you made no secret of your claim to the sole rights in these patents, did you?

A. I had no rights in the patents. I had them under the patents, Mr. Kresel.

XQ. 824. The sole rights under the patents?

A. Yes, sir.

XQ. 825. When did you start to try to make salvarsan in the United States?

A. As soon as my brother got back from Europe with the data as to machines, and so forth.

XQ. 826. Well, when; in January, 1916?

A. Yes.

XQ. 827. You say he stayed there four months?

A. Approximately.

XQ. 828. That would bring it to May, 1916?

A. Approximately.

XQ. 829. So as soon as he returned you started to try to produce the product?

A. I started to install a plant, to buy machinery.

XQ. 830. Well, that was a preliminary step, of course.

A. Certainly; necessary to any production.

XQ. 831. When did you first produce salvarsan in the United States on a commercial basis?

A. I told you Saturday that I do not remember the exact date. I am having it looked up, when I first sold it. It was made in 1916. I will try to have the information for you later on.

XQ. 832. In what year?

A. The end of 1916. We made some in 1916, undoubtedly.

XQ. 833. When did you have it ready for the market?

A. I think early in 1917.

XQ. 834. Early in 1917?

A. I think so. I am getting the exact dates for you from New York. You requested that on Saturday and I am having that looked up.

XQ. 835. I show you a letter that you sent to Honorable Charles Warren, Assistant Attorney General, Department of Justice, under date of May 11, 1917 (handing witness). Did you send that?

A. I recall such a letter, yes. I assume this is a copy.

XQ. 836. I read from that letter, which is dated May 11, 1917, the following: "I have received from the German owners of these patents verbal permission to manufacture these products in this country and full information relative to the processes of manufacture; that I have the factory and machinery for such purpose and will be able to supply the market within the next month or two."

A. I so thought at that time.

XQ. 837. So in May, 1917, you thought you would be ready to supply the market either in June or July, 1917?

A. Yes, sir.

XQ. 838. That was more than a year after you started in to try to produce?

A. It took us months to get the machinery.

XQ. 839. It was a year after you started in to try to produce?

A. No, the year after I started to build the plant.

XQ. 840. All right, have it that way. Is it not a fact that you did not start to produce until June, 1918?

A. I must refresh my memory on that, Mr. Kresel. I am doing that. I am having these dates looked up in New York.

XQ. 841. Is it not a fact that during the last six months of 1918 you lost $38,000 in trying to make salvarsan?

A. I presume my records show that. I have got such a statement. Not in trying to make salvarsan.

XQ. 842. Listen, Mr. Metz, or Colonel Metz, I asked you a question.

A. Yes, sir.

XQ. 843. Is it the fact that during the last six months of 1918 in trying to make salvarsan you lost $38,000 on the transaction?

A. I did not try. I sold salvarsan for less than the cost of production, that is what it means, and at an agreed price with the Government. That is why I lost the money.

XQ. 844. Did you lose $38,000?

A. My records, I think show it. An examination of my books shows it—in one concern. I have those figures somewhere.

XQ. 845. And in 1918 your production of salvarsan was no good, was it?

A. Oh, no, I beg your pardon. It was as good as anybody else's, that went into the Government market. It passed the Government test or would not have gone into the market.

XQ. 846. Do you not remember the attack made on you by Dr. Sargent because when he used your stuff on five patients he almost lost them, they almost died?

A. I know they didn't know how to use it and had lots of deaths because they could not use the product.

XQ. 847. Do you not remember that article was printed in the Medical Journal and that you got your lawyers to write a letter to Dr. Sargent that you would hold him responsible for damages?

A. Yes, sir, because the same article was used elsewhere and proved satisfactory.

XQ. 848. And is it not a fact that as late as June, 1918, you did not know how to produce salvarsan?

A. I beg your pardon, I did know as well as anybody else.

XQ. 849. Is it not a fact that you got Dr. Schamberg to come and show you how to make it?

A. I did not. Dr. Stieglitz suggested it and we never got together.

XQ. 850. Did you not sign an agreement with Dr. Schamberg in June, 1918, to come and show you how to make salvarsan?

A. Dr. Stieglitz prepared some such agreement in the interest of the consumers of the country to get together and make a satisfactory product that was alike all around.

Mr. Kresel: I ask that the answer be stricken out.

The Court: The answer will be stricken out and the question repeated.

XQ. 851. (XQ. 850 read as recorded above). Just say yes or no, please.

A. I do not recall signing it. I remember such an agreement.

XQ. 852. Now let me show you a copy of it.

A. It was never carried out.

XQ. 853. I ask you do you recognize your signature on it (handing witness)?

A. Certainly, I am willing to do anything at all to satisfy you.

XQ. 854. Is that your signature?

A. Let me see it. Yes, that is my signature—a copy of it.

XQ. 855. Now I will read to you from this agreement.

Mr. Anderson: Will you have it identified, Mr. Kresel?

Mr Kresel: Yes I will just mark it for identification.

Same marked "Defendant's Exhibit G, for Identification."

XQ. 854. (continued) "The Dermatological Research Laboratories through Doctors Schamberg, Kolmer and Raiziss and others, having expert knowledge and experience concerning the manufacture of arsphenamine of a minimum and safe degree of toxicity agreed to place their knowledge and experience at the service of Mr. H. A. Metz and his laboratories without unnecessary delay and in a sincere effort to bring his product up to the standards demanded by the Government without delay, in such a way however, that the manufacturing of arsphenamine of the Dermatological Research Laboratories shall not be crippled or interfered with. To accomplish this, Dr. Raiziss will, without delay, arrange his management of the manufacturing plant in such a way as to be in a position to give time and attention to the task of improving the product of the Metz Laboratories." That was the agreement you signed?

A. What was the date of that?

XQ. 855. June 8, 1918.

A. And what was the Sargent letter?

XQ. 856. I will answer questions when you are through answering them. I read further from this agreement.

The Court: Was the question answered?

Mr. Kresel: Yes, sir.

XQ. 856. (continued) "In return for this valuable assistance, rendered by the Dermatological Research Laboratories, Mr. Metz will agree for himself, that the companies in which he is interested and his assignees: (a) In the event that the Treaty of Peace should for any cause nullify the license of the Dermatological Laboratories to manufacture arsphenamine as at present, these laboratories under the trusteeship of Doctors Schamberg, Kolmer and Raiziss or their successors, will be permitted to continue to manufacture and sell arsphenamine to the extent of a minimum of 3,000 ampules of 0.6 grams per week and not to exceed 10,000 tubes per week or 10 per cent of the needs of the country in arsphenamine, (or its derivatives), in case Mr. Metz or any of his companies or assignees should have control of the German rights in any way after the Treaty of Peace has been signed."

A. Yes, sir; perfectly true.

XQ. 857. That was your agreement?

A. Yes, sir; my position exactly.

XQ. 858. And then you agreed: (b) In the event that the Treaty of Peace does not nullify the license of the Dermatological Research Laboratories to manufacture arsphenamine after the war or in the event that Mr. Metz is not in the position to guarantee to the Dermatological Research Laboratories the right to manufacture arsphenamine after the war to the extent indicated in paragraph a, Mr. Metz and his Laboratories for the valuable services received will pay the Dermatological Research Laboratories a royalty on the manufacture of salvarsan under license from the Federal Trade Commission for the duration of the war."

A. Yes, sir.

After Recess.

XQ. 859. Mr. Metz, I was asking, when we adjourned for recess, about this agreement of Dr. Schamberg or the Dermatological Laboratories, dated June 8, 1918, and in connection with that you asked me if I could give you the date of the letter from Dr. Sargent. You remember that?

A. Yes, sir.

XQ. 860. I show you now a copy of Dr. Sargent's letter as it was printed in the Journal of the American Medical Association under date of March 30, 1918. So you will see that that letter of Dr. Sargent's preceded the agreement of June 8, 1918?

A. That shows it.

XQ. 861. So we have it now, Mr. Metz, that as late as June 8, 1918 your product, salvarsan, was not up to the standard demanded by the Government?

A. I don't admit that, sir. The Government passed it before it was sold.

XQ. 862. I read to you from the agreement: "The Dermatological Research Laboratories, through Dr. Schamberg, Kolmer and Raiziss and others, having expert knowledge and experience concerning the manufacture of arsphenamine of a minimum and safe degree of toxicity agree to place their knowledge and experience at the service of Mr. H. A. Metz and his laboratories without unnecessary delay and in a sincere effort to bring his product up to the standards demanded by the Government without delay."

A. That does not follow. It was passing the Government's standards.

XQ. 863. You mean to say that you signed this agreement with that statement in it, and that that was not true?

A. That was not true. We were passing the Government's requirements.

XQ. 864. You signed this agreement and that was not true?

A. That is not true. I signed the agreement, and the fact is we did pass the Government standards.

XQ. 865. You signed the agreement notwithstanding that what I have just read was not true, is that it?

A. I signed the agreement. It was not true. It was up to Government standards. I signed it to help to get these things—

XQ. 866. I am simply asking one question at a time. I say that you signed this agreement with the statement in it that I have read, and yet that that statement was then untrue; is that what you say?

A. I can not say it was untrue. I said we did pass the Government's standards, despite that statement, and I signed that statement, if that is what you want.

XQ. 867. By this agreement you asked Dr. Schamberg to improve your product?

A. Dr. Stieglitz asked him and I signed it at his request. There you are; that is the statement.

XQ. 868. Did you ask Dr. Schamberg to help you improve your product?

A. Dr. Stieglitz asked him and I agreed to let him and signed that agreement.

XQ. 869. Well, your product needed improvement?

A. They said so. I did not think so. The Government test did not show it.

XQ. 870. And in return for these valuable services you agreed to pay them a royalty?

A. If they were earning it, yes.

XQ. 871. And that was June, 1918, more than two and a half years after your brother had gone abroad and had spent four months through the German factory learning how to make salvarsan, was it not?

A. The dates are there, yes. The questions were raised.

XQ. 872. And for all this time and for years prior thereto you had before you and open to you the patent on salvarsan?

A. And were working and putting out marketable goods.

Mr. Kresel: I ask that "were working and putting out marketable goods" be stricken out.

The Court: The motion is granted.

XQ. 873. After we went into the war I think you testified upon your direct that the Federal Trade Commission issued four licenses to manufacturers to make salvarsan?

A. Yes.

XQ. 874. You knew that such licenses were being granted by the Federal Trade Commission, did you not?

A. Naturally.

XQ. 875. You knew that the Massachusetts State Department of Health was asking for a license to manufacture salvarsan, did you not?

A. I had been informed they were doing it for their own hospitals. I did not know about the license.

XQ. 876. Did you know they were asking for a license?

A. Possibly. I cannot say definitely.

XQ. 877. Did you know that the New York State Board of Health was asking for a license from the Federal Trade Commission?

A. I knew later on that they had a license for manufacturing, yes.

XQ. 878. And did you not protest against the Federal Trade Commission issuing licenses to these State Boards of Health?

A. As a matter of fact, I protested against all licenses.

XQ. 879. Did you or did you not?

A. I did, against all licenses.

XQ. 880. I show you a letter from yourself to Dr. G. W. McCoy, Director of Hygienic Laboratory, Public Health Service, Washington, D. C. Did you write that letter to him (handing witness)?

A. Yes, sir.

XQ. 881. That letter is dated March 14, 1919, and appears at page 839 on the Hearings on Resolution

No. 77. You say in that letter: "My dear Dr. McCoy: I wrote to the Federal Trade Commission today in regard to the application of the Massachusetts State Department of Health for licenses. I also protested against a license being granted to the New York State Board of Health. I feel in doing this I am justified in the position I take and I would like to hear from you whether you favor the various State Boards making their own product or not. Personally my experience with the New York City Board of Health when I was Controller satisfied me that it was a very unfair competition against private enterprise."

A. Yes, sir.

XQ. 882. That was your humanitarian point of view?

A. That was my commercial and humanitarian.

XQ. 883. Was it?

A. Yes, sir. I did not think it was fair to private individuals.

XQ. 884. In other words, you objected to the Federal Trade Commission giving a license to the State of Massachusetts and the State of New York to manufacture their own salvarsan?

A. To anything in competition with private enterprise; yes, sir.

XQ. 885. Up to the time of the war you had a monopoly of salvarsan in the United States?

A. Yes, sir.

XQ. 886. And up to the time of the war you were selling to physicians, you told us—no, you were selling it at wholesale at $2.50 a dose?

A. Yes, sir.

XQ. 887. And during the war you raised the price to $4.50 a dose?

A. To physicians direct, in small lots.

XQ. 888. And to the Government?

A. No, I do not recall that. I sold to the Government for $1.17.

XQ. 889. Didn't you charge the Government $4.50 in 1915?

A. You have made that claim and I have got to verify it. I do not know; I took your word for it.

XQ. 889-a. You testified to that last Saturday. Do you want to take it back?

A. I will want to qualify it after I look at my record. You may have said the imported stuff. I will tell you why I did it if you want to know.

XQ. 890. I do not want to know why did you it. So that when you had the monopoly, you were charging $2.50 wholesale, and until you satisfy the Court that you were wrong on Saturday, I will take it that your testimony stands that you were charging $4.50 during the war?

A. I did to physicians. I admit that.

XQ. 891. You admit charging that to the physicians?

A. Direct to the physicians.

XQ. 892. Since the war and since the Federal Trade Commission issued licenses for the manufacture of this product and since The Chemical Foundation have issued licenses on this product, what is it selling at now?

A. I sold to the Government at $1.00 when I started making it.

XQ. 893. What is it selling at now?

A. I made a bid last Monday to the Government, thirteen cents a dose for its requisitions. That is the cost price.

XQ. 894. Thirteen cents a dose; and what are you selling it to physicians at?

A. I do not recall without going to my records.

XQ. 895. Sixty cents a dose, isn't it?

A. Possibly in single packages. We are required to go to a different expenditure than with the Government's stuff.

XQ. 896. And there is keen competition in the market now, is there not?

A. Yes, sir.

XQ. 897. You no longer have the monopoly, have you?

A. No, sir.

XQ. 898. And there is no monopoly in the product of salvarsan, is there?

A. No, sir. I should say no in the sense that monopoly is a control.

XQ. 899. What was that last? I did not get it.

A. In the sense that monopoly is a control.

XQ. 900. I do not want to know your sense. You understand the word "monopoly." I asked you whether to your knowledge there is a monopoly in the market of the supply of salvarsan?

> Mr. Anderson: If counsel will permit me, I do not think the question asked for anything but a conclusion. What is a monopoly is a conclusion of law founded on facts.
>
> The Court: This witness has found no difficulty, Colonel Anderson, in testifying about a monopoly in previous answers. I shall assume that he knows the meaning of "monopoly" as embodied in that sentence. The objection is overruled.
>
> Mr. Anderson: Exception.

XQ. 901. Is there, Colonel Metz?

A. In the ordinary sense of monopoly, no.

XQ. 902. Did you testify before the Shortridge Committee as follows; I read from page 818. The Chairman said to you:

> "Is there any other company manufacturing the same article?"

You said:

> "Oh, yes. The Federal Trade Commission licensed four manufacturers, and Mr. Garvan, or The Chemical Foundation, I think, licensed, I think, four or five others, but of those he licensed, I think only one is producing, in a liquid form.
>
> "THE CHAIRMAN: Is there any combination between you and other manufacturers of salvarsan?
>
> "MR. METZ: No, sir; no combination of any kind."

That was true?

A. Yes, sir.

XQ. 903. And is it true today?

A. As far as I know, yes. None that I am interested in.

XQ. 904. At page 869, the Chairman asked you:

> "Is there any monopolistic arrangement between you and any other concerns?
>
> "MR. METZ: No, sir; not even an understanding.
>
> "THE CHAIRMAN: Do you know of any combination?
>
> "MR. METZ: Not at the present time.
>
> "THE CHAIRMAN: Do you know of any combination at all now or in the past?
>
> "MR. METZ: Not in these things I am talking about."

Was that true?

A. Yes, sir; absolutely.

XQ. 905. And is it true now?

A. Yes, sir; so far as I know.

XQ. 906. And is it not the fact that the American product salvarsan is as good as the German ever was, and better?

A. It is so conceded by the Government testers and by physicians that are using it.

XQ. 907. Now, coming to the dye industry, Mr.

Metz, you have told us that before August, 1914, there were in this country no factories producing dyes, but that there were, I think you said, six assembling plants?

A. They were called assembling. They were dye-producing plants; but they were practically assembling dyes. That is the term used in the reports of Mr. Choate or anybody else.

XQ. 908. Since the war and since these patents were seized—I mean the German patents covering dyes that are here in question—and since The Chemical Foundation has been operating, has the number of producers of dyes in this country increased or decreased?

A. It has increased, but not because of the patent.

XQ. 909. I did not ask you——

A. I beg your pardon.

Mr. Kresel: May I ask that that be stricken out after "it has increased?"

The Court: Let it be stricken out.

XQ. 910. And can you tell us how many manufacturers there are today in this country producing dyes?

A. No, sir.

XQ. 911. Can you give us an approximate number?

A. No, sir.

XQ. 912. Are there as many as 160?

A. I should not say there were that many producing, no, sir. They claim to be, but they are not producing dyes, really.

XQ. 913. Are there as many as a hundred?

A. I should say no; emphatically no.

XQ. 914. Are there more than six?

A. Oh, yes.

XQ. 915. Well, you are one of the producers——

A. (interrupting). I am two of them.

XQ. 916. ——aren't you? What?

A. I am two of them.

XQ. 917. You have taken out licenses from The Chemical Foundation, haven't you?

A. Not for colors. I took from the Federal Trade Commission for colors, one of my plants.

XQ. 918. So you hold no licenses covering dyes from The Chemical Foundation?

A. No, sir. Oh, for importation, yes; not for manufacturing.

XQ. 919. You notice I did not restrict my question to manufacturing, did I?

A. Well, we were talking of manufacturing, Mr. Kresel. Pardon me if I did not cover the full ground. We pay licenses when we import patented colors, as they come in.

XQ. 920. And is it not a fact that today the American chemical industry is producing 90 per cent of the United States dyes in that way?

A. Undoubtedly; of the unpatented products.

Mr. Kresel: May the last part be stricken out—"of the unpatented products?"

The Court: Let it be stricken out.

The Witness: I beg your pardon, your Honor.

XQ. 921. And the dyes that are being produced by American manufacturers are as good as the German ever were?

A. Many of them, yes.

XQ. 922. And we are no longer dependent upon Germany for our dyestuffs, are we?

A. Thank God, no—and I helped bring it about.

XQ. 923. And we are neither dependent on them for dyes nor for pharmaceuticals?

A. That is right, we are independent of them.

XQ. 924. Of course, you believe in an American dye indsutry?

A. Absolutely.

XQ. 925. Your heart is wholly here?

A. My money is in it.

XQ. 926. No part of it back in Germany?

A. Not money, no, except a little stock I own here, and that I bought since the war.

XQ. 927. You believe in protecting and fostering the American industry?

A. Absolutely.

XQ. 928. Yes. Indeed, you have been very active in trying to do that?

A. In getting a satisfactory duty on it, yes, sir.

XQ. 929. Haven't you?

A. Yes, sir, I have been.

XQ. 930. When there was a petition before Congress to have an embargo against the importation of German dyestuffs, you were in favor of it, weren't you?

A. I was against it as unfair and unnecessary.

XQ. 931. Although you were a manufacturer, and if the German dyes had come in they would have been in competition with you?

A. I wanted——

XQ. 932. Isn't that right?

A. If they had come in free of duty, yes. I wanted a high duty to protect me as a manufacturer, and so stated on every occasion.

XQ. 933. You have been very anxious to import German dyes, haven't you?

A. No, sir; not anxious at all. I give my customers what they want.

XQ. 934. You have been asking the Government's leave to import German dyes, haven't you?

A. On customers' licenses.

XQ. 935. Haven't you?

A. On customers' licenses.

XQ. 936. I did not ask you on what.

A. No, sir, I did not ask to import dyes——

XQ. 937. Haven't you been asking the Government ever since 1919 to be permitted to bring in German dyes?

A. My customers asked for licenses which I imported for them under the embargo act.

XQ. 938. And haven't you been importuning the Government to allow you to bring in German salvarsan?

A. Yes.

XQ. 939. Yes.

A. For physicians who desired it, on one occasion.

XQ. 940. Indeed, you are now bringing in German salvarsan, are you not?

A. I did bring in two lots, I think for physicians who wanted it and stated they preferred it for their own reasons.

XQ. 941. Now, you were not only active in investigations before Congress on the question of dyes, but you financed investigations of that sort, did you not?

A. No, sir, I never financed any of them.

XQ. 942. Let us see whether you did not. Do you know a man named Pickerel?

A. He is in my employ; certainly.

XQ. 943. Do you know a man named Dieters?

A. I met such a man in Washington; he used to be with the Chemical Warfare Service.

XQ. 944. Just met him casually?

A. He came to me.

XQ. 945. What?

A. Came to me with some stories.

XQ. 946. Came to you? I see.

A. Certainly.

XQ. 947. Did you employ him?

A. No, sir, I did not employ him for a moment.

XQ. 948. Did you pay him any money?

A. I loaned him some money, and I gave him some money when he lost his position

XQ. 949. How much did you loan him?

A. I do not recall the figures. Several hundred dollars I presume. He came to me and told me he lost his position. That is my best recollection, Mr. Kresel.

XQ. 950. Now, Mr. Metz, it is not up to me to warn you and I do not propose to intimate that you are not telling the truth.

A. I am doing the best I can, Mr. Kresel.

XQ. 951. But I ask you again whether it is not a fact that you employed this man Deiters to get for you affidavits to be used in the dyes investigation, and that you paid him $6,000 in cash——

A. Oh, no.

XQ. 952. Wait a minute.

A. Go on.

XQ. 953. And that he rendered you a bill on the 23rd of October, 1922, for $14,765 for such services?

A. I have no such recollection.

XQ. 954. Is it simply a matter of recollection with you, Mr. Metz?

A. Mr. Deiters sent me a bill for something, and I sent it back. I don't know what the amount was.

XQ. 955. Oh, he did send you a bill?

A. He did send me a bill. I do not know what the amount was.

XQ. 956. Never mind what the amount was.

A. May I correct that?

XQ. 957. What did he send you a bill for?

A. May I correct that?

XQ. 958. No.

A. It was not a bill.

XQ. 959. What did he send you a bill for?

A. I don't know. He said he needed some money, and sent me a memorandum.

XQ. 960. Sent you a memorandum or a bill because he needed money, did he?

A. Yes.

XQ. 961. And how much money did he need?

A. I don't remember the figures. I have got to look it up. I never gave it any attention, Mr. Kresel. I will have to refresh my memory. I do not know.

XQ. 962. Now look at the bill or memorandum and see if that refreshes your recollection (handing paper)?

A. Yes, that is it; but there is no basis for it.

XQ. 963. No, wait a minute; "that is it," that is enough.

A. But no basis for it.

Mr. Kresel: I ask that it be marked for identification.

The Court: Let it be so marked.

Paper marked "Plaintiff's Exhibit H: for Identification."

The Witness: Pardon me, Mr. Kresel——

XQ. 964. Just a minute; there is no question pending.

A. Well, I want to modify that one.

XQ. 965. You had a conference with Mr. Deiters at the University Club in New York, did you not?

A. I do not recall the University Club.

XQ. 966. What club was it?

A. I was at a hotel with Senator Moses, as I recall it.

XQ. 967. What hotel?

A. I think it was the Chatham, but I am not certain. Senator Moses——

XQ. 968. In New York?

A. In New York.

XQ. 969. When you mentioned Senator Moses you mean United States Senator Moses?

A. George H. Moses, of New Hampshire, yes.

XQ. 970. And when was it that you had this conference?

A. I do not recall. During one of the hearings in Washington.

XQ. 971. What year was it?

A. I do not recall. It was a hearing before the Senate Committee I presume. You have got the record here. I do not know which one of those hearings.

XQ. 972. When you speak of the Senate Committee, do you mean the Committee over which Senator Shortridge presided?

A. No, previous; the Senator Watson Committee, I think it was called, or the one that he was Chairman of, I think. I believe that is the time.

XQ. 973. And at that meeting you engaged Mr. Deiters to obtain for you, to be used by Senator Moses, affidavits to show that the War Department of the United States was in favor of the dyes embargo and in favor of The Chemical Foundation, because it had been induced to take that position by a certain manufacturer of dyes?

A. I did not engage him, no, sir.

XQ. 974. Did he offer to do that?

A. Senator Moses asked him to.

XQ. 975. Senator Moses asked him to?

A. Asked him to get those records for him, yes, sir, which he had mentioned to Senator Moses.

XQ. 976. You knew that Mr. Deiters was an employee of the Government, did you not?

A. At that time, yes.

XQ. 977. That he was an employee of The Chemical Warfare Service of the Government?

A. Yes, sir.

XQ. 978. And you say now, do you, that Senator Moses, of the United States Senate, and not you, asked this employee of the Government to produce affidavits reflecting upon the actions of the War Department?

A. If he was asked, it was by Senator Moses, not by me. I never asked him to produce those affidavits for me.

XQ. 979. Well, whether Senator Moses asked him or whether you asked him, is it not the fact that you promised to pay him for producing those affidavits?

A. I did not; I beg your pardon; I did not.

XQ. 980. And is it not a fact that you did pay him for it?

A. After the man lost his position, I gave him money; not for the affidavits, no, sir; never with that understanding, directly or indirectly, never.

XQ. 980a. And this bill or memorandum that you have identified is the bill or memorandum that Mr. Dieters sent you for his services in that connection?

A. I am not responsible for his bill.

XQ. 981. But that is what he sent you?

A. He sent me a bill. I won't say that is the one. He sent me a bill.

XQ. 982. You just said it was?

A. I beg your pardon. I am not sure. I was going to withdraw it and say he sent me a bill. I can not identify the copy you have there.

XQ. 983. Didn't you less than ten minutes ago say that this is a copy of what he sent you?

A. When I said that, you said there was no question. You put your hand up. I am modifying it now. I can't tell until I see my bill home. I do not believe it is such an amount.

XQ. 984. Where is your bill home?

A. I don't know if I ever kept it.

XQ. 985. So that you can not find the bill home?

A. I may be able to. I don't know. I never paid any attention to it. I laughed at it.

XQ. 986. Didn't you a few moments ago testify that you sent it back to Dieters?

A. I think I did; yes, sir. I am not sure.

XQ. 987. Then you haven't got it home?

A. I may have a copy of it home. I don't know. I never paid any attention to it. That is what I am trying to tell you. He sent me a bill which I indignantly repudiated.

XQ. 988. When he sent you the bill, didn't he send you a letter with the bill?

A. I do not recall, Mr. Kresel.

XQ. 989. Look at this letter and see if that refreshes your recollection?

A. I can't help what another man does. That is his construction of it. I had a letter from him. That may be it.

XQ. 990. And when you received this letter and the bill, I want to ask you what you wrote to Mr. Dieters?

A. I don't recall, Mr. Kresel.

XQ. 991. Did you write a letter to him denying what he said in this memorandum?

A. Possibly. No doubt I did.

XQ. 992. Well, will you produce any such letter?

A. If I sent it, how can I produce it? I paid no attention to it.

XQ. 993. Don't you keep copies of your letters?

A. No, I don't, not of very many things. I don't keep copies of personal things. They don't influence me.

XQ. 994. Listen, Mr. Metz——

A. You may have things that I have never seen.

XQ. 995 (reading). "Washington, D. C., October 23, 1922. I, Edward W. Deeters, hereby submit to Mr. H. A. Metz my bill for fees and expenses incurred by me in securing information and affidavits to be used by Senator George H. Moses, of New Hampshire, in the case of the dye embargo as per agreement between Mr. Metz, Senator Moses and myself, made in New York City, New York, in October, 1921, to wit: 1. That all information, evidence, or affidavits secured by me should be used by Senator Moses and turned over to him or other persons designated by him. 2. That Mr. H. A. Metz take charge of the financial part of this agreement, defraying all fees and expenses incurred by me. Expenses: Personal fee for services rendered, $7,200; traveling expenses, $453; clerical help, $1,000. Special Expenses: (Securing affidavits, maintenance, and traveling expenses of persons making affidavits): Affidavit No. 1, $1,429; Affidavit No. 2, $1,163; Affidavit No. 3, $447; Affidavit No. 4, $942; Affidavit No. 5, $1,319; Affidavit No. 6, $812. Total, $14,765. Received on account, $5,000. Balance due, $9,765." Now I ask you to produce to this Court any copy of a letter from you to Mr. Deeters denying the truth of the statements that he made in this.

A. I will be glad to if I can find such a letter. I shall be glad to look it up just as soon as I go back. If I have a copy I shall certainly submit it, because I deny such statements.

XQ. 996. How much did you pay him?

A. I have not any idea.

XQ. 997. Just try to approximate it for us?

A. Nowhere near that amount.

XQ. 998. He says $5,000. How much do you say you paid him?

A. I gave him a thousand dollars at one time towards a mortgage on his house, I recall that. I do not recall the figures, Mr. Kresel.

XQ. 999. Well, a thousand dollars. Any more than that?

A. I recall one thousand dollars on a mortgage. His wife was sick, and his child, and I gave him a thousand dollars to pay on his mortgage.

XQ. 1000. You gave him a thousand dollars. Is that all?

A. No, I gave him smaller amounts at various times.

XQ. 1001. How much more?

A. As little as ten dollars at various times.

XQ. 1002. How much more?

A. I don't recall, Mr. Kresel.

XQ. 1003. Did you give him the thousand dollars by check?

A. I do not recall that, but I can look it up and see.

XQ. 1004. If you did, will you produce the check?

A. If I did, I certainly will.

XQ. 1005. Is it a fact that you gave it to him in cash?

A. Possibly I did. He was in New York and he came there crying about his house, to save him from being foreclosed. I will try to look it up and try to locate the date.

XQ. 1006. You did it just because he had to pay a mortgage on his house?

A. Because he lost his job because he tried to get this thing straight with Senator Moses, and I sympathized with the man on that account.

XQ. 1007. I see.

A. Absolutely, and no other reason, Mr. Kresel.

XQ. 1008. When he wrote you sending this letter under date of October 24, 1922: "My dear Colonel: I am enclosing herewith a statement. You understand how I am situated financially. I explained to you that it is necessary for me to have the money at this time. Taking over your work entailed great sacrifice on my part, and you of course are not willing that I should endure any further hardship. It is absolutely necessary that I receive a check from you by return mail. Very truly yours." Was it after receiving this letter that you gave him a thousand dollars to pay his mortgage?

A. I do not recall, but I sent no check by return mail, I can assure you.

XQ. 1009. Is it not a fact that you paid him a thousand dollars on account after you received this bill?

A. I do not recall, Mr. Kresel. I gave it to him in New York when he came with his mortgage and his note to the bank.

XQ. 1010. Won't your books show what you paid him?

A. If I gave him a check they certainly will.

XQ. 1011. And if you gave him cash won't it show, if it is an honest transaction?

A. Possibly not. I may have had it in my pocket and gave it to him, the same as I gave him ten dollars for his fare. If I find it I shall give it to you, Mr. Kresel. I can not do any more than that. And I will be glad to do it, and give you any other amounts. I will be glad to. I have nothing to conceal in that matter.

XQ. 1012. Mr. Metz, you were abroad in the summer of 1921, were you not?

A. 1921, yes.

XQ. 1013. And you went to see your old friends, the Germans, did you not?

A. I went to see——

XQ. 1014. Did you, yes or no?

A. I resent your putting it that way—my friends, the Germans.

XQ. 1015. You went to see your former principals?

A. Certainly, I went to the works. Certainly, I went on a business trip.

XQ. 1016. And you discussed with them the return of the patents here in suit?

A. No, sir, I never discussed the return of the patents. I never thought they would get the patents back.

XQ. 1017. Do you mean you did not discuss with them the return of these patents?

A. I don't think I specifically discussed it with them.

XQ. 1018. Is it only thinking, or do you say you did not?

A. I might have discussed the general proposition, but if I did it was in a general way.

XQ. 1019. I did not ask you what you might have done.

A. I can not answer differently than that.

THE COURT: You will have to say whether you did or did not.

THE WITNESS: I do not know, your Honor. I do not know specifically.

XQ. 1020. Did you not testify under oath that you did discuss it with them?

A. Now you give me——

XQ. 1021. Oh, when you see I have it in writing——

A. Oh, no.

XQ. 1021 (continuing.) You are willing to admit it, are you?

A. No. I beg your pardon. I discussed it in 1920. That is not fair, Mr. Kresel. In 1920.

MR. ANDERSON: Just a minute.

THE COURT: Have you some objection to make, Colonel Anderson?

MR. ANDERSON: I object to that method of dealing with the witness. The witness is trying to testify to various and sundry transactions. Now I felt the witness is absolutely helpless and is entitled to courtesy from counsel.

THE COURT: I am afraid I do not understand you. You think what?

MR. ANDERSON: That the witness is entitled to courtesy from counsel. I have that suggestion.

THE COURT: I think he has had it in full measure, and if you think the witness needs any protection you should come to his rescue.

MR. ANDERSON: No, I do not, but I think at the proper time if the question is improper——

THE COURT: I think Mr. Kresel has shown the utmost restraint, Colonel Anderson, and I shall no longer hesitate to say so.

MR. ANDERSON: Your Honor's judgment will of course control, but I feel that way and I can only address the Court. You are the only person I can address myself to.

THE COURT: But I think the objection is not well taken. I think instead of criticism of Mr. Kresel at this time he is to be commended for the restraint he has shown. The time has come when this witness must answer these questions or abide by the consequences. You have observed him with care. I have observed you observing him. I have observed him throughout. The time has come, and from now on, evasion, will not be tolerated.

MR. ANDERSON: I quite agree with your Honor that evasion is not to be tolerated under any circumstances.

THE COURT: I appreciate your position, Colonel Anderson.

MR. ANDERSON: I was not impressed with the fact that the witness was undertaking to evade.

THE WITNESS: I assure your Honor that I have not evaded.

THE COURT: I can not hear you, Colonel Anderson.

MR. ANDERSON: He was going over a very long record. I do not want to argue with the Court on the subject, but merely to note an objection.

THE COURT: I do not want to discuss it either, because the thing amounts now to a demonstration and not an opinion on my part. So if you can help the witness by suggesting to him what I suggested to him on Saturday and this morning you will be doing the witness a favor—and that is to stop evasion and answer questions, and stop argument. This is not the place for that.

MR. ANDERSON: I quite agree, if your Honor please, and I am not undertaking to testify, nor am I undertaking to control the examination in any respect. I have not interrupted it, I have even refrained from making objection where I thought I should object, because I believe in the utmost latitude. If your Honor thinks the witness is evading I should be very glad to say that the witness should not evade.

THE COURT: This Court will be glad to protect in full measure any witness, as I advised Mr. Metz on Saturday or Friday, unless he undertakes to protect himself. He has not needed protection from aggression of counsel. There is no need of discussing it further, Colonel Anderson.

MR. ANDERSON: I was not doing it, but my duty is to address myself to the Court when the question is raised.

THE COURT: I understand.

MR. ANDERSON: I never argue with this Court or any other Court when it has reached its conclusion.

XQ. 1022. I asked you whether you had not testified that you had discussed with the Germans on your trip abroad the question of the return of these patents to them. Do you say now that you had?

A. In 1920 I did, yes, sir, when I went abroad.

XQ. 1023. In 1920 you said you discussed that?

A. Yes, sir.

XQ. 1024. Not in 1921?

A. I do not recall. In 1920 I discussed it with all the people who had patents here.

XQ. 1025. Did you not also discuss it with them in 1921?

A. Not specifically, I don't think.

XQ. 1026. You were abroad in 1921?

A. And 1922.

XQ. 1027. Now I read to you your testimony before the Shortridge Committee at page 877, as follows: "Undoubtedly our patent laws, in not providing for carrying out invention are to blame for conditions that existed, and in my discussion of this point with the foreign concerns last summer, they conceded this and said that they would be perfectly willing to continue licenses granted under their patents, if their property were returned to them."

A. That is true. That was their statement.

XQ. 1028. Now you were testifying to that in 1922?

A. That is right.

XQ. 1028a. And you state that conversation took place "last summer." That was 1921, was it not?

A. It also took place in 1920.

XQ. 1028b. Well, did it take place in 1921?

A. Apparently, yes; but in 1920, positively.

XQ. 1029. Is it not a fact that, after you had gone abroad and discussed with the Germans the question of the return of these patents to them, that they sent a commission here early in 1922 consisting of Dr. Oppenheimer, Dr. Holdermann and Dr. Wagner to get these patents back, is it not?

A. I do not think that that was the purpose of the commission.

XQ. 1030. Didn't you meet them in New York in your own lawyer's office?

A. I did not. I was in Europe when they came here. I met one of the gentlemen before he sailed from Berlin, Dr. Oppenheimer.

XQ. 1031. Didn't you send them to your own lawyer?

A. I gave Dr. Oppenheimer a note to Mr. Vandiver the night before he sailed.

XQ. 1032. Mr. Vandiver is your lawyer?

A. He was my counsel in the proceedings against the Alien Property Custodian.

XQ. 1033. He was then your lawyer?

A. And still is.

XQ. 1034. And he is in Court here with you now?

A. Yes, sir; as my counsel.

XQ. 1035. Did you testify before the Shortridge Committee as follows: I read from page 883. Talking about dyestuffs, Senator Shortridge, the Chairman, questioning you said: "At the present time is there or is there not competition among the manufacturers?

"Mr. Metz: There is the strongest kind of competition, because everybody is trying to get rid of the stock on hand and turn it into cash."

Did you so testify?

A. Yes, sir; that is a fact.

XQ. 1036. Was it true?

A. Yes, sir.

XQ. 1037. At page 894, you were questioned by the Chairman as follows:

"Mr. Metz, I have been very much interested in your statement. I suppose we all agree that we want to continue the dye chemical industry in America." and you said:

"Absolutely.

"The Chairman: It gives employment to our people and legitimate profit to capital invested and to be invested. Now there was a time when we were, in a sense, almost wholly dependent upon Europe."

And you said:

"The whole world was on Germany; let us put it more concretely.

"The Chairman. Well, I have understood that Switzerland supplied some proportion of these things.

"Mr. Metz: Only a small per cent.

"The Chairman: I have understood that Switzerland manufactured a very considerable quantity.

"Mr. Metz: And they got their crudes and intermediates from Germany.

"The Chairman: Well, then, we will assume as a fact, fixing a time in 1913 and 1914, say—and then you interrupted and said:

"Germany had the world by the throat, absolutely.

"The Chairman: Yes. Now then for reasons which have developed, America has come to be a very important producer of dyes and chemicals. That is true, is it not?

"Mr. Metz: Yes, sir.

"The Chairman: An embargo was effected, resulting from the war and the laws which have existed since the determination of the great war. Now it is charged by many, and believed by many, that there has already grown up and exists today in America what is called a monopoly in this industry. From your knowledge would you say there is or is not a monopoly?"

And you said:

"I would say that at the present time there is not." Was that true?

A. Yes, sir; that was true in my opinion.

XQ. 1038. And that was true of pharmaceuticals?

A. Yes, sir.

XQ. 1039. And of course you are opposed to monopoly are you not?

A. I don't believe in a monopoly in the ordinary sense. I believe there should be free competition.

XQ. 1040. You remember when the Alien Property Custodian sold the Bayer plant and with it twelve hundred German patents; you remember that, do you not?

A. I remember that, yes. It is a matter of information and belief.

XQ. 1041. And you remember at a meeting of the dyes institute and learned that Mr. Matheson who was in control of the Cassella plant here in the United States was selling the Cassella patents to the National Aniline Company, did you not?

A. He claimed, I believe, to have transferred them.

XQ. 1042. You learned that at that time?

A. Yes, sir; that is right.

XQ. 1043. And you saw at that time that that would give the National exclusive control of the manufacture of such products as the Cassella patents covered, did you not?

A. Yes, sir.

XQ. 1044. But you saw the danger of it, did you not?

A. No, sir; I didn't think Matheson had a right to do it.

XQ. 1045. Didn't you see the danger of it?

A. That was not my point.

XQ. 1046. Didn't you so testify before the Shortridge Committee?

A. They would have a monopoly of course, naturally, under the patents.

XQ. 1047. Now, you see you switch again.

A. I am trying to give you my attitude of mind, Mr. Kresel.

XQ. 1048. Didn't you at that time, when you learned of the possibility of these Cassella patents going to the National, see the danger of that, that it would create a monopoly?

A. In those particular products, yes, naturally.

XQ. 1049. Before the Shortridge Committee you testified:

"I was making salvarsan and novocain and I had licenses for various patents covering vat colors; and at that meeting of the institute, a claim was made that Mr. Matheson had transferred the Cassella patents to the National and that they would have exclusive control of the manufacture of such patents as the Cassella patents covered. I saw the danger of this."

A. Yes; that is correct.

XQ. 1050. And when you saw the danger of this, what did you do about it?

A. I spoke to Mr. Garvan about it, if I remember correctly.

XQ. 1051. Oh, you did? You spoke to Mr. Garvan about it. Now, that was in 1921, was it not?

A. I do not recall the date. The records will show.

XQ. 1052. When you spoke to Mr. Garvan about it, was Mr. Garvan then the President of the Chemical Foundation?

A. I do not think it existed at that time, Mr. Kresel.

XQ. 1053. That was before the organization—

A. I would have to look up the date.

XQ. 1054. And that was before the organization of the Chemical Foundation. Mr. Garvan, however, was the Alien Property Custodian?

A. Yes. The dates I do not remember.

XQ. 1055. It was the Alien Property Custodian that had sold these Bayer patents?

A. Yes, sir.

XQ. 1056. And shortly after you talked to Mr. Garvan about the danger that you saw in having such a large number of patents go into the hands of a single manufacturer, do you not recall attending a meeting at which Mr. Choate appeared and outlined the proposed organization of The Chemical Foundation?

A. I do. I well remember it.

XQ. 1057. That was the meeting of the Manufacturing Chemists' Association?

A. Of which I am a member; yes, sir.

XQ. 1058. Of which you were a member. And it is Mr. Joseph H. Choate that you are talking about now, is it not?

A. Yes, the gentleman sitting here.

XQ. 1059. And Mr. Choate explained what it was intended to do about the remaining German patents, did he not?

A. Yes, sir.

XQ. 1060. He explained that the Alien Property Custodian proposed to sell those patents to The Chemical Foundation?

A. Yes, sir.

XQ. 1061. He explained that it was for the purpose of having The Chemical Foundation give non-exclusive licenses on these patents to any qualified American citizen?

A. Yes, sir.

XQ. 1062. Upon equal terms and upon equal rights?

A. Yes, sir.

XQ. 1063. He explained that the United States Government was to have a free license to those patents?

A. I think that was part of the explanation.

XQ. 1064. He explained that they were to be sold for $250,000, did he not?

A. Yes, sir.

XQ. 1065. He explained that Mr. Garvan was to be the President of the Corporation, did he not?

A. Well, I knew he was to be. Whether it was explained at that meeting or not I don't know. But I knew that was going to come.

XQ. 1066. And after you learned what you have just stated of the purposes of the organization of this corporation and of the intended sale to it by the Alien Property Custodian of these patents, you joined the organization and subscribed $50,000 to it?

A. I did at that same meeting, around the table.

XQ. 1067. Now, you knew at that time as much about the value of these patents as you know today, didn't you?

A. I certainly did.

XQ. 1068. If your testimony is true, you knew that the salvarsan patent alone was worth a million dollars?

A. I certainly did.

XQ. 1069. And yet you were willing to become part and parcel of this organization that you knew was to buy the whole kit and crew of them for $250,000?

A. I saw a good thing as a stockholder and was perfectly willing, yes.

XQ. 1070. That is your attitude, is it?

A. That is my answer on that. I had no interest in the Germans.

XQ. 1071. And so, seeing a good thing, you became a stockholder and are still a stockholder of The Chemical Foundation?

A. Yes, I still hold certain shares for three companies.

XQ. 1072. Did you ever receive a dividend on your stock?

A. Not to my knowledge.

XQ. 1073. Wouldn't you know if you had?

A. I am quite sure I have not.

XQ. 1074. You were also a member at that time of the Dyes Institute?

A. The Consolidated Color Company was; yes, sir.

XQ. 1075. You are aware that the Government charges in this case that the American Dyes Institute and its members were in a conspiracy to defraud the Government of this property?

A. I have read the charge.

XQ. 1076. You are one of the conspirators then?

A. I was not on the Executive Committee.

XQ. 1077. I see. You were not on the Executive Committee. When you learned that The Chemical Foundation was about to take over these patents you thought that there was safety in that for the American industry, did you not?

A. It didn't make any difference.

XQ. 1078. I want to know yes or no whether you thought there was safety in that?

A. I did not think it made any difference to the industry, Mr. Kresel.

The Court: Will you suspend a minute, Mr. Kresel?

Mr. Galloway, will you come to the Bench?

(Messrs. Anderson, Galloway and Kresel then conferred with the Court, and a short recess was declared).

XQ. 1079. Now, Mr. Metz, as you have been reflecting upon your testimony of the past twenty minutes, has it occurred to you that there is anything about the Deeters transaction that I inquired about that you have not stated?

A. I do not recall anything, Mr. Kresel, that I have not told you.

XQ. 1080. You know Gaston Means, do you not?

A. No, sir.

XQ. 1081. You mean you have never met him?

A. Never met him to my knowledge.

XQ. 1082. Or spoken to him?

A. Never to my knowledge saw him.

XQ. 1083. You know Cyril Bennett, do you not?

A. Yes, sir, very well.

XQ. 1084. You employed him, did you not?

A. No, sir, never employed him.

XQ. 1085. Did you pay him any money?

A. I loaned him money, yes, sir, on various occasions.

XQ. 1086. You endorsed his note to the bank, did you not?

A. When he was with—

XQ. 1087. Yes or no? I did not ask you when.

A. Yes, I endorsed a note for him at one time for the bank.

XQ. 1088. What bank was it?

A. Gotham National, if I remember.

XQ. 1089. Yes, you remember correctly. And how much?

(No answer.)

XQ. 1090. And how much was the note?

A. I do not recall that, Mr. Kresel. I think it was $5,000 for the Dyers Colors Institute, Dyers Trade Journal.

XQ. 1091. Didn't you know that Bennett and Gaston Means made the investigation of this matter which resulted in this case?

A. No, I don't know it, no, sir; only from hearsay I have heard it mentioned.

XQ. 1092. You have heard it.

A. I have heard it rumored, that is all.

XQ. 1093. And you know, don't you, that Gaston Means was a German spy here during the war?

A. I do not know it.

XQ. 1094. Don't you know that it was so testified before the Overman Committee in the Senate?

A. I do not recall such testimony, Mr. Kresel; never read it.

XQ. 1095. Before the Committee of Ways and Means of the House on June 18, 1919, did you testify as follows: "Now, Mr. Chairman, there is another great danger as I view it. The question has been raised of the Chemical Foundation taking over these patents. Well, there is safety in that." Did you so testify?

A. Yes, sir.

XQ. 1096. And this was in June, 1919. You realized then, did you not, that this arrangement that Mr. Choate had outlined at the meeting of the manufacturers for the conveyance of these patents by the Alien Property Custodian to The Chemical Foundation would avoid the very danger that you saw in the transfer of the Bayer patents and the Cassella patents?

A. Yes, sir.

XQ. 1097. That is it would avoid these German patents which had controlled the dye industry, which had permitted Germany to have a monopoly of the dye industry, getting into the hands of somebody else that could monopolize it; is that it?

A. So far as the patents were concerned; yes, sir. That would kill us.

XQ. 1098. And you thought that the arrangement outlined by Mr. Choate for the conveyance of these patents to The Chemical Foundation was an arrangement that was desirable in the public interests, did you not?

A. Yes, for those interested. Yes, sir, in that way.

Mr. Kresel: I ask that the part wherein he says "for those interested" be stricken out.

The Court: Read the question and the answer.

(XQ. 1098. Read as above recorded, with the answer thereto).

XQ. 1099. I ask you to answer the question directly.

The Court: No, I deny that motion, Mr. Kresel. You may have the question repeated, if you wish, or you may repeat it, but I deny your motion.

XQ. 1100. Did you think that the arrangement was in the public interest?

A. No, not in the general run—did not give that a thought, Mr. Kresel. I thought it was the industry that was interested in the patents.

XQ. 1101. It was the interest of the chemical industry?

A. To that extent, yes, certainly. The American industry.

XQ. 1102. You testified before the Shortridge Committee in 1922 that you were not competent to give the value of these patents, did you not?

A. I can't give all of them. I must have testified that.

XQ. 1103. Did you so testify? If you do not remember I will read it to you.

A. I probably did testify to that. I could not testify to it on all the patents.

XQ. 1104. If you did so testify I want to know when it was you became competent to testify to the value?

A. I knew at once on the salvarsan and novocain patents. Not all of them I could not tell you, Mr. Kresel.

XQ. 1105. I will read to you what you said before the Committee: "I am not competent to discuss the value of the patents taken over by The Chemical Foundation, but based on Mr. Garvan's statement they would not seem to amount to much." You testified to that, did you not?

A. Based on Mr. Garvan's statement.

XQ. 1106. Now I want to know the time when you became competent to testify as to the values that you undertake to testify here?

Mr. Anderson: What page is that on, Mr. Kresel?

Mr. Kresel: Page 867.

A. I always was on the salvarsan patent, Mr. Kresel.

XQ. 1107. Listen to what you said about the salvarsan patent in the same connection: "So far as salvarsan is concerned I made a statement before the Finance Committee that on a basis of one million dollars for that patent I could on the basis of the royalty itself, which is only five per cent of the selling price, pay ten per cent for ten years. That patent has about seven more years to run." You remember that?

A. Yes, sir.

XQ. 1108. You did not there undertake to say that in your opinion this salvarsan patent was worth a million dollars, did you?

A. Salvarsan is about $700,000 on a basis of ten per cent for ten years. That is what I testify.

XQ. 1109. You did not there testify in your opinion the patent was worth a million dollars, did you?

A. I testified what stands in there. I did not testify here it was worth a millions dollars; I said the two of them were worth a million dollars.

XQ. 1110. Which two?

A. The neo and the salvarsan together.

XQ. 1111. When you were testifying before this

Finance Committee that you speak of you were testifying about both, were you not?

A. Approximately, yes. Ten per cent for seven years, or ten years, I figured at the time.

XQ. 1112. I am not asking you what the income was. I am pointing out to you that even there you did not testify that in your opinion this one or both of those patents was worth a million dollars, did you?

A. I was not called upon to do so specifically, Mr. Kresel.

XQ. 1113. That is your answer.

A. Yes, sir.

XQ. 1114. But now you say that the two salvarsan patents are worth a million dollars?

A. Yes, sir.

Mr. Anderson: He said they were worth a million dollars.

XQ. 1115. Were worth a million dollars?

A. Yes, sir.

XQ. 1116. In April, 1919?

A. Yes, sir.

XQ. 1117. You mean they were worth that to you?

A. To any one who had them.

XQ. 1118. And that the Novocain patent was worth $200,000?

A. At least that, I testified, I believe.

XQ. 1119. Will you not be a little more liberal with us? Is it not worth more than that?

A. Only had four years to run, Mr. Kresel. The neo was worth more.

XQ. 1120. You think it was worth over $200,000?

A. Well, the returns show it.

XQ. 1121. I did not ask you about the returns.

A. I think it was worth over that; at least $200,000.

XQ. 1122. Were the salvarsan and neosalvarsan patents worth a million in April, 1919?

A. In my opinion, yes.

XQ. 1123. What were they worth in 1920, in your opinion?

A. They were worth that ever since; worth it today in my opinion.

XQ. 1124. So in your opinion the value of these patents has neither increased nor diminished since April, 1919.

A. The royalties accumulating or accumulated, make it worth that in my opinion.

XQ. 1125. Please answer my question?

A. Yes, sir; I think it is still worth that.

XQ. 1126. It has neither diminished nor increased?

A. That is a matter of opinion. They are still worth a million dollars in my opinion.

XQ. 1127. Have they since April, 1919, and the present day been worth more than a million dollars?

A. I should not estimate any more than that. It is a speculation.

XQ. 1128. So that at all times between April, 1919, and the present date, in your opinion, these two patents are worth a million dollars?

A. They still are.

XQ. 1129. Were they ever worth more than a million dollars?

A. I could not say that. I never estimated beyond the returns on them, in an off-hand way.

XQ. 1130. Did you ever estimate that they were worth more than a million dollars?

A. I never went beyond the figure that I would give that much for them at the time.

XQ. 1131. I understand that that is your testimony, that you would have been willing to pay a million dollars for them. But did you ever estimate their value to be greater than a million dollars?

A. I never considered it further, Mr. Kresel.

XQ. 1132. Did you ever testify they were worth five million dollars?

A. I might have said so, yes, and they would have been to some folks. They would have been to me if I had them exclusively.

Mr. Kresel: I ask that the answer be stricken out.

A. (continued). I think I did mention that figure once, Mr. Kresel.

The Court: Motion granted.

XQ. 1133. Did you not testify before the Committee on Finance of the United States Senate that in your opinion these two patents were worth five million dollars?

A. Yes, they may have been worth that. I think I mentioned that figure once.

XQ. 1134. Now, which is it? Were they worth a million dollars or five million dollars?

A. It would depend upon the time and the conditions what they were worth.

XQ. 1135. I have asked you the time. You have told me that at all times since April, 1919, to the present day there has been no difference in the value of them, have you not?

A. I said I would give a million dollars at any time.

XQ. 1136. Did you not say that?

A. That was my opinion of their value, yes.

XQ. 1137. And yet in 1921 you testified they were worth five million dollars?

A. Even on five they would pay a return, Mr. Kresel.

XQ. 1138. Did you testify that?

A. Yes.

XQ. 1139. What do you want the Court to take now? A million dollars as your testimony or five million dollars?

A. The figures are there. I did not verify them. I think at a million absolutely. That is the figure I swore to I would have paid, Mr. Kresel.

XQ. 1140. What do you want to say now? Were they worth a million dollars or were they worth five million dollars?

A. I should say they are worth a million easily, possibly five. You can verify that figure, as I told you.

XQ. 1141. And you would have been willing to pay five million dollars for these two patents, would you not?

A. Under certain conditions, certainly.

XQ. 1142. If they had been put up by the Alien Property Custodian for sale, you would have been willing to bid five million dollars for them, would you not?

A. It would depend on the conditions, Mr. Kresel.

XQ. 1143. No conditions at all; just the conditions that existed at that time, namely, that there were the patents and there were four licenses that had been issued thereon by the Federal Trade Commission. Under those circumstances would you have been willing to bid five million dollars for them?

A. No, sir. I would have been willing to bid one million with the licenses.

XQ. 1144. I read to you from your testimony before this Committee on Finance given by you in the month of August, 1921:

> "MR. METZ: On the basis of $75,000 and a five per cent royalty and the profit they made here, anybody that paid five million dollars for that patent would have a very cheap bargain, because they would have a monopoly, and with a

> monopoly I could on the present output make a great profit. I would gladly have paid five million dollars for it if I could have gotten it."

Did you so testify?

A. Under a monopoly, yes, sir. Under an absolute patent, yes.

XQ. 1145. You knew that with those four licenses issued with the Federal Trade Commission, you could not get a monopoly?

A. Then it was not worth five million dollars. I said if it was so; I so testified.

XQ. 1146. You knew that the Alien Property Custodian could not sell them without their licenses, did you not?

A. But with them I would have paid a million on them. I would not have paid five million.

XQ. 1147. Let us see: If you had bought these patents, you could have imported the products covered by them, if you had wanted to, could you not?

A. Yes, sir.

XQ. 1148. You could have refused to issue licenses under them to anybody that you wanted, could you not?

A. Further licenses, yes.

XQ. 1149. You would have been receiving a five per cent royalty from the four licensees under the Federal Trade Commission?

A. I could have claimed those.

XQ. 1150. That would have paid you a ten per cent differential, would it not, as between you and a manufacturer and those four others?

A. Yes, sir, certainly.

XQ. 1151. How long would it take you with that differential to have driven the others out of the market?

A. Even if I did not drive them out and continued at the same price, it was worth a million dollars.

XQ. 1152. Would you not have had a monopoly if you had bought these patents?

A. If I wanted to exercise it, certainly, Mr. Kresel, and that is what made the value, exactly.

XQ. 1153. So that when you say that these patents are worth a million dollars, you are placing a value on them as a monopoly?

A. No, sir; as they stand today with the licenses.

XQ. 1154. As they stood in April, 1919, not today.

A. Yes, sir, with the royalties in 1919, yes, sir; with the licenses on them.

XQ. 1155. And you admit that if you had gotten them, you could have had a monopoly?

A. I have always said I was against a monopoly on an article of that kind.

XQ. 1156. Do you not admit that you could have had it, if you had wanted it?

A. Any one that bought it could have had it, subject to the licenses.

XQ. 1157. You do not mean to say that the million dollars value which you placed on these two patents was a market value, do you?

A. I mean to say the returns would have——

XQ. 1158. Do you or do you not mean to testify that that is the market value of those patents at that time?

A. What do you mean by "market value," Mr. Kresel?

XQ. 1159. That is just it. I want to know what you mean by it?

A. That it is worth that to any one.

XQ. 1160. I do not know anything about it. What did you mean when you answered Colonel Anderson's question that the fair market value of those patents was a million dollars?

Mr. Anderson: I did not say "fair market value." I said, "the fair value."

Mr. Kresel: "Fair value;" excuse me.

Mr. Anderson: I did not say "market value."

Mr. Kresel: Excuse me. I stand corrected.

XQ. 1161. Did you mean to testify to the fair market value or the fair value?

A. To the fair value to anyone that bought those patents.

XQ. 1162. Did you mean to testify to the fair value or the fair market value?

A. Fair value, I should take it, to anyone.

XQ. 1163. You know, do you not, that there is no market value of patents?

A. In the ordinary sense, certainly.

XQ. 1164. There is or is not?

A. There is not, certainly; I know that.

XQ. 1165. Now let me read to you the question that Colonel Anderson put to you. I read from page 1719:

> "Q. 148. I will ask you this question: Basing your knowledge upon your experience as an importer and as a merchant in this business and other knowledge which you have described, and your manufacturing experience, your knowledge of the profits of this business, including the profits of sale and manufacture, and from your familiarity with market conditions which you have described up to April 10, 1919, what in your opinion was the fair market value of patent No. 986,148 which you have described as covering salvarsan, and re-issue patent No. 13,848, which you have described as covering neo-salvarsan, on April 10, 1919?"

Do you remember that question?

A. I do recall it from the record.

XQ. 1166. Now then, do you still say that the fair market value of these two patents was one million dollars in April, 1919?

A. I say the fair value of these patents. There was no market value, of course.

XQ. 1167. And what you mean by that is that you would have been willing to pay that for them?

A. Yes, sir; gladly.

XQ. 1168. If you had bought these patents, you would have been in a position to fix any price for the product that you pleased, would you not?

A. Not with the license outstanding.

XQ. 1169. With the ten per cent differential you have already told me that you could drive those out of the market, could you not?

A. I do not believe the ten per cent would have made the difference.

XQ. 1170. Well, if you could import from Germany, as you would have imported——

A. I would not have imported, Mr. Kresel.

XQ. 1171. As you could have imported, you could have driven your competitors out of business here, could you not?

A. That would depend upon how much cheaper they could manufacture.

XQ. 1172. Well, you know they manufactured cheaper, don't you, over there, than here?

A. I am speaking of the American manufacturer.

XQ. 1173. No, no, I am speaking of the German, if you please.

A. I never had in mind closing American plants and taking German stuff at that time.

XQ. 1174. I didn't ask you that. Please listen to my question. You know, don't you, that the Germans produced this article at a much lower price than the Americans can?

A. I don't know it today, Mr. Kresel.

XQ. 1175. Well, did you know it in 1919?

A. No, sir; I did not know it.

XQ. 1176. Did you know it in 1920?

A. No, sir.

XQ. 1177. When you were abroad in 1920 and 1921, don't you know what they were selling them at?

A. For export, at much higher than the market price in Germany and higher than our price here in some instances.

XQ. 1178. You mean that you are now importing from Germany and paying more for the product than you could buy it here for?

A. With the duty, yes; more than we could make it for here; the small amounts I have imported.

XQ. 1179. And you are importing it from your former principals?

A. I am only——

XQ. 1180. You are importing it from your former principals?

A. I am not importing. I had imported two lots, special orders.

XQ. 1181. Of course you knew, didn't you, that at the price you paid for these patents, it would eventually go back to your German friends?

A. Oh, no, it wouldn't. Why should it?

XQ. 1182. Didn't you think that the money would be returned to them by the Government?

A. I had no reason to form an opinion.

XQ. 1183. Had you never thought of it?

A. I never thought of that. Our claims against Germany would even that up.

XQ. 1184. You mean that when you were considering the value of these patents it never occurred to you that no matter what you paid for them, the Germans would get what you paid?

A. I had no such thing in mind, Mr. Kresel.

XQ. 1185. No such thing; that was farthest from your mind?

A. I didn't give it a thought. The question wasn't up.

XQ. 1186. Well, your arrangement with the Germans still continues?

A. To what extent, Mr. Kresel?

XQ. 1187. I don't know to what extent. Your exclusive license, you told us this morning, still continues?

A. Yes, sir.

XQ. 1188. Your agency still continues?

A. Yes, sir.

XQ. 1189. And when you started manufacturing salvarsan here, you did that contrary to your arrangement with the Germans, didn't you?

A. On the contrary, with their permission, when I started manufacturing under the patent.

XQ. 1190. Contrary to your contract, didn't you?

A. The contract was amended and I had the right to do it in 1916.

XQ. 1191. It was contrary to your written contract of 1912, was it not?

A. There was a change in the contract.

XQ. 1192. Was it contrary to the written contract of 1912?

A. It was not under the terms of the 1912 contract. It was a new contract, a new arrangement, an amendment thereto, if you put it that way.

XQ. 1193. Did not the 1912 contract prohibit you from manufacturing salvarsan here?

A. I couldn't manufacture salvarsan. The patent prohibited me from doing it. I had no right to until I got permission.

XQ. 1194. Did not the terms of your contract prohibit you from manufacturing?

A. It didn't mention the fact that I couldn't manufacture. It mentioned that I was agent for their goods.

XQ. 1195. When you were manufacturing here, you expected to have to account to your Germans for doing that, didn't you?

A. No, sir; that was never mentioned.

XQ. 1196. Didn't you so tell Mr. Choate when he was examining you?

A. Possibly that might have happened later on, but there was no mention at the time, Mr. Kresel.

XQ. 1197. I didn't ask you anything about any particular time. Didn't you tell Mr. Choate, when he was examining you in the office of the Alien Property Custodian, that you expected to have a severe session with the Germans after the war for making salvarsan at all?

A. I do not recall using those words, Mr. Kresel. I may have said something of the kind.

XQ. 1198. Let me read it to you.

A. I should be glad to have you.

XQ. 1199. I read from the stenographic report of your examination, page 22, as follows. The date is September 23, 1918. Question by Mr. Choate:

> "Mr. Metz, I can very easily see why, as long as you were under the contract of 1912, you kept the pharmaceutical and general business separate. But what was the point after you had them both?"

And your answer was:

> "I had a factory in Brooklyn, Herman A. Metz, doing pharmaceutical work. That building belonged to me and that was a separate thing entirely. You see the reason for that"——

And then Mr. Choate interposed by putting this question:

> "You are quite sure that that was not done with a view to making the accounting easier?"

And your answer was:

> "No, nothing whatever to do with that. There can not be any accounting on that now. After the war, I think I will have a severe session for making salvarsan at all."

A. That probably was true at that time.

Mr. Anderson: Where are you reading that from?

Mr. Kresel: I am reading from a report of an examination of Mr. Herman A. Metz before Mr. Joseph H. Choate in the office of the Alien Property Custodian on September 23, 1918.

Mr. Anderson: Is it in the official record? I have never seen it.

Mr. Kresel: It is an official record of the Alien Property Custodian, I suppose, or a copy of it.

XQ. 1200. Your estimate of a million dollars as the value of these two patents was based upon the assumption that you would have these patents and that you would be under no obligation to license anybody; isn't that right?

A. Quite right, sir.

XQ. 1201. And upon the assumption that you would be under no obligation to give to the United States a free license on all those patents; isn't that right?

A. Yes, that is true, naturally.

XQ. 1202. And upon the assumption that you would not be limited to a six per cent return upon your investment?

A. Certainly.

XQ. 1203. And upon the assumption that you would not have to devote all above six per cent for the advancement of the chemical industry?

A. Certainly.

XQ. 1204. Now I am going to ask you to tell this Court what in your opinion those two patents were worth, upon these conditions; namely, that the purchaser had to issue non-exclusive licenses on these patents to all Americans upon equal terms and upon equal royalties; that the purchaser had to give a free license upon all the patents to the United States Government; that the purchaser had to give away for public purposes everything that was made above six per cent on the investment?

Mr. Anderson: If your Honor please, I have to note an objection to that question, because it does not state the facts in the record and it is not based upon any facts shown in the record. It is a hypothetical question, and of course it must be predicated upon facts. It is contended here, and will be very earnestly contended in this case, that the charter is not susceptible of any such construction; and that being the case, a question predicated upon that construction of the charter, no part of which question we think can be sustained by the language of the charter itself, would be of course an improper question. I therefore subject the objection to the question.

Mr. Kresel: I desire to be heard, your Honor. I deny entirely Colonel Anderson's view of what is proper in a hypothetical question. I purposely refrained from assuming those to be the facts. This man has taken it upon himself to qualify as an expert on the values. I am asking him to assume certain conditions. Whether those conditions prevailed here or no I am not discussing with this witness, that is a matter that we have to discuss with your Honor. But I am entitled to have this expert assume a state of facts and give an answer thereon.

Mr. Anderson: I would say in reply that I think a hypothetical question must be predicated upon a state of facts appearing in the record where it is not taken in advance of the hearing on the promise to prove those facts to exist, and then if they are not proved the hypothetical question goes out, along with the answer. In the next place, I must take exception to the suggestion of counsel that the witness has assumed, as I think he said, to qualify as an expert. The witness is here under subpoena and he was asked questions by counsel on direct examination which we assume qualified him as an expert.

The Court: Tell me this, Colonel Anderson. Suppose it should be determined, though I am not now determining it, that the charter of this defendant is open to such construction, which you deny, would the answer to Mr. Kresel's inquiry then be pertinent to the issues in this case?

Mr. Anderson: I will put it this way, your Honor: I do not venture to suggest the question to counsel, but he might say, assuming so and so to be the truth, what then would be your idea of the value of the patents. But if it is put as a fact, then it must appear of record in order to be a proper question.

Mr. Kresel: I think, Colonel, if you will permit the stenographer to read the question you will agree with me it is not open to the criticism you have just made.

The Court: Do you care to have it read, Colonel Anderson?

Mr. Kresel: I have assumed, and I will ask him to assume that. If it does not meet that, I will correct it.

(XQ. 1204 read by the reporter as above recorded.)

Mr. Anderson: That was under these conditions.

The Court: As I understand, Mr. Kresel is ready to make it correspond to your ideas.

Mr. Kresel: May I reframe the question?

The Court: Yes.

XQ. 1205. Mr. Metz, I want you to assume for the purposes of this question that the purchaser of these patents would have had to issue non-exclusive licenses thereon to any qualified American citizen, that he would have had to issue such licenses upon equal terms and equal royalties to all, that he would have had to issue a free license upon all the patents to the United States Government, that he would have been entitled to retain of all the profits made only six per cent upon his investment, and that he would have been obligated to devote everything above six per cent to the advancement of the chemical industry of the country. Upon those assumptions will you tell the Court what in your opinion those patents were worth on the 10th of April, 1919?

Mr. Anderson: The objection to the form of the question as not predicated upon a fact is removed, and therefore it brings directly before the Court the point which I wish to submit by way of objection. If the question is predicated upon a state of facts in the record it is clearly material; if the question is predicated upon a state of facts not in the record, we can go on guessing eternally, and it is clearly immaterial. Therefore it brings us to the direct issue that it is immaterial and irrelevant because it assumes as a predicate for the answer conditions which do not exist in this record and did not surround this sale.

The Court: That objection is based on your construction of the charter, as I understand it.

Mr. Anderson: And upon the full record.

The Court: The answer may be taken under our general rule.

Mr. Anderson: Will your Honor permit me to add something, because I wanted to get that definitely before you?

The Court: Yes.

Mr. Anderson: This is more a reason for

supporting it than an additional suggestion. I think it becomes an important question in this case that to have divested a patent, which is nothing but an exclusive right granted by the Government, of the exclusive right, which was its character, as I indicated in my opening statement, and withdraw from it those rights and then ascertain its value, essentially assumes a confiscation of its essential elements or a destruction of its essential elements before you sell it, and that of course would not be a sale within the contemplation of the law. That is enlarging to some extent the direct point that I make.

The Court: I understand that contention from the standpoint of your previous objection. I will take the answer under our general rule and determine that later.

A. The value would be very largely destroyed and I should not have bid for it.

The Court: Are you practically through with your cross-examination?

Mr. Kresel: No, your Honor, I shall probably be another hour with this witness.

The Court: The time for adjournment has arrived. Colonel Anderson, at the time of an objection made by you this afternoon I probably displayed some irritation. I want to assure you, Colonel Anderson, such irritation was not due to your objection or the manner of its making. You were strictly within your rights in making an objection and the manner of its making is not open to criticism. I am sorry, sir, if my manner indicated the contrary.

Mr. Anderson: I thank your Honor very much.

(Whereupon, at 3.05 o'clock P. M., Standard time, adjournment was taken until tomorrow, June 26, 1923, at 8.30 o'clock A. M., Standard time.)

FIFTEENTH DAY.

Wilmington, Delaware,
June 26, 1923, at 8.30 o'clock A. M.,
Standard Time.

Before:

Hon. Hugh M. Morris, *U. S. District Judge.*

Counsel present as before noted.

Trial Resumed Before the Court.

Herman A. Metz resumed the stand.

Cross-Examination (Continued).

By Mr. Kresel:

XQ. 1206. Mr. Metz, you testified that in 1919 you paid $34,711.16 as a royalty to the Federal Trade Commission under the salvarsan license?

A. I have the figures here, yes, sir.

XQ. 1207. Will you tell me, please, when you made that payment?

A. (Witness refers to papers).

XQ. 1208. Do you think you can give us that information?

A. I am looking for it, Mr. Kresel, if you please, just a moment. I have here royalties paid that I testified from, the figures.

XQ. 1209. Do you find the item that I call your attention to?

A. What is the amount, do you say—thirty-four thousand?

XQ. 1210. $34,711.16, you testified?

A. Yes, sir, I have got here royalties on salvarsan and neosalvarsan, 1919, $34,711.16.

XQ. 1211. My question is when the payment was made, if you can give me that?

A. When the payment was made? I have got all the receipts here. I have two receipts here from the Alien Property Custodian for about that amount, Mr. Kresel. I suppose that was taken from my books, my statement. That is $34,000 something on there, as I figure it offhand. That would probably be the same item, as I take it, with a possible difference in figures of a small amount. I presume those are the receipts for those two payments make that total. There is a slight difference there in the amount. I do not see just how much it is. There were always slight adjustments on these matters.

XQ. 1212. Subject to any further correction that you may desire to make, then, I understand your testimony to be that the sum of $34,711.16 which you paid for royalties in 1919 was paid in two instalments, for which you produce these two receipts?

A. One for salvarsan and one for neosalvarsan, I think it is, Mr. Kresel.

XQ. 1213. Now, all I am interested in are the dates. One of these receipts is dated March 7, 1919, and is for $17,807.84, is that right?

A. Yes, sir.

XQ. 1214. And the other is dated July 22, 1919, and is for $16,241.25?

A. Yes, sir; shows the 1919 payments.

XQ. 1215. You know, do you not, that the Novocain patent expired in February of this year?

A. Yes, sir.

XQ. 1216. Now, Mr. Metz, I want you to assume for the purposes of this question that the purchaser of the novocain patent, which you valued at $200,000, according to your testimony, would have had to issue non-exclusive licenses thereon to any qualified American citizen, that he would have had to issue such licenses upon equal terms and equal royalties to all, that he would have had to issue a free license upon all the patents to the United States Government, that the royalties that he was to charge would have to be reasonable royalties, that he would have been entitled to retain of all the profits made only 6 per cent upon his investment, and that he would have been obligated to devote everything above 6 per cent to the advancement of the chemical industry of the country. Upon these assumptions, will you tell the Court what in your opinion those patents were worth on the 10th day of April, 1919?

Mr. Anderson: I ask leave, if your Honor please, to submit an objection to that question on the ground that it assumes facts which are not facts in this case and is not complete in the statement of the alleged evidence upon which it is predicated and that it is obviously predicated upon an erroneous construction of the evidence, and especially the charter of the defendant corporation; and therefore, in addition to the general objection which I have had placed upon the record, I wish to note this special objection.

Mr. Kresel: That is the same question that your Honor passed on just as we were adjourning yesterday. I purposely read from the question just as I put it yesterday, which your Honor allowed.

Mr. Anderson: It is probably fair to Mr. Kresel and to the Court that I should state it occurs to me that there are certain defects in the question which I think I should point out, perhaps, in addition to the contention I made yesterday, which I need not repeat now. The statements of assumed facts in the question are not drawn out by the record or especially the charter.

The Court: Is this the same question, with respect to the novocain patent——

Mr. Kresel: That I put yesterday with respect to salvarsan. Exactly the same.

Mr. Anderson: I agree to that. My objection is really sufficient, but in view of the fact that some question may be raised to which I did not point out the specific points of my objections, I want to do that in order to make it more specific. The following objections occur to me now, without limiting my general objection.

I desire to say in the first place the purchaser of these patents was not obligated to issue nonexclusive licenses thereon to any qualified American citizen. The charter does not contain any such provision. Second, that he would have had to issue such licenses upon equal terms and equal royalties to all. I believe you inserted "reasonable" there—reasonable royalties to all. I think the evidence negatives that situation and the record does not bear out that construction. That he would have to issue a free license on all patents to the United States Government. There is no such obligation in the charter, as we contend. That he would have been entitled to retain, of all the profits made, only six per cent upon his investment. That there is nothing to that effect in the charter. The limit of the amount that can be paid upon the stock of the corporation is six per cent, but there is no limit upon the expenses which can be incurred by the corporation in the way of salaries or otherwise, and therefore a purchaser, if he had owned this corporation, if he had bought under the charter of this corporation, would have been at liberty to allow himself any amount of compensation that he saw fit for his services, and the directors of this corporation can do likewise.

Therefore, the limitation there imposed is only as to the net profits distributable upon the stock, and does not in any way affect the rights of the parties. I do not want to argue this now, but I think it is due I should state this.

The next point is that he would have been obligated to devote anything above six per cent to the advancement of the chemical industry of the country, and, as I indicated in my opening statement, while there is language of that kind in the charter, it is so utterly indefinite that it is incapable of enforcement.

THE COURT: As I understand you, you contend and urge that there is a difference between this question and what it would be if he were asked what he would give if it were bought under the terms and conditions of the charter.

MR. ANDERSON: No, sir. Of course, I would object to that as an illegal question, because he would have to construe the charter, and no layman can do that.

THE COURT: I do not mean a question——

MR. ANDERSON: I understand what you mean.

THE COURT: But your main objection, as I understand you, is that this involves a construction of the charter with which you do not agree.

MR. ANDERSON: With which I do not agree and which I claim to be entirely unjustified by the charter itself.

THE COURT: Yes.

MR. ANDERSON: And, in the second place, that it does not fully state the evidence in the case, for the reason that there is evidence here at least of one case where an exclusive agency was conferred. There is evidence here that there was an accruing income on these patents, and all of those matters should be stated; in a hypothetical question the substantial elements of the evidence must be stated.

I want to state, if your Honor please, that I have elaborated my objection to the end that the Court may understand and counsel may understand its general character. I do not mean to limit it by that elabbration.

The Court: Have you anything to say, Mr. Kresel?

Mr. Kresel: No, your Honor.

The Court: I think it states the evidence substantially. It probably does not incorporate the fact disclosed by the evidence which was called to my attention by your last remark, namely, that there were accruing royalties on some of these patents. I do not recall offhand whether that was true with respect to novocain or not.

Mr. Anderson: Yes, that is true.

Mr. Kresel: Your Honor will excuse me, but I was talking to someone and did not get your last remark.

The Court: My remark was this, Mr. Kresel: that I think the question represents substantially the fact, with this exception, which was just called to my attention by Colonel Anderson, that the evidence does not disclose, as I recall, that there were accruing royalties on novocain, which fact is not embodied in your question.

Mr. Kresel: I understand that; but there is no question about those royalties, since the purchaser did not get them. That is the reason I did not include it. I quite understand that that is the contention of the Government.

The Court: Have you shown that those royalties were released in any way, or merely not purchased?

Mr. Kresel: They were not only not purchased, but we have not had a chance to show that they were released. But your Honor will recall that in my opening I read to your Honor a letter from the Foundation to the Alien Property Custodian, waiving any claims to those royalties whatsoever.

The Court: You may take the answer.

XQ. 1217. Mr. Metz, would you like me to repeat the question?

Mr. Anderson: I do not understand your Honor's saying that this conforms to the facts as in any way expressing a view upon the charter.

The Court: No, I am not taking his word for that.

Mr. Anderson: I do not want to argue that.

A. I made no calculation on that basis, Mr. Kresel.

XQ. 1218. I want you to make a calculation right now and tell the Court what, in your opinion, under those conditions stated in my question, the value of that novocain patent was?

A. Under those conditions I should not want the patent.

XQ. 1219. I did not ask you that?

A. I have no way of forming a conclusion as to what it would be worth without having all the facts, Mr. Kresel.

XQ. 1220. You stated yesterday in answer to a similar question with reference to the salvarsan and neosalvarsan patents as follows:

> "The value would be very largely destroyed and I should not have bid for it."

Is that your answer to the present question?

A. Yes, sir, that would be the same answer to that question.

XQ. 1221. You testified that you were the owner of two trade-marks, a trade-mark covering salvarsan and a trade-mark covering novocain.

A. And neosalvarsan; three trade-marks.

XQ. 1222. And neosalvarsan.

A. Yes, sir.

XQ. 1223. Of course, you were not the owner; the owner according to the papers that counsel introduced here was the Farbwerke-Hoechst?

A. Yes, my company, naturally, in which I own all the stock; now The Laboratories.

XQ. 1224. You stated that those trade-marks were seized by the Alien Property Custodian?

A. Yes, sir, they were demanded.

XQ. 1225. Is it not the fact that they were seized by the Alien Property Custodian after he had seized the stock of the Farbwerke-Hoechst Company as German property?

A. I should assume so, because he first seized——

XQ. 1226. I do not want you to assume, please.

A. It must be so, because he seized the property first.

XQ. 1227. I do not want your reasons. I simply want to know whether it is the fact.

A. To the best of my knowledge, yes.

XQ. 1228. You have testified that in your opinion the value of the salvarsan and neosalvarsan trade-marks was a million dollars?

A. Yes, sir.

XQ. 1229. A round million.

A. Yes, sir.

XQ. 1230. I want you to assume, for the purposes of this question, that the purchaser of those trade-marks would have had to issue non-exclusive licenses thereon to any qualified American manufacturer to use the same; that he would have had to issue such licenses upon equal terms and equal and reasonable royalties to all; that he would have had to issue a free license upon those trade-marks to the United States Government; that he would have been entitled to retain of all the profits made on the said trade-marks only 6 per cent upon his investment; and that he would have been obligated to devote everything above 6 per cent to the advancement of the chemical industry of the country.

Upon those assumptions, will you tell the Court, what, in your opinion, those salvarsan and neosalvarsan trade-marks were worth on the 10th day of April, 1919?

Mr. Anderson: Will your Honor permit me to renew the objection stated to the previous question of a similar character on the same grounds, in addition to the general grounds stated, and on the further grounds that the laws of the United States do not permit the licensing of a trade-mark. Therefore, the assumption is illegal.

The Court: I will hear you on the last objection, Mr. Kresel.

Mr. Kresel: I do not agree with counsel that there is any such law. On the contrary, not only is there no such law, but the fact is that The Chemical Foundation did license the United States Government to use those very trade-marks, as we shall show.

The Court: I have this difficulty: my impression with respect to the law of trade-marks was this: that it was an evidence of the good-will of the manufacturer; it was the brand, so to speak, indicating that it was manufactured by a certain person, and thus indicated a quality which was reflected in the good-will or good-will and quality, whichever way you may view it.

Possibly, this question raises more particularly one of the fundamental questions involved in this case, if my view of the law be correct, whether what was undertaken to be done by The Chemical Foundation with respect to trade-marks was not in reality a destruction and actual confiscation of the trade-marks—not of the patents but of the trade-marks; and if you care to give me the benefit of your views on that at the present time, I shall be glad to have them, Mr. Kresel.

Mr. Kresel: Well, I think your Honor is absolutely correct in the view that a trade-mark is a representation that the merchandise sold thereunder is the product of a particular manufacturer.

One of two things is true. Either these trademarks were of no value to The Chemical Foundation, because they could not properly represent that merchandise manufactured by somebody else and using that trade-mark was the merchandise that was manufactured by the persons or concerns that owned those trade-marks originally; or else, if they used them at all, whether by license or otherwise, it was upon the theory that they stepped into the shoes, so to speak, of the former owners of the trade-mark, and therefore had a perfect right to represent that the merchandise offered under that name was the merchandise of the successor of the original owners.

What I am trying to get from this witness is what, in his opinion, the value was of those trademarks under the conditions that I have laid down, whether those conditions were properly exercised or not. That is a matter that your Honor has to determine.

The Court: But is it a question that can be answered?

Mr. Kresel: I think so, sir. Indeed, I have no doubt of it.

Mr. Anderson: May I supplement my statement, if your Honor please. In view of your Honor's inquiry and the reply of counsel, I think it is proper that I should say, without at this time undertaking to argue the question, that the Government will contend in this case that while the Government could have seized these trade-marks to prevent their being used during the war, just as it could any property or right, for its protection, that any assignment of these trade-marks with a general obligation to give anybody the right to use them, was in effect a cancellation of the trade-mark; and therefore, the question is predicated upon a legal assumption which essentially destroys the thing which is sought to be valued and counsel is clearly asking this witness to assume a state of facts which answers itself.

Therefore, in addition to the other objections, the contention of the Government is that the counsel for the defense is asking the witness, in effect: Suppose the Government had confiscated and cancelled by act of Congress every one of the trade-marks here involved, what would you then think they were worth?

The Court: Is it not the law that a trade-mark can not be assigned apart from the business?

Mr. Kresel: No, your Honor. That is not my understanding.

The Court: If the witness can answer the question, we will put it of record, reserving the legal questions. If he can not answer it, let him say so, or let him answer it on various assumptions, so as to complete the question.

XQ. 1231. Have you the question in mind?

A. Yes, sir. I should have opposed any such transfer to an American owner of an American trade-mark.

Mr. Kresel: I ask that that be stricken out.

The Court: That does not answer it. Suppose we have the question repeated.

XQ. 1232. Do you want the question re-read?

A. I know the question. I understand the question.

XQ. 1233. You do know the question?

A. Yes. Assuming those were the conditions, I would not give anything for it.

XQ. 1234. Now without repeating the question at length, I ask you the same question with reference to the novocain trade-mark, and is your answer the same?

> Mr. Anderson: Your Honor will note the same objection in each case?

> The Court: Yes, and an exception noted.

A. The same answer. It would have been destroyed.

XQ. 1235. What did the Farbwerke-Hoechst Co. pay to the Germans for the assignment of the salvarsan trade-mark?

A. They paid nothing at the time, except the continuation of the business.

XQ. 1236. They paid them nothing. That is all I want to know. What did the Farbwerke-Hoechst Company pay the Germans for the assignment of the novocain patent?

A. Same conditions. Carried it on.

XQ. 1237. Mr. Metz, what in your opinion is the value of a patent upon which the owner has to issue non-exclusive licenses?

A. Based upon earning capacity. I would have to know the earning capacity.

XQ. 1238. Has it any value?

A. Yes, sir.

XQ. 1239. In your opinion?

A. Yes, sir.

XQ. 1240. Take the salvarsan patent and the neosalvarsan patent, which I understand you are considering together——

A. Yes, sir.

XQ. 1240 (continuing). ——and tell me what in your opinion those two patents were worth on the 10th day of April, 1919, to a purchaser who would have had to issue non-exclusive licenses thereon?

A. Based upon the earnings, under those conditions, and the royalties, they were worth what I said, easily.

XQ. 1241. They were worth what?

A. The amounts I said, at least a million dollars, with their earnings under the same conditions as you stated.

XQ. 1242. Is it not a fact that in your opinion a patent on which the owner had to issue non-exclusive licenses was worth nothing at all?

A. It depends upon the income.

XQ. 1243. I am talking now about these salvarsan patents?

A. He could fix the income and it would be worth accordingly, Mr. Kresel, in my opinion.

XQ. 1244. Have you not testified that the patents which are involved here, owing to the fact that non-exclusive licenses had to be issued thereon were worth nothing?

A. I said the value had been largely diminished, but I would not have bid on them is what I said, I think.

XQ. 1245. Have you not testified that they were worth nothing?

A. I do not think I so testified, Mr. Kresel. I should like to be shown.

The Court: Do you mean in this case, Mr. Kresel?

Mr. Kresel: No, your Honor, before a Congressional Committee.

The Witness: Oh, well——

The Court: Did you understand the question to be that, Mr. Metz?

The Witness: I understood the question. He said I testified so. Possibly. I do not recall.

Mr. Anderson: May I ask, to make it perfectly clear, whether this was before the Congressional Committee that he testified?

Mr. Kresel: The Court has asked and I answered it.

Mr. Anderson: I did not hear it.

The Court: Mr. Kresel said he referred to testimony elsewhere than here, and the witness said he understood the question.

Mr. Anderson: I see. I could hear very little of the evidence.

XQ. 1246. What is your last answer?

A. I do not recall such testimony, unless you show it to me.

XQ. 2147. Before I read you your testimony I want to ask you the same question as to a trade-mark. Have you not testified that a trade-mark which was not exclusive was worth nothing?

A. Certainly. A trade-mark is exclusive in my opinion, and must be necessarily.

XQ. 2148. Then you have so testified?

A. I assume if I was asked that question I should have answered in that way. A trade-mark is exclusive, naturally.

XQ. 2149. Now I read to you from page 879 of the record before the Sub-Committee of the Committee on Judiciary of the United States Senate. At the bottom of the page, the question by the Chairman:

> "You claim to own the trade-mark of 'salvarsan?'
>
> "Mr. Metz: I claim to own the trade-mark on salvarsan—salvarsan, neosalvarsan, and novocain. They were transferred to me by the Germans before we went into the war.
>
> "Mr. Garvan: What is the value of a non-exclusive right in a trade-mark?
>
> "Mr. Metz: Of a non-exclusive?
>
> "Mr. Garvan: Yes.
>
> "Mr. Metz: Well, I don't believe you can

grant a license in an exclusive trade-mark. A trade-mark refers to a certain thing.

"MR. GARVAN: We can not give an exclusive license.

"MR. METZ: Well, why interfere with me, then, if you can not?

"THE CHAIRMAN: You claim exclusive ownership in the trade-mark?

"MR. METZ: I claim exclusive ownership in the trade-mark. It is worth nothng if it is not exclusive. It must be exclusive, or it is worth nothing.

"THE CHAIRMAN: What is that?

"MR. METZ: It must be exclusive, or it is worth nothing.

"THE CHAIRMAN: And that is practically so in respect to a patent.

"MR. METZ: Yes."

Did you give that testimony?

A. I suppose I did; yes, sir. I am quite sure I did. That is my opinion.

XQ. 2150. Mr. Metz, what in your opinion were the salvarsan and neosalvarsan patents worth on the 10th of April, 1919, if in fact some person had an exclusive license to manufacture under them in the United States?

A. Exclusive license?

XQ. 2151. Yes, sir?

A. At least five million dollars—exclusive.

XQ. 2152. I will repeat the question. What in your opinion were those two patents worth to a purchaser on the 10th day of April, 1919, if he had to take them subject to an exclusive license in the hands of someone else, to manufacture under them in the United States?

A. What do you mean, exclusive license to somebody else?

THE COURT: I am not sure that I understand your question.

Mr. Kresel: May I reframe it, sir?

The Court: Yes. I assume you mean an outstanding?

Mr. Kresel: Yes, sir.

The Court: Very well.

XQ. 2153. Did you understand that?

A. I don't know how——

XQ. 2154. Well, let me try to put it again. What in your opinion were those two patents worth on the 10th day of April, 1919, to a purchaser who had to take them subject to an outstanding license in the hands of a third party, giving that party an exclusive right to manufacture under the patents in the United States?

Mr. Anderson: In addition to the objections already urged to this evidence, which apply to each question, I wish to add the additional objection that there is no evidence in this case that there was any exclusive license outstanding. I know that there was evidence yesterday—and I wish to say that so we may not entirely misunderstand the evidence—by Mr. Metz that he claimed an exclusive license under a verbal right from the owners in Germany before these patents were seized; but that could give no right in the United States unless it were a written assignment or license recorded in the Patent Office, and therefore there can be no such condition existing upon the evidence in this case, and there is no such evidence in the record.

The Court: I have a note to make inquiries about three or four matters, of which this is one: I was not sure whether the testimony had so far disclosed that the property seized by the Alien Property Custodian was, as to this patent, subject to the rights of Mr. Metz and his company. There is no evidence with respect to that, is there?

Mr. Anderson: I will reply to that question.

As I understand it, the witness was asked yesterday if he claimed a license to use these patents, acquired prior to the war. He said he got a verbal right to manufacture in 1916 and that he did claim a license. There is in this case no evidence that such license was ever recorded or that it was in writing, which would be necessary in order to make it good against a purchaser of that patent. And therefore upon that state of facts and upon that evidence, whatever the witness may have claimed, if he wants to say subject to the claim of this witness, why, that is all right.

THE COURT: May I ask two questions?

MR. ANDERSON: Yes, sir.

THE COURT: The first is that my recollection of the testimony is that that agreement permitting Mr. Metz or his company to manufacture was in writing. I may be mistaken about that.

MR. KRESEL: I have it right here; may I read it to your Honor?

THE COURT: No. Any way, I was under that assumption. The second is, whether it was in writing or not and whether recorded or not, it is such an agreement as may be enforced against the parties though not recorded, is it not? My understanding of the recording acts, and I may be in error, is that they are for the protection of other parties than those to the document.

MR. ANDERSON: Yes. The agreement between Mr. Metz and those companies abroad might be enforced, assuming there is no Statute prohibiting the enforcement.

THE COURT: Then that would be enforceable. My next thought is this: If that is enforceable against the German owners, when the United States makes the seizure it does not get any broader or greater rights than the German owner had, I assume.

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XQ. 1259. All right. Will you answer it.

A. To me they would have been worth a million dollars easily.

XQ. 1260. I did not ask you what they were worth to you.

A. What they were worth to someone else I can not say, your Honor.

XQ. 1261. You do not know what the value would be to you?

A. I know what they would be worth to me—salvarsan and neosalvarsan.

XQ. 1262. You say they would be worth to you a million dollars?

A. Certainly, on my calculation.

XQ. 1263. I am coming to your calculation now. If you had bought the patents you could have worked under them, could you not?

A. I was working under them, yes, sir, certainly.

XQ. 1264. I did not ask you what you were doing.

A. Certainly I could have worked under them.

XQ. 1265. You could have worked under them because it was you who had the outstanding license to manufacture?

A. Yes, sir. In either case I could have worked under them.

Mr. Kresel: May I have that stricken out?

The Court: Yes.

The Witness: Yes, sir, I could have worked under them.

XQ. 1266. Anybody that had purchased them under the conditions that I have set forth in my question could not have worked them, could he?

A. No one but the three licensees; no one else—or four licensees.

XQ. 1267. Assume, if you will, that they were bought by a person who had no license. Do you understand?

A. Yes, sir.

XQ. 1268. All right. Perhaps you misunderstood my question and I will ask it of you again. Assume that the purchase was made by a person who had no license, Federal Trade Commission or any other, and assume that there was an outstanding license giving some one else the exclusive right to manufacture in the United States, what in your opinion would have been the value of those patents on the 10th of April, 1919, to such a person?

A. That is a matter of legal—it would depend on the law and I would have to look it up first to see just what rights there were and what they would have brought in.

XQ. 1269. You would want to see the law first?

A. Certainly. I could not determine that off-hand, a matter of that kind, with so many of those questions.

XQ. 1270. What in your opinion was the value of these two patents on the 10th of April, 1919, assuming that there was an outstanding agreement between the Germans and an American citizen made before the United States went into the war, for the transfer of those patents to the American citizen?

A. Will you repeat that, Mr. Kresel?

Mr. Anderson: That is subject to the same objection.

The Court: Oh, yes.

Mr. Kresel: The stenographer will read it.

(XQ. 1270 repeated as recorded above.)

A. That would depend on his rights also, as to the royalties collected and the legal questions involved; but I can not pass on that.

XQ. 1271. What do you mean "royalties collected"? What are you talking about now?

A. The royalties paid on the licenses existing up to that time. There was about $300,000 which he could claim probably.

XQ. 1272. Assume, for the purposes of this question, that the sale of the patents did not include the accrued royalties. Upon that assumption, what in your opinion was the value of these patents on the 10th day of April, 1919, in the face of an outstanding agreement between the German owners of the patents and a United States citizen, made before the United States went into the War, to transfer those patents to the American citizen?

Mr. Anderson: It is possible, your Honor, that I do not catch the question of counsel; but in addition to the objection I have already made, I wish to add this objection: that the question is predicated upon and assumes a state of evidence which is contrary to evidence here, or, at least, an incomplete statement of evidence in another particular which I have not pointed out. The evidence is perfectly clear, your Honor, that there were licenses outstanding under the Federal Trade Commission, which were earning royalties under all these patents.

The Court: Neosalvarsan?

Mr. Anderson: Salvarsan and neosalvarsan and novocain; and the amount of royalties being paid annually has been testified to by these long statements, and that that was a continuing license for the life of the patent.

Your Honor will observe, therefore, a revenue continuing, and if there were no remaining value in the patent at all, the right of a purchaser to receive those continuing royalties under that patent for the life of the patent is certainly a valuable right, because that is like the lease of a house.

The Court: I think I understand you.

Mr. Anderson: In the second place, if it is an assumption that there was a grant or an effort to grant to this witness, or anyone else, by the

German interests before the seizure, of a license to use these patents exclusively, and that license or contract, which was identified but not put in evidence here, as I recall (it may have been put in), gave to the seller or the licensor, whichever it might be, a right to receive a continuing interest in the business, profits or royalties, or in any other form, then it necessarily follows that if the patent was conveyed subject to that exclusive right, assuming such was the truth, then the purchaser of that patent from the Alien Property Custodian would necessarily have received the right to whatever benefits accrued under that contract during the period of the contract. If the contract continued, the benefits would continue. If it ended, then it was no longer a burden.

Therefore I submit to your Honor that a hypothetical question asking for an opinion of the witness as an expert must set forth the facts accurately, to the end that he may predicate upon accurate facts, and not upon a partial statement of them.

THE COURT: See if I understand you, Colonel Anderson: Depending upon the different theories in the case, two hypothetical questions might be asked, I take it: (1) What would be the value of this patent on April 10, 1919, subject to an outstanding license under the terms and conditions set forth in the agreement between this witness or his company and the German owner? That would call for one answer on one basis. You could say probably, very properly, that would depend upon the terms of that agreement.

(2) What would be the value of that property on the same day, subject to four licenses which had theretofore been issued by the Trade Commission?

Mr. Kresel: And if counsel had waited, that would have been my next question.

The Court: Now then, of course you do not contend, I assume you do not contend—and I am asking this merely to see whether I am right in my assumption—that the Trade Commission license royalties are in and of themselves any indication of the value of the patent? These royalties paid to the Trade Commission are arbitrary royalties, are they not?

Mr. Anderson: Five per cent.

The Court: As I recall the statute, they are subject to no royalties or such royalties as the Court may subsequently allow; and that is a purely arbitrary statutory royalty.

Mr. Anderson: That involves a great many questions in this case. I take it that the presumption would be clearly in favor of the continuance of the royalty under the license issued by the Federal Trade Commission in the absence of anything else, because the presumption is always in favor of the validity of an act of an official of the Government.

May I answer your Honor's question a little more fully, because this is an important question?

The Court: Yes, certainly.

Mr. Anderson: I recognize I am on an intricate and technical question of law and I do not claim to be an expert in patent law. I am old enough now to say I don't know.

In the first place, I assume that a number of hypothetical questions might be asked this witness: First, assuming that there were no licenses on this patent and it was perfectly free to be transferred without any restrictions or burdens, what would be its value?

The Court: That was your question.

Mr. Anderson: No, sir. My question was, what its value was subject to the Federal Trade Commission license in every instance; because the evidence was that it was subject to that license for the life of the patent. In every instance, that was my question. I went over it last night and found out that that was true. That would be a question, where there were no limitations and where the people were free to deal with the patent as they saw fit.

Then there might be a question predicated upon the contracts which have been identified here and read from but not put in evidence. I doubt if they can be made the basis of a question unless they are put in evidence. I don't think they can.

The Court: I wonder if you would not be left in this difficulty. Suppose in the eventual determination of the case the facts should be found different from those assumed by you in your question; then would you have any evidence of value on the real facts?

Mr. Anderson: Possibly, unless there was other evidence on which the value could be predicated with reasonable accuracy, I might be left without adequate evidence of value. There would be some. I will state what I stated to your Honor the other day, that in my view of the law in this case, which I can not be assured your Honor is going to accept, there is no burden on the Government to show any value in this case. I am doing it because we averred certain facts and are going to prove them if we can. When we once call for an accounting of the trustee and prove that the property came into his hands, the burden shifts to him and that is where he has to discharge his responsibility.

But aside from that law point which we will argue when we come to it, I was saying that there might be a question first on an actual free transaction.

Second, assuming that the evidence not put in the record here can be made the basis of a hypothetical question, and counsel assumes in his hypothetical question the fact that there was, whatever it was, a possible outstanding interest in the witness or anyone else derived from the German owners before the seizure, validly derived, then of course the value would depend upon the construction of that contract, the rights under that contract, the limitations upon the rights of the owner or grantor and the right of the owner or grantor to receive benefits thereunder, all of which would be a question of very delicate construction. That would be the second phase.

Assuming that right to be outstanding, we might go one step further and assume the existence of valid licenses of the Federal Trade Commission, of four licenses. Then you would be predicating on five propositions. Your Honor now sees my position?

The Court: Yes, but I am wondering if there is not a flaw in that theory. I do not know. But if there was an outstanding exclusive license in Mr. Metz or his companies, and then getting to a matter of law, assuming that the United States took only the rights of the Germans and did not take his rights, then you would be confronted with the proposition, would you not, that the Federal Trade Commission licenses were invalid?

Mr. Anderson: Undoubtedly.

The Court: In view of these various questions of law, which we are not deciding as we go along, I am going to permit Mr. Kresel, subject to your objection, to predicate as many questions on as many different theories as he desires.

Mr. Anderson: Of course. I am not going to argue the matter further. There were other phases of it.

The Court: I did not intend to preclude you.

Mr. Anderson: I was coming to the very phase your Honor indicated, that if there was a valid exclusive license outstanding which the Government would have to recognize then the question would come up—what if any rights the purchaser had under the Federal Trade Commission license and what right if any he had to any accrued royalties if any.

Then we come to the third proposition, whether he was estopped to raise the question of the validity of the Federal Trade Commission licenses as long as he had taken them out himself. We are getting into an extremely delicate situation and I think that this question is entirely incomplete as a basis for value.

The Court: No more so than yours, Mr. Anderson, is it?

Mr. Anderson: Possibly not complete as to my own, but I had to take the evidence that was then in. All the other evidence was not in, I frankly did not know it or I would have put it in.

The Court: I think the only practical way of disposing of this matter is to allow Mr. Kresel to predicate his questions on the various theories he has in mind.

Mr. Anderson: I simply wanted to point out the various difficulties, to the end that they might be overcome, if possible.

The Court: I thank you very much, Colonel Anderson.

XQ. 1272. (continuing) Mr. Metz, have you the question in mind or would you like to have it read to you?

A. The last question, please.

(XQ. 1272 repeated as follows) "Assume, for the purposes of this question, that the sale of the patents did not include the accrued royalties. Upon that assumption, what in your opinion was the value of these patents on the 10th day of April, 1919, in the face of an outstanding agreement between the German owners of the patents and a United States citizen, made before the United States went into the war, to transfer those patents to the American Citizen?"

A. I can not answer that question.

XQ. 1273. You can not answer it?

A. I don't believe anybody could.

XQ. 1274. You mumbled there. I can't get it.

A. I don't believe anybody could answer that question.

XQ. 1275. That is an answer. You can not give it and you do not believe anybody could. Now, I want you to assume, Mr. Metz, that on the 10th day of April, 1919, these patents were offered for sale—we are talking only, you understand, about the salvarsan and neosalvarsan patents—that they were absolutely free except for the three or four Trade Commission licenses that were then outstanding and that the sale would include and carry with it all accrued royalties up to that day. What in your opinion under those circumstances were those patents worth?

A. At least a million dollars, I have testified.

XQ. 1276. Assume that on the 10th day of April, 1919, these patents were absolutely free except for the Federal Trade Commission licenses then outstanding, but that the sale did not carry with it the accrued royalties; what in your opinion were they worth on that day?

A. That would be based on the earning capacity then.

XQ. 1277. Not based. What were they worth?

A. Based on my knowledge of them, a million dollars still.

XQ. 1278. Still a million dollars?

A. Yes, sir; on the earning capacity.

XQ. 1279. Assume that on the 10th day of April, 1919, these patents, in addition to having the Federal Trade Commission licenses outstanding, were also burdened with a license granted by the Germans to an American citizen prior to our entry into the war, giving that citizen the exclusive right to manufacture thereunder in the United States; what, in your opinion, were the patents then worth under those circumstances?

Mr. Anderson: Subject to the same objection, your Honor.

The Court: Oh, yes.

A. They would be worth more to me than to anybody else.

XQ. 1280. I did not ask you that.

Mr. Anderson: I do not want to press the objection, but I want to make my position very clear here. I do not think that the question in the form asked is legal without at least having the alleged license introduced in evidence or stating what were the terms of the license, because, how can anybody estimate the value of a patent, subject to an exclusive license, without knowing the terms of the license?

The question is not fair. It is a question that can be misunderstood. It does not state the facts and may lead the witness into an entire misunderstanding. I am frank to say I can not follow it very easily myself.

The Court: Have you anything to say, Mr. Kresel?

Mr. Kresel: No, your Honor.

The Court: Why is there not merit in Colonel Anderson's objection that the record does not disclose, even though the witness may know of his own knowledge, what were the terms of the agreement between the German owners and his company?

Mr. Kresel: Why, your Honor, the witness testified that he was to pay nothing to the Germans for that license.

XQ. 1281. Didn't you?

A. Yes.

The Court: Your assumption is based on an error of fact, is it not, Colonel Anderson?

Mr. Anderson: No, the terms of the license do not appear. He may have said that he did not have to pay anything, but there may have been terms in the license which were very beneficial to the owners. It may have been an indeterminate license.

The Court: Aren't you shifting?

Mr. Anderson: No, sir. I am not conscious of shifting.

The Court: I am only asking the question. If the Germans got nothing for the license, then a person buying the Germans' interest would have gotten nothing.

Mr. Anderson: Let me suppose this case, in order to make my position clear. I do not know what the terms of these contracts are. I have not seen them. I want to have a chance to see them before I take up the re-direct examination of this witness, if I can.

Suppose in 1916 the German owner of this patent had realized that he could not ship into the United States and could not manufacture in the United States; and, therefore, if this market was not kept open for his product and its good will preserved and the business preserved, it would be an enormous loss to him. I am assuming now these facts. Everybody knew that the war was going to end. Everybody expected it to end about every six months.

Therefore, to have preserved this business right over here may have been of enormous value and so far as anything in this record shows, the licensee may have reasserted his right in America immediately. He may have been only too glad to have somebody take his patent and use it and manufacture under it and sell under it and develop that business during the period that he could not develop it—just as a man would be only too glad to have somebody else take his house and keep it in good condition while he was abroad, without any rent; it might be worth $10,000 a year.

Therefore, there are all kinds of elements that enter into value, depending upon the surrounding facts and circumstance; and to predicate a question of this kind upon the mere fact that a money payment was not to be made, assuming that to be the case (and that does not appear of record, except the witness has testified that he was not paid any money I believe. I do not recall; but I assume it is in the case)—that being the case, that does not give us the facts upon which you can predicate such a question. I can not possibly know those facts if they are not in evidence, and how can the witness know them? He might know them if they were in evidence; but he can only speak upon the record. I have merely suggested that as one of the suggestions that is apparent upon the face of the question. It is clearly an objectionable question.

The Court: Have you anything to say in reply?

Mr. Kresel: No, sir, I do not think I have anything to add.

The Court: What is the question, Mr. Stenographer?

(XQ. 1279 repeated as above recorded.)

The Court: By "exclusive license," of course, I shall assume that you mean a license that would run throughout the life of the patent without the payment of license fees or royalties.

Mr. Kresel: Yes, your Honor.

XQ. 1281. (continued) —and please assume that in my question, you understand?

A. That is the condition.

XQ. 1282. That was the condition?

A. That is the condition I maintained as to myself.

XQ. 1283. Of course, that is the condition of the license that you say you had, isn't that right?

A. Yes, sir.

XQ. 1284. All right, now, I want you to answer the question.

A. To me it would be worth a million dollars easily.

XQ. 1285. What would it have been worth to a person who did not hold that exclusive license, as you say you did hold it?

A. I can not judge that, Mr. Kresel.

XQ. 1286. Can give no estimate or opinion thereof?

A. It would be subject to law suits and everything else.

XQ. 1287. I did not ask you about that. Can you give any estimate of the value of the patents to anybody else other than yourself under the circumstances assumed in my question?

A. I have not considered that and I can't.

XQ. 1288. You can not?

A. I can not.

XQ. 1289. Now please assume that on the 10th day of April, 1919, these patents were absolutely free, except that there were outstanding the Federal Trade Commission licenses that you have mentioned and also there was outstanding an agreement made between the Germans and an American citizen before the United States entered into the war, to convey those patents to the American citizen. What, in your opinion, would the patents have been worth then?

A. I can only repeat the answer: To me, so much, and to others, I can not judge.

XQ. 1290. What to you?

A. At least a million dollars.

XQ. 1291. And how much to anybody else?

A. That is up to them to judge; I can't.

XQ. 1292. You can't give any answer to that?

A. I can not put myself in their position. I do not know, not without—

XQ. 1293. There you go again; I can't catch what you say.

A. Without looking up the details, I was going to say.

XQ. 1294. Looking only at the details that I have put in my question. Now please try to be a witness and not a lawyer. I mean that honestly, Mr. Metz.

A. I say I don't know that, Mr. Kresel.

XQ. 1295. You say you do not know?

A. I say I do not know.

XQ. 1296. You can not give an answer to that question?

A. Not offhand, no, sir.

XQ. 1297. You know enough about patents and manufacturing to understand the term "know-how" that is applied to patents, do you not?

A. Yes, sir; knowing how.

XQ. 1298. That means, does it not, the information and the technical knowledge to enable a person to manufacture an article that is covered by the patent?

A. The patent is supposed to convey that information to the man that knows how.

XQ. 1299. You know, of course, that patents do not?

A. Some do; some do not.

XQ. 1300. Some do and some do not; very well, we will come to that. As an example of the value of the "know-how" in connection with a patent, you have in mind, have you not, your own experience?

A. Yes, sir.

XQ. 1300. (continuing) As a manufacturer of salvarsan?

A. Yes, sir.

XQ. 1301. You had this patent available to you before the war and during the war; you were the representative of the owners of the patent before the war; you sent your brother abroad, who spent four months studying in the German factory how to make salvarsan; and yet, according to your testimony yesterday, it took you more than a year after he came back before you could produce it?

A. Because we had no machinery.

XQ. 1301. (continued) That is true, is it not?

A. Because we had no machinery, yes, sir; preparing a plant, not making salvarsan.

XQ. 1302. Now, Mr. Metz, you do not mean to say that that delay was only because it took you so long to install the machinery?

A. Largely.

XQ. 1302. (continued) In the face of the agreement that you made with Dr. Schamberg in June, 1918; do you?

A. You mean the Stieglitz agreement?

XQ. 1303. I call it the agreement with Dr. Schamberg of June, 1918?

A. I mean to say we were still hampered by machinery, yes, sir.

XQ. 1304. And that was your only hampering?

A. That was the main hampering, yes, sir.

XQ. 1305. And that you had no difficulty in producing the stock except because you did not have the machinery?

A. I say, we did produce the stock.

XQ. 1306. And that you had no difficulty in producing it except for the machinery?

A. No difficulty when we once got started, no, sir.

XQ. 1307. I am perfectly willing to leave it there. Now, as an example of the value of the "know-how" do you remember testifying that the Badische Company, for instance, had a patent on synthetic indigo and yet it took them twenty-five years and that they had to spend millions of dollars before they succeeded in producing indigo; do you remember testifying to that?

A. No, that is not true, Mr. Kresel.

XQ. 1308. It is not the truth?

A. They produced indigo, but not on a commercial scale, which is a great deal different.

XQ. 1309. Oh, that is what you mean?

A. That is what I mean, certainly, to produce it commercially.

XQ. 1310. What is the value of a patent if you can not produce it commercially?

A. That is an open question.

XQ. 1311. That is true, is it not?

A. That is an open question. From a scientific standpoint, it may be very valuable.

XQ. 1312. And you remember you testified, speaking upon this subject, that chemists know the why, but it is the practical man that knows the how?

A. Yes, sir.

XQ. 1313. And you remember testifying as follows, do you not, speaking of the licenses granted under these very patents. I am reading from page 719 of the Hearing before the Committee on Ways and Means:

> "Licenses have been obtained for some time past from the Federal Trade Commission by a number of concerns under the patents for vat colors, and yet none of them has so far been manufactured in this country. This would seem to indicate that more than the mere patents have stood in the way of manufacturing, since otherwise these vat dyes would have appeared in the market by now."

A. Yes, sir.

XQ. 1313. (continued) That was true?

A. That was true.

XQ. 1314. Of course, you know that when The Chemical Foundation bought these patents, they did not get the "know-how" from the Germans, did they?

A. Whatever was in the patent they got and nothing else.

XQ. 1315. And you know, do you not, that you could not produce under these patents?

A. I know we did in the laboratory, but had no raw material for the commercial operation.

XQ. 1316. I am not speaking particularly of salvarsan?

A. I am speaking of colors.

XQ. 1316. (continued) Just a moment; I am not through.

A. I am speaking of colors.

XQ. 1316. (continued) Just a moment. I am not through. I am speaking generally with reference to the patents which are here in question. Do you not know that you could not work with those patents any way?

A. I do not know. I know that we did work in the laboratory under our license for vat colors, but had not the raw material to make it commercially and could not obtain it in this country.

XQ. 1317. Did you not testify before the House Committee on Ways and Means that you could not work under these patents any way?

A. You can on some and some you can't; in a general way, certainly.

By The Court:

Q. 1318. The question is whether you so testified or not?

A. I assume I did, yes. I think I made that statement several times.

By Mr. Kresel:

XQ. 1319. And it was true, was it not?

A. In a general way, yes; but under specific patents it isn't.

By The Court:

Q. 1320. Which is true? What you just said or what you testified before the Committee?

A. That is what I testified. In a general way it is true, I will say that again; but if you will give me a certain—

By Mr. Kresel:

XQ. 1321. Let me read you what you testified.

The Witness: (continuing): But if you will give me a certain patent; it will be different with individual patents.

XQ. 1321. (continued) I read from page 24 of this record before the Committee on Ways and Means:

"Now, Mr. Chairman,"

you said,

> "there is another great danger, as I view it; the question has been raised of The Chemical Foundation taking over these patents. Well, there is safety in that. In other words, the patents have no value as such except for the purpose of keeping out infringing products."

You testified to that, did you not?

A. I did, yes, sir.

XQ. 1322. "They were simply clubs used to keep out other manufacturers."

You testified to that, did you not?

A. Many of them were, certainly.

XQ. 1323. Didn't you so testify?

A. Yes, yes, yes, it is there.

XQ. 1324. "You can not work with those patents any way."

Did you not so testify?

A. Yes.

XQ. 1325. "And there are a great many of these patents that under the patents we can allow goods that we will not make here to come in, and it is going to do it."

Did you so testify?

A. Yes.

XQ. 1326. And was that testimony true?

A. Yes, to a large extent.

XQ. 1327. And is it true today?

A. To a large extent, yes.

XQ. 1328. Well, wasn't it true as you testified? Never mind your "to a large extent."

A. Well, you have got to give me specific—

XQ. 1329. Wasn't it the truth?

A. Yes.

XQ. 1330. And isn't it true today?

A. Yes, practically true.

XQ. 1331. And did you not testify also that these patents have only a nuisance value?

A. Well, it is not only; they had a nuisance value.

XQ. 1332. Did you not say that they had only a nuisance value?

A. It is not fair to pin me down to statements made before the Committee in a general way.

XQ. 1332. (continued) Please don't argue with me.

A. I will say yes, then.

By The Court:

Q. 1334. Did you or did you not so testify?

A. I did at the hearing, undoubtedly.

By Mr. Kresel:

XQ. 1335. Talking about the "know-how," Mr. Metz, you remember you tried to manufacture beta-naphthol, did you not?

A. That was not patented. We did manufacture. We are manufacturing.

XQ. 1336. I did not say it was patented.

A. We are manufacturing. We are manufacturing.

XQ. 1337. You remember that when you started in to make beta-naphthol you had a man who claimed to know how to make it, do you not?

A. Yes, sir.

XQ. 1338. You know, do you not, that after working for a long time, all that you could get was a laboratory quantity, and finally gave it up?

A. Oh, I don't think that is true. We built a large plant, and one of the largest consumers—

XQ. 1339. When you started to make it, the best you could do for months was to produce laboratory quantities?

A. We had no plants; naturally. When we had a plant we made it.

XQ. 1340. Let me understand what you mean by "plant." Do you mean brick and mortar and iron and steel; or do you mean—

A. I mean—

XQ. 1340. (continued) Wait a minute. Or do you mean your machinery and the skill of people who knew how to make it?

A. By "plant" I mean brick and mortar and the machinery necessary to make it; proper machinery.

XQ. 1341. That is all you mean?

A. That is what I mean by "plant," yes, sir.

XQ. 1342. So that you say now that you were able to make beta-naphthol. You had no difficulty at all except that your building and machinery did not come in quick enough?

A. That was the main drawback, we had—

XQ. 1343. Was it the entire drawback?

A. You have got to experiment around before you get a thing finished, naturally, Mr. Kresel, with the crude materials which you get?

XQ. 1344. Then it was not only the fact that your building did not go up fast enough?

A. It was a combination of circumstances during the war, and you could not get raw material.

XQ. 1345. It is a fact, is it not, that the patents that are here involved, namely, the patents that were conveyed by the Alien Property Custodian to The Chemical Foundation cover only 10 per cent of the dyes that were produced?

A. As to the number of dyes, yes, sir; approximately 10 per cent, I should say.

XQ. 1346. Now, what do you mean "as to the number of dyes?" You see, you qualify your answers so that I don't know where I am at with you.

A. Well, 10 per cent, whether you figure it on money value or on quantity is quite different.

XQ. 1347. Oh, no; I am not speaking of money value; I am speaking of dyes as dyes.

A. On bulk produced or as the names of dyes, the individual dyes? That is a great difference, Mr. Kresel.

XQ. 1348. Is it not a fact that they cover only 10 per cent of the bulk of dyes?

A. I can not say that, Mr. Kresel.

XQ. 1349. Is it not a fact that 90 per cent of the dyes that are produced in this country are free of patents?

A. Yes, sir, if you put it that way, yes, sir; at least 90 per cent.

XQ. 1350. Lest there be any question as to what you mean by that answer, I will read to you from your statement made to the House Committee on Ways and Means. I read from page 728 of this record. You said:

> "Over 90 per cent of the tonnage and of the individual dyes used in the United States will be free from any patent restraint within the next four years. Over 75 per cent of the dyes are now in that condition."

Was that true?

A. That is true, to the best of my knowledge and belief, Mr. Kresel; and was true then.

XQ. 1351. How high a royalty did you pay the Federal Trade Commission on novocain?

A. I will give you the figures.

XQ. 1352. I did not ask the figures; I mean the rate of royalty?

A. 5 per cent.

XQ. 1353. 5 per cent?

A. On the gross sales.

XQ. 1354. 5 per cent on the gross sales. Now, did you testify that your gross sales of novocain for 1919 were $246,295.67?

A. Let me see if that is correct. I have the figures. (Refers to papers.) How much?

XQ. 1354. (continued) $246,295.67?

A. What year did you say, Mr. Kresel, please?

XQ. 1354. (continued) 1919?

A. $246,295.67, yes, sir.

XQ. 1355. Well, that is the figure I gave you.

A. That is right, sir.

XQ. 1356. Now, I wish you would calculate 5 per cent on that and tell me the result?

A. The royalties I have here are forty-six hundred—

XQ. 1357. I did not ask you anything about that. Now please answer my question. I want you to tell me, if you can (if you can not, you can say so), what 5 per cent is on the gross sales that you have just given me for 1919?

A. (Witness makes calculation.)

MR. ANDERSON: On what page does he give his gross sales, Mr. Kresel?

MR. KRESEL: Page 1718.

XQ. 1357. (continued) Can you give us the result?

A. I am trying to get at it, Mr. Kresel; in just a moment.

XQ. 1358. I am afraid you do not figure rapidly enough to suit me.

A. No, I have got figures here. I do not know exactly how they—

XQ. 1359. I want to know if you can give us the result of that. If not, I will pass on.

A. Well, I have got the figures we paid here—

XQ. 1360. I did not ask you what you paid. I want to know if you can give me the result of 5 per cent on $246,295.67?

A. Yes, I will give it to you in just a second.

XQ. 1361. What is it?

A. Just let me have one moment.

XQ. 1362. In round figures it is about $12,000, is it not?

A. $12,000? Yes.

XQ. 1363. All right. Now, you testified that you paid as royalties on novocain to the Federal Trade Commission in 1919 $4863.74, did you not?

A. $4683.

XQ. 1364. $4863.74 is what the record shows.

A. Well, that is a mistake. It is forty-six hundred in my record here.

XQ. 1365. $4600. I will take your correction; $4683.74. Now will you explain to the Court how it is that you did not pay to the Federal Trade Commission the entire amount of royalties due, if you are right in saying that those were your sales?

A. Yes, sir. The sales include the tablets and the solutions. We only pay upon the novocain in the tablets and the solutions, which was arranged with the Commission and checked up by Mr. Buffum and Mrs. Wilson at my office. The bottles and the other products going in do not pay a royalty; only the novocain in those solutions; and we had the whole thing in our books as novocain sales, and got a separate memorandum of the stuff in there, which was checked up. I told you I have not the quantities of novocain at that time.

XQ. 1366. Are you through?

A. Yes, sir. That explains the difference.

XQ. 1367. Are you through?

A. Yes, sir.

XQ. 1368. You say now that you did not pay royalty on all your novocain sales?

A. On all the novocain sales as novocain, yes; absolutely every ounce of it, every gram of it.

XQ. 1369. You say, Mr. Metz, that you did not have to pay a royalty to the Federal Trade Commission for all your novocain sales?

A. I did not say that, Mr. Kresel.

XQ. 1370. Were all your novocain sales $246,295 in 1919?

A. They were novocain preparations and—

XQ. 1370. (continued) No, no, no, no; answer my question.

A. Not on that basis that they contained other things than the tablets; but the sales book shows the total. This is taken from our sales book.

XQ. 1371. Did you not testify on your direct that your sales of novocain in 1919 were $246,295.67?

A. Yes, but I want to modify that by saying—

XQ. 1371. (continued) Now, —

A. Yes, I did.

XQ. 1372. Do you want to change that?

A. I want to modify that to say—

XQ. 1373. All right, modify it any way you want.

A. The sales of novocain other than the novocain preparations, which are all in the same book and checked up by the representative of the Custodian and Federal Trade Commission.

XQ. 1374. How much were the sales of your novocain preparations so-called?

A. I had that straight here on novocain and I gave them to you. I will have to look that up. I can not give you the amounts. I will give you the figures.

XQ. 1374. (continuing) What do you mean you can not give me the amounts; you will give me the figures?

A. I have not got the tablets and the solutions separate. I have simply got novocain as such; but I have got the amounts in pounds and ounces, which are separate. I will have to check those back, Mr. Kresel. That escaped me; I am very sorry.

XQ. 1375. Now, Mr. Metz, I am waiting for your attention if you will give it to me.

A. I beg your pardon, Mr. Kresel; I was looking for a paper; pardon me.

XQ. 1376. The reason that you say you paid only $4683.74 in royalties to the Federal Trade Commission in 1919 was that you did not have to pay a royalty on novocain preparations; is that your answer?

A. On the products that went into them besides novocain, yes, sir. We paid for the novocain in the preparation.

XQ. 1377. I will repeat the question. Is it your claim that you did not have to pay a royalty on what you have called novocain preparations?

A. That is not my answer. My answer is—

XQ. 1378. All right, now. If that is not your answer, let me put another question: You said that your sales were $246,295.67. Is it true that those were sales of novocain?

A. Novocain and—

XQ. 1379. Yes or no?

A. Not entirely.

XQ. 1380. What is included there in that figure in addition to the novocain?

A. Novocain tablets and solutions.

XQ. 1381. Are not novocain tablets novocain?

A. There are the small bottles—

XQ. 1381. (continued) Aren't they novocain?

A. Novocain and a mixture, in some cases, of something else.

XQ. 1382. Novocain tablets that you sold and that you included in that figure, were they not novocain?

A. They contained novocain.

XQ. 1383. Were they not novocain?

A. Some were not novocain, no, sir; they contained novocain.

XQ. 1384. Under what name did you sell them?

A. "Novocain tablets E," "T," and so forth, which are different combinations.

XQ. 1385. Is it your claim that under your Federal Trade license you did not have to pay a royalty on such novocain tablets, E, T, and so on?

A. Only on the novocain in those tablets; that is my claim was my arrangement with the Commission.

XQ. 1386. You speak of an arrangement with the Commission. Was that in writing?

A. I went down and saw them.

XQ. 1387. Was it in writing?

A. I do not recall. I know they checked it up and were satisfied with those conditions.

XQ. 1388. You know, do you not, that you did not pay to the Federal Trade Commission either during 1919 or 1920, or 1921 or 1922, an amount equal to five per cent on the sales that you gave us?

A. Not on the sales, because the sales, as I say now are—

XQ. 1389. Well, not on the sales, that is the answer.

Mr. Kresel: May I have the rest beginning with "because" stricken out?

The Court: Motion granted.

A. Not on the sales I gave you as covering novocain.

XQ. 1390. You did not give me any sales, I beg your pardon; you gave them upon your direct examination.

A. Yes, sir.

XQ. 1391. That is all I want to know.

A. I would like to correct that, your Honor.

THE COURT: The witness says he wants to qualify something.

XQ. 1392. Certainly, now you may qualify it.

A. Those sales contain the total of the sales of the novocain, but in which are included the bottles and the ingredients that enter into the tablets, that are not novocain, and therefore require no license, and so arranged with the Federal Trade Commission. They contain, however, all the sales of novocain in every form, plus these outside propositions, which should have been deducted, and I regret that that has not been done or had not been done when the list was handed to me. But that can be done at any time and I will be glad to do it.

XQ. 1393. I asked you on last Saturday to produce your books showing the amount of your sales in 1919, 1920, 1921 and 1922. Have you them here?

A. I sent my bookkeeper back for some of them and I think he brought them here to the hotel.

XQ. 1394. Will you produce them?

A. I can bring them here.

XQ. 1395. They are not here?

A. They are in the hotel.

THE COURT: Are you going to take up the books now?

MR. KRESEL: I would like to see them, sir.

(At this point a short recess was taken at the direction of the Court.)

XQ. 1396. Before the recess, Mr. Metz, I asked you to produce your books showing the amount of your sales during the years 1919 to 1922, inclusive. Have you those?

A. My man informs me there are 25 sales books. He did not bring all the sales books. He brought the sheets which were checked from the books.

XQ. 1397. I did not ask for sheets and I do not want anything about them. I would like to see the books.

A. I haven't got those books. They were not asked for. The sales book for 1914, the first sale of salvarsan to the Government was asked for and that I have got. I sent my man for that and these sheets he brought from the books.

XQ. 1398. If you misunderstood me on Saturday, very well. I state to you now that I want to see your books which show that you made the amount of sales that you testified to here on the direct. How long will it take you to get them?

A. Is it necessary to bring 25 sales books down here from New York to check up?

XQ. 1399. How long will it take you to get them?

A. We can send to New York to bring them down. I have the records from the books checked up, if you want those.

XQ. 1400. Can you get them here this afternoon?

A. No, not possible.

XQ. 1401. Can you get them in the morning?

A. I can send my man. I can't get them. I have the sheets here. I can't do business without my books.

XQ. 1402. Can you have them tomorrow?

A. If the Court so orders me.

The Court: Mr. Kresel, I am going to let you proceed in your own way, but I am wondering whether you care to inspect these sheets and then determine whether you want the books or not.

Mr. Kresel: I will do that, your Hono

Mr. Anderson: Would your Honor permit me to make this suggestion to counsel. The witness, I understand, has his ledgers. He has the sheets showing the royalties paid in detail, which have been checked by the representative of the Federal Trade Commission, and Mr. Buffum, who is now representing The Chemical Foundation. Would it not be a little unreasonable—I do not mean that counsel means to be unreasonable—to require the whole 25 sales books?

The Court: No, Colonel Anderson, but haven't we made progress? Mr. Kresel said he would examine the sheets.

Mr. Anderson: I did not hear that.

Mr. Kresel: I am going to look at the sheets and then examine Mr. Metz.

Mr. Anderson: I can not hear back here.

Mr. Kresel: I am going to speak louder. May I proceed, sir?

The Court: Yes.

XQ. 1403. You testified upon your direct examination as to the amount of profits that you made. You started in by giving your alleged profits beginning with 1913.

A. Yes, sir.

XQ. 1404. Have you in Court here the books which will show what those profits were?

A. I have the ledgers from which the Treasury reports are made.

XQ. 1405: You have the ledgers?

A. I am not a bookkeeper. My bookkeeper will account for all that, Mr. Kresel.

XQ. 1406. Please, Mr. Metz; you say you have your ledgers?

A. The ledgers are here; yes, sir.

XQ. 1407. Will you take your ledgers and point out to me therein the entry of the profits that you made during the years for which you undertook to give figures?

A. Personally I would not recognize them in my books. My bookkeeper can do that. I am not a bookkeeper, Mr. Kresel.

XQ. 1408. Your answer is you can not do it?

A. Personally I can not. I do not think I can.

XQ. 1409. All right, that is an answer. I asked you yesterday whether you had ever met Gaston Means. Do you remember that?

A. Yes, sir.

XQ. 1410. You testified that you never saw him. Does that mean that you never spoke to him?

A. It means to the best of my knowledge I never saw the man or spoke to him. To the best of my knowledge and belief. I do not recollect ever seeing or speaking to him, ever.

XQ. 1411. And that you never wrote to him?

A. That I do not know officially, if we had a communication. I do not recall it, if I did. I do not know the man, that is all I could say. I would not know him if he was in the courtroom.

XQ. 1412. And that you never received any communication from him?

A. I do not recall any such communication, Mr. Metz, to the best of my recollection.

XQ. 1413. You testified that you had been informed that this man Means had been making an investigation of this case?

A. Newspaper reports so stated.

XQ. 1414. Did you not confer with Means about this case?

A. I never did to my recollection; no, sir, never.

XQ. 1415. Do you mean to say that you have forgotten whether you did confer with him about this case?

A. I mean to say if it was Means I did not know it, and to my recollection I do not know. And I could positively swear to that, Mr. Kresel, and I am under oath.

XQ. 1416. You did confer with Bennett?

A. Bennett came to see me time and again in my office. You do not call that a conference, do you?

XQ. 1417. You did talk with Bennett?

A. Bennett came to me time and again, yes, sir.

XQ. 1418. And you talked with him?

A. He talked with me and mentioned facts, but it did not interest me one bit.

XQ. 1419. And you talked with him about this case?

A. Undoubtedly, Mr. Kresel, in the course of the conversation.

MR. ANDERSON: I think you will have to say what time.

MR. KRESEL: I am coming to that.

MR. ANDERSON: But you are asking the witness, and that ought to come first.

MR. KRESEL: Please do not criticize me. If you have an objection, please raise it. I do not like counsel telling me that I should put one question ahead of another.

MR. ANDERSON: I am sorry, your Honor, if I offended counsel.

THE COURT: Colonel Anderson, there is no question before the Court now. Let it pass, and let us have the next question.

XQ. 1420. Mr. Metz, you had talks with Bennett before this suit was brought, did you not?

A. Oh, yes; he has talked to me very often.

XQ. 1421. And you met Bennett in Washington, did you not?

A. I saw him there undoubtedly when I was there and he came there.

XQ. 1422. And you saw him in your office in New York, did you not?

A. Yes, at various times.

XQ. 1423. And you gave him information with regard to The Chemical Foundation and these patents, did you not?

A. Not specifically; in conversation possibly; answered questions if he asked them.

XQ. 1424. And you talked with him about your trip abroad?

A. Undoubtedly, in general conversation, certainly.

XQ. 1425. And you told him that you had talked with your former principals about the return of these patents, did you not?

Mr. Anderson: I shall have to object.

The Court: The time, place and persons will have to be specified, Mr. Kresel.

XQ. 1426. I am speaking, Mr. Metz, only of the conversations that you had prior to the bringing of this suit, which was September, 1922. Do you understand me?

The Court: That does not comply with the general rule, as I understand it, and does not comply with the local rule which requires, for purposes of contradiction, that you designate and specify in your question the time and place and persons present.

Mr. Kresel: All right, your Honor.

Mr. Anderson: In addition to my general objection, I wish to renew very earnestly my objection to this examination as being entirely immaterial and irrelevant.

The Court: As I understand the purpose of the examination, all of it has been either on one or two grounds, or on both, namely, the interest, the bias, the credibility of this witness, or his testimony with respect to values; and I understand this question is leading up to a matter which goes to a question of credibility.

XQ. 1427. Did you not on or about the 6th day of September, 1921, have a conference with Mr. C. Cyril Bennett and with Mr. Pickerell, as to whom you testified yesterday that he was in your employ, with reference to The Chemical Foundation and the patents here involved and the proposed suit to be brought thereon by the Government?

A. I have no recollection of such a conversation or any idea of a suit being brought.

XQ. 1428. I will ask you the same question and shall omit the statement that a suit was to be brought.

THE COURT: The question does not embody the place. The way those questions are framed here is whether the witness did not at a certain time and at a certain place, with certain persons present, make a statement, specifying the statement, or use words to that effect. We are probably very strict about those rules here; and unless that is put in more or less that form, we do not permit contradiction.

MR. KRESEL: All right, your Honor; I will observe the rule.

XQ. 1429. Did you not on or about the 6th day of September, 1921, in Washington, D. C., have a conference with Mr. C. Cyril Bennett, at which Mr. Pickerell was present, and at which time you asked Mr. Bennett to obtain for you from the files of the Alien Property Custodian information regarding the patents conveyed to The Chemical Foundation?

A. I have no such recollection. Those lists were available. I had them in New York—the patents transferred or obtained. They were all published. I had them. There was no use asking Bennett to get them and I don't recall that I did.

The Court: Will you repeat the question, Mr. Kresel? I do not think the witness understood.

Mr. Kresel: I will repeat it. Indeed, I should prefer to have the stenographer repeat it, if your Honor will permit it.

(XQ. 1429 repeated as above recorded.)

A. I do not recall such a meeting.

XQ. 1430. And at that meeting, is it not a fact that Mr. Bennett stated to you that the only way he could get that information was through Senator Moses and that he would request Senator Moses to get you that information?

A. That may be true. I don't recall.

Mr. Anderson: He has stated, sir, he did not recall any such meeting.

Mr. Kresel: He has now answered.

XQ. 1431. Look at that copy of a letter I now hand you. Do you recognize the handwriting of your employee, Mr. Pickerell, in that letter?

A. Yes, sir. That looks like Dr. Pickerell's letter.

XQ. 1432. Let me have it, please.

A. May I read it?

XQ. 1433. No, let me have it. All I asked you was to identify the handwriting.

A. (Witness returns letter to counsel.)

XQ. 1434. Now, I am going to ask you to read the letter and state whether that does not refresh your recollection about this conference that I have just been questioning you about?

A. I never saw the letter and I do not recall anything in connection with it, Mr. Kresel.

XQ. 1435. You say that that does not refresh your recollection?

A. No, not specially.

XQ. 1436. Now, don't let us misunderstand or fall between "specially" and "generally."

A. I do not recall any details connected with it; no, sir.

XQ. 1437. I didn't ask you about any details. I am asking you whether that does not refresh your recollection that you had the conference that I questioned you about, in Washington; that there were present Mr. Bennett and Mr. Pickerell, and that the statements that I embodied in my question were made?

A. There were many conferences. I do not deny it. Possibly. I don't recall, Mr. Kresel. That's all I can say—to the best of my knowledge and belief.

MR. KRESEL: I ask to have this paper marked for the present for identification.

THE COURT: Let it be so marked.

Marked Defendant's Exhibit H for Identification, 6-26-1923.

XQ. 1438. Mr. Metz, you testified yesterday that you had endorsed a note for Mr. Bennett in the sum of $5,000?

A. I think that was the amount; yes, sir.

XQ. 1439. You endorsed other notes at the Gotham National Bank, didn't you?

A. May I explain the conditions on which I endorsed them?

XQ. 1440. No, please first answer my question. Then you will explain.

A. Yes, I did.

XQ. 1441. You endorsed a note for $300,000, didn't you?

A. $300,000?

XQ. 1442. Yes.

A. Oh, no. $300,000?

XQ. 1443. Yes.

A. For who?

XQ. 1444. Now, wait a minute. Did you endorse a note for $300,000 for Mr. Bennett?

A. Certainly not—$300,000.

XQ. 1445. How much was it that you endorsed in addition to the $5,000?

A. There were various notes, as he paid off on the $5,000. I endorsed new notes as I recall it.

XQ. 1446. You mean that the total of your endorsements for Mr. Bennett was only $5,000?

A. That is my recollection, Mr. Kresel.

XQ. 1447. You mean that the maximum that you ever endorsed for him was $5,000?

A. To my recollection, yes. He had another note in a bank in Jersey when he was with the Dyers Trade Journal, that I endorsed for him, or some paper that he was on as co-endorser.

XQ. 1448. How much was that?

A. I don't recall the amount; $1200 or more.

XQ. 1449. About $1200?

A. That is my recollection. I had to pay one of them myself.

XQ. 1450. That is in addition to the $5,000?

A. Yes; and he paid off in installments.

XQ. 1451. Please don't let us travel away from the City of New York. Please confine yourself to the Gotham National Bank in New York?

A. Yes, sir.

XQ. 1452. To repeat the question, have you not endorsed for Bennett in that bank more than $5,000 of notes?

A. At one time, I don't think I did.

XQ. 1453. Did you endorse any notes for the

Manchester Union and the Manchester Leader, of Manchester, New Hampshire?

A. Not to my knowledge, no.

XQ. 1454. Or for anyone that used the proceeds of those notes for the purposes of those two publications?

A. I never heard of them before.

MR. ANDERSON: It seems to me, assuming that this evidence is admissible at all, that the limit of counsel's right to ask the question would be to specify whether he endorsed the note for specific persons; for certainly, it is rather general to ask a witness whether he endorsed a note for someone who used the proceeds for something.

THE COURT: It is very vague. Of course, it is cross-examination. I assume it is preliminary, to be followed up; is it not?

MR. KRESEL: Yes, sir.

THE COURT: If not, I do not see its value myself. If the witness recalls and is able to testify from such a general question, then a more specific one is not necessary. If he does not recall, and a more specific one is not asked, I see no benefit to be derived from answering the question.

XQ. 1455. Do you know Mr. J. A. Muehling?

A. Who?

XQ. 1456. J. A. Muehling?

A. A. J. R. Murling?

XQ. 1457. I may have his initials wrong.

A. I know such a man—A. J. R. Murling, yes.

XQ. 1458. Just for the purpose of identification, what is his business?

A. I do not know what he is doing now. He used to be with the Bayer Company years ago. He was their manager, if that is the man you mean.

XQ. 1459. No, that is not the man I mean; so we do not agree.

A. Then I do not recall, Mr. Kresel.

XQ. 1460. The man I am asking about is J. A. Muehling?

A. I do not recall such a name, Mr. Kresel.

XQ. 1461. You remember in April, 1922, you were in the United States, were you not?

A. April, 1922?

XQ. 1462. Yes.

A. I sailed in May.

XQ. 1463. You sailed away in May?

A. I went to Europe in May, 1922.

XQ. 1464. And were you in Europe in July, 1922?

A. Yes, sir.

XQ. 1465. In April, 1922, you remember visiting Mr. Bennett at his house on an occasion when he was ill?

A. Yes, sir; I recall that.

XQ. 1466. You visited him several times there, did you not?

A. Yes, sir. He was laid up for quite a while.

XQ. 1467. And you gave him money?

A. He borrowed money to pay his rent with on one occasion.

XQ. 1468. You gave him money?

A. Yes.

XQ. 1469. Now, in July, 1922, you were abroad?

A. Yes, sir.

XQ. 1470. You remember receiving a long letter from Mr. Bennett while you were abroad?

A. I think so.

XQ. 1471. Have you that letter?

A. No, sir.

XQ. 1472. Where is it?

A. I presume I destroyed it. I don't carry that kind of stuff.

XQ. 1473. Don't presume.

A. I am sure I did. I didn't bring those letters back.

XQ. 1474. That is an answer.

A. I am quite sure I destroyed it.

XQ. 1475. Will you tell the Court—and here you can make any explanation that you like—for what services you paid Bennett, for what services you endorsed notes for him, and for what services you paid notes of his in the bank?

A. A full explanation?

XQ. 1476. Go ahead; you have got the field open to you.

A. Yes, sir. Mr. Bennett was connected with the Color Trade Journal, which was the new journal of the color industry. He needed money to develop it, and the first note I understand was for that. Then he went into another journal—sort of a dry goods economist on that line—and I believe I endorsed their note for him. As I recall it, he paid off on installments the Gotham note. I had to pay one note of his that I recollect in a Jersey bank, I think over in New Jersey. Mr. Bennett was interested or had been interested with The Chemical Foundation and sent me a telegram calling for the first installment on the stock of The Chemical Foundation. Mr. Bennett was secretary of one of the dye manufacturing concerns, I forget which one, when it was organized, or shortly after it, and Mr. Bennett, in association with Dr. Matthews, had this dye journal, which was a very promising proposition, and which I was very glad to help him develop, and I think—no, he did not buy it; Merritt Matthews bought it, as I understand, bought out Bennett's interest, as I understand. Bennett was interested in the embargo, the dye embargo, which I opposed on general principles, opposed any embargo.

He conferred with Dr. Pickerell, who was formerly the chemist of the Appraiser Stores in New York, and later on, some years afterwards, I employed him as an expert on tariff matters, and in the laboratories, and he was in Washington on all those sessions. I think he conferred with Bennett and every one interested on those things. Those are the only cases I had an interest in or knew anything about. Bennett was living on Central Park West and several times came to me and said he needed money to pay his rent and other things, and I made it as a loan each time, and Bennett so understood it, and said, "As soon as I am able I will pay it back." That is the whole situation as I recall it, Mr. Kresel, and the only interest I had.

Mr. Kresel: That is all.

The Court: Do I understand, Mr. Kresel, that you want the production of some more books?

Mr. Kresel: I will during recess, your Honor, examine these papers.

The Court: You are through with cross-examination—

Mr. Kresel: Except for that.

The Court: Any re-direct, Colonel Anderson?

Mr. Anderson: Yes, sir.

The Witness: Will you take these now, Mr. Kresel (handing counsel papers). Your Honor, if you please, those are originals, and I would like to get them back eventually. They are my office records.

The Court: Mr. Metz requests, Mr. Kresel, that you return them to him at your convenience.

Mr. Kresel: Certainly.

The Witness: There is no hurry, but I want to get them back eventually.

RE-DIRECT EXAMINATION.

By **Mr. Anderson**:

RDQ. 1477. You have said that Mr. Bennett was the secretary of one of the dye manufacturers' associations. May I ask if he was Sescretary of the American Dyes Institute?

A. I do not think he was Secretary of the American Dyes Institute. I think the one prior to that. I am not certain. The records would show that, Colonel; I am not certain. I do know this, however, Colonel Anderson—

Mr. Kresel: One minute, I object to that. The question has been answered.

RDQ. 1478. Were you a member of the association of which you understood he was secretary?

A. I don't recall. This was the beginning of these transactions. I do not remember. I was a member of the Dyes Institute, I recall that.

Mr. Kresel: I object to that. The answer is "I don't remember."

The Witness: I don't remember; I cannot recall. The records would show.

RDQ. 1479. You have stated on direct examination, if I recall correctly, that you were a member of the American Dyes Institute?

A. Yes, sir.

RDQ. 1480. Mr. Metz, there were produced here and presented and marked for identification several contracts between—

Mr. Kresel: Colonel Anderson, may I interrupt you a minute. I do not want to take you by surprise. I propose to offer in evidence a number of letters that I used in the cross-examination of the witness, and with them in evidence you may want to use them to re-direct him. Therefore will you permit me to interrupt you to offer them now?

Mr. Anderson: Yes, sir.

The Court: There is no objection to having them offered out of order?

Mr. Anderson: Not the slightest.

The Court: Very well, then.

Mr. Kresel: I offer in evidence, if your Honor please, contract between the Dermatological Research Laboratories and the Farbwerke Hoechst Company, dated December 5, 1916, as to which I questioned the witness yesterday and which he identified. I have it here in this form (handing counsel).

Mr. Anderson: I do not object to that, though I have not looked at it. I do not object to it.

The Court: Admitted.

The Witness: I can give you a printed copy, Mr. Kresel, if you care for it.

Mr. Anderson: I do not object to it, except that I make the general objection to which all this evidence is subject. I do not object to it as to form.

The Court: It is so understood, Colonel Anderson.

Received in evidence and marked "Defendant's Exhibit No. 5." (*See Exhibits, Vol. IV, page 2042.*)

The Witness: If you want that, there is a printed copy and you can substitute that for the original (handing counsel).

Mr. Kresel: He has a printed copy and we can put that in.

Mr. Anderson: Yes.

The Court: You may substitute that later if you desire.

Mr. Kresel: Very well, your Honor, I just want to make sure it is a copy.

The Court: You may compare it.

Mr. Kresel: If I may have the privilege, I will substitute it later.

The Witness: I thought it was clearer, Mr. Kresel, that is all.

Mr. Kresel: I offer in evidence the agreement between the Dermatological Research Laboratories, Dr. Schamberg, Dr. Raiziss and Herman A. Metz, dated Philadelphia, June 8, 1918.

Received in evidence and marked "Defendant's Exhibit No. 6." (*See Exhibits, Vol. IV, page 2049.*)

Mr. Kresel: I offer in evidence a letter of James C. Sargent to the Journal of American Medical Association, printed in the issue of that magazine under date of March 30, 1918, which the witness identified.

Received in evidence and marked "Defendant's Exhibit No. 7." (*See Exhibits, Vol. IV, page 2052.*)

Mr. Kresel: I offer in evidence a letter from Dr. Hausser to Mr. Metz, dated June 20, 1913, which is printed at page 499 of the hearing before the Committee on Finance of the United States Senate, on H. R. 8078. And may I with the permission of the Court have the privilege of substituting typewritten copies of these letters which are printed in these books. There is no use putting the book in. We will give it a number now. That is the one of June 20, 1913.

Received in evidence and considered marked "Defendant's Exhibit No. 8" (to be furnished). (*See Exhibits, Vol. IV, page 2055.*)

Mr. Kresel: I offer in evidence letter from Dr. Haeuser to Mr. Metz, dated May 14, 1913, which appears at page 500 of this same volume of hearings before the Committee on Finance.

Received in evidence and considered marked "Defendant's Exhibit No. 9" (to be furnished). (*See Exhibits, Vol. IV, page 2057.*)

MR. ANDERSON: I will state as to these letters the form of the evidence is not objected to, but of course they are subject to the objections—

THE COURT: Each exhibit offered is admitted subject to your general and specific objections.

MR. KRESEL: I offer in evidence letter from Herman A. Metz to Dr. H. F. Albert, dated May 9, 1916, and the enclosure which went with that letter. I would suggest that the letter be marked Exhibit 10 and the enclosure 10-A.

THE COURT: Let them be so marked.

Same received in evidence and marked "Defendant's Exhibits 10 and 10-A" respectively. (*See Exhibits, Vol. IV, page 2059.*)

MR. KRESEL: I offer in evidence letter from Herman A. Metz to Joseph P. Tumulty, The White House, Washington, D. C., dated April 8, 1915, printed at pages 268 to 271 inclusive, of the volume of Hearings before a subcommittee of the Committee on the Judiciary, United States Senate, on Senate Resolution No. 77.

Received in evidence and considered marked "Defendant's Exhibit No. 11" (to be furnished). (*See Exhibits, Vol. IV, page 2065.*)

MR. KRESEL: I will put in typewritten copies of all of these. I offer in evidence a letter from Herman A. Metz to Woodrow Wilson, President of the United States, dated November 7, 1914, and printed at page 775 of the hearings before the Committee on Judiciary.

Received in evidence and considered marked "Defendant's Exhibit No. 12" (to be furnished). (*See Exhibits, Vol. IV, page 2072.*)

Mr. Kresel: I offer in evidence letter from one Blank to Herman A. Metz, dated August 5, 1915, and printed at page 668 of the volume of hearings before the Committee on Ways and Means of the House of Representatives on H. R. 2706.

Received in evidence and considered marked Defendant's Exhibit No. 13 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2323.*)

Mr. Kresel: I offer in evidence another letter from Blank to Herman A. Metz, dated September 28, 1915, and also printed on page 668 of that volume.

Received in evidence and considered marked Defendant's Exhibit No. 14 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2351.*)

Mr. Kresel: I offer in evidence another letter from Blank to Herman A. Metz, dated November 12, 1915, also printed at page 668 of that volume.

Received in evidence and considered marked Defendant's Exhibit No. 15 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2352.*)

Mr. Kresel: I offer in evidence a letter from Dr. Haeuser to Mr. Metz, dated March 30, 1914, printed at page 509 of the volume containing the hearings before the Committee on Finance of the United States Senate, on H. R. 8078.

Received in evidence and considered marked Defendant's Exhibit No. 16 (to be furnished.) (*See Exhibits, Vol. IV, page 2077.*)

Mr. Kresel: I offer in evidence a letter from Dr. Haeuser to Mr. Metz, dated July 31, 1913, and printed at page 677 of the hearings before the Committee on Ways and Means of the House.

Received in evidence and considered marked Defendant's Exhibit No. 17 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2344.*)

Mr. Kresel: I offer in evidence a letter from Mr. Metz to Honorable Robert F. Rose, Foreign Trade Adviser, Washington, D. C., dated October 23, 1914, printed at page 7766 of the hearings be-the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 18 (to be furnished). (*See Exhibits, Vol. IV, page 2080.*)

Mr. Kresel: I offer in evidence a letter from Herman A. Metz to Woodrow Wilson, President of the United States, dated June 16, 1915, and printed at page 274 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 19 (to be furnished). (*See Exhibits, Vol. IV, page 2081.*)

Mr. Kresel: I offer in evidence a letter from Herman A. Metz to Honorable William J. Bryan, Secretary of State, Washington, D. C., dated March 6, 1915, printed at page 255 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 20 (to be furnished). (*See Exhibits, Vol. IV, page 2083.*)

Mr. Kresel: I offer in evidence a telegram from Charles A. Holder, Foreign Trade Adviser, to Mr. Metz, printed at page 779 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 21. (*See Exhibits, Vol. IV, page 2083.*)

Mr. Kresel: I offer in evidence a letter from the Farbwerke-Hoechst Company. I can not read the name of the person who has signed it. Could you not help me with that (handing witness)?

The Witness: That is J. H. Martin. That is one of my clerks.

Mr. Kresel: Signed by Farbwerke-Hoechst Company, J. H. Martin, addressed to Drs. Brown and Jack, Decatur, Illinois, April 26, 1917. That will be marked now.

Received in evidence and marked Defendant's Exhibit No. 22. (*See Exhibits, Vol. IV, page 2084.*)

Mr. Kresel: I offer in evidence a letter from Herman A. Metz to Dr. G. W. McCoy, dated March 14, 1919, printed at page 839 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 23 (to be furnished). (*See Exhibits, Vol. IV, page 2085.*)

Mr. Kresel: I offer in evidence a letter from Edward W. Dieters to Mr. Metz, addressed as "My dear Colonel," dated October 24, 1922.

Received in evidence and marked "Defendant's Exhibit No. 24." (*See Exhibits, Vol. IV, page 2086.*)

Mr. Kresel: I offer in evidence as a separate exhibit the enclosure that came with that letter.

Received in evidence and marked "Defendant's Exhibit No. 24-A." (*See Exhibits, Vol. IV, page 2087.*)

Mr. Kresel: I offer in evidence the letter now marked Defendant's Exhibit H for identification.

Received in evidence and marked "Defendant's Exhibit No. 25." (*See Exhibits, Vol. IV, page 2088.*)

Mr. Kresel: That is all, your Honor.

The Court: Each is admitted subject to the general and specific objections of the Government.

Mr. Anderson: If the Court please, there are a number of these documents of yesterday that I have not been able to examine. It is within ten minutes of the time of recess. Would it be agreeable to the Court to take the recess at this time and convene ten minutes earlier?

The Court: No, we will meet at the same time. We will take a recess until one o'clock Standard time.

RDQ. 1481. You identified on cross-examination an agreement of November 12, 1902, between the German firm mentioned therein and the Consolidated Color and Chemical Company, which I think you said was one of your companies, is that true?

A. Yes, that was changed in the other contracts. They were continuing contracts as to my agency for their products, that is all, that feature of it.

Mr. Anderson: As this paper was not offered in evidence, I would like to make a reoffer. I now offer in evidence this paper which has been identified as Exhibit C for Identification, of the defendant, to be read as Plaintiff's Exhibit No. 407.

Mr. Kresel: Just our general objection, your Honor, as to materiality and relevancy.

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 407." (*See Exhibits, Vol. II, page 762.*)

RDQ. 1482. There was also identified by you on yesterday another agreement dated August 4, 1905, between certain German firms and H. A. Metz and the Consolidated Color Company. This was one of the same series to which you referred?

A. Yes, sir, the continuation of the previous one.

Mr. Anderson: We offer in evidence the agreement already identified and mentioned above, dated August 4, 1905, to be read as Plaintiff's Exhibit No. 408.

The Court: Admitted under the same conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 408." (*See Exhibits, Vol. II, page 782.*)

Mr. Anderson: I should have offered preceding the former agreement, but do now offer the agreement of September 26, 1904, which was identified by the witness on yesterday and marked for identification Defendant's Exhibit E, between the German firms mentioned and Herman A. Metz and others. I now offer that agreement in evidence, to be identified and read as Plaintiff's Exhibit No. 409.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 409." (*See Exhibits, Vol. II, page 792.*)

Mr. Anderson: The witness also identified on yesterday an agreement dated the 22nd day of July, 1912, between the German firms mentioned therein, and Herman A. Metz, H. A. Metz & Company, Victor Koechl & Company, which was marked for identification as Defendant's Exhibit F. I ask that the same be identified as Plaintiff's Exhibit No. 410.

The Court: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 410." (*See Exhibits, Vol. II, page 797.*)

RDQ. 1483. Colonel Metz, you stated on yesterday that there was another agreement dated in 1913. Have you a copy of that agreement?

A. I have not. That is in the Court in Detroit. I have not got a copy.

RDQ. 1484. Have you made a search for it?

A. I did, sir, before I came down.

RDQ. 1485. By reference to one of the exhibits of the Answer, found at page 88 of the printed Answer in this cause, I find the following statement:

> "A prolonged negotiation ensued, the Germans being very reluctant to make any change. At last, in the summer of 1913, it was arranged that the 1,990 shares held by the German concern should be transferred on the books to Mr. Metz; that in return he should execute a demand promissory note without interest for the sum of $597,000; that the note should be delivered to the German company and the stock, together with a suitable transfer properly executed, should be deposited to the sole order of the German concern in a Montreal bank, as security for the note."

Can you state whether the transaction there mentioned is the matter covered by the agreement of 1913, which you have been unable to find?

MR. KRESEL: We object to the question upon the ground, first, that it is not proper re-direct; secondly upon the ground that it is immaterial and irrelevant; third, upon the ground that the instrument speaks for itself and that this witness can not interpret in the way that he is undertaking to do.

If you have a copy of the agreement, Colonel Anderson, I shall not object to your putting it in.

MR. ANDERSON: No, I have not. I can not find a copy and I can not locate the original. I will state to your Honor that we have tried to find it. The witness of course has not been able to go to New York himself to get it. We have done everything we could to find it.

In addition to that, as to the first point, I think the cross-examination opened up this entire subject and it certainly would not be fair to the witness to put in a part of his series of transactions and not put in all, that the full truth may appear.

I recognize the entire right of counsel on cross-examination to limit it to such inquiry as he thinks is appropriate to his particular position, but in the interest of re-direct, I have the right to put in evidence of the entire transaction for the consideration of the Court. If I had the agreement or a copy, I would produce it.

Mr. Kresel: Colonel, may I direct your attention to the statement of the witness on cross-examination that there was a copy of it printed in one of those records. Maybe you can locate it that way.

Mr. Anderson: We have made a search and can not locate that contract in the record. If we can, I will be glad to produce it.

Mr. Kresel: I want to say to your Honor and Colonel Anderson, for your information, that I am pretty familiar with these records before Congressional committees and I do not remember ever having seen any copy of that instrument, nor have I ever seen the original.

Mr. Anderson: Well, that is my experience, sir. I did not know anything about it until this matter was brought up on cross-examination.

The Court: Whether it is re-direct, in order that it may possibly make it unnecessary for you to recall the witness I will let you take it so far as that point is concerned under the general rule, because it is only a question as to whether there would be further examination upon it.

Mr. Anderson: I would not object to it, sir.

The Court: The second point is that it is immaterial. On that ground I have found it necessary to lay down a general rule to take whatever counsel believes is material, because of the many conflicting views—that is, in view of the fact that your views vary with respect to all matters in this case except one single one. With respect to a conclusion, I think at the moment that question does call for a conclusion, Colonel Anderson. Won't you have the question read to you?

Mr. Anderson: I think the question does call for a conclusion but I merely want to identify the character of the transaction from that evidence. I will put the question this way:

RDQ. 1486. Can you state whether the agreement of 1919 to which you refer related to the sale or alleged sale to you of the 1990 shares of stock mentioned in the paragraph of the Answer which I have read?

Mr. Kresel: I won't object.

The Court: You will not?

Mr. Kresel: I will not object.

A. It did, and I know where there is a copy, I think.

Mr. Anderson: If your Honor please, I will ask this question:

RDQ. 1487. Did you have a suit in the United States District Court for the Southern District of New York in which H. A. Metz was complainant and Francis P. Garvan as Alien Property Custodian was the defendant, in which this transaction was involved?

Mr. Kresel: I object to that on the ground that it is immaterial and irrelevant; further, upon the ground that it calls for the witness's conclusion as to what was involved in the suit.

Mr. Anderson: I think upon technical grounds, possibly the second part, that it is a conclusion, would be a good objection; but it was merely leading up and as an inducement to something I wanted to introduce. I did not want him to say what was in the suit, but whether it related to this agreement, whether that agreement was involved.

Mr. Kresel: Further I urge the objection that it is not re-direct. In fact I understand your Honor has ruled generally—

The Court: No, I have ruled with respect to the other matter, because it would require a great many niceties probably to inquire whether all these are proper or not. But Colonel Anderson says he will have no objection to your re-cross examination—

Mr. Anderson: Not the slightest.

The Court: With respect to any matters you want to inquire about. In that case, it seems to me the objection that it is not re-direct falls. But I think, Colonel Anderson, you are right that it does fall unless it is pure inducement to something else, and more by way of recital than a statement of fact. If that fact becomes material to your part of the case, I take it you do not ask me to accept this statement as binding?

Mr. Anderson: I will not, sir. It could only be possible as connecting up.

The Court: I will take the answer and I will see what the next questions are and then determine it.

A. What was the question, Colonel, please?

(RDQ. 1487 repeated as recorded above.)

Mr. Anderson: I will change it, the latter part, to read: "In which this contract was involved." I will put it that way.

A. Yes, sir.

Mr. Kresel: Which contract?

Mr. Anderson: The contract of 1913 was involved. I merely want to bring that out. I should have said at the beginning, though I did not, that in my re-direct examination on these points I still reserve my objections to the evidence on them opened up on cross-examination.

The Court: I do not understand you have waived them.

Mr. Kresel: I think we are assuming that, Colonel, from the very beginning—that you never abandon anything.

Mr. Anderson: If your Honor please, I now wish to offer in evidence the unreported opinion of Judge Mayer, the District Judge in the case of Metz against Garvan, Alien Property Custodian, which opinion was rendered on the 2nd day of June, 1921. If it were reported, I would not offer it.

The Court: As tending to show what?

Mr. Anderson: As tending to show that in the absence of all—

Mr. Kresel: Colonel, will you permit me to interrupt you?

Mr. Anderson: Yes.

Mr. Kresel: You are misinformed as to its not being reported. It is reported.

Mr. Anderson: In what book?

Mr. Kresel: It is reported in the Federal Reporter, of course.

Mr. Anderson: If it is reported in the Federal Reporter, of course I do not want to offer the opinion, and I withdraw it.

Mr. Kresel: If you desire I will give you the citation.

Mr. Anderson: I withdraw it and ask that the entire reference to that matter be stricken out.

I now ask leave to offer in evidence a certified copy of a decree of the United States District

Court for the Southern District of New York in the case of Herman A. Metz, plaintiff, against Francis P. Garvan, as Alien Property Custodian and successor in office to A. Mitchell Palmer, as defendant.

Mr. Kresel: May I see it first?

Mr. Anderson: Certainly (handing counsel).

Mr. Kresel: Your Honor, we object to the introduction of this decree. I am not objecting to it upon the ground of incompetency and that it is a copy; but I am objecting to it upon the ground that it is immaterial and irrelevant; that a decree between Mr. Metz, and Mr. Garvan as Alien Property Custodian, is not evidence against this defendant; that it appears from the face of the instrument that it has no reference to the patents here in suit; that if the decree goes in at all I shall ask that the entire record of the case go in, so that the Court may be able to determine what relevancy or materiality there is in the decree, judging by what was being litigated in the action, and in order that the Court may have before it the complaint and the answer and any other pleadings in the case, so as to see what issues there were in the case and what evidence there was to support this decree.

I think from any point that it is viewed, this is immaterial and irrelevant and not binding upon this defendant, and we therefore object.

Mr. Anderson: Counsel is, I concede, well within his rights in insisting that the remainder of the Court record go in. I recognize that; and if counsel desire that, then while I shall not object in any way to having the entire record here, for the purpose of making this record within some reasonable bounds, I shall withdraw this decree certainly for the present in order to have it certified. If I reach the conclusion that I must introduce it, I will do so later; but simply for the service of the record, I will withdraw that order, the opinion is sufficient.

RDQ. 1488. Colonel Metz, you were asked on cross-examination about negotiations looking to the importation of German dyestuffs in the years 1914, 1915 and 1916, and certain correspondence was introduced either to or from you bearing upon that subject. I would ask if you have any other original correspondence on that subject. If so, I will ask you to produce it.

A. Yes, sir, I have quite a number of letters from the State Department and from other officials.

RDQ. 1489. Will you let me have it?

A. (Witness hands papers.)

RDQ. 1490. I hand you what purports to be a telegram addressed to you and signed by W. J. Bryan, Secretary of State, and ask you if you can identify that as having been received by you?

A. Yes, sir.

MR. ANDERSON: We offer in evidence a telegram dated Washington, August 21, 1914, addressed to Honorable Herman A. Metz, House of Representatives, signed W. J. Bryan, Secretary of State, to be identified and read as Plaintiff's Exhibit No. 411.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 411." (*See Exhibits, Vol. II, page 813.*)

MR. ANDERSON: I will read this correspondence, as the remainder has been read, so your Honor can have the whole thing before you.

MR. KRESEL: I did not read it all, but I have no objection to your reading it.

MR. ANDERSON: You read that part that interested you; so I will read this. The telegram is as follows. (Reading.)

RDQ. 1491. I hand you a telegram dated August 23, 1914——

Mr. Kresel: I will assume he will say that he received these things or sent them, whichever it is.

Mr. Anderson: They are all original papers and we agree, without having him identify them, that they may be introduced.

Mr. Kresel: Not without having him identify them, but without putting you to the trouble of asking him. May I just see them as you offer them, to see if I have any objection.

The Court: Will you offer such as you desire to offer, and when you have finished, I will admit them all subject to such general and specific objection as may now or hereafter be made by the defendant.

Mr. Anderson: Telegram dated Washington, August 23, 1914, addressed to Honorable Herman A. Metz, House of Representatives, Washington, signed "Bryan," to be identified and read in evidence as Plaintiff's Exhibit No. 412. (Reading.)

The Court: Admitted.

Exhibit No. 412." (*See Exhibits, Vol. II, page 814.*)

Mr. Anderson: I offer in evidence telegram dated September 17, 1914, addressed to Honorable Herman A. Metz, signed "Robert Lansing, Acting Secretary of State," to be identified and read a Plaintiff's Exhibit No. 413. The telegram is a follows (reading).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 413." (*See Exhibits, Vol. II, page 814.*)

Mr. Anderson: I offer in evidence carbon copy of a letter dated September 18, 1914, addressed to Honorable Robert A. Lansing, Acting Secretary of State, Washington, D. C., and initialed "H. A. M."

RDQ. 1492. You signed the original of that letter, did you not?

A. Yes, sir.

Mr. Anderson: For convenience of the record, I will put his name at the bottom of that letter, with the consent of counsel.

The Court: Admitted.

Mr. Anderson: The letter reads as follows (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 414." (*See Exhibits, Vol. II, page 815.*)

Mr. Anderson: I offer in evidence letter dated September 22, 1914, addressed to Honorable Herman A. Metz, signed Robert Lansing, Acting Secretary of State, to be identified and read as Plaintiff's Exhibit No. 415. (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 415." (*See Exhibits, Vol. II, page 816.*)

Mr. Anderson: I offer in evidence a letter from W. B. Fleming, Foreign Trade Adviser to the Department of State, to the Honorable Herman A. Metz, dated September 23, 1914, referring therein to two telegrams or drafts of telegrams attached as exhibits with the letter, all of which I ask to be identified, respectively, as Plaintiff's Exhibits Nos. 416, 416-A and 416-B. The letter is as follows (reading).

Received in evidence and marked "Plaintiff's Exhibits Nos. 416, 416-A and 416-B" respectively. (*See Exhibits, Vol. II, pages 817, 818.*)

Mr. Anderson: I offer in evidence a telegram dated October 9, 1914, to Honorable Herman A. Metz, New York, signed Robert Lansing, Acting

Secretary of State, to be identified and read as Plaintiff's Exhibit No. 417 (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 417." (*See Exhibits, Vol. II, page 819.*)

RDQ. 1493. Do you know who Mr. Poucher was?

A. Mr. Morris R. Poucher, Vice-President of Badische Company in New York, who went to Europe to meet the Matanzas.

RDQ. 1494. Do you know of your own knowledge whether Mr. Poucher was active in undertaking to secure the importation of dyestuffs?

A. He was; went over for that purpose.

MR. ANDERSON: I offer in evidence a communication dated at Rotterdam, October 10, 1914, embargo on an export of dyestuffs from Germany, signed by S. Listoe, Consul General.

Received in evidence and marked "Plaintiff's Exhibit No. 418." (*See Exhibits, Vol. II, page 820.*)

RDQ. 1495. Do you know from what place you got this record?

A. Sent to me by the State Department.

MR. ANDERSON: The communication is as follows. **(Reading Plaintiff's Exhibit No. 418.)**

I offer in evidence original telegram dated October 16, 1914, addressed to Honorable Herman A. Metz, signed "Robert Lansing, Acting Secretary of State," to be identified and read in evidence as Plaintiff's Exhibit No. 419. The telegram is as follows. (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 419." (*See Exhibits, Vol. II, page 822.*)

MR. ANDERSON: I offer in evidence letter dated October 14, 1914, addressed to Honorable H. A. Metz, New York City, signed "Robert F. Rose, Foreign Trade Adviser," to be identified and read

in evidence as Plaintiff's Exhibit No. 420. (Reading.)

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 420." (*See Exhibits, Vol. II, page 823.*)

RDQ. 1496. Who was Charles H. Burr, do you know?

A. Charles H. Burr was the counsel for the committee that took up the investigation of abuses in the dyestuff industry with Mr. A. M. Patterson and his organization.

RDQ. 1497. Was that the textile organization?

A. Later on it became the Textile Alliance.

Mr. Anderson: I offer in evidence telegram to Honorable Herman A. Metz, dated October 27th, 1914, signed "Robert Lansing, Acting Secretary of State," to be identified and read in evidence as Plaintiff's Exhibit No. 421. The telegram reads as follows. (Reading.)

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 421." (*See Exhibits, Vol. II, page 824.*)

Mr. Anderson: I offer in evidence letter to Honorable Herman A. Metz, dated October 29th, 1914, signed "Robert Lansing, Acting Secretary of State," which will be found in the record of the Senate Committee Hearing on Resolution No. 77, page 775.

Mr. Kresel: No objection.

Mr. Anderson: I will try to furnish a copy later. The letter is as follows. (Reading.)

The Court: Admitted.

Received in evidence, to be considered marked "Plaintiff's Exhibit No. 422." (*See Exhibits, Vol. II, page 825.*)

RDQ. 1498. Who was Count von Bernstorff?

A. German Ambassador.

RDQ. 1499. German Ambassador to the United States?

A. Yes, sir.

Mr. Anderson: I next offer in evidence a letter dated November 19, 1914, to the Honorable Herman A. Metz, signed Robert Lansing, Acting Secretary of State, to be marked Plaintiff's Exhibit No. 423.

Received in evidence and marked "Plaintiff's Exhibit No. 423." (Read by Mr. Anderson.) (*See Exhibits, Vol. II, page 826.*)

RDQ. 1500. The letter of November 7, 1914, that you referred to this morning, is that the letter that counsel for the defendant introduced in evidence before luncheon, do you recall?

A. I did not see what he introduced there, sir, but this is a copy of the letter I wrote to the President. There is another page missing. I presume it is among those introduced, I am not certain. There were several letters.

Mr. Kresel: The letter is in evidence, I assume.

Mr. Anderson: I will state that it is agreed the letter is the same as the one introduced by counsel.

The Witness: I am not quite certain that we had that letter, Colonel. I would like to make sure, because that is an important one in the record, under the circumstances.

Mr. Anderson: I will verify it. I now offer in evidence a letter dated November 12, 1914, to Honorable James W. Gerard, signed by W. J. Bryan, on the letterhead of the State Department at Washington, to be read as Plaintiff's Exhibit No. 424.

Received in evidence and marked "Plaintiff's Exhibit No. 424" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 826.*)

RDQ. 1501. Mr. Metz, did you take that letter with you to Germany in 1914?

A. I did, yes, sir.

RDQ. 1502. Did you present it to Mr. Gerard, the Ambassador?

A. He handed it back to me and told me keep it as a souvenir. I did not need any introduction.

RDQ. 1503. Do you want it as a souvenir? If so, I will produce copies.

A. I should like to have all those back. I may need those again.

Mr. Anderson: Will your Honor permit, with consent of counsel, that we substitute copies for these originals; and if so substituted, return the originals?

Mr. Kresel: No objection.

The Court: Copies then may be substituted.

Mr. Anderson: I offer in evidence cable dated December 2nd, 1914, from Rome, for department. The paper is headed, "Paraphrase of text of cipher telegram received December, 1914," and is signed by Nelson Page, American Ambassador (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 425." (*See Exhibits, Vol. II, page 827.*)

RDQ. 1504. What is indanthrene?

A. Indanthrene was a patented color, or a series of patented colors, controlled by the Badische Company, now the Kuttroff, Pickhardt & Company, of which Mr. Poucher was Vice-President.

RDQ. 1505. Is that an important dyestuff material?

A. Very important dyestuff.

RDQ. 1506. Indigo was also a patented material at that time, was it not?

A. Indigo itself was not patented. The process for manufacturing synthetic indigo was patented.

RDQ. 1507. But the indanthrene was a patented product?

A. The product was patented as well as the process. It covered a number of indanthrene vat colors.

Mr. Anderson: I offer in evidence telegram dated December 8, 1914, to H. A. Metz, New York, signed "W. J. Bryan, Secretary of State." (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 426." (*See Exhibits, Vol. II, page 829.*)

Mr. Anderson: I next offer in evidence telegram dated January 18, 1915, to Herman A. Metz, signed "W. J. Bryan, Secretary of State." (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 427." (*See Exhibits, Vol. II, page 830.*)

Mr. Anderson: I next offer in evidence a copy of a letter dated September 3, 1915, addressed to the Secretary of State and signed "W. G. McAdoo, Secretary," on the letterhead of the Treasury Department. I suppose the Court will take judicial notice of the fact that Mr. McAdoo was Secretary of the Treasury at that time (reading).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 428." (*See Exhibits, Vol. II, page 830.*)

RDQ. 1508. I note that this letter which I have just read from the Secretary of the Treasury to the Secretary of State states that the Treasury Department has requested you to deliver 500 tubes of salvarsan and 200 tubes of neosalvarsan at $2.25 per tube free of duty. Do you know whether you actually delivered those goods or not and whether they were imported?

A. I would have to refresh my memory. I assume I did, undoubtedly. If they came here, they were delivered.

MR. ANDERSON: I offer in evidence a letter dated November 8, 1915, addressed to Mr. Metz, signed by Frank L. Polk, Counsellor to the State Department.

MR. KRESEL: Are you sure that is in his official capacity?

MR. ANDERSON: I am not at all sure about it. This appears to be official. This is to be read in evidence as Plaintiff's Exhibit 429, together with a copy of a communication signed "Lansing" attached thereto, to be read in evidence as Plaintiff's Exhibit 429-A. The letter is as follows (reading).

THE COURT: Admitted.

Received in evidence and marked respectively Plaintiff's Exhibits 429 and 429-A. (*See Exhibits, Vol. II, pages 831, 832.*)

MR. ANDERSON: If your Honor please, I will merely state that the enclosure is a long telegram addressed to the American Embassy at Paris, which appears to have been sent to the American Embassy at London also, containing instructions, information and data as to the importation of salvarsan, neosalvarsan and novocain, and measures to be taken to procure the free movement thereof through the blockade.

I offer in evidence letter from the Department of State dated January 6, 1916, to Mr. Herman A. Metz, signed, "For the Secretary of State, Alvey A. Adee, Second Assistant Secretary," together with typewritten enclosure, what appears to be a copy of telegram from American Embassy at Berlin, signed with stamp "James W. Gerard," to be identified and read in evidence as Plaintiff's Exhibits 430 and 430-A. (Reading.)

The Court: Admitted.

Mr. Anderson: The telegram from Mr. Gerard merely relates to the same matter, the substance of which is stated therein.

Received in evidence and marked "Plaintiff's Exhibits 430 and 430-A," respectively. (*See Exhibits, Vol. II, pages 835, 837.*)

Mr. Anderson: I offer in evidence a telegram dated Washington, February 8, 1916, addressed to Herman A. Metz, signed "Charles A. Holder, Foreign Trade Adviser," to be read in evidence.

Mr. Kresel: That is already in evidence. I put it in.

Mr. Anderson: I am informed that the telegram I have just offered has already been introduced by counsel for the defendant. I will withdraw the offer in order to avoid duplication of the record.

Mr. Kresel: What is the date of it? I do not want to mislead you.

Mr. Anderson: It is February 8, 1916, Mr. Kresel, addressed to Herman A. Metz.

Mr. Kresel: Yes, that is in as Exhibit No. 21.

Mr. Anderson: I offer in evidence copy of the telegram or cable dated New York, February 9, 1916, addressed to Farbwerke-Hoechst, Main, Germany, signed "Herman Metz," as Plaintiff's Exhibit No. 431.

Received in evidence and marked "Plaintiff's Exhibit No. 431" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 837.*)

RDQ. 1509. I show you, Mr. Metz, an original letter from Mr. Adee, Second Assistant Secretary of State, dated February 3, 1916, in which he refers to a letter from you dated January 17, 1916. Have you that letter or a copy of it?

A. Probably, in one of my bags. It is an official letter. May I say, Colonel Anderson, that these things have been back and forth and in Court so many times that I am losing them one by one. That is the reason I want to keep them this time. They have gone astray.

XQ. 1510. You have not in the papers that you have with you a copy of the paper showing these details?

A. No.

Mr. Anderson: Now I offer in evidence an original letter dated February 3, 1916, addressed to Honorable Herman A. Metz and signed for the Secretary of State, Alvey E. Adee, to be read in evidence as Plaintiff's Exhibit No. 432.

Received in evidence and marked "Plaintiff's Exhibit No. 432" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 838.*)

Mr. Anderson: I offer in evidence a telegram addressed to Herman Metz, dated February 12, 1916, from Farbwerke-Hoechst, to be identified as Plaintiff's Exhibit No. 433.

Received in evidence and marked "Plaintiff's Exhibit No. 433." (*See Exhibits, Vol. II, page 839.*)

Mr. Anderson: The telegram is as follows (reading).

I offer in evidence a letter dated February 10, 1916, to Charles A. Holder, Foreign Trade Adviser from State Department, to Herman A. Metz, to be identified as Plaintiff's Exhibit 434.

Received in evidence and marked "Plaintiff's

Exhibit No. 434." (*See Exhibits, Vol. II, page 839.*)

Mr. Anderson: The letter is as follows (reading).

I offer in evidence letter dated February 10, 1916, to Herman A. Metz, signed Charles A. Holder, Foreign Trade Adviser to State Department.

Received in evidence and marked "Plaintiff's Exhibit No. 435." (*See Exhibits, Vol. II, page 840.*)

(Letter read by Mr. Anderson.)

Mr. Anderson: I offer in evidence a telegram dated Washington, February 28, 1916, to Mr. Herman A. Metz, signed Robert Lansing, Secretary of State.

Received in evidence and marked "Plaintiff's Exhibit No. 436." (*See Exhibits, Vol. II, page 841.*)

(Letter read by Mr. Anderson.)

Mr. Anderson: I offer in evidence letter dated March 11, 1916, to Mr. Herman A. Metz, signed Charles A. Holder, Foreign Trade Adviser.

Received in evidence and marked "Plaintiff's Exhibit No. 437." (*See Exhibits, Vol. II, page 841.*)

(Letter read by Mr. Anderson.)

Mr. Anderson: I offer in evidence letter dated March 23, 1916, to Herman A. Metz, signed Alvey A. Adee, Second Assistant Secretary.

Received in evidence and marked "Plaintiff's Exhibit No. 438." (*See Exhibits, Vol. II, page 843.*)

(Letter read by Mr. Anderson.)

Mr. Kresel: Are those all, Colonel, because I now want to put my objection on the record.

Mr. Anderson: Yes.

Mr. Kresel: I understood your Honor to suggest that we withhold our objection and your Honor's rulings until all of them have been offered. We now object to the introduction of these letters and telegrams upon the ground that they are immaterial and irrelevant.

The Court: They will be received under our general rule.

RDQ. 1511. Were you or were you not in constant touch with the State Department during the period of these negotiations in 1915 and 1916?

A. Yes, sir, constantly.

RDQ. 1512. Mr. Metz, I think you have already testified you were born in the United States, have you not?

A. City of New York, yes, sir.

RDQ. 1513. You have been rather satirically called "Colonel Metz" a number of times by my friend, the counsel for the defendant. Are you entitled to that title?

A. Yes, sir; I am.

RDQ. 1514. If so, for what reason?

Mr. Kresel: I object as entirely immaterial and irrelevant whether this man is Colonel Metz or not Colonel Metz. You are the one who was calling him Colonel Metz when you put him on the witness stand. I did not know anything about it.

Mr. Anderson: The loyalty of this witness has, in a sense, at least by inference, been assailed; and I want to show that he has been in the public service and military service of the United States.

The Court: You may show it, but so far as I recall, he was first called "Colonel Metz" by you.

Mr. Anderson: He was called that by me because I was informed that was his title.

The Court: If you think it is material, you may show how he came by the title.

Mr. Anderson: I do, under the circumstances of this case. Otherwise, it would be utterly immaterial what his title was.

RDQ. 1514 (continuing). Will you answer the question?

A. I served in the New York National Guard about fifteen years. I was first lieutenant, then captain. I was in the Reserves when the war started and immediately when the United States went in, I rejoined my old regiment as Lieutenant Colonel, remained Lieutenant Colonel for about three years, and was then promoted to the staff of the Adjutant General of the State of New York as full Colonel, and I am now in the Reserves since the first of last January.

RDQ. 1515. You were asked on cross-examination, whether as a member of Congress you succeeded in getting indigo put on the free list. Can you say whether or not the representatives of the textile industry demanded that indigo be put on the free list at that time.

A. The consumers did.

Mr. Kresel: One minute.

The Witness: I beg your pardon.

Mr. Kresel: I object to the question on the ground that it is immaterial and irrelevant as to what the textile industry requires. Moreover, I object to it on the ground that the desires of an industry like that must be shown by documentary proof and that we can not be bound, if it is material, by the conclusion or the opinion of this witness as to what the industry desired.

Mr. Anderson: All right. I will put the question differently.

RDQ. 1516. Do you know whether the representatives of the textile industry appeared before committees of Congress at that time and urged the putting of indigo on the free list?

Mr. Kresel: I object to that on the ground that it calls for this witness's conclusion and interpretation as to what representatives of the industry asked Congress to do. If any such appeared before any committee of Congress, there is a way of showing it by the records of the committee.

RDQ. 1517. Then I will ask you this: What was your understanding of the desires of the industry as a member of Congress?

Mr. Kresel: I object to what this witness's understanding was of the desire of the industry, whether he was a member of Congress or not.

Mr. Anderson: If your Honor please, I put the question in three forms so as to avoid objection. But it goes deeper than that. The effort was made here to show that this witness while a member of Congress was instrumental in putting indigo upon the free list, the implication being that he was acting in the interest of German shippers. I objected then to it as immaterial and I thought it was utterly immaterial, because it had absolutely nothing to do with whether this sale of patents was valid or invalid, and we are not here trying the loyalty of a witness, as I understand it. But in view of that inquiry I regarded as both fair to the case and fair to the Government that the position of those directly interested in this industry and using this dye should be stated as the witness understood it, since his motive in Congress has been challenged.

The Court: Isn't that question open to objection? Would he not be required to disclose the facts rather than his understanding the facts? So far as I recall the other evidence to which you refer, it was evidence by documents which were produced. I do not see how you can ask this witness what his understanding of the desire of the industry would be.

Mr. Anderson: I have put the question in three forms, if your Honor please, to meet that. I agree there were technical objections to one or two of the questions. I think, however, the witness can testify whether representatives of the industry—and if further detail is desired, what representatives—appeared before the committees of Congress, if he knows, and what branch of the industry, whether textile or dye, and urged this action. It is not necessary that it should be in writing; these things are conducted personally. Four-fifths of the expressions of the will of the people brought to the attention of Congress are not in writing.

The Court: I have no objection to your disclosing the facts evidenced by your question, but I think the last question is open to the objection made by Mr. Kresel. However, I shall apply the general rule if you want me to.

Mr. Anderson: I will ask this question to try and meet as far as I can the technical objection:

RDQ. 1518. Speaking of your own knowledge, do you know whether persons representing or claimed to represent textile institutions and industries in the United States, came to Washington at the time that indigo was put on the free list and urged that it be free from duty in the interests of American industry?

Mr. Kresel: I object to that question upon the ground hitherto urged, that this is not the proper way to prove what was requested of Congress or of a committee of Congress, by anybody. May I direct your Honor's attention to the testimony that this witness gave to which counsel is now trying to apply this present testimony. I read from page 1757 of the record: "Did you try as a member of Congress to have indigo placed on the free list?" That was after I had introduced the two letters from the Farbwerke-Hoechst Company to this witness to do that, which he said he understood was not an instruction but a suggestion. His answer to the question was, "Yes, sir." "XQ. 249. And you succeeded? A. Yes, sir."

Now, that is the testimony.

Mr. Anderson: All right, then I will put the question this way, since you have called my attention to the express language of the testimony:

RDQ. 1519. Why did you try to have indigo put on the free list in Congress at the time that you testified?

Mr. Kresel: I shall not object to that question.

A. Indigo was on the free list and always had been. It was considered putting it on a 10 per cent basis in the Underwood Bill, which would have raised the price that much, and there was objection by the textile people and myself on the floor of the House, and it was retained on the free list in that territory.

RDQ. 1520. Do you know whether synthetic indigo was in fact made in the United States at all at that time?

A. It was not.

RDQ. 1521. Is it a dye material which has been extensively used in the trade?

A. Most extensive of any individual dye, I presume.

RDQ. 1522. It has been testified here that the Textile Alliance was organized for the purpose of eradicating and preventing bribery and other improper practices in the textile and dye trade of the

United States. That was the effect, I think, of Mr. Patterson's testimony.

Mr. Kresel: Colonel, my recollection is that you declined to let me prove by Mr. Patterson what the purposes of his organization were. Notwithstanding that, I shall not object to your question. I simply want to correct your recollection that that was the testimony.

The Court: You gentlemen need not debate that now if there is no objection to the question.

Mr. Anderson: Certainly.

RDQ. 1522 (continued). I will ask you if you were a member of or contributed to the Textile Alliance?

Mr. Kresel: I object to the question upon the ground that that is immaterial and irrelevant.

Mr. Anderson: I will agree with counsel, as I urged upon the Court in the cross-examination, that all of this evidence is immaterial and irrelevant; but the character, standing, loyalty, integrity and every other quality that this witness possesses, was attacked on cross-examination, and the witness was, with counsel acting well within his legal rights, and therefore I am not complaining, restrained to a very limited reply as to those questions.

While I agree that as to the issues in this case none of this evidence on cross-examination is material and relevant, or can affect it, yet I think it is not only the right of the Government, but that which is due in fairness to the witness himself, to let the facts as fully as I know them be brought out, so that the testimony of the witness may be complete for the consideration of the Court.

The Court: It is re-direct on the question of bias or lack of it; interest or lack of it; credibility or lack of it; and for no other purpose?

Mr. Anderson: That is right, your Honor; and no other purpose in the world.

The Court: Have you anything to say, Mr. Kresel?

Mr. Kresel: No, your Honor, I have nothing to add to my objection. Of course, if counsel will take this witness into new fields that were neither touched upon on the direct nor on the cross, I say now that it will unnecessarily lengthen any examination of him that I have to make. I am trying, and I had hoped that Colonel Anderson would help me, to finish with this witness as speedily as possible. Now, Colonel Anderson admits that the testimony is immaterial and irrelevant. I do not think it ought to go in. I have nothing further to add to my objection, your Honor.

Mr. Anderson: I might say, in reply to counsel, that I think the reasons which I have stated impose upon me a duty to put this evidence in, although the whole subject, in my judgment, is immaterial. I am as anxious as counsel to shorten this examination; but I do not want to shorten it at the expense of justice, either to an individual or to the case.

The Court: You may put it in under the general rule if you like. You of course know more about the institution of which he was a member than I do. I do not know whether he has been discredited; I am not assuming that he has or has not; and do not know whether it would have a tendency to rehabilitate him or not. You may take the answer.

RDQ. 1523. Will you answer the question?

(RDQ. 1522 read as above recorded.)

A. Yes; my firm was——

Mr. Kresel: "Yes." Now, "yes," is an answer, isn't it?

RDQ. 1524. Have you any written evidence of any such contribution?

Mr. Kresel: I object to that upon the ground that it is immaterial and irrelevant.

The Court: Do you not think that is going a little far?

RDQ. 1524a. I will ask you how much you contributed to the Textile Alliance?

Mr. Kresel: I object to that as immaterial and irrelevant.

The Court: It seems to me that that does not have any tendency on that line.

Mr. Anderson: If your Honor will permit me—I am certainly not going to argue against your Honor's views, excepting to this extent: This man is engaged in a large business. I say again, counsel acting within his rights attacked this witness and his credibility and his character and loyalty with a severity that I do not recall having before witnessed, and the evidence already in this case justifies in my judgment the statement that this is but a part of a long-continued controversy.

Those things, unless the full facts are brought out as far as one can on sudden notice of this kind, are liable to do irreparable injury to an individual when there is no redress, because these things done in a court of justice afford no redress.

Therefore, while I deem all of that matter as immaterial, and have so stated, those questions having been gone into, in my judgment, it is my duty to the full extent that I on short notice have a chance to do so to bring out every fact in order that the whole picture may be observed, because on cross-examination a witness is not allowed to talk, he is not allowed to explain, he is not allowed to tell his motives, he is just pinned down to practically bare statements and half proof.

THE COURT: Colonel Anderson, do not understand me to indicate that I have any objection whatsoever to your asking any question that has a tendency, however remote, to do what you indicate it is your desire to do. But the thought that I tried to express was that at the moment I failed to see how his contributions to any commercial organization would have that tendency. However, rather than discuss it, let us put it of record under our general rule.

RDQ. 1525. How much did you contribute, do you know?

A. $5,000 on two occasions, I am quite sure. I offered for three years $5,000 each, and then when the war came, I do not believe the last contribution was called for.

MR. ANDERSON: I offer in evidence letter dated October 1, 1914, from A. M. Patterson, who has been on the witness stand here, to H. A. Metz, acknowledging receipt of $5,000 as a contribution to the Dyestuffs Committee of the American Association of Woolen and Worsted Manufacturers, to be identified and read as Plaintiff's Exhibit No. 439 (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 439." (*See Exhibits, Vol. II, page 843.*)

RDQ. 1526. Do you know whether the American Association of Woolen and Worsted Manufacturers had any connection with the Textile Alliance?

A. It was one of the associate members, a constituent member of the Textile Alliance; yes, sir. Mr. Patterson was president of that organization. Here is a previous payment, the letter I have there, which I happened to see; my letter to him.

Mr. Anderson: I offer in evidence copy of a letter dated May 15, 1914, addressed to Mr. Patterson by Mr. Metz, to be read and identified as Plaintiff's Exhibit No. 440, in which he says (reading).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 440." (*See Exhibits, Vol. II, page 844.*)

A. (continuing). I have the other two here, if you want them.

Mr. Anderson: I also offer in evidence copy of letter dated October 1, 1914, from Mr. Metz to Mr. Patterson enclosing a check of contribution for $5,000 for the improvement of conditions in the textile industry, to be identified and read as Plaintiff's Exhibit No. 441 (reading).

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 441." (*See Exhibits, Vol. II, page 845.*)

RDQ. 1527. You were asked as to the price which you charged the Government of the United States for salvarsan during the years 1916, 1917 and 1918, I think it was. Can you state the prices at which you actually sold salvarsan to the United States during those years or any of them?

Mr. Kresel: That was not my question, but I do not object to your asking him that.

A. Yes, sir; I can answer that.

RDQ. 1528. If you can give that information, please give it as far as you can?

A. In 1917, August 22nd, I sold the Medical Supply Depot 2,400 ampules of 0.6 at $1.00. That was American product.

RDQ. 1529. When you say 0.6, apparently, from your former testimony, there were two sizes to this stuff?

A. Six-tenths of a gram and four-tenths of a gram are the usual sizes used.

RDQ. 1530. When you say 0.6, you mean the larger size, and when you say 0.4, you mean the smaller size?

A. Yes, I have the samples here.

By THE COURT:

Q. 1531. Are those the samples?

A. Yes, sir. I would be very glad to have you look at them.

THE COURT: Do you want those in?

MR. ANDERSON: I do not think so, sir.

By MR. ANDERSON:

RDQ. 1532. Go ahead, Mr. Metz, with your statement.

A. Do you want further figures, Colonel?

RDQ. 1533. You said first that you sold a number of ampules of what you call 0.6 at $1.00?

A. At $1.00.

RDQ. 1534. Now go ahead and state the date of the sales, the amount and the prices, as far as you can do it?

A. On August 22, 1917, 2,400 ampules of 0.6 at $1.00 to the Medical Supply Department of the Navy.

On December 6, 1917, 1,500 ampules to the U. S. Army, Medical Supply Depot, at eighty cents. That was 0.4.

On the same date, 1,000 ampules of 0.6 at $1.00.

On the same date, 1,200 ampules of one gram at $1.50.

On the same date, 200 ampules of 0.3 grams, at $2.00.

On the 27th of November, the same year, 1,500 ampules of 0.4 at 80 cents. On the same date, 1,000 ampules of 0.6 at one dollar, 1,200 ampules of one gram at $1.50, 300 ampules of two grams each, $3.00.

On December 7, 1917, 1,500 ampules of 0.4 at 80 cents, 1,000 6's at $1.00, 1,200 1's at $1.50, 300 2's at $3.00.

On November 5, 1917, to the Navy, 1,200 6's at $1.00, and to the Army on November 12th, 1,000 6's at $1.00.

The total that year was $30,100. That was 1917, after we started manufacturing.

In 1918, on February 18, 18,000 ampules to the Army at $1.00; on March 30, 100,006 6's at $1.00.

On March 30th, 25,000 ampules of one gram at $1.50, and 2,500 of two grams at $3.00. A total of $163,000 on those contracts.

Then I have the contracts for 1922 and 1923. There were none made in 1919, practically, except small shipments to the Public Health Service, but not to the Army and Navy. 1922 and 1923 I have got, but those were the average sales, and the price came down gradually from that time down to 1922, 30 cents for the 0.6, and in March to the Army and Navy I have here 18 cents, and 15 cents for the 0.3, 15 cents, neosalvarsan, 0.2, 14 cents, 0.3, 15 cents, 0.4, 16 cents, 0.6, 18 cents. The last quotation to the Army was 13 cents a few days ago, and I do not know who got the contract, with the United States Government Public Health Service.

Mr. Kresel: Would you mind my making a suggestion?

Mr. Anderson: No.

Mr. Kresel: You asked him first the question with regard to the price, basing it on your recollection of what my question was. My question referred to the time before we entered into the war, and as to that period he testified he was charging everybody $4.50, including the Army.

Mr. Anderson: I am going to ask him about that in a moment. I was referring now to his sales to the Army during the war.

Mr. Kresel: I simply did not want you to be misled about what the testimony was.

Mr. Anderson: I understood the testimony to relate to the period of the war.

RDQ. 1535. On cross-examination yesterday counsel for the defendant asked you as to sales of salvarsan or neosalvarsan to the Government of the United States at a price of $4.50. Have you any knowledge of any such sale or record thereof?

A. Yes, sir, my accountant brought me a memorandum last night that we had one sale of 1,200 ampules to the Army some time in 1915, at $4.50, the price at that time.

RDQ. 1536. Mr. Metz, do you know where you got that salvarsan from?

A. That salvarsan came from Europe, after being held up——

Mr. Kresel: I ask that the——

RDQ. 1537. All right, it came from Europe, just stop there. Do you know what it cost you to get it over here?

A. Not specifically. I know the cost was greatly increased.

RDQ. 1538. Do you know approximately what it cost to get it here?

A. We had to pay Mr. Burr 10 per cent of the invoice——

Mr. Kresel: One minute, please. The question is what it cost.

The Court: That is susceptible of a definite answer.

RDQ. 1539. Have you any record from which you can find out what it did cost to get it here?

A. Not the entire charge, because there were separate charges, commission for getting it through the lines, and so forth. It was materially increased over the old price. I can not give you the exact figures at this date. I have not got them.

RDQ. 1540. Was that a part of the salvarsan that was imported during the period of 1915, as shown by the correspondence which I have read between you and the State Department?

A. Yes, sir; I had to send a man to Rotterdam to get it out.

RDQ. 1541. Did you offer your plant to the Government of the United States in 1917, and if the offer is in writing, let me have it?

A. I did, sir, and I have copies of the letters here which I sent to the Government.

Mr. Anderson: We offer in evidence copies of three letters, one addressed to Dr. W. C. Stimpson.

Mr. Kresel: There is no objection on the ground that they are copies at all.

The Court: They will be admitted.

Mr. Anderson: The first is addressed to Dr. W. C. Stimpson, Assistant Surgeon General, Public Health Service, Washington, D. C., signed H. A. Metz, dated April 26, 1917; another dated June 2, 1917, addressed to Honorable Newton D. Baker, Secretary of War, signed H. A. Metz; another dated June 2, 1917, to the Honorable Josephus Daniels, Secretary of the Navy, signed H. A. Metz, the three to be read as Plaintiff's Exhibits Nos. 442, 442-A and 442-B.

Received in evidence and marked respectively "Plaintiff's Exhibits Nos. 442, 442-A and 442-B." (*See Exhibits, Vol. II, pages 845, 846, 847.*)

Mr. Anderson: In view of the evidence on this subject I am going to ask your Honor's indulgence while I read parts of these letters. The

Mr. Kresel: Will you pardon me. Don't try to do my job, too. The date of the agreement is December 5, 1916, not June; and then there is another agreement of June 8, 1919.

Mr. Anderson: I am very much obliged to you. My notes were wrong, having been taken down hurriedly.

RDQ. 1546. To correct my statement, the first agreement is dated 1916. At that time were you actually manufacturing salvarsan commercially?

A. What date ?

RDQ. 1547. December 5, 1916.

A. I had not begun to put it on the market. That was the agreement. I had been selling——

Mr. Kresel: One minute. You have answered the question.

RDQ. 1548. In the letter which I have just read, where you offered to sell to the War Department or the Surgeon General, you spoke of buying from Dr. Schamberg. Was that bought under that agreement?

A. I had been buying under that agreement before it was made for some time and that agreement finally settled the responsibility.

RDQ. 1549. There was another agreement put in here which was read to you by counsel for the defendant which was dated June, 1918. I will ask you whether you ever operated under the second agreement?

Mr. Kresel: I object to the question upon the ground that it calls for the witness's conclusion and for his interpretation of the agreement.

Mr. Anderson: I agree that the word "operated" calls for a conclusion, but it does not call for an interpretation of the agreement.

Mr. Kresel: Of course, how can he state whether he operated under the agreement unless he interprets the agreement?

THE COURT: The question is withdrawn.

RDQ. 1550. The first paragraph of this agreement provides in effect that Dr. Schamberg and his associates, having knowledge and experience in the manufacture of this article, place their knowledge and experience at the service of H. A. Metz and his laboratory without unnecessary delay, in a sincere effort to bring his product up to the standards demanded by the Government without delay; in such a way, however, that the manufacture of this article by the Dermatological Research Laboratories will not be crippled or interfered with, and to accomplish this, Dr. Raiziss will without delay arrange his management of the manufacturing plants in such a way as to be in a position to give time and attention to the task of improving the product of the Metz Laboratory.

I will first ask you whether Dr. Schamberg or his associates ever went to your laboratories and did any work there after the execution of this agreement?

A. No, sir.

RDQ. 1551. I will next ask you whether Dr. Raiziss ever went to your laboratories or took any part in the management thereof after the execution of this agreement?

A. No, sir.

RDQ. 1552. I will ask you whether anything was done by Dr. Schamberg or his two associates named under that clause of the agreement at your laboratories?

A. No, sir; he was never asked.

RDQ. 1553. The second paragraph of this agreement contains two clauses. The first is that in the event that the Treaty of Peace terminated the right of the Dermatological Institute to manufacture under Federal Trade Commission license, you would agree, if you or any of your companies should have control of the German rights in any way after the Treaty of

Peace had been signed, to let them manufacture to a limited extent. Did you ever do anything under that agreement, under that clause?

A. No, sir. May I give a history of the whole agreement? Is it proper?

Mr. Anderson: I am perfectly willing, if my friend, counsel for the defendant, will not object.

Mr. Kresel: Are you through questioning him specifically about the agreement?

Mr. Anderson: I am now and he said he would like to give the history of it if you do not object. I don't know what he is going to say.

Mr. Kresel: I don't either.

Mr. Anderson: Will you take the risk if I do?

Mr. Kresel: You are asking me to engage in a lottery?

Mr. Anderson: Well, yes.

Mr. Kresel: Well, Colonel, I do not want to keep out what he wants to say, but I will say this to you: That that may make it necessary for me to call Dr. Schamberg and Dr. Raiziss and somebody else to contradict him, and I am trying to avoid that. That is the only reason that I will not consent.

The Witness: May I withdraw the request?

Mr. Anderson: Under the objection of counsel, of course, it would not be competent for the witness to state what took place prior to the making of the agreement, and therefore I will not try to get it in because I think we would be stopped almost at once, going outside of the terms of a written agreement.

Mr. Kresel: Colonel, you are learning, I will say that.

Mr. Anderson: No, I think I learned that some years ago.

The Court: It is past three o'clock, and if there is going to be a discussion on immaterial matters, we will take an adjournment. If not, we can go ahead and try to finish with this witness.

Mr. Anderson: It will take me another hour with this witness.

The Court: Do you want to go ahead for another hour?

Mr. Anderson: I would prefer not. We are going to be in this case three weeks more, judging from the way we are going. I can not stand it physically. I would like to do it.

The Court: If there is any danger of that, I am going to ask counsel to lengthen the Court day from five hours to seven. We will begin earlier or stay later.

Mr. Anderson: All I can say is that I hope to rest the Government's case tomorrow. I am prepared to rest tomorrow, and I think I can.

The Court: I do not want to ask you in weather like this to make it longer, if you can possibly avoid it.

Mr. Kresel: Before your Honor takes an adjournment, you will recall that before recess Mr. Metz handed me some documents, with the idea of my being able to determine whether I required the production of his books or whether these will be satisfactory.

These documents do not include any information with regard to novocain, which was the only product that I was questioning him about. These are solely documents relating to salvarsan. Therefore, they certainly do not answer the purpose.

The Court: And they are now returned to the witness?

Mr. Kresel: And are now returned to the witness.

Mr. Anderson: I will take it up with the witness after adjournment, if your Honor please, and if it is possible to get any record such as counsel have called for here tomorrow morning, I will try to get it done.

The Court: We will take an adjournment until 8.30 tomorrow morning.

(Whereupon, at 3.10 o'clock, Standard Time, an adjournment was taken until Wednesday, June 27th, 1923, at 8.30 o'clock A. M., Standard Time.)

SIXTEENTH DAY.

Wilmington, Delaware,
June 27th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:

Hon. Hugh M. Morris, U. S. District Judge.

Counsel present as before noted.

Trial Resumed Before the Court.

Herman A. Metz, resumed the stand.

Re-Direct Examination (Continued).

By Mr. Anderson:

RDQ. 1554. Yesterday, at the time of adjournment, I was asking you what if anything was done under the so-called Schamberg agreement of June 8th, 1918. The third paragraph of the agreement is to the effect that in the event the Treaty of Peace does not nullify the license of the Dermatological Research Laboratories to manufacture arsphenamine after the war, in the event that Mr. Metz is not in a position to carry out the guarantee to The Laboratories of their right to manufacture, that you would pay to The Laboratories a royalty on the manufacture of salvarsan under the license from the Federal Trade Commission for the duration of the war. Did you ever pay any royalties under that agreement?

A. No, sir.

RDQ. 1555. Then according to your testimony, nothing was ever done under that agreement?

A. Nothing, sir.

RDQ. 1556. Why not, Mr. Metz?

A. Didn't need their assistance; didn't demand it; didn't desire it and didn't use it.

RDQ. 1557. Under the agreement of December 5th, 1916, you were asked by counsel on cross-examination as to the provision in the agreement to the effect that you would not prosecute the Dermatological Institute for having manufactured, under the patents, salvarsan and neosalvarsan. You never did prosecute them, did you?

A. No, sir; I agreed not to.

RDQ. 1558. Why did you agree not to prosecute them?

A. I was willing to sacrifice—

Mr. Kresel: One minute, please. I object to that.

Mr. Anderson: I think it is perfectly legitimate to ask him why he did not prosecute them.

Mr. Kresel: No, I do not agree with you. There is a written agreement between the parties that speaks for itself.

Mr. Anderson: But I think he has a right to say why he did not prosecute.

The Court: I am not sure that I have the facts leading up to this question entirely clear in my mind. You are referring now to the agreement of June, 1918?

Mr. Anderson: No, sir; the agreement of 1916. I will put another question, which will probably make it clear.

RDQ. 1559. Counsel asked you something about your authority to sue in the prosecution of any alleged infringements of the rights of the then German owners of these patents, and I think he asked for the production of a power of attorney, or your authority.

Mr. Kresel: I did not ask him that, Colonel. He did say that he had some power of attorney, and if this is it and you want it put in, let me read it. I do not know that I will have any objection.

Mr. Anderson: All right.

Mr. Kresel: Do you want to offer that?

Mr. Anderson: Yes, I will offer it.

Mr. Kresel: Except as to materiality and relevancy, your Honor, we have no further objection.

Mr. Anderson: I offer in evidence an original power of attorney dated the 16th day of December, 1911, running from the German house which has been shown in evidence to be the owner of these patents, to the witness, the contents of which speak for themselves; to be read as Plaintiff's Exhibit No. 444; and would ask leave to withdraw this paper and substitute a copy if desired.

Mr. Kresel: There is no objection to that.

The Court: Admitted subject to the general and specific objections of the defendant.

Received in evidence and marked "Plaintiff's Exhibit No. 444." (*See Exhibits, Vol. II, page 849.*)

The Court: Now, was the other question withdrawn, or will you restate it?

Mr. Anderson: I will bring it up again.

RDQ. 1560. Now, you did not in fact sue the Dermatological Institute for infringement, as the representative of the German house, did you?

A. No, sir.

RDQ. 1561. They were manufacturing in 1916?

A. Yes, sir.

RDQ. 1562. May I ask why you did not sue to enforce the rights of the German house?

Mr. Kresel: To that, your Honor, we object upon the ground that it is immaterial and irrelevant.

The Court: I wonder if I may ask two or three questions which will help me on that; but I hope these questions can be answered without a discussion.

Mr. Anderson: Yes, sir; I will do that.

The Court: Because it seems to me that that is immaterial. It seems to me that many other facts are necessarily immaterial and unavoidably immaterial, and I mention these facts now so that if, perchance, my views happen to be more or less correct, we may eliminate them and in so doing save time on such matters as are clearly immaterial.

If I understand the testimony of yesterday and its value—and understand me, Colonel Anderson, I am not at any time during this trial unless I make it clear beyond all question definitely ruling on any issues of this case; for instance, on the power of the President to do what was done —I am not passing on that. I have read the Act once. I have not attempted to make any study of the Act. That is a matter lying at the foundation of the suit and I am not going to try and determine that until the whole case is in. But as I see it at the minute, it seems to me that the testimony of yesterday clearly presents these thoughts: First, you deny the contention of the defendant that the terms and conditions of the acquisition of the patents and trade-marks by The Chemical Foundation were such as contended by the defendant; second, if I understand your testimony—and I am asking this to get your help—you do not deny that if those terms and conditions were as contended for by the defendant, that the price paid by The Chemical Foundation for the property it acquired was at all inadequate.

If I am right in those two statements, I take it that the only questions that are open here really are, the ascertainment of the terms and conditions under which the patent rights, trademark rights and other rights acquired by The Chemical Foundation were so acquired by it, and if they were in fact and in law acquired under the terms and conditions contended for by the defendant, then the only question remaining is the power of the Executive Department to make such sale under those terms and conditions.

I take it you are not suggesting that the Judicial Department has power to review the acts, the discretion or wisdom of the acts, of the Executive Department, if acts there were, with respect to the dye industry, particularly in view of the American situation pertaining thereto disclosed and demonstrated by the documentary evidence introduced yesterday afternoon. Do I make myself at all clear, Colonel?

Mr. Anderson: I think you do. But I think your Honor has misunderstood my position, which was not unnatural in this confusion. I am going now to just answer it and not going to argue it at all.

The Court: Yes, if you will.

Mr. Anderson: In the first place, your Honor is right in your first impression. I do differ fundamentally from counsel as to the terms and conditions which surrounded this sale as disclosed by the record and as to the rights transferred thereby. I think we differ on every point in that respect.

I object most earnestly and shall at all times most earnestly, unless there is a very material change in anything I understand in this case, insist that, if every condition surrounding this sale which they insisted upon were true, that the price paid was wholly, utterly and shockingly inadequate.

THE COURT: Will you not point out to me now the testimony on which you are going to base that? I do not mean to argue.

MR. ANDERSON: I am going to base it chiefly on the actual earnings of the property at the time of the sale. But I will go further. I do not want to argue the matter now. There is a great deal in the record that has not been brought to your Honor's attention specifically.

I will go further in that connection and say, as I have indicated in a number of instances, that while the Government has introduced evidence of the earning power of this property at the time of the transfer, which in our judgment is conclusive on the question of inadequacy, aside from the actual admissions on the record by the parties themselves of the arbitrary character of the arrangement as to price, yet the Government was under no legal obligation to do that.

MR. KRESEL: To do what?

MR. ANDERSON: To introduce any evidence of value on its prima facie case in view of the fact that under principles of law so familiar that they are elementary, once it is shown that property which has come into the hands of the trustee has been disposed of, the burden shifts upon the trustee.

The Court: Do you mean to the purchaser?

Mr. Anderson: The burden is shifted to the trustee, in this case to the purchaser, and the purchaser takes notice of the power of the trustee and the duties of the trustee.

In other words, I am not going to argue, but am merely trying to state my position. If I were to be trustee for A, with power of sale, and A and B bought from me trust property, in the absence of any provisions in the trust relieving me from any responsibility—and there is none here—he would take subject to my powers of sale and with knowledge of my trust position and with the responsibilities attached to that position. He can get no higher position in that connection than a trustee himself takes under all the burdens of a trustee, and becomes a constructive trustee himself if there is any defect in the sale. That, of course, is elementary law.

In the third place, while I have introduced evidence here of various theories because I can not tell what view your Honor or any other Court will take, it is my contention that the question of value in this case is utterly and absolutely immaterial; because it is so well settled by the decisions of the Supreme Court of the United States and the English courts as to require no discussion, that when a man is both seller and buyer, the question of consideration does not enter. He might have paid more than it is worth and the sale is invalid. If that principle of law is adopted in this case, then the question of consideration becomes utterly without value.

Now, I outlined those positions to you, so that your Honor might get a reply to your question as full and as frank as I could make it at this time in connection with these questions of value; and in the fourth place, that if our position is correct in any of those respects, then the sale constitutes a confiscation which no one in the Government had the power to make.

The Court: Outside of Congress.

Mr. Anderson: Outside of Congress. I mean in the Executive Department.

The Court: The question is whether the Congress did exercise the power and authorize the Executive Department to execute that power.

Mr. Anderson: Yes. And of course, I would take the position there that Congress could not confer a power upon the Executive Department.

The Court: You need not debate that.

Mr. Anderson: No, sir, of course not.

Then I would say further in connection with the question of confiscation of property that all of the conditions of sale enter into that, and that becomes a question of a very careful analysis of the record. Therefore, this evidence that I am now offering goes really to the position taken by the defendant as to certain conditions surrounding this sale, a point which I assume they will argue, that the value of this property at that time was depleted. It also goes to the fact of the very indefinite and intangible thing which we call an attack upon the credibility of a witness. This particular question I took to be directed more to that than anything else, on cross-examination, and I am only going to ask one or two questions.

I am not very clear, I am afraid, this morning, because sometimes you think clearly and sometimes you do not, and I am afraid I am not this morning; but I have tried to make my answers as clear to your Honor as I could, and as brief. I

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you are referring to or what the witness has in mind.

Mr. Anderson: I have a note here that the question was asked.

Mr. Kresel: I will not object to your bringing it out; but I am simply calling to your attention that there was no such question that I put to the witness, or any answer on that line at all.

Mr. Anderson: May I have the question answered? I have a note here that such a question was asked. May I have the question answered with the understanding that if there was no evidence brought out on cross-examination on that subject, the evidence will be disregarded so far as we are concerned?

The Court: I do not know whether I can do that, Colonel Anderson, because you may open up a field—

Mr. Anderson: For re-direct?

The Court: Yes.

Mr. Anderson: Then for the present I withdraw the question because I do not want to go into something that has not been gone into, on assurance of counsel that he does not recall the question. I may have misunderstood the witness.

RDQ. 1564. Mr. Metz, you were asked on cross-examination something about getting a transfer for salvarsan patents, neosalvarsan, and so forth, and you were asked a great many questions about the exclusive right which you claimed to use these patents. Did you ever get any transfer of these patents?

Mr. Kresel: One minute, please. Of course, that is asking for a conclusion. Do you mean whether he got a writing?

RDQ. 1565. I will ask you if you ever obtained any written assignment of these patents from the German house?